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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** |
| *­­­­­*­­  **KAC357 Inc.**, *Plaintiff*,  vs.  **HAMED/YUSUF PARTNERSHIP,**  *Defendant.* | Consolidated with  **Case No.: ST-18-CV-219** |
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**SUPPLEMENTAL DECLARATION OF COUNSEL IN SUPPORT OF**

**HAMED’S EXPEDITED MOTION TO COMPEL RE CLAIM H-1 --**

**FATHI YUSUF’S FAILURE TO PAY FUNDS RE SALE OF THE DOROTHEA CONDO**

I, **CARL J. HARTMANN**, 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 am co-counsel for Mohammad Hamed (now the Mohammad Hamed Estate) in *Hamed v. Yusuf et al*., **SX-12-CV-370.**
4. **Pursuant to this court’s Rule 6-1(d)(2), and in further support of the averments made at paragraphs 7 & 6, at page 6 of the instant motion, I have conducted and/or directed attempts to identify the dates on which Fathi Yusuf received payment of the funds related to the sale of the Y & S stock at issue in this motion, and that I or persons working under my direction have ascertained the following:**
5. **I reviewed and directed attempts to review** all financial information provided to Hamed, his counsel and his CPAs which might relate to this transaction. I have caused discovery to be propounded to Yusuf and others. In discovery and otherwise Yusuf has supplied no invoices, receipts, deposits, transaction ledgers and/or correspondence related to his receipt of the funds at issue, as the agent-nominee for such payments under the contract.
6. **I have reviewed and directed attempts to review all of Mr. Yusuf’s prior statements with regard to what, when and how he received these payments – particularly as to whether such payments, and particularly the final payment that led to the 2012 release of escrow occurred after the Court-ordered cutoff date in 2006. I have located the following:**
   * 1. Fathi Yusuf, testified in a post-2006 deposition, on April 2, 2014, that he received the final payment within three years of February 19, 2012 release of the escrow:

**Q [Holt].** Okay. And when did you get that money?

**A. [Yusuf]** I get that money, I don't have a date. **But I get that money maybe, I can guarantee you, it's not three years. It's less than three years.** I sold this property many, many years ago. (Emphasis added.)

**Exhibit 1**. Deposition of Fathi Yusuf at 105.[[1]](#footnote-1) Thus, the “new” Yusuf assertion that his present (very convenient) view is that all payments were received before 2006, should be open to a SINGLE interrogatory question – and fully responded to, with supporting RFPD documents, in light of his specific, directly contradictory testimony that “**I can guarantee you, it's not three years. It's less than three years”** prior to the execution of the escrow release.

Because Mr. Yusuf attempted to conflate the date the contract was entered into with the date that final payment was received, and the escrow released in 2012, Attorney Holt again tried to tie the date down, and Yusuf again stated that “maybe” he had received the funds in 2012, around the time this action was filed and the time when the escrow was released and the Y&S stock actually transferred under the contract.

**A [Yusuf].** I get that money, I don't have a date. But I get that money maybe, I can guarantee you, it's not three years. It's less than three years. I sold this property many, many years ago.

**Q. [Holt]** Okay. So you got this money, would it be fair to say you got it in 2012?

**A.** I don't know when.

**Q.** Okay.

**A.** I don't remember.

**Q. Well, this lawsuit was filed in August of 2012.**

**Did you get the money before this lawsuit was filed?** [MR. HODGES: [Interjecting] September 2012.]

**A. Maybe.** (Emphasis added.)

1. **I have reviewed and directed attempts to review all of the Hamed’s information with regard to what, when and how they were directed to sign the escrow release in 2012 and receive the funds – particularly as to whether such payments, and particularly the final payment that led to the 2012 release of escrow occurred after the Court-ordered cutoff date in 2006. I have located the following:**
2. Shawn Hamed has related to me and will testify in his scheduled deposition on January 22, 2019, that Fathi Yusuf called him and said that he [Fathi] wanted to come to West and get Shawn to sign the release of escrow so he could split the funds he had received on the Dorothea sale. Approximately 4-5 days before Shawn signed the escrow release on , Fathi did, in fact, appear at the West store and proffer two documents: (1) a marked-up copy of the ‘release of escrow’ form and a handwritten sheet showing the reasons that the Hameds were not getting the full half of the amounts Fathi had collected due to other charges and deductions. [That handwritten sheet is attached to the instant Motion as Exhibit 8, and was Exhibit 12 to Fathi Yusuf’s Deposition. Fathi acknowledged that handwritten accounting in his deposition at 99-100:

