

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

MOHAMMAD HAMED, by his
authorized agent, WALEED HAMED,

Plaintiff,

v.

FATHI YUSUF and UNITED CORPORATION,

Defendants.

CIVIL NO. SX-12-CV-370

**DEFENDANTS' EMERGENCY MOTION FOR RECONSIDERATION OF
PRELIMINARY INJUNCTION ORDER AND FOR STAY OF SAME PENDING
POSTING OF ADEQUATE BOND**

Defendants hereby move, on an *emergency* basis, for reconsideration of the Court's April 25, 2013 Memorandum Opinion and Order (the "Preliminary Injunction Order") on Plaintiff's January 19, 2013 Emergency Motion and Memorandum to Renew Application for TRO, and for a temporary stay of the Preliminary Injunction Order pending Plaintiff's posting of an adequate bond.¹

Introduction

Trial courts should err on the *high side* when setting the amount of a security bond. Here, however, the current bond of \$25,000 was arbitrarily set without any discussion or argument on the bond issue during the January 25 and 31, 2013 preliminary injunction hearings or otherwise. Indeed, the meager bond clearly cannot satisfy its primary purpose, *i.e.*, "to pay the costs and damages sustained by any party found to have been wrongfully enjoined or restrained," Fed. R. Civ. P. 65(c), which costs in this action exceed **\$80 million**, including the \$68 million net equity of Defendant United Corporation d/b/a Plaza Extra, whose assets and operations have been usurped by the

¹ This motion addresses the legal insufficiency of the current bond only, and otherwise is made without waiver of any of Defendants' arguments that the Preliminary Injunction Order was wrongfully issued. Defendants' undersigned counsel received notice of the entry of the Order via an e-mail from the Court dated April 30, 2013.

Preliminary Injunction Order and whose continued existence has been placed in serious jeopardy. Nor does the Preliminary Injunction Order presently require that the bond be held in an interest-bearing account until the entry of final judgment.

Accordingly, as addressed in greater detail below, Defendants respectfully request that this Court forthwith schedule a bond hearing to determine a legally sufficient bond amount to be posted by Plaintiff in an interest-bearing account prior to the effective date of any interlocutory injunction order; or, in lieu of a bond hearing, rely upon the damages figure offered herein by Defendants, *i.e.*, \$80 million, as the sufficient bond amount.

Relevant Background²

A. The Current Security Bond

1. The January 25 and 31, 2013 hearings on Plaintiff's underlying preliminary injunction motion were devoted to the merits of Plaintiff's extraordinary and drastic request for equitable relief.

2. Significantly, the issue of a bond, including the costs and damages that Defendants would sustain if wrongfully enjoined, was never discussed or argued during the merits-based hearings or otherwise.

3. Notwithstanding, in granting the injunction, this Court set "a bond in the amount of Twenty-Five Thousand Dollars (\$25,000.00)" absent any factual findings or other record evidence regarding Defendants' respective costs and damages if an injunction were wrongfully issued. (Preliminary Injunction Order at 23).

² The Preliminary Injunction Order sets forth additional factual findings as gleaned, almost exclusively, from Plaintiff's one-sided proposed factual findings and conclusions of law. The Order otherwise makes no attempt to distinguish or even discuss the factual findings and conclusions of law that Defendants proposed in their post-hearing submissions. The Order likewise was entered prior to a resolution of Defendants' November 5, 2012 Renewed Motion to Dismiss.

4. Similarly, although the Preliminary Injunction Order provides that “Plaintiff’s interest in [United Corporation d/b/a Plaza Extra’s] ‘profits’ accounts of the business now held at Banco Popular Securities shall serve as additional security to pay any costs and damages incurred by Defendants if found to have been wrongfully enjoined,” that “security” is illusory. Indeed, upon a finding that Defendants were wrongfully enjoined and, necessarily, that United Corporation alone owns full interest in the accounts held in its name, Plaintiff would own no interest in those accounts. In other words, Plaintiff’s alleged interest in the accounts held at Banco Popular Securities cannot somehow serve as “additional security” because, *if Plaintiff is found not to own any interest in those accounts*, that “additional security” would be zero. Thus, upon a finding that Defendants were wrongfully enjoined, they would be limited to the meager \$25,000 bond.

5. Further, although a bond is the only source of Defendants’ recovery if found to have been wrongfully enjoined, the Court did not concurrently direct that the instant bond amount actually reflect the “additional security” suggested in the Preliminary Injunction Order.

6. Nor does the current \$25,000 bond reflect any attempt to ensure that the value of United Corporation d/b/a Plaza Extra’s assets encumbered bear some reasonable relationship to (a) Plaintiff’s expected recovery in this action or (b) as noted, Defendants’ *respective* costs and damages resulting from the current injunction.

B. Defendants’ Costs and Damages

7. Although the Preliminary Injunction Order endeavors “to preserve the status quo of the parties,” the Order in fact does the exact opposite – it turns the status quo on its head. (Preliminary Injunction Order at 22).

