

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

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

Plaintiff/Counterclaim Defendant,

vs.

FATHI YUSUF and **UNITED CORPORATION**

Defendants and Counterclaimants.

vs.

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

Counterclaim Defendants,

Case No.: SX-2012-cv-370

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

JURY TRIAL DEMANDED

Consolidated with

Case No.: SX-2014-CV-287

**ACTION FOR DECLARATORY
JUDGMENT**

JURY TRIAL DEMANDED

Consolidated with

Case No.: SX-2014-CV-278

**ACTION FOR DEBT AND
CONVERSION**

JURY TRIAL DEMANDED

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

Plaintiff,

vs.

UNITED CORPORATION,

Defendant.

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

Plaintiff,

vs.

FATHI YUSUF,

Defendant.

**HAMED'S MOTION AS TO HAMED CLAIM NO. H-10:
MARY GONZALES' POST-SPLIT BONUS**

This claim involves a 'post-split' retirement 'bonus' Fathi Yusuf decided to pay from Partnership assets to a person who was no longer an employee of the Partnership when Mr. Yusuf and the employee agreed on the retirement and bonus. The parties have agreed this would be one of the claims submitted by the Plaintiff prior to January 12, 2018.

Mary Gonzales was an employee of the Hamed-Yusuf Partnership. When the Partnership stores were split by the Order of this Court, employees were given the right to go to work for either the Yusufs or the Hameds. Mary Gonzales elected to remain at Plaza East and work for the store now owned by Fathi Yusuf.

The Plaza East store was transferred to Yusuf on March 9, 2015. See **Exhibit 1**. **After that date, Gonzales was on that store's payroll, as she was not an employee of the Partnership.** A decision was subsequently made in **April of 2015** by Mr. Yusuf and Mary Gonzales that she should retire, with her to receive \$28,899.28 as a retirement "bonus". See **Exhibit 2**. The only thing that makes this unique is that Yusuf then charged the \$28,899.28 **back to the Partnership**, even though Gonzales was his employee when it was decided she should retire, and not an employee of the Partnership.

Thereafter, Mr. Yusuf used Partnership funds to pay this bonus, which is not disputed. However, as the decision to retire was made after she was an employee of New Plaza East, owned by Yusuf, this is not a Partnership obligation. The Hameds were not consulted. **The Hameds paid such retirement benefits to the employees who went to the West store and subsequently retired.** By Court Order, Yusuf has to pay for Gonzales' post-split bonus from his funds, not those of the Partnership. As such, Hamed is entitled to an equal distribution of \$28,899.28 to balance out Yusuf's improper payment to his employee from Partnership funds.

The only other way to decide this is to follow the regular and ordinary accounting rules (GAAP) -- as set out in the Expert CPA's report. They stated (see **Exhibit 3**):

Item 297 -- Retirement bonus paid to Mary Gonzales

Summary Description of Issue Identified:

Mary Gonzales was paid a retirement bonus with Partnership funds after the stores were transferred. At the time the bonus was paid, Mary Gonzales was an employee of the new Plaza Extra-East.

Work performed:

We interviewed the Hameds regarding payments to Mary Gonzales. We were advised that Mary Gonzales retired after the Plaza Extra East store was transferred to the Yusufs, making this is an expense for the new Plaza Extra-East, not the Partnership. We also provided John Gaffney a query dated February 15, 2016 (see Attachment VII) to identify where Mary Gonzales' bonus payment is reflected on the general ledger and to provide the canceled check for Mary Gonzales' bonus payment, her last payroll check and her 2015 W-2. In addition, we reviewed the general ledgers from 2012 to present provided by John Gaffney and Exhibit 297-a, which was provided by John Gaffney.

Gaffney's response:

John Gaffney did not respond to our request.

Opinion as to the Issue Identified:

According to the general ledger provided by John Gaffney, the date of the bonus payment was April 1, 2015 and was recorded in the Partnership Plaza Extra East general ledger. The Plaza Extra East store was transferred to Fathi Yusuf on March 9, 2015. The work performed and documentation provided was sufficient and reliable audit evidence to conclude that this payment should be reimbursed to the Partnership to satisfy ourselves of management's assertions: 1. Completeness as described in AU-C 315.A128.

