

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,

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

Plaintiff,

vs.

UNITED CORPORATION,

Defendant.

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

Plaintiff,

vs.

FATHI YUSUF,

Defendant.

Case No.: SX-2012-CV-370

**ACTION FOR DAMAGES,
INJUNCTIVE RELIEF AND
DECLARATORY RELIEF**

JURY TRIAL DEMANDED

Consolidated with

Case No.: SX-2014-CV-287

**ACTION FOR
DECLARATORY JUDGMENT**

JURY TRIAL DEMANDED

Consolidated with

Case No.: SX-2014-CV-278

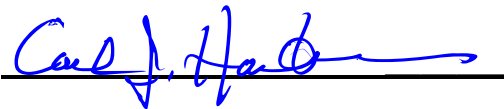
**ACTION FOR DEBT AND
CONVERSION**

JURY TRIAL DEMANDED

NOTICE OF INTENT TO SERVE SUBPOENA

PLEASE TAKE NOTICE that on May 17, 2018, or as soon thereafter as service may be effectuated, and pursuant to V.I.R. Civ. P. 45, Counsel for the Plaintiff, Joel H. Holt and Carl J. Hartmann, will issue and serve the Subpoena attached hereto as "Exhibit A," for the deposition and production of the items listed in the Subpoena at the time and place specified therein. Any necessary witness fee(s), expenses and costs are hereby tendered. This is service pursuant to Rule 45 and 45(c)((1)(A) as (1) the deponent is a member of the USVI Bar being deposed with regard to activities in this case before the Superior Court of the USVI, and (2) the locus of the deposition is within 100 miles of where the person resides, is employed, or regularly transacts business in person -- to wit, the deponent regularly transacts business in the USVI at locations less than 100 miles from the Law Office of Joel H. Holt.

Dated: May 17, 2018



Carl J. Hartmann III, Esq (Bar #48)
Co-Counsel for Plaintiff
5000 Estate Coakley Bay, L-6
Christiansted, VI 00820
Email: carl@carlhartmann.com
Tele: (340) 719-8941
Fax: (212) 202-3733

Joel H. Holt, Esq.
Counsel for Plaintiff
Law Offices of Joel H. Holt
2132 Company Street,
Christiansted, VI 00820
Email: holtvi@aol.com
Tele: (340) 773-8709
Fax: (340) 773-867

CERTIFICATE OF SERVICE

I hereby certify that on this 17th day of May, 2018, I served a copy of the foregoing by email (via CaseAnywhere), as agreed by the parties, on the following and that the documents meets the page and word limitations under the applicable Rule:

Hon. Edgar Ross (w/ 2 copies by Mail)

Special Master
edgarrossjudge@hotmail.com

Gregory H. Hodges

Stefan Herpel

Charlotte Perrell

Law House, 10000 Frederiksberg Gade
P.O. Box 756
St. Thomas, VI 00802
ghodges@dtflaw.com

Mark W. Eckard

Hamm, Eckard, LLP
5030 Anchor Way Christiansted, VI 00820
mark@markeckard.com

Jeffrey B. C. Moorhead

CRT Brow Building
1132 King Street, Suite 3
Christiansted, VI 00820
jeffreymlaw@yahoo.com

A handwritten signature in blue ink, reading "Carl J. Haddad", is written over a horizontal line.

Courtesy Copy to:

Joseph A. DiRuzzo (By Email)

JD@DiRuzzoLaw.com

(954) 615.1676 (office)

(954) 764.7272 (fax)

**Issued by the
SUPERIOR COURT OF THE VIRGIN ISLANDS**

DIVISION OF ST. CROIX

SUBPOENA IN A CIVIL CASE

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,
MUFEEED HAMED, HISHAM HAMED, and
PLESSEN ENTERPRISES, INC.,**

Counterclaim Defendants.

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

Plaintiff,

vs.

UNITED CORPORATION,

Defendant.

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

Plaintiff,

vs.

FATHI YUSUF,

Defendant.

EXHIBIT A

Case No.: SX-2012-CV-370

**ACTION FOR DAMAGES,
INJUNCTIVE RELIEF AND
DECLARATORY RELIEF**

JURY TRIAL DEMANDED

Consolidated with

Case No.: SX-2014-CV-287

**ACTION FOR DECLARATORY
JUDGMENT**

JURY TRIAL DEMANDED

Consolidated with

Case No.: SX-2014-CV-278

**ACTION FOR DEBT AND
CONVERSION**

JURY TRIAL DEMANDED

**EXHIBIT
A**

SUBPOENA DUCES TECUM

TO: **Joseph A. DiRuzzo, III Esq. (VI Bar Member)**
ADDRESS: **633 SE 3rd Ave., Suite 301**
Ft. Lauderdale, FL 33301

YOU ARE HEREBY COMMANDED to appear in the Superior Court of the Virgin Islands in the place, date, and time specified below to testify in the above case.

PLACE OF TESTIMONY	COURTROOM
	DATE AND TIME

YOU ARE HEREBY COMMANDED to appear in the Superior Court of the Virgin Islands in the place, date, and time specified at the taking of a Deposition in the above case.

PLACE OF DEPOSITION	DATE AND TIME
Joel H. Holt, Esq. Law Offices of Joel H. Holt 2132 Company Street Christiansted, VI 00820 (340) 773-8709	Thursday, June 31, 2018, at 10:00 a.m.
Video Taped 30(b)(6) deposition of DTF	

YOU ARE HEREBY COMMANDED to produce and permit inspection and copying of the following documents or object at the place, date and times specified below (list documents or objects):
All Documents related to your representation of Fathi Yusuf, United Corporation or the Yusuf Hamed from 9/20/12 (aka the Plaza Extra Partnership) from 9/20/2012 to 4/30/2013 for which your firm at the time billed and received payment from the "Plaza Extra - Banco Popular Account" # 191-2562690, including the attached.

PLACE: Law Offices of Joel H. Holt
2132 Company Street, Christiansted, VI 00820
(340) 773-8709

DATE AND TIME:

Thursday, May 31, 2018,
at 10:00 am

YOU ARE HEREBY COMMANDED to permit inspection of the following premises at the date and time specified below:

PREMISES

DATE AND TIME:

Any organization not a party to this suit that is subpoenaed for the taking of a deposition shall designate one or more officers, directors, or managing agents, or other persons who consent to testify on its behalf, and may set forth, for each person designated, the matters on which the person will testify. Federal Rules of Civil Procedure, 30(b)(6).

