

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,
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

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 RELIEF

WALEED HAMED, as Executor of the
Estate of MOHMMED HAMED,
Plaintiff,
v.
FATHI YUSUF,
Defendant.

CIVIL NO. SX-14-CV-278
ACTION FOR DEBT
AND CONVERSION
JURY TRIAL DEMANDED

SUPPLEMENTAL BRIEF REGARDING THREE MOTIONS ADDRESSED AT
MARCH 6-7, 2017 HEARINGS

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Defendants/counterclaimants Fathi Yusuf (“Yusuf”) and United Corporation (“United”) (collectively, the “Defendants”), through their undersigned counsel, respectfully submit this Supplemental Brief addressing three of the motions identified in this Court’s “Order Scheduling Hearing for March 6, 2017” entered on February 7, 2017 (the “Scheduling Order”), namely, (1) Defendants’ Motion to Strike Jury Demand, filed on September 29, 2014; (2) Yusuf’s 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, filed on December 12, 2016; and (3) Plaintiff’s Motion for Further Instructions and Discovery Schedule, filed on October 28, 2016.<sup>1</sup> At the conclusion of the continued hearing on March 7, 2017, the Court originally contemplated that Plaintiff and Defendants would file their supplemental briefs at the same time. Because it was assumed that the supplemental briefs would relate to Plaintiff’s Motion for Partial Summary Judgment Regarding the Statute of Limitations and Motion to Strike the BDO Report, Defendants were given until March 21, 2017 to file their supplemental briefing and Plaintiff was given until March 28, 2017 to submit his responsive brief. Because this brief also addresses Defendants’ motions to strike, identified in subparagraphs 2 and 3 of the Scheduling Order, Defendants should be provided with the same opportunity as Plaintiff to have the “last word” on their motions. Accordingly, Defendants respectfully request a further opportunity to reply to Plaintiff’s supplemental brief(s) to be filed on March 28, 2017 only to the extent Plaintiff addresses Defendants’ motions to strike. Defendants request seven (7) days to file any such reply brief.

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<sup>1</sup>Separate supplemental briefs regarding the other motions identified in the Scheduling Order will be filed concurrently with this supplemental brief.

**I. Defendants' Motion to Strike Jury Demand**

**A. Plaintiff Never Had A Right to A Jury Trial On His Equitable Claims.**

In an action for an accounting, “the court (or more commonly, an auditor, master, or referee subject to court review) conducts a comprehensive investigation of the transactions of the partnership and the partners, adjudicates their relative rights, and enters a money judgment for or against each partner according to the balance struck.” *See, e.g., Guntle v. Barnett*, 73 Wash. Ct. App. 825, 830 (Wa. Ct. App. 1994) (quoting 2 Alan R. Bromberg and Larry E. Ribstein, *Partnership*, § 6.08(a) (1994)).

It is hornbook law that an accounting between partners has historically been exclusively an equity action. *See Kline Hotel Partners v. Aircoa Equity Interests, Inc.*, 729 F. Supp. 740, 743 (D. Colo. 1990); *see also Phillips v. Kaplus*, 764 F.2d 807, 813 (11th Cir. 1985) (“It has been said that a court of equity is the only forum in which partnership affairs can be settled”); *Swift Bros. v. Swift & Sons*, 921 F. Supp. 267, 272 (E.D. Pa. 1995) (Pennsylvania courts “routinely treat claims of partners’ breach of partnership obligations as matters to be resolved in equity”); *In re Judiciary Tower Assocs.*, 170 B.R. 8, at \*10 (Bankr. D.C. 1994) (“In an accounting, all of the assets and liabilities of the partnership are determined and the allocation of profits or losses among the partners is established. There is no question but that a partnership accounting is an equitable action.”).

As early as 1887 the United States Supreme Court held that an accounting between parties, particularly a complex one, is an equitable cause of action to be decided by a judge, not a jury and explained why. *See Kirby v. Lake Shore & Mich. So. R.R. Co.*, 120 U.S. 130, 134 (1887). To wit:

[Plaintiff’s case] is clearly one of which a court of equity may take cognizance. **The complicated nature of the accounts between the parties constitutes itself a sufficient ground for going into equity. It would have been difficult, if not**

**impossible, for a jury to unravel the numerous transactions involved in the settlements between the parties**, and reach a satisfactory conclusion as to the amount of drawbacks to which Alexander & Co. were entitled on each settlement. 1 Story, Eq. Jur. § 451. Justice could not be done except by employing the methods of investigation peculiar to courts of equity.

*Id.* (emphasis supplied). It is indisputable that the gravamen of the instant case is a complex accounting of the parties' partnership. The complicated nature of the accounts and number of transactions over the almost three decades of partnership affairs makes it "difficult, if not impossible, for a jury to unravel the numerous transactions involved[.]" *See id.* Rather, this is the quintessential complex accounting case—so complex a Master has been appointed with the consent of the parties—due to the number and nature of the transactions at issue. In contrast, the court in *Thompson v. Coughlin*, 329 Or. 630, 63-40 (Or. 2000), puzzlingly cited by Plaintiff in his "Response re Jury Issues" (the "Response"), explained that that action was not an equitable one because, unlike the instant case, "it appears that no bookkeeping, in the sense of a formal review of all partnership transactions, is necessary in this case. The accounts at issue do not appear to be so complex that justice [could] not be done without resort to an equity court." (internal quotation marks omitted).

Moreover, this Court has already determined: "Plaintiff maintains this action seeking equitable relief, and this Court may grant such equitable (i.e. injunctive) relief to enforce Plaintiff/partner's rights to an equal share of the partnership profits and equal rights in the management and conduct of the partnership, pursuant to 26 V.I. Code §75(b)(1) and (2)(i)." *Hamed v. Yusuf*, 58 V.I. 117, 134 (V.I. Super. Ct. 2013), *aff'd in part and vacated in part*, 59 V.I. 841 (2013). While Plaintiff's First Amended Complaint ("FAC") contains statutory cites, this does not transform his claims from equitable to legal ones. *See, e.g., Tranberg v. Maidman*, 18 V.I. 556, 558 (D.V.I. 1981) ("It seems that the basis for this claim is that the cause of action here has a statutory basis, 28 V.I.C. § 209. It is not made clear why this should affect the

equitable nature of the relief; and in fact it does not”). Indeed, each of Plaintiff’s claims seeks relief based on the existence of a partnership and/or the accounting of funds held by a partnership. *See, e.g.*, FAC at ¶¶35-37, 41-42, 44-46 and Wherefore Clause; *see also Felton v. Felton*, 672 N.W.2d 333, at \*2 (Iowa Ct. App. 2003) (holding that an action concerning a partnership was an equitable action, explaining “The pleadings, relief sought, and nature of the case ordinarily dictate whether an action is legal or equitable.”)(citing the Iowa Supreme Court (unpublished)). In *Harris v. Gurley*, 80 F.2d 744 (5th Cir. 1936)—a case concerning a claim for accounting and dissolution of partnership—the court held that the matter sounded in equity despite Plaintiff’s demand for damages for the highest value of oil between the time of its conversion and trial and for recovery of part interest in properties. The *Harris* court explained:

On the coming in of the master’s report the Harrises claimed that the suit was one at law for the recovery of land and for damages for conversion of oil, and that it should be transferred to the law docket for trial, or at least the issues of title and damages should be submitted to a jury. The motion to this effect was denied and the ruling repeated in the decree. We think it too plain for argument that the proceeding was equitable. The title asserted was an equitable one, to wit, a holding of the legal title to realty by J. T. and L. M. Harris in trust for the benefit of a partnership. **The main relief sought is dissolution of the partnership and an account among the partners which is an ancient head of equity jurisdiction.**

*Id.* at 746.

Plaintiff, however, claims that the Revised Uniform Partnership Act (“RUPA”) somehow transforms his claim for an equitable partnership accounting into a legal claim because legal claims were made available to litigants pursuant to RUPA. *See* Response, p. 2. Plaintiff is incorrect. *See, e.g., Schuetzle v. Linebeger*, 137 Wash. App 1022, at \*3 (Wa. App. Ct. Feb. 26, 2007) (unpublished). Faced with the same RUPA argument as advanced by Plaintiff, the *Schuetzle* court explained that RUPA does nothing to alter the prior cases distinguishing between equitable and legal partnership claims, nor does it require a trial by jury. To wit:

The Linebergers contend that *Hamar* and *Roediger* are too old and too infrequently cited to control the outcome of this case, particularly after Washington adopted the Revised Uniform Partnership Act, chapter 25.05 RCW. This argument is not persuasive. No provision in chapter 25.05 RCW requires a jury to determine whether there is a partnership. Further, RCW 25.05.170(2) explicitly states that a “partner may maintain an action against ... another partner for legal or equitable relief.” Under this provision, in cases where a partner is seeking primarily legal relief, a jury would be appropriate, but **in cases where a partner is seeking primarily equitable relief, a court does not err by denying a jury trial. The statute does nothing to alter the cases distinguishing between legal and equitable claims.**

*Id.* Thus, it is clear that Plaintiff’s claims related to the Partnership are properly adjudicated by the Court and his jury demand is properly struck.

**B. Any Right To Have A Jury Determine Partnership Accounting Claims Has Been Waived.**

To say that Plaintiff did not timely oppose Defendants’ September 29, 2014 Motion to Strike Jury Demand would be an extraordinary understatement. Without first seeking leave from this Court to file his untimely Response, as required by Super. Ct. R. 10(a)(2), Plaintiff unilaterally filed it on September 27, 2016, only two days shy of the two year anniversary of the filing of the motion, feigning as if this Court’s discovery stay had somehow “stayed the litigation process in this case.” *See* Response at n. 2. This Court may take judicial notice of the docket in this case, which reveals that there was no other motion filed in this case by the Defendants to which Plaintiff did not timely respond and that the “litigation process” continued to flourish after the discovery stay. Moreover, on March 30, 2015, approximately six months after the Motion to Strike Jury Demand had been filed, Defendants filed an Opposition to Plaintiff’s Motion For Release of Preliminary Injunction Bond noting at page 3 (n. 1) that “Yusuf has no intention to ask a jury for damages. On September 29, 2014, Defendants filed and served their Motion to Strike Jury Demand. To date, no party has bothered to oppose that motion, which should be treated as conceded.” On April 1, 2015,

Plaintiff replied to that Opposition noting at page 3 (n. 1): “As for Defendants’ comment that this should not be a jury proceeding, that issue need not be resolved in this motion.”

As the transcript of the October 7, 2014 telephone hearing clearly reveals, only motions “ancillary to the primary focus” of the case – “that are not primary, or that are not required to be addressed” would be held in abeyance. If Hamed is arguing that Defendants’ Motion to Strike Jury Demand was “held in abeyance,” which Defendants dispute, he effectively concedes his jury trial demand was not a “primary focus” of the case. As the record in this case clearly reveals, Hamed did not consider his jury demand a “primary focus” because he unambiguously consented to a process ultimately embodied in the Plan that effectively removed the jury from the claims accounting and resolution process, just as the cases addressing partnership accounting claims say they should be. The Response is nothing more than Plaintiff’s effort to completely reverse course in his two and one half year participation in the development and implementation of the Final Wind Up Plan (“Plan”)<sup>2</sup> approved by this Court’s Order dated January 7, 2015 (the “Wind Up Order”). A careful review of the record timeline in this case reveals that Plaintiff’s improper filing of the Response three days before the accounting claims he was supposed to submit only to the Master and counsel for Yusuf was nothing more than a belated attempt to erase his express consent to the role of the Master and this Court in the claims resolution process between the Partners.

At the continued hearing on March 7, 2017, counsel for the Defendants referred to a timeline filed shortly before that hearing. A copy of that timeline is attached as **Exhibit 1**. As reflected in the timeline, on April 7, 2014, Defendants filed their Motion to Appoint Master for Judicial Supervision of Partnership Winding Up.<sup>3</sup> Attached to that motion as Exhibit A, was a

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<sup>2</sup>All capitalized terms not defined in this brief have the meanings provided in the Plan.

<sup>3</sup>It is noteworthy that at page 15 of the FAC filed on October 19, 2012, Plaintiff’s very first prayer for relief sought:

- 1) A full and complete accounting to be conducted by a court-appointed Master with Declaratory Relief against both defendants to establish Hamed’s rights under his

proposed plan for winding up the Partnership. Section 8, Step 8 (entitled “Distribution Plans”) of that proposed plan provided as follows:

Upon conclusion of the Liquidation Process, the funds remaining in the Liquidating Expenses Account, if any, shall be deposited into the Claims Reserve Account. **Within 45 days after the Liquidating Partner completes the liquidation of the Partnership Assets, Hamed and Yusuf shall each submit to the Master a proposed accounting and distribution plan for the funds remaining in the Claims Reserve Account. Thereafter, the Master shall make a report and recommendation of distribution to the Court for its final determination.** (Emphasis supplied)

On April 30, 2014, Plaintiff filed a Response to Defendants’ Motion to Appoint Master for Judicial Supervision of the Partnership Winding Up Or, In the Alternative, To Appoint Receiver to Wind Up Partnership. Attached as Exhibit 2 to that response was the “Hamed Plan for Winding Up Partnership,” which used Defendants’ plan outline and format but radically altered the content. At § 8, Step 8 (also entitled “Distribution Plans”) of Hamed’s proposed plan, the following relevant language appears:

Upon conclusion of the Liquidating Process, the funds remaining in the Liquidating Expenses Account, if any, shall be deposited into the Claims Reserve Account. Within 45 days after the Liquidating Partner completes the liquidation of the Partnership Assets, the Master shall present a proposed accounting and distribution plan for the funds remaining in the Claims Reserve Account. **Thereafter, the Master shall make a report and recommendation of distribution to the Court for its final determination.** (Emphasis supplied)

Although the record reveals that Plaintiff and Defendants proposed dueling plans that significantly differed from one another regarding outcomes, all of them consistently followed the language quoted above that provided for the Master making a report and recommendation of distribution to the Court for its final determination.

