

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

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

Plaintiff/Counterclaim Defendant, )

v. )

FATHI YUSUF and UNITED CORPORATION, )

Defendants/Counterclaimants, )

v. )

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

Additional Counterclaim Defendants. )

CIVIL NO. SX-12-CV-370

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

Consolidated With

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

Plaintiff, )

v. )

UNITED CORPORATION, )

Defendant. )

CIVIL NO. SX-14-CV-287

ACTION FOR DAMAGES AND  
DECLARATORY JUDGMENT

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

Plaintiff, )

v. )

FATHI YUSUF, )

Defendant. )

CIVIL NO. SX-14-CV-278

ACTION FOR DEBT AND  
CONVERSION

**MOTION FOR LEAVE TO FILE SURRESPONSE TO HAMED'S REPLY AS TO  
CLAIM NO. H-3: \$504,591.03 OF PARTNERSHIP FUNDS TAKEN BY YUSUF – PAID  
TO HIS LAWYER**

Defendants/counterclaimants Fathi Yusuf (“Yusuf”) and United Corporation (“United”) (collectively, the “Defendants”), respectfully move the Master to grant them leave to file a Surrespone to “Hamed Reply As To Claim No. H-3: \$504,591.03 of Partnership Funds Taken by Yusuf – Paid To His Lawyer” filed on January 16, 2016 (the “Reply”) because the Reply contains

new arguments and new evidence, to which Defendants have had no opportunity to respond. After Defendants established the falsity of the premise of Hamed's original motion, which claimed that "a total of \$504,591.03 was paid for Yusuf's personal defense of this case *after* the Complaint here was filed. **These were fees paid to Attorney DiRuzzo's firm for work in this case . . .**" Hamed completely changed his tack in the Reply and argued that it did not matter whether the fees at issue were incurred in defending the criminal action or the civil action. Hamed then attempts to rely on a new declaration from Attorney Gordon Rhea to argue any work performed by Joseph DiRuzzo or his firm in the criminal matter could not have been on behalf of the Partnership. Clearly, Defendants should be given an opportunity to file a surresponse in order to address this new argument and new evidence. *See Weer v. Hess Oil Virgin Islands Corporation*, 64 V.I. 107, 120-124 (V.I. Super. March 15, 2016) (addressing the propriety of allowing surresponses and surreplies generally and noting "if HOVIC had raised a new argument in its reply, then the Court could, in its discretion, allow Mrs. DerWeer to file a sur response.").


Accordingly, Defendants respectfully request the Master to grant them leave to file the brief surresponse attached to this motion as **Exhibit 1**.

Respectfully submitted,

**DUDLEY, TOPPER AND FEUERZEIG, LLP**

**DATED:** January 22, 2018

By:

  
\_\_\_\_\_  
Gregory H. Hodges (V.I. Bar No. 174)  
Stefan B. Herpel (V.I. Bar No. 1019)  
Charlotte K. Perrell (V.I. Bar No. 1281)  
1000 Frederiksberg Gade - P.O. Box 756  
St. Thomas, VI 00804  
Telephone: (340) 715-4405  
Fax: (340) 715-4400  
E-Mail: [ghodges@dtflaw.com](mailto:ghodges@dtflaw.com)  
[sherpel@dtflaw.com](mailto:sherpel@dtflaw.com)  
[cperrell@dtflaw.com](mailto:cperrell@dtflaw.com)

**DUDLEY, TOPPER  
AND FEUERZEIG, LLP**

1000 Frederiksberg Gade  
P.O. Box 756

St. Thomas, U.S. V.I. 00804-0756  
(340) 774-4422

Attorneys for Fathi Yusuf and United Corporation

**CERTIFICATE OF SERVICE**

I hereby certify that on this 22<sup>nd</sup> day of January, 2018, I caused the foregoing **Motion For Leave To File Surreponse To Hamed's Reply As To Claim No. H-3: \$504,591.03 Of Partnership Funds Taken By Yusuf – Paid To His Lawyer**, which complies with the page or word limitation set forth in Rule 6-1(e), to be served upon the following via the Case Anywhere docketing system:

Joel H. Holt, Esq.  
**LAW OFFICES OF JOEL H. HOLT**  
Quinn House - Suite 2  
2132 Company Street  
Christiansted, St. Croix  
U.S. Virgin Islands 00820  
E-Mail: [holtvi@aol.com](mailto:holtvi@aol.com)

