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

WALEED HAMED, as Executor of the Estate of MOHAMMAD HAMED, Plaintiff/Counterclaim Defendant, v. **FATHI YUSUF** and **UNITED CORPORATION**, Defendants/Counterclaimants, v. **WALEED HAMED**, **WAHEED HAMED**, **MUFEED HAMED**, **HISHAM HAMED**, and **PLESSEN ENTERPRISES, INC.**, Additional Counterclaim Defendants.	**CIVIL NO. SX-12-CV-370** **ACTION FOR INJUNCTIVE RELIEF, DECLARATORY JUDGMENT, AND PARTNERSHIP DISSOLUTION, WIND UP, AND ACCOUNTING**
	Consolidated With
WALEED HAMED, as Executor of the Estate of MOHAMMAD HAMED, Plaintiff, v. **UNITED CORPORATION**, Defendant.	**CIVIL NO. SX-14-CV-287** **ACTION FOR DAMAGES AND DECLARATORY JUDGMENT**
WALEED HAMED, as Executor of the Estate of MOHAMMAD HAMED, Plaintiff, v. **FATHI YUSUF**, Defendant.	**CIVIL NO. SX-14-CV-278** **ACTION FOR DEBT AND CONVERSION**

DEFENDANTS' REPLY IN SUPPORT OF MOTION TO DISQUALIFY COUNSEL FOR THE HAMEDS AND FOR DISCOVERY RELATED TO ADDITIONAL POTENTIAL BASIS FOR DISQUALIFICATION

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Defendants/counterclaimants Fathi Yusuf ("Yusuf") and United Corporation (collectively, "Defendants"), through their undersigned counsel, hereby reply in support of their Motion to Disqualify Counsel for the Hameds and for Discovery Related to Additional Potential Basis for Disqualification ("Motion") and, in support hereof, state as follows.

I. INTRODUCTION

As a prefatory matter, given the fact that Attorney Holt's disqualification is at issue, the fact that Attorney Seila did not submit a sworn statement in opposition to disqualification is both a telling and glaring omission. Further, it is important not to lose sight of the absolutely critical issues surrounding Attorney Seila's employment by Attorney Holt and acknowledge what is at stake for the profession, the judicial system and this case if he is allowed to continue to represent the Hameds under these circumstances. The principles underlying disqualification of counsel include: 1) avoiding the appearance of impropriety; 2) safeguarding the integrity of court proceedings; and 3) eliminating the threat that litigation is tainted. Clearly, where an attorney with information about the judge's factual and legal impressions of this case—which information is indisputably valuable to the Hameds—is now working for the Hameds' counsel as a junior associate in a two-attorney office, there is a significant appearance of impropriety, an imperiling of the integrity of the proceedings in this Court and, most importantly, a substantial threat that the case will be tainted.

In the face of Attorney Holt's claim that the undersigned was untruthful in the declaration submitted in support of the Motion, the undersigned confirms that the entirety of the declaration is true. At no time did the undersigned express to Attorney Holt that hiring Attorney Seila was unobjectionable to Yusuf, or the undersigned. In litigation as acrimonious as the current Yusuf/Hamed litigation, it strains credulity that Yusuf, or the undersigned, would endorse the

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hiring of a law clerk who has very valuable information about the case by counsel for the Hameds. However, as noted in the Motion, the undersigned believed—and still believes—he could not demand that Attorney Holt not enter into employment discussions with Attorney Seila, or not hire her, without verging into tortious interference with a third party's business relationship/contract. The undersigned further believed—and still believes—it is Attorney Holt's prerogative to hire whomever he wants. Although the undersigned advised Attorney Holt he would not be pleased if Attorney Holt hired Attorney Seila, **Attorney Holt never inquired if Yusuf, or the undersigned, would oppose his continued representation of the Hameds on matters that Attorney Seila worked as a clerk, let alone sought approval to hire her from the undersigned in writing.** If Attorney Holt had seen fit to take such a prudent prophylactic step, such approval never would have been given. Of course, this leaves an open question as to why Attorney Holt did not request a written commitment, which question clearly suggests the following answer: Attorney Holt intended to hire Attorney Seila irrespective of Yusuf's position, but hoped to ultimately mount an express waiver argument without actually obtaining the express wavier that he knew would never be forthcoming.