In an Order dated August 28, 2014, this Court found:

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Yusuf/Hamed Partnership with Yusuf, including his rights regarding the operation of the three Plaza Extra supermarkets and the withdrawal of funds from the Partnership accounts associated with the three Plaza supermarkets[.]



In this case, the parties have consented to have a master appointed to perform certain duties regarding the wind-up of the Hamed-Yusuf Partnership. The parties have presented their respective candidates for master: Plaintiff proposes David Ridgeway; and Defendants propose Joyce Wensel-Bailey.

The Court has determined not to select either of these candidates, and presents to the parties several potential masters who have indicated their willingness to accept an appointment to serve as special master in this case to oversee the winding up of the Hamed-Yusuf Partnership. The parties will have the opportunity to confer and agree to the appointment of one of the potential masters from the list below. Within 14 days of entry of this Order, the parties shall stipulate to the selection of master and advise the Court in writing. If the parties fail to reach an agreement, each party shall separately indicate its choice of master from the list below in order of preference. The Court will consider the parties' submissions and *sua sponte* appoint a master from the list below.

\* \* \*

Upon the parties' stipulation to a master (or in the event of the parties' failure to agree, their separate filings of preferences), the Court will enter an appropriate Order appointing the master, whose services will promptly commence with a review of selected documentation from the Court's files of the case. While the master's review is ongoing, the Court will present the parties with a proposed wind-up plan for the Partnership and solicit comments, objections and recommendations. After considering the parties' filings, the Court will adopt the final wind-up plan to be overseen by the master.

On September 10, 2014, the Partners filed a stipulation for the appointment of Judge Edgar D. Ross as the Master in this case. Pursuant to that stipulation, on September 18, 2014, this Court entered an Order appointing Judge Ross "to serve as judicial Master in this action, to direct and oversee the winding up of the Hamed-Yusuf Partnership."

On October 7, 2014, this Court entered an "Order Soliciting Comments, Objections and Recommendations" in which the parties were "ordered to review the proposed plan and present comments, objections and recommendations within the time periods provided below." At page 6 of that Order, the Court provided, in relevant part, as follows:

**Step 6: Distribution Plan.**

Upon conclusion of the Liquidation Process, the funds remaining in the Liquidation Expenses Account, if any, shall be deposited into the Claims Reserve Account. **Within 45 days after the Liquidating Partner completes the liquidation of the Partnership Assets, Hamed and Yusuf shall each submit to the Master a**

**proposed accounting and distribution plan for the funds remaining in the Claims Reserve Account. Thereafter, the Master shall make a report and recommendation of distribution for the Court for its final determination.** Nothing herein shall prevent the Partners from agreeing to distribution of Partnership assets between themselves rather than liquidating assets by sale and distributing proceeds. (Emphasis supplied)

This highlighted language is identical to the highlighted language quoted above (p.4) from § 8, Step 8 of Defendants' initial proposed plan.

That Order further provided each party 14 days within which to submit their comments, objections, and recommendations with respect to the Court's proposed plan. On October 21, 2014, Plaintiff filed his "Comments Regarding Proposed Winding Up Order," which included a proposed revised plan as Exhibit 4. Section 8, Step 6 (page 12-13), provided as follows:

Upon conclusion of the Liquidation Process, the funds remaining in the Liquidation Expenses Account, if any, shall be deposited into the Claims Reserve Account. Within 45 days after the Master completes the liquidation of Partnership Assets, **Hamed and Yusuf shall each submit to the Master a proposed accounting and distribution plan for the funds remaining in the Claims Reserve Account. Thereafter, the Master shall make a report and recommendation of distribution for the Court for its final determination.** (Emphasis supplied)

Of course, this language is identical to the language from Yusuf's initial plan and this Court's proposed plan, except it substituted "Master" for the "Liquidating Partner" as the person who completes the liquidation of the Partnership Assets since Plaintiff objected so vehemently to Yusuf serving as the Liquidating Partner. Nowhere in Plaintiff's Comments Re Proposed Winding Up Order did he argue or even suggest that a jury should decide the competing accounting and distribution plans between the Partners as opposed to the Master making the initial determination by report and recommendation for final determination by this Court. Indeed, the word "jury" did not appear anywhere in the body of any of Plaintiff's documents either proposing a wind up plan or commenting on Defendants' or the Court's proposed plans.

After considering the parties' comments, this Court entered the Wind Up Order approving the Plan. Of course, the language quoted above (p.4) from Yusuf's original proposed plan found its way *verbatim* into § 9, Step 6 of the Plan **because both Partners agreed to that language.**

On October 2, 2015, the parties stipulated that the "Partners will submit their proposed accounting and distribution plans required by § 9, Step 6, of the Plan to each other and the Master by March 3, 2016[.]" This stipulation was "So Ordered" on November 13, 2015 (the "Stipulated Order").<sup>4</sup> What happened between October 2, 2015 and September 27, 2016, the date of the Response, to cause Plaintiff to completely reverse course regarding the unambiguous, agreed provisions of § 9, Step 6, of the Plan providing that "Hamed and Yusuf shall each submit to the Master a proposed accounting and distribution plan . . . [and] the Master shall make a report and recommendation for distribution to the Court for its final determination"? To this date, Plaintiff has not even attempted to edify this Court how a jury could possibly fit into this agreed claims resolution process that was put into effect upon entry of the Wind Up Order. Clearly, there is simply no place for a jury in that process.

The reason Plaintiff now wants to supplant the Master and this Court with a jury is again apparent from the record. Simply put, Plaintiff got upset because the Master approved a number of payments to Yusuf, United, and Dudley, Topper and Feuerzeig, LLP ("DTF"). This prompted Plaintiff's January 29, 2016 motions to remove Yusuf as the Liquidating Partner and to disqualify DTF. Those motions were duly opposed and ultimately denied by this Court in Orders dated August 5, 2016. In the Order Re Disqualification of DTF, the reasoning of which was found applicable to the Order denying the removal of Yusuf as Liquidating Partner, the Court found as follows:

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<sup>4</sup> The March 3, 2016 deadline was later extended by the Master at Plaintiff's request.

The Court finds that it is unnecessary to disqualify DTF. The Court is satisfied that the strict system of judicial oversight over all decisions made by the Liquidating Partner via the bi-monthly reports serves as a sufficient safeguard against such potential conflict. That is, even to the extent that the dual roles of Yusuf and DTF may involve conflicting interests, there is sufficient transparency in the liquidation process to avoid impropriety and collusion between Yusuf as an individual, and Yusuf in his capacity as the Liquidating Partner.

\* \* \*

To the extent that Plaintiff objects to specific, individual items in DTF's billing, it is more appropriate to resolve billing issues following submission of the Master's Report and Recommendation rather than the disqualification of DTF. The Court notes that Plaintiff has filed responses and objections to the bi-monthly reports of the Liquidating Partner. Such filings are the appropriate vehicle for raising such objections that will ultimately be resolved at the conclusion of the litigation.

Twenty six days later, on August 31, 2016, the Master directed the Partners to submit any objections they may have to the accountings filed by the Liquidating Partner and any claims they may have against the Partnership or the other Partner by September 30, 2016. Of course, three days before that deadline, Plaintiff improperly filed his Response without bothering to seek leave of this Court to do so, and on September 30, 2016, he filed in this Court his "Notice of Partnership Claims and Objections to Yusuf's Post-January 1, 2012 Accounting" ("Hamed's Claim") in clear violation of the Stipulated Order and the Master's September 22, 2016 directive to make these submissions only to the Master and counsel for the other Partner.

To date, Plaintiff has completely ignored Defendants' argument that his participation in the development of the Plan and his consent to the provisions of the Plan, as further evidenced by the Stipulated Order, constitutes a clear waiver of any jury trial right he arguably had, a right that Defendants submit never existed. Now that the Partners and the Master have been operating under and implementing the Plan for more than 2 years and the liquidation process is essentially completed, but not the Partnership wind up, Plaintiff wants to have the Partners' disputed accounting claims decided by a jury instead of this Court, after report and recommendation by the Master. Why? Because Plaintiff is unhappy with some of the Master's initial determinations, which are all

clearly subject to this Court's final review. He is also unhappy with this Court's refusal to remove Yusuf as the Liquidating Partner or to disqualify DTF. Plaintiff's unhappiness with intermediate decisions in the wind up process simply provides no basis for abandoning the agreed upon process embodied in the Wind Up Order and Plan. What the Virgin Islands Supreme Court stated when it dismissed Yusuf's appeal from the Wind Up Order for lack of jurisdiction applies with equal force to Hamed, who "is only challenging various matters that fall within the administration of winding up the partnership, over which the Superior Court possesses considerable discretion and which are not immediately appealable." *Yusuf v. Hamed*, 62 V.I. 565, 569 (2015) (citations omitted).

Notwithstanding Plaintiff's "Motion to Terminate the Role of the Special Master" (the "Motion To Terminate Master"), filed on March 15, 2017, which Defendants will vigorously oppose in due course, Defendants respectfully submit that this Court should stay the course with the Plan and allow the Master full authority to "direct and oversee" the Partnership wind up to its conclusion, as determined by this Court after considering the Master's report and recommendation. It simply makes no sense to abandon this agreed upon process simply because Plaintiff does not like a few decisions made in the administration of the Partnership wind up.

**II. Defendants' 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**

Of course Hamed's so-called "revised claims" only revised his original claims improperly filed with this Court on September 30, 2016 by purportedly redacting personal data identifiers ("PDI"). The revised Hamed's Claim should be stricken for all the reasons set forth in Yusuf's previous motions papers filed on October 14, 2016, October 20, 2016, October 24, 2016, and November 14, 2016. Why did Hamed choose to violate two orders (the Wind Up Order and Stipulated Order) and the Master's September 22, 2016 directive (clarifying his August 31, 2016 directive) clearly providing that the Partners' submissions should only be made to each other and the Master? The

only explanation provided to date is a reference to an email from Plaintiff's counsel (Exhibit 5 to the Motion to Strike and Exhibit 1A to the Opposition thereto) claiming "there has been no formal accounting under RUPA, there is a proper demand for a jury on issues triable by a jury and those documents need to be part of the record in case an appeal of any such claims." See Opposition to Motion to Strike at page 3. Although these "reasons" are either wrong (the Master determined on August 31, 2016 that "the Partnership accounting is more than 99% completed"<sup>5</sup> (see Exhibit 1 to the Motion to Strike)) or seriously disputed (see the Motion to Strike Jury Demand and Reply Memorandum in Further Support of Motion to Strike), they are ultimately irrelevant because the Master's September 22, 2016 directive provided: "If [the competing claims are] unresolved, they may be forwarded and/or filed with the Court." Without seeking any relief from the Wind Up Order, the Plan, the Stipulated Order or the Master's directive, Plaintiff simply chose to disregard these orders and directives by filing Hamed's Claim (as revised and supplemented) directly with this Court.<sup>6</sup> Even in the unlikely event that the Master told counsel for Plaintiff in an *ex parte* conversation "that we should proceed in whatever fashion we think appropriate," see Exhibit 1 to Plaintiff's Response to the Motion to Strike filed on October 17, 2016, filing Hamed's Claim directly with the Court violated § 9, Step 6, of the Plan and ¶ 2 of the Stipulated Order. It is respectfully submitted that the Master may not authorize noncompliance with these Orders.

Plaintiff should not be allowed to take advantage of Yusuf and this Court because Yusuf followed this Court's Orders and the Master's directive, while Hamed did not. Fundamental fairness requires this Court to require both Partners to play by the same rules and to strike Plaintiff's improperly filed documents. While Plaintiff may have removed PDI from his original

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<sup>5</sup> The Master was obviously referring to the Partnership accountings provided by John Gaffney on November 16, 2015 as updated with each of the Liquidating Partner's Bi-Monthly reports and last updated by Gaffney on August 31, 2016.

<sup>6</sup> As pointed out in Defendants' filings on October 14, 2106 (p. 2) and October 20, 2106 (p. 7), Plaintiff was apparently not satisfied with improperly filing his papers on the public docket of this Court. He also published them for the world to see on his attorney's website.

claim when he filed his revised claim, he continues to ignore the fact that two of the expert reports he improperly filed with this Court, namely, the BDO Report and the Jackson Report, contain PDI. He has made no effort whatsoever to remove that PDI to date. As was made clear in the email exchange that led to the Master's September 22, 2016 directive, one of the reasons for submitting the Partners' competing accounting claims only to each other and the Master is because it was contemplated that those claims would contain detailed financial information that was inappropriate for inclusion in the public record. There is simply no good reason to allow Hamed to continue to violate the Orders of this Court and the Master's directives, particularly, when by doing so he violates the clear rules of this Court to redact PDI from documents filed with the Court. All of the documents improperly filed by Plaintiff should simply be stricken from the record of this case. Since they have already been submitted to the Master and counsel for Yusuf, there is no delay or complexity created by the striking of these improperly filed documents. It is respectfully submitted that such striking along with appropriate sanctions is essential to upholding the authority of this Court and the Master and as well as the uniform application of this Court's Orders and Rules to all parties.

### **III. Plaintiff's Motion for Further Instructions and Discovery Schedule**

Section 4 of the Plan provides, in relevant part, for "equal distribution to the Partners following payment of all Debts and a full accounting by the Partners . . . ." Yusuf submits that he has provided his "full accounting," to the extent possible given the lengthy stay of discovery, via the BDO Report (addressing the period from 1994 through 2012) and the accounting provided by John Gaffney on November 16, 2015 (addressing the period from 2013 through 2015), as supplemented every two months in the bi-monthly reports and last supplemented on August 31, 2016 with what Gaffney referred to as "Partnership financials [, which] are a final accounting of the Partnership through August 2016." *See* Exhibit 2 to Defendants' Response To Motion For Further Instructions

filed on November 10, 2016. Plaintiff, on the other hand, has provided no accounting whatsoever for the 18 year period from 1994 through 2012, because his experts claim it is impossible. Plaintiff has also provided no accounting for the post-2012 period. Rather, he has merely submitted a host of disjointed objections to Gaffney's accounting.

