IN THE SUPREME COURT OF THE VIRGIN ISLANDS

FATHI YUSUF, Appellant/Defendant, v. **MOHAMMAD HAMED, WALEED HAMED, WAHEED HAMED, WAHEED HAMED, HISHAM HAMED**, and **PLESSEN ENTERPRISES, INC.,** Appellees/Plaintiffs.	**S. Ct. Civ. No. 2015-0001** Re: Super. Ct. Civ. No. 370/2012 (STX) **Consolidated Cases:** S. Ct. Civ. No. 2015-0001 S. Ct. Civ. No. 2015-0009

OPPOSITION TO APPELLEE'S MOTION FOR FEES

Appellant Fathi Yusuf ("Yusuf"), through his counsel, Dudley, Topper and Feuerzeig, LLP, respectfully submits this Opposition to Appellee's Motion for Fees (the "Motion") filed by Appellee Mohammad Hamed ("Hamed"). In support, Yusuf states as follows:

I. STANDARD OF REVIEW

V.I.S.CT.R. 30(a) sets forth the following standard for who may seek an award of costs and fees:

> (a) **To Whom Allowed**. Except in criminal cases or as otherwise provided by law, if an appeal or petition is dismissed, reasonable costs, which may include attorney's fees, shall be taxed against the appellant unless otherwise agreed by the parties or ordered by the Supreme Court; if a judgment is affirmed or a petition denied, reasonable costs shall be taxed against the appellant or petitioner unless otherwise ordered; if a judgment is reversed or a petition granted, reasonable costs shall be taxed against the appellee or the respondent unless otherwise ordered; if a judgment is affirmed or reversed in part, or is vacated, or a petition granted in part and denied in part, reasonable costs shall be allowed only as ordered by the Supreme Court. If the side against whom costs are assessed includes multiple parties, the Supreme Court may apportion the assessment or impose it jointly and severally. In cases involving the Government of the Virgin Islands or an agency or officer thereof, reasonable costs shall only be awarded as authorized by law. The Supreme Court shall, in its discretion, determine

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> whether costs are reasonable. If the Supreme Court determines that an appeal or petition is frivolous, it may, after a separately filed motion or notice from the Court and reasonable opportunity to respond, award just damages and single or double costs to the appellee or the respondent.

See also Judi's of St. Croix Car Rental v. Weston, 2008 V.I. Supreme LEXIS 21, *1-2 (V.I. 2008) (interpreting Rule 30(a)).

This Court has interpreted and applied the foregoing standard to interlocutory appeals. For example, in *Beachside Assocs., LLC v. Fishman*, 54 V.I. 418, 421-422 (V.I. 2010), this Court held that when there is an interlocutory appeal, the only issue is whether there is a prevailing party who should be awarded fees. If this Court finds that there is a "prevailing party" entitled to an award of costs and attorney's fees, it will remand the matter to the Superior Court "to determine the exact amount of costs to which Beachside is entitled for prevailing in this appeal." *Id.* at 422; *see also* V.I.S.CT.R. 30(b) ("if a party seeks attorney's fees as among the costs to be taxed, the amount of attorney's fees to be awarded—if any—shall be determined by the Superior Court on remand"). Hamed should be well aware of this procedure since his October 15, 2013 Motion for Costs and Attorney's Fees filed in *Yusuf v. Hamed*, S. Ct. Civ. No. 2013-0040, was denied without prejudice by Order of the same date.

II. ARGUMENT

A. HAMED IS NOT A "PREVAILING PARTY" ENTITLED TO AN AWARD OF COSTS AND ATTORNEY'S FEES.

There is no prevailing party in this appeal who is entitled to an award of costs and fees. Both Yusuf and Hamed filed notices of appeal and raised a number of substantive issues. As this Court observed, Hamed's Notice of Cross-Appeal "stated that he believed this Court lacked jurisdiction over Yusuf's appeals, but that he wished to preserve his right to challenge other aspects of the 'Final Wind Up Plan' in the event this Court concludes that it does, in fact, have

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jurisdiction." *Yusuf v. Hamed*, 2015 V.I. Supreme LEXIS 6, *4 (V.I. 2015). In other words, Hamed sought to preserve the right to appeal (if one was allowed) while at the same time seeking dismissal of his adversary's appeal.

