

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,	)	CIVIL NO. SX-12-CV-370
v.)	
FATHI YUSUF and UNITED CORPORATION,	)	ACTION FOR INJUNCTIVE RELIEF, DECLARATORY JUDGMENT, AND
	)	PARTNERSHIP DISSOLUTION, WIND UP, AND ACCOUNTING
Defendants/Counterclaimants,)	
v.)	
WALEED HAMED, WAHEED HAMED, MUFEED HAMED, HISHAM HAMED, and PLESEN ENTERPRISES, INC.,)	
)	
<u>Additional Counterclaim Defendants.</u>	)	Consolidated With
)	
WALEED HAMED, as Executor of the Estate of MOHAMMAD HAMED,	)	CIVIL NO. SX-14-CV-287
)	
Plaintiff,)	
v.)	
UNITED CORPORATION,	)	ACTION FOR DAMAGES AND DECLARATORY JUDGMENT
)	
<u>Defendant.</u>)	
)	
WALEED HAMED, as Executor of the Estate of MOHAMMAD HAMED,	)	CIVIL NO. SX-14-CV-278
)	
Plaintiff,)	
v.)	
FATHI YUSUF,	)	ACTION FOR DEBT AND CONVERSION
)	
<u>Defendant.</u>)	

YUSUF'S OPPOSITION TO
HAMED'S MOTION AND MEMORANDUM FOR SUMMARY JUDGMENT RE
HAMED REVISED CLAIMS AS TO H-16 – NAJEH YUSUF'S USE OF PARTNERSHIP
RESOURCES AND H-34-RENTS COLLECTED, BUT NOT DEPOSITED IN THE
PARTNERSHIP ACCOUNT

Fathi Yusuf through his undersigned attorneys, respectfully submits this Opposition to Hamed's Motion and Memorandum for Summary Judgment Re Hamed Revised claims as to H-16-Najeh Yusuf's Use of Partnership Resources and H-34-Rents Collected, But Not Deposited in the Partnership Account.

I. Genuine Issues of Disputed Facts

Yusuf shows as to each of the claims below that there exists genuine issues of material fact, which preclude summary judgment in favor of Hamed as to the items claimed.

A. As to H-16 – Najeh Yusuf's Alleged Use of Partnership Resources

i. Surveillance Cameras and Shipping

Hamed contends that Najeh Yusuf's use of Plaza Extra containers to ship security cameras from Miami to St. Thomas, which had been purchased in bulk from China, was an improper use of Partnership resources and alleges that these cameras were improperly taken from the Plaza Extra-Tutu Park store. *See* Hamed Summary Judgment Brief as to H-16 and H-34 ("Hamed Brief"), p. 4-5. This is incorrect. Najeh Yusuf testified that he was able to secure a deal from a supplier in China for security cameras for \$30-40 per camera. *See Exhibit A – Depo. Najeh Yusuf, 27:15-20.*¹ The Plaza Extra-Tutu Park store would need to utilize over 40 such cameras. *Id.* The typical retail price for such cameras was \$170.00 per camera. *Id.* at 27:4-7. This is a cost saving to Plaza Extra-Tutu Park of between \$5,200 to \$5,600.¹ Further arrangements were made to

¹ The calculation is as follows for cameras purchased at \$30/camera:

eliminate the shipping costs to Miami. *Id.* at 27:8-9. The cameras were then put on a Plaza Extra-Tutu Park container and delivered to the Plaza Extra-Tutu Park store. *Id.* at 27:9-10. Any cost associated with the shipping of the cameras in the Plaza Extra-Tutu Park container was *de minimis* (approximately \$4 per box and roughly 8 boxes for a total of \$24.00). See **Exhibit B**-Declaration of Najeh Yusuf: ¶2. The cost savings benefited the Plaza Extra-Tutu Park store as the cost savings remained significant. *Id.* at ¶3. The bulk purchase (combining the Plaza Extra-Tutu Park cameras with others for Najeh Yusuf and Wireless Tech into a single purchase) benefitted the partnership as they were able to utilize the cost savings. *Id.* at ¶3. The cameras purchased for the Plaza Extra-Tutu Park store were installed. *Id.* at ¶4. Najeh Yusuf, personally installed the cameras in the Plaza Extra-Tutu Park store along with other Plaza Extra employees Amer Zatar and Andrew Escobar, often while Willie Hamed was present watching. *Id.* at ¶4. The cameras purchased for Wireless Tech were delivered to or retrieved by Wireless Tech. *Id.* at ¶5. Najeh Yusuf did not take any cameras from the Plaza Extra-Tutu Park store that were for the store. See Exhibit A-Najeh Depo., 28:3-18. As far as payment, while Najeh Yusuf does not specifically remember who initially purchased the cameras, he does recall that when the cameras were divided (either to Najeh

\$170 (Retail Price)
<u>- 30</u> (Purchase price from China)
\$140 (Cost Savings per camera)
<u>x 40</u> (Number of Cameras needed for Plaza Extra-Tutu Park.)
\$5,600 (Total savings). The same calculation for cameras at \$40/camera results in \$5,200 in cost savings.

Yusuf or Wireless Tech or installed by Plaza), that the proper reimbursement occurred. *See Exhibit B*-Declaration of Najeh Yusuf: ¶6. At this time, the stores were requiring two signatures-one Hamed and one Yusuf-for any checks including reimbursement checks. *Id.* at ¶6. Therefore, Najeh Yusuf would not have received a reimbursement check without someone from the Hamed family approving it. *Id.* at ¶6 If Najeh Yusuf purchased the cameras directly, he would have sought a reimbursement from Plaza Extra Tutu-Park for those used by the Plaza Extra-Tutu Park store. *Id.* at ¶6.

ii. Alleged Removal of other Equipment

As to the alleged removal of any other items from the Plaza Extra-Tutu Park store by Najeh Yusuf, he testified that nothing was removed:

Q. And did you – at the time that the – the division –the sale of the Tutu store occurred, did-did you remove certain objects from the store or the premises, such as a compressor?

A. No.

...

Q. Did you take any compressor?

A. No, never.

Q. Okay. Did you take any product?

A. No.

See Exhibit A–Najeh Depo., 29:10-14; 22-25.

With regard to Hamed's allegation that Najeh Yusuf removed items from the Plaza Extra-Tutu Park store at or around the time of the sale of the store, Najeh Yusuf has testified to the contrary:

Q. After—after the date of the sale—

...

Q. —did you remove any assets of Plaza Extra?

A. The day of the sale happened, --

A. —I was allowed to only stay in the office area and the grocery side area, the showroom. I was told specifically by the mediator – by the – by the judge, you're not allowed in the warehouse. You're to stay in the store until the store ends, and that was it. So I didn't go anywhere. I didn't sell anything from the store after the sale.

Q. And —and would your answer be the same for the –for the, say, a month before the sale, in anticipation of a possible sale, did you remove anything out or did you sell anything?

A. No.

Id. at 31:21-32:14. If not otherwise clear, Najeh Yusuf affirmatively states that he did not take a monitor or a T.V. from the Plaza Extra-Tutu Park store. *See Exhibit B*—Declaration of Najeh Yusuf: ¶7. Even Willie Hamed's testimony appears somewhat unclear as to whether these items were, in fact, taken or whether he simply believes “equipment” was taken because testified he “can't recall in detail what it is” and that he did not see Najeh Yusuf removing any items. *See Exhibit C*—Waheed “Willie” Hamed Depo., 65:5-8; 13-14; 64:9-16. Both Willie Hamed and Najeh each had personal laptop computers that were purchased by Plaza Extra. *See Exhibit B*—Declaration of Najeh Yusuf: ¶7. On the day of the sale, Najeh Yusuf specifically asked Judge Ross about his personal laptop computer and Judge Ross advised that he could take it with him.

Id.

iii. Pressure Washer

As to the pressure washer, Najeh Yusuf has always maintained that the Plaza Extra-Tutu Park store can retrieve the item. *Id.* at 30:1-14. Counsel for the parties and coordinate same.

B. Undeposited Rent from Triumphant Church

The property for which rent was collected from Triumphant Church is comprised of a ½ acre lot titled in United’s name. This particular property is the subject of related claims for Hamed in H-142 and relates to Yusuf Claim Y-12. See **Exhibit D**-Yusuf Amended Accounting Claims as to Y-12 and **Exhibit E**-Ninth Bi-Monthly Report. There is a dispute was to whether the property is a partnership asset.² Yusuf contends it is not as it was originally titled in Plessen’s name and then transferred into United’s name pursuant to a deed in lieu of foreclosure. It is also related to Yusuf’s claim Y-12, which seeks to effectuate an agreement between Yusuf and Hamed for the transfer of a third property of which the ½ acre serves as an entrance and where Yusuf has requested that “any claims that Hamed would have to the ½ acre entrance parcel should be extinguished.” See **Exhibit F**-Yusuf Supplemental Responses to Hamed’s Discovery, p. 8. As Hamed Claim H-142 and Yusuf Claim Y-12 are scheduled on a different discovery tracks and the outcome of those claims would affect any decision as to Hamed’s claims of entitlement to rents, Yusuf shows that this claim is not ripe for summary adjudication. The Master can address the corresponding claim for alleged undeposited rents at a later point when Hamed Claim H-142 and Yusuf Claim Y-12 are more fully addressed and a determination is made as to whether Hamed has any entitlement to said property.