Moreover, it is troubling, to say the least, that in the Opposition to the Motion to Disqualify ("Opposition") Attorney Holt attempts to outsource his ethical obligations—which in this case involves segregating information Attorney Seila gained during her clerkship—to the undersigned by suggesting that it was the undersigned's duty to advise him how to properly screen, or educate him on the law finding screening ineffective in small law firms. Plainly, Attorney Holt has the burden of complying with his ethical obligations, which obligations are in place to safeguard the integrity of the profession and the judicial system.

Under the facts at issue, Attorney Holt's firm is properly disqualified from representing the

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Hameds in this matter, due to the lack of efficacy of an ethics screen in a two-person law firm, the appearance of impropriety created by the continued representation, and the risk of tainting the litigation through inadvertent disclosure(s).

II. MEMORANDUM OF LAW

A. Joel H. Holt, Esq. Must Be Disqualified from Representing the Hameds Given that Attorney Holt's Associate Attorney, Robin P. Seila, Esq., Could Not Represent Those Parties, Effective Screening Cannot Be Implemented in a Two Person Firm, and the Required Written Notice Was Not Provided.

1. *Screening Cannot be Effective in a Two Person Firm, the Appearance of Impropriety is Too Great, and There is an Actual Threat that the Litigation Will be Tainted by Inadvertent Disclosure.*

The parties agree that "[i]f a lawyer [Attorney Seila] is disqualified by paragraph (a) no lawyer in a firm with which that lawyer is associated may knowingly . . . continue in representation in the matter unless: (1) the disqualified lawyer is timely screened from any participation in the matter . . . (2) written notice is promptly given to the parties and any appropriate tribunal to enable them to ascertain compliance with the provisions of this rule." VISCR 211.1.12(c)(1)-(2).

Plaintiff/counterclaim-defendant, Waleed Hamed ("Hamed"), rather bizarrely, falsely claims that Defendants argue there is a *per se* basis for disqualifying a law firm from hiring a former law clerk. Opposition, p. 1. Instead, Defendants actually argued that the specific facts of this case require disqualification. To wit, because Attorney Holt's firm consists of only two lawyers there cannot be an effective screen and there is significant appearance of impropriety and danger of the litigation actually being tainted by inadvertent disclosure.

Hamed, however—for obvious reasons—refuses to confront the extensive case law cited by Defendants holding that an ethics screen cannot be effective in small firms. *See Chase Home*

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Finance, LLC v. Ysabel, no. CV095029461, 2010 WL 3960775, at * 11 (Sup. Ct. Conn. Sept. 3, 2010) (unpublished) ("The size of Attorney Rivera's firm [two attorneys working in different locations] is a significant and fatal impediment to the existence of a viable Chinese wall."); *Cheng v. GAF Corp.*, 631 F.2d 1052, 1058 (2d Cir.1980), *vacated on other grounds,* 450 U.S. 903 (1981) (concluding that there was "a continuing danger that [the conflicted attorney] may unintentionally transmit information he gained through his prior association [] during his day-to-day contact with defense counsel [in a thirty-five person firm]."); *Baird v. Hilton Hotel Corp.*, 771 F.Supp. 24, 27 (E.D.N.Y. 1991) ("[I]n terms of the potential effectiveness of any "Chinese Wall," Ms. Pluchino's firm is smaller [nine attorneys] than the firm in the *Cheng* case [thirty five attorneys] and the measures taken to insulate her are no more stringent. Moreover, as in *Cheng*, this case is ongoing and accordingly the danger of disclosure continues. Although I do not doubt the veracity of Ms. Pluchino's statements that she has not disclosed confidential information to her new colleagues, **I find that in her daily contacts with plaintiffs' counsel there remains a danger of inadvertent disclosure of information she gained while representing the defendants. The obvious appearance of impropriety coupled with a real danger that the forthcoming trial will be tainted require disqualification.**") (emphasis supplied); *Crudele v. N.Y. City Police Dep't,* Nos. 97 Civ. 6687, 2001 WL 1033539, at *4 (S.D.N.Y. Sept. 7, 2001) (disqualifying law firm stating, "In such situations, courts are concerned that the disqualified attorney, in his day-to-day contact with his new associates, may unintentionally transmit information learned in the course of the prior representation. . . . **This Court likewise concludes that the danger of inadvertent disclosure and the appearance of impropriety is sufficiently present here so as to require disqualification.** Leeds, Morelli & Brown is comprised of only 15 lawyers.") (emphasis supplied); *Marshall v. New York Div. of State Police,* 952 F.Supp. 103, 112 (N.D.N.Y. 1997) (disqualifying