Carl J. Hartmann, III, Esq.  
5000 Estate Coakley Bay – Unit L-6  
Christiansted, St. Croix  
U.S. Virgin Islands 00820  
E-Mail: [carl@carlhartmann.com](mailto:carl@carlhartmann.com)

Mark W. Eckard, Esq.  
**ECKARD, P.C.**  
P.O. Box 24849  
Christiansted, St. Croix  
U.S. Virgin Islands 00824  
E-Mail: [mark@markeckard.com](mailto:mark@markeckard.com)

Jeffrey B.C. Moorhead, Esq.  
**JEFFREY B.C. MOORHEAD, P.C.**  
C.R.T. Brow Building – Suite 3  
1132 King Street  
Christiansted, St. Croix  
U.S. Virgin Islands 00820  
E-Mail: [jeffreymlaw@yahoo.com](mailto:jeffreymlaw@yahoo.com)

The Honorable Edgar D. Ross  
E-Mail: [edgarrossjudge@hotmail.com](mailto:edgarrossjudge@hotmail.com)



R:\DOCS\6254\1\DRFTPLDG\17N4237.DOCX

**DUDLEY, TOPPER  
AND FEUERZEIG, LLP**

1000 Frederiksberg Gade

P.O. Box 756

St. Thomas, U.S. V.I. 00804-0756

(340) 774-4422

# **EXHIBIT 1**

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

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

Plaintiff/Counterclaim Defendant, )

v. )

**FATHI YUSUF** and **UNITED CORPORATION**, )

Defendants/Counterclaimants, )

v. )

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

Additional Counterclaim Defendants. )

**WALEED HAMED**, as Executor of the )  
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Plaintiff, )

v. )

**UNITED CORPORATION**, )

Defendant. )

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

Plaintiff, )

v. )

**FATHI YUSUF**, )

Defendant. )

**CIVIL NO. SX-12-CV-370**

**ACTION FOR INJUNCTIVE  
RELIEF, DECLARATORY  
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**CIVIL NO. SX-14-CV-287**

**ACTION FOR DAMAGES AND  
DECLARATORY JUDGMENT**

**CIVIL NO. SX-14-CV-278**

**ACTION FOR DEBT AND  
CONVERSION**

**SURRESPONSE TO HAMED’S REPLY AS TO CLAIM NO. H-3: \$504,591.03 OF  
PARTNERSHIP FUNDS TAKEN BY YUSUF – PAID TO HIS LAWYER**

Defendants/counterclaimants Fathi Yusuf (“Yusuf”) and United Corporation (“United”) (collectively, the “Defendants”), respectfully submit this Surrespouse to “Hamed Reply As To

**DUDLEY, TOPPER  
AND FEUERZEIG, LLP**  
1000 Frederiksberg Gade  
P.O. Box 756

St. Thomas, U.S. V.I. 00804-0756  
(340) 774-4422

Claim No.H-3: \$504,591.03 of Partnership Funds Taken by Yusuf – Paid to His Lawyer” filed on January 16, 2018 (the “Reply”). By raising new arguments and new evidence, the Reply actually underscores why the original motion concerning this claim should be denied so that discovery can be done regarding the fees at issue just like discovery will be done regarding the millions of dollars in other professional fees at issue in this case.

In the Reply, Hamed argues, without any supporting evidence whatsoever, that “**all of these funds paid** to DiRuzzo were paid for the *personal legal fees* of Fathi Yusuf, and not for the Partnership, regardless of whether DiRuzzo billed for the criminal or civil case.” Reply at p. 2 (emphasis in original). Incredibly, Hamed argues that the declaration of Gordon Rhea dated January 15, 2018 attached as Exhibit 1 to the Reply “verif[ies] that neither DiRuzzo nor his firm did any criminal work **on behalf of the Partnership** under the Joint Defense Agreement, which ended on September 25[sic], 2012.” Reply at p. 3. Attorney Rhea’s declaration provides no such verification whatsoever. The word “partnership” does not appear anywhere in his declaration for the obvious reason that the Partnership was not a defendant in the criminal action. Indeed, as Yusuf has previously stated under penalty of perjury and without contradiction, “our criminal defense lawyers did not want us to take any actions that supported the existence of a partnership as the owner of the Plaza Extra Stores.” See ¶ 8 of Yusuf’s August 12, 2014 declaration attached as Exhibit 3 to Defendants’ Memorandum in Support of Motion for Partial Summary Judgment on Counts IV, XI, and XII Regarding Rent.

