

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

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

Plaintiff/Counterclaim Defendant,

vs.

FATHI YUSUF and **UNITED CORPORATION**

Defendants and Counterclaimants.

vs.

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

Counterclaim Defendants,

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

vs.

UNITED CORPORATION, *Defendant.*

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

vs.

FATHI YUSUF, *Defendant.*

FATHI YUSUF, *Plaintiff,*

vs.

MOHAMMAD A. HAMED TRUST, *et al,*

Defendants.

KAC357 Inc., *Plaintiff,*

vs.

HAMED/YUSUF PARTNERSHIP,

Defendant.

Case No.: SX-2012-CV-370

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

JURY TRIAL DEMANDED

Consolidated with

Case No.: SX-2014-CV-287

Consolidated with

Case No.: SX-2014-CV-278

Consolidated with

Case No.: ST-17-CV-384

Consolidated with

Case No.: ST-18-CV-219

**HAMED REPLY TO YUSUF'S OPPOSITION TO HAMED'S STATEMENT OF FACTS,
AND HAMED'S OPPOSITION TO YUSUF'S COUNTERSTATEMENT OF FACTS:
RE REVISED CLAIM H-1 – FATHI YUSUF'S FAILURE TO PAY FUNDS RE SALE OF
THE Y&S STOCK RESULTING IN THE SALE OF DORTHEA CONDOS AND LAND**

I. Introduction

This filing deals with the facts only. Pursuant to the Special Master's Order, on May 28, 2019, Yusuf filed a revised response to Hamed's *Statement of Facts* and also filed a very slightly altered version of his *Opposition to Hamed's Motion and Memorandum for Summary Judgment Re Hamed's Revised Claim H-1 – Fathi Yusuf's Failure to Pay Funds Re the Sale of the Y&S Stock Resulting in the Sale of the Dorothea Condos and Land* ("Opposition"). However, Yusuf's 'revised' Opposition is substantially the same as his original Opposition. *Accordingly, here Hamed responds to Yusuf's new factual response, but relies on his original Reply, filed on April 24, 2019, and does not re-file it.*

II. Hamed's Reply to Yusuf's Opposition to Hamed's Statement of Facts

As will be discussed below, Yusuf largely fails to follow the Court's instructions that he respond, point-by-point, to Hamed's SOF. Although there are now repeated "surface level" statements that Yusuf "disputes" the facts set out in the SOF – there is no real effort by Yusuf to actually 'respond' to the facts with evidence and facts of record as required by the applicable rule, and, moreover, the 'new' responses are not integrated into Yusuf's Opposition, which remains substantially unchanged. Thus, despite the Court's clear order, this has largely been an exercise in Yusuf simply stating "NO" to the facts rather than really attempting to meet them with evidence or affidavits as the rules require.

A. Yusuf is in agreement with Hamed regarding most of Hamed's statement of facts – and definitely with all of the "material" facts

Yusuf agrees with the following Hamed statement of facts ("HSOF"): 1-7, 9-11, 15, 17, 20, 22-25, 27 and 31-32 and thus they are accepted as fact.

As will be discussed below, Yusuf does not provide a proper denial to the following facts, so these facts can be considered undisputed for the purposes of this motion under *V.I.R. Civ. P. 56(e)(2)*: 8, 12, 16, 18-19, 21, and 30.

Taken together, these 'admitted' and 'not-denied' facts are sufficient on this record to aloe the Special Master to grant the relief sought.

B. Although Yusuf facially “disputes” some statements of facts, in reality he offers no proof to contradict HSOF and therefore those facts must be deemed undisputed under V.I. R. CIV. P. 56(c)(1)(B)

Pursuant to *V.I.R. Civ. P. 56(c)(1)(B)*, actually “disputing” a statement of fact requires: (1) a cite to materials in the record contradicting the statement, (2) a showing that the materials cited do or do not establish a genuine dispute of fact or (3) there is not admissible evidence to support the fact, stating in relevant part:

(c) **Procedures.**

(1) **Supporting Factual Positions.** A party asserting that a fact cannot be or is genuinely disputed must

(B) support the assertion by:

(i) citing to particular parts of materials in the record, including depositions, documents, electronically stored information, affidavits or declarations, stipulations (including those made for purposes of the motion only), admissions, interrogatory answers, or other materials; or

(ii) showing that the materials cited do not establish the absence or presence of a genuine dispute, or that an adverse party cannot produce admissible evidence to support the fact.

