

UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

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BASSAM Y. ALGHANIM,	:	
	:	
Plaintiff,	:	Case No. 09-CIV-8098 (NRB)
	:	
v.	:	
	:	
KUTAYBA Y. ALGHANIM et al.,	:	
	:	
Defendants.	:	
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DECLARATION OF OMAR AL-ESSA

OMAR AL-ESSA, pursuant to 28 U.S.C. § 1746, declares as follows:

1. I am an attorney registered to practice before the Kuwaiti Court of Cassation and the Kuwaiti Constitutional Court, a member of the Kuwaiti law firm Al Essa & Partners, and head of the Kuwait Bar Association. I serve as counsel to Kutayba Y. Alghanim (“KYA”) in connection with various legal matters in Kuwait, including negotiations and litigations concerning the agreement dated March 12, 2008 and the Memorandum of Understanding, dated March 27, 2008, entered into by and between Bassam Y. Alghanim and KYA, which are described in my declaration dated November 18, 2009 (“First Al-Essa Decl.”). I submit this declaration to provide the Court with additional documentary evidence in support of Defendants Kutayba Y. Alghanim and Omar K. Alghanim’s Motion to Dismiss the Amended Complaint or, in the Alternative, Stay this Action Pending Arbitration. I have personal knowledge of the facts stated herein and, if called as a witness, I could and would competently testify thereto.

2. On March 24, 2009, Bassam Y. Alghanim ("BYA") sued KYA and Yusuf Ahmed Alghanim and Sons W.L.L. ("YAAS"), requesting that the Kuwaiti Court of First Instance, Commercial Circuit appoint an expert to calculate YAAS's profits for 2007 and 2008 and order KYA and YAAS to pay BYA his share of the profits (the "YAAS Accounting Action").¹ (See BYA's Action Statement for Delegating the Experts' Department for Calculating YAAS Profits for 2007 and 2008, dated March 24, 2009, First Al-Essa Decl., Ex. J). On November 2, 2009, the Court of First Instance issued a ruling dismissing the case in favor of arbitration. (See Court of First Instance, Commercial Circuit's decision in the YAAS Accounting Action, dated November 2, 2009, First Al-Essa Decl., Ex. K). BYA appealed this decision on November 12, 2009. On December 27, 2009, the Appellate Court affirmed the Court of First Instance's decision, ordered the case dismissed, and found BYA liable for attorney's fees. I have been informed that this decision and written opinion will be forthcoming. A true and correct copy, along with a certified translation into English, of the Appellate Court's certificate of judgment passed in the YAAS Accounting Action, dated January 6, 2010, is annexed hereto as Exhibit 1.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed on January 7, 2010



Omar Al-Essa

¹ The date of this action was mistakenly stated as April 2, 2009 (and as March 29, 2009 in the corresponding citation) in paragraph 8 of my declaration dated November 18, 2009.