

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

**MOHAMMAD HAMED**, by his )  
authorized agent **WALEED HAMED**, )

Plaintiff/Counterclaim Defendant, )

vs. )

**FATHI YUSUF and UNITED CORPORATION**, )

Defendants/Counterclaimants, )

vs. )

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

Additional Counterclaim Defendants. )

CIVIL NO. SX-12-CV-370

ACTION FOR DAMAGES,  
INJUNCTIVE RELIEF  
AND DECLARATORY RELIEF

**Consolidated With**

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**MOHAMMAD HAMED**, )

Plaintiff, )

v. )

**UNITED CORPORATION**, )

Defendant. )

CIVIL NO. SX-14-CV-287

ACTION FOR DAMAGES  
AND DECLARATORY RELIEF

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**MOHAMMAD HAMED**, )

Plaintiff, )

v. )

**FATHI YUSUF**, )

Defendant. )

CIVIL NO. SX-14-CV-278

ACTION FOR DEBT  
AND CONVERSION

**JURY TRIAL DEMANDED**

**DUDLEY, TOPPER  
AND FEUERZEIG, LLP**

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**MOTION TO STRIKE HAMED'S REVISED NOTICE OF PARTNERSHIP CLAIMS  
AND OBJECTIONS TO YUSUF'S POST-JANUARY 1, 2012 ACCOUNTING AND  
NOTICE OF SUPPLEMENTATION OF RECORD**

Defendant/counterclaimant Fathi Yusuf ("Yusuf"), through his undersigned counsel, respectfully moves this Court to strike the following documents from the record in this case: "Hamed's Revised Notice of Partnership Claims and Objections to Yusuf's Post-January 1, 2012 Accounting" filed on October 17, 2016 (the "Revised Claims") and "Plaintiff Hamed's Notice of Supplementation of Record" served on December 1, 2016 (the "Supplementation").<sup>1</sup> The Revised Claims and Supplementation should be stricken for all the reasons set forth in Yusuf's Motion to Strike Hamed's Notice of Partnership Claims and Objections to Yusuf's Post-January 1, 2012 Accounting filed on October 14, 2016, Yusuf's Reply to Plaintiff's Response to Motion to Strike Hamed's Notice of Partnership Claims and Objections to Yusuf's Post-January 1, 2012 Accounting filed on October 20, 2016, Yusuf's Motion to Strike Hamed's Notice of First Supplemental Claims filed on October 24, 2016, and Yusuf's Reply to Hamed's Opposition to Motion to Strike Supplemental Claims filed on November 14, 2016 (collectively, "Yusuf's Motions to Strike"). All of the arguments set forth in Yusuf's Motions To Strike apply with equal force to the Revised Claims<sup>2</sup> and the Supplementation.

The Supplementation also should be stricken pursuant to Fed. R. Civ. P. 5(d)(1), made applicable to proceedings in this Court by Super. Ct. R. 7. In the Supplementation, Hamed attaches an expert report from J. David Jackson dated August 1, 2014, which was served on counsel on that date. The Supplementation disingenuously states: "It has been brought to Hamed's attention that

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<sup>1</sup> The Certificate of Service following the Supplementation incorrectly certifies that electronic service was made on November 30, 2016.

<sup>2</sup> As set forth in the introductory paragraph of the Revised Claims, the only revision made to the original document improperly filed with this Court was the purported redaction of personal data identifiers. Even if the Revised Claims did redact personal data identifiers, this document still must be stricken for the reasons argued in Yusuf's Motions To Strike because Hamed's repeated filings with the Court represent a willful violation of this Court's Orders and the clear directives of the Master. Not surprisingly, the Supplementation also did not redact all personal data identifiers. See Exhibit 6 to Exhibit A of the Supplementation.

the Jackson Expert Report, while served on opposing counsel on that date, was not filed with the Court under the applicable rule – and therefore, should have been attached as an exhibit to Hamed’s filing.” Of course, Hamed does not cite the “applicable” rule because there is no rule that allows the filing of expert reports. Indeed, Fed. R. Civ. P. 5(d)(1) provides, in pertinent part, that “disclosures under Rule 26(a)(1) or (2) . . . must not be filed until they are used in the proceeding or the court orders filing[.]” Pursuant to Fed. R. Civ. P. 26(a)(2)(B), made directly applicable to proceedings in this Court by Super. Ct. R. 39(a), it is clear that expert reports are not supposed to be filed with the Court, but rather disclosed or served on the opposing party. The only thing that is filed with the Court is “a notice setting forth the nature of the material and the date on which it was served.” LRCi 26.1. The last sentence of LRCi. 26.1 provides: “The Clerk of the Court shall return any documents or other material that are filed in violation of Federal Rule of Civil Procedure 5(d).”

Not only should expert reports not be filed with the Court, they may not even be admissible in evidence. This Court has recently noted that “it would appear that the written report of a testifying expert may not generally be admissible at trial.” See *Schrader v. The Governor Juan F. Luis Hospital and Medical Center*, Civil No. SX-12-CV-066 at n. 1 (citing *Engelbretsen v. Fairchild Aircraft Corp.*, 21 F.3d 721, 729 (6<sup>th</sup> Cir. 1994)).

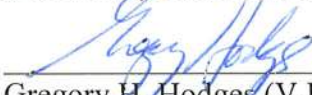
For all of the foregoing reasons and the reasons set forth in Yusuf’s Motions to Strike, Yusuf respectfully requests this Court to enter an order striking the Revised Claims and the Supplementation from the record in this case and providing Yusuf with such further relief as is just and proper under the circumstances.

Respectfully submitted,

**DUDLEY, TOPPER and FEUERZEIG, LLP**

Dated: December 12, 2016

By:

  
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Attorneys for Fathi Yusuf  
and United Corporation

**CERTIFICATE OF SERVICE**

I hereby certify that on the 12<sup>th</sup> day of December, 2016, I served the foregoing **Motion To Strike Hamed's Revised Notice Of Partnership Claims And Objections To Yusuf's Post-January 1, 2012 Accounting And Notice Of Supplementation Of Record** via e-mail addressed to:

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