Plaintiff complains that he was never allowed to review the post-2012 Partnership information as provided by § 9, Step 4 of the Plan. He makes no attempt whatsoever to provide this Court with any admissible evidence to support this demonstrably false claim. Yusuf has repeatedly shown that Hamed has had unfettered access to review such information and that his accountants actually reviewed such information. *See, e.g.*, Liquidating Partner's Eighth Bi-Monthly Report (p. 10) (including Exhibit 3 thereto) attached as **Exhibit 2**; Yusuf's entire Reply to Plaintiff's Notice of Objections to Liquidating Partner's Eighth Bi-Monthly Report filed on July 1, 2016 attached as **Exhibit 3**; and Liquidating Partner's Ninth Bi-Monthly Report filed on August 1, 2016 (p. 9-10).

On March 7, 2017, Plaintiff filed the Declaration of Joel H. Holt dated March 6, 2016, apparently as a stand alone document. First, the Declaration incorrectly suggests that Judge Ross has not yet been appointed Master under Fed. R. Civ. P. 53 (not Rule 52 as stated in the Declaration). *See* Declaration at ¶ 2 and 7. As pointed out above, Judge Ross was appointed Master pursuant to the Partners' stipulation filed on September 10, 2014 and this Court's Order of September 18, 2014. Secondly, Plaintiff complains that he has been unfairly prejudiced because the Master has spent significantly more time with the Liquidating Partner and the accountant engaged on behalf of the Partnership than he has with Plaintiff and his counsel. This claim is utterly frivolous. Pursuant to § 2 of the Plan, Judge Ross was required to "serve as Master to oversee and act as the judicial supervision of the wind up efforts of the Liquidating Partner." Section 3 of the Plan provides Yusuf, as the Liquidating Partner, "with the exclusive right and obligation to wind up the Partnership pursuant to this Plan . . . under the supervision of the Master." That section further



provides: “All acts of the Liquidating Partner, except those customarily undertaken in the ordinary course of the ongoing business operations of the Partnership, are subject to prior notification to and approval of the Master.” Given these clear Plan provisions obligating the Master to supervise the activities of the Liquidating Partner, it is hardly surprising that he would spend far more time with Yusuf and the Partnership accountant than he would with Plaintiff and his lawyer.

Since the Partners’ competing accounting claims clearly involve the winding up of the Partnership for which this Court gave the Master authority to “direct and oversee,” Defendants respectfully submit that the Master should determine, in the first instance, the nature and scope of the discovery and hearings, if any, required to complete the winding up of the Partnership. The Master should also report and recommend to this Court with respect to the two “*Daubert*” motions. Not only is the Master an experienced jurist with the requisite knowledge and experience to resolve these common motions, more importantly, the issues addressed in these motions directly affect the claims resolution and winding up process, which the Wind Up Order and the Plan authorized the Master to oversee.

On March 13, 2017, counsel for Plaintiff submitted a proposed scheduling order to counsel for Yusuf, a copy of which is attached **Exhibit 4**. Because that proposed scheduling order effectively assumed that neither the Master nor this Court had any continuing authority to address or resolve the Partners’ competing accounting claims and distribution plans, it was unacceptable to Yusuf. On March 15, 2017, counsel for Yusuf submitted a proposed scheduling order to counsel for Plaintiff, a copy of which is attached as **Exhibit 5**. Defendants’ proposed order obviously assumes the Master’s and this Court’s continuing roles in the claims resolution process, as contemplated by the Plan.

On March 20, 2017, Plaintiff filed his three (3) page “Response To This Court’s Directive To Submit A Proposed Scheduling Order” (the “Response Re Rescheduling Order”) along with

five exhibits consisting of twenty eight (28) pages and a proposed scheduling order that is substantially similar to the one attached to this brief as Exhibit 4. Two of the five exhibits are self-serving declarations from counsel for Plaintiff. Exhibit 2 of the Response Re Scheduling Order is a declaration of Attorney Holt dated January 28, 2016 that was attached as Exhibit 8 to Plaintiff's Motion To Remove Yusuf As Liquidating Partner filed on January 29, 2016, which was denied by this Court's Order of August 5, 2016. Of course, Plaintiff does not include the declaration of John Gaffney, which was included as Exhibit 6 to Yusuf's Opposition to the motion to remove him as Liquidating Partner filed on February 17, 2016. A copy of that declaration is attached as **Exhibit 6** for the Court's convenience. The other declaration of counsel attached as Exhibit 3 to the Response Re Scheduling Order is dated March 15, 2017 and was attached as Exhibit 1 to the Motion To Terminate Master. Defendants' intend to respond to this declaration when they respond in due course to the Motion To Terminate Master.

The Response Re Scheduling Order claims that Gaffney "previously stated that no accounting was possible prior to 2013." Of course, Plaintiff fails to provide this Court with any record evidence of that alleged statement. Contrary to Plaintiff's claims, he never objected to the accounting submitted by the Liquidating Partner pursuant to the Notice of Service of Partnership Accounting filed on November 16, 2015.

Plaintiff fails to acknowledge that the Master allowed Plaintiff to issue two extraordinarily broad subpoenas to Banco Popular and Scotia Bank over Defendants' objection that they were barred by the discovery stay. After these subpoenas were issued, ostensibly to spare Gaffney from spending time to produce the "underlying documents" allegedly needed to understand his accountings, there is nothing in the record establishing that the Master ever determined that Plaintiff should also be allowed to force the Liquidating Partner, through Gaffney, to answer the "130 questions" propounded by Plaintiff's accountants. It is noteworthy that Plaintiff only obliquely

refers to the “130 questions” in footnote 2 of Attorney Holt’s March 15, 2017 declaration. If the Court actually takes the time to review these detailed questions, it will become crystal clear that Plaintiff was propounding questions that should be pursued via written interrogatories or depositions.

While Defendants intend to more fully respond to the Motion to Terminate Master, it is respectfully submitted that the Plaintiff has utterly failed to establish that there is no continuing role for the Master under the Plan or that, assuming there is a continuing role for a Master, Judge Ross should not continue to serve in the same role he has served since his appointment on September 14, 2014. While the liquidation of the Partnership Assets may be practically complete, the wind up of the Partnership is nowhere near finished because, among other things, the Partners’ competing accounting claims and proposed distributions plans have not been finalized much less presented to the Master for his report and recommendation to this Court. It is respectfully submitted that under these circumstances, this Court should favorably consider Defendants’ proposed scheduling order, which provides for the Master’s and this Court’s continuing roles as provided for in the Plan and also provides for a much more timely completion of the winding up process than as proposed in Plaintiff’s scheduling order.

At the hearing on March 7, 2017, the following exchange took place between the Court and counsel for Plaintiff:

THE COURT: What would a jury trial look like?

MR. HOLT: I think the Court -- well, first of all, the jury trial would be basically the claims between the parties. And the claims between the parties are those that were filed September 30. And so, you know, if you look at their Exhibit 23, if you look at our list of claims we filed with the Court because we filed a list of claims with the Court, you will see that those are not accounting claims. Those are different claims relating to different payments that were made.

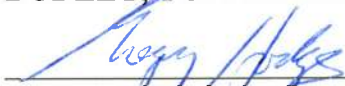
See p. 59 of the March 7, 2016 hearing transcript attached as **Exhibit 7**. Clearly, counsel is asking this Court to replace the claim resolution process provided for in the Plan with a jury, which would address the Partners' competing accounting claims that everyone acknowledges are complex and confusing. As pointed out in paragraphs 5 and 6 of Gaffney's declaration attached as Exhibit 6, even counsel for Plaintiff appeared confused by a small part of the accounting issues addressed in the November 16, 2015 accounting. If counsel is confused, a jury will no doubt find these complex accounting issues even more incomprehensible. That is why this is the paradigm case for the appointment of a Master, who can report and recommend concerning the Partners' complex accounting claims for this Court's final determination.

Respectfully submitted,

**DUDLEY, TOPPER and FEUERZEIG, LLP**

Dated: March 21, 2017

By:

  
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**CERTIFICATE OF SERVICE**

I hereby certify that on the 21<sup>st</sup> day of March, 2017, I served the foregoing **Supplemental Brief Regarding Three Motions Addressed at March 6-7, 2017 Hearings** via e-mail addressed to:

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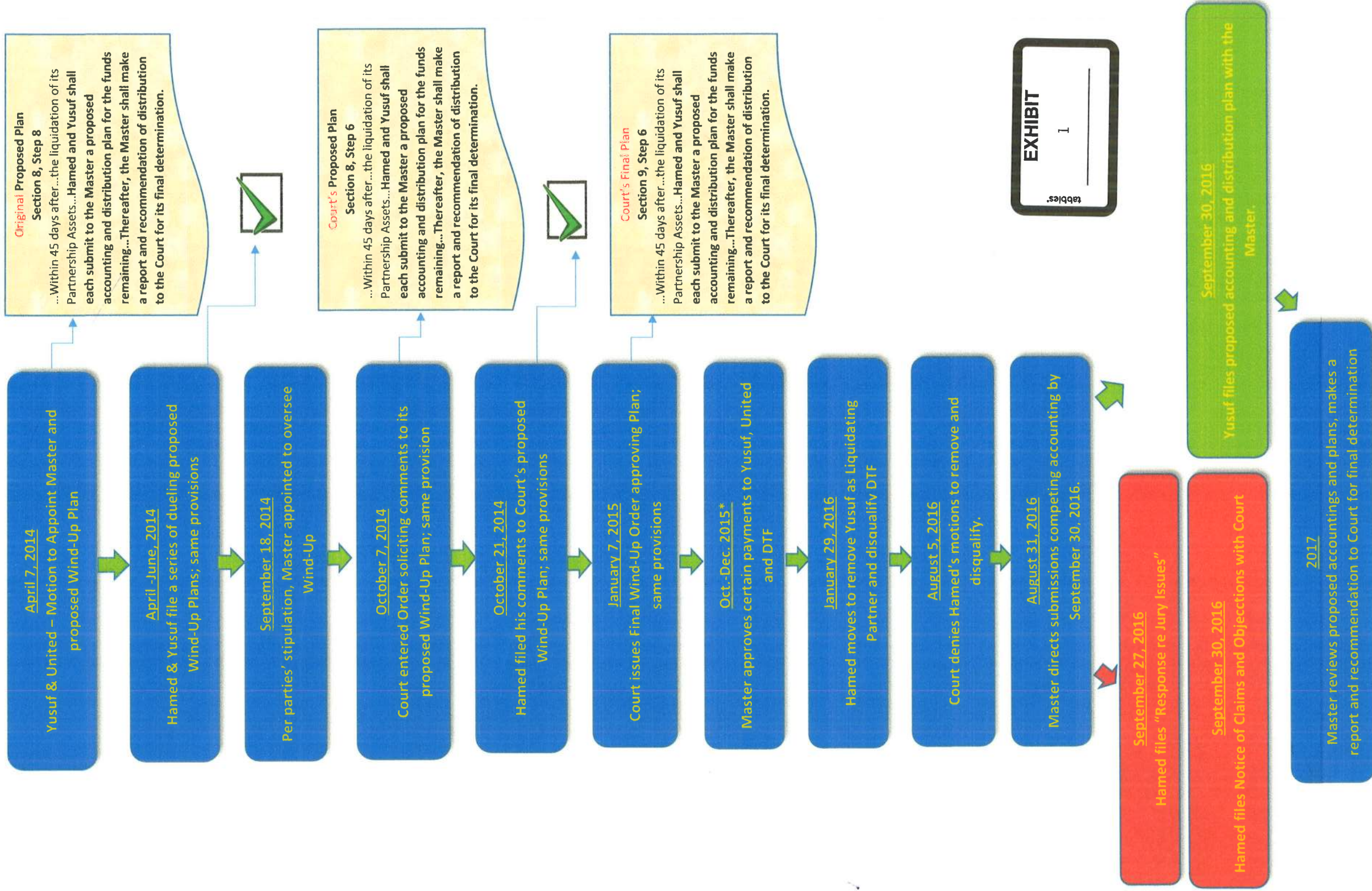
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## Timeline Regarding Partnership Wind-Up Plan



**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  
 JURY TRIAL DEMANDED



**LIQUIDATING PARTNER'S EIGHTH BI-MONTHLY REPORT**

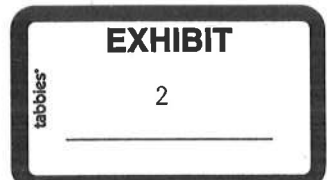
Pursuant to this Court's "Final Wind Up Plan Of The Plaza Extra Partnership" entered on January 9, 2015 (the "Plan"), defendant/counterclaimant Fathi Yusuf ("Yusuf"), as the Liquidating Partner<sup>1</sup>, respectfully submits this eighth bi-monthly report of the status of wind up efforts, as required by § 5 of the Plan.

Pursuant to the Court's "Order Adopting Final Wind Up Plan" dated January 7, 2015 and entered on January 9, 2015 (the "Wind Up Order"), the Court adopted the Plan. An Order entered on January 27, 2015 approving a stipulation of the parties provided, among other things, that the effective date of the Plan "shall be changed from ten (10) days following the date of the ... [Wind Up] Order to January 30, 2015."

On February 25, 2015, the Claims Reserve Account ("CRA") and the Liquidating Expense Account ("LEA") were established at Banco Popular de Puerto Rico. No disbursements have been made from the CRA or LEA without the approval of the Master. The

<sup>1</sup> Capitalized terms not otherwise defined in this report shall have the meaning provided for in the Plan.

