

Defendants/counterclaimants Fathi Yusuf (“Yusuf”) and United Corporation (“United”) (collectively, the “Defendants”), through their undersigned counsel, respectfully submit this Reply to “Hamed’s Response To Yusuf’s Supplemental Briefing Regarding Three Motions Addressed At The March 6th Hearing” dated March 27, 2017 (the “Response”). Incredibly, Plaintiff claims “it is undisputed that a final partnership accounting **has not and cannot be done** based on the record in this case[.]” (Emphasis in original). *See* Response at p. 2. While Yusuf does not dispute that a “final partnership accounting” has not been done yet given, among other things, the discovery stay that has been in effect since October 7, 2014, he very much disputes that a final partnership accounting cannot be done. The “final partnership accounting” obviously must await the result of this Court’s final determination after the Master reports and recommends with respect to the Partners’ competing accounting claims and distribution plans, as provided in § 9, Step 6, of the Plan. Ultimately, V.I. Code Ann. tit. 26, § 177(b) provides: “Each partner is entitled to a settlement of all partnership accounts upon winding up the partnership business.” Section 9, Step 6, of the Plan essentially provides that the “final partnership accounting” that will result in a “settlement of all partnership accounts” must await the Master’s report and recommendation for this Court’s final determination.

At page 18 of his Supplemental Brief Regarding Three Motions Addressed at March 6-7, 2017 Hearings, Yusuf pointed out that Plaintiff’s claim in his Response Re Scheduling Order that John Gaffney “previously stated that no accounting was possible prior to 2013” was not supported by the record. In his Response, Plaintiff retreats to the claim that Gaffney testified that the records prior to 2012 “were a mess.” *See* Response at p. 2. What is clear is that the record reflects that neither John Gaffney nor Plaintiff’s experts testified that no partnership accounting could be done prior to 2013. Although Lawrence Schoenbach testified that he had no accounting background whatsoever, he conceded that accounting for this period was not impossible, declaring that “nothing

is impossible.” See Transcript at p. 174, 199-200 attached as **Exhibit 1**.¹ Mr. Jackson testified that his opinion regarding the impossibility of performing a trueup or accounting prior to 2012 was based entirely on information presented by counsel for Plaintiff and he never made an independent determination of what books and records existed that would have enabled him to do any kind of trueup or partnership accounting prior to 2012. See Transcript at p. 256-258. In fact, Mr. Jackson testified that he had never been asked to perform a trueup or an accounting for the period prior to 2012 and that if he had been asked to do so, he would have attempted to do it. *Id.* at p. 261. Accordingly, it is disingenuous for Plaintiff to represent to this Court that it is undisputed that a Partnership accounting cannot be done.

As pointed out at page 4 of Yusuf’s Supplemental Brief, it is puzzling why Plaintiff seems to think the case of *Thompson v. Coughlin*, 329 Or. 630 (Or. 2000) supports his position that a jury should decide the Partners’ competing accounting claims. Defendants’ Reply Memorandum of Law in Further Support of Motion to Strike Plaintiff’s Jury Demand, filed on October 14, 2016 (at p. 7-8), further establishes why *Thompson* actually supports Yusuf’s position that the Partners’ competing accounting claims must be resolved by the Court, sitting without a jury. The Court need only review the Partners’ respective pleadings to discern that neither seeks a judgment for a specified sum of money determinable without an accounting. Because the final partnership accounting or the “settlement of all partnership accounts” provided by V.I. Code Ann. tit. 26, § 177(b) will involve complex accounting issues and the Plan provides that those issues will be resolved by the Court, sitting without a jury, Defendants respectfully submit that this Court should proceed with the process set forth in the Plan so that the Master can promptly provide his report and recommendation to this Court for its final determination.


¹ This exhibit will include all transcript references in this reply.