However, by filing his cross-appeal, Hamed ensured that there would not be a "prevailing party" if the appeals were later dismissed on the basis of jurisdiction. He made a calculated decision to cross-appeal with full knowledge that he would be in the same procedural position as Yusuf for purposes of a fee award. Indeed, Hamed readily acknowledged the possibility of dismissal in his Notice of Cross-Appeal.

This differs from most appeals because an appellee who seeks dismissal typically does not file a "protective" appeal of his own. Thus, for good reason, Rule 30(a) does not address a situation in which both parties' appeals are dismissed. Here, neither party truly "prevailed" and the underlying purposes for awarding fees are not implicated. *See, e.g., Addie v. Kjaer*, 2014 U.S. Dist. LEXIS 134500 at *13 (D.V.I. Sept. 24, 2014) ("Where neither party is a prevailing party, or where both are, this Court in the past has exercised its discretion by declining to award attorney's fees"); *Newfound Mgmt. Corp. v. Sewer*, 34 F. Supp. 2d 305, 358 (D.V.I. 1999) (In interpreting, V.I. Code Ann. tit. 5, §541, the District Court held that the purpose "is to indemnify the prevailing party"); *Sardam v. Moford*, 756 P.2d 174 (Wash. Ct. App. 1988) (holding that there was no prevailing party under a statutory fee-shifting provision when "each party successfully defended against a major claim by the other"). Moreover, if Rule 30(a) is interpreted as only requiring dismissal of the opposing party's appeal on procedural grounds, Yusuf also could have filed a Bill of Costs because Hamed's cross-appeal was dismissed as well.[1]

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[1] In this case, Hamed did not file a proper "Bill of Costs" and, instead, styled his request as a "Motion for Fees."

Even assuming *arguendo* that the dismissal of Hamed's cross-appeal does not disqualify him from seeking an award of costs and fees, Rule 30(a) does not apply to dismissals based on lack of jurisdiction. For example, in *Beachside Assocs., LLC,* 54 V.I. at 422, this Court used the term "prevailing party" to refer to the party who prevailed on the merits of the interlocutory appeal, i.e. Beachside. Here, no party prevailed on the merits of any interlocutory appeal because all appeals were dismissed for lack of jurisdiction. Accordingly, there is no prevailing party. *Id.; see also, Sprauve v. W. Indian Co.*, 2014 U.S. Dist. LEXIS 55364, *5 (D.V.I. 2014) ("Because Defendants did not prevail on the merits of at least some of the claims, Defendants are not considered prevailing parties for the purposes of attorney's fees and costs under 42 U.S.C. § 1988").

Given the absence of a prevailing party on the merits of an appeal or any public policy reason for indemnifying Hamed for a dismissal on procedural grounds, this Court should deny the Motion.

B. ASSUMING *ARGUENDO* THAT HAMED IS A PREVAILING PARTY, THIS COURT SHOULD FIND THAT HE FAILED TO SUBMIT EVIDENCE SHOWING THAT HIS ATTORNEYS' FEES ARE REASONABLE.

(1) THE HOURLY RATES SET FORTH IN THE SUPPORTING DECLARATIONS ARE SIGNIFICANTLY HIGHER THAN THOSE CHARGED BY OTHER ATTORNEYS IN THE TERRITORY.

"The party seeking fees bears the burden of producing sufficient evidence of what constitutes a reasonable market rate for the essential character and complexity of the legal services rendered in order to make out a prima facie case." *Lanni v. N.J.*, 259 F.3d 146, 149 (3d Cir. 2001); *Blum v. Stenson*, 465 U.S. 886, 896 (1984) ("courts properly have required prevailing attorneys to justify the reasonableness of the requested rate or rates. To inform and assist the court in the exercise of its discretion, the burden is on the fee applicant to produce satisfactory

