

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

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

Plaintiff/Counterclaim Defendant, )

v. )

FATHI YUSUF and UNITED CORPORATION, )

Defendants/Counterclaimants, )

v. )

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

Additional Counterclaim Defendants. )

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

Plaintiff, )

v. )

UNITED CORPORATION, )

Defendant. )

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

Plaintiff, )

v. )

FATHI YUSUF, )

Defendant. )

FATHI YUSUF and )  
UNITED CORPORATION, )

Plaintiffs, )

v. )

THE ESTATE OF MOHAMMAD HAMED, )  
Waleed Hamed as Executor of the Estate of )  
Mohammad Hamed, and )  
THE MOHAMMAD A. HAMED LIVING TRUST,) )

Defendants. )

CIVIL NO. SX-12-CV-370

ACTION FOR INJUNCTIVE  
RELIEF, DECLARATORY  
JUDGMENT, AND  
PARTNERSHIP DISSOLUTION,  
WIND UP, AND ACCOUNTING

Consolidated With

CIVIL NO. SX-14-CV-287

ACTION FOR DAMAGES AND  
DECLARATORY JUDGMENT

CIVIL NO. SX-14-CV-278

ACTION FOR DEBT AND  
CONVERSION

CIVIL NO. ST-17-CV-384

ACTION TO SET ASIDE  
FRAUDULENT TRANSFERS

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**RESPONSES TO HAMED'S FIFTH INTERROGATORIES PER THE CLAIM  
DISCOVERY PLAN OF 1/29/2018 NOS. 29-32 OF 50**

Defendant/Counterclaimants Fathi Yusuf ("Yusuf") and United Corporation ("United")(collectively, the "Defendants") through their attorneys, Dudley, Topper and Feuerzeig, LLP, hereby provide their Responses to Hamed's Fifth Set of Interrogatories per the Claims Discovery Plan of 1/29/2018, Nos. 29-32 of 50 as to Y-2: Rents for Bays 5 & 8; Y-12: Foreign Accts and Jordanian Properties; H-157: Unclear General Ledger Entry Regarding "Fathi Yusuf Refund of Overpayment;" H-35: KAC357, Inc.'s American Express Payments Deposited to Partnership Account.

**GENERAL OBJECTIONS**

Defendants make the following general objections to the Interrogatories. These general objections apply to all or many of the Interrogatories, thus, for convenience, they are set forth herein and are not necessarily repeated after each objectionable Request to Admit. The assertion of the same, similar, or additional objections in the individual responses to the Interrogatories, or the failure to assert any additional objections to a discovery request does not waive any of Defendants' objections as set forth below:

(1) Defendants object to these Interrogatories to the extent they may impose obligations different from or in addition to those required under the Virgin Islands Rules of Civil Procedure.

(2) Defendants object to these Interrogatories to the extent that they use the words "any" and "all" as being overly broad, unduly burdensome, immaterial, irrelevant, and not reasonably calculated to lead to the discovery of admissible evidence.

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(3) Defendants object to these Interrogatories to the extent they seek information which is protected by the attorney-client privilege or work-product doctrine, including information prepared in anticipation of litigation, or for trial, by or on behalf of Defendants or relating to mental impressions, conclusions, opinions, or legal theories of their attorneys or representatives, or any other applicable privilege or doctrine under federal or territorial statutory, constitutional or common law. Defendants' answers shall not include any information protected by such privileges or doctrine, and documents or information inadvertently produced which includes such privileged information shall not be deemed a waiver by Defendants of such privilege or doctrine.

(4) Defendants object to these Interrogatories to the extent that they seek information and documents concerning any matter that is irrelevant to the claims or defenses of any party to this action, and not reasonably calculated to lead to the discovery of admissible evidence.

(5) Defendants object to these Interrogatories to the extent that they use terms or phrases that are vague, ambiguous, or undefined. Defendants' response to such request will be based upon their understanding of the request.

(6) Defendants object to these Interrogatories to the extent they seek documents or information not in the possession, custody or control of Defendants, on the grounds that it would subject them to undue burden, oppression and expense, and impose obligations not required by the Virgin Islands Rules of Civil Procedure.

(7) Defendants have not completed either their discovery or preparation for trial of this matter. Accordingly, Defendants' responses to these Interrogatories are made without prejudice to their right to make any use of, or proffer at any hearing or at trial evidence later discovered, and are based only upon information presently available. If any additional, non-

privileged, responsive information is discovered, these Interrogatories will be supplemented to the extent that supplementation may be required by the Virgin Islands Rules of Civil Procedure.

