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 **JURY TRIAL DEMANDED**

DEFENDANT FATHI YUSUF'S SUPPLEMENTAL
BRIEF REGARDING STATUTE OF LIMITATIONS DEFENSE

I. An Equitable Accounting Claim Examines all Withdrawals By or Payments Made to Each Partner from Partnership Monies.

The common law rule is that "an action for an accounting examines the entire period of the partnership," *Sriraman v. Patel*, 761 F. Supp. 2d 7, 41 (E.D. N.Y. 2011), or the period from the date of last accounting, if one has been undertaken. *See Blut v. Katz*, 81 A.2d 406, 408 (Sup. Ct. N.J. 1951). As explained in the well-known treatise, Crane and Bromberg, *Law of Partnerships §72 (1968)*:

> [A]n action for an accounting. . .is a comprehensive investigation of transactions of the partnership and the partners, and an adjudication of their relative rights. It is conducted by the court, or, more commonly, by an auditor, referee or master, subject to the court's review. Equitable throughout its long history, this action is well adapted to the complexity of partners' relations.

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See also Nogueras v. Maisel & Associates of Michigan, 369 N.W.2d 492, 495 (Mich. App. 1995) (quoting above description of accounting action from *Law of Partnerships* §72); *Schneider v. Cooper,* 687 A.2d 606, 608 (Me. 1996) (a "judicial accounting is a systematic and thorough financial review of a partnership's affairs").

In an accounting action, the court conducts a "comprehensive investigation" of what each partner has withdrawn or been paid from partnership funds and then "enters a money judgment in favor or against each partner according to the determined balance." *Schneider*, *supra*, 687 A.2d at 68. The money judgment entered by the master, referee or court ensures that the percentage of total distributions received by each partner corresponds to his or her percentage ownership in the partnership. The District Court in *Sririman* described this process as follows:

> Under New York law, as well as equity practice in most other common law jurisdictions, an action for an accounting is a two-step process. The first step is to establish the right to an accounting . . . Once a plaintiff establishes that he has a right to an accounting, the second step is for the Court to "true-up" the partners' individual accounts to make sure that each has been allocated his fair share of partnership distributions, "fair share' referring to the allocation agreed between the parties or required by law.

Sririman, 761 F.Supp.2d at 17.

Section 177(b) of the Virgin Islands Revised Uniform Partnership Act ("RUPA"), V.I. Code Ann. tit. 26, § 1, et seq., entitled "Settlement of accounts and contributions among partners," describes the remedy of an accounting in a nearly identical way, and makes it clear that in providing this remedy the Court examines "all" partnership accounts, which can only mean all partnership accounts that have not previously been reconciled:

> Each partner is entitled to a settlement of *all* partnership accounts upon winding up of the partnership business. In settling accounts among the partners, profits and losses that result from the liquidation of the partnership assets must be credited and charged to the partners accounts. The partnership shall make a distribution to a partner in an amount equal to any excess of the credits over the charges in the partner's account. A partner shall contribute to the partnership an amount equal to any excess of the

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> charges over the credits in the partner's account but excluding from the calculation charges attributable to an obligation for which the partner is not personally liable under section 46 of this chapter.

26 V.I.C. § 177(b) (emphasis added).[1]

It would make no sense to exclude from an equitable accounting action documented payments from partnership monies made to one partner without the consent or knowledge of the other partner. Indeed, if it is undisputed that payments were made to a partner, even without authorization, then to exclude them from an accounting for that reason would be entirely arbitrary. All documented and provable payments should be tallied in the accounting, regardless of whether the payments can be characterized as conversions or misappropriations. This is the nature of an accounting claim. *See Sririman*, *supra* at 23-24.

