

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

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

**EMERGENCY MOTION TO FURTHER EXTEND  
SCHEDULING ORDER DEADLINES**

Defendants/counterclaimants Fathi Yusuf (“Yusuf”) and United Corporation (“United”) (collectively, the “Defendants”), through their undersigned attorneys, respectfully submit this Emergency Motion to Further Extend Scheduling Order Deadlines and, in support, state as follows:

**I. Additional Work and Information Is Necessary Prior to Trial**

Presently, fact discovery is set to expire on September 30, 2014, pursuant the Fifth Amended Scheduling Order. This latest scheduling order extended the discovery period because, *inter alia*, voluminous records held by the Department of Justice (the “FBI Boxes”) had recently been returned to St. Thomas and were in the process of being scanned and provided to the parties for review and analysis. While the FBI Boxes were provided to the parties in multiple productions as they became available, the last of the FBI Boxes was just received less than two weeks ago. Time is needed for counsel and accounting experts to absorb

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and analyze these materials. Reams of financial information continue to pour in from other sources as well. Bank records, which are being produced (in installments as they become available) in response to subpoenas arrive daily. For example, Defendants received a substantial production of documents from Banco Popular de Puerto Rico (“Banco Popular”) on September 29, 2014 and it informed counsel that further production of documents would be made on October 8, 2014. The parties also continue to exchange responses to written discovery and produce documents. Review and analysis of what remains outstanding, where disputes exist and decisions as to what is required to be produced are still needed in order to have meaningful depositions. Likewise, outstanding motions remain as to which depositions can or cannot proceed and for how long. A decision as to these issues is needed. In addition, plaintiff/counterclaim defendant Mohammad Hamed (“Hamed”) has recently filed another suit involving claims to assets allegedly derived from the partnership that are very similar to the claims in this case. No discovery has been done as to these “new” claims and they should arguably be included in the full and final accounting of the partnership accounts.

In addition to discovery, other matters must be addressed prior to trial and, therefore, a December 1, 2014 trial date is unrealistic. Honorable Edgar D. Ross was just appointed Master less than two weeks ago. In the Order appointing the Master, the Court 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.” Once a plan for winding up the partnership is approved, the Master must have the time to implement the plan and supervise the liquidation of partnership assets. In all three of the wind-up plans currently before the Court, the liquidation process is contemplated to take at least six months. Likewise, all competing plans contemplate presentation of accountings to the Master and his report and

recommendation to the Court concerning the disputed accounting issues. Clearly, all of this needs to be done prior to trial. Therefore, for all of these reasons, good cause has been shown for the extension of the current scheduling order deadlines.

**A. New Claims Requiring Discovery**

On July 14, 2014, Hamed filed another suit claiming Yusuf owed him monies from their alleged investment in Y & S Corporation, Inc.<sup>1</sup> In that suit, Hamed alleges that as a result of Hamed and Yusuf's partnership in the Plaza Extra Supermarkets, the "partners removed funds from the partnership and used them to invest in certain property on St. Thomas, in Estate Dorothea, using Y&S Corporation, Inc. as the vehicle of their investment." See Exhibit A – Complaint, ¶6, in the 278 Litigation. See also Exhibit B – First Amended Answer and Counterclaim in the 278 Litigation. Hamed contends he is entitled to a percentage of the profits from the liquidation of this investment citing to Yusuf's deposition testimony in this litigation to support his claims. To the extent these claims involve an accounting and settling of partnership accounts, they should be encompassed in this litigation. And, if so, discovery is required to determine the nature of the investment, what was liquidated (i.e. either shares or real property), and, if monies are due to the partnership or a partner, the amounts should be included in the final accounting of the partnership assets as part of the winding up process. Hamed effectively acknowledged that these claims should be included in this litigation when he asked Yusuf to admit or deny that these matters were at issue in this case. See Exhibit C – Yusuf's Responses to Requests for Admission, Questions 1-3. Accordingly, discovery is needed to fully explore the transactions relating to Y&S Corporation and the "Dorothea Property." As the claims were made only recently, there has been no opportunity for discovery. This issue alone provides a basis for extension of the current discovery deadlines.

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<sup>1</sup> Hamed v. Yusuf, 2014-SX-CV-278 (the "278 Litigation").

**B. FBI Boxes Have Just Been Received**

The volume of documents in the FBI Boxes is extensive and spans decades. Hundreds of thousands of documents have been produced. However, voluminous documents contained in the FBI Boxes have only recently been produced. While all of the FBI Boxes now have been scanned, the final grouping of FBI Boxes arrived less than ten (10) days ago on September 19, 2014. The volume of the earlier production and the recent arrival of the remaining documents does not allow the parties and their experts time to absorb and digest them prior to the depositions scheduled for next week October 8-11.<sup>2</sup> To have a meaningful, thorough examination of the witnesses, additional time is necessary to fully process the volumes of new information.

**C. Subpoenaed Documents Have Been Received Recently and Some Remain Outstanding**

Likewise, information continues to pour in as to subpoenas served on various financial institutions. Although subpoenas were served in May and July, 2014, the volume and age of the documents has required extensive time to amass. Voluminous records from Scotia Bank and Banco Popular have arrived within the last few days. Many are already digital but much is in paper format, requiring scanning, bates numbering and then assembling for experts to review, analyze and absorb and for production to the opposing side. Some records remain outstanding. Correspondence from Banco Popular indicates that certain records will not be available until after October 8, 2014, the dates a number of depositions are scheduled to begin.

See Exhibit D – Correspondence from Banco Popular dated September 8, 2014.

Below is a listing of the information received pursuant to the subpoenas and what remains outstanding:

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<sup>2</sup> Although these depositions were previously scheduled to take place before the current fact discovery deadline of September 30, 2014, due to a number of scheduling issues, the parties agreed to schedule them in October.

**Banco Popular:**

Requested records for:

1. Mohammed Hamed- received 9/5/14;
2. Waleed Hamed- received 9/29/14;
3. Mufeed Hamed- requested extension through 10/8/14.

**Scotiabank:**

Requested records for:

1. Plessen Enterprises- received 9/11/14 and 9/26/14;
2. Mohammed Hamed- received 9/11/14 and 9/26/14;
3. Waleed Hamed- received 9/11/14 and 9/26/14;
4. Mufeed Hamed- received 9/11/14 and 9/26/14;
5. Waheed Hamed- received 9/11/14;
6. Hisham Hamed- no records produced to date.

Scotiabank has not confirmed that there are no further documents responsive to the subpoenas.

**FirstBank:**

Requested records for:

1. Mohammed Hamed;
2. Waleed Hamed;
3. Mufeed Hamed;
4. Waheed Hamed;
5. Hisham Hamed.

FirstBank has not provided any records despite follow up calls and e-mails, nor has FirstBank confirmed that no records exist.

As reflected above, the majority of these records have been received within the last two weeks and some within the last few days. Hence, additional time is needed to analyze these documents.

**D. Parties Responses To Discovery Continues**

The parties have exchanged additional written discovery and they are serving their responses as well as producing responsive documents as recently as last week and right up to

the last day of the current discovery period. The majority of this information is financial, which must be sorted, absorbed and analyzed. With the production of all of this information, much has only been served within the last few days and in some instances, is still *en route*. Time is needed to review and analyze the responses and determine if any disputes exist as to the production.

