

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

HISHAM HAMED, on behalf of himself)
and derivatively, on behalf of **SIXTEEN**)
PLUS CORPORATION,)

Plaintiff,)

vs.)

FATHI YUSUF, ISAM YOUSUF and)
JAMIL YOUSEF,)

Defendants,)

and)

SIXTEEN PLUS CORPORATION,)

a nominal defendant.)

Case No.: 2016-SX-CV-650

DERIVATIVE SHAREHOLDER
SUIT, ACTION FOR DAMAGES,
CICO RELIEF, EQUITABLE RELIEF
AND INJUNCTION

JURY TRIAL DEMANDED

**REPLY OF DEFENDANTS ISAM YOUSUF AND JAMIL YOUSUF IN SUPPORT OF
MOTION TO DISQUALIFY PLAINTIFF’S COUNSEL AND FOR DISCOVERY
RELATED TO ADDITIONAL POTENTIAL BASIS FOR DISQUALIFICATION AND
MOTION TO STAY PENDING RESOLUTION OF MOTION TO DISQUALIFY**

Defendants, Isam Yousuf (“Isam”) and Jamil Yousuf, incorrectly identified as Jamil Yousef (“Jamil”) (collectively “Yousufs”), by and through their undersigned counsel, respectfully move to disqualify Joel H. Holt, Esq. from representing Sixteen Plus Corporation¹ and Hisham Hamed, individually and derivatively on behalf of Sixteen Plus Corporation

¹ 16 Plus includes the interests of the family members of Mohammad Hamed by virtue of their allegations in various litigation that 16 Plus’ stock was owned 50% by family members of Mohammad Hamed. Upon information and belief, the Estate of Mohammad Hamed includes Waleed Hamed, Waheed Hamed, Mufeed Hamed, and Hisham Hamed (collectively the “Hameds”).

(collectively "16 Plus/Hameds"), in this matter based on the imputed conflict of the Court's former law clerk, Robin P. Seila, Esq., which conflict cannot be rebutted by screening in a two-person law firm, and for discovery concerning Attorney Seila's involvement with the instant case, and other cases before the Court involving these or related parties, after employment discussions were initiated. The Yousufs further request a brief continuance issue pending a resolution of this motion to disqualify. In challenging the selection of plaintiff's counsel by disqualification, requesting to conduct discovery related thereto, and requesting a motion to stay pending a resolution of the motion to disqualify, Isam and Jamil Yousuf do not submit to the jurisdiction of the Court, do not waive their jurisdictional defenses and defenses to service of process, and do not voluntarily appear in this action.

The Yousufs move to disqualify Joel H. Holt, Esquire, P.C. ("Holt firm") as 16 Plus/Hameds' counsel asserting a conflict of interest exists premised upon Attorney Seila's involvement in the matters as a law clerk to Judge Brady, that the conflict is necessarily imputed to the entire law firm, and that the conflict cannot be cured by any screening measures. The disqualification of Attorney Seila personally is unchallenged in the case at hand. The parties agree that law clerk Robin Seila is disqualified from representing 16 Plus/Hameds in the pending matters. In other words, 16 Plus/Hameds acknowledges that former law clerk Seila's activity with the other Hamed/Yusuf cases disqualifies her from representation under V.I.S.Ct.R. Rule 211.1.12. Pursuant to V.I.S.Ct.R. Rule 211.1.12(c), Attorney Seila's disqualification is imputed to the remaining members of her law firm but the parties disagree on whether screening may be utilized to cure the imputed disqualification. The Holt firm is obliged to satisfy the requirements of the V.I.S.Ct.R. Rule 211.1.12(c)(1) and (2) in order to avoid disqualification. The Court must

resolve not only whether the screening measures taken by Holt firm are sufficient but also whether the written notice requirements were abided. That is, compliance with the screening exception requirements and written notice mandates of V.I.S.Ct.R. Rule 211.1.12 must be reviewed by the Court.

