

SUPERIOR COURT OF THE VIRGIN ISLANDS

DIVISION OF ST. CROIX

WALEED HAMED as EXECUTOR of  
The ESTATE OF MOHAMMAD HAMED

CASE NO: SX 2012 CV 370

v.

ACTION FOR:

FATHI YUSUF and UNITED CORPORATION

TERRITORY OF THE VIRGIN ISLANDS )  
DISTRICT OF ST. CROIX ) SS:

I, FELIPE TORRES, JR., being duly sworn according t law upon my oath depose and state:

1. That I am a citizen of the United States and a resident of St. Croix, Virgin Islands and I am a process ser  
duly appointed by the Courts of the Virgin Islands.

2. That I received copies of ( ) summons and complaint, (  ) subpoena, ( ) citation, ( ) lette  
( ) order, ( ) request for admission, ( ) request for production, ( ) other

\_\_\_\_\_ in the above matter and served the same as follow  
RECEIVED: FEBRUARY 7 2018 SERVED: FEBRUARY 7 2018  
PERSON SERVED: FATHI YUSUF PLACE SERVED: PLAZA XTMA EAST

3. That such service was personally made by delivering to and leaving with the person, who was proper  
identified to be the person mentioned and described in said process or authorized according to law to receive suc  
process true copies of the above-mentioned document(s).

4. That I made diligent search and inquiry in St. Croix for the person to be served but have been unable t  
find or learn of the whereabouts of the person and thus have been unable to serve process on the said persor  
Locations endeavors are: \_\_\_\_\_

Felipe Torres, Jr.  
FELIPE TORRES, JR.

SUBSCRIBED AND SWORN to before me  
this 8<sup>th</sup> day of February 2018

Walter M. Ward  
Notary Public  
Name: Walter M. Ward  
Notary No: NA  
Commission Expires: Ex-Officio

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**Issued by the  
SUPERIOR COURT OF THE VIRGIN ISLANDS**

**DIVISION OF ST. CROIX**

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**SUBPOENA IN A CIVIL CASE**

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

*Plaintiff/Counterclaim Defendant,*

vs.

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

*Defendants and Counterclaimants,*

vs.

**WALEED HAMED, WAHEED HAMED,  
MUFEEED 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

Consolidated with

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

**ACTION FOR DECLARATORY  
JUDGMENT**

JURY TRIAL DEMANDED

Consolidated with

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

**ACTION FOR DEBT AND  
CONVERSION**

JURY TRIAL DEMANDED

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

*Plaintiff,*

vs.

**UNITED CORPORATION,**

*Defendant.*

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

*Plaintiff,*

vs.

**FATHI YUSUF,**

*Defendant.*

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**SUBPOENA DUCES TECUM**

TO: **Hamed-Yusuf Partnership (aka Plaza Extra Partnership)**  
ADDRESS: **Attn: Fathi Yusuf, Liquidating Partner**  
**Plaza Extra East, 4 C & D**  
**Christiansted, VI 00820**

YOU ARE HEREBY COMMANDED to appear in the Superior Court of the Virgin Islands in the place, date, and time specified below to testify in the above case.

PLACE OF TESTIMONY	COURTROOM
	DATE AND TIME

YOU ARE HEREBY COMMANDED to appear in the Superior Court of the Virgin Islands in the place, date, and time specified at the taking of a Deposition in the above case.

PLACE OF DEPOSITION	DATE AND TIME
<b>Joel H. Holt, Esq.</b> <b>Law Offices of Joel H. Holt</b> <b>2132 Company Street</b> <b>Christiansted, VI 00820</b> <b>(340) 773-8709</b>	<b>Monday, March 26, 2018</b> <b>at 10:00 a.m.</b>
<b>Video Taped 30(b)(6) deposition of Hamed-Yusuf Partnership</b>	

**YOU ARE HEREBY COMMANDED** to produce and permit inspection and copying of the following documents or object at the place, date and times specified below (list documents or objects):  
Produce any and all documents listed in Schedule A attached hereto.

**PLACE:** Law Offices of Joel H. Holt

2132 Company Street, Christiansted, VI 00820  
(340) 773-8709

**DATE AND TIME:**

Monday, March 26, 2018 at  
10:00 am

**YOU ARE HEREBY COMMANDED** to permit inspection of the following premises at the date and time specified below:

PREMISES

DATE AND TIME:

Any organization not a party to this suit that is subpoenaed for the taking of a deposition shall designate one or more officers, directors, or managing agents, or other persons who consent to testify on its behalf, and may set forth, for each person designated, the matters on which the person will testify. Federal Rules of Civil Procedure, 30(b)(6).