8. Specifically, disregarding the undisputed hearing testimony, the Preliminary Injunction Order gives rise for the first time to a crippling corporate deadlock “affecting the

management, employees, methods, procedures and operations” of the Plaza Extra stores based on the directive that the Hameds and Yusufs now “jointly manag[e] each store.” (*Id.* at 23).

9. This directive purports to usurp the ultimate decision-making authority that Defendant Fathi Yusuf has exercised since he incorporated United Corporation in 1979 (*id.* at 3), began building the first of its three supermarkets (*id.*), and thereafter has managed and been in charge of all of the three stores through the present – *as even Plaintiff and his own witnesses do not dispute.* (*See, e.g.*, Jan. 25, 2013 Hr’g Tr. at 201:4 (Mohammad Hamed conceding, during his direct testimony, that “Mr. [Fathi] Yusuf he is in charge for everybody”), 201:23-24 & 210:21-23 (Mohammad Hamed acknowledging, again, that Fathi Yusuf is in “charge” of “all the three store[s]”); Jan. 25, 2013 Hr’g Tr. at 26:14-15 & 100:2-3 (Waleed Hamed conceding that Fathi Yusuf is and always has been ultimately responsible for the entire office operations of United Corporation d/b/a Plaza Extra), Jan. 25, 2013 Hr’g Tr. at 105:12-15 (Waleed Hamed reaffirming that Fathi Yusuf is the only individual who has the “ultimate call” relating to the supermarket operations, including to ultimately resolve any disagreements between the respective co-manager employees at the stores)).

10. The Preliminary Injunction Order’s incredible overhaul of ultimate decision-making regarding the stores’ operations – *i.e.*, from the parties’ longstanding *prior regime* since 1979 of Fathi Yusuf as the ultimate decision-maker and tie-breaker to the Court’s judicially-imposed *new regime* of “joint management” based on a preliminary record – threatens the very existence of United Corporation d/b/a Plaza Extra and of the Plaza Extra stores.

11. The Preliminary Injunction Order also usurps the finances of United Corporation d/b/a Plaza Extra, based on the directives that “[n]o funds will be disbursed from [United’s] supermarket operating accounts without the mutual consent of Hamed and Yusuf” and that “[a]ll

checks from all Plaza Extra Supermarket operating accounts will require two signatures,” one from each family. (*Id.* at 23).

12. These directives, among other injury to Defendants, likewise threaten United Corporation’s continued existence, and also purport to relieve Plaintiff from his obligation to pay certain rent owed to United.

13. Further, the directives materially impact United Corporation’s obligations in various pending criminal and civil legal proceedings in which it is a party.

14. Thus, given the unprecedented restraints in the Preliminary Injunction Order, Defendants – and each of them – will sustain significant costs and damages complying with the Order. Those costs and damages include, at a minimum:

(a) the earnings that the injunction presently directs be paid to certain employees, including four Hamed employees and Wadda Charriez, irrespective of Defendants’ ultimate consideration of whether those employees, among others, should remain employed through the entry of a final judgment in this action;

(b) the outstanding rent owed by Plaintiff for the lease of the Sion Farm Plaza Extra Supermarket through the entry of a final judgment in this action;

(c) Defendants’ costs, including attorneys’ fees, incurred in complying with the present injunction order through the entry of a final judgment in this action;

and, perhaps most importantly,

(d) the net equity of United Corporation, whose assets and operations, as noted, have been completely usurped from it.

15. With respect to the forced earnings component of the present injunction and assuming that a final judgment on the merits will not be entered in this action for another two years, *i.e.*, until May 2015, the combined earnings of the Hameds who are employed at the supermarket stores, together with the earnings of Wadda Charriez, from May 2013 through May 2015, is

\$2,866,442.00. (*See* May 8, 2013 Declaration of John Gaffney at ¶ 5 (attached as Exhibit “A” hereto)).

16. With respect to the unpaid rent damages arising from the injunction, Plaintiff’s continued failure to account for various lease obligations at the Sion Farm Plaza Extra Supermarket currently includes \$9,012,759.50 in outstanding rent owed to United Corporation d/b/a Plaza Extra. (*See* Gaffney Decl. at ¶¶ 8-9).

17. With respect to the compliance component of the injunction, Defendants’ estimated costs, including attorneys’ fees, incurred in complying with the injunction are \$380,000-\$625,000. (*See* May 8, 2013 Declaration of Nizar A. DeWood at ¶ 13 (attached as Exhibit “B” hereto)).

18. Lastly, with respect to the value of United Corporation d/b/a Plaza Extra and its supermarket stores, whose continued existence the injunction has seriously jeopardized, the present net equity of United Corporation exceeds \$68,000,000.00. (*See* Gaffney Decl. at ¶ 10).

19. In sum, Defendants’ out-of-pocket compliance costs and potential damages as a result of the instant injunction total more than **\$80 million**.