ISSUING OFFICER'S SIGNATURE AND TITLE

JOEL H. HOLT
Attorney-at-Law

/s/ Carl J. Hartmann

By: 

DATE

5/17/18

ISSUING ATTORNEY'S ADDRESS AND TELEPHONE NUMBER:

Carl J. Hartmann
c/o Law Offices of Joel H. Holt
2132 Company Street
Christiansted, VI 00820
(340) 773-8709

RETURN OF SERVICE

I personally served the within subpoena duces tecum by delivering a copy to _____

Dated: _____

By: _____

RETURN OF SERVICE

This is to certify that _____ cannot be found in this jurisdiction.

Dated: _____

By: _____

RETURN OF SERVICE

I hereby certify that I served the within subpoena duces tecum by leaving a copy at _____, the usual place of abode, with _____, a member of his/her family over the age of 14 years, then residing with him/her.

Dated: _____

By: _____

Pursuant to V.I. R. Civ. P. 45, as well as R. Civ. P. 34, the deponent(s) shall bring all preparations, notes, briefings and documents necessary to allow full and complete testimony on the topics.

SCHEDULE A - Topics for Rule 45 Witness

In relation to Hamed Claim H-3 and the same is more particularly described in the attached May 8, 2018 Order.

With regard to all work performed between September 20, 2012 and April 30, 2013, that resulted in the payment amounts paid to Fuerst Ittleman David & Joseph, PL, for the work of Joseph A. DiRuzzo III and others, as the same are described in the Special Master's Order of May 8, 2018, to wit, (see attached)

\$15,067.26 October 19, 2012
\$29,011.50 October 19, 2012
\$99,254.45 November 16, 2012
\$111,660.24 January 21, 2013
\$112,383.32 February 13, 2013
\$82,274.84 March 6, 2013
\$54,938.89 April 3, 2013,

As Yusuf and United now claim that some or all of this work was done "for the Partnership" or "for the Partnership under the umbrella of United" and not for Yusuf personally or United as a distinct entity; no privilege attaches to such work. Therefore, Deponent will supply and be ready to testify regarding his and his prior firm's receipt, retention, retention policies and status of the following documents supplied to him, as follows:

(1) all written correspondence (including emails) from or to Deponent or Fuerst Ittleman David & Joseph, PL, its attorneys or staff as to all work performed that was "for the Partnership" or "for the Partnership under the umbrella of United",

(2) all notations, notes, drafts, attorney work product or other writings created by deponent or Fuerst Ittleman David & Joseph, PL, its attorneys or staff for those such "Partnership" charges (this would include any files or other writings transferred to the Dudley Firm, and

(3) all other physical evidence in the possession of deponent as to the nature and production of that work.

Attorney Fees Paid to Joe DiRuzzo, FUERST ITTLEMAN DAVID & JOSEPH, PL

**Payments After 10/19/2012
to Fuerst Ittleman from 'Plaza Extra' Account**

Date	Payee	From Account	Amount	Check No.
2012-10-19	Fuerst Ittleman	Plaza Extra - Banco Popular	\$ 15,067.26	3979
2012-10-19	Fuerst Ittleman	Plaza Extra - Banco Popular	\$ 29,011.50	3977
2012-11-16	Fuerst Ittleman	Plaza Extra - Banco Popular	\$ 99,254.45	4195
2013-01-21	Fuerst Ittleman	Plaza Extra - Banco Popular	\$ 111,660.24	4642
2013-02-13	Fuerst Ittleman	Plaza Extra - Banco Popular	\$ 112,383.82	4819
2013-03-06	Fuerst Ittleman	Plaza Extra - Banco Popular	\$ 82,274.87	5055
2013-04-03	Fuerst Ittleman	Plaza Extra - Banco Popular	\$ 54,938.89	5193
			\$	