On September 7, 2012, Attorney DiRuzzo noticed his appearance in the criminal action on behalf of United Corporation. See **Exhibit A**. At that time, United was the only defendant in the criminal case, since the indictment as to all the individual defendants had been dismissed with prejudice pursuant to an Order entered on March 4, 2010. See **Exhibit B**. While the Partnership



was not a named defendant in the criminal case and was not even recognized as a partnership until this Court's Order of November 7, 2014, there is no dispute that the Partnership operated under the corporate umbrella of United and that work performed on behalf of United in the criminal case redounded to the benefit of the Partnership. By way of example, United and the United States of America filed a Joint Motion to Vacate the Criminal Temporary Restraining Orders on August 30, 2013, *see Exhibit C*, which ultimately led to the entry of an Order vacating the restraining orders that had frozen the assets of the Partnership for many years.

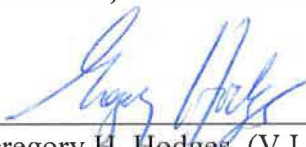
Accordingly, it is simply beyond cavil that discovery needs to be performed so that the Master can ultimately determine what portion of the \$504,591.03 at issue is properly chargeable to the Partnership.

Respectfully submitted,

**DUDLEY, TOPPER AND FEUERZEIG, LLP**

**DATED:** January 22, 2018

By:

  
\_\_\_\_\_  
Gregory H. Hodges (V.I. Bar No. 174)  
Stefan B. Herpel (V.I. Bar No. 1019)  
Charlotte K. Perrell (V.I. Bar No. 1281)  
1000 Frederiksberg Gade - P.O. Box 756  
St. Thomas, VI 00804  
Telephone: (340) 715-4405  
Fax: (340) 715-4400  
E-Mail: [ghodges@dtflaw.com](mailto:ghodges@dtflaw.com)  
[sherpel@dtflaw.com](mailto:sherpel@dtflaw.com)  
[cperrell@dtflaw.com](mailto:cperrell@dtflaw.com)

Attorneys for Fathi Yusuf and United Corporation

**DUDLEY, TOPPER  
AND FEUERZEIG, LLP**

1000 Frederiksberg Gade  
P.O. Box 756

St. Thomas, U.S. VI. 00804-0756

(340) 774-4422

**CERTIFICATE OF SERVICE**

I hereby certify that on this 22<sup>nd</sup> day of January, 2018, I caused the foregoing **Surreponse To Hamed's Reply As To Claim No. H-3: \$504,591.03 Of Partnership Funds Taken By Yusuf – Paid To His Lawyer**, which complies with the page or word limitation set forth in Rule 6-1(e), to be served upon the following via the Case Anywhere docketing system:

Joel H. Holt, Esq.  
**LAW OFFICES OF JOEL H. HOLT**  
Quinn House - Suite 2  
2132 Company Street  
Christiansted, St. Croix  
U.S. Virgin Islands 00820  
E-Mail: [holtvi@aol.com](mailto:holtvi@aol.com)

Carl J. Hartmann, III, Esq.  
5000 Estate Coakley Bay – Unit L-6  
Christiansted, St. Croix  
U.S. Virgin Islands 00820  
E-Mail: [carl@carlhartmann.com](mailto:carl@carlhartmann.com)

Mark W. Eckard, Esq.  
**ECKARD, P.C.**  
P.O. Box 24849  
Christiansted, St. Croix  
U.S. Virgin Islands 00824  
E-Mail: [mark@markeckard.com](mailto:mark@markeckard.com)

Jeffrey B.C. Moorhead, Esq.  
**JEFFREY B.C. MOORHEAD, P.C.**  
C.R.T. Brow Building – Suite 3  
1132 King Street  
Christiansted, St. Croix  
U.S. Virgin Islands 00820  
E-Mail: [jeffreymlaw@yahoo.com](mailto:jeffreymlaw@yahoo.com)

The Honorable Edgar D. Ross  
E-Mail: [edgarrossjudge@hotmail.com](mailto:edgarrossjudge@hotmail.com)



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**DUDLEY, TOPPER  
AND FEUERZEIG, LLP**

1000 Frederiksberg Gade

P.O. Box 756

St. Thomas, U.S. V.I. 00804-0756

(340) 774-4422



# **EXHIBIT A**

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

THE UNITED STATES OF AMERICA	:	
	:	
Plaintiff,	:	CASE # 1:05-cr-15
	:	
vs.	:	
	:	
UNITED CORPORATION, et al.	:	
	:	
Defendants.	:	
_____	:	

NOTICE OF APPEARANCE

**COMES NOW** Defendant, UNITED CORPORATION, by and through the undersigned, and hereby give notice of the undersigned's appearance before this Court. All Orders, notices, pleadings and other papers in the above-captioned matter should be directed to the undersigned counsel.