It is important to note why Attorney Seila is disqualified from representation in this matter. The duty to maintain confidential information continues after the clerkship. V.I.S.Ct.R. Rule 103.3(C) ("This duty [of confidentiality] extends beyond the term of clerkship."). 16 Plus/Hameds is mistaken to the extent it contends the instant matter has no relation to the other Hamed/Yusuf cases before Judge Brady. Although 16 Plus/Hameds refers to the Hamed/Yusuf cases as "unrelated Yusuf proceedings" (see Opposition at page 2), Attorney Holt concedes an ethical screen is needed for this matter. [See Yousufs' Exhibit B (the Chinese Wall is applicable to "every Hamed/Yusuf case, no matter what the designation may be (Plessen, Sixteen Plus, Manal Yousef, etc.)."] It cannot be disputed that there is and has been exhaustive litigation between the Yusufs and the Hameds. Upon information and belief there has been litigation between the Yusufs and the Hameds on matters involving 16 Plus and concerning Plaza Extra in the Superior Court. The three (3) consolidated *Hamed v. Yusuf* matters (referenced as "related cases" in the moving papers for the sake of convenience) potentially intersect with the instant matter as they involve some of the same parties or at least their interests and entities involved in the multiple litigations. The Court should find these other cases involving the Hameds and the Yusufs share common facts and/or issues that taint the instant proceeding and results in unfair advantage to 16 Plus/Hameds.

A concern includes valuable information obtained by Attorney Seila through her clerkship in other cases involving similar parties (with ownership interest in 16 Plus) and possibly involving facts and/or issues common to the case at hand. Upon information and belief, the Yousufs state: 1) a matter styled as *Hamed v. Yusuf, et al.*, Civil No. SX-12-CV-370, was assigned to Judge Douglas A. Brady and involves the dissolution of the Hamed/Yousuf partnership and winding up of the partnership affairs including a partnership accounting; 2) Special Master Judge Edgar Ross was to initially resolve claims submitted; 3) in that submission Hamed made a claim for \$4.5 Million dollars in partnership funds which Hamed claimed were transferred to Isam Yousuf in 1996-1999 and used to purchase the Diamond Keturah property at issue in the matter *sub judice*. [Upon information and belief, a copy of Hamed Partnership Claims for 1986 Through January 1, 2012 at Section F entitled "Isam Yousuf was given \$4.5M in Plaza Extra money to apply towards the Sixteen Plus mortgage for Diamond Keturah and it was further given to Manal Yousuf (Spreadsheet Item 350)" (stating, "In 1996-1997 Fathi Yusuf supplied Isam Yousuf with \$4.5M in partnership cash[.] ... Those funds were then supplied by Isam to Isam's sister, Manal Yousef, who in turn supplied the funds to Sixteen Plus subject to a mortgage. Neither Isam of[sic] Manal Yousuf contributed any of their own funds, or gave any consideration for the \$4.5 million mortgage [on the Diamond Keturah property]") is attached as Exhibit "1."]; 4) Hamed recently withdrew, on an unknown date, the claim relating to the Sixteen Plus mortgage for Diamond Keturah in *Hamed v. Yusuf, et al.*, Civil No. SX-12-CV-370; and 5) Judge Brady made a ruling concerning each party's accounting pursuant to *Hamed v. Yusuf*, 2017 V.I. LEXIS 114 (Super. Ct. V.I. July 21, 2017). It should be noted that principles and/or doctrines involving laches, judicial estoppel, collateral estoppel, res judicata, and judicial notice

may be implicated, and therefore invoked, in the instant matter from decisions in other cases involving Hameds/Yusufs including those of Judge Brady.

The undersigned represents the interests of the Yousufs in this matter. The Yousufs do not concede there is a connection among themselves and Fathi Yusuf. Instead 16 Plus/Hameds takes an unchecked leap when it alleges that there is a connection between Fathi Yusuf and the Yousufs. The motion to disqualify by Fathi Yusuf in the three (3) consolidated *Hamed v. Yusuf* cases is a matter of court record. Attorney Holt's vague and unsupported allegations of unethical conduct are troubling and may be a tactic to harass the opposing parties and undersigned counsel. The undersigned submits the statements of Attorney Holt are baseless and could be considered as an attempt to potentially interfere with the attorney-client relations between the undersigned and his clients the Yousufs. Persistence of this type of behavior on the part of counsel to 16 Plus/Hameds may very well provide another basis for disqualification.