Yusuf merely says he “disputes” a number of Hamed's statement of facts with conclusory denials that do not cite to any materials in the record to show that there is a genuine dispute of fact. This does not result in a material fact in dispute. Under the rule, this is *meaningless naysaying – not a proper denial*. He also does not support his “disputes” of the facts by showing that the materials cited by Hamed do not establish the

absence of a genuine dispute or that Hamed has not produce admissible evidence to support the fact.¹ *V.I.R. Civ. P. 56* then goes on to expressly provide a remedy in this situation, stating in *Rule 56(e)(2)*:

(e) Failing to Properly Support or Address a Fact. If a party fails to properly support an assertion of fact or fails to properly address another party's assertion of fact as required by Rule 56(c), the court may:

(2) consider the fact undisputed for purposes of the motion;

(3) grant summary judgment if the motion and supporting materials — including the facts considered undisputed — show that the movant is entitled to it; . . . (Emphasis added).

Thus, the facts Yusuf denied but failed to support with the materials required by *Rule 56(c)(1)(B)* can be deemed as admitted facts for the purpose of this motion under *Rule 56(e)(2)*, with summary judgment then an appropriate option under *Rule 56(e)(3)*.

Moreover, both Judge Brady and the V.I. Supreme Court have recognized that the Special Master, as the “trier of facts” here, has additional discretion to address and handle such facts – because, although this this “looks” like a summary judgment proceeding, it

¹ This is hard, black letter law refined by the U.S. Supreme Court in two leading cases. Hamed's counsel has located no cases where a mere denial, absent a reference to evidence of record, has been deemed sufficient. See, e.g., *Marsulex Env'tl. Techs. v. Selip S.P.A.*, No. 1:15-CV-00269, 2019 WL 2184714, at *2 (M.D. Pa. May 21, 2019) (“If the nonmoving party “fails to make a showing sufficient to establish the existence of an element essential to that party's case, and on which that party will bear the burden at trial,” summary judgment is appropriate. *Celotex*, 477 U.S. at 322. Summary judgment is also appropriate if the nonmoving party provides merely colorable, conclusory, or speculative evidence. *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 249 (1986). There must be more than a scintilla of evidence supporting the nonmoving party's claims and more than some metaphysical doubt as to the material facts. *Id.* at 252. “Where the record taken as a whole could not lead a rational trier of fact to find for the non-moving party, there is no ‘genuine issue for trial.’ ” *Matsushita Elec. Indus. Co. v. Zenith Radio Corp.*, 475 U.S. 574, 586 (1986)).

is actually just part of an equitable proceeding as to Partnership accounting under RUPA. Thus, because "an accounting in this context is both an equitable cause of action and an equitable remedy in itself" the Special Master has significant latitude in deciding whether to have full evidentiary hearings as he is not bound to a full summary judgment standard with regard to each and every fact. As Judge Brady noted previously:

However, as an accounting in this context is both an equitable cause of action and an equitable remedy in itself, the Court, upon consideration of the general principles underlying the affirmative defense of laches, together with the express policy goals of RUPA, exercised its considerable discretion in fashioning equitable remedies, to limit the scope of the partnership accounting.

Brady Order of November 15, 2017 at 3. As such, the Special Master, while conducting this "in the form" of a summary judgment has the same broad power, as the finder of fact, to determine what facts have are sufficiently understood by him without an additional evidentiary hearing.

Accordingly, the following HSOFs should be deemed undisputed, and hence admitted, for the purposes of this motion: 8, 12, 16, 18-19, 21, and 30. As just a few examples of these HSOFs where Yusuf is "disputing" a fact, but not doing so in accordance with V.I.R. Civ. P. 56, HSOFs 16, 18 and 30 Hamed provides the following:

HSOF 16 states:

16. Directing the signature of the release document in 2012 was an act under the contract by Fathi Yusuf as the Nominee of the parties. (**Ex. 6**)

Yusuf claims to "dispute" this statement by stating:

16. Disputed. Yusuf submits that this is actually a conclusion of law rather than a statement of fact. However, to the extent that it is a statement of fact, it attempts to allege independent acts in furtherance of the contract so as to portray the transaction as giving rise to an independent cause of action, with continuing violations or partial performance so as to refute a possible statute of limitations bar. Yusuf submits that such statements and efforts are

misplaced as the claims are simply accounting claims between partners and are subject to the Limitation Order's bar date.