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law firm explaining, "Moreover, while screening devices may be used in some circumstances to prevent the disclosure of confidences and secrets from a prior representation, thus allowing a law firm to avoid disqualification, they cannot be used where the circumstances are such that a court cannot determine that they will effectively prevent disclosure. . . .[T]he relatively small size of the Ruberti Firm (approximately 15 lawyers) raises doubts that even the most stringent screening mechanisms could have been effective in this case."); *Filippi v. Elmont Union Free School Dist. B'd of Ed.*, 722 F. Supp. 2d 295, 313 (E.D.N.Y. 2010) ("Moreover, as discussed extensively, *supra*, because of the small size of the Morelli Firm [six lawyers], the Court does not believe, under the circumstances here, **that any screening procedures to prevent the flow of information about the matter between the personally disqualified lawyer and the others in the Firm would be fully effective. . . . [E]ven assuming there were not an actual conflict in this case, this particular conflict presents such an appearance of impropriety that disqualification is warranted**.") (emphasis supplied); *Stratton v. Wallace*, Case No. 11-CV-0074A, 2012 WL 3201666, at *5 (W.D.N.Y. Aug. 2, 2012) (disqualifying law firm explaining, "The lead defense attorney in the matter, Mr. D'Aquino, is co-chair of the general litigation practice group in which Ms. Martin practices, a group which includes less than forty attorneys across the firm's multiple offices. Moreover, Ms. Martin and Mr. D'Aquino are both in the Buffalo office. **While the court has no doubt as to the integrity of all of the lawyers involved in this matter, the appearance of impropriety which arises from the facts presented cannot be overcome.")** (emphasis supplied); *In re Asbestos Cases*, 514 F.Supp. 914, 923 (E.D.Va. 1981) (disqualifying law firm, explaining, "Peterson's employment with Greitzer and Locks constitutes a threat to the integrity of the Norfolk litigation despite the attempts of the firm to screen him from any participation in the litigation. . . . Greitzer and Locks is a six-man law firm."); *Puerto Rico Fuels, Inc. v. Empire*

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Gas Co., Inc., Case No. CE-90-796, 1993 WL 840220 (Supreme Ct. PR, April 14, 1993) (disqualifying law firm stating, "The fact that shortly after[wards] she [the disqualified attorney] moved to Estrella Law Firm—a small [four person] firm—makes it difficult, if not impossible, the real possibility of implementing an adequate screening device that would meet the professional ethics rule in question."); *Mitchell v. Metropolitan Life Ins. Co.*, Case No. 01 CIV. 2112, 2002 WL 441194, at *10 (S.D.N.Y. March 21, 2002) (disqualifying law firm, explaining "In this case, the screening measures put in place by [the law firm of] Lieff Cabraser do not suffice to avoid disqualification. . . . **Given that Fleishman works in close proximity to attorneys responsible for this action, and regularly interacts with at least one of them, there exists a continuing danger that Fleishman may inadvertently transmit information**[.]") (emphasis supplied); *Energy Intelligence Group, Inc. v. Cowen and Co., LLC*, Case No. 14 Civ. 3789, 2016 WL 3929355, at *6 (S.D.N.Y. July 15, 2016) (disqualifying law firm stating, "EIG is a very small firm consisting of four partners and about ten other attorneys in a single office, **which by its nature imperils an ethical screen**.") (emphasis supplied).