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evidence -- in addition to the attorney's own affidavits -- that the requested rates are in line with those prevailing in the community for similar services by lawyers of reasonably comparable skill, experience, and reputation"). In making this determination, this Court must consider only the rates normally charged by Virgin Islands attorneys. *See Antilles Indus. v. Government of the Virgin Islands*, 11 V.I. 604, 609 (D.V.I. 1975) (referring to the "reasonable rate for an attorney's time in the Virgin Islands"); *Hodge v. Superior Court of the V.I.*, 2009 U.S. Dist. LEXIS 110340, *12 (D.V.I. Nov. 24, 2009) (referring to the "customary and prevailing market rates in the Virgin Islands for similar services"). Hamed's counsel has made no effort to show that their hourly rates are reasonable for the Virgin Islands market. Indeed, neither Attorney Holt nor Attorney Hartmann cite a market analysis or comparison of their rates to those of other attorneys or firms. Accordingly, this Court should deny the Motion and find that Hamed's counsel, by failing to include this necessary information, did not meet their prima facie burden.

If Hamed had conducted a market analysis, it would have shown that his counsel's rates exceed those normally charged by attorneys with similar experience and qualifications. Indeed, this Court and others have observed that "$ 300.00 per hour is at the high end of rates normally charged by Virgin Islands attorneys." *Judi's of St. Croix Car Rental*, 2008 V.I. Supreme LEXIS 21, *6; *see also L & J Crew Station, L.L.C. v. Banco Popular de P.R.*, 2004 U.S. Dist. LEXIS 22678, *5 (D.V.I. Nov. 9, 2004) (referring to "the local reasonable hourly rate of $ 200.00 per hour"); *Home Depot, U.S.A. v. Bohlke Int'l Airways*, 2001 U.S. Dist. LEXIS 6935, *4 (D.V.I. Apr. 30, 2001) (same); *Equivest St. Thomas, Inc. v. Virgin Islands*, 46 V.I. 447, 461 (D.V.I. 2004) (the billing rate of $300 per hour is "above average for this jurisdiction"); *WDC Miami v. NR Elec.*, 2015 U.S. Dist. LEXIS 1770 (D.V.I. Jan. 8, 2015) ("$300.00 per hour rate that has been generally deemed to be the maximum reasonable rate in this jurisdiction"). There is no

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evidence that the "high end" of rates has increased despite the challenging economy. Furthermore, as Attorney Hartmann billed at close to this "high end" and Attorney Holt billed double that amount, it is clear that the rate structure charged by Hamed's counsel is skewed and, therefore, does not reflect the typical rate in the Virgin Islands.

Based on Yusuf's own review and survey of the prevailing market rates in this territory, the average hourly rate for an experienced attorney in the U.S. Virgin Islands is well below $600 per hour. For example, Carol G. Hurst, Esq. an attorney who was admitted to practice in the Virgin Islands around the same time as Attorney Holt, only charges $275 per hour for her time. *See* Affirmation of Carol G. Hurst (submitted in D.V.I. Civil No. 04-135) (listing the top hourly rate of $275 for the senior partner), attached as **Exhibit 1**. Likewise, J. Daryl Dodson, Esq. and Treston Moore, Esq., both of whom have practiced for more than thirty years, charged $250 per hour in 2013. *See* Verified Motion for Award of Costs and Attorneys' Fees (submitted in D.V.I. Civil No. 11-61), attached as **Exhibit 2**. Finally, Attorney Andrew Capdeville, a respected attorney who has practiced for more than thirty years, charged $250.00 per hour as of 2014. *See, e.g., M & N Aviation, Inc. v. United Parcel Service, Inc.,* 2014 U.S. Dist. LEXIS 37383, * 14-15 (D.V.I. Mar. 21, 2014) (referring to Attorney Capdeville's hourly rate).

While Hamed is free to hire attorneys who charge significantly higher rates, a fee award (if any) should not be based on those same rates. Indeed, in most cases, an award should only be a minor fraction of what a single attorney may reasonably have charged for his services. *See, e.g., Smith v. Gov't of V.I.*, 361 F.2d 469, 471 (3d Cir. 1966).

(2) HAMED IS NOT ENTITLED TO RECOVER FEES BILLED BY TWO DIFFERENT ATTORNEYS.