Hamed's Response:

Yusuf does not deny that directing Shawn Hamed and Nejeh Yusuf to sign the release document in 2012 was an act by Fathi Yusuf as a Nominee under the contract. Moreover, Yusuf does not point to any evidence of record refuting this statement. Yusuf does not explain why Hamed Exhibit 6 wouldn't support HSOF 16. Finally, Yusuf does not assert that Hamed lacks admissible evidence to prove the statement.² Accordingly, HSOF is one of the material, undisputed facts in this motion that, while Yusuf utters the word "denied", he does not deny under the rule. Similarly,

HSOF 18 states as follows:

18. Fathi Yusuf then delivered the signed contract/escrow release to Attorney King, who release [sic] the Y & S stock to the Buyer pursuant to the contract. This was also an act under the contract. (**Ex. 6** and **Ex. 7**)

Yusuf claims to "dispute" this statement by stating:

18. **Disputed** as written. Yusuf does not dispute that the documents were delivered to Attorney King. Yusuf does dispute the statement that this was an act under the contract.

Hamed's Response:

What does "[d]isputed as written" even mean? Once again, Yusuf fails to satisfy *Rule 56(c)(1)(B)*. He merely makes an assertion (without any stated basis) that the release was "not an act under the contract." That is nonsensical – an absurdity.

² If the statement may also constitute a conclusion of law as well, that is beside the point, and is for the Special Master to determine in any case.

Not only is this an absurdity,³ but he points to absolutely nothing in the record that would demonstrate that Yusuf's delivery of the signed contract/escrow release was not an act under the contract. **The Master does not need an evidentiary hearing to draw a factual conclusion as to this.** Yusuf also does not point to anything in Exhibits 6 or 7 that would show that the delivery of the release is not an act under the contract. Finally, Yusuf does not assert that Hamed is unable to produce admissible evidence in support.

Yusuf's dispute of HSOF 30 presents the exact same scenario as Yusuf's dispute of HSOF 18. **HSOF 30** states:

30. On December 18, 2018, Yusuf filed his supplemental responses to Hamed's discovery requests regarding the Dorothea property. He completely changed his version of events, now stating that the payments for the property occurred prior to 2006, that he had no physical records of the \$1.5 million in payments, and that interest was paid directly to a charity as part of the agreement to donate any interest.

Yusuf supplements his earlier response and confirms that proceeds from the sale were paid and completed before 2006. Yusuf has no records of the payments. Interest was paid directly to a charity as part of the agreement to donate any interest. (**Exhibit 19**)

Yusuf now attempts to "dispute" this prior admission, stating:

30. **Disputed** as written. Yusuf acknowledges his supplemental discovery responses but when asked to further clarify, Yusuf stated that "[i]t is my **belief** that the principle payments were received prior to 2006. **However, I cannot say this for sure.**" See Yusuf Exhibit B-Yusuf's Supplemental Discovery Responses dated January 18, 2019. (Emphasis added.)

Hamed's Response:

There is no dispute regarding the fact that Yusuf said what he said – that **he could not state for sure when payments were received and had no records in support.** Because he changed his story **again** on to naysay his own admission does not make

³ What other possible reason would exist for the delivery of this stock to this buyer than the contract of sale?

HSOF 30 "in dispute," it just shows that Yusuf was willing to lie on a critical point a sometimes. In other words, under the rule, Yusuf cannot create a dispute by simply reversing himself on a factual admission with no evidentiary support.

For the reasons outlined above, HSOFs 8, 12, 16, 18-19, 21, 26 and 30 should be deemed undisputed.

C. Yusuf "disputes" some HSOFs using materials as required by Rule 56, but they are immaterial to Hamed's summary judgment motion

Yusuf does dispute the following HSOFs using certain materials, as required by Rule 56(c)(1)(B), but those materials do not defeat Hamed's summary judgment motion because they still do not create a genuine issue of fact: HSOF 13, 14 and 28-29.

HSOF 13 states:

13. In support of this, Fathi Yusuf also testified in his 2014 deposition that he received proceeds from the Y & S sale of the Dorothea property not more than three years earlier from the date of that April 2, 2014 deposition; totally consistent with the November 16, 2011 transfer of funds for final payment of the Y & S stock by Mr. Salem. (SOF ¶¶ 10, 11)

Q [Mr. Holt]. . . .Dorothia is -- the 1.5 million were -- were monies paid that belonged to you and -- and Mr. Hamed?
A. [FATHI YUSUF] Yes.