Moreover, in *Yaretsky v. Blum*, 525 F.Supp. 24 (S.D.N.Y. 1981), the screening methods employed by the law firm included isolating the attorney with the direct conflict from conversations and communications involving the matter and locking up all files generated by the case. *Id.* at 30. However, the *Yaretsky* court found that despite the lawyer's "unimpeached good character" and the "screening efforts undertaken" by the firm, the firm must be disqualified. *Id.* The court explained its rationale:

> In other words, the relatively small group of professional colleagues with whom Mr. Gassel interacts on a daily basis are also the group of people who must screen their activities from Mr. Gassel, and who must, in turn, be screened from Mr. Gassel's disclosure, however inadvertent, of confidential information[.] This court is very skeptical about the efficacy of any screening procedures given this situation.

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Id. The *Yaretsky* court also persuasively addressed the issue of the appearance of impropriety as it relates to the public's confidence in the legal profession.

> As this court reads the applicable law of the Second Circuit, the appearance of impropriety . . . standing alone, [would not] be sufficient to require disqualification. Clearly this position is motivated by solicitude for a party's right to choose his own counsel, and an appreciation of the dislocation caused by disqualifying counsel once an action has begun. **However, these considerations must be balanced with "the need to maintain the highest standards of the profession." These standards take on practical importance in preserving the public's confidence in the legal profession.** This court would be hard pressed to explain to a lay person how it was in fact proper for a lawyer who was substantially involved with the prosecution of a lawsuit to switch sides in the middle of the action. The appearance of impropriety is incontrovertible on the instant facts, and serves as an important additional reason for disqualification of [the law firm of] EBB&G.

Id. (emphasis supplied) (internal citations omitted). Indeed, like the *Yaretsky* court, this Court would be "hard pressed" to explain to a lay person how it was in fact proper for Attorney Holt to continue to represent the Hameds after hiring a law clerk who obtained valuable information concerning the case during her clerkship, given the unmistakable appearance of a disadvantage to Defendants—and advantage to the Hameds—created thereby. Hiring Attorney Selia may, or may not, have been an attempt to buy a litigation advantage, but, it is impossible to argue that it does not have a significant appearance of impropriety which is an important additional reason for disqualification of Attorney Holt's firm. *See also Van Jackson v. Check 'N Go of IL, Inc.*, 114 F. Supp. 2d 731, 734 (N.D. Il 2000) (disqualifying small law firm, stating, "The small size of the firm also weighs heavily against an effective screen. . . . **In such a small firm [four attorneys], it is questionable whether a screen can ever work. . . . . In addition to the danger of tainting the underlying trial, [the law firm of] K&D's continuing representation of the defendants creates the type of unacceptable appearance of professional impropriety condemned in . . . the Code of Professional Responsibility. [W]here public confidence in the Bar would be undermined**

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even an appearance of impropriety requires prompt remedial action by the court.") (emphasis supplied) (internal cite and quotation marks omitted).

2. There is No Credible Distinction Between Effective Ethics Screens.

Hamed tries to distinguish all of the cases cited by Defendants on the basis that those cases address the efficacy of screens, and the appearance of impropriety, solely in the context of attorneys being screened from cases where they previously represented the opposing party. Hamed claims that any case holding an ethics screen is not sufficient in that context is irrelevant in the context of screening a law clerk from a case she worked on during her clerkship. Opposition, p. 4. This is a distinction without a difference. There is no credible basis for distinguishing an efficacious ethics screen in a case involving an attorney who previously represented an opposing party and a law clerk who worked on a case during her clerkship. An ethics screen is either efficacious or not. There is no credible argument that an ethics screen can be less effective where a law clerk must be screened from a case on which she acquired knowledge of the judge's factual and legal impressions which she could deploy to help one of the litigants. There is simply no principled distinction between an effective ethics screen for prior counsel, or an ethics screen for a former law clerk.

3. Hamed's Contention that the Size of a Law Firm is Not a Valid Consideration in Determining the Efficacy of an Ethics Screen Is Without Merit.

