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

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

YUSUF'S AMENDED ACCOUNTING CLAIMS LIMITED TO TRANSACTIONS OCCURRING ON OR AFTER SEPTEMBER 17, 2006

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

Procedural Posture

On September 30, 2016, pursuant to the "Final Wind Up Plan Of The Plaza Extra Partnership," entered on January 9, 2015 (the "Plan"),[1] §9, Step 6, and the August 31, 2016 directive[2] of the Master, as clarified on September 22, 2016, Yusuf submitted his Accounting Claims and Proposed Distribution Plan, which were supplemented on December 7 and 12, 2016 (as amended, the "Original Claims").

On July 21, 2017, Judge Brady issued a number of orders including an order limiting the Partnership accounting claims to those transactions that occurred on or after September 17, 2006 (the "Accounting Order"). On August 11, 2017, Yusuf filed his Motion for Reconsideration of Ruling Limiting Period of Accounting Claim and Motion to Certify Questions in Order Limiting Period of Accounting Claim for Immediate Review. These motions have been fully briefed and remain pending.

On August 8, 2017, the Master notified the parties that he was "ready to start the claims determination process and [did] not need to wait on decisions on motions filed after the July 21, 2017 decisions by the Court." The Master further noted that he "will not now consider any claim affected by post July 21, 2017 motions" and directed counsel for the parties to "identify or agree on any claim that is ready to be determined." Finally, the Master requested that counsel "identify those [claims] that require additional pretrial preparation" so that an interim scheduling and discovery order agreeable to all could be developed.

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

[1] Unless otherwise defined, all capitalized terms have the same meaning as provided in the Plan.
[2] That directive required the Partners to submit any objection to the previously submitted Partnership Accounting and any claims against the Partnership or a Partner by September 30, 2016. It is undisputed that since the inception of the Partnership, the only Partners were Yusuf and Hamed, who died on June 16, 2016. On December 21, 2016, this Court entered an Order substituting Waleed M. Hamed, as Executor of the Estate of Hamed, as Plaintiff in this matter.

To keep the presentation of Yusuf's claims consistent, the same format as the Original Claims will be used. Yusuf submits his Amended Accounting Claims Limited to Transactions Occurring On Or After September 17, 2006 (the "Amended Claims") as follows with a description of each partnership debt or partner claim and a notation as to whether it is: a) disputed or undisputed, b) ready for determination, or c) requires further discovery.[3]

I. Status of Partnership Wind Up and Overview of Proposed Distribution

The status of the wind up of the Partnership is set forth in the Twelfth Bi-Monthly Report of the Liquidating Partner filed on January 31, 2017 and the supporting financial information concurrently submitted to the Master and counsel. This was the final Bi-Monthly Report of the Liquidating Partner reflecting $8,891,338.28 in total remaining assets of the Partnership as of December 31, 2016[4].

A summary of Yusuf's Amended Claims and proposed distributions is set forth in **Exhibit A - 1**.[5] As with the Original Claims, the Amended Claims contemplate that a portion of the remaining Partnership Assets will be held in reserve for potential expenses including taxes and litigation costs for personal injury claims made or potentially to be made against the various Plaza Extra Stores prior to the Partnership wind up. In addition, all Debts of the Partnership must be paid prior to any distributions to Partners. At this stage, the remaining Debts include the unpaid rent obligations, plus interest, due to United for occupying the Plaza Extra-East store and

[3] The Amended Claims are submitted without prejudice to the relief sought by Yusuf in his August 11, 2017 motions.
[4] These assets are reflected in the Partnership financial statement provided on January 31, 2017 to the Master and counsel for the Partners by John Gaffney ("Gaffney"), who has served as the accountant for the Partnership. As of August 31, 2017, Gaffney advises that the total assets are $8,879,900.96.
[5] A summary of Yusuf's Original Claims and proposed distributions was attached as Exhibit A to the Original Claims.

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

Bays 5 and 8 in the United Shopping Plaza, which have not been adjudicated[6], as well as other obligations owed to United discussed in more detail below. As reflected in Exhibit A-1, there will be a shortfall of more than $2.7 million in Partnership Assets, if all listed Debts are paid and all proposed reserves are established. Any actual shortfall must be made up by the Partners or a deceased Partner's estate.

Once reserves are established and the outstanding Debts are allowed and paid, distributions to the Partners can be made only if there are remaining Partnership Assets. The Amended Claims provide:

a) reconciliation of the historical withdrawals and distributions between the Partners and their agents from the profits of the Plaza Extra Stores limited to those transactions occurring on or after September 17, 2006, reflecting a net balance of $2,549,819.22 due to Yusuf;

b) removal of the accounting of funds received by Yusuf for the sale of Y&S Corporation ("Y&S") and R&F Condominium, Inc. ("R&F") stock resulting in a balance of $802,966.00 originally due to Hamed because these transactions are now barred by the Accounting Order and should be removed from the Partnership allocations;

c) a description of Partnership funds entrusted to Hamed to be held in foreign accounts, invested in real estate or used as charitable donations of the Partners, reflecting a balance due to Yusuf; and

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

[6] *See* Memorandum Opinion and Order dated April 27, 2015 (the "Rent Order"), which provides that although back rent for Bays 5 and 8 are set forth in United's Counterclaim, "this Order addresses only Bay No. 1." (Rent Order, p. 2, n. 1)

d) quantification of the loss of the going concern value of Plaza Extra-West as a result of Hamed's actions resulting in a balance of $4,385,000.00 due to Yusuf.

II. Funds to Be Held in Reserve

Prior to distribution of the remaining Partnership Assets, certain funds must be held in reserve to satisfy contingent obligations and risks of the Partnership.

A. Reserves Needed for Plaza Extra-Tutu Park Property Taxes and United Matching Payment

As described in the Tenth Bi-Monthly Report, *see* p. 4, n. 6, property taxes for 2015 have not yet been billed, but reserves should be set aside to pay these taxes which are estimated to be $14,356.44, along with a matching payment to United of $9,812.14.

Disputed/Undisputed, Ripe for Determination or Discovery Needed: Hamed disputes Yusuf's entitlement to the matching payment, but the issue is ripe for determination by the Master without further discovery.