* * * * *

A. One million and a half is absolutely 50/50. I'm not hiding anything.

Q. . . .And when did you get that money?

A. 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. . . . (**Exhibit 4**, pp. 101:17-19; 105:6-12)

Yusuf disputes this statement, stating:

13. **Disputed.** Hamed attempts to mischaracterize Yusuf's testimony as meaning within *a few years* of the *deposition date* wherein he testified:

Question: Okay. When did you get that money?

Yusuf Ans.: I get that money, **I don't have a date**. But I get that money maybe, I can guarantee you,

it's not 3 years. It's less than 3 years. I sold this property many, many years ago.

See **Yusuf Exhibit C**-Yusuf Depo. dated April 4, 2014,105:8-12. Hence, while Yusuf may not have the specific dates that he received the payments, he has confirmed that payments were received within a few years ("it's not three years", "[I]t's less than 3 years") *of the sale*, which occurred in 2000 ("many, many years ago"). *Id.* This is also consistent with the stated terms of the *Agreement* that payments were to be received within a few years *of the sale* in 2000.

Hamed's Response:

First, the "fact" here is that a statement that was made in deposition – it is evidence. Second, even if Yusuf's unsupported "dispute" of HSOF 13 were true (Hamed does not believe it is), *it is totally immaterial to the ultimate outcome of Hamed's summary judgment motion.* Hamed contends that under the partial performance of the contract theory, Hamed still would prevail *because the statute of limitations was reset each time a receipt of payments was made.* **Yusuf has not disputed that he received a \$150,000 payment from the buyers on November 16, 2011, thus resetting the statute of limitations. Nor does he dispute that delivery of the stock occurred after that.**

Hamed also would prevail on this point under the "continuing violations doctrine" under Virgin Islands law. Yusuf has admitted and received \$150,000 under the contract in 2011. He was required by the contract to give Hamed his half of the \$150,000. Instead, Yusuf took it upon himself to allocate the funds to an imaginary debt of Hamed. Clearly, nothing in the Y & S contract nor in Yusuf's duties as the nominee permitted him to make that decision and divert Hamed's funds. Similarly, the stock delivery occurred under the contract long after 2006, so the contract was still being performed then. Thus, Yusuf either 1) re-breached the contract and reset the limitations periods or 2) committed an act

of tortious conversion which started a new limitations period. The materials submitted in response to HSOF 13 simply do not create a genuine issue in dispute as to those points.

HSOF 14 states:

14. Just prior to obtaining the Hamed signature to release the stock escrow in 2012, Yusuf showed Waheed "Willie" Hamed and Shawn Hamed a handwritten document that Yusuf prepared. The handwritten document contained the amount owed to Hamed from the sale of the Y & S stock (and by extension, the sale of the Dorothea property) and a loan Hamed paid on behalf of Yusuf. **Yusuf's handwritten calculations showed the total owed Hamed was \$802,966**, and that in exchange for Shawn Hamed's signature, Yusuf would turn over the \$802,966 to Hamed, according to Fathi Yusuf's January 21, 2019 deposition testimony. . . .

Yusuf disputes this statement, stating:

14. This is an extended "statement" which requires clarification. Yusuf does not dispute that he showed Hamed Exhibit 8 either to Hisham or Waheed Hamed. Yusuf does not dispute that Exhibit 8 reflects his handwriting and was an *initial* calculation that he prepared. Yusuf does **dispute** that the \$802,966 is a correct calculation as he testified in his deposition and discovery responses. See Exhibit D-Yusuf Depo. dated January 21, 2019,49:2-50:10. In calculating what was due then it would be \$750,000 for Yusuf (1/2 of the \$1,500,000) and \$600,000 for Hamed (\$750,000 (his 1/2 of the 1,500,000) minus \$150,000 paid to the batch plant from Hamed's portion). *Id.* and Exhibit B-Yusuf's Supplemental Discovery Responses dated January 18, 2019.