Although a party often may find it advantageous to hire a legal team, rather than a single firm, Rule 30(a) (which is based on Section 541) was not intended to reward one's strategic

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decision to incur these extraordinary expenses.[2] Instead, courts in this jurisdiction have routinely held that it is unreasonable for a prevailing party "to be indemnified for fees incurred by the hiring of two sets of lawyers." *Kreigel v. St. Thomas Beach Resorts, Inc.*, 18 V.I. 365, 369 (D.V.I. 1981); *see also Smith*, 361 F.2d at 472 (emphasis added) ("the normal award under section 541 is often only a minor fraction of what **an attorney** may reasonably have charged a client for the services involved in the litigation"); *Melendez v. Rivera*, 24 V.I. 63, 66 (Terr. Ct. 1988); *Creque v. Sofarelli Assocs.*, 20 V.I. 85, 87 (Terr. Ct. 1983); *Alexander v. Montoute*, 20 V.I. 98, 99 (Terr. Ct. 1983) (describing the purpose of Section 541 as "only to award a prevailing party a fair and reasonable portion of his attorney's fees"); *Bevans v. Triumpho*, 17 V.I. 144, 148 (Terr. Ct. 1980). In large part, this is because Section 541 (and, by extension, Rule 30(a)) is not viewed as a "vehicle for punishing a losing litigant, nor is it a license for the unrestricted employment of legal resources with the aim of taxing the loser with every last dollar spent by the parties and their attorneys in the successful prosecution or defense of a case." *Skeoch v. Ottley*, 278 F. Supp. 314, 316 (D.V.I. 1968); *see also Mazur v. Beauchamp*, 16 V.I. 513, 518 (Terr. Ct. 1979) (Section 541 "must not be looked upon as 'the pot of gold at the end of the rainbow' or as 'the goose that lays the golden eggs.'").

The plain language of Section 541(b) and Rule 30(a) further clarifies this point because they each use the single term, "attorney's fees," rather than "attorneys' fees." With respect to Section 541(a), the very first sentence refers to the measure and mode of compensation of attorneys as a completely separate matter from a court's discretionary award of attorney's fees. Furthermore, the inclusion of the word "but" evinces the Legislature's intent to differentiate

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[2] In *Williams v. United Corp.*, 2009 V.I. Supreme LEXIS 1, *4 (V.I. 2009), this Court stated that "[t]he inclusion of attorney's fees within the definition of reasonable costs in the rules of this Court and the Appellate Division, therefore, is derived from title 5, section 541 of the Virgin Islands Code."

between a party's choices and the court's discretion to award attorney's fees. Likewise, the use of the singular term, "attorney's fees," instead of the plural, "attorneys' fees," is strong evidence that the Legislature intended the statute to award only fees charged by one attorney. *See, e.g., Virgin Islands v. J.C.*, 47 V.I. 712, 717 (D.V.I. 2006) ("[S]tatutory interpretation begins with the language of the statute itself.") (internal citation omitted). In fact, the legislative history shows that the word "attorney's" was chosen instead of the former term "attorneys." Act No. 5176, § 1(c), (d) (1986), Sess. L. 1986, p. 180. This change was consistent with use of "Attorney's fees" in Section 541(a)(6).

Given the plain language of Section 541 and long standing precedent in this jurisdiction, Courts routinely award fees for only a minor fraction of **one** attorney's work.[3] Here, both attorneys spent a significant amount of time researching jurisdictional issues and working on the same motion. The time entries do not list specific issues that they researched and only provides very generic descriptions. Without specific information, it is impossible for this Court to determine if the attorneys' work was duplicative or necessary. Accordingly, if this Court finds that Hamed is a prevailing party entitled to an award of costs and fees, it should also hold that one attorneys' fees must be excluded in its entirety.

(3) ATTORNEY TIME WAS INFLATED BECAUSE HAMED'S COUNSEL USED QUARTER-HOUR BILLING.

