

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

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

vs.

UNITED CORPORATION, *Defendant.*

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

vs.

FATHI YUSUF, *Defendant.*

FATHI YUSUF, *Plaintiff,*

vs.

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

HAMED'S OPPOSITION TO THE MOTION TO MODIFY THE DISCOVERY ORDER

I. Introduction

For the third time in as many months, Yusuf seeks to renegotiate specific terms of the Stipulated Discovery Order of January 29, 2018 (the "Discovery Plan" or "Plan"). He seeks to alter five terms that were bargained for during several days of negotiations, and were then committed to a written, stipulated agreement for joint submission to the Special Master

1. Gaffney acts expressly as a *fiduciary* to the entire Partnership—not as an employee of, or under the directions of Yusuf or DTF
2. Gaffney reports daily to Hamed's counsel.¹
3. In those daily emails to Hamed's counsel, Mr. Gaffney reports not only his hours, but what he is doing.
4. Any issues or disputes about this process go from Hamed's counsel to the Special Master, who then gives whatever direction is necessary to Mr. Gaffney—no mention of Mr. Gaffney's reporting to or taking direction from Yusuf or DTF.
5. No fee-splitting and *no arrangement to evade this and get Yusuf the funds by other means*—this is intended to pay Mr. Gaffney as an independent accountant.

Hamed opposes both (1) changes to negotiated terms in a written, signed stipulated document, and (2) proposed "clarifications" based solely on (more) "testimony" of Yusuf's counsel without affidavit or evidentiary support—as to what the parties 'intended' or 'meant to say' *when those negotiations were taking place*. In addition, this proposed alteration of agreed terms would result in delay, interference and endless motions to "clarify."

Thus, Hamed asks the Special Master to determine that the clear, plain language of the Plan says what it says, as follows:

First, in dealing with the 'Section A' claims, H-41 to H-141, the parties agreed in writing, after explicitly discussing and bargaining as to this point, that Mr. Gaffney is to act

¹ To avoid more disagreement and filings, Hamed stipulates that he will voluntarily supply copies of these reports to Yusuf's counsel *immediately* on receipt from Mr. Gaffney.

in a "fiduciary capacity" for the entire Partnership. As is shown below, this term was not in early drafts; and was explicitly bargained for and added later, through negotiations.

Second, Yusuf also agreed in writing that "Mr. Gaffney will submit dally emails to counsel for Hamed". As is shown below, this term was not in early drafts; and was explicitly bargained for and added.

Third, the reporting to Hamed's counsel is not just Mr. Gaffney's hours, but also "what was done" daily by him. As is shown below, this term was not in early drafts; and was explicitly bargained for and added through negotiations. Nothing was discussed, or is said in the Plan about reporting to or consulting with Yusuf or DTF in this process.²

Fourth, Yusuf also agreed in writing that if "counsel for Hamed disapproves the work" any concerns, glitches or disputes that did occur in the process would be directed by him to the Special Master. Again, as shown below, this was not in early drafts, and was explicitly added through negotiations.

Fifth, the parties also agreed in writing that the Master, NOT Yusuf and NOT DTF, would then provide Mr. Gaffney or Hamed's counsel any necessary direction. This simply cannot be amended to change wording or intent here, Yusuf and DTF cannot be allowed to get in the middle of the *defined process*, as this term was not in early drafts; and was **explicitly bargained for and added through negotiations**. Moreover, it is clear that DTF giving a person acting as a fiduciary (who is also a *non-client*) legal advice, which would be favorable to its client over the interests of the whole Partnership, would violate several ethical rules.

² But see footnote 1.

The timeline below will demonstrate that Hamed's counsel sought and obtained these five provisions in return for other agreements and concessions expressly because of the overriding, predominant fear *that he expressed to Yusuf's counsel*: If Hamed was going to pay 100% of the cost, he would not accept Yusuf and DTF in the middle of what was designed to be **a VERY simple accounting process dealing solely with Partnership entries and the supporting documents—this is not about anyone's positions**. As can be seen below, Hamed's counsel made it clear when the revisions were being done that Hamed would not proceed if DTF and Yusuf were covertly directing Mr. Gaffney's discovery responses or giving him "legal advice" regarding what should be a painfully direct accounting analysis: what do the books show about specific, identified entries, and what do the documents relating to those entries show or not show.

If the Special Master allows Defendants get into a position where they are "advising" Mr. Gaffney on what to say (considering the types of evasive discovery responses they have provided) and then file 2 or 3 dilatory "clarifying" motions as to every single response—this will never get done. That is neither an analysis nor a fiduciary's description of what the books and supporting documents show on their face. More to the point, THAT is NOT the process Hamed agreed to pay 100% for, what he specifically bargained for. The final language of the Plan below is the specific operative language for which Hamed negotiated, and which should be enforced:

A. Discovery as to Hamed Claims H-41 through H-141

. . . .the parties agree to the following discovery regarding any of the Claims H-41 to H-141. . . .

1. Mr. Gaffney will be paid by Hamed at the rate of \$150.00 per hour for the time he works, set forth in a contemporaneous kept timesheet for answering the items in this "Section A". **Mr. Gaffney will submit dally emails to counsel for Hamed informing them of the hours worked and what was done**. Unless **counsel for Hamed disapproves the work** by the

end of the following day, Mr. Gaffney will continue the work. **If it is disapproved, the Master will be consulted for a decision** before work resumes. . . .

2. For each of the Hamed Claims numbered H-41 through H-141, which survive the Motion, John Gaffney will provide a written response, **in his fiduciary capacity** as the Partnership Accountant. . . .

3. Mr. Gaffney's responses to interrogatories and document requests will be provided in the bi-weekly period in which they are completed and not in groups or all at once, by July 31, 2018.