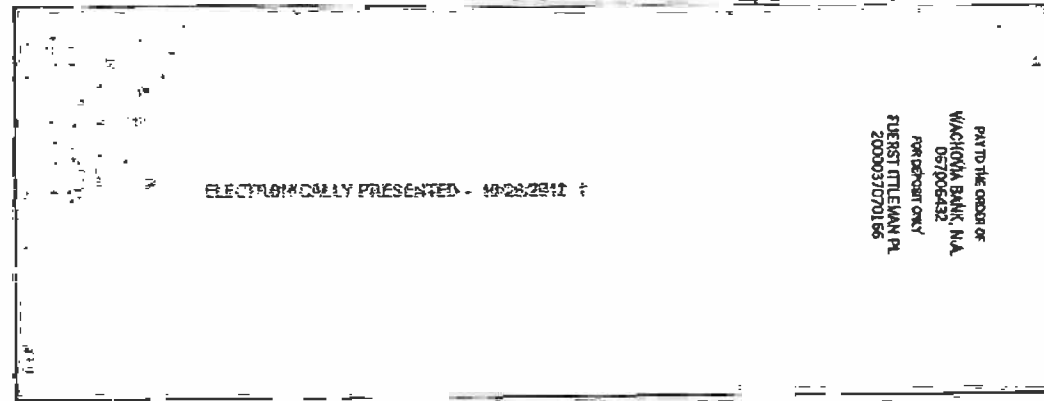
CHECK 3977

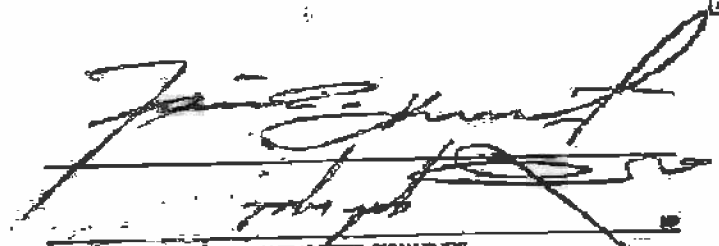
Dated: Friday, October 19, 2012

Amount: \$99,254.45

Cleared: Sunday, October 28, 2012

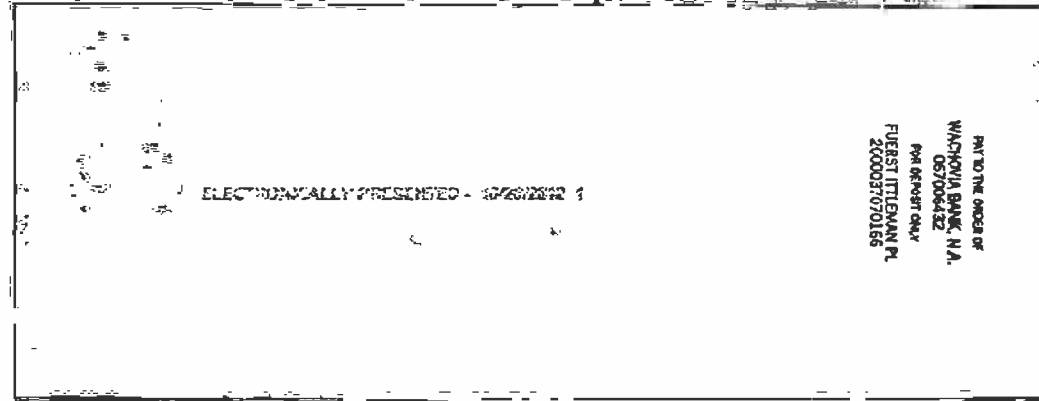
Depository: Fuerst Littleman PL
Account Wachovia Bank N.A.
2000037070166



UNITED CORPORATION DBA PLAZA EXTRA (340) 719-1870 PO BOX 3649 ST CROIX, VI 00851		BANCO POPULAR DE PUERTO RICO 101-667216	3977 CHECK NUMBER
		DATE	Oct 19, 2012
		AMOUNT	\$ 29,011.50
Twenty-Nine Thousand Eleven and 50/100 Dollars			
FUERST LITTLEMAN DAVID & JOSEPH, PL 1001 BRICKELL BAY DRIVE 32ND FLOOR MIAMI, FL 33131			
PAY TO THE ORDER OF:	 AUTHORIZED SIGNATURE		
Memo:			
⑈003977⑈ ⑆021606674⑆ 1910256269⑈			

CHECK 3979

Dated: Friday, October 19, 2012
Amount: \$15,067.26
Cleared: Sunday, October 28, 2012
Depository: Fuerst Ittleman PL
Account: Wachovia Bank N.A.
2000037070166



UNITED CORPORATION DBA PLAZA EXTRA (340) 719-1870 PO BOX 3649 ST CROIX, VI 00851		BANCO POPULAR DE PUERTO RICO 701-997216	3979 CHECK NUMBER
		DATE	Oct 19, 2012
		AMOUNT	\$ 15,067.26
PAY TO THE ORDER OF:	Fifteen Thousand Sixty-Seven and 26/100 Dollars		Details on Back
	FUERST ITTLEMAN DAVID & JOSEPH, PL 1001 BRICKELL BAY DRIVE 32ND FLOOR MIAMI, FL 33131		
Memo:			AUTHORIZED SIGNATURE
	00037070166 0216066740 19102562690		

UNITED CORPORATION
DBA PLAZA EXTRA
(340) 719-1870
PO BOX 3649
ST CROIX, VI 00851

BANCO POPULAR DE PUERTO RICO
101-667/216

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CHECK IMAGE
REAL PROTECT

DATE

Nov 16, 2012

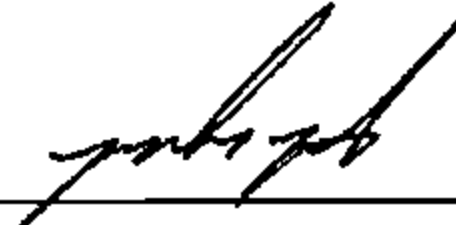
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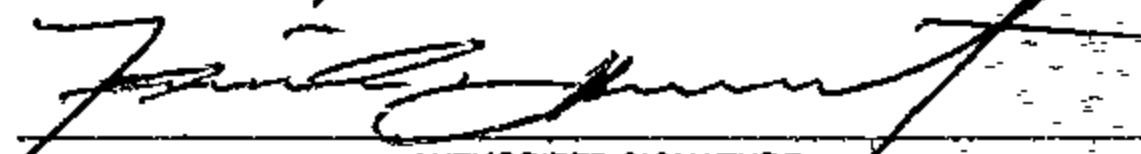
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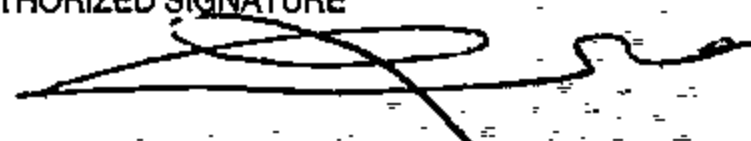
PAY
TO THE
ORDER
OF:

Ninety-Nine Thousand Two Hundred Fifty-Four and 45/100 Dollars
FUERST ITTLEMAN DAVID & JOSEPH, PL
1001 BRICKELL BAY DRIVE
32ND FLOOR
MIAMI, FL 33131

Memo:





AUTHORIZED SIGNATURE


⑈004 195⑈ ⑆02 1606674⑆ 19 1 256 269⑈

HAMD203422

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Security Features Included

PAY TO THE ORDER OF

WACHOVIA BANK, N.A.

