

**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

**PLAINTIFF/COUNTERCLAIM DEFENDANT WALEED HAMED'S
RESPONSES TO FATHI YUSUF'S INTERROGATORIES 1-33 [sic] TO HAMED**

Objection to all of the following:

This "claims" discovery is limited by the order of the Court to the *Revised Claims* submitted by the parties pursuant to the direction of the Special Master. All discovery must, therefore, relate to or be calculated to lead to discoverable evidence as to one of the claims set forth. Yusuf does not identify the Claims to which his inquiries relate -- and most do not relate to any of the remaining *Revised Claims*. (In Hamed's discovery each item is referenced to the specific claim.)

ROG 1. Please identify any and all assets including bank accounts (indicating account number and name of bank), brokerage accounts, real estate, interests in business ventures and other financial interests, foreign and domestic, owned by each of the following Hamed family members: 1) Hamed, 2) Waleed, 3) Waheed, 4) Mufeed Hamed and 5) Hisham as of September 17, 2006 and the date of your response and identify the source of all funds for the acquisition of such assets:

Hamed Response: Object: (1) overly broad, (2) not related to any claim as this appears to be a renewed effort to resurrect the "lifestyle" analysis that Judge Brady rejected. See Brady decision: *Hamed v. Yusuf, et al.*; SX-12-CV-370; SX-14-278; SX-14-287 Memorandum Opinion and Order Re Limitations on Accounting, July 21, 2017, at pp. 23-24.

As part of the accounting and distribution phase of the Wind Up, Yusuf submitted to the Master the report of accountant Fernando Scherrer of the accounting firm BDO, Puerto Rico, P.S.C. (BDO Report). Yusuf contends that this report constitutes a comprehensive accounting of the historical partner withdrawals and reconciliation for the time period 1994-2012." See Opposition to Motion to Strike BDO Report, filed October 20, 2016. However, the BDO report, by its own terms, appears to be anything but comprehensive. Most tellingly, the body of the BDO Report itself contains a section detailing its own substantial "limitations," resulting from the absence or inadequacy of records for each of the grocery stores covering various periods during the life of the partnership.²⁵ See Plaintiff's Motion to Strike BDO Rep't, Exhibit 1, at 22.

Additionally, **the analysis presented in the report rests on the unsupported assumption that any monies identified in excess of "known sources of income" constitute distributions from partnership funds to the partners'§ 71(a) accounts.** Thus, even Yusuf's own "expert report" acknowledges the insurmountable difficulties inherent in any attempt to accurately reconstruct the partnership accounts(Emphasis added.)

In addition (3) Hamed does not have his bank records for the date September 17, 2006 -
- and records he has "as of the date of these responses" is irrelevant. (4) The request is
oppressive and (5) overburdensome. Subject to those objections, Hamed states¹:

A. Property outside of the USVI

Hamed owns certain parcels of land either individually or with Fathi Yusuf in Jordan. Hamed objects to listing these individually as: (1) Yusuf has full and equal knowledge as to them, (2) they are outside of the jurisdiction of this Court and objections have been filed here on that basis. Subject to that, If Yusuf will pay for the title search, Hamed will have a title company supply a list of all properties owned.

B. Property in the USVI

Hamed and the Hamed sons own the property on which their houses are located. Mr. Hamed had small holdings of land worth less than \$250,000. Waleed Hamed also owns an apartment duplex in Carlton on St. Croix, purchased sometime around 1987. However, although **this question was not asked**, in the interest of full disclosure, they own stock in several companies, all known to Yusuf and United. All such properties are listed in the records of the Recorder of Deeds for the US Virgin Islands under the respective company names. Though the request does not inquire as to those properties,

¹In addition, Hamed states that the identical interrogatory was propounded to Yusuf/United in Hamed's Sixth Interrogatories on March 24, 2018. He believes that the Special Master's direction as to these identical interrogatories will be required -- and that whatever ruling is applied to Yusuf will most probably be applied to Hamed.

if Yusuf will pay for the title search, Hamed will have a title company supply a list of all properties owned by such corporate entities -- or depositions or subpoenae can be issued to said companies by Yusuf.

C. Stocks Outside of Investment Accounts

Hamed (or his Trust or Estate) along with his family members owns 50% of the stock of several USVI entities along with Yusuf of members of his family. These are all known to Yusuf. In addition, also known to Yusuf, are shares in KAC357 Inc. which owns the leases of the stores obtained from the partnership. In addition, the Hamed sons own shares in several corporations unrelated to this litigation and which compete with Yusuf. If a motion to compel this information is made, a motion for a protective order will be filed as a trade secret unrelated to the litigation.

D. Bank and Brokerage Accounts

Hamed owns no more bank accounts. As for the prior bank accounts of Hamed and his sons, Yusuf obtained the account numbers and records previously, served subpoenae and obtained the documents requested. Hamed and his sons have no such records, other than what was gathered by the FBI as part of the criminal case (*United States v Yusuf*, US District Court of the Virgin Islands, Division of St. Croix, 1:05-cr-15), which is equally available to Yusuf, before the current ones, which are irrelevant.

Yusuf's accountant (BDO) has testified by expert report that older bank records are not available. Subject to that (and the footnote), out of an abundance of caution, the Hameds list the following accounts, but do not know whether any of these accounts were transacted on or after September 17, 2006. Further, Wally Hamed's Cairo Amman bank statements for account numbers 02/501/171878/00 and 02/533/171878 were sent to Fathi Yusuf at the Tutu Park Plaza Extra location, St. Thomas, so he would be in the best

position to know that status of those accounts and both of Wally Hamed Banque Francaise Commercial accounts were sent to Isam Yousuf in Sint-Maarten.

Wally Hamed

Banco Popular – 194-602753

Banco Popular – 194-038515

Banco Popular – 191-716286

Banco Popular – 194-602753

Core States, First Pennsylvania Bank – 11150056080

Scotiabank – 5800308313

Virgin Islands Community Bank – 182605817

Virgin Islands Community Bank – 182556086

Merrill Lynch – 140-16184

Merrill Lynch – 140-82626

Merrill Lynch – 140-85240

Prudential Bache-Securities – 050-130830-2

Banque Francaise Commerciale – 40-60-63878-90

Banque Francaise Commerciale – 40-60-63878-91

Bellevue Abriere Guichet – 60638789040

Cairo Amman Bank - 02/501/171878/00

Cairo Amman Bank – 02/533/171878

Cairo Amman Bank – 6101863

Willie Hamed

Banco Popular – 594178865

Chase – 721-1-047688

Scotiabank – 2068417

Scotiabank – 55002244

Scotiabank – 55034622

Prudential Bache – 08-3640-022

Raymond James – 10221124

Raymond James – 10230982

Raymond James – 50245929

Raymond James – 50245934

Raymond James – 71962008

Raymond James – 71962013

Raymond James – 72946098

Mafi Hamed

Banco Popular – 191-045535

Banco Popular – 591-416998

Ideal – 191-045535

Scotiabank – 058-00119415

Scotiabank – 45609811

Merrill Lynch – 140-19156

Shawn Hamed

Banco Popular – 191-185515

Scotiabank – 044-55152125

Scotiabank – 60829213

Charles Schwab – 4062-0039

Morgan Keegan & Company – 76316041

Morgan Keegan & Company – 61009668

Popular Securities – PSP-021644

Raymond James – 10207203

TD Ameritrade – 788-441834

TD Ameritrade – 788-441996

Wally, Willie, Mafi and Shawn Hamed

Scotiabank – 92032496

Wally and Mafi Hamed

Scotiabank – 058- 45609811

Shawn and Willie Hamed

Charles Schwab – 4101-9260

Mafi and Amal Hamed

Banco Popular 191-045535

ROG 2. Please identify each and every asset and interest, foreign and domestic, owned by Mohammad Hamed as of September 1, 2012 and the source of the income (including any loan proceeds) which provided the asset as well as any disposition of the asset since that time.

Hamed Response: See response to Interrogatory 1. In addition, Hamed does not have his bank records for the date of September 1, 2012 and the request is oppressive and overburdensome. Subject to those objections, Hamed states²:

A. Property outside of the USVI

²In addition, Hamed states that the identical interrogatory was propounded to Yusuf/United in Hamed's Sixth Interrogatories on March 24, 2018. He believes that the Special Master's direction as to these identical interrogatories will be required -- and that whatever ruling is applied to Yusuf will most probably be applied to Hamed.

Hamed owns certain parcels of land either individually or with Fathi Yusuf in Jordan. Hamed object to listing these as: (1) Yusuf has full and equal knowledge as to them, (2) they are outside of the jurisdiction of this Court and objections have been filed here on that basis. Subject to that, if Yusuf will pay for the title search, Hamed will have a title company supply a list of all properties owned.

B. Property in the USVI

Hamed owned his personal residence, along with several small real estate holdings on St. Croix in September 2012. His wife is still living in their personal residence. Mr. Hamed is no longer living, so we are unable to ask him about the source of income or the disposition of assets.

C. Stocks outside of Investment Accounts

Mr. Hamed had the following on September 1, 2012: 10% of the shares (10 shares) of Plessen Enterprises, Inc., which owns over 100 acres of prime real estate on St. Croix and over 8 acres of prime real estate on St. Thomas, all unencumbered, with a monthly income of approximately \$100,000 per month and over \$1.6 million currently in its bank account; 50% of the shares (500 shares) of Peters Farm, Inc., which owns over 100 acres of property on St. Croix as well as over 100 acres of land on St. Thomas, all unencumbered; 10% of the shares in Sixteen Plus, Inc., which owns over 100 acres of prime beach front property on the south shore of St. Croix. The property does have a mortgage recorded against it in favor of Fathi Yusuf's niece, which is the subject of several lawsuits pending on St. Croix, including one alleging that the mortgage is invalid. Mr. Hamed is no longer living, so we are unable to ask him about the source of income for these shares, but since Mr. Yusuf also owns shares in each of the companies listed, he is in a position to know about the source of funds.

D. Bank Accounts

Hamed owns no more bank accounts. As for the prior bank accounts of Hamed, Yusuf obtained the account numbers and records previously and served subpoenas. Yusuf's accountant (BDO) has testified by expert report that older bank records are not available. See response to Interrogatory 1.

ROG 3. Please identify all sources of income for 1) Hamed, 2) Waleed, 3) Waheed, 4) Mufeed and, 5) Hisham from September 17, 2006 to present including the total amount of said income from each source per year.

Hamed Response: See response to Interrogatory 1. Subject to that³,

1. Sources of income

The Hameds received income from the Partnership until it was divided. In addition, the Hamed sons have drawn salaries from the business operations of the stores purchased from the Partnership and other stores. Income has also been derived from rental property. Their income after the date of that split is irrelevant to this action. If a motion to compel this information is made, a motion for a protective order will be filed as a trade secret unrelated to the litigation.

2. Amounts of income

It is impossible, based on the records in their possession and control, to calculate the amounts of income prior to the split other than for the past few tax reporting years. To the extent the income was derived from their salaries at the Partnership, it is known equally to Yusuf. Their income after the date of that split is irrelevant to this action. If a

³In addition, Hamed states that the identical interrogatory was propounded to Yusuf/United in Hamed's Sixth Interrogatories on March 24, 2018. He believes that the Special Master's direction as to these identical interrogatories will be required -- and that whatever ruling is applied to Yusuf will most probably be applied to Hamed.

motion to compel this information is made, a motion for a protective order will be filed as a trade secret unrelated to the litigation.

ROG 4. Please describe who selected counsel to represent the Hamed defendants in the Criminal Case, who paid each counsel, what amount each counsel was paid, how each counsel was paid, and the source of funds for each payment?

Hamed Response: As Yusuf has alleged that he directed all such counsel and because they were paid through accounts he had access to or (for a period, unilaterally controlled and excluded Hameds) that information is known to him equally. Subject to that objection, Hamed states the incomplete extent of his knowledge as follows:

Initially, Fathi Yusuf hired Robert King to represent him in the criminal case. Maher "Mike" and Fathi Yusuf, and Waleed "Wally" and Waheed "Willie" Hamed all met with Attorney King on St. Thomas after Fathi Yusuf hired him. Attorney King told Mike Yusuf and Wally and Willie Hamed that they each needed to retain their own attorneys. When the three asked him for recommendations, Attorney King proceeded to thumb through the yellow pages of the phone book looking for potential lawyers for the three men.

After the meeting with Attorney King, when Mike Yusuf and Wally Hamed returned to St. Croix, they determined that they would need to find other attorneys, as Attorney King's method was not inspiring confidence. After meeting with other attorneys who had represented the families in the past and gathering recommendations, Mike Yusuf and Wally Hamed decided they wanted to hire Gordon Rhea. The two obtained the consent of Fathi Yusuf to hire Attorney Rhea as joint counsel. According to the criminal docket, Attorney Rhea entered an appearance as counsel to lead defendant United on November 6, 2003. Attorney Rhea, as counsel to United (for the Partnership), then put the team together a team of lawyers for the defendants as a group, who would all work under his

overall oversight, collectively for the defendants. Attorney King did not like this arrangement and insisted on continuing as Fathi Yusuf's personal (i.e. non-team) attorney, operating somewhat independently from Attorney Rhea's team.

Selection of Counsel

Attorney Rhea recommended hiring attorneys Jack Dema, Derek Hodge, Randy Andreozzi and Pam Colon for the benefit of all defendants -- who would represent everyone as a group, but would enter appearances for Rhea-assigned individuals. Attorney Rhea's recommendations and assignments were accepted. (*See discussion of the Joint Defense Agreement below.*) According to the criminal case docket: Jack Dema entered an appearance for Mike Yusuf on March 12, 2004; Derek Hodge entered an appearance for Nejeih Yusuf on March 24, 2004; Pam Colon entered an appearance for Willie Hamed on June 24, 2004 and Randy Andreozzi was pro haced in on a motion by Gordon Rhea for Wally Hamed on November 19, 2004. Also on November 19, 2004, Tom Alkon was substituted as counsel for the United Corporation.

After the joint legal team had been assembled, the team was allowed to review and copy the documents the FBI had collected. Attorney Rhea coordinated the copying of the documents for the legal team, but Attorney King did not want to be a part of that effort. Instead, he insisted on copying documents himself. When the bills for the copying came, to the best of Wally Hamed's recollection, Attorney Rhea's bill was approximately \$60,000-\$70,000 for copying the documents. Attorney King, doing the exact same thing, submitted a bill for approximately \$345,000. At this point, Fathi Yusuf was persuaded that continuing to employ Attorney King separately was not cost effective. Attorney King was fired and on August 6, 2004, Attorney Hank Smock entered an appearance for the team, nominally representing Fathi Yusuf.

At a later date and after the initial legal team was retained, Bruce Cole was hired in 2007 or 2008 to represent the non-indicted shareholders for the United Corporation.

Eventually, Fathi Yusuf hired Atty. Joe DiRuzzo to represent him in the criminal case (and perhaps Nizar DeWood). Attorney DiRuzzo's hiring precipitated the ending of the Joint Defense Agreement. Thus, after September 19, 2012, all counsel ceased to be part of a team, or be paid by the Partnership.

Payment of Counsel and Source of Payment

A Joint Defense Agreement ("JDA") was entered into for the purpose of representing all of the defendants (and did include Hank Smock and Bruce Cole) collectively. The JDA did not expire until September 19, 2012. According to Gordon Rhea's March 2, 2017 declaration, under the Joint Defense Agreement:

- a. All legal and accounting work was done jointly on behalf of all represented defendants in an effort to defend all of them at the same time.
- b. Bills for attorneys' fees and expenses reflected the work of counsel done for all defendants without allocating specific items to individual defendants.
- c. Simply because a bill was directed to a specific defendant did not reflect their individual personal obligation, as the bills were the joint obligation of all defendants while the Joint Defense Agreement was in place.
- d. All defendants were all aware of this fact, as applications for payment of the bills submitted under Joint Defense Agreement had to be made to the United States Attorney, who would then have to authorize funds to pay these bills from the defendants' bank accounts which had been frozen by court order.
- e. Until the Joint Defense Agreement was terminated all legal bills were paid from a United Plaza Extra account. . . .

See, Exhibit 44 to the March 6, 2017 hearing before Judge Brady in this case,

Attorney Rhea, with the consent of Fathi Yusuf, set up an escrow account at his law firm to pay all of the attorneys. All attorneys' fees were paid for by the Partnership. A centralized escrow account was established in order to manage the attorneys' fees payments. Because all of the Partnership's accounts were frozen by the government, Attorney Rhea had to file a motion with the court to secure funds to pay for the defendants' representation. The court allowed an initial draw of \$2 million for the escrow account. This funding and subsequent escrow funding came from the Partnership accounts. This process continued for some time—Attorney Rhea had to request periodic funding from the court.

To make a draw from the escrow account, attorney's invoices were sent to Rhea's escrow agent at his firm, Richardson, Patrick, Westbrook & Brickman. The escrow agent would then send an email with the invoice generally to Wally Hamed. After receiving the invoice, Wally Hamed would circulate it to Fathi and Mike Yusuf. Wally Hamed approved payments from the escrow account.

Although the date is unknown, the escrow account moved from Gordon Rhea's firm to Andreozzi, Fickess, LLP. At some point, the Yusufs and Hameds gained approval to write checks directly from the Partnership accounts and checks for attorneys' fees were signed by whomever was available, including Fathi Yusuf. To the best of Wally Hamed's recollection, these checks were under \$10,000 as checks larger than that required approval from the government's monitor. See, e.g., HAMD606918-HAMD606918, \$9,420.00 partnership check written to Smock & Moorhead on December 22, 2011.

The exception to the described fee payment process above occurred when, in 2012, Fathi Yusuf refused to sign partnership checks totaling \$332,900 to pay for attorneys' fees that were incurred under and prior to the expiration of the Joint Defense

Agreement. This amount, \$332,900, was paid by Mohammad Hamed out of his personal bank account. See also, Claim H-17.

After the Joint Defense Agreement ended on September 19, 2012, the Partnership ceased to pay for legal fees associated with the criminal case and each individual paid his own attorney's fees.

Amount Each Counsel was Paid

In accordance with Rule 33(d) of the Virgin Islands Rules of Civil Procedure, Hamed cannot, in good faith, prepare an answer to this question from the information in his possession and reasonably available to him. As all attorneys' fees and expenses reflected the work of counsel done for all defendants without allocating specific items to individual defendants, Hamed cannot in the exercise of reasonable efforts, prepare an answer to the question of the amount each counsel was paid.