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Liquidating Partner has provided the Master and Hamed with copies of bank statements, ledgers, and reconciliations reflecting the inflows/outflows concerning these accounts from inception through April 30, 2016. Copies of the bank statements, ledgers, and a final reconciliation reflecting the inflows/outflows of the other bank accounts used jointly by the Partners in the operation of the three stores from May 1, 2015 through August 31, 2015 have previously been provided to the Master and Hamed.<sup>2</sup>

On March 5, 2015, the Master issued his "Master's Order Regarding Transfer of Ownership of Plaza Extra West." On March 6, 2015, the Master issued his "Master's Order Regarding Transfer of Ownership of Plaza Extra East." An accounting reconciling the difference in the inventory and equipment values involved in the transfer of Plaza Extra East and Plaza Extra West has occurred resulting in the payment of \$1,211,267.01 to Yusuf in July 2015.

The closed auction for Plaza Extra Tutu Park took place on April 30, 2015, pursuant to the Master's Order dated April 28, 2015. On April 30, 2015, the Master issued his "Master's Order Regarding Transfer Of Ownership Of Plaza Extra Tutu Park" (the "April 30 Master's Order"), pursuant to which that store was transferred to Hamed's designee, KAC357, Inc., for

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<sup>2</sup> These accounts used by all three stores remained open as an operational necessity with the consent of the Partners and the Master. Since these accounts were joint signatory accounts signed by representatives of both Partners, Hamed had uninterrupted, unfettered access to monitor these accounts. All checks drawn on these accounts have been signed by a representative of both Partners. All of these accounts, except one account at Scotiabank, were closed effective July 10, 2015 with all of the funds from those accounts transferred to the CRA. The one account was left open with a balance of \$1,000 for a few additional days because of pending document requests related to the 2014 Department of Justice review and Scotiabank needed an account to charge. After deducting fees, the \$895 balance in the account was transferred to the CRA.



the price of \$4,050,000 plus \$220,000 in fees attributable to the Tutu Park Litigation (collectively, the “Tutu Park Purchase Price”), which has been paid.<sup>3</sup>

Pursuant to the express provisions of the Wind Up Order (p.5), § 8(2) of the Plan, and the April 30 Master’s Order (p.2), Hamed was obligated to obtain releases of the Partnership and Yusuf from any further leasehold obligations to Tutu Park, Ltd. when he assumed sole ownership and control of the Tutu Park store premises as of May 1, 2015. Despite repeated demands, Hamed has failed to provide the required releases that are a precondition to the valid transfer of the Tutu Park store. In the absence of the delivery of such releases, the Tutu Park store will require the further attention of the Liquidating Partner and the Court for separation. Given the passage of more than thirteen (13) months since the releases should have been delivered, the Liquidating Partner is requesting the Court’s immediate intervention regarding Hamed’s failure to provide the required releases.<sup>4</sup> The significant problems created by Hamed’s failure to obtain the required releases has been reported by the Liquidating Partner beginning with his fourth bi-monthly report and in each of his succeeding reports. Although Hamed has filed multiple objections to the bi-monthly reports, he has never disputed his obligation to obtain the releases or his failure to do so. Although the Tutu Park Litigation was initially stayed after the auction of the Tutu Park store to provide Hamed an opportunity to negotiate a new lease with Tutu Park, Ltd. and obtain the required releases, after approximately

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<sup>3</sup> Because the Tutu Park Purchase Price was paid to Yusuf using Partnership funds, Yusuf was in fact paid an equal amount from the CRA representing a matching distribution to him of the funds used by Hamed to purchase Plaza Extra Tutu Park.

<sup>4</sup> In the absence of such releases, at a minimum, Yusuf submits that a reserve must be created for all rent, percentage rent, and real property taxes that may accrue during the remaining term of the lease with Tutu Park, Ltd. (30 months), plus any matching payment that would be due to Yusuf if Partnership funds are used to pay these obligations.

a year of fruitless negotiations, that stay has now been lifted and the Tutu Park Litigation has been set for trial. *See* Order dated February 19, 2016, attached as **Exhibit 1**, and Third Amended Scheduling Order dated April 18, 2016, attached as **Exhibit 2**. Originally, Hamed was not a party to the Tutu Park Litigation and United was the sole plaintiff and counterclaim defendant. As reflected in the Scheduling Order attached as Exhibit 2, sometime after the Tutu Park store auction, Hamed and KAC357, Inc. were substituted as plaintiffs in one of the cases comprising the Tutu Park Litigation. Since the transfer of the Tutu Park store and Tutu Park Litigation was expressly conditioned upon the delivery of the required releases to United and Yusuf, Hamed and his counsel cannot be allowed to control that litigation unless they immediately produce the releases that should have been provided more than one year ago. Accordingly, the issue involving Hamed's failure to provide the releases has now become critical requiring this Court's immediate attention.

The Liquidating Partner is also working to resolve issues involving recent claims presented by Tutu Park, Ltd. concerning property taxes for the years 2012, 2013, and 2014 and percentage rents claimed due for the period November 1, 2014 through October 31, 2015. The Liquidating Partner authorized the payment of the entire, allocable taxes for 2012 and 2013 in the amount of \$79,009.87 and for 2014 taxes in the amount of \$43,069.36. Checks for those amounts have been delivered to Tutu Park, Ltd. The property taxes for 2015 have not yet been billed, but reserves will be set aside to pay these taxes (estimated to be \$14,356.44 based on

4/12 x \$43,069.36)<sup>5</sup>, disputed federal unemployment (Form 940) taxes (approximately \$732,000)<sup>6</sup>, and contemplated accounting fees (approximately \$30,000).

The Liquidating Partner's sixth bi-monthly report incorrectly stated (at p. 4) that Tutu Park, Ltd.'s claim for percentage rents in the amount of \$41,462.28 had been rejected when, in fact, that claim was paid on December 17, 2015 via CRA check no. 278 and a matching check was issued to Yusuf via CRA check no. 279. Copies of these checks were provided to Hamed and the Master with the submission of the sixth bi-monthly report.

To date, no Partnership Assets requiring liquidation beyond those described above have been identified by or to the Liquidating Partner.<sup>7</sup> Hamed has inquired about the disposition of ½ acre of unimproved land located on St. Thomas that is allegedly owned by the Partnership and more particularly described as Parcel No. 2-4 Rem. Estate Charlotte Amalie, No. 3 New Quarter, St. Thomas, as shown on OLG Map. No. D9-7044-T002 (the "Land"). Yusuf submits that the Land has been erroneously carried on the balance sheet of the Partnership, because the record owner of the Land, pursuant to a Warranty Deed dated July 26, 2006 and recorded August 24, 2006, was Plessen Enterprises, Inc. ("Plessen"), a corporation jointly owned by the Hamed and Yusuf families. The Land was encumbered by a mortgage dated August 24, 2006

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<sup>5</sup> If the Liquidating Partner determines that the Partnership is responsible to Tutu Park, Ltd. for additional rent in the form of taxes or otherwise, the Partnership would be obligated to pay United comparable amounts since the rent for the Plaza Extra East store was pegged to the rent for the Tutu Park store, as recognized in this Court's Memorandum Opinion and Order entered on April 27, 2015. For example, when \$79,009.87 and \$43,069.36 in real property taxes were paid to Tutu Park, Ltd., the Liquidating Partner and the Master authorized matching payments of \$89,442.92 and \$46,990.48 to United based on this formula. Accordingly, in addition to creating a \$14,356.44 reserve for the 2015 pro-rated real property taxes, a reserve for the matching payment to United should be created in the amount of \$9,812.14.

<sup>6</sup> The Liquidating Partner does not believe that any such taxes are actually due and owing.

<sup>7</sup> With the permission of the Master, a 2005 Toyota Camry owned by the Partnership and used primarily by Nejeah Yusuf in connection with his co-management of Plaza Extra Tutu Park was purchased by United on May 1, 2015 for the sum of \$5,000.

from Plessen to United in the face amount of \$330,000. Pursuant to a Deed In Lieu Of Foreclosure dated October 23, 2008 and recorded on March 24, 2009, Plessen conveyed the Land to United. Pursuant to a Release Of Mortgage dated October 23, 2008 and recorded on March 24, 2009, United released its mortgage covering the Land.<sup>8</sup> Copies of the Deed In Lieu Of Foreclosure and Release Of Mortgage have been provided to the Master and Hamed. Accordingly, the Liquidating Partner does not intend to pursue liquidation of the Land or the mortgage since the Partnership has no continuing interest in either.<sup>9</sup>

Hamed has claimed that the Liquidating Partner has “fail[ed] to identify a significant partnership asset, a Merrill-Lynch account that has in excess of \$300,000 in it, all of which came from Plaza Extra funds.” *See, e.g.*, Motion To Remove The Liquidating Partner filed by Hamed on January 29, 2016 at p. 6.<sup>10</sup> At page 3 of Yusuf’s September 3, 2015 Response to the Objection, Yusuf states:

At no time has Hamed provided the Liquidating Partner with any information establishing that a Merrill Lynch account in the name of a third party actually represents Partnership Assets. Hamed certainly does not explain why he only raised the prospect of such account 18 days after the filing of the third bi-monthly report. (footnote omitted).

<sup>8</sup> The fourth bi-monthly report contained dated information. After that report was filed, counsel for the Liquidating Partner learned of the subsequent conveyance of the Land to United.

<sup>9</sup> On August 18, 2015, Hamed filed a “Notice of Objection to Liquidating Partners Bi-Monthly Reports” (the “Objection”), which raised the issue of the Land, among other issues, but acknowledged that these issues would be addressed in the “claims portion” of the liquidation process. On September 3, 2015, Yusuf filed his Response to the Objection. On February 8, 2016, Hamed filed his “Notice of Objection to Liquidating Partner’s Sixth Bi-Monthly Report,” to which Yusuf replied on February 24, 2016.

<sup>10</sup> Yusuf filed his Opposition to that motion on February 17, 2016.

To date, the Liquidating Partner has been provided with no information whatsoever that even suggests the unidentified Merrill Lynch account was funded with Partnership money, contains any Partnership funds, or otherwise constitutes Partnership Assets.

An updated balance sheet was provided to counsel and the Master on February 6, 2015, as required by § 9, Step 4 of the Plan. Combined balance sheets and income statements for the Partnership as of April 30, 2016 and supporting general ledger, cash reconciliation, accounts receivable aging, and accounts payable aging information (collectively, the "Financial Information") have been provided to the Master and Hamed with this report. John Gaffney, an accountant who has been engaged on behalf of and paid by the Partnership, has compiled the Financial Information, which the Liquidating Partner believes is generally reliable and historically accurate.<sup>11</sup>

The pending litigation identified in Exhibit C to the Plan was updated by the more detailed list attached as Exhibit C-1 to the first bi-monthly report. The Liquidating Partner is attempting to establish appropriate reserves for all pending litigation<sup>12</sup> and any future litigation that may be filed within the two year statute of limitations period for personal injuries allegedly occurring prior to the transfer of the Plaza Extra Stores. Such reserves will be established out of the funds in the CRA.

On March 17, 2016, Yusuf, as Liquidating Partner, filed motions to consolidate three cases pending in the Superior Court, namely, *United Corporation v. Waheed Hamed*, Civ. No.

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<sup>11</sup> The submission of the Financial Information by the Liquidating Partner is not intended to impair or otherwise affect the right of either Partner to submit his proposed accounting and distribution plan contemplated by § 9, Step 6, of the Plan.

<sup>12</sup> An updated, more detailed list of pending litigation (Exhibit C-2) was previously provided to the Master and counsel for Hamed.

ST-13-CV-0000101, *United Corporation v. Waleed Hamed*, Civ. No. SX-13-CV-000003, and *United Corporation v. Wadda Charriez*, Civ. No. SX-13-CV-0000152, with this case since the claims asserted in these three cases “may be treated as claims for resolution in the liquidating process of the Partnership pursuant to the Plan adopted” in this case. For similar reasons, on March 21, 2016, the parties filed a stipulation to consolidate two cases pending in the Superior Court with this case, namely, *Hamed v. Yusuf*, Civ. No. SX-2014-CV-278, and *Hamed v. United Corporation*, Civ. No. SX-2014-CV-287.<sup>13</sup>

Section 9, Step 2, of the Plan requires the Liquidating Partner to “submit to Hamed and the Master each month a reconciliation of actual expenditures against the projected expenses set forth in Exhibit A. Unless the Partners agree or the Master orders otherwise, the Liquidating Partner shall not exceed the funds deposited in the Liquidated Expense Account.” That reconciliation was provided to the Master and Hamed with the third bi-monthly report. It reflected that the actual expenditures incurred through June 30, 2015 in winding up the Partnership and liquidating its assets were approximately \$4 million less than the projected expenses reflected in Exhibit A to the Plan. An updated reconciliation through August 31, 2015 was provided to the Master and Hamed with the filing of the fourth bi-monthly report reflecting a similar difference. An updated comparison through October 31, 2015 was provided to the Master and Hamed with the filing of fifth bi-monthly report. An updated comparison through December 31, 2015 was provided to the Master and Hamed with the filing of the sixth report, an updated comparison through February 29, 2016 was provided with the filing of the

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<sup>13</sup> By Order dated April 15, 2016, Civ. No. SX-2014-CV-287 was consolidated with this case.

seventh report, and an updated comparison through April 30, 2016 was provided with the filing of this report.

On October 15, 2015, the Master requested counsel for the Partners to submit a list of (a) any Partnership Assets other than the Plaza Extra Stores that require the attention of the Liquidating Partner or the Court for separation; and (b) any pending motions that affect the disposition of Partnership Assets. Counsel for the Partners submitted such lists to the Master on October 23, 2015 and reviewed such lists with the Master at a meeting on January 25, 2016. At such meeting, the parties discussed, among other issues, an invoice in the amount of \$57,605 from Dudley, Topper and Feuerzeig, LLP for services rendered to the Liquidating Partner after entry of the Wind Up Order through November 30, 2015 related to the Liquidating Partner's duties pursuant to § 4 of the Plan. The Liquidating Partner and the Master co-signed CRA check no. 281 on December 29, 2015 in payment of those fees.