20. As discussed below, Defendants should be fully protected against those costs and damages in the event the Preliminary Injunction Order should not have been imposed – and the current \$25,000 bond does not satisfy that purpose and thus is legally inadequate.

Argument

A. Legal Standards

“The purpose of the bond requirement is to protect the enjoined party in the event the injunction should not have been imposed.” *See Howmedica Osteonics v. Zimmer, Inc.*, 461 Fed. Appx. 192, 198 (3d Cir. 2012) (vacating trial court’s grant of preliminary injunction where, among other reasons, court failed to conduct a “full hearing” on the bond requirement). Thus, although a trial

court has equitable discretion to set the amount of a bond securing the issuance of a preliminary injunction, such security must reflect “the costs and damages sustained by any party found to have been wrongfully enjoined or restrained.” Fed. R. Civ. P. 65(c). The trial court also must “ensure that the value of assets encumbered b[ear] some reasonable relationship to the likely amount of [the movant]’s expected recovery.” See *Hoxworth v. Blinder, Robinson & Co.*, 903 F.2d 186, 189 (3d Cir. 1990) (“agree[ing] with defendants that the injunction suffers at least one fatal defect: the [trial] court made no attempt to ensure that the value of assets encumbered bore some reasonable relationship to the likely amount of plaintiffs’ expected recovery” and thus “conclud[ing] that the preliminary injunction *must be set aside*”) (emphasis added). See also *Mead Johnson & Co. v. Abbott Labs.*, 201 F.3d 883, 887 (7th Cir. 2000) (advising trial courts, in advance of preliminary injunction hearings, to “notify the parties of the ground rules and endeavor to set bonds at levels reflecting *full consequences*”) (emphasis added).

“[T]he posting of adequate security is a ‘condition precedent’ to injunctive relief.” *Scanvec Amiable Ltd. v. Chang*, 80 Fed. Appx. 171, 176 (3d Cir. 2003) (citations omitted). Further, the text and policies of Rule 65(c) are interpreted “very strictly.” *Hoxworth*, 903 F.2d at 210. See also *Arlington Indus., Inc. v. Bridgeport Fittings, Inc.*, No. 3:06-CV-1105, 2011 U.S. Dist. LEXIS 119438, at *9-10 (M.D. Pa. Oct. 17, 2011) (“The Third Circuit strictly interprets the security bond requirement of Rule 65(c).”). Indeed,

[t]here are important policies undergirding a strict application of the bond requirement . . . *Instant Air Freight Co. v. C.F. Air Freight, Inc.*, 882 F.2d 797, 805-06 n.9 (3d Cir. 1989). An incorrect interlocutory order may harm defendant and a bond provides a fund to use to compensate incorrectly enjoined defendants. *Id.* at 804. Such protection is important in the preliminary injunction context, for because of attenuated procedure, an interlocutory order has a higher than usual chance of being wrong. *Id.* (citation omitted).

Hoxworth, 903 F.2d at 210 (internal quotation omitted). “Plaintiffs too derive some protection from the bond requirement, for defendants injured by wrongfully issued preliminary injunctions can recover only against the bond itself.” *Id.* at 210 n.31 (citing *W.R. Grace & Co. v. Local Union 759*, 461 U.S. 757, 770 (1983)).

“Very strict” application of the bond requirement fulfills an additional key purpose: to deter “rash applications” for preliminary relief by causing plaintiffs to “think carefully beforehand.” *Id.* at 211 (citing *Instant Air Freight*). See also *Howmedica*, 461 Fed. Appx. at 198 (“The bond serves to inform [plaintiffs] of the price they can expect to pay if the injunction was wrongfully issued.”) (citation and quotation omitted); *Mead Johnson*, 201 F.3d at 888 (“Shifting back to the plaintiff the complete injury occasioned by the errors that sometimes occur when preliminary relief is issued after an abridged judicial inquiry will hold in check the incentive [plaintiffs] have to pursue [preliminary injunctive] relief”); *Zambelli Fireworks Mfg. v. Wood*, 592 F.3d 412, 426 (3d Cir. 2010) (“The requirement of security is rooted in the belief that a defendant deserves protection against a court order granted without the full deliberation a trial offers.”).

Accordingly, trial courts “**should err on the high side**” when setting the amount of a security bond under Rule 65(c). *Mead Johnson*, 201 F.3d at 888 (emphasis added). As the court explained in *Mead Johnson*,

[i]f the [trial] judge had set the bond at \$ 50 million, as [defendant] requested, this would not have entitled [defendant] to that sum; [defendant] still would have to prove its loss *An error in setting the bond too high thus is not serious.* . . . Unfortunately, an error in the other direction produces irreparable injury, because the damages for an erroneous preliminary injunction cannot exceed the amount of the bond.

Id. (emphasis added) (citations omitted). *See also Arlington*, 2011 U.S. Dist. LEXIS 119438, at *9-16 (holding it would be “manifestly unjust” to maintain a bond at below 100% “of the damages [the enjoined party] will purportedly suffer should the preliminary injunction be deemed erroneous”).