Respectfully submitted,

DUDLEY, TOPPER and FEUERZEIG, LLP

Dated: April 3, 2017

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CERTIFICATE OF SERVICE

I hereby certify that on the 3rd day of April, 2017, I served the foregoing **Reply To Hamed's Response To Yusuf's Supplemental Brief Regarding Three Motions Addressed At March 6-7, 2017 Hearings** via e-mail addressed to:

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

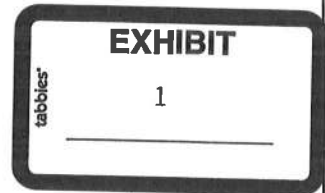
MOHAMMAD HAMED, by his) SX-12-CV-370
authorized agent WALHEED)
HAMED,)
Plaintiff/Counterclaim Defendant,)
v.)
FATHI YUSUF and UNITED)
CORPORATION,)
Defendants/Counterclaimants,)
v.)
WALEED HAMED, WAHEED HAMED,)
MUFEED HAMED, HISHAM HAMED, and)
PLESSEN ENTERPRISES, INC.,)
Additional Counterclaim Defendants.)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

March 6, 2017
Kingshill, St. Croix

The above-entitled action came on for MOTIONS HEARING
before the Honorable Douglas A. Brady, in Courtroom
Number 211.

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.

TRACY BINDER, RPR
Official Court Reporter
(340) 778-9750 Ext. 7151



1 Q You don't have any accounting background?

2 A None whatsoever.

3 Q Now, you said since your report, September 19,
4 2016, you've looked at other documents, including the
5 BDO report; is that correct?

6 A That's correct.

7 Q Have you looked at the full BDO report or just
8 the exhibit -- Exhibit 12 that was admitted today?

9 A No, I can honestly say I've read every page
10 of that report.

11 Q I'm talking about Exhibit 12. Have you looked
12 at only Exhibit 12 or all of the supporting information
13 that was provided with it?

14 A I'm sure it was -- may I see Exhibit 12? I
15 assume it was just that.

16 (Perusing exhibit.) No. I've read Exhibit 12
17 cover to cover. I slept through a good deal of it, but
18 I have not seen any of the supporting documents.

19 Q Okay. Fair enough.

20 A I can say they were not provided to me.

21 Q Okay. So you've not looked at any of the
22 schedules or supporting documents to the BDO report; is
23 that fair to say?

24 A Yes, it is.

25 Q You've been talking about United and its being

1 them, I agree that we're 1.6 million in the hole to you
2 after reviewing these documents, and let's destroy them
3 so that the Government doesn't find them, if somebody --
4 if there was testimony that says, yes, I heard them
5 agree, wouldn't that be evidence that could be relied on
6 to recreate those documents?

7 A No, I don't believe so. Because now you're
8 relying on two dependent witnesses as opposed to an
9 independent third party, such as a bank, financial
10 statement, a bank statement, a wire transfer receipt, or
11 some independent analysis. I mean, yes, of course, the
12 parties could stipulate, and this is a civil proceeding,
13 so I assume they could do that, but obviously that
14 hasn't happened. So the only way to actually know what
15 are the numbers is to have some kind of independent
16 third-party analysis.

17 Q Not -- and if those documents aren't
18 available, you're saying it's simply impossible to
19 account for?

20 A It's very difficult, if not impossible.

21 Q Okay. It's not impossible is what you're
22 saying?

23 A Nothing is impossible.

24 Q Okay.

25 A But to come up with a true accounting is

1 extraordinarily difficult, and I don't believe that the
2 BDO report does that.

3 Q Again, without having looked at any of the
4 supporting information for their report.

5 A I just read the report.

6 MR. HODGES: Thank you, sir.

7 REDIRECT EXAMINATION

8 MR. HOLT: Could I have the witness shown
9 Exhibit Number 11?

10 A I believe I have it in front of me.

11 BY MR. HOLT:

12 Q This is a defendant's supplemental Rule 26
13 disclosure in the civil case. Could you turn to page 2
14 and see where the document says "disclosures," look at
15 Item Number 2 and read that into the record?

16 A "Draft Summary Schedules prepared by the
17 government in the matter of United States versus Fathi
18 Yusuf, et al, CR number 2003-147 and attached and
19 designated FY 009991-010247."

