

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

MOHAMMAD HAMED, by his
authorized agent WALEED HAMED,

Plaintiff/Counterclaim Defendant,

vs.

FATHI YUSUF and UNITED CORPORATION,

Defendants and Counterclaimants.

vs.

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

Counterclaim Defendants,

Case No.: SX-2012-cv-370

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

JURY TRIAL DEMANDED

MOHAMMAD HAMED,

Plaintiff,

vs.

FATHI YUSUF,

Defendant.

Case No.: SX-2014-CV-278

**ACTION FOR DEBT AND
CONVERSION**

JURY TRIAL DEMANDED

MOHAMMAD HAMED,

Plaintiff,

vs.

UNITED CORPORATION,

Defendant.

Case No.: SX-2014-CV-287

**ACTION FOR DEBT AND
CONVERSION**

JURY TRIAL DEMANDED

EXHIBIT 1

TO: DUDLEY, TOPPER AND FEUERZEIG, LLP

RE: MOHAMMAD HAMED V FATHI YUSUF AND UNITED CORPORATION CIVIL NO. SX-12-CV-370

REPORT OF HISTORICAL WITHDRAWALS AND DISTRIBUTIONS OF THE PARTNERS AND PROPOSED ALLOCATION TO EQUALIZE PARTNERSHIP DISTRIBUTIONS

AUGUST 31, 2016



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1. EXECUTIVE SUMMARY

BDO Puerto Rico, PSC (“BDO”) was engaged by Dudley, Topper and Feuerzeig, LLP (“Dudley”) on behalf of Mr. Fathi Yusuf (“Mr. Yusuf”) to provide litigation support services in connection with Civil Case No. SX-12-CV-370 (the “Case”), which was brought by Plaintiff Mohammad Hamed (“Mr. Hamed”) against Mr. Yusuf and United Corporation (collectively “Defendants”) seeking damages in addition to injunctive and declaratory relief.

Our analysis, procedures and adjustments was divided and summarized accordingly into the following two (2) categories:

1. Known or Documented Withdrawals from Partnership
2. Lifestyle Analysis to Identify Undisclosed Withdrawals from the Partnership

We reviewed the available information and identified those funds withdrawn from the Partnership as follows:

1. Funds withdrawn from Partnership through checks of the business
2. Funds withdrawn evidenced through a signed cash tickets/receipts
3. Funds withdrawn related to tickets already settled by the Partners
4. Payments to third parties on behalf of a partner through tickets or checks
5. Payments to attorneys with partnership’s funds
6. Funds withdrawn by cashier’s checks

In the following table we summarize the adjustments that were identified as the result of our work and that were construed to be Partnership distributions not accounted for in the Balance Sheet provided by Gaffney. We conclude that as a result of the withdrawals in excess, and to equalize the Partnership Distributions the Hamed family will need to pay \$9,670,675.36 to the Yusuf family:

	Partnership Withdrawals		
	Hamed	Yusuf	Total
Withdrawals from Supermarkets	\$ 13,553,076.27	\$ 8,354,410.77	\$ 21,907,487.04
Lifestyle Analysis	14,938,589.07	795,903.85	15,734,492.92
Total Withdrawals	28,491,665.34	9,150,314.62	\$ 37,641,979.96
Credit for withdrawals in excess	(9,670,675.36)	9,670,675.36	
Total Allocation to equalize partnership withdrawals	\$ 18,820,989.98	\$ 18,820,989.98	

2. INTRODUCTION

BDO Puerto Rico, PSC (“BDO”) was engaged by Dudley, Topper and Feuerzeig, LLP (“Dudley”) on behalf of Mr. Fathi Yusuf (“Mr. Yusuf”) to provide litigation support services in connection with Civil Case No. SX-12-CV-370 (the “Case”), which was brought by Plaintiff Mohammad Hamed (“Mr. Hamed”) against Mr. Yusuf and United Corporation (collectively “Defendants”) seeking damages in addition to injunctive and declaratory relief. The Case originally stemmed from disputes over a claimed partnership between Mr. Hamed and Mr. Yusuf and partnership distributions.

2.1 Scope

The engagement was divided in two (2) areas:

1. Identification of historical withdrawals both disclosed and undisclosed from the partnership during the period where no formal partnership accounting process was in place.
2. Review the accounting of the Claims Reserve Account and the Liquidating Expenses Account, as those terms are defined in the “Final Wind Up Plan of the Plaza Extra Partnership” (the “Plan”) approved by an order entered in the Case on January 9, 2015 (the “Wind Up Order”).¹

Since the opening of the first supermarket, the Partnership accounting records were prepared in an informal manner. For this reason, and after the Partners began the process to dissolve the Partnership, Dudley engaged BDO to identify withdrawals made by the Partners, family members and/or their agents which could be construed to be partnership withdrawals from the Partnership. This report represents a portion of the total claims presented related to historical withdrawals, additional claims are presented in the “Proposed Distribution Plan” not prepared or revised by BDO.

The scope of our work with respect to these withdrawals was limited to the period January 1994 through December 2012. Before 1994, the Partners had settled their respective Partnership distributions and, therefore, reconciliation before 1994 was not deemed necessary. Nevertheless, certain investments bought and sold by Mr. Waleed Hamed, which Mr. Yusuf understands were not included in the initial reconciliation were taken into consideration in our analysis.

Additional information was provided by Dudley which was obtained through subpoenas for the period covering January 2013 through August 2014, however, during this period a formalized partnership accounting process was already in place. As a result, we did not to perform any additional procedures

¹ All capitalized terms not otherwise defined in this report shall have the meaning provided for in the Plan.

to identify withdrawals from January 2013 to the date of this report. During this period Mr. John Gaffney (“Gaffney”), who had been engaged as the accountant of the Partnership as of January 1, 2013, was in-charge of the supermarkets accounting and a formalized partnership accounting process was put into place. We obtained information during this period and is included in our report but we adjusted all the transactions to avoid double counting with the information being provided by Gaffney.

Dudley requested that we also review the accounting of the Claims Reserve Account and the Liquidating Expenses Account, and the proposed distribution of the remaining funds and/or net assets of the Partnership pursuant to the Plan and Wind Up Order. The review included the Accounting, Combined Balance Sheets, and other financial information prepared by Gaffney and provided periodically with the Bi-Monthly Reports submitted to the Master overseeing the Liquidation Process and finalized in the last submission of financials as of August 31, 2016. The Partnership Accounting includes the accounts of Plaza Extra-East, Plaza Extra-West, and Plaza Extra-Tutu Park.

Any partnership withdrawals made prior to Gaffney’s appointment were not included in his accounting. Therefore, our work was aimed towards identifying withdrawals which could be construed to be Partnership distributions and to incorporate them into Gaffney’s accounting in order to provide an Adjusted Partnership Accounting.

This report only includes our conclusions related to the withdrawals/distributions from the Partnership and the available amount to be allocated per Partner to equalize the historical distributions.

2.2 Assumptions and Limitations

The analysis and conclusions included in this report are based on the information made available to us as of the date of this report. All information was provided by Dudley as submitted by Mr. Hamed and Defendants.² In the event that any other relevant information is provided, we shall evaluate it and amend our report, if necessary.

Our procedures do not constitute an audit, review, or compilation of the information provided and, accordingly, we do not express an opinion or provide any other form of assurance on the completeness or accuracy of the information. The use of the words “audit” and “review” throughout this document do not imply an audit or examination as used in the accounting profession. We make no further warranty, expressed or implied.

² Information was obtained from the following sources: (1) FBI files related to Criminal Case No. 2005-CR-0015, (2) documents produced by Mr. Hamed in the Case, and (3) documents produced by Defendants in the Case.

Our conclusions are based on the information provided by the personnel, officers and representatives of the Partnership, a practice commonly used by experts in our field to express opinions or make inferences, in addition to our education, knowledge, and experience. A detailed list of such information is included as part of this document.³

The professional fees related to this report were based on our regular rates for this type of engagement, and are in no way contingent upon the results of our analysis.⁴

3. BACKGROUND

Mr. Hamed and Mr. Yusuf had a longstanding family relationship which preceded their business relationship. In 1979, Mr. Yusuf incorporated United Corporation in the U.S. Virgin Islands. In early 1980, Mr. Yusuf began the construction of a shopping center⁵ at Estate Sion Farm, St. Croix with plans to build a supermarket within it. During the construction of the shopping center, Mr. Yusuf encountered financial difficulties which rendered him unable to obtain sufficient financing from banks to complete the construction of the project. In his search for capital, Mr. Yusuf approached Mr. Hamed for funding to facilitate the opening of Plaza Extra-East. Mr. Hamed provided funding with the agreement that they would each receive fifty percent (50%) of the net profits⁶ of the supermarkets.

The Partnership between Mr. Hamed and Mr. Yusuf subsequently expanded to include two (2) other supermarket locations, one in the west end of St. Croix, Plaza Extra-West and one in St. Thomas, Plaza Extra-Tutu Park; both built and initially stocked utilizing profits of the Partnership operating under the trade name Plaza Extra Supermarket. The trade name was registered to United Corporation, which maintained accounts for the operation of the supermarkets and for the shopping center rental business.⁷ The three (3) stores employed approximately six-hundred (600) employees and are hereinafter referred to collectively as “the Supermarkets”.

The Supermarkets were managed jointly by the Partners, with both families having a direct, active role in their operations; be it through the actions of the Partners, family members or authorized agents. The families agreed to have one (1) member of the Hamed family and one (1) member of the Yusuf family co-manage each of the stores.

³ Refer to Appendix A.

⁴ Our rates for this engagement are set forth in Exhibit 1.

⁵ The construction of the shopping center is related to the operations of United Corporation.

⁶ Net profits were defined as the remaining income after all the expenses, including the rent for the Plaza Extra East, were paid.

⁷ Related to United Corporation.

Mr. Yusuf was the managing partner of the original Plaza Extra Supermarket (Plaza Extra-East). He was responsible for the overall management of the business. Mr. Hamed was in charge of receiving, the warehouse and all produce. Mr. Hamed retired from actively participating in the business in 1996. During the later years, Plaza Extra-East had been managed by Mufeed Hamed and Yusuf Yusuf, along with Waleed Hamed; Plaza Extra-Tutu Park had been managed by Waheed Hamed, Fathi Yusuf and NejeH Yusuf; while Plaza Extra-West had been managed by Hisham Hamed and Maher Yusuf.

In 2001, charges were brought against United, Fathi Yusuf, Maher Yusuf, NejeH Yusuf, Waleed Hamed and Waheed Hamed. As a result, the FBI seized financial records from the Supermarkets and members of both the Yusuf and Hamed families as part of the investigation.

In 2003, the federal government, in connection with **Case No. 1:05-CR-00015-RLF-GWB**, appointed a monitor to oversee the Supermarkets' operations and to review the financial protocols. The monitor required all profits to be deposited into investment accounts, originally held at Merrill Lynch but subsequently transferred to Banco Popular.⁸ The financial information secured during this period was also examined with respect to our analysis.

In the later part of 2010, Mr. Yusuf reviewed documents from a hard drive containing financial records that had been seized by the FBI during the course of the investigation related to Case No. 1:05-CR-00015-RLF-GWB. The Partners became at odds over the inconsistent adherence to the fifty-fifty distribution agreement and as to the accounting of such disbursements to agents, family members and Partners. Subsequently, discussions began towards dissolving the Partnership.

On August 15, 2012, Mr. Yusuf wrote a check payable to United which was signed by him and his son, Maher Yusuf, in the amount of \$2,784,706.25⁹ drawn against a Plaza Extra operating account to equalize prior withdrawals of the Hamed family according to earlier reconciliations and additional documentation which was attached to the correspondence. Mr. Hamed alleges this withdrawal violates the Partnership agreement and "threaten[d] the financial viability" of the stores.

As a result of the aforementioned disputes, on September 19, 2012, a Complaint was filed by Mr. Hamed, as Plaintiff, against Mr. Yusuf and United Corporation, as Defendants, commencing the Case. Mr. Hamed alleged that he and Mr. Yusuf had formed a partnership in 1984, through which they agreed to jointly

⁸ Refer to Exhibit 2.

⁹ Refer to Exhibit 3 Check No. 1154.

manage the stores and equally share the profits and losses. Mr. Hamed also alleged that Mr. Yusuf acted in a manner “designed to undermine the Partnership’s operations and success” citing Yusuf’s eviction attempts and his disbursement of \$2.7 million from Plaza Extra’s operating accounts to United operating accounts, which Mr. Hamed alleged was a violation of the Partnership agreement.¹⁰ Additionally, Mr. Hamed filed a First Amended Complaint on October 19, 2012 seeking damages, along with injunctive and declaratory relief.¹¹

On April 25, 2013, an order was entered in the Case enjoining the parties and, among other things, requiring them to:¹²

1. Continue the operations of the Supermarkets as they had throughout the years prior to the commencement of the litigation, with Hamed, or his designated representative(s), and Yusuf, or his designated representative(s), jointly managing each store, without unilateral action by either party, or representative(s), regarding management, employees, methods, procedures and operations.
2. Refrain from disbursing funds from the Supermarkets’ operating accounts without the mutual consent of Mr. Hamed and Mr. Yusuf (or designated representative(s)).
3. Secure two (2) signatures on all checks from the Supermarkets’ operating accounts, one of a designated representative of Mr. Hamed and the other of a designated representative of Mr. Yusuf.

Pursuant to an order entered in the Case on September 18, 2014, the Honorable Edgar D. Ross, was appointed as Master, to direct and oversee the winding up of the Partnership. Such order established, among other things, the Court’s intention for the parties to present a proposed plan for winding up the Partnership under the Master’s supervision.¹³

On November 7, 2014, an order was entered in the Case concluding that the Partnership was formed in 1986 by the oral agreement between Mr. Hamed and Mr. Yusuf for the ownership and operation of the

¹⁰ Refer to Exhibit 4.

¹¹ Refer to Exhibit 5, First Amended Complaint.

¹² Refer to Exhibit 6, Memorandum Opinion page 23.

¹³ Refer to Exhibit 7, Order Appointing Master.

three Plaza Extra Stores, with each partner having a 50% ownership interest in all partnership assets and profits, and 50% obligation as to all losses and liabilities.¹⁴

On January 9, 2015, the court entered the Wind Up Order and approved the Plan, which named Mr. Yusuf as the Liquidating Partner with the exclusive right and obligation to wind up the Partnership pursuant to the Plan and the provisions of V.I. Code Ann. tit. 26, § 173(c), under the supervision of the Master.¹⁵

Additionally, the Plan established the terms and conditions under which Mr. Yusuf and Mr. Hamed would purchase certain assets and assume separate ownership and control of Plaza Extra-East and Plaza Extra-West, respectively. In addition, the order dictated the parameters for the private auction to be held for Plaza Extra-Tutu Park and established that the shares of stock of Associated Grocers held in the name of United was to be split 50/50 between Mr. Hamed and Mr. Yusuf, with United retaining in its name Yusuf's 50% share, and 50% of such stock being reissued in Hamed's name or his designee's name.

With respect to the Plaza Extra-Tutu Park auction, the Partnership assets that were sold consisted of the leasehold interests, the inventory, and equipment. The Partner submitting the winning bid for Plaza Extra-Tutu Park was to receive and assume all existing rights and obligations to the pending litigation with the landlord in the Superior Court of the Virgin Islands. The Partner who received and assumed said rights and obligations to the Tutu Park Litigation was obligated to reimburse the other Partner 50% of the amount of costs and attorneys' fees incurred to date directly attributable to the Tutu Park Litigation. The Prevailing Partner at auction was responsible for obtaining releases or otherwise removing any continuing or further leasehold obligations and guarantees of the Partnership and the other Partner.

The Plan also delineated the steps to be followed for the orderly liquidation of the Partnership. The following is a list of the steps to be taken:

1. **Budget for Winding Up Efforts:** The Liquidating Partner proposed a budget for the Wind Up Expenses. Such expenses include, but are not limited to, those incurred in the liquidation process, costs for the continued operations of Plaza Extra Stores during the wind up, costs for the professional services of the Master, costs relating to pending litigation in which Plaza Extra and/or United d/b/a Plaza Extra Stores is named as a party, and the rent to be paid to the landlords of Plaza Extra-East and Plaza Extra- Tutu Park.

¹⁴ Refer to Exhibit 8, Order page 3.

¹⁵ Refer to Exhibit 9, Order Adopting Final Wind Up Plan.

2. **Setting Aside Reserves:** The sum of Ten Million Five Hundred Thousand Dollars (\$10,500,000) is to be set aside in a Liquidating Expenses Account to cover Wind Up Expenses as set out in the Wind Up Budget with small surplus to cover any miscellaneous or extraordinary Wind Up Expenses that may occur at the conclusion of the liquidation process. Such Account shall be held in trust by the Liquidating Partner under the supervision of the Master. All disbursements shall be subject to prior approval by the Master. Unless the Partners agree or the Master orders otherwise, the Liquidating Partner shall not exceed the funds deposited in the Liquidation Expenses Account.
3. **Liquidation of Partnership Assets:** The Liquidating Partner shall promptly confer with the Master and Mr. Hamed to inventory all non-Plaza Extra Stores Partnership assets, and to agree to and implement a plan to liquidate such assets, which shall result in the maximum recoverable payment for the Partnership.
4. **Other Pending Litigation:** The pending litigation against United set forth in Exhibit C of Exhibit 9 to the Plan arises out of the operation of Plaza Extra Stores. As part of the Wind Up of the Partnership, the Liquidating Partner shall undertake to resolve those claims in Exhibit C Exhibit 9, and to the extent any claims arise in the future relating to the operation of a Plaza Extra Store during the liquidation process, within the available insurance coverage for such claims. Any litigation expenses not covered by the insurance shall be charged against the Claims Reserve Account.
5. **Distribution Plan:** Upon conclusion of the Liquidating Process, the funds remaining in the Liquidation Expenses Account, if any, shall be deposited into the Claims Reserve Account. Within 45 days after Liquidating Partner completes the liquidation of the Partnership Assets, Mr. Hamed and Yusuf shall each submit to the Master a proposed accounting and distribution plan for the funds remaining in the Claims Reserve Account. Thereafter, the Master shall make a report and recommendation of distribution for the Court for its final determination.
6. **Additional Measures to be Taken:**
 - i. Should the funds deposited into the Liquidating Expenses Account prove to be insufficient, the Master shall transfer from the Claims Reserve Account sufficient funds required to complete the wind up and liquidation of the Partnership, determined in the Master's discretion.

- ii. All funds realized from the sale of the non-cash Partnership Assets shall be deposited into the Claims Reserve Account under the exclusive control of the Master.
- iii. All bank accounts utilized in the operation of the Partnership business shall be consolidated into the Claims Reserve Account.
- iv. Any Partnership Assets remaining after the completion of the liquidation process shall be divided equally between Mr. Hamed and Mr. Yusuf under the supervision of the Master.

On January 26, 2015, Hamed and Defendants filed a stipulation that was approved and ordered by the Court.¹⁶ The parties stipulated to the following:

1. The valuation of the equipment at its depreciated value in each of the three stores, as provided in items #1, #2 and #3 of Section 8 of the Plan, is as follows:
 - v. Plaza Extra-East - \$150,000
 - vi. Plaza Extra-West - \$350,000
 - vii. Plaza Extra-Tutu Park - \$200,000
2. There is no need to do an appraisal of the Tutu Park leasehold interest, as provided in item #2 of Section 8 of the Plan, although the Parties will still do an inventory of the store's merchandise at its landed cost, as the parties will bid on this store (as ordered by the Court) without regard to its appraised value.
3. The litigation entitled "United Corporation v. Tutu Park Ltd., Civ. No. ST-97-CV-997 should be added to the definition of the "Tutu Park Litigation" in item #2 of Section 8 of the Plan and treated as property of that store under the same terms and conditions of the other referenced litigation (United Corporation v. Tutu Park Limited and P.I.D., Inc., Civ. No. ST-01-CV-361).

¹⁶ Refer to Exhibit 10, Stipulation.

4. Item #5 in Section 8 of the Plan shall be amended by replacing that language with the following language:

The parties agreed that the "Plaza Extra" trade name for each of the three stores shall be transferred with each store to the Partner who purchases the partnership assets associated with that location. United Corporation will sign whatever paperwork is needed to effectuate a trade name transfer. No party will thereafter be able to use the name Plaza Extra at any other location.

5. The effective date of the Court's Order Adopting Final Wind Up Plan shall be changed from ten (10) days following the date of the original Order to January 30, 2015.

On April 27, 2015, Honorable Judge Douglas A. Brady granted Defendant United Corporation's Motion to Withdraw Rent. The Liquidating Partner was ordered to withdraw from the Partnership joint account to cover past rent due the total amount of \$5,234,298.71, plus additional rents that have become due since October 1, 2013 at a rate of \$58,791.38 per month, until Mr. Yusuf assumed full possession and control of Plaza Extra-East.¹⁷

On April 28, 2015, Honorable Edgar D. Ross, Master, ordered the specific parameters applicable to the private auction of Plaza Extra-Tutu Park which was scheduled to commence at 10:00 a.m. on April 30, 2015. The order, also states the Partners agreed on \$220,000 as 50% of the amount of costs and the attorney fees incurred directly attributable to Tutu Park Litigation which shall be considered the Tutu Park Fees. Furthermore, all bank accounts, cash deposits, and accounts receivable of Plaza Extra-Tutu Park as of the day of the transfer shall belong to the Partnership.

Additionally, all debts, including accounts payable and liabilities, lawsuits against the Partnership or United arising from the operation of Plaza Extra-Tutu Park prior to the transfer to the purchasing partner or his designee, shall be treated as Partnership debts. Moreover, the purchase and sale of the assets of the Partnership shall be accomplished by a debit or credit from the Partner's interest in the Partnership accounts, determined whether the Partner is treated as the purchaser (debit) or the seller (credit). Such debits and credits will be reconciled and the net amount of the winning bid plus the Tutu Park Fees shall be paid to the selling partner within a reasonable amount of time after the conclusion of the auction,

¹⁷ Refer to Exhibit 11, Memorandum Opinion and Order dated April 27, 2015.

not to exceed fifteen (15) days. Lastly, the actual transfer shall become effective at 12:01 a.m. on May 1, 2015.¹⁸

On April 30, 2015, Honorable Edgar D. Ross, Master, declared Mr. Hamed the successful purchaser of Plaza Extra-Tutu Park. Consequently, as of 12:01 a.m. on May, 1, 2015, Mr. Hamed acquired the sole right, title, interest, ownership and control of the business known as Plaza Extra-Tutu Park. It should be noted that Mr. Hamed's rights, privileges and powers regarding Plaza Extra-Tutu Park will be exercised by KAC357, Inc., a corporation owned by Mr. Hamed's sons, using the trade name "Plaza Extra-Tutu Park".¹⁹

On March 5, 2015, Honorable Edgar D. Ross, Master, declared that Mr. Hamed fully complied with and satisfied the foregoing directive of the Wind Up Order with respect to Plaza Extra-West. Consequently, Mr. Hamed assumed sole ownership and control of Plaza Extra-West and was allowed to operate the location. Additionally, it was noted that Mr. Hamed's rights, privileges and powers regarding Plaza Extra-West will be exercised by KAC357, Inc.²⁰

On March 6, 2015, Honorable Edgar D. Ross, Master, declared that Mr. Yusuf fully complied with and satisfied the foregoing directive of the Wind Up Order with respect to Plaza Extra-East. Mr. Yusuf assumed sole ownership and control of Plaza Extra-East and was allowed to operate the location. Further, Mr. Yusuf's rights, privileges and powers regarding Plaza Extra-East will be exercised by United Corporation.²¹

The aforementioned court orders were examined in order to assist us in the preparation of the Partnership accounting, with respect to the disbursements of the Partners and their agents during the covered period and the proposed allocation to equalize partnership distributions.

In the following sections we will discuss the results of our analysis related to the withdrawals from the Partnership and the resulting Partnership final balance distribution.

¹⁸ Refer to Exhibit 12, Master's Order Regarding Bidding Procedures for Ownership of Plaza Extra-Tutu Park dated April 28, 2015.

¹⁹ Refer to Exhibit 13, Master's Order Regarding Transfer of Ownership of Plaza Extra Tutu Park, St. Thomas dated April 30, 2015.

²⁰ Refer to Exhibit 14, Master's Order Regarding Transfer of Ownership of Plaza Extra West.

²¹ Refer to Exhibit 15 Master's Order Regarding Transfer of Ownership of Plaza Extra East.

4. METHODOLOGY AND PROCEDURES PERFORMED TO DETERMINE WITHDRAWALS FROM PARTNERSHIP

In the Virgin Islands, partnerships are governed by the Uniform Partnership Act (“UPA”), adopted in 1998 as Title 26, Chapter I of the Virgin Islands Code. A partnership is defined as “an association of two or more persons who carry on a business, as co-owners, for profit”.²² Typically, unless a written partnership agreement stipulates otherwise, certain general rules apply with respect to management, profits, and losses. For example, unless otherwise stipulated in writing, each partner has an equal voice in the management of the partnership’s business and all partners share equally in profits and losses of the partnership.

Customarily, a partnership maintains separate books of account, which typically include records of the partnership’s financial transactions and each partner’s capital contributions. Usually, each partner has a separate capital account for investments and his share of net income/loss, and a separate withdrawal account. A withdrawal account is used to track the amounts taken from the business for personal use. On the other hand, net income or loss is added to the capital accounts in the closing process.

As previously indicated, the present claim arises from disputes over the Partnership and partnership distributions. At present, the Court has ruled that the Supermarkets are owned by the Partnership composed of Mr. Hamed and Mr. Yusuf on a fifty-fifty basis, thus net income/loss is shared equally among the partners. With respect to the Partnership distributions/withdrawals, no agreement has been reached by the parties and they are presently disputing amounts owed to or from the respective partner.

Due to the lack of formal accounting records related to the Partnership withdrawals and to the ongoing disputes between the Partners, BDO was requested to identify through the use of forensic accounting, the amounts that have been withdrawn from the Partnership which could be construed to be Partnership withdrawals and/or distributions. As forensic accountants, we use financial information to reconstruct past events. It should be noted that the findings and the report are impacted by the quality of the information provided and/or by the lack or limitation of the information provided for analysis. In the following paragraphs and sections, we will discuss the methodology and assumptions used during the engagement and the limitations we encountered in connection with the information provided.

²² Refer to Exhibit 16.

4.1 Net Withdrawals from Partnership

Our analysis, procedures and adjustments was divided and summarized accordingly into the following two (2) categories:

1. Known or Documented Withdrawals from Partnership
2. Lifestyle Analysis to Identify Undisclosed Withdrawals from the Partnership

4.1.1 Known or Documented Withdrawals from Partnership

It had been the custom and practice of the Yusuf and Hamed families to withdraw funds from the supermarket accounts for personal reasons, using either checks or cash tickets/receipts. The partnership category relates to all activity recorded and/or transacted through the Partnership. Our examination and analysis included the review of the available supermarkets' bank statements, bank reconciliations, checks, cash tickets/receipts and, cash receipt ledgers.

We reviewed the available information and identified those funds withdrawn from the Partnership as follows:

1. Funds withdrawn from Partnership through checks of the business
2. Funds withdrawn evidenced through a signed cash tickets/receipts
3. Funds withdrawn related to tickets already settled by the Partners
4. Payments to third parties on behalf of a partner through tickets or checks
5. Payments to attorneys with partnership's funds
6. Funds withdrawn by cashier's checks

Funds withdrawn from Partnership through checks of the business

In order to identify all monies withdrawn from the Partnership through checks we identified available checks, other than those related to salaries and wages made to the order of the Partners, family members and/or their agents through the Partnership. Our examination included available Partnership bank accounts, related to Plaza Extra-East, Plaza Extra-West and Plaza Extra-Tutu Park.

Funds withdrawn evidenced through a signed cash ticket/receipt

It should also be mentioned that the Yusuf and Hamed families periodically reconciled and evened their cash withdrawals through the use of the "black book" (cash tickets/receipts ledger). The cash ticket receipts ledger was deemed to represent direct evidence of the money directly withdrawn by each individual. Therefore, these cash receipts (withdrawals) were considered a direct acceptance of money that was withdrawn by each family member.

Furthermore, our analysis was aimed to identify all withdrawals made through the Supermarkets by the Partners, family members and/or their agents which could be construed to be partnership distributions. In order to identify all monies withdrawn from the Partnership through cash withdrawals, we reviewed and analyzed available cash tickets/receipts and cash ticket/receipts ledgers from Partnership which included Plaza Extra-East, Plaza Extra-West, and Plaza Extra-Tutu Park. The cash receipts provided were identified and assigned accordingly by the signature or name of the Partner, family member and/or the name of the agent.

Our analysis included the examination of the cash ticket/receipts ledger ("black book") to identify any cash withdrawals made by the Partners, family members and/or their agents. As part of our procedures, when analyzing the deposits of each individual we identified and traced any cash withdrawals to deposits made within the same day or up to three business days from the withdrawal date in order to avoid double counting.