Respectfully Submitted,

Dated Sept. 7, 2012

By: /s/ Joseph A. DiRuzzo, III Digitally signed by /s/ Joseph A. DiRuzzo, III  
DN: cn=/s/ Joseph A. DiRuzzo, III, o=Fuerst Ittleman, PL, ou,  
email=jdiruzzo@fuerstlaw.com, c=US  
Date: 2012.09.07 11:03:57 -0400

Joseph A. DiRuzzo, III  
USVI Bar #1114  
Fuerst Ittleman David & Joseph, PL  
1001 Brickell Bay Drive  
32<sup>nd</sup> Floor  
Miami, Florida 33131  
305.350.5692 (O)  
305.371.8989 (F)  
[jdiruzzo@fuerstlaw.com](mailto:jdiruzzo@fuerstlaw.com)

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the foregoing was filed on ECF on Sept. 7, 2012, and a NEF will be delivery upon the following:

Henry C. Smock  
Smock & Moorehead  
P.O. Box 1498  
Suites B18-23 Palm Passage  
No. 24 Dronningens Gade  
St Thomas, VI 00804-1498

Gordon C Rhea  
Richardson, Patrick, Westbrook &  
Brickman, LLC  
1037 Chuck Dowley Boulevard, Building A  
Mount Pleasant, SC 29464

Randall P. Andreozzi  
Andreozzi, Bluestein, Fickess, Muhlbauer  
Weber, Brown LLP  
9145 Main Street  
Clarence, NY 14031

W. B Cole  
Hunter, Cole & Bennett  
Pentheny Bldg., 3rd Fl.  
1138 King Street, Suite 301  
St Croix, VI 00820

Pamela L Colon  
Law Offices of Pamela L. Colon  
27 & 28 King Cross Street, First Floor  
Christiansted, St.croix, VI 00820

John K Dema  
1236 Strand Street Suite 103  
St Croix, VI 00820-5008

Thomas Alkon  
Thomas Alkon, P.C.  
2115 Queen Street  
Christiansted, VI 00820

Derek M Hodge  
Derek M. Hodge, P.C.  
P.O. Box 303678  
2369 Kronprindsens Gade  
St Thomas, VI 00803

Alphonso A Andrews  
U.S. Attorney's Office  
1108 King Street, Suite 201  
Christiansted, VI 00820

Kevin C. Lombardi  
U.S. Department of Justice  
601 D. St. NW RM 7912  
Washington, DC 20004

Mark F Daly  
U.S. Department of Justice  
P.O. Box 972  
Ben Franklin Building  
Washington, DC 20044

Nelson Luis Jones  
U.S. Attorney's Office  
Ron De Lugo Federal Bldg  
5500 Veterans Drive, Suite 260  
St Thomas, VI 00802

Lori A Hendrickson  
Department of Justice  
P O Box 972  
Washington, DC 20044

By: /s/ Joseph A. DiRuzzo, III  
Joseph A. DiRuzzo, III  
USVI Bar #1114  
Fuerst Ittleman David & Joseph, PL  
1001 Brickell Bay Drive  
32<sup>nd</sup> Floor  
Miami, Florida 33131  
305.350.5692 (O)  
305.371.8989 (F)  
[jdiruzzo@fuerstlaw.com](mailto:jdiruzzo@fuerstlaw.com)

Digitally signed by /s/ Joseph A. DiRuzzo, III  
DN: cn=/s/ Joseph A. DiRuzzo, III, o=Fuerst Ittleman, PL, ou,  
email=jdiruzzo@fuerstlaw.com, c=US  
Date: 2012.09.07 11:04:09 -0400'

# **EXHIBIT B**

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

UNITED STATES OF AMERICA, and  
GOVERNMENT OF THE VIRGIN ISLANDS,  
Plaintiff,

v.

FATHI YUSUF MOHAMAD YUSUF,  
aka Fathi Yusuf,  
WALEED MOHAMMAD HAMED,  
aka Wally Hamed,  
WAHEED MOHAMMED HAMED,  
aka Willie Hamed,  
MAHER FATHI YUSUF,  
aka Mike Yusuf,  
ISAM MOHAMAD YOUSUF,  
aka Sam Yousuf,  
NEJEH FATHI YUSUF, and  
UNITED CORPORATION  
d/b/a Plaza Extra,

Defendants.

