

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 COUNTER STATEMENT OF FACTS:
RE HAMED'S REVISED CLAIM H-2 – \$2.78 MILLION
UNILATERAL WITHDRAWAL FROM THE PARTNERSHIP BANK ACCOUNT**

I. Introduction

Pursuant to the Special Master's Order of May 13, 2019, on May 28, 2019 Yusuf filed his *Revised Opposition to Hamed's Motion and Memorandum for Summary Judgment Re Claim H-2 – \$2.78 Million Unilateral Withdrawal from the Partnership Bank Account*. However, the body of Yusuf's 'revised' Opposition is almost exactly the same as his original Opposition – what was added are: (1) a paragraph-by paragraph opposition to the Hamed SOF, and 2) a counterstatement as to the facts. *Accordingly, in this filing Hamed responds only to Yusuf's new factual filings, but relies on his original Reply as to the merits, filed on April 24, 2019.*

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

Unfortunately, as will be discussed below, Yusuf largely fails to follow the Court's instructions that he revise *his Opposition* to respond to Hamed's *Statement of Facts* ("HSOF"). Although Yusuf makes repeated "surface level" statements that Yusuf "disputes" facts in the HSOF – there is no real effort to *respond* to the facts with evidence and facts of record as the applicable rule requires, *and, critically, the 'new' fact responses are not integrated into the 'revised' Opposition*, which remains substantially unchanged. Thus, this has largely been an exercise in Yusuf simply stating "NO" to facts rather than really attempting to substantively meet them with evidence as the rules require.

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

In the Opposition, Yusuf concedes the following Hamed statements of fact: ¶¶ 1, 3-6, 8-10, 12-14, 17, 19-20 and 24.

Moreover, as to HSOFs ¶¶ 8-10, 14, 17 and 20, while Yusuf repeatedly 'states' that the statement is "undisputed," he then *adds a qualifier* such as "[i]rrelevant to the issues addressed in this motion," or "[c]ertain statements related to the issues of an injunction are not relevant to the matters now at issue." However, because Yusuf concedes these HSOFs are undisputed

(and the qualifiers are irrelevant and do not conform to *V.I. R. Civ. P. 56(c)(1)(B)*), these are treated as undisputed statements as well.

Arriving then at the real items of interest here, while Yusuf says he “denies” some facts, as will be discussed in detail below, Yusuf does not provide a *proper* denial -- so these facts *can be considered undisputed for the purposes of this motion under V.I.R. Civ. P. 56(e)(2)*: HSOFs ¶¶ 11, 15-16, 18 and 21-23.

Taken together, these ‘admitted’ and ‘not-actually-denied’ facts are sufficient on this record to allow the Special Master to grant the relief sought.

B. Yusuf “disputes” some statements of fact, but offers no proof to contradict these HSOFs and therefore they 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 the resisting party to: (1) cite to *materials in the record contradicting the statement*, (2) show that the materials cited do or do not establish a genuine dispute of fact or (3) there is no 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 “disputes” a number of Hamed’s statements of fact with *conclusory denials* that do not cite to any materials in the record. 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 somehow fail to 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)* (emphasis added):

(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; . . .

Thus, the facts Yusuf denied but failed to support with the materials required by *Rule 56(c)(1)(B)* can be deemed '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 in this case that the Special Master, as the "trier of facts" here, has wide discretion as to how to address and handle such disputes because, while this "looks" like a summary judgment motion, *it is actually part of an equitable proceeding as to a Partnership accounting under RUPA*. 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.**

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)).

Brady Order of November 15, 2017 at 3 (emphasis added.) As such, the Special Master, while conducting this "in the form" of a summary judgment analysis, has the same broad power, as the finder of fact, to determine what facts are sufficiently understood by him without an additional evidentiary hearing or other proceedings/filings. In other words, this is "claims processing" not a full summary judgment proceeding.

As just a few examples of Yusuf "disputing" a fact, but not doing so in accordance with *V.I. R. Civ. P. 56*, HSOFs ¶¶ 11, 15-16 and 21-22 provide representative samples.

Hamed's HSOF ¶ 11 states:

11. On January 9, 2013, Fathi Yusuf called the police and demanded that the Hameds (Waleed "Wally" Hamed and Mufeed "Mafi" Hamed) and Wadda Charriez be removed from the Plaza Extra-East store as trespassers. He also threatened to close down the Plaza Extra-East store if the police did not do so. As Judge Brady recounted in his Finding of Facts in his April 25, 2013 Memorandum Opinion:

40. On January 8, 2013, Yusuf confronted and unilaterally terminated 15 year accounting employee Wadda Charriez for perceived irregularities relative to her timekeeping records of her hours of employment, threatening to report her stealing if she challenged the firing or sought unemployment benefits at Department of Labor, Tr. 181:20-185:16. Charriez had a "very critical job" with Plaza Extra (Tr 179.:17-19), and the independent accountant retained by Yusuf agreed that she was "a very good worker" and that her work was "excellent." Tr. 94:2-6. Because the Hamed co-managers had not been consulted concerning the termination or shown any proof of the employee's improper activity, Mafeed Hamed instructed Charriez to return to work the following day. Tr. 179.: 4-24; 185:17-186:83. On Charriez' January 9, 2013 return to work, Yusuf started screaming at her, and told her to leave or he would call the police. Tr. 186:9-187:113. Yusuf did call police and demanded on their arrival that Charriez, and Mufeed Hamed and Waleed Hamed be removed from the store, and threatened to close the store. Tr. 93:5-94:15; 164:19-165:18; 187:5 -188:8. (**Exhibit 11**, p. 11)

Yusuf claims to "dispute" this statement by stating:

11. **Disputed** as written. (Irrelevant to the issues addressed in this motion.)