Hamed also relies on the fact that Virgin Islands Supreme Court Rule 211.1.12 allows screening without addressing firm size to argue the size of a firm is not a factor in the efficacy of an ethics screen. This flies in the face of both common sense and how courts evaluate the effectiveness of ethics screens. A review of the language of numerous states' counterparts to Rule 211.1.12, including Model Rule 1.12 (ABA 2015), reveals language analogous to that of Virgin

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Islands Supreme Court Rule 211.1.12, which requires screening but does not specifically refer to small or large firms. However, in those jurisdictions, the size and structural organization of the law firm and the likelihood of contact between the disqualified attorney and other members of the firm and support personnel involved in the present representation are among factors typically considered by courts reviewing the efficacy of an ethics screen. The nonexclusive factors generally include: (1) instructions given to ban the exchange of information between the disqualified attorney and other members of the firm; (2) restricted access to files and other information about the case; (3) prohibited sharing in fees derived from the litigation; (4) the size of the law firm and its structural divisions; and (5) the likelihood of contact between the quarantined lawyer and other members of the firm. As illustrated by the cases cited above, courts from other jurisdictions with screening requirements use nonexclusive factors—including size of the firm—in making a determination. Notably, Hamed does not cite **any** authority that the size of a law firm and the concomitant likelihood of contact between the quarantined lawyer and other members of the firm are not factors when a court is assessing the adequacy of screening mechanisms. Hamed's contention that the size of a law firm is not a valid consideration is without merit.

4. *As a Practical Matter the Ethics Screen Allegedly Put in Place is Ineffective.*

Because Attorney Holt and Attorney Seila work together in a two-lawyer firm an ethical screen is presumptively ineffective. The appearance of impropriety is also incontrovertible on the instant facts and there is a real risk that the litigation will be tainted. But, beyond that, the sufficiency of the preventative measures touted by Attorney Holt appear to be grossly inadequate in practice. In matters styled as *Sixteen Plus Corporation v. Manal Yousef v. Sixteen Plus*

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Corporation, Civil No. SX-16-CV-65 and *Manal Yousef v. Sixteen Plus Corporation v. Manal Yousef and Fathi Yusuf*, Civil No. ST-17-CV-342, Sixteen Plus Corporation ("Sixteen Plus"), represented by Attorney Holt, submitted a Motion to Consolidate wherein it identifies the ostensibly unsecured email address of holtvi@aol.com rather than the purportedly secured email address of holtvi.plaza@gmail.com that Attorney Holt proclaimed would be used for all Sixteen Plus, Yusuf, Yousef, and Yousuf cases. *See* Exhibit B to the Motion (stating the Chinese Wall is applicable to "every Hamed/Yusuf case, no matter what the designation may be (Plessen, Sixteen Plus, Manal Yousef, etc.)"). Sixteen Plus again identified the compromised holtvi@aol.com email address instead of the designated email address of holtvi.plaza@gmail.com in each of its oppositions to the Motions to Disqualify filed by counsel for Manal Yousef and Jamil and Isam Yousuf, Jim Hymes, Esq., in *Sixteen Plus Corporation v. Manal Yousef v. Sixteen Plus Corporation*, *Manal Yousef v. Sixteen Plus Corporation v. Manal Yousef and Fathi Yusuf*, and *Hisham Hamed derivatively on behalf of Sixteen Plus Corporation v. Fathi Yusuf, Isam Yousuf and Jamil Yousuf,* Civil No. SX-16-CV-650.

Moreover, and most disturbingly, on December 20, 2017, Attorney Holt sent an email from joelholtpc@gmail.com, inquiring as to whether Yusuf had filed a response to Sixteen Plus's third party complaint in *Manal Yousef v. Sixteen Plus Corporation v. Manal Yousef and Fathi Yusuf.* Yusuf's response had been filed and served via email to the holtvi.plaza@gmail.com address on December 15, 2017. Plainly, Attorney Holt had not checked that secure email account, and was using a different unsecured email account—to which Attorney Seila presumably has access—to communicate concerning the a Yusuf/Hamed case. *See* December 20, 2017 email chain attached as **Exhibit 1**. Therefore, as a practical matter, the screening procedures allegedly implemented are not preventing the potential flow of information about the matter between the personally

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disqualified lawyer, Attorney Seila, and the others in the firm. Thus, Attorney Holt's continued representation of the Hameds in this matter would seriously compromise the public's perception of the integrity of the Court and the legal profession and shake the public's confidence in the judicial system itself.