Pursuant to a "Further Stipulation Regarding Motion to Clarify Order of Liquidation" filed with the Court on October 5, 2015 and "So Ordered" on November 13, 2015, the Partners stipulated that the Liquidating Partner will provide the Master and Hamed with the Partnership accounting required by § 5 of the Plan on November 16, 2015, which was done, and the Partners will submit their proposed accounting and distribution plans contemplated by § 9, Step 6, of the Plan to each other and the Master by March 3, 2016. At the request of Hamed, the Master extended the date for submission of the Partners' accounting and distribution plans until May 2, 2016. Subsequently, that deadline was further extended by the Master without a date certain.

Section 9, Step 4 of the Plan provides, in pertinent part, as follows: “Hamed’s accountant shall be allowed to view all partnership accounting information from January 2012 to present and to submit his findings to the Master.” Yusuf submits that Hamed’s accountants have not been prevented from viewing any Partnership accounting information for the relevant period. Instead of accepting John Gaffney’s proposal to have one of Hamed’s accountants work alongside him to facilitate their ability to review the relevant accounting information, Hamed’s accountants submitted 81 “Questions/Requests for Info” to Yusuf, and those requests were recently expanded even further. As reflected in his Reply to Plaintiff’s Notice of Objection to Liquidating Partner’s Seventh Bi-Monthly Report (page 5), Yusuf objects to these discovery requests to the extent they seek to interrogate Yusuf, through Mr. Gaffney, as opposed to simply seeking Mr. Gaffney’s assistance in accessing or reviewing partnership accounting information.

On May 17, 2016, Mr. Gaffney wrote a letter to counsel for Hamed, which accompanied his submission of responses to some of the document requests and questions from Hamed’s accountants. A copy of that letter is attached as **Exhibit 3**. After quoting Section 9, Step 4 of the Plan, Mr. Gaffney concludes his letter as follows:

To date, no one has been denied access to original records that we possess. Under the pending VZ requests, instead of being “allowed to view” the relevant partnership accounting information, I am being effectively requested to gather and spoon feed that information to VZ. I respectfully submit that my proposal to have a VZ accountant work on premises with the original records is much more consistent with the information access contemplated by the Plan than the process of my responding to the myriad information requests submitted by VZ.

The Master has reviewed and approves the process I have recommended.



Respectfully submitted this 31<sup>st</sup> day of May, 2016.

**DUDLEY, TOPPER and FEUERZEIG, LLP**

By: 

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Attorneys for Liquidating Partner

**CERTIFICATE OF SERVICE**

I hereby certify that on this 31<sup>st</sup> day of May, 2016, I caused the foregoing **Liquidating Partner's Eighth Bi-Monthly Report** to be served upon the following via e-mail:

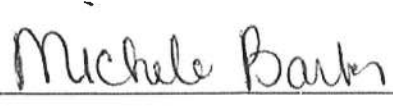
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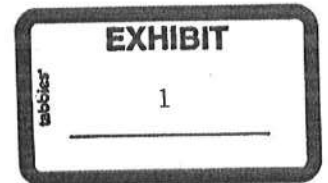
The Honorable Edgar A. Ross  
Email: [edgarrossjudge@hotmail.com](mailto:edgarrossjudge@hotmail.com)



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

\*\*\*\*

UNITED CORPORATION	)	CASE NO. ST-1997-CV-097
d/b/a PLAZA EXTRA,	)	
	)	ACTION FOR BREACH
Plaintiff,	)	OF CONTRACT
v.	)	
	)	JURY TRIAL DEMANDED
TUTU PARK LIMITED	)	
	)	
Defendant.	)	
<hr/>		
UNITED CORPORATION	)	CASE NO. ST-2006-CV-353
d/b/a PLAZA EXTRA,	)	
	)	ACTION FOR DAMAGES
Plaintiff,	)	AND INDEMNITY
v.	)	
	)	
TUTU PARK LIMITED	)	
	)	
Defendant.	)	
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**ORDER**

This matter is before the Court *sua sponte*.<sup>1</sup> During a status conference on November 16, 2015, this matter was scheduled for jury selection on October 31, 2016. The Court granted the parties' request for an additional 90-day stay of this case in order to facilitate settlement negotiations. The parties were informed that the Court would fix pretrial deadlines at the expiration of the 90-day stay. The 90-day stay has now expired.

Accordingly, it is

**ORDERED** that this matter remains scheduled for jury selection on October 31, 2016, at 9:00 a.m. in Courtroom III; and it is further

**ORDERED** that, on or before September 26, 2016, Plaintiff shall submit its portion of the Joint Final Pretrial Order to Defendant in accordance with LRCi 16.1 and Appendix 1 to LRCi 16.1;<sup>2</sup> and it is further

<sup>1</sup> Case Nos. ST-1997-CV-097 and ST-2006-CV-353 were consolidated by Court Order dated January 10, 2007.

<sup>2</sup> Local Rule of Civil Procedure 16.1 applies to this proceeding as a rule of last resort through the operation of Superior Court Rule 7. *Sweeney v. Ombres*, 60 V.I. 438, 442 (V.I. 2014). The Court elects to rely on the well-developed framework provided by LRCi 16.1 due to the absence of same from the Superior Court Rules.

Order

**ORDERED** that, on or before October 3, 2016, Defendant shall submit its portion of the Joint Final Pretrial Order to Plaintiff in accordance with LRCi 16.1 and Appendix 1 to LRCi 16.1; and it is further

**ORDERED** that the parties' fully completed and integrated Joint Final Pretrial Order in accordance with LRCi 16.1 and Appendix 1 to LRCi 16.1 and signed by both parties shall be filed with the Court by Plaintiff's attorney on or before October 17, 2016; and it is further

**ORDERED** that this matter is scheduled for a final pretrial conference on October 24, 2016 at 9:45 a.m. in Courtroom III; and it is further

**ORDERED** that a copy of this Order shall be directed to Attorney Carl A. Beckstedt, III, counsel for Plaintiff, and to Attorney Charles S. Russell, Jr., counsel for Defendant.

Dated: February 19, 2016

ATTEST:

Estrella H. George  
Acting Clerk of the Court

By: 

Lori Boynes-Fyson  
Court Clerk Supervisor 2/22/16



DENISE M. FRANCOIS  
Judge of the Superior Court  
of the Virgin Islands

CERTIFIED A TRUE COPY

DATE: 2/22/16

ESTRELLA H. GEORGE  
Acting Clerk of the Court

By: 

Camell A. Clarke  
Court Clerk II

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

<b>MOHAMMED HAMED and KAC357, INC., d/b/a</b>	)	
<b>PLAZA EXTRA,</b>	)	
	)	CASE NO. ST-2001-CV-0000361
Plaintiffs,	)	
vs.	)	ACTION FOR BREACH OF
	)	CONTRACT
<b>TUTU PARK LIMITED and P.I.D., INC.,</b>	)	
	)	JURY TRIAL DEMANDED
Defendants.	)	
	)	

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**THIRD AMENDED SCHEDULING ORDER**

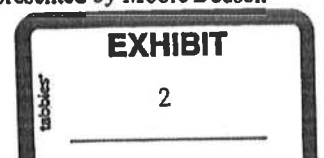
By Order dated February 19, 2016, this Court directed the parties<sup>1</sup> to meet and confer and draft a proposed third amended scheduling order within fourteen (14) days of entry of the Order. This Court having received and reviewed the parties' proposed Third Amended Scheduling Order filed on March 4, 2016 along with their Revised version filed on April 8, 2016, it is

**ORDERED** that the Second Amended Scheduling Order issued by the Court on February 24, 2015 is hereby **AMENDED**, and the parties shall adhere to the following schedule in this matter:

1. All Supplementary Responses to written discovery shall be filed in accordance with the time limits set forth in the Federal Rules of Civil Procedure;
2. All factual depositions have been completed;
3. Any reply by Plaintiffs to Defendants TPL and PID's March 29, 2016 Opposition to former Plaintiff United Corporation's Motion for Partial Summary Judgment shall be filed **on or before April 15, 2016**;
4. Plaintiffs' experts shall be identified and copies of their reports, and Rule 26(a)(2)(B) and Rule 26(a)(2)(C) materials shall be served upon Defendants **on or before May 27, 2016**;
5. Defendants' experts shall be identified and copies of their reports, and Rule 26(a)(2)(B) and Rule 26(a)(2)(C) materials shall be served on Plaintiffs **on or before July 8, 2016**;
6. All experts' depositions shall be completed **on or before August 12, 2016**;
7. Mediation shall be completed **on or before September 23, 2016**;
8. *Daubert* motions, together with supporting brief, and any motions for summary judgment, shall be filed and served **on or before September 2, 2016**. The parties do not agree on whether summary judgment motions may be filed following remand from the V.I. Supreme Court, and what issues they may address. It is Plaintiffs' position that such motions must be limited to

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<sup>1</sup> Plaintiffs are represented by John K. Dema, Esquire, and the Defendants are represented by Moore Dodson & Russell, P.C. (J. Daryl Dodson, of counsel).



matters that are unrelated to expert testimony and were not addressed in previous motion practice. It is Defendants' position that the Court should decide what issues may be addressed, in conformity with the V.I. Supreme Court's decision and instructions on remand, by ruling on the summary judgment motions ultimately submitted by the parties, and not through an advance ruling on what those motions may or may not contain. The parties reserve all rights and defenses in this regard;

9. Any brief in opposition to *Daubert* motions shall be filed and served **on or before September 21, 2016**, and replies shall be filed and served **on or before September 28, 2016**;

10. In accordance with LRCi 16.1 and Appendix 1 to LRCi 16.1, Plaintiffs shall submit their portion of the Joint Final Pretrial Order to Defendants **on or before October 28, 2016**;

11. In accordance with LRCi 16.1 and Appendix 1 to LRCi 16.1, Defendants shall submit their portion of the Joint Final Pretrial Order to Plaintiffs **on or before November 4, 2016**; and

12. The parties' Joint Final Pretrial Order, fully completed and integrated in accordance with LRCi 16.1 and Appendix 1 to LRCi 16.1 and signed by both parties, shall be filed with the Court by Plaintiffs **on or before November 11, 2016**; and it is further

**ORDERED** that this matter is hereby scheduled for a **final pretrial conference on Wednesday, January 18, 2017 at 9:30 a.m. in Courtroom III**; and it is further

**ORDERED** that all motions in *limine* shall be filed **at least twenty-one (21) days** prior to the date on which the trial is scheduled to commence; and it is further

**ORDERED** that this matter is hereby scheduled for **jury selection on Monday, January 23, 2017 at 9:00 a.m.** with trial to commence sometime during the following three-week jury period; and it is further

**ORDERED** that this Third Amended Scheduling Order shall not be modified except with good cause shown and the Court's approval; and it is further

**ORDERED** that a copy of this Third Amended Scheduling Order shall be directed to John K. Dema, Esquire, and Moore, Dodson & Russell, P.C. (Treston E. Moore, of counsel).

DATED: April 18, 2016  
*Nunc Pro Tunc* to March 4, 2016

ATTEST:  
**ESTRELLA H. GEORGE**  
Acting Clerk of the Court

  
**DENISE M. FRANCOIS**  
Judge of the Superior Court of the Virgin Islands

BY: \_\_\_\_\_  
**LORI BOYNES-TYSON**  
Court Clerk Supervisor \_\_\_\_/\_\_\_\_/\_\_\_\_



P.O. Box 763  
Christiansted, VI 00821

May 17, 2016

Joel Holt, Esq. P.C.  
2132 Company Street, Suite 2  
Christiansted, VI 00820

Dear Joel,

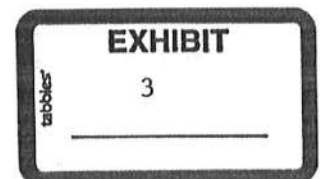
This letter accompanies my first submission of responses to document requests and questions from Vizcaino Zomerfeld (VZ). At this point I must point out the burdensome, time-consuming and expensive nature of these document requests. After reviewing my responses, you can decide yourself whether any of them serve in winding up the Partnership.

In our very first meeting with VZ in your office, I challenged the very extensive nature of the initial document request. Betty Martin, VZ Partner verbally backed off the initial request some. When I asked her about the scope of VZ's review, the answer was vague and you even questioned that scope in a later conversation with me in your office. We did establish that the scope did not include a full audit as I made it clear we did not have the resources for such work.

I suggested a less burdensome and more productive approach that Betty and her team thought could be implemented. The suggestion was to assign a junior level auditor who would work along with me. That was before the St. Thomas store auction. After the auction our challenge was overwhelming and would have likely crashed except for the assistance from Humphrey Caswell, former PE St. Thomas Controller.

Admittedly, there was a long gap between our initial meeting in March 2015 and beginning VZ field work in January 2016. During that gap, we completed the Kauffman Rossin DOJ review while I continued receiving extensive accounting record requests from VZ. But due to the extended time between the first and second meetings, I was able to provide most of the records. But doing so was so burdensome, time-consuming and expensive that I recommended again that I provide all accounting databases augmented with 6 month increments of original records. In other words, I would deliver 6 months of original records and upon review completion I would deliver the next 6 months and pick up the first 6 months.

To date the first 6 months of original records have not been returned nor have you requested the next 6 months. During our meeting in January 2016, I suggested again that someone be assigned to work closely with me, especially in response to VZ's request for detailed till stat reports. Instead of requesting the provision hundreds of detailed till stat reports, have someone from your team work with me to review a handful of such reports. Once done, I was confident VZ would conclude that reviewing hundreds was unnecessary just as Kauffman Rossin did during their review.



Keep in mind, the Hameds controlled the cash rooms and managed the cash registers in all three stores during my entire time with the company. The Yusufs were much less involved in this area and although I implemented the "sales journal" system, I had no indication that there were any weaknesses or other issues in the Hameds' management of the cash rooms and registers. Once someone from VZ duplicates the documents contained in the daily sales journals and the integrity therein, I'm confident they would see that a document request for hundreds of till stat detail reports is non-productive and unnecessarily time-consuming and expensive.