Trial courts also **should hold a “full hearing”** on the bond requirement when, as here, the initial preliminary injunction hearing was “devoted to the merits of that request, rather than to fixing the amount of bond.” *Mead Johnson*, 201 F.3d at 887. *See also Zambelli*, 592 F.3d at 426 (noting that Rule 65(c) “does not impose any obligation on the parties to seek a bond” at the initial preliminary injunction hearing on the merits); *H.I. Constr., LLC v. Bay Isles Assocs., LLLP*, 53 V.I. 206, 223 (Terr. Ct. 2010) (clarifying that trial court “is *unable to impose a reasonable bond* as required as part of an order for injunctive relief” absent testimony on the Rule 65(c) considerations, including the enjoined party’s financial ability) (emphasis added); *Howmedica*, 461 Fed. Appx. at 198 (remanding matter for “full hearing on the [bond] issue” where the issue was not addressed at the initial preliminary injunction hearing); *Deborah Heart and Lung Center v. Children of the World Foundation*, 99 F. Supp. 2d 481, 495 (D.N.J. 2000) (scheduling, at the conclusion of preliminary injunction hearing on the merits, a separate “bond hearing” to determine appropriate bond requirement); *EH Yacht, LLC v. Egg Harbor, LLC*, 84 F. Supp. 2d 556, 573 (D.N.J. 2000) (ordering separate bond hearing “for a determination of appropriate security to be posted pending further proceedings,” and ordering that injunction order “be temporarily stayed and be[] effective as of the plaintiff’s posting of a bond” as determined after the bond hearing); *Doebler’s Pennsylvania Hybrids, Inc. v. Doebler*, No. 4:CV-03-1079, 2003 U.S. Dist. LEXIS 27098, at *4 (M.D. Pa. Oct. 15, 2003) (granting motion for reconsideration to “schedule[] a hearing to address the amount and nature of the security for the injunction,” which matters were not addressed at the initial hearing on the merits).

Lastly, because “the only recourse for a defendant wrongfully enjoined is against the security bond,” trial courts in this context **should “retain the security bond in an interest-bearing account until the entry of final judgment.”** *Arlington*, 2011 U.S. Dist. LEXIS 119438, at *16-17 (granting enjoined party’s motion for reconsideration to “modify [the court’s initial preliminary injunction order] and direct the Clerk of Court to retain the security bond in an interest-bearing account until the entry of final judgment”). Indeed, retention of the bond in an interest-bearing account until the entry of final judgment is advisable because “recovery under the security bond is triggered only after final judgment on the merits in favor of the enjoined party.” *Id.* at *17 (citing *Clark v. K-Mart Corp.*, 979 F.2d 965, 969 (3d Cir. 1992) and *Am. Bible Soc’y v. Blount*, 446 F.2d 588, 594-95 & n.12 (3d Cir. 1971)).

Where a trial court fails to comply with the foregoing legal standards, a motion for reconsideration is appropriate “to correct clear error or prevent manifest injustice.” LRCi 7.3. *See also Arlington*, 2011 U.S. Dist. LEXIS 119438, at *6-7 (“The purpose of a motion for reconsideration is to . . . correct manifest errors or law or fact” and “[t]he court [also] possesses inherent power to reconsider its interlocutory orders when it is consonant with justice to do so”) (citation omitted); Fed. R. Civ. P. 60(b)(6) (allowing relief from an order for any “reason that justifies relief”).

B. Reconsideration is Warranted in This Action

In the present action, the Court did *not* “err on the high side” when setting the current bond amount of \$25,000; did *not* hold a “full hearing” on the bond requirement, as the initial preliminary injunction hearings were devoted to the merits of the underlying injunction request; and did *not* direct that the bond be held in an interest-bearing account until the entry of final judgment on the merits. Based on the authority cited herein, those failures collectively, and each of them individually, constitute clear error and would lead to manifest injustice if not remedied. *See, e.g., Arlington*, 2011

U.S. Dist. LEXIS 119438, at *9-16 (holding it would be “erroneous” and “manifestly unjust” to set bond at any amount below the full damage figure an enjoined party purportedly would suffer; increasing initial bond of 25% of the defendant’s suggested damages figure to 100% of the suggested figure).