Hamed Response:

Yusuf's dispute is not material to the determination of whether Fathi Yusuf's handwritten calculations showed the total owed Hamed was \$802,966. Yusuf agrees that the amount owed Hamed was a total of \$802,966. "Yusuf does not dispute that Exhibit 8 reflects his handwriting and was an *initial* calculation that he prepared." Thus, these facts are admitted. While Yusuf tries to create an illusory dispute as to the amount due by claiming an offset to a non-existent debt of Hamed (which is also contained in his claim Y-12 Foreign Accounts and Jordanian Property and is more appropriately evaluated as a

part of that Yusuf claim), he provides no proof that Hamed ever received any of the \$802,966 as required by Rue 56(c)(1)(B).

Indeed, if Yusuf believed there was such an offset, he should have made this alleged offset a claim so that discovery could occur and the alleged offset examined. However, Yusuf did not identify this claim under the timeframe given for identifying claims, so it is now time-barred and therefore not material to Hamed's summary judgment claim.

HSOF 28 states:

28. Although Yusuf contended in his October 30, 2017 amended accounting claims that the proceeds from the sale of the Y & S and R & F stock were time barred by Judge Brady's July 21, 2017 Order re Limitations on Accounting, Yusuf states the opposite in another section of his amended accounting claims. Yusuf asserted that the email documenting a \$150,000 November 16, 2011 money transfer (Exhibit L) was made by the purchaser of the Y & S and R & F stock and the transfer represented a portion of the purchaser's payment for the stock. This puts the time frame for the receipt of payment for the Y & S stock directly in the post September 17, 2006 timeframe. **(Group Exhibit 14)**

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 [dated November 16, 2011].¹⁷

[Footnote 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.

Yusuf disputes this statement, stating:

28. **Disputed.** Hamed misstates the import of Yusuf's notation in footnote 17 of Yusuf's Amended Accounting Claims. Yusuf's position is that the entire transaction relating to the sale of the stock of Y&S and R&F are barred by the Limitation Order. See Yusuf's Amended Accounting Claims, p. 4, 14-15. To the extent that the Court disagrees, Hamed is only entitled to \$600,000, because he already received the benefit of \$150,000 due to him in the form of the payment that was made on his behalf to satisfy a long-standing debt of his due to the concrete batch plant. Yusuf testified that of the total \$1.5 million received, that \$150,000 of Hamed's share was directed

to be paid a concrete batch plant to cover a payment that Hamed had failed to make to the batch plant some 10 years earlier (i.e. an earlier debt of Hamed's), well before the 2006 bar date. See Yusuf Exhibit D-Yusuf Depo. dated January 21, 2019,49:2-50:10. In calculating what was due then it would be \$750,000 for Yusuf (½ 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). *Id.* and Yusuf Exhibit B-Yusuf's Supplemental Discovery Responses dated January 18, 2019.

Hamed's Response:

Hamed's response to Yusuf's dispute of HSOF 14 applies equally to this "dispute," which argument Hamed incorporates into this response as well, as there is no evidence to support the claim that \$150,000 was ever paid to cover an alleged (and newly created) unrelated debt of Hamed.

HOSF 29 states:

29. On May 15, 2018, Yusuf admitted in his response to Hamed's Fourth Request to Admit, *Hamed v Yusuf*, SX-12-CV-370, that a "balance of \$802,966.00 due to Hamed" and that acknowledgement was made after September 17, 2006.

Request to Admit 30 of 50:

* * *

Admit or Deny that on September 30, 2016, Yusuf's Accounting Claims and Proposed Distribution Plan, p. 3, as filed with the Court, Defendants acknowledged, as follows, in writing: a "balance of \$802,966.00 due to Hamed"-and that such acknowledgement was made after September 17, 2006.

b) an accounting of funds received by Yusuf for the sale of Y&S Corporation ("Y&S") and R&F Condominium, Inc. ("R&F") stock **resulting in a balance of \$802,966.00 due to Hamed** ... (Emphasis added.)

Response:

Admitted that the words quoted above were set forth in Yusuf's Accounting Claims and Proposed Distribution Plan filed on September 30, 2016 without the emphasis added as to the boldfaced type and that such words were modified in Yusuf's Amended Accounting Claims Limited to Transactions Occurring On or After September 17,

2006 (at p. 4 and 14-15) as a result of the Court's July 21, 2017 Memorandum and Order Re Limitations on Actions. (**Exhibit 18**)

Yusuf disputes this statement, stating:

29. **Disputed.** The document reflects that after the Limitation Order, Yusuf amended his Accounting Claims to reflect that the \$802,966 was barred by the Limitation Order.

