

**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 and Counterclaimants.*

vs.

**WALEED HAMED, WAHEED HAMED,  
MUFEED HAMED, HISHAM HAMED, and  
PLESSEN ENTERPRISES, INC.,**

*Counterclaim Defendants,*

Case No.: SX-2012-CV-370

**ACTION FOR DAMAGES,  
INJUNCTIVE RELIEF AND  
DECLARATORY RELIEF**

JURY TRIAL DEMANDED

**MOHAMMAD HAMED**,

*Plaintiff,*

vs.

**FATHI YUSUF**,

*Defendant.*

Case No.: SX-2014-CV-278

**ACTION FOR DEBT AND  
CONVERSION**

JURY TRIAL DEMANDED

**HAMED'S SUBMISSION OF HIS SUGGESTIONS  
AS TO THE FURTHER HANDLING OF THE REMAINING CLAIMS  
PER THE MASTER'S DIRECTIONS OF AUGUST, 24, 2017**

On August 24, 2017, the Special Master ordered the parties to make a submission of the status and proposed further handling of the remaining claims, those **that accrued after September 17, 2006**, as follows:

identify or agree on any claim that is ready to be determined. . . I would consider [those] first. . . . As to the other claims, please identify those that require additional pretrial preparation, e.g. discovery, depositions, etc., and we will develop an interim scheduling and discovery order agreeable to all.

Two preliminary comments are in order. First, as directed by Judge Brady, the parties have agreed on an electronic docketing system (*Case Anywhere*), so this filing and all subsequent filings regarding these claims will be submitted and served electronically using that system. Aside from assisting the Master in making this process more orderly, this system will ultimately be incorporated into the Clerk's records. This will allow for the development of a record regarding the resolution of each party's respective claims, which is essential both to this process and any appeals.

Second, once the parties see each other's respective claims, it can be determined which of these claims may not be disputed by the parties. For example, the proposed escrow of funds for current third-party claims against the partnership will probably not be disputed once the Liquidating Partner identifies the proposed amount.

With these comments in mind, a newly numbered list of the 165 outstanding "post-September 17, 2006" claims previously raised by Hamed is attached. **Exhibit A**<sup>1</sup>.

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<sup>1</sup> Based on the September 30, 2017 filings of the parties, Hamed believes that there are 12 outstanding post-September 17, 2006 Yusuf claims, which are listed below, all of which are disputed and will be addressed after the receipt of the Yusufs' details.

Y's BDO-Table 10A	Wally Hamed attorney and accounting fees for the federal criminal case
Y's BDO-Table 18	Willy Hamed attorney fees for the federal criminal case
Y's Claims - III.B.1	Outstanding debts of the partnership - Unpaid rent for Plaza Extra-East Bay 1
Y's Claims - III.B.2	Outstanding debts of the partnership - Unpaid rent for Plaza Extra-East Bays 5 & 8
Y's Claims - III.B.3	Outstanding debts of the partnership - 9% interest on rent claims for Bay 1 (excludes 6/1/13-3/8/2015 timeframe)
Y's Claims - III.B.3	Outstanding debts of the partnership - 9% interest on rent claims for Bays 5 & 8 (for 5/17/13-9/30/16)
Y's Claims - III.F	Water sales revenue from Plaza Extra-East through 2/28/2015 at an avg. monthly rate of \$5,291.66 (approx. 101 mo., 2/17/06-2/28/15)
Y's Claims - VI	Two parcels of land titled in Mohammad Hamed's name only, Exhibit N
Y's Claims - III.A	Outstanding debts of the partnership - Miscellaneous debts
Y's BDO-Table 1	Gifts to Mufeed and Hisham Hamed from Fathi and Fawzia Yusuf
Y's Claims - VII	Loss of going concern value of Plaza Extra-West
Y's Claims - VIII	Half of the value of the six containers

Hamed has broken his 165 claims into three groups, based on the extent to which the claims are ready for disposition:

(1) *3 claims* that the Court has stated are owed to Hamed now and thus require no discovery or briefing;

(2) *9 claims* that do not require any additional discovery, and can each be made the subject of short, 2-page briefs (described below) that can then be reviewed without further delay once the Special Master approves this process; and

(3) *153 claims* for which Hamed proposes a highly streamlined discovery schedule (described below), to be followed by short briefing when that discovery is completed.

These groups will now be addressed separately to assist the Special Master.

#### **I. Three claims that the Trial Court has already stated are owed to Hamed now**

Of his 165 remaining claims, Hamed submits that the following three claims should be paid immediately, as they **do not** require (1) any "additional pretrial preparation, e.g. discovery, depositions, etc." or (2) any further briefing -- because Judge Brady has stated (and Fathi Yusuf has filed papers agreeing) that the amounts are owed to Hamed.

<b>Hamed New Claim Number</b>	<b>Original Hamed Designation</b>	<b>Description of the Claim</b>
1	201	Hamed's \$802,966 Yusuf is holding for the sale of the Dorothea
2	355	\$2.7 million unilateral withdrawal from the Partnership account
3	3006	Partnership funds used for Yusuf's personal, civil legal fees here

**A. Hamed Partnership Interest in Sale of the Dorothea property (\$802,966)**

This matter has been repeatedly briefed, and was ruled on by the Court.<sup>2</sup> More importantly, however, in detailing his claims **Yusuf has also now conceded** both at deposition and in filings before this Court that the claim is valid, due **and would be paid when this mutual accounting stage was reached**. See *Yusuf's Accounting Claims And Proposed Distribution Plan* dated September 30, 2017, at page 11:

**\$802,966.14 should be allocated to Hamed** to equalize the Partnership distribution between the Partners resulting from the sale of the stock of Y&S and R&F. (Emphasis added.)

Thus, this amount which was **collected and held after 9/17/06**, plus full statutory simple interest of 9%, pursuant to 11 V.I.C. § 951(a), should be paid as being due.

**B. \$2.7 million unilateral withdrawal from the Partnership account**

Similarly, the Court determined,<sup>3</sup> and there is no dispute, that Yusuf unilaterally took \$2.7 million from the partnership account (check dated August 15, 2012, **Group Exhibit B**). One-half of this amount plus statutory interest should be paid to Hamed now.

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<sup>2</sup> Order dated April 25, 2013 ("Brady Decision") at page 10, paragraph 33:

33. Waleed Hamed testified that Fathi Yusuf utilized Plaza Extra account funds to purchase and subsequently sell property in Estate Dorothea, St. Thomas, **to which it was agreed that Hamed was entitled to 50% of net proceeds**. Although Yusuf's handwritten accounting of sale proceeds confirms that Hamed, is due \$802,966, representing 50% of net proceeds (Pl. Ex. 18), **that payment has never been made to Hamed** and the disposition of those sale proceeds is not known to Hamed. . . .

<sup>3</sup> The Court stated at *id.*, page 10, paragraphs 35 and 36 and footnote 9 at page 19:

On the first hearing day, Mahar Yusuf, President of United. Corporation testified under oath that he used the \$2,784,706.25 withdrawn from the Plaza Extra operating account to buy three properties on St. Croix in the name of United. **On the second hearing day, Mahar Yusuf, contradicted his prior testimony and admitted that those withdrawn funds had actually been used to invest in businesses not owned by United.** . . . (Emphasis added.)



**C. Partnership funds used to pay Fathi Yusuf's personal civil legal fees in this case in the amount of \$504,591.03**

Finally, as Judge Brady stated in factual finding 38 of his April 25, 2013 Order, Fathi Yusuf paid his personal, civil legal fees in this lawsuit out of partnership funds. These are fees in this case for the period after the complaint here was filed, and do not involve the criminal case fees. **These were fees paid to Attorney DiRuzzo's firm for work in this case.** The matter was fully briefed here, with all attached, post-complaint invoices from Attorney DiRuzzo in the filings before the Court. One-half of this amount plus statutory interest should be paid over to Hamed.

The exhibits for the Dorothea sale, the \$2.7 million check and the DiRuzzo checks are attached here as **Group Exhibit B** for the ease of the Master's reference.

**D. Summary of Claims Already Determined by the Court / Yusuf Admission**

The totals, plus interest, owed to Hamed are as follows:

1. \$802,966 plus \$258,775 in interest from the date of the April 2, 2014 Fathi Yusuf deposition where he admits he had **recently collected the funds** (post-2006) -- from the sale of Y&S and R&F stock, for Dorothea.
2. \$2,784,706.25 plus \$1,305,988 in interest from August 15, 2012, the date of the Plaza Extra check written to the United Corporation (unilateral Partnership withdrawal).
3. \$504,590 in checks to Fuerst Ittleman David & Joseph, PL in the following amounts plus interest accruing from the date of each check in the amount of \$216,991:
  - \$29,011.50 plus \$13,141 in interest from October 19, 2012
  - \$15,067.26 plus \$ 6,824 in interest from October 19, 2012
  - \$99,254.45 plus \$44,272 in interest from November 16, 2012
  - \$111,660.24 plus \$47,989 in interest from January 21, 2013
  - \$112,383.32 plus \$47,662 in interest from February 13, 2013
  - \$82,274.84 plus \$ 34,467 in interest from March 6, 2013

\$54,938.89 plus \$22,636 in interest from April 3, 2013

Thus, it is uncontested that the Hameds are owed (1) 100% of the Dorothea property amount, plus interest, (2) half of the \$2.7 million, plus interest and (3) half of the checks written to the United Corporation and Fuerst Ittleman David & Joseph, PLC, plus interest. That is \$4,092,262.75 plus \$1,718,754 in interest, for a total of \$5,874,016.75.

**II. Claims that Hamed believes do not require additional discovery and should be briefed now**

Hamed believes his following nine claims can and should be briefed and determined immediately, because they do not require any additional discovery. **Hamed proposes that he be allowed a two-page memo (exclusive of captions and signatures), with any relevant exhibits attached -- on each of the following 9 claims -- with a two-page opposition and a one-page reply (and Yusuf to be allowed the same for his claims):**

Hamed Claim Number	Original Hamed Desig.	Description
4	356	2012-2013 Real Estate Taxes for Plaza Extra STT
5	272	Tutu Park Mall 2014 taxes & corresponding Partnership withdrawals by Fathi Yusuf
6	244	Reimbursement for Fathi Yusuf withdrawal related to Tutu Park rent payments
7	248	David Jackson, CPA, bill owed for tax work done related to the Partnership's 2014 taxes
8	256	David Jackson, CPA, bill owed for tax work done related to the Partnership's 2013 taxes
9	3005/426	John Gaffney's salary, benefits and bonus
10	297	Retirement bonus paid to Mary Gonzales
11	315	100 shopping carts purchased for Plaza Extra-East
12	312	Replacement of two condensers

**A. Reimbursement to Fathi Yusuf for withdrawals related to Tutu Park rent and tax payments**

**1. 2012-2013 real estate taxes for Plaza Extra STT**

On December 4, 2015, the Landlord for the Plaza Tutu Store in St. Thomas sent the real property tax assessment for that store for 2012 and 2013 (totaling \$79,009.87), which are the real property taxes reimbursed to the landlord by the tenant (the Yusuf/Hamed partnership in 2012 and 2013) under the written lease for the STT premises. These tax bills were submitted to the Liquidating Partner, who promptly paid them. However, when this tax payment was reimbursed to the STT landlord by the Partnership, Yusuf then gave himself a larger distribution without any court order, which totaled \$89,443.92, as noted on the January 1, 2015-December 31, 2015 Plaza Extra-West general ledger submitted to the Hameds by John Gaffney on February 1, 2016.

**2. 2014 real estate taxes for Plaza Extra STT**

Yusuf also apparently repeated this procedure for the 2014 taxes owed for the STT store, paying the STT landlord \$43,069.38 for this tax bill, while then paying United, his corporation, \$46,990.48 for the Plaza East store, as identified on the January 1, 2015-December 31, 2015 Plaza Extra-West general ledger submitted to the Hameds by John Gaffney on February 1, 2016.

**3. Rent payments for Plaza Tutu Store from November 1, 2014 through October 31, 2015**

The Landlord for the Plaza Tutu Store in St. Thomas sent the annual percentage rent calculation for that store, seeking a total payment of \$41,462.28. Because that store was owned by the partnership for 6 months of this time period and by Hameds' new company, KAC357, Inc. ("KAC"), for the last 6 months of the time period, KAC asked the partnership to pay half of this amount, or \$20,731.14. In the January 1, 2015-

December 31, 2015 Plaza Extra-West general ledger submitted to the Hameds by John Gaffney on February 1, 2016, Yusuf decided to pay the entire amount from the Partnership funds (even though only half was owed by the partnership), and then paid himself an equal amount as a partnership distribution of \$41,462.28.

**B. Invoices from David Jackson, CPA, for tax work done for the Partnership**

David Jackson, CPA, provided work for the Partnership's Plaza Extra 2013 and 2014 tax returns in an amount totaling \$1,486.00. Those invoices were paid by the Hameds, not the Partnership.

**C. John Gaffney's pro-rated salary, benefits and bonus from 2012 through June 2016**

John Gaffney testified on January 31, 2013 in the TRO hearing in front of Judge Brady that he was originally hired by the United Corporation. Hearing Tr. Day 2, 65:13-15, 65:21-22. Because of this admission, the Partnership should only be charged 10% of Mr. Gaffney's salary, benefits and bonus from 2012-April 24, 2013. As his work increased for the Partnership, from April 25, 2013 through June 2016 (the latest data available at the time of the Jackson, Vizcaíno Zomerfeld, LLP accounting report), 50% of his salary, benefits and allowances should be allocated to the Partnership in recognition of his work for the Liquidating Partner. The remaining 50% should be paid for by the United Corporation and Plaza Extra - New East, as he was performing more than 50% of his accounting duties for both entities while working for the Partnership.

**D. Retirement bonus paid to Mary Gonzales**

Mary Gonzales received a bonus paid for by the Partnership. According to the general ledger provided by John Gaffney, the date of the bonus payment was April 1, 2015 and was recorded in the Partnership Plaza Extra East general ledger. The Plaza

Extra East store was transferred to Fathi Yusuf on March 9, 2015, which clearly makes the expense the responsibility of the new Plaza Extra-East, not the Partnership.

**E. 100 shopping carts purchased for Plaza Extra-East**

Fathi Yusuf ordered 100 shopping carts for use in the new Plaza Extra-East and paid for them with Partnership funds shortly before the stores were transferred. Accordingly, this purchase should be paid for by the new Plaza Extra-East because the purchase did not benefit the Partnership.

**F. Replacement of two condensers for Plaza Extra-East**

Two condensers were installed at Plaza Extra-East after the value of the store's equipment had been agreed to as part of the evaluation for transferring the stores between the partners. Because these new condensers did not benefit the Partnership, but rather were installed for the benefit of new Plaza Extra-East, the cost should not be assessed to the Partnership.

**G. Summary as to Claims Ready for Briefing (No Discovery Needed)**

Hamed is ready to file a two-page memo as to each of the above nine items once this Court approves the procedure proposed by Hamed for creating the record to allow these claims to be resolved now. The totals, plus interest, owed to the Hameds are as follows:

1. \$89,444.00 plus \$15,261 in interest from December 8, 2015, the date of the entry on the general ledger (2012-2013 Plaza Extra STT real estate taxes)
2. \$46,990.48 plus \$8,747 in interest from October 6, 2015, the date of the entry on the general ledger (2014 Plaza Extra STT real estate taxes)

3. \$41,462.28 plus \$6,982 in interest from December 17, 2015, the date of the entry on the general ledger (November 1, 2014 through October 31, 2015 Plaza Extra STT rent payments)
4. \$832.50 plus \$224 in interest from October 30, 2014, the date Mr. Mohammad Hamed's check to David Jackson cleared (2014 tax work for the Partnership)
5. \$652.50 plus \$199 in interest from June 10, 2014, the date of David Jackson's invoice (2013 tax work for the Partnership)
6. \$226,231.62 plus \$45,146 in interest<sup>4</sup> (John Gaffney salary, benefits and bonus)
7. \$29,899.28 plus \$6,952 in interest from April 1, 2015, the date of the bonus payment (Mary Gonzales bonus)
8. \$13,117.00 plus \$3,169 in interest from February 23, 2015, the date of the invoice (100 shopping carts)
9. \$59,867.02 plus \$14,909 in interest from January 24, 2015, the date of the entry on the Plaza Extra-East general ledger (condensers)

The Hameds are owed (1) 100% of the David Jackson invoice amounts, plus interest (\$1,908) and (2) 50% of all the other claims plus interest (\$295,495.84), for a total of \$297,853.84 owed the Hameds for these nine claims.

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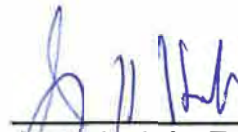
<sup>4</sup> Because the amount of John Gaffney's work for the Partnership varied, the interest calculations totaling \$45,146, are as follows:

- a. \$3,456.88 plus \$1,406 in interest from October 7, 2012-April 24, 2013, calculated from April 24, 2013
- b. \$41,157.92 plus \$14,197 interest from April 24, 2013-December 31, 2013, calculated from Dec. 31, 2013
- c. \$61,091.25 plus \$15,575 in interest for 2014, calculated from 12/31/2014
- d. \$62,764.53 plus \$ 10,353 in interest for 2015, calculated from 12/31/2015
- e. \$30,106.00 plus \$3,615 in interest from January 1, 2016-June 30, 2016, calculated from June 30, 2016

**III. Claims that Hamed believes require additional, but limited, pretrial preparation, e.g. discovery, depositions, etc.**

**Exhibit A** lists the suggested discovery on each of the remaining claims. These would be one or two specific interrogatories with document requests about each specific, detailed accounting item, in some instances followed by a short deposition of Mr. Yusuf or Mr. Gaffney as to the points which remain unclear after the receipt of responses/documents (approximately 10 minutes of deposition questions per item). There are a couple of places where a subpoena of a third party or a deposition of one of Yusuf's sons is requested -- *but these are few*. Hamed can conceive of no other way to get this most basic information on the claims made.

**Dated:** October 30, 2017



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**CERTIFICATE OF SERVICE**

I hereby certify that on this 30<sup>th</sup> day of October, 2017, I served a copy of the foregoing by email (via Case Anywhere ECF), as agreed by the parties, on:

**Hon. Edgar Ross**  
Special Master  
%edgarrossjudge@hotmail.com

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A handwritten signature in blue ink is positioned above a solid horizontal line. The signature is stylized and appears to be the initials 'JM'.



# EXHIBIT A

SUMMARY OF HAMED'S Post-September 17, 2006 CLAIMS (163) following Judge Brady's 7/25/17 Order  
With Suggested "Next Steps" for Depos, Discovery, Etc.

(All Pre-2012 Claims were on Exhibit A --- All Post-2010, numbered Claims were on Exhibit B)					
New Claim Number	Item No. in Original 8/30/16 Claim Filing	Description	Next Steps or What is needed from discovery	Amount Due to Partnership from Yusuf	Amount Due to Hamed Directly from Yusuf
1	201	Reimbursement for sale of the Dorthea condo - uncontested	Nothing - Ready for disposition		\$ 802,966
2	355	\$2.7 million unilateral withdrawal from the Partnership account - uncontested	Nothing - Ready for disposition	\$ 2,784,706	
3	3006	Partnership funds used to pay Fathi Yusuf's personal legal fees - uncontested	Nothing - Ready for disposition	\$ 504,591	
4	356	2012-2013 Real Estate Taxes for Plaza Extra STT	Two page brief and exhibits, two page opposition and one page reply	\$ 89,444	
5	272	Tutu Park Mall 2014 taxes & corresponding Partnership withdrawals by Fathi Yusuf	Two page brief and exhibits, two page opposition and one page reply	\$ 46,990	
6	244	Reimbursement for Fathi Yusuf withdrawal related to Tutu Park rent payments	Two page brief and exhibits, two page opposition and one page reply	\$ 41,462	
7	248	KAC357, Inc. payment of invoices from J. David Jackson PC	Two page brief and exhibits, two page opposition and one page reply		\$ 833
8	256	David Jackson, CPA, bill owed for tax work done related to the Partnership's 2013 taxes	Two page brief and exhibits, two page opposition and one page reply		\$ 653
9	3005/426	John Gaffney's salary, benefits and bonus	Two page brief and exhibits, two page opposition and one page reply	\$ 226,232	
10	297	Retirement bonus paid to Mary Gonzales	Two page brief and exhibits, two page opposition and one page reply	\$ 28,899	
11	315	100 shopping carts purchased for Plaza Extra-East	Two page brief and exhibits, two page opposition and one page reply	\$ 13,117	
12	312	Replacement of four condensers, plus associated costs for shipping, delivery and installation	Two page brief and exhibits, two page opposition and one page reply	\$ 59,867	
13	210	Hamed payment of taxes during criminal case	-Doc request to Liquidating Partner for cancelled checks for United taxpayers -Depo (5-10 minutes) - Fathi Yusuf & John Gaffney regarding payment of taxes		\$ 133,128
14	221	Unsubstantiated checks to NejeH Yusuf	-Doc request to Liquidating Partner for invoices related to checks Subpoena to bank for cancelled checks -Depo (5-10 minutes) - NejeH Yusuf & John Gaffney for business purpose of checks	\$ 14,756	
15	242	NejeH Yusuf's cash withdrawals from safe	-Doc request to Liquidating Partner for invoices/receipts substantiating cash withdrawals -Depo (5-10 minutes) - NejeH Yusuf & John Gaffney regarding business purpose of cash withdrawals	\$ 53,385	
16	253	NejeH Yusuf's use of Partnership resources for his Private Businesses on STT	Subpoenas to trucking companies for invoices -Depo (5-10 minutes) - Personnel involved in the moving of the inventory -Depo (5-10 minutes) - NejeH Yusuf regarding his use of Partnership resources without reimbursement Declaration - Willie Hamed regarding what Partnership resources NejeH Yusuf used	Pending discovery	
17	265	Wally Hamed's personal payment of accounting and attorneys' fees in United States of America v United Corp., et. al., VI D.Ct. 2005-cr-015	Subpoena to criminal attorneys for Joint Defense Agreement, billing records for time period in question -Depo (5-10 minutes) - Attorneys to explain payment under criminal joint defense agreement		\$ 332,900
18	275	KAC357, Inc. payment of invoices from FreedMaxick	-Rog to Liquidating Partner asking whether KAC357, Inc. was reimbursed, and if so, where is it listed on the general ledger -Doc request to Liquidating Partner for underlying Documentation substantiating the reimbursement to KAC357, Inc.		\$ 6,245



SUMMARY OF HAMED'S Post-September 17, 2006 CLAIMS (163) following Judge Brady's 7/25/17 Order  
With Suggested "Next Steps" for Depos, Discovery, Etc.

New Claim Number	Item No. in Original 8/30/16 Claim Filing	Description	Next Steps or What is needed from discovery	Amount Due to Partnership from Yusuf	Amount Due to Hamed Directly from Yusuf
19	278	KAC357, Inc. payment of Partnership WAPA invoices	-Rog to Liquidating Partner asking whether KAC357, Inc. was reimbursed, and if so, where is it listed on the general ledger -Doc request to Liquidating Partner for underlying Documentation substantiating the reimbursement to KAC357, Inc.		\$ 81,714
20	279	KAC357, Inc. payment of Partnership Tropical Shipping invoices	-Rog to Liquidating Partner asking whether KAC357, Inc. was reimbursed, and if so, where is it listed on the general ledger -Doc request to Liquidating Partner for underlying Documentation substantiating the reimbursement to KAC357, Inc.		\$ 23,848
21	281	Payment of NejeH Yusuf credit card bill	Subpoena to bank for NejeH Yusuf credit card records substantiating the balance (will need prior months of credit cards) -Doc request to Liquidating Partner for invoices/receipts substantiating the business purpose for the charges -Depo (5-10 minutes) - NejeH Yusuf to explain business purpose of charges	\$ 49,715	
22	290	NejeH Yusuf removed property belonging to KAC357 Inc.	-Depo (5-10 minutes) - NejeH Yusuf regarding his use of Partnership resources without reimbursement Declaration - Willie Hamed regarding what Partnership resources NejeH Yusuf used	Pending discovery	
23	299	2015 Workers' Compensation payments for Plaza East	Subpoena to bank for 2015 checks -Document request to Liquidating Partner for the cancelled check evidencing payment of the 2015 workers' comp for Plaza Extra East and underlying Documentation substantiating the reimbursement to KAC357, Inc. -Rog to the Liquidating Partner about how payment was made--was it proportioned or paid in full for the year -Following Doc and Rog requests, a 5-10 minute Depo of John Gaffney (and/or accounting staff member) for an explanation of where the credit to KAC357, Inc. is identified on the general ledger	Pending discovery	
24	310	2015 Health permit payments for Plaza East	Subpoena to bank for 2015 checks -Document request to Liquidating Partner for the cancelled check evidencing payment of the 2015 Health Permits for Plaza Extra East and underlying Documentation substantiating the reimbursement to KAC357, Inc. -Rog to the Liquidating Partner about how payment was made--was it proportioned or paid in full for the year -Following Doc and Rog requests, a 5-10 minute Depo of John Gaffney (and/or accounting staff member) for an explanation of where the credit to KAC357, Inc. is identified on the general ledger	\$ 850	
25	314	2015 Business license payment for Plaza East	Subpoena to bank for 2015 checks -Document request to Liquidating Partner for the cancelled check evidencing payment of the 2015 Business License for Plaza Extra East and underlying Documentation substantiating the reimbursement to KAC357, Inc. -Rog to the Liquidating Partner about how payment was made--was it proportioned or paid in full for the year -Following Doc and Rog requests, a 5-10 minute Depo of John Gaffney (and/or accounting staff member) for an explanation of where the credit to KAC357, Inc. is identified on the general ledger	Pending discovery	
26	316	Inventory moved from Plaza West to East after official inventory	-Depo (5-10 minutes) of Mike Yusuf	Pending discovery	
27	319	BJ's Wholesale Club vendor credit	-Doc request for Mike Yusuf's personal credit card statement regarding the vendor credit -Rog to John Gaffney asking where this vendor credit is reflected on the general ledger -Following Rog and Doc request, 5-10 minute Depo of John Gaffney (and/or accounting staff member) for explanation of entry	Pending discovery	

SUMMARY OF HAMED'S Post-September 17, 2006 CLAIMS (163) following Judge Brady's 7/25/17 Order  
With Suggested "Next Steps" for Depos, Discovery, Etc.

New Claim Number	Item No. in Original 8/30/16 Claim Filing	Description	Next Steps or What is needed from discovery	Amount Due to Partnership from Yusuf	Amount Due to Hamed Directly from Yusuf
28	329	2015 Real Estate Tax for Plaza Extra-STT	-Rog to United Corp		\$ 12,652
29	331	2015 Insurance for St. Thomas Plaza Extra car	-Doc request to Liquidating Partner for 2015 car insurance invoice, canceled check for insurance payment & general ledger entry showing credit for the June-December 2015 credit -Rog for the name of the insurance company -Following Rog and Doc request, 5-10 minute Depo of John Gaffney (and/or accounting staff member) for explanation of where the credit is recorded on the general ledger	Pending discovery	
30	333	KAC357, Inc. payment of Partnership AT&T invoices	-Rog to Liquidating Partner asking whether KAC357, Inc. was reimbursed, and if so, where is it listed on the general ledger -Doc request to Liquidating Partner for underlying Documentation substantiating the reimbursement to KAC357, Inc.		\$ 756
31	334	Point of Sale transactions (purchases on account )	-Doc request to Liquidating Partner for Point of Sale (POS) transactions for Fathi, Mike, Nejeah and Yusuf Yusuf -Rog to Liquidating Partner asking where reimbursement to Hameds for POS transactions by Yusuf was credited or balanced out -Depo (5-10 minutes) of Yusufs to explain the POSs and reimbursement of Hameds for them	\$ 926	
32	335	No credit for expired (spoiled) inventory discovered at Plaza Extra West	Declaration from Shawn Hamed	\$ 54,592	
33	338	Merrill Lynch accounts that still existed in 2012 (ML 140-21722, ML 140-07884, and ML 140-07951) financed with Partnership funds	-Depo (5-10 minutes) (5-10 minutes)s of Fathi Yusuf and ML	Pending discovery	
34	340	Rents collected from Triumphant church	Declaration from Willie Hamed -Rog to Liquidating Partner asking where these payments are reflected on the general ledger -Doc request to the Liquidating Partner for underlying Documentation substantiating the entry -Following Rog and Doc request, 5-10 minute Depo of John Gaffney (and/or accounting staff member) for explanation of the entry	\$ 3,900	
35	343	KAC357, Inc.'s American Express payments deposited to Partnership account	-Rog to Liquidating Partner regarding whether KAC357, Inc. was reimbursed and if so, where is it listed on the general ledger -Doc request to Liquidating Partner for underlying Documentation substantiating the reimbursement to KAC357, Inc. -Following Rog and Doc request, 5-10 minute Depo of John Gaffney (and/or accounting staff member) for explanation of the entries		\$ 12,273
36	345	Unclear UVI payment	-Rog regarding what was the purpose of the payment -Doc request for invoice and cancelled check -Following Rog and Doc request, 5-10 minute Depo of John Gaffney (and/or accounting staff member) for explanation of entry	\$ 293	
37	353	Due to/from Fathi Yusuf	-Rog regarding what the entry references--explanation of what this entry covers -Doc request to Liquidating Partner for underlying Documentation to substantiate the entry -Following Rog and Doc request, 5-10 minute Depo of John Gaffney (and/or accounting staff member) for an explanation of the entry	\$ 186,819	
38	357	Payment to Dudley, Topper and Feuerzeig, LLP (Fathi Yusuf's personal attorney)	-Rog to Fathi Yusuf	\$ 57,605	
39	358	STT Tutu gift certificates	-Doc request to Liquidating Partner for a review of the originals of the STT Tutu gift certificates--need to see the backs of them and underlying Documentation substantiating the reimbursement to KAC357, Inc. -Following Rog and Doc request, 5-10 minute Depo of John Gaffney (and/or accounting staff member) for explanation where the credit to KAC357, Inc. is located on the general ledger		\$ 3,790

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New Claim Number	Item No. in Original 8/30/16 Claim Filing	Description	Next Steps or What is needed from discovery	Amount Due to Partnership from Yusuf	Amount Due to Hamed Directly from Yusuf
40	360	Approximately \$18 million in "purged" (i.e. missing) transactions in 2013	-Rog to Liquidating Partner for explanation of \$18 million in purged transactions that are questionable -Doc request to Liquidating Partner for underlying Documentation substantiating the entries -Following Rog and Doc requests, Depo of John Gaffney (and/or accounting staff member) for an explanation of the entries	Pending discovery	
41	361	Payments to Caribbean Refrigeration & Mechanical LLC	-Rog to Liquidating Partner regarding what was the purpose of the payments -Doc request to Liquidating Partner for the invoices and cancelled checks substantiating the transactions -Following Rog and Doc request, 5-10 minute Depo of John Gaffney (and/or accounting staff member) for an explanation of the entries	\$ 95,420	
42	363	Transactions with Miadden Plastic	-Rog to Liquidating Partner regarding what was the purpose of the payments -Doc request to Liquidating Partner for the invoices and cancelled checks substantiating the transactions -Following Rog and Doc request, 5-10 minute Depo of John Gaffney (and/or accounting staff member) for an explanation of the entries	\$ 49,565	
43	364	Unclear General Ledger entry "Collection of Setallment [sic]"	-Rog to Liquidating Partner requesting an explanation of the meaning of this entry -Doc request to the Liquidating Partner for underlying Documentation substantiating the entry -Following Rog and Doc request, 5-10 minute Depo of John Gaffney (and/or accounting staff member) for explanation of the entry	\$ 42,970	
44	365	Unclear General Ledger entries "Foreign taxes paid"	-Rog to Liquidating Partner regarding what the entries reference -Doc request to Liquidating Partner for underlying Documentation substantiating the entries -Following Rog and Doc request, 5-10 minute Depo of John Gaffney (and/or accounting staff member) for explanation of the entries	\$ 18,804	
45	366	Unclear General Ledger entries POS charges for Seaside Market	-Rog to Liquidating Partner regarding what the entries reference -Doc request to Liquidating Partner for underlying Documentation substantiating the entries -Following Rog and Doc request, 5-10 minute Depo of John Gaffney (and/or accounting staff member) for explanation of the entries	\$ 11,660	
46	367	Unclear General Ledger entries "change order" and "cash requisition"	-Rog to Liquidating Partner regarding what the entries reference -Doc request to Liquidating Partner for underlying Documentation substantiating the entries -Following Rog and Doc request, 5-10 minute Depo of John Gaffney (and/or accounting staff member) for explanation of the entries	\$ 26,510	
47	369	Unclear General Ledger entries "credit card paid"	-Rog to Liquidating Partner regarding what the entries reference -Doc request to Liquidating Partner for underlying Documentation substantiating the entries -Following Rog and Doc request, 5-10 minute Depo of John Gaffney (and/or accounting staff member) for explanation of the entries	Pending discovery	
48	370	Unclear General Ledger entries "RDC Frozen Account"	-Rog to Liquidating Partner regarding what the entries reference -Doc request to Liquidating Partner for underlying Documentation substantiating the entries -Following Rog and Doc request, 5-10 minute Depo of John Gaffney (and/or accounting staff member) for explanation of the entries	\$ 350,000	
49	371	Scotiabank Telecheck transfers were deposited in Partnership accounts	-Rog to Liquidating Partner regarding what the entries reference -Doc request to Liquidating Partner for underlying Documentation substantiating the entries -Following Rog and Doc request, 5-10 minute Depo of John Gaffney (and/or accounting staff member) for explanation of the entries	\$ 8,500,000	
50	373	Unclear General Ledger entries regarding "return check mutilated"	-Rog to Liquidating Partner regarding what the entries reference -Doc request to Liquidating Partner for underlying Documentation substantiating the entries -Following Rog and Doc request, 5-10 minute Depo of John Gaffney (and/or accounting staff member) for explanation of the entries	\$ 83,800	

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New Claim Number	Item No. in Original 8/30/16 Claim Filing	Description	Next Steps or What is needed from discovery	Amount Due to Partnership from Yusuf	Amount Due to Hamed Directly from Yusuf
51	374	Unclear General Ledger entry regarding "Cash - Transfer Clearing, Banco Proc Error re Xfer"	-Rog to Liquidating Partner regarding what the entry references -Doc request to Liquidating Partner for underlying Documentation substantiating the entry -Following Rog and Doc request, 5-10 minute Depo of John Gaffney (and/or accounting staff member) for explanation of the entry	\$ 360,000	
52	375	Unclear General Ledger entry regarding "2013 US Customs Exp Per Schedule"	-Rog to Liquidating Partner regarding what the entry references -Doc request to Liquidating Partner for underlying Documentation substantiating the entry -Following Rog and Doc request, 5-10 minute Depo of John Gaffney (and/or accounting staff member) for explanation of the entry	\$ 9,916	
53	376	Unclear General Ledger entries regarding Merrill Lynch	-Rog to Liquidating Partner regarding what the entries reference -Doc request to Liquidating Partner for underlying Documentation substantiating the entries -Following Rog and Doc request, 5-10 minute Depo of John Gaffney (and/or accounting staff member) for explanation of the entries	\$ 4,261,939	
54	377	Unclear General Ledger entries regarding Daas corporate loan	-Rog to Liquidating Partner regarding what the entries reference -Doc request to Liquidating Partner for underlying Documentation substantiating the entries -Following Rog and Doc request, 5-10 minute Depo of John Gaffney (and/or accounting staff member) for explanation of the entries	\$ 327,500	
55	378	Unclear General Ledger entries to "Due from (to) Yusuf"	-Rog to Liquidating Partner regarding what the entries reference -Doc request to Liquidating Partner for underlying Documentation substantiating the entries -Following Rog and Doc request, 5-10 minute Depo of John Gaffney (and/or accounting staff member) for explanation of the entries	\$ 693,242	
56	380	Unclear what the reclassification of partnership income in 2013 and 2014 notation on the general ledger means	-Rog to Liquidating Partner regarding what the entries reference -Doc request to Liquidating Partner for underlying Documentation substantiating the entries -Following Rog and Doc request, 5-10 minute Depo of John Gaffney (and/or accounting staff member) for explanation of the entries	Pending discovery	
57	381	Many general ledger entries are missing descriptions	-Rog to Liquidating Partner regarding what the entries reference -Doc request to Liquidating Partner for underlying Documentation substantiating the entries -Following Rog and Doc request, 5-10 minute Depo of John Gaffney (and/or accounting staff member) for explanation of the entries	\$ 1,026,856	
58	383	Unclear general ledger entries regarding "nominal cash reconciliation	-Rog to Liquidating Partner regarding what the entries reference -Doc request to Liquidating Partner for underlying Documentation substantiating the entries -Following Rog and Doc request, 5-10 minute Depo of John Gaffney (and/or accounting staff member) for explanation of the entries	\$ 4,313	
59	384	Unclear general ledger entry "Accrue 2012 rent as directed by legal"	-Rog to Liquidating Partner requesting an explanation of the meaning of this entry -Doc request to the Liquidating Partner for underlying Documentation substantiating the entry -Following Rog and Doc request, 5-10 minute Depo of John Gaffney (and/or accounting staff member) for explanation of the entry	\$ 678,549	
60	385	Partnership may have paid Fathi Yusuf's personal attorney's fees	Subpoena to Offices of K.G. Cameron requesting any Documents evidencing payment from United Corporation d/b/a Plaza Extra for 2012-2013, along with the invoices substantiating those payments -Depo (5-10 minutes)of Fathi Yusuf	\$ 14,995	
61	386	Unclear general ledger entries regarding deposit adjustments	-Rog to Liquidating Partner regarding what the entries reference -Doc request to Liquidating Partner for underlying Documentation substantiating the entries -Following Rog and Doc request, 5-10 minute Depo of John Gaffney (and/or accounting staff member) for explanation of the entries	\$ 1,700,000	
62	388	Unclear general ledger entries regarding due/to Shopping Center	-Rog to Liquidating Partner regarding what the entries reference -Doc request to Liquidating Partner for underlying Documentation substantiating the entries -Following Rog and Doc request, 5-10 minute Depo of John Gaffney (and/or accounting staff member) for explanation of the entries	\$ 900,000	

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New Claim Number	Item No. in Original 8/30/16 Claim Filing	Description	Next Steps or What is needed from discovery	Amount Due to Partnership from Yusuf	Amount Due to Hamed Directly from Yusuf
63	390	Transactions with Alamnai Co	-Rog to Liquidating Partner regarding what the entries reference -Doc request to Liquidating Partner for underlying Documentation substantiating the entries -Following Rog and Doc request, 5-10 minute Depo of John Gaffney (and/or accounting staff member) for explanation of the entries	\$ 37,629	
64	391	Unclear general ledger entries regarding "Adjust due/to from"	-Rog to Liquidating Partner regarding what the entries reference -Doc request to Liquidating Partner for underlying Documentation substantiating the entries -Following Rog and Doc request, 5-10 minute Depo of John Gaffney (and/or accounting staff member) for explanation of the entries	\$ 241,558	
65	392	Improper payments to Carol's newspaper distribution	-Depo (5-10 minutes)of Fathi Yusuf regarding the purpose of continuing payments after Carol's newspaper distribution had been accused of stealing in 2014 Declaration of Shawn Hamed	\$ 1,697	
66	393	Unclear general ledger entries regarding "Cash Reques"	-Rog to Liquidating Partner regarding what the entries reference -Doc request to Liquidating Partner for underlying Documentation substantiating the entries -Following Rog and Doc request, 5-10 minute Depo of John Gaffney (and/or accounting staff member) for explanation of the entries	\$ 6,500	
67	394	Unclear general ledger entry regarding "AT&T MOBILITY"	-Rog to Liquidating Partner requesting an explanation of the meaning of this entry -Doc request to the Liquidating Partner for underlying Documentation substantiating the entry -Following Rog and Doc request, 5-10 minute Depo of John Gaffney (and/or accounting staff member) for explanation of the entry	\$ 2,950	
68	396	Transactions with JKC Communication	-Rog to Liquidating Partner regarding what the entries reference -Doc request to Liquidating Partner for underlying Documentation substantiating the entries -Following Rog and Doc request, 5-10 minute Depo of John Gaffney (and/or accounting staff member) for explanation of the entries	\$ 13,389	
69	397	Transactions with House of Printing	-Rog to Liquidating Partner regarding what the entries reference -Doc request to Liquidating Partner for underlying Documentation substantiating the entries -Following Rog and Doc request, 5-10 minute Depo of John Gaffney (and/or accounting staff member) for explanation of the entries	\$ 860	
70	398	Transactions with Foampack	-Rog to Liquidating Partner regarding what the entries reference -Doc request to Liquidating Partner for underlying Documentation substantiating the entries -Following Rog and Doc request, 5-10 minute Depo of John Gaffney (and/or accounting staff member) for explanation of the entries	\$ 1,257	
71	399	Unclear general ledger entries regarding "All Scotia Account Closures"	-Rog to Liquidating Partner regarding what the entries reference -Doc request to Liquidating Partner for underlying Documentation substantiating the entries -Following Rog and Doc request, 5-10 minute Depo of John Gaffney (and/or accounting staff member) for explanation of the entries	\$ 615,172	
72	400	Unclear general ledger entries regarding "Fathi Yusuf matching draw"	-Rog to Liquidating Partner regarding what the entries reference -Doc request to Liquidating Partner for underlying Documentation substantiating the entries -Following Rog and Doc request, 5-10 minute Depo of John Gaffney (and/or accounting staff member) for explanation of the entries	\$ 1,288,603	
73	401	Unclear general ledger entries regarding United Corporation	-Rog to Liquidating Partner regarding what the entries reference -Doc request to Liquidating Partner for underlying Documentation substantiating the entries -Following Rog and Doc request, 5-10 minute Depo of John Gaffney (and/or accounting staff member) for explanation of the entries	\$ 120,431	
74	405	Numerous unexplained general ledger entries regarding Hamed	-Rog to Liquidating Partner regarding what the entries reference -Doc request to Liquidating Partner for underlying Documentation substantiating the entries -Following Rog and Doc request, 5-10 minute Depo of John Gaffney (and/or accounting staff member) for explanation of the entries	\$ 51,061	



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New Claim Number	Item No. in Original 8/30/16 Claim Filing	Description	Next Steps or What is needed from discovery	Amount Due to Partnership from Yusuf	Amount Due to Hamed Directly from Yusuf
75	408	Unclear general ledger entry for \$176,353.61 dated 9/30/15	-Rog to Liquidating Partner requesting an explanation of the meaning of this entry -Doc request to the Liquidating Partner for underlying Documentation substantiating the entry -Following Rog and Doc request, 5-10 minute Depo of John Gaffney (and/or accounting staff member) for explanation of the entry	\$ 176,354	
76	409	Unclear general ledger entries regarding transfers and closed accounts	-Rog to Liquidating Partner regarding what the entries reference -Doc request to Liquidating Partner for underlying Documentation substantiating the entries -Following Rog and Doc request, 5-10 minute Depo of John Gaffney (and/or accounting staff member) for explanation of the entries	\$ 837,554	
77	410	Unclear general ledger entry regarding 50/50 distribution	-Rog to Liquidating Partner requesting an explanation of the meaning of this entry -Doc request to the Liquidating Partner for underlying Documentation substantiating the entry -Following Rog and Doc request, 5-10 minute Depo of John Gaffney (and/or accounting staff member) for explanation of the entry	\$ 165,000	
78	411	Unclear general ledger entry regarding accrued accounting fees to complete 2015 year-end taxes	-Rog to Liquidating Partner requesting an explanation of the meaning of this entry -Doc request to the Liquidating Partner for underlying Documentation substantiating the entry -Following Rog and Doc request, 5-10 minute Depo of John Gaffney (and/or accounting staff member) for explanation of the entry	\$ 16,315	
79	412	Unclear general ledger entry regarding accounting error for Tropical Shipping invoices	-Rog to Liquidating Partner requesting an explanation of the meaning of this entry -Doc request to the Liquidating Partner for underlying Documentation substantiating the entry -Following Rog and Doc request, 5-10 minute Depo of John Gaffney (and/or accounting staff member) for explanation of the entry	\$ 10,242	
80	414	Unclear general ledger entry regarding adjust cash on hand to count on 3/11/15	-Rog to Liquidating Partner requesting an explanation of the meaning of this entry -Doc request to the Liquidating Partner for underlying Documentation substantiating the entry -Following Rog and Doc request, 5-10 minute Depo of John Gaffney (and/or accounting staff member) for explanation of the entry	\$ 24,934	
81	415	Unclear general ledger entry regarding clearing Banco irregularities	-Rog to Liquidating Partner requesting an explanation of the meaning of this entry -Doc request to the Liquidating Partner for underlying Documentation substantiating the entry -Following Rog and Doc request, 5-10 minute Depo of John Gaffney (and/or accounting staff member) for explanation of the entry	\$ 8,482	
82	416	Unclear general ledger entry regarding balance sheet balances closed for insurance items to expedite close	-Rog to Liquidating Partner requesting an explanation of the meaning of this entry -Doc request to the Liquidating Partner for underlying Documentation substantiating the entry -Following Rog and Doc request, 5-10 minute Depo of John Gaffney (and/or accounting staff member) for explanation of the entry	\$ 51,569	
83	417	Unclear general ledger entries regarding clear misc Yusuf/Pship Due to/fr accounts	-Rog to Liquidating Partner regarding what the entries reference -Doc request to Liquidating Partner for underlying Documentation substantiating the entries -Following Rog and Doc request, 5-10 minute Depo of John Gaffney (and/or accounting staff member) for explanation of the entries	Pending discovery	
84	418	Unclear general ledger entry regarding United reimbursement to Hamed of 7/13 overpayment	-Rog to Liquidating Partner requesting an explanation of the meaning of this entry -Doc request to the Liquidating Partner for underlying Documentation substantiating the entry -Following Rog and Doc request, 5-10 minute Depo of John Gaffney (and/or accounting staff member) for explanation of the entry	\$ 38,668	
85	419	Unclear general ledger entry regarding combined services inv dtd 2/24/15 paid on behalf of East	-Rog to Liquidating Partner requesting an explanation of the meaning of this entry -Doc request to the Liquidating Partner for underlying Documentation substantiating the entry -Following Rog and Doc request, 5-10 minute Depo of John Gaffney (and/or accounting staff member) for explanation of the entry	\$ 4,935	
86	420	Unclear general ledger entry regarding CRA check 215 to reimburse KAC357 for STT deposit errors	-Rog to Liquidating Partner requesting an explanation of the meaning of this entry -Doc request to the Liquidating Partner for underlying Documentation substantiating the entry -Following Rog and Doc request, 5-10 minute Depo of John Gaffney (and/or accounting staff member) for explanation of the entry	Pending discovery	



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New Claim Number	Item No. in Original 8/30/16 Claim Filing	Description	Next Steps or What is needed from discovery	Amount Due to Partnership from Yusuf	Amount Due to Hamed Directly from Yusuf
87	421	Unclear general ledger entry regarding Daily (United C. CK)	-Rog to Liquidating Partner requesting an explanation of the meaning of this entry -Doc request to the Liquidating Partner for underlying Documentation substantiating the entry -Following Rog and Doc request, 5-10 minute Depo of John Gaffney (and/or accounting staff member) for explanation of the entry	Pending discovery	
88	422	Unclear general ledger entry regarding excess cash over \$50k per court order	-Rog to Liquidating Partner requesting an explanation of the meaning of this entry -Doc request to the Liquidating Partner for underlying Documentation substantiating the entry -Following Rog and Doc request, 5-10 minute Depo of John Gaffney (and/or accounting staff member) for explanation of the entry	\$ 44,400	
89	423	Unclear general ledger entries regarding prepayment of insurance	-Rog to Liquidating Partner regarding what the entries reference -Doc request to Liquidating Partner for underlying Documentation substantiating the entries -Following Rog and Doc request, 5-10 minute Depo of John Gaffney (and/or accounting staff member) for explanation of the entries	\$ 139,231	
90	425	2015 Accounts Payable-Trade to John Gaffney	-Rog to Liquidating Partner regarding what the entries reference -Doc request to Liquidating Partner for underlying Documentation substantiating the entries -Following Rog and Doc request, 5-10 minute Depo of John Gaffney (and/or accounting staff member) for explanation of the entries	\$ 1,544	
91	427	2013 Accounts Payable-Trade to John Gaffney	-Rog to Liquidating Partner requesting an explanation of the meaning of this entry -Doc request to the Liquidating Partner for underlying Documentation substantiating the entry -Following Rog and Doc request, 5-10 minute Depo of John Gaffney (and/or accounting staff member) for explanation of the entry	\$ 1,214	
92	428	Unclear general ledger entries regarding 2015 Accounts Payable-Trade to Maher Yusuf	-Rog to Liquidating Partner regarding what the entries reference -Doc request to Liquidating Partner for underlying Documentation substantiating the entries -Following Rog and Doc request, 5-10 minute Depo of John Gaffney (and/or accounting staff member) for explanation of the entries	\$ 1,866	
93	430	Unclear Unsubstantiated check to NejeH Yusuf	-Rog to Liquidating Partner requesting an explanation of the meaning of this entry -Doc request to the Liquidating Partner for underlying Documentation substantiating the entry -Following Rog and Doc request, 5-10 minute Depo of John Gaffney (and/or accounting staff member) for explanation of the entry	\$ 2,032	
94	431	Unclear general ledger entry, Non-cash distribution to Yusuf	-Rog to Liquidating Partner requesting an explanation of the meaning of this entry -Doc request to the Liquidating Partner for underlying Documentation substantiating the entry -Following Rog and Doc request, 5-10 minute Depo of John Gaffney (and/or accounting staff member) for explanation of the entry	\$ 245,090	
95	432	Unclear general ledger entry, North Western Selectra Inc.	-Rog to Liquidating Partner requesting an explanation of the meaning of this entry -Doc request to the Liquidating Partner for underlying Documentation substantiating the entry -Following Rog and Doc request, 5-10 minute Depo of John Gaffney (and/or accounting staff member) for explanation of the entry	\$ 4,524	
96	433	Unclear general ledger entry, J Ortiz	-Rog to Liquidating Partner requesting an explanation of the meaning of this entry -Doc request to the Liquidating Partner for underlying Documentation substantiating the entry -Following Rog and Doc request, 5-10 minute Depo of John Gaffney (and/or accounting staff member) for explanation of the entry	\$ 1,250	
97	434	Unclear general ledger entries regarding St. Thomas petty cash	-Rog to Liquidating Partner regarding what the entries reference -Doc request to Liquidating Partner for underlying Documentation substantiating the entries -Following Rog and Doc request, 5-10 minute Depo of John Gaffney (and/or accounting staff member) for explanation of the entries	\$ 10,339	
98	436	Unclear general ledger entry regarding United Shopping Center payment of accounting fees for the Partnership	-Rog to Liquidating Partner requesting an explanation of the meaning of this entry -Doc request to the Liquidating Partner for underlying Documentation substantiating the entry -Following Rog and Doc request, 5-10 minute Depo of John Gaffney (and/or accounting staff member) for explanation of the entry	\$ 4,500	

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99	437	Unclear general ledger entry regarding United Shopping Center payment of legal fees for the Partnership	-Rog to Liquidating Partner requesting an explanation of the meaning of this entry -Doc request to the Liquidating Partner for underlying Documentation substantiating the entry -Following Rog and Doc request, 5-10 minute Depo of John Gaffney (and/or accounting staff member) for explanation of the entry	\$ 4,946	
100	438	Transaction with Source Accounting	-Rog to Liquidating Partner requesting an explanation of the meaning of this entry -Doc request to the Liquidating Partner for underlying Documentation substantiating the entry -Following Rog and Doc request, 5-10 minute Depo of John Gaffney (and/or accounting staff member) for explanation of the entry	\$ 3,500	
101	439	Unclear general ledger entry regarding St. Thomas 1.5% CR Reduction (FUTA) paid by West to United	-Rog to Liquidating Partner requesting an explanation of the meaning of this entry -Doc request to the Liquidating Partner for underlying Documentation substantiating the entry -Following Rog and Doc request, 5-10 minute Depo of John Gaffney (and/or accounting staff member) for explanation of the entry	\$ 12,346	
102	440	Unclear general ledger entry regarding temporary adjustment for unreimbursed cash expenses during 2014/15	-Rog to Liquidating Partner requesting an explanation of the meaning of this entry -Doc request to the Liquidating Partner for underlying Documentation substantiating the entry -Following Rog and Doc request, 5-10 minute Depo of John Gaffney (and/or accounting staff member) for explanation of the entry	\$ 46,725	
103	443	Unclear general ledger entry regarding price gun deposits	-Rog to Liquidating Partner requesting an explanation of the meaning of this entry -Doc request to the Liquidating Partner for underlying Documentation substantiating the entry -Following Rog and Doc request, 5-10 minute Depo of John Gaffney (and/or accounting staff member) for explanation of the entry	\$ 1,780	
104	444	Unclear general ledger entries regarding 2013 Q3 VIESA deficiency, plus penalty and interest in 2005	-Rog to Liquidating Partner regarding what the entries reference -Doc request to Liquidating Partner for underlying Documentation substantiating the entries -Following Rog and Doc request, 5-10 minute Depo of John Gaffney (and/or accounting staff member) for explanation of the entries	\$ 9,386	
105	445	Unclear general ledger entries regarding United Corporation	-Rog to Liquidating Partner regarding what the entries reference -Doc request to Liquidating Partner for underlying Documentation substantiating the entries -Following Rog and Doc request, 5-10 minute Depo of John Gaffney (and/or accounting staff member) for explanation of the entries	\$ 6,933	
106	446	Unclear general ledger entries regarding United Corporation – FUTA	-Rog to Liquidating Partner regarding what the entries reference -Doc request to Liquidating Partner for underlying Documentation substantiating the entries -Following Rog and Doc request, 5-10 minute Depo of John Gaffney (and/or accounting staff member) for explanation of the entries	\$ 10,047	
107	447	Unclear general ledger entry regarding United Corporation – Gift Certificates	-Rog to Liquidating Partner requesting an explanation of the meaning of this entry -Doc request to the Liquidating Partner for underlying Documentation substantiating the entry -Following Rog and Doc request, 5-10 minute Depo of John Gaffney (and/or accounting staff member) for explanation of the entry	\$ 2,630	
108	449	Unclear general ledger entries regarding Industrial Video and Luxor Goods	-Rog to Liquidating Partner regarding what the entries reference -Doc request to Liquidating Partner for underlying Documentation substantiating the entries -Following Rog and Doc request, 5-10 minute Depo of John Gaffney (and/or accounting staff member) for explanation of the entries	\$ 9,803	
109	450	Unclear general ledger entry regarding Hector Torres' invoice	-Rog to Liquidating Partner requesting an explanation of the meaning of this entry -Doc request to the Liquidating Partner for underlying Documentation substantiating the entry -Following Rog and Doc request, 5-10 minute Depo of John Gaffney (and/or accounting staff member) for explanation of the entry	\$ 2,000	
110	451	Unclear general ledger entries for Ramone Reid Felix invoices	-Rog to Liquidating Partner regarding what the entries reference -Doc request to Liquidating Partner for underlying Documentation substantiating the entries -Following Rog and Doc request, 5-10 minute Depo of John Gaffney (and/or accounting staff member) for explanation of the entries	\$ 1,092	

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111	452	Unclear general ledger entries regarding Tasty Alternatives	-Rog to Liquidating Partner regarding what the entries reference -Doc request to Liquidating Partner for underlying Documentation substantiating the entries -Following Rog and Doc request, 5-10 minute Depo of John Gaffney (and/or accounting staff member) for explanation of the entries	\$ 30,721	
112	453	Scotia Invoices	-Rog to Liquidating Partner regarding what the entries reference -Doc request to Liquidating Partner for underlying Documentation substantiating the entries -Following Rog and Doc request, 5-10 minute Depo of John Gaffney (and/or accounting staff member) for explanation of the entries	\$ 11,411	
113	454	Lisette Colon's salary, benefits, bonuses and incidental expenses	-Depo (5-10 minutes) of Lisette Colon to determine how much of her time was devoted to new Plaza Extra East activities versus the Partnership	\$ 6,215	
114	455	Myra Senhouse's salary, benefits, bonuses and incidental expenses	-Depo (5-10 minutes) of Myra Senhouse to determine how much of her time was devoted to new Plaza Extra East activities versus the Partnership	\$ 2,259	
115	456	Humphrey Caswell's salary, benefits, bonuses and travel and entertainment expenses	-Depo (5-10 minutes) of Humphrey Casell to determine how much of his time was devoted to new Plaza Extra East activities versus the Partnership, plus his explanation of T&E -Doc Request to Liquidating Partner for underlying Documentation substantiating T&E reimbursement	\$ 28,666	
116	457	Unclear 2016 general ledger entries regarding the United Corporation in 2016	-Rog to Liquidating Partner regarding what the entries reference -Doc request to Liquidating Partner for underlying Documentation substantiating the entries -Following Rog and Doc request, 5-10 minute Depo of John Gaffney (and/or accounting staff member) for explanation of the entries	\$ 238,829	
117	459	Unclear general ledger entry regarding United Corporation – Worker's Compensation	-Rog to Liquidating Partner requesting an explanation of the meaning of this entry -Doc request to the Liquidating Partner for underlying Documentation substantiating the entry -Following Rog and Doc request, 5-10 minute Depo of John Gaffney (and/or accounting staff member) for explanation of the entry	\$ 318	
118	460	Unclear general ledger entries regarding FUTA late fee	-Rog to Liquidating Partner regarding what the entries reference -Doc request to Liquidating Partner for underlying Documentation substantiating the entries -Following Rog and Doc request, 5-10 minute Depo of John Gaffney (and/or accounting staff member) for explanation of the entries	\$ 85,697	
119	464	Transaction with Raja Foods	-Rog to Liquidating Partner requesting an explanation of the meaning of this entry -Doc request to the Liquidating Partner for underlying Documentation substantiating the entry -Following Rog and Doc request, 5-10 minute Depo of John Gaffney (and/or accounting staff member) for explanation of the entry	\$ 410	
120	465	2016 transactions with Caribbean Refrigeration & Mechanical LLC	-Rog to Liquidating Partner regarding what the entries reference -Doc request to Liquidating Partner for underlying Documentation substantiating the entries -Following Rog and Doc request, 5-10 minute Depo of John Gaffney (and/or accounting staff member) for explanation of the entries	\$ 10,902	
121	466	Unclear general ledger entries We Are Wine LLC	-Rog to Liquidating Partner regarding what the entries reference -Doc request to Liquidating Partner for underlying Documentation substantiating the entries -Following Rog and Doc request, 5-10 minute Depo of John Gaffney (and/or accounting staff member) for explanation of the entries	\$ 2,705	
122	467	Unclear general ledger entries regarding US Customs penalty	-Rog to Liquidating Partner regarding what the entries reference -Doc request to Liquidating Partner for underlying Documentation substantiating the entries -Following Rog and Doc request, 5-10 minute Depo of John Gaffney (and/or accounting staff member) for explanation of the entries	\$ 2,250	
123	468	2016 payments to Dudley, Topper and Feuerzeig, LLP (Fathi Yusuf's personal attorney)	-Rog to Fathi Yusuf	\$ 9,680	

SUMMARY OF HAMED'S Post-September 17, 2006 CLAIMS (163) following Judge Brady's 7/25/17 Order  
With Suggested "Next Steps" for Depos, Discovery, Etc.

New Claim Number	Item No. in Original 8/30/16 Claim Filing	Description	Next Steps or What is needed from discovery	Amount Due to Partnership from Yusuf	Amount Due to Hamed Directly from Yusuf
124	469	Unclear general ledger entries regarding Inter Ocean refund	-Rog to Liquidating Partner regarding what the entries reference -Doc request to Liquidating Partner for underlying Documentation substantiating the entries -Following Rog and Doc request, 5-10 minute Depo of John Gaffney (and/or accounting staff member) for explanation of the entries	Pending discovery	
125	470	Unclear general ledger entries regarding "Lutheran Family Social Services"	-Rog to Liquidating Partner regarding what the entries reference -Doc request to Liquidating Partner for underlying Documentation substantiating the entries -Following Rog and Doc request, 5-10 minute Depo of John Gaffney (and/or accounting staff member) for explanation of the entries	\$ 1,246	
126	471	Unclear general ledger entries regarding KAC357	-Rog to Liquidating Partner regarding what the entries reference -Doc request to Liquidating Partner for underlying Documentation substantiating the entries -Following Rog and Doc request, 5-10 minute Depo of John Gaffney (and/or accounting staff member) for explanation of the entries	\$ 3,640	
127	472	Unclear 2016 general ledger entries for Banco Popular Puerto Rico	-Rog to Liquidating Partner regarding what the entries reference -Doc request to Liquidating Partner for underlying Documentation substantiating the entries -Following Rog and Doc request, 5-10 minute Depo of John Gaffney (and/or accounting staff member) for explanation of the entries	Pending discovery	
128	473	Unclear general ledger entries regarding 2016 V.I. Employment Security contributions and penalties	-Rog to Liquidating Partner regarding what the entries reference -Doc request to Liquidating Partner for underlying Documentation substantiating the entries -Following Rog and Doc request, 5-10 minute Depo of John Gaffney (and/or accounting staff member) for explanation of the entries	\$ 13,048	
129	475	Fathi Yusuf draw from Partnership funds for gift	-Depo (5-10 minutes) of Fathi Yusuf	\$ 4,000,000	
130	476	Wireless Tech Rent	-Doc request to Liquidating Partner for any Documentation evidencing payment of Wireless Tech rent -Depo (5-10 minutes) - Fady Monsour and NejeH Yusuf regarding payment of Wireless Tech rent -Following Doc requests & Depos of Fady Mansour & NejeH Yusuf, 5-10 minute Depo of John Gaffney (and/or accounting staff member) for explanation where the Wireless rent payment is located on the general ledger	\$ 15,000	
131	477	Unclear general ledger entries regarding Hanun loan	-Rog to Liquidating Partner regarding what the entries reference -Doc request to Liquidating Partner for underlying Documentation substantiating the entries -Following Rog and Doc request, 5-10 minute Depo of John Gaffney (and/or accounting staff member) for explanation of the entries	\$ 35,000	
132	478	Unclear general ledger entries regarding distributing cash on hand in 2015	-Rog to Liquidating Partner regarding what the entries reference -Doc request to Liquidating Partner for underlying Documentation substantiating the entries -Following Rog and Doc request, 5-10 minute Depo of John Gaffney (and/or accounting staff member) for explanation of the entries	\$ 19,333	
133	479	Unclear general ledger entry regarding Yusuf distribution of WAPA deposit	-Depo (5-10 minutes) of John Gaffney (and/or accounting staff member) and accounting staff member	\$ 110,842	
134	480	Unclear general ledger entries regarding "Yusuf distribu for trade AR"	-Rog to Liquidating Partner regarding what the entries reference -Doc request to Liquidating Partner for underlying Documentation substantiating the entries -Following Rog and Doc request, 5-10 minute Depo of John Gaffney (and/or accounting staff member) for explanation of the entries	\$ 15,701	
135	481	Unclear general ledger entry regarding "xfer fr Yusuf fam BPPR a/c to United BPPR a/c"	-Rog to Liquidating Partner requesting an explanation of the meaning of this entry -Doc request to the Liquidating Partner for underlying Documentation substantiating the entry -Following Rog and Doc request, 5-10 minute Depo of John Gaffney (and/or accounting staff member) for explanation of the entry	\$ 1,449	
136	482	Unclear general ledger entry regarding "Yusuf refund of overpayment"	-Rog to Liquidating Partner requesting an explanation of the meaning of this entry -Doc request to the Liquidating Partner for underlying Documentation substantiating the entry -Following Rog and Doc request, 5-10 minute Depo of John Gaffney (and/or accounting staff member) for explanation of the entry	\$ 77,336	

SUMMARY OF HAMED'S Post-September 17, 2006 CLAIMS (163) following Judge Brady's 7/25/17 Order  
With Suggested "Next Steps" for Depos, Discovery, Etc.

New Claim Number	Item No. in Original 8/30/16 Claim Filing	Description	Next Steps or What is needed from discovery	Amount Due to Partnership from Yusuf	Amount Due to Hamed Directly from Yusuf
137	483	Unclear general ledger entry regarding "CLEAR MISC YUSUF/PSHIP DUE TO/FR ACCOUNTS"	-Rog to Liquidating Partner requesting an explanation of the meaning of this entry -Doc request to the Liquidating Partner for underlying Documentation substantiating the entry -Following Rog and Doc request, 5-10 minute Depo of John Gaffney (and/or accounting staff member) for explanation of the entry	\$ 247,870	
138	484	Unclear general ledger entries regarding "correct Yusuf/Hamed distrib settle on 9/30 ref ck 251 for \$183,381.91"	-Rog to Liquidating Partner regarding what the entries reference -Doc request to Liquidating Partner for underlying Documentation substantiating the entries -Following Rog and Doc request, 5-10 minute Depo of John Gaffney (and/or accounting staff member) for explanation of the entries	\$ 20,484	
139	485	Unclear general ledger entry regarding "clear pship a/c 28600 intraco bal's to equity"	-Rog to Liquidating Partner requesting an explanation of the meaning of this entry -Doc request to the Liquidating Partner for underlying Documentation substantiating the entry -Following Rog and Doc request, 5-10 minute Depo of John Gaffney (and/or accounting staff member) for explanation of the entry	\$ 247,138	
140	487	Unclear general ledger entry "clear misc Hamed/pship due to/fr accounts" in the amount of \$39,788.40.	-Rog to Liquidating Partner requesting an explanation of the meaning of this entry -Doc request to the Liquidating Partner for underlying Documentation substantiating the entry -Following Rog and Doc request, 5-10 minute Depo of John Gaffney (and/or accounting staff member) for explanation of the entry	\$ 39,788	
141	488	Unclear general ledger entry regarding "due t/fr settlement re stmt at 9/30/15"	-Rog to Liquidating Partner requesting an explanation of the meaning of this entry -Doc request to the Liquidating Partner for underlying Documentation substantiating the entry -Following Rog and Doc request, 5-10 minute Depo of John Gaffney (and/or accounting staff member) for explanation of the entry	\$ 183,382	
142	490	Half acre in Estate Tutu	-Rog to Fathi Yusuf	Sale or split of Property	
143	491	Plaza Extra East land	-Rog to Fathi Yusuf	Sale or split of Property	
144	492	\$900,000 Estimated tax payment for United Corporation shareholders	-Rog to Liquidating Partner regarding what the entry references and a Rog asking if Mohammad, Wally and Willie Hameds' taxes were paid for the same time period, with an explanation of where that is reflected on the general ledger -Doc request to Liquidating Partner for underlying Documentation substantiating the entries -Following Rog and Doc request, 5-10 minute Depo of John Gaffney (and/or accounting staff member) for explanation of the entries	\$ 900,000	
145	3003	WAPA deposits paid with Partnership funds	-Depo (5-10 minutes) - John Gaffney to discuss how WAPA Deposits are handled on the general ledger	\$ 272,572	
146	3007	Imbalance in credit card points	-Rog to each Yusuf requesting a list of all credit cards in each of their names Subpoena bank records for all of Hamed and Yusuf credit cards		\$ 421,235
147	3010	Vendor rebates	-Rog to Liquidating Partner regarding what the entries reference -Doc request to Liquidating Partner for underlying Documentation substantiating the entries -Following Rog and Doc request, 5-10 minute Depo of John Gaffney (and/or accounting staff member) for explanation of the entries	Pending discovery	
148	3011	Excessive travel and entertainment expenses	-Doc request to Liquidating Partner for the invoices/receipts substantiating the business purpose of the T&E Subpoena for credit card statements reflecting the T&E expenditures -Depo (5-10 minutes) of each person submitting an expense for an explanation of the charges	\$ 23,745	
149	246, 255, 260, 318	Seaside Market & Deli LLC	-Rog to Liquidating Partner regarding what the entries reference -Doc request to Liquidating Partner for underlying Documentation substantiating the entries -Following Rog and Doc request, 5-10 minute Depo of John Gaffney (and/or accounting staff member) for explanation of the entries	Pending discovery	

SUMMARY OF HAMED'S Post-September 17, 2006 CLAIMS (163) following Judge Brady's 7/25/17 Order  
With Suggested "Next Steps" for Depos, Discovery, Etc.

New Claim Number	Item No. in Original 8/30/16 Claim Filing	Description	Next Steps or What is needed from discovery	Amount Due to Partnership from Yusuf	Amount Due to Hamed Directly from Yusuf
150	3002a	United Shopping Center's gross receipt taxes	-Doc request to Liquidating Partner for the United Shopping Center March 2013, June -December 2014, and 2015 monthly gross receipt tax forms and cancelled checks/credit cards statement evidencing payment -Rog to Liquidating Partner regarding the reason the Partnership would pay for the taxes of an entity unrelated to the Partnership -Depo (5-10 minutes) of Fathi Yusuf -Following Doc requests, 5-10 minute Depo of John Gaffney (and/or accounting staff member) for explanation where the payment for the United Shopping Center gross receipt tax is located on the general ledger	\$ 70,193	
151	3004a	Checks written to Fathi Yusuf for personal use	-Depo (5-10 minutes) - Fathi Yusuf regarding purpose of checks	Pending discovery	
152	3008a	United's corporate franchise taxes and annual franchise fees	-Doc request to Liquidating Partner for the United Shopping Center 2006-2015 franchise taxes and fees forms and cancelled checks/credit cards statement evidencing payment -Rog to Liquidating Partner regarding the reason the Partnership would pay for the taxes & fees of an entity unrelated to the Partnership -Depo (5-10 minutes) of Fathi Yusuf -Following Doc requests, 5-10 minute Depo of John Gaffney (and/or accounting staff member) for explanation where the payment for the United Shopping Center gross receipt tax is located on the general ledger	\$ 2,301	
153	3009a	Partnership funds used to pay United Shopping Center's property insurance	Subpoena to insurance company for the evidence of property insurance, invoice and canceled check for the years 2008-2010, 2013 and 2015. -Document request to the Liquidating Partner for the evidence of property insurance, invoice and canceled check for the years 2008-2010, 2013 and 2015.	\$ 59,361	
154	346a	Attorney and accounting's fees paid by the Partnership for the criminal case	-Rog to Fathi Yusuf	\$ 989,627	
155	359/362	Employee Loans	-Rog to Liquidating Partner regarding what the entries reference -Doc request to Liquidating Partner for underlying Documentation substantiating the entries -Following Rog and Doc request, 5-10 minute Depo of John Gaffney (and/or accounting staff member) for explanation of the entries	\$ 33,121	
156	372/379	Unclear General Ledger entries regarding miscellaneous adjustments to employee loans	-Rog to Liquidating Partner regarding what the entries reference -Doc request to Liquidating Partner for underlying Documentation substantiating the entries -Following Rog and Doc request, 5-10 minute Depo of John Gaffney (and/or accounting staff member) for explanation of the entries	\$ 122,905	
157	402/418	Unclear general ledger entry regarding "Fathi Yusuf refund of overpayment"	-Rog to Liquidating Partner requesting an explanation of the meaning of this entry -Doc request to the Liquidating Partner for underlying Documentation substantiating the entry -Following Rog and Doc request, 5-10 minute Depo of John Gaffney (and/or accounting staff member) for explanation of the entry	\$ 77,336	
158	403/413	Unclear general ledger entries for By Order	-Rog to Liquidating Partner regarding what the entries reference -Doc request to Liquidating Partner for underlying Documentation substantiating the entries -Following Rog and Doc request, 5-10 minute Depo of John Gaffney (and/or accounting staff member) for explanation of the entries	\$ 260,491	
159	442/407	Unclear general ledger entries indicating Accounts Payable Trade payments to United Corporation in 2015	-Rog to Liquidating Partner regarding what the entries reference -Doc request to Liquidating Partner for underlying Documentation substantiating the entries -Following Rog and Doc request, 5-10 minute Depo of John Gaffney (and/or accounting staff member) for explanation of the entries	Pending discovery	

SUMMARY OF HAMED'S Post-September 17, 2006 CLAIMS (163) following Judge Brady's 7/25/17 Order  
With Suggested "Next Steps" for Depos, Discovery, Etc.

New Claim Number	Item No. in Original 8/30/16 Claim Filing	Description	Next Steps or What is needed from discovery	Amount Due to Partnership from Yusuf	Amount Due to Hamed Directly from Yusuf
160	Exhibit A - H	United Shopping Center's gross receipt taxes	-Doc request to Liquidating Partner for the United Shopping Center 2007-2011 monthly gross receipt tax forms and cancelled checks/credit cards statement evidencing payment -Following Doc requests, 5-10 minute Depo of John Gaffney (and/or accounting staff member) for explanation where the payment for the United Shopping Center gross receipt tax is located on the general ledger	Pending discovery	
161	Exhibit A - I	Attorney and accounting's fees paid by the Partnership for the criminal case - Pro-rated from September 17, 2006 forward	-Rog to Liquidating Partner regarding what the entries reference -Doc request to Liquidating Partner for underlying Documentation substantiating the entries -Following Rog and Doc request, 5-10 minute Depo of John Gaffney (and/or accounting staff member) for explanation of the entries	\$7,728,287	
162	Exhibit A - L	Claims based on monitoring reports/accounting 2007-2012	Subpoena to Andreozzi law firm for monitoring reports Subpoena to monitoring firm for reports	Pending discovery	
163	Exhibit A - M	Loss of assets due to wrongful dissolution - attorney's fees	Identify Hamed invoices for legal services during the relevant time period	Pending discovery	
164		Inventory adjusted downward by \$1,660,000 due to unrecorded inventory transfers to other stores, as per first supplemental Hamed claims dated October 6, 2016	Doc request to Liquidating Partner regarding this entry Following Doc requests, 5-10 minute Depo of John Gaffney (and/or accounting staff member) for an explanation	Pending discovery	
165		In Yusuf's Accounting and Proposed Distribution Plan filing on September 30, 2016, Yusuf stated that "[t]here are Debts totaling \$176,267.97, which must be paid prior to any distribution of the remaining Partnership Assets to the Partners." (Footnote omitted) This is an unclear accounting entry.	Doc request to Liquidating Partner regarding this entry Following Doc requests, 5-10 minute Depo of John Gaffney (and/or accounting staff member) for an explanation	Pending discovery	
		<b>Subtotal</b>		\$ 43,657,787	\$ 1,832,992
		<b>Amount Claimed by Hamed</b>		\$ 21,828,893	\$ 1,832,992
		<b>Grand Total Payable to Hamed</b>	<b>\$</b>	<b>23,661,885</b>	

# Group Exhibit B





Original Claim Number: 201

**Reimbursement for sale of the Dorothea**

Dorothida.  
Jordan Fund 75,000 - Dinar

1,500,000.00  
105,932.00

Fatthi YUSUF  
From Jordan " " "  
Balance for Fatthi YUSUF

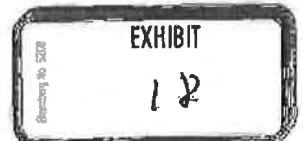
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← 617,000.00 ←  
← 105,932.00 ←  
80,034.00 -

802,966.00

2

1,605,932.00

802,966.00



Original Claim Number: 355

**\$2.7 Million Unilateral Withdrawal from  
Partnership Account to United Corp.**

1154

101-606216

UNITED CORPORATION D/B/A  
PLAZA EXTRA  
340-778-5349  
PO BOX 769  
CHRISTIANSTED, USVI 00821-0763

Date: 8/15<sup>th</sup> / 2012.

United Corporation.

\$ 2,784,706.25

Two million Seven Hundred Eighty-Four Thousand Seven Hundred Six Dollars & 25/100

Scotiabank  
THE BANK OF NOVA SCOTIA  
AT SCOTIA BANK WITH BRANCHES

FRONT  
FRONT EAST  
FRONT WEST  
FRONT NORTH  
FRONT SOUTH

FRONT EAST

FRONT WEST

FRONT NORTH

FRONT SOUTH

FRONT EAST

FRONT WEST

FRONT NORTH

FRONT SOUTH

Original Claim Number: 3006

**Partnership Funds used to Pay  
Fathi Yusuf's Personal Legal Fees**

**Exhibit 10 – Attorney Fees Paid to Joe DiRuzzo, FUERST ITTLEMAN DAVID & JOSEPH, PL**

## Exhibit 10 - Payments After 1/1/2012 to Fuerst Ittleman from Plaza Account

Date	Payee	From Account	Amount	Check No.
2012-10-19	Fuerst Ittleman	Plaza Extra - Banco Popular	\$ 15,067.26	3979
2012-10-19	Fuerst Ittleman	Plaza Extra - Banco Popular	\$ 29,011.50	3977
2012-11-16	Fuerst Ittleman	Plaza Extra - Banco Popular	\$ 99,254.45	4195
2013-01-21	Fuerst Ittleman	Plaza Extra - Banco Popular	\$ 111,660.24	4642
2013-02-13	Fuerst Ittleman	Plaza Extra - Banco Popular	\$ 112,383.82	4819
2013-03-06	Fuerst Ittleman	Plaza Extra - Banco Popular	\$ 82,274.87	5055
2013-04-03	Fuerst Ittleman	Plaza Extra - Banco Popular	\$ 54,938.89	5193
			<b>\$ 504,591.03</b>	

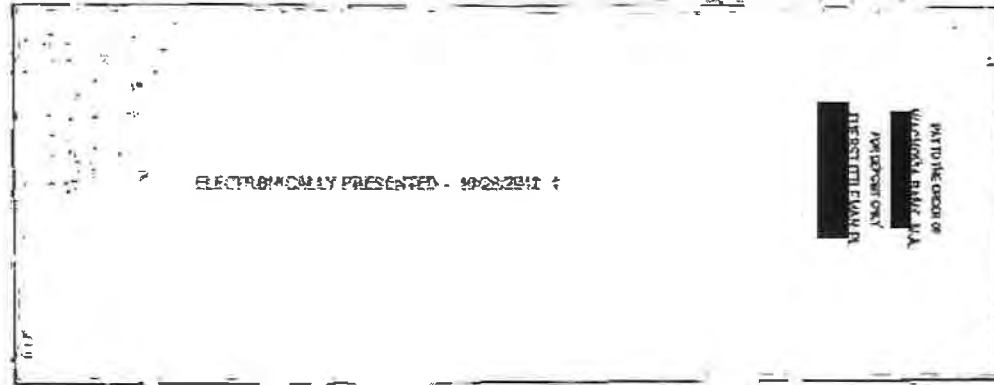
# CHECK 3977

Dated: Friday, October 19, 2012

Amount: \$99,254.45

Cleared: Sunday, October 28, 2012

Depository: Fuerst Ittleman PL  
Account Wachovia Bank N.A.  
[REDACTED]



<b>UNITED CORPORATION</b> DBA PLAZA EXTRA (340) 719-1870 PO BOX 3549 ST CROIX, VI 00851		<b>BANCO POPULAR DE PUERTO RICO</b> 101-687216	<b>3977</b> 3977
		DATE	Oct 19, 2012
		AMOUNT	\$ 29,011.50
PAY TO THE ORDER OF:	Twenty-Nine Thousand Eleven and 50/100 Dollars		
	FUERST ITTLEMAN DAVID & JOSEPH, PL 1001 BRICKELL BAY DRIVE 32ND FLOOR MIAMI, FL 33131		
Memo:	[REDACTED]		
		<i>[Signature]</i> AUTHORIZED SIGNATURE	



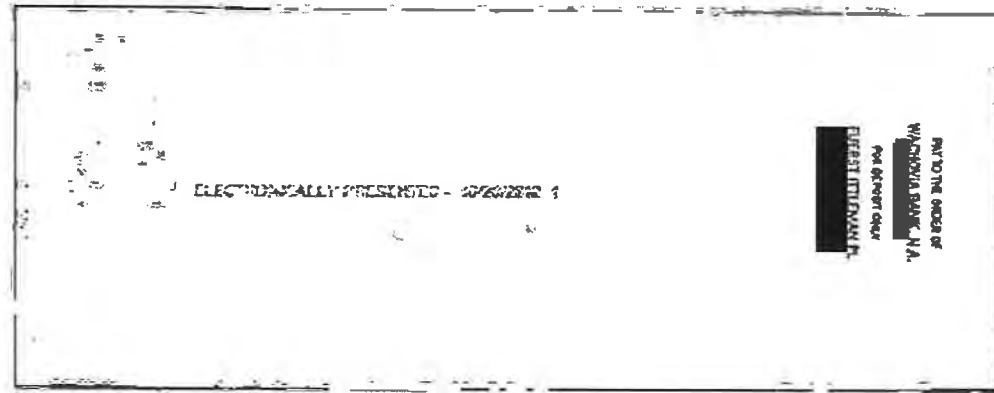
# CHECK 3979

Dated: Friday, October 19, 2012

Amount: \$15,067.26

Cleared: Sunday, October 28, 2012

Depository: Fuerst Ittleman PL  
Account Wachovia Bank N.A.  
[REDACTED]



<b>UNITED CORPORATION</b> DBA PLAZA EXTRA (340) 719-1870 PO BOX 3649 ST CROIX, VI 00851		<b>BANCO POPULAR DE PUERTO RICO</b> 101-997210	<b>3979</b> CHECK NUMBER
		DATE	Oct 19, 2012
		AMOUNT	\$ 15,067.26
PAY TO THE ORDER OF:	Fifteen Thousand Sixty-Seven and 26/100 Dollars		
	FUERST ITTLEMAN DAVID & JOSEPH, PL 1001 BRICKELL BAY DRIVE 32ND FLOOR MIAMI, FL 33131		
Memo:	[REDACTED]	[Handwritten Signature] AUTHORIZED SIGNATURE	

**UNITED CORPORATION**  
DBA PLAZA EXTRA  
(340) 719-1870  
PO BOX 3649  
ST CROIX, VI 00851

**BANCO POPULAR DE PUERTO RICO**  
101-887/216

**4195**  
CHECK NUMBER

DATE

Nov 16, 2012

AMOUNT

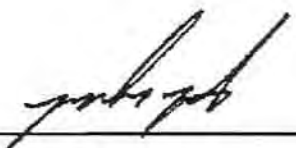

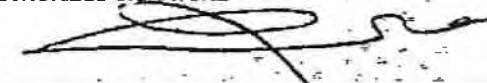
\$ 99,254.45

PAY  
TO THE  
ORDER  
OF:

Ninety-Nine Thousand Two Hundred Fifty-Four and 45/100 Dollars  
FUERST ITTLEMAN DAVID & JOSEPH, PL  
1001 BRICKELL BAY DRIVE  
32ND FLOOR  
MIAMI, FL 33131

Memo:

HAMD203422

  
  
AUTHORIZED SIGNATURE  


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Security Features Included

PAY TO THE ORDER OF  
WACHOVIA BANK, N.A.



FOR DEPOSIT ONLY

FUERST ITTLEMAN PL



Vertical line of text, possibly a barcode or routing information, oriented vertically in the center of the page.

Faded text at the bottom left, including a MICR line (Magnetic Ink Character Recognition) and other document details.

Handwritten or stamped alphanumeric code: HAMD203423



UNITED CORPORATION  
DBA PLAZA EXTRA  
(340) 719-1870  
PO BOX 3649  
ST CROIX, VI 00851

BANCO POPULAR DE PUERTO RICO  
101-867/216

4642  
CHECK NUMBER

DATE  
Jan 21, 2013

Ph 10  
Type ok  
Issue Exp. ok  
Pay Order ok  
Mkt AL  
MP ok

AMOUNT  
\$ \*\*\*\$111,660.24

PAY One Hundred Eleven Thousand Six Hundred Sixty and 24/100 Dollars  
TO THE ORDER OF: FURST ITTLEMAN DAVID & JOSEPH PL  
1001 BRICKELL BAY DRIVE  
32ND FLOOR  
MIAMI, FL 33131

Memo :



*[Handwritten Signature]*  
\_\_\_\_\_  
AUTHORIZED SIGNATURE  
*[Handwritten Signature]*

HAMD261896

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WACHOVIA BANK, N.A.

FOR DEPOSIT ONLY

FUERST ITTEMAN PL



946

AMD261897

**UNITED CORPORATION**  
**DBA PLAZA EXTRA**  
(340) 719-1870  
PO BOX 3649  
ST CROIX, VI 00851

**BANCO POPULAR DE PUERTO RICO**

Pin	ID	101-667216
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Issue/Exp.	AD	<i>X</i>
Net	Dep. Only	<i>OK</i>
Hist.	Sig.	<i>OK</i>
	HFF	<i>OK</i>
	Memo	<i>OK</i>

**4819**  
CHECK NUMBER

DATE  
Feb 13, 2013

AMOUNT  
\$ \*\*\*\$112,383.32

PAY TO THE ORDER OF: One Hundred Twelve Thousand Three Hundred Eighty-Three and 32/100 Dollars  
FUERST ITTLEMAN DAVID & JOSEPH PL  
1001 BRICKELL BAY DRIVE  
32ND FLOOR  
MIAMI, FL 33131

Memo:



*[Handwritten Signature]*  
\_\_\_\_\_  
AUTHORIZED SIGNATURE  
*[Handwritten Signature]*

HAMD277362

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Security Features Included

PAY TO THE ORDER OF  
WACHOVIA BANK, N.A.

FOR DEPOSIT ONLY

FUERST ITTELMAN PL

101561883

UNITED CORPORATION  
DBA PLAZA EXTRA  
(340) 719-1870  
PO BOX 3649  
ST CROIX, VI 00851

BANCO POPULAR DE PUERTO RICO  
101-667/216

5005

CHECK NUMBER

DATE

Mar 6, 2013

AMOUNT

\$ \*\*\*\*\$82,274.87

PAY Eighty-Two Thousand Two Hundred Seventy-Four and 87/100 Dollars

TO THE  
ORDER  
OF:

FUERST ITTLEMAN DAVID & JOSEPH PL  
1001 BRICKELL BAY DRIVE  
32ND FLOOR  
MIAMI, FL 33131

Memo:

HAMD562193

  
  
AUTHORIZED SIGNATURE

Details on Bank

Security Features Included



PAY TO THE ORDER OF  
WACHOVIA BANK, N.A.

FOR DEPOSIT ONLY

FUERST ITTLEMAN PL

11/15/2011 11:15 AM

HAMD562194

UNITED CORPORATION  
DBA PLAZA EXTRA  
(340) 719-1870  
PO BOX 3649  
ST CROIX, VI 00851

BANCO POPULAR DE PUERTO RICO  
101-667/216

5193  
CHECK NUMBER

DATE  
Apr 3, 2013

AMOUNT

\$ \*\*\*\*\$54,938.89

PAY TO THE ORDER OF: Fifty-Four Thousand Nine Hundred Thirty-Eight and 89/100 Dollars

FUERST ITTLEMAN DAVID & JOSEPH PL  
1001 BRICKELL BAY DRIVE  
32ND FLOOR  
MIAMI, FL 33131

Memo:

HAMD562231

  
  
AUTHORIZED SIGNATURE

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Security Features Included

PAY TO THE ORDER OF  
WACHOVIA BANK, N.A.



FOR DEPOSIT ONLY

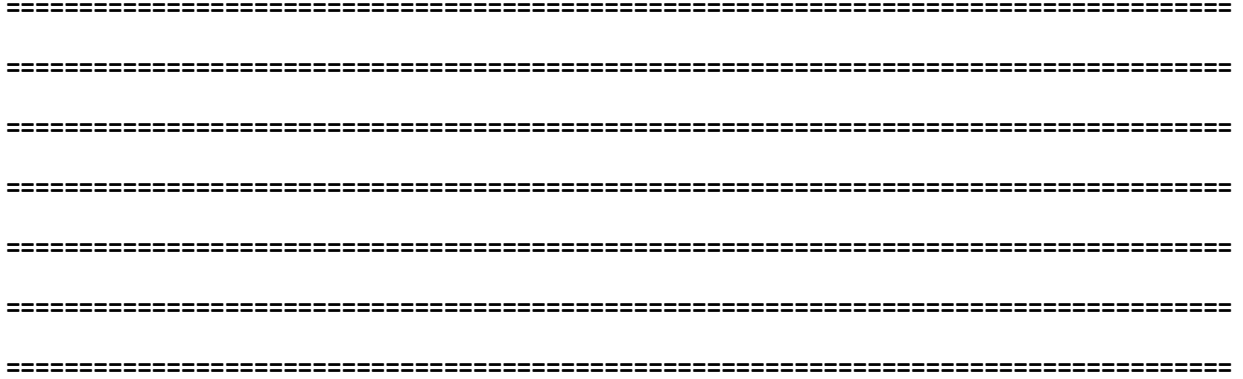
FUERST ITTLEMAN PL



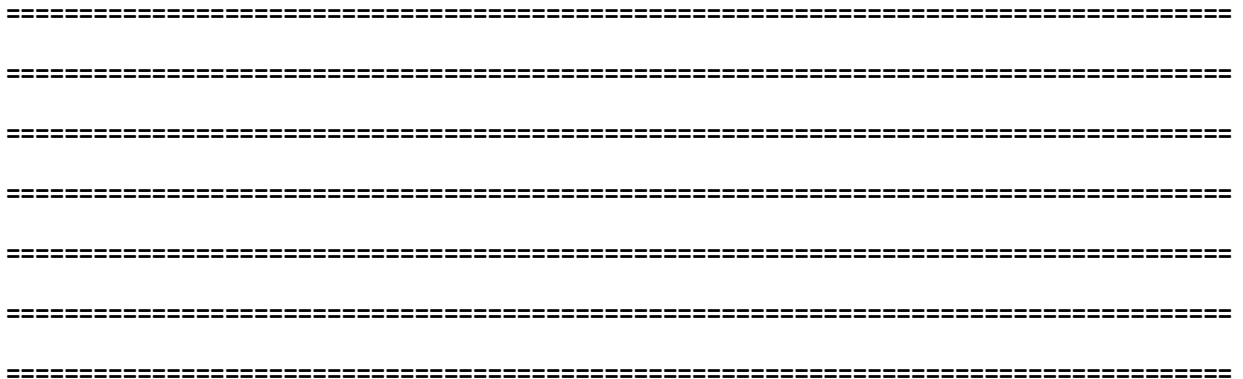
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WACHOVIA BANK, N.A.  
1000 BANK CENTER DRIVE  
CHARLOTTE, NC 28269  
TEL: 704.766.6000  
WWW.WACHOVIA.COM  
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HAMD562232



# **DIVIDER**



**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 and Counterclaimants.*

vs.

**WALEED HAMED, WAHEED HAMED,  
MUFEED HAMED, HISHAM HAMED, and  
PLESSEN ENTERPRISES, INC.,**

*Counterclaim Defendants,*

**Case No.: SX-2012-cv-370**

**ACTION FOR DAMAGES,  
INJUNCTIVE RELIEF AND  
DECLARATORY RELIEF**

**JURY TRIAL DEMANDED**

**MOHAMMAD HAMED,**

*Plaintiff,*

vs.

**FATHI YUSUF,**

*Defendant.*

**Case No.: SX-2014-CV-278**

**ACTION FOR DEBT AND  
CONVERSION**

**JURY TRIAL DEMANDED**

**MOTION FOR A HEARING BEFORE SPECIAL MASTER**

The Special Master ordered the parties to re-submit claims that accrued after September 17, 2006, which both parties filed on October 30, 2017. A hearing is needed:

- To address any housekeeping matters needed to go forward;
- To rule on the claims that are ready to resolve now;
- To establish the procedure for resolving claims that need briefing but no discovery;
- To establish the discovery process for claims that need discovery.

### I. The Remaining Claims

As noted in Hamed's revised filing, he has submitted 165 claims, two of which can be heard and decided now, several that require only a very short briefing before a hearing, and additional claims that more require discovery before briefing and hearing. Yusuf's submission contained 14 claims with a similar breakdown.

As a preliminary housekeeping matter, while Hamed numbered his revised claims, Yusuf did not. To simplify this process, Hamed has assigned a number to each of Yusuf's re-submitted claims, as Y1 to Y14, on the chart below, with a brief summary of each.<sup>1</sup>

<b>Description of Yusuf's Revised (Post-9/17/2006) Claims in his 10/30/2017 Filing</b>	<b>Original Amount of This Claim</b>	<b>Date of Activities that Led to the Revised Claim</b>	<b>Amount of Claim Remaining After Revision to Only Post-9/17/2006 Claims<sup>2</sup></b>
<b>Y1.</b> Additional Rent for Bay 1 (\$200,000 & \$250,000 per month)	\$6,974,063.10	1/1/12-3/31/12 & 4/1/12-3/08/15	\$6,974,063.10
<b>Y2.</b> Rent for Bays 5 & 8	\$793,984.34	5/1/94-7/31/01 & 5/1/94-9/30/02 & 4/1/08-5/30/13	\$198,593.75
<b>Y3.</b> Interest on Bay 1 Rent Already Awarded by the Court on 4/27/2015	\$881,955.08	1/01/94-5/4/04 & 1/1/12-9/30/13	\$167,927.51

<sup>1</sup> Yusuf starts his October 30, 2017 claims submission with a list of funds to be held in reserve for anticipated debts of the Partnership, including 'reserves' for expenses to complete this process. These are not "claims," but can each be addressed at the hearing as part of the housekeeping issues, as Hamed has just a few comments and suggestions.

<sup>2</sup> As will be discussed, many of Yusuf's claims are time-barred by Judge Brady's July 17, 2017, Order, as noted in the chart. The "Remaining" column represents that part of the claim that was not barred by Judge Brady.

<b>Y4.</b> Interest on Bays 5 & 8	\$241,005.18	<b>5/17/13-9/30/16</b>	\$60,328.97
<b>Y5.</b> Reimburse United for Gross Receipt Taxes	\$60,586.96	1993-2001	None
<b>Y6.</b> Black Book Balance Owed United	\$49,997.00	1990s	None
<b>Y7.</b> Ledger Balances Owed United	\$199,760.00	1994-95 and 1998	None
<b>Y8.</b> Water Revenue Owed United	\$693,207.46	4/1/04-9/16/06 & <b>9/17/06-2/28/15</b>	\$537,103.49
<b>Y9.</b> Unreimbursed Transfers from United	\$188,132.00	1996	None
<b>Y10.</b> Past Pship Withdrawals - Receipts	\$7,657,418.00	1999- <b>12/31/12</b>	\$5,879,315.00
<b>Y11.</b> Lifestyle Analysis	\$1,966,617.56	<b>9/16/06-12/31/12</b>	\$1,966,617.56
<b>Y12.</b> Foreign Accts and Jordanian Properties	TBD, but at least \$434,921.37	No dates given for the original purchase of the parcels of land. The alleged conveyance of parcel occurred in <b>2011</b>	NA
<b>Y13.</b> Loss of Going Concern Value of PE-West	\$4,385,000.00	<b>3/9/15</b>	\$4,385,000.00
<b>Y14.</b> Half of Value of Six Containers	\$210,000.00	<b>After May 1, 2015</b>	\$210,000.00

## II. Going Forward

Hamed respectfully requests a hearing. In addition to the claims ready for hearing, the Special Master and the parties can also discuss any needed housekeeping matters, such as the reserves for any remaining expenses.

*First*, Hamed respectfully submits that this Court can decide certain claims which are ready for disposition without discovery or briefing at this first hearing, based on:

- Orders already entered in this case; or
- Judicial admissions of the parties.

A list of the "ready for hearing/disposition" claims is attached as **Exhibit 1**. A ruling on these claims will greatly limit the need for further discovery.

*Second*, there are also claims that cannot be immediately decided as a matter of law, *but do not need any discovery*. The list of these claims as submitted by both parties is attached as **Exhibit 2**. It is respectfully submitted that these claims can be decided at a later hearing, after very limited briefing -- with any relevant evidence attached. For this process, Hamed suggests that the Special Master set up a briefing schedule, directing that the party who submitted the claim to first file a summary of each claim that is five pages or less (exclusive of captions and signatures), with any supporting evidence attached. Thereafter, the opposing party should be directed to file a five-page opposition, with any evidence attached. A two-page reply should then be permitted. After these submissions, these claims will then be ready for hearing and the Master's decision.



*Third*, and finally, as for the remaining claims that do need discovery,<sup>3</sup> Hamed proposes a divided, two track discovery process for the Master to consider, as follows:

**1. Discovery for Claims Related to Accounting Entries**

- 1-2 Interrogatories per unclear or questionable accounting entry (similar to the specific, very short, very detailed requests sent to John Gaffney previously)
- Document requests for the underlying documents substantiating payment of Partnership debts
- Limited subpoenas for the few instances where the Partnership does not have the underlying documents
- Following receipt of documents and interrogatory responses, a 5-10 minute deposition per remaining unclear or questionable accounting entry

**2. Discovery Process for all Other (Non-Accounting Entries) Hamed and Yusuf Claims**

- The traditional discovery process should be allowed (document requests, interrogatories and depositions), with the Special Master setting forth any needed limits.
- Once discovery is completed, each side will submit a five-page memo (exclusive of captions and signatures), with any relevant exhibits attached to each of its claims. Each side will be allowed a five-page opposition and a two-page reply.

After the discovery and briefings are completed for each claim, these remaining claims will be ready for a hearing and the Master's decision.

Thus, for the reasons set forth herein, it is requested that this Court enter an order for a hearing to address any needed housekeeping items, resolve the claims set forth in Exhibit 1, set a briefing schedule for the claims lists on Exhibit 2, and establish a discovery schedule for the claims on Exhibit 3.

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<sup>3</sup> **Exhibit 3** is an itemized chart listing all of Hamed's claims. For each of the items requiring additional discovery, there is a brief notation of what Hamed believes will be required. Yusuf should be required to do the same for any claims for which he believes discovery is needed.

**Dated:** November 16, 2017



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**CERTIFICATE OF SERVICE**

I hereby certify that on this 16th day of November, 2017, I served a copy of the foregoing by email (via Case Anywhere ECF) as well as regular email, as agreed by the parties, on:

**Hon. Edgar Ross**  
Special Master  
% [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 and Counterclaimants.*

vs.

**WALEED HAMED, WAHEED HAMED,  
MUFEED HAMED, HISHAM HAMED, and  
PLESSEN ENTERPRISES, INC.,**

*Counterclaim Defendants,*

**Case No.: SX-2012-cv-370**

**ACTION FOR DAMAGES,  
INJUNCTIVE RELIEF AND  
DECLARATORY RELIEF**

**JURY TRIAL DEMANDED**

**MOHAMMAD HAMED,**

*Plaintiff,*

vs.

**FATHI YUSUF,**

*Defendant.*

**Case No.: SX-2014-CV-278**

**ACTION FOR DEBT AND  
CONVERSION**

**JURY TRIAL DEMANDED**

**EXHIBIT 1  
CLAIMS READY FOR HEARING NOW**

Hamed submits that the following twelve Yusuf and two Hamed claims are ready for hearing/resolution now, as described below.

**I. Yusuf's 12 Claims that are Ready for Hearing/Resolution Now**

Hamed respectfully submits that there are 12 Yusuf claims that can be rejected now, in whole or in part. If these claims are rejected, *discovery will be drastically*

*reduced*. If these claims are not rejected, discovery will be needed on all but one, as noted below.

**A. Yusuf Claim Y-2—Rent for Bays 5 & 8**

Yusuf is requesting rent from the Partnership for Bays 5 and 8 at the Plaza East location, based on a declaration he submitted with his claims. See ¶¶ 21-25 of **Exhibit**

**A.** Yusuf makes it clear that this claim is divided into three distinct time periods.

1. Rent for Bay 5 from **May 1, 1994 through July 31, 2001**, 3,125 square feet at \$12.00 per month for 7.25 years. The total due for Bay 5 rent is \$271,875.00.
2. Rent for Bay 8 from **May 1, 1994 through September 30, 2002**, 6,250 square feet at \$6.15 for 8 years, 5 months. The total due for Bay 8 rent is \$323,515.63.
3. Rent for Bay 8 from April 1, 2008 through May 30, 2013, 6,250 square feet at \$6.15 for 5 years, 2 months. The total due for Bay 8 rent for this time period is \$198,593.75.

The first two periods can be resolved now, pursuant to Judge Brady's July 21<sup>st</sup> Order, as both time periods are prior to September 17, 2006 and are time-barred. The Court determined only claims that occurred on or after September 17, 2006 could be considered (see excerpt attached as **Exhibit B**):

ORDERED that the accounting in this matter, to which each partner is entitled under 26 V.I.C § 177(b), conducted pursuant to the Final Wind Up Plan adopted by the Court, shall be limited in scope to consider only those claimed credits and charges to partner accounts, within the meaning of 26 V.I.C § 71(a), based upon transactions that occurred on or after September 17, 2006.

*Hamed v. Yusuf*, No. SX-12-CV-370, 2017 WL 3168458, at \*29 (V.I. Super. July 21, 2017). Discovery is needed for the last time period, rent for Bay 8 from April 1, 2008 through May 30, 2013, as it is not time-barred.<sup>1</sup>

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<sup>1</sup> The rent claims that are not time barred require discovery because (1) there was no written agreement by the Partnership to pay rent to United for Bay 8; (2) unlike Bay 1, there is no evidence the partnership occupied or ever paid for these bays, **nor did it**; (3)

### **B. Yusuf Claim Y-3—Interest on the Previously Determined Bay 1 Rent**

This claim can also be resolved as a matter of law, as the facts and the Court's prior Rent Order are not in dispute. The rent was paid on Bay 1 pursuant to the Court's Order dated April 27, 2015. However, although interest was adamantly sought by Yusuf,<sup>2</sup> none was awarded, nor should interest be awarded under the circumstances set out in that original briefing and order. The Court stated (see **Exhibit C**):

ORDERED that Defendant United Corporation's Motion to Withdraw Rent is GRANTED, and the Liquidating Partner, under the supervision of the Master, is authorized and directed to pay from the Partnership joint account for past rents due to United the total amount of \$5,234,298.71, plus additional rents that have come due from October 1, 2013 at the rate of \$58,791.38 per month, until the date that Yusuf assumed full possession and control of Plaza Extra - East.

*Hamed v Yusuf*, SX-12-CV-370, April 27, 2015 at pp. 11-12. Thus, the law of the case has been entered after full briefing and argument, and it refused interest on the back rent for Bay 1. Defendants are really trying to finesse a **motion to reconsider the April**

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there is no documentation that \$6.15 per square foot was agreed to as the amount per square foot or how that amount was derived; and (4) there was no verbal "acknowledgement" by Hamed that the Partnership owed rent to United for Bay 8 (as the Court found with regard to Bay 1). Also, there are additional affirmative defenses.

<sup>2</sup> Yusuf already argued this interest position **extensively**--and lost. See Yusuf's original August 12, 2014 Rent Motion at pages 28-29 (See excerpt attached as **Exhibit D**):

III. United Is Entitled To Recover Prejudgment Interest On The Unpaid Rent.

Although United did not charge any interest on the past due rent over the decade it accrued and while it could not be paid because of the criminal injunction and the absence of the "black book," it is entitled to recover prejudgment interest at 9% per annum, as provided by V.I. Code Ann. tit. 11, § 951(a)(4), from the date it demanded payment - May 17, 2013. See Exhibit 3B.

**27, 2015 rent order**, not make a 'claim'. As the time for a motion to reconsider has passed pursuant to V.I. R. Civ. P. 6-4 (a), this claim must be denied.<sup>3</sup>

#### **C. Yusuf Claim Y-4—Interest on Bays 5 & 8**

This claim, which is divided into several time periods as noted in *Section A* above, can be resolved pursuant to Judge Brady's July 21<sup>st</sup> Order. In this regard, just like the base rent claim is time barred, the claim for interest on rent allegedly due for (1) Bay 5 from May 1, 1994 through July 31, 2001 and (2) Bay 8 from May 1, 1994 through September 30, 2002 should be denied as well because it is also outside of the September 17, 2006 time frame for considering claims (as discussed in *Section A* above).<sup>4</sup>

#### **D. Yusuf Claim Y-5—Reimburse United for Gross Receipt Taxes**

This entire claim can be resolved pursuant to Judge Brady's July 21<sup>st</sup> Order. Yusuf contends that the Partnership owes United reimbursement for **United's separate, unrelated gross receipt taxes** for the time period of 1993-2001, referencing Exhibit F to his initial claims filing. These are not the supermarket gross receipts--only United's other businesses. A copy is attached hereto as **Exhibit F** to assist the Court. As can be seen from this exhibit, his claim must be denied because it is outside of the September 17, 2006 time frame for considering claims, as discussed in *Section A* above.<sup>5</sup>

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<sup>3</sup> At the time the Order in question was entered, the applicable rule for filing motions for reconsideration was District Court Rule 7.3, applicable to the Superior Court pursuant its Rule 7. The time period for filing a motion for reconsideration is the same under both the old and new rule.

<sup>4</sup> The determination of interest on Bay 8 from April 1, 2008 through May 30, 2013, is premature, as there has not yet been any determination that rent is even owed for this Bay.

<sup>5</sup> If this claim is not time barred, then discovery is needed to determine why this belated claim for such taxes paid by the Landlord on the rents it collected from all shopping

### **E. Yusuf Claim Y-6—Black Book Balance Owed United**

This entire claim can be resolved pursuant to Judge Brady's July 21<sup>st</sup> Order. Yusuf claims he is owed certain sums based on the "black book," referencing Exhibit G to his initial claims filing. A copy is attached hereto as **Exhibit G** to assist the Court. As can be seen from this exhibit, none of the entries are dated after September 17, 2006. This is the exact situation that the Court sought to avoid in its opinion:

[t]he stated policy of RUPA clearly prevents both Hamed and Yusuf from imposing upon the Court the great burden of sorting through the ramshackle patchwork of evidence supporting their § 71(a) claims, to reconstruct decades' worth of partnership accounts, when the partners, who deliberately determined not to keep accurate records in the first place, were themselves content to carry on conducting partnership business despite having full knowledge of the pattern of conduct of which they now, belatedly, complain.

*Hamed v. Yusuf*, 2017 WL 3168458, at \*28. The Court strenuously reiterated this position in its denial of the motion for reconsideration dated November 15, 2017.

Again, this claim must also be denied because it is outside of the September 17, 2006 time frame for considering claims, as discussed in *Section A* above.<sup>6</sup>

### **F. Yusuf Claim Y-7—Ledger Balances Owed United**

This entire claim can be resolved pursuant to Judge Brady's July 21<sup>st</sup> Order. Yusuf is requesting ledger balances from 1994, 1995 and 1998 owed to United for various Partnership expenses, referencing Exhibit H to his initial claims filing. A copy is attached hereto as **Exhibit H** to assist the Court. As can be seen from this Exhibit, this

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center tenants would be owed by the Partnership. Indeed, under V.I. law, a taxpayer cannot pass its gross receipt obligations on to its customers (here, its tenant).

<sup>6</sup> If this claim is not time barred, then discovery is needed to determine why this sum is allegedly still owed, as it is a disputed claim.

claim also must be denied because it is outside of the September 17, 2006 time frame for considering claims, as discussed in *Section A* above.<sup>7</sup>

#### **G. Yusuf Claim Y-8—Water Revenue Owed United**

A portion of this claim can be resolved pursuant to Judge Brady's July 21<sup>st</sup> Order. Here, Yusuf is claiming that the Partnership sold water from wells belonging to United, seeking compensation for sales from **April 1, 2004** through February 28, 2015, as noted in page 12 of his revised claims submission.

While Hamed denies this claim is owed (as this was jointly owned property), the amount for water sales United claims from **April 1, 2004 through September 15, 2006**, totaling \$156,103.97, must be denied because it is outside of the September 17, 2006 time frame for considering claims, as discussed in *Section A* above.<sup>8</sup>

#### **H. Yusuf Claim Y-9—Unreimbursed Transfers from United**

This entire claim can be resolved pursuant to Judge Brady's July 21<sup>st</sup> Order. Yusuf alleges that the Partnership owes United \$188,132 for its unreimbursed transfers from its Tenant account to the Partnership, referencing Exhibit I to his initial claims filing. A copy is attached hereto as **Exhibit I** to assist the Court. As can be seen from this Exhibit, the dates of these transfers are all in 1996. This claim must be denied because it is occurred prior to the September 17, 2006, as discussed in *Section A* above.<sup>9</sup>

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<sup>7</sup> If this claim is not time barred, then discovery is needed to determine why these sums are allegedly still owed, as it is a disputed claim.

<sup>8</sup> Discovery is needed on any portion of this claim that is not time barred, as Hamed has multiple defenses to this claim, including the ownership of the wells which is still an open issue, the calculation for the sales as computed by Yusuf and several other defenses.

<sup>9</sup> Discovery is needed on any portion of this claim that is not time barred, as these alleged transfers are disputed.



### I. Yusuf Claim Y-11—Lifestyle Analysis

This entire claim can be resolved pursuant to Judge Brady's July 21<sup>st</sup> Order, but for different reasons than being time barred. The lifestyle analysis claim of \$1,966,617.56 is the result of the Yusuf accounting firm, BDO, identifying all of the deposits to bank and brokerage accounts and payments to credit cards made on or after September 17, 2006 by the Hameds, without any regard to any other sources of income the Hameds may have had. This *bizarre* BDO analysis was *soundly* rejected by the Court:

As part of the accounting and distribution phase of the Wind Up, Yusuf submitted to the Master the report of accountant Fernando Scherrer of the accounting firm BDO, Puerto Rico, P.S.C. (BDO Report). Yusuf contends that this report constitutes "a comprehensive accounting of the historical partner withdrawals and reconciliation for the time period 1994–2012." See Opposition to Motion to Strike BDO Report, filed October 20, 2016. However, the BDO report, by its own terms, appears to be anything but comprehensive. Most tellingly, the body of the BDO Report itself contains a section detailing its own substantial "limitations," resulting from the absence or inadequacy of records for each of the grocery stores covering various periods during the life of the partnership.<sup>25</sup> See Plaintiff's Motion to Strike BDO Report, Exhibit 1, at 22. **Additionally, the analysis presented in the report rests on the unsupported assumption that any monies identified in excess of "known sources of income" constitute distributions from partnership funds to the partners' § 71(a) accounts.**

*Hamed v. Yusuf*, 2017 WL 3168458, at \*24 (emphasis added, footnote omitted).<sup>10</sup>

Thus, this lifestyle claim must be summarily denied pursuant to the law of the case, as

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<sup>10</sup> Judge Brady re-emphasized this point and also amplified his statement that **NO pre-2006 claims can be brought back to life** by crafty arguments designed to circumvent the intent of his order -- in his November 15, 2017 denial of Yusuf's motion for reconsideration on this exact point, at pp. 5-6.

The Court referred to Mr. Shoenbach's letter in its Opinion, not in reliance upon his expertise in accounting, but in order to illustrate the general proposition that where, as here, business partners have schemed to deliberately omit large sums of money from their accounting, have intentionally destroyed existing records of cash withdrawals, and have, even at their best, engaged only in loose, informal accounting practices,

being founded on a baseless theory backed by incomplete records and "unsupported assumptions."<sup>11</sup>

#### **J. Yusuf Claim Y-12—Foreign Accounts and Jordanian Properties**

A portion of this claim can be resolved pursuant to Judge Brady's July 21<sup>st</sup> Order. In this regard, Yusuf is making multiple claims here, five of which are itemized on pages 16-17 of Yusuf's revised claims submission. At the end of subsection (e), Yusuf agreed that subsections (c) through (e) are time barred. Thus, these claims should be stricken now.

As for subsection (b), there is a claim for \$150,000 involving a charitable donation of half a batch plant to a town in Jordan, which then references Exhibit L of his original claim, attached hereto as **Exhibit L** to assist the Court. Fathi Yusuf's deposition pegs the date of this transaction to the year 2000, before the FBI raid and well before September 17, 2006. See **Exhibit K** (Deposition of Fathi Yusuf, April 2, 2014, *Hamed v Yusuf*, SX-12-CV-370, p. 120). Thus, this portion of this claim is time barred as well.<sup>12</sup>

#### **K. Yusuf Claim Y-13—Loss of Going Concern Value of PE-West**

This claim can be rejected based on Yusuf's judicial admissions in this case. Yusuf is claiming he is owed damages based on the "on-going" value of the Plaza West store when it was liquidated. To support this claim, Yusuf submitted as Exhibit P to his original claim, a business valuation expert report from a real estate appraiser, Integra, attached hereto as **Exhibit P**.

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***any* attempt to accurately reconstruct partnership records will necessarily involve some element of unreliability**, as that is the very point of such a scheme. (Emphasis added.)

<sup>11</sup> If this claim is not stricken, then discovery is needed on it.

<sup>12</sup> Discovery is needed on the portion of this claim that is not time barred.

However, the Integra report contains an evaluation of the Plaza West store *that states on its face that it is contingent on one pivotal assumption that is false—that the partnership had a lease on the Plaza West store* when it was closed (see Exhibit P, at page 2 of the cover letter):

Extraordinary Assumptions and Hypothetical Conditions

The value conclusions are subject to the following extraordinary assumptions that may affect the assignment results. **An extraordinary assumption is uncertain information accepted as fact. . . .**

3. It is our understanding that the real estate was owned by a related entity as of the date of valuation. *For the purposes of valuing the business entity separately from the value of the real estate (which was separately appraised), we have assumed that the entity operating business [the Hamed/Yusuf partnership] leases the property from a separate entity at market rent.*

However, there never was a lease for the Plaza West store, as Yusuf acknowledged in his own April 7, 2014 filing in this Court when he submitted his own dissolution plan (See **Exhibit N**), conceding on page 6 of his Proposed Wind-Up Plan:

**The Plaza Extra Stores cannot be sold as a going concern because of the absence of commercial leases for Plaza Extra - East and Plaza Extra - West** and the existence of only a short term (less than 5 years) remaining on the lease between United and Tutu Parle Mall, Ltd. for Plaza Extra - Tutu Park. Hence, liquidation of the Plaza Extra Stores is warranted. (Emphasis added).

Thus, once Integra's "assumption" that there was a lease for the Plaza West store is removed *based on Yusuf's judicial admission*, the Plaza West store has no "ongoing value," as there was no lease to support any valuation. **Indeed, the Court has already divided the "assets" related to that store as part of the Wind-Up process**, which the Special Master administered.

In short, Yusuf admitted when he filed his proposed plan that the Plaza West store could not be sold as a going concern. How can he now try to seek damages as if

the store had a lease and was a going concern? Thus, this claim can be summarily rejected.<sup>13</sup>

Indeed, if the partners could create leases where none exist, **Hamed would have the EXACT same claim on the Plaza East store.**

#### **L. Yusuf Claim Y-14—Half of Value of Six Containers**

Yusuf claims that six containers of inventory with a value between \$180,000 and \$210,000 were not included in the auction for the Plaza Extra-Tutu store. Yusuf discussed this claim with the Master and admits in a court filing that this claim was rejected by the Special Master. See the relevant admission in the *Liquidating Partner's Sixth Bimonthly Report*, **Exhibit O**, footnote 4, page 3. Hamed adopts the Master's position.<sup>14</sup>

## **II. Hamed's 2 Claims that are Ready for Hearing/Resolution Now**

Hamed has two claims that can be decided now as well, as the facts are not in dispute and the amounts have already been noted as being due by the Court.<sup>15</sup>

### **A. \$2.7 million unilateral withdrawal from the Partnership account**

This litigation began when Fathi Yusuf and Mike Yusuf unilaterally took \$2.7 million from a partnership account and transferred it to an account to which the Hameds did not have access. A copy of the check is attached as **Exhibit M**. This was a central issue during the early portion of this case, which was a critical issue during the initial TRO hearings on January 25th and 31st, 2013. Three months later, the Court ruled on the matter. (See the Court's *critical* Memorandum of April 25, 2013. *Hamed v. Yusuf*, 58

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<sup>13</sup> Discovery is needed on this claim if it is not rejected now.

<sup>14</sup> Discovery is needed on this claim if it is not rejected now.

<sup>15</sup> Hamed did have a third claim which Yusuf had conceded, but Yusuf has now reversed his position on that claim—it will be deferred until the next round of claims.

V.I. 117, 2013 WL 1846506 (V.I. Super. April 25, 2013). The Court stated at paragraphs 35 and 36:

On the first hearing day, Mahar Yusuf, President of United. Corporation testified under oath that he used the \$2,784,706.25 withdrawn from the Plaza Extra operating account to buy three properties on St. Croix in the name of United. **On the second hearing day, Mahar Yusuf, contradicted his prior testimony and admitted that those withdrawn funds had actually been used to invest in businesses not owned by United.** . . . (Emphasis added.)

*Id.* at \*10. And, further, at footnote 9, at \*19:

With regard to the **August 2012 diversion of more than \$2.7 million by Mahar Yusuf, president of United, to accounts inaccessible to Plaintiff**, a real concern exists that continuing diversions will not be traceable as the Plaza Extra store have had no system of internal controls in existence and, to date accounting for the businesses is not completed beyond June 2012. . . . (Emphasis added.)

Yusuf has held off having the Partnership pay the same \$2.7 million pending this claims process. There is no doubt that the Yusufs took the money and (as Judge Brady's memorandum makes clear), so that \$2.7 million plus interest at 9% is due to Hamed.

**B. Partnership funds used to pay Fathi Yusuf's personal civil legal fees in this case in the amount of \$504,591.03**

As Judge Brady also stated, in factual finding 38 of his April 25, 2013 Order, Fathi Yusuf paid his personal, civil legal fees in this lawsuit out of partnership funds. *Id.* at 11, para. 38 ("Funds from supermarket accounts have also been utilized unilaterally by Yusuf, without agreement of Hamed, to pay legal fees of defendants relative to this action. . . .") The \$504,591.03 was paid for Yusuf's personal defense of this case *after* the complaint here was filed. **These were fees paid to Attorney DiRuzzo's firm for work in this case**, which have been submitted to the Court on several occasions and are attached here as **Group Exhibit J** for the ease of the Master's reference.

Thus, this same amount plus statutory interest should be paid to Hamed to even out this distribution.

**C. Summary of Claims Already Determined by the Court/Yusuf Admission**

The totals, plus interest, owed to Hamed are as follows:

1. \$2,784,706.25 plus \$1,305,988 in interest from August 15, 2012, the date of the Plaza Extra check written to the United Corporation (unilateral Partnership withdrawal).
2. \$504,591.03 in checks to Fuerst Ittleman David & Joseph, PL in the following amounts plus \$216,991 interest accruing from the date of each check.

\$15,067.26 plus \$ 6,824 in interest from October 19, 2012  
\$29,011.50 plus \$13,141 in interest from October 19, 2012  
\$99,254.45 plus \$44,272 in interest from November 16, 2012  
\$111,660.24 plus \$47,989 in interest from January 21, 2013  
\$112,383.32 plus \$47,662 in interest from February 13, 2013  
\$82,274.84 plus \$ 34,467 in interest from March 6, 2013  
\$54,938.89 plus \$22,636 in interest from April 3, 2013

# 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,** )  
 )  
Additional Counterclaim Defendants. )  
 )  
\_\_\_\_\_ )

CIVIL NO. SX-12-CV-370

ACTION FOR DAMAGES,  
INJUNCTIVE RELIEF  
AND DECLARATORY RELIEF

**JURY TRIAL DEMANDED**

**DECLARATION OF FATHI YUSUF**

I, Fathi Yusuf, pursuant to 28 U.S.C. §1746 and Super. Ct. R. 18, declare under the penalty of perjury, that:

~~1. Mohammad Hamed ("Hamed") and I agreed to carry on a supermarket business (the "Plaza Extra Stores") that eventually grew into three locations, including the first of three stores, Plaza Extra-East, which opened in April 1986. Plaza Extra-East was and is located in United Plaza Shopping Center owned by United Corporation ("United"), of which I am the principal shareholder. Under the business agreement between Hamed and me that I now describe as a partnership, profits would be divided 50-50 after deduction for rent owed to United, among other expenses. Under our business agreement, we also agreed that rent would accrue until such time as I decided that our business accounts should be reconciled. The reconciliation of business accounts would not only involve payment of accrued rent, but also advances that each of us had taken by withdrawing money from the store safe(s). Under our agreement, I was the person~~

**HAMD606083**

**EXHIBIT  
A**

~~DEFENDANT'S  
EXHIBIT  
3~~




~~formula used at Plaza Extra – Tutu Park. See Exhibit F, which are the rent calculations that I prepared. See Exhibit F.~~

18. For 2012, the undisputed rent due is \$702,908. See Exhibit F, p.1.

19. For 2013, the undisputed rent due is \$654,190.09. See Exhibit F, p. 2.

20. For the period from January 1, 2014 through August 30, 2014, the undisputed rent due is \$452,366.03. This amount was calculated by adding the rent for 2012 and 2013 and dividing that sum by 24 months in order to determine an average monthly rent, which is then multiplied by 8, representing the eight months from January through August 30, 2014 ( $\$702,908 + 654,190.09 = \$1,357,098.09 \div 24 = \$56,545.75 \times 8 = \$452,366.03$ ). The total undisputed Current Rent is the sum of \$702,908, \$654,190.09 and \$452,366.03, which is \$1,809,464.12.



21. At periodic points in time, additional space was used by Plaza Extra-East for extra storage and staging of inventory. United has made demand for the rent covering the additional space actually occupied by Plaza Extra-East, but no payment has been received to date.

22. For the period from May 1, 1994 through July 31, 2001, Plaza Extra-East has occupied and owes rent for Bay 5 (“Bay 5 Rent”). The Bay 5 Rent is calculated by multiplying the square feet actually occupied (3,125) by \$12.00 for 7.25 years. The total due for Bay 5 Rent is \$271,875.00.

23. For the period from May 1, 1994 through September 30, 2002, Plaza Extra-East has occupied and owes rent for Bay 8 (“First Bay 8 Rent”). The First Bay 8 Rent is calculated by multiplying the square feet actually occupied (6,250) by \$6.15 for 8 years, 5 months. The total due for First Bay 8 Rent is \$323,515.63.

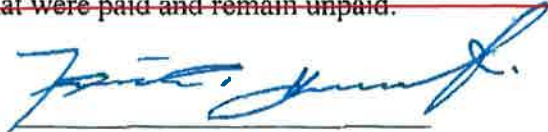
24. For the period from April 1, 2008 through May 30, 2013, Plaza Extra-East has occupied and owes rent for Bay 8 (“Second Bay 8 Rent”). The Second Bay 8 Rent is calculated by

multiplying the square feet actually occupied (6,250) by \$6.15 for 5 years, 2 months. The total due for Second Bay 8 Rent is \$198,593.75.

25. The total amount due for Bay 5 Rent, First Bay 8 Rent, and Second Bay 8 Rent is \$793,984.38.

~~26. The total outstanding, unpaid rent for all the space used by Plaza Extra East from January 1, 1994 through August 30, 2014 is \$6,603,122.23, excluding the "disputed" increased rent from January 1, 2012 through the present. Exhibit G is a Chronology of Rents, which accurately reflects the history of the rents that were paid and remain unpaid.~~

Dated: August 12, 2014



Fathi Yusuf

# **Exhibit B**

2017 WL 3168458 (V.I.Super.)  
Only the Westlaw citation is currently available.  
Superior Court of the Virgin Islands,  
Division of St. Croix.

Waleed HAMED, as Executor of the Estate of  
Mohammed Hamed, Plaintiff/Counterclaim Defendant,

v.

Fathi YUSUF and United Corporation, Defendants/Counterclaimants,  
Waleed Hamed, Waheed Hamed, Mufeed Hamed, Hisham  
Hamed, and Plessen Enterprises, Inc., Counterclaim Defendants.

Waleed Hamed, as Executor of the Estate of Mohammed Hamed, Plaintiff

v.

United Corporation, Defendant.

Waleed Hamed, as Executor of the Estate of Mohammed Hamed, Plaintiff

v.

Fathi Yusuf, Defendant.

Civil No. SX-12-CV-370, Civil No. SX-14-CV-287, Civil No. SX-14-CV-278

|  
July 21, 2017

ACTION FOR INJUNCTIVE RELIEF, DECLARATORY JUDGMENT, and  
PARTNERSHIP DISSOLUTION, WIND UP, and ACCOUNTING  
ACTION FOR DAMAGES and DECLARATORY JUDGMENT  
ACTION FOR DEBT and CONVERSION


**MEMORANDUM OPINION AND ORDER  
GRANTING MOTION TO STRIKE JURY DEMAND**

DOUGLAS A. BRADY, Judge of the Superior Court

\*1 This matter came on for hearing on March 6 and 7, 2017 on various matters including Defendants' Motion to Strike Jury Demand, filed September 14, 2014; Plaintiff's Response Re: Jury Issues, filed September 27, 2016; Defendants' Motion and Memorandum in Support of Motion to Strike Plaintiff's Response and Reply Memorandum in Further Support of Motion to Strike Jury Demand, both filed October 14, 2016; and Plaintiff's Opposition to Motion to Strike Response, filed October 18, 2016. For the reasons that follow, the Court will

**EXHIBIT**

**B**



ORDERED that the accounting in this matter, to which each partner is entitled under 26 V.I.C § 177(b), conducted pursuant to the Final Wind Up Plan adopted by the Court, shall be limited in scope to consider only those claimed credits and charges to partner accounts, within the meaning of 26 V.I.C § 71(a), based upon transactions that occurred on or after September 17, 2006.

### All Citations

2017 WL 3168458

# Exhibit C

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

MOHAMMED HAMED by his authorized agent )  
WALEED HAMED, )  
Plaintiff/Counterclaim Defendant, )  
v. )  
FATHI YUSUF and UNITED CORPORATON, )  
Defendants/Counterclaimants )  
v. )  
WALEED HAMED, WAHEED HAMED, )  
MUFEED HAMED, HISHAM HAMED, and )  
PLESSEN ENTERPRISES, INC. )  
Counterclaim Defendants. )

---

CIVIL NO. SX-12-CV-370  
ACTION FOR DAMAGES, etc.

**MEMORANDUM OPINION AND ORDER**

THIS MATTER is before the Court on Defendant United Corporation's Motion to Withdraw Rent and Memorandum of Law in Support of United's Motion ("Motion"), filed September 9, 2013; Plaintiff's Response, filed September 16, 2013; United's Reply, filed September 27, 2013; Plaintiff's Motion for Partial Summary Judgment re the Statute of Limitations Defense Barring Defendants' Counterclaim Damages Prior to September 16, 2006 (Plaintiff's "Summary Judgment Motion"), filed May 13, 2014; and Defendant's Brief in Opposition ("Opposition"), filed June 6, 2014. For the reasons that follow, United's Motion will be granted and Plaintiff's Summary Judgment Motion will be denied, in part.

<b>EXHIBIT</b> <b>C</b>
----------------------------

**3. Defendant United is also entitled to rent from 2012 to 2013 in the amount of \$58,791.38 per month.**

Plaintiff does not argue that the Partnership is exempt from paying rent to United. “[I]t is undisputed that United is the landlord and Plaza Extra is the tenant at the Sion Farm location, for which rent is due since January of 2012.” Response, 1. Rather, Plaintiff claims that United itself has created a dispute regarding rents from January 2012 by issuing rent notices seeking increased rent in the amount of \$250,000.00 per month, rather than the \$58,791.38 per month set out in Yusuf’s affidavit. Response, 4. The proof before the Court is clear as to United’s claim that rent is due for Bay No. 1 at the rate of \$58,791.38 per month from January 1, 2012 to September 30, 2013, when United’s Motion was filed.<sup>4</sup>

As the fee simple owner and landlord of Bay No. 1 United Shopping Plaza, United is entitled to rents from the Partnership for its continued use of Bay No. 1 for the operations of Plaza Extra - East. Therefore, the Court will order the Partnership to pay United the sum of \$1,234,618.98 for rent from January 1, 2012 through September 30, 2013, Plus rent due from October 1, 2013 at the same rate of \$58,791.38 per month until the date that Yusuf assumed sole possession and control of Plaza extra – East.

On the basis of the foregoing, it is hereby

**ORDERED** that Defendant United Corporation’s Motion to Withdraw Rent is **GRANTED**, and the Liquidating Partner, under the supervision of the Master, is authorized and directed to pay

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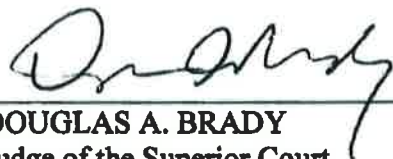
<sup>4</sup> It is acknowledged that United delivered notices to the Partnership following the April 2013 Preliminary Injunction, seeking to collect an increased rent sum of \$250,000.00. United presents in its Motion and proofs no numerical or factual justification for such claims, which are not considered in this Order.



from the Partnership joint account for past rents due to United the total amount of \$5,234,298.71, plus additional rents that have come due from October 1, 2013 at the rate of \$58,791.38 per month, until the date that Yusuf assumed full possession and control of Plaza Extra – East. It is further

~~ORDERED that Plaintiff's Motion for Partial Summary Judgment is DENIED, in part, as to Plaintiff's claims that the statute of limitations precludes Defendant United's claims for past due rent.~~

Dated: April 27, 2015

  
DOUGLAS A. BRADY  
Judge of the Superior Court

ATTEST:

ESTRELLA GEORGE  
Acting Clerk of the Court

By:   
Court Clerk Supervisor  
4/27/15

CERTIFIED TO BE A TRUE COPY  
This 27<sup>th</sup> day of April 2015

CLERK OF THE COURT

By:  Court Clerk II

# Exhibit D

**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,**

Additional Counterclaim Defendants.)

CIVIL NO. SX-12-CV-370

ACTION FOR DAMAGES,  
INJUNCTIVE RELIEF  
AND DECLARATORY RELIEF

JURY TRIAL DEMANDED

**DEFENDANTS' MOTION FOR PARTIAL SUMMARY JUDGMENT  
ON COUNTS IV, XI, AND XII REGARDING RENT**

Defendants/counterclaimants Fathi Yusuf ("Yusuf") and United Corporation ("United") (collectively, the "Defendants"), through their undersigned attorneys, respectfully move this Court, pursuant to Fed. R. Civ. P. 56 and LRCi 56.1, made applicable to this Court by Super. Ct. R. 7, to enter partial summary judgment on Counts IV, XI, and XII of their counterclaim regarding rent. In support of this motion, Defendants respectfully refer this Court to the accompanying Brief, Statement of Undisputed Material Facts, and proposed Order. Defendants request oral argument, pursuant to LRCi 7.1(f).

DUDLEY, TOPPER  
AND FEUERZEIG, LLP  
1000 Frederiksborg Gade

P.O. Box 756

St. Thomas, U.S. VI. 00804-0756

(340) 774-4422

**EXHIBIT  
D**

collection impossible. The fact that the black book was seized and not returned until years later also made it impossible for either Hamed or Yusuf or United to know the amount of the rent payment. These extraordinary circumstances created by the bringing of the federal criminal case further demonstrate that any limitations period for assertion of the rent claim for 1994-2004 would be tolled at least until 2011. As such, there could be no time bar to assertion of United's counterclaim for rent for that period.

### III. United Is Entitled To Recover Prejudgment Interest On The Unpaid Rent.

Although United did not charge any interest on the past due rent over the decade it accrued and while it could not be paid because of the criminal injunction and the absence of the "black book," it is entitled to recover prejudgment interest at 9% per annum, as provided by V.I. Code Ann. tit. 11, § 951(a)(4), from the date it demanded payment – May 17, 2013. See Exhibit 3B. "As a general rule, prejudgment interest is to be awarded when the amount of the underlying liability is reasonably capable of ascertainment and the relief granted would otherwise fall short of making the claimant whole because he or she has been denied the use of money which is legally due. Awarding judgment interest is intended to serve as least two purposes: to compensate prevailing parties for the true costs of money damages incurred, and, where liability and the amount of damages are fairly certain, to promote settlement and deter attempts to benefit from the inherent delays of litigation. Thus prejudgment interest should ordinarily be granted unless exceptional or unusual circumstances exist making the award of interest inequitable." Skretvedt v. E.I. Dupont de Nemours, 372 F.3d 193, 208 (3d Cir. 2004) (quotation marks and citation omitted); see also, Booker v. Taylor Milk Co., 64 F.3d 860, 868 (3d Cir. 1995) ("To fulfill this make-whole purpose, prejudgment interest should be given in response to considerations of fairness and denied when its

exaction would be inequitable.”) (internal quotation marks and citation omitted); Elbrecht v. Carambola Partners, LLC, 2010 U.S. Dist. LEXIS 72158, \* 19 (D.V.I. July 16, 2010) (same).

Here, there are no exceptional or unusual circumstances that would make it unfair for United to recover prejudgment interest. To the contrary, it would be entirely unfair to United if the partnership is allowed to have the uncompensated use of United’s money after it made a demand for payment more than a year ago. It is certainly not inequitable for the partnership to be required to pay interest at the legal rate (9%) on the \$3,999,679.73 from May 17, 2013 until entry of judgment. Likewise, it is only fair to require the partnership to pay prejudgment interest on the Bay 5 Rent, First Bay 8 Rent, and Second Bay 8 Rent from May 17, 2013.

Since Hamed conceded almost one year ago that the current rent is due and owing, see note 7, supra, it would be particularly unfair for United not to recover prejudgment interest on this unpaid rent. United submits that the interest should begin to accrue on the first day of the month following the month that the rent was not paid. In other words, the rent for January 2012 would begin to accrue interest on February 1, 2012 and continue accruing interest until entry of judgment.


#### **CONCLUSION AND RELIEF REQUESTED**

United respectfully submits that partial summary judgment should be entered in its favor on its breach of contract counts in its counterclaim (Counts XI and XII) for the undisputed portion of the unpaid rent in the amount of \$6,603,122.23. Yusuf also asks this Court for partial summary judgment on his accounting claim (Count IV), by declaring that in making the final reconciliation of partnership accounts and determining what must be distributed to each partner, \$6,603,122.23 should be deducted from partnership profits. Hamed and Yusuf should be ordered to pay those amounts from partnership accounts in accordance with the procedures set forth in the April 25, 2013 preliminary injunction.

Respectfully submitted,

**DUDLEY, TOPPER AND FEUERZEIG, LLP**

Dated: August 12, 2014

By:   
Gregory H. Hodges (V.I. Bar No. 174)  
1000 Frederiksberg Gade - P.O. Box 756  
St. Thomas, VI 00804  
Telephone: (340) 715-4405  
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and

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

Attorneys for Fathi Yusuf and United Corporation

**CERTIFICATE OF SERVICE**

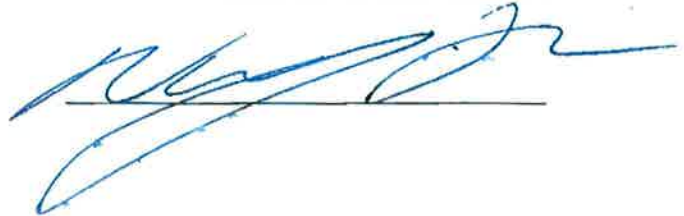
I hereby certify that on this 12<sup>th</sup> day of August, 2014, I caused the foregoing **United Corporation, Inc.'s Brief in Support of Motion For Summary Judgment On Its Claims For Rent** to be served upon the following via e-mail:

Joel H. Holt, Esq.  
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# **Exhibit E**

**Intentionally Omitted**



# **Exhibit F**

**Gross Receipts Paid by United Tenant Account - Owed By Partnership to United**

<b>Year</b>	<b>Month</b>	<b>Amount</b>
1993	29-Mar	1226.29
1994	28-Feb	647.39
1994	29-Mar	974.49
1994	28-Apr	978.29
1994	31-May	602
1994	30-Jun	1582.57
1994	31-Aug	1015.04
1994	30-Sep	1303.75
1994	31-Oct	1242.37
1994	30-Nov	1079.4
1994	30-Dec	1485.41
1994		1360.66
1995	31-Jan	1789.58
1995	1-Dec	1557.14
1996	1-Feb	1598.27
1996	1-Mar	1069.07
1996	1-Apr	1366.72
1996	1-May	1184.04
1996	1-Jun	1288.54
1996	1-Jul	1231.24
1996	1-Aug	1199.02
1996	1-Sep	1271.85
1996	1-Oct	1052.23
1996	1-Dec	1215.26
1999	30-May	1,161.38
1999	29-Jun	1285.42
1999	30-Jul	1395.83
1999	27-Aug	1605.26
1999	30-Sep	1470.76
1999	29-Dec	1224.04
2000	1-Jan	1569.18
2000	31-Jan	1637.16
2000	28-Feb	1,322.54
2000	28-Apr	1298.78
2000	30-Jun	970.58
2000	28-Jul	1344.36
2000	29-Aug	816.79
2000	30-Sep	1628.66
2000	30-Oct	1097.58
2000	29-Nov	1620.79
2000	26-Dec	1777.5
2001	30-Jan	1333.53
2001	28-Feb	815.04
2001	29-Mar	1370.89

**EXHIBIT**

**F**

YUSF237728

2001	26-Apr	1968.46
2001	30-May	925.85
2001	29-Jun	1402.45
2001	20-Aug	223.51
		<b>60586.96</b>

# **Exhibit G**

1

1	200	4/6/12	United Corp. paid out film Plaza Est.		1
2					2
3					3
4	200	4/6/12	Adnan Rahhal	31,379.00	4
5	211	5/6/12	Enrique Arrago	1,000.00	5
6	216	6/7/12	Committee to Elect Fed. C.	1,000.00	6
7		7/4/12	Return check	781.05	7
8	228	8/1/12	Xerox Corp.	5,985.00	8
9	250	8/1/12	Xerox Corp.	634.87	9
10	251	9/1/12	Zenen Const.	15,000.00	10
11	258	11/1/12	Land	16,500.00	11
12	267	12/1/12	E. Arroyo	1,000.00	12
13	269	12/1/12	Western Food Re-Zoning	255.00	13
14	274	1/4/13	Lilliana Belardo	500.00	14
15	274	1/4/13	Rent Lammert	550.00	15
16	279	16/1/13	ATand T	56.86	16
17	280	17/1/13	Attorney Fee	2,728.08	17
18	284	18/1/13	E. Arroyo	5,000.00	18
19	286	19/1/13	American Express	1,020.00	19
20	287	20/1/13	F.Z. Rental	200.00	20
21	289	21/1/13	Law suit	7,000.00	21
22			Cash Backhoe operator	50.00	22
23	290	23/1/13	F.Z. Rental	400.00	23
24			2 wire for Arroyo	20.74	24
25	293	25/1/13	Printing of material: Lucanton	50.00	25
26	294	26/1/13	Bank	2,058.52	26
27	295	27/1/13	Bank	2,615.00	27
28			Rent.	194,058.00	28
29	296	29/1/13	Standard Apoor's Corp.	100.00	29
30	297	30/1/13	Ray travel	500.00	30
31	300	31/1/13	K. Mill	500.00	31
32	303	32/1/13	Print Maker, Inc.	350.00	32

EXHIBIT  
G



October

(2)

1	3081.6	End Pool Rental	817.00		1
2	2	Car Wash	1,000.00		2
3	3				3
4	4	Notary Public Firms	51.00		4
5	5	St. Thomas trip	19.60		5
6	1-9493	Florida toll	100.00		6
7	7	one car	6,186.00		7
8	8				8
9	9				9
10	10		399,332.62		10
11	11	Canta Lova	150,000.00		11
12	12				12
13	13		149,332.62		13
14	14	Rent E. Lee	23,000.00		14
15	15				15
16	16		171,332.62		16
17	17	less Farhat Yusuf	3,500.00		17
18	18				18
19	19		168,832.62		19
20	20	one month Rent	700.00	#1057	20
21	21				21
22	22		168,132.62		22
23	23	61933 Corporate tax 92	300.00	#1188	23
24	24		167,832.62		24
25	25	Building Insurance	25,000.00	#1239	25
26	26				26
27	27		142,832.62		27
28	28	6 Air Condition	15,241.25	8-8-93	28
29	29				29
30	30		127,591.37		30
31	31	9 16 Florida welding	10,000.00	#0510	31
32	32		137,591.37		32



W 9 2 1

1									
2									
3									
4									
5									
6	3-29-93	check #	425			15,000			
7	4-20		446			5,000			
8	5-14		460			5,000			
9	6-1		1039	#1040		1,500			
10	7-8		1215			2,500			
11	8-9		1381			2,500			
12	9-9		1550			2,500			
13	9-30		557			5,000			
14	11-4		1799			5,000			
15	12-21		619			6,550			
16	12-46		1927			1,500		1/2	
17	12-15	10,000 + 5,000 - 2,000				1,500			
18	5-14-94	cash check # 99158				5,000		0.50	
19	6-29-94	# 124				15,000			
20	6-30-94	FIVE (cash) with				5,000		cash	
21	7-12-94	FIVE (cash) with				2,500		cash	
22	7-11-94	NOTE REC				43710		cash	
23									
24									
25									
26		united owes plaza as a R							
27									
28		12-31-1993				\$ 399,295.00			
29		paid				399,295.00			
30									
31									
32									



united paid out

(3)

1							1
2					137,591.87		2
10	3	17	Paint to St. Thomas		2,243.26	# 577	3
10	4	17	monarch Heavy Equipment		752. -	579	4
11	5		transferred money		20,000.00		5
12	8	21	Frank Medina		5,000.00	# 618	6
12	7	30	Caribe Do-it Center		36.84	# 623	7
12	8	27	Tropical shipping		1,831.28	# 629	8
12	9	27	U.I. Bureau of Internal Revenue		731.82	# 630	9
12	10	28	Anthony Tavernier floor tile		2,000.00	# 631	10
12			Tropical shipping		1,927.75	# 625	11
12			U.I. Bureau of Internal Revenue		281.43	# 626	12
1	10	4	Anthony Tavernier floor tile		1,000.00	# 628	13
2	14	4	American Express		1,826.26	# 656	14
15							15
16					175,234.75		16
17			Less for Gross R. tax		1,032.09	# 2071	17
18							18
19					174,202.66		19
3	20	5	Mark 21 Industries		20,000.00	668	20
3	21	5	Ray APRA		2,200.00	669	21
3	22	5	Eda to white Associates		218.75	673	22
3	23	7	Christian Environmental		381.73	674	23
3	24	7	Superior Block		832.30	675	24
25					197,234.66		25
26			meta checks		100.00	2147/214	26
2	27	22			197,234.66		27
3	28	14			10,000.00	# 676	28
29							29
3	30	20			207,234.66		30
31					860.99	# 678	31
32			less cash flow		13,800.00		32
					194,295.65		



(4)

united paid out

1							1
2						194,295.65	2
3	6-34 prudential Bache					32,500.00	3
4							4
5						224,295.65	5
6	property tax					34,476.69	6
7							7
8						199,618.96	8
9	press 1 / K <sub>3</sub>					234.25	9
10							10
11						199,384.71	11
12	press 1 / K <sub>3</sub>					692.50	12
13							13
14						198,792.21	14
15	less: For Jan 1					100,000.00	15
16							16
17					X X X	98,792.21	17
18							18
19	28 month X 16,000.00 Int					448,000.00	19
20	24 month Rent M-84 to 12-31-85				X X X	302,000.00	20
21						98,792.91	21
22							22
23						749,292.00	23
24						399,295.00	24
25							25
26						349,997.00	26
27	Scotia Bank					300,000.00	27
28							28
29	owed to YUSUF					49,997.00	29
30							30
31							31
32							32

# Exhibit H

Unit -          per          out for Plaza

5/23/98	Stave	Nesky	400.00
5/24	Pendin	Paul Bacher	30,000.00
5/23	Core Sp	for [unclear] in SITI	75,010.00
5	Refin	for X +	1,000.00
5	Bed	for [unclear] branch	350.00
2/16/95	Prcty	for United	20,000.00
5/5	Peters	for Investor - K Corp	60,000.00
5/3	Prcty	for United	40,000.00
5/2/98	Bed room	sat for Alton	3,000.00



FY 014955

# Exhibit I

**Funds Transferred from United's Tenant Account to Plaza Extra - Owed to United**

<b>Year</b>	<b>Month</b>	<b>Amount</b>
1996	Jan	15,900
1996	Jan	30,300
1996	Mar	3,000
1996	Apr	6,000
1996	Apr	5,000
1996	Apr	8,000
1996	May	4,000
1996	May	13,000
1996	May	1,500
1996	May	3,500
1996	May	5,500
1996	June	5,000
1996	June	3,500
1996	June	10,000
1996	June	6,000
1996	June	2,000
1996	July	1,000
1996	July	4,182
1996	July	17,000
1996	Aug.	10,000
1996	Aug	3,500
1996	Aug	4,300
1996	Aug	12,000
1996	Sept	950
1996	Oct	12,000
1996	Dec	1,000
		<b>188,132</b>

# Exhibit J

## **Exhibit 10 - Payments After 1/1/2012 to Fuerst Ittleman from Plaza Account**

<b>Date</b>	<b>Payee</b>	<b>From Account</b>	<b>Amount</b>	<b>Check No.</b>
2012-10-19	Fuerst Ittleman	Plaza Extra - Banco Popular	\$ 15,067.26	3979
2012-10-19	Fuerst Ittleman	Plaza Extra - Banco Popular	\$ 29,011.50	3977
2012-11-16	Fuerst Ittleman	Plaza Extra - Banco Popular	\$ 99,254.45	4195
2013-01-21	Fuerst Ittleman	Plaza Extra - Banco Popular	\$ 111,660.24	4642
2013-02-13	Fuerst Ittleman	Plaza Extra - Banco Popular	\$ 112,383.82	4819
2013-03-06	Fuerst Ittleman	Plaza Extra - Banco Popular	\$ 82,274.87	5055
2013-04-03	Fuerst Ittleman	Plaza Extra - Banco Popular	\$ 54,938.89	5193
			<b>\$ 504,591.03</b>	

**EXHIBIT  
Group J**



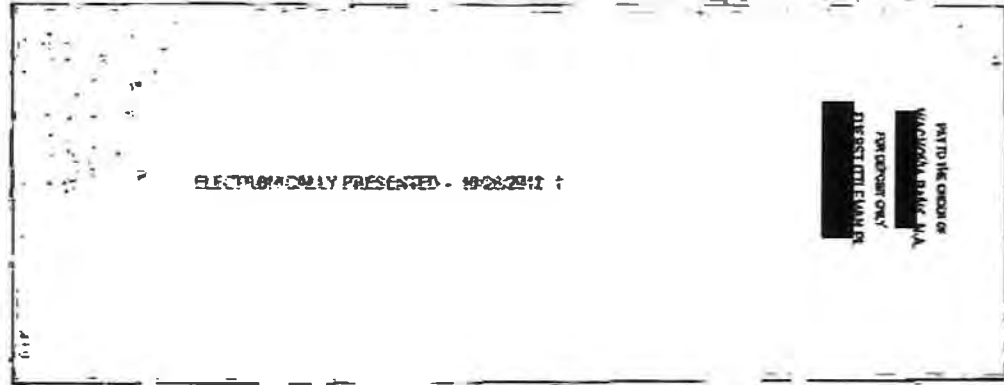
# CHECK 3977

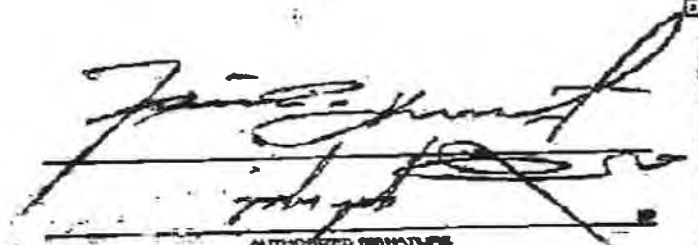
Dated: Friday, October 19, 2012

Amount: \$99,254.45

Cleared: Sunday, October 28, 2012

Depository: Fuerst Ittleman PL  
Account Wachovia Bank N.A.  
[REDACTED]



<b>UNITED CORPORATION</b> DBA PLAZA EXTRA (340) 719-1870 PO BOX 3649 ST CROIX, VI 00851		<b>BANCO POPULAR DE PUERTO RICO</b> 101-6872216	<b>3977</b> 82254288
		DATE	Oct 19, 2012
		AMOUNT	\$ 329,011.50
PAY TO THE ORDER OF:	Twenty-Nine Thousand Eleven and 50/100 Dollars		
	FUERST ITTLEMAN DAVID & JOSEPH, PL 1001 BRICKELL BAY DRIVE 32ND FLOOR MIAMI, FL 33131		
Memo:	[REDACTED]		
		 AUTHORIZED SIGNATURE	



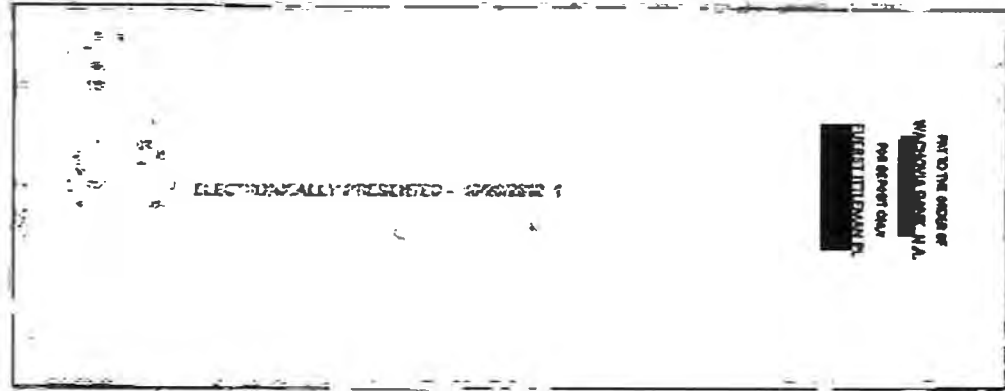
# CHECK 3979

Dated: Friday, October 19, 2012

Amount: \$15,067.26

Cleared: Sunday, October 28, 2012

Depository: Fuerst Ittleman PL  
Account Wachovia Bank N.A.  
[REDACTED]



<b>UNITED CORPORATION</b> DBA PLAZA EXTRA (340) 718-1870 PO BOX 3619 ST CROIX, VI 00851		<b>BANCO POPULAR DE PUERTO RICO</b> 701-997210	<b>3979</b> BRICKELL
		DATE	Oct 19, 2012
		AMOUNT	\$ 15,067.26
PAY TO THE ORDER OF:	Fifteen Thousand Sixty-Seven and 26/100 Dollars		
	FUERST ITTLEMAN DAVID & JOSEPH, PL 1001 BRICKELL BAY DRIVE 32ND FLOOR MIAMI, FL 33131		
Memo:	[REDACTED]	[REDACTED]	
		[Handwritten Signature] [Handwritten Signature] AUTHORIZED SIGNATURE	

**UNITED CORPORATION**  
**DBA PLAZA EXTRA**  
(340) 719-1870  
PO BOX 3649  
ST CROIX, VI 00851

**BANCO POPULAR DE PUERTO RICO**  
101-667/216

**4195**  
**CHECK NUMBER**

**DATE**

Nov 16, 2012

**AMOUNT**


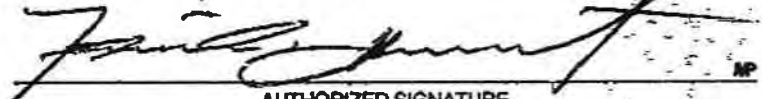
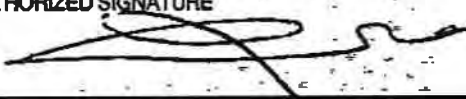
**\$ 99,254.45**

**PAY  
TO THE  
ORDER  
OF:**

Ninety-Nine Thousand Two Hundred Fifty-Four and 45/100 Dollars  
FUERST ITTLEMAN DAVID & JOSEPH, PL  
1001 BRICKELL BAY DRIVE  
32ND FLOOR  
MIAMI, FL 33131

**Memo:**

HAMD203422

  
  
AUTHORIZED SIGNATURE  


Patalla an Bank  
Continuo Features Included

PAY TO THE ORDER OF  
WACHOVIA BANK, N.A.