Funds withdrawn related to cash receipts or tickets already settled by the Partners

In accordance with "Notice of Withdrawal" letter dated August 15, 2012, signed by Mr. Yusuf, partnership withdrawals made by the Hamed family totaled \$2,784,706.25 and withdrawn from United's operating account.²³ Composed of \$1,600,000 of cash receipts/tickets that had been destroyed, but agreed by the Partners, family members and/or their agents; \$1,095,381.75 in cash receipts tickets; and \$178,103 (\$89,392 and \$88,711) received after closing two (2) bank accounts. For purposes of our analysis, the documents provided with the Notice of Withdrawal were evaluated and the amounts considered as partnership distributions.

Payments to third parties on behalf of the Partners through tickets or checks

In order to identify and/or detect any disbursements from the Partnership on behalf of the Partners, family members and/or their agents to third parties, which could be construed to be partnership distributions, we examined available checks, cash tickets/receipts and cash tickets/receipts ledgers of the partnership accounts. Our examination included reviewing any available supporting documentation of such disbursements in order to determine whether such withdrawals/disbursements constituted partnership distributions.

²³ Refer to Exhibit 20.

Tickets/receipts signed by third parties were observed acknowledging the receipt of money as a result of a loan; these tickets/receipts were also signed by Partners, family members and/or their agents who authorized the loan. Available tickets/receipts of the repayment of loans were also observed, signed by Partners, family members and/or their agents. If both tickets/receipts were identified, loan originated and loan repayment, we proceeded to adjust the amounts. However, if only one ticket/receipt was observed, said amounts were considered as partnership distributions.

Payments to attorneys with partnership's funds

During our examination a number of payments for legal services issued by either Partners, family members and/or their agents were analyzed and deemed not related to Partnership benefits or agreed upon. As a result, such payments were considered partnership distributions.

Funds withdrawn by cashier's checks

In order to identify any additional monies withdrawn, not directly identifiable through the Partnership or directly linked to the Partnership which could be construed to be partnership distributions, we examined available cashier's checks issued to either Partners, family members and/or their agents. Furthermore, we also reviewed any available supporting documentation related to such disbursements in order to determine whether such withdrawals/disbursements constituted partnership distributions.

4.1.2 Lifestyle Analysis to Identify Undisclosed Withdrawals from the Partnership

Our examination was aimed to identify all other income received by the Partners, family members and/or their agents that could be construed to be partnership distributions, which otherwise had not been disclosed as a withdrawal. Mr. Mohammad Hamed testified that their only source of income was salaries and/or wages, and the distributions received from the Partnership since 1986.²⁴ Therefore, any excess of monies identified over the known sources of income during the period analyzed was assumed to be partnership distributions and/or partnership withdrawals.

Yusuf's family has testified that their source of income was not only related to the supermarket activities, but also from United's rental and other businesses not related to the supermarket operation. Any unidentified deposit was considered a withdrawal from the Partnership.

Lifestyle analysis is the most commonly used method of proving income for an individual in cases where records or documents are not fully available. This method considers the person's spending patterns in

²⁴ Refer to Case No. SX-12-CV370, Oral deposition of Mr. Hamed dated April 21, 2014, pages 43 to 44.

relation to their known sources of funds.²⁵ If a person has declared income that is well below the cost of the lifestyle he or she is living, the lifestyle analysis may suggest that undisclosed sources of income exist. When the total is compared to reported or known sources of income, there may be a big gap, which can indicate other sources of income.

There are different methods to prove income, depending on factors such as the availability and adequacy of the individual's books and records, whether the individual spends all income or accumulates it, the type of business involved, etc. The methods commonly used are the following:²⁶

- a. Direct (specific item or transaction) method
- b. Indirect methods:
 - i. Net worth method
 - ii. Expenditures method
 - iii. Bank deposits method
 - iv. Cash method
 - v. Percentage markup method
 - vi. Unit and volume methods

We relied upon the bank deposits method²⁷, one of the traditional indirect methods, to identify the Partners' withdrawals. The bank deposits method is recommended to be used in various situations, specifically when books and records are incomplete, inadequate, or not available, such as in this case.²⁸

This method is based on the theory that if a person is engaged in an income producing business or occupation and periodically deposits money in bank accounts in his or her name or under his or her control, an inference can be drawn that such bank deposits represent income unless it appears that the deposits represented re-deposits or transfers of funds between accounts, or that the deposits came from a non-related sources such as gifts, inheritances, or loans. In other words, under this method, all bank deposits are deemed to be income, unless they can be traced to another source of funds.²⁹

²⁵ Sources of income or funds can include wages, bonuses, stocks sold, bank loan proceeds, gifts, gambling winnings, among others.

²⁶ Thomson Reuters/PPC. (2014). *Litigation Support Services: Chapter 11 Criminal Cases*, "1104 Methods of Proving Unreported Income". These methods are not only used in criminal cases but also in civil cases such as divorces and for other purposes where income needs to be proved.

²⁷ A description of banks deposits computation can be observed in case United States v. Boulet, 577 F.2d 1165 (5th Cir. 1978).

²⁸ Thomson Reuters/PPC. (2014). *Litigation Support Services: Chapter 11 Criminal Cases*, "1104 Methods of Proving Unreported Income".

²⁹ This may include bank loans, transfer from another account, a gift, or another documented source. The Fraud Files Blog. (2010, February 28). Lifestyle Analysis in Criminal Cases: Proving Income without Full Documentation. <http://www.sequenceinc.com/fraudfiles/2010/02/lifestyle-analysis-in-criminal-cases-proving-income-without-full-documentation/>.

This method also contemplates, that any expenditures made by the person in cash or currency from funds not deposited in any bank and not derived from a known source, similarly raises an inference that such cash or currency represents additional income.

The deposits method can stand on its own as proof of taxable income; it need not be corroborated by another method and its use is not limited to validating another method. In using the deposits method, care must be taken to observe the following procedures:

- a. Deposits to all types of financial institutions should be considered; for example, banks, savings and loan associations, investment trusts, mutual funds, brokerage accounts, etc.
- b. Cash payments (whether for business expenses, personal expenses, investments, etc.) made from cash receipts not deposited must be counted (added) as additional gross income.
- c. Deposits that do not represent taxable income, such as deposits of gifts, inheritances, loan proceeds, insurance proceeds, etc., must be deducted from total deposits.
- d. Calculating taxable income, deductible business expenses, whether paid by cash or check, must be deducted from the total deposit, a deduction for depreciation must also be allowed.³⁰
- e. Care must be taken not to double count transfers between accounts, deposits of previously withdrawn checks, checks in transit at the end of the period, bounced checks, debit and credit advices or deposits reported on the prior period's tax return but not deposited until the current period. Also, only the net deposit should be counted if the deposit slip lists all checks and then deducts an amount to be paid to the taxpayer in cash.

Based on the deposit method, we decided to examine the bank accounts, credit card accounts, and brokerage/investment accounts of each of the Partners, family members and their agents. As part of our analysis, we identified and included all amounts deposited in the respective bank and brokerage accounts, credit card payments, and funds assumed to have been received as partnership distributions/withdrawals identified from cash receipts provided. In order to confirm the funds and sources of income of both families, we used their known salaries/wages.

Our examination entailed reviewing and analyzing all known and available bank accounts, brokerage/investment accounts and credit card accounts of each of the Partners, family members and their agents. As part of our analysis, we identified and included all amounts deposited in the respective

³⁰ Thomson Reuters/PPC. (2014). *Litigation Support Services: Chapter 11 Criminal Cases, "1104 Methods of Proving Unreported Income"*.

bank and brokerage accounts, credit card payments, and funds assumed to have been received as partnership distributions/withdrawals. Any excess monies identified from our examination over the known and confirmed income was assumed to be distributions from the partnership. In order to confirm the funds and sources of income of both families, we obtained from the Partnership records the salaries and wages earned by the Partners, family members and their agents.

Through our forensic analysis, we were also able to identify a number of disbursements related to a construction of a residence belonging to Waleed Hamed (son of Mohammad Hamed). Such amounts were considered in our analysis of the partnership distributions.

In order to avoid double counting of data, our lifestyle analysis required that certain adjustments be made to the amounts of withdrawals/distributions identified for each of the Partners, family members and/or their agents. Following, list of the type of adjustments that were made:

1. Deduction from the amounts deposited, any amounts identified from sources other than the supermarket business. (Transfers from family members and/or transfers from other owned accounts).
2. Deduction of payments made to credit card accounts using funds from other personal accounts.
3. Deduction of amounts identified through cash tickets/receipts, related to withdrawals from the Partnership which we were able to identify as having been deposited in the bank and/or brokerage accounts.
4. Deduction of checks issued from Plaza Extra's accounts which we identified as having been deposited in the bank or brokerage accounts representing reimbursement of business expenses.

The above described procedures were applied to each of the Partners, family members and their agents in order to calculate the excess monies received per each individual over their stated or known sources of income. The calculated withdrawals and/or construed partnership distribution were tallied per Partner, family member, agent and family (i.e. Hamed Family vs. Yusuf Family). Following is a list of the Partnership families - Hamed & Yusuf:

Hamed Family

- a. Mohammad Hamed
- b. Waleed Hamed
- c. Waheed Hamed
- d. Mufeed Hamed

e. Hisham Hamed

Yusuf Family

- a. Fathi Yusuf
- b. NejeH Yusuf
- c. Maher Yusuf
- d. Yusuf Yusuf
- e. Najat Yusuf
- f. Zayed Yusuf

4.2 Yusuf Family Members

We also performed a Partnership withdrawal analysis and a lifestyle analysis of the following additional Yusuf family members:

- Syaid Yusuf
- Amal Yusuf
- Hoda Yusuf

Our analysis entailed identifying checks and cash withdrawals, payments to third parties, payments to attorneys and withdrawals through cashier's checks from Partnership accounts. As well as reviewing and analyzing deposits to available bank accounts and brokerage/investment accounts, and payments to credit card accounts. However, our examination did not reveal any of the latter, checks or cash withdrawals; No deposits were made to bank accounts, brokerage/investment accounts or payments to credit cards. In accordance with the information presented, our analysis did not reveal Partnership withdrawals for the benefit of Amal, or Hoda Yusuf family members for 1994 to 2012. Hence, no adjustments were required. For Syaid Yusuf, we only observed three checks associated with tax expenses for the year 2000 and 2001 and therefore adjusted. No further analysis was needed.

4.3 Periods for Analysis

Due to the lack of formal accounting records related to the Partnership withdrawals prior to Mr. Gaffney's appointment, we divided into four periods the result of our work and the proposed adjustments to the partnership distributions based on the availability of the information. Following is a description of the periods:

1. January 1994 thru September 2001: this is the accounting period prior to the FBI raid and government scrutiny. During this period, it was common for the Partners, family members and their agents to withdraw monies via a check or cash by just signing a cash ticket/receipt. Neither formal supervision nor formal accounting was in place during this period.
2. October 2001 thru December 2012: this is the period after the FBI raid and government scrutiny; accounting was improved, however, Gaffney was not in place and most withdrawals were limited to salaries; partnership distributions were limited as the government supervision/monitoring was in place.
3. January 2013 thru January 30, 2015: the Gaffney years - accounting information is formal and comprehensive. During this period, all withdrawals were made with Gaffney's supervision and therefore, were recognized in the general ledger.
4. January 30, 2015 thru August 31, 2016: this is the period of the liquidation of the Partnership assets; during this period, all transactions were performed with Gaffney's supervision and therefore, recognized in the general ledger. Additionally, during this period the Partnership activity was supervised by the Court through the appointed Master.

We should clarify that before 1994 only one store was open, a fire in 1992 destroyed the store and with it most of the financial/accounting information that was available. It had also been established that the Partnership kept a "black book" or a ledger to reconcile withdrawals from the Partnership. Prior to 1993, no amounts had been disputed by either Partner. However, as a result of the current litigation process, Mr. Yusuf became aware of certain investments reported by Waleed Hamed in his personal income tax returns of 1992 and 1993. Due to the amounts involved it was decided to evaluate and consider such amounts as part of our analysis.

Our analysis included information until August 2014, however we decided to adjust all transactions after January 2013 considering that during that period Mr. Gaffney was in control of all the transactions related to the partnership and all withdrawals should be accounted for.

4.4 Documents Examined

As part of our analysis, we have examined documents for each of the family members of the Hamed and Yusuf families, the Supermarkets (includes Plaza Extra-East, Plaza Extra-West, and Plaza Extra-Tutu Park), United Corporation, and other related entities. All information, documents, evidence examined

and used by BDO was provided by Dudley.³¹ The following is a summary of documents examined and used in our analysis.

- General ledgers of the Supermarkets
- Cash receipts of the Supermarkets
- Monthly bank statements of the Supermarkets' bank accounts
- Monthly bank statements of each Partner's bank accounts
- Monthly bank statements of each of the Partner's family members' bank accounts
- Monthly bank statements of each of the Partner's agents' bank accounts
- Monthly brokerage/investment statements of each Partner's investment accounts
- Monthly brokerage/investment statements of each of the Partner's family members' investment accounts
- Monthly brokerage/investment statements of each of the Partner's agents' investment accounts
- Credit card statements of each Partner's credit card accounts
- Credit card statements of each Partners' family members' credit card accounts
- Credit card statements of each Partners' agents' credit card accounts
- Income tax return of each Partner
- Income tax return of each Partner's family members
- Income tax return of each Partner's agents
- Legal documents: Court Orders, Motions and depositions
- Letters, black book (cash receipts ledger) and other documents

As indicated under Section 4.5 Limitations, we encountered certain limitations with respect to the information provided; not all of the information examined was complete. Due to the volume of documents provided, we have included a complete list of documents examined and used in our report. Therein, we have listed the documents received along with the corresponding dates. In addition, any missing statements and/or documents are also disclosed therein.

In the following sections, we describe the specific procedures that were applied to enable us to identify any withdrawals made by the Partners, family members and/or their agents that could be construed to be partnership distributions for the covered period.

³¹ Information obtained from of the following sources: (1) FBI files related to Criminal Case No. 2005-CR-0015, (2) documents provided by Mr. Hamed through the discovery process in the Case, (3) documents provided by Mr. Yusuf and United Corp. through the discovery process in the Case.

4.5 Limitations

Our report and the findings included herein have been impacted by the limitation of the information available in the Case. Following is a summary of the limitations we encountered during the performance of the engagement.

- Accounting records of Plaza Extra-East were destroyed by fire in 1992 and the information was incomplete and/or insufficient to permit us to reconstruct a comprehensive accounting of the partnership accounts before 1993.
- Accounting records and/or documents (checks registers, bank reconciliations, deposits and disbursements of Supermarkets' accounts) provided in connection with Supermarkets were limited to covering the period from 2002 through 2004, East and West from 2006 through 2012, and Tutu Park from 2009 through 2012.
- Accounting records and/or documents provided to us for the periods prior to 2003 are incomplete and limited to bank statements, deposit slips, cancelled checks, check registers, investments and broker statements, cash withdrawal tickets/receipts and cash withdrawal receipt listings. For example, the retention policy for statements, checks, deposits, credits in Banco Popular de Puerto Rico is seven years; therefore, there is no Bank information available prior to 2007 and electronic transactions do not generate any physical evidence as to regular deposits and/or debits.
- Information discovered about the case up to August 31, 2014. We only considered information up to December 31, 2012. Transactions after that date were adjusted in our report.

4.6 Assumptions

Any monies identified through our analysis in excess of the amount identified from the known sources of income (e.g. salaries, rent income, etc.) were assumed to be partnership withdrawals/distributions. With regards to the Hamed family, Mohammad Hamed admitted during deposition testimony that his family's sole source of income was the monies they withdrew from the supermarkets.³²

The lifestyle analysis is supported by available information related to deposits to banks and brokerage accounts and payments to credit cards during the period from January 1994 to December 2012 or until Gaffney was assigned to work with the Supermarkets accounting.

³² Refer to Case No. SX-12-CV370, Oral deposition of Mr. Hamed dated April 21, 2014, pages 43 to 44.

5. DETERMINATION OF PARTNER'S WITHDRAWALS

As previously indicated, the Supermarkets have been managed jointly, with both families having a direct active role in their operations be it through the actions of the Partners, the actions of family members or the actions of their authorized agents. The families agreed to have one (1) member of the Hamed family and one (1) member of the Yusuf family co-manage each of the stores.

In the following sections, we have documented the results of the procedures that were applied to enable us to identify any withdrawals made by the Partners, family members and/or their agents that could be construed to be partnership distributions for the covered period.

5.1 Hamed's Family

5.1.1 Mohammad Hamed - Partner

Partnership - Monies withdrawn from Supermarkets

a. Partnership withdrawals/distributions through checks

In order to identify all monies withdrawn from the Partnership through checks, we identified available checks made to the order of Mohammad Hamed. Our examination did not reveal any checks made to the order of Mohammad Hamed from the Partnership accounts, therefore, no partnership distributions were identified that would require any adjustment from checks issued to the order or on behalf of Mohammad Hamed for the covered periods.

During the period covering October 2001 through December 2012, a total of \$3,000,000 was withdrawn through checks issued from the Partnership as gifts to Hisham Hamed and his spouse (\$1,500,000) and to Mufeed Hamed and his spouse (\$1,500,000). We should mention that both spouses are daughters of Mr. Yusuf.

Therefore, for purposes of our analysis it was determined that this amount represented distributions from the Partnership. We adjusted Mr. Hamed's and Mr. Yusuf's distribution by \$1,500,000 for said period.³³

³³ Refer to Exhibit 17 and Table 1.

Description	October 2001 to December 2012
Plaza Extra ██████ 13	\$ 750,000.00
Plaza Extra ██████ 18	750,000.00
Total	\$ 1,500,000.00

b. Partnership withdrawals/distributions through cash withdrawals

In order to identify all monies withdrawn from the Partnership through cash withdrawals we reviewed and analyzed available cash tickets/receipts and cash tickets/receipts ledgers provided from the Partnership. The cash withdrawals identified and/or attributable to Mohammad Hamed for the periods covered amounted to \$853,718.00 as shown in the table below:³⁴

Description	January 1994 to September 2001	October 2001 to December 2012	January 2013 to August 2014	Total
Withdrawals from the partnership with a signed ticket/receipt	\$ 848,718.00	\$ 5,000.00	\$ -	\$853,718.00

We should mention that a number of the cash withdrawals identified and attributed to Mohammad Hamed during our examination were not dated; nonetheless, such withdrawals were reasonably believed to be amounts withdrawn from the Partnership and attributable to his account during this time period. From our examination we determined that partnership distributions to Mohammad Hamed related to cash withdrawals amounted to \$946,518.00 for the covered period. A total of \$92,800.00 was adjusted (eliminated) to avoid double counting, since these funds were deposited and accounted for in our analysis of Waleed Hamed for a net amount of \$853,718.00.

c. Payment to Third Parties through checks or cash tickets/receipts

In order to identify any disbursements from the Partnership on behalf of the Partners, family members and/or their agents to third parties which could be construed to be distributions to the benefit of a specific Partner, we examined available checks, cash tickets/receipts, and cash tickets/receipts ledgers of the Partnership accounts to identify any payments to third parties on behalf of Mohammad Hamed. Our examination did not reveal any checks made to third parties on behalf of Mohammad Hamed from the Partnership accounts, therefore, no partnership distributions were identified that would require any adjustment from checks issued to third parties on behalf of Mohammad Hamed for the covered periods.

³⁴ Refer to Tables 2A and 2B.

d. Payments to attorneys with partnership's funds

In order to identify and/or detect any disbursements from the Partnership on behalf of the Partners, family members and/or their agents to attorneys which could be construed to be partnership distribution to a specific Partner, we examined a number of payments for legal services not related to the Partnership that were identified and we included in our analysis, since the Partners had no agreement to pay such expenses with Partnership funds. No payments to attorneys were identified and/or attributable to Mohammad Hamed for the periods covered.

e. Funds withdrawn by cashier's checks

In order to identify any additional monies withdrawn through other sources not directly identifiable through the Partnership or directly linked to the Partnership which could be construed to be partnership distributions, we examined available cashier's checks issued to Mohammad Hamed. We also examined checks issued to Hamed from any other related parties and/or entities related to the Partnership. From our review and analysis, we were able to identify a total of \$62,000.00³⁵ in manager checks which were considered to be distributions from the Partnership to the exclusive benefit of Hamed.

f. Summary

As a result of our review we can conclude that the Partnership monies withdrawn for the sole benefit of Mr. Mohammad Hamed from January 1994 to December 2012 amounted to \$2,415,718.00.

Lifestyle Analysis

a. Bank and Investments Accounts/Credit Card Accounts

Our examination entailed reviewing and analyzing all known and available bank accounts and brokerage/investment accounts of Mohammad Hamed. From our examination, we were able to identify that Mohammad Hamed deposited monies/funds in the amount of \$1,307,043.72³⁶ for the covered period.

We should mention that our analysis excludes any deposits which could be identified and/or related to a source other than the Partnership. In the following table we summarize the deposits identified and/or attributable to Mohammad Hamed for the periods covered:

³⁵ Refer to Table 3.

³⁶ Refer to Tables 4A to 4C.

Type of Account:	Account Number:	January 1994 to September 2001	October 2001 to December 2012	January 2013 to August 2014	Total
Checking Account	██████████ 517	\$ -	\$ -	\$ -	\$ -
Checking Account	██████████ 814	259,670.00	14,850.00	-	274,520.00
Checking/Savings Account	██████████ 53	28,172.09	6,880.21	-	35,052.30
Time Deposit - Customers (Fixed)	██████████ 710	-	-	-	-
Time Deposit - Customers (Fixed)	██████████ -700	-	-	-	-
Order - Customers	██████████ -570	74,898.00	-	-	74,898.00
Order - Customers	██████████ 500	97,352.42	-	-	97,352.42
Order - Customers	██████████ 510	20,415.00	-	-	20,415.00
Time Deposit	██████████ 833	245,007.00	-	-	245,007.00
Time Deposit	██████████ -833	559,799.01	-	-	559,799.01
Investments/Securities	██████████ 28	-	-	-	-
	Total	\$ 1,285,313.51	\$ 21,730.21	\$ -	\$ 1,307,043.72

b. Credit Card Accounts

Our examination entailed reviewing and analyzing all known and available credit card accounts belonging to Mohammad Hamed. As part of our analysis, we identified and included available credit card payments and included them in our analysis. Through our analysis a total amounting to \$1,552.08 of credit card payments from Mohammad Hamed were identified for the period covered as shown below:³⁷

Type of Account:	Account Number:	January 1994 to September 2001	October 2001 to December 2012	January 2013 to August 2014	Total
Credit Card - VISA	██████████ 11	\$ 1,552.08	\$ -	\$ -	\$ 1,552.08

c. Adjustments

In order to avoid double counting of amounts identified as withdrawals and/or distributions in our lifestyle analysis, we obtained salaries and wages for the Partners, family members and their agents from Partnership records. Those that we were able to identify as salaries and wages were adjusted. To the extent Mohammad Hamed received social security benefits these were eliminated from our lifestyle analysis.

d. Summary

As a result of the lifestyle analysis we can conclude that Mohammad Hamed withdrew \$1,308,595.80 from January 1994 to December 2012. This total is net from any ticket/receipt or check already considered in the other classifications above.

³⁷ Refer to Table 5A and 5B.

Result

In result of the information presented above, Mohammad Hamed’s total partnership withdrawals during the years 1994 to 2012 were \$3,724,313.80.³⁸

5.1.2 Waleed Hamed (son of Mohammad Hamed)

Partnership - monies withdrawn from Supermarkets

a. Partnership withdrawals/distributions through checks

In order to identify all monies withdrawn from the Partnership through checks, we identified available checks made to the order of Waleed Hamed. The checks identified as withdrawals attributable to Waleed Hamed for the periods covered amounted to \$684,170.00³⁹ as presented in the table below:

Description	January 1994 to September 2001	October 2001 to December 2012	January 2013 to August 2014	Total
Banque Française Commerciale	\$ 450,000.00	\$ -	\$ -	\$ 450,000.00
Plaza Extra - Checking Account # [REDACTED] 11	1,500.00	205,000.00	-	206,500.00
Plaza Extra - Checking Account # [REDACTED] 10	-	27,670.00	-	27,670.00
Total	\$ 451,500.00	\$ 232,670.00	\$ -	\$ 684,170.00

b. Partnership withdrawals/distributions through cash withdrawals

In order to identify all monies withdrawn from the Partnership through cash withdrawals we reviewed and analyzed available cash tickets/receipts and cash tickets/receipts ledgers provided from the Partnership.

We should mention that a number of the cash withdrawals identified and attributed to Waleed Hamed during our examination were not dated; nonetheless, such withdrawals were reasonably determined to be amounts withdrawn from the Partnership and attributable to his account during the period in question. From our examination, we determined that partnership distributions to Waleed Hamed related to cash withdrawals amounted to \$1,133,245.75 for the covered period as shown in the table below:⁴⁰

³⁸ Refer to Table 6.

³⁹ Refer to Tables 7A and 7B.

⁴⁰ Refer to Tables 8A and 8B.

Description	January 1994 to September 2001	October 2001 to December 2012	January 2013 to August 2014	Total
Withdrawals from the partnership with a signed ticket/receipt	\$ 414,115.75	\$ 273,630.00	\$ -	\$ 687,745.75
Loan to Third Parties	445,500.00	-	-	445,500.00
Total	\$ 859,615.75	\$ 273,630.00	\$ -	\$ 1,133,245.75

c. Funds withdrawn related to cash tickets/receipts already settled by the Partners

In accordance with “Notice of Withdrawal” letter dated August 15, 2012, signed by Mr. Yusuf, partnership withdrawals by the Hamed family totaled \$2,784,706.25 and withdrawn from United’s operating account.

A total of \$1,778,103⁴¹ was attributed as partnership distributions to Waleed Hamed. This total represents cash tickets/receipts that were destroyed as per Maher Yusuf’s testimony and which the Hamed’s had agreed that such amount had been withdrawn by the Hamed family. This amount represents \$1,600,000 past confirmed withdrawals and \$178,103 (\$89,392 and \$88,711) received after closing two (2) bank accounts.

d. Payments to third parties through checks or cash tickets/receipts

In order to identify and/or detect any disbursements from the Partnership on behalf of the Partners, family members and/or their agents to third parties which could be construed to be partnership distributions, we examined available checks, cash tickets/receipts and cash tickets/receipts ledgers of the partnership accounts to identify any payments to third parties on behalf of Waleed Hamed.

The payments to third parties identified and/or attributable to Waleed Hamed for the periods covered amounted to \$717,276.46:⁴²

⁴¹ Refer to Exhibit 20.

⁴² Refer to Tables 9A and 9B.

Description	January 1994 to September 2001	October 2001 to December 2012	January 2013 to August 2014	Total
Receipts - Juan Rosario	\$ 147,612.32	\$ -	\$ -	\$ 147,612.32
Receipts- Ali Mohamad Zater	26,400.00	-	-	26,400.00
Receipts- Amin Yusuf Mustafa	4,000.00	-	-	4,000.00
Receipts- Al Fattah Aldalie	16,000.00	-	-	16,000.00
Receipts- Ely	400.00	-	-	400.00
Receipts- PA	5,867.50	-	-	5,867.50
Receipts - Dlack	730.00	-	-	730.00
Receipts- James Gamble	150.00	-	-	150.00
Receipts - Cynthia	575.00	-	-	575.00
Receipts - Anthony L.	8,000.00	-	-	8,000.00
Receipts - Adnan Alhamed	8,000.00	-	-	8,000.00
Receipts - Eustar Bailey	960.00	-	-	960.00
Receipts - Jaunn	5,150.00	-	-	5,150.00
Receipts - S. Phillip	1,513.00	-	-	1,513.00
Receipts- Louis Lorin	200.00	-	-	200.00
Receipts - Zalton Francis	1,690.00	-	-	1,690.00
Receipts- A. Joseph	15,000.00	-	-	15,000.00
Receipts - Other	31,069.83	4,130.00	-	35,199.83
Construction disbursements	428,678.81	-	-	428,678.81
FBI Documents related to Construction Disbursements	11,150.00	-	-	11,150.00
Total	\$ 713,146.46	\$ 4,130.00	\$ -	\$ 717,276.46

e. Payments to attorneys with partnership's funds

In order to identify and/or detect any disbursements from the Partnership on behalf of the Partners, family members and/or their agents to attorneys which could be construed to be partnership distribution to a specific Partner, we examined a number of payments for legal services not related to the Partnership that were identified and we included in our analysis, since the Partners had no agreement to pay such expenses with Partnership funds. The payments to attorneys identified and/or attributable to Waleed Hamed for the periods covered amounted to \$3,749,495.48.⁴³

Description	January 1994 to September 2001	October 2001 to December 2012	January 2013 to August 2014	Total
Payments to Attorneys	\$ -	\$ 3,749,495.48	\$ -	\$ 3,749,495.48

d. Funds received by cashier's check

In order to identify any additional monies withdrawn through other sources not directly identifiable through the Partnership or directly linked to the Partnership which could be construed to be partnership distributions to a specific Partner, we examined available cashier's checks issued to Waleed Hamed. Furthermore, we also examined any checks issued to Waleed Hamed from any other related parties and/or entities related to the Partnership. Our examination did not reveal any cashier's checks issued to Waleed Hamed.