**ISSUING OFFICER'S SIGNATURE AND TITLE**

**JOEL H. HOLT**  
Attorney-at-Law

/s/ Joel H. Holt

By: \_\_\_\_\_

DATE

2/5/18

**ISSUING ATTORNEY'S ADDRESS AND TELEPHONE NUMBER:**

Joel H. Holt, Esq.  
Law Offices of Joel H. Holt  
2132 Company Street  
Christiansted, VI 00820  
(340) 773-8709

**RETURN OF SERVICE**

I personally served the within subpoena duces tecum by delivering a copy to \_\_\_\_\_

Dated: \_\_\_\_\_

By: \_\_\_\_\_

**RETURN OF SERVICE**

This is to certify that \_\_\_\_\_ cannot be found in this jurisdiction.

Dated: \_\_\_\_\_

By: \_\_\_\_\_

**RETURN OF SERVICE**

I hereby certify that I served the within subpoena duces tecum by leaving a copy at \_\_\_\_\_, the usual place of abode, with \_\_\_\_\_, a member of his/her family over the age of 14 years, then residing with him/her.

Dated: \_\_\_\_\_

By: \_\_\_\_\_

Pursuant to V.I. R. Civ. P. 30(b)(2) and 30(b)(6), as well as R. Civ. P. 34, those deponents shall bring all preparations, notes, briefings and documents necessary to allow full and complete testimony on the topics.

## SCHEDULE A - Topics for Partnership Witness

<b>New Claim Number<sup>1</sup></b>	<b>Item No. in Original 8/30/16 Claim Filing</b>	<b>Description</b>
<b>H-007</b>	248	The facts and decision not to pay KAC357, Inc. for its payment of invoices from J. David Jackson PC
<b>H-008</b>	256	Same as to David Jackson, CPA, bill owed for tax work done related to the Partnership's 2013 taxes
<b>H-013</b>	210	Same as to Hamed taxes during criminal case
<b>H-017</b>	265	Same as to Wally Hamed's personal payment of accounting and attorneys' fees in United States of America v United Corp., et. al., VI D.Ct. 2005-cr-015
<b>H-018</b>	275	Same--KAC357 payment of invoices from FreedMaxick
<b>H-019</b>	278	Same--KAC357, Inc. payment of Partnership WAPA
<b>H-020</b>	279	Same--invoices KAC357, Inc. payment of Partnership Tropical Shipping invoices
<b>H-023</b>	299	Same--2015 Workers' Compensation payments for East
<b>H-024</b>	310	Same--2015 Health permit payments for Plaza East
<b>H-025</b>	314	Same--2015 Business license payment for Plaza East
<b>H-026</b>	316	Same--Inventory moved from Plaza West to East after official inventory
<b>H-027</b>	319	Same-- as to BJ's Wholesale Club vendor credit
<b>H-030</b>	333	Same-- KAC357 payment of Partnership AT&T invoices
<b>H-031</b>	334	Same-- Point of Sale transactions KAC357, Inc.'s
<b>H-035</b>	343	American Express payments deposited to Partnership account Unclear UVI payment
<b>H-036</b>	345	Due to/from Fathi Yusuf
<b>H-037</b>	353	Decisions as STT Tutu gift certificates
<b>H-039</b>	358	WAPA deposits paid with Partnership funds
<b>H-145</b>	3003	Decisions as to Imbalance in credit card points
<b>H-146</b>	3007	Decisions as to Vendor rebates
<b>H-147</b>	3010	Decisions re Excessive travel & entertainment exp.
<b>H-148</b>	3011	What was given/transferred to Seaside Market
<b>H-149</b>	246, 255, 260, 318	Attorney and accounting's fees paid by the Partnership for the criminal case
<b>H-154</b>	346a	Employee Loans
<b>H-161</b>	Exhibit A - I	Attorney and accounting's fees paid by the Partnership for the criminal case - Pro-rated from September 17, 2006 forward

<sup>1</sup> Each "New Claim" is more fully described in Hamed's CPA Expert Report -- by claim number, and specific documents known to Hamed (if any) and general area of inquiry.