Hamed and Yusuf conducted only one reconciliation of all partnership accounts, and it occurred at the end of December 1993. *See* Fathi Yusuf's 8/8/14 Declaration, attached as Exhibit 3 to Defendants' 8/11/14 Brief in Support of Motion for Partial Summary Judgment on Counts IV, XI, and XII Regarding Rent. As discussed in testimony at the March 7, 2017 evidentiary hearing in this case, a partial reconciliation of partnership accounts took place on October 2001, days before the FBI raid. That reconciliation addressed only one of the three stores, and it did not consider all of the receipts that had been left in that one store safe by Hamed or Yusuf to reflect withdrawals of cash by either the Hameds or the Yusufs. For that reason, it was amended by Yusuf when certain additional receipts from that store's safe pertinent to that partial reconciliation were returned by the FBI. While Hamed took the position at the March 7, 2017 telephonic argument that this was a complete partnership accounting covering all three stores, see 3/7/17 Tr. at 30-31, Waleed Hamed's own interrogatory answers are to the

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[1]The effective date of RUPA in the Virgin Islands was May 1, 1998, as shown under the heading "HISTORY" that appears in the V.I. Code, just before section 1 of the Act.

contrary. *See* Exhibit A. The only *full* reconciliation of partnership accounts was performed on December 31, 1993, as stated in Yusuf's August 8, 2014 declaration.

II. The Common Law Rule is that A Claim for an Equitable Accounting Accrues on Dissolution.

To be sure, in order to recover on a claim for an equitable accounting which examines all partner transactions for the entire period from the date of last accounting, the claim for an equitable accounting must have been timely brought. And determining whether an accounting claim is or is not time-barred requires an analysis under the applicable local law of when the accounting claim accrued, and whether the doctrine of laches or a statute of limitations analysis is appropriate for that kind of equitable claim.

At common law, an equitable accounting claim accrued on dissolution of the partnership. This accrual rule was established many years ago and it found nearly universal acceptance in the states, long before the drafting of the first Uniform Partnership Act in 1914. *See*, e.g., *Annot., When Statute of Limitations Commences to Run on Right of Partnership Accounting*, 44 A.L.R.4th 678 §§ 3, 6, and 9 (1986 and Supp. 2014) (collecting common law cases in 29 jurisdictions, dating from 1854 to 1914, which hold that "as a general matter, a statute of limitations will not commence to run on a cause of action for an accounting of partnership affairs before the dissolution of the partnership in question"). *See* Yusuf's 8/11/14 Brief in Support of Motion for Partial Summary Judgment Regarding Rent, at p. 23 for a discussion of the 29 cases.

Plaintiff has argued in a prior brief that the statute of limitations for an equitable accounting claim is six years. *See* Plaintiff's 5/13/14 Motion for Partial Summary Judgment re: the Statute of Limitations Defense, at p. 6. In addition, Plaintiff served a Notice of Dissolution of Partnership on April 30, 2014. *See id.* at 6. While there appear to be no reported cases addressing when an accounting claim accrues, for statute of limitations purposes, under a *Banks*

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analysis, the old common law rule that an accounting claims accrues on dissolution will be deemed part of the jurisprudence of the Virgin Islands. It is the majority rule at common law, and it is the best rule for the Virgin Islands, because it promotes the stability of partnerships and therefore serves broad economic interests. The majority rule discourages the bringing of lawsuits between partners during the existence of a partnership, and in that way promotes the stability of partnerships as business enterprises. Forcing one partner to either sue another partner any time there is a breach of contractual commitment, or risk losing that claim, would inevitably result in the termination of many partnerships. Few partnerships would be able to withstand the stresses and conflict that would attend the filing of a lawsuit by one partner against another.

The rule advocated by Hamed would force partners to engage in lawsuits that could otherwise be avoided. For example, if a partner in a law firm borrowed money eight years ago, and defaulted on the loan a year later, the partners or the partnership would have to bring suit within six years of the default. The failure to do that would mean than a documented debt by one partner to the firm would be excluded from a partnership accounting action that was eventually filed on dissolution of the partnership.

III. The Adoption of RUPA in the VI Did Not Alter the Common Law Rule that a Cause of Action for an Accounting Accrues Upon Dissolution.

A. Hamed's Reading of RUPA Section 75(c) Contravenes its Plain Language.

Hamed argued that this Court is not required to perform a *Banks*[2] analysis because such an analysis "needs to be done to determine the common law, not the law when there is a V.I. statute directly on point." Hamed's 8/25/14 Opposition to Defendants' Partial Rule 56 Motion re Rent, at 16. Then, referring to Yusuf's reliance on the common law of 29 states regarding when

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[2] *Banks v. International Rental and Leasing Company*, 55 V.I. 967 (V.I. 2011).

an accounting claim accrues, Hamed argues that "[c]ommon law cases based on a different, explicitly changed statute, are totally inapposite." Id.