Alternatively, the Court may dispense with the bond hearing by relying upon the damages figure suggested by Defendants in this motion. *See, e.g., Arlington*, 2011 U.S. Dist. LEXIS 119438, at *12-13 (noting that the court therein “specifically relied upon [the enjoined party]’s calculation of lost profits, which was asserted by [the party]’s counsel”); *Christiana Indus. Inc. v. Empire Elecs., Inc.*, 443 F. Supp. 2d 870, 884 (E.D. Mich. 2006) (granting emergency motion for reconsideration to increase bond amount from \$100,000 to \$2.5 million where “Plaintiff d[id] not contest the amount presented by Defendant as its potential loss”); *Merry Maids, L.P. v. WWJD Enters., Inc.*, No. 8:06CV36, 2006 U.S. Dist. LEXIS 49788, at *8 (D. Neb. July 20, 2006) (adopting “figure suggested by the defendants” as bond amount where “the matter of the security required by Rule 65(c) was not discussed or argued at the time of the hearing”). Towards that end, Defendants’ potential loss as a result of being wrongfully enjoined or restrained in this action is \$80 million, comprising the net value of United Corporation and the other costs and damages set forth herein, which amount Plaintiff should be required to post with the Court as security in an interest-bearing account until final judgment. *See, e.g., Mead Johnson*, 201 F.3d at 887 (expressing “concern” over \$1 million bond that failed to adequately consider the defendant’s *full* out-of-pocket compliance costs and potential loss of market share as a result of the injunction, which costs defendant estimated to be \$21.8 million); *Stonder v. Mc&A Tech., Inc.*, No. 09-4113, 2010 U.S. Dist. LEXIS 85616, at *9 (D. Kan. Aug. 19, 2010) (including income, *i.e.*, base salary plus commissions, as bond component); *Scanvec*, 80 Fed. Appx. at 178 (including “expenses” incurred in complying with injunction as bond component).

Conclusion

For the foregoing reasons, Defendants pray that the Court, on an emergency basis, enter an Order (a) scheduling a bond hearing to determine the legally sufficient security to be posted pending further proceedings or, alternatively, adopting the damages figure suggested by Defendants in this motion, *i.e.*, \$80 million, as the sufficient security bond; (b) directing Plaintiff to post the amended security with the Clerk of the Court in an interest-bearing account until the entry of final judgment; (c) staying any preliminary injunction order until Plaintiff's such posting of the amended security and notice to the Court thereof; and (d) granting any additional relief deemed to be just under the circumstances.

Respectfully submitted,

May 9, 2013

Joseph A. DiRuzzo, III, Esq.
USVI Bar # 1114
jdiruzzo@fuerstlaw.com
Christopher M. David, Esq.
S. Ct. BA. No. 2013-0010 (pro hac vice)
cdavid@fuerstlaw.com
FUERST ITTLEMAN DAVID & JOSEPH, PL
1001 Brickell Bay Drive, 32nd Floor
Miami, Florida 33131
305.350.5690 (O)
305.371.8989 (F)
Co-counsel for Defendants Fathi Yusuf and United Corporation

-and-



Nizar A. DeWood, Esq.

USVI Bar No. 1177

THE DEWOOD LAW FIRM

2006 Eastern Suburb, Suite 102

Christiansted, V.I. 00820

T. 340.773.3444

F. 888.398.8428

info@dewood-law.com

Counsel for Defendants Fathi Yusuf and United Corporation

CERTIFICATE OF SERVICE

I hereby certify that on May 9, 2013, a true and accurate copy of the foregoing was forwarded via email to the following: *Joel H. Holt, Esq.*, 2132 Company St., St. Croix, VI 00820, holtvi@aol.com; *Carl J. Hartmann III, Esq.*, 5000 Estate Coakley Bay, L-6, Christiansted, VI 00820, carl@carlhartmann.com; and *K. Glenda Cameron, Esq.*, Law Offices of K.G. Cameron, 2006 Eastern Suburb, Suite 101, St. Croix, VI 00820, kglenda@cameronlawvi.com.



Nizar A. DeWood, Esq.

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

MOHAMMAD HAMED, by his)
authorized agent, WALEED HAMED,)
)
Plaintiff,)
)
v.)
)
FATHI YUSUF and UNITED CORPORATION,)
)
Defendants.)
_____)

CIVIL NO. SX-12-CV-370

EXHIBIT "A" – May 8, 2013 Declaration of John Gaffney

(in support of Defendants' May 8, 2013 *Emergency* Motion for Reconsideration of Preliminary Injunction Order and For Stay of Same Pending Posting of Adequate Bond)

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

MOHAMMAD HAMED, by his authorized
agent WALEED HAMED,

Plaintiff,

vs.

FATHI YUSUF and UNITED CORPORATION,

Defendants.

CASE # SX-12-CV-370

DECLARATION OF JOHN GAFFNEY

I, John Gaffney, pursuant to 28 U.S.C. § 1746, declare as follows:

1. I am employed by United Corporation d/b/a Plaza Extra in a controller capacity.

2. The statements in this declaration are based on my personal knowledge and my review of United Corporation d/b/a Plaza Extra's business records, as those records are kept and maintained in the regular course of business and upon which records I rely as part of my regular duties. If called as a witness, I could and would testify competently to the facts set forth in this declaration.