- |              |         |  |
|--------------|---------|--|
| <b>H-164</b> | Sched A | Facts as to inventory being adjusted downward by \$1,660,000 due to unrecorded inventory transfers to other stores, as per first supplemental Hamed claims dated October 6, 2016   |
| <b>H-165</b> | Sched A | In Yusuf's Accounting and Proposed Distribution Plan filing on September 30, 2016, Yusuf stated that "[t]here are Debts totaling \$176,267.97, which must be paid prior to any distribution of the remaining Partnership Assets to the Partners." Facts as to what happened. |

**Rules Governing the  
Superior Court of the Virgin Islands**

**Rule 30. Depositions by Oral Examination**

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**(b) Notice of the Deposition; Other Formal Requirements.**

\* \* \*

(6) *Notice or Subpoena Directed to an Organization.* In its notice or subpoena, a party may name as the deponent a public or private corporation, a partnership, an association, a governmental body, or other entity and must describe with reasonable particularity the matters for examination. The named organization must then designate one or more officers, directors, or managing agents, or designate other persons who consent to testify on its behalf; and it may set out the matters on which each person designated will testify. A subpoena must advise a nonparty organization of its duty to make this designation. The persons designated must testify about information known or reasonably available to the organization. This paragraph (6) does not preclude a deposition by any other procedure allowed by these rules.

**Rule 45. Subpoena**

**(a) In General.**

**(1) Form and Contents.**

(A) *Requirements — In General.* Every subpoena must:

- (i) state the court from which it issued;
- (ii) state the title of the action and its civil-action number;
- (iii) command each person to whom it is directed to do the following at a specified time and place: attend and testify; produce designated documents, electronically stored information, or tangible things in that person's possession, custody, or control; or permit the inspection of premises; and
- (iv) set out the text of Rule 45(d) and (e).

(B) *Command to Attend a Deposition — Notice of the Recording Method.* A subpoena commanding attendance at a deposition must state the method for recording the testimony.

(C) *Combining or Separating a Command to Produce or to Permit Inspection; Specifying the Form for Electronically Stored Information.* A command to produce documents, electronically stored information, or tangible things or to permit the inspection of premises may be included in a subpoena commanding attendance at a deposition, hearing, or trial, or may be set out in a separate subpoena. A subpoena may specify the form

or forms in which electronically stored information is to be produced.

(D) *Command to Produce; Included Obligations.* A command in a subpoena to produce documents, electronically stored information, or tangible things requires the responding person to permit inspection, copying, testing, or sampling of the materials.

(2) *Issuing Court.* A subpoena must issue from the court where the action is pending.

(3) *Issued by Whom.* The clerk of court must issue a subpoena, signed but otherwise in blank, to a party who requests it. That party must complete it before service. An attorney also may issue and sign a subpoena if the attorney is authorized to practice in the Virgin Islands.

(4) *Notice to Other Parties Before Service.* If the subpoena commands the production of documents, electronically stored information, or tangible things or the inspection of premises before trial, then — at least 5 days before it is served on the person to whom it is directed — a notice and a copy of the subpoena must be served on each party.

**(b) Service.**

(1) *By Whom and How; Tendering Fees.* Any person who is at least 18 years old and not a party may serve a subpoena. Serving a subpoena requires delivering a copy to the named person.

(2) *Service in the Virgin Islands.* A subpoena may be served at any place within the United States Virgin Islands.

(3) *Service in a Foreign Country.* A subpoena may be served at any place outside the United States Virgin Islands consistent with the provisions of 5 V.I.C. § 505.

(4) *Proof of Service.* Proving service, when necessary, requires filing with the issuing court a statement showing the date and manner of service and the names of the persons served. The statement must be certified by the server.

**(c) Place of Compliance.**

(1) *For a Trial, Hearing, or Deposition.* A subpoena may command a person to attend a trial, hearing, or deposition only as follows:

(A) within 100 miles of where the person resides, is employed, or regularly transacts business in person; or

(B) within the state where the person resides, is employed, or regularly transacts business in person, if the person

(i) is a party or a party's officer; or

(ii) is commanded to attend a trial and would not incur substantial expense.

(2) *For Other Discovery.* A subpoena may command:

(A) production of documents, electronically stored information, or tangible things at a place within 100 miles of where the person resides, is employed, or regularly transacts business in person; and

(B) inspection of premises at the premises to be inspected.



**(d) Protecting a Person Subject to a Subpoena; Enforcement.**

**(1) *Avoiding Undue Burden or Expense; Sanctions.*** A party or attorney responsible for issuing and serving a subpoena must take reasonable steps to avoid imposing undue burden or expense on a person subject to the subpoena. The court for the division where the action is pending must enforce this duty and impose an appropriate sanction — which may include lost earnings and reasonable attorney's fees — on a party or attorney who fails to comply.

**(2) *Command to Produce Materials or Permit Inspection.***

**(A) *Appearance Not Required.*** A person commanded to produce documents, electronically stored information, or tangible things, or to permit the inspection of premises, need not appear in person at the place of production or inspection unless also commanded to appear for a deposition, hearing, or trial.