5. *Attorney Holt Cannot Properly Outsource His Compliance with the Ethics Rule to Counsel for Defendants.*

After disingenuously claiming all the cases cited by Defendants should not apply to screening a law clerk, Hamed then attempts to shift Attorney Holt's burden to comply with the applicable ethics rules onto counsel for Defendants. This argument is wholly lacking in legal support. It is Attorney Holt's burden to meet his ethical obligations, not counsel for Defendants' to guide him through how to do so, or educate him on the law in this area. Hamed also states: "Defendants cannot now complain about the specific measures that they were told would be implemented." Opposition, p. 7. In the Motion, Defendants did not complain about specific measures, although as noted above, in practice those measures are clearly inadequate. Rather, Defendants cited law that explained that an effective ethics screen is not possible in a two-person firm and, even if it were, that the appearance of impropriety was so great as to require the law firm's disqualification. Of course, this law should have been well known to Attorney Holt since it potentially impacted his ability to continue to represent the Hameds if he hired Attorney Seila.

6. *Defendants Did Not Waive their Objection to Disqualification.*

Hamed, incredibly, claims that the undersigned stated that Yusuf had no objection to the hiring of Attorney Seila and the undersigned never said he would be displeased by the same. This is not true. Hamed now attempts to twist an unanswered email to the undersigned into an express waiver. However, an express waiver would be an email saying "my client does not object to your

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continued representation of the Hameds if you hire Attorney Seila," or an email saying "Defendants will not file a motion to disqualify Attorney Holt as counsel for the Hameds if you hire Attorney Seila."

There was also no judicial waiver. Defendants learned on July 26, 2017, **only after the undersigned specifically inquired**, that Attorney Holt had hired Attorney Seila. On September 6, 2017, Hurricane Irma hit the territory, followed shortly thereafter by Hurricane Maria. The undersigned office's was damaged and basic infrastructure on St. Thomas was lacking for almost two (2) months following the hurricanes. Thus, the undersigned was only able to work intermittently, at best, during that time period. Defendants filed their Motion to Disqualify Counsel on December 6, 2017. Thus, it was only roughly two months—August 2017 and November 2017—which passed before the Motion was filed. Hamed also claims that he would be prejudiced if Attorney Holt was disqualified. However, Attorney Carl Hartmann also represents the Hameds, and has since the outset of the litigation. Thus, even if Attorney Holt is disqualified, the Hameds will still have the benefit of counsel who is fully versed in the current litigation.

B. Attorney Holt Did Not Provide the Required Written Notice to the Parties and the Court.

Hamed claims the October 27, 2017 letter is the required notice to the parties. Opposition, p. 9. However, that letter was not promptly provided to the parties since it came late in the afternoon on October 27, 2017, the business day before her employment began, especially since Attorney Seila executed her "final" employment contract on July 9, 2017. The letter was not only untimely, it was not provided to this Court, only to the Master who has no jurisdiction over the issue of counsel's conflicts of interest. Hamed claims that because "Judge Brady was aware of the fact that Robin Seila had been hired by Joel Holt, while the Special Master was not, the October

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27th letter was only copied to Special Master Ross." Opposition, p. 9, n.8. However, notice to the Court is a substantive requirement designed to allow the Court a meaningful opportunity to evaluate whether counsel can successfully rebut the imputed conflict of interest, including evaluating the proposed screening measures. Serving the letter only on the Master who has no jurisdiction over the issue of counsel's conflicts of interest or the ability to evaluate the proposed screening, is inadequate and defeats the whole purpose of the requirement that notice be provided to this Court, which has such jurisdiction. Of course, since the conflict in the instant matter arises as a result of Attorney Seila's clerkship with the Court, it also follows that the Court would have a special interest in making sure that the valuable information she gained about this case, and related cases, does not cast a shadow on the Court's ultimate disposition of the case. Given that the required written notice was not promptly provided to the parties, or ever provided to this Court, Attorney Holt is properly disqualified from representing the Hameds on this separate and independent basis as well.