The Court decides on the sufficiency of the ethical screen and compliance with the written notice requirements. Despite Attorney Holt's protestations, it is appropriate for the Court to evaluate the adequacy of the screening mechanisms. This is so regardless of whether or not the undersigned proposed recommendations to Attorney Holt's screening precautions. Besides the undersigned was not in a position to comment upon the ethical screen set forth in Attorney Holt's October 27, 2017 correspondence when Attorney Seila was to begin her employment the next business day on October 30, 2017. [See Yousufs' Exhibit B.] The inquiry by the Court as to the sufficiency of the Chinese Wall is appropriate whether or not undersigned counsel forwarded any suggestions pertaining to Attorney Holt's Chinese Wall on the eve of Attorney Seila's employment as an associate. The Court reviews compliance with the screening exception

requirements and written notice obligations. Stated differently, the Court retains the duty to scrutinize the screening measures and to disqualify the firm if the Court finds that, despite the attempted screening, continued representation constitutes a threat to the integrity of the trial or creates an appearance of impropriety.

Although this Court has yet to consider the adequacy of screening measures utilized where a lawyer (who is a former judge, law clerk, or third-party neutral) is disqualified pursuant to V.I.S.Ct.R. Rule 211.1.12, several courts from other jurisdictions with similar rules have considered the adequacy of screening mechanisms and use similar nonexclusive factors in making a determination on a case-by-case basis. The nonexclusive factors include: (1) instructions given to ban the exchange of information between the disqualified attorney and other members of the firm; (2) restricted access to files and other information about the case; (3) prohibited sharing in fees derived from the litigation; (4) the size of the law firm and its structural divisions; and (5) the likelihood of contact between the quarantined lawyer and other members of the firm. Without acknowledging a list of non-exclusive factors a court considers in evaluating screening devices, 16 Plus/Hameds references many of these factors in its opposition. Yousufs note 16 Plus/Hameds cites no authority that the size of a law firm (and its structural divisions) is a non-factor when a court is assessing the adequacy of screening mechanisms. 16 Plus/Hameds contention that the size of a law firm is not a valid consideration is without merit. In fact a review of the language of numerous state's counterpart to V.I.S.Ct.R. Rule 211.1.12, including Model Rule 1.12 (ABA 2015), reveals analogous language as found in Virgin Islands rule without a specific reference to small or large firms. To the contrary, in evaluating whether screening mechanisms implemented are sufficient, the size and structure of

law firm (size and structural organization) and the likelihood of contact between disqualified attorney and other members of the firm and support personnel involved in the present representation are among factors typically considered by the court. The courts in other jurisdictions, in the cases cited in the moving papers, have disqualified law firms small in size including 2-attorney firms. The Yousufs cited cases evaluating the relevant factors guiding the Court's assessment of the efficacy of the screening device of size of the law firm and its structural divisions as well as the likelihood of contact between the quarantined attorney and other members of the firm. Furthermore Ogletree Deakins and Quintairos, Prieto, Wood & Boyer, P.A. are examples of a Virgin Islands law firm each with several hundred attorneys affiliated with the law firm, even if they practice in different geographic regions.

The Holt firm must demonstrate the adequacy including the height and thickness of the Chinese Wall constructed. No affidavit or other sworn testimony of Attorney Seila has been proffered to the Court pertaining to her conduct. It is not burdensome for Attorney Seila to submit sworn testimony that she complied with her ethical obligations set forth in V.I.S.Ct.R. Rule 103 including Rules 103.5(E) and 103.3(C) and (D) and V.I.S.Ct.R. Rule 211.1.12. Although there is no *per se* disqualification of a law clerk from working on a case in which a prospective employer is involved (Rule 103.5(E)), the law clerk has obligations during the clerkship tenure which are an appropriate area of inquiry. The ethical obligations of a law clerk during her clerkship (Rules 103 and 211.1.12(b)) are distinct from the ethical obligations of the former law clerk and the law firm employing the disqualified former law clerk (Rule 211.1.12). The law clerk is required to promptly bring the fact of prospective employment to the attention of the appointing judicial officer and abide by any determination of the appointing judicial

officer during the remainder of the clerkship and comply with any directions of the appointing judicial officer and Superior Court of the Virgin Islands relating to the practice of law by the former law clerk before the judicial officer or the Court. V.I.S.Ct.R. Rule 103.5(E). Despite protests, 16 Plus/Hameds concedes at the end of its argument in the opposition additional evidence - besides a declaration of Joel H. Holt, Esquire - may be needed in the form of an affidavit from Attorney Seila and/or office staff to assuage the Court of the efficacy of the Chinese Wall.