(8) Defendants object to these Interrogatories to the extent that they are compound and not a single Request. Hence, these Interrogatories should be counted as more than a single Request such that when all of the subparts are included together with other Interrogatories they exceed the 50 Interrogatories allowed in the Joint Discovery and Scheduling Plan ("JDSP").

### **RESPONSES TO INTERROGATORIES**

#### **Interrogatory 29 of 50:**

Interrogatory 29 of 50, relates to Claim Y-2: "Rents for Pays 5 & 8." Please describe all facts related to this claim with reference to dates, documents, witnesses and what facts, conversations, writings, communications or other information or documents that leads United to believe and assert that it had an agreement with Hamed to pay rent for Bays 5 and 8. Include in your description the dates of the conversations, writings, communication or other documents, the place where these discussions or meetings took place and identify the participants to the discussions or meetings. Include in your response, but not limit to what facts, conversations, writings, communications or other information or documents that leads Yusuf to believe and assert that any consent for such an arrangement survived the bringing of a suit in September of 2012.

#### **Response:**

Defendants object to this Interrogatory because it is compound such that the total number of interrogatories together with their sub parts and other discovery exceeds the maximum

allowable number of interrogatories under the JDSP and violates both the spirit and the terms of the JDSP limiting the number of interrogatory questions.

Without waiving any objection to this Interrogatory, Defendants incorporate the Declaration of Fathi Yusuf dated August 12, 2014 attached as Exhibit 3 to the Defendants' Motion for Partial Summary Judgment on Counts IV, IX, and XII Regarding Rent, particularly paragraphs 21-25 thereof, as their response to this Interrogatory.

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**Interrogatory 30 of 50:**

Interrogatory 30 of 50 relates to Y-12: "Foreign Accts and Jordanian Properties."

This interrogatory relates to Claim &-12: "Foreign Accts and Jordanian Properties." Please identify all foreign accounts and Jordanian properties that were funded or purchased with funds from the Plaza Extra supermarkets. For each such foreign account individually: include the name of the account, the account number, the name of the institution and its location, the date it was opened, how money generated by the Plaza Extra supermarkets got into the foreign account, the dates deposits and withdrawals were made from each account and the amounts, the date the last transaction on the account occurred, whether the account is active or closed. If open, provide the present balance and if closed, please identify the date the account closed and who closed it. For the Jordanian property, for each property individually please identify (in English) the date it was purchased, the name of the title holder, the property description, who presently owns the property, whether the purchase was in cash or was transferred from a bank, and how all funds generated or provided by Plaza Extra supermarkets were transferred for the purchase of the property (including amounts and dates of all such transactions).

**Response:**

Defendants object to this Interrogatory because it is compound such that the total number of interrogatories together with their sub parts and other discovery exceeds the maximum allowable number of interrogatories under the JDSP and violates both the spirit and the terms of the JDSP limiting the number of interrogatory questions.

Without waiving any objection to this Interrogatory, Yusuf incorporates the information concerning the foreign accounts and Jordanian properties set forth in his September 30, 2016 Accounting Claims and Proposed Distribution Plan, his October 30, 2017 Amended Accounting Claims and his December 12, 2016 Amended Supplementation of Accounting Claims as responsive to this Interrogatory.

**Interrogatory 31 of 50:**

Interrogatory 31 of 50 relates to Claim H-157 (old Claim No. 402/418): Unclear general ledger entry regarding 'Fathi Yusuf refund of overpayment,'" as described in Hamed's November 16, 2017 Motion for a Hearing Before Special Master, Exhibit 3 and the September 28, 2016 JVZ Engagement Report and Exhibits.

This interrogatory relates to Claim H-157. Please describe in detail what the general ledger entry "West, 7/14/15, JE14, GENJ, YUSUF REFUND OF OVERPMY, \$77,335.62," references, including why Yusuf was entitled to a refund of overpayment in the amount of \$77,335.62, what the \$77,335.62 covers, a description of all documents supporting this transaction and identification of any witnesses and what knowledge you believe they have.

**Response:**

Defendants object to this Interrogatory because it is compound such that the total number of interrogatories together with their sub parts and other discovery exceeds the maximum allowable number of interrogatories under the JDSP and violates both the spirit and the terms of the JDSP limiting the number of interrogatory questions.