**E. Outstanding Motions to Compel**

Much of the recent production is the product of Yusuf's Motion to Compel filed against Waleed Hamed ("Waleed"), Mufeed Hamed ("Mufeed") and Hisham Hamed ("Hisham") requesting the production of certain documentation sought as early as May, 2014. After the Motion to Compel had been filed (and discovery extended by the Court), Waleed, Mufeed and Hisham then filed supplemental discovery responses on September 9, 2014, although their responsive documents were not received until September 15, 2014. They again supplemented their responses on September 22, 2014, but the responsive documents were not received until yesterday, September 29, 2014. Upon preliminary review, the production appears to be incomplete as references are made to documents, which were allegedly in the attached production but then none of the documents attached were designated as responsive to that particular request. Additional time is needed to determine what remains outstanding and for a ruling on the Motion to Compel the remaining documents.

**F. Motions to Compel That Will Be Filed**

By way of example, Waheed Hamed served certain discovery responses as recently as yesterday, September 29, 2014, for discovery served in May, 2014. The documents, however, are in the mail but have not yet been received. Because the parties are receiving the responses to written discovery and the responsive documents are not yet available, time is needed to analyze what is being produced, to determine what remains outstanding, whether a resolution

or agreement can be reached as to discovery disputes and, if not, then motions to compel will need to be filed to determine if additional production will be required.

**G. Pending Motions as to the Continued Deposition of Hamed**

The Court's ruling will be needed on certain discovery issues such as Defendants' Emergency Motion to Further Extend the Durational Limit of the Deposition of Mohammad Hamed filed on April 8, 2014. This fully briefed motion awaits the Court's disposition and directly impacts the completion of fact discovery.<sup>3</sup>

**H. Unrealistic Trial Date**

In their last motion to amend this Court's scheduling order, Defendants noted that while they were not requesting an extension of the trial date, that the current trial date of December 1, 2014 was unrealistic given what remained to be done prior to trial – appointment of a Master, approval of a plan for winding up the partnership, liquidation of the partnership assets, presentation of accountings to the Master, and a report and recommendation from the Master to the Court. The appointment of the Master has only recently taken place.<sup>4</sup> However, approval of a plan for winding up the partnership, the actual liquidation of partnership assets under the plan, the presentation of accountings by the partners to the Master, and his report and recommendation to the Court remain to be done. A December trial date with these major components of the dissolution and winding up of the partnership outstanding is unrealistic despite everyone's mutual desire to bring this litigation to prompt conclusion. Unfortunately, the effort to keep this unrealistic trial date has unduly compressed the discovery dates throughout this case, making the discovery process unpredictable and disjointed.

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<sup>3</sup> Hamed filed a Motion To Compel Defendants' Attendance At Deposition Regarding Counterclaim on June 16, 2014. That motion is also fully briefed and awaiting this Court's resolution.

<sup>4</sup> The parties are scheduled to have a face to face conference with the Master on October 2, 2014 to, among other things, "narrow the issues relative to the dissolution of the partnership."

Further, Defendants have filed a Motion to Strike the Jury Demand on the basis that the pending claims are equitable in nature and, therefore, a jury trial is not available. The issues to be tried will no doubt involve disputed accounting issues that will be addressed in the Master's report and recommendation. These issues must be left to the Court to decide without a jury.

## **II. Argument**

A discovery schedule "may be modified only for good cause and with the judge's consent." Fed. R. Civ. P. 16(b)(4).<sup>5</sup> Defendants submit that good cause is shown for a further modification of the current Fifth Amended Scheduling Order, which will benefit all of the parties and accomplish the ultimate goal of winding up the partnership and reconciling the partners' accounts.

While much has been done, much remains to be completed. Given the extensive financial information required to conduct a full and comprehensive accounting, additional time is needed to allow the parties to marshal the remaining financial data, scan and analyze it to use effectively in the discovery process, and for the parties to submit their accountings to the Master for his preparation of a report and recommendation to the Court. These reasons provide good cause for a further extension of the current discovery and trial period.

### **Defendants Have Not Conferred with Counsel for Hamed Because It would be Futile**

Given Hamed's opposition to Defendants' last motion to modify the Court's scheduling order, which only sought a modest extension of the fact and expert discovery periods, Defendants respectfully submit it would be futile to seek Hamed's consent to the more significant extensions requested in this motion.

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<sup>5</sup> Pursuant to Super. Ct. R. 38: "Pre-trial procedure, as provided by Rule 16 of the Federal Rules of Civil Procedure, shall not be mandatory in the superior court, but may be employed in the discretion of the . . . trial judge . . ."



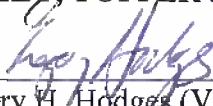
**III. Conclusion**

Modification of the discovery and trial schedule is not sought for purposes of delay but rather to enable the parties to effectively use a huge volume of highly relevant documents in the discovery and trial preparation process. Such a modification benefits all parties and does not operate to unduly prejudice one side. However, the looming deadlines once again require the Court's prompt attention. Defendants respectfully submit that all of these reasons demonstrate good cause to extend the discovery and trial period in this case. A proposed Sixth Amended Scheduling Order setting forth proposed, revised deadlines is submitted for the Court's consideration.

**DUDLEY, TOPPER and FEUERZEIG, LLP**

Dated: September 30, 2014

By:

  
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**CERTIFICATE OF SERVICE**

I hereby certify that on this 30<sup>th</sup> day of September, 2014, I caused the foregoing **Emergency Motion To Further Extend Scheduling Order Deadlines** to be served upon the following via e-mail:

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Michelle Barker

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

MOHAMMAD HAMED,

Plaintiff,

v.

FATHI YUSUF,

Defendant.

Case No.: 2014-SX-CV- 278

ACTION FOR DEBT AND  
CONVERSION

JURY TRIAL DEMANDED

COMPLAINT

Comes now Plaintiff, Mohammad Hamed, who files this Complaint against Fathi Yusuf alleging as follows:

1. This Court has jurisdiction over this matter pursuant to Title 4 V.I.C. §76(a).
2. Plaintiff, Mohammad Hamed ("Hamed") is a resident of St. Croix, United States Virgin Islands.
3. Defendant Fathi Yusuf ("Yusuf") is a resident of the St. Croix, United States Virgin Islands.
4. All acts and events described herein occurred within the Territory of the U.S. Virgin Islands.
5. Mohammad Hamed and Fathi Yusuf have been partners in Plaza Extra Supermarkets from 1986 to the present.
6. As part of that partnership the partners removed funds from the partnership and used them to invest in certain property on St. Thomas, in Estate Dorothea, using Y&S Corporation, Inc. as the vehicle for their investment.
7. Yusuf and Hamed agreed to liquidate the Estate Dorothea property.

EXHIBIT

A

8. After Hamed provided the necessary Y&S corporation document to allow the sale, Yusuf informed Hamed that the sale had occurred and handwrote a document showing that the Dorothea property was liquidated for \$1,500,000, noting further that Hamed was owed \$802,955 as a result of this transaction and related offsets. Exhibit 1.
9. Fathi Yusuf received the funds and owes the funds to Hamed – which Yusuf has admitted under oath. Exhibit 2 (Deposition Testimony of Fathi Yusuf, April 2, 2014 at 99-105.)
10. Hamed is owed the \$802,955 and despite demands and Yusuf's agreement that it is owed to Hamed -- Hamed has not received the funds.

**COUNT ONE: DEBT**

11. Plaintiffs hereby incorporate the averments in the preceding paragraphs herein.
12. Defendant owes a debt to Plaintiff as a result of this transaction totaling \$802,955 plus prejudgment interest from the date the funds were made available to Yusuf.
13. Despite repeated demands, the funds have not been paid for the debt owing, so that Yusuf is liable to Hamed for this debt.
14. Plaintiff is injured in the deprivation of the funds and interest thereon.