3. United Corporation d/b/a Plaza Extra presently employs, and pay salaries to, four members of the Hamed family in the supermarket stores at issue in this litigation as follows, in relevant part:

Name	Store	Position	2012 Annual Earnings (Base Salary + Bonus + Vacation)
Waleed Hamed	St. Croix East	Manager	\$347,000 (286,000 + 50,000 + 11,000)
Mufeed Hamed	St. Croix East	Manager	\$347,000 (286,000 + 50,000 + 11,000)
Hisham Hamed	St. Croix West	Manager	\$347,000 (286,000 + 50,000 + 11,000)
Waheed Hamed	St. Thomas	Manager	\$347,000 (286,000 + 50,000 + 11,000)

4. United Corporation d/b/a Plaza Extra also employs and pays a salary to Wadda Charriez, who is an accounting supervisor at the St. Croix East store, as follows, in relevant part:

Name	2012 Annual Earnings (Hourly @ \$12/hr + Overtime + Bonus + Vacation)
Wadda Charriez	\$45,221 (24,960 + 14,864 + 4,500 + 897)

5. Assuming that a final judgment in this action on the merits will not be entered for another two years, *i.e.*, until May 2015, and assuming that the foregoing salaries remain constant

through that date, the combined salaries of Waleed Hamed, Mufeed Hamed, Hisham Hamed, Waheed Hamed and Wadda Charriez to be paid by United Corporation d/b/a Plaza Extra to those employees from May 2013 through May 2015 is \$2,866,442.

6. Plaintiff Mohammad Hamed's last rent payment to United Corporation d/b/a Plaza Extra for the lease at the Sion Farm Plaza Extra East supermarket was made on or about February 7, 2012, in the amount of \$5,408,806.74 for the period May 2004 through December 2011.

7. Additional rent for the Plaza Extra East store remains unpaid and is due and owing to United Corporation d/b/a Plaza Extra.

8. Specifically, with respect to the areas referred to by the parties as "Bay No. 1," "Bay No. 5," and "Bay No. 8" of the Plaza Extra East store:

- a. \$3,967.894.19 is owed for Bay No. 1 from January 1, 1994, through April 4, 2004;
- b. \$243,904.00 is owed for Bay No. 5 from May 1, 1994, through October 31, 2001; and
- c. \$381,250.00 is owed for Bay No. 8 from April 1, 2008, through May 30, 2013;

for a combined amount as of those dates of \$4,593,048.19

9. Separately, as of May 1, 2013, Plaintiff Mohammad Hamed owes to United Corporation d/b/a Plaza Extra \$4,419,711.31 in outstanding rent, including base rent and late fees, for the lease at the Sion Farm Plaza Extra supermarket from January 1, 2012, through May 1, 2013.

10. As of December 31, 2011, the net equity of United Corporation d/b/a Plaza Extra exceeds \$68 million.

I declare under penalty of perjury, on this 8th day of May, 2013, that the foregoing is true and correct.



JOHN GAFFNEY

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

MOHAMMAD HAMED, by his)
authorized agent, WALEED HAMED,)
)
Plaintiff,)
)
v.)
)
FATHI YUSUF and UNITED CORPORATION,)
)
Defendants.)
_____)

CIVIL NO. SX-12-CV-370

EXHIBIT "B" – May 8, 2013 Declaration of Nizar DeWood

(in support of Defendants' May 8, 2013 *Emergency* Motion for Reconsideration of Preliminary
Injunction Order and For Stay of Same Pending Posting of Adequate Bond)

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

MOHAMMAD HAMED, by his authorized
agent WALEED HAMED,

Plaintiff,

vs.

FATHI YUSUF and UNITED CORPORATION,

Defendants.

CASE # SX-12-CV-370

DECLARATION OF NIZAR A. DeWOOD

I, Nizar A. DeWood, pursuant to 28 U.S.C. § 1746, declare as follows:

1. This declaration is based on my personal knowledge and, if called as a witness, I could and would testify competently to the statements herein.
2. I am the founding partner of the DeWood Law Firm, which is Defendants' co-counsel in this action.
3. I am a member in good standing of the Virgin Islands Bar Association and I have been a member of that bar since November 2010.
4. I have worked on various matters in this action since its inception and I am familiar with the filings therein, including the Court's April 25, 2013 Memorandum Opinion and Order (the "Preliminary Injunction Order") on Plaintiff's January 19, 2013 Emergency Motion and Memorandum to Renew Application for TRO.
5. I likewise am familiar with Defendant's *Emergency* Motion for Reconsideration of Preliminary Injunction Order and for Stay of Same Pending Posting of Adequate Bond, which has been filed concurrently herewith without waiver of any arguments that the Order was wrongfully issued.
6. This Court, on a preliminary record, has questioned whether United Corporation d/b/a Plaza Extra remains a viable corporate entity vis-à-vis its supermarket operations or is "distinct" from the Plaza Extra operations (Preliminary Injunction Order at 7); and, independently, has found that Mohammad Hamed has a present ownership interest in United Corporation's supermarket profits dating back to the 1980s (*id.* at 16-17).
7. The Court thus has directed, among other things, that "[n]o funds will be disbursed from [United Corporation d/b/a Plaza Extra's] supermarket operating accounts without the mutual

consent of [Mohammad] Hamed and [Fathi] Yusuf” and that “[a]ll checks from all Plaza Extra Supermarket operating accounts will require two signatures,” one from each family. (*Id.* at 23).