FOR DEPOSIT ONLY

FUERST ITTLEMAN PL



UNRECORDED BY THE STATE - 1/23/2012

WACHOVIA BANK, N.A.  
1000 W. WASHINGTON ST.  
CHARLOTTE, NC 28202  
704.771.2000  
www.wachovia.com

HAMD203423

UNITED CORPORATION  
DBA PLAZA EXTRA  
(340) 719-1870  
PO BOX 3649  
ST CROIX, VI 00851

BANCO POPULAR DE PUERTO RICO  
101-867/216

4642  
CHECK NUMBER

DATE  
Jan 21, 2013

Pin \_\_\_\_\_  
Type \_\_\_\_\_  
Issued \_\_\_\_\_  
No. \_\_\_\_\_  
Date \_\_\_\_\_  
Mkt \_\_\_\_\_

AMOUNT  
\$ \*\*\*\$111,660.24

PAY One Hundred Eleven Thousand Six Hundred Sixty and 24/100 Dollars

TO THE ORDER OF:  
FUERST ITTLEMAN DAVID & JOSEPH PL  
1001 BRICKELL BAY DRIVE  
32ND FLOOR  
MIAMI, FL 33131

  
\_\_\_\_\_  
  
\_\_\_\_\_  
AUTHORIZED SIGNATURE  


Memo:



HAMD261896

Details on Back.



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**UNITED CORPORATION**  
**DBA PLAZA EXTRA**  
(340) 719-1870  
PO BOX 3649  
ST CROIX, VI 00851

**BANCO POPULAR DE PUERTO RICO**

Pin	101-667216
Type	Open <i>OK</i>
Issue/Exp.	AD <i>X</i>
Ret.	Dep. Only <i>OK</i>
Hlet.	<i>OK</i>
	Sig. <i>OK</i>
	HFF <i>OK</i>
	Memo <i>OK</i>

4819  
@RISK.MEMO

DATE  
Feb 13, 2013

AMOUNT  
\$ \*\*\*\$112,383.32

PAY One Hundred Twelve Thousand Three Hundred Eighty-Three and 32/100 Dollars

TO THE ORDER OF:  
FUERST ITTLEMAN DAVID & JOSEPH PL  
1001 BRICKELL BAY DRIVE  
32ND FLOOR  
MIAMI, FL 33131

Memo:



*David Fuerst*  
\_\_\_\_\_  
AUTHORIZED SIGNATURE  
*[Signature]*

HAMD277362

Details on Back.



Security Features Included

light  
100  
90  
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70  
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20071961308

PAY TO THE ORDER OF  
WACHOVIA BANK, N.A.  
FOR DEPOSIT ONLY  
FUERST ITLEMAN PL

HAMD277363

**UNITED CORPORATION**  
DBA PLAZA EXTRA  
(340) 719-1870  
PO BOX 3649  
ST CROIX, VI 00851

**BANCO POPULAR DE PUERTO RICO**  
101-667/216

5005

CHECK NUMBER

DATE

Mar 6, 2013

AMOUNT

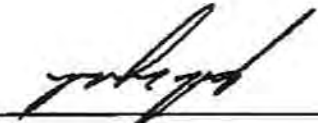

\$ \*\*\*\*\*\$82,274.87

PAY Eighty-Two Thousand Two Hundred Seventy-Four and 87/100 Dollars

TO THE ORDER OF: FUERST ITTLEMAN DAVID & JOSEPH PL  
1001 BRICKELL BAY DRIVE  
32ND FLOOR  
MIAMI, FL 33131

Memo:



  
\_\_\_\_\_  
  
\_\_\_\_\_  
AUTHORIZED SIGNATURE

HAMD562193

Details on Back

Security Features Included



PAY TO THE ORDER OF  
WACHOVIA BANK, N.A.  
[REDACTED]  
FOR DEPOSIT ONLY  
FUERST ITTEMAN PL  
[REDACTED]

ELECTRONICALLY PRESENTED - 01/22/12

HAMD562194

UNITED CORPORATION  
DBA PLAZA EXTRA  
(340) 719-1870  
PO BOX 3649  
ST CROIX, VI 00851

BANCO POPULAR DE PUERTO RICO  
101-667/216

5193  
CHECK NUMBER

DATE  
Apr 3, 2013

AMOUNT

\$ \*\*\*\*\$54,938.89

PAY Fifty-Four Thousand Nine Hundred Thirty-Eight and 89/100 Dollars

TO THE ORDER OF: FUERST ITTLEMAN DAVID & JOSEPH PL  
1001 BRICKELL BAY DRIVE  
32ND FLOOR  
MIAMI, FL 33131

  
\_\_\_\_\_  
AUTHORIZED SIGNATURE

Memo:

HAMD562231

Detalle en Back



Constituye Evidencia Inalterada

PAY TO THE ORDER OF

WACHOVIA BANK, N.A.

FOR DEPOSIT ONLY

FUERST ITLEMAN PL

ELECTRONICALLY PRESENTED - 4/8/2013 2

HAMD562232

# **Exhibit K**

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

MOHAMMED HAMED by His Authorized )  
Agent WALEED HAMED, )

Plaintiff/Counterclaim Defendant, )

vs. )

Case No. SX-12-CV-370

FATHI YUSUF and UNITED CORPORATION, )

Defendants/Counterclaimants, )

vs. )

WALEED HAMED, WAHEED HAMED, MUFEED )  
HAMED, HISHAM HAMED, and PLESSEN )  
ENTERPRISES, INC., )

Additional Counterclaim Defendants.)

**THE VIDEOTAPED ORAL DEPOSITION OF FATHI YUSUF**

was taken on the 2nd day of April, 2014, at the Law Offices  
of Adam Hoover, 2006 Eastern Suburb, Christiansted,  
St. Croix, U.S. Virgin Islands, between the hours of  
9:17 a.m. and 4:16 p.m., pursuant to Notice and Federal  
Rules of Civil Procedure.

Reported by:

Cheryl L. Haase  
Registered Professional Reporter  
Caribbean Scribes, Inc.  
2132 Company Street, Suite 3  
Christiansted, St. Croix U.S.V.I.  
(340) 773-8161

## FATHI YUSUF -- DIRECT

1 Q. Now, I want to see if I understand the math. You  
2 agreed that you all would do something for a batch plant  
3 in --

4 A. Yes.

5 Q. -- in your home --

6 A. Yes.

7 MR. HARTMANN: In the year 2000.

8 Q. (Mr. Holt) -- in the year 2000?

9 And you sent what you thought was a million  
10 dollars over to do that, correct?

11 A. That's what I told Wally, to send a million there.

12 Q. ~~And now you're telling me that only 700,000 got~~  
13 ~~sent?~~

14 A. According to what Mr. Hamed told me.

15 Q. Okay.

16 A. Finally.

17 Q. All right. So it was decided that another  
18 \$300,000 should be donated, is that correct?

19 A. Right.

20 Q. Is that correct?

21 A. And I explained to you what it is.

22 Q. 150 for the -- for the pump, concrete pump, and  
23 then 75 to whomever he wanted to give something to, and 75  
24 to who you would like to give it to, is that correct?

25 A. ~~Uh-huh.~~

Cheryl L. Haase  
(340) 773-8161

HAMD601417

# Exhibit L

Wael H. Abu Hazeema

NOV. 16, 2011

From: Iyad F. Al-Madhoun  
Sent: 23 July, 2015 09:02  
To: Wael H. Abu Hazeema

----- Instance Type and Transmission -----  
Original received from SWIFT  
Priority : Normal  
Message Output Reference : 1726 111107PALSPS22AXXX1978883961  
Correspondent Input Reference : 1026 111107BOFAUS3NAXXX8600067040  
----- Message Header -----

Swift Output : FIN 103  
Sender : BOFAUS3NXXX  
BANK OF AMERICA, N.A.  
NEW YORK, NY 10001  
NEW YORK, NY  
UNITED STATES US  
Receiver : PALSPS22XXX  
BANK OF PALESTINE PLC  
RAMALLAH  
RAMALLAH  
PALESTINIAN TERRITORY, OCCUPIED PS  
MUR : 1111040259558-07

----- Message Text -----  
:20:2011110400259558  
:23B:CRED  
:32A:111107USD150000,  
:33B:USD150000,  
:50K:/898046509528  
MADHAT R SALEM  
ITF MAGEE R SALEM  
8826 PHILLIPS BAY DR  
ORLANDO FL 32836-5001  
:52A:BOFAUS3N  
:54A:CHASUS33  
:59:/352325  
MESSERS SILAT EL DAHER  
JENIN PALESTINE  
:70:/RFB/01111104007730NN  
:71A:SHA  
:72:/ACC/FOR DEVELOPMENT CO ME AMAR  
//CONCRETE FACTORY

----- Message Trailer -----  
{CHK:C7623EAD8ED6}

EXHIBIT

L

FY 014956

YUSF237886



# Exhibit M

UNITED CORPORATION D/B/A  
PLAZA EXTRA

349-778-4240  
PO BOX 763

CHRISTIANSTED, USVI 00821-0763

1154

101-606/216

Date 8/15<sup>th</sup>/2012.



To The Order Of

United Corporation.

\$ 2,784,700.25

Two million Seven hundred Eighty-four Thousand Seven hundred Six Dollars & 25/100

Scotiabank   
THE BANK OF NOVA SCOTIA  
ST. JOHN'S, VIRGIN ISLANDS

*[Handwritten signature]*

FROM  
TRICIA ERIK  
POST  
TO: TOWN ACCT

# Exhibit N

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

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

**MEMORANDUM IN SUPPORT OF  
MOTION TO APPOINT MASTER FOR JUDICIAL SUPERVISION  
OF PARTNERSHIP WINDING UP OR,  
IN THE ALTERNATIVE, TO APPOINT RECEIVER TO WIND UP PARTNERSHIP**

~~Defendants/counterclaimants Fathi Yusuf ("Yusuf") and United Corporation ("United")~~  
(collectively, the "Defendants"), respectfully submit this Memorandum in Support of their Motion To Appoint Master For Judicial Supervision Of Partnership Winding Up Or, In the Alternative, To Appoint Receiver To Wind Up Partnership (the "Motion").

**FACTUAL AND PROCEDURAL BACKGROUND**

1. On September 17, 2012, plaintiff/counterclaim defendant Mohammed Hamed ("Hamed" or "Plaintiff") filed his complaint in this matter. Hamed filed his first amended complaint ("FAC") on October 19, 2012. The FAC alleges, among other things, that Hamed and Yusuf formed a partnership to own and operate a supermarket business comprised of three ~~supermarket stores located in Sion Farm, St. Croix, Estate Plessen, St. Croix, and Tutu Park, St.~~

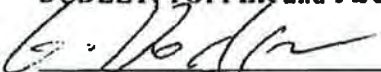
Hamed v. Yusuf, et al.  
Civil No. STX-12-cv-370  
Page 11 of 12

~~the partnership pursuant to the Plan or appointing a Receiver to effect the wind up and requiring the parties to promptly submit proposed Receiver candidates for the Court to consider along with a brief addressing the Receiver's proposed powers and compensation, and providing such further relief as is just and proper under the circumstances.~~

**DUDLEY, TOPPER and FEUERZEIG, LLP**

Dated: April 7, 2014

By:



Gregory H. Hodges (V.I. Bar No. 174)  
Law House  
1000 Frederiksberg Gade - P.O. Box 756  
St. Thomas, VI 00804  
Telephone: (340) 715-4405  
Telefax: (340) 715-4400  
E-mail: [ghodges@dtflaw.com](mailto:ghodges@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 and United Corporation

HAMD599754

Hamed v. Yusuf, et al.  
Civil No. STX-12-cv-370  
Page 12 of 12

**CERTIFICATE OF SERVICE**

I hereby certify that on this 7<sup>th</sup> day of April, 2014, I caused the foregoing **MEMORANDUM IN SUPPORT OF MOTION TO APPOINT MASTER FOR JUDICIAL SUPERVISION OF PARTNERSHIP WINDING UP OR, IN THE ALTERNATIVE, TO APPOINT RECEIVER TO WIND UP PARTNERSHIP** 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)

A handwritten signature in black ink, appearing to read 'Mark W. Eckard', is written over a horizontal line. The signature is fluid and cursive.

**PLAZA EXTRA SUPERMARKETS  
PLAN FOR  
WINDING UP PARTNERSHIP**

~~This Plan provides for the winding up of the Partnership, as defined below. This is a liquidating plan and does not contemplate the continuation of the Partnership's business except as may be required for the orderly winding up of the Partnership.~~

**Section 1. DEFINITIONS**

1.1 "Act" means the Uniform Partnership Act, V. I. Code Ann. Tit. 26, §§ 1-274.

1.2 "Available Cash" means the aggregate amount of all unencumbered cash and securities held by the Partnership including cash realized from any Litigation Recovery or any Liquidation Proceeds.

1.3 "Case" means Civil No. SX-12-CV-370 pending in the Court.

1.4 "Claim" means

(a) any right to payment from the Partnership whether or not such right is reduced to judgment, liquidated, unliquidated, contingent, matured, unmatured, disputed, undisputed, legal, equitable, secured or unsecured; or

(b) any right to an equitable remedy for breach of performance if such breach gives rise to a right of payment from the Partnership whether or not such right to an equitable remedy is reduced to judgment, fixed, contingent, matured, unmatured, disputed, undisputed, secured or unsecured.

1.5 "Claimant" means the holder of a Claim.

1.6 "Claims Reserve Account" means one or more interest-bearing bank account(s), money market or securities account(s) to be established and held in trust by the Master for the purpose of holding the Available Cash until distributed in accordance with the Plan and any interest, dividends or other income earned upon the investment of such Claims Reserve Account. The Claims Reserve Account will be further funded from time to time by the Liquidating Partner with:

- (i) any Liquidation Proceeds realized, plus
- (ii) any Litigation Recovery realized, minus
- (iii) any amounts necessary to pay Wind Up Expenses.

~~The Encumbered Cash shall be deposited into the Claims Reserve Account immediately after it is no longer encumbered by the restraining order entered in the Criminal Case and, thereafter, held for distribution in accordance with this Plan.~~

## **Section 8. PLAN OF LIQUIDATION AND WINDING UP**

### **A. Sale of Plaza Extra Stores as Going Concern vs. Liquidation.**

The Plaza Extra Stores cannot be sold as a going concern because of the absence of commercial leases for Plaza Extra – East and Plaza Extra – West and the existence of only a short term (less than 5 years) remaining on the lease between United and Tutu Park Mall, Ltd. for Plaza Extra – Tutu Park. Hence, liquidation of the Plaza Extra Stores is warranted.

### **B. Liquidation Process**

The liquidation process will include the sale of all non-liquid Partnership Assets, payment of outstanding Debts, and deposit of all net Liquidation Proceeds into the Claims Reserve Account under the control of the Master.

#### **1. Current Financial Profile of Partnership.**

The Partnership Assets and Debts are reflected on the balance sheet for the Plaza Extra Stores attached as Exhibit B.

#### **2. Estimated Time for Liquidation**

The liquidation process is estimated to take six months to complete.

#### **3. Steps to Be Taken for the Orderly Liquidation of the Partnership**

##### **STEP 1: Budget for Wind Up Efforts**

The Liquidating Partner proposes the Wind Up Budget, attached as Exhibit A for the Wind Up Expenses. Such expenses include, but are not limited to, those incurred in the liquidation process, costs for continued operations of the Plaza Extra Stores during the wind up, costs for the professional services of the Master, costs relating to pending litigation in which United d/b/a Plaza Extra Store is named as a party, and the rent to be paid to the landlord of Plaza Extra – East and Plaza Extra – Tutu Park.

##### **STEP 2: Setting Aside Reserves**

The sum of Ten Million Five Hundred Thousand Dollars (\$10,500,000) - to cover the Wind Up Expenses as set out in the Wind Up Budget with a small surplus to cover any miscellaneous or extraordinary Wind Up Expenses that may occur at the conclusion of the liquidation process - shall be deposited in the Liquidating Expenses Account to be held in trust by the Liquidating Partner under the supervision of the Master. ~~The Liquidating Partner shall~~



# Exhibit O

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

<b>MOHAMMAD HAMED</b> , by his	)	CIVIL NO. SX-12-CV-370
authorized agent <b>WALEED HAMED</b> ,	)	
	)	<b>ACTION FOR DAMAGES,</b>
Plaintiff/Counterclaim Defendant,	)	<b>INJUNCTIVE RELIEF</b>
	)	<b>AND DECLARATORY RELIEF</b>
vs.	)	
	)	<b>JURY TRIAL DEMANDED</b>
<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, INC.,</b>	)	
	)	
Additional Counterclaim Defendants.	)	

**LIQUIDATING PARTNER'S SIXTH BI-MONTHLY REPORT**

~~Pursuant to this Court's "Final Wind Up Plan Of The Plaza Extra Partnership" entered on January 9, 2015 (the "Plan"), defendant/counterclaimant Fathi Yusuf ("Yusuf"), as the Liquidating Partner<sup>1</sup>, respectfully submits this sixth bi-monthly report of the status of wind up efforts, as required by § 5 of the Plan.~~

Pursuant to the Court's "Order Adopting Final Wind Up Plan" dated January 7, 2015 and entered on January 9, 2015 (the "Wind Up Order"), the Court adopted the Plan. An Order entered on January 27, 2015 approving a stipulation of the parties provided, among other things, that the effective date of the Plan "shall be changed from ten (10) days following the date of the ... [Wind Up] Order to January 30, 2015."

On February 25, 2015, the Claims Reserve Account ("CRA") and the Liquidating Expense Account ("LEA") were established at Banco Popular de Puerto Rico. No disbursements have been made from the CRA or LEA without the approval of the Master. The

<sup>1</sup>Capitalized terms not otherwise defined in this report shall have the meaning provided for in the Plan.

**DUDLEY, TOPPER  
AND FEUERZEIG, LLP**  
1000 Frederiksberg Gade  
P.O. Box 758  
St. Thomas, U.S. V.I. 00804-0758  
(340) 774-4422

**YUSF230180**

<b>EXHIBIT</b>
<b>O</b>

~~the price of \$4,050,000 plus \$220,000 in fees attributable to the Tutu Park Litigation (collectively, the "Tutu Park Purchase Price"), which has been paid.<sup>3</sup>~~

Pursuant to the express provisions of the Wind Up Order (p.5), § 8(2) of the Plan, and the April 30 Master's Order (p.2), Hamed was obligated to obtain releases of the Partnership and Yusuf from any further leasehold obligations to Tutu Park, Ltd. when he assumed sole ownership and control of the Tutu Park store as of May 1, 2015. Despite repeated demands, Hamed has failed to provide the required releases that are a precondition to the valid transfer of the Tutu Park store. In the absence of the prompt delivery of such releases, the Tutu Park store will require the further attention of the Liquidating Partner and the Court for separation.<sup>4</sup> Given the passage of more than nine (9) months since the releases should have been delivered, the Liquidating Partner is requesting the Court's intervention regarding the final disposition of the Tutu Park store.

The Liquidating Partner is also working to resolve issues involving recent claims presented by Tutu Park, Ltd. concerning property taxes for the years 2012, 2013, and 2014 and percentage rents claimed due for the period November 1, 2014 through October 31, 2015. The Liquidating Partner and Master authorized the payment of the entire, allocable taxes for 2012 and 2013 in the amount of \$79,009.87 and a check for that amount has been delivered to Tutu Park, Ltd. ~~The property taxes for 2014 and 2015 have not yet been billed, but reserves will be~~

<sup>3</sup> ~~Because the Tutu Park Purchase Price was paid to Yusuf using Partnership funds, Yusuf was in fact paid an equal amount from the CRA representing a matching distribution to him of the funds used by Hamed to purchase Plaza Extra Tutu Park.~~

<sup>4</sup> At the closed auction for the Tutu Park store, the Partners agreed before the Master that the inventory to be included in the auction consisted of the inventory located under the roof of the store facilities. After the auction, Yusuf learned that Hamed or his designee, KAC357, Inc., took possession of 6 trailers of inventory located outside of the covered premises. Since the inventory contained in these 6 trailers was indisputably Partnership property, the Liquidating Partner needs to determine what was contained in these trailers and the value of such content. Although Yusuf has claimed he is entitled to ½ of the value, the Master has rejected that claim.



Hamed v. Yusuf, et al.  
Civil No. SX-12-CV-370  
Page 7

~~Liquidating Partner's duties, pursuant to § 4 of the Plan. The Liquidating Partner and the Master have authorized the payment of those fees.~~

Pursuant to a "Further Stipulation Regarding Motion to Clarify Order of Liquidation" filed with the Court on October 5, 2015 and "So Ordered" on November 13, 2015, the Partners stipulated that the Liquidating Partner will provide the Master and Hamed with the Partnership accounting required by § 5 of the Plan on November 16, 2015, which was done, and the Partners will submit their proposed accounting and distribution plans contemplated by § 9, Step 6, of the Plan to each other and the Master by March 3, 2016.

~~Respectfully submitted this 1<sup>st</sup> day of February, 2016.~~

**DUDLEY, TOPPER and FEUERZEIG, LLP**

By: 

Gregory H. Hodges (V.I. Bar No. 174)  
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YUSF230186

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Page 8

**CERTIFICATE OF SERVICE**

I hereby certify that on this 1st day of February, 2016, I caused the foregoing Liquidating Partner's Sixth Bi-Monthly Report to be served upon the following via e-mail:

Joel H. Holt, Esq.  
**LAW OFFICES OF JOEL H. HOLT**  
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Email: [edgarrossjudge@hotmail.com](mailto:edgarrossjudge@hotmail.com)

  
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**YUSF230187**

# Exhibit P



**Integra Realty Resources** Caribbean

**Business Valuation**

**Hamed/Yusuf Partnership d/b/a Plaza Extra West**

Doing Business at  
Plot 14 (portion)  
Estate Plessen, St. Croix  
U.S. Virgin Islands

**Prepared For:**

Dudley Topper and Feuerzeig, LLP  
Mr. Gregory Hodges, Esq.

**Valuation Date:**

April 30, 2014

**IRR - Caribbean**

File Number: 172-2015-0081



**EXHIBIT  
P**

Integra Realty Resources  
Caribbean

6500 Red Hook Plaza Suite 206  
St. Thomas, VI 00802  
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T 340-714-7325  
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September 26, 2016

Mr. Gregory Hodges, Esq.  
Dudley Topper and Feuerzeig, LLP  
Law House, 1000 Frederiksborg Gade  
St. Thomas, VI 00802

**SUBJECT: Conclusion of Value  
Hamed/Yusuf Partnership d/b/a Plaza Extra West  
Integra Caribbean File No. 172-2015-0081**

Dear Mr. Hodges:

IRR – Caribbean is pleased to submit the accompanying valuation of the referenced business. The purpose of the valuation is to develop an opinion of the fair market value of a 100% interest in the subject company, *excluding the value of the real estate*, under the going concern premise, as of April 30, 2014. The client for the assignment is Dudley Topper and Feuerzeig, LLP, and the intended use is for litigation purposes.

The valuation (appraisal) is intended to conform with the Principles of Appraisal Practice and Code of Ethics of the American Society of Appraisers, the Business Valuation Standards of the American Society of Appraisers, the Professional Standards of the National Association of Certified Valuators and Analysts (NACVA), the Code of Professional Ethics and Standards of Professional Practice of the Appraisal Institute, the RICS Valuation Professional Standards, and the Uniform Standards of Professional Appraisal Practice. The type of valuation service provided is a Conclusion of Value and this report is considered a Summary Report as defined by USPAP.

The subject of the valuation is the grocery store business known as Plaza Extra West, operating in St. Croix, U.S. Virgin Islands. The grocery store business has been operating since 2000 as a part of a small independent chain of stores in the U.S.V.I. The valuation is of a whole ownership, 100%; marketable interest in the business, which is assumed to be a partnership entity having the right to operate the business using the Plaza Extra name.



Based on the valuation analysis in the accompanying report, and subject to the definitions, assumptions, and limiting conditions expressed in the report, our opinion of value is as follows:

Final Value Conclusion	
Standard of Value	Value Conclusion as of April 30, 2014
Fair Market Value - Equity	\$8,770,000
Going Concern Premise	<i>Eight Million Seven Hundred Seventy Thousand Dollars</i>

Note: Unless otherwise noted, all financial figures are expressed in United States Dollars

Note: Unless otherwise stated, all financial figures in this report are expressed in United States Dollars.

#### Extraordinary Assumptions and Hypothetical Conditions

The value conclusions are subject to the following extraordinary assumptions that may affect the assignment results. An extraordinary assumption is uncertain information accepted as fact. If the assumption is found to be false as of the valuation date, we reserve the right to modify our value conclusions.

1. In our valuation, we relied on the representations of company's accountant. The financial information provided to us was compiled by the company's accountant and has not been audited. To the extent that such information may, at a later date, be found to have been inaccurate or misrepresented, we accept no liability for the consequences such inaccuracy or misrepresentation may have on our value determination expressed in this report nor any responsibility to update the valuation conclusion to reflect the impact that more accurate and complete data may or may not have on the opinions expressed herein.
2. For the purposes of the valuation, it is assumed that the partnership owning the Plaza Extra West business is a separate legal entity; the ownership of which was divided evenly between the partners as of the date of valuation. We have valued the entity on a control basis rather than a specific fractional interest which would require adjustments for lack of control and/or marketability.
3. It is our understanding that the real estate was owned by a related entity as of the date of valuation. For the purposes of valuing the business entity separately from the value of the real estate (which was separately appraised), we have assumed that the entity operating the business leases the property from a separate entity at market rent. We have made adjustments accordingly in the process of normalizing the financial statements as described in this report.
4. The partnership holds marketable securities on its books, which have been removed (along with related income) from the financial statements in the process of making normalization adjustments as described in this report. These securities have not been added back to the value of the company as non-operating assets; rather, have been assumed to have been dealt with separately.

The value conclusions are based on the following hypothetical conditions that may affect the assignment results. A hypothetical condition is a condition contrary to known fact on the effective date of the appraisal but is supposed for the purpose of analysis.

1. None

**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 and Counterclaimants.*

vs.

**WALEED HAMED, WAHEED HAMED,  
MUFEED HAMED, HISHAM HAMED, and  
PLESSEN ENTERPRISES, INC.,**

*Counterclaim Defendants,*

**Case No.: SX-2012-cv-370**

**ACTION FOR DAMAGES,  
INJUNCTIVE RELIEF AND  
DECLARATORY RELIEF**

**JURY TRIAL DEMANDED**

**MOHAMMAD HAMED,**

*Plaintiff,*

vs.

**FATHI YUSUF,**

*Defendant.*

**Case No.: SX-2014-CV-278**

**ACTION FOR DEBT AND  
CONVERSION**

**JURY TRIAL DEMANDED**

**EXHIBIT 2-CLAIMS READY FOR RESOLUTION NOW  
AFTER BRIEFING WITH NO DISCOVERY NEEDED**

The following claims are ready for resolution once the parties submit short briefs (of no more than 5 pages) explaining the claim with supporting back-up documentation:

**A. Yusuf Claim Y-1—Additional Rent for Bay 1 (\$200,000 & \$250,000 per month)**

United Corporation owns the shopping center where the Plaza Extra store operated by the Yusuf-Hamed Partnership was located. For the last few years just prior

to 2012, the Hamed-Yusuf Partnership paid Yusuf's United Corporation monthly rent of \$58,791.38. *That amount has been paid in full.*

However, after Yusuf and Hamed began the partnership dispute in 2012 that ultimately lead to this litigation, Yusuf tried to force the Partnership out of the store by demanding that the Partnership immediately vacate the premises, giving notice that the rent for the store would be increased to *almost five times the original rent amount* – first raising it to \$200,000 and then to \$250,000—until the store was vacated. This does not require further discovery, but does require briefing before disposition/hearing.

#### **B. Yusuf Claim Y-10—Past Partnership Withdrawals – Receipts**

Yusuf claims that the Hameds withdrew \$7,657,418.00 from the Partnership via tickets or receipts left in the store safes. The \$7,657,418.00 amount contains a number of sub-claims, three of which do not require further discovery, but do need additional briefing as follows:

- First, one portion of the receipts that does not need discovery concerns \$3 million Fathi Yusuf withdrew for gifts. Hamed claims that the entire \$3 million was taken by Yusuf and has filed his own claim seeking an equal payment to him (Hamed Claim H-129). Yusuf does not deny receiving the funds, which he and his wife then gifted to children of both families getting married to each other. However, Yusuf is now attempting to "un-gift" part of it retroactively and claim it was really a withdrawal by Hamed.
- Second, there is an item claimed for \$1,600,000 that is based on an alleged reconciliation that took place prior to the FBI raid in 2001.<sup>1</sup>

---

<sup>1</sup> Indeed, this is exactly what Judge Brady sought to avoid--flimsy accounting based on little hard data. Mike Yusuf testified that Plaza Extra-East receipts were tallied between the Hameds and the Yusufs, showing that Hameds had taken out approximately \$1.6 million more than the Yusufs prior to the 2001 FBI raid. However, Mike Yusuf also testified that the reconciliation did not include St. Thomas and it did not include all of the Plaza Extra-East receipts. See, 30(b)(6) Deposition of United Corporation through its representative, Mike Yusuf, *Hamed v Yusuf*, SX-12-CV-370, April 3, 2014, pp. 64-68. Thus, the reconciliation was not complete because documents were destroyed, making a complete reconciliation impossible, and receipts for all three stores were not reconciled obviating any acknowledgement that there was a reconciliation during that time period. Thus, discovery is needed on this portion of the claim if it is not time barred, which it should be, as noted.

- Finally, Yusuf is claiming \$4,121,651.43 in reimbursement for attorneys' fees in the criminal case filed by the United States of America in the District Court of the Virgin Islands (St. Thomas Division), Docket No, 1:05-cr-00015 -- against, among others, the United Corporation, Fathi Yusuf, Mike Yusuf, Wally Hamed and Willie Hamed.

These three items do not need discovery, just briefing.

**C. Hamed Claim H-1—Hamed Partnership Interest in Sale of the Dorothea Property**

This claim involves the sale of certain property in St. Thomas in which the parties had jointly invested. Yusuf has repeatedly acknowledged this \$802,000 debt, along with an additional \$600,000 Yusuf admitted he kept for himself from this investment. Yusuf conceded the debt in his original claims filing. However, in Yusuf's re-submitted claim filing, he now claims this debt is time barred. As these funds were collected and the property transferred long after 9/17/2006, this claim requires briefing, but no discovery, before it can be resolved.

**D. Hamed Claim H-4—Reimbursement to Fathi Yusuf for withdrawals related to Tutu Park rent and tax payments-2012-2014 real estate taxes for Plaza Extra STT**

The Landlord for the Plaza Tutu Store in St. Thomas sent the real property tax assessment for that store for 2012, 2013 and 2014 (totaling \$122,079.25), which are the real property taxes reimbursed to the landlord by the tenant under the written lease for the STT premises. These tax bills were submitted to the Liquidating Partner, who promptly paid them. However, when this tax payment was reimbursed to the STT landlord by the Partnership, Yusuf then gave himself a larger distribution without any court order, which totaled \$136,434.40, which Hamed contests. This claim can be addressed in short order after briefing without the need for discovery.

Additionally, the Landlord for the Plaza Tutu Store in St. Thomas sent the annual percentage rent calculation for that store, seeking a total payment of \$41,462.28.

Because that store was owned by the partnership for 6 months of this time period and by Hameds' new company, KAC357, Inc. ("KAC"), for the last 6 months of the time period, KAC asked the Partnership to pay half of this amount, or \$20,731.14. Yusuf decided to pay the entire amount from the Partnership funds (even though only half was owed by the Partnership), and then paid himself an equal amount as a partnership distribution of \$41,462.28. Again, these claims can be addressed in short order after briefing without the need for discovery.

**E. Hamed Claim H-5—Invoices from David Jackson, CPA, for tax work done for the Partnership**

David Jackson, CPA, provided work for the Partnership's Plaza Extra 2013 and 2014 tax returns in an amount totaling \$1,486.00. Those invoices were paid by Hamed, not the Partnership. This claim can be addressed after briefing without the need for discovery.

**F. Hamed Claim H-6—John Gaffney's pro-rated salary, benefits and bonus from 2012 through June 2016**

John Gaffney has been paid 100% of his salary, benefits and bonuses by the Partnership from 2012 until June 2016, even though he testified that he worked for the United Corporation and also did accounting for its unrelated businesses. This amount needs to be adjusted. This claim can be addressed after briefing without the need for discovery.

**G. Hamed Claim H-5—Retirement bonus paid to Mary Gonzales**

Mary Gonzales received a bonus paid for by the Partnership. According to the general ledger provided by John Gaffney, the date of the bonus payment was April 1, 2015 and was recorded in the Partnership Plaza Extra East general ledger. The Plaza Extra East store was transferred to Fathi Yusuf on March 9, 2015, which clearly makes

the expense the responsibility of the new Plaza Extra-East, not the Partnership. Again, this claim can be addressed in short order after briefing without the need for discovery.

**H. Hamed Claim H-6—100 shopping carts purchased for Plaza Extra-East**

Fathi Yusuf ordered 100 shopping carts for use in the new Plaza Extra-East and paid for them with Partnership funds shortly before the stores were transferred. Accordingly, this purchase should be paid for by the new Plaza Extra-East because the purchase did not benefit the Partnership. Again, this claim can be addressed in short order after briefing without the need for discovery.

**I. Hamed Claim H-7—Replacement of two condensers for Plaza Extra-East**

Two condensers were installed at Plaza Extra-East after the value of the store's equipment had been agreed to as part of the evaluation for transferring the stores between the partners. Because these new condensers did not benefit the Partnership, but rather were installed for the benefit of new Plaza Extra-East, the cost should not be assessed to the Partnership. This claim can be addressed after briefing without the need for discovery.

**J. Hamed Claim H-17—Wally Hamed's payment of accounting and attorneys' fees in *United States of America v United Corp., et. al.*, VI D.Ct. 2005-cr-015**

There is no dispute that Wally Hamed paid \$332,900 in attorney and accounting fees that were due from the Partnership and covered the aggregated defendants during the period of the Court's Order regarding payment of those fees. Yusuf raises no dispute other than suggesting (without any substantiation or basis) that those were incurred by the Hameds. However, it was a joint defense, these were joint defense fees, and they should have been paid from the Partnership account. This is another claim that can be addressed after briefing without the need for discovery.

**K. Hamed Claims H-38 and H-123—Payments to Dudley Law Firm**

The Dudley Firm has been paid amounts clearly for the benefit of Fathi Yusuf in his interactions with the Partnership. H-123 is for \$9,680 and there appears to be no partnership value. The same is true for H-38 for \$57,605. Again, this claim can be addressed in short order after briefing without the need for discovery.

**L. Hamed Claim H-154—Attorney and accounting's fees paid by the Partnership for the criminal case**

As Fathi Yusuf has repeatedly stated, he was the financial and decision-making nexus of the Partnership at the time after Mohammad Hamed gave the power of attorney to Waleed Hamed, he was obviously the person who "directed" the criminal enterprise which caused the Partnership to incur the costs of defending a criminal action. While Hamed does not seek the penalties and criminal amounts levied, he does seek the \$989,627 incurred because of Yusuf's directions and activities. Only the amounts after September 17, 2006 are sought.

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 and Counterclaimants.*

vs.

**WALEED HAMED, WAHEED HAMED,  
MUFEEED HAMED, HISHAM HAMED, and  
PLESSEN ENTERPRISES, INC.,**

*Counterclaim Defendants,*

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**ACTION FOR DAMAGES,  
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**JURY TRIAL DEMANDED**

**MOHAMMAD HAMED,**

*Plaintiff,*

vs.

**FATHI YUSUF,**

*Defendant.*

**Case No.: SX-2014-CV-278**

**ACTION FOR DEBT AND  
CONVERSION**

**JURY TRIAL DEMANDED**

**EXHIBIT 3  
HAMED CLAIMS REQUIRING DISCOVERY**

Attached are the remaining Hamed claims requiring discovery.



**SUMMARY OF HAMED'S Post-September 17, 2006 CLAIMS (163) following Judge Brady's 7/25/17 Order  
With Suggested "Next Steps" for Depos, Discovery, Etc.**

**Exhibit 3**

<b>New Claim Number</b>	<b>Item No. in Original 8/30/16 Claim Filing</b>	<b>Description</b>	<b>Next Steps or What is needed from discovery</b>	<b>Amount Due to Partnership from Yusuf</b>	<b>Amount Due to Hamed Directly from Yusuf</b>	<b>Amount Due to Hamed from Partnership</b>
1	201	Reimbursement for sale of the Dorthea condo	five page brief and exhibits, five page opposition and two page reply		\$ 802,966	
2	355	\$2.7 million unilateral withdrawal from the Partnership account - uncontested	Nothing - Ready for disposition			\$ 2,784,706
3	3006	Partnership funds used to pay Fathi Yusuf's personal legal fees - uncontested	Nothing - Ready for disposition			\$ 504,591
4	356	2012-2013 Real Estate Taxes for Plaza Extra STT	five page brief and exhibits, five page opposition and two page reply	\$ 89,444		
5	272	Tutu Park Mall 2014 taxes & corresponding Partnership withdrawals by Fathi Yusuf	five page brief and exhibits, five page opposition and two page reply	\$ 46,990		
6	244	Reimbursement for Fathi Yusuf withdrawal related to Tutu Park rent payments	five page brief and exhibits, five page opposition and two page reply	\$ 41,462		
7	248	KAC357, Inc. payment of invoices from J. David Jackson PC	five page brief and exhibits, five page opposition and two page reply		\$ 833	
8	256	David Jackson, CPA, bill owed for tax work done related to the Partnership's 2013 taxes	five page brief and exhibits, five page opposition and two page reply		\$ 653	
9	3005/426	John Gaffney's salary, benefits and bonus	five page brief and exhibits, five page opposition and two page reply	\$ 226,232		
10	297	Retirement bonus paid to Mary Gonzales	five page brief and exhibits, five page opposition and two page reply	\$ 28,899		
11	315	100 shopping carts purchased for Plaza Extra-East	five page brief and exhibits, five page opposition and two page reply	\$ 13,117		
12	312	Replacement of four condensers, plus associated costs for shipping, delivery and installation	five page brief and exhibits, five page opposition and two page reply	\$ 59,867		
13	210	Hamed payment of taxes during criminal case	five page brief and exhibits, five page opposition and two page reply		\$ 133,128	
14	221	Unsubstantiated checks to NejeH Yusuf	-Doc request to Liquidating Partner for invoices related to checks Subpoena to bank for cancelled checks -Depo (5-10 minutes) - NejeH Yusuf & John Gaffney for business purpose of checks	\$ 14,756		
15	242	NejeH Yusuf's cash withdrawals from safe	-Doc request to Liquidating Partner for invoices/receipts substantiating cash withdrawals -Depo (5-10 minutes) - NejeH Yusuf & John Gaffney regarding business purpose of cash withdrawals	\$ 53,385		
16	253	NejeH Yusuf's use of Partnership resources for his Private Businesses on STT	Subpoenas to trucking companies for invoices -Depo (5-10 minutes) - Personnel involved in the moving of the inventory -Depo (5-10 minutes) - NejeH Yusuf regarding his use of Partnership resources without reimbursement Declaration - Willie Hamed regarding what Partnership resources NejeH Yusuf used		Pending discovery	
17	265	Wally Hamed's personal payment of accounting and attorneys' fees in United States of America v United Corp., et. al., VI D.Ct. 2005-cr-015	five page brief and exhibits, five page opposition and two page reply		\$ 332,900	
18	275	KAC357, Inc. payment of invoices from FreedMaxick	-Rog to Liquidating Partner asking whether KAC357, Inc. was reimbursed, and if so, where is it listed on the general ledger -Doc request to Liquidating Partner for underlying Documentation substantiating the reimbursement to KAC357, Inc.		\$ 6,245	

Blumberg No. 5208

3  
EXHIBIT

**SUMMARY OF HAMED'S Post-September 17, 2006 CLAIMS (163) following Judge Brady's 7/25/17 Order  
With Suggested "Next Steps" for Depos, Discovery, Etc.**

New Claim Number	Item No. in Original 8/30/16 Claim Filing	Description	Next Steps or What is needed from discovery	Amount Due to Partnership from Yusuf	Amount Due to Hamed Directly from Yusuf	Amount Due to Hamed from Partnership
19	278	KAC357, Inc. payment of Partnership WAPA invoices	-Rog to Liquidating Partner asking whether KAC357, Inc. was reimbursed, and if so, where is it listed on the general ledger -Doc request to Liquidating Partner for underlying Documentation substantiating the reimbursement to KAC357, Inc.		\$ 81,714	
20	279	KAC357, Inc. payment of Partnership Tropical Shipping invoices	-Rog to Liquidating Partner asking whether KAC357, Inc. was reimbursed, and if so, where is it listed on the general ledger -Doc request to Liquidating Partner for underlying Documentation substantiating the reimbursement to KAC357, Inc.		\$ 23,848	
21	281	Payment of NejeH Yusuf credit card bill	Subpoena to bank for NejeH Yusuf credit card records substantiating the balance (will need prior months of credit cards) -Doc request to Liquidating Partner for invoices/receipts substantiating the business purpose for the charges -Depo (5-10 minutes) - NejeH Yusuf to explain business purpose of charges	\$ 49,715		
22	290	NejeH Yusuf removed property belonging to KAC357 Inc.	-Depo (5-10 minutes) - NejeH Yusuf regarding his use of Partnership resources without reimbursement Declaration - Willie Hamed regarding what Partnership resources NejeH Yusuf used	Pending discovery		
23	299	2015 Workers' Compensation payments for Plaza East	Subpoena to bank for 2015 checks -Document request to Liquidating Partner for the cancelled check evidencing payment of the 2015 workers' comp for Plaza Extra East and underlying Documentation substantiating the reimbursement to KAC357, Inc. -Rog to the Liquidating Partner about how payment was made—was it proportioned or paid in full for the year -Following Doc and Rog requests, a 5-10 minute Depo of John Gaffney (and/or accounting staff member) for an explanation of where the credit to KAC357, Inc. is identified on the general ledger	Pending discovery		
24	310	2015 Health permit payments for Plaza East	Subpoena to bank for 2015 checks -Document request to Liquidating Partner for the cancelled check evidencing payment of the 2015 Health Permits for Plaza Extra East and underlying Documentation substantiating the reimbursement to KAC357, Inc. -Rog to the Liquidating Partner about how payment was made—was it proportioned or paid in full for the year -Following Doc and Rog requests, a 5-10 minute Depo of John Gaffney (and/or accounting staff member) for an explanation of where the credit to KAC357, Inc. is identified on the general ledger	\$ 850		
25	314	2015 Business license payment for Plaza East	Subpoena to bank for 2015 checks -Document request to Liquidating Partner for the cancelled check evidencing payment of the 2015 Business License for Plaza Extra East and underlying Documentation substantiating the reimbursement to KAC357, Inc. -Rog to the Liquidating Partner about how payment was made—was it proportioned or paid in full for the year -Following Doc and Rog requests, a 5-10 minute Depo of John Gaffney (and/or accounting staff member) for an explanation of where the credit to KAC357, Inc. is identified on the general ledger	Pending discovery		
26	316	Inventory moved from Plaza West to East after official inventory	-Depo (5-10 minutes) of Mike Yusuf	Pending discovery		
27	319	BJ's Wholesale Club vendor credit	-Doc request for Mike Yusuf's personal credit card statement regarding the vendor credit -Rog to John Gaffney asking where this vendor credit is reflected on the general ledger -Following Rog and Doc request, 5-10 minute Depo of John Gaffney (and/or accounting staff member) for explanation of entry	Pending discovery		

SUMMARY OF HAMED'S Post-September 17, 2006 CLAIMS (163) following Judge Brady's 7/25/17 Order  
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New Claim Number	Item No. in Original 8/30/16 Claim Filing	Description	Next Steps or What is needed from discovery	Amount Due to Partnership from Yusuf	Amount Due to Hamed Directly from Yusuf	Amount Due to Hamed from Partnership
28	329	2015 Real Estate Tax for Plaza Extra-STT	-Rog to United Corp		\$ 12,652	
29	331	2015 Insurance for St. Thomas Plaza Extra car	-Doc request to Liquidating Partner for 2015 car insurance invoice, canceled check for insurance payment & general ledger entry showing credit for the June-December 2015 credit -Rog for the name of the insurance company -Following Rog and Doc request, 5-10 minute Depo of John Gaffney (and/or accounting staff member) for explanation of where the credit is recorded on the general ledger	Pending discovery		
30	333	KAC357, Inc. payment of Partnership AT&T invoices	-Rog to Liquidating Partner asking whether KAC357, Inc. was reimbursed, and if so, where is it listed on the general ledger -Doc request to Liquidating Partner for underlying Documentation substantiating the reimbursement to KAC357, Inc.		\$ 756	
31	334	Point of Sale transactions (purchases on account )	-Doc request to Liquidating Partner for Point of Sale (POS) transactions for Fathi, Mike, NejeH and Yusuf Yusuf -Rog to Liquidating Partner asking where reimbursement to Hameds for POS transactions by Yusuf was credited or balanced out -Depo (5-10 minutes) of Yusufs to explain the POSs and reimbursement of Hameds for them	\$ 926		
32	335	No credit for expired (spoiled) inventory discovered at Plaza Extra West	Declaration from Shawn Hamed	\$ 54,592		
33	338	Merrill Lynch accounts that still existed in 2012 (ML 140-21722, ML 140-07884, and ML 140-07951) financed with Partnership funds	-Depo (5-10 minutes) (5-10 minutes)s of Fathi Yusuf and ML	Pending discovery		
34	340	Rents collected from Triumphant church	Declaration from Willie Hamed -Rog to Liquidating Partner asking where these payments are reflected on the general ledger -Doc request to the Liquidating Partner for underlying Documentation substantiating the entry -Following Rog and Doc request, 5-10 minute Depo of John Gaffney (and/or accounting staff member) for explanation of the entry	\$ 3,900		
35	343	KAC357, Inc.'s American Express payments deposited to Partnership account	-Rog to Liquidating Partner regarding whether KAC357, Inc. was reimbursed and if so, where is it listed on the general ledger -Doc request to Liquidating Partner for underlying Documentation substantiating the reimbursement to KAC357, Inc. -Following Rog and Doc request, 5-10 minute Depo of John Gaffney (and/or accounting staff member) for explanation of the entries		\$ 12,273	
36	345	Unclear UVI payment	-Rog regarding what was the purpose of the payment -Doc request for invoice and cancelled check -Following Rog and Doc request, 5-10 minute Depo of John Gaffney (and/or accounting staff member) for explanation of entry	\$ 293		
37	353	Due to/from Fathi Yusuf	-Rog regarding what the entry references—explanation of what this entry covers -Doc request to Liquidating Partner for underlying Documentation to substantiate the entry -Following Rog and Doc request, 5-10 minute Depo of John Gaffney (and/or accounting staff member) for an explanation of the entry	\$ 186,819		
38	357	Payment to Dudley, Topper and Feuerzeig, LLP (Fathi Yusuf's personal attorney)	five page brief and exhibits, five page opposition and two page reply	\$ 57,605		
39	358	STT Tutu gift certificates	-Doc request to Liquidating Partner for a review of the originals of the STT Tutu gift certificates—need to see the backs of them and underlying Documentation substantiating the reimbursement to KAC357, Inc. -Following Rog and Doc request, 5-10 minute Depo of John Gaffney (and/or accounting staff member) for explanation where the credit to KAC357, Inc. is located on the general ledger		\$ 3,790	

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New Claim Number	Item No. in Original 8/30/16 Claim Filing	Description	Next Steps or What is needed from discovery	Amount Due to Partnership from Yusuf	Amount Due to Hamed Directly from Yusuf	Amount Due to Hamed from Partnership
40	360	Approximately \$18 million in "purged" (i.e. missing) transactions in 2013	-Rog to Liquidating Partner for explanation of \$18 million in purged transactions that are questionable -Doc request to Liquidating Partner for underlying Documentation substantiating the entries -Following Rog and Doc requests, Depo of John Gaffney (and/or accounting staff member) for an explanation of the entries	Pending discovery		
41	361	Payments to Caribbean Refrigeration & Mechanical LLC	-Rog to Liquidating Partner regarding what was the purpose of the payments -Doc request to Liquidating Partner for the invoices and cancelled checks substantiating the transactions -Following Rog and Doc request, 5-10 minute Depo of John Gaffney (and/or accounting staff member) for an explanation of the entries	\$ 95,420		
42	363	Transactions with Miadden Plastic	-Rog to Liquidating Partner regarding what was the purpose of the payments -Doc request to Liquidating Partner for the invoices and cancelled checks substantiating the transactions -Following Rog and Doc request, 5-10 minute Depo of John Gaffney (and/or accounting staff member) for an explanation of the entries	\$ 49,565		
43	364	Unclear General Ledger entry "Collection of Setallment [sic]"	-Rog to Liquidating Partner requesting an explanation of the meaning of this entry -Doc request to the Liquidating Partner for underlying Documentation substantiating the entry -Following Rog and Doc request, 5-10 minute Depo of John Gaffney (and/or accounting staff member) for explanation of the entry	\$ 42,970		
44	365	Unclear General Ledger entries "Foreign taxes paid"	-Rog to Liquidating Partner regarding what the entries reference -Doc request to Liquidating Partner for underlying Documentation substantiating the entries -Following Rog and Doc request, 5-10 minute Depo of John Gaffney (and/or accounting staff member) for explanation of the entries	\$ 18,804		
45	366	Unclear General Ledger entries POS charges for Seaside Market	-Rog to Liquidating Partner regarding what the entries reference -Doc request to Liquidating Partner for underlying Documentation substantiating the entries -Following Rog and Doc request, 5-10 minute Depo of John Gaffney (and/or accounting staff member) for explanation of the entries	\$ 11,660		
46	367	Unclear General Ledger entries "change order" and "cash requisition"	-Rog to Liquidating Partner regarding what the entries reference -Doc request to Liquidating Partner for underlying Documentation substantiating the entries -Following Rog and Doc request, 5-10 minute Depo of John Gaffney (and/or accounting staff member) for explanation of the entries	\$ 26,510		
47	369	Unclear General Ledger entries "credit card paid"	-Rog to Liquidating Partner regarding what the entries reference -Doc request to Liquidating Partner for underlying Documentation substantiating the entries -Following Rog and Doc request, 5-10 minute Depo of John Gaffney (and/or accounting staff member) for explanation of the entries	Pending discovery		
48	370	Unclear General Ledger entries "RDC Frozen Account"	-Rog to Liquidating Partner regarding what the entries reference -Doc request to Liquidating Partner for underlying Documentation substantiating the entries -Following Rog and Doc request, 5-10 minute Depo of John Gaffney (and/or accounting staff member) for explanation of the entries	\$ 350,000		
49	371	Scotiabank Telecheck transfers were deposited in Partnership accounts	-Rog to Liquidating Partner regarding what the entries reference -Doc request to Liquidating Partner for underlying Documentation substantiating the entries -Following Rog and Doc request, 5-10 minute Depo of John Gaffney (and/or accounting staff member) for explanation of the entries	\$ 8,500,000		
50	373	Unclear General Ledger entries regarding "return check mutilated"	-Rog to Liquidating Partner regarding what the entries reference -Doc request to Liquidating Partner for underlying Documentation substantiating the entries -Following Rog and Doc request, 5-10 minute Depo of John Gaffney (and/or accounting staff member) for explanation of the entries	\$ 83,800		

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New Claim Number	Item No. in Original 8/30/16 Claim Filing	Description	Next Steps or What is needed from discovery	Amount Due to Partnership from Yusuf	Amount Due to Hamed Directly from Yusuf	Amount Due to Hamed from Partnership
51	374	Unclear General Ledger entry regarding "Cash - Transfer Clearing, Banco Proc Error re Xfer"	-Rog to Liquidating Partner regarding what the entry references -Doc request to Liquidating Partner for underlying Documentation substantiating the entry -Following Rog and Doc request, 5-10 minute Depo of John Gaffney (and/or accounting staff member) for explanation of the entry	\$ 360,000		
52	375	Unclear General Ledger entry regarding "2013 US Customs Exp Per Schedule"	-Rog to Liquidating Partner regarding what the entry references -Doc request to Liquidating Partner for underlying Documentation substantiating the entry -Following Rog and Doc request, 5-10 minute Depo of John Gaffney (and/or accounting staff member) for explanation of the entry	\$ 9,916		
53	376	Unclear General Ledger entries regarding Merrill Lynch	-Rog to Liquidating Partner regarding what the entries reference -Doc request to Liquidating Partner for underlying Documentation substantiating the entries -Following Rog and Doc request, 5-10 minute Depo of John Gaffney (and/or accounting staff member) for explanation of the entries	\$ 4,261,939		
54	377	Unclear General Ledger entries regarding Daas corporate loan	-Rog to Liquidating Partner regarding what the entries reference -Doc request to Liquidating Partner for underlying Documentation substantiating the entries -Following Rog and Doc request, 5-10 minute Depo of John Gaffney (and/or accounting staff member) for explanation of the entries	\$ 327,500		
55	378	Unclear General Ledger entries to "Due from (to) Yusuf"	-Rog to Liquidating Partner regarding what the entries reference -Doc request to Liquidating Partner for underlying Documentation substantiating the entries -Following Rog and Doc request, 5-10 minute Depo of John Gaffney (and/or accounting staff member) for explanation of the entries	\$ 693,242		
56	380	Unclear what the reclassification of partnership income in 2013 and 2014 notation on the general ledger means	-Rog to Liquidating Partner regarding what the entries reference -Doc request to Liquidating Partner for underlying Documentation substantiating the entries -Following Rog and Doc request, 5-10 minute Depo of John Gaffney (and/or accounting staff member) for explanation of the entries	Pending discovery		
57	381	Many general ledger entries are missing descriptions	-Rog to Liquidating Partner regarding what the entries reference -Doc request to Liquidating Partner for underlying Documentation substantiating the entries -Following Rog and Doc request, 5-10 minute Depo of John Gaffney (and/or accounting staff member) for explanation of the entries	\$ 1,026,856		
58	383	Unclear general ledger entries regarding "nominal cash reconciliation"	-Rog to Liquidating Partner regarding what the entries reference -Doc request to Liquidating Partner for underlying Documentation substantiating the entries -Following Rog and Doc request, 5-10 minute Depo of John Gaffney (and/or accounting staff member) for explanation of the entries	\$ 4,313		
59	384	Unclear general ledger entry "Accrue 2012 rent as directed by legal"	-Rog to Liquidating Partner requesting an explanation of the meaning of this entry -Doc request to the Liquidating Partner for underlying Documentation substantiating the entry -Following Rog and Doc request, 5-10 minute Depo of John Gaffney (and/or accounting staff member) for explanation of the entry	\$ 678,549		
60	385	Partnership may have paid Fathi Yusuf's personal attorney's fees	Subpoena to Offices of K.G. Cameron requesting any Documents evidencing payment from United Corporation d/b/a Plaza Extra for 2012-2013, along with the invoices substantiating those payments -Depo (5-10 minutes) of Fathi Yusuf	\$ 14,995		
61	386	Unclear general ledger entries regarding deposit adjustments	-Rog to Liquidating Partner regarding what the entries reference -Doc request to Liquidating Partner for underlying Documentation substantiating the entries -Following Rog and Doc request, 5-10 minute Depo of John Gaffney (and/or accounting staff member) for explanation of the entries	\$ 1,700,000		
62	388	Unclear general ledger entries regarding due/to Shopping Center	-Rog to Liquidating Partner regarding what the entries reference -Doc request to Liquidating Partner for underlying Documentation substantiating the entries -Following Rog and Doc request, 5-10 minute Depo of John Gaffney (and/or accounting staff member) for explanation of the entries	\$ 900,000		

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<b>New Claim Number</b>	<b>Item No. in Original 8/30/16 Claim Filing</b>	<b>Description</b>	<b>Next Steps or What is needed from discovery</b>	<b>Amount Due to Partnership from Yusuf</b>	<b>Amount Due to Hamed Directly from Yusuf</b>	<b>Amount Due to Hamed from Partnership</b>
63	390	Transactions with Alamnai Co.	-Rog to Liquidating Partner regarding what the entries reference -Doc request to Liquidating Partner for underlying Documentation substantiating the entries -Following Rog and Doc request, 5-10 minute Depo of John Gaffney (and/or accounting staff member) for explanation of the entries	\$ 37,629		
64	391	Unclear general ledger entries regarding "Adjust due/to from"	-Rog to Liquidating Partner regarding what the entries reference -Doc request to Liquidating Partner for underlying Documentation substantiating the entries -Following Rog and Doc request, 5-10 minute Depo of John Gaffney (and/or accounting staff member) for explanation of the entries	\$ 241,558		
65	392	Improper payments to Carol's newspaper distribution	-Depo (5-10 minutes)of Fathi Yusuf regarding the purpose of continuing payments after Carol's newspaper distribution had been accused of stealing in 2014 Declaration of Shawn Hamed	\$ 1,697		
66	393	Unclear general ledger entries regarding "Cash Reques"	-Rog to Liquidating Partner regarding what the entries reference -Doc request to Liquidating Partner for underlying Documentation substantiating the entries -Following Rog and Doc request, 5-10 minute Depo of John Gaffney (and/or accounting staff member) for explanation of the entries	\$ 6,500		
67	394	Unclear general ledger entry regarding "AT&T MOBILITY"	-Rog to Liquidating Partner requesting an explanation of the meaning of this entry -Doc request to the Liquidating Partner for underlying Documentation substantiating the entry -Following Rog and Doc request, 5-10 minute Depo of John Gaffney (and/or accounting staff member) for explanation of the entry	\$ 2,950		
68	396	Transactions with JKC Communication	-Rog to Liquidating Partner regarding what the entries reference -Doc request to Liquidating Partner for underlying Documentation substantiating the entries -Following Rog and Doc request, 5-10 minute Depo of John Gaffney (and/or accounting staff member) for explanation of the entries	\$ 13,389		
69	397	Transactions with House of Printing	-Rog to Liquidating Partner regarding what the entries reference -Doc request to Liquidating Partner for underlying Documentation substantiating the entries -Following Rog and Doc request, 5-10 minute Depo of John Gaffney (and/or accounting staff member) for explanation of the entries	\$ 860		
70	398	Transactions with Foampack	-Rog to Liquidating Partner regarding what the entries reference -Doc request to Liquidating Partner for underlying Documentation substantiating the entries -Following Rog and Doc request, 5-10 minute Depo of John Gaffney (and/or accounting staff member) for explanation of the entries	\$ 1,257		
71	399	Unclear general ledger entries regarding "All Scotia Account Closures"	-Rog to Liquidating Partner regarding what the entries reference -Doc request to Liquidating Partner for underlying Documentation substantiating the entries -Following Rog and Doc request, 5-10 minute Depo of John Gaffney (and/or accounting staff member) for explanation of the entries	\$ 615,172		
72	400	Unclear general ledger entries regarding "Fathi Yusuf matching draw"	-Rog to Liquidating Partner regarding what the entries reference -Doc request to Liquidating Partner for underlying Documentation substantiating the entries -Following Rog and Doc request, 5-10 minute Depo of John Gaffney (and/or accounting staff member) for explanation of the entries	\$ 1,288,603		
73	401	Unclear general ledger entries regarding United Corporation	-Rog to Liquidating Partner regarding what the entries reference -Doc request to Liquidating Partner for underlying Documentation substantiating the entries -Following Rog and Doc request, 5-10 minute Depo of John Gaffney (and/or accounting staff member) for explanation of the entries	\$ 120,431		
74	405	Numerous unexplained general ledger entries regarding Hamed	-Rog to Liquidating Partner regarding what the entries reference -Doc request to Liquidating Partner for underlying Documentation substantiating the entries -Following Rog and Doc request, 5-10 minute Depo of John Gaffney (and/or accounting staff member) for explanation of the entries	\$ 51,061		

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75	408	Unclear general ledger entry for \$176,353.61 dated 9/30/15	-Rog to Liquidating Partner requesting an explanation of the meaning of this entry -Doc request to the Liquidating Partner for underlying Documentation substantiating the entry -Following Rog and Doc request, 5-10 minute Depo of John Gaffney (and/or accounting staff member) for explanation of the entry	\$ 176,354		
76	409	Unclear general ledger entries regarding transfers and closed accounts	-Rog to Liquidating Partner regarding what the entries reference -Doc request to Liquidating Partner for underlying Documentation substantiating the entries -Following Rog and Doc request, 5-10 minute Depo of John Gaffney (and/or accounting staff member) for explanation of the entries	\$ 837,554		
77	410	Unclear general ledger entry regarding 50/50 distribution	-Rog to Liquidating Partner requesting an explanation of the meaning of this entry -Doc request to the Liquidating Partner for underlying Documentation substantiating the entry -Following Rog and Doc request, 5-10 minute Depo of John Gaffney (and/or accounting staff member) for explanation of the entry	\$ 165,000		
78	411	Unclear general ledger entry regarding accrued accounting fees to complete 2015 year-end taxes	-Rog to Liquidating Partner requesting an explanation of the meaning of this entry -Doc request to the Liquidating Partner for underlying Documentation substantiating the entry -Following Rog and Doc request, 5-10 minute Depo of John Gaffney (and/or accounting staff member) for explanation of the entry	\$ 16,315		
79	412	Unclear general ledger entry regarding accounting error for Tropical Shipping invoices	-Rog to Liquidating Partner requesting an explanation of the meaning of this entry -Doc request to the Liquidating Partner for underlying Documentation substantiating the entry -Following Rog and Doc request, 5-10 minute Depo of John Gaffney (and/or accounting staff member) for explanation of the entry	\$ 10,242		
80	414	Unclear general ledger entry regarding adjust cash on hand to count on 3/11/15	-Rog to Liquidating Partner requesting an explanation of the meaning of this entry -Doc request to the Liquidating Partner for underlying Documentation substantiating the entry -Following Rog and Doc request, 5-10 minute Depo of John Gaffney (and/or accounting staff member) for explanation of the entry	\$ 24,934		
81	415	Unclear general ledger entry regarding clearing Banco irregularities	-Rog to Liquidating Partner requesting an explanation of the meaning of this entry -Doc request to the Liquidating Partner for underlying Documentation substantiating the entry -Following Rog and Doc request, 5-10 minute Depo of John Gaffney (and/or accounting staff member) for explanation of the entry	\$ 8,482		
82	416	Unclear general ledger entry regarding balance sheet balances closed for insurance items to expedite close	-Rog to Liquidating Partner requesting an explanation of the meaning of this entry -Doc request to the Liquidating Partner for underlying Documentation substantiating the entry -Following Rog and Doc request, 5-10 minute Depo of John Gaffney (and/or accounting staff member) for explanation of the entry	\$ 51,569		
83	417	Unclear general ledger entries regarding clear misc Yusuf/Pship Due to/fr accounts	-Rog to Liquidating Partner regarding what the entries reference -Doc request to Liquidating Partner for underlying Documentation substantiating the entries -Following Rog and Doc request, 5-10 minute Depo of John Gaffney (and/or accounting staff member) for explanation of the entries	Pending discovery		
84	418	Unclear general ledger entry regarding United reimbursement to Hamed of 7/13 overpayment	-Rog to Liquidating Partner requesting an explanation of the meaning of this entry -Doc request to the Liquidating Partner for underlying Documentation substantiating the entry -Following Rog and Doc request, 5-10 minute Depo of John Gaffney (and/or accounting staff member) for explanation of the entry	\$ 38,668		
85	419	Unclear general ledger entry regarding combined services inv dtd 2/24/15 paid on behalf of East	-Rog to Liquidating Partner requesting an explanation of the meaning of this entry -Doc request to the Liquidating Partner for underlying Documentation substantiating the entry -Following Rog and Doc request, 5-10 minute Depo of John Gaffney (and/or accounting staff member) for explanation of the entry	\$ 4,935		
86	420	Unclear general ledger entry regarding CRA check 215 to reimburse KAC357 for STT deposit errors	-Rog to Liquidating Partner requesting an explanation of the meaning of this entry -Doc request to the Liquidating Partner for underlying Documentation substantiating the entry -Following Rog and Doc request, 5-10 minute Depo of John Gaffney (and/or accounting staff member) for explanation of the entry	Pending discovery		



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87	421	Unclear general ledger entry regarding Daily (United C. CK)	-Rog to Liquidating Partner requesting an explanation of the meaning of this entry -Doc request to the Liquidating Partner for underlying Documentation substantiating the entry -Following Rog and Doc request, 5-10 minute Depo of John Gaffney (and/or accounting staff member) for explanation of the entry	Pending discovery		
88	422	Unclear general ledger entry regarding excess cash over \$50k per court order	-Rog to Liquidating Partner requesting an explanation of the meaning of this entry -Doc request to the Liquidating Partner for underlying Documentation substantiating the entry -Following Rog and Doc request, 5-10 minute Depo of John Gaffney (and/or accounting staff member) for explanation of the entry	\$ 44,400		
89	423	Unclear general ledger entries regarding prepayment of insurance	-Rog to Liquidating Partner regarding what the entries reference -Doc request to Liquidating Partner for underlying Documentation substantiating the entries -Following Rog and Doc request, 5-10 minute Depo of John Gaffney (and/or accounting staff member) for explanation of the entries	\$ 139,231		
90	425	2015 Accounts Payable-Trade to John Gaffney	-Rog to Liquidating Partner regarding what the entries reference -Doc request to Liquidating Partner for underlying Documentation substantiating the entries -Following Rog and Doc request, 5-10 minute Depo of John Gaffney (and/or accounting staff member) for explanation of the entries	\$ 1,544		
91	427	2013 Accounts Payable-Trade to John Gaffney	-Rog to Liquidating Partner requesting an explanation of the meaning of this entry -Doc request to the Liquidating Partner for underlying Documentation substantiating the entry -Following Rog and Doc request, 5-10 minute Depo of John Gaffney (and/or accounting staff member) for explanation of the entry	\$ 1,214		
92	428	Unclear general ledger entries regarding 2015 Accounts Payable-Trade to Maher Yusuf	-Rog to Liquidating Partner regarding what the entries reference -Doc request to Liquidating Partner for underlying Documentation substantiating the entries -Following Rog and Doc request, 5-10 minute Depo of John Gaffney (and/or accounting staff member) for explanation of the entries	\$ 1,866		
93	430	Unclear Unsubstantiated check to NejeH Yusuf	-Rog to Liquidating Partner requesting an explanation of the meaning of this entry -Doc request to the Liquidating Partner for underlying Documentation substantiating the entry -Following Rog and Doc request, 5-10 minute Depo of John Gaffney (and/or accounting staff member) for explanation of the entry	\$ 2,032		
94	431	Unclear general ledger entry, Non-cash distribution to Yusuf	-Rog to Liquidating Partner requesting an explanation of the meaning of this entry -Doc request to the Liquidating Partner for underlying Documentation substantiating the entry -Following Rog and Doc request, 5-10 minute Depo of John Gaffney (and/or accounting staff member) for explanation of the entry	\$ 245,090		
95	432	Unclear general ledger entry, North Western Selectra Inc.	-Rog to Liquidating Partner requesting an explanation of the meaning of this entry -Doc request to the Liquidating Partner for underlying Documentation substantiating the entry -Following Rog and Doc request, 5-10 minute Depo of John Gaffney (and/or accounting staff member) for explanation of the entry	\$ 4,524		
96	433	Unclear general ledger entry, J Ortiz	-Rog to Liquidating Partner requesting an explanation of the meaning of this entry -Doc request to the Liquidating Partner for underlying Documentation substantiating the entry -Following Rog and Doc request, 5-10 minute Depo of John Gaffney (and/or accounting staff member) for explanation of the entry	\$ 1,250		
97	434	Unclear general ledger entries regarding St. Thomas petty cash	-Rog to Liquidating Partner regarding what the entries reference -Doc request to Liquidating Partner for underlying Documentation substantiating the entries -Following Rog and Doc request, 5-10 minute Depo of John Gaffney (and/or accounting staff member) for explanation of the entries	\$ 10,339		
98	436	Unclear general ledger entry regarding United Shopping Center payment of accounting fees for the Partnership	-Rog to Liquidating Partner requesting an explanation of the meaning of this entry -Doc request to the Liquidating Partner for underlying Documentation substantiating the entry -Following Rog and Doc request, 5-10 minute Depo of John Gaffney (and/or accounting staff member) for explanation of the entry	\$ 4,500		



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99	437	Unclear general ledger entry regarding United Shopping Center payment of legal fees for the Partnership	-Rog to Liquidating Partner requesting an explanation of the meaning of this entry -Doc request to the Liquidating Partner for underlying Documentation substantiating the entry -Following Rog and Doc request, 5-10 minute Depo of John Gaffney (and/or accounting staff member) for explanation of the entry	\$ 4,946		
100	438	Transaction with Source Accounting	-Rog to Liquidating Partner requesting an explanation of the meaning of this entry -Doc request to the Liquidating Partner for underlying Documentation substantiating the entry -Following Rog and Doc request, 5-10 minute Depo of John Gaffney (and/or accounting staff member) for explanation of the entry	\$ 3,500		
101	439	Unclear general ledger entry regarding St. Thomas 1.5% CR Reduction (FUTA) paid by West to United	-Rog to Liquidating Partner requesting an explanation of the meaning of this entry -Doc request to the Liquidating Partner for underlying Documentation substantiating the entry -Following Rog and Doc request, 5-10 minute Depo of John Gaffney (and/or accounting staff member) for explanation of the entry	\$ 12,346		
102	440	Unclear general ledger entry regarding temporary adjustment for unreimbursed cash expenses during 2014/15	-Rog to Liquidating Partner requesting an explanation of the meaning of this entry -Doc request to the Liquidating Partner for underlying Documentation substantiating the entry -Following Rog and Doc request, 5-10 minute Depo of John Gaffney (and/or accounting staff member) for explanation of the entry	\$ 46,725		
103	443	Unclear general ledger entry regarding price gun deposits	-Rog to Liquidating Partner requesting an explanation of the meaning of this entry -Doc request to the Liquidating Partner for underlying Documentation substantiating the entry -Following Rog and Doc request, 5-10 minute Depo of John Gaffney (and/or accounting staff member) for explanation of the entry	\$ 1,780		
104	444	Unclear general ledger entries regarding 2013 Q3 VIESA deficiency, plus penalty and interest in 2005	-Rog to Liquidating Partner regarding what the entries reference -Doc request to Liquidating Partner for underlying Documentation substantiating the entries -Following Rog and Doc request, 5-10 minute Depo of John Gaffney (and/or accounting staff member) for explanation of the entries	\$ 9,386		
105	445	Unclear general ledger entries regarding United Corporation	-Rog to Liquidating Partner regarding what the entries reference -Doc request to Liquidating Partner for underlying Documentation substantiating the entries -Following Rog and Doc request, 5-10 minute Depo of John Gaffney (and/or accounting staff member) for explanation of the entries	\$ 6,933		
106	446	Unclear general ledger entries regarding United Corporation – FUTA	-Rog to Liquidating Partner regarding what the entries reference -Doc request to Liquidating Partner for underlying Documentation substantiating the entries -Following Rog and Doc request, 5-10 minute Depo of John Gaffney (and/or accounting staff member) for explanation of the entries	\$ 10,047		
107	447	Unclear general ledger entry regarding United Corporation – Gift Certificates	-Rog to Liquidating Partner requesting an explanation of the meaning of this entry -Doc request to the Liquidating Partner for underlying Documentation substantiating the entry -Following Rog and Doc request, 5-10 minute Depo of John Gaffney (and/or accounting staff member) for explanation of the entry	\$ 2,630		
108	449	Unclear general ledger entries regarding Industrial Video and Luxor Goods	-Rog to Liquidating Partner regarding what the entries reference -Doc request to Liquidating Partner for underlying Documentation substantiating the entries -Following Rog and Doc request, 5-10 minute Depo of John Gaffney (and/or accounting staff member) for explanation of the entries	\$ 9,803		
109	450	Unclear general ledger entry regarding Hector Torres' invoice	-Rog to Liquidating Partner requesting an explanation of the meaning of this entry -Doc request to the Liquidating Partner for underlying Documentation substantiating the entry -Following Rog and Doc request, 5-10 minute Depo of John Gaffney (and/or accounting staff member) for explanation of the entry	\$ 2,000		
110	451	Unclear general ledger entries for Ramone Reid Felix invoices	-Rog to Liquidating Partner regarding what the entries reference -Doc request to Liquidating Partner for underlying Documentation substantiating the entries -Following Rog and Doc request, 5-10 minute Depo of John Gaffney (and/or accounting staff member) for explanation of the entries	\$ 1,092		

SUMMARY OF HAMED'S Post-September 17, 2006 CLAIMS (163) following Judge Brady's 7/25/17 Order  
With Suggested "Next Steps" for Depos, Discovery, Etc.

New Claim Number	Item No. in Original 8/30/16 Claim Filing	Description	Next Steps or What is needed from discovery	Amount Due to Partnership from Yusuf	Amount Due to Hamed Directly from Yusuf	Amount Due to Hamed from Partnership
111	452	Unclear general ledger entries regarding Tasty Alternatives	-Rog to Liquidating Partner regarding what the entries reference -Doc request to Liquidating Partner for underlying Documentation substantiating the entries -Following Rog and Doc request, 5-10 minute Depo of John Gaffney (and/or accounting staff member) for explanation of the entries	\$ 30,721		
112	453	Scotia Invoices	-Rog to Liquidating Partner regarding what the entries reference -Doc request to Liquidating Partner for underlying Documentation substantiating the entries -Following Rog and Doc request, 5-10 minute Depo of John Gaffney (and/or accounting staff member) for explanation of the entries	\$ 11,411		
113	454	Lisette Colon's salary, benefits, bonuses and incidental expenses	-Depo (5-10 minutes)of Lisette Colon to determine how much of her time was devoted to new Plaza Extra East activities versus the Partnership	\$ 6,215		
114	455	Myra Senhouse's salary, benefits, bonuses and incidental expenses	-Depo (5-10 minutes)of Myra Senhouse to determine how much of her time was devoted to new Plaza Extra East activities versus the Partnership	\$ 2,259		
115	456	Humphrey Caswell's salary, benefits, bonuses and travel and entertainment expenses	-Depo (5-10 minutes)of Humphrey Casell to determine how much of his time was devoted to new Plaza Extra East activities versus the Partnership, plus his explanation of T&E -Doc Request to Liquidating Partner for underlying Documentation substantiating T&E reimbursement	\$ 28,666		
116	457	Unclear 2016 general ledger entries regarding the United Corporation in 2016	-Rog to Liquidating Partner regarding what the entries reference -Doc request to Liquidating Partner for underlying Documentation substantiating the entries -Following Rog and Doc request, 5-10 minute Depo of John Gaffney (and/or accounting staff member) for explanation of the entries	\$ 238,829		
117	459	Unclear general ledger entry regarding United Corporation – Worker's Compensation	-Rog to Liquidating Partner requesting an explanation of the meaning of this entry -Doc request to the Liquidating Partner for underlying Documentation substantiating the entry -Following Rog and Doc request, 5-10 minute Depo of John Gaffney (and/or accounting staff member) for explanation of the entry	\$ 318		
118	460	Unclear general ledger entries regarding FUTA late fee	-Rog to Liquidating Partner regarding what the entries reference -Doc request to Liquidating Partner for underlying Documentation substantiating the entries -Following Rog and Doc request, 5-10 minute Depo of John Gaffney (and/or accounting staff member) for explanation of the entries	\$ 85,697		
119	464	Transaction with Raja Foods	-Rog to Liquidating Partner requesting an explanation of the meaning of this entry -Doc request to the Liquidating Partner for underlying Documentation substantiating the entry -Following Rog and Doc request, 5-10 minute Depo of John Gaffney (and/or accounting staff member) for explanation of the entry	\$ 410		
120	465	2016 transactions with Caribbean Refrigeration & Mechanical LLC	-Rog to Liquidating Partner regarding what the entries reference -Doc request to Liquidating Partner for underlying Documentation substantiating the entries -Following Rog and Doc request, 5-10 minute Depo of John Gaffney (and/or accounting staff member) for explanation of the entries	\$ 10,902		
121	466	Unclear general ledger entries We Are Wine LLC	-Rog to Liquidating Partner regarding what the entries reference -Doc request to Liquidating Partner for underlying Documentation substantiating the entries -Following Rog and Doc request, 5-10 minute Depo of John Gaffney (and/or accounting staff member) for explanation of the entries	\$ 2,705		
122	467	Unclear general ledger entries regarding US Customs penalty	-Rog to Liquidating Partner regarding what the entries reference -Doc request to Liquidating Partner for underlying Documentation substantiating the entries -Following Rog and Doc request, 5-10 minute Depo of John Gaffney (and/or accounting staff member) for explanation of the entries	\$ 2,250		
123	468	2016 payments to Dudley, Topper and Feuerzeig, LLP (Fathi Yusuf's personal attorney)	five page brief and exhibits, five page opposition and two page reply	\$ 9,680		

**SUMMARY OF HAMED'S Post-September 17, 2006 CLAIMS (163) following Judge Brady's 7/25/17 Order  
With Suggested "Next Steps" for Depos, Discovery, Etc.**

New Claim Number	Item No. in Original 8/30/16 Claim Filing	Description	Next Steps or What is needed from discovery	Amount Due to Partnership from Yusuf	Amount Due to Hamed Directly from Yusuf	Amount Due to Hamed from Partnership
124	469	Unclear general ledger entries regarding Inter Ocean refund	-Rog to Liquidating Partner regarding what the entries reference -Doc request to Liquidating Partner for underlying Documentation substantiating the entries -Following Rog and Doc request, 5-10 minute Depo of John Gaffney (and/or accounting staff member) for explanation of the entries	Pending discovery		
125	470	Unclear general ledger entries regarding "Lutheran Family Social Services"	-Rog to Liquidating Partner regarding what the entries reference -Doc request to Liquidating Partner for underlying Documentation substantiating the entries -Following Rog and Doc request, 5-10 minute Depo of John Gaffney (and/or accounting staff member) for explanation of the entries	\$ 1,246		
126	471	Unclear general ledger entries regarding KAC357	-Rog to Liquidating Partner regarding what the entries reference -Doc request to Liquidating Partner for underlying Documentation substantiating the entries -Following Rog and Doc request, 5-10 minute Depo of John Gaffney (and/or accounting staff member) for explanation of the entries	\$ 3,640		
127	472	Unclear 2016 general ledger entries for Banco Popular Puerto Rico	-Rog to Liquidating Partner regarding what the entries reference -Doc request to Liquidating Partner for underlying Documentation substantiating the entries -Following Rog and Doc request, 5-10 minute Depo of John Gaffney (and/or accounting staff member) for explanation of the entries	Pending discovery		
128	473	Unclear general ledger entries regarding 2016 V.I. Employment Security contributions and penalties	-Rog to Liquidating Partner regarding what the entries reference -Doc request to Liquidating Partner for underlying Documentation substantiating the entries -Following Rog and Doc request, 5-10 minute Depo of John Gaffney (and/or accounting staff member) for explanation of the entries	\$ 13,048		
129	475	Fathi Yusuf draw from Partnership funds for gift	-Depo (5-10 minutes) of Fathi Yusuf	\$ 4,000,000		
130	476	Wireless Tech Rent	-Doc request to Liquidating Partner for any Documentation evidencing payment of Wireless Tech rent -Depo (5-10 minutes) - Fady Monsour and Nejeh Yusuf regarding payment of Wireless Tech rent -Following Doc requests & Depos of Fady Mansour & Nejeh Yusuf, 5-10 minute Depo of John Gaffney (and/or accounting staff member) for explanation where the Wireless rent payment is located on the general ledger	\$ 15,000		
131	477	Unclear general ledger entries regarding Hanun loan	-Rog to Liquidating Partner regarding what the entries reference -Doc request to Liquidating Partner for underlying Documentation substantiating the entries -Following Rog and Doc request, 5-10 minute Depo of John Gaffney (and/or accounting staff member) for explanation of the entries	\$ 35,000		
132	478	Unclear general ledger entries regarding distributing cash on hand in 2015	-Rog to Liquidating Partner regarding what the entries reference -Doc request to Liquidating Partner for underlying Documentation substantiating the entries -Following Rog and Doc request, 5-10 minute Depo of John Gaffney (and/or accounting staff member) for explanation of the entries	\$ 19,333		
133	479	Unclear general ledger entry regarding Yusuf distribution of WAPA deposit	-Depo (5-10 minutes) of John Gaffney (and/or accounting staff member) and accounting staff member	\$ 110,842		
134	480	Unclear general ledger entries regarding "Yusuf distribu for trade AR"	-Rog to Liquidating Partner regarding what the entries reference -Doc request to Liquidating Partner for underlying Documentation substantiating the entries -Following Rog and Doc request, 5-10 minute Depo of John Gaffney (and/or accounting staff member) for explanation of the entries	\$ 15,701		
135	481	Unclear general ledger entry regarding "xfer fr Yusuf fam BPPR a/c to United BPPR a/c"	-Rog to Liquidating Partner requesting an explanation of the meaning of this entry -Doc request to the Liquidating Partner for underlying Documentation substantiating the entry -Following Rog and Doc request, 5-10 minute Depo of John Gaffney (and/or accounting staff member) for explanation of the entry	\$ 1,449		

SUMMARY OF HAMED'S Post-September 17, 2006 CLAIMS (163) following Judge Brady's 7/25/17 Order  
With Suggested "Next Steps" for Depos, Discovery, Etc.

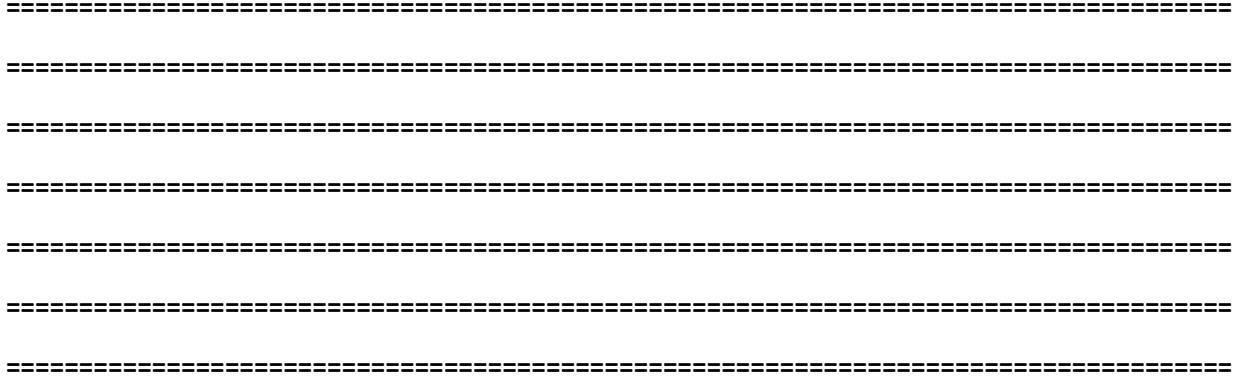
New Claim Number	Item No. in Original 8/30/16 Claim Filing	Description	Next Steps or What is needed from discovery	Amount Due to Partnership from Yusuf	Amount Due to Hamed Directly from Yusuf	Amount Due to Hamed from Partnership
136	482	Unclear general ledger entry regarding "Yusuf refund of overpayment"	-Rog to Liquidating Partner requesting an explanation of the meaning of this entry -Doc request to the Liquidating Partner for underlying Documentation substantiating the entry -Following Rog and Doc request, 5-10 minute Depo of John Gaffney (and/or accounting staff member) for explanation of the entry	\$ 77,336		
137	483	Unclear general ledger entry regarding "CLEAR MISC YUSUF/PSHIP DUE TO/FR ACCOUNTS"	-Rog to Liquidating Partner requesting an explanation of the meaning of this entry -Doc request to the Liquidating Partner for underlying Documentation substantiating the entry -Following Rog and Doc request, 5-10 minute Depo of John Gaffney (and/or accounting staff member) for explanation of the entry	\$ 247,870		
138	484	Unclear general ledger entries regarding "correct Yusuf/Hamed distrib settle on 9/30 ref ck 251 for \$183,381.91"	-Rog to Liquidating Partner regarding what the entries reference -Doc request to Liquidating Partner for underlying Documentation substantiating the entries -Following Rog and Doc request, 5-10 minute Depo of John Gaffney (and/or accounting staff member) for explanation of the entries	\$ 20,484		
139	485	Unclear general ledger entry regarding "clear pship a/c 28600 intraco bal's to equity"	-Rog to Liquidating Partner requesting an explanation of the meaning of this entry -Doc request to the Liquidating Partner for underlying Documentation substantiating the entry -Following Rog and Doc request, 5-10 minute Depo of John Gaffney (and/or accounting staff member) for explanation of the entry	\$ 247,138		
140	487	Unclear general ledger entry "clear misc Hamed/pship due to/fr accounts" in the amount of \$39,788.40.	-Rog to Liquidating Partner requesting an explanation of the meaning of this entry -Doc request to the Liquidating Partner for underlying Documentation substantiating the entry -Following Rog and Doc request, 5-10 minute Depo of John Gaffney (and/or accounting staff member) for explanation of the entry	\$ 39,788		
141	488	Unclear general ledger entry regarding "due t/fr settlement re stmt at 9/30/15"	-Rog to Liquidating Partner requesting an explanation of the meaning of this entry -Doc request to the Liquidating Partner for underlying Documentation substantiating the entry -Following Rog and Doc request, 5-10 minute Depo of John Gaffney (and/or accounting staff member) for explanation of the entry	\$ 183,382		
142	490	Half acre in Estate Tutu	-Rog to Fathi Yusuf	Sale or split of Property		
143	491	Plaza Extra East land	-Rog to Fathi Yusuf	Sale or split of Property		
144	492	\$900,000 Estimated tax payment for United Corporation shareholders	-Rog to Liquidating Partner regarding what the entry references and a Rog asking if Mohammad, Wally and Willie Hameds' taxes were paid for the same time period, with an explanation of where that is reflected on the general ledger -Doc request to Liquidating Partner for underlying Documentation substantiating the entries -Following Rog and Doc request, 5-10 minute Depo of John Gaffney (and/or accounting staff member) for explanation of the entries	\$ 900,000		
145	3003	WAPA deposits paid with Partnership funds	-Depo (5-10 minutes) - John Gaffney to discuss how WAPA Deposits are handled on the general ledger	\$ 272,572		
146	3007	Imbalance in credit card points	-Rog to each Yusuf requestiong a list of all credit cards in each of their names Subpoena bank records for all of Hamed and Yusuf credit cards		\$ 421,235	
147	3010	Vendor rebates	-Rog to Liquidating Partner regarding what the entries reference -Doc request to Liquidating Partner for underlying Documentation substantiating the entries -Following Rog and Doc request, 5-10 minute Depo of John Gaffney (and/or accounting staff member) for explanation of the entries	Pending discovery		
148	3011	Excessive travel and entertainment expenses	-Doc request to Liquidating Partner for the invoices/receipts substantiating the business purspose of the T&E Subpoena for credit card statements reflecting the T&E expenditures -Depo (5-10 minutes)of each person submitting an expense for an explanation of the charges	\$ 23,745		

SUMMARY OF HAMED'S Post-September 17, 2006 CLAIMS (163) following Judge Brady's 7/25/17 Order  
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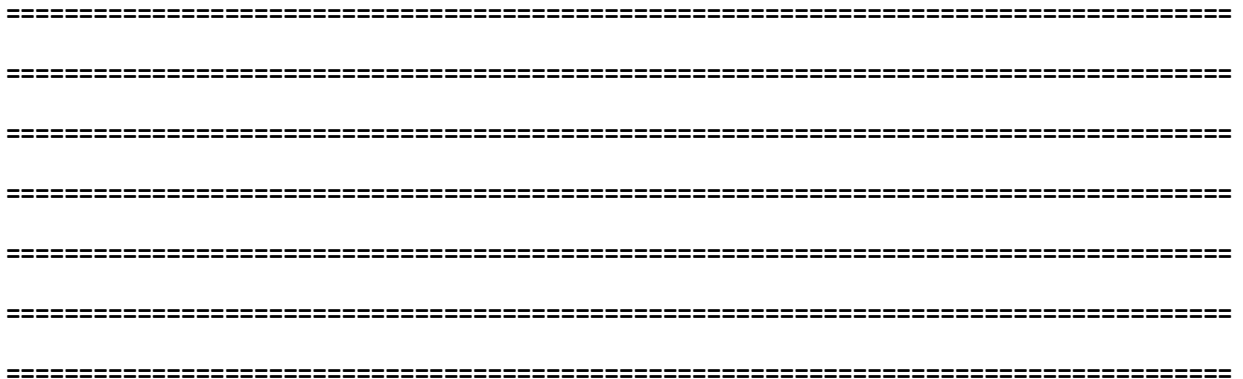
New Claim Number	Item No. in Original 8/30/16 Claim Filing	Description	Next Steps or What is needed from discovery	Amount Due to Partnership from Yusuf	Amount Due to Hamed Directly from Yusuf	Amount Due to Hamed from Partnership
149	246, 255, 260, 318	Seaside Market & Deli LLC	-Rog to Liquidating Partner regarding what the entries reference -Doc request to Liquidating Partner for underlying Documentation substantiating the entries -Following Rog and Doc request, 5-10 minute Depo of John Gaffney (and/or accounting staff member) for explanation of the entries	Pending discovery		
150	3002a	United Shopping Center's gross receipt taxes	-Doc request to Liquidating Partner for the United Shopping Center March 2013, June -December 2014, and 2015 monthly gross receipt tax forms and cancelled checks/credit cards statement evidencing payment -Rog to Liquidating Partner regarding the reason the Partnership would pay for the taxes of an entity unrelated to the Partnership -Depo (5-10 minutes)of Fathi Yusuf -Following Doc requests, 5-10 minute Depo of John Gaffney (and/or accounting staff member) for explanation where the payment for the United Shopping Center gross receipt tax is located on the general ledger	\$ 70,193		
151	3004a	Checks written to Fathi Yusuf for personal use	-Depo (5-10 minutes) - Fathi Yusuf regarding purpose of checks	Pending discovery		
152	3008a	United's corporate franchise taxes and annual franchise fees	-Doc request to Liquidating Partner for the United Shopping Center 2006-2015 franchise taxes and fees forms and cancelled checks/credit cards statement evidencing payment -Rog to Liquidating Partner regarding the reason the Partnership would pay for the taxes & fees of an entity unrelated to the Partnership -Depo (5-10 minutes)of Fathi Yusuf -Following Doc requests, 5-10 minute Depo of John Gaffney (and/or accounting staff member) for explanation where the payment for the United Shopping Center gross receipt tax is located on the general ledger	\$ 2,301		
153	3009a	Partnership funds used to pay United Shopping Center's property insurance	Subpoena to insurance company for the evidence of property insurance, invoice and canceled check for the years 2008-2010, 2013 and 2015. -Document request to the Liquidating Partner for the evidence of property insurance, invoice and canceled check for the years 2008-2010, 2013 and 2015.	\$ 59,361		
154	346a	Attorney and accounting's fees paid by the Partnership for the criminal case	five page brief and exhibits, five page opposition and two page reply	\$ 989,627		
155	359/362	Employee Loans	-Rog to Liquidating Partner regarding what the entries reference -Doc request to Liquidating Partner for underlying Documentation substantiating the entries -Following Rog and Doc request, 5-10 minute Depo of John Gaffney (and/or accounting staff member) for explanation of the entries	\$ 33,121		
156	372/379	Unclear General Ledger entries regarding miscellaneous adjustments to employee loans	-Rog to Liquidating Partner regarding what the entries reference -Doc request to Liquidating Partner for underlying Documentation substantiating the entries -Following Rog and Doc request, 5-10 minute Depo of John Gaffney (and/or accounting staff member) for explanation of the entries	\$ 122,905		
157	402/418	Unclear general ledger entry regarding "Fathi Yusuf refund of overpayment"	-Rog to Liquidating Partner requesting an explanation of the meaning of this entry -Doc request to the Liquidating Partner for underlying Documentation substantiating the entry -Following Rog and Doc request, 5-10 minute Depo of John Gaffney (and/or accounting staff member) for explanation of the entry	\$ 77,336		
158	403/413	Unclear general ledger entries for By Order	-Rog to Liquidating Partner regarding what the entries reference -Doc request to Liquidating Partner for underlying Documentation substantiating the entries -Following Rog and Doc request, 5-10 minute Depo of John Gaffney (and/or accounting staff member) for explanation of the entries	\$ 260,491		

SUMMARY OF HAMED'S Post-September 17, 2006 CLAIMS (163) following Judge Brady's 7/25/17 Order  
With Suggested "Next Steps" for Depos, Discovery, Etc.

New Claim Number	Item No. in Original 8/30/16 Claim Filing	Description	Next Steps or What is needed from discovery	Amount Due to Partnership from Yusuf	Amount Due to Hamed Directly from Yusuf	Amount Due to Hamed from Partnership
159	442/407	Unclear general ledger entries indicating Accounts Payable Trade payments to United Corporation in 2015	-Rog to Liquidating Partner regarding what the entries reference -Doc request to Liquidating Partner for underlying Documentation substantiating the entries -Following Rog and Doc request, 5-10 minute Depo of John Gaffney (and/or accounting staff member) for explanation of the entries	Pending discovery		
160	Exhibit A - H	United Shopping Center's gross receipt taxes	-Doc request to Liquidating Partner for the United Shopping Center 2007-2011 monthly gross receipt tax forms and cancelled checks/credit cards statement evidencing payment -Following Doc requests, 5-10 minute Depo of John Gaffney (and/or accounting staff member) for explanation where the payment for the United Shopping Center gross receipt tax is located on the general ledger	Pending discovery		
161	Exhibit A - I	Attorney and accounting's fees paid by the Partnership for the criminal case - Pro-rated from September 17, 2006 forward	-Rog to Liquidating Partner regarding what the entries reference -Doc request to Liquidating Partner for underlying Documentation substantiating the entries -Following Rog and Doc request, 5-10 minute Depo of John Gaffney (and/or accounting staff member) for explanation of the entries	\$7,728,287		
162	Exhibit A - L	Claims based on monitoring reports/accounting 2007-2012	Subpoena to Andreozzi law firm for monitoring reports Subpoena to monitoring firm for reports	Pending discovery		
163	Exhibit A - M	Loss of assets due to wrongful dissolution - attorney's fees	Identify Hamed invoices for legal services during the relevant time period	Pending discovery		
164		Inventory adjusted downward by \$1,660,000 due to unrecorded inventory transfers to other stores, as per first supplemental Hamed claims dated October 6, 2016	Doc request to Liquidating Partner regarding this entry Following Doc requests, 5-10 minute Depo of John Gaffney (and/or accounting staff member) for an explanation	Pending discovery		
165		In Yusuf's Accounting and Proposed Distribution Plan filing on September 30, 2016, Yusuf stated that "[t]here are Debts totaling \$176,267.97, which must be paid prior to any distribution of the remaining Partnership Assets to the Partners." (Footnote omitted) This is an unclear accounting entry.	Doc request to Liquidating Partner regarding this entry Following Doc requests, 5-10 minute Depo of John Gaffney (and/or accounting staff member) for an explanation	Pending discovery		



# **DIVIDER**



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 and Counterclaimants.*

vs.

**WALEED HAMED, WAHEED HAMED,  
MUFEED HAMED, HISHAM HAMED, and  
PLESSEN ENTERPRISES, INC.,**

*Counterclaim Defendants,*

Case No.: SX-2012-cv-370

**ACTION FOR DAMAGES,  
INJUNCTIVE RELIEF AND  
DECLARATORY RELIEF**

JURY TRIAL DEMANDED

**MOHAMMAD HAMED**,

*Plaintiff,*

vs.

**FATHI YUSUF**,

*Defendant.*

Case No.: SX-2014-CV-278

**ACTION FOR DEBT AND  
CONVERSION**

JURY TRIAL DEMANDED

**NOTICE AS TO ALICE KUO**

The Special Master has given notice of the retention of Alice Kuo as a law clerk in this matter. The Plaintiff received a December 13, 2017, motion from Yusuf to disqualify Joel Holt due to his hiring (with the Court's permission and full disclosure to opposing counsel) of a former law clerk. Out of an abundance of caution, the following



disclosure is made as to Alice Kuo, even though there is no rule requiring such disclosure.

As set forth in the *Declaration of Joel H. Holt, Esq.*, attached as **Exhibit 1**:

2. As per the attached IRS form 1099 with attachment, Alice Kuo did paralegal work for Joel Holt's firm in 2012.
3. At the time she was not a member of the USVI bar.
4. She was paid a total of \$3,755 for all work done, which was allocated to specific clients, as noted in the summary attached to the 1099.
5. Alice Kuo never worked on any issue regarding the Hamed cases, nor did the billings for the Hamed case begin until after she left working for me.
6. I have never discussed the Hamed cases or anything relating to them with Alice Kou.
7. I know of no basis for disqualifying Alice Kuo from participating in this matter.

Again, Plaintiff has agreed to her retention by the Special Master and knows of no reason that she should not fulfill those duties, but this filing is made to make sure there is full disclosure of her past work with my office.

**Dated:** December 14, 2017

  
\_\_\_\_\_  
**Joel H. Holt, Esq.**  
*Counsel for Plaintiff*  
Law Offices of Joel H. Holt  
2132 Company Street,  
Christiansted, VI 00820  
Email: joelholtpc@gmail.com  
Tele: (340) 773-8709  
Fax: (340) 773-8677

**Carl J. Hartmann III, Esq.**  
*Co-Counsel for Plaintiff*  
5000 Estate Coakley Bay, L-6  
Christiansted, VI 00820  
Email: carl@carlhartmann.com  
Tele: (340) 719-8941

**CERTIFICATE OF SERVICE**

I hereby certify that on this 14<sup>th</sup> day of December, 2017, I served a copy of the foregoing by email, as agreed by the parties, on:

**Hon. Edgar Ross**  
Special Master  
% edgarrossjudge@hotmail.com

**Gregory H. Hodges**  
**Stefan Herpel**  
**Charlotte Perrell**  
Law House, 10000 Frederiksberg Gade  
P.O. Box 756  
St. Thomas, VI 00802  
ghodges@dtflaw.com

**Mark W. Eckard**  
Hamm, Eckard, LLP  
5030 Anchor Way  
Christiansted, VI 00820  
mark@markeckard.com

**Jeffrey B. C. Moorhead**  
CRT Brow Building  
1132 King Street, Suite 3  
Christiansted, VI 00820  
jeffreymlaw@yahoo.com

A handwritten signature in blue ink is written over a horizontal black line. The signature is stylized and appears to be the initials 'JBC'.

IN THE SUPERIOR COURT OF THE VIRGIN ISLANDS  
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*Plaintiff/Counterclaim Defendant,*

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**DECLARATION OF JOEL H. HOLT**


I, Joel H. Holt, declare, pursuant to V.I. R. CIV. P. 84, as follows:

1. I am counsel for the Plaintiff and am personally familiar with the facts set forth herein.
2. As per the attached IRS form 1099 with attachment, Alice Kuo did paralegal work for Joel Holt's firm in 2012.
3. At the time she was not a member of the USVI bar.



4. She was paid a total of \$3,755 for all work done, which was allocated to specific clients, as noted in the summary attached to the 1099.
5. Alice Kuo never worked on any issue regarding the Hamed cases, nor did the billings for the Hamed case begin until after she left working for me.
6. I have never discussed the Hamed cases or anything relating to them with Alice Kou.
7. I know of no basis for disqualifying Alice Kuo from participating in this matter.

I declare under penalty of perjury that the foregoing is true and correct, executed on this 14<sup>th</sup> day of December, 2017.

  
\_\_\_\_\_  
Joel H. Holt

VOID  CORRECTED

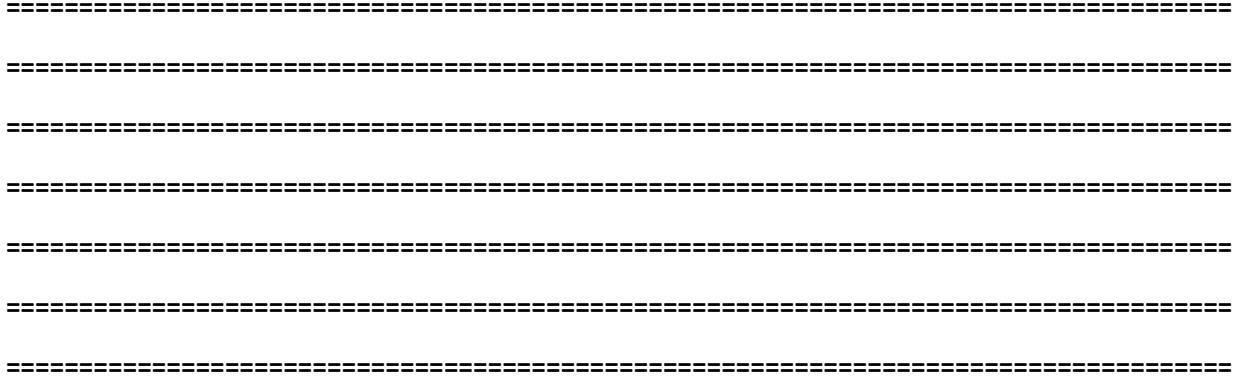
PAYER'S name, street address, city, state, ZIP code, and telephone no.  Joel H. Holt, Esq. PC 2132 Company Street Christiansted, VI 00820		1 Rents \$	OMB No. 1545-0115  <b>2012</b>		<b>Miscellaneous Income</b>
		2 Royalties \$	Form <b>1099-MISC</b>		
PAYER'S federal identification number  66-0666737	RECIPIENT'S identification number  614-42-3665	3 Other income \$	4 Federal income tax withheld \$	<b>Copy C For Payer</b>	
		5 Fishing boat proceeds \$	6 Medical and health care payments \$		
RECIPIENT'S name  Alice Kuo		7 Nonemployee compensation  \$ 3,755.00	8 Substitute payments in lieu of dividends or interest \$	<b>For Privacy Act and Paperwork Reduction Act Notice, see the 2012 General Instructions for Certain Information Returns.</b>	
Street address (including apt. no.)  14660 Moon Crest Lane Unit E		9 Payer made direct sales of \$5,000 or more of consumer products to a buyer (recipient) for resale <input type="checkbox"/>	10 Crop insurance proceeds \$		
City, state, and ZIP code  Chino Hills, California 91709		11	12		
Account number (see instructions)	2nd TIN not <input type="checkbox"/>	13 Excess golden parachute payments \$	14 Gross proceeds paid to an attorney \$		
15a Section 409A deferrals \$	15b Section 409A income \$	16 State tax withheld \$	17 State/Payer's state no.	18 State income \$	

Form **1099-MISC**

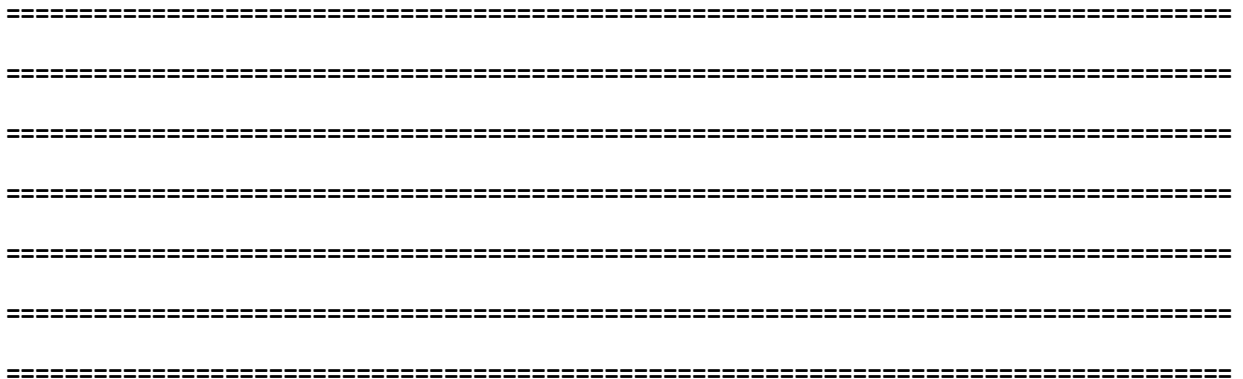
Department of the Treasury - Internal Revenue Service

CenterMall  
JHH PC Operating Account

Num	Date	Payee	Memo	Category	Client	Amount
8472	2/8/2012	Alice Kuo		prof asst	xSickler-Diehl	(300.00)
8558	3/2/2012	Alice Kuo		prof asst	xClearview-mar...	(450.00)
8559	3/2/2012	Alice Kuo		prof asst	xSickler-Diehl	(50.00)
8559	3/2/2012	Alice Kuo		prof asst	xRiverhawk	(1,050.00)
8659	4/2/2012	Alice Kuo	legal research	prof asst	xCrawford #3	(300.00)
8659	4/2/2012	Alice Kuo	legal research	prof asst	xDefoe	(292.00)
8659	4/2/2012	Alice Kuo	legal research	prof asst	xSickler-Diehl	(313.00)
8684	4/13/2012	Alice Kuo	legal research	prof asst	xClearview-3/1...	(176.48)
8684	4/13/2012	Alice Kuo	legal research	prof asst	xSickler-Diehl	(411.76)
8684	4/13/2012	Alice Kuo	legal research	prof asst		(411.76)
<b>Grand Total</b>						<b>(3,755.00)</b>



# **DIVIDER**



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JURY TRIAL DEMANDED

**HAMED'S RESPONSE TO YUSUF'S "BENCH MEMO"**

On December 13, 2017, two days before the hearing, Yusuf filed a "Bench Memo" raising new theories that the Court's orders did not apply to United Corporation, leaving it free to reinstate the pre-2006 claims. It also argues that Judge Brady's scathing denouncement of the BDO report with its "lifestyle analysis" was just "dicta". These points are incorrect and should be addressed at the outset of these proceedings.

As for the remainder of Yusuf's memo, Hamed has several comments.



**1. Yusuf agrees that the following items are ready for a 2-page briefing, as suggested by Hamed:**

- Additional rent for Bay 1 (\$200,000 & \$250,000)
- Reimbursement to Fathi Yusuf for Tutu rent & taxes
- John Gaffney salary & benefits
- Retirement bonus paid to Mary Gonzales
- 100 shopping carts
- Replacement of 2 condensers
- Payments to Dudley Law firm (for work re liquidating partner)

Thus, an order can be entered allowing this briefing to begin.

**2. At page 2, Yusuf opposes Hamed's proposed discovery process, but doesn't offer one of its own.**

What exactly is Yusuf proposing? A discovery process and schedule are needed.

**3. Yusuf claims that the \$2.7 million it owes should not be paid yet, but does not dispute that it is a valid claim.**

Regardless of when it is to be paid, it is an undisputed claim on which the Court has ruled and should be resolved now.

**4. On the \$504,591 in Yusuf DiRuzzo attorney's fees—Yusuf says he needs discovery on this item.**

Judge Brady has ruled on this. Yusuf should explain why discovery is needed.

**5. Yusuf also says the following require further discovery:**

- Past Partnership Withdrawals
- Dorothea property (if not time barred)
- David Jackson invoices
- Wally's payment of criminal fees (approx. \$300,000)
- Attorney and accounting fees paid by the partnership in the criminal case

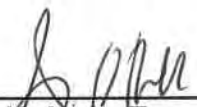
This is fine with Hamed -- an order should be entered.

**6. As to the various legal arguments Yusuf makes in footnotes to his Exhibit A, which need to be briefed in some detail -- these are Hamed's initial responses:**

<p>p. 2, of Yusuf's memo, footnote 13 – Rent order did <b>not</b> deny an award of interest</p>	<p>Final relief on rent was given by the Court, and if it was not, Yusuf should seek reconsideration from Judge Brady.</p>
<p>p. 2, footnote 15 – Hamed falsely claims that United's claims for rent on bays 5 &amp; 8 are barred by the rent order</p>	<p>They are.</p>
<p>p. 4, footnote 25 – Judge Brady's opinion about the reliability of the BDO lifestyle analysis was <b>just dicta</b>—lifestyle analysis should still be considered</p>	<p>It is not dicta -- his order is clear and was <b>reaffirmed</b> in the second order denying reconsideration,</p>
<p>p. 4, footnote 27—\$3M in Fathi/Fawzia gifts to Shawn/Mafi, \$1.6M in past withdrawals prior to 2001 and \$4.1M in attorney's fees paid in criminal case requires discovery, contrary to Hamed's claim of no discovery</p>	<p>Discovery is fine, but not with regard to anything before 2006, which is time barred.</p>
<p>p. 5, footnote 28—Dorthea took place on 1/15/2000 &amp; 2001 &amp; is time barred. If not time barred, discovery is needed to determine what payments were received after the bar date</p>	<p>Nonsense. The funds were not received (and, therefore, not withheld) until after 2006. Discovery should be limited to first determining this fact before this becomes a fishing expedition.</p>
<p>p. 5, footnote 29--\$150,000 transfer for batch plant occurred on 11/11/07 and therefore is <b>not</b> barred by the statute of limitations</p>	<p>Nonsense. Yusuf's alleges (without proof) that this happened in 2007 (the document shows nothing.)</p>
<p>p. 5, footnote 30—Integra report is still viable b/c Judge Brady did not strike the report. Yusuf wants Integra to testify re "going concern" to Master</p>	<p>Yusuf should be required to explain why discovery is needed, as this is a resolved claim that the parties should not waste resources on.</p>
<p>p 7, footnote 36—Wally was responsible for payment of all attorney's fees in criminal case and Yusuf doesn't have docs, so the \$332,900 payment by Wally requires discovery.</p>	<p>Agree to discovery.</p>

<p>p. 7, footnote 37—As Liquidating Partner, Fathi Yusuf chose not to pursue the \$989,627 in fees paid by the Partnership in the criminal case on behalf of the Partnership.</p>	<p>Fathi cannot waive partnership claims in an accounting -- that is absurd...why not waive all claims then?</p>
<p>p. 7, footnote 38—Plot 4H, Sion Farm (Hamed claim # 491) is barred by the Judge's order b/c the conveyance to United occurred on October 6, 1992</p>	<p>Judge Brady specifically held that this claim was not being resolved by the Wind-Up Order</p>
<p>p. 8, footnote 39—Parcel 2-4 Rem. Estate Charlotte Amalie (Hamed claim #490) is barred by the Judge's order b/c the conveyance of the property from Plessen to United occurred on 8/24/2006</p>	<p>The dispute over ownership arose in 2015 during the wind up period. The fact that United has title to it is of no consequence, as even the supermarket operated under that name prior to 2006.</p>
<p>p. 8, footnote 40—Hamed took Diamond Keturah off its list because it is time barred and Yusuf wants Master to rule that Diamond Keturah is time barred.</p>	<p>The Diamond Keturah property is owned by Sixteen Plus, so it need not be part of these proceedings. There is no dispute that the parties are 50/50 owners of that corporation. The dispute is with a third party who claims to have a mortgage on it.</p>

**Dated:** December 14, 2017

---

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**Carl J. Hartmann III, Esq.**  
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Tele: (340) 719-8941

### CERTIFICATE OF SERVICE

I hereby certify that on this 14<sup>th</sup> day of December, 2017, I served a copy of the foregoing by email, (via CaseAnywhere) as agreed by the parties, on:

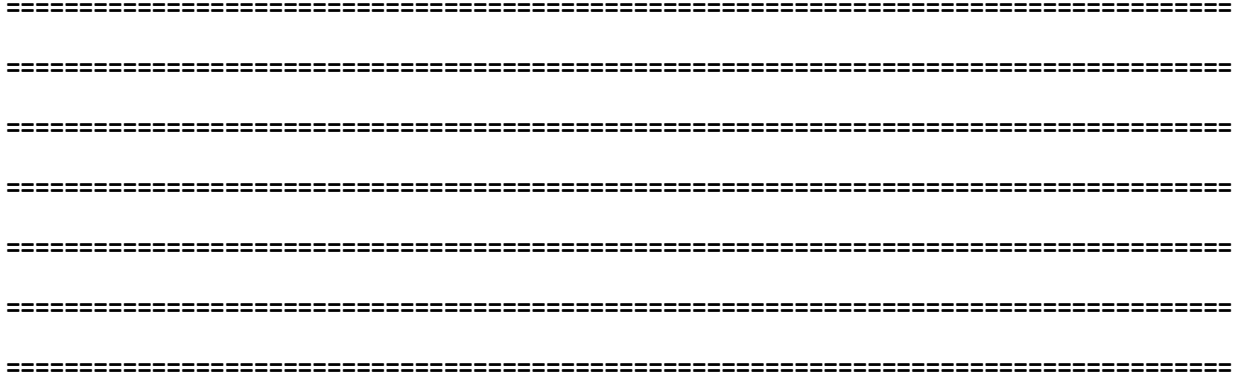
**Hon. Edgar Ross**  
Special Master  
% edgarrossjudge@hotmail.com

**Gregory H. Hodges**  
Law House, 10000 Frederiksberg Gade  
P.O. Box 756  
St. Thomas, VI 00802  
ghodges@dtflaw.com

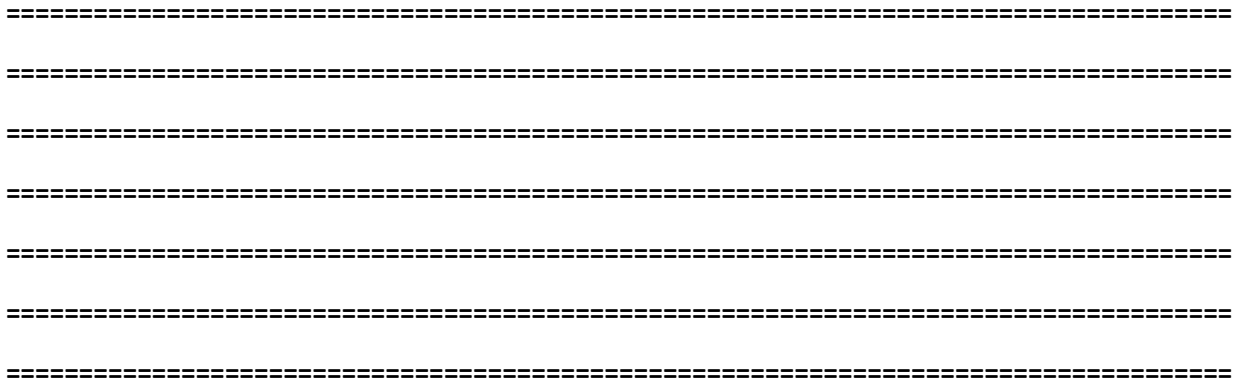
**Mark W. Eckard**  
HAMM Eckard, LLP  
5030 Anchor Way  
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**Jeffrey B. C. Moorhead**  
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A handwritten signature in blue ink is written over a horizontal line. The signature is stylized and appears to be 'J B C Moorhead'.



# **DIVIDER**



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 and Counterclaimants.*

vs.

WALEED HAMED, WAHEED HAMED, MUFEED  
HAMED, HISHAM HAMED, and PLESSEN  
ENTERPRISES, INC.,

*Counterclaim Defendants,*

Case No.: SX-2012-cv-370

**ACTION FOR DAMAGES, INJUNCTIVE  
RELIEF AND DECLARATORY RELIEF**

JURY TRIAL DEMANDED

MOHAMMAD HAMED,

*Plaintiff,*

vs.

FATHI YUSUF,

*Defendant.*

Case No.: SX-2014-CV-278

**ACTION FOR DEBT AND CONVERSION**

JURY TRIAL DEMANDED

MOHAMMAD HAMED,

*Plaintiff,*

vs.

UNITED CORPORATION,

*Defendant.*

Case No.: SX-2014-CV-287

**ACTION FOR DEBT AND  
CONVERSION**

JURY TRIAL DEMANDED

**MOTION TO STRIKE YUSUF'S "PLAZA WEST / INTEGRA" CLAIM (Y-13)**

Yusuf claims a loss of Plaza West as a "going concern" from Hamed (see **Exhibit 1**), that he values at \$4,385,000 based on a report from *Integra Realty*

*Resources* ("Integra"). See **Exhibit 2**.<sup>1</sup> It is respectfully submitted that this claim should be stricken now to avoid protracted and expensive discovery.

A brief factual background is useful. This case arose over a dispute as to whether the three Plaza Extra supermarkets (two on St. Croix and one on St. Thomas) were owned by United Corporation (owned by Fathi Yusuf's family) or by a partnership consisting of Fathi Yusuf and Mohammad Hamed. After a full hearing, Judge Brady found the stores were owned by the 2-person partnership, 2013 WL 1846506, affirmed on appeal at 2013 WL 5429498.

While this was just a preliminary finding sufficient to issue an injunction, it was not a final determination on the merits. Fathi Yusuf then decided to concede that there was a partnership, which he promptly moved to dissolve. **His proposed dissolution plan called for the closure of all three stores**, as, he stated, neither of the **two stores on St. Croix (Plaza East and Plaza West) had a lease** and the store on St. Thomas only had a few years left on its lease.

Three of Mohammad Hamed's sons formed, KAC357, Inc., and obtained a lease from the owner of the property where Plaza West was located, Plessen Enterprises, Inc. **The lease commenced only after the partnership vacated the premises.** While the validity of that lease was challenged by Yusuf, it was found to be valid by Judge Brady, as well as by Judge Willocks -- in a Yusuf lawsuit filed against Plessen.<sup>2</sup> With this background in mind, there are two independent reasons to reject Yusuf's claim that he is entitled to damages related to the Plaza West store.

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<sup>1</sup> This is an 83-page report, but only the formal letter report contained at the beginning of the report is attached, as that is all that is needed to address the issue raised by this motion. The balance can be supplied if requested.

<sup>2</sup> These two opinions are found at 2014 WL 3697817 and 2016 WL 9454299. Judge Brady also denied a motion to reconsider, which can be supplied if requested.

First, as the Special Master will recall, when the Plaza West store was transferred, he signed an order transferring that store “**free and clear of any claims of Yusuf,**” quoting from Judge Brady’s January 7, 2015, Wind Up Order. See **Exhibit 3.** (Emphasis in original).<sup>3</sup> Thus, it has already been determined by the January 7<sup>th</sup> Order (as incorporated into the transfer Order of the Special Master) that Yusuf has no claim against Hamed for the transfer of the Plaza West store. In short, Yusuf’s additional claim for half of its value “as a going concern” is meritless.

Second, even if such a claim survived, it would have no value, as the Plaza West store had no lease, and hence, nothing to sell, other than its inventory and equipment, which was sold with the transfer order. See **Exhibit 3.** Notwithstanding this fact, Yusuf obtained an expert report from Integra to opine on the value of this claim. See **Exhibit 2.** However, that valuation is contingent on **one pivotal assumption that is false.** At the outset of that opinion, Integra notes the definition of the “Extraordinary Assumptions” contained in the report, stating (See **Exhibit 2** at page 2 of the cover letter):

*Extraordinary Assumptions and Hypothetical Conditions*

The value conclusions are subject to the following extraordinary assumptions that may affect the assignment results. **An extraordinary assumption is uncertain information accepted as fact. . . . .**

The report then continues by listing one such assumption (See **Exhibit 2** at page 2):

3. It is our understanding that the real estate was owned by a related entity as of the date of valuation. For the purposes of valuing the business entity separately from the value of the real estate (which was separately appraised), **we have assumed that the entity operating the business leases the property from a separate entity at market rent.**

However, this assumption is false, as there was never a lease for the Plaza West store, as Yusuf conceded in his pleadings in this case.

In this regard, when Yusuf filed his proposed liquidation plan, he admitted **to this**

---

<sup>3</sup> The transfer of the Plaza East store to Yusuf had similar language barring any claim by Hamed. See **Exhibit 4.**



**Court that the West store could not be sold as a going concern because it had no such lease** (See **Exhibit 3**, emphasis added):

**The Plaza Extra Stores cannot be sold as a going concern because of the absence of commercial leases for Plaza Extra - East and Plaza Extra - West** and the existence of only a short term less than 5 years) remaining on the lease between United and Tutu Park Mall, Ltd. for Plaza Extra-Tutu Park. Hence, liquidation of the Plaza Extra Stores is warranted.

Thus, as there was no lease, the Integra calculation is based on an assumption that does not in fact exist. In short, once this “assumption” is removed, the Plaza West store has no “ongoing value” under Integra’s valuation based on this assumption.<sup>4</sup>

As such, for both reasons, this claim should be stricken now to avoid the expense and delay of discovery on this claim. Indeed, Yusuf’s judicial admission to the Court that the Plaza Stores could not be sold as a going concern confirms this claim is frivolous.

Dated: December 18, 2017



---

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---

<sup>4</sup> Indeed, if the partners could create leases where none exist, Hamed would have the EXACT same claim on the Plaza East store.

### CERTIFICATE OF SERVICE

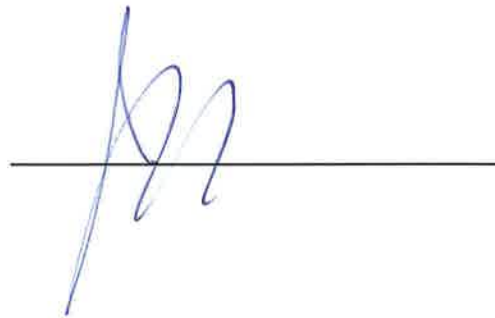
I hereby certify that on this 18 day of December, 2017, I served a copy of the foregoing by email (via Case Anywhere ECF), as agreed by the parties, on:

**Hon. Edgar Ross**  
Special Master  
% edgarrossjudge@hotmail.com

**Gregory H. Hodges**  
**Stefan Herpel**  
**Charlotte Perrell**  
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P.O. Box 756  
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ghodges@dtflaw.com

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[jeffreymlaw@yahoo.com](mailto:jeffreymlaw@yahoo.com)

A handwritten signature in blue ink is written over a horizontal black line. The signature is stylized and appears to be the initials 'JM'.

# EXHIBIT 1

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

WALEED HAMED, as Executor of the )  
Estate of MOHAMMAD HAMED, )

Plaintiff/Counterclaim Defendant, )

v. )

FATHI YUSUF and UNITED CORPORATION, )

Defendants/Counterclaimants, )

v. )

WALEED HAMED, WAHEED HAMED, )  
MUFEED HAMED, HISHAM HAMED, and )  
PLESSEN ENTERPRISES, INC., )

Additional Counterclaim Defendants. )

CIVIL NO. SX-12-CV-370

ACTION FOR INJUNCTIVE  
RELIEF, DECLARATORY  
JUDGMENT, AND  
PARTNERSHIP DISSOLUTION,  
WIND UP, AND ACCOUNTING

Consolidated With

WALEED HAMED, as Executor of the )  
Estate of MOHAMMAD HAMED, )

Plaintiff, )

v. )

UNITED CORPORATION, )

Defendant. )

CIVIL NO. SX-14-CV-287

ACTION FOR DAMAGES AND  
DECLARATORY JUDGMENT

WALEED HAMED, as Executor of the )  
Estate of MOHAMMAD HAMED, )

Plaintiff, )

v. )

FATHI YUSUF, )

Defendant. )

CIVIL NO. SX-14-CV-278

ACTION FOR DEBT AND  
CONVERSION

**YUSUF'S AMENDED ACCOUNTING CLAIMS  
LIMITED TO TRANSACTIONS OCCURRING ON OR AFTER SEPTEMBER 17, 2006**

JUDLEY, TOPPER  
ID FEUERZEIG, LLP  
100 Frederiksberg Gade  
P.O. Box 756  
St. John's, U.S. VI 00804-0756  
(340) 774-4422

HAMD652382



addressed in a number of the Liquidating Partner's Bi-Monthly Reports. See Ninth Bi-Monthly Report at p. 5-6. Yusuf insisted that if Hamed wanted a resolution addressing all Hamed misappropriations, whether known or unknown, Hamed would have to arrange for the conveyance to Yusuf or United of another approximately 9.3 acre parcel located on St. Thomas also titled in the name of Plessen Enterprises, Inc. Hamed, through his son, Waleed, refused to convey this third parcel.

Although Yusuf is not pursuing his claims regarding the misappropriated 2,000,000, Hamed's sons are still seeking to somehow rescind Hamed's conveyance of his interest in the Jordanian parcel that is the subject of Exhibit N of the Original Claims in their second amended complaint in *Hamed v. Yusuf*, Civil No. SX-12-CV-377. Yusuf asks this Court to bind Hamed's estate by the agreement signed by Hamed.

**Disputed/Undisputed, Ripe for Determination or Discovery Needed:** It is Yusuf's position that these items are disputed and additional discovery is necessary. Furthermore, some of these claims relate to post – September 17, 2006 transactions or agreements between the Partners and therefore have not been eliminated by the Accounting Order.

#### **VII. Loss of Going Concern Value of Plaza Extra-West**

During the period that the Partnership operated Plaza Extra-West, it generated income, supported its expenses and ultimately generated profits. Plaza Extra-West's net profits were expected to continue indefinitely or, upon the dissolution of the Partnership, they were to continue until an orderly liquidation process could be concluded involving purchase of the business by one of the Partners or a third party. In either case, Plaza Extra-West's value as a "going concern" would have been quantified and realized equally by the Partners.

As equal Partners, both Hamed and Yusuf had ownership interests in the “going concern” value of Plaza Extra-West. A “going concern” value recognizes the many advantages that an existing business has over a new business, such as avoidance of start-up costs and improved operating efficiency. In this sense, the “going concern” value of a business represents the difference between the value of an established business and the value of a start-up one. “Going concern” value also indicates the value of a business as an operating, active whole, rather than merely as distinct items of property.<sup>19</sup>

Both Hamed and Yusuf had fiduciary obligations to each other to maintain the “going concern” value of Plaza Extra-West and to behave in such a way as to promote and not diminish its value as an on-going business. An essential component to Plaza Extra-West’s on-going business operations was its ability to continue to operate out of its existing location in Estate Plessen. By orchestrating an April 30, 2014 lease of the premises occupied by Plaza Extra-West to a competing business (wholly owned by Hamed’s sons), KAC357, Inc., which then took over the operation of the Plaza Extra-West supermarket formerly owned by the Partnership, Hamed effectively appropriated for the benefit of three of his sons the “going concern” value to the Partnership of the supermarket. Hence, Hamed’s actions operated to substantially decrease the value of Partnership Assets. Plaza Extra-West’s value as a “going concern” at the time that Hamed took such actions was \$8,770,000. *See* Valuation Report of Plaza Extra-West, prepared by Integra Realty Resources, attached as Exhibit P to the Original Claims, at page 55.<sup>20</sup>

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<sup>19</sup> Preservation of the going concern value is recognized in many contexts including bankruptcy proceedings, which seek to preserve such value when reorganizing businesses in order to maximize recoveries for creditors and shareholders (11 U.S.C. § 1101 et seq.).

<sup>20</sup>In addition to the business valuation report for Plaza Extra-West, Integra Realty Resources also prepared an appraisal of the real property occupied by Plaza Extra-West, which is attached as Exhibit Q to the Original Claims. Exhibit Q in turn contains an analysis of the market rent for use of the land and improvements occupied by Plaza Extra-West. In Exhibit Q, Integra Realty


and distributions between the Partners adjusted to reflect the period from September 17, 2006 forward, both disclosed and undisclosed, still reveals a large discrepancy in Yusuf's favor. Again, these calculations were prepared without the benefit of deposition testimony and additional written discovery following the stay. It is anticipated that additional discovery will yield information necessitating further revisions to these calculations. On balance, there exists a substantial amount due to Yusuf to reconcile the Partner's withdrawals and distributions. Solvency of Hamed (or his estate)<sup>21</sup> is in serious doubt given the significant discrepancy in the amounts due to Yusuf. For this reason, Hamed's (or his estate's or his trust's) interests in the jointly owned entities (Plessen Enterprises, Inc., Peter's Farm Investment Corporation, and Sixteen Plus Corporation) may need to be quantified as a means of payment to equalize the Partnership withdrawals.

Respectfully submitted,

**DUDLEY, TOPPER and FEUERZEIG, LLP**

DATED: October 30, 2017

By:

  
\_\_\_\_\_  
Gregory H. Hodges (V.I. Bar No. 174)  
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Attorneys for Fathi Yusuf and United Corporation

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(340) 774-4422

<sup>21</sup> A Petition for Probate of Will and for Letters Testamentary was filed on August 26, 2016 as Case No. SX-2016-PB-76. That petition reflects no available assets to satisfy Yusuf's claims since all of Hamed's interests in real and personal property had previously been conveyed to the Mohammad A. Hamed Living Trust dated September 12, 2012. Yusuf has filed a complaint challenging such conveyance as fraudulent. A copy of that complaint is attached as **Exhibit U** since Yusuf's Amended Supplementation left off with Exhibit T.

# EXHIBIT 2



**Integra Realty Resources Caribbean**

**Business Valuation**

**Hamed/Yusuf Partnership d/b/a Plaza Extra West**  
Doing Business at  
Plot 14 (portion)  
Estate Plessen, St. Croix  
U.S. Virgin Islands

**Prepared For:**  
Dudley Topper and Feuerzeig, LLP  
Mr. Gregory Hodges, Esq.

**Valuation Date:**  
April 30, 2014

**IRR - Caribbean**  
File Number: 172-2015-0081



Integra Realty Resources  
Caribbean

6500 Red Hook Plaza Suite 206  
St. Thomas, VI 00802  
US Virgln Islands

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September 26, 2016

Mr. Gregory Hodges, Esq.  
Dudley Topper and Feuerzeig, LLP  
Law House, 1000 Frederiksborg Gade  
St. Thomas, VI 00802

SUBJECT: Conclusion of Value  
Hamed/Yusuf Partnership d/b/a Plaza Extra West  
Integra Caribbean File No. 172-2015-0081

Dear Mr. Hodges:

IRR – Caribbean is pleased to submit the accompanying valuation of the referenced business. The purpose of the valuation is to develop an opinion of the fair market value of a 100% interest in the subject company, *excluding the value of the real estate*, under the going concern premise, as of April 30, 2014. The client for the assignment is Dudley Topper and Feuerzeig, LLP, and the intended use is for litigation purposes.

The valuation (appraisal) is intended to conform with the Principles of Appraisal Practice and Code of Ethics of the American Society of Appraisers, the Business Valuation Standards of the American Society of Appraisers, the Professional Standards of the National Association of Certified Valuators and Analysts (NACVA), the Code of Professional Ethics and Standards of Professional Practice of the Appraisal Institute, the RICS Valuation Professional Standards, and the Uniform Standards of Professional Appraisal Practice. The type of valuation service provided is a Conclusion of Value and this report is considered a Summary Report as defined by USPAP.

The subject of the valuation is the grocery store business known as Plaza Extra West, operating in St. Croix, U.S. Virgin Islands. The grocery store business has been operating since 2000 as a part of a small independent chain of stores in the U.S.V.I. The valuation is of a whole ownership, 100%; marketable interest in the business, which is assumed to be a partnership entity having the right to operate the business using the Plaza Extra name.

Mr. Gregory Hodges, Esq.  
Dudley Topper and Feuerzeig, LLP  
September 26, 2016  
Page 2

Based on the valuation analysis in the accompanying report, and subject to the definitions, assumptions, and limiting conditions expressed in the report, our opinion of value is as follows:

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**Final Value Conclusion**

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Standard of Value	Value Conclusion as of April 30, 2014
Fair Market Value - Equity	\$8,770,000
Going Concern Premise	<i>Eight Million Seven Hundred Seventy Thousand Dollars</i>

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*Note: Unless otherwise noted, all financial figures are expressed in United States Dollars*

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*Note: Unless otherwise stated, all financial figures in this report are expressed in United States Dollars.*

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**Extraordinary Assumptions and Hypothetical Conditions**

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The value conclusions are subject to the following extraordinary assumptions that may affect the assignment results. An extraordinary assumption is uncertain information accepted as fact. If the assumption is found to be false as of the valuation date, we reserve the right to modify our value conclusions.

1. In our valuation, we relied on the representations of company's accountant. The financial information provided to us was compiled by the company's accountant and has not been audited. To the extent that such information may, at a later date, be found to have been inaccurate or misrepresented, we accept no liability for the consequences such inaccuracy or misrepresentation may have on our value determination expressed in this report nor any responsibility to update the valuation conclusion to reflect the impact that more accurate and complete data may or may not have on the opinions expressed herein.
2. For the purposes of the valuation, it is assumed that the partnership owning the Plaza Extra West business is a separate legal entity; the ownership of which was divided evenly between the partners as of the date of valuation. We have valued the entity on a control basis rather than a specific fractional interest which would require adjustments for lack of control and/or marketability.
3. It is our understanding that the real estate was owned by a related entity as of the date of valuation. For the purposes of valuing the business entity separately from the value of the real estate (which was separately appraised), we have assumed that the entity operating the business leases the property from a separate entity at market rent. We have made adjustments accordingly in the process of normalizing the financial statements as described in this report.
4. The partnership holds marketable securities on its books, which have been removed (along with related income) from the financial statements in the process of making normalization adjustments as described in this report. These securities have not been added back to the value of the company as non-operating assets; rather, have been assumed to have been dealt with separately.

The value conclusions are based on the following hypothetical conditions that may affect the assignment results. A hypothetical condition is a condition contrary to known fact on the effective date of the appraisal but is supposed for the purpose of analysis.

1. None
- 



Mr. Gregory Hodges, Esq.  
Dudley Topper and Feuerzeig, LLP  
September 26, 2016  
Page 3

If you have any questions or comments, please contact the undersigned. Thank you for the opportunity to be of service.

Respectfully submitted,

**Integra Realty Resources - Caribbean**

A handwritten signature in black ink, appearing to read 'J. Andrews', with a horizontal line drawn through the middle of the letters.

James V. Andrews, MAI, CRE, ASA, CVA, FRICS  
Telephone: 345-746-3110  
Email: [jandrews@irr.com](mailto:jandrews@irr.com)



# **EXHIBIT 3**

DAS

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

MOHAMMED HAMED, by his authorized agent )  
WALEED HAMED, )  
 )  
Plaintiff/Counterclaim Defendant, )  
 )  
v. )  
 )  
FATHI YUSUF and UNITED CORPORATION, )  
 )  
Defendants/Counterclaimants, )  
 )  
v. )  
 )  
WALEED HAMED, WAHEED HAMED, )  
MUFEED HAMED, HISHAM HAMED, and )  
PLESSEN ENTERPRISES, INC., )  
 )  
Counterclaim Defendants. )

Case No. SX-12-CV-370  
Action for Damages,  
Injunctive Relief and  
Declaratory Relief

15 JAN -5 PM 2:40

MASTER'S ORDER REGARDING TRANSFER OF OWNERSHIP OF  
PLAZA EXTRA WEST

WHEREAS, on September 18, 2014, the undersigned, Honorable Edgar D. Ross (the "Master"), was appointed by the Court to serve as Judicial Master in the above-captioned civil action to direct and oversee the winding up of the Hamed-Yusuf Partnership *also known as the Plaza Extra Partnership* (the "Appointment Order"), a copy of which is attached as Exhibit 1;

WHEREAS, on January 7, 2015, the Court issued its Order Adopting Final Wind Up Plan ("Wind Up Order") providing for the transfer of the business known as Plaza Extra West:

Plaza Extra West

Hamed will purchase from the Partnership the following elements of the existing business operation known as Plaza Extra West: inventory at one half of the landed cost and the equipment at its depreciated value, as mutually determined by the Partners. . . . Upon payment for the inventory, and upon payment (or auction and distribution of the proceeds) for the equipment, Hamed will assume full ownership and control and may continue to operate Plaza Extra West without any further involvement of Yusuf, Yusuf's sons or United, and free and clear of any claims or interests of Yusuf or United;

Blumberg No. 5208  
EXHIBIT  
3

WHEREAS, Hamed has fully complied with and satisfied the foregoing directive of the Wind Up Order such that as of 12:01 AM on March 9, 2015, Hamed will lawfully has sole right, title, interest, ownership and control of the business known as Plaza Extra West to the exclusion of all other persons and entities that may have previously been involved in the operation of Plaza Extra West;

WHEREAS, the parties have also stipulated that this business can operate using the trade name "Plaza Extra West";

WHEREAS, the Court and Master have been informed that Hamed's rights, privileges and powers regarding Plaza Extra West will be exercised by KAC357, Inc., a duly formed and existing Virgin Islands corporation ("KAC357"), using the trade name "Plaza Extra West";

WHEREAS, Plaza Extra West is authorized by the United States Department of Agriculture ("USDA") to accept and transact payments through the USDA Supplemental Nutrition Assistance Program ("SNAP");

WHEREAS, Plaza Extra West is a SNAP superstore, does substantial SNAP transactions and is located in an area of high SNAP participant need;

WHEREAS, Plaza Extra West participates in the Virgin Islands Department of Health Special Supplemental Nutrition Program for Women, Infants, and Children ("WIC") and accepts WIC checks and WIC Cash Value Checks;

WHEREAS, Plaza Extra West is located in an impoverished rural area and significant hardship would ensue to the communities surrounding Plaza Extra West in the event that Plaza Extra West was unable to serve the public and/or accept and transact SNAP payments, WIC checks and WIC Cash Value Checks;

WHEREAS, Plaza Extra West employs a significant number of St. Croix residents who depend on their jobs at Plaza Extra West for their livelihoods and to support their families;

WHEREAS, it is essential that ownership, control and operation of Plaza Extra West be transferred in a smooth and efficient manner in order to prevent cessation of services to the communities surrounding Plaza Extra West and prevent employment interruption; and

WHEREAS, it is therefore necessary (i) that all governmental agencies, persons and businesses doing business with Plaza Extra West act with all deliberate speed to recognize, document and act in accordance with the directives of the Wind Up Order and this Order and (ii) that certain bank accounts remain open to act as trust accounts to hold monies for the benefit of Plaza Extra West for no more than thirty (30) days from March 9, 2015.

**NOW THEREFORE, THE MASTER HERBY DECLARES AS FOLLOWS:**

**A. Recognition of Hameds Full and Sole Ownership of Plaza Extra West**

1. Hamed has lawfully and rightfully assumed full and sole ownership and control and may continue to operate Plaza Extra West without any further involvement of any other person or entity, using the trade name "Plaza Extra West."

2. All persons, entities and governmental agencies are hereby directed to recognize KAC357 the operator of Plaza West through KAC357, Inc. and to, assist in this transition to the fullest extent permitted by law and regulation with all matters related to preparation and issuance of documentation necessary to reflect KAC357's operation of Plaza Extra West.

**B. SNAP (Food Stamps) and WIC**

3. With regard to USDA Food and Consumer Service Food Stamp Program Permit Number 4443411, all persons, entities and agencies presented with this Order are hereby informed that, consistent with the Wind Up Order and this Order, Maher Yusuf has disassociated



from Plaza Extra West and it is now fully operated by KAC357, with Waleed ("Wally") Hamed as President.

4. With regard to WIC Vendor Agreement dated October 31, 2012, regarding "Plaza Extra" with ID number 66-0391237, all persons, entities and agencies presented with this Order are hereby informed that, consistent with the Wind Up Order and this Order, Maher Yusuf has disassociated from Plaza Extra West. To the extent necessary and in accordance with all applicable law and regulation, a new WIC Vendor Agreement may be executed by Plaza Extra West, acting by and through Waleed ("Wally") Hamed as President, and the Virgin Islands Department of Health.

**C. Bank Accounts to Remain Open During Transition as Trust Accounts**

5. In order to provide for a smooth transition of ownership and to provide time for the preparation and issuance of documentation necessary to memorialize KAC357's operation of Plaza Extra West, the two bank accounts (the "Bank Accounts") designated as follows:

- a. BANCO POPULAR CREDIT CARD ACCOUNT  
No. 191-063789
- b. SCOTIA TELECHECK ACCOUNT  
No. 058-600929218

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12:40

shall be handled as follows:

- (1) All transactions to be deposited into these Bank Accounts as of 11:59 PM on March 8, 2015, shall belong to the partnership and shall be turned over to the Master and the Liquidating Partner to be deposited into the Claim Reserve Account.
- (2) All transactions occurring after 12:01 AM on March 9, 2015, shall belong to Hamed or his assignee, KAC357, Inc., and are thereafter declared to be trust accounts to hold in trust for Hamed or his assignee, KAC357, Inc.

6. Thereafter, no person or entity other than (i) Waleed ("Wally") Hamed; (ii) Waheed ("Willie") Hamed; (iii) Mufeed ("Mafi") Hamed; and/or (iv) Hisham ("Shawn")

Hamed, is or shall be permitted to withdraw any Plaza Extra West Funds from either or both of the Bank Accounts.

7. The parties shall cooperate with requests for execution and completion of all required forms, signature cards and other documentation necessary to effect the directives hereof concerning the Bank Accounts.

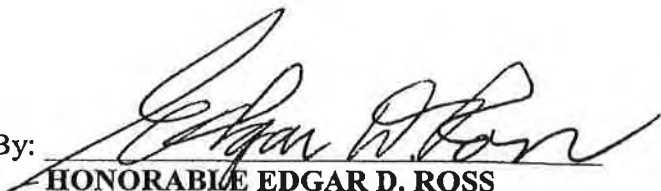
**D. Business License and Permits**

8. All governmental agencies, including but not limited to the Virgin Islands Department of Health, Fire Service, Bureau of Internal Revenue, Department of Labor and Department of Licensing and Consumer Affairs are requested to act with all deliberate speed in connection with any required inspection(s) or diligence necessary to approve and permit KAC357 to operate Plaza Extra West and shall, upon satisfaction of all such inspections and diligence, forthwith issue any and all permits, licenses or permissions necessary for KAC357 to operate and exercise full operational control of Plaza Extra West.

**E. Further Information**

9. Any and all persons having questions or concerns regarding this Order shall contact **Mark W. Eckard, Esquire, at 340.514.2690**, who shall, upon receipt of any questions or concerns regarding this Order, (i) forthwith inform the Master of all such questions or concerns and (ii) respond to all such questions or concerns as directed by the Master.

Dated: MARCH 5, 2015

By:   
**HONORABLE EDGAR D. ROSS**  
Judicial Master

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2:48

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

MOHAMMED HAMED by his authorized agent  
WALEED HAMED,  
Plaintiff/Counterclaim Defendant,  
v.  
FATHI YUSUF and UNITED CORPORATON,  
Defendants/Counterclaimants  
v.  
WALEED HAMED, WAHEED HAMED,  
MUFEED HAMED, HISHAM HAMED, and  
PLESSEN ENTERPRISES, INC.  
Counterclaim Defendants.

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CIVIL NO. SX-12-CV-370  
ACTION FOR DAMAGES, etc.

15 JAN -5 12:46

**ORDER APPOINTING MASTER**

THIS MATTER is before the Court on Plaintiff/Counterclaim Defendant and Defendant/Counterclaimants' Stipulation Regarding Appointment of Master ("Stipulation"), filed September 10, 2014 and the same Parties' Joint Notice re Suggested Compensation of Master ("Notice"), filed September 17, 2014.

By Order dated August 28, 2014, the Parties were ordered to confer and jointly select a Master acceptable to both. By the Stipulation and the Notice, the Parties have agreed to the appointment of the Honorable Edgar D. Ross to serve as Master, to be compensated for services at the rate of \$400.00 per hour, which is acceptable to the Master. In light of the foregoing, it is hereby

ORDERED that the Honorable Edgar D. Ross is appointed to serve as judicial Master in this action, to direct and oversee the winding up of the Hamed-Yusuf Partnership. It is further



ORDERED that the Master's duties will commence forthwith with a review of such portions of the Court's file as are deemed necessary and helpful to provide background information relative to the Partnership, its businesses, assets and operations; and the scope and structure of the winding up process, which review shall include the previously filed submissions of the Parties presenting their respective plans for winding up the Partnership. It is further

ORDERED that the Master will be compensated at the rate of \$400.00 per hour according to a monthly payment schedule and process to be agreed between the Master and the Liquidating Partner (to be named) (or, prior to the designation of the Liquidating Partner, between the Master and the Parties, through counsel). It is further

ORDERED that in conjunction with the Master's review, the Court will present to the Parties a proposed plan for the winding up of the Partnership in advance of the status conference scheduled by this Order, and will solicit comments, objections and recommendations. It is further


ORDERED that this matter will come on for telephonic status conference on **Tuesday, October 7, 2014 at 11:30 a.m.** with the Master in attendance. The parties are directed to attend the conference by calling (559) 546-1200 and entering access code 920025025. It is further


ORDERED that upon consideration of the Parties' presentations, the Court will adopt the final plan for winding up the Partnership to be overseen by the Master.

DATED: September 18, 2014


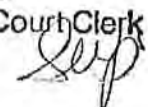
ATTEST:

ESTRELLA GEORGE  
Acting Clerk of the Court

By:   
Court Clerk Supervisor

  
DOUGLAS A. BRADY  
Judge of the Superior Court

CERTIFIED TO BE A TRUE COPY  
This 18th day of Sept 2014

CLERK OF THE COURT  
By:   
Court Clerk 

# EXHIBIT 4

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

15 KAR -6 PA 39

MOHAMMED HAMED, by his authorized agent )  
WALEED HAMED, )

Plaintiff/Counterclaim Defendant, )

v. )

FATHI YUSUF and UNITED CORPORATION, )

Defendants/Counterclaimants, )

v. )

WALEED HAMED, WAHEED HAMED, )  
MUFEEED HAMED, HISHAM HAMED, and )  
PLESSEN ENTERPRISES, INC., )

Counterclaim Defendants. )

Case No. SX-12-CV-370

Action for Damages,  
Injunctive Relief and  
Declaratory Relief

**MASTER'S ORDER REGARDING TRANSFER OF OWNERSHIP OF  
PLAZA EXTRA EAST**

WHEREAS, on September 18, 2014, the undersigned, Honorable Edgar D. Ross (the "Master"), was appointed by the Court to serve as Judicial Master in the above-captioned civil action to direct and oversee the winding up of the Hamed-Yusuf Partnership *also known as* the Plaza Extra Partnership (the "Appointment Order"), a copy of which is attached as Exhibit 1;

WHEREAS, on January 7, 2015, the Court issued its Order Adopting Final Wind Up Plan ("Wind Up Order") providing for the transfer of the business known as Plaza Extra East:

**Plaza Extra East**

Yusuf will purchase from the Partnership the following elements of the existing business operation known as Plaza Extra East: inventory at one half of the landed cost and the equipment at its depreciated value, as mutually determined by the Partners. . . . **Upon payment for the inventory, and upon payment (or auction and distribution of the proceeds) for the equipment, Yusuf will assume full ownership and control and may continue to operate Plaza Extra East without any further involvement of Hamed, Hamed's sons, and free and clear of any claims or interests of Hamed;**



WHEREAS, Yusuf has fully complied with and satisfied the foregoing directive of the Wind Up Order such that as of 12:01 AM on March 9, 2015, Yusuf will lawfully <sup>15</sup> ~~has~~ sole right, title, interest, ownership and control of the business known as Plaza Extra East to the exclusion of all other persons and entities that may have previously been involved in the operation of Plaza Extra East;

WHEREAS, the parties have also stipulated that this business can operate using the trade name "Plaza Extra East";

WHEREAS, the Court and Master have been informed that Yusuf's rights, privileges and powers regarding Plaza Extra East will be exercised by United Corporation, a duly formed and existing Virgin Islands corporation, using the trade name "Plaza Extra East";

WHEREAS, Plaza Extra East is authorized by the United States Department of Agriculture ("USDA") to accept and transact payments through the USDA Supplemental Nutrition Assistance Program ("SNAP");

WHEREAS, Plaza Extra East is a SNAP superstore, does substantial SNAP transactions and is located in an area of high SNAP participant need;

WHEREAS, Plaza Extra East participates in the Virgin Islands Department of Health Special Supplemental Nutrition Program for Women, Infants, and Children ("WIC") and accepts WIC checks and WIC Cash Value Checks;

WHEREAS, Plaza Extra East is located in an impoverished rural area and significant hardship would ensue to the communities surrounding Plaza Extra East in the event that Plaza Extra East was unable to serve the public and/or accept and transact SNAP payments, WIC checks and WIC Cash Value Checks;

WHEREAS, Plaza Extra East employs a significant number of St. Croix residents who depend on their jobs at Plaza Extra East for their livelihoods and to support their families;

WHEREAS, it is essential that ownership, control and operation of <sup>d5</sup> Plaza Extra East be transferred in a smooth and efficient manner in order to prevent cessation of services to <sup>7/1/15 5 24:30</sup> the communities surrounding Plaza Extra East and prevent employment interruption; and

WHEREAS, it is therefore necessary that all governmental agencies, persons and businesses doing business with Plaza Extra East act with all deliberate speed to recognize, document and act in accordance with the directives of the Wind Up Order and this Order.

**NOW THEREFORE, THE MASTER HERBY DECLARES AS FOLLOWS:**

**Recognition of Fathi Yusuf's Full and Sole Ownership of Plaza Extra East**

1. Yusuf has lawfully and rightfully assumed full and sole ownership and control and may continue to operate Plaza Extra East without any further involvement of any other person or entity, using the trade name "Plaza Extra East."

2. All persons, entities and governmental agencies are hereby directed to recognize Fathi Yusuf as the operator of Plaza East through United Corporation and to, assist in this transition to the fullest extent permitted by law and regulation with all matters related to preparation and issuance of documentation necessary to reflect United Corporation's operation of Plaza Extra East.

**Further Information**

3. Any and all persons having questions or concerns regarding this Order shall contact **Gregory Hodges, Esquire, at 340.774.4422**, who shall, upon receipt of any questions or concerns regarding this Order, (i) forthwith inform the Master of all such questions or concerns and (ii) respond to all such questions or concerns as directed by the Master.

Dated:

Mgech  
6, 2015  
EDR

By:

Edgar D. Ross  
HONORABLE EDGAR D. ROSS  
Judicial Master



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

15 MAR -6 P 4:39

MOHAMMED HAMED by his authorized agent )  
WALEED HAMED, )  
Plaintiff/Counterclaim Defendant, )  
v. )  
FATHI YUSUF and UNITED CORPORATON, )  
Defendants/Counterclaimants )  
v. )  
WALEED HAMED, WAHEED HAMED, )  
MUFEEED HAMED, HISHAM HAMED, and )  
PLESSEN ENTERPRISES, INC. )  
Counterclaim Defendants. )

CIVIL NO. SX-12-CV-370  
ACTION FOR DAMAGES, etc.

**ORDER APPOINTING MASTER**

THIS MATTER is before the Court on Plaintiff/Counterclaim Defendant and Defendant/Counterclaimants' Stipulation Regarding Appointment of Master ("Stipulation"), filed September 10, 2014 and the same Parties' Joint Notice re Suggested Compensation of Master ("Notice"), filed September 17, 2014.