Hamed's counsel, Attorney Holt, billed all time for work on this case in quarter-hour increments. Courts consistently hold that billing in fifteen-minute increments, rather than the standard six-minute increment, adds time to each time entry and contributes to an overall inflated

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[3] Hamed may refer to *Equivest St. Thomas, Inc. v. Virgin Islands*, 46 V.I. 447, 450 (D.V.I. 2004), a case in which the Court awarded fees to two law firms. However, it should be noted that the *Equivest* court relied on 42 U.S.C. §198 and cited to a case discussing the compensatory nature of a § 1988 award. *Id.* at 452 n.3 *citing Missouri v. Jenkins by Agyei*, 491 U.S. 274, 285-87 (1989). Thus, it is inappropriate to compare the fee request at issue to the one at issue in *Equivest*.

bill. *See, e.g., Cambridge Toxicology Group, Inc. v. Exnicios*, 495 F.3d 169, 181-82 (5th Cir. 2007) (reducing the attorney's award because he used quarter-hour billing and consistently rounded up his time); *Republican Party of Minn. v. White*, 456 F.3d 912, 920 (8th Cir. 2006) ("quarter-hour increment billing is less reliable than tenth-hour billing and risks bill inflation"); *Diffenderfer v. Gomez-Colon*, 606 F. Supp. 2d 222, 231 (D.P.R. 2009) (reducing fees by 20% because "[b]illing in quarter-hour increments is an unreasonable practice that will tend to inflate Plaintiffs' total hours billed by adding time to *each entry*"); *Smith v. Citifinancial Retail Servs.*, 2007 U.S. Dist. LEXIS 58723, *8 (N.D. Cal. Aug. 2, 2007) ("The Ninth Circuit has affirmed an across-the-board reduction of attorneys' fees when services were billed on a quarter-hour basis without proper specificity.").

With quarter-hour billing, tasks that take just a few minutes are billed at many multiples of the time actually expended on the task. Moreover, quarter-hour billing not only inflates the time associated with quick tasks, it also increases the overall time billed on longer tasks. As a result, courts impose across-the-board reductions to correct for the inflation caused by the practice. *See, e.g., Welch v. Metropolitan Life Ins. Co.*, 480 F.3d 942, 949 (9th Cir. 2007) (affirming a trial court's 20% across-the-board reduction of hours for billing by the quarter hour); *Morgan v. Chi. Title Ins. Co.*, 2008 U.S. Dist. LEXIS 22628, *16-17 (D. Haw. Mar. 20, 2008) (reducing amount of fees awarded by 10% to account for quarter-hour billing). Because Attorney Holt used an inherently unreliable and inflationary method of billing, the Court should deny an award of fees or, at the very least, sharply reduce the amount claimed.

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C. HAMED IS NOT ENTITLED TO RECOVER FEES FOR A PREPARING A REPLY BRIEF THAT, UNDER THIS COURT'S RULES, IS NOT ALLOWED.

In the exhibits to the Motion, Hamed's counsel billed 12.6 hours for preparing a reply to Yusuf's Opposition to Motion to Dismiss. Pursuant to VISCR 21(a), only a motion and a response may be filed. Thus, Hamed's Reply was improperly filed. If this Court finds that Hamed is the prevailing party, all time attributable to the Reply should be excluded. *See, e.g., M & N Aviation, Inc.*, 2014 U.S. Dist. LEXIS 37382, *8 (citation omitted) ("excessive, redundant, or otherwise unnecessary" time must be excluded); *Good Timez, Inc. v. Phoenix Fire & Marine Ins. Co.*, 754 F. Supp. 459, 464 (D.V.I. 1991) (reducing the claimed attorney's fees to "adequately correct for inefficient, duplicative or unnecessary legal work").

D. THE FEES ARE INFLATED BECAUSE HAMED'S COUNSEL SPENT AN EXCESSIVE AMOUNT OF TIME PREPARING THE MOTION TO DISMISS.

In his nine-page Motion to Dismiss, Hamed cited just five cases and four statutes. Given the issues and legal authorities, the Motion only should have required minimal research – not 37.75 hours. Moreover, because the supporting description of services contained only vague descriptions (i.e. "Research re dismissal re jurisdiction"), it is impossible to assess how Hamed's attorneys coordinated and performed various activities. *See, e.g., Charlery v. STX Rx, Inc.*, 2011 U.S. Dist. LEXIS 101500, *7 (D.V.I. Sept. 8, 2011) ("A fee petition should include fairly detailed information for time devoted to various activities"); *Bedford v. Pueblo Supermarkets of St. Thomas, Inc.*, 18 V.I. 275, 279 (D.V.I. 1981) (billing item was "disallowed as vague and nebulous").