8. Related to those directives, United Corporation d/b/a Plaza Extra and/or its officers and directors are currently a party in numerous pending criminal and civil actions in the Virgin Islands, including the following:

Action
United States of America and Government of the Virgin Islands v. Government of the Virgin Islands v. United Corporation d/b/a Plaza Extra, <i>et al.</i>
Edwards v. United Corporation d/b/a Plaza Extra
Fell v. United Corporation d/b/a Plaza Extra
Gilbert v. United Corporation, Inc. d/b/a Plaza Extra
Hartzog v. United Corporation d/b/a Plaza Extra
Hay v. United Corporation d/b/a Plaza Extra
Jackman v. United Corporation d/b/a Plaza Extra
Javois v. United Corporation
Melendez v. Mike Yusuf, <i>et al.</i>
Pemberton v. United Corporation d/b/a Plaza Extra
Philip v. United Corporation d/b/a Plaza Extra
Powell v. United
Samuel v. United Corporation d/b/a Plaza Extra
Santiago v. United Corporation d/b/a Plaza Extra (West)
United Corporation d/b/a Plaza Extra v. Tutu Park, Limited (Light Poles)
United Corporation d/b/a Plaza Extra v. Tutu Park, Limited
Williams v. United Corporation d/b/a Plaza Extra
Yarwood v. United Corporation, Inc. d/b/a Plaza Extra Supermarket

9. With respect to the criminal action identified on the first line above, the Preliminary Injunction Order purports to require Defendants to do the following, without limitation:

- a. move to vacate the current plea, which is premised upon the Hameds’ affirmative representations to the District Court that United Corporation d/b/a Plaza Extra alone owned and operated the three Plaza Extra supermarket stores during the relevant periods; and that the tax obligations of United Corporation, United Corporation’s shareholders, the individual defendants in the Criminal Action and any related entities and individuals for supermarket profits and other such taxable monies were properly calculated based on United Corporation’s status as a “C” or “S” corporation, as opposed to the partnership alleged in this action, which partnership this Court has acknowledged for the first time in its supposed 30-year history; and
- b. seek from Mohammad Hamed indemnification for all taxes, fines and other penalties that United Corporation d/b/a

Plaza Extra already has paid, for which liabilities this Court now has determined Mohammad Hamed to be jointly and/or severally liable.

Defendants estimate such compliance costs, including the attorneys' fees necessarily related thereto, to be \$75,000-\$100,000.

10. As to the 17 remaining above-referenced civil actions, based on the unique circumstances of each of those cases, the Preliminary Injunction Order purports to require Defendants to do the following in compliance thereof, including, but not limited to:

- a. obtain the Hameds' consent to continuation of each of the subject lawsuits;
- b. obtain the Hameds' consent to the continued retention of United Corporation's respective counsel in each of the subject lawsuits;
- c. revise every existing engagement letter between United Corporation and its respective counsel to incorporate this Court's findings and conclusions of law in the Preliminary Injunction Order, including, but not limited to, Mohammad Hamed alleged interest in the Plaza Extra profits and liability for same;
- d. draft, file and serve notices in each of the subject lawsuits notifying all parties of Mohammad Hamed's joint and several liability for any awards or orders in those lawsuits, including any damage claims against United Corporation d/b/a Plaza Extra; and
- e. prepare and execute indemnification agreements in each of the subject lawsuits to be executed by Mohammad Hamed for indemnification of United Corporation d/b/a Plaza Extra's expenses, including attorneys' fees and adverse damages judgments, in the lawsuits.

Defendants estimate such compliance costs, including the attorneys' fees necessarily related thereto, to be \$15,000-\$25,000 for *each* of the subject civil actions, *i.e.*, \$255,000-\$425,000.

11. The attached letter dated May 8, 2013 from one of United Corporation's current attorneys in certain of the pending actions referenced above highlights the issues in this context. (*See* May 8, 2013 Letter from Carl A. Beckstedt, III, Esq. (attached as Exhibit 1 hereto)).

12. Further, the Court's findings and conclusions of law in the Preliminary Injunction Order establish the basis for certain counter-claims in this action against Mohammad Hamed, including, but not limited to, reimbursement for all costs and damages that Fathi Yusuf and/or United Corporation d/b/a Plaza Extra has paid during the period of the alleged partnership absent

Mohammad Hamed's attendant liability for same as an alleged "partner" in the supermarket operations. Defendants estimate the costs of preparing and filing those counter-claims, including the attorneys' fees necessarily related thereto, to be \$50,000-\$100,000.

13. In sum, the total compliance component of the costs and damages that Defendants' now face as addressed herein based on the Preliminary Injunction Order is \$380,000-\$625,000.