Hamed's Response:

What does "[d]isputed as written" even mean? All of those things happened. They are all facts found by the Court and are of record. Yusuf fails to fulfill Rule 56(c)(1)(B). Yusuf does

not assert that Judge Brady was wrong when he stated that “Yusuf confronted and unilaterally terminated 15 year accounting employee Wadda Charriez for perceived irregularities relative to her timekeeping records of her hours of employment, threatening to report her stealing if she challenged the firing or sought unemployment benefits at Department of Labor.” Yusuf also does not say Judge Brady was incorrect when he found that “Yusuf did call police and demanded on their arrival that Charriez, and Mufeed Hamed and Waleed Hamed be removed from the store, and threatened to close the store.” Yusuf does not point to any evidence of record refuting these findings by Judge Brady. Yusuf does not explain why Hamed Exhibit 11 wouldn't support HSOF ¶ 11. Yusuf also does not assert that Hamed lacks admissible evidence to prove the statement. Yusuf merely states that this fact is “irrelevant” to the issues addressed in the motion without facts or statement as to why. This fact is not irrelevant – it shows a pattern of Fathi Yusuf unilaterally making decisions and taking action on the part of the Partnership with no input or consideration of his partner, Mohammad Hamed. Accordingly, HSOF ¶ 11 is one of the material, undisputed facts in this motion. Similarly,

HSOF ¶ 15 states:

15. However, on January 31, 2013, Maher Yusuf was caught in a fabrication regarding where the money went. He admitted in a hearing before Judge Brady that, contrary to his prior testimony under oath, the three properties purchased in United's name with the \$2.78 million withdrawn from the Partnership accounts in August actually went to a non-partnership business deal of the Yusufs—that he purchased one property, a mattress company, and other businesses with the Partnership funds. Maher Yusuf also admitted that the purchase of the mattress company and other businesses with Partnership funds was not in United Corporation d/b/a Plaza Extra's name and therefore were in entities that were outside of the control of the Partnership and thus the Hameds. . . .

Yusuf claims to “dispute” this statement by stating:

15. **Disputed** as written. (Irrelevant to the issues addressed in this motion.)
Undisputed as to the quoted testimony.

Hamed's Response:

Again, Yusuf just tosses out his stock, meaningless "[d]isputed as written" phrase. Thus, Yusuf's objection once again fails to satisfy *Rule 56(c)(1)(B)*. Again, Yusuf is not denying that Fathi and Maher Yusuf moved some of the \$2.78 million out of the reach of Fathi Yusuf's partner, Mohammad Hamed. **Rather he admits that this point is: "[u]ndisputed as to the quoted testimony."** How is that not just a plain vanilla admission?

Yusuf does not point to evidence of record refuting Hamed's statement of fact, he does not state or explain why Hamed Exhibit 13 does not support HSOF ¶ 15 and he does not claim that Hamed lacks admissible evidence to prove the statement. He merely makes an anemic statement that HSOF ¶ 15 is "[i]rrelevant to the issues addressed in this motion." Of course, that is untrue as well. It is very relevant to the motion as it showed Yusuf's intent to move Partnership money out of the reach of his partner, Mohammad Hamed, by purchasing businesses that had no relation to the Partnership and doing it unilaterally and without Mr. Hamed's consent. Thus, HSOF ¶ 15 is one of the material, undisputed facts in this motion. Also,

HSOF ¶ 16 states:

16. On January 31, 2013 in a hearing before Judge Brady, Waleed Hamed testified that prior to Yusuf's withdrawal of \$2,784,706.25, neither the Hameds nor the Yusufs ever withdrew funds from Partnership accounts without the prior agreement of both families.

Q [MR. HOLT] And prior to the withdrawal of the 2.7 million, can you tell me whether or not any member of the Hamed or Yusuf family had ever withdrawn funds that were not agreed to?

A [WALEED HAMED] No. (**Exhibit 13**, p.123:5-9)

Yusuf claims to "dispute" this statement by stating:

16. **Disputed.** In the Limitation Order, Judge Brady described the accounting and practices of the partners as a system in "which both partners and their respective family members *unilaterally withdrew* funds from partnership accounts as needed to cover various business and personal expenses" and that "there exists no authoritative ledger or series of financial statements recording the distribution of funds between the partners." See Limitation Order, p. 11, fn. 10 (emphasis added). Hence, Waleed Hamed's representation that "neither the Hameds nor the Yusufs ever withdrew funds from Partnership accounts without the prior agreement of both families" is contradicted by the Court's findings. To the extent that there was an

agreement between the families, it was that they would keep track of their withdrawals and then reconcile at periodic times – which is what Yusuf was doing with his matching withdrawal.

Hamed's Response:

Yet again, Yusuf admits the central point of Waleed Hamed's testimony in HSOF ¶ 16. Yusuf states “[t]o the extent that there was an agreement between the families, it was that they would keep track of their withdrawals and then reconcile at periodic times – which is what Yusuf was doing with his matching withdrawal.” Thus, it was agreed that reconciliation requires a gathering of all Partnership debts, reconciling the withdrawals between the two parties, and an agreement that the reconciliation is accurate. Reconciliation was never agreed to be a unilateral act. As Hamed pointed out in his HSOFs, this was clearly *not* a global reconciliation because it reflected the withdrawals of one store only, it did not include other amounts owed to Hamed such as reimbursement for the Dorothea condo sale and the bank withdrawals were one sided because Yusuf's withdrawals from foreign bank accounts containing Partnership funds were not included. Thus, HSOF ¶ 16 should be deemed undisputed.

Similarly, **HSOF ¶ 21** states:

21. On April 1, 2014, Mohammad Hamed testified under oath in his deposition that he did not agree Fathi Yusuf was entitled to withdraw the \$2.78 million because Mohammad Hamed should have received half—his share as a Partner.

Q. (Mr. Hodges) Okay. In other words, you agree that Mr. Yusuf was entitled to withdraw the \$2.7 million, approximately, that is identified?

* * * *

Q. (Mr. Hodges) Mr. Hamed, you agree with me that the amounts set forth in this letter, Mr. Yusuf was entitled to withdraw.

THE INTERPRETER: No.

A. No.

Q. (Mr. Hodges) Why?

A. Because I have to have my share. He get half, and I get half. Not to take two million and seven, not to take—(speaking in Arabic). How is a partner? I'm his partner in the business. (**Exhibit 16**, p. 73:19-21; 74:6-8, 13-18)

Yusuf claims to “dispute” this statement by responding:

21. Undisputed that Hamed has so testified. **Disputed** that Yusuf was not entitled to take the funds as a counter-withdrawal to Hamed's prior withdrawals.

Hamed's Response:

Yusuf's dispute is completely unsupported by any evidence, as is required by *Rule 56(c)(1)(B)*. Yusuf has not provided any evidentiary support in the record to rebut the fact that 1) the Yusuf \$2.78 million withdrawal justification was based on just one store reconciliation—not all three stores; 2) the Yusuf “reconciliation” did not include amounts owed to Hamed, such as the reimbursement for Hamed's share of the sale of the Dorothea condo and 3) the Yusuf “reconciliation” did not include offsetting withdrawals Yusuf made from foreign accounts containing Partnership funds. Accordingly, HSOF ¶ 21 is one of the material, undisputed facts.