In making this argument, Hamed avoids any discussion of the statutory language in RUPA section 75(c),[3] which unequivocally authorizes the bringing by one partner against another of legal or equitable claims (including, specifically an accounting claim), and then goes on to provide that RUPA does not set forth any accrual rules or limitation periods for any such claim, but instead defers to local law to provide those accrual rules and limitation periods:

> The accrual of, and any time limitation on, a right of action for a remedy under this section is governed by other law.

V.I. Code Ann. tit. 26, § 75. Section 75(c) provides that a right to an accounting upon a dissolution and winding up "does not revive a claim" barred by that other law. Because this RUPA section specifically defers to local law regarding when any claim (including an accounting claim) accrues, it is not accurate to say, as Hamed does, that "there is a V.I. statute [i.e., RUPA] directly on point" regarding when an accounting claim accrues, and hence no need for this Court to perform a *Banks* analysis. Hamed's 8/25/14 Opposition to Defendants' Partial Rule 56 Motion re Rent, at 16, n.16. Moreover, since the 29 cases that adopt the common law accrual rule for accounting actions precede adoption of the first Uniform Partnership Act, Hamed is mistaken in suggesting that these cases are based on a "different, explicitly changed statute." They clearly cannot be based on the original Uniform Partnership Act because they were decided before that Act was even drafted.

Critical to Hamed's construction of RUPA as altering the accrual rules for equitable accounting claims is the Delaware trial court decision in *Fike v. Ruger*, 754 A.2d 254 (Del. Ch. 1999). The plaintiffs in *Fike* argued that certain loans made to other partners years earlier should

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[3] Section 75(c) is codified as section 405(c) in the Uniform Act itself.

instead be treated as capital contributions. They "characterize[ed] their claims as ones for settlement of partnership accounts upon dissolution," and argued that the claims were for that reason not time-barred. *Id.* at 262. The Court first held the partnership agreement specifically provided a "mechanism for resolution by arbitration of disputes arising under it that is not dependent upon the happening of an event of dissolution." *Id.* at 263. The Court held that in light of this provision, they should not be permitted to "sleep on their rights until an event of dissolution or termination occurs and the default provisions of the partnership statute give them a right to an accounting." *Id.* at 263. The Court then noted that RUPA § 405(c) would support this result because it codifies the rule that an accounting action accrues for statute of limitations purposes at the occurrence of a dispute. *Id.* at 264. But this statement by the *Fike* Court was mere *dictum*, because Delaware has never adopted RUPA, and is still operating under the UPA.

The actual holding of *Fike* was that the three-year statute of limitations had run because the dispute pertained to matters occurring between 1981 and 1992, and there was no basis for tolling the statute. *See id.* at 261-262. Alternatively, the *Fike* Court held that the claims were barred by laches because the death of defendants' long time accountant, who would have been an important witness for them, meant that allowing the claim to proceed would cause defendants substantial prejudice. *See id.* at 262.

The Delaware Supreme Court affirmed the *Fike* decision on appeal, but only on the ground of laches. *See Fike v. Ruger*, 752 A.2d 112 (Del. 2000). In addition, its laches analysis went far beyond the cursory discussion of that doctrine in the trial court decision. The Delaware High Court held that, "[i]n applying laches, a plaintiff is chargeable with such knowledge of a claim as he or she might have obtained upon inquiry, provided the facts already known to that plaintiff were such as to put the duty of inquiry upon a person of ordinary intelligence." *Id.* at