I declare under penalty of perjury that the foregoing is true and correct on this 8th day of May, 2013.



NIZAR A. DeWOOD

EXHIBIT 1

(in support of May 8, 2013 Declaration of Nizar A. DeWood)

Beckstedt & Associates



2162 Church Street • Christiansted, VI 00820 • 340-719-8086 • 800-886-6831 (fax)

Attorneys at Law

May 8, 2013

Via US Mail & Email to mike@plazaextra.com

Mr. Fathi Yusuf
Plaza Extra
P.O. Box 763
Christiansted, VI 00820

Via U.S. Mail & Email to mike@plazaextra.com

Mr. Mike Yusuf
President
United Corporation
P.O. Box 3649
Kingshill, VI 00851

Via U.S. Mail & Email to wally@plazaextra.com

Mr. Mohammad Hamed
c/o Mr. Wally Hamed, his authorized agent
Plaza Extra
P.O. Box 763
Christiansted, VI 00820

Re: Plaza Extra Litigation

Gentlemen:

I am in receipt of Wally's May 3, 2013 email requesting a status on all Plaza Extra litigation and copies of Judge Brady's Orders and Memorandum Opinion dated April 25, 2013, in the matter of *Mohammed Hamed v. Fathi Yusuf and United Corporation*, SX-12-CV-370 (the "Litigation"). I am also in receipt of Wally's letter of today's date indicating that the Hamed interests in Plaza Extra want me to continue as counsel in all litigation for the Plaza Extra Supermarkets that I am currently handling. Wally also advises that they make no claim as to the corporate operation of the shopping plaza or the rentals therefrom.

Attached is a list of the cases involving Plaza Extra Supermarket litigation which I am currently defending. (I note that in two cases I am appointed directly by the insurers, ACE and Admiral. Also, as to the cases covered by First Mercury, while they remain under the Self Insured Retention at this time, I am approved panel counsel once they exceed retention.) Note one of the cases is against Mike Yusuf, individually, however, it is my opinion that this matter clearly arises out of his managerial position at Plaza Extra West and is related to the supermarket

Fathi Yusuf
Mike Yusuf
Wally Hamed
May 8, 2012
Page 2

business. Indeed, coverage has been accepted by First Mercury under the insurance coverage for the store.

At a very minimum, Judge Brady's Order suggests that my client in these matters is the Yusuf/Hamed partnership, not United Corporation. It is my opinion that, in view of this Order, I cannot ethically proceed to represent the defendants in these actions without confirmation as to my retention by Fathi Yusuf, Mohammed Hamed (through Wally Hamed as his authorized representative) and United Corporation (as named defendant in all but one of these cases). I also need clear and agreed instruction as to invoicing, the person or persons to whom I am to report and the person or persons from whom I am to receive authorization/approval on litigation matters.

Assuming that all parties agree to continue my retention and defense of these cases and can also agree on a method of instruction for my services, then I can prepare an Engagement Letter for signature that embodies that consent and agreement. Given that there are many matters that need immediate attention, I recommend that this issue be resolved as soon as possible.

Thank you for your quick response.

Very truly yours,



Carl A. Beckstedt III, Esq.

CAB:jlz

PENDING PLAZA EXTRA SUPERMARKET LITIGATION

MATTER	CARRIER
Edwards, Sonia v. United Corporation d/b/a Plaza Extra	No suit filed
Fell, Isaline v. United Corporation d/b/a Plaza Extra	First Mercury Insurance Company
Gilbert, Felicite v. United Corporation, Inc., d/b/a Plaza Extra	
Hartzog, Amanda individually and as Next of Friend of Jahmil Perez, a minor v. United Corporation d/b/a Plaza Extra	
Hay, Carol L. v. United Corporation d/b/a, Plaza Extra	First Mercury
Jackman, Francis v. United Corporation d/b/a Plaza Extra	
Javois, Kyshama and Ferdinand Javois as parents of Kai Javois, a minor v. United Corporation	No suit filed
Melendez, Carlos, Jr. v. V.I. Asphalt Products Corporation (VIAPCO) and Mike Yusuf	First Mercury Insurance Company
Pemberton, Rita v. Plaza Extra Supermarket and United Shopping Plaza	
Phillip, Nelda P. v. United Corporation d/b/a Plaza Extra	Admiral Insurance
Powell, Paula v. United	No suit filed
Samuel, Velma v. United Corporation d/b/a Plaza Extra	ACE Global Solutions
Santiago, Jacqueline v. United Corporation d/b/a Plaza Extra (West)	
United Corporation d/b/a Plaza Extra v. Tutu Park, Limited (Light Poles)	
United Corporation d/b/a Plaza Extra v. Tutu Park, Limited	
Williams, Edith v. United Corporation d/b/a Plaza Extra	
Yarwood, Christie v. United Corporation, Inc., d/b/a Plaza Extra Supermarket	First Mercury