⁴³ Refer to Tables 10A and 10B.

From our review and analysis, we were able to identify a total of \$285,000.00 in checks issued to Waleed Hamed from other related parties and/or entities related to the Partnership which were considered to be distributions from the Partnership to the exclusive benefit of Waleed Hamed:⁴⁴

Description	January 1994 to September 2001	October 2001 to December 2012	January 2013 to August 2014	Total
Checks - Transfer Hamed & Yusuf	\$ -	\$ -	\$ -	\$ -
Checks- Paid by Yusef Jaber	285,000.00	-	-	285,000.00
Checks from Mohammad Hamed	-	-	-	-
Checks from Plessen Enterprises	-	-	-	-
Total	\$ 285,000.00	\$ -	\$ -	\$ 285,000.00

e. Summary

As a result of our review we can conclude that the Partnership monies withdrawn by Waleed Hamed for his personal account from January 1994 to December 2012 amounted to \$8,347,290.69.

Lifestyle Analysis

a. Bank and Investments Accounts

Our examination entailed reviewing and analyzing all known and available bank accounts and brokerage/investment accounts of Waleed Hamed. From our examination, we were able to identify that Waleed Hamed deposited monies/funds in the amount of \$2,142,800.88 for the covered period.

We should mention that our analysis excludes any deposits which could be identified and/or related to a source other than the Partnership. In the following table we summarize the deposits identified and/or attributable to Waleed Hamed for the periods covered:⁴⁵

⁴⁴ Refer to Tables 11A and 11B.

⁴⁵ Refer to Tables 12A to 12C.

Account Number:	January 1994 to September 2001	October 2001 to December 2012	January 2013 to August 2014	Total
313	\$ 578,800.00	\$ -	\$ -	\$ 578,800.00
753	138,923.83	492,699.31	-	631,623.14
86	684,799.06	66,474.51	-	751,273.57
286	-	-	-	-
080	-	-	-	-
184	6,003.11	89,066.06	-	95,069.17
40	4,035.00	7,000.00	-	11,035.00
26	-	-	-	-
-2	-	-	-	-
90	75,000.00	-	-	75,000.00
Total	\$ 1,487,561.00	\$ 655,239.88	\$ -	\$ 2,142,800.88

b. Credit Card Accounts

Our examination entailed reviewing and analyzing all known and available credit card accounts belonging to Waleed Hamed. As part of our analysis, we identified and included available credit card payments and included them in our analysis. Through our analysis a total amounting to \$661,928.70 of credit card payments on Waleed Hamed's credit cards were identified for the period covered. The following table summarizes the credit card payments identified and/or attributable to Waleed Hamed's partnership interest for the periods covered:⁴⁶

Account Number:	January 1994 to September 2001	October 2001 to December 2012	January 2013 to August 2014	Total
19	\$ 109,866.54	\$ 88,764.93	\$ -	\$ 198,631.47
04	26,077.33	13,814.20	-	39,891.53
18	358.00	-	-	358.00
	-	-	-	-
	223.00	-	-	223.00
	-	-	-	-
09	-	-	-	-
99	-	-	-	-
39	-	86,324.54	-	86,324.54
11	-	73,278.81	-	73,278.81
28	-	8,087.35	-	8,087.35
27	-	47,210.20	-	47,210.20
18	-	(5,684.47)	-	(5,684.47)
	-	54,999.76	-	54,999.76
36	-	49,497.27	-	49,497.27
11	-	95,030.40	-	95,030.40
98	-	14,080.84	-	14,080.84
	-	-	-	-
	-	-	-	-
	-	-	-	-
	-	-	-	-
Total	\$ 136,524.87	\$ 525,403.83	\$ -	\$ 661,928.70

⁴⁶ Refer to Tables 13A to 13C.

c. **Adjustments**

In order to avoid double counting of amounts identified as withdrawals and/or distributions in our lifestyle analysis, we obtained salaries and wages for the Partners, family members and their agents from Partnership records. Those that we were able to identify as salaries and wages were adjusted.

d. **Investment sold as per tax returns**

Investments reported by Waleed Hamed in his personal income tax returns in 1992 and 1993 amounted to \$8,027,053.00. This amount was included in our analysis.⁴⁷

Year	Date	Amount
1992	12/31/1992	\$ 439,570.00
1993	12/31/1993	7,587,483.00
Total		8,027,053.00

e. **Summary**

As a result of the lifestyle analysis we can conclude that Waleed Hamed withdrew \$10,831,782.58 from January 1994 to December 2012. This total is net from any tickets/receipts or check already considered in the other classifications above.

Result

According to the information presented above, Waleed Hamed's total partnership withdrawals for his personal benefit during the years 1994 to 2012 totaled \$19,179,073.27.⁴⁸

5.1.3 **Waheed Hamed (son of Mohammad Hamed)**

Partnership - monies withdrawn from Supermarkets

a. **Partnership withdrawals/distributions through checks**

In order to identify all monies withdrawn from the Partnership through checks we identified available checks made to the order of Waheed Hamed. The checks identified as withdrawals attributable to Waheed Hamed for the periods covered amounted to \$72,400.44.⁴⁹

⁴⁷ Refer to Exhibit 21.

⁴⁸ Refer to Table 14.

⁴⁹ Refer to Tables 15A and 15B.

Description	January 1994 to September 2001	October 2001 to December 2012	January 2013 to August 2014	Total
Plaza Extra - Checking Account # [REDACTED] 10	\$ 50,000.00	\$ 22,400.44	\$ -	\$ 72,400.44

b. Partnership withdrawals/distributions through cash withdrawals

In order to identify all monies withdrawn from the Partnership through cash withdrawals we reviewed and analyzed available cash tickets/receipts and tickets/receipts ledgers provided from the Partnership. From our examination we determined that partnership distributions to Waheed Hamed related to cash withdrawals amounted to \$1,307,622.00 for the covered period.⁵⁰

Description	January 1994 to September 2001	October 2001 to December 2012	January 2013 to August 2014	Total
Withdrawals from the partnership with a signed ticket/receipt	\$ 1,281,122.00	\$ 26,500.00	\$ -	\$ 1,307,622.00

c. Payments to third parties through checks or cash tickets/receipts

In order to identify and/or detect any disbursements from the Partnership on behalf of Mr. Hamed's partnership interest, family members and/or his agents to third parties which could be construed to be partnership distributions for Waheed Hamed's sole benefit, we examined available checks, cash tickets/receipts and cash tickets/receipts ledgers of the Partnership accounts to identify any payments to third parties on behalf of Waheed Hamed. Total payments to third parties identified for the benefit of Waheed Hamed for the periods covered amounted to \$528,998.81.⁵¹

Description	January 1994 to September 2001	October 2001 to December 2012	January 2013 to August 2014	Total
Sam & Ken Mason (Tabor & Harmony Rent)	\$ 5,172.10	\$ -	\$ -	\$ 5,172.10
José Román	310,499.52	1,665.45	-	312,164.97
Conrad Ambrose (Willie House)	74,171.18	-	-	74,171.18
Trevor Ryan (Willie House)	50,100.00	-	-	50,100.00
Felix Rey (Willie Hamed)	14,446.23	1,000.00	-	15,446.23
Louis Hughes (Willie House)	6,000.00	-	-	6,000.00
Ahmed Atarefi (Willie's Home)	11,664.00	-	-	11,664.00
Manuel Tejada (Willie House)	3,850.00	-	-	3,850.00
GMT (Willie House)	2,685.00	-	-	2,685.00
Cheyenne Heavy Equip (Willie House)	5,000.00	-	-	5,000.00
Edward (Willie House)	1,280.00	-	-	1,280.00
Keneth Donova (Willie House)	700.00	-	-	700.00
Joseph Edwards (Willie House)	4,950.00	-	-	4,950.00
Other	35,815.33	-	-	35,815.33
Total	\$ 526,333.36	\$ 2,665.45	\$ -	\$ 528,998.81

⁵⁰ Refer to Table 16A and 16B.

⁵¹ Refer to Tables 17A and 17B.

d. Payments to attorneys with partnership's funds

In order to identify and/or detect any disbursements from the Partnership on behalf of the Partners, family members and/or their agents to attorneys which could be construed to be partnership distribution to a specific Partner, we examined a number of payments for legal services not related to the Partnership that were identified and we included in our analysis, since the Partners had no agreement to pay such expenses with Partnership funds. The payments to attorneys identified and/or attributable to Waheed Hamed for the periods covered amounted to \$372,155.95.⁵²

e. Funds withdrawn by cashier's checks

In order to identify any additional monies withdrawn through other sources not directly identifiable through the Partnership or directly linked to the Partnership which could be construed to be partnership distributions, we examined available cashier's checks issued to Waheed Hamed. Furthermore, we also examined any checks issued to Waheed Hamed from any of other related parties and/or entities related to the Partnership. Our examination did not reveal any cashier's checks issued to Waheed Hamed, nor were any other checks issued for the benefit of Waheed Hamed identified.⁵³

f. Summary

As a result of our review we can conclude that the Partnership monies withdrawn by Waheed Hamed for his sole benefit from January 1994 to December 2012 amounted to \$2,281,177.20.

Lifestyle Analysis

a. Bank and Investments Accounts

Our examination entailed reviewing and analyzing all known and available bank accounts and brokerage/investment accounts of Waheed Hamed. From our examination, we were able to identify that Waheed Hamed deposited monies/funds in the amount of \$756,156.78 for the covered period. We should mention that our analysis included identifying and excluding any deposits which could be identified and/or related to a source other than from the Partnership. In the following table we summarize the deposits identified and/or attributable to Waheed Hamed for the periods covered:⁵⁴

⁵² Refer to Table 18.

⁵³ Refer to Table 19.

⁵⁴ Refer to Table 20A and 20B.

Account Number:	January 1994 to September 2001	October 2001 to December 2012	January 2013 to August 2014	Total
██████████88	\$ 345,825.84	\$ -	\$ -	\$ 345,825.84
██████████22	240,847.32	-	-	240,847.32
██████████244	50,332.63	-	-	50,332.63
██████████865	15,150.99	-	-	15,150.99
██████████7	-	100,000.00	-	100,000.00
██████████022	-	-	-	-
██████████24	-	-	-	-
██████████82	-	-	-	-
██████████84	2,000.00	-	-	2,000.00
██████████98	2,000.00	-	-	2,000.00
██████████29	-	-	-	-
██████████34	-	-	-	-
██████████08	-	-	-	-
██████████13	-	-	-	-
Total	\$ 656,156.78	\$ 100,000.00	\$ -	\$ 756,156.78

b. Credit Card Accounts

Our examination entailed reviewing and analyzing all known and available credit card accounts belonging to Waheed Hamed. As part of our analysis, we identified and included available credit card payments and included them in our analysis. Through our analysis a total amounting to \$103,505.95 of credit card payments for the benefit of Waheed Hamed were identified for the period covered. The following table summarizes the credit card payments identified and/or attributable to Waheed Hamed for the periods covered:⁵⁵

Account Number:	January 1994 to September 2001	October 2001 to December 2012	January 2013 to August 2014	Total
██████████01	\$ 88,105.30	\$ 11,277.13	\$ -	\$ 99,382.43
██████████0628	-	4,123.52	-	4,123.52
██████████1897	-	-	-	-
Total	\$ 88,105.30	\$ 15,400.65	\$ -	\$ 103,505.95

c. Adjustments

In order to avoid double counting of amounts identified as withdrawals and/or distributions in our lifestyle analysis, we obtained salaries and wages for the Partners, family members and their agents from Partnership records. Those that we were able to identify as salaries and wages were adjusted.

d. Summary

As a result of the lifestyle analysis we can conclude that Waheed Hamed withdrew \$859,662.73 from January 1994 to December 2012. This total is net from any ticket or check already considered in the other classifications above.

⁵⁵ Refer to Table 21A to 21C.

Result

According to the information presented above, Waheed Hamed's total partnership withdrawals for his personal benefit during the years 1994 to 2012 totaled \$3,140,839.93.⁵⁶

5.1.4 Mufeed Hamed (son of Mohammad Hamed)

Partnership - Monies withdrawn from Plaza Extra Supermarkets

a. Partnership withdrawals/distributions through checks

In order to identify available monies withdrawn from the Partnership through checks we identified available checks made to the order of Mufeed Hamed. Our examination did not reveal any checks made to the order of Mufeed Hamed from the Partnership accounts, therefore no partnership distributions were identified that would require any adjustment from checks issued to the order or on behalf of Mufeed Hamed for the covered periods.⁵⁷

b. Partnership withdrawals/distributions through cash withdrawals

In order to identify available monies withdrawn from the Partnership through cash withdrawals we reviewed and analyzed available cash tickets/receipts and cash tickets/receipts ledgers provided from the Partnership. From our examination we determined that distributions from Partnership funds to Mufeed Hamed related to cash withdrawals amounted to \$357,066.38 for the covered period.⁵⁸

Description	January 1994 to September 2001	October 2001 to December 2012	January 2013 to August 2014	Total
Withdrawals from the partnership with a signed ticket/receipt	\$ 168,163.07	\$ 188,903.31	\$ -	\$ 357,066.38

c. Payments to third parties through checks or cash tickets/receipts

In order to identify and/or detect any disbursements from the Partnership on behalf of the Partners, family members and/or their agents to third parties which could be construed to be partnership distributions to the sole benefit of Mufeed Hamed, we examined available checks, cash tickets/receipts and cash tickets/receipts ledgers of the Partnership accounts to identify any payments to third parties on behalf of Mufeed Hamed. In the following table we summarize the

⁵⁶ Refer to Table 22.

⁵⁷ Refer to Table 23.

⁵⁸ Refer to Table 24A and 24B.

payments to third parties identified and/or attributable to Mufeed Hamed for the periods covered amounted to \$9,623.50.⁵⁹

Description	January 1994 to September 2001	October 2001 to December 2012	January 2013 to August 2014	Total
Receipts paid to Tom Shelley	\$ -	\$ 510.00	\$ -	\$ 510.00
Receipts paid to Manuel	-	50.00	-	50.00
Receipts paid to Pedro Herrera	-	700.00	-	700.00
Receipts paid to Zalton Francis	-	1,000.00	-	1,000.00
Receipts paid to Sgt. E Barnes	500.00	-	-	500.00
Receipts - Juan Rosario	2,810.50	2,125.00	-	4,935.50
Other Receipts paid to third parties	677.00	1,251.00	-	1,928.00
Total \$	3,987.50	\$ 5,636.00	\$ -	\$ 9,623.50

d. Payments to Attorneys

In order to identify and/or detect any disbursements from the Partnership on behalf of the Partners, family members and/or their agents to attorneys which could be construed to be partnership distribution to a specific Partner, we examined a number of payments for legal services not related to the Partnership that were identified and we included in our analysis, since the Partners had no agreement to pay such expenses with Partnership funds. No payments to attorneys were identified and/or attributable to Mufeed Hamed for the periods covered.

e. Funds withdrawn by cashier's checks

In order to identify any additional monies withdrawn through other sources not directly identifiable through the Partnership or directly linked to the Partnership which could be construed to be partnership distributions, we examined available cashier's checks issued to Mufeed Hamed. Furthermore, we also examined any checks issued to Mufeed Hamed from any of other related parties and/or entities related to the Partnership. Our examination did not reveal any managers or other checks issued to Mufeed Hamed.

f. Summary

As a result of our review we can conclude that the Partnership monies withdrawn by Mufeed Hamed for his personal benefit from January 1994 to December 2012 amounted to \$366,689.88.

Lifestyle Analysis

a. Bank and Investments Accounts

⁵⁹ Refer to Tables 25A and 25B.

Our examination entailed reviewing and analyzing all known and available bank accounts and brokerage/investment accounts of Mufeed Hamed. From our examination, we were able to identify that Mufeed Hamed or agents acting on his behalf deposited monies/funds in the amount of \$756,194.11 for the personal benefit of Mufeed Hamed for the covered period. In the following table we summarize the deposits identified and/or attributable to Mufeed Hamed for the periods covered:⁶⁰

Account Number:	January 1994 to September 2001	October 2001 to December 2012	January 2013 to August 2014	Total
[REDACTED] 35	\$ 180,115.70	\$ 90,929.28	\$ -	\$ 271,044.98
[REDACTED] 98	-	100.00	-	100.00
[REDACTED] 415	2,500.00	-	-	2,500.00
[REDACTED] 1	124,120.00	344,929.13	-	469,049.13
[REDACTED] 56	8,500.00	5,000.00	-	13,500.00
	\$ 315,235.70	\$ 440,958.41	\$ -	\$ 756,194.11

b. Credit Card Accounts

Our examination entailed reviewing and analyzing all known and available credit card accounts belonging to Mufeed Hamed. As part of our analysis, we identified and included available credit card payments and included them in our analysis. Through our analysis a total amounting to \$230,205.08 of credit card payments for the benefit of Mufeed Hamed were identified for the period covered. The following table summarizes the credit card payments identified and/or attributable to Mufeed Hamed for the periods covered:⁶¹

Account Number:	January 1994 to September 2001	October 2001 to December 2012	January 2013 to August 2014	Total
[REDACTED] 63	\$ 1,450.00	\$ -	\$ -	\$ 1,450.00
[REDACTED] 62	20,770.46	-	-	20,770.46
[REDACTED] 80	7,168.50	21,029.32	-	28,197.82
[REDACTED] 18	-	109,692.00	-	109,692.00
[REDACTED] 29	-	-	-	-
[REDACTED] 70	-	70,094.80	-	70,094.80
	\$ 29,388.96	\$ 200,816.12	\$ -	\$ 230,205.08

c. Adjustments

⁶⁰ Refer to Tables 26A to 26C.

⁶¹ Refer to Tables 27A to 27C.

In order to avoid double counting of amounts identified as withdrawals and/or distributions in our lifestyle analysis, we obtained salaries and wages for the Partners, family members and their agents from Partnership records. Those that we were able to identify as salaries and wages were adjusted.

d. Summary

As a result of the lifestyle analysis we can conclude that Mufeed Hamed received \$986,399.19 of Partnership funds from January 1994 to December 2012. This total is net from any ticket or check already considered in the other classifications above.

Result

According to the information presented above, Mufeed Hamed's total partnership withdrawals for his personal benefit during the years 1994 to 2012 totaled \$1,353,089.07.⁶²

5.1.5 Hisham Hamed (son of Mohammad Hamed)

Partnership - monies withdrawn from Supermarkets

a. Partnership withdrawals/distributions through checks

In order to identify available monies withdrawn from the Partnership through checks we identified available checks made to the order of Hisham Hamed. Our examination did not reveal any checks made to the order of Hisham Hamed from the Partnership accounts, therefore no partnership distributions were identified that would require any adjustment from checks issued to the order or on behalf of Hisham Hamed for the covered periods.

b. Partnership withdrawals/distributions through cash withdrawals

In order to identify available monies withdrawn from the Partnership through cash withdrawals we reviewed and analyzed available cash tickets/receipts and cash tickets/receipts ledgers provided from the Partnership. From our examination we determined that distributions from the Partnership accounts to Hisham Hamed related to cash withdrawals amounted to \$136,500.00 for the covered period.⁶³

Description	January 1994 to September 2001	October 2001 to December 2012	January 2013 to August 2014	Total
Withdrawals from the partnership with a signed ticket/receipt	\$ 102,000.00	\$ 34,500.00	-	\$ 136,500.00

⁶² Refer to Table 28.

⁶³ Refer to Tables 29A and 29B.

c. Payments to third parties through checks or cash tickets/receipts

In order to identify and/or detect any disbursements from the Partnership on behalf of the Partners, family members and/or their agents to third parties which could be construed to be partnership distributions for the personal benefit of Hisham Hamed, we examined available checks, cash tickets/receipts and cash tickets/receipts ledgers of the Partnership accounts to identify any payments to third parties on behalf of Hisham Hamed. Our examination did not reveal any checks made to third parties on behalf of Hisham Hamed from the Partnership accounts other than those related to rent payments and considered marginal benefits.⁶⁴ Therefore, no partnership distributions were identified that would require any adjustment from checks issued to third parties on behalf of Hisham Hamed for the covered periods.

d. Payments to Attorneys

In order to identify and/or detect any disbursements from the Partnership on behalf of the Partners, family members and/or their agents to attorneys which could be construed to be partnership distribution to a specific Partner, we examined a number of payments for legal services not related to the Partnership that were identified and we included in our analysis, since the Partners had no agreement to pay such expenses with Partnership funds. No payments to attorneys were identified and/or attributable to Hisham Hamed for the periods covered.

e. Funds withdrawn by cashier's checks

In order to identify any additional monies withdrawn through other sources not directly identifiable through the Partnership or directly linked to the Partnership which could be construed to be partnership distributions for the benefit of Hisham Hamed, we examined available cashier's checks issued to Hisham Hamed. Furthermore, we also examined any checks issued to Hisham Hamed from any of other related parties and/or entities related to the Partnership.

Our examination did not reveal any cashier's checks issued to Hisham Hamed. From our review and analysis, we were able to identify a total of \$5,700.50 in checks issued to Hisham Hamed from other related parties and/or entities related to the Partnership which were considered to be distributions from the Partnership.⁶⁵

⁶⁴ Refer to Table 30.

⁶⁵ Refer to Tables 31A to 31C.

Description	January 1994 to September 2001	October 2001 to December 2012	January 2013 to August 2014	Total
██████████ 811	\$ -	\$ -	\$ -	\$ -
██████████ 86	-	-	-	-
██████████ 35	-	-	-	-
	5,700.50	-	-	5,700.50
Total	\$ 5,700.50	\$ -	\$ -	\$ 5,700.50

f. Summary

As a result of our review we can conclude that the Partnership monies withdrawn for the benefit of Hisham Hamed from January 1994 to December 2012 amounted to \$142,200.50.

Lifestyle Analysis

a. Bank and Investments Accounts

Our examination entailed reviewing and analyzing all known and available bank accounts and brokerage/investment accounts of Hisham Hamed. From our examination, we were able to identify that Hisham Hamed deposited monies/funds in the amount of \$952,148.77 for the covered period. This total does not consider deposits that could be identified and/or related to a source other than from the Partnership. In the following table we summarize the deposits identified and/or attributable to Hisham Hamed from Partnership funds for the periods covered:⁶⁶

Account Number:	January 1994 to September 2001	October 2001 to December 2012	January 2013 to August 2014	Total
██████████ 125	\$ 315,650.00	\$ -	\$ -	\$ 315,650.00
██████████ 96	-	-	-	-
██████████ 515	-	189,162.01	-	189,162.01
██████████ 03	16,432.70	-	-	16,432.70
██████████ 39	35,000.00	-	-	35,000.00
██████████ 762	-	-	-	-
██████████ 644	-	150,004.50	-	150,004.50
██████████ 60	-	-	-	-
██████████ 996	-	245,899.56	-	245,899.56
██████████ 834	-	-	-	-
Total	\$ 367,082.70	\$ 585,066.07	\$ -	\$ 952,148.77

⁶⁶ Refer to Tables 32A to 32C.

b. Credit Card Accounts

Our examination entailed reviewing and analyzing all known and available credit card accounts belonging to Hisham Hamed. As part of our analysis, we identified and included available credit card payments and included them in our analysis. Our examination did not reveal any credit card payments related to Hisham Hamed for his personal benefit. We only observed receipts of purchases made with the credit card from Citibank number 5466-1601-8830-4130. No amounts were considered as a result of this analysis.⁶⁷

c. Adjustments

In order to avoid double counting of amounts identified as withdrawals and/or distributions in our lifestyle analysis, we obtained salaries and wages for the Partners, family members and their agents from Partnership records. Those that we were able to identify as salaries and wages were adjusted.

d. Summary

As a result of the lifestyle analysis we can conclude that Hisham Hamed received \$952,148.77 in partnership funds from January 1994 to December 2012. This total is net from any ticket or check already considered in the other classifications above.

Result

According to the information presented above, Hisham Hamed's total partnership withdrawals for his personal benefit during the years 1994 to 2012 totaled \$1,094,349.27.⁶⁸

5.2 Yusuf's Family

5.2.1 Fathi Yusuf - Partner

Partnership - monies withdrawn from Supermarkets

a. Partnership withdrawals/distributions through checks

In order to identify all monies withdrawn from the Partnership through checks we identified available checks made to the order of Fathi Yusuf. The checks identified as withdrawals attributable to Fathi Yusuf for the periods covered amounted to \$5,359,161.65.⁶⁹

⁶⁷ Refer to Table 33.

⁶⁸ Refer to Table 34.

⁶⁹ Refer to Table 35A and 35B.

Description	January 1994 to September 2001	October 2001 to December 2012	January 2013 to August 2014	Total
Plaza Extra 413	\$ -	3,534,706.25	\$ -	\$ 3,534,706.25
Plaza Extra 10	-	924,375.40	-	924,375.40
Plaza Extra 11	-	150,080.00	-	150,080.00
Plaza Extra 18	-	750,000.00	-	750,000.00
Total	\$ -	\$ 5,359,161.65	\$ -	\$ 5,359,161.65

During the period covering October 2001 through December 2012 a total of \$3,000,000.00 was withdrawn through checks issued from the Partnership as gifts to Hisham Hamed and his spouse (\$1,500,000.00) and to Mufeed Hamed and his spouse (\$1,500,000.00). We should mention that both spouses are daughters of Mr. Yusuf.⁷⁰

Therefore, for purposes of our analysis it was determined that this amount represented distributions from the Partnership. We adjusted Mr. Hamed's and Mr. Yusuf's distribution by \$1,500,000.00 for said period.

b. Partnership withdrawals/distributions through cash withdrawals

In order to identify all monies withdrawn from the Partnership through cash withdrawals we reviewed and analyzed available cash tickets/receipts and cash tickets/receipts ledgers provided from the Partnership. The cash withdrawals identified and/or attributable to Fathi Yusuf for the periods covered amounted to \$791,767.00 as shown below:⁷¹

Description	January 1994 to September 2001	October 2001 to December 2012	January 2013 to August 2014	Total
Withdrawals from the partnership with a signed ticket/receipt	\$ 783,367.00	\$ 700.00	\$ -	\$ 784,067.00
Loans to third parties	7,700.00	-	-	7,700.00
Total	\$ 791,067.00	\$ 700.00	\$ -	\$ 791,767.00

We should mention that a one of the cash withdrawals identified and attributed to Fathi Yusuf during our examination was not dated; nonetheless, such withdrawal was reasonably determined to be an amount withdrawn from the Partnership during the period in question and attributable to his account.

⁷⁰ Refer to Exhibit 17.

⁷¹ Refer to Table 36A and 36B.

c. Payment to Third Parties through checks or cash tickets/receipts

In order to identify and/or detect any disbursements from the Partnership on behalf of the Partners, family members and/or their agents to third parties which could be construed to be partnership distributions for the specific benefit of one of the Partners or his interests, we examined available checks, cash tickets/receipts and cash tickets/receipts ledgers of the Partnership accounts to identify any payments to third parties on behalf of Fathi Yusuf. The payments to third parties identified and/or attributable to Fathi Yusuf for the periods covered amounted to \$126,965.00.⁷²

Description	January 1994 to September 2001	October 2001 to December 2012	January 2013 to August 2014	Total
Ahmad Alafari	\$ 8,000.00	\$ -	\$ -	\$ 8,000.00
Patrick/ Ken Mason	2,500.00	-	-	2,500.00
Conrad Ambrose	52,175.00	-	-	52,175.00
A-9 Heavy Equipment	1,600.00	-	-	1,600.00
Trevor Ryan	29,090.00	-	-	29,090.00
Yes Concrete, Inc.	25,000.00	-	-	25,000.00
Felix Rey	3,170.00	-	-	3,170.00
Hugh Reifer	3,000.00	-	-	3,000.00
Chayenne	1,630.00	-	-	1,630.00
Edward	800.00	-	-	800.00
Total	\$ 126,965.00	\$ -	\$ -	\$ 126,965.00

d. Payments to attorneys with partnership's funds

In order to identify and/or detect any disbursements from the Partnership on behalf of the Partners, family members and/or their agents to attorneys which could be construed to be partnership distribution to a specific Partner, we examined a number of payments for legal services not related to the Partnership that were identified and we included in our analysis, since the Partners had no agreement to pay such expenses with Partnership funds. The payments to attorneys identified and/or attributable to Fathi Yusuf for the periods covered amounted to \$183,607.05.⁷³

Description	January 1994 to September 2001	October 2001 to December 2012	January 2013 to August 2014	Total
Payments to Attorneys	\$ -	\$ 183,607.05	\$ -	\$ 183,607.05

⁷² Refer to Table 37.