**Q. (Mr. Holt) All right. All right. Showing you Exhibit No. 12, can you tell me if you recognize that? Do you recognize that document --**

**A. Yes, it's my handwriting.**

**Q.** And at the top it has "Dorothia" written, is that correct?

**A.** Yes.

**Q.** Can you tell me, what -- what -- what what does this transaction mean?

**A.** The transaction that we bought -- we was in partnership with a third person, that we own 50 percent of the Dorothia real estate -- a real estate in Dorothia, and the other partner owned the other 50 percent. Finally, I come to this decision to sell it to my partner. **He bought it at one-and-a-half million, and this number below, it was an idea to Mr. Hamed what would I -- I am counted for, up to the time I give it to him**. I tell him what it is. By example, Jordan Fund, 75,000, it's a checking account. This, I'm going to reclaim it back. Because at that time I did it, I did it in the most honest

way, and we end up transferring property to myself. That transfer the property cost me money, well, I have to put that money out of my own pocket, even though the obligation

**[Yusuf]** And then I'm going to use whatever it cost me to transfer that property into my name, at the expense of both of us . . . .

**Q [Holt]. Okay. So now the first line, Dorothia, 1.5 million, those were the funds that you received when the other partner bought you out or paid you off?**

**A. Excuse me, sir?**

**Q. The first line, the 1.5 million on that line?**

**A. Yeah, this is a fund I received -- I received from Dorothia.**

**Q. And is that actually technically YNH Investments, Inc.? Is that --**

**A. Yes.**

**Q. Okay. And -- and so those were funds that you received from them, is that correct?**

**A.** I received for our half, but **I kept it. I'm not stealing it. We're going to account for it.**

**Q.** Okay. (Emphasis added.)

Shawn Hamed confirmed that Fathi asked him to re-type the release of escrow form exactly as it appeared in the marked-up sheet that was proffered, and return it to Fathi – at which time Fathi would pay over the $802,966 shown on the accounting. Shawn noted that he would do so in a day or two, after reviewing the document with Wally Hamed and Mohammad Hamed.

I have further confirmed with Wally Hamed and he will so testify at his deposition on January 21, 2019, that he reviewed the re-typed escrow release form with Shawn and Mohammad, and that Wally also reviewed the handwritten accounting, although he believes that Yusuf provided him with his own separate copy of that handwritten accounting and separately told Wally that the Hamed funds would be provided immediately following transfer of the stock.

Both Shawn and Wally Hamed confirmed with me and will so testify at their depositions that thereafter, in reliance on the assertion that the funds would be paid out to the Hamed, Shawn signed the re-typed Notice of Payment of Purchase Price and Authorization to Release Stock Certificates and delivered it to Fathi Yusuf on or about that same date, February 19, 2012. However, instead of paying the Hameds the funds, soon thereafter Fathi Yusuf, having kept the funds, began his attempt to take over the Partnership and stole $2.7 million in additional funds from the Partnership – leading to the instant action.

**Dated:** December 24, 2018 A

**Carl J. Hartmann III, Esq.**

*Co-Counsel for Plaintiff*

5000 Estate Coakley Bay, L6

Christiansted, Vl 00820

Email: carl@carlhartmann.com

Tele: (340) 719-8941

**CERTIFICATE OF SERVICE**

I hereby certify that on this 24h day of December, 2018, I served a copy of the foregoing by email (via CaseAnywhere), as agreed by the parties, on:

**Hon. Edgar Ross**

Special Master

edgarrossjudge@hotmail.com

**Gregory H. Hodges**

**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

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**CERTIFICATE OF COMPLIANCE WITH RULE 6-1(e)**

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

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1. The entire examination regarding the Dorothea property and the sale appears at pp. 99-105, which are provided for full context as Exhibit 2. [↑](#footnote-ref-1)