

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

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

*Plaintiff/Counterclaim Defendant,*

vs.

**FATHI YUSUF** and **UNITED CORPORATION**

*Defendants and Counterclaimants.*

vs.

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

*Counterclaim Defendants,*

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

*Plaintiff,*

vs.

**UNITED CORPORATION,**

*Defendant.*

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

*Plaintiff,*

vs.

**FATHI YUSUF,**

*Defendant.*

**Case No.: SX-2012-cv-370**

**ACTION FOR DAMAGES, INJUNCTIVE  
RELIEF AND DECLARATORY RELIEF**

JURY TRIAL DEMANDED

Consolidated with

**Case No.: SX-2014-CV-287**

**ACTION FOR DECLARATORY  
JUDGMENT**

JURY TRIAL DEMANDED

Consolidated with

**Case No.: SX-2014-CV-278**

**ACTION FOR DEBT AND CONVERSION**

JURY TRIAL DEMANDED

**HAMED'S MOTION TO DENY UNITED CLAIMS Y-6, Y-7 and Y-9  
DUE TO THE APPLICABLE STATUTES OF LIMITATIONS  
AS TO UNITED CLAIMS THAT AROSE PRIOR TO SEPTEMBER 16, 2006**

United Corporation seeks three claims in this case that are barred by the applicable statute of limitations ("SOL"). It is respectfully submitted that these three claims should be stricken now to avoid protracted and expensive discovery.

## I. Introduction

United Corporation is a distinct party in this proceeding, completely independent of the Yusuf and Hamed partnership accounting claims. Three of these claims, identified in sections D, E and G in the claims submitted by Yusuf arise out of debts that allegedly arose in the 1990's (See **Exhibit 1** (with "Y" claims designation)):

D. (Y-6)	Black Book Balance Owed United <sup>1</sup>
E. (Y-7)	Ledger Balances Owed United
G. (Y-9)	Unreimbursed Transfers from United

While Hamed denies any of these debts are owed, there is no need to have to address the merits of these claims, as each is barred by the applicable statute of limitations. As can be seen from the back-up submitted with each claim, each debt arose in the 1990's:

- Exhibit D (Black Book Balance)-This is an alleged reconciliation of debts **in 1994**, supposedly leaving a balance due Yusuf.
- Exhibit E (Ledger Balances)- This is an almost illegible ledger sheet showing amounts allegedly owed for **1994, 1995** and **1998**.
- Exhibit G-(Unreimbursed Transfers)-This is a list of transfers allegedly from United to the partnership, with all amounts being from **1996**.

With this background in mind, the applicable SOL will now be discussed.

## II. Argument

Pursuant to 5 V.I.C. §31(3), the statute of limitations for actions for debt, breach of contract and conversion of property is 6 years. It is undisputed that SOL on all of these claims expired years ago, between the years 1999 and 2002 depending on the

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<sup>1</sup> The "black book" issue is a Fathi Yusuf partner's claim -- not a United claim, and is therefore prevented by the Court's "laches" order -- will be addressed in a separate motion. However, assuming it is a United claim, it is out of time.

specific claim, except for one claim for a ledger balance in 1998, for which the SOL would expire in 2004. Thus, all of these claims are barred by 5 V.I.C. §31(3).

### III. Conclusion

For the reasons set forth herein, it is respectfully submitted that these claims are each barred by the applicable statute of limitations and can be stricken now so that the time and expense of discovery can be avoided.

**Dated:** December 18, 2017



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### CERTIFICATE OF SERVICE

I hereby certify that on this 18<sup>th</sup> day of December, 2017, I served a copy of the foregoing by email, as agreed by the parties, on:

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

**Gregory H. Hodges**  
**Stefan Herpel**  
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A handwritten signature in blue ink is written over a horizontal line. The signature is stylized and appears to be 'J. B. C. Moorhead'.

# EXHIBIT 1

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, )  
MUFEEED HAMED, HISHAM HAMED, and )  
PLESSEN ENTERPRISES, INC., )

Additional Counterclaim Defendants. )

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

Plaintiff, )

v. )

UNITED CORPORATION, )

Defendant. )

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

Plaintiff, )

v. )

FATHI YUSUF, )

Defendant. )

CIVIL NO. SX-12-CV-370

ACTION FOR INJUNCTIVE  
RELIEF, DECLARATORY  
JUDGMENT, AND  
PARTNERSHIP DISSOLUTION,  
WIND UP, AND ACCOUNTING

Consolidated With

CIVIL NO. SX-14-CV-287

ACTION FOR DAMAGES AND  
DECLARATORY JUDGMENT

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**

STUDLEY, TOPPER  
AND FEUERZEIG, LLP  
100 Frederiksberg Gade  
P.O. Box 756  
St. John's, U.S. VI. 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



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.





**F. Water Revenue Re Plaza Extra-East**

Beginning in 1994, 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

# EXHIBIT D

①

ck #	1	United Corp. paid out from Plaza Extra		1
	2			2
	3			3
200	4	6/12 Adnan Rahhal	31,379.00	4
211	5	6/27 Enrique Arrugo	1,000.00	5
216	6	7/1 Committee to Elect Rodriguez	1,000.00	6
	7	7/4 Return check	781.25	7
228	8	7/15 Xerox Corp.	5,985.00	8
250	9	8/10 Xerox Corp.	634.87	9
251	10	8/12 Zenon Const.	15,000.00	10
258	11	Land	16,500.00	11
267	12	9/2 E. Arroyo	1.00	12
269	13	9/3 western food Re-zoning	255.00	13
268	14	9/4 Lilliana Belardo	500.00	14
270	15	9/4 Bent Jawaritz	500.00	15
279	16	7/1 AT and T	56.86	16
280	17	9/10 Attorney Fee	2,728.28	17
284	18	9/19 E. Arroyo	5,000.00	18
286	19	9/21 American Express	1,220.00	19
287	20	9/22 F.Z. Rental	200.00	20
289	21	9/23 Law suit	7,000.00	21
—	22	Cash Backhoe operator	50.00	22
292	23	7/26 F.Z. Rental	400.00	23
	24	2 wine for Arroyo	20.74	24
293	25	2/3 Pharmacy & medical Recourses	50.00	25
294	26	28 Bank	2,058.52	26
295	27	28 Bank	2,615.00	27
	28	Rent.	191,058.00	28
296	29	Standard & Poor's Corp.	100.72	29
297	30	Kay travel	500.00	30
300	31	Ms. Mapp	500.00	31
303	32	Print Maker, Inc.	352.00	32

october

2

1	308	6	Fr 2. fuel Rental	817.00		1
2		2	U.S. ...	1,000.00		2
3		3		<del>1,000.00</del>		3
4		4	Notary Public Fees	51.00		4
5		5	St. Thomas trip	19.60		5
6	1-9493		Florida trip	150.00		6
7		7	one car	6,186.00		7
8		8				8
9		9				9
10		10		399,332.62		10
11		11	Canta ...	150,000.00		11
12		12				12
13		13		149,332.62		13
14		14	Bert F. Lee	22,000.00		14
15		15				15
16		16		171,332.62		16
17		17	less Fathi Yusuf	3,500.00		17
18		18				18
19		19		168,832.62		19
20		20	one month Rent	700.00	check #1057	20
21		21				21
22		22		168,132.62		22
23	6/19/93		Corporate tax 92	300.00	# 1188	23
24		24		167,832.62		24
25		25	Building Insurance	25,000.00	# 1239	25
26		26				26
27		27		142,832.62		27
28	6	28	Air Condition	15,241.25	8-8-93	28
29		29				29
30		30		127,591.37		30
31	9	31	Florida wedding	10,000.00	# 154	31
32		32		137,591.37		32



11 9 91

1	1	1,000.00	1,000.00			
2	2	750.00	750.00			
3	3	500.00	500.00			
4	4	5,500.00	5,500.00	Check # 12 #396	Rec'd	
5	5	5,000.00	5,000.00	Check # 408		
6	6	15,000.00	15,000.00	Check # 425		
7	7	5,000.00	5,000.00	446		
8	8	5,000.00	5,000.00	460		
9	9	1,500.00	1,500.00	1039 #1000		
10	10	2,500.00	2,500.00	1215		
11	11	2,500.00	2,500.00	1281		
12	12	2,500.00	2,500.00	1552		
13	13	5,000.00	5,000.00	567		
14	14	5,000.00	5,000.00	1799		
15	15	6,500.00	6,500.00	2119		
16	16	1,500.00	1,500.00	1907		
17	17	1,500.00	1,500.00	10,000 + 5,000 - 2,000	check	
18	18	5,000.00	5,000.00	5284-24 #9158	check	
19	19	15,000.00	15,000.00	6-8-94 #1816	check	
20	20	5,000.00	5,000.00	6-8-94 FIVE		
21	21	8,000.00	8,000.00	7-13-94 FIVE		
22	22	12,710.00	12,710.00	7-13-94		
23	23					
24	24					
25	25					
26	26					
27	27					
28	28					
29	29					
30	30					
31	31					
32	32					

United Oves Plaza as of

12-31-1993 \$ 399,295.00 Paid

399,295.00

united paid out

(3)

1						1	
2					137,591.37	2	
10	3	17	Paint to St. Thomas		2,348.26	# 577	3
10	4	17	monarch Heavy Equipment		750. -	579	4
5			transferred money		20,000.00		5
12	8	21	Frank Medlin		5,000.00	# 618	6
12	7	30	Caribe Do-it Center		36.64	# 623	7
12	8	27	Tropical shipping		1,831.73	# 629	8
12	9	27	U.I. Bureau of Internal Revenue		731.80	# 630	9
12	10	28	Anthony Tavernier floor tile		2,000.00	# 631	10
12	11		Tropical shipping		1,927.75	# 625	11
12			U.I. Bureau of Internal Revenue		281.43	# 626	12
1	13	4	Anthony Tavernier floor tile		1,000.00	# 628	13
2	14	4	American Express		1,836.26	# 656	14
15							15
16					175,234.75		16
17			Less for Gross R. tax		1,032.89	# 207	17
18							18
19					174,201.86		19
3	20	5	Marks 21 Industries		25,000.00	668	20
3	21		St. Paul		2,000.00	669	21
3	22		Elroy + White & Associates		218.75	673	22
3	23	7	Cruzan Environmental		381.73	674	23
3	24	7	Superior Block		832.30	675	24
25					197,834.60		25
26			motte checks		100.00	# 674	26
2	27	22			197,834.60		27
3	28	14			10,000.00	# 676	28
29							29
3	30	20			207,834.60		30
31					860.99	# 678	31
32			Less Cash		13,800.00		32
					194,034.65		



(4)

United paid out

1									1
2							194,295.65		2
3	5284	prudential Bache					30,000.00		3
4									4
5							224,295.65		5
6		property tax					24,476.69		6
7									7
8							199,618.96		8
9		less: /					234.25		9
10									10
11							199,384.71		11
12		less: /					692.50		12
13									13
14							198,792.21		14
15		less: For land					100,000.00		15
16									16
17					X X X		98,792.21		17
18									18
19		28 month X 16,000.00 Int.					448,000.00		19
20		24 month Rent ML-84 to 12-31-85					202,000.00		20
21					X X X		98,792.91		21
22									22
23							749,292.00		23
24							399,295.00		24
25									25
26							349,997.00		26
27		Scotia Bank					300,000.00		27
28									28
29		owed to YUSUF					49,997.00		29
30									30
31									31
32									32

# EXHIBIT E





# EXHIBIT G

**Funds Transferred from United's Tenant Account to Plaza Extra - Owed to United**

<b>Year</b>	<b>Month</b>	<b>Amount</b>
1996	Jan	15,900
1996	Jan	30,300
1996	Mar	3,000
1996	Apr	6,000
1996	Apr	5,000
1996	Apr	8,000
1996	May	4,000
1996	May	13,000
1996	May	1,500
1996	May	3,500
1996	May	5,500
1996	June	5,000
1996	June	3,500
1996	June	10,000
1996	June	6,000
1996	June	2,000
1996	July	1,000
1996	July	4,182
1996	July	17,000
1996	Aug.	10,000
1996	Aug	3,500
1996	Aug	4,300
1996	Aug	12,000
1996	Sept	950
1996	Oct	12,000
1996	Dec	1,000
		<b>188,132</b>