* * * *

6. No part of these funds paid to Mr. Gaffney by Hamed will be paid by him or shared by him with Yusuf or United or any third person or entity.

But Yusuf now seeks to "clarify" (*i.e.* amend) the clear language that he specifically bargained for—as to these exact five points.. He seeks to do this by three mechanisms: (1) by his counsel once again "testifying in his motion" about the key facts, without affidavits or evidentiary support, (2) his counsel again testifying about matters that by both Rule and agreement were confidential and privileged communications seeking a settled, joint submission, and (3) by assuming Hamed will not violate the Rules and confidentiality to defend himself—that Hamed will not submit and discuss the actual negotiations and documents in the record to refute statements that are patently untrue if read against the actual timeline.

Therefore, Hamed is put into a difficult spot. To refute Yusuf's counsel's improper evidence-free "testimony" in the instant motion, Hamed would seemingly have to do exactly what Yusuf did—openly divulge negotiating positions, intents of the parties and the documents being exchanged. Hamed declines to do this. Doing this would mean that there will never be a viable negotiation or settlement discussion in this case due to the parties' view that they can always just 'get around' the Rules and confidentiality to use those exchanges in later motions.

Instead, Hamed has taken great pains to chronicle exactly what happened with reference to every 'bargained-for phrase' *that ultimately appears in the Plan as it exists today*, without disclosing such documents or communications. He has done this by referring *almost* solely to the final document in comparison to the original draft—and has redacted 95% of the rest of the communications, documents and ancillary information. (The negotiations, discussions and documents are noted by date and included as exhibits, but are redacted.) If the Court directs that these submitted in a non-redacted form, perhaps under seal in Reply (as Yusuf already has all of them as well), Hamed will do so, but believes future negotiations and settlements will suffer gravely.

By taking this careful approach, Hamed is able to demonstrate exactly how **Yusuf negotiated and then agreed to the addition of every single one of the five items for which he allegedly seeks "clarification" in his instant motion.**³ The timeline below also makes it apparent that this was a *much* discussed, debated and edited stipulation. The parties carefully bargained for each and every term that Yusuf now seeks to "clarify" quite carefully.

II. Facts - The Timeline of how and when these specific provisions were negotiated

On January 3, 2018, Hamed attorney Carl Hartmann ("Hartmann") sent an email to Yusuf attorney Gregory Hodges ("Hodges"), noting that a joint proposal for a discovery and scheduling had been ordered to be submitted within nine days—by January 12th—attaching the relevant portion of the transcript statements of the Special Master. **Exhibit 1.**

Greg: I reviewed the Transcript last night after the message from Alice Kuo. I noticed that we were supposed to meet and confer and submit a proposed joint discovery order by the 12th. As you have seen our proposal,

³ This is exactly how Yusuf previously attempted to have the Court "clarify" the Discovery Plan, by *adding many items for diversion to Mr. Gaffney in Schedule A*. He (again) seeks outright changes to agreed terms by again calling this a "clarification".

would you like to send me yours – and then you and I can have a phone call to work out any disagreements, or agree to disagree.... [Remainder Redacted]

Order:

MR. HODGES: That's true. Your Honor, I would suggest—and Attorney Holt and our office have, I believe, actually at least in one case, maybe more, agreed on a discovery schedule. And if we can't agree on it, I would say that we submit our proposed discovery schedules to you. And that's exactly what we did in another case. And the judge—I can't remember whether he mixed and matched or accepted one schedule over the other, but I think, you know, it makes better sense and better use of your time if we present you with something, either a stipulated discovery schedule or our competing discovery schedules so you can have something in writing to look at and decide for {Page 25} yourself.

SPECIAL MASTER: Can you do it by the 12th of January? MR. HODGES: I don't see why not.

MR. HOLT: Sounds fine, Your Honor.

SPECIAL MASTER: Okay. Either a joint stipulation or the parties' position on discovery and submit it by the 12th.

The next day, Attorney Hodges thanked opposing counsel for reminding him, and stated that he did not recall having received the Hamed proposal. **Exhibit 2**.

Carl, Thanks for bringing this issue up now. I do not recall seeing your proposed discovery schedule in a separate document. If you have already sent that document to us, will you please resend. If you have not already shared that document, it would be appreciated if you would create a proposed schedule that we can respond to with proposed redline edits.
Regards, Greg

Later that same day, Hartmann re-sent the proposal (**Exhibit 3**) by email. **Exhibit 4**.⁴ This began the negotiations designed to reach a stipulated agreement as to a Discovery Plan.

Greg: Thank you for your speedy response. Attached is our plan – in the form of a motion. Please redline the first section – and draft your own second. . . .(Or, if you desire, we can join them in a joint stipulated motion...

⁴ Because this exhibit was a communication between the parties negotiating a disputed stipulation, Hamed has redacted this.

Without disclosing any of the following documents or specific negotiations surrounding them after these talks began, by the attached declaration (**Exhibit 5**) Hamed's counsel affirms on his oath that the initial Hamed proposed draft did NOT include anything about (1) Mr. Gaffney being paid by Hamed to do accounting, (2) any reference to Mr. Gaffney acting in a "fiduciary capacity" for the entire Partnership, (3) any reference to Mr. Gaffney to Hamed's counsel daily, (4) Mr. Gaffney would email such reports as to *what he was doing*, or (5) that the Special Master would be person giving directions in the event of any disagreements between Hamed's counsel and Gaffney—rather than DTF or Yusuf. See Hartmann Declaration, **Exhibit 5** at ¶ 2.