By Order dated August 28, 2014, the Parties were ordered to confer and jointly select a Master acceptable to both. By the Stipulation and the Notice, the Parties have agreed to the appointment of the Honorable Edgar D. Ross to serve as Master, to be compensated for services at the rate of \$400.00 per hour, which is acceptable to the Master. In light of the foregoing, it is hereby

ORDERED that the Honorable Edgar D. Ross is appointed to serve as judicial Master in this action, to direct and oversee the winding up of the Hamed-Yusuf Partnership. It is further



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ORDERED that the Master's duties will commence forthwith with a review of such portions of the Court's file as are deemed necessary and helpful to provide background information relative to the Partnership, its businesses, assets and operations; and the scope and structure of the winding up process, which review shall include the previously filed submissions of the Parties presenting their respective plans for winding up the Partnership. It is further

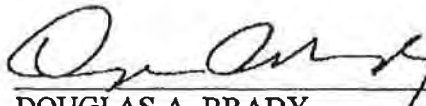
ORDERED that the Master will be compensated at the rate of \$400.00 per hour according to a monthly payment schedule and process to be agreed between the Master and the Liquidating Partner (to be named) (or, prior to the designation of the Liquidating Partner, between the Master and the Parties, through counsel). It is further

ORDERED that in conjunction with the Master's review, the Court will present to the Parties a proposed plan for the winding up of the Partnership in advance of the status conference scheduled by this Order, and will solicit comments, objections and recommendations. It is further

ORDERED that this matter will come on for telephonic status conference on Tuesday, October 7, 2014 at 11:30 a.m. with the Master in attendance. The parties are directed to attend the conference by calling (559) 546-1200 and entering access code 920025025. It is further

ORDERED that upon consideration of the Parties' presentations, the Court will adopt the final plan for winding up the Partnership to be overseen by the Master.

DATED: September 18, 2014

  
DOUGLAS A. BRADY  
Judge of the Superior Court

ATTEST:

ESTRELLIA GEORGE  
Acting Clerk of the Court

By:   
Court Clerk Supervisor

CERTIFIED TO BE A TRUE COPY  
This 18th day of Sept 2014

CLERK OF THE COURT  
By:  Court Clerk

9/18/14

sep

# EXHIBIT 5

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

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

**MEMORANDUM IN SUPPORT OF**  
**MOTION TO APPOINT MASTER FOR JUDICIAL SUPERVISION**  
**OF PARTNERSHIP WINDING UP OR,**  
**IN THE ALTERNATIVE, TO APPOINT RECEIVER TO WIND UP PARTNERSHIP**

Defendants/counterclaimants Fathi Yusuf ("Yusuf") and United Corporation ("United") (collectively, the "Defendants"), respectfully submit this Memorandum in Support of their Motion To Appoint Master For Judicial Supervision Of Partnership Winding Up Or, In the Alternative, To Appoint Receiver To Wind Up Partnership (the "Motion").

**FACTUAL AND PROCEDURAL BACKGROUND**

1. On September 17, 2012, plaintiff/counterclaim defendant Mohammed Hamed ("Hamed" or "Plaintiff") filed his complaint in this matter. Hamed filed his first amended complaint ("FAC") on October 19, 2012. The FAC alleges, among other things, that Hamed and Yusuf formed a partnership to own and operate a supermarket business comprised of three supermarket stores located in Sion Farm, St. Croix, Estate Plessen, St. Croix, and Tutu Park, St.

**PLAZA EXTRA SUPERMARKETS  
PLAN FOR  
WINDING UP PARTNERSHIP**

This Plan provides for the winding up of the Partnership, as defined below. This is a liquidating plan and does not contemplate the continuation of the Partnership's business except as may be required for the orderly winding up of the Partnership.

**Section 1. DEFINITIONS**

1.1 "Act" means the Uniform Partnership Act, V. I. Code Ann. Tit. 26, §§ 1-274.

1.2 "Available Cash" means the aggregate amount of all unencumbered cash and securities held by the Partnership including cash realized from any Litigation Recovery or any Liquidation Proceeds.

1.3 "Case" means Civil No. SX-12-CV-370 pending in the Court.

1.4 "Claim" means


(a) any right to payment from the Partnership whether or not such right is reduced to judgment, liquidated, unliquidated, contingent, matured, unmatured, disputed, undisputed, legal, equitable, secured or unsecured; or

(b) any right to an equitable remedy for breach of performance if such breach gives rise to a right of payment from the Partnership whether or not such right to an equitable remedy is reduced to judgment, fixed, contingent, matured, unmatured, disputed, undisputed, secured or unsecured.

1.5 "Claimant" means the holder of a Claim.

1.6 "Claims Reserve Account" means one or more interest-bearing bank account(s), money market or securities account(s) to be established and held in trust by the Master for the purpose of holding the Available Cash until distributed in accordance with the Plan and any interest, dividends or other income earned upon the investment of such Claims Reserve Account. The Claims Reserve Account will be further funded from time to time by the Liquidating Partner with:

- (i) any Liquidation Proceeds realized, plus
- (ii) any Litigation Recovery realized, minus
- (iii) any amounts necessary to pay Wind Up Expenses.



The Encumbered Cash shall be deposited into the Claims Reserve Account immediately after it is no longer encumbered by the restraining order entered in the Criminal Case and, thereafter, held for distribution in accordance with this Plan.

## **Section 8. PLAN OF LIQUIDATION AND WINDING UP**

### **A. Sale of Plaza Extra Stores as Going Concern vs. Liquidation.**

The Plaza Extra Stores cannot be sold as a going concern because of the absence of commercial leases for Plaza Extra – East and Plaza Extra – West and the existence of only a short term (less than 5 years) remaining on the lease between United and Tutu Park Mall, Ltd. for Plaza Extra – Tutu Park. Hence, liquidation of the Plaza Extra Stores is warranted.

### **B. Liquidation Process**

The liquidation process will include the sale of all non-liquid Partnership Assets, payment of outstanding Debts, and deposit of all net Liquidation Proceeds into the Claims Reserve Account under the control of the Master.

#### **1. Current Financial Profile of Partnership.**

The Partnership Assets and Debts are reflected on the balance sheet for the Plaza Extra Stores attached as Exhibit B.

#### **2. Estimated Time for Liquidation**

The liquidation process is estimated to take six months to complete.

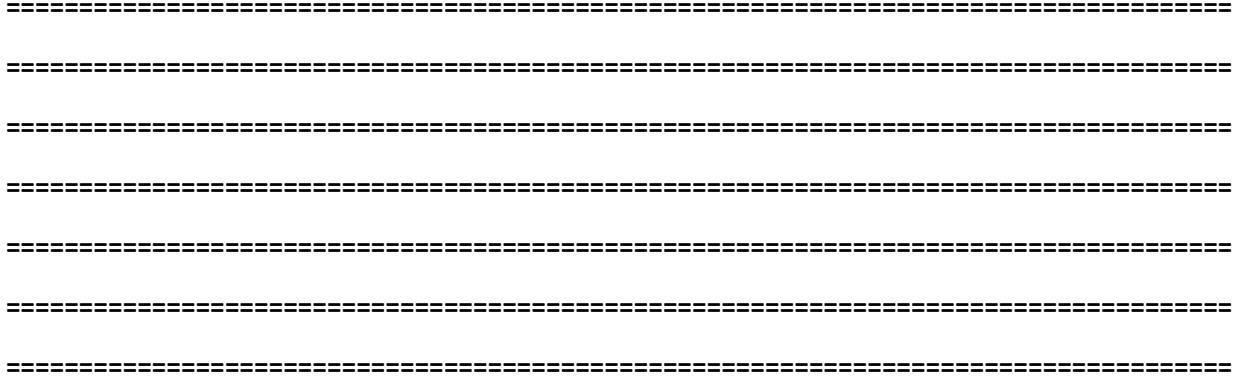
#### **3. Steps to Be Taken for the Orderly Liquidation of the Partnership**

##### **STEP 1: Budget for Wind Up Efforts**

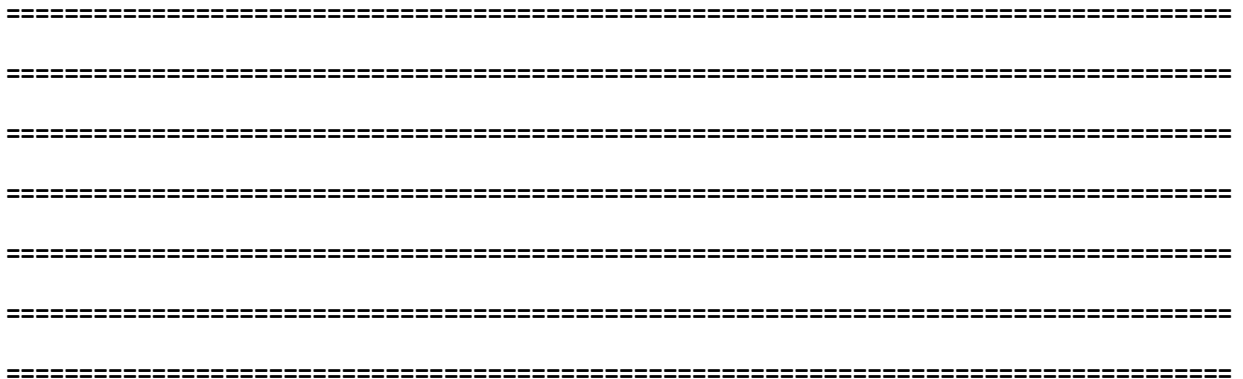
The Liquidating Partner proposes the Wind Up Budget, attached as Exhibit A for the Wind Up Expenses. Such expenses include, but are not limited to, those incurred in the liquidation process, costs for continued operations of the Plaza Extra Stores during the wind up, costs for the professional services of the Master, costs relating to pending litigation in which United d/b/a Plaza Extra Store is named as a party, and the rent to be paid to the landlord of Plaza Extra – East and Plaza Extra – Tutu Park.

##### **STEP 2: Setting Aside Reserves**

The sum of Ten Million Five Hundred Thousand Dollars (\$10,500,000) - to cover the Wind Up Expenses as set out in the Wind Up Budget with a small surplus to cover any miscellaneous or extraordinary Wind Up Expenses that may occur at the conclusion of the liquidation process - shall be deposited in the Liquidating Expenses Account to be held in trust by the Liquidating Partner under the supervision of the Master. The Liquidating Partner shall



# **DIVIDER**



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

WALEED HAMED, as the Executor of the Estate  
of MOHAMMAD HAMED,

*Plaintiff/Counterclaim Defendant,*

vs.

FATHI YUSUF and UNITED CORPORATION

*Defendants and Counterclaimants.*

vs.

WALEED HAMED, WAHEED HAMED, MUFEED  
HAMED, HISHAM HAMED, and PLESSEN  
ENTERPRISES, INC.,

*Counterclaim Defendants,*

WALEED HAMED, as the Executor of the Estate  
of MOHAMMAD HAMED,

*Plaintiff,*

vs.

UNITED CORPORATION,

*Defendant.*

WALEED HAMED, as the Executor of the Estate  
of MOHAMMAD HAMED,

*Plaintiff,*

vs.

FATHI YUSUF,

*Defendant.*

Case No.: SX-2012-cv-370

ACTION FOR DAMAGES, INJUNCTIVE  
RELIEF AND DECLARATORY RELIEF

JURY TRIAL DEMANDED

Consolidated with

Case No.: SX-2014-CV-287

ACTION FOR DECLARATORY  
JUDGMENT

JURY TRIAL DEMANDED

Consolidated with

Case No.: SX-2014-CV-278

ACTION FOR DEBT AND CONVERSION

JURY TRIAL DEMANDED

**HAMED'S MOTION TO DENY UNITED CLAIMS Y-6, Y-7 and Y-9  
DUE TO THE APPLICABLE STATUTES OF LIMITATIONS  
AS TO UNITED CLAIMS THAT AROSE PRIOR TO SEPTEMBER 16, 2006**

United Corporation seeks three claims in this case that are barred by the applicable statute of limitations ("SOL"). It is respectfully submitted that these three claims should be stricken now to avoid protracted and expensive discovery.



## I. Introduction

United Corporation is a distinct party in this proceeding, completely independent of the Yusuf and Hamed partnership accounting claims. Three of these claims, identified in sections D, E and G in the claims submitted by Yusuf arise out of debts that allegedly arose in the 1990's (See **Exhibit 1** (with "Y" claims designation)):

D. (Y-6)	Black Book Balance Owed United <sup>1</sup>
E. (Y-7)	Ledger Balances Owed United
G. (Y-9)	Unreimbursed Transfers from United

While Hamed denies any of these debts are owed, there is no need to have to address the merits of these claims, as each is barred by the applicable statute of limitations. As can be seen from the back-up submitted with each claim, each debt arose in the 1990's:

- Exhibit D (Black Book Balance)-This is an alleged reconciliation of debts **in 1994**, supposedly leaving a balance due Yusuf.
- Exhibit E (Ledger Balances)- This is an almost illegible ledger sheet showing amounts allegedly owed for **1994, 1995** and **1998**.
- Exhibit G-(Unreimbursed Transfers)-This is a list of transfers allegedly from United to the partnership, with all amounts being from **1996**.

With this background in mind, the applicable SOL will now be discussed.

## II. Argument

Pursuant to 5 V.I.C. §31(3), the statute of limitations for actions for debt, breach of contract and conversion of property is 6 years. It is undisputed that SOL on all of these claims expired years ago, between the years 1999 and 2002 depending on the

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<sup>1</sup> The "black book" issue is a Fathi Yusuf partner's claim -- not a United claim, and is therefore prevented by the Court's "laches" order -- will be addressed in a separate motion. However, assuming it is a United claim, it is out of time.

specific claim, except for one claim for a ledger balance in 1998, for which the SOL would expire in 2004. Thus, all of these claims are barred by 5 V.I.C. §31(3).

### III. Conclusion

For the reasons set forth herein, it is respectfully submitted that these claims are each barred by the applicable statute of limitations and can be stricken now so that the time and expense of discovery can be avoided.

**Dated:** December 18, 2017



**Joel H. Holt, Esq.**  
*Counsel for Plaintiff*  
Law Offices of Joel H. Holt  
2132 Company Street,  
Christiansted, VI 00820  
Email: joelholtpc@gmail.com  
Tele: (340) 773-8709  
Fax: (340) 773-8677

**Carl J. Hartmann III, Esq.**  
*Co-Counsel for Plaintiff*  
5000 Estate Coakley Bay, L-6  
Christiansted, VI 00820  
Email: carl@carlhartmann.com  
Tele: (340) 719-8941

### CERTIFICATE OF SERVICE

I hereby certify that on this 18<sup>th</sup> day of December, 2017, I served a copy of the foregoing by email, as agreed by the parties, on:

**Hon. Edgar Ross**  
Special Master  
% edgarrossjudge@hotmail.com

**Gregory H. Hodges**  
**Stefan Herpel**  
**Charlotte Perrell**  
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# EXHIBIT 1

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

WALEED HAMED, as Executor of the	)	
Estate of MOHAMMAD HAMED,	)	
	)	
Plaintiff/Counterclaim Defendant,	)	CIVIL NO. SX-12-CV-370
v.	)	
	)	ACTION FOR INJUNCTIVE
FATHI YUSUF and UNITED CORPORATION,	)	RELIEF, DECLARATORY
	)	JUDGMENT, AND
Defendants/Counterclaimants,	)	PARTNERSHIP DISSOLUTION,
v.	)	WIND UP, AND ACCOUNTING
	)	
WALEED HAMED, WAHEED HAMED,	)	
MUFEED HAMED, HISHAM HAMED, and	)	
PLESSEN ENTERPRISES, INC.,	)	
	)	
Additional Counterclaim Defendants.	)	Consolidated With
	)	
WALEED HAMED, as Executor of the	)	
Estate of MOHAMMAD HAMED,	)	
	)	
Plaintiff,	)	CIVIL NO. SX-14-CV-287
v.	)	
	)	ACTION FOR DAMAGES AND
UNITED CORPORATION,	)	DECLARATORY JUDGMENT
	)	
Defendant.	)	
	)	
WALEED HAMED, as Executor of the	)	
Estate of MOHAMMAD HAMED,	)	
	)	
Plaintiff,	)	CIVIL NO. SX-14-CV-278
v.	)	
	)	ACTION FOR DEBT AND
FATHI YUSUF,	)	CONVERSION
	)	
Defendant.	)	

**YUSUF'S AMENDED ACCOUNTING CLAIMS  
LIMITED TO TRANSACTIONS OCCURRING ON OR AFTER SEPTEMBER 17, 2006**

JUDLEY, TOPPER  
 ID FEUERZEIG, LLP  
 100 Frederiksberg Gade  
 P.O. Box 756  
 St. John's, U.S. VI 00804-0756  
 (340) 774-4422

2016 is \$241,005.18. Such interest continues to accrue at the daily rate of \$195.78 until paid. See calculation of interest on Bays 5 and 8 rent attached as Exhibit E to the Original Claims.

**Disputed/Undisputed, Ripe for Determination or Discovery Needed:** It is Yusuf's position that the issue of interest upon the unpaid rent for Bays 5 and 8 cannot be adjudicated until the claim for the unpaid rent is resolved. Once the unpaid rent for Bays 5 and 8 is resolved, the interest calculation can be readily determined by the Master.

**C. Reimbursement For Gross Receipts Taxes Paid by United**

As Yusuf has testified without contradiction (*see* transcript of Yusuf's deposition of April 2, 2014 at pages 53-4), the Partners originally agreed that the Plaza Extra Stores would pay all gross receipts taxes and insurance relating to United's Shopping Center. The Partners acted on this agreement for the life of the Partnership, as reflected in the actual payment of these expenses with funds from the Plaza Extra Stores for more than 28 years. The Partnership owes United for certain gross receipts taxes United paid on behalf of the Partnership totaling \$60,586.96, which were never reimbursed. See Exhibit F to the Original Claims, Summary and Evidence of United Payment of Gross Receipts Taxes.

**Disputed/Undisputed, Ripe for Determination or Discovery Needed:** This debt is disputed. The Master will need to determine whether United's gross receipts taxes and insurance were treated as part of the expenses of the Partnership. Additional discovery is needed on this issue.

**D. Black Book Balance Owed to United**

A black ledger book (the "Black Book") was used by the Partners to track spending and withdrawals as between the Partners and their families as well as by United on behalf of the Plaza Extra Stores. Certain entries from the Black Book are accounted for in the BDO Report



discussed in §IV below, to the extent they represent historical withdrawals as between the Partners and their families. Adjustments have been made as to BDO's allocation of those partnership withdrawals prior to September 17, 2006. However, as to funds which United paid on behalf of the Plaza Extra Stores, the Black Book entries reveal that the Partnership owes United \$49,997.00 for various expenses it paid on behalf of the Partnership. *See Exhibit G to the Original Claims, Relevant Black Book Entries.*

**Disputed/Undisputed, Ripe for Determination or Discovery Needed:** This debt is disputed and will likely require additional discovery.

**E. Additional Ledger Balances Due to United**

In addition to the Black Book balance owed to United, at various points in time, United made other payments on behalf of the Plaza Extra Stores. In 1994, 1995 and in 1998, United paid \$199,760.00 for various expenses of the Partnership. *See Exhibit H to the Original Claims, Ledger Sheets Reflecting United's Payments for Plaza Extra.* In the same ledger book, records of withdrawals by Yusuf are also noted for certain personal expenses in 1995 and 1996. The amounts relating to Yusuf's personal expenses are included in the BDO Report discussed below in § IV, accounting for the withdrawals as between the Partners and their families. Again, adjustments have been made as to BDO's allocation of those historical partner withdrawals prior to September 17, 2016. However, the total amount of \$199,760.00 paid by United has not otherwise been captured in other reconciliations and remains due and owing to United.

**Disputed/Undisputed, Ripe for Determination or Discovery Needed:** This debt is disputed and will likely require additional discovery.



**F. Water Revenue Re Plaza Extra-East**

Beginning in 1994, Plaza Extra-East began selling United's water. The proceeds for the first 10 years were used primarily for charitable purposes. From April 1, 2004, however, all revenue from the sale of United's water that was collected by Plaza Extra-East was to be paid to United. United has calculated the average water sales per month based upon two years of sales in 1997 (\$52,000) and 1998 (\$75,000) as \$5,291.66 per month. Multiplying the average monthly sales revenue by 131 months, United is owed \$693,207.46 from the Partnership for the water sales revenue from April 1, 2004 through February 28, 2015.

**Disputed/Undisputed, Ripe for Determination or Discovery Needed:** Yusuf anticipates that this debt will be disputed and will likely require additional discovery.

**G. Unreimbursed Transfers to Plaza Extra from United's Tenant Account**

At various points throughout the Partnership, United would transfer funds from its tenant account, which the parties have already conceded was separate and independent from the Partnership, to the Plaza Extra Stores to cover expenses and to maintain cash-flow. The Partnership has not reimbursed United for certain transfers. The Partnership owes United \$188,132 for its unreimbursed transfers. See Exhibit I to the Original Claims, Summary and Supporting Documentation of Unreimbursed Transfers from United.

**Disputed/Undisputed, Ripe for Determination or Discovery Needed:** Yusuf anticipates that this debt will be disputed and will likely require additional discovery.

**IV. Past Partnership Withdrawals and Distribution Reconciliation**

Throughout the Partnership, the Partners and their agents (*i.e.*, their sons) would withdraw cash from safes at the Plaza Extra Stores. Evidence of these withdrawals came in multiple forms including, *inter alia*, receipts, checks or ledger entries. In addition, the Partners



# EXHIBIT D

1

ck #	1	United Corp. paid out from Plaza Extra		1
	2			2
	3			3
200	4	6/12 Adnan Rahhal	31,379.00	4
211	5	6/27 Enrique Arrugo	1,000.00	5
216	6	7/1 Committee to Elect Felicitad	1,000.00	6
	7	7/18 Return check	781.25	7
228	8	7/15 Xerox Corp.	5,985.00	8
250	9	8/10 Xerox Corp.	684.87	9
251	10	8/12 Zenon Const.	15,000.00	10
258	11	Land	16,500.00	11
267	12	9/2 E. Arroyo	1.00	12
269	13	9/3 Western Road Re-zoning	255.00	13
268	14	9/4 Lilliana Belardo	500.00	14
270	15	9/4 Bent Jawastz	500.00	15
279	16	7/1 AT and T	56.86	16
280	17	7/10 Attorney Fee	2,728.26	17
284	18	10/19 E. Arroyo	5,000.00	18
286	19	10/11 American Express	1,020.00	19
287	20	9/22 F.Z. Rental	200.00	20
289	21	9/23 Law suit	7,000.00	21
—	22	Cash Backhoe operator	50.00	22
292	23	7/26 F.Z. Rental	400.00	23
	24	2 wine for Arroyo	20.74	24
293	25	9/23 Pharmacy & medical supplies	50.00	25
294	26	28 Bank	2,058.52	26
295	27	28 Bank	2,615.00	27
	28	Rent.	191,058.00	28
296	29	Standard Apoor's Corp.	100.72	29
297	30	Kay travel	500.00	30
300	31	M. Mapp	500.00	31
303	32	Print Maker, Inc.	352.00	32

October

2

1	3081	6	Ex 2. fuel Rental	817.00		1
2		2	U.S. ...	1,000.00		2
3		3				3
4		4	Notary Public Fees	5.00		4
5		5	St. Thomas trip	19.60		5
6	1-9493		Florida trip	100.00		6
7		7	one car	6,186.00		7
8		8				8
9		9				9
10		10		399,332.62		10
11		11	Carita 1991	150,000.00		11
12		12				12
13		13		149,332.62		13
14		14	Bert F. Lee	22,000.00		14
15		15				15
16		16		171,332.62		16
17		17	less Fathi Yusuf	3,500.00		17
18		18				18
19		19		168,832.62		19
20		20	one month Rent	700.00	#1057	20
21		21				21
22		22		168,132.62		22
23	6/19/93		Cooperative tax 92	300.00	#1188	23
24		24		167,832.62		24
25		25	Building Insurance	25,000.00	#1239	25
26		26				26
27		27		142,832.62		27
28	6	28	Air Condition	15,241.25	8-8-93	28
29		29				29
30		30		127,591.37		30
31	9	31	Florida wedding	10,000.00	#1544	31
32		32		117,591.37		32



M 9 21

1	1	1,000.00				
2	2	7.50				
3	3	5.00				
4	4	5,500.00		Check # 22,396		
5	5	5,000.00		Check # 408		
6	6	15,000.00		Check # 425		
7	7	5,000.00		446		
8	8	5,000.00		460		
9	9	1,500.00		1039		
10	10	8,500.00		1815		
11	11	8,500.00		1881		
12	12	8,500.00		1552		
13	13	5,000.00		557		
14	14	5,000.00		1799		
15	15	6,500.00		619		
16	16	1,500.00		1907		
17	17	1,500.00				
18	18	5,000.00		Check # 9458		
19	19	5,000.00		# 1810		
20	20	5,000.00		Five		
21	21	8,500.00		(Five) Five		
22	22	13,710.00		Five		
23	23					
24	24					
25	25					
26	26					
27	27					
28	28					
29	29					
30	30					
31	31					
32	32					

*Handwritten:* United owes plaza as of 12-31-1993 \$399,295.00  
Paid 399,295.00

*Handwritten:* 12-19-93  
11/4/93  
9-8-93  
9-9-93  
7-8-93  
6-1-93  
5-14-93  
4-20-93  
3-25-93

*Handwritten:* CASH  
CASH  
CASH

*Handwritten:* 1,000  
1,000  
1,000  
1,000  
1,000

*Handwritten:* 11.15.93

*Handwritten:* 1039 81000

united paid out

(3)

1							1	
2						137,591.37	2	
10	3	17	Paint to St. Thomas			2,348.26	#577	3
10	4	17	monarch Heavy Equipment			750.-	579	4
5			transferred money			20,000.00		5
12	8	21	Frank Medina			5,000.00	#618	6
12	7	30	Caribe De-It Center			36.64	#623	7
12	8	27	Tropical Shipping			1,831.73	#629	8
12	9	27	U.I. Bureau of Internal Revenue			731.85	#630	9
12	10	28	Anthony Tavernier floor tile			2,000.00	#831	10
12			Tropical shipping			1,927.75	#825	11
12			U.I. Bureau of Internal Revenue			281.43	#626	12
1	13	4	Anthony Tavernier floor tile			1,000.00	#828	13
2	14	4	American Express			1,836.26	#454	14
15								15
16						175,234.75		16
17			Less for Gross R. tax			1,032.89	#2071	17
18								18
19						174,201.86		19
3	20	15	Marks 21 Industries			25,000.00	668	20
3	21		St. Paul			2,000.00	669	21
3	22		El Riva + white of Associates			218.75	673	22
3	23	7	Cruzan Environmental			381.73	674	23
3	24	7	Superior Block			832.30	675	24
25						197,834.60		25
26			more checks			100.00	2147/2148	26
2	27	22				197,834.60		27
3	28	14				10,000.00	#676	28
29								29
3	30	20				207,834.60		30
31						860.99	#678	31
32			Less Cash			13,800.00		32
						194,034.65		



(4)

United paid out

1											1
2											2
3	5284	prudential Bache									3
4											4
5											5
6		property tax									6
7											7
8											8
9		less /									9
10											10
11											11
12		less /									12
13											13
14											14
15		less for land									15
16											16
17											17
18											18
19											19
20		28 month X 16,000 Int.									20
21		24 month Rent ML-84 to 12-31-85									21
22											22
23											23
24											24
25											25
26											26
27		Scotia Bank									27
28											28
29		owed to YUSUF									29
30											30
31											31
32											32

# EXHIBIT E

YUSF237795

FY 014955

28				
27				
26				
25				
24				
23				
22				
21				
20				
19				
18				
17				
16				
15				
14				
13				
12				
11				
10	3,000.00		Sp/190 Bad room	sat for Alk
9	40,000.00		2/31	Praty for United
8	60,000.00		5/5	Pebers form investm
7	20,000.00		2/17/95	Praty for United
6	350.00		5	Bob
5	1,000.00		5	Refer
4	45,010.00		9/23	Core Sp
3	30,000.00		5/26	Penison
2	400.00		5/28/94	Staur

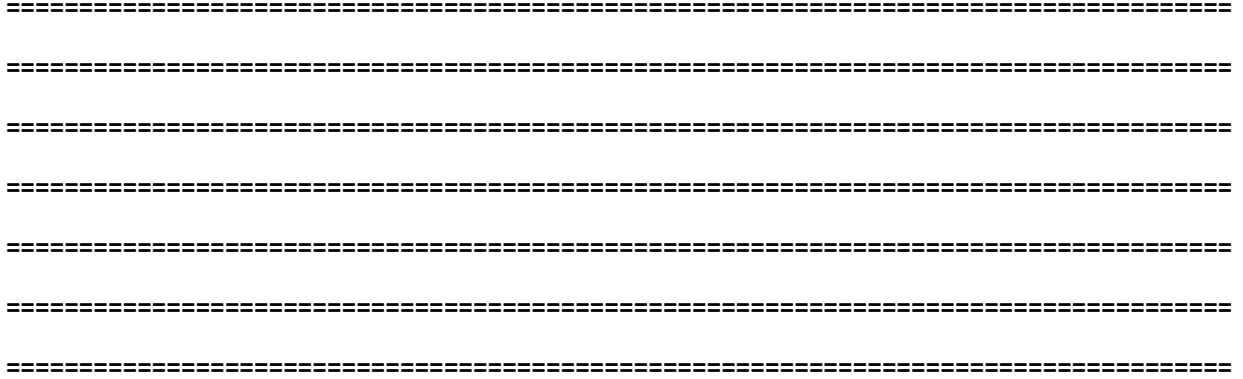
Unit of per  
out for Plaza



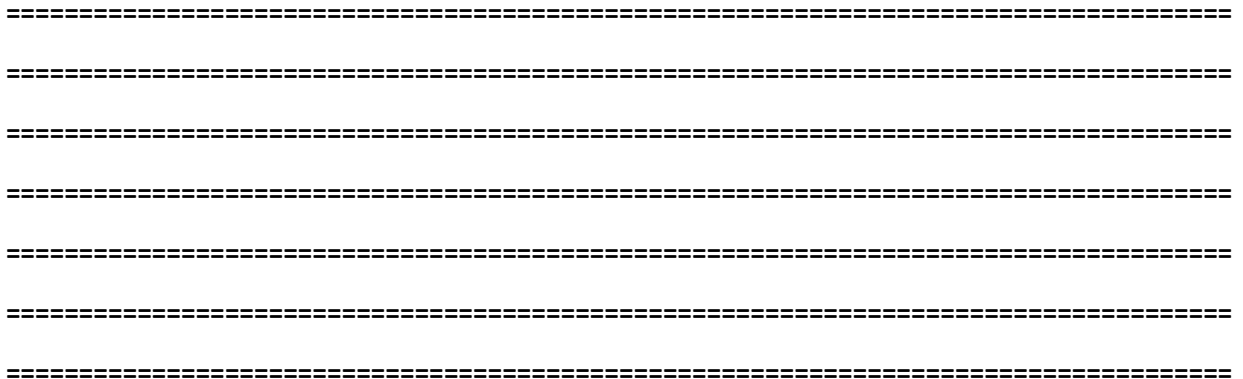
# EXHIBIT G

**Funds Transferred from United's Tenant Account to Plaza Extra - Owed to United**

<b>Year</b>	<b>Month</b>	<b>Amount</b>
1996	Jan	15,900
1996	Jan	30,300
1996	Mar	3,000
1996	Apr	6,000
1996	Apr	5,000
1996	Apr	8,000
1996	May	4,000
1996	May	13,000
1996	May	1,500
1996	May	3,500
1996	May	5,500
1996	June	5,000
1996	June	3,500
1996	June	10,000
1996	June	6,000
1996	June	2,000
1996	July	1,000
1996	July	4,182
1996	July	17,000
1996	Aug.	10,000
1996	Aug	3,500
1996	Aug	4,300
1996	Aug	12,000
1996	Sept	950
1996	Oct	12,000
1996	Dec	1,000
		<b>188,132</b>



# **DIVIDER**



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

**WALEED HAMED**, as the Executor of the  
Estate of MOHAMMAD HAMED,

*Plaintiff/Counterclaim Defendant,*

vs.

**FATHI YUSUF** and **UNITED CORPORATION**

*Defendants and Counterclaimants.*

vs.

**WALEED HAMED, WAHEED HAMED,  
MUFEED HAMED, HISHAM HAMED, and  
PLESSEN ENTERPRISES, INC.,**

*Counterclaim Defendants,*

---

**WALEED HAMED**, as the Executor of the  
Estate of MOHAMMAD HAMED,

*Plaintiff,*

vs.

**UNITED CORPORATION,**

*Defendant.*

---

**WALEED HAMED**, as the Executor of the  
Estate of MOHAMMAD HAMED,

*Plaintiff,*

vs.

**FATHI YUSUF,**

*Defendant.*

---

**Case No.: SX-2012-cv-370**

**ACTION FOR DAMAGES,  
INJUNCTIVE RELIEF AND  
DECLARATORY RELIEF**

JURY TRIAL DEMANDED

Consolidated with

**Case No.: SX-2014-CV-287**

**ACTION FOR DECLARATORY  
JUDGMENT**

JURY TRIAL DEMANDED

Consolidated with

**Case No.: SX-2014-CV-278**

**ACTION FOR DEBT AND  
CONVERSION**

JURY TRIAL DEMANDED

**MOTION AS TO HAMED CLAIM NO. H-9:  
JOHN GAFFNEY'S SALARY, BENEFITS AND BONUS**

Hamed has raised as one of his claims, designated as H-9, whether the Partnership should have had to pay 100% of John Gaffney's salary and benefits from 2012 to 2016. The parties have agreed this would be one of the claims submitted by the Plaintiff on or before January 12, 2018. This motion is being filed to reduce those salary/benefit amounts by 90% and 50% for two specific, stated periods.

Hamed's expert CPA's reviewed the payment of 100% of Mr. Gaffney's salary by the Partnership and stated that under applicable accounting rules, his salary should have been allocated between the Partnership and Yusuf/United. See **Exhibit 1**.

Partnership paid John Gaffney's salary, benefits and bonus from October 2012 to April 24, 2013, despite Mr. Gaffney's under oath testimony that he was an employee of the United Corporation. From April 25, 2013 (the date identified in the Winding Up Order) to present, 100% of his salary and benefits have been charged to the Partnership **with no allocation documented**. (Emphasis added.)

Exhibit 1 is the "Gaffney" portion of the CPA's expert report—which also contains both Mr. Gaffney's responses and the documents supporting Hamed's position. As discussed below, the CPA's state that, first, as to the short period from October 7, 2012 to April 24, 2013, the Partnership's share of his salary should be 10%, and United/Yusuf share 90%. Second, as to the period after that date, they determined that the Partnership's share of his salary should be reduced to 50%, for the reasons noted herein. *Id.*

**I. Facts.** It is uncontested that in his 2013 testimony at the Preliminary Hearing, Mr. Gaffney stated: (1) he is not a Certified Public Accountant (CPA) in the Virgin Islands or elsewhere, (2) he worked for the United Corporation, (3) he began his employment with United on October 7, 2012, and (4) he did not receive a formal engagement letter with job duties. More importantly, at his deposition on April 3, 2014, Mr. Gaffney further testified that when he was hired and during his employment, United had unrelated, 'non-grocery store' operations and financial transactions—and that prior to April 2013, in

addition to working on Partnership matters, he did the accounting for those *totally separate* United operations.

Q. Okay. I guess the question is this: We agree that Plaza Extra Supermarkets sells [groceries] and takes in money, do we not? A. Sells groceries, yes. Q. Yes. Groceries. Takes in money. And that it has expenses, does it not? A. Yes. Q. Distinct and separate from that, United Corporation rents property, does it not? A. (Witness nods head.) Yes, that's one of its functions. Q. . . .do you work on the financials of United Corporation . . . . A. . . .I do. I do see the United books. . . See **Exhibit 2** at pp. 14-15.

Thus, the Court simply cannot order that 100% of his pre-April 24, 2013 salary be paid by the Partnership—under the applicable accounting rules and law, there must be some allocation. Moreover, once the Partnership was split up, he then became the **full-time** comptroller for *United Corporation and New East*—totally separate entities that also had several other operations unrelated to the Partnership. However, despite his being the full-time comptroller and accountant for the New East operation, and several other Yusuf operations, **100% of his salary after April 3, 2014 was charged to the Partnership.**<sup>1</sup> Finally, it is also undisputed that there are no contemporaneous time sheets showing the division of his labor between these entities.

**II. Applicable Law.** When courts award compensation for work done by professionals related to an entity in ongoing legal proceedings, they are not supposed to unilaterally "gift" large blocks of compensation without supporting specifics. Time sheets must be submitted, and, only then, **just actual work done** compensated. This is true not only for lawyers, expert witnesses and paralegals under the lodestar calculation,<sup>2</sup> but also

---

<sup>1</sup> Nothing shows he was also paid a separate, *additional* full salary by United, Plaza Extra-New East or Seaside. For that matter, there is no evidence of any other salary at all.

<sup>2</sup>See, e.g. *Yearwood Enterprises, Inc., d/b/a Paradise Gas v. Antilles Gas Corp.*, No. ST-17-CV-77, 2017 WL 6316625, at \*3 (V.I. Super. Dec. 5, 2017)(emphasis added):

In assessing the reasonableness of the fees and costs sought by Plaintiff, the Court is **guided** by Virgin Islands jurisprudence regarding the reasonableness of the fees requested under 5 V.I.C. § 541.21 Defendant

for other professionals providing services to businesses or other entities, in court actions—such as guardians or accountants:

The Court's own research has uncovered only two cases from the District of Virgin Islands, and no territorial law cases, discussing *compensation rates for guardians*. . . .After initially denying the request due to a lack of supporting documentation, **the court authorized a payment of fees at the rate of \$90 per hour**—the then-rate paid to court-appointed counsel. . . .There are no entries, for example, regarding meetings or discussions with a RBCWM financial analyst as to investment strategies or concerns. Indeed, his time sheet indicates he spent minimal time and effort in the care of said property. As such, compensation via an hourly rate is appropriate in the instant matter as a fee award equal to a percentage of the settlement proceeds on an annual basis would be excessive. (Emphasis added.)

*Booth v. Bowen*, No. CIV. 2006-217, 2012 WL 5845390, at \*4 (D.V.I. Nov. 19, 2012); see also *Hale v. Moore*, 289 S.W.3d 567, 583–84, 2008 WL 53871 (Ky. Ct. App. 2008)(“Third, **upon a showing of proof** a court *may* authorize additional compensation that is “fair and reasonable” for [accounting] services pertaining to realty and taxes. **Here, no proof was offered to the district court regarding calculation of the fee, an itemized bill was not submitted with the billing.** . . .”); and *In Re Campbell*, 59 V.I. 701, 740, 2013 WL 5200473, at \*18 (V.I. Sept. 16, 2013) (“costs of the UPLC's investigation, in an amount this Court shall fix after reviewing an itemized bill of costs”). But Yusuf continues to insist that in spite of all of the obvious, contrary facts—primarily the fact that that Mr. Gaffney was working full time for Plaza Extra-New East and other United entities – 100% of Mr. Gaffney's salary should be paid by the Partnership. First, only the Partnership paid him, so Yusuf got at least half of his time either for free, or close to it. Second, that is not the law—Hamed does not have to take anyone's word about time worked when compensating an accountant. Third, **if the Partnership paid 100%, then it gets 50%**

---

seeks recovery for 50.4 hours at the rate of \$350.00 per hour for shareholders and \$50.00 per hour for an associate, for a total of \$16,630.00. Plaintiff claims that **the application contains time actually and necessarily spent in defending this action.**

**back for the other work he did and Yusuf got for free, no matter how many hours Mr. Gaffney worked for the Partnership.** A salaried employee works whatever time he works for 100% of his pay—there is no "overtime". Yusuf must buy that 50% of his time.

What is critical here is that Yusuf knew that the allocation of Mr. Gaffney's time between the Partnership and separate, United tasks was subject to strong dispute. In multiple documents and discussions with the Master, Yusuf was fully informed of Hamed's clear objections to paying 100% of Mr. Gaffney's salary despite his obvious other Yusuf duties. **The power to keep contemporaneous records<sup>3</sup> was in Yusuf's hands—and he and United elected not to do so—and the burden was on them.** Hamed is not seeking a total denial of payment, only the realization that for some periods there was less Partnership work—and in others it was clearly not 100% of the time. Thus, Hamed agrees to accept the 10% for 2012-2013 and 50% for 2013-on, as stated by his CPA.

**III. Argument.** In Mr. Gaffney's *Preliminary Hearing* testimony, he stated that: (1) he was originally hired by the United Corporation on October 7, 2012 and identified his job as controller to United; and (2) he was hired to develop internal controls for United. In his deposition he further stated that he did the accounting for the separate activities of the United Corporation unrelated to the supermarket stores. See Exhibit 2 at pp.14-15. Subsequent to the stores being allocated between the partners, Mr. Gaffney continued to do accounting work for the United Corporation, as well as for Plaza Extra-New East. Indeed, it is now a famous axiom in this case that Mr. Gaffney repeatedly stated that he was too busy to answer *most* of Hamed's simple, very specific questions regarding the **Partnership accounting**. Because he was doing this work for both the supermarkets and for United's separate operations, Hamed's expert accountants opined:

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<sup>3</sup> This problem cannot be solved by now submitting after-the-fact, made up time sheets -- which is why contemporaneous records are always required.

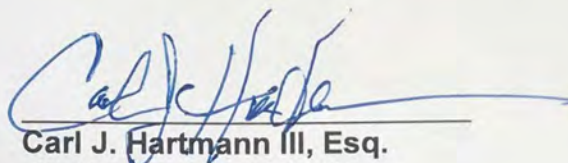


The audit evidence provided was not sufficient to conclude proper allocation of John Gaffney's salary, benefits and bonus based on time spent between the Partnership and United Corporation. As such, we are not able to satisfy ourselves of the following management assertions: 1. Occurrence 2. Accuracy or 3. Classification, as described in AU-C 315.A128.

Accordingly, the expert accountants' report concluded that for 2012-April 24, 2013, the Partnership is owed \$31,111.92: "Given that John Gaffney was hired by the United Corporation in 2012 through April 24, 2013, only 10% of his salary, benefits, and allowances should be allocated to the Partnership." See Exhibit 1. The expert report further allowed 50% for the later periods because Mr. Gaffney continued to work as the controller for the United Corporation during the time period prior to the split of the Partnership and after the split. Thus, for the remaining time period, April 25, 2013 to the present, 50% of his salary, benefits and allowances or \$195,119.70 should be allocated to the Partnership in recognition of his work for the Liquidating Partner. The other 50% should be allocated to the United Corporation and Plaza Extra - New East.

**IV. Conclusion.** Hamed has repeatedly identified this issue as a major point. He has asked numerous times to disallow Mr. Gaffney billing 100% of his salary to the Partnership. He has pointed out that there is no way for him to know, as a partner, what was being done. Thus, from the date this issue was first raised in 2013, Yusuf and Mr. Gaffney could have, and should have, begun keeping contemporaneous time records, as well as records of work for the other Yusuf entities. **They did not do so, and seek to get a full 100% of Mr. Gaffney's time as a reward.** However, the justification for these payments is undocumented, despite it being raised from the outset. For the reasons set forth herein, it is respectfully submitted that \$226,231.62 should be returned to the Partnership or \$113,115.81 to Hamed.

**Dated:** January 19, 2017



**Carl J. Hartmann III, Esq.**

*Co-Counsel for Plaintiff*

5000 Estate Coakley Bay, L6

Christiansted, VI 00820

Email: carl@carlhartmann.com

Tele: (340) 719-8941

**Joel H. Holt, Esq.**

*Counsel for Plaintiff*

Law Offices of Joel H. Holt

2132 Company Street,

Christiansted, VI 00820

Email: holtvi@aol.com

Tele: (340) 773-8709

Fax: (340) 773-867

### CERTIFICATE OF SERVICE

I hereby certify that on this 19th day of December, 2017, I served a copy of the foregoing by email, as agreed by the parties, on:

**Hon. Edgar Ross**

Special Master

% edgarrossjudge@hotmail.com

**Gregory H. Hodges**

**Stefan Herpel**

**Charlotte Perrell**

Law House, 10000 Frederiksberg Gade

P.O. Box 756

St. Thomas, VI 00802

ghodges@dtflaw.com

**Mark W. Eckard**

Hamm, Eckard, LLP

5030 Anchor Way

Christiansted, VI 00820

mark@markeckard.com

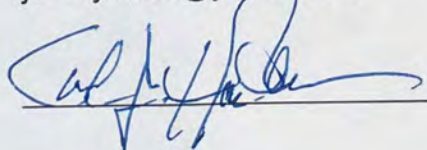
**Jeffrey B. C. Moorhead**

CRT Brow Building

1132 King Street, Suite 3

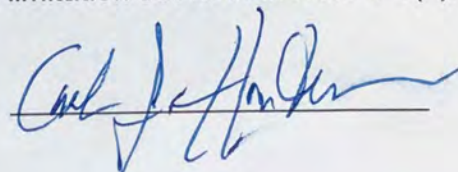
Christiansted, VI 00820

jeffreymlaw@yahoo.com



### CERTIFICATE OF COMPLIANCE WITH RULE 6-1(e)

This document complies with the page or word limitation set forth in Rule 6-1(e).



# EXHIBIT 1

**TO HAMED'S MOTION AS TO HAMED CLAIM NO. H-9:  
JOHN GAFFNEY'S SALARY, BENEFITS AND BONUS**

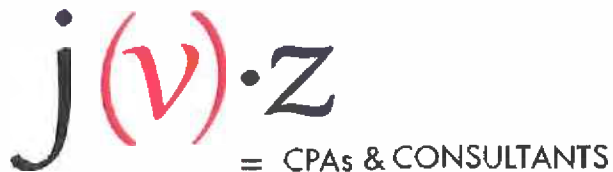
**Engagement Report**  
Joel H. Holt, Esq.  
c/o Plaza Supermarket Partnership and Subsidiaries

EXHIBIT  
1

Exhibit:

B-2

JVZ-000001



5001 Chandler's Wharf  
P.O. Box 24390 GBS  
Christiansted, VI 00824  
T. 340-719-8261  
F. 340-719-2775  
www.jvz-cpa.com

September 28, 2016

Joel H. Holt, Esq.  
2132 Company Street  
Christiansted, VI 00820

Re: Mohammad Hamed, et.al v. Fathi Yusuf and United Corporation

Dear Attorney Holt:

Jackson Vizcaino Zomerfeld, LLP (JVZ or we) is a licensed Certified Public Accountant firm in the U.S. Virgin Islands.

You have retained us to render an expert opinion in the litigation captioned Hamed v. Yusuf et al., docket number Civ. No. SX-12-CV-370. Attached is our analysis of the financial accounting for January 1, 2012 through June 30, 2016 as per Fathi Yusuf.

For the Firm

JACKSON, VIZCAINO ZOMERFELD, LLP

MEMBERS OF:

American Institute of Certified Public Accountants  
Florida Institute of Certified Public Accountants  
National Association of Certified Valuation Analysts  
Texas State board of Public Accountancy  
Virgin Islands Board of Accountancy

The Carribean's full-service accounting firm

JVZ-000002

#### ATTACHMENT IV - Analysis

~~following management assertions: 1. Occurrence 2. Accuracy or 3. Classification, as described in AU-C 315.A128.~~

We concluded these amounts should be returned to the Partnership to conform to the management's assertions.

The total amount of the claim is \$272,571.59.

---

#### **Item 3004a – Checks written to Fathi Yusuf**

##### *Summary Description of Issue Identified:*

Checks written from Partnership to Fathi Yusuf for personal use.

##### *Work performed:*

We requested canceled checks for the Plaza Extra bank accounts. John Gaffney informed us that he does not have all of the canceled checks for each of the Plaza Extra bank accounts. Attorney Joel Holt issued subpoenas to the Bank of Nova Scotia and Banco Popular on May 31, 2016. As of the date of this report, the banks have not responded fully.

##### *Opinion as to the Issue Identified:*

~~The total amount of the claim will be determined after discovery is re-opened and completed.~~

---



#### **Item 3005/426 – John Gaffney's salary, benefits and bonus**

##### *Summary Description of Issue Identified:*

Partnership paid John Gaffney's salary, benefits and bonus from October 2012 to April 24, 2013, despite Mr. Gaffney's under oath testimony that he was an employee of the United Corporation. From April 25, 2013 (the date identified in the Winding Up Order) to present, 100% of his salary and benefits have been charged to the Partnership with no allocation documented.

##### *Work performed:*

We interviewed John Gaffney and the Hameds regarding John Gaffney's employment with the Partnership and United Corporation. We also provided John Gaffney a query dated February 15, 2016 (see Attachment VII) requesting a detailed allocation of his time between the Partnership and Non-Plaza Extra/United Corporation from 2012-2015. In addition, we reviewed the general ledgers from 2012 to present provided by John Gaffney. We were advised by both parties that John was hired by and an employee of the United Corporation, not the Partnership. However, John Gaffney performed bookkeeping services for the Partnership. We noted payments from the Partnership bank accounts to John Gaffney for salary, benefits and bonus. No separate payments for United's sole benefit were located.

##### *Gaffney response:*

## ATTACHMENT IV - Analysis

John Gaffney's response dated May 17, 2016 (see Attachment IX) stated he is paid \$2,000 salary, \$1,000 monthly personal travel and housing allowance, plus reimbursement for direct costs such as flights and hotel costs and shows 0% of his salary devoted to Non-PE Activities. John Gaffney provided the general ledgers and summary payroll registers.

### *Opinion as to the Issue Identified:*

The audit evidence provided was not sufficient to conclude proper allocation of John Gaffney's salary, benefits and bonus based on time spent between the Partnership and United Corporation. As such, we are not able to satisfy ourselves of the following management assertions: 1. Occurrence 2. Accuracy or 3. Classification, as described in AU-C 315.A128.

Salary, benefits and bonus paid to and on behalf of John Gaffney was: \$34,568.80 (2012 – April 24, 2013), \$82,315.84 (April 25, - December 31, 2013), \$122,182.50 (2014), \$125,529.05 (2015), \$60,212 (through June 2016).

Exhibit 3005-a contains a summary of the accounting (extracted from general ledger provided by John Gaffney) of the payments posted to John Gaffney for salary, benefits and bonus.

Given that John Gaffney was hired by the United Corporation in 2012 through April 24, 2013, only 10% of his salary, benefits, and allowances should be allocated to the Partnership. From April 25, 2013 to the present, 50% of his salary, benefits and allowances should be allocated to the Partnership in recognition of his work for the Liquidating Partner and his work for Plaza Extra – New East.

The total amount of the claim is \$226,231.62.

### ~~Item 3006 – Partnership funds used to pay Fathi Yusuf's personal legal fees~~

#### *Summary Description of Issue Identified:*

In 2012 and 2013, Fathi Yusuf used funds from the Partnership to pay for his personal legal fees. These expenditures were solely for the benefit of Mr. Yusuf and did not benefit the Partnership.

#### *Work performed:*

We interviewed John Gaffney and the Hameds regarding payments to certain attorneys, lawyers and professional in 2012 and 2013. We also provided John Gaffney a query dated February 15, 2016 (see Attachment VII) requesting an explanation as to why these payments were paid by the Partnership.

JVZ reviewed 7 checks that were written on Plaza Extra partnership bank accounts for payment of Fathi Yusuf's personal legal fees. We traced these 7 checks to the Partnership's bank statements to ensure checks cleared the bank account.

#### *Gaffney's response:*

John Gaffney's response dated May 17, 2016 (see Attachment IX) stated he is not in the position to ~~dispute whether the funds (used to pay Fathi Yusuf's lawyers) should be recovered by the Partnership.~~

**Attachment IX - John Gaffney's response letter  
to Joel Holt and supporting documentation 5.17.16**

**Excerpt From  
JVZ Engagement Report  
September 28, 2016**



**List of documents provided:** N/A

WAPA statements dated 3/05/15 for East, West and STT

## Item No. 3005

**Description:** From October 2, 2012-present, John Gaffney was hired by the United Corporation as its Controller. (See 1/25/13 transcript from the TRO hearing, p. 65 in *Hamed v Yusuf*, SX-12-CV-370)

**General Ledger-Store, Date, Entry No. & Description [as an example] (if applicable):** None

**Question/Request for Info:**

By year, please allocate the percentage of your time you devoted to non-PE activities.

Please provide back-up documentation for the following (10/2/12-present):

- Your salary & benefits by year
- Your bonuses by year
- Your allowances by year

**Response:**

See objection to Item No. 3002. Without waiving that objection, I was hired in October 2012. The terms included a \$2,000 weekly salary plus \$1,000 monthly for personal travel and housing plus reimbursement of any other direct business costs such as hotels, business flights, etc.

Company practices are that 2 weeks paid vacation is paid each year at the end of December. However, no pay is received when vacations are taken which explains the occasional gaps in my weekly salary. Bonuses are discretionary.

**List of documents provided:**

Included herein is a narrative which includes a recap of my wages and allowances for each year since 2012 plus details of my typical work week.

2012, 2013, 2014 and 2015 Summary Payroll Registers.

2012, 2013, 2014 and 2015 General Ledger detail of monthly allowances and reimbursements of direct business expenses.

**JOHN GAFFNEY  
WAGES, BONUSES, AND ALLOWANCES**

<u>Year</u>	<u>Wages</u>	<u>Bonus</u>	<u>Travel &amp; Housing</u>	<u>Non-PE Activities *</u>
2012	19,600.00	-	3,000.00	0%
2013	101,764.74	-	12,000.00	0%
2014	102,000.00	-	12,000.00	0%
2015	100,184.62	3,000.00	12,000.00	0%
2016	Thru Mar 24,000.00	-	3,000.00	0%

\* My work week begins on Mondays and ends on Sunday. A regular work day begins at 8:30am and ends at 10:30pm. On Friday, I usually leave at 7:30pm. Saturday & Sunday hours vary, but I normally work at least 6 hours and often 8 or more hours. Subtracting 2 hours daily for meals, my typical work week is 70 hours. Every 2 months I travel to Florida for a long weekend (Friday through Monday). On occasion, I travel away for longer periods during which I don't get paid which explains why my salary falls short of \$104,000 annually. Throughout my entire employment with United Corporation dba Plaza Extra and Plaza Extra Partnership, I easily spend over 60 plus hours weekly on PE business. My purpose is and has always been to install, train and maintain the integrity of accounting for Plaza Extra which until the split accounted for 99% of all the revenue generated annually. For 6 months after the split, my hours increased due to the burden of partnership accounting and I often left the building after midnight. Currently, I continue cleaning up backlogged areas created by the persistent and continual need to handle more document flows than a single person can do. On any day, I handle matters related to the partnership period. Just today (04/05/16), I received two notices from VIBIR stating we owe \$761.58 and \$356.64 related to GRT for Feb 2015 and Mar 2015, respectively. This is partnership business.

Attachment IX - John Gaffney's response letter to Joel Holt and supporting documentation 5.17.16

GOVERNMENT OF THE U.S. VIRGIN ISLANDS  
BUREAU OF INTERNAL REVENUE

6115 EST. SMITH BAY- SUITE 225  
ST. THOMAS, VI 00802  
(340) 715-1040  
(340) 774-2672 - FAX

4008 ESTATE DIAMOND - PLOT 7-B  
CHRISTIANSTED, VI 00820 4421  
(340) 773-1040  
(340) 773-1006 - FAX

3/29/16

UNITED CORPORATION  
PO BOX 763  
CHRISTIANSTED VI 00821-0000

SSN/EIN: xxxxxx1237  
SPOUSE SSN/EIN:  
TAX FORM: 720VI/720VI  
TAX PERIOD: 2/28/2015  
DLN: 20154000166  
ASSESSMENT DATE: 3/29/2016

REMINDER

According to our records, you haven't paid all you owe for the tax period above. To avoid additional penalty and interest, please pay the full amount you owe within ten days from the date of this notice. We can file a Notice of Federal Tax Lien if your balance owed is not paid within 10 days from the date of this notice.

Please make your check or money order payable to the Virgin Islands Bureau of Internal Revenue. Write your social security number or employer identification number on your payment. Please enclose a copy of this notice so we can promptly credit your account.

If you have already paid your balance in full or arranged for an installment agreement, please disregard this notice.

SINCERELY,

YVONNE NISBETT  
CHIEF, DELINQUENT ACCOUNTS BRANCH

ACCOUNT SUMMARY AS OF 3/29/2016

TAX:	112,667.18
PLUS PENALTIES	
FAILURE TO PAY	138.97
FAILURE TO FILE	.00
BAD CHECK PENALTY	.00
LIEN FEE	.00
PLUS INTEREST:	66.71
MINUS CREDITS:	112,111.28-
BALANCE DUE:	761.58

REC'D  
4/5/16

Attachment IX - John Gaffney's response letter to Joel Holt and supporting documentation 5.17.16

GOVERNMENT OF THE U.S. VIRGIN ISLANDS  
BUREAU OF INTERNAL REVENUE

6115 EST. SMITH BAY- SUITE 225  
ST. THOMAS, VI 00802  
(340) 715-1040  
(340) 774-2672 - FAX

4008 ESTATE DIAMOND - PLOT 7-B  
CHRISTIANSTED, VI 00820 4421  
(340) 773-1040  
(340) 773-1006 - FAX

3/29/16

UNITED CORPORATION  
PO BOX 763  
CHRISTIANSTED VI 00821-0000

SSN/EIN: xxxxxx1237  
SPOUSE SSN/EIN:  
TAX FORM: 720VI/720VI  
TAX PERIOD: 3/31/2015  
DLN: 20154000266  
ASSESSMENT DATE: 3/29/2016

REMINDER

According to our records, you haven't paid all you owe for the tax period above. To avoid additional penalty and interest, please pay the full amount you owe within ten days from the date of this notice. We can file a Notice of Federal Tax Lien if your balance owed is not paid within 10 days from the date of this notice.

Please make your check or money order payable to the Virgin Islands Bureau of Internal Revenue. Write your social security number or employer identification number on your payment. Please enclose a copy of this notice so we can promptly credit your account.

If you have already paid your balance in full or arranged for an installment agreement, please disregard this notice.

SINCERELY,

YVONNE NISBETT  
CHIEF, DELINQUENT ACCOUNTS BRANCH

ACCOUNT SUMMARY AS OF 3/29/2016

TAX:	120,404.87
PLUS PENALTIES	
FAILURE TO PAY	65.56
FAILURE TO FILE	.00
BAD CHECK PENALTY	.00
LIEN FEE	.00
PLUS INTEREST:	28.85
MINUS CREDITS:	120,142.64-
BALANCE DUE:	356.64

Rec'd  
4/5/16

x 2012 United Corp Plaza West PR

Payroll Register

For the Period From Oct 1, 2012 to Dec 31, 2012

Filter Criteria includes: 1) Employee IDs from to ; 2) Employee Names from JOHN F. GAFFNEY to JOHN F. GAFFNEY Report order is by Check Date. Report is printed in Show Totals Only Format

Employee ID Employee Masked SS No	Pay Type	Pay Hrs	Pay Amt	Amount	Gross Medicallns Garnishment AFLAC Medicare_ER	Fed_Income EmplLoan MASA PRETXAFLAC FUTA_ER	Soc_Sec ChildCare CashDrawer PRETYCIGNA SUI_ER	Medicare HigherEd EmpShort Soc_Sec_ER
Summary Total 10/1/12 thru 12/31/12	Salary	440.00	19,600.00	15,068.63	19,600.00	-3,423.97	-823.20	-284.20
					-284.20	-42.00	-1.00	-1,215.20
Report Date Final Total 10/1/12 thru 12/31/12	Salary	440.00	19,600.00	15,068.63	19,600.00	-3,423.97	-823.20	-284.20
					-284.20	-42.00	-1.00	-1,215.20

x 2012 United Corp Plaza West AP

Vendor Ledgers

For the Period From Oct 1, 2012 to Dec 31, 2012

Filter Criteria includes: 1) IDs. JOHN. Report order is by ID.

Vendor ID Vendor	Date	Trans No	Type	Paid	Debit Amt	Credit Amt	Balance
JOHN	10/9/12	0001001	PJ	*		2,156.75	2,156.75
JOHN GAFFNEY	10/10/12	3897	CDJ		2,156.75		0.00
	10/28/12	1368 Office MAX	PJ	*		869.86	869.86
	10/31/12	4060	CDJ		869.86		0.00
	12/12/12	0001002	PJ	*		1,459.00	1,459.00
	12/12/12	4377	CDJ		1,459.00		0.00
Report Total					4,485.61	4,485.61	0.00

TRAVEL/HOUSING 3,000.00  
 LATERAL FILE CABINET 869.86  
 PRINTER, MONITOR, ETC 615.75  
4,485.61

**X 2013 United Corp Plaza West  
Payroll Register**

**For the Period From Jan 1, 2013 to Dec 31, 2013**

Filter Criteria includes: 1) Employee Names from JOHN F. GAFFNEY to JOHN F. GAFFNEY. Report order is by Check Date. Report is printed in Show Totals Only Format.

Employee ID Employee Masked SS No	Pay Type	Pay Hr	Pay Amt	Amount	Gross Emp_Loan MASA	Fed_Income Medical_Ins AFLAC	Soc_Sec Garnishment PreTx_AFLA	MEDICARE Emp_Short PreTx_CIGN
Summary Total 1/1/13 thru 3/31/13	Salary	480.00	24,000.00	17,889.84	24,000.00	-4,274.16	-1,488.00	-348.00
Summary Total 4/1/13 thru 6/30/13	Salary	520.00	26,000.00	19,380.66	-1,488.00	-348.00	-42.00	-78.80
Summary Total 7/1/13 thru 9/30/13	Salary	480.00	24,000.00	17,385.84	26,000.00	-4,630.34	-1,612.00	-377.00
Summary Total 10/1/13 thru 12/31/13	Salary Vacation	360.00 1.00	24,000.00 3,764.74	20,631.58	-1,612.00	-377.00	-1,721.41	-402.59
Report Date Final Total 1/1/13 thru 12/31/13	Salary Vacation	1,840.0 1.00	98,000.00 3,764.74	75,287.92	27,764.74	-5,009.16	-6,309.41	-1,475.59
					-1,721.41	-402.59	-42.00	-78.80

**x 2013 United Corp Plaza West  
Vendor Ledgers**

**For the Period From Jan 1, 2013 to Dec 31, 2013**

Filter Criteria includes: 1) IDs: JOHN. Report order is by ID.

Vendor ID Vendor	Date	Trans No	Type	Paid	Debit Amt	Credit Amt	Balance
JOHN	1/1/13	0001003	PJ	*		1,000.00	1,000.00
JOHN GAFFNEY	1/21/13	4841	CDJ		1,000.00		0.00
	2/1/13	1004	PJ	*		1,000.00	1,000.00
	2/21/13	4887	CDJ		1,000.00		0.00
	3/1/13	001005	PJ	*		1,000.00	1,000.00
	3/25/13	5132	CDJ		1,000.00		0.00
	4/1/13	0001006	PJ	*		1,000.00	1,000.00
	5/1/13	0001007	PJ	*		1,000.00	2,000.00
	5/7/13	5457	CDJ		2,000.00		0.00
	6/1/13	0001008	PJ	*		1,000.00	1,000.00
	6/6/13	5683	CDJ		1,000.00		0.00
	6/27/13	2288554	PJ	*		300.00	300.00
	7/1/13	0001009	PJ	*		1,000.00	1,300.00
	7/17/13	5903	CDJ		300.00		1,000.00
	7/19/13	5947	CDJ		1,000.00		0.00
	8/5/13	1010	PJ	*		1,000.00	1,000.00
	8/5/13	6070	CDJ		1,000.00		0.00
	8/7/13	200000621642	PJ	*		1,214.10	1,214.10
	8/7/13	200000621642	PJ	*	1,214.10		0.00
	9/1/13	0001011	PJ	*		1,000.00	1,000.00
	9/27/13	6495	CDJ		1,000.00		0.00
	10/1/13	0001012	PJ	*		1,000.00	1,000.00
	11/1/13	001013	PJ	*		1,000.00	2,000.00
	11/4/13	6753	CDJ		1,000.00		1,000.00
	11/22/13	6949	CDJ		1,000.00		0.00
	12/1/13	0001014	PJ	*		1,000.00	1,000.00
	12/2/13	2279	PJ	*		117.69	1,117.69
	12/2/13	1454	PJ	*		117.69	1,235.38
	12/4/13	7031	CDJ		1,235.38		0.00
	12/29/13	001014A	PJ	*		556.50	556.50
<b>Report Total</b>					<b>13,749.48</b>	<b>14,305.98</b>	<b>556.50</b>

INTUIT  
SOFTWARE

TRAVEL/HOUSING 12,000.00  
 REIMB SOFTWARE 1,214.10  
 HOTEL/AIRLINE 535.38  
13,749.48



**x 2014 United Corp Plaza West  
Payroll Register**

**For the Period From Jan 1, 2014 to Dec 31, 2014**

Filter Criteria includes: 1) Employee Names from JOHN F. GAFFNEY to JOHN F. GAFFNEY. Report order is by Check Date. Report is printed in Show Totals Only Format.

Employee ID Employee Masked SS No	Pay Type	Pay Hr	Pay Amt	Amount	Gross Emp_Loan MASA Soc_Sec_C	Fed_Income Medical_Ins AFLAC Medicare_C	Soc_Sec Garnishment PreTx_AFLA Fed_Unemp	MEDICARE Emp_Short PreTx_CIGN St_Unemp_C
Summary Total 1/1/14 thru 3/31/14	Salary		24,000.00	17,419.44	24,000.00	-4,744.56	-1,488.00	-348.00
Summary Total 4/1/14 thru 6/30/14	Salary		24,000.00	17,419.44	-1,488.00	-348.00	-42.00	-337.50
Summary Total 7/1/14 thru 9/30/14	Salary		24,000.00	17,419.44	-1,488.00	-348.00	-1,488.00	-348.00
Summary Total 10/1/14 thru 12/31/14	Salary Bonus Vacation		26,000.00 4,000.00	21,774.30	30,000.00 -1,860.00	-5,930.70 -435.00	-1,860.00	-435.00
Report Date Final Total 1/1/14 thru 12/31/14	Salary Bonus Vacation		98,000.00 4,000.00	74,032.62	102,000.00 -6,324.00	-20,164.38 -1,479.00	-6,324.00 -42.00	-1,479.00 -337.50

**United Corporation West (Pship)  
Vendor Ledgers**

**For the Period From Jan 1, 2014 to Dec 31, 2014**

Filter Criteria includes: 1) IDs: JOHN. Report order is by ID.

Vendor ID Vendor	Date	Trans No	Type	Paid	Debit Amt	Credit Amt	Balance
JOHN	1/1/14	Balance Fwd					556.50
JOHN GAFFNEY	1/1/14	0001015	PJ	*		1,000.00	1,556.50
	1/2/14	7188	CDJ		1,556.50		0.00
	2/1/14	0001016	PJ	*		1,000.00	1,000.00
	2/11/14	7416	CDJ		1,000.00		0.00
	3/1/14	0001017	PJ	*		1,000.00	1,000.00
	3/10/14	7552	CDJ		1,000.00		0.00
	4/1/14	0001018	PJ	*		1,000.00	1,000.00
	4/2/14	7675	CDJ		1,000.00		0.00
	5/1/14	0001019	PJ	*		1,000.00	1,000.00
	5/9/14	7895	CDJ		1,000.00		0.00
	6/1/14	0001020	PJ	*		1,000.00	1,000.00
	6/5/14	8032	CDJ		1,000.00		0.00
	7/1/14	0001021	PJ	*		1,000.00	1,000.00
	7/8/14	8175	CDJ		1,000.00		0.00
	7/31/14	20140713	PJ	*		437.00	437.00
	8/1/14	0001022	PJ	*		1,000.00	1,437.00
	8/1/14	8410	CDJ		1,000.00		437.00
	8/4/14	8414	CDJ		437.00		0.00
	8/28/14	VIESA PAYME	PJ	*		235.55	235.55
	8/28/14	8566	CDJ		235.55		0.00
	9/1/14	0001023	PJ	*		1,000.00	1,000.00
	9/2/14	8576	CDJ		1,000.00		0.00
	10/1/14	0001024	PJ	*		1,000.00	1,000.00
	10/1/14	1368013867	PJ	*		148.78	1,148.78
	10/6/14	8797	CDJ		1,148.78		0.00
	11/1/14	0001025	PJ	*		1,000.00	1,000.00
	11/3/14	8932	CDJ		1,000.00		0.00
	12/1/14	0001026	PJ	*		1,000.00	1,000.00
	12/9/14	9204	CDJ		1,000.00		0.00
	12/31/14	001026A	PJ	*		351.33	351.33
<b>Report Total</b>					<b>13,377.83</b>	<b>13,172.66</b>	<b>351.33</b>

TRAVEL/HOUSING 1200000  
HOTELS/AIRLINES 1,377.83  
13,377.83

**United Corporation West (Pship)  
Payroll Register**

**For the Period From Jan 1, 2015 to Dec 31, 2015**

Filter Criteria includes: 1) Employee Names from JOHN F. GAFFNEY to JOHN F. GAFFNEY. Report order is by Check Date. Report is printed in Show Totals Only Format.

Employee ID Employee Masked SS No	Pay Type	Pay Hr	Pay Amt	Amount	Gross Emp_Loan MASA	Fed_Income Medical_Ins AFLAC	Soc_Sec Garnishment PreTx_AFLA	MEDICARE Emp_Short PreTx_CIGN
	Salary	80.00	18,400.00	14,531.44	18,400.00	-2,460.96	-1,140.80	-266.80
					-1,140.80	-266.80	-42.00	-276.00
<b>Summary Total</b> 1/1/15 thru 3/31/15					18,400.00	-2,460.96	-1,140.80	-266.80
	Salary	80.00	18,400.00	14,531.44	-1,140.80	-266.80	-42.00	-276.00
<b>Report Date Final Total</b> 1/1/15 thru 12/31/15					18,400.00	-2,460.96	-1,140.80	-266.80
					-1,140.80	-266.80	-42.00	-276.00

**United Corporation dba Plaza East  
Payroll Register**

**For the Period From Jan 1, 2015 to Dec 31, 2015**

Filter Criteria includes: 1) Employee Names from JOHN F. GAFFNEY to JOHN F. GAFFNEY. Report order is by Check Date. Report is printed in Show Totals Only Format.

Employee ID Employee Masked SS No	Pay Type	Pay Hr	Pay Amt	Amount	Gross Emp_Loan MASA Soc_Sec_C	Fed_Income Medical_Ins AFLAC Medicare_C	Soc_Sec Garnishment PreTx_AFLA Fed_Unemp	MEDICARE Emp_Short PreTx_CIGN St_Unemp_C
Summary Total 1/1/15 thru 3/31/15	Salary		4,000.00	3,147.12	4,000.00	-546.88	-248.00	-58.00
Summary Total 4/1/15 thru 6/30/15	Salary		26,000.00	22,422.68	-248.00	-58.00	-24.00	-60.00
Summary Total 7/1/15 thru 9/30/15	Salary		26,000.00	23,012.60	26,000.00	-1,588.32	-1,612.00	-377.00
Summary Total 10/1/15 thru 12/31/15	Salary Vacation		22,000.00 3,784.62	22,440.92	-1,612.00	-377.00	-18.00	-283.50
Report Date Final Total 1/1/15 thru 12/31/15	Salary Vacation		78,000.00 3,784.62	71,023.32	25,784.62	-1,371.17	-1,598.65	-373.88
					-1,598.65	-373.88		
					81,784.62	-4,504.77	-5,070.65	-1,185.88
					-5,070.65	-1,185.88	-42.00	-343.50

**United Corporation West (Pship)  
Vendor Ledgers**

**For the Period From Jan 1, 2015 to Dec 31, 2015**

Filter Criteria includes: 1) IDs; JOHN. Report order is by ID.

Vendor ID Vendor	Date	Trans No	Type	Paid	Debit Amt	Credit Amt	Balance
JOHN	1/1/15	Balance Fwd					351.33
JOHN GAFFNEY	1/1/15	0001027	PJ	*		1,000.00	1,351.33
	1/21/15	102914-1285-2	PJ	*		5.75	1,357.08
	1/21/15	3155	PJ	*		20.00	1,377.08
	1/21/15	9499	CDJ		1,377.08		0.00
	1/29/15	42846360820-	PJ	*		17.25	17.25
	2/1/15	001028	PJ	*		1,150.00	1,167.25
	2/3/15	9594	CDJ		17.25		1,150.00
	2/9/15	9616	CDJ		1,150.00		0.00
	3/1/15	0001029	PJ	*		1,000.00	1,000.00
	3/2/15	9816	CDJ		1,000.00		0.00
<b>Report Total</b>					<b>3,544.33</b>	<b>3,193.00</b>	<b>0.00</b>

TRAVEL/HOUSING 3,000.00  
HOTEL/AIR REIMB 544.33  
3,544.33

**United Corporation dba Plaza East  
Vendor Ledgers**

**For the Period From Jan 1, 2015 to Dec 31, 2015**

Filter Criteria includes: 1) IDs: JOHN. Report order is by ID.

Vendor ID Vendor	Date	Trans No	Type	Paid	Debit Amt	Credit Amt	Balance
JOHN	4/1/15	0001030	PJ	*		1,000.00	1,000.00
JOHN GAFFNEY	4/13/15	1137	CDJ		1,000.00		0.00
	5/1/15	03/14-04/16/15	PJ	*		143.77	143.77
	5/1/15	1293	CDJ		143.77		0.00
	5/1/15	0001031	PJ	*		1,000.00	1,000.00
	5/18/15	1417	CDJ		1,000.00		0.00
	6/1/15	0001032	PJ	*		1,000.00	1,000.00
	6/9/15	1532	CDJ		1,000.00		0.00
	7/1/15	0001033	PJ	*		1,000.00	1,000.00
	7/2/15	1765	CDJ		1,000.00		0.00
	7/29/15	1922	CDJ		1,000.00		-1,000.00
	8/1/15	0001034	PJ	*		1,000.00	0.00
	8/27/15	2171	CDJ		1,000.00		-1,000.00
	9/1/15	0001035	PJ	*		1,000.00	0.00
	10/1/15	1036	PJ	*		1,000.00	1,000.00
	10/5/15	2456	CDJ		1,000.00		0.00
	11/1/15	0001037	PJ	*		1,000.00	1,000.00
	11/9/15	2694	CDJ		1,000.00		0.00
	12/1/15	0001038	PJ	*		1,000.00	1,000.00
	12/2/15	2848	CDJ		1,000.00		0.00
<b>Report Total</b>					<b>9,143.77</b>	<b>9,143.77</b>	<b>0.00</b>

TRAVEL/HOUSING 9,000.00  
 EXP REIMB 143.77  
9,143.77

Attachment IX - John Gaffney's response letter to Joel Holt and supporting documentation 5.17.16

General Journal Entry

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**Journal Entry**

Date: 12/27/16  Reverse Transaction

Reference: 280

Gl. Account	Description	Debit	Credit	Job
60000	JOHN GAFFNEY (ROSS APPROVED BONUS)	3,000.00		
Accounting Fees		Account will be increased		
10600	JOHN GAFFNEY (ROSS APPROVED BONUS)		3,000.00	
Cash - Bank Claims 9091		Account will be decreased		
Totals:		3,000.00	3,000.00	
Out of Balance:		0.00		

**United Corporation dba Plaza East  
Payroll Register**

**For the Period From Jan 1, 2016 to Mar 31, 2016**

Filter Criteria includes: 1) Employee Names from JOHN F. GAFFNEY. Report order is by Check Date. Report is printed in Show Totals Only Format.

Employee ID Employee Masked SS No	Pay Type	Pay Hr	Pay Amt	Amount	Gross Emp_Loan MASA	Fed_Income Medical_Ins AFLAC	Soc_Sec Medicare_C	Garnishment PreTx_AFLA Fed_Unemp	MEDICARE Emp_Short PreTx_CIGN St_Unemp_C
Summary Total 1/1/16 thru 3/31/16	Salary		24,000.00	17,775.83	24,000.00	-4,388.17	-1,488.00	-348.00	-348.00
Report Date Final Total 1/1/16 thru 3/31/16	Salary		24,000.00	17,775.83	24,000.00	-4,388.17	-1,488.00	-348.00	-348.00
					-1,488.00	-348.00	-42.00	-42.00	-345.00
					-1,488.00	-348.00	-42.00	-42.00	-345.00



**United Corporation dba Plaza East  
Vendor Ledgers  
For the Period From Jan 1, 2016 to Mar 31, 2016**

Filter Criteria includes: 1) IDs: JOHN. Report order is by ID.

Vendor ID Vendor	Date	Trans No	Type	Paid	Debit Amt	Credit Amt	Balance
JOHN	1/1/16	0001039	PJ	*		1,000.00	1,000.00
JOHN GAFFNEY	1/6/16	3056	CDJ		1,000.00		0.00
	2/1/16	0001040	PJ	*		1,000.00	1,000.00
	2/4/16	3292	CDJ		1,000.00		0.00
	3/1/16	0001041	PJ	*		1,000.00	1,000.00
	3/2/16	3508	CDJ		1,000.00		0.00
<b>Report Total</b>					<b>3,000.00</b>	<b>3,000.00</b>	<b>0.00</b>

**Exhibits for  
claim**

**3005/426**

# Expert report of Jackson, Vizcaino Zomerfeld, LLP re Hamed v. Yusuf et.al

## Exhibit 3005/426-a

Salary, benefits and bonus paid to and on behalf of John Gaffney  
2012- April 24, 2013

Account ID	Account Description	Date	Reference	Jrnl	Trans Description	Debit Amt	Credit Amt	Balance	Store	Year
69200	Wages - Managers	1/9/2013	DD-20101	PRJ	JOHN F. GAFFNEY	2,000			West	2013 VZ-2/9/16
67200	Taxes - Empr FICA & Medicare	1/9/2013	DD-20101	PRJ	JOHN F. GAFFNEY	124			West	2013
67200	Taxes - Empr FICA & Medicare	1/9/2013	DD-20101	PRJ	JOHN F. GAFFNEY	29			West	2013
67400	Taxes - Empr FUTA Expense	1/9/2013	DD-20101	PRJ	JOHN F. GAFFNEY	12			West	2013
67500	Taxes - Empr VI Unemp	1/9/2013	DD-20101	PRJ	JOHN F. GAFFNEY	10			West	2013
69200	Wages - Managers	1/16/2013	DD-20233	PRJ	JOHN F. GAFFNEY	2,000			West	2013 VZ-2/9/16
67200	Taxes - Empr FICA & Medicare	1/16/2013	DD-20233	PRJ	JOHN F. GAFFNEY	124			West	2013
67200	Taxes - Empr FICA & Medicare	1/16/2013	DD-20233	PRJ	JOHN F. GAFFNEY	29			West	2013
67400	Taxes - Empr FUTA Expense	1/16/2013	DD-20233	PRJ	JOHN F. GAFFNEY	12			West	2013
67500	Taxes - Empr VI Unemp	1/16/2013	DD-20233	PRJ	JOHN F. GAFFNEY	10			West	2013
69200	Wages - Managers	1/23/2013	DD-20365	PRJ	JOHN F. GAFFNEY	2,000			West	2013 VZ-2/9/16
67200	Taxes - Empr FICA & Medicare	1/23/2013	DD-20365	PRJ	JOHN F. GAFFNEY	29			West	2013
67200	Taxes - Empr FICA & Medicare	1/23/2013	DD-20365	PRJ	JOHN F. GAFFNEY	124			West	2013
67400	Taxes - Empr FUTA Expense	1/23/2013	DD-20365	PRJ	JOHN F. GAFFNEY	12			West	2013
67500	Taxes - Empr VI Unemp	1/23/2013	DD-20365	PRJ	JOHN F. GAFFNEY	6			West	2013
69200	Wages - Managers	1/30/2013	DD-20495	PRJ	JOHN F. GAFFNEY	2,000			West	2013 VZ-2/9/16
67200	Taxes - Empr FICA & Medicare	1/30/2013	DD-20495	PRJ	JOHN F. GAFFNEY	29			West	2013
67200	Taxes - Empr FICA & Medicare	1/30/2013	DD-20495	PRJ	JOHN F. GAFFNEY	124			West	2013
67400	Taxes - Empr FUTA Expense	1/30/2013	DD-20495	PRJ	JOHN F. GAFFNEY	6			West	2013
67500	Taxes - Empr VI Unemp	1/30/2013	DD-20495	PRJ	JOHN F. GAFFNEY	6			West	2013
69200	Wages - Managers	2/6/2013	DD-20630	PRJ	JOHN F. GAFFNEY	2,000			West	2013 VZ-2/9/16
67200	Taxes - Empr FICA & Medicare	2/6/2013	DD-20630	PRJ	JOHN F. GAFFNEY	29			West	2013
67200	Taxes - Empr FICA & Medicare	2/6/2013	DD-20630	PRJ	JOHN F. GAFFNEY	124			West	2013
67500	Taxes - Empr VI Unemp	2/6/2013	DD-20630	PRJ	JOHN F. GAFFNEY	6			West	2013
69200	Wages - Managers	2/13/2013	DD-20766	PRJ	JOHN F. GAFFNEY	2,000			West	2013 VZ-2/9/16
67200	Taxes - Empr FICA & Medicare	2/13/2013	DD-20766	PRJ	JOHN F. GAFFNEY	124			West	2013
67200	Taxes - Empr FICA & Medicare	2/13/2013	DD-20766	PRJ	JOHN F. GAFFNEY	29			West	2013
67500	Taxes - Empr VI Unemp	2/13/2013	DD-20766	PRJ	JOHN F. GAFFNEY	6			West	2013
69200	Wages - Managers	2/20/2013	DD-20896	PRJ	JOHN F. GAFFNEY	2,000			West	2013 VZ-2/9/16
67200	Taxes - Empr FICA & Medicare	2/20/2013	DD-20896	PRJ	JOHN F. GAFFNEY	124			West	2013
67200	Taxes - Empr FICA & Medicare	2/20/2013	DD-20896	PRJ	JOHN F. GAFFNEY	29			West	2013
67500	Taxes - Empr VI Unemp	2/20/2013	DD-20896	PRJ	JOHN F. GAFFNEY	6			West	2013
69200	Wages - Managers	2/27/2013	DD-21032	PRJ	JOHN F. GAFFNEY	2,000			West	2013 VZ-2/9/16
67200	Taxes - Empr FICA & Medicare	2/27/2013	DD-21032	PRJ	JOHN F. GAFFNEY	29			West	2013
67200	Taxes - Empr FICA & Medicare	2/27/2013	DD-21032	PRJ	JOHN F. GAFFNEY	124			West	2013
67500	Taxes - Empr VI Unemp	2/27/2013	DD-21032	PRJ	JOHN F. GAFFNEY	6			West	2013
69200	Wages - Managers	3/4/2013	DD-21164	PRJ	JOHN F. GAFFNEY	2,000			West	2013 VZ-2/9/16
67200	Taxes - Empr FICA & Medicare	3/4/2013	DD-21164	PRJ	JOHN F. GAFFNEY	124			West	2013
67200	Taxes - Empr FICA & Medicare	3/4/2013	DD-21164	PRJ	JOHN F. GAFFNEY	29			West	2013
67500	Taxes - Empr VI Unemp	3/4/2013	DD-21164	PRJ	JOHN F. GAFFNEY	6			West	2013
69200	Wages - Managers	3/13/2013	DD-21304	PRJ	JOHN F. GAFFNEY	2,000			West	2013 VZ-2/9/16
67200	Taxes - Empr FICA & Medicare	3/13/2013	DD-21304	PRJ	JOHN F. GAFFNEY	29			West	2013
67200	Taxes - Empr FICA & Medicare	3/13/2013	DD-21304	PRJ	JOHN F. GAFFNEY	124			West	2013
67500	Taxes - Empr VI Unemp	3/13/2013	DD-21304	PRJ	JOHN F. GAFFNEY	6			West	2013
69200	Wages - Managers	3/20/2013	DD-21442	PRJ	JOHN F. GAFFNEY	2,000			West	2013 VZ-2/9/16
67200	Taxes - Empr FICA & Medicare	3/20/2013	DD-21442	PRJ	JOHN F. GAFFNEY	124			West	2013
67200	Taxes - Empr FICA & Medicare	3/20/2013	DD-21442	PRJ	JOHN F. GAFFNEY	29			West	2013
67500	Taxes - Empr VI Unemp	3/20/2013	DD-21442	PRJ	JOHN F. GAFFNEY	6			West	2013
69200	Wages - Managers	3/27/2013	DD-21574	PRJ	JOHN F. GAFFNEY	2,000			West	2013 VZ-2/9/16
67200	Taxes - Empr FICA & Medicare	3/27/2013	DD-21574	PRJ	JOHN F. GAFFNEY	124			West	2013
67200	Taxes - Empr FICA & Medicare	3/27/2013	DD-21574	PRJ	JOHN F. GAFFNEY	29			West	2013
67500	Taxes - Empr VI Unemp	3/27/2013	DD-21574	PRJ	JOHN F. GAFFNEY	5			West	2013 34,568.80
69200	Wages - Managers	4/3/2013	DD-21713	PRJ	JOHN F. GAFFNEY	2,000			West	2013 VZ-2/9/16
67200	Taxes - Empr FICA & Medicare	4/3/2013	DD-21713	PRJ	JOHN F. GAFFNEY	29			West	2013
67200	Taxes - Empr FICA & Medicare	4/3/2013	DD-21713	PRJ	JOHN F. GAFFNEY	124			West	2013
69200	Wages - Managers	4/10/2013	DD-21850	PRJ	JOHN F. GAFFNEY	2,000			West	2013 VZ-2/9/16
67200	Taxes - Empr FICA & Medicare	4/10/2013	DD-21850	PRJ	JOHN F. GAFFNEY	124			West	2013
67200	Taxes - Empr FICA & Medicare	4/10/2013	DD-21850	PRJ	JOHN F. GAFFNEY	29			West	2013
69200	Wages - Managers	4/17/2013	DD-21984	PRJ	JOHN F. GAFFNEY	2,000			West	2013 VZ-2/9/16
67200	Taxes - Empr FICA & Medicare	4/17/2013	DD-21984	PRJ	JOHN F. GAFFNEY	29			West	2013
67200	Taxes - Empr FICA & Medicare	4/17/2013	DD-21984	PRJ	JOHN F. GAFFNEY	124			West	2013
69200	Wages - Managers	4/24/2013	DD-22120	PRJ	JOHN F. GAFFNEY	2,000			West	2013 VZ-2/9/16
67200	Taxes - Empr FICA & Medicare	4/24/2013	DD-22120	PRJ	JOHN F. GAFFNEY	29			West	2013
67200	Taxes - Empr FICA & Medicare	4/24/2013	DD-22120	PRJ	JOHN F. GAFFNEY	124			West	2013
<b>Total period 2012- April 24, 2013</b>						<b>34,568.80</b>				

Exhibit: 3005/426-a

# Expert report of Jackson, Vizcaino Zomerfeld, LLP re Hamed v. Yusuf et.al

## Exhibit 3005/426-a

Salary, benefits and bonus paid to and on behalf of John Gaffney  
April 25, 2013 - December 31, 2013

Account ID	Account Description	Date	Reference	Jrnl	Trans Description	Debit Amt	Credit Amt	Balance	Store	Year
69200	Wages - Managers	4/30/2013	DD-22259	PRJ	JOHN F. GAFFNEY	2,000.00			West	2013 VZ-2/9/16
67200	Taxes - Empr FICA & Medicare	4/30/2013	DD-22259	PRJ	JOHN F. GAFFNEY	124.00			West	2013
67200	Taxes - Empr FICA & Medicare	4/30/2013	DD-22259	PRJ	JOHN F. GAFFNEY	29.00			West	2013
69200	Wages - Managers	5/8/2013	DD-22389	PRJ	JOHN F. GAFFNEY	2,000.00			West	2013 VZ-2/9/16
67200	Taxes - Empr FICA & Medicare	5/8/2013	DD-22389	PRJ	JOHN F. GAFFNEY	29.00			West	2013
67200	Taxes - Empr FICA & Medicare	5/8/2013	DD-22389	PRJ	JOHN F. GAFFNEY	124.00			West	2013
69200	Wages - Managers	5/15/2013	DD-22527	PRJ	JOHN F. GAFFNEY	2,000.00			West	2013 VZ-2/9/16
67200	Taxes - Empr FICA & Medicare	5/15/2013	DD-22527	PRJ	JOHN F. GAFFNEY	29.00			West	2013
67200	Taxes - Empr FICA & Medicare	5/15/2013	DD-22527	PRJ	JOHN F. GAFFNEY	124.00			West	2013
69200	Wages - Managers	5/22/2013	DD-22658	PRJ	JOHN F. GAFFNEY	2,000.00			West	2013 VZ-2/9/16
67200	Taxes - Empr FICA & Medicare	5/22/2013	DD-22658	PRJ	JOHN F. GAFFNEY	124.00			West	2013
67200	Taxes - Empr FICA & Medicare	5/22/2013	DD-22658	PRJ	JOHN F. GAFFNEY	29.00			West	2013
69200	Wages - Managers	5/29/2013	DD-22787	PRJ	JOHN F. GAFFNEY	2,000.00			West	2013 VZ-2/9/16
67200	Taxes - Empr FICA & Medicare	5/29/2013	DD-22787	PRJ	JOHN F. GAFFNEY	124.00			West	2013
67200	Taxes - Empr FICA & Medicare	5/29/2013	DD-22787	PRJ	JOHN F. GAFFNEY	29.00			West	2013
69200	Wages - Managers	6/5/2013	DD-22922	PRJ	JOHN F. GAFFNEY	2,000.00			West	2013 VZ-2/9/16
67200	Taxes - Empr FICA & Medicare	6/5/2013	DD-22922	PRJ	JOHN F. GAFFNEY	29.00			West	2013
67200	Taxes - Empr FICA & Medicare	6/5/2013	DD-22922	PRJ	JOHN F. GAFFNEY	124.00			West	2013
69200	Wages - Managers	6/12/2013	DD-23060	PRJ	JOHN F. GAFFNEY	2,000.00			West	2013 VZ-2/9/16
67200	Taxes - Empr FICA & Medicare	6/12/2013	DD-23060	PRJ	JOHN F. GAFFNEY	124.00			West	2013
67200	Taxes - Empr FICA & Medicare	6/12/2013	DD-23060	PRJ	JOHN F. GAFFNEY	29.00			West	2013
69200	Wages - Managers	6/19/2013	DD-23195	PRJ	JOHN F. GAFFNEY	2,000.00			West	2013 VZ-2/9/16
67200	Taxes - Empr FICA & Medicare	6/19/2013	DD-23195	PRJ	JOHN F. GAFFNEY	29.00			West	2013
67200	Taxes - Empr FICA & Medicare	6/19/2013	DD-23195	PRJ	JOHN F. GAFFNEY	124.00			West	2013
69200	Wages - Managers	6/26/2013	DD-23330	PRJ	JOHN F. GAFFNEY	2,000.00			West	2013 VZ-2/9/16
67200	Taxes - Empr FICA & Medicare	6/26/2013	DD-23330	PRJ	JOHN F. GAFFNEY	124.00			West	2013
67200	Taxes - Empr FICA & Medicare	6/26/2013	DD-23330	PRJ	JOHN F. GAFFNEY	29.00			West	2013
68200	Travel & Hotels Expense	7/1/2013	1009	PJ	JOHN GAFFNEY	1,000.00			West	2013 VZ-2/9/16
69200	Wages - Managers	7/3/2013	DD-23463	PRJ	JOHN F. GAFFNEY	2,000.00			West	2013 VZ-2/9/16
67200	Taxes - Empr FICA & Medicare	7/3/2013	DD-23463	PRJ	JOHN F. GAFFNEY	29.00			West	2013
67200	Taxes - Empr FICA & Medicare	7/3/2013	DD-23463	PRJ	JOHN F. GAFFNEY	124.00			West	2013
69200	Wages - Managers	7/10/2013	DD-23597	PRJ	JOHN F. GAFFNEY	2,000.00			West	2013 VZ-2/9/16
67200	Taxes - Empr FICA & Medicare	7/10/2013	DD-23597	PRJ	JOHN F. GAFFNEY	29.00			West	2013
67200	Taxes - Empr FICA & Medicare	7/10/2013	DD-23597	PRJ	JOHN F. GAFFNEY	124.00			West	2013
69200	Wages - Managers	7/17/2013	DD-23722	PRJ	JOHN F. GAFFNEY	2,000.00			West	2013 VZ-2/9/16
67200	Taxes - Empr FICA & Medicare	7/17/2013	DD-23722	PRJ	JOHN F. GAFFNEY	124.00			West	2013
67200	Taxes - Empr FICA & Medicare	7/17/2013	DD-23722	PRJ	JOHN F. GAFFNEY	29.00			West	2013
69200	Wages - Managers	7/24/2013	DD-23851	PRJ	JOHN F. GAFFNEY	2,000.00			West	2013 VZ-2/9/16
67200	Taxes - Empr FICA & Medicare	7/24/2013	DD-23851	PRJ	JOHN F. GAFFNEY	29.00			West	2013
67200	Taxes - Empr FICA & Medicare	7/24/2013	DD-23851	PRJ	JOHN F. GAFFNEY	124.00			West	2013
69200	Wages - Managers	7/31/2013	DD-23980	PRJ	JOHN F. GAFFNEY	2,000.00			West	2013 VZ-2/9/16
67200	Taxes - Empr FICA & Medicare	7/31/2013	DD-23980	PRJ	JOHN F. GAFFNEY	29.00			West	2013
67200	Taxes - Empr FICA & Medicare	7/31/2013	DD-23980	PRJ	JOHN F. GAFFNEY	124.00			West	2013
68200	Travel & Hotels Expense	8/5/2013	1010	PJ	JOHN GAFFNEY	1,000.00			West	2013 VZ-2/9/16
61200	Computer Supplies & Expense	8/7/2013	2000006216429	PJ	JOHN GAFFNEY - INTUJI	1,214.10			West	2013 VZ-2/9/16
69200	Wages - Managers	8/7/2013	DD-24112	PRJ	JOHN F. GAFFNEY	2,000.00			West	2013 VZ-2/9/16
67200	Taxes - Empr FICA & Medicare	8/7/2013	DD-24112	PRJ	JOHN F. GAFFNEY	124.00			West	2013
67200	Taxes - Empr FICA & Medicare	8/7/2013	DD-24112	PRJ	JOHN F. GAFFNEY	29.00			West	2013
69200	Wages - Managers	8/14/2013	DD-24244	PRJ	JOHN F. GAFFNEY	2,000.00			West	2013 VZ-2/9/16
67200	Taxes - Empr FICA & Medicare	8/14/2013	DD-24244	PRJ	JOHN F. GAFFNEY	29.00			West	2013
67200	Taxes - Empr FICA & Medicare	8/14/2013	DD-24244	PRJ	JOHN F. GAFFNEY	124.00			West	2013
69200	Wages - Managers	8/21/2013	DD-24375	PRJ	JOHN F. GAFFNEY	2,000.00			West	2013 VZ-2/9/16
67200	Taxes - Empr FICA & Medicare	8/21/2013	DD-24375	PRJ	JOHN F. GAFFNEY	124.00			West	2013
67200	Taxes - Empr FICA & Medicare	8/21/2013	DD-24375	PRJ	JOHN F. GAFFNEY	29.00			West	2013
69200	Wages - Managers	8/28/2013	DD-24502	PRJ	JOHN F. GAFFNEY	2,000.00			West	2013 VZ-2/9/16
67200	Taxes - Empr FICA & Medicare	8/28/2013	DD-24502	PRJ	JOHN F. GAFFNEY	124.00			West	2013
67200	Taxes - Empr FICA & Medicare	8/28/2013	DD-24502	PRJ	JOHN F. GAFFNEY	29.00			West	2013
68200	Travel & Hotels Expense	9/1/2013	1011	PJ	JOHN GAFFNEY	1,000.00			West	2013 VZ-2/9/16
69200	Wages - Managers	9/11/2013	DD-24758	PRJ	JOHN F. GAFFNEY	2,000.00			West	2013 VZ-2/9/16
67200	Taxes - Empr FICA & Medicare	9/11/2013	DD-24758	PRJ	JOHN F. GAFFNEY	29.00			West	2013
67200	Taxes - Empr FICA & Medicare	9/11/2013	DD-24758	PRJ	JOHN F. GAFFNEY	124.00			West	2013
69200	Wages - Managers	9/18/2013	DD-24886	PRJ	JOHN F. GAFFNEY	2,000.00			West	2013 VZ-2/9/16
67200	Taxes - Empr FICA & Medicare	9/18/2013	DD-24886	PRJ	JOHN F. GAFFNEY	124.00			West	2013
67200	Taxes - Empr FICA & Medicare	9/18/2013	DD-24886	PRJ	JOHN F. GAFFNEY	29.00			West	2013
69200	Wages - Managers	9/25/2013	DD-25015	PRJ	JOHN F. GAFFNEY	2,000.00			West	2013 VZ-2/9/16
67200	Taxes - Empr FICA & Medicare	9/25/2013	DD-25015	PRJ	JOHN F. GAFFNEY	124.00			West	2013
67200	Taxes - Empr FICA & Medicare	9/25/2013	DD-25015	PRJ	JOHN F. GAFFNEY	29.00			West	2013
68200	Travel & Hotels Expense	10/1/2013	1012	PJ	JOHN GAFFNEY	1,000.00			West	2013 VZ-2/9/16
69200	Wages - Managers	10/2/2013	DD-25144	PRJ	JOHN F. GAFFNEY	2,000.00			West	2013 VZ-2/9/16
67200	Taxes - Empr FICA & Medicare	10/2/2013	DD-25144	PRJ	JOHN F. GAFFNEY	29.00			West	2013
67200	Taxes - Empr FICA & Medicare	10/2/2013	DD-25144	PRJ	JOHN F. GAFFNEY	124.00			West	2013
69200	Wages - Managers	10/9/2013	DD-25268	PRJ	JOHN F. GAFFNEY	2,000.00			West	2013 VZ-2/9/16
67200	Taxes - Empr FICA & Medicare	10/9/2013	DD-25268	PRJ	JOHN F. GAFFNEY	29.00			West	2013
67200	Taxes - Empr FICA & Medicare	10/9/2013	DD-25268	PRJ	JOHN F. GAFFNEY	124.00			West	2013
69200	Wages - Managers	10/16/2013	DD-25397	PRJ	JOHN F. GAFFNEY	2,000.00			West	2013 VZ-2/9/16
67200	Taxes - Empr FICA & Medicare	10/16/2013	DD-25397	PRJ	JOHN F. GAFFNEY	29.00			West	2013

**Expert report of Jackson, Vizcaino Zomerfeld, LLP re Hamed v. Yusuf et.al**  
**Exhibit 3005/426-a**

67200	Taxes - Empr FICA & Medicare	10/16/2013 DD-25397	PRJ	JOHN F. GAFFNEY	124.00	West	2013
69200	Wages - Managers	10/30/2013 DD-25654	PRJ	JOHN F. GAFFNEY	2,000.00	West	2013 VZ-2/9/16
67200	Taxes - Empr FICA & Medicare	10/30/2013 DD-25654	PRJ	JOHN F. GAFFNEY	124.00	West	2013
67200	Taxes - Empr FICA & Medicare	10/30/2013 DD-25654	PRJ	JOHN F. GAFFNEY	29.00	West	2013
68200	Travel & Hotels Expense	11/1/2013 1013	PJ	JOHN GAFFNEY	1,000.00	West	2013 VZ-2/9/16
69200	Wages - Managers	11/6/2013 DD-25788	PRJ	JOHN F. GAFFNEY	2,000.00	West	2013 VZ-2/9/16
67200	Taxes - Empr FICA & Medicare	11/6/2013 DD-25788	PRJ	JOHN F. GAFFNEY	29.00	West	2013
67200	Taxes - Empr FICA & Medicare	11/6/2013 DD-25788	PRJ	JOHN F. GAFFNEY	124.00	West	2013
69200	Wages - Managers	11/13/2013 DD-25921	PRJ	JOHN F. GAFFNEY	2,000.00	West	2013 VZ-2/9/16
67200	Taxes - Empr FICA & Medicare	11/13/2013 DD-25921	PRJ	JOHN F. GAFFNEY	124.00	West	2013
67200	Taxes - Empr FICA & Medicare	11/13/2013 DD-25921	PRJ	JOHN F. GAFFNEY	29.00	West	2013
69200	Wages - Managers	11/20/2013 DD-26054	PRJ	JOHN F. GAFFNEY	2,000.00	West	2013 VZ-2/9/16
67200	Taxes - Empr FICA & Medicare	11/20/2013 DD-26054	PRJ	JOHN F. GAFFNEY	124.00	West	2013
67200	Taxes - Empr FICA & Medicare	11/20/2013 DD-26054	PRJ	JOHN F. GAFFNEY	29.00	West	2013
69200	Wages - Managers	11/27/2013 DD-26181	PRJ	JOHN F. GAFFNEY	2,000.00	West	2013 VZ-2/9/16
67200	Taxes - Empr FICA & Medicare	11/27/2013 DD-26181	PRJ	JOHN F. GAFFNEY	29.00	West	2013
67200	Taxes - Empr FICA & Medicare	11/27/2013 DD-26181	PRJ	JOHN F. GAFFNEY	124.00	West	2013
68200	Travel & Hotels Expense	12/1/2013 1014	PJ	JOHN GAFFNEY	1,000.00	West	2013 VZ-2/9/16
69200	Wages - Managers	12/4/2013 DD-26313	PRJ	JOHN F. GAFFNEY	2,000.00	West	2013 VZ-2/9/16
67200	Taxes - Empr FICA & Medicare	12/4/2013 DD-26313	PRJ	JOHN F. GAFFNEY	124.00	West	2013
67200	Taxes - Empr FICA & Medicare	12/4/2013 DD-26313	PRJ	JOHN F. GAFFNEY	29.00	West	2013
69200	Wages - Managers	12/11/2013 DD-26447	PRJ	JOHN F. GAFFNEY	2,000.00	West	2013 VZ-2/9/16
67200	Taxes - Empr FICA & Medicare	12/11/2013 DD-26447	PRJ	JOHN F. GAFFNEY	124.00	West	2013
67200	Taxes - Empr FICA & Medicare	12/11/2013 DD-26447	PRJ	JOHN F. GAFFNEY	29.00	West	2013
69200	Wages - Managers	12/25/2013 DD-26716	PRJ	JOHN F. GAFFNEY	2,000.00	West	2013 VZ-2/9/16
67200	Taxes - Empr FICA & Medicare	12/25/2013 DD-26716	PRJ	JOHN F. GAFFNEY	124.00	West	2013
67200	Taxes - Empr FICA & Medicare	12/25/2013 DD-26716	PRJ	JOHN F. GAFFNEY	29.00	West	2013
69500	Wages - Vacation	12/30/2013 22465	PRJ	JOHN F. GAFFNEY	3,764.74	West	2013 VZ-2/9/16
67200	Taxes - Empr FICA & Medicare	12/30/2013 22465	PRJ	JOHN F. GAFFNEY	233.41	West	2013
67200	Taxes - Empr FICA & Medicare	12/30/2013 22465	PRJ	JOHN F. GAFFNEY	54.59	West	2013
69200	Wages - Managers	12/31/2013 DD-26855	PRJ	JOHN F. GAFFNEY	2,000.00	West	2013 VZ-2/9/16
67200	Taxes - Empr FICA & Medicare	12/31/2013 DD-26855	PRJ	JOHN F. GAFFNEY	29.00	West	2013
67200	Taxes - Empr FICA & Medicare	12/31/2013 DD-26855	PRJ	JOHN F. GAFFNEY	124.00	West	2013
<b>Total period April 25, 2013 - December 31, 2013</b>					<b>82,315.84</b>		

# Expert report of Jackson, Vizcaino Zomerfeld, LLP re Hamed v. Yusuf et.al

## Exhibit 3005/426-a

Salary, benefits and bonus paid to and on behalf of John Gaffney  
2014

Account ID	Account Description	Date	Reference	Jrn#	Trans Description	Debit Amt	Credit Amt	Balance	Store	Year
68200	Travel & Hotels Expense	1/1/2014	1015	PJ	JOHN GAFFNEY	1,000.00			West	2014 VZ-2/9/16
69200	Wages - Managers	1/8/2014	DD-26989	PRJ	JOHN F. GAFFNEY	2,000.00			West	2014 VZ-2/9/16
67200	Taxes - Empr FICA & Medicare	1/8/2014	DD-26989	PRJ	JOHN F. GAFFNEY	124.00			West	2014
67200	Taxes - Empr FICA & Medicare	1/8/2014	DD-26989	PRJ	JOHN F. GAFFNEY	29.00			West	2014
67400	Taxes - Empr FUTA Expense	1/8/2014	DD-26989	PRJ	JOHN F. GAFFNEY	12.00			West	2014
67500	Taxes - Empr VI Unemp	1/8/2014	DD-26989	PRJ	JOHN F. GAFFNEY	30.00			West	2014
69200	Wages - Managers	1/15/2014	DD-27122	PRJ	JOHN F. GAFFNEY	2,000.00			West	2014 VZ-2/9/16
67200	Taxes - Empr FICA & Medicare	1/15/2014	DD-27122	PRJ	JOHN F. GAFFNEY	124.00			West	2014
67200	Taxes - Empr FICA & Medicare	1/15/2014	DD-27122	PRJ	JOHN F. GAFFNEY	29.00			West	2014
67400	Taxes - Empr FUTA Expense	1/15/2014	DD-27122	PRJ	JOHN F. GAFFNEY	12.00			West	2014
67500	Taxes - Empr VI Unemp	1/15/2014	DD-27122	PRJ	JOHN F. GAFFNEY	30.00			West	2014
69200	Wages - Managers	1/22/2014	DD-27252	PRJ	JOHN F. GAFFNEY	2,000.00			West	2014 VZ-2/9/16
67200	Taxes - Empr FICA & Medicare	1/22/2014	DD-27252	PRJ	JOHN F. GAFFNEY	29.00			West	2014
67200	Taxes - Empr FICA & Medicare	1/22/2014	DD-27252	PRJ	JOHN F. GAFFNEY	124.00			West	2014
67400	Taxes - Empr FUTA Expense	1/22/2014	DD-27252	PRJ	JOHN F. GAFFNEY	12.00			West	2014
67500	Taxes - Empr VI Unemp	1/22/2014	DD-27252	PRJ	JOHN F. GAFFNEY	30.00			West	2014
69200	Wages - Managers	1/29/2014	DD-27381	PRJ	JOHN F. GAFFNEY	2,000.00			West	2014 VZ-2/9/16
67200	Taxes - Empr FICA & Medicare	1/29/2014	DD-27381	PRJ	JOHN F. GAFFNEY	29.00			West	2014
67200	Taxes - Empr FICA & Medicare	1/29/2014	DD-27381	PRJ	JOHN F. GAFFNEY	124.00			West	2014
67400	Taxes - Empr FUTA Expense	1/29/2014	DD-27381	PRJ	JOHN F. GAFFNEY	6.00			West	2014
67500	Taxes - Empr VI Unemp	1/29/2014	DD-27381	PRJ	JOHN F. GAFFNEY	30.00			West	2014
68200	Travel & Hotels Expense	2/1/2014	1016	PJ	JOHN GAFFNEY	1,000.00			West	2014 VZ-2/9/16
69200	Wages - Managers	2/5/2014	DD-27511	PRJ	JOHN F. GAFFNEY	2,000.00			West	2014 VZ-2/9/16
67200	Taxes - Empr FICA & Medicare	2/5/2014	DD-27511	PRJ	JOHN F. GAFFNEY	124.00			West	2014
67200	Taxes - Empr FICA & Medicare	2/5/2014	DD-27511	PRJ	JOHN F. GAFFNEY	29.00			West	2014
67500	Taxes - Empr VI Unemp	2/5/2014	DD-27511	PRJ	JOHN F. GAFFNEY	30.00			West	2014
69200	Wages - Managers	2/12/2014	DD-27644	PRJ	JOHN F. GAFFNEY	2,000.00			West	2014 VZ-2/9/16
67200	Taxes - Empr FICA & Medicare	2/12/2014	DD-27644	PRJ	JOHN F. GAFFNEY	124.00			West	2014
67200	Taxes - Empr FICA & Medicare	2/12/2014	DD-27644	PRJ	JOHN F. GAFFNEY	29.00			West	2014
67500	Taxes - Empr VI Unemp	2/12/2014	DD-27644	PRJ	JOHN F. GAFFNEY	30.00			West	2014
69200	Wages - Managers	2/19/2014	DD-27777	PRJ	JOHN F. GAFFNEY	2,000.00			West	2014 VZ-2/9/16
67200	Taxes - Empr FICA & Medicare	2/19/2014	DD-27777	PRJ	JOHN F. GAFFNEY	29.00			West	2014
67200	Taxes - Empr FICA & Medicare	2/19/2014	DD-27777	PRJ	JOHN F. GAFFNEY	124.00			West	2014
67500	Taxes - Empr VI Unemp	2/19/2014	DD-27777	PRJ	JOHN F. GAFFNEY	30.00			West	2014
69200	Wages - Managers	2/26/2014	DD-27909	PRJ	JOHN F. GAFFNEY	2,000.00			West	2014 VZ-2/9/16
67200	Taxes - Empr FICA & Medicare	2/26/2014	DD-27909	PRJ	JOHN F. GAFFNEY	29.00			West	2014
67200	Taxes - Empr FICA & Medicare	2/26/2014	DD-27909	PRJ	JOHN F. GAFFNEY	124.00			West	2014
67500	Taxes - Empr VI Unemp	2/26/2014	DD-27909	PRJ	JOHN F. GAFFNEY	30.00			West	2014
68200	Travel & Hotels Expense	3/1/2014	1017	PJ	JOHN GAFFNEY	1,000.00			West	2014 VZ-2/9/16
69200	Wages - Managers	3/5/2014	DD-28041	PRJ	JOHN F. GAFFNEY	2,000.00			West	2014 VZ-2/9/16
67200	Taxes - Empr FICA & Medicare	3/5/2014	DD-28041	PRJ	JOHN F. GAFFNEY	29.00			West	2014
67200	Taxes - Empr FICA & Medicare	3/5/2014	DD-28041	PRJ	JOHN F. GAFFNEY	124.00			West	2014
67500	Taxes - Empr VI Unemp	3/5/2014	DD-28041	PRJ	JOHN F. GAFFNEY	30.00			West	2014
69200	Wages - Managers	3/12/2014	DD-28177	PRJ	JOHN F. GAFFNEY	2,000.00			West	2014 VZ-2/9/16
67200	Taxes - Empr FICA & Medicare	3/12/2014	DD-28177	PRJ	JOHN F. GAFFNEY	29.00			West	2014
67200	Taxes - Empr FICA & Medicare	3/12/2014	DD-28177	PRJ	JOHN F. GAFFNEY	124.00			West	2014
67500	Taxes - Empr VI Unemp	3/12/2014	DD-28177	PRJ	JOHN F. GAFFNEY	30.00			West	2014
69200	Wages - Managers	3/19/2014	DD-28311	PRJ	JOHN F. GAFFNEY	2,000.00			West	2014 VZ-2/9/16
67200	Taxes - Empr FICA & Medicare	3/19/2014	DD-28311	PRJ	JOHN F. GAFFNEY	29.00			West	2014
67200	Taxes - Empr FICA & Medicare	3/19/2014	DD-28311	PRJ	JOHN F. GAFFNEY	124.00			West	2014
67500	Taxes - Empr VI Unemp	3/19/2014	DD-28311	PRJ	JOHN F. GAFFNEY	30.00			West	2014 110,182.50
69200	Wages - Managers	3/26/2014	DD-28448	PRJ	JOHN F. GAFFNEY	2,000.00			West	2014 VZ-2/9/16
67200	Taxes - Empr FICA & Medicare	3/26/2014	DD-28448	PRJ	JOHN F. GAFFNEY	29.00			West	2014
67200	Taxes - Empr FICA & Medicare	3/26/2014	DD-28448	PRJ	JOHN F. GAFFNEY	124.00			West	2014
67500	Taxes - Empr VI Unemp	3/26/2014	DD-28448	PRJ	JOHN F. GAFFNEY	7.50			West	2014
68200	Travel & Hotels Expense	4/1/2014	1018	PJ	JOHN GAFFNEY	1,000.00			West	2014 VZ-2/9/16
69200	Wages - Managers	4/2/2014	DD-28584	PRJ	JOHN F. GAFFNEY	2,000.00			West	2014 VZ-2/9/16
67200	Taxes - Empr FICA & Medicare	4/2/2014	DD-28584	PRJ	JOHN F. GAFFNEY	124.00			West	2014
67200	Taxes - Empr FICA & Medicare	4/2/2014	DD-28584	PRJ	JOHN F. GAFFNEY	29.00			West	2014
69200	Wages - Managers	4/9/2014	DD-28715	PRJ	JOHN F. GAFFNEY	2,000.00			West	2014 VZ-2/9/16
67200	Taxes - Empr FICA & Medicare	4/9/2014	DD-28715	PRJ	JOHN F. GAFFNEY	124.00			West	2014
67200	Taxes - Empr FICA & Medicare	4/9/2014	DD-28715	PRJ	JOHN F. GAFFNEY	29.00			West	2014
69200	Wages - Managers	4/16/2014	DD-28852	PRJ	JOHN F. GAFFNEY	2,000.00			West	2014 VZ-2/9/16
67200	Taxes - Empr FICA & Medicare	4/16/2014	DD-28852	PRJ	JOHN F. GAFFNEY	29.00			West	2014
67200	Taxes - Empr FICA & Medicare	4/16/2014	DD-28852	PRJ	JOHN F. GAFFNEY	124.00			West	2014
69200	Wages - Managers	4/28/2014	DD-29128	PRJ	JOHN F. GAFFNEY	2,000.00			West	2014 VZ-2/9/16
67200	Taxes - Empr FICA & Medicare	4/28/2014	DD-29128	PRJ	JOHN F. GAFFNEY	124.00			West	2014
67200	Taxes - Empr FICA & Medicare	4/28/2014	DD-29128	PRJ	JOHN F. GAFFNEY	29.00			West	2014
68200	Travel & Hotels Expense	5/1/2014	1019	PJ	JOHN GAFFNEY	1,000.00			West	2014 VZ-2/9/16
69200	Wages - Managers	5/7/2014	DD-29262	PRJ	JOHN F. GAFFNEY	2,000.00			West	2014 VZ-2/9/16
67200	Taxes - Empr FICA & Medicare	5/7/2014	DD-29262	PRJ	JOHN F. GAFFNEY	124.00			West	2014
67200	Taxes - Empr FICA & Medicare	5/7/2014	DD-29262	PRJ	JOHN F. GAFFNEY	29.00			West	2014
69200	Wages - Managers	5/14/2014	DD-29393	PRJ	JOHN F. GAFFNEY	2,000.00			West	2014 VZ-2/9/16
67200	Taxes - Empr FICA & Medicare	5/14/2014	DD-29393	PRJ	JOHN F. GAFFNEY	29.00			West	2014
67200	Taxes - Empr FICA & Medicare	5/14/2014	DD-29393	PRJ	JOHN F. GAFFNEY	124.00			West	2014
69200	Wages - Managers	5/21/2014	DD-29523	PRJ	JOHN F. GAFFNEY	2,000.00			West	2014 VZ-2/9/16





**Expert report of Jackson, Vizcaino Zomerfeld, LLP re Hamed v. Yusuf et.al**  
**Exhibit 3005/426-a**

69200	Wages - Managers	11/19/2014 DD-32804	PRJ	JOHN F. GAFFNEY	2,000.00	West	2014 VZ-2/9/16
67200	Taxes - Empr FICA & Medicare	11/19/2014 DD-32804	PRJ	JOHN F. GAFFNEY	29.00	West	2014
67200	Taxes - Empr FICA & Medicare	11/19/2014 DD-32804	PRJ	JOHN F. GAFFNEY	124.00	West	2014
69200	Wages - Managers	11/26/2014 DD-32925	PRJ	JOHN F. GAFFNEY	2,000.00	West	2014 VZ-2/9/16
67200	Taxes - Empr FICA & Medicare	11/26/2014 DD-32925	PRJ	JOHN F. GAFFNEY	29.00	West	2014
67200	Taxes - Empr FICA & Medicare	11/26/2014 DD-32925	PRJ	JOHN F. GAFFNEY	124.00	West	2014
68200	Travel & Hotels Expense	12/1/2014 1025	PJ	JOHN GAFFNEY	1,000.00	West	2014 VZ-2/9/16
69200	Wages - Managers	12/3/2014 DD-33049	PRJ	JOHN F. GAFFNEY	2,000.00	West	2014 VZ-2/9/16
67200	Taxes - Empr FICA & Medicare	12/3/2014 DD-33049	PRJ	JOHN F. GAFFNEY	124.00	West	2014
67200	Taxes - Empr FICA & Medicare	12/3/2014 DD-33049	PRJ	JOHN F. GAFFNEY	29.00	West	2014
69200	Wages - Managers	12/17/2014 DD-33295	PRJ	JOHN F. GAFFNEY	2,000.00	West	2014 VZ-2/9/16
67200	Taxes - Empr FICA & Medicare	12/17/2014 DD-33295	PRJ	JOHN F. GAFFNEY	29.00	West	2014
67200	Taxes - Empr FICA & Medicare	12/17/2014 DD-33295	PRJ	JOHN F. GAFFNEY	124.00	West	2014
69200	Wages - Managers	12/24/2014 DD-33416	PRJ	JOHN F. GAFFNEY	2,000.00	West	2014 VZ-2/9/16
67200	Taxes - Empr FICA & Medicare	12/24/2014 DD-33416	PRJ	JOHN F. GAFFNEY	29.00	West	2014
67200	Taxes - Empr FICA & Medicare	12/24/2014 DD-33416	PRJ	JOHN F. GAFFNEY	124.00	West	2014
69200	Wages - Managers	12/30/2014 DD-33545	PRJ	JOHN F. GAFFNEY	2,000.00	West	2014 VZ-2/9/16
67200	Taxes - Empr FICA & Medicare	12/30/2014 DD-33545	PRJ	JOHN F. GAFFNEY	29.00	West	2014
67200	Taxes - Empr FICA & Medicare	12/30/2014 DD-33545	PRJ	JOHN F. GAFFNEY	124.00	West	2014
69500	Wages - Vacation	12/31/2014 25996	PRJ	JOHN F. GAFFNEY	4,000.00	West	2014 VZ-2/9/16
67200	Taxes - Empr FICA & Medicare	12/31/2014 25996	PRJ	JOHN F. GAFFNEY	58.00	West	2014
67200	Taxes - Empr FICA & Medicare	12/31/2014 25996	PRJ	JOHN F. GAFFNEY	248.00	West	2014
Total 2014					<u>122,182.50</u>		



# Expert report of Jackson, Vizcaino Zomerfeld, LLP re Hamed v. Yusuf et al

## Exhibit 3005/426-a

Salary, benefits and bonus paid to and on behalf of John Gaffney  
2015

Account ID	Account Description	Date	Reference	Jrnl	Trans Description	Debit Amt	Credit Amt	Balance	Store	Year
68200	Travel & Hotels Expense	1/1/2015	1027	PJ	JOHN GAFFNEY	1,000.00			West	2015
68200	Travel & Hotels Expense	1/1/2015	1027	PJ	JOHN GAFFNEY	1,000.00			West	2015 Gaff 2-1-15
67200	Taxes - Empr FICA & Medicare	1/7/2015	DD-33668	PRJ	JOHN F. GAFFNEY	29.00			West	2015 Gaff 2-1-15
67200	Taxes - Empr FICA & Medicare	1/7/2015	DD-33668	PRJ	JOHN F. GAFFNEY	124.00			West	2015 Gaff 2-1-15
67400	Taxes - Empr FUTA Expense	1/7/2015	DD-33668	PRJ	JOHN F. GAFFNEY	12.00			West	2015 Gaff 2-1-15
67500	Taxes - Empr VI Unemp	1/7/2015	DD-33668	PRJ	JOHN F. GAFFNEY	30.00			West	2015 Gaff 2-1-15
69200	Wages - Managers	1/7/2015	DD-33668	PRJ	JOHN F. GAFFNEY	2,000.00			West	2015 Gaff 2-1-15
67200	Taxes - Empr FICA & Medicare	1/14/2015	DD-33788	PRJ	JOHN F. GAFFNEY	5.80			West	2015 Gaff 2-1-15
67200	Taxes - Empr FICA & Medicare	1/14/2015	DD-33788	PRJ	JOHN F. GAFFNEY	24.80			West	2015 Gaff 2-1-15
67400	Taxes - Empr FUTA Expense	1/14/2015	DD-33788	PRJ	JOHN F. GAFFNEY	2.40			West	2015 Gaff 2-1-15
67500	Taxes - Empr VI Unemp	1/14/2015	DD-33788	PRJ	JOHN F. GAFFNEY	6.00			West	2015 Gaff 2-1-15
69200	Wages - Managers	1/14/2015	DD-33788	PRJ	JOHN F. GAFFNEY	400.00			West	2015 Gaff 2-1-15
68200	Travel & Hotels Expense	1/21/2015	102914-1285-25	PJ	JOHN GAFFNEY	5.75			West	2015
68200	Travel & Hotels Expense	1/21/2015	3155	PI	JOHN GAFFNEY	20.00			West	2015
68200	Travel & Hotels Expense	1/21/2015	3155	PJ	JOHN GAFFNEY	20.00			West	2015 Gaff 2-1-15
68200	Travel & Hotels Expense	1/21/2015	102914-1285-25	PJ	JOHN GAFFNEY	5.75			West	2015 Gaff 2-1-15
67200	Taxes - Empr FICA & Medicare	1/21/2015	DD-33912	PRJ	JOHN F. GAFFNEY	29.00			West	2015 Gaff 2-1-15
67200	Taxes - Empr FICA & Medicare	1/21/2015	DD-33912	PRJ	JOHN F. GAFFNEY	124.00			West	2015 Gaff 2-1-15
67400	Taxes - Empr FUTA Expense	1/21/2015	DD-33912	PRJ	JOHN F. GAFFNEY	12.00			West	2015 Gaff 2-1-15
67500	Taxes - Empr VI Unemp	1/21/2015	DD-33912	PRJ	JOHN F. GAFFNEY	30.00			West	2015 Gaff 2-1-15
69200	Wages - Managers	1/21/2015	DD-33912	PRJ	JOHN F. GAFFNEY	2,000.00			West	2015 Gaff 2-1-15
67200	Taxes - Empr FICA & Medicare	1/28/2015	DD-34039	PRJ	JOHN F. GAFFNEY	124.00			West	2015 Gaff 2-1-15
67200	Taxes - Empr FICA & Medicare	1/28/2015	DD-34039	PRJ	JOHN F. GAFFNEY	29.00			West	2015 Gaff 2-1-15
67400	Taxes - Empr FUTA Expense	1/28/2015	DD-34039	PRJ	JOHN F. GAFFNEY	12.00			West	2015 Gaff 2-1-15
67500	Taxes - Empr VI Unemp	1/28/2015	DD-34039	PRJ	JOHN F. GAFFNEY	30.00			West	2015 Gaff 2-1-15
69200	Wages - Managers	1/28/2015	DD-34039	PRJ	JOHN F. GAFFNEY	2,000.00			West	2015 Gaff 2-1-15
68200	Travel & Hotels Expense	1/29/2015	42846360820-0096	PJ	JOHN GAFFNEY	17.25			West	2015
68200	Travel & Hotels Expense	1/29/2015	42846360820-0096	PJ	JOHN GAFFNEY	17.25			West	2015 Gaff 2-1-15
68200	Travel & Hotels Expense	2/1/2015	1028	PJ	JOHN GAFFNEY	1,150.00			West	2015
68200	Travel & Hotels Expense	2/1/2015	1028	PJ	JOHN GAFFNEY	1,150.00			West	2015 Gaff 2-1-15
67200	Taxes - Empr FICA & Medicare	2/4/2015	DD-34164	PRJ	JOHN F. GAFFNEY	29.00			West	2015 Gaff 2-1-15
67200	Taxes - Empr FICA & Medicare	2/4/2015	DD-34164	PRJ	JOHN F. GAFFNEY	124.00			West	2015 Gaff 2-1-15
67400	Taxes - Empr FUTA Expense	2/4/2015	DD-34164	PRJ	JOHN F. GAFFNEY	3.60			West	2015 Gaff 2-1-15
67500	Taxes - Empr VI Unemp	2/4/2015	DD-34164	PRJ	JOHN F. GAFFNEY	30.00			West	2015 Gaff 2-1-15
69200	Wages - Managers	2/4/2015	DD-34164	PRJ	JOHN F. GAFFNEY	2,000.00			West	2015 Gaff 2-1-15
67200	Taxes - Empr FICA & Medicare	2/11/2015	DD-34295	PRJ	JOHN F. GAFFNEY	29.00			West	2015 Gaff 2-1-15
67200	Taxes - Empr FICA & Medicare	2/11/2015	DD-34295	PRJ	JOHN F. GAFFNEY	124.00			West	2015 Gaff 2-1-15
67500	Taxes - Empr VI Unemp	2/11/2015	DD-34295	PRJ	JOHN F. GAFFNEY	30.00			West	2015 Gaff 2-1-15
69200	Wages - Managers	2/11/2015	DD-34295	PRJ	JOHN F. GAFFNEY	2,000.00			West	2015 Gaff 2-1-15
67200	Taxes - Empr FICA & Medicare	2/18/2015	DD-34424	PRJ	JOHN F. GAFFNEY	124.00			West	2015 Gaff 2-1-15
67200	Taxes - Empr FICA & Medicare	2/18/2015	DD-34424	PRJ	JOHN F. GAFFNEY	29.00			West	2015 Gaff 2-1-15
67500	Taxes - Empr VI Unemp	2/18/2015	DD-34424	PRJ	JOHN F. GAFFNEY	30.00			West	2015 Gaff 2-1-15
69200	Wages - Managers	2/18/2015	DD-34424	PRJ	JOHN F. GAFFNEY	2,000.00			West	2015 Gaff 2-1-15
67200	Taxes - Empr FICA & Medicare	2/25/2015	DD-34555	PRJ	JOHN F. GAFFNEY	124.00			West	2015 Gaff 2-1-15
67200	Taxes - Empr FICA & Medicare	2/25/2015	DD-34555	PRJ	JOHN F. GAFFNEY	29.00			West	2015 Gaff 2-1-15
67500	Taxes - Empr VI Unemp	2/25/2015	DD-34555	PRJ	JOHN F. GAFFNEY	30.00			West	2015 Gaff 2-1-15
69200	Wages - Managers	2/25/2015	DD-34555	PRJ	JOHN F. GAFFNEY	2,000.00			West	2015 Gaff 2-1-15
68200	Travel & Hotels Expense	3/1/2015	1029	PJ	JOHN GAFFNEY	1,000.00			West	2015
68200	Travel & Hotels Expense	3/1/2015	1029	PJ	JOHN GAFFNEY	1,000.00			West	2015 Gaff 2-1-15
67200	Taxes - Empr FICA & Medicare	3/4/2015	DD-34683	PRJ	JOHN F. GAFFNEY	29.00			West	2015 Gaff 2-1-15
67200	Taxes - Empr FICA & Medicare	3/4/2015	DD-34683	PRJ	JOHN F. GAFFNEY	124.00			West	2015 Gaff 2-1-15
67500	Taxes - Empr VI Unemp	3/4/2015	DD-34683	PRJ	JOHN F. GAFFNEY	30.00			West	2015 Gaff 2-1-15
69200	Wages - Managers	3/4/2015	DD-34683	PRJ	JOHN F. GAFFNEY	2,000.00			West	2015 Gaff 2-1-15
67200	Taxes - Empr FICA & Medicare	3/11/2015	26795	PRJ	JOHN F. GAFFNEY	29.00			West	2015 Gaff 2-1-15
67200	Taxes - Empr FICA & Medicare	3/11/2015	26795	PRJ	JOHN F. GAFFNEY	124.00			West	2015 Gaff 2-1-15
67500	Taxes - Empr VI Unemp	3/11/2015	26795	PRJ	JOHN F. GAFFNEY	30.00			West	2015 Gaff 2-1-15
69200	Wages - Managers	3/11/2015	26795	PRJ	JOHN F. GAFFNEY	2,000.00			West	2015 Gaff 2-1-15
67200	Taxes - Empr FICA & Medicare	3/25/2015	2015-0325-02	PJ	UNITED CORPORATION	58.00			East	2015
67200	Taxes - Empr FICA & Medicare	3/25/2015	2015-0325-02	PJ	UNITED CORPORATION	248.00			East	2015
67400	Taxes - Empr FUTA Expense	3/25/2015	2015-0325-02	PJ	UNITED CORPORATION	24.00			East	2015
67500	Taxes - Empr VI Unemp	3/25/2015	2015-0325-02	PJ	UNITED CORPORATION	60.00			East	2015
69200	Wages - Managers	3/25/2015	2015-0325-02	PJ	UNITED CORPORATION	4,000.00			East	2015
65500	Office Supplies & Expense	4/15/2015	2015-0415-01	PJ	UNITED CORPORATION	98.03			East	2015
67200	Taxes - Empr FICA & Medicare	4/29/2015	2015-0429-01	PJ	UNITED CORPORATION	145.00			East	2015
67200	Taxes - Empr FICA & Medicare	4/29/2015	2015-0429-01	PJ	UNITED CORPORATION	620.00			East	2015
67400	Taxes - Empr FUTA Expense	4/29/2015	2015-0429-01	PJ	UNITED CORPORATION	18.00			East	2015
67500	Taxes - Empr VI Unemp	4/29/2015	2015-0429-01	PJ	UNITED CORPORATION	150.00			East	2015
69200	Wages - Managers	4/29/2015	2015-0429-01	PJ	UNITED CORPORATION	10,000.00			East	2015
67200	Taxes - Empr FICA & Medicare	5/27/2015	2015-0527-02	PJ	UNITED CORPORATION	496.00			East	2015
67200	Taxes - Empr FICA & Medicare	5/27/2015	2015-0527-02	PJ	UNITED CORPORATION	116.00			East	2015
67500	Taxes - Empr VI Unemp	5/27/2015	2015-0527-02	PJ	UNITED CORPORATION	120.00			East	2015
69200	Wages - Managers	5/27/2015	2015-0527-02	PJ	UNITED CORPORATION	8,000.00			East	2015
67200	Taxes - Empr FICA & Medicare	6/24/2015	2015-0624-01	PJ	UNITED CORPORATION	496.00			East	2015
67200	Taxes - Empr FICA & Medicare	6/24/2015	2015-0624-01	PJ	UNITED CORPORATION	116.00			East	2015
67500	Taxes - Empr VI Unemp	6/24/2015	2015-0624-01	PJ	UNITED CORPORATION	13.50			East	2015
69200	Wages - Managers	6/24/2015	2015-0624-01	PJ	UNITED CORPORATION	8,000.00			East	2015
64900	Meals & Entertainment Expense	6/25/2015	2015-0625-01	PJ	UNITED CORPORATION	349.00			East	2015

**Expert report of Jackson, Vizcaino Zomerfeld, LLP re Hamed v. Yusuf et.al**  
**Exhibit 3005/426-a**

69200	Wages - Managers	7/31/2015	2015-0731-02	PJ	UNITED CORPORATION	10,765.00	East	2015
69200	Wages - Managers	8/31/2015	2015-0831-02	PJ	UNITED CORPORATION	8,612.00	East	2015
69200	Wages - Managers	9/30/2015	15-0930-02	PJ	UNITED CORPORATION	8,612.00	East	2015
68200	Travel & Hotels Expense	10/1/2015	15-1001-01	PJ	UNITED CORPORATION	7,143.77	East	2015
69200	Wages - Managers	10/28/2015	15-1028-02	PJ	UNITED CORPORATION	8,612.00	East	2015
69200	Wages - Managers	11/30/2015	15-1130-02	PJ	UNITED CORPORATION	6,459.00	East	2015
80000	Accounting Fees	12/17/2015	280	GEN	JOHN GAFFNEY (ROSS P	3,090.00	West	2015
69200	Wages - Managers	12/31/2015	15-1231-03	PJ	UNITED CORPORATION	12,686.15	East	2015
<b>Total 2015</b>						<b><u>125,529.05</u></b>		

**Expert report of Jackson, Vizcaino Zomerfeld, LLP re Hamed v. Yusuf et.al**  
**Exhibit 3005/426-a**

Salary, benefits and bonus paid to and on behalf of John Gaffney  
 2016

Account ID	Account Description	Date	Reference	jml	Trans Description	Debit Amt	Credit Amt	Year
68200	Travel & Hotels Expense	3/31/16	16-0331-03	PJ	UNITED CORPORATION - GAFFNEY TRAVEL/HOUSING ALLOW FOR JAN, FEB, MAR 2016	3,000.00		2016
68200	Travel & Hotels Expense	4/30/16	16-0430-03	PJ	UNITED CORPORATION - GAFFNEY APRIL TRAVEL/HOUSING ALLOWANCE	1,000.00		2016
68200	Travel & Hotels Expense	5/31/16	16-0531-03	PJ	UNITED CORPORATION - GAFFNEY MAY TRAVEL / HOUSING ALLOW	1,000.00		2016
68200	Travel & Hotels Expense	6/30/16	16-0630-03	PJ	UNITED CORPORATION - GAFFNEY JUNE TRAVEL HOUSING ALLOWANCE	1,000.00		2016
69200	Wages - Managers	1/31/16	16-0131-02	PJ	UNITED CORPORATION - JOHN GAFFNEY WAGES FOR FEBRUARY	8,774.00		2016
69200	Wages - Managers	2/29/16	16-0229-02	PJ	UNITED CORPORATION - JOHN GAFFNEY FEBRUARY WAGES	8,732.00		2016
69200	Wages - Managers	3/31/16	16-0331-02	PJ	UNITED CORPORATION - GAFFNEY MAR 2016 WAGES	8,717.00		2016
68200	Wages - Managers	4/30/16	16-0430-02	PJ	UNITED CORPORATION - JOHN GAFFNEY APRIL WAGES	8,612.00		2016
69200	Wages - Managers	5/31/16	16-0531-02	PJ	UNITED CORPORATION - JOHN GAFFNEY MAY WAGES	8,612.00		2016
69200	Wages - Managers	6/30/16	16-0630-02	PJ	UNITED CORPORATION - JOHN GAFFNEY JUNE WAGES	10,785.00		2016
<b>Total 2016</b>						<b>60,212.00</b>		

**Expert report of Jackson, Vizcaino Zomerfeld, LLP re Hamed v. Yusuf et.al**  
**Exhibit 3005/426-a**

2012 – April 24, 2013	\$ 34,568.80
April 25, - December 31, 2013	82,315.84
2014	122,182.50
2015	125,529.05
through June 2016	60,212.00
	<u>\$ 424,808.19</u>

2012 – April 24, 2013	\$ 34,568.80
Percentage allocated	10%
	<u>3,456.88</u>

April 25, - December 31, 2013	\$ 82,315.84
Percentage allocated	50%
	<u>41,157.92</u>

2014	\$ 122,182.50
Percentage allocated	50%
	<u>61,091.25</u>

2015	\$ 125,529.05
Percentage allocated	50%
	<u>\$ 62,764.53</u>

2016	\$ 60,212.00
Percentage allocated	50%
	<u>\$ 30,106.00</u>

Amount payable by Partnership	\$ 198,576.58
Amount due back to the Partnership	226,231.62
	<u>\$ 424,808.19</u>

# EXHIBIT 2

**TO HAMED'S MOTION AS TO HAMED CLAIM NO. H-9:  
JOHN GAFFNEY'S SALARY, BENEFITS AND BONUS**

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

MOHAMMED HAMED by His Authorized )  
Agent WALEED HAMED, )  
)  
Plaintiff/Counterclaim Defendant, )  
)  
vs. ) Case No. SX-12-CV-370  
)  
FATHI YUSUF and UNITED CORPORATION, )  
)  
Defendants/Counterclaimants, )  
)  
vs. )  
)  
WALEED HAMED, WAHEED HAMED, MUFEED )  
HAMED, HISHAM HAMED, and PLESSEN )  
ENTERPRISES, INC., )  
)  
Additional Counterclaim Defendants.)

**THE VIDEOTAPED ORAL DEPOSITION OF JOHN GAFFNEY**

was taken on the 3rd day of April, 2014, at the Law Offices  
of Adam Hoover, 2006 Eastern Suburb, Christiansted,  
St. Croix, U.S. Virgin Islands, between the hours of  
3:14 p.m. and 4:41 p.m., pursuant to Notice and Federal  
Rules of Civil Procedure.

Reported by:

Cheryl L. Haase  
Registered Professional Reporter  
Caribbean Scribes, Inc.  
2132 Company Street, Suite 3  
Christiansted, St. Croix U.S.V.I.  
(340) 773-8161

EXHIBIT  
2

## JOHN GAFFNEY -- DIRECT

1 Q. Okay.

2 A. But it's certainly not what's being rumored as  
3 going around.

4 Q. But -- but the Judge also said that there was a  
5 partnership, as well, didn't he?

6 A. He gave an opinion that there was, and I didn't  
7 have to read beyond the first page of that to know that it  
8 was an opinion that basically allowed for litigation to  
9 continue. It was not an order.

10 Q. I see. And so you think that the Judge was wrong  
11 in his opinion that there was a partnership?

12 A. No, I think there's some merits about a  
13 ~~partnership, but I -- I don't think it's the way it's~~  
14 defined.

15 Q. Okay. I guess the question is this: We agree  
16 that Plaza Extra Supermarkets sells grocery stores (sic) and  
17 takes in money, do we not?

18 A. Sells groceries, yes.

19 Q. Yes. Groceries. Takes in money.

20 And that it has expenses, does it not?

21 A. Yes.

22 Q. Distinct and separate from that,  
23 United Corporation rents property, does it not?

24 A. (Witness nods head.) Yes, that's one of its  
25 functions.

JOHN GAFFNEY -- DIRECT

1 Q. Do you do the books, do you work on the financials  
2 of United Corporation? For instance, when you were asked at  
3 the preliminary injunction if you knew where the money from  
4 a \$2.7 million withdrawal were, you said you had no idea;  
5 that you hadn't worked -- you didn't work on the United  
6 books.

7 Do you recall that testimony?

8 A. No, I do. I do see the United books, and in fact  
9 they're incorporated into the overall financial statements.

10 Q. In the Sage 50 system that's -- that's used by the  
11 company, are -- are the United financial -- the United  
12 tenant account, for instance, referenced in that?

13 A. They are now.

14 Q. As of what date?

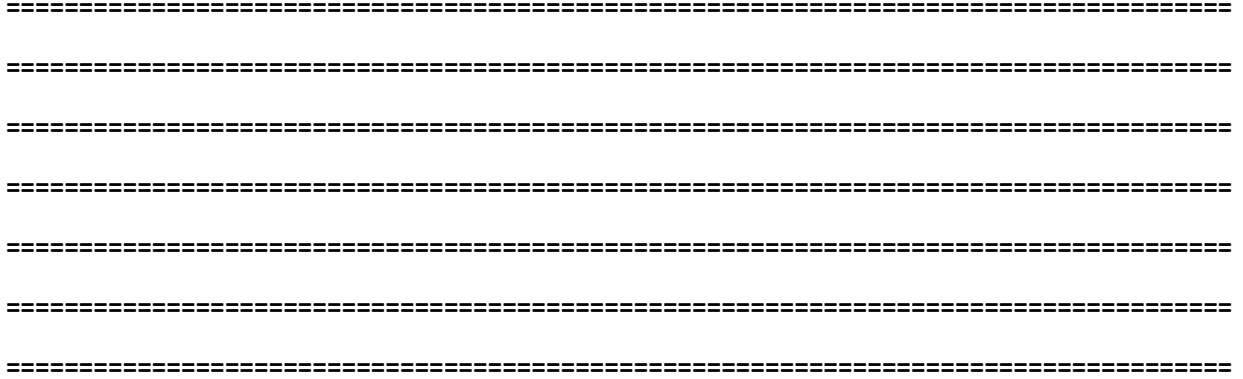
15 A. I don't know. Let me see when I put them in. I  
16 know that what happened was -- oh, actually, I take that  
17 back. I take that back.

18 They are in a combination company now,  
19 because what I did was I set up separate accounting  
20 departments in St. Thomas, at Plaza East and at Plaza West.  
21 Then Iman was doing -- Iman did the, basically, the bank  
22 analysis to come up with the journal entries to be able to  
23 include the effects of the --

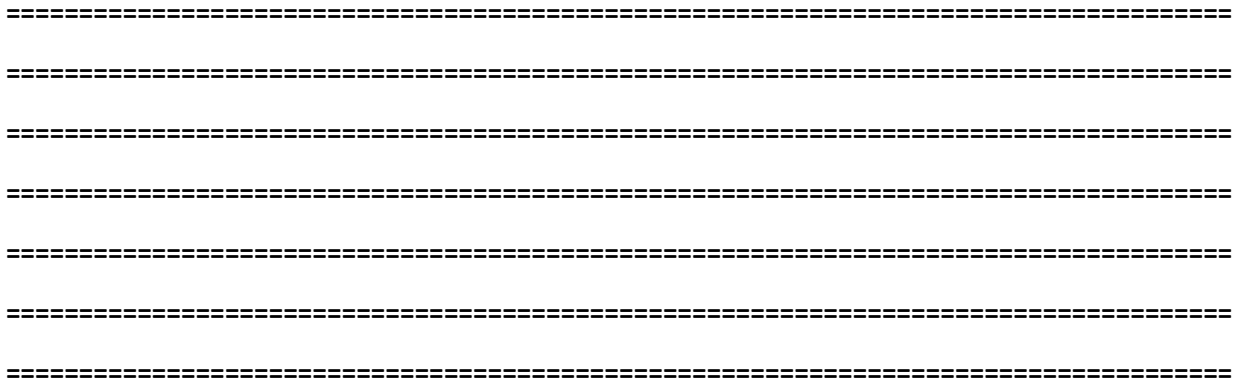
24 Q. But that's something new you've done now.

25 A. Yeah, I put that into a combination company.





# **DIVIDER**



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

**WALEED HAMED**, as the Executor of the  
Estate of MOHAMMAD HAMED,

*Plaintiff/Counterclaim Defendant,*

vs.

**FATHI YUSUF** and **UNITED CORPORATION**

*Defendants and Counterclaimants.*

vs.

**WALEED HAMED, WAHEED HAMED,  
MUFEED HAMED, HISHAM HAMED, and  
PLESSEN ENTERPRISES, INC.,**

*Counterclaim Defendants,*

---

**WALEED HAMED**, as the Executor of the  
Estate of MOHAMMAD HAMED,

*Plaintiff,*

vs.

**UNITED CORPORATION,**

*Defendant.*

---

**WALEED HAMED**, as the Executor of the  
Estate of MOHAMMAD HAMED,

*Plaintiff,*

vs.

**FATHI YUSUF,**

*Defendant.*

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**Case No.: SX-2012-cv-370**

**ACTION FOR DAMAGES,  
INJUNCTIVE RELIEF AND  
DECLARATORY RELIEF**

JURY TRIAL DEMANDED

Consolidated with

**Case No.: SX-2014-CV-287**

**ACTION FOR DECLARATORY  
JUDGMENT**

JURY TRIAL DEMANDED

Consolidated with

**Case No.: SX-2014-CV-278**

**ACTION FOR DEBT AND  
CONVERSION**

JURY TRIAL DEMANDED

**MOTION AS TO HAMED CLAIM NO. H-2:  
\$2,784,706.25 TAKEN IN 2012 BY YUSUF**

Hamed has raised as one of his claims, designated as H-2, the \$2.7 million unilaterally taken from the Partnership in 2012 by Yusuf. While Yusuf continually attempts to discuss other claims which might offset this -- Hamed seeks approval of the claim now, as it is *uncontested and has been ruled on by the Court*.

This litigation began in 2012 when Fathi and Mike Yusuf unilaterally took \$2,784,706.25 from a Partnership account and transferred it to an account to which the Hameds did not have access. A copy of the check is attached as **Exhibit 1**. This was the main issue in Hamed's 2012 complaint--and the central issue during the early portion of this case. Yusuf took the position that Hamed had no interest in the Plaza Extra Stores. Based on this, he took \$2.7 million from the Partnership account and also **tried to have the police remove the Hameds from the stores**. Thus, Judge Brady granted a full evidentiary TRO hearing over two full days -- January 25th and 31st, 2013.

Three months later, the Court ruled for Hamed on the matter. (See the Court's *detailed* Memorandum of April 25, 2013, **Exhibit 2**, *Hamed v. Yusuf*, 58 V.I. 117, 2013 WL 1846506 (V.I. Super. Apr. 25, 2013)). The Court stated at paragraphs 35 and 36:

On the first hearing day, Mahar Yusuf, President of United Corporation testified under oath that he used the \$2,784,706.25 withdrawn from the Plaza Extra operating account to buy three properties on St. Croix in the name of United. **On the second hearing day, Mahar Yusuf, contradicted his prior testimony and admitted that those withdrawn funds had actually been used to invest in businesses not owned by United. . . .** (Emphasis added.)

*Id.* at \*10. And, further, at footnote 9, at \*19 (emphasis added):

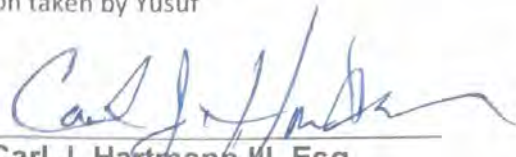
With regard to the **August 2012 diversion of more than \$2.7 million by Mahar Yusuf, president of United, to accounts inaccessible to Plaintiff**, a real concern exists that continuing diversions will not be traceable as the Plaza Extra store have had no system of internal controls in existence and, to date accounting for the businesses is not completed beyond June 2012....

There is no way that Yusuf can now alter the Court's decision on this matter -- having since conceded that there was a Yusuf/Hamed partnership that owned the Plaza Extra Stores, and Judge Brady having entered summary judgment. (**Exhibit 3.**) Simply put, Yusuf tried to steal Hamed's half of the Plaza Extra Stores, claim that Hamed was just an illiterate employee, give him a small "annuity" rather than his 50%, and throw the Hameds out -- and he began all of this by baldly stealing the \$2.7 million.

However, Yusuf (as the Liquidating Partner) has delayed having this declared a valid claim by repeatedly saying he too has claims that must be heard as well. That may be the case, and he may or may not prove those other claims, **but as there is no doubt that the Yusufs took the money and (as Judge Brady's memorandum makes clear) that \$2.7 million plus interest is a valid claim and must be returned to the Partnership.** Thus, Hamed asks the court to make that determination now, as we have arrived at that stage of the proceedings -- regardless of what other claims Yusuf raises.

The original amount of the claim was \$2,784,706.25. Additionally, Hamed seeks \$1,305,988 in statutory interest at 9% from August 15, 2012, the date of the Plaza Extra check written to the United Corporation (unilateral Partnership withdrawal). It is respectfully submitted this claim should be resolved now and declared to be due and owing, with interest to run until it is paid.

Dated: January 20, 2017



**Carl J. Hartmann III, Esq.**  
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#### CERTIFICATE OF SERVICE

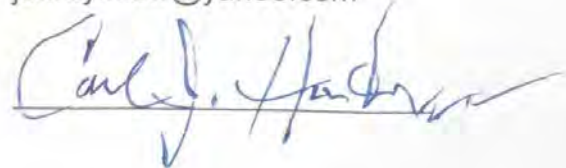
I hereby certify that on this 20th day of December, 2017, I served a copy of the foregoing by email, as agreed by the parties, on:

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#### CERTIFICATE OF COMPLIANCE WITH RULE 6-1(e)

This document complies with the page or word limitation set forth in Rule 6-1(e).



# EXHIBIT 1

**TO HAMED'S MOTION AS TO HAMED CLAIM NO. H-2:  
\$2,784,706.25 TAKEN IN 2012 BY YUSUF**



UNITED CORPORATION D/B/A  
PLAZA EXTRA

PO BOX 765  
CHRISTIANSTED, USVI 00805-0765

1154

101-806216

Date: 8/15/2012

United Corporation

\$ 2,784,700.25

Two million Seven hundred eighty-four Thousand Seven Hundred Six Dollars & 25/100

Scotiabank  
THE BANK OF NOVA SCOTIA

*[Handwritten Signature]*

⑆11001⑆ NO 21608069⑆ 058⑆ 00086413⑆

EXHIBIT  
1

# EXHIBIT 2

**TO HAMED'S MOTION AS TO HAMED CLAIM NO. H-2:  
\$2,784,706.25 TAKEN IN 2012 BY YUSUF**



**FOR PUBLICATION**

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

MOHAMMED HAMED, by his authorized agent WALEED HAMED,	)	
	)	
	)	CIVIL NO. SX-12-CV-370
	)	ACTION FOR DAMAGES; PRELIMINARY AND PERMANENT INJUNCTION;
FATHI YUSUF and UNITED CORPORATON,	)	DECLARATORY RELIEF
	)	JURY TRIAL DEMANDED
Defendants.	)	

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**MEMORANDUM OPINION**

**THIS MATTER** is before the Court on Plaintiff’s Emergency Motion and Memorandum to Renew Application for TRO (“Renewed Motion”), filed January 9, 2013, renewing his September 18, 2012 Motion for a Temporary Restraining Order and/or a Preliminary Injunction. Hearing on the Renewed Motion was held on January 25, 2013 and continued on January 31, 2013. Having reviewed the Renewed Motion, evidence and argument of counsel presented at the hearing, along with the voluminous filings of the parties in support of and in opposition to the Renewed Motion, this matter has been converted to that of a Preliminary Injunction pursuant to Fed. R. Civ. P. 65(a). Upon review of the record, the Court herein makes findings of fact and conclusions of law, pursuant to Fed. R. Civ. P. 52(a)(2), and GRANTS Plaintiff’s Renewed Motion.

*JURISDICTION*

This Court has jurisdiction over this matter pursuant to 4 V.I. Code § 76(a), which grants the Superior Court “original jurisdiction in all civil actions regardless of the amount in controversy.” Likewise, under 5 V.I. Code § 1261, courts of record are empowered to “declare rights, status, and other legal relations whether or not further relief is or could be claimed . . .

The declaration may be either affirmative or negative in form and effect; and such declarations shall have the force and effect of a final judgment or decree.” A request for injunctive relief is addressed to the sound discretion of the Court. *Shire US Inc. v. Barr Laboratories, Inc.*, 329 F.3d 348, 352 (3d Cir. 2003). This Court may grant equitable (i.e. injunctive) relief as Plaintiff seeks in his Renewed Motion to enforce a partner’s rights regarding partnership profits and management and conduct of the partnership business pursuant to 26 V.I. Code §75(b).

#### *STANDARD*

The Court must consider four factors when reviewing a motion for preliminary injunction: (1) whether the movant has shown a reasonable probability of success on the merits; (2) whether the movant will be irreparably injured by the denial of the relief; (3) whether granting preliminary relief will result in even greater harm to the nonmoving party; and (4) whether granting the preliminary relief will be in the public interest. *Petrus v. Queen Charlotte Hotel Corp.*, 56 V.I. 548, 554 (2012), citing *Iles v. de Jongh*, 55 V.I. 1251, 1256 (3d Cir. 2011), (quoting *McTernan v. City of New York*, 577 F. 3d 521, 526 (3d Cir. 2009).

#### *STATEMENT OF ISSUES*

By his Verified Complaint, Plaintiff alleges that Defendants, acting personally and through authorized agents, committed several unilateral acts in contravention of the partnership relationship between Plaintiff and Defendant Fathi Yusuf (“Yusuf”) and established understandings and agreements among the parties. Plaintiff avers that those acts threaten the businesses and his interests in the businesses established by the partnership as a result of those agreements. Accordingly, Plaintiff demands injunctive and declaratory relief to determine the status of the parties’ relationships and the framework under which they must conduct their

business operations in light of those relationships. Upon review of the parties' case and controversy, submissions and presented evidence, the Court makes the following findings of fact.