Subject to this objection, see the responses to Interrogatories 21, 24 and 25 and the corresponding RFPDs, including RFPD 23. Documents relating to this interrogatory include:

- September 30, 2016 JVZ Engagement Report and Exhibits, JVZ-000001-JVZ-000867.pdf and JVZ-000868-JVZ-001730.pdf
- Gordon Rhea's March 2, 2017 declaration, Exhibit 44, HAMD641485-HAMD642240.pdf
- Judge Barnard's April 17, 2014 Memorandum and Order in the criminal case, HAMD599941-HAMD599944.pdf
- September 19, 2012 email to members of the Joint Defense Agreement and Joseph DiRuzzo, Esq., from Gordon Rhea, Esq. regarding termination of the joint defense agreement, HAMD201592-HAMD201593.pdf

- September 14, 2012 letter to members of the Joint Defense Agreement from Joseph DiRuzzo, Esq. asking whether members believe he is part of the Joint Defense Agreement, HAMD201590-HAMD201591.pdf.
- September 13, 2012 letter to Joseph DiRuzzo, Esq. from Randall Andreozzi, Esq., that Attorney DiRuzzo is not a party to the Joint Defense Agreement, HAMD201586-HAMD201587.pdf.
- September 13, 2012 letter to Joseph DiRuzzo, Esq. from Pamela Colon, Esq. confirming that Attorney DiRuzzo is not a party to the Joint Defense Agreement, HAMD201588-HAMD201589.pdf.
- July 7, 2011 Order, *United States v Yusuf*, US District Court of the Virgin Islands, Division of St. Croix, 1:05-cr-15, regarding the immediate release of \$300,000 from United Corporation to the escrow account of the law offices of Andreozzi and Fickess, LLP, HAMD202721-HAMD202721.pdf.
- June 27, 2011 motion, Defendants' Motion for Release of Funds from United Corporation, requesting release of \$300,000 000 from United Corporation to the escrow account of the law offices of Andreozzi and Fickess, LLP, HAMD248051-HAMD248053.pdf.
- December 15, 2010 Order, *United States v Yusuf*, US District Court of the Virgin Islands, Division of St. Croix, 1:05-cr-15, ordering the release of \$250,000 to the escrow account of Richardson Patrick Westbrook & Brickman, LLC, HAMD659180-HAMD659180.pdf.
- December 10, 2010 motion, Defendants' Motion for Release of Funds from United Corporation, *United States v Yusuf*, US District Court of the Virgin Islands, Division

of St. Croix, 1:05-cr-15, requesting \$250,000 to the escrow account of Richardson Patrick Westbrook & Brickman, LLC, HAMD202691-HAMD202694.pdf.

- March 16, 2010 Order, *United States v Yusuf*, US District Court of the Virgin Islands, Division of St. Croix, 1:05-cr-15, ordering the release of \$1 million to the escrow account of Richardson Patrick Westbrook & Brickman, LLC, HAMD202587-HAMD202587.pdf.
- March 1, 2010 motion, Defendants' Motion for Release of Funds from United Corporation, *United States v Yusuf*, US District Court of the Virgin Islands, Division of St. Croix, 1:05-cr-15, requesting \$1 million to the escrow account of Richardson Patrick Westbrook & Brickman, LLC, HAMD202558-HAMD202562.pdf.
- December 22, 2011 partnership check written to Smock & Moorhead for \$9,420.00, HAMD606918-HAMD606918.pdf.

ROG 5. What do you contend would be the proper reconciliation of the Partner accounts as of September 17, 2006 and the respective amounts due to each Partner as of that date and the date of your response?

Hamed Response: Object. Unanswerable. As the Court pointed out in the referenced decision, it is impossible, because of how Yusuf kept the partnership's records, to determine the status of those accounts on that date. The Court stated in *Hamed v. Yusuf, et al.*, SX-12-CV-370; SX-14-278; SX-14-287, Memorandum Opinion and Order Re Limitations on Accounting, July 21, 2017, at p. 28:

As managing partner, Yusuf was not only intimately familiar with the methods of record keeping, or lack thereof, employed by the partnership, but was the one responsible for designing and implementing those procedures in the first place. It was Yusuf's responsibility to oversee, account for, and periodically reconcile the distributions of funds between the partners.

Subject to those objections, Hamed provides the following as to the "determinability" of such amounts. Hamed employed an expert CPA to review the accounting records that had been kept for the Partnership by Fathi Yusuf prior to 2012. He was asked to research whether it was possible to provide an accurate accounting of the partnership accounts before 2012 either by reviewing existing accounting records or reconstructing comprehensive or cohesive partnership transactions for Plaza Extra Supermarkets prior to 2012. This was submitted as an expert report to the Court.

Hamed thus states that to his knowledge and the knowledge of his CPA experts who work frequently with this and similar accounting systems and are experienced in their use—and the act of accounting for different businesses on such systems—the present "books and accounting records" of Plaza Extra Supermarkets as kept on the Sage50 system only really began with 2012. The underlying documents, *e.g.*, invoices, canceled checks, bank statements, also are incomplete for 2012.

Despite statements and misrepresentations to the contrary, Fathi Yusuf kept no cohesive books and records from the inception of the Partnership to 2012. A large number of documents obtained from the U.S. Attorney/FBI and supplied to Mr. Hamed do contain some information and HAVE been supplied to Yusuf by Hamed. The computer disk containing some or all of the 2003-2012 accountings was destroyed or damaged by defect while in Yusuf's possession or control, and John Gaffney states there was no full backup kept. Gaffney also testified that the records before 2012 were of little accounting value and were little more than bank reconciliations. However, the two plea agreements involving the computation of income and taxes for the period from 2001 to 2013 have been supplied to Yusuf.

Therefore, based on all available data, Hamed believes that no set of useable or reliable accounting records from the inception of the Partnership to 2012 exist and that it is impossible to reconstruct the accounting transactions of Plaza Extra Supermarkets for those years.

ROG 6. Identify all distributions from the Partnership to any member of the Hamed family from September 17, 2006 to present?

Hamed Response: Object. It is impossible, because of how Yusuf kept the partnership's records, to determine the status of those accounts on that date. The Court stated in *Hamed v. Yusuf, et al.*, SX-12-CV-370; SX-14-278; SX-14-287, Memorandum Opinion and Order Re Limitations on Accounting, July 21, 2017, at p. 28:

As managing partner, Yusuf was not only intimately familiar with the methods of record keeping, or lack thereof, employed by the partnership, but was the one responsible for designing and implementing those procedures in the first place. It was Yusuf's responsibility to oversee, account for, and periodically reconcile the distributions of funds between the partners.

Subject to those objections, Hamed provides the following as to the "determinability" of such amounts. Hamed employed an expert CPA to review the accounting records that had been kept for the Partnership by Fathi Yusuf prior to 2012. He was asked to research whether it was possible to provide an accurate accounting of the partnership accounts before 2012 either by reviewing existing accounting records or reconstructing comprehensive or cohesive partnership transactions for Plaza Extra Supermarkets prior to 2012. Hamed states that to his knowledge and the knowledge of his experts who work frequently with this and similar accounting systems and are experienced in their use—and the act of accounting for different businesses on such systems—the present "books and accounting records" of Plaza Extra Supermarkets as kept on the Sage50 system only really began with 2012. The underlying documents, e.g.,

invoices, canceled checks, bank statements, also are incomplete for 2012. Despite statements and misrepresentations to the contrary, Fathi Yusuf kept no cohesive books and records for the period 2003 to 2012. A large number of documents obtained from the U.S. Attorney/FBI and supplied to Mr. Hamed do contain some information and HAVE been supplied to Yusuf by Hamed. The computer disk containing some or all of the 2003-2012 accountings was destroyed or damaged by defect while in Yusuf's possession or control, and Gaffney states there was no full backup kept. Gaffney also testified that the records before 2012 were of little accounting value and were little more than bank reconciliations. However, the two plea agreements involving the computation of income and taxes for the period from 2001 to 2013 have been supplied to Yusuf.

Therefore, based on all available data, Hamed believes that no set of useable or reliable accounting records from the inception of the Partnership to 2012 exist and it is impossible to reconstruct the accounting transactions of Plaza Extra Supermarkets for those years.

ROG 7. Do you contest any allocation to you as set forth in Tables 1-6 for transactions after September 17, 2006, attached hereto as Exhibit 1, and, if so, which ones are contested and why?

Hamed Response: Yes. As a general matter, the BDO tables in Exhibit 1 are incorrect, are based on incomplete data, and are – by the admission of Yusuf's own experts – inaccurate and incomplete. See p. 2 and 22 of the BDO Report (emphasis added).

[At 2] **records were prepared in an informal manner.**

[At 22] Our report and the findings included herein have been impacted by the **limitation of the information available** in the Case. Following is a summary of the limitations we encountered during the performance of the engagement.

* * * *

Accounting records and/or documents (checks registers, bank reconciliations, deposits and disbursements of Supermarkets' accounts) provided in connection with Supermarkets were limited to covering the period from 2002 through 2004, East and West from 2006 through 2012, and Tutu Park from 2009 through 2012.

Accounting records and/or documents provided to us for the periods prior to 2003 are incomplete and limited to bank statements, deposit slips, cancelled checks, check registers, investments and broker statements, cash withdrawal tickets/receipts and cash withdrawal receipt listings. **For example, the retention policy for statements, checks, deposits, credits in Banco Popular de Puerto Rico is seven years; therefore, there is no Bank information available prior to 2007** and electronic transactions do not generate any physical evidence as to regular deposits and/or debits. Information discovered about the case up to August 31, 2014. We only considered information up to December 31, 2012. Transactions after that date were adjusted in our report.

Any monies identified through our analysis in excess of the amount identified from the known sources of income (e.g. salaries, rent income, etc.) **were assumed** to be partnership withdrawals/distributions. With regards to the Hamed family,

The lifestyle analysis is supported by **available information** related to deposits to banks and brokerage accounts and payments to credit cards during the period from January 1994 to December 2012 or until Gaffney was assigned to work with the Supermarkets accounting.

Second, Judge Brady also found the reports lacking in terms of comprehensiveness and he also rejected BDO's purported "lifestyle" analysis. See Brady decision: *Hamed v. Yusuf, et al.*; SX-12-CV-370; SX-14-278; SX-14-287 Memorandum Opinion and Order Re Limitations on Accounting, July 21, 2017, at pp. 23-24 (emphasis added).

As part of the accounting and distribution phase of the Wind Up, Yusuf submitted to the Master the report of accountant Fernando Scherrer of the accounting firm BDO, Puerto Rico, P.S.C. (BDO Report). Yusuf contends that this report constitutes a comprehensive accounting of the historical partner withdrawals and reconciliation for the time period 1994-2012." See Opposition to Motion to Strike BDO Report, filed October 20, 2016. However, the BDO report, by its own terms, appears to be anything but comprehensive. Most tellingly, the body of the BDO Report itself contains a section detailing its own substantial "limitations," resulting from the absence or inadequacy of records for each of the grocery stores covering various periods during the life of the partnership.²⁵ See Plaintiff's Motion to Strike BDO Rep't, Exhibit 1, at 22.

Additionally, **the analysis presented in the report rests on the unsupported assumption that any monies identified in excess of "known sources of income" constitute distributions from partnership funds to the partners'§ 71(a) accounts.** Thus, even Yusuf's own "expert report" acknowledges the insurmountable difficulties inherent in any attempt to accurately reconstruct the partnership accounts

Finally, Judge Brady's July 24, 2017 Order limits claims to transactions that occurred on or after September 17, 2006:

ORDERED that the accounting in this matter, to which each partner is entitled under 26 V.I.C § 177(b), conducted pursuant to the Final Wind Up Plan adopted by the Court, shall be limited in scope to consider only those claimed credits and charges to partner accounts, within the meaning of 26 V.I.C § 71(a), based upon transactions that occurred on or after September 17, 2006.

Hamed v. Yusuf, Civ. No. SX-12-CV-370, 2017 WL 3168458, at *29 (V.I.Super. July 21, 2017).

Subject to those objections, Hamed states the following:

Table 1 – Hamed objects to Table 1. The \$3 million distributed to Fathi and Fawzia Yusuf were Partnership distributions to them alone. Their affidavits clearly state that the amounts were gifts to Mafi and Shawn Hamed. Nothing in the affidavits suggest that the gifts are partnership distributions from both families. Further, there are no other writings documenting that this was an equal distribution between Hamed and Yusuf. This was solely a Yusuf withdrawal. Moreover, in the Hoda Hamed divorce proceedings she describes these as her father's or her property for these same reasons.

Additionally, Fathi Yusuf withdrew an additional \$1 million for himself at the same time the \$3 million in gifts was drawn. Mr. Yusuf kept that money for his own purposes and there was no corresponding \$1 million withdrawal for Hamed. See, HAMD248055-HAMD248057.pdf, HAMD200057-HAMD200057.

Tables 2A-4A, 5A-5B – Hamed objects to Tables 2A-4A, 5A-5B. These tables are irrelevant because Judge Brady's July 24, 2017 Order limits claims to transactions that occurred on or after September 17, 2006:

ORDERED that the accounting in this matter, to which each partner is entitled under 26 V.I.C § 177(b), conducted pursuant to the Final Wind Up Plan adopted by the Court, shall be limited in scope to consider only those claimed credits and charges to partner accounts, within the meaning of 26 V.I.C § 71(a), based upon transactions that occurred on or after September 17, 2006.

Hamed v. Yusuf, Civ. No. SX-12-CV-370, 2017 WL 3168458, at *29 (V.I.Super. July 21, 2017). All of the dates on Tables 2A-4A, 5A-5B occurred prior to September 17, 2006 and thus are not proper claims under the Order.

Hamed has not evaluated each allocation individually to identify errors because the timeframe covered by the tables is outside of the scope as articulated in Judge Brady's July 21, 2017 Order. For a sampling of disputes Hamed has regarding these tables, please see the testimony and exhibits from the March 6, 2017 hearing before Judge Brady. Further, see generally, the documents the FBI seized in its 2001 raid for documents contradicting BDO's tables, which were produced by Yusuf to Hamed on August 26, 2013.

Tables 4A-5B—Hamed objects to Tables 4A-5B, which form the underlying basis for the lifestyle analysis. The “lifestyle analysis” these tables underpin have already been discredited in Judge Brady's July 21, 2017 Order:

Additionally, **the analysis presented in the report rests on the unsupported assumption that any monies identified in excess of “known sources of income” constitute distributions from partnership funds to the partners' § 71(a) accounts.** Thus, even Yusuf's own “expert report” acknowledges the insurmountable difficulties inherent in any attempt to accurately reconstruct the partnership accounts; a project which necessarily becomes proportionately more difficult and less reliable the farther back in time one goes.

Id. at *24 (emphasis added). Further, all of the Yusuf deposits and charges to credit cards were not accounted for in the BDO report, making the comparisons between the two families' spending inaccurate.⁴ Finally, many of the deposits in these tables occurred prior to September 17, 2006, also rendering them moot under the Judge's Order.

Table 6—Hamed objects to Table 6 for all of the reasons given for Tables 1-5.

ROG 8. Do you contest any allocation to Waleed set forth in Tables 7A-14 for transactions after September 17, 2006, attached hereto as Exhibit 2, and, if so, which ones are contested and why?

Hamed Response: As a general matter, the BDO tables in Exhibit 2 are incorrect, are based on incomplete data, and are – by the admission of Yusuf's own experts – inaccurate and incomplete. See p. 2 and 22 of the BDO Report (emphasis added).

[At 2] records were prepared in an informal manner.

[At 22] Our report and the findings included herein have been impacted by the **limitation of the information available** in the Case. Following is a summary of the limitations we encountered during the performance of the engagement.

* * * *

Accounting records and/or documents (checks registers, bank reconciliations, deposits and disbursements of Supermarkets' accounts) provided in connection with Supermarkets were limited to covering the period from 2002 through 2004, East and West from 2006 through 2012, and Tutu Park from 2009 through 2012.

Accounting records and/or documents provided to us for the periods prior to 2003 are incomplete and limited to bank statements, deposit slips, cancelled checks, check registers, investments and broker statements, cash withdrawal tickets/receipts and cash withdrawal receipt listings. **For example, the retention policy for statements, checks, deposits, credits in Banco Popular de Puerto Rico is seven years; therefore, there is no Bank information available prior to 2007** and electronic transactions do not generate any physical evidence as to regular deposits and/or debits.

⁴ BDO reported, for example, that Fathi, Maher and Yusuf Yusuf had no spending on credit cards from January 1994 through December 2012 and Nejeah Yusuf only had \$100 in spending during the same time period.

Information discovered about the case up to August 31, 2014. We only considered information up to December 31, 2012. Transactions after that date were adjusted in our report.

Any monies identified through our analysis in excess of the amount identified from the known sources of income (e.g. salaries, rent income, etc.) **were assumed** to be partnership withdrawals/distributions. With regards to the Hamed family,

The lifestyle analysis is supported by **available information** related to deposits to banks and brokerage accounts and payments to credit cards during the period from January 1994 to December 2012 or until Gaffney was assigned to work with the Supermarkets accounting.

Second, Judge Brady also found the reports lacking in terms of comprehensiveness and he also rejected BDO's purported "lifestyle" analysis. See Brady decision: *Hamed v. Yusuf, et al.*; SX-12-CV-370; SX-14-278; SX-14-287 Memorandum Opinion and Order Re Limitations on Accounting, July 21, 2017, at pp. 23-24 (emphasis added).

As part of the accounting and distribution phase of the Wind Up, Yusuf submitted to the Master the report of accountant Fernando Scherrer of the accounting firm BDO, Puerto Rico, P.S.C. (BDO Report). Yusuf contends that this report constitutes a comprehensive accounting of the historical partner withdrawals and reconciliation for the time period 1994-2012." See Opposition to Motion to Strike BDO Report, filed October 20, 2016. However, the BDO report, by its own terms, appears to be anything but comprehensive. Most tellingly, the body of the BDO Report itself contains a section detailing its own substantial "limitations," resulting from the absence or inadequacy of records for each of the grocery stores covering various periods during the life of the partnership.²⁵ See Plaintiff's Motion to Strike BDO Rep't, Exhibit 1, at 22.

Additionally, **the analysis presented in the report rests on the unsupported assumption that any monies identified in excess of "known sources of income" constitute distributions from partnership funds to the partners'§ 71(a) accounts.** Thus, even Yusuf's own "expert report" acknowledges the insurmountable difficulties inherent in any attempt to accurately reconstruct the partnership accounts

Finally, Judge Brady's July 24, 2017 Order limits claims to transactions that occurred on or after September 17, 2006:

ORDERED that the accounting in this matter, to which each partner is entitled under 26 V.I.C § 177(b), conducted pursuant to the Final Wind Up Plan adopted by the Court, shall be limited in scope to consider only those claimed credits and charges to partner accounts, within the meaning of 26 V.I.C § 71(a), based upon transactions that occurred on or after September 17, 2006.

Hamed v. Yusuf, Civ. No. SX-12-CV-370, 2017 WL 3168458, at *29 (V.I.Super. July 21, 2017).

Subject to those objections, Hamed states the following:

Tables 7A-9B – Hamed objects to Tables 7A-9B. These tables are irrelevant date because Judge Brady's July 24, 2017 Order limits claims to transactions that occurred on or after September 17, 2006:

ORDERED that the accounting in this matter, to which each partner is entitled under 26 V.I.C § 177(b), conducted pursuant to the Final Wind Up Plan adopted by the Court, shall be limited in scope to consider only those claimed credits and charges to partner accounts, within the meaning of 26 V.I.C § 71(a), based upon transactions that occurred on or after September 17, 2006.

Hamed v. Yusuf, Civ. No. SX-12-CV-370, 2017 WL 3168458, at *29 (V.I.Super. July 21, 2017). All of the dates on Tables 7A-9B occurred prior to September 17, 2006 and thus are not proper claims under the Order.

Hamed has not evaluated each allocation individually to identify errors because the timeframe covered by the tables is outside of the scope as articulated in Judge Brady's July 21, 2017 Order. For a sampling of disputes Hamed has regarding these exhibits, please see the testimony and exhibits from the March 6, 2017 hearing before Judge Brady. Further, see generally, the documents the FBI seized in its 2001 raid for documents contradicting BDO's tables, which were produced by Yusuf to Hamed on August 26, 2013.