067006432

FOR DEPOSIT ONLY

**FUERST ITLEMAN PL
2000037070166**

STANDARD BANK OF NEW YORK AND FREEPORT
NEW YORK, NY 10005-1000

UNITED CORPORATION
DBA PLAZA EXTRA
(340) 719-1870
PO BOX 3649
ST CROIX, VI 00851

BANCO POPULAR DE PUERTO RICO
101-667/216

4642

CHECK MARK

DATE

Jan 21, 2013

AMOUNT

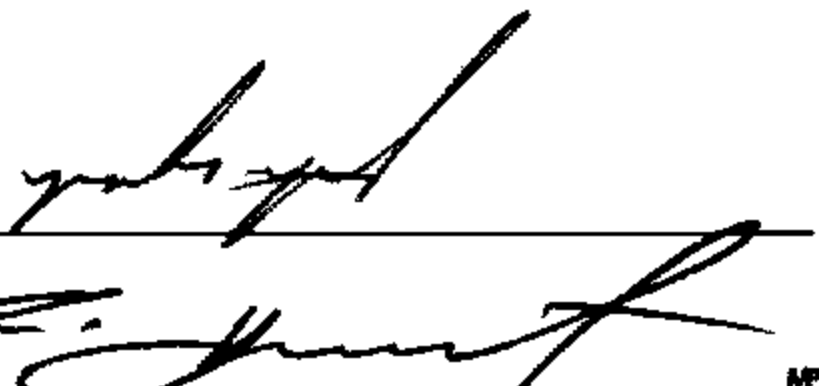
\$ ***\$111,660.24

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PAY TO THE ORDER OF: One Hundred Eleven Thousand Six Hundred Sixty and 24/100 Dollars

FUERST ITTLEMAN DAVID & JOSEPH PL
1001 BRICKELL BAY DRIVE
32ND FLOOR
MIAMI, FL 33131

Memo:



AUTHORIZED SIGNATURE

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PAY TO THE ORDER OF

WACHOVIA BANK, N.A.
067006432

FOR DEPOSIT ONLY

FUERST ITTLEMAN PL
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UNITED CORPORATION
DBA PLAZA EXTRA
(340) 719-1870
PO BOX 3649
ST CROIX, VI 00851

BANCO POPULAR DE PUERTO RICO

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CHECK NUMBER

Pin	ID	101-667216
Type	Open	OK
Issue/Exp.	AD	X
Acc. Dep. Only		
Hist.	Sig.	
	HPF	OK
	Memo	OK

DATE
Feb 13, 2013

AMOUNT
\$ ***\$112,383.32

PAY One Hundred Twelve Thousand Three Hundred Eighty-Three and 32/100 Dollars

TO THE ORDER OF:
FUERST ITTLEMAN DAVID & JOSEPH PL
1001 BRICKELL BAY DRIVE
32ND FLOOR
MIAMI, FL 33131

Memo:

[Handwritten Signature]

AUTHORIZED SIGNATURE

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PAY TO THE ORDER OF
WACHOVIA BANK, N.A.
067006432

FOR DEPOSIT ONLY
FUERST ITTLEMAN PL
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UNITED CORPORATION
DBA PLAZA EXTRA
(340) 719-1870
PO BOX 3649
ST CROIX, VI 00851

BANCO POPULAR DE PUERTO RICO
101-667/216

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CHECK AMOUNT
TRADE PROTECTION

DATE
Mar 6, 2013

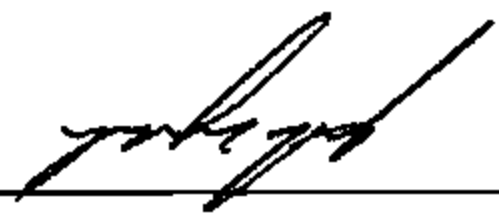

AMOUNT

\$ ****\$82,274.87

PAY Eighty-Two Thousand Two Hundred Seventy-Four and 87/100 Dollars
TO THE ORDER OF:

FUERST ITTLEMAN DAVID & JOSEPH PL
1001 BRICKELL BAY DRIVE
32ND FLOOR
MIAMI, FL 33131

Memo:



AUTHORIZED SIGNATURE

⑈005005⑈ ⑆021606674⑆ 191⑈256269⑈

UNITED CORPORATION
DBA PLAZA EXTRA
(340) 719-1870
PO BOX 3649
ST CROIX, VI 00851

BANCO POPULAR DE PUERTO RICO
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CHECK ARMOR
BY COLLECTION

DATE
Apr 3, 2013

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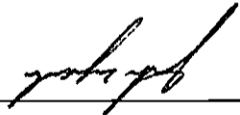
\$ *****\$54,938.89

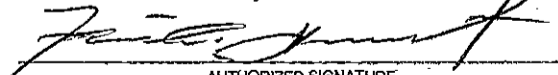
PAY TO THE ORDER OF: Fifty-Four Thousand Nine Hundred Thirty-Eight and 89/100 Dollars

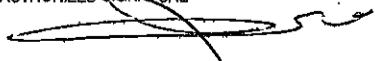
FUERST ITTLEMAN DAVID & JOSEPH PL
1001 BRICKELL BAY DRIVE
32ND FLOOR
MIAMI, FL 33131

Memo:

HAMD562231 005193 021606674 191 256269





AUTHORIZED SIGNATURE


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PAY TO THE ORDER OF
WACHOVIA BANK, N.A.
067006432
FOR DEPOSIT ONLY
FUERST ITTELMAN PL
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 HAMD562232

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

**MOHAMMAD HAMED, BY HIS
AUTHORIZED AGENT WALEED HAMED,**

PLAINTIFF/COUNTERCLAIM DEFENDANT,

v.

**FATHI YUSUF AND UNITED
CORPORATION,**

DEFENDANTS/COUNTERCLAIMANTS,

v.

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

COUNTERCLAIM DEFENDANTS.

**WALEED HAMED, AS EXECUTOR OF THE
ESTATE OF MOHAMMAD HAMED,**

PLAINTIFF,

v.

UNITED CORPORATION,

DEFENDANT.

MOHAMMAD HAMED,

PLAINTIFF,

v.

FATHI YUSUF,

DEFENDANT.

Civil No. SX-12-CV-370

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

CONSOLIDATED WITH

Civil No. SX-14-CV-287

**ACTION FOR DAMAGES and
DECLARATORY JUDGMENT**

CONSOLIDATED WITH

Civil No. SX-14-CV-378

**ACTION FOR DEBT and
CONVERSION**

Exhibit B

ORDER¹

THIS MATTER came before the Special Master (hereinafter “Master”) on Hamed’s motion as to Hamed Claim No. H-3: Partnership funds in the amount of \$504,591.03 unilaterally taken by Yusuf to pay his counsel for defending this instant lawsuit.² Yusuf filed an opposition and Hamed filed a reply thereafter. Subsequently, United/Yusuf filed a sur-response³ and Hamed filed a reply thereto.