### FINDINGS OF FACT

1. Plaintiff and Defendant Yusuf have a longstanding friendship and familial history which preceded their business relationship. *January 25, 2013 Evidentiary Hearing Transcript, at 196-198, hereinafter Tr. 196-198, Jan. 25, 2013.*
2. In 1979, Fathi Yusuf incorporated United Corporation ("United") in the U.S. Virgin Islands. *Defendants' Evidentiary Hearing Exhibit, no. 7, hereinafter Def. Ex. 7.*
3. United subsequently began construction on a shopping center located at Estate Sion Farm, St. Croix. Thereafter, Defendant Yusuf desired and made plans to build a supermarket within the shopping center. *Plaintiff's Evidentiary Hearing Exhibit, no. 1 (Transcript, February 2, 2000 Oral Deposition of Fathi Yusuf: Idheileh v. United Corp. and Yusuf, Case No. 156/1997, Territorial Court of the Virgin Islands, Div. St. Thomas and St. John), at 8, lines 1-14; hereinafter Pl. Ex. 1, p. 8:1-14.<sup>1</sup>*
4. Subsequently, Yusuf encountered financial difficulty in completing construction of the shopping center and opening the supermarket, was unable to procure sufficient bank loans, and told Plaintiff Mohammad Hamed ("Hamed") that he was unable to finance the completion of the project. At Yusuf's request, Hamed provided funding to Yusuf's project from proceeds of Hamed's grocery business. *Pl. Ex. 1, p. 14:4-15:14.*
5. Hamed provided Yusuf with monies to facilitate completion of construction on the shopping center and to facilitate opening the Plaza Extra supermarket in Estate Sion Farm, St Croix. *Tr.197:5—199:13, Jan. 25, 2013.*

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<sup>1</sup> The Court has taken judicial notice of the certified copy of the deposition transcript in the noted Territorial Court action, submitted as Pl. Ex. 1. See discussion at *Tr. 6-9, Jan. 25, 2013.*

6. Upon Yusuf's request, Hamed sold his two grocery stores to work exclusively as a part of Plaza Extra. *Tr. 200:4-15, Jan. 25, 2013.*
7. Hamed contributed to Yusuf's project funds as they were available to him, including the entire proceeds from the sale of his two grocery stores, with the agreement that he and Yusuf would each be a 50% partner in the Plaza Extra Supermarket, "in the winning or loss." *Tr.200:16-23, Jan. 25, 2013.*
8. Hamed initially became a 25% partner of Yusuf, along with Yusuf's two nephews who each also had a 25% interest in the Plaza Extra Supermarket business. *Pl. Ex. 1, p.15:2-14.*
9. Yusuf sought additional bank financing to complete the construction of the building for the Plaza Extra business, which loan application was eventually denied, as a result of which Yusuf's two nephews requested to have their funds returned and to leave the partnership. *Pl. Ex. 1, p. 17:6-24.*
10. With the withdrawal of Yusuf's nephews, the two remaining partners of the Plaza Extra Supermarket business were Hamed and Yusuf. Notwithstanding the financing problems, Hamed determined to remain with the business, having contributed a total of \$400,000 in exchange for a 50% ownership interest in the business. *Pl. Ex. 1, p.17:24-19:10.*
11. Yusuf and Hamed were the only partners in Plaza Extra by the time in 1986 when the supermarket opened for business and Hamed has remained a partner since that time. *Pl. Ex. 28.*<sup>2</sup>

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<sup>2</sup> Subsequent to the evidentiary hearing but before the parties submitted their post-hearing briefs, Plaintiff on February 19, 2013 filed his Second Request to Take Judicial Notice and Request to Supplement the Hearing Record, presenting proposed Plaintiff's Exhibits 28, 29 and 30. By separate Order of this date, Plaintiff's Request was granted. Exhibit 28 is comprised of selected Defendants' Responses to Plaintiff's Second Set of Interrogatories to Defendants in that matter known as *Idheileh v. United Corp. and Yusuf, Case No. 156/1997, Territorial Court of the Virgin Islands, Div. St. Thomas and St. John*

12. As a partner in the Plaza Extra Supermarket business, Hamed was entitled to fifty (50%) percent of the profit and liable for fifty (50%) of the “payable” as well as loss of his contribution to the initial start-up funds. *Tr. 44:12-21; 200:16-23; 206:23-25, Jan. 25, 2013; Pl. Ex. 1, p 18:16-23; p.23:18-25.*
13. Yusuf and Hamed have both acknowledged their business relationship as a partnership of an indefinite term. *Pl. Ex. 1, p.18:18-23* (“I’m obligated to be your partner as long as you want me to be your partner until we lose \$800,000.”); *Tr. 210:4-8, Jan. 25, 2013* (Q: “How long is your partnership with Mr. Yusuf supposed to last? When does it end?” A: “Forever. We start with Mr. Yusuf with the supermarket and we make money. He make money and I make money, we stay together forever.”)
14. Yusuf testified in the *Idheileh* case that it was general public knowledge that Yusuf was a business partner with Hamed even before the Plaza Extra supermarket opened. *Pl. Ex. 1, p. 20:10-12.*
15. Yusuf has admitted in this case that he and Hamed “entered into an oral joint venture agreement” in 1986 by which Hamed provided a “loan” of \$225,000 and a cash payment of \$175,000 in exchange for which “Hamed [was] to receive fifty percent (50%) of the net profits of the operations of the Plaza Extra supermarkets” in addition to the “loan” repayment. Yusuf states that the parties’ agreement provided for “a 50/50 split of the profits of the Plaza Extra Supermarket stores.” *Pl. Ex. 2, p.3,4.* Indeed, Yusuf confirms that “[t]here is no disagreement that Mr. Hamed is entitled to fifty percent (50%) of the profits of the operations of Plaza Extra Store....The issue here again is not whether Plaintiff Hamed is entitled to 50% of the profits. He is.” *Pl. Ex. 3, p.11.*

16. In 1992-1993, a second Plaza Extra supermarket was opened on the island of St. Thomas, USVI, initially with a third “partner,” Ahmad Idheileh, who later withdrew leaving a “50/50” ownership interest in the St. Thomas Plaza Extra between Yusuf and Hamed. *Tr.27:1-28:14, Jan. 25, 2013.*
17. At present, there are three Plaza Extra Supermarkets which employ approximately six hundred people on St. Croix and St. Thomas. *Tr. 238:4-6, Jan 25, 2013.*
18. In the *Idheileh* litigation, Yusuf provided an affidavit wherein he stated that “[m]y brother in law, Mohamed Hamed, and I have been full partners in the Plaza Extra Supermarket since 1984 while we were obtaining financing and constructing the store, which finally opened in 1986.” *Pl. Ex. 1, Affidavit of Fathi Yusuf, Deposition Ex. 6<sup>3</sup>.*
19. Hamed and Yusuf have jointly managed the stores by having one member of the Hamed family and one member of the Yusuf family co-manage each of the three Plaza Extra Supermarkets. Originally, Hamed and Yusuf personally managed the first Plaza Extra store, with Hamed in charge of receiving, the warehouse and produce, and Yusuf taking care of the office. *Tr. 26:11-19; 206:20-22, Jan 25, 2013.* Yusuf’s management and control of the “office” was such that Hamed was completely removed from the financial aspects of the business, concerning which Hamed testified “I’m not sign nothing...Fathi is the one, he sign. Mr. Yusuf the one he sign the loan, the first one and the second one.” *Tr. 207:16-21, Jan. 25, 2013.*
20. During recent years, in every store there is, at least, one Yusuf and one Hamed who co-manage all aspects of the operations of each store. Mafeed Hamed and Yusuf Yusuf have

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<sup>3</sup> At the conclusion of the second day of the hearing, counsel agreed to supplement the record to include exhibits to Plaintiff’s Exhibit 1, the February 2, 2000 deposition of Fathi Yusuf. *Tr.129-130, Jan. 31, 2013.* Deposition Exhibits 6 and 7 were provided with Plaintiff’s Notice of Filing Supplemental Deposition Exhibits, filed February 19, 2013.

- managed the Estate Sion Farm store along with Waleed Hamed. Waheed Hamed, Fathi Yusuf and Nejah Yusuf operate the St. Thomas store, and Hisham Hamed and Mahar Yusuf manage the Plaza West store on St. Croix. *Tr. 31:6-35:11; 147:11-20; 160:10-22, Jan. 25, 2013, and Tr. 33:6-17, Jan. 31, 2013.*
21. In operating the “office,” Yusuf did not clearly delineate the separation between United “who owns United Shopping Plaza” and Plaza Extra, despite the fact that from the beginning Yusuf intended to and did “hold the supermarket for my personal use.” *Pl. Ex. 1, p. 8:1-7.* Despite the facts that the supermarket used the trade name “Plaza Extra” registered to United (*Pl. Ex. 4, ¶14*) and that the supermarket bank accounts are in the name of United (*Pl. Ex's. 15, 16*), “in talking about Plaza Extra...when it says United Corporation...[i]t’s really meant me [Yusuf] and Mr. Mohammed Hamed.” *Pl. Ex. 1, p. 69:13-21.*
  22. Yusuf admitted in the *Idheileh* action that Plaza Extra was a distinct entity from United, although the “partners operated Plaza Extra under the corporate name of United Corp.” *Pl. Ex. 28, Response to Interrogatory 6.*
  23. The distinction between United and the Plaza Extra Supermarkets is also apparent from the fact that United, as owner of United Shopping Center, has sent rent notices to Hamed on behalf of the Sion Farm Plaza Extra Supermarket, and the supermarket has paid to United the rents charged. *Pl. Ex's. 7, 8, 9; Tr. 48:24-51:9; 212:18-214:15, Jan. 25, 2013.*
  24. In 2003, United was indicted for tax evasion in federal court, along with Yusuf and several other members of the Hamed and Yusuf families in that matter in the District Court of the Virgin Islands, Division of St. Croix, known as *United States and Government of the Virgin Islands v. Fathi Yusuf, et al., Crim. No. 2005-15* (“the Criminal

- Action”) . However, Plaintiff Mohammed Hamed was not indicted. *Tr. 222:11-223:6; 134:15-23, Jan. 25, 2013.*
25. In connection with the Criminal Action, the federal government appointed a receiver in 2003 to oversee the Plaza Extra Supermarkets, who deposits all profits into investment accounts at Banco Popular Securities and, originally, at Merrill-Lynch. Those “profits” accounts remain at Banco Popular Securities to the present. *Tr. 41:15-42:18; 137:13-138:19, Jan. 25, 2013.*
26. In 2011, United pled guilty to tax evasion in the Criminal Action. Charges were dismissed against the other Defendants, by Plea Agreement filed February 26, 2011. *Def. Ex. 2, p.2.*
27. The Criminal Action against United remains pending, as the terms of the Plea Agreement require “complete and accurate” tax filings. United has filed no tax returns since 2002, although estimated taxes have been paid from the grocery store accounts, and mandatory accounting procedures for Plaza Extra have been adopted. *Tr. 241:23-245:12, Jan 25, 2013; Tr. 90:4-16, Jan 31, 2013; Def. Ex. 2.*
28. At some point between late 2009 and 2011, at Yusuf’s suggestion, the Hamed and Yusuf families agreed that all checks drawn on Plaza Extra Supermarket accounts had to be signed by one member of the Hamed family and one member of the Yusuf family. *Tr. 100:11-16, 228:2-11, Jan. 25, 2013.*
29. In late 2011, United had its newly retained accountant review a hard drive containing voluminous financial records related to the Criminal Action, following which Yusuf accused members of the Hamed family of stealing money from the supermarket business



- and threatening to close the store and to terminate the United Shopping Plaza lease. *Tr. 52:5-10, Jan. 31, 2013; Tr. 51:18-52:8, Jan. 25, 2013.*
30. Thereafter, discussions commenced initiated by Yusuf's counsel regarding the "Dissolution of Partnership." *Pl. Ex. 10, 11, 12.* On March 13, 2012, through counsel, Yusuf sent a Proposed Partnership Dissolution Agreement to Hamed, which described the history and context of the parties' relationship, including the formation of an oral partnership agreement to operate the supermarkets, by which they shared profits and losses. *Pl. Ex. 12.*<sup>4</sup> Settlement discussions followed those communications but have not to date resulted in an agreement. *Tr. 58:15-20, Jan. 25, 2013.*
31. Although Plaintiff retired from the day-to-day operation of the supermarket business in about 1996, Waleed Hamed has acted on his behalf pursuant to two powers of attorney from Plaintiff. *Tr. 45:24-48:2; 172:6-173:8; 202:18-25, Jan. 25, 2013; Pl. Ex. 1, Affidavit of Fathi Yusuf, Depos. Exh .6, ¶4.* Both Plaintiff and Yusuf have designated their respective sons to represent their interests in the operation and management of the three Plaza Extra stores. *Tr. 31:6-35:11, Jan. 25, 2013.*
32. It had been the custom and practice of the Yusuf and Hamed families to withdraw funds from the supermarket accounts for their own purposes and use (see *Def. Ex. 1; Pl. Ex. 27*), however such withdrawals were always made with the knowledge and consent of the other partner. *Tr. 138:20-139:8, Jan. 25, 2013; Tr.121:3-123:9, Jan. 31, 2013.*

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<sup>4</sup> These exhibits were admitted at hearing over Defendants' objection premised on Fed. R. Evid. 408. The evidence was not offered to prove the validity or amount of Plaintiff's claims, but rather to put into context the history of the parties' relationship which may be accepted as evidence for another purpose under R. 408(b). Further, the exhibits offer nothing beyond evidence presented wherein Yusuf has similarly characterized the history of his relationship with Plaintiff.

33. Waleed Hamed testified that Fathi Yusuf utilized Plaza Extra account funds to purchase and subsequently sell property in Estate Dorothea, St. Thomas, to which it was agreed that Hamed was entitled to 50% of net proceeds. Although Yusuf's handwritten accounting of sale proceeds confirms that Hamed is due \$802,966, representing 50% of net proceeds (*Pl. Ex. 18*), that payment has never been made to Hamed and the disposition of those sale proceeds is not known to Hamed. *Tr.88:8-90:17, Jan. 25, 2013*;
34. Each of the three Plaza Extra Supermarkets maintains and accounts for its operations separately, with separate bank accounts. In total, the stores maintain a total of approximately eleven accounts. *Tr. 35:12-20; 36:22-38:25; 229:10-13, Jan. 25, 2013*;
35. On or about August 15, 2012, Yusuf wrote a check signed by himself and his son Mahar Yusuf and made payment to United in the amount of \$2,784,706.25 from a segregated Plaza Extra Supermarket operating account, despite written objection of Waleed Hamed on behalf of Plaintiff and the Hamed family, who claimed that, among other objections, the unilateral withdrawal violated the terms of the District Court's restraining order in the Criminal Action. *Tr. 246:1-250:14, Jan. 25, 2013; Pl.Group Ex. 13*.
36. On the first hearing day, Mahar Yusuf, President of United Corporation testified under oath that he used the \$2,784,706.25 withdrawn from the Plaza Extra operating account to buy three properties on St. Croix in the name of United. On the second hearing day, Mahar Yusuf contradicted his prior testimony and admitted that those withdrawn funds had actually been used to invest in businesses not owned by United, including a mattress business, but that none of the funds were used to purchase properties overseas. *Tr. 250:2-251:15, Jan. 25, 2013; Tr. 118:12-120:2, Jan. 31, 2013*;

37. A restraining order was entered by the District Court in the Criminal Action which remains in place and restricts withdrawal of funds representing profits, from the supermarkets that have been set aside in the Banco Popular Securites brokerage account pending the conclusion of the Criminal Action or further order of that Court. *Tr. 41:15-42:18; 119:4-12, Jan. 25, 2013.* The Criminal Action will remain pending until past tax returns are filed. *Tr. 134:15-136:22; 242:16-245:5, Jan. 25, 2013.* As of January 18, 2013, the brokerage account had a balance of \$43,914,260.04. *Def. Ex. 9* This Court cannot enforce the restraining order or otherwise control any aspect of the Criminal Action or its disposition;
38. Funds from supermarket accounts have also been utilized unilaterally by Yusuf, without agreement of Hamed, to pay legal fees of defendants relative to this action and the Criminal Action, in excess of \$145,000 to the dates of the evidentiary hearing. *Tr. 76:5-82:9, Jan. 25, 2013; Pl. Ex. 15, 16.*<sup>5</sup>
39. Since at least late 2012, Yusuf has threatened to fire Hamed family managers and to close the supermarkets. *Tr. 149:20-150:22; 158:18-159:12; 253:25-254:19, Jan. 25, 2013.*
40. On January 8, 2013, Yusuf confronted and unilaterally terminated 15 year accounting employee Wadda Charriez for perceived irregularities relative to her timekeeping records of her hours of employment, threatening to report her stealing if she challenged the firing or sought unemployment benefits at Department of Labor. *Tr. 181:20-185:16, Jan. 25, 2013.* Charriez had a “very critical job” with Plaza Extra (*Tr 179:17-19, Jan. 25, 2013*),

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<sup>5</sup> Plaintiff has submitted Exhibit 30 with his February 19, 2013 Second Request to Take Judicial Notice and Request to Supplement the Hearing Record, granted by separate Order. Defendants’ opposition to Plaintiffs’ Motion did not address Exhibit 30, consisting of two checks in the total sum of more than \$220,000 in payment to defense counsel in this action, dated January 21, 2013 and February 13, 2013, drawn on a supermarket account by Defendants without Plaintiffs’ consent. Although the evidence is cumulative and not essential to the Court’s decision herein, it reflects an ongoing practice of unilateral withdrawals and the possibility of continuing unilateral action in the future.

and the independent accountant retained by Yusuf agreed that she was “a very good worker” and that her work was “excellent.” *Tr. 94:2-6, Jan. 31, 2013*. Because the Hamed co-managers had not been consulted concerning the termination or shown any proof of the employee’s improper activity, Mafeed Hamed instructed Charriez to return to work the following day. *Tr. 179:4-24; 185:17-186:8, Jan. 25, 2013*. On Charriez’ January 9, 2013 return to work, Yusuf started screaming at her, and told her to leave or he would call the police. *Tr. 186:9-187:1, Jan. 25, 2013*. Yusuf did call police and demanded on their arrival that Charriez, and Mufeed Hamed and Waleed Hamed be removed from the store, and threatened to close the store. *Tr. 93:5-94:15; 164:19-165:18; 187:5-188:8, Jan. 25, 2013*. The incident that occurred on January 9, 2013, the same day that Plaintiff’s Renewed Motion was filed, coupled with other evidence presented demonstrates that there has been a breakdown in the co-management structure of the Plaza Extra Supermarkets. *Tr. 141:25-142:18;143:17-146:19; 166:21-167:8, Jan 25, 2013*;

41. “By the time Plaza Extra opened in 1986, Mohamed Hamed and Defendant Yusuf were the only partners. These partners operated Plaza Extra under the corporate name of United Corp.” *Pl. Ex. 28, Response to Interrogatory 6*. Defendants now claim that Yusuf is the owner of only 7.5% of the shares of United (*Pl. Ex. 2, p. 11*), which could adversely affect Plaintiff’s ability to enforce his claims as to the partnership “operated [as] Plaza Extra under the corporate name of United Corp.”

#### *DISCUSSION*

Although this matter is before the Court on Plaintiff’s Renewed Motion that seeks a temporary restraining order, the parties agree that following the full evidentiary hearing

conducted, the relief Plaintiff seeks is a preliminary injunction pursuant to Fed. R. Civ. P. 65(a). The Court cannot issue a preliminary injunction unless on the basis of the evidence on the record, Plaintiff prevails as to each of the four factors recently delineated by the Virgin Islands Supreme Court in *Petrus*, namely: (1) the movant has shown a reasonable probability of success on the merits; (2) the movant will be irreparably injured by the denial of the relief; (3) granting preliminary relief will not result in even greater harm to the nonmoving party; and (4) granting the preliminary relief will be in the public interest. 56 V.I. at 554. Only if the movant produces evidence sufficient to convince the Court that all four factors favor preliminary relief should the injunction issue. *Opticians Association of America v. Independent Opticians of America*, 920 F.2d 187, 192 (3d Cir. 1990).

The evidentiary record before the Court includes the testimony of witnesses and documentary exhibits. Those exhibits include prior filings of the parties in this case by which the parties are bound by virtue of the doctrine of judicial admissions. *Berkley Inv. Group, Ltd. V. Colkitt*, 455 F.3d 195, 211 n. 20 (3d Cir. 2006); *Parilla v. IAP Worldwide Serv., VI, Inc.*, 368 F.3d 269, 275 (3d Cir 2004). Those exhibits also include filings in prior unrelated cases, which are admissible as admissions of such party against its interest, pursuant to Fed. R. Evid. 801(d).<sup>6</sup>

The Court will consider the four factors required for the issuance of a preliminary injunction *in seriatim*, and makes the following conclusions of law.

### **CONCLUSIONS OF LAW**

#### **Probability of Movant's Success on the Merits.**

1. Plaintiff seeks to establish that his business relationship with Yusef of more than 25 years constitutes a Virgin Islands partnership, notwithstanding the lack of any written partnership

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<sup>6</sup> On April 7, 2010, Act No. 7161 became law, section 15 of which established the Federal Rules of Evidence as applicable in this Court. See, *Chinnery v. People*, 55 V.I. 508, 525 (2011).

agreement and the failure of the business to file Virgin Islands partnership tax returns or to provide K-1 forms to report partners' distributive share of income, among other factors urged by Defendants. Whether the relationship will be characterized as a partnership is governed by the Uniform Partnership Act ("UPA"), adopted in 1998 as Title 26, Chapter 1 of the Virgin Islands Code.

2. Under the UPA, "the association of two or more persons to carry on as co-owners a business for profit forms a partnership, whether or not the persons intend to form a partnership." 26 V.I. Code §22(a). In the mid-1980's when the Hamed -- Yusuf business relationship began, a Virgin Islands partnership was defined as "an association of two or more persons to carry on as co-owners a business for profit." *Former* 26 V.I. Code §21(a).

3. Under the UPA, "A person who receives a share of the profits of a business is presumed to be a partner in the business..." 26 V.I. Code §22(c)(3). Under the former Code provisions, "the receipt by a person of a share of the profits of a business is prima facie evidence that he is a partner in the business..." *Former* 26 V.I. Code §22(4).<sup>7</sup>

4. Evidence of "a fixed profit-sharing arrangement" and "evidence of business operation" are factors to be considered in the determination of whether the parties in a business relationship had formed a partnership. *Addie v. Kjaer*, Civ. No. 2004-135, 2011 WL 797402, at 3\* (D.V.I. Mar. 1, 2011).

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<sup>7</sup> The Court applies the test in effect at the time the business relationship between the parties was formed (see *Harrison v. Bornn, Bornn & Handy*, 200 F.R.D. 509, 514 (D.V.I. 2001)), and holds that a partnership is found to exist by the admitted sharing of profits of the business unless Defendants' evidence is sufficient to rebut that *prima facie* evidence. However, the distinction between the language in the former statute and the current is of no legal significance. Commentary of the National Conference of Commissioners of Uniform State Laws on the publication of the 1997 of the UPA notes that "no substantive change is intended. The sharing of profits is recast as a rebuttable presumption of a partnership, a more contemporary construction, rather than as prima facie evidence thereof." Formation of Partnership, Unif. Partnership Act §202, cmt. 3 (1997).

5. A partnership agreement is defined as the agreement, whether written, *oral*, or implied, among the partners concerning the partnership, including amendments to the partnership agreement.” 26 V.I. Code §2(7), *emphasis added*. A “partnership at will” exists where the partners have not agreed to remain partners until the expiration of a definite term or the completion of a particular undertaking.” 26 V.I. Code §2(8).

6. Defendants protest that there is no written partnership agreement to memorialize the understanding between Yusuf and Hamed. However, as noted, the UPA does not require that such agreements be memorialized by a writing, and further sanctions “at will” agreements that have no definite term or duration, and are subject to dissolution by either partner at any time. As such, partnerships are not within the statute of frauds and need not be in writing. *Smith v. Robinson*, 44 V.I. 56, 61 (Terr. Ct. 2001).

7. Even if the statute of frauds were applicable to the formation of a partnership, the doctrine of part performance operates to prevent an inequity where a person is induced or permitted to invest time, money and labor in reliance upon an oral agreement, which agreement would otherwise be voided by the application of the statute of frauds. Accordingly, if a party can show that part of an oral agreement was performed, the oral contract is taken out of the statute of frauds and becomes binding. *Sylvester v. Frydenhoj Estates Corp.*, 47 V.I. 720, 724 (D.V.I. 2006), citations omitted.

8. Defendants suggest that Hamed and Yusuf entered into a joint venture rather than a partnership. A joint venture has been defined as a partnership for a single transaction, recognized as a subspecies of partnership, and is analyzed under Virgin Islands law in the same manner as is a partnership. *Boudreax v. Sandstone Group*, 36 V.I. 86, 97 (Terr. Ct. 1997), citing *Fountain Valley Corp. v. Wells*, 19 V.I. 607 (D.V.I.1983).

9. Yusuf and Hamed, acting under the name "United Corporation," entered into their relationship with Ahmad Idheifeh "to open and operate a supermarket on St. Thomas" by means of a Joint Venture Agreement. *Pl. Ex. 1, Dep. Ex. 7*. This "business relationship created by agreement of the parties for the purpose of profit" was formed "for a single undertaking or transaction," and was to "terminate at the conclusion of their stated purpose, by agreement, or at the will of the parties." *C&C Manhattan v. Gov't of the V.I.*, 46 V.I. 377, 384 (D.V.I. 2004), citations omitted. To the contrary, the self-described "partnership" of Hamed and Yusuf, formed for profit, with no set duration, involved the development of a business enterprise, including the three supermarkets and other business projects spanning two and a half decades.

10. The Court concludes that Defendants' recent claims that the parties have been engaged in a joint venture and not a partnership are not credible as they contradict the record before the Court and the long history prior to this litigation of admissions by Yusuf, who did not testify at the hearing, to the effect that he and Hamed are "50/50" partners. Those pre-litigation admissions of the existence of a partnership have been consistent over many years, including through his notice to Hamed of his dissolution of their partnership in the months prior to this litigation.

11. Defendants argue that Defendant United has owned and operated the businesses known as Plaza Extra, and that Hamed's claims must fail because he concedes that he has no ownership interest in United. To the contrary, the record clearly reflects that Yusuf's use of the Plaza Extra trade name registered to United, the use bank accounts in United's name to handle the finances of the three supermarkets and other participation of the corporate entity in the operation of the stores was all set up in the context of Yusuf's partnership with Hamed, as Yusuf has consistently admitted. The existence of a partnership is not negated by the use of the corporate form to



conduct various operations of the partnership: *McDonald v. McDonald*, 192 N.W. 2d 903, 908 (Wis. 1972). The fact that the partner conducting the business utilizes a corporate form does not change the essential nature of the relationship of the parties. *Granik v. Perry*, 418 F.2d 832, 836 (5th Cir. 1969).

12. Where, as here, the parties agree that one partner is designated to take charge of “the office” and assumes the responsibility for obtaining or filing the relevant documents as a part of his share of the partnership responsibilities, his failure to file that documentation in the name of the partnership does not mean that no partnership exists. Partners may apportion their duties with respect to the management and control of the partnership such that one partner is given a greater share in the management than others. Thus, the fact that one partner may be given a greater day-to-day role in the management and control of a business than another partner does not defeat the existence of the partnership itself. *Al-Yassin v. Al-Yassin*, 2004 WL 625757, \*7 (Cal. Ct. App. 2004). Where one party actively pursues the partnership business, such business must be conducted in keeping with “fundamental characteristics of trust, fairness, honesty, and good faith that define the essence of the partners’ relationship.” *Alpart v. Gen. Land Partners Inc.*, 574 F.Supp. 2d 491, 500 (E.D. Pa. 2008).

13. It is undisputed that Plaintiff and Yusuf agreed from the time prior to the opening of the first store to share profits from the business on a 50/50 basis and that they did so share profits. These elements of their business relationship present a *prima facie* case for the existence of a partnership under the former 26 V.I. Code §22(4), applicable at the time of the formation of the

partnership. Defendants have not presented evidence sufficient to overcome Plaintiff's *prima facie* proof of the partnership of the parties.<sup>8</sup>

14. Various other indicia of the existence of the formation of a partnership are present in the record, including the fact that the parties intended to and did associate with each other carry on as co-owners a business for profit (26 V.I. Code §22(a)). The parties agreed to share the net profits of the business "50/50" (26 V.I. Code §22(c)(3)). Each of the parties contributed money and services to commence the business operation. The parties agreed that their relationship would continue without any definite term. The parties jointly shared the risks of the business and agreed to equally share any losses of the business. By dividing the initial management of the business between the warehouse, receiving and produce (Hamed) and the office (Yusuf), the parties jointly managed the business. As years passed and additional stores opened, joint management continued with the sons of each of the parties co-managing all aspects of each of the stores.

15. On the basis of the record before the Court and the foregoing, Plaintiff has demonstrated a reasonable probability that he will succeed on the merits of his claim as to the existence of a partnership between himself and Yusef with regard to the three Plaza Extra stores.

**Irreparable injury to Movant by denial of relief.**

16. As the Court finds that there is a reasonable probability of Plaintiff's success in proving the existence of a partnership, he is entitled to the benefits of his status as a partner, including "an equal share of the partnership profits" and "equal rights in the management and conduct of the partnership business." 26 V.I. Code §71(b) and (f).

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<sup>8</sup> The analysis and the result are the same if the evidence is determined to give rise to the presumption of the existence of a partnership of the parties under the current 26 V.I. Code §22(c)(3), the Virgin Islands UPA. Defendants' proofs are insufficient to rebut the presumption of the existence of a partnership.

17. Plaintiff maintains this action seeking equitable relief, and this Court may grant such equitable (i.e. injunctive) relief to enforce Plaintiff/partner's rights to an equal share of the partnership profits and equal rights in the management and conduct of the partnership, pursuant to 26 V.I. Code §75(b)(1) and (2)(i).

18. Yusuf forcefully contends that this case is solely about money damages, and any damage to Plaintiff is economic damage only, which can be remedied by an award of monetary damages. "[A] preliminary injunction should not be granted if the injury suffered by the moving party can be recouped in monetary damages." *IDT Telecom, Inc. v CVT Prepaid Solutions, Inc.*, 250 Fed. Appx. 476, 479 (3d Cir. 2007), citations omitted. Although the alleged diversion of more than \$3,000,000 constitutes a primary focus of Plaintiff's claims for relief, he also seeks to remedy what he alleges to be usurpation by Yusuf of his "equal rights in the management and conduct of the partnership."<sup>9</sup>

19. To establish irreparable harm, Plaintiff must show that his legal remedies (i.e. the potential award of a money judgment) are inadequate. If the plaintiff suffers a substantial injury that cannot be accurately measurable or adequately compensable by an award of money damages, irreparable harm may be found. *Ross-Simons of Warwick, Inc. v. Baccarat*, 102 F.3d 12, 18-19 (1<sup>st</sup> Cir. 1996). An award of monetary damages may not provide an adequate remedy where the amount of monetary loss alleged is not capable of ascertainment. *Instant Air Freight Co. v. C.A. Air Freight, Inc.*, 882 F. 2d 797, 801 (3d Cir. 1989).<sup>9</sup> Further, injunctive relief may be available where the movant can "demonstrate that there exists some cognizable danger of

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<sup>9</sup> With regard to the August 2012 diversion of more than \$2.7 million by Mahar Yusuf, president of United, to accounts inaccessible to Plaintiff, a real concern exists that continuing diversions will not be traceable as the Plaza Extra store have had no system of internal controls in existence and, to date accounting for the businesses is not completed beyond June 2012. (Testimony of accountant John Gaffney, *Tr. 71:20-72:3; 75:11-21, Jan. 31, 2013.*) As such, the amount of any monetary loss suffered by Plaintiff may not be capable of ascertainment.

recurrent violation of its legal rights.” *Anderson v. Davila*, 125 F. 3d 148, 164 (3d Cir. 1997), quoting *United States v. W.T. Grant Co.*, 345 U.S. 629, 633 (1953), internal quotations omitted.

20. Plaintiff alleges recurring violations of his legal rights to equal participation in the management and conduct of the partnership business. In addition, Plaintiff claims that the diversion of partnership revenues to accounts inaccessible to Plaintiff without accounting or explanation constitutes a showing of irreparable harm because of the threat that similar diversions will occur in the future and diverted funds may be removed from the jurisdiction of the Court rendering a monetary judgment ineffectual. See *Health and Body Store, LLC v. JustBrand Limited*, 2012 WL 4006041, at \*4-5 (E.D. Pa. Sept. 11, 2012).

21. The record reflects that Yusuf has arbitrarily addressed employee issues, including termination of a long-term high level employee and has threatened to close the stores. (See, Findings of Fact, ¶40). Evidence exists in the record to the effect that co-managers in Plaza Extra East no longer speak with each other (*Tr. 166:21-167:8, Jan. 25, 2013*), that employees are fearful for their jobs (*Tr. 158:18-159:12, Jan. 25, 2013*), and that the tensions between Yusuf and the Hamed family have created a “hard situation” for employees (*Tr. 187:5-188:8*). Plaintiff alleges that such circumstances that flow directly from his deprivation of equal participation in management and control of the supermarkets reflect his loss of control of the reputation and goodwill of the business which constitute irreparable injury, not compensable by an award of money damages. *S & R Corp. v. Jiffy Lube Intern., Inc.*, 968 F.2d 371, 378 (3d Cir. 1992).

22. Defendant's actions have deprived Plaintiff of his rights to equal participation in the management and conduct of the business. As such, the Court finds that Plaintiff has met his burden of establishing irreparable injury if injunctive relief is not granted.<sup>10</sup>

**The balance of harms favors the Movant**

23. One of the goals of the preliminary injunction analysis is to maintain the status quo, defined as "the last, peaceable, noncontested status of the parties." *Opticians Association of America, supra*, 920 F.2d at 197, citations omitted. For more than 25 years, the parties have been able to equally manage and control their very successful business enterprise. For reasons delineated above, that Plaintiff's rights to equal management and control have been infringed upon by the actions of Defendant. In considering the relief sought by Plaintiff, the Court must assure that granting injunctive relief will not harm Defendants more than denying relief would harm Plaintiff.

24. The remedy sought and the relief to be imposed does not deprive Yusuf of his statutory partnership rights to equal management and control of the business. Rather, it simply assures that Hamed is not deprived of the same legal rights to which he is entitled. Neither party has the right to exclude the other from any part of the business. *Health and Body Store, LLC, supra*, 2012 WL 4006041, at \*5. The relief sought and granted to provide equal access to all aspects of the business will not harm Defendants more than the denial of such relief harms Plaintiff.

25. Neither party has sought and the Court has not considered the prospect of appointing a receiver or bringing in any other outsider to insure that the joint management and control of the

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<sup>10</sup> Most troubling is the substance of Plaintiff's Motion to Supplement the Record, dated and filed April 23, 2013, after the Opinion was largely completed. Therein, Waleed Hamed states that the Hamed family has been denied access to the supermarket accounts and signature authorization to Hamed family members has been revoked by the depository banks based upon instructions from Yusuf. Deprivation of access to bank accounts and signature authorization on bank accounts clearly constitute denial of partnership management rights not compensable by an award of monetary damages.

partnership is maintained. Rather, notwithstanding the animosity that exists between the parties, they are left to work out issues of equal management and control themselves as they have done successfully over the years.

**Public interest favors injunctive relief.**

26. The public interest is best served by the continued success of Plaza Extra Supermarkets or, in the alternative, by the orderly dissolution or winding down of the business relationship of the parties pursuant to their own agreement. Enforcement of statutory rights of the partners is best suited to accomplish that end.

27. The public interest is served by the continued employment of 600 Virgin Islanders and the continuity of this Virgin Island institution operated according to law and their agreement. "It is not only in the interest of [Plaintiff] that this court grant a preliminary injunction against [Defendants], but it is in the public interest to ensure that the management of [Plaza Extra Supermarkets] be properly maintained and the premises remain available for public use—they being an integral part of the St. Croix economy." *Kings Wharf Island Enterprises, Inc. v. Rehlaender*, 34 V.I. 23, 29 (Terr. Ct. 1996).

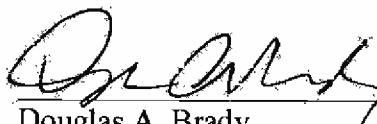
**CONCLUSION**

Injunctive relief is appropriate to preserve the status quo of the parties, their partnership and business operations, by ensuring that the parties' statutory rights are preserved and enforced. The Court's Order entering injunctive relief must state its terms specifically and describe in reasonable detail the act or acts restrained. *Caribbean Healthways, Inc. v. James*, 55 V.I. 691, 700 (2011), quoting Fed. R. Civ. P. 65(d)(1)(B) and (C).

Consistent with this Court's Findings of Fact and Conclusions of Law a separate Order of even date will accompany this Memorandum Opinion, directing the parties as follows:

1. The operations of the three Plaza Extra Supermarket stores shall continue as they have throughout the years prior to this commencement of this litigation, with Hamed, or his designated representative(s), and Yusuf, or his designated representative(s), jointly managing each store, without unilateral action by either party, or representative(s), affecting the management, employees, methods, procedures and operations.
2. No funds will be disbursed from supermarket operating accounts without the mutual consent of Hamed and Yusuf (or designated representative(s)).
3. All checks from all Plaza Extra Supermarket operating accounts will require two signatures, one of a designated representative of Hamed and the other of Yusuf or a designated representative of Yusuf.
4. A copy of the Order accompanying this Opinion will be provided to the depository banks where all Plaza Extra Supermarket operating accounts are held.
5. Plaintiff shall forthwith file a bond in the amount of Twenty-Five Thousand Dollars (\$25,000.00) with the Clerk of the Court, and shall provide notice of the posting to Defendants. (Plaintiff's interest in the "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.)

Dated: April 25, 2013

  
\_\_\_\_\_  
Douglas A. Brady  
Judge of the Superior Court

ATTEST:

VENETIA H. VELASQUEZ  
Clerk of the Court

By: 

Chief Deputy Clerk  
4/25/13

FOR PUBLICATION

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

MOHAMMED HAMED by his authorized agent	)	
WALEED HAMED,	)	
	)	CIVIL NO. SX-12-CV-370
Plaintiff	)	
v.	)	ACTION FOR DAMAGES;
	)	PRELIMINARY AND PERMANENT
FATHI YUSUF, and UNITED CORPORATON,	)	INJUNCTION; DECLARATORY
	)	RELIEF
Defendants.	)	JURY TRIAL DEMANDED
	)	

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**ORDER**

The Court having issued its Memorandum Opinion of this date, it is hereby

**ORDERED** that Plaintiff's Emergency Motion to Renew Application for TRO, filed January 9, 2013, seeking entry of a temporary restraining order or, in the alternative, preliminary injunction is **GRANTED**, as follows:

**ORDERED** that the operations of the three Plaza Extra Supermarket stores shall continue as they have throughout the years prior to this commencement of this litigation, with Hamed, or his designated representative(s), and Yusuf, or his designated representative(s), jointly managing each store, without unilateral action by either party, or representative(s), affecting the management, employees, methods, procedures and operations. It is further

**ORDERED** that no funds will be disbursed from supermarket operating accounts without the mutual consent of Hamed and Yusuf (or designated representative(s)). It is further

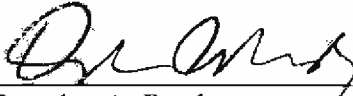
**ORDERED** that all checks from all Plaza Extra Supermarket operating accounts will require two signatures, one of a designated representative of Hamed and the other of Yusuf or a designated representative of Yusuf. It is further



**ORDERED** that a copy of this Order shall be provided to the depository banks where all Plaza Extra Supermarket operating accounts are held. It is further

**ORDERED** that Plaintiff shall forthwith file a bond in the amount of Twenty-Five Thousand Dollars (\$25,000.00) with the Clerk of the Court, and shall provide notice of the posting to Defendants. (Plaintiff's interest in the "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.)

Dated: *April 25, 2013*

  
\_\_\_\_\_  
Douglas A. Brady  
Judge of the Superior Court

ATTEST;

VENETIA H. VELASQUEZ  
Clerk of the Court

By:   
\_\_\_\_\_  
Chief Deputy Clerk

*4/25/13*

# EXHIBIT 3

**TO HAMED'S MOTION AS TO HAMED CLAIM NO. H-2:  
\$2,784,706.25 TAKEN IN 2012 BY YUSUF**



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

MOHAMMED HAMED by his authorized agent )  
WALEED HAMED, )

Plaintiff/Counterclaim Defendant, )

v. )

FATHI YUSUF and UNITED CORPORATON, )

Defendants/Counterclaimants )

v. )

WALEED HAMED, WAHEED HAMED, )  
MUFEED HAMED, HISHAM HAMED, and )  
PLESSEN ENTERPRISES, INC. )

Counterclaim Defendants. )

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CIVIL NO. SX-12-CV-370  
ACTION FOR DAMAGES, etc.

**ORDER**

THIS MATTER is before the Court on Plaintiff's Motion for Partial Summary Judgment, filed November 12, 2012 in the District Court of the Virgin Islands, prior to remand to this Court; Defendants' Motion to Appoint a Master for Judicial Supervision of Partnership Winding Up, or in the alternative to Appoint Receiver to Wind Up Partnership ("Motion re Master"), filed April 7, 2014; Plaintiff's Renewed Motion for Partial Summary Judgment as to the Existence of a Partnership ("Plaintiff's Motion"), filed May 9, 2014; Defendants' Opposition, filed June 2, 2014; Plaintiff's Reply, filed June 10, 2014, and Plaintiff Mohammad Hamed's Notice of Additional Facts Regarding his Motion for Summary Judgment as to Partnership, filed September 11, 2014. This matter came on for a telephonic status conference on October 7, 2014, at which time the Court advised that based Defendants' agreement that the relationship between Plaintiff and Defendant

Yusuf constituted a partnership that it would enter summary judgment as to the existence of a partnership. As such, Plaintiff's Motion will be granted for the reasons that follow.

By Amended Complaint filed October 19, 2012, Plaintiff alleged that a partnership existed between Hamed and Yusuf pursuant to the Uniform Partnership Act adopted in the Virgin Islands, and brought this action pursuant to V.I. CODE ANN. tit. 26, § 75 seeking, among other things, entry of declaratory judgment recognizing the Hamed-Yusuf Partnership. In his Motion re Master, Defendant Yusuf conceded the existence of a partnership by operation of law between himself and Plaintiff Hamed, and requested that this Court dissolve said partnership. See Motion re Master, ¶7. In subsequent filings and in open court, Defendants have reiterated their concession as to the existence of the partnership. Accordingly, Plaintiff renewed his motion for partial summary judgment, seeking the Court's entry of judgment on Count One of Plaintiff's Amended Complaint declaring the existence of the Hamed-Yusuf Partnership.

Defendants object to Plaintiff's Motion on the following grounds: 1) Pursuant to LRCi 56.1, Plaintiff's Motion lacks a separate statement of material facts; 2) Plaintiff's Amended Complaint does not request declaratory relief based on the Uniform Partnership Act; and 3) there is no need to enter summary judgment as Defendant Yusuf already conceded the existence of a partnership. Opposition, at 2-4.

The Court is not persuaded by Defendants' arguments: First, Plaintiff's Motion before the Court is "renewed." His original Motion for Partial Summary Judgment, filed in the District Court, included an accompanying statement of undisputed material facts. As such, Plaintiff in compliance with LRCi 56.1. Second, Paragraphs 36 and 37 of Plaintiff's Amended Complaint specifically seeks declaratory relief as to the existence of a partnership pursuant to the Uniform

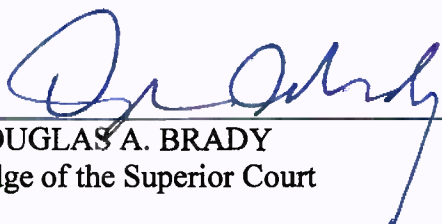
Partnership Act, as codified in the V.I. Code. Finally, contrary to Defendants' argument, the declaration by the Court of the legal relationship of the parties, disputed in the pleadings but undisputed in fact, brings clarity to the record and conforms the law of the case to the undisputed facts upon which the parties agree. The formal declaration of the existence of a partnership is a necessary prerequisite to the dissolution and winding-up of the partnership, the process upon which the parties have embarked. In light of the foregoing, it is hereby

ORDERED that Plaintiff's Renewed Motion for Partial Summary Judgment as to the Existence of a Partnership is GRANTED; and it is further

ORDERED that the Court finds and declares that a partnership was formed in 1986 by the oral agreement between Plaintiff and Defendant Yusuf for the ownership and operation of the three Plaza Extra Stores, with each partner having a 50% ownership interest in all partnership assets and profits, and 50% obligation as to all losses and liabilities; and it is further

ORDERED that Plaintiff may properly maintain this action against Defendant Yusuf for legal and equitable relief to enforce his rights under the parties' partnership agreement and the Uniform Partnership Act.

Dated: *November 7, 2014*

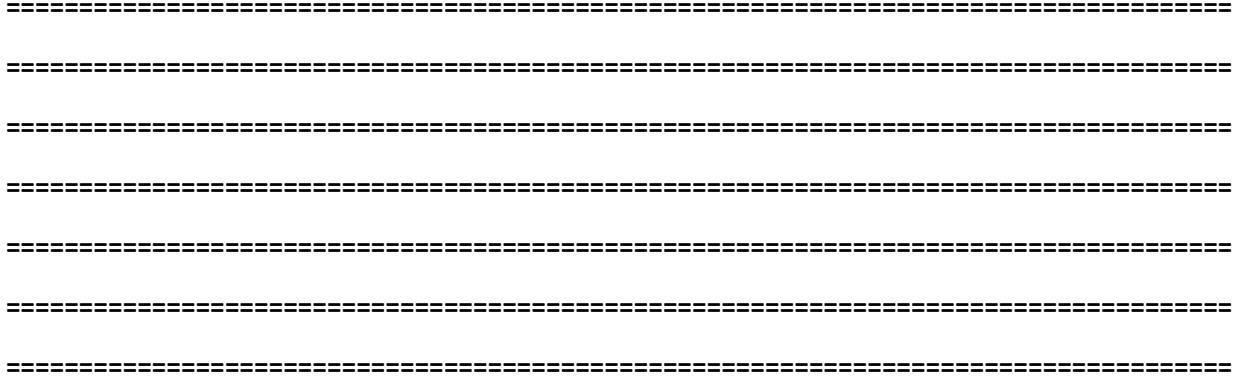
  
DOUGLAS A. BRADY  
Judge of the Superior Court

ATTEST:

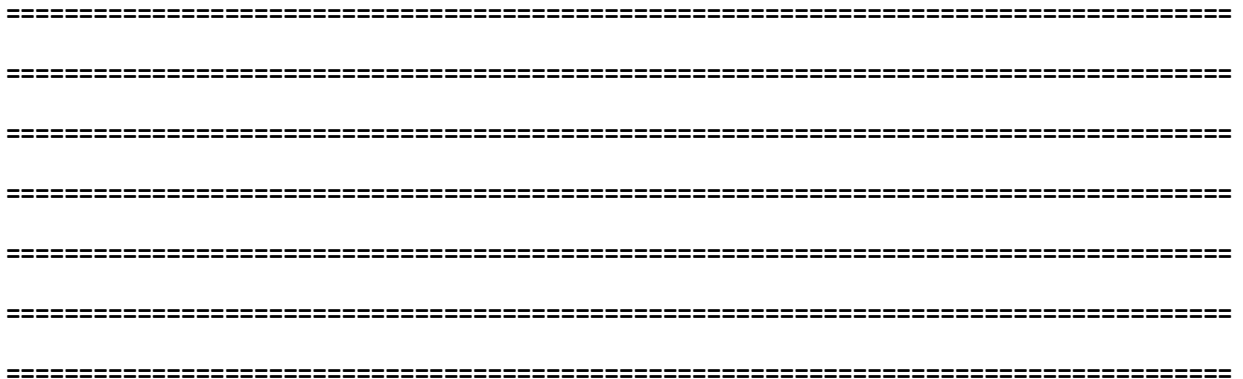
ESTRELLA GEORGE  
Acting Clerk of the Court

By:   
Court Clerk Supervisor

*11/7/14*



# **DIVIDER**



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

**WALEED HAMED**, as the Executor of the  
Estate of MOHAMMAD HAMED,

*Plaintiff/Counterclaim Defendant,*

vs.

**FATHI YUSUF** and **UNITED CORPORATION**

*Defendants and Counterclaimants.*

vs.

**WALEED HAMED, WAHEED HAMED,  
MUFEED HAMED, HISHAM HAMED, and  
PLESSEN ENTERPRISES, INC.,**

*Counterclaim Defendants,*

**Case No.: SX-2012-cv-370**

**ACTION FOR DAMAGES,  
INJUNCTIVE RELIEF AND  
DECLARATORY RELIEF**

JURY TRIAL DEMANDED

Consolidated with

**Case No.: SX-2014-CV-287**

**ACTION FOR DECLARATORY  
JUDGMENT**

JURY TRIAL DEMANDED

Consolidated with

**Case No.: SX-2014-CV-278**

**ACTION FOR DEBT AND  
CONVERSION**

JURY TRIAL DEMANDED

---

**WALEED HAMED**, as the Executor of the  
Estate of MOHAMMAD HAMED,

*Plaintiff,*

vs.

**UNITED CORPORATION,**

*Defendant.*

---

**WALEED HAMED**, as the Executor of the  
Estate of MOHAMMAD HAMED,

*Plaintiff,*

vs.

**FATHI YUSUF,**

*Defendant.*

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**MOTION AS TO HAMED CLAIM NO. H-3:  
\$504,591.03 OF PARTNERSHIP FUNDS TAKEN BY YUSUF - PAID TO HIS LAWYER**



Hamed has raised as one of his claims, designated as H-3, the \$504,591.03 unilaterally taken from the Partnership in 2012-2013 by Fathi Yusuf and used to pay to his counsel for defending this case.

This litigation began in 2012 when Fathi and Mike Yusuf unilaterally took \$2,784,706.25 from a partnership account and transferred it to an account to which the Hameds did not have access. A copy of the check is attached as **Exhibit 1**. This was the main issue in Hamed's complaint -- and a central issue during the early portion of this case. Because Yusuf was claiming that Hamed had no interest in the Plaza Extra Stores, unilaterally withdrawing \$2.7 million from the partnership account and **trying to have the police remove the Hameds from the stores**, Judge Brady granted a full evidentiary TRO hearing which stretched to two days -- on January 25th and 31st, 2013.

During this period, when Yusuf had seized control of the Plaza Extra accounts, he used Partnership funds to pay his own civil lawyer for his Answer, his attempt to remove this to Federal Court (which the federal court denied and remanded) and the TRO proceedings here. This was pure theft, about which Hamed objected to judge Brady in the TRO proceeding, and on which Judge Brady ruled.

Three months later, the Court ruled for Hamed on the matter. **Exhibit 2**. *Hamed v. Yusuf*, 58 V.I. 117, 2013 WL 1846506 (V.I. Super. April 25, 2013). As Judge Brady stated, in factual finding 38 of that Order, Fathi Yusuf paid his personal, civil legal fees in this lawsuit out of partnership funds. *Id.* at 11, para. 38 ("Funds from supermarket accounts have also been utilized unilaterally by Yusuf, without agreement of Hamed, to pay legal fees of defendants relative to this action. . . .") This was after the hearing where this issue and the attached checks were argued before the Court.

In short, a total of \$504,591.03 was paid for Yusuf's personal defense of this case *after* the complaint here was filed. **These were fees paid to Attorney DiRuzzo's firm for work in this case**, which have been submitted to the Court on several occasions and are attached here as **Group Exhibit 3** for the ease of the Master's reference. The brutal irony of taking your partner's money to use to defend yourself in the case for stealing his other money earlier is overwhelming !

The claim is for \$504,591.03 in checks to Fuerst Ittleman David & Joseph, PL in the following amounts plus \$216,991 interest accruing from the date of each check.

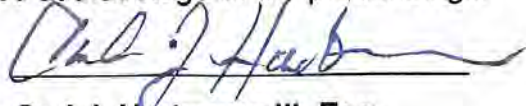
\$15,067.26 plus \$ 6,824 in interest from October 19, 2012  
\$ 29,011.50 plus \$ 13,141 in interest from October 19, 2012  
\$ 99,254.45 plus \$ 44,272 in interest from November 16, 2012  
\$111,660.24 plus \$ 47,989 in interest from January 21, 2013  
\$112,383.32 plus \$ 47,662 in interest from February 13, 2013  
\$ 82,274.84 plus \$ 34,467 in interest from March 6, 2013  
\$ 54,938.89 plus \$ 22,636 in interest from April 3, 2013

There is no way that Yusuf can alter the Court's decision on this matter -- having since conceded that there is a partnership that owned the Plaza Extra Stores, with Judge Brady then entering summary judgment on this issue. **Exhibit 4**. Simply put, Yusuf tried to steal the Plaza Extra Stores, claim that Hamed was just an illiterate employee, throw the Hameds out by calling the police and then stealing the \$500 thousand from the Partnership to pay for this ridiculous paroxysm of theft and litigation.

However, Yusuf (as the Liquidating Partner) has held off having this declared a valid claim by repeatedly saying discovery may be necessary. There is NOTHING known to the Hameds that can be discovered. **There is no doubt that the Yusufs took the money and paid it to Attorney DiRuzzo to pursue his "brilliant" idea of stealing the stores -- and if there is any evidence, it is in the hands of Yusuf or his attorney.**

As Judge Brady's memorandum makes clear, those fees plus interest constitute a valid claim and must be returned to the Partnership. As such, Hamed asks the court to make that determination as we have now arrived at that stage of the proceedings.

**Dated:** January 20, 2017



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**Joel H. Holt, Esq.**  
*Counsel for Plaintiff*  
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Christiansted, VI 00820  
Email: holtvi@aol.com  
Tele: (340) 773-8709

#### **CERTIFICATE OF SERVICE**

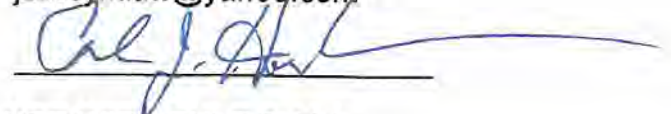
I hereby certify that this document complies with the page or word limitation set forth in Rule 6-1(e), and that on this 20th day of December, 2017, I served a copy of the foregoing by email, as agreed by the parties, on:

**Hon. Edgar Ross**  
Special Master  
% edgarrossjudge@hotmail.com

**Gregory H. Hodges**  
**Stefan Herpel**  
**Charlotte Perrell**  
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#### **CERTIFICATE OF COMPLIANCE WITH RULE 6-1(e)**

This document complies with the page or word limitation set forth in Rule 6-1(e).



# EXHIBIT 1

**TO HAMED'S MOTION AS TO HAMED CLAIM NO. H-3:  
\$504,591.03 OF PARTNERSHIP FUNDS TAKEN BY YUSUF - PAID TO HIS LAWYER**



UNITED CORPORATION D/B/A  
PLAZA EXTRA

540-773-0240  
PO BOX 765  
CHRISTIANSTED, USVI 00805-0765

1154

101-806216

Date: 8/15/2012

United Corporation

\$ 2,784,700.25

Two million Seven hundred eighty-four Thousand Seven Hundred Six Dollars & 25/100

Scotiabank  
THE BANK OF NOVA SCOTIA  
A MEMBER OF THE SCOTIABANK GROUP

*[Handwritten Signature]*

⑆001151⑆ NO21608069⑆ 058⑆00086413⑆

EXHIBIT  
1

# EXHIBIT 2

**TO HAMED'S MOTION AS TO HAMED CLAIM NO. H-3:  
\$504,591.03 OF PARTNERSHIP FUNDS TAKEN BY YUSUF - PAID TO HIS LAWYER**

**FOR PUBLICATION**

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

MOHAMMED HAMED, by his authorized  
agent WALEED HAMED,

Plaintiff,

CIVIL NO. SX-12-CV-370

ACTION FOR DAMAGES; PRELIMINARY  
AND PERMANENT INJUNCTION;  
DECLARATORY RELIEF

FATHI YUSUF and UNITED CORPORATON,

Defendants.

JURY TRIAL DEMANDED

**MEMORANDUM OPINION**

**THIS MATTER** is before the Court on Plaintiff's Emergency Motion and Memorandum to Renew Application for TRO ("Renewed Motion"), filed January 9, 2013, renewing his September 18, 2012 Motion for a Temporary Restraining Order and/or a Preliminary Injunction. Hearing on the Renewed Motion was held on January 25, 2013 and continued on January 31, 2013. Having reviewed the Renewed Motion, evidence and argument of counsel presented at the hearing, along with the voluminous filings of the parties in support of and in opposition to the Renewed Motion, this matter has been converted to that of a Preliminary Injunction pursuant to Fed. R. Civ. P. 65(a). Upon review of the record, the Court herein makes findings of fact and conclusions of law, pursuant to Fed. R. Civ. P. 52(a)(2), and GRANTS Plaintiff's Renewed Motion.

*JURISDICTION*

This Court has jurisdiction over this matter pursuant to 4 V.I. Code § 76(a), which grants the Superior Court "original jurisdiction in all civil actions regardless of the amount in controversy." Likewise, under 5 V.I. Code § 1261, courts of record are empowered to "declare rights, status, and other legal relations whether or not further relief is or could be claimed . . .

The declaration may be either affirmative or negative in form and effect; and such declarations shall have the force and effect of a final judgment or decree.” A request for injunctive relief is addressed to the sound discretion of the Court. *Shire US Inc. v. Barr Laboratories, Inc.*, 329 F.3d 348, 352 (3d Cir. 2003). This Court may grant equitable (i.e. injunctive) relief as Plaintiff seeks in his Renewed Motion to enforce a partner’s rights regarding partnership profits and management and conduct of the partnership business pursuant to 26 V.I. Code §75(b).

#### *STANDARD*

The Court must consider four factors when reviewing a motion for preliminary injunction: (1) whether the movant has shown a reasonable probability of success on the merits; (2) whether the movant will be irreparably injured by the denial of the relief; (3) whether granting preliminary relief will result in even greater harm to the nonmoving party; and (4) whether granting the preliminary relief will be in the public interest. *Petrus v. Queen Charlotte Hotel Corp.*, 56 V.I. 548, 554 (2012), citing *Iles v. de Jongh*, 55 V.I. 1251, 1256 (3d Cir. 2011), (quoting *McTernan v. City of New York*, 577 F. 3d 521, 526 (3d Cir. 2009).

#### *STATEMENT OF ISSUES*

By his Verified Complaint, Plaintiff alleges that Defendants, acting personally and through authorized agents, committed several unilateral acts in contravention of the partnership relationship between Plaintiff and Defendant Fathi Yusuf (“Yusuf”) and established understandings and agreements among the parties. Plaintiff avers that those acts threaten the businesses and his interests in the businesses established by the partnership as a result of those agreements. Accordingly, Plaintiff demands injunctive and declaratory relief to determine the status of the parties’ relationships and the framework under which they must conduct their



business operations in light of those relationships. Upon review of the parties' case and controversy, submissions and presented evidence, the Court makes the following findings of fact.

### FINDINGS OF FACT

1. Plaintiff and Defendant Yusuf have a longstanding friendship and familial history which preceded their business relationship. *January 25, 2013 Evidentiary Hearing Transcript, at 196-198, hereinafter Tr. 196-198, Jan. 25, 2013.*
2. In 1979, Fathi Yusuf incorporated United Corporation ("United") in the U.S. Virgin Islands. *Defendants' Evidentiary Hearing Exhibit, no. 7, hereinafter Def. Ex. 7.*
3. United subsequently began construction on a shopping center located at Estate Sion Farm, St. Croix. Thereafter, Defendant Yusuf desired and made plans to build a supermarket within the shopping center. *Plaintiff's Evidentiary Hearing Exhibit, no. 1 (Transcript, February 2, 2000 Oral Deposition of Fathi Yusuf: Idheileh v. United Corp. and Yusuf, Case No. 156/1997, Territorial Court of the Virgin Islands, Div. St. Thomas and St. John), at 8, lines 1-14; hereinafter Pl. Ex. 1, p. 8:1-14.<sup>1</sup>*
4. Subsequently, Yusuf encountered financial difficulty in completing construction of the shopping center and opening the supermarket, was unable to procure sufficient bank loans, and told Plaintiff Mohammad Hamed ("Hamed") that he was unable to finance the completion of the project. At Yusuf's request, Hamed provided funding to Yusuf's project from proceeds of Hamed's grocery business. *Pl. Ex. 1, p. 14:4-15:14.*
5. Hamed provided Yusuf with monies to facilitate completion of construction on the shopping center and to facilitate opening the Plaza Extra supermarket in Estate Sion Farm, St Croix. *Tr.197:5—199:13, Jan. 25, 2013.*

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<sup>1</sup> The Court has taken judicial notice of the certified copy of the deposition transcript in the noted Territorial Court action, submitted as Pl. Ex. 1. See discussion at *Tr. 6-9, Jan. 25, 2013.*

6. Upon Yusuf's request, Hamed sold his two grocery stores to work exclusively as a part of Plaza Extra. *Tr. 200:4-15, Jan. 25, 2013.*
7. Hamed contributed to Yusuf's project funds as they were available to him, including the entire proceeds from the sale of his two grocery stores, with the agreement that he and Yusuf would each be a 50% partner in the Plaza Extra Supermarket, "in the winning or loss." *Tr.200:16-23, Jan. 25, 2013.*
8. Hamed initially became a 25% partner of Yusuf, along with Yusuf's two nephews who each also had a 25% interest in the Plaza Extra Supermarket business. *Pl. Ex. 1, p.15:2-14.*
9. Yusuf sought additional bank financing to complete the construction of the building for the Plaza Extra business, which loan application was eventually denied, as a result of which Yusuf's two nephews requested to have their funds returned and to leave the partnership. *Pl. Ex. 1, p. 17:6-24.*
10. With the withdrawal of Yusuf's nephews, the two remaining partners of the Plaza Extra Supermarket business were Hamed and Yusuf. Notwithstanding the financing problems, Hamed determined to remain with the business, having contributed a total of \$400,000 in exchange for a 50% ownership interest in the business. *Pl. Ex. 1, p.17:24-19:10.*
11. Yusuf and Hamed were the only partners in Plaza Extra by the time in 1986 when the supermarket opened for business and Hamed has remained a partner since that time. *Pl. Ex. 28.*<sup>2</sup>

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<sup>2</sup> Subsequent to the evidentiary hearing but before the parties submitted their post-hearing briefs, Plaintiff on February 19, 2013 filed his Second Request to Take Judicial Notice and Request to Supplement the Hearing Record, presenting proposed Plaintiff's Exhibits 28, 29 and 30. By separate Order of this date, Plaintiff's Request was granted. Exhibit 28 is comprised of selected Defendants' Responses to Plaintiff's Second Set of Interrogatories to Defendants in that matter known as *Idheileh v. United Corp. and Yusuf, Case No. 156/1997, Territorial Court of the Virgin Islands, Div. St. Thomas and St. John*

12. As a partner in the Plaza Extra Supermarket business, Hamed was entitled to fifty (50%) percent of the profit and liable for fifty (50%) of the “payable” as well as loss of his contribution to the initial start-up funds. *Tr. 44:12-21; 200:16-23; 206:23-25, Jan. 25, 2013; Pl. Ex. 1, p 18:16-23; p.23:18-25.*
13. Yusuf and Hamed have both acknowledged their business relationship as a partnership of an indefinite term. *Pl. Ex. 1, p.18:18-23* (“I’m obligated to be your partner as long as you want me to be your partner until we lose \$800,000.”); *Tr. 210:4-8, Jan. 25, 2013* (Q: “How long is your partnership with Mr. Yusuf supposed to last? When does it end?” A: “Forever. We start with Mr. Yusuf with the supermarket and we make money. He make money and I make money, we stay together forever.”)
14. Yusuf testified in the *Idheileh* case that it was general public knowledge that Yusuf was a business partner with Hamed even before the Plaza Extra supermarket opened. *Pl. Ex. 1, p. 20:10-12.*
15. Yusuf has admitted in this case that he and Hamed “entered into an oral joint venture agreement” in 1986 by which Hamed provided a “loan” of \$225,000 and a cash payment of \$175,000 in exchange for which “Hamed [was] to receive fifty percent (50%) of the net profits of the operations of the Plaza Extra supermarkets” in addition to the “loan” repayment. Yusuf states that the parties’ agreement provided for “a 50/50 split of the profits of the Plaza Extra Supermarket stores.” *Pl. Ex. 2, p.3,4.* Indeed, Yusuf confirms that “[t]here is no disagreement that Mr. Hamed is entitled to fifty percent (50%) of the profits of the operations of Plaza Extra Store....The issue here again is not whether Plaintiff Hamed is entitled to 50% of the profits. He is.” *Pl. Ex. 3, p.11.*

16. In 1992-1993, a second Plaza Extra supermarket was opened on the island of St. Thomas, USVI, initially with a third “partner,” Ahmad Idheileh, who later withdrew leaving a “50/50” ownership interest in the St. Thomas Plaza Extra between Yusuf and Hamed. *Tr. 27:1-28:14, Jan. 25, 2013.*
17. At present, there are three Plaza Extra Supermarkets which employ approximately six hundred people on St. Croix and St. Thomas. *Tr. 238:4-6, Jan 25, 2013.*
18. In the *Idheileh* litigation, Yusuf provided an affidavit wherein he stated that “[m]y brother in law, Mohamed Hamed, and I have been full partners in the Plaza Extra Supermarket since 1984 while we were obtaining financing and constructing the store, which finally opened in 1986.” *Pl. Ex. 1, Affidavit of Fathi Yusuf, Deposition Ex. 6<sup>3</sup>.*
19. Hamed and Yusuf have jointly managed the stores by having one member of the Hamed family and one member of the Yusuf family co-manage each of the three Plaza Extra Supermarkets. Originally, Hamed and Yusuf personally managed the first Plaza Extra store, with Hamed in charge of receiving, the warehouse and produce, and Yusuf taking care of the office. *Tr. 26:11-19; 206:20-22, Jan 25, 2013.* Yusuf’s management and control of the “office” was such that Hamed was completely removed from the financial aspects of the business, concerning which Hamed testified “I’m not sign nothing...Fathi is the one, he sign. Mr. Yusuf the one he sign the loan, the first one and the second one.” *Tr. 207:16-21, Jan. 25, 2013.*
20. During recent years, in every store there is, at least, one Yusuf and one Hamed who co-manage all aspects of the operations of each store. Mafeed Hamed and Yusuf Yusuf have

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<sup>3</sup> At the conclusion of the second day of the hearing, counsel agreed to supplement the record to include exhibits to Plaintiff’s Exhibit 1, the February 2, 2000 deposition of Fathi Yusuf. *Tr. 129-130, Jan. 31, 2013.* Deposition Exhibits 6 and 7 were provided with Plaintiff’s Notice of Filing Supplemental Deposition Exhibits, filed February 19, 2013.

managed the Estate Sion Farm store along with Waleed Hamed. Waheed Hamed, Fathi Yusuf and Nejah Yusuf operate the St. Thomas store, and Hisham Hamed and Mahar Yusuf manage the Plaza West store on St. Croix. *Tr. 31:6-35:11; 147:11-20; 160:10-22, Jan. 25, 2013, and Tr. 33:6-17, Jan. 31, 2013.*

21. In operating the “office,” Yusuf did not clearly delineate the separation between United “who owns United Shopping Plaza” and Plaza Extra, despite the fact that from the beginning Yusuf intended to and did “hold the supermarket for my personal use.” *Pl. Ex. 1, p. 8:1-7.* Despite the facts that the supermarket used the trade name “Plaza Extra” registered to United (*Pl. Ex. 4, ¶14*) and that the supermarket bank accounts are in the name of United (*Pl. Ex's. 15, 16*), “in talking about Plaza Extra...when it says United Corporation...[i]t’s really meant me [Yusuf] and Mr. Mohammed Hamed.” *Pl. Ex. 1, p. 69:13-21.*
22. Yusuf admitted in the *Idheileh* action that Plaza Extra was a distinct entity from United, although the “partners operated Plaza Extra under the corporate name of United Corp.” *Pl. Ex. 28, Response to Interrogatory 6.*
23. The distinction between United and the Plaza Extra Supermarkets is also apparent from the fact that United, as owner of United Shopping Center, has sent rent notices to Hamed on behalf of the Sion Farm Plaza Extra Supermarket, and the supermarket has paid to United the rents charged. *Pl. Ex's. 7, 8, 9; Tr. 48:24-51:9; 212:18-214:15, Jan. 25, 2013.*
24. In 2003, United was indicted for tax evasion in federal court, along with Yusuf and several other members of the Hamed and Yusuf families in that matter in the District Court of the Virgin Islands, Division of St. Croix, known as *United States and Government of the Virgin Islands v. Fathi Yusuf, et al., Crim. No. 2005-15* (“the Criminal

- Action”) . However, Plaintiff Mohammed Hamed was not indicted. *Tr. 222:11-223:6; 134:15-23, Jan. 25, 2013.*
25. In connection with the Criminal Action, the federal government appointed a receiver in 2003 to oversee the Plaza Extra Supermarkets, who deposits all profits into investment accounts at Banco Popular Securities and, originally, at Merrill-Lynch. Those “profits” accounts remain at Banco Popular Securities to the present. *Tr. 41:15-42:18; 137:13-138:19, Jan. 25, 2013.*
26. In 2011, United pled guilty to tax evasion in the Criminal Action. Charges were dismissed against the other Defendants, by Plea Agreement filed February 26, 2011. *Def. Ex. 2, p.2.*
27. The Criminal Action against United remains pending, as the terms of the Plea Agreement require “complete and accurate” tax filings. United has filed no tax returns since 2002, although estimated taxes have been paid from the grocery store accounts, and mandatory accounting procedures for Plaza Extra have been adopted. *Tr. 241:23-245:12, Jan 25, 2013; Tr. 90:4-16, Jan 31, 2013; Def. Ex. 2.*
28. At some point between late 2009 and 2011, at Yusuf’s suggestion, the Hamed and Yusuf families agreed that all checks drawn on Plaza Extra Supermarket accounts had to be signed by one member of the Hamed family and one member of the Yusuf family. *Tr. 100:11-16, 228:2-11, Jan. 25, 2013.*
29. In late 2011, United had its newly retained accountant review a hard drive containing voluminous financial records related to the Criminal Action, following which Yusuf accused members of the Hamed family of stealing money from the supermarket business

- and threatening to close the store and to terminate the United Shopping Plaza lease. *Tr. 52:5-10, Jan. 31, 2013; Tr. 51:18-52:8, Jan. 25, 2013.*
30. Thereafter, discussions commenced initiated by Yusuf's counsel regarding the "Dissolution of Partnership." *Pl. Ex. 10, 11, 12.* On March 13, 2012, through counsel, Yusuf sent a Proposed Partnership Dissolution Agreement to Hamed, which described the history and context of the parties' relationship, including the formation of an oral partnership agreement to operate the supermarkets, by which they shared profits and losses. *Pl. Ex. 12.*<sup>4</sup> Settlement discussions followed those communications but have not to date resulted in an agreement. *Tr. 58:15-20, Jan. 25, 2013.*
31. Although Plaintiff retired from the day-to-day operation of the supermarket business in about 1996, Waleed Hamed has acted on his behalf pursuant to two powers of attorney from Plaintiff. *Tr. 45:24-48:2; 172:6-173:8; 202:18-25, Jan. 25, 2013; Pl. Ex. 1, Affidavit of Fathi Yusuf, Depos. Exh .6, ¶4.* Both Plaintiff and Yusuf have designated their respective sons to represent their interests in the operation and management of the three Plaza Extra stores. *Tr. 31:6-35:11, Jan. 25, 2013.*
32. It had been the custom and practice of the Yusuf and Hamed families to withdraw funds from the supermarket accounts for their own purposes and use (see *Def. Ex. 1; Pl. Ex. 27*), however such withdrawals were always made with the knowledge and consent of the other partner. *Tr. 138:20-139:8, Jan. 25, 2013; Tr.121:3-123:9, Jan. 31, 2013.*

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<sup>4</sup> These exhibits were admitted at hearing over Defendants' objection premised on Fed. R. Evid. 408. The evidence was not offered to prove the validity or amount of Plaintiff's claims, but rather to put into context the history of the parties' relationship which may be accepted as evidence for another purpose under R. 408(b). Further, the exhibits offer nothing beyond evidence presented wherein Yusuf has similarly characterized the history of his relationship with Plaintiff.

33. Waleed Hamed testified that Fathi Yusuf utilized Plaza Extra account funds to purchase and subsequently sell property in Estate Dorothea, St. Thomas, to which it was agreed that Hamed was entitled to 50% of net proceeds. Although Yusuf's handwritten accounting of sale proceeds confirms that Hamed is due \$802,966, representing 50% of net proceeds (*Pl. Ex. 18*), that payment has never been made to Hamed and the disposition of those sale proceeds is not known to Hamed. *Tr.88:8-90:17, Jan. 25, 2013*;
34. Each of the three Plaza Extra Supermarkets maintains and accounts for its operations separately, with separate bank accounts. In total, the stores maintain a total of approximately eleven accounts. *Tr. 35:12-20; 36:22-38:25; 229:10-13, Jan. 25, 2013*;
35. On or about August 15, 2012, Yusuf wrote a check signed by himself and his son Mahar Yusuf and made payment to United in the amount of \$2,784,706.25 from a segregated Plaza Extra Supermarket operating account, despite written objection of Waleed Hamed on behalf of Plaintiff and the Hamed family, who claimed that, among other objections, the unilateral withdrawal violated the terms of the District Court's restraining order in the Criminal Action. *Tr. 246:1-250:14, Jan. 25, 2013; Pl.Group Ex. 13*.
36. On the first hearing day, Mahar Yusuf, President of United Corporation testified under oath that he used the \$2,784,706.25 withdrawn from the Plaza Extra operating account to buy three properties on St. Croix in the name of United. On the second hearing day, Mahar Yusuf contradicted his prior testimony and admitted that those withdrawn funds had actually been used to invest in businesses not owned by United, including a mattress business, but that none of the funds were used to purchase properties overseas. *Tr. 250:2-251:15, Jan. 25, 2013; Tr. 118:12-120:2, Jan. 31, 2013*;



37. A restraining order was entered by the District Court in the Criminal Action which remains in place and restricts withdrawal of funds representing profits, from the supermarkets that have been set aside in the Banco Popular Securites brokerage account pending the conclusion of the Criminal Action or further order of that Court. *Tr. 41:15-42:18; 119:4-12, Jan. 25, 2013.* The Criminal Action will remain pending until past tax returns are filed. *Tr. 134:15-136:22; 242:16-245:5, Jan. 25, 2013.* As of January 18, 2013, the brokerage account had a balance of \$43,914,260.04. *Def. Ex. 9* This Court cannot enforce the restraining order or otherwise control any aspect of the Criminal Action or its disposition;
38. Funds from supermarket accounts have also been utilized unilaterally by Yusuf, without agreement of Hamed, to pay legal fees of defendants relative to this action and the Criminal Action, in excess of \$145,000 to the dates of the evidentiary hearing. *Tr. 76:5-82:9, Jan. 25, 2013; Pl. Ex. 15, 16.*<sup>5</sup>
39. Since at least late 2012, Yusuf has threatened to fire Hamed family managers and to close the supermarkets. *Tr. 149:20-150:22; 158:18-159:12; 253:25-254:19, Jan. 25, 2013.*
40. On January 8, 2013, Yusuf confronted and unilaterally terminated 15 year accounting employee Wadda Charriez for perceived irregularities relative to her timekeeping records of her hours of employment, threatening to report her stealing if she challenged the firing or sought unemployment benefits at Department of Labor. *Tr. 181:20-185:16, Jan. 25, 2013.* Charriez had a “very critical job” with Plaza Extra (*Tr 179:17-19, Jan. 25, 2013*),

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<sup>5</sup> Plaintiff has submitted Exhibit 30 with his February 19, 2013 Second Request to Take Judicial Notice and Request to Supplement the Hearing Record, granted by separate Order. Defendants’ opposition to Plaintiffs’ Motion did not address Exhibit 30, consisting of two checks in the total sum of more than \$220,000 in payment to defense counsel in this action, dated January 21, 2013 and February 13, 2013, drawn on a supermarket account by Defendants without Plaintiffs’ consent. Although the evidence is cumulative and not essential to the Court’s decision herein, it reflects an ongoing practice of unilateral withdrawals and the possibility of continuing unilateral action in the future.

and the independent accountant retained by Yusuf agreed that she was “a very good worker” and that her work was “excellent.” *Tr. 94:2-6, Jan. 31, 2013*. Because the Hamed co-managers had not been consulted concerning the termination or shown any proof of the employee’s improper activity, Mafeed Hamed instructed Charriez to return to work the following day. *Tr. 179:4-24; 185:17-186:8, Jan. 25, 2013*. On Charriez’ January 9, 2013 return to work, Yusuf started screaming at her, and told her to leave or he would call the police. *Tr. 186:9-187:1, Jan. 25, 2013*. Yusuf did call police and demanded on their arrival that Charriez, and Mufeed Hamed and Waleed Hamed be removed from the store, and threatened to close the store. *Tr. 93:5-94:15; 164:19-165:18; 187:5-188:8, Jan. 25, 2013*. The incident that occurred on January 9, 2013, the same day that Plaintiff’s Renewed Motion was filed, coupled with other evidence presented demonstrates that there has been a breakdown in the co-management structure of the Plaza Extra Supermarkets. *Tr. 141:25-142:18;143:17-146:19; 166:21-167:8, Jan 25, 2013*;

41. “By the time Plaza Extra opened in 1986, Mohamed Hamed and Defendant Yusuf were the only partners. These partners operated Plaza Extra under the corporate name of United Corp.” *Pl. Ex. 28, Response to Interrogatory 6*. Defendants now claim that Yusuf is the owner of only 7.5% of the shares of United (*Pl. Ex. 2, p. 11*), which could adversely affect Plaintiff’s ability to enforce his claims as to the partnership “operated [as] Plaza Extra under the corporate name of United Corp.”

#### *DISCUSSION*

Although this matter is before the Court on Plaintiff’s Renewed Motion that seeks a temporary restraining order, the parties agree that following the full evidentiary hearing

conducted, the relief Plaintiff seeks is a preliminary injunction pursuant to Fed. R. Civ. P. 65(a). The Court cannot issue a preliminary injunction unless on the basis of the evidence on the record, Plaintiff prevails as to each of the four factors recently delineated by the Virgin Islands Supreme Court in *Petrus*, namely: (1) the movant has shown a reasonable probability of success on the merits; (2) the movant will be irreparably injured by the denial of the relief; (3) granting preliminary relief will not result in even greater harm to the nonmoving party; and (4) granting the preliminary relief will be in the public interest. 56 V.I. at 554. Only if the movant produces evidence sufficient to convince the Court that all four factors favor preliminary relief should the injunction issue. *Opticians Association of America v. Independent Opticians of America*, 920 F.2d 187, 192 (3d Cir. 1990).

The evidentiary record before the Court includes the testimony of witnesses and documentary exhibits. Those exhibits include prior filings of the parties in this case by which the parties are bound by virtue of the doctrine of judicial admissions. *Berkley Inv. Group, Ltd. V. Colkitt*, 455 F.3d 195, 211 n. 20 (3d Cir. 2006); *Parilla v. IAP Worldwide Serv., VI, Inc.*, 368 F.3d 269, 275 (3d Cir 2004). Those exhibits also include filings in prior unrelated cases, which are admissible as admissions of such party against its interest, pursuant to Fed. R. Evid. 801(d).<sup>6</sup>

The Court will consider the four factors required for the issuance of a preliminary injunction *in seriatim*, and makes the following conclusions of law.

### **CONCLUSIONS OF LAW**

#### **Probability of Movant's Success on the Merits.**

1. Plaintiff seeks to establish that his business relationship with Yusef of more than 25 years constitutes a Virgin Islands partnership, notwithstanding the lack of any written partnership

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<sup>6</sup> On April 7, 2010, Act No. 7161 became law, section 15 of which established the Federal Rules of Evidence as applicable in this Court. See, *Chinnery v. People*, 55 V.I. 508, 525 (2011).

agreement and the failure of the business to file Virgin Islands partnership tax returns or to provide K-1 forms to report partners' distributive share of income, among other factors urged by Defendants. Whether the relationship will be characterized as a partnership is governed by the Uniform Partnership Act ("UPA"), adopted in 1998 as Title 26, Chapter 1 of the Virgin Islands Code.

2. Under the UPA, "the association of two or more persons to carry on as co-owners a business for profit forms a partnership, whether or not the persons intend to form a partnership." 26 V.I. Code §22(a). In the mid-1980's when the Hamed -- Yusuf business relationship began, a Virgin Islands partnership was defined as "an association of two or more persons to carry on as co-owners a business for profit." *Former* 26 V.I. Code §21(a).

3. Under the UPA, "A person who receives a share of the profits of a business is presumed to be a partner in the business..." 26 V.I. Code §22(c)(3). Under the former Code provisions, "the receipt by a person of a share of the profits of a business is prima facie evidence that he is a partner in the business..." *Former* 26 V.I. Code §22(4).<sup>7</sup>

4. Evidence of "a fixed profit-sharing arrangement" and "evidence of business operation" are factors to be considered in the determination of whether the parties in a business relationship had formed a partnership. *Addie v. Kjaer*, Civ. No. 2004-135, 2011 WL 797402, at 3\* (D.V.I. Mar. 1, 2011).

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<sup>7</sup> The Court applies the test in effect at the time the business relationship between the parties was formed (see *Harrison v. Bornn, Bornn & Handy*, 200 F.R.D. 509, 514 (D.V.I. 2001)), and holds that a partnership is found to exist by the admitted sharing of profits of the business unless Defendants' evidence is sufficient to rebut that *prima facie* evidence. However, the distinction between the language in the former statute and the current is of no legal significance. Commentary of the National Conference of Commissioners of Uniform State Laws on the publication of the 1997 of the UPA notes that "no substantive change is intended. The sharing of profits is recast as a rebuttable presumption of a partnership, a more contemporary construction, rather than as prima facie evidence thereof." Formation of Partnership, Unif. Partnership Act §202, cmt. 3 (1997).

5. A partnership agreement is defined as the agreement, whether written, *oral*, or implied, among the partners concerning the partnership, including amendments to the partnership agreement.” 26 V.I. Code §2(7), *emphasis added*. A “partnership at will” exists where the partners have not agreed to remain partners until the expiration of a definite term or the completion of a particular undertaking.” 26 V.I. Code §2(8).

6. Defendants protest that there is no written partnership agreement to memorialize the understanding between Yusuf and Hamed. However, as noted, the UPA does not require that such agreements be memorialized by a writing, and further sanctions “at will” agreements that have no definite term or duration, and are subject to dissolution by either partner at any time. As such, partnerships are not within the statute of frauds and need not be in writing. *Smith v. Robinson*, 44 V.I. 56, 61 (Terr. Ct. 2001).

7. Even if the statute of frauds were applicable to the formation of a partnership, the doctrine of part performance operates to prevent an inequity where a person is induced or permitted to invest time, money and labor in reliance upon an oral agreement, which agreement would otherwise be voided by the application of the statute of frauds. Accordingly, if a party can show that part of an oral agreement was performed, the oral contract is taken out of the statute of frauds and becomes binding. *Sylvester v. Frydenhoj Estates Corp.*, 47 V.I. 720, 724 (D.V.I. 2006), citations omitted.

8. Defendants suggest that Hamed and Yusuf entered into a joint venture rather than a partnership. A joint venture has been defined as a partnership for a single transaction, recognized as a subspecies of partnership, and is analyzed under Virgin Islands law in the same manner as is a partnership. *Boudreax v. Sandstone Group*, 36 V.I. 86, 97 (Terr. Ct. 1997), citing *Fountain Valley Corp. v. Wells*, 19 V.I. 607 (D.V.I.1983).

9. Yusuf and Hamed, acting under the name “United Corporation,” entered into their relationship with Ahmad Idheifeh “to open and operate a supermarket on St. Thomas” by means of a Joint Venture Agreement. *Pl. Ex. 1, Dep. Ex. 7*. This “business relationship created by agreement of the parties for the purpose of profit” was formed “for a single undertaking or transaction,” and was to “terminate at the conclusion of their stated purpose, by agreement, or at the will of the parties.” *C&C Manhattan v. Gov’t of the V.I.*, 46 V.I. 377, 384 (D.V.I. 2004), citations omitted. To the contrary, the self-described “partnership” of Hamed and Yusuf, formed for profit, with no set duration, involved the development of a business enterprise, including the three supermarkets and other business projects spanning two and a half decades.

10. The Court concludes that Defendants’ recent claims that the parties have been engaged in a joint venture and not a partnership are not credible as they contradict the record before the Court and the long history prior to this litigation of admissions by Yusuf, who did not testify at the hearing, to the effect that he and Hamed are “50/50” partners. Those pre-litigation admissions of the existence of a partnership have been consistent over many years, including through his notice to Hamed of his dissolution of their partnership in the months prior to this litigation.

11. Defendants argue that Defendant United has owned and operated the businesses known as Plaza Extra, and that Hamed’s claims must fail because he concedes that he has no ownership interest in United. To the contrary, the record clearly reflects that Yusuf’s use of the Plaza Extra trade name registered to United, the use bank accounts in United’s name to handle the finances of the three supermarkets and other participation of the corporate entity in the operation of the stores was all set up in the context of Yusuf’s partnership with Hamed, as Yusuf has consistently admitted. The existence of a partnership is not negated by the use of the corporate form to

conduct various operations of the partnership: *McDonald v. McDonald*, 192 N.W. 2d 903, 908 (Wis. 1972). The fact that the partner conducting the business utilizes a corporate form does not change the essential nature of the relationship of the parties. *Granik v. Perry*, 418 F.2d 832, 836 (5th Cir. 1969).

12. Where, as here, the parties agree that one partner is designated to take charge of “the office” and assumes the responsibility for obtaining or filing the relevant documents as a part of his share of the partnership responsibilities, his failure to file that documentation in the name of the partnership does not mean that no partnership exists. Partners may apportion their duties with respect to the management and control of the partnership such that one partner is given a greater share in the management than others. Thus, the fact that one partner may be given a greater day-to-day role in the management and control of a business than another partner does not defeat the existence of the partnership itself. *Al-Yassin v. Al-Yassin*, 2004 WL 625757, \*7 (Cal. Ct. App. 2004). Where one party actively pursues the partnership business, such business must be conducted in keeping with “fundamental characteristics of trust, fairness, honesty, and good faith that define the essence of the partners’ relationship.” *Alpart v. Gen. Land Partners Inc.*, 574 F.Supp. 2d 491, 500 (E.D. Pa. 2008).

13. It is undisputed that Plaintiff and Yusuf agreed from the time prior to the opening of the first store to share profits from the business on a 50/50 basis and that they did so share profits. These elements of their business relationship present a *prima facie* case for the existence of a partnership under the former 26 V.I. Code §22(4), applicable at the time of the formation of the

partnership. Defendants have not presented evidence sufficient to overcome Plaintiff's *prima facie* proof of the partnership of the parties.<sup>8</sup>

14. Various other indicia of the existence of the formation of a partnership are present in the record, including the fact that the parties intended to and did associate with each other carry on as co-owners a business for profit (26 V.I. Code §22(a)). The parties agreed to share the net profits of the business "50/50" (26 V.I. Code §22(c)(3)). Each of the parties contributed money and services to commence the business operation. The parties agreed that their relationship would continue without any definite term. The parties jointly shared the risks of the business and agreed to equally share any losses of the business. By dividing the initial management of the business between the warehouse, receiving and produce (Hamed) and the office (Yusuf), the parties jointly managed the business. As years passed and additional stores opened, joint management continued with the sons of each of the parties co-managing all aspects of each of the stores.

15. On the basis of the record before the Court and the foregoing, Plaintiff has demonstrated a reasonable probability that he will succeed on the merits of his claim as to the existence of a partnership between himself and Yusef with regard to the three Plaza Extra stores.

**Irreparable injury to Movant by denial of relief.**

16. As the Court finds that there is a reasonable probability of Plaintiff's success in proving the existence of a partnership, he is entitled to the benefits of his status as a partner, including "an equal share of the partnership profits" and "equal rights in the management and conduct of the partnership business." 26 V.I. Code §71(b) and (f).

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<sup>8</sup> The analysis and the result are the same if the evidence is determined to give rise to the presumption of the existence of a partnership of the parties under the current 26 V.I. Code §22(c)(3), the Virgin Islands UPA. Defendants' proofs are insufficient to rebut the presumption of the existence of a partnership.



17. Plaintiff maintains this action seeking equitable relief, and this Court may grant such equitable (i.e. injunctive) relief to enforce Plaintiff/partner's rights to an equal share of the partnership profits and equal rights in the management and conduct of the partnership, pursuant to 26 V.I. Code §75(b)(1) and (2)(i).

18. Yusuf forcefully contends that this case is solely about money damages, and any damage to Plaintiff is economic damage only, which can be remedied by an award of monetary damages. "[A] preliminary injunction should not be granted if the injury suffered by the moving party can be recouped in monetary damages." *IDT Telecom, Inc. v CVT Prepaid Solutions, Inc.*, 250 Fed. Appx. 476, 479 (3d Cir. 2007), citations omitted. Although the alleged diversion of more than \$3,000,000 constitutes a primary focus of Plaintiff's claims for relief, he also seeks to remedy what he alleges to be usurpation by Yusuf of his "equal rights in the management and conduct of the partnership."<sup>9</sup>

19. To establish irreparable harm, Plaintiff must show that his legal remedies (i.e. the potential award of a money judgment) are inadequate. If the plaintiff suffers a substantial injury that cannot be accurately measurable or adequately compensable by an award of money damages, irreparable harm may be found. *Ross-Simons of Warwick, Inc. v. Baccarat*, 102 F.3d 12, 18-19 (1<sup>st</sup> Cir. 1996). An award of monetary damages may not provide an adequate remedy where the amount of monetary loss alleged is not capable of ascertainment. *Instant Air Freight Co. v. C.A. Air Freight, Inc.*, 882 F. 2d 797, 801 (3d Cir. 1989).<sup>9</sup> Further, injunctive relief may be available where the movant can "demonstrate that there exists some cognizable danger of

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<sup>9</sup> With regard to the August 2012 diversion of more than \$2.7 million by Mahar Yusuf, president of United, to accounts inaccessible to Plaintiff, a real concern exists that continuing diversions will not be traceable as the Plaza Extra store have had no system of internal controls in existence and, to date accounting for the businesses is not completed beyond June 2012. (Testimony of accountant John Gaffney, *Tr. 71:20-72:3; 75:11-21, Jan. 31, 2013.*) As such, the amount of any monetary loss suffered by Plaintiff may not be capable of ascertainment.

recurrent violation of its legal rights.” *Anderson v. Davila*, 125 F. 3d 148, 164 (3d Cir. 1997), quoting *United States v. W.T. Grant Co.*, 345 U.S. 629, 633 (1953), internal quotations omitted.

20. Plaintiff alleges recurring violations of his legal rights to equal participation in the management and conduct of the partnership business. In addition, Plaintiff claims that the diversion of partnership revenues to accounts inaccessible to Plaintiff without accounting or explanation constitutes a showing of irreparable harm because of the threat that similar diversions will occur in the future and diverted funds may be removed from the jurisdiction of the Court rendering a monetary judgment ineffectual. See *Health and Body Store, LLC v. JustBrand Limited*, 2012 WL 4006041, at \*4-5 (E.D. Pa. Sept. 11, 2012).

21. The record reflects that Yusuf has arbitrarily addressed employee issues, including termination of a long-term high level employee and has threatened to close the stores. (See, Findings of Fact, ¶40). Evidence exists in the record to the effect that co-managers in Plaza Extra East no longer speak with each other (*Tr. 166:21-167:8, Jan. 25, 2013*), that employees are fearful for their jobs (*Tr. 158:18-159:12, Jan. 25, 2013*), and that the tensions between Yusuf and the Hamed family have created a “hard situation” for employees (*Tr. 187:5-188:8*). Plaintiff alleges that such circumstances that flow directly from his deprivation of equal participation in management and control of the supermarkets reflect his loss of control of the reputation and goodwill of the business which constitute irreparable injury, not compensable by an award of money damages. *S & R Corp. v. Jiffy Lube Intern., Inc.*, 968 F.2d 371, 378 (3d Cir. 1992).

22. Defendant's actions have deprived Plaintiff of his rights to equal participation in the management and conduct of the business. As such, the Court finds that Plaintiff has met his burden of establishing irreparable injury if injunctive relief is not granted.<sup>10</sup>

**The balance of harms favors the Movant**

23. One of the goals of the preliminary injunction analysis is to maintain the status quo, defined as "the last, peaceable, noncontested status of the parties." *Opticians Association of America, supra*, 920 F.2d at 197, citations omitted. For more than 25 years, the parties have been able to equally manage and control their very successful business enterprise. For reasons delineated above, that Plaintiff's rights to equal management and control have been infringed upon by the actions of Defendant. In considering the relief sought by Plaintiff, the Court must assure that granting injunctive relief will not harm Defendants more than denying relief would harm Plaintiff.

24. The remedy sought and the relief to be imposed does not deprive Yusuf of his statutory partnership rights to equal management and control of the business. Rather, it simply assures that Hamed is not deprived of the same legal rights to which he is entitled. Neither party has the right to exclude the other from any part of the business. *Health and Body Store, LLC, supra*, 2012 WL 4006041, at \*5. The relief sought and granted to provide equal access to all aspects of the business will not harm Defendants more than the denial of such relief harms Plaintiff.

25. Neither party has sought and the Court has not considered the prospect of appointing a receiver or bringing in any other outsider to insure that the joint management and control of the

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<sup>10</sup> Most troubling is the substance of Plaintiff's Motion to Supplement the Record, dated and filed April 23, 2013, after the Opinion was largely completed. Therein, Waleed Hamed states that the Hamed family has been denied access to the supermarket accounts and signature authorization to Hamed family members has been revoked by the depository banks based upon instructions from Yusuf. Deprivation of access to bank accounts and signature authorization on bank accounts clearly constitute denial of partnership management rights not compensable by an award of monetary damages.

partnership is maintained. Rather, notwithstanding the animosity that exists between the parties, they are left to work out issues of equal management and control themselves as they have done successfully over the years.

**Public interest favors injunctive relief.**

26. The public interest is best served by the continued success of Plaza Extra Supermarkets or, in the alternative, by the orderly dissolution or winding down of the business relationship of the parties pursuant to their own agreement. Enforcement of statutory rights of the partners is best suited to accomplish that end.

27. The public interest is served by the continued employment of 600 Virgin Islanders and the continuity of this Virgin Island institution operated according to law and their agreement. "It is not only in the interest of [Plaintiff] that this court grant a preliminary injunction against [Defendants], but it is in the public interest to ensure that the management of [Plaza Extra Supermarkets] be properly maintained and the premises remain available for public use—they being an integral part of the St. Croix economy." *Kings Wharf Island Enterprises, Inc. v. Rehlaender*, 34 V.I. 23, 29 (Terr. Ct. 1996).

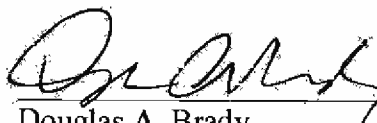
**CONCLUSION**

Injunctive relief is appropriate to preserve the status quo of the parties, their partnership and business operations, by ensuring that the parties' statutory rights are preserved and enforced. The Court's Order entering injunctive relief must state its terms specifically and describe in reasonable detail the act or acts restrained. *Caribbean Healthways, Inc. v. James*, 55 V.I. 691, 700 (2011), quoting Fed. R. Civ. P. 65(d)(1)(B) and (C).

Consistent with this Court's Findings of Fact and Conclusions of Law a separate Order of even date will accompany this Memorandum Opinion, directing the parties as follows:

1. The operations of the three Plaza Extra Supermarket stores shall continue as they have throughout the years prior to this commencement of this litigation, with Hamed, or his designated representative(s), and Yusuf, or his designated representative(s), jointly managing each store, without unilateral action by either party, or representative(s), affecting the management, employees, methods, procedures and operations.
2. No funds will be disbursed from supermarket operating accounts without the mutual consent of Hamed and Yusuf (or designated representative(s)).
3. All checks from all Plaza Extra Supermarket operating accounts will require two signatures, one of a designated representative of Hamed and the other of Yusuf or a designated representative of Yusuf.
4. A copy of the Order accompanying this Opinion will be provided to the depository banks where all Plaza Extra Supermarket operating accounts are held.
5. Plaintiff shall forthwith file a bond in the amount of Twenty-Five Thousand Dollars (\$25,000.00) with the Clerk of the Court, and shall provide notice of the posting to Defendants. (Plaintiff's interest in the "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.)


Dated: April 25, 2013

  
\_\_\_\_\_  
Douglas A. Brady  
Judge of the Superior Court

ATTEST:

VENETIA H. VELASQUEZ  
Clerk of the Court

By:

  
\_\_\_\_\_  
Chief Deputy Clerk  
4/25/13

FOR PUBLICATION

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

MOHAMMED HAMED by his authorized agent	)	
WALEED HAMED,	)	
	)	CIVIL NO. SX-12-CV-370
Plaintiff	)	
v.	)	ACTION FOR DAMAGES;
	)	PRELIMINARY AND PERMANENT
FATHI YUSUF, and UNITED CORPORATON,	)	INJUNCTION; DECLARATORY
	)	RELIEF
Defendants.	)	JURY TRIAL DEMANDED
	)	

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**ORDER**

The Court having issued its Memorandum Opinion of this date, it is hereby

**ORDERED** that Plaintiff's Emergency Motion to Renew Application for TRO, filed January 9, 2013, seeking entry of a temporary restraining order or, in the alternative, preliminary injunction is **GRANTED**, as follows:

**ORDERED** that the operations of the three Plaza Extra Supermarket stores shall continue as they have throughout the years prior to this commencement of this litigation, with Hamed, or his designated representative(s), and Yusuf or his designated representative(s), jointly managing each store, without unilateral action by either party, or representative(s), affecting the management, employees, methods, procedures and operations. It is further

**ORDERED** that no funds will be disbursed from supermarket operating accounts without the mutual consent of Hamed and Yusuf (or designated representative(s)). It is further

**ORDERED** that all checks from all Plaza Extra Supermarket operating accounts will require two signatures, one of a designated representative of Hamed and the other of Yusuf or a designated representative of Yusuf. It is further

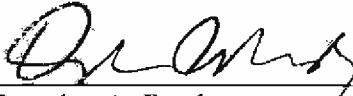
ORDER

Page 2 of 2

**ORDERED** that a copy of this Order shall be provided to the depository banks where all Plaza Extra Supermarket operating accounts are held. It is further

**ORDERED** that Plaintiff shall forthwith file a bond in the amount of Twenty-Five Thousand Dollars (\$25,000.00) with the Clerk of the Court, and shall provide notice of the posting to Defendants. (Plaintiff's interest in the "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.)

Dated: April 25, 2013

  
\_\_\_\_\_  
Douglas A. Brady  
Judge of the Superior Court

ATTEST;

VENETIA H. VELASQUEZ  
Clerk of the Court

By:   
\_\_\_\_\_  
Chief Deputy Clerk

4/25/13

# EXHIBIT 3

**TO HAMED'S MOTION AS TO HAMED CLAIM NO. H-3:  
\$504,591.03 OF PARTNERSHIP FUNDS TAKEN BY YUSUF - PAID TO HIS LAWYER**



## Exhibit 10 - Payments After 1/1/2012 to Fuerst Ittleman from Plaza Account

Date	Payee	From Account	Amount	Check No.
2012-10-19	Fuerst Ittleman	Plaza Extra - Banco Popular	\$ 15,067.26	3979
2012-10-19	Fuerst Ittleman	Plaza Extra - Banco Popular	\$ 29,011.50	3977
2012-11-16	Fuerst Ittleman	Plaza Extra - Banco Popular	\$ 99,254.45	4195
2013-01-21	Fuerst Ittleman	Plaza Extra - Banco Popular	\$ 111,660.24	4642
2013-02-13	Fuerst Ittleman	Plaza Extra - Banco Popular	\$ 112,383.82	4819
2013-03-06	Fuerst Ittleman	Plaza Extra - Banco Popular	\$ 82,274.87	5055
2013-04-03	Fuerst Ittleman	Plaza Extra - Banco Popular	\$ 54,938.89	5193
			<b>\$ 504,591.03</b>	

EXHIBIT  
3

EXHIBIT  
Group J

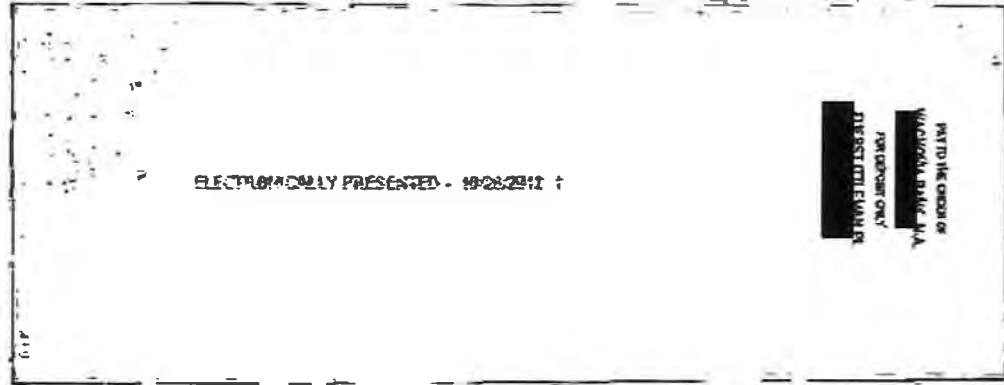
# CHECK 3977

Dated: Friday, October 19, 2012

Amount: \$99,254.45

Cleared: Sunday, October 28, 2012

Depository: Fuerst Ittleman PL  
Account Wachovia Bank N.A.  
[REDACTED]



<b>UNITED CORPORATION</b> DBA PLAZA EXTRA (340) 719-1870 PO BOX 3649 ST CROIX, VI 00851		<b>BANCO POPULAR DE PUERTO RICO</b> 101-6872216	<b>3977</b> 82254288
		DATE	Oct 19, 2012
		AMOUNT	\$ 329,011.50
PAY TO THE ORDER OF:	Twenty-Nine Thousand Eleven and 50/100 Dollars		
	FUERST ITTLEMAN DAVID & JOSEPH, PL 1001 BRICKELL BAY DRIVE 32ND FLOOR MIAMI, FL 33131		
Memo:	[REDACTED]		
		[Handwritten Signature] AUTHORIZED SIGNATURE	

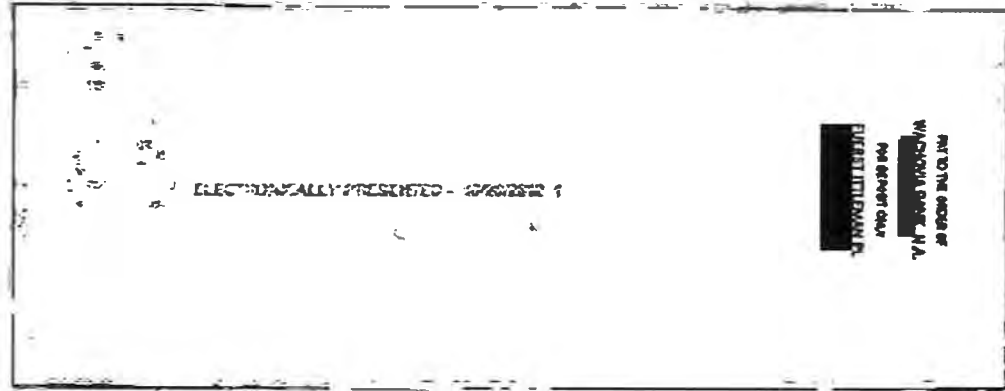
# CHECK 3979

Dated: Friday, October 19, 2012

Amount: \$15,067.26

Cleared: Sunday, October 28, 2012

Depository: Fuerst Ittleman PL  
Account Wachovia Bank N.A.  
[REDACTED]



<b>UNITED CORPORATION</b> DBA PLAZA EXTRA (340) 718-1870 PO BOX 3619 ST CROIX, VI 00851		<b>BANCO POPULAR DE PUERTO RICO</b> 701-997210	<b>3979</b> BRICKELL
		DATE	Oct 19, 2012
		AMOUNT	\$ 15,067.26
PAY TO THE ORDER OF:	Fifteen Thousand Sixty-Seven and 26/100 Dollars		
	FUERST ITTLEMAN DAVID & JOSEPH, PL 1001 BRICKELL BAY DRIVE 32ND FLOOR MIAMI, FL 33131		
Memo:	[REDACTED]	[REDACTED]	
		[Handwritten Signature] AUTHORIZED SIGNATURE	

**UNITED CORPORATION**  
**DBA PLAZA EXTRA**  
(340) 719-1870  
PO BOX 3649  
ST CROIX, VI 00851

**BANCO POPULAR DE PUERTO RICO**  
101-667/216

**4195**  
**CHECK NUMBER**

**DATE**

Nov 16, 2012

**AMOUNT**

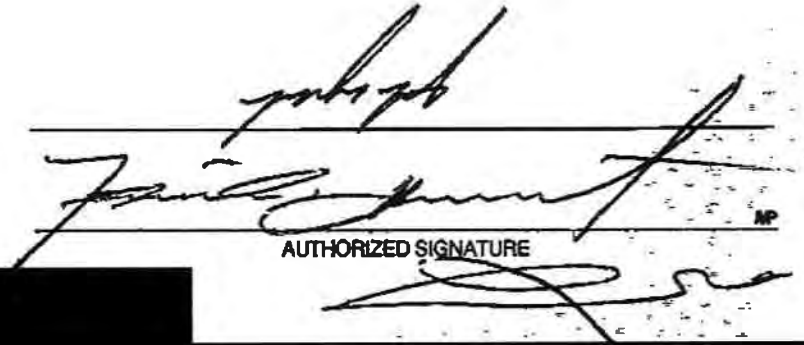
**\$ 99,254.45**

**PAY  
TO THE  
ORDER  
OF:**

Ninety-Nine Thousand Two Hundred Fifty-Four and 45/100 Dollars  
**FUERST ITTLEMAN DAVID & JOSEPH, PL**  
**1001 BRICKELL BAY DRIVE**  
**32ND FLOOR**  
**MIAMI, FL 33131**

**Memo:**

HAMD203422

  
\_\_\_\_\_  
**AUTHORIZED SIGNATURE**

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Continúa Fronteiras Incluídas

PAY TO THE ORDER OF  
WACHOVIA BANK, N.A.



FOR DEPOSIT ONLY

FUERST ITTLEMAN PL



UNRECORDED BY THE STATE - 1/23/2012

WACHOVIA BANK, N.A.  
10000 WACHOVIA DRIVE  
CHARLOTTE, NC 28260  
704.766.6000  
www.wachovia.com

HAMD203423

UNITED CORPORATION  
DBA PLAZA EXTRA  
(340) 719-1870  
PO BOX 3649  
ST CROIX, VI 00851

BANCO POPULAR DE PUERTO RICO  
101-867/216

4642  
BANK OF AMERICA

DATE  
Jan 21, 2013

AMOUNT  
\$ \*\*\*\$111,660.24

Pin \_\_\_\_\_  
Type \_\_\_\_\_  
Issued \_\_\_\_\_  
To \_\_\_\_\_  
By \_\_\_\_\_  
Date \_\_\_\_\_

PAY One Hundred Eleven Thousand Six Hundred Sixty and 24/100 Dollars

TO THE ORDER OF:  
FUERST ITTLEMAN DAVID & JOSEPH PL  
1001 BRICKELL BAY DRIVE  
32ND FLOOR  
MIAMI, FL 33131

  
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AUTHORIZED SIGNATURE  


Memo:



HAMD261896

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**PAY TO THE ORDER OF  
WACHOVIA BANK, N.A.**  
[REDACTED]

**FOR DEPOSIT ONLY**

**FUERST ITLEMAN PL**



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AMD261897

**UNITED CORPORATION**  
**DBA PLAZA EXTRA**  
(340) 719-1870  
PO BOX 3649  
ST CROIX, VI 00851

**BANCO POPULAR DE PUERTO RICO**

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Issue/Exp.	AD	X
Ret.	Dep. Only	OK
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	Sig.	OK
	HFF	OK
	Memo	OK

4819  
@RISK.MEMO

DATE  
Feb 13, 2013

AMOUNT  
\$ \*\*\*\$112,383.32

PAY One Hundred Twelve Thousand Three Hundred Eighty-Three and 32/100 Dollars

TO THE ORDER OF:  
FUERST ITTLEMAN DAVID & JOSEPH PL  
1001 BRICKELL BAY DRIVE  
32ND FLOOR  
MIAMI, FL 33131

Memo:



*David Fuerst*  
\_\_\_\_\_  
*Fuerst*  
\_\_\_\_\_  
AUTHORIZED SIGNATURE

HAMD277362

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PAY TO THE ORDER OF  
WACHOVIA BANK, N.A.  
FOR DEPOSIT ONLY  
FUERST ITLEMAN PL

HAMD277363

**UNITED CORPORATION**  
DBA PLAZA EXTRA  
(340) 719-1870  
PO BOX 3649  
ST CROIX, VI 00851

**BANCO POPULAR DE PUERTO RICO**  
101-667/216

5005

CHECK NUMBER

DATE

Mar 6, 2013

AMOUNT

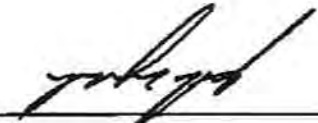

\$ \*\*\*\*\*\$82,274.87

PAY Eighty-Two Thousand Two Hundred Seventy-Four and 87/100 Dollars

TO THE ORDER OF: FUERST ITTLEMAN DAVID & JOSEPH PL  
1001 BRICKELL BAY DRIVE  
32ND FLOOR  
MIAMI, FL 33131

Memo:



  
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\_\_\_\_\_  
AUTHORIZED SIGNATURE

HAMD562193

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PAY TO THE ORDER OF  
WACHOVIA BANK, N.A.  
[REDACTED]  
FOR DEPOSIT ONLY  
FUERST ITTEMAN PL  
[REDACTED]

ELECTRONICALLY PRESENTED - 01/22/12

HAMD562194

**UNITED CORPORATION**  
DBA PLAZA EXTRA  
(340) 719-1870  
PO BOX 3649  
ST CROIX, VI 00851

**BANCO POPULAR DE PUERTO RICO**  
101-667/216

**5193**  
CHECK NUMBER

DATE  
Apr 3, 2013

AMOUNT

\$ \*\*\*\*\$54,938.89

PAY Fifty-Four Thousand Nine Hundred Thirty-Eight and 89/100 Dollars

TO THE ORDER OF: FUERST ITTLEMAN DAVID & JOSEPH PL  
1001 BRICKELL BAY DRIVE  
32ND FLOOR  
MIAMI, FL 33131

  
\_\_\_\_\_  
AUTHORIZED SIGNATURE

Memo:

**HAMD562231**

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Constituted Escribas Inhabilitado

PAY TO THE ORDER OF

WACHOVIA BANK, N.A.

FOR DEPOSIT ONLY

FUERST ITLEMAN PL

ELECTRONICALLY PRESENTED - 4/8/2013 2

HAMD562232

# EXHIBIT 4

**TO HAMED'S MOTION AS TO HAMED CLAIM NO. H-3:  
\$504,591.03 OF PARTNERSHIP FUNDS TAKEN BY YUSUF - PAID TO HIS LAWYER**

**IN THE SUPERIOR COURT OF THE VIRGIN ISLANDS**

**DIVISION OF ST. CROIX**

**MOHAMMED HAMED by his authorized agent WALEED HAMED**

**Plaintiff )**

**Vs. )**

**FATHI YUSUF and UNITED CORPORATION, ET AL**

**Defendant )**

**CASE NO. SX-12-CV-370**

**ACTION FOR: DAMAGES; ET AL**

**NOTICE  
OF  
ENTRY OF JUDGMENT/ORDER**

**TO: JOEL HOLT, ESQ.; CARL HARTMANN III, Esquire    **HON. EDGAR ROSS (edgarrossjudge@hotmail.com)**  
NIZAR DEWOOD, ESQ.; GREGORY HODGES, Esquire  
MARK ECKARD, ESQ.; JEFFREY MOORHEAD, Esquire**

**Please take notice that on NOVEMBER 7, 2014 Order was entered by this Court in the above-entitled matter.**

**Dated: November 7, 2014**

**ESTRELLA H. GEORGE (ACTING)**

**Clerk of the Superior Court**



**By: IRIS D. CINTRON**

**COURT CLERK II**

**EXHIBIT  
4**

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

MOHAMMED HAMED by his authorized agent )  
WALEED HAMED, )

Plaintiff/Counterclaim Defendant, )

v. )

FATHI YUSUF and UNITED CORPORATON, )

Defendants/Counterclaimants )

v. )

WALEED HAMED, WAHEED HAMED, )  
MUFEED HAMED, HISHAM HAMED, and )  
PLESSEN ENTERPRISES, INC. )

Counterclaim Defendants. )

CIVIL NO. SX-12-CV-370

ACTION FOR DAMAGES, etc.

**ORDER**

THIS MATTER is before the Court on Plaintiff’s Motion for Partial Summary Judgment, filed November 12, 2012 in the District Court of the Virgin Islands, prior to remand to this Court; Defendants’ Motion to Appoint a Master for Judicial Supervision of Partnership Winding Up, or in the alternative to Appoint Receiver to Wind Up Partnership (“Motion re Master”), filed April 7, 2014; Plaintiff’s Renewed Motion for Partial Summary Judgment as to the Existence of a Partnership (“Plaintiff’s Motion”), filed May 9, 2014; Defendants’ Opposition, filed June 2, 2014; Plaintiff’s Reply, filed June 10, 2014, and Plaintiff Mohammad Hamed’s Notice of Additional Facts Regarding his Motion for Summary Judgment as to Partnership, filed September 11, 2014. This matter came on for a telephonic status conference on October 7, 2014, at which time the Court advised that based Defendants’ agreement that the relationship between Plaintiff and Defendant



Yusuf constituted a partnership that it would enter summary judgment as to the existence of a partnership. As such, Plaintiff's Motion will be granted for the reasons that follow.

By Amended Complaint filed October 19, 2012, Plaintiff alleged that a partnership existed between Hamed and Yusuf pursuant to the Uniform Partnership Act adopted in the Virgin Islands, and brought this action pursuant to V.I. CODE ANN. tit. 26, § 75 seeking, among other things, entry of declaratory judgment recognizing the Hamed-Yusuf Partnership. In his Motion re Master, Defendant Yusuf conceded the existence of a partnership by operation of law between himself and Plaintiff Hamed, and requested that this Court dissolve said partnership. See Motion re Master, ¶7. In subsequent filings and in open court, Defendants have reiterated their concession as to the existence of the partnership. Accordingly, Plaintiff renewed his motion for partial summary judgment, seeking the Court's entry of judgment on Count One of Plaintiff's Amended Complaint declaring the existence of the Hamed-Yusuf Partnership.

Defendants object to Plaintiff's Motion on the following grounds: 1) Pursuant to LRCi 56.1, Plaintiff's Motion lacks a separate statement of material facts; 2) Plaintiff's Amended Complaint does not request declaratory relief based on the Uniform Partnership Act; and 3) there is no need to enter summary judgment as Defendant Yusuf already conceded the existence of a partnership. Opposition, at 2-4.

The Court is not persuaded by Defendants' arguments: First, Plaintiff's Motion before the Court is "renewed." His original Motion for Partial Summary Judgment, filed in the District Court, included an accompanying statement of undisputed material facts. As such, Plaintiff in compliance with LRCi 56.1. Second, Paragraphs 36 and 37 of Plaintiff's Amended Complaint specifically seeks declaratory relief as to the existence of a partnership pursuant to the Uniform

Partnership Act, as codified in the V.I. Code. Finally, contrary to Defendants' argument, the declaration by the Court of the legal relationship of the parties, disputed in the pleadings but undisputed in fact, brings clarity to the record and conforms the law of the case to the undisputed facts upon which the parties agree. The formal declaration of the existence of a partnership is a necessary prerequisite to the dissolution and winding-up of the partnership, the process upon which the parties have embarked. In light of the foregoing, it is hereby

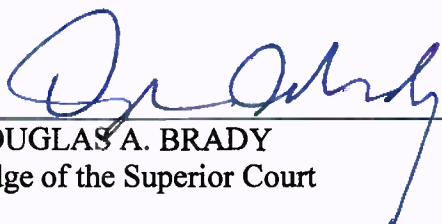
ORDERED that Plaintiff's Renewed Motion for Partial Summary Judgment as to the Existence of a Partnership is GRANTED; and it is further

ORDERED that the Court finds and declares that a partnership was formed in 1986 by the oral agreement between Plaintiff and Defendant Yusuf for the ownership and operation of the three Plaza Extra Stores, with each partner having a 50% ownership interest in all partnership assets and profits, and 50% obligation as to all losses and liabilities; and it is further

ORDERED that Plaintiff may properly maintain this action against Defendant Yusuf for legal and equitable relief to enforce his rights under the parties' partnership agreement and the Uniform Partnership Act.

Dated:


November 7, 2014

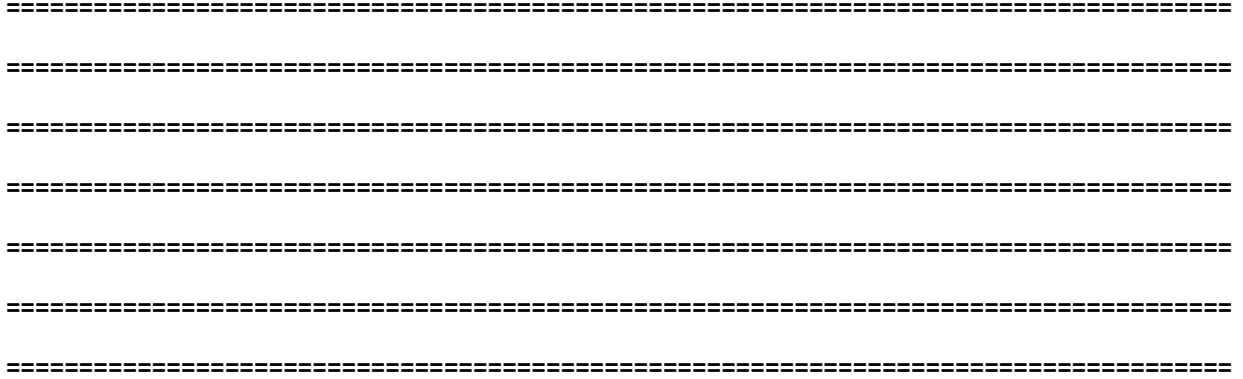
  
DOUGLAS A. BRADY  
Judge of the Superior Court

ATTEST:

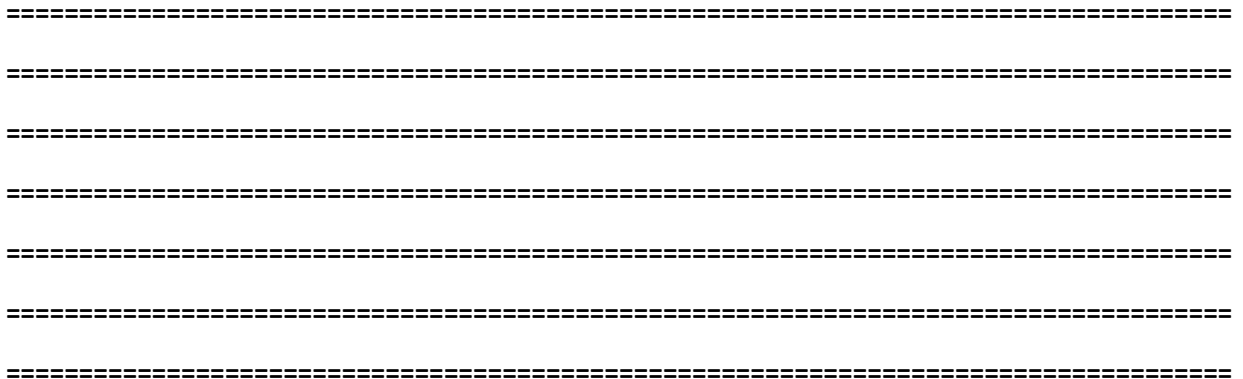
ESTRELLA GEORGE  
Acting Clerk of the Court

By:

  
Court Clerk Supervisor  
11/7/14



# **DIVIDER**



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 and Counterclaimants.*

vs.

**WALEED HAMED, WAHEED HAMED,  
MUFEED HAMED, HISHAM HAMED, and  
PLESSEN ENTERPRISES, INC.,**

*Counterclaim Defendants,*

Case No.: **SX-2012-cv-370**

**ACTION FOR DAMAGES,  
INJUNCTIVE RELIEF AND  
DECLARATORY RELIEF**

**JURY TRIAL DEMANDED**

---

**MOHAMMAD HAMED**,

*Plaintiff,*

vs.

**FATHI YUSUF**,

*Defendant.*

Case No.: **SX-2014-CV-278**

**ACTION FOR DEBT AND  
CONVERSION**

**JURY TRIAL DEMANDED**

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**MOHAMMAD HAMED**,

*Plaintiff,*

vs.

**UNITED CORPORATION**,

*Defendant.*

Case No.: **SX-2014-CV-287**

**ACTION FOR DEBT AND  
CONVERSION**

**JURY TRIAL DEMANDED**

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**MOTION TO STRIKE YUSUF'S "REVISED BDO REPORT" CLAIM**

In 2016, Yusuf produced an expert report from BDO Puerto Rico, PSC ("BDO") that was the subject of an evidentiary hearing before Judge Brady on March 6, 2017. After the hearing, Judge Brady entered multiple orders on July 21, including one directing the Special Master to resolve all remaining claims. Judge Brady severely criticized the BDO report as well, but Yusuf is still seeking damages based on a "revised" version of it.

Thus, Hamed moves to strike the "revised" BDO report as (1) it is still based on the same unreliable records and faulty "lifestyle" analysis that Judge Brady rejected, and (2) it attempts to invade the decision-making process now assigned to the Special Master.

**I. This Court has already discredited the BDO report.**

BDO issued a report that supposedly "analyzed" the withdrawals from the Mohammad Hamed/Fathi Yusuf partnership since 1994. See **Exhibit 1**.<sup>1</sup> It consisted of cherry-picked information supplied *solely* by Yusuf and his lawyers to BDO. BDO admitted in the report that it did not conduct any independent investigation. The analysis was based on what Judge Brady later determined was a completely false premise---that *any* funds traced *to any Hamed* "must have" been removed from the partnership, while only **certain funds** traced *to any Yusuf* were similarly taken from the partnership.<sup>2</sup> Based on this skewered approach, BDO concluded that Hamed owed Yusuf \$9.6 million.

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<sup>1</sup> All referenced exhibits are voluminous and are attached in a separate booklet being filed with this motion. Based on the fact that Judge Brady essentially rejected the initial BDO report, as discussed herein, it need not be reviewed in any detail (or maybe not at all) in order to address this motion.

<sup>2</sup> For example, Yusuf told BDO that Wally Hamed used partnership funds to build a home in the 1995-1996 time period, which BDO then allocated as a withdrawal to Mohammad Hamed, but Yusuf did not tell BDO about the two palatial homes he and his son Mike Yusuf built between 2004 and 2008.

In reaching its conclusion, however, **BDO admitted that many partnership records were missing, with no accurate accounting records available until 2012** when John Gaffney began overseeing the partnership accounting. See **Exhibit 1** at p. 3-4, 22 (“Limitations” and “Assumptions”). Hamed filed a *Daubert* motion to strike this report.

In his first of two opinions criticizing this report, Judge Brady completely discounted the BDO "analysis" and "data" submitted by Yusuf, stating (see **Exhibit 2** at pp. 23-24):

[t]he BDO report, by its own terms, appears to be anything but comprehensive. Most tellingly, the body of the BDO Report itself contains a section detailing its own substantial "limitations," resulting from the absence or inadequacy of records for each of the grocery stores covering various periods during the life of the partnership. **Additionally, the analysis presented in the report rests on the unsupported assumption that any monies identified in excess of "known sources of income" constitute distributions from partnership funds to the partners' §71(a) accounts.** (Emphasis added.) (Footnote 25 detailing these missing records omitted)(References to Plaintiff's motion omitted.)

Judge Brady then discussed the well-documented criminal facets of the partnership accounting that made BDO's analysis *totally unreliable*, before limiting the wind-up partnership accounting to claims arising after September 17, 2006. See **Exhibit 2** at pp. 24-31, 34.

In response, Yusuf moved for reconsideration, attaching a "saving" declaration from BDO's lead accountant, basically saying Judge Brady was wrong. **See Exhibit 3.**

Judge Brady denied this motion, *expanding his criticism of the BDO report* in light of the unreliable accounting practices of the partnership, stating (**Exhibit 4** at 5-6):

[t]hat where, as here, business partners have schemed to deliberately omit large sums of money from their accounting, have intentionally destroyed existing records of cash withdrawals, and have, even at their best, engaged only in loose, informal accounting practices, **any attempt to accurately reconstruct partnership records will necessarily involve some element of unreliability, as that is the very point of such a scheme.** (Emphasis added).

Judge Brady, however, stopped short of striking the BDO report, stating that such a determination was for the Special Master to address. See **Exhibit 5**.<sup>3</sup>

## II. The “revised” BDO report violates the orders of this Court.

Undaunted by Judge Brady’s scathing criticism of the report, Yusuf submitted a “revised” BDO report for the Special Master to address, still seeking \$4.5 million from Hamed. See **Exhibit 6**. A review of this “new” spreadsheet reveals it still should be stricken or ignored, as it still violates the orders entered by Judge Brady and further attempts to invade the decision-making process assigned to the Special Master. Several glaring examples make this point:<sup>4</sup>

1. Marked as “Item #1” is an entry charged to Waleed (Wally) Hamed for \$1,778,103 for “Amount owed by Hamed family to Yusuf **as per agreement before raid Sept 2001.**” (Emphasis added). However, in his July 24<sup>th</sup> order, Judge Brady made it clear this claim was barred, stating that all claims that predated September 17, 2006, were now barred, even if the amount was supposedly undisputed. See **Exhibit 2** at p. 34 n.35. Thus, the inclusion of this claim in the “revised” BDO report is in direct violation of this Court’s order.
2. Marked as “Item #2” is a line allocating \$4.1 million in attorney’s fees to Hamed and \$237,691 to Yusuf for the defense of the criminal case. **That accounting entry consists of a “finding” that this allocation is appropriate, which is a finding reserved for the Special Master, not BDO.** Indeed, the lawyer who headed up the legal team for the criminal case, Gordon Rhea, submitted a declaration at the March 6<sup>th</sup> hearing that all legal work was done jointly on behalf of all of the Yusuf/Hamed defendants, so that no such allocation was proper (See **Exhibit 7**), which no one contradicted. Indeed, it is unknown why BDO (who did not attend the hearing) was not shown the hearing exhibit so it could correct this error.
3. Marked as “Item 3” is an entry for Mufeed (Mafi) Hamed in excess of \$300,000 for deposits to a bank account. However, at the March 6<sup>th</sup> hearing, it was established that this was Account No. 9811 at Scotiabank, which is an account *for a rental apartment complex Mafi and Wally Hamed own that is not related to any partnership activity.* See **Exhibit 8**. Thus, this incorrect

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<sup>3</sup> As noted in that opinion, this finding was based in large part on the fact that Judge Brady also struck the jury demand, as a Court need not act as a “gatekeeper” for itself, rendering any *Daubert* issues moot.

<sup>4</sup> To assist in analyzing these points, an extra copy of this “revised” BDO report (Exhibit 6) is also attached at the end of this motion.

allocation by BDO also **consists of a “finding” that this account contains partnership withdrawals, which is a finding reserved for the Special Master, not BDO.** Indeed, it is unknown why BDO was not shown the hearing transcript so it could also correct this error.

4. Marked as “Item #4” is an entry for Mohammad Hamed for allegedly withdrawing \$1.5 million. This entry is based on an assumption that **\$3 million in gifts given by Fathi Yusuf and his wife, Fawzia Yusuf,** to two of their Hamed son-in-laws married to two of their daughters should now be allocated 50/50 between them. See **Exhibit 9.** Again, this accounting entry **consists of a “finding” that this allocation is correct, which is a finding reserved for the Special Master, not BDO.** Indeed, Hamed has a claim allocating this entire withdrawal to Yusuf, which the Special Master, not BDO, needs to resolve.

These few examples make it clear that Yusuf is trying to use this “revised” BDO report to (1) make allocations stricken by the Court and (2) make “findings” that have been entrusted to the Special Master, not BDO. Indeed, Yusuf’s counsel made this admission at the December 14<sup>th</sup> hearing when Hamed’s claim for Yusuf’s \$2.7 million withdrawal in August of 2012 was discussed, stating (see **Exhibit 10** on page 15):

I think he's suggesting that there's no further – nothing further needs to be done on the 2.7 million that he refers to, which is, you know -- respectfully, Your Honor, **it's already on Mr. Yusuf's side of the ledger, so to speak, in the BDO report.** We acknowledged he withdrew those funds. That's not in dispute. The accounting effect of that is what is in dispute . . . . (Emphasis added).

However, it is the Special Master, not BDO, who is in charge of deciding all remaining accounting claims. In short, while Yusuf is free to raise any claims that Hamed withdrew funds to which he is entitled to an off-set, **he must present evidence proving each such specific claim to the Special Master,** not just say "allow it because BDO says so."

Thus, the revised BDO report that “packages” multiple “findings” into an alleged debt of \$4.5 million supposedly “owed” by Hamed to Yusuf should be stricken as invading the province of the Special Master, who has been entrusted with making such findings.



**III. The “revised” BDO report is based on incomplete and unreliable records.**

As noted by Judge Brady, the BDO report was based (1) on **“unsupported assumptions that any monies identified in excess of “known sources of income” constitute distributions from partnership funds”** and (2) incomplete partnership records. Both criticisms remain equally valid as to the “revised” BDO report.

As for the first point, a quick look at the revised BDO report shows 11 accounts in the name of the Hamed sons and three in the name of the Yusuf sons that are supposedly “partnership” withdrawals. Such an assumption is not only unsupported by any evidence that the funds in question were taken from a partnership account, but **extensive evidence at the March 6<sup>th</sup> hearing confirmed this assumption is not correct**, such as the allocation of a bank account to Mufeed (Mafi) Hamed discussed above. In short, this assumption is not valid, rendering the “revised” report unreliable as well.

As for the second point, while the partnership records from 2007 to 2012 were not as sparse as those before 2007, BDO still admitted that the partnership accounting records were not complete until after 2012, when Gaffney was hired and instituted formal accounting procedures. See **Exhibit 1** at p. 3. As Gaffney stated under oath, before he was retained in 2012, the accounting records of the partnership were a **complete, useless mess**. See **Exhibit 11**. In short, the “revised” BDO report is still based in incomplete and unreliable records, as confirmed by John Gaffney’s sworn testimony.

Thus, the “revised” BDO report can also be summarily rejected, as it still suffers from the same two deficiencies noted by Judge Brady, with no effort to try to correct them despite Judge Brady’s succinct and harsh “criticisms.”

**IV. Conclusion**

For the reasons set forth herein, it is respectfully submitted that the hopelessly flawed "revised" BDO report should be stricken.

Dated: December 27, 2017



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**CERTIFICATE OF SERVICE**

I hereby certify that on this 27th day of December, 2017 , I served a copy of the foregoing by email (via Case Anywhere ECF), as agreed by the parties, on:

**Hon. Edgar Ross**  
Special Master  
% edgarrossjudge@hotmail.com

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BDO

Budley, Topper and Feuerzeig, LLP  
United Corporation  
Civil No. 13-12-CV-99

Summary calculation of Additional Income as a result of withdrawals from Supermarkets' accounts (or partnership's accounts) - January 1994 to August 2014. (Including adjustments for withdrawals before 9/17/2006 as instructed by the Court)

Summary of Withdrawals

Funds received from partnership through checks	\$ 1,500,000.00	\$ -	\$ -	\$ -	\$ 1,500,000.00
Withdrawals from the partnership with a signed ticket/receipt	-	237,352.75	-	-	237,352.75
Amount owed by Hamed family to Yusuf as per agreement before raid Sept 2001. As per Jilka's testimony these tickets were burned. (Refer to Letter dated August 13, 2012)	-	1,778,103.00	-	-	1,778,103.00
Payments to third parties on behalf of Hamed/Yusuf with partnership funds either with tickets or checks	-	20,311.00	-	-	20,311.00
Payments to Attorneys with partnership's funds	-	3,749,495.48	372,155.95	-	4,121,651.43
Funds received by cashier's checks	-	-	-	-	-
<b>Total Partnership</b>	<b>1,500,000.00</b>	<b>5,785,262.33</b>	<b>372,155.95</b>	<b>-</b>	<b>7,657,418.18</b>
Deposits to bank and brokerage accounts	18,505.80	430,439.13	100,000.00	306,999.56	510,061.57
Payments to credit cards	-	432,824.70	-	179,786.80	602,611.50
Investments (cost) sold as per tax returns	-	-	-	-	-
Subtotal Lifestyle analysis	18,505.80	833,263.83	100,000.00	486,786.36	1,598,617.36
<b>Net Withdrawals</b>	<b>\$ 1,518,505.80</b>	<b>\$ 8,638,526.06</b>	<b>\$ 472,155.95</b>	<b>\$ 486,786.36</b>	<b>\$ 9,624,035.74</b>

\$ 4,284,706.25	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ 4,284,706.25	\$ (2,784,706.25)
-	-	2,000.00	-	-	-	-	-	-	-	-	-	-	-	2,000.00	235,352.75
-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	1,778,103.00
-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	20,311.00
183,607.05	20,370.00	33,714.00	-	-	-	-	-	-	-	-	-	-	-	237,691.05	3,883,960.38
-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
<b>-4,468,313.30</b>	<b>20,370.00</b>	<b>35,714.00</b>	<b>-</b>	<b>-</b>	<b>-</b>	<b>-</b>	<b>-</b>	<b>-</b>	<b>-</b>	<b>-</b>	<b>-</b>	<b>-</b>	<b>-</b>	<b>4,524,377.30</b>	<b>3,153,070.88</b>
-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	1,364,006.06
-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	402,811.50
-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	1,966,817.36
<b>\$ -4,468,313.30</b>	<b>\$ 20,370.00</b>	<b>\$ 35,714.00</b>	<b>\$ -</b>	<b>\$ -</b>	<b>\$ -</b>	<b>\$ -</b>	<b>\$ -</b>	<b>\$ -</b>	<b>\$ -</b>	<b>\$ -</b>	<b>\$ -</b>	<b>\$ -</b>	<b>\$ -</b>	<b>\$ 4,524,377.30</b>	<b>\$ 5,099,638.44</b>

Note:  
1 Total amounts include adjustments made for withdrawals in 2016

HAMD652413





Dudley, Topper and Feuerzeig, LLP  
 United Corporation  
 Civil No. SX-12-CV-99

ITEM #4

ITEM #1

ITEM #2

Summary calculation of Additional Income as a result of withdrawals from Supermarkets' accounts (or partnership's accounts) - January 1994 to August 2014. (Including adjustments

Summary of Withdrawals

Description	Hamed					Total
	Mohammad	Waleed	Waheed	Mufeed	Hisham	
Funds received from partnership through checks	\$ 1,500,000.00	\$ -	\$ -	\$ -	\$ -	\$ 1,500,000.00
Withdrawals from the partnership with a signed ticket/receipt	-	237,352.75	-	-	-	237,352.75
Amount owed by Hamed family to Yusuf as per agreement before raid Sept 2001. As per Mike's testimony these tickets were burned. (Refer to Letter dated August 15, 2012)	-	1,778,103.00	-	-	-	1,778,103.00
Payments to third parties on behalf of Hamed/Yusuf with partnership funds either with tickets or checks	-	20,311.00	-	-	-	20,311.00
Payments to Attorneys with partnership's funds	-	3,749,495.48	372,155.95	-	-	4,121,651.43
Funds received by cashier's checks	-	-	-	-	-	-
<b>Total Partnership</b>	<b>1,500,000.00</b>	<b>5,785,262.23</b>	<b>372,155.95</b>	<b>-</b>	<b>-</b>	<b>7,657,418.18</b>
Deposits to bank and brokerage accounts	16,505.80	430,439.13	100,000.00	306,999.56	510,061.57	1,364,006.06
Payments to credit cards	-	422,824.70	-	179,786.80	-	602,611.50
Investments (cost) sold as per tax returns	-	-	-	-	-	-
<b>Subtotal Lifestyle analysis</b>	<b>16,505.80</b>	<b>853,263.83</b>	<b>100,000.00</b>	<b>486,786.36</b>	<b>510,061.57</b>	<b>1,966,617.56</b>
<b>Net Withdrawals</b>	<b>\$ 1,516,505.80</b>	<b>\$ 6,638,526.06</b>	<b>\$ 472,155.95</b>	<b>\$ 486,786.36</b>	<b>\$ 510,061.57</b>	<b>\$ 9,624,035.74</b>

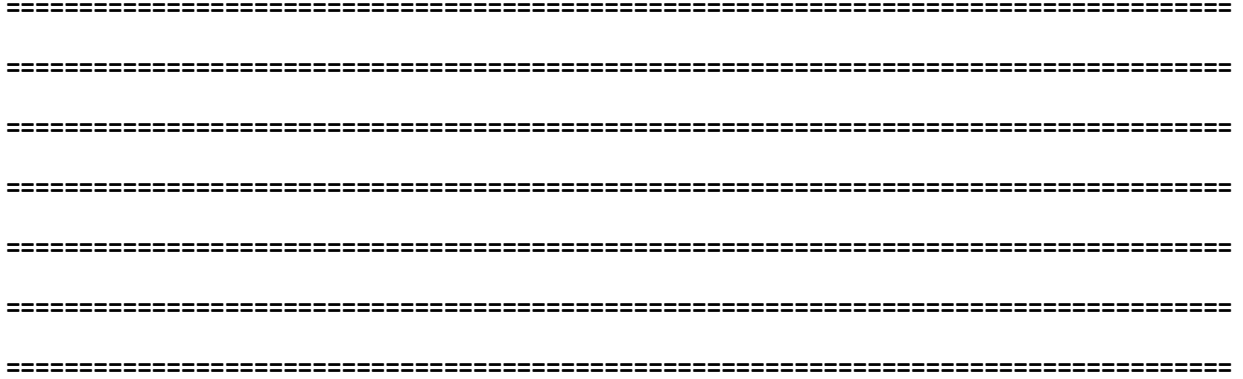
Note:

1 Total amounts include adjustments made for withdrawals in 2016.

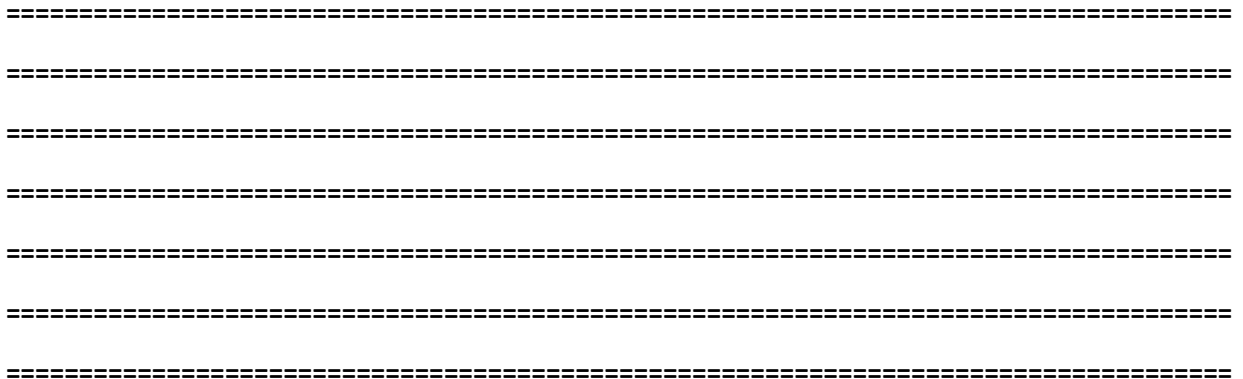
ITEM #3







# **DIVIDER**



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 and Counterclaimants.*

vs.

**WALEED HAMED, WAHEED HAMED,  
MUFEED HAMED, HISHAM HAMED, and  
PLESSEN ENTERPRISES, INC.,**

*Counterclaim Defendants,*

Case No.: SX-2012-cv-370

**ACTION FOR DAMAGES,  
INJUNCTIVE RELIEF AND  
DECLARATORY RELIEF**

JURY TRIAL DEMANDED

---

**MOHAMMAD HAMED**,

*Plaintiff,*

vs.

**FATHI YUSUF**,

*Defendant.*

Case No.: SX-2014-CV-278

**ACTION FOR DEBT AND  
CONVERSION**

JURY TRIAL DEMANDED

---

**MOHAMMAD HAMED**,

*Plaintiff,*

vs.

**UNITED CORPORATION**,

*Defendant.*

Case No.: SX-2014-CV-287

**ACTION FOR DEBT AND  
CONVERSION**

JURY TRIAL DEMANDED

# EXHIBIT 1



TO: DUDLEY, TOPPER AND FEUERZEIG, LLP

RE: MOHAMMAD HAMED V FATHI YUSUF AND UNITED CORPORATION CIVIL NO. SX-12-CV-370

REPORT OF HISTORICAL WITHDRAWALS AND DISTRIBUTIONS OF THE PARTNERS AND PROPOSED ALLOCATION TO EQUALIZE PARTNERSHIP DISTRIBUTIONS

AUGUST 31, 2016



BDO, Puerto Rico, PSC, a Puerto Rico Professional Services Corporation, and BDO USVI, LLC, a United States Virgin Island's limited liability Company, are members of BDO International Limited, a UK company limited by guarantee, and form part of the International BDO network of independent member firms.

BDO is the brand name for the BDO network and for each of the BDO Member Firms.



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**TABLES**

**APPENDICES**

**EXHIBITS**

**1. EXECUTIVE SUMMARY**

BDO Puerto Rico, PSC (“BDO”) was engaged by Dudley, Topper and Feuerzeig, LLP (“Dudley”) on behalf of Mr. Fathi Yusuf (“Mr. Yusuf”) to provide litigation support services in connection with Civil Case No. SX-12-CV-370 (the “Case”), which was brought by Plaintiff Mohammad Hamed (“Mr. Hamed”) against Mr. Yusuf and United Corporation (collectively “Defendants”) seeking damages in addition to injunctive and declaratory relief.

Our analysis, procedures and adjustments was divided and summarized accordingly into the following two (2) categories:

1. Known or Documented Withdrawals from Partnership
2. Lifestyle Analysis to Identify Undisclosed Withdrawals from the Partnership

We reviewed the available information and identified those funds withdrawn from the Partnership as follows:

1. Funds withdrawn from Partnership through checks of the business
2. Funds withdrawn evidenced through a signed cash tickets/receipts
3. Funds withdrawn related to tickets already settled by the Partners
4. Payments to third parties on behalf of a partner through tickets or checks
5. Payments to attorneys with partnership’s funds
6. Funds withdrawn by cashier’s checks

In the following table we summarize the adjustments that were identified as the result of our work and that were construed to be Partnership distributions not accounted for in the Balance Sheet provided by Gaffney. We conclude that as a result of the withdrawals in excess, and to equalize the Partnership Distributions the Hamed family will need to pay \$9,670,675.36 to the Yusuf family:

	Partnership Withdrawals		
	Hamed	Yusuf	Total
Withdrawals from Supermarkets	\$ 13,553,076.27	\$ 8,354,410.77	\$ 21,907,487.04
Lifestyle Analysis	14,938,589.07	795,903.85	15,734,492.92
<b>Total Withdrawals</b>	<b>28,491,665.34</b>	<b>9,150,314.62</b>	<b>\$ 37,641,979.96</b>
Credit for withdrawals in excess	(9,670,675.36)	9,670,675.36	
<b>Total Allocation to equalize partnership withdrawals</b>	<b>\$ 18,820,989.98</b>	<b>\$ 18,820,989.98</b>	

## 2. INTRODUCTION

BDO Puerto Rico, PSC (“BDO”) was engaged by Dudley, Topper and Feuerzeig, LLP (“Dudley”) on behalf of Mr. Fathi Yusuf (“Mr. Yusuf”) to provide litigation support services in connection with Civil Case No. SX-12-CV-370 (the “Case”), which was brought by Plaintiff Mohammad Hamed (“Mr. Hamed”) against Mr. Yusuf and United Corporation (collectively “Defendants”) seeking damages in addition to injunctive and declaratory relief. The Case originally stemmed from disputes over a claimed partnership between Mr. Hamed and Mr. Yusuf and partnership distributions.

### 2.1 Scope

The engagement was divided in two (2) areas:

1. Identification of historical withdrawals both disclosed and undisclosed from the partnership during the period where no formal partnership accounting process was in place.
2. Review the accounting of the Claims Reserve Account and the Liquidating Expenses Account, as those terms are defined in the “Final Wind Up Plan of the Plaza Extra Partnership” (the “Plan”) approved by an order entered in the Case on January 9, 2015 (the “Wind Up Order”).<sup>1</sup>

Since the opening of the first supermarket, the Partnership accounting records were prepared in an informal manner. For this reason, and after the Partners began the process to dissolve the Partnership, Dudley engaged BDO to identify withdrawals made by the Partners, family members and/or their agents which could be construed to be partnership withdrawals from the Partnership. This report represents a portion of the total claims presented related to historical withdrawals, additional claims are presented in the “Proposed Distribution Plan” not prepared or revised by BDO.

The scope of our work with respect to these withdrawals was limited to the period January 1994 through December 2012. Before 1994, the Partners had settled their respective Partnership distributions and, therefore, reconciliation before 1994 was not deemed necessary. Nevertheless, certain investments bought and sold by Mr. Waleed Hamed, which Mr. Yusuf understands were not included in the initial reconciliation were taken into consideration in our analysis.

Additional information was provided by Dudley which was obtained through subpoenas for the period covering January 2013 through August 2014, however, during this period a formalized partnership accounting process was already in place. As a result, we did not to perform any additional procedures

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<sup>1</sup> All capitalized terms not otherwise defined in this report shall have the meaning provided for in the Plan.

to identify withdrawals from January 2013 to the date of this report. During this period Mr. John Gaffney (“Gaffney”), who had been engaged as the accountant of the Partnership as of January 1, 2013, was in-charge of the supermarkets accounting and a formalized partnership accounting process was put into place. We obtained information during this period and is included in our report but we adjusted all the transactions to avoid double counting with the information being provided by Gaffney.

Dudley requested that we also review the accounting of the Claims Reserve Account and the Liquidating Expenses Account, and the proposed distribution of the remaining funds and/or net assets of the Partnership pursuant to the Plan and Wind Up Order. The review included the Accounting, Combined Balance Sheets, and other financial information prepared by Gaffney and provided periodically with the Bi-Monthly Reports submitted to the Master overseeing the Liquidation Process and finalized in the last submission of financials as of August 31, 2016. The Partnership Accounting includes the accounts of Plaza Extra-East, Plaza Extra-West, and Plaza Extra-Tutu Park.

Any partnership withdrawals made prior to Gaffney’s appointment were not included in his accounting. Therefore, our work was aimed towards identifying withdrawals which could be construed to be Partnership distributions and to incorporate them into Gaffney’s accounting in order to provide an Adjusted Partnership Accounting.

This report only includes our conclusions related to the withdrawals/distributions from the Partnership and the available amount to be allocated per Partner to equalize the historical distributions.

## 2.2 Assumptions and Limitations

The analysis and conclusions included in this report are based on the information made available to us as of the date of this report. All information was provided by Dudley as submitted by Mr. Hamed and Defendants.<sup>2</sup> In the event that any other relevant information is provided, we shall evaluate it and amend our report, if necessary.

Our procedures do not constitute an audit, review, or compilation of the information provided and, accordingly, we do not express an opinion or provide any other form of assurance on the completeness or accuracy of the information. The use of the words “audit” and “review” throughout this document do not imply an audit or examination as used in the accounting profession. We make no further warranty, expressed or implied.

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<sup>2</sup> Information was obtained from the following sources: (1) FBI files related to Criminal Case No. 2005-CR-0015, (2) documents produced by Mr. Hamed in the Case, and (3) documents produced by Defendants in the Case.

Our conclusions are based on the information provided by the personnel, officers and representatives of the Partnership, a practice commonly used by experts in our field to express opinions or make inferences, in addition to our education, knowledge, and experience. A detailed list of such information is included as part of this document.<sup>3</sup>

The professional fees related to this report were based on our regular rates for this type of engagement, and are in no way contingent upon the results of our analysis.<sup>4</sup>

### 3. BACKGROUND

Mr. Hamed and Mr. Yusuf had a longstanding family relationship which preceded their business relationship. In 1979, Mr. Yusuf incorporated United Corporation in the U.S. Virgin Islands. In early 1980, Mr. Yusuf began the construction of a shopping center<sup>5</sup> at Estate Sion Farm, St. Croix with plans to build a supermarket within it. During the construction of the shopping center, Mr. Yusuf encountered financial difficulties which rendered him unable to obtain sufficient financing from banks to complete the construction of the project. In his search for capital, Mr. Yusuf approached Mr. Hamed for funding to facilitate the opening of Plaza Extra-East. Mr. Hamed provided funding with the agreement that they would each receive fifty percent (50%) of the net profits<sup>6</sup> of the supermarkets.

The Partnership between Mr. Hamed and Mr. Yusuf subsequently expanded to include two (2) other supermarket locations, one in the west end of St. Croix, Plaza Extra-West and one in St. Thomas, Plaza Extra-Tutu Park; both built and initially stocked utilizing profits of the Partnership operating under the trade name Plaza Extra Supermarket. The trade name was registered to United Corporation, which maintained accounts for the operation of the supermarkets and for the shopping center rental business.<sup>7</sup> The three (3) stores employed approximately six-hundred (600) employees and are hereinafter referred to collectively as “the Supermarkets”.

The Supermarkets were managed jointly by the Partners, with both families having a direct, active role in their operations; be it through the actions of the Partners, family members or authorized agents. The families agreed to have one (1) member of the Hamed family and one (1) member of the Yusuf family co-manage each of the stores.

<sup>3</sup> Refer to Appendix A.

<sup>4</sup> Our rates for this engagement are set forth in Exhibit 1.

<sup>5</sup> The construction of the shopping center is related to the operations of United Corporation.

<sup>6</sup> Net profits were defined as the remaining income after all the expenses, including the rent for the Plaza Extra East, were paid.

<sup>7</sup> Related to United Corporation.

Mr. Yusuf was the managing partner of the original Plaza Extra Supermarket (Plaza Extra-East). He was responsible for the overall management of the business. Mr. Hamed was in charge of receiving, the warehouse and all produce. Mr. Hamed retired from actively participating in the business in 1996. During the later years, Plaza Extra-East had been managed by Mufeed Hamed and Yusuf Yusuf, along with Waleed Hamed; Plaza Extra-Tutu Park had been managed by Waheed Hamed, Fathi Yusuf and NejeH Yusuf; while Plaza Extra-West had been managed by Hisham Hamed and Maher Yusuf.