**DUDLEY, TOPPER
AND FEUERZIEG, LLP**
1000 Frederiksberg Gade
P.O. Box 756
i. Thomas, U.S. V.I. 00804-0756
(340) 774-4422

² The Master issued an Order on July 12, 2018 denying Yusuf’s Motion to Strike Hamed Claim H-142 (half acre in Estate Tutu) as more discovery was required.

II. Genuine Issues of Material Fact Preclude Summary Judgment

Summary judgment is not appropriate where there exists genuine issues of material fact. There is clearly disputed facts as to Hamed's H-16 alleging Najeh Yusuf improperly used partnership resources for his private businesses. With regard to certain surveillance cameras, the facts and circumstances surrounding this transaction ultimately inured to the benefit of the partnership as it was able to secure these cameras at approximately 25% of the typical retail value, or stated differently at a 75% cost savings. The partnership had the cameras installed on the property and thus, enjoyed the use and benefit of the cameras purchased. Hamed has failed to produce any documents supporting this claim. Willie Hamed testified that he did not see Najeh Yusuf remove the cameras and relies upon an alleged statement from a Mr. Monsour who supposedly "confirmed it." See Hamed Brief, p.7. The alleged confirmation from Mr. Mansour is hearsay-an out of court statement offered for the truth of the matter asserted and insufficient evidence to establish the fact for the purposes of summary judgment which requires admissible evidence. Likewise, with regard to the laptop, monitor and TV that Hamed claims were taken, Najeh Yusuf has explained his whereabouts the day of the sale and affirmatively stated that he did not take anything from the Plaza Extra-Tutu Park store. In the absence of any documentary or other admissible evidence such as photographs or otherwise, the issue is disputed and Hamed is precluded from summary judgment on that claim.

As to the issue of the undeposited rents, it remains disputed as to whether or not Hamed has any claims to the property for which the rents were paid. Until an interest in the property is

**DUDLEY, TOPPER
AND FEUERZEIG, LLP**

1000 Frederiksberg Gade
P.O. Box 756

St. Thomas, U.S. V.I. 00804-0756

(340) 774-4422

Fathi Yusuf, et al. (adv. Hamed, et al.)
Case Nos. SX-12-CV-370, SX-14-CV-287 and SX-14-CV-278
Yusuf's Opposition to Hamed's Motion and Memorandum for
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Use of Partnership Resources and H-34-Rents Collected, But Not
Deposited in the Partnership Account
Page 8 of 10

determined, there can be no adjudication of an entitlement to rents thereon. Wherefore, Hamed is precluded from summary judgment on his claim H-34 at this time.

Conclusion

For the foregoing reasons, Hamed's Motion for Summary Judgment as to Hamed Claim H-16-Najeh Yusuf's Use of Partnership Resources and Hamed Claim H-34-Rents Collected, But Not Deposited in the Partnership Account must be denied.

Respectfully submitted,

DUDLEY NEWMAN FEUERZEIG, LLP

DATED: April 1, 2019

By:


GREGORY H. HODGES (V.I. Bar No. 174)

CHARLOTTE K. PERRELL (V.I. Bar No. 1281)

P.O. Box 756

St. Thomas, VI 00804

Temporary Street Address:

The Tunick Building – Suite 101
1336 Beltjen Road

St. Thomas, VI 00802-4701

Telephone: (340) 774-4422

E-Mail: ghodges@dtflaw.com

cperrell@dtflaw.com

Attorneys for Fathi Yusuf and United Corporation

**DUDLEY, TOPPER
AND FEUERZEIG, LLP**
1000 Frederiksberg Gade
P.O. Box 756
St. Thomas, U.S. V.I. 00804-0756
(340) 774-4422

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Page 9 of 10

CERTIFICATE OF SERVICE

I hereby certify that on this 1st day of April, 2019, I caused the foregoing **YUSUF'S OPPOSITION TO HAMED'S MOTION AND MEMORANDUM FOR SUMMARY JUDGMENT RE HAMED REVISED CLAIMS AS TO H-16-NAJEH YUSUF'S USE OF PARTNERSHIP RESOURCES AND H-34-RENTS COLLECTED, BUT NOT DEPOSITED IN THE PARTNERSHIP ACCOUNT**, which complies with the page or word limitation set forth in Rule 6-1(e), to be served upon the following via the Case Anywhere docketing system:

Joel H. Holt, Esq.
LAW OFFICES OF JOEL H. HOLT
Quinn House - Suite 2
2132 Company Street
Christiansted, St. Croix
U.S. Virgin Islands 00820

E-Mail: holtvi.plaza@gmail.com

Mark W. Eckard, Esq.
ECKARD, P.C.
P.O. Box 24849
Christiansted, St. Croix
U.S. Virgin Islands 00824

E-Mail: mark@markeckard.com

The Honorable Edgar D. Ross
E-Mail: edgarrossjudge@hotmail.com

Carl J. Hartmann, III, Esq.
5000 Estate Coakley Bay – Unit L-6
Christiansted, St. Croix
U.S. Virgin Islands 00820

E-Mail: carl@carlhartmann.com

Jeffrey B.C. Moorhead, Esq.
JEFFREY B.C. MOORHEAD, P.C.
C.R.T. Brow Building – Suite 3
1132 King Street
Christiansted, St. Croix
U.S. Virgin Islands 00820

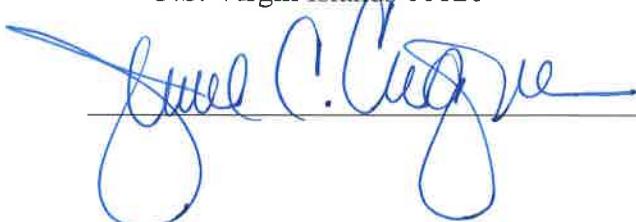
E-Mail: jeffreymlaw@yahoo.com

Fathi Yusuf, et al. (adv. Hamed, et al.)
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Page 10 of 10

and via U.S. Mail to:

The Honorable Edgar D. Ross
Master
P.O. Box 5119
Kingshill, St. Croix
U.S. Virgin Islands 00851

Alice Kuo
5000 Estate Southgate
Christiansted, St. Croix
U.S. Virgin Islands 00820



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**DUDLEY, TOPPER
AND FEUERZIEG, LLP**
1000 Frederiksberg Gade
P.O. Box 756
St. Thomas, U.S. V.I. 00804-0756
(340) 774-4422

INDEX OF EXHIBITS

Exhibit A January 22, 2019 Najeh Yusuf Deposition

Exhibit B Declaration of Najeh Yusuf

Exhibit C January 22, 2019 Waheed “Willie” Hamed Deposition

Exhibit D Yusuf Amended Accounting Claims as to Y-12

Exhibit E Ninth Bi-Monthly Report

Exhibit F Yusuf Supplemental Responses to Hamed’s Discovery
dated January 15, 2019

EXHIBIT A

**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 Deft.,)
)
)
vs.) Case No. SX-2012-CV-370
)
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FATHI YUSUF and UNITED)
CORPORATION,)
)
)
Defendants/Counterclaimants,)
)
)
vs.)
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WALEED HAMED, WAHEED HAMED,)
MUFEED HAMED, HISHAM HAMED, and)
PLESEN ENTERPRISES, INC.,)
)
)
Counterclaim Defendants.)
WALEED HAMED, as Executor of the)
Estate of MOHAMMAD HAMED,)
)
)
Plaintiff,)
)
vs.) Consolidated with
) Case No. SX-2014-CV-287
)
UNITED CORPORATION,)
)
)
Defendant.)
WALEED HAMED, as Executor of the)
Estate of MOHAMMAD HAMED,)
)
)
Plaintiff,)
)
vs.) Consolidated with
) Case No. SX-2014-CV-278
)
FATHI YUSUF,)
)
Defendant.)

**VIDEOTAPED ORAL DEPOSITION OF
NAJEH YUSUF**

NAJEH YUSUF -- DIRECT

1 **Q.** Okay. I'm sorry.

2 **A.** We bought the cameras. I can't remember how it's
3 situated, if it's in my name or Wireless Tech's name. To
4 think about it now, it could have even been in Plaza Extra's
5 name, because Willie was aware of it, that we were getting
6 cameras from him, and we were paying roughly 30 bucks or 40
7 bucks a camera, versus \$169-\$170 a camera.

8 So cameras came in. I made a deal with the
9 guy, you pay it to Miami. Miami comes down in my container
10 to Plaza St. Thomas. I take what's my share. I don't know
11 if -- how it was taken. If it was delivered. If he picked
12 it up. If it went -- if it went, you know, in the store,
13 landed like right at the receiving inside and we opened it
14 up, I opened it up and separated mine's, but the cameras
15 came in. I bought it for the purpose of Plaza Extra saving
16 funds, because we were buying it for over \$150 a camera from
17 the local people. I used to install the cameras myself. I
18 bought it for 30 or 40 bucks a camera. I mean, you do the
19 math. It's a huge savings when we're doing over 40 cameras
20 in a big store like that.

21 **Q.** Okay. And -- and I don't know if he's going to
22 testify to this, and I haven't heard Mr. Mansour's
23 testimony, but if Mr. Mansour said that you took Plaza Extra
24 cameras out of the Plaza Extra store and then sold them
25 either through Wireless Tech or gave them to Wireless Tech

NAJEH YUSUF -- DIRECT

1 or something like that, it's -- it's your argument that he
2 would be lying about that; is that correct?