In his motion, Hamed argued that “a total of \$504,591.03 was paid for Yusuf’s personal defense of this case after the complaint here was filed” and that “[t]hese were fees paid to Attorney DiRuzzo’s firm for work in this case.” (Motion, p. 3) (emphasis omitted) More specifically, Hamed argued that “the claim is for \$504,591.03 in checks to Fuerst Ittleman David & Joseph, PL in the following amounts plus \$216,991 interest accruing from the date of each check:

\$15,067.26 plus \$6,824 in interest from October 19, 2012
\$29,011.50 plus \$13,141 in interest from October 19, 2012
\$99,254.45 plus \$44,272 in interest from November 16, 2012
\$111,660.24 plus \$47,989 in interest from January 21, 2013
\$112,383.32 plus \$47,662 in interest from February 13, 2013
\$82,274.84 plus \$34,467 in interest from March 6, 2013
\$54,938.89 plus \$22,636 in interest from April 3, 2013.” (Id.)

Hamed claimed that discovery is not necessary yet Yusuf, as the Liquidating Partner, “has held off having this declared a valid claim by repeatedly saying discovery may be necessary.” (Id.) (emphasis in original) Hamed further claimed that, “[a]s Judge Brady’s memorandum makes

¹ All references made to DiRuzzo’s firm in this Order refers to “Fuerst Ittleman David & Joseph, PL.” All references made to the criminal matter in this Order refers to *The United States of America v. United Corporation, et al.*, case no. 1:05-cr-15.

² The Master was appointed by the Court to “direct and oversee the winding up of the Hamed-Yusuf Partnership” (Sept. 18, 2015 order: Order Appointing Master) and “make a report and recommendation for distribution [of Partnership Assets] to the Court for its final determination.” (Jan. 7, 2015 order: Final Wind Up Plan) The Master finds that that Hamed Claim No. H-3 falls within the scope of the Master’s report and recommendation given that Hamed Claim No. H-3 is alleged debts owed by Yusuf to the Partnership (or in other words, potential Partnership Assets).

³ United/Yusuf filed a motion for leave to file a sur-response which included their sur-response. The Master will grant United/Yusuf’s motion for leave and consider both their sur-response and Hamed’s reply thereto.

ORDER

Page 3 of 9

clear, those fees plus interest constitute a valid claim and must be returned to the Partnership.” (Id., at p. 4; Exhibit 2: Memorandum Opinion and Order granting Hamed’s emergency motion to renew application for TRO, dated April 25, 2013) As such, Hamed requested the Master to find that this claim is ripe and determine that the \$504,591.03 to Fuerst Ittleman David & Joseph, PL was improperly paid by the Partnership. (Id.)

In their opposition, Yusuf and United argued that “this claims requires discovery before it will be ripe for determination.” (Opp., p. 2) Yusuf and United further argued that it is disingenuous for Hamed to argue that Judge Brady has “already ruled that the \$504,591.03 that was paid to Fuerst Ittleman David & Joseph, PL should be disgorged by Yusuf, citing the Court’s April 25, 2013 Memorandum Opinion and Order.” (Id.) Yusuf and United pointed out that what the Court actually found was: “Funds from supermarket accounts have been utilized unilaterally by Yusuf, without agreement from Hamed, to pay legal fees of defendants relative to this action and the Criminal Action, in excess of \$145,000 to the dates of the evidentiary hearing. Tr. 76:5-82:9, Jan. 25, 2013; Pl. Ex. 15, 16.” (Id., at p. 2-3) Yusuf and United further pointed out that “[n]othing in that Order or any other Order of the Court finds or rules that Hamed has a valid claim for recovery of the \$504,591.03 addressed in this claim.” (Id., at p. 3) Moreover, Yusuf and United also pointed out that while Hamed claimed that \$504,591.03 were fees paid to Attorney DiRuzzo’s firm for work in this instant lawsuit, Hamed failed to provide any evidence—such as invoices describing the work performed for the aforementioned payments. (Id.) Accordingly, Yusuf and United explained that discovery is necessary because “the actual invoices reflect that much of the \$504,591.03 was paid for Fuerst Ittleman’s defense of the ‘Criminal Action.’”⁴ (Id.) Furthermore, Yusuf and United also cited to Hamed’s

⁴ As an example, Yusuf and United cited to check no. 3979, in the amount of \$15,067.26—the first payment listed in Hamed’s motion—and claimed that it was payment “for work performed from August 6, 2012 through September 28, 2013 exclusively in the Criminal Action.” (Opp., p. 3; Exhibit 2: Invoices from Fuerst Ittleman David & Joseph, LP, dated September 11, 2012 and October 3, 2012)

ORDER

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response to Yusuf's bench memo wherein Hamed conceded that discovery is required regarding "Wally's payment of criminal fees (approx. \$300,000)" (item 10 at page 2 of the Master's December 4 Order) and "Attorney and accounting fees paid by the partnership in the criminal case" (item 12 of the Master's December 4 Order). (Opp., at p. 4) Thus, Yusuf and United requested the Master to deny Hamed's motion since "discovery will clearly be required to allocate what portion of the work included in the claim was for defending 'this' action and what portion was properly charged to the Partnership for defending the Criminal Action." (Id., p. 3-4)

In his reply, Hamed reiterated that "this claim can be resolved on the record before the Master without any further discovery." (Reply, p. 2) Hamed again cited to the Court's April 25, 2013 Memorandum Opinion and Order as evidence that the Court has already "noted that a total of at least \$365,000 has been paid to Yusuf's personal lawyers from Partnership funds, without Hamed's consent, as of April 25, 2012 [sic]."⁵ (Id.) Hamed pointed out that "Yusuf does not deny that funds in the amount of \$504,591.03 were eventually paid to DiRuzzo's law firm, as evidenced by the checks submitted with Hamed's motion" but instead Yusuf "suggests that a portion of those funds were used for work in the criminal case, which Yusuf should not have to pay." Hamed argued that, it does not matter whether DiRuzzo billed for this case or the criminal case because "all of these funds paid to DiRuzzo were paid for the personal legal

⁵ Hamed cited to the following sections of the April 25, 2013 Memorandum Opinion:

"Funds from supermarket accounts have also been utilized unilaterally by Yusuf, without agreement of Hamed, to pay legal fees of defendants relative to this action and the Criminal Action, in excess of \$145,000 to the dates of the evidentiary hearing." (April 24, 2013 Memorandum Opinion, p. 11)