Courts in this jurisdiction often sharply reduce or deny fees when an attorney overbills for a task that should have taken less time. *See, e.g., Judi's of St. Croix Car Rental*, 2008 V.I.

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Supreme LEXIS 21, *5 ("We find that counsel could have located and analyzed the cases and statutes cited in his brief with five to six hours of research. Therefore, given the lack of specificity in counsel's 'Bill of Costs,' we must approximate that about twenty of the hours seemingly billed for legal research are unreasonable"); *Flagstar Bank, FSB v. Nicholas*, 2014 U.S. Dist. LEXIS 2497, *18 (D.V.I. 2014) ("seventeen and one-half hours is an excessive — and therefore unreasonable — amount of time to bill for a Motion for Default Judgment in a routine foreclosure matter"). In this case, Hamed's counsel (both of whom are experienced attorneys) spent an exorbitant amount of time researching and drafting the Motion. Accordingly, if this Court finds that Hamed is a prevailing party entitled to an award of costs and fees, it should impose a substantial reduction to the number of hours claimed.

III. CONCLUSION

No fees should be awarded since there was no prevailing party given this Court's dismissal of all appeals for lack of appellate jurisdiction. Even if it could be argued that Hamed was the prevailing party, his requested fees should be denied or sharply reduced for the reasons stated. Accordingly, Yusuf respectfully requests this Court to deny Hamed's Motion and grant such further relief as is just and proper.

Respectfully submitted,

DUDLEY, TOPPER AND FEUERZEIG, LLP

DATED: March 27, 2015 By: _____

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CERTIFICATE OF SERVICE

I hereby certify that on this 27th day of March, 2015, I caused the foregoing **Opposition to Appellee's Motion for Fees** to be served upon the following via e-mail since the document could not be e-filed on the Supreme Court's ECF system:

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IN THE DISTRICT COURT OF THE VIRGIN ISLANDS

DIVISION OF ST. THOMAS AND ST. JOHN

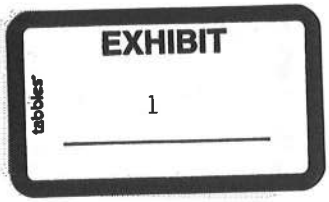
ROBERT ADDIE, JORGE PEREZ and JASON TAYLOR, Plaintiffs, v. CHRISTIAN KJAER, HELLE BUNDGAARD, STEEN BUNDGAARD, JOHN KNUD FÜRST, KIM FÜRST, NINA FÜRST, PREMIER TITLE COMPANY, INC., formerly known as FIRST AMERICAN TITLE COMPANY, INC., and KEVIN F. D'AMOUR, Defendants.	CIVIL NO. 2004/135 ACTION FOR DECLARATORY RELIEF, BREACH OF CONTRACT, NEGLIGENT MISREPRESENTATION, FRAUD, CONVERSION, BREACH OF FIDUCIARY DUTY, UNJUST ENRICHMENT AND IMPOSITION OF CONSTRUCTIVE TRUST

AFFIRMATION IN SUPPORT OF SELLERS' SUPPLEMENTAL AND RENEWED MOTION FOR FEES

I, CAROL G. HURST, an attorney admitted to the bar of this Court, do hereby make the following supplemental affirmation in lieu of affidavit pursuant to 5 V.I. Code Ann. § 699 (1997):

1. I am a partner in the law firm of Carol G. Hurst, P.C., ("the firm"), attorneys for Christian Kjaer, Helle Bundgaard, Steen Bundgaard, John Knud Fürst, Kim Fürst, and Nina Fürst, ("Sellers"), in this action.

2. On August 28, 2009, Docket No. 825, Sellers submitted their original petition for fees and costs, after courtesy discounts, in the grand total amount of $591,494.25. The work performed on behalf of Sellers was set forth in detail in Docket Nos. 825-3 to 825-7 to the original fee petition.