Hamed's Response:

Again, Yusuf's "dispute" is immaterial to the summary judgment motion because after 2006, Yusuf admitted that this was a debt owed to Hamed. This admission is not impacted by Yusuf's *Amended Accounting Claims* submission noting that Yusuf thinks this claim is barred by the Court's July 21, 2017 limitation order.

III. Hamed's Opposition to Yusuf's Counter-Statement of Facts

A. Undisputed facts

Hamed does not dispute the following Yusuf Counter Statement of Facts ("YCSOF"): 1, 2 and 12-13. They are irrelevant to this motion.

B. Hamed disputes some YCSOFs, but the disputes are also immaterial to Hamed's summary judgment motion

Hamed does dispute the following Yusuf Counter Statement of Facts: 3-11 and 13. These disputes, however, do not impact the motion for summary judgment as the facts are immaterial to the determination of the motion. The first YCSOF that Hamed disputes is **YCSOF 3**.

3. It is undisputed that the transaction giving rise to this claim was initiated and was to be completed prior to the September 17, 2006 cut-off date. The *Agreement of Sale of Stock*, which defines the transaction was dated June 15, 2000 and required the buyer to make four \$225,000 installment payments, which were due on January 15, 2001, January 15, 2002, January 15, 2003 and January 15, 2004—all of which were to occur before the September 17, 2006 cut-off date. See Hamed Statement of Facts ("SOF"),

¶7 and Exhibit 6 thereto, at p.1 and p. 2, ¶3. See Notice referenced in Hamed SOF ¶17 stating payments were made "on a timely basis." YCSOF p. 8.

Hamed's Response:

While Hamed does not dispute that the sale of the stock was *intended* to be made in four payments on the dates Yusuf specified, Hamed *note Yusuf's admission* that those payments were made on those dates. He admits (in both his September 30, 2016 and October 17, 2017 claims submissions) that at least one payment (for \$150,000) occurred on November 16, 2011. **(Hamed Group Exhibit 14)** As for the rest of the payments, Yusuf stated that **he could not remember when they were made and does not have documentation for those allegedly earlier payments. (Hamed Exhibits 19 and 21)**

Finally, although the notice to release the stock certificates did state the following:

Pursuant to that certain agreement of Sale of Stock dated June 15th, 2000 by and between Hisham Hamed and Najah Yusef, as sellers, and Hakima Salem, as buyer, conveying the sellers' 1,000 shares of Y & S Corporation, a United States Virgin Islands corporation, the undersigned hereby gives you formal written notice that the purchase price has been paid in full on a timely basis and that you are authorized and directed to release the shares of stock that have been endorsed by the sellers to the buyer. **(Hamed Exhibit 6)**

Yusuf knows that is not what happened, that the payments were NOT made on a timely basis because 1) **Yusuf admitted that a payment was made on November 16, 2011 pursuant to the stock sale (Hamed Group Exhibit 14)** and 2) Yusuf stated in a response to an interrogatory that interest *under this contract* "was paid directly to a charity as part of the agreement to donate any interest." Critically, the original June 15, 2000 Agreement of Sale document also provided that interest would be assessed when a payment was *late*:

4. Interest: The installments due hereunder shall accrue interest on the outstanding balance. . . . In the event that an installment is late, the interest payable or accruable to the date of the late payment shall be paid to the IQRA School in St. Croix, United States Virgin Islands. . . .

5. Default: It shall be a default under this agreement if Buyer shall fail to pay principal payments in the amount of Four Hundred Fifty Thousand (\$450,000.00) Dollars on or before January 15, 2002 and the grace period herein provided. It shall also be a default if Buyer shall fail to make timely payment of installments due on January 15, 2003 or January 15, 2004 within the allotted grace period. In the event that Buyer shall default. . . the seller may accelerate the remaining indebtedness, making the entire amount then outstanding, immediately due and payable. Upon acceleration and notice thereof, Buyer shall pay the entire principal balance then outstanding to the Seller's Nominee, Fathi Yusef and shall pay any and all accrued interest to the IQRA School. (**Exhibit 7**, pp. HAMD666044-45)

While Yusuf has not provided information on whether an installment was in default or not because he only kept one record of payment for the whole loan, it is clear by Yusuf's own admission that interest was paid to the IQRA School under the contract (showing either a late payment or a loan default). This demonstrates that the *Notice of Payment of Purchase Price and Authorization to Release Stock Certificates* assertion that the payments were made on a timely basis was just boilerplate and clearly erroneous.