"Plaintiff [Hamed] has submitted Exhibit 30 with his February 19, 2013 Second Request to Take Judicial Notice and Request to Supplement the Hearing Record, granted by separate Order. Defendants' [Yusuf] opposition to Plaintiffs' Motion did not address Exhibit 30, consisting of two checks in the total sum of more than \$220,000 in payment to defense counsel in this action, dated January 21, 2013 and February 13, 2013, drawn on a supermarket account by Defendants without Plaintiffs' consent. Although the evidence is cumulative and not essential to the Court's decision herein, it reflects an ongoing practice of unilateral withdrawals and the possibility of continuing unilateral action in the future." (Reply, p. 2)

fees of Fathi Yusuf, and not for the Partnership” and therefore, should be paid back to the Partnership. (Id.) (emphasis omitted) In support of his argument, Hamed attached the declaration of Attorney Gordon Rhea, dated January 15, 2018, “verifying that neither DiRuzzo nor his firm did any criminal work on behalf of the Partnership under the Joint Defense Agreement, which ended on September 25, 2012. (Id., at p. 3; Exhibit 1: Declaration of Gordon Rhea, Esq., dated January 15, 2018) Hamed clarified that “[t]o the extent Hamed’s claim may have been misconstrued as only seeking reimbursement of fees related to the civil case, that misconception is hereby clarified—the claim for \$504,591.03 (plus interest) is for all fees paid by the Partnership for Yusuf’s personal legal fees, whether incurred in regard to the criminal case or the civil case.” (Id., at p. 3) As such, Hamed concluded that there is no need for discovery with regards to this claim and requested the Court to order Yusuf to reimburse the Partnership in the total amount of \$504,591.03 plus interest, or in the alternative, have the Partnership pay the equal amount to Hamed. (Id.)

In their sur-response, Yusuf and United argued that, again, Hamed failed to provide any evidence to support his allegation that “all of these funds paid to DiRuzzo were paid for the personal legal fees of Fathi Yusuf, and not for the Partnership, regardless of whether DiRuzzo billed for the criminal or civil case.” (Sur-response, p. 2) Furthermore, Yusuf and United pointed out that the Partnership was not a defendant in the criminal case, and thus, Attorney Gordon Rhea’s declaration cannot verify that “neither DiRuzzo nor his firm did any criminal work on behalf of the Partnership under the Joint Defense Agreement” as alleged by Hamed. (Id.) In fact, Yusuf and United pointed out that, “[o]n September 7, 2012, Attorney DiRuzzo noticed his appearance in the criminal action on behalf of United Corporation.” (Id.; Exhibit A: Notice of Appearance of Attorney Joseph A. DiRuzzo, III for United Corporation in *The United States of America v. United Corporation, et al.*, dated September 7, 2012) Yusuf and

United further pointed out that, “[w]hile the Partnership was not a named defendant in the criminal case and was not even recognized as a partnership until this Court’s Order of November 7, 2014, there is no dispute that the Partnership operated under the corporate umbrella of United and that work performed on behalf of United in the criminal case redounded to the benefit of the Partnership.” (Id., at p. 2-3) As such, Yusuf and Hamed requested the Master to deny Hamed’s motion and allow for discovery with regards to this claim.

In his reply to Yusuf and United’s sur-response, Hamed argued that Yusuf and United’s argument that “a portion of the \$504,591.03 paid to DiRuzzo’s law firm was actually authorized by the partnership in defending the ‘criminal case’” is without merit. (Sur-reply, p. 2) (emphasis omitted) First, Hamed pointed out that “all payments made to DiRuzzo’s firm were made by Fathi Yusuf using Partnership funds for his individual obligations—without the permission of Hamed, one of the partners” and that “Hamed made it absolutely clear that DiRuzzo had no authority to do anything on behalf of the Partnership, so any fees incurred by him were solely Yusuf’s responsibility, whether the work was for the criminal case or the civil case.” (Id.) Second, Hamed also pointed out that “it has long been resolved (by Judge Brady’s summary judgment decision of November 7, 2014) that the Partnership was the sole entity operating the Plaza Extra Stores, not United” so “Yusuf’s ‘argument’ as to who was the Defendant in the criminal case has no relevance in deciding whether the payments to DiRuzzo’s law firm should be reimbursed to the Partnership.” (Id.) (emphasis omitted) Lastly, Hamed again cited to the Court’s April 25, 2013 Memorandum Opinion and Order as evidence that the Court has already decided on this matter.⁶ As such, Hamed concluded that there is no need for discovery with regards to this claim and requested the Court to order Yusuf to reimburse the

⁶ *Supra*, fn. 5.

Partnership in the total amount of \$504,591.03 plus interest, or in the alternative, have the Partnership pay the equal amount to Hamed. (Id.)

DISCUSSION

The Master must note at the outset that Hamed essentially amended its Claim No. H-3 from seeking reimbursement of “Partnership funds in the amount of \$504,591.03 unilaterally taken by Yusuf to pay his counsel for defending **this instant lawsuit**” to “Partnership funds in the amount of \$504,591.03 unilaterally taken by Yusuf to pay his counsel for defending **this instant lawsuit and the criminal lawsuit.**” *See* Hamed’s Reply, p. 3 (“To the extent Hamed’s claim may have been misconstrued as only seeking reimbursement of fees related to the civil case, that misconception is hereby clarified—the claim for \$504,591.03 (plus interest) is for all fees paid by the Partnership for Yusuf’s personal legal fees, whether incurred in regard to the criminal case or the civil case.”) However, Hamed has previously agreed to proceed with more discovery as to the attorneys’ fees paid by the Partnership for the criminal case.⁷ As such, it is unfair for Hamed to combine the two matters—attorneys’ fees paid by the Partnership in this instant lawsuit and attorneys’ fee paid by the Partnership in the criminal lawsuit—in his reply, and now renege on his agreement to proceed with discovery on attorneys’ fee paid by the Partnership for the criminal case.