Table 10A – Hamed objects to Table 10A as these are attorneys' fees and associated expenses incurred in the joint defense of the criminal case, *United States of America vs. United Corp. et. al.*, in the District Court of the Virgin Islands (St. Thomas Division), Docket No. 1:05-cr-00015. These expenses were not split or attributed to any individual defendant, "rather all defense counsel worked together on behalf of all of the represented defendants in a joint effort to defend the case," according to the affidavit of Gordon C. Rhea:

I, GORDON C. RHEA, declare under penalty of perjury pursuant to 28 U.S.C. Section 1746, as follows:

1. I have personal knowledge of the facts set forth herein.
2. I am an attorney licensed to practice law in the U.S. Virgin Islands.
3. I was one of the defense lawyers in the criminal action filed by the United States of America in the District Court of the Virgin Islands (St. Thomas Division), Docket No, 1:05-cr-00015, against the following defendants:

FATHI YUSUF MOHAMAD YUSUF, aka Fathi Yusuf
WALEED MOHAMMAD HAMED, aka Wally Hamed
WAHEED MOHAMMAD HAMED, aka Willie Hamed
MAHER FATHI YUSUF, aka Mike Yusuf
NEJEH FATHI YUSUF,
ISAM YUSUF, and
UNITED CORPORATION

4. All of the defendants in that criminal case, except for Isam Yousef who was never apprehended, were represented jointly by multiple counsel, including myself, under a Joint Defense Agreement.
5. Pursuant to the Joint Defense Agreement, all defense counsel worked together on behalf of all of the represented defendants in a joint effort to defend the case.
6. A plea agreement was reached in December of 2010 . . . , with a modification made thereafter in early 2011. . . . As noted therein, the only defendant who pled guilty was United Corporation, as the charges were dismissed against all of the other represented defendants.
7. The Joint Defense Agreement then continued during the sentencing phase of the case (to primarily address the tax issues related to the Plea) until September 19, 2012, when the Joint Defense Agreement was terminated.
8. Under the Joint Defense Agreement;
 - a. All legal and accounting work was done jointly on behalf of all represented defendants in an effort to defend all of them at the same time.

b. Bills for attorneys' fees and expenses reflected the work of counsel done for all defendants without allocating specific items to individual defendants.

c. Simply because a bill was directed to a specific defendant did not reflect their individual personal obligation, as the bills were the joint obligation of all defendants while the Joint Defense Agreement was in place.

d. All defendants were all aware of this fact, as applications for payment of the bills submitted under Joint Defense Agreement had to be made to the United States Attorney, who would then have to authorize funds to pay these bills from the defendants' bank accounts which had been frozen by court order.

e. Until the Joint Defense Agreement was terminated all legal bills were paid from a United Plaza Extra account.

I declare under penalty of perjury that the foregoing is true and correct.

(See, Exhibit 44 to the March 6, 2017 hearing before Judge Brady in this case, HAMD641485-HAMD642240.pdf)

Further evidence of this is shown in letters Randall Andreozzi, Esq., wrote on behalf of the United Corporation in 2012-2009 to the federal government, requesting Partnership funds be released on United's behalf. An attorney solely representing Waleed Hamed would not be making requests to the federal government in a criminal case on behalf of the United Corporation and its shareholders. Yusuf's argument that Attorney Andreozzi solely represented Waleed Hamed during the time of the joint defense agreement is absurd.⁵ See, e.g., HAMD562177-HAMD562179.pdf, HAMD562183-

⁵ First, 10A is incomprehensible. What BDO appears to have done on 10A, is target bills from specific attorneys such as Pam Colon or other similar professionals. Thus, in bulk, Colon's bills were excepted. No reference is made to what work she actually did or for whom from any documentation. Beyond the obvious refutation of this by the supplied declaration and the underlying Joint Defense Agreement, Hamed notes that no support is provided in the invoices of such lawyers as to either the work done or for which party it was done.

Thus, the completely unsupported and fanciful "assumption" by BDO as to what work Ms. Colon did, for example, underlines the failure of Table 10A. To put this another way, this is not an accounting, it is a "BDO accepts the completely unsupported statement of Fathi Yusuf, in the total absence of underlying documentation, as to who did what – and we might as well have claimed absolutely ANY amount and simply said 'because

HAMD562185.pdf, HAMD261888-HAMD261892.pdf, HAMD562180-HAMD562182.pdf,
HAMD562174-HAMD562176.pdf, HAMD562159-HAMD562166.pdf and HAMD562157-
HAMD562158.pdf.

Tables 10B – Hamed does not contest this table, as it appears that BDO excepted these amounts from the calculations.

Table 11A – Hamed objects to Table 11A. This table is irrelevant date because Judge Brady's July 24, 2017 Order limits claims to transactions that occurred on or after September 17, 2006:

ORDERED that the accounting in this matter, to which each partner is entitled under 26 V.I.C § 177(b), conducted pursuant to the Final Wind Up Plan adopted by the Court, shall be limited in scope to consider only those claimed credits and charges to partner accounts, within the meaning of 26 V.I.C § 71(a), based upon transactions that occurred on or after September 17, 2006.

Hamed v. Yusuf, Civ. No. SX-12-CV-370, 2017 WL 3168458, at *29 (V.I.Super. July 21, 2017). All of the dates on Tables 11A occurred prior to September 17, 2006 and thus are not proper claims under the Order. Further, Table 11A demonstrates the incompleteness of the BDO report. For example, BDO's note 2 on Table 11A states "[a]mounts were transferred to Cairo Amman Bank account #250117187800 (account not included on our scope)." Thus, note 2 shows that BDO did not do a true accounting because not all accounts were included and, according to the body of the BDO report, not all records were available. See p. 2 and 22 of the BDO Report. Put another way, Fathi Yusuf could have taken tens of millions through the Cairo Amman Bank account #250117187800, and

Fathi said so.'" Again, this is not an attempt to provide an accounting via underlying documents, it is an attempt to make a position look like an accounting by dropping in a bunch of numbers based on what Fathi Yusuf "told" BDO, and then having BDO sign.

it would not show up here. That is not an accounting, it is a one-sided speculative argument.

Table 11B – Hamed does not contest this table, as it appears that BDO excepted these amounts from the calculations. Hamed does not, however, agree with Note 1: “All transactions that occur during the period while Gaffney was in charge of the accounting were adjusted to avoid duplicity because all withdrawals were supposed to be accounted for by Gaffney.”

During a portion of 2013, the Hameds were locked out of the Partnership's financials—both paper and electronic access to bank records – and were subsequently told by Mr. Gaffney that all bank statements for the Partnership during that time period were not available for their review because paper statements for some of the accounts did not exist. Accordingly, Hamed cannot assert that all Yusuf withdrawals were properly accounted by Mr. Gaffney, demonstrating another reason why BDO's Exhibit J-2 to Yusuf's October 30, 2017 revised amended claims submission regarding the amount BDO claims Hamed owes Yusuf is inaccurate.

Tables 12A-13C – Hamed objects to Tables 12A-13C, which form the underlying basis for the lifestyle analysis. The “lifestyle analysis” these tables underpin have already been discredited in Judge Brady's July 21, 2017 Order:

Additionally, **the analysis presented in the report rests on the unsupported assumption that any monies identified in excess of “known sources of income” constitute distributions from partnership funds to the partners' § 71(a) accounts.** Thus, even Yusuf's own “expert report” acknowledges the insurmountable difficulties inherent in any attempt to accurately reconstruct the partnership accounts; a project which necessarily becomes proportionately more difficult and less reliable the farther back in time one goes.

Hamed v. Yusuf, 2017 WL 3168458, at *24 (emphasis added). Also, all of the Yusuf deposits and charges to credit cards were not accounted for in the BDO report, making

the comparisons between the two families' spending inaccurate.⁶ Finally, Hamed's income earned from sources other than his salary from the Partnership was not included, plus many of the bank account deposits and payments to credit cards in these tables occurred prior to September 17, 2006, also rendering them moot under the Judge's Order.

Table 14 – Hamed objects to Table 14 for all of the reasons given for Tables 7A-13C, plus the following: The headings on Table 14 make it difficult to determine which items occurred on or after Judge Brady's September 17, 2006 date for permissible claims. For instance, Table 14 shows "Funds Withdrawn through Partnership Checks" to be \$232,670.00 (BDO Table 7B). All of those withdrawals were prior to 2004, thus none of those withdrawals are applicable to the current claims process. Additionally, Table 14 shows "Withdrawals from the Partnership with a Signed Ticket/Receipt" to be \$273,630.00. All of those withdrawals were prior to 2003 (BDO Table 8B), thus none of those withdrawals are applicable to the current claims process. This amount, presumably in error, was carried over to BDO's revised Table J-2, which Hamed also disputes. Similarly, Table 14 shows "Payments to Third Parties on behalf of Hamed/Yusuf with Partnership Funds Either with Tickets or Checks" to be \$4,130.00. All of those withdrawals were prior to 2003 (BDO Table 9B), thus none of those withdrawals are applicable to the current claims process. This amount somehow jumped from \$4,130.00 to \$20,311.00 on BDO's revised Table J-2, which Hamed also disputes.

Finally, Table 14 shows "Amount Owed by Hamed Family to Yusuf as per Agreement Before Raid Sept. 2001. As per Mike's Testimony these Tickets were Burned (Refer to Letter dated August 15, 2012)" to be \$1,778,103.00. This amount is disputed

⁶ BDO reported, for example, that Fathi, Maher and Yusuf Yusuf had no spending on credit cards from January 1994 through December 2012 and Nejeh Yusuf only had \$100 in spending during the same time period.

and Hamed is unclear where BDO's came up with an amount of \$1,778,103.00. The amount in the letter refers to "Past Confirmed Withdrawals" as \$1,600,000.00, and that is the amount referenced below. See, HAMD200104-HAMD200104.pdf. In any event, Hamed does not owe the \$1.6 or \$1.77 million.

Hamed stated in Plaintiff's Response to Defendant United's First Set of Interrogatories to Plaintiff Hamed, December 23, 2013, *Hamed v Yusuf*, 12-SX-CV-370, as follows:

Describe in detail what objections you have to the accounting provided to you by Fathi Yusuf regarding the \$2.7 million dollars amount that was withdrawn by United Corporation in August of 2013 as an offset to your previous withdrawals and identify all persons with knowledge of any such facts and all documents which support your answer to this interrogatory.

Hamed Response: There are multiple problems with this accounting, which was recently supplied to my lawyers after repeated requests that it be provided. While this investigation and review continues, which will be the subject of an expert accounting report, several problems have already been noted.

First, it states that \$1.6 million was due and owing at the time of the removal of the \$2.7 million. That claim is time barred. Moreover, while it is true that in 1999 Mafi Hamed and Maher Yusuf met and reconciled the outstanding chits related to 50/50 distribution of the Sion Farm grocery store profits, showing \$1.6 million was due to the Yusufs to "true up" the differences in the 50/50 profit withdrawals at that time for that store, **there are other off-sets to that amount. For example, there were amounts to "true up" from the other stores as well.** Likewise, after that time, Fathi Yusuf and his sons took funds that were required to be offset against that amount, as he well knows. . . .(Emphasis added.)

What Mohammad Hamed stated, at page 102-103 of his 3/31-4/1, **2014** deposition was:

In.9 Q. (Mr. Hodges) And as I understand it, as of today,
In.10 you -- you are still not aware of the facts and
In.11 circumstances surrounding the \$1.6 million that's referenced
In.12 in Exhibit No. 3, is that right?
In.13 MR. HARTMANN: Object. Asked and answered.
In.14 MR. HODGES: Show him the letter while
In.15 you're --
In.16 THE INTERPRETER: This one?
In.17 MR. HODGES: No, the 1.6.

In.18 THE INTERPRETER: Right.
In.19 MR. HODGES: You want me to ask the question
In.20 again?
In.21 THE INTERPRETER: Please.
* * *

In.3 Q. (Mr. Hodges) Okay. If you would point out the
In.4 1.6 million on Exhibit 3? And the -- the words to the
In.5 left -- left of it, Past confirmed withdrawal?
In.6 **Okay. So, Mr. Hamed, as -- as you're sitting**
In.7 **here today, you are not aware of any of the facts**
In.8 **surrounding the, quote, Past confirmed withdrawals of**
In.9 **\$1.6 million, is that correct?**

In.10 MR. HARTMANN: Object. Asked and answered.
In.11 THE INTERPRETER: Okay.
In.12 **He says no.**
In.13 MR. HODGES: Okay. I guess that's a good
In.14 time to break, then. (Emphasis added.)

This was just one small part of the relationship between the parties that was partially accounted at one time, and thus was incomplete. Mike Yusuf testified that Plaza Extra - East receipts were tallied between the Hameds and the Yusufs, showing that Hameds had taken out approximately \$1.6 million more than the Yusufs prior to the 2001 FBI raid. However, Mike Yusuf also testified that the reconciliation did not include St. Thomas and it did not include all of the Plaza Extra-East receipts. See, 30(b)(6) Deposition of United Corporation through its representative, Mike Yusuf, *Hamed v Yusuf*, SX-12-CV-370, April 3, 2014, pp. 64-68. The \$1.6 million was just one facet of various claims between the Yusufs (not United) and the Hameds at that time. **To get what was "owed" as an effect of ALL ACCOUNTS at that time, one would have to know the similar amounts from the other operations at the same time.**

Thus, Hamed objects to this amount because 1) it is outside of the applicable timeframe for claims and 2) it is clear that a full accounting prior to the FBI raid was not done, thus making the \$1.6 million one data point in the various claims between the Partners.

ROG 9. Do you contest any allocation to Waheed set forth in Tables 15A-22 for transactions after September 17, 2006, attached hereto as Exhibit 3, and, if so, which ones are contested and why?

Hamed Response: Yes. As a general matter, the BDO tables in Exhibit 3 are incorrect, are based on incomplete data, and are – by the admission of Yusuf's own experts – inaccurate and incomplete. See p. 2 and 22 of the BDO Report (emphasis added).

[At 2] records were prepared in an **informal manner**.

[At 22] Our report and the findings included herein have been impacted by the **limitation of the information available** in the Case. Following is a summary of the limitations we encountered during the performance of the engagement.

* * * *

Accounting records and/or documents (checks registers, bank reconciliations, deposits and disbursements of Supermarkets' accounts) provided in connection with Supermarkets were limited to covering the period from 2002 through 2004, East and West from 2006 through 2012, and Tutu Park from 2009 through 2012.

Accounting records and/or documents provided to us for the periods prior to 2003 are incomplete and limited to bank statements, deposit slips, cancelled checks, check registers, investments and broker statements, cash withdrawal tickets/receipts and cash withdrawal receipt listings. **For example, the retention policy for statements, checks, deposits, credits in Banco Popular de Puerto Rico is seven years; therefore, there is no Bank information available prior to 2007** and electronic transactions do not generate any physical evidence as to regular deposits and/or debits.

Information discovered about the case up to August 31, 2014. We only considered information up to December 31, 2012. Transactions after that date were adjusted in our report.

Any monies identified through our analysis in excess of the amount identified from the known sources of income (e.g. salaries, rent income, etc.) **were assumed** to be partnership withdrawals/distributions. With regards to the Hamed family,

The lifestyle analysis is supported by **available information** related to deposits to banks and brokerage accounts and payments to credit cards during the period from January 1994 to December 2012 or until Gaffney was assigned to work with the Supermarkets accounting.

Second, Judge Brady also found the reports lacking in terms of comprehensiveness and he also rejected BDO's purported "lifestyle" analysis. See Brady

decision: *Hamed v. Yusuf, et al.*; SX-12-CV-370; SX-14-278; SX-14-287 Memorandum Opinion and Order Re Limitations on Accounting, July 21, 2017, at pp. 23-24 (emphasis added).

As part of the accounting and distribution phase of the Wind Up, Yusuf submitted to the Master the report of accountant Fernando Scherrer of the accounting firm BDO, Puerto Rico, P.S.C. (BDO Report). Yusuf contends that this report constitutes a comprehensive accounting of the historical partner withdrawals and reconciliation for the time period 1994-2012." See Opposition to Motion to Strike BDO Report, filed October 20, 2016. However, the BDO report, by its own terms, appears to be anything but comprehensive. Most tellingly, the body of the BDO Report itself contains a section detailing its own substantial "limitations," resulting from the absence or inadequacy of records for each of the grocery stores covering various periods during the life of the partnership.²⁵ See Plaintiff's Motion to Strike BDO Rep't, Exhibit 1, at 22.

Additionally, **the analysis presented in the report rests on the unsupported assumption that any monies identified in excess of "known sources of income" constitute distributions from partnership funds to the partners'§ 71(a) accounts.** Thus, even Yusuf's own "expert report" acknowledges the insurmountable difficulties inherent in any attempt to accurately reconstruct the partnership accounts

Finally, Judge Brady's July 24, 2017 Order limits claims to transactions that occurred on or after September 17, 2006:

ORDERED that the accounting in this matter, to which each partner is entitled under 26 V.I.C § 177(b), conducted pursuant to the Final Wind Up Plan adopted by the Court, shall be limited in scope to consider only those claimed credits and charges to partner accounts, within the meaning of 26 V.I.C § 71(a), based upon transactions that occurred on or after September 17, 2006.

Hamed v. Yusuf, Civ. No. SX-12-CV-370, 2017 WL 3168458, at *29 (V.I.Super. July 21, 2017).

Subject to those objections, Hamed states the following:

Tables 15A-17B, 20A, 21A-21B – Hamed objects to Tables 15A-17B, 20A, 21A-21B.

These tables are irrelevant date because Judge Brady's July 24, 2017 Order limits claims to transactions that occurred on or after September 17, 2006:

ORDERED that the accounting in this matter, to which each partner is entitled under 26 V.I.C § 177(b), conducted pursuant to the Final Wind Up Plan adopted by the Court, shall be limited in scope to consider only those claimed credits and charges to partner accounts, within the meaning of 26 V.I.C § 71(a), based upon transactions that occurred on or after September 17, 2006.

Hamed v. Yusuf, Civ. No. SX-12-CV-370, 2017 WL 3168458, at *29 (V.I.Super. July 21, 2017). All of the dates on Tables 15A-17B, 20A, 21A-21B occurred prior to September 17, 2006 and thus are not proper claims under the Order.

Hamed has not evaluated each allocation individually to identify errors because the timeframe covered by the tables is outside of the scope as articulated in Judge Brady's July 21, 2017 Order. For a sampling of disputes Hamed has regarding these exhibits, please see the testimony and exhibits from the March 6, 2017 hearing before Judge Brady. Further, see generally, the documents the FBI seized in its 2001 raid for documents contradicting BDO's tables, which were produced by Yusuf to Hamed on August 26, 2013.