Similarly, **HSOF ¶ 22** states:

22. On April 3, 2014, Maher Yusuf testified in his deposition that it was impossible to go from 1986 to April 4, 2014 and reconcile all of the receipts demonstrating cash withdrawals from the Plaza Extra stores made by the Hameds and the Yusufs because some of the receipts had been destroyed.

Q. [MR. HARTMANN]. . .so for every transaction where cash was removed from any of the safes, - There were three safe rooms, one in each store, is that correct?

A. [MAHER YUSUF] Yes.

Q. – there would have either been an entry in a ledger, or a receipt, is that correct?

A. Entry in a ledger, or a receipt? Yes, yes.

* * * *

Q. [MR. HARTMANN]. . .And to the best of your knowledge, all of those receipts still exist today from 1986 on?

A. No.

Q. [MR. HARTMANN] . . . I asked you if I could go around and collect all these receipts, add them up and find out how much the Hameds took out, and how much the Yusufs. You said yes.....And I said, So I should be able to do that from the – from back till now, and you said, no, there's a problem. You said some might be in the possession of a third party.

A. [MAHER YUSUF] Right.

Q. When I have those from the third party, will I then be able to get that number?

A. To physically check every receipt by receipt?

* * * *

A. There's—there's some receipt was destroyed by Waleed Hamed, and some receipts were destroyed by me. . . . (Ex. 17, pp. 61:21-25; 62:1-4, 20-22; 63:4-18)

Yusuf claims to “dispute” this statement by stating:

22. **Disputed** at written. Various receipts are available and reconstruction can be had as to those receipts.

Hamed's Response:

Stating that “various receipts are available and reconstruction can be had as to those receipts” is unsupported by any reference to the records and is an outright falsehood as can be seen on the face of the testimony above – the opposite is true based on all FACTS of record. This is just saying “no it isn't” and fails to fulfill *Rule 56(c)(1)(B)*. *Maher Yusuf testified under oath that a reconstruction could absolutely not be made: “There's—there's some receipt was destroyed by Waleed Hamed, and some receipts were destroyed by me.”* On the other hand, if they exist and are relevant—now is the time for Yusuf to adduce them. Rather he makes a vague reference to “various receipts” – nothing concrete ‘of record’ in the way of refuting *Maher Yusuf's own statement* that a reconstruction of the receipts could not be made. Yusuf does not explain why Hamed Exhibit 17 wouldn't support HSOF ¶ 22. Yusuf also does not assert that Hamed lacks admissible evidence to prove the statement. Accordingly, HSOF ¶ 22 is one of the material, undisputed facts in this motion, and ¶¶ 11, 15-16, 18 and 21-23 are 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 of record, 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 material fact: HSOF ¶¶ 2, 7 and 25-26.

For example, **HSOF ¶ 2** states:

2. After the deposit of the \$2.78 million check had already occurred, Fathi Yusuf had a letter dated August 15, 2012 addressed to Mohammad Hamed hand delivered to Hamed's son, Waleed Hamed on August 16, 2012. Yusuf's letter stated that he was unilaterally withdrawing \$2,784,706.25 from the Plaza Extra Supermarkets Partnership operating account—effective 8/15/2012. He identified three items explaining the withdrawal: past confirmed withdrawals (\$1.6 million), additional withdrawals (\$1.095 million) and two foreign bank accounts (\$89,000).

The amount of \$2,784,706.25 will be withdrawn from United's Operating account effective August 12th, 2012: This amount equals the proceeds you previously withdrew through your agent Waleed Hamed. To ensure full accuracy, attached are the receipts you requested during mediation demonstrating the \$1,095,381.75 of withdrawals. The below itemized amounts are not in dispute. (**Exhibits 2 and 21**)

Past Confirmed Withdrawals.....	\$1,600,000.00
Additional Withdrawals per the attached [] receipts	\$1,095,381.75
Fifty Percent (50%) of St. Maarten Bank Account.....	\$44,355.50
Fifty Percent (50%) of Cairo Amman Bank.....	\$44,696.00

Yusuf claims to “dispute” this statement by stating:

2. **Disputed** as written. The letter explaining the basis for the withdrawal with the corresponding withdrawals was dated the same date as the check – August 15, 2012. The letter and supporting documentation speak for themselves. It also appears that the funds did not leave the account until August 20, 2012, some five (5) days later. Therefore, the funds had not been removed when the letter was sent and remained in the account for an additional five (5) days thereafter. . . .

Hamed's Response:

Yusuf looks like he is fulfilling *Rule 56(c)(1)(B)*, but his “proof” is no proof at all. Yusuf points to HSOF ¶ 4 and Hamed Exhibit 4 to allegedly refute Hamed's statement that the funds were not moved before Hamed was made aware of the check and the reasons for the removal. Hamed Exhibit 4 shows the date the check *cleared* the Partnership account, not the date the funds were moved via the check from the Partnership account to Fathi Yusuf's United tenant account. Exhibit 1 shows that the \$2.78M check was written on August 15, 2012 – the date the funds were moved — and Hamed Exhibit 2 shows that Hamed did not receive the letter explaining why the funds were unilaterally being withdrawn until the following day, August 16, 2012. **More importantly, the central fact of the unilateral removal of the \$2.78 million from the Partnership account is not disputed by Yusuf, the timing of the removal is immaterial to this summary judgment motion and may be disregarded.**

HSOF ¶ 7 states:

7. On September 17, 2012, this action was filed because of: (1) Yusuf's denial of ALL of Hamed's partnership rights, and (2) Yusuf's unilateral taking of \$2.7 million from the Partnership. (**Exhibit 7**)

Yusuf claims to “dispute” this statement by stating:

7. **Disputed** as written. Yusuf does not dispute that the Complaint in this action was filed. Yusuf is without information to know the motivations behind Hamed's decision to file the suit.

Hamed's Response:

Yusuf admits the key part of this statement “Yusuf does not dispute that the Complaint in this action was filed.” The rest of the statement is immaterial to this summary judgment motion and may be disregarded.

III. Hamed's Reply to Yusuf's Counter Statement of Facts

A. Undisputed facts

Hamed does not dispute the Yusuf Counter Statement of Facts (“YCSOF”) 1 and 9.

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: 2-8 and 10-12. 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 YSCOF ¶ 2.