The amount of the claim is \$28,899.28 [plus interest at the statutory rate].

In short, pursuant to the Order transferring the Plaza East store to Fathi Yusuf, who then employed Mary Gonzales, or under GAAP, this amount is owed to Hamed.

Dated: January 9, 2018



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Co-Counsel for Plaintiff
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Counsel for Plaintiff
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2132 Company Street,
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Tele: (340) 773-8709
Fax: (340) 773-867

CERTIFICATE OF SERVICE

I hereby certify that on this 9th day of January, 2018, I served a copy of the foregoing by email, as agreed by the parties, on:

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

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CERTIFICATE OF COMPLIANCE WITH RULE 6-1(e)

This document complies with the page or word limitation set forth in Rule 6-1(e).



Exhibit 1

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

15 MAR -6 P4 39

MOHAMMED HAMED, by his authorized agent))	
WALEED HAMED,))	Case No. SX-12-CV-370
)	
Plaintiff/Counterclaim Defendant,))	Action for Damages,
)	Injunctive Relief and
v.))	Declaratory Relief
)	
FATHI YUSUF and UNITED CORPORATION,))	
)	
Defendants/Counterclaimants,))	
)	
v.))	
)	
WALEED HAMED, WAHEED HAMED,))	
MUFEED HAMED, HISHAM HAMED, and))	
PLESSEN ENTERPRISES, INC.,))	
)	
<u>Counterclaim Defendants.</u>))	

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

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

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

Plaza Extra East

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



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

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

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

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

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

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

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

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

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

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

NOW THEREFORE, THE MASTER HERBY DECLARES AS FOLLOWS:

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

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

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

Further Information

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

Dated:

~~March 4, 2015~~
March 4, 2015
EDR

By:

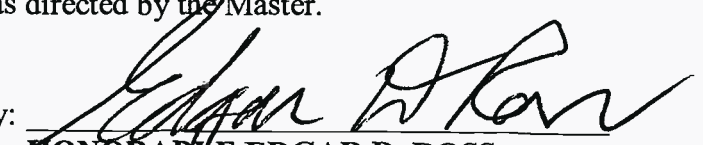

HONORABLE EDGAR D. ROSS
Judicial Master

Exhibit 2

2015-0401-01: This is retirement pay to Mary Gonzalez who worked for Plaza East for over 25 years. Documentation previously provided is on file.

Purchases/Receive Inventory

File Edit Go To Window Help

Close New List Save Copy Delete Row Serial No Note Journal Event Layout Reports Attach Help

Vendor ID: UNITED CORPORATION Purchase

Remit to: UNITED CORPORATION
PO BOX 763
4C & D SION FARM
CHRISTIANSTED, VI 00821

Ship to: United Corporation East (Pship)
P.O. Box 763
Christiansted
St. Croix VI 00821
Country

*Invoice date: 4/1/15
*Due date: Apr 30, 2015
Invoice No.: 2015-0401-01
 Drop ship
 Waiting on bill
[View related transactions](#)

PAID IN FULL
Sep 30, 2015

Customer SO No. Customer invoice No. Terms Ship via A/P account
Due at end of Month UPS Red 20000

Apply to Purchase Order: 0.00 **Apply to Purchases: 28,899.28**

Quantity	Item	U/M	Description	GL Account	Unit Price	Amount	Job
			MARY GONZALEZ 4/1/15 RETIREMENT SETTLEMENT	69200	0.00	26,659.09	
			Wages - Managers				
			MARY GONZALEZ 4/1/15 RETIREMENT SETTLEMENT	67200	0.00	1,619.70	
			Taxes - Empr FICA & Medicare				
			MARY GONZALEZ 4/1/15 RETIREMENT SETTLEMENT	67200	0.00	378.80	
			Taxes - Empr FICA & Medicare				
			MARY GONZALEZ 4/1/15 RETIREMENT SETTLEMENT	67400	0.00	0.91	
			Taxes - Empr FUTA Expense				
			MARY GONZALEZ 4/1/15 RETIREMENT SETTLEMENT	67500	0.00	240.78	
			Taxes - Empr VI Unemp				