The Yousufs harbor doubts as to the sufficiency of these preventative measures. They believe the attempted quarantine is not impenetrable and suspect the members of the public would concur. Attorney Holt has faltered on the implementation of the screening devices. In matters styled as *Sixteen Plus Corporation v. Manal Yousef v. Sixteen Plus Corporation*, Civil No. SX-16-CV-65 and *Manal Yousef v. 16 Plus Corporation v. Manal Yousef and Fathi Yusuf*, Civil No. ST-17-CV-342, 16 Plus submitted a Motion to Consolidate wherein it identifies the ostensibly unsecured e-mail address of holtvi@aol.com rather than secured e-mail address of holtvi.plaza@gmail.com that he proclaimed would be used for all 16 Plus, Manal Yousef, and Yusuf cases. [See Yousufs' Exhibit B (the Chinese Wall is applicable to "every Hamed/Yusuf case, no matter what the designation may be (Plessen, Sixteen Plus, Manal Yousef, etc.)."] 16 Plus again identified the offending holtvi@aol.com e-mail address instead of the designated e-mail address of holtvi.plaza@gmail.com in its Opposition to motion to disqualify in all three matters involving the Yousufs and Manal Yousef. The screening procedures have not prevented the potential flow of information about the matter between the personally disqualified lawyer, Attorney Seila, and the others in the firm. The continued representation by the Holt firm would

seriously compromise the public's perception of the integrity of the Court and the legal profession and shake the public's confidence in the" judicial system itself.

The Holt firm has not complied with the written notice requirements of V.I.S.Ct.R. Rule 211.1.12(c)(2). "Written notice [must be] promptly given to the parties and any appropriate tribunal to enable them to ascertain compliance with the provisions of this rule." V.I.S.Ct.R. Rule 211.1.12(c)(2). "Tribunal denotes a court ... when a neutral official, after presentation of evidence or legal argument by a party or parties, will render a binding legal judgment directly affecting a party's interests in a particular matter." V.I.S.Ct.R. Rule 211.1.0(m). As per Attorney Holt, Judge Brady was orally made aware that Attorney Holt would broach the topic of future employment (employment negotiations) with Attorney Seila. [See Yousufs' Exhibit A.] No written notice was provided to Judge Brady or any other judge that could render a legal judgment directly affecting Yousufs' interest in this or other cases in the Court involving similar parties (with ownership interest in 16 Plus) and possibly involving facts and/or issues common to the case at hand.

The disqualification motion is not a litigation tactic but rather filed out of real concern of a material risk of taint resulting from the Holt firm's continued appearance in this matter. The disqualification of the Holt firm would not have an immediate, adverse impact on the clients and would not unnecessarily delay the proceedings because this case is in the early stages of litigation. The removal of the attorneys would not create hardship to the unwitting clients. *Rennie v. Hess Oil V.I. Corp.*, 37 V.I. 323, 332, 981 F.Supp. 374, 378 (D.V.I. 1997).

WHEREFORE, on the basis of the foregoing, Isam Yousuf and Jamil Yousuf respectfully request that the Court disqualify Attorney Holt from representing 16 Plus/Hameds in

this matter and allow Defendants to serve written discovery and take depositions concerning the timeline of employment discussions and Attorney Seila's involvement with this matter and any other related matters on which she performed substantive work during her clerkship, as well as awarding the Yousufs such further relief as the Court deems just and proper.

Respectfully Submitted,

DATED: January 3, 2018.

LAW OFFICES OF JAMES L. HYMES, III, P.C.

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By: 

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CERTIFICATE OF SERVICE

I hereby certify this document complies with the page or word limitation set forth in V.I. R. Civ. P. 6-1(e) and that on this the 3rd day of January, 2018, I caused an exact copy of the foregoing **"Motion of Defendants Isam Yousuf And Jamil Yousuf to Disqualify Plaintiff's Counsel and for Discovery Related to Additional Potential Basis for Disqualification and Motion to Stay Pending Resolution of Motion to Disqualify"** to be served electronically by e-mail, and by mailing same, postage pre-paid, to the following counsel of record:

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A handwritten signature in blue ink, appearing to read "Laura Steuwer", is written over a horizontal line.