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114. The Court then found that "Plaintiffs were on inquiry notice and/or possessed actual knowledge of their claims related to the loans since the mid- to late-1980's." *Id.* at 114. The Delaware Supreme Court then held that defendants were prejudiced by the delay in bringing the claims in two respects. In addition to the death of the long-time accountant referenced by the trial court, the Delaware Supreme Court held that if the plaintiffs had filed suit earlier, the defendants could have "avoided significant losses by ceasing to lend money to the joint venture." *Id.* at 114. The Delaware Supreme Court did not even mention the trial court's RUPA dictum, and it specifically said it was not addressing the trial court's determination that the accounting claim was barred by the statute of limitations. *Id.* at 114, note. These facts mean that the trial court's decision has no persuasive value to this Court on those two points.[4] In *Ruggerio v. Poppiti*, 2005 WL 517967, *4 (Del. Ch. 2005), another Delaware trial court case, the Court relied on the *Fike* dictum regarding RUPA section 405(c), and adopted that dictum as being useful for interpreting Delaware UPA sections 1521 and 1522 [UPA sections 21 and 22]. Using unadopted RUPA provisions to construe the very sections of UPA that Hamed claims were changed by RUPA is strained, to say the least. As for *Baghdady v. Baghdady*, 2008 WL 4630487 (D. Conn. 2008), that Connecticut district court case quotes the *Fike dictum* as if it were a holding of a state that had adopted RUPA, and then misleadingly cites to the case without indicating that it was affirmed by the Delaware Supreme Court on other grounds completely

[4]The Delaware Supreme Court has held that a "statute of limitations period at law does not automatically bar an action in equity because actions in equity are time-barred only by the equitable doctrine of laches." *Whittington v. Dragon Group*, 991 A.2d 1, 8 (Del. 2009) (internal marks and citation omitted). This may explain why the Delaware Supreme Court in *Fike* chose to affirm the trial court on the grounds of laches, rather than the statute of limitations. Trial court decisions are generally not even binding on other trial courts in the same jurisdiction, and the fact that the Supreme Court affirmed on laches grounds means that *Fike* is especially unpersuasive as an aid to construction of section 75(c) in the Virgin Islands RUPA.

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unrelated to RUPA section 405(c). *See id.* at *5. *Baghdady* and *Ruggerio* simply reinforce the fact that the *Fike dictum* is entitled to no weight by this Court in construing section 75(c) of the Virgin Islands RUPA.[5]

Hamed also relies on the commentary to section 405 of the official draft of RUPA, which states the "effect of those rules is to compel partners to litigate their claims during the life of the partnership." Assuming *arguendo* that this commentary should even be considered,[6] what Yusuf believes it means is that certain claims by one partner against the other that do not involve the receipt of partnership money by one partner could be subject to their own separate statute of limitations analysis. An equitable accounting claim will not revive those classes of claims if the

[5]The *Baghdady* opinion suffers from other defects. First, *Baghdady* is incorrect in suggesting that the common law rule barred the assertion of any claims by one partner against another (or against the partnership) prior to dissolution; in fact, it only barred a claim for an accounting prior to dissolution. Under the uniform partnership act that preceded RUPA, a partner could at his election opt to bring contract and tort claims against a co-partner before dissolution. *See Sriraman v. Patel*, supra, 761 F. Supp. 2d at 39 (acknowledging that such actions could be brought before dissolution, but stating that this fact did not accelerate the accrual date of a claim for an accounting). Second, *Baghdady* never discusses the old common law accrual rule for accounting actions, let alone explains how that rule can be displaced by a RUPA provision which unambiguously requires litigants to look to other common law or statutory law of their state to determine when an accounting claim accrues.

[6]It is well-settled that a Court should look to legislative history only when necessary to construe an ambiguous statute. *See, e.g., Percival v. People*, 2014 V.I. Supreme LEXIS 39, *11 (V.I. 2014) (court must first find statute to be ambiguous before it "proceeds to examine the legislative history of a statute"). Here, the language of section 75(c) is not ambiguous, because by its plain terms it authorizes one partner to bring "legal or equitable claims," including "accounting" claims, against "another partner," and then requires a court to look to territorial law outside of RUPA to determine the accrual rules for any such claims. And even if section 75(c) were ambiguous on this point, none of the drafters' comments relied upon by Hamed was adopted by the Virgin Islands legislature when it enacted RUPA, and the comments do not appear in the Virgin Islands Code. As such, they cannot be regarded as legislative history that could aid in the construction of any supposed ambiguity in section 75(c). *See Fisher Sand & Gravel Co. v. Neal A. Sweebe, Inc.*, 837 N.W. 2d 244, 254 (Mich. 2013) (holding that the official comments to the UCC "do not have the force of law," and reversing lower court for relying on them to alter the "plain language of the statute in question"). The official comments to the UCC, like the official comments to RUPA, are prepared by the National Conference of Commissioners on Uniform State Laws and the American Law Institute. *See id.* at 249, n. 10.

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statute has expired as to them, and equitable tolling or discovery rules do not apply to save the claims. At the oral argument held on March 7, in response to a question from the Court, Yusuf's counsel identified personal injury actions by one partner against the other as one type of claim that would not be revived by the filing of an accounting claim. *See* 3/7/17 TR at 19-20. Another example would be claims by one partner that another partner damaged or destroyed partnership properly. Yet another example would be claims by one partner that another partner caused the partnership damages by mismanaging it. So long at the claim involves partnership money actually obtained or received by a partner, then it should be part of an accounting, regardless of whether it could be characterized as a conversion and regardless of whether the limitations period for conversion had expired before the accounting claim was brought.[7]

IV. At Least Two State Appellate Cases Reject Hamed's Reading of RUPA Section 75(c).

In contrast to Hamed, who cites to *dictum* in one trial court decision, and two other trial court decisions which follow that *dictum*, Yusuf has cited to two state appellate cases that support his reading of section 75(c) as preserving the general rule that an action for an equitable accounting accrues on dissolution.

In *Smith v. Graner*, 2010 Minn. App. Unp. LEXIS 717 (Minn. App. 2010), the estate of one partner, Smith, brought an action for breach of fiduciary duty, breach of contract and for dissolution and winding up of a partnership formed by Smith and Graner. On appeal from an adverse judgment, Graner argued that Smith's claim, which arose out of alleged acts occurring in 1993, was time-barred under a six-year catch-all statute of limitations. The Minnesota Court of Appeals quoted (in its entirety) section 323A.0405(c) of their Uniform Partnership Act, which is

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[7]Because Yusuf's counterclaim relates back to the filing of Hamed's complaint in this case, the accounting claim is deemed to have been filed on September 17, 2012.

identical to section 75(c) of the Virgin Islands Act set forth above. See id. at p. *14. On the basis of that statutory language, the Court stated, "Thus, to determine when [Smith's] claim regarding the 1993 adjustment of partnership capital accounts accrued and what statute of limitations applied to the claim, we must look beyond the Act."[8] Id. at p. *14. The Court of Appeals agreed with Graner that the Minnesota catch-all 6-year statute of limitations applied. Noting, however, that the catch-all statute did not "address when an action [for an accounting] accrues," the Court looked to the common law of Minnesota to determine the applicable accrual rule. Id. at p. *14.

The Minnesota Court of Appeals, citing to the same A.L.R. article mentioned earlier in this brief, then stated, "[A]s a general matter, a statute of limitations will not commence to run on a cause of action for an accounting of partnership affairs before the dissolution of the partnership in question." The Court then cited to an 1889 Minnesota Supreme Court case which applied this rule in a case in which a partner sought to recover a deficiency in annual profits owed to him for the years 1881 to 1887, and the defendant partner argued that the claim as to 1881 was time-barred under the six-year statute of limitations, because suit was not brought until 1888. In that case, *Broderick v. Beaupre*, 42 N.W. 83, 83-84 (1889), which is referenced in the A.L.R. article, the Minnesota Supreme Court rejected the statute of limitations argument as "utterly untenable," because the statute of limitations on an accounting claim "did not begin to run . . . before the dissolution of the firm by [the suing partner's] retirement in November, 1887." Relying on the language of the Minnesota RUPA section that is codified as section 75(c) of the VI RUPA, along with the common law rule that an action for an accounting accrues upon dissolution, the

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[8]The fiduciary duty claim in *Graner* was plainly a claim relating to whether one partner had received partnership monies that ought to be credited to the other partner. It was not a claim that one partner had caused damages to the partnership by breaching a fiduciary duty.