3 **A.** I never took anything out of the store. I didn't
4 take cameras out of the store --

5 **Q.** Okay.

6 **A.** -- that didn't belong -- that -- I didn't take
7 cameras out of the store and sold it to Wireless Tech.

8 **Q.** Okay. But you did take cameras out of the store
9 that went to Wireless Tech?

10 **A.** I took cameras that came in on the dock --

11 **Q.** Right.

12 **A.** -- and gave it to Wireless Tech, because that's
13 the agreement I had with them.

14 **Q.** Okay.

15 **A.** But I didn't go in the office 5 days later, a
16 month later, or whatever, and saw that I had some cameras
17 there and decide to pick it up and says, Hey, I could sell
18 this to you guys.

19 **Q.** So could Mr. Mansour -- if Mr. Mansour thought you
20 had taken some Plaza Extra cameras, could he have just
21 confused the two shipments?

22 **A.** I don't know. I mean, we're talking about Fadi
23 Mansour, but I dealt with his brother, Wala Mansour, on the
24 cameras.

25 **Q.** You did?

NAJEH YUSUF -- DIRECT

1 **A.** I don't deal with Fadi. I had an issue with Fadi.
2 I heard of his problems in the beginning and I came in with
3 Fadi, knowing that Fadi -- I don't want to do anything with
4 Fadi. I dealt mainly with his brother, Wala, and the other
5 brother, Bashar. Fadi is nothing to me.

6 **Q.** Okay. So what -- could you give me the spelling
7 of the brother that you dealt with on the cameras?

8 **A.** Wala Mansour, W-A-L-A; and then M-A-N-S-O-U-R.

9 **Q.** Okay. Thank you.

10 And did you -- at the time that the -- the
11 division of -- the sale of the Tutu store occurred, did --
12 did you remove certain objects from the store or the
13 premises, such as a compressor?

14 **A.** No.

15 **Q.** Okay. You didn't take any --

16 **A.** A compressor?

17 **Q.** Yeah.

18 **A.** No. What kind of compressor?

19 **Q.** I'm -- I'm just asking whether you took anything?

20 **A.** There's many compressors. There's an air
21 compressor.

22 **Q.** Did you take any compressor?

23 **A.** No, never.

24 **Q.** Okay. Did you take any product?

25 **A.** No.

NAJEH YUSUF -- DIRECT

1 There was a -- a issue with a pressure washer
2 that was at my house that I borrowed before the -- the
3 split, and the manager called me, Johnny Gumbs, and says, We
4 want the pressure washer back. I said, It's at my house.
5 You want it, you can come get it. I'm not bringing it.

6 **Q.** Okay. And did they ever get that back?

7 **A.** So if you think that's considered a compressor,
8 which it's not, it's a pressure washer --

9 **Q.** Okay.

10 **A.** -- then that is what was at my house. And I guess
11 when you looked for it, he remembered that I had it at my
12 house. He asked me for it, 'cause I figured Willie told
13 him, Call Najeh and get the pressure washer back. I tell
14 him, you want it, you come get it.

15 **Q.** Okay. And where's the pressure washer now?

16 **A.** I think it's still there probably rotten.

17 **Q.** At your house?

18 **A.** Probably.

19 **Q.** Okay.

20 **A.** I -- I have to check in the pump room.

21 **Q.** And how about actual merchandise from the store?

22 Did you sell any of the merchandise from the store after the
23 sale?

24 **A.** Sell the merchandise from the store after the
25 sale?

EXHIBIT B

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

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FATHI YUSUF,)	ACTION FOR DEBT AND CONVERSION
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<u>Defendant.</u>)	

DECLARATION OF NAJEH YUSUF

I, Najeh Yusuf, pursuant to 28 U.S.C. § 1746, and V.I.R. Civ. P. 84, declare under the penalties of perjury, that the following is true and correct:

1. I am over the age of 21. I make the following statements based upon my personal knowledge.
2. With regard to the cameras purchased from China, which I discussed in my deposition dated January 22, 2019, any cost associated with the shipping of the cameras in the Plaza Extra-Tutu Park container was *de minimus* (approximately \$4 per box and roughly 8 boxes for a total of \$24.00).
3. The cost savings for the shipping arrangements I made and the bulk purchase price benefited the Plaza Extra-Tutu Park store as the cost savings remained significant. The bulk purchase (combining the Plaza Extra-Tutu Park cameras with others for myself and Wireless Tech into a single purchase) benefitted the partnership as they were able to utilize the cost savings.
4. The cameras purchased for the Plaza Extra-Tutu Park store were installed. I personally installed the cameras in the Plaza Extra-Tutu Park store along with other Plaza Extra employees Amer Zatar and Andrew Escobar, often while Willie Hamed was present watching sitting on the forklift while I was up installing the cameras.
5. The cameras purchased for Wireless Tech were delivered to or retrieved by Wireless Tech. I did not take any cameras from the Plaza Extra-Tutu Park store that were for the store.
6. As far as payment, while I do not specifically remember who initially purchased the cameras, I do recall that when the cameras were divided (either to myself or Wireless Tech or installed at Plaza), that the proper reimbursement occurred. At this time, the stores were requiring two signatures, one Hamed and one Yusuf, for any checks including reimbursement checks and so I would not have received a reimbursement without someone from the Hamed family approving it. If I purchased the cameras directly, as I did for many items, I would have sought a reimbursement from Plaza Extra Tutu-Park for those used by the Plaza Extra-Tutu Park store.

7. I did not take a monitor or a T.V. from the Plaza Extra-Tutu Park store. Both Willie Hamed and I each had personal laptop computers that were purchased by Plaza Extra. On the day of the sale, I specifically asked Judge Ross about my personal laptop computer and he advised that I could take that with me.

Dated: April 1, 2019



Najeh Yusuf

EXHIBIT C

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

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FATHI YUSUF,)
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Defendant.)

**VIDEOTAPED ORAL DEPOSITION OF
WAHEED "WILLIE" HAMED**

WAHEED "WILLIE" HAMED -- DIRECT

1 **A.** Yes, ma'am. I mean, we'll have to discuss with my
2 attorney on it, but --

3 **MR. HARTMANN:** Your deposition.

4 **Q.** (**Ms. Perrell**) Okay. Have you articulated this as
5 a claim before?

6 **A.** I don't recall.

7 **Q.** All right. What's the value of that claim?

8 **A.** Seven to \$10,000.

9 **Q.** All right. With regard to the computer, the
10 monitor, the TV, and so forth, counsel has already
11 stipulated that none of the employees are going to be called
12 to testify relating to that.

13 Did you personally see the computer, the
14 monitor, or the TV taken by Yusuf, Nejeh Yusuf?

15 **A.** I -- no, I did not physically see him.

16 **Q.** Okay. Other than communications and conversations
17 with employees, do you have any knowledge of pallets of
18 product being sold by Nejeh to outsiders?

19 **A.** If I have any what?

20 **Q.** Knowledge, other than what these people have told
21 you?

22 **A.** Yes, that's all. That's all I know, is what they
23 told me.

24 **Q.** Okay. All right. Other than those things, do you
25 have any knowledge -- it's kind of a long answer. Let me

WAHEED "WILLIE" HAMED -- DIRECT

1 break it down.

2 Do you have any knowledge relating to a
3 compressor that you believe that Fathi -- that Nejeh Yusuf
4 misappropriated?

5 **A.** I know there's equipment that was taken out of the
6 store.

7 **Q.** What?

8 **A.** I can't recall in detail what it is. I know there
9 was cameras, like a box of surveillance cameras. DVRs.

10 **Q.** Okay.

11 **A.** I'm -- I'm trying to remember the list now. A
12 compressor. I -- I think so.

13 **Q.** Okay. Did you see those things being removed by
14 Nejeh?

15 **A.** No, but they were in his possession --

16 **Q.** Okay.

17 **A.** -- at all times.

18 **Q.** Okay.

19 **A.** Then when we were getting with our bidding
20 process, all of a sudden, they disappeared.

21 **Q.** Okay. Other than those items that you just
22 mentioned, you indicated that -- here, that there were
23 certain partnership resources that were also utilized, and
24 you also indicated personnel were utilized by Nejeh.