YCSOF ¶ 2:

2. The various amounts as set forth in Yusuf's Amending Accounting Claims are off-set against each other. If a check was paid from the partnership to the Yusufs to counter balance a previous withdrawal by the Hameds, both the check and the previous withdrawal are reflected as to the respective family on the various sides of the ledger. *Id.*

Hamed's Response:

The various amounts in Yusuf's Amending Accounting Claims were not off-set against each other. **This was the conclusion of Yusuf's own accountants, BDO, who prepared the report Yusuf references in Yusuf Exhibit A.** BDO stated the following:

2.2 Assumptions and Limitations

Our procedures do not constitute an audit, review, or compilation of the information provided and, accordingly, we do not express an opinion or provide any other form of assurance on the completeness or accuracy of the information. The use of the

words "audit" and "review" throughout this document do not imply an audit or examination as used in the accounting profession. We make no further warranty, expressed or implied. (Emphasis added.) (**Hamed Exhibit 22**, p. 3)

The BDO report upon which Yusuf relies states on its face that it is not an accurate accounting of the withdrawals between the partners from the inception of the Partnership through the end of it. Indeed, BDO *itself* itemized numerous instances of faulty documentation:

4.5 Limitations

Our report and the findings included herein have been impacted by the limitation of the information available in the Case. Following is a summary of the limitations we encountered during the performance of the engagement.

- Accounting records of [PE]-East were destroyed by fire in 1992 and the information was incomplete and/or insufficient to permit us to reconstruct a comprehensive accounting of the partnership accounts before 1993.
- Accounting records and/or documents (checks registers, bank reconciliations, deposits and disbursements of Supermarkets' accounts) provided in connection with Supermarkets were limited to covering the period from 2002 through 2004, East and West from 2006 through 2012, and Tutu Park from 2009 through 2012.
- Accounting records and/or documents provided to us for the periods prior to 2003 are incomplete and limited to bank statements, deposit slips, cancelled checks, check registers, investments and broker statements, cash withdrawal tickets /receipts and cash withdrawal receipt listings. . . . (**Hamed Exhibit 22**, p. 22)

BDO's comments throughout the report substantiate the lack of documentation and a reliance on Yusuf for explanations and assumptions, rather than facts, to determine Partnership withdrawals and distributions:

- Nevertheless, certain investments bought and sold by Mr. Waleed Hamed, which **Mr. Yusuf understands were not included in the initial reconciliation** were taken into consideration in our analysis. (**Hamed Exhibit 22**, p. 2)(Emphasis added).
- In order to identify all monies withdrawn from the Partnership through checks **we identified available** checks. . . .**Our examination included available** Partnership bank accounts . . . (**Hamed Exhibit 22**, p. 13)(Emphasis added).
- Furthermore, our analysis was aimed to identify all withdrawals made through the Supermarkets by the Partners, family members and/or their agents **which could be construed** to be partnership distributions. (**Hamed Exhibit 22**, p. 14)(Emphasis added).

- We should mention that a number of the cash withdrawals identified and attributed to Waleed Hamed during our examination were not dated. . . .
(**Hamed Exhibit 22**, p. 27)(Emphasis added).

During a hearing before Judge Brady, Hamed introduced an exhibit that identified numerous Yusuf accounts that BDO did not include in its analysis containing Partnership funds (**Hamed Exhibit 23**) and Hamed introduced another exhibit that showed bank accounts containing Partnership funds that the FBI was able to analyze during the pendency of the criminal case, but BDO did not include those accounts in its report. (**Hamed Exhibit 24**)

While BDO's report is not a reliable "reconciliation" of the Partnership withdrawals and disbursements and Hamed disputes it, this does not alter the fact that Yusuf made a unilateral Partnership withdrawal of \$2.78 million and Hamed is owed an equal disbursement.

Similarly, **YCSOF ¶ 3:**

3. Yusuf has accounted for and listed the \$2.78 million dollar withdrawal from the partnership on his side of the ledger in the category of "funds received from the partnership through checks" along with any other checks from the partnership he received from the cut-off date forward. *Id.* Corresponding previous withdrawals are listed on the Hamed side of the ledger broken down into the various forms in which they were received (be it "withdrawals from the partnership with a signed ticket/receipt" or documented as set forth in the category for "amount owed by Hamed Family to Yusuf as per agreement before raid Sept. 2001 (Letter dated August 15, 2012)"). *Id.*

Hamed's Response:

Hamed's response to YCSOF ¶ 2 applies equally to this YSCOF, which argument Hamed incorporates into this response as well. **The central issue of the \$2.78 million being unilaterally removed has been fully admitted by Yusuf and is uncontested.**

And, **YCSOF ¶ 4:**

4. Yusuf does not dispute that the \$2.78 million dollar check was removed but does dispute that it was unjustified as it was a corresponding matching withdrawal. See **Exhibit B**-August 15, 2012 Letter with corresponding supporting documentation for the withdrawal. Yusuf provided documentary support for the withdrawal and formally notified Hamed of the withdrawal in writing. *Id.*

Hamed's Response:

Hamed disputes Yusuf's claim that the \$2.78 million dollar withdrawal was justified. The following factors make the withdrawal of the \$2.78 million unjustified:

Past Confirmed Withdrawals - \$1.6 million

Maher testified that the \$1.6 million reconciliation was for the Plaza Extra East store only. PE West and Tutu were not reconciled, so it is impossible to know if Yusuf would have owed Hamed, or the eventual amount would have been anything like \$1.6 million.

Additional Withdrawals per the attached requested receipts - \$1.01 million – dated documents are from 1997-2001 and some documents are not dated

- 1) Maher Yusuf also testified that it was impossible to go from 1986 to April 4, 2014 and reconcile all of the receipts demonstrating cash withdrawals from the Plaza Extra stores made by the Hameds and the Yusufs because some of the receipts had been destroyed. (Hamed SOF ¶ 22).
- 2) BDO also noted in its report that “[a]ccounting records and/or documents provided to us for the periods prior to 2003 are incomplete.” (**Hamed Exhibit 22**, p. 22)
- 3) None of the Yusuf withdrawals for the 1997-2001 time period were provided in the documentation accompanying the August 15, 2012 letter, so it would be impossible to determine whether the correct offset was \$1.01 million. (Hamed SOF ¶ 3, **Hamed Ex. 2**)

Fifty percent (50%) of the St. Maarten Bank Account (\$44,355.50) and the Cairo Amman Bank (\$44,696.00)