Minnesota Court of Appeals rejected Graner's argument that Smith's claim for breach of fiduciary duty embraced within that accounting claim was time-barred, and it affirmed the lower court's ruling in favor of Smith on that claim.[9]

A 2001 case from the state of Washington, which adopted RUPA in 1998,[10] also continues to apply the common law rule that an action for an accounting accrues upon dissolution of a partnership. *See Laue v. Estate of Elder*, 25 P.3d 1032 (Wash. App. 2001) (holding that "a cause of action for an accounting accrues at dissolution" and that "the statutory period does not begin to run until dissolution…"). In that case, a partner, Laue, claimed that the estate of his former co-partner "owe[d] him money" for a partnership that was effectively dissolved some four years before he served the summons and complaint on his co-partner. *Id.* at 703. The Washington Court of Appeals first acknowledged the rule that "[a]fter dissolution, a partner generally cannot bring a suit at law against a former copartner regarding partnership liabilities without first bringing an action to account for and settle the partner's affairs." *Id.* at 710-711. The Court then held that because "[a] cause of action for an accounting accrues at dissolution," *id.* at 711, and such actions are governed by "a three-year statute of limitation," *id.* at 711, Laue's claim for money damages in the form of a partnership distribution was untimely because served more than three years after dissolution.

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[9]The Minnesota Court of Appeals also noted that this result was "consistent with Minn. Stat. § 323A.0807(b)(2008), which states that "[e]ach partner is entitled to a settlement of all partnership accounts *upon winding up the partnership business*." (emphasis in original). That RUPA provision in the Minnesota Act is codified in the above-quoted section 177 of the Virgin Islands Act. Section 177 of RUPA thus offers another reason for holding that any accounting claim brought at or before dissolution is necessarily timely, and will entitle the partner to a settlement of "all" partnership accounts from inception.

[10]*See* http://partnerships.uslegal.com/partnership/state-laws-governing-partnerships/ showing which states have adopted RUPA and when they have done so.

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In a prior brief, Plaintiff argues that *Laue* is "inapposite" because the Court in that case ruled that the accounting claim was brought too late. This is a *non sequitur*. The importance of *Laue* for our purposes is that it is a RUPA case which continues to recognize the common law rule that an equitable accounting claim accrues on dissolution. The fact that the Court held that the accounting claim was brought more than three years after dissolution does not change this critical aspect of the *Laue* analysis.

V. Even if His Equitable Accounting Claim Accrued Before Dissolution, Yusuf Has Timely Asserted It.

Even if Yusuf's accounting claim accrued when he had inquiry notice of a partnership dispute, the evidence shows that there was no unreasonable delay in bringing an action for an accounting after that point in time. At the earliest, Yusuf was placed on inquiry notice of a possible dispute with Hamed in late 2010. *See* Exhibit 3 to Defendants' 8/11/14 Brief in Support of Motion for Partial Summary Judgment Regarding Rent, p. 7, ¶12. His suit for an equitable accounting (asserted in his counterclaim in this case) was therefore well within the 6-year statute for bringing such a claim.

Yusuf has previously invoked equitable tolling and discovery rule principles in several briefs in this case, and these principles enable him to avoid any time bar as to claims relating to misappropriation of partnership monies, whether or not these claims are properly assertable as part of an equitable accounting claim. *See* Yusuf's 6/6/14 Brief in Opposition to Motion for Partial Summary Judgment Regarding Statute of Limitations Defense, at 11-15; *see also* discussion of equitable tolling in Yusuf's 9/15/14 Brief in Support of Motion for Partial Summary Judgment Regarding Rent, at 15-21.

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VI. Alternatively, 5 V.I.C. §33, entitled "Actions on Accounts," Establishes that Any Claim on an Account is Not Time-Barred.

While the common law established a special accrual rule for accounting actions brought by one partner against another or against the partnership, there is a general Virgin Islands statute of limitations for a particular kind of accounting claim – namely, a claim on an open account. Yusuf satisfies the accrual rules for that kind of an accounting claim. 5 V.I.C. §33 provides that:

> In an action to recover a balance due upon a mutual, open, and current account, where there have been reciprocal demands between the parties, the cause of action shall be deemed to have accrued from the date of the last item proved in the account on either side; but whenever a period of more than one year shall elapse between any of a series of items or demands, they are not to be deemed such an account.