25 What information do you have about that?

EXHIBIT D

**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,	)	CIVIL NO. SX-12-CV-370
v.)	
FATHI YUSUF and UNITED CORPORATION,)	
)	
Defendants/Counterclaimants,	)	ACTION FOR INJUNCTIVE RELIEF, DECLARATORY JUDGMENT, AND PARTNERSHIP DISSOLUTION, WIND UP, AND ACCOUNTING
v.)	
WALEED HAMED, WAHEED HAMED, MUFEED HAMED, HISHAM HAMED, and PLESEN ENTERPRISES, INC.,)	
)	
<u>Additional Counterclaim Defendants.</u>	)	Consolidated With
)	
WALEED HAMED, as Executor of the Estate of MOHAMMAD HAMED,)	
)	
Plaintiff,	)	CIVIL NO. SX-14-CV-287
v.)	
UNITED CORPORATION,)	
)	
<u>Defendant.</u>	)	ACTION FOR DAMAGES AND DECLARATORY JUDGMENT
)	
WALEED HAMED, as Executor of the Estate of MOHAMMAD HAMED,)	
)	
Plaintiff,	)	CIVIL NO. SX-14-CV-278
v.)	
FATHI YUSUF,)	
)	
<u>Defendant.</u>	)	ACTION FOR DEBT AND CONVERSION

**YUSUF'S AMENDED ACCOUNTING CLAIMS
LIMITED TO TRANSACTIONS OCCURRING ON OR AFTER SEPTEMBER 17, 2006**

DUDLEY, TOPPER
AND FEUERZEIG, LLP
1000 Frederiksberg Gade
P.O. Box 756
St. Thomas, U.S. V.I. 00804-0756
(340) 774-4422

reflected on Exhibit 1 to the complaint in SX-2014-CV-278, \$802,966¹⁶ would have been allocated to Hamed to equalize the Partnership distribution between the Partners resulting from the sale of the stock of Y&S and R&F. However, since the Accounting Order limits the claims Partners can make to transactions occurring on or before September 17, 2006, any claims Hamed has regarding the sale of the stock of Y&S and R&F are barred by the Accounting Order.

Disputed/Undisputed, Ripe for Determination or Discovery Needed: It is Yusuf's position that this item is barred by the Accounting Order and no longer subject to determination by the Master.

VI. Foreign Accounts and Jordanian Properties

As part of the profit sharing arrangement between the Partners, at various points in time, profits of the Partnership were sent to Jordan to be held in bank accounts or invested in real property to the mutual benefit of the Partners. In addition, Partnership profits were also sent to Jordan to be used as charitable donations of the Partners. Based upon Yusuf's review of bank documentation available to date and information discovered following the FBI raid, Yusuf claims that Hamed (either individually or through his sons or agents) failed to properly invest all Partnership funds with which he had been entrusted and failed to properly account for such funds. As a result, Hamed either breached his fiduciary duties to the Partnership by failing to properly safeguard, account for, and invest these funds as agreed between the Partners or he converted them for his own personal use or the personal use of his family members.

DUDLEY, TOPPER
AND FEUERZEIG, LLP
1000 Frederiksberg Gade
P.O. Box 756
St. Thomas, U.S. V.I. 00804-0756
(340) 774-4422

¹⁶ The Original Claims did not include interest on this claim because, among other things, United did not include all the interest it could claim on the rent actually awarded by the Rent Order. See n. 12, above. There were additional reasons for not paying interest on the claim as reflected in Yusuf's First Amended Answer And Counterclaim filed in SX-2014-CV-278. See also n. 16, below, regarding \$150,000 offset. Because the Accounting Order now bars this claim, the issue of interest is no longer relevant.

Yusuf has repeatedly raised these claims with Hamed and his agent, Waleed Hamed, but has received either unsatisfactory or no responses to questions as to how the funds were spent. The misappropriations or failures to account by Hamed and his agents of which Yusuf is presently aware include:

- a. Hamed and his sons have failed to account for the Partnership funds held in various foreign bank accounts from 1996 to date including, but not limited to, the accounts identified in Exhibit K to the Original Claims. The parties will need to engage in discovery to determine what transactions occurred with respect to those accounts on or after September 17, 2006.
- b. Because Hamed converted \$150,000 previously delivered as a charitable donation for a batch plant in West Bank, his interest in the Partnership should be charged for the transfer of \$150,000.00 to the Bank of Palestine to make good on the original donation. *See Exhibit L to the Original Claims, Wire Transfer Information Supporting Claim.*¹⁷
- c. Waleed Hamed's unauthorized check of \$536,405 to Hamed on April 29, 1998 and additional checks for \$10,000 and \$15,216. *See Exhibit M to the Original Claims.*
- d. Waleed Hamed's failure to account for funds that were removed from the Commercial Francaise Bank in Saint Maarten with four (4) checks totaling \$550,373.14 to close out the account in January and February of 1997.

DUDLEY, TOPPER
AND FEUERZEIG, LLP
1000 Frederiksberg Gade
P.O. Box 756
St. Thomas, U.S. V.I. 00804-0756
(340) 774-4422

¹⁷ This payment was made on behalf of the purchaser of the Y&S and R&F stock and represented a portion of the proceeds of the sale of that stock. Accordingly, the amount should be charged against Hamed's interest in the Partnership.

e. Waleed Hamed's conversion of \$1.4 million received in 1996 as reflected in a St. Maarten police report. Items (c) – (e) would appear to be barred by the Accounting Order.

Approximately forty (40) parcels of real property were purchased in Jordan using funds from the Plaza Extra Stores. All but two of those properties were jointly titled in the names of Hamed and Yusuf. The Court's assistance in administering or liquidating the jointly titled parcels is not sought at this time. Yusuf does seek the Court's assistance, however, with respect to two (2) parcels that were incorrectly titled in Hamed's name alone. These two parcels are identified in the "Land Value Estimation" attached as Exhibit N to the Original Claims. Yusuf respectfully requests an Order requiring the Executor/Administrator of Hamed's estate to take such action as may be necessary to properly reflect Yusuf's joint ownership of these parcels and to recover the \$434,921.37 reflected in Exhibit R to Yusuf's Amended Supplementation Of Accounting Claims submitted to the Master and counsel on December 12, 2016, (the "Amended Supplementation").

Hamed's interest in another parcel that was purchased in Jordan using funds from the Plaza Extra Stores has already been conveyed to Yusuf as part of Hamed's efforts to appease Yusuf following his discovery of the misappropriation of \$2,000,000 sent to Hamed from St. Maarten in or around 1997. A copy of the agreement in Arabic conveying Hamed's interest in such parcel is attached as Exhibit O to the Original Claims¹⁸. Yusuf had agreed to resolve this misappropriation, but not any others that Yusuf might later discover, by the conveyance of Hamed's interest in two parcels, one in Jordan that is the subject of Exhibit N, and one half acre parcel in St. Thomas, previously titled in the name of Plessen Enterprises, Inc., which is

DUDLEY, TOPPER
AND FEUERZEIG, LLP
1000 Frederiksberg Gade
P.O. Box 756
St. Thomas, U.S. V.I. 00804-0756
(340) 774-4422

¹⁸ An English translation was provided to the Master and counsel as Exhibit S to the Amended Supplementation on December 12, 2016.

addressed in a number of the Liquidating Partner's Bi-Monthly Reports. *See Ninth Bi-Monthly Report* at p. 5-6. Yusuf insisted that if Hamed wanted a resolution addressing all Hamed misappropriations, whether known or unknown, Hamed would have to arrange for the conveyance to Yusuf or United of another approximately 9.3 acre parcel located on St. Thomas also titled in the name of Plessen Enterprises, Inc. Hamed, through his son, Waleed, refused to convey this third parcel.

Although Yusuf is not pursuing his claims regarding the misappropriated 2,000,000, Hamed's sons are still seeking to somehow rescind Hamed's conveyance of his interest in the Jordanian parcel that is the subject of Exhibit N of the Original Claims in their second amended complaint in *Hamed v. Yusuf*, Civil No. SX-12-CV-377. Yusuf asks this Court to bind Hamed's estate by the agreement signed by Hamed.

Disputed/Undisputed, Ripe for Determination or Discovery Needed: It is Yusuf's position that these items are disputed and additional discovery is necessary. Furthermore, some of these claims relate to post – September 17, 2006 transactions or agreements between the Partners and therefore have not been eliminated by the Accounting Order.

VII. Loss of Going Concern Value of Plaza Extra-West

During the period that the Partnership operated Plaza Extra-West, it generated income, supported its expenses and ultimately generated profits. Plaza Extra-West's net profits were expected to continue indefinitely or, upon the dissolution of the Partnership, they were to continue until an orderly liquidation process could be concluded involving purchase of the business by one of the Partners or a third party. In either case, Plaza Extra-West's value as a "going concern" would have been quantified and realized equally by the Partners.

EXHIBIT E

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

MOHAMMAD HAMED, by his authorized agent WALEED HAMED,	)	CIVIL NO. SX-12-CV-370
Plaintiff/Counterclaim Defendant,	)	ACTION FOR DAMAGES, INJUNCTIVE RELIEF AND DECLARATORY RELIEF
vs.	)	JURY TRIAL DEMANDED
FATHI YUSUF and UNITED CORPORATION,		
Defendants/Counterclaimants,)	
vs.)	
WALEED HAMED, WAHEED HAMED, MUFEED HAMED, HISHAM HAMED, and PLESEN ENTERPRISES, INC.,		
Additional Counterclaim Defendants.)	
)	



LIQUIDATING PARTNER'S NINTH BI-MONTHLY REPORT

Pursuant to this Court's "Final Wind Up Plan Of The Plaza Extra Partnership" entered on January 9, 2015 (the "Plan"), defendant/counterclaimant Fathi Yusuf ("Yusuf"), as the Liquidating Partner¹, respectfully submits this ninth bi-monthly report of the status of wind up efforts, as required by § 5 of the Plan.

Pursuant to the Court's "Order Adopting Final Wind Up Plan" dated January 7, 2015 and entered on January 9, 2015 (the "Wind Up Order"), the Court adopted the Plan. An Order entered on January 27, 2015 approving a stipulation of the parties provided, among other things, that the effective date of the Plan "shall be changed from ten (10) days following the date of the ... [Wind Up] Order to January 30, 2015."