EXHIBIT “1”

**D. Gift of Partnership Funds to Nejeih Yusuf for Car
(Spreadsheet Item 347)**

On October 26, 2004, Fathi Yusuf wrote a check to Nejeih Yusuf (ck. No. 16073-STT operating acct.) from partnership funds to Nejeih Yusuf for reimbursement of a Toyota Camry. The amount of the check, owed to the partnership, was \$28,900.

E. Gold and Diamonds the U.S. Government Discovered in Mike Yusuf's Two Safe Deposit Boxes (Spreadsheet Item 348)

After the federal government raids, in 2003 diamonds and gold purchased with unaccounted Plaza Extra cash was discovered by governmental authorities in two safety deposit boxes belonging to Mike Yusuf. Hamed asked for detail as to such goods and the source of cash in discovery, but no detail was given. Thus Hamed approximates the value to be \$1,000,000 but requests a deposition of Mike Yusuf.

F. Isam Yousuf was given \$4.5M in Plaza Extra money to apply toward the Sixteen Plus mortgage for Diamond Keturah and it was further given to Manal Yousef (Spreadsheet Item 350)²

In 1996-1997, Fathi Yusuf supplied Isam Yousuf with \$4.5 million in partnership cash as part of a money laundering operation to avoid the scrutiny of federal marshals. Those funds were then supplied by Isam to Isam's sister, Manal Yousef, who in turn supplied the funds to Sixteen Plus subject to a mortgage. Neither Isam or Manal Yousef contributed any of their own funds, or gave any consideration for the \$4.5 million

² This matter of the sham mortgage is also in civil litigation. A current action, *Sixteen Plus v. Manal Yousef*, SX-16-CV-65, is pending before the Superior Court. In addition, an action is being prepared against Fathi Yousef and others for fraud in attempting to foreclose the sham mortgage and steal the underlying property. If these actions are successful, this claim will be obviated. Because of the current activities attempting to enforce the mortgage, by Yousuf and Yusuf, it is also listed on the post-2012 accounting as a currently pursued claim. With interest, this claim exceeds \$14 million.

mortgage. Fathi Yusuf has now taken over that mortgage for all practical purposes and is trying to collect the whole amount for himself despite his knowledge that the mortgage is a result of 100% Partnership funds and is a sham. Those are partnership funds and should be recovered from Isam and Manal (or the mortgage should be voided.)

The documents which demonstrate this list the specific dates of the transactions and are attached as follows:

- 350-a--HAMD227019-HAMD227020--Isam Yousuf \$100k,
- 350-b--HAMD203062-HAMD203065--1997 02 13 BFC \$2 Mil transfer,
- 350-c--HAMD493359-HAMD493360--1997 02 19 Scotia \$2 Mil transfer,
- 350-d--HAMD204003-HAMD204003--BFC ltr 2 Mil and \$400k cks,
- 350-e--HAMD204004-HAMD204004--1996 08 11 BFC \$2 Mil and 2 \$400k cks, 350-f--HAMD204002-HAMD204002--BFC \$2 Mil wdrawl bank state,
- 350-g--HAMD204060-HAMD204065--BFC \$400k wdrawl bank state,
- 350-h--HAMD204181-HAMD204181--BFC \$400k wdrawl bank state,
- 350-i--HAMD242114-HAMD242115--ltr to BFC re \$2 Mil and \$400k

**G. Options trading losses in Partnership account by Fathi Yusuf
(Spreadsheet Item 354)**

Prior to 2002, Fathi Yusuf lost millions of dollars of the Partnership's funds because he saw himself as a genius in market trading. After losing those millions, he was told by Mohammad Hamed to stop doing so.

After Hamed's permission for such trading was explicitly withdrawn, Yusuf lost more than \$15 million more in unauthorized trading. He stated the following regarding this in his deposition of April 2, 2014, at pp 215-220, in this proceeding (emphasis added):