Similarly, the extensive requests for documents supporting expenditures including cancelled checks are questionable knowing that no payments were made without signatures from a member of each family. If the Hameds disputed an item, they simply refused to sign the check. Admittedly, we aren't able to provide many cancelled checks. Once you review my responses, you should clearly understand why. In view of the extent to which I've provided original bank records though, I question the intent behind continued requests for cancelled checks or bank statements that VZ knows we don't have, either because the Hameds retained possession or banks refused to provide them.

Your recent document requests and inquiries submitted last week appear to be legitimate as VZ has challenged or questioned some of my accounting decisions in winding up the Partnership. While I don't object to being challenged, I would like to say that I put off having to make some decisions as long as possible. I mentioned this in my meetings with VZ as well. The very request for VZ to assign someone to work with me was so we could discuss and make joint decisions on nominal issues.

For instance, after the March 8, 2015 East/West split there were employee loans that were extremely difficult to track and collect. Employees who owed money at PE East transferred to PE West and vice versa. While I offered to provide and may have even sent details to PE West, I assumed that some loans simply would not be collected. Or that if they were collected, I might not be informed of it as in the case of 3 payments by one employee at PE West who we followed up on a few months ago. Therefore, I made the decision to write them off with the plan of revisiting them when time allowed. There are adjustments (credits) however small that are due to the Partnership. But the time it takes to research these credits is being consumed in otherwise burdensome, time-consuming and expensive document requests.

With the provision of what I've done so far, I plan to take a leave of absence from any other work for the Partnership related to these document requests for at least one month in order to tend to other emergencies, many of which relate to the Partnership. Refer to my documents of ongoing PE challenges with taxing authorities which are being ignored due to VZ document requests.

Also, I request for VZ to return the original records consisting of the sales journals for PE East and West for the first 6 months of 2013 and after one month for VZ to assign someone who can work on premises (Plaza East) with original records to avoid the burdensome task of providing electronic copies. As you know, Section 9, Step 4 of the Plan simply provides that "Hamed's accountant shall be allowed to view all partnership accounting information from January 2012 to

present..." To date, no one has been denied access to original records that we possess. Under the pending VZ requests, instead of being "allowed to view" the relevant partnership accounting information, I am being effectively requested to gather and spoon feed that information to VZ. I respectfully submit that my proposal to have a VZ accountant work on premises with the original records is much more consistent with the information access contemplated by the Plan than the process of my responding to the myriad information requests submitted by VZ.

The Master has reviewed and approves the process I have recommended.

Sincerely,

  
John Gaffney



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  
JURY TRIAL DEMANDED



**REPLY TO PLAINTIFF'S NOTICE OF OBJECTION TO LIQUIDATING  
PARTNER'S EIGHTH BI-MONTHLY REPORT**

Defendant/counterclaimant Fathi Yusuf ("Yusuf"), as the Liquidating Partner,<sup>1</sup> through his undersigned counsel, respectfully submits this Reply to "Plaintiff's Notice of Objection to Liquidating Partner's Eighth Bi-Monthly Report" filed by plaintiff/counterclaim defendant Mohammad Hamed ("Hamed") on June 17, 2016<sup>2</sup> (the "Objection").

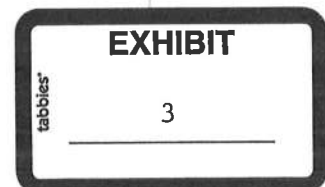
The Objection concludes with the following paragraph:

While the partnership's accountant, Mr. Gaffney, is no longer being asked for more documents, despite being paid to assist the Partnership on a full time basis, Hamed's CPA's have withdrawn the request for documents at this time and simply asked him to answer 130 very

DUDLEY, TOPPER  
AND FEUERZEIG, LLP  
1020 Frederiksberg Gade  
P.O. Box 756  
St. Thomas, U.S. V.I. 00004-0756  
(340) 774-4422

<sup>1</sup> Unless otherwise defined in this Reply, capitalized terms shall have the meaning provided for in this Court's "Final Wind Up Plan of the Plaza Extra Partnership" dated January 7, 2015 and entered on January 9, 2015 (the "Plan").

<sup>2</sup> On June 16, 2016, Hamed died. See Yusuf's Statement Noting Death of Mohammad Hamed filed on June 22, 2016. As a result of his death, any power of attorney given by Hamed to Waleed Hamed is terminated. See V.I. Code Ann. tit. 15, § 1265(a). Since no motion for substitution of a representative of the estate of Hamed has been filed to date, it is unclear on whose behalf counsel for Hamed is filing documents.



specific questions about the accounting methods and decisions. These (reduced) questions are required for a fundamental understanding of what decisions were made in generating the financials. It is estimated by the CPA's that these will take less than 40 hours (of the 160 + hours per month Mr. Gaffney is being paid by the Partnership) since the questions no longer have any extensive document requests.

Although counsel for Hamed sent the Master an email on June 23, 2016, one full week after his client's death,<sup>3</sup> requesting the Master to forward these "130 very specific questions" to Mr. Gaffney along with an instruction that he respond to them at his convenience, *see* email attached as Exhibit 1, the Master has not yet forwarded them to Mr. Gaffney with the requested instruction. For the reasons set forth in this Reply, Yusuf submits these unauthorized discovery requests are entirely improper.

To the extent that the Master chooses to forward these discovery requests as sought by counsel for Hamed, Yusuf objects to each and every one of them to the extent that they clearly seek to interrogate Yusuf, through Mr. Gaffney, as opposed to simply seeking Mr. Gaffney's assistance in accessing and reviewing the existing Partnership information from January 2012 to date. As this Court is well aware, discovery has been stayed in this case and Hamed should not be allowed to use his "130 very specific questions" to essentially propound interrogatories on Yusuf, through Mr. Gaffney.

The Plan merely gave Hamed's accountants a right of access "to view all Partnership accounting information from January 2012 to present." *See* § 9, Step 4 of the Plan. It did not

<sup>3</sup> Notwithstanding the death of his client, counsel continues to proceed as if his client has not died or as if a representative has already been appointed for the estate of his deceased client and that representative has been substituted in this case. Yusuf strongly objects to counsel's continued prosecution of this matter when he currently has no client to prosecute the matter.

give Hamed's accountants the right to propound "130 very specific questions" or to conduct such inquiries as they set fit to gain "a fundamental understanding of what decisions were made in generating the financials." In March of 2015, John Gaffney proposed to provide the access contemplated by the Plan by allowing Hamed's accountants to work on the premises with him and the original documents. *See* letter dated May 17, 2016 from John Gaffney to Joel Holt attached as Exhibit 3 to the Liquidating Partner's Eighth Bi-Monthly Report. Instead of accepting that proffered access, Hamed's accountants first propounded 81 "questions/request for info," which has now grown to "130 very specific questions." Mr. Gaffney's letter to Attorney Holt concludes with the sentence: "The Master has reviewed and approves the process I have recommended." That process -- to have one of Hamed's accountants work on premises with Mr. Gaffney and the original records - is inconsistent with the process contemplated by the "130 very specific questions," which is another example of counsel for Hamed engaging in unauthorized discovery.

Moreover, the 130 questions do not "need" to be answered in order for Hamed's accountants to be "allowed to view all Partnership accounting information from January 2012 to present." Yusuf's experts never propounded any such questions to Mr. Gaffney. In fact, the amount of time Mr. Gaffney has spent compiling information for and answering questions from Yusuf's experts represents only a tiny fraction of the amount of time he has spent doing the same for Hamed's accountants. The Plan merely provides Hamed's accountants with a right of access, not inquisition rights. That access was offered to Hamed's accountants more than 15 months ago and they have squandered that opportunity. If Hamed's accountants claim

Hamed v. Yusuf, et al.  
Civil No. SX-12-CV-370  
Page 4

a need to review accounting information during the applicable period, they should be ordered to immediately accept the offer of access made more than one year ago or be foreclosed from further demands on the limited resources of the Liquidating Partner.

For all of the foregoing reasons, Yusuf respectfully requests this Court to overrule Hamed's Objection to the eighth bi-monthly report and provide such further relief as is just and proper under the circumstances.

Respectfully submitted,

**DUDLEY, TOPPER and FEUERZEIG, LLP**

DATED: July 1, 2016

By: 

Gregory H. Hodges (V.I. Bar No. 174)  
1000 Frederiksberg Gade  
P.O. Box 756  
St. Thomas, VI 00804  
Telephone: (340) 715-4405  
Telefax: (340) 715-4400  
E-mail: [ghodges@dtflaw.com](mailto:ghodges@dtflaw.com)

Attorneys for Fathi Yusuf, the Liquidating Partner

**DUDLEY, TOPPER  
AND FEUERZEIG, LLP**  
1000 Frederiksberg Gade  
P.O. Box 756  
St. Thomas, U.S. V.I. 00804-0756  
(340) 774-4422

Hamed v. Yusuf, et al.  
Civil No. SX-12-CV-370  
Page 5

**CERTIFICATE OF SERVICE**

I hereby certify that on this 1<sup>st</sup> day of July, 2016, I caused the foregoing **Reply To Plaintiff's Notice Of Objection To Liquidating Partner's Eight Bi-Monthly Report** to be served upon the following via e-mail:

Joel H. Holt, Esq.  
**LAW OFFICES OF JOEL H. HOLT**  
2132 Company Street  
Christiansted, V.I. 00820  
Email: [holtvi@aol.com](mailto:holtvi@aol.com)

Carl Hartmann, III, Esq.  
5000 Estate Coakley Bay, #L-6  
Christiansted, VI 00820  
Email: [carl@carlhartmann.com](mailto:carl@carlhartmann.com)

Mark W. Eckard, Esq.  
Eckard, P.C.  
P.O. Box 24849  
Christiansted, VI 00824  
Email: [mark@markeckard.com](mailto:mark@markeckard.com)

Jeffrey B.C. Moorhead, Esq.  
C.R.T. Building  
1132 King Street  
Christiansted, VI 00820  
Email: [jeffreymlaw@yahoo.com](mailto:jeffreymlaw@yahoo.com)

The Honorable Edgar A. Ross  
Email: [edgarrossjudge@hotmail.com](mailto:edgarrossjudge@hotmail.com)

Michelle Barber

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**Michele Barber**

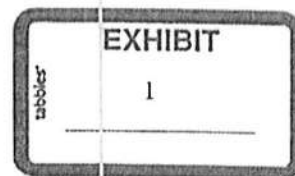
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**From:** Joel Holt <holtvi@aol.com>  
**Sent:** Thursday, June 23, 2016 2:18 PM  
**To:** edgarrossjudge@hotmail.com  
**Cc:** Gregory H. Hodges; dewoodlaw@gmail.com; dewoodlaw@me.com; carl@carlhartmann.com  
**Subject:** Plaza  
**Attachments:** REVISED FINAL - All Request to J Gaffney re items.docx; 242-a--Expenditures by NejeH from large STT safe-2.pdf; 340-a--Rent collected by NejeH from Triumphant Church-2.pdf; 358-a--Gift certificates from STT Tutu-2.pdf

Dear Judge Ross:

As we have agreed, since we are independently pursuing the bank and vendor records, we have removed the document demands to Gaffney. Attached is a revised set of our CPA's questions which remove those demands. This will, hopefully, end the complaints about the burden on his time. The questions themselves should be answerable in under one week according to our CPA's and are necessary to their doing the review the Court has allowed. Please forward them to Mr. Gaffney and ask that he respond to them at his convenience, as he is being paid full-time to do such work for the Partnership.

Joel H. Holt, Esq.  
2132 Company Street  
Christiansted, St. Croix  
U.S. Virgin Islands 00820  
(340) 773-8709





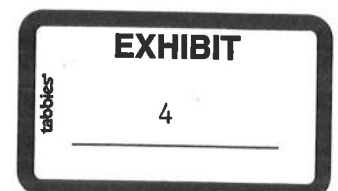
**Michele Barber**

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**From:** Joel Holt <holtvi@aol.com>  
**Sent:** Monday, March 13, 2017 6:43 AM  
**To:** Gregory H. Hodges; Stefan B. Herpel; Charlotte Perrell  
**Subject:** Plaza  
**Attachments:** hamed.wally.2017 03 13 Scheduling Stip.docx

Attached is our proposed scheduling order—let me know your thoughts so we can hopefully decide how to proceed with the Court.

Joel H. Holt, Esq.  
2132 Company Street  
Christiansted, St. Croix  
U.S. Virgin Islands 00820  
(340) 773-8709





**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 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

**MOHAMMAD HAMED**,

*Plaintiff,*  
vs.

**FATHI YUSUF**,

*Defendant.*

Case No.: SX-2014-CV-278

**ACTION FOR DEBT AND  
CONVERSION  
JURY TRIAL DEMANDED**

**PROPOSED SCHEDULING ORDER**

**COMES NOW** the parties by their undersigned counsel, after conferring as required by Rule 26, and hereby submit the following proposed scheduling plan, which expressly subject to the approval of this Court:

1. The parties will update their respective Rule 26 Self Disclosures by **April 15, 2017**, and shall continue to do so as required by Rule 25.

2. Prior to conducting any further discovery, the Liquidating Partner will make John Gaffney available to the Plaintiff's accountants between the current date and **May 15, 2017**, so that those accountants can complete their accounting for the 2013-2016 time period. Gaffney shall meet the accountants forthwith and shall promptly provide response to all questions submitted. The Plaintiff's accountants shall any revisions to their prior report no later than **June 30, 2017**.
3. The parties will conduct written discovery, which is to be sent by **July 30, 2017**, with each party allowed 25 more interrogatories each in addition to any previously filed.
4. Depositions shall not be done prior to June 15, 2017, but are then to be completed by **November 15, 2017**. It is expressly agreed that the Liquidating Partner as well as Maher Yusuf can be re-deposed. Further, the parties agree that the limit on the number of such additional depositions shall be 15 for each side.
5. Each party will file expert disclosures pursuant to Federal Rule of Civil Procedure 26(a)(2) on any issue in which they have the affirmative burden of proof by **February 28, 2018**. Responsive Expert Reports will be filed by **April 30, 2018**. Expert Depositions will be taken after all reports are received but before **July 15, 2018**.
6. Any additional dispositive motion or Daubert motion shall be filed no later **August 30, 2018**.
7. Mediation shall be completed no later than **September 30, 2018**.

8. The earliest date by which this case should be reasonably be expected to be ready for trial shall be **December, 2018.**

**Dated:** March \_\_, 2017

---

**Joel H. Holt, Esq.**  
*Counsel for Plaintiff*  
Law Offices of Joel H. Holt  
2132 Company Street,  
Christiansted, VI 00820  
Email: holtvi@aol.com  
Tele: (340) 773-8709  
Fax: (340) 773-8677

**Carl J. Hartmann III, Esq.**  
*Co-Counsel for Plaintiffs*  
5000 Estate Coakley Bay, L-6  
Christiansted, VI 00820  
Email: carl@carlhartmann.com

March \_\_, 2017

---

**Gregory H. Hodges**  
**Stephen Herpal**  
**Charlotte Perrell**  
*Counsel for Defendants*  
Law House, 10000 Frederiksberg Gade  
P.O. Box 756  
St. Thomas, VI 00802  
ghodges@dtflaw.com

### **CERTIFICATE OF SERVICE**

I hereby certify that on this \_\_ day of March, 2017, I served a copy of the foregoing by email, as agreed by the parties, on:

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

**Mark W. Eckard**  
Hamm, Eckard, LLP  
5030 Anchor Way  
Christiansted, VI 00820  
mark@markeckard.com

**Jeffrey B. C. Moorhead**  
CRT Brow Building  
1132 King Street, Suite 3  
Christiansted, VI 00820  
jeffreymlaw @yahoo.com

---

## Michele Barber

---

**From:** Gregory H. Hodges  
**Sent:** Wednesday, March 15, 2017 4:08 PM  
**To:** 'Joel Holt'  
**Cc:** 'carl@carlhartmann.com'; 'Kim Japinga'; Stefan B. Herpel; Charlotte Perrell  
**Subject:** RE: Proposed Scheduling Order  
**Attachments:** 1751957-PROPOSED SCHEDULING ORDER.FFD.DOCX

Your proposed scheduling order is unacceptable primarily because it effectively assumes no continuing role for the Master and Judge Brady in the claims resolution process. Attached is our proposed scheduling order, which assumes the continuing roles of the Master and Judge Brady, as contemplated under the Plan. Given the motion filed today to terminate the Master's role, which will be opposed, I doubt there is much we can agree upon, but let me know if you think a conversation might be helpful in reaching any common ground.

Gregory H. Hodges  
Dudley, Topper and Feuerzeig, LLP  
Law House, 1000 Frederiksberg Gade  
St. Thomas, VI 00802  
Direct: (340) 715-4405  
Fax: (340) 715-4400  
Web: [www.DTFLaw.com](http://www.DTFLaw.com)

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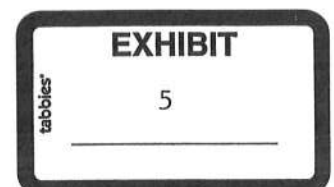
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**From:** Gregory H. Hodges  
**Sent:** Wednesday, March 15, 2017 10:03 AM  
**To:** 'Joel Holt'; Stefan B. Herpel; Charlotte Perrell  
**Cc:** [carl@carlhartmann.com](mailto:carl@carlhartmann.com); Kim Japinga  
**Subject:** RE: Plaza

Will do-later today or tomorrow.

Gregory H. Hodges  
Dudley, Topper and Feuerzeig, LLP  
Law House, 1000 Frederiksberg Gade  
St. Thomas, VI 00802  
Direct: (340) 715-4405  
Fax: (340) 715-4400



Web: [www.DTFLaw.com](http://www.DTFLaw.com)

Member

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THIS MESSAGE IS INTENDED ONLY FOR THE USE OF THE INDIVIDUAL OR ENTITY OR ENTITY TO WHICH IT IS ADDRESSED AND MAY CONTAIN INFORMATION THAT IS PRIVILEGED, CONFIDENTIAL, AND EXEMPT FROM DISCLOSURE UNDER APPLICABLE LAW. If the reader of this message is not the intended recipient, you are hereby notified that any dissemination, distribution, forwarding or copying of this communication is strictly prohibited. If you have received this communication in error, please notify the sender immediately by e-mail or telephone and delete the original message immediately. Thank you.

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**From:** Joel Holt [<mailto:holtvi@aol.com>]  
**Sent:** Wednesday, March 15, 2017 6:10 AM  
**To:** Gregory H. Hodges; Stefan B. Herpel; Charlotte Perrell  
**Cc:** [carl@carlhartmann.com](mailto:carl@carlhartmann.com); Kim Japinga  
**Subject:** Fwd: Plaza

Can you please respond to the proposed scheduling order I sent early last Monday?

Joel H Holt  
2132 Company St.  
Christiansted, VI 00820  
340-773-8709

Begin forwarded message:

**From:** Joel Holt <[holtvi@aol.com](mailto:holtvi@aol.com)>  
**Date:** March 13, 2017 at 6:43:21 AM AST  
**To:** [ghodges@dtflaw.com](mailto:ghodges@dtflaw.com), [sherpel@dtflaw.com](mailto:sherpel@dtflaw.com), [cperrell@dtflaw.com](mailto:cperrell@dtflaw.com)  
**Subject:** Plaza

Attached is our proposed scheduling order—let me know your thoughts so we can hopefully decide how to proceed with the Court.

Joel H. Holt, Esq.  
2132 Company Street  
Christiansted, St. Croix  
U.S. Virgin Islands 00820  
(340) 773-8709

**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,

vs.

FATHI YUSUF and UNITED CORPORATION,

Defendants/Counterclaimants,

vs.

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

Additional Counterclaim Defendants.

---

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

Plaintiff,

v.

UNITED CORPORATION,

Defendant.

---

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

Plaintiff,

v.

FATHI YUSUF,

Defendant.

---

CIVIL NO. SX-12-CV-370

ACTION FOR DAMAGES,  
INJUNCTIVE RELIEF  
AND DECLARATORY RELIEF

**Consolidated With**

CIVIL NO. SX-14-CV-287

ACTION FOR DAMAGES  
AND DECLARATORY RELIEF

CIVIL NO. SX-14-CV-278

ACTION FOR DEBT  
AND CONVERSION

**JURY TRIAL DEMANDED**

**PROPOSED SCHEDULING ORDER**

COME NOW the parties, by their undersigned counsel, and hereby submit the following proposed scheduling plan, subject to the Court's approval:

1. Pursuant to the Final Wind Up Plan of the Plaza Extra Partnership (the "Plan")<sup>1</sup> approved by this Court in an Order entered on January 9, 2015, the Master is charged with reviewing the Partners' proposed accounting and distribution plans and then making a report and recommendation to the Court for final determination. *See* Plan, §9, Step 6.

2. The Partners are directed to serve the Master and each other with a response to the September 30, 2016 submissions made by the other Partner in response to the August 31, 2016 and September 22, 2016 directives of the Master (along with any amendments or supplements thereto) (collectively, the "September 30 Submissions") within twenty (20) days after entry of this Order. Only notice of such responses shall be filed in this Court. In their responses, the Partners shall identify each disputed claim and state whether there is a need for further discovery before such claim should be addressed by the Master in his report and recommendation and, if so, the nature of the discovery required, e.g., written discovery, deposition discovery or some combination thereof.

3. As to those matters that require further written discovery, the Partners shall serve written discovery tailored to those issues by **May 15, 2017**.

4. Depositions shall be completed by **October 1, 2017**.

5. The Partners shall serve each other and the Master with a final supplementation of the September 30 Submissions by **November 15, 2017**. Only notice of service of such supplementation shall be filed in this Court.

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<sup>1</sup> Unless otherwise defined, capitalized terms shall have the same meaning as provided for in the Plan.



6. The Master is authorized to modify the foregoing schedule after consulting with counsel for the Partners and for good cause. The Master is further authorized to resolve in the first instance all discovery or other disputes concerning the Partners' competing accounting claims and distribution plans. To the extent the Master determines that live testimony may be helpful in making his report and recommendation, he shall schedule a hearing at which the Partners may present evidence on any issue that the Master determines requires a hearing.

7. The Master shall endeavor to submit his report and recommendation, as provided in § 9, Step 6 of the Plan, to the Court by **January 30, 2018**.

**THE LAW OFFICES OF JOEL H. HOLT**

Dated: March \_\_\_\_\_, 2017

---

Joel H. Holt  
2132 Company Street  
Christiansted, VI 00820  
Email: holtvi@aol.com  
Telephone: (340) 773-8709  
Facsimile: (340) 773-8677

*Attorneys for Plaintiff*

**DUDLEY, TOPPER and FEUERZEIG, LLP**

Dated: March \_\_\_\_\_, 2017

---

Gregory H. Hodges (V.I. Bar No. 174)  
Stefan B. Herpel (V.I. Bar No., 1019)  
Charlotte K. Perrell (V.I. Bar No. 1281)  
1000 Frederiksberg Gade  
P.O. Box 756  
St. Thomas, VI 00804  
Telephone: (340) 715-4405  
Telefax: (340) 715-4400  
E-mail: ghodges@dtflaw.com

*Attorneys for Fathi Yusuf  
and United Corporation*

**CERTIFICATE OF SERVICE**

I hereby certify that on the \_\_th day of March, 2017, I served the foregoing **PROPOSED SCHEDULING ORDER** via e-mail addressed to:

Mark W. Eckard, Esq.  
Eckard, P.C.  
P.O. Box 24849  
Christiansted, VI 00824  
Email: mark@markeckard.com

Jeffrey B.C. Moorhead, Esq.  
C.R.T. Building  
1132 King Street  
Christiansted, VI 00820  
Email: jeffreymlaw@yahoo.com

The Honorable Edgar A. Ross  
Email: edgarrossjudge@hotmail.com

**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,** )  
 )  
Additional Counterclaim Defendants. )  
 )  
\_\_\_\_\_ )

CIVIL NO. SX-12-CV-370

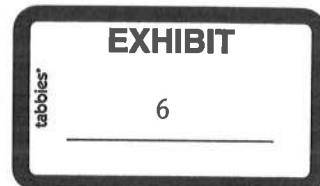
ACTION FOR DAMAGES,  
INJUNCTIVE RELIEF  
AND DECLARATORY RELIEF

**DECLARATION OF JOHN GAFFNEY**

I, John Gaffney, pursuant to 28 USC § 1746 and Super. Ct. R. 18, under the penalties of perjury, state and affirm that the following is true and correct:

1. I am the Senior Controller of United Corporation d/b/a Plaza Extra. As such, my duties include the collection, supervision and updating of accounting data and financial information concerning, among other things, the three supermarket stores known as Plaza Extra-East, Plaza Extra-Tutu Park, and Plaza Extra-West.

2. I have been shown a declaration of Joel H. Holt dated January 28, 2016 attached as Exhibit 8 to "Plaintiff's Motion and Memorandum In Support Thereof To Remove The Liquidating Partner" (the "Motion"). I prepared the "Summary of Remaining Partnership Items For the Period From Jan 1, 2013 to Sept 30, 2015" (the "Summary") that was included as a part of the Partnership accounting provided to the Partners, Mohammad Hamed and Fathi Yusuf,



and the Master on November 16, 2015 and which was attached as Exhibit 6 to the Motion. The purpose of the Summary was to explain the Partnership debits and credits for the period from January 1, 2013 to September 30, 2015 with respect to the three Plaza Extra stores. The Summary was delivered to Attorney Holt on or about November 16, 2015 when I delivered a check payable to Mr. Hamed in the amount of \$183,381.91 to Attorney Holt. While I did not provide the "back up" for the Summary at that time, I did inform Attorney Holt that I would do so in connection with the next bi-monthly report that was due at the end of November. Furthermore, I told him I would be happy to answer any questions and provide whatever support was needed immediately, if he so desired. Attorney Holt did not ask to meet with me until we met on January 25, 2016.

3. The \$119,529.01 entry reflected on the Summary represents the cumulative total of gross receipts taxes and insurance paid by the Partnership, through Plaza Extra-East, from January 1, 2013 through March 8, 2015 on behalf of the United Shopping Center. Mr. Yusuf has steadfastly objected to any effort to claim that United Corporation owed this to Plaza Extra-East because he contends his original agreement with Mr. Hamed was that Plaza Extra-East would pay all gross receipts taxes and insurance on behalf of the United Shopping Center. Since I began providing accounting services with respect to the Plaza Extra Stores, I have never found any evidence that the United Shopping Center ever previously paid or reimbursed Plaza Extra-East for such gross receipts taxes and insurance.

4. The \$72,984.02 "discrepancy" addressed in ¶ 4 of the declaration of Attorney Holt relates to two invoices in the amount of \$59,867.02 (for condensers ordered for Plaza Extra-East in 2014) and \$13,117 (for shopping carts ordered for Plaza Extra-East). At an initial meeting between Judge Ross, Attorney Holt, and me, I was instructed by Judge Ross to credit


the Partnership for these two invoices. While I informed Judge Ross that Mr. Yusuf would object, I did in fact credit the Partnership as instructed. Later, after much back and forth between the Partners and their representatives, at a meeting between Judge Ross, Mr. Yusuf and me on October 1, 2015, Judge Ross instructed me to take out the credits previously provided to the Partnership for the condensers and shopping carts. I informed Judge Ross that I would maintain visibility of this disputed transaction by simply posting offsetting charges.