CRIMINAL NO. 2005-015

10 MAR -4 10 2 56  
DISTRICT COURT  
ST. CROIX

**ORDER**

Having considered the plea agreement among the parties to this case, the plea of guilty by defendant United Corporation to count sixty of the indictment, and the motion by the Government to dismiss all counts of the indictment against the remaining defendants,

IT IS HEREBY ORDERED that the indictment is dismissed with prejudice against defendants FATHI YUSUF MOHAMAD YUSUF, aka Fathi Yusuf, WALEED MOHAMMAD HAMED, aka Wally Hamed, WAHEED MOHAMMED HAMED, aka



Willie Hamed, MAHER FATHI YUSUF, aka Mike Yusuf, ISAM MOHAMAD  
YOUSUF, aka Sam Yousuf, and NEJEH FATHI YUSUF.

Done and ordered this 4 day of March, 2010.

  
RAYMOND L. FINCH  
UNITED STATES DISTRICT JUDGE

# EXHIBIT C

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

THE UNITED STATES OF AMERICA :  
 :  
 Plaintiff, : CASE # 1:05-cr-15  
 :  
 vs. :  
 :  
 UNITED CORPORATION, et al. :  
 :  
 Defendants. :  
 \_\_\_\_\_ :

**JOINT MOTION TO VACATE THE  
CRIMINAL TEMPORARY RESTRAINING ORDERS**

**COMES NOW** Plaintiff, THE UNITED STATES OF AMERICA, and the Defendant, UNITED CORPORATION, by and through their respective undersigned attorneys, and hereby moves the Court for an Order vacating the post-indictment restraining orders entered in this case. As grounds in support THE UNITED STATES OF AMERICA and UNITED CORPORATION d/b/a Plaza Extra state the following.

**1. RELEVANT BACKGROUND**

On September 15, 2003, Judge Moore entered an post-indictment temporary restraining order pursuant to 18 U.S.C. § 982(b)(1) and 21 U.S.C. § 853(e)(1)(A) (the “federal TRO”), “to preserve the availability of certain property that is subject to forfeiture in the above-referenced criminal action.” On September 18, 2003, Judge Moore entered another post-indictment temporary restraining order, but this time pursuant to 14 V.I.C. § 606 (the “local level TRO”). The local level TRO, *inter alia*, identified certain financial institution accounts. *See* local level TRO at p. 7-8.

The local level and federal TROs remain in effect and currently operate to restrain Defendant and UNITED CORPORATION d/b/a Plaza Extra from utilizing its funds as it sees fit.

Defendant UNITED CORPORATION d/b/a Plaza Extra, and the individual shareholders, have filed the appropriate tax returns and have paid all of the appropriate tax to the VIBIR. UNITED CORPORATION d/b/a Plaza Extra, and its individual shareholders, are currently tax compliant.

## **2. REQUEST FOR RELIEF**

### *The TROs Should be Vacated*

The local level and the federal TROs entered in this case were premised on the simple fact that the Government wanted to ensure that all of the appropriate taxes had been paid and, by extension, that the Government's interest in the fisc was protected. Several important developments have occurred since the TROs were entered. On February 26, 2010, United Corporation pleaded guilty to Count Sixty of the Third Superseding Indictment. (Doc. No. 1248). On February 7, 2011, the parties filed a Plea Agreement – Addendum in which the parties agreed that United would pay: 1) \$5,000 statutory fine; 2) \$10 million to the VIBIR for restitution for taxes owed for tax years 1996 through 2001; and 3) a \$1 million substantial monetary penalty. (Doc. No. 1304-1). On July 19, 2011, the VIBIR entered into a closing agreement for the tax years 1996 through 2001 and received a payment of \$10 million. On June 24, 2013, the parties filed a Plea Agreement – Second Addendum which summarized the results of mediation with respect to taxes owed to the VIBIR for tax years 2002 through 2010, with an attendant payment of \$6,586,132. (Doc. No. 1373-1).

The remaining financial issues are the payment of the \$5,000 statutory fine and \$1 million penalty. On June 20, 2013, Magistrate Judge Barnard signed an order allowing for these funds to be deposited with the clerk of courts pending sentencing in this matter. (Doc. No. 1368). On August 30, 2013 a check for \$5,000 and a check for \$1 million were deposited with the clerk of courts in St. Croix. Accordingly, since the factual and legal basis for the post-indictment federal and local level TROs no longer exist, it is appropriate to vacate both the federal TRO and the local level TRO.

An agreed order is attached hereto.