¹ Capitalized terms not otherwise defined in this report shall have the meaning provided for in the Plan.

On February 25, 2015, the Claims Reserve Account ("CRA") and the Liquidating Expense Account ("LEA") were established at Banco Popular de Puerto Rico. No disbursements have been made from the CRA or LEA without the approval of the Master. The Liquidating Partner has provided the Master and Hamed with copies of bank statements, ledgers, and reconciliations reflecting the inflows/outflows concerning these accounts from inception through April 30, 2016. Copies of the bank statements, ledgers, and a final reconciliation reflecting the inflows/outflows of the other bank accounts used jointly by the Partners in the operation of the three stores from May 1, 2015 through August 31, 2015 have previously been provided to the Master and Hamed.²

On March 5, 2015, the Master issued his "Master's Order Regarding Transfer of Ownership of Plaza Extra West." On March 6, 2015, the Master issued his "Master's Order Regarding Transfer of Ownership of Plaza Extra East." An accounting reconciling the difference in the inventory and equipment values involved in the transfer of Plaza Extra East and Plaza Extra West has occurred resulting in the payment of \$1,211,267.01 to Yusuf in July 2015.

The closed auction for Plaza Extra Tutu Park took place on April 30, 2015, pursuant to the Master's Order dated April 28, 2015. On April 30, 2015, the Master issued his "Master's

² These accounts used by all three stores remained open as an operational necessity with the consent of the Partners and the Master. Since these accounts were joint signatory accounts signed by representatives of both Partners, Hamed had uninterrupted, unfettered access to monitor these accounts. All checks drawn on these accounts have been signed by a representative of both Partners. All of these accounts, except one account at Scotiabank, were closed effective July 10, 2015 with all of the funds from those accounts transferred to the CRA. The one account was left open with a balance of \$1,000 for a few additional days because of pending document requests related to the 2014 Department of Justice review and Scotiabank needed an account to charge. After deducting fees, the \$895 balance in the account was transferred to the CRA.

Order Regarding Transfer Of Ownership Of Plaza Extra Tutu Park" (the "April 30 Master's Order"), pursuant to which that store was transferred to Hamed's designee, KAC357, Inc., for the price of \$4,050,000 plus \$220,000 in fees attributable to the Tutu Park Litigation (collectively, the "Tutu Park Purchase Price"), which has been paid.³

Pursuant to the express provisions of the Wind Up Order (p.5), § 8(2) of the Plan, and the April 30 Master's Order (p.2), Hamed⁴ was obligated to obtain releases of the Partnership and Yusuf from any further leasehold obligations to Tutu Park, Ltd. when he assumed sole ownership and control of the Tutu Park store premises as of May 1, 2015. Despite repeated demands, Hamed has failed to provide the required releases that are a precondition to the valid transfer of the Tutu Park store. In the absence of the delivery of such releases, the Tutu Park store will require the further attention of the Liquidating Partner and the Court for separation. Given the passage of more than fifteen (15) months since the releases should have been delivered, the Liquidating Partner is requesting the Court's immediate intervention regarding Hamed's failure to provide the required releases.⁵ The significant problems created by Hamed's failure to obtain the required releases has been reported by the Liquidating Partner

³ Because the Tutu Park Purchase Price was paid to Yusuf using Partnership funds, Yusuf was in fact paid an equal amount from the CRA representing a matching distribution to him of the funds used by Hamed to purchase Plaza Extra Tutu Park.

⁴ On June 16, 2016, Hamed died. See Yusuf's Statement Noting Death Of Mohammad Hamed filed on June 22, 2016. As a result of his death, any power of attorney given by Hamed to Waleed Hamed has been terminated. See V.I. Code Ann. tit. 15, § 1265(a). Since no motion for substitution of a representative of the estate of Hamed has been filed to date, it is unclear on whose behalf counsel for Hamed has been filing documents in this case since June 16, 2016.

⁵ In the absence of such releases, at a minimum, Yusuf submits that a reserve must be created for all rent, percentage rent, and real property taxes that may accrue during the remaining term of the lease with Tutu Park, Ltd. (28 months), plus any matching payment that would be due to Yusuf if Partnership funds are used to pay these obligations.

beginning with his fourth bi-monthly report and in each of his succeeding reports. Although Hamed has filed multiple objections to the bi-monthly reports, he has never disputed his obligation to obtain the releases or his failure to do so. Although the Tutu Park Litigation was initially stayed after the auction of the Tutu Park store to provide Hamed an opportunity to negotiate a new lease with Tutu Park, Ltd. and obtain the required releases, after approximately a year of fruitless negotiations, that stay has now been lifted and the Tutu Park Litigation has been set for trial. Since the transfer of the Tutu Park store and Tutu Park Litigation was expressly conditioned upon the delivery of the required releases to United and Yusuf, Hamed and his counsel cannot be allowed to control that litigation unless they immediately produce the releases that should have been provided more than one year ago. On June 29, 2016, the Master asked counsel to “advise as to the status or whereabouts of the releases” and counsel responded that “[w]e understand the urgency and will get this done as soon as Wally returns.” *See* June 29, 2016 email exchange attached as **Exhibit 1**. Despite the passage of more than a month since that email exchange, no releases have been produced to date. Accordingly, the issue involving the failure to provide the releases has now become critical requiring this Court’s immediate attention.

The Liquidating Partner is also working to resolve issues involving recent claims presented by Tutu Park, Ltd. concerning property taxes for the years 2012, 2013, and 2014 and percentage rents claimed due for the period November 1, 2014 through October 31, 2015. The Liquidating Partner authorized the payment of the entire, allocable taxes for 2012 and 2013 in

the amount of \$79,009.87 and for 2014 taxes in the amount of \$43,069.36. Checks for those amounts have been delivered to Tutu Park, Ltd. The property taxes for 2015 have not yet been billed, but reserves will be set aside to pay these taxes (estimated to be \$14,356.44 based on $4/12 \times \$43,069.36$)⁶, disputed federal unemployment (Form 940) taxes (approximately \$732,000)⁷, and contemplated accounting fees (approximately \$30,000).

The Liquidating Partner's sixth bi-monthly report incorrectly stated (at p. 4) that Tutu Park, Ltd.'s claim for percentage rents in the amount of \$41,462.28 had been rejected when, in fact, that claim was paid on December 17, 2015 via CRA check no. 278 and a matching check was issued to Yusuf via CRA check no. 279. Copies of these checks were provided to Hamed and the Master with the submission of the sixth bi-monthly report.

To date, no Partnership Assets requiring liquidation beyond those described above have been identified by or to the Liquidating Partner.⁸ Hamed has inquired about the disposition of $\frac{1}{2}$ acre of unimproved land located on St. Thomas that is allegedly owned by the Partnership and more particularly described as Parcel No. 2-4 Rem. Estate Charlotte Amalie, No. 3 New Quarter, St. Thomas, as shown on OLG Map. No. D9-7044-T002 (the "Land"). Yusuf submits

⁶ If the Liquidating Partner determines that the Partnership is responsible to Tutu Park, Ltd. for additional rent in the form of taxes or otherwise, the Partnership would be obligated to pay United comparable amounts since the rent for the Plaza Extra East store was pegged to the rent for the Tutu Park store, as recognized in this Court's Memorandum Opinion and Order entered on April 27, 2015. For example, when \$79,009.87 and \$43,069.36 in real property taxes were paid to Tutu Park, Ltd., the Liquidating Partner and the Master authorized matching payments of \$89,442.92 and \$46,990.48 to United based on this formula. Accordingly, in addition to creating a \$14,356.44 reserve for the 2015 pro-rated real property taxes, a reserve for the matching payment to United should be created in the amount of \$9,812.14.

⁷ The Liquidating Partner does not believe that any such taxes are actually due and owing.

⁸ With the permission of the Master, a 2005 Toyota Camry owned by the Partnership and used primarily by Nejeh Yusuf in connection with his co-management of Plaza Extra Tutu Park was purchased by United on May 1, 2015 for the sum of \$5,000.

that the Land has been erroneously carried on the balance sheet of the Partnership, because the record owner of the Land, pursuant to a Warranty Deed dated July 26, 2006 and recorded August 24, 2006, was Plessen Enterprises, Inc. ("Plessen"), a corporation jointly owned by the Hamed and Yusuf families. The Land was encumbered by a mortgage dated August 24, 2006 from Plessen to United in the face amount of \$330,000. Pursuant to a Deed In Lieu Of Foreclosure dated October 23, 2008 and recorded on March 24, 2009, Plessen conveyed the Land to United. Pursuant to a Release Of Mortgage dated October 23, 2008 and recorded on March 24, 2009, United released its mortgage covering the Land.⁹ Copies of the Deed In Lieu Of Foreclosure and Release Of Mortgage have been provided to the Master and Hamed. Accordingly, the Liquidating Partner does not intend to pursue liquidation of the Land or the mortgage since the Partnership has no continuing interest in either.¹⁰

Hamed has claimed that the Liquidating Partner has "fail[ed] to identify a significant partnership asset, a Merrill-Lynch account that has in excess of \$300,000 in it, all of which came from Plaza Extra funds." *See, e.g.*, Motion To Remove The Liquidating Partner filed by Hamed on January 29, 2016 at p. 6.¹¹ At page 3 of Yusuf's September 3, 2015 Response to the Objection, Yusuf states:

⁹ The fourth bi-monthly report contained dated information. After that report was filed, counsel for the Liquidating Partner learned of the subsequent conveyance of the Land to United.