Table 18 – Hamed objects to Table 18 as these are attorneys' fees and associated expenses incurred in the joint defense of the criminal case, *United States of America vs. United Corp. et. al.*, in the District Court of the Virgin Islands (St. Thomas Division), Docket No, 1:05-cr-00015. These expenses were not split or attributed to any individual defendant, rather all bills were to be paid out of a Plaza Extra bank account, according to the affidavit of Gordon C. Rhea:

- 1, GORDON C. RHEA, declare under penalty of perjury pursuant to 28 U.S.C. Section 1746, as follows:
2. I have personal knowledge of the facts set forth herein.
2. I am an attorney licensed to practice law in the U.S. Virgin Islands.
3. I was one of the defense lawyers in the criminal action filed by the United States of America in the District Court of the Virgin Islands (St. Thomas Division), Docket No, 1:05-cr-00015, against the following defendants:
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MAHER FATHI YUSUF, aka Mike Yusuf
NEJEH FATHI YUSUF,
ISAM YUSUF, and
UNITED CORPORATION

4. All of the defendants in that criminal case, except for Isam Yousef who was never apprehended, were represented jointly by multiple counsel, including myself, under a Joint Defense Agreement.
5. Pursuant to the Joint Defense Agreement, all defense counsel worked together on behalf of all of the represented defendants in a joint effort to defend the case.
6. A plea agreement was reached in December of 2010 . . . , with a modification made thereafter in early 2011. . . . As noted therein, the only defendant who pled guilty was United Corporation, as the charges were dismissed against all of the other represented defendants.
7. The Joint Defense Agreement then continued during the sentencing phase of the case (to primarily address the tax issues related to the Plea) until September 19, 2012, when the Joint Defense Agreement was terminated.
8. Under the Joint Defense Agreement;
 - a. All legal and accounting work was done jointly on behalf of all represented defendants in an effort to defend all of them at the same time.
 - b. Bills for attorneys' fees and expenses reflected the work of counsel done for all defendants without allocating specific items to individual defendants.
 - c. Simply because a bill was directed to a specific defendant did not reflect their individual personal obligation, as the bills were the joint obligation of all defendants while the Joint Defense Agreement was in place.
 - d. All defendants were all aware of this fact, as applications for payment of the bills submitted under Joint Defense Agreement had to be made to the United States Attorney, who would then have to authorize funds to pay these bills from the defendants' bank accounts which had been frozen by court order.
 - e. Until the Joint Defense Agreement was terminated all legal bills were paid from a United Plaza Extra account,

I declare under penalty of perjury that the foregoing is true and correct.

(See, Exhibit 44 to the March 6, 2017 hearing before Judge Brady in this case, HAMD641485-HAMD642240.pdf).⁷

⁷ First, Table 18 is incomprehensible. What BDO appears to have done on 18, is target bills from specific attorneys such as Pam Colon or other similar professionals. Thus, in bulk, Colon's bills were excepted. No reference is made to what work she actually did or

Further evidence of this is shown in letters Randall Andreozzi, Esq., wrote on behalf of the United Corporation in 2012-2009 to the federal government, requesting Partnership funds be released on United's behalf. An attorney solely representing Waleed Hamed would not be making requests to the federal government in a criminal case on behalf of the United Corporation and its shareholders. Yusuf's argument that Attorney Andreozzi solely represented Waleed Hamed during the time of the joint defense agreement is absurd. See, e.g., HAMD562177-HAMD562179.pdf, HAMD562183-HAMD562185.pdf, HAMD261888-HAMD261892.pdf, HAMD562180-HAMD562182.pdf, HAMD562174-HAMD562176.pdf, HAMD562159-HAMD562166.pdf and HAMD562157-HAMD562158.pdf.

Table 19 – Hamed does not contest this table, as it appears that BDO excepted these amounts from the calculations.

Tables 20A-21C – Hamed objects to Tables 20A-21C, which form the underlying basis for the lifestyle analysis. The "lifestyle analysis" these tables underpin have already been discredited in Judge Brady's July 21, 2017 Order:

Additionally, **the analysis presented in the report rests on the unsupported assumption that any monies identified in excess of "known sources of income" constitute distributions from partnership funds to the partners' § 71(a) accounts.** Thus, even Yusuf's own "expert report" acknowledges the insurmountable difficulties inherent in any attempt

for whom from any documentation. Beyond the obvious refutation of this by the supplied declaration and the underlying Joint Defense Agreement, Hamed notes that no support is provided in the invoices of such lawyers as to either the work done or for which party it was done.

Thus, the completely unsupported and fanciful "assumption" by BDO as to what work Ms. Colon did, for example, underlines the failure of Table 10A. To put this another way, this is not an accounting, it is a "BDO accepts the completely unsupported statement of Fathi Yusuf, in the total absence of underlying documentation, as to who did what – and we might as well have claimed absolutely ANY amount and simply said 'because Fathi said so'." Again, this is not an attempt to provide an accounting via underlying documents, it is an attempt to make a position look like an accounting by dropping in a bunch of numbers based on what Fathi Yusuf "told" BDO, and then having BDO sign.

to accurately reconstruct the partnership accounts; a project which necessarily becomes proportionately more difficult and less reliable the farther back in time one goes.

Hamed v. Yusuf, 2017 WL 3168458, at *24 (emphasis added). Also, all of the Yusuf deposits and charges to credit cards were not accounted for in the BDO report, making the comparisons between the two families' spending inaccurate.⁸ Further, Hamed's income earned from sources other than his salary from the Partnership was not included, plus many of the bank account deposits and payments to credit cards in these tables occurred prior to September 17, 2006, also rendering them moot under the Judge's Order.

Finally, Hamed does not agree with Tickmark A on Table 21C: "All transactions that occur during the period while Gaffney was in charge of the accounting were adjusted to avoid duplicity because all withdrawals were supposed to be accounted for by Gaffney." During a portion of 2013, the Hameds were locked out of the Partnership's financials—both paper and electronic access to bank records – and were subsequently told by Mr. Gaffney that all bank statements for the Partnership during that time period were not available for their review because paper statements for some of the accounts did not exist. Accordingly, Hamed cannot assert that all Yusuf withdrawals were properly accounted by Mr. Gaffney, demonstrating another reason why BDO's Exhibit J-2 to Yusuf's October 30, 2017 revised amended claims submission regarding the amount BDO claims Hamed owes Yusuf is inaccurate.

Table 22 – Hamed objects to Table 22 for all of the reasons given for Tables 15A-21C, plus the following: The headings on Table 22 make it difficult to determine which items occurred on or after Judge Brady's September 17, 2006 date for permissible claims. For

⁸ BDO reported, for example, that Fathi, Maher and Yusuf Yusuf had no spending on credit cards from January 1994 through December 2012 and Negeh Yusuf only had \$100 in spending during the same time period.

instance, Table 22 shows "Funds Withdrawn through Partnership Checks" to be \$72,400.44 (BDO Tables 15A-B). All of those withdrawals were prior to 2005, thus none of those withdrawals are applicable to the current claims process. Additionally, Table 22 shows "Withdrawals from the Partnership with a Signed Ticket/Receipt" to be \$1,307,622.00. All of those withdrawals were prior to 2002 (BDO Tables 16A-16B), therefore none of those withdrawals are applicable to the current claims process. Finally, Table 22 shows "Payments to Third Parties on behalf of Hamed/Yusuf with Partnership Funds Either with Tickets or Checks" to be \$528,998.81. All of those withdrawals were prior to 2003 (BDO Table 17A-17B), thus none of those withdrawals are applicable to the current claims process.

ROG 10. Do you contest any allocation to Mufeed set forth in Tables 23A-28 for transactions after September 17, 2006, attached hereto as Exhibit 4, and, if so, which ones are contested and why?

Hamed Response: Yes. As a general matter, the BDO tables in Exhibit 4 are incorrect, are based on incomplete data, and are – by the admission of Yusuf's own experts – inaccurate and incomplete. See p. 2 and 22 of the BDO Report (emphasis added).

[At 2] records were prepared in an **informal manner**.

[At 22] Our report and the findings included herein have been impacted by the **limitation of the information available** in the Case. Following is a summary of the limitations we encountered during the performance of the engagement.

* * * *

Accounting records and/or documents (checks registers, bank reconciliations, deposits and disbursements of Supermarkets' accounts) provided in connection with Supermarkets were limited to covering the period from 2002 through 2004, East and West from 2006 through 2012, and Tutu Park from 2009 through 2012.

Accounting records and/or documents provided to us for the periods prior to 2003 are incomplete and limited to bank statements, deposit slips, cancelled checks, check registers, investments and broker statements, cash withdrawal tickets/receipts and cash withdrawal receipt listings. **For**

example, the retention policy for statements, checks, deposits, credits in Banco Popular de Puerto Rico is seven years; therefore, there is no Bank information available prior to 2007 and electronic transactions do not generate any physical evidence as to regular deposits and/or debits. Information discovered about the case up to August 31, 2014. We only considered information up to December 31, 2012. Transactions after that date were adjusted in our report.

Any monies identified through our analysis in excess of the amount identified from the known sources of income (e.g. salaries, rent income, etc.) **were assumed** to be partnership withdrawals/distributions. With regards to the Hamed family,

The lifestyle analysis is supported by **available information** related to deposits to banks and brokerage accounts and payments to credit cards during the period from January 1994 to December 2012 or until Gaffney was assigned to work with the Supermarkets accounting.

Second, Judge Brady also found the reports lacking in terms of comprehensiveness and he also rejected BDO's purported "lifestyle" analysis. See Brady decision: *Hamed v. Yusuf, et al.*; SX-12-CV-370; SX-14-278; SX-14-287 Memorandum Opinion and Order Re Limitations on Accounting, July 21, 2017, at pp. 23-24 (emphasis added).

As part of the accounting and distribution phase of the Wind Up, Yusuf submitted to the Master the report of accountant Fernando Scherrer of the accounting firm BDO, Puerto Rico, P.S.C. (BDO Report). Yusuf contends that this report constitutes a comprehensive accounting of the historical partner withdrawals and reconciliation for the time period 1994-2012." See Opposition to Motion to Strike BDO Report, filed October 20, 2016. However, the BDO report, by its own terms, appears to be anything but comprehensive. Most tellingly, the body of the BDO Report itself contains a section detailing its own substantial "limitations," resulting from the absence or inadequacy of records for each of the grocery stores covering various periods during the life of the partnership.²⁵ See Plaintiff's Motion to Strike BDO Rep't, Exhibit 1, at 22.

Additionally, **the analysis presented in the report rests on the unsupported assumption that any monies identified in excess of "known sources of income" constitute distributions from partnership funds to the partners'§ 71(a) accounts.** Thus, even Yusuf's own "expert report" acknowledges the insurmountable difficulties inherent in any attempt to accurately reconstruct the partnership accounts

Finally, Judge Brady's July 24, 2017 Order limits claims to transactions that occurred on or after September 17, 2006:

ORDERED that the accounting in this matter, to which each partner is entitled under 26 V.I.C § 177(b), conducted pursuant to the Final Wind Up Plan adopted by the Court, shall be limited in scope to consider only those claimed credits and charges to partner accounts, within the meaning of 26 V.I.C § 71(a), based upon transactions that occurred on or after September 17, 2006.

Hamed v. Yusuf, Civ. No. SX-12-CV-370, 2017 WL 3168458, at *29 (V.I.Super. July 21, 2017).

Subject to those objections, Hamed states the following:

Tables 23A-26A, 27A – Hamed objects to Tables 23A-26A, 27A. These tables are irrelevant date because Judge Brady's July 24, 2017 Order limits claims to transactions that occurred on or after September 17, 2006:

ORDERED that the accounting in this matter, to which each partner is entitled under 26 V.I.C § 177(b), conducted pursuant to the Final Wind Up Plan adopted by the Court, shall be limited in scope to consider only those claimed credits and charges to partner accounts, within the meaning of 26 V.I.C § 71(a), based upon transactions that occurred on or after September 17, 2006.

Hamed v. Yusuf, Civ. No. SX-12-CV-370, 2017 WL 3168458, at *29 (V.I.Super. July 21, 2017). All of the dates on Tables 23A-26A, 27A occurred prior to September 17, 2006 and thus are not proper claims under the Order.

Hamed has not evaluated each allocation individually to identify errors because the timeframe covered by the tables is outside of the scope as articulated in Judge Brady's July 21, 2017 Order. For a sampling of disputes Hamed has regarding these exhibits, please see the testimony and exhibits from the March 6, 2017 hearing before Judge Brady. Further, see generally, the documents the FBI seized in its 2001 raid for

documents contradicting BDO's tables, which were produced by Yusuf to Hamed on August 26, 2013.

Tables 26A-27C – Hamed objects to Tables 26A-27C, which form the underlying basis for the lifestyle analysis. The “lifestyle analysis” these tables underpin have already been discredited in Judge Brady's July 21, 2017 Order:

Additionally, **the analysis presented in the report rests on the unsupported assumption that any monies identified in excess of “known sources of income” constitute distributions from partnership funds to the partners' § 71(a) accounts.** Thus, even Yusuf's own “expert report” acknowledges the insurmountable difficulties inherent in any attempt to accurately reconstruct the partnership accounts; a project which necessarily becomes proportionately more difficult and less reliable the farther back in time one goes.

Hamed v. Yusuf, 2017 WL 3168458, at *24 (emphasis added). Further, Hamed's income earned from sources other than his salary from the Partnership was not included, plus many of the bank account deposits and payments to credit cards in these tables occurred prior to September 17, 2006, also rendering them moot under the Judge's Order.

Finally, Hamed does not agree with Tickmark A on Tables 26C and 27C: “All transactions that occur during the period while Gaffney was in charge of the accounting were adjusted to avoid duplicity because all withdrawals were supposed to be accounted for by Gaffney.” During a portion of 2013, the Hameds were locked out of the Partnership's financials—both paper and electronic access to bank records – and were subsequently told by Mr. Gaffney that all bank statements for the Partnership during that time period were not available for their review because paper statements for some of the accounts did not exist. Accordingly, Hamed cannot assert that all Yusuf withdrawals were properly accounted by Mr. Gaffney, demonstrating another reason why BDO's Exhibit J-2 to Yusuf's October 30, 2017 revised amended claims submission regarding the amount BDO claims Hamed owes Yusuf is inaccurate.

Table 28 – Hamed objects to Table 28 for all of the reasons given for Tables 23A-27C.

ROG 11. Do you contest any allocation to Hisham set forth in Tables 29A-34 for transactions after September 17, 2006, attached hereto as Exhibit 5, and, if so, which ones are contested and why?

Hamed Response: Yes. As a general matter, the BDO tables in Exhibit 4 are incorrect, are based on incomplete data, and are – by the admission of Yusuf's own experts – inaccurate and incomplete. See p. 2 and 22 of the BDO Report (emphasis added).

[At 2] records were prepared in an informal manner.

[At 22] Our report and the findings included herein have been impacted by the **limitation of the information available** in the Case. Following is a summary of the limitations we encountered during the performance of the engagement.

* * * *

Accounting records and/or documents (checks registers, bank reconciliations, deposits and disbursements of Supermarkets' accounts) provided in connection with Supermarkets were limited to covering the period from 2002 through 2004, East and West from 2006 through 2012, and Tutu Park from 2009 through 2012.

Accounting records and/or documents provided to us for the periods prior to 2003 are incomplete and limited to bank statements, deposit slips, cancelled checks, check registers, investments and broker statements, cash withdrawal tickets/receipts and cash withdrawal receipt listings. **For example, the retention policy for statements, checks, deposits, credits in Banco Popular de Puerto Rico is seven years; therefore, there is no Bank information available prior to 2007** and electronic transactions do not generate any physical evidence as to regular deposits and/or debits. Information discovered about the case up to August 31, 2014. We only considered information up to December 31, 2012. Transactions after that date were adjusted in our report.

Any monies identified through our analysis in excess of the amount identified from the known sources of income (e.g. salaries, rent income, etc.) **were assumed** to be partnership withdrawals/distributions. With regards to the Hamed family,

The lifestyle analysis is supported by **available information** related to deposits to banks and brokerage accounts and payments to credit cards during the period from January 1994 to December 2012 or until Gaffney was assigned to work with the Supermarkets accounting.

Second, Judge Brady also found the reports lacking in terms of comprehensiveness and he also rejected BDO's purported "lifestyle" analysis. See Brady decision: *Hamed v. Yusuf, et al.*; SX-12-CV-370; SX-14-278; SX-14-287 Memorandum Opinion and Order Re Limitations on Accounting, July 21, 2017, at pp. 23-24 (emphasis added).

As part of the accounting and distribution phase of the Wind Up, Yusuf submitted to the Master the report of accountant Fernando Scherrer of the accounting firm BDO, Puerto Rico, P.S.C. (BDO Report). Yusuf contends that this report constitutes a comprehensive accounting of the historical partner withdrawals and reconciliation for the time period 1994-2012." See Opposition to Motion to Strike BDO Report, filed October 20, 2016. However, the BDO report, by its own terms, appears to be anything but comprehensive. Most tellingly, the body of the BDO Report itself contains a section detailing its own substantial "limitations," resulting from the absence or inadequacy of records for each of the grocery stores covering various periods during the life of the partnership.²⁵ See Plaintiff's Motion to Strike BDO Rep't, Exhibit 1, at 22.

Additionally, **the analysis presented in the report rests on the unsupported assumption that any monies identified in excess of "known sources of income" constitute distributions from partnership funds to the partners'§ 71(a) accounts.** Thus, even Yusuf's own "expert report" acknowledges the insurmountable difficulties inherent in any attempt to accurately reconstruct the partnership accounts

Finally, Judge Brady's July 24, 2017 Order limits claims to transactions that occurred on or after September 17, 2006:

ORDERED that the accounting in this matter, to which each partner is entitled under 26 V.I.C § 177(b), conducted pursuant to the Final Wind Up Plan adopted by the Court, shall be limited in scope to consider only those claimed credits and charges to partner accounts, within the meaning of 26 V.I.C § 71(a), based upon transactions that occurred on or after September 17, 2006.

Hamed v. Yusuf, Civ. No. SX-12-CV-370, 2017 WL 3168458, at *29 (V.I.Super. July 21, 2017).

Subject to those objections, Hamed states the following:

Tables 29A-31A, 32A – Hamed objects to Tables 29A-31A, 32A. These tables are irrelevant date because Judge Brady's July 24, 2017 Order limits claims to transactions that occurred on or after September 17, 2006:

ORDERED that the accounting in this matter, to which each partner is entitled under 26 V.I.C § 177(b), conducted pursuant to the Final Wind Up Plan adopted by the Court, shall be limited in scope to consider only those claimed credits and charges to partner accounts, within the meaning of 26 V.I.C § 71(a), based upon transactions that occurred on or after September 17, 2006.

Hamed v. Yusuf, Civ. No. SX-12-CV-370, 2017 WL 3168458, at *29 (V.I.Super. July 21, 2017). All of the dates on Tables 29A-31A occurred prior to September 17, 2006 and thus are not proper claims under the Order.

Hamed has not evaluated each allocation individually to identify errors because the timeframe covered by the tables is outside of the scope as articulated in Judge Brady's July 21, 2017 Order. For a sampling of disputes Hamed has regarding these exhibits, please see the testimony and exhibits from the March 6, 2017 hearing before Judge Brady. Further, see generally, the documents the FBI seized in its 2001 raid for documents contradicting BDO's tables, which were produced by Yusuf to Hamed on August 26, 2013.

Tables 31B-31C – Hamed does not contest Tables 31B-31C, as it appears that BDO excepted these amounts from the calculations.

Tables 32A-33 – Hamed objects to Tables 32A-33, which form the underlying basis for the lifestyle analysis. The "lifestyle analysis" these tables underpin have already been discredited in Judge Brady's July 21, 2017 Order:

Additionally, **the analysis presented in the report rests on the unsupported assumption that any monies identified in excess of "known sources of income" constitute distributions from partnership funds to the partners' § 71(a) accounts.** Thus, even Yusuf's own "expert report" acknowledges the insurmountable difficulties inherent in any attempt

to accurately reconstruct the partnership accounts; a project which necessarily becomes proportionately more difficult and less reliable the farther back in time one goes.

Hamed v. Yusuf, 2017 WL 3168458, at *24 (emphasis added). Further, Hamed's income earned from sources other than his salary from the Partnership was not included, plus many of the bank account deposits and payments to credit cards in these tables occurred prior to September 17, 2006, also rendering them moot under the Judge's Order.