**(B) *Objections.*** A person commanded to produce documents or tangible things or to permit inspection may serve on the party or attorney designated in the subpoena a written objection to inspecting, copying, testing, or sampling any or all of the materials or to inspecting the premises — or to producing electronically stored information in the form or forms requested. The objection must be served before the earlier of the time specified for compliance or 14 days after the subpoena is served. If an objection is made, the following rules apply:

(i) At any time, on notice to the commanded person, the serving party may move the court for the division where the action is pending for an order compelling production or inspection.

(ii) These acts may be required only as directed in the order, and the order must protect a person who is neither a party nor a party's officer from significant expense resulting from compliance.

**(3) *Quashing or Modifying a Subpoena.***

**(A) *When Required.*** On timely motion, the court for the division where the action is pending must quash or modify a subpoena that:

(i) fails to allow a reasonable time to comply;

(ii) requires a person to comply beyond the geographical limits specified in Rule 45(c);

(iii) requires disclosure of privileged or other protected matter, if no exception or waiver applies; or

(iv) subjects a person to undue burden.

**(B) *When Permitted.*** To protect a person subject to or affected by a subpoena, the court where the action is pending may, on motion, quash or modify the subpoena if it requires:

(i) disclosing a trade secret or other confidential research, development, or commercial information; or

(i) disclosing an unretained expert's opinion or information that does not describe specific occurrences in dispute and results from the expert's

study that was not requested by a party.

(C) *Specifying Conditions as an Alternative.* In the circumstances described in Rule 45(d)(3)(B), the court may, instead of quashing or modifying a subpoena, order appearance or production under specified conditions if the serving party:

(i) shows a substantial need for the testimony or material that cannot be otherwise met without undue hardship; and

(ii) ensures that the subpoenaed person will be reasonably compensated.

**(e) Duties in Responding to a Subpoena.**

**(1) *Producing Documents or Electronically Stored Information.*** These procedures apply to producing documents or electronically stored information:

(A) *Documents.* A person responding to a subpoena to produce documents must produce them as they are kept in the ordinary course of business or must organize and label them to correspond to the categories in the demand.

(B) *Form for Producing Electronically Stored Information Not Specified.* If a subpoena does not specify a form for producing electronically stored information, the person responding must produce it in a form or forms in which it is ordinarily maintained or in a reasonably usable form or forms.

(C) *Electronically Stored Information Produced in Only One Form.* The person responding need not produce the same electronically stored information in more than one form.

(D) *Inaccessible Electronically Stored Information.* The person responding need not provide discovery of electronically stored information from sources that the person identifies as not reasonably accessible because of undue burden or cost. On motion to compel discovery or for a protective order, the person responding must show that the information is not reasonably accessible because of undue burden or cost. If that showing is made, the court may nonetheless order discovery from such sources if the requesting party shows good cause, considering the limitations of Rule 26(b)(2)(C). The court may specify conditions for the discovery.

**(2) *Claiming Privilege or Protection.***

(A) *Information Withheld.* A person withholding subpoenaed information under a claim that it is privileged or subject to protection as trial-preparation material must:

(i) expressly make the claim; and

(ii) describe the nature of the withheld documents, communications, or tangible things in a manner that, without revealing information itself privileged or protected, will enable the parties to assess the claim.

(B) *Information Produced.* If information produced in response to a subpoena is subject to a claim of privilege or of protection as trial-preparation material, the person making the claim may notify any party that received the information of the claim and the basis for it. After being notified, a party must promptly return, sequester, or destroy the specified

information and any copies it has; must not use or disclose the information until the claim is resolved; must take reasonable steps to retrieve the information if the party disclosed it before being notified; and may promptly present the information under seal to the court for the division where the action is pending for a determination of the claim. The person who produced the information must preserve the information until the claim is resolved.

**(f) Contempt.** The court may hold in contempt a person who, having been served, fails without adequate excuse to obey the subpoena or an order related to it.

**(g) Subpoenas and discovery outside the Virgin Islands.** The procedures for use of letters rogatory for discovery outside the Virgin Islands are set forth in 5 V.I.C. § 4921. The Uniform Interstate Depositions and Discovery Act (Chapter 505 of Title 5 of the Virgin Islands Code, 5 V.I.C. § 4922 et seq.) provides for discovery involving jurisdictions recognizing reciprocal discovery obligations, and includes provisions for issuance and service of subpoenas for depositions and production of documents in those jurisdictions.