**WHEREFORE**, based on the foregoing, the Court should grant this motion to vacate.

Respectfully Submitted,

Dated: August 30, 2013

/s/ Joseph A. DiRuzzo, III

Joseph A. DiRuzzo, III

USVI Bar #1114

FUERST ITTLEMAN DAVID & JOSEPH, PL

1001 Brickell Bay Drive, 32<sup>nd</sup> Floor

Miami, Florida 33131

305.350.5690 (O)

305.371.8989 (F)

[jdiruzzo@fuerstlaw.com](mailto:jdiruzzo@fuerstlaw.com)

/s/Lori A. Hendrickson

Lori A. Hendrickson

Trial Attorney

United States Department of Justice, Tax Division

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the foregoing was filed on ECF on August 30, 2013, and a NEF will be delivery upon the following:

Henry C. Smock  
Smock & Moorehead  
P.O. Box 1498  
Suites B18-23 Palm Passage  
No. 24 Dronningens Gade  
St Thomas, VI 00804-1498

Gordon C Rhea  
Richardson, Patrick, Westbrook &  
Brickman, LLC  
1037 Chuck Dowley Boulevard, Building A  
Mount Pleasant, SC 29464

Randall P. Andreozzi  
Andreozzi, Bluestein, Fickess, Muhlbauer  
Weber, Brown LLP  
9145 Main Street  
Clarence, NY 14031

W. B Cole  
Hunter, Cole & Bennett  
Pentheny Bldg., 3rd Fl.  
1138 King Street, Suite 301  
St Croix, VI 00820  
Pamela L Colon  
Law Offices of Pamela L. Colon  
27 & 28 King Cross Street, First Floor  
Christiansted, St.croix, VI 00820

John K Dema  
1236 Strand Street Suite 103  
St Croix, VI 00820-5008

Thomas Alkon  
Thomas Alkon, P.C.  
2115 Queen Street  
Christiansted, VI 00820

Derek M Hodge  
Derek M. Hodge, P.C.  
P.O. Box 303678  
2369 Kronprindsens Gade



St Thomas, VI 00803

Alphonso A Andrews  
U.S. Attorney's Office  
1108 King Street, Suite 201  
Christiansted, VI 00820

Kevin C. Lombardi  
U.S. Department of Justice  
601 D. St. NW RM 7912  
Washington, DC 20004

Mark F Daly  
U.S. Department of Justice  
P.O. Box 972  
Ben Franklin Building  
Washington, DC 20044

Nelson Luis Jones  
U.S. Attorney's Office  
Ron De Lugo Federal Bldg  
5500 Veterans Drive, Suite 260  
St Thomas, VI 00802

Lori A Hendrickson  
Department of Justice  
P O Box 972  
Washington, DC 20044

Nizar A. DeWood  
The DeWood Law Firm  
2006 Eastern Suburb, Suite 101  
Christiansted, VI 00820

/s/ Joseph A. DiRuzzo, III  
Joseph A. DiRuzzo, III  
USVI Bar #1114  
FUERST ITTLEMAN DAVID & JOSEPH, PL  
1001 Brickell Bay Drive, 32<sup>nd</sup> Floor  
Miami, Florida 33131  
305.350.5690 (O)  
305.371.8989 (F)  
[jdiruzzo@fuerstlaw.com](mailto:jdiruzzo@fuerstlaw.com)

**IN THE SUPERIOR COURT OF THE VIRGIN ISLANDS  
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WALEED HAMED, as Executor of the  
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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 MOHMMED HAMED,

Plaintiff,

v.

FATHI YUSUF,

Defendant.

---

CIVIL NO. SX-12-CV-370

ACTION FOR DAMAGES,  
INJUNCTIVE RELIEF  
AND DECLARATORY RELIEF

**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

**ORDER GRANTING LEAVE TO FILE SURRESPONSE**

Upon the motion of the Defendants and for good cause shown, it is accordingly,

Hamed v. Yusuf, et al.  
Civil No. SX-12-CV-370  
Page 2

**ORDERED** that Defendants are granted leave to file the surresponse attached as **Exhibit 1** to their motion for leave to file same and such surresponse is deemed filed as of the date of this Order.

DATED: January \_\_\_\_\_, 2018

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Honorable Edgar D. Ross  
Master

cc: Mark W. Eckard, Esq.  
Carl H. Hartmann, III, Esq.  
Gregory H. Hodges, Esq.  
Joel H. Holt, Esq.  
Jeffrey B.C. Moorhead, Esq.

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