Finally, Hamed does not agree with Tickmark A on Table 32C: "All transactions that occur during the period while Gaffney was in charge of the accounting were adjusted to avoid duplicity because all withdrawals were supposed to be accounted for by Gaffney." During a portion of 2013, the Hameds were locked out of the Partnership's financials—both paper and electronic access to bank records – and were subsequently told by Mr. Gaffney that all bank statements for the Partnership during that time period were not available for their review because paper statements for some of the accounts did not exist. Accordingly, Hamed cannot assert that all Yusuf withdrawals were properly accounted for by Mr. Gaffney, demonstrating another reason why BDO's Exhibit J-2 to Yusuf's October 30, 2017 revised amended claims submission regarding the amount BDO claims Hamed owes Yusuf is inaccurate.

Table 34 – Hamed objects to Table 34 for all of the reasons given for Tables 29A-33.

ROG 12. What expenses, if any, do you contend must be paid by the Partnership before any distribution of the profits can be made?

Hamed Response: Object. It is unclear as to what is meant by "expenses." Subject to that objection: If this means claims, then all of the 165 claims Hamed has submitted. If it means on-going administrative expenses, the costs of the Special Master, his clerk, his costs as set forth in his invoices, the CaseAnywhere charges and whatever proper

expenses the court or the Master orders to be paid. Hamed does not agree to any "prospective" amounts that Yusuf has ESTIMATED might be due. As for amounts listed as expenses by Mr. Gaffney's accounting, Hamed has not been able to examine Mr. Gaffney and will respond thereafter by supplementation.

ROG 13. Did each of the Hamed family members originally disclose on their tax returns from 1986 through the time of the plea agreement in the Criminal Case, all the income they received from the Partnership operation of the grocery store business?

Hamed Response: No.

ROG 14. Identify all assets that were transferred to the Mohammad Hamed Revocable Trust and what was the value of said assets upon transfer?

Hamed Response: Object. This interrogatory attempts to invade the Trust. Yusuf brought a separate action regarding the Trust (which has recently been consolidated with this case) – despite the fact that there has been no judgment yet for any amounts for Hamed here. Moreover, there are more than sufficient assets in the real estate holding of the Trust, which have not changed since the Trust was funded, to pay any potential judgment. Thus, all such inquiries are premature here. Subject to this objection, see response to Interrogatory 15.

ROG 15. What assets were held by the Mohammad Hamed Revocable Trust as of the date of death of Mohammad Hamed?

Hamed Response: Object. All of the assets set forth in the Trust Agreement are listed on the Trust Agreement -- which has been provided. This interrogatory attempts to invade the Trust. There are more than sufficient assets in the real estate holding of the Trust, which have not changed since the Trust was funded, to pay any potential judgment. Thus, all such inquiries are premature here.

Subject to this objection, Waleed Hamed states:

1. Into the Trust, Mohammad Hamed placed assets, some of which are listed below, in 2012 -- which assets all remain in the Trust, unpledged and unencumbered in any manner:
 - a. 10% of the shares (10 shares) of Plessen Enterprises, Inc.
 - b. 10% of the shares (10 shares) of Sixteen Plus.⁹
 - c. 50% of the shares (500 shares) of Peters Farm.¹⁰
 - d. His personal residence in which Mrs. Hamed is residing.
 - e. Small holdings of land worth less than \$250,000.
2. The value of these above-listed assets is approximately \$9,600,000, calculated as:
 - a. Mohammad Hamed's residence, \$300,000
 - b. Miscellaneous unimproved land in his name, \$200,000
 - c. Stock in Plessen (10 shares = 10%), estimated \$ 2,000,000¹¹
(estimated \$20 million value: rent from Plaza West store + other property + \$1.6 million plus in cash)
 - d. Stock in Sixteen Plus (10 shares - 10%), estimated \$1,600,000
(estimated \$16 million land Diamond Keturah)

⁹ The balance of the shares is owned by other Hamed Family Members and Yusuf Family Members. The underlying property cannot be sold or encumbered without the agreement of the Yusufs.

¹⁰ The balance of the shares is owned by other Hamed Family Members and Yusuf Family Members. The underlying property cannot be sold or encumbered without the agreement of the Yusufs.

¹¹ In addition to the \$1.6 million plus Plessen has in the bank, it takes in more than \$100,000 per month. Out of this, Plessen only pays taxes and other minor amounts -- it has no significant expenses.

e. Stock in Peter's Farm (500 shares = 50%), estimated \$5,500,000

(4 properties)

3. In addition, there are Mohammad Hamed's claims pending in the action *Hamed v. Yusuf* and United, SX-12-CV-370¹² against Fathi Yusuf and United Corporation as follows:

a. One-half of the original \$2.7 million that Judge Brady found that the Yusuf's had stolen from the Partnership,¹³ (See the Court's detailed Memorandum of April 25, 2013, *Hamed v. Yusuf*, 58 V.I. 117, 2013 WL 1846506 (V.I. Super. Apr. 25, 2013)).

¹² This litigation began in 2012 when Fathi and Mike Yusuf unilaterally took \$2,784,706.25 from a Partnership account and transferred it to an account to which the Hameds did not have access. This was the main issue in Hamed's 2012 complaint and the central issue during the early portion of this case. Yusuf took the position that Hamed had no interest in the Plaza Extra Stores. Based on this, he took \$2.7 million from the Partnership account and also tried to have the police remove the Hameds from the stores. Thus, Judge Brady granted a full evidentiary TRO hearing over two full days -- January 25th and 31st, 2013. Three months later, the Court ruled for Hamed on the matter. (See the Court's detailed Memorandum of April 25, 2013, *Hamed v. Yusuf*, 58 V.I. 117, 2013 WL 1846506 (V.I. Super. Apr. 25, 2013)). The Court stated at paragraphs 35 and 36:

On the first hearing day, Mahar Yusuf, President of United. Corporation testified under oath that he used the \$2,784,706.25 withdrawn from the Plaza Extra operating account to buy three properties on St. Croix in the name of United. On the second hearing day, Mahar Yusuf, contradicted his prior testimony and admitted that those withdrawn funds had actually been used to invest in businesses not owned by United. . . . Id. at *10.

And, further, at footnote 9, at *19:

With regard to the August 2012 diversion of more than \$2.7 million by Mahar Yusuf, president of United, to accounts inaccessible to Plaintiff, a real concern exists that continuing diversions will not be traceable as the Plaza Extra store have had no system of internal controls in existence and, to date accounting for the businesses is not completed beyond June 2012....

¹³ This asset is within the control of the Court here and cannot be realized before that action is decided.

- b. More than \$500,000 dollars Judge Brady found had been wrongfully taken from Partnership accounts to pay for Yusuf's personal lawyer.¹⁴ See Court's detailed Memorandum of April 25, 2013.
- c. One-half of \$8 million in cash, presently escrowed in a Court-supervised account, which Hamed's share may increase based on the on-going accounting.¹⁵
- d. Two parcels of land in United's name paid for with Partnership funds and transferred to United without any consideration.¹⁶
- e. One-half of more than \$26 million in "new" claims listed in a 2016 Expert Report as having been improperly paid or accounted for by Yusuf and United when they controlled accounts from 2012-present.¹⁷ It is also important to note that if EVERY remaining Yusuf Claim were granted against Hamed and none of the other counter-defendants (new claims are no longer allowed), and every one of the Hamed claims for \$26 million were denied, Yusuf's total remaining potential claims are still less than the value of just the enumerated Hamed assets in Trust plus half of Hamed's remaining \$4 million in escrow.

¹⁴ This asset is within the control of the Court in this action (consolidated) and cannot be realized before the action is decided.

¹⁵ This asset is within the control of the Court in 370 and cannot be realized before that action is decided.

¹⁶ This asset is within the control of the Court in 370 and cannot be realized before that action is decided.

¹⁷ This asset is within the control of the Court in 370 and cannot be realized before that action is decided.

ALL REMAINING YUSUF CLAIMS

New Claim Number	Item No. in Original 9/30/2017 Claim Filing	Description	Total Amount of Claim, According to Yusuf
Y-01	Exhibit C	Unpaid rent for Plaza Extra-East Bay 1	DENIED – J. Ross
Y-02	Y's Claims - III.B.2	Unpaid rent for Plaza Extra-East Bays 5 & 8	\$793,984.34
Y-03	Exhibit D	9% interest on rent claims for Bay 1	DENIED – J. Ross
Y-04	Exhibit E	9% interest on rent claims for Bays 5 & 8	\$241,005.18
Y-05	Exhibit F	Reimburse United for Gross Receipt Taxes	\$60,586.96
Y-06	Exhibit G	Black Book Balance Owed United	\$49,997.00
Y-07	Exhibit H	Ledger Balance Owed United	\$199,760.00
Y-08	Y's Claims - III.F	Water Revenue Owed United	\$693,207.46
Y-09	Exhibit I	Unreimbursed Transfers from United	\$188,132.00
Y-10	New	Past Partnership Withdrawals - Receipts	\$3,133,020.88
Y-11	BDO Table	Lifestyle Analysis	DENIED- J. Brady
Y-12	Y's Claims - VI, Exhibits K-O	Foreign Accts and Jordanian Properties	Extra-Jurisdictional
Y-13	Y's Claims - VII, Exhibit P	Loss of going concern value of Plaza West- Integra	\$4,385,000.00
Y-14	Y's Claims - VIII	Half of the value of the six containers	\$210,000.00
Sum of All Remaining Yusuf Claims			\$9,954,693.82

4. Other than the amounts listed above associated with this action, there are no other claims against Mohammad Hamed, the Estate or the Trust.

5. In this, the amount claimed in the January 14, 2013, Amended Counterclaim plus interest -- against all defendants -- is \$7 million¹⁸ -- far less than \$9,600,000 plus the \$4,000,000 in cash in the escrow.
6. Of the remaining claims against Mohammad Hamed in that case, the most likely and significant one was by United, for back rents of \$6,974,063.10. It was soundly denied by Special Master Ross, who found, at page 6 (emphasis added):

Thus, the evidence and facts surrounding Yusuf's action through United—terminating the lease with the Partnership at Bay 1, treating the Partnership as a holdover tenant, and raising United's rent significantly higher than the agreed upon rent—demonstrates **a transaction prohibited by law and tainted by a conflict of interest and self-dealing.**

ROG 16. Identify the current assets of the Mohammad Hamed Revocable Trust and identify any transfers that have occurred since its inception.

Hamed Response: None of the assets or claims set forth in response to the preceding interrogatory have been transferred. All remain in the trust, unencumbered. With regard to the current assets of the trust, other than those described, Hamed objects on the basis of relevance.

ROG 17. Has any member of the Hamed family held assets for the benefit of Hamed and, if so, please identify any such assets and their value as of September 17, 2006, September 1, 2012, and at present, as well as any disposition of such assets?

Hamed Response: No.

¹⁸ At paragraph 155:

Hamed and his agents have obtained in excess of \$7 million of the Plaza Extra Stores' monies under such circumstances that in equity and good conscience they ought not retain and the Hamed Sons participated and aided and abetted in this conduct by accepting funds from the Plaza Extra Stores and, among other things, using them to purchase and improve properties for their own personal benefit.

ROG 18. Do you dispute any of the debts owed by the Partnership as set forth in the attached Exhibit 6 and if so, please explain the basis for your dispute identifying any documents or evidentiary support for your position?

Hamed Response: Yes. Exhibit 6 is Yusuf's amended accounting claims, which were filed on October 30, 2017. For purposes of this interrogatory, Hamed is referencing section "III. Outstanding Debts of the Partnership," pages 7-12 only. Each section on those pages is addressed separately, below.

Section A. Miscellaneous Debts

Hamed objects to "Section A. Miscellaneous Debts," page 8. This section asserts that \$167,114.78 must be paid by the Partnership prior to any distribution of assets. Yusuf states that as of August 31, 2017, that amount is now \$69,273.51, according to John Gaffney. It is impossible for Hamed not to object to this section, as Hamed has not received any underlying, supporting documentation to validate the accuracy of the debts.

For Hamed to make a determination regarding this section, invoices and cancelled checks for each debt need to be examined by Hamed's accountant.

Section B. Unpaid Rent for Plaza Extra East and Adjacent Bays

1. Bay 1 - Increased Rent Due Net of Rent Paid

The first debt listed under Section B has been made moot by Special Master Ross' March 15, 2018 Order regarding rent on Bay 1.

In this instance, Yusuf and Hamed are partners of the Partnership (Wind up Order ¶ 1.24). At the same time, Yusuf is also the principal shareholder of United, the landlord of the Partnership at Bay 1. Acting on behalf of United, Yusuf terminated the Partnership's lease at Bay 1, treated the Partnership as a holdover tenant, and raised the rent from \$58,791.38 to \$200,000.00 and \$250,000.00. While "[a] partner does not violate a duty or obligation under this chapter or under the partnership agreement merely because the partner's conduct furthers the partner's own interest" under Title 26 V.I.C. § 74(e), Yusuf's conduct went beyond furthering his own interest. Here, Yusuf dealt with the Partnership on behalf of a party—namely, United—having an

interest adverse to the Partnership, in violation of Title 26 V.I.C. § 74(b)(2). Additionally, Yusuf did not act consistently with the obligation of good faith and fair dealing, in violation of Title 26 V.I.C. § 74(d). Thus, the evidence and facts surrounding Yusuf's action through United—terminating the lease with the Partnership at Bay 1, treating the Partnership as a holdover tenant, and raising United's rent significantly higher than the agreed upon rent—demonstrates a transaction prohibited by law and tainted by a conflict of interest and self-dealing.

Based on the foregoing, the Master will deny United's motion for recovery of additional rent from the Partnership as holdover tenant at Bay 1.

Hamed v. Yusuf, et al.; SX-12-CV-370; SX-14-278; SX-14-287 Order, March 15, 2018, at pp. 6-7 (footnotes omitted).

2. *Bays 5 and 8*

Hamed disputes the Partnership owes United rent for Bays 5 and 8 at Plaza Extra-East. He does stipulate to the following: (1) He entered into a settlement agreement with regard to the Partnership's use of any of the premises used during such periods by the East Store. Said agreement references the use of whatever premises were used at the Sion Farm location -- and does not restrict its scope to just Bay 1. See, HAMD591991-HAMD592006.pdf and Moreover, (2) Hamed knows that Yusuf is in possession of pages from the United Accounts Receivable (labeled "A/R") ledger during that period showing (i) no rent due for the covered period and, more importantly, (ii) no "balance forward." See e.g., FBIX339272-FBIX339301. Both of these documents are documentary evidence to refute that rent is due from the Partnership to United for Bay 5 in the amount of \$271,875.00 and for Bay 8 in the amount of \$323,515.63 for the period of May 1, 1994 to September 30, 2002 and \$198,593.75 for the period of April 1, 2008 to May 30, 2013.

3. *Interest on Rent Claims*

Again, this debt has been made moot by Special Master Ross' March 15, 2018 Order regarding rent on Bay 1. Further, Hamed disputes that interest is owed on rent for

Bays 5 and 8, as there is no rent owed by the Partnership, and by extension, no interest is owed either.

Section C. Reimbursement for Gross Receipts Taxes Paid by United

Hamed disputes this debt. The Partners agreed when the Partnership was formed that all gross receipts of United *ascribable to Partnership operation, but not those of unrelated United businesses* were to be paid from the grocery store operations. As this claim relates to United's businesses unrelated to the Plaza Extra Partnership, the Partnership does not owe United \$60,586.96. Further, the time period United is claiming reimbursement for United's gross receipts is 1993-2001. Pursuant to 5 V. I.C. §31 (3), the statute of limitations for actions for debt, breach of contract and conversion of property is 6 years, making this well outside of the time period for bringing a claim. Finally, this claim is outside of the time period Judge Brady set for bringing claims against the Partnership. See Brady decision: *Hamed v. Yusuf, et al.*; SX-12-CV-370; SX-14-278; SX-14-287 Memorandum Opinion and Order Re Limitations on Accounting, July 21, 2017.

Section D. Black Book Balance Owed United

Hamed disputes this debt. First, the documentary evidence provided by Yusuf is dated in 1993-1994. Pursuant to 5 V. I.C. §31 (3), the statute of limitations for actions for debt, breach of contract and conversion of property is 6 years, making this well outside of the time period for bringing a claim. This claim also is outside of the time period Judge Brady set for bringing claims against the Partnership. See Brady decision: *Hamed v. Yusuf, et al.*; SX-12-CV-370; SX-14-278; SX-14-287 Memorandum Opinion and Order Re Limitations on Accounting, July 21, 2017.

The documentary evidence Yusuf provided is merely a couple of pages out of a so-called black book. It is impossible to say definitively that the Partnership owes this

amount to United, because all of the records of the Partnership are not available from 1992 forward. This alleged debt could have been paid years ago, but the documentary evidence no longer exists. Even Yusuf's own accounting expert, BDO, asserted in its report that that "records were kept in an informal manner" and "accounting records and/or documents provided to us for the periods prior to 2003 are incomplete." BDO's September 30, 2016 Report, pages 2, 22.

Finally, Fathi Yusuf's brother owned part of the United Shopping Center prior to the Plaza Extra-East store burning down in 1992. Fathi Yusuf tried to steal the shopping center from his brother, but was unsuccessful. Instead, he bought out his brother's interest in the United Shopping Center using Partnership funds. Nowhere in the Black Book does United show the debt it owes to the Partnership for the use of Partnership funds to buy out Fathi Yusuf's brother, nor does it show any United payment to the Partnership for the funds taken by United to buy out Fathi Yusuf's brother's interest in the United Shopping Center. Thus, the black book excerpt showing that the Partnership allegedly owes United funds is just one data point in time, not a full accounting or reconciliation of all amounts.

Section E. Additional Ledger Balances Due to United

Hamed disputes this debt. First, the documentary evidence provided by Yusuf is dated in 1994, 1995 and 1998. Pursuant to 5 V. I.C. §31 (3), the statute of limitations for actions for debt, breach of contract and conversion of property is 6 years, making this well outside of the time period for bringing a claim. Further, the documentary evidence Yusuf provided is merely a couple of pages out of a ledger, the entire ledger was not even produced. It is impossible to say definitively that the Partnership owes this amount to United, because all of the records of the Partnership are not available from 1992 forward.

This alleged debt could have been paid years ago, but the documentary evidence no longer exists. Even Yusuf's own accounting expert, BDO, asserted in its report that "records were kept in an informal manner" and "accounting records and/or documents provided to us for the periods prior to 2003 are incomplete." BDO's September 30, 2016 Report, pages 2, 22. Finally, this claim is outside of the time period Judge Brady set for bringing claims against the Partnership. See Brady decision: *Hamed v. Yusuf, et al.*; SX-12-CV-370; SX-14-278; SX-14-287 Memorandum Opinion and Order Re Limitations on Accounting, July 21, 2017.

Finally, Fathi Yusuf's brother owned part of the United Shopping Center prior to the Plaza Extra-East store burning down in 1992. Fathi Yusuf tried to steal the shopping center from his brother, but was unsuccessful. Instead, he bought out his brother's interest in the United Shopping Center using Partnership funds. Nowhere in the ledger balances does United show the debt it owes to the Partnership for the use of Partnership funds to buy out Fathi Yusuf's brother, nor does it show any United payment to the Partnership for the funds taken by United to buy out Fathi Yusuf's brother's interest in the United Shopping Center. Thus, the ledger balance excerpt showing that the Partnership allegedly owes United funds is just one data point in time, not a full accounting or reconciliation of all amounts.

Section F. Water Revenue Re Plaza Extra-East

Hamed disputes this debt. Yusuf contends that from April 1, 2004, all revenue from the sale of water that was collected by Plaza Extra-East was to be paid to United. The water sales actually did not belong to United, but to the Partnership.

A little background is in order. When the Partnership purchased the one-acre property at Plaza Extra-East, it also built, with Partnership funds, a 400,000 to 450,000

gallon cistern on the property. Additionally, one or two water wells also were used to fill the cistern. This was during the 1990s. At that time, there was a water shortage on island, WAPA had difficulty consistently providing water and, other than WAPA, there really weren't other companies selling water. The Partnership filled this gap by selling water, starting approximately in 1994. Yusuf is correct that during 1994-2004, the proceeds from the sale of the water went to charity (half to Mr. Yusuf's choice of charity and the other half to Mr. Hamed's choice of charity) and to pay the expenses of the water generation and delivery. At its peak, in the 1990s, 10 or more trucks a day, each with a capacity of about 30,000 gallons, delivered water to St. Croix residents.

After April 1, 2004, the funds generated from the enterprise went to the Partnership, rather than to charity. The sale of water dropped off quite dramatically for the Partnership in the 2000s. Competitors, such as Marcos and others, entered the market. To get a sense of the scope, in the 2000s, the Partnership was sending out one or two trucks a day to deliver water, rather than the previous 10 or more trucks.

Eventually, Yusuf Yusuf was in charge of monitoring the water sales. For a time, water sales were recorded on hand written receipts, but there weren't any controls to ensure that the vendors did not take more water than they were billed. Wally Hamed then recommended, and Yusuf Yusuf implemented, a key being programmed into the register at the service desk to record the sales of water.

Hamed objects to this blatant claim by Yusuf & United for a number of reasons. First, neither United nor Yusuf has provided any document memorializing this so-called agreement between the Partnership and United because one does not exist. Next, Yusuf picks two years of sales, 1997 and 1998, and extrapolates those two years of sales into an average of \$5,291.66 per month and applies that monthly figure to every month from

April 1, 2004 through February 28, 2015. As is explained by the chronology, water sales dropped off dramatically in the 2000s, so of course Yusuf picks two years of sales during the most profitable years. Third, Yusuf does not provide *any* documentation to support the sales for 1997 and 1998, nor does he provide *any* documentation to support water sales from April 1, 2004 through February 28, 2015, even though both paper copy receipts and information from the register could be generated to show actual sales. Fourth, and perhaps most galling, United doesn't have any right to the water, as it is Partnership water, so this really isn't money United is entitled. Finally, this leads to Hamed's belief that this is another example of what Special Master Ross described as "a transaction prohibited by law and tainted by a conflict of interest and self-dealing," when discussing the inflated rents United tried to collect on Bay 1. Yusuf is not fulfilling his fiduciary duty to the Partnership and instead is trying to loot the Partnership for his corporation, United.

Section G. Unreimbursed Transfers to Plaza Extra from United's Tenant Account

Hamed disputes this debt. First, the documentary evidence provided by Yusuf is dated 1996. Pursuant to 5 V. I.C. §31 (3), the statute of limitations for actions for debt, breach of contract and conversion of property is 6 years, making this well outside of the time period for bringing a claim. Further, the documentary evidence Yusuf provided merely are journal entries from United's tenant account. It is impossible to say definitively that the Partnership owes this amount to United, because all of the records of the Partnership are not available from 1993 forward. This alleged debt could have been paid years ago, but the documentary evidence no longer exists. Even Yusuf's own accounting expert, BDO, asserted in its report that "records were kept in an informal manner" and "accounting records and/or documents provided to us for the periods prior to 2003 are incomplete." BDO's September 30, 2016 Report, pages 2, 22. Finally, this claim is

outside of the time period Judge Brady set for bringing claims against the Partnership. See Brady decision: *Hamed v. Yusuf, et al.*; SX-12-CV-370; SX-14-278; SX-14-287 Memorandum Opinion and Order Re Limitations on Accounting, July 21, 2017.

See also, Hamed's response to Yusuf's RFPD 9. Documents relating to this claim include:

- May 22, 2013 letter to Attorney Nizar DeWood from Attorney Joel Holt regarding alleged rent due to United, HAMD563377-HAMD563378.pdf.
- February 7, 2012, Rent check, HAMD592007-HAMD592007.pdf.
- Undated - Rent calculation, YUSF102523-YUSF102523.pdf.
- July and August 2001 accounts receivable, lease data and 2001 tax calculation showing Bays 5 & 8 vacant, FBIX339272-FBIX339301.pdf.

ROG 19. Identify all facts and circumstances relating to Hamed Claim No. 2 and identify, all documents relating to that claim.

Hamed Response: Claim H-2 has been fully briefed and will be determined based on those briefs, thus, no discovery remains. However, Hamed's knowledge, positions and evidence have been fully set forth in the Motion (12/20/2017) and Reply (1/17/2017) as well as in the Amended Complaint (10/19/2012) and the Proposed Findings submitted in the PI motion process (2/27/2013). See also, Hamed's response to Yusuf's RFPD 13. Subject to that:

This litigation began in 2012 when Fathi and Mike Yusuf unilaterally took \$2,784,706.25 from a partnership account and transferred it to an account to which the Hameds did not have access. This was the main issue in Hamed's 2012 complaint -- and the central issue during the early portion of this case. Because Yusuf was claiming that Hamed had no interest in the Plaza Extra Stores, unilaterally withdrawing \$2.7 million

from the partnership account and trying to have the police remove the Hameds from the stores, Judge Brady granted a full evidentiary TRO hearing which stretched to two days -- January 25th and 31st, 2013.

Three months later, the Court ruled for Hamed on the matter. (See the Court's *critical* Memorandum of April 25, 2013. *Hamed v. Yusuf*, 58 V.I. 117, 2013 WL 1846506 (V.I. Super. April 25, 2013)). The Court stated at paragraphs 35 and 36:

On the first hearing day, Mahar Yusuf, President of United. Corporation testified under oath that he used the \$2,784,706.25 withdrawn from the Plaza Extra operating account to buy three properties on St. Croix in the name of United. On the second hearing day, Mahar Yusuf, contradicted his prior testimony and admitted that those withdrawn funds had actually been used to invest in businesses not owned by United. . . . (Emphasis added.)

Id. at *10. And, further, at footnote 9, at *19:

With regard to the August 2012 diversion of more than \$2.7 million by Mahar Yusuf, president of United, to accounts inaccessible to Plaintiff, a real concern exists that continuing diversions will not be traceable as the Plaza Extra store have had no system of internal controls in existence and, to date accounting for the businesses is not completed beyond June 2012....

There is no way that Yusuf can now alter the Court's decision on this matter -- having since conceded that there was a Yusuf/Hamed partnership that owned the Plaza Extra Stores, and Judge Brady having entered summary judgment. Simply put, Yusuf tried to steal the Plaza Extra Stores, claim that Hamed was just an illiterate employee, give him a small "annuity" rather than his 50%, and throw the Hameds out -- and he began all of this by baldly stealing the \$2.7 million.

However, Yusuf (as the Liquidating Partner) has delayed having this declared a valid claim by repeatedly saying he too has claims that must be heard as well. That may be the case, and he may or may not prove those other claims, but as there is no doubt that the Yusufs took the money and (as Judge Brady's memorandum makes clear) that \$2.7 million plus interest is a valid claim and must be returned to the Partnership.

The original amount of the claim was \$2,784,706.25. Additionally, Hamed seeks \$1,305,988 in statutory interest at 9% from August 15, 2012, the date of the Plaza Extra check written to the United Corporation (unilateral Partnership withdrawal).

ROG 20. Identify all facts and circumstances relating to Hamed Claim No. 13 and identify, all documents relating to that claim.

Hamed Response: H-13 relates to Hamed's payment of taxes during criminal case (*United States v Yusuf*, US District Court of the Virgin Islands, Division of St. Croix, 1:05-cr-15) where the Partnership did not pay for Waleed ("Wally") and Waheed's ("Willie") 2002-2012 taxes, but the Partnership did pay for Yusuf and his children's 2002-2012 taxes. The following chronology supports Hamed's contention:

On May 24, 2013, the Virgin Islands Bureau of Internal Revenue ("VIBIR") sent a letter to Fathi Yusuf's personal attorney, Nizar DeWood, stating that "United and Related entities" owed the government \$6,586,132.00 in taxes for 2002-2012. On June 14, 2013, Maggie Doherty, US Marshal's Service, authorized the release of \$6,586,132.00 from the Partnership Banco Popular Securities account for tax payments to VIBIR (during the course of the criminal case involving United, Fathi, Maher and Yusuf Yusuf and Waleed and Waheed Hamed, the US Marshal's Service had to authorize any release of funds in excess of a certain amount from the Partnership's banking and investment accounts). The VIBIR was paid and the Hameds thought that this amount covered their parents' taxes.

On June 20, 2013, Maggie Doherty, US Marshal's Service, authorized the release of \$315,747.00 from the Partnership Banco Popular Securities account for the estimated income tax liabilities for both Waleed and Waheed Hamed (the tax liability for both men subsequently was revised to \$129,546.00 for Wally and \$3,582.00 for Willie). As was the

requirement following Judge Brady's preliminary injunction order on April 25, 2013, one Hamed and one Yusuf had to sign a check jointly from the Partnership accounts before any amount could be distributed. Fathi Yusuf refused to sign the check written to pay Wally and Willie's taxes for 2002-2012.

On June 29, 2012 [sic], Fathi Yusuf's personal attorney, Joseph DiRuzzo, claimed in a letter to Tamika M. Archer, Esq., VI Office of the Attorney General, Tamarah Parson-Small, Esq., VIBIR, and Lori Hendrickson, Esq., DOJ, that the \$6.5 million tax payment agreed to during a mediation on the subject was not to cover Mohammad Hamed or his sons:

This is a material breach of the agreement that was reached in the mediation conducted before Judge Barnard. The Parties to the mediation explicitly agreed that the \$6.5M tendered was to satisfy only the Yusuf family members' tax liabilities for the years 2002 - 2010 and not for any tax liability of Mohammad Hamed (and by extension any of the Hamed family members). We made clear that this term was non-negotiable. Everyone present agreed that Mohammed Hamed was not to be covered and under no circumstances would any portion of the \$6.5M be credited/transferred to the tax account or to satisfy any tax liability of another taxpayer (and in particular Mohammad Hamed or his family members).

See HAMD594355-HAMD594356.pdf at p. HAMD594356. Attorney DiRuzzo then threatened to recoup the \$6.5 million payment from the government unless the VIRIB confirmed that the payment applied only to Yusuf and his children's taxes:

In order to cure the breach we demand (i) that the VIRIB retract the June 20th letters issued to Mohammad Hamed (and confirm in writing its withdrawal to us) and (ii) that the VIRIB issue us a letter confirming that the \$6.5M paid was used to satisfy only the tax liabilities of the Yusuf family members (as shareholders of United Corporation, as a Subchapter S-Corp under the Internal Revenue Code) and not to satisfy any tax liability of Mohammad Hamed or any other taxpayer (including but not limited to other Hamed family members).

If the VIRIB does not cure this breach immediately we will seek to recoup the \$6.5M that was tendered as it was obtained either (i) by mutual mistake, (ii) in bad faith, or (iii) by fraud. *Id.*

On July 1, 2013, concerned that the VIBIR would lose the \$6.5 million tax payment, Claudette Watson-Anderson, CPA, VIBIR, sent a letter to Attorney DiRuzzo stating,

In response to your letter dated June 29, 2013, the Bureau hereby acknowledges that full payment of tax owed, in the amount of \$6,586,132, has been applied to the returns filed for the following taxpayers only:

Fathi & Fawzia Yusuf

Yusuf & Ala Yusuf

Zeyad Yusuf

Maher & Najat Yusuf

Nejah Yusuf

Zayed Yusuf

See HAMD594305-HAMD594305.pdf.

Also, on July 1, 2013, Lori Hendrickson, U.S. Department of Justice, confirmed that the \$6.5 million tax payment was not applicable to the Hamed family.

I am in receipt of your letter dated June 29, 2013 and the declaration of Waleed Hamed dated June 27, 2013. The statements from the declaration you quoted in your letter are not based on any representations or promises made by representatives of the Virgin Islands Bureau of Internal Revenue (VIBIR) or the United States. As we all agreed, the \$6,586,132 was applied only to members of the Yusuf family for taxes owed for 2002 through 2010. This is confirmed, as you requested, in the attached letter dated July 1, 2013 signed by the Director of the VIBIR. No one from the named family received any credit or benefit from that payment.

See, HAMD594304-HAMD594304.pdf.

On July 16, 2013, Lori Hendrickson, DOJ, confirmed to the court in the criminal tax case (*United States v Yusuf*, US District Court of the Virgin Islands, Division of St. Croix, 1:05-cr-15) that all members of the Yusuf family who were United shareholders (including those children who did not work in the Plaza Extra stores), had their taxes paid by the

Partnership, and further, if those shareholders owed for other income unrelated to Plaza Extra, such as income from investments, then the Partnership paid those taxes too.

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20 MS. HENDRICKSON: Yes, to clarify. I
21 agree with Mr. Andreozzi that during those
22 years [of the criminal case] the payments were made, based on copies
23 of the requests for payment government sought
24 and approved, and let the money be released,
25 that **it was money to pay the tax obligations of**

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1 **the Yusuf family members who were listed as**
2 **shareholders in the record of the VIBIR. And**
3 **there was other income on some of their**
4 **returns. So, if they had other investments and**
5 **things like that.** So I think that is a fair
6 representation to say United paid for other
7 taxes that the individual shareholders owed on
8 top of the flow through based on United's
9 operations.

* * *

23 So to the extent there was additional money
24 paid, and I reviewed the tax returns, I agree
25 with Mr. Andreozzi's point, but I think it has

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1 no impact on the plea agreement itself, since
2 the government's purpose was to get all the
3 income reported and the taxes paid for the
4 income of Plaza Extra. And with the payment of
5 \$6.5 million, that has occurred.

6 THE COURT: If that included other than
7 the flow through, so be it?

8 MS. HENDRICKSON: Yes.

* * *

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17 The fact that the United won't pay for the
18 Hameds, that is a separate issue. In February
19 of 2011, yes, they paid for everyone's. Now,
20 in June, July of 2013, United does not agree to
21 pay, but the Hameds, as taxpayers, are legally
22 obligated to report income and pay taxes
23 whether or not they're part of a criminal case. (Emphasis added.)
24

On December 9, 2013, Willie Hamed wrote a check for \$3,582.00 out of his personal Banco Popular account to the VIRIB for his 2002-2012 taxes. See, JVZ-000868-JVZ-001730.pdf at p. JVZ-001174.

On March 30, 2014, Wally Hamed wrote a check for \$129,546.00 out of his personal Banco Popular account to the VIRIB for his 2002-2012. See, JVZ-000868-JVZ-001730.pdf at p. JVZ-001172.

On September 28, 2016, Hamed's CPA reviewed the general ledgers from 2012 to present provided by John Gaffney for any reimbursements to Waleed and Waheed for these tax payments or payments of the taxes made by the Partnership directly to VIBIR for the same period. None were found. See, JVZ-000001-JVZ-000867.pdf at p. JVZ-000039.

Thus, Fathi Yusuf authorized the Partnership to pay the 2002-2012 taxes for himself, his wife, his three children who worked in the Plaza Extra stores and his two children who were shareholders of the United Corporation, but did *not* work for Plaza Extra. Further, Fathi Yusuf blocked the Partnership's payment of Wally and Willie Hamed's 2002-2012 taxes. Clearly, this is another instance of, as Judge Ross opined in an earlier opinion about Fathi Yusuf's actions, "a transaction prohibited by law and tainted by a conflict of interest and self-dealing."

See also, Hamed's response to Yusuf's RFPD 14. Documents relating to this claim include:

- September 30, 2016 JVZ Engagement Report and Exhibits
- Wally (Waleed) Hamed's March 30, 2014 check to VIBIR for 2002-2012 taxes in the amount of \$129,546.00, HAMD633372-HAMD633372.pdf.

- December 10, 2013 letter to Tamarah Parson-Small, Esq., VIBIR, from Randall Andreozzi, Esq., Pamela L. Colon, Esq. and Gordon Rhea regarding payment of Willie Hamed's taxes "pursuant to the terms and protocol under our Plea Agreement in *United States v. Yusuf et al.*, Docket No. 05-cr-0015," HAMD594372-HAMD594373.pdf.
- Willie (Waheed) Hamed's December 9, 2013 check to VIBIR for payment of 2002-2012 taxes in the amount of \$3,582.00, HAMD594372-HAMD594373.pdf.
- September 26, 2013 pleading in *Hamed v Yusuf*, VI Superior Court, St. Croix Division, SX-12-CV-370, Plaintiff's Reply to Defendants' Opposition to Plaintiff's Motion for Partial Summary Judgment, specifically, Exhibit E, Waleed Hamed's declaration, dated June 27, 2013, HAMD590700-HAMD590742.pdf.
- July 1, 2013 letter to Joseph DiRuzzo, Esq. from Claudette Watson-Anderson, CPA, VIBIR, confirming that the \$6,586,132 tax payment was applied to the Yusuf family only, HAMD594305-HAMD594305.pdf.
- July 1, 2013 letter to Joseph DiRuzzo, Esq. from Lori Hendrickson, Esq., DOJ, affirming, "[as] we all agreed, the \$6,586,132 was applied only to members of the Yusuf family for taxes owed for 2002 through 2010" and "[n]o one from the Hamed family received any credit or benefit from that payment," HAMD594304-HAMD594304.pdf.
- June 29, 2012 [sic] letter to Tamika M. Archer, Esq., VI Office of the Attorney General, Tamarah Parson-Small, Esq., VIBIR, and Lori Hendrickson, Esq., DOJ, from Joseph DiRuzzo, Esq., regarding \$6.5 million in tax payments applied to the Yusuf family only, HAMD594355-HAMD594356.pdf.

- June 20, 2013 email and letter to Randall Andreozzi, Esq., from Maggie Doherty, US Marshal's Service, authorizing payment from the Partnership Banco Popular Securities account in the amount of \$315,747.00 for the estimated income tax liabilities for both Waleed and Waheed Hamed, HAMD588657-HAMD588657.pdf and HAMD588847-HAMD588848.pdf.
- June 14, 2013 letter to Joseph DiRuzzo, Esq. from Maggie Doherty, US Marshal's Service, authorizing \$6,586,132.00 payment from the Partnership Banco Popular Securities account for tax payments to VIBIR, HAMD587992-HAMD587992.pdf.
- May 24, 2013 letter to Nizar DeWood, Esq., from Claudette Watson-Anderson, CPA, VIBIR, stating "United and Related entities" owed \$6,586,132.00 in taxes for 2002-2012, HAMD594303-HAMD594303.pdf.
- April 10, 2013 letter to Maggie Doherty, US Marshal's Service, from Joseph DiRuzzo, Esq. requesting the release of \$900,000 to pay for United's quarterly taxes from Partnership funds, HAMD562233-HAMD562234.pdf.
- February 21, 2013, Motion to Alter the Temporary Restraining Order for Release of Funds, *United States v United Corp.*, US District Court of the Virgin Islands, Division of St. Croix, 1:05-cr-15, HAMD591985-HAMD591990.pdf.
- January 14, 2013 letter to Maggie Doherty, US Marshal's Service, from Joseph DiRuzzo, Esq. requesting the release of \$1,000,000 to pay for United's quarterly taxes from Partnership funds, HAMD562186-HAMD562188.pdf.
- September 7, 2012 letter to Maggie Doherty, US Marshal's Service, from Randall Andreozzi, Esq., requesting the release of \$400,000 to pay for United's quarterly taxes from Partnership funds, HAMD562177-HAMD562179.pdf.