On January 5, 2018, Attorney Hodges sent an email to Hartmann stating, in relevant part, that [REDACTED]

[REDACTED]. **Exhibit 6.**⁵ Attorney Hodges also attached a proposed Plan re-draft that reflected this position. **Exhibit 7.**⁶ Later that day, Hartmann responded that he would [REDACTED]

[REDACTED]. **Exhibit 8.**⁷ [REDACTED]

⁵ Because this exhibit was communication between the parties negotiating a disputed stipulation, Hamed has redacted this.

⁶ Because this exhibit was communication between the parties negotiating a disputed stipulation, Hamed has redacted this.

⁷ Because this exhibit was communication between the parties negotiating a disputed stipulation, Hamed has redacted this.

[REDACTED]

[REDACTED]

Therefore, on January 8, 2018, Hamed agreed that Hamed would pay Mr. Gaffney 100% of his hourly rate and all costs to do this work for the Partnership -- which language appears in the final Plan. See **Exhibit 9**⁸ enclosing the revised draft, **Exhibit 10**.⁹ But Hamed's counsel also affirms by declaration that this agreement to pay was accompanied by language to firm up the accounting process—sent to Attorney Hodges in the new, Hamed-proposed draft. **These terms began by assuring that (1) Mr. Gaffney would act solely as a "fiduciary" for "the Partnership,"** (2) the responses would be timely, and (3) there would be no 'kick-backs' to Yusuf. See Exhibit 5 at ¶ 3. It included the following language which is set forth here because it appears in the final version:

A. As to the 100 "Accounting" Issues H-41 through H-141

1. Mr. Gaffney will be paid by Hamed at the hourly rate of XXXX [*Redacted*] per hour for the time he works, set forth in a contemporaneous kept timesheet for answering the items in this "Section A".

2. For each of the Hamed Claims numbered H-41 through H-141, John Gaffney will provide a written response, **in his fiduciary capacity** as the Partnership Accountant, to the following. . .

* * * *

3. Each interrogatory and document response will be provided in a timely manner, and not in a bunch at the end—as completed.

* * * *

7. No part of these funds will be "kicked back" to Yusuf or United or any third person or entity. (Emphasis added.)

In addition, there was a footnoted drafting comment in which Hamed's counsel made it clear that these additions were specifically designed to insure [REDACTED]

⁸ Because this exhibit was communication between the parties negotiating a disputed stipulation, Hamed has redacted this.

⁹ Because this exhibit was communication between the parties negotiating a disputed stipulation, Hamed has redacted this.

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] Hamed's counsel also affirms by declaration that at this point in the negotiations there were no terms in the draft, yet, that Mr. Gaffney would report to Hamed's counsel, that he would report on what he "what he had done" substantively to Hamed's counsel, or that issues or disputes would be addressed by Hamed's counsel directly to the Master. See Exhibit 5 at ¶ 4.

On January 10, 2018—just two days before the filing was due under the Special Master's instructions—Attorney Hodges responded with a Plan re-draft (**Exhibit 11**¹⁰) that Hamed's counsel affirms by declaration did not change the provisions regarding Mr. Gaffney acting as a fiduciary, What was proposed (that is relevant here) was very limited communication and control between Hamed's counsel and Mr. Gaffney; merely a "monthly" submission of the bills, with discovery responses "in several installments." See Exhibit 5 at ¶ 5. Hamed's counsel affirms by declaration that this was unacceptable. If Mr. Gaffney was going to be paid 100% by Hamed, and was going to act solely as a "fiduciary" rather than as a shill for Yusuf/DTF, Hamed would require language that would create more definite reporting directly to Hamed's counsel—and that Mr. Gaffney's responses would be made on a much more controlled basis. Exhibit 5 at ¶ 6. See **Exhibits 12**¹¹ and **13**¹².

¹⁰ Because this exhibit was a communication between the parties negotiating a disputed stipulation, Hamed has redacted this.

¹¹ Because this exhibit was a communication between the parties negotiating a disputed stipulation, Hamed has redacted this.

¹² Because this exhibit was a communication between the parties negotiating a disputed stipulation, Hamed has redacted this.

As a result, on January 12th, the day the filing was due, Attorney Hodges sent a redline draft of the Plan. Exhibit 13. That re-draft was redlined directly on top of an earlier Hartmann draft of the Plan, and because of this, it can be seen who wrote what, and that Attorney Hodges expressly accepted the very language that he now seeks to modify:

1. Mr. Gaffney will be paid by Hamed at the hourly rate of \$150.00 per hour for the time he works, set forth in a contemporaneous kept timesheet for answering the items in this "Section A". Mr. Gaffney will submit daily emails to counsel for Hamed informing them of the hours worked and what was done. Unless counsel for Hamed approves the work by the end of the following day, Mr. Gaffney may cease any further work. Approved emails will then form the basis of weekly billings that bills to Hamed on a bi-monthly weekly basis, and they shall be paid within two weeks of receipt of same.

The only Yusuf changes in this paragraph (shown in bold type) were that the amount would be \$150.00 per hour which it is now, and that Gaffney would be paid by Hamed in two weeks—which was changed to "one month" in the final. Everything is there:

1. "daily emails"
2. "to counsel for Hamed"
3. "informing them of the hours worked and what was done."
4. "counsel for Hamed approves the work by the end of the following day".

In the end, there were only hours to go, but term in the final version that "Hamed's counsel reports to the Master" was still missing. In the final version, that too was added: (1) If there are any issues, Hamed's counsel goes to the Special Master for direction, NOT DTF or Yusuf, and (2) The Master then gives direction—not Yusuf or DTF. **Exhibit 12.**

Unless counsel for Hamed disapproves the work by the end of the following day, Mr. Gaffney will continue the work. If it is disapproved, the Master will be consulted for a decision before work resumes.

Thus, ALL FIVE points Yusuf now seeks to "clarify," were bargained for and added to meet specific demands.

III. Argument

NONE of the language as to the five critical points in Yusuf's instant motion was in the original draft. ALL of these points were terms that were explicitly added after extended, specific negotiations.

Moreover, it would be a unmitigated disaster to allow Yusuf/DTF to direct or give legal advice to Mr. Gaffney in this limited process—something Hamed expressly bargained to avoid—as this will create an endless progression of interference, incomprehensible discovery responses and 2-3 "clarifying" motions on each of the 101 claims. All of which is unnecessary as this is supposed to be a vanilla statement of **what the books and supporting documents show or do not show about specifically identified entries**. As RUPA law makes clear, if there is a Partnership accounting entry it can be reviewed as part of the winding up. In reviewing that specified, listed entry that was made, an accountant need only state (1) exactly what the books show, and (2) whether he can locate or not locate the supporting documents.

IV. Conclusion

Yusuf is attempting to change a document that he negotiated for, agreed to and signed—and then submitted to the Special Master. He is attempting to change the very five terms about which the parties negotiated.

There is no need to change the agreed language. To the extent that there was any real issue here, Hamed has stipulated that he will immediately provide copies of Mr. Gaffney's emails to Yusuf/DTF. Hamed does not suggest that he should direct or instruct Mr. Gaffney in going through list of claims provided, sorted by amount, nor will he do so. Hamed does not seek *ex parte* communication with the Special Master, nor will he have any. Nor does Hamed intend to direct Mr. Gaffney's employment or payment by United --

he merely seeks to assure that Yusuf cannot, by artifice or "arrangements" seek to recover any fees being paid to Mr. Gaffney: no tricks like a "reduction of this year's bonus" or a "reduction in this year's salary".¹³ These funds are going to Mr. Gaffney to make him want to do the extra work, not to give Yusuf an additional income stream.

Thus, the language of the Plan should remain unchanged and the motion denied.

Dated: May 4, 2018



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¹³ If Mr. Gaffney cannot complete the work in vacation, weekend or evening periods, and there is some "arrangement" for "time off" it should be disclosed and transparent to the Special Master and parties.

CERTIFICATE OF SERVICE

I hereby certify that on this 4th day of May, 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

To

Hamed's 5/4/18 Opposition
To Yusuf's Motion to Modify the
Discovery Plan

From: Carl Hartmann <carl@carlhartmann.com>
Sent: Wednesday, January 03, 2018 12:28 PM
To: 'Gregory Hodges' <Ghodges@dtflaw.com>
Cc: 'Kim Japinga' <kim@japinga.com>
Subject: Request for Plan and M&C

Greg:

I reviewed the Transcript last night after the message from Alice Kuo. I noticed that we were supposed to meet and confer and submit a proposed joint discovery order by the 12th. As you have seen our proposal, would you like to send me yours – and then you and I can have a phone call to work out any disagreements, or agree to disagree. When formulating yours, keep in mind that Joel did agree to stipulate to Mr. Gaffney getting paid for interrogatory/depo time he spends. We are willing to discuss how that happens if it will alleviate your desire to strike the 125 'accounting' claims – as we cannot imagine how to deal with them other than by brief discovery and opposing motions. My cell is (340) 642-4422 if you want to discuss.

Carl

Order:

MR. HODGES: That's true. Your Honor, I would suggest -- and Attorney Holt and our office have, I believe, actually at least in one case, maybe more, agreed on a discovery schedule. And if we can't agree on it, I would say that we submit our proposed discovery schedules to you. And that's exactly what we did in another case. And the judge -- I can't remember whether he mixed and matched or accepted one schedule over the other, but I think, you know, it makes better sense and better use of your time if we present you with something, either a stipulated discovery schedule or our competing discovery schedules so you can have something in writing to look at and decide for

Page 25

yourself.

SPECIAL MASTER: Can you do it by the 12th of January?

MR. HODGES: I don't see why not.

MR. HOLT: Sounds fine, Your Honor.

SPECIAL MASTER: Okay. Either a joint stipulation or the parties' position on discovery and submit it by the 12th.

MR. HOLT: Okay.

Ex 1

Exhibit 2

To

Hamed's 5/4/18 Opposition
To Yusuf's Motion to Modify the
Discovery Plan

From: Gregory Hodges <Ghodges@dtflaw.com>
Sent: Wednesday, January 03, 2018 12:44 PM
To: 'Carl@hartmann.attorney' <Carl@hartmann.attorney>
Cc: Kim Japinga <kim@japinga.com>
Subject: RE: Request for Plan and M&C

Carl,
Thanks for bringing this issue up now. I do not recall seeing your proposed discovery schedule in a separate document. If you have already sent that document to us, will you please resend. If you have not already shared that document, it would be appreciated if you would create a proposed schedule that we can respond to with proposed redline edits.
Regards,
Greg

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Ex 2

Exhibit 3

To

Hamed's 5/4/18 Opposition
To Yusuf's Motion to Modify the
Discovery Plan

**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

**HAMED'S MOTION TO THE SPECIAL MASTER
FOR A DISCOVERY SCHEDULE**

The Special Master ordered the parties to re-submit claims that accrued after September 17, 2006, which both parties filed on October 30, 2017. A hearing was held on December 15, 2017, during which the Special Master ordered that the parties meet and confer on a Discovery Schedule -- and that failing consensus, they submit their own

Ex 3

proposals. The parties have been unable to reach consensus as to all points, but have agreed to some points. Thus, Hamed presents the agreed on points and then requests the Plan set forth below, as it was proposed in large part in its motion for a hearing of November 16, 2017.

A. Points on which the parties agree

1. The parties agree that Mr. Gaffney will be paid for time, as submitted to the Court and approved for answering interrogatories and providing deposition testimony.

2. He will be paid \$100.00 per hour, providing that he will certify on receipt that no amount of those funds are being given to any third person or entity.

3. He will be paid as follows: 100% to be paid from Partnership funds. [NOTE: we will negotiate on who pays if you will let him just answer the questions.]

4. For ease of reference, Hamed's re-submitted claims are numbered H-1 to H-175. Yusuf's re-submitted claims are numbered Y-1 to Y-14 as shown on the attached

Exhibit A. [Note: We will move these to the section below if you do not agree.]

B. Hamed's Plan as to 125 Accounting Claims

1. Discovery for Claims Related to Accounting Entries

- 1-2 Interrogatories per unclear or questionable accounting entry (similar to the specific, very short, very detailed requests sent to John Gaffney previously)
- Document requests for the underlying documents substantiating payment of Partnership debts
- Limited subpoenas for the few instances where the Partnership does not have the underlying documents
- Following receipt of documents and interrogatory responses, a 5-10 minute deposition per remaining unclear or questionable accounting entry

2. Discovery Process for all Other (Non-Accounting Entries) Hamed and Yusuf Claims that have not already been briefed by January 12, 2018.

- The traditional discovery process should be allowed (document requests, interrogatories and depositions), with the Special Master setting forth any needed limits. If the parties require more than 25 interrogatories for these items, they will request the from the Special Master.
- While that process is on-going, once discovery on an issue is completed or within 30 days of the end of all such discovery, the moving side will submit a five-page memo (exclusive of captions and signatures), with any relevant exhibits attached -- as to each of its claims. **Claims may be grouped together for ease and reduction of paperwork.** Each side will be allowed a five-page opposition and a two-page reply.

After the discovery and briefings are completed for each claim, these remaining claims will be ready for a hearing and the Master's decision.

Thus, for the reasons set forth herein, it is requested that this Court enter an order with this schedule to begin February 1, 2017 -- after the already scheduled briefs and responses have been received. The parties believe that this can be accomplished in 3 months.

Dated: January 3, 2018

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CERTIFICATE OF SERVICE

I hereby certify that on this 3rd day of January, 2017, I served a copy of the foregoing by email (via Case Anywhere ECF) as well as regular email, as agreed by the parties, on:

Hon. Edgar Ross

Special Master

% edgarrossjudge@hotmail.com

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Exhibit 4

To

Hamed's 5/4/18 Opposition
To Yusuf's Motion to Modify the
Discovery Plan

From: Carl Hartmann <carl@carlhartmann.com>
Sent: Wednesday, January 03, 2018 1:15 PM
To: 'Gregory Hodges' <Ghodes@dtflaw.com>
Cc: 'Joel Holt' <holtvi@aol.com>; 'Kim Japinga' <kim@japinga.com>
Subject: [REDACTED]

Greg:

Thank you for your speedy response. Attached is our plan – in the form of a motion.

Please redline the first section – and draft your own second. I will represent exactly what we agree in that first section in my motion, and I will expect you to do so as well. (Or, if you desire, we can join them in a joint stipulated motion setting out the agreed items first and the both below – your call.)

[REDACTED]

Carl

Ex 4

Exhibit 5

To

Hamed's 5/4/18 Opposition
To Yusuf's Motion to Modify the
Discovery Plan

**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

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

vs.

UNITED CORPORATION, *Defendant.*

Case No.: SX-2014-CV-287

Consolidated with

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

vs.

FATHI YUSUF, *Defendant.*

Case No.: SX-2014-CV-278

Consolidated with

FATHI YUSUF, *Plaintiff,*

vs.

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

Case No.: ST-17-CV-384

**DECLARATION OF CARL J. HARTMANN IN SUPPORT OF
HAMED'S OPPOSITION TO THE MOTION TO AMEND THE DISCOVERY ORDER**

I declare, on my oath and under penalty of perjury, the following to be true:

1. I am an attorney admitted to the practice of law in the U.S. Virgin Islands (admitted *pro hac vice* 1987, fully admitted April 7, 1991, Bar No. 48). I have direct, first-hand knowledge as to each of the averments I make herein. Each such averment is truthful.

2. I sent the initial Hamed proposed draft of the Discovery Plan to Attorney Hodges and it did not include anything about (1) Mr. Gaffney being paid by Hamed to do accounting, (2) any reference to Mr. Gaffney acting in a "fiduciary capacity" for the entire Partnership, (3) any reference to Mr. Gaffney reporting substantively to Hamed's counsel daily, or (4) that the Special Master would be person giving directions in the event of any disagreements between Hamed's counsel and Gaffney—rather than DTF or Yusuf.

3. On January 8, 2018, I sent an email to Attorney Hodges in which Hamed agreed that: [Redacted]

But, this was accompanied by language in the new, January 7th Hamed proposal that required that Gaffney would act as a "fiduciary" to the Partnership.

4. At this point in the negotiations there were no explicit provisions that Mr. Gaffney would report to Hamed's counsel or that he would not only report hours, but also what he was doing.

5. Attorney Hodges responded with a re-draft that did not change the provision on Mr. Gaffney acting as a fiduciary. What was proposed as to this area was merely a "reporting provision" as to "monthly" submission of the bills, with discovery responses "in several installments."

6. This was totally unacceptable to Hamed. If Mr. Gaffney was going to be paid 100% by Hamed, and was going to act solely as a "fiduciary", Hamed insisted on more

definite reporting directly to Hamed's counsel—and that Mr. Gaffney's responses be made on a much more controlled basis. Thus, in my response of January 9th (Exhibit 9 to the motion), I emphasized that this process did not need to be complicated, stating: "this is nothing more than a simple accounting examination of an accountant who made course-of-business entries."