- 1) No documentation showing the amount Hamed withdrew from the St. Maarten or Cairo Amman bank accounts was provided in the documentation accompanying the August 15, 2012 letter. (Hamed SOF ¶ 3, **Hamed Exhibit 2**)
- 2) Even if documentation had been provided of the amount withdrawn, it still would have been an incomplete reconciliation because none of the amounts Fathi Yusuf withdrew from foreign accounts was provided. (Hamed SOF ¶ 3, **Hamed Exhibit 2**)
- 3) BDO, Yusuf's accountant, did not include in its report and analysis many foreign accounts in Fathi Yusuf's name containing Partnership funds, making it impossible to state that Yusuf's withdrawal was justified. (**Hamed Exhibit 23**)
- 4) BDO also did not include in its report and analysis the foreign accounts in Fathi Yusuf's name containing Partnership funds identified by the FBI in the criminal case, thus making it impossible to state that Yusuf's withdrawal was justified. **Hamed Exhibit 24**)

No Hamed Offsets were Included

Finally, Yusuf did not include any amounts he owed Hamed in his reconciliation. For example, the amount owed Hamed for the sale of the Dorothea property was not included as an offset in the \$2.78 million Yusuf withdrawal. (Hamed SOF ¶ 3)

Accordingly, there is ample evidence provided (and omitted) by Yusuf that the \$2.78 million withdrawal was unbalanced.

YCSOF ¶ 5:

5. Yusuf submits that it is inappropriate to seek to award for interest as to Yusuf's withdrawal of \$2.78 million as same was simply a corresponding matching withdrawal to Hamed's previous withdrawals and was not improper.

Hamed's Response:

Hamed disputes this response and incorporates his response to YSCOF ¶ 4 for proof that Yusuf's withdrawal of \$2.78 million was *not* "simply a corresponding matching withdrawal." Hamed signaled the inappropriateness of this withdrawal **at the time in an immediate letter and email.** (HSOF ¶¶ 3 and 6) Despite this concern, Yusuf unilaterally withdrew the money anyway. Hamed's concerns about the money disappearing forever were substantiated when Yusuf moved the money to an account Hamed could not access and then the United Corporation took some of the money and purchased businesses not in United's name, thereby further removing the money from Hamed's reach. (Hamed SOF ¶¶ 13-15) Finally, Yusuf took the ultimate step to shut off Hamed's access to Partnership funds by removing Hamed (and his sons) as an authorized signor on the Partnership accounts. (Hamed SOF ¶ 17) All of these actions by Yusuf are more than enough to warrant an award of interest.

YCSOF ¶ 6:

6. Throughout the history of the Hamed/Yusuf partnership, the parties would regularly take a matching withdrawals and this is the same circumstance. In the Limitation Order, Judge Brady described the accounting and practices of the partners as a system in "which both partners and their respective family members *unilaterally withdrew* funds from partnership accounts as needed to cover various business and personal expenses" and that "there exists no authoritative ledger or series of financial statements recording the distribution of funds between the partners." See Limitation Order, p. 11, fn. 10 (emphasis added). Hamed has acknowledged in his Interrogatory responses that "it is true that...Mafi Hamed and Maher Yusuf met and reconciled the outstanding chits related to 50/50 distribution of the Sion Farm grocery store profits showing \$1.6 million was due to the Yusufs to "true up" the differences the 50/50 profit withdrawals at that time for that store." See **Exhibit C** Hamed Response to Interrogatories dated 5/15/18, p. 31. Hence,

the parties would take matching distributions to equalize on past partnership withdrawals.

Hamed's Response:

Hamed disputes YCSOF ¶ 6 because Yusuf selectively edited Hamed's full response, making it seem like Hamed agreed that the \$1.6 million was a complete reconciliation. The rest of the paragraph demonstrates the \$1.6 million was not a complete reconciliation:

Hamed Response:

* * * *

First, it states that \$1.6 million was due and owing at the time of the removal of the \$2.7 million. That claim is time barred. Moreover, while it is true that in 1999 Mafi Hamed and Maher Yusuf met and reconciled the outstanding chits related to 50/50 distribution of the Sion Farm grocery store profits, showing \$1.6 million was due to the Yusufs to "true up" the differences in the 50/50 profit withdrawals at that time for that store, **there are other offsets to that amount. For example, there were amounts to "true up" from the other stores as well.** Likewise, after that time, Fathi Yusuf and his sons took funds that were required to be offset against that amount, as he well knows. . . .(Emphasis added.)

YCSOF ¶ 7:

7. Yusuf's removal of the funds was not done in a manner that was kept secret or undisclosed. In fact, copies of the corresponding off-setting matching withdrawals were attached. **Exhibit B**-August 15, 2012 Letter with corresponding supporting documentation for the withdrawal.

Hamed's Response:

Hamed disputes this statement and incorporates his response to YSCOF ¶ 4. Yusuf did not provide any of Yusuf's "corresponding off-setting matching withdrawals." Yusuf only provided documentation of Hamed withdrawals. Further, the withdrawals did not contain any receipts from the Plaza Extra West or Tutu stores, showing that these documents only concerned one of the three stores – Plaza Extra East. Thus, this is not a complete nor accurate reconciliation.

YCSOF ¶ 8:

8. Although some of Yusuf's corresponding withdrawals identified in Yusuf Exhibit B–August 15, 2012 Letter have been stricken because of the imposition of the bar in the Limitation Order, at the time that Yusuf withdrew the funds, he fully anticipated that the corresponding matching withdrawals would be part of a global reconciliation, which covered the period of the past withdrawals he was seeking to match. Yusuf did not take more than matching funds. *Id.*

Hamed's Response:

As all of Hamed's responses to Yusuf's CSOFs demonstrate, Hamed disputes the statement that "Yusuf did not take more than matching funds." Yusuf did take more than matching funds because the reconciliation did not include all three stores and neglected to include other Hamed offsets such as the proceeds from the sale of the Dorothea condo.

YCSOF ¶ 10:

10. Yusuf provided full disclosure about the removal and the reasons therefore. *Id.* Those reasons were justified and the funds removed constitute simply a matching withdrawal. *Id.*

Hamed's Response:

Hamed disputes that Yusuf's reasons for the withdrawal and the characterization of the withdrawal as "simply a matching withdrawal" are false. See Hamed's Responses to YSCOF 2-5 in particular.

YCSOF ¶ 11:

11. The fact that certain off-sets, which justified the withdrawal, have been barred following the Limitation Order issued in 2017 (5 years after the removal) could not have been anticipated by Yusuf and does not render the withdrawal improper. In particular, the corresponding the \$1.6 million "past confirmed withdrawal" was barred by the Master, because it was tabulated prior to the September 17, 2006 bar date for accounting claims imposed by the Limitation Order not necessarily because it was not acknowledged. See Order from the Master dated September 24, 2018, p. 5.