- April 5, 2012 letter to Maggie Doherty, US Marshal's Service, from Randall Andreozzi, Esq., requesting the release of \$800,000 to pay for United's quarterly taxes from Partnership funds, HAMD562183-HAMD562185.pdf.
- January 11, 2012 letter to Maggie Doherty, US Marshal's Service, from Randall Andreozzi, Esq., requesting the release of \$1,500,000 to pay for United's quarterly taxes from Partnership funds, HAMD562180-HAMD562182.pdf.
- September 7, 2012 letter to Maggie Doherty, US Marshal's Service, from Randall Andreozzi, Esq., requesting the release of \$400,000 to pay for United's quarterly taxes from Partnership funds, HAMD562177-HAMD562179.pdf.
- April 5, 2012 letter to Maggie Doherty, US Marshal's Service, from Randall Andreozzi, Esq., requesting the release of \$800,000 to pay for United's quarterly taxes from Partnership funds, HAMD562183-HAMD562185.pdf.
- September 2, 2011 letter to Maggie Doherty, US Marshal's Service, from Randall Andreozzi, Esq., requesting the release of \$700,000 to pay for United's quarterly taxes from Partnership funds, HAMD562174-HAMD562176.pdf.
- April 13, 2010 letter to Leonard Briskman, US Marshal's Service, from Randall Andreozzi, Esq., requesting the release of \$780,000 to pay for United's quarterly taxes from Partnership funds, HAMD562159-HAMD562166.pdf.
- October 13, 2009 letter to Leonard Briskman, US Marshal's Service, from Randall Andreozzi, Esq., requesting the release of \$780,000 to pay for United's quarterly taxes from Partnership funds, HAMD562157-HAMD562158.pdf.

ROG 21. Identify all facts and circumstances relating to Hamed Claim No. 17 and identify, all documents relating to that claim.

Hamed Response: H-17 relates to Hamed's payment of attorneys' fees and expenses during the criminal case (*United States v Yusuf*, US District Court of the Virgin Islands, Division of St. Croix, 1:05-cr-15). For a period of time, all of the defense attorneys worked together under a Joint Defense Agreement to represent the following: United Corporation, Fathi, Maher ("Mike"), and Nejeih Yusuf and Waleed ("Wally") and Waheed ("Willie") Hamed.

One feature of the Joint Defense Agreement concerned the payment of fees. A retainer (funded by Partnership bank accounts) for attorneys' fees and expenses for all of the defendants was established at the law firm of Andreozzi, Bluestein LLP and Richardson Patrick Westbrook & Brickman, LLC, as the attorneys worked together for all of the defendants to defend the case. Replenishment and draws from the retainer were required approval of the Court. See, e.g., HAMD202558-HAMD202562.pdf, HAMD202587-HAMD202587.pdf, HAMD202691-HAMD202694.pdf, HAMD248051-HAMD248053.pdf and HAMD202721-HAMD202721.pdf.

The Joint Defense Agreement expired on September 19, 2012 when Attorney Joseph DiRuzzo was retained to represent Fathi Yusuf. Fathi Yusuf is now refusing to allow the Partnership to pay attorneys' fees and expenses for attorneys' fees for Wally and Willie Hamed that were incurred prior to September 19, 2012, which is the subject of H-17. The following chronology supports Hamed's contention:

As noted, under the Joint Defense Agreement in the criminal case, *United States v Yusuf*, attorneys' fees and expenses were not split or attributed to any individual defendant, "rather all defense counsel worked together on behalf of all of the represented defendants in a joint effort to defend the case," according to the March 2, 2017 declaration of Gordon C. Rhea, one of the attorneys party to the Joint Defense Agreement:

I, GORDON C. RHEA, declare under penalty of perjury pursuant to 28 U.S.C. Section 1746, as follows:

3. I have personal knowledge of the facts set forth herein.
2. I am an attorney licensed to practice law in the U.S. Virgin Islands.
3. I was one of the defense lawyers in the criminal action filed by the United States of America in the District Court of the Virgin Islands (St. Thomas Division), Docket No, 1:05-cr-00015, against the following defendants:

FATHI YUSUF MOHAMAD YUSUF, aka Fathi Yusuf
WALEED MOHAMMAD HAMED, aka Wally Hamed
WAHEED MOHAMMAD HAMED, aka Willie Hamed
MAHER FATHI YUSUF, aka Mike Yusuf
NEJEH FATHI YUSUF,
ISAM YUSUF, and
UNITED CORPORATION

4. All of the defendants in that criminal case, except for Isam Yousef who was never apprehended, were represented jointly by multiple counsel, including myself, under a Joint Defense Agreement.
5. Pursuant to the Joint Defense Agreement, all defense counsel worked together on behalf of all of the represented defendants in a joint effort to defend the case.
6. A plea agreement was reached in December of 2010 . . . , with a modification made thereafter in early 2011. . . . As noted therein, the only defendant who pled guilty was United Corporation, as the charges were dismissed against all of the other represented defendants.
7. The Joint Defense Agreement then continued during the sentencing phase of the case (to primarily address the tax issues related to the Plea) until September 19, 2012, when the Joint Defense Agreement was terminated.
8. Under the Joint Defense Agreement;
 - a. All legal and accounting work was done jointly on behalf of all represented defendants in an effort to defend all of them at the same time.
 - b. Bills for attorneys' fees and expenses reflected the work of counsel done for all defendants without allocating specific items to individual defendants.
 - c. Simply because a bill was directed to a specific defendant did not reflect their individual personal obligation, as the bills were the joint obligation of all defendants while the Joint Defense Agreement was in place.
 - d. All defendants were all aware of this fact, as applications for payment of the bills submitted under Joint Defense Agreement had to be made to the United States Attorney, who would then have to authorize funds to pay these bills from the defendants' bank accounts which had been frozen by court order.
 - e. Until the Joint Defense Agreement was terminated all legal bills were paid from a United Plaza Extra account.

I declare under penalty of perjury that the foregoing is true and correct.

(See, Exhibit 44 to the March 6, 2017 hearing before Judge Brady in this case, HAMD641485-HAMD642240.pdf)

On September 19, 2012, Attorney Gordon Rhea sent an email to all of the attorneys party to the Joint Defense Agreement and Attorney Joesph DiRuzzo, stating:

It is with sadness that I must announce the termination of the joint defense team that we assembled in the early stages of the Federal criminal case against United Corporation, the Yusufs, and the Hameds. Working in harmony toward a common purpose, we brought a difficult case to a remarkably successful conclusion, resulting in the dismissal of all charges against all individuals. The joint defense agreement was formed to advance the common interests of all defendants in the criminal matter; sadly, it no longer appears capable of discharging that function.

Recent events have eroded the once-harmonious relationship among our clients, who are now divided into camps that are at serious odds with one another. The Hamed and Yusuf families are engaged in a bitter civil dispute, each has retained attorneys to pursue their civil disagreements, and civil litigation is in train. United Corporation has directed attorneys Alkon and Cole, who skillfully represented that entity during the active phase of the criminal case, to withdraw, and has replaced them with an attorney who represents the Yusuf family interests and who has acted unilaterally by making overtures to the Federal prosecutor without consulting the defense team. In addition, **the Yusufs have directed United not to pay the fees of various defense team members who represent Hameds, contrary to the protocol followed in the past.**

See, HAMD201592-HAMD201593.pdf at p. HAMD201592 (Emphasis added).

On April 17, 2004, Judge Barnard, Magistrate, *United States v Yusuf*, US District Court of the Virgin Islands, Division of St. Croix, 1:05-cr-15, held that the attorneys' fees and expenses reimbursement by Hamed was covered under the Joint Defense Agreement and should be paid by Partnership funds:

At the mediation counsel advised that they had represented the defendant, as well as dismissed defendants, pursuant to a joint defense agreement which had been negotiated early in the litigation.

Because of a substitution of counsel and divergence in trial strategy the Joint Defense Agreement was concluded on September 19, 2012. At the close of the mediation the attorneys' billing statements were requested for

in camera review. After a thorough review of the invoices presented by counsel and the retained accounting experts, the mediator concluded that because of the termination of the Joint Defense Agreement the invoices should be resubmitted in camera for consideration of work performed prior to September 19, 2012.

Invoices were received from the Law Offices of Pamela Lynn Colon, LLC., Gordon C. Rhea, P.C., Andreozzi, Bluestein, Fickess, Muhlbauner Weber, Brown LLP, and Freed Maxick, CPA PC. Invoices were not received from Feurst, Ittleman, David, and Joseph, P.L. nor from Nizar Dewood, Esq. 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. The invoices submitted are approved as follows:

Pamela Lynn Colon, LLC \$46,393.95
Gordon C. Rhea, PC. 16,737.90
Andreozzi, Bluestein LLP 118,418.57
Freed Maxick CPA, PC 151,350.00

Accordingly, the sum of \$332,900.42 is directed to be released for the restrained assets of the defendant to the Escrow Account of Andreozzi, Bluestein, in accordance with prior protocol established by Judge Raymond Finch, for distribution to counsel and experts in the sums approved pursuant to the Joint Defense Agreement.

See, HAMD599941-HAMD599944.pdf at pp. HAMD599941-HAMD599942.

On August 17, 2014, Mohammad Hamed paid the following out of his personal Banco Popular checking account: Pamela L. Colon, Esq., \$46,393.95, Gordon C. Rhea, Esq., \$16,737.90, Andreozzi, Bluestein LLP, \$118,418.57 and Freed Maxicx, CPA, PL, \$151,350.00. These fees were incurred for work completed prior to the expiration of the Joint Defense Agreement on September 19, 2012. See, JVZ-000868-JVZ-001730.pdf at p. JVZ-001211-JVZ001214.

Yusuf now is trying to contend that this was not the case and each defendant was required to pay his own individual attorney during the course of the Joint Defense Agreement. This is an absurd contention on Yusuf's part. Carried to its extreme, it would mean that the Yusuf defendants and the United Corporation would only pay \$237,691.00 or 5% of the total cost of attorneys' fees and expenses, while Hamed would pay a

whopping \$4,121,561.00 or 95% of the total. See, HAMD641485-HAMD642240.pdf, p. HAMD642214. Hamed disputes this contention and provides the March 2, 2017 declaration of Attorney Gordon Rhea and Judge Barnard's April 17, 2014 Order as support.

Hamed's CPA also provided John Gaffney a query dated February 15, 2016 asking whether these fees were reimbursed. Hamed's CPA 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. See, JVZ-000001-JVZ-000867.pdf at p. JVZ-000044-45. See also, Hamed's response to Yusuf's RFPD 15. Documents relating to this claim include:

- September 30, 2016 JVZ Engagement Report and Exhibits, JVZ-000001-JVZ-000867.pdf and JVZ-000868-JVZ-001730.pdf
- Gordon Rhea's March 2, 2017 declaration, Exhibit 44, HAMD641485-HAMD642240.pdf
- Judge Barnard's April 17, 2014 Memorandum and Order in the criminal case, HAMD599941-HAMD599944.pdf
- Mohammad Hamed's August 17, 2014 checks to Pamela L. Colon, Esq., Gordon C. Rhea, Esq., Andreozzi, Bluestein LLP and Freed Maxicx, CPA, PL
- September 19, 2012 email to members of the Joint Defense Agreement and Joseph DiRuzzo, Esq., from Gordon Rhea, Esq. regarding termination of the joint defense agreement, HAMD201592-HAMD201593.pdf

- September 14, 2012 letter to members of the Joint Defense Agreement from Joseph DiRuzzo, Esq. asking whether members believe he is part of the Joint Defense Agreement, HAMD201590-HAMD201591.pdf.
- September 13, 2012 letter to Joseph DiRuzzo, Esq. from Randall Andreozzi, Esq., that Attorney DiRuzzo is not a party to the Joint Defense Agreement, HAMD201586-HAMD201587.pdf.
- September 13, 2012 letter to Joseph DiRuzzo, Esq. from Pamela Colon, Esq. confirming that Attorney DiRuzzo is not a party to the Joint Defense Agreement, HAMD201588-HAMD201589.pdf.
- July 7, 2011 Order, *United States v Yusuf*, US District Court of the Virgin Islands, Division of St. Croix, 1:05-cr-15, regarding the immediate release of \$300,000 from United Corporation to the escrow account of the law offices of Andreozzi and Fickess, LLP, HAMD202721-HAMD202721.pdf.
- June 27, 2011 motion, Defendants' Motion for Release of Funds from United Corporation, requesting release of \$300,000 000 from United Corporation to the escrow account of the law offices of Andreozzi and Fickess, LLP, HAMD248051-HAMD248053.pdf.
- December 15, 2010 Order, *United States v Yusuf*, US District Court of the Virgin Islands, Division of St. Croix, 1:05-cr-15, ordering the release of \$250,000 to the escrow account of Richardson Patrick Westbrook & Brickman, LLC, HAMD659180-HAMD659180.pdf.
- December 10, 2010 motion, Defendants' Motion for Release of Funds from United Corporation, *United States v Yusuf*, US District Court of the Virgin Islands, Division

of St. Croix, 1:05-cr-15, requesting \$250,000 to the escrow account of Richardson Patrick Westbrook & Brickman, LLC, HAMD202691-HAMD202694.pdf.

- March 16, 2010 Order, *United States v Yusuf*, US District Court of the Virgin Islands, Division of St. Croix, 1:05-cr-15, ordering the release of \$1 million to the escrow account of Richardson Patrick Westbrook & Brickman, LLC, HAMD202587-HAMD202587.pdf.
- March 1, 2010 motion, Defendants' Motion for Release of Funds from United Corporation, *United States v Yusuf*, US District Court of the Virgin Islands, Division of St. Croix, 1:05-cr-15, requesting \$1 million to the escrow account of Richardson Patrick Westbrook & Brickman, LLC, HAMD202558-HAMD202562.pdf.

ROG 22. Identify all facts and circumstances relating to Hamed Claim No. 129 and identify, all documents relating to that claim.

Hamed Response: Partnership funds were withdrawn by Fathi Yusuf. From those funds, he and his wife Fawzia gave Shawn Hamed \$1.5 million and Mafi Hamed \$1.5 million. Fathi Yusuf took an additional \$1 million at the same time for his family. Fathi Yusuf or his daughter has recently made a claim in 2016 for the return of the \$1.5 million he gifted to Shawn Hamed in the divorce proceedings between Shawn and his daughter. Because of the divorce claim that was made in 2016, Hamed is making a claim here to return the unequal withdrawal.

See also, Hamed's response to Yusuf's RFPD 16. Documents relating to this claim include:

- July 1, 2011 letters from Fathi and Fawzia Yusuf gifting Mufeed and Shawn Hamed \$1.5 million each, YUSF103629-YUSF103632.pdf.

- Checks and bank statements regarding the July 1, 2011 gift from Fathi and Fawzi Yusuf to Mufeed and Shawn Hamed, BDO_005293-005300.pdf
- August 12, 2011 pleading, Defendants' Motion for Release of Funds from United Corporation to the Shareholders of United Corporation, *United States v Yusuf*, US District Court of the Virgin Islands, Division of St. Croix, 1:05-cr-15, HAMD248055-HAMD248057.pfd.

ROG 23. Identify all facts and circumstances relating to Hamed Claim No. 145 and identify, all documents relating to that claim.

Hamed Response: H-145 relates to the way the Virgin Islands Water and Power Authority ("WAPA") deposits paid by the Partnership in 1993, 1994, 1999 and 2000 were distributed after the Partnership was dissolved. Hamed contends that the deposits should have been split 50/50 and returned to each Partner. This did not happen and an unequal amount, favorable to Fathi Yusuf and United the Corporation, was distributed.

The WAPA deposit and interest for Plaza Extra-East totaled \$110,842.00, Plaza Extra-West totaled \$127,037.03 and Plaza Extra-Tutu totaled \$34,693.06, for a grand total of \$272,572.09 or \$136,286.05 per partner. See, YUSF238279-YUSF238287.pdf.

According to John Gaffney's May 17, 2016 explanation, the deposits were divided as follows:

The disposition of deposits in each location was as follows:

1. Plaza East - since there was no refund or other event and since the deposits are in favor of United Corporation without change, the balance was treated as a capital distribution.
2. Plaza West - since the deposits are in the name of Plessen Enterprises, inc. which is owned 50/50 consistent with Plaza ownership, these deposits were distributed to the partners consistent with the elimination of inter-company debt on 12/31/14. This adjustment was made after recognizing the accrued interest in the partnership.
3. Plaza STT - the deposits and accrued interest were offset against the final WAPA invoice.

I am unable to locate a copy of the final WAOA [sic] invoice in STT.

See, YUSF238182-YUSF238184.pdf at p. YUSF238279.

John Gaffney further stated that the \$34,693.06 deposit for Plaza Extra-Tutu was credited against the last bill. Unfortunately, it is unclear how much of the last bill should be attributed to the Partnership and how much should be attributed to Hamed, who purchased the store on May 1, 2015. Because John Gaffney cannot locate the final WAPA bill, the proceeds from the deposit should be split equally between the partners.

Also, it is unclear what the "inter-company" debt on 12/31/14 being eliminated was and whether it was appropriate. Absent more information on exactly what this debt was, Hamed does not agree that the inter-company debt that was eliminated was appropriate.

Hamed's CPAs also took issue with this division:

Opinion as to the Issue Identified:

We noted adjustments had been made on East & West to deposit amounts recorded in the accounting records to reflect balances at 12/31/14. The adjustment made to STT accounting records did not agree with the statements provided by WAPA.

We disagree, however, that the treatment of the deposits was accurate. All deposits were made with Partnership funds and the subsequent interest payments are also considered Partnership funds. Because the deposits and interest payments are Partnership funds, there is no justification for returning Plaza Extra East's deposit and interest to the United Corporation. Similarly, there is no justification for attributing Plaza Extra West's deposit and interest to the "elimination of inter-company debt on 12/31/14" for Plessen Enterprises, Inc. - an unexplained phrase that has no justification or documentation to support it. The St. Thomas store's treatment of the deposit and interest is also faulty. The amount should have been returned to the Partnership and not applied to the St. Thomas WAPA bill. As John Gaffney cannot find a copy of the WAPA invoice that the deposit and interest were allegedly applied against, this treatment in the general ledger cannot be substantiated. Further, there is no evidence of payment, receipt or refund of WAPA deposits. . . . See, JVZ-000001-JVZ-000867.pdf at p. JVZ-000030.

See also, Hamed's response to Yusuf's RFPD 17. Documents relating to this claim include:

- September 30, 2016 JVZ Engagement Report and Exhibits
- May 17, 2016 Letter to Joel Holt, Esq., from John Gaffney, Controller, regarding the treatment of WAPA deposits on the Plaza Extra books and associated documents

ROG 24. Identify all facts and circumstances relating to Hamed Claim No. 154 and identify, all documents relating to that claim.

Hamed Response: H-154 relates to Hamed's payment of attorneys' fees and expenses during the criminal case (*United States v Yusuf*, US District Court of the Virgin Islands, Division of St. Croix, 1:05-cr-15) from January 1, 2012 to April 16, 2015.