C. Discovery Is Needed on the Timeline of Employment Discussions and Attorney Seila's Involvement with This Case and Other Related Cases.

Any substantive work Attorney Seila did on this matter after she and Attorney Holt began employment discussions would also be a separate and independent basis on which to disqualify Attorney Holt's firm. *See e.g. Fredonia Broadcasting Corp., Inc. v. RCA Corp.*, 569 F.2d 251 (5th Cir. 1978) (explaining when a law clerk has accepted employment with a law firm, it is possible that if the law clerk continues to work on a case in the course of her clerkship in which her future employer is counsel it might present an unfair advantage to the party represented by that law firm and noting a clear appearance of impropriety). Hamed argues that no discovery is needed because Rule 11.4.3 of the Internal Operating Rules of the Virgin Islands Supreme Court states that "there

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is no disqualification *per se* for a law clerk to work on a case involving the firm from which the law clerk has accepted a job offer. Those assignments will be left to the discretion of the individual justice." This is a jaw dropping assertion. The case law holds that only ministerial—not substantive—actions undertaken by a law clerk after employment discussion have begun can avoid a fatal appearance of impropriety and avoid disqualification of the former clerk's law firm. *See Comparato v. Schait*, 848 A.2d 770 (N.J. 2004) (denying motion to disqualify firm because law clerk only did ministerial work on the case, explaining "[w]e have no basis to conclude that Miller's [the former law clerk] involvement was other than what she describes in her certification, namely, that she had calendared the motions filed during her tenure and performed other related ministerial tasks. Miller also certified that as a law clerk she was not privy to any confidential information regarding the Comparato matter. Judge Convery basically corroborated that assertion. Under those circumstances, we find no reason to disqualify the entire Donahue and Gomperts firms [law firms representing the defendant for which former law clerk worked]."). Accordingly, just because Attorney Seila was not *per se* disqualified does not mean that Attorney Holt—or the Court—could not be disqualified if she did substantive work on the case after she engaged in employment discussions, or accepted a job offer. *See also P.M. v. N.P.*, *supra*, 116 A.3d at 1088-89 (remanding the matter for specific factual findings by the judge stating, "[W]e are compelled to remand this matter for the judge to make specific findings describing the law clerk's pre-employment activities with defense counsel. The judge must make specific findings regarding the timing and substance of defense counsel's employment discussions with his law clerk, including whether the law clerk independently notified the judge of her employment negotiations with defense counsel as required by RPC 1.12(c). The judge must also describe what duties the law clerk performed for him in connection with this case after defense counsel revealed her interest in

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hiring his law clerk. . . . Without this vital information, we are unable to determine whether the trial judge erred in accepting defense counsel's certification as well as her self-serving unsworn representations at oral argument on this critical point."). Discovery was not necessary in *P.M. v. N.P.* because the judge himself was aware of the facts surrounding defense counsel's hiring of his law clerk and the substantive work his clerk performed for him during the relevant period. However, *P.M. v. N.P.* makes clear that those facts were necessary for the appellate court to be able to decide the issue of disqualification and, therefore, the judge needed to put them on the record. In the instant case, since Defendants, unlike the judge in *P.M. v. N.P.*, do not have the relevant facts in their possession, Defendants are entitled to discovery on the timeline of the employment discussions and the extent of Attorney Seila's involvement with this and other Yusuf/Hamed cases after discussions began.

III. CONCLUSION

It is undisputable that Attorney Seila gained information during her clerkship that is highly valuable to the parties in this case. It is also undisputable that Attorney Seila may not represent the Hameds in this matter and her conflict is imputed to Attorney Holt unless he can rebut the imputation of the conflict with a successful and timely ethical screen, and he provided the parties and the Court with timely written notice. Because Attorney Holt and Attorney Seila work together in a two-lawyer firm, no ethical screen can be effective. Additionally, the required notice was not provided to the parties and the Court. Moreover, the appearance of impropriety is incontrovertible on the instant facts and serves as an important additional reason for disqualification of Attorney Holt's firm. Accordingly, Attorney Holt's firm is properly disqualified from representing the Hameds in this matter, due to the lack of efficacy of an ethics screen in a two-person law firm, the

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appearance of impropriety created by the continued representation, and the risk of tainting the litigation through inadvertent disclosure(s).