¹⁰ On August 18, 2015, Hamed filed a "Notice of Objection to Liquidating Partners Bi-Monthly Reports" (the "Objection"), which raised the issue of the Land, among other issues, but acknowledged that these issues would be addressed in the "claims portion" of the liquidation process. On September 3, 2015, Yusuf filed his Response to the Objection. On February 8, 2016, Hamed filed his "Notice of Objection to Liquidating Partner's Sixth Bi-Monthly Report," to which Yusuf replied on February 24, 2016.

¹¹ Yusuf filed his Opposition to that motion on February 17, 2016.

At no time has Hamed provided the Liquidating Partner with any information establishing that a Merrill Lynch account in the name of a third party actually represents Partnership Assets. Hamed certainly does not explain why he only raised the prospect of such account 18 days after the filing of the third bi-monthly report. (footnote omitted).

To date, the Liquidating Partner has been provided with no information whatsoever that even suggests the unidentified Merrill Lynch account was funded with Partnership money, contains any Partnership funds, or otherwise constitutes Partnership Assets.

An updated balance sheet was provided to counsel and the Master on February 6, 2015, as required by § 9, Step 4 of the Plan. Combined balance sheets and income statements for the Partnership as of June 30, 2016 and supporting general ledger, cash reconciliation, accounts receivable aging, and accounts payable aging information (collectively, the "Financial Information") have been provided to the Master and Hamed with this report. John Gaffney, an accountant who has been engaged on behalf of and paid by the Partnership, has compiled the Financial Information, which the Liquidating Partner believes is generally reliable and historically accurate.¹²

The pending litigation identified in Exhibit C to the Plan was updated by the more detailed list attached as Exhibit C-1 to the first bi-monthly report. The Liquidating Partner is attempting to establish appropriate reserves for all pending litigation¹³ and any future litigation

DUDLEY, TOPPER
AND FEUERZEIG, LLP
1000 Frederiksberg Gade
P.O. Box 756
St. Thomas, U.S. V.I. 00804-0756
(340) 774-4422

¹² The submission of the Financial Information by the Liquidating Partner is not intended to impair or otherwise affect the right of either Partner to submit his proposed accounting and distribution plan contemplated by § 9, Step 6, of the Plan.

¹³ An updated, more detailed list of pending litigation (Exhibit C-2) was previously provided to the Master and counsel for Hamed.

that may be filed within the two year statute of limitations period for personal injuries allegedly occurring prior to the transfer of the Plaza Extra Stores. Such reserves will be established out of the funds in the CRA.

On March 17, 2016, Yusuf, as Liquidating Partner, filed motions to consolidate three cases pending in the Superior Court, namely, *United Corporation v. Waheed Hamed*, Civ. No. ST-13-CV-0000101, *United Corporation v. Waleed Hamed*, Civ. No. SX-13-CV-000003, and *United Corporation v. Wadda Charriez*, Civ. No. SX-13-CV-0000152, with this case since the claims asserted in these three cases “may be treated as claims for resolution in the liquidating process of the Partnership pursuant to the Plan adopted” in this case. For similar reasons, on March 21, 2016, the parties filed a stipulation to consolidate two cases pending in the Superior Court with this case, namely, *Hamed v. Yusuf*, Civ. No. SX-2014-CV-278, and *Hamed v. United Corporation*, Civ. No. SX-2014-CV-287.¹⁴

Section 9, Step 2, of the Plan requires the Liquidating Partner to “submit to Hamed and the Master each month a reconciliation of actual expenditures against the projected expenses set forth in Exhibit A. Unless the Partners agree or the Master orders otherwise, the Liquidating Partner shall not exceed the funds deposited in the Liquidated Expense Account.” That reconciliation was provided to the Master and Hamed with the third bi-monthly report. It reflected that the actual expenditures incurred through June 30, 2015 in winding up the Partnership and liquidating its assets were approximately \$4 million less than the projected expenses reflected in Exhibit A to the Plan. An updated reconciliation through August 31,

¹⁴ By Order dated April 15, 2016, Civ. No. SX-2014-CV-287 was consolidated with this case.

2015 was provided to the Master and Hamed with the filing of the fourth bi-monthly report reflecting a similar difference. An updated comparison through October 31, 2015 was provided to the Master and Hamed with the filing of fifth bi-monthly report. An updated comparison through December 31, 2015 was provided to the Master and Hamed with the filing of the sixth report, an updated comparison through February 29, 2016 was provided with the filing of the seventh report, an updated comparison through April 30, 2016 was provided with the filing of the eighth report, and an updated comparison through June 30, 2016 was provided with the filing of this report.

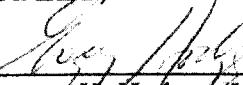
Pursuant to a “Further Stipulation Regarding Motion to Clarify Order of Liquidation” filed with the Court on October 5, 2015 and “So Ordered” on November 13, 2015, the Partners stipulated that the Liquidating Partner will provide the Master and Hamed with the Partnership accounting required by § 5 of the Plan on November 16, 2015, which was done, and the Partners will submit their proposed accounting and distribution plans contemplated by § 9, Step 6, of the Plan to each other and the Master by March 3, 2016. At the request of Hamed, the Master extended the date for submission of the Partners’ accounting and distribution plans until May 2, 2016. Subsequently, that deadline was further extended by the Master without a date certain.

Section 9, Step 4 of the Plan provides, in pertinent part, as follows: “Hamed’s accountant shall be allowed to view all partnership accounting information from January 2012 to present and to submit his findings to the Master.” Yusuf submits that Hamed’s accountants

have not been prevented from viewing any Partnership accounting information for the relevant period. Instead of accepting John Gaffney's March 2015 proposal to have one of Hamed's accountants work alongside him to facilitate their ability to review the relevant accounting information, Hamed's accountants submitted 81 "Questions/Requests for Info" to Yusuf, and those requests were recently expanded even further to "130 very specific questions." As reflected in his Reply to Plaintiff's Notice of Objection to Liquidating Partner's Eighth Bi-Monthly Report (page 2-4), Yusuf objects to these discovery requests to the extent they seek to interrogate Yusuf, through Mr. Gaffney, as opposed to simply seeking Mr. Gaffney's assistance in accessing or reviewing partnership accounting information.

Respectfully submitted this 1st day of August, 2016.

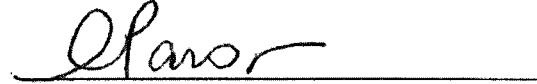
DUDLEY, TOPPER and FEUERZEIG, LLP

By: 
Gregory H. Hodges (V.I. Bar No. 174)
1000 Frederiksberg Gade - P.O. Box 756
St. Thomas, VI 00804
Telephone: (340) 715-4405
Telefax: (340) 715-4400
E-mail:ghodges@dtflaw.com

Attorneys for Liquidating Partner

CERTIFICATE OF SERVICE

I hereby certify that on this 1st day of August, 2016, I caused the foregoing **Liquidating Partner's Ninth Bi-Monthly Report** to be served upon the following via e-mail:

Joel H. Holt, Esq. LAW OFFICES OF JOEL H. HOLT 2132 Company Street Christiansted, V.I. 00820 Email: holtvi@aol.com	Carl Hartmann, III, Esq. 5000 Estate Coakley Bay, #L-6 Christiansted, VI 00820 Email: carl@carlhartmann.com
Mark W. Eckard, Esq. Eckard, P.C. P.O. Box 24849 Christiansted, VI 00824 Email: mark@markeckard.com	Jeffrey B.C. Moorhead, Esq. C.R.T. Building 1132 King Street Christiansted, VI 00820 Email: jeffreymlaw@yahoo.com
<p>The Honorable Edgar A. Ross Email: edgarrossjudge@hotmail.com</p> 	

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Gregory H. Hodges

From: Joel Holt <holtvi@aol.com>
Sent: Wednesday, June 29, 2016 1:21 PM
To: Edgar Ross
Cc: Gregory H. Hodges
Subject: Re: Tutu Park Plaza Releases

The final meeting to resolve this issue was set for today, but was canceled because Wally is in the Middle East due to his father's death. We understand the urgency and will get this done as soon as Wally returns

Joel H Holt
2132 Company St.
Christiansted, VI 00820
340-773-8709

On Jun 29, 2016, at 12:54 PM, Edgar Ross <edgarrossjudge@hotmail.com> wrote:

More than a year has elapsed since the Hameds were to obtain releases from the Lessor of the Tutu Park Plaza for the benefit of United Corp. and Fathi Yusuf. Please advise as to the status or whereabouts of the releases.