⁷³ Refer to Table 38A and 38B.

e. Funds withdrawn by cashier's checks

In order to identify any additional monies withdrawn through other sources not directly identifiable through the Partnership or directly linked to the Partnership which could be construed to be partnership distributions, we examined available cashier's checks issued to Fathi Yusuf. Furthermore, we also examined any checks issued to Fathi Yusuf from any other related parties and/or entities related to the Partnership. From our review and analysis, we were able to identify a total of \$536,000.00 in cashier's checks which were considered to be distributions from the Partnership. From our review and analysis, we were able to identify a total of \$100,000.00 in checks issued to Fathi Yusuf from other related parties and/or entities related to the Partnership which were considered to be distributions from the Partnership. Total checks identified and/or attributable to Fathi Yusuf for the periods covered amounted to \$636,000.00.⁷⁴

Description	January 1994 to September 2001	October 2001 to December 2012	January 2013 to August 2014	Total
Cashier's Checks	\$ 536,000.00	\$ -	\$ -	\$ 536,000.00
Bank of Jordan ██████████ 668	-	-	-	-
Banque Francaise Commerciale	100,000.00	-	-	100,000.00
Total	\$ 636,000.00	\$ -	\$ -	\$ 636,000.00

f. Summary

As a result of our review we can conclude that the Partnership monies withdrawn by Mr. Fathi Yusuf from January 1994 to December 2012 amounted to \$7,097,500.70.

Lifestyle Analysis

a. Bank and Investments Accounts/Credit Card Accounts

Our examination entailed reviewing and analyzing all known and available bank accounts and brokerage/investment accounts of Fathi Yusuf. From our examination, we were able to identify that Fathi Yusuf deposited monies/funds in the amount of \$82,235.76 for the covered period.⁷⁵

We should mention that our analysis included identifying and excluding any deposits which could be identified and/or related to a source other than from the Partnership. In the following table we summarize the deposits identified and/or attributable to Fathi Yusuf for the periods covered:

⁷⁴ Refer to Table 39.

⁷⁵ Refer to Table 40A and 40B.

Account Number:	January 1994 to September 2001	October 2001 to December 2012	January 2013 to August 2014	Total
██████10	\$ 39,000.00	\$ -	\$ -	\$ 39,000.00
██████26	37,075.00	6,160.76	-	43,235.76
██████84	-	-	-	-
██████27	-	-	-	-
Total	\$ 76,075.00	\$ 6,160.76	\$ -	\$ 82,235.76

b. Credit Card Accounts

Our examination entailed reviewing and analyzing all known and available credit card accounts. In Mr. Yusuf's case we did not have any credit card statement or any other evidence that Partnership funds were used to pay.

c. Adjustments

In order to avoid double counting of amounts identified as withdrawals and/or distributions in our lifestyle analysis, we obtained salaries and wages for the Partners, family members and their agents from Partnership records. Those that we were able to identify as salaries and wages were adjusted.

d. Summary

As a result of the lifestyle analysis we can conclude that Mr. Fathi Yusuf withdrew \$82,235.76 of Partnership funds from January 1994 to December 2012. This total is net from any ticket or check already considered in the other classifications above.

Result

According to the information presented above, Mr. Fathi Yusuf's partnership withdrawals during the years 1994 to 2012 totaled \$7,179,736.46.⁷⁶

5.2.2 NejeH Yusuf

Partnership - monies withdrawn from Supermarkets

a. Partnership withdrawals/distributions through checks

In order to identify all monies withdrawn from the Partnership through checks we identified available checks made to the order of NejeH Yusuf. The checks identified as withdrawals attributable to NejeH Yusuf for the periods covered amounted to \$344,414.16.⁷⁷

⁷⁶ Refer to Table 41.

⁷⁷ Refer to Table 42A and 42B.

Description	January 1994 to September 2001	October 2001 to December 2012	January 2013 to August 2014	Total
Plaza Extra 10	\$ -	\$ 344,414.16	\$ -	\$ 344,414.16
Plaza Extra 11	-	-	-	-
Total	\$ -	\$ 344,414.16	\$ -	\$ 344,414.16

b. Partnership withdrawals/distributions through cash withdrawals

In order to identify all monies withdrawn from the Partnership through cash withdrawals we reviewed and analyzed available cash tickets/receipts and cash tickets/receipts ledgers provided from the Partnership. From our examination we determined that Partnership distributions to NejeH Yusuf related to cash withdrawals amounted to \$275,118.60 for the covered period. In the following table we summarize the cash withdrawals of partnership funds identified and/or attributable to NejeH Yusuf for the periods covered:⁷⁸

Description	January 1994 to September 2001	October 2001 to December 2012	January 2013 to August 2014	Total
Withdrawals from the partnership with a signed ticket/receipt	\$ 237,866.81	\$ 37,251.79	\$ -	\$ 275,118.60

We should mention that one of the cash withdrawals identified and attributed to NejeH Yusuf during our examination was not dated, nonetheless, such withdrawal was reasonably determined to be an amount withdrawn from the Partnership during the period in question and attributable to his account.

c. Payments to third parties through checks or cash tickets/receipts

In order to identify and/or detect any disbursements from the Partnership on behalf of the Partners, family members and/or their agents to third parties which could be construed to be Partnership distributions, we examined available checks, cash tickets/receipts and cash tickets/receipts ledgers of the Partnership accounts to identify any payments to third parties on behalf of NejeH Yusuf. In the following table we summarize the payments to third parties identified and/or attributable to NejeH Yusuf for the periods covered; The payments to third parties identified and/or attributable to NejeH Yusuf for the periods covered amounted to \$171,574.91.⁷⁹

⁷⁸ Refer to Table 43A and 43B.

⁷⁹ Refer to Table 44A and 44B.

Description	January 1994 to September 2001	October 2001 to December 2012	January 2013 to August 2014	Total
Gasin Potter- Rent Payments	\$ -	\$ -		\$ -
Sammy & Trevor Ryan	104,225.00	-		104,225.00
Kenneth Donovan	2,380.00	900.00		3,280.00
Felix Rey	900.00	2,000.00		2,900.00
Carfer R	1,850.00	-		1,850.00
José Román	30,322.50	11,437.41		41,759.91
Edward	5,400.00	1,000.00		6,400.00
Henry Peter	2,800.00	-		2,800.00
Hugh Reifer- Plumber	1,000.00	2,000.00		3,000.00
José Hernández	200.00	-		200.00
Art House	5,000.00	-		5,000.00
Franklin Harrigan	160.00	-		160.00
Total	\$ 154,237.50	\$ 17,337.41	\$ -	\$ 171,574.91

d. **Payments to attorneys with partnership's funds**

In order to identify and/or detect any disbursements from the Partnership on behalf of the Partners, family members and/or their agents to attorneys which could be construed to be partnership distribution to a specific Partner, we examined a number of payments for legal services not related to the Partnership that were identified and we included in our analysis, since the Partners had no agreement to pay such expenses with Partnership funds. The payments to attorneys identified and/or attributable to NejeH Yusuf for the periods covered amounted to \$20,370.00.⁶⁰

Description	January 1994 to September 2001	October 2001 to December 2012	January 2013 to August 2014	Total
Payments to Attorneys	\$ -	\$ 20,370.00	\$ -	\$ 20,370.00

e. **Funds withdrawn by cashier's checks**

In order to identify any additional monies withdrawn through other sources not directly identifiable through the Partnership or directly linked to the Partnership which could be construed to be Partnership distributions, we examined available cashier's checks issued to NejeH Yusuf. Furthermore, we also examined any checks issued to NejeH Yusuf from any of other related parties and/or entities related to the Partnership. Our examination did not reveal any cashier's checks issued to NejeH Yusuf. Our examination did not reveal any cashier's checks issued to NejeH Yusuf.

⁶⁰ Refer to Table 45.

f. Summary

As a result of our review we can conclude that the Partnership monies withdrawn by Nejeh Yusuf from January 1994 to December 2012 amounted to \$811,477.67.

Lifestyle Analysis

a. Bank and Investments Accounts

Our examination entailed reviewing and analyzing all known and available bank accounts and brokerage/investment accounts of Nejeh Yusuf. From our examination, we were able to identify that Nejeh Yusuf deposited monies/funds from the Partnership in the amount of \$112,998.21 for the covered period.⁸¹

We should mention that our analysis included identifying and excluding any deposits which could be identified and/or related to a source other than from the Partnership. In the following table we summarize the deposits of Partnership funds identified and/or attributable to Nejeh Yusuf for the periods covered:

Account Number:	January 1994 to September 2001	October 2001 to December 2012	January 2013 to August 2014	Total
██████████27	\$ 4,750.00	\$ 43,998.21	\$ -	\$ 48,748.21
██████████0	34,250.00	-	-	34,250.00
██████████0	30,000.00	-	-	30,000.00
Total	\$ 69,000.00	\$ 43,998.21	\$ -	\$ 112,998.21

b. Credit Card Accounts

Our examination entailed reviewing and analyzing all known and available credit card accounts belonging to Nejeh Yusuf. As part of our analysis, we identified and included available credit card payments and included them in our analysis. Through our analysis a total amounting to \$100.00 of credit card payments from Nejeh Yusuf using Partnership funds were identified for the period covered. The following table summarizes the credit card payments identified and/or attributable to Nejeh Yusuf for the periods covered:⁸²

⁶¹ Refer to Table 46A and 46B.

⁸² Refer to Table 47.

Account Number:	January 1994 to September 2001	October 2001 to December 2012	January 2013 to August 2014	Total
43	\$ -	\$ -	\$ -	\$ -
49	100.00	-	-	100.00
496	-	-	-	-
77	-	-	-	-
52	-	-	-	-
22	-	-	-	-
50	-	-	-	-
22	-	-	-	-
Total	\$ 100.00	\$ -	\$ -	\$ 100.00

c. Adjustments

In order to avoid double counting of amounts identified as withdrawals and/or distributions in our lifestyle analysis, we obtained salaries and wages for the Partners, family members and their agents from Partnership records. Those that we were able to identify as salaries and wages were adjusted.

d. Summary

As a result of the lifestyle analysis we can conclude that Nejeih Yusuf withdrew partnership funds totaling \$113,098.21 from January 1994 to December 2012. This total is net from any ticket or check already considered in the other classifications above.

Result

According to the information presented above, Nejeih Yusuf's Partnership withdrawals for his personal benefit during the years 1994 to 2012 totaled \$924,575.88.⁸³

5.2.3 Maher Yusuf (son of Fathi Yusuf)

Partnership - monies withdrawn from Supermarkets

a. Partnership withdrawals/distributions through checks

In order to identify all monies withdrawn from the Partnership through checks we identified available checks made to the order of Maher Yusuf. In the following table we summarize the checks identified as withdrawals attributable to Maher Yusuf for the periods covered amounted to \$127,759.22:⁸⁴

⁸³ Refer to Table 48.

⁸⁴ Refer to Table 49A and 49B.

Description	January 1994 to September 2001	October 2001 to December 2012	January 2013 to August 2014	Total
Plaza Extra [REDACTED] 10	\$ -	\$ -	\$ -	\$ -
Plaza Extra [REDACTED] 11	5,818.05	-	-	5,818.05
Plaza Extra [REDACTED] 89	-	121,941.17	-	121,941.17
	\$ 5,818.05	\$ 121,941.17	\$ -	\$ 127,759.22

b. Partnership withdrawals/distributions through cash withdrawals

In order to identify all monies withdrawn from the Partnership through cash withdrawals we reviewed and analyzed available cash tickets/receipts and cash tickets/receipts ledgers provided from the Partnership. From our examination we determined that Partnership distributions to Maher Yusuf related to cash withdrawals amounted to \$158,850.00 for the covered period. In the following table we summarize the cash withdrawals of Partnership funds identified and/or attributable to Maher Yusuf for the periods covered:⁸⁵

Description	January 1994 to September 2001	October 2001 to December 2012	January 2013 to August 2014	Total
Withdrawals from the partnership with a signed ticket/receipt	\$ 12,540.00	\$ 146,310.00	\$ -	\$ 158,850.00

c. Payments to third parties through checks or cash tickets/receipts

In order to identify and/or detect any disbursements from the Partnership on behalf of the Partners, family members and/or their agents to third parties which could be construed to be Partnership distributions for the exclusive benefit of a specific individual, we examined available checks, cash tickets/receipts and cash tickets/receipts ledgers of the partnership accounts to identify any payments to third parties on behalf of Maher Yusuf. Our examination did not reveal any checks made to third parties on behalf of Maher Yusuf from the Partnership accounts, therefore no Partnership distributions were identified that would require any adjustment from checks issued to third parties on behalf of Maher Yusuf for the covered periods.

d. Payments to attorneys with partnership's funds

In order to identify and/or detect any disbursements from the Partnership on behalf of the Partners, family members and/or their agents to attorneys which could be construed to be partnership distribution to a specific Partner, we examined a number of payments for legal services not related

⁸⁵ Refer to Table 50A and 50B.

to the Partnership that were identified and we included in our analysis, since the Partners had no agreement to pay such expenses with Partnership funds. The payments to attorneys identified and/or attributable to Majer Yusuf for the periods covered amounted to \$33,714.00.⁸⁶

Description	January 1994 to September 2001	October 2001 to December 2012	January 2013 to August 2014	Total
Payments to Attorneys		\$ 33,714.00	\$ -	\$ 33,714.00

e. Funds withdrawn by cashier's checks

In order to identify any additional monies withdrawn through other sources not directly identifiable through the Partnership or directly linked to the Partnership which could be construed to be Partnership distributions for the personal benefit of Maher Yusuf, we examined available cashier's checks issued to Maher Yusuf. Furthermore, we also examined any checks issued to Maher Yusuf from any other related parties and/or entities related to the Partnership. Our examination did not reveal any managers or other checks issued to Maher Yusuf.

f. Summary

As a result of our review we can conclude that the Partnership monies withdrawn by Maher Yusuf from January 1994 to December 2012 for his personal benefit amounted to \$320,323.22.

Lifestyle Analysis

a. Bank and Investments Accounts

Our examination entailed reviewing and analyzing all known and available bank accounts and brokerage/investment accounts of Maher Yusuf. From our examination, we were able to identify that Maher Yusuf deposited Partnership monies/funds in the amount of \$515,169.88 for the covered period.⁸⁷

Account Number:	January 1994 to September 2001	October 2001 to December 2012	January 2013 to August 2014	Total
██████26	\$ -	\$ -	\$ -	\$ -
██████18	473,285.71	41,884.17	-	515,169.88
Total	\$ 473,285.71	\$ 41,884.17	\$ -	\$ 515,169.88

⁸⁶ Refer to Table 51.

⁸⁷ Refer to Table 52A and 52B.

We should mention that our analysis included identifying and excluding any deposits which could be identified and/or related to a source other than from the Partnership. In the following table we summarize the deposits identified and/or attributable to Maher Yusuf for the periods covered.

b. Credit Card Accounts

Our examination entailed reviewing and analyzing all known and available credit card accounts belonging to Maher Yusuf. Our examination did not reveal any credit card payments using Partnership funds for the personal benefit of Maher Yusuf. We only observed receipts of purchases made with the credit card.⁸⁸

c. Adjustments

In order to avoid double counting of amounts identified as withdrawals and/or distributions in our lifestyle analysis, we obtained salaries and wages for the Partners, family members and their agents from Partnership records. Those that we were able to identify as salaries and wages were adjusted.

d. Summary

As a result of the lifestyle analysis we can conclude that Maher Yusuf withdrew Partnership funds totaling \$515,169.88 from January 1994 to December 2012 for his personal benefit. This total is net from any ticket or check already considered in the other classifications above.

Result

According to the information presented above, Maher Yusuf's Partnership withdrawals for his personal benefit during the years 1994 to 2012 totaled \$835,493.10.⁸⁹

5.2.4 Yusuf Yusuf (son of Fathi Yusuf)

Partnership - monies withdrawn from Supermarkets

a. Partnership withdrawals/distributions through checks

In order to identify all monies withdrawn from the Partnership through checks we identified available checks made to the order of Yusuf Yusuf. Our examination did not reveal checks made to the order of Yusuf Yusuf from the Partnership accounts, therefore no Partnership distributions were identified that would require any adjustment from checks issued to the order or on behalf of Yusuf Yusuf for the covered periods.⁹⁰

⁸⁸ Refer to Table 53A and 53B.

⁸⁹ Refer to Table 54.

⁹⁰ Refer to Table 55.

b. Partnership withdrawals/distributions through cash withdrawals

In order to identify all monies withdrawn from the Partnership through cash withdrawals we reviewed and analyzed available cash tickets/receipts and cash tickets/receipts ledgers provided from the Partnership. From our examination we determined that Partnership distributions to Yusuf Yusuf related to cash withdrawals amounted to \$21,485.55 for the covered period. In the following table we summarize the cash withdrawals identified and/or attributable to Yusuf Yusuf for the periods covered:⁹¹

Description	January 1994 to September 2001	October 2001 to December 2012	January 2013 to August 2014	Total
Withdrawals from the partnership with a signed ticket/receipt	\$ 19,985.55	\$ 1,500.00	\$ -	\$ 21,485.55

We should mention that a number of the cash withdrawals identified and attributed to Yusuf Yusuf during our examination were not dated, nonetheless, such withdrawals were reasonably determined to be amounts withdrawn from Partnership funds for his personal benefit during the periods covered.

c. Payments to third parties through checks or cash tickets/receipts

In order to identify and/or detect any disbursements from the Partnership on behalf of the Partners, family members and/or their agents to third parties which could be construed to be Partnership distributions, we examined available checks, cash tickets/receipts and cash tickets/receipts ledgers of the Partnership accounts to identify any payments to third parties on behalf of Yusuf Yusuf. In the following table we summarize the payments to third parties, determined to be for the personal benefit to Yusuf Yusuf for the periods covered amounted to \$9,878.00:⁹²

Description	January 1994 to September 2001	October 2001 to December 2012	January 2013 to August 2014	Total
Other Tickets/ Receipts-Yusuf	\$ 1,763.55	\$ -	\$ -	\$ 1,763.55
Receipts - Juan Rosario	8,114.45	-	-	8,114.45
Total	\$ 9,878.00	\$ -	\$ -	\$ 9,878.00

⁹¹ Refer to Table 56A and 56B.

⁹² Refer to Table 57.

d. Payments to Attorneys

In order to identify and/or detect any disbursements from the Partnership on behalf of the Partners, family members and/or their agents to attorneys which could be construed to be partnership distribution to a specific Partner, we examined a number of payments for legal services not related to the Partnership that were identified and we included in our analysis, since the Partners had no agreement to pay such expenses with Partnership funds. No payments to attorneys were identified and/or attributable to Yusuf Yusuf for the periods covered.

e. Funds withdrawn by cashier's checks

In order to identify any additional monies withdrawn through other sources not directly identifiable through the Partnership or directly linked to the Partnership which could be construed to be Partnership distributions, we examined available cashier's checks issued to Yusuf Yusuf. Furthermore, we also examined any checks issued to Yusuf Yusuf from any of other related parties and/or entities related to the Partnership.

Our examination did not reveal any cashier's checks issued to Yusuf Yusuf. From our review and analysis, we were able to identify \$40,000.00⁹³ in checks issued to Yusuf Yusuf from other related parties and/or entities related to the Partnership which were considered to be distributions from the Partnership. In the following table we summarize checks identified and/or attributable to Yusuf Yusuf for the periods covered.

Description	January 1994 to September 2001	October 2001 to December 2012	January 2013 to August 2014	Total
Waleed Hamed # [REDACTED] 13	\$ 40,000.00	\$ -	\$ -	\$ 40,000.00

f. Summary

As a result of our review we can conclude that the Partnership monies withdrawn by Yusuf Yusuf for his personal benefit from January 1994 to December 2012 amounted to \$71,363.55.

Lifestyle Analysis

a. Bank and Investments Accounts

Our examination entailed reviewing and analyzing all known and available bank accounts and brokerage/investment accounts of Yusuf Yusuf. Our examination did not reveal any deposits of Partnership funds to bank accounts or brokerage/investment accounts of Yusuf Yusuf.⁹⁴

⁹³ Refer to Table 58.

⁹⁴ Refer to Table 59.

b. Credit Card Accounts

Our examination entailed reviewing and analyzing all known and available credit card accounts belonging to Yusuf Yusuf. Our examination did not reveal any credit card payments using Partnership funds for the personal benefit of Yusuf Yusuf.⁹⁵

c. Adjustments

In order to avoid double counting of amounts identified as withdrawals and/or distributions in our lifestyle analysis, we obtained salaries and wages for the Partners, family members and their agents from Partnership records. Those that we were able to identify as salaries and wages were adjusted.

Result

According to the information presented above, Yusuf Yusuf's total Partnership withdrawals during the years 1994 to 2012 totaled \$71,363.55.⁹⁶

5.2.5 Najat Yusuf (son of Fathi Yusuf)

Partnership - monies withdrawn from Supermarkets

a. Partnership withdrawals/distributions through checks

In order to identify all monies withdrawn from the Partnership through checks we identified available checks made to the order of Najat Yusuf. Our examination did not reveal any checks made to the order of Najat Yusuf from the Partnership accounts, therefore no Partnership distributions were identified that would require any adjustment from checks issued to the order or on behalf of Najat Yusuf for the covered periods.

b. Partnership withdrawals/distributions through cash withdrawals

In order to identify all monies withdrawn from the Partnership through cash withdrawals we reviewed and analyzed available cash tickets/receipts and cash tickets/receipts ledgers provided from the Partnership. From our examination we determined that distributions of partnership funds to the personal benefit of Najat Yusuf related to cash withdrawals amounted to \$2,000.00 for the covered period. In the following table we summarize the cash withdrawals identified and/or attributable to Najat Yusuf for the periods covered:⁹⁷

⁹⁵ Refer to Table 60A to 60C.

⁹⁶ Refer to Table 61.

⁹⁷ Refer to Table 62.

Description	January 1994 to September 2001	October 2001 to December 2012	January 2013 to August 2014	Total
Withdrawals from the partnership with a signed ticket/receipt	\$ 2,000.00	\$ -	\$ -	2,000.00

c. Payments to third parties through checks or cash tickets/receipts

In order to identify and/or detect any disbursements from the Partnership on behalf of the Partners, family members and/or their agents to third parties which could be construed to be Partnership distributions, we examined available checks, cash tickets/receipts and cash tickets/receipts ledgers of the Partnership accounts to identify any payments to third parties on behalf of Najat Yusuf. Our examination did not reveal any checks made to third parties on behalf of Najat Yusuf from the Partnership accounts, therefore no partnership distributions were identified that would require any adjustment from checks issued to third parties on behalf of Najat Yusuf for the covered periods.

d. Payments to Attorneys

In order to identify and/or detect any disbursements from the Partnership on behalf of the Partners, family members and/or their agents to attorneys which could be construed to be partnership distribution to a specific Partner, we examined a number of payments for legal services not related to the Partnership that were identified and we included in our analysis, since the Partners had no agreement to pay such expenses with Partnership funds. No payments to attorneys were identified and/or attributable to Yusuf Yusuf for the periods covered.

e. Funds withdrawn by cashier's checks

In order to identify any additional monies withdrawn through other sources not directly identifiable through the Partnership or directly linked to the Partnership which could be construed to be partnership distributions, we examined available cashier's checks issued to Najat Yusuf. Furthermore, we also examined any checks issued to Najat Yusuf from any of other related parties and/or entities related to the Partnership. From our review and analysis, we were able to identify a total of \$48,594.63 in checks issued to Najat Yusuf from other related parties and/or entities related to the Partnership which were considered to be distributions from the Partnership. In the following table we summarize checks identified and/or attributable to Najat Yusuf for the periods covered:⁹⁸

⁹⁸ Refer to Table 63.

Description	January 1994 to September 2001	October 2001 to December 2012	January 2013 to August 2014	Total
Funds withdrawn by cashier's checks	\$ 48,594.63	\$ -	\$ -	\$ 48,594.63

f. Summary

As a result of our review we can conclude that the Partnership monies withdrawn by Najat Yusuf for his personal benefit from January 1994 to December 2012 amounted to \$50,594.63.

Lifestyle Analysis

a. Bank and Investments Accounts

Our examination entailed reviewing and analyzing all known and available bank accounts and brokerage/investment accounts of Najat Yusuf. From our examination, we were able to identify that Najat Yusuf deposited monies/funds in the amount of \$85,400.00 for the covered period.⁹⁹

We should mention that our analysis included identifying and excluding any deposits which could be identified and/or related to a source other than from the partnership. In the following table we summarize the deposits identified and/or attributable to Najat Yusuf for the periods covered.

Account Number:	January 1994 to September 2001	October 2001 to December 2012	January 2013 to August 2014	Total
██████ 16	\$ 85,400.00	\$ -	\$ -	\$ 85,400.00
██████ 35	-	-	-	-
Total	\$ 85,400.00	\$ -	\$ -	\$ 85,400.00

b. Credit Card Accounts

Our examination entailed reviewing and analyzing all known and available credit card accounts belonging to Najat Yusuf. Our examination did not reveal any credit card payments using Partnership funds for the personal benefit of Najat Yusuf.

c. Adjustments

In order to avoid double counting of amounts identified as withdrawals and/or distributions in our lifestyle analysis, we obtained salaries and wages for the Partners, family members and their agents from Partnership records. Those that we were able to identify as salaries and wages were adjusted.

⁹⁹ Refer to Table 64.

d. Summary

As a result of the lifestyle analysis we can conclude that Najat Yusuf withdrew Partnership funds totaling \$85,400 from January 1994 to December 2012 for his personal benefit. This total is net from any ticket or check already considered in the other classifications above.

Result

According to the information presented above, the withdrawals of Partnership funds for the personal benefit of Najat Yusuf during the years 1994 to 2012 totaled \$135,994.63.¹⁰⁰

5.2.6. Zayed Yusuf (son of Fathi Yusuf)

Partnership - monies withdrawn from Supermarkets

a. Partnership withdrawals/distributions through checks

In order to identify all monies withdrawn from the Partnership through checks we identified available checks made to the order of Zayed Yusuf. In the following table we summarize the checks identified as withdrawals attributable to Zayed Yusuf for the periods covered amounted to \$2,876.00.¹⁰¹

Description	January 1994 to September 2001	October 2001 to December 2012	January 2013 to August 2014	Total
Plaza Extra # [REDACTED] 11	\$ -	\$ 2,876.00	\$ -	\$ 2,876.00
Plaza Extra [REDACTED] 10	-	-	-	-
Total	\$ -	\$ 2,876.00	\$ -	\$ 2,876.00

b. Partnership withdrawals/distributions through cash withdrawals

In order to identify all monies withdrawn from the Partnership through cash withdrawals we reviewed and analyzed available cash tickets/receipts and cash tickets/receipts ledgers provided from the Partnership. From our examination we determined that distributions of partnership funds to the personal benefit of Zayed Yusuf related to cash withdrawals amounted to \$275.00 for the covered period. In the following table we summarize the cash withdrawals of Partnership funds for the personal benefit of Zayed Yusuf for the periods covered.¹⁰²

¹⁰⁰ Refer to Table 65.

¹⁰¹ Refer to Table 66A and 66B.

¹⁰² Refer to Table 67.

Description	January 1994 to September 2001	October 2001 to December 2012	January 2013 to August 2014	Total
Withdrawals from the partnership with a signed ticket/receipt	\$ 275.00	\$ -	\$ -	\$ 275.00

c. Payments to third parties through checks or cash tickets/receipts

In order to identify and/or detect any disbursements from the Partnership on behalf of the Partners, family members and/or their agents to third parties which could be construed to be Partnership distributions; we examined available checks, cash tickets/receipts and cash tickets/receipts ledgers of the Partnership accounts to identify any payments to third parties on behalf of Zayed Yusuf. Our examination did not reveal any checks made to third parties on behalf of Zayed Yusuf from the Partnership accounts, therefore no Partnership distributions were identified that would require any adjustment from checks issued to third parties on behalf of Zayed Yusuf for the covered periods.

d. Payments to Attorneys

In order to identify and/or detect any disbursements from the Partnership on behalf of the Partners, family members and/or their agents to attorneys which could be construed to be partnership distribution to a specific Partner, we examined a number of payments for legal services not related to the Partnership that were identified and we included in our analysis, since the Partners had no agreement to pay such expenses with Partnership funds. No payments to attorneys were identified and/or attributable to Zayed Yusuf for the periods covered.

e. Funds withdrawn by cashier's checks

In order to identify any additional monies withdrawn through other sources not directly identifiable through the Partnership or directly linked to the Partnership which could be construed to be Partnership distributions, we examined available cashier's checks issued to Zayed Yusuf. Furthermore, we also examined any checks issued to Zayed Yusuf from any of other related parties and/or entities related to the Partnership. Our examination did not reveal any managers or other checks issued to Zayed Yusuf.

f. Summary

As a result of our review we can conclude that the Partnership monies distributed for the personal benefit of Mr. Zayed Yusuf from January 1994 to December 2012 amounted to \$3,151.00.

Lifestyle Analysis

a. Bank and Investments Accounts

Our examination entailed reviewing and analyzing all known and available bank accounts and brokerage/investment accounts of Zayed Yusuf. Our examination did not reveal any deposits to bank accounts or brokerage/investment accounts of Zayed Yusuf.

b. Credit Card Accounts

Our examination entailed reviewing and analyzing all known and available credit card accounts belonging to Zayed Yusuf. Our examination did not reveal any credit card payments using Partnership funds for the personal benefit of Zayed Yusuf.

c. Adjustments

In order to avoid double counting of amounts identified as withdrawals and/or distributions in our lifestyle analysis, we obtained salaries and wages for the Partners, family members and their agents from Partnership records. Those that we were able to identify as salaries and wages were adjusted.