Additionally, because any substantive work Attorney Seila did on this or any related case after employment discussions with Attorney Holt began provides another independent ground for disqualifying Attorney Holt's firm, Defendants' motion for discovery on the timeline of employment discussions and what work was performed by Attorney Seila on this case and related cases after those discussions were commenced is properly granted.

WHEREFORE, on the basis of the foregoing, Defendants respectfully request that the Court disqualify Attorney Holt from representing the Hameds in this matter and allow Defendants to serve written discovery and take depositions concerning the timeline of employment discussions and Attorney Seila's involvement with this matter and any other related matters on which she performed substantive work during her clerkship, as well as awarding Defendants such further relief as the Court deems just and proper.

Respectfully submitted,

DUDLEY, TOPPER AND FEUERZEIG, LLP

DATED: January 9, 2018 By: _____

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CERTIFICATE OF SERVICE

It is hereby certified that on this 9th day of January, 2018, I served a true and correct copy of the foregoing **Defendants' Reply in Support of Motion To Disqualify Counsel For The Hameds And For Discovery Related To Additional Potential Basis For Disqualification**, which complies with the page and word limitations set forth in Rule 6-1(e), via e-mail addressed to:

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EXHIBIT 1

Michele Barber

From: Lisa Komives
Sent: Tuesday, January 09, 2018 3:06 PM
To: Michele Barber
Subject: FW: Response to Counterclaim/Third Party Complaint; ST-17-CV-342

Regards,

Lisa

340-774-4422

From: Joel Holt [mailto:joelholtpc@gmail.com]
Sent: Wednesday, December 20, 2017 11:56 AM
To: Lisa Komives <Lkomives@dtflaw.com>
Cc: Gregory Hodges <Ghodges@dtflaw.com>; jim@hymeslawvi.com
Subject: Re: Response to Counterclaim/Third Party Complaint; ST-17-CV-342

No-now see it-Jim?

Joel H. Holt
2132 Company Street
Christiansted, USVI 00820
340-773-8709

On Dec 20, 2017, at 11:35 AM, Lisa Komives <Lkomives@dtflaw.com> wrote:

> Yes. Filed it on Friday, December 15, 2017, and served it via email to holtvi.plaza@gmail.com. Shall we forward that email to this email address?
>
> Regards,
>
> *Lisa*
>
> 340-774-4422
>
> **From:** Joel Holt [mailto:joelholtpc@gmail.com]
> **Sent:** Wednesday, December 20, 2017 11:32 AM
> **To:** Gregory Hodges <Ghodges@dtflaw.com>
> **Cc:** jim@hymeslawvi.com; Lisa Komives <Lkomives@dtflaw.com>
> **Subject:** Re: Response to Counterclaim/Third Party Complaint; ST-17-CV-342
>
> Did either of you file or serve these responses to the counterclaim due on Dec 15th?

Joel H. Holt, Esq.
2132 Company Street
Christiansted, VI 00820
Tele: 340-773-8709
Fax: 340-773-8677

On Mon, Nov 6, 2017 at 3:10 PM, Joel Holt <joelholtpc@gmail.com> wrote:

No problem-Jim has an open date. How much time do you need?

Joel H. Holt
2132 Company Street
Christiansted, USVI 00820
340-773-8709

On Nov 6, 2017, at 1:57 PM, Gregory Hodges <Ghodges@dtflaw.com> wrote:

> Joel,
>
> Lisa is out sick today. My understanding from her is that Jim asked for and received an extension of time to respond to the counterclaim. I am unsure of the terms of that extension. May we have a similar extension to respond to the "third party complaint"? If so, please confirm when the extension expires.
>
> Thanks.
>
> Gregory H. Hodges
>
> Dudley, Topper and Feuerzeig, LLP
>
> Law House, 1000 Frederiksberg Gade
>
> St. Thomas, VI 00802
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> <image001.jpg>