Dated: May 4, 2018

A handwritten signature in blue ink, appearing to read "Carl J. Hamed", with a long horizontal flourish extending to the right.

Exhibit 6

To

Hamed's 5/4/18 Opposition
To Yusuf's Motion to Modify the
Discovery Plan

From: Gregory Hodges <Ghodges@dtflaw.com>
Sent: Friday, January 05, 2018 4:30 PM
To: 'Carl@hartmann.attorney' <Carl@hartmann.attorney>
Cc: Joel Holt <holtvi@aol.com>; Kim Japinga <kim@japinga.com>; Stefan Herpel <sherpel@dtflaw.com>; Charlotte Perrell <Cperrell@dtflaw.com>
Subject: RE: Request for Plan and M&C

Carl,

[REDACTED]

[REDACTED]

Gregory H. Hodges
Dudley, Topper and Feuerzeig, LLP
Law House, 1000 Frederiksberg Gade
St. Thomas, VI 00802
Direct: (340) 715-4405
Fax: (340) 715-4400
Web: www.DTFLaw.com

Ex 6

Exhibit 7

To

Hamed's 5/4/18 Opposition
To Yusuf's Motion to Modify the
Discovery Plan

**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, |) | CIVIL NO. SX-12-CV-370 |
| v. |) | |
| |) | |
| FATHI YUSUF and UNITED CORPORATION, |) | ACTION FOR INJUNCTIVE |
| |) | RELIEF, DECLARATORY |
| |) | JUDGMENT, AND |
| Defendants/Counterclaimants, |) | PARTNERSHIP DISSOLUTION, |
| v. |) | WIND UP, AND ACCOUNTING |
| |) | |
| WALEED HAMED, WAHEED HAMED, |) | |
| MUFEED HAMED, HISHAM HAMED, and |) | |
| PLESSEN ENTERPRISES, INC., |) | |
| |) | |
| <hr/> Additional Counterclaim Defendants. |) | Consolidated With |
| |) | |
| WALEED HAMED, as Executor of the |) | |
| Estate of MOHAMMAD HAMED, |) | |
| |) | |
| Plaintiff, |) | CIVIL NO. SX-14-CV-287 |
| v. |) | |
| |) | |
| UNITED CORPORATION, |) | ACTION FOR DAMAGES AND |
| |) | DECLARATORY JUDGMENT |
| |) | |
| <hr/> Defendant. |) | |
| |) | |
| WALEED HAMED, as Executor of the |) | |
| Estate of MOHAMMAD HAMED, |) | |
| |) | |
| Plaintiff, |) | CIVIL NO. SX-14-CV-278 |
| v. |) | |
| |) | |
| FATHI YUSUF, |) | ACTION FOR DEBT AND |
| |) | CONVERSION |
| |) | |
| <hr/> Defendant. |) | |

JOINT DISCOVERY AND SCHEDULING PLAN

THE PARTIES to the above-captioned civil action, in accordance with Virgin Islands Rules of Civil Procedure 16 and 26, and the instructions of the Honorable Edgar D. Ross (the “Master”) at a scheduling conference on December 15, 2017 agree and stipulate to the following discovery and scheduling plan for incorporation into a Case Management Order.

Ex 7

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

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[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

10. The parties shall jointly contact the Master to attempt an informal resolution of any [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

Respectfully submitted,

LAW OFFICES OF JOEL H. HOLT

DATED: January _____, 2018

By: _____

Joel H. Holt
2132 Company Street
Christiansted, VI 00820
Telephone: (340) 773-8709
Facsimile: (340) 773-8677
Email: holtvi.plaza@gmail.com

Attorneys for Plaintiff/Counterclaim Defendant

DUDLEY, TOPPER AND FEUERZEIG, LLP

DATED: January _____, 2018

By: _____

Gregory H. Hodges (V.I. Bar No. 174)
Dudley, Topper and Feuerzeig, LLP
1000 Frederiksberg Gade
P.O. Box 756
St. Thomas, VI 00804
Telephone: (340) 715-4405
Facsimile: (340) 715-4400
Email: ghodges@dtflaw.com

Attorneys for Defendants/Counterclaimants

The foregoing Joint Discovery and Scheduling Plan is **APPROVED** and is made the Case Management Order in this case.

Dated: January _____, 2018

Hon. Edgar D. Ross
Master

CERTIFICATE OF SERVICE

It is hereby certified that on this 5th day of January, 2018, I served a true and correct copy of the foregoing **Joint Discovery and Scheduling Plan**, which complies with the page and word limitations set forth in Rule 6-1(e), via e-mail addressed to:

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

Mark W. Eckard, Esq.
ECKARD, P.C.
P.O. Box 24849
Christiansted, St. Croix
U.S. Virgin Islands 00824
E-Mail: 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

Exhibit 8

To

Hamed's 5/4/18 Opposition
To Yusuf's Motion to Modify the
Discovery Plan

From: Carl Hartmann <carl@carlhartmann.com>
Sent: Friday, January 05, 2018 6:40 PM
To: 'Gregory Hodges' <Ghodges@dtflaw.com>
Cc: 'Joel Holt' <holtvi@aol.com>; 'Kim Japinga' <kim@japinga.com>; 'Stefan Herpel' <sherpel@dtflaw.com>; 'Charlotte Perrell' <Cperrell@dtflaw.com>
Subject: [REDACTED]

Greg:

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

Carl

Ex 8

Exhibit 9

To

Hamed's 5/4/18 Opposition
To Yusuf's Motion to Modify the
Discovery Plan

From: Carl Hartmann <carl@carlhartmann.com>
Sent: Monday, January 08, 2018 10:55 AM
To: 'Gregory Hodges' <Ghodes@dtflaw.com>
Cc: 'Joel Holt' <holtvi@aol.com>; 'kim@japinga.com' <kim@japinga.com>
Subject: [REDACTED]

Greg:

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

Carl Hartmann

Ex 9

Exhibit 10

To

Hamed's 5/4/18 Opposition
To Yusuf's Motion to Modify the
Discovery Plan

[REDACTED]

[REDACTED]

[REDACTED]

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[REDACTED]

█ [REDACTED]

[REDACTED]

Respectfully submitted,

LAW OFFICES OF JOEL H. HOLT

DATED: January _____, 2018

By: _____

Joel H. Holt
2132 Company Street
Christiansted, VI 00820
Telephone: (340) 773-8709
Facsimile: (340) 773-8677
Email: holtvi.plaza@gmail.com

Attorneys for Plaintiff/Counterclaim Defendant

DUDLEY, TOPPER AND FEUERZEIG, LLP

DATED: January _____, 2018

By: _____

Gregory H. Hodges (V.I. Bar No. 174)
Dudley, Topper and Feuerzeig, LLP
1000 Frederiksberg Gade
P.O. Box 756
St. Thomas, VI 00804
Telephone: (340) 715-4405

Facsimile: (340) 715-4400
Email: ghodges@dtflaw.com

Attorneys for Defendants/Counterclaimants

The foregoing Joint Discovery and Scheduling Plan is **APPROVED** and is made the Case Management Order in this case.

Dated: January _____, 2018

Hon. Edgar D. Ross
Master

CERTIFICATE OF SERVICE

It is hereby certified that on this 5th day of January, 2018, I served a true and correct copy of the foregoing **Joint Discovery and Scheduling Plan**, which complies with the page and word limitations set forth in Rule 6-1(e), via e-mail addressed to:

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

Mark W. Eckard, Esq.
ECKARD, P.C.
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U.S. Virgin Islands 00824
E-Mail: mark@markeckard.com

Jeffrey B.C. Moorhead, Esq.
JEFFREY B.C. MOORHEAD, P.C.
C.R.T. Brow Building – Suite 3
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U.S. Virgin Islands 00820
E-Mail: jeffreylaw@yahoo.com

Exhibit 11

To

Hamed's 5/4/18 Opposition
To Yusuf's Motion to Modify the
Discovery Plan

[Redacted]

[Redacted]

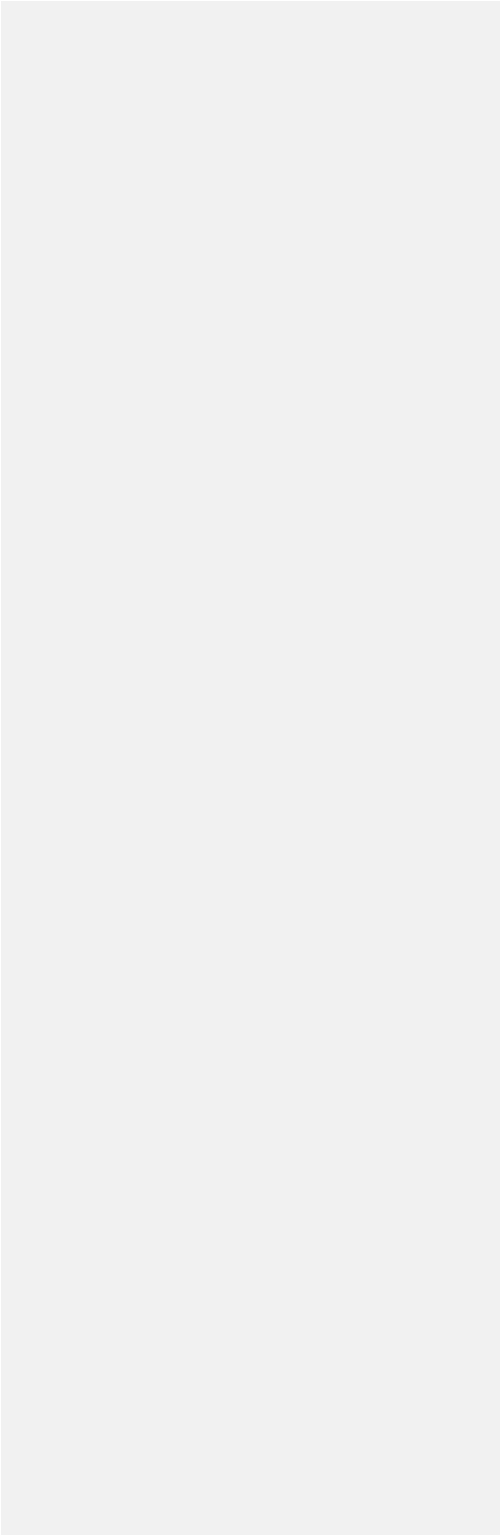
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Hamed v. Yusuf, et al.
Civil No. SX-12-cv-370

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[REDACTED]

Respectfully submitted,

LAW OFFICES OF JOEL H. HOLT

DATED: January ____, 2018

By: _____

Joel H. Holt
2132 Company Street
Christiansted, VI 00820
Telephone: (340) 773-8709
Facsimile: (340) 773-8677
Email: holtvi.plaza@gmail.com

Attorneys for Plaintiff/Counterclaim Defendant

DUDLEY, TOPPER AND FEUERZEIG, LLP

DATED: January ____, 2018

By: _____

Gregory H. Hodges (V.I. Bar No. 174)
Dudley, Topper and Feuerzeig, LLP

Hamed v. Yusuf, et al.
Civil No. SX-12-cv-370
Page 6

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P.O. Box 756
St. Thomas, VI 00804
Telephone: (340) 715-4405
Facsimile: (340) 715-4400
Email: ghodges@dtflaw.com

Attorneys for Defendants/Counterclaimants

The foregoing Joint Discovery and Scheduling Plan is **APPROVED** and is made the Case Management Order in this case.