Furthermore, while it is true that that Plaza Extra is a distinct entity from United and that the Court did not formally recognize the existence of a Partnership until its November 7,

⁷ On December 13, 2017, Yusuf and United filed a bench memo for status conference, wherein they submitted that “items 2, 3, 5, 10, and 12 listed on page 1 of the Master’s December 4, 2017 Order should be removed from that list because further discovery is required for each of the matters described in those items.” (Yusuf’s Bench Memo for Status Conference, dated December 13, 2017) In his response thereto, Hamed stated that it is fine to proceed with discovery on the aforementioned items. (Hamed’s Response to Yusuf’s Bench Memo, dated December 14, 2017)

According to the Master’s December 4, 2017 Order, item 12 refers to “Attorney and accounts fees paid by the Partnership for the criminal case.” This is a separate matter from item 10, which refers to “Wally Hamed’s payment of accounting and attorneys’ fees (approx. \$300,000) in *United States of America v. United Corp., et al.*”

ORDER

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2014 Order and, the Court has long found indicia of the existence of a partnership and that the partners operated Plaza Extra under the corporate name of United. See April 25, 2013 Memorandum Opinion and Order (“Yusuf admitted in the *Idheileh* action that Plaza Extra was a distinct entity from United, although the ‘partners operated Plaza Extra under the corporate name of United Corp.’”). Based on the joint motion to vacate the criminal temporary restraining orders submitted in the criminal case, *The United States of America v. United Corporation, et al.*, case no. 1:05-cr-15, United was named as a defendant as “United Corporation d/b/a Plaza Extra” (hereinafter “Joint Motion”). (Yusuf’s Sur-response, Exhibit C: The United States of America and Defendant United Corporation d/b/a Plaza Extra’s Joint Motion to Vacate the Criminal Temporary Restraining Orders) Moreover, the Joint Motion was filed to vacate the restraining orders that had frozen the assets of the Partnership. Thus, it is disingenuous for Hamed to argue that Yusuf was trying to confuse the Master by arguing that United—and not the Partnership—was named as a defendant in the criminal case. As such, the Master finds Hamed’s argument that all of these funds paid to DiRuzzo’s firm—counsel for United in the criminal case—were for the personal legal fees of Fathi Yusuf, and not for the Partnership to be unpersuasive. At this juncture, the Master will deny Hamed’s motion and allow for Parties to proceed with discovery as to the \$504,591.03 paid to Fuerst Ittleman David & Joseph, PL to determine whether the fees charged was for work performed in this instant lawsuit, in the criminal lawsuit, and for whom.

CONCLUSION

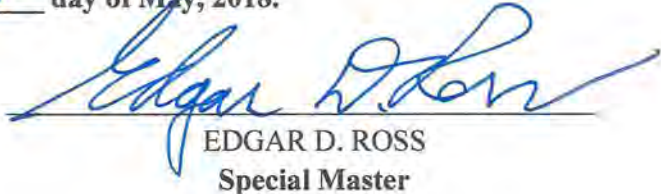
Based on the foregoing, the Master will deny Hamed’s motion. Accordingly, it is hereby:

ORDERED that Yusuf's motion for leave to file a sur-response, dated January 25, 2018, is **GRANTED**. Both Yusuf's sur-response and Hamed's reply thereto was considered herein. It is further:

ORDERED that Parties may commence discovery in connection with Hamed Claim No. H-3. Discovery in connection with Hamed Claim No. H-3 shall be completed no later than **June 1, 2018**. And it is further:

ORDERED that Hamed's motion as to Hamed Claim No. H-3 is **DENIED WITHOUT PREJUDICE**. Hamed may re-file his motion upon the completion of discovery in connection with Hamed Claim No. H-3.

DONE and so ORDERED this 8th day of May, 2018.


EDGAR D. ROSS
Special Master

**Rules Governing the
Superior Court of the Virgin Islands**

Rule 30. Depositions by Oral Examination

* * *

(b) Notice of the Deposition; Other Formal Requirements.

* * *

(6) *Notice or Subpoena Directed to an Organization.* In its notice or subpoena, a party may name as the deponent a public or private corporation, a partnership, an association, a governmental body, or other entity and must describe with reasonable particularity the matters for examination. The named organization must then designate one or more officers, directors, or managing agents, or designate other persons who consent to testify on its behalf; and it may set out the matters on which each person designated will testify. A subpoena must advise a nonparty organization of its duty to make this designation. The persons designated must testify about information known or reasonably available to the organization. This paragraph (6) does not preclude a deposition by any other procedure allowed by these rules.

Rule 45. Subpoena

(a) In General.

(1) Form and Contents.

(A) *Requirements — In General.* Every subpoena must:

- (i) state the court from which it issued;
- (ii) state the title of the action and its civil-action number;
- (iii) command each person to whom it is directed to do the following at a specified time and place: attend and testify; produce designated documents, electronically stored information, or tangible things in that person's possession, custody, or control; or permit the inspection of premises; and
- (iv) set out the text of Rule 45(d) and (e).

(B) *Command to Attend a Deposition — Notice of the Recording Method.* A subpoena commanding attendance at a deposition must state the method for recording the testimony.

(C) *Combining or Separating a Command to Produce or to Permit Inspection; Specifying the Form for Electronically Stored Information.* A command to produce documents, electronically stored information, or tangible things or to permit the inspection of premises may be included in a subpoena commanding attendance at a deposition, hearing, or trial, or may be set out in a separate subpoena. A subpoena may specify the form

or forms in which electronically stored information is to be produced.

(D) *Command to Produce; Included Obligations.* A command in a subpoena to produce documents, electronically stored information, or tangible things requires the responding person to permit inspection, copying, testing, or sampling of the materials.

(2) *Issuing Court.* A subpoena must issue from the court where the action is pending.

(3) *Issued by Whom.* The clerk of court must issue a subpoena, signed but otherwise in blank, to a party who requests it. That party must complete it before service. An attorney also may issue and sign a subpoena if the attorney is authorized to practice in the Virgin Islands.

(4) *Notice to Other Parties Before Service.* If the subpoena commands the production of documents, electronically stored information, or tangible things or the inspection of premises before trial, then — at least 5 days before it is served on the person to whom it is directed — a notice and a copy of the subpoena must be served on each party.

(b) Service.

(1) *By Whom and How; Tendering Fees.* Any person who is at least 18 years old and not a party may serve a subpoena. Serving a subpoena requires delivering a copy to the named person.

