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

**DIVISION OF ST. CROIX**

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

**AS TO CLAIM H-13**

**Introduction**

First, If the Special Master grants this motion, it is essential a concession that the the briefing schedule agreed to and ordered should simply be tossed out—and a new one should be entered to allow 5 briefs per issue rather than the present 3. Yusuf has made this made a routine practice, without any real basis other than "we want to say more".

Second, a surreply under these circumstances is absurd. This motion is based on facts alleged by testimony of counsel, unsupported by declaration or sufficient evidence.

Third, this motion is predicated on a series of "facts" that are not only unsupported, they are simply wrong.

**Argument**

*1. Yusuf suggests the surreply be allowed because Hamed made "new arguments"*

Hamed's inclusion of transcript testimony (available to both parties for a decade) about the nature of the conversion to an S-Corp in 1999 is simply a *REPLY* to the ridiculous contentions (unsupported by any declarations or documents) *in Yusuf's opposition* that this differential payment of Yusuf's son's taxes (1) had been going on for "decades" (false) or was (2) somehow part of the original agreement or early conduct (false) or was (3) allowed by a later amendment of the partnership agreement (false). Hamed's reply simply demonstrated that the *only* actual evidence demonstrates that none of these three statements are true.  *Facts in reply are allowed in replies if they meet the argument in the opposition*. Thus, the real point to Yusuf's motion is that Yusuf's counsel repeatedly makes such statements in papers with no support, and when Hamed responds in reply (raising no new 'issues'), Yusuf labels it "new", filing yet another surreply motion.

*2. The "facts" Yusuf wishes to introduce are neither new nor facts*

Each of the statements below is either demonstrably false, or is worded to obscure the critical, operative truth of the matter;

A. At page 4 of the proposed surreply:

IRB agreed that a payment of approximately $6.5 million would cover the income tax liabilities of the shareholders of United, **the lion's share of which** were liabilities arising out of Plaza Extra profits that were imputed to them pro rata (in accordance with their percentage shareholdings in United). United made that payment in June 2013. (Emphasis added.)

Sounds good, but the use of the phrase "lion's share" is there to obscure the fact that **ALL** of the actual evidence of record, and **all** of the exhibits attached to this motion and opposition, state that for *just* the years 1999-2001, Partnership funds ***were*** used to pay the personal income taxes of Yusuf family members for totally unrelated income. The U.S. Attorney stated this (Exhibit 1), and by this "lion's share" statement, Yusuf admits it**.** Nor is it disputed that this unrelated income was not only *not* income on the grocery operations—it was not even for other United income. It was whatever income those family members had from all other, totally unrelated *investments*[[1]](#footnote-1)—some of it extra-territorial.

**So what Yusuf actually is trying to file is a surreply to say (yet again) that in 1999, totally unrelated to anything that had been done in the first 13 years, totally contrary to all past practices, totally contrary to the partnership agreement and without any necessary amendment, for a very short period he *unilaterally* started paying his family's admittedly, totally unrelated income taxes out of grocery store receipts, and because tax on grocery store income was ALSO being paid for, BUT was the larger of the two amounts, payment of Yusuf's family's private, unrelated investment and other incomes should be ignored. *That* is what he wants a surreply for, to make the same old argument but emphasize the phrase "lion's share".**

B. At page 4

Given the difference in the ownership structure, with the partnership later

overlaid upon United, **it is virtually impossible to true up the taxes with any exactitude after the fact.** Nor is there any equitable reason to do that. Mohammad **Hamed benefitted from the U.S. Government's theory that United operated the Plaza Extra stores, because otherwise, as a partner, he would have necessarily been named as a defendant in the criminal case.[[2]](#footnote-2)** (Emphasis added.)

So, there it is. Despite all of the smokescreen and filings about needing the Hamed's early taxes and computing 'relative' amounts of 2002-2012 taxes—we now have have Yusuf's clear *admission* that the 2013 assessment was not, and *could not* be based on the actual 2002-2012 taxes.....it was simply a settlement of *all* possible outstanding taxes that were the result of the operations.

[I]t is virtually impossible to true up the

taxes with any exactitude after the fact.

Hamed asks the Master to stop and re-read this a couple of times.

Moreover, this proves what Hamed has repeatedly said: Nobody ever tried to "true up the taxes with any exactitude **in 2013**." Instead there was settlement that was assessed and implemented **AFTER** TJudge Brady's April 25, 2013 factual findings that the *actual entity* for grocery operations was the *Partnership* and that United had simply been an operating agency supplied by Yusuf. (Which leads to the misleading statements in the next section.)

C. At page 4

Judge Brady's determination in late 2014 that there was a partnership is

contrary to the ownership structure that informed and governed the resolution of the criminal case by the United States.

This misleading. It seeks to substitute "Judge Brady's determination" for the fact that his April 2013 *factual findings* were issued and known to all well BEFORE the tax settlement assessment and payment in 2013. The USVI and federal government were fully and completely aware of the situation when the events of 2013 took place. **More importantly, it is entirely undisputed that those amounts for both families *were being paid* prior to Judge Brady's findings, but only *stopped* AFTER Judge Brady's ruling**. That should end this motion dead in its tracks. Thus, the perplexed testimony by the U.S. Attorney, in the exhibits (**Exhibit 1** hereto) , that:

[p. 123] HENDRICKSON: The fact that the United won't pay for the Hameds, that is a separate issue. **In February of 2011, yes, they paid for everyone's. *Now, in June, July of 2013*, United does not agree to pay**, but the Hameds, as taxpayers, are legally obligated to report income and pay taxes. . . .

The only relevant "past conduct" was that **all of the taxes for both families *were* being paid** from Partnership funds up until 2011. What was the only thing that changed in 2012? Yusuf tried to take the stores and *stopped* the payments for Hamed and his family.

**Conclusion**

Yusuf seeks to suggest that the Special Master consider (1) the same tax computations for the 2002-2012 tax period that he now, *finally* admits *cannot be calculated and never were,* or (2) the **2010** negotiation—long before the government and parties knew there was a dispute about whose taxes were being paid. He asks that the original partnership agreement and the course of dealing for the first 15 years be ignored. He asks that the fact that these taxes were paid for everyone up to 2011 be ignored. In short, he asks the Special Master to ignore the facts and documents, and instead rely on what Yusuf did for just the years 1999-2001 absent any amendment. With nothing new to add, he asks for a surreply with no new evidence, on the (erroneous) testimony of counsel.

The motion to allow the surreply should be denied, or all motions should have five filings rather than three from now on

**Dated:** July 15, 2018 A

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**CERTIFICATE OF SERVICE**

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

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Special Master

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**CERTIFICATE OF WORD/PAGE COUNT**

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

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1. See Exhibit [p. 67]

   MS. HENDRICKSON: And there was **other income on some of their [the Yusuf Family members'] returns. So, if they had other investments and things like that. So I think that is a fair representation to say United paid for other taxes that the individual shareholders owed on top of the flow through based on United's operations.** \* \* \*

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

   MS. HENDRICKSON: Yes. \* \* \* \* (Emphasis added.) [↑](#footnote-ref-1)
2. The hidden argument here is that since Mohammad Hamed was not charged, he shouldn't comp[lain if his sons get stuck with an improper tax load. Utter nonsense. [↑](#footnote-ref-2)