**IN THE SUPERIOR COURT OF THE VIRGIN ISLANDS**

**DIVISION OF ST. CROIX**

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| **WALEED HAMED**,as the Executor of the Estate of MOHAMMAD HAMED, | **Case No.: SX-2012-CV-370** |
| *Plaintiff/Counterclaim Defendant*, |  |
|  vs.**FATHI YUSUF** and **UNITED CORPORATION** | **ACTION FOR DAMAGES, INJUNCTIVE RELIEF AND DECLARATORY RELIEF** |
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| *Defendants and Counterclaimants*. vs. **WALEED HAMED, WAHEED** **HAMED, MUFEED HAMED, HISHAM HAMED,** **and PLESSEN ENTERPRISES, INC.**,  *Counterclaim Defendants*, | JURY TRIAL DEMANDED |
|  | Consolidated with |
| **WALEED HAMED**,as the Executor of the Estate of MOHAMMAD HAMED, *Plaintiff,* vs.  | **Case No.: SX-2014-CV-287** |
| **UNITED CORPORATION,** *Defendant.* |  |
| *­­­­­­*­­**WALEED HAMED**,as the Executor of the Estate of MOHAMMAD HAMED, *Plaintiff*  vs.  **FATHI YUSUF**, *Defendant.* | Consolidated with**Case No.: SX-2014-CV-278** |
| *­­­­­­*­­**FATHI YUSUF**, *Plaintiff*, vs. **MOHAMMAD A. HAMED TRUST***, et al,* *Defendants.* | Consolidated with**Case No.: ST-17-CV-384** |
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**HAMED'S MOTION AS TO HAMED CLAIM H-17:**

**THE UNREIMBURSED FEE PAYMENT OF $332,900.42 BY HAMED --**

**MADE PURSUANT TO THE CRIMINAL CASE JOINT DEFENSE AGREEMENT**

**I. Introduction**

 Hamed has raised as one of his claims, designated as H-17, $332,900.42 of fees paid by Waleed Hamed pursuant to the *Joint Defense Agreement* ("JDA") in *USA v United Corp., et. al.,* V.I. D. Ct. 2005-CR-015 (the "Criminal Action"), but not reimbursed by the Partnership—although Yusuf reimbursed all of his own pre-September 25, 2014 professional fees to himself. There can be no dispute that: (1) **a Court has explicitly held** that Hamed *did* pay the amount at issue here in these specific checks as fees under the JDA in that case, (2) that he did pay those fees *prior* to the September 25, 2014, end of the *JDA*, (3) that a CPA review has shown that the Partnership—at the direction of Fathi Yusuf—has not reimbursed the amount, or (4) this motion is timely filed.[[1]](#footnote-1)

 Hamed submits only two items of proof: (1) an April 17, 2014 Order issued in the *Criminal Action* by United States Magistrate Judge Geoffrey Barnard (after soliciting evidence) finding that ***these***, specific "subject invoices were reviewed *in camera* and the **work performed by counsel and the accountants" was explicitly found to be** "**in furtherance of the object of the Joint Defense Agreement[**[[2]](#footnote-2)**]**....**Accordingly, the sum of $332,900.42 is directed to be released...for distribution to counsel and experts in the sums approved pursuant to the Joint Defense Agreement."** (Emphasis added.) **Exhibit 1,** Judge Barnard's *Opinion*, with the subject checks added, and (2) an email sent to counsel for Yusuf today, containing a relevant stipulation *by Hamed*.

**II. Facts**

 On May 8, 2018, the Special Master held that fees paid by Defendants prior to the end of the Joint Defense Agreement in *United States of America v United Corp., et. al.*, V.I. D.Ct. 2005-CR-015 on September 25, 2014, are *per se[[3]](#footnote-3)* valid Partnership expenses. Thus, Hamed’s concession of May 11, 2018 (**Exhibit 2**) that:

To simplify the following discussion, Hamed stipulates, without pre-condition or negotiation, that he will not pursue DiRuzzo’s or his firm’s (“DiRuzzo’s”) billings for any period prior to the end date of the Joint Defense Agreement – despite the fact that they were, on the face of the document, not participants in that agreement.

 On March 11, 2018, Hamed sent the following request to Yusuf based on that holding:

Thus, we would ask that your client stipulate to owing the amount shown in the claims documents regarding Claim H-17:

H-17 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. **$332,900.42**

There is no dispute this amount was paid, that it was not reimbursed, and more to the point, that all work was prior to the end of the Joint Defense Agreement.  If you will not concede this point, please let me know if you feel any additional discovery is necessary before Hamed files a bald motion on this with only those three assertions and the documentary support for them.

Thereafter, Hamed provided Yusuf's counsel with a full draft of this motion with a copy of Judge Barnard's order and the described checks—as well as a request:

Greg & Charlotte:

 I really hope that you decide to concede this claim based on this.  However, attached is the draft motion we intend to file by the end of the day today unless you provide some basis for believing that you need additional discovery.

 Frankly, I cannot imagine what discovery would be appropriate – but you have your chance to speak up. . . .

 I believe your analysis will be faster if you read the (short) exhibit first.

Carl

Ps. I apologize for the need to do this quickly, but as we have to conclude the discovery on H-3 and this is directly applicable, we only have until June 1st to act.

 Attached to the Hamed's *Revised Claim* H-17, filed October 17, 2017, (Exhibit 3) is the description of what was then claim 265. with supporting documents, now Claim H-17.[[4]](#footnote-4)

Waleed Hamed paid from his personal Banco Popular account the criminal attorneys' fees in United States of America v United Corp., et. al., VI D.Ct. 2005-cr-015. The accountant and attomeys' fees were incurred when all of the defendants were represented under the joint defense agreement. That joint defense agreement provided for the payment of attorneys' fees by the United Corporation, which subsequently was recognized as the Partnership (Exhibit 265-a).

*Work performed:*

 We interviewed Waleed Hamed regarding his payments of the criminal attorneys' fees which benefited the Partnership. Waleed advised he made these payments and was never reimbursed. We also provided John Gaffney a query dated February 15,2016 (see Attachment VII) asking whether these fees were reimbursed. Finally, we were provided a copy of the canceled checks for the payment (Exhibit 265-b).

 We reviewed the general ledgers from 2012 to present provided by John Gaffney for any reimbursements to Waleed for these payments or payments made by the Partnership directly to Waleed Hamed for the same period. None were found. **We also reviewed the April 17, 2014 Order by United States Magistrate Judge Geoffrey Barnard finding that "the subject invoices were reviewed in camera and the work performed by counsel and the accountants was in furtherance of the object of the Joint Defense Agreement. . . . Accordingly, the sum of $332,900.42 is directed to be released . . . for distribution to counsel and experts in the sums approved pursuant to the Joint Defense Agreement."**

*Gaffney's response*

 John Gaffney did not respond to our request.

*Opinion as to the laws identified.*

 The work performed and documentation provided was sufficient and reliable audit evidence to conclude that the payment made by Waleed served a business purpose relating to the Partnership, as it dealt with the payment of legal and accounting fees in the criminal case against the Partnership (VI D. Ct, 2005-cr-015). As such, we concluded the payment should be reimbursed to the Hameds to satisfy ourselves of management's assertions: l. Completeness as described in AU-C 315.4128. The total amount of the claim is $332,900.42. (Emphasis added.)

Attached hereto (Exhibit 1) are the documents in those Exhibits—265a (the Order) and 265b (the checks), repeatedly supplied to Yusuf and his counsel.

**III. Applicable Law**

 The Special Master has stated that payments under the Joint Defense Agreement are valid Partnership expenses. That is the law of the case. Also, Judge Barnard ordered that the specific amounts in these checks are due as proper amounts under the JDA.

**IV. Argument**

 There is no basis for Fathi Yusuf refusing to pay this claim—moreover his refusal violates both Judge Brady's April 25th, 2013 Memorandum and Order placing the funds into joint hands, and Judge Barnard's Order.

**V. Conclusion**

 There is no valid basis for refusal to pay this claim—nor has there ever been. The amount of $332,900.42 (plus 9% interest from the date of Judge Barnard's Order) must be paid to Hamed.

**Dated:** May 9, 2018 A

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**CERTIFICATE OF SERVICE**

 I hereby certify that on this 9th 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

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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).

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1. First, the stipulated *Joint Discovery Plan* of January 29, 2018, states that a party may file any of his claims motions "at *any* time, without regard for the discovery schedule, and [they] need not be held until the end of this process." Second, as the Special Master noted in his Order dated May 8, 2018, at page 7, footnote 7:

On December 13, 2017, Yusuf and United filed a bench memo for status conference, wherein they submitted that “items 2, 3, 5, ***10 [the instant claim]***, and 12 listed on page 1 of the Master’s December 4, 2017 Order should be removed from that list because further discovery is required for each of the matters described in those items.” (Yusuf’s Bench Memo for Status Conference, dated December 13, 2017) In his response thereto, Hamed **stated that it is fine to proceed with discovery on the aforementioned items.** (Hamed’s Response to Yusuf’s Bench Memo, dated December 14, 2017). (Emphasis added.}

The H-17 claim is a Hamed claim. It is covered by "Section B" of the Plan. As such, it has *not* been subject to any delays while the Special Master has had to address Yusuf's many "Section A" *issues*. Thus, he has had *months* to take depositions of the counsel who did the H-17 claim work, although Judge Barnard took evidence *and decided the sole factual issue in an order that is res judicata on Fathi Yusuf and United*, as they were parties there as well. Third, Yusuf has served all of his extensive written discovery requests as to all claims other than H-41 to H-141 and H-3 now. To further ease time concerns, as Hamed will supply his even more extensive written responses to all of Yusuf/United's written discovery on May 15, 2018—by agreement of the parties—**he hereby agrees to additional time** for Yusuf to review those responses, to May 29, 2018, for Yusuf's opposition hereto.

 Fourth, Hamed could argue that non-payment is actually more in the nature of contempt, than non-reimbursement; though he will avoid doing so to avoid further complicating matters. [↑](#footnote-ref-1)
2. There was no successful reconsideration or appeal by Yusuf/United of that Order within the time allowed by that court's rules. [↑](#footnote-ref-2)
3. I.e., payment of fees that are both, by order of the Special Master and under the prior order of Judge Barnard, due and owing *without further discussion, discovery or dispute*—just as Attorney DiRuzzo's pre-September 25, 2014 fees are. [↑](#footnote-ref-3)
4. See *Exhibit B-2 thereto*, Expert Report of Jackson, Vizcaino Zomerfeld, LLP, Certified Public Accountants. [↑](#footnote-ref-4)