B. Reserves Needed for FUTA Taxes

The Original Claims reflected a dispute as to the amount of Federal Unemployment Taxes ("FUTA") due from the Plaza Extra Stores, since the Internal Revenue Bureau was claiming that approximately $350,000.00 was due for 2014 and 2015, while Gaffney had determined that no additional FUTA taxes were due. Gaffney has since determined that he has adequate documentation to establish that the Partnership's accounts are cleared through the dates the Plaza Extra Stores were transferred in 2015. Accordingly, a $350,000 reserve is no longer needed.

C. Master's Fees

The fees of the Master for supervising the final liquidation and wind up of the Partnership will need to be reserved. It is estimated that $150,000 should be set aside for such expenses.

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

Disputed/Undisputed, Ripe for Determination or Discovery Needed: The parties and the Master should be able to agree upon the amount necessary to be set aside for payment of the Master's future fees and expenses.

D. Accounting Fees

Accounting fees for coordination and payment of various Debts and wind up of the Partnership will need to be reserved. It is estimated that $30,000.00 should be set aside for such expenses.

Disputed/Undisputed, Ripe for Determination or Discovery Needed: It is Yusuf's position that this item should not be disputed and is ripe for determination by the Master.

E. Funds to Be Held in Reserve for Litigation Risks

Reserves must be set aside for pending and possible litigation relating to claims for injuries allegedly suffered at the various Plaza Extra Stores prior to the dissolution of the Partnership and transfer of ownership of the stores. *See* Exhibit C-2 to the Seventh Bi-Monthly Report filed on April 1, 2016. Yusuf submits that the amount required to satisfy the potential risk to the Partnership as well as costs and expenses not otherwise covered by insurance for those claims is approximately $1,320,777.00. This amount is comprised of two primary components: 1) pending claims and 2) estimated future claims.[7]

As to the pending claims, they are further divided into two categories: a) those claims with insurance coverage and a self-insured retention and b) uncovered claims. For those claims with insurance coverage, reserves are calculated by considering the total amount claimed or last

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

[7] At present, Yusuf is unaware of any unfiled claims within the statute of limitations.

demanded in settlement by the plaintiffs, multiplied by the probability of plaintiffs' success in each case, added to the costs for the litigation not covered by insurance.[8]

As to the estimated future claims, the average value of claims in a given year is calculated by review of historical claims. Then this value is multiplied by the average number of claims per year and by the number of years in the statute of limitation period to determine the total risk. That figure is in turn multiplied by the percentage of time remaining in the applicable statute of limitations. The statute of limitations is calculated for each store from the last date it was controlled by the Partnership; i.e. March 9, 2015 for Plaza Extra-East and West, and April 30, 2015 for Plaza Extra-Tutu Park. Such formulas are commonly utilized to evaluate risk exposure by insurers in setting insurance loss reserves.[9]

These reserves include the claims of Wadda Charriez[10] since her counterclaims are effectively against the Partnership and, therefore, constitute a potential obligation of the Partnership.

Disputed/Undisputed, Ripe for Determination or Discovery Needed: It is Yusuf's position that this item should not be disputed. The Master should assess whether the estimated amounts for the reserves should be adjusted but it is otherwise ready for determination.

III. Outstanding Debts of the Partnership

Although nearly all of the undisputed Debts of the Partnership have been paid or resolved, the following Debts remain:

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

[8] *See* Exhibit B to the Original Claims, Litigation Reserves Calculations.
[9] *A User-Friendly Introduction to Property and Casualty Claims Reserves*, Joseph Calandro, Jr. and Thomas J. O'Brien, 2004, describing accounting methodologies as to assessment of litigation risks and costs for setting reserves.
[10] These claims are the subject of a separate suit, United Corporation v. Wadda Charriez, SX-13-CV-152, which Yusuf has moved to consolidate into this action for resolution. *See* Motion to Consolidate filed on March 17, 2016.

A. Miscellaneous Debts

There are Debts totaling $167,114.78, which must be paid prior to any distribution of the remaining Partnership Assets to the Partners[11]. This amount relates primarily to accounts payable for open tax issues.

Disputed/Undisputed, Ripe for Determination or Discovery Needed: It is Yusuf's position that this item should not be disputed and is ready for determination by the Master.

B. Unpaid Rent for Plaza Extra-East and Adjacent Bays

While the Court determined that certain past due rent obligations for Plaza Extra-East must be paid pursuant to the Rent Order, there remain additional rent claims for Plaza Extra-East. These claims have not yet been resolved[12] and, if found to be due and owing, then these are Debts of the Partnership that should be paid prior to any distribution of the remaining Partnership Assets to the Partners.

United makes the following claims against the Partnership as set forth in its Amended Counterclaim and Motion For Partial Summary Judgment Regarding Rent:

1. Bay 1 – Increased Rent Due Net of Rent Paid

United provided formal notice of increased rent of $200,000 per month to the Partnership, which was to begin on January 1, 2012 through March 31, 2012, if the premises were not vacated before then. Thereafter, beginning on April 1, 2012 through March 8, 2015, United provided formal notice of increased rent of $250,000 per month. *See* Exhibit D to Yusuf's Declaration dated August 12, 2014 (the "Yusuf Declaration") in support of Defendants'

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

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[11] These liabilities are as of December 31, 2016 and are reflected in the Partnership financial statement provided to the Master and counsel for the Partners by Gaffney on January 31, 2017. As of August 31, 2017, Gaffney advises that these liabilities are $69,273.51, which includes the $30,000 accrued for accounting fees pursuant to § II D, above.
[12] *See* Rent Order, p. 2, n. 1; p. 11, n. 4.

Motion for Partial Summary Judgment on Counts IV, XI and XII Regarding Rent. Although the Rent Order awarded certain amounts of rent to United during this period, the award did not address the increased rent claimed by United. The outstanding balance of the increased rent claimed as to Bay 1, net of the rent recovered pursuant to the Rent Order, is $6,974,063.10. *See* calculation of additional rents attached as Exhibit C to the Original Claims.

Disputed/Undisputed, Ripe for Determination or Discovery Needed: Although this debt is disputed, it is fully briefed and ready for determination by the Master.