20 Q And this is filed by the Dudley Topper law
21 firm, at the bottom, signature page?

22 A Ah, it's filed by -- yes, Dudley Topper.

23 Q And if that's referring to Exhibit Number 10,
24 you have no doubt that was prepared by the Government?

25 A I have no doubt it was -- I had no doubt

1 A True.

2 Q Okay. Exhibit 39 is your opinion.

3 A Right.

4 Q This is the opinion that you authored and
5 addressed to Attorney Holt on August 1, 2014; correct?

6 A Correct.

7 Q And in this opinion, you essentially
8 determined that because of the absence of partnership
9 books and records, it's impossible to perform any
10 true-up or accounting before 2012; isn't that correct?

11 A That was part of the reason. The other part
12 of the reason, that there was a criminal enterprise
13 going on at that time and there was no way for me to do
14 an accounting of that.

15 Q Well, did you say that in your opinion?

16 A I did. If you go to the bottom of page 5, and
17 at the top, I talked about their usable or reliable
18 accounting records do not exist for two reasons. If you
19 go to the footnote, you'll see my remarks.

20 Q Okay. So -- but as I understand your
21 testimony, you have never independently determined what
22 books and records are available to the partnership
23 during this period; is that right?

24 A I have determined what was presented to me by
25 all parties, and that was it.

1 Q I never presented any information to you, did
2 I?

3 A No, you didn't.

4 Q The only information that was presented to you
5 was by Attorney Holt, in coming up with this opinion;
6 isn't that right?

7 A That's correct, uh-huh.

8 Q So, again, you never made an independent
9 determination of what books and records existed that
10 would have enabled you to do any kind of true-up or
11 partnership accounting, prior to 2012; isn't that
12 right?

13 A True.

14 Q All right. And does it shock you that another
15 accounting firm doesn't accept that it's impossible to
16 do that and they undertook to perform what you claim was
17 impossible?

18 A I don't believe that they did that.

19 Q No. But it's not shocking --

20 A This BDO report is not even an opinion.

21 Q Right.

22 A It's an agreed-upon procedure, which falls
23 short of an opinion.

24 Q Okay. But it was not offered as an opinion,
25 was it?

1 A Ah, it was crafted like an opinion and it's
2 being used as an opinion and it's making an assertion.

3 Q It was submitted in support of a claim that
4 was required to be filed by September 30, 2016; isn't
5 that right?

6 A Therefore, it's an agreed-upon procedure.
7 Correct.

8 Q Okay. Did you attempt to do any true-up or
9 accounting for the partnership at all that would be
10 submitted to the Court on September 30, 2016?

11 A No, I did not.

12 Q Okay. You weren't asked to?

13 A I was not asked to.

14 Q And as far as you know, nobody else on behalf
15 of Mr. Hamed was ever asked to?

16 A That's correct.

17 Q Okay. Mr. Jackson, it's fair to say that it's
18 not unusual for partnerships, particularly verbal
19 partnerships that have lasted for decades, there will be
20 gaps in the records and things like that? That doesn't
21 surprise you, does it?

22 A No.

23 Q In fact, that would be expected.

24 A Well, I would think that some gaps, maybe, if
25 it's a true partnership.

1 should they be faulted for not including an analysis of
2 ~~something they weren't asked to do?~~

3 A No, I -- it's an agreed-upon procedure, as I
4 said before. You know, they're just doing what they
5 agreed to do.

6 Q Okay. All right. And you weren't asked to do
7 a true-up or an accounting for the period from 2001 to
8 date, were you, by Mr. Holt or Mr. Hamed?

9 A No, I was not.

10 Q Okay. If they had asked you to do that
11 true-up, you would have at least attempted to do it,
12 wouldn't you?

13 A Yes.

14 Q Exhibit 30 and 31.

15 A (Perusing documents.)

16 Q I believe you testified -- correct me if I'm
17 wrong, Mr. Jackson -- that the \$160,000 check was never
18 cashed; is that right?

19 A That's correct.

20 Q Have you examined bank statements for the Bank
21 of Nova Scotia account that's referenced here?

22 A 2000? I have not, no.

23 Q So you don't know from personal knowledge
24 whether this check has been cashed or not, do you?

25 A I do not. My understanding is they were in a