The defendants have repeatedly asserted that Fathi Yusuf was in charge of everything. This also extends to the extensive money laundering scheme that Mr. Yusuf created and directed. Instead of protecting the Partnership, Mr. Yusuf instructed his son "Maher" Mike Yusuf and Nejeah Yusuf, as well as Waleed "Wally" and Waheed "Willie" Yusuf to engage in an enterprise taking Partnership funds off island and depositing those funds in various foreign bank accounts. Mike Yusuf, in turn, instructed his sister Hoda to take the Partnership cash he had given her and purchase cashier's checks. Fathi Yusuf also enlisted his relatives in Jordan (his brother and niece) and St. Maarten (his nephew and niece) to launder money for him.

An FBI Interview demonstrates that Fathi Yusuf hid the actual amount of money generated at the Plaza Extra stores by instructing United's comptroller, John Irvin, to base sales on the stores' deposits, not on its actual sales:

IRVIN was told by FATHI YUSUF that store sales would be based on deposits. IRVIN said that normal accounting procedures allow accountants to conduct internal audits. IRVIN advised that YUSUF told him that internal audits were being handled and to simply continue to use deposits to calculate sales. IRVIN said that YUSUF told him this early on and that YUSUF was very emphatic. IRVIN never revisited the subject of sales with

YUSUF and continued to base sales on daily deposits. (See, HAMD639822-HAMD639830.pdf at p. HAMD639823).

Fathi Yusuf also artificially manufactured the year-end inventory for each store at \$3 million:

IRVIN was shown copies of February and March of 1999 gross receipts sales tax figures. IRVIN stated that he had a discussion with FATHI YUSUF concerning cost of goods sold. YUSUF told IRVIN that it was not possible to determine actual numbers for cost of goods sold. Per YUSUF'S instructions, IRVIN was told to determine cost of goods sold in whatever manner would reflect approximately \$3 million in year ending inventory for each store. IRVIN also had conversations with WILLIE HAMED concerning cost of goods sold and what the average markup on merchandise was.

IRVIN said that HAMED was not specific but understood that YUSUF wanted ending inventory to be around \$3 million. IRVIN advised that to determine cost of goods sold he would use a formula reflecting a 42% markup, or more often than not, simply plug in numbers so the \$3 million number would be met. IRVIN stated that the reason YUSUF wanted the number for inventory to be around \$3 million for each store was to show a lower net income. If taxable income was too high, YUSUF would tell IRVIN to adjust cost of goods sold to show a decrease in the companies profit. IRVIN stated YUSUF normally had him adjust the numbers presented to him which reflected cost of goods sold. (See, HAMD639822-HAMD639830.pdf at p. HAMD639823)

Additionally, Fathi Yusuf artificially lowered the amount of sales at Plaza Extra Tutu.

IRVIN advised that the rent paid to TUTU PARK MALL was based partly on sales. When the rent was due, YUSUF would go into his office and return to give IRVIN the numbers to be used to pay the portion of the rent that was based on sales. (See, HAMD639822-HAMD639830.pdf at p. HAMD639828)

Irwin's account and Fathi Yusuf's own multiple filings here demonstrate that he, personally, ran the operation and directed the individuals. These activities led the federal government to indict the United Corporation, Fathi, Mike and Nejeh Yusuf and Wally and Willie Hamed for money laundering. Fathi Yusuf was in charge. The losses include attorneys' fees and expenses paid in defense of the money laundering charges.

See also, Hamed's response to Yusuf's RFPD 18. Documents relating to this claim include:

- September 30, 2016 JVZ Engagement Report and Exhibits, JVZ-000001-JVZ-000867.pdf and JVZ-000868-JVZ-001730.pdf
- Checks and bank statements for attorney and accounting fees in the criminal case, dated from January 1, 2012-April 16, 2015
- May 22, 2003 Hoda Yusuf Fathi Hamed grand jury testimony, YUSF221358-YUSF221414.pdf.
- August 1, 2003, John Benson Irvin FBI interview, HAMD639822-HAMD639830.pdf.

ROG 25. Identify all facts and circumstances relating to Hamed Claim No. 161 and identify, all documents relating to that claim.

Hamed Response: H-161 relates to Hamed's payment of attorneys' fees and expenses during the criminal case (*United States v Yusuf*, US District Court of the Virgin Islands, Division of St. Croix, 1:05-cr-15) from September 17, 2006 through December 22, 2011.

Documents relating to this claim include:

- September 30, 2016 JVZ Engagement Report and Exhibits, JVZ-000001-JVZ-000867.pdf and JVZ-000868-JVZ-001730.pdf
- 94 checks for attorney and accounting fees in the criminal case, dated from September 28, 2006 through December 22, 2011

ROG 26. Identify all facts and circumstances relating to Hamed Claim No. 162 and identify, all documents relating to that claim.

Hamed Response: H-162 relates to claims based on monitoring reports prepared by contractors for the federal government between 2006-2012. Hamed is looking for

instances when Yusuf expended Partnership funds for non-Partnership expenses. Hamed has discovery requests to obtain these monitoring reports, but no additional reports were supplied. A motion to compel is necessary. Once the monitoring reports have been obtained, this interrogatory will be updated.

ROG 27. Identify all facts and circumstances relating to Hamed Claim No. 163 and identify, all documents relating to that claim.

Hamed Response: H-163 relates to the loss of assets due to wrongful dissolution, including the attorneys' fees Hamed has had to expend to ensure that Hamed's status as a partner was secure. As stated regarding the \$2.7 million, Yusuf, stole funds, made claims, attempted to get the Hameds thrown out by the police, obtained criminal prosecution by lying to the police, and otherwise caused the wrongful dissolution of the partnership.

The central fact of a partnership is that it is an agreement between two or more persons "to carry on as co-owners a business for profit formed under section 22 of this chapter, predecessor law, or comparable law of another jurisdiction." 26 V.I.C. § 2. On November 7, 2014, this Court declared that a partnership has existed between Hamed and Yusuf since 1986.

It is undisputed and a matter of record that in 2012, Yusuf declared in pleadings before this Court that no partnership existed and thereby attempted to take *the ongoing businesses for himself*. His attempt to take all of the Partnership's assets has created numerous costs and losses, as described below.

As the best example of this, Yusuf's counsel stated to the V.I. Supreme Court that no such partnership existed and that all Hamed was entitled to was some sort of "annuity"

to be determined by Yusuf. See Transcript of Oral Argument, *Yusuf v. Hamed*, S.Ct. Civ No. 2013-CV-0040 (July 9, 2013) at 7-9.

JUSTICE HODGE: -- and now its an annuity?

MR. DIRUZZO: Well, that's -- that's my best way to -- to describe or couch, which is why we characterize it as an almost uncharacteristic or uncharacterizable agreement. It almost defies your typical definitions because it is so out of the ordinary. . . .

Thus, Yusuf denied the partnership and attempted to take and run its three businesses.

A. Costs to Stop Taking of All Partnership Assets Generally

As a result, Plaintiff Hamed has had to undertake the costs of this legal action to establish the existence of the partnership. *Section 602 of the Revised Uniform Partnership Act*, enacted in the USVI at V.I. 26 § 122 (Partner's power to dissociate; wrongful dissociation) provides:

SECTION 602. PARTNER'S POWER TO DISSOCIATE; WRONGFUL DISSOCIATION.

- (a) A partner has the power to dissociate at any time, rightfully or wrongfully, by express will pursuant to Section 601(1).
- (b) **A partner's dissociation is wrongful** only if:
 - (1) it is in breach of an express provision of the partnership agreement;** or
 - (2) in the case of a partnership for a definite term or particular undertaking, before the expiration of the term or the completion of the undertaking:
 - (i) the partner withdraws by express will, unless the withdrawal follows within 90 days after another partner's dissociation by death or otherwise under Section 601(6) through (10) or wrongful dissociation under this subsection;
 - (ii) the partner is expelled by judicial determination under Section 601(5);
 - (iii) the partner is dissociated by becoming a debtor in bankruptcy; or
 - (iv) in the case of a partner who is not an individual, trust other than a business trust, or estate, the partner is expelled or otherwise dissociated because it willfully dissolved or terminated.

(c) A partner who wrongfully dissociates is liable to the partnership and to the other partners for damages caused by the dissociation. The liability is in addition to any other obligation of the partner to the partnership or to the other partners.

The *Official Comments* to 602(c) state:

Comment

3. Subsection (c) provides that a wrongfully dissociating partner is liable to the partnership and to the other partners for any damages caused by the wrongful nature of the dissociation. **That liability is in addition to any other obligation of the partner to the partnership or to the other partners.** For example, the partner would be liable for any damage caused by breach of the partnership agreement or other misconduct. The partnership might also incur substantial expenses resulting from a partner's premature withdrawal from a term partnership, such as replacing the partner's expertise or obtaining new financing. The wrongfully dissociating partner would be liable to the partnership for those and all other expenses and damages that are causally related to the wrongful dissociation.

The most basic provision of the partnership is that Yusuf and Hamed were partners, and thus were 50% owners of all assets. Yusuf violated that and tried to take everything. (Or at least he tried to take everything minus some "annuity" he calculated was owing.)

There are no fact issues remaining about the existence of the partnership. There are no fact issues remaining as to Yusuf's absolute denial of that partnership for the year and a half it took to wring that admission out of him. There is no dispute of fact that **but for** Yusuf's wrongful actions, Hamed would not have incurred the costs and losses necessary to (1) recover his 50% of the assets, (2) provide access to accounts and (3) obtain a declaration. As a matter of law, there being no further issues of fact, Yusuf "is liable to the partnership and to the other partners for **damages caused by the dissociation**. The liability is in addition to any other obligation of the partner to the partnership or to the other partners."

B. Recovery of Fees as One Element of Damages

Beyond the fact that a successful USVI Plaintiff can recover attorney fees,¹⁹ fees for RUPS litigation occasioned by the breach of the partnership agreement and for wrongful dissolution are recoverable. See, e.g., *Meyer v. Christie*, No. 07-2230-CM, 2009 WL 3294001, at *1 (D. Kan. Oct. 13, 2009); same on appeal *Meyer v. Christie*, 634 F.3d 1152, 1160–61, 2011 WL 873437 (10th Cir. 2011); *State Farm Fire & Cas. Co. v. Christie*, No. 10-CV-2699, 2015 WL 751808, at *3 (D. Kan. Feb. 23, 2015); *Cratte v. Estabrook*, No. 1 CA-CV 09-0239, 2010 WL 2773372, at *3 (Ariz. Ct. App. July 13, 2010); and *Saint Alphonsus Diversified Care, Inc. v. MRI Associates, LLP*, 148 Idaho 479, 489, 224 P.3d 1068, 1078, 2009 WL 5252829 (2009).

Fees for the litigation occasioned by the breach of the partnership agreement and for wrongful dissolution are not accounting damages and require a jury. See, e.g., *Meyer v. Christie*, No. 07-2230-CM, 2009 WL 3294001, at *1 (D. Kan. Oct. 13, 2009); same on appeal *Meyer v. Christie*, 634 F.3d 1152, 1160–61, 2011 WL 873437 (10th Cir. 2011); *State Farm Fire & Cas. Co. v. Christie*, No. 10-CV-2699, 2015 WL 751808, at *3 (D. Kan. Feb. 23, 2015); *Cratte v. Estabrook*, No. 1 CA-CV 09-0239, 2010 WL 2773372, at *3 (Ariz. Ct. App. July 13, 2010); and *Saint Alphonsus Diversified Care, Inc. v. MRI Associates, LLP*, 148 Idaho 479, 489, 224 P.3d 1068, 1078, 2009 WL 5252829 (2009).

Pursuant to the Rules of the Court, the supporting documents are the bills and payments for counsel -- which will be provided, and the fees determined, at the end of litigation.

C. Other Losses and Costs

¹⁹ The claims here sound in tort. The attempt by Yusuf/United to convert all of the partnership was abject, unadulterated **conversion** – and additional, non-accounting monetary damages were pleaded. The Amended Complaint specifically asked, at item 7 of relief, for “[a]n award of compensatory damages against the defendants.”

Hamed, as the partner, also lost the value of:

(1) the Partnership's diminution of income, profits and time occasioned by the Yusuf taking and efforts to correct those. The supporting documents will be expert reports not yet due under the Discovery Plan.

(2) the costs of accountants and accounting experts to determine the amount that Yusuf took between 2006 and 2012. The supporting documents will be expert reports not yet due under the Discovery Plan.

(3) the costs of accountants and accounting experts to determine the amount that Yusuf took between 2012 and the end of the Partnership. The supporting documents will be expert reports not yet due under the Discovery Plan.

(4) the costs of 100% of Mr. Gaffney's fees to determine review the accounting as part of the Claims process. The supporting documents will be expert reports not yet due under the Discovery Plan.

(5) the damage to trade reputation occasioned by the Yusuf's acts and statements. The supporting documents will be expert reports not yet due under the Discovery Plan.

ROG 28. State whether you dispute any of United's claims as to the Black Book Balance of \$49,997 and identify all documents relating to your dispute.

Hamed Response: Hamed disputes this debt, the claims and the facts as stated. First, the documentary evidence provided by Yusuf is dated in 1993-1994. Pursuant to 5 V. I.C. §31 (3), the statute of limitations for actions for debt, breach of contract and conversion of property is 6 years, making this well outside of the time period for bringing a claim. This was a stale claim before the FBI-raided the premises.

Further, the documentary evidence Yusuf provided is merely a couple of pages out of one such so-called black book. It is impossible to say definitively that the Partnership

owes this amount to United, because all of the records of the Partnership are not available from 1993 forward. It is a partial accounting at best. This alleged debt could have been paid years ago or offset by other amounts, but the documentary evidence no longer exists.

Even Yusuf's own accounting expert, BDO, asserted in its report that that "records were kept in an informal manner" and "accounting records and/or documents provided to us for the periods prior to 2003 are incomplete." BDO's September 30, 2016 Report, pages 2, 22. Finally, this claim is outside of the time period Judge Brady set for bringing claims against the Partnership. See Brady decision: *Hamed v. Yusuf, et al.*; SX-12-CV-370; SX-14-278; SX-14-287 Memorandum Opinion and Order Re Limitations on Accounting, July 21, 2017.

ROG 29. Identify all facts and circumstances which give rise to any dispute you have with United's claims as to the Ledger Balance of \$200,000 and identify all documents relating to your dispute.

Hamed Response: Hamed disputes this debt. First, the documentary evidence provided by Yusuf is dated in 1994, 1995 and 1998. Pursuant to 5 V. I.C. §31 (3), the statute of limitations for actions for debt, breach of contract and conversion of property is 6 years, making this well outside of the time period for bringing a claim. Further, the documentary evidence Yusuf provided is merely a couple of pages out of a ledger, the entire ledger was not even produced. It is impossible to say definitively that the Partnership owes this amount to United, because all of the records of the Partnership are not available from 1993 forward. This alleged debt could have been paid years ago, but the documentary evidence no longer exists. Even Yusuf's own accounting expert, BDO, asserted in its report that "records were kept in an informal manner" and "accounting records and/or documents provided to us for the periods prior to 2003 are incomplete." BDO's

September 30, 2016 Report, pages 2, 22. Finally, this claim is outside of the time period Judge Brady set for bringing claims against the Partnership. See Brady decision: *Hamed v. Yusuf, et al.*; SX-12-CV-370; SX-14-278; SX-14-287 Memorandum Opinion and Order Re Limitations on Accounting, July 21, 2017.

ROG 30. Identify all facts and circumstances which give rise to any dispute you have Yusuf s claims as to the Water Revenue from Plaza Extra East in the amount of \$693,000 and identify all documents relating to your dispute.

Hamed Response: Hamed disputes this debt. Yusuf contends that from April 1, 2004, all revenue from the sale of water that was collected by Plaza Extra-East was to be paid to United. The water sales actually did not belong to United, but to the Partnership.

A little background is in order. When the Partnership purchased the one-acre property at Plaza Extra-East, it also built, with Partnership funds, a 400,000 to 450,000 gallon cistern on the property. Additionally, one or two water wells also were used to fill the cistern. This was during the 1990s. At that time, there was a water shortage on island, WAPA had difficulty consistently providing water and, other than WAPA, there really weren't other companies selling water. The Partnership filled this gap by selling water, starting approximately in 1994. Yusuf is correct that during 1994-2004, the proceeds from the sale of the water went to charity (half to Mr. Yusuf's choice of charity and the other half to Mr. Hamed's choice of charity) and to pay the expenses of the water generation and delivery. At its peak, in the 1990s, 10 or more trucks a day, each with a capacity of about 30,000 gallons, delivered water to St. Croix residents.

After April 1, 2004, the funds generated from the enterprise went to the Partnership, rather than to charity. The sale of water dropped off quite dramatically for the Partnership in the 2000s. Competitors, such as Marcos and others, entered the

market. To get a sense of the scope, in the 2000s, the Partnership was sending out one or two trucks a day to deliver water, rather than the previous 10 or more trucks.

Eventually, Yusuf Yusuf was in charge of monitoring the water sales. For a time, water sales were recorded on hand written receipts, but there weren't any controls to ensure that the vendors did not take more water than they were billed. Wally Hamed then recommended, and Yusuf Yusuf implemented, a key being programmed into the register at the service desk to record the sales of water.

Hamed objects to this blatant claim by Yusuf & United for a number of reasons. First, neither United nor Yusuf has provided any document memorializing this so-called agreement between the Partnership and United because one does not exist. Next, Yusuf picks two years of sales, 1997 and 1998, and extrapolates those two years of sales into an average of \$5,291.66 per month and applies that monthly figure to every month from April 1, 2004 through February 28, 2015. As is explained by the chronology, water sales dropped off dramatically in the 2000s, so of course Yusuf picks two years of sales during the most profitable years. Third, Yusuf does not provide *any* documentation to support the sales for 1997 and 1998, nor does he provide *any* documentation to support water sales from April 1, 2004 through February 28, 2015, even though both paper copy receipts and information from the register could be generated to show actual sales. Fourth, and perhaps most galling, United doesn't have any right to the water, as it is Partnership water, so this really isn't money United is entitled. Finally, this leads to Hamed's belief that this is another example of what Special Master Ross described as "a transaction prohibited by law and tainted by a conflict of interest and self-dealing," when discussing the inflated rents United tried to collect on Bay 1. Yusuf is not fulfilling his fiduciary duty to the Partnership and instead is trying to loot the Partnership for his corporation, United.

Note: ROGs 31 & 32 were revised by Yusuf on March 30, 2018 and will be answered separately.

Dated: May 15, 2018

A handwritten signature in blue ink that reads "Carl J. Hartmann III". The signature is fluid and cursive, with a long horizontal flourish extending to the right.

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CERTIFICATE OF SERVICE

I hereby certify that on this 15th day of May, 2018, I served a copy of the foregoing by email (via CaseAnywhere), as agreed by the parties, on:

Hon. Edgar Ross

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



VERIFICATION

I hereby certify under penalty of perjury that the facts contained in each of the foregoing responses to interrogatories are true and correct to the best of my knowledge, information and belief.

Dated: May, 15, 2018


_____ Attesting Individual

TERRITORY OF THE UNITED STATES VIRGIN ISLANDS

DISTRICT OF St. Croix) ss.

On this, the 15th day of May, 2018, before me, the undersigned officer, personally appeared the signor known to me (or satisfactorily proven to be) the person whose name is subscribed to the within document and acknowledged that he/she executed the same for the purpose therein contained.

IN WITNESS WHEREOF, I hereunto set my hand and official seal.


_____ Notary Public

NOTARY PUBLIC
JERRI FARRANTE
Commission Exp: September 3, 2019
NP-93-15