Here, there is a partnership account consisting of "demands" – i.e., debits and credits made by Hamed and Yusuf – including credits and debits arising from documented payments to both parties in the form of "receipts" for withdrawals of cash from store safes, or checks written to either partner (or their sons) out of partnership funds. It thus qualifies as an open account within the meaning of section 33. The BDO report discloses that the time between any two charges never exceeded one year. Charges on the open account continued to date of wind-up and the accounting claim was timely under section 33 when asserted.

VII. Even if Hamed's Construction of RUPA Section 75(c) is Correct, the Savings Clause in RUPA Would Preserve the January 1, 1994 to May 1, 1998 Accounting Claims.

Even assuming *arguendo* that Hamed is right about the operation of section 75(c) of the V.I. RUPA, the savings clause in section 274 of RUPA would preserve a portion of the accounting claim. Section 274, which is entitled "Savings clause," provides that "[t]his chapter does not affect an action or proceeding commenced or right accrued before this chapter takes effect." The "effective date" of RUPA was May 1, 1998, as shown under the heading "HISTORY" that appears in the V.I. Code, just prior to section 1 of RUPA. Thus, the savings

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clause provides that RUPA does not govern any right that accrued before May 1, 1998, which means that they can only be governed by the prior uniform partnership law, the Uniform Partnership Act ("UPA").

The purpose of a savings clause in a statute is to make a cause of action that has accrued before the effective date of a statute subject to the limitations rules in effect on the date of the accrual, and more generally to protect accrued rights from being extinguished by repeal of a statute. *See Bonney v. The Upjohn Company*, 243 N.W.2d 551, 553 (Mich. Ct. App. 1983) (construing similar savings clause to mean that a cause of action accruing before the effective date of the act is governed by the statute of limitations rules in effect on the date of accrual); *Schultz v. Jibben*, 513 N.W.2d 923, 925, n.2 (S.D. 1994) ("the specific purpose of savings clauses is to preserve preexisting rights, and on repeal of a statute a savings clause or general saving statute preserves rights and liabilities which have accrued under the act repealed"); *Wieslander v. Iowa Department of Transportation*, 596 N.W.2d 516 (Iowa 1999) (stating that "[t]he repeal of a statute destroys the effectiveness of the statute, and the repealed statute is never deemed to have existed," but noting that one exception to this rule is "the existence of a savings clause...limiting the effect of a repeal"); *Beverly Hilton Hotel v. Workers' Compensation Appeals Board*, 176 Cal. App. 4th 1597, 1608 (Cal. App. 2009) ("A savings clause is generally used in a repealing act to preserve rights and claims that would otherwise be lost") (citations and internal marks omitted).

Plaintiff acknowledges that the rule under the repealed uniform partnership act, UPA, is that any claims by one partner against another may be asserted as part of a suit for an accounting regardless of when the accounting claim is brought and regardless of whether there would be a time bar if those claims were brought separately. As such, the savings clause in RUPA would

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mean that the portion of Yusuf's accounting claim covering the years 1994, 1995, 1996, 1997 and part of 1998 (through May 1, 1998) is not time-barred. Plaintiff acknowledges that the accounting action may examine all transactions between September 12, 2006 and September 12, 2012. So even assuming *arguendo* that Plaintiff's reading of section 75(c) is correct, the time frame that would be excluded from the accounting claim period of January 1, 1994 to present would be the May 1, 1998 to September 12, 2006 period.

CONCLUSION AND RELIEF REQUESTED

For all of the foregoing reasons, as well as those previously set forth in briefs filed on June 6, 2014, August 11, 2014, and September 15, 2014, this Court should rule as a matter of law that the statute of limitations does not bar Defendants' accounting claim or any of its other claims.