Defendants further object on the grounds that the responsive information cannot be readily obtained by making reasonable inquiries as these inquiries require the skilled and detailed attention and focus of John Gaffney, former Partnership accountant, to revisit his accounting and work papers. Yusuf is no longer being paid to function as the Liquidating Partner to answer

questions on behalf of the Partnership and the accounting that took place during the liquidation process. Likewise, John Gaffney is no longer employed by the Partnership to function in the role as Partnership accountant. To respond to these questions, the expertise and knowledge of John Gaffney is necessary, which diverts him away from his employment with United. Rather, if Hamed seeks information from John Gaffney for questions as to the accounting efforts he undertook as the Partnership accountant, Hamed should be required to compensate John Gaffney for his time in researching and preparing those responses. Furthermore, many of these inquiries as to the Partnership accounting are duplicative of questions Gaffney has previously addressed at or near the time that the transactions took place. Reorienting now as to transactions from years ago constitutes an undue burden and causes unnecessary time and expense. If Hamed seeks to revisit these issues, Hamed should bear the cost.



**Interrogatory 32 of 50:**

Interrogatory 32 of 50 relates to Claim No. H-35 (old Claim No. 343): "KAC357, Inc.'s American Express payments deposited to Partnership account," as described in Hamed's November 16, 2017 Motion for a Hearing Before Special Master, Exhibit 3 and the September 28, 2016 JVZ Engagement Report and Exhibits.

This interrogatory relates to Claim H-35. Describe all fact relevant to whether, after the Plaza Extra West store was transferred out of the Partnership, American Express payments to that Store were still being deposited into the Partnership Banco Popular account. Describe all facts relevant to whether this occurred due to an error in configuring the credit card processing machines on the part of the Banco Popular technician, or if not, why this occurred. Please explain any facts as to why factual or legal basis as to why these amounts have not been reimbursed to KAC357, Inc. Include an identification of all documents or witnesses. If they have been reimbursed, please describe all documents that would substantiate the reimbursement, including, but not limited to, bank records.

**Response:**

Defendants object to this Interrogatory because it is vague, ambiguous, and compound such that the total number of interrogatories together with their sub parts and other discovery exceeds the maximum allowable number of interrogatories under the JDSP and violates both the spirit and the terms of the JDSP limiting the number of interrogatory questions.

Defendants object to this interrogatory since KAC357, Inc. is not a party to this case and its "claims" are not part of the accounting claims referred to the Master for his report and recommendation.

Defendants further object because all information as to the accounting performed by Mr. Gaffney during his employment as the accountant for the Partnership has been provided by John Gaffney in various forms including the submissions accompanying the numerous bi-monthly

reports as well as the additional information and explanations provided by Gaffney directly to counsel and accountants for Hamed. This question relates to an accounting allocation made by the accountant to the Partnership under the supervision of the Master. Yusuf, as a partner, is without sufficient knowledge to respond to this inquiry as the information is not with in his care, custody or control. Yusuf has made reasonable inquiry into this Interrogatory and the information he knows or can readily obtain is insufficient to enable him to respond to same.

Defendants further object on the grounds that the responsive information cannot be readily obtained by making reasonable inquiries as these inquiries require the skilled and detailed attention and focus of John Gaffney, former Partnership accountant, to revisit his accounting and work papers. Yusuf is no longer being paid to function as the Liquidating Partner to answer questions on behalf of the Partnership and the accounting that took place during the liquidation process. Likewise, John Gaffney is no longer employed by the Partnership to function in the role as Partnership accountant. To respond to these questions, the expertise and knowledge of John Gaffney is necessary, which diverts him away from his employment with United. Rather, if Hamed seeks information from John Gaffney for questions as to the accounting efforts he undertook as the Partnership accountant, Hamed should be required to compensate John Gaffney for his time in researching and preparing those responses. Furthermore, many of these inquiries as to the Partnership accounting are duplicative of questions Gaffney has previously addressed at or near the time that the transactions took place. Reorienting now as to transactions from years ago constitutes an undue burden and causes unnecessary time and expense. If Hamed seeks to revisit these issues, Hamed should bear the cost.

DUDLEY, TOPPER AND FEUERZEIG, LLP

DATED: May 15<sup>th</sup>, 2018

By: 

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**CERTIFICATE OF SERVICE**

It is hereby certified that on this 15<sup>th</sup> day of May, 2018, I caused the foregoing a true and exact copy of the foregoing **RESPONSE TO HAMED'S FIFTH INTERROGATORIES PER THE CLAIMS DISCOVERY PLAN OF 1/29/2018, NOS. 29-32** to be served upon the following via Case Anywhere docketing system:

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