Result

According to the information presented above, Zayed Yusuf's Partnership withdrawals for his personal benefit during the years 1994 to 2012 totaled \$3,151.00.¹⁰³

6. PARTNERSHIP FINAL BALANCES FOR LIQUIDATING PURPOSES

As previously indicated, we were requested to review the accounting of the Claims Reserve Account and the Liquidating Expenses Account and the proposed distribution of the remaining funds and/or net assets of the Partnership pursuant to the Wind Up Order and Plan.¹⁰⁴ The review included taking into consideration the Partnership Accounting and the final Balance Sheet prepared by Gaffney as of August 31, 2016.¹⁰⁵ The Partnership Accounting includes the accounts of Plaza Extra-East, Plaza Extra-West, and Plaza Extra-Tutu Park.

Any Partnership withdrawals/distributions previous to Gaffney's appointment were not included in his accounting, therefore, our work was aimed to identify withdrawals construed to be Partnership distributions and to incorporate them to Gaffney's accounting in order to provide an Adjusted Partnership Accounting.

¹⁰³ Refer to Table 68.

¹⁰⁴ Refer to Exhibit 18, Final Wind Up Plan of the Plaza Extra Partnership.

¹⁰⁵ Refer to Exhibit 19.

As part of our review of the balance sheet provided by Gaffney as of August 31, 2016 we verified that the journal entries related to the transfer and disposition of the Plaza Extra Stores as approved and ordered by the Court were appropriately accounted for. From our review, no significant exceptions were noted; therefore, we concluded that the accounting related to the transfer and disposition of the Plaza Extra Stores was adequate.

We reviewed the balance sheet account balances and in our judgment no significant findings were noted that would need to be reported and/or adjusted. We also reviewed that the disbursements authorized by the Court were appropriately accounted for in the general ledger and no exceptions were noted. Furthermore, we reviewed the journal entries related to the Claims Reserve Account and no exceptions were noted. The Balance Sheet provided by Gaffney was used as our basis for the Partnership Accounting for final distribution.

Net assets available for distribution amounted to \$8,789,652.25, divided equally between both families; \$4,394,826.13 for the Yusuf family and \$4,394,826.13 Hamed family.

7. CONCLUSIONS AND FINAL ALLOCATION RECOMMENDATIONS TO BALANCE HISTORICAL WITHDRAWALS

We applied the direct and indirect methods as part of our procedures to identify any withdrawals and/or distributions that could be construed to be Partnership distributions not previously identified as such. Through our analysis we were able to restate the net assets to be distributed among the Partners and such net amount was divided on a fifty-fifty basis. In essence, the amount to be distributed per Partner was adjusted by the distribution and/or withdrawals identified through our work which were not originally accounted for as Partnership distributions.

In the following table we summarize the adjustments that were identified as the result of our work and that were construed to be Partnership distributions not accounted for in the Balance Sheet provided by Gaffney. We conclude that as a result of the withdrawals in excess, and to equalize the Partnership Distributions the Hamed family will need to pay \$9,670,675.36 to the Yusuf family:

	Partnership Withdrawals		
	Hamed	Yusuf	Total
Withdrawals from Supermarkets	\$ 13,553,076.27	\$ 8,354,410.77	\$ 21,907,487.04
Lifestyle Analysis	14,938,589.07	795,903.85	15,734,492.92
Total Withdrawals	28,491,665.34	9,150,314.62	<u>\$ 37,641,979.96</u>
Credit for withdrawals in excess	(9,670,675.36)	9,670,675.36	
Total Allocation to equalize partnership withdrawals	<u>\$ 18,820,989.98</u>	<u>\$ 18,820,989.98</u>	

The amounts to equalize the withdrawals should be included in the "Proposed Distribution Plan" with the additional claims to be presented by the Defendants.

8. SIGNATURE

This report has been prepared under the direction of Fernando Scherrer, CPA, CIRA, CA, MBA, Managing Shareholder of BDO Puerto Rico, P.S.C. Neither the professionals who worked on this engagement, nor the shareholders of BDO Puerto Rico, P.S.C. have any present or contemplated future interest in the Partnership, as herein defined, or in reference to the owner, nor any personal interest with respect to the parties involved, nor any other interest that might prevent us from performing an unbiased analysis. Our compensation is not contingent on an action or event resulting from the analysis, opinions, or conclusions in, or the use of this report.

This report was prepared for the specific purpose described above and is not to be copied or made available to unrelated parties without the express written consent of BDO Puerto Rico, P.S.C. We did not use the work of one or more outside specialists to assist during this engagement. We have no obligation to update this report for information that comes to our attention after the date of this report.

BDO PUERTO RICO, P.S.C.



Fernando Scherrer, CPA, CIRA, CA, MBA

EXHIBIT 2

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

WALEED HAMED, as Executor of the)
Estate of MOHAMMED 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.,)
Counterclaim Defendants.)

Civil No. SX-12-CV-370

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

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

Civil No. SX-14-CV-278

ACTION FOR DEBT and
CONVERSION

MEMORANDUM OPINION AND ORDER RE LIMITATIONS ON ACCOUNTING

This matter came on for hearing on March 6 and 7, 2017 on various pending motions, including Hamed's fully briefed Motion for Partial Summary Judgment re the Statute of Limitations Defense Barring Defendants' Counterclaim Damages Prior to September 16, 2006, filed May 13, 2014.¹ Because the Court concludes that Defendant Yusuf has not, in fact, presented

¹ Hamed's Motion was followed by: Defendants' Brief in Opposition, filed June 6, 2014; Hamed's Reply, filed June 20, 2014; Hamed's Notice of Supplemental Authority, filed November 15, 2016; Yusuf's Brief in Response, filed December 3, 2016; Yusuf's post-hearing Supplemental Brief, filed March 21, 2017; and Hamed's Response, filed March 27, 2017. Also pending is Defendants' Motion for Partial Summary Judgment on Counts IV, XI, and XII Regarding Rent, filed August 12, 2014, which is addressed herein.



any legal claims for damages, but has rather presented a single, equitable action for a partnership accounting,² and because the parties do not assert that the action for accounting is itself barred by the statute of limitations, Plaintiff's Motion will be denied as to Yusuf's claim for accounting. Additionally, as to Defendant United's claim for rent presented in Count XII of the Counterclaim, the Court finds that there exist genuinely disputed issues of material fact such that summary judgment is inappropriate.

Nonetheless, in light of the arguments presented by the parties, as well as the general complexities and difficulties inherent in addressing the peculiar questions of fact necessary for the resolution of this matter, the Court finds that the interests of the parties in the just and fair disposition of their claims, as well as the overarching interest of the judiciary in the efficient resolution of disputes before it, are best served by utilizing the broad powers conferred upon the Court sitting in equity to fashion remedies specifically tailored to the circumstances presented in order to establish an equitable limitation upon claimed credits and charges submitted to the Master in the context of the Wind Up process.

Background

Hamed's Complaint was filed September 17, 2012, followed by his First Amended Complaint (Complaint), filed in the District Court following removal and prior to remand, on October 19, 2012, seeking, among other relief, "A full and complete accounting... with Declaratory Relief against both defendants to establish Hamed's rights under his Yusuf/Hamed Partnership with Yusuf..." Complaint, at 15, ¶1. Defendants filed their First Amended

² Count IX of the First Amended Counterclaim, seeking the dissolution of Plessen Enterprises, Inc., constitutes the sole claim presented by Yusuf that is unrelated to, and therefore not incorporated into, his equitable claim for accounting. However, Plaintiff's Motion, by its own terms, concerns only "monetary damage claims," and therefore Yusuf's Count IX is excluded from consideration in this Opinion.

Counterclaim (Counterclaim) on January 13, 2014, seeking relief as follows: Count: I— Declaratory Relief that No Partnership Exists; Count II— Declaratory Relief, in the event that a partnership is determined to exist to determine, among other relief, “their respective rights, interests, and obligations concerning the Plaza Extra Stores and the disposition of the assets and liabilities of these stores;” Count III— Conversion; Count IV— Accounting, alleging that “Yusuf is entitled to a full accounting...;” Count V— Restitution; Count VI— Unjust Enrichment and Imposition of a Constructive Trust; Count VII— Breach of Fiduciary Duty; Count VIII— Dissolution of Alleged Partnership, stating: “Although Defendants deny the existence of any partnership with Hamed, in the event the Alleged Partnership is determined to exist, then Yusuf is entitled to dissolution of the Alleged Partnership and to wind up its affairs, in that such partnership would be an oral at-will partnership and Yusuf provided notice of his intent to terminate any business relationship (including any partnership) with Hamed in March of 2012;” Count IX— Dissolution of Plessen; Count X— Appointment of Receiver; Count XI—Rent for Retail Space Bay I;³ Count XII— Past Rent for Retail Spaces Bay 5 & 8; Count XIII— Civil Conspiracy; Count XIV—Indemnity and Contribution. Counterclaim ¶¶ 141-191.

Legal Standard

By his Motion, Plaintiff is entitled to entry of summary judgment barring certain relief sought by Defendants’ Counterclaim pursuant to the applicable statute of limitations if he “shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law.” V.I. R. Civ. P. 56(a).

³ This Count was the subject of Memorandum Opinion and Order entered April 27, 2015, denying, in part, Plaintiff’s present Motion and granting United’s Motion to Withdraw Rent. United’s claim in Count XII and other monetary claims of United were unaffected by that Order.

“A party is entitled to judgment as a matter of law when, in considering all of the evidence, accepting the nonmoving party’s evidence as true, and drawing all reasonable inferences in favor of the nonmoving party, the court concludes that a reasonable jury could only enter judgment in favor of the moving party.” *Antilles School, Inc. v. Lembach*, 2016 V.I. Supreme LEXIS 7, at *6-7 (V.I. 2016). The nonmoving party in responding to a motion for summary judgment has the burden to “set out specific facts showing a genuine issue for trial.” *Williams v. United Corp.*, 50 V.I. 191, 194-95 (V.I. 2008). A dispute is genuine if the evidence is such that a reasonable trier of fact could return a verdict for the nonmoving party. *Machado v. Yacht Haven U.S.V.I., LLC*, 61 V.I. 373, 391-92 (V.I. 2014).

Discussion

There can be no more appropriate introduction to this matter than the lucid observations of Judge Herman E. Moore of the District Court of the Virgin Islands who remarked of another matter involving a dispute between business partners more than half a century ago:

This case illustrates the pitfalls open to friends going into business. When two strangers go into business, you usually have each one requiring formal contracts, formal statements, formal deposits, and everything of the kind; but usually when two friends go into business, and where it becomes one happy family, so many of these things are omitted; and when they do fall out, as happened in this case, there arises bitterness and difficulties which make it the most difficult type of case to try.

Stoner v. Bellows, et al., 2 V.I. 172, 174-75 (D.V.I. 1951).

Hamed’s Motion seeks to bar Defendants’ unresolved monetary claims, as alleged in their Counterclaim, for “debt, breach of contract, conversion, breach of fiduciary duty, recoupment/constructive trust and accounting” that accrued more than six years prior to the September 17, 2012 commencement of this action, citing *James v. Antilles Gas Corp.*, 43 V.I. 37 (V.I. Terr. Ct.

2000).⁴ Defendants respond to Hamed’s assertion that Defendants’ monetary claims are governed by the six-year limitation period set out in 5 V.I.C. § 31(3) (Motion, at 3) by asserting that Yusuf’s monetary claims constitute a cause of action for an accounting which, consistent with longstanding common law precedent, accrues upon dissolution of the partnership, and examines the entire period of the partnership, or the period from the last accounting. Opposition, at 9; Supplemental Brief, at 1. Defendant United has not denied the applicability of a six-year limitation period to its third-party claims against Hamed and/or the partnership, but rather argues that the limitation period should be equitably tolled.

“Each partner is entitled to a settlement of all partnership accounts upon winding up the partnership business.” 26 V.I.C. § 177(b). “A partnership is dissolved, and its business must be wound up... upon... in a partnership at will, the partnership’s having notice from a partner... of that partner’s express will to withdraw as a partner.” 26 V.I.C. § 171(1).

By their pleadings in this litigation, Hamed alleged and Yusuf denied the existence of a partnership at will. Although Yusuf had previously acknowledged the existence of a partnership during pre-litigation negotiations in February and March 2012, and his intention that the partnership be dissolved, by the time litigation ensued, Defendants sought “declaratory relief that no partnership exists.” Counterclaim, Count I. By his Motion to Appoint Master, filed April 7, 2014, Yusuf “now concedes for the purposes of this case that he and Hamed entered into a partnership to carry on the business of the Plaza Extra Stores and to share equally the net profits

⁴ While acknowledging a split of authority, the Territorial Court in *James* found “compelling” the majority view, as described by Professors Wright and Miller: “although there is some conflict on the subject, the majority view appears to be that the institution of *plaintiff’s suit tolls or suspends the running of the statute of limitations governing a compulsory counterclaim.*” *James v. Antilles Gas Corp.*, 43 V.I. at 44, 46, citing 6 Charles Alan Wright & Arthur R. Miller, *Federal Practice and Procedure*, § 1419, at 151 (2d ed. 1990) (emphasis in original).

from the operation of the Plaza Extra Stores.” The Court granted in part Plaintiff’s May 9, 2014 Renewed Motion for Partial Summary Judgment as to the Existence of a Partnership by Order entered November 7, 2014, finding and declaring the existence of a 50/50 partnership between Yusuf and Hamed based upon their 1986 oral agreement for the ownership and operation of the Plaza Extra Stores.

Yusuf has argued that, to the extent a partnership existed, it was dissolved by Hamed’s retirement in 1996 which constituted his withdrawal from the partnership. However, the Court has already found that Hamed’s participation in the operation and management of the three Plaza Extra Stores continued after his withdrawal from day-to-day operations through his son Waleed Hamed, acting pursuant to powers of attorney. *Hamed v. Yusuf*, 58 V.I. 117, 126 (V.I. Super. Ct. 2013). As noted, Yusuf’s pre-litigation negotiations seeking an agreement to dissolve his business relationship with Hamed never resulted in an agreement, such that the partnership was not dissolved by the time the litigation commenced. Within his April 7, 2014 Motion to Appoint Master, Yusuf states his “‘express will to withdraw as a partner,’ thus dissolving the partnership,” quoting 26 V.I.C. § 171(1). In his Response to that Motion, Hamed submitted his April 30, 2014 “Notice of Dissolution of Partnership.” Hamed and Yusuf concur that the partnership is dissolved, and both concur that the right of each partner to an accounting has accrued upon dissolution. Both also concur that the monetary claims set forth in Hamed’s Complaint and the monetary claims of Yusuf set forth in Defendants’ Counterclaim relate back to September 17, 2012, the date Hamed filed his original Complaint.

MOTION FOR PARTIAL SUMMARY JUDGMENT RE: STATUTE OF LIMITATIONS

As discussed in detail in the Memorandum Opinion and Order Striking Jury Demand entered contemporaneously herewith, despite the misleading form of both Hamed’s Complaint and

Yusuf's Counterclaim, each partner has presented in this matter only a single, tripartite cause of action for the dissolution, wind up, and accounting of the partnership pursuant to 26 V.I.C. § 75(b)(2)(iii). However, Count XII of Defendants' Counterclaim also presents a separate cause of action on behalf of United for debt in the form of rent. The Court first considers Hamed's Motion for Partial Summary Judgment Re: Statute of Limitations as it applies to United's action for rent, and then as it applies to the partners' competing claims for dissolution, wind up, and accounting.

United's Cause of Action for Debt (Rent)

By Memorandum Opinion and Order entered April 27, 2015, the Court denied Plaintiff's Motion for Partial Summary Judgment Re: Statute of Limitations as to United's Count XI for debt in the form of rent owed with respect to "Bay 1" and granted United's Motion to Withdraw Rent, filed September 9, 2013; authorizing the Liquidating Partner, under the supervision of the Master, to pay to United from partnership funds the total amount of \$5,234,298.71 plus additional rents that have come due from October 1, 2013 at the rate of \$58,791.38 per month. That Memorandum Opinion and Order also effectively, though not explicitly, granted in part Defendants' Motion for Partial Summary Judgment on Counts IV, XI, and XII Regarding Rent, filed August 12, 2014, as to Count XI, and entered judgment thereon in favor of United.

In Count XII of Defendants' Counterclaim, United seeks an award of \$793,984.38 for rent owed with respect to "Bay 5" and "Bay 8," which the partnership allegedly used for storage space in connection with the Plaza Extra-East store during various periods between 1994 and 2013. Counterclaim ¶¶ 179-84. United's arguments against the applying the statute of limitations to bar its claims for rent generally fail to distinguish between the rent owed for Bay 1 (Count XI) and the rent owed for Bays 5 and 8 (Count XII). Thus, the Court must infer that United opposes Hamed's statute of limitations argument as to Count XII on the same grounds as it opposed the argument

with respect to Count XI. In denying Hamed's Motion for Partial Summary Judgment Re Statute of Limitations as to Count XI, the Court found that the limitations period had been tolled on the basis of Hamed's undisputed acknowledgement and partial payment of the debt.

However, in his August 24, 2014 Declaration, attached as Exhibit 1 to Plaintiff's Response to Defendants' Rule 56.1 Statement of Facts and Counterstatement of Facts, Waleed Hamed expressly states that "there was no agreement to use [Bays 5 and 8] other than on a temporary and periodic basis, nor was there any agreement to pay rent for this space, as United made it available at no cost." Declaration of Waleed Hamed ¶¶ 19-20. Mohammed Hamed's comments acknowledging the debt, which formed the basis of the Court's judgment as to Count XI, do not explicitly distinguish between the rent owed for Bay 1 and the rent owed for Bays 5 and 8. Yet, considered in light of the declaration of his son, the Court is compelled to conclude that a genuine dispute of material fact exists as to whether Hamed ever acknowledged any debt as to rent owed for Bays 5 and 8, and more basically, whether the partnership ever agreed to pay any rent for the use of Bays 5 and 8 in the first place. Accordingly, both Hamed's Motion for Partial Summary Judgment Re: Statute of Limitations and Defendants' Motion for Partial Summary Judgment on Counts IV, XI, and XII Regarding Rent must be denied as to Count XII of Defendants' Counterclaim.⁵

⁵ Defendants' Motion for Partial Summary Judgment on Counts IV, XI, and XII Regarding Rent must also be denied as to Count IV (Accounting). While Hamed and Yusuf are each entitled to an accounting of the partnership pursuant to 26 V.I.C. § 177, United's cause of action for rent is entirely unrelated to the partners' respective actions for accounting except insofar as each partner will ultimately be liable in the final accounting for 50% of whatever debt is found to be owing from the partnership to United.

Partners' Causes of Action for Partnership Dissolution, Wind Up, and Accounting

26 V.I.C. § 75(b) and (c) provide:

(b) A partner may maintain an action against the partnership or another partner for legal or equitable relief, with or without an accounting as to partnership business, to:

- (1) enforce the partner's rights under the partnership agreement;
- (2) enforce the partner's rights under this chapter... or
- (3) enforce the rights and otherwise protect the interests of the partner, including rights and interests arising independently of the partnership relationship.

(c) The accrual of, and any time limitation on, a right of action for a remedy under this section is governed by other law. A right to an accounting upon a dissolution and winding up does not revive a claim barred by law.

By Act No. 6205, the Revised Uniform Partnership Act (RUPA) was adopted in the Virgin Islands, effective May 1, 1998.⁶ The amended statute changed the common law and predecessor statute by, among other things, linking the accrual and limitations of actions brought by a partner against another partner or the partnership to the periods provided "by other law," such that claims accruing during the life of the partnership are not revived upon dissolution.⁷

"The first step when interpreting a statute is to determine whether the language at issue has a plain and unambiguous meaning. If the statutory language is unambiguous and the statutory scheme is coherent and consistent, no further inquiry is needed." *Brady v. Gov't of the V.I.*, 57 V.I. 433, 441 (V.I. 2012) (citations omitted). By its plain language, Section 75 unambiguously provides

⁶ Yusuf argues that the RUPA savings clause (26 V.I.C. § 274) preserves his claims against Hamed that predate May 1, 1998, the effective date of RUPA in the Virgin Islands. That is, Yusuf contends that RUPA does not apply to claims that accrued before that date, which are instead governed by the limitations period then in effect. His argument fails in that claims in the nature of an accounting of one partner against another could only be presented upon dissolution of the partnership. Here, since the partnership had not been dissolved by the date of the enactment of RUPA in the Virgin Islands, and since all his monetary claims against Hamed could only be brought on dissolution, no claims of Yusuf had accrued by May 1, 1998.

⁷ See National Conference of Commissioners on Uniform State Laws; Uniform Partnership Act (1997); Section 405(c) [26 V.I.C. § 75(c)], comment 4: "The statute of limitations on such claims is also governed by other law, and claims barred by a statute of limitations are not revived by reason of the partner's right to an accounting upon dissolution, as they were under the UPA." http://www.uniformlaws.org/shared/docs/partnership/upa_final_97.

that during the life of the partnership, a “partner may maintain an action against the partnership or another partner for legal or equitable relief, with or without an accounting as to the partnership business;” and that “accrual of, and any time limitation on, a right of action for a remedy under this section is governed by other law. A right to an accounting upon a dissolution and winding up does not revive a claim barred by law.” “The effect of those rules is to compel partners to litigate their claims during the life of the partnership or risk losing them.” National Conference of Commissioners on Uniform State Laws; Uniform Partnership Act; Section 405(c) comment 4.

Though the parties have submitted lengthy briefs presenting their respective positions on how the limited case law interpreting this section of RUPA affects the “claims” purportedly presented by Yusuf and United, there is significant confusion surrounding precisely what is meant by the term “claims.”⁸ As it is often used in legal parlance, the term “claim” is essentially synonymous with “cause of action.” Used in this sense, Hamed and Yusuf have each, in their respective pleadings, presented only a single, tripartite cause of action, or claim, for an equitable partnership dissolution, wind up, and accounting under 26 V.I.C. § 75(b)(2)(iii).⁹ However, as

⁸ Much of this confusion stems from the imprecision of the Complaint and Counterclaim. Both pleadings are presented in essentially the same fashion, consisting of a litany of alleged instances in which the opposing party partner, or his relatives, withdrew or otherwise utilized monies from partnership funds, followed by a “kitchen sink” style presentation of “counts” in which the parties purport to characterize these allegedly improper transactions variously as giving rise to causes of action for conversion, breach of fiduciary duty, unjust enrichment, constructive trust, etc., with no attempt to distinguish between them or to explain which transactions give rise to which cause of action. As a result, Plaintiff’s Motion for Partial Summary Judgment is peculiar in that it does not, and indeed cannot, seek entry of judgment as to any one count presented in the Counterclaim, but rather seeks to bar from consideration as to all counts any alleged financial transaction occurring more than six years prior to the commencement of this litigation. In this respect, Plaintiff’s Motion seems more akin to a motion *in limine* than a motion for summary judgment, as Plaintiff seeks only to limit the scope of the accounting process by excluding from consideration any transaction pre-dating September 2006.

⁹ For a detailed analysis of the nature of the claims presented by the parties in this action, see the Memorandum Opinion and Order Striking Jury Demand entered contemporaneously herewith; explaining that despite the misleading form of the Complaint and Counterclaim, Hamed presents only a single action for dissolution, wind up, and accounting, while Yusuf presents an action for accounting, and an action for corporate dissolution, and United presents an action for debt/breach of contract for failure to pay rent.

used by both the Court and the parties in the context of this litigation, the term “claims” has also taken on an entirely different, and more specific meaning, by which the term “claims” refers not to the parties’ respective causes of action for accounting, but rather to the numerous alleged individual debits and withdrawals from partnership funds made by the partners or their family members over the lifetime of the partnership that have been, and, following further discovery, will continue to be, presented to the Master for reconciliation in the accounting and distribution phase of the Final Wind Up Plan.¹⁰

Pursuant to 26 V.I.C. § 71(a), “[e]ach partner is deemed to have an account that is: (1) credited with an amount equal to the money plus the value of any other property, net of the amount of any liabilities, the partner contributes to the partnership and the partner’s share of the partnership profits; and (2) charged with an amount equal to the money plus the value of any other property, net of the amount of any liabilities, distributed by the partnership to the partner and the partner’s share of the partnership losses.” Thus, under the RUPA framework, the “claims” to which the parties refer are, in fact, nothing more than the parties’ respective assertions of credits and charges to be applied in ascertaining the balance of each partner’s individual partnership account.¹¹

¹⁰ It is worth noting that this type of claims resolution process would appear to be unnecessary, or at least far less complicated, in the context of many, if not most, actions for partnership accounting, as the need for such a claims resolution process is generally obviated by the existence of the type of comprehensive ledger and periodic accounting statements typically maintained by modern businesses. Here however, as a result of the questionable and highly informal financial accounting practices of the partnership, by which both partners and their respective family members unilaterally withdrew funds from partnership accounts as needed to cover various business and personal expenses, there exists no authoritative ledger or series of financial statements recording the distribution of funds between partners upon which the Master or the Court could reasonably rely in conducting an accounting. Instead the Court finds itself in the predicament of having to account for multiple decades’ worth of distributions of partnership funds among the partners and their family members based upon little more than a patchwork of cancelled checks, hand-written receipts for cash withdrawn from Plaza Extra safes, and the personal recollections of the partners and their agents.

¹¹ Alternatively, such “claims” may be referred to as § 71(a) claims, and the accounts to which they apply may be referred to as § 71(a) accounts.

As discussed above, pursuant to 26 V.I.C. § 75(c), “any time limitation on a right of action for a remedy under this section is governed by other law.” In the Virgin Islands, limitations on the time for the commencement of various actions are codified at 5 V.I.C. § 31. In his Motion, Hamed argues that Yusuf’s “claims” should be subject to the six year limitations period under § 31(3); presumably on the theory that they are essentially claims to enforce the Yusuf’s rights under the partnership agreement as described in 26 V.I.C. § 75(b)(1), effectively rendering them claims upon a contract.

However, by its own terms, 5 V.I.C. § 31 applies to bar, in their entirety, *causes of action* that are commenced outside of the relevant limitations period: “Civil actions shall only be commenced within the period prescribed below after the cause of action shall have accrued.” Here, Hamed does not contend that Yusuf’s cause of action for accounting was commenced outside the relevant limitations period,¹² but only that Yusuf should be barred from asserting claims—meaning credits to and charges against the partners’ accounts—based upon any transaction that took place more than six years prior to the filing of Hamed’s initial Complaint. And while Yusuf’s action for accounting, as a whole, is undoubtedly subject to a statutory limitations period, the statute of limitations, by its plain language, has no direct applicability to individual, claimed credits and charges presented within the accounting process. Accordingly, Plaintiff’s Motion for Partial Summary Judgment will be denied.

¹² The Court need not determine the relevant limitations period for the commencement of a cause of action for accounting, as Hamed has not challenged the timeliness of Yusuf’s action for accounting as such, but only the timeliness of the individual § 71(a) claims presented within the accounting.

EQUITABLE LIMITATION OF SCOPE OF PARTNERSHIP ACCOUNTING

Despite concluding that Plaintiff is not entitled to partial summary judgment based upon the statute of limitations as such, the Court is nonetheless moved to consider whether the various issues raised and arguments presented in Plaintiff's Motion, among other concerns, justify the imposition of some equitable limitation on the presentation of claimed credits and charges in the accounting process.

The Supreme Court of the Virgin Islands has explained that “[d]espite the fact that the Superior Court of the Virgin Islands—like almost all modern American courts—exercises both equitable and legal authority, the division between law and equity remains meaningful to defining the remedies available in a particular action.” *3RC & Co. v. Boynes Trucking Sys.*, 63 V.I. 544, 553 (V.I. 2015) (quoting *Cacciamani & Rover Corp. v. Banco Popular*, 61 V.I. 247, 252 n.3 (V.I. 2014)). Furthermore, “because ‘[a] court of equity has traditionally had the power to fashion any remedy deemed necessary and appropriate to do justice in [a] particular case,’ a court has a great deal more flexibility in considering equitable remedies than it does in considering legal remedies.” *Id.* (quoting *Kaloo v. Estate of Small*, 62 V.I. 571, 584 (V.I. 2015)).

As explained in detail in the Memorandum Opinion and Order Striking Jury Demand entered contemporaneously herewith, both Hamed and Yusuf have presented in this matter competing equitable actions to compel the dissolution, winding up, and accounting of their partnership pursuant to 26 V.I.C. § 75(b)(2)(iii).¹³ As an accounting in this context is both an

¹³ 26 V.I.C. § 75(b)(2)(iii) codifies the right of one partner to maintain an action against the partnership or another partner to enforce the partner's “right to compel a dissolution and winding up of the partnership business under section 171 of this chapter or enforce any other right under subchapter VIII of this chapter.” In turn, subchapter VIII, §177 explicitly provides that “[e]ach partner is entitled to a settlement of all partnership accounts upon winding up the partnership business.”

equitable cause of action and an equitable remedy in itself, the Court is granted considerable flexibility in fashioning the specific contours of the accounting process. *See, e.g., Isaac v. Crichlow*, 2015 V.I. LEXIS 15, at *39 (V.I. Super. 2015) (“An equitable accounting is a *remedy* of restitution where a fiduciary defendant is forced to disgorge gains received from the improper use of the plaintiffs [sic] property or entitlements.”) (quoting *Gov't Guarantee Fund of Republic of Finland v. Hyatt Corp.*, 5 F. Supp. 2d, 324, 327 (D.V.I. 1998)) (emphasis added).