Dated: January _____, 2018

Hon. Edgar D. Ross
Master

CERTIFICATE OF SERVICE

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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

Mark W. Eckard, Esq.
ECKARD, P.C.
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U.S. Virgin Islands 00824
E-Mail: mark@markeckard.com

Jeffrey B.C. Moorhead, Esq.
JEFFREY B.C. MOORHEAD, P.C.
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E-Mail: jeffreymlaw@yahoo.com

Exhibit 12

To

Hamed's 5/4/18 Opposition
To Yusuf's Motion to Modify the
Discovery Plan

[REDACTED]

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Respectfully submitted,

LAW OFFICES OF JOEL H. HOLT

DATED: January _____, 2018 By: _____

Joel H. Holt
2132 Company Street
Christiansted, VI 00820
Telephone: (340) 773-8709
Facsimile: (340) 773-8677
Email: holtvi.plaza@gmail.com

Attorneys for Plaintiff/Counterclaim Defendant

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DUDLEY, TOPPER AND FEUERZEIG, LLP

DATED: January _____, 2018 By: _____

Gregory H. Hodges (V.I. Bar No. 174)
Dudley, Topper and Feuerzeig, LLP
1000 Frederiksberg Gade
P.O. Box 756
St. Thomas, VI 00804
Telephone: (340) 715-4405
Facsimile: (340) 715-4400
Email: ghodges@dtflaw.com

Attorneys for Defendants/Counterclaimants

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The foregoing Joint Discovery and Scheduling Plan is **APPROVED** and is made the Case Management Order in this case.

Dated: January _____, 2018 _____

Hon. Edgar D. Ross
Master

CERTIFICATE OF SERVICE

It is hereby certified that on this 5th day of January, 2018, I served a true and correct copy of the foregoing **Joint Discovery and Scheduling Plan**, which complies with the page and word limitations set forth in Rule 6-1(e), via e-mail addressed to:

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

Mark W. Eckard, Esq.
ECKARD, P.C.
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U.S. Virgin Islands 00824
E-Mail: mark@markeckard.com

Jeffrey B.C. Moorhead, Esq.
JEFFREY B.C. MOORHEAD, P.C.
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Christiansted, St. Croix
U.S. Virgin Islands 00820
E-Mail: jeffreymlaw@yahoo.com

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Exhibit 13

To

Hamed's 5/4/18 Opposition
To Yusuf's Motion to Modify the
Discovery Plan

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

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| | | |
|--|---|--------------------------|
| WALEED HAMED, as Executor of the Estate of MOHAMMAD HAMED, |) | |
| |) | |
| Plaintiff/Counterclaim Defendant, |) | CIVIL NO. SX-12-CV-370 |
| v. |) | |
| FATHI YUSUF and UNITED CORPORATION, |) | ACTION FOR INJUNCTIVE |
| |) | RELIEF, DECLARATORY |
| Defendants/Counterclaimants, |) | JUDGMENT, AND |
| v. |) | PARTNERSHIP DISSOLUTION, |
| |) | WIND UP, AND ACCOUNTING |
| WALEED HAMED, WAHEED HAMED, MUFEED HAMED, HISHAM HAMED, and PLESSEN ENTERPRISES, INC., |) | |
| |) | |
| Additional Counterclaim Defendants. |) | Consolidated With |
| WALEED HAMED, as Executor of the Estate of MOHAMMAD HAMED, |) | |
| |) | CIVIL NO. SX-14-CV-287 |
| Plaintiff, |) | |
| v. |) | ACTION FOR DAMAGES AND |
| UNITED CORPORATION, |) | DECLARATORY JUDGMENT |
| |) | |
| Defendant. |) | |
| WALEED HAMED, as Executor of the Estate of MOHAMMAD HAMED, |) | |
| |) | CIVIL NO. SX-14-CV-278 |
| Plaintiff, |) | |
| v. |) | ACTION FOR DEBT AND |
| FATHI YUSUF, |) | CONVERSION |
| |) | |
| Defendant. |) | |

JOINT DISCOVERY AND SCHEDULING PLAN

THE PARTIES to the above-captioned civil action, in accordance with Virgin Islands Rules of Civil Procedure ~~16 and 26~~, and the instructions of the Honorable Edgar

[REDACTED]

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~~18~~19. All motions in limine and V.I. Rule of Evidence 104 motions shall be filed

[REDACTED]
[REDACTED]
[REDACTED]

Respectfully submitted,

LAW OFFICES OF JOEL H. HOLT

DATED: January _____, 2018 By: _____
Joel H. Holt
2132 Company Street
Christiansted, VI 00820
Telephone: (340) 773-8709
Facsimile: (340) 773-8677
Email: holtvi.plaza@gmail.com

Attorneys for Plaintiff/Counterclaim Defendant

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DUDLEY, TOPPER AND FEUERZEIG, LLP

DATED: January _____, 2018 By: _____
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The foregoing Joint Discovery and Scheduling Plan is **APPROVED** and is made the Case Management Order in this case.

Dated: January _____, 2018 _____

Hon. Edgar D. Ross
Master

CERTIFICATE OF SERVICE

It is hereby certified that on this 5th day of January, 2018, I served a true and correct copy of the foregoing **Joint Discovery and Scheduling Plan**, which complies with the page and word limitations set forth in Rule 6-1(e), via e-mail addressed to:

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