(2) *Service in the Virgin Islands.* A subpoena may be served at any place within the United States Virgin Islands.

(3) *Service in a Foreign Country.* A subpoena may be served at any place outside the United States Virgin Islands consistent with the provisions of 5 V.I.C. § 505.

(4) *Proof of Service.* Proving service, when necessary, requires filing with the issuing court a statement showing the date and manner of service and the names of the persons served. The statement must be certified by the server.

(c) Place of Compliance.

(1) *For a Trial, Hearing, or Deposition.* A subpoena may command a person to attend a trial, hearing, or deposition only as follows:

(A) within 100 miles of where the person resides, is employed, or regularly transacts business in person; or

(B) within the state where the person resides, is employed, or regularly transacts business in person, if the person

(i) is a party or a party's officer; or

(ii) is commanded to attend a trial and would not incur substantial expense.

(2) *For Other Discovery.* A subpoena may command:

(A) production of documents, electronically stored information, or tangible things at a place within 100 miles of where the person resides, is employed, or regularly transacts business in person; and

(B) inspection of premises at the premises to be inspected.

(d) Protecting a Person Subject to a Subpoena; Enforcement.

(1) *Avoiding Undue Burden or Expense; Sanctions.* A party or attorney responsible for issuing and serving a subpoena must take reasonable steps to avoid imposing undue burden or expense on a person subject to the subpoena. The court for the division where the action is pending must enforce this duty and impose an appropriate sanction — which may include lost earnings and reasonable attorney's fees — on a party or attorney who fails to comply.

(2) *Command to Produce Materials or Permit Inspection.*

(A) *Appearance Not Required.* A person commanded to produce documents, electronically stored information, or tangible things, or to permit the inspection of premises, need not appear in person at the place of production or inspection unless also commanded to appear for a deposition, hearing, or trial.

(B) *Objections.* A person commanded to produce documents or tangible things or to permit inspection may serve on the party or attorney designated in the subpoena a written objection to inspecting, copying, testing, or sampling any or all of the materials or to inspecting the premises — or to producing electronically stored information in the form or forms requested. The objection must be served before the earlier of the time specified for compliance or 14 days after the subpoena is served. If an objection is made, the following rules apply:

(i) At any time, on notice to the commanded person, the serving party may move the court for the division where the action is pending for an order compelling production or inspection.

(ii) These acts may be required only as directed in the order, and the order must protect a person who is neither a party nor a party's officer from significant expense resulting from compliance.

(3) *Quashing or Modifying a Subpoena.*

(A) *When Required.* On timely motion, the court for the division where the action is pending must quash or modify a subpoena that:

(i) fails to allow a reasonable time to comply;

(ii) requires a person to comply beyond the geographical limits specified in Rule 45(c);

(iii) requires disclosure of privileged or other protected matter, if no exception or waiver applies; or

(iv) subjects a person to undue burden.

(B) *When Permitted.* To protect a person subject to or affected by a subpoena, the court where the action is pending may, on motion, quash or modify the subpoena if it requires:

(i) disclosing a trade secret or other confidential research, development, or commercial information; or

(i) disclosing an unretained expert's opinion or information that does not describe specific occurrences in dispute and results from the expert's

study that was not requested by a party.

(C) *Specifying Conditions as an Alternative.* In the circumstances described in Rule 45(d)(3)(B), the court may, instead of quashing or modifying a subpoena, order appearance or production under specified conditions if the serving party:

(i) shows a substantial need for the testimony or material that cannot be otherwise met without undue hardship; and

(ii) ensures that the subpoenaed person will be reasonably compensated.

(e) Duties in Responding to a Subpoena.

(1) *Producing Documents or Electronically Stored Information.* These procedures apply to producing documents or electronically stored information:

(A) *Documents.* A person responding to a subpoena to produce documents must produce them as they are kept in the ordinary course of business or must organize and label them to correspond to the categories in the demand.

(B) *Form for Producing Electronically Stored Information Not Specified.* If a subpoena does not specify a form for producing electronically stored information, the person responding must produce it in a form or forms in which it is ordinarily maintained or in a reasonably usable form or forms.

(C) *Electronically Stored Information Produced in Only One Form.* The person responding need not produce the same electronically stored information in more than one form.

(D) *Inaccessible Electronically Stored Information.* The person responding need not provide discovery of electronically stored information from sources that the person identifies as not reasonably accessible because of undue burden or cost. On motion to compel discovery or for a protective order, the person responding must show that the information is not reasonably accessible because of undue burden or cost. If that showing is made, the court may nonetheless order discovery from such sources if the requesting party shows good cause, considering the limitations of Rule 26(b)(2)(C). The court may specify conditions for the discovery.

(2) *Claiming Privilege or Protection.*

(A) *Information Withheld.* A person withholding subpoenaed information under a claim that it is privileged or subject to protection as trial-preparation material must:

(i) expressly make the claim; and

(ii) describe the nature of the withheld documents, communications, or tangible things in a manner that, without revealing information itself privileged or protected, will enable the parties to assess the claim.

(B) *Information Produced.* If information produced in response to a subpoena is subject to a claim of privilege or of protection as trial-preparation material, the person making the claim may notify any party that received the information of the claim and the basis for it. After being notified, a party must promptly return, sequester, or destroy the specified

information and any copies it has; must not use or disclose the information until the claim is resolved; must take reasonable steps to retrieve the information if the party disclosed it before being notified; and may promptly present the information under seal to the court for the division where the action is pending for a determination of the claim. The person who produced the information must preserve the information until the claim is resolved.

(f) Contempt. The court may hold in contempt a person who, having been served, fails without adequate excuse to obey the subpoena or an order related to it.

(g) Subpoenas and discovery outside the Virgin Islands. The procedures for use of letters rogatory for discovery outside the Virgin Islands are set forth in 5 V.I.C. § 4921. The Uniform Interstate Depositions and Discovery Act (Chapter 505 of Title 5 of the Virgin Islands Code, 5 V.I.C. § 4922 et seq.) provides for discovery involving jurisdictions recognizing reciprocal discovery obligations, and includes provisions for issuance and service of subpoenas for depositions and production of documents in those jurisdictions.