Partnership Accounting Under RUPA

The general framework for conducting a partnership accounting in the Virgin Islands is outlined at 26 V.I.C. § 177(b):

Each partner is entitled to a settlement of all partnership accounts upon winding up 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 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.

In turn, the “partners' accounts” referenced in § 177(b) are described at 26 V.I.C. § 71(a):

Each partner is deemed to have an account that is: (1) credited with an amount equal to the money plus the value of any other property, net of the amount of any liabilities, the partner contributes to the partnership and the partner's share of the partnership profits; and (2) charged with an amount equal to the money plus the value of any other property, net of the amount of any liabilities, distributed by the partnership to the partner and the partner's share of the partnership losses.

By the plain language of the statute,¹⁴ these individual partner accounts, are deemed to exist, regardless of whether any such accounts are in fact maintained, and irrespective of the actual accounting practices of the partners. In this case, these § 71(a) accounts exist purely as a creation of equity, as Hamed and Yusuf, and their sons, withdrew partnership funds at will over the lifetime of the partnership with no formal system of accounting either for distributions made to partners from partnership funds, or contributions made by partners to partnership funds. Thus, because these implied partner accounts, particularly in this case, exist solely to facilitate the efficient settlement of accounts between partners under 26 V.I.C. § 177, which is itself an equitable remedy, the Court, operating within the parameters established by RUPA, possesses significant discretion and flexibility in determining the manner and scope of the partner account reconstruction process. *See 3RC & Co.*, 63 V.I. at 553.

As the last and only true-up of the partnership business occurred in 1993,¹⁵ the parties, by their respective actions for accounting, effectively impose upon the Court the onerous burden of reconstructing, out of whole cloth, twenty-five years' worth of these partner account transactions, based upon nothing more than scant documentary evidence and the ever-fading recollections of the partners and their representatives.¹⁶ For the reasons discussed below, the Court concludes, upon considerations of laches and a weighing of the interests of both the parties and the Court in the just and efficient resolution of their disputes, that the equities of this particular case necessitate

¹⁴ Subject to certain specified exceptions, "relations among the partners and between the partners and the partnership are governed by the partnership agreement." 26 V.I.C § 4. However, "[t]o the extent the partnership agreement does not otherwise provide, [Title 26, Chapter 1] governs relations among the partners and between the partners and the partnership." Here, the terms of the oral partnership agreement are limited, and establish only that Hamed and Yusuf agreed to jointly operate the three Plaza Extra Stores, and to each share 50% in the profits and losses thereof. See Order entered November 7, 2014, granting Renewed Motion for Partial Summary Judgment as to the Existence of a Partnership.

¹⁵ See Counterclaim in SX-14-CV-287 (Counterclaim 287) ¶ 10.

¹⁶ See *supra*, note 10 and accompanying text.

the imposition of a six-year equitable limitation period for §71(a) claims submitted to the Master in the accounting and distribution phase of the Wind Up Plan.

Doctrines of Laches and Statute of Limitations by Analogy

In other similar situations, some courts have imposed equitable limitation periods by applying the “statute of limitations by analogy.” In the days of the divided bench, when statutes of limitations were largely inapplicable to suits in equity, courts of equity regularly invoked the statute of limitations by analogy to bar stale claims. Thus, Justice Strong remarked:

The statute of limitations bars actions for fraud... after six years, and equity acts or refuses to act in analogy to the statute. Can a party evade the statute or escape in equity from the rule that the analogy of the statute will be followed by changing the form of his bill? We think not. We think a court of equity will not be moved to set aside a fraudulent transaction at the suit of one who has been quiescent during a period longer than that fixed by the statute of limitations, after he had knowledge of the fraud, or after he was put upon inquiry with the means of knowledge accessible to him.

Burke v. Smith, 83 U.S. 390, 401 (1872).

Modern courts of equity, such as the Court of Chancery of Delaware, also apply the statute of limitations by analogy as a component of the equitable defense of laches. *See, e.g., Whittington v. Dragon Group, L.L.C.*, 991 A.2d 1, 9 (Del. 2009) (“Where the Plaintiff seeks equitable relief... failure to file within the analogous period of limitations will be given great weight in deciding whether the claims are barred by laches”); *see also Williams v. Williams*, 2010 Conn. Super. LEXIS 2344, at *15 (Conn. Super. Ct. Sep. 15, 2010) (noting that court may consider an analogous statute of limitation when considering laches defense). Under this approach, “[w]here the statute bars the legal remedy, it shall bar the equitable remedy in analogous cases, or in reference to the same subject matter, and where the legal and equitable claim so far correspond, that the only difference is, that the one remedy may be enforced in a court of law, and the other in

a court of equity.” *Whittington*, 991 A.2d at 9.¹⁷ Different jurisdictions disagree, however, as to how much force an analogous statute of limitations should have. *See Dobbs, Law of Remedies* § 2.4(4), at 78 (2d ed. 1993) (“When courts look to an analogous statute of limitations for guidance, and that statute has run, they may (1) presume unreasonable delay and prejudice, but permit the plaintiff to rebut the presumption; (2) treat the statute as one element ‘in the congeries of factors to be considered.’ Some authority has gone beyond either of these rules by holding that equity will follow the law and (3) give the statute conclusive effect”).¹⁸

The Supreme Court of the Virgin Islands has recognized the availability of the equitable defense of laches in territorial courts. In one of its earliest cases, *St. Thomas-St. John Board of Elections v. Daniel*, the Court explained:

Laches is an affirmative defense under Rule 8(c) of the Federal Rules of Civil Procedure that bars a plaintiff's claim where there has been an inexcusable delay in prosecuting the claim in light of the equities of the case and prejudice to the defendant from the delay. *See Cook v. Wikler*, 320 F.3d 431, 438 (3d Cir. 2003); *Churma*, 514 F.2d at 593. “Laches requires proof of (1) lack of diligence by the party against whom the defense is asserted, and (2) prejudice to the party asserting the defense.” *Costello v. United States*, 365 U.S. 265, 282, 81 S. Ct. 534, 543, 5 L. Ed. 2d 551 (1961).

¹⁷ The Delaware Supreme Court agreed with the Chancery Court's analysis that “[a]s a practical matter, there is not likely to be much difference between the prosecution of [the party's] claim here for an accounting and a claim for damages at law,” and that, in turn, the “claims for declaratory relief and an accounting are analogous to a legal claim for the same relief” for the purposes of the laches analysis. *Whittington*, 991 A.2d at 9. The higher court disagreed with the lower court's conclusion that the three-year limitations period for contract actions applied, and instead found applicable the twenty-year limitations period for actions upon contracts under seal. *Id.* Nonetheless, the general approach of considering analogous statutes of limitations in the context of the laches analysis was upheld.

¹⁸ It appears that the Virgin Islands has effectively codified the doctrine of statute of limitations by analogy to conclusive effect in equitable actions. “An action of an equitable nature shall only be commenced within the time limited to commence an action as provide by this chapter.” 5 V.I.C. § 32(a). This suggests, in the event that a particular equitable cause of action is not explicitly included in any particular limitation period outlined in 5 V.I.C. § 31, that the Court must apply the most analogous statute of limitations, or fall back on the residual limitations period of ten years for “any cause not otherwise provided for,” under § 31(2).

49 V.I. 322, 330 (V.I. 2007).¹⁹

It must be noted that, just as with the statute of limitations defense, the equitable defense of laches is also typically invoked as a bar to causes of action, in their entirety. Thus, in a case such as this, the defense of laches, if proven, would typically be applied as a complete bar to the party's cause of action for accounting under 26 V.I.C. § 75(b)(2)(iii), rather than as a limitation on the partners' § 71(a) claims presented within the § 177(b) accounting process.²⁰ However, the equitable defense of laches differs from any defense based upon the statute of limitations—a creature of law—in critical respects. Whereas direct application of a statute of limitations defense must fail because 5 V.I.C. § 31, by its own terms, applies only to causes of action, laches, as an equitable defense, is inherently flexible by nature, and may therefore be molded to suit the particular equities of a given case.²¹

¹⁹ The Supreme Court has since adopted the Virgin Islands Rules of Civil Procedure to govern civil practice in the territory, however Virgin Islands Rule of Civil Procedure 8(c) is identical to the formerly applicable Federal Rule, and thus the Supreme Court's reasoning regarding the affirmative defense of laches, insofar as it relates to this rule, remains equally applicable under the new rules.

²⁰ In addition to pleading the affirmative defense of the statute of limitations, both Plaintiff and Defendants pled in their respective Answers the affirmative defense of laches.

²¹ The Supreme Court of the Virgin Islands has recognized at least one application of the defense of laches outside the confines of its traditional use as a bar to causes of action brought before the Court, further supporting the Court's conclusion herein that laches, as a creature of equity, is inherently broader and more flexible in its application than the statute of limitations. *See In the Matter of the Suspension of Joseph*, 60 V.I. 540, 558-59 (V.I. 2014) (noting that "laches, an equitable defense, is distinct from the statute of limitations, a creature of law," and finding that "the laches defense may apply to attorney discipline proceedings in certain very narrowly defined circumstances, such as when the delay in instituting the disciplinary proceedings results in prejudice to the respondent"). Particularly appropriate here, the Court also noted that "there may be factual situations in which the expiration of time destroys the fundamental fairness of the entire proceeding." *Id.* (citing *Anne Arundel County Bar Ass'n, Inc. v. Collins*, 272 Md. 578 (1974)).

Doctrine of Laches as Limit on Scope of Accounting

A most instructive case on this issue, bearing notable factual similarity to the case at bar, is the Connecticut Superior Court case of *Williams v. Williams*, 2010 Conn. Super. LEXIS 2344.²² As described by the court, *Williams* involved a “battle between two brothers over how the assets of [their partnership] had been handled,” in which each partner presented his own action for dissolution and accounting of the partnership. In response, each brother also presented affirmative defenses including, *inter alia*, statute of limitations and laches. *Id.* at *2-3. In explaining the law governing each partner’s right to an accounting, the court noted that while a final accounting is generally “the one great occasion for a comprehensive and effective settlement of all partnership affairs” in which “all the claims and demands arising between the partners should be settled,” the partners’ “right to an accounting is not absolute.” *Id.* at *7. Consistent with the principle that “actions for accounting generally invoke the equitable powers of the court,” courts are granted wide latitude in setting the terms and principles upon which any accounting shall be based.²³ *Id.* “Consequently, a party’s right to an accounting may be limited by other equitable considerations, for example a claim of laches.” *Id.* at *8 (citations omitted).

²² Although the Connecticut Superior Court did not explicitly frame its opinion in the language of RUPA, Connecticut is a RUPA jurisdiction, and therefore the court’s decision in *Williams* necessarily concerns principles applicable to actions for dissolution and accounting under RUPA. *See* Conn. Gen. Stat. § 34-300 et seq. (Revised Partnership Act). As the complaint in *Williams* was filed in 2006 there can be no doubt that the *Williams* partnership was governed by RUPA. *See* Conn. Gen. Stat. § 34-398(b) (“After January 1, 2002, sections 34-300 to 34-399, inclusive, govern all partnerships”).

²³ In articulating this rule, the Connecticut Superior Court referred to a Connecticut statute explicitly providing that “in any judgment or decree for an accounting, the court shall determine the terms and principles upon which such accounting shall be had.” *Williams*, 2010 Conn. Super. LEXIS 2344, at *7 (citing Conn. Gen. Stat. § 52-401). Although the Virgin Islands lacks such a specific statute, the Court nonetheless concludes that the relevant provisions of RUPA such as 26 V.I.C. §§ 71, 75, and 177, coupled with the considerable discretion granted to the Court in tailoring equitable remedies to suit the needs of any given case, confer upon the Court wide latitude and discretion in establishing the terms and principles, including the scope, of this kind of judicially ordered and supervised accounting. *See supra*, discussion of Equitable Limitation of Scope of Partnership Accounting.

After noting that the statute of limitations had no direct applicability in the context of an accounting, the court explained that “to establish the defense [of laches], [a defendant] must prove both that there was an inexcusable delay by [the plaintiff] in seeking the accounting, and that [the defendant] has been prejudiced by the delay.” *Id.* at *15. Under Connecticut law, the court was permitted to consider analogous statutes of limitation when evaluating the laches claim, but was not obligated to apply any such statute.²⁴ *Id.* Lastly, the court noted that the laches analysis “is an inherently fact specific question that can only be resolved by a close examination of the circumstances of the particular case.” *Id.* at *16.

After examining nine separate claimed credits and charges to partner accounts presented by the defendant partner in his counterclaim, the court concluded that “the doctrine of laches precludes [defendant] from seeking an accounting on any of the issues he claims.” *Id.* at *37. The court found that there had been “inexcusable delay” as plaintiff did not file his claims until 2007; even the most recent of which was related to events that transpired in 1999. *Id.* The court further noted that, while not dispositive of the issue, the most analogous statutory limitations period—three years for breach of fiduciary duty—had long expired. *Id.* This delay was inexcusable, as the defendant partner was, for most of the relevant period, “in charge of the day-to-day operations” of the partnership and therefore possessed either “actual or constructive knowledge of every transaction of which he now complains,” and accordingly tolling was inappropriate. *Id.* at *38.

Additionally, it was “clear to the court that [defendant’s] delay in asserting his claims [had] prejudiced [plaintiff].” The court explained: “the passage of time puts [plaintiff] at an unfair

²⁴ As discussed above, different jurisdictions afford different weight to the consideration of analogous statutes of limitations in the laches analysis. Connecticut appears to treat analogous statutes of limitations merely as one factor among many to be considered in evaluating a laches defense.

disadvantage in responding to the merits of [defendant's] claims. Because many of [defendant's] claims involve how transactions were or were not recorded by [the partnership's] accountants an analysis of those claims would likely involve testimony from the accountants. Yet, how much [the accountant] might remember of a schedule he prepared for a client a decade before the claim relating to that schedule was made is questionable, at best." *Id.* at *39-40. Lastly, the court noted that while the parties had presented a "substantial amount" of accounting records, "they are by no means complete," and as such, "[plaintiff] would be at a distinct disadvantage if he were required to recreate or find decades of accounting records prepared by a variety of accountants." *Id.* at *40.

In summation, the court remarked: "While an accounting upon a dissolution of a partnership may be the final opportunity for the partners to square up, where one partner ignores issues year after year and allows the other partner to proceed along thinking everything is fine, the first partner cannot be heard to cry upon dissolution a decade or more later, 'I'd like a do over.'" *Id.* at *40-41. Accordingly, the court found that the plaintiff had met his burden in proving his laches defense to the defendant's counterclaim, entered judgment dissolving the partnership pursuant to stipulation of the parties, and ordered a final accounting to be conducted by an appointed third party, limited in scope to the reconciliation of the partners' respective interests in the partnership from January 1, 2009 to the September 15, 2010 dissolution of the partnership. *Id.* at *42.

Hamed/Yusuf Partnership Accounting

Turning to the case at bar, there are both striking similarities and critical differences between the factual scenario presented in this matter and that before the court in *Williams*. Just as in *Williams*, this matter is best described as a battle between two partners, here former friends and brothers-in-law, over how the assets of the partnership were handled. Additionally, despite having,

at all times, either actual or constructive knowledge of the alleged ongoing, repeated withdrawals of partnership funds, both Hamed and Yusuf ignored these issues year after year and allowed one another to continue conducting partnership business, each implying to the other that all was well.

Procedurally, however, the *Williams* court considered the limitation of only one partner's accounting claims, as only that partner sought an accounting reaching back to the formation of the partnership while the other sought an accounting only as to how to divide the current assets of the partnership, as they stood at the time of dissolution. Additionally, whereas the defendant in *Williams* had identified in his counterclaim, by subject matter and date, nine specific challenged transactions, the description of the challenged transactions in the pleadings in this matter are largely devoid of specificity and generally fail to include the precise date, or even year of their occurrence. And while the parties in *Williams* had conducted significant discovery at the time of the court's ruling, here Hamed filed his present Motion with the clear aim of limiting not only the scope of Yusuf's § 71(a) claims, but also the cost and burden of the discovery process itself. See Plaintiff's Reply re Statute of Limitations, filed June 20, 2014, at 19. As a result of the partnership's notably informal and unreliable accounting, as well as each partner's general lack of concern or attention toward each other's financial practices over the lifetime of the partnership, neither partner truly knows what he might uncover upon investigation.

State of Partnership Accounting Records

Here, the pleadings alone demonstrate the imprecision and inadequacy of the partners' accounting practices. Hamed's Complaint explains the partners' practice of unilaterally withdrawing partnership funds as needed for various business and personal expenses on the understanding that "there would always be an equal (50/50) amount of these withdrawals for each partner directly or to designated family members." See Complaint ¶ 21. Though Hamed alleges

that the partners “scrupulously maintained” records of these withdrawals, the other pleadings and evidence of record in this matter fatally belie this unsupported assertion. For example, Yusuf’s First Amended Counterclaim in SX-14-CV-278 (FAC 278) speaks of the need for reconciliation of both “documented withdrawals” of cash from store safes, and “undocumented withdrawals from safes (i.e., all misappropriations),” in the § 177 accounting process. *See* FAC 278 ¶¶ 37-38.

Yusuf has pled that, aside from the sole “full reconciliation of accounts” at the end of 1993, the partners only sporadically attempted to account for, and reconcile their respective §71(a) charges and credits when Yusuf, for unspecified reasons, “decided their business accounts should be reconciled.” *See* Counterclaim 287 ¶¶ 9-10. Alternatively, Yusuf has also alleged that such reconciliations sometimes occurred when Hamed specifically “sought to recover funds from his investment,” at which point “funds would be given in cash and a notation would be made as to the amount given so as to insure an equal amount was paid to Yusuf from these net profits.” *See* FAC 278 ¶ 55.

As part of the accounting and distribution phase of the Wind Up, Yusuf submitted to the Master the report of accountant Fernando Scherrer of the accounting firm BDO, Puerto Rico, P.S.C. (BDO Report). Yusuf contends that this report constitutes “a comprehensive accounting of the historical partner withdrawals and reconciliation for the time period 1994-2012.” *See* Opposition to Motion to Strike BDO Report, filed October 20, 2016. However, the BDO report, by its own terms, appears to be anything but comprehensive. Most tellingly, the body of the BDO Report itself contains a section detailing its own substantial “limitations,” resulting from the absence or inadequacy of records for each of the grocery stores covering various periods during

the life of the partnership.²⁵ *See* Plaintiff's Motion to Strike BDO Report, Exhibit 1, at 22. Additionally, the analysis presented in the report rests on the unsupported assumption that any monies identified in excess of "known sources of income" constitute distributions from partnership funds to the partners' § 71(a) accounts. Thus, even Yusuf's own "expert report" acknowledges the insurmountable difficulties inherent in any attempt to accurately reconstruct the partnership accounts; a project which necessarily becomes proportionately more difficult and less reliable the farther back in time one goes.

Furthermore, in his Revised Notice of Partnership Claims (RNPC), filed October 17, 2016, Hamed expressly states that he "believes that it is clear that because of the state of the partnership records due to Yusuf's acts and failures to act, no [accounting for the period from 1986-2012] is even arguably possible." RNPC, at 6-7. Plaintiff's belief appears to be based in large part on the Opinion Letter of Lawrence Shoenbach, presenting the "expert opinion of a criminal defense attorney with experience in federal criminal practice and so-called 'white collar' business crimes involving tax evasion, money laundering, and/or compliance." *See* RNPC, Exhibit C (Op. Letter), at 1.

²⁵ These limitations include the following: 1) "Accounting records of Plaza Extra-East were destroyed by fire in 1992 and the information was incomplete and/or insufficient to permit us to reconstruct a comprehensive accounting of the partnership accounts before 1993;" 2) "Accounting records and/or documents (checks registers, bank reconciliations, deposits and disbursements of Supermarkets' accounts) provided in connection with Supermarkets were limited to covering the period from 2002 through 2004, East and West from 2006 through 2012, and Tutu Park from 2009 through 2012;" and 3) "Accounting records and/or documents provided to us for the periods prior to 2003 are incomplete and limited to bank statements, deposit slips, cancelled checks, check registers, investments and broker statements, cash withdrawal tickets/receipts and cash withdrawal receipt listings. For example, the retention policy for statements, checks, deposits, credits in Banco Popular de Puerto Rico is seven years; therefore, there is no Bank information available prior to 2007 and electronic transactions do not generate any physical evidence as to regular deposits and/or debits." Plaintiff's Motion to Strike BDO Report, Exhibit 1, at 22.

Plaintiff's expert²⁶ bases his opinion on the 2003 Third Superseding Indictment in the matter captioned *United States of America and Government of the Virgin Islands v. Fathi Yusuf Mohamad Yusuf, et al.* and United's plea of guilty to Count 60 (tax evasion) thereof.²⁷ Under the terms of the plea agreement, United pled guilty to willfully preparing and presenting a materially false corporate income tax return for the year 2001 by reporting gross receipts as \$69,579,412, knowing that the true amount was approximately \$79,305,980. Plea Agreement at 3-4, *United States v. Yusuf*, No. 2005-15F/B (D.V.I. Feb. 26, 2010). According to the indictment, United evaded reporting gross receipts by employing a cash diversion/money laundering scheme by which United, through its officers and employees,²⁸ conspired "to withhold from deposit substantial amounts of cash received from sales, typically bills in denominations of \$100, \$50, and \$20." See Plaintiff's Reply re Statute of Limitations, Exhibit D (Indictment) ¶ 12. Additionally, it was alleged that "instead of being deposited into the bank accounts with other sales receipts, this cash was delivered to one of the defendants or placed in a dedicated safe in a cash room." *Id.* As described by Plaintiff's expert, "those acting on behalf of the company took cash out of sales before the Company could properly account for them." Op. Letter, at 5.

The expert explains:

The most fundamental feature of such a scheme is that the actual accounting records of the entity do not, and in fact *cannot*, accurately reflect the amount of cash taken in. No proper accounting can be determined from the Company's financial records because the gross receipts have been intentionally misapplied and documented. The

²⁶ The Court refers to Lawrence Shoenbach as "Plaintiff's expert" in this Opinion for simplicity. The Court expresses no opinion, however, as to the qualifications of this expert within the meaning of Virgin Islands Rule of Evidence 702.

²⁷ "Although all of the individual defendants [Fathi Yusuf, Maher Yusuf, Isam Yusuf, Nejeah Yusuf, Waleed Hamed, and Waheed Hamed], were charged in the criminal indictment, only the corporate defendant [United] was convicted of a crime... Critical to my analysis is that United admitted at the time of entry of the corporate plea that it under-reported gross receipts by utilizing the money laundering scheme outlined in the 3rd superseding indictment." Op. Letter, at 3.

²⁸ Including Fathi Yusuf, Maher Yusuf, Isam Yusuf, Nejeah Yusuf, Waleed Hamed, and Waheed Hamed. See Indictment, at 1.

very purpose of this sort of scheme is to render any accounting inaccurate... It is critical that the parties have both admitted that many records of transaction that should have gone into any accurate accounting were not kept or mutually and intentionally destroyed... Because the very nature of the crime, particularly money laundering/tax evasion, is to hide such incoming and outgoing funds from legitimate accounting it is impossible to determine and account for any portion of that amount each partner has or owes to the other. Since many such transactions were not recorded or destroyed, any remaining "records" can never be legitimately credited or debited against the unknown amounts.

Op. Letter, at 6-7.²⁹

In his April 3, 2014 deposition in this matter, Maher Yusuf recounted one instance, just prior to the FBI's raid of the Plaza Extra stores in 2001, in which Waheed Hamed advised Waleed Hamed of the impending raid, and Maher Yusuf and the Hameds mutually "decided to destroy some of the receipts, because they were all in cash." *See* Op. Letter, at 7 n.5. According to his deposition testimony, Maher Yusuf, together with Mufeed Hamed, "pulled out a good bit of receipts from the safe in Plaza East," and after roughly estimating the amount of withdrawals attributable to the Hameds and the Yusufs, each family destroyed their own receipts. *Id.* At the hearing on March 6-7, 2017, witnesses including Hamed's sons corroborated this account as well as many of the allegations of the Third Superseding Indictment. Evidence presented at the hearing included testimony concerning a cash diversion scheme involving cashier's checks, conflicting testimony regarding the ledger and receipt system for keeping track of cash withdrawals at each partnership store, and testimony that records documenting the withdrawals had been destroyed.

²⁹ The Court is not called upon to express any opinion, and therefore does not express any opinion, as to the criminal nature of the conduct of the individual defendants named in the criminal matter, except to the extent that such conduct demonstrates both the impossibility of reconstructing financial records or conducting, at present, an accurate accounting, and the partners' knowledge of this state of affairs. However, United's guilty plea as to Count 60 establishes that United, which as a corporation must necessarily act through its officers and employees, intentionally schemed to obfuscate gross receipts and cash disbursements thereby rendering impossible any accurate reconstruction of accounts.

Altogether, the allegations presented in the pleadings paint a clear picture of the partners' loose, "honor system" style accounting practices by which each partner and his sons freely and unilaterally withdrew partnership funds, either by check drawn upon partnership bank accounts or, apparently more often, by directly removing cash from store safes; the only apparent control being a general understanding between the partners that such withdrawals would be documented by hand-written receipts to be placed in the safe so that the partners, at some undetermined date, could reconcile their accounts if, and when, they deemed it appropriate. Additionally, evidence of record reveals one clear instance in which the partners, through their sons, deliberately destroyed a substantial amount of records evidencing such withdrawals, and further suggests a general pattern of negligent, if not willful, failure to record such withdrawals throughout the history of the partnership. At a bare minimum, the pleadings and record evidence establish that the partners and their sons had both unfettered access to large amounts of cash, deliberately kept off company books, and ample opportunity to secretly remove that cash, secure in the knowledge that no partner, accountant, or investigator would be able, after the fact, to ascertain the amount taken, as the total amount of cash kept in store safes was intentionally omitted from any record keeping.

Knowledge, Delay, and Prejudice

Against this backdrop of decades of woefully inadequate and, in some instances, deliberately misleading accounting practices, the partners now present their competing claims for partnership accounting asking the Court to employ its already strained resources to untangle the web that they have spun and clean up the mess that they have made. Given the dismal state of the relevant records, this process necessarily entails an evaluation of each individual § 71(a) claim submitted to determine whether, in light of the frequently conflicting recollections of the partners, any given withdrawal or expenditure of partnership funds constituted a legitimate business

expenditure on behalf of the partnership, or a unilateral withdrawal chargeable to the partner's § 71(a) account. However, just as in the *Williams* case, where each partner "ignores issues year after year and allows the other partner to proceed along thinking everything is fine, [neither partner will] be heard to cry upon dissolution a decade or more later, 'I'd like a do over.'" 2010 Conn. Super. LEXIS 2344, at *40-41.

Here, both partners and their respective sons were well aware from the beginning of their involvement with the business that any record keeping and accounting of distributions to the partners was highly informal and controlled only by the "honor system." As managing partner, Yusuf was not only intimately familiar with the methods of record keeping, or lack thereof, employed by the partnership, but was the one responsible for designing and implementing those procedures in the first place. It was Yusuf's responsibility to oversee, account for, and periodically reconcile the distributions of funds between the partners. And though Yusuf was content to dispense with the standard business accounting formalities for nearly the entire life of the partnership, upon Hamed's filing his Complaint in this matter, Yusuf changed course and now seeks to vindicate his right to a thorough and methodical partnership accounting.³⁰

Hamed is no less to blame for this state of affairs and no less at fault for failing to seek any formal accounting of his interest until this late hour. Although Hamed was not the managing partner, he was undoubtedly aware of the absence of any formal record keeping from at least the date of the first and only true-up of the partnership business in 1993, if not from the very inception

³⁰ Yusuf argues that he only became aware of the extent of the Hameds' withdrawals of partnership funds upon the 2010 return of the voluminous documentation seized by the FBI in 2002. However, affidavit evidence shows that all documents seized by the FBI were not only available to the defendants in the criminal matter, including Yusuf, but were, in fact, thoroughly reviewed by them, through their lawyers, on multiple occasions. See Hamed's Reply re Statute of Limitations, Exhibit 4-B (Declaration of Special Agent Thomas L. Petri) (noting that in 2003, subsequent to the return of the indictment, counsel were given complete access to seized evidence, and that a team of four to five individuals led by the attorney for defendants reviewed evidence at the FBI office on St. Thomas for several weeks).

of the partnership.³¹ While Hamed may not have had the foresight to know that the 1993 true-up would be the last undertaken, the fact that the partners waited approximately seven years—since the founding of the partnership in 1986—to conduct the first and only complete reconciliation of the accounts between them demonstrates that Hamed was equally content with this practice of informal and sporadic accounting.