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 21st day of March, 2017, I served the foregoing **SUPPLEMENTAL BRIEF REGARDING STATUTE OF LIMITATIONS DEFENSE** via e-mail addressed to:

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

MOHAMMAD HAMED, by his authorized agent WALEED HAMED,	)	
Plaintiff/Counterclaim Defendant,	)	
vs.	)	**CIVIL NO. SX-12-CV-370**
FATHI YUSUF and **UNITED CORPORATION**,	)	
Defendants/Counterclaimants,	)	
vs.	)	ACTION FOR DAMAGES INJUNCTIVE RELIEF AND DECLARATORY RELIEF
WALEED HAMED, WAHEED HAMED, MUFEED HAMED, HISHAM HAMED, and **PLESSEN ENTERPRISES, INC.**,	)	JURY TRIAL DEMANDED
Counterclaim Defendants.	)	

COUNTERCLAIM DEFENDANT WALEED HAMED'S RESPONSES TO DEFENDANTS' 8/27/14 INTERROGATORIES

Counterclaim defendant Waleed Hamed responds to the interrogatories served on him on August 27, 2014.

PRELIMINARY STATEMENT

These answers and objections are made solely for the purpose of this action. Each answer is subject to any and all objections as to competence, relevance, materiality, propriety, and admissibility; and any and all objections and grounds that would require the exclusion of any statement contained in any response, if

EXHIBIT A

not time barred, they would be subject to off-sets well in excess of said amounts anyway, as the reconciliation did not cover many items, as Mike Yusuf acknowledged in the referenced deposition.

> *3. If you dispute the removal of the $2.7 million by Yusuf pursuant to the August 15, 2012 letter identified at FY004123-FY004210 and attached receipts, please describe in detail each and every item disputed as well as what amounts you contend should be off-set and identify any and all documentation supporting your contention.*

The referenced letter had no attachments, so this Interrogatory is objected to as worded. Additionally, the referenced reconciliation was only a *partial* reconciliation, as Mike Yusuf stated in the Rule 30-b-6 deposition of United, which was time barred as an offset by 2012, as noted in response to Interrogatory 2. Likewise, even if not time barred, it did not include many other accounts, including but not limited to, sums due from Dorothea as noted in the response to that letter, improper payments made to United's counsel, DiRuzzo, payments made at the direction Yusuf of debts for United from Plaza's accounts or even (back then) the accounting from the other stores.

> *4. Please identify all checking, savings, credit, investment, trust, or escrow accounts, you have or had in your name or upon which you had signatory authority to write checks and withdraw funds at any bank or financial institution anywhere in the world from 1986 through the present and the date the accounts were opened and closed, if any are closed, including but not limited to:*
>
> *a. Banque Fracaise Commerciale Account No. 3878-91*
> *b. Banque Fracaise Commerciale Account No. 3878-90*
> *c. Scotia Bank Account No.00308313*
> *d. VI Community Bank Account No. 6086*
> *e. VI Community Bank Account No. 5817*
> *f. Banco Popular 194-602753*
> *g. Merrill Lynch 140-16184*
> *h. Merrill Lynch 140-85240*
> *1. Banco Popular Visa - Account ending in 2319*
> *J. Banco Popular Visa - Account ending in 2204*
> *k. Amex Gold Card-Account No. 3782-925489-33001*
> *i. Cairo Amman Bank - Account No. 02 501 171878 00*

Object as to irrelevant and not likely to lead to discoverable information. Subject to this objection, the Yusufs had stolen $2.7 million from a joint account. The money was removed to protect it from looting by them again. One-half was deposited to the Court accounts representing the Yusuf's 50% interest in these funds and the Yusufs have been given a stipulation to withdraw their share.

I, Waleed Hamed, declare under penalty of perjury, pursuant to 28 U.S.C. Section 1746, that the foregoing interrogatory responses are true and correct.

Dated: September 26, 2014

Waleed "Wally" Hamed

Respectfully submitted,

ECKARD, PC

Dated: September 26, 2014 By:

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CERTIFICATE OF SERVICE

I hereby certify that on this 26th day of September 2014, I served a copy of the foregoing in compliance with the parties consent, pursuant to Fed. R. Civ. P. 5(b)(2)(E), to electronic service of all documents in this action on: Nizar A. DeWood, Esquire (dewoodlaw@gmail.com); Gregory H. Hodges, Esquire (ghodges@dtflaw.com); Joel H. Holt, Esquire (holtvi@aol.com); and Jeffrey B.C. Moorhead, Esquire (jeffreymlaw@yahoo.com).