In 2001, charges were brought against United, Fathi Yusuf, Maher Yusuf, NejeH Yusuf, Waleed Hamed and Waheed Hamed. As a result, the FBI seized financial records from the Supermarkets and members of both the Yusuf and Hamed families as part of the investigation.

In 2003, the federal government, in connection with **Case No. 1:05-CR-00015-RLF-GWB**, appointed a monitor to oversee the Supermarkets' operations and to review the financial protocols. The monitor required all profits to be deposited into investment accounts, originally held at Merrill Lynch but subsequently transferred to Banco Popular.<sup>8</sup> The financial information secured during this period was also examined with respect to our analysis.

In the later part of 2010, Mr. Yusuf reviewed documents from a hard drive containing financial records that had been seized by the FBI during the course of the investigation related to Case No. 1:05-CR-00015-RLF-GWB. The Partners became at odds over the inconsistent adherence to the fifty-fifty distribution agreement and as to the accounting of such disbursements to agents, family members and Partners. Subsequently, discussions began towards dissolving the Partnership.

On August 15, 2012, Mr. Yusuf wrote a check payable to United which was signed by him and his son, Maher Yusuf, in the amount of \$2,784,706.25<sup>9</sup> drawn against a Plaza Extra operating account to equalize prior withdrawals of the Hamed family according to earlier reconciliations and additional documentation which was attached to the correspondence. Mr. Hamed alleges this withdrawal violates the Partnership agreement and "threaten[d] the financial viability" of the stores.

As a result of the aforementioned disputes, on September 19, 2012, a Complaint was filed by Mr. Hamed, as Plaintiff, against Mr. Yusuf and United Corporation, as Defendants, commencing the Case. Mr. Hamed alleged that he and Mr. Yusuf had formed a partnership in 1984, through which they agreed to jointly

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<sup>8</sup> Refer to Exhibit 2.

<sup>9</sup> Refer to Exhibit 3 Check No. 1154.

manage the stores and equally share the profits and losses. Mr. Hamed also alleged that Mr. Yusuf acted in a manner “designed to undermine the Partnership’s operations and success” citing Yusuf’s eviction attempts and his disbursement of \$2.7 million from Plaza Extra’s operating accounts to United operating accounts, which Mr. Hamed alleged was a violation of the Partnership agreement.<sup>10</sup> Additionally, Mr. Hamed filed a First Amended Complaint on October 19, 2012 seeking damages, along with injunctive and declaratory relief.<sup>11</sup>

On April 25, 2013, an order was entered in the Case enjoining the parties and, among other things, requiring them to:<sup>12</sup>

1. Continue the operations of the Supermarkets as they had throughout the years prior to the commencement of the litigation, with Hamed, or his designated representative(s), and Yusuf, or his designated representative(s), jointly managing each store, without unilateral action by either party, or representative(s), regarding management, employees, methods, procedures and operations.
2. Refrain from disbursing funds from the Supermarkets’ operating accounts without the mutual consent of Mr. Hamed and Mr. Yusuf (or designated representative(s)).
3. Secure two (2) signatures on all checks from the Supermarkets’ operating accounts, one of a designated representative of Mr. Hamed and the other of a designated representative of Mr. Yusuf.

Pursuant to an order entered in the Case on September 18, 2014, the Honorable Edgar D. Ross, was appointed as Master, to direct and oversee the winding up of the Partnership. Such order established, among other things, the Court’s intention for the parties to present a proposed plan for winding up the Partnership under the Master’s supervision.<sup>13</sup>

On November 7, 2014, an order was entered in the Case concluding that the Partnership was formed in 1986 by the oral agreement between Mr. Hamed and Mr. Yusuf for the ownership and operation of the

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<sup>10</sup> Refer to Exhibit 4.

<sup>11</sup> Refer to Exhibit 5, First Amended Complaint.

<sup>12</sup> Refer to Exhibit 6, Memorandum Opinion page 23.

<sup>13</sup> Refer to Exhibit 7, Order Appointing Master.



three Plaza Extra Stores, with each partner having a 50% ownership interest in all partnership assets and profits, and 50% obligation as to all losses and liabilities.<sup>14</sup>

On January 9, 2015, the court entered the Wind Up Order and approved the Plan, which named Mr. Yusuf as the Liquidating Partner with the exclusive right and obligation to wind up the Partnership pursuant to the Plan and the provisions of V.I. Code Ann. tit. 26, § 173(c), under the supervision of the Master.<sup>15</sup>

Additionally, the Plan established the terms and conditions under which Mr. Yusuf and Mr. Hamed would purchase certain assets and assume separate ownership and control of Plaza Extra-East and Plaza Extra-West, respectively. In addition, the order dictated the parameters for the private auction to be held for Plaza Extra-Tutu Park and established that the shares of stock of Associated Grocers held in the name of United was to be split 50/50 between Mr. Hamed and Mr. Yusuf, with United retaining in its name Yusuf's 50% share, and 50% of such stock being reissued in Hamed's name or his designee's name.

With respect to the Plaza Extra-Tutu Park auction, the Partnership assets that were sold consisted of the leasehold interests, the inventory, and equipment. The Partner submitting the winning bid for Plaza Extra-Tutu Park was to receive and assume all existing rights and obligations to the pending litigation with the landlord in the Superior Court of the Virgin Islands. The Partner who received and assumed said rights and obligations to the Tutu Park Litigation was obligated to reimburse the other Partner 50% of the amount of costs and attorneys' fees incurred to date directly attributable to the Tutu Park Litigation. The Prevailing Partner at auction was responsible for obtaining releases or otherwise removing any continuing or further leasehold obligations and guarantees of the Partnership and the other Partner.

The Plan also delineated the steps to be followed for the orderly liquidation of the Partnership. The following is a list of the steps to be taken:

1. **Budget for Winding Up Efforts:** The Liquidating Partner proposed a budget for the Wind Up Expenses. Such expenses include, but are not limited to, those incurred in the liquidation process, costs for the continued operations of Plaza Extra Stores during the wind up, costs for the professional services of the Master, costs relating to pending litigation in which Plaza Extra and/or United d/b/a Plaza Extra Stores is named as a party, and the rent to be paid to the landlords of Plaza Extra-East and Plaza Extra- Tutu Park.

<sup>14</sup> Refer to Exhibit 8, Order page 3.

<sup>15</sup> Refer to Exhibit 9, Order Adopting Final Wind Up Plan.

2. **Setting Aside Reserves:** The sum of Ten Million Five Hundred Thousand Dollars (\$10,500,000) is to be set aside in a Liquidating Expenses Account to cover Wind Up Expenses as set out in the Wind Up Budget with small surplus to cover any miscellaneous or extraordinary Wind Up Expenses that may occur at the conclusion of the liquidation process. Such Account shall be held in trust by the Liquidating Partner under the supervision of the Master. All disbursements shall be subject to prior approval by the Master. Unless the Partners agree or the Master orders otherwise, the Liquidating Partner shall not exceed the funds deposited in the Liquidation Expenses Account.
3. **Liquidation of Partnership Assets:** The Liquidating Partner shall promptly confer with the Master and Mr. Hamed to inventory all non-Plaza Extra Stores Partnership assets, and to agree to and implement a plan to liquidate such assets, which shall result in the maximum recoverable payment for the Partnership.
4. **Other Pending Litigation:** The pending litigation against United set forth in Exhibit C of Exhibit 9 to the Plan arises out of the operation of Plaza Extra Stores. As part of the Wind Up of the Partnership, the Liquidating Partner shall undertake to resolve those claims in Exhibit C Exhibit 9, and to the extent any claims arise in the future relating to the operation of a Plaza Extra Store during the liquidation process, within the available insurance coverage for such claims. Any litigation expenses not covered by the insurance shall be charged against the Claims Reserve Account.
5. **Distribution Plan:** Upon conclusion of the Liquidating Process, the funds remaining in the Liquidation Expenses Account, if any, shall be deposited into the Claims Reserve Account. Within 45 days after Liquidating Partner completes the liquidation of the Partnership Assets, Mr. Hamed and Yusuf shall each submit to the Master a proposed accounting and distribution plan for the funds remaining in the Claims Reserve Account. Thereafter, the Master shall make a report and recommendation of distribution for the Court for its final determination.
6. **Additional Measures to be Taken:**
  - i. Should the funds deposited into the Liquidating Expenses Account prove to be insufficient, the Master shall transfer from the Claims Reserve Account sufficient funds required to complete the wind up and liquidation of the Partnership, determined in the Master's discretion.

- ii. All funds realized from the sale of the non-cash Partnership Assets shall be deposited into the Claims Reserve Account under the exclusive control of the Master.
- iii. All bank accounts utilized in the operation of the Partnership business shall be consolidated into the Claims Reserve Account.
- iv. Any Partnership Assets remaining after the completion of the liquidation process shall be divided equally between Mr. Hamed and Mr. Yusuf under the supervision of the Master.

On January 26, 2015, Hamed and Defendants filed a stipulation that was approved and ordered by the Court.<sup>16</sup> The parties stipulated to the following:

1. The valuation of the equipment at its depreciated value in each of the three stores, as provided in items #1, #2 and #3 of Section 8 of the Plan, is as follows:
  - v. Plaza Extra-East - \$150,000
  - vi. Plaza Extra-West - \$350,000
  - vii. Plaza Extra-Tutu Park - \$200,000
2. There is no need to do an appraisal of the Tutu Park leasehold interest, as provided in item #2 of Section 8 of the Plan, although the Parties will still do an inventory of the store's merchandise at its landed cost, as the parties will bid on this store (as ordered by the Court) without regard to its appraised value.
3. The litigation entitled "United Corporation v. Tutu Park Ltd., Civ. No. ST-97-CV-997 should be added to the definition of the "Tutu Park Litigation" in item #2 of Section 8 of the Plan and treated as property of that store under the same terms and conditions of the other referenced litigation (United Corporation v. Tutu Park Limited and P.I.D., Inc., Civ. No. ST-01-CV-361).

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<sup>16</sup> Refer to Exhibit 10, Stipulation.

4. Item #5 in Section 8 of the Plan shall be amended by replacing that language with the following language:

The parties agreed that the "Plaza Extra" trade name for each of the three stores shall be transferred with each store to the Partner who purchases the partnership assets associated with that location. United Corporation will sign whatever paperwork is needed to effectuate a trade name transfer. No party will thereafter be able to use the name Plaza Extra at any other location.

5. The effective date of the Court's Order Adopting Final Wind Up Plan shall be changed from ten (10) days following the date of the original Order to January 30, 2015.

On April 27, 2015, Honorable Judge Douglas A. Brady granted Defendant United Corporation's Motion to Withdraw Rent. The Liquidating Partner was ordered to withdraw from the Partnership joint account to cover past rent due the total amount of \$5,234,298.71, plus additional rents that have become due since October 1, 2013 at a rate of \$58,791.38 per month, until Mr. Yusuf assumed full possession and control of Plaza Extra-East.<sup>17</sup>

On April 28, 2015, Honorable Edgar D. Ross, Master, ordered the specific parameters applicable to the private auction of Plaza Extra-Tutu Park which was scheduled to commence at 10:00 a.m. on April 30, 2015. The order, also states the Partners agreed on \$220,000 as 50% of the amount of costs and the attorney fees incurred directly attributable to Tutu Park Litigation which shall be considered the Tutu Park Fees. Furthermore, all bank accounts, cash deposits, and accounts receivable of Plaza Extra-Tutu Park as of the day of the transfer shall belong to the Partnership.

Additionally, all debts, including accounts payable and liabilities, lawsuits against the Partnership or United arising from the operation of Plaza Extra-Tutu Park prior to the transfer to the purchasing partner or his designee, shall be treated as Partnership debts. Moreover, the purchase and sale of the assets of the Partnership shall be accomplished by a debit or credit from the Partner's interest in the Partnership accounts, determined whether the Partner is treated as the purchaser (debit) or the seller (credit). Such debits and credits will be reconciled and the net amount of the winning bid plus the Tutu Park Fees shall be paid to the selling partner within a reasonable amount of time after the conclusion of the auction,

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<sup>17</sup> Refer to Exhibit 11, Memorandum Opinion and Order dated April 27, 2015.

not to exceed fifteen (15) days. Lastly, the actual transfer shall become effective at 12:01 a.m. on May 1, 2015.<sup>18</sup>

On April 30, 2015, Honorable Edgar D. Ross, Master, declared Mr. Hamed the successful purchaser of Plaza Extra-Tutu Park. Consequently, as of 12:01 a.m. on May, 1, 2015, Mr. Hamed acquired the sole right, title, interest, ownership and control of the business known as Plaza Extra-Tutu Park. It should be noted that Mr. Hamed's rights, privileges and powers regarding Plaza Extra-Tutu Park will be exercised by KAC357, Inc., a corporation owned by Mr. Hamed's sons, using the trade name "Plaza Extra-Tutu Park".<sup>19</sup>

On March 5, 2015, Honorable Edgar D. Ross, Master, declared that Mr. Hamed fully complied with and satisfied the foregoing directive of the Wind Up Order with respect to Plaza Extra-West. Consequently, Mr. Hamed assumed sole ownership and control of Plaza Extra-West and was allowed to operate the location. Additionally, it was noted that Mr. Hamed's rights, privileges and powers regarding Plaza Extra-West will be exercised by KAC357, Inc.<sup>20</sup>

On March 6, 2015, Honorable Edgar D. Ross, Master, declared that Mr. Yusuf fully complied with and satisfied the foregoing directive of the Wind Up Order with respect to Plaza Extra-East. Mr. Yusuf assumed sole ownership and control of Plaza Extra-East and was allowed to operate the location. Further, Mr. Yusuf's rights, privileges and powers regarding Plaza Extra-East will be exercised by United Corporation.<sup>21</sup>

The aforementioned court orders were examined in order to assist us in the preparation of the Partnership accounting, with respect to the disbursements of the Partners and their agents during the covered period and the proposed allocation to equalize partnership distributions.

In the following sections we will discuss the results of our analysis related to the withdrawals from the Partnership and the resulting Partnership final balance distribution.

<sup>18</sup> Refer to Exhibit 12, Master's Order Regarding Bidding Procedures for Ownership of Plaza Extra-Tutu Park dated April 28, 2015.

<sup>19</sup> Refer to Exhibit 13, Master's Order Regarding Transfer of Ownership of Plaza Extra Tutu Park, St. Thomas dated April 30, 2015.

<sup>20</sup> Refer to Exhibit 14, Master's Order Regarding Transfer of Ownership of Plaza Extra West.

<sup>21</sup> Refer to Exhibit 15 Master's Order Regarding Transfer of Ownership of Plaza Extra East.

#### 4. METHODOLOGY AND PROCEDURES PERFORMED TO DETERMINE WITHDRAWALS FROM PARTNERSHIP

In the Virgin Islands, partnerships are governed by the Uniform Partnership Act (“UPA”), adopted in 1998 as Title 26, Chapter I of the Virgin Islands Code. A partnership is defined as “an association of two or more persons who carry on a business, as co-owners, for profit”.<sup>22</sup> Typically, unless a written partnership agreement stipulates otherwise, certain general rules apply with respect to management, profits, and losses. For example, unless otherwise stipulated in writing, each partner has an equal voice in the management of the partnership’s business and all partners share equally in profits and losses of the partnership.

Customarily, a partnership maintains separate books of account, which typically include records of the partnership’s financial transactions and each partner’s capital contributions. Usually, each partner has a separate capital account for investments and his share of net income/loss, and a separate withdrawal account. A withdrawal account is used to track the amounts taken from the business for personal use. On the other hand, net income or loss is added to the capital accounts in the closing process.

As previously indicated, the present claim arises from disputes over the Partnership and partnership distributions. At present, the Court has ruled that the Supermarkets are owned by the Partnership composed of Mr. Hamed and Mr. Yusuf on a fifty-fifty basis, thus net income/loss is shared equally among the partners. With respect to the Partnership distributions/withdrawals, no agreement has been reached by the parties and they are presently disputing amounts owed to or from the respective partner.

Due to the lack of formal accounting records related to the Partnership withdrawals and to the ongoing disputes between the Partners, BDO was requested to identify through the use of forensic accounting, the amounts that have been withdrawn from the Partnership which could be construed to be Partnership withdrawals and/or distributions. As forensic accountants, we use financial information to reconstruct past events. It should be noted that the findings and the report are impacted by the quality of the information provided and/or by the lack or limitation of the information provided for analysis. In the following paragraphs and sections, we will discuss the methodology and assumptions used during the engagement and the limitations we encountered in connection with the information provided.

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<sup>22</sup> Refer to Exhibit 16.

#### 4.1 Net Withdrawals from Partnership

Our analysis, procedures and adjustments was divided and summarized accordingly into the following two (2) categories:

1. Known or Documented Withdrawals from Partnership
2. Lifestyle Analysis to Identify Undisclosed Withdrawals from the Partnership

##### 4.1.1 Known or Documented Withdrawals from Partnership

It had been the custom and practice of the Yusuf and Hamed families to withdraw funds from the supermarket accounts for personal reasons, using either checks or cash tickets/receipts. The partnership category relates to all activity recorded and/or transacted through the Partnership. Our examination and analysis included the review of the available supermarkets' bank statements, bank reconciliations, checks, cash tickets/receipts and, cash receipt ledgers.

We reviewed the available information and identified those funds withdrawn from the Partnership as follows:

1. Funds withdrawn from Partnership through checks of the business
2. Funds withdrawn evidenced through a signed cash tickets/receipts
3. Funds withdrawn related to tickets already settled by the Partners
4. Payments to third parties on behalf of a partner through tickets or checks
5. Payments to attorneys with partnership's funds
6. Funds withdrawn by cashier's checks

##### Funds withdrawn from Partnership through checks of the business

In order to identify all monies withdrawn from the Partnership through checks we identified available checks, other than those related to salaries and wages made to the order of the Partners, family members and/or their agents through the Partnership. Our examination included available Partnership bank accounts, related to Plaza Extra-East, Plaza Extra-West and Plaza Extra-Tutu Park.

##### Funds withdrawn evidenced through a signed cash ticket/receipt

It should also be mentioned that the Yusuf and Hamed families periodically reconciled and evened their cash withdrawals through the use of the "black book" (cash tickets/receipts ledger). The cash ticket receipts ledger was deemed to represent direct evidence of the money directly withdrawn by each individual. Therefore, these cash receipts (withdrawals) were considered a direct acceptance of money that was withdrawn by each family member.

Furthermore, our analysis was aimed to identify all withdrawals made through the Supermarkets by the Partners, family members and/or their agents which could be construed to be partnership distributions. In order to identify all monies withdrawn from the Partnership through cash withdrawals, we reviewed and analyzed available cash tickets/receipts and cash ticket/receipts ledgers from Partnership which included Plaza Extra-East, Plaza Extra-West, and Plaza Extra-Tutu Park. The cash receipts provided were identified and assigned accordingly by the signature or name of the Partner, family member and/or the name of the agent.

Our analysis included the examination of the cash ticket/receipts ledger ("black book") to identify any cash withdrawals made by the Partners, family members and/or their agents. As part of our procedures, when analyzing the deposits of each individual we identified and traced any cash withdrawals to deposits made within the same day or up to three business days from the withdrawal date in order to avoid double counting.

**Funds withdrawn related to cash receipts or tickets already settled by the Partners**

In accordance with "Notice of Withdrawal" letter dated August 15, 2012, signed by Mr. Yusuf, partnership withdrawals made by the Hamed family totaled \$2,784,706.25 and withdrawn from United's operating account.<sup>23</sup> Composed of \$1,600,000 of cash receipts/tickets that had been destroyed, but agreed by the Partners, family members and/or their agents; \$1,095,381.75 in cash receipts tickets; and \$178,103 (\$89,392 and \$88,711) received after closing two (2) bank accounts. For purposes of our analysis, the documents provided with the Notice of Withdrawal were evaluated and the amounts considered as partnership distributions.

**Payments to third parties on behalf of the Partners through tickets or checks**

In order to identify and/or detect any disbursements from the Partnership on behalf of the Partners, family members and/or their agents to third parties, which could be construed to be partnership distributions, we examined available checks, cash tickets/receipts and cash tickets/receipts ledgers of the partnership accounts. Our examination included reviewing any available supporting documentation of such disbursements in order to determine whether such withdrawals/disbursements constituted partnership distributions.

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<sup>23</sup> Refer to Exhibit 20.



Tickets/receipts signed by third parties were observed acknowledging the receipt of money as a result of a loan; these tickets/receipts were also signed by Partners, family members and/or their agents who authorized the loan. Available tickets/receipts of the repayment of loans were also observed, signed by Partners, family members and/or their agents. If both tickets/receipts were identified, loan originated and loan repayment, we proceeded to adjust the amounts. However, if only one ticket/receipt was observed, said amounts were considered as partnership distributions.

#### **Payments to attorneys with partnership's funds**

During our examination a number of payments for legal services issued by either Partners, family members and/or their agents were analyzed and deemed not related to Partnership benefits or agreed upon. As a result, such payments were considered partnership distributions.

#### **Funds withdrawn by cashier's checks**

In order to identify any additional monies withdrawn, not directly identifiable through the Partnership or directly linked to the Partnership which could be construed to be partnership distributions, we examined available cashier's checks issued to either Partners, family members and/or their agents. Furthermore, we also reviewed any available supporting documentation related to such disbursements in order to determine whether such withdrawals/disbursements constituted partnership distributions.

#### **4.1.2 Lifestyle Analysis to Identify Undisclosed Withdrawals from the Partnership**

Our examination was aimed to identify all other income received by the Partners, family members and/or their agents that could be construed to be partnership distributions, which otherwise had not been disclosed as a withdrawal. Mr. Mohammad Hamed testified that their only source of income was salaries and/or wages, and the distributions received from the Partnership since 1986.<sup>24</sup> Therefore, any excess of monies identified over the known sources of income during the period analyzed was assumed to be partnership distributions and/or partnership withdrawals.

Yusuf's family has testified that their source of income was not only related to the supermarket activities, but also from United's rental and other businesses not related to the supermarket operation. Any unidentified deposit was considered a withdrawal from the Partnership.

Lifestyle analysis is the most commonly used method of proving income for an individual in cases where records or documents are not fully available. This method considers the person's spending patterns in

<sup>24</sup> Refer to Case No. SX-12-CV370, Oral deposition of Mr. Hamed dated April 21, 2014, pages 43 to 44.

relation to their known sources of funds.<sup>25</sup> If a person has declared income that is well below the cost of the lifestyle he or she is living, the lifestyle analysis may suggest that undisclosed sources of income exist. When the total is compared to reported or known sources of income, there may be a big gap, which can indicate other sources of income.

There are different methods to prove income, depending on factors such as the availability and adequacy of the individual's books and records, whether the individual spends all income or accumulates it, the type of business involved, etc. The methods commonly used are the following:<sup>26</sup>

- a. Direct (specific item or transaction) method
- b. Indirect methods:
  - i. Net worth method
  - ii. Expenditures method
  - iii. Bank deposits method
  - iv. Cash method
  - v. Percentage markup method
  - vi. Unit and volume methods

We relied upon the bank deposits method<sup>27</sup>, one of the traditional indirect methods, to identify the Partners' withdrawals. The bank deposits method is recommended to be used in various situations, specifically when books and records are incomplete, inadequate, or not available, such as in this case.<sup>28</sup>

This method is based on the theory that if a person is engaged in an income producing business or occupation and periodically deposits money in bank accounts in his or her name or under his or her control, an inference can be drawn that such bank deposits represent income unless it appears that the deposits represented re-deposits or transfers of funds between accounts, or that the deposits came from a non-related sources such as gifts, inheritances, or loans. In other words, under this method, all bank deposits are deemed to be income, unless they can be traced to another source of funds.<sup>29</sup>

<sup>25</sup> Sources of income or funds can include wages, bonuses, stocks sold, bank loan proceeds, gifts, gambling winnings, among others.

<sup>26</sup> Thomson Reuters/PPC. (2014). *Litigation Support Services: Chapter 11 Criminal Cases*, "1104 Methods of Proving Unreported Income". *These methods are not only used in criminal cases but also in civil cases such as divorces and for other purposes where income needs to be proved.*

<sup>27</sup> A description of banks deposits computation can be observed in case United States v. Boulet, 577 F.2d 1165 (5<sup>th</sup> Cir. 1978).

<sup>28</sup> Thomson Reuters/PPC. (2014). *Litigation Support Services: Chapter 11 Criminal Cases*, "1104 Methods of Proving Unreported Income".

<sup>29</sup> This may include bank loans, transfer from another account, a gift, or another documented source. The Fraud Files Blog. (2010, February 28). *Lifestyle Analysis in Criminal Cases: Proving Income without Full Documentation*. <http://www.sequenceinc.com/fraudfiles/2010/02/lifestyle-analysis-in-criminal-cases-proving-income-without-full-documentation/>.

This method also contemplates, that any expenditures made by the person in cash or currency from funds not deposited in any bank and not derived from a known source, similarly raises an inference that such cash or currency represents additional income.

The deposits method can stand on its own as proof of taxable income; it need not be corroborated by another method and its use is not limited to validating another method. In using the deposits method, care must be taken to observe the following procedures:

- a. Deposits to all types of financial institutions should be considered; for example, banks, savings and loan associations, investment trusts, mutual funds, brokerage accounts, etc.
- b. Cash payments (whether for business expenses, personal expenses, investments, etc.) made from cash receipts not deposited must be counted (added) as additional gross income.
- c. Deposits that do not represent taxable income, such as deposits of gifts, inheritances, loan proceeds, insurance proceeds, etc., must be deducted from total deposits.
- d. Calculating taxable income, deductible business expenses, whether paid by cash or check, must be deducted from the total deposit, a deduction for depreciation must also be allowed.<sup>30</sup>
- e. Care must be taken not to double count transfers between accounts, deposits of previously withdrawn checks, checks in transit at the end of the period, bounced checks, debit and credit advices or deposits reported on the prior period's tax return but not deposited until the current period. Also, only the net deposit should be counted if the deposit slip lists all checks and then deducts an amount to be paid to the taxpayer in cash.

Based on the deposit method, we decided to examine the bank accounts, credit card accounts, and brokerage/investment accounts of each of the Partners, family members and their agents. As part of our analysis, we identified and included all amounts deposited in the respective bank and brokerage accounts, credit card payments, and funds assumed to have been received as partnership distributions/withdrawals identified from cash receipts provided. In order to confirm the funds and sources of income of both families, we used their known salaries/wages.

Our examination entailed reviewing and analyzing all known and available bank accounts, brokerage/investment accounts and credit card accounts of each of the Partners, family members and their agents. As part of our analysis, we identified and included all amounts deposited in the respective

<sup>30</sup> Thomson Reuters/PPC. (2014). *Litigation Support Services: Chapter 11 Criminal Cases, "1104 Methods of Proving Unreported Income"*.

bank and brokerage accounts, credit card payments, and funds assumed to have been received as partnership distributions/withdrawals. Any excess monies identified from our examination over the known and confirmed income was assumed to be distributions from the partnership. In order to confirm the funds and sources of income of both families, we obtained from the Partnership records the salaries and wages earned by the Partners, family members and their agents.

Through our forensic analysis, we were also able to identify a number of disbursements related to a construction of a residence belonging to Waleed Hamed (son of Mohammad Hamed). Such amounts were considered in our analysis of the partnership distributions.

In order to avoid double counting of data, our lifestyle analysis required that certain adjustments be made to the amounts of withdrawals/distributions identified for each of the Partners, family members and/or their agents. Following, list of the type of adjustments that were made:

1. Deduction from the amounts deposited, any amounts identified from sources other than the supermarket business. (Transfers from family members and/or transfers from other owned accounts).
2. Deduction of payments made to credit card accounts using funds from other personal accounts.
3. Deduction of amounts identified through cash tickets/receipts, related to withdrawals from the Partnership which we were able to identify as having been deposited in the bank and/or brokerage accounts.
4. Deduction of checks issued from Plaza Extra's accounts which we identified as having been deposited in the bank or brokerage accounts representing reimbursement of business expenses.

The above described procedures were applied to each of the Partners, family members and their agents in order to calculate the excess monies received per each individual over their stated or known sources of income. The calculated withdrawals and/or construed partnership distribution were tallied per Partner, family member, agent and family (i.e. Hamed Family vs. Yusuf Family). Following is a list of the Partnership families - Hamed & Yusuf:

**Hamed Family**

- a. Mohammad Hamed
- b. Waleed Hamed
- c. Waheed Hamed
- d. Mufeed Hamed

e. Hisham Hamed

**Yusuf Family**

- a. Fathi Yusuf
- b. Nejeh Yusuf
- c. Maher Yusuf
- d. Yusuf Yusuf
- e. Najat Yusuf
- f. Zayed Yusuf

**4.2 Yusuf Family Members**

We also performed a Partnership withdrawal analysis and a lifestyle analysis of the following additional Yusuf family members:

- Syaid Yusuf
- Amal Yusuf
- Hoda Yusuf

Our analysis entailed identifying checks and cash withdrawals, payments to third parties, payments to attorneys and withdrawals through cashier's checks from Partnership accounts. As well as reviewing and analyzing deposits to available bank accounts and brokerage/investment accounts, and payments to credit card accounts. However, our examination did not reveal any of the latter, checks or cash withdrawals; No deposits were made to bank accounts, brokerage/investment accounts or payments to credit cards. In accordance with the information presented, our analysis did not reveal Partnership withdrawals for the benefit of Amal, or Hoda Yusuf family members for 1994 to 2012. Hence, no adjustments were required. For Syaid Yusuf, we only observed three checks associated with tax expenses for the year 2000 and 2001 and therefore adjusted. No further analysis was needed.

**4.3 Periods for Analysis**

Due to the lack of formal accounting records related to the Partnership withdrawals prior to Mr. Gaffney's appointment, we divided into four periods the result of our work and the proposed adjustments to the partnership distributions based on the availability of the information. Following is a description of the periods:

1. January 1994 thru September 2001: this is the accounting period prior to the FBI raid and government scrutiny. During this period, it was common for the Partners, family members and their agents to withdraw monies via a check or cash by just signing a cash ticket/receipt. Neither formal supervision nor formal accounting was in place during this period.
2. October 2001 thru December 2012: this is the period after the FBI raid and government scrutiny; accounting was improved, however, Gaffney was not in place and most withdrawals were limited to salaries; partnership distributions were limited as the government supervision/monitoring was in place.
3. January 2013 thru January 30, 2015: the Gaffney years - accounting information is formal and comprehensive. During this period, all withdrawals were made with Gaffney's supervision and therefore, were recognized in the general ledger.
4. January 30, 2015 thru August 31, 2016: this is the period of the liquidation of the Partnership assets; during this period, all transactions were performed with Gaffney's supervision and therefore, recognized in the general ledger. Additionally, during this period the Partnership activity was supervised by the Court through the appointed Master.

We should clarify that before 1994 only one store was open, a fire in 1992 destroyed the store and with it most of the financial/accounting information that was available. It had also been established that the Partnership kept a "black book" or a ledger to reconcile withdrawals from the Partnership. Prior to 1993, no amounts had been disputed by either Partner. However, as a result of the current litigation process, Mr. Yusuf became aware of certain investments reported by Waleed Hamed in his personal income tax returns of 1992 and 1993. Due to the amounts involved it was decided to evaluate and consider such amounts as part of our analysis.

Our analysis included information until August 2014, however we decided to adjust all transactions after January 2013 considering that during that period Mr. Gaffney was in control of all the transactions related to the partnership and all withdrawals should be accounted for.

#### 4.4 Documents Examined

As part of our analysis, we have examined documents for each of the family members of the Hamed and Yusuf families, the Supermarkets (includes Plaza Extra-East, Plaza Extra-West, and Plaza Extra-Tutu Park), United Corporation, and other related entities. All information, documents, evidence examined

and used by BDO was provided by Dudley.<sup>31</sup> The following is a summary of documents examined and used in our analysis.

- General ledgers of the Supermarkets
- Cash receipts of the Supermarkets
- Monthly bank statements of the Supermarkets' bank accounts
- Monthly bank statements of each Partner's bank accounts
- Monthly bank statements of each of the Partner's family members' bank accounts
- Monthly bank statements of each of the Partner's agents' bank accounts
- Monthly brokerage/investment statements of each Partner's investment accounts
- Monthly brokerage/investment statements of each of the Partner's family members' investment accounts
- Monthly brokerage/investment statements of each of the Partner's agents' investment accounts
- Credit card statements of each Partner's credit card accounts
- Credit card statements of each Partners' family members' credit card accounts
- Credit card statements of each Partners' agents' credit card accounts
- Income tax return of each Partner
- Income tax return of each Partner's family members
- Income tax return of each Partner's agents
- Legal documents: Court Orders, Motions and depositions
- Letters, black book (cash receipts ledger) and other documents

As indicated under Section 4.5 Limitations, we encountered certain limitations with respect to the information provided; not all of the information examined was complete. Due to the volume of documents provided, we have included a complete list of documents examined and used in our report. Therein, we have listed the documents received along with the corresponding dates. In addition, any missing statements and/or documents are also disclosed therein.

In the following sections, we describe the specific procedures that were applied to enable us to identify any withdrawals made by the Partners, family members and/or their agents that could be construed to be partnership distributions for the covered period.

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<sup>31</sup> Information obtained from of the following sources: (1) FBI files related to Criminal Case No. 2005-CR-0015, (2) documents provided by Mr. Hamed through the discovery process in the Case, (3) documents provided by Mr. Yusuf and United Corp. through the discovery process in the Case.

#### 4.5 Limitations

Our report and the findings included herein have been impacted by the limitation of the information available in the Case. Following is a summary of the limitations we encountered during the performance of the engagement.

- Accounting records of Plaza Extra-East were destroyed by fire in 1992 and the information was incomplete and/or insufficient to permit us to reconstruct a comprehensive accounting of the partnership accounts before 1993.
- Accounting records and/or documents (checks registers, bank reconciliations, deposits and disbursements of Supermarkets' accounts) provided in connection with Supermarkets were limited to covering the period from 2002 through 2004, East and West from 2006 through 2012, and Tutu Park from 2009 through 2012.
- Accounting records and/or documents provided to us for the periods prior to 2003 are incomplete and limited to bank statements, deposit slips, cancelled checks, check registers, investments and broker statements, cash withdrawal tickets/receipts and cash withdrawal receipt listings. For example, the retention policy for statements, checks, deposits, credits in Banco Popular de Puerto Rico is seven years; therefore, there is no Bank information available prior to 2007 and electronic transactions do not generate any physical evidence as to regular deposits and/or debits.
- Information discovered about the case up to August 31, 2014. We only considered information up to December 31, 2012. Transactions after that date were adjusted in our report.

#### 4.6 Assumptions

Any monies identified through our analysis in excess of the amount identified from the known sources of income (e.g. salaries, rent income, etc.) were assumed to be partnership withdrawals/distributions. With regards to the Hamed family, Mohammad Hamed admitted during deposition testimony that his family's sole source of income was the monies they withdrew from the supermarkets.<sup>32</sup>

The lifestyle analysis is supported by available information related to deposits to banks and brokerage accounts and payments to credit cards during the period from January 1994 to December 2012 or until Gaffney was assigned to work with the Supermarkets accounting.

<sup>32</sup> Refer to Case No. SX-12-CV370, Oral deposition of Mr. Hamed dated April 21, 2014, pages 43 to 44.



## 5. DETERMINATION OF PARTNER'S WITHDRAWALS

As previously indicated, the Supermarkets have been managed jointly, with both families having a direct active role in their operations be it through the actions of the Partners, the actions of family members or the actions of their authorized agents. The families agreed to have one (1) member of the Hamed family and one (1) member of the Yusuf family co-manage each of the stores.

In the following sections, we have documented the results of the procedures that were applied to enable us to identify any withdrawals made by the Partners, family members and/or their agents that could be construed to be partnership distributions for the covered period.

### 5.1 Hamed's Family

#### 5.1.1 Mohammad Hamed - Partner

##### Partnership - Monies withdrawn from Supermarkets

###### a. Partnership withdrawals/distributions through checks

In order to identify all monies withdrawn from the Partnership through checks, we identified available checks made to the order of Mohammad Hamed. Our examination did not reveal any checks made to the order of Mohammad Hamed from the Partnership accounts, therefore, no partnership distributions were identified that would require any adjustment from checks issued to the order or on behalf of Mohammad Hamed for the covered periods.

During the period covering October 2001 through December 2012, a total of \$3,000,000 was withdrawn through checks issued from the Partnership as gifts to Hisham Hamed and his spouse (\$1,500,000) and to Mufeed Hamed and his spouse (\$1,500,000). We should mention that both spouses are daughters of Mr. Yusuf.

Therefore, for purposes of our analysis it was determined that this amount represented distributions from the Partnership. We adjusted Mr. Hamed's and Mr. Yusuf's distribution by \$1,500,000 for said period.<sup>33</sup>

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<sup>33</sup> Refer to Exhibit 17 and Table 1.

Description	October 2001 to December 2012
Plaza Extra ██████ 13	\$ 750,000.00
Plaza Extra ██████ 18	750,000.00
<b>Total</b>	<b>\$ 1,500,000.00</b>

**b. Partnership withdrawals/distributions through cash withdrawals**

In order to identify all monies withdrawn from the Partnership through cash withdrawals we reviewed and analyzed available cash tickets/receipts and cash tickets/receipts ledgers provided from the Partnership. The cash withdrawals identified and/or attributable to Mohammad Hamed for the periods covered amounted to \$853,718.00 as shown in the table below:<sup>34</sup>

Description	January 1994 to September 2001	October 2001 to December 2012	January 2013 to August 2014	Total
Withdrawals from the partnership with a signed ticket/receipt	\$ 848,718.00	\$ 5,000.00	\$ -	\$853,718.00

We should mention that a number of the cash withdrawals identified and attributed to Mohammad Hamed during our examination were not dated; nonetheless, such withdrawals were reasonably believed to be amounts withdrawn from the Partnership and attributable to his account during this time period. From our examination we determined that partnership distributions to Mohammad Hamed related to cash withdrawals amounted to \$946,518.00 for the covered period. A total of \$92,800.00 was adjusted (eliminated) to avoid double counting, since these funds were deposited and accounted for in our analysis of Waleed Hamed for a net amount of \$853,718.00.

**c. Payment to Third Parties through checks or cash tickets/receipts**

In order to identify any disbursements from the Partnership on behalf of the Partners, family members and/or their agents to third parties which could be construed to be distributions to the benefit of a specific Partner, we examined available checks, cash tickets/receipts, and cash tickets/receipts ledgers of the Partnership accounts to identify any payments to third parties on behalf of Mohammad Hamed. Our examination did not reveal any checks made to third parties on behalf of Mohammad Hamed from the Partnership accounts, therefore, no partnership distributions were identified that would require any adjustment from checks issued to third parties on behalf of Mohammad Hamed for the covered periods.

<sup>34</sup> Refer to Tables 2A and 2B.

**d. Payments to attorneys with partnership's funds**

In order to identify and/or detect any disbursements from the Partnership on behalf of the Partners, family members and/or their agents to attorneys which could be construed to be partnership distribution to a specific Partner, we examined a number of payments for legal services not related to the Partnership that were identified and we included in our analysis, since the Partners had no agreement to pay such expenses with Partnership funds. No payments to attorneys were identified and/or attributable to Mohammad Hamed for the periods covered.

**e. Funds withdrawn by cashier's checks**

In order to identify any additional monies withdrawn through other sources not directly identifiable through the Partnership or directly linked to the Partnership which could be construed to be partnership distributions, we examined available cashier's checks issued to Mohammad Hamed. We also examined checks issued to Hamed from any other related parties and/or entities related to the Partnership. From our review and analysis, we were able to identify a total of \$62,000.00<sup>35</sup> in manager checks which were considered to be distributions from the Partnership to the exclusive benefit of Hamed.

**f. Summary**

As a result of our review we can conclude that the Partnership monies withdrawn for the sole benefit of Mr. Mohammad Hamed from January 1994 to December 2012 amounted to \$2,415,718.00.

**Lifestyle Analysis**

**a. Bank and Investments Accounts/Credit Card Accounts**

Our examination entailed reviewing and analyzing all known and available bank accounts and brokerage/investment accounts of Mohammad Hamed. From our examination, we were able to identify that Mohammad Hamed deposited monies/funds in the amount of \$1,307,043.72<sup>36</sup> for the covered period.

We should mention that our analysis excludes any deposits which could be identified and/or related to a source other than the Partnership. In the following table we summarize the deposits identified and/or attributable to Mohammad Hamed for the periods covered:

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<sup>35</sup> Refer to Table 3.

<sup>36</sup> Refer to Tables 4A to 4C.

Type of Account:	Account Number:	January 1994 to September 2001	October 2001 to December 2012	January 2013 to August 2014	Total
Checking Account	██████████ 517	\$ -	\$ -	\$ -	\$ -
Checking Account	██████████ 814	259,670.00	14,850.00	-	274,520.00
Checking/Savings Account	██████████ 53	28,172.09	6,880.21	-	35,052.30
Time Deposit - Customers (Fixed)	██████████ 710	-	-	-	-
Time Deposit - Customers (Fixed)	██████████ -700	-	-	-	-
Order - Customers	██████████ -570	74,898.00	-	-	74,898.00
Order - Customers	██████████ 500	97,352.42	-	-	97,352.42
Order - Customers	██████████ 510	20,415.00	-	-	20,415.00
Time Deposit	██████████ 833	245,007.00	-	-	245,007.00
Time Deposit	██████████ -833	559,799.01	-	-	559,799.01
Investments/Securities	██████████ 28	-	-	-	-
	<b>Total</b>	<b>\$ 1,285,313.51</b>	<b>\$ 21,730.21</b>	<b>\$ -</b>	<b>\$ 1,307,043.72</b>

**b. Credit Card Accounts**

Our examination entailed reviewing and analyzing all known and available credit card accounts belonging to Mohammad Hamed. As part of our analysis, we identified and included available credit card payments and included them in our analysis. Through our analysis a total amounting to \$1,552.08 of credit card payments from Mohammad Hamed were identified for the period covered as shown below:<sup>37</sup>

Type of Account:	Account Number:	January 1994 to September 2001	October 2001 to December 2012	January 2013 to August 2014	Total
Credit Card - VISA	██████████ 11	\$ 1,552.08	\$ -	\$ -	\$ 1,552.08

**c. Adjustments**

In order to avoid double counting of amounts identified as withdrawals and/or distributions in our lifestyle analysis, we obtained salaries and wages for the Partners, family members and their agents from Partnership records. Those that we were able to identify as salaries and wages were adjusted. To the extent Mohammad Hamed received social security benefits these were eliminated from our lifestyle analysis.

**d. Summary**

As a result of the lifestyle analysis we can conclude that Mohammad Hamed withdrew \$1,308,595.80 from January 1994 to December 2012. This total is net from any ticket/receipt or check already considered in the other classifications above.

<sup>37</sup> Refer to Table 5A and 5B.

**Result**

In result of the information presented above, Mohammad Hamed's total partnership withdrawals during the years 1994 to 2012 were \$3,724,313.80.<sup>38</sup>

**5.1.2 Waleed Hamed (son of Mohammad Hamed)**

**Partnership - monies withdrawn from Supermarkets**

**a. Partnership withdrawals/distributions through checks**

In order to identify all monies withdrawn from the Partnership through checks, we identified available checks made to the order of Waleed Hamed. The checks identified as withdrawals attributable to Waleed Hamed for the periods covered amounted to \$684,170.00<sup>39</sup> as presented in the table below:

Description	January 1994 to September 2001	October 2001 to December 2012	January 2013 to August 2014	Total
Banque Française Commerciale	\$ 450,000.00	\$ -	\$ -	\$ 450,000.00
Plaza Extra - Checking Account # [REDACTED] 11	1,500.00	205,000.00	-	206,500.00
Plaza Extra - Checking Account # [REDACTED] 10	-	27,670.00	-	27,670.00
<b>Total</b>	<b>\$ 451,500.00</b>	<b>\$ 232,670.00</b>	<b>\$ -</b>	<b>\$ 684,170.00</b>

**b. Partnership withdrawals/distributions through cash withdrawals**

In order to identify all monies withdrawn from the Partnership through cash withdrawals we reviewed and analyzed available cash tickets/receipts and cash tickets/receipts ledgers provided from the Partnership.

We should mention that a number of the cash withdrawals identified and attributed to Waleed Hamed during our examination were not dated; nonetheless, such withdrawals were reasonably determined to be amounts withdrawn from the Partnership and attributable to his account during the period in question. From our examination, we determined that partnership distributions to Waleed Hamed related to cash withdrawals amounted to \$1,133,245.75 for the covered period as shown in the table below:<sup>40</sup>

<sup>38</sup> Refer to Table 6.

<sup>39</sup> Refer to Tables 7A and 7B.

<sup>40</sup> Refer to Tables 8A and 8B.

Description	January 1994 to September 2001	October 2001 to December 2012	January 2013 to August 2014	Total
<b>Withdrawals from the partnership with a signed ticket/receipt</b>	\$ 414,115.75	\$ 273,630.00	\$ -	\$ 687,745.75
<b>Loan to Third Parties</b>	445,500.00	-	-	445,500.00
<b>Total</b>	<b>\$ 859,615.75</b>	<b>\$ 273,630.00</b>	<b>\$ -</b>	<b>\$ 1,133,245.75</b>

**c. Funds withdrawn related to cash tickets/receipts already settled by the Partners**

In accordance with “Notice of Withdrawal” letter dated August 15, 2012, signed by Mr. Yusuf, partnership withdrawals by the Hamed family totaled \$2,784,706.25 and withdrawn from United’s operating account.

A total of \$1,778,103<sup>41</sup> was attributed as partnership distributions to Waleed Hamed. This total represents cash tickets/receipts that were destroyed as per Maher Yusuf’s testimony and which the Hamed’s had agreed that such amount had been withdrawn by the Hamed family. This amount represents \$1,600,000 past confirmed withdrawals and \$178,103 (\$89,392 and \$88,711) received after closing two (2) bank accounts.

**d. Payments to third parties through checks or cash tickets/receipts**

In order to identify and/or detect any disbursements from the Partnership on behalf of the Partners, family members and/or their agents to third parties which could be construed to be partnership distributions, we examined available checks, cash tickets/receipts and cash tickets/receipts ledgers of the partnership accounts to identify any payments to third parties on behalf of Waleed Hamed.

The payments to third parties identified and/or attributable to Waleed Hamed for the periods covered amounted to \$717,276.46:<sup>42</sup>

<sup>41</sup> Refer to Exhibit 20.

<sup>42</sup> Refer to Tables 9A and 9B.

Description	January 1994 to September 2001	October 2001 to December 2012	January 2013 to August 2014	Total
Receipts - Juan Rosario	\$ 147,612.32	\$ -	\$ -	\$ 147,612.32
Receipts- Ali Mohamad Zater	26,400.00	-	-	26,400.00
Receipts- Amin Yusuf Mustafa	4,000.00	-	-	4,000.00
Receipts- Al Fattah Aldalie	16,000.00	-	-	16,000.00
Receipts- Ely	400.00	-	-	400.00
Receipts- PA	5,867.50	-	-	5,867.50
Receipts - Dlack	730.00	-	-	730.00
Receipts- James Gamble	150.00	-	-	150.00
Receipts - Cynthia	575.00	-	-	575.00
Receipts - Anthony L.	8,000.00	-	-	8,000.00
Receipts - Adnan Alhamed	8,000.00	-	-	8,000.00
Receipts - Eustar Bailey	960.00	-	-	960.00
Receipts - Jaunn	5,150.00	-	-	5,150.00
Receipts - S. Phillip	1,513.00	-	-	1,513.00
Receipts- Louis Lorin	200.00	-	-	200.00
Receipts - Zalton Francis	1,690.00	-	-	1,690.00
Receipts- A. Joseph	15,000.00	-	-	15,000.00
Receipts - Other	31,069.83	4,130.00	-	35,199.83
Construction disbursements	428,678.81	-	-	428,678.81
FBI Documents related to Construction Disbursements	11,150.00	-	-	11,150.00
<b>Total</b>	<b>\$ 713,146.46</b>	<b>\$ 4,130.00</b>	<b>\$ -</b>	<b>\$ 717,276.46</b>

e. Payments to attorneys with partnership's funds

In order to identify and/or detect any disbursements from the Partnership on behalf of the Partners, family members and/or their agents to attorneys which could be construed to be partnership distribution to a specific Partner, we examined a number of payments for legal services not related to the Partnership that were identified and we included in our analysis, since the Partners had no agreement to pay such expenses with Partnership funds. The payments to attorneys identified and/or attributable to Waleed Hamed for the periods covered amounted to \$3,749,495.48.<sup>43</sup>

Description	January 1994 to September 2001	October 2001 to December 2012	January 2013 to August 2014	Total
Payments to Attorneys	\$ -	\$ 3,749,495.48	\$ -	\$ 3,749,495.48

d. Funds received by cashier's check

In order to identify any additional monies withdrawn through other sources not directly identifiable through the Partnership or directly linked to the Partnership which could be construed to be partnership distributions to a specific Partner, we examined available cashier's checks issued to Waleed Hamed. Furthermore, we also examined any checks issued to Waleed Hamed from any other related parties and/or entities related to the Partnership. Our examination did not reveal any cashier's checks issued to Waleed Hamed.

<sup>43</sup> Refer to Tables 10A and 10B.

From our review and analysis, we were able to identify a total of \$285,000.00 in checks issued to Waleed Hamed from other related parties and/or entities related to the Partnership which were considered to be distributions from the Partnership to the exclusive benefit of Waleed Hamed:<sup>44</sup>

Description	January 1994 to September 2001	October 2001 to December 2012	January 2013 to August 2014	Total
Checks - Transfer Hamed & Yusuf	\$ -	\$ -	\$ -	\$ -
Checks- Paid by Yusef Jaber	285,000.00	-	-	285,000.00
Checks from Mohammad Hamed	-	-	-	-
Checks from Plessen Enterprises	-	-	-	-
<b>Total</b>	<b>\$ 285,000.00</b>	<b>\$ -</b>	<b>\$ -</b>	<b>\$ 285,000.00</b>

**e. Summary**

As a result of our review we can conclude that the Partnership monies withdrawn by Waleed Hamed for his personal account from January 1994 to December 2012 amounted to \$8,347,290.69.

**Lifestyle Analysis**

**a. Bank and Investments Accounts**

Our examination entailed reviewing and analyzing all known and available bank accounts and brokerage/investment accounts of Waleed Hamed. From our examination, we were able to identify that Waleed Hamed deposited monies/funds in the amount of \$2,142,800.88 for the covered period.

We should mention that our analysis excludes any deposits which could be identified and/or related to a source other than the Partnership. In the following table we summarize the deposits identified and/or attributable to Waleed Hamed for the periods covered:<sup>45</sup>

<sup>44</sup> Refer to Tables 11A and 11B.

<sup>45</sup> Refer to Tables 12A to 12C.



Account Number:	January 1994 to September 2001	October 2001 to December 2012	January 2013 to August 2014	Total
313	\$ 578,800.00	\$ -	\$ -	\$ 578,800.00
753	138,923.83	492,699.31	-	631,623.14
86	684,799.06	66,474.51	-	751,273.57
286	-	-	-	-
080	-	-	-	-
184	6,003.11	89,066.06	-	95,069.17
40	4,035.00	7,000.00	-	11,035.00
26	-	-	-	-
-2	-	-	-	-
90	75,000.00	-	-	75,000.00
<b>Total</b>	<b>\$ 1,487,561.00</b>	<b>\$ 655,239.88</b>	<b>\$ -</b>	<b>\$ 2,142,800.88</b>

b. Credit Card Accounts

Our examination entailed reviewing and analyzing all known and available credit card accounts belonging to Waleed Hamed. As part of our analysis, we identified and included available credit card payments and included them in our analysis. Through our analysis a total amounting to \$661,928.70 of credit card payments on Waleed Hamed's credit cards were identified for the period covered. The following table summarizes the credit card payments identified and/or attributable to Waleed Hamed's partnership interest for the periods covered:<sup>46</sup>

Account Number:	January 1994 to September 2001	October 2001 to December 2012	January 2013 to August 2014	Total
19	\$ 109,866.54	\$ 88,764.93	\$ -	\$ 198,631.47
04	26,077.33	13,814.20	-	39,891.53
18	358.00	-	-	358.00
	-	-	-	-
	223.00	-	-	223.00
	-	-	-	-
09	-	-	-	-
09	-	-	-	-
39	-	86,324.54	-	86,324.54
11	-	73,278.81	-	73,278.81
28	-	8,087.35	-	8,087.35
27	-	47,210.20	-	47,210.20
18	-	(5,684.47)	-	(5,684.47)
	-	54,999.76	-	54,999.76
86	-	49,497.27	-	49,497.27
11	-	95,030.40	-	95,030.40
98	-	14,080.84	-	14,080.84
	-	-	-	-
	-	-	-	-
	-	-	-	-
	-	-	-	-
<b>Total</b>	<b>\$ 136,524.87</b>	<b>\$ 525,403.83</b>	<b>\$ -</b>	<b>\$ 661,928.70</b>

<sup>46</sup> Refer to Tables 13A to 13C.

c. **Adjustments**

In order to avoid double counting of amounts identified as withdrawals and/or distributions in our lifestyle analysis, we obtained salaries and wages for the Partners, family members and their agents from Partnership records. Those that we were able to identify as salaries and wages were adjusted.

d. **Investment sold as per tax returns**

Investments reported by Waleed Hamed in his personal income tax returns in 1992 and 1993 amounted to \$8,027,053.00. This amount was included in our analysis.<sup>47</sup>

Year	Date	Amount
1992	12/31/1992	\$ 439,570.00
1993	12/31/1993	7,587,483.00
<b>Total</b>		<b>8,027,053.00</b>

e. **Summary**

As a result of the lifestyle analysis we can conclude that Waleed Hamed withdrew \$10,831,782.58 from January 1994 to December 2012. This total is net from any tickets/receipts or check already considered in the other classifications above.

**Result**

According to the information presented above, Waleed Hamed's total partnership withdrawals for his personal benefit during the years 1994 to 2012 totaled \$19,179,073.27.<sup>48</sup>

5.1.3 **Waheed Hamed (son of Mohammad Hamed)**

Partnership - monies withdrawn from Supermarkets

a. **Partnership withdrawals/distributions through checks**

In order to identify all monies withdrawn from the Partnership through checks we identified available checks made to the order of Waheed Hamed. The checks identified as withdrawals attributable to Waheed Hamed for the periods covered amounted to \$72,400.44.<sup>49</sup>

<sup>47</sup> Refer to Exhibit 21.

<sup>48</sup> Refer to Table 14.

<sup>49</sup> Refer to Tables 15A and 15B.

Description	January 1994 to September 2001	October 2001 to December 2012	January 2013 to August 2014	Total
Plaza Extra - Checking Account # [REDACTED] 10	\$ 50,000.00	\$ 22,400.44	\$ -	\$ 72,400.44

**b. Partnership withdrawals/distributions through cash withdrawals**

In order to identify all monies withdrawn from the Partnership through cash withdrawals we reviewed and analyzed available cash tickets/receipts and tickets/receipts ledgers provided from the Partnership. From our examination we determined that partnership distributions to Waheed Hamed related to cash withdrawals amounted to \$1,307,622.00 for the covered period.<sup>50</sup>

Description	January 1994 to September 2001	October 2001 to December 2012	January 2013 to August 2014	Total
Withdrawals from the partnership with a signed ticket/receipt	\$ 1,281,122.00	\$ 26,500.00	\$ -	\$ 1,307,622.00

**c. Payments to third parties through checks or cash tickets/receipts**

In order to identify and/or detect any disbursements from the Partnership on behalf of Mr. Hamed's partnership interest, family members and/or his agents to third parties which could be construed to be partnership distributions for Waheed Hamed's sole benefit, we examined available checks, cash tickets/receipts and cash tickets/receipts ledgers of the Partnership accounts to identify any payments to third parties on behalf of Waheed Hamed. Total payments to third parties identified for the benefit of Waheed Hamed for the periods covered amounted to \$528,998.81.<sup>51</sup>

Description	January 1994 to September 2001	October 2001 to December 2012	January 2013 to August 2014	Total
Sam & Ken Mason (Tabor & Harmony Rent)	\$ 5,172.10	\$ -	\$ -	\$ 5,172.10
José Román	310,499.52	1,665.45	-	312,164.97
Conrad Ambrose (Willie House)	74,171.18	-	-	74,171.18
Trevor Ryan (Willie House)	50,100.00	-	-	50,100.00
Felix Rey (Willie Hamed)	14,446.23	1,000.00	-	15,446.23
Louis Hughes (Willie House)	6,000.00	-	-	6,000.00
Ahmed Atarefi (Willie's Home)	11,664.00	-	-	11,664.00
Manuel Tejada (Willie House)	3,850.00	-	-	3,850.00
GMT (Willie House)	2,685.00	-	-	2,685.00
Cheyenne Heavy Equip (Willie House)	5,000.00	-	-	5,000.00
Edward (Willie House)	1,280.00	-	-	1,280.00
Keneth Donova (Willie House)	700.00	-	-	700.00
Joseph Edwards (Willie House)	4,950.00	-	-	4,950.00
Other	35,815.33	-	-	35,815.33
<b>Total</b>	<b>\$ 526,333.36</b>	<b>\$ 2,665.45</b>	<b>\$ -</b>	<b>\$ 528,998.81</b>

<sup>50</sup> Refer to Table 16A and 16B.

<sup>51</sup> Refer to Tables 17A and 17B.

**d. Payments to attorneys with partnership's funds**

In order to identify and/or detect any disbursements from the Partnership on behalf of the Partners, family members and/or their agents to attorneys which could be construed to be partnership distribution to a specific Partner, we examined a number of payments for legal services not related to the Partnership that were identified and we included in our analysis, since the Partners had no agreement to pay such expenses with Partnership funds. The payments to attorneys identified and/or attributable to Waheed Hamed for the periods covered amounted to \$372,155.95.<sup>52</sup>

**e. Funds withdrawn by cashier's checks**

In order to identify any additional monies withdrawn through other sources not directly identifiable through the Partnership or directly linked to the Partnership which could be construed to be partnership distributions, we examined available cashier's checks issued to Waheed Hamed. Furthermore, we also examined any checks issued to Waheed Hamed from any of other related parties and/or entities related to the Partnership. Our examination did not reveal any cashier's checks issued to Waheed Hamed, nor were any other checks issued for the benefit of Waheed Hamed identified.<sup>53</sup>

**f. Summary**

As a result of our review we can conclude that the Partnership monies withdrawn by Waheed Hamed for his sole benefit from January 1994 to December 2012 amounted to \$2,281,177.20.

**Lifestyle Analysis**

**a. Bank and Investments Accounts**

Our examination entailed reviewing and analyzing all known and available bank accounts and brokerage/investment accounts of Waheed Hamed. From our examination, we were able to identify that Waheed Hamed deposited monies/funds in the amount of \$756,156.78 for the covered period. We should mention that our analysis included identifying and excluding any deposits which could be identified and/or related to a source other than from the Partnership. In the following table we summarize the deposits identified and/or attributable to Waheed Hamed for the periods covered:<sup>54</sup>

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<sup>52</sup> Refer to Table 18.

<sup>53</sup> Refer to Table 19.

<sup>54</sup> Refer to Table 20A and 20B.

Account Number:	January 1994 to September 2001	October 2001 to December 2012	January 2013 to August 2014	Total
██████████88	\$ 345,825.84	\$ -	\$ -	\$ 345,825.84
██████████22	240,847.32	-	-	240,847.32
██████████44	50,332.63	-	-	50,332.63
██████████865	15,150.99	-	-	15,150.99
██████████7	-	100,000.00	-	100,000.00
██████████022	-	-	-	-
██████████24	-	-	-	-
██████████82	-	-	-	-
██████████84	2,000.00	-	-	2,000.00
██████████98	2,000.00	-	-	2,000.00
██████████29	-	-	-	-
██████████34	-	-	-	-
██████████08	-	-	-	-
██████████13	-	-	-	-
<b>Total</b>	<b>\$ 656,156.78</b>	<b>\$ 100,000.00</b>	<b>\$ -</b>	<b>\$ 756,156.78</b>

**b. Credit Card Accounts**

Our examination entailed reviewing and analyzing all known and available credit card accounts belonging to Waheed Hamed. As part of our analysis, we identified and included available credit card payments and included them in our analysis. Through our analysis a total amounting to \$103,505.95 of credit card payments for the benefit of Waheed Hamed were identified for the period covered. The following table summarizes the credit card payments identified and/or attributable to Waheed Hamed for the periods covered:<sup>55</sup>

Account Number:	January 1994 to September 2001	October 2001 to December 2012	January 2013 to August 2014	Total
██████████01	\$ 88,105.30	\$ 11,277.13	\$ -	\$ 99,382.43
██████████0628	-	4,123.52	-	4,123.52
██████████1897	-	-	-	-
<b>Total</b>	<b>\$ 88,105.30</b>	<b>\$ 15,400.65</b>	<b>\$ -</b>	<b>\$ 103,505.95</b>

**c. Adjustments**

In order to avoid double counting of amounts identified as withdrawals and/or distributions in our lifestyle analysis, we obtained salaries and wages for the Partners, family members and their agents from Partnership records. Those that we were able to identify as salaries and wages were adjusted.

**d. Summary**

As a result of the lifestyle analysis we can conclude that Waheed Hamed withdrew \$859,662.73 from January 1994 to December 2012. This total is net from any ticket or check already considered in the other classifications above.

<sup>55</sup> Refer to Table 21A to 21C.

**Result**

According to the information presented above, Waheed Hamed's total partnership withdrawals for his personal benefit during the years 1994 to 2012 totaled \$3,140,839.93.<sup>56</sup>

**5.1.4 Mufeed Hamed (son of Mohammad Hamed)**

**Partnership - Monies withdrawn from Plaza Extra Supermarkets**

**a. Partnership withdrawals/distributions through checks**

In order to identify available monies withdrawn from the Partnership through checks we identified available checks made to the order of Mufeed Hamed. Our examination did not reveal any checks made to the order of Mufeed Hamed from the Partnership accounts, therefore no partnership distributions were identified that would require any adjustment from checks issued to the order or on behalf of Mufeed Hamed for the covered periods.<sup>57</sup>

**b. Partnership withdrawals/distributions through cash withdrawals**

In order to identify available monies withdrawn from the Partnership through cash withdrawals we reviewed and analyzed available cash tickets/receipts and cash tickets/receipts ledgers provided from the Partnership. From our examination we determined that distributions from Partnership funds to Mufeed Hamed related to cash withdrawals amounted to \$357,066.38 for the covered period.<sup>58</sup>

Description	January 1994 to September 2001	October 2001 to December 2012	January 2013 to August 2014	Total
Withdrawals from the partnership with a signed ticket/receipt	\$ 168,163.07	\$ 188,903.31	\$ -	\$ 357,066.38

**c. Payments to third parties through checks or cash tickets/receipts**

In order to identify and/or detect any disbursements from the Partnership on behalf of the Partners, family members and/or their agents to third parties which could be construed to be partnership distributions to the sole benefit of Mufeed Hamed, we examined available checks, cash tickets/receipts and cash tickets/receipts ledgers of the Partnership accounts to identify any payments to third parties on behalf of Mufeed Hamed. In the following table we summarize the

<sup>56</sup> Refer to Table 22.

<sup>57</sup> Refer to Table 23.

<sup>58</sup> Refer to Table 24A and 24B.

payments to third parties identified and/or attributable to Mufeed Hamed for the periods covered amounted to \$9,623.50.<sup>59</sup>

Description	January 1994 to September 2001	October 2001 to December 2012	January 2013 to August 2014	Total
Receipts paid to Tom Shelley	\$ -	\$ 510.00	\$ -	\$ 510.00
Receipts paid to Manuel	-	50.00	-	50.00
Receipts paid to Pedro Herrera	-	700.00	-	700.00
Receipts paid to Zalton Francis	-	1,000.00	-	1,000.00
Receipts paid to Sgt. E Barnes	500.00	-	-	500.00
Receipts - Juan Rosario	2,810.50	2,125.00	-	4,935.50
Other Receipts paid to third parties	677.00	1,251.00	-	1,928.00
<b>Total</b>	<b>\$ 3,987.50</b>	<b>\$ 5,636.00</b>	<b>\$ -</b>	<b>\$ 9,623.50</b>

**d. Payments to Attorneys**

In order to identify and/or detect any disbursements from the Partnership on behalf of the Partners, family members and/or their agents to attorneys which could be construed to be partnership distribution to a specific Partner, we examined a number of payments for legal services not related to the Partnership that were identified and we included in our analysis, since the Partners had no agreement to pay such expenses with Partnership funds. No payments to attorneys were identified and/or attributable to Mufeed Hamed for the periods covered.

**e. Funds withdrawn by cashier's checks**

In order to identify any additional monies withdrawn through other sources not directly identifiable through the Partnership or directly linked to the Partnership which could be construed to be partnership distributions, we examined available cashier's checks issued to Mufeed Hamed. Furthermore, we also examined any checks issued to Mufeed Hamed from any of other related parties and/or entities related to the Partnership. Our examination did not reveal any managers or other checks issued to Mufeed Hamed.

**f. Summary**

As a result of our review we can conclude that the Partnership monies withdrawn by Mufeed Hamed for his personal benefit from January 1994 to December 2012 amounted to \$366,689.88.

**Lifestyle Analysis**

**a. Bank and Investments Accounts**

<sup>59</sup> Refer to Tables 25A and 25B.

Our examination entailed reviewing and analyzing all known and available bank accounts and brokerage/investment accounts of Mufeed Hamed. From our examination, we were able to identify that Mufeed Hamed or agents acting on his behalf deposited monies/funds in the amount of \$756,194.11 for the personal benefit of Mufeed Hamed for the covered period. In the following table we summarize the deposits identified and/or attributable to Mufeed Hamed for the periods covered:<sup>60</sup>

Account Number:	January 1994 to September 2001	October 2001 to December 2012	January 2013 to August 2014	Total
35	\$ 180,115.70	\$ 90,929.28	\$ -	\$ 271,044.98
98	-	100.00	-	100.00
415	2,500.00	-	-	2,500.00
1	124,120.00	344,929.13	-	469,049.13
56	8,500.00	5,000.00	-	13,500.00
	\$ 315,235.70	\$ 440,958.41	\$ -	\$ 756,194.11

b. Credit Card Accounts

Our examination entailed reviewing and analyzing all known and available credit card accounts belonging to Mufeed Hamed. As part of our analysis, we identified and included available credit card payments and included them in our analysis. Through our analysis a total amounting to \$230,205.08 of credit card payments for the benefit of Mufeed Hamed were identified for the period covered. The following table summarizes the credit card payments identified and/or attributable to Mufeed Hamed for the periods covered:<sup>61</sup>

Account Number:	January 1994 to September 2001	October 2001 to December 2012	January 2013 to August 2014	Total
63	\$ 1,450.00	\$ -	\$ -	\$ 1,450.00
62	20,770.46	-	-	20,770.46
80	7,168.50	21,029.32	-	28,197.82
18	-	109,692.00	-	109,692.00
29	-	-	-	-
70	-	70,094.80	-	70,094.80
	\$ 29,388.96	\$ 200,816.12	\$ -	\$ 230,205.08

c. Adjustments

<sup>60</sup> Refer to Tables 26A to 26C.

<sup>61</sup> Refer to Tables 27A to 27C.



In order to avoid double counting of amounts identified as withdrawals and/or distributions in our lifestyle analysis, we obtained salaries and wages for the Partners, family members and their agents from Partnership records. Those that we were able to identify as salaries and wages were adjusted.

**d. Summary**

As a result of the lifestyle analysis we can conclude that Mufeed Hamed received \$986,399.19 of Partnership funds from January 1994 to December 2012. This total is net from any ticket or check already considered in the other classifications above.

**Result**

According to the information presented above, Mufeed Hamed's total partnership withdrawals for his personal benefit during the years 1994 to 2012 totaled \$1,353,089.07.<sup>62</sup>

**5.1.5 Hisham Hamed (son of Mohammad Hamed)**

Partnership - monies withdrawn from Supermarkets

**a. Partnership withdrawals/distributions through checks**

In order to identify available monies withdrawn from the Partnership through checks we identified available checks made to the order of Hisham Hamed. Our examination did not reveal any checks made to the order of Hisham Hamed from the Partnership accounts, therefore no partnership distributions were identified that would require any adjustment from checks issued to the order or on behalf of Hisham Hamed for the covered periods.

**b. Partnership withdrawals/distributions through cash withdrawals**

In order to identify available monies withdrawn from the Partnership through cash withdrawals we reviewed and analyzed available cash tickets/receipts and cash tickets/receipts ledgers provided from the Partnership. From our examination we determined that distributions from the Partnership accounts to Hisham Hamed related to cash withdrawals amounted to \$136,500.00 for the covered period.<sup>63</sup>

Description	January 1994 to September 2001	October 2001 to December 2012	January 2013 to August 2014	Total
Withdrawals from the partnership with a signed ticket/receipt	\$ 102,000.00	\$ 34,500.00	-	\$ 136,500.00

<sup>62</sup> Refer to Table 28.

<sup>63</sup> Refer to Tables 29A and 29B.

**c. Payments to third parties through checks or cash tickets/receipts**

In order to identify and/or detect any disbursements from the Partnership on behalf of the Partners, family members and/or their agents to third parties which could be construed to be partnership distributions for the personal benefit of Hisham Hamed, we examined available checks, cash tickets/receipts and cash tickets/receipts ledgers of the Partnership accounts to identify any payments to third parties on behalf of Hisham Hamed. Our examination did not reveal any checks made to third parties on behalf of Hisham Hamed from the Partnership accounts other than those related to rent payments and considered marginal benefits.<sup>64</sup> Therefore, no partnership distributions were identified that would require any adjustment from checks issued to third parties on behalf of Hisham Hamed for the covered periods.

**d. Payments to Attorneys**

In order to identify and/or detect any disbursements from the Partnership on behalf of the Partners, family members and/or their agents to attorneys which could be construed to be partnership distribution to a specific Partner, we examined a number of payments for legal services not related to the Partnership that were identified and we included in our analysis, since the Partners had no agreement to pay such expenses with Partnership funds. No payments to attorneys were identified and/or attributable to Hisham Hamed for the periods covered.

**e. Funds withdrawn by cashier's checks**

In order to identify any additional monies withdrawn through other sources not directly identifiable through the Partnership or directly linked to the Partnership which could be construed to be partnership distributions for the benefit of Hisham Hamed, we examined available cashier's checks issued to Hisham Hamed. Furthermore, we also examined any checks issued to Hisham Hamed from any of other related parties and/or entities related to the Partnership.

Our examination did not reveal any cashier's checks issued to Hisham Hamed. From our review and analysis, we were able to identify a total of \$5,700.50 in checks issued to Hisham Hamed from other related parties and/or entities related to the Partnership which were considered to be distributions from the Partnership.<sup>65</sup>

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<sup>64</sup> Refer to Table 30.

<sup>65</sup> Refer to Tables 31A to 31C.

Description	January 1994 to September 2001	October 2001 to December 2012	January 2013 to August 2014	Total
811	\$ -	\$ -	\$ -	\$ -
86	-	-	-	-
35	-	-	-	-
	5,700.50	-	-	5,700.50
<b>Total</b>	<b>\$ 5,700.50</b>	<b>\$ -</b>	<b>\$ -</b>	<b>\$ 5,700.50</b>

f. Summary

As a result of our review we can conclude that the Partnership monies withdrawn for the benefit of Hisham Hamed from January 1994 to December 2012 amounted to \$142,200.50.

Lifestyle Analysis

a. Bank and Investments Accounts

Our examination entailed reviewing and analyzing all known and available bank accounts and brokerage/investment accounts of Hisham Hamed. From our examination, we were able to identify that Hisham Hamed deposited monies/funds in the amount of \$952,148.77 for the covered period. This total does not consider deposits that could be identified and/or related to a source other than from the Partnership. In the following table we summarize the deposits identified and/or attributable to Hisham Hamed from Partnership funds for the periods covered:<sup>66</sup>

Account Number:	January 1994 to September 2001	October 2001 to December 2012	January 2013 to August 2014	Total
125	\$ 315,650.00	\$ -	\$ -	\$ 315,650.00
96	-	-	-	-
515	-	189,162.01	-	189,162.01
03	16,432.70	-	-	16,432.70
39	35,000.00	-	-	35,000.00
762	-	-	-	-
644	-	150,004.50	-	150,004.50
60	-	-	-	-
996	-	245,899.56	-	245,899.56
834	-	-	-	-
<b>Total</b>	<b>\$ 367,082.70</b>	<b>\$ 585,066.07</b>	<b>\$ -</b>	<b>\$ 952,148.77</b>

<sup>66</sup> Refer to Tables 32A to 32C.

**b. Credit Card Accounts**

Our examination entailed reviewing and analyzing all known and available credit card accounts belonging to Hisham Hamed. As part of our analysis, we identified and included available credit card payments and included them in our analysis. Our examination did not reveal any credit card payments related to Hisham Hamed for his personal benefit. We only observed receipts of purchases made with the credit card from Citibank number 5466-1601-8830-4130. No amounts were considered as a result of this analysis.<sup>67</sup>

**c. Adjustments**

In order to avoid double counting of amounts identified as withdrawals and/or distributions in our lifestyle analysis, we obtained salaries and wages for the Partners, family members and their agents from Partnership records. Those that we were able to identify as salaries and wages were adjusted.

**d. Summary**

As a result of the lifestyle analysis we can conclude that Hisham Hamed received \$952,148.77 in partnership funds from January 1994 to December 2012. This total is net from any ticket or check already considered in the other classifications above.

**Result**

According to the information presented above, Hisham Hamed's total partnership withdrawals for his personal benefit during the years 1994 to 2012 totaled \$1,094,349.27.<sup>68</sup>

**5.2 Yusuf's Family**

**5.2.1 Fathi Yusuf - Partner**

**Partnership - monies withdrawn from Supermarkets**

**a. Partnership withdrawals/distributions through checks**

In order to identify all monies withdrawn from the Partnership through checks we identified available checks made to the order of Fathi Yusuf. The checks identified as withdrawals attributable to Fathi Yusuf for the periods covered amounted to \$5,359,161.65.<sup>69</sup>

<sup>67</sup> Refer to Table 33.

<sup>68</sup> Refer to Table 34.

<sup>69</sup> Refer to Table 35A and 35B.

Description	January 1994 to September 2001	October 2001 to December 2012	January 2013 to August 2014	Total
Plaza Extra 413	\$ -	3,534,706.25	\$ -	\$ 3,534,706.25
Plaza Extra 10	-	924,375.40	-	924,375.40
Plaza Extra 11	-	150,080.00	-	150,080.00
Plaza Extra 18	-	750,000.00	-	750,000.00
<b>Total</b>	<b>\$ -</b>	<b>\$ 5,359,161.65</b>	<b>\$ -</b>	<b>\$ 5,359,161.65</b>

During the period covering October 2001 through December 2012 a total of \$3,000,000.00 was withdrawn through checks issued from the Partnership as gifts to Hisham Hamed and his spouse (\$1,500,000.00) and to Mufeed Hamed and his spouse (\$1,500,000.00). We should mention that both spouses are daughters of Mr. Yusuf.<sup>70</sup>

Therefore, for purposes of our analysis it was determined that this amount represented distributions from the Partnership. We adjusted Mr. Hamed's and Mr. Yusuf's distribution by \$1,500,000.00 for said period.

**b. Partnership withdrawals/distributions through cash withdrawals**

In order to identify all monies withdrawn from the Partnership through cash withdrawals we reviewed and analyzed available cash tickets/receipts and cash tickets/receipts ledgers provided from the Partnership. The cash withdrawals identified and/or attributable to Fathi Yusuf for the periods covered amounted to \$791,767.00 as shown below:<sup>71</sup>

Description	January 1994 to September 2001	October 2001 to December 2012	January 2013 to August 2014	Total
Withdrawals from the partnership with a signed ticket/receipt	\$ 783,367.00	\$ 700.00	\$ -	\$ 784,067.00
Loans to third parties	7,700.00	-	-	7,700.00
<b>Total</b>	<b>\$ 791,067.00</b>	<b>\$ 700.00</b>	<b>\$ -</b>	<b>\$ 791,767.00</b>

We should mention that a one of the cash withdrawals identified and attributed to Fathi Yusuf during our examination was not dated; nonetheless, such withdrawal was reasonably determined to be an amount withdrawn from the Partnership during the period in question and attributable to his account.

<sup>70</sup> Refer to Exhibit 17.

<sup>71</sup> Refer to Table 36A and 36B.

**c. Payment to Third Parties through checks or cash tickets/receipts**

In order to identify and/or detect any disbursements from the Partnership on behalf of the Partners, family members and/or their agents to third parties which could be construed to be partnership distributions for the specific benefit of one of the Partners or his interests, we examined available checks, cash tickets/receipts and cash tickets/receipts ledgers of the Partnership accounts to identify any payments to third parties on behalf of Fathi Yusuf. The payments to third parties identified and/or attributable to Fathi Yusuf for the periods covered amounted to \$126,965.00.<sup>72</sup>

Description	January 1994 to September 2001	October 2001 to December 2012	January 2013 to August 2014	Total
Ahmad Alafari	\$ 8,000.00	\$ -	\$ -	\$ 8,000.00
Patrick/ Ken Mason	2,500.00	-	-	2,500.00
Conrad Ambrose	52,175.00	-	-	52,175.00
A-9 Heavy Equipment	1,600.00	-	-	1,600.00
Trevor Ryan	29,090.00	-	-	29,090.00
Yes Concrete, Inc.	25,000.00	-	-	25,000.00
Felix Rey	3,170.00	-	-	3,170.00
Hugh Reifer	3,000.00	-	-	3,000.00
Chayenne	1,630.00	-	-	1,630.00
Edward	800.00	-	-	800.00
<b>Total</b>	<b>\$ 126,965.00</b>	<b>\$ -</b>	<b>\$ -</b>	<b>\$ 126,965.00</b>

**d. Payments to attorneys with partnership's funds**

In order to identify and/or detect any disbursements from the Partnership on behalf of the Partners, family members and/or their agents to attorneys which could be construed to be partnership distribution to a specific Partner, we examined a number of payments for legal services not related to the Partnership that were identified and we included in our analysis, since the Partners had no agreement to pay such expenses with Partnership funds. The payments to attorneys identified and/or attributable to Fathi Yusuf for the periods covered amounted to \$183,607.05.<sup>73</sup>

Description	January 1994 to September 2001	October 2001 to December 2012	January 2013 to August 2014	Total
Payments to Attorneys	\$ -	\$ 183,607.05	\$ -	\$ 183,607.05

<sup>72</sup> Refer to Table 37.

<sup>73</sup> Refer to Table 38A and 38B.

**e. Funds withdrawn by cashier's checks**

In order to identify any additional monies withdrawn through other sources not directly identifiable through the Partnership or directly linked to the Partnership which could be construed to be partnership distributions, we examined available cashier's checks issued to Fathi Yusuf. Furthermore, we also examined any checks issued to Fathi Yusuf from any other related parties and/or entities related to the Partnership. From our review and analysis, we were able to identify a total of \$536,000.00 in cashier's checks which were considered to be distributions from the Partnership. From our review and analysis, we were able to identify a total of \$100,000.00 in checks issued to Fathi Yusuf from other related parties and/or entities related to the Partnership which were considered to be distributions from the Partnership. Total checks identified and/or attributable to Fathi Yusuf for the periods covered amounted to \$636,000.00.<sup>74</sup>

Description	January 1994 to September 2001	October 2001 to December 2012	January 2013 to August 2014	Total
Cashier's Checks	\$ 536,000.00	\$ -	\$ -	\$ 536,000.00
Bank of Jordan ██████████ 668	-	-	-	-
Banque Francaise Commerciale	100,000.00	-	-	100,000.00
<b>Total</b>	<b>\$ 636,000.00</b>	<b>\$ -</b>	<b>\$ -</b>	<b>\$ 636,000.00</b>

**f. Summary**

As a result of our review we can conclude that the Partnership monies withdrawn by Mr. Fathi Yusuf from January 1994 to December 2012 amounted to \$7,097,500.70.

**Lifestyle Analysis**

**a. Bank and Investments Accounts/Credit Card Accounts**

Our examination entailed reviewing and analyzing all known and available bank accounts and brokerage/investment accounts of Fathi Yusuf. From our examination, we were able to identify that Fathi Yusuf deposited monies/funds in the amount of \$82,235.76 for the covered period.<sup>75</sup>

We should mention that our analysis included identifying and excluding any deposits which could be identified and/or related to a source other than from the Partnership. In the following table we summarize the deposits identified and/or attributable to Fathi Yusuf for the periods covered:

<sup>74</sup> Refer to Table 39.

<sup>75</sup> Refer to Table 40A and 40B.

Account Number:	January 1994 to September 2001	October 2001 to December 2012	January 2013 to August 2014	Total
██████10	\$ 39,000.00	\$ -	\$ -	\$ 39,000.00
██████26	37,075.00	6,160.76	-	43,235.76
██████84	-	-	-	-
██████27	-	-	-	-
<b>Total</b>	<b>\$ 76,075.00</b>	<b>\$ 6,160.76</b>	<b>\$ -</b>	<b>\$ 82,235.76</b>

**b. Credit Card Accounts**

Our examination entailed reviewing and analyzing all known and available credit card accounts. In Mr. Yusuf's case we did not have any credit card statement or any other evidence that Partnership funds were used to pay.

**c. Adjustments**

In order to avoid double counting of amounts identified as withdrawals and/or distributions in our lifestyle analysis, we obtained salaries and wages for the Partners, family members and their agents from Partnership records. Those that we were able to identify as salaries and wages were adjusted.

**d. Summary**

As a result of the lifestyle analysis we can conclude that Mr. Fathi Yusuf withdrew \$82,235.76 of Partnership funds from January 1994 to December 2012. This total is net from any ticket or check already considered in the other classifications above.

**Result**

According to the information presented above, Mr. Fathi Yusuf's partnership withdrawals during the years 1994 to 2012 totaled \$7,179,736.46.<sup>76</sup>

**5.2.2 NejeH Yusuf**

**Partnership - monies withdrawn from Supermarkets**

**a. Partnership withdrawals/distributions through checks**

In order to identify all monies withdrawn from the Partnership through checks we identified available checks made to the order of NejeH Yusuf. The checks identified as withdrawals attributable to NejeH Yusuf for the periods covered amounted to \$344,414.16.<sup>77</sup>

<sup>76</sup> Refer to Table 41.

<sup>77</sup> Refer to Table 42A and 42B.



Description	January 1994 to September 2001	October 2001 to December 2012	January 2013 to August 2014	Total
Plaza Extra 10	\$ -	\$ 344,414.16	\$ -	\$ 344,414.16
Plaza Extra 11	-	-	-	-
<b>Total</b>	<b>\$ -</b>	<b>\$ 344,414.16</b>	<b>\$ -</b>	<b>\$ 344,414.16</b>

**b. Partnership withdrawals/distributions through cash withdrawals**

In order to identify all monies withdrawn from the Partnership through cash withdrawals we reviewed and analyzed available cash tickets/receipts and cash tickets/receipts ledgers provided from the Partnership. From our examination we determined that Partnership distributions to NejeH Yusuf related to cash withdrawals amounted to \$275,118.60 for the covered period. In the following table we summarize the cash withdrawals of partnership funds identified and/or attributable to NejeH Yusuf for the periods covered:<sup>78</sup>

Description	January 1994 to September 2001	October 2001 to December 2012	January 2013 to August 2014	Total
<b>Withdrawals from the partnership with a signed ticket/receipt</b>	<b>\$ 237,866.81</b>	<b>\$ 37,251.79</b>	<b>\$ -</b>	<b>\$ 275,118.60</b>

We should mention that one of the cash withdrawals identified and attributed to NejeH Yusuf during our examination was not dated, nonetheless, such withdrawal was reasonably determined to be an amount withdrawn from the Partnership during the period in question and attributable to his account.

**c. Payments to third parties through checks or cash tickets/receipts**

In order to identify and/or detect any disbursements from the Partnership on behalf of the Partners, family members and/or their agents to third parties which could be construed to be Partnership distributions, we examined available checks, cash tickets/receipts and cash tickets/receipts ledgers of the Partnership accounts to identify any payments to third parties on behalf of NejeH Yusuf. In the following table we summarize the payments to third parties identified and/or attributable to NejeH Yusuf for the periods covered; The payments to third parties identified and/or attributable to NejeH Yusuf for the periods covered amounted to \$171,574.91.<sup>79</sup>

<sup>78</sup> Refer to Table 43A and 43B.

<sup>79</sup> Refer to Table 44A and 44B.

Description	January 1994 to September 2001	October 2001 to December 2012	January 2013 to August 2014	Total
Gasin Potter- Rent Payments	\$ -	\$ -		\$ -
Sammy & Trevor Ryan	104,225.00	-		104,225.00
Kenneth Donovan	2,380.00	900.00		3,280.00
Felix Rey	900.00	2,000.00		2,900.00
Carfer R	1,850.00	-		1,850.00
José Román	30,322.50	11,437.41		41,759.91
Edward	5,400.00	1,000.00		6,400.00
Henry Peter	2,800.00	-		2,800.00
Hugh Reifer- Plumber	1,000.00	2,000.00		3,000.00
José Hernández	200.00	-		200.00
Art House	5,000.00	-		5,000.00
Franklin Harrigan	160.00	-		160.00
<b>Total</b>	<b>\$ 154,237.50</b>	<b>\$ 17,337.41</b>	<b>\$ -</b>	<b>\$ 171,574.91</b>

d. **Payments to attorneys with partnership's funds**

In order to identify and/or detect any disbursements from the Partnership on behalf of the Partners, family members and/or their agents to attorneys which could be construed to be partnership distribution to a specific Partner, we examined a number of payments for legal services not related to the Partnership that were identified and we included in our analysis, since the Partners had no agreement to pay such expenses with Partnership funds. The payments to attorneys identified and/or attributable to NejeH Yusuf for the periods covered amounted to \$20,370.00.<sup>60</sup>

Description	January 1994 to September 2001	October 2001 to December 2012	January 2013 to August 2014	Total
Payments to Attorneys	\$ -	\$ 20,370.00	\$ -	\$ 20,370.00

e. **Funds withdrawn by cashier's checks**

In order to identify any additional monies withdrawn through other sources not directly identifiable through the Partnership or directly linked to the Partnership which could be construed to be Partnership distributions, we examined available cashier's checks issued to NejeH Yusuf. Furthermore, we also examined any checks issued to NejeH Yusuf from any of other related parties and/or entities related to the Partnership. Our examination did not reveal any cashier's checks issued to NejeH Yusuf. Our examination did not reveal any cashier's checks issued to NejeH Yusuf.

<sup>60</sup> Refer to Table 45.

f. Summary

As a result of our review we can conclude that the Partnership monies withdrawn by Nejeh Yusuf from January 1994 to December 2012 amounted to \$811,477.67.

Lifestyle Analysis

a. Bank and Investments Accounts

Our examination entailed reviewing and analyzing all known and available bank accounts and brokerage/investment accounts of Nejeh Yusuf. From our examination, we were able to identify that Nejeh Yusuf deposited monies/funds from the Partnership in the amount of \$112,998.21 for the covered period.<sup>81</sup>

We should mention that our analysis included identifying and excluding any deposits which could be identified and/or related to a source other than from the Partnership. In the following table we summarize the deposits of Partnership funds identified and/or attributable to Nejeh Yusuf for the periods covered:

Account Number:	January 1994 to September 2001	October 2001 to December 2012	January 2013 to August 2014	Total
██████████27	\$ 4,750.00	\$ 43,998.21	\$ -	\$ 48,748.21
██████████0	34,250.00	-	-	34,250.00
██████████0	30,000.00	-	-	30,000.00
<b>Total</b>	<b>\$ 69,000.00</b>	<b>\$ 43,998.21</b>	<b>\$ -</b>	<b>\$ 112,998.21</b>

b. Credit Card Accounts

Our examination entailed reviewing and analyzing all known and available credit card accounts belonging to Nejeh Yusuf. As part of our analysis, we identified and included available credit card payments and included them in our analysis. Through our analysis a total amounting to \$100.00 of credit card payments from Nejeh Yusuf using Partnership funds were identified for the period covered. The following table summarizes the credit card payments identified and/or attributable to Nejeh Yusuf for the periods covered:<sup>82</sup>

<sup>61</sup> Refer to Table 46A and 46B.

<sup>82</sup> Refer to Table 47.

Account Number:	January 1994 to September 2001	October 2001 to December 2012	January 2013 to August 2014	Total
43	\$ -	\$ -	\$ -	\$ -
49	100.00	-	-	100.00
496	-	-	-	-
77	-	-	-	-
52	-	-	-	-
22	-	-	-	-
50	-	-	-	-
22	-	-	-	-
<b>Total</b>	<b>\$ 100.00</b>	<b>\$ -</b>	<b>\$ -</b>	<b>\$ 100.00</b>

**c. Adjustments**

In order to avoid double counting of amounts identified as withdrawals and/or distributions in our lifestyle analysis, we obtained salaries and wages for the Partners, family members and their agents from Partnership records. Those that we were able to identify as salaries and wages were adjusted.

**d. Summary**

As a result of the lifestyle analysis we can conclude that Nejeih Yusuf withdrew partnership funds totaling \$113,098.21 from January 1994 to December 2012. This total is net from any ticket or check already considered in the other classifications above.

**Result**

According to the information presented above, Nejeih Yusuf's Partnership withdrawals for his personal benefit during the years 1994 to 2012 totaled \$924,575.88.<sup>83</sup>

**5.2.3 Maher Yusuf (son of Fathi Yusuf)**

**Partnership - monies withdrawn from Supermarkets**

**a. Partnership withdrawals/distributions through checks**

In order to identify all monies withdrawn from the Partnership through checks we identified available checks made to the order of Maher Yusuf. In the following table we summarize the checks identified as withdrawals attributable to Maher Yusuf for the periods covered amounted to \$127,759.22:<sup>84</sup>

<sup>83</sup> Refer to Table 48.

<sup>84</sup> Refer to Table 49A and 49B.

Description	January 1994 to September 2001	October 2001 to December 2012	January 2013 to August 2014	Total
Plaza Extra [REDACTED] 10	\$ -	\$ -	\$ -	\$ -
Plaza Extra [REDACTED] 11	5,818.05	-	-	5,818.05
Plaza Extra [REDACTED] 89	-	121,941.17	-	121,941.17
	\$ 5,818.05	\$ 121,941.17	\$ -	\$ 127,759.22

**b. Partnership withdrawals/distributions through cash withdrawals**

In order to identify all monies withdrawn from the Partnership through cash withdrawals we reviewed and analyzed available cash tickets/receipts and cash tickets/receipts ledgers provided from the Partnership. From our examination we determined that Partnership distributions to Maher Yusuf related to cash withdrawals amounted to \$158,850.00 for the covered period. In the following table we summarize the cash withdrawals of Partnership funds identified and/or attributable to Maher Yusuf for the periods covered:<sup>85</sup>

Description	January 1994 to September 2001	October 2001 to December 2012	January 2013 to August 2014	Total
<b>Withdrawals from the partnership with a signed ticket/receipt</b>	\$ 12,540.00	\$ 146,310.00	\$ -	\$ 158,850.00

**c. Payments to third parties through checks or cash tickets/receipts**

In order to identify and/or detect any disbursements from the Partnership on behalf of the Partners, family members and/or their agents to third parties which could be construed to be Partnership distributions for the exclusive benefit of a specific individual, we examined available checks, cash tickets/receipts and cash tickets/receipts ledgers of the partnership accounts to identify any payments to third parties on behalf of Maher Yusuf. Our examination did not reveal any checks made to third parties on behalf of Maher Yusuf from the Partnership accounts, therefore no Partnership distributions were identified that would require any adjustment from checks issued to third parties on behalf of Maher Yusuf for the covered periods.

**d. Payments to attorneys with partnership's funds**

In order to identify and/or detect any disbursements from the Partnership on behalf of the Partners, family members and/or their agents to attorneys which could be construed to be partnership distribution to a specific Partner, we examined a number of payments for legal services not related

<sup>85</sup> Refer to Table 50A and 50B.

to the Partnership that were identified and we included in our analysis, since the Partners had no agreement to pay such expenses with Partnership funds. The payments to attorneys identified and/or attributable to Majer Yusuf for the periods covered amounted to \$33,714.00.<sup>86</sup>

Description	January 1994 to September 2001	October 2001 to December 2012	January 2013 to August 2014	Total
Payments to Attorneys		\$ 33,714.00	\$ -	\$ 33,714.00

e. Funds withdrawn by cashier's checks

In order to identify any additional monies withdrawn through other sources not directly identifiable through the Partnership or directly linked to the Partnership which could be construed to be Partnership distributions for the personal benefit of Maher Yusuf, we examined available cashier's checks issued to Maher Yusuf. Furthermore, we also examined any checks issued to Maher Yusuf from any other related parties and/or entities related to the Partnership. Our examination did not reveal any managers or other checks issued to Maher Yusuf.

f. Summary

As a result of our review we can conclude that the Partnership monies withdrawn by Maher Yusuf from January 1994 to December 2012 for his personal benefit amounted to \$320,323.22.

Lifestyle Analysis

a. Bank and Investments Accounts

Our examination entailed reviewing and analyzing all known and available bank accounts and brokerage/investment accounts of Maher Yusuf. From our examination, we were able to identify that Maher Yusuf deposited Partnership monies/funds in the amount of \$515,169.88 for the covered period.<sup>87</sup>

Account Number:	January 1994 to September 2001	October 2001 to December 2012	January 2013 to August 2014	Total
██████ 26	\$ -	\$ -	\$ -	\$ -
██████ 18	473,285.71	41,884.17	-	515,169.88
<b>Total</b>	<b>\$ 473,285.71</b>	<b>\$ 41,884.17</b>	<b>\$ -</b>	<b>\$ 515,169.88</b>

<sup>86</sup> Refer to Table 51.

<sup>87</sup> Refer to Table 52A and 52B.

We should mention that our analysis included identifying and excluding any deposits which could be identified and/or related to a source other than from the Partnership. In the following table we summarize the deposits identified and/or attributable to Maher Yusuf for the periods covered.

**b. Credit Card Accounts**

Our examination entailed reviewing and analyzing all known and available credit card accounts belonging to Maher Yusuf. Our examination did not reveal any credit card payments using Partnership funds for the personal benefit of Maher Yusuf. We only observed receipts of purchases made with the credit card.<sup>88</sup>

**c. Adjustments**

In order to avoid double counting of amounts identified as withdrawals and/or distributions in our lifestyle analysis, we obtained salaries and wages for the Partners, family members and their agents from Partnership records. Those that we were able to identify as salaries and wages were adjusted.

**d. Summary**

As a result of the lifestyle analysis we can conclude that Maher Yusuf withdrew Partnership funds totaling \$515,169.88 from January 1994 to December 2012 for his personal benefit. This total is net from any ticket or check already considered in the other classifications above.

**Result**

According to the information presented above, Maher Yusuf's Partnership withdrawals for his personal benefit during the years 1994 to 2012 totaled \$835,493.10.<sup>89</sup>

**5.2.4 Yusuf Yusuf (son of Fathi Yusuf)**

**Partnership - monies withdrawn from Supermarkets**

**a. Partnership withdrawals/distributions through checks**

In order to identify all monies withdrawn from the Partnership through checks we identified available checks made to the order of Yusuf Yusuf. Our examination did not reveal checks made to the order of Yusuf Yusuf from the Partnership accounts, therefore no Partnership distributions were identified that would require any adjustment from checks issued to the order or on behalf of Yusuf Yusuf for the covered periods.<sup>90</sup>

<sup>88</sup> Refer to Table 53A and 53B.

<sup>89</sup> Refer to Table 54.

<sup>90</sup> Refer to Table 55.

**b. Partnership withdrawals/distributions through cash withdrawals**

In order to identify all monies withdrawn from the Partnership through cash withdrawals we reviewed and analyzed available cash tickets/receipts and cash tickets/receipts ledgers provided from the Partnership. From our examination we determined that Partnership distributions to Yusuf Yusuf related to cash withdrawals amounted to \$21,485.55 for the covered period. In the following table we summarize the cash withdrawals identified and/or attributable to Yusuf Yusuf for the periods covered:<sup>91</sup>

Description	January 1994 to September 2001	October 2001 to December 2012	January 2013 to August 2014	Total
Withdrawals from the partnership with a signed ticket/receipt	\$ 19,985.55	\$ 1,500.00	\$ -	\$ 21,485.55

We should mention that a number of the cash withdrawals identified and attributed to Yusuf Yusuf during our examination were not dated, nonetheless, such withdrawals were reasonably determined to be amounts withdrawn from Partnership funds for his personal benefit during the periods covered.

**c. Payments to third parties through checks or cash tickets/receipts**

In order to identify and/or detect any disbursements from the Partnership on behalf of the Partners, family members and/or their agents to third parties which could be construed to be Partnership distributions, we examined available checks, cash tickets/receipts and cash tickets/receipts ledgers of the Partnership accounts to identify any payments to third parties on behalf of Yusuf Yusuf. In the following table we summarize the payments to third parties, determined to be for the personal benefit to Yusuf Yusuf for the periods covered amounted to \$9,878.00:<sup>92</sup>

Description	January 1994 to September 2001	October 2001 to December 2012	January 2013 to August 2014	Total
Other Tickets/ Receipts-Yusuf	\$ 1,763.55	\$ -	\$ -	\$ 1,763.55
Receipts - Juan Rosario	8,114.45	-	-	8,114.45
<b>Total</b>	<b>\$ 9,878.00</b>	<b>\$ -</b>	<b>\$ -</b>	<b>\$ 9,878.00</b>

<sup>91</sup> Refer to Table 56A and 56B.

<sup>92</sup> Refer to Table 57.



**d. Payments to Attorneys**

In order to identify and/or detect any disbursements from the Partnership on behalf of the Partners, family members and/or their agents to attorneys which could be construed to be partnership distribution to a specific Partner, we examined a number of payments for legal services not related to the Partnership that were identified and we included in our analysis, since the Partners had no agreement to pay such expenses with Partnership funds. No payments to attorneys were identified and/or attributable to Yusuf Yusuf for the periods covered.

**e. Funds withdrawn by cashier's checks**

In order to identify any additional monies withdrawn through other sources not directly identifiable through the Partnership or directly linked to the Partnership which could be construed to be Partnership distributions, we examined available cashier's checks issued to Yusuf Yusuf. Furthermore, we also examined any checks issued to Yusuf Yusuf from any of other related parties and/or entities related to the Partnership.

Our examination did not reveal any cashier's checks issued to Yusuf Yusuf. From our review and analysis, we were able to identify \$40,000.00<sup>93</sup> in checks issued to Yusuf Yusuf from other related parties and/or entities related to the Partnership which were considered to be distributions from the Partnership. In the following table we summarize checks identified and/or attributable to Yusuf Yusuf for the periods covered.

Description	January 1994 to September 2001	October 2001 to December 2012	January 2013 to August 2014	Total
Waleed Hamed # [REDACTED] 13	\$ 40,000.00	\$ -	\$ -	\$ 40,000.00

**f. Summary**

As a result of our review we can conclude that the Partnership monies withdrawn by Yusuf Yusuf for his personal benefit from January 1994 to December 2012 amounted to \$71,363.55.

**Lifestyle Analysis**

**a. Bank and Investments Accounts**

Our examination entailed reviewing and analyzing all known and available bank accounts and brokerage/investment accounts of Yusuf Yusuf. Our examination did not reveal any deposits of Partnership funds to bank accounts or brokerage/investment accounts of Yusuf Yusuf.<sup>94</sup>

<sup>93</sup> Refer to Table 58.

<sup>94</sup> Refer to Table 59.

**b. Credit Card Accounts**

Our examination entailed reviewing and analyzing all known and available credit card accounts belonging to Yusuf Yusuf. Our examination did not reveal any credit card payments using Partnership funds for the personal benefit of Yusuf Yusuf.<sup>95</sup>

**c. Adjustments**

In order to avoid double counting of amounts identified as withdrawals and/or distributions in our lifestyle analysis, we obtained salaries and wages for the Partners, family members and their agents from Partnership records. Those that we were able to identify as salaries and wages were adjusted.

**Result**

According to the information presented above, Yusuf Yusuf's total Partnership withdrawals during the years 1994 to 2012 totaled \$71,363.55.<sup>96</sup>

**5.2.5 Najat Yusuf (son of Fathi Yusuf)**

**Partnership - monies withdrawn from Supermarkets**

**a. Partnership withdrawals/distributions through checks**

In order to identify all monies withdrawn from the Partnership through checks we identified available checks made to the order of Najat Yusuf. Our examination did not reveal any checks made to the order of Najat Yusuf from the Partnership accounts, therefore no Partnership distributions were identified that would require any adjustment from checks issued to the order or on behalf of Najat Yusuf for the covered periods.

**b. Partnership withdrawals/distributions through cash withdrawals**

In order to identify all monies withdrawn from the Partnership through cash withdrawals we reviewed and analyzed available cash tickets/receipts and cash tickets/receipts ledgers provided from the Partnership. From our examination we determined that distributions of partnership funds to the personal benefit of Najat Yusuf related to cash withdrawals amounted to \$2,000.00 for the covered period. In the following table we summarize the cash withdrawals identified and/or attributable to Najat Yusuf for the periods covered:<sup>97</sup>

<sup>95</sup> Refer to Table 60A to 60C.

<sup>96</sup> Refer to Table 61.

<sup>97</sup> Refer to Table 62.

Description	January 1994 to September 2001	October 2001 to December 2012	January 2013 to August 2014	Total
Withdrawals from the partnership with a signed ticket/receipt	\$ 2,000.00	\$ -	\$ -	2,000.00

**c. Payments to third parties through checks or cash tickets/receipts**

In order to identify and/or detect any disbursements from the Partnership on behalf of the Partners, family members and/or their agents to third parties which could be construed to be Partnership distributions, we examined available checks, cash tickets/receipts and cash tickets/receipts ledgers of the Partnership accounts to identify any payments to third parties on behalf of Najat Yusuf. Our examination did not reveal any checks made to third parties on behalf of Najat Yusuf from the Partnership accounts, therefore no partnership distributions were identified that would require any adjustment from checks issued to third parties on behalf of Najat Yusuf for the covered periods.

**d. Payments to Attorneys**

In order to identify and/or detect any disbursements from the Partnership on behalf of the Partners, family members and/or their agents to attorneys which could be construed to be partnership distribution to a specific Partner, we examined a number of payments for legal services not related to the Partnership that were identified and we included in our analysis, since the Partners had no agreement to pay such expenses with Partnership funds. No payments to attorneys were identified and/or attributable to Yusuf Yusuf for the periods covered.

**e. Funds withdrawn by cashier's checks**

In order to identify any additional monies withdrawn through other sources not directly identifiable through the Partnership or directly linked to the Partnership which could be construed to be partnership distributions, we examined available cashier's checks issued to Najat Yusuf. Furthermore, we also examined any checks issued to Najat Yusuf from any of other related parties and/or entities related to the Partnership. From our review and analysis, we were able to identify a total of \$48,594.63 in checks issued to Najat Yusuf from other related parties and/or entities related to the Partnership which were considered to be distributions from the Partnership. In the following table we summarize checks identified and/or attributable to Najat Yusuf for the periods covered:<sup>98</sup>

<sup>98</sup> Refer to Table 63.

Description	January 1994 to September 2001	October 2001 to December 2012	January 2013 to August 2014	Total
Funds withdrawn by cashier's checks	\$ 48,594.63	\$ -	\$ -	\$ 48,594.63

f. Summary

As a result of our review we can conclude that the Partnership monies withdrawn by Najat Yusuf for his personal benefit from January 1994 to December 2012 amounted to \$50,594.63.

Lifestyle Analysis

a. Bank and Investments Accounts

Our examination entailed reviewing and analyzing all known and available bank accounts and brokerage/investment accounts of Najat Yusuf. From our examination, we were able to identify that Najat Yusuf deposited monies/funds in the amount of \$85,400.00 for the covered period.<sup>99</sup>

We should mention that our analysis included identifying and excluding any deposits which could be identified and/or related to a source other than from the partnership. In the following table we summarize the deposits identified and/or attributable to Najat Yusuf for the periods covered.

Account Number:	January 1994 to September 2001	October 2001 to December 2012	January 2013 to August 2014	Total
██████ 16	\$ 85,400.00	\$ -	\$ -	\$ 85,400.00
██████ 35	-	-	-	-
<b>Total</b>	<b>\$ 85,400.00</b>	<b>\$ -</b>	<b>\$ -</b>	<b>\$ 85,400.00</b>

b. Credit Card Accounts

Our examination entailed reviewing and analyzing all known and available credit card accounts belonging to Najat Yusuf. Our examination did not reveal any credit card payments using Partnership funds for the personal benefit of Najat Yusuf.

c. Adjustments

In order to avoid double counting of amounts identified as withdrawals and/or distributions in our lifestyle analysis, we obtained salaries and wages for the Partners, family members and their agents from Partnership records. Those that we were able to identify as salaries and wages were adjusted.

<sup>99</sup> Refer to Table 64.

**d. Summary**

As a result of the lifestyle analysis we can conclude that Najat Yusuf withdrew Partnership funds totaling \$85,400 from January 1994 to December 2012 for his personal benefit. This total is net from any ticket or check already considered in the other classifications above.

**Result**

According to the information presented above, the withdrawals of Partnership funds for the personal benefit of Najat Yusuf during the years 1994 to 2012 totaled \$135,994.63.<sup>100</sup>

**5.2.6. Zayed Yusuf (son of Fathi Yusuf)**

**Partnership - monies withdrawn from Supermarkets**

**a. Partnership withdrawals/distributions through checks**

In order to identify all monies withdrawn from the Partnership through checks we identified available checks made to the order of Zayed Yusuf. In the following table we summarize the checks identified as withdrawals attributable to Zayed Yusuf for the periods covered amounted to \$2,876.00.<sup>101</sup>

Description	January 1994 to September 2001	October 2001 to December 2012	January 2013 to August 2014	Total
Plaza Extra # [REDACTED] 11	\$ -	\$ 2,876.00	\$ -	\$ 2,876.00
Plaza Extra [REDACTED] 10	-	-	-	-
<b>Total</b>	<b>\$ -</b>	<b>\$ 2,876.00</b>	<b>\$ -</b>	<b>\$ 2,876.00</b>

**b. Partnership withdrawals/distributions through cash withdrawals**

In order to identify all monies withdrawn from the Partnership through cash withdrawals we reviewed and analyzed available cash tickets/receipts and cash tickets/receipts ledgers provided from the Partnership. From our examination we determined that distributions of partnership funds to the personal benefit of Zayed Yusuf related to cash withdrawals amounted to \$275.00 for the covered period. In the following table we summarize the cash withdrawals of Partnership funds for the personal benefit of Zayed Yusuf for the periods covered.<sup>102</sup>

<sup>100</sup> Refer to Table 65.

<sup>101</sup> Refer to Table 66A and 66B.

<sup>102</sup> Refer to Table 67.

Description	January 1994 to September 2001	October 2001 to December 2012	January 2013 to August 2014	Total
Withdrawals from the partnership with a signed ticket/receipt	\$ 275.00	\$ -	\$ -	\$ 275.00

**c. Payments to third parties through checks or cash tickets/receipts**

In order to identify and/or detect any disbursements from the Partnership on behalf of the Partners, family members and/or their agents to third parties which could be construed to be Partnership distributions; we examined available checks, cash tickets/receipts and cash tickets/receipts ledgers of the Partnership accounts to identify any payments to third parties on behalf of Zayed Yusuf. Our examination did not reveal any checks made to third parties on behalf of Zayed Yusuf from the Partnership accounts, therefore no Partnership distributions were identified that would require any adjustment from checks issued to third parties on behalf of Zayed Yusuf for the covered periods.

**d. Payments to Attorneys**

In order to identify and/or detect any disbursements from the Partnership on behalf of the Partners, family members and/or their agents to attorneys which could be construed to be partnership distribution to a specific Partner, we examined a number of payments for legal services not related to the Partnership that were identified and we included in our analysis, since the Partners had no agreement to pay such expenses with Partnership funds. No payments to attorneys were identified and/or attributable to Zayed Yusuf for the periods covered.

**e. Funds withdrawn by cashier's checks**

In order to identify any additional monies withdrawn through other sources not directly identifiable through the Partnership or directly linked to the Partnership which could be construed to be Partnership distributions, we examined available cashier's checks issued to Zayed Yusuf. Furthermore, we also examined any checks issued to Zayed Yusuf from any of other related parties and/or entities related to the Partnership. Our examination did not reveal any managers or other checks issued to Zayed Yusuf.

**f. Summary**

As a result of our review we can conclude that the Partnership monies distributed for the personal benefit of Mr. Zayed Yusuf from January 1994 to December 2012 amounted to \$3,151.00.

### Lifestyle Analysis

#### a. Bank and Investments Accounts

Our examination entailed reviewing and analyzing all known and available bank accounts and brokerage/investment accounts of Zayed Yusuf. Our examination did not reveal any deposits to bank accounts or brokerage/investment accounts of Zayed Yusuf.

#### b. Credit Card Accounts

Our examination entailed reviewing and analyzing all known and available credit card accounts belonging to Zayed Yusuf. Our examination did not reveal any credit card payments using Partnership funds for the personal benefit of Zayed Yusuf.

#### c. Adjustments

In order to avoid double counting of amounts identified as withdrawals and/or distributions in our lifestyle analysis, we obtained salaries and wages for the Partners, family members and their agents from Partnership records. Those that we were able to identify as salaries and wages were adjusted.

### Result

According to the information presented above, Zayed Yusuf's Partnership withdrawals for his personal benefit during the years 1994 to 2012 totaled \$3,151.00.<sup>103</sup>

### 6. PARTNERSHIP FINAL BALANCES FOR LIQUIDATING PURPOSES

As previously indicated, we were requested to review the accounting of the Claims Reserve Account and the Liquidating Expenses Account and the proposed distribution of the remaining funds and/or net assets of the Partnership pursuant to the Wind Up Order and Plan.<sup>104</sup> The review included taking into consideration the Partnership Accounting and the final Balance Sheet prepared by Gaffney as of August 31, 2016.<sup>105</sup> The Partnership Accounting includes the accounts of Plaza Extra-East, Plaza Extra-West, and Plaza Extra-Tutu Park.

Any Partnership withdrawals/distributions previous to Gaffney's appointment were not included in his accounting, therefore, our work was aimed to identify withdrawals construed to be Partnership distributions and to incorporate them to Gaffney's accounting in order to provide an Adjusted Partnership Accounting.

<sup>103</sup> Refer to Table 68.

<sup>104</sup> Refer to Exhibit 18, Final Wind Up Plan of the Plaza Extra Partnership.

<sup>105</sup> Refer to Exhibit 19.

As part of our review of the balance sheet provided by Gaffney as of August 31, 2016 we verified that the journal entries related to the transfer and disposition of the Plaza Extra Stores as approved and ordered by the Court were appropriately accounted for. From our review, no significant exceptions were noted; therefore, we concluded that the accounting related to the transfer and disposition of the Plaza Extra Stores was adequate.

We reviewed the balance sheet account balances and in our judgment no significant findings were noted that would need to be reported and/or adjusted. We also reviewed that the disbursements authorized by the Court were appropriately accounted for in the general ledger and no exceptions were noted. Furthermore, we reviewed the journal entries related to the Claims Reserve Account and no exceptions were noted. The Balance Sheet provided by Gaffney was used as our basis for the Partnership Accounting for final distribution.

Net assets available for distribution amounted to \$8,789,652.25, divided equally between both families; \$4,394,826.13 for the Yusuf family and \$4,394,826.13 Hamed family.

#### 7. CONCLUSIONS AND FINAL ALLOCATION RECOMMENDATIONS TO BALANCE HISTORICAL WITHDRAWALS

We applied the direct and indirect methods as part of our procedures to identify any withdrawals and/or distributions that could be construed to be Partnership distributions not previously identified as such. Through our analysis we were able to restate the net assets to be distributed among the Partners and such net amount was divided on a fifty-fifty basis. In essence, the amount to be distributed per Partner was adjusted by the distribution and/or withdrawals identified through our work which were not originally accounted for as Partnership distributions.

In the following table we summarize the adjustments that were identified as the result of our work and that were construed to be Partnership distributions not accounted for in the Balance Sheet provided by Gaffney. We conclude that as a result of the withdrawals in excess, and to equalize the Partnership Distributions the Hamed family will need to pay \$9,670,675.36 to the Yusuf family:



	Partnership Withdrawals		
	Hamed	Yusuf	Total
Withdrawals from Supermarkets	\$ 13,553,076.27	\$ 8,354,410.77	\$ 21,907,487.04
Lifestyle Analysis	14,938,589.07	795,903.85	15,734,492.92
Total Withdrawals	28,491,665.34	9,150,314.62	<u>\$ 37,641,979.96</u>
Credit for withdrawals in excess	(9,670,675.36)	9,670,675.36	
Total Allocation to equalize partnership withdrawals	<u>\$ 18,820,989.98</u>	<u>\$ 18,820,989.98</u>	

The amounts to equalize the withdrawals should be included in the "Proposed Distribution Plan" with the additional claims to be presented by the Defendants.

**8. SIGNATURE**

This report has been prepared under the direction of Fernando Scherrer, CPA, CIRA, CA, MBA, Managing Shareholder of BDO Puerto Rico, P.S.C. Neither the professionals who worked on this engagement, nor the shareholders of BDO Puerto Rico, P.S.C. have any present or contemplated future interest in the Partnership, as herein defined, or in reference to the owner, nor any personal interest with respect to the parties involved, nor any other interest that might prevent us from performing an unbiased analysis. Our compensation is not contingent on an action or event resulting from the analysis, opinions, or conclusions in, or the use of this report.

This report was prepared for the specific purpose described above and is not to be copied or made available to unrelated parties without the express written consent of BDO Puerto Rico, P.S.C. We did not use the work of one or more outside specialists to assist during this engagement. We have no obligation to update this report for information that comes to our attention after the date of this report.

BDO PUERTO RICO, P.S.C.



Fernando Scherrer, CPA, CIRA, CA, MBA

# EXHIBIT 2

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

WALEED HAMED, as Executor of the )  
Estate of MOHAMMED HAMED )  
Plaintiff/Counterclaim Defendant, )  
v. )  
FATHI YUSUF and UNITED CORPORATION, )  
Defendants/Counterclaimants, )  
v. )  
WALEED HAMED, WAHEED HAMED, )  
MUFEED HAMED, HISHAM HAMED, and )  
PLESSEN ENTERPRISES, INC., )  
Counterclaim Defendants. )

Civil No. SX-12-CV-370

ACTION FOR INJUNCTIVE RELIEF,  
DECLARATORY JUDGMENT, and  
PARTNERSHIP DISSOLUTION,  
WIND UP, and ACCOUNTING

WALEED HAMED, as Executor of the )  
Estate of MOHAMMED HAMED, )  
Plaintiff, )  
v. )  
UNITED CORPORATION, )  
Defendant. )

Civil No. SX-14-CV-287

ACTION FOR DAMAGES and  
DECLARATORY JUDGMENT

WALEED HAMED, as Executor of the )  
Estate of MOHAMMED HAMED, )  
Plaintiff, )  
v. )  
FATHI YUSUF, )  
Defendant. )

Civil No. SX-14-CV-278

ACTION FOR DEBT and  
CONVERSION

**MEMORANDUM OPINION AND ORDER RE LIMITATIONS ON ACCOUNTING**

This matter came on for hearing on March 6 and 7, 2017 on various pending motions, including Hamed's fully briefed Motion for Partial Summary Judgment re the Statute of Limitations Defense Barring Defendants' Counterclaim Damages Prior to September 16, 2006, filed May 13, 2014.<sup>1</sup> Because the Court concludes that Defendant Yusuf has not, in fact, presented

<sup>1</sup> Hamed's Motion was followed by: Defendants' Brief in Opposition, filed June 6, 2014; Hamed's Reply, filed June 20, 2014; Hamed's Notice of Supplemental Authority, filed November 15, 2016; Yusuf's Brief in Response, filed December 3, 2016; Yusuf's post-hearing Supplemental Brief, filed March 21, 2017; and Hamed's Response, filed March 27, 2017. Also pending is Defendants' Motion for Partial Summary Judgment on Counts IV, XI, and XII Regarding Rent, filed August 12, 2014, which is addressed herein.



any legal claims for damages, but has rather presented a single, equitable action for a partnership accounting,<sup>2</sup> and because the parties do not assert that the action for accounting is itself barred by the statute of limitations, Plaintiff's Motion will be denied as to Yusuf's claim for accounting. Additionally, as to Defendant United's claim for rent presented in Count XII of the Counterclaim, the Court finds that there exist genuinely disputed issues of material fact such that summary judgment is inappropriate.

Nonetheless, in light of the arguments presented by the parties, as well as the general complexities and difficulties inherent in addressing the peculiar questions of fact necessary for the resolution of this matter, the Court finds that the interests of the parties in the just and fair disposition of their claims, as well as the overarching interest of the judiciary in the efficient resolution of disputes before it, are best served by utilizing the broad powers conferred upon the Court sitting in equity to fashion remedies specifically tailored to the circumstances presented in order to establish an equitable limitation upon claimed credits and charges submitted to the Master in the context of the Wind Up process.

## **Background**

Hamed's Complaint was filed September 17, 2012, followed by his First Amended Complaint (Complaint), filed in the District Court following removal and prior to remand, on October 19, 2012, seeking, among other relief, "A full and complete accounting... with Declaratory Relief against both defendants to establish Hamed's rights under his Yusuf/Hamed Partnership with Yusuf..." Complaint, at 15, ¶1. Defendants filed their First Amended

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<sup>2</sup> Count IX of the First Amended Counterclaim, seeking the dissolution of Plessen Enterprises, Inc., constitutes the sole claim presented by Yusuf that is unrelated to, and therefore not incorporated into, his equitable claim for accounting. However, Plaintiff's Motion, by its own terms, concerns only "monetary damage claims," and therefore Yusuf's Count IX is excluded from consideration in this Opinion.

Counterclaim (Counterclaim) on January 13, 2014, seeking relief as follows: Count: I— Declaratory Relief that No Partnership Exists; Count II— Declaratory Relief, in the event that a partnership is determined to exist to determine, among other relief, “their respective rights, interests, and obligations concerning the Plaza Extra Stores and the disposition of the assets and liabilities of these stores;” Count III— Conversion; Count IV— Accounting, alleging that “Yusuf is entitled to a full accounting...;” Count V— Restitution; Count VI— Unjust Enrichment and Imposition of a Constructive Trust; Count VII— Breach of Fiduciary Duty; Count VIII— Dissolution of Alleged Partnership, stating: “Although Defendants deny the existence of any partnership with Hamed, in the event the Alleged Partnership is determined to exist, then Yusuf is entitled to dissolution of the Alleged Partnership and to wind up its affairs, in that such partnership would be an oral at-will partnership and Yusuf provided notice of his intent to terminate any business relationship (including any partnership) with Hamed in March of 2012;” Count IX— Dissolution of Plessen; Count X— Appointment of Receiver; Count XI—Rent for Retail Space Bay I;<sup>3</sup> Count XII— Past Rent for Retail Spaces Bay 5 & 8; Count XIII— Civil Conspiracy; Count XIV—Indemnity and Contribution. Counterclaim ¶¶ 141-191.

### **Legal Standard**

By his Motion, Plaintiff is entitled to entry of summary judgment barring certain relief sought by Defendants’ Counterclaim pursuant to the applicable statute of limitations if he “shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law.” V.I. R. Civ. P. 56(a).

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<sup>3</sup> This Count was the subject of Memorandum Opinion and Order entered April 27, 2015, denying, in part, Plaintiff’s present Motion and granting United’s Motion to Withdraw Rent. United’s claim in Count XII and other monetary claims of United were unaffected by that Order.

“A party is entitled to judgment as a matter of law when, in considering all of the evidence, accepting the nonmoving party’s evidence as true, and drawing all reasonable inferences in favor of the nonmoving party, the court concludes that a reasonable jury could only enter judgment in favor of the moving party.” *Antilles School, Inc. v. Lembach*, 2016 V.I. Supreme LEXIS 7, at \*6-7 (V.I. 2016). The nonmoving party in responding to a motion for summary judgment has the burden to “set out specific facts showing a genuine issue for trial.” *Williams v. United Corp.*, 50 V.I. 191, 194-95 (V.I. 2008). A dispute is genuine if the evidence is such that a reasonable trier of fact could return a verdict for the nonmoving party. *Machado v. Yacht Haven U.S.V.I., LLC*, 61 V.I. 373, 391-92 (V.I. 2014).

### **Discussion**

There can be no more appropriate introduction to this matter than the lucid observations of Judge Herman E. Moore of the District Court of the Virgin Islands who remarked of another matter involving a dispute between business partners more than half a century ago:

This case illustrates the pitfalls open to friends going into business. When two strangers go into business, you usually have each one requiring formal contracts, formal statements, formal deposits, and everything of the kind; but usually when two friends go into business, and where it becomes one happy family, so many of these things are omitted; and when they do fall out, as happened in this case, there arises bitterness and difficulties which make it the most difficult type of case to try.

*Stoner v. Bellows, et al.*, 2 V.I. 172, 174-75 (D.V.I. 1951).

Hamed’s Motion seeks to bar Defendants’ unresolved monetary claims, as alleged in their Counterclaim, for “debt, breach of contract, conversion, breach of fiduciary duty, recoupment/constructive trust and accounting” that accrued more than six years prior to the September 17, 2012 commencement of this action, citing *James v. Antilles Gas Corp.*, 43 V.I. 37 (V.I. Terr. Ct.

2000).<sup>4</sup> Defendants respond to Hamed’s assertion that Defendants’ monetary claims are governed by the six-year limitation period set out in 5 V.I.C. § 31(3) (Motion, at 3) by asserting that Yusuf’s monetary claims constitute a cause of action for an accounting which, consistent with longstanding common law precedent, accrues upon dissolution of the partnership, and examines the entire period of the partnership, or the period from the last accounting. Opposition, at 9; Supplemental Brief, at 1. Defendant United has not denied the applicability of a six-year limitation period to its third-party claims against Hamed and/or the partnership, but rather argues that the limitation period should be equitably tolled.

“Each partner is entitled to a settlement of all partnership accounts upon winding up the partnership business.” 26 V.I.C. § 177(b). “A partnership is dissolved, and its business must be wound up... upon... in a partnership at will, the partnership’s having notice from a partner... of that partner’s express will to withdraw as a partner.” 26 V.I.C. § 171(1).

By their pleadings in this litigation, Hamed alleged and Yusuf denied the existence of a partnership at will. Although Yusuf had previously acknowledged the existence of a partnership during pre-litigation negotiations in February and March 2012, and his intention that the partnership be dissolved, by the time litigation ensued, Defendants sought “declaratory relief that no partnership exists.” Counterclaim, Count I. By his Motion to Appoint Master, filed April 7, 2014, Yusuf “now concedes for the purposes of this case that he and Hamed entered into a partnership to carry on the business of the Plaza Extra Stores and to share equally the net profits

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<sup>4</sup> While acknowledging a split of authority, the Territorial Court in *James* found “compelling” the majority view, as described by Professors Wright and Miller: “although there is some conflict on the subject, the majority view appears to be that the institution of *plaintiff’s suit tolls or suspends the running of the statute of limitations governing a compulsory counterclaim.*” *James v. Antilles Gas Corp.*, 43 V.I. at 44, 46, citing 6 Charles Alan Wright & Arthur R. Miller, *Federal Practice and Procedure*, § 1419, at 151 (2d ed. 1990) (emphasis in original).



from the operation of the Plaza Extra Stores.” The Court granted in part Plaintiff’s May 9, 2014 Renewed Motion for Partial Summary Judgment as to the Existence of a Partnership by Order entered November 7, 2014, finding and declaring the existence of a 50/50 partnership between Yusuf and Hamed based upon their 1986 oral agreement for the ownership and operation of the Plaza Extra Stores.

Yusuf has argued that, to the extent a partnership existed, it was dissolved by Hamed’s retirement in 1996 which constituted his withdrawal from the partnership. However, the Court has already found that Hamed’s participation in the operation and management of the three Plaza Extra Stores continued after his withdrawal from day-to-day operations through his son Waleed Hamed, acting pursuant to powers of attorney. *Hamed v. Yusuf*, 58 V.I. 117, 126 (V.I. Super. Ct. 2013). As noted, Yusuf’s pre-litigation negotiations seeking an agreement to dissolve his business relationship with Hamed never resulted in an agreement, such that the partnership was not dissolved by the time the litigation commenced. Within his April 7, 2014 Motion to Appoint Master, Yusuf states his “‘express will to withdraw as a partner,’ thus dissolving the partnership,” quoting 26 V.I.C. § 171(1). In his Response to that Motion, Hamed submitted his April 30, 2014 “Notice of Dissolution of Partnership.” Hamed and Yusuf concur that the partnership is dissolved, and both concur that the right of each partner to an accounting has accrued upon dissolution. Both also concur that the monetary claims set forth in Hamed’s Complaint and the monetary claims of Yusuf set forth in Defendants’ Counterclaim relate back to September 17, 2012, the date Hamed filed his original Complaint.

#### MOTION FOR PARTIAL SUMMARY JUDGMENT RE: STATUTE OF LIMITATIONS

As discussed in detail in the Memorandum Opinion and Order Striking Jury Demand entered contemporaneously herewith, despite the misleading form of both Hamed’s Complaint and

Yusuf's Counterclaim, each partner has presented in this matter only a single, tripartite cause of action for the dissolution, wind up, and accounting of the partnership pursuant to 26 V.I.C. § 75(b)(2)(iii). However, Count XII of Defendants' Counterclaim also presents a separate cause of action on behalf of United for debt in the form of rent. The Court first considers Hamed's Motion for Partial Summary Judgment Re: Statute of Limitations as it applies to United's action for rent, and then as it applies to the partners' competing claims for dissolution, wind up, and accounting.

United's Cause of Action for Debt (Rent)

By Memorandum Opinion and Order entered April 27, 2015, the Court denied Plaintiff's Motion for Partial Summary Judgment Re: Statute of Limitations as to United's Count XI for debt in the form of rent owed with respect to "Bay 1" and granted United's Motion to Withdraw Rent, filed September 9, 2013; authorizing the Liquidating Partner, under the supervision of the Master, to pay to United from partnership funds the total amount of \$5,234,298.71 plus additional rents that have come due from October 1, 2013 at the rate of \$58,791.38 per month. That Memorandum Opinion and Order also effectively, though not explicitly, granted in part Defendants' Motion for Partial Summary Judgment on Counts IV, XI, and XII Regarding Rent, filed August 12, 2014, as to Count XI, and entered judgment thereon in favor of United.

In Count XII of Defendants' Counterclaim, United seeks an award of \$793,984.38 for rent owed with respect to "Bay 5" and "Bay 8," which the partnership allegedly used for storage space in connection with the Plaza Extra-East store during various periods between 1994 and 2013. Counterclaim ¶¶ 179-84. United's arguments against the applying the statute of limitations to bar its claims for rent generally fail to distinguish between the rent owed for Bay 1 (Count XI) and the rent owed for Bays 5 and 8 (Count XII). Thus, the Court must infer that United opposes Hamed's statute of limitations argument as to Count XII on the same grounds as it opposed the argument

with respect to Count XI. In denying Hamed's Motion for Partial Summary Judgment Re Statute of Limitations as to Count XI, the Court found that the limitations period had been tolled on the basis of Hamed's undisputed acknowledgement and partial payment of the debt.

However, in his August 24, 2014 Declaration, attached as Exhibit 1 to Plaintiff's Response to Defendants' Rule 56.1 Statement of Facts and Counterstatement of Facts, Waleed Hamed expressly states that "there was no agreement to use [Bays 5 and 8] other than on a temporary and periodic basis, nor was there any agreement to pay rent for this space, as United made it available at no cost." Declaration of Waleed Hamed ¶¶ 19-20. Mohammed Hamed's comments acknowledging the debt, which formed the basis of the Court's judgment as to Count XI, do not explicitly distinguish between the rent owed for Bay 1 and the rent owed for Bays 5 and 8. Yet, considered in light of the declaration of his son, the Court is compelled to conclude that a genuine dispute of material fact exists as to whether Hamed ever acknowledged any debt as to rent owed for Bays 5 and 8, and more basically, whether the partnership ever agreed to pay any rent for the use of Bays 5 and 8 in the first place. Accordingly, both Hamed's Motion for Partial Summary Judgment Re: Statute of Limitations and Defendants' Motion for Partial Summary Judgment on Counts IV, XI, and XII Regarding Rent must be denied as to Count XII of Defendants' Counterclaim.<sup>5</sup>

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<sup>5</sup> Defendants' Motion for Partial Summary Judgment on Counts IV, XI, and XII Regarding Rent must also be denied as to Count IV (Accounting). While Hamed and Yusuf are each entitled to an accounting of the partnership pursuant to 26 V.I.C. § 177, United's cause of action for rent is entirely unrelated to the partners' respective actions for accounting except insofar as each partner will ultimately be liable in the final accounting for 50% of whatever debt is found to be owing from the partnership to United.

Partners' Causes of Action for Partnership Dissolution, Wind Up, and Accounting

26 V.I.C. § 75(b) and (c) provide:

(b) A partner may maintain an action against the partnership or another partner for legal or equitable relief, with or without an accounting as to partnership business, to:

- (1) enforce the partner's rights under the partnership agreement;
- (2) enforce the partner's rights under this chapter... or
- (3) enforce the rights and otherwise protect the interests of the partner, including rights and interests arising independently of the partnership relationship.

(c) The accrual of, and any time limitation on, a right of action for a remedy under this section is governed by other law. A right to an accounting upon a dissolution and winding up does not revive a claim barred by law.

By Act No. 6205, the Revised Uniform Partnership Act (RUPA) was adopted in the Virgin Islands, effective May 1, 1998.<sup>6</sup> The amended statute changed the common law and predecessor statute by, among other things, linking the accrual and limitations of actions brought by a partner against another partner or the partnership to the periods provided "by other law," such that claims accruing during the life of the partnership are not revived upon dissolution.<sup>7</sup>

"The first step when interpreting a statute is to determine whether the language at issue has a plain and unambiguous meaning. If the statutory language is unambiguous and the statutory scheme is coherent and consistent, no further inquiry is needed." *Brady v. Gov't of the V.I.*, 57 V.I. 433, 441 (V.I. 2012) (citations omitted). By its plain language, Section 75 unambiguously provides

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<sup>6</sup> Yusuf argues that the RUPA savings clause (26 V.I.C. § 274) preserves his claims against Hamed that predate May 1, 1998, the effective date of RUPA in the Virgin Islands. That is, Yusuf contends that RUPA does not apply to claims that accrued before that date, which are instead governed by the limitations period then in effect. His argument fails in that claims in the nature of an accounting of one partner against another could only be presented upon dissolution of the partnership. Here, since the partnership had not been dissolved by the date of the enactment of RUPA in the Virgin Islands, and since all his monetary claims against Hamed could only be brought on dissolution, no claims of Yusuf had accrued by May 1, 1998.

<sup>7</sup> See National Conference of Commissioners on Uniform State Laws; Uniform Partnership Act (1997); Section 405(c) [26 V.I.C. § 75(c)], comment 4: "The statute of limitations on such claims is also governed by other law, and claims barred by a statute of limitations are not revived by reason of the partner's right to an accounting upon dissolution, as they were under the UPA." [http://www.uniformlaws.org/shared/docs/partnership/upa\\_final\\_97](http://www.uniformlaws.org/shared/docs/partnership/upa_final_97).

that during the life of the partnership, a “partner may maintain an action against the partnership or another partner for legal or equitable relief, with or without an accounting as to the partnership business;” and that “accrual of, and any time limitation on, a right of action for a remedy under this section is governed by other law. A right to an accounting upon a dissolution and winding up does not revive a claim barred by law.” “The effect of those rules is to compel partners to litigate their claims during the life of the partnership or risk losing them.” National Conference of Commissioners on Uniform State Laws; Uniform Partnership Act; Section 405(c) comment 4.

Though the parties have submitted lengthy briefs presenting their respective positions on how the limited case law interpreting this section of RUPA affects the “claims” purportedly presented by Yusuf and United, there is significant confusion surrounding precisely what is meant by the term “claims.”<sup>8</sup> As it is often used in legal parlance, the term “claim” is essentially synonymous with “cause of action.” Used in this sense, Hamed and Yusuf have each, in their respective pleadings, presented only a single, tripartite cause of action, or claim, for an equitable partnership dissolution, wind up, and accounting under 26 V.I.C. § 75(b)(2)(iii).<sup>9</sup> However, as

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<sup>8</sup> Much of this confusion stems from the imprecision of the Complaint and Counterclaim. Both pleadings are presented in essentially the same fashion, consisting of a litany of alleged instances in which the opposing party partner, or his relatives, withdrew or otherwise utilized monies from partnership funds, followed by a “kitchen sink” style presentation of “counts” in which the parties purport to characterize these allegedly improper transactions variously as giving rise to causes of action for conversion, breach of fiduciary duty, unjust enrichment, constructive trust, etc., with no attempt to distinguish between them or to explain which transactions give rise to which cause of action. As a result, Plaintiff’s Motion for Partial Summary Judgment is peculiar in that it does not, and indeed cannot, seek entry of judgment as to any one count presented in the Counterclaim, but rather seeks to bar from consideration as to all counts any alleged financial transaction occurring more than six years prior to the commencement of this litigation. In this respect, Plaintiff’s Motion seems more akin to a motion *in limine* than a motion for summary judgment, as Plaintiff seeks only to limit the scope of the accounting process by excluding from consideration any transaction pre-dating September 2006.

<sup>9</sup> For a detailed analysis of the nature of the claims presented by the parties in this action, see the Memorandum Opinion and Order Striking Jury Demand entered contemporaneously herewith; explaining that despite the misleading form of the Complaint and Counterclaim, Hamed presents only a single action for dissolution, wind up, and accounting, while Yusuf presents an action for accounting, and an action for corporate dissolution, and United presents an action for debt/breach of contract for failure to pay rent.

used by both the Court and the parties in the context of this litigation, the term “claims” has also taken on an entirely different, and more specific meaning, by which the term “claims” refers not to the parties’ respective causes of action for accounting, but rather to the numerous alleged individual debits and withdrawals from partnership funds made by the partners or their family members over the lifetime of the partnership that have been, and, following further discovery, will continue to be, presented to the Master for reconciliation in the accounting and distribution phase of the Final Wind Up Plan.<sup>10</sup>

Pursuant to 26 V.I.C. § 71(a), “[e]ach partner is deemed to have an account that is: (1) credited with an amount equal to the money plus the value of any other property, net of the amount of any liabilities, the partner contributes to the partnership and the partner’s share of the partnership profits; and (2) charged with an amount equal to the money plus the value of any other property, net of the amount of any liabilities, distributed by the partnership to the partner and the partner’s share of the partnership losses.” Thus, under the RUPA framework, the “claims” to which the parties refer are, in fact, nothing more than the parties’ respective assertions of credits and charges to be applied in ascertaining the balance of each partner’s individual partnership account.<sup>11</sup>

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<sup>10</sup> It is worth noting that this type of claims resolution process would appear to be unnecessary, or at least far less complicated, in the context of many, if not most, actions for partnership accounting, as the need for such a claims resolution process is generally obviated by the existence of the type of comprehensive ledger and periodic accounting statements typically maintained by modern businesses. Here however, as a result of the questionable and highly informal financial accounting practices of the partnership, by which both partners and their respective family members unilaterally withdrew funds from partnership accounts as needed to cover various business and personal expenses, there exists no authoritative ledger or series of financial statements recording the distribution of funds between partners upon which the Master or the Court could reasonably rely in conducting an accounting. Instead the Court finds itself in the predicament of having to account for multiple decades’ worth of distributions of partnership funds among the partners and their family members based upon little more than a patchwork of cancelled checks, hand-written receipts for cash withdrawn from Plaza Extra safes, and the personal recollections of the partners and their agents.

<sup>11</sup> Alternatively, such “claims” may be referred to as § 71(a) claims, and the accounts to which they apply may be referred to as § 71(a) accounts.

As discussed above, pursuant to 26 V.I.C. § 75(c), “any time limitation on a right of action for a remedy under this section is governed by other law.” In the Virgin Islands, limitations on the time for the commencement of various actions are codified at 5 V.I.C. § 31. In his Motion, Hamed argues that Yusuf’s “claims” should be subject to the six year limitations period under § 31(3); presumably on the theory that they are essentially claims to enforce the Yusuf’s rights under the partnership agreement as described in 26 V.I.C. § 75(b)(1), effectively rendering them claims upon a contract.

However, by its own terms, 5 V.I.C. § 31 applies to bar, in their entirety, *causes of action* that are commenced outside of the relevant limitations period: “Civil actions shall only be commenced within the period prescribed below after the cause of action shall have accrued.” Here, Hamed does not contend that Yusuf’s cause of action for accounting was commenced outside the relevant limitations period,<sup>12</sup> but only that Yusuf should be barred from asserting claims—meaning credits to and charges against the partners’ accounts—based upon any transaction that took place more than six years prior to the filing of Hamed’s initial Complaint. And while Yusuf’s action for accounting, as a whole, is undoubtedly subject to a statutory limitations period, the statute of limitations, by its plain language, has no direct applicability to individual, claimed credits and charges presented within the accounting process. Accordingly, Plaintiff’s Motion for Partial Summary Judgment will be denied.

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<sup>12</sup> The Court need not determine the relevant limitations period for the commencement of a cause of action for accounting, as Hamed has not challenged the timeliness of Yusuf’s action for accounting as such, but only the timeliness of the individual § 71(a) claims presented within the accounting.

### EQUITABLE LIMITATION OF SCOPE OF PARTNERSHIP ACCOUNTING

Despite concluding that Plaintiff is not entitled to partial summary judgment based upon the statute of limitations as such, the Court is nonetheless moved to consider whether the various issues raised and arguments presented in Plaintiff's Motion, among other concerns, justify the imposition of some equitable limitation on the presentation of claimed credits and charges in the accounting process.

The Supreme Court of the Virgin Islands has explained that “[d]espite the fact that the Superior Court of the Virgin Islands—like almost all modern American courts—exercises both equitable and legal authority, the division between law and equity remains meaningful to defining the remedies available in a particular action.” *3RC & Co. v. Boynes Trucking Sys.*, 63 V.I. 544, 553 (V.I. 2015) (quoting *Cacciamani & Rover Corp. v. Banco Popular*, 61 V.I. 247, 252 n.3 (V.I. 2014)). Furthermore, “because ‘[a] court of equity has traditionally had the power to fashion any remedy deemed necessary and appropriate to do justice in [a] particular case,’ a court has a great deal more flexibility in considering equitable remedies than it does in considering legal remedies.” *Id.* (quoting *Kaloo v. Estate of Small*, 62 V.I. 571, 584 (V.I. 2015)).

As explained in detail in the Memorandum Opinion and Order Striking Jury Demand entered contemporaneously herewith, both Hamed and Yusuf have presented in this matter competing equitable actions to compel the dissolution, winding up, and accounting of their partnership pursuant to 26 V.I.C. § 75(b)(2)(iii).<sup>13</sup> As an accounting in this context is both an

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<sup>13</sup> 26 V.I.C. § 75(b)(2)(iii) codifies the right of one partner to maintain an action against the partnership or another partner to enforce the partner's “right to compel a dissolution and winding up of the partnership business under section 171 of this chapter or enforce any other right under subchapter VIII of this chapter.” In turn, subchapter VIII, §177 explicitly provides that “[e]ach partner is entitled to a settlement of all partnership accounts upon winding up the partnership business.”



equitable cause of action and an equitable remedy in itself, the Court is granted considerable flexibility in fashioning the specific contours of the accounting process. *See, e.g., Isaac v. Crichlow*, 2015 V.I. LEXIS 15, at \*39 (V.I. Super. 2015) (“An equitable accounting is a *remedy* of restitution where a fiduciary defendant is forced to disgorge gains received from the improper use of the plaintiffs [sic] property or entitlements.”) (quoting *Gov't Guarantee Fund of Republic of Finland v. Hyatt Corp.*, 5 F. Supp. 2d, 324, 327 (D.V.I. 1998)) (emphasis added).

#### Partnership Accounting Under RUPA

The general framework for conducting a partnership accounting in the Virgin Islands is outlined at 26 V.I.C. § 177(b):

Each partner is entitled to a settlement of all partnership accounts upon winding up the partnership business. In settling accounts among the partners, profits and losses that result from the liquidation of the partnership assets must be credited and charged to the partners accounts. The partnership shall make a distribution to a partner in an amount equal to any excess of the credits over the charges in the partner's account. A partner shall contribute to the partnership an amount equal to any excess of the charges over the credits in the partner's account but excluding from the calculation charges attributable to an obligation for which the partner is not personally liable under section 46 of this chapter.

In turn, the “partners' accounts” referenced in § 177(b) are described at 26 V.I.C. § 71(a):

Each partner is deemed to have an account that is: (1) credited with an amount equal to the money plus the value of any other property, net of the amount of any liabilities, the partner contributes to the partnership and the partner's share of the partnership profits; and (2) charged with an amount equal to the money plus the value of any other property, net of the amount of any liabilities, distributed by the partnership to the partner and the partner's share of the partnership losses.

By the plain language of the statute,<sup>14</sup> these individual partner accounts, are deemed to exist, regardless of whether any such accounts are in fact maintained, and irrespective of the actual accounting practices of the partners. In this case, these § 71(a) accounts exist purely as a creation of equity, as Hamed and Yusuf, and their sons, withdrew partnership funds at will over the lifetime of the partnership with no formal system of accounting either for distributions made to partners from partnership funds, or contributions made by partners to partnership funds. Thus, because these implied partner accounts, particularly in this case, exist solely to facilitate the efficient settlement of accounts between partners under 26 V.I.C. § 177, which is itself an equitable remedy, the Court, operating within the parameters established by RUPA, possesses significant discretion and flexibility in determining the manner and scope of the partner account reconstruction process. *See 3RC & Co.*, 63 V.I. at 553.

As the last and only true-up of the partnership business occurred in 1993,<sup>15</sup> the parties, by their respective actions for accounting, effectively impose upon the Court the onerous burden of reconstructing, out of whole cloth, twenty-five years' worth of these partner account transactions, based upon nothing more than scant documentary evidence and the ever-fading recollections of the partners and their representatives.<sup>16</sup> For the reasons discussed below, the Court concludes, upon considerations of laches and a weighing of the interests of both the parties and the Court in the just and efficient resolution of their disputes, that the equities of this particular case necessitate

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<sup>14</sup> Subject to certain specified exceptions, "relations among the partners and between the partners and the partnership are governed by the partnership agreement." 26 V.I.C § 4. However, "[t]o the extent the partnership agreement does not otherwise provide, [Title 26, Chapter 1] governs relations among the partners and between the partners and the partnership." Here, the terms of the oral partnership agreement are limited, and establish only that Hamed and Yusuf agreed to jointly operate the three Plaza Extra Stores, and to each share 50% in the profits and losses thereof. See Order entered November 7, 2014, granting Renewed Motion for Partial Summary Judgment as to the Existence of a Partnership.

<sup>15</sup> See Counterclaim in SX-14-CV-287 (Counterclaim 287) ¶ 10.

<sup>16</sup> See *supra*, note 10 and accompanying text.

the imposition of a six-year equitable limitation period for §71(a) claims submitted to the Master in the accounting and distribution phase of the Wind Up Plan.

Doctrines of Laches and Statute of Limitations by Analogy

In other similar situations, some courts have imposed equitable limitation periods by applying the “statute of limitations by analogy.” In the days of the divided bench, when statutes of limitations were largely inapplicable to suits in equity, courts of equity regularly invoked the statute of limitations by analogy to bar stale claims. Thus, Justice Strong remarked:

The statute of limitations bars actions for fraud... after six years, and equity acts or refuses to act in analogy to the statute. Can a party evade the statute or escape in equity from the rule that the analogy of the statute will be followed by changing the form of his bill? We think not. We think a court of equity will not be moved to set aside a fraudulent transaction at the suit of one who has been quiescent during a period longer than that fixed by the statute of limitations, after he had knowledge of the fraud, or after he was put upon inquiry with the means of knowledge accessible to him.

*Burke v. Smith*, 83 U.S. 390, 401 (1872).

Modern courts of equity, such as the Court of Chancery of Delaware, also apply the statute of limitations by analogy as a component of the equitable defense of laches. *See, e.g., Whittington v. Dragon Group, L.L.C.*, 991 A.2d 1, 9 (Del. 2009) (“Where the Plaintiff seeks equitable relief... failure to file within the analogous period of limitations will be given great weight in deciding whether the claims are barred by laches”); *see also Williams v. Williams*, 2010 Conn. Super. LEXIS 2344, at \*15 (Conn. Super. Ct. Sep. 15, 2010) (noting that court may consider an analogous statute of limitation when considering laches defense). Under this approach, “[w]here the statute bars the legal remedy, it shall bar the equitable remedy in analogous cases, or in reference to the same subject matter, and where the legal and equitable claim so far correspond, that the only difference is, that the one remedy may be enforced in a court of law, and the other in

a court of equity.” *Whittington*, 991 A.2d at 9.<sup>17</sup> Different jurisdictions disagree, however, as to how much force an analogous statute of limitations should have. *See Dobbs, Law of Remedies* § 2.4(4), at 78 (2d ed. 1993) (“When courts look to an analogous statute of limitations for guidance, and that statute has run, they may (1) presume unreasonable delay and prejudice, but permit the plaintiff to rebut the presumption; (2) treat the statute as one element ‘in the congeries of factors to be considered.’ Some authority has gone beyond either of these rules by holding that equity will follow the law and (3) give the statute conclusive effect”).<sup>18</sup>

The Supreme Court of the Virgin Islands has recognized the availability of the equitable defense of laches in territorial courts. In one of its earliest cases, *St. Thomas-St. John Board of Elections v. Daniel*, the Court explained:

Laches is an affirmative defense under Rule 8(c) of the Federal Rules of Civil Procedure that bars a plaintiff's claim where there has been an inexcusable delay in prosecuting the claim in light of the equities of the case and prejudice to the defendant from the delay. *See Cook v. Wikler*, 320 F.3d 431, 438 (3d Cir. 2003); *Churma*, 514 F.2d at 593. “Laches requires proof of (1) lack of diligence by the party against whom the defense is asserted, and (2) prejudice to the party asserting the defense.” *Costello v. United States*, 365 U.S. 265, 282, 81 S. Ct. 534, 543, 5 L. Ed. 2d 551 (1961).

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<sup>17</sup> The Delaware Supreme Court agreed with the Chancery Court's analysis that “[a]s a practical matter, there is not likely to be much difference between the prosecution of [the party's] claim here for an accounting and a claim for damages at law,” and that, in turn, the “claims for declaratory relief and an accounting are analogous to a legal claim for the same relief” for the purposes of the laches analysis. *Whittington*, 991 A.2d at 9. The higher court disagreed with the lower court's conclusion that the three-year limitations period for contract actions applied, and instead found applicable the twenty-year limitations period for actions upon contracts under seal. *Id.* Nonetheless, the general approach of considering analogous statutes of limitations in the context of the laches analysis was upheld.

<sup>18</sup> It appears that the Virgin Islands has effectively codified the doctrine of statute of limitations by analogy to conclusive effect in equitable actions. “An action of an equitable nature shall only be commenced within the time limited to commence an action as provide by this chapter.” 5 V.I.C. § 32(a). This suggests, in the event that a particular equitable cause of action is not explicitly included in any particular limitation period outlined in 5 V.I.C. § 31, that the Court must apply the most analogous statute of limitations, or fall back on the residual limitations period of ten years for “any cause not otherwise provided for,” under § 31(2).

49 V.I. 322, 330 (V.I. 2007).<sup>19</sup>

It must be noted that, just as with the statute of limitations defense, the equitable defense of laches is also typically invoked as a bar to causes of action, in their entirety. Thus, in a case such as this, the defense of laches, if proven, would typically be applied as a complete bar to the party's cause of action for accounting under 26 V.I.C. § 75(b)(2)(iii), rather than as a limitation on the partners' § 71(a) claims presented within the § 177(b) accounting process.<sup>20</sup> However, the equitable defense of laches differs from any defense based upon the statute of limitations—a creature of law—in critical respects. Whereas direct application of a statute of limitations defense must fail because 5 V.I.C. § 31, by its own terms, applies only to causes of action, laches, as an equitable defense, is inherently flexible by nature, and may therefore be molded to suit the particular equities of a given case.<sup>21</sup>

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<sup>19</sup> The Supreme Court has since adopted the Virgin Islands Rules of Civil Procedure to govern civil practice in the territory, however Virgin Islands Rule of Civil Procedure 8(c) is identical to the formerly applicable Federal Rule, and thus the Supreme Court's reasoning regarding the affirmative defense of laches, insofar as it relates to this rule, remains equally applicable under the new rules.

<sup>20</sup> In addition to pleading the affirmative defense of the statute of limitations, both Plaintiff and Defendants pled in their respective Answers the affirmative defense of laches.

<sup>21</sup> The Supreme Court of the Virgin Islands has recognized at least one application of the defense of laches outside the confines of its traditional use as a bar to causes of action brought before the Court, further supporting the Court's conclusion herein that laches, as a creature of equity, is inherently broader and more flexible in its application than the statute of limitations. *See In the Matter of the Suspension of Joseph*, 60 V.I. 540, 558-59 (V.I. 2014) (noting that "laches, an equitable defense, is distinct from the statute of limitations, a creature of law," and finding that "the laches defense may apply to attorney discipline proceedings in certain very narrowly defined circumstances, such as when the delay in instituting the disciplinary proceedings results in prejudice to the respondent"). Particularly appropriate here, the Court also noted that "there may be factual situations in which the expiration of time destroys the fundamental fairness of the entire proceeding." *Id.* (citing *Anne Arundel County Bar Ass'n, Inc. v. Collins*, 272 Md. 578 (1974)).

### Doctrine of Laches as Limit on Scope of Accounting

A most instructive case on this issue, bearing notable factual similarity to the case at bar, is the Connecticut Superior Court case of *Williams v. Williams*, 2010 Conn. Super. LEXIS 2344.<sup>22</sup> As described by the court, *Williams* involved a “battle between two brothers over how the assets of [their partnership] had been handled,” in which each partner presented his own action for dissolution and accounting of the partnership. In response, each brother also presented affirmative defenses including, *inter alia*, statute of limitations and laches. *Id.* at \*2-3. In explaining the law governing each partner’s right to an accounting, the court noted that while a final accounting is generally “the one great occasion for a comprehensive and effective settlement of all partnership affairs” in which “all the claims and demands arising between the partners should be settled,” the partners’ “right to an accounting is not absolute.” *Id.* at \*7. Consistent with the principle that “actions for accounting generally invoke the equitable powers of the court,” courts are granted wide latitude in setting the terms and principles upon which any accounting shall be based.<sup>23</sup> *Id.* “Consequently, a party’s right to an accounting may be limited by other equitable considerations, for example a claim of laches.” *Id.* at \*8 (citations omitted).

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<sup>22</sup> Although the Connecticut Superior Court did not explicitly frame its opinion in the language of RUPA, Connecticut is a RUPA jurisdiction, and therefore the court’s decision in *Williams* necessarily concerns principles applicable to actions for dissolution and accounting under RUPA. *See* Conn. Gen. Stat. § 34-300 et seq. (Revised Partnership Act). As the complaint in *Williams* was filed in 2006 there can be no doubt that the *Williams* partnership was governed by RUPA. *See* Conn. Gen. Stat. § 34-398(b) (“After January 1, 2002, sections 34-300 to 34-399, inclusive, govern all partnerships”).

<sup>23</sup> In articulating this rule, the Connecticut Superior Court referred to a Connecticut statute explicitly providing that “in any judgment or decree for an accounting, the court shall determine the terms and principles upon which such accounting shall be had.” *Williams*, 2010 Conn. Super. LEXIS 2344, at \*7 (citing Conn. Gen. Stat. § 52-401). Although the Virgin Islands lacks such a specific statute, the Court nonetheless concludes that the relevant provisions of RUPA such as 26 V.I.C. §§ 71, 75, and 177, coupled with the considerable discretion granted to the Court in tailoring equitable remedies to suit the needs of any given case, confer upon the Court wide latitude and discretion in establishing the terms and principles, including the scope, of this kind of judicially ordered and supervised accounting. *See supra*, discussion of Equitable Limitation of Scope of Partnership Accounting.

After noting that the statute of limitations had no direct applicability in the context of an accounting, the court explained that “to establish the defense [of laches], [a defendant] must prove both that there was an inexcusable delay by [the plaintiff] in seeking the accounting, and that [the defendant] has been prejudiced by the delay.” *Id.* at \*15. Under Connecticut law, the court was permitted to consider analogous statutes of limitation when evaluating the laches claim, but was not obligated to apply any such statute.<sup>24</sup> *Id.* Lastly, the court noted that the laches analysis “is an inherently fact specific question that can only be resolved by a close examination of the circumstances of the particular case.” *Id.* at \*16.

After examining nine separate claimed credits and charges to partner accounts presented by the defendant partner in his counterclaim, the court concluded that “the doctrine of laches precludes [defendant] from seeking an accounting on any of the issues he claims.” *Id.* at \*37. The court found that there had been “inexcusable delay” as plaintiff did not file his claims until 2007; even the most recent of which was related to events that transpired in 1999. *Id.* The court further noted that, while not dispositive of the issue, the most analogous statutory limitations period—three years for breach of fiduciary duty—had long expired. *Id.* This delay was inexcusable, as the defendant partner was, for most of the relevant period, “in charge of the day-to-day operations” of the partnership and therefore possessed either “actual or constructive knowledge of every transaction of which he now complains,” and accordingly tolling was inappropriate. *Id.* at \*38.

Additionally, it was “clear to the court that [defendant’s] delay in asserting his claims [had] prejudiced [plaintiff].” The court explained: “the passage of time puts [plaintiff] at an unfair

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<sup>24</sup> As discussed above, different jurisdictions afford different weight to the consideration of analogous statutes of limitations in the laches analysis. Connecticut appears to treat analogous statutes of limitations merely as one factor among many to be considered in evaluating a laches defense.

disadvantage in responding to the merits of [defendant's] claims. Because many of [defendant's] claims involve how transactions were or were not recorded by [the partnership's] accountants an analysis of those claims would likely involve testimony from the accountants. Yet, how much [the accountant] might remember of a schedule he prepared for a client a decade before the claim relating to that schedule was made is questionable, at best." *Id.* at \*39-40. Lastly, the court noted that while the parties had presented a "substantial amount" of accounting records, "they are by no means complete," and as such, "[plaintiff] would be at a distinct disadvantage if he were required to recreate or find decades of accounting records prepared by a variety of accountants." *Id.* at \*40.

In summation, the court remarked: "While an accounting upon a dissolution of a partnership may be the final opportunity for the partners to square up, where one partner ignores issues year after year and allows the other partner to proceed along thinking everything is fine, the first partner cannot be heard to cry upon dissolution a decade or more later, 'I'd like a do over.'" *Id.* at \*40-41. Accordingly, the court found that the plaintiff had met his burden in proving his laches defense to the defendant's counterclaim, entered judgment dissolving the partnership pursuant to stipulation of the parties, and ordered a final accounting to be conducted by an appointed third party, limited in scope to the reconciliation of the partners' respective interests in the partnership from January 1, 2009 to the September 15, 2010 dissolution of the partnership. *Id.* at \*42.

#### Hamed/Yusuf Partnership Accounting

Turning to the case at bar, there are both striking similarities and critical differences between the factual scenario presented in this matter and that before the court in *Williams*. Just as in *Williams*, this matter is best described as a battle between two partners, here former friends and brothers-in-law, over how the assets of the partnership were handled. Additionally, despite having,



at all times, either actual or constructive knowledge of the alleged ongoing, repeated withdrawals of partnership funds, both Hamed and Yusuf ignored these issues year after year and allowed one another to continue conducting partnership business, each implying to the other that all was well.

Procedurally, however, the *Williams* court considered the limitation of only one partner's accounting claims, as only that partner sought an accounting reaching back to the formation of the partnership while the other sought an accounting only as to how to divide the current assets of the partnership, as they stood at the time of dissolution. Additionally, whereas the defendant in *Williams* had identified in his counterclaim, by subject matter and date, nine specific challenged transactions, the description of the challenged transactions in the pleadings in this matter are largely devoid of specificity and generally fail to include the precise date, or even year of their occurrence. And while the parties in *Williams* had conducted significant discovery at the time of the court's ruling, here Hamed filed his present Motion with the clear aim of limiting not only the scope of Yusuf's § 71(a) claims, but also the cost and burden of the discovery process itself. See Plaintiff's Reply re Statute of Limitations, filed June 20, 2014, at 19. As a result of the partnership's notably informal and unreliable accounting, as well as each partner's general lack of concern or attention toward each other's financial practices over the lifetime of the partnership, neither partner truly knows what he might uncover upon investigation.

#### *State of Partnership Accounting Records*

Here, the pleadings alone demonstrate the imprecision and inadequacy of the partners' accounting practices. Hamed's Complaint explains the partners' practice of unilaterally withdrawing partnership funds as needed for various business and personal expenses on the understanding that "there would always be an equal (50/50) amount of these withdrawals for each partner directly or to designated family members." See Complaint ¶ 21. Though Hamed alleges

that the partners “scrupulously maintained” records of these withdrawals, the other pleadings and evidence of record in this matter fatally belie this unsupported assertion. For example, Yusuf’s First Amended Counterclaim in SX-14-CV-278 (FAC 278) speaks of the need for reconciliation of both “documented withdrawals” of cash from store safes, and “undocumented withdrawals from safes (i.e., all misappropriations),” in the § 177 accounting process. *See* FAC 278 ¶¶ 37-38.

Yusuf has pled that, aside from the sole “full reconciliation of accounts” at the end of 1993, the partners only sporadically attempted to account for, and reconcile their respective §71(a) charges and credits when Yusuf, for unspecified reasons, “decided their business accounts should be reconciled.” *See* Counterclaim 287 ¶¶ 9-10. Alternatively, Yusuf has also alleged that such reconciliations sometimes occurred when Hamed specifically “sought to recover funds from his investment,” at which point “funds would be given in cash and a notation would be made as to the amount given so as to insure an equal amount was paid to Yusuf from these net profits.” *See* FAC 278 ¶ 55.

As part of the accounting and distribution phase of the Wind Up, Yusuf submitted to the Master the report of accountant Fernando Scherrer of the accounting firm BDO, Puerto Rico, P.S.C. (BDO Report). Yusuf contends that this report constitutes “a comprehensive accounting of the historical partner withdrawals and reconciliation for the time period 1994-2012.” *See* Opposition to Motion to Strike BDO Report, filed October 20, 2016. However, the BDO report, by its own terms, appears to be anything but comprehensive. Most tellingly, the body of the BDO Report itself contains a section detailing its own substantial “limitations,” resulting from the absence or inadequacy of records for each of the grocery stores covering various periods during

the life of the partnership.<sup>25</sup> *See* Plaintiff's Motion to Strike BDO Report, Exhibit 1, at 22. Additionally, the analysis presented in the report rests on the unsupported assumption that any monies identified in excess of "known sources of income" constitute distributions from partnership funds to the partners' § 71(a) accounts. Thus, even Yusuf's own "expert report" acknowledges the insurmountable difficulties inherent in any attempt to accurately reconstruct the partnership accounts; a project which necessarily becomes proportionately more difficult and less reliable the farther back in time one goes.

Furthermore, in his Revised Notice of Partnership Claims (RNPC), filed October 17, 2016, Hamed expressly states that he "believes that it is clear that because of the state of the partnership records due to Yusuf's acts and failures to act, no [accounting for the period from 1986-2012] is even arguably possible." RNPC, at 6-7. Plaintiff's belief appears to be based in large part on the Opinion Letter of Lawrence Shoenbach, presenting the "expert opinion of a criminal defense attorney with experience in federal criminal practice and so-called 'white collar' business crimes involving tax evasion, money laundering, and/or compliance." *See* RNPC, Exhibit C (Op. Letter), at 1.

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<sup>25</sup> These limitations include the following: 1) "Accounting records of Plaza Extra-East were destroyed by fire in 1992 and the information was incomplete and/or insufficient to permit us to reconstruct a comprehensive accounting of the partnership accounts before 1993;" 2) "Accounting records and/or documents (checks registers, bank reconciliations, deposits and disbursements of Supermarkets' accounts) provided in connection with Supermarkets were limited to covering the period from 2002 through 2004, East and West from 2006 through 2012, and Tutu Park from 2009 through 2012;" and 3) "Accounting records and/or documents provided to us for the periods prior to 2003 are incomplete and limited to bank statements, deposit slips, cancelled checks, check registers, investments and broker statements, cash withdrawal tickets/receipts and cash withdrawal receipt listings. For example, the retention policy for statements, checks, deposits, credits in Banco Popular de Puerto Rico is seven years; therefore, there is no Bank information available prior to 2007 and electronic transactions do not generate any physical evidence as to regular deposits and/or debits." Plaintiff's Motion to Strike BDO Report, Exhibit 1, at 22.

Plaintiff's expert<sup>26</sup> bases his opinion on the 2003 Third Superseding Indictment in the matter captioned *United States of America and Government of the Virgin Islands v. Fathi Yusuf Mohamad Yusuf, et al.* and United's plea of guilty to Count 60 (tax evasion) thereof.<sup>27</sup> Under the terms of the plea agreement, United pled guilty to willfully preparing and presenting a materially false corporate income tax return for the year 2001 by reporting gross receipts as \$69,579,412, knowing that the true amount was approximately \$79,305,980. Plea Agreement at 3-4, *United States v. Yusuf*, No. 2005-15F/B (D.V.I. Feb. 26, 2010). According to the indictment, United evaded reporting gross receipts by employing a cash diversion/money laundering scheme by which United, through its officers and employees,<sup>28</sup> conspired "to withhold from deposit substantial amounts of cash received from sales, typically bills in denominations of \$100, \$50, and \$20." See Plaintiff's Reply re Statute of Limitations, Exhibit D (Indictment) ¶ 12. Additionally, it was alleged that "instead of being deposited into the bank accounts with other sales receipts, this cash was delivered to one of the defendants or placed in a dedicated safe in a cash room." *Id.* As described by Plaintiff's expert, "those acting on behalf of the company took cash out of sales before the Company could properly account for them." Op. Letter, at 5.

The expert explains:

The most fundamental feature of such a scheme is that the actual accounting records of the entity do not, and in fact *cannot*, accurately reflect the amount of cash taken in. No proper accounting can be determined from the Company's financial records because the gross receipts have been intentionally misapplied and documented. The

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<sup>26</sup> The Court refers to Lawrence Shoenbach as "Plaintiff's expert" in this Opinion for simplicity. The Court expresses no opinion, however, as to the qualifications of this expert within the meaning of Virgin Islands Rule of Evidence 702.

<sup>27</sup> "Although all of the individual defendants [Fathi Yusuf, Maher Yusuf, Isam Yusuf, Nejeah Yusuf, Waleed Hamed, and Waheed Hamed], were charged in the criminal indictment, only the corporate defendant [United] was convicted of a crime... Critical to my analysis is that United admitted at the time of entry of the corporate plea that it under-reported gross receipts by utilizing the money laundering scheme outlined in the 3<sup>rd</sup> superseding indictment." Op. Letter, at 3.

<sup>28</sup> Including Fathi Yusuf, Maher Yusuf, Isam Yusuf, Nejeah Yusuf, Waleed Hamed, and Waheed Hamed. See Indictment, at 1.

very purpose of this sort of scheme is to render any accounting inaccurate... It is critical that the parties have both admitted that many records of transaction that should have gone into any accurate accounting were not kept or mutually and intentionally destroyed... Because the very nature of the crime, particularly money laundering/tax evasion, is to hide such incoming and outgoing funds from legitimate accounting it is impossible to determine and account for any portion of that amount each partner has or owes to the other. Since many such transactions were not recorded or destroyed, any remaining "records" can never be legitimately credited or debited against the unknown amounts.

Op. Letter, at 6-7.<sup>29</sup>

In his April 3, 2014 deposition in this matter, Maher Yusuf recounted one instance, just prior to the FBI's raid of the Plaza Extra stores in 2001, in which Waheed Hamed advised Waleed Hamed of the impending raid, and Maher Yusuf and the Hameds mutually "decided to destroy some of the receipts, because they were all in cash." *See* Op. Letter, at 7 n.5. According to his deposition testimony, Maher Yusuf, together with Mufeed Hamed, "pulled out a good bit of receipts from the safe in Plaza East," and after roughly estimating the amount of withdrawals attributable to the Hameds and the Yusufs, each family destroyed their own receipts. *Id.* At the hearing on March 6-7, 2017, witnesses including Hamed's sons corroborated this account as well as many of the allegations of the Third Superseding Indictment. Evidence presented at the hearing included testimony concerning a cash diversion scheme involving cashier's checks, conflicting testimony regarding the ledger and receipt system for keeping track of cash withdrawals at each partnership store, and testimony that records documenting the withdrawals had been destroyed.

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<sup>29</sup> The Court is not called upon to express any opinion, and therefore does not express any opinion, as to the criminal nature of the conduct of the individual defendants named in the criminal matter, except to the extent that such conduct demonstrates both the impossibility of reconstructing financial records or conducting, at present, an accurate accounting, and the partners' knowledge of this state of affairs. However, United's guilty plea as to Count 60 establishes that United, which as a corporation must necessarily act through its officers and employees, intentionally schemed to obfuscate gross receipts and cash disbursements thereby rendering impossible any accurate reconstruction of accounts.

Altogether, the allegations presented in the pleadings paint a clear picture of the partners' loose, "honor system" style accounting practices by which each partner and his sons freely and unilaterally withdrew partnership funds, either by check drawn upon partnership bank accounts or, apparently more often, by directly removing cash from store safes; the only apparent control being a general understanding between the partners that such withdrawals would be documented by hand-written receipts to be placed in the safe so that the partners, at some undetermined date, could reconcile their accounts if, and when, they deemed it appropriate. Additionally, evidence of record reveals one clear instance in which the partners, through their sons, deliberately destroyed a substantial amount of records evidencing such withdrawals, and further suggests a general pattern of negligent, if not willful, failure to record such withdrawals throughout the history of the partnership. At a bare minimum, the pleadings and record evidence establish that the partners and their sons had both unfettered access to large amounts of cash, deliberately kept off company books, and ample opportunity to secretly remove that cash, secure in the knowledge that no partner, accountant, or investigator would be able, after the fact, to ascertain the amount taken, as the total amount of cash kept in store safes was intentionally omitted from any record keeping.

*Knowledge, Delay, and Prejudice*

Against this backdrop of decades of woefully inadequate and, in some instances, deliberately misleading accounting practices, the partners now present their competing claims for partnership accounting asking the Court to employ its already strained resources to untangle the web that they have spun and clean up the mess that they have made. Given the dismal state of the relevant records, this process necessarily entails an evaluation of each individual § 71(a) claim submitted to determine whether, in light of the frequently conflicting recollections of the partners, any given withdrawal or expenditure of partnership funds constituted a legitimate business

expenditure on behalf of the partnership, or a unilateral withdrawal chargeable to the partner's § 71(a) account. However, just as in the *Williams* case, where each partner "ignores issues year after year and allows the other partner to proceed along thinking everything is fine, [neither partner will] be heard to cry upon dissolution a decade or more later, 'I'd like a do over.'" 2010 Conn. Super. LEXIS 2344, at \*40-41.

Here, both partners and their respective sons were well aware from the beginning of their involvement with the business that any record keeping and accounting of distributions to the partners was highly informal and controlled only by the "honor system." As managing partner, Yusuf was not only intimately familiar with the methods of record keeping, or lack thereof, employed by the partnership, but was the one responsible for designing and implementing those procedures in the first place. It was Yusuf's responsibility to oversee, account for, and periodically reconcile the distributions of funds between the partners. And though Yusuf was content to dispense with the standard business accounting formalities for nearly the entire life of the partnership, upon Hamed's filing his Complaint in this matter, Yusuf changed course and now seeks to vindicate his right to a thorough and methodical partnership accounting.<sup>30</sup>

Hamed is no less to blame for this state of affairs and no less at fault for failing to seek any formal accounting of his interest until this late hour. Although Hamed was not the managing partner, he was undoubtedly aware of the absence of any formal record keeping from at least the date of the first and only true-up of the partnership business in 1993, if not from the very inception

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<sup>30</sup> Yusuf argues that he only became aware of the extent of the Hameds' withdrawals of partnership funds upon the 2010 return of the voluminous documentation seized by the FBI in 2002. However, affidavit evidence shows that all documents seized by the FBI were not only available to the defendants in the criminal matter, including Yusuf, but were, in fact, thoroughly reviewed by them, through their lawyers, on multiple occasions. See Hamed's Reply re Statute of Limitations, Exhibit 4-B (Declaration of Special Agent Thomas L. Petri) (noting that in 2003, subsequent to the return of the indictment, counsel were given complete access to seized evidence, and that a team of four to five individuals led by the attorney for defendants reviewed evidence at the FBI office on St. Thomas for several weeks).

of the partnership.<sup>31</sup> While Hamed may not have had the foresight to know that the 1993 true-up would be the last undertaken, the fact that the partners waited approximately seven years—since the founding of the partnership in 1986—to conduct the first and only complete reconciliation of the accounts between them demonstrates that Hamed was equally content with this practice of informal and sporadic accounting.

Furthermore, both partners were clearly aware, during the entire life of the partnership, of their mutual practice of making, either personally or through their sons, unilateral withdrawals of partnership funds documented by hand-written receipts and controlled only by the honor system. Additionally, by at least 2001 and likely before, Hamed and Yusuf were similarly aware that substantial monies deposited in the store safes were being deliberately kept off the partnership books, and that all involved acted without hesitation in destroying voluminous records of cash withdrawals thereby rendering any independently verifiable accounting or audit impossible. Certainly, by the time of the 2003 filing of the Third Superseding Indictment in the criminal case recounting the cash diversion scheme implemented by the officers of United, even the most trusting individual would have sufficient reason to suspect malfeasance, thereby putting both partners on inquiry notice.<sup>32</sup>

Thus, on the basis of the pleadings and evidence of record, it is clear that both Hamed and Yusuf, personally and through their sons as agents, had actual notice of the informal and imprecise

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<sup>31</sup> Even the 1993 “true-up” itself was merely an informal reconciliation. As Hamed explains, “reliable books have only been attempted since an order from the District Court in the criminal case requiring such an accounting.” See Plaintiff’s Comments Re Proposed Winding-Up Order, filed October 21, 2014, at 11.

<sup>32</sup> This notion is perhaps best, and most memorably, expressed in Martin Scorsese’s 1995 film, *Casino*, in which the gangster, Nicky Santoro, played by Joe Pesci, remarks of the men conducting the skim operation at the fictional Tangiers Casino: “You gotta know that the guy who helps you steal... even if you take care of him real well... he’s gonna steal a little extra for himself. Makes sense, don’t it?”



nature of the accounting practices of the partnership since at least 1993, as well as actual notice of the deliberate destruction of substantial accounting records in 2001. In turn, even if the partners were ignorant of any one withdrawal of partnership funds considered in isolation, they both had actual notice of the significant potential for abuse inherent in their chosen method of record keeping, and therefore constructive, if not actual, notice of the need to protect their respective partnership interests by action pursuant to 26 V.I.C. § 75(b).

Additionally, by his acquiescence to such inadequate record keeping and his inexcusable delay in seeking to enforce his rights under 26 V.I.C. §§ 71(a) and 75(b), each partner has irrevocably prejudiced the ability of the other to respond to the various allegations against him. Here, as in *Williams* “the passage of time puts [each partner] at an unfair disadvantage in responding to the merits of [the other partner’s] claims.” 2010 Conn. Super. LEXIS 2344, at \*39-40. Similarly, “because many of [the] claims involve how transactions were or were not recorded... an analysis of those claims would likely involve testimony” from the partners and their sons, yet, how much they might remember concerning the details of a transaction completed a decade earlier “is questionable, at best.” *Id.* Lastly, while the court in *Williams* concluded that the defendant was prejudiced despite the production of “substantial records,” here, in the absence of complete or comprehensive records, the partners are even more so “at a distinct disadvantage” in any attempt to “recreate or find decades of accounting records.” *Id.* at \*40. Thus, the Court concludes that consideration of the principles underlying the doctrine of laches strongly supports

the imposition of an equitable limitation on the submission of § 71(a) claims in the accounting and distribution phase of the Wind Up Plan.<sup>33</sup>

### *Policy Considerations*

Moreover, imposing such a limitation furthers the clear policy goals of the legislature as embodied by RUPA. In *Fike v. Ruger*, the Delaware Chancery Court examined statutory language identical to 26 V.I.C. § 75, and determined that “it is clear under RUPA that a right of action arising during the life of a partnership is not revived merely because dissolution occurs and a separate right to an accounting on dissolution arises.” *Id.* at 263. While the common law and prior statutory scheme “placed partners in the predicament of either causing a dissolution to resolve disputes or continuing the partnership despite a cloud of conflict and uncertainty hanging over it, the drafters of [RUPA] included Section 22 [26 V.I.C. § 75], specifically authorizing actions prior to dissolution.” *Id.* “The effect of those rules is to compel partners to litigate their claims during the life of the partnership or risk losing them.” National Conference of Commissioners on Uniform State Laws; Uniform Partnership Act; Section 405(c) comment 4.

Both partners’ claims, as presented in this matter, must be construed as actions for dissolution, wind up, and accounting under § 75(b)(2)(iii). Yet, each partner could have, and under the policy considerations undergirding RUPA, should have, brought his claims concerning individual withdrawals of partnership funds or other transactions, with or without an

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<sup>33</sup> In addition to laches, consideration of the equitable doctrine of unclean hands also supports the impositions of an equitable limitation on the partners’ § 71(a) claims. “It is an ancient and established maxim of equity jurisprudence that he who comes into equity must come with clean hands. If a party seeks relief in equity, he must be able to show that on his part there has been honesty and fair dealing.” *SBRMCOA, LLC v. Morehouse Real Estate Invs., LLC*, 62 V.I. 168, 205-06, (V.I. Super. Ct. 2015) (quoting *Sunshine Shopping Ctr., Inc. v. KMart Corp.*, 85 F. Supp. 2d 537, 544 (D.V.I. 2000)). As explained above, both partners bear responsibility for the dismal state of partnership records, and for allowing the practice of unilateral withdrawal of partnership funds to continue unchecked, in the absence of accurate records. Additionally, as both partners, through their sons as agents, engaged in the deliberate destruction of accounting records, neither partner can be said to have come to Court in this matter with clean hands.

accompanying action for accounting, as each partner became aware or should have become aware of those transactions pursuant to § 75(b). Such a policy not only furthers the traditional goals of the statute of limitations by preventing prejudice to defendants resulting from the inevitable decay of memory and other evidence, but also prevents litigants from imposing upon the judiciary, and in turn the taxpayer, the burden of individually evaluating the validity of numerous disputed transactions decades after the fact. In this instance, the stated policy of RUPA clearly prevents both Hamed and Yusuf from imposing upon the Court the great burden of sorting through the ramshackle patchwork of evidence supporting their § 71(a) claims, to reconstruct decades' worth of partnership accounts, when the partners, who deliberately determined not to keep accurate records in the first place, were themselves content to carry on conducting partnership business despite having full knowledge of the pattern of conduct of which they now, belatedly, complain.

### *Conclusion*

“Equity aids the vigilant, not those who slumber upon their rights.” *Kan. v. Colo.*, 514 U.S. 673, 687 (1995) (quoting *Black's Law Dictionary* 875 (6th ed. 1990)). And in keeping with this great maxim of jurisprudence, the Court concludes that considerations of laches, in addition to the express policy goals of the legislature as embodied by RUPA, justify the imposition of an equitable limitation on the submission of the partners' § 71(a) claims to the Master in the accounting and distribution phase of the Final Wind Up Plan. Because each of these § 71(a) claims could have, and should have, been pursued as they arose as causes of action under § 75(b)(1) to “enforce the partner's rights under the partnership agreement,” the Court finds that such actions, had they been brought individually, would be subject, either directly or by analogy, to the six year limitations

period outlined in 5 V.I.C. § 31(3)(A) as a species of an action upon contract.<sup>34</sup> Therefore, the Court exercises the significant discretion it possesses in fashioning equitable remedies to restrict the scope of the accounting in this matter to consider only those § 71(a) claims that are based upon transactions occurring no more than six years prior to the September 17, 2012 filing of Hamed's Complaint.<sup>35</sup>

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<sup>34</sup> Alternatively, these claims could have been pursued under 26 V.I.C. § 75(b)(2)(i) to "enforce the partner's rights under sections 71, 73, or 74 of this chapter," which, as "action upon a liability created by statute," are also subject, whether directly or by analogy, to a six year limitations period under 5 V.I.C. § 31(3)(B).

<sup>35</sup> Yusuf has argued that certain § 71(a) claims are effectively undisputed, and that "if it is undisputed that payments were made to a partner, even without authorization, then to exclude them from an accounting for that reason would be entirely arbitrary." First, it appears doubtful, based upon the record and the representations of the parties in this matter, that any claim submitted by either party would truly be undisputed. But, even if some claims were, in fact, undisputed, because of the great dearth of accurate records there exists such an element of chance in any attempt to reconstruct the partnership accounts that an accounting reaching back to the date of the last partnership true-up in 1993 would ultimately be no more complete, accurate, or fair, than an accounting reaching back only to 2006.

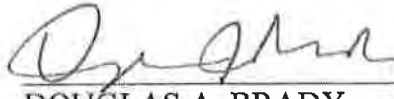
In light of the foregoing, it is hereby

ORDERED that Defendants' Motion for Partial Summary Judgment on Counts IV, XI, and XII Regarding Rent is DENIED, as to Counts IV and XII. It is further

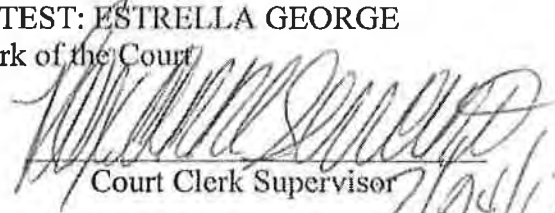
ORDERED that Hamed's Motion for Partial Summary Judgment re the Statute of Limitations Defense Barring Defendants' Counterclaim Damages Prior to September 17, 2006 is DENIED. It is further

ORDERED that the accounting in this matter, to which each partner is entitled under 26 V.I.C § 177(b), conducted pursuant to the Final Wind Up Plan adopted by the Court, shall be limited in scope to consider only those claimed credits and charges to partner accounts, within the meaning of 26 V.I.C § 71(a), based upon transactions that occurred on or after September 17, 2006.


DATED: July 21, 2017.

  
DOUGLAS A. BRADY  
Judge of the Superior Court

ATTEST: ESTRELLA GEORGE  
Clerk of the Court

By:   
Court Clerk Supervisor

**CERTIFIED A TRUE COPY**

DATE: July 24, 2017  
ESTRELLA H. GEORGE  
ACTING CLERK OF THE COURT  
BY:   
COURT CLERK EH

# EXHIBIT 3

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

WALEED HAMED, as Executor of the )  
Estate of MOHAMMAD 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., )

Additional Counterclaim Defendants. )

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WALEED HAMED, as Executor of the )  
Estate of MOHAMMAD HAMED, )

Plaintiff, )

v. )

UNITED CORPORATION, )

Defendant. )

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WALEED HAMED, as Executor of the )  
Estate of MOHMMAD HAMED, )

Plaintiff, )

v. )

FATHI YUSUF, )

Defendant. )

CIVIL NO. SX-12-CV-370

ACTION FOR INJUNCTIVE  
RELIEF, DECLARATORY  
JUDGMENT, AND  
PARTNERSHIP DISSOLUTION,  
WIND UP, AND ACCOUNTING

**Consolidated With**

CIVIL NO. SX-14-CV-287

ACTION FOR DAMAGES  
AND DECLARATORY RELIEF

CIVIL NO. SX-14-CV-278

ACTION FOR DEBT  
AND CONVERSION



**DECLARATION OF FERNANDO SCHERRER**

I, Fernando Scherrer, CPA, CIRA, CA, MBA, pursuant to 28 U.S.C. § 1746 and V.I. R. Civ. P. 84(b), declare under penalty of perjury under the laws of the United States Virgin Islands that the following is true and correct:

1. I make this declaration based upon my personal knowledge and my professional expertise, as described below.

2. My firm, BDO Puerto Rico, PSC, was engaged by Fathi Yusuf (“Yusuf”) to identify, through the use of forensic accounting, the amounts withdrawn by the partners and their families from the Partnership, as that term is defined and used in the report I signed on August 31, 2016 (the “BDO Report”). The BDO Report, which included voluminous supporting tables, appendices, and exhibits, was attached as Exhibits J and J-1 to Yusuf’s Accounting Claims and Proposed Dissolution Plan submitted to the Master on September 30, 2016. A copy of the BDO Report without any of the supporting material was admitted as Exhibit 12 at the hearing in this case on March 6, 2017 (the “Hearing”). The Court extensively referred to Exhibit 12 in its Memorandum Opinion and Order dated July 21, 2017 (the “Court’s Opinion”).

3. BDO is a well-known and respected international network of accounting firms with offices worldwide. I am a partner at the member firms located in Puerto Rico and U.S.V.I. My background, education, experience and training as a certified public accountant in the U.S. Virgin Islands, Puerto Rico and other jurisdictions, is set forth in great detail in Exhibit 12 and qualifies me to render opinions as an expert in accounting and, in particular, the partnership accounting and reconciliation of partnership capital accounts addressed in the BDO Report, as well as opinions about the BDO Report and the adequacy of records to perform a partnership reconciliation that are set forth in the Court’s Opinion. The work for this engagement, which culminated in the



preparation of the BDO Report, was performed by a team of up to nine (9) BDO professionals, led by me, over a period of more than two (2) years. We identified, through the use of forensic accounting, the amounts withdrawn by Mohammad Hamed (“Hamed”) and Yusuf (collectively, the “Partners”) and their family members from the Partnership, which should be categorized as partnership withdrawals and distributions for the defined period set forth in the BDO Report, from January 1, 1994 through December 31, 2012. We adopted the accountings prepared by John Gaffney for the Partnership from January 1, 2013 to the date of the BDO Report (Exhibit 12), with adjustments to avoid double counting. *See* pp. 2-3 of Exhibit 12.

4. I have reviewed the testimony of Lawrence Shoenbach at the March 6, 2017 Court hearing, his Opinion Letter, which was designated as Exhibit 34 at the hearing, as well as the Court’s Opinion, which relies in part upon that testimony and Letter.

5. In its Opinion, the Court appears to rely upon Mr. Shoenbach’s characterizations as to the state of the Partnership’s financial records, as well as his opinions criticizing the conclusions in the BDO Report, as support for its decision to limit the review period for the accounting from September 17, 2006 forward. Based upon my extensive review and knowledge of the documentary evidence supporting the BDO Report’s conclusions regarding the historical partnership withdrawals between the Partners, it is my expert opinion that:

- a) There are voluminous records (i.e., in excess of eighty thousand) that were reviewed to identify the Partners’ withdrawals documented in the BDO Report. As Mr. Shoenbach acknowledged at the Hearing, *see* Transcript at page 174, he has not seen any of the supporting documents to the BDO Report. Nothing in the Court’s Opinion suggests that the Court has reviewed this extensive information either. Accordingly, any characterization of these records as

“scant” or “patchwork” is misleading, as is any implication that the reconciliation of the Partners’ accounts in the BDO Report was made “out of whole cloth.”

- b) Mr. Shoenbach’s unsupported opinion that “[n]o proper accounting can be determined from the Company’s financial records because the gross receipts have been intentionally misapplied and documented . . . ,” *see* Court’s Opinion at p. 25, upon which the Court relied, is erroneous because a partnership accounting to establish the historical withdrawals can properly be accomplished without analyzing or even considering the overall gross receipts of the grocery store operations or whether those gross receipts were disclosed or hidden from the taxing authorities.
- c) The disclosed gaps in the currently available Partnership records do not render the partnership accounting contained in the BDO Report, which is supported and well-documented, unreliable.
- d) Nowhere does the BDO Report “acknowledge the insurmountable difficulties inherent in any attempt to accurately reconstruct the partnership accounts[,]” as suggested at page 24 of the Court’s Opinion. We could not have and would not have prepared the BDO Report had we believed that to be the case.
- e) The Shoenbach Opinion Letter refers to Maher Yusuf’s deposition testimony describing the partial reconciliation conducted by a Hamed and a Yusuf in 2001, whereby receipts from a safe at the Plaza East store were tabulated precisely with calculators and double-checked, and the tabulation showed that the Hameds had withdrawn \$1.6 million dollars more than the Yusufs. The fact

that both parties agreed to destroy the receipts used in that calculation does not mean that we are precluded by any accounting standard or rule from accepting that \$1.6 million dollars tabulation as accurate, based on the deposition testimony of Maher Yusuf and a letter from Fathi Yusuf dated August 15, 2012. The BDO Report allocates that \$1.6 million dollars amount to the Hameds, and the BDO Report was justified in making that allocation.

Some additional elaboration of the points set forth in paragraph 5(a)-(e) follows.

6. The Court's characterization of the financial records available to assess the historical withdrawals between the Partners as "scant" or "patchwork" is misleading. To the contrary, there is a massive volume of documents that were reviewed to identify withdrawals or distributions of Partnership funds that were provided to BDO. More than eighty thousand documents were reviewed, sorted, allocated, cross-referenced and then noted for each family member, according to the parameters set forth in the BDO Report. Every single allocation in the BDO Report has documentary support. Indeed, supporting evidence is so voluminous that it is impractical to access it in hard copy. The BDO Report is only preliminary. To the extent that additional information is learned through discovery, or otherwise which would require a change or alter a particular allocation, the conclusions in the BDO Report will be revised accordingly, prior to final submission to the Master.

7. Mr. Shoenbach's claim that because some unknown amount of the gross receipts from the Partnership's grocery store operations were not reported to the taxing authorities – and according to the criminal indictment were laundered – it is impossible to determine the withdrawals and distributions between the Partners, is false and unsupported by any accounting standard or rule. Knowledge of total gross receipts of the Partnership (reported or unreported) is

simply not necessary to quantify what each partner has withdrawn. Rather, the amount of the distribution is calculated based upon evidence of the withdrawal. In this case, evidence of the withdrawals took various forms such as checks, receipts, and ledger entries. To the extent that there are gross receipts of the Partnership which were not reported to the taxing authorities, they remain Partnership assets owned equally by the Partners until such time as they are withdrawn from the Partnership. Whether the source of a Partnership asset is unreported or reported gross receipts, it remains a Partnership asset subject to 50/50 ownership. If, for example, the Partners used unreported gross receipts to hold in foreign accounts or acquire real estate in the Middle East, there would be no purpose served in accounting for these amounts in the BDO Report. Regardless of the form in which that subset of gross receipts is held, it remains a jointly owned partnership asset.

8. Contrary to Mr. Shoenbach's opinion, which is not informed by any accounting expertise, BDO was not required under any accounting standard to determine gross receipts of the Partnership in order to determine the aggregate amount of each Partner's withdrawals, and his critique of the BDO Report on that basis is mistaken. Gross receipts are not needed to document withdrawals. In a partnership accounting, the gross receipts or revenues are used to cover the operational costs and expenses of the business, and when revenues and expenses are closed out at the end of the year, the net profit or loss is assigned to the partners' capital accounts. If a partner withdraws money from the company, this amount is recognized in the accounting against the partner's capital account, reducing the capital of the partner. This happens year over year and by the time the partnership is liquidated and all payments are made, the balance in each capital account is distributed to the corresponding partner. In this case, that did not happen. Both gross receipts and withdrawals were not recognized in the books. For that reason, our assignment was to account

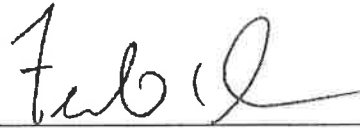
for those withdrawals, independently on the balances of the partners' capital accounts that may or may not include the gross receipts.

9. Statements of limitation, as set forth at page 22 of Exhibit 12, are standard in all accounting analyses. The stated limitations in the BDO Report and quoted in the Court's Opinion are simply a disclosure that less than 100% of all records were available. They were categorically not a statement that the absence of these records affected in any significant way the reliability and validity of the allocations in the BDO Report. It is also important to note that the limitation in item 1 on page 22 of the BDO Report regarding the lack of records preceding January 1, 1994 is immaterial to the BDO Report. As noted on page 2 of the BDO Report, the parties have agreed that a full reconciliation of partnership accounts occurred at the end of 1993, and BDO's engagement was therefore limited to the period beginning January 1994, except for the investments identified in Hamed's tax returns that, as per Mr. Yusuf's were not included in the 1993 reconciliation.

10. Mr. Shoenbach's Opinion Letter and the Court's Opinion place great significance on the destruction of safe receipts after the 2001 partial reconciliation by both parties, and both conclude that this one instance of destruction renders an accurate accounting impossible. *See* Court's Opinion at pp. 26-27, 29; Shoenbach Opinion Letter at p. 6. This conclusion is incorrect and not supported by any accounting standard. My review of the evidence revealed that the destruction of certain safe receipts around October of 2001 was an isolated act. Further, it was done mutually by the parties after a full tabulation of the receipts took place between the parties with each double-checking the other's tabulations. In addition to the deposition testimony of Maher Yusuf, there is documentary evidence in the form of a letter dated August 15, 2012, which further supported the allocation of \$1.6 million to Hamed.

11. In light of the volume of evidence available which has been chronicled and painstakingly reviewed and analyzed in the BDO Report, it would be arbitrary to limit the Partnership reconciliation to transactions occurring after September 17, 2006, because there is voluminous documentation of withdrawals by each Partner for the period January 1, 1994 to the present.

Dated: August 11, 2017



Fernando Scherrer, CPA, CIRA, CA, MBA

# EXHIBIT 4

IN THE SUPERIOR COURT OF THE VIRGIN ISLANDS

DIVISION OF ST. CROIX

MOHAMMAD HAMED

Plaintiff )

)

)

)

vs )

)

FATHI YUSUF

)

)

Defendant

CASE NO. SX-14-CV-0000278

ACTION FOR: DEBT - CIVIL

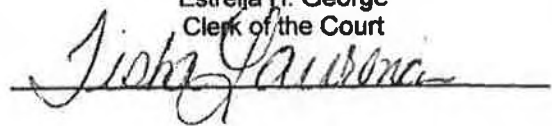
**NOTICE OF ENTRY OF  
ORDER**

TO: GREGORY HODGES, ESQ.  
JOEL HOLT, ESQ.  
MARK W. ECKARD, ESQ.  
JEFFREY B.C. MOORHEAD, ESQ.  
HONORABLE EDGAR ROSS, ESQ, VIA EMAIL

Please take notice that on November 15, 2017 a(n) ORDER dated  
November 13, 2017 was entered by the Clerk in the above-entitled matter.

Dated: November 15, 2017

Estrella H. George  
Clerk of the Court



TISHA LAURENCIN-ORTIZ  
COURT CLERK II

Blumberg No. 5208  
EXHIBIT  
4



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

WALEED HAMED, as Executor of the )  
Estate of MOHAMMED HAMED )  
Plaintiff/Counterclaim Defendant, )  
v. )  
FATHI YUSUF and UNITED CORPORATION, )  
Defendants/Counterclaimants, )  
v. )  
WALEED HAMED, WAHEED HAMED, )  
MUFEED HAMED, HISHAM HAMED, and )  
PLESSEN ENTERPRISES, INC., )  
Counterclaim Defendants. )

Civil No. SX-12-CV-370

ACTION FOR INJUNCTIVE RELIEF,  
DECLARATORY JUDGMENT, and  
PARTNERSHIP DISSOLUTION,  
WIND UP, and ACCOUNTING

WALEED HAMED, as Executor of the )  
Estate of MOHAMMED HAMED, )  
Plaintiff, )  
v. )  
UNITED CORPORATION, )  
Defendant. )

Civil No. SX-14-CV-287

ACTION FOR DAMAGES and  
DECLARATORY JUDGMENT

WALEED HAMED, as Executor of the )  
Estate of MOHAMMED HAMED, )  
Plaintiff, )  
v. )  
FATHI YUSUF, )  
Defendant. )

Civil No. SX-14-CV-278

ACTION FOR DEBT and  
CONVERSION

**ORDER DENYING MOTIONS FOR RECONSIDERATION AND TO CERTIFY  
QUESTIONS FOR IMMEDIATE APPEAL**

This matter comes before the Court on Defendant Yusuf's Motion for Reconsideration of Ruling Limiting Period of Accounting Claims (Motion), filed August 11, 2017; Plaintiff's Response to Yusuf's Motion for Reconsideration (Response), filed August 15, 2017; and Defendant's Reply thereto, filed September 13, 2017. Also pending before the Court is Defendant Yusuf's Motion to Certify Questions in Order Limiting Period of Accounting Claims for Immediate Review, filed August 11, 2017; and Plaintiff's Response thereto, filed August 15, 2017. Both Defendant's Motions are premised upon an apparent misunderstanding and mischaracterization of the Court's July 24, 2017 Memorandum Opinion and Order Re Limitations on Accounting (Opinion), and both Motions will be denied.

### **Motion for Reconsideration**

Defendant moves the Court to reconsider its Opinion pursuant to V.I. R. Civ. P. 6-4(b)(3), based upon “the need to correct clear error of law.” Defendant asserts that the Court, in issuing its Opinion, committed the following clear errors of law:

1. The Court granted “partial summary judgment in favor of Plaintiff... on the basis of an issue — laches — that was never raised by Plaintiff in his motion for partial summary judgment or even mentioned at the hearings held on March 6 or 7 to address the motion,” in violation of V.I. R. Civ. P. 56(f). Motion, at 1.
2. In granting partial summary judgment, the Court impermissibly relied on the testimony of Lawrence Shoenbach, Plaintiff’s purported expert in “white collar crime.”
3. The Court erred substantively in its laches analysis in finding both that Yusuf’s delay in bringing his accounting claim was inexcusable and that Hamed suffered prejudice as a result of this delay.

As an initial matter, it is necessary to clarify that despite Defendant’s characterization of the Opinion as a grant of partial summary judgment in favor of Plaintiff on the basis of the affirmative defense of laches, the Court, in fact, denied Plaintiff’s Motion for Summary Judgment Re Statute of Limitations. Rather, as part of the administration of winding up the partnership, over which this Court “possesses considerable discretion,”<sup>1</sup> the Court, upon consideration of the principles underlying the doctrine of laches, as well as the express policy goals of the Legislature as embodied in the Revised Uniform Partnership Act (RUPA), imposed an equitable limitation upon the scope of the accounting process. Pursuant to the Court’s Opinion, the submission of the partners’ §71(a) claims to the Master in the accounting and distribution phase of the Final Wind Up Plan is limited to those §71(a) claims based upon transactions occurring no more than six years prior to the September 17, 2012 filing of Hamed’s Complaint.<sup>2</sup>

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<sup>1</sup> See *Yusuf v. Hamed*, 62 V.I. 565, 569 (2015).

<sup>2</sup> “§71(a) claims” refer to the parties’ respective assertions of credits and charges to be applied in ascertaining the balance of each partner’s individual partnership account during the accounting and distribution phase of the Final Wind Up Plan as outlined in 26 V.I.C. §71(a). For further explanation, refer to the Court’s Opinion, at 11.

Although the Court's ruling bears certain similarities to a grant of partial summary judgment in its effect, there are critical, if subtle, differences. As discussed in detail in the Opinion, affirmative defenses, such as laches and the statute of limitations, are generally invoked as a bar to causes of action in their entirety. By contrast, in this matter, Plaintiff sought to bar Yusuf not from pursuing his accounting action as a whole, but rather from presenting to the Master certain claimed credits and charges to partnership accounts in the accounting and distribution phase of the Final Wind Up Plan.<sup>3</sup> Thus, neither the affirmative defense of statute of limitations nor laches, as generally understood, has direct applicability in the context of limiting the submission of the partners §71(a) claims. However, as an accounting in this context is both an equitable cause of action and an equitable remedy in itself, the Court, upon consideration of the general principles underlying the affirmative defense of laches, together with the express policy goals of RUPA, exercised its considerable discretion in fashioning equitable remedies, to limit the scope of the partnership accounting. Additionally, and perhaps most obviously, a grant of partial summary judgment in favor of Plaintiff would have limited only Yusuf's §71(a) claims, while the equitable limitation imposed by the Court equally limits the claims of both partners.

Assignment of Error #1

Defendant's first assignment of error is essentially an assertion that Defendant had no notice of the Court's intention to consider the issue of laches, and was unfairly deprived of the opportunity to submit evidence and argument on this issue. While it is true that the Court did not specifically order briefing on the issue of laches, both parties had already submitted voluminous briefing and argument on the issues central to the laches analysis — length of delay in bringing claims, reasons for delay, knowledge of wrongdoing, prejudice — in the context of Plaintiff's Motion for Summary Judgment Re Statute of Limitations, and in many peripheral supplemental briefs. Additionally, as Plaintiff points out, "Yusuf can hardly claim to be surprised by discussion of laches, an affirmative defense raised by both parties, as his post-March 6<sup>th</sup> Hearing memorandum addressed the fact that the *Fike* decision, a key case briefed by both parties, applied laches (as opposed to the SOL) under RUPA."<sup>4</sup> Response, at 3 n.3. Thus, to the extent that V.I. R.

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<sup>3</sup> For a more detailed discussion of the nature of the partners' respective causes of action, as compared to the nature of the "claims" Plaintiff sought to limit by his Motion for Summary Judgment, refer to the Opinion, at 10-11.

<sup>4</sup> *Fike v. Ruger*, 752 A.2d 112 (Del. 2000).

Civ. P. 56(f) is at all applicable in this context, Defendant cannot reasonably claim that he lacked notice of the laches issue, and further cannot claim that he was deprived of the opportunity to submit briefing on those issues central to the laches analysis including inexcusable delay and prejudice, as those issues were, in fact, discussed by both parties in several rounds of briefing prior to entry of the Court's Opinion.

Assignment of Error #2

Defendant's second assignment of error contends that the Court impermissibly relied on the testimony and report of Plaintiff's purported expert Lawrence Shoenbach in issuing the Opinion. Specifically, Defendant argues that the Court "rel[ie]d] on one party's expert testimony and report to resolve a summary judgment motion, without inviting, let alone considering, testimony and argument from the other side rebutting that testimony." Motion, at 6. Defendant cannot reasonably claim that he was not granted the opportunity to present testimony of his accounting expert. To the contrary, the Court's February 7, 2017 Order Scheduling Hearing for March 6, 2017 explicitly directed that Plaintiff's fully briefed Motion to Strike Accounting Expert (BDO) would come on for hearing. Although Plaintiff utilized this hearing to present testimony and other evidence in support of his Motion challenging the BDO report as unreliable, Defendant offered no witness testimony at the hearing and objected to the Court taking evidence.

However, even if Defendant's objection at the hearing may be considered meritorious, the Opinion does not directly rely on any testimony offered by Mr. Shoenbach at the March 6, 2017 hearing. Rather, the Opinion considered Mr. Shoenbach's opinion letter, attached as an exhibit to Plaintiff's Revised Notice of Partnership Claims, filed nearly five months earlier on October 17, 2016. The Opinion merely noted that the written opinions of Mr. Shoenbach were corroborated by the testimony of several witness at the hearing. Defendant cannot reasonably claim either that he was deprived of any opportunity to respond to the substance of Mr. Shoenbach's opinion, or to put on testimony of his own expert.

Defendant also argues that reliance on Mr. Shoenbach's opinion regarding the reliability of any potential accounting is substantively inappropriate as he is not an accountant. Instead, Defendant contends that the Court should credit the Declaration of Fernando Scherer, drafted and submitted after the Court issued its Opinion, stating that "the disclosed gaps in the currently available partnership records do not render the partnership accounting contained in the BDO

Report, which is supported and well-documented, unreliable.” Declaration ¶ 5(c). While there is little doubt that a respected accounting firm such as BDO is capable of rendering an accurate accounting *based upon the records provided*, the Court’s decision to impose an equitable limitation upon the scope of the partnership accounting is premised, not on the many tens of thousands of records that are available — to be expected in the context of a partnership spanning three decades — but rather on the many hundreds, if not thousands of records that are demonstrably unavailable, such as any bank records predating 2007 (*see* BDO Report, at 22), and the unknown number of cash transactions left unrecorded that must be inferred from the known historical behavior and highly informal, if not deliberately misleading, accounting practices of the partners.

Additionally, taking issue with Mr. Shoenbach’s opinion that the partners’ documented scheme to obfuscate gross receipts of the partnership renders any accounting between the partners unreliable, Mr. Scherer’s Declaration further asserts that “knowledge of total gross receipts of the Partnership (reported or unreported) is simply not necessary to quantify what each partner has withdrawn.” Declaration ¶ 7. While it is true that each partner’s respective withdrawals may be tabulated without establishing the gross receipts of the partnership, in order to determine the amount owed on a successful action for partnership accounting, the Court must, under the statutory framework presented by RUPA, determine the overall profits of the partnership.<sup>5</sup>

The Court referred to Mr. Shoenbach’s letter in its Opinion, not in reliance upon his expertise in accounting, but in order to illustrate the general proposition that where, as here, business partners have schemed to deliberately omit large sums of money from their accounting, have intentionally destroyed existing records of cash withdrawals, and have, even at their best, engaged only in loose, informal accounting practices, any attempt to accurately reconstruct

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<sup>5</sup> The general framework for conducting a partnership accounting in the Virgin Islands is outlined at 26 V.I.C. § 177(b): “Each partner is entitled to a settlement of all partnership accounts upon winding up the partnership business. In settling accounts among the partners, profits and losses that result from the liquidation of the partnership assets must be credited and charged to the partners accounts. The partnership shall make a distribution to a partner in an amount equal to any excess of the credits over the charges in the partner’s account. A partner shall contribute to the partnership an amount equal to any excess of the charges over the credits in the partner’s account but excluding from the calculation charges attributable to an obligation for which the partner is not personally liable under section 46 of this chapter.” In turn, the “partners’ accounts” referenced in § 177(b) are described at 26 V.I.C. § 71(a): “Each partner is deemed to have an account that is: (1) credited with an amount equal to the money plus the value of any other property, net of the amount of any liabilities, the partner contributes to the partnership and the partner’s share of the partnership profits; and (2) charged with an amount equal to the money plus the value of any other property, net of the amount of any liabilities, distributed by the partnership to the partner and the partner’s share of the partnership losses.”

partnership records will necessarily involve some element of unreliability, as that is the very point of such a scheme. Moreover, such a reconstruction will only become proportionately more difficult and less reliable the farther back in time one goes. As summarized in Plaintiff's Response, the main import of Mr. Shoenbach's opinion letter is that both partners knew "that this was a criminal enterprise whose very nature was to have people take funds in a manner that would avoid detection." Response, at 9.

Assignment of Error #3

Defendant's third assignment of error contends that the Court erroneously concluded both that Yusuf inexcusably delayed in bringing this action, and that Hamed was prejudiced by the delay. Defendant begins his argument by misstating the Court's Opinion, noting that "[t]he Court correctly held that an equitable claim for an accounting accrues 'upon dissolution of the partnership,' and can 'only be presented' when dissolution occurs." Motion, at 12. What the referenced footnote actually stated is that actions for partnership accounting could only be presented upon dissolution of the partnership *prior to the enactment of RUPA in the Virgin Islands in 1998*. Opinion, at 9 n.6.

Additionally, Defendant's argument is premised upon a significant mischaracterization of the nature of the Court's holding. The Court did not find that Defendant delayed inexcusably in pursuing his right to an accounting as an element of his tripartite cause of action for equitable partnership dissolution, wind up, and accounting under 26 V.I.C. § 75(b)(2)(iii). Indeed, §177(b) of the same title unequivocally establishes that "each partner is entitled to a settlement of all partnership accounts upon winding up the partnership business." Rather, the Court found that both partners inexcusably delayed, specifically in bringing their respective §71(a) claims based upon transactions predating September 17, 2006, as according to the manifest intent of the Legislature in enacting RUPA, each partner statutorily could have and should have brought his claims concerning these individual withdrawals of partnership funds or other transactions, with or without an accompanying action for accounting, as each partner became aware or should have become aware of those transactions, pursuant to 26 V.I.C. § 75(b)(1). *See* Opinion, at 32.

Defendant also argues that there can be no inexcusable delay on the part of Yusuf as he "had no reason to know that the Hameds were acting dishonestly until he reviewed the seized FBI documents" following partial return of those documents in 2010. Motion, at 14. As outlined in the

Opinion, this assertion is fatally belied by the history of the partnership as established in the 2003 Third Superseding Indictment in the criminal matter captioned *United States of America and Government of the Virgin Islands v. Fathi Yusuf, Mohamad Yusuf, et al.* and United's plea of guilty to Count 60 (tax evasion) thereof. This, in addition to the pleadings and other evidence of record compels the conclusion that by the time of the filing of the indictment in the criminal case recounting the cash diversion scheme implemented by the officers of United, "even the most trusting individual would have sufficient reason to suspect malfeasance, thereby putting both partners on inquiry notice." Opinion, at 29.

Defendant takes issue with the Court's observation in footnote 30 on page 28 of the Opinion, that affidavit evidence "shows that all documents seized by the FBI were not only available to the defendants in the criminal matter, including Yusuf, but were, in fact, thoroughly reviewed by them, through their lawyers, on multiple occasions." Defendant contends that the affidavit cannot be considered evidence of knowledge of wrongdoing sufficient to put Yusuf on inquiry notice because the Supreme Court, in *United Corp. v. Hamed*, 64 V.I. 297 (V.I. 2016), overturned the Superior Court's grant of summary judgment on the same issue, holding that "more than bare access to necessary information is required to start the statute of limitations running... there must also be a suspicious circumstance to trigger a duty to exploit the access." *Id.* at 310. But, whereas the Superior Court in that case expressly based its ruling only upon "unfettered access" to information, the Court here instead found inexcusable delay on the basis of evidence that Yusuf, through his lawyers, *had actually reviewed* the documents in question. Additionally, the consideration of the affidavit in this matter is distinguishable from its consideration in *United* as the Court here did not find the affidavit to be dispositive of the question of knowledge, but rather considered the affidavit as supplemental support for drawing the inference of knowledge of wrongdoing based on the more general history of the partnership as established by the pleadings of the partners and other evidence of record.

As to the Court's finding of prejudice, Defendant asserts that none of the "'classic elements' of prejudice in the laches context" are present in this case, such as unavailability of witnesses, changed personnel, or the loss of pertinent records. This assertion is simply incorrect. Most obviously, Mohammad Hamed, one of the two partners in the Hamed-Yusuf partnership and the original named Plaintiff in this matter, is now deceased and consequently unavailable to testify.

Additionally, as discussed above, Defendant's own BDO Report attests to the loss of any bank records predating 2007. It is also worth noting that while some of the "classic elements" of prejudice in the laches context are plainly present, the Opinion does not represent a classic application of the doctrine of laches. Rather, the Opinion looks to the principles of inexcusable delay and prejudice underlying the doctrine of laches, as well as the express policy goals of the Legislature as embodied in RUPA, in order to establish an equitable limitation on the scope of the accounting phase of the Final Wind Up Plan.

However, the Court's finding of prejudice suffered by both partners is also based upon the simple truth that memories of events, particularly of numerous routine individual financial transactions spanning decades, necessarily fade and become less reliable with the passage of time. Specifically, the Court found that in light of the known unavailability of a substantial body of relevant financial records, "because many of [the] claims involve how transactions were or were not recorded... an analysis of those claims would likely involve testimony' from the partners and their sons, yet, how much they might remember concerning the details of a transaction completed a decade earlier 'is questionable, at best.'" Opinion, at 30.

#### **Motion to Certify**

4 V.I.C. §33(c) provides:

Whenever the Superior Court judge, in making a civil action or order not otherwise appealable under this section, is of the opinion that the order involves a controlling question of law as to which there is substantial ground for difference of opinion and that an immediate appeal from the order may materially advance the ultimate termination of litigation, the judge shall so state in the order. The Supreme Court of the Virgin Islands may thereupon, in its discretion, permit an appeal to be taken from the order, if application is made to it within ten days after the entry of the order; except that application for an appeal hereunder may not stay proceedings, in the Superior Court unless the Superior Court judge or the Supreme Court or a justice thereof orders a stay of the proceedings.

Because the six questions of law presented by Defendant in his Motion to Certify are all premised upon an apparent misreading and mischaracterization of the Opinion as detailed above,



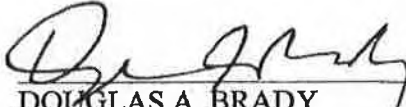
the Court will not, in its discretion, certify those questions for appeal. However, even if Defendant or the Court were to reformulate the questions to more accurately reflect the substance of the Opinion, such questions still would not present appropriate grounds for certification under 4 V.I.C. §33, as the Court does not find that certification would “materially advance the termination of litigation.” Under the Court’s present Order, this matter continues to move forward with the claims resolution process in the accounting and distribution phase of the Final Wind Up Plan as to all claims related to transactions occurring on or after September 17, 2006. Should Defendant file an appeal after final judgment is entered in this matter, and should such an appeal prove successful, the claims resolution process could then recommence as to claims based upon pre-2006 transactions, and the total amount owed pursuant to the final accounting could be adjusted accordingly. Therefore, because it is not apparent that an immediate appeal would materially advance the ultimate termination of the litigation, Defendant’s Motion to Certify will be denied.

In light of the foregoing, it is hereby

ORDERED that Defendant’s Motion for Reconsideration of Ruling Limiting Period of Accounting Claims is DENIED. It is further

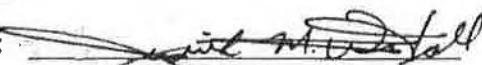
ORDERED that Defendant’s Motion to Certify Questions in Order Limiting Period of Accounting Claims for Immediate Review is DENIED.

DATED: November 13, 2017.

  
DOUGLAS A. BRADY  
Judge of the Superior Court

ATTEST:  
ESTRELLA GEORGE  
Clerk of the Court

By:

  
Court Clerk, Supervisor  
11/14/17

# EXHIBIT 5

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

WALEED HAMED, as Executor of the  
Estate of MOHAMMED HAMED )

Plaintiff/Counterclaim Defendant, )  
v. )

FATHI YUSUF and UNITED CORPORATION, )  
Defendants/Counterclaimants, )

v. )

WALEED HAMED, WAHEED HAMED, )  
MUFEED HAMED, HISHAM HAMED, and )  
PLESSEN ENTERPRISES, INC., )

Counterclaim Defendants. )

Civil No. SX-12-CV-370

ACTION FOR INJUNCTIVE RELIEF,  
DECLARATORY JUDGMENT, and  
PARTNERSHIP DISSOLUTION,  
WIND UP, and ACCOUNTING

WALEED HAMED, as Executor of the  
Estate of MOHAMMED HAMED, )

Plaintiff, )

v. )

UNITED CORPORATION, )  
Defendant. )

Civil No. SX-14-CV-287

ACTION FOR DAMAGES and  
DECLARATORY JUDGMENT

WALEED HAMED, as Executor of the  
Estate of MOHAMMED HAMED, )

Plaintiff, )

v. )

FATHI YUSUF, )  
Defendant. )

Civil No. SX-14-CV-278

ACTION FOR DEBT and  
CONVERSION

**ORDER DENYING WITHOUT PREJUDICE PLAINTIFF'S MOTIONS TO STRIKE  
BUSINESS VALUATION EXPERT (INTEGRA) AND ACCOUNTING EXPERT (BDO)**

This matter came on for hearing on March 6 and 7, 2017 on Plaintiff's fully briefed Motion to Strike Accounting Expert (BDO), filed October 4, 2016, and Plaintiff's Motion to Strike Business Valuation Expert (Integra), filed October 3, 2016.<sup>1</sup> For the reasons that follow, the Court will deny both Motions without prejudice.

At the hearing, Hamed presented extensive testimony from several witnesses to the effect that the BDO report, supported by the report's own disclaimers, is unreliable as an expert accounting report and fails the test for admissibility under Virgin Islands Rule of Evidence 702 as defined in *Antilles*

<sup>1</sup> Also before the Court are Defendants' BDO Opposition, filed October 20, 2016; Plaintiff's BDO Reply filed October 26, 2016; Defendants' Supplemental BDO Opposition, filed March 21, 2017; Defendants' Integra Opposition, filed October 21, 2016; and Plaintiff's Integra Reply, filed October 26, 2016.



*School, Inc. v. Lembach*, 64 V.I. 400 (V.I. 2016) and *Daubert v. Merrell Dow Pharmaceuticals, Inc.*, 509 U.S. 579 (1993). As such, Plaintiff asserts that the report must be stricken.<sup>2</sup> Defendants respond that the Motions are premature in that the reports were submitted to the Master only as part of Defendants' proposed accounting and distribution plan, and are not a part of the record. Further, Defendants state that the BDO report represents only a preliminary accounting based on information available at the time, and will be supplemented upon completion of additional discovery. Both parties agree that more discovery is required to adequately present their respective claims.

While Plaintiff took the opportunity at the recent hearing to present evidence in the nature of a pretrial motion in limine, a determination of trial admissibility of the testimony of the author(s) of the reports in issue, and of the reports themselves, is premature. The primary purpose of conducting a *Daubert* hearing pursuant to V.I. R. Evid. 104 is to permit the trial court to act as gatekeeper to prevent a jury from hearing inadmissible testimony. Because the Court, by Memorandum Opinion and Order entered contemporaneously herewith, strikes both Plaintiff's and Defendants' demands for trial by jury, that concern is not present. Further, the ability of the Master and the Court to evaluate the reports and ascribe to them only such weight as they deserve, militates against striking the reports at this stage of the litigation.<sup>3</sup> Accordingly, it is hereby

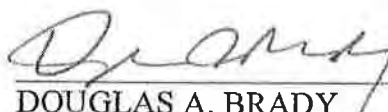
ORDERED that Hamed's Motion to Strike Accounting Expert (BDO) is DENIED without prejudice. It is further

ORDERED that Hamed's Plaintiff's Motion to Strike Business Valuation Expert (Integra) is DENIED without prejudice.

DATED: July 21, 2017.

ATTEST: ESTRELLA GEORGE  
Clerk of the Court

By: \_\_\_\_\_  
Court Clerk Supervisor

  
DOUGLAS A. BRADY  
Judge of the Superior Court

CERTIFIED A TRUE COPY

DATE: July 24, 2017  
ESTRELLA H. GEORGE  
ACTING CLERK OF THE COURT

BY: \_\_\_\_\_  
COURT CLERK

<sup>2</sup> No evidence was presented at the hearing regarding the Integra report, which Plaintiff challenges as failing the last two of the three-prong test for admissibility: qualifications, reliability and fit. Because the same issues are involved, both Motions are treated together for purposes of this Order.

<sup>3</sup> See, e.g., "The Court also deferred ruling on some of the motions involving expert testimony, as the judge need not serve as gatekeeper for himself." *Eames v. Bedor*, 2012 N.H. Super. LEXIS 15, \*7 (N.H. Super. Ct. 2012) (citing *Traxys N. Am., LLC v. Concept Mining, Inc.*, 808 F. Supp. 2d 851, 853 (W.D. Va. 2011)).

# EXHIBIT 6



BDO  
Dudley, Topper and Feuerzweig, LLP  
United Corporation  
Civil No. SX-12-CV-99

Summary calculation of Additional Income as a result of withdrawals from Supermarkets' accounts (or partnership's accounts) - January 1994 to August 2014. (Including adjustments for withdrawals before 9/17/2006 as instructed by the Court)

Summary of Withdrawals

	2011	2012	2013	2014	Total
Funds received from partnership through checks	\$ 1,500,000.00	\$ -	\$ -	\$ -	\$ 1,500,000.00
Withdrawals from the partnership with a signed ticket / receipt	-	237,352.75	-	-	237,352.75
Amount owed by Hamed family to Yusuf as per agreement before raid Sept. 2001. As per Albe's testimony these tickets were burned. (Refer to Letter dated August 15, 2012)	-	1,778,103.00	-	-	1,778,103.00
Payments to third parties on behalf of Hamed/Yusuf with partnership funds either with tickets or checks	-	20,311.00	-	-	20,311.00
Payments to Attorneys with partnership's funds	-	3,749,495.48	372,153.95	-	4,121,651.43
Funds received by cashier's checks	-	-	-	-	-
<b>Total Partnership</b>	<b>1,500,000.00</b>	<b>5,785,262.23</b>	<b>372,153.95</b>	<b>-</b>	<b>7,657,416.18</b>
Deposits to bank and brokerage accounts	18,505.80	430,439.13	100,000.00	308,999.56	510,061.57
Payments to credit cards	-	422,824.70	-	179,786.80	602,611.50
Investments (cost sold as per tax returns)	-	-	-	-	-
<b>Subtotal Lifestyle analysis</b>	<b>18,505.80</b>	<b>853,263.83</b>	<b>100,000.00</b>	<b>488,786.36</b>	<b>1,966,556.39</b>
<b>Net Withdrawals</b>	<b>\$ 1,518,505.80</b>	<b>\$ 6,638,526.06</b>	<b>\$ 472,153.95</b>	<b>\$ 488,786.36</b>	<b>\$ 9,824,039.74</b>

	2011	2012	2013	2014	Total
Funds received from partnership through checks	\$ 4,284,706.25	\$ -	\$ -	\$ -	\$ 4,284,706.25
Withdrawals from the partnership with a signed ticket / receipt	-	-	2,000.00	-	2,000.00
Amount owed by Hamed family to Yusuf as per agreement before raid Sept. 2001. As per Albe's testimony these tickets were burned. (Refer to Letter dated August 15, 2012)	-	-	-	-	-
Payments to third parties on behalf of Hamed/Yusuf with partnership funds either with tickets or checks	-	-	-	-	-
Payments to Attorneys with partnership's funds	183,607.05	20,370.00	33,714.00	-	237,691.05
Funds received by cashier's checks	-	-	-	-	-
<b>Total Partnership</b>	<b>4,468,313.30</b>	<b>20,370.00</b>	<b>35,714.00</b>	<b>-</b>	<b>4,524,397.30</b>
Deposits to bank and brokerage accounts	-	-	-	-	-
Payments to credit cards	-	-	-	-	-
Investments (cost sold as per tax returns)	-	-	-	-	-
<b>Subtotal Lifestyle analysis</b>	<b>-</b>	<b>-</b>	<b>-</b>	<b>-</b>	<b>-</b>
<b>Net Withdrawals</b>	<b>\$ 4,468,313.30</b>	<b>\$ 20,370.00</b>	<b>\$ 35,714.00</b>	<b>\$ -</b>	<b>\$ 4,524,397.30</b>

Note:  
1 Total amounts include adjustments made for withdrawals in 2016.

HAMD652413





Dudley, Topper and Feuerzeig, LLP  
 United Corporation  
 Civil No. SX-12-CV-99

**ITEM #4**

**ITEM #1**

**ITEM #2**

Summary calculation of Additional Income as a result of withdrawals from Supermarkets' accounts (or partnership's accounts) - January 1994 to August 2014. (Including adjustments)

Summary of Withdrawals

Description	Hamed					Total
	Mohammad	Waleed	Waheed	Mufeed	Hisham	
Funds received from partnership through checks	\$ 1,500,000.00	\$ -	\$ -	\$ -	\$ -	\$ 1,500,000.00
Withdrawals from the partnership with a signed ticket/receipt	-	237,352.75	-	-	-	237,352.75
Amount owed by Hamed family to Yusuf as per agreement before raid Sept 2001. As per Mike's testimony these tickets were burned. (Refer to Letter dated August 15, 2012)	-	1,778,103.00	-	-	-	1,778,103.00
Payments to third parties on behalf of Hamed/Yusuf with partnership funds either with tickets or checks	-	20,311.00	-	-	-	20,311.00
Payments to Attorneys with partnership's funds	-	3,749,495.48	372,155.95	-	-	4,121,651.43
Funds received by cashier's checks	-	-	-	-	-	-
<b>Total Partnership</b>	<b>1,500,000.00</b>	<b>5,785,262.23</b>	<b>372,155.95</b>	<b>-</b>	<b>-</b>	<b>7,657,418.18</b>
Deposits to bank and brokerage accounts	16,505.80	430,439.13	100,000.00	306,999.56	510,061.57	1,364,006.06
Payments to credit cards	-	422,824.70	-	179,786.80	-	602,611.50
Investments (cost) sold as per tax returns	-	-	-	-	-	-
<b>Subtotal Lifestyle analysis</b>	<b>16,505.80</b>	<b>853,263.83</b>	<b>100,000.00</b>	<b>486,786.36</b>	<b>510,061.57</b>	<b>1,966,617.56</b>
<b>Net Withdrawals</b>	<b>\$ 1,516,505.80</b>	<b>\$ 6,638,526.06</b>	<b>\$ 472,155.95</b>	<b>\$ 486,786.36</b>	<b>\$ 510,061.57</b>	<b>\$ 9,624,035.74</b>

Note:

1 Total amounts include adjustments made for withdrawals in 2016.

**ITEM #3**







# EXHIBIT 7

**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, MUFEE HAMED,  
HISHAM HAMED,**  
and **PLESSEN ENTERPRISES, INC.**,

*Counterclaim Defendants.*

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**MOHAMMAD HAMED**,

*Plaintiff,*

vs.

**UNITED CORPORATION**,

*Defendant.*

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**MOHAMMAD HAMED**,

*Plaintiff,*

vs.

**FATHI YUSUF**,

*Defendant.*

**CIVIL NO. SX-12-CV-370**

**ACTION FOR DAMAGES  
INJUNCTIVE RELIEF AND  
DECLARATORY RELIEF**

**JURY TRIAL DEMANDED**

**Consolidated With**

**CIVIL NO. SX-I4-CY-287**

**ACTION FOR DAMAGES  
AND DECLARATORY  
RELIEF**

**CIVIL NO. SX-I4-CY-278**

**ACTION FOR DEBT  
AND CONVERSION**

**JURY TRIAL DEMANDED**

**DECLARATION OF GORDON C. RHEA, ESQ.**

I, GORDON C. RHEA, declare under penalty of perjury pursuant to 28 U.S.C. Section 1746, as follows:

1. I have personal knowledge of the facts set forth herein.
2. I am an attorney licensed to practice law in the U.S. Virgin Islands.

HAMD642159



3. I was one of the defense lawyers in the criminal action filed by the United States of America in the District Court of the Virgin Islands (St. Thomas Division), Docket No, 1:05-cr-00015, against the following defendants:

FATHI YUSUF MOHAMAD YUSUF, aka Fathi Yusuf  
WALEED MOHAMMAD HAMED, aka Wally Hamed  
WAHEED MOHAMMAD HAMED, aka Willie Hamed  
MAHER FATHI YUSUF, aka Mike Yusuf  
NEJEH FATHI YUSUF,  
ISAM YUSUF, and  
UNITED CORPORATION

4. All of the defendants in that criminal case, except for Isam Yousef who was never apprehended, were represented jointly by multiple counsel, including myself, under a Joint Defense Agreement.

5. Pursuant to the Joint Defense Agreement, all defense counsel worked together on behalf of all of the represented defendants in a joint effort to defend the case

6. A plea agreement was reached in December of 2010 (See Exhibit 1), with a modification made thereafter in early 2011 (See Exhibit 2). As noted therein, the only defendant who pled guilty was United Corporation, as the charges were dismissed against all of the other represented defendants.

7. The Joint Defense Agreement then continued during the sentencing phase of the case (to primarily address the tax issues related to the Plea) until September 19, 2012, when the Joint Defense Agreement was terminated.

8. Under the Joint Defense Agreement;

- a. All legal and accounting work was done jointly on behalf of all represented defendants in an effort to defend all of them at the same time.

- b. Bills for attorneys' fees and expenses reflected the work of counsel done for all defendants without allocating specific items to individual defendants.
- c. Simply because a bill was directed to a specific defendant did not reflect their individual personal obligation, as the bills were the joint obligation of all defendants while the Joint Defense Agreement was in place.
- d. All defendants were all aware of this fact, as applications for payment of the bills submitted under Joint Defense Agreement had to be made to the United States Attorney, who would then have to authorize funds to pay these bills from the defendants' bank accounts which had been frozen by court order.
- e. Until the Joint Defense Agreement was terminated all legal bills were paid from a United Plaza Extra account,

I declare under penalty of perjury that the foregoing is true and correct.

Dated: March 2, 2017

  
Gordon C. Rhea, Esq.

# EXHIBIT 8

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

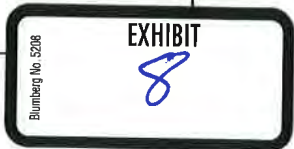
MOHAMMAD HAMED, by his	)	SX-12-CV-370
authorized agent WALHEED	)	
HAMED,	)	
	)	
Plaintiff/Counterclaim Defendant,	)	
	)	
v.	)	
	)	
FATHI YUSUF and UNITED	)	
CORPORATION,	)	
	)	
Defendants/Counterclaimants,	)	
	)	
v.	)	
	)	
WALEED HAMED, WAHEED HAMED,	)	
MUFEED HAMED, HISHAM HAMED, and	)	
PLESSEN ENTERPRISES, INC.,	)	
	)	
Additional Counterclaim Defendants.)	)	
	)	

March 6, 2017  
Kingshill, St. Croix

The above-entitled action came on for MOTIONS HEARING before the Honorable Douglas A. Brady, in Courtroom Number 211.

THIS TRANSCRIPT REPRESENTS THE PRODUCT OF AN OFFICIAL COURT REPORTER, ENGAGED BY THE COURT, WHO HAS PERSONALLY CERTIFIED THAT IT REPRESENTS HER ORIGINAL NOTES AND RECORDS OF TESTIMONY AND PROCEEDINGS OF THE CASE AS RECORDED.

TRACY BINDER, RPR  
Official Court Reporter  
(340) 778-9750 Ext. 7151



1 argument on all the motions be held telephonically  
2 so that we don't have to come back here, and that,  
3 you know, we actually do it telephonically so that,  
4 you know, we don't feel like we have to come back  
5 here.

6 THE COURT: Okay. Attorney Holt, do you want  
7 to respond to that?

8 MR. HOLT: I'm willing to go forward tonight,  
9 Your Honor. You do have court personnel and I'm  
10 sympathetic to not wanting to stay. I can do it  
11 tomorrow morning as well.

12 THE COURT: All right. Let's forge ahead. Go  
13 ahead.

14 MR. HOLT: I'll call Mafi Hamed.

15 MUFEED HAMED,  
16 having been first duly sworn, was examined and  
17 testified as follows:

18 DIRECT EXAMINATION

19 BY MR. HOLT:

20 Q Can you state your name for the record, after  
21 you're seated?

22 A Mufeed Hamed.

23 Q Excuse me?

24 A I'm sorry. What was --

25 Q Please state your name for record.

1 A Mufeed Hamed.

2 Q Okay. Mr. Hamed, when did you actually start  
3 working at the Plaza Extra store?

4 A Right after Marilyn, Hurricane Marilyn.

5 Q And that's around 1995?

6 A 1995.

7 Q And which store did you work in?

8 A Plaza East.

9 Q And just as it relates to this case, this  
10 hearing, at the time that you came, did you start  
11 working with your brother on something outside of Plaza  
12 East?

13 A Yes.

14 Q And what was that?

15 A It was four -- it was -- excuse me. Four  
16 duplexes in Estate Carlton.

17 Q Okay. And are those duplexes that you rent  
18 out?

19 A Yes.

20 Q And those are the houses that Mr. Wally Hamed  
21 testified this morning he bought in the late 1980s?

22 A Yes.

23 Q Okay. And did you take care of the books for  
24 them?

25 A Yes.



1 Q Okay. Showing you Exhibit Number 45, can you  
2 tell me what this is?

3 A (Perusing document.)

4 Q Did you have an opportunity to look at this  
5 before you came and testified today?

6 A Yes, I did.

7 Q And this is checks written on a bank  
8 account?

9 A Yes.

10 Q And what is that bank account?

11 A It's a Scotiabank account.

12 Q And what are the numbers that that Scotiabank  
13 account end in?

14 A 9811.

15 Q Okay. And what is that account used for?

16 A That is used for the apartment complexes -- I  
17 mean, the apartment buildings that we own.

18 Q So to the extent that those accounts show  
19 deposits into 9811, where would those deposits come  
20 from?

21 A Rental income.

22 Q And that's from the units.

23 A Yes.

24 Q The Carlton units.

25 A Yes.

1 Q And to the extent there's any checks going out  
2 of that account, that's expenses for what?

3 A Maintenance.

4 Q On those units.

5 A On those same units, yes.

6 Q Okay. So you're aware in the BDO report that  
7 they said that you should be paying all the money  
8 deposited in this account back to Mr. Yusuf.

9 A Yes, I saw that.

10 Q Okay. And is, in fact, that money owed to him  
11 for any reason whatsoever?

12 A None whatsoever.

13 Q And that's because it's related to income  
14 outside of Plaza?

15 A Yes.

16 Q Okay.

17 MR. HOLT: Now, can I have the witness shown  
18 Exhibit Number 46?

19 THE COURT: He may be shown. Let me ask as to  
20 Number 45, the page -- page number 1 has at the  
21 bottom total year 2002. My second page at the top  
22 says total year 2000. It sounds like there are a  
23 couple of pages missing.

24 Are all the other copies like that or just --

25 THE WITNESS: Yes, they are. Mine is like

1 THE COURT: No, no, no. This isn't the full  
2 document either. It's the same thing. The one I  
3 was just handed is the same.

4 MR. HOLT: I would have to print it out.  
5 These are backups to the BDO file. So I would have  
6 to print it out from that.

7 Your Honor, for the purposes of this  
8 testimony, I believe that this version can be used  
9 and substituted, because the real key is not the  
10 years but the total figure of 344,000 on the last  
11 page.

12 THE COURT: Very well.

13 MR. HOLT: Okay?

14 THE COURT: Yeah.

15 MR. HOLT: All right.

16 BY MR. HOLT:

17 Q Looking at Exhibit Number 45, do you see  
18 that?

19 A Yes.

20 Q What is the total amount of funds they claim  
21 are deposited into this account from 2001 through 2012  
22 that were allocated to you?

23 A \$344,929.13.

24 Q Okay. And was that income earned from the  
25 Carlton apartments over this time period or from the

1 store?

2 A Carlton apartments.

3 Q Okay. So 344,000 that BDO says you owe to  
4 Mr. Yusuf is, in fact, not money you owe him at all, is  
5 it?

6 A Absolutely not.

7 Q Okay.

8 MR. HOLT: Do you have Exhibit 45, Your Honor?

9 THE COURT: Yeah, I have the Exhibit 45 with  
10 the missing pages. So do I -- when you said -- the  
11 last question was that BDO says you owe Mr. Yusuf,  
12 is that -- is the claim 344 or is the claim 50  
13 percent of 344?

14 MR. HOLT: They claim 100 percent of it. They  
15 claim on that bank account, 9811, in the name of  
16 Mafi Hamed and Wally Hamed, from 2001 to 2012, they  
17 claim 344,000 in deposits that belong to them, and  
18 his testimony is, no, those were deposits from the  
19 rentals from the apartments out in Carlton.

20 THE COURT: Okay. So in other words, this is  
21 a claim that this money is owed back to the  
22 partnership; correct? As opposed to owed to  
23 Mr. Yusuf?

24 MR. HOLT: No. In the lifestyle analysis, the  
25 Yusufs claim that Mafi Hamed should pay that amount

# EXHIBIT 9

Fathi Yusuf  
PO Box 503358  
St. Thomas, USVI 00805

July 1, 2011

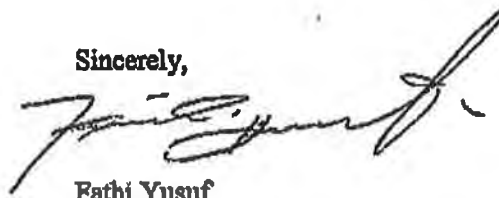
Mufeed Harfed  
PO Box 763  
Christiansted, USVI 00821

Dear Mufeed:

This correspondence will acknowledge and memorialize my conveyance today of a gift in the amount of \$750,000 to you.

I am giving you the unrestricted right to the immediate use of this money for whatever purpose you desire. I expect no repayment of this gift from me, whether in the form of cash, property, or future services.

Sincerely,

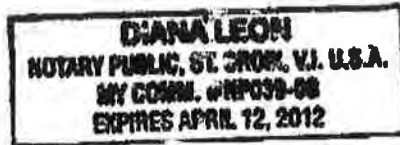


Fathi Yusuf

Sworn to before me this  
1 day of July, 2011



Notary Public



Fawzia Yusuf  
PO Box 503358  
St. Thomas, USVI 00805

July 6, 2011

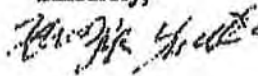
Mufeed Hamed  
PO Box 763  
Christiansted, USVI 00821

Dear Mufeed:

This correspondence will acknowledge and memorialize my conveyance today of a gift in the amount of \$750,000 to you.

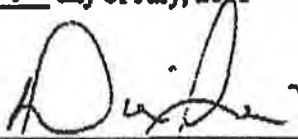
I am giving you the unrestricted right to the immediate use of this money for whatever purpose you desire. I expect no repayment of this gift from me, whether in the form of cash, property, or future services.

Sincerely,

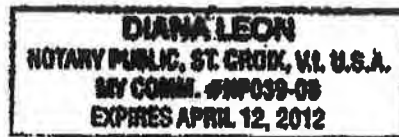


Fawzia Yusuf

Sworn to before me this  
1 day of July, 2011



Notary Public



Fawzia Yusuf  
PO Box 503358  
St. Thomas, USVI 00805

July 1, 2011

Hisham Hamed  
PO Box 763  
Christiansted, USVI 00821

Dear Hisham:

This correspondence will acknowledge and memorialize my conveyance today of a gift in the amount of \$750,000 to you.

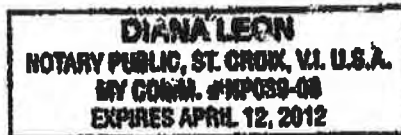
I am giving you the unrestricted right to the immediate use of this money for whatever purpose you desire. I expect no repayment of this gift from me, whether in the form of cash, property, or future services.

Sincerely,  
*Fawzia Yusuf*

Fawzia Yusuf

Sworn to before me this  
1 day of July, 2011

*[Signature]*  
\_\_\_\_\_  
Notary Public





Fathi Yusuf  
PO Box 503358  
St. Thomas, USVI 00805

July 1, 2011

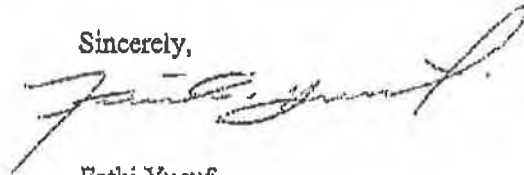
Hisham Hamed  
PO Box 763  
Christiansted, USVI 00821

Dear Hisham:

This correspondence will acknowledge and memorialize my conveyance today of a gift in the amount of \$750,000 to you.

I am giving you the unrestricted right to the immediate use of this money for whatever purpose you desire. I expect no repayment of this gift from me, whether in the form of cash, property, or future services.

Sincerely,

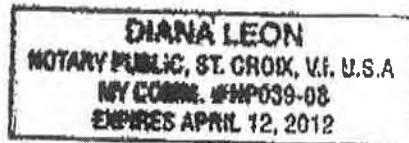


Fathi Yusuf

Sworn to before me this  
1 day of July, 2011



Notary Public



# EXHIBIT 10

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

MOHAMMAD HAMED, by his	)	SX-12-CV-370
authorized agent WALEED	)	
HAMED,	)	
	)	
Plaintiff/Counterclaim Defendant,	)	
	)	
v.	)	
	)	
FATHI YUSUF and UNITED	)	
CORPORATION,	)	
	)	
Defendants/Counterclaimants,	)	
	)	
v.	)	
	)	
WALEED HAMED, WAHEED HAMED,	)	
MUFEEED HAMED, HISHAM HAMED, and	)	
PLESSEN ENTERPRISES, INC.,	)	
	)	
Additional Counterclaim Defendants.)	)	
	)	

**December 15, 2017**  
Kingshill, St. Croix

The above-entitled action came on for Status Hearing before the Special Master in Courtroom Number 211.

THIS TRANSCRIPT REPRESENTS THE PRODUCT OF AN OFFICIAL COURT REPORTER, ENGAGED BY THE COURT, WHO HAS PERSONALLY CERTIFIED THAT IT REPRESENTS HER ORIGINAL NOTES AND RECORDS OF TESTIMONY AND PROCEEDINGS OF THE CASE AS RECORDED.

TRACY BINDER, RPR  
Official Court Reporter  
(340) 778-9750 Ext. 7151



1 Hodges, that you believe that the order doesn't  
2 apply to, you think they're outside the scope of  
3 the order, and Attorney Holt can respond. How much  
4 time would you need to do that? I mean, you have  
5 identified some of them already. Are there any  
6 more?

7 MR. HODGES: No. I mean, he's the one that's  
8 claiming that the limitation order affects the  
9 claims -- what I say are the claims of United. He  
10 says the water revenues are not a United claim,  
11 it's a partnership claim; I can't disagree with  
12 that more. He claims the water revenue is a  
13 partnership claim; I can't disagree with that more.  
14 That's United's roof that collects that water. So,  
15 you know, the --

16 But he also has his claims. I think he's  
17 suggesting that there's no further -- nothing  
18 further needs to be done on the 2.7 million that he  
19 refers to, which is, you know -- respectfully, Your  
20 Honor, it's already on Mr. Yusuf's side of the  
21 ledger, so to speak, in the BDO report. We  
22 acknowledged he withdrew those funds. That's not  
23 in dispute. The accounting effect of that is what  
24 is in dispute, so that can't be ruled on without  
25 discovery. And they pretty much acknowledge it in

# EXHIBIT 11



JOHN GAFFNEY -- DIRECT

1                   ~~So, essentially, the decision was made to put~~  
2 ~~in a~~ ~~an accounting system in all three locations that~~  
3 ~~would have the same system of controls, and the~~ ~~the most~~  
4 ~~major thing that was implemented was the interface between~~  
5 ~~Point of Sale and Peachtree.~~

6           Q.     So you said early on that you were brought in  
7 pursuant to a court order, or something like that, to try to  
8 fix what I think you described it as pretty much a -- a  
9 total mess.

10                   Would that be true?

11           A.     Yeah, it was pretty -- it was a pretty good  
12 description that it was a pretty total mess before.

13           ~~Q.     And you~~

14           ~~A.     I'm not saying that it was~~ ~~it didn't have any~~  
15 ~~integrity. It did have integrity.~~

16           ~~Q.     Uh-huh.~~

17           ~~A.     It's just that it lacked controls.~~

18           ~~Q.     Okay. And was it accurate?~~

19           ~~A.     I'd say fairly accurate.~~

20           Q.     Okay. And do you know where -- where the -- where  
21 the accounting records were before -- you've given me 2012  
22 and 2013, is that correct?

23           A.     Correct, yeah.

24           Q.     Okay. And do you have any idea where the  
25 accounting records are for 2002 through 2011?

Cheryl L. Haase  
(340) 773-8161

HAMD642142

JOHN GAFFNEY -- DIRECT

1           A.    If I do some comparative financial statements, I  
2    can get it at least through back to 2010.

3           Q.    And your recollection is that the financial  
4    records before 2010 are in a warehouse?

5           A.    The -- I'm hoping that there are hard copies of  
6    most of the records in the warehouse at St. Thomas. I did  
7    look for a lot of them after the crash, when I was trying to  
8    find things, but I -- I didn't have a great deal of success.

9           Q.    Okay.

10          A.    And I did find a -- spotty old backups on  
11    computers, but -- and I had to get help from Sage to -- to  
12    break through them, because they had old passwords and  
13    whatnot on them. But I didn't get anything cohesive, like  
14    I -- I had one old backup at East, and it was, you know, as  
15    far as I was concerned, East and West were just using it to  
16    process payroll and/or accounts payable, and it was being  
17    used much like a word processor. There was no integrity  
18    when it came to general ledgers or anything like that, or  
19    anything that would feed into a financial statement.

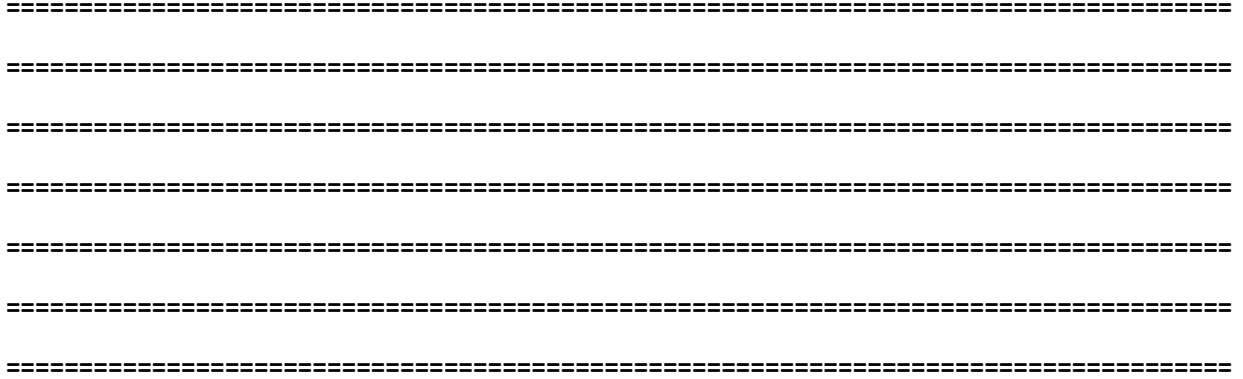
20          ~~Q.    Okay. Now, in the -- let's use the 2013 year that~~  
21    ~~you supplied on January 5th, 2014.~~

22                   ~~You said, sort of off the bat, it -- it~~  
23    ~~tagged in certain areas, such as accounts payable and~~  
24    ~~securities for a couple of months. Beyond that, is there~~  
25    ~~any other major financial data related to the Plaza Extra~~

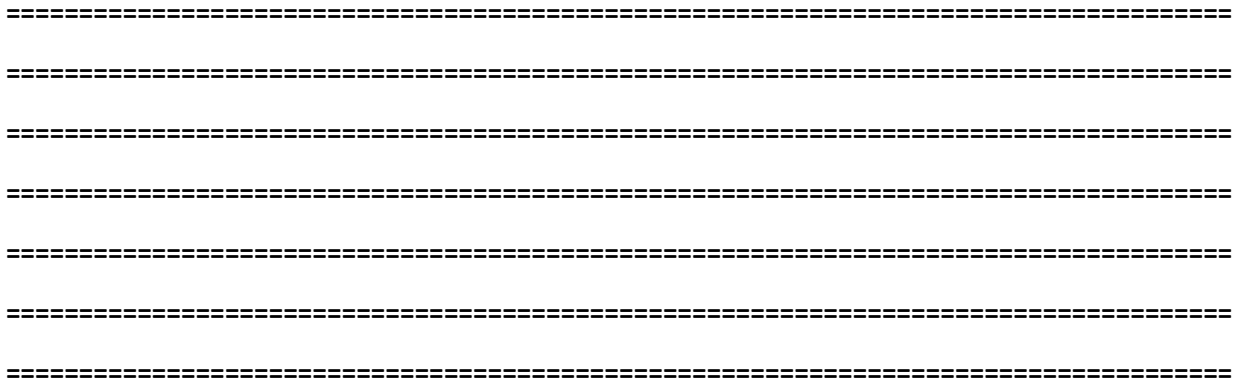
Cheryl L. Haase  
(340) 773-8161

HAMD642145





# **DIVIDER**



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 and Counterclaimants.*

vs.

**WALEED HAMED, WAHEED HAMED,  
MUFEED HAMED, HISHAM HAMED, and  
PLESSEN ENTERPRISES, INC.,**

*Counterclaim Defendants,*

Case No.: SX-2012-cv-370

**ACTION FOR DAMAGES,  
INJUNCTIVE RELIEF AND  
DECLARATORY RELIEF**

JURY TRIAL DEMANDED

---

**MOHAMMAD HAMED**,

*Plaintiff,*

vs.

**FATHI YUSUF**,

*Defendant.*

Case No.: SX-2014-CV-278

**ACTION FOR DEBT AND  
CONVERSION**

JURY TRIAL DEMANDED

---

**MOHAMMAD HAMED**,

*Plaintiff,*

vs.

**UNITED CORPORATION**,

*Defendant.*

Case No.: SX-2014-CV-287

**ACTION FOR DEBT AND  
CONVERSION**

JURY TRIAL DEMANDED

---

**MOTION TO PRECLUDE YUSUF'S CLAIMS PRIOR TO SEPTEMBER 17, 2006**

Judge Brady made it clear that claims prior to September 17, 2006, are barred **regardless of whether the claims are described as “disputed” or “undisputed” by Yusuf**, stating (See p. 33 excerpt from July 24, 2017 Brady Order, attached as **Exhibit 1**):

Therefore, the Court exercises the significant discretion it possesses in fashioning equitable remedies to restrict the scope of the accounting in this matter to consider only those § 71(a) claims that are based upon transactions occurring no more than six years prior to the September 17, 2012 filing of Hamed’s Complaint.

The Court then further clarified this directive in footnote 35 at the end of this sentence, making it clear it applied to all claims prior to this date, even those that were allegedly “undisputed”:

Yusuf has argued that certain § 71(a) claims are effectively undisputed, and that “if it is undisputed that payments were made to a partner, even without authorization, then to exclude them from an accounting for that reason would be entirely arbitrary.” First, it appears doubtful, based upon the record and the representations of the parties in this matter, that any claim submitted by either party would truly be undisputed. But, even if some claims were, in fact, undisputed, because of the great dearth of accurate records there exists such an element of chance in any attempt to reconstruct the partnership accounts that an accounting reaching back to the date of the last partnership true-up in 1993 would ultimately be no more complete, accurate, or fair, than an accounting reaching back only to 2006.

Despite this clear directive, Yusuf repeatedly and improperly still attempts to reintroduce such claims using various “tricks” to avoid that date.


For example, Yusuf had BDO include a claim that admittedly pre-dated 2001 as part of the revised BDO report. See “Item #1” on **Exhibit 2**. Again, this claim is barred by Judge Brady’s July 17, 2017, order, as it predates September 17, 2006.<sup>1</sup>

---

<sup>1</sup> This “pre-2001” claim is also the subject of a motion to strike the “revised” BDO report.

As such, this claim should be stricken. **Additionally, Yusuf should be instructed (again) not to re-assert any such pre-September 17, 2006, claims.**

Dated: December 27, 2017

  
**Joel H. Holt, Esq. Bar #6**  
Law Offices of Joel H. Holt  
2132 Company Street,  
Christiansted, VI 00820  
Email: holtvi.plaza@gmail.com  
Tele: (340) 773-8709  
Fax: (340) 773-867

**Carl J. Hartmann III, Esq.**  
5000 Estate Coakley Bay, L6  
Christiansted, VI 00820  
Email: carl@carlhartmann.com  
Tele: (340) 719-8941

### CERTIFICATE OF SERVICE

I hereby certify that on this 27 day of December, 2017, I served a copy of the foregoing by email (via Case Anywhere ECF), as agreed by the parties, on:

**Hon. Edgar Ross**  
Special Master  
% edgarrossjudge@hotmail.com

**Gregory H. Hodges**  
**Stefan Herpel**  
**Charlotte Perrell**  
Law House, 10000 Frederiksberg Gade  
P.O. Box 756  
St. Thomas, VI 00802  
ghodges@dtflaw.com

**Mark W. Eckard**  
Hamm, Eckard, LLP  
5030 Anchor Way  
Christiansted, VI 00820  
mark@markeckard.com

**Jeffrey B. C. Moorhead**  
CRT Brow Building  
1132 King Street, Suite 3  
Christiansted, VI 00820  
jeffreymlaw@yahoo.com

  
\_\_\_\_\_

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

WALEED HAMED, as Executor of the )  
Estate of MOHAMMED HAMED )  
Plaintiff/Counterclaim Defendant, )

v. )

FATHI YUSUF and UNITED CORPORATION, )  
Defendants/Counterclaimants, )

v. )

WALEED HAMED, WAHEED HAMED, )  
MUFEED HAMED, HISHAM HAMED, and )  
PLESSEN ENTERPRISES, INC., )  
Counterclaim Defendants. )

Civil No. SX-12-CV-370

ACTION FOR INJUNCTIVE RELIEF,  
DECLARATORY JUDGMENT, and  
PARTNERSHIP DISSOLUTION,  
WIND UP, and ACCOUNTING

WALEED HAMED, as Executor of the )  
Estate of MOHAMMED HAMED, )  
Plaintiff, )

v. )

UNITED CORPORATION, )  
Defendant. )

Civil No. SX-14-CV-287

ACTION FOR DAMAGES and  
DECLARATORY JUDGMENT

WALEED HAMED, as Executor of the )  
Estate of MOHAMMED HAMED, )  
Plaintiff, )

v. )

FATHI YUSUF, )  
Defendant. )

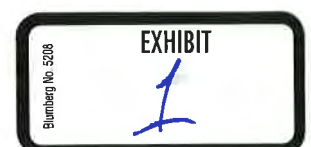
Civil No. SX-14-CV-278

ACTION FOR DEBT and  
CONVERSION

**MEMORANDUM OPINION AND ORDER RE LIMITATIONS ON ACCOUNTING**

This matter came on for hearing on March 6 and 7, 2017 on various pending motions, including Hamed's fully briefed Motion for Partial Summary Judgment re the Statute of Limitations Defense Barring Defendants' Counterclaim Damages Prior to September 16, 2006, filed May 13, 2014.<sup>1</sup> Because the Court concludes that Defendant Yusuf has not, in fact, presented

<sup>1</sup> Hamed's Motion was followed by: Defendants' Brief in Opposition, filed June 6, 2014; Hamed's Reply, filed June 20, 2014; Hamed's Notice of Supplemental Authority, filed November 15, 2016; Yusuf's Brief in Response, filed December 3, 2016; Yusuf's post-hearing Supplemental Brief, filed March 21, 2017; and Hamed's Response, filed March 27, 2017. Also pending is Defendants' Motion for Partial Summary Judgment on Counts IV, XI, and XII Regarding Rent, filed August 12, 2014, which is addressed herein.



period outlined in 5 V.I.C. § 31(3)(A) as a species of an action upon contract.<sup>34</sup> Therefore, the Court exercises the significant discretion it possesses in fashioning equitable remedies to restrict the scope of the accounting in this matter to consider only those § 71(a) claims that are based upon transactions occurring no more than six years prior to the September 17, 2012 filing of Hamed's Complaint.<sup>35</sup>

---

<sup>34</sup> Alternatively, these claims could have been pursued under 26 V.I.C. § 75(b)(2)(i) to "enforce the partner's rights under sections 71, 73, or 74 of this chapter," which, as "action upon a liability created by statute," are also subject, whether directly or by analogy, to a six year limitations period under 5 V.I.C. § 31(3)(B).

<sup>35</sup> Yusuf has argued that certain § 71(a) claims are effectively undisputed, and that "if it is undisputed that payments were made to a partner, even without authorization, then to exclude them from an accounting for that reason would be entirely arbitrary." First, it appears doubtful, based upon the record and the representations of the parties in this matter, that any claim submitted by either party would truly be undisputed. But, even if some claims were, in fact, undisputed, because of the great dearth of accurate records there exists such an element of chance in any attempt to reconstruct the partnership accounts that an accounting reaching back to the date of the last partnership true-up in 1993 would ultimately be no more complete, accurate, or fair, than an accounting reaching back only to 2006.

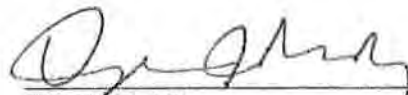
In light of the foregoing, it is hereby

ORDERED that Defendants' Motion for Partial Summary Judgment on Counts IV, XI, and XII Regarding Rent is DENIED, as to Counts IV and XII. It is further

ORDERED that Hamed's Motion for Partial Summary Judgment re the Statute of Limitations Defense Barring Defendants' Counterclaim Damages Prior to September 17, 2006 is DENIED. It is further


ORDERED that the accounting in this matter, to which each partner is entitled under 26 V.I.C § 177(b), conducted pursuant to the Final Wind Up Plan adopted by the Court, shall be limited in scope to consider only those claimed credits and charges to partner accounts, within the meaning of 26 V.I.C § 71(a), based upon transactions that occurred on or after September 17, 2006.

DATED: July 21, 2017.

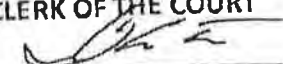
  
DOUGLAS A. BRADY  
Judge of the Superior Court

ATTEST: ESTRELLA GEORGE  
Clerk of the Court

By:

  
Court Clerk Supervisor 7/24/17

**CERTIFIED A TRUE COPY**

DATE: July 24, 2017  
ESTRELLA H. GEORGE  
ACTING CLERK OF THE COURT  
BY:   
COURT CLERK EG



Dudley, Topper and Feuerzeig, LLP  
 United Corporation  
 Civil No. SX-12-CV-99

**ITEM #1**

Summary calculation of Additional Income as a result of withdrawals from Supermarkets' accounts (or partnership's accounts) - January 1994 to August 2014. (Including adjustments

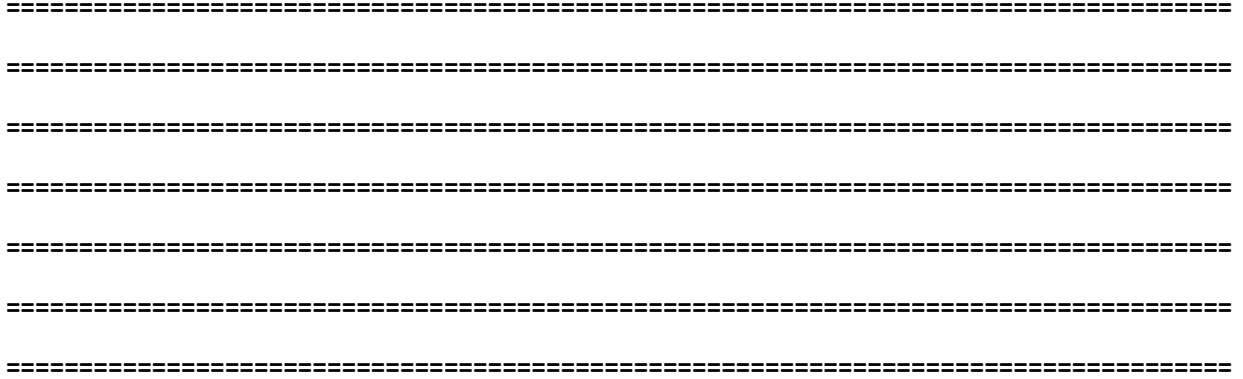
Summary of Withdrawals

Description	Hamed					Total
	Mohammed	Waleed	Waheed	Mufeed	Hisham	
Funds received from partnership through checks	\$ 1,500,000.00	\$ -	\$ -	\$ -	\$ -	\$ 1,500,000.00
Withdrawals from the partnership with a signed ticket/receipt	-	237,352.75	-	-	-	237,352.75
Amount owed by Hamed family to Yusuf as per agreement before raid Sept 2001. As per Mike's testimony these tickets were burned. (Refer to Letter dated August 15, 2012)	-	1,778,103.00	-	-	-	1,778,103.00
Payments to third parties on behalf of Hamed/Yusuf with partnership funds either with tickets or checks	-	20,311.00	-	-	-	20,311.00
Payments to Attorneys with partnership's funds	-	3,749,495.48	372,155.95	-	-	4,121,651.43
Funds received by cashier's checks	-	-	-	-	-	-
<b>Total Partnership</b>	<b>1,500,000.00</b>	<b>5,785,262.23</b>	<b>372,155.95</b>	<b>-</b>	<b>-</b>	<b>7,657,418.18</b>
Deposits to bank and brokerage accounts	16,505.80	430,439.13	100,000.00	306,999.56	510,061.57	1,364,006.06
Payments to credit cards	-	422,824.70	-	179,786.80	-	602,611.50
Investments (cost) sold as per tax returns	-	-	-	-	-	-
Investment style analysis	16,505.80	853,263.83	100,000.00	486,786.36	510,061.57	1,966,617.56
<b>Withdrawals</b>	<b>\$ 1,516,505.80</b>	<b>\$ 6,638,526.06</b>	<b>\$ 472,155.95</b>	<b>\$ 486,786.36</b>	<b>\$ 510,061.57</b>	<b>\$ 9,624,035.74</b>

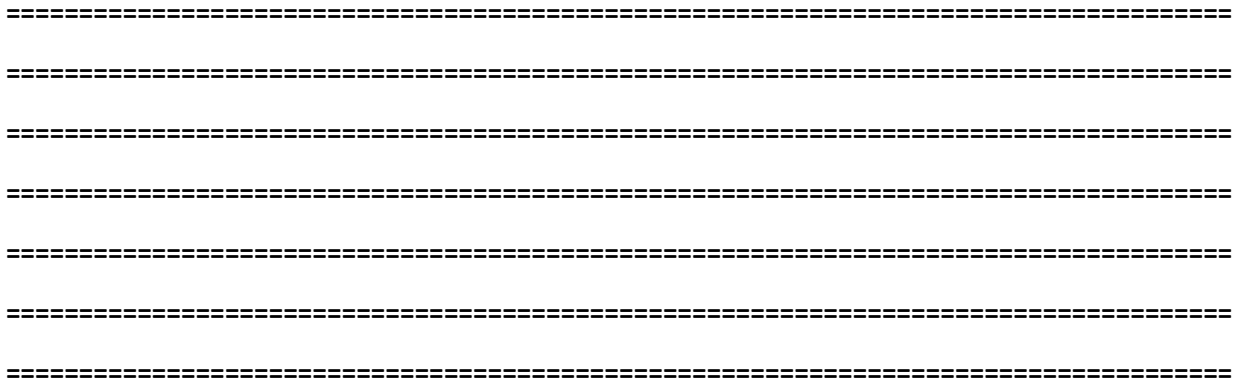


Accounts include adjustments made for withdrawals in 2016.





# **DIVIDER**



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

**WALEED HAMED**, as the Executor of the  
Estate of MOHAMMAD HAMED,

*Plaintiff/Counterclaim Defendant,*

vs.

**FATHI YUSUF** and **UNITED CORPORATION**

*Defendants and Counterclaimants.*

vs.

**WALEED HAMED, WAHEED HAMED,  
MUFEED HAMED, HISHAM HAMED, and  
PLESSEN ENTERPRISES, INC.,**

*Counterclaim Defendants,*

**Case No.: SX-2012-cv-370**

**ACTION FOR DAMAGES,  
INJUNCTIVE RELIEF AND  
DECLARATORY RELIEF**

JURY TRIAL DEMANDED

Consolidated with

**WALEED HAMED**, as the Executor of the  
Estate of MOHAMMAD HAMED,

*Plaintiff,*

vs.

**UNITED CORPORATION,**

*Defendant.*

**Case No.: SX-2014-CV-287**

**ACTION FOR DECLARATORY  
JUDGMENT**

JURY TRIAL DEMANDED

Consolidated with

**WALEED HAMED**, as the Executor of the  
Estate of MOHAMMAD HAMED,

*Plaintiff,*

vs.

**FATHI YUSUF,**

*Defendant.*

**Case No.: SX-2014-CV-278**

**ACTION FOR DEBT AND  
CONVERSION**

JURY TRIAL DEMANDED

**HAMED'S REPLY AS TO HAMED CLAIM NO. H-9:  
JOHN GAFFNEY'S SALARY, BENEFITS AND BONUS**

On December 19, 2017, Hamed filed his claim designated as H-9: the Partnership should only have to pay 50% of John Gaffney's salary from 2012 to 2016. On December 28, 2017, an opposition was filed in which Yusuf/United said 'he's a great guy, very skilled, and worked 70-80 hours per week.' What they do NOT explain is why the Partnership paid 100% of Mr. Gaffney's **entire** salary for those years. **Yusuf and United paid him not one cent over that time -- yet Yusuf got at least half of his time for those years absolutely free.**<sup>1</sup>

If Mr. Gaffney WAS a full-time, salaried employee of the Partnership as they say now -- why did Yusuf, United and Seaside get TOTALLY FREE accounting for several years? If Mr. Gaffney was solely a Partnership employee, the Partnership should recover the value of that other 50% of his time. It is not **just** the absence of timesheets upon which Hamed's experts relied -- it is the **total absence of any allocation of time for years, of anything to Yusuf/United**. Hamed's expert CPAs reviewed the payment of 100% of Mr. Gaffney's salary by the Partnership (in a report it stated was based on GAAP and applicable accounting rules.) They say what is common sense, that his salary should have been **allocated** between the Partnership and Yusuf/United. See Exhibit 1 [original motion.] The CPAs could not give particulars because there were no timesheets/allocations *at all*. From April 25, 2013 (the date identified in the Winding Up Order) to present, **100%** of his salary and benefits have been charged to the Partnership **with no allocation**. **Yusuf/United does not contest this.**

Nor do Yusuf and United contest the fact that Mr. Gaffney testified that when he was hired and during his employment, United has unrelated, 'non-grocery store' operations and financial transactions—and that, in addition to working on Partnership matters, or that he did

---

<sup>1</sup> Without any timesheets, they NOW make several different statements about what percentage of his time he did work for the Partnership. The only **clear** statement is on page 6 where they state: "Throughout the time the **Partnership was paying 100% of Gaffney's salary**, he worked at least 40-50 hours per week on Partnership matters. . . . If he worked 40-50 hours for the Partnership two things are obvious and Yusuf/United have now admitted: (1) This EXPLICITLY supports the fact that half of his 70-80 hour time he says he worked was going **elsewhere**, and (2) Yusuf/United got that other half of his time **totally free**."

the accounting for those *totally separate* United operations. Thus, a decider of fact cannot order that 100% of his salary be paid by the Partnership—when Yusuf/United admit they received half of his time for 2.5 years TOTALLY FREE. Under all applicable accounting rules and the applicable case law, **there must be some allocation**. The Court entered summary judgment on November 7, 2014 -- but *any* time paid 100% must be allocated.

Moreover importantly, once the Partnership was split up, he then became the **full-time** comptroller for new *United Corporation and New East*—totally separate entities that also had several other operations unrelated to the Partnership. However, despite his being the full-time comptroller and accountant for the New East operation, and several other Yusuf operations, **100% of his salary after April 3, 2014 was charged to the Partnership.**<sup>2</sup> Yusuf paid him **NOTHING**. He was 100% Free. Why should Yusuf get hundreds of thousands of dollars of work for free? A free half-accountant for years.

Again, what is critical here is that Yusuf knew that the allocation between the partnership and separate, United tasks was subject to strong dispute but did not keep records necessary for a *fair* allocation. Under the applicable case law, they can't "create" them now with affidavits and non-contemporaneous statements by counsel in briefs.<sup>3</sup>

---

<sup>2</sup> Nothing shows he was also paid a separate, *additional* full salary by United, Plaza Extra-New East or Seaside. For that matter, there is no evidence of any other salary at all.

<sup>33</sup> Yusuf/United now say, at page 6, "Although Hamed claims that he first raised this issue in 2013. . .he points to no record evidence supporting this claim. Hamed's 2/8/16 Sixth Objection (to Judge Ross) notes that he *had* been objecting to this previously.

Indeed, Yusuf has likewise abused his position as the Liquidating Partner in paying John Gaffney. In this regard, **since the Liquidating Partner was appointed, 100% of John Gaffney's salary has been paid by the partnership, even though Gaffney also does extensive accounting work for Yusuf's new company running the Plaza East store since it was severed into a new "Yusuf owned" business in March of 2015.** See Exhibit 1. While there is no doubt that Gaffney has done extensive work for the partnership during this time period, he has also done work that is totally unrelated to the partnership. See Exhibit 1. However, rather than even attempt to allocate his salary between his partnership work and the work he does for

**Dated:** December 28, 2017



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### **CERTIFICATE OF SERVICE**

This document complies with the page or word limitation set forth in Rule 6-1(e). I hereby certify that on this 28th day of December, 2017, I served a copy of the foregoing by email (via CaseAnywhere ECF) as agreed by the parties, on:

**Hon. Edgar Ross**  
Special Master  
% edgarrossjudge@hotmail.com

**Gregory H. Hodges**  
**Stefan Herpel**  
**Charlotte Perrell**  
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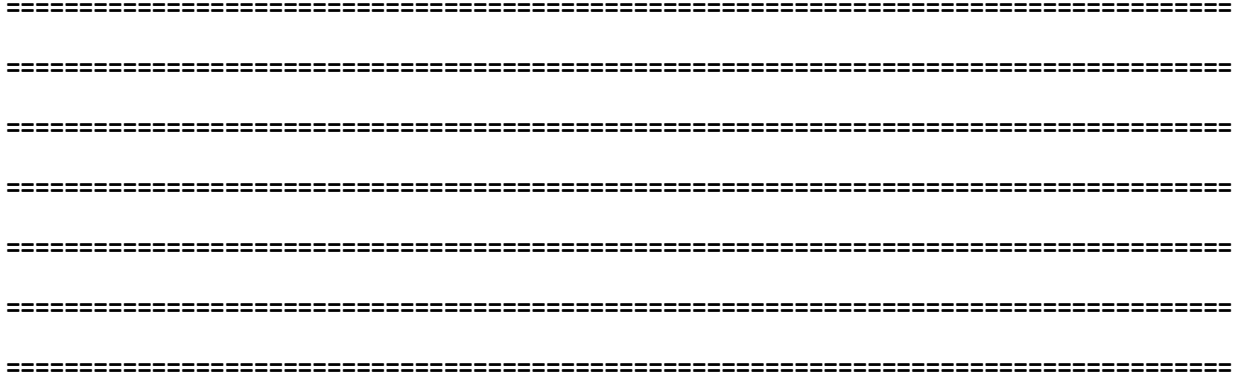
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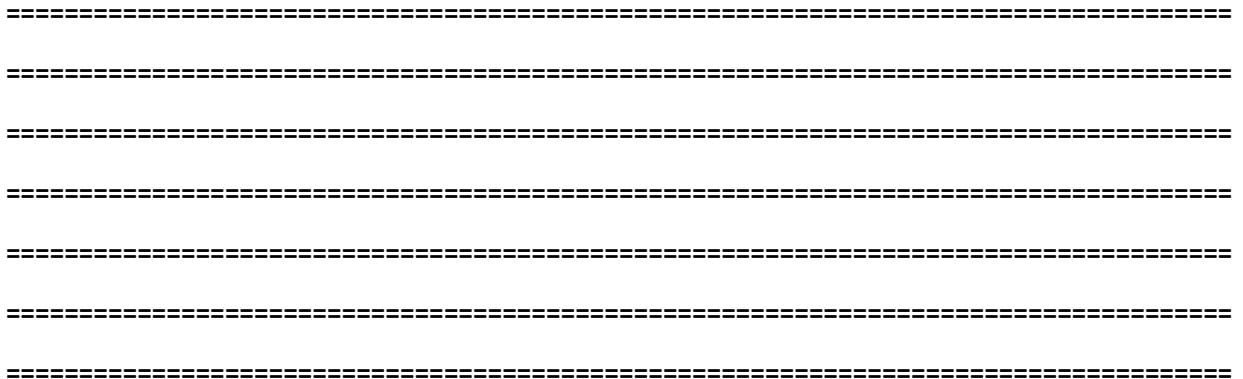


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Yusuf's new store (or other ventures), Yusuf has chosen to pay 100% of his salary from partnership funds. (Emphasis added.)



# **DIVIDER**



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

**WALEED HAMED**, as the Executor of the  
Estate of MOHAMMAD HAMED,

*Plaintiff/Counterclaim Defendant,*

vs.

**FATHI YUSUF** and **UNITED CORPORATION**

*Defendants and Counterclaimants.*

vs.

**WALEED HAMED, WAHEED HAMED,  
MUFEED HAMED, HISHAM HAMED, and  
PLESSEN ENTERPRISES, INC.,**

*Counterclaim Defendants,*

**Case No.: SX-2012-cv-370**

**ACTION FOR DAMAGES,  
INJUNCTIVE RELIEF AND  
DECLARATORY RELIEF**

JURY TRIAL DEMANDED

Consolidated with

**Case No.: SX-2014-CV-287**

**ACTION FOR DECLARATORY  
JUDGMENT**

JURY TRIAL DEMANDED

Consolidated with

**Case No.: SX-2014-CV-278**

**ACTION FOR DEBT AND  
CONVERSION**

JURY TRIAL DEMANDED

---

**WALEED HAMED**, as the Executor of the  
Estate of MOHAMMAD HAMED,

*Plaintiff,*

vs.

**UNITED CORPORATION,**

*Defendant.*

---

**WALEED HAMED**, as the Executor of the  
Estate of MOHAMMAD HAMED,

*Plaintiff,*

vs.

**FATHI YUSUF,**

*Defendant.*

**MOTION AS TO HAMED CLAIMS NOS. H-11 AND H-12:  
TWO CONDENSERS AND 100 SHOPPING CARTS**

Hamed has raised as two of his claims, designated as H-11 and H-12, as follows:

Hamed H-11	100 shopping cards purchased for Plaza Extra-East
Hamed H-12	Replacement of two condensers for Plaza Extra-East

These two claims are somewhat related -- in that they both deal with the issue of the purchase of equipment that arose immediately after **the parties had already agreed on, and stipulated to the value of the equipment for each store.** Because of that stipulation (which was ordered by the Court), purchases made *after* the January 26-27, 2015 stipulation had to be borne by the partner keeping the store in question. However, Yusuf did not honor his agreement (and follow the order) -- but, instead paid for these items with Partnership funds, even though they were clearly purchased *after* the January 26-27, 2015 stipulation. Accordingly, 100% of the purchase price for each item must be returned to the Partnership.

The parties have agreed these would be two of the claims submitted by the Plaintiff on or before January 12, 2018.

#### **1. H-12 - Replacement of two condensers for Plaza Extra-East**

The Court's "Wind-Up" Order divided the two St. Croix stores between Yusuf (who got Plaza East) and Mohammad Hamed (who got the Plaza West store). Judge Brady's Wind-Up Order required a value to be established on the equipment in each store so that the person receiving that store would pay the Partnership to purchase this equipment. See § 8 of the *Final Wind-Up Plan* of January 9, 2015.

Pursuant to that Order, the parties reviewed what was there, figured out what it was worth to each, and then entered into a stipulation that placed that agreed value on that equipment for each store. **Judge Brady approved and ordered it on January 27, 2015.** (See **Exhibit 1**). That stipulation set a value of \$150,000 on the equipment at the Plaza East store, the amount Fathi Yusuf had to pay to purchase.



Yusuf *subsequently* told the Hameds he purchased two *new* condensers for East at a cost of \$59,867.02 exclusive of shipping and installation. (See **Exhibit 2**). However, Hamed's counsel notified Yusuf's counsel that *Yusuf* needed to pay for new equipment not at Plaza East when the values were determined since the stipulation had already been entered by the Court. (See **Exhibit 3**).

Yusuf's counsel then sent an email to the Master asking him to approve this purchase **without copying Hamed's counsel**. The Master, who was not informed of Hamed's objection or informed of the applicable terms of the January 27<sup>th</sup> stipulation in Yusuf's request, approved this purchase—doing so before Hamed's counsel knew the Master had even been contacted. Only after it was a completely "done deal" did Yusuf's counsel then inform Hamed's counsel that the Master had approved the purchase. (See **Exhibit 3**).

While that "initial approval"<sup>1</sup> may have been given, resulting in Partnership funds being used to conditionally pay for these two condensers at that time, under the stipulation and order, Yusuf is *now* required to bear this expense since the parties had *already* stipulated to the value of equipment in the store being purchased from the partnership. To put it another way, Yusuf cannot agree that he must pay \$150,000 to buy the equipment of the Plaza East store from the Partnership and then *subsequently* use Partnership funds to purchase more equipment for the store.<sup>2</sup> As such, Hamed is entitled to the value of the two condensers Yusuf received that was purchased with Partnership funds *after* the value of the store's equipment had been

---

<sup>1</sup> The Special Master said both then and in the December 15, 2017 hearing that his approvals in his past capacity relating to the Liquidating Partner were initial, NOT presumptive, and that he now sits in an adjudicative capacity -- which is particularly useful in situations such as this, where approvals may have been obtained in such a manner.

<sup>2</sup> By analogy, if a buyer agrees to pay \$100 for the seller's furniture, but then uses the seller's funds to buy \$50 in additional furniture, the buyer must now pay \$150, not \$100, to buy the seller's furniture.

established—a total of \$59,867.02, plus statutory interest from the date of payment to Yusuf to the date he reimburses the Partnership.

## **2. H-11 - 100 shopping cards purchased for Plaza Extra-East**

Yusuf also ordered and received 100 shopping carts just before the split, as per the invoice dated February 23, 2015, for \$13,177.00. (See **Exhibit 4**). Again, it is undisputed that Yusuf had the Partnership pay this invoice. (See **Exhibit 5**). However, the purchase of these shopping carts using Partnership funds after the equipment for the store had been agreed upon was improper. Thus, Hamed is entitled to a payment of \$13,177 to equalize this withdrawal, plus statutory interest from the date of payment to Yusuf to the date he reimburses the Partnership.

## **3. Summary**

The parties agreed upon the value of the equipment in the Plaza East store, which Yusuf then agreed to pay the Partnership to purchase this equipment. Because Yusuf received additional equipment with Partnership funds for his store *after* the equipment's value had been established and the stipulation ordered by the Court, Hamed is entitled to an equal payment (or Yusuf must reimburse the Partnership).

**Dated:** January 8, 2018



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### CERTIFICATE OF SERVICE

I hereby certify that on this 8th day of January, 2018, I served a copy of the foregoing by email, as agreed by the parties, on:

**Hon. Edgar Ross**

Special Master  
% edgarrossjudge@hotmail.com

**Gregory H. Hodges**

**Stefan Herpel**  
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Carl J. Hamed

### CERTIFICATE OF COMPLIANCE WITH RULE 6-1(e)

This document complies with the page or word limitation set forth in Rule 6-1(e).



Carl J. Hamed

# **Exhibit 1**

IN THE SUPERIOR COURT OF THE VIRGIN ISLANDS

DIVISION OF ST. CROIX

MOHAMMED HAMED by his authorized agent WALEED HAMED  
Plaintiff )  
Vs. )  
FATHI YUSUF and UNITED )  
CORPORATION, ET AL Defendant )

CASE NO. SX-12-CV-370  
ACTION FOR: DAMAGES; ET AL

NOTICE  
OF  
ENTRY OF JUDGMENT/ORDER

TO: JOEL HOLT, ESQ.; CARL HARTMANN III, Esquire HON. EDGAR ROSS (edgarrossjudge@hotmail.com)  
NIZAR DEWOOD, ESQ.; GREGORY HODGES, Esquire  
MARK ECKARD, ESQ.; JEFFREY MOORHEAD, Esquire

Please take notice that on JANUARY 27, 2015 Order was  
entered by this Court in the above-entitled matter.

Dated: January 27, 2015

ESTRELLA H. GEORGE (ACTING)

Clerk of the Superior Court



By: IRIS D. CINTRON

COURT CLERK II

EXHIBIT  
1

DAB

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

15 JAN 26 AM 1:19

STIPULATION

Comes now the parties, by counsel, and hereby stipulate, with the consent and approval of the Master, to amend the Court's Order Adopting Final Wind Up Plan, **which stipulation is expressly subject to Court approval**, as follows:

1. The Parties stipulate to the evaluation of the equipment at its depreciated value in each of the three stores, as provided in items #1, #2 and #3 of Section 8 of the Plan, as follows:  
 Plaza East-\$150,000  
 Plaza West-\$350,000  
 Plaza Tutu Park-\$200,000
2. The Parties agree that there is no need to do an appraisal of the Plaza Tutu Park leasehold interest, as provided in item #2 of Section 8 of the Plan, although the

**Stipulation**  
**Page 2**

Parties will still do an inventory of the store's merchandise at its landed cost, as the parties will bid on this store (as ordered by the Court) without regard to its appraised value.

3. The Parties agree that the litigation entitled "United Corporation v Tutu Park Ltd., Civ. No. ST-97-CV-997 should be added to the definition of the "Tutu Park Litigation" in item #2 of Section 8 of the Plan and treated as property of that store under the same terms and conditions of the other referenced litigation (United Corporation v. Tutu Park Limited and P.I.D., Inc., Civ. No. ST-01-CV-361).
4. That item #5 in Section 8 of the Plan shall be amended by replacing that language with the following language:

The parties agreed that the "Plaza Extra" trade name for each of the three stores shall be transferred with each store to the Partner who purchases the partnership assets associated with that location. United Corporation will sign whatever paperwork is needed to effectuate a trade name transfer. No party will thereafter be able to use the name Plaza Extra at any other location.
5. That the effective date of the Court's Order Adopting Final Wind Up Plan shall be changed from ten(10) days following the date of the original Order to January 30, 2015.

The Parties respectfully request the Court to approve this stipulation forthwith so the foregoing terms replace the referenced terms in the Court's Order Adopting Final Wind Up Plan dated January 7, 2015, with all other terms remaining unchanged and subject to the rights of any party to appeal.

Stipulation  
Page 3

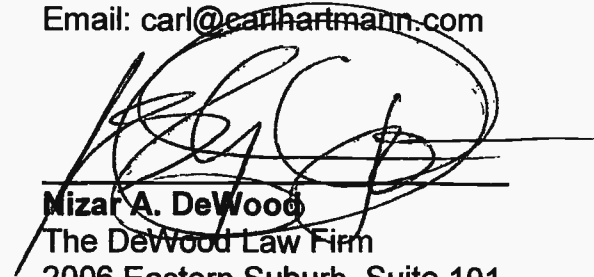
Dated: January 26, 2015



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Counsel for Defendants

### CERTIFICATE OF SERVICE

I hereby certify that on this 26th day of January, 2015, I served a copy of the foregoing by email, as agreed by the parties, on:

**Hon. Edgar Ross**  
Special Master  
[edgarrossjudge@hotmail.com](mailto:edgarrossjudge@hotmail.com)



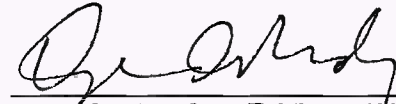
Stipulation  
Page 4

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

**Jeffrey B. C. Moorhead**  
CRT Brow Building  
1132 King Street, Suite 3  
Christiansted, VI 00820  
email : jeffreymlaw @yahoo.com



Approved and So Ordered this 27 day of January, 2015

  
**DOUGLAS A. BRADY, JUDGE**  
Judge of the Superior Court

ATTEST:  
ESTRELLA GEORGE  
Acting Clerk of the Court

By:   
Court Clerk Supervisor

1/27/15

CERTIFIED TO BE A TRUE COPY  
This 27<sup>th</sup> day of Jan 20 15

CLERK OF THE COURT

By:  Court Clerk II

# **Exhibit 2**

**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**

**DECLARATION OF WALEED HAMED**

I, Waleed Hamed a/k/a Wally Hamed, declare, pursuant to 28 U.S.C. Section 1746, as follows:

1. I have personal knowledge of the facts set forth herein.
2. After the parties entered into the January 30<sup>th</sup> stipulation approved by this Court setting the value of the equipment at the Plaza East store for the purpose of purchase by Fathi Yusuf at \$150,000, Yusuf subsequently notified the Hameds that he had purchased two new condenser units for the Plaza East store at a total cost of \$59,867.02 exclusive of shipping and installation.
3. However, the Hamed manager for Plaza Extra East signed the check to pay for these new condensers at the instruction of my father's lawyer.

I declare under penalty of perjury that the foregoing is true and correct.

**Dated:** February 9, 2015

  
\_\_\_\_\_  
**Waleed Hamed a/k/a Wally Hamed**

**EXHIBIT  
2**



**HAMD626165**

# **Exhibit 3**

**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**, )  
)  
*Defendants/Counterclaimants*, )

vs. )

**ACTION FOR DAMAGES  
INJUNCTIVE RELIEF AND  
DECLARATORY RELIEF**

**WALEED HAMED, WAHEED  
HAMED, MUFEED HAMED,  
HISHAM HAMED,**  
and **PLESSEN ENTERPRISES, INC.**, )  
)  
*Counterclaim Defendants.* )

**JURY TRIAL DEMANDED**

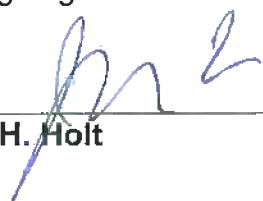
**DECLARATION OF JOEL H. HOLT**

I, Joel H. Holt, declare, pursuant to 28 U.S.C. Section 1746, as follows:

1. I have personal knowledge of the facts set forth herein.
2. After my client notified me that Fathi Yusuf has purchased new equipment for the Plaza East store, I notified Yusuf's counsel by email that Yusuf needed to pay for this new purchase of equipment for Plaza East since the stipulation setting the value of the equipment at Plaza East at \$150,000 had already been entered by the Court. See **Exhibit A**.
3. After I sent this email, Yusuf's counsel then sent an ex parte email to the Master asking him to approve this purchase. The Master approved this purchase before I knew he had even been contacted. Yusuf's counsel then informed me that the Master had approved the purchase. See **Exhibit B**.

I declare under penalty of perjury that the foregoing is true and correct.

**Dated:** February 9, 2015

  
\_\_\_\_\_  
**Joel H. Holt**

**EXHIBIT  
3**

~~**EXHIBIT  
2**~~

Stump No. 5208

**From:** Joel Holt <holtvi@aol.com>  
**To:** ghodges <ghodges@dtflaw.com>  
**Cc:** dewoodlaw <dewoodlaw@gmail.com>; carl <carl@carlhartmann.com>; kimjapinga <kimjapinga@gmail.com>  
**Subject:** Re: Equipment Values  
**Date:** Wed, Feb 4, 2015 11:12 am ↩

Greg--these values were agreed to as being the depreciated value of the equipment in the three stores. As we did not change the method of payment in the Liquidation Plan, all payments are to be made to the partnership, which I presume will be deposited into the Liquidated Expense Account. I am glad to discuss this further if you read the Plan to state otherwise. ↩

I should note that these figures were set as of the date of the stipulation, so if any new equipment is received in any store, it will have to be paid in full to the vendor by the partner who is receiving the store in question (i.e., not from partnership funds).

**REDACTED**

Joel H. Holt, Esq.  
2132 Company Street  
Christiansted, St. Croix  
U.S. Virgin Islands 00820  
(340) 773-8709

-----Original Message-----

**From:** Gregory H. Hodges <ghodges@dtflaw.com>  
**To:** 'Joel Holt' <holtvi@aol.com>  
**Cc:** Nizar A. DeWood (dewoodlaw@gmail.com) <dewoodlaw@gmail.com>  
**Sent:** Mon, Feb 2, 2015 4:31 pm  
**Subject:** Equipment Values

Joel,

Further to our telephone conversation last week, you were going to let me know whether your client will agree that the values reflected in item 1 of the 1/26/15 stipulation represent the amounts that would be paid by the purchasing partner to the non-purchasing partner for his 50% interest in the equipment. Please advise.

Gregory H. Hodges  
Dudley, Topper and Feuerzeig, LLP  
Law House, 1000 Frederiksberg Gade



**From:** Gregory H. Hodges <ghodges@dtflaw.com>  
**To:** 'Joel Holt' <holtvi@aol.com>  
**Cc:** dewoodlaw <dewoodlaw@gmail.com>; carl <carl@carlhartmann.com>; kimjapinga <kimjapinga@gmail.com>  
**Subject:** RE: Equipment Values  
**Date:** Thu, Feb 5, 2015 10:27 am ←

Joel,

Your position regarding the equipment values is noted. Assuming your comment re "new equipment" relates to the condensers purchased from Associated Grocers for East, I disagree with your position. Attached is an email from Judge Ross approving the payment of the condensers. Until the accounts required by the Final Wind Up Plan can be established, we ask your client to keep in mind the provisions of § 3 and 4 of the Plan and to cooperate with the payment of debts the Liquidating Partner determines should be paid with the approval of the Master. ←

Mr. Yusuf is willing to consider the stipulation you propose below. Will you prepare the proposed stipulation for review?

Regarding the bidding for the STT store, if the Court does not stay the provisions re reimbursement of legal costs, the parties at least need to know what the costs are before they can intelligently bid. I have asked Jack Dema and Carl Beckstedt for that information but have not yet received it. If your client has that information, I ask you to share it. Mr. Yusuf believes the minimum increments should be \$200,000, with a 5 minute maximum time between bids.

Gregory H. Hodges  
Dudley, Topper and Feuerzeig, LLP  
Law House, 1000 Frederiksberg Gade  
St. Thomas, VI 00802  
Direct: (340) 715-4405  
Fax: (340) 715-4400  
Web: [www.DTFLaw.com](http://www.DTFLaw.com)

Member

**LexMundi**  
World Ready

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**From:** Joel Holt [<mailto:holtvi@aol.com>]  
**Sent:** Wednesday, February 04, 2015 11:12 AM  
**To:** Gregory H. Hodges  
**Cc:** [dewoodlaw@gmail.com](mailto:dewoodlaw@gmail.com); [carl@carlhartmann.com](mailto:carl@carlhartmann.com); [kimjapinga@gmail.com](mailto:kimjapinga@gmail.com)





Fax: (340) 715-4400  
 Web: [www.DTFLaw.com](http://www.DTFLaw.com)

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## Attached Message

From Edgar Ross <edgarrossjudge@hotmail.com>   
 To Gregory H. Hodges <ghodges@dtflaw.com>  
 Subject RE: AG Invoice For \$151,713.52  
 Date Thu, 5 Feb 2015 07:45:39 -0400 

I approve the payment for the condensers.

Sent via the Samsung GALAXY S®4, an AT&T 4G LTE smartphone

----- Original message -----

From: "Gregory H. Hodges" <ghodges@dtflaw.com>  
 Date: 02/04/2015 3:39 PM (GMT-04:00)   
 To: 'Edgar Ross' <edgarrossjudge@hotmail.com>  
 Cc: fathiyusuf@yahoo.com, "Nizar A. DeWood (dewoodlaw@gmail.com)" <dewoodlaw@gmail.com>  
 Subject: AG Invoice For \$151,713.52

Judge Ross,

Mr. Yusuf, as Liquidating Partner, proposes to pay Associated Grocers of Florida ("AG") \$151,731.52 for the attached group of invoices for supplies and equipment for Plaza Extra-East. AG has notified Plaza Extra that late payment will result in a finance charge of 8.25% (or \$12,517.93) if payment is not received immediately.

The hold up has resulted from Mufeed's refusal to authorize the payment of \$59,867.02 for condensers ordered in December to replace old condensers that refrigeration technicians have advised should have been replaced long ago. The invoice for the condensers is at page 7 of 14 in the attached.

By way of background, in September 2013, East ordered 2 condensers to replace 2 of its 4 old condensers after a failure caused the loss of approximately \$60,000 in frozen goods. Although the technicians advised that all the condensers should be replaced, only 2 were ordered at the time. Based on the advise of these same technicians, Yusuf ordered 2 more replacement condensers in early December, which were recently delivered and invoiced for \$59,867.02. I am informed that within the last weeks, one of the older condensers failed causing oil/gas leaks and smoke to fill the store.

Given the clear language of §3 of the Plan, Mr. Yusuf feels strongly that the entire AG invoice should be promptly paid



to avoid the substantial finance charge and the potential for a significant condenser failure that could result in losses exceeding the cost of the replacement equipment, which should have been purchased long ago. Needless to say, Mr. Hamed claims that Mr. Yusuf should be required to pay for the condensers out of his own money since he will end up with East under the Wind Up Plan. Mr. Yusuf is unwilling to do so because this is clearly an appropriate partnership or wind up expense.

Please let us know whether you approve the prompt payment of the AG invoice.

Regards,

Gregory H. Hodges  
Dudley, Topper and Feuerzeig, LLP  
Law House, 1000 Frederiksberg Gade  
St. Thomas, VI 00802  
Direct: (340) 715-4405  
Fax: (340) 715-4400  
Web: [www.DTFLaw.com](http://www.DTFLaw.com)

Member

**LexMundi**  
World Ready

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# **Exhibit 4**



# **Exhibit 5**

2015-0930-02: This is an offset to a paid item by Old East before the split that the Hameds objected to and that Judge Ross initially charged back to United Corp. Documentation previously provided is on file. This was a late entry made following a meeting with Judge Ross on 10/1/15. Instead of deleting the original credit memo, this accounting entry was made to provide visibility.

Purchases/Receive Inventory

File Edit Go To Window Help

Close New List Save Copy Delete Row Serial No Note Journal Event Layout Reports Attach Help

Vendor ID: UNITED CORPORATION

Purchase

Remit to: UNITED CORPORATION  
 PO BOX 763  
 4C & D SION FARM  
 CHRISTIANSTED, VI 00821

Ship to:  
 United Corporation East (Pship)  
 P.O. Box 763  
 Christiansted  
 St. Croix VI 00821  
 Country

\*Invoice date: 9/30/15  
 \*Due date: Mar 31, 2015  
 Invoice No.: 2015-0930-02  
 Drop ship  
 Waiting on bill  
[View related transactions](#)

Customer SO No. Customer Invoice No. Terms Ship via A/P account  
 Due at end of Month UPS Red 20000

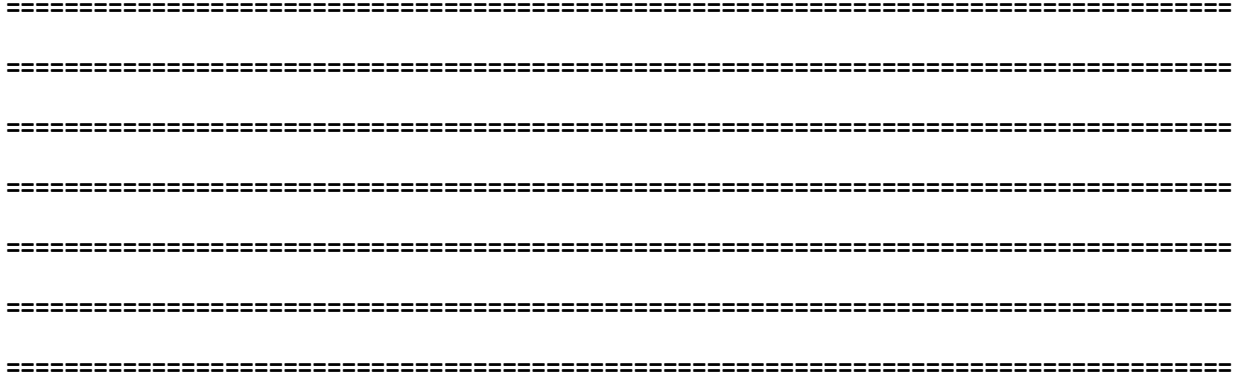
Apply to Purchase Order: 0.00 Apply to Purchases: 13,117.00

Quantity	Item	U/M	Description	GL Account	Unit Price	Amount	Job
			REVERSE 2015-0331-CM02 PER JUDGE ROSS MTG ON 10/1/15 Repairs & Maintenance Expense	66700	0.00	13,117.00	

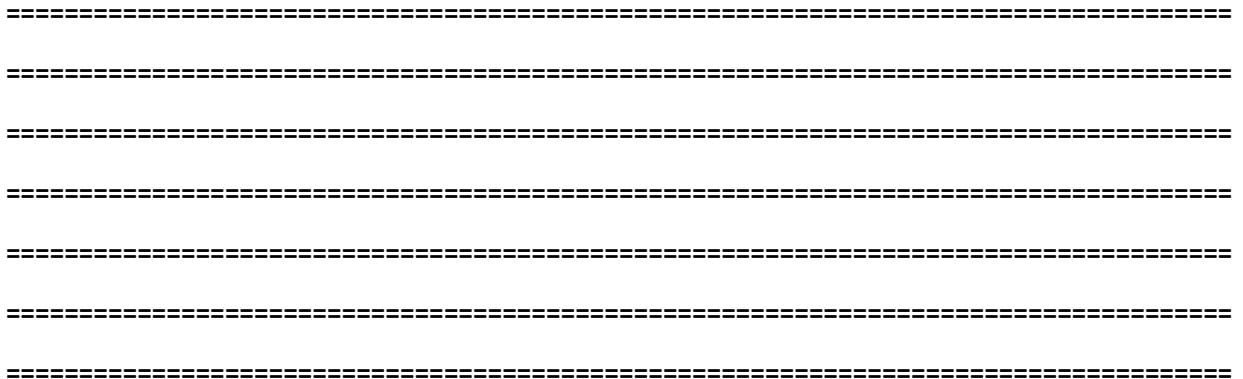
Other payments and credits: 13,117.00 13,117.00 Invoice total  
 Amount paid at purchase: 0.00 0.00 Net due

Vendor balance on Mar 30, 2015 91,645.99

EXHIBIT  
5



# **DIVIDER**



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

**WALEED HAMED**, as the Executor of the  
Estate of MOHAMMAD HAMED,

*Plaintiff/Counterclaim Defendant,*

vs.

**FATHI YUSUF** and **UNITED CORPORATION**

*Defendants and Counterclaimants.*

vs.

**WALEED HAMED, WAHEED HAMED,  
MUFEED HAMED, HISHAM HAMED, and  
PLESSEN ENTERPRISES, INC.,**

*Counterclaim Defendants,*

---

**WALEED HAMED**, as the Executor of the  
Estate of MOHAMMAD HAMED,

*Plaintiff,*

vs.

**UNITED CORPORATION,**

*Defendant.*

---

**WALEED HAMED**, as the Executor of the  
Estate of MOHAMMAD HAMED,

*Plaintiff,*

vs.

**FATHI YUSUF,**

*Defendant.*

---

**Case No.: SX-2012-cv-370**

**ACTION FOR DAMAGES,  
INJUNCTIVE RELIEF AND  
DECLARATORY RELIEF**

JURY TRIAL DEMANDED

Consolidated with

**Case No.: SX-2014-CV-287**

**ACTION FOR DECLARATORY  
JUDGMENT**

JURY TRIAL DEMANDED

Consolidated with

**Case No.: SX-2014-CV-278**

**ACTION FOR DEBT AND  
CONVERSION**

JURY TRIAL DEMANDED

**HAMED'S MOTION AS TO HAMED CLAIM NO. H-10:  
MARY GONZALES' POST-SPLIT BONUS**

This claim involves a 'post-split' retirement 'bonus' Fathi Yusuf decided to pay from Partnership assets to a person who was no longer an employee of the Partnership when Mr. Yusuf and the employee agreed on the retirement and bonus. The parties have agreed this would be one of the claims submitted by the Plaintiff prior to January 12, 2018.

Mary Gonzales was an employee of the Hamed-Yusuf Partnership. When the Partnership stores were split by the Order of this Court, employees were given the right to go to work for either the Yusufs or the Hameds. Mary Gonzales elected to remain at Plaza East and work for the store now owned by Fathi Yusuf.

The Plaza East store was transferred to Yusuf on March 9, 2015. See **Exhibit 1**. **After that date, Gonzales was on that store's payroll, as she was not an employee of the Partnership.** A decision was subsequently made in **April of 2015** by Mr. Yusuf and Mary Gonzales that she should retire, with her to receive \$28,899.28 as a retirement "bonus". See **Exhibit 2**. The only thing that makes this unique is that Yusuf then charged the \$28,899.28 **back to the Partnership**, even though Gonzales was his employee when it was decided she should retire, and not an employee of the Partnership.

Thereafter, Mr. Yusuf used Partnership funds to pay this bonus, which is not disputed. However, as the decision to retire was made after she was an employee of New Plaza East, owned by Yusuf, this is not a Partnership obligation. The Hameds were not consulted. **The Hameds paid such retirement benefits to the employees who went to the West store and subsequently retired.** By Court Order, Yusuf has to pay for Gonzales' post-split bonus from his funds, not those of the Partnership. As such, Hamed is entitled to an equal distribution of \$28,899.28 to balance out Yusuf's improper payment to his employee from Partnership funds.



The only other way to decide this is to follow the regular and ordinary accounting rules (GAAP) -- as set out in the Expert CPA's report. They stated (see **Exhibit 3**):

**Item 297** -- Retirement bonus paid to Mary Gonzales

*Summary Description of Issue Identified:*

Mary Gonzales was paid a retirement bonus with Partnership funds after the stores were transferred. At the time the bonus was paid, Mary Gonzales was an employee of the new Plaza Extra-East.

*Work performed:*

We interviewed the Hameds regarding payments to Mary Gonzales. We were advised that Mary Gonzales retired after the Plaza Extra East store was transferred to the Yusufs, making this is an expense for the new Plaza Extra-East, not the Partnership. We also provided John Gaffney a query dated February 15, 2016 (see Attachment VII) to identify where Mary Gonzales' bonus payment is reflected on the general ledger and to provide the canceled check for Mary Gonzales' bonus payment, her last payroll check and her 2015 W-2. In addition, we reviewed the general ledgers from 2012 to present provided by John Gaffney and Exhibit 297-a, which was provided by John Gaffney.

*Gaffney's response:*

John Gaffney did not respond to our request.

*Opinion as to the Issue Identified:*

According to the general ledger provided by John Gaffney, the date of the bonus payment was April 1, 2015 and was recorded in the Partnership Plaza Extra East general ledger. The Plaza Extra East store was transferred to Fathi Yusuf on March 9, 2015. The work performed and documentation provided was sufficient and reliable audit evidence to conclude that this payment should be reimbursed to the Partnership to satisfy ourselves of management's assertions: 1. Completeness as described in AU-C 315.A128.

The amount of the claim is \$28,899.28 [plus interest at the statutory rate].

In short, pursuant to the Order transferring the Plaza East store to Fathi Yusuf, who then employed Mary Gonzales, or under GAAP, this amount is owed to Hamed.

**Dated:** January 9, 2018



**Carl J. Hartmann III, Esq.**  
*Co-Counsel for Plaintiff*  
5000 Estate Coakley Bay, L6  
Christiansted, VI 00820  
Email: carl@carlhartmann.com  
Tele: (340) 719-8941

**Joel H. Holt, Esq.**  
*Counsel for Plaintiff*  
Law Offices of Joel H. Holt  
2132 Company Street,  
Christiansted, VI 00820  
Email: holtvi@aol.com  
Tele: (340) 773-8709  
Fax: (340) 773-867

### **CERTIFICATE OF SERVICE**

I hereby certify that on this 9th day of January, 2018, I served a copy of the foregoing by email, as agreed by the parties, on:

**Hon. Edgar Ross**  
Special Master  
% edgarrossjudge@hotmail.com

**Gregory H. Hodges**  
**Stefan Herpel**  
**Charlotte Perrell**  
Law House, 10000 Frederiksberg Gade  
P.O. Box 756  
St. Thomas, VI 00802  
ghodges@dtflaw.com

**Mark W. Eckard**  
Hamm, Eckard, LLP  
5030 Anchor Way  
Christiansted, VI 00820  
mark@markeckard.com

**Jeffrey B. C. Moorhead**  
CRT Brow Building  
1132 King Street, Suite 3  
Christiansted, VI 00820  
jeffreymlaw@yahoo.com



### **CERTIFICATE OF COMPLIANCE WITH RULE 6-1(e)**

This document complies with the page or word limitation set forth in Rule 6-1(e).



# Exhibit 1

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

15 MAR -6 PM 39

MOHAMMED HAMED, by his authorized agent ) WALEED HAMED, ) ) Plaintiff/Counterclaim Defendant, ) ) v. ) ) FATHI YUSUF and UNITED CORPORATION, ) ) Defendants/Counterclaimants, ) ) v. ) ) WALEED HAMED, WAHEED HAMED, ) MUFEED HAMED, HISHAM HAMED, and ) PLESSEN ENTERPRISES, INC., ) ) <u>Counterclaim Defendants.</u> )	)	Case No. SX-12-CV-370  Action for Damages, Injunctive Relief and Declaratory Relief
--	---	---

**MASTER’S ORDER REGARDING TRANSFER OF OWNERSHIP OF  
PLAZA EXTRA EAST**

~~WHEREAS, on September 18, 2014, the undersigned, Honorable Edgar D. Ross (the “Master”), was appointed by the Court to serve as Judicial Master in the above-captioned civil action to direct and oversee the winding up of the Hamed-Yusuf Partnership *also known as* the Plaza Extra Partnership (the “Appointment Order”), a copy of which is attached as **Exhibit 1**;~~

WHEREAS, on January 7, 2015, the Court issued its Order Adopting Final Wind Up Plan (“Wind Up Order”) providing for the transfer of the business known as Plaza Extra East:

**Plaza Extra East**

~~Yusuf will purchase from the Partnership the following elements of the existing business operation known as Plaza Extra East: inventory at one half of the landed cost and the equipment at its depreciated value, as mutually determined by the Partners. . . . Upon payment for the inventory, and upon payment (or auction and distribution of the proceeds) for the equipment, Yusuf will assume full ownership and control and may continue to operate Plaza Extra East without any further involvement of Hamed, Hamed’s sons, and free and clear of any claims or interests of Hamed;~~



WHEREAS, Yusuf has fully complied with and satisfied the foregoing directive of the Wind Up Order such that as of 12:01 AM on March 9, 2015, Yusuf will lawfully <sup>15 MAR</sup> ~~has sole right~~ title, interest, ownership and control of the business known as Plaza Extra East to the exclusion of all other persons and entities that may have previously been involved in the operation of Plaza Extra East;

~~WHEREAS, the parties have also stipulated that this business can operate using the trade name "Plaza Extra East";~~

WHEREAS, the Court and Master have been informed that Yusuf's rights, privileges and powers regarding Plaza Extra East will be exercised by United Corporation, a duly formed and existing Virgin Islands corporation, using the trade name "Plaza Extra East";

WHEREAS, Plaza Extra East is authorized by the United States Department of Agriculture ("USDA") to accept and transact payments through the USDA Supplemental Nutrition Assistance Program ("SNAP");

WHEREAS, Plaza Extra East is a SNAP superstore, does substantial SNAP transactions and is located in an area of high SNAP participant need;

WHEREAS, Plaza Extra East participates in the Virgin Islands Department of Health Special Supplemental Nutrition Program for Women, Infants, and Children ("WIC") and accepts WIC checks and WIC Cash Value Checks;

WHEREAS, Plaza Extra East is located in an impoverished rural area and significant hardship would ensue to the communities surrounding Plaza Extra East in the event that Plaza Extra East was unable to serve the public and/or accept and transact SNAP payments, WIC checks and WIC Cash Value Checks;

WHEREAS, Plaza Extra East employs a significant number of St. Croix residents who ~~depend on their jobs at Plaza Extra East for their livelihoods and to support their families;~~

~~WHEREAS, it is essential that ownership, control and operation of Plaza Extra East be transferred in a smooth and efficient manner in order to prevent cessation of services to the communities surrounding Plaza Extra East and prevent employment interruption; and~~

WHEREAS, it is therefore necessary that all governmental agencies, persons and businesses doing business with Plaza Extra East act with all deliberate speed to recognize, document and act in accordance with the directives of the Wind Up Order and this Order.

**NOW THEREFORE, THE MASTER HERBY DECLARES AS FOLLOWS:**

**Recognition of Fathi Yusuf's Full and Sole Ownership of Plaza Extra East**

1. Yusuf has lawfully and rightfully assumed full and sole ownership and control and may continue to operate Plaza Extra East without any further involvement of any other person or entity, using the trade name "Plaza Extra East."

2. All persons, entities and governmental agencies are hereby directed to recognize Fathi Yusuf as the operator of Plaza East through United Corporation and to, assist in this transition to the fullest extent permitted by law and regulation with all matters related to preparation and issuance of documentation necessary to reflect United Corporation's operation of Plaza Extra East.

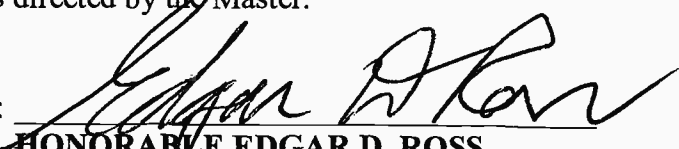
**Further Information**

3. Any and all persons having questions or concerns regarding this Order shall contact **Gregory Hodges, Esquire, at 340.774.4422**, who shall, upon receipt of any questions or concerns regarding this Order, (i) forthwith inform the Master of all such questions or concerns and (ii) respond to all such questions or concerns as directed by the Master.

Dated:

~~March~~  
6, 2015  
EDR

By:

  
HONORABLE EDGAR D. ROSS  
Judicial Master

# **Exhibit 2**

2015-0401-01: This is retirement pay to Mary Gonzalez who worked for Plaza East for over 25 years. Documentation previously provided is on file.

Purchases/Receive Inventory

File Edit Go To Window Help

Close New List Save Copy Delete Row Serial No Note Journal Event Layout Reports Attach Help

Vendor ID: UNITED CORPORATION

Remit to: **UNITED CORPORATION**  
 PO BOX 763  
 4C & D SION FARM  
 CHRISTIANSTED, VI 00821

Ship to:  
 United Corporation East (Pship)  
 P.O. Box 763  
 Christiansted  
 St. Croix VI 00821  
 Country

\*Invoice date: 7/2/15  
 \*Due date: Apr 30, 2015  
 Invoice No.: 2015-0401-01  
 Drop ship  
 Waiting on bill  
[View related transactions](#)

**PAID IN FULL**  
 Sep 30, 2015

Customer SO No. Customer invoice No. Terms Ship via A/P account  
 Due at end of Month UPS Red 20000

Apply to Purchase Order: 0.00 **Apply to Purchases: 28,899.28**

Quantity	Item	U/M	Description	GL Account	Unit Price	Amount	Job
			MARY GONZALEZ 4/1/15 RETIREMENT SETTLEMENT Wages - Managers	69200	0.00	26,659.09	
			MARY GONZALEZ 4/1/15 RETIREMENT SETTLEMENT Taxes - Empr FICA & Medicare	67200	0.00	1,619.70	
			MARY GONZALEZ 4/1/15 RETIREMENT SETTLEMENT Taxes - Empr FICA & Medicare	67200	0.00	378.80	
			MARY GONZALEZ 4/1/15 RETIREMENT SETTLEMENT Taxes - Empr FUTA Expense	67400	0.00	0.91	
			MARY GONZALEZ 4/1/15 RETIREMENT SETTLEMENT Taxes - Empr VI Unemp	67500	0.00	240.78	

Other payments and credits: 28,899.28 28,899.28 Invoice total  
 Amount paid at purchase: 0.00 0.00 Net due

Vendor balance on Apr 1, 2015 48,264.39



# **Exhibit 3**

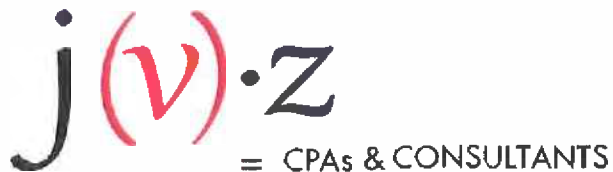
**Engagement Report**  
Joel H. Holt, Esq.  
c/o Plaza Supermarket Partnership and Subsidiaries

**EXHIBIT**  
**3**

~~Exhibit:~~

~~B-2~~

JVZ-000001



5001 Chandler's Wharf  
P.O. Box 24390 GBS  
Christiansted, VI 00824  
T. 340-719-8261  
F. 340-719-2775  
www.jvz-cpa.com

September 28, 2016

Joel H. Holt, Esq.  
2132 Company Street  
Christiansted, VI 00820

Re: Mohammad Hamed, et.al v. Fathi Yusuf and United Corporation

Dear Attorney Holt:

Jackson Vizcaino Zomerfeld, LLP (JVZ or we) is a licensed Certified Public Accountant firm in the U.S. Virgin Islands.

You have retained us to render an expert opinion in the litigation captioned Hamed v. Yusuf et al., docket number Civ. No. SX-12-CV-370. Attached is our analysis of the financial accounting for January 1, 2012 through June 30, 2016 as per Fathi Yusuf.

For the Firm

JACKSON, VIZCAINO ZOMERFELD, LLP

MEMBERS OF:

American Institute of Certified Public Accountants  
Florida Institute of Certified Public Accountants  
National Association of Certified Valuation Analysts  
Texas State board of Public Accountancy  
Virgin Islands Board of Accountancy

The Carribean's full-service accounting firm

JVZ-000002

## ATTACHMENT IV - Analysis

~~*Opinion as to the Issue Identified:*~~

~~We did not find any sufficient reliable audit evidence, nor were we provided any audit evidence from John Gaffney, that these items removed were properly recorded and reimbursed. As such, we are not able to satisfy ourselves of the following management assertions: 1. Completeness, as described in AU-C 315.A128.~~

~~Due to the lack of sufficient information, further investigation through the legal process of discovery is needed.~~

---

### **Item 297 – Retirement bonus paid to Mary Gonzales**

*Summary Description of Issue Identified:*

Mary Gonzales was paid a retirement bonus with Partnership funds after the stores were transferred. At the time the bonus was paid, Mary Gonzales was an employee of the new Plaza Extra-East.

*Work performed:*

We interviewed the Hameds regarding payments to Mary Gonzales. We were advised that Mary Gonzales retired after the Plaza Extra East store was transferred to the Yusufs, making this is an expense for the new Plaza Extra-East, not the Partnership. We also provided John Gaffney a query dated February 15, 2016 (see Attachment VII) to identify where Mary Gonzales' bonus payment is reflected on the general ledger and to provide the canceled check for Mary Gonzales' bonus payment, her last payroll check and her 2015 W-2. In addition, we reviewed the general ledgers from 2012 to present provided by John Gaffney and Exhibit 297-a, which was provided by John Gaffney.

*Gaffney's response:*

John Gaffney did not respond to our request.

*Opinion as to the Issue Identified:*

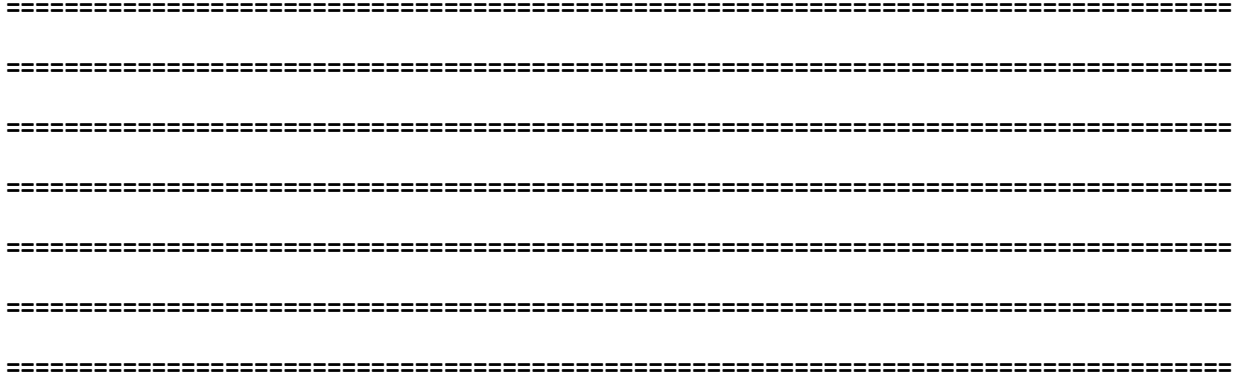
According to the general ledger provided by John Gaffney, the date of the bonus payment was April 1, 2015 and was recorded in the Partnership Plaza Extra East general ledger. The Plaza Extra East store was transferred to Fathi Yusuf on March 9, 2015. The work performed and documentation provided was sufficient and reliable audit evidence to conclude that this payment should be reimbursed to the Partnership to satisfy ourselves of management's assertions: 1. Completeness as described in AU-C 315.A128.

The total amount of the claim is \$28,899.28.

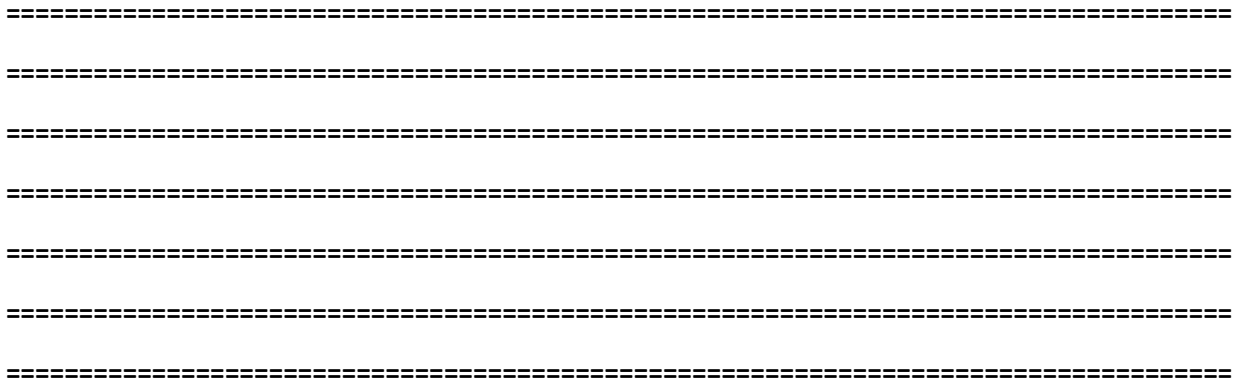
---

### ~~**Item 299 – 2015 Workers' Compensation Payment**~~

~~*Summary Description of Issue Identified:*~~



# **DIVIDER**



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

**WALEED HAMED**, as the Executor of the  
Estate of MOHAMMAD HAMED,

*Plaintiff/Counterclaim Defendant,*

vs.

**FATHI YUSUF** and **UNITED CORPORATION**

*Defendants and Counterclaimants.*

vs.

**WALEED HAMED, WAHEED HAMED,  
MUFEED HAMED, HISHAM HAMED, and  
PLESSEN ENTERPRISES, INC.,**

*Counterclaim Defendants,*

**Case No.: SX-2012-cv-370**

**ACTION FOR DAMAGES,  
INJUNCTIVE RELIEF AND  
DECLARATORY RELIEF**

JURY TRIAL DEMANDED

Consolidated with

**Case No.: SX-2014-CV-287**

**ACTION FOR DECLARATORY  
JUDGMENT**

JURY TRIAL DEMANDED

Consolidated with

**Case No.: SX-2014-CV-278**

**ACTION FOR DEBT AND  
CONVERSION**

JURY TRIAL DEMANDED

---

**WALEED HAMED**, as the Executor of the  
Estate of MOHAMMAD HAMED,

*Plaintiff,*

vs.

**UNITED CORPORATION,**

*Defendant.*

---

**WALEED HAMED**, as the Executor of the  
Estate of MOHAMMAD HAMED,

*Plaintiff,*

vs.

**FATHI YUSUF,**

*Defendant.*

**HAMED'S MOTION AS TO HIS CLAIMS NOS. H-38 AND H-123:  
PAYMENTS TO DUDLEY, TOPPER AND FEUERZEIG LAW FIRM**

Hamed has raised as two of his claims, designated as H-38 and H-123, whether the Partnership should have had to pay for legal fees to Dudley, Topper and Feurerzeig LLP (“DTF”). These fees were charged to the Partnership for representation of the Liquidating Partner, who is also DTF's individual client in the current action against Hamed. The parties have agreed this would be one of the claims submitted by the Plaintiff before January 12, 2018. This motion is being filed to return fees paid to DTF to the Partnership.

### **I. Facts**

It is uncontested that since November 2013, DTF has represented the Defendants individually in this case, *Hamed v Fathi Yusuf and United Corporation* (370). When the Partnership was being dissolved, both Hamed and Yusuf sought to be the Liquidating Partner. It is also uncontested that, because of Hamed's *expressly* stated concerns about Yusuf's lawyer also representing the Partnership, to obtain that Order, DTF **explicitly represented** to the Court **prior** to the Court's issuing its Final Wind-Up Order, **that if Yusuf were appointed to be the Liquidating Partner, DTF would not be paid for any services provided with Partnership funds** (see **Exhibit 1** at p. 13). They stated:

#### *Payment of Yusuf's Counsel and Accounting Experts*

The Order needs no clarification because it does not propose that Yusuf's counsel and accounting experts would be paid with partnership funds.

Despite this *express* representation to this Court, DTF did, thereafter, seek payment for legal fees from the Partnership and **was** paid such fees with Partnership funds.<sup>1</sup> The Partnership paid at least three DTF invoices that have been disclosed. See **Exhibit 2**.

---

<sup>1</sup> When seeking reimbursement for the DTF fees, it does not appear that Yusuf ever made it clear *at the time of that application* to the Special Master that the Order allowing Yusuf to be Liquidating Partner was issued based on *this specific representation by DTF*. In any event, the Master has made it clear that he now sits in an adjudicatory role, unbound by his prior approvals – especially if they were obtained without his knowledge of DTF's prior representation. See pp. 30-31 of the December 15, 2017 transcript.

## **II. Judge Ross's Role**

When the issue of these payments was raised with Judge Brady, he directed the Master to determine whether DTF should be paid with Partnership funds for any work performed. See **Exhibit 3** at pp. 3-4.

## **III. Argument**

There are three reasons why these fees should be returned to the Partnership, each of which independently warrants Yusuf remitting these payments back to the Partnership.

### **1. DTF's express representations to this Court.**

First, DTF should not be reimbursed for representing the Liquidating Partner because, to obtain the Winding Up Order, DTF *expressly represented* to the Court on October 28, 2014, that it would not seek reimbursement from the Partnership: "The Order needs no clarification because it does not propose that Yusuf's counsel and accounting experts would be paid with partnership funds." There was no qualification made of any kind regarding this representation to the Court. Hamed relied on this, despite his previous objections of record, when the Order was being negotiated.

**Thus, this representation should be the end of this matter, as DTF fully waived its ability to be reimbursed by the Partnership for any such fees.**

### **2. Work was performed primarily for Yusuf's personal benefit.**

Second, the Liquidating Partner made decisions for the Partnership that were favorable to him personally, but adverse to the interests of the Partnership, all with the help of DTF, **who then billed the Partnership for this advocacy work for Yusuf.** DTF primarily billed for preparing the bi-monthly reports, but much of those reports was a tool used to allocate Partnership assets to Yusuf or to approve disputed accounting entries in favor of Yusuf, to the direct, *specific disadvantage* of the Partnership. See **Exhibit 2.**



For example, DTF billed the Partnership for preparing the 5<sup>th</sup> Bi-Monthly Report, which stated that United (a corporation owned by Yusuf) owned Plot 2-4 Rem. Estate Charlotte Amalie (which is a very valuable piece of property). See **Exhibit 2**. Hamed objected, noting that *Yusuf had already testified under oath that the property was owned by the Partnership*. See **Exhibit 4**.<sup>2</sup> **DTF then billed the Partnership to research and justify Yusuf trying to simply take the Partnership asset**—essentially requiring the Partnership to pay for defending Yusuf’s anti-Partnership self-dealings. See **Exhibit 2**. A sampling of other similar Yusuf-only activities charged to the Partnership includes:<sup>3</sup>

- a. Approving payment of \$41,462.28 in Partnership funds to the Liquidating Partner related to the Plaza Tutu rent. This type of reimbursement had not been done in the past and was made without documentation substantiating an agreement by the Partnership to pay Yusuf or the United Corporation for that rent. As noted in the 6<sup>th</sup> Liquidating Partner’s Bi-Monthly Report, the landlord for the Plaza Tutu store in St. Thomas sent an invoice for the annual percentage rent calculation for that store, seeking a total payment of \$41,462.28, half of which was owed by the Partnership. Instead of paying the \$20,731.14 owed by the Partnership, the Liquidating Partner paid the full amount to the Plaza Tutu landlord and unilaterally paid himself an additional of \$41,462.28, something that had never been done in the past and was not agreed to jointly by the partners. See **Exhibit 2, Exhibit 6 and Exhibit 7**.

---

<sup>2</sup> Mr. Yusuf testified in his deposition on April 2, 2014 (see **Exhibit 5**, pp. 80-81):

Q. And the Tutu Park property, is that also called Ft. Milner, as well?

A. Yeah, it's Ft. Milner or Tutu. It's Ft. Milner, I believe.

Q. Okay. And one is a 9-acre parcel?

A. 9.31

Q. Then the other one is like a half-acre parcel?

A. It's about .53, if I recall.

\* \* \*

Q. Okay. So, and what I'm trying to get at is there's a half-acre piece in United, that's in the name of United.

A. Yes.

\* \* \*

**Q. Okay. And both of those, the smaller piece and the bigger piece, were purchased with money from the supermarket, so they're 50/50.**

**A. That's correct.** (Emphasis added.)

<sup>3</sup> There are probably many more -- but the records supplied are not detailed, and Hamed does not have access to the DTF billings to Yusuf for the same time periods to see if Yusuf was *charged even one cent* for all of this individual work.

- b. Approving payments of \$89,443.92 and \$46,069.38 in Partnership funds to the Liquidating Partner related to the 2012-2014 Plaza Tutu real estate taxes. This type of reimbursement hadn't been done in the past and was made without any documentation substantiating an agreement by the Partnership to pay Yusuf or United for those taxes. The 6<sup>th</sup> Bi-Monthly Report notes that the Liquidating Partner received an invoice for the real property tax assessment for 2012 and 2013, totaling \$79,009.87 for the Plaza Tutu store. Inexplicably, he unilaterally reimbursed himself for the 2012 and 2013 taxes with a larger distribution of \$89,443.92. He did the same thing with the 2014 Plaza Tutu taxes, paying the Tutu landlord \$43,069.38 and then reimbursing himself \$46,990.48. See **Exhibit 2, Exhibit 6 and Exhibit 7.**
- c. Submitting financials accompanying the 6<sup>th</sup> Bi-Monthly Report, which indicated that \$186,819.33 was due from/to Yusuf, a figure which came out of thin air. See **Exhibit 8.** In the Plaza balance sheets as of December 31, 2013 and Prior Year, that line read: Due from(to) **Shareholders** as of 12/31/2013 \$117,644.33 and as of 12/31/2012 \$186,819.33. See **Exhibit 9.**

In short, incurring legal fees to prepare bi-monthly reports and defenses of Yusuf-only positions that only benefitted Yusuf, and not the Partnership, makes these fees “**personal expenses**” for Yusuf, not fees for the Partnership.<sup>4</sup> As such, these fees should be disallowed.

### **3. The burden to prove these claims is on Yusuf**

It is Yusuf's burden to prove that the work was done for the Partnership and that Yusuf's work was not charged to the Partnership. The entries supplied **do not show this.** The fact that DTF 'worked on' a particular report or item means nothing -- as both the Partnership and Yusuf had positions that were advanced by DTF in documents sent to Hamed and the Court. As pointed out above, DTF took Yusuf-only positions and changed

---

<sup>4</sup> Hamed's expert CPA reviewed the payments to DTF made by Fathi Yusuf out of the Partnership account, and stated that under applicable accounting rules, the Partnership should not have paid the fees. See **Exhibit 10.**

IRS Pub. 535 - Business Expenses states "[generally, you cannot deduct personal, living, or family expenses." Therefore, we conclude this payment would not be deductible for tax purposes under IRS Pub. 535. As such, we are not able to satisfy ourselves of the following management assertions: 1. Occurrence 2. Accuracy or 3. Classification, as described in AU-C 315.A128. We concluded these amounts should be returned to the Partnership . . . .

them in the Bi-Monthly reports. So the Special Master must ask: **Were there separate billings to Yusuf for that individual work as to the issues over those reports?** Or was it like Mr. Gaffney, where the Partnership paid 100% and Yusuf got his fees for free? Again, the records are insufficient to determine this -- which is Yusuf's doing and thus his burden, not Hamed's. See, e.g., *In Re Campbell*, 59 V.I. 701, 740, 2013 WL 5200473, at \*18 (V.I. Sept. 16, 2013) ("costs of the UPLC's investigation, in an amount this Court shall fix after reviewing an itemized bill of costs.") and *Hale v. Moore*, 289 S.W.3d 567, 583, 2008 WL 53871 (Ky. Ct. App. 2008)("Third, *upon a showing of proof* a court *may* authorize additional compensation that is "fair and reasonable" for services. . . .")

#### **IV. Conclusion**

DTF cannot be paid with Partnership funds because both DTF and Yusuf expressly represented to the Court that DTF would not be paid with Partnership funds. They did so to overcome express, written objections by Hamed. The Court's subsequent Wind-Up Order was granted on that express representation.

Additionally, as work performed benefitted Yusuf, not the Partnership, these fees are personal expenses incurred by Yusuf, independently warranting the rejection as a Partnership expense. Indeed, if the Liquidating Partner had required additional counsel or accounting advice, *he was granted the authority to hire independent professionals to assist him with the wind-up duties.*<sup>5</sup> Had the Liquidating Partner availed himself of independent professionals *or proper records been kept*, the Master would not have unwind this conflict.

---

<sup>5</sup> These decisions adverse to the Partnership, as identified above, could have been avoided if the Liquidating Partner had hired outside legal counsel, as Yusuf was well within his rights to hire external counsel. See Plan at § 4 of the Final Wind-Up Plan: "Pursuant to the Act, the Liquidating Partner shall have authority to . . . engage legal, accounting and other professional services." If independent professionals had been brought in, these self-dealing items would have been brought to light and documentation would have been required to substantiate the expenditures, rather than merely relying on the word of the Liquidating Partner.

**Dated:** January 9, 2018



**Carl J. Hartmann III, Esq.**  
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**Joel H. Holt, Esq.**  
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Fax: (340) 773-867

### **CERTIFICATE OF SERVICE**

I hereby certify that on this 9th day of January, 2018, I served a copy of the foregoing by email, as agreed by the parties, on:

**Hon. Edgar Ross**  
Special Master  
% edgarrossjudge@hotmail.com

**Gregory H. Hodges**  
**Stefan Herpel**  
**Charlotte Perrell**  
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ghodges@dtflaw.com

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**Jeffrey B. C. Moorhead**  
CRT Brow Building  
1132 King Street, Suite 3  
Christiansted, VI 00820  
jeffreymlaw@yahoo.com



### **CERTIFICATE OF COMPLIANCE WITH RULE 6-1(e)**

This document complies with the page or word limitation set forth in Rule 6-1(e).



# **Exhibit 1**

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

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

**FATHI YUSUF’S RESPONSE TO HAMED’S COMMENTS CONCERNING THE  
COURT’S PROPOSED WIND-UP PLAN**

~~Defendant/counterclaimant Fathi Yusuf (“Yusuf”), through his undersigned counsel,~~  
respectfully submits the following response to “Hamed’s Comments Re Proposed Winding Up  
Order” (“Hamed Comments”), pursuant to this Court’s Order dated October 7, 2014 (the  
“Order”).

The Hamed Comments are very significant insofar as he concedes for the first time that  
bidding by Hamed and Yusuf is an appropriate method of liquidating the assets of the  
partnership. See Hamed Comments, p. 8-9 and Exhibit 4 to the Hamed Comments, Section 8(1),  
(2), (3), and (5). Although the Hamed Comments suggest that the use of bidding as a liquidation  
tool should be limited to the assets of Plaza Extra-Tutu Park and the Plaza Extra trade name, the  
logic of this position is that the bidding method of liquidation should be extended to cover all  
~~partnership assets, including Plaza Extra-West. Bidding by Hamed and Yusuf offers the best~~

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

**HAMD624743**

<b>EXHIBIT</b>
<b>1</b>

~~See Declaration of Yusuf dated August 12, 2014, attached as Exhibit 3 to Defendants' Memorandum in Support of Motion for Partial Summary Judgment on Counts IV, XI, and XII Regarding Rent. Hamed's sworn testimony is consistent with Yusuf's declaration that the reconciliation occurred at the end of 1993. Hamed testified that the reconciliation took place "sometime after the fire in the store." See page 51-2 of the transcript of Hamed's April 1, 2014 deposition attached as Exhibit 1.~~

While partnership funds may have been used to pay the insurance premiums for the applicable insurance policy, payment of the insurance premiums by the store has always been one of the terms of the partnership and Hamed has provided this Court with no evidence that Yusuf conceded that the additional acre was purchased with partnership funds. In any event, there is no dispute that the partners' accounts were fully reconciled as of December 31, 1993, that this acre has been titled in United's name for decades, and that rent for this acre was included in the \$5,408,806.74 paid on February 7, 2012 covering rent for the period from May 5, 2004 – December 31, 2011. Under these circumstances, Hamed should be estopped from asserting any legal or equitable title to this 1 acre parcel. In any event, Hamed's vague and unsupported claim should not be allowed to impede the disposition of Plaza Extra – East.

#### **Payment of Yusuf's Counsel and Accounting Experts**

The Order needs no clarification because it does not propose that Yusuf's counsel and accounting experts would be paid with partnership funds. ~~It should be pointed out, however, that~~

Section 5 of Hamed's "combined" order attached as Exhibit 3 to the Hamed Comments obligates the Liquidating Partner to "prepare and file all required federal and territorial tax returns . . . [and

~~Because there was never any consensus regarding the terms of the competing plans, this~~  
section should be deleted except for the first two sentences.

**Section 8: Plan of Liquidation Plan and Winding Up**


The lead in paragraph to Section 8(B)(1) of the competing plans should be added. Attached as **Exhibit 2** to this Response is the “combined” plan that Yusuf submits accurately sets forth the terms of the competing plans that the parties have not disputed and the provisions proposed by this Court. Yusuf’s revised, proposed plan, which incorporates the Yusuf Comments and his foregoing comments in redlined fashion, is attached as **Exhibit 3** to this Response. Yusuf respectfully requests this Court to consider and approve the plan submitted as ~~Exhibit 3.~~

Respectfully submitted,

**DUDLEY, TOPPER and FEUERZEIG, LLP**

Dated: October 28, 2014

By:

  
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Attorneys for Fathi Yusuf and United Corporation



**CERTIFICATE OF SERVICE**

I hereby certify that on this 28<sup>th</sup> day of October, 2014, I caused the foregoing **Fathi Yusuf's Response To Hamed's Comments Concerning The Court's Proposed Wind-Up Plan** to be served upon the following via e-mail:

Joel H. Holt, Esq.  
**LAW OFFICES OF JOEL H. HOLT**  
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The Honorable Edgar A. Ross  
Email: [edgarrossjudge@hotmail.com](mailto:edgarrossjudge@hotmail.com)



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# **Exhibit 2**

**United Corp West (Pship)**  
**Vendor Ledgers**  
**For the Period From Jan 1, 2015 to Feb 28, 2017**

Vendor ID	Vendor	Date	Trans No	Type	Paid	Debit Amt	Credit Amt	Balance
DUDLEY TOPPER	DUDLEY TOPPER AND FEI	12/17/15	281	CDJ		57,605.00	57,605.00	0.00
DUDLEY TOPPER	DUDLEY TOPPER AND FEI	3/1/16	167848	PJ	*		3,280.00	3,280.00
DUDLEY TOPPER	DUDLEY TOPPER AND FEI	3/1/16	168038	PJ	*		6,400.00	9,680.00
DUDLEY TOPPER	DUDLEY TOPPER AND FEI	4/2/16	305	CDJ		9,680.00		0.00
<b>Report Total</b>						<b>67,285.00</b>	<b>67,285.00</b>	<b>0.00</b>

<b>EXHIBIT</b> <b>2</b>
----------------------------

UNITED CORPORATION PARTNERSHIP  
CLAIMS RESERVE ACCOUNT  
PO BOX 763  
CHRISTIANSTED, VI 00821

281

101-667/216

12-29-15 Date

CHECK 281

Pay to the Order of DUDLEY POPPER & FEUERZEIG LLP | \$ 57,605<sup>00</sup>

FIFTY SEVEN THOUSAND SIX HUNDRED FIVE & 00/100 Dollars

Security Features. Details on back.



**BANCO POPULAR**

BANCO POPULAR DE PUERTO RICO  
Orange Grove Branch  
Saint Croix, U.S. Virgin Islands

For 1-9-15 THRU 11-30-15

*[Signature]*

⑆021606674⑆ 190⑆199091⑆ 0281

UNITED CORPORATION PARTNERSHIP  
CLAIMS RESERVE ACCOUNT  
PO BOX 763  
CHRISTIANSTED, VI 00821

305

101-667/216

4-2-16

CHECK IMAGE

Pay to the Order of DUDLEY TOPPER & FEUERERIG \$ 9,680<sup>00</sup>

NINE THOUSAND SIX HUNDRED EIGHTY & 00/100 Dollars



**BANCO POPULAR**

BANCO POPULAR DE PUERTO RICO  
Orange Grove Branch  
Saint Croix, U.S. Virgin Islands

For INV # 168038

*Edgar W. Low*

⑆021606674⑆ 190 199091 0305 *Jan 1 2016*

POSTED

# MATTER LEDGER REPORT

Client **6254 Yusuf, Fahti**  
 Matter **1 adv. Hamed, Mohammad (Time Related to Liquidating Partner Duties)**

Code	Name	Date	Rate	Hours	\$ Value	Ref #	Text
GHH	Gregory H. Hodges	02/06/15	400.00	2.10	840.00	15M3190	Prepare for and attend conference with Ross, et.al. re status and course of action re accounts; teleconference with Gaffney and G. Dudley re updated BS; review updated BS and email to Holt re same
GHH	Gregory H. Hodges	02/20/15	400.00	0.30	120.00	15N3720	Teleconference with Gaffney re course of action re 2014 tax return.
GHH	Gregory H. Hodges	02/23/15	400.00	0.90	360.00	15N5053	Review and respond to multiple emails from Holt, Ross, and Grey re status and course of action re bank accounts, inventories, liquidation of store, etc.
GHTD	George H.T. Dudley	02/23/15	425.00	0.70	297.50	15N7590	Review emails from E. Ross and J. Holt re dissolution process; review Ross email re United's name being on the liquidation accounts; <del>conference with G. Hodges re Ross's email</del>
GHH	Gregory H. Hodges	03/03/15	400.00	0.60	240.00	15O1489	Review emails from Ross re new accounts; teleconference with Gaffney re store transfers.
GHH	Gregory H. Hodges	03/05/15	400.00	1.50	600.00	15O6079	Review master's order; conference with G. Dudley re same; teleconference with Ross re same.
GHTD	George H.T. Dudley	03/05/15	425.00	1.50	637.50	15O9310	Review Master's Order; conference with GHH re Order; conference call with GHH and Judge Ross re Order, implications and consequences of same and need for a similar order re Plaza East.
GHH	Gregory H. Hodges	03/24/15	400.00	3.10	1,240.00	15P8754	Begin draft of first bi-monthly report.
CKP	Charlotte K. Perrell	03/25/15	295.00	1.50	442.50	15P8863	Review Beckstedt's List of Pending Cases and compare with our prior list, email to Beckstedt to confirm discrepancies; update our list and consolidate with Beckstedt's information.
GHH	Gregory H. Hodges	03/25/15	400.00	2.00	800.00	15Q0505	Complete draft of and revise first bi-monthly report; email exchange with C. Perrell re Exhibit C-1 to same.
GHH	Gregory H. Hodges	03/26/15	400.00	0.80	320.00	15Q0950	Conference with C. Perrell re updated list of pending litigation against United; review and revise same; review and revise bi-monthly report.
GHH	Gregory H. Hodges	03/30/15	400.00	0.60	240.00	15Q4187	Email Gaffney re bi-monthly report; teleconference with Gaffney and MY re same; finalize and file first bi-monthly report.
GHH	Gregory H. Hodges	05/19/15	400.00	0.40	160.00	15U2705	Review emails from Holt and Dema re payment of Dema fees; email and teleconference with FY re same; email to Holt and Dema re same.

1st Bi-Monthly Rpt


GHH	Gregory H. Hodges	05/20/15	400.00	1.80	720.00	15U3520	Multiple email exchanges with Gaffney re status and course of action re various accounting issues.
GHH	Gregory H. Hodges	05/21/15	400.00	1.20	480.00	15U4731	Conference with G. Dudley re status and course of action re bank account/accounting issues; email exchanges with Gaffney re same; teleconference with Gaffney re same.
GHTD	George H.T. Dudley	05/21/15	425.00	0.70	297.50	15U8894	Conference with G. Hodges re materials to be included in next bi-monthly report of liquidating partner filed with Court; conference call with G. Hodges and J. Gaffney re financial records.
GHH	Gregory H. Hodges	05/22/15	400.00	0.70	280.00	15U5833	Email exchange with CJH re bi monthly report; email Gaffney re same.
GHTD	George H.T. Dudley	05/22/15	425.00	1.90	807.50	15V2286	Review financial information prepared by J. Gaffney; conference with G. Hodges re financial information provided by Gaffney and what is to be included in liquidating partners bi-monthly report; conference call with Gaffney re matter.
GHH	Gregory H. Hodges	05/26/15	400.00	0.50	200.00	15U6784	Email exchange with MY and Holt re Shevlin letter re stock split; review Shevlin's 4/10/15 letter.
GHH	Gregory H. Hodges	05/26/15	400.00	2.40	960.00	15U7428	Draft second bi-monthly report; conference with G. Dudley re same.
GHH	Gregory H. Hodges	05/27/15	400.00	3.80	1,520.00	15U7888	Review and revise second bi-monthly report; email to client group and Gaffney re same; teleconferences with FY re accounting re inflows/outflows from CRA, LEA, and other operation accounts; conference with G. Dudley re draft bi-monthly report; email exchanges with Gaffney re same.
GHTD	George H.T. Dudley	05/27/15	425.00	1.60	680.00	15V3847	Review and edit draft of second bi-monthly report; conference with GHH re financial info to be included with report and related issues; review emails from J. Gaffney re matter.
GHH	Gregory H. Hodges	05/28/15	400.00	2.30	920.00	15U9594	Review and revise draft second bi-monthly report; email exchange with Gaffney re same; conference with G. Dudley re same.
GHTD	George H.T. Dudley	05/28/15	425.00	1.20	510.00	15V4181	Review draft report; review emails from J. Gaffney re financial records; conference with G. Hodges re Gaffney email and information to be provided to Holt et al.; conference call with G. Hodges and J. Gaffney.
GHH	Gregory H. Hodges	05/29/15	400.00	0.90	360.00	15V0150	Teleconference with Gaffney re draft report; review and revise draft bi-monthly report; email client group re same.
GHH	Gregory H. Hodges	06/01/15	400.00	5.30	2,120.00	15V1844	Review emails from Gaffney with financial information to be provided to Master and Hamed; email exchanges with Gaffney re same; teleconference with Gaffney and FY re same; final revisions to report; email to Ross and Holt re same; review and reply to email from CJH re pre-transfer AP information.
GHTD	George H.T. Dudley	06/01/15	425.00	1.30	552.50	15V4258	Review additional comments from J. Gaffney on second bi-monthly report; conference with GHH re Gaffney comments; review email from GHH to E. Ross et al. transmitting reports; conference with GHH re filing same with Superior Court; review attachments to email.

2nd Bi-Monthly Rpt

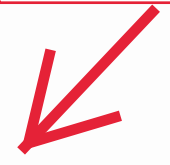


2nd Bi-Monthly Rpt



GHH	Gregory H. Hodges	06/02/15	400.00	1.30	520.00	15V2216	Review emails from CJH re alleged reporting deficiencies; review email from Gaffney re APs; teleconference with FY re \$19K refund and APs; review Gaffney email re same.
GHH	Gregory H. Hodges	06/05/15	400.00	1.70	680.00	15V5962	Email exchanges with CJH re second report and course of action; teleconference with Gaffney re same; email exchange with Gaffney re same.
GHTD	George H.T. Dudley	06/05/15	425.00	0.20	85.00	15W0634	Review C. Hartmann further emails re demand for additional financial information; conference with G. Hodges re Hartman's demand.
GHTD	George H.T. Dudley	07/02/15	425.00	0.70	297.50	15Y4994	Conference with GHH re 2014 tax return and next report from liquidating partner.
GHH	Gregory H. Hodges	07/08/15	400.00	0.40	160.00	15Y3180	Teleconference with Gaffney re status of store transfers due after June 15 and reconciliation of actual expenses of liquidation with projected expenses
GHH	Gregory H. Hodges	07/13/15	400.00	2.10	840.00	15Y6317	Draft third bi-monthly report of Liquidating Partner.
GHH	Gregory H. Hodges	07/14/15	400.00	1.10	440.00	15Y7564	Review email from Holt re Isaac mediation; email to and teleconference with FY and NY re course of action re same; email NY re same; teleconference with C. Beckstedt re same.
GHH	Gregory H. Hodges	07/15/15	400.00	1.60	640.00	15Y8808	Conference with G. Dudley re 3d bi-monthly report; further revise draft of same; email FY/Gaffney re same; email exchanges with CJH re same; email from CB re settlement of Isaac matter; review and revise list of pending cases and bi-monthly report re same.
GHTD	George H.T. Dudley	07/15/15	425.00	0.50	212.50	15Z1914	Review 3d Bi-Monthly Report to Court; conference with GHH re edits to report.
GHTD	George H.T. Dudley	07/15/15	425.00	0.20	85.00	15Z2612	Review email from J. Bailey re non-payment of rent for office in Buccaneer Mall; review J. Holt email re same; review J. Gaffney email re same.
GHTD	George H.T. Dudley	07/15/15	425.00	0.20	85.00	15Z4031	Conference with GHH re latest emails from C. Hartmann complaining about delayed reconciliation of actual vs. budgeted expenses for liquidation/windup of plaza partnership.
GHH	Gregory H. Hodges	07/16/15	400.00	0.50	200.00	15Y9696	Review emails from Gaffney re tax returns and information re receipts/disbursements.
GHTD	George H.T. Dudley	07/16/15	425.00	0.50	212.50	15Z4042	Several emails with GHH and J. Gaffney re 3d Report by Liquidating Partner.
GHH	Gregory H. Hodges	07/17/15	400.00	1.50	600.00	15Z0680	Review and revise draft third bi-monthly report; email to Gaffney/FY re sharing information; review emails from Gaffney to Ross/Holt re receipts/disbursements; email exchange with Gaffney re same.
GHTD	George H.T. Dudley	07/17/15	425.00	1.20	510.00	15Z5662	Review emails and attachments from J. Gaffney re STT Bank Reconciliations; conference with GHH re same and advisability of providing to Holt, et al.; edit transmittal email to be used by Gaffney.
GHH	Gregory H. Hodges	07/18/15	400.00	1.20	480.00	15Z1136	Review emails from Gaffney re Hartmann claims re salaries; review file re same; email to Hartmann re same.

Yusuf Response to Hamed's Objection to 2nd Bi-Monthly Rpt



3rd Bi-Monthly Report



Yusuf Response to Hamed's Objection to 2nd Bi-Monthly Rpt

3rd Bi-Monthly Report





GHTD	George H.T. Dudley	07/18/15	425.00	0.40	170.00	1526662	Review C. Hartmann email to GHH re payment of Hamed and Yusuf sons until proper notice of termination is provided; conference with GHH re matter; review GHH email to C. Hartmann re payment of F. Yusuf as liquidating partner.
GHTD	George H.T. Dudley	07/19/15	425.00	0.20	85.00	1525670	Review J. Gaffney email with attached notice from the IRS re Unemployment Taxes due for 2012 in the amount of \$280,000; conference with GHH re matter.
GHH	Gregory H. Hodges	07/20/15	400.00	1.20	480.00	1522139	Review emails from CJH re salary and accounting issues; reply to same; email exchange with Gaffney re same and course of action re meetings with Judge Ross; teleconference with FY and NAD re same.
GHTD	George H.T. Dudley	07/20/15	425.00	0.90	382.50	1525670	Review Plaza Extra monthly income statements and related financial information received from J. Gaffney
GHH	Gregory H. Hodges	07/21/15	400.00	2.70	1,080.00	1523490	Review emails from Gaffney re accounting info through 6/30/15; teleconference with Gaffney and G. Dudley re same; review email from CB re pending cases and reserves; conference with G. Dudley re reserves.
GHTD	George H.T. Dudley	07/21/15	425.00	2.50	1,062.50	1525776	Review materials received from J. Gaffney re accountings; conference with GHH re matter; conference call with GHH and J. Gaffney re matter; review GHH email to Gaffney authorizing release of info to J. Holt and Magistrate.
GHH	Gregory H. Hodges	07/22/15	400.00	2.20	880.00	1524635	Review and revise third bi-monthly report; email to G. Dudley re same; review and reply to emails from Gaffney and CPA monitors (Kaufman Rossin) re various orders in partnership case.
GHH	Gregory H. Hodges	07/23/15	400.00	0.20	80.00	1524700	Review email from CB re status and course of action re Hippolyte v. United.
GHH	Gregory H. Hodges	07/23/15	400.00	2.10	840.00	1525161	Review G. Dudley comments to draft third bi-monthly report; review and revise same; emails to Gaffney and FY re same; review emails from Gaffney re financial information supporting LP report and to be shared with Holt et al; reply to same; further revise report re timing of LP accounting and n.2 re BNS account.
GHTD	George H.T. Dudley	07/23/15	425.00	1.80	765.00	1529523	Review financial info prepared by J. Gaffney; conference with GHH and conference call with Gaffney re payment made to F. Yusuf for difference in value between East and West; edit draft of third bi-monthly report.
GHH	Gregory H. Hodges	07/24/15	400.00	0.80	320.00	1526188	Conference with G. Dudley and Gaffney re financial information to be provided to Holt.
GHTD	George H.T. Dudley	07/24/15	425.00	2.80	1,190.00	1600433	Review financial information sent by J. Gaffney; conference call with GHH and Gaffney re questions on statements and required revisions to same.
GHTD	George H.T. Dudley	07/27/15	425.00	0.80	340.00	1600457	Review J. Gaffney's email and attached revised financials to be supplied to J. Holt; review GHH emails re same.

**3rd Bi-Monthly Report**



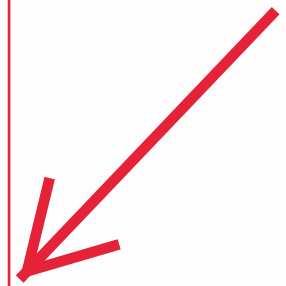
GHTD	George H.T. Dudley	08/13/15	425.00	0.40	170.00	1617830	Review email with attached Topa invoice from J. Bailey; conference with CKP re additional time and need for continued occupancy of rented space; review J. Holt email re Topa invoice.
GHH	Gregory H. Hodges	08/24/15	400.00	0.40	160.00	1618453	Review motion to clarify and objection to 3rd report filed by Holt.
GHH	Gregory H. Hodges	08/25/15	400.00	1.40	560.00	1619065	Review Bailey email re rent and forward to client group; review file and begin outlining responses to motion to clarify and objection to report.
GHH	Gregory H. Hodges	08/26/15	400.00	3.40	1,360.00	1620830	Continue drafting opposition to motion to clarify and response to objection to bi-monthly reports.
GHTD	George H.T. Dudley	08/26/15	425.00	0.80	340.00	1625193	Review J. Gaffney email to J. Bailey re rent payments; conference with GHH re status of case; review J. Bailey reply email to Gaffney; review Gaffney email and attached spreadsheets for Plaza West; conference with GHH re Gaffney email; review GHH email to Gaffney re need for a conference call to discuss issues.
GHH	Gregory H. Hodges	09/01/15	400.00	1.10	440.00	1623815	Final revisions to response to objection to bi-monthly reports; emails to client group re same; teleconference with FY re same.
GHH	Gregory H. Hodges	09/21/15	400.00	2.40	960.00	1638162	Review Holt email re Tutu Park real property taxes and course of action re same; conference with G. Dudley re same; draft reply to Holt email after reviewing 1/7/15 order, plan, and master's orders re Tutu Park.
GHTD	George H.T. Dudley	09/21/15	425.00	0.70	297.50	1650063	Review email from Joel Holt re demand for payment of property taxes by Tutu Mall landlord for property taxes recently assessed by Tax Assessor based on Tax Assessor's earlier mistakes; conference with GHH re matter.
GHH	Gregory H. Hodges	09/22/15	400.00	3.00	1,200.00	1640232	Teleconference with FY re Tutu Park taxes; review draft letter re same; review and revise email to Holt re taxes; email to GHTD re same; conference with GHTD re course of action re accounting issues; email to Holt re taxes; teleconference with FY re email to Holt re course of action re taxes; draft 4th bi-monthly report.
GHH	Gregory H. Hodges	09/23/15	400.00	1.30	520.00	1640667	Review and revise 4th bi-monthly report; email to Gaffney re same.
GHH	Gregory H. Hodges	09/26/15	400.00	0.20	80.00	1643356	Review email from Russell re tax invoices.
GHH	Gregory H. Hodges	09/28/15	400.00	1.20	480.00	1644650	Teleconference with FY re Tutu Park taxes and course of action re same; email to Gaffney re 4th bi-monthly report; email to CKP re same; email to G. Dudley re Tutu park taxes.
GHTD	George H.T. Dudley	09/28/15	425.00	0.40	170.00	1653822	Conference with GHH re property tax reimbursement to Tutu Park and United to receive a proportionate share for Plaza East; review lease re matter.
GHH	Gregory H. Hodges	09/29/15	400.00	2.50	1,000.00	1645426	Email to Holt re Tutu Park taxes; email exchanges with Gaffney re accounting info for bi-monthly report; teleconference with Gaffney re reconciliation of actual expenses against projected; review and revise draft bi-monthly report.

3rd Bi-Monthly Report

Yusuf Response to Hamed's Objection to 3rd Bi-Monthly Rpt



4th Bi-Monthly Rpt



GHH	Gregory H. Hodges	09/30/15	400.00	1.00	400.00	1646167	Review emails from Gaffney re financial information to be provided to Holt and Judge Ross; email exchange re same.
GHH	Gregory H. Hodges	09/30/15	400.00	1.20	480.00	1647375	Review financial information Gaffney intends to provide to Holt/Ross; email Gaffney re same; review and revise 4th bi-monthly report and file same; emails to Gaffney re covering letter for financial information provided to Holt.
GHH	Gregory H. Hodges	10/01/15	400.00	1.30	520.00	1648029	Teleconference with FY re 4th bi-monthly report; email to FY re course of action re payments to Tutu Park, Ltd; review and reply to email from Gaffney re financial info provided to Ross/Holt.
GHH	Gregory H. Hodges	10/01/15	400.00	1.00	400.00	1648982	Draft further stipulation re timing of accounting; email exchange with Holt re same; teleconference with FY re taxes for Tutu Park; teleconference with Russell re course of action re releases.
GHTD	George H.T. Dudley	10/01/15	425.00	0.40	170.00	1663364	Conference with GHH re property tax reimbursement and additional rent claimed by Tutu Park; review GHH email to F. Yusuf re matter.
GHTD	George H.T. Dudley	10/02/15	425.00	0.30	127.50	1664016	Review invoice for rent at Buccaneer Mall received from J. Bailey; review J. Holt email approving payment of same.
GHH	Gregory H. Hodges	10/05/15	400.00	1.60	640.00	1649662	Review email from Gaffney re course of action re payment of Tutu Park taxes; reply to 9/29 letter from Holt re partnership assets; email FY re same; teleconference with FY re draft reply to Holt.
GHH	Gregory H. Hodges	10/07/15	400.00	2.60	1,040.00	1652359	Review emails from Gaffney re GR figures for STT store to be shared with Judge Ross/Holt; reply to same; teleconferences with FY re percentage rent; review emails from Holt and Russell re same; reply to same; teleconference with Russell re same.
GHH	Gregory H. Hodges	10/15/15	400.00	0.30	120.00	1659497	Review email from Judge Ross re status and course of action re partnership liquidation; email client group re same
GHTD	George H.T. Dudley	10/15/15	425.00	0.40	170.00	1688696	Conference with GHH re email received from Ross requesting list of other properties/assets requiring attention of liquidating partner.
GHH	Gregory H. Hodges	10/16/15	400.00	0.70	280.00	1659940	Review financial information provided by Gaffney on 10/11/15 to address status/liquidation issues raised by Judge Ross in his 10/15 email.
GHH	Gregory H. Hodges	10/19/15	400.00	1.80	720.00	1661367	Email to FY re remaining partnership assets to liquidate/separate; teleconference with FY re same; review bi-monthly reports in order to draft list of remaining partnership property requested by Ross; review file to determine any pending motions that may affect partnership liquidation; email to attorney group re same; begin work on "list" Judge Ross wants filed by 10/23/15.
GHH	Gregory H. Hodges	10/20/15	400.00	1.50	600.00	1663367	Draft, review, and revise list of remaining partnership property to be liquidated and pending motions affecting partnership property.
GHH	Gregory H. Hodges	10/21/15	400.00	1.30	520.00	1663923	Review letter from Holt re disputed land; email FY re same; review and revise draft list in response to Judge Ross directive; email client group re same.
GHH	Gregory H. Hodges	10/22/15	400.00	1.00	400.00	1664622	Email exchange with LEB re 1/2 acre disputed parcel; review and revise draft list re disputed 1/2 acre; email to FY re same.
LEB	Leslie E. Bush	10/22/15	150.00	0.80	120.00	1664942	E-mail exchange with GHH re 2-4 Charlotte Amalie research.

4th Bi-Monthly Rpt

4th Bi-Monthly Rpt

4th Bi-Monthly Rpt

Plot 2-4 Rem.,  
STT



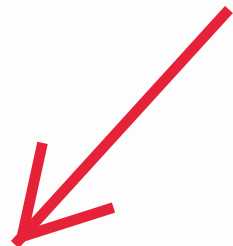
Plot 2-4 Rem.,  
STT



GHH	Gregory H. Hodges	10/23/15	400.00	2.30	920.00	1666480	Teleconference with FY re 1/2 acre and course of action re same; review and finalize list of issues for Ross; email exchanges with Holt and Harthman re same and 1/2 acre.
GHTD	George H.T. Dudley	10/23/15	425.00	0.50	212.50	1671846	Conference with GHH re final accounting to be filed by liquidating partner and prepare for same by J. Gaffney; conference call with GHH and Gaffney to discuss contents of final accounting and preparation of same.
GHTD	George H.T. Dudley	10/26/15	425.00	0.20	85.00	1672077	Conference with GHH re liquidating partner accounting by J. Gaffney.
GHH	Gregory H. Hodges	10/27/15	400.00	0.30	120.00	1669732	Email exchange with Gaffney re partnership accounting due 11/16/15.
GHTD	George H.T. Dudley	10/28/15	425.00	0.20	85.00	1672364	Conference call with GHH and J. Gaffney re liquidating partner accounting to be filed with Court.
GHH	Gregory H. Hodges	11/03/15	400.00	0.20	80.00	1673950	Email Gaffney re status of partnership accounting.
GHH	Gregory H. Hodges	11/04/15	400.00	0.50	200.00	1675174	Email exchange with Gaffney re status of partnership accounting; conference with G. Dudley re same.
GHTD	George H.T. Dudley	11/04/15	425.00	0.20	85.00	1683074	Review J. Gaffney email; conference with GHH re timing of preparation of final accounting.
GHH	Gregory H. Hodges	11/05/15	400.00	1.00	400.00	1676347	Email to Gaffney re partnership accounting; review email from Gaffney re same; review draft balance sheet; email to G. Dudley re same.
GHH	Gregory H. Hodges	11/09/15	400.00	1.10	440.00	1678334	Conference with G. Dudley re draft balance sheets re liquidation process received from Gaffney; teleconference with Gaffney re course of action re revisions to same.
GHTD	George H.T. Dudley	11/09/15	425.00	1.10	467.50	1683099	Review partnership accounting prepared by J. Gaffney; conference with GHH re additional information needed with accounting to be filed with court; conference call with Gaffney and GHH re footnotes needed for accounting.
GHH	Gregory H. Hodges	11/11/15	400.00	2.50	1,000.00	1680841	Review Gaffney's revised financials for Partnership accounting; email to Gaffney re questions concerning same and notes to same; review Gaffney reply.
GHTD	George H.T. Dudley	11/11/15	425.00	0.80	340.00	1683395	Review draft of Gaffney's report; conference with GHH re edits to report to better explain numbers; review GHH email to J. Gaffney with questions re numbers in draft report.
GHH	Gregory H. Hodges	11/12/15	400.00	2.10	840.00	1681048	Conference with G. Dudley re Gaffney draft report; conference with G. Dudley and Gaffney re same; draft notice re submission of Partnership accounting.
GHTD	George H.T. Dudley	11/12/15	425.00	1.50	637.50	1686792	Conference call with J. Gaffney re partnership accounting and explanatory footnotes.
GHH	Gregory H. Hodges	11/13/15	400.00	1.80	720.00	1681764	Review and revise notice re service of accounting; review revised partnership accounting from Gaffney; reply to Gaffney re same; email to FY re course of action re same; email exchange with Gaffney re further updating the Partnership accounting with BPPR securities October statement.

GHTD	George H.T. Dudley	11/13/15	425.00	1.20	510.00	1686974	Review updated accounting report received from J. Gaffney; conference with G. Hodges re updated report, timing of filing of same.
GHH	Gregory H. Hodges	11/15/15	400.00	0.40	160.00	1682537	Review revised partnership accounting from Gaffney; email to Gaffney and FY re same.
GHTD	George H.T. Dudley	11/15/15	425.00	0.30	127.50	1688984	Review J. Gaffney email to G. Hodges re revisions to partnership accounting to reflect activities in the BP securities account; review accounting.
GHH	Gregory H. Hodges	11/16/15	400.00	1.30	520.00	1683086	Review and reply to email from Gaffney re accounting; conference with G. Dudley re same; email to FY re authorization to submit same; teleconference with FY re same; email to Ross/Holt re same.
GHTD	George H.T. Dudley	11/16/15	425.00	0.70	297.50	1696529	Review Gaffney's revised Partnership Account and draft of Notice of Service prepared by G. Hodges; conference with G. Hodges re Gaffney's accounting and draft notice.
GHH	Gregory H. Hodges	11/17/15	400.00	1.60	640.00	1686123	Draft fifth bi-monthly report; conference with CKP re pending litigation and claims reserve.
GHH	Gregory H. Hodges	11/19/15	400.00	0.80	320.00	1686526	Review and revise fifth bi-monthly report; email to Gaffney and CKP re same.
GHH	Gregory H. Hodges	11/23/15	400.00	0.50	200.00	689447	Email to Gaffney re fifth bi-monthly report and updated financial info needed; review Gaffney response.
GHH	Gregory H. Hodges	11/24/15	400.00	2.50	1,000.00	1689902	Review email from Gaffney regarding financial info to be provided with fifth bi-monthly report; conference with G. Dudley re same; reply to Gaffney re same; teleconference with Gaffney and G. Dudley re same; begin review of financial info sent by Gaffney to be referenced in the bi-monthly report; teleconference with FY re course of action re bi-monthly reports.
GHTD	George H.T. Dudley	11/24/15	425.00	1.30	552.50	1691983	Review G. Hodges email with September Report (through August) prepared by J. Gaffney and draft of latest report; conference with G. Hodges re discrepancies; conference call with G. Hodges and J. Gaffney re simply extending September Report to 10/31/15 and adding footnotes to explain any changes in numbers; review Gaffney emails with revised report.
GHH	Gregory H. Hodges	11/25/15	400.00	2.00	800.00	1690853	Complete review of the updated financial information that supports or is referenced in fifth bi-monthly report; finalize the report; email Gaffney re sending the updated financial information to Judge Ross and Holt.
GHTD	George H.T. Dudley	11/25/15	425.00	1.00	400.00	1694487	Review J. Gaffney proposed final liquidation accounting and comparison to budget; review emails between Gaffney and G. Hodges; conference with G. Hodges re final account and filing of same with Judge Ross.
CKP	Charlotte K. Perrell	11/25/15	295.00	0.30	88.50	16A1118	Correspondence to Carl Beckstedt for update as to status of United Litigation as to Bi-Monthly report.
GHTD	George H.T. Dudley	11/30/15	425.00	1.00	425.00	1697520	Review J. Gaffney emails re 10/31/15 budget comparison and details for partner distributions and supporting documents; conference with GHH re Gaffney emails.

5th Bi-Monthly Rpt



5th Bi-Monthly Rpt



CKP	Charlotte K. Perrell	11/30/15	295.00	0.20	59.00	16A1113	Coordinate for filing the Bi-Monthly report.
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Total Unbilled: 57,605.00

**DUDLEY, TOPPER  
AND FEUERZEIG, LLP**

STREET ADDRESS:  
LAW HOUSE, 1000 FREDERIKSBERG GADE  
ST THOMAS, US VIRGIN ISLANDS 00802-6736

TELEPHONE: 340.774.4422  
FACSIMILE: 340.715.4400  
WEB: WWW.DTFLAW.COM

MAILING ADDRESS:  
PO Box 756  
ST THOMAS, US VIRGIN ISLANDS 00804-0756

Invoice No. 167848

February 1, 2016

Fathi Yusuf and United Corporation  
Mike Yusuf  
P.O. Box 908  
Christiansted  
St. Croix, VI 00821

Re: Services Relating to Liquidating Partner Duties  
Our File #6254-10004

6th Bi-Monthly Rpt

Date		Services	Hours	Amount
01/04/16	GHH	Conference with CKP re status of establishing reserve amount for PI cases pending and contemplated.	0.10	40.00
01/14/16	GHH	Email to Gaffney re 2/1/16 deadline for next bi-monthly report.	0.20	80.00
01/26/16	GHH	Initial draft of sixth bi-monthly report; email with CKP re reserves for pending/contemplated litigation.	1.80	720.00
01/27/16	GHH	Review and revise draft sixth bi-monthly report; email to Gaffney re same; teleconference with Gaffney re same and updated financial information; further revise draft report.	1.80	720.00
01/31/16	GHH	Review Holt 1/28/16 declaration re reconciliations submitted with bi-monthly reports and forward to Gaffney; review Gaffney response; email exchange with Gaffney re financial information to be provided with sixth bi-monthly report; review and revise draft report; email to FY re final draft of report.	1.60	640.00
01/31/16	GHH	Teleconference with FY re sixth bi-monthly report; conference with G. Dudley re same; finalize and file same; teleconferences with Gaffney re comparison of updated financial information with previously provided information; review all updated financial information.	2.70	1,080.00

HAMD640258

**DUDLEY, TORPER  
AND FEUERZEIG, LLP**

STREET ADDRESS:  
LAW HOUSE, 1000 FREDERIKSBERG GADE  
ST THOMAS, US VIRGIN ISLANDS 00802-6736

TELEPHONE: 340.774.4422  
FACSIMILE: 340.715.4400  
WEB: WWW.DTFLAW.COM

MAILING ADDRESS:  
PO Box 756  
ST THOMAS, US VIRGIN ISLANDS 00804-0756

Invoice No. 168038

March 1, 2016

Fathi Yusuf and United Corporation  
Mike Yusuf  
P.O. Box 908  
Christiansted  
St. Croix, VI 00821

Re: Services Relating to Liquidating Partner Duties  
Our File #6254-10004

Yusuf Response to  
Hamed's Objection to  
6th Bi-Monthly Rpt

Date		Services	Hours	Amount
02/17/16	GHH	Review, revise, finalize and file/serve oppositions to motions to disqualify and to remove LP; email to FY re same; begin drafting response to objection to sixth bi-monthly report; email to Gaffney re response to Holt's declaration of 2/8/16.	4.50	1,800.00
02/17/16	GHH	Review email from Gaffney re information responsive to objection to sixth bi-monthly report; teleconference with FY re same; begin drafting response to objection to sixth bi-monthly report.	2.30	920.00
02/19/16	GHH	Continue drafting of response to objection to sixth bi-monthly report.	2.80	1,120.00
02/19/16	GHH	Complete initial draft of response to objection to sixth bi-monthly report and review and revise same,	1.60	640.00
02/22/16	GHH	Review and revise response to objection to sixth bi-monthly report; email to FY re same.	2.20	880.00
02/23/16	GHH	Review and revise response to objection to sixth bi-monthly report; email exchange with FY re same; teleconference with FY re same; compile exhibits to same.	1.80	720.00
02/24/16	GHH	Email exchange with Gaffney re hours worked and matching checks; finalize and file reply to objection to sixth bi-monthly report.	0.80	320.00





# **Exhibit 3**

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

MOHAMMED HAMED by his authorized agent )  
WALEED HAMED, )  
Plaintiff/Counterclaim Defendant, )  
v. )  
FATHI YUSUF and UNITED CORPORATION, )  
Defendants/Counterclaimants, )  
v. )  
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 JUDGMENT

**ORDER RE DISQUALIFICATION OF DUDLEY, TOPPER, AND FEUERZEIG**

~~THIS MATTER is before the Court on Plaintiff/Counterclaimant Mohammad Hamed's Motion to Disqualify Dudley, Topper, and Feuerzeig (DTF) from any Further Involvement in these Proceedings (Motion), filed January 29, 2016; Defendants/Counterclaimants Fathi Yusuf (Yusuf) and United Corporation's (United) (collectively, the Defendants) Opposition thereto, filed February 17, 2016; and Plaintiff's Reply thereto, filed February 22, 2016; and Plaintiff's Supplemental Authority Re Motion to Disqualify Dudley, Topper and Fuererzeig [sic] (Supplement), filed July 20, 2016. For the reasons that follow, Plaintiff's Motion will be denied.~~

**Legal Standard**

Virgin Islands Rules of Professional Conduct, as established by Supreme Court Rule 211, effective February 1, 2014, govern the conduct of members of the Virgin Islands Bar Association. *Cianci v. Chaput*, 2016 V.I. Supreme LEXIS 24, \*15-17 (V.I. 2016) (citing *In re Nevins*, 60 V.I. 800, 804 n.1 (V.I. 2014)).

**Discussion**

Virgin Islands Supreme Court Rule 211.1.7 governs conflicts of interest pertaining to current clients, as follows:

(a) Except as provided in paragraph (b), a lawyer shall not represent a client if the representation involves a concurrent conflict of interest. A concurrent conflict of interest exists if:

~~(1) the representation of one client will be directly adverse to another client; or~~

~~Defendants respond that the motion to disqualify DTF is simply a smokescreen to dispute Judge Ross's approval of billings by DTF paid out of Partnership funds. Opposition, at 7.<sup>2</sup> Defendants state that DTF's representation is appropriate and that to hire an outside attorney to represent the Liquidating Partner would be unnecessary and add greater expense to the Partnership. *Id.* at 5. Defendants explain that~~

~~Hamed's failure to even try to support the notion that the Liquidating Partner is the Partnership is understandable, because that clearly is not the case. The Partnership between Hamed and Yusuf was a business organization formed by the two of them for operating three supermarkets on St. Thomas and St. Croix. The Liquidating Partner is a position created by the Court to facilitate the liquidation and winding up of the Partnership under judicial supervision. The court order creating this position carefully circumscribes the duties of the Liquidating Partner and makes the exercise of all of those duties subject to oversight by the Master, Judge Ross. The duties of the Liquidating Partner, as set forth in the Order creating that office, include the "power and authority to sell and transfer Partnership Assets, engage legal, accounting and other professional services, sign and submit tax matters, execute and record a statement of dissolution of the Partnership, pay and settle debts, and marshal Partnership Assets for equal distribution to the Partners following payment of all Debts and a full accounting by the Partners.~~

~~*Id.* at 3. (citing Windup Plan § 4).~~

~~The Court finds that it is unnecessary to disqualify DTF. The Court is satisfied that the strict system of judicial oversight over all decisions made by the Liquidating Partner via the bi-monthly reports serves as a sufficient safeguard against such potential conflict. That is, even to the extent that the dual roles of Yusuf and DTF may involve conflicting interests, there is sufficient transparency in the liquidation process to avoid impropriety and collusion between Yusuf as an individual, and Yusuf in his capacity as the Liquidating Partner. Thus, the Court finds that the Partnership, the Liquidating Partner, and Yusuf's interests are not so directly adverse to each other to require the attorney's disqualification.~~

~~The Court has already considered whether Yusuf should have been conflicted out of serving in the role of Liquidating Partner and found Yusuf, notwithstanding the conflicting interests, to nonetheless be the most appropriate choice for Liquidating Partner. See Order adopting Final Windup Plan, entered January 7, 2015. To the extent that Plaintiff objects to specific, individual items in DTF's billing, it is more appropriate to resolve billing issues following submission of the Master's Report and~~


~~<sup>2</sup> "[I]n a January 23, 2016 email to Judge Ross not attached to Hamed's motion, his attorney, Joel H. Holt, admitted that so long as DTF was not being paid by the Partnership for any services it provided to the Liquidating Partner, there would be no basis for 'ethical action' by Hamed. As such, it is clear that this motion is not about any supposed ethical conflicts at all, but is instead about whether Judge Ross should have approved and paid the DTF billing in full, or should have disapproved payment for some of the entries." *Id.* at 3.~~

Recommendation rather than by the disqualification of DTF. The Court notes that Plaintiff has filed responses and objections to the bi-monthly reports of the Liquidating Partner. Such filings are the appropriate vehicle for raising such objections that will ultimately be resolved at the conclusion of the litigation.

In light of the foregoing, it is hereby

ORDERED that Plaintiff's Motion to Disqualify Dudley, Topper and Feuerzeig from any Further Involvement in these Proceedings is DENIED.

DATED: August 5, 2016.

  
DOUGLAS A. BRADY  
Judge of the Superior Court

ATTEST:

ESTRELLA GEORGE  
Acting Clerk of the Court

By:   
Court Clerk Supervisor

8/5/16

# **Exhibit 4**

**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**

**PLAINTIFF’S MOTION TO DISQUALIFY DUDLEY, TOPPER AND FEUERZEIG  
FROM ANY FURTHER INVOLVEMENT IN THESE PROCEEDINGS**

~~The law firm of Dudley, Topper and Feuerzeig LLP (“DTF”) has represented the Defendants in this case, Fathi Yusuf and United Corporation, for the past several years. However, on December 24, 2015, counsel for the Plaintiff was informed for the first time that DTF entered into representation of Fathi Yusuf in his role as the Liquidating Partner of the partnership so that DTF now also represents the partnership. See Hodges’ Email to Judge Edgar Ross attached as **Exhibit 1**. That email had a bill attached for services rendered, seeking payment of these fees from the partnership assets from February, 2015 through November 30, 2015.~~

~~It is respectfully submitted that DTF’s representation of the partnership requires it to be disqualified from continuing to represent the Defendants herein.~~

~~To disqualify counsel because of this conflict requires nothing more than showing that counsel is attempting to represent potentially adverse parties. However, in this case, DTF's bill includes work done for the partnership that is directly adverse to the partnership's interests.~~

In this regard, there is a .57 acre lot in St. Thomas that is in the name of DTF's client, United Corporation, that belongs to the partnership, Parcel No.2-4 Rem. Estate Charlotte Amalie. It was purchased by Plessen Corporation for \$350,000 in 2006, which United Corporation had loaned to it, secured by a mortgage. When asked about this small parcel in his deposition earlier in this action, Fathi Yusuf unequivocally stated in part as follows (See **Exhibit 2** at pp. 80-81):

Q. And the Tutu Park property, is that also called Ft. Milner, as well?

A. Yeah, it's Ft. Milner or Tut. Its' Ft. Milner, I believe.

Q. Okay. And one is a 9-acre parcel?

A. 9.31

Q. Then the other one is like a half-acre parcel?

A. It's about .53, if I recall.

...

Q. Okay. So, and what I'm trying to get at is there's a half-acre piece in United, that's in the name of United.

A. Yes.

...

**Q. Okay. And both of those, the smaller piece and the bigger piece, were purchased with money from the supermarket, so they're 50/50.**

**A. That's correct.** (Emphasis added.)

Notwithstanding this testimony, Yusuf failed to identify this property as partnership property in the Liquidating Partner's July 31<sup>st</sup> report to this Court, prompting Hamed to file an objection to that report because of his omission. See **Exhibit 3**.

At first, DTF derided Hamed for even raising the issue of the ½ acre, stating in a response to counsel's letter on this issue that United was not asserting any claim to this property. See Group **Exhibit 4**. **However, in the Liquidating Partner's November**

30<sup>th</sup> report, Yusuf reversed his position, now claiming the property did belong to United and not to the partnership. See Exhibit 5.

Thus, DTF has filed pleadings and sent correspondence that has taken both sides of the issue at different times for different parties. While this Court need not resolve this ownership issue in addressing this motion, DTF's invoice (**Exhibit 1**) contains specific entries that demonstrate that it was billing the partnership for the work it did, reversing itself on the partnership's interest in this land, and subsequently claiming that the partnership (its client!) had no interest and refusing to list the property as a contested asset:

10/05/15	reply to 9/29 letter from Holt re partnership assets; email FY re same; teleconference with FY re draft reply to Holt.
10/20/15	Draft, review, and revise list of remaining partnership property to be liquidated and pending motions affecting partnership property.
10/21/15	Review letter from Holt re disputed land; email FY re same.
11/17/15	Draft fifth by-monthly report. Conference with CKP re pending litigation and claims reserve.
11/19/15	Review and revise fifth bi-monthly report, email to Gaffney and CKP re same.
11/23/15	Email to Gaffney re fifth bi-monthly report

Of course, this work, which DTF has represented was done "for" the partnership, really was done to serve Yusuf and United, not the partnership. Otherwise DTF never would have submitted pleadings (being charged to the partnership) that benefited Yusuf and United as opposed to the partnership. In short, DTF is acting directly contrary to its "client", the partnership, and for the benefit of DTF's other two clients, Yusuf and United.

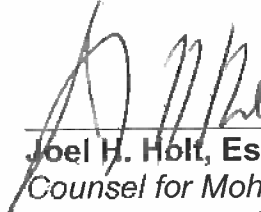
~~A full analysis of this billing demonstrates numerous other instances where DTF acted contrary to the interests of the partnership. However, the simple fact is that the Supreme Court's admonition in *King* against representing potentially conflicting interests~~



~~materially adverse to the interests of the former client unless  
the former client gives informed consent, confirmed in writing.~~

~~This rule clearly applies here. Thus, DTF must be disqualified from proceeding further  
in this case.~~

**Dated:** January 29, 2016



**Joel H. Holt, Esq.**  
*Counsel for Mohammad Hamed*  
2132 Company Street,  
Christiansted, VI 00820  
(340) 773-8709  
Email: holtvi@aol.com

**Carl J. Hartmann III, Esq.**  
*Counsel for Waheed Hamed*  
5000 Estate Coakley Bay, L-6  
Christiansted, VI 00820  
(340) 719-8941  
Email: carl@carlhartmann.com

### CERTIFICATE OF SERVICE

I hereby certify that on this 29<sup>th</sup> day of January, 2016, I served a copy of the foregoing Memorandum by email, as agreed by the parties, on:

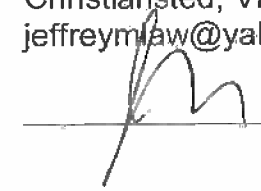
**Hon. Edgar Ross**  
Special Master  
edgarrossjudge@hotmail.com

**Nizar A. DeWood**  
2006 Eastern Suburb, Suite 101  
Christiansted, VI 00820  
dewood@gmail.com

**Gregory H. Hodges**  
Law House, 10000 Frederiksberg Gade  
P.O. Box 756  
St. Thomas, VI 00802  
ghodges@dtflaw.com

**Mark W. Eckard**  
5030 Anchor Way  
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mark@markeckard.com

**Jeffrey B. C. Moorhead**  
CRT Brow Building  
1132 King Street, Suite 3  
Christiansted, VI 00820  
jeffreymlaw@yahoo.com



# **Exhibit 5**

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

MOHAMMED HAMED by His Authorized )  
Agent WALEED HAMED, )  
)  
Plaintiff/Counterclaim Defendant, )  
)  
vs. ) Case No. SX-12-CV-370  
)  
FATHI YUSUF and UNITED CORPORATION, )  
)  
Defendants/Counterclaimants, )  
)  
vs. )  
)  
WALEED HAMED, WAHEED HAMED, MUFEED )  
HAMED, HISHAM HAMED, and PLESSEN )  
ENTERPRISES, INC., )  
)  
Additional Counterclaim Defendants.)

**THE VIDEOTAPED ORAL DEPOSITION OF FATHI YUSUF**

was taken on the 2nd day of April, 2014, at the Law Offices  
of Adam Hoover, 2006 Eastern Suburb, Christiansted,  
St. Croix, U.S. Virgin Islands, between the hours of  
9:17 a.m. and 4:16 p.m., pursuant to Notice and Federal  
Rules of Civil Procedure.

---

Reported by:

Cheryl L. Haase  
Registered Professional Reporter  
Caribbean Scribes, Inc.  
2132 Company Street, Suite 3  
Christiansted, St. Croix U.S.V.I.  
(340) 773-8161

## FATHI YUSUF -- DIRECT

1 property?

2 A. No. I have a contract.

3 Q. So if I went over to Jordan and did a title  
4 search -- I don't even know if they do that -- it would show  
5 the property's still in both your names?

6 A. Yes.

7 Q. And the Tutu Park property, is that also called  
8 Ft. Milner, as well?

9 A. Yeah, it's Ft. Milner or Tutu. It's Ft. Milner, I  
10 believe.

11 Q. Okay. And one is a 9-acre parcel?

12 A. 9.31.

13 Q. Then the other one is like a half-acre parcel?

14 A. It's about .53, if I recall.

15 Q. Okay.

16 A. Not too sure exactly.

17 Q. And -- and both of those properties were supposed  
18 to belong 50 percent to you and 50 percent to Hamed?

19 A. Up to the time he give me his word, it was 50/50.  
20 After that, I would assume all is mine.

21 Q. Okay. So, and what I'm trying to get at is I know  
22 there's a half-acre piece in United, that's in the name of  
23 United?

24 A. Yes.

25 Q. But that was actually purchased with --

## FATHI YUSUF -- DIRECT

1           **A.**   This is part of the --

2           **Q.**   Bigger piece?

3           **A.**   -- of the one he pledge to settle the number I  
4 give him at our first meeting.

5           **Q.**   Okay. And both of those, the smaller piece and  
6 the bigger piece, were purchased with money from the  
7 supermarket, so they're 50/50.

8           **A.**   That's correct.

9           **Q.**   Okay. And, you know, you keep referring back to  
10 the testimony yesterday of Mr. Mohammad Hamed.

11                         Did you hear him say anything that you think  
12 is incorrect or untruthful?

13           **A.**   A lot, unfortunate. A lot of what he say, I don't  
14 agree with.

15           **Q.**   Okay. Let me come back to that.

16                         All right. So getting back to the exhibit in  
17 front of you, I'm just going to read you two more clauses  
18 and then we'll be done with this one.

19                         The third -- the third clause from the bottom  
20 says, Whereas the partners have shared profits, losses,  
21 deductions, credits and cash --

22           **A.**   Excuse me. Where -- where it says that? What  
23 page?

24           **Q.**   The page you're on, right there.

25           **A.**   This?

# **Exhibit 6**

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

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

**LIQUIDATING PARTNER’S SIXTH BI-MONTHLY REPORT**

~~Pursuant to this Court’s “Final Wind Up Plan Of The Plaza Extra Partnership” entered on January 9, 2015 (the “Plan”), defendant/counterclaimant Fathi Yusuf (“Yusuf”), as the Liquidating Partner<sup>1</sup>, respectfully submits this sixth bi-monthly report of the status of wind up efforts, as required by § 5 of the Plan.~~

~~Pursuant to the Court’s “Order Adopting Final Wind Up Plan” dated January 7, 2015 and entered on January 9, 2015 (the “Wind Up Order”), the Court adopted the Plan. An Order entered on January 27, 2015 approving a stipulation of the parties provided, among other things, that the effective date of the Plan “shall be changed from ten (10) days following the date of the ... [Wind Up] Order to January 30, 2015.”~~

~~On February 25, 2015, the Claims Reserve Account (“CRA”) and the Liquidating Expense Account (“LEA”) were established at Banco Popular de Puerto Rico. No disbursements have been made from the CRA or LEA without the approval of the Master. The~~

<sup>1</sup> Capitalized terms not otherwise defined in this report shall have the meaning provided for in the Plan.

**EXHIBIT**

**6**

**YUSF230180**

**DUDLEY, TOPPER  
AND FEUERZEIG, LLP**

1000 Frederiksberg Gade  
P.O. Box 756

St. Thomas, U.S. V.I. 00804-0756  
(340) 774-4422

~~the price of \$4,050,000 plus \$220,000 in fees attributable to the Tutu Park Litigation~~  
(collectively, the "Tutu Park Purchase Price"), which has been paid.<sup>3</sup>

Pursuant to the express provisions of the Wind Up Order (p.5), § 8(2) of the Plan, and the April 30 Master's Order (p.2), Hamed was obligated to obtain releases of the Partnership and Yusuf from any further leasehold obligations to Tutu Park, Ltd. when he assumed sole ownership and control of the Tutu Park store as of May 1, 2015. Despite repeated demands, Hamed has failed to provide the required releases that are a precondition to the valid transfer of the Tutu Park store. In the absence of the prompt delivery of such releases, the Tutu Park store will require the further attention of the Liquidating Partner and the Court for separation.<sup>4</sup> Given the passage of more than nine (9) months since the releases should have been delivered, the Liquidating Partner is requesting the Court's intervention regarding the final disposition of the Tutu Park store.

The Liquidating Partner is also working to resolve issues involving recent claims presented by Tutu Park, Ltd. concerning property taxes for the years 2012, 2013, and 2014 and percentage rents claimed due for the period November 1, 2014 through October 31, 2015. The Liquidating Partner and Master authorized the payment of the entire, allocable taxes for 2012 and 2013 in the amount of \$79,009.87 and a check for that amount has been delivered to Tutu Park, Ltd. The property taxes for 2014 and 2015 have not yet been billed, but reserves will be

<sup>3</sup> Because the Tutu Park Purchase Price was paid to Yusuf using Partnership funds, Yusuf was in fact paid an equal amount from the CRA representing a matching distribution to him of the funds used by Hamed to purchase Plaza Extra Tutu Park.

<sup>4</sup> At the closed auction for the Tutu Park store, the Partners agreed before the Master that the inventory to be included in the auction consisted of the inventory located under the roof of the store facilities. After the auction, Yusuf learned that Hamed or his designee, KAC357, Inc., took possession of 6 trailers of inventory located outside of the covered premises. Since the inventory contained in these 6 trailers was indisputably Partnership property, the Liquidating Partner needs to determine what was contained in these trailers and the value of such content. Although Yusuf has claimed he is entitled to ½ of the value, the Master has rejected that claim.



set aside to pay these taxes.<sup>5</sup> The Liquidating Partner rejected Tutu Park, Ltd.'s claim for percentage rents in the amount of \$41,462.28 because all parties concede that no percentage rents were due as of the effective transfer of the Tutu Park store.

To date, no Partnership Assets requiring liquidation beyond those described above have been identified by or to the Liquidating Partner.<sup>6</sup> Hamed has inquired about the disposition of ½ acre of unimproved land located on St. Thomas that is allegedly owned by the Partnership and more particularly described as Parcel No. 2-4 Rem. Estate Charlotte Amalie, No. 3 New Quarter, St. Thomas, as shown on OLG Map. No. D9-7044-T002 (the "Land"). Yusuf submits that the Land has been erroneously carried on the balance sheet of the Partnership, because the record owner of the Land, pursuant to a Warranty Deed dated July 26, 2006 and recorded August 24, 2006, was Plessen Enterprises, Inc. ("Plessen"), a corporation jointly owned by the Hamed and Yusuf families. The Land was encumbered by a mortgage dated August 24, 2006 from Plessen to United in the face amount of \$330,000. Pursuant to a Deed In Lieu Of Foreclosure dated October 23, 2008 and recorded on March 24, 2009, Plessen conveyed the Land to United. Pursuant to a Release Of Mortgage dated October 23, 2008 and recorded on March 24, 2009, United released its mortgage covering the Land.<sup>7</sup> Copies of the Deed In Lieu Of Foreclosure and Release Of Mortgage have been provided to the Master and Hamed.

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<sup>5</sup> If the Liquidating Partner determines that the Partnership is responsible to Tutu Park, Ltd. for additional rent in the form of taxes or otherwise, the Partnership would be obligated to pay United comparable amounts since the rent for the Plaza Extra East store was pegged by formula to the rent for the Tutu Park store, as recognized in this Court's Memorandum Opinion and Order entered on April 27, 2015. For example, when the \$79,009.87 was paid to Tutu Park, Ltd., the Liquidating Partner and the Master authorized the payment of \$89,442.92 to United based on that formula.

<sup>6</sup> With the permission of the Master, a 2005 Toyota Camry owned by the Partnership and used primarily by Nejeih Yusuf in connection with his co-management of Plaza Extra Tutu Park was purchased by United on May 1, 2015 for the sum of \$5,000.

<sup>7</sup> The fourth bi-monthly report contained dated information. After that report was filed, counsel for the Liquidating Partner learned of the subsequent conveyance of the Land to United.

Accordingly, the Liquidating Partner does not intend to pursue liquidation of the Land or the mortgage since the Partnership has no continuing interest in either.<sup>8</sup>

~~An updated balance sheet was provided to counsel and the Master on February 6, 2015, as required by § 9, Step 4 of the Plan. Combined balance sheets and income statements for the Partnership as of December 31, 2015 and supporting general ledger, cash reconciliation, accounts receivable aging, and accounts payable aging information (collectively, the “Financial Information”) have been provided to the Master and Hamed with or prior to this report. John Gaffney, an accountant who has been engaged on behalf of and paid by the Partnership, has compiled the Financial Information, which the Liquidating Partner believes is generally reliable and historically accurate.<sup>9</sup>~~

The pending litigation identified in Exhibit C to the Plan was updated by the more detailed list attached as Exhibit C-1 to the first bi-monthly report. Since that updated Exhibit was prepared, the Allembert and Isaac claims have been settled. The Liquidating Partner is attempting to establish appropriate reserves for all pending litigation and any future litigation that may be filed within the two year statute of limitations period for personal injuries allegedly occurring prior to the transfer of the Plaza Extra Stores. Such reserves will be established out of the funds in the CRA.

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<sup>8</sup> On August 18, 2015, Hamed filed a “Notice of Objection to Liquidating Partners Bi-Monthly Reports” (the “Objection”), which raised the issue of the Land, among other issues, but acknowledged that these issues would be addressed in the “claims portion” of the liquidation process. On September 3, 2015, Yusuf filed his Response to the Objection.

<sup>9</sup> The submission of the Financial Information by the Liquidating Partner is not intended to impair or otherwise affect the right of either Partner to submit his proposed accounting and distribution plan contemplated by § 9, Step 6, of the Plan.

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~~Liquidating Partner's duties, pursuant to § 4 of the Plan. The Liquidating Partner and the Master have authorized the payment of those fees.~~

Pursuant to a "Further Stipulation Regarding Motion to Clarify Order of Liquidation" filed with the Court on October 5, 2015 and "So Ordered" on November 13, 2015, the Partners stipulated that the Liquidating Partner will provide the Master and Hamed with the Partnership accounting required by § 5 of the Plan on November 16, 2015, which was done, and the Partners will submit their proposed accounting and distribution plans contemplated by § 9, Step 6, of the Plan to each other and the Master by March 3, 2016.

~~Respectfully submitted this 1<sup>st</sup> day of February, 2016.~~

**DUDLEY, TOPPER and FEUERZEIG, LLP**

By: 

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**CERTIFICATE OF SERVICE**

I hereby certify that on this 1st day of February, 2016, I caused the foregoing **Liquidating Partner's Sixth Bi-Monthly Report** to be served upon the following via e-mail:

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**YUSF230187**

# **Exhibit 7**

**United Corporation West (Pship)**  
**General Ledger**  
**For the Period From Jan 1, 2015 to Dec 31, 2015**

Account ID	Account Description	Date	Reference	Jrnl	Trans Description	Debit Amt	Credit Amt	Balance
10000	Cash - Petty	1/1/15			Beginning Balance			11,000.00
10000	Cash - Petty	3/31/15	JE31	GENJ	ADJUST NOMINAL CASH ON HAND DIFF TO OTHER INC		1,000.00	
10000	Cash - Petty	3/31/15	XJE31-01	GENJ	HAMED DISTRIB FOR CASH ON HAND		10,000.00	
10000	Cash - Petty				Change		11,000.00	-11,000.00
10100	Cash - Registers	1/1/15			Beginning Balance			11,450.00
10100	Cash - Registers	3/31/15	XJE31-01	GENJ	HAMED DISTRIB FOR CASH ON HAND		11,450.00	
10100	Cash - Registers				Change		11,450.00	-11,450.00
10200	Cash - Safe	1/1/15			Beginning Balance			77,950.00
10200	Cash - Safe	1/12/15	SJ12	GENJ	DAILY POS (CHANGE ORDER)		11,000.00	
10200	Cash - Safe	1/12/15	JE12	GENJ	RETURN CK MUTILATED	11,000.00		
10200	Cash - Safe	1/15/15	JE15	GENJ	RETURN CHECK MUTILATED	7,000.00		
10200	Cash - Safe	1/18/15	SJ18	GENJ	DAILY POS (CHANGE ORDER)		7,000.00	
10200	Cash - Safe	2/18/15	SJ18	GENJ	DAILY POS ENTRY		15,800.00	
10200	Cash - Safe	2/19/15	SJE19	GENJ	RETURN CK MUTILATED	15,800.00		
10200	Cash - Safe	2/25/15	SJ25	GENJ	DAILY POS ENTRY		5,500.00	
10200	Cash - Safe	2/25/15	JE25	GENJ	OPEN NEW BANCO 9075 PSHIP LIQUIDATION		500.00	
10200	Cash - Safe	2/25/15	JE25	GENJ	OPEN NEW BANCO 9091 CLAIMS RESERVE		500.00	
10200	Cash - Safe	2/26/15	SJE26	GENJ	CASH REQ.	5,500.00		
10200	Cash - Safe	3/9/15	SJE09	GENJ	CASH REQUES	1,000.00		
10200	Cash - Safe	3/31/15	JE31	GENJ	RECLASS EXCESS CASH DEP ERROR POSTED TO KAC LIAB		49,843.33	
10200	Cash - Safe	3/31/15	JE31	GENJ	ADJUST NOMINAL CASH ON HAND DIFF TO OT	443.33		
10200	Cash - Safe	3/31/15	XJE31-01	GENJ	HAMED DISTRIB FOR CASH ON HAND		28,550.00	
10200	Cash - Safe				Change	40,743.33	118,693.33	-77,950.00
10300	Cash - Bank Op'g 6269	1/1/15			Beginning Balance			-389,444.08
10300	Cash - Bank Op'g 6269	1/1/15	SJ01	GENJ	DAILY POS ENTRY	9,957.24		
10300	Cash - Bank Op'g 6269	1/1/15	SJ01	GENJ	DAILY POS ENTRY	22,524.71		
10300	Cash - Bank Op'g 6269	1/1/15	JE01	GENJ	O/S CHK 9303 NOT SENT TO VENDOR ASSUME	385.00		
10300	Cash - Bank Op'g 6269	1/2/15	SJ02	GENJ	DAILY POS ENTRY	27,982.57		
10300	Cash - Bank Op'g 6269	1/2/15	SJ02	GENJ	DAILY POS ENTRY	11,948.73		
10300	Cash - Bank Op'g 6269	1/2/15	SJ02	GENJ	DAILY POS ENTRY	58.00		
10300	Cash - Bank Op'g 6269	1/3/15	SJ03	GENJ	DAILY POS ENTRY	33,987.63		
10300	Cash - Bank Op'g 6269	1/3/15	SJ03	GENJ	DAILY POS ENTRY	7,122.78		
10300	Cash - Bank Op'g 6269	1/4/15	SJ04	GENJ	DAILY POS ENTRY	10,174.60		
10300	Cash - Bank Op'g 6269	1/4/15	SJ04	GENJ	DAILY POS ENTRY	21,467.28		
10300	Cash - Bank Op'g 6269	1/5/15	9373	CDJ	VI. DAILY NEWS		358.64	
10300	Cash - Bank Op'g 6269	1/5/15	9374	CDJ	CARIBBEAN REFRIGERATION & MECH		1,179.43	
10300	Cash - Bank Op'g 6269	1/5/15	9375	CDJ	ST. CROIX GAS		3,137.09	
10300	Cash - Bank Op'g 6269	1/5/15	9376	CDJ	SUN CROIX FOODS LLC		628.00	
10300	Cash - Bank Op'g 6269	1/5/15	9377	CDJ	URIAS JN BAPTISTE		1,817.00	
10300	Cash - Bank Op'g 6269	1/5/15	9378	CDJ	ADT SECURITIES SYSTEMS V.I.		110.25	
10300	Cash - Bank Op'g 6269	1/5/15	9379	CDJ	HADDON HOUSE FOOD PRODUCTS		11,924.31	
10300	Cash - Bank Op'g 6269	1/5/15	9380	CDJ	BADIA SPICES INC		1,069.20	
10300	Cash - Bank Op'g 6269	1/5/15	9381	CDJ	ASSOCIATED GROCERS OF FL		82,154.61	
10300	Cash - Bank Op'g 6269	1/5/15	9382	CDJ	AMERICAN FRUIT & PRODUCE		26,229.97	
10300	Cash - Bank Op'g 6269	1/5/15	9383	CDJ	HAPCOR INC		594.80	
10300	Cash - Bank Op'g 6269	1/5/15	9384	CDJ	MONEL INC		1,127.90	
10300	Cash - Bank Op'g 6269	1/5/15	9385	CDJ	NIAGARA BOTTLING LLC		15,540.00	
10300	Cash - Bank Op'g 6269	1/5/15	9386	CDJ	BECKSTEDT & ASSOCIATES		2,121.50	
10300	Cash - Bank Op'g 6269	1/5/15	SJ05	GENJ	DAILY POS ENTRY	598.76		
10300	Cash - Bank Op'g 6269	1/5/15	SJ05	GENJ	DAILY POS ENTRY	19,771.25		
10300	Cash - Bank Op'g 6269	1/5/15	SJ05	GENJ	DAILY POS ENTRY	14,968.39		
10300	Cash - Bank Op'g 6269	1/6/15	9387	CDJ	BANCO POPULAR ADVANTAGE VISA		19,049.00	
10300	Cash - Bank Op'g 6269	1/6/15	9388	CDJ	BANCO POPULAR ADVANTAGE VISA		18,548.00	
10300	Cash - Bank Op'g 6269	1/6/15	9389	CDJ	BANCO POPULAR ADVANTAGE VISA		16,874.00	
10300	Cash - Bank Op'g 6269	1/6/15	9390	CDJ	BANCO POPULAR ADVANTAGE VISA		19,981.00	
10300	Cash - Bank Op'g 6269	1/6/15	9391	CDJ	BANCO POPULAR ADVANTAGE VISA		17,405.23	
10300	Cash - Bank Op'g 6269	1/6/15	9393	CDJ	US CUSTOMS AND BORDER PROTECTI		1,013.76	
10300	Cash - Bank Op'g 6269	1/6/15	9394	CDJ	US CUSTOMS AND BORDER PROTECTI		159.36	
10300	Cash - Bank Op'g 6269	1/6/15	9395	CDJ	US CUSTOMS AND BORDER PROTECTI		12.42	
10300	Cash - Bank Op'g 6269	1/6/15	9396	CDJ	US CUSTOMS AND BORDER PROTECTI		32.82	
10300	Cash - Bank Op'g 6269	1/6/15	9392	CDJ	FOOD XPORT		1,566.20	
10300	Cash - Bank Op'g 6269	1/6/15	9397	CDJ	US CUSTOMS AND BORDER PROTECTI		975.84	
10300	Cash - Bank Op'g 6269	1/6/15	9398	CDJ	US CUSTOMS AND BORDER PROTECTI		188.88	
10300	Cash - Bank Op'g 6269	1/6/15	9399	CDJ	BANCO POPULAR ADVANTAGE VISA		40,527.16	
10300	Cash - Bank Op'g 6269	1/6/15	SJ06	GENJ	DAILY POS ENTRY	8,389.73		
10300	Cash - Bank Op'g 6269	1/6/15	SJ06	GENJ	DAILY POS ENTRY	22,958.00		
10300	Cash - Bank Op'g 6269	1/6/15	SJ06	GENJ	DAILY POS ENTRY	14,468.96		
10300	Cash - Bank Op'g 6269	1/6/15	31813747	CDJ	INTERNAL REVENUE SERVICE		10,553.56	
10300	Cash - Bank Op'g 6269	1/6/15	12874525	CDJ	INTERNAL REVENUE SERVICE		9,904.58	
10300	Cash - Bank Op'g 6269	1/7/15	DD-33664	PRJ	KHADIJAH P. SOMERSZAUL		190.99	
10300	Cash - Bank Op'g 6269	1/7/15	DD-33665	PRJ	GEORGE J. SOMERSZAUL III		249.19	
10300	Cash - Bank Op'g 6269	1/7/15	DD-33666	PRJ	CECIL N. GUMBS		210.55	
10300	Cash - Bank Op'g 6269	1/7/15	DD-33667	PRJ	ABDELKRIM BOUCENNA		1,086.42	

**EXHIBIT**  
**7**

Account ID	Account Description	Date	Reference	Jrnl	Trans Description	Debit Amt	Credit Amt	Balance
10600	Cash - Bank Claims 9091	7/31/15	225	CDJ	BECKSTEDT & ASSOCIATES		475.00	
10600	Cash - Bank Claims 9091	7/31/15	226	CDJ	BECKSTEDT & ASSOCIATES		3,705.00	
10600	Cash - Bank Claims 9091	7/31/15	216	GENJ	VOID LOST CK 204 TO SUSAN C NISSMAN	832.00		
10600	Cash - Bank Claims 9091	7/31/15	216	GENJ	REPLACE LOST CK 204 TO SUSAN C NISSMAN		832.00	
10600	Cash - Bank Claims 9091	7/31/15	217	GENJ	SUB CRA CK 217 FOR STT SCOTIA CK 41649 TO TROPICAL SHIP		11,941.00	
10600	Cash - Bank Claims 9091	7/31/15	228	GENJ	SUB WEST CRA CK 228 FOR STT SCOTIA CK 41650 TO BLUE OC		299.75	
10600	Cash - Bank Claims 9091	7/31/15	229	GENJ	CRA CK 229 TO PAY OLD UNITED NAT'L FOODS 2013-14 OPEN IT		3,581.29	
10600	Cash - Bank Claims 9091	7/31/15	230	GENJ	CRA CK 230 TO PAY OLD EAST MASA FOR EMP'S		311.26	
10600	Cash - Bank Claims 9091	7/31/15	218	GENJ	SUB CRA CK 218 FOR STT CK 41647 TO AP PURATOS		948.90	
10600	Cash - Bank Claims 9091	7/31/15	227	GENJ	VOID CK 211 TO GALLOW'S BAY PASTRY TO C	65.72		
10600	Cash - Bank Claims 9091	7/31/15	227	GENJ	REPLACE CK 211 TO GALLOW'S BAY BAKERY TO CORRECT NAM		65.72	
10600	Cash - Bank Claims 9091	8/17/15	JE17	GENJ	MERRILL LYNCH ACCOUNT CLOSURE	336,378.45		
10600	Cash - Bank Claims 9091	8/25/15	231	CDJ	V.I. EMPLOYMENT SECURITY AGENC		42,200.00	
10600	Cash - Bank Claims 9091	8/25/15	232	CDJ	V.I. EMPLOYMENT SECURITY AGENC		16,775.00	
10600	Cash - Bank Claims 9091	8/25/15	233	GENJ	TOPA PROPERTIES PAYMENT FOR AUGUST 2015 INV:69312		733.33	
10600	Cash - Bank Claims 9091	8/25/15	234	GENJ	TOPA PROPERTIES ADVANCE PAYMENT FOR SEPTEMBER		733.33	
10600	Cash - Bank Claims 9091	8/25/15	235	CDJ	ANDA INC.		82.08	
10600	Cash - Bank Claims 9091	8/25/15	238	CDJ	PUERTO RICO SUPPLIES GROUP		1,199.72	
10600	Cash - Bank Claims 9091	8/25/15	237	CDJ	AT&T MOBILITY		120.32	
10600	Cash - Bank Claims 9091	8/25/15	236	CDJ	AT&T MOBILITY		282.28	
10600	Cash - Bank Claims 9091	10/1/15	240	GENJ	CRA CK 240 TO REPLACE LOST CRA CK 218 TO AP PURATOS		948.90	
10600	Cash - Bank Claims 9091	10/1/15	240	GENJ	CRA CK 240 TO REPLACE LOST CRA CK 218 TC	948.90		
10600	Cash - Bank Claims 9091	10/1/15	241	GENJ	CRA CK 241 TO OTTLEY COMM (WSTA RADIO) FOR STT		23.64	
10600	Cash - Bank Claims 9091	10/1/15	242	GENJ	CRA CK 242 TO KLR SVCS FOR STT		280.00	
10600	Cash - Bank Claims 9091	10/1/15	243	GENJ	CRA CK 243 TO CARIBBEAN FOODSVC FOR STT		722.92	
10600	Cash - Bank Claims 9091	10/1/15	244	GENJ	CRA CK 244 TO WGOD RADIO FOR STT		300.00	
10600	Cash - Bank Claims 9091	10/1/15	245	GENJ	CRA CK 245 TO MEDINA BAKERY FOR STT		825.00	
10600	Cash - Bank Claims 9091	10/1/15	246	GENJ	CRA CK 246 TO WAPA FOR STT		32,836.73	
10600	Cash - Bank Claims 9091	10/1/15	248	GENJ	CRA CK 248 TO HADDON HOUSE FOR STT		8,922.72	
10600	Cash - Bank Claims 9091	10/1/15	249	GENJ	CRA CK 249 TO TROPICAL SHIPPING FOR STT DISPUTED PMT		10,242.00	
10600	Cash - Bank Claims 9091	10/1/15	251	GENJ	DUE TO/FR SETTLEMENT RE STMT AT 9/30/15		183,381.91	
10600	Cash - Bank Claims 9091	10/1/15	252	GENJ	CRA CK 252 TO STERENSON FORMEL FRGHT FOR STT		35.00	
10600	Cash - Bank Claims 9091	10/6/15	255	GENJ	TUTU PARK MALL 2014 R/E TAX RENT ADJUST		43,069.36	
10600	Cash - Bank Claims 9091	10/6/15	256	GENJ	UNITED CORP % RENT ADJ RE TUTU PARK MALL PMT		46,990.48	
10600	Cash - Bank Claims 9091	10/6/15	257	GENJ	TOPA PROPERTIES LLC OCTOBER THRU DECEMBER		2,199.99	
10600	Cash - Bank Claims 9091	10/17/15	258	GENJ	VIESA 2013 Q3 DEFICIENCY PLUS PENALTY & INTEREST		9,166.84	
10600	Cash - Bank Claims 9091	10/17/15	259	GENJ	VIDOL ID 12976 STT Q2 SURCHARGE		200.00	
10600	Cash - Bank Claims 9091	10/27/15	JE27	GENJ	TROPICAL SHIPPING 2014 REBATE CK 64312	293,614.74		
10600	Cash - Bank Claims 9091	10/27/15	260	GENJ	WALTRUDE HIPPOLYTE SETTLEMENT		30,000.00	
10600	Cash - Bank Claims 9091	10/27/15	261	GENJ	OTTLEY COMMUNICATIONS WSTA RADIO FOR STT		24.64	
10600	Cash - Bank Claims 9091	11/5/15	263	GENJ	UNITED CORPORATION		89,604.00	
10600	Cash - Bank Claims 9091	11/24/15	258V	GENJ	VOID CK 258 TO VIESA	9,166.84		
10600	Cash - Bank Claims 9091	11/25/15	264	CDJ	BECKSTEDT & ASSOCIATES		6,272.50	
10600	Cash - Bank Claims 9091	11/25/15	265	GENJ	VIESA 2013 Q3 DEFICIENCY RE EAST PMT NOT CLEARED		7,314.60	
10600	Cash - Bank Claims 9091	11/25/15	266	GENJ	VIESA INT/PEN RE Q3 2013 TAX PMT NOT CLR'D		2,071.35	
10600	Cash - Bank Claims 9091	11/25/15	267	GENJ	US CENTRAL BILLING FINAL PMT ON DISPUTED STT INV'S		2,917.50	
10600	Cash - Bank Claims 9091	11/30/15	JE30	GENJ	BANCO 9091 FEE		15.00	
10600	Cash - Bank Claims 9091	12/8/15	270	GENJ	TUTU PARK PMT FOR 2012/13 R/E TAXES		79,009.87	
10600	Cash - Bank Claims 9091	12/8/15	271	GENJ	PLAZA EAST RENT ADJUST RE TUTU PARK 2012/13 R/E TAX		89,442.92	
10600	Cash - Bank Claims 9091	12/8/15	272	GENJ	AMER EXPRESS CHARGE BACK IN STT		130.11	
10600	Cash - Bank Claims 9091	12/8/15	273	GENJ	GEORGE MATTHEW SNF SETTLE FR 1/22/14		5,500.00	
10600	Cash - Bank Claims 9091	12/8/15	274	GENJ	BECKSTEDT & ASSOC RE PSHIP SNF CLAIMS		6,926.25	
10600	Cash - Bank Claims 9091	12/17/15	275	GENJ	RAJA FOODS (STT INV 071186 DTD 3/19/15)		410.00	
10600	Cash - Bank Claims 9091	12/17/15	276	GENJ	INT'L RETAIL (WEST INV 520336 DTD 2/15/15)		5,871.15	
10600	Cash - Bank Claims 9091	12/17/15	277	GENJ	INT'L RETAIL (STT INV 520363 DTD 4/1/15)		675.00	
10600	Cash - Bank Claims 9091	12/17/15	278	GENJ	TUTU PARK MALL (% RENT THRU 10/31/15)		41,462.28	
10600	Cash - Bank Claims 9091	12/17/15	279	GENJ	FATHI YUSUF (TUTU MATCH % RENT)		41,462.28	
10600	Cash - Bank Claims 9091	12/17/15	280	GENJ	JOHN GAFFNEY (ROSS APPROVED BONUS)		3,000.00	
10600	Cash - Bank Claims 9091	12/17/15	281	GENJ	DUDLEY TOPPER (PSHIP LIQUID LEGAL FEES)		57,605.00	
10600	Cash - Bank Claims 9091	12/17/15	282	GENJ	UNITED CORP (NOV AP AGING TOTAL)		30,827.00	
10600	Cash - Bank Claims 9091				Change	27,718,583.65	26,070,147.52	1,648,436.13
		<b>12/31/15</b>			<b>Ending Balance</b>			<b>1,648,436.13</b>
10700	Cash - Bank Liquid 9075	1/1/15			Beginning Balance			
10700	Cash - Bank Liquid 9075	2/25/15	JE25	GENJ	BANCO SVC CHG		10.00	
10700	Cash - Bank Liquid 9075	2/25/15	JE25	GENJ	OPEN NEW BANCO 9075 PSHIP LIQUIDATION	500.00		
10700	Cash - Bank Liquid 9075	3/2/15	JE02	GENJ	FUNDS FR BPPR SECURITIES	1,113,614.05		
10700	Cash - Bank Liquid 9075	3/2/15	JE02	GENJ	FUNDS FR BPPR SECURITIES	8,886,385.95		
10700	Cash - Bank Liquid 9075	3/6/15	101	CDJ	MOHAMMAD HAMED		5,000,000.00	
10700	Cash - Bank Liquid 9075	3/20/15	103	GENJ	CK 103 XFER FR 10700 TO WEST 10300 (BANCO 9075 > 6269)		1,000,000.00	
10700	Cash - Bank Liquid 9075	3/20/15	103	GENJ	CK 102 XFER FR 10700 TO EAST 10300 (BANCO 9075 > 8830)		1,000,000.00	
10700	Cash - Bank Liquid 9075	3/20/15	104	CDJ	EDGAR D. ROSS		25,700.00	
10700	Cash - Bank Liquid 9075	3/24/15	JE24	GENJ	FUNDS FR BPPR SECURITIES	851,293.00		
10700	Cash - Bank Liquid 9075	3/24/15	JE24	GENJ	FUNDS FR BPPR SECURITIES	4,148,707.00		
10700	Cash - Bank Liquid 9075	4/1/15	JE01	GENJ	HARLAND CHECKS ORDER		164.76	
10700	Cash - Bank Liquid 9075	5/1/15	LEA101	GENJ	XFER FR LEA 9075 TO CRA 9091		5,000,000.00	
10700	Cash - Bank Liquid 9075	5/11/15	LEA102	GENJ	XFER FR LEA 9075 TO CRA 9091		2,500,000.00	
10700	Cash - Bank Liquid 9075	5/20/15	LEA103	GENJ	XFER FR LEA 9075 TO CRA 9091		300,000.00	

2014 Tutu Rent

2012-2013 Tutu Property Tax

2015 Tutu Rent

# **Exhibit 8**



**United Corporation West (Pship)**  
**Summary of Remaining Partnership Items**  
**For the Period From Jan 1, 2013 to Sep 30, 2015**

<u>Location</u>	<u>A/C</u>	<u>A/C Description</u>	<u>Yusuf</u>	<u>Hamed</u>
East	10400	Cash - Banco CC 3307	(176,353.61)	-
East	14500	Due from/to Shopping Ctr	(119,529.01)	-
East	14500	Adjust Re Mtg on 10/01	119,529.01	-
East	20000	Accounts Payable (@ 8/31/15)	326,017.99	-
East	25800	Deposit Error Suspense	193,649.63	-
			<u>343,314.01</u>	<u>-</u>
STT	14000	Due from/to Yusuf	186,819.33	-
STT	25800	Deposit Error Suspense	-	181,355.40
STT	Adjust	Paid to KAC357 in July 2015	-	(181,355.40)
STT	Adjust	Trop Shpg Pd for KAC357	-	(10,242.00)
			<u>186,819.33</u>	<u>(10,242.00)</u>
West	14000	Due from/to Yusuf	120,167.33	-
West	14500	Due from/to Shopping Ctr	(900,000.00)	-
West	14600	Due from/to Hamed	-	(24,700.00)
West	20000	Accounts Payable	(5,632.57)	2,780.41
West	25800	Deposit Error Suspense	-	(39,788.40)
			<u>(785,465.24)</u>	<u>(61,707.99)</u>
		<b>Due from (to) Partnership</b>	<b><u>(255,331.90)</u></b>	<b><u>(71,949.99)</u></b>
		Partnership Distribution	255,331.90	255,331.90
		Repmt fr NonCash Distrib	<u>(255,331.90)</u>	<u>(71,949.99)</u>
		Net Cash Payout	<u>-</u>	<b><u>183,381.91</u></b>

# **Exhibit 9**

Plaza Extra Supermarkets  
Balance Sheet  
As of December 31, 2013 and Prior Year

	<u>As of 12/31/13</u>	<u>As of 12/31/12</u>
<b>ASSETS</b>		
<b>Current Assets</b>		
10000	\$ 30,000.00	\$ 30,000.00
10100	33,870.00	33,870.00
10200	177,032.00	221,000.00
10300	(923,160.09)	(1,354,119.40)
10350	18,894.76	10,523.05
10400	932,533.54	1,454,852.93
10500	7,703,852.96	4,171,924.43
10900	4,450.00	0.00
11000	43,528.26	135,446.40
12000	9,553,982.58	9,443,569.48
13100	278,216.83	218,740.59
13400	75,006.39	(0.04)
14000	(117,644.33)	(186,819.33)
14100	(491,742.89)	0.00
14300	482,951.56	0.00
14400	8,791.33	0.00
14500	65,688.31	0.00
15100	37,767,429.03	43,069,015.83
15150	(2,324,369.86)	(3,778,720.41)
15200	336,378.45	201,293.74
15250	0.00	1,611,901.72
	53,655,688.83	55,282,478.99
Total Current Assets		
<b>Property and Equipment</b>		
16000	3,478,103.00	6,835,346.00
16100	4,214,919.00	4,214,919.00
16200	7,377,032.21	7,293,445.00
16400	304,241.60	294,445.00
16500	57,050.50	158,405.50
16900	(10,677,827.06)	(12,732,177.00)
	4,753,519.25	6,064,383.50
Total Property and Equipment		
<b>Other Assets</b>		
17000	330,000.00	3,353,652.10
19000	57,963.40	57,963.40
19100	0.00	159,882.79
19150	0.00	5,000,000.00
19200	1,527,708.00	1,527,708.00
19300	5,109,018.00	5,089,018.00
19400	87,004.26	87,004.26
19500	0.00	327,500.00
19600	0.00	500,000.00
	7,111,693.66	16,102,728.55
Total Other Assets		
Total Assets	\$ 65,520,901.74	\$ 77,449,591.04

Unaudited - For Management Purposes Only

**EXHIBIT**

**9**

Plaza Extra Supermarkets  
Balance Sheet  
As of December 31, 2013 and Prior Year

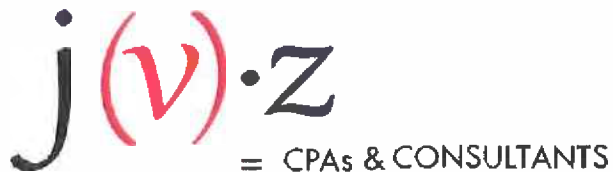
		<u>As of 12/31/13</u>	<u>As of 12/31/12</u>
<b>LIABILITIES AND CAPITAL</b>			
<b>Current Liabilities</b>			
20000	Accounts Payable - Trade	\$ 4,865,244.83	\$ 4,763,465.79
21000	VI Income Tax W/H & Payable	48,033.14	21,308.50
21100	FICA / Medicare Payable	22,931.42	80,075.05
21200	Accrued FUTA Payable	53,297.14	65,992.01
21300	Accrued VI Unemp Tax Payable	28,588.52	9,442.89
21500	Garnishments W/H & Payable	477.80	3,657.91
21700	AFLAC W/H & Payable	4,597.92	2,031.44
21900	MASA W/H & Payable	863.75	0.00
23100	Accrued Gross Rcpts Tx Payable	<u>446,997.03</u>	<u>470,501.65</u>
	<b>Total Current Liabilities</b>	<b>5,471,031.55</b>	<b>5,416,475.24</b>
<b>Long-Term Liabilities</b>			
27000	Tenant Security Deposits	<u>0.00</u>	<u>35,782.99</u>
	<b>Total Long-Term Liabilities</b>	<b><u>0.00</u></b>	<b><u>35,782.99</u></b>
	<b>Total Liabilities</b>	<b>5,471,031.55</b>	<b>5,452,258.23</b>
<b>Capital</b>			
30000	Common Stock	200,000.00	200,000.00
31000	Additional Paid-In Capital	12,454,539.26	12,454,539.26
32000	Less Cost of Treasury Stock	(400,000.00)	(400,000.00)
33000	Dividend Distrib's (Ptr Draws)	(8,486,132.00)	(3,515,060.00)
39000	Retained Earnings	49,585,658.61	55,837,942.60
	Net Income	<u>6,695,804.32</u>	<u>7,419,910.95</u>
	<b>Total Capital</b>	<b><u>60,049,870.19</u></b>	<b><u>71,997,332.81</u></b>
	<b>Total Liabilities &amp; Capital</b>	<b><u>\$ 65,520,901.74</u></b>	<b><u>\$ 77,449,591.04</u></b>

# **Exhibit 10**

**Engagement Report**  
Joel H. Holt, Esq.  
c/o Plaza Supermarket Partnership and Subsidiaries

**EXHIBIT**  
**10**

~~Exhibit:~~  
~~B-2~~



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September 28, 2016

Joel H. Holt, Esq.  
2132 Company Street  
Christiansted, VI 00820

Re: Mohammad Hamed, et.al v. Fathi Yusuf and United Corporation

Dear Attorney Holt:

Jackson Vizcaino Zomerfeld, LLP (JVZ or we) is a licensed Certified Public Accountant firm in the U.S. Virgin Islands.

You have retained us to render an expert opinion in the litigation captioned Hamed v. Yusuf et al., docket number Civ. No. SX-12-CV-370. Attached is our analysis of the financial accounting for January 1, 2012 through June 30, 2016 as per Fathi Yusuf.

For the Firm

JACKSON, VIZCAINO ZOMERFELD, LLP

MEMBERS OF:

American Institute of Certified Public Accountants  
Florida Institute of Certified Public Accountants  
National Association of Certified Valuation Analysts  
Texas State board of Public Accountancy  
Virgin Islands Board of Accountancy

The Carribean's full-service accounting firm

JVZ-000002

## ATTACHMENT IV - Analysis

*Gaffney's response:*

John Gaffney did not respond to our request.

*Opinion as to the Issue Identified:*

We did not find any sufficient reliable audit evidence, nor were we provided any audit evidence from John Gaffney, that this payment to Fathi Yusuf was for a valid business expense or served a business purpose. As such, we are not able to satisfy ourselves of the following management assertions: 1. Occurrence 2. Accuracy or 3. Classification, as described in AU-C 315.A128.

We concluded these amounts should be returned to the Partnership to conform to the management's assertions.

The total amount of the claim is \$89,443.92.

**Item 357 – Payment to Dudley, Topper and Feuerzeig, LLP (Fathi Yusuf's personal attorney)**

*Summary Description of Issue Identified:*

The Partnership paid a legal bill to Dudley, Topper and Feuerzeig, LLP ("DTF"), dated December 17, 2015. DTF is the law firm representing the Fathi Yusuf personally.

*Work performed:*

We interviewed the Hameds regarding this payment to DTF. We were advised that DTF is the personal attorney representing Fathi Yusuf and should not be an expense of the Partnership. We reviewed the Declaration of Joel H. Holt dated February 8, 2016 (Exhibit 357-a) along with its attachments, in particular Exhibit B (matter ledger report from DTF). We also reviewed the Plaintiff's Reply to DTF's Opposition to Disqualify the Firm from any Further Involvement in These Proceedings in *Hamed v Yusuf, et. al., SX-12-CV-370*, particularly the quote where DTF asserted "[t]he Order needs no clarification because it does not propose that Yusuf's counsel . . . would be paid with partnership funds." (Exhibit 357-b). Finally, we provided John Gaffney a query dated February 15, 2016 (see Attachment VII) to explain why the Partnership reimbursed work done by Fathi Yusuf's personal attorneys and provide supporting documentation.

*Gaffney's response:*

John Gaffney did not respond to our request.

*Opinion as to the Issue Identified:*

**IRS Pub. 535 - Business Expenses** states "[g]enerally, you cannot deduct personal, living, or family expenses."



#### ATTACHMENT IV - Analysis

Therefore, we conclude this payment would not be deductible for tax purposes under **IRS Pub. 535**. As such, we are not able to satisfy ourselves of the following management assertions: 1. Occurrence 2. Accuracy or 3. Classification, as described in **AU-C 315.A128**.

We concluded these amounts should be returned to the Partnership to conform to the management's assertions.

The total amount of the claim is \$57,605.

---

#### **Item 358 - STT Tutu gift certificates**

##### *Summary Description of Issue Identified:*

Plaza Extra Gift Certificates were purchased prior to the sale and separation of the Plaza Extra stores under the Court's Wind Up Order. After the sale and separation of the stores, 143 of those gift certificates that were purchase prior to the sale and separation were redeemed. These Gift Certificates were redeemed using Hamed's funds.

##### *Work performed:*

We reviewed 143 Plaza Extra Gift Certificates, including a summary of the gift certificates (Exhibits 358-a and 358-b). They were identified, summarized and totaled. We interviewed the Hameds regarding these gift certificates. The Hamed advised they were never reimbursed for the redeemed Gift Certificates. We also provided John Gaffney a query dated February 15, 2016 (see Attachment VII) to advise where the reimbursement to KAC357, Inc. is reflected on the 2015 PE partnership general ledger and provide any documents substantiating payment to KAC357, Inc. We reviewed the general ledgers from 2012 to present provided by John Gaffney.

##### *Gaffney's response:*

John Gaffney's response dated May 17, 2016 (see Attachment IX) to our request included an excel spreadsheet prepared by John of gift certificates redeemed and copies of such gift certificates. John Gaffney's spreadsheet totaled \$3,460 which John states was reimbursed to the Partnership from the claims reserve account. John Gaffney states he excludes 3 certificates totaling \$150 which are not valid. John Gaffney's response did not include any support for the reimbursement made to KAC357, Inc.

##### *Opinion as to the Issue Identified:*

We did not find any sufficient reliable audit evidence, nor were we provided any audit evidence from John Gaffney, that these items were reimbursed and the reimbursement of these items was properly recorded.

The total amount of the claim is \$3,790, subject to further refinement after discovery is re-opened and completed.

---

#### **Item 359/362 – Employee Loans**

## ATTACHMENT IV - Analysis

*Opinion as to the Issue Identified:*

We did not find any sufficient reliable audit evidence, nor were we provided any audit evidence from John Gaffney, that this payment was for a valid business expense or served a business purpose. As such, we are not able to satisfy ourselves of the following management assertions: 1. Occurrence 2. Accuracy or 3. Classification, as described in **AU-C 315.A128**.

We concluded these amounts should be returned to the Partnership to conform to the management's assertions.

The total amount of the claim is \$2,250.00.

**Item 468 – Payment to Dudley, Topper and Feuerzeig, LLP (Fathi Yusuf's personal attorney)**

*Summary Description of Issue Identified:*

We noted check #305 recorded on West in 2016 payable to Dudley, Topper and Feuerzeig, LLP, ("DTF"). DTF is the law firm representing the Fathi Yusuf personally.

*Work performed:*

We interviewed the Hameds regarding this payment to DTF. We were advised that DTF is the personal attorney representing Fathi Yusuf and should not be an expense of the Partnership. We reviewed the Declaration of Joel H. Holt dated February 8, 2016 (Exhibit 272-b) along with its attachments, in particular Exhibit B (matter ledger report from DTF). We also reviewed the Plaintiff's Reply to DTF's Opposition to Disqualify the Firm from any Further Involvement in These Proceedings in *Hamed v Yusuf, et. al.*, SX-12-CV-370, particularly the quote where DTF asserted "[t]he Order needs no clarification because it does not propose that Yusuf's counsel . . . would be paid with partnership funds." (Exhibit 357-b)

*Gaffney's response:*

John Gaffney was not queried regarding these items because he has not responded to the first two sets of requests and Hamed's counsel has informed us that they were notified that he would not be answering further such written questions.

*Opinion as to the Issue Identified:*

**IRS Pub. 535 - Business Expenses** states "[g]enerally, you cannot deduct personal, living, or family expenses."

Therefore, we conclude this payment would not be deductible for tax purposes under **IRS Pub. 535**. As such, we are not able to satisfy ourselves of the following management assertions: 1. Occurrence 2. Accuracy or 3. Classification, as described in **AU-C 315.A128**.

We concluded these amounts should be returned to the Partnership to conform to the management's assertions.

ATTACHMENT IV - Analysis

The total amount of the claim is \$9,680.

---

**Item 469 – Unclear general ledger entries regarding Inter Ocean refund**

*Summary Description of Issue Identified:*

We noted a refund from Inter Ocean.

*Work performed:*

We interviewed the Hameds regarding this unusual journal entry. The Hameds stated that it is not clear whether the portion of the refund owed Hamed has been credited.

*Gaffney's response:*

John Gaffney was not queried regarding these items because he only responded to a few items in our first query and did not respond at all to the second set of requests. The Hameds' counsel has informed us that they were notified that he would not be answering further such written questions.

*Opinion as to the Issue Identified:*

We did not find any sufficient reliable audit evidence, nor were we provided any audit evidence from John Gaffney, that the accounting records support this transaction. As such, we are not able to satisfy ourselves of the following management assertions: 1. Occurrence 2. Accuracy or 3. Classification, as described in AU-C 315.A128.

Due to the lack of sufficient information, we are unable to conclude on the amount of the claim for this item, if any. Further discovery is needed to determine the amount of this claim.

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**Item 470 – Unclear general ledger entries regarding "Lutheran Family Social Services"**

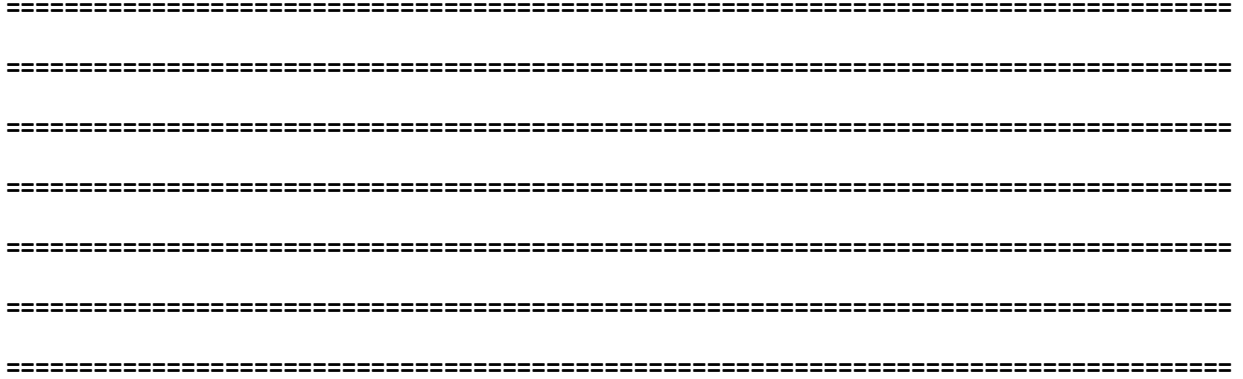
*Summary Description of Issue Identified:*

We noted an unusual journal entry recorded on West with the following description "LUTHERAN FAM RECOVERY REVERSE PREV AR CHG OFF." This entry is recorded to Dividend Distribution #33000. Write-off of receivables should be recorded to expenses rather than dividend distributions.

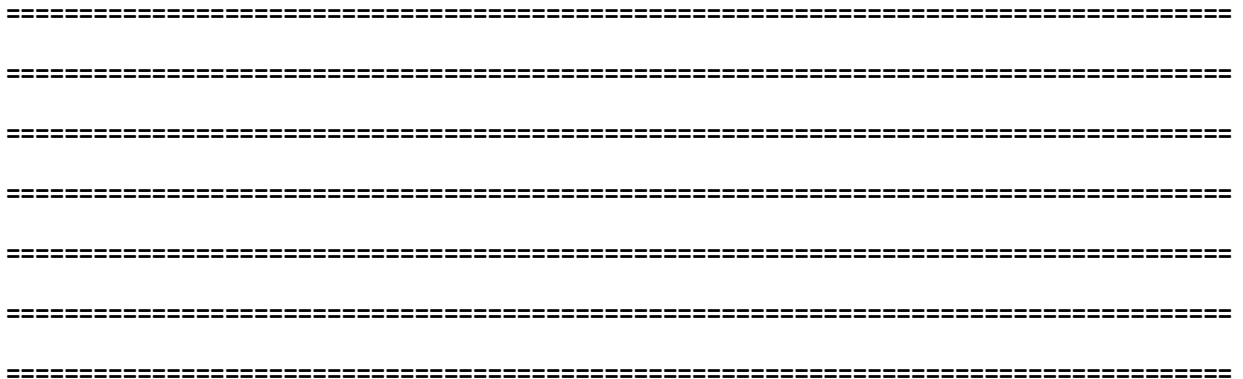
*Work performed:*

We generated a transaction detail report in Sage 50 using the accounting backup provided by John Gaffney. This report shows the detail from inception to date of the general ledger account which the transaction was recorded. We reviewed the activity in the account, and any related account(s), to determine the business purpose or rationale for recording such entry.

*Gaffney's response:*



# **DIVIDER**



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

**WALEED HAMED**, as the Executor of the  
Estate of MOHAMMAD HAMED,

*Plaintiff/Counterclaim Defendant,*

vs.

**FATHI YUSUF and UNITED CORPORATION**

*Defendants and Counterclaimants.*

vs.

**WALEED HAMED, WAHEED HAMED,  
MUFEED HAMED, HISHAM HAMED, and  
PLESSEN ENTERPRISES, INC.,**

*Counterclaim Defendants,*

**WALEED HAMED**, as the Executor of the  
Estate of MOHAMMAD HAMED,

*Plaintiff,*

vs.

**UNITED CORPORATION,**

*Defendant.*

**WALEED HAMED**, as the Executor of the  
Estate of MOHAMMAD HAMED,

*Plaintiff,*

vs.

**FATHI YUSUF,**

*Defendant.*

**Case No.: SX-2012-cv-370**

**ACTION FOR DAMAGES,  
INJUNCTIVE RELIEF AND  
DECLARATORY RELIEF**

JURY TRIAL DEMANDED

Consolidated with

**Case No.: SX-2014-CV-287**

**ACTION FOR DECLARATORY  
JUDGMENT**

JURY TRIAL DEMANDED

Consolidated with

**Case No.: SX-2014-CV-278**

**ACTION FOR DEBT AND  
CONVERSION**

JURY TRIAL DEMANDED

**HAMED'S OPPOSITION TO YUSUF MOTION TO STRIKE  
AS TO CLAIMS H-4, H-5 AND H-6 - RE SUPERMARKET LEASE INCREASE**

This motion deals with the issue of whether United is entitled to any "extra percentage rent" beyond the agreed upon base amount of rent for the Plaza East store, where United was the landlord. In this regard, Yusuf asserted that United is entitled to an "extra" rent payment for the Plaza East store every time the landlord in St. Thomas is due an agreed upon amount for taxes, water and insurance in addition to the base rent. To date United has withdrawn \$177,896 based on this *totally fabricated position*, for which Hamed seeks reimbursement in Hamed Claims H-4, H-5 and H-6.

Yusuf starts this motion by complaining about having to file the initial motion on this "extra" rent because the Special Master already approved these payments. However, as Hamed's counsel explained in the email attached as Exhibit 1 to Yusuf's motion:

Greg-this is a landlord claim, just like the one seeking "funds to be held in reserve" for the 2015 taxes owed to the STT landlord (found in section II A on page 5 of your client's Oct 30th list of his amended claims). **As Judge Ross indicated, just because certain amounts have been paid to Mr. Yusuf that are based on the same premise--that United gets additional funds when the landlord in STT gets funds-- does not mean the payment was proper.** (Emphasis added.)

The Special Master has made it *clear* that the mere fact that such payments were authorized on an interim basis is irrelevant to the merits of this (or any other claims) motion. As for this specific claim for "extra percentage rent," this is *clearly* a claim as to which Yusuf and United should bear the burden of proof, requiring them to file the first motion, as there is no written agreement or Court order that supports such a claim, as further noted in the above referenced email to Attorney Hodges:

In short, the burden does not shift to Hamed to disprove the validity of this landlord claim just because they were paid during the wind-up phase. That is why we asserted **this allocation should be United's burden to prove at the hearing, requiring it to file its explanation for this payment first, which you agreed to on the record.**

With this clarification in mind, the facts relative to this claim are simple and straight forward.

Yusuf previously requested that Judge Brady allow him to pay United rent for the Plaza East store from 2012 through 2013, stating in a supporting affidavit (see **Exhibit 1**):

5. The period of January 1, 2012, through September 1, 2013, reflects a 21 month rental period at a monthly rate of \$58,791.38 . . . . calculated based upon the sales of the Plaza Extra Store in St. Thomas.

6. This rate has been agreed upon by myself and Mohammad Hamed . . . . The attached Exhibit B shows how the calculations have been done . . . . Therefore, the monthly rate of \$58,791.38 is what the current monthly rate is.

That declaration made it clear that **the parties had agreed** that the rent for the Plaza East store was \$58,791.31 per month, **without any reference to any additional amounts for additional "taxes, water and insurance" being due, as now claimed.**<sup>1</sup>

Based on Yusuf's affidavit, Judge Brady entered the "Rent Order" on April 27, 2015, finding that United was entitled the monthly rent of \$58,791.03 from January, 2012, through the date of the Order, **as agreed between the parties**. See excerpt attached as **Exhibit 3**. The Court made no allowance for any "extra rent" as now being claimed—indeed, such a claim was never even raised, even though the same document raised here was used in that motion to set rent at the fixed amount of \$58,791.03.

**Thus, this motion is nothing more than a motion for reconsideration. As such, it is out of time, lacks the necessary factual basis (i.e. newly discovered evidence) and should have been addressed to Judge Brady, not belatedly sought now.**<sup>2</sup>

---

<sup>1</sup> Interestingly, Yusuf attached the **identical** one page of calculations to that affidavit that he now refers to as supporting his claim for "extra percentage rent" beyond the agreed upon amount of \$58,791.03, even though he made no such claim for any such additional amounts being due in that affidavit. Why? Because **the calculations were used to create a fixed monthly rent for the Plaza East** store that would not vary, even if the monthly sales of that store or the St. Thomas Plaza store subsequently dipped or increased, as those sales changed each year. See **Exhibit 2**.

<sup>2</sup> Aside from the fact that Yusuf never moved for reconsideration of this order to seek the "extra" amounts he now seeks, the motion would have been rejected even if he had filed it, as he had not previously raised the claim he now asserts for this "extra percentage rent."

In short, the Court has **already** set the rent for the Plaza East at \$58,791.03 since January 1, 2012, going forward until “Yusuf assumed sole possession and control of Plaza extra--East.” See **Exhibit 3** at p. 11. While Yusuf argues that the number used to calculate the \$58,791.03 figure should now, after the fact, be changed to include extra payments to United based on additional payments owed the St. Thomas landlord for taxes, water and insurance, **no such language is in that document or anywhere else** (nor was it previously raised with this Court when back rent since 2012 was sought from this Court).

Indeed, if the rent for the St. Croix Plaza store was to be based on the rent at the St. Thomas Plaza store, the rent would have fluctuated each year, as the total sales for that store varied each year, as noted in the calculations that took an average over the eight-year period between 2004 and 2012 to calculate this “fixed rent.” See **Exhibit 2**. In fact, as the Special Master will recall, Yusuf never sought payment for these amounts until KAC 357, Inc. sought the tax and insurance payment for the St. Thomas store for the time period before they took possession. After initially objecting to these payments, Yusuf devised this scheme, which was a windfall to him: Each payment for the St. Thomas items came 50/50 from each partner’s funds, while Yusuf then got 100 percent of the same amount for each withdrawal he took, netting him a nice gain each time to the detriment of the Partnership.

In summary, the amounts (totaling \$177,896.00) withdrawn by Yusuf for “extra percentage rent” should be returned to the Partnership, with interest (or an equal payment made to Hamed), as set forth in Hamed Claims H-4, H-5 and H-6, despite the prior approval of the Special Master.



**Dated:** January 15, 2018



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**Joel H. Holt, Esq.**  
*Counsel for Plaintiff*  
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Email: carl@carlhartmann.com  
Tele: (340) 719-8941

### **CERTIFICATE OF SERVICE**

I hereby certify that on this 16<sup>th</sup> day of January, 2018, I served a copy of the foregoing by email, as agreed by the parties, on:

**Hon. Edgar Ross**  
Special Master  
% edgarrossjudge@hotmail.com

**Gregory H. Hodges**  
**Stefan Herpel**  
**Charlotte Perrell**  
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### **CERTIFICATE OF COMPLIANCE WITH RULE 6-1(e)**

This document complies with the page or word limitation set forth in Rule 6-1(e).



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# **EXHIBIT 1**

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

MOHAMMAD HAMED

Plaintiff

Vs.

FATHI YUSUF  
UNITED CORPORATION

Defendants

CIVIL NO. SX-12-CIV-370

CIVIL ACTION

ACTION FOR DAMAGES

AFFIDAVIT OF FATHI YUSUF

**AFFIDAVIT OF FATHI YUSUF**

I, Fathi Yusuf, pursuant to 28 USC §1746, declare under oath that:

1. I am an adult of sound mind, and I am the treasurer and secretary of United Corporation, as such I am aware of the facts herein.
2. I have made repeated demands for rent outstanding to Plaintiff Hamed regarding the current rent obligations owed to United.
3. United Shopping Plaza is divided into various sized retail spaces. Each retail space is referred to as a "Bay." Since 1986, Bay 1, a 69,680 Sq. Ft. (approx.) retail space has been occupied by the Plaza Extra Supermarket in Sion Farm, St. Croix.
4. For the period of January 1<sup>st</sup>, 2012 through September 1, 2013 there is rent outstanding and due in the amount of \$1,234,618.98.
5. The period of January 1<sup>st</sup>, 2012 through September 1, 2013 reflects a 21 month rental period at a monthly rate of \$58,791.38 for a total of \$1,234,618.98. The monthly rate is calculated based on the sales of the Plaza Extra Store in St. Thomas.
6. This rate has been agreed upon by myself and Mohammed Hamed and was used to calculate the rent for the period of May 5<sup>th</sup>, 2004 through December 31<sup>st</sup>, 2011. The



attached Exhibit B shows how the calculations have been done, and to which everyone agreed to by issuing a check in the amount of \$5,408,806.74. Therefore, the monthly rate of \$58,791.38 is what the current monthly rent is.

7. For the period of January 1, 1994 through May 4<sup>th</sup>, 2004, there is rent outstanding in the amount of \$3,999,679.73 (69,680 Sq. Ft. of Retail Space @ \$5.55 sq. ft.). This reflects a rental period of 10 Years & 125 days. The rate of \$5.55 sq. ft. has always been significantly below market value.
8. United did not make a demand for the rent for the period of January 1, 1994 through May 4<sup>th</sup>, 2004 because records concerning the exact months that rental period began and ended were in the possession of the Federal government. Plaintiff knows well these records are in the possession of the federal government, and has never made any objections or denied that no agreement existed regarding the payment of rents.
9. It is respectfully requested that an Order permitting United withdraw the back rent of \$5,234,298.71 the value of all rents due for Bay 1.
10. As the fee simple owner of United Shopping Plaza, Defendant United is also entitled to repossess the premises immediately as a result of Plaintiff's bad faith refusal to allow United to withdraw rents at a rate that has already been agreed on.
11. Whether the court declares this to be partnership, a business agreement, or any other legal entity, the rent due must be paid, and there can be no excuse for failure to pay any rent.

Date:

9-5-2013



Fathi Yusuf

# **EXHIBIT 2**

## DECLARATION OF WALLY HAMED

I, Wally Hamed, declare, pursuant to V.I. R. CIV. P. 84, as follows:

1. I am over 18 years of age.
2. I am now the named Plaintiff herein and am familiar with the facts set forth herein.
3. Attached hereto is the calculation used to establish a fixed rent for the Plaza East store that was negotiated by me with Fathi Yusuf.
4. That calculation was intended to establish a fixed rent based on the eight-year average of rent paid the St. Thomas landlord for the St. Thomas Plaza store.
5. Had the intent been for this fixed amount to fluctuate based on the St. Thomas rent, the rent for the Plaza East store after 2012 would have fluctuated each year, as the St. Thomas rent fluctuated each year after 2012 due the variations in the sales, which changed from year to year.
6. At no time did Fathi Yusuf suggest that the partnership should pay United same the "extra percentage rent" payments due under the St. Thomas lease.

I declare under penalty of perjury that the foregoing is true and correct, executed on this 15th day of January, 2018.

  
\_\_\_\_\_  
Wally Hamed



**United Corporation dba Plaza Extra**

**Tutu Park Store Sales:**

1-1-2004 to 12-31-2004	32,323,902.88
Less: 1-1-2004 to 5-4-2004	-10,849,029.02
Sales 5-5-2004 to 12-31-2004	<u>21,474,873.86</u>

**Tutu Park Store:**

Paid Rent, Water, & Property Tax	263,577.53
Paid 1.5% Overage	<u>71,914.23</u>
5-5-2004 to 12-31-2004	335,491.76

1-1-2005 to 12-31-2005	515,361.54
1-1-2006 to 12-31-2006	590,533.60
1-1-2007 to 4-1-2007	255,699.33
4-2-2007 to 12-3-2007	468,689.55
1-3-2008 to 12-5-2008	540,180.12
1-5-2009 to 12-10-2009	529,799.66
1-6-2010 to 12-3-2010	527,565.40
1-1-2011 to 12-31-2011	<u>541,175.61</u>

Rent, etc. 5-5-2004 to 12-31-2011	4,304,496.57
Parking Lot Cleaning	<u>126,000.00</u>
Total Amount Paid	4,430,496.57 a

**Tutu Park Store Sales:**

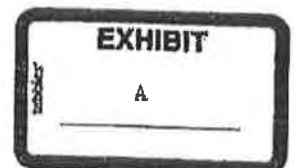
5-5-2004 to 12-31-2011	261,474,323.91
Portion of Sales - Rented building	<u>217,895,269.93</u> b
Portion of Sales - Area built by Plaza	43,579,053.98

Total Paid as a % of Sales (Rented Bldg.) = a/b 2.0333147073%

**Sion Farm Sales:**

Sion Farm Sales 5-5-2004 to 12-31-2011	273,884,322.70
Less: R/X	<u>-7,874,897.13</u>
	266,009,325.57

Calculated Rent as a % of Sales Sion Farm \$ 5,408,806.74



# **EXHIBIT 3**



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

MOHAMMED HAMED by his authorized agent )  
WALEED HAMED, )  
Plaintiff/Counterclaim Defendant, )  
v. )  
FATHI YUSUF and UNITED CORPORATON, )  
Defendants/Counterclaimants )  
v. )  
WALEED HAMED, WAHEED HAMED, )  
MUFEEED HAMED, HISHAM HAMED, and )  
PLESSEN ENTERPRISES, INC. )  
Counterclaim Defendants. )

CIVIL NO. SX-12-CV-370  
ACTION FOR DAMAGES, etc.

**MEMORANDUM OPINION AND ORDER**

THIS MATTER is before the Court on Defendant United Corporation's Motion to Withdraw Rent and Memorandum of Law in Support of United's Motion ("Motion"), filed September 9, 2013; Plaintiff's Response, filed September 16, 2013; United's Reply, filed September 27, 2013; Plaintiff's Motion for Partial Summary Judgment re the Statute of Limitations Defense Barring Defendants' Counterclaim Damages Prior to September 16, 2006 (Plaintiff's "Summary Judgment Motion"), filed May 13, 2014; and Defendant's Brief in Opposition ("Opposition"), filed June 6, 2014. For the reasons that follow, United's Motion will be granted and Plaintiff's Summary Judgment Motion will be denied, in part.

Blumberg No. 3208  
**EXHIBIT**  
**3**

**3. Defendant United is also entitled to rent from 2012 to 2013 in the amount of \$58,791.38 per month.**

Plaintiff does not argue that the Partnership is exempt from paying rent to United. “[I]t is undisputed that United is the landlord and Plaza Extra is the tenant at the Sion Farm location, for which rent is due since January of 2012.” Response, 1. Rather, Plaintiff claims that United itself has created a dispute regarding rents from January 2012 by issuing rent notices seeking increased rent in the amount of \$250,000.00 per month, rather than the \$58,791.38 per month set out in Yusuf’s affidavit. Response, 4. The proof before the Court is clear as to United’s claim that rent is due for Bay No. 1 at the rate of \$58,791.38 per month from January 1, 2012 to September 30, 2013, when United’s Motion was filed.<sup>4</sup>

As the fee simple owner and landlord of Bay No. 1 United Shopping Plaza, United is entitled to rents from the Partnership for its continued use of Bay No. 1 for the operations of Plaza Extra - East. Therefore, the Court will order the Partnership to pay United the sum of \$1,234,618.98 for rent from January 1, 2012 through September 30, 2013, Plus rent due from October 1, 2013 at the same rate of \$58,791.38 per month until the date that Yusuf assumed sole possession and control of Plaza extra – East.

On the basis of the foregoing, it is hereby

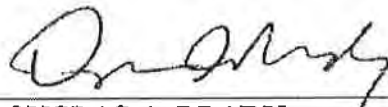
ORDERED that Defendant United Corporation’s Motion to Withdraw Rent is GRANTED, and the Liquidating Partner, under the supervision of the Master, is authorized and directed to pay

<sup>4</sup> It is acknowledged that United delivered notices to the Partnership following the April 2013 Preliminary Injunction, seeking to collect an increased rent sum of \$250,000.00. United presents in its Motion and proofs no numerical or factual justification for such claims, which are not considered in this Order.

from the Partnership joint account for past rents due to United the total amount of \$5,234,298.71, plus additional rents that have come due from October 1, 2013 at the rate of \$58,791.38 per month, until the date that Yusuf assumed full possession and control of Plaza Extra – East. It is further

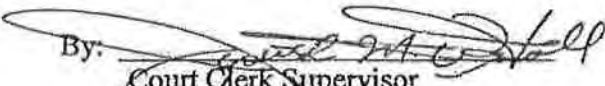
ORDERED that Plaintiff's Motion for Partial Summary Judgment is DENIED, in part, as to Plaintiff's claims that the statute of limitations precludes Defendant United's claims for past due rent.

Dated: April 27, 2015

  
DOUGLAS A. BRADY  
Judge of the Superior Court

ATTEST:

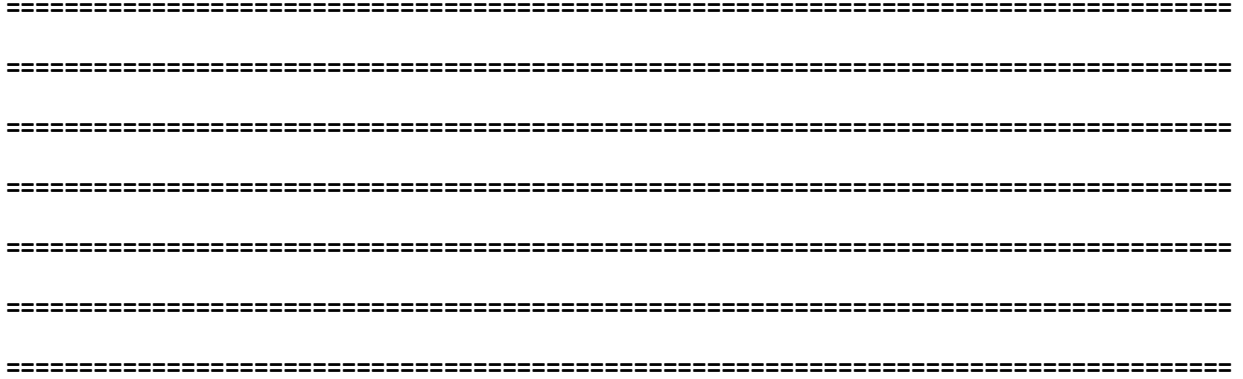
ESTRELLA GEORGE  
Acting Clerk of the Court

By:   
Court Clerk Supervisor  
4/27/15

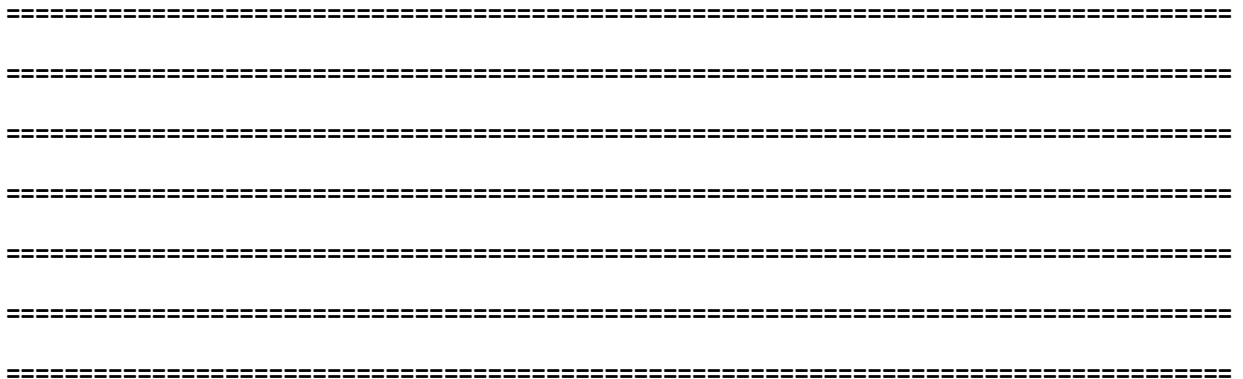
CERTIFIED TO BE A TRUE COPY  
This 27<sup>th</sup> day of April 2015

CLERK OF THE COURT

By:  Court Clerk KL



# **DIVIDER**



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

**WALEED HAMED**, as the Executor of the  
Estate of MOHAMMAD HAMED,

*Plaintiff/Counterclaim Defendant,*

vs.

**FATHI YUSUF** and **UNITED CORPORATION**

*Defendants and Counterclaimants.*

vs.

**WALEED HAMED, WAHEED HAMED,  
MUFEED HAMED, HISHAM HAMED, and  
PLESSEN ENTERPRISES, INC.,**

*Counterclaim Defendants,*

**WALEED HAMED**, as the Executor of the  
Estate of MOHAMMAD HAMED,

*Plaintiff,*

vs.

**UNITED CORPORATION,**

*Defendant.*

**WALEED HAMED**, as the Executor of the  
Estate of MOHAMMAD HAMED,

*Plaintiff,*

vs.

**FATHI YUSUF,**

*Defendant.*

**Case No.: SX-2012-cv-370**

**ACTION FOR DAMAGES,  
INJUNCTIVE RELIEF AND  
DECLARATORY RELIEF**

JURY TRIAL DEMANDED

Consolidated with

**Case No.: SX-2014-CV-287**

**ACTION FOR DECLARATORY  
JUDGMENT**

JURY TRIAL DEMANDED

Consolidated with

**Case No.: SX-2014-CV-278**

**ACTION FOR DEBT AND  
CONVERSION**

JURY TRIAL DEMANDED

**HAMED REPLY AS TO CLAIM NO. H-3:  
\$504,591.03 OF PARTNERSHIP FUNDS TAKEN BY YUSUF - PAID TO HIS LAWYER**

The Yusuf/United ("Yusuf") opposition is really a motion to stay pending additional discovery. However, Defendants' request that they be allowed to do discovery of their own (former) lawyer, Joe DiRuzzo, is simply a delay tactic that this Court should not permit, as this claim can be resolved on the record before the Master without any further discovery.

In this regard, Judge Brady, referencing hearing exhibits 15 and 16, found in his April 25, 2013, opinion as follows:

Funds from supermarket accounts have also been utilized unilaterally by Yusuf, without agreement of Harmed, **to pay legal fees of defendants relative to this action and the Criminal Action**, in excess of \$145,000 to the dates of the evidentiary hearing. (Emphasis added).

See *Hamed v. Yusuf*, 58 V.I. 117, 128, 2013 WL 1846506 at \*6 (¶38) (V.I. Super. Apr. 25, 2013). That section included a footnote 5, which stated:

Plaintiff has submitted Exhibit 30 with his February 19, 2013 Second Request to Take Judicial Notice and Request to Supplement the Hearing Record, granted by separate Order. Defendants' opposition to Plaintiffs' Motion did not address Exhibit 30, consisting of two checks in the total sum of more than \$220,000 in payment to defense counsel in this action, dated January 21, 2013 and February 13, 2013, drawn on a supermarket account by Defendants without Plaintiffs' consent. **Although the evidence is cumulative and not essential to the Court's decision herein, it reflects an ongoing practice of unilateral withdrawals and the possibility of continuing unilateral action in the future.** (Emphasis added).

Thus, the Court noted that a total of at least \$365,000 had been paid to Yusuf's personal lawyers from Partnership funds, without Hamed's consent, as of April 25, 2012.

In fact, Yusuf does not deny that funds in the amount of \$504,591.03 were eventually paid to DiRuzzo's law firm, as evidenced by the checks submitted with Hamed's motion regarding this claim. Instead, Yusuf now suggests that a portion of those funds were used for work in the criminal case, which Yusuf should not have to pay. That is untrue, **as all of these funds paid** to DiRuzzo were paid for the *personal legal fees* of Fathi Yusuf, and not for the Partnership, regardless of whether DiRuzzo billed for the criminal or civil case.

In this regard, attached is the declaration of Gordon Rhea verifying that neither DiRuzzo nor his firm did any criminal work **on behalf of the Partnership** under the Joint Defense Agreement, which ended on September 25, 2012. See **Exhibit 1**. Thereafter, when the Joint Defense ended, each defendant paid his own legal fees. In fact, DiRuzzo never contended that he represented the Partnership in the criminal case, if had he done so, he would not have been able to represent Yusuf personally in the civil case due to the obvious conflict of interest. As noted above, Judge Brady criticized civil **and criminal** fees.

Thus, the fact that DiRuzzo may have billed Fathi Yusuf for work in the criminal case as part of the \$504,591.03 is irrelevant, as it is undisputed that this total amount was for bills incurred in behalf of Fathi Yusuf individually. Thus, the total amount of \$504,591.03 (plus interest) is owed back to the Partnership.<sup>1</sup>

One final comment is in order. Yusuf makes passing reference to an Hamed claim for reimbursement of fees incurred in the criminal case in excess of \$300,000 in order to try to muddy the record. This is a distinct claim for the payment of fees incurred by the Partnership under the Joint Defense Agreement prior to its termination, which Hamed finally paid at the urging of Magistrate Judge Barnard so the criminal case could be closed.

In summary, there is no dispute that the total amount of \$504,591.03 was paid to Yusuf's personal lawyer by the Partnership, which claim should now be resolved, with a required payment back to the Partnership, plus interest, or alternatively, an equal payment of this full amount to be paid to Hamed.

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<sup>1</sup> To the extent Hamed's claim may have been misconstrued as only seeking reimbursement of fees related to the civil case, that misconception is hereby clarified—the claim for \$504,591.03 (plus interest) is for all fees paid by the Partnership for Yusuf's personal legal fees, whether incurred in regard to the criminal case or the civil case.

**Dated:** January 16, 2018




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*Counsel for Plaintiff*  
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**Carl J. Hartmann III, Esq.**  
*Co-Counsel for Plaintiff*  
 5000 Estate Coakley Bay, L6  
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 Tele: (340) 719-8941

**CERTIFICATE OF SERVICE**


I hereby certify that on this 16th day of January, 2018, I served a copy of the foregoing by email, as agreed by the parties, on:

**Hon. Edgar Ross**  
 Special Master  
 % edgarrossjudge@hotmail.com

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**Stefan Herpel**  
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**CERTIFICATE OF COMPLIANCE WITH RULE 6-1(e)**

This document complies with the page or word limitation set forth in Rule 6-1(e).




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

**WALEED HAMED**, as the Executor of the  
Estate of MOHAMMAD HAMED,

*Plaintiff/Counterclaim Defendant,*

vs.

**FATHI YUSUF** and **UNITED CORPORATION**

*Defendants and Counterclaimants.*

vs.

**WALEED HAMED, WAHEED HAMED,  
MUFEED HAMED, HISHAM HAMED, and  
PLESSEN ENTERPRISES, INC.,**

*Counterclaim Defendants,*

**WALEED HAMED**, as the Executor of the  
Estate of MOHAMMAD HAMED,

*Plaintiff,*

vs.

**UNITED CORPORATION,**

*Defendant.*

**WALEED HAMED**, as the Executor of the  
Estate of MOHAMMAD HAMED,

*Plaintiff,*

vs.

**FATHI YUSUF,**

*Defendant.*

Case No.: SX-2012-cv-370

**ACTION FOR DAMAGES,  
INJUNCTIVE RELIEF AND  
DECLARATORY RELIEF**

JURY TRIAL DEMANDED

Consolidated with

Case No.: SX-2014-CV-287

**ACTION FOR DECLARATORY  
JUDGMENT**

JURY TRIAL DEMANDED

Consolidated with

Case No.: SX-2014-CV-278

**ACTION FOR DEBT AND  
CONVERSION**

JURY TRIAL DEMANDED

DECLARATION OF GORDON RHEA, ESQ.



I, Gordon Rhea, declare, pursuant to V.I. R. CIV. P. 84, as follows:

1. I have personal knowledge of the facts set forth herein.
2. I am an attorney licensed to practice law in the U.S. Virgin Islands.
3. I was one of the defense lawyers in the criminal action filed by the United States of America in the District Court of the Virgin Islands (St. Thomas Division), Docket No, 1:05-cr-00015, against the following defendants:

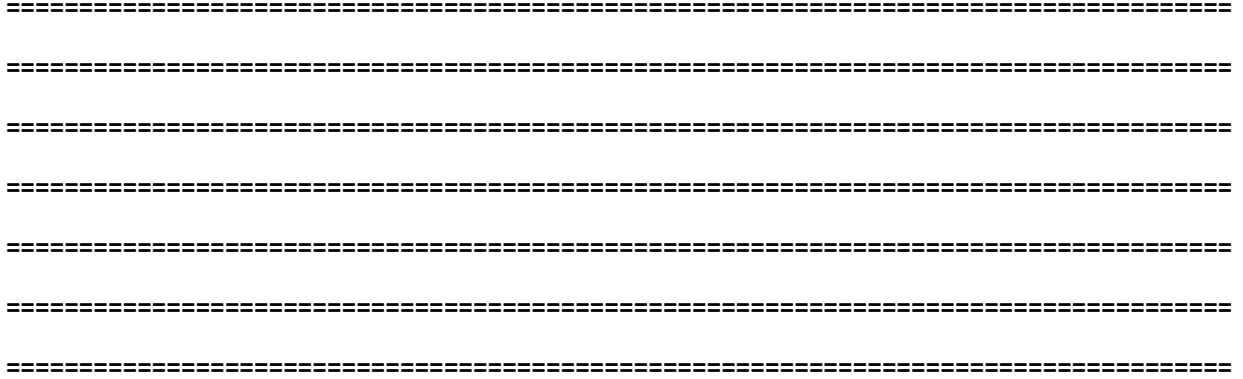
FATHI YUSUF MOHAMAD YUSUF, aka Fathi Yusuf  
WALEED MOHAMMAD HAMED, aka Wally Hamed  
WAHEED MOHAMMAD HAMED, aka Willie Hamed  
MAHER FATHI YUSUF, aka Mike Yusuf  
NEJEH FATHI YUSUF,  
ISAM YUSUF, and  
UNITED CORPORATION

4. All of the defendants in that criminal case, except for Isam Yousef who was never apprehended, were represented jointly by multiple counsel, including myself, under a Joint Defense Agreement.
5. The Joint Defense Agreement continued until September 19, 2012, when the Joint Defense Agreement was terminated.
6. Until the Joint Defense Agreement was terminated all legal bills were paid from a United Plaza account.
7. Joe DiRuzzo was never part of the Joint Defense Agreement and was not paid pursuant to it.
8. After the Joint Defense Agreement ended, each defendant paid their own fees.

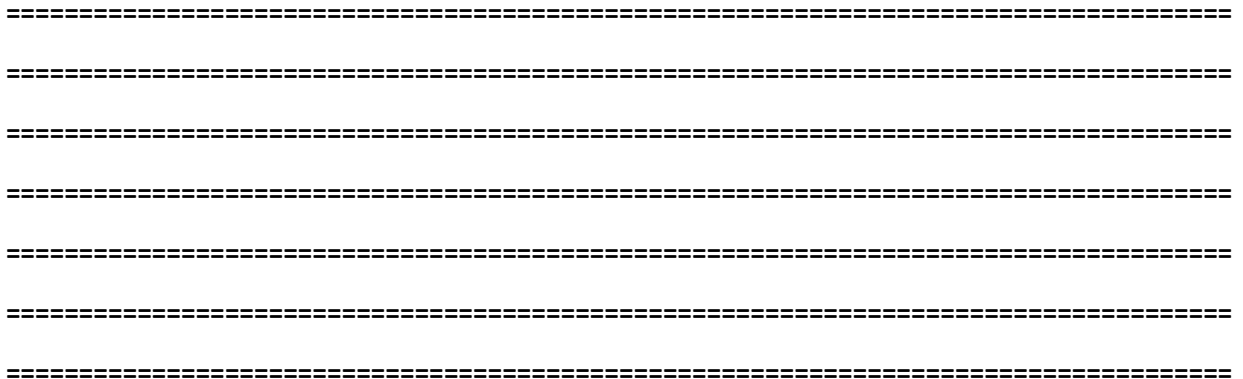
I declare under penalty of perjury that the foregoing is true and correct, executed on this 15th day of January, 2018.

Dated: January 15 2018

  
GORDON RHEA



# **DIVIDER**



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 and Counterclaimants.*

vs.

**WALEED HAMED, WAHEED HAMED,  
MUFEED HAMED, HISHAM HAMED, and  
PLESSEN ENTERPRISES, INC.,**

*Counterclaim Defendants,*

Case No.: SX-2012-cv-370

**ACTION FOR DAMAGES,  
INJUNCTIVE RELIEF AND  
DECLARATORY RELIEF**

JURY TRIAL DEMANDED

**MOHAMMAD HAMED**,

*Plaintiff,*

vs.

**FATHI YUSUF**,

*Defendant.*

Case No.: SX-2014-CV-278

**ACTION FOR DEBT AND  
CONVERSION**

JURY TRIAL DEMANDED

**MOHAMMAD HAMED**,

*Plaintiff,*

vs.

**UNITED CORPORATION**,

*Defendant.*

Case No.: SX-2014-CV-287

**ACTION FOR DEBT AND  
CONVERSION**

JURY TRIAL DEMANDED

**HAMED'S REPLY TO YUSUF'S OPPOSITION TO MOTION TO STRIKE  
YUSUF'S "PLAZA WEST / INTEGRA" CLAIM (Y-13)**

Yusuf claims a loss of Plaza West as a "going concern" from Hamed that he values at \$4,385,000, based solely on a report from Integra. In response to Hamed's motion to strike this claim, Yusuf raises several arguments that are both factually and legally incorrect.

First, Yusuf incorrectly argues that the Wind-Up Order does not bar this claim. However, while Judge Brady's Wind-Up Order allowed for the valuation of assets being purchased from the Partnership, including the St. Thomas Plaza store **because it had a lease**, no such valuation was ordered for either of the two St. Croix Plaza stores **since neither had a lease, so there was nothing to buy from the Partnership**. See **Exhibit 1**.

Second, Yusuf argues that Integra can value the Plaza West store even if it did not have a lease because they can "assume" one might be obtained. As Integra noted in its report, this is called an "extraordinary assumption," which that report specifically defines as "**uncertain information accepted as fact**. . . ." However, this assumption is more than "uncertain," as not only was there never a lease for the Plaza West store, but in fact there already was a lease to a third party, KAC357, Inc., **which was recognized as valid by multiple opinions** (from different Judges) issued by this Court.<sup>1</sup> Thus, Integra's "assumption" is worse than totally speculative, it fails to acknowledge controlling facts established by this Court--that a third party had a lease for this store so the Partnership could not have even "theoretically" obtained one and then sold the store as a "going concern." Yusuf could not have created a lease where none existed, **but if that could be done, Hamed would have the EXACT same claim on the Plaza East store**.

Third, and most importantly, Yusuf has already conceded in pleadings filed in this Court that the Plaza East store could not be sold as a "going concern," directly refuting the critical "extraordinary assumption" that Integra's report relies upon. In his opposition, Yusuf does not

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<sup>1</sup>These two opinions are found at 2014 WL 3697817 and 2016 WL 9454299. Judge Brady also denied a motion to reconsider, which can be supplied if requested.

dispute that **he represented to this Court that the Plaza East and Plaza West stores could not be sold as going concerns because neither has a lease.**<sup>2</sup> However, in footnote 3, he argues that he “changed” this view after realizing “this position was incorrect,” referencing a subsequent proposal he submitted for “both [St. Croix] stores should be sold in a closed bid between Hamed and Yusuf.” A review of the referenced document, attached as Exhibit D to Yusuf’s motion, shows this representation is false. That section (with the referenced excerpt attached here as **Exhibit 2** to assist this Court) only references such a “closed bid sale” for Plaza West, *not* Plaza East, and was contingent on the Court (1) voiding the already approved KAC lease and then (2) forcing the (non-party) owner of that property, Plessen Enterprises, to sell the property at an auction.

Thus, there was no such “change of position” as suggested by Yusuf, as his “new proposal” still required the buyer to be able to get title to the property in order to possess it, just like a lease. And, if that could happen, then Plaza East would have the identical “going concern” value too, allowing an off-set for any claim on the Plaza West store. In short, Yusuf still recognized in his revised plan that the Plaza West store could not be sold unless some type of lease or forced sale were imposed by the Court.

In summary, Yusuf cannot now assert that the Plaza West store could have been sold as a going concern, as the Partnership had no lease for the premises. Indeed, he judicially admitted that the store could not be sold as a going concern in his proposed plan because there was no lease, warranting the striking of this claim.

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<sup>2</sup> Yusuf stated in his dissolution plan filed with the Court, attached to Hamed’s opening motion:

**The Plaza Extra Stores cannot be sold as a going concern because of the absence of commercial leases for Plaza Extra - East and Plaza Extra - West . . . .**

Dated: January 16, 2018



---

**Joel H. Holt, Esq.**  
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Christiansted, VI 00820  
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### CERTIFICATE OF SERVICE

I hereby certify that on this 16th day of January, 2018, I served a copy of the foregoing by email (via Case Anywhere ECF), as agreed by the parties, on:

**Hon. Edgar Ross**  
Special Master  
% edgarrossjudge@hotmail.com

**Gregory H. Hodges**  
**Stefan Herpel**  
**Charlotte Perrell**  
Law House, 10000 Frederiksberg Gade  
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# **EXHIBIT 1**



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

MOHAMMED HAMED by his authorized agent  
WALEED HAMED,  
Plaintiff/Counterclaim Defendant,  
v.  
FATHI YUSUF and UNITED CORPORATON,  
Defendants/Counterclaimants  
v.  
WALEED HAMED, WAHEED HAMED,  
MUFEED HAMED, HISHAM HAMED, and  
PLESSEN ENTERPRISES, INC.  
Counterclaim Defendants.

CIVIL NO. SX-12-CV-370  
ACTION FOR DAMAGES, etc.

**ORDER ADOPTING FINAL WIND UP PLAN**

By Order Soliciting Comments, Objections and Recommendations, entered October 7, 2014, the Court ordered the parties to review the Proposed Wind Up Plan ("Proposed Plan") presented therewith relative to the Hamed-Yusuf (Plaza Extra) Partnership and to present comments, objections and recommendations. Plaintiff Mohammed Hamed submitted his Comments re Proposed Winding Up Order (filed October 21, 2014); Defendant Fathi Yusuf submitted his Comments, Objections and Recommendations Concerning the Court's Proposed Plan (filed October 21, 2014). The Parties each then responded to the filing of the other: Plaintiff filed his Response to Defendant's Comments re Proposed Winding Up Order on October 28, 2014; and Defendant Yusuf filed his Response to Hamed's Comments Concerning the Court's Proposed Wind-Up Plan on October 29, 2014.



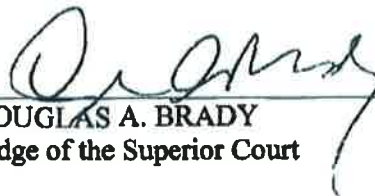
- b) All funds realized from the sale of the non-cash Partnership Assets shall be deposited into the Claims Reserve Account under the exclusive control of the Master.
- c) All bank accounts utilized in the operation of the Partnership business shall be consolidated into the Claims Reserve Account.
- d) All brokerage and investment accounts set forth in Exhibit D shall be turned over to the Master as part of the Claims Reserve Account.
- e) Any Partnership Assets remaining after the completion of the liquidation process shall be divided equally between Hamed and Yusuf under the supervision of the Master.

On the basis of the foregoing, it is hereby

ORDERED that the foregoing modifications of the Proposed Plan shall be incorporated into and form a part of the Final Wind Up Plan of the Plaza Extra Partnership, submitted herewith, which Final Plan is ADOPTED by this Order. It is further

ORDERED that the Parties shall meet and confer with the Master FORTHWITH relative to the implementation of the Final Plan, which will be deemed final and effective ten (10) business days following the date of the entry of this Order.

Dated: January 7, 2015

  
DOUGLAS A. BRADY  
Judge of the Superior Court

ATTEST:

ESTRELLA GEORGE  
Acting Clerk of the Court

By:

  
Court Clerk Supervisor 1/7/15

CERTIFIED TO BE A TRUE COPY  
This 7th day of Jan 20 15

CLERK OF THE COURT

By  Court Clerk 11

**FINAL WIND UP PLAN  
OF THE PLAZA EXTRA PARTNERSHIP**

This Plan provides for the winding up of the Partnership, as defined below. This is a liquidating plan and does not contemplate the continuation of the Partnership's business except as may be required for the orderly winding up of the Partnership.

**Section 1. DEFINITIONS**

1.1 "Act" means the Uniform Partnership Act, V.I. Code Ann. tit. 26, §§ 1-274.

1.2 "Available Cash" means the aggregate amount of all unencumbered cash and securities held by the Partnership including cash realized from any Litigation Recovery or any Liquidation Proceeds.

1.3 "Case" means *Hamed v. Yusuf, et al.*, Superior Court of the Virgin Islands (Civil No. SX-12-CV-370).

1.4 "Claim" means

- (a) any right to payment from the Partnership whether or not such right is reduced to judgment, liquidated, unliquidated, contingent, matured, unmatured, disputed, undisputed, legal, equitable, secured or unsecured; or
- (b) any right to an equitable remedy for breach of performance if such breach gives rise to a right of payment from the Partnership whether or not such right to an equitable remedy is reduced to judgment, fixed, contingent, matured, unmatured, disputed, undisputed, secured or unsecured.

1.5 "Claimant" means the holder of a Claim.

1.6 "Claims Reserve Account" means one or more interest-bearing bank account(s), money market or securities account(s) to be established and held in trust by the Master for the purpose of holding the Available Cash until distributed in accordance with the Plan and any interest, dividends or other income earned upon the investment of such Claims Reserve Account. The Claims Reserve Account will be further funded from time to time by the Liquidating Partner with:

- (i) any Liquidation Proceeds realized, plus
- (ii) any Litigation Recovery realized, minus
- (iii) any amounts necessary to pay Wind Up Expenses.

1.7 "Court" means Superior Court of the Virgin Islands in which the Case is pending.

**Section 8. PLAN OF LIQUIDATION AND WINDING UP**

**1) Plaza Extra-East**

No  
Leasehold  
interest

Yusuf will purchase from the Partnership the following elements of the existing business operation known as Plaza Extra-East: the inventory at one half of the landed cost and the equipment at its depreciated value, as mutually determined by the Partners. In the event the Partners cannot agree, such value shall be determined by a qualified appraiser selected by the Master. In the event that Yusuf is unwilling to pay the appraised depreciated value of the equipment, the same shall be sold at public auction under the direction and supervision of the Master, with net proceeds equally divided and disbursed by the Master. Upon payment for such inventory, and upon payment (or auction and distribution of proceeds) for the equipment, Yusuf will assume full ownership and control and may continue to operate the business Plaza Extra-East without any further involvement of Hamed or the Hamed Sons, and free and clear of any claims or interest of Hamed.

For purposes of winding up the Partnership, Plot 4-H Estate Sion Farm shall not be considered Partnership property and is not subject to division under this Plan, without prejudice to any accounting claim that may be presented by Hamed.

**2) Plaza Extra-Tutu Park**

The Partners will be allowed to bid on Plaza Extra-Tutu Park at a closed auction supervised by the Master. The auction shall take no more than one day and should not cause any delay in implementing this Plan or disrupt the business operations of any Plaza Extra store. The Partners may discuss and jointly or individually propose the format and procedures for the auction, subject however to the Master's sole determination.

Leasehold interest

→ The Partnership assets sold in connection with Plaza Extra-Tutu Park shall consist of the leasehold interests, the inventory, equipment, and all leasehold improvements not a part of the real property. The value of such assets shall be determined by a qualified appraiser selected by the Master prior to the auction. Whichever Partner submits the winning bid for Plaza Extra-Tutu Park shall receive and assume all existing rights and obligations to the pending litigation with the landlord in the Superior Court of the Virgin Islands, Division of St. Thomas and St. John, *United Corporation d/b/a Plaza Extra v. Tutu Park Limited and P.I.D., Inc.* (Civ. No. ST-01-CV-361) (the "Tutu Park Litigation"). The Partner who receives and assumes said rights and obligations to the Tutu Park Litigation shall be obligated to reimburse the other Partner 50% of the amount of costs and attorneys' fees incurred to date directly attributable to the Tutu Park Litigation. Additionally, the prevailing Partner at auction shall be responsible for obtaining releases or otherwise removing any continuing or further leasehold obligations and guarantees of the Partnership and the other Partner. ←

No leasehold  
interest

**3) Plaza Extra-West**

Hamed will purchase from the Partnership the following elements of the existing business operation known as Plaza Extra-West: inventory at one half of the landed cost and the equipment at its depreciated value, as mutually determined by the Partners. In the event the Partners cannot agree, such value shall be determined by a qualified appraiser selected by the Master. In the event

that Hamed is unwilling to pay the appraised value of the equipment, the same shall be sold at public auction under the direction and supervision of the Master. Upon payment for the inventory, and upon payment (or auction and distribution of the proceeds) for the equipment, Hamed will assume full ownership and control and may continue to operate Plaza Extra-West without any further involvement of Yusuf, Yusuf's sons or United, and free and clear of any claims or interests of Yusuf or United.

Hamed will be entitled to a recordable non-exclusive easement for the existing sewage line servicing Plaza Extra-West, which shall not preclude Plessen Enterprises, Inc., the owner of the servient parcel, from reserving the right to tap into and to utilize such sewage line.

#### **4) Stock of Associated Grocers**

The stock of Associated Grocers held in the name of United shall be split 50/50 between Hamed and Yusuf, with United retaining in its name Yusuf's 50% share, and 50% of such stock being reissued in Hamed's name or in the name of his designee.

#### **5) Plaza Extra Name**

The Master will conduct and supervise a closed auction wherein the Partners alone will be allowed to bid to purchase the trade name "Plaza Extra." The prevailing Partner at the auction shall receive the right to the exclusive use of the name "Plaza Extra," to the exclusion of all others, including the other Partner, who shall be forever barred from using the name "Plaza Extra" in connection with operation of any business in the U.S. Virgin Islands.

The auction shall take no more than one day and will be conducted in a manner that will not cause any delay in implementing this Plan or any disruption in the business operations of any Plaza Extra store. The Partners may discuss and jointly or individually propose the format and procedures for the auction, subject however to the Master's sole determination.

### **Section 9. Steps to Be Taken for the Orderly Liquidation of the Partnership**

This Plan is conditioned upon the ability of Hamed and Yusuf to use the 50% interest of each in Available Cash and Encumbered Cash to purchase the non-liquid Partnership Assets. While the bid-in process may continue, actual payment of the funds shall be subject to approval of the Master, the Court and, to the extent necessary, the District Court.

#### **Step 1: Budget for Wind Up Efforts**

The Wind Up Budget for the Wind Up Expenses is attached hereto as **Exhibit A**. Such expenses include but are not limited to, those incurred in the liquidation process, costs for the continued operations of Plaza Extra Stores during the wind up, costs for the professional services of the Master, costs relating to pending litigation in which Plaza Extra and/or United *d/b/a* Plaza Extra Stores is named as a party, and the rent to be paid to the landlords of Plaza Extra-East and Plaza Extra-Tutu Park.

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# **EXHIBIT 2**



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, INC.,

Additional Counterclaim Defendants.

CIVIL NO. SX-12-CV-370

ACTION FOR DAMAGES,  
INJUNCTIVE RELIEF  
AND DECLARATORY RELIEF

JURY TRIAL DEMANDED

FILED  
ST. CROIX  
JAN 14 2015

**FATHI YUSUF'S RESPONSE TO HAMED'S COMMENTS CONCERNING THE  
COURT'S PROPOSED WIND-UP PLAN**

Defendant/counterclaimant Fathi Yusuf ("Yusuf"), through his undersigned counsel, respectfully submits the following response to "Hamed's Comments Re Proposed Winding Up Order" ("Hamed Comments"), pursuant to this Court's Order dated October 7, 2014 (the "Order").

The Hamed Comments are very significant insofar as he concedes for the first time that bidding by Hamed and Yusuf is an appropriate method of liquidating the assets of the partnership. See Hamed Comments, p. 8-9 and Exhibit 4 to the Hamed Comments, Section 8(1), (2), (3), and (5). Although the Hamed Comments suggest that the use of bidding as a liquidation tool should be limited to the assets of Plaza Extra-Tutu Park and the Plaza Extra trade name, the logic of this position is that the bidding method of liquidation should be extended to cover all partnership assets, including Plaza Extra-West. Bidding by Hamed and Yusuf offers the best

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Excerpt from Yusuf Ex. D.

Blumberg No. 5208  
EXHIBIT  
2

means for maximizing partnership value, and also ensures continued operation of the stores (thereby avoiding the economic waste that would be entailed by closure of the stores).

Of course, the bidding option for Plaza Extra-West can only meet the goal of maximizing partnership value on windup if the lease that was created by action of the Board of Directors of Plessen Enterprises, Inc. ("Plessen") on April 30, 2014 (over the objections of the Yusuf faction that also owns 50% of Plessen's shares) is set aside by this Court. Hamed's suggestion that given the disputed lease, only the inventory and equipment of Plaza Extra-West would be subject to bid plainly will not maximize partnership value. The Court denied Yusuf's motion to nullify and void that lease in its July 22, 2014 Opinion and Order. That order is the subject of a pending motion for reconsideration which focuses primarily on the intrinsic fairness to the Yusuf shareholders and to Plessen of a lease that will encumber Plessen's property for 30 years. But as that motion notes, this Court also has power to revisit the order approving the disputed lease as part of its power to approve a plan of liquidation for the Plaza Extra Stores. Yusuf submits that, whatever may be said about any purported benefits to Plessen from the lease, it is clear beyond peradventure that partnership value cannot be maximized by allowing either of these partners to encumber Plessen's property with a 30-year lease, and appropriate the millions of dollars in leasehold improvements paid for with partnership funds. Rather, both the Plaza Extra-West supermarket and the 16 acres on which it sits should be put up for bid by Yusuf and Hamed, so that the value of this partnership asset can be maximized and realized at time of windup.

Yusuf and Hamed are 50% partners in the Plaza Extra Stores and for all intents and purposes are also the 50% owners of Plessen. They have the power as Plessen shareholders to



subdivide the 16 acres of land on which that store is situated from the much larger tract owned by Plessen, and to offer that land as part of any bid for that store. And this Court has the power to order this relief in conjunction with the windup of the partnership. Since either Hamed or Yusuf will be the successful bidder, there will be no need for a lease.

Any plan of liquidation that entails a continuing business relationship of any kind by Hamed and Yusuf is a non-starter. The Hamed Plan and the Court's proposed plan (to the extent it leaves the disputed lease in place), does just that. By creating a scenario in which the Yusuf and Hamed families will jointly operate a business (Plessen) for the next 30 years, with a Hamed-controlled corporation as the tenant, the Court's proposed plan would frustrate the very purposes for dissolving the partnership. It must be abundantly clear to this Court that Hamed and Yusuf simply cannot coexist as owners of any business. They must be given the equivalent of a divorce and there must be a clean break. Far from creating any finality to the Hamed and Yusuf divorce, the Hamed Plan and the Court's proposed plan (if it leaves the disputed lease in force) only ensures more strife, more mutual antagonism and ultimately more litigation down the road.

The Hamed Comments suggest that in formulating a plan, this Court should follow the Montana Supreme Court's decision in McCormick v. Brevig, 96 P.3d 697 (Mont. 2004). Hamed Comments at 3. That is a very peculiar suggestion on his part, because the only plan that is consistent with McCormick is the initial Yusuf Plan, filed on April 7, 2014, which contemplated a liquidation sale of all partnership assets to any third party who was interested. McCormick, as described in the Hamed Comments at page 1, note 1, involved a partnership which operated a

## Section 6: SALARIES, WITHDRAWALS

As compensation for serving as Liquidating Partner, Yusuf shall continue to receive the salary Yusuf is currently receiving as shown on the Wind Up Budget. This compensation will be considered an expense of winding up the Partnership's business.

## Section 7: CRIMINAL CASE AND ENCUMBERED CASH

There exists a plea agreement ("Plea Agreement") entered by United in the Criminal Case. Nothing in this Plan or the Partnership wind up efforts shall undermine or impair United's Plea Agreement. The President of United shall meet with the U.S. Department of Justice to see what impact, if any, the implementation of the Plan and wind up of the Partnership may have on United's compliance with the Plea Agreement.

The Encumbered Cash shall be deposited into the Claims Reserve Account immediately after it is no longer encumbered by the restraining order entered in the Criminal Case and, thereafter, held for distribution in accordance with this Plan.

## Section 8: PLAN OF LIQUIDATION AND WINDING UP

The liquidation process will include the sale of all non-liquid Partnership Assets, payment of outstanding Debts, and deposit of all net Liquidation Proceeds into the Claims Reserve Account under the control of the Master.

### 1) Plaza Extra – East

Yusuf will purchase from the Partnership the following elements of the existing business operations known as Plaza Extra – East: the inventory at landed cost and the equipment and leasehold improvements at their depreciated value, as mutually determined by the Partners. In the event the Partners cannot agree, such value shall be determined by a qualified appraiser selected by the Master. If the Partners do not agree with the foregoing manner of disposition, the Partners shall bid for such inventory, equipment, and leasehold improvements at a private auction between the Partners to be supervised by the Master. Upon payment for such inventory, ~~equipment and leasehold improvements, assets,~~ Yusuf will assume full ownership and control and may continue to operate the business Plaza Extra – East without any further involvement of Hamed or the Hamed sons, and free and clear of any claims or interest of Hamed.

No  
sale

### 2) Plaza Extra – Tutu Park

~~Yusuf will purchase from the Partnership the following elements of the existing business operation known as Plaza Extra – Tutu Park: the inventory at landed cost and the equipment and leasehold improvements at their depreciated value, as mutually determined by the Partners. In the event the Partners cannot agree, such value shall be determined by a qualified appraiser selected by the Master. Yusuf will reimburse the Partnership for 50% of the reasonable costs and attorneys' fees incurred to date in the Tutu Park litigation. The Partners shall bid for the Tutu Park Lease, inventory, equipment, leasehold improvements, and Tutu Park Litigation at~~

a private auction between the Partners to be supervised by the Master. Upon payment for such assets, inventory, equipment, leasehold improvements and attorneys' fees, Yusuf the purchasing Partner will assume full ownership and control and may continue to operate the business Plaza Extra – Tutu Park without any further involvement of Hamed or the Hamed sons the other Partner or his family or affiliated companies, and free and clear of any claims or interests of Hamed the non-purchasing Partner.

### 3) Plaza Extra – West

Hamed will purchase from the Partnership the following elements of the existing business operation known as Plaza Extra – West: inventory at landed cost and the equipment and leasehold improvements at their depreciated value, as mutually determined by the Partners. In the event the Partners cannot agree, such value shall be determined by a qualified appraiser selected by the Master. The lease from Plessen to the New Hamed Company shall be vacated and discharged of record. The approximately 16 acre tract shown on the July 13, 2012 preliminary surveys attached as Exhibit E (the "Plaza West Parcel") shall be subdivided from the larger tract owned by Plessen. The Partners shall bid for the Plaza West Parcel inclusive of all improvements, equipment, and inventory located on such premises at a private auction between the Partners to be supervised by the Master. Upon payment for such inventory, equipment and leasehold improvements, Hamed assets, the purchasing Partner will assume full ownership and control and may continue to operate Plaza Extra – West without any further involvement of Yusuf, Yusuf's sons or United the other Partner or his family or affiliated companies and free and clear of any claims or interests of Yusuf or United the non-purchasing Partner. The purchasing Partner shall be entitled to a recordable easement for the existing sewage line servicing Plaza Extra - West provided that Plessen shall also have the right to tap into such sewer line.

### 4) Stock of Associated Grocers

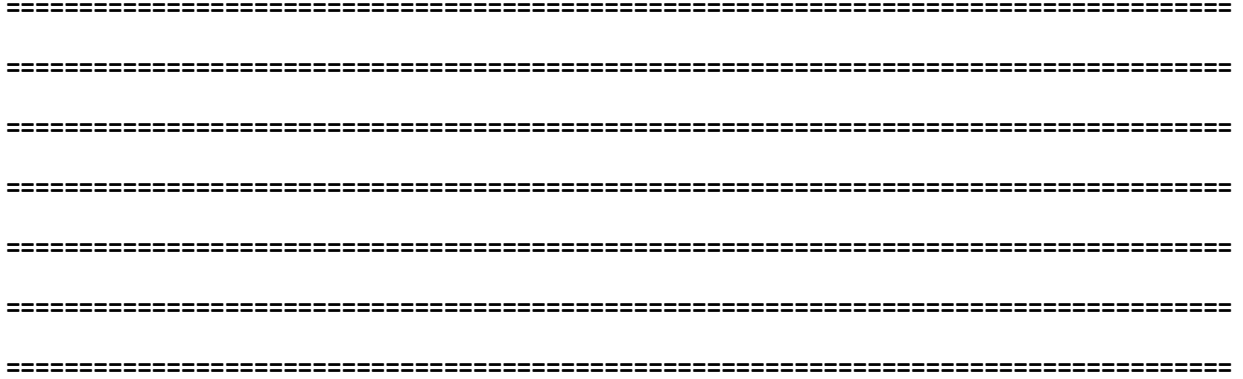
The stock of Associated Grocers held in the name of United shall be split 50/50 between Hamed and Yusuf, with United retaining in its name Yusuf's 50% share, and 50% of such stock reissued in Hamed's name or his designee's name.

### 5) Plaza Extra Name

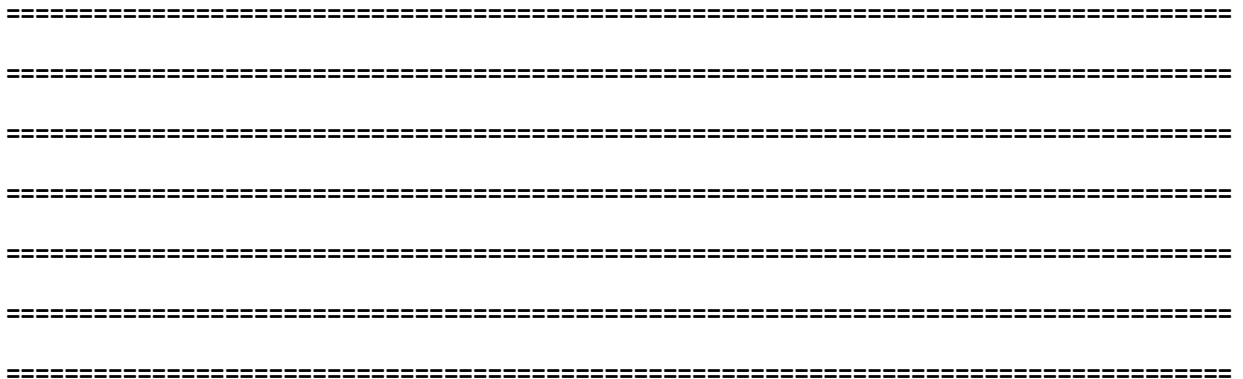
Yusuf shall own and have the right to use the trade name "Plaza Extra" in the operation of Yusuf's Plaza Extra stores. Hamed will operate Plaza Extra – West under the trade name "Plaza West."

Unless the Partners agree in writing that the name used for each store will remain with each store but without either Partner being able to use such name at any other location, The Partners shall bid for the trade name "Plaza Extra" at a private auction between the Partners to be supervised by the Master. Upon payment for such trade name, the purchasing Partner will assume full ownership and control of such trade name and the exclusive right to use such name in the operation of any businesses, including the Plaza Extra Stores.

## Steps to Be Taken for the Orderly Liquidation of the Partnership



# **DIVIDER**





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

**WALEED HAMED**, as the Executor of the  
Estate of MOHAMMAD HAMED,

*Plaintiff/Counterclaim Defendant,*

vs.

**FATHI YUSUF** and **UNITED CORPORATION**

*Defendants and Counterclaimants.*

vs.

**WALEED HAMED, WAHEED HAMED,  
MUFEED HAMED, HISHAM HAMED, and  
PLESSEN ENTERPRISES, INC.,**

*Counterclaim Defendants,*

---

**WALEED HAMED**, as the Executor of the  
Estate of MOHAMMAD HAMED,

*Plaintiff,*

vs.

**UNITED CORPORATION,**

*Defendant.*

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**WALEED HAMED**, as the Executor of the  
Estate of MOHAMMAD HAMED,

*Plaintiff,*

vs.

**FATHI YUSUF,**

*Defendant.*

Case No.: **SX-2012-CV-370**

**ACTION FOR DAMAGES,  
INJUNCTIVE RELIEF AND  
DECLARATORY RELIEF**

**JURY TRIAL DEMANDED**

Consolidated with

Case No.: **SX-2014-CV-287**

**ACTION FOR DECLARATORY  
JUDGMENT**

**JURY TRIAL DEMANDED**

Consolidated with

Case No.: **SX-2014-CV-278**

**ACTION FOR DEBT AND  
CONVERSION**

**JURY TRIAL DEMANDED**

**HAMED'S OPPOSITION TO MOTION AS TO YUSUF/UNITED CLAIM NO. Y-1:  
RENT IN "HOLDOVER" PERIOD FOR BAY 1**

In 2012, Yusuf and Hamed agreed on rent at the Plaza East store of \$58,791.38 per month. The Hamed-Yusuf Partnership has already fully paid Yusuf's United Corporation the agreed monthly rent of \$58,791.38 through the time the store was vacated in 2015.<sup>1</sup>

In his amended claim, Yusuf/United assert a claim (Y-1) that the Partnership actually owes United more rent for the period since 2012, at the absurd monthly rate of \$200,000, which then increases to \$250,000 per month, for an additional \$6,974,063.10. See **Exhibit 1**. They asserted in their pleading that *no discovery was needed to resolve this claim*. No other claim for "a reasonable rent increase" or "special damages" was ever sought by Yusuf. As Judge Brady and the Special Master have noted, any new claims are now barred.

The additional rent being sought is punitive "holdover" rent, almost **five times the agreed upon amount**. Moreover, while Yusuf argues that this Court found that Yusuf was "in charge of rent," allowing him to set the rent as he wished (with Mohammad Hamed's consent) **is untrue as to this claim**. To the contrary, the Rent Order directing that the agreed upon rent of \$58,791.38 to be paid, expressly refused to rule on this claim for this additional rent, stating that Yusuf had no "numerical or factual justification" for his new \$250,000 rent claim. See **Exhibit 2**.

Indeed, it is undisputed that Mohammad Hamed (as well as the Partnership) repeatedly refused in writing to agree to pay this amount. See, e.g., **Exhibit 3**. In short, there was no *agreement* as to the amount of **rent in any holdover period**.

In his motion, Yusuf asserts that the law requires a holdover tenant to simply pay whatever amount is set by the Landlord, citing several cases that do not support that position or which have since been rejected as being outdated law. However, because the VI Supreme Court has not ruled on this, a *Banks* analysis is required, which Yusuf did not do.

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<sup>1</sup> The same computation method used to calculate this amount was used in computing the West Lease rent, which has been found to be a commercially reasonable rate by two different Judges. See 2014 WL 3697817 and 2016 WL 9454299.

**Virgin Islands Case Law.** Yusuf cites a 1962 Virgin Islands case, *Malling-Holm v. Feiner*, 4 V.I. 341 (Terr. Ct. 1962), but that case centered on a specific finding that **the landlord had proved that the rent increase was commercially reasonable based on the rents of adjacent properties.** *Id.* at 345. The court then concluded the increase was reasonable because it was "not out of line with rentals of comparable accommodations." *Id.* at 349. Thus, that case actually undermines Yusuf's claim, as Yusuf has no evidence that his unilaterally imposed increase was "commercially reasonable," easily distinguishing it.<sup>2</sup>

The second case is *Marcelly v. Mohan*, 16 V.I. 575, 583-84 (V.I. Terr. Ct. 1979) (Feuerzeig, J.), which cited and relied upon the *Restatement (Second) of Property § 14.5 (1977)*, in holding: "During the holdover period a landlord is entitled to recover from the tenant **at a rate based on the previous rent**, unless the parties validly agree otherwise." Of course, Yusuf failed to cite either §14.5, or this case -- despite its being authored by a now-partner in the Dudley law firm. Both are discussed further below.

Thus, the only two Virgin Islands cases addressing this issue have held that (1) a holdover tenant should pay a *proven*, commercially reasonable rent increase (*Malling-Holm*) or (2) the previous rent rate if no different reasonable rent rate is proven by the landlord (*Marcelly*). Thus, no Virgin Islands court has adopted Yusuf's position.

**Majority Rule.** In feudal times, the old English common law protected the landowner's privileged status to do anything he pleased, now a very outdated and rejected concept. See, e.g., *Machado v. Yacht Haven U.S.V.I., LLC*, 61 V.I. 373, 384-85 (V.I. 2014). That view held that a landlord could demand any rent with regard to a tenant holding over at the end of a lawful tenancy, as the tenant was treated as if he had become a common

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<sup>2</sup> Indeed, in *Malling-Holm*, the Court cited to 109 ALR 197, published in 1937, that noted that the jurisdictions were split even then on whether a holdover tenant had to pay the unilaterally imposed new rent. That article included a statement that warns that a rule that automatically required such payment may result in "demands which are wholly exorbitant," as is the case in the claim now being asserted by Yusuf.

trespasser. But, in the early 20th Century the American common law began to evolve as to such holdovers. An excellent example of this evolution can be seen in *Welk v. Bidwell*, 73 A.2d 295, 298 (1950), which cited multiple jurisdictions in reaching this holding:

As a tenant at sufferance, the defendant was not liable for any stipulated rent. **He was not obligated to pay the \$125 per month demanded by the plaintiff.** Nor was his obligation fixed at the rate of \$10 per month which he had been paying. **His obligation was to pay the reasonable rental value of the property which he occupied.** *Colyear v. Tobriner*, supra, 7 Cal.2d 743, 62 P.2d 741; *Meaher v. Pomeroy*, 49 Ala. 146, 148; *McGrath v. Snell*, 162 Ill.App. 635, 637; *Abrams v. Sherwin*, 269 Pa. 31, 33, 112 A. 235; 32 Am.Jur. 792, § 938. (Emphasis added.)

Thus, the evolving, modern view took into the account that there is no meeting of the minds when a landlord *unilaterally* states a higher rent at the end of an oral, month-to-month lease.

By 1977, the *Restatement (Second) of Property: Landlord-Tenant* reflected such changes, solidifying in §14.5 what has **now become the universally accepted rule**:

. . . . the landlord . . . is entitled to recover from a tenant improperly holding over after the termination of his lease for the use and occupation of the leased property during the holdover period at a rate **based on the previous rental rate**, or on the **proven reasonable value independently established if that differs from the previous rental rate.** (Emphasis added).

Not only did the USVI adopt this rule in *Marcelly v. Mohan*, 16 V.I. 575, 583-84 (V.I. Terr. Ct. 1979) (Feuerzeig, J.) (“[d]uring the holdover period a landlord is entitled to recover from the tenant at a rate based on the previous rent, unless the parties validly agree otherwise”), but the overwhelming majority of courts have done so as well. As noted in *Hernandez v. Banks*, 84 A.3d 543, 556-557 (D.C. App. 2014):

Although the District's existing case law is limited on the issue of clear value for use and occupancy, other jurisdictions have identified similar legal principles to those set forth above, as well as other principles. In *Mushlam, Inc. v. Nazor*, 80 A.D.3d 471, 916 N.Y.S.2d 25 (2011), the court declared that “it is the landlord, not the tenant, who has the burden of proving reasonable value of use and occupancy.” *Id.* at 26 (citation omitted). Reasonable value of use and occupancy is defined as “the fair market value of the premises after the expiration of the lease.” *Id.* (citations omitted). **“In determining reasonable value of use and occupancy, the rent reserved under the lease, while not necessarily conclusive, is probative.”** *Id.* (citation omitted); see also *Charles Downey Family Ltd. P'ship v. S & V Liquor, Inc.*, 880 N.E.2d 322, 326 (Ind.Ct.App.2008) (“The measure of damages when a tenant



unlawfully holds over, and no special damages are alleged, ... is the rental value of the premises during the time the same are so detained.") (citations omitted). New Hampshire has a similar position regarding the measure of damages for use and occupancy: "In the absence of proof of special damages, the general rule is that the proper measure of recovery against a tenant for failure to surrender the premises is the reasonable rental value for the time possession is withheld." *Greelish v. Wood*, 154 N.H. 521, 914 A.2d 1211, 1214 (2006) (citation omitted). New Hampshire explains that its position "is consistent with the view of the RESTATEMENT (SECOND) OF PROPERTY, which states that a landlord is entitled to recover from a tenant who improperly holds over after the termination of a lease for the use and occupation of the leased property during the holdover period at a rate based on the previous rental rate, or on the proven reasonable value independently established if that differs from the previous rental rate." *Greelish, supra*, 914 A.2d at 1214 (citing RESTATEMENT (SECOND) OF PROPERTY, , , , , *Landlord and Tenant* § 14.5 (1977)) (internal quotation marks omitted).

The *Hernandez* court then adopted this universally accepted view as well. *Id.* at 557. See also, *89 Ranch Co. v. Oryx Energy Co.*, 1997 WL 22397, at \*4 (Tex. App. Jan. 22, 1997)("landlord is entitled to recover either the previous rental rate or the proven reasonable value of the property"); *Everett v. Lanouette*, 1994 WL 681106, at \*8 (Del. Ch. Nov. 10, 1994)("A landlord is entitled to recover reasonable rental value for the time a tenant remains in wrongful possession of the property"); *Price v. S. S. Fuller, Inc.*, 639 P.2d 1003, 1006 (Alaska 1982)("Price did not present any evidence of the reasonable rental value of the property during the time that Fuller was out of possession . . . . Thus, the previous rental rate was properly utilized by the court in computing reasonable rental value.").

In short, the Majority view now clearly rejects the position being asserted by Yusuf, that a landlord can set whatever price it wants, no matter how ridiculous, and enforce it.<sup>3</sup>

**Minority Rule.** Hamed can find no minority rule under any case law in any jurisdiction that allows enforcement of a unilateral demand for rent beyond a reasonably commercial rental value just because the landlord demands it. If that were the

---

<sup>3</sup> In fact, another case Yusuf relied upon was *Russells Factory Stores v. Fielden Furn. Co.*, 232 S.W.2d 592 (Tenn. App. 1950), that held that a holdover tenant is required to pay the amount set by the landlord. However, in 1994, **that same Court** held in *AHCI, Inc. v. Lamar Advertising of Tennessee, Inc.*, 1994 WL 25848 (Tenn. App. Jan. 26, 1994) at \*3, that the *Restatement (Second) of Property*, Section 14.5 (1977) is the better view to apply.

law, why not make it a million dollars a month? Or ten million dollars? In short, no court approves such abhorrent, feudal demands.

**Best Rule for the VI.** Thus, it is clear that the best rule for the Virgin Islands is the overwhelming majority rule -- the holdover tenant pays the existing rent, unless the landlord has proved in the record there is a more reasonable, commercial rate. Indeed, what better evidence is there of a reasonable rent than an amount agreed to by the landlord and tenant -- **which is exactly what they did here in 2012.**

Under the universal, majority view—really the only reasonable view--Yusuf's claim (Y-1) for additional rent at the monthly rate of \$200,000, or the increased monthly rate of \$250,000, must be rejected, **as Yusuf offered nothing to prove this rate was commercially reasonable**, which is his burden. **Indeed, even this Court previously noted that Yusuf had no "numerical or factual justification" for this \$250,000 rent claim. See Exhibit 2.**

One final comment is in order. Yusuf made a claim for additional rent of \$200,000, and then \$250,000 per month, confirming in writing that no additional discovery was needed to address this specific claim. See **Exhibit 1**. As the time for filing new claims has expired by Court Order, Yusuf cannot now be heard that he should be able to make new, additional claims, with more discovery, to prove (1) what a reasonable, commercial increase should be, if such an adjusted rate could even be proven, or (2) what special damages he suffered due to his partnership holding over.

**In short, the time to prove this rent claim is now, which Yusuf has failed to prove is a commercially reasonable rent increase. Under the "Bar Orders" issued by the Court and the Special Master, no further claims can now be concocted or asserted.** Thus, Yusuf's request for such additional relief should be summarily rejected.

**Dated:** January 16, 2018

 for JHH

**Joel H. Holt, Esq.**  
*Counsel for Plaintiff*  
Law Offices of Joel H. Holt  
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Christiansted, VI 00820  
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**Carl J. Hartmann III, Esq.**  
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5000 Estate Coakley Bay, L6  
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Tele: (340) 719-8941

**CERTIFICATE OF SERVICE**

I hereby certify that on this 16<sup>th</sup> day of January 2018, I served a copy of the foregoing by email, as agreed by the parties, on:

**Hon. Edgar Ross**  
Special Master  
% edgarrossjudge@hotmail.com

**Gregory H. Hodges**  
**Stefan Herpel**  
**Charlotte Perrell**  
Law House, 10000 Frederiksberg Gade  
P.O. Box 756  
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**Mark W. Eckard**  
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CRT Brow Building  
1132 King Street, Suite 3  
Christiansted, VI 00820  
jeffreymlaw@yahoo.com



**CERTIFICATE OF COMPLIANCE WITH RULE 6-1(e)**

This document complies with the page or word limitation set forth in Rule 6-1(e).



# **EXHIBIT 1**

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

WALEED HAMED, as Executor of the )  
Estate of MOHAMMAD HAMED, )  
 )  
Plaintiff/Counterclaim Defendant, )

v. )

FATHI YUSUF and UNITED CORPORATION, )  
 )  
Defendants/Counterclaimants, )

v. )

WALEED HAMED, WAHEED HAMED, )  
MUFEEED HAMED, HISHAM HAMED, and )  
PLESSEN ENTERPRISES, INC., )  
 )  
Additional Counterclaim Defendants. )

CIVIL NO. SX-12-CV-370

ACTION FOR INJUNCTIVE  
RELIEF, DECLARATORY  
JUDGMENT, AND  
PARTNERSHIP DISSOLUTION,  
WIND UP, AND ACCOUNTING

Consolidated With

WALEED HAMED, as Executor of the )  
Estate of MOHAMMAD HAMED, )  
 )  
Plaintiff, )

v. )

UNITED CORPORATION, )  
 )  
Defendant. )

CIVIL NO. SX-14-CV-287

ACTION FOR DAMAGES AND  
DECLARATORY JUDGMENT

WALEED HAMED, as Executor of the )  
Estate of MOHAMMAD HAMED, )  
 )  
Plaintiff, )

v. )

FATHI YUSUF, )  
 )  
Defendant. )

CIVIL NO. SX-14-CV-278

ACTION FOR DEBT AND  
CONVERSION

**YUSUF'S AMENDED ACCOUNTING CLAIMS  
LIMITED TO TRANSACTIONS OCCURRING ON OR AFTER SEPTEMBER 17, 2006**

UDLEY, TOPPER  
D FEUERZEIG, LLP  
10 Frederiksberg Gade  
P.O. Box 756  
St. John's, U.S. VI 00804-0756  
(340) 774-4422



**A. Miscellaneous Debts**

There are Debts totaling \$167,114.78, which must be paid prior to any distribution of the remaining Partnership Assets to the Partners<sup>11</sup>. This amount relates primarily to accounts payable for open tax issues.

**Disputed/Undisputed, Ripe for Determination or Discovery Needed:** It is Yusuf's position that this item should not be disputed and is ready for determination by the Master.

**B. Unpaid Rent for Plaza Extra-East and Adjacent Bays**

While the Court determined that certain past due rent obligations for Plaza Extra-East must be paid pursuant to the Rent Order, there remain additional rent claims for Plaza Extra-East. These claims have not yet been resolved<sup>12</sup> and, if found to be due and owing, then these are Debts of the Partnership that should be paid prior to any distribution of the remaining Partnership Assets to the Partners.

United makes the following claims against the Partnership as set forth in its Amended Counterclaim and Motion For Partial Summary Judgment Regarding Rent:


**1. Bay 1 – Increased Rent Due Net of Rent Paid**

United provided formal notice of increased rent of \$200,000 per month to the Partnership, which was to begin on January 1, 2012 through March 31, 2012, if the premises were not vacated before then. Thereafter, beginning on April 1, 2012 through March 8, 2015, United provided formal notice of increased rent of \$250,000 per month. See Exhibit D to Yusuf's Declaration dated August 12, 2014 (the "Yusuf Declaration") in support of Defendants'

<sup>11</sup> These liabilities are as of December 31, 2016 and are reflected in the Partnership financial statement provided to the Master and counsel for the Partners by Gaffney on January 31, 2017. As of August 31, 2017, Gaffney advises that these liabilities are \$69,273.51, which includes the \$30,000 accrued for accounting fees pursuant to § II D, above.

<sup>12</sup> See Rent Order, p. 2, n. 1; p. 11, n. 4.

Motion for Partial Summary Judgment on Counts IV, XI and XII Regarding Rent. Although the Rent Order awarded certain amounts of rent to United during this period, the award did not address the increased rent claimed by United. The outstanding balance of the increased rent claimed as to Bay 1, net of the rent recovered pursuant to the Rent Order, is \$6,974,063.10. See calculation of additional rents attached as Exhibit C to the Original Claims.

**Disputed/Undisputed, Ripe for Determination or Discovery Needed:** Although this debt is disputed, it is fully briefed and ready for determination by the Master. 

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## 2. Bays 5 and 8

Likewise, outstanding rent is due to United for Bays 5 and 8 of the United Shopping Plaza. These amounts were not adjudicated in the Rent Order and they remain an outstanding rent claim against the Partnership. The total amount due to United for unpaid rent for Bays 5 and 8 is \$793,984.34. See the Yusuf Declaration at ¶¶ 21-25.

**Disputed/Undisputed, Ripe for Determination or Discovery Needed:** Although this debt is disputed, it is fully briefed and it is ready for determination by the Master.

## 3. Interest on Rent Claims

The interest that accrued at 9% per annum on the rent actually awarded by the Rent Order (\$6,248,924.14) is \$881,955.08 as of May 11, 2015, when that rent was paid to United. See calculation of interest on Bay 1 rent attached as Exhibit D to the Original Claims.<sup>13</sup>

**Disputed/Undisputed, Ripe for Determination or Discovery Needed:** Although this debt may be disputed, it is ripe for decision by the Master.

The interest due for the unpaid rent on Bays 5 and 8 is also claimed by United. The total interest calculated at 9% per annum for the period from May 17, 2013 through September 30,

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<sup>13</sup> This amount does not include any interest accruing at the 9% rate on each month's unpaid rent from June 1, 2013 through March 8, 2015.

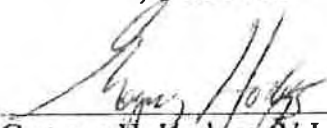
and distributions between the Partners adjusted to reflect the period from September 17, 2006 forward, both disclosed and undisclosed, still reveals a large discrepancy in Yusuf's favor. Again, these calculations were prepared without the benefit of deposition testimony and additional written discovery following the stay. It is anticipated that additional discovery will yield information necessitating further revisions to these calculations. On balance, there exists a substantial amount due to Yusuf to reconcile the Partner's withdrawals and distributions. Solvency of Hamed (or his estate)<sup>21</sup> is in serious doubt given the significant discrepancy in the amounts due to Yusuf. For this reason, Hamed's (or his estate's or his trust's) interests in the jointly owned entities (Plessen Enterprises, Inc., Peter's Farm Investment Corporation, and Sixteen Plus Corporation) may need to be quantified as a means of payment to equalize the Partnership withdrawals.

Respectfully submitted,

**DUDLEY, TOPPER and FEUERZEIG, LLP**

DATED: October 30, 2017

By:

  
\_\_\_\_\_  
Gregory H. Hodges (V.I. Bar No. 174)  
1000 Frederiksberg Gade  
P.O. Box 756  
St. Thomas, VI 00804  
Telephone: (340) 715-4405  
Telefax: (340) 715-4400  
E-mail: [ghodges@dtflaw.com](mailto:ghodges@dtflaw.com)

Attorneys for Fathi Yusuf and United Corporation

<sup>21</sup> A Petition for Probate of Will and for Letters Testamentary was filed on August 26, 2016 as Case No. SX-2016-PB-76. That petition reflects no available assets to satisfy Yusuf's claims since all of Hamed's interests in real and personal property had previously been conveyed to the Mohammad A. Hamed Living Trust dated September 12, 2012. Yusuf has filed a complaint challenging such conveyance as fraudulent. A copy of that complaint is attached as **Exhibit U** since Yusuf's Amended Supplementation left off with Exhibit T.



# **EXHIBIT 2**

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

MOHAMMED HAMED by his authorized agent  
WALEED HAMED,  
Plaintiff/Counterclaim Defendant,  
v.  
FATHI YUSUF and UNITED CORPORATON,  
Defendants/Counterclaimants  
v.  
WALEED HAMED, WAHEED HAMED,  
MUFEEED HAMED, HISHAM HAMED, and  
PLESSEN ENTERPRISES, INC.  
Counterclaim Defendants.

CIVIL NO. SX-12-CV-370  
ACTION FOR DAMAGES, etc.

**MEMORANDUM OPINION AND ORDER**

THIS MATTER is before the Court on Defendant United Corporation's Motion to Withdraw Rent and Memorandum of Law in Support of United's Motion ("Motion"), filed September 9, 2013; Plaintiff's Response, filed September 16, 2013; United's Reply, filed September 27, 2013; Plaintiff's Motion for Partial Summary Judgment re the Statute of Limitations Defense Barring Defendants' Counterclaim Damages Prior to September 16, 2006 (Plaintiff's "Summary Judgment Motion"), filed May 13, 2014; and Defendant's Brief in Opposition ("Opposition"), filed June 6, 2014. For the reasons that follow, United's Motion will be granted and Plaintiff's Summary Judgment Motion will be denied, in part.

**3. Defendant United is also entitled to rent from 2012 to 2013 in the amount of \$58,791.38 per month.**

Plaintiff does not argue that the Partnership is exempt from paying rent to United. “[I]t is undisputed that United is the landlord and Plaza Extra is the tenant at the Sion Farm location, for which rent is due since January of 2012.” Response, 1. Rather, Plaintiff claims that United itself has created a dispute regarding rents from January 2012 by issuing rent notices seeking increased rent in the amount of \$250,000.00 per month, rather than the \$58,791.38 per month set out in Yusuf’s affidavit. Response, 4. The proof before the Court is clear as to United’s claim that rent is due for Bay No. 1 at the rate of \$58,791.38 per month from January 1, 2012 to September 30, 2013, when United’s Motion was filed.<sup>4</sup>

As the fee simple owner and landlord of Bay No. 1 United Shopping Plaza, United is entitled to rents from the Partnership for its continued use of Bay No. 1 for the operations of Plaza Extra - East. Therefore, the Court will order the Partnership to pay United the sum of \$1,234,618.98 for rent from January 1, 2012 through September 30, 2013, Plus rent due from October 1, 2013 at the same rate of \$58,791.38 per month until the date that Yusuf assumed sole possession and control of Plaza extra -- East.

On the basis of the foregoing, it is hereby

ORDERED that Defendant United Corporation’s Motion to Withdraw Rent is GRANTED, and the Liquidating Partner, under the supervision of the Master, is authorized and directed to pay

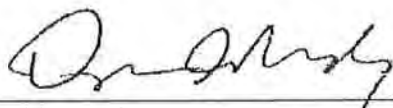
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<sup>4</sup> It is acknowledged that United delivered notices to the Partnership following the April 2013 Preliminary Injunction, seeking to collect an increased rent sum of \$250,000.00. United presents in its Motion and proofs no numerical or factual justification for such claims, which are not considered in this Order.

from the Partnership joint account for past rents due to United the total amount of \$5,234,298.71, plus additional rents that have come due from October 1, 2013 at the rate of \$58,791.38 per month, until the date that Yusuf assumed full possession and control of Plaza Extra – East. It is further

ORDERED that Plaintiff's Motion for Partial Summary Judgment is DENIED, in part, as to Plaintiff's claims that the statute of limitations precludes Defendant United's claims for past due rent.

Dated: April 27, 2015

  
DOUGLAS A. BRADY  
Judge of the Superior Court

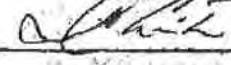
ATTEST:

ESTRELLA GEORGE  
Acting Clerk of the Court

By:   
Court Clerk Supervisor  
4/27/15

CERTIFIED TO BE A TRUE COPY  
This 27<sup>th</sup> day of April 2015

CLERK OF THE COURT

By:  Court Clerk KL

# **EXHIBIT 3**

**Mohammad Hamed**  
Plaza Extra Supermarket  
4-C & 4-D Estate Sion Farm  
Christiansted, VI 00821

November 6, 2012

Email/Hand deliver

Fathi Yusuf  
United Corporation  
4C & 4D Sion Farm  
St. Croix, USVI 00821

Dear, Mr. Yusuf:

I continue to receive the rent notes for the Plaza Extra Supermarket store at Sion Farm. I previously had my attorney write to you telling you that Plaza Extra Supermarket has never agreed to the rent you are now trying to charge us. A copy of that letter is attached. This letter is being sent to remind you that the rent you are trying to charge is outrageous, has not been agreed to and will never be agreed to.

Cordially,

 for Mohammad Hamed

Mohammad Hamed

cc: Joel Holt



# JOEL H. HOLT, ESQ. P.C.

2132 Company Street, Suite 2  
Christiansted, St. Croix  
U.S. Virgin Islands 00820

Tele. (340) 773-8709  
Fax (340) 773-8677  
E-mail: [holtvi@aol.com](mailto:holtvi@aol.com)


May 11, 2012

Fathi Yusuf  
United Corporation  
4C & 4D Sion Farm  
St. Croix, USVI 00821

Dear Mr. Yusuf:

Wally Hamed received the Statement of Rent allegedly due for Plaza Extra dated May 4, 2012, signed by Najeh Yusuf on your behalf, a copy of which is attached. He has requested that I respond to it on behalf of his family. Mr. Hamed finds it difficult to believe that you think the store has agreed to pay such rent, as it has not. Indeed, it would be a dereliction of the manager's interest to ever agree to such rent. Your efforts to act unilaterally are not in the interest of the business or its owners, much less its creditors, customers and the community it serves. Such actions will not be recognized as valid. Please have your lawyer contact me if you have any questions.

Cordially,

  
Joel H. Holt  
JHH/jf

cc: Nizar Dewood

UNITED CORPORATION  
4C & 4D Sion Farm  
St Croix, USVI 00821  
Phone (340) 778-6240

May 4, 2012

Mohammad Abdul Qader Hamed  
Plaza Extra Supermarket  
4-C & 4-D Estate Sion Farm  
Christiansted, VI 00821

**Statement of Rent due for Plaza Extra – East as of May 1, 2012**

Rent due for Plaza Extra – East, January 1, 2012 through April 1, 2012	Balance Due	\$850,000.00
ADD: 1% interest on outstanding Balance		<u>\$ 8,500.00</u>
	Amount Due	\$858,500.00
May 2012 Rent currently due:		<u>\$250,000.00</u>
	Total Balance due May 1, 2012	<u>\$1,108,500.00</u>

Please forward a check immediately.

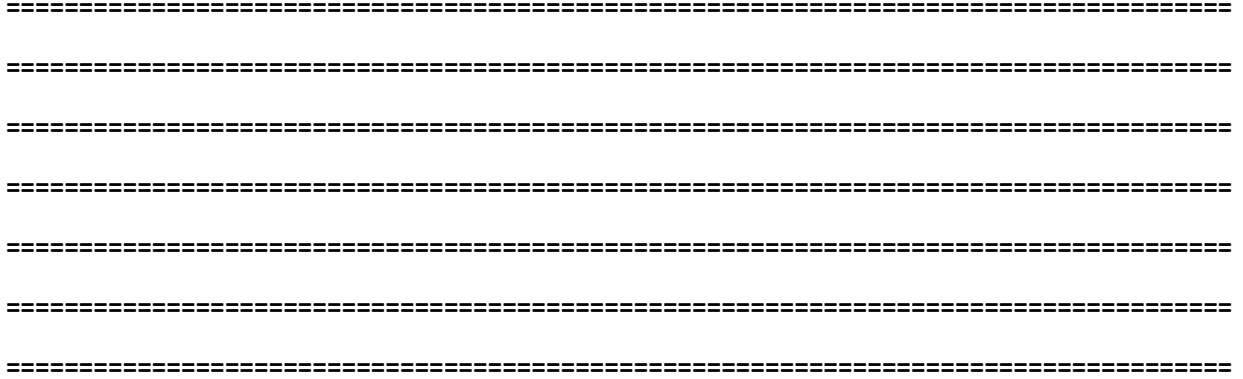
Sincerely,



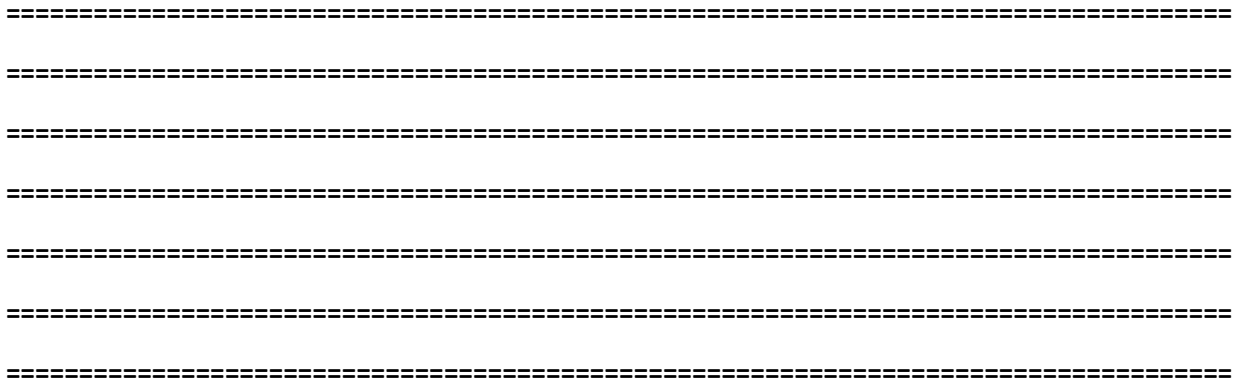
Najeh Yusuf for Fathi Yusuf

CC: Wally Hamed





# **DIVIDER**



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

**WALEED HAMED**, as the Executor of the  
Estate of MOHAMMAD HAMED,

*Plaintiff/Counterclaim Defendant,*

vs.

**FATHI YUSUF and UNITED CORPORATION**

*Defendants and Counterclaimants.*

vs.

**WALEED HAMED, WAHEED HAMED,  
MUFEED HAMED, HISHAM HAMED, and  
PLESSEN ENTERPRISES, INC.,**

*Counterclaim Defendants,*

---

**WALEED HAMED**, as the Executor of the  
Estate of MOHAMMAD HAMED,

*Plaintiff,*

vs.

**UNITED CORPORATION,**

*Defendant.*

---

**WALEED HAMED**, as the Executor of the  
Estate of MOHAMMAD HAMED,

*Plaintiff,*

vs.

**FATHI YUSUF,**

*Defendant.*

**Case No.: SX-2012-cv-370**

**ACTION FOR DAMAGES,  
INJUNCTIVE RELIEF AND  
DECLARATORY RELIEF**

JURY TRIAL DEMANDED

Consolidated with

**Case No.: SX-2014-CV-287**

**ACTION FOR DECLARATORY  
JUDGMENT**

JURY TRIAL DEMANDED

Consolidated with

**Case No.: SX-2014-CV-278**

**ACTION FOR DEBT AND  
CONVERSION**

JURY TRIAL DEMANDED

**HAMED'S REPLY TO YUSUF'S OPPOSITION TO MOTION RE HAMED CLAIM H-2:  
\$2,784,706.25 MILLION TAKEN BY YUSUF AND UNITED**

Hamed has raised as one of his claims, designated as H-2, the \$2.7 million unilaterally taken from the Partnership in 2012 by Yusuf. While Yusuf submitted a voluminous response on January 16th, continually attempting to discuss other claims which might offset this claim, there is one line (page 1, third line) from Yusuf's motion which seals this claim:

"there is no dispute that Yusufs account should be charged with this withdrawal"

Thus, this claim has been conceded and can be finalized now.

As for Yusuf's complicated "accounting" offsets, the entire claims process can address all of those issues whenever they are raised, as with all claims of each partner.<sup>1</sup> However, this claim is now conceded as being due, so nothing further is needed to enter an order on Hamed's Claim H-2 for \$2,784,706.25, plus \$1,305,988 in statutory interest from August 15, 2012 (the date of the Plaza Extra check written to the United Corporation for this unilateral Partnership withdrawal).

**Dated:** January 17, 2018



---

**Joel H. Holt, Esq.**  
*Counsel for Plaintiff*  
Law Offices of Joel H. Holt  
2132 Company Street,  
Christiansted, VI 00820  
Email: holtvi@aol.com  
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**Carl J. Hartmann III, Esq.**  
*Co-Counsel for Plaintiff*  
5000 Estate Coakley Bay, L6  
Christiansted, VI 00820  
Email: carl@carlhartmann.com  
Tele: (340) 719-8941

---

<sup>1</sup> While irrelevant to granting this motion, Yusuf's argument that his off-set claim of \$1.6 million from 1996 is a valid claim has already been rejected in Judge Brady's "Laches Opinion." See excerpt attached as **Exhibit 1**.

### CERTIFICATE OF SERVICE

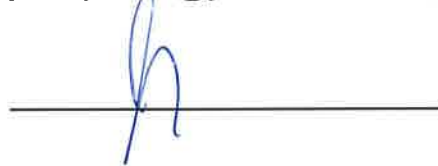
I hereby certify that on this 17th day of January, 2018, I served a copy of the foregoing by email, as agreed by the parties, on:

**Hon. Edgar Ross**  
Special Master  
% edgarrossjudge@hotmail.com

**Gregory H. Hodges**  
**Stefan Herpel**  
**Charlotte Perrell**  
Law House, 10000 Frederiksberg Gade  
P.O. Box 756  
St. Thomas, VI 00802  
ghodges@dtflaw.com

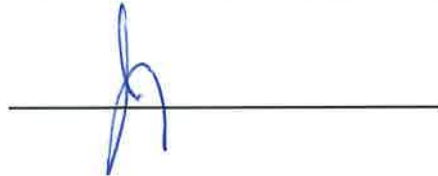
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1132 King Street, Suite 3  
Christiansted, VI 00820  
jeffreymlaw@yahoo.com



### CERTIFICATE OF COMPLIANCE WITH RULE 6-1(e)

This document complies with the page or word limitation set forth in Rule 6-1(e).



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

WALEED HAMED, as Executor of the  
Estate of MOHAMMED HAMED  
Plaintiff/Counterclaim Defendant,

v.

FATHI YUSUF and UNITED CORPORATION,  
Defendants/Counterclaimants,

v.

WALEED HAMED, WAHEED HAMED,  
MUFEED HAMED, HISHAM HAMED, and  
PLESSEN ENTERPRISES, INC.,  
Counterclaim Defendants.

Civil No. SX-12-CV-370

ACTION FOR INJUNCTIVE RELIEF,  
DECLARATORY JUDGMENT, and  
PARTNERSHIP DISSOLUTION,  
WIND UP, and ACCOUNTING

WALEED HAMED, as Executor of the  
Estate of MOHAMMED HAMED,  
Plaintiff,

v.

UNITED CORPORATION,  
Defendant.

Civil No. SX-14-CV-287

ACTION FOR DAMAGES and  
DECLARATORY JUDGMENT

WALEED HAMED, as Executor of the  
Estate of MOHAMMED HAMED,  
Plaintiff,

v.

FATHI YUSUF,  
Defendant.

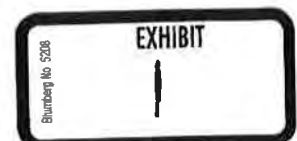
Civil No. SX-14-CV-278

ACTION FOR DEBT and  
CONVERSION

**MEMORANDUM OPINION AND ORDER RE LIMITATIONS ON ACCOUNTING**

This matter came on for hearing on March 6 and 7, 2017 on various pending motions, including Hamed's fully briefed Motion for Partial Summary Judgment re the Statute of Limitations Defense Barring Defendants' Counterclaim Damages Prior to September 16, 2006, filed May 13, 2014.<sup>1</sup> Because the Court concludes that Defendant Yusuf has not, in fact, presented

<sup>1</sup> Hamed's Motion was followed by: Defendants' Brief in Opposition, filed June 6, 2014; Hamed's Reply, filed June 20, 2014; Hamed's Notice of Supplemental Authority, filed November 15, 2016; Yusuf's Brief in Response, filed December 3, 2016; Yusuf's post-hearing Supplemental Brief, filed March 21, 2017; and Hamed's Response, filed March 27, 2017. Also pending is Defendants' Motion for Partial Summary Judgment on Counts IV, XI, and XII Regarding Rent, filed August 12, 2014, which is addressed herein.



period outlined in 5 V.I.C. § 31(3)(A) as a species of an action upon contract.<sup>34</sup> Therefore, the Court exercises the significant discretion it possesses in fashioning equitable remedies to restrict the scope of the accounting in this matter to consider only those § 71(a) claims that are based upon transactions occurring no more than six years prior to the September 17, 2012 filing of Hamed's Complaint.<sup>35</sup>

<sup>34</sup> Alternatively, these claims could have been pursued under 26 V.I.C. § 75(b)(2)(i) to "enforce the partner's rights under sections 71, 73, or 74 of this chapter," which, as "action upon a liability created by statute," are also subject, whether directly or by analogy, to a six year limitations period under 5 V.I.C. § 31(3)(B).

<sup>35</sup> Yusuf has argued that certain § 71(a) claims are effectively undisputed, and that "if it is undisputed that payments were made to a partner, even without authorization, then to exclude them from an accounting for that reason would be entirely arbitrary." First, it appears doubtful, based upon the record and the representations of the parties in this matter, that any claim submitted by either party would truly be undisputed. But, even if some claims were, in fact, undisputed, because of the great dearth of accurate records there exists such an element of chance in any attempt to reconstruct the partnership accounts that an accounting reaching back to the date of the last partnership true-up in 1993 would ultimately be no more complete, accurate, or fair, than an accounting reaching back only to 2006.


In light of the foregoing, it is hereby

ORDERED that Defendants' Motion for Partial Summary Judgment on Counts IV, XI, and XII Regarding Rent is DENIED, as to Counts IV and XII. It is further

ORDERED that Hamed's Motion for Partial Summary Judgment re the Statute of Limitations Defense Barring Defendants' Counterclaim Damages Prior to September 17, 2006 is DENIED. It is further

ORDERED that the accounting in this matter, to which each partner is entitled under 26 V.I.C § 177(b), conducted pursuant to the Final Wind Up Plan adopted by the Court, shall be limited in scope to consider only those claimed credits and charges to partner accounts, within the meaning of 26 V.I.C § 71(a), based upon transactions that occurred on or after September 17, 2006.

DATED: July 21, 2017.

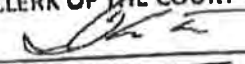
  
DOUGLAS A. BRADY  
Judge of the Superior Court

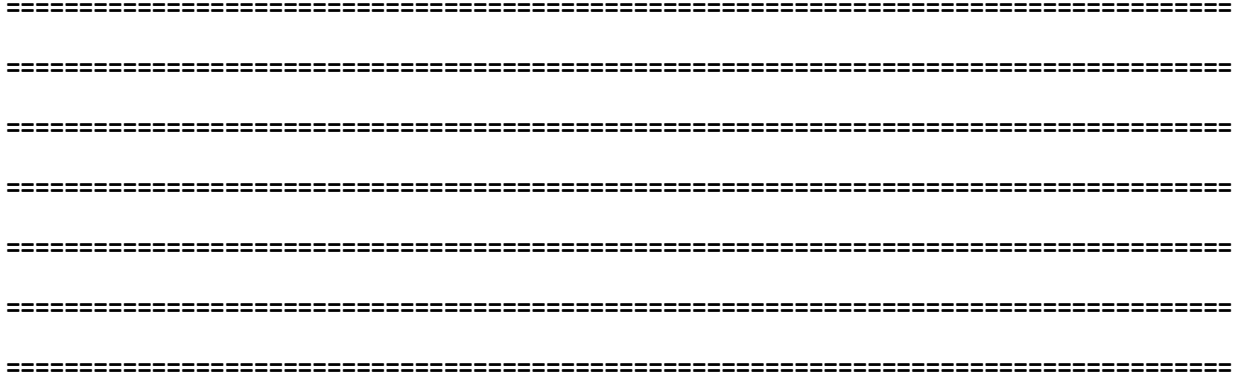
ATTEST: ESTRELLA GEORGE  
Clerk of the Court

By:

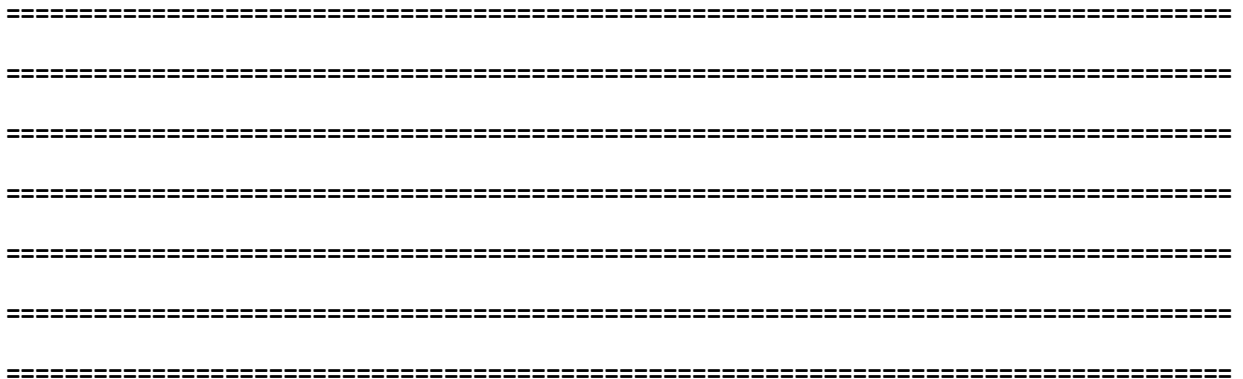
  
Court Clerk Supervisor 7/24/17

**CERTIFIED A TRUE COPY**

DATE: July 24, 2017  
ESTRELLA H. GEORGE  
ACTING CLERK OF THE COURT  
BY:   
COURT CLERK EG



# DIVIDER





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

**WALEED HAMED**, as the Executor of the  
Estate of MOHAMMAD HAMED,

*Plaintiff/Counterclaim Defendant,*

vs.

**FATHI YUSUF** and **UNITED CORPORATION**

*Defendants and Counterclaimants.*

vs.

**WALEED HAMED, WAHEED HAMED,  
MUFEED HAMED, HISHAM HAMED, and  
PLESSEN ENTERPRISES, INC.,**

*Counterclaim Defendants,*

**Case No.: SX-2012-cv-370**

**ACTION FOR DAMAGES,  
INJUNCTIVE RELIEF AND  
DECLARATORY RELIEF**

**JURY TRIAL DEMANDED**

Consolidated with

**Case No.: SX-2014-CV-287**

**ACTION FOR DECLARATORY  
JUDGMENT**

**JURY TRIAL DEMANDED**

Consolidated with

**Case No.: SX-2014-CV-278**

**ACTION FOR DEBT AND  
CONVERSION**

**JURY TRIAL DEMANDED**

---

**WALEED HAMED**, as the Executor of the  
Estate of MOHAMMAD HAMED,

*Plaintiff,*

vs.

**UNITED CORPORATION,**

*Defendant.*

---

**WALEED HAMED**, as the Executor of the  
Estate of MOHAMMAD HAMED,

*Plaintiff,*

vs.

**FATHI YUSUF,**

*Defendant.*

**HAMED'S REPLY AS TO  
CLAIMS Y-6, Y-7 and Y-9 -- UNITED'S CLAIMS THAT VIOLATE THE SOL**

For the purpose of this motion, it is assumed that Claims Y-6, Y-7 and Y-9 are Claims of the landlord, United Corporation, even though Hamed believes these are really partnership claims barred by the “Laches” opinion. Each of these claims (attached to Yusuf’s motion as exhibits G, H and I (also attached to Hamed’s motion as D, E and G) are still not recoverable even if they belong to United, as they are barred by the applicable statute of limitations (“SOL”).

In this regard, in his opposition memorandum, Yusuf does not contest the fact that:

- 1) the applicable statute of limitations for the collection of these debts is six years;
- 2) each of the debts identified in Yusuf Exhibits G, H and I all predate September 12, 2012 (the date the parties agree this complaint was filed for the purpose of triggering the SOL), **by over 12 years;**<sup>1</sup>

Thus, all of these claims are at least 6 years late in filing, so that they are barred by the agreed upon SOL.

In response, Yusuf argues that he can explain why these time barred claims are still ripe. First, he attaches (as Exhibit A to his motion) a declaration dated August 12, 2014, in support of his argument that these claims are not time barred, but that declaration deals with past due rent, not any of these three claims, none of which are for past rent. Thus, this irrelevant declaration is not sufficient to defeat this SOL motion on these three items.

Yusuf then argues that the same theory advanced in the “rent declaration” will be relied upon by Yusuf to explain why the SOL has not run based on the fact that in October of 2001 the black book (Yusuf Exhibit G) and the ledger (Yusuf Exhibit H) were seized, somehow tolling the SOL. However, the SOL for all of these claims expired by August of 2001, except a claim for \$3000 in May of 1998 in Exhibit H. Thus, this seizure, which

---

<sup>1</sup> As those attached documents show, Exhibit G involves claims in 1994, Exhibit H has five entries from 1994, three in 1995 (between May and August) and one in May of 1998 All illegible), and the entries in Exhibit I are all in 1996.

August of 2001, except a claim for \$3000 in May of 1998 in Exhibit H. Thus, this seizure, which occurred after August of 2001, does not revive the claims in Exhibits G and H, except for possibly this one \$3000 claim in Exhibit H (if the seizure of the document is even a basis for tolling the SOL in the first place). As for Exhibit I, no claim was made that this document was seized by the feds in 2001, so that argument does not save the items in Exhibit I from being barred by the SOL.

Finally, Yusuf argues that this Court should just allow these claims because Judge Brady allowed the past due rent claims for the Plaza Extra East premises (Bay #1) back to 2004 in his April 27, 2015, "Rent Order." However, on July 24, 2017, this Court refused to extend that ruling regarding Bay #1 to other claims for rent for different locations. See excerpt attached as **Exhibit 1**. Thus, there are no such rulings that apply to these claims, or permit them. To the contrary, Mohammad Hamed never acknowledged these three United claims were valid or could be paid at anytime, as the Court found he had expressly done for the past due rent on Bay #1.

Indeed, 5 V.I.C. §39 requires claims to extend the SOL to be in writing:

No acknowledgment or promise shall be sufficient evidence of a new or continuing contract, whereby to take the case out of the operation of this chapter, unless the same is contained in some writing, signed by the party to be charged thereby....

In short, these alleged oral agreements do not extend the statute of limitations. Indeed, the fact that Mohammad Hamed is now deceased explains why such statutes must be strictly construed, since he is not alive to now refute Yusuf's self-serving claims of their alleged prior agreements.

In summary, the statute of limitations has run on all of these claims asserted by United, so they should be stricken now.

**Dated:** January 17, 2018



---

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**CERTIFICATE OF SERVICE**

I hereby certify that on this 17<sup>th</sup> day of January, 2018, I served a copy of the foregoing by email, as agreed by the parties, on:

**Hon. Edgar Ross**  
Special Master  
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**Gregory H. Hodges**  
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**CERTIFICATE OF COMPLIANCE WITH RULE 6-1(e)**

This document complies with the page or word limitation set forth in Rule 6-1(e).



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

WALEED HAMED, as Executor of the  
Estate of MOHAMMED HAMED  
Plaintiff/Counterclaim Defendant,

v.

FATHI YUSUF and UNITED CORPORATION,  
Defendants/Counterclaimants,

v.

WALEED HAMED, WAHEED HAMED,  
MUFEED HAMED, HISHAM HAMED, and  
PLESSEN ENTERPRISES, INC.,  
Counterclaim Defendants.

Civil No. SX-12-CV-370

ACTION FOR INJUNCTIVE RELIEF,  
DECLARATORY JUDGMENT, and  
PARTNERSHIP DISSOLUTION,  
WIND UP, and ACCOUNTING

WALEED HAMED, as Executor of the  
Estate of MOHAMMED HAMED,  
Plaintiff,

v.

UNITED CORPORATION,  
Defendant.

Civil No. SX-14-CV-287

ACTION FOR DAMAGES and  
DECLARATORY JUDGMENT

WALEED HAMED, as Executor of the  
Estate of MOHAMMED HAMED,  
Plaintiff,

v.

FATHI YUSUF,  
Defendant.

Civil No. SX-14-CV-278

ACTION FOR DEBT and  
CONVERSION

**MEMORANDUM OPINION AND ORDER RE LIMITATIONS ON ACCOUNTING**

This matter came on for hearing on March 6 and 7, 2017 on various pending motions, including Hamed's fully briefed Motion for Partial Summary Judgment re the Statute of Limitations Defense Barring Defendants' Counterclaim Damages Prior to September 16, 2006, filed May 13, 2014.<sup>1</sup> Because the Court concludes that Defendant Yusuf has not, in fact, presented

<sup>1</sup> Hamed's Motion was followed by: Defendants' Brief in Opposition, filed June 6, 2014; Hamed's Reply, filed June 20, 2014; Hamed's Notice of Supplemental Authority, filed November 15, 2016; Yusuf's Brief in Response, filed December 3, 2016; Yusuf's post-hearing Supplemental Brief, filed March 21, 2017; and Hamed's Response, filed March 27, 2017. Also pending is Defendants' Motion for Partial Summary Judgment on Counts IV, XI, and XII Regarding Rent, filed August 12, 2014, which is addressed herein.



Yusuf's Counterclaim, each partner has presented in this matter only a single, tripartite cause of action for the dissolution, wind up, and accounting of the partnership pursuant to 26 V.I.C. § 75(b)(2)(iii). However, Count XII of Defendants' Counterclaim also presents a separate cause of action on behalf of United for debt in the form of rent. The Court first considers Hamed's Motion for Partial Summary Judgment Re: Statute of Limitations as it applies to United's action for rent, and then as it applies to the partners' competing claims for dissolution, wind up, and accounting.

United's Cause of Action for Debt (Rent)

By Memorandum Opinion and Order entered April 27, 2015, the Court denied Plaintiff's Motion for Partial Summary Judgment Re: Statute of Limitations as to United's Count XI for debt in the form of rent owed with respect to "Bay 1" and granted United's Motion to Withdraw Rent, filed September 9, 2013; authorizing the Liquidating Partner, under the supervision of the Master, to pay to United from partnership funds the total amount of \$5,234,298.71 plus additional rents that have come due from October 1, 2013 at the rate of \$58,791.38 per month. That Memorandum Opinion and Order also effectively, though not explicitly, granted in part Defendants' Motion for Partial Summary Judgment on Counts IV, XI, and XII Regarding Rent, filed August 12, 2014, as to Count XI, and entered judgment thereon in favor of United.

In Count XII of Defendants' Counterclaim, United seeks an award of \$793,984.38 for rent owed with respect to "Bay 5" and "Bay 8," which the partnership allegedly used for storage space in connection with the Plaza Extra-East store during various periods between 1994 and 2013. Counterclaim ¶¶ 179-84. United's arguments against the applying the statute of limitations to bar its claims for rent generally fail to distinguish between the rent owed for Bay 1 (Count XI) and the rent owed for Bays 5 and 8 (Count XII). Thus, the Court must infer that United opposes Hamed's statute of limitations argument as to Count XII on the same grounds as it opposed the argument

with respect to Count XI. In denying Hamed's Motion for Partial Summary Judgment Re Statute of Limitations as to Count XI, the Court found that the limitations period had been tolled on the basis of Hamed's undisputed acknowledgement and partial payment of the debt.

However, in his August 24, 2014 Declaration, attached as Exhibit 1 to Plaintiff's Response to Defendants' Rule 56.1 Statement of Facts and Counterstatement of Facts, Waleed Hamed expressly states that "there was no agreement to use [Bays 5 and 8] other than on a temporary and periodic basis, nor was there any agreement to pay rent for this space, as United made it available at no cost." Declaration of Waleed Hamed ¶¶ 19-20. Mohammed Hamed's comments acknowledging the debt, which formed the basis of the Court's judgment as to Count XI, do not explicitly distinguish between the rent owed for Bay 1 and the rent owed for Bays 5 and 8. Yet, considered in light of the declaration of his son, the Court is compelled to conclude that a genuine dispute of material fact exists as to whether Hamed ever acknowledged any debt as to rent owed for Bays 5 and 8, and more basically, whether the partnership ever agreed to pay any rent for the use of Bays 5 and 8 in the first place. Accordingly, both Hamed's Motion for Partial Summary Judgment Re: Statute of Limitations and Defendants' Motion for Partial Summary Judgment on Counts IV, XI, and XII Regarding Rent must be denied as to Count XII of Defendants' Counterclaim.<sup>5</sup>

<sup>5</sup> Defendants' Motion for Partial Summary Judgment on Counts IV, XI, and XII Regarding Rent must also be denied as to Count IV (Accounting). While Hamed and Yusuf are each entitled to an accounting of the partnership pursuant to 26 V.I.C. § 177, United's cause of action for rent is entirely unrelated to the partners' respective actions for accounting except insofar as each partner will ultimately be liable in the final accounting for 50% of whatever debt is found to be owing from the partnership to United.


In light of the foregoing, it is hereby

ORDERED that Defendants' Motion for Partial Summary Judgment on Counts IV, XI, and XII Regarding Rent is DENIED, as to Counts IV and XII. It is further

ORDERED that Hamed's Motion for Partial Summary Judgment re the Statute of Limitations Defense Barring Defendants' Counterclaim Damages Prior to September 17, 2006 is DENIED. It is further

ORDERED that the accounting in this matter, to which each partner is entitled under 26 V.I.C § 177(b), conducted pursuant to the Final Wind Up Plan adopted by the Court, shall be limited in scope to consider only those claimed credits and charges to partner accounts, within the meaning of 26 V.I.C § 71(a), based upon transactions that occurred on or after September 17, 2006.

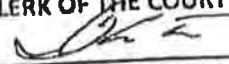
DATED: July 21, 2017.

  
DOUGLAS A. BRADY  
Judge of the Superior Court

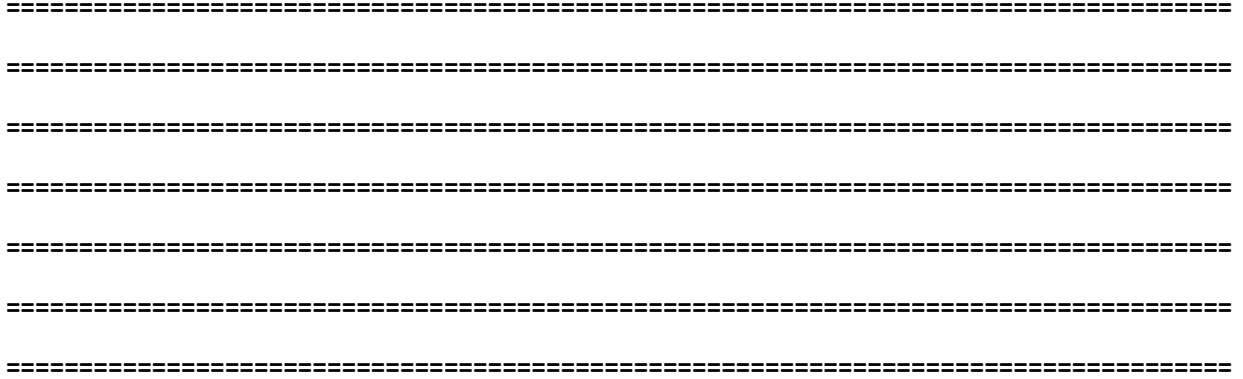
ATTEST: ESTRELLA GEORGE  
Clerk of the Court

By:   
Court Clerk Supervisor 7/24/17

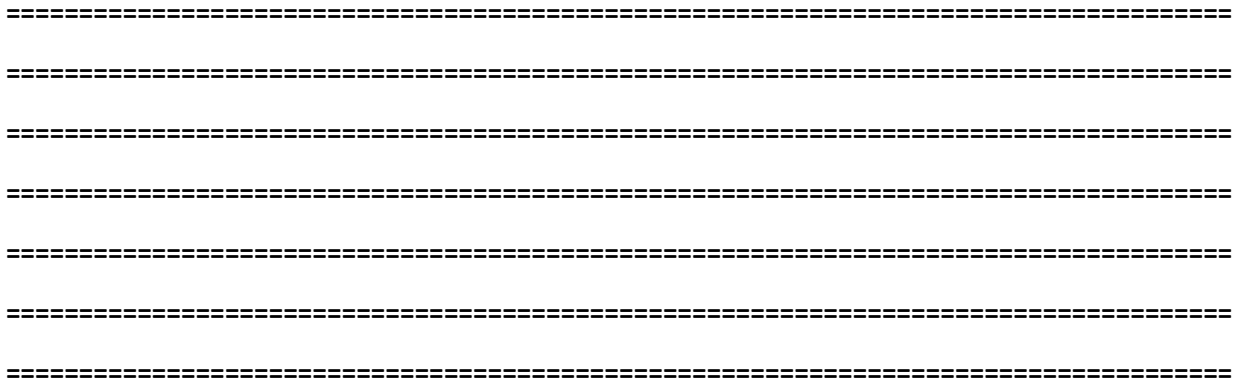
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DATE: July 24, 2017  
ESTRELLA H. GEORGE  
ACTING CLERK OF THE COURT  
BY:   
COURT CLERK EG





# **DIVIDER**



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

**WALEED HAMED**, as the Executor of the  
Estate of MOHAMMAD HAMED,

*Plaintiff/Counterclaim Defendant,*

vs.

**FATHI YUSUF** and **UNITED CORPORATION**

*Defendants and Counterclaimants.*

vs.

**WALEED HAMED, WAHEED HAMED,  
MUFEED HAMED, HISHAM HAMED, and  
PLESSEN ENTERPRISES, INC.,**

*Counterclaim Defendants,*

**Case No.: SX-2012-cv-370**

**ACTION FOR DAMAGES,  
INJUNCTIVE RELIEF AND  
DECLARATORY RELIEF**

JURY TRIAL DEMANDED

Consolidated with

**WALEED HAMED**, as the Executor of the  
Estate of MOHAMMAD HAMED,

*Plaintiff,*

vs.

**UNITED CORPORATION,**

*Defendant.*

**Case No.: SX-2014-CV-287**

**ACTION FOR DECLARATORY  
JUDGMENT**

JURY TRIAL DEMANDED

Consolidated with

**WALEED HAMED**, as the Executor of the  
Estate of MOHAMMAD HAMED,

*Plaintiff,*

vs.

**FATHI YUSUF,**

*Defendant.*

**Case No.: SX-2014-CV-278**

**ACTION FOR DEBT AND  
CONVERSION**

JURY TRIAL DEMANDED

**HAMED'S REPLY AS TO CLAIM NO. H-10 --  
MARY GONZALES' POST-SPLIT BONUS**

In his motion as to this issue, Hamed made two salient points: (1) by order, all employment issues after a 'date certain' when the two St. Croix stores split were to be paid by the new employer, and (2) Yusuf paid Mary Gonzales' bonus from Partnership funds, but did not pay similar amounts to Hamed for employees who left after that date.<sup>1</sup> Yusuf does not dispute these two points, admitting: "**Thereafter**, Mr. Yusuf used Partnership funds to pay this bonus, **which is not disputed.**" That admission ends the matter.

Moreover, he concedes that when Ms. Gonzales retired, she was solely and completely his employee: stating ".24% of her period of employment working for Plaza Extra-East **after its transfer.**" Yes, but it was the *LAST* .24% -- a period for which Yusuf had taken full legal and financial responsibility. Imagine any other employer claiming that an employee's last employer should pay for a retirement bonus that a new employer agreed to -- and without discussion!

Instead, Yusuf comes up with a new theory, completely divorced from the plain language of the Orders severing the operations of the two stores -- arguing that since most of her time was as a Partnership employee, and because he 'can decide whatever he wants,' all of those Orders should be ignored. At page 2, he states "Yusuf had the discretion

---

<sup>1</sup> Hamed stated in part in his opening memorandum on this Claim:

The Plaza East store was transferred to Yusuf on March 9, 2015. See Exhibit 1. After that date, Gonzales was on that store's payroll, as **she was not an employee of the Partnership**. A decision was **subsequently made** in April of 2015 by Mr. Yusuf and Mary Gonzales that she should retire, with her to receive \$28,899.28 as a retirement "bonus". See Exhibit 2. The only thing that makes this unique is that Yusuf then charged the \$28,899.28 back to the Partnership, even though Gonzales was his employee when it was decided she should retire, and not an employee of the Partnership.

**Thereafter, Mr. Yusuf used Partnership funds to pay this bonus, which is not disputed.** However, as the decision to retire was made after she was an employee of New Plaza East, owned by Yusuf, this is not a Partnership obligation. The Hameds were not consulted. The Hameds paid such retirement benefits to the employees who went to the West store and subsequently retired. (Emphasis supplied.)

as Liquidating Partner to determine the amount of Ms. Gonzales' bonus for her long service to the partnership." He could determine the amount of the bonus, but under the applicable Orders **he had no power to make *the Partnership pay for it after she was solely his employee.***

In short, the fact that Mary Gonzales may have been a fine candidate for such a voluntary bonus is *not* the issue. The only question is who should pay for it—her then current employer or a former employer. Indeed, if this bonus is subject to 'allocation' between the Partnership and the new employers based on percentages of time worked, does this mean **every employee who has retired or will retire** should be paid, in part, from Partnership funds even though the stores were separated almost three years ago? Can it be just Yusuf employee in his "discretion" ? How long will this go on? Will it be a continuing liability until 50% of the time was for the Partnership, or will it go out a full 20 years? How will it be administered?

**Dated:** January 19, 2018



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**CERTIFICATE OF SERVICE**

I hereby certify that on this 19th day of January, 2018, I served a copy of the foregoing by email, as agreed by the parties, on:

**Hon. Edgar Ross**  
Special Master  
% edgarrossjudge@hotmail.com

**Gregory H. Hodges**  
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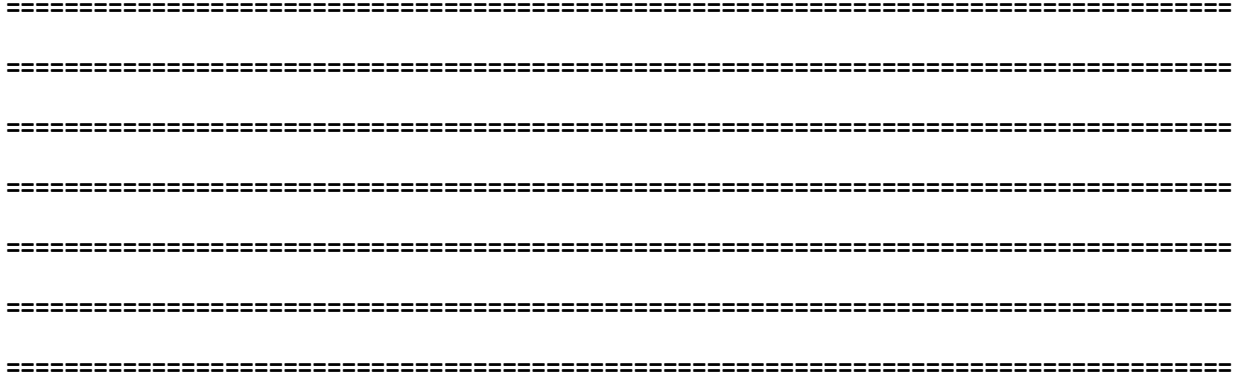
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**CERTIFICATE OF COMPLIANCE WITH RULE 6-1(e)**

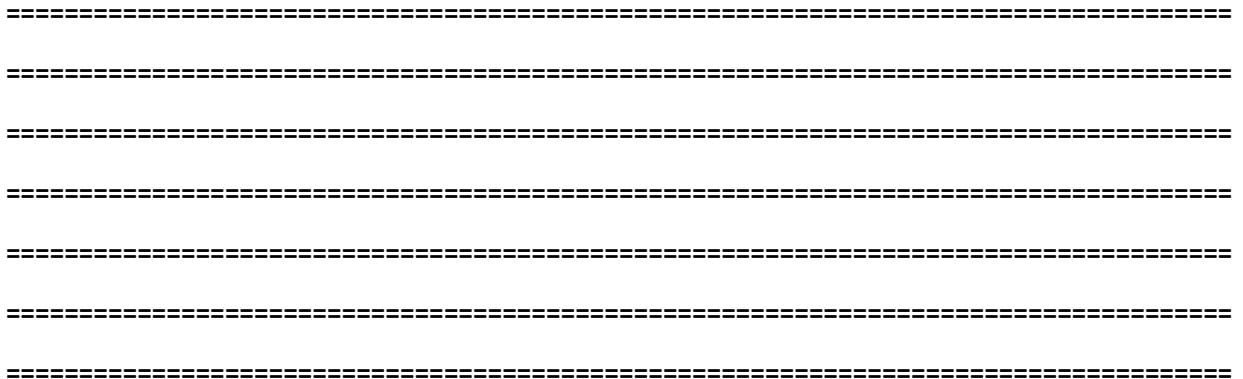
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# **DIVIDER**



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*Counterclaim Defendants,*

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**ACTION FOR DAMAGES,  
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DECLARATORY RELIEF**

JURY TRIAL DEMANDED

Consolidated with

**WALEED HAMED**, as the Executor of the  
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*Plaintiff,*

vs.

**UNITED CORPORATION,**

*Defendant.*

**Case No.: SX-2014-CV-287**

**ACTION FOR DECLARATORY  
JUDGMENT**

JURY TRIAL DEMANDED

Consolidated with

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*Plaintiff,*

vs.

**FATHI YUSUF,**

*Defendant.*

**Case No.: SX-2014-CV-278**

**ACTION FOR DEBT AND  
CONVERSION**

JURY TRIAL DEMANDED

**HAMED'S REPLY AS TO CLAIMS NOS. H-38 AND H-123 --  
PAYMENTS TO DUDLEY, TOPPER AND FEUERZEIG LAW FIRM**

This issue comes down to one fact -- which DTF and Yusuf dispute: Whether they expressly obtained the terms of the Winding Up Order on this contested issue by representing that they would not bill the Partnership. They either did or they did not. **If they did, these funds should be returned** to the Partnership.

**If they did not, let them keep the funds**, even though Yusuf used them to advance his own interests, and not those of the Partnership, which independent counsel would have done if retained. It is that simple. Hamed will rely on the already submitted documents at the time as to what was represented to the Court by DTF and Yusuf, which is the obvious, continuing basis for Hamed's repeated efforts to get these charges refunded.

Judge Brady's admonition that this not be decided while the Liquidating Partner was still marshaling the assets makes common sense. The argument that the Special Master should be burdened with the task of reviewing DTF's itemized billings is unrealistic, as those bills do not contain enough information to do that laborious task.

As such, this Claim is ripe for determination now that DTF is no longer involved in that manner.

**Dated:** January 19, 2018



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### CERTIFICATE OF SERVICE

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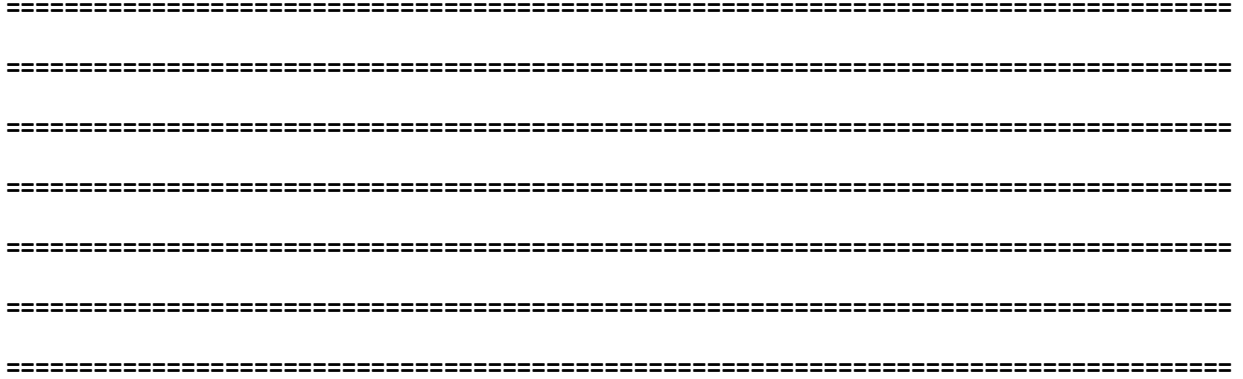
Carl J. Hamed

### CERTIFICATE OF COMPLIANCE WITH RULE 6-1(e)

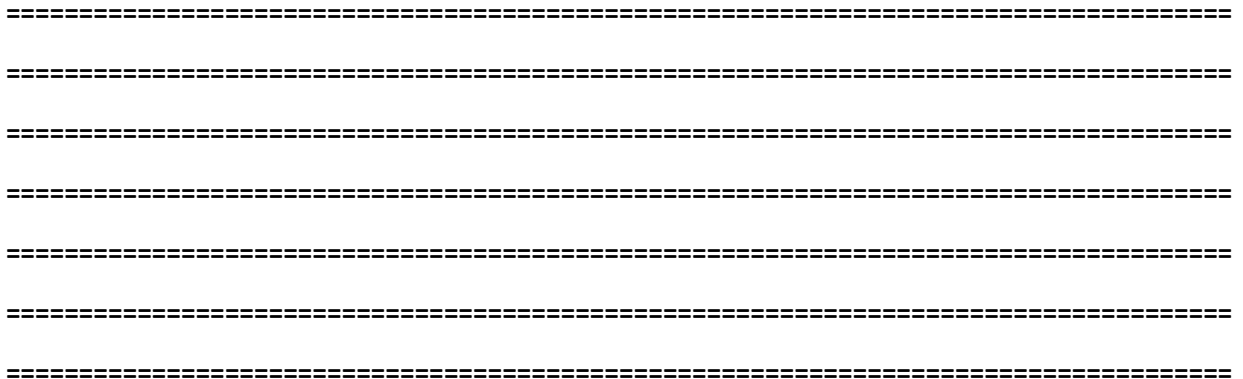
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Carl J. Hamed



# **DIVIDER**



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

**WALEED HAMED**, as the Executor of the  
Estate of MOHAMMAD HAMED,

*Plaintiff/Counterclaim Defendant,*

vs.

**FATHI YUSUF** and **UNITED CORPORATION**

*Defendants and Counterclaimants.*

vs.

**WALEED HAMED, WAHEED HAMED,  
MUFEED HAMED, HISHAM HAMED, and  
PLESSEN ENTERPRISES, INC.,**

*Counterclaim Defendants,*

---

**WALEED HAMED**, as the Executor of the  
Estate of MOHAMMAD HAMED,

*Plaintiff,*

vs.

**UNITED CORPORATION,**

*Defendant.*

---

**WALEED HAMED**, as the Executor of the  
Estate of MOHAMMAD HAMED,

*Plaintiff,*

vs.

**FATHI YUSUF,**

*Defendant.*

**Case No.: SX-2012-cv-370**

**ACTION FOR DAMAGES,  
INJUNCTIVE RELIEF AND  
DECLARATORY RELIEF**

JURY TRIAL DEMANDED

Consolidated with

**Case No.: SX-2014-CV-287**

**ACTION FOR DECLARATORY  
JUDGMENT**

JURY TRIAL DEMANDED

Consolidated with

**Case No.: SX-2014-CV-278**

**ACTION FOR DEBT AND  
CONVERSION**

JURY TRIAL DEMANDED

Yusuf does not dispute that neither his order for the two condensers nor the shopping carts were invoiced **until after** the parties had stipulated in January of 2015 that the value of the equipment for the Plaza East store was \$150,000. Nor does he dispute that Judge Brady approved on the split order on January 30, 2015. **The order provided for a valuation of Partnership equipment that Yusuf would have to pay to purchase this equipment from the Partnership.**

While who should pay for these two items has been previously disputed, Yusuf notes that the Special Master has already stated:

**If said purchase was not considered at the time of the stipulation, then an adjustment should be made; if considered, then no adjustment.**

This directive is simply common sense, and is what should control the determination of these two claims.

While Yusuf concedes these items were not 'officially' invoiced until after the January 30<sup>th</sup> Order, he raises several arguments in support of his assertion that the partnership should still pay for these two items (costing \$59,867.02 and \$13,177) that improved his store at the Partnership's expense **after** the \$150,000 valuation had already been agreed upon.<sup>1</sup>

First, Yusuf argues that Hamed "*knew or should have known* these items were needed for the store" when the \$150,000 valuation was being done. That argument is contrary to both the facts (and the extensive record) in this case, as the Hameds were surprised by these two purchases and *immediately* objected to them. See *Declaration of Wally Hamed* attached as **Exhibit 1**. Indeed, it is absurd to argue that the Hameds "knew" about \$73,000 in new purchases (and took those purchases into consideration) when the total value of the entire store's equipment was agreed to only to

---

<sup>1</sup> The parties do not dispute that the condensers and shopping carts are "equipment."

be \$150,000. Nor is it clear why their knowing of needed repairs would change everything -- as Yusuf certainly is not arguing that the Hameds could charge for post-split repairs even if previously needed at Tutu.

Second, Yusuf argues that the Plaza East store was in terrible shape when the transfer took place. That point, even if true, is irrelevant, as the controlling figure of what the store's equipment was worth *is what the parties agreed to* (and the Court approved). Indeed, Plaza West had to replace its condensers and purchase shopping carts **after** the stores were transferred. These **were not paid for by the Partnership**. See **Exhibit 1**.

In short, the parties agreed upon the value of the equipment in the Plaza East store, it was approved by this Court on January 30, 2015, and Yusuf agreed to pay the partnership to purchase this equipment. Thus, Hamed is entitled to an equal payment (or Yusuf must reimburse the partnership) for the cost of the additional items Yusuf purchased for this store with partnership funds after that date, as he did here.

**Dated:** January 19, 2018

A handwritten signature in blue ink, reading "Carl J. Hartmann III", written over a horizontal line.

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### CERTIFICATE OF SERVICE

I hereby certify that on this 19th day of January, 2018, I served a copy of the foregoing by email, as agreed by the parties, on:

**Hon. Edgar Ross**

Special Master  
% edgarrossjudge@hotmail.com

**Gregory H. Hodges**

**Stefan Herpel**  
**Charlotte Perrell**  
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Carl J. Hamed

### CERTIFICATE OF COMPLIANCE WITH RULE 6-1(e)

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Carl J. Hamed

## DECLARATION OF WALLY HAMED

I, Wally Hamed, declare, pursuant to V.I. R. CIV. P. 84, as follows:

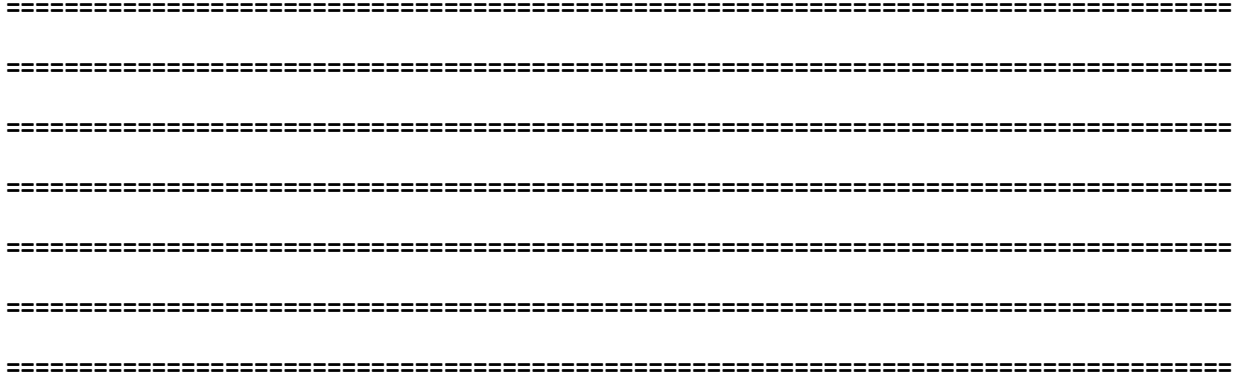
1. I am over 18 years of age.
2. I am now the named Plaintiff herein and am familiar with the facts set forth herein.
3. I am the person who agreed to the valuation of \$150,000 for the equipment in the Plaza East store, which the Court subsequently approved on January 30, 2015, setting the amount Fathi Yusuf would have to pay the partnership to purchase this equipment, which was agreed to after consulting my brother Mafi Hamed, as he and I were the two Hamed family members that worked in this store.
4. At no time were we informed about the potential purchase of the two condensers and the 100 shopping carts until we were presented with checks to pay for these items, which was well after January 30, 2015.
5. Had we known these new items, costing in excess of \$73,000, were to be included in the Plaza East equipment to be purchased by Fathi Yusuf from the Partnership, the Hameds would not have agreed to the \$150,000 figure that was then presented to the Court.
6. After the stores were transferred in March of 2015, the Plaza West store had to replace its condensers and buy new shopping carts, but the partnership did not pay for these items, nor was it asked to do so, as the valuations for the equipment being purchased from the Partnership had already been agreed to.

I declare under penalty of perjury that the foregoing is true and correct, executed on this 19th day of January, 2018.

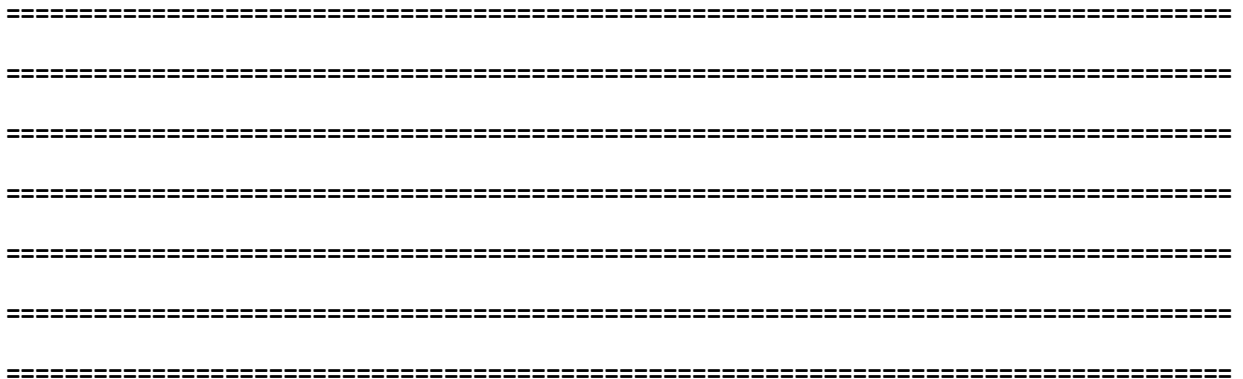
  
\_\_\_\_\_  
Wally Hamed

**EXHIBIT**

**1**



# **DIVIDER**





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

**WALEED HAMED**, as the Executor of the  
Estate of MOHAMMAD HAMED,

*Plaintiff/Counterclaim Defendant,*

vs.

**FATHI YUSUF** and **UNITED CORPORATION**

*Defendants and Counterclaimants.*

vs.

**WALEED HAMED, WAHEED HAMED,  
MUFEED HAMED, HISHAM HAMED, and  
PLESSEN ENTERPRISES, INC.,**

*Counterclaim Defendants,*

Case No.: **SX-2012-cv-370**

**ACTION FOR DAMAGES,  
INJUNCTIVE RELIEF AND  
DECLARATORY RELIEF**

JURY TRIAL DEMANDED

Consolidated with

Case No.: **SX-2014-CV-287**

**ACTION FOR DECLARATORY  
JUDGMENT**

JURY TRIAL DEMANDED

Consolidated with

Case No.: **SX-2014-CV-278**

**ACTION FOR DEBT AND  
CONVERSION**

JURY TRIAL DEMANDED

**WALEED HAMED**, as the Executor of the  
Estate of MOHAMMAD HAMED,

*Plaintiff,*

vs.

**UNITED CORPORATION,**

*Defendant.*

**WALEED HAMED**, as the Executor of the  
Estate of MOHAMMAD HAMED,

*Plaintiff,*

vs.

**FATHI YUSUF,**

*Defendant.*

**HAMED'S REPLY AS TO MOTION TO PRECLUDE YUSUF'S CLAIMS  
PRIOR TO SEPTEMBER 17, 2006**

Despite Yusuf's efforts to re-write Judge Brady's opinion, that detailed, specific opinion made it clear that claims prior to September 17, 2006, **are barred regardless of whether the claims are described as "disputed" or "undisputed" by Yusuf**, stating (see p. 33, excerpt from July 24, 2017 Brady Order, attached again as **Exhibit 1**):

Therefore, the Court exercises the significant discretion it possesses in fashioning equitable remedies to restrict the scope of the accounting in this matter to consider only those § 71(a) claims that are **based upon transactions** occurring no more than six years prior to the September 17, 2012 filing of Hamed's Complaint. (Emphasis added).

Any *TRANSACTIONS* prior to the date are BARRED. The referenced \$1.6 million **transaction** occurred well before September 17, 2006, so it is clearly time-barred under that Order.<sup>1</sup> That totally and completely ends the issue.

Indeed, Yusuf's attempt to use an affidavit of a close friend of his *clients* to describe a conversation in a mediation to reach a global settlement (an alleged admission Hamed denies) is exactly the type of evidence that Judge Brady sought to avoid. Similarly, Yusuf's reference to a prior Brady opinion on the SOL is off-base, as Brady's July 24<sup>th</sup> opinion is based on laches, not the SOL.

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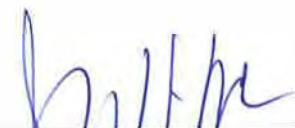
<sup>1</sup> The Court further clarified this directive in footnote 35, specifically addressing any alleged "undisputed" claim:

Yusuf has argued that certain § 71(a) claims are effectively undisputed, and that "if it is undisputed that payments were made to a partner, even without authorization, then to exclude them from an accounting for that reason would be entirely arbitrary." First, it appears doubtful, based upon the record and the representations of the parties in this matter, that any claim submitted by either party would truly be undisputed. **But, even if some claims were, in fact, undisputed, because of the great dearth of accurate records there exists such an element of chance in any attempt to reconstruct the partnership accounts that an accounting reaching back to the date of the last partnership true-up in 1993 would ultimately be no more complete, accurate, or fair, than an accounting reaching back only to 2006.** (Emphasis added).

Moreover, the July 24<sup>th</sup> ruling worked both ways, as a significant Hamed claim included an admission by Yusuf in his deposition that he had lost \$18 million in partnership funds prior to 2006 trading futures options, **after agreeing with Mohammad Hamed that he would stop all such trading.** However, this door has been shut by the Court, which the parties need to abide by -- even if they think it may be unfair (like any other decision rendered by the Court).

Thus, it is respectfully submitted that this Court should bar all transactions prior to September 17, 2006, regardless of what may have occurred after that date, including Yusuf's \$1.6 million claim that predates this cut-off date set by the Court.

**Dated:** January 22, 2018



---

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**CERTIFICATE OF SERVICE**

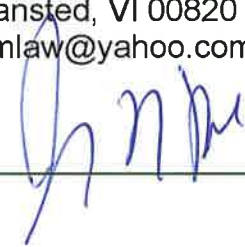
I hereby certify that on this 22<sup>nd</sup> day of January, 2018, I served a copy of the foregoing by email, as agreed by the parties, on:

**Hon. Edgar Ross**  
Special Master  
% edgarrossjudge@hotmail.com

**Gregory H. Hodges**  
**Stefan Herpel**  
**Charlotte Perrell**  
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**CERTIFICATE OF COMPLIANCE WITH RULE 6-1(e)**

This document complies with the page or word limitation set forth in Rule 6-1(e).



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

WALEED HAMED, as Executor of the  
Estate of MOHAMMED HAMED  
Plaintiff/Counterclaim Defendant,

v.

FATHI YUSUF and UNITED CORPORATION,  
Defendants/Counterclaimants,

v.

WALEED HAMED, WAHEED HAMED,  
MUFEED HAMED, HISHAM HAMED, and  
PLESSEN ENTERPRISES, INC.,  
Counterclaim Defendants.

Civil No. SX-12-CV-370

ACTION FOR INJUNCTIVE RELIEF,  
DECLARATORY JUDGMENT, and  
PARTNERSHIP DISSOLUTION,  
WIND UP, and ACCOUNTING

WALEED HAMED, as Executor of the  
Estate of MOHAMMED HAMED,  
Plaintiff,

v.

UNITED CORPORATION,  
Defendant.

Civil No. SX-14-CV-287

ACTION FOR DAMAGES and  
DECLARATORY JUDGMENT

WALEED HAMED, as Executor of the  
Estate of MOHAMMED HAMED,  
Plaintiff,

v.

FATHI YUSUF,  
Defendant.

Civil No. SX-14-CV-278

ACTION FOR DEBT and  
CONVERSION

**MEMORANDUM OPINION AND ORDER RE LIMITATIONS ON ACCOUNTING**

This matter came on for hearing on March 6 and 7, 2017 on various pending motions, including Hamed's fully briefed Motion for Partial Summary Judgment re the Statute of Limitations Defense Barring Defendants' Counterclaim Damages Prior to September 16, 2006, filed May 13, 2014.<sup>1</sup> Because the Court concludes that Defendant Yusuf has not, in fact, presented

<sup>1</sup> Hamed's Motion was followed by: Defendants' Brief in Opposition, filed June 6, 2014; Hamed's Reply, filed June 20, 2014; Hamed's Notice of Supplemental Authority, filed November 15, 2016; Yusuf's Brief in Response, filed December 3, 2016; Yusuf's post-hearing Supplemental Brief, filed March 21, 2017; and Hamed's Response, filed March 27, 2017. Also pending is Defendants' Motion for Partial Summary Judgment on Counts IV, XI, and XII Regarding Rent, filed August 12, 2014, which is addressed herein.



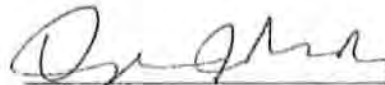
In light of the foregoing, it is hereby

ORDERED that Defendants' Motion for Partial Summary Judgment on Counts IV, XI, and XII Regarding Rent is DENIED, as to Counts IV and XII. It is further

ORDERED that Hamed's Motion for Partial Summary Judgment re the Statute of Limitations Defense Barring Defendants' Counterclaim Damages Prior to September 17, 2006 is DENIED. It is further

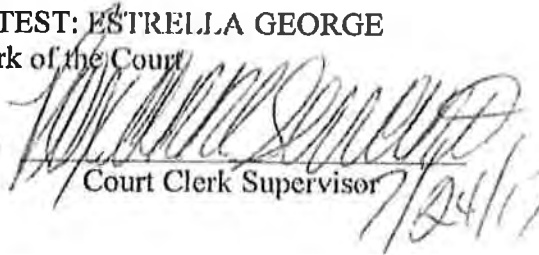
ORDERED that the accounting in this matter, to which each partner is entitled under 26 V.I.C § 177(b), conducted pursuant to the Final Wind Up Plan adopted by the Court, shall be limited in scope to consider only those claimed credits and charges to partner accounts, within the meaning of 26 V.I.C § 71(a), based upon transactions that occurred on or after September 17, 2006.

DATED: July 21, 2017.

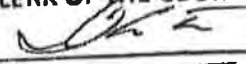
  
DOUGLAS A. BRADY  
Judge of the Superior Court

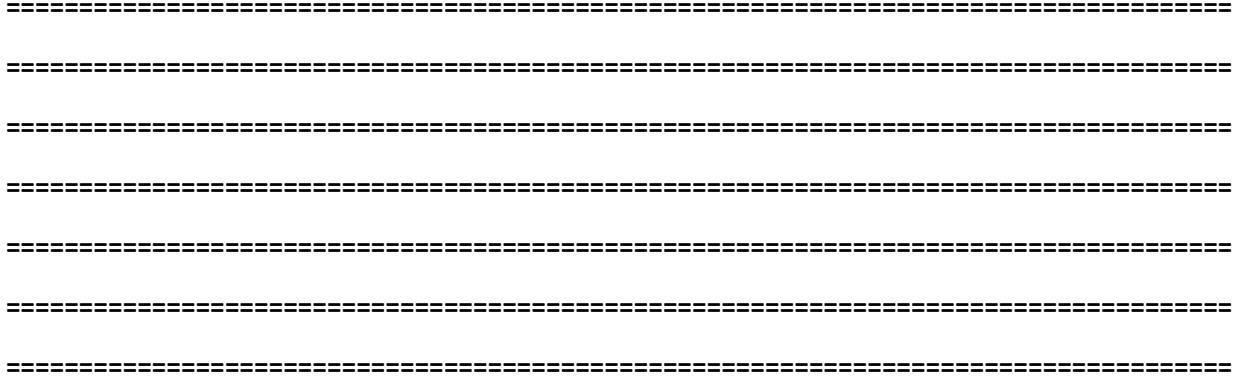
ATTEST: ESTRELLA GEORGE  
Clerk of the Court

By:

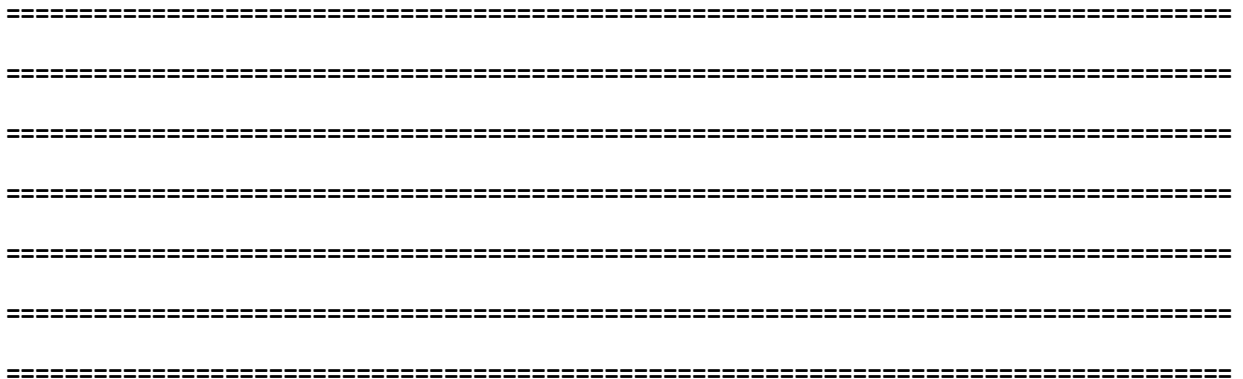
  
Court Clerk Supervisor 7/24/17

**CERTIFIED A TRUE COPY**

DATE: July 24, 2017  
ESTRELLA H. GEORGE  
ACTING CLERK OF THE COURT  
BY:   
COURT CLERK II



# **DIVIDER**



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 and Counterclaimants.*

vs.

**WALEED HAMED, WAHEED HAMED,  
MUFEED HAMED, HISHAM HAMED, and  
PLESSEN ENTERPRISES, INC.,**

*Counterclaim Defendants,*

**Case No.: SX-2012-CV-370**

**ACTION FOR DAMAGES,  
INJUNCTIVE RELIEF AND  
DECLARATORY RELIEF**

**JURY TRIAL DEMANDED**

**MOHAMMAD HAMED,**

*Plaintiff,*

vs.

**FATHI YUSUF,**

*Defendant.*

**Case No.: SX-2014-CV-278**

**ACTION FOR DEBT AND  
CONVERSION**

**JURY TRIAL DEMANDED**

**MOHAMMAD HAMED,**

*Plaintiff,*

vs.

**UNITED CORPORATION,**

*Defendant.*

**Case No.: SX-2014-CV-287**

**ACTION FOR DEBT AND  
CONVERSION**

**JURY TRIAL DEMANDED**

**REPLY TO YUSUF'S OPPOSITION TO MOTION TO STRIKE THE  
"REVISED BDO REPORT"**



Despite Yusuf’s efforts to put a positive spin on it, Judge Brady’s scathing criticism of the BDO report gutted it. Undaunted, Yusuf now submits a “revised” BDO report, reduced from 62 pages to a 1 page accounting spreadsheet. Yusuf touts this declaration as a “compilation” of *offsetting claims*. The revised spreadsheet is still defective, as it is nothing more than a simple invasion into the tasks assigned to the Special Master. Moreover, **additional 'discovery' will not correct this obvious flaw.**

**I. The revised BDO report improperly attempts to usurp the Master’s role**

The revised BDO report tries to “package” an “expert opinion” about multiple, individual claims into one “super claim”, seeking \$4.5 million from Hamed, as a “stand-alone” single claim. It is not. Instead, BDO’s revised report is an attempt to **decide** multiple claims that the Master needs to resolve -- without any evidentiary or testimonial support -- and then group them into one “claim.” However, the task of verifying or rejecting each of these claims (and any offsets) one at a time, is for the Special Master to decide based on actual evidence, not BDO’s say so.

A review of this *revised* report confirms that **each entry is a *separate* claim** that cannot be lumped together, as the Master must find that *each one* is valid. For example:

1. BDO still seeks to 'assess' Waleed (Wally) Hamed for \$1,778,103 for “Amount owed by Hamed family to Yusuf **as per agreement before raid Sept 2001.**” (Emphasis added). See **Exhibit 1**. However, as noted in the reply seeking to strike this claim, filed at the same time as this response, Judge Brady made it clear that transactions that predated September 17, 2006, were now barred. Thus, the inclusion of this claim in the “revised” BDO report is in direct violation of this Court’s order. More to the point here, **only the Master, not BDO, can decide if this claim is still valid or is barred.**
2. BDO allocates \$4.1 million in attorney’s fees to Hamed and \$237,691 to Yusuf for the defense of the criminal case. **Those “accounting entries” actually consist of “findings” that this allocation is appropriate, which is a finding reserved for the Special Master, not BDO.<sup>1</sup>**

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<sup>1</sup> BDO still ignores the un-contradicted declaration of Gordon Rhea, the lawyer who headed up the legal team for the criminal case, submitted at the March 6<sup>th</sup> hearing that all legal work was done jointly on behalf of all of the Yusuf/Hamed defendants, so that such an allocation was improper. See **Exhibit 7** to Hamed’s initial motion re BDO.

3. Yusuf argues on pp. 10-12 of its opposition that BDO *did* take into account the fact that Mafi Hamed earned rents outside of his Plaza income, attaching Table 26B from BDO’s report for Scotia account 9811 that supposedly supports this argument. However, a review of that table confirms that BDO **did not make any such adjustment for the years prior to 2012**, despite Mafi’s testimony that **all deposits into this account were rent from a business unrelated to Plaza Extra**. See **Exhibit 2**. Thus, this obviously incorrect allocation is **STILL** in the BDO report and **STILL** consists of a “finding” that this bank account contains partnership withdrawals.<sup>2</sup> **More to the point**, not only is this “accounting entry” incorrect, **but it involves a finding reserved for the Master**.
4. BDO includes the Hamed \$2.7 million claim (conceded by Yusuf) as simply an accounting entry, which it then offsets with other claims, even though that is a pending claim now before the Master to decide, as will be the case regarding any offsetting claims. **Again, BDO is attempting to replace the Master**.

These few examples make it clear that Yusuf is trying to use this “revised” BDO report to have BDO make “findings” that are in fact separate “judgments” as to ultimate issues -- decisions entrusted to the Special Master, not BDO.

In short, each BDO accounting entry constitutes a separate claim. While Yusuf is free to raise any claims that Hamed withdrew funds to which he is entitled to an offset, **he *must* present evidence proving *each* such specific claim to the Special Master**, not just say "allow it because BDO says so" in an accountant’s “compilation” summary.

## **II. Yusuf’s request to do more discovery will not correct this fatal flaw**

Because the very nature of the revised BDO report is flawed, no amount of discovery will cure this defect. **Indeed, the mere suggestion that this report may be further modified "after discovery" runs afoul of the Bar Orders entered in this accounting phase**. BDO’s \$4.5 million claim is set, which is nothing more than an unwarranted intrusion into the Master’s task of deciding claims. Thus, further discovery

---

<sup>2</sup> See **Exhibit 2**, attached hereto, with markings in red where no such alleged adjustment was made. It is amazing that Yusuf argues that Mafi’s March 6<sup>th</sup> testimony was addressed by BDO, when no adjustment was made. When will such antics stop?

would be a waste of time and resources, further delaying this matter, as such discovery will not cure this fatal defect. It would also contravene Judge Brady’s orders.

### III. Conclusion

The revised BDO report--that “packages” multiple “findings” into an alleged single “claim” of \$4.5 million--should be stricken as invading the province of the Special Master, who has been entrusted with the sole responsibility of making such findings. **Moreover, additional discovery will not change the simple fact that it is the Special Master, not BDO, who has been entrusted to make these decisions.** Thus, BDO’s one page “compilation” should be stricken now, allowing the Master to make all decisions on each individual claim, rather than allowing BDO to try grouping such findings it made into a single claim.

Dated: January 22, 2017



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**Carl J. Hartmann III, Esq.**  
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**CERTIFICATE OF SERVICE**

I hereby certify that on this 22nd day of January, 2018, I served a copy of the foregoing by email (via Case Anywhere ECF), as agreed by the parties, on:

**Hon. Edgar Ross**, Special Master  
% edgarrossjudge@hotmail.com

**Gregory H. Hodges**  
**Stefan Herpel**  
**Charlotte Perrell**  
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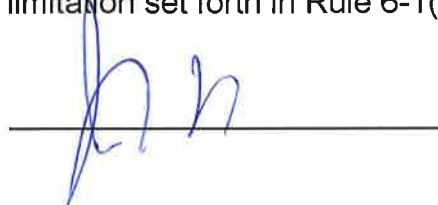
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**CERTIFICATE OF COMPLIANCE WITH RULE 6-1(e)**

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Dudley, Topper and Feuerzeig, LLP  
 United Corporation  
 Civil No. SX-12-CV-99

ITEM #4

ITEM #1

ITEM #2

Summary calculation of Additional Income as a result of withdrawals from Supermarkets' accounts (or partnership's accounts) - January 1994 to August 2014. (Including adjustments)

Summary of Withdrawals

Description	Hamed					Total
	Mohammad	Waleed	Waheed	Mufeed	Hisham	
Funds received from partnership through checks	\$ 1,500,000.00	\$ -	\$ -	\$ -	\$ -	\$ 1,500,000.00
Withdrawals from the partnership with a signed ticket/receipt	-	237,352.75	-	-	-	237,352.75
Amount owed by Hamed family to Yusuf as per agreement before raid Sept 2001. As per Mike's testimony these tickets were burned. (Refer to Letter dated August 15, 2012)	-	1,778,103.00	-	-	-	1,778,103.00
Payments to third parties on behalf of Hamed/Yusuf with partnership funds either with tickets or checks	-	20,311.00	-	-	-	20,311.00
Payments to Attorneys with partnership's funds	-	3,749,495.48	372,155.95	-	-	4,121,651.43
Funds received by cashier's checks	-	-	-	-	-	-
<b>Total Partnership</b>	<b>1,500,000.00</b>	<b>5,785,262.23</b>	<b>372,155.95</b>	<b>-</b>	<b>-</b>	<b>7,657,418.18</b>
Deposits to bank and brokerage accounts	16,505.80	430,439.13	100,000.00	306,999.56	510,061.57	1,364,006.06
Payments to credit cards	-	422,824.70	-	179,786.80	-	602,611.50
Investments (cost) sold as per tax returns	-	-	-	-	-	-
<b>Subtotal Lifestyle analysis</b>	<b>16,505.80</b>	<b>853,263.83</b>	<b>100,000.00</b>	<b>486,786.36</b>	<b>510,061.57</b>	<b>1,966,617.56</b>
<b>Net Withdrawals</b>	<b>\$ 1,516,505.80</b>	<b>\$ 6,638,526.06</b>	<b>\$ 472,155.95</b>	<b>\$ 486,786.36</b>	<b>\$ 510,061.57</b>	<b>\$ 9,624,035.74</b>

Note:

1 Total amounts include adjustments made for withdrawals in 2016.

ITEM #3







Dudley, Topper and Feuerzeig, LLP

Mohammad Hamed v. Fathi Yusuf and United Corporation

Civil No. SX-12-CV-99

(October 2001 to December 2012)

Account Owner: Mufeed Hamed / Wally Hamed  
 Financial Institution: Scotiabank  
 Type of Account: Checking Account  
 Account Number: 058-45609811

Barred by Judge  
Brady's Opinion

Year	Statement Date	Transaction Date	Deposits	Adjustment	Adjusted Amount	Tickmarks/ Note
2001	10/15/2001	10/1/2001	\$ 5,000.00	\$ (1,000.00)	\$ 4,000.00	A, B, 1
2001	11/15/2001		No deposit			2
2001	12/15/2001		No deposit			2
<b>Total Year 2001</b>			<b>5,000.00</b>	<b>(1,000.00)</b>	<b>4,000.00</b>	
2002	1/15/2002		No deposit			2
2002	2/15/2002		No deposit			2
2002	3/15/2002	3/8/2002	3,980.00		\$ 3,980.00	A, B
2002	4/15/2002		No deposit			2
<i>Statements between May and August were not available.</i>						
2002	9/13/2002	No available	13,000.00		13,000.00	A
2002	9/13/2002	No available	2,500.00		2,500.00	A
2002	9/13/2002	No available	2,500.00		2,500.00	A
2002	9/13/2002	No available	2,000.00		2,000.00	A
2002	9/13/2002	No available	100.00		100.00	A
2002	9/13/2002	No available	1,500.00		1,500.00	A
2002	9/13/2002	No available	2,400.00		2,400.00	A
2002	9/13/2002	No available	4,410.00		4,410.00	A
2002	9/13/2002	No available	3,700.00		3,700.00	A
2002	9/13/2002	No available	3,500.00		3,500.00	A
2002	9/13/2002	No available	1,500.00		1,500.00	A
<b>Total Year 2002</b>			<b>41,090.00</b>	<b>-</b>	<b>41,090.00</b>	
<i>Statements between October 2002 and December 2006 were not available.</i>						

EXHIBIT  
2

Barred by Judge Brady's Opinion

Year	Statement Date	Transaction Date	Deposits	Adjustment	Adjusted Amount	Tickmarks/Notes
2006	1/15/2007	12/20/2006	1,400.00		1,400.00	A
2006	1/15/2007	12/20/2006	2,000.00		2,000.00	A
<b>Total Year 2006</b>			<b>3,400.00</b>	<b>-</b>	<b>3,400.00</b>	
2007	1/15/2007	1/9/2007	1,400.00		1,400.00	A
2007	1/15/2007	1/9/2007	3,030.00		3,030.00	A
2007	1/15/2007	1/12/2007	0.60	(0.60)	-	A, 3
2007	2/15/2007	2/9/2007	1,355.00		1,355.00	A
2007	2/15/2007	2/9/2007	2,585.00		2,585.00	A
2007	2/15/2007	2/15/2007	1.30	(1.30)	-	A, 3
2007	3/15/2007	3/2/2007	3,030.00		3,030.00	A
2007	3/15/2007	3/2/2007	1,000.00		1,000.00	A
2007	3/15/2007	3/14/2007	2,145.00		2,145.00	A
2007	3/15/2007	3/14/2007	3,030.00		3,030.00	A
2007	3/15/2007	3/15/2007	1.20	(1.20)	-	A, 3
2007	4/15/2007	4/12/2007	3.00	(3.00)	-	A, 3
2007	5/15/2007	4/24/2007	2,100.00		2,100.00	A
2007	5/15/2007	4/24/2007	1,800.00		1,800.00	A
2007	5/15/2007	5/10/2007	1.40	(1.40)	-	A, 3
2007	6/15/2007	5/23/2007	700.00		700.00	A
2007	6/15/2007	5/23/2007	3,600.00		3,600.00	A
2007	6/15/2007	6/4/2007	975.67		975.67	A
2007	6/15/2007	6/4/2007	57.18		57.18	A
2007	6/15/2007	6/4/2007	106.73		106.73	A
2007	6/15/2007	6/7/2007	407.00		407.00	A
2007	7/15/2007	6/20/2007	1,780.00		1,780.00	A
2007	7/15/2007	6/20/2007	1,400.00		1,400.00	A
2007	7/15/2007	7/9/2007	1,325.00		1,325.00	A
2007	7/15/2007	7/9/2007	2,000.00		2,000.00	A
2007	8/15/2007	7/18/2007	700.00		700.00	A
2007	8/15/2007	7/18/2007	2,285.00		2,285.00	A
2007	8/15/2007	8/5/2007	1,100.00		1,100.00	A
2007	8/15/2007	8/6/2007	700.00		700.00	A
2007	8/15/2007	8/15/2007	1.40	(1.40)	-	A, 3
2007	9/15/2007	9/14/2007	0.60	(0.60)	-	A, 3





Rents Collected by Mafi Hamed unrelated to Partnership, but allocated as a Partnership withdrawal by BDO

Year	Statement Date	Transaction Date	Deposits			kmarks/ Note
2007	10/15/2007	9/19/2007	3,685.00		3,685.00	A
2007	10/15/2007	9/19/2007	3,000.00		3,000.00	A
2007	10/15/2007	10/15/2007	0.90	(0.90)	-	A, 3
2007	11/15/2011	11/15/2007	0.30	(0.30)	-	A, 3
2007	12/15/2007	11/20/2007	2,585.00		2,585.00	A
2007	12/15/2007	11/20/2007	6,040.00		6,040.00	A
2007	12/15/2007	12/14/2007	1.80	(1.80)	-	A, 3
<b>Total Year 2007</b>			<b>53,934.08</b>	<b>(12.50)</b>	<b>53,921.58</b>	
2008	1/15/2008	1/8/2008	1,400.00		1,400.00	A
2008	1/15/2008	1/9/2008	1,100.00		1,100.00	A
2008	1/15/2008	1/25/2007	0.90	(0.90)	-	A, 3
2008	2/15/2008	1/24/2008	4,400.00		4,400.00	A
2008	2/15/2008	1/24/2008	2,100.00		2,100.00	A
2008	2/15/2008	2/15/2008	1.80	(1.80)	-	A, 3
2008	3/15/2008	3/14/2008	1,400.00		1,400.00	A
2008	3/15/2008	3/14/2008	4,900.00		4,900.00	A
2008	3/15/2008	3/14/2008	1.20	(1.20)	-	A, 3
2008	4/15/2008	4/15/2008	5,350.00		5,350.00	A
2008	4/15/2008	4/15/2008	1,700.00		1,700.00	A
2008	4/15/2008	4/15/2008	0.60	(0.60)	-	A, 3
2008	5/15/2008	5/15/2008	1.80	(1.80)	-	A, 3
2008	6/15/2008	6/4/2008	1,300.00		1,300.00	A
2008	6/15/2008	6/4/2008	2,800.00		2,800.00	A
2008	6/15/2008	6/13/2008	0.30	(0.30)	-	A, 3
2008	7/15/2008	6/26/2008	2,400.00		2,400.00	A
2008	7/15/2008	6/26/2008	2,200.00		2,200.00	A
2008	7/15/2008	7/15/2008	1.20	(1.20)	-	A, 3
2008	8/15/2008	8/15/2008	0.90	(0.90)	-	A, 3
<i>Statement for September was not available.</i>						
2008	10/15/2008	9/18/2008	3,040.00		3,040.00	A
2008	10/15/2008	9/18/2008	1,500.00		1,500.00	A
2008	10/15/2008	9/24/2008	1,740.00		1,740.00	A
2008	10/15/2008	9/24/2008	1,400.00		1,400.00	A
2008	10/15/2008	10/10/2008	1,920.00		1,920.00	A



Rents Collected by Mafi Hamed unrealted to Partnership, but allocated as a Partnership withdrawal by BDO

Year	Statement Date	Transaction Date	Deposits	Ac		ckmarks/ Note
2008	10/15/2008	10/10/2008	2,200.00		2,200.00	A
2008	10/15/2008	10/15/2008	1.50	(1.50)	-	A, 3
2008	11/15/2008	11/15/2008	1.20	(1.20)	-	A, 3
2008	12/15/2008		No deposit		-	2
2008	1/15/2009	12/31/2008	74.55		74.55	A
<b>Total Year 2008</b>			<b>42,935.95</b>	<b>(11.40)</b>	<b>42,924.55</b>	
2009	1/15/2009	1/2/2009	400.00		400.00	A
2009	1/15/2009	1/7/2009	1,400.00		1,400.00	A
2009	1/15/2009	1/8/2009	3,450.00		3,450.00	A
2009	1/15/2009	1/13/2009	4,540.00		4,540.00	A
2009	1/15/2009	1/13/2009	1,280.00		1,280.00	A
2009	2/15/2009	1/23/2009	2,540.00		2,540.00	A
2009	2/15/2009	1/23/2009	770.00		770.00	A
2009	2/15/2009	2/13/2009	0.90	(0.90)	-	A, 3
2009	3/15/2009	2/17/2009	5,819.00		5,819.00	A
2009	3/15/2009	2/17/2009	770.00		770.00	A
2009	4/15/2009	3/31/2009	770.00		770.00	A
2009	4/15/2009	3/31/2009	2,240.00		2,240.00	A
2009	4/15/2009	4/4/2009	3,000.00		3,000.00	A
2009	4/15/2009	4/8/2009	2,930.00		2,930.00	A
2009	5/15/2009	4/28/2009	770.00		770.00	A
2009	5/15/2009	4/28/2009	4,690.00		4,690.00	A
2009	5/15/2009	5/9/2009	4,020.00		4,020.00	A
2009	5/15/2009	5/9/2009	1,270.00		1,270.00	A
2009	6/15/2009	6/3/2009	1,000.00		1,000.00	A
2009	6/15/2009	6/3/2009	2,170.00		2,170.00	A
2009	6/15/2009	6/11/2009	2,500.00		2,500.00	A
2009	7/15/2009	7/10/2009	3,080.00		3,080.00	A
2009	7/15/2009	7/10/2009	1,540.00		1,540.00	A
2009	8/15/2009	8/3/2009	2,900.00		2,900.00	A
2009	8/15/2009	8/3/2009	2,605.00		2,605.00	A
2009	8/15/2009	8/14/2009	0.60	(0.60)	-	A, 3
2009	9/15/2009	9/2/2009	3,540.00		3,540.00	A
2009	9/15/2009	9/2/2009	770.00		770.00	A

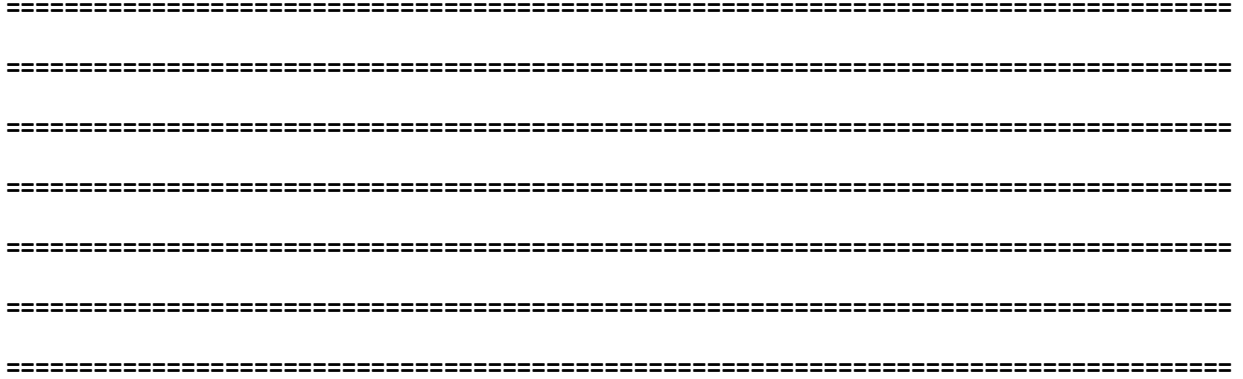
Rents collected by Mafi Hamed unrelated to Partnership, but allocated as a Partnership withdrawal by BDO

Year	Statement Date	Transaction Date	Deposits	Adjust		
2009	9/15/2009	9/15/2009	1.50			
2009	10/15/2009	10/8/2009	2,270.00		2,270.00	A
2009	10/15/2009	10/8/2009	3,770.00		3,770.00	A
2009	10/15/2009	10/8/2009	7,000.00		7,000.00	A
2009	10/15/2009	10/15/2009	1.20	(1.20)	-	A, 3
2009	11/15/2009	11/3/2009	770.00		770.00	A
2009	11/15/2009	11/13/2009	0.60	(0.60)	-	A, 3
2009	11/15/2009	11/3/2009	3,875.00		3,875.00	A
2009	12/15/2009	12/2/2009	770.00		770.00	A
2009	12/15/2009	12/2/2009	1,770.00		1,770.00	A
2009	12/15/2009	12/9/2009	2,040.00		2,040.00	A
2009	12/15/2009	12/9/2009	1,000.00		1,000.00	A
2009	12/15/2009	12/15/2009	1.20	(1.20)	-	A, 3
<b>Total Year 2009</b>			<b>84,035.00</b>	<b>(6.00)</b>	<b>84,029.00</b>	
2010	1/15/2010	1/7/2010	2,310.00		2,310.00	A
2010	1/15/2010	1/13/200	1.20	(1.20)	-	A, 3
2010	2/15/2010	2/12/2010	1.50	(1.50)	-	A, 3
2010	3/15/2010	3/3/2010	6,940.00		6,940.00	A
2010	3/15/2010	3/10/2010	4,640.00		4,640.00	A
2010	3/15/2010	3/15/2010	0.60	(0.60)	-	A, 3
2010	4/15/2010	4/15/2010	1.20	(1.20)	-	A, 3
2010	5/15/2009	5/3/2010	6,890.00		6,890.00	A
2010	5/15/2009	5/14/2010	0.90	(0.90)	-	A, 3
2010	6/15/2010	6/13/2010	0.60	(0.60)	-	A, 3
2010	7/15/2010	7/2/2010	7,330.00		7,330.00	A
2010	7/15/2010	7/15/2010	1.20	(1.20)	-	A, 3
2010	8/15/2010	7/21/2010	3,010.00		3,010.00	A
2010	8/15/2010	8/13/2010	1.80	(1.80)	-	A, 3
2010	9/15/2010	9/14/2010	6,120.00		6,120.00	A
2010	9/15/2010	9/15/2010	0.90	(0.90)	-	A, 3
2010	10/15/2010	10/4/2010	4,540.00		4,540.00	A
2010	10/15/2010	10/15/2010	1.20	(1.20)	-	A, 3
2010	11/15/2010	11/3/2010	4,040.00		4,040.00	A
2010	11/15/2010	11/15/2010	0.90	(0.90)	-	A, 3



Rents collected by Mafi Hamed  
unrelated to Partnership , but  
allocated as a Partnership  
withdrawal by BDO

Year	Statement Date	Transaction Date	Deposits	Adjustment	Adjusted Amount	Note
2010	12/15/2010	12/14/2010	500.00		500.00	A
2010	12/15/2010	12/14/2010	600.00		600.00	A
2010	12/15/2010	12/15/2010	6,120.00		6,120.00	A
<b>Total Year 2010</b>			<b>53,052.00</b>	<b>(12.00)</b>	<b>53,040.00</b>	
2011	1/15/2011	1/6/2011	600.00		600.00	A
2011	1/15/2011	1/10/2011	1,540.00		1,540.00	A
2011	2/15/2011	1/21/2011	2,650.00		2,650.00	A
2011	3/15/2011	3/9/2011	4,350.00		4,350.00	A
2011	3/15/2011	3/15/2011	1.90	(1.90)	-	A, 3
2011	4/15/2011	4/15/2011	0.30	(0.30)	-	A, 3
2011	5/15/2011	5/9/2011	7,340.00		7,340.00	A
2011	6/15/2011	6/15/2011	2,560.00		2,560.00	A
2011	6/15/2011	6/15/2011	0.60	(0.60)	-	A, 3
2011	7/15/2011	7/15/2011	1.60	(1.60)	-	A, 3
2011	8/15/2011	8/4/2011	7,975.00		7,975.00	A
2011	8/15/2011	8/15/2011	0.90	(0.90)	-	A, 3
2011	9/15/2011	8/30/2011	3,570.00		3,570.00	A
2011	9/15/2011	9/15/2011	3,409.00		3,409.00	A
2011	9/15/2011	9/15/2011	1.60	(1.60)	-	A, 3
2011	10/15/2011	10/13/2011	1,000.00	(1,000.00)	-	A,4
2011	11/15/2011	10/26/2011	1,000.00	(1,000.00)	-	A,4
2011	11/15/2011	11/3/2011	2,310.00		2,310.00	A
2011	11/15/2011	11/8/2011	2,940.00		2,940.00	A
2011	12/15/2011	11/22/2011	800.00		800.00	A
2011	12/15/2011	12/15/2011	1.20	(1.20)	-	A, 3
<b>Total Year 2011</b>			<b>42,052.10</b>	<b>(2,008.10)</b>	<b>40,044.00</b>	
2012	1/15/2012	1/9/2012	5,450.00	(2,310.00)	3,140.00	A, 5
2012	1/15/2012	1/13/2012	0.90	(0.90)	-	A, 3
2012	2/15/2012	1/25/2012	1,400.00		1,400.00	A
2012	2/15/2012	2/14/2012	3,210.00	(1,540.00)	1,670.00	A, 6
2012	3/15/2012	3/13/2012	2,340.00	(1,540.00)	800.00	A, 7
2012	3/15/2012	3/15/2012	1.50	(1.50)	-	A, 3
2012	4/15/2012	4/5/2012	2,170.00	(770.00)	1,400.00	A, 8



# **DIVIDER**