YCSOF 4

4. As to the timing of the payments for this transaction, Mr. Yusuf has testified:

Yusuf supplements his earlier response and confirms that proceeds from the sale were paid and completed before 2006. Yusuf has no records of the payments. Interest was paid directly to a charity as part of the agreement to donate any interest.

See **Exhibit A**-Yusuf's Supplemental Discovery Responses dated December 18, 2018. YCSOF p. 8.

Hamed's Response:

Hamed does not dispute that Mr. Yusuf *testified* that the proceeds from the sale of the stock were paid and completed before 2006, rather Hamed asserts that the statement

is false AS A MATTER OF RECORD because Mr. Yusuf later changed that December 18, 2018 statement on January 18, 2019, now saying under oath "It is my belief that the principle payments were received prior to 2006. However, I cannot say this for sure."

(Hamed Exhibit 21)

YCSOF 5

5. Subsequently, Mr. Yusuf clarified to state:

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 1/2 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 "Dorothea" 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.

See **Exhibit B** - Yusuf's Supp. Discovery Responses of January 18, 2019.

Hamed's Response:

Hamed does not dispute that Mr. Yusuf *responded* this way to an interrogatory, rather Hamed asserts that *this response does not account for the full amount due Hamed and discusses an alleged set-off that is irrelevant for purposes of this summary judgment motion. Yusuf has already admitted (after the bar date) the amount owed Hamed for the Dorothea transaction is \$802,966* (an amount which includes the sale of the Dorothea condo and repayment of a loan Yusuf asked Hamed to cover for him). (**Hamed**

Exhibit 8) Yusuf also discusses a set-off irrelevant to this discussion – an alleged debt of \$150,000 that, according to Yusuf, was incurred 10 years prior to November 16, 2011, well before the Court's September 16, 2006 Accounting Limitation Order. This alleged \$150,000 claim is covered in Yusuf's Y-12 Foreign Accounts and Jordanian properties claim (**Hamed Group Exhibit 14**) and should be properly considered when Yusuf files his motion for that claim.

YCSOF 6

6. This is consistent with Yusuf's prior testimony in 2014, wherein he testified:

Question: Okay. When did you get that money?

Yusuf Ans.: I get that money, I don't have a date. But I get that money maybe, I can guarantee you, it's not 3 years. It's less than 3 years. I sold this property many, many years ago.

See **Exhibit C**-Yusuf Depo. dated April 4, 2014,105:8-12.

Hamed's Response:

Again, Hamed does not dispute that Yusuf testified this way in his deposition on April 4, 2014. Rather, Hamed notes that Yusuf states "I get that money, I don't have a date. But I get that money maybe, I can guarantee you, it's not 3 years. It's less than 3 years." This statement is referring to the date of the deposition, not the date the property was sold. This is consistent with the facts that 1) the contract for the sale of the stock was in 2000, 2) a payment for the sale of the stock occurred on November 16, 2011 and 3) a document transferring the stock was signed in 2012. (**Hamed Exhibits 6, 14 and 7**) In any event, the Special Master does not need to consider this fact because **Yusuf has already admitted under oath that he does not remember when the payments were**

made and Yusuf provided documented evidence that at least one payment was made in 2011. That is the single, undisputed material fact that controls here.

YCSOF 7

7. Hence, while Yusuf may not have the specific dates that he received the payments, he has confirmed that payments were received within a few years ("it's not three years", "[I]t's less than 3 years") *of the sale*, which occurred in 2000 ("many, many years ago"). *Id.* This is also consistent with the stated terms of the *Agreement* that payments were to be received within a few years of the sale. See Hamed Statement of Facts ("SOF"), ¶7 and Exhibit 6 thereto, at p.1 and p. 2, ¶3 and the Notice (Ex. 7).

Hamed's Response:

Hamed disputes Yusuf's interpretation of his deposition testimony and incorporates his responses to YSCOF 3 and 6, however, the Special Master does not need to consider this response, as it does not comport with V.I. R. CIV. P. 56(c)(1)(B) and the Special Master has discretion to grant summary judgment under V.I. R. CIV. P. 56(e):

(e) Failing to Properly Support or Address a Fact. If a party fails to properly support an assertion of fact or fails to properly address another party's assertion of fact as required by Rule 56(c), the court may: (1) give an opportunity to properly support or address the fact; (2) consider the fact undisputed for purposes of the motion; (3) grant summary judgment if the motion and supporting materials — including the facts considered undisputed — show that the movant is entitled to it; or (4) issue any other appropriate order.