3. Since the filing of the original fee petition, additional work was performed on behalf of Sellers in August and September of 2009 in the preparation and briefing of post trial motions and related issues; these fees and costs incurred are broken down as follows:

August 2009	19,374.02
September 2009	11,801.25
Supplemental Total	$31,175.27

The details of this supplemental work are provided in Supplemental Exhibit A-1, attached.

4. The hourly rates for the attorneys and paralegals whose time is reflected in Supplemental Exhibit A-1 are contained in the following chart. These rates remained the same throughout August and September 2009.

Name	Rate
Carol G. Hurst/Attny	$275 per hour
Matthew Thiesing/Attny	$210 per hour
Robert Eberhart/ Attny	$210 per hour
Cindy Shearer/ paralegal	$140 per hour

5. Supplemental Exhibit A-1 was compiled directly from the firm's billing records. I have knowledge of the facts relative to the above attorney's fees charged and they were actually and necessarily performed. Sellers compensated the firm in accordance with the hourly billing rates set out above.

6. The Court will note that some of the time slip entries on Supplemental Exhibit A-1 have been redacted. These redactions were made in order not to reveal information that is protected by the attorney/client privilege and entries containing attorney work product.

7. The fees and costs expended by Sellers per the original fee petition was $591,494.25; the fees and costs expended by Sellers per the supplemental fee petition is $31,175.27. The final grand total of fees and costs expended by Sellers is $622,669.52.

I do hereby certify under penalty of perjury that the foregoing is true and correct to the best of my knowledge and belief.

Carol G. Hurst

DISTRICT COURT OF THE VIRGIN ISLANDS
DIVISION OF ST. THOMAS

* * * * *

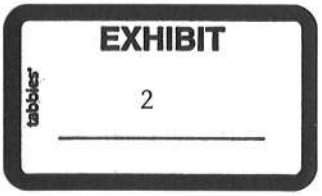
RIAN WATTS, Plaintiff, vs. TANYA BLAKE-COLEMAN Defendants.	CASE NO.: 3:11-CV-61

DEFENDANT'S VERIFIED MOTION FOR AN AWARD OF COSTS AND ATTORNEY'S FEES

COMES NOW the Defendant TANYA VAN BLAKE-COLEMAN , by and through her undersigned counsel, pursuant to ***5 V.I.C. § 541, LRCi 54.1,*** and ***F.R.Civ.P. 54(d),*** to move this Honorable Court for an award of costs and attorney's fees in the above captioned matter.

In support of this application, Defendant states the following facts and circumstances:

1. On May 27, 2011, Plaintiff Rian Watts filed her complaint in this matter against Defendant Tanya Van Blake-Coleman ("Defendant"), et al., for claims under negligent entrustment and conversion. [Docket No. 1]
2. In response, Defendant filed a motion for dismissal for failure to state a claim, pursuant to Rule 12(b)(6). [Docket No. 15]



3. Subsequently, the Court dismissed the negligent entrustment claim against Defendant and currently, resulting in only the conversion claim pending against Defendant. [Docket No. 37]

4. On February 13, 2012, Plaintiff's counsel moved to withdraw as counsel of record. [Docket No. 30] On October 18, 2012, the Court granted the motion to withdraw. [Docket No. 59]

5. Plaintiff subsequently appeared *pro se* by telephone at two status conferences held on November 20, 2012 and December 5, 2012. At the December status hearing, the Court ordered Plaintiff to respond to outstanding written discovery requests that had been propounded by Defendant by December 12, 2012. In addition, the Court set a discovery deadline of December 31, 2012 and ordered that all dispositive motions must be filed by January 2, 2013.

6. Plaintiff failed to respond to the written discovery requests propounded by Defendant, but also did not respond to telephone calls, e-mails, and letters that were sent by Defendant's Counsel, requesting the status of the outstanding discovery. On December 24, 2012, Defendant filed a motion to compel discovery responses and Plaintiff failed to file any opposition or any other response thereto. [Docket No. 67]

7. On January 2, 2013, Defendant filed a motion for summary judgment. [Docket No. 68] Plaintiff failed to responded to that motion. Plaintiff also failed to appear at the status conference held on January 9, 2013, despite notice and several attempts by the

court to contact Plaintiff by telephone. [Docket No. 71]

8. On January 25, 2013, Defendant filed its Motion to Dismiss for Failure to Prosecute. [Docket No. 72]

9. On June 28, 2013, this Court granted the Defendant's motion and ordered the above matter dismissed for failure to Prosecute. [Docket No. 78]

10. According to the computer printout of the undersigned's time and billing records, attached hereto as ***Exhibit A***, 98.4 hours of attorney time were expended in preparing for and litigating this civil dispute, including preparation and briefing of the *Motion for Summary Judgment* as well as the *Motion to Dismiss for Failure to Prosecute* which was ultimately granted.

11. In the foregoing tabulation, the reference to "TEM" regards efforts performed by Treston E. Moore, Esquire. At all times mentioned herein, Mr. Moore was an attorney at law with nearly forty years experience as a trial lawyer (1973), and your affiant believes that an hourly rate of Two Hundred Fifty ($250.00) Dollars per hour is reasonable and customary for attorneys with similar backgrounds in this jurisdiction handling cases of this nature ("reasonable hourly rate"). The reference to "JDD" regards efforts performed by J. Daryl Dodson, Esquire. At all times mentioned herein, Mr. Dodson was an attorney at law with nearly thirty years experience (1982) as a trial lawyer, and your affiant believes that an hourly rate of Two Hundred Fifty ($250.00) Dollars per hour is reasonable and customary for attorneys with similar backgrounds in this jurisdiction handling cases of this nature

("reasonable hourly rate"). The reference to "HK" regards efforts performed by Helen K. Kim, Esquire. At all times mentioned herein, Ms. Kim was an associate attorney at Moore Dodson and Russell, P.C., with nine years experience practicing law. Your affiant believes that an hourly rate of Two Hundred Twenty ($220.00) Dollars per hour is reasonable and customary for associate attorneys with similar backgrounds in this jurisdiction handling cases of this nature ("associate reasonable hourly rate"). The foregoing tabulation of hours are based upon those hourly rates.

12. The undersigned does not assert that any extraordinary or unusual costs were incurred regarding this litigation over and above normal and customary overhead expenses. The customary overhead expenses are detailed in the Bill of Cost attached as ***Exhibit B.***

13. For the foregoing reasons, the undersigned asserts that the sum of Twenty One Thousand Five Hundred Three Dollars and Seventy Cents ($21,503.70), the product of the total attorney or associate attorney hours multiplied by a reasonable hourly rate for each, constitutes the reasonable attorney's fees plus the costs expended by Coleman in obtaining an ***Order*** dismissing this case.

WHEREFORE, for the foregoing reasons, Defendant respectfully requests this Honorable Court to grant her the relief sought in this ***Verified Motion for an Award of Costs and Attorneys Fees.***

VERIFICATION

TERRITORY OF THE VIRGIN ISLANDS)
DIVISION OF ST. THOMAS AND ST. JOHN) ***ss:***

I, TRESTON E. MOORE, being first duly sworn, depose and say that the statements contained herein are true to the best of my current knowledge and belief; that the items listed on the attached exhibits are correct; that the services were actually and necessarily performed; that the disbursements were necessarily incurred; that I am an attorney authorized by law and admitted to practice in the Courts of the Virgin Islands

TRESTON E. MOORE

SUBSCRIBED AND SWORN TO before me this 26th day of July, 2013, by Treston E. Moore, a person who is known to me.

NOTARY PUBLIC, V.I.

My Commission Expires: _____

CHARLES S. RUSSELL, JR., ESQ.
Notary Public
St. Thomas/St. John, U.S. Virgin Islands
LNP-011-10
My Commission Expires May 2, 2014

Dated this 26th day of July, 2013

Respectfully Submitted,

/s/ Treston E. Moore

Treston E. Moore, Esquire
MOORE DODSON & RUSSELL, P.C.
Attorney for Defendant Blake-Coleman
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St. Thomas, VI 00804-0310
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EMAIL: tresmoore@aol.com

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the foregoing was served by first class mail and email, this 26th day of January, 2013, upon the following:

Ms. Rian Watts
86 Sonata Street
Free Port, FL 32439
scubalyday76@yahoo.com

/s/ Treston E. Moore