2. Bays 5 and 8

Likewise, outstanding rent is due to United for Bays 5 and 8 of the United Shopping Plaza. These amounts were not adjudicated in the Rent Order and they remain an outstanding rent claim against the Partnership. The total amount due to United for unpaid rent for Bays 5 and 8 is $793,984.34. *See* the Yusuf Declaration at ¶¶ 21-25.

Disputed/Undisputed, Ripe for Determination or Discovery Needed: Although this debt is disputed, it is fully briefed and it is ready for determination by the Master.

3. Interest on Rent Claims

The interest that accrued at 9% per annum on the rent actually awarded by the Rent Order ($6,248,924.14) is $881,955.08 as of May 11, 2015, when that rent was paid to United. *See* calculation of interest on Bay 1 rent attached as Exhibit D to the Original Claims.[13]

Disputed/Undisputed, Ripe for Determination or Discovery Needed: Although this debt may be disputed, it is ripe for decision by the Master.

The interest due for the unpaid rent on Bays 5 and 8 is also claimed by United. The total interest calculated at 9% per annum for the period from May 17, 2013 through September 30,

[13] This amount does not include any interest accruing at the 9% rate on each month's unpaid rent from June 1, 2013 through March 8, 2015.

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

2016 is $241,005.18. Such interest continues to accrue at the daily rate of $195.78 until paid. *See* calculation of interest on Bays 5 and 8 rent attached as Exhibit E to the Original Claims.

Disputed/Undisputed, Ripe for Determination or Discovery Needed: It is Yusuf's position that the issue of interest upon the unpaid rent for Bays 5 and 8 cannot be adjudicated until the claim for the unpaid rent is resolved. Once the unpaid rent for Bays 5 and 8 is resolved, the interest calculation can be readily determined by the Master.

C. Reimbursement For Gross Receipts Taxes Paid by United

As Yusuf has testified without contradiction (*see* transcript of Yusuf's deposition of April 2, 2014 at pages 53-4), the Partners originally agreed that the Plaza Extra Stores would pay all gross receipts taxes and insurance relating to United's Shopping Center. The Partners acted on this agreement for the life of the Partnership, as reflected in the actual payment of these expenses with funds from the Plaza Extra Stores for more than 28 years. The Partnership owes United for certain gross receipts taxes United paid on behalf of the Partnership totaling $60,586.96, which were never reimbursed. *See* Exhibit F to the Original Claims, Summary and Evidence of United Payment of Gross Receipts Taxes.

Disputed/Undisputed, Ripe for Determination or Discovery Needed: This debt is disputed. The Master will need to determine whether United's gross receipts taxes and insurance were treated as part of the expenses of the Partnership. Additional discovery is needed on this issue.

D. Black Book Balance Owed to United

A black ledger book (the "Black Book") was used by the Partners to track spending and withdrawals as between the Partners and their families as well as by United on behalf of the Plaza Extra Stores. Certain entries from the Black Book are accounted for in the BDO Report

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

discussed in §IV below, to the extent they represent historical withdrawals as between the Partners and their families. Adjustments have been made as to BDO's allocation of those partnership withdrawals prior to September 17, 2006. However, as to funds which United paid on behalf of the Plaza Extra Stores, the Black Book entries reveal that the Partnership owes United $49,997.00 for various expenses it paid on behalf of the Partnership. *See* Exhibit G to the Original Claims, Relevant Black Book Entries.

Disputed/Undisputed, Ripe for Determination or Discovery Needed: This debt is disputed and will likely require additional discovery.

E. Additional Ledger Balances Due to United

In addition to the Black Book balance owed to United, at various points in time, United made other payments on behalf of the Plaza Extra Stores. In 1994, 1995 and in 1998, United paid $199,760.00 for various expenses of the Partnership. *See* Exhibit H to the Original Claims, Ledger Sheets Reflecting United's Payments for Plaza Extra. In the same ledger book, records of withdrawals by Yusuf are also noted for certain personal expenses in 1995 and 1996. The amounts relating to Yusuf's personal expenses are included in the BDO Report discussed below in § IV, accounting for the withdrawals as between the Partners and their families. Again, adjustments have been made as to BDO's allocation of those historical partner withdrawals prior to September 17, 2016. However, the total amount of $199,760.00 paid by United has not otherwise been captured in other reconciliations and remains due and owing to United.

Disputed/Undisputed, Ripe for Determination or Discovery Needed: This debt is disputed and will likely require additional discovery.

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

F. Water Revenue Re Plaza Extra-East

Beginning in1994, Plaza Extra-East began selling United's water. The proceeds for the first 10 years were used primarily for charitable purposes. From April 1, 2004, however, all revenue from the sale of United's water that was collected by Plaza Extra-East was to be paid to United. United has calculated the average water sales per month based upon two years of sales in 1997 ($52,000) and 1998 ($75,000) as $5,291.66 per month. Multiplying the average monthly sales revenue by 131 months, United is owed $693,207.46 from the Partnership for the water sales revenue from April 1, 2004 through February 28, 2015.

Disputed/Undisputed, Ripe for Determination or Discovery Needed: Yusuf anticipates that this debt will be disputed and will likely require additional discovery.

G. Unreimbursed Transfers to Plaza Extra from United's Tenant Account

At various points throughout the Partnership, United would transfer funds from its tenant account, which the parties have already conceded was separate and independent from the Partnership, to the Plaza Extra Stores to cover expenses and to maintain cash-flow. The Partnership has not reimbursed United for certain transfers. The Partnership owes United $188,132 for its unreimbursed transfers. *See* Exhibit I to the Original Claims, Summary and Supporting Documentation of Unreimbursed Transfers from United.

Disputed/Undisputed, Ripe for Determination or Discovery Needed: Yusuf anticipates that this debt will be disputed and will likely require additional discovery.