Furthermore, both partners were clearly aware, during the entire life of the partnership, of their mutual practice of making, either personally or through their sons, unilateral withdrawals of partnership funds documented by hand-written receipts and controlled only by the honor system. Additionally, by at least 2001 and likely before, Hamed and Yusuf were similarly aware that substantial monies deposited in the store safes were being deliberately kept off the partnership books, and that all involved acted without hesitation in destroying voluminous records of cash withdrawals thereby rendering any independently verifiable accounting or audit impossible. Certainly, by the time of the 2003 filing of the Third Superseding Indictment in the criminal case recounting the cash diversion scheme implemented by the officers of United, even the most trusting individual would have sufficient reason to suspect malfeasance, thereby putting both partners on inquiry notice.³²

Thus, on the basis of the pleadings and evidence of record, it is clear that both Hamed and Yusuf, personally and through their sons as agents, had actual notice of the informal and imprecise

³¹ Even the 1993 “true-up” itself was merely an informal reconciliation. As Hamed explains, “reliable books have only been attempted since an order from the District Court in the criminal case requiring such an accounting.” See Plaintiff’s Comments Re Proposed Winding-Up Order, filed October 21, 2014, at 11.

³² This notion is perhaps best, and most memorably, expressed in Martin Scorsese’s 1995 film, *Casino*, in which the gangster, Nicky Santoro, played by Joe Pesci, remarks of the men conducting the skim operation at the fictional Tangiers Casino: “You gotta know that the guy who helps you steal... even if you take care of him real well... he’s gonna steal a little extra for himself. Makes sense, don’t it?”

nature of the accounting practices of the partnership since at least 1993, as well as actual notice of the deliberate destruction of substantial accounting records in 2001. In turn, even if the partners were ignorant of any one withdrawal of partnership funds considered in isolation, they both had actual notice of the significant potential for abuse inherent in their chosen method of record keeping, and therefore constructive, if not actual, notice of the need to protect their respective partnership interests by action pursuant to 26 V.I.C. § 75(b).

Additionally, by his acquiescence to such inadequate record keeping and his inexcusable delay in seeking to enforce his rights under 26 V.I.C. §§ 71(a) and 75(b), each partner has irrevocably prejudiced the ability of the other to respond to the various allegations against him. Here, as in *Williams* “the passage of time puts [each partner] at an unfair disadvantage in responding to the merits of [the other partner’s] claims.” 2010 Conn. Super. LEXIS 2344, at *39-40. Similarly, “because many of [the] claims involve how transactions were or were not recorded... an analysis of those claims would likely involve testimony” from the partners and their sons, yet, how much they might remember concerning the details of a transaction completed a decade earlier “is questionable, at best.” *Id.* Lastly, while the court in *Williams* concluded that the defendant was prejudiced despite the production of “substantial records,” here, in the absence of complete or comprehensive records, the partners are even more so “at a distinct disadvantage” in any attempt to “recreate or find decades of accounting records.” *Id.* at *40. Thus, the Court concludes that consideration of the principles underlying the doctrine of laches strongly supports

the imposition of an equitable limitation on the submission of § 71(a) claims in the accounting and distribution phase of the Wind Up Plan.³³

Policy Considerations

Moreover, imposing such a limitation furthers the clear policy goals of the legislature as embodied by RUPA. In *Fike v. Ruger*, the Delaware Chancery Court examined statutory language identical to 26 V.I.C. § 75, and determined that “it is clear under RUPA that a right of action arising during the life of a partnership is not revived merely because dissolution occurs and a separate right to an accounting on dissolution arises.” *Id.* at 263. While the common law and prior statutory scheme “placed partners in the predicament of either causing a dissolution to resolve disputes or continuing the partnership despite a cloud of conflict and uncertainty hanging over it, the drafters of [RUPA] included Section 22 [26 V.I.C. § 75], specifically authorizing actions prior to dissolution.” *Id.* “The effect of those rules is to compel partners to litigate their claims during the life of the partnership or risk losing them.” National Conference of Commissioners on Uniform State Laws; Uniform Partnership Act; Section 405(c) comment 4.

Both partners’ claims, as presented in this matter, must be construed as actions for dissolution, wind up, and accounting under § 75(b)(2)(iii). Yet, each partner could have, and under the policy considerations undergirding RUPA, should have, brought his claims concerning individual withdrawals of partnership funds or other transactions, with or without an

³³ In addition to laches, consideration of the equitable doctrine of unclean hands also supports the impositions of an equitable limitation on the partners’ § 71(a) claims. “It is an ancient and established maxim of equity jurisprudence that he who comes into equity must come with clean hands. If a party seeks relief in equity, he must be able to show that on his part there has been honesty and fair dealing.” *SBRMCOA, LLC v. Morehouse Real Estate Invs., LLC*, 62 V.I. 168, 205-06, (V.I. Super. Ct. 2015) (quoting *Sunshine Shopping Ctr., Inc. v. KMart Corp.*, 85 F. Supp. 2d 537, 544 (D.V.I. 2000)). As explained above, both partners bear responsibility for the dismal state of partnership records, and for allowing the practice of unilateral withdrawal of partnership funds to continue unchecked, in the absence of accurate records. Additionally, as both partners, through their sons as agents, engaged in the deliberate destruction of accounting records, neither partner can be said to have come to Court in this matter with clean hands.

accompanying action for accounting, as each partner became aware or should have become aware of those transactions pursuant to § 75(b). Such a policy not only furthers the traditional goals of the statute of limitations by preventing prejudice to defendants resulting from the inevitable decay of memory and other evidence, but also prevents litigants from imposing upon the judiciary, and in turn the taxpayer, the burden of individually evaluating the validity of numerous disputed transactions decades after the fact. In this instance, the stated policy of RUPA clearly prevents both Hamed and Yusuf from imposing upon the Court the great burden of sorting through the ramshackle patchwork of evidence supporting their § 71(a) claims, to reconstruct decades' worth of partnership accounts, when the partners, who deliberately determined not to keep accurate records in the first place, were themselves content to carry on conducting partnership business despite having full knowledge of the pattern of conduct of which they now, belatedly, complain.

Conclusion

“Equity aids the vigilant, not those who slumber upon their rights.” *Kan. v. Colo.*, 514 U.S. 673, 687 (1995) (quoting Black's Law Dictionary 875 (6th ed. 1990)). And in keeping with this great maxim of jurisprudence, the Court concludes that considerations of laches, in addition to the express policy goals of the legislature as embodied by RUPA, justify the imposition of an equitable limitation on the submission of the partners' § 71(a) claims to the Master in the accounting and distribution phase of the Final Wind Up Plan. Because each of these § 71(a) claims could have, and should have, been pursued as they arose as causes of action under § 75(b)(1) to “enforce the partner's rights under the partnership agreement,” the Court finds that such actions, had they been brought individually, would be subject, either directly or by analogy, to the six year limitations

period outlined in 5 V.I.C. § 31(3)(A) as a species of an action upon contract.³⁴ Therefore, the Court exercises the significant discretion it possesses in fashioning equitable remedies to restrict the scope of the accounting in this matter to consider only those § 71(a) claims that are based upon transactions occurring no more than six years prior to the September 17, 2012 filing of Hamed's Complaint.³⁵

³⁴ Alternatively, these claims could have been pursued under 26 V.I.C. § 75(b)(2)(i) to "enforce the partner's rights under sections 71, 73, or 74 of this chapter," which, as "action upon a liability created by statute," are also subject, whether directly or by analogy, to a six year limitations period under 5 V.I.C. § 31(3)(B).

³⁵ Yusuf has argued that certain § 71(a) claims are effectively undisputed, and that "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." First, it appears doubtful, based upon the record and the representations of the parties in this matter, that any claim submitted by either party would truly be undisputed. But, even if some claims were, in fact, undisputed, because of the great dearth of accurate records there exists such an element of chance in any attempt to reconstruct the partnership accounts that an accounting reaching back to the date of the last partnership true-up in 1993 would ultimately be no more complete, accurate, or fair, than an accounting reaching back only to 2006.

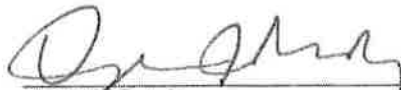
In light of the foregoing, it is hereby

ORDERED that Defendants' Motion for Partial Summary Judgment on Counts IV, XI, and XII Regarding Rent is DENIED, as to Counts IV and XII. It is further

ORDERED that Hamed's Motion for Partial Summary Judgment re the Statute of Limitations Defense Barring Defendants' Counterclaim Damages Prior to September 17, 2006 is DENIED. It is further

ORDERED that the accounting in this matter, to which each partner is entitled under 26 V.I.C § 177(b), conducted pursuant to the Final Wind Up Plan adopted by the Court, shall be limited in scope to consider only those claimed credits and charges to partner accounts, within the meaning of 26 V.I.C § 71(a), based upon transactions that occurred on or after September 17, 2006.

DATED: July 21, 2017.


DOUGLAS A. BRADY
Judge of the Superior Court

ATTEST: ESTRELLA GEORGE
Clerk of the Court

By: 
Court Clerk Supervisor

CERTIFIED A TRUE COPY

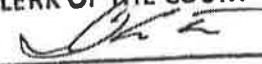
DATE: July 24, 2017
ESTRELLA H. GEORGE
ACTING CLERK OF THE COURT
BY: 
COURT CLERK

EXHIBIT 3

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

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

Plaintiff/Counterclaim Defendant,)

vs.)

FATHI YUSUF and UNITED CORPORATION,)

Defendants/Counterclaimants,)

vs.)

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

Additional Counterclaim Defendants.)

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

Plaintiff,)

v.)

UNITED CORPORATION,)

Defendant.)

WALEED HAMED, as Executor of the
Estate of MOHMMAD 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 RELIEF

CIVIL NO. SX-14-CV-278

ACTION FOR DEBT
AND CONVERSION



DECLARATION OF FERNANDO SCHERRER

I, Fernando Scherrer, CPA, CIRA, CA, MBA, pursuant to 28 U.S.C. § 1746 and V.I. R. Civ. P. 84(b), declare under penalty of perjury under the laws of the United States Virgin Islands that the following is true and correct:

1. I make this declaration based upon my personal knowledge and my professional expertise, as described below.

2. My firm, BDO Puerto Rico, PSC, was engaged by Fathi Yusuf (“Yusuf”) to identify, through the use of forensic accounting, the amounts withdrawn by the partners and their families from the Partnership, as that term is defined and used in the report I signed on August 31, 2016 (the “BDO Report”). The BDO Report, which included voluminous supporting tables, appendices, and exhibits, was attached as Exhibits J and J-1 to Yusuf’s Accounting Claims and Proposed Dissolution Plan submitted to the Master on September 30, 2016. A copy of the BDO Report without any of the supporting material was admitted as Exhibit 12 at the hearing in this case on March 6, 2017 (the “Hearing”). The Court extensively referred to Exhibit 12 in its Memorandum Opinion and Order dated July 21, 2017 (the “Court’s Opinion”).

3. BDO is a well-known and respected international network of accounting firms with offices worldwide. I am a partner at the member firms located in Puerto Rico and U.S.V.I. My background, education, experience and training as a certified public accountant in the U.S. Virgin Islands, Puerto Rico and other jurisdictions, is set forth in great detail in Exhibit 12 and qualifies me to render opinions as an expert in accounting and, in particular, the partnership accounting and reconciliation of partnership capital accounts addressed in the BDO Report, as well as opinions about the BDO Report and the adequacy of records to perform a partnership reconciliation that are set forth in the Court’s Opinion. The work for this engagement, which culminated in the

preparation of the BDO Report, was performed by a team of up to nine (9) BDO professionals, led by me, over a period of more than two (2) years. We identified, through the use of forensic accounting, the amounts withdrawn by Mohammad Hamed (“Hamed”) and Yusuf (collectively, the “Partners”) and their family members from the Partnership, which should be categorized as partnership withdrawals and distributions for the defined period set forth in the BDO Report, from January 1, 1994 through December 31, 2012. We adopted the accountings prepared by John Gaffney for the Partnership from January 1, 2013 to the date of the BDO Report (Exhibit 12), with adjustments to avoid double counting. *See* pp. 2-3 of Exhibit 12.

4. I have reviewed the testimony of Lawrence Shoenbach at the March 6, 2017 Court hearing, his Opinion Letter, which was designated as Exhibit 34 at the hearing, as well as the Court’s Opinion, which relies in part upon that testimony and Letter.

5. In its Opinion, the Court appears to rely upon Mr. Shoenbach’s characterizations as to the state of the Partnership’s financial records, as well as his opinions criticizing the conclusions in the BDO Report, as support for its decision to limit the review period for the accounting from September 17, 2006 forward. Based upon my extensive review and knowledge of the documentary evidence supporting the BDO Report’s conclusions regarding the historical partnership withdrawals between the Partners, it is my expert opinion that:

- a) There are voluminous records (i.e., in excess of eighty thousand) that were reviewed to identify the Partners’ withdrawals documented in the BDO Report. As Mr. Shoenbach acknowledged at the Hearing, *see* Transcript at page 174, he has not seen any of the supporting documents to the BDO Report. Nothing in the Court’s Opinion suggests that the Court has reviewed this extensive information either. Accordingly, any characterization of these records as

“scant” or “patchwork” is misleading, as is any implication that the reconciliation of the Partners’ accounts in the BDO Report was made “out of whole cloth.”

- b) Mr. Shoenbach’s unsupported opinion that “[n]o proper accounting can be determined from the Company’s financial records because the gross receipts have been intentionally misapplied and documented . . . ,” *see* Court’s Opinion at p. 25, upon which the Court relied, is erroneous because a partnership accounting to establish the historical withdrawals can properly be accomplished without analyzing or even considering the overall gross receipts of the grocery store operations or whether those gross receipts were disclosed or hidden from the taxing authorities.
- c) The disclosed gaps in the currently available Partnership records do not render the partnership accounting contained in the BDO Report, which is supported and well-documented, unreliable.
- d) Nowhere does the BDO Report “acknowledge the insurmountable difficulties inherent in any attempt to accurately reconstruct the partnership accounts[,]” as suggested at page 24 of the Court’s Opinion. We could not have and would not have prepared the BDO Report had we believed that to be the case.
- e) The Shoenbach Opinion Letter refers to Maher Yusuf’s deposition testimony describing the partial reconciliation conducted by a Hamed and a Yusuf in 2001, whereby receipts from a safe at the Plaza East store were tabulated precisely with calculators and double-checked, and the tabulation showed that the Hameds had withdrawn \$1.6 million dollars more than the Yusufs. The fact

that both parties agreed to destroy the receipts used in that calculation does not mean that we are precluded by any accounting standard or rule from accepting that \$1.6 million dollars tabulation as accurate, based on the deposition testimony of Maher Yusuf and a letter from Fathi Yusuf dated August 15, 2012. The BDO Report allocates that \$1.6 million dollars amount to the Hameds, and the BDO Report was justified in making that allocation.

Some additional elaboration of the points set forth in paragraph 5(a)-(e) follows.

6. The Court's characterization of the financial records available to assess the historical withdrawals between the Partners as "scant" or "patchwork" is misleading. To the contrary, there is a massive volume of documents that were reviewed to identify withdrawals or distributions of Partnership funds that were provided to BDO. More than eighty thousand documents were reviewed, sorted, allocated, cross-referenced and then noted for each family member, according to the parameters set forth in the BDO Report. Every single allocation in the BDO Report has documentary support. Indeed, supporting evidence is so voluminous that it is impractical to access it in hard copy. The BDO Report is only preliminary. To the extent that additional information is learned through discovery, or otherwise which would require a change or alter a particular allocation, the conclusions in the BDO Report will be revised accordingly, prior to final submission to the Master.

7. Mr. Shoenbach's claim that because some unknown amount of the gross receipts from the Partnership's grocery store operations were not reported to the taxing authorities – and according to the criminal indictment were laundered – it is impossible to determine the withdrawals and distributions between the Partners, is false and unsupported by any accounting standard or rule. Knowledge of total gross receipts of the Partnership (reported or unreported) is

simply not necessary to quantify what each partner has withdrawn. Rather, the amount of the distribution is calculated based upon evidence of the withdrawal. In this case, evidence of the withdrawals took various forms such as checks, receipts, and ledger entries. To the extent that there are gross receipts of the Partnership which were not reported to the taxing authorities, they remain Partnership assets owned equally by the Partners until such time as they are withdrawn from the Partnership. Whether the source of a Partnership asset is unreported or reported gross receipts, it remains a Partnership asset subject to 50/50 ownership. If, for example, the Partners used unreported gross receipts to hold in foreign accounts or acquire real estate in the Middle East, there would be no purpose served in accounting for these amounts in the BDO Report. Regardless of the form in which that subset of gross receipts is held, it remains a jointly owned partnership asset.

8. Contrary to Mr. Shoenbach's opinion, which is not informed by any accounting expertise, BDO was not required under any accounting standard to determine gross receipts of the Partnership in order to determine the aggregate amount of each Partner's withdrawals, and his critique of the BDO Report on that basis is mistaken. Gross receipts are not needed to document withdrawals. In a partnership accounting, the gross receipts or revenues are used to cover the operational costs and expenses of the business, and when revenues and expenses are closed out at the end of the year, the net profit or loss is assigned to the partners' capital accounts. If a partner withdraws money from the company, this amount is recognized in the accounting against the partner's capital account, reducing the capital of the partner. This happens year over year and by the time the partnership is liquidated and all payments are made, the balance in each capital account is distributed to the corresponding partner. In this case, that did not happen. Both gross receipts and withdrawals were not recognized in the books. For that reason, our assignment was to account

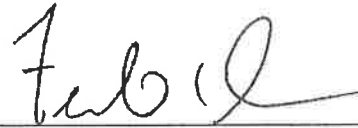
for those withdrawals, independently on the balances of the partners' capital accounts that may or may not include the gross receipts.

9. Statements of limitation, as set forth at page 22 of Exhibit 12, are standard in all accounting analyses. The stated limitations in the BDO Report and quoted in the Court's Opinion are simply a disclosure that less than 100% of all records were available. They were categorically not a statement that the absence of these records affected in any significant way the reliability and validity of the allocations in the BDO Report. It is also important to note that the limitation in item 1 on page 22 of the BDO Report regarding the lack of records preceding January 1, 1994 is immaterial to the BDO Report. As noted on page 2 of the BDO Report, the parties have agreed that a full reconciliation of partnership accounts occurred at the end of 1993, and BDO's engagement was therefore limited to the period beginning January 1994, except for the investments identified in Hamed's tax returns that, as per Mr. Yusuf's were not included in the 1993 reconciliation.

10. Mr. Shoenbach's Opinion Letter and the Court's Opinion place great significance on the destruction of safe receipts after the 2001 partial reconciliation by both parties, and both conclude that this one instance of destruction renders an accurate accounting impossible. *See* Court's Opinion at pp. 26-27, 29; Shoenbach Opinion Letter at p. 6. This conclusion is incorrect and not supported by any accounting standard. My review of the evidence revealed that the destruction of certain safe receipts around October of 2001 was an isolated act. Further, it was done mutually by the parties after a full tabulation of the receipts took place between the parties with each double-checking the other's tabulations. In addition to the deposition testimony of Maher Yusuf, there is documentary evidence in the form of a letter dated August 15, 2012, which further supported the allocation of \$1.6 million to Hamed.

11. In light of the volume of evidence available which has been chronicled and painstakingly reviewed and analyzed in the BDO Report, it would be arbitrary to limit the Partnership reconciliation to transactions occurring after September 17, 2006, because there is voluminous documentation of withdrawals by each Partner for the period January 1, 1994 to the present.

Dated: August 11, 2017



Fernando Scherrer, CPA, CIRA, CA, MBA

EXHIBIT 4

Motion for Reconsideration

Defendant moves the Court to reconsider its Opinion pursuant to V.I. R. Civ. P. 6-4(b)(3), based upon “the need to correct clear error of law.” Defendant asserts that the Court, in issuing its Opinion, committed the following clear errors of law:

1. The Court granted “partial summary judgment in favor of Plaintiff... on the basis of an issue — laches — that was never raised by Plaintiff in his motion for partial summary judgment or even mentioned at the hearings held on March 6 or 7 to address the motion,” in violation of V.I. R. Civ. P. 56(f). Motion, at 1.
2. In granting partial summary judgment, the Court impermissibly relied on the testimony of Lawrence Shoenbach, Plaintiff’s purported expert in “white collar crime.”
3. The Court erred substantively in its laches analysis in finding both that Yusuf’s delay in bringing his accounting claim was inexcusable and that Hamed suffered prejudice as a result of this delay.

As an initial matter, it is necessary to clarify that despite Defendant’s characterization of the Opinion as a grant of partial summary judgment in favor of Plaintiff on the basis of the affirmative defense of laches, the Court, in fact, denied Plaintiff’s Motion for Summary Judgment Re Statute of Limitations. Rather, as part of the administration of winding up the partnership, over which this Court “possesses considerable discretion,”¹ the Court, upon consideration of the principles underlying the doctrine of laches, as well as the express policy goals of the Legislature as embodied in the Revised Uniform Partnership Act (RUPA), imposed an equitable limitation upon the scope of the accounting process. Pursuant to the Court’s Opinion, the submission of the partners’ §71(a) claims to the Master in the accounting and distribution phase of the Final Wind Up Plan is limited to those §71(a) claims based upon transactions occurring no more than six years prior to the September 17, 2012 filing of Hamed’s Complaint.²

¹ See *Yusuf v. Hamed*, 62 V.I. 565, 569 (2015).

² “§71(a) claims” refer to the parties’ respective assertions of credits and charges to be applied in ascertaining the balance of each partner’s individual partnership account during the accounting and distribution phase of the Final Wind Up Plan as outlined in 26 V.I.C. §71(a). For further explanation, refer to the Court’s Opinion, at 11.

Although the Court's ruling bears certain similarities to a grant of partial summary judgment in its effect, there are critical, if subtle, differences. As discussed in detail in the Opinion, affirmative defenses, such as laches and the statute of limitations, are generally invoked as a bar to causes of action in their entirety. By contrast, in this matter, Plaintiff sought to bar Yusuf not from pursuing his accounting action as a whole, but rather from presenting to the Master certain claimed credits and charges to partnership accounts in the accounting and distribution phase of the Final Wind Up Plan.³ Thus, neither the affirmative defense of statute of limitations nor laches, as generally understood, has direct applicability in the context of limiting the submission of the partners §71(a) claims. However, as an accounting in this context is both an equitable cause of action and an equitable remedy in itself, the Court, upon consideration of the general principles underlying the affirmative defense of laches, together with the express policy goals of RUPA, exercised its considerable discretion in fashioning equitable remedies, to limit the scope of the partnership accounting. Additionally, and perhaps most obviously, a grant of partial summary judgment in favor of Plaintiff would have limited only Yusuf's §71(a) claims, while the equitable limitation imposed by the Court equally limits the claims of both partners.

Assignment of Error #1

Defendant's first assignment of error is essentially an assertion that Defendant had no notice of the Court's intention to consider the issue of laches, and was unfairly deprived of the opportunity to submit evidence and argument on this issue. While it is true that the Court did not specifically order briefing on the issue of laches, both parties had already submitted voluminous briefing and argument on the issues central to the laches analysis — length of delay in bringing claims, reasons for delay, knowledge of wrongdoing, prejudice — in the context of Plaintiff's Motion for Summary Judgment Re Statute of Limitations, and in many peripheral supplemental briefs. Additionally, as Plaintiff points out, "Yusuf can hardly claim to be surprised by discussion of laches, an affirmative defense raised by both parties, as his post-March 6th Hearing memorandum addressed the fact that the *Fike* decision, a key case briefed by both parties, applied laches (as opposed to the SOL) under RUPA."⁴ Response, at 3 n.3. Thus, to the extent that V.I. R.

³ For a more detailed discussion of the nature of the partners' respective causes of action, as compared to the nature of the "claims" Plaintiff sought to limit by his Motion for Summary Judgment, refer to the Opinion, at 10-11.

⁴ *Fike v. Ruger*, 752 A.2d 112 (Del. 2000).

Civ. P. 56(f) is at all applicable in this context, Defendant cannot reasonably claim that he lacked notice of the laches issue, and further cannot claim that he was deprived of the opportunity to submit briefing on those issues central to the laches analysis including inexcusable delay and prejudice, as those issues were, in fact, discussed by both parties in several rounds of briefing prior to entry of the Court's Opinion.

Assignment of Error #2

Defendant's second assignment of error contends that the Court impermissibly relied on the testimony and report of Plaintiff's purported expert Lawrence Shoenbach in issuing the Opinion. Specifically, Defendant argues that the Court "rel[ied] on one party's expert testimony and report to resolve a summary judgment motion, without inviting, let alone considering, testimony and argument from the other side rebutting that testimony." Motion, at 6. Defendant cannot reasonably claim that he was not granted the opportunity to present testimony of his accounting expert. To the contrary, the Court's February 7, 2017 Order Scheduling Hearing for March 6, 2017 explicitly directed that Plaintiff's fully briefed Motion to Strike Accounting Expert (BDO) would come on for hearing. Although Plaintiff utilized this hearing to present testimony and other evidence in support of his Motion challenging the BDO report as unreliable, Defendant offered no witness testimony at the hearing and objected to the Court taking evidence.

However, even if Defendant's objection at the hearing may be considered meritorious, the Opinion does not directly rely on any testimony offered by Mr. Shoenbach at the March 6, 2017 hearing. Rather, the Opinion considered Mr. Shoenbach's opinion letter, attached as an exhibit to Plaintiff's Revised Notice of Partnership Claims, filed nearly five months earlier on October 17, 2016. The Opinion merely noted that the written opinions of Mr. Shoenbach were corroborated by the testimony of several witness at the hearing. Defendant cannot reasonably claim either that he was deprived of any opportunity to respond to the substance of Mr. Shoenbach's opinion, or to put on testimony of his own expert.

Defendant also argues that reliance on Mr. Shoenbach's opinion regarding the reliability of any potential accounting is substantively inappropriate as he is not an accountant. Instead, Defendant contends that the Court should credit the Declaration of Fernando Scherer, drafted and submitted after the Court issued its Opinion, stating that "the disclosed gaps in the currently available partnership records do not render the partnership accounting contained in the BDO

Report, which is supported and well-documented, unreliable.” Declaration ¶ 5(c). While there is little doubt that a respected accounting firm such as BDO is capable of rendering an accurate accounting *based upon the records provided*, the Court’s decision to impose an equitable limitation upon the scope of the partnership accounting is premised, not on the many tens of thousands of records that are available — to be expected in the context of a partnership spanning three decades — but rather on the many hundreds, if not thousands of records that are demonstrably unavailable, such as any bank records predating 2007 (*see* BDO Report, at 22), and the unknown number of cash transactions left unrecorded that must be inferred from the known historical behavior and highly informal, if not deliberately misleading, accounting practices of the partners.

Additionally, taking issue with Mr. Shoenbach’s opinion that the partners’ documented scheme to obfuscate gross receipts of the partnership renders any accounting between the partners unreliable, Mr. Scherer’s Declaration further asserts that “knowledge of total gross receipts of the Partnership (reported or unreported) is simply not necessary to quantify what each partner has withdrawn.” Declaration ¶ 7. While it is true that each partner’s respective withdrawals may be tabulated without establishing the gross receipts of the partnership, in order to determine the amount owed on a successful action for partnership accounting, the Court must, under the statutory framework presented by RUPA, determine the overall profits of the partnership.⁵

The Court referred to Mr. Shoenbach’s letter in its Opinion, not in reliance upon his expertise in accounting, but in order to illustrate the general proposition that where, as here, business partners have schemed to deliberately omit large sums of money from their accounting, have intentionally destroyed existing records of cash withdrawals, and have, even at their best, engaged only in loose, informal accounting practices, any attempt to accurately reconstruct

⁵ The general framework for conducting a partnership accounting in the Virgin Islands is outlined at 26 V.I.C. § 177(b): “Each partner is entitled to a settlement of all partnership accounts upon winding up 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 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.” In turn, the “partners’ accounts” referenced in § 177(b) are described at 26 V.I.C. § 71(a): “Each partner is deemed to have an account that is: (1) credited with an amount equal to the money plus the value of any other property, net of the amount of any liabilities, the partner contributes to the partnership and the partner’s share of the partnership profits; and (2) charged with an amount equal to the money plus the value of any other property, net of the amount of any liabilities, distributed by the partnership to the partner and the partner’s share of the partnership losses.”

partnership records will necessarily involve some element of unreliability, as that is the very point of such a scheme. Moreover, such a reconstruction will only become proportionately more difficult and less reliable the farther back in time one goes. As summarized in Plaintiff's Response, the main import of Mr. Shoenbach's opinion letter is that both partners knew "that this was a criminal enterprise whose very nature was to have people take funds in a manner that would avoid detection." Response, at 9.

Assignment of Error #3

Defendant's third assignment of error contends that the Court erroneously concluded both that Yusuf inexcusably delayed in bringing this action, and that Hamed was prejudiced by the delay. Defendant begins his argument by misstating the Court's Opinion, noting that "[t]he Court correctly held that an equitable claim for an accounting accrues 'upon dissolution of the partnership,' and can 'only be presented' when dissolution occurs." Motion, at 12. What the referenced footnote actually stated is that actions for partnership accounting could only be presented upon dissolution of the partnership *prior to the enactment of RUPA in the Virgin Islands in 1998*. Opinion, at 9 n.6.