Hamed's Response:


Hamed disputes that the \$1.6 million withdrawal was acknowledged as a full reconciliation of all three stores

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.

It is undisputed that Yusuf unilaterally withdrew \$2,784,706.25 in Partnership funds. Yusuf then moved these Partnership funds beyond the reach of Hamed by first depositing them into a United account Hamed did not have access to and then further moving the funds by purchasing businesses not in the Partnership or United Corporation's name. He used the funds as an interest-free business loans and thus saved himself interest at the Partnership's expense. Yusuf's alleged offsets to the \$2.78 million withdrawal are not relevant because they don't represent a full Partnership accounting (only reconciled one store's withdrawals, did not provide documentation of Yusuf's withdrawals during the same time period or proof that those withdrawals were offset, did not include Hamed's other offsets such as Dorothea and did not account for Yusuf withdrawals of Partnership funds in foreign accounts). Accordingly, Hamed is entitled to an equal Partnership withdrawal plus prejudgment interest credited to his Partnership account.

Dated: June 17, 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 17th day of June, 2019. I served a copy of the foregoing by email (via CaseAnywhere), as agreed by the parties, on:

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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.

New Hamed Exhibits
Referenced in Hamed's Reply to Yusuf's Opposition to
Hamed's Statement of Facts, and Hamed's Opposition to
Yusuf's Counter Statement of Facts: Re Hamed's Revised Claim
H-2 – \$2.78 Million Unilateral Withdrawal from the Partnership Bank Account

- Exhibit 22 BDO's Report of Historical Withdrawals and Distributions of the Partners and Proposed Allocation to Equalize Partnership Distributions, August 31, 2016
- Exhibit 23 Chart - The Yusuf Accounts Left Out of BDO's Report, March 6, 2017 Hearing before Judge Brady
- Exhibit 24 Chart - BDO Did Not Discuss Either the 1996-2001 "FBI/ US Gov. Analysis" or Large Accounts the FBI And U.S. Attorney Reviewed in that Analysis, March 6, 2017 Hearing before Judge Brady

Exhibit 22

TO: DUDLEY, TOPPER AND FEUERZEIG, LLP

RE: MOHAMMAD HAMED V FATHI YUSUF AND UNITED CORPORATION CIVIL NO. SX-12-CV-370

REPORT OF HISTORICAL WITHDRAWALS AND DISTRIBUTIONS OF THE PARTNERS AND PROPOSED ALLOCATION TO EQUALIZE PARTNERSHIP DISTRIBUTIONS

AUGUST 31, 2016

BDO, Puerto Rico, PSC, a Puerto Rico Professional Services Corporation, and BDO USVI, LLC, a United States Virgin Island's limited liability Company, are members of BDO International Limited, a UK company limited by guarantee, and form part of the international BDO network of independent member firms.

BDO is the brand name for the BDO network and for each of the BDO Member Firms.



**EXHIBIT
22**

YUSF237817

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APPENDICES

EXHIBITS

2. INTRODUCTION

BDO Puerto Rico, PSC (“BDO”) was engaged by Dudley, Topper and Feuerzeig, LLP (“Dudley”) on behalf of Mr. Fathi Yusuf (“Mr. Yusuf”) to provide litigation support services in connection with Civil Case No. SX-12-CV-370 (the “Case”), which was brought by Plaintiff Mohammad Hamed (“Mr. Hamed”) against Mr. Yusuf and United Corporation (collectively “Defendants”) seeking damages in addition to injunctive and declaratory relief. The Case originally stemmed from disputes over a claimed partnership between Mr. Hamed and Mr. Yusuf and partnership distributions.

2.1 Scope

The engagement was divided in two (2) areas:

1. Identification of historical withdrawals both disclosed and undisclosed from the partnership during the period where no formal partnership accounting process was in place.
2. Review the accounting of the Claims Reserve Account and the Liquidating Expenses Account, as those terms are defined in the “Final Wind Up Plan of the Plaza Extra Partnership” (the “Plan”) approved by an order entered in the Case on January 9, 2015 (the “Wind Up Order”).¹

Since the opening of the first supermarket, the Partnership accounting records were prepared in an informal manner. For this reason, and after the Partners began the process to dissolve the Partnership, Dudley engaged BDO to identify withdrawals made by the Partners, family members and/or their agents which could be construed to be partnership withdrawals from the Partnership. This report represents a portion of the total claims presented related to historical withdrawals, additional claims are presented in the “Proposed Distribution Plan” not prepared or revised by BDO.

The scope of our work with respect to these withdrawals was limited to the period January 1994 through December 2012. Before 1994, the Partners had settled their respective Partnership distributions and, therefore, reconciliation before 1994 was not deemed necessary. Nevertheless, certain investments bought and sold by Mr. Waleed Hamed, which Mr. Yusuf understands were not included in the initial reconciliation were taken into consideration in our analysis.

Additional information was provided by Dudley which was obtained through subpoenas for the period covering January 2013 through August 2014, however, during this period a formalized partnership accounting process was already in place. As a result, we did not to perform any additional procedures

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

to identify withdrawals from January 2013 to the date of this report. During this period Mr. John Gaffney (“Gaffney”), who had been engaged as the accountant of the Partnership as of January 1, 2013, was in charge of the supermarkets accounting and a formalized partnership accounting process was put into place. We obtained information during this period and is included in our report but we adjusted all the transactions to avoid double counting with the information being provided by Gaffney.

Dudley requested that we also review the accounting of the Claims Reserve Account and the Liquidating Expenses Account, and the proposed distribution of the remaining funds and/or net assets of the Partnership pursuant to the Plan and Wind Up Order. The review included the Accounting, Combined Balance Sheets, and other financial information prepared by Gaffney and provided periodically with the Bi-Monthly Reports submitted to the Master overseeing the Liquidation Process and finalized in the last submission of financials as of August 31, 2016. The Partnership Accounting includes the accounts of Plaza Extra-East, Plaza Extra-West, and Plaza Extra-Tutu Park.

Any partnership withdrawals made prior to Gaffney’s appointment were not included in his accounting. Therefore, our work was aimed towards identifying withdrawals which could be construed to be Partnership distributions and to incorporate them into Gaffney’s accounting in order to provide an Adjusted Partnership Accounting.

This report only includes our conclusions related to the withdrawals/distributions from the Partnership and the available amount to be allocated per Partner to equalize the historical distributions.