Other payments and credits: 28,899.28 28,899.28 Invoice total
Amount paid at purchase: 0.00 0.00 Net due

Vendor balance on Apr 1, 2015 48,264.39

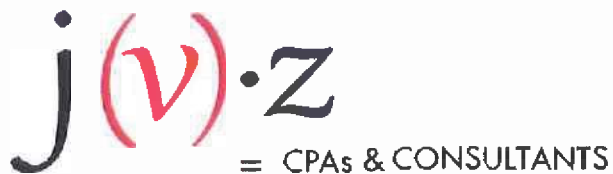
Exhibit 3

Engagement Report
Joel H. Holt, Esq.
c/o Plaza Supermarket Partnership and Subsidiaries

EXHIBIT
3

~~Exhibit:~~

~~B-2~~



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P.O. Box 24390 GBS
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www.jvz-cpa.com

September 28, 2016

Joel H. Holt, Esq.
2132 Company Street
Christiansted, VI 00820

Re: Mohammad Hamed, et.al v. Fathi Yusuf and United Corporation

Dear Attorney Holt:

Jackson Vizcaino Zomerfeld, LLP (JVZ or we) is a licensed Certified Public Accountant firm in the U.S. Virgin Islands.

You have retained us to render an expert opinion in the litigation captioned Hamed v. Yusuf et al., docket number Civ. No. SX-12-CV-370. Attached is our analysis of the financial accounting for January 1, 2012 through June 30, 2016 as per Fathi Yusuf.

For the Firm

JACKSON, VIZCAINO ZOMERFELD, LLP

MEMBERS OF:

American Institute of Certified Public Accountants
Florida Institute of Certified Public Accountants
National Association of Certified Valuation Analysts
Texas State board of Public Accountancy
Virgin Islands Board of Accountancy

The Carribean's full-service accounting firm

JVZ-000002

ATTACHMENT IV - Analysis

~~Opinion as to the Issue Identified:~~

~~We did not find any sufficient reliable audit evidence, nor were we provided any audit evidence from John Gaffney, that these items removed were properly recorded and reimbursed. As such, we are not able to satisfy ourselves of the following management assertions: 1. Completeness, as described in AU-C 315.A128.~~

~~Due to the lack of sufficient information, further investigation through the legal process of discovery is needed.~~

Item 297 – Retirement bonus paid to Mary Gonzales

Summary Description of Issue Identified:

Mary Gonzales was paid a retirement bonus with Partnership funds after the stores were transferred. At the time the bonus was paid, Mary Gonzales was an employee of the new Plaza Extra-East.

Work performed:

We interviewed the Hameds regarding payments to Mary Gonzales. We were advised that Mary Gonzales retired after the Plaza Extra East store was transferred to the Yusufs, making this is an expense for the new Plaza Extra-East, not the Partnership. We also provided John Gaffney a query dated February 15, 2016 (see Attachment VII) to identify where Mary Gonzales' bonus payment is reflected on the general ledger and to provide the canceled check for Mary Gonzales' bonus payment, her last payroll check and her 2015 W-2. In addition, we reviewed the general ledgers from 2012 to present provided by John Gaffney and Exhibit 297-a, which was provided by John Gaffney.

Gaffney's response:

John Gaffney did not respond to our request.

Opinion as to the Issue Identified:

According to the general ledger provided by John Gaffney, the date of the bonus payment was April 1, 2015 and was recorded in the Partnership Plaza Extra East general ledger. The Plaza Extra East store was transferred to Fathi Yusuf on March 9, 2015. The work performed and documentation provided was sufficient and reliable audit evidence to conclude that this payment should be reimbursed to the Partnership to satisfy ourselves of management's assertions: 1. Completeness as described in AU-C 315.A128.

The total amount of the claim is \$28,899.28.

~~**Item 299 – 2015 Workers' Compensation Payment**~~

~~*Summary Description of Issue Identified:*~~