Sent via the Samsung GALAXY S®4, an AT&T 4G LTE smartphone

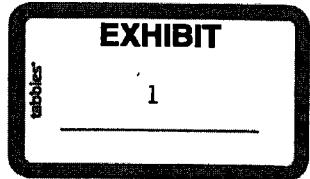


EXHIBIT F

**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,	)	CIVIL NO. SX-12-CV-370
v.)	
FATHI YUSUF and UNITED CORPORATION,	)	ACTION FOR INJUNCTIVE RELIEF, DECLARATORY JUDGMENT, AND PARTNERSHIP DISSOLUTION, WIND UP, AND ACCOUNTING
)	
Defendants/Counterclaimants,)	
v.)	
)	
WALEED HAMED, WAHEED HAMED, MUFEED HAMED, HISHAM HAMED, and PLESSEN ENTERPRISES, INC.,)	
<u>Additional Counterclaim Defendants.</u>)	
WALEED HAMED, as Executor of the Estate of MOHAMMAD HAMED,	)	Consolidated With
)	
Plaintiff,	)	CIVIL NO. SX-14-CV-287
v.)	
)	
UNITED CORPORATION,	)	ACTION FOR DAMAGES AND DECLARATORY JUDGMENT
)	
Defendant.)	
WALEED HAMED, as Executor of the Estate of MOHAMMAD HAMED,	)	CIVIL NO. SX-14-CV-278
)	
Plaintiff,	)	ACTION FOR DEBT AND CONVERSION
v.)	
)	
FATHI YUSUF,)	
)	
Defendant.)	
FATHI YUSUF and UNITED CORPORATION,	)	CIVIL NO. ST-17-CV-384
)	
Plaintiffs,	)	ACTION TO SET ASIDE FRAUDULENT TRANSFERS
v.)	
)	
THE ESTATE OF MOHAMMAD HAMED, Waleed Hamed as Executor of the Estate of Mohammad Hamed, and THE MOHAMMAD A. HAMED LIVING TRUST,)	
)	
Defendants.)	
)	

**SUPPLEMENTAL RESPONSES
TO HAMED'S DISCOVERY**

Defendant/Counterclaimants Fathi Yusuf (“Yusuf”) and United Corporation (“United”)(collectively, the “Defendants”) through their attorneys, Dudley, Topper and Feuerzeig, LLP, hereby provide their Supplemental Responses to Hamed’s Discovery as follows:

1. Interrogatory No 3 – Relating to H-1, Dorthea Condo

Dorthea Condo transaction. Mr. Yusuf confirms the following:

1. I was to receive the proceeds under the sales contract for the sale of the Dorthea Condo.
2. The full amount of \$1.5 million for the sale was received.
3. I am currently in possession of \$1,350,000 of the total amount of those proceeds in the form of another asset. The remaining \$150,000, I directed the purchaser to pay directly to the Batch Plant to make up for what Hamed had received 10 years earlier but had failed to deliver to the Batch Plant. Attached is the document that reflects that payment (FY015136). The breakdown is: \$750,000 for Yusuf (1/2 of the \$1,500,000) and \$600,000 for Hamed (total due \$750,000 (his ½ of the 1,500,000) minus \$150,000 paid to the Batch Plant from Hamed’s portion).
4. I believe that I provided the handwritten “Dorothia” document to Willy but I do not recall when.
5. It is my belief that the principle payments were received prior to 2006. However, I cannot say this for sure.

**2. Interrogatory No. 29 and Requests for Production of Documents Nos 21 and 34
– Relating to Y-2 and 4 relating to rent for Bays 5 and 8**

Yusuf and United provide the following supplemental response to Interrogatory #29 and Requests for Production of Documents #21 and #34:

United has made a claim for past due rent for Bays 5 and 8 which were leased by Plaza Extra East at various points in time and utilized as extra storage. Yusuf set forth in his Declaration dated August 12, 2014 the square footage of each Bay, the period of the rental and the price per square foot. Again, Yusuf incorporates his August 12, 2014 Declaration together with the attached Chart as responsive to Interrogatory #29. In addition, attached is a floor plan of the United Shopping Center reflecting the location of Plaza Extra East and the other commercial/retail storefronts referred to as Bays (FY015135).

A. Bay 5 – Period May 1, 1994 through July 31, 2001

Bay 5 is close to the entrance of Plaza Extra East and is one of the most desirable storefronts in the United Shopping Center given its location and visibility. From 1987 to the time of the fire in 1992, Bay 5 was rented to a pharmacy. There is no copy of the lease for this period as it was destroyed in the fire. During this 1987-1992 timeframe, Plaza Extra East was utilizing a series of trailers as warehouse space to provide additional storage for inventory. There were eight trailers, four on the bottom and four on top. However, this storage system of trailers was very cumbersome and inefficient to access and effectively utilize. As Plaza Extra East was being rebuilt and then reopening, it needed additional space for storage which was easier to access.

As described more fully below, Plaza Extra East began utilizing Bay 8 for storage upon reopening in May, 1994. However, additional space was still needed. Mike Yusuf and Waleed Hamed broke through a cement block wall between Bay 4 and 5 to utilize the space in Bay 5 for sodas. They made an opening big enough for the forklift to go through. Their efforts demonstrate knowledge by Hamed that the space was being used. The space was utilized by Plaza Extra East from May 1, 1994 through July 31, 2001 for storage and primarily for the storage of sodas. Mr. Yusuf was not happy to discover that this particular Bay was needed for storage space because he would have preferred the space to be used as a retail store. In a conversation with Waleed Hamed, Mr. Yusuf explained that he would prefer to use the space to lease to retail but that if Plaza Extra East was going to use it for storage and needed the space, then it would have to pay rent, to which Waleed Hamed responded that he agreed. As Yusuf was in charge of setting the price and collecting the rent, he set the price at the same amount as other commercial tenants for that space. As with the rent for Bay 1, United allowed the rent to accrue so as to provide the partnership with greater liquidity. Waleed Hamed agreed to this arrangement.

At some point in the first half of 2001, Mr. Yusuf explained that Plaza Extra East cannot keep using Bay 5 for warehouse space as it is better utilized as retail space. It was helpful to the partnership to have other retail stores in the United Shopping Center which drives more customers to the area and then into Plaza Extra East. However, using such visible space for storage did not help increase the traffic to the center and by extension to Plaza Extra East. As Bay 5 is a highly visible space, the better use of the space was for retail. Beginning on September 1, 2001, United leased Bay 5 to a retail tenant operating as "Diamond Girl." A copy of the lease is attached to demonstrate the end of the period that Plaza Extra East was utilizing Bay 5. (Bates FY015138-75). The lease with Diamond Girl was for ten years. In December 2011, Diamond Girl entered into another lease with United and expanded their space to use Bay 4 in addition to Bay 5. A copy of that lease is also attached. (Bates FY015176-211). These leases reflect the price charged for the space and the ending time period of Plaza East's occupancy of Bay 5. There is no written lease for Plaza Extra East's use of the Bays 5 or 8, just as there was no written lease for the use of space to house the Plaza Extra East store. Waleed Hamed agreed to this arrangement. The total amount due for the period of rent for Bay 5 is as set forth in Yusuf's August 12, 2014 Declaration for \$271,875.00.

B. Bay 8 – May 1, 1994 through September 30, 2002 ("First Bay 8 Rent")

Bay 8 is located in the corner of the shopping center and is a double bay. It is a less desirable location as a retail store given the limited storefront and lack of visibility being in the corner of the center.

From 1987 to the time of the fire in 1992, Bay 8 was rented to Ali's Hardware. Ultimately, United had to evict Ali Hardware at some point prior to the fire. Mike Yusuf recalls the scenario where the renter threw the keys to Mike as they were rebuilding the store after he had been evicted. The eviction was handled by Carl Beckstedt. Attached is an unsigned "Satisfaction of Judgment" reflecting the action brought against Ali Hardware for the collection of back rent demonstrating the date the suit was filed as 1993. (Bates FY01537). As described above, the storage system of stacked trailers used by Plaza Extra East at this time was inefficient. As Plaza Extra East was being rebuilt, it needed the additional space for storage.

Following the fire, Plaza Extra East reopened in May 1994 and began utilizing Bay 8 for additional storage. Given its less desirable location as a retail store, its large size and easy access to the back of the bay with a roll-down door, it was suitable and more feasible to use as a warehouse. Bay 8 was occupied by Plaza Extra East from May 1, 1994 through September 30, 2002. As the space had previously been rented to a third party but was now being utilized by Plaza Extra East, Mr. Yusuf discussed with Waleed Hamed that Plaza Extra East would need to pay rent for the use of this additional space and he agreed. As with the rent for Bay 1, United allowed the rent to accrue so as to provide the partnership with greater liquidity. Waleed Hamed agreed to this arrangement.

From October 1, 2002 to April 1, 2008, the space was then rented to an entity called Riverdale which is a food wholesaler who was not interested in utilizing the space as retail operation. A copy of the lease for Bay 8 is attached to reflect when the First Bay 8 Rent period ended and the amount charged for this space. (Bates FY015212-247). The total amount due to United for the First Bay 8 Rent is as set forth in Yusuf's August 12, 2014 Declaration for \$323,515.63.

C. April 1, 2008 through May 30, 2013 ("Second Bay 8 Rent")

When the lease with Riverdale ended, Plaza Extra East began using the space for storage. As with the earlier period of use and the use of Bay 5, Yusuf discussed with Waleed Hamed that Plaza Extra East would pay rent on the same terms as before and Waleed Hamed Agreed. The total amount due to United for the Second Bay 8 Rent is as set forth in Yusuf's August 12, 2014 Declaration for \$198,593.44. As before, United allowed the rent for this period to accrue rather than demanding payment so as to allow the partnership greater liquidity.

After May 30, 2013, United again rented Bay 8 to Riverdale or a relative of the individual who rented as Riverdale from that point forward.