2.2 Assumptions and Limitations

The analysis and conclusions included in this report are based on the information made available to us as of the date of this report. All information was provided by Dudley as submitted by Mr. Hamed and Defendants.² In the event that any other relevant information is provided, we shall evaluate it and amend our report, if necessary.

Our procedures do not constitute an audit, review, or compilation of the information provided and, accordingly, we do not express an opinion or provide any other form of assurance on the completeness or accuracy of the information. The use of the words “audit” and “review” throughout this document do not imply an audit or examination as used in the accounting profession. We make no further warranty, expressed or implied.

² Information was obtained from the following sources: (1) FBI files related to Criminal Case No. 2005-CR-0015, (2) documents produced by Mr. Hamed in the Case, and (3) documents produced by Defendants in the Case.

4.1 Net Withdrawals from Partnership

Our analysis, procedures and adjustments was divided and summarized accordingly into the following two (2) categories:

1. Known or Documented Withdrawals from Partnership
2. Lifestyle Analysis to Identify Undisclosed Withdrawals from the Partnership

4.1.1 Known or Documented Withdrawals from Partnership

It had been the custom and practice of the Yusuf and Hamed families to withdraw funds from the supermarket accounts for personal reasons, using either checks or cash tickets/receipts. The partnership category relates to all activity recorded and/or transacted through the Partnership. Our examination and analysis included the review of the available supermarkets' bank statements, bank reconciliations, checks, cash tickets/receipts and, cash receipt ledgers.

We reviewed the available information and identified those funds withdrawn from the Partnership as follows:


1. Funds withdrawn from Partnership through checks of the business
2. Funds withdrawn evidenced through a signed cash tickets/receipts
3. Funds withdrawn related to tickets already settled by the Partners
4. Payments to third parties on behalf of a partner through tickets or checks
5. Payments to attorneys with partnership's funds
6. Funds withdrawn by cashier's checks

Funds withdrawn from Partnership through checks of the business

In order to identify all monies withdrawn from the Partnership through checks we identified available checks, other than those related to salaries and wages made to the order of the Partners, family members and/or their agents through the Partnership. Our examination included available Partnership bank accounts, related to Plaza Extra-East, Plaza Extra-West and Plaza Extra-Tutu Park.

Funds withdrawn evidenced through a signed cash ticket/receipt

It should also be mentioned that the Yusuf and Hamed families periodically reconciled and evened their cash withdrawals through the use of the "black book" (cash tickets/receipts ledger). The cash ticket receipts ledger was deemed to represent direct evidence of the money directly withdrawn by each individual. Therefore, these cash receipts (withdrawals) were considered a direct acceptance of money that was withdrawn by each family member.



Furthermore, our analysis was aimed to identify all withdrawals made through the Supermarkets by the Partners, family members and/or their agents which could be construed to be partnership distributions.

In order to identify all monies withdrawn from the Partnership through cash withdrawals, we reviewed and analyzed available cash tickets/receipts and cash ticket/receipts ledgers from Partnership which included Plaza Extra-East, Plaza Extra-West, and Plaza Extra-Tutu Park. The cash receipts provided were identified and assigned accordingly by the signature or name of the Partner, family member and/or the name of the agent.

Our analysis included the examination of the cash ticket/receipts ledger (“black book”) to identify any cash withdrawals made by the Partners, family members and/or their agents. As part of our procedures, when analyzing the deposits of each individual we identified and traced any cash withdrawals to deposits made within the same day or up to three business days from the withdrawal date in order to avoid double counting.

Funds withdrawn related to cash receipts or tickets already settled by the Partners

In accordance with “Notice of Withdrawal” letter dated August 15, 2012, signed by Mr. Yusuf, partnership withdrawals made by the Hamed family totaled \$2,784,706.25 and withdrawn from United’s operating account.²³ Composed of \$1,600,000 of cash receipts/tickets that had been destroyed, but agreed by the Partners, family members and/or their agents; \$1,095,381.75 in cash receipts tickets; and \$178,103 (\$89,392 and \$88,711) received after closing two (2) bank accounts. For purposes of our analysis, the documents provided with the Notice of Withdrawal were evaluated and the amounts considered as partnership distributions.

Payments to third parties on behalf of the Partners through tickets or checks

In order to identify and/or detect any disbursements from the Partnership on behalf of the Partners, family members and/or their agents to third parties, which could be construed to be partnership distributions, we examined available checks, cash tickets/receipts and cash tickets/receipts ledgers of the partnership accounts. Our examination included reviewing any available supporting documentation of such disbursements in order to determine whether such withdrawals/disbursements constituted partnership distributions.

²³ Refer to Exhibit 20.

4.5 Limitations

Our report and the findings included herein have been impacted by the limitation of the information available in the Case. Following is a summary of the limitations we encountered during the performance of the engagement.

- Accounting records of Plaza Extra-East were destroyed by fire in 1992 and the information was incomplete and/or insufficient to permit us to reconstruct a comprehensive accounting of the partnership accounts before 1993.
- Accounting records and/or documents (checks registers, bank reconciliations, deposits and disbursements of Supermarkets' accounts) provided in connection with Supermarkets were limited to covering the period from 2002 through 2004, East and West from 2006 through 2012, and Tutu Park from 2009 through 2012.
- Accounting records and/or documents provided to us for the periods prior to 2003 are incomplete and limited to bank statements, deposit slips, cancelled checks, check registers, investments and broker statements, cash withdrawal tickets/receipts and cash withdrawal receipt listings. For example, the retention policy for statements, checks, deposits, credits in Banco Popular de Puerto Rico is seven years; therefore, there is no Bank information available prior to 2007 and electronic transactions do not generate any physical evidence as to regular deposits and/or debits.
- Information discovered about the case up to August 31, 2014. We only considered information up to December 31, 2012. Transactions after that date were adjusted in our report.

4.6 Assumptions

Any monies identified through our analysis in excess of the amount identified from the known sources of income (e.g. salaries, rent income, etc.) were assumed to be partnership withdrawals/distributions. With regards to the Hamed family, Mohammad Hamed admitted during deposition testimony that his family's sole source of income was the monies they withdrew from the supermarkets.³²

The lifestyle analysis is supported by available information related to deposits to banks and brokerage accounts and payments to credit cards during the period from January 1994 to December 2012 or until Gaffney was assigned to work with the Supermarkets accounting.

³² Refer to Case No. SX-12-CV370, Oral deposition of Mr. Hamed dated April 21, 2014, pages 43 to 44.

