

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

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

*Plaintiff/Counterclaim Defendant,*

vs.

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

*Defendants and Counterclaimants.*

vs.

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

*Counterclaim Defendants,*

**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**

Consolidated with

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

Consolidated with

**Case No.: ST-17-CV-384**

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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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**FATHI YUSUF,** *Plaintiff,*

vs.

**MOHAMMAD A. HAMED TRUST,** *et al,*  
*Defendants.*

**MOTION FOR LEAVE TO FILE SURRESPONSE  
TO YUSUF'S REPLY IN SUPPORT OF HIS MOTION TO STRIKE HAMED'S  
CLAIMS H-41 THROUGH H-141 AND ADDITIONAL "MAYBE" CLAIMS"**

Plaintiff Hamed, through his undersigned counsel, respectfully moves the Special Master to grant him leave to file this brief *Surreply* to "Yusuf's Reply In Support of His Motion to Strike Hamed's Claim H-41 Through H-141 and Additional "Maybe" Claims," filed on March 8, 2018 (the "Reply") because (1) Yusuf makes statements contrary to an existing Order of the Court in his Reply without opportunity for response by Hamed, and (2) does not cite that order in contravention of the applicable Court Rule.

1. At page 2, Yusuf states: "Because his purported claims H-41 through H-141 and the others identified in Yusuf's Motion are in the nature of questions rather than claims, **they do not comply with the Court's directives.**" (Emphasis added.)

2. This is directly contrary to an applicable, prior order of the Court (Brady, J.) in response to a Yusuf motion to strike these claims which is not cited to the Special Master by Yusuf<sup>1</sup> -- as recently briefed to the Special Master in the filings related to the motion to compel as to requests to admit 1-3, at pages 4-5, to wit:

Yusuf seems to be unwilling to participate in much of the claims process yet because he has decreed that Hamed's claims are not really RUPA § 71(a) claims— but, rather, just "questions." **However, his views that Hamed did not file a separate accounting or file his claims on time (or in the procedurally correct manner) or that they were not really RUPA § 71(a) "claims"** were all argued, at length, in Yusuf's pending motion dated February 6, 2018. It is captioned "Yusuf's Motion to Strike Hamed's Claim Nos. H-41 through H-141 and Additional Maybe Claims." In reply, Hamed's opposition to that motion is attached here as Exhibit 4, and incorporated herein.[2]<sup>2</sup> Hamed will not reargue that other motion here because, in

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<sup>1</sup> Sub-paragraph 5 of *Rule 11* of the *V.I. Rules of Civil Procedure* (as amended) provides that the signing and filing of a motion affirms that "(5) that the applicable Virgin Islands law has been cited, **including authority for and against the positions being advocated** by the party." (Emphasis added.) An existing order of the Court in the same matter is the law of the case and is considered applicable Virgin Islands law.

<sup>2</sup> [*Footnote 2 in the Original*] 2 Hamed's Opposition was filed February 15, 2018, captioned "Hamed's Opposition To Yusuf's Motion To Somehow, Magically, Make 117 Hamed Claims Just Disappear." Yusuf's reply was filed March 8, 2018. See also, the CPA Declaration attached to Hamed's Opposition which makes it very clear, *inter alia*, that an accountant cannot simply ignore claims in a RUPA partnership wind-up accounting under § 71(a).

addition to the absolutely clear majority legal rule set out in Hamed's opposition there (which law Yusuf also avoided), **the Master is asked to review Judge Brady's holdings in his July 17, 2017 Order.** In response to Yusuf's earlier "Motion to Strike Hamed's Revised Notice of Partnership Claims and Objections", Judge Brady stated (**Exhibit 1** here):

Although Yusuf is correct that the above referenced filings were submitted to the Court in clear violation of the Master's directive, in this limited instance, the Court finds Hamed's failure to comply with the Master's directive to be harmless, **as all filings concerning the partners' § 71(a) accounting claims will ultimately need to be submitted to the Court** in order to allow for substantive review of the Master's final recommendation on the partnership accounting. . .In light of the foregoing, it is hereby. . .ORDERED that Yusuf s Motion to Strike Hamed's Revised Notice of Partnership Claims and Objections to Yusuf's Post-January 1, 2012 Accounting and Notice of Supplementation of Record is DENIED. (Emphasis added.)

It seems pretty apparent that Judge Brady is of the very strong opinion that these are all surviving RUPA "§ 71(a) accounting claims" that must be heard. His view is clear because that is exactly what he called them in denying Yusuf's prior attempt to make the exact same accounting claims 'just go away' via similar magical thinking. They were not stricken, but were expressly described as "the partners' [RUPA] § 71(a) accounting claims." They were not described as "just questions," nor were they described as "maybe claims."

Moreover, after that Order, and regardless of earlier 'insufficient' filings or failures to timely or correctly file 'proposed' alternate accountings or claims, Hamed was directed by the Court to submit REVISED claims. Thus, on October 30, 2017, Hamed submitted his revised claims—all stated as claims—which the Court allowed [to be filed as section 71 claims], regardless of any previous procedural issues or Yusuf-alleged impediments from earlier orders.

## **Conclusion**

Thus, Hamed asks that Judge Brady's prior order be considered as refuting the Yusuf assertion that: "Because his purported claims H-41 through H-141 and the others identified in Yusuf s Motion are in the nature of questions rather than claims, *they do not comply with the Court's directive.*" To the contrary the Court has *specifically* recognized "all filings" in the October 30, 2017 Revised Claims as "RUPA § 71(a) claims" that must be heard. He has stated that "all filings" that are "concerning the partners' § 71(a) accounting claims need to be submitted to the Court."

**Dated:** April 23, 2018



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### **CERTIFICATE OF SERVICE**

I hereby certify that on this 23rd day of April, 2018, I served a copy of the foregoing by email (via CaseAnywhere), as agreed by the parties, on:

**Hon. Edgar Ross** (w/ 2 Mailed Copies)  
Special Master  
% edgarrossjudge@hotmail.com

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### **CERTIFICATE OF COMPLIANCE WITH RULE 6-1(e)**

This document complies with the page or word limitation set forth in Rule 6-1(e).



# **EXHIBIT 1**

**JUDGE BRADY'S ORDER**

**DATED JULY 17, 2017**

**Refusing to Strike**

**Hamed's RUPA 71(a)**

**Accounting Claims**

**Dated July 17, 2017**

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

**ORDER RE YUSUF'S MOTIONS TO STRIKE**

~~Before the Court are the following related fully briefed motions of Defendant Fathi Yusuf: (1) Motion to Strike Hamed's Notice of Partnership Claims and Objections to Yusuf's Post-January 1, 2012 Accounting, filed October 14, 2016;<sup>1</sup> (2) Motion to Strike Hamed's Notice of First Supplemental Claims, filed October 24, 2016;<sup>2</sup> and (3) Motion to Strike Hamed's Revised Notice of Partnership Claims and Objections to Yusuf's Post-January 1, 2012 Accounting and Notice of Supplementation of Record, filed December 12, 2016.<sup>3</sup>~~

~~By his first Motion, Yusuf seeks to strike Hamed's Notice of Partnership Claims and Objections, filed with the Court September 30, 2016. Because that filing contained certain financial and personal~~

<sup>1</sup> Plaintiff's Response was filed October 17, 2016; Yusuf's Reply was filed October 20, 2016.

<sup>2</sup> Plaintiff's Opposition was filed October 25, 2016; Yusuf's Reply was filed November 14, 2016.

<sup>3</sup> Plaintiff's Opposition was filed December 20, 2016; Yusuf's Reply was filed January 5, 2017.

~~identification information that should have been redacted, Hamed filed his Revised Notice of Partnership Claims and Objections on October 17, 2016, replacing in its entirety the original filing. Pursuant to Order entered December 21, 2016, the original filing was returned to Plaintiff's counsel in its entirety. As such, Yusuf's first Motion will be denied, as moot. Yusuf's subsequent motions regarding Hamed's replacement filing is addressed below.~~

By his second Motion, Yusuf seeks an order striking the Notice of Hamed's First Supplemental Claims Occasioned by Yusuf's Disclosures in his Claims, filed October 6, 2016, presenting two specific supplemental monetary claims that purportedly only became apparent from reviewing Yusuf's claims filed with the Master on September 30, 2016. Yusuf reasserts the argument presented in his first Motion that, pursuant to the Master's direction that "claims against or on behalf of the partnership should be filed with the Master and served on opposing counsel only," all documents filed with the Court regarding the partners' § 71(a) accounting claims must be stricken from the record.

Yusuf's third Motion reiterates the first, seeking to strike Hamed's Revised Notice of Claims and Objections, filed October 17, 2016, which replaced Hamed's original filing of claims and objections, pursuant to the Master's directive that "claims against or on behalf of the partnership should be filed with the Master and served on opposing counsel only." Yusuf's Motion also seeks to strike "Plaintiff Hamed's Notice of Supplementation of Record," with certificate noting service on November 30, 2016, actually served on Yusuf's counsel December 1, 2016.<sup>4</sup> Yusuf argues that, pursuant to Virgin Islands Rule of Civil Procedure 5(d)(1), certain discovery materials, including expert reports, "must not be filed until they are used in the proceeding or the court orders filing."

Although Yusuf is correct that the above referenced filings were submitted to the Court in clear violation of the Master's directive, in this limited instance, the Court finds Hamed's failure to comply with the Master's directive to be harmless, as all filings concerning the partners' § 71(a) accounting claims will ultimately need to be submitted to the Court in order to allow for substantive review of the Master's final recommendation on the partnership accounting. By separate Order entered contemporaneously herewith, the parties are required to meet and confer, under the supervision of the Master, to implement a docketing/record-retention system to alleviate any concerns that documents submitted to the Master will not be subject to judicial or appellate review. In the future, failure to comply

<sup>4</sup> Neither the Court's file nor electronic docket contains any reference to such a filing on November 30 or December 1, 2016.

~~with the Master's directives may result in appropriate sanctions, as such directives, issued under the authority of the Master pursuant to the Final Wind Up Plan, are designed to facilitate the efficient resolution of this matter and to avoid burdening both the parties and the Court with added costs associated with duplicative filings.~~


In light of the foregoing, it is hereby

ORDERED that Yusuf's Motion to Strike Hamed's Notice of Partnership Claims and Objections to Yusuf's Post-January 1, 2012 Accounting is DENIED, as moot. It is further

ORDERED that Yusuf's Motion to Strike Hamed's Notice of First Supplemental Claims is DENIED. It is further

ORDERED that Yusuf's Motion to Strike Hamed's Revised Notice of Partnership Claims and Objections to Yusuf's Post-January 1, 2012 Accounting and Notice of Supplementation of Record is DENIED.

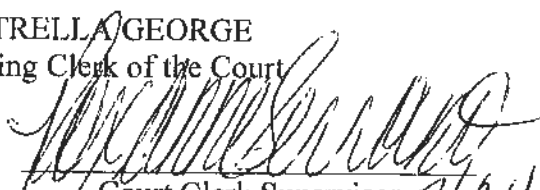
DATED: July 21, 2017.

  
DOUGLAS A. BRADY  
Judge of the Superior Court


ATTEST:

ESTRELLA GEORGE  
Acting Clerk of the Court

By:

  
Court Clerk Supervisor 7/24/17

CERTIFIED A TRUE COPY

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