5. When we met on January 25, 2016, Attorney Holt appeared to be confused over the \$186,819.33 entry reflected on the Summary. This entry is a stated liability from United Corporation to the shareholders on the books of Plaza Extra-Tutu Park. I did not say to Attorney Holt that I "had no idea why this amount was on this ledger." I know why it was reflected on the ledger because it was carried over from the previous books and records of the corporation. What I did say was that no audit trail exists to validate the transactions giving rise to this liability as they occurred many years ago. I went on to say that it is not uncommon for audit trails to disappear over long periods of time and accountants generally except the validity of such items since they are reported on tax returns, as was this entry. The accounting records of United Corporation originally reflected the account as "Due to/from Shareholders." After the retroactive establishment of the Partnership, I added an account called "Due to/from Hamed" and changed the "Shareholders" reference to Yusuf to avoid confusion over the shareholders versus partners.

6. Attorney Holt's confusion over the balance of \$186,819.33 reported on the balance sheet of Plaza Extra-Tutu Park on December 31, 2012 appeared to be due, in part, to his comparison of the balance sheet of Plaza Extra-Tutu Park with the Combined balance sheets of all three stores. I told him not to compare the "St. Thomas" and "Combined" balance sheets

as it was tantamount to comparing balance sheets of different companies. The fact that the balance on the combined balance sheet was \$117,644.33 on December 31, 2013 was very clear to me, but unfortunately, not for Attorney Holt. The difference of \$69,175.00 is simply an offsetting amount on the Plaza Extra-West balance sheet. Even after I pointed out to Attorney Holt that the \$186,819.33 had not changed on the Plaza Extra-Tutu Park balance sheet, he remained confused. Attached as Exhibits A, B, and C are balance sheets I have produced for Plaza Extra-Tutu Park, Plaza Extra-West, and Combined. The \$69,175 shown on Plaza Extra-West balance sheet relates to money Mr. Yusuf owed to the Partnership for 2012 tax extension payments originally charged to shareholder distributions. If you look at the Summary (Exhibit 6 to the Motion), there is an "A/C 14000" settlement amount for Plaza Extra-West. By the reconciliation date in 2015, other transactions obscured the \$69,175 from the earlier year. One such transaction was the reporting of the ByOrder Investments series of transactions. When I started to explain this, it appeared that Attorney Holt was even further confused. I then asked him to allow me to explain it to Mr. Hamed's accountants to eliminate any confusion and resulting suspicion. Although Attorney Holt appeared to be satisfied with this suggestion, I have never been asked to provide any further explanation. The ByOrder monies were received in 2014 and 2015. With each cash receipt, Mr. Hamed was issued a check for his 31% interest, while Mr. Yusuf was not issued a check for his percentage interest. Therefore, the \$69,175 Mr. Yusuf originally owed to Plaza Extra-West eventually became the \$120,167.33 Plaza Extra-West owed to Mr. Yusuf, as reflected in the Summary.

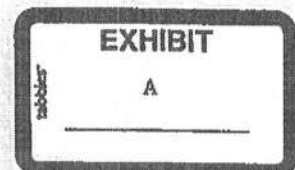
Dated: February 16, 2016

  
\_\_\_\_\_  
John Gaffney

United Corporation STT (Pship)  
Balance Sheet  
As of December 31, 2013 and Prior Year

	<u>As of 12/31/13</u>	<u>As of 12/31/12</u>
<b>ASSETS</b>		
<b>Current Assets</b>		
10000 Cash - Petty	\$ 10,000.00	\$ 10,000.00
10100 Cash - Registers	5,000.00	5,000.00
10200 Cash - Safe	61,000.00	61,000.00
10300 Cash - Bank Op'g 2010	325,585.62	20,106.91
10350 Cash - Bank Payroll 0640	18,894.76	10,523.05
10400 Cash - Bank CC 6143	53,203.15	306,646.08
10500 Cash - Bank Telohk 6719	116,760.40	107,890.35
11000 Accounts Receivable - Trade	14,083.33	0.00
12000 Inventory	2,184,104.30	2,008,308.64
13100 Prepaid Insurance	119,989.70	63,398.58
14000 Due from (to) STT's Yusuf	(186,819.33)	(186,819.33)
14100 Due from (to) Plaza East	(126,480.79)	0.00
14300 Due from (to) Plaza West	117,689.46	0.00
<b>Total Current Assets</b>	<b>2,713,010.60</b>	<b>2,406,054.28</b>
<b>Property and Equipment</b>		
16100 Leasehold Improvements	4,188,558.00	4,188,558.00
16200 Fixtures & Store Equipment	2,253,883.85	2,247,158.00
16400 Security Equipment	99,335.60	95,180.00
16500 Vehicles & Transport Equipment	25,800.00	25,800.00
16900 Accum Depreciation	(4,201,529.00)	(4,092,580.00)
<b>Total Property and Equipment</b>	<b>2,366,048.45</b>	<b>2,464,116.00</b>
<b>Other Assets</b>		
17000 Land	330,000.00	330,000.00
19000 Deposits	37,962.40	37,962.40
<b>Total Other Assets</b>	<b>367,962.40</b>	<b>367,962.40</b>
<b>Total Assets</b>	<b>\$ 5,447,021.45</b>	<b>\$ 5,238,132.68</b>

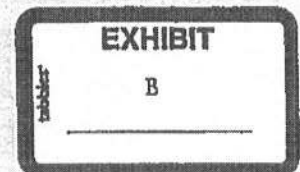
Unaudited - For Management Purposes Only



**United Corporation West (Pship)**  
**Balance Sheet**  
**As of December 31, 2013 and Prior Year**

	<u>As of 12/31/13</u>	<u>As of 12/31/12</u>
<b>ASSETS</b>		
<b>Current Assets</b>		
10000 Cash - Petty	\$ 10,000.00	\$ 10,000.00
10100 Cash - Registers	14,435.00	14,435.00
10200 Cash - Safe	36,032.00	80,000.00
10300 Cash - Bank Op'g 6269	(672,207.87)	(613,302.06)
10400 Cash - Bank CC 3789	351,196.21	583,059.33
10500 Cash - Bank Telchk 2918	2,343,033.13	2,246,391.86
11000 Accounts Receivable - Trade	21,738.20	0.00
12000 Inventory	4,259,525.49	4,242,815.36
13100 Prepaid Insurance	83,679.76	73,059.38
13400 Due from Employees - Loans	62,561.39	0.00
14000 Due from (to) Yusuf	69,175.00	0.00
14100 Due from (to) Plaza East	(365,262.10)	0.00
14400 Due from (to) Plaza STT	(117,689.46)	0.00
14500 Due from (to) Shopping Ctr	900,000.00	0.00
15100 Marketable Securities - BPPR	37,767,429.03	43,069,015.83
15150 Unrealized (Gain) Loss - BPPR	(2,324,369.86)	(3,778,720.41)
15200 Marketable Securities - ML	336,378.45	201,293.74
15250 Unrealized (Gain) Loss - ML	0.00	1,611,901.72
	<b>42,775,654.37</b>	<b>47,739,949.75</b>
<b>Property and Equipment</b>		
16000 Buildings	3,478,103.00	3,478,103.00
16200 Fixtures & Store Equipment	2,977,514.00	2,977,514.00
16400 Security Equipment	109,333.00	109,333.00
16900 Accum Depreciation	(4,272,215.00)	(4,183,036.00)
	<b>2,292,735.00</b>	<b>2,381,914.00</b>
<b>Other Assets</b>		
19000 Deposits	10,000.50	10,000.50
19200 Due from (to) Peter's Farm	1,598,689.00	1,527,708.00
19300 Due from (to) Plessen	5,004,610.00	5,089,018.00
19400 Due from (to) Sixteen Plus	140,719.62	87,004.26
19500 Due from (to) DAAS Corp	0.00	327,500.00
	<b>6,754,019.12</b>	<b>7,041,230.76</b>
<b>Total Assets</b>	<b>\$ 51,822,408.49</b>	<b>\$ 57,163,094.51</b>

Unaudited - For Management Purposes Only

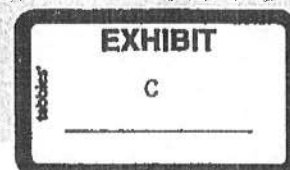




Plaza Extra Supermarkets  
Combined Balance Sheet  
As of December 31, 2013 and Prior Year

ASSETS	<u>As of 12/31/13</u>	<u>As of 12/31/12</u>
<b>Current Assets</b>		
10000 Cash - Petty	\$ 30,000.00	\$ 30,000.00
10100 Cash - Registers	33,870.00	33,870.00
10200 Cash - Safe	177,032.00	221,000.00
10300 Cash in Bank - Operating	(923,160.09)	(1,519,575.21)
10350 Cash in Bank - Payroll	18,894.76	10,523.05
10400 Cash in Bank - CC Deposit	932,533.54	1,454,852.93
10500 Cash in Bank - Telecheck	7,703,852.96	4,171,924.43
10900 Cash Clearing - Transfers	4,450.00	0.00
11000 Accounts Receivable - Trade	43,528.26	0.00
12000 Inventory	9,553,982.58	9,443,569.48
13100 Prepaid Insurance	278,216.83	200,320.86
13400 Due from Employees - Loans	75,006.39	(0.04)
14000 Due from (to) Shareholders	(117,644.33)	(186,819.33)
14100 Due from (to) Plaza East	(491,742.89)	0.00
14300 Due from (to) Plaza West	482,951.56	0.00
14400 Due from (to) Plaza STT	8,791.33	0.00
14500 Due from (to) Shopping Ctr	(391,409.69)	0.00
15100 Marketable Securities - BPPR	37,767,429.03	43,069,015.83
15150 Unrealized (Gain) Loss - BPPR	(2,324,369.86)	(3,778,720.41)
15200 Marketable Securities - ML	336,378.45	201,293.74
15250 Unrealized (Gain) Loss - ML	0.00	1,611,901.72
	53,198,590.83	54,963,157.05
<b>Total Current Assets</b>		
<b>Property and Equipment</b>		
16000 Buildings	3,478,103.00	3,478,103.00
16100 Leasehold Improvements	4,214,919.00	4,214,919.00
16200 Fixtures & Store Equipment	7,377,032.21	7,293,445.00
16400 Security Equipment	298,600.60	294,445.00
16500 Vehicles & Transport Equipment	57,050.50	57,050.50
16900 Accum Depreciation	(10,677,021.00)	(10,465,458.00)
	4,748,684.31	4,872,504.50
<b>Total Property and Equipment</b>		
<b>Other Assets</b>		
17000 Land	330,000.00	330,000.00
19000 Deposits	57,963.40	57,963.40
19100 Investment - Laundromat	0.00	0.00
19150 Investment - Mattress Pal LLC	0.00	0.00
19200 Due from (to) Peter's Farm	1,598,689.00	1,527,708.00
19300 Due from (to) Plessen	5,004,610.00	5,089,018.00
19400 Due from (to) Sixteen Plus	140,719.62	87,004.26
19500 Due from (to) DAAS Corp	0.00	327,500.00
19600 Due from (to) Royal Furniture	0.00	0.00
	7,131,982.02	7,419,193.66
<b>Total Other Assets</b>		
	\$ 65,079,257.16	\$ 67,254,855.21
<b>Total Assets</b>		

Unaudited - For Management Purposes Only



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

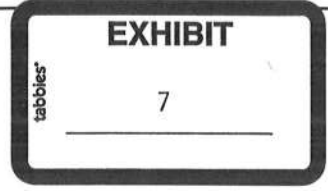
MOHAMMAD HAMED, by his ) SX-12-CV-370  
authorized agent WALHEED )  
HAMED, )  
Plaintiff/Counterclaim Defendant, )  
v. )  
FATHI YUSUF and UNITED )  
CORPORATION, )  
Defendants/Counterclaimants, )  
v. )  
WALEED HAMED, WAHEED HAMED, )  
MUFEED HAMED, HISHAM HAMED, and )  
PLESSEN ENTERPRISES, INC., )  
Additional Counterclaim Defendants.)

**Tuesday, March 7, 2017**  
Kingshill, St. Croix

The above-entitled action came on for telephonic hearing before the Honorable DOUGLAS A. BRADY, Judge, in Courtroom Number 211, commencing at 11:10 a.m.

THIS TRANSCRIPT REPRESENTS THE PRODUCT OF AN OFFICIAL COURT REPORTER, ENGAGED BY THE COURT, WHO HAS PERSONALLY CERTIFIED THAT IT REPRESENTS HER ORIGINAL NOTES AND RECORDS OF TESTIMONY AND PROCEEDINGS OF THE CASE AS RECORDED.

KADI A. HARMON  
OFFICIAL COURT REPORTER  
(340) 778-9750 EXT. 7155



1 case should be set for trial and we can go forward. And,  
2 yes, there's lot of work to be done. And that's one  
3 reason why yesterday we spent the amount of time we did  
4 in preparation for that hearing and that notice was well  
5 in advance to the hearing, trying to simplify the issues  
6 by discussing the statute of limitations and the other  
7 issues that this matter should proceed with a jury trial.

8 THE COURT: What would a jury trial look like?

9 MR. HOLT: I think the Court -- well, first of  
10 all, the jury trial would be basically the claims between  
11 the parties. And the claims between the parties are  
12 those that were filed September 30. And so, you know, if  
13 you look at their Exhibit 23, if you look at our list of  
14 claims we filed with the Court because we filed a list of  
15 claims with the Court, you will see that those are not  
16 accounting claims. Those are different claims relating  
17 to different payments that were made.

18 And I want to come back and just say one other  
19 thing. If Judge Ross was actively deciding how to  
20 simplify this, he would have addressed a lot of the  
21 claims that we raised. We raised numerous claims on  
22 people that we thought should be paid and debts that  
23 should be paid. (Inaudible) should be brought back into  
24 the business, that there's not over in St. Thomas and  
25 claims that should be paid. He didn't force Fathi Yusuf