Result

In result of the information presented above, Mohammad Hamed’s total partnership withdrawals during the years 1994 to 2012 were \$3,724,313.80.³⁸

5.1.2 Waleed Hamed (son of Mohammad Hamed)

Partnership - monies withdrawn from Supermarkets

a. Partnership withdrawals/distributions through checks

In order to identify all monies withdrawn from the Partnership through checks, we identified available checks made to the order of Waleed Hamed. The checks identified as withdrawals attributable to Waleed Hamed for the periods covered amounted to \$684,170.00³⁹ as presented in the table below:

Description	January 1994 to September 2001	October 2001 to December 2012	January 2013 to August 2014	Total
Banque Française Commerciale	\$ 450,000.00	\$ -	\$ -	\$ 450,000.00
Plaza Extra - Checking Account #65811	1,500.00	205,000.00	-	206,500.00
Plaza Extra - Checking Account #2010	-	27,670.00	-	27,670.00
Total	\$ 451,500.00	\$ 232,670.00	\$ -	\$ 684,170.00

b. Partnership withdrawals/distributions through cash withdrawals

In order to identify all monies withdrawn from the Partnership through cash withdrawals we reviewed and analyzed available cash tickets/receipts and cash tickets/receipts ledgers provided from the Partnership.

We should mention that a number of the cash withdrawals identified and attributed to Waleed Hamed during our examination were not dated; ~~nonetheless, such withdrawals were reasonably determined~~ to be amounts withdrawn from the Partnership and attributable to his account during the period in question. From our examination, we determined that partnership distributions to Waleed Hamed related to cash withdrawals amounted to \$1,133,245.75 for the covered period as shown in the table below:⁴⁰

³⁸ Refer to Table 6.

³⁹ Refer to Tables 7A and 7B.

⁴⁰ Refer to Tables 8A and 8B.

8. SIGNATURE

This report has been prepared under the direction of Fernando Scherrer, CPA, CIRA, CA, MBA, Managing Shareholder of BDO Puerto Rico, P.S.C. Neither the professionals who worked on this engagement, nor the shareholders of BDO Puerto Rico, P.S.C. have any present or contemplated future interest in the Partnership, as herein defined, or in reference to the owner, nor any personal interest with respect to the parties involved, nor any other interest that might prevent us from performing an unbiased analysis. Our compensation is not contingent on an action or event resulting from the analysis, opinions, or conclusions in, or the use of this report.

This report was prepared for the specific purpose described above and is not to be copied or made available to unrelated parties without the express written consent of BDO Puerto Rico, P.S.C. We did not use the work of one or more outside specialists to assist during this engagement. We have no obligation to update this report for information that comes to our attention after the date of this report.

BDO PUERTO RICO, P.S.C.

A handwritten signature in blue ink, appearing to read "Fernando Scherrer", with a long horizontal line extending to the right.

Fernando Scherrer, CPA, CIRA, CA, MBA

Exhibit 23

CHART 2 - THE YUSUF ACCOUNTS LEFT OUT OF BDO'S REPORT

Account Holder	Account Type	Name of Financial Institution & Account	BDO Report
Fathi Yusuf	Bank /Invest.	Banque Francaise Commerciale 0 40 60 63877 90	NOT in BDO Report
Fathi Yusuf	Bank /Invest.	Cairo Amman Bank 01 500 172349 00	NOT in BDO Report
Fathi Yusuf	Bank /Invest.	Cairo Amman Bank 01 532 172349 00	NOT in BDO Report
Fathi Yusuf	Bank /Invest.	Cairo Amman Bank 02 033 172349 00	NOT in BDO Report
Fathi Yusuf	Bank /Invest.	Cairo Amman Bank 02 503 172349 00	NOT in BDO Report
Fathi Yusuf	Bank /Invest.	Cairo Amman Bank 02 528 172349 00	NOT in BDO Report
Fathi Yusuf	Bank /Invest.	Cairo Amman Bank 02 533 172349 00	NOT in BDO Report
Fathi Yusuf	Credit Card	American Express-3713 -845112 -21003	NOT in BDO Report
Fathi Yusuf	Credit Card	Scotiabank Visa Gold 4563-4601- 5003-9052	NOT in BDO Report
Fathi Yusuf/ Hamdan Diamond Corp.	Bank /Invest.	Merrill Lynch 140-07884	NOT in BDO Report
Fathi Yusuf/ Hamdan Diamond Corp./Isam	Bank /Invest.	Banque Francaise Commerciale 0 40 60 63887 90	NOT in BDO Report
Fathieh Yousef	Bank /Invest.	Merrill Lynch 140-21722	NOT in BDO Report
Hamdan Diamond	Bank /Invest.	Merrill Lynch 140-07951	NOT in BDO Report
Mike Yusuf	Bank /Invest.	Scotiabank 60804314 (personal checking)	NOT in BDO Report
Mike Yusuf	Credit Card	Citi-Visa-4922 0020 0003 6759	NOT in BDO Report
Nejeh Yusuf	Bank /Invest.	BP 194-018332	NOT in BDO Report
Nejeh Yusuf	Bank /Invest.	First Bank 58-02114835	NOT in BDO Report
Nejeh Yusuf	Credit Card	Banco Popular-4549-0550-1358-6262	NOT in BDO Report
Nejeh Yusuf	Credit Card	Bank of America-5474-1500-0117-5222	NOT in BDO Report
Nejeh Yusuf	Credit Card	ML-4264-5200-2653-6235	NOT in BDO Report
United Corp.	Bank /Invest.	Prudential Securities 05Q-958838-55	NOT in BDO Report



Exhibit 24

CHART 3 - BDO Did Not Discuss Either the 1996-2001 "FBI/ US Gov. Analysis" or Large Accounts the FBI and U.S. Attorney Reviewed in that Analysis

In the DTF/Yusuf Opposition to the BDO Daubert Motion it is stated that BDO did Consider the 1996-2001 "FBI/U.S. Attorney Summary Report" and the any Accounts Analyzed -- however, BDO Report does no Analysis of the FBI's Findings and Ignores Many Accounts

--Number of Times the "FBI/U.S. Attorney Analysis" is Mentioned in BDO Report TEXT:

NONE

--Number of Times the "FBI/U.S. Attorney Analysis" is Mentioned in BDO Report Exhibits:

NONE

--Mentions of "FBI/U.S. Attorney Analysis" -- In BDO List of Documents Reviewed:

NONE

YUSUF ACCOUNTS LOCATED AND ANALYZED BY THE FBI BUT NOT ANALYZED IN BDO REPORT

Fathi Yