

**IN THE SUPERIOR COURT OF THE VIRGIN ISLANDS  
DIVISION OF ST. THOMAS/ST. JOHN**

<b>UNITED CORPORATION,</b>	)	CASE NO. ST-13-CV-101
	)	
<i>Plaintiff,</i>	)	
	)	
V.	)	ACTION FOR DAMAGES
	)	
<b>WAHEED HAMED,</b>	)	
	)	
<i>Defendant</i>	)	
_____	)	

**PLAINTIFF’S RESPONSE TO DEFENDANT WAHEED  
HAMED’S MOTION FOR SUMMARY JUDGEMENT**

**INTRODUCTION**

Plaintiff United Corporation (“Plaintiff” or “United”) respectfully files its Response<sup>1</sup> opposition to Defendant Waheed Hamed’s (“Defendant” or “Hamed”) summary judgment motion. Defendant’s Motion should be denied because 1) it fails to comply with LRCi 56.1 (despite this Court’s admonition on September 2, 2014 that failure to comply with LRCi 56.1 in the future would result in sanctions), 2) because the argument that Plaintiff United has no “standing” was rejected by the Virgin Islands Supreme Court in *United v. Waheed Hamed (2015-21)*, and 3) because even if United is deemed not to have standing, the appropriate course is to name Fathi Yusuf as the real party in interest in lieu of United pursuant to Fed. R. Civ. P 17(a)(3).

For those reasons below, the Court should deny Defendant’s Motion.

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<sup>1</sup> Defendant’s Motion was filed on March 23, 2016, and served by email. Because Plaintiff did not receive that email, and became aware of the Motion on April 6, 2016, the parties stipulated to a May 2, 2016 extension date for Plaintiff to file its Response.

## **DISCUSSION**

### **A. Defendant's Motion Fails To Comply With LRCi 56.1**

It is basic requirement that every summary judgment motion must attach a “separate statement of material facts about which the movant contends there is no genuine issue of material facts...” LRCi 56.1(a)(1). Here, Defendant Hamed, like in his previous motion for summary judgment, fails to provide the Court with a statement of undisputed facts. The issue of “standing” is clearly in dispute. Therefore, the required statement of undisputed facts is necessary to apprise the court and the Plaintiff of why Defendant believes there is no genuine issue of material facts concerning the issue of “standing.” Thus, the court should deny Defendant's Motion because Defendant fails to state whether any genuine issues of material fact exists regarding standing by way of a statement of undisputed facts. As such, the court should deny Defendant's motion for its deliberate non-compliance with LRCi 56.1.

### **B. United Has Standing**

Defendant Waheed Hamed argues that United has no standing to represent the interest of the Plaza Extra Supermarkets because liquidating partner Fathi Yusuf conceded that a “partnership” existed based on Yusuf's agreement with Mohammed Hamed to split profits. Previously, Defendant made this same argument before the Virgin Islands Supreme Court, in *United Corporation v. Waheed Hamed* (2015-21), and same argument was quickly rejected. In *United v. Hamed*, the V.I. Supreme Court held “standing is at best a non-jurisdictional claims-processing rule in Virgin Islands courts, since Article III of the United States Constitution does not apply to

local courts and no provision of Virgin Islands law includes a case-or-controversy.” *Id.* at 5.

### **United has Standing**

United was Defendant’s employer at all times alleged in this case. United operated all three Plaza Extra Stores for the last 31 years, including the relevant years relating to Defendant’s financial misconduct. Thus, even if United is deemed procedurally no longer a party in interest, the remedy is to replace Plaintiff United with Fathi Yusuf, the court appointed liquidating partner.

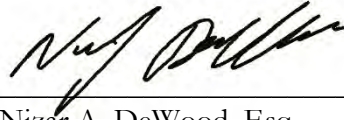
Fed. R. Civ. P 17(a)(3) states, in relevant part, “[t]he **court may not dismiss an action** for failure to prosecute in the name of the real party in interest until, after an objection, a reasonable time has been allowed for the real party in interest to ratify, join or be substituted into the action.” (emphasis supplied). Defendant concedes that the party with an ownership interest in the business, i.e., the partnership, would have standing. Currently, the partnership is being liquidated and wound up by Fathi Yusuf as the liquidating partner in a separate Superior Court case (*Yusuf v. Hamed*, SX-12-CV-370). Assuming arguendo that this court concludes that United lacks standing, the Court can simply order the substitution of Yusuf (in his capacity as liquidating partner) for United.

### **CONCLUSION**

Defendant’s Motion should be denied because it fails to comply with LRCi 56.1. Moreover, United has standing as Defendant’s previous employer during the period pleaded in this matter. Finally, even if the court deems United to no longer be the real party in interest, the proper course is to substitute Fathi Yusuf as the liquidating partner for United.

**Dated:** April 30, 2016

Respectfully Respected,



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### CERTIFICATE OF SERVICE

I hereby certify that on May 2, 2016 day, I served a copy of the foregoing Response by email, as agreed by the parties, on:

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