Yusuf does not point to anything in the record supporting his version that the "less than 3 years" was of the sale and not the date of the deposition. He has no documents. He contradicts himself. He admits later payments. The Special Master can consider this and decide these facts based the record – without a further evidentiary hearing.

YCSOF 8

8. In his most recent deposition, Yusuf was asked questions about the Dorthea transaction and when he had Hisham Hamed and Najeh Yusuf sign a release. Yusuf explained "I want them to give the release, because the

people ask for the release. They already paid the money long time, and they requested the release, and I told Shawn to sign the release.” See **Exhibit D**, Yusuf Depo. dated January 21, 2019, 25:1-4. Yusuf further testified that he does not recall when he received \$1.3 million of the \$1.5 million. *Id.* at 28:1-2.

Hamed's Response:

Hamed does not object that Yusuf testified as quoted, but does note that Yusuf's testimony is not inconsistent with the view that payments were made after 2006, as that would leave a span of 13 years for payments and that is certainly consistent with paying some of “the money long time.” Additionally, Yusuf provided evidence that a payment against the loan was made on November 16, 2011. (**Hamed Exhibit 14**) Finally, **the stock transfer took place after the admitted later payment – exactly as required by the terms of the contract.**

YCSOF 9 and 10

9. There are no records as to the payments or when they were received. See Exhibit A Yusuf's Supplemental Discovery Responses dated December 18, 2018.

10. The only payment for which there is any documentation is a payment in 2011 in which a \$150,000 was paid directly to a concrete batch plant in Jordan at Yusuf's direction to satisfy a joint obligation of the partners, Hamed's portion of which Hamed failed to pay some ten (10) years earlier. See Exhibit D, Yusuf Depo. dated January 21, 2019; 22:3-1; 43:5-49:12. However, this single payment does not demonstrate when the other \$1,350,000 value had been received.

Hamed's Response:

Hamed notes that Yusuf has conceded that at least one payment against the loan was made in 2011 – with the transfer of the stock following that final payment. Once that has been conceded, all of their other arguments become moot for purposes of Hamed's summary judgment motion.

YCSOF 11

11. Yusuf testified that of the total \$1.5 million received, that \$150,000 of Hamed's share was paid directly to a concrete batch plant to cover a payment that Hamed had failed to make to the batch plant some 10 years earlier (i.e. an earlier obligation of Hamed's), well before the 2006 bar date. See Exhibit D-Yusuf Depo. dated January 21, 2019,49:2-50:10. In calculating what was due then it would be \$750,000 for Yusuf (1/2 of the \$1,500,000) and \$600,000 for Hamed (\$750,000 (his 1/2 of the 1,500,000) minus \$150,000 paid to the batch plant from Hamed's portion). *Id.* and Exhibit B-Yusuf's Supplemental Discovery Responses dated January 18, 2019.

Hamed's Response:

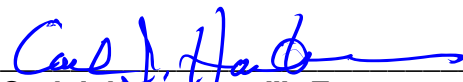
Hamed has already responded to this argument as being irrelevant to this motion in his response to YCSOF 5, which is incorporated herein by reference.

IV. Conclusion

Nothing in Yusuf's "disputes" to Hamed's *Statement of Facts* or Yusuf's *Counter Statement of Facts* would preclude judgment in favor of Hamed.

Thus, Hamed requests that the Special Master grant his motion for summary for the full \$802,966 that is owed for the Dorothea property. He is also entitled to prejudgment interest. Both should be entered in favor of Hamed against Yusuf on Claim H-1 and credited to his Partnership account when all claims are reconciled.

Dated: June 7, 2019



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CERTIFICATE OF SERVICE AND COMPLIANCE WITH RULE 6-1(e)

I hereby certify that the above document meets the requirements of Rule 6-1(e) and was served this 7th day of June, 2019. I served a copy of the foregoing by email (via CaseAnywhere), as agreed by the parties, on:

Hon. Edgar Ross

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A handwritten signature in blue ink, appearing to read "Carl J. Haddad", with a long horizontal flourish extending to the right.