There are no written leases between Plaza Extra East and United as to renting Bay 5 and Bay 8. At the time, the stores were all operating as United. However, as described above Mr. Yusuf discussed the matter with Waleed Hamed and he agreed to pay rent for the space utilized. Collection of the rent was deferred for Bays 5 and 8, just as it was deferred for the Plaza Extra East Store. *See* Yusuf Declaration of August 12, 2014, ¶8.

As to the period after this lawsuit was filed, United shows that Plaza Extra East continued to occupy the space until it was rented to the tenant associated with Riverdale. Mr. Yusuf considered the partial rent payments made by the partnership as to Bay 1 as a partial payment of the total rent debt due which included the rent for Bays 5 and 8. When Plaza Extra East was using either Bay 5 or 8, their use and occupancy was continuous during that period of time.

3. Interrogatory No. 30 – Relating to Y-12 Jordanian Property and Accounts

Yusuf supplements his responses to Interrogatory No. 30:

Over the course of time, Mr. Yusuf, on behalf of the partnership, purchased five different properties in Jordan (the “Initial Five Properties”) and put in joint names of Hamed and Yusuf. Two of these properties are still owned by them jointly, two others were sold with the proceeds reinvested in a larger number (approximately 40 residential properties) and one Hamed transferred his interests to Mr. Yusuf pursuant to an agreement which also required the transfer of property in St. Thomas.

A. Original Five Properties in Joint Name of Yusuf and Hamed

Property 1: One of the Initial Five Properties was purchased for approximately 3 million Jordanian pounds around 1999 (“Property 1”). It was titled jointly in both Yusuf and Hamed’s name. The parties still own it. It is now worth approximately at least 30 million. There is no dispute relating to this property and it is not the subject of Yusuf’s Claim Y-12.

Property 2: Another of the Initial Five Properties was purchased for approximately 240,000.00 Jordanian pounds (“Property 2”). It was also titled in jointly in both names. Property 2 was later sold for 1 million Jordanian pounds. The proceeds from the sale of Property 2 and another of the Initial Five Properties were used to purchase additional properties more fully described below. Property 2 is not in dispute and is no longer owned by the partners.

Property 3: Another of the Initial Five Properties was purchased for 858,000.00 Jordanian pounds (“Property 3”). It was also titled jointly in both names. Subsequently after Mr. Yusuf determined that the Hamed’s had removed funds without disclosing their receipt, Mr. Yusuf and Mr. Hamed entered into an agreement where Mr. Hamed agreed to provide his half of this property to Mr. Yusuf dated July 18, 2011, Exhibits O and S are the documents that reflects that transfer and agreement.

Property 4: Another of the Initial Five Properties was purchased for 520,000.00 Jordanian pounds. As with all of the Initial Five Properties, it was put in both names. Property 4 is located near an airport. At some point, a portion of Property 4 was needed for the roadway near the airport and the appropriate governmental entity procured the property under an eminent domain basis and ultimately paid 2 million Jordanian pounds. The remainder of the property was sold for 3.3 million Jordanian pounds. The proceeds from these transfers of Property 4 in combination with the proceeds from the transfer of

Property 2 were combined and used to purchase a larger number of residential properties more fully described below.

Property 5: Another one of the Initial Five Properties was purchased in the early 1990's for approximately 1 million Jordanian pounds. It too was in the joint names. The parties still own this particular property. Property 5 remains jointly owned and is not the subject of Yusuf's Claim Y-12.

B. Sale of Properties 2 and 4 and Reinvestment into 40+ Residential Properties

With the sale of Properties 2 and 4 for a total of approximately 6.3 million Jordanian pounds, the parties purchased approximately 40 pieces of residential real estate ("40+Properties"). They 40+ Properties are not contiguous properties but are located in the Ahman area and all of the purchases were done during a single trip Mr. Yusuf took to Jordan. Although jointly owned, the 40+ Properties were put in Mohammad Hamed's name solely. However, the parties understood and agreed that Mr. Yusuf had a one-half interest in these properties. This timeframe would have been around 2008.

Sometime in 2011, Mr. Yusuf requested that the 40+ Properties now be titled to reflect his one-half interest. During a trip to Jordan, Hamed and Yusuf coordinated to transfer most but not all of these 40+ Properties to reflect their joint ownership. As described in Yusuf's accounting claim "[A]ll but two of these properties were jointly titled in the names of Hamed and Yusuf." Yusuf is not looking to liquidate these properties but rather "respectfully requests an Order requiring the Executor/Administrator of Hamed's estate to take such action as may be necessary to properly reflect Yusuf's joint ownership of these [two remaining] parcels and to recover the \$434,921.37" in costs incurred relating to these 40+ Properties. The costs are set forth in Exhibit R to Yusuf's Original Claims Accounting.

C. Transfer of Property from Hamed to Yusuf Per Agreement

After Yusuf's discovery of the misappropriation of \$2,000,000 sent to Hamed from St. Maarten in or around 1997, Mr. Yusuf agreed, in order to resolve that issue only, that Hamed would convey to him two properties. One of the properties was Property 3 described above and Hamed's conveyance of his interest in a one half acre parcel and its adjacent 9.31 acres in Tutu, St. Thomas.

The document reflecting Hamed's transfer of his interest in Property 3 to Yusuf is Exhibit O and Exhibit S which is the English translation. Property 3 is Land Lot No. 310. On Bates page FY000272-9 of Exhibit O, the words "Lot 310" is located in the middle of a residential community of approximately one million in population. It is a very large plot in the middle of all the smaller plots. Hamed's allegations in the 377 case at Paragraphs 43, 44, 143, 145, 153, 154 and 155 all relate to Property 3 and Hamed's transfer of it

to Yusuf. The Hamed's value that piece of property – Property 3 at \$10,000,000.00. However, Mr. Yusuf estimates it is closer to only \$8,000,000.00. Therefore, the claims in the 377 case do, in fact, relate to the same piece of property ("Property 3") and any alleged claims that Hamed has relating to Property 3 is properly adjudicated in this proceeding.

Yusuf is seeking exactly what he set forth in his claims accounting that "[A]lthough Yusuf is not pursuing his claims regarding the misappropriated 2,000,000, Hamed's sons are still seeking to somehow rescind Hamed's conveyance of his interest in" Property 3 in the 377 case. Yusuf is seeking an order, which binds Hamed's estate by the agreement signed by Hamed at Exhibits O and S. In that agreement entitled "Written Declaration and Undertaking," Hamed confirms that he has the requisite mental faculties to convey his interests in Property 3 to Yusuf, that he intends to give him all of his financial and other interests in the property. Hamed also states that:

...I recommend my folks and legal heirs after me not to oppose Mr. Fathi [Yusuf] in the said land due to his right in it and I have signed this declaration in three originals whiles enjoying my full mental power that are legitimately and legally considered and drop my right to claim the falsehood of the declaration and/or the circumstances surrounding the execution of this declaration and/or any rebut arising from or relating to this declaration and/or its applications.

This was signed by Mohammed Hamed on July 18, 2011.

Ultimately, Yusuf had agreed to resolve the misappropriation by the conveyance of Property 3 and Hamed's conveyance of his interest in a one half acre parcel and its adjacent 9.31 acres in Tutu, St. Thomas. The 9.31 acres are currently titled in Plessen but should be conveyed to Mr. Yusuf. Likewise, any claims that Hamed would have to the ½ acre entrance parcel should be extinguished.

Supplemental Response to Hamed's Discovery

Waleed Hamed et al. vs. Fathi Yusuf et al.

Case No.: STX-2012-CV-370

Page 9

DUDLEY, TOPPER AND FEUERZEIG, LLP

DATED: January 15, 2019

By: s/Charlotte K. Perrell

CHARLOTTE K. PERRELL

(V.I. Bar #1281)

Law House

1000 Frederiksberg Gade - P.O. Box 756
St. Thomas, VI 00804-0756

Telephone: (340) 715-4422

Facsimile: (340) 715-4400

E-Mail: cperrell@dtflaw.com

*Attorneys for Fathi Yusuf and United
Corporation*

CERTIFICATE OF SERVICE

It is hereby certified that on this 15th day of January, 2019, I caused the foregoing a true and exact copy of the foregoing **SUPPLEMENTAL RESPONSES TO HAMED'S DISCOVERY** to be served upon the following via Case Anywhere docketing system:

Joel H. Holt, Esq.
LAW OFFICES OF JOEL H. HOLT
2132 Company, V.I. 00820
Email: joelholtpc@gmail.com

Carl Hartmann, III, Esq.
5000 Estate Coakley Bay, #L-6
Christiansted, VI 00820
Email: carl@carlhartmann.com

Mark W. Eckard, Esq.
HAMM & ECKARD, LLP
5030 Anchor Way – Suite 13
Christiansted, St. Croix
U.S. Virgin Islands 00820-4692
E-Mail: mark@markeckard.com

Jeffrey B.C. Moorhead, Esq.
C.R.T. Building
1132 King Street
Christiansted, St. Croix
U.S. Virgin Islands 00820
E-Mail: jeffreymlaw@yahoo.com

s/Charlotte K. Perrell

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Supplemental Response to Hamed's Discovery

Waleed Hamed et al. vs. Fathi Yusuf et al.

Case No.: STX-2012-CV-370

Page 11

EXHIBIT 1

FY 015045 – 015134