Additionally, Defendant's argument is premised upon a significant mischaracterization of the nature of the Court's holding. The Court did not find that Defendant delayed inexcusably in pursuing his right to an accounting as an element of his tripartite cause of action for equitable partnership dissolution, wind up, and accounting under 26 V.I.C. § 75(b)(2)(iii). Indeed, §177(b) of the same title unequivocally establishes that "each partner is entitled to a settlement of all partnership accounts upon winding up the partnership business." Rather, the Court found that both partners inexcusably delayed, specifically in bringing their respective §71(a) claims based upon transactions predating September 17, 2006, as according to the manifest intent of the Legislature in enacting RUPA, each partner statutorily could have and should have brought his claims concerning these individual withdrawals of partnership funds or other transactions, with or without an accompanying action for accounting, as each partner became aware or should have become aware of those transactions, pursuant to 26 V.I.C. § 75(b)(1). *See* Opinion, at 32.

Defendant also argues that there can be no inexcusable delay on the part of Yusuf as he "had no reason to know that the Hameds were acting dishonestly until he reviewed the seized FBI documents" following partial return of those documents in 2010. Motion, at 14. As outlined in the

Opinion, this assertion is fatally belied by the history of the partnership as established in the 2003 Third Superseding Indictment in the criminal matter captioned *United States of America and Government of the Virgin Islands v. Fathi Yusuf, Mohamad Yusuf, et al.* and United's plea of guilty to Count 60 (tax evasion) thereof. This, in addition to the pleadings and other evidence of record compels the conclusion that by the time of the filing of the indictment in the criminal case recounting the cash diversion scheme implemented by the officers of United, "even the most trusting individual would have sufficient reason to suspect malfeasance, thereby putting both partners on inquiry notice." Opinion, at 29.

Defendant takes issue with the Court's observation in footnote 30 on page 28 of the Opinion, that affidavit evidence "shows that all documents seized by the FBI were not only available to the defendants in the criminal matter, including Yusuf, but were, in fact, thoroughly reviewed by them, through their lawyers, on multiple occasions." Defendant contends that the affidavit cannot be considered evidence of knowledge of wrongdoing sufficient to put Yusuf on inquiry notice because the Supreme Court, in *United Corp. v. Hamed*, 64 V.I. 297 (V.I. 2016), overturned the Superior Court's grant of summary judgment on the same issue, holding that "more than bare access to necessary information is required to start the statute of limitations running... there must also be a suspicious circumstance to trigger a duty to exploit the access." *Id.* at 310. But, whereas the Superior Court in that case expressly based its ruling only upon "unfettered access" to information, the Court here instead found inexcusable delay on the basis of evidence that Yusuf, through his lawyers, *had actually reviewed* the documents in question. Additionally, the consideration of the affidavit in this matter is distinguishable from its consideration in *United* as the Court here did not find the affidavit to be dispositive of the question of knowledge, but rather considered the affidavit as supplemental support for drawing the inference of knowledge of wrongdoing based on the more general history of the partnership as established by the pleadings of the partners and other evidence of record.

As to the Court's finding of prejudice, Defendant asserts that none of the "'classic elements' of prejudice in the laches context" are present in this case, such as unavailability of witnesses, changed personnel, or the loss of pertinent records. This assertion is simply incorrect. Most obviously, Mohammad Hamed, one of the two partners in the Hamed-Yusuf partnership and the original named Plaintiff in this matter, is now deceased and consequently unavailable to testify.

Additionally, as discussed above, Defendant's own BDO Report attests to the loss of any bank records predating 2007. It is also worth noting that while some of the "classic elements" of prejudice in the laches context are plainly present, the Opinion does not represent a classic application of the doctrine of laches. Rather, the Opinion looks to the principles of inexcusable delay and prejudice underlying the doctrine of laches, as well as the express policy goals of the Legislature as embodied in RUPA, in order to establish an equitable limitation on the scope of the accounting phase of the Final Wind Up Plan.

However, the Court's finding of prejudice suffered by both partners is also based upon the simple truth that memories of events, particularly of numerous routine individual financial transactions spanning decades, necessarily fade and become less reliable with the passage of time. Specifically, the Court found that in light of the known unavailability of a substantial body of relevant financial records, "because many of [the] claims involve how transactions were or were not recorded... an analysis of those claims would likely involve testimony' from the partners and their sons, yet, how much they might remember concerning the details of a transaction completed a decade earlier 'is questionable, at best.'" Opinion, at 30.

Motion to Certify

4 V.I.C. §33(c) provides:

Whenever the Superior Court judge, in making a civil action or order not otherwise appealable under this section, is of the opinion that the order involves a controlling question of law as to which there is substantial ground for difference of opinion and that an immediate appeal from the order may materially advance the ultimate termination of litigation, the judge shall so state in the order. The Supreme Court of the Virgin Islands may thereupon, in its discretion, permit an appeal to be taken from the order, if application is made to it within ten days after the entry of the order; except that application for an appeal hereunder may not stay proceedings, in the Superior Court unless the Superior Court judge or the Supreme Court or a justice thereof orders a stay of the proceedings.

Because the six questions of law presented by Defendant in his Motion to Certify are all premised upon an apparent misreading and mischaracterization of the Opinion as detailed above,

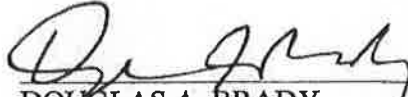
the Court will not, in its discretion, certify those questions for appeal. However, even if Defendant or the Court were to reformulate the questions to more accurately reflect the substance of the Opinion, such questions still would not present appropriate grounds for certification under 4 V.I.C. §33, as the Court does not find that certification would “materially advance the termination of litigation.” Under the Court’s present Order, this matter continues to move forward with the claims resolution process in the accounting and distribution phase of the Final Wind Up Plan as to all claims related to transactions occurring on or after September 17, 2006. Should Defendant file an appeal after final judgment is entered in this matter, and should such an appeal prove successful, the claims resolution process could then recommence as to claims based upon pre-2006 transactions, and the total amount owed pursuant to the final accounting could be adjusted accordingly. Therefore, because it is not apparent that an immediate appeal would materially advance the ultimate termination of the litigation, Defendant’s Motion to Certify will be denied.

In light of the foregoing, it is hereby

ORDERED that Defendant’s Motion for Reconsideration of Ruling Limiting Period of Accounting Claims is DENIED. It is further

ORDERED that Defendant’s Motion to Certify Questions in Order Limiting Period of Accounting Claims for Immediate Review is DENIED.

DATED: November 13, 2017.


DOUGLAS A. BRADY
Judge of the Superior Court

ATTEST:
ESTRELLA GEORGE
Clerk of the Court

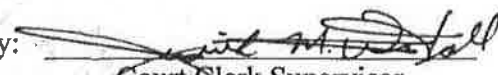
By: 
Court Clerk, Supervisor
11/14/17

EXHIBIT 5

School, Inc. v. Lembach, 64 V.I. 400 (V.I. 2016) and *Daubert v. Merrell Dow Pharmaceuticals, Inc.*, 509 U.S. 579 (1993). As such, Plaintiff asserts that the report must be stricken.² Defendants respond that the Motions are premature in that the reports were submitted to the Master only as part of Defendants' proposed accounting and distribution plan, and are not a part of the record. Further, Defendants state that the BDO report represents only a preliminary accounting based on information available at the time, and will be supplemented upon completion of additional discovery. Both parties agree that more discovery is required to adequately present their respective claims.

While Plaintiff took the opportunity at the recent hearing to present evidence in the nature of a pretrial motion in limine, a determination of trial admissibility of the testimony of the author(s) of the reports in issue, and of the reports themselves, is premature. The primary purpose of conducting a *Daubert* hearing pursuant to V.I. R. Evid. 104 is to permit the trial court to act as gatekeeper to prevent a jury from hearing inadmissible testimony. Because the Court, by Memorandum Opinion and Order entered contemporaneously herewith, strikes both Plaintiff's and Defendants' demands for trial by jury, that concern is not present. Further, the ability of the Master and the Court to evaluate the reports and ascribe to them only such weight as they deserve, militates against striking the reports at this stage of the litigation.³ Accordingly, it is hereby


ORDERED that Hamed's Motion to Strike Accounting Expert (BDO) is DENIED without prejudice. It is further

ORDERED that Hamed's Plaintiff's Motion to Strike Business Valuation Expert (Integra) is DENIED without prejudice.

DATED: July 21, 2017.

ATTEST: ESTRELLA GEORGE
Clerk of the Court

By: _____
Court Clerk Supervisor


DOUGLAS A. BRADY
Judge of the Superior Court

CERTIFIED A TRUE COPY

DATE: July 24, 2017
ESTRELLA H. GEORGE
ACTING CLERK OF THE COURT

BY: _____
COURT CLERK

² No evidence was presented at the hearing regarding the Integra report, which Plaintiff challenges as failing the last two of the three-prong test for admissibility: qualifications, reliability and fit. Because the same issues are involved, both Motions are treated together for purposes of this Order.

³ See, e.g., "The Court also deferred ruling on some of the motions involving expert testimony, as the judge need not serve as gatekeeper for himself." *Eames v. Bedor*, 2012 N.H. Super. LEXIS 15, *7 (N.H. Super. Ct. 2012) (citing *Traxys N. Am., LLC v. Concept Mining, Inc.*, 808 F. Supp. 2d 851, 853 (W.D. Va. 2011)).

EXHIBIT 6



BDO
Dudley, Topper and Feuerzweig, 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

	1994	1995	1996	1997	1998	1999
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 Albe'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	372,153.95	-	-	4,121,651.43
Funds received by cashier's checks	-	-	-	-	-	-
Total Partnership	1,500,000.00	5,785,262.23	372,153.95	-	-	7,657,418.18
Deposits to bank and brokerage accounts	18,505.80	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	18,505.80	853,263.83	100,000.00	486,786.36	510,061.57	1,966,617.36
Net Withdrawals	\$ 1,518,505.80	\$ 6,638,526.06	\$ 472,153.95	\$ 486,786.36	\$ 510,061.57	\$ 9,624,035.34

	2000	2001	2002	2003	2004	2005	2006	2007	2008	2009	2010	2011	2012	2013	2014	Total
Funds received from partnership through checks	\$ 4,284,706.25	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ 4,284,706.25
Withdrawals from the partnership with a signed ticket/receipt	-	-	2,000.00	-	-	-	-	-	-	-	-	-	-	-	-	2,000.00
Amount owed by Hamed family to Yusuf as per agreement before raid Sept. 2001. As per Albe'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
Funds received by cashier's checks	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
Total Partnership	4,468,313.30	20,370.00	35,714.00	-	-	-	-	-	-	-	-	-	-	-	-	4,524,397.30
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	18,505.80	430,439.13	100,000.00	306,999.56	510,061.57	-	-	-	-	-	-	-	-	-	-	1,966,617.36
Net Withdrawals	\$ 4,449,807.50	\$ 18,930.87	\$ 35,714.00	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ 4,524,397.30

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

HAMD652413





Dudley, Topper and Feuerzeig, LLP
 United Corporation
 Civil No. SX-12-CV-99

ITEM #4

ITEM #1

ITEM #2

Summary calculation of Additional Income as a result of withdrawals from Supermarkets' accounts (or partnership's accounts) - January 1994 to August 2014. (Including adjustments)

Summary of Withdrawals

Description	Hamed					Total
	Mohammad	Waleed	Waheed	Mufeed	Hisham	
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

Note:

1 Total amounts include adjustments made for withdrawals in 2016.

ITEM #3

EXHIBIT 7

**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, MUFEEH HAMED,
HISHAM HAMED,**
and **PLESSEN ENTERPRISES, INC.**,

Counterclaim Defendants.

MOHAMMAD HAMED,

Plaintiff,

vs.

UNITED CORPORATION,

Defendant.

MOHAMMAD HAMED,

Plaintiff,

vs.

FATHI YUSUF,

Defendant.

CIVIL NO. SX-12-CV-370

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

JURY TRIAL DEMANDED

Consolidated With

CIVIL NO. SX-14-CY-287

**ACTION FOR DAMAGES
AND DECLARATORY
RELIEF**

CIVIL NO. SX-14-CY-278

**ACTION FOR DEBT
AND CONVERSION**

JURY TRIAL DEMANDED

DECLARATION OF GORDON C. RHEA, ESQ.

I, GORDON C. RHEA, declare under penalty of perjury pursuant to 28 U.S.C. Section 1746, as follows:

1. I have personal knowledge of the facts set forth herein.
2. I am an attorney licensed to practice law in the U.S. Virgin Islands.

HAMD642159



3. I was one of the defense lawyers in the criminal action filed by the United States of America in the District Court of the Virgin Islands (St. Thomas Division), Docket No, 1:05-cr-00015, against the following defendants:

FATHI YUSUF MOHAMAD YUSUF, aka Fathi Yusuf
WALEED MOHAMMAD HAMED, aka Wally Hamed
WAHEED MOHAMMAD HAMED, aka Willie Hamed
MAHER FATHI YUSUF, aka Mike Yusuf
NEJEH FATHI YUSUF,
ISAM YUSUF, and
UNITED CORPORATION

4. All of the defendants in that criminal case, except for Isam Yousef who was never apprehended, were represented jointly by multiple counsel, including myself, under a Joint Defense Agreement.

5. Pursuant to the Joint Defense Agreement, all defense counsel worked together on behalf of all of the represented defendants in a joint effort to defend the case

6. A plea agreement was reached in December of 2010 (See Exhibit 1), with a modification made thereafter in early 2011 (See Exhibit 2). As noted therein, the only defendant who pled guilty was United Corporation, as the charges were dismissed against all of the other represented defendants.

7. The Joint Defense Agreement then continued during the sentencing phase of the case (to primarily address the tax issues related to the Plea) until September 19, 2012, when the Joint Defense Agreement was terminated.

8. Under the Joint Defense Agreement;

- a. All legal and accounting work was done jointly on behalf of all represented defendants in an effort to defend all of them at the same time.

- b. Bills for attorneys' fees and expenses reflected the work of counsel done for all defendants without allocating specific items to individual defendants.
- c. Simply because a bill was directed to a specific defendant did not reflect their individual personal obligation, as the bills were the joint obligation of all defendants while the Joint Defense Agreement was in place.
- d. All defendants were all aware of this fact, as applications for payment of the bills submitted under Joint Defense Agreement had to be made to the United States Attorney, who would then have to authorize funds to pay these bills from the defendants' bank accounts which had been frozen by court order.
- e. Until the Joint Defense Agreement was terminated all legal bills were paid from a United Plaza Extra account,

I declare under penalty of perjury that the foregoing is true and correct.

Dated: March 2, 2017


Gordon C. Rhea, Esq.

EXHIBIT 8

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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 argument on all the motions be held telephonically
2 so that we don't have to come back here, and that,
3 you know, we actually do it telephonically so that,
4 you know, we don't feel like we have to come back
5 here.

6 THE COURT: Okay. Attorney Holt, do you want
7 to respond to that?

8 MR. HOLT: I'm willing to go forward tonight,
9 Your Honor. You do have court personnel and I'm
10 sympathetic to not wanting to stay. I can do it
11 tomorrow morning as well.

12 THE COURT: All right. Let's forge ahead. Go
13 ahead.

14 MR. HOLT: I'll call Mafi Hamed.

15 MUFEED HAMED,

16 having been first duly sworn, was examined and
17 testified as follows:

18 DIRECT EXAMINATION

19 BY MR. HOLT:

20 Q Can you state your name for the record, after
21 you're seated?

22 A Mufeed Hamed.

23 Q Excuse me?

24 A I'm sorry. What was --

25 Q Please state your name for record.

1 A Mufeed Hamed.

2 Q Okay. Mr. Hamed, when did you actually start
3 working at the Plaza Extra store?

4 A Right after Marilyn, Hurricane Marilyn.

5 Q And that's around 1995?

6 A 1995.

7 Q And which store did you work in?

8 A Plaza East.

9 Q And just as it relates to this case, this
10 hearing, at the time that you came, did you start
11 working with your brother on something outside of Plaza
12 East?

13 A Yes.

14 Q And what was that?

15 A It was four -- it was -- excuse me. Four
16 duplexes in Estate Carlton.

17 Q Okay. And are those duplexes that you rent
18 out?

19 A Yes.

20 Q And those are the houses that Mr. Wally Hamed
21 testified this morning he bought in the late 1980s?

22 A Yes.

23 Q Okay. And did you take care of the books for
24 them?

25 A Yes.

1 Q Okay. Showing you Exhibit Number 45, can you
2 tell me what this is?

3 A (Perusing document.)

4 Q Did you have an opportunity to look at this
5 before you came and testified today?

6 A Yes, I did.

7 Q And this is checks written on a bank
8 account?

9 A Yes.

10 Q And what is that bank account?

11 A It's a Scotiabank account.

12 Q And what are the numbers that that Scotiabank
13 account end in?

14 A 9811.

15 Q Okay. And what is that account used for?

16 A That is used for the apartment complexes -- I
17 mean, the apartment buildings that we own.

18 Q So to the extent that those accounts show
19 deposits into 9811, where would those deposits come
20 from?

21 A Rental income.

22 Q And that's from the units.

23 A Yes.

24 Q The Carlton units.

25 A Yes.

1 Q And to the extent there's any checks going out
2 of that account, that's expenses for what?

3 A Maintenance.

4 Q On those units.

5 A On those same units, yes.

6 Q Okay. So you're aware in the BDO report that
7 they said that you should be paying all the money
8 deposited in this account back to Mr. Yusuf.

9 A Yes, I saw that.

10 Q Okay. And is, in fact, that money owed to him
11 for any reason whatsoever?

12 A None whatsoever.

13 Q And that's because it's related to income
14 outside of Plaza?

15 A Yes.

16 Q Okay.

17 MR. HOLT: Now, can I have the witness shown
18 Exhibit Number 46?

19 THE COURT: He may be shown. Let me ask as to
20 Number 45, the page -- page number 1 has at the
21 bottom total year 2002. My second page at the top
22 says total year 2000. It sounds like there are a
23 couple of pages missing.

24 Are all the other copies like that or just --

25 THE WITNESS: Yes, they are. Mine is like

1 THE COURT: No, no, no. This isn't the full
2 document either. It's the same thing. The one I
3 was just handed is the same.

4 MR. HOLT: I would have to print it out.
5 These are backups to the BDO file. So I would have
6 to print it out from that.

7 Your Honor, for the purposes of this
8 testimony, I believe that this version can be used
9 and substituted, because the real key is not the
10 years but the total figure of 344,000 on the last
11 page.

12 THE COURT: Very well.

13 MR. HOLT: Okay?

14 THE COURT: Yeah.

15 MR. HOLT: All right.

16 BY MR. HOLT:

17 Q Looking at Exhibit Number 45, do you see
18 that?

19 A Yes.

20 Q What is the total amount of funds they claim
21 are deposited into this account from 2001 through 2012
22 that were allocated to you?

23 A \$344,929.13.

24 Q Okay. And was that income earned from the
25 Carlton apartments over this time period or from the

1 store?

2 A Carlton apartments.

3 Q Okay. So 344,000 that BDO says you owe to
4 Mr. Yusuf is, in fact, not money you owe him at all, is
5 it?

6 A Absolutely not.

7 Q Okay.

8 MR. HOLT: Do you have Exhibit 45, Your Honor?

9 THE COURT: Yeah, I have the Exhibit 45 with
10 the missing pages. So do I -- when you said -- the
11 last question was that BDO says you owe Mr. Yusuf,
12 is that -- is the claim 344 or is the claim 50
13 percent of 344?

14 MR. HOLT: They claim 100 percent of it. They
15 claim on that bank account, 9811, in the name of
16 Mafi Hamed and Wally Hamed, from 2001 to 2012, they
17 claim 344,000 in deposits that belong to them, and
18 his testimony is, no, those were deposits from the
19 rentals from the apartments out in Carlton.

20 THE COURT: Okay. So in other words, this is
21 a claim that this money is owed back to the
22 partnership; correct? As opposed to owed to
23 Mr. Yusuf?

24 MR. HOLT: No. In the lifestyle analysis, the
25 Yusufs claim that Mafi Hamed should pay that amount

EXHIBIT 9

Fathi Yusuf
PO Box 503358
St. Thomas, USVI 00805

July 1, 2011

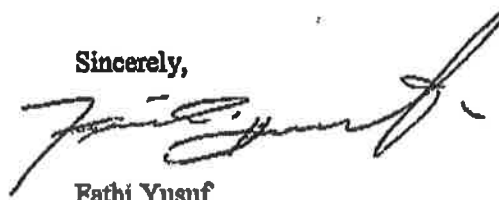
Mufeed Harfed
PO Box 763
Christiansted, USVI 00821

Dear Mufeed:

This correspondence will acknowledge and memorialize my conveyance today of a gift in the amount of \$750,000 to you.

I am giving you the unrestricted right to the immediate use of this money for whatever purpose you desire. I expect no repayment of this gift from me, whether in the form of cash, property, or future services.

Sincerely,

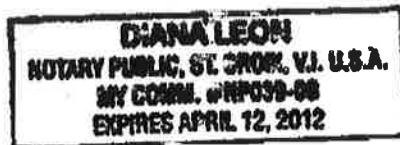


Fathi Yusuf

Sworn to before me this
1 day of July, 2011



Notary Public



Fawzia Yusuf
PO Box 503358
St. Thomas, USVI 00805

July 6, 2011

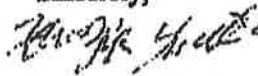
Mufeed Hamed
PO Box 763
Christiansted, USVI 00821

Dear Mufeed:

This correspondence will acknowledge and memorialize my conveyance today of a gift in the amount of \$750,000 to you.

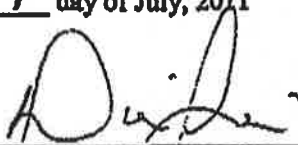
I am giving you the unrestricted right to the immediate use of this money for whatever purpose you desire. I expect no repayment of this gift from me, whether in the form of cash, property, or future services.

Sincerely,

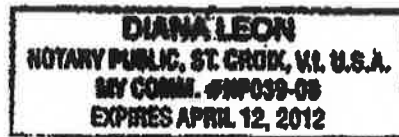


Fawzia Yusuf

Sworn to before me this
1 day of July, 2011



Notary-Public



Fawzia Yusuf
PO Box 503358
St. Thomas, USVI 00805

July 1, 2011

Hisham Hamed
PO Box 763
Christiansted, USVI 00821

Dear Hisham:

This correspondence will acknowledge and memorialize my conveyance today of a gift in the amount of \$750,000 to you.

I am giving you the unrestricted right to the immediate use of this money for whatever purpose you desire. I expect no repayment of this gift from me, whether in the form of cash, property, or future services.

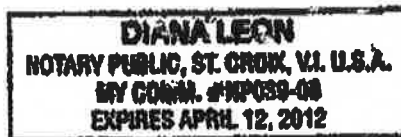
Sincerely,
Fawzia Yusuf

Fawzia Yusuf

Sworn to before me this
1 day of July, 2011

[Signature]

Notary Public



Fathi Yusuf
PO Box 503358
St. Thomas, USVI 00805

July 1, 2011

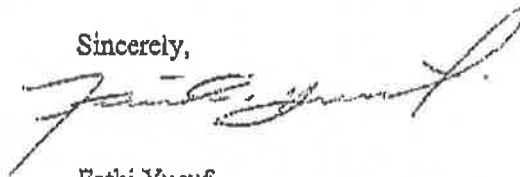
Hisham Hamed
PO Box 763
Christiansted, USVI 00821

Dear Hisham:

This correspondence will acknowledge and memorialize my conveyance today of a gift in the amount of \$750,000 to you.

I am giving you the unrestricted right to the immediate use of this money for whatever purpose you desire. I expect no repayment of this gift from me, whether in the form of cash, property, or future services.

Sincerely,



Fathi Yusuf

Sworn to before me this
1 day of July, 2011



Notary Public

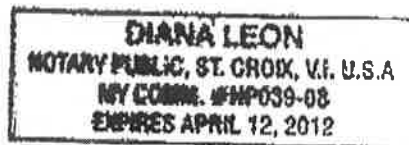


EXHIBIT 10

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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 WALEED)
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.)
_____)

December 15, 2017
Kingshill, St. Croix

The above-entitled action came on for Status Hearing
before the Special Master 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 Hodges, that you believe that the order doesn't
2 apply to, you think they're outside the scope of
3 the order, and Attorney Holt can respond. How much
4 time would you need to do that? I mean, you have
5 identified some of them already. Are there any
6 more?

7 MR. HODGES: No. I mean, he's the one that's
8 claiming that the limitation order affects the
9 claims -- what I say are the claims of United. He
10 says the water revenues are not a United claim,
11 it's a partnership claim; I can't disagree with
12 that more. He claims the water revenue is a
13 partnership claim; I can't disagree with that more.
14 That's United's roof that collects that water. So,
15 you know, the --

16 But he also has his claims. I think he's
17 suggesting that there's no further -- nothing
18 further needs to be done on the 2.7 million that he
19 refers to, which is, you know -- respectfully, Your
20 Honor, it's already on Mr. Yusuf's side of the
21 ledger, so to speak, in the BDO report. We
22 acknowledged he withdrew those funds. That's not
23 in dispute. The accounting effect of that is what
24 is in dispute, so that can't be ruled on without
25 discovery. And they pretty much acknowledge it in

EXHIBIT 11

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

MOHAMMED HAMED by His Authorized)
Agent WALEED HAMED,)

Plaintiff/Counterclaim Defendant,)

vs.)

Case No. SX-12-CV-370

FATHI YUSUF and UNITED CORPORATION,)

Defendants/Counterclaimants,)

vs.)

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

Additional Counterclaim Defendants.)

THE VIDEOTAPED ORAL DEPOSITION OF JOHN GAFFNEY

was taken on the 3rd day of April, 2014, at the Law Offices
of Adam Hoover, 2006 Eastern Suburb, Christiansted,
St. Croix, U.S. Virgin Islands, between the hours of
3:14 p.m. and 4:41 p.m., pursuant to Notice and Federal
Rules of Civil Procedure.

Reported by:

Cheryl L. Haase
Registered Professional Reporter
Caribbean Scribes, Inc.
2132 Company Street, Suite 3
Christiansted, St. Croix U.S.V.I.
(340) 773-8161



JOHN GAFFNEY -- DIRECT

1 ~~So, essentially, the decision was made to put~~
2 ~~in a~~ ~~an accounting system in all three locations that~~
3 ~~would have the same system of controls, and the~~ ~~the most~~
4 ~~major thing that was implemented was the interface between~~
5 ~~Point of Sale and Peachtree.~~

6 Q. So you said early on that you were brought in
7 pursuant to a court order, or something like that, to try to
8 fix what I think you described it as pretty much a -- a
9 total mess.

10 Would that be true?

11 A. Yeah, it was pretty -- it was a pretty good
12 description that it was a pretty total mess before.

13 Q. And you --

14 A. ~~I'm not saying that it was~~ ~~it didn't have any~~
15 ~~integrity. It did have integrity.~~

16 Q. ~~Uh-huh.~~

17 A. ~~It's just that it lacked controls.~~

18 Q. ~~Okay. And was it accurate?~~

19 A. ~~I'd say fairly accurate.~~

20 Q. Okay. And do you know where -- where the -- where
21 the accounting records were before -- you've given me 2012
22 and 2013, is that correct?

23 A. Correct, yeah.

24 Q. Okay. And do you have any idea where the
25 accounting records are for 2002 through 2011?

Cheryl L. Haase
(340) 773-8161

HAMD642142

JOHN GAFFNEY -- DIRECT

1 A. If I do some comparative financial statements, I
2 can get it at least through back to 2010.

3 Q. And your recollection is that the financial
4 records before 2010 are in a warehouse?

5 A. The -- I'm hoping that there are hard copies of
6 most of the records in the warehouse at St. Thomas. I did
7 look for a lot of them after the crash, when I was trying to
8 find things, but I -- I didn't have a great deal of success.

9 Q. Okay.

10 A. And I did find a -- spotty old backups on
11 computers, but -- and I had to get help from Sage to -- to
12 break through them, because they had old passwords and
13 whatnot on them. But I didn't get anything cohesive, like
14 I -- I had one old backup at East, and it was, you know, as
15 far as I was concerned, East and West were just using it to
16 process payroll and/or accounts payable, and it was being
17 used much like a word processor. There was no integrity
18 when it came to general ledgers or anything like that, or
19 anything that would feed into a financial statement.

20 ~~Q. Okay. Now, in the -- let's use the 2013 year that~~
21 ~~you supplied on January 5th, 2014.~~

22 ~~You said, sort of off the bat, it -- it~~
23 ~~tagged in certain areas, such as accounts payable and~~
24 ~~securities for a couple of months. Beyond that, is there~~
25 ~~any other major financial data related to the Plaza Extra~~

Cheryl L. Haase
(340) 773-8161

HAMD642145