IV. Past Partnership Withdrawals and Distribution Reconciliation

Throughout the Partnership, the Partners and their agents (*i.e.,* their sons) would withdraw cash from safes at the Plaza Extra Stores. Evidence of these withdrawals came in multiple forms including, *inter alia*, receipts, checks or ledger entries. In addition, the Partners

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

and their agents used funds generated by the Plaza Extra Stores for personal expenses. These payments for personal expenses were to be counted against each Partner as a distribution. The withdrawals and payments for personal expenses were supposed to be done on the "honor system," which relied upon each Partner and their agents to disclose to the other Partner, via "tickets" or receipts left in the store safes, when withdrawals were made or personal expenses were paid from Partnership funds. Occasionally, the Partners would reconcile the various withdrawals and expenses between them. Upon review of the various accounting records as well as information regarding personal accounts and assets of the Partners and their agents, Yusuf submits that Hamed and his agents failed to fully disclose all of the funds they withdrew from the Partnership or personal expenses they paid with Partnership funds. Consequently, these previously undisclosed withdrawals and expenses are treated as distributions in the Original Claims and the Amended Claims. A full accounting of the Partnership withdrawals is set forth in the Expert Report of Fernando Scherrer of BDO Puerto Rico, P.S.C. ("BDO") attached as Exhibit J to the Original Claims[14]. Based on that report, Hamed's withdrawals/distributions exceeded Yusuf's withdrawals/distributions by $19,341,350.72. *See* Exhibit J at p. 62-3. As a result, under the Original Claims, $9,670,675.36 should be awarded to Yusuf to equalize the distributions between the Partners so that both Partners have equal distributions of $18,820,989.98.

Subsequent to the Accounting Order limiting the accounting claims to those transactions occurring on or after September 17, 2006, BDO adjusted their calculations to reflect only transactions from that date forward. Their revised calculations are set forth in the attached **Exhibit J-2**. Hamed received $5,099,638.44 more than Yusuf for the defined period. As a result

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

[14] The tables, schedules and supporting documentation for that report are voluminous and were submitted to the Master and counsel for Hamed via a flash drive or CD identified as Exhibit J-1.

of these amended calculations, $2,549,819.22 should be awarded to Yusuf to equalize the distributions between the Partners for the disparity in distributions from September 17, 2006 forward so that both Partners have equal distributions.

Disputed/Undisputed, Ripe for Determination or Discovery Needed: The various transactions identified and allocated by BDO are in dispute. While not every single allocation will be in dispute, Hamed will need to identify which specific allocations he disputes. It is Yusuf's position that further discovery is needed as to these claims as well as any accounting claims that Hamed may assert involving transactions occurring on or after September 17, 2006.

V. Y&S and R&F Stock Sale Proceeds Distribution

The Partnership invested in various entities used to purchase either stock or real estate. One such entity was Y&S. The Partners invested Partnership funds through two of their sons, Hisham Hamed and Nejeh Yusuf. The two sons sold their stock for $900,000, pursuant to an agreement dated January 15, 2000 with Hakima Salem. Rather than receiving the proceeds, the two sons directed that the funds be paid to Yusuf, who was to be the nominee of the sales proceeds and, thus, custodian of the funds. The funds were not paid in a lump sum, but rather periodically and often late. Yusuf has received all of the proceeds from the sale of the stock. Although claims to these funds were the subject of a separate suit (Hamed v. Yusuf, Superior Court of St. Croix, SX-2014–CV-278), these claims[15] have been consolidated into this case and incorporated into the Partnership accounting and distribution. As a result of various adjustments

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

[15] Although no claims have ever been pled in this case or SX-2014-CV-278 concerning the $600,000 in proceeds from Yusuf's sale of 1,000 shares of stock in R&F pursuant to an agreement dated January 15, 2001 with Hakima Salem, Yusuf included these proceeds in his accounting in the Original Claims.

reflected on Exhibit 1 to the complaint in SX-2014-CV-278, $802,966[16] would have been allocated to Hamed to equalize the Partnership distribution between the Partners resulting from the sale of the stock of Y&S and R&F. However, since the Accounting Order limits the claims Partners can make to transactions occurring on or before September 17, 2006, any claims Hamed has regarding the sale of the stock of Y&S and R&F are barred by the Accounting Order.

Disputed/Undisputed, Ripe for Determination or Discovery Needed: It is Yusuf's position that this item is barred by the Accounting Order and no longer subject to determination by the Master.

VI. Foreign Accounts and Jordanian Properties

As part of the profit sharing arrangement between the Partners, at various points in time, profits of the Partnership were sent to Jordan to be held in bank accounts or invested in real property to the mutual benefit of the Partners. In addition, Partnership profits were also sent to Jordan to be used as charitable donations of the Partners. Based upon Yusuf's review of bank documentation available to date and information discovered following the FBI raid, Yusuf claims that Hamed (either individually or through his sons or agents) failed to properly invest all Partnership funds with which he had been entrusted and failed to properly account for such funds. As a result, Hamed either breached his fiduciary duties to the Partnership by failing to properly safeguard, account for, and invest these funds as agreed between the Partners or he converted them for his own personal use or the personal use of his family members.

DUDLEY, TOPPER AND FEUERZEIG, LLP
1000 Frederiksberg Gade
P.O. Box 756
St. Thomas, U.S. V.I. 00804-0756
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[16] The Original Claims did not include interest on this claim because, among other things, United did not include all the interest it could claim on the rent actually awarded by the Rent Order. *See* n. 12, above. There were additional reasons for not paying interest on the claim as reflected in Yusuf's First Amended Answer And Counterclaim filed in SX-2014-CV-278. *See also* n. 16, below, regarding $150,000 offset. Because the Accounting Order now bars this claim, the issue of interest is no longer relevant.

Yusuf has repeatedly raised these claims with Hamed and his agent, Waleed Hamed, but has received either unsatisfactory or no responses to questions as to how the funds were spent. The misappropriations or failures to account by Hamed and his agents of which Yusuf is presently aware include:

a. Hamed and his sons have failed to account for the Partnership funds held in various foreign bank accounts from 1996 to date including, but not limited to, the accounts identified in Exhibit K to the Original Claims. The parties will need to engage in discovery to determine what transactions occurred with respect to those accounts on or after September 17, 2006.

b. Because Hamed converted $150,000 previously delivered as a charitable donation for a batch plant in West Bank, his interest in the Partnership should be charged for the transfer of $150,000.00 to the Bank of Palestine to make good on the original donation. *See* Exhibit L to the Original Claims, Wire Transfer Information Supporting Claim.[17]

c. Waleed Hamed's unauthorized check of $536,405 to Hamed on April 29, 1998 and additional checks for $10,000 and $15,216. *See* Exhibit M to the Original Claims.

d. Waleed Hamed's failure to account for funds that were removed from the Commercial Francaise Bank in Saint Maarten with four (4) checks totaling $550,373.14 to close out the account in January and February of 1997.

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

[17] This payment was made on behalf of the purchaser of the Y&S and R&F stock and represented a portion of the proceeds of the sale of that stock. Accordingly, the amount should be charged against Hamed's interest in the Partnership.

e. Waleed Hamed's conversion of $1.4 million received in 1996 as reflected in a St. Maarten police report. Items (c) – (e) would appear to be barred by the Accounting Order.

Approximately forty (40) parcels of real property were purchased in Jordan using funds from the Plaza Extra Stores. All but two of those properties were jointly titled in the names of Hamed and Yusuf. The Court's assistance in administering or liquidating the jointly titled parcels is not sought at this time. Yusuf does seek the Court's assistance, however, with respect to two (2) parcels that were incorrectly titled in Hamed's name alone. These two parcels are identified in the "Land Value Estimation" attached as Exhibit N to the Original Claims. Yusuf respectfully requests an Order requiring the Executor/Administrator of Hamed's estate to take such action as may be necessary to properly reflect Yusuf's joint ownership of these parcels and to recover the $434,921.37 reflected in Exhibit R to Yusuf's Amended Supplementation Of Accounting Claims submitted to the Master and counsel on December 12, 2016, (the "Amended Supplementation").

Hamed's interest in another parcel that was purchased in Jordan using funds from the Plaza Extra Stores has already been conveyed to Yusuf as part of Hamed's efforts to appease Yusuf following his discovery of the misappropriation of $2,000,000 sent to Hamed from St. Maarten in or around 1997. A copy of the agreement in Arabic conveying Hamed's interest in such parcel is attached as Exhibit O to the Original Claims[18]. Yusuf had agreed to resolve this misappropriation, but not any others that Yusuf might later discover, by the conveyance of Hamed's interest in two parcels, one in Jordan that is the subject of Exhibit N, and one half acre parcel in St. Thomas, previously titled in the name of Plessen Enterprises, Inc., which is

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

[18] An English translation was provided to the Master and counsel as Exhibit S to the Amended Supplementation on December 12, 2016.

addressed in a number of the Liquidating Partner's Bi-Monthly Reports. *See* Ninth Bi-Monthly Report at p. 5-6. Yusuf insisted that if Hamed wanted a resolution addressing all Hamed misappropriations, whether known or unknown, Hamed would have to arrange for the conveyance to Yusuf or United of another approximately 9.3 acre parcel located on St. Thomas also titled in the name of Plessen Enterprises, Inc. Hamed, through his son, Waleed, refused to convey this third parcel.

Although Yusuf is not pursuing his claims regarding the misappropriated 2,000,000, Hamed's sons are still seeking to somehow rescind Hamed's conveyance of his interest in the Jordanian parcel that is the subject of Exhibit N of the Original Claims in their second amended complaint in *Hamed v. Yusuf*, Civil No. SX-12-CV-377. Yusuf asks this Court to bind Hamed's estate by the agreement signed by Hamed.

Disputed/Undisputed, Ripe for Determination or Discovery Needed: It is Yusuf's position that these items are disputed and additional discovery is necessary. Furthermore, some of these claims relate to post – September 17, 2006 transactions or agreements between the Partners and therefore have not been eliminated by the Accounting Order.

VII. Loss of Going Concern Value of Plaza Extra-West

During the period that the Partnership operated Plaza Extra-West, it generated income, supported its expenses and ultimately generated profits. Plaza Extra-West's net profits were expected to continue indefinitely or, upon the dissolution of the Partnership, they were to continue until an orderly liquidation process could be concluded involving purchase of the business by one of the Partners or a third party. In either case, Plaza Extra-West's value as a "going concern" would have been quantified and realized equally by the Partners.

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As equal Partners, both Hamed and Yusuf had ownership interests in the "going concern" value of Plaza Extra-West. A "going concern" value recognizes the many advantages that an existing business has over a new business, such as avoidance of start-up costs and improved operating efficiency. In this sense, the "going concern" value of a business represents the difference between the value of an established business and the value of a start-up one. "Going concern" value also indicates the value of a business as an operating, active whole, rather than merely as distinct items of property.[19]

Both Hamed and Yusuf had fiduciary obligations to each other to maintain the "going concern" value of Plaza Extra-West and to behave in such a way as to promote and not diminish its value as an on-going business. An essential component to Plaza Extra-West's on-going business operations was its ability to continue to operate out of its existing location in Estate Plessen. By orchestrating an April 30, 2014 lease of the premises occupied by Plaza Extra-West to a competing business (wholly owned by Hamed's sons), KAC357, Inc., which then took over the operation of the Plaza Extra-West supermarket formerly owned by the Partnership, Hamed effectively appropriated for the benefit of three of his sons the "going concern" value to the Partnership of the supermarket. Hence, Hamed's actions operated to substantially decrease the value of Partnership Assets. Plaza Extra-West's value as a "going concern" at the time that Hamed took such actions was $8,770,000. *See* Valuation Report of Plaza Extra-West, prepared by Integra Realty Resources, attached as Exhibit P to the Original Claims, at page 55.[20]

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[19] Preservation of the going concern value is recognized in many contexts including bankruptcy proceedings, which seek to preserve such value when reorganizing businesses in order to maximize recoveries for creditors and shareholders (11 U.S.C. § 1101 et seq.).

[20] In addition to the business valuation report for Plaza Extra-West, Integra Realty Resources also prepared an appraisal of the real property occupied by Plaza Extra-West, which is attached as Exhibit Q to the Original Claims. Exhibit Q in turn contains an analysis of the market rent for use of the land and improvements occupied by Plaza Extra-West. In Exhibit Q, Integra Realty

Hamed's actions thus diminished the value of the Partnership Assets at the time of dissolution by $8,770,000. As half owner of the Partnership, such actions decreased the value of Yusuf's Partnership interests by $4,385,000. As a result, $4,385,000 should be awarded to Yusuf to compensate him for such loss of value.

Disputed/Undisputed, Ripe for Determination or Discovery Needed: It is Yusuf's position that this item is disputed, that it is not ripe for determination and that additional discovery is needed as to this claim.

VIII. Half of Value of Six Containers

As reflected in the Liquidating Partner's Sixth Bi-Monthly Report, n. 4, at the closed auction for the Tutu Park store, the Partners agreed before the Master that the inventory to be included in the auction consisted of the inventory located under the roof of the store facilities. After the auction, Yusuf learned that Hamed or his designee, KAC357, Inc., took possession of six (6) very large trailers of inventory located outside of the covered premises. Since the inventory contained in these 6 containers was indisputably Partnership property, Yusuf claims entitlement to half of the total value of such inventory, which is estimated to be approximately $360,000 to $420,000. Subject to further discovery, Yusuf submits he should be entitled to recover between $180,000 and $210,000. Since the Master has already rejected this claim, Yusuf reasserts it here merely to preserve the claim for review.

Resources concludes that the market rent for the property is $7.50 per square foot per year, rather than the $4.04 per square foot per year rate in the KAC357, Inc. lease. *See* Exhibit Q, pp. 63-64. The annual market rent is $1,224,848 at the $7.50/sq. ft./year rate. *See id.* at p. 63. That annual market rent of $1,224,848 in Exhibit Q was in turn used in the income approach calculations of Exhibit P of the Original Claims to determine the business value of Plaza Extra-West as of April 30, 2014. *See* Exhibit P, p. 39, item 4; pp. 40, 53-54. The $7.50/sq. ft./year market rent for Plaza Extra-West is a conservative number because, as noted in Exhibit Q (at page 61), the actual annual rent paid at one of the other stores – Plaza Extra-Tutu Park – was $8.91 (as a result of overage or percentage rent clauses in that lease).

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1000 Frederiksberg Gade
P.O. Box 756
St. Thomas, U.S. V.I. 00804-0756
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IX. Disposition of Main Case and Related Litigation

The Amended Claims address or resolve many but not all of the open claims between the Partners and related entities. To fully and finally complete the winding up of the Partnership and accomplish a final distribution to the Partners, further discovery will be required in this case and related litigation.

A. The Main Case and Consolidated Cases

Yusuf's proposed distribution in this matter (Hamed v. Yusuf, SX-12-CV-370, the "Main Case") is based upon the discovery that had been conducted prior to the imposition of the discovery stay in October of 2014. Additional information which has been or will be sought from Hamed's estate and his agents or representatives reflecting their personal finances is expected to reveal additional undisclosed withdrawals or personal expenses paid with Partnership funds that occurred on or after September 17, 2006. Hence, additional discovery is needed to determine if such additional undisclosed withdrawals occurred which would result in a revised proposed distribution as to the historical withdrawals.

The matter dealing with Y&S (Hamed v. Yusuf, SX-14-CV-278) has been consolidated with the Main Case. It is addressed in § V, above.

Hamed filed suit against United and Yusuf (Hamed v. United, SX-14-CV-287, the "287 Case") for the withdrawal of $2.7 million in Partnership funds on August 20, 2012. Yusuf submits that payment of these funds was made as a matching withdrawal to address the disparity of the prior Partnership distributions to Hamed and his agents. The Partners stipulated for consolidation of these cases and on April 15, 2016 an Order was entered consolidating the 287 Case into the Main Case. The withdrawal at issue in the 287 Case is fully addressed in the accounting and reconciliation of past Partner withdrawals in the BDO Report. *See* Exhibit J to

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

the Original Claims at p. 14. Yusuf's entitlement to this payment is disputed and discovery will be required before the matter is ready for determination by the Master.

B. Additional Suits Which Should Be Consolidated with the Main Case

The suit captioned United Corporation v. Wadda Charriez, SX-13-CV-152, relates to claims by United that Ms. Charriez falsified her work hours and therefore received compensation to which she was not entitled. Ms. Charriez counterclaimed against United and filed a third party complaint against Yusuf for intentional infliction of emotional distress, tortious interference with contract, civil extortion, civil conspiracy, and defamation, all of which are essentially claims against the Partnership. Yusuf contends that the claim is a potential asset of the Partnership and that the counterclaim/third party complaint is a potential liability of the Partnership, which requires the establishment of appropriate reserves. Further, Yusuf proposes that, as the Liquidating Partner, he be allowed to pursue efforts to resolve the claims and counterclaims involving the Partnership. These claims are disputed and will require discovery before they are ready for determination by the Master.

C. Conclusion

Yusuf submits that even with the limitations imposed by the Accounting Order restricting the Partnership accounting to claimed credits and charges for transactions occurring on or after September 17, 2006, the remaining assets of the Partnership are insufficient to satisfy the outstanding Debts and reserves for anticipated or contingent obligations and litigation risks of the Partnership. Assuming the allowance of all the identified Debts and proposed reserves, there will be a shortfall of more than $2.7 million in Partnership Assets to pay or establish these Debts and reserves. *See* Exhibit A-1. Any actual shortfall must be made up by the Partners or a deceased Partner's estate. Even the revised preliminary accounting of the historical withdrawals

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

and distributions between the Partners adjusted to reflect the period from September 17, 2006 forward, both disclosed and undisclosed, still reveals a large discrepancy in Yusuf's favor. Again, these calculations were prepared without the benefit of deposition testimony and additional written discovery following the stay. It is anticipated that additional discovery will yield information necessitating further revisions to these calculations. On balance, there exists a substantial amount due to Yusuf to reconcile the Partner's withdrawals and distributions. Solvency of Hamed (or his estate)[21] is in serious doubt given the significant discrepancy in the amounts due to Yusuf. For this reason, Hamed's (or his estate's or his trust's) interests in the jointly owned entities (Plessen Enterprises, Inc., Peter's Farm Investment Corporation, and Sixteen Plus Corporation) may need to be quantified as a means of payment to equalize the Partnership withdrawals.

Respectfully submitted,

DUDLEY, TOPPER and FEUERZEIG, LLP

DATED: October 30, 2017

By: Gregory H. Hodges

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

Attorneys for Fathi Yusuf and United Corporation

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

[21] A Petition for Probate of Will and for Letters Testamentary was filed on August 26, 2016 as Case No. SX-2016-PB-76. That petition reflects no available assets to satisfy Yusuf's claims since all of Hamed's interests in real and personal property had previously been conveyed to the Mohammad A. Hamed Living Trust dated September 12, 2012. Yusuf has filed a complaint challenging such conveyance as fraudulent. A copy of that complaint is attached as **Exhibit U** since Yusuf's Amended Supplementation left off with Exhibit T.

CERTIFICATE OF SERVICE

I hereby certify that on this 30th day of October, 2017, I caused the foregoing **Yusuf's Amended Accounting Claims Limited to Those Claims Arising After September 17, 2012** 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: joelholtpc@gmail.com

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

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

Michele Baker

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INDEX OF EXHIBITS TO YUSUF'S AMENDED ACCOUNTING CLAIMS AND PROPOSED DISTRIBUTION PLAN

Exhibit A-1-	Revised Summary of Yusuf Plan Distributions
Exhibit B -	Litigation Reserves Calculations
Exhibit C -	Calculation of Additional Rent Net of Rent Paid
Exhibit D -	Calculation of Interest on Bay 1 Rent
Exhibit E -	Calculation of Interest on Bay 5 & 8 Rent
Exhibit F -	Summary and Evidence of United Payment of Gross Receipts Taxes
Exhibit G -	Relevant Black Book Entries
Exhibit H -	Relevant Ledger Entries
Exhibit I -	Summary and Supporting Documentation of Unreimbursed Transfers from United
Exhibit J -	Past Partner Withdrawals and Distribution Reconciliation, BDO Report
Exhibit J-1 -	Tables, Schedules and Supporting Documents for BDO Report
Exhibit J-2 -	Revised Schedules for BDO Report based on limitations of Accounting Order
Exhibit K -	List of Foreign Accounts
Exhibit L -	Wire Transfer Information Supporting Claim
Exhibit M -	Cairo Amman Checks to Waleed Hamed
Exhibit N -	Land Value Estimation
Exhibit O -	Agreement in Arabic Conveying Hamed's Interest in Jordanian Parcel
Exhibit P -	Integra Realty Resources Valuation Report
Exhibit Q -	Integra Realty Resources Appraisal Report
Exhibit R -	Payment Analysis (*See* Amended Supplementation)
Exhibit S -	English translation of Exhibit O (*See* Amended Supplementation)
Exhibit T -	Invoices identified in Exhibit R (*See* Amended Supplementation)

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

Exhibit U - Fraudulent Conveyance Complaint

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

EXHIBIT A-1

Original Claim Distribution Summary Submitted September 30, 2016 (and amended in December 2016)	Amended Claim Distribution Summary Submitted October 30, 2017	Disputed or Undisputed	Ripe for Determination	Additional Discovery Needed
I. Total Assets Remaining After Liquidation:[1] $8,957,168.54	I. Total Assets Remaining After Liquidation:[2] $8,879,900.96	Undisputed	N/A	N/A
II. Less Reserves	II. Less Reserves			
A. Tutu Park Property Taxes:[3] $ 14,356.44	A. Tutu Park Property Taxes: $ 14,356.44	Undisputed	Yes	No
B. Matching Payment to United:[4] $ 9,812.14	B. Matching Payment to United:[5] $ 9,812.14	Disputed	Yes	No
C. FUTA Taxes: $ 350,000.00	C. FUTA Taxes: $ N/A	N/A	N/A	N/A
D. Master's Fees[6]: $ 150,000.00	D. Master's Fees[7]: $ 150,000.00	Need Add'l Estimate	Yes	No
E. Accounting Fees: $ 30,000.00	E. Accounting Fees[8]: $ 30,000.00	Need Add'l Estimate	Yes	No
F. Litigation Risks: $1,320,777.00 Subtotal: $1,874,945.58 Balance Less Reserves: $7,082,222,96	F. Litigation Risks: $1,320,777.00 Subtotal: $1,524,945.58 Balance Less Reserves: $7,354,955.38	Undisputed	Yes	No

[1] *See* Partnership balance sheet as of August 31, 2016 provided by John Gaffney to the Master and counsel for the Partners on September 30, 2016.
[2] *See* ftn. 4 of the Amended Claims.
[3] *See* ftn. 6 to Tenth Bi-Monthly Report filed on September 30, 2016.
[4] *See* ftn. 6 to Tenth Bi-Monthly Report filed on September 30, 2016.
[5] *See* ftn. 5 to Twelfth and Final Bi-Monthly Report filed on January 31, 2017.
[6] This is an estimated amount.
[7] This is an estimated amount to be updated by the Master.
[8] This is an estimated amount.

III. Less Debts of the Partnership:		III. Less Debts of the Partnership:		Disputed or Undisputed	Ripe for Determination	Additional Discovery Needed
A. Balance Sheet Liabilities[9]	$ 176,267.97	A. Balance Sheet Liabilities[10]	$ 39,273.51	Disputed	Yes	No
B. Add'l Rent for Bay 1:	$ 6,974,063.10	B. Add'l Rent for Bay 1:	$ 6,974,063.10	Disputed	Yes	No
C. Int. on Bay 1 Rent Awarded:	$ 881,955.08	C. Int. on Bay 1 Rent Awarded:	$ 881,955.08	Disputed	Yes	No
D. Rent for Bays 5 & 8:	$ 793,984.34	D. Rent for Bays 5 & 8:	$ 793,984.34	Disputed	Yes	No
E. Int. on Unpaid Rent, Bays 5 & 8:	$ 241,005.18	E. Int. on Unpaid Rent, Bays 5 & 8:	$ 241,005.18	Disputed	Yes	No
F. Reimb. United for Gross Receipts Taxes	$ 60,586.96	F. Reimb. United for Gross Receipts Taxes	$ 60,586.96	Disputed	No	Yes
G. Black Book Balance owed to United	$ 49,997.00	G. Black Book Balance owed to United	$ 49,997.00	Disputed	No	Yes
H. Ledger Balances owed to United	$ 199,760.00	H. Ledger Balances owed to United	$ 199,760.00	Disputed	No	Yes
I. Water Revenue Re: Plaza Extra-East	$ 693,207.46	I. Water Revenue Re: Plaza Extra-East	$ 693,207.46	Disputed	No	Yes
J. Unreimbursed Transfers from United	$ 188,132.00	J. Unreimbursed Transfers from United	$ 188,132.00	Disputed	No	Yes
Subtotal:	$10,258,959.09	Subtotal:	$10,121,964.60			
IV. Net Partnership Assets Available for Distribution After Debts and Reserves:	($3,176,736.04)	IV. Net Partnership Assets Available for Distribution After Debts and Reserves:	($2,767,009.22)			

[9] *See* Total Liabilities shown on balance sheet provided by John Gaffney on September 30, 2016.

[10] *See* ftn. 11 of the Amended Claims. Since $30,000 was included as a reserve in item II E, above, that amount was not also included in the balance sheet liabilities.

V. Past Partnership Withdrawals and Distribution Reconciliation: A. Net funds withdrawn or deemed to be a distribution between the Partners per BDO Report – Net Due to Yusuf[11]: $ 9,670,675.36	V. Past Partnership Withdrawals and Distribution Reconciliation: A. Net funds withdrawn or deemed to be a distribution between the Partners per BDO Report – Net Due to Yusuf[12]: $ 2,549,819.22	Disputed or Undisputed	Ripe For Determination	Additional Discovery Needed
		Disputed	No	Yes
VI. Y&S Corporation and R&F Condominium Stock Sale Proceeds Distribution: $802,966.00	VI. Y&S Corporation and R&F Condominium Stock Sale Proceeds Distribution: $ 0	No longer applicable as barred by Accounting Order	N/A	N/A
VII. Foreign Accounts and Jordanian Properties: A. Net Due to Yusuf: $TBD, but at least $434,921.37	VII. Foreign Accounts and Jordanian Properties A. Net Due to Yusuf: $TBD, but at least $434,921.37 (Exhibit R)	Disputed	No	Yes
VIII. Loss of Going Concern Value of Plaza Extra West: $4,385,000.00	VIII. Loss of Going Concern Value of Plaza Extra West: $4,385,000.00	Disputed	No	Yes

[11] *See* BDO Report at p. 63.
[12] *See* Exhibit J-2.

EXHIBIT J-2

BDO

Dudley, Topper and Feuerzeig, LLP
United Corporation
Civil No. SX-12-CV-99
Summary calculation of Additional Income as a result of withdrawals from Supermarkets' accounts (or partnership's accounts) - January 1994 to August 2014. (Including adjustments for withdrawals before 9/17/2006 as instructed by the Court)

Summary of Withdrawals

	Hamed					
Description	Mohammad	Waleed	Waheed	Mufeed	Hisham	Total
Funds received from partnership through checks	$ 1,500,000.00	$ -	$ -	$ -	$ -	$ 1,500,000.00
Withdrawals from the partnership with a signed ticket/receipt	-	237,352.75	-	-	-	237,352.75
Amount owed by Hamed family to Yusuf as per agreement before raid Sept 2001. As per Mike's testimony these tickets were burned. (Refer to Letter dated August 15, 2012)	-	1,778,103.00	-	-	-	1,778,103.00
Payments to third parties on behalf of Hamed/Yusuf with partnership funds either with tickets or checks	-	20,311.00	-	-	-	20,311.00
Payments to Attorneys with partnership's funds	-	3,749,495.48	372,155.95	-	-	4,121,651.43
Funds received by cashier's checks	-	-	-	-	-	-
Total Partnership	**1,500,000.00**	**5,785,262.23**	**372,155.95**	**-**	**-**	**7,657,418.18**
Deposits to bank and brokerage accounts	16,505.80	430,439.13	100,000.00	306,999.56	510,061.57	1,364,006.06
Payments to credit cards	-	422,824.70	-	179,786.80	-	602,611.50
Investments (cost) sold as per tax returns	-	-	-	-	-	-
Subtotal Lifestyle analysis	16,505.80	853,263.83	100,000.00	486,786.36	510,061.57	1,966,617.56
Net Withdrawals	**$ 1,516,505.80**	**$ 6,638,526.06**	**$ 472,155.95**	**$ 486,786.36**	**$ 510,061.57**	**$ 9,624,035.74**

	Yusuf											
Description	Fathi	Nejeh	Maher	Yusuf	Najat	Zayed	Syaid	Amal	Hoda	Yacer	Total	Difference
Funds received from partnership through checks	$ 4,284,706.25	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ 4,284,706.25	$ (2,784,706.25)
Withdrawals from the partnership with a signed ticket/receipt	-	-	2,000.00	-	-	-	-	-	-	-	2,000.00	235,352.75
Amount owed by Hamed family to Yusuf as per agreement before raid Sept 2001. As per Mike's testimony these tickets were burned. (Refer to Letter dated August 15, 2012)	-	-	-	-	-	-	-	-	-	-	-	1,778,103.00
Payments to third parties on behalf of Hamed/Yusuf with partnership funds either with tickets or checks	-	-	-	-	-	-	-	-	-	-	-	20,311.00
Payments to Attorneys with partnership's funds	183,607.05	20,370.00	33,714.00	-	-	-	-	-	-	-	237,691.05	3,883,960.38
Funds received by cashier's checks	-	-	-	-	-	-	-	-	-	-	-	-
Total Partnership	**4,468,313.30**	**20,370.00**	**35,714.00**	**-**	**-**	**-**	**-**	**-**	**-**	**-**	**4,524,397.30**	**3,133,020.88**
Deposits to bank and brokerage accounts	-	-	-	-	-	-	-	-	-	-	-	1,364,006.06
Payments to credit cards	-	-	-	-	-	-	-	-	-	-	-	602,611.50
Investments (cost) sold as per tax returns	-	-	-	-	-	-	-	-	-	-	-	-
Subtotal Lifestyle analysis	-	-	-	-	-	-	-	-	-	-	-	1,966,617.56
Net Withdrawals	**$ 4,468,313.30**	**$ 20,370.00**	**$ 35,714.00**	**$ -**	**$ -**	**$ -**	**$ -**	**$ -**	**$ -**	**$ -**	**$ 4,524,397.30**	**$ 5,099,638.44**

Note:
1 Total amounts include adjustments made for withdrawals in 2016.