**COUNT II CONVERSION**

15. Plaintiff hereby incorporates the averments in the preceding paragraphs herein.
16. Yusuf has converted the funds belonging to Hamed, treating them as his own.
17. As such, Yusuf is liable to Hamed for the conversion of the \$802,955.

18. Such willful misconduct constitutes conversion of these funds for which Yusuf is liable to Hamed.

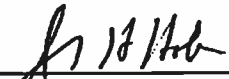
19. Such willful and wanton conduct, amounting to theft of these funds, warrants an award of punitive damages as well.

**WHEREFORE, Plaintiff seeks the following relief from this Court as follows:**

- 1) An award of compensatory damages against the Defendant in the amount of \$802,955;
- 2) An award of prejudgment interest at the statutory rate of 9%;
- 3) An award of punitive damages against Defendant as determined by the trier of fact;
- 4) An award of attorney's fees and costs against Defendant; and
- 5) Any other relief the Court deems appropriate as warranted by the facts and the applicable law.

**A TRIAL BY JURY IS DEMANDED AS TO ALL ISSUES TRIABLE BY A JURY**

Dated: July 7, 2014

  
\_\_\_\_\_  
**Joel H. Holt, Esq.**  
*Counsel for Plaintiff*  
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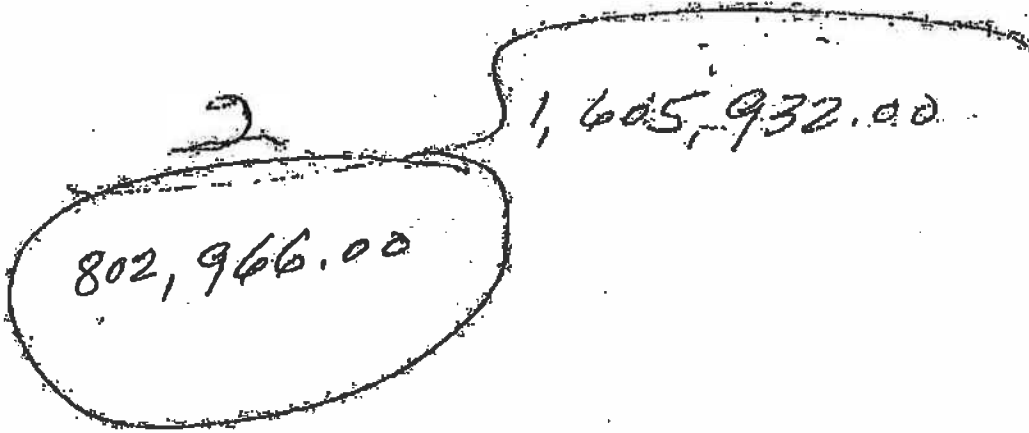
Dorothia  
Jordan Fund 75,000.-Dinar

1,500,000.00  
105,932.00

Fathi YUSUF  
From Jordan " " "  
Balance for Fathi Yusuf

1,605,932.00  
← 617,000.00  
← 105,932.00  
80,034.00

802,966.00



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.,	)	
	)	
<u>Additional Counterclaim Defendants.)</u>	)	

**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:

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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 THE VIDEOGRAPHER: Please swear the witness.  
2 THE REPORTER: Raise your right hand, please.  
3 THE WITNESS: Stand up.  
4 THE REPORTER: No. You're fine.

5 FATHI YUSUF,

6 Called as a witness, having been first duly sworn,

7 Testified on his oath as follows:

8 DIRECT EXAMINATION

9 BY MR. HOLT:

10 Q. Can you state your name for the record, please?

11 A. My name, Fathi, F-A-T-H-I; last name, Yusuf,  
12 Y-U-S-U-F.

13 ~~Q. And can you tell me where you reside?~~

14 A. Where do I live?

15 Q. Yep.

16 A. 92C La Grande Princesse in Christiansted,  
17 St. Croix.

18 Q. Are you married?

19 A. Yes.

20 Q. And what's your wife's name?

21 A. F-A-W-Z-I-A, same last name.

22 Q. And are you involved with a company called  
23 United Corporation?

24 A. Yes, I do. I am.

25 ~~Q. And first of all, can you tell me what ownership~~

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HAMD601305



FATHI YUSUF -- DIRECT

1 (Deposition Exhibit No. 12 was  
2 marked for identification.)

3 Q. (Mr. Holt) All right. All right. Showing you  
4 Exhibit No. 12, can you tell me if you recognize that? Do  
5 you recognize that document --

6 A. Yes, it's my handwriting.

7 Q. And at the top it has "Dorothia" written, is that  
8 correct?

9 A. Yes.

10 Q. Can you tell me, what -- what -- what what does  
11 this transaction mean?

12 A. The transaction that we bought -- we was in  
13 partnership with a third person, that we own 50 percent of  
14 the Dorothia real estate -- a real estate in Dorothia, and  
15 the other partner owned the other 50 percent.

16 Finally, I come to this decision to sell it  
17 to my partner. He bought it at one-and-a-half million, and  
18 this number below, it was an idea to Mr. Hamed what would  
19 I -- I am counted for, up to the time I give it to him. I  
20 tell him what it is. By example, Jordan Fund, 75,000, it's  
21 a checking account. This, I'm going to reclaim it back.  
22 Because at that time I did it, I did it in the most honest  
23 way, and we end up transferring property to myself. That  
24 transfer the property cost me money, well, I have to put  
25 that money out of my own pocket, even though the obligation

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HAMD601396

FATHI YUSUF -- DIRECT

1 was on both of us.

2 And then I'm going to use whatever it cost me  
3 to transfer that property into my name, at the expense of  
4 both of us, even though we missing three, four property that  
5 he never transferred it to me. It's still in his name. He  
6 said no, but I can claim, I can prove, still in his name.

7 Q. Okay. So now the first line, Dorothis,  
8 1.5 million, those were the funds that you received when the  
9 other partner bought you out or paid you off?

10 A. Excuse me, sir?

11 Q. The first line, the 1.5 million on that line?

12 A. Yeah, this is a fund I received -- I received from  
13 Dorothis.

14 Q. And is that actually technically YNH Investments,  
15 Inc.? Is that --

16 A. Yes.

17 Q. Okay. And -- and so those were funds that you  
18 received from them, is that correct?

19 A. I received for our half, but I kept it. I'm not  
20 stealing it. We're going to account for it.

21 Q. Okay.

22 A. This is yours, this is mine.

23 Excuse me. I going back a little bit towards  
24 the 251,000. That wasn't Mr. Hamed money. Mr. Hamed, I  
25 were giving him \$150,000 to the batch plant, and I have

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HAMD601397

FATHI YUSUF -- DIRECT

1 proof I deposited it for him in St. Thomas. And up to now,  
2 he denying that money. That money, I give him \$150,000 to  
3 deliver to the batch plant, and he claim that the batch  
4 plant is ours.

5 It's not ours. We put it just not to let the  
6 town fight together.

7 Q. Okay. I am going to ask you about the batch  
8 plant, but --

9 A. Oh, whenever you want.

10 Q. -- I want to try to stick on this document?

11 A. Yeah. But I want to show you why these people, I  
12 believe they owe me a lot of money.

13 Q. I understand.

14 A. Why should I pay them? Let's sit down and say,  
15 what is yours and what is mine.

16 Q. No problem. Let me go down this list.

17 Doroithia is -- the 1.5 million were -- were  
18 monies paid that belonged to you and -- and Mr. Hamed?

19 A. Yes.

20 Q. And then the Jordan fund, it says 75,000 dinar. I  
21 take it that, converted, that's 105,932 U.S. dollars?

22 A. Right.

23 Q. Okay. and those are funds that are to be split  
24 between you and Mr. Hamed, as well?

25 A. I explained to you, sir.

Cheryl L. Haase  
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HAMD601398

## FATHI YUSUF -- DIRECT

1 Q. Yeah.

2 A. The 105 is by mistake. I end up transferring from  
3 his -- the property was mine and his.

4 Q. Right.

5 A. And I choose for some reason to put it in his  
6 name, because I trusted him.

7 Q. Right.

8 A. Now, when we decide to leave, we have to shake  
9 hands forever. I'm not looking back anymore. I need my  
10 half back, Mr. Mohammad.

11 Q. What is -- what is that plot number, the -- the  
12 one you're talking about?

13 A. Several. We have -- we have properties, too much.  
14 We have 1,200 or two -- 1,200 acre right here in the Virgin  
15 Islands.

16 Q. Okay.

17 A. Were owned between both of us.

18 Q. All right. So then the next line comes down and  
19 it says, 617,000 for Fathi Yusuf.

20 A. No. Yeah, this is -- I -- I don't know why I  
21 should give him that. This is my half. I went and bought  
22 the property with it.

23 Q. Okay. So you --

24 A. After I give him notice, I don't want to work with  
25 you no more.

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HAMD601399

FATHI YUSUF -- DIRECT

1 Q. So we -- tell you what, let's get to the bottom.  
2 At the bottom of this calculation is \$802,966.

3 Do you see that?

4 A. Sir, it's a lot of -- this 8,200 (sic) I owe him  
5 on account.

6 Q. Okay.

7 A. We sit down, he give what I owe him to the  
8 accountant, I give what I believe he owe me to the  
9 accountant, and let's (indicating).

10 Q. Okay.

11 A. Let's, what do you call it, reconcile the account,  
12 and who owe who, we'll settle. I'm not running away.

13 Q. Okay. So one of the items that you owe them for,  
14 I understand there are items back and forth, but one of the  
15 items you owe him is the 802,960 --

16 A. Not 802, sir. I told you I already spent 105, or  
17 most of it, in a property where both of us is responsible to  
18 spend that money.

19 Q. Okay. So you would take the 105 off of this 802?

20 A. I might -- well, the others -- yeah, this -- that  
21 should go off.

22 MR. HARTMANN: Half.

23 Q. (Mr. Holt) Half of that should go off?

24 A. Yeah, but I -- sir, thanks God, I -- I -- you  
25 know, I'm not speaking Arabic, not even one word up to now.

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HAMD601400

FATHI YUSUF -- DIRECT

1 Okay? They all English. I'm talking to you in plain  
2 English. Let's sit down and give this to an accountant and  
3 what is yours is yours, what is mine is mine. I have a  
4 check of 536,405, begging Mr. Wally to give me an answer for  
5 this check. This is written to your father, drawn on your  
6 account. Can you tell me what is this for?

7 Q. Okay.

8 A. All I'm getting, I'll get to the bottom of it.  
9 When this gentleman is going to reach the bottom?

10 Q. All right. So the sale of -- the money in  
11 Dorothea was 1.5 million, to be split between the two of  
12 you.

13 A. Yes, sir.

14 Q. Okay. And then you did some more accounting to  
15 come up with the fact --

16 A. Yeah, this will go, and we'll go through every  
17 little thing, right? Whatever is his is his, whatever is  
18 mine is mine.

19 Q. Okay.

20 A. I'm not denying anything.

21 Q. All right. And on that pile, is 802,966 is --

22 A. Yes, yes, but all of it is not his.

23 Q. All of this is not his.

24 A. Because there's an accountant. Some of it, I told  
25 you, by example, the bank statement.

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HAMD601401

FATHI YUSUF -- DIRECT

1 Q. Which is another -- another item.

2 A. Definitely this was an expense. I brought that  
3 money out.

4 Q. Okay. So you start with the 1.5 million, which is  
5 50/50, and then you start adding --

6 A. One million and a half is absolutely 50/50. I'm  
7 not hiding anything.

8 Q. Okay. And when did you get that money?

9 A. I get that money, I don't have a date. But I get  
10 that money maybe, I can guarantee you, it's not three years.  
11 It's less than three years. I sold this property many, many  
12 years ago.

13 Q. Okay. So you got this money, would it be fair to  
14 say you got it in 2012?

15 A. I don't know when.

16 Q. Okay.

17 A. I don't remember.

18 Q. Well, this lawsuit was filed in August of 2012.

19 Did you get the money before this lawsuit was filed?

20 MR. HODGES: September 2012.

21 A. Maybe. Look at the date. Go to the owner and  
22 look at the date, or go to the public recorder office.

23 That's something that can be resolved.

24 Q. (Mr. Holt) Okay.

25 A. I don't remember.

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HAMD601402

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

**MOHAMMAD HAMED,**

Plaintiff,

v.

**FATHI YUSUF,**

Defendant.

CIVIL NO. SX-14-CV-278

ACTION FOR DEBT  
AND CONVERSION

**JURY TRIAL DEMANDED**

**FIRST AMENDED ANSWER AND COUNTERCLAIM**

Defendant Fathi Yusuf ("Yusuf"), through his undersigned counsel, answers the correspondingly numbered paragraphs of the Complaint, as follows:

1-3. Admitted.

4. Yusuf lacks knowledge or information sufficient to form a belief as to the truth of the allegations in this paragraph.

5. Admitted.

6. Denied. By way of further answer, upon information and belief, a corporation named Y & S Corporation, Inc. ("Y&S"), purchased property in Estate Dorothea in 1994. As of June 15, 2000, the shareholders of Y&S were Hisham Hamed, the son of Plaintiff Mohammed Hamed ("Hamed"), Yusuf's son, NejeH, and Hakima Salem. On June 20, 2000, Hisham Hamed and NejeH Yusuf sold their shares to Hakima Salem. Any partnership monies that were invested in Y&S had lost their status as partnership monies when the original purchase was made.

7. Denied.

8. Denied, except it is admitted that Exhibit 1 to the Complaint was handwritten by Yusuf.

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**EXHIBIT**

B



9. Denied, except it is admitted that Yusuf received the funds.
10. Denied, except it is admitted that Hamed has not received the funds.

**COUNT ONE: DEBT**

11. Yusuf realleges his responses to paragraphs 1 through 10.
- 12-14. Denied.

**COUNT TWO: CONVERSION**

15. Yusuf realleges his responses to paragraph 1 through 14.
- 16-19. Denied.

**AFFIRMATIVE DEFENSES**

1. The Complaint fails to state a claim upon which relief can be granted.
2. Hamed's claims are barred by the doctrine of estoppel.
3. Hamed's claims are barred by his fraud.
4. Hamed's claims are barred by the doctrine of unclean hands.
5. Hamed's claims are barred by the doctrine of laches and the applicable statute of limitations.
6. Hamed's claims are barred by the doctrine of waiver.
7. Hamed has failed to join necessary and indispensable parties, namely, Y & S, Hisham Hamed, and NejeH Yusuf.
8. Hamed's claims are barred or diminished by Yusuf's right of recoupment and setoff.
9. Hamed lacks standing to pursue his claims.

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For all the foregoing reasons, Yusuf respectfully requests this Court to dismiss the Complaint with prejudice, award Yusuf his reasonable costs and attorneys' fees, and provide Yusuf with such further relief as is just and proper under the circumstances.

**COUNTERCLAIM**

Pursuant to Fed. R. Civ. P. 13 and Super. Ct. R. 34, for his counterclaim against Hamed, Yusuf alleges:

**JURISDICTION**

1. This Court has subject matter jurisdiction of this counterclaim pursuant to V.I. Code Ann. tit. 4, § 76(a).

**RELATED PENDING LITIGATION**

2. On September 17, 2012, Hamed filed suit against Yusuf and United in this Court, Hamed v Yusuf, et al, Civil No. SX-12-CV-370 (the "370 Case"). Among the allegations in the First Amended Complaint in the 370 Case were allegations that are substantially similar to Hamed's allegations in this case.

3. Specifically, in the 370 Case, Hamed alleged, *inter alia*, the following:

From time to time, Mohammad Hamed and Yusuf have used these profits, distributed solely from these "supermarket accounts" to buy other businesses and real property – always then owning these jointly held assets, regardless of the form of ownership, on a 50/50 basis. The following assets, now owned 50/50 between the Hamed and Yusuf (or their families through them) were purchased using 50/50 distributions [of] Partnership profits from the three Plaza Extra supermarkets – from the "supermarket" accounts:

\* \* \*

d) Y and S Corporation – ("Dorothea Property") – Land and condos located in St. Thomas, owned 50/50 between the two families, which was recently sold for \$1,600,000, even though Fathi Yusuf has refused to turn over the funds to the Partnership.

\* \* \*

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Upon information and belief, Yusuf has also now diverted more than \$1.6 million in partnership funds from the Partnership interest [in] the Dorothea Property. . . .

See ¶ 20, 20(d), and 32 of the First Amended Complaint in the 370 Case and compare with ¶¶ 6-8 of the Complaint in this case. Among the relief sought by Hamed in the 370 Case was the following:

- 1) A full and complete accounting to be conducted by a court-appointed Master with Declaratory Relief against both defendants to establish Hamed's rights under his Yusuf/Hamed Partnership with Yusuf, including his rights regarding the operation of the three Plaza Extra supermarkets and the withdrawal of funds from the Partnership accounts associated with these three Plaza supermarkets;

\* \* \*

- 4) Declaratory Relief requiring Yusuf to account for and return all funds of the Partnership related to the Dorothea Beach investment and any other funds or property recently removed without a 50% distribution to Hamed;

\* \* \*

- 6) Declaratory Relief as to the Partnership's rights in any businesses and/or assets purchased by United using partnership assets or obtained without providing the Partnership the opportunity to participate in the ownership of these newly acquired businesses and/or assets[.]

See p. 15-16 of the First Amended Complaint in the 370 Case.

4. Yusuf and United filed a First Amended Counterclaim in the 370 Case seeking, *inter alia*, rent owed to United for the use and occupancy of the premises occupied by the Plaza

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Extra supermarket in Sion Farm, St. Croix ("Plaza Extra – East"), and a full and complete accounting as between Hamed and Yusuf of the monies withdrawn from the Plaza Extra Stores by their respective families.

5. As a comparison of the First Amended Complaint in the 370 Case with the Complaint in this case shows, the claims alleged and relief sought by Hamed in this case are encompassed within the 370 Case. Further, the pleadings, discovery, and sworn testimony in the 370 Case establish that the Dorothea property sales proceeds at issue in both cases were received by Yusuf under a claim of right.

#### **FACTS COMMON TO ALL COUNTS**

6. In or around 1986, Yusuf and Hamed agreed to carry on a supermarket business that eventually grew into three locations in the Virgin Islands (the "Plaza Extra Stores). Yusuf has conceded in the 370 Case that that their agreement to operate the supermarket business was an oral partnership agreement, in which he and Hamed were 50-50 partners.

7. The first of the three supermarkets, which is known as Plaza Extra-East, opened in April 1986 at a shopping center in Sion Farm, St. Croix known as United Shopping Plaza, which is owned by United Corporation ("United"), a Virgin Islands corporation whose shares of stock are wholly owned by Yusuf and members of his immediate family.

8. The second of the three supermarkets, Plaza Extra-Tutu Park, opened at the Tutu Park Mall in St. Thomas in October 1993. The third, Plaza Extra-West, opened in Grove Place, St. Croix in November 2000.

9. At the time they formed their business association, Yusuf and Hamed agreed that Plaza Extra-East would pay rent to United for occupying its premises, and that profits of the supermarket operations would be determined only after the deduction of rent and other expenses,

and that any 50-50 distribution of profits had to be net of rent, expenses (including insurance covering United Shopping Plaza), and taxes (including United's gross receipts taxes).

10. In order to allow the grocery store business to grow, Hamed and Yusuf further agreed that annual rent would accrue for a number of years before it was paid as part of a reconciliation of business accounts.

11. It was also agreed that Yusuf, as the person in charge of managing the business, would have the exclusive responsibility of determining when accounts would be reconciled, and would have exclusive authority to balance accounts as part of that reconciliation, and to cause rent payments to be made to United from accounts of the Plaza Extra Stores.

12. Yusuf and Hamed also agreed that initially the annual rent for Plaza Extra-East's occupancy of United's property would be at a square foot rate of \$5.55 per square foot. Plaza Extra-East originally occupied 33,750 square feet of space at United Shopping Plaza, and the rent at the \$5.55/sq. ft. rate comes to \$187,312.50 per year.

13. Yusuf determined that a reconciliation of accounts as of December 31, 1993 ought to be made, and he made that reconciliation. Both Hamed and Yusuf took advances of monies against their respective accounts, by withdrawing cash from a safe at the Plaza Extra-East store in which store revenues were kept, and documenting those withdrawals. The rent that accrued through December 31, 1993 (the "first rent payment") was paid by means of a reconciliation of accounts in which amounts Yusuf owed Hamed for advances taken in excess of Hamed's advances were credited against the rent payment.

14. Plaza Extra-East burned down in 1992, and before it reopened in 1994, Yusuf and Hamed agreed to leave the same \$5.55/sq. foot rent in place for the ten years following the re-

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opening of the store, after which time the rent formula would be adjusted upward to something approximating a market rate. Plaza Extra-East reopened on May 4, 1994.

15. Hamed left the Virgin Islands in 1996 to return to Jordan, and he left his affairs as partner in the hands of his son, Waleed, who has claimed in the 370 Case that at all relevant times he acted as the authorized agent for his father in the supermarket business with Yusuf.

16. In or about September or October 2001, Yusuf's son, Maher, and Hamed's son, Mufeed, conducted a partial reconciliation of partnership accounts at the Plaza Extra-East store. They examined receipts which they and other members of the Yusuf and Hamed family had placed in the safe at that store to reflect withdrawals of cash they had made after December 31, 1993. Maher Yusuf and Mufeed Hamed tabulated those receipts and determined that the Hamed withdrawals exceeded the Yusuf withdrawals by \$1,600,000. The Federal Bureau of Investigation ("FBI") raid of the Plaza Extra Stores and its seizure of the financial records of the Plaza Extra Stores took place very shortly thereafter, and Yusuf determined that a full reconciliation of the partnership accounts at the other two Plaza Extra Stores, including a balancing of those accounts, could not be undertaken at that time.

17. In late 2002 or early 2003, Waleed Hamed, on behalf of Hamed, and Yusuf, agreed to a change in rent formula to be implemented on May 5, 2004, the ten-year anniversary of the re-opening of Plaza Extra-East.

18. Specifically, Yusuf and Hamed agreed that effective May 5, 2004, rent for Plaza Extra-East would be calculated using rent as a percentage of sales at Plaza Extra-Tutu Park. For each year, the rent payments made by Plaza Extra-Tutu Park would be divided by that store's adjusted gross sales for that year to yield a percentage. That percentage in turn would be

multiplied by actual sales at Plaza Extra-East for the corresponding year to determine the amount of rent owed by Plaza Extra-East to United.

19. In 2004, at about the time the new rent formula became effective, Yusuf and Waleed Hamed, on behalf of his father, discussed a reconciliation of partnership accounts, including payment of the rent that had accrued annually at the \$5.55 per square foot rate since the first rent payment was made.

20. Hamed and Yusuf agreed that having a reconciliation and paying rent that had accrued since the first rent payment was made would not be possible, because of the FBI raid in 2001 and a criminal indictment against United, Yusuf, two of Yusuf's sons, and two of Hamed's sons, that was filed in September 2003.

21. The criminal indictment was almost immediately followed by an order freezing the accounts of United, including the accounts used for the Plaza Extra Stores, thereby making payment of rent that had accrued since the first payment impossible.

22. In addition, as part of its raid, the FBI had seized nearly all of the financial records of the Plaza Extra Stores, including those records needed to determine the date the next rent payment began accruing (January 1, 1994) and records needed to make a full reconciliation of the accounts of Hamed and Yusuf. In the absence of those records, neither Waleed Hamed nor Yusuf remembered whether the first rent payment had been paid in 1992, 1993 or 1994, let alone the debits and credits between Hamed and Yusuf in the subsequent years following the year in which the rent had been paid.

23. Yusuf therefore made the decision, to which Waleed Hamed (on behalf of Hamed) agreed, that the payment of rent that had accrued since the first rent payment was made

would have to await the unfreezing of the bank accounts and the return of financial records needed to determine the exact period covered by the first rent payment.

24. Waleed Hamed and Yusuf met in early 2012, and by then the injunction in the criminal case had been relaxed, but the records needed to determine the end date for the first rent payment (and hence the start date for the second such payment) had not been returned by the FBI. Waleed and Yusuf agreed that while rent for the second period could not be determined, rent which began to accrue on May 5, 2004 could be determined, because Waleed Hamed and Yusuf had previously agreed that the percentage-of-sales rent formula would become effective on that date.

25. Yusuf and Waleed Hamed agreed that the rent for the May 5, 2004 to December 31, 2011 period should be paid, even if a full reconciliation of accounts, going back to the date of the first reconciliation, could not be made. They also agreed, as they had before, that rent that had accrued from the first rent payment up to May 4, 2004 (the "second rent period") would have to be deferred until the financial records needed to determine the start date for the second rent period (and hence the amount of the second rent payment to be made) were returned to them by the FBI.

26. Using the percentage of sales formula that he and Waleed had agreed would become effective on May 5, 2004, Yusuf calculated the amount of rent due for the period May 5, 2004 to December 31, 2011 to be \$5,408,806.74. He presented the rent bill to Waleed Hamed for that sum and period, and Waleed, on behalf of his father, agreed that it should be paid to United. Payment in the amount of \$5,408,806.74 was then made by means of a check signed by Waleed Hamed and by Yusuf's son.

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27. Later, in August 2012, Yusuf, on the basis of additional records that had been returned by the FBI, completed the partial reconciliation of the partnership accounts, as to the Plaza Extra-East store only, that had been started by Maher Yusuf and Mufecd Hamed in September or October of 2001. Yusuf determined that the Hameds had in actuality withdrawn not \$1,600,000 more than the Yusufs from the safe at the Plaza Extra East store, but approximately \$2,700,000 more than the Yusufs from the safe at that store.

28. Since Yusuf was the partner given the sole responsibility for determining when to reconcile partnership accounts, Yusuf balanced the account for Plaza Extra-East (with the exception of the rent payment for the second period, which was still unknown) by withdrawing \$2,784,706.25 from a United account used in the operation of the Plaza Extra Stores, and placing it into another United account controlled solely by the Yusufs.

29. Yusuf's son, Maher, when reviewing records returned by the FBI, found records that would enable Hamed and Yusuf to determine the start date for the second rent payment, and hence the amount of accrued rent that was owed from that date to May 4, 2004. Maher Yusuf then presented this information to his father.

30. Thereafter, on May 17, 2013, United's and Yusuf's counsel made demand on Hamed's counsel for, inter alia, payment of accrued rent from January 1, 1994 to May 4, 2004. By letter dated May 22, 2013, Hamed (through his counsel) repudiated his obligation to determine partnership profits net of rent by stating that any rent claim for that period was unenforceable by reason of the statute of limitations.

31. In addition to rent owed for the second rent period, rent is owed for Plaza Extra-East's occupancy of the premises at United Shopping Plaza for the time period January 1, 2012 to the present. Rent for this period includes rent at the agreed - upon percentage of sale formula,

and additional rent that has been demanded by virtue of Hamed's failure to timely vacate the premises.

32. In addition to documented withdrawals of cash from safes at each of the Plaza Extra Stores, Hamed and his sons also misappropriated monies from the Plaza Extra Stores by making withdrawals from safes that were not documented or otherwise disclosed to Yusuf.

**COUNT I**  
**ACCOUNTING**

33. Paragraphs 1 through 32 of this Counterclaim are realleged.

34. Section 177(b) of the Virgin Islands Revised Uniform Partnership Act, V.I. Code Ann. tit. 26, § 1, et seq., provides that "each partner is entitled to a settlement of all partnership accounts upon winding up of the partnership business." It further provides that, as part of this settlement, the Court may order that "[t]he partnership . . . make[] a distribution to a partner in an amount equal to any excess of the credits over the charges in the partner's account."

35. Because the agreement between Hamed and Yusuf provided that profits would be determined after deduction of rent, as part of the final settlement of all partnership accounts all unpaid rent for Plaza Extra-East's occupancy of the United Shopping Plaza premises, including rent for the period January 1, 1994 to May 4, 1994, and rent for the period January 1, 2012 to present, must be deducted in order to determine the profits of the partnership to be distributed to Hamed and Yusuf.

36. In addition, the final settlement should reflect that the reconciliation of all partnership accounts conducted on December 31, 1993 was correct, and the partial reconciliation of Plaza Extra-East that forms the basis for Yusuf's withdrawal of \$2,784,706.25 on August 20, 2012 was correct.

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37. In determining the excess of credits over charges in Yusuf's account, all documented withdrawals of cash by any Yusuf family member or any Hamed family member from: (1) the safe at Plaza Extra-Tutu Park for the period October 1, 1993 to the present; (2) the safe at Plaza Extra-East since October 23, 2001 to the present, and (3) the safe at Plaza Extra-West from November 1, 2000 to the present, should be tallied and charged to Yusuf's and Hamed's accounts.

38. In determining the excess of credits over charges in Yusuf's account, all undocumented withdrawals from safes (i.e., all misappropriations) by any members of the Hamed family, should be charged to Hamed's account.

39. The receipt and distribution of proceeds of the sale of the Dorothea property is a corporate issue, not a partnership issue, and therefore should not be part of any partnership accounting.

40. After making the final settlement of the account, the Court should credit Yusuf's account in the amount by which Hamed's documented and undocumented withdrawals exceed Yusuf's documented withdrawals, and then deduct from each partner's share one-half of the unpaid rent, before ordering distribution of partnership monies to Hamed and Yusuf.

## COUNT II

### **DISSOLUTION AND WIND-UP OF PARTNERSHIP**

41. Paragraphs 1 through 40 of this Counterclaim are realleged.

42. The oral partnership between Hamed and Yusuf was terminable at will as a matter of law.

43. If the partnership was not dissolved by Hamed's retirement and return to Jordan in 1996, or by Yusuf's oral notice to Hamed to vacate the premises in September 2010, it was

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dissolved by Yusuf not later than his April 7, 2014 notice in the 370 Case or by Hamed in his April 30, 2014 notice in the 370 Case.

44. The Court should order that the partnership has been dissolved, and that the partnership should be wound up, pursuant to the applicable provisions of the Virgin Islands Revised Uniform Partnership Act and one of the two plans submitted by Yusuf and United on April 7, 2014 and June 16, 2014 in the 370 Case.

### COUNT III

#### CONVERSION

45. Paragraphs 1 through 44 of this Counterclaim are realleged.

46. Hamed and his sons have taken in excess of \$7 million from the Plaza Extra Stores without authorization from Yusuf, and without disclosing to him or documenting that they were doing so and then, among other things, have used that cash to purchase and improve personal and real property for their own personal benefit.

47. This taking of partnership monies is willful misconduct that constitutes conversion for which Hamed is liable to Yusuf for damages and for the equitable relief of a constructive trust over the assets purchased with those misappropriated funds.

48. The taking of these monies is willful and wanton conduct amounting to theft, and an award of punitive damages should be made.

### COUNT IV

#### RESTITUTION, UNJUST ENRICHMENT, AND IMPOSITION OF A CONSTRUCTIVE TRUST

49. Paragraphs 1 through 48 of this Counterclaim are realleged.

50. Hamed and his sons have taken in excess of \$7 million from the Plaza Extra Stores under such circumstances that in equity and good conscience they ought not retain and

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without disclosing to Yusuf or documenting that they were doing so. Further, they used such funds to purchase and improve personal and real property for their own personal benefit.

51. Yusuf is entitled to the imposition of constructive trusts over any assets purchased with those funds, equitable liens over such assets, and disgorgement of all profits made from the use of such funds, in order to prevent Hamed and his sons from being unjustly enriched by ill-gotten money from the Plaza Extra Stores.

### COUNT V

#### **BREACH OF FIDUCIARY DUTY AND PARTNERSHIP AGREEMENT**

52. Paragraphs 1 through 51 of this Counterclaim are realleged.

53. Hamed owes Yusuf a fiduciary duty to act in a manner consistent with their mutual interests and not to deal with him in a manner that promotes only Hamed's or his families' interests to the detriment of Yusuf or his family. He also owes Yusuf duties under the terms of their oral partnership agreement.

54. Hamed breached his fiduciary duties to Yusuf and his duties to Yusuf under the partnership agreement by, among other things, failing to disclose millions of dollars of Plaza Extra Stores' funds converted by Hamed or his agents; anticipatorily repudiating, in May 2013, the obligation to determine partnership profits after deducting rent owed to United for Plaza Extra-East's occupancy of the United Shopping Plaza; continuing to occupy United's shopping center without paying any rent long after notice to vacate was given; and by otherwise acting in a manner inconsistent with Yusuf's interests and welfare and subordinating Yusuf's interests in the Plaza Extra Stores to those of Hamed and his family.

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55. As a result of these breaches of fiduciary duties and the partnership agreement, Yusuf has been damaged. The breaches of fiduciary duty are so wanton and willful as to entitle Yusuf to an award of punitive damages.

### COUNT VI

#### APPOINTMENT OF RECEIVER

56. Paragraphs 1 through 55 of this Counterclaim are realleged.

57. A qualified, neutral business person should be appointed as Receiver for the partnership to operate the Plaza Extra Stores.

58. The Receiver should liquidate the assets of the Plaza Extra Stores and divide the net proceeds amongst Hamed and Yusuf according to their respective interests, as declared by this Court, after accounting for all liabilities and claims for recoupment and setoff, since Yusuf desires to immediately terminate any and all business relations with Hamed or his family members.

Accordingly, Yusuf seeks a judgment providing for the following relief against Hamed:

- i. A final settlement of partnership accounts, which, inter alia:
  - a. declares that the reconciliation that took place as of December 31, 1993 is correct, that the partial reconciliation of the Plaza Extra-East store in September or October of 2001 was correct and that the payment to Yusuf of \$2,784,706.25 was proper;
  - b. tabulates and charges to Yusuf and Hamed all disclosed withdrawals by Yusuf and Hamed for 1) the safe at Plaza Extra-Tutu Park for the period October 1, 1993 to the present; (2) the safe at Plaza Extra-East since

October 23, 2001 to the present, and (3) the safe at Plaza Extra-West from November 1, 2000 to the present;

- c. charges to Yusuf and Hamed the rent expense for Plaza Extra-East from January 1, 1994 to August 30, 2014 in the amount of \$6,603,122.23, and the rent expense from September 1, 2014 to the date of judgment, in an amount to be determined by the Court;
- d. charges to Yusuf and Hamed the additional rent expense for Plaza Extra-East from January 1, 2012 until the premises are vacated pursuant to notices provided by United in January 2012;
- e. charges to Yusuf and Hamed prejudgment interest on the rent expense described in subparagraph c, above;
- f. charges to Hamed all amounts taken by him or his sons from Plaza Extra Stores safes which were not documented or disclosed to Yusuf;
- g. directs that in distributing partnership monies, Yusuf's share be increased by the amount by which credits to his account exceed charges to his account; and
- h. declares that the receipt and distribution of proceeds from the sale of the Dorothea property is not properly part of any partnership accounting.

ii. A judgment for damages, including pre-judgment interest, for any monies owed to Yusuf under the final accounting for which there are insufficient funds in partnership accounts to pay him;

iii. A judgment for punitive damages against Hamed for his breaches of fiduciary duty, and for his conversion and misappropriation of partnership monies;

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iv. The placement of constructive trusts and liens on any personalty or realty obtained by Hamed or his sons with funds that were converted or misappropriated by Hamed or his sons;

v. A judgment declaring that the partnership between Hamed and Yusuf is dissolved; and

vi. A judgment appointing a receiver to wind-up the affairs of the partnership pursuant to either of the two United/Yusuf wind up plans that were submitted to the Court in the 370 Case on April 7, 2014 and June 16, 2014.

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




Respectfully submitted,

**DUDLEY, TOPPER AND FEUERZEIG, LLP**

Dated: August 27, 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  
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

**CERTIFICATE OF SERVICE**

I hereby certify that on this 27<sup>th</sup> day of August, 2014, I caused the foregoing First Amended Answer and Counterclaim to be served upon the following via United States regular 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)



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1000 Frederiksberg Gade  
P.O. Box 756  
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(340) 774-4422

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The following answers are based upon information presently available to Yusuf and, except for explicit facts admitted herein, no incidental or implied admissions are intended hereby. The fact that Yusuf has answered or objected to any request should not be taken as an admission that he accepts or admits the existence of any facts set forth or assumed by such Request, or that such answer constitutes admissible evidence. The fact that Yusuf has answered part or all of any such Request is not intended and shall not be construed to be a waiver by him of all or any part of any objection to such Request.

#### **GENERAL OBJECTIONS**

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

1. Yusuf objects to each Request that uses the words "any" and "all" as being overbroad, unduly burdensome, immaterial, irrelevant, and not reasonably calculated to lead to the discovery of admissible evidence.
2. Yusuf objects to each Request that seeks information that is not relevant to his or plaintiff's claims or defenses.
3. Yusuf objects to each Request to the extent it seeks the disclosure of information protected by the attorney-client, work product or other privileges.
4. Yusuf objects to each Request to the extent that it uses terms or phrases that are vague, ambiguous, or undefined.

5. Yusuf objects to each Request that seeks information that is irrelevant, immaterial, and not reasonably calculated to lead to the discovery of admissible evidence.

6. Yusuf objects to each Request to the extent it seeks information outside of his possession, custody or control on the ground that it would subject Yusuf to undue burden, oppression and expense, and impose obligations not required by the Federal Rules of Civil Procedure.

7. The information sought by the Requests may be as much as twenty-seven (27) years old. Documents that may have contained information relevant to the Requests may no longer be in existence. Thus any information provided herein may not be, and should not be considered complete, and may be subject to supplementation if additional information becomes available.

8. Yusuf objects to defined terms and instruction to the extent that they vary from applicable law and/or impose different obligations than those set forth in the Federal Rules of Civil Procedure.

**SPECIFIC OBJECTIONS AND RESPONSES**

1. ADMIT your counsel Gregory Hodges stated to Plaintiff's counsel Joel Holt that the issue of the \$802,955 allegedly due to Hamed as set forth in SX.14-CV-278, is NOT an issue presented in the instant action.

**RESPONSE:**

Deny.

2. ADMIT that the issue of the \$802,955 allegedly due to Hamed set forth in SX.14-CV-278, is NOT an issue presented in the instant action.

**RESPONSE:**

Deny.

3. ADMIT that the issue of the \$802,955 allegedly due to Hamed as set forth in SX.14-CV-278, IS an issue presented in the instant action.

**RESPONSE:**

Admitted.

4. ADMIT that the issue of the purchase of real property in Estate Enfield Grene from the \$2.7 million withdrawn for Plaza Extra Supermarkets accounts as set forth in SX.14-CV-287, is NOT an issue presented in the instant action.

**RESPONSE:**

Admitted in that no such property is identified in the Amended Complaint in this case or its exhibits.

5. ADMIT that the issue of the purchase of real property in Estate Enfield Green from the \$2.7 million withdrawn for Plaza Extra Supermarkets accounts as set forth in SX.14-CV-287, is an issue presented in the instant action.

**RESPONSE:**

Denied in that no such property is identified in the Amended Complaint or its exhibits.

Respectfully submitted,

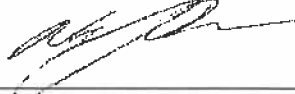
**DUDLEY, TOPPER AND FEUERZEIG, LLP**

Dated: September 24, 2014

By:

Charlotte K. Perrell (V.I. Bar No. 1281)  
1000 Frederiksberg Gade - P.O. Box 756  
St. Thomas, VI 00804  
Telephone: (340) 715-4437  
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and

  
Nizar A. DeWood, Esq. (V.I. Bar No. 1177)  
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Email: [info@dewood-law.com](mailto:info@dewood-law.com)

Attorneys for Fathi Yusuf and United Corporation

**CERTIFICATE OF SERVICE**

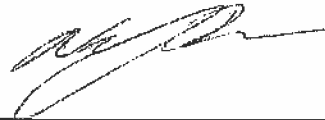
I hereby certify that on this 24<sup>th</sup> day of September, 2014, I caused the foregoing **Fathi Yusuf's Objections and Responses to Plaintiff's Requests for Admission** to be served upon the following via e-mail:

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  
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September 08, 2014

DUDLEY, TROPER AND FEUERZEIG, LLP  
Gregory H. Hodge, Esq  
1000 Frederiksberg Gade  
Po Box 756  
St Thomas VI 00804-0756

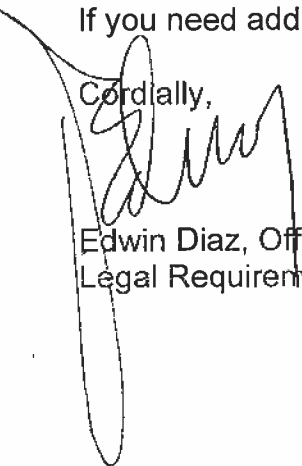
RE: MUFEEED HAMED  
SUBPOENA CASE NO. SX-12-cv-370  
RECEIVED JULY 30, 2014  
**CASE BPPR 14701-30JUL14**

Dear attorney Hodge:

We request an extension of 30 days (10-08-14) to comply with the delivery of documents.

If you need additional information, please call us at (787) 751-9800, ext 312267.

Cordially,

  
Edwin Diaz, Officer  
Legal Requirements (637)

**EXHIBIT**

D

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PO Box 362708  
San Juan, Puerto Rico 00936-2708  
Teléfonos (787) 765-9800, 751-9800

September 08, 2014

DUDLEY, TROPER AND FEUERZEIG, LLP  
Gregory H. Hodge, Esq  
1000 Frederiksberg Gade  
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St Thomas VI 00804-0756

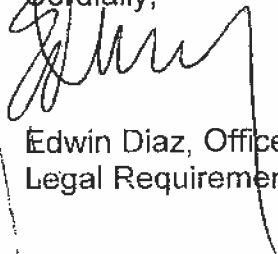
RE: WALEED HAMED  
SUBPOENA CASE NO. SX-12-cv-370  
RECEIVED JULY 30, 2014  
**CASE BPPR 14802-30JUL14**

Dear attorney Hodge:

We request an extension of 30 days (10-08-14) to comply with the delivery of documents.

If you need additional information, please call us at (787) 751-9800, ext 312267.

Cordially,



Edwin Diaz, Officer  
Legal Requirements (637)

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

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

**SIXTH AMENDED SCHEDULING ORDER**

THIS MATTER is before the Court on Defendants' Emergency Motion To Further Extend Scheduling Order Deadlines, filed in this case on September 30, 2014. The premises having been considered, it is hereby

ORDERED that the discovery schedule and case deadlines are amended as follows:

**1. FACTUAL DISCOVERY**

All factual discovery, including written discovery and fact witness depositions, shall be completed by **December 1, 2014**.

**2. EXPERT DISCOVERY**

Any expert report required pursuant to Federal Rule of Civil Procedures 26(a)(2)(B) shall be served by the party which bears the burden of proof for that issue no later than **Monday, February 16, 2015**. Any parties' expert report intended to rebut any other expert report shall be provided no later than **March 20, 2015**. All reports shall provide the information required by Fed. R. Civ. P. 26(a)(2)(B). All expert discovery shall be completed, and discovery shall close, no later than **April 20, 2015**.

3. STATUS CONFERENCE

A Status Conference shall be held on \_\_\_\_\_, \_\_\_\_\_, 2015 at \_\_\_\_\_ a.m., in Courtroom No. 211.

4. FINAL PRETRIAL CONFERENCE

A Final Pretrial Conference will be held on \_\_\_\_\_, \_\_\_\_\_, 2015 at \_\_\_\_\_ p.m., in Courtroom No. 211.

5. TRIAL DATE

Jury Selection and Trial shall take place on \_\_\_\_\_, \_\_\_\_\_ at 9:00 a.m., in Courtroom No. 211. Finally, it is

ORDERED that all dates set forth in this Court's August 20, 2014, Fifth Amended Scheduling Order are VACATED.

Dated: September \_\_\_\_\_, 2014

\_\_\_\_\_  
**DOUGLAS A. BRADY, JUDGE**  
Judge of the Superior Court

ATTEST:

**ESTRELLA GEORGE**  
Acting Clerk of the Court

By: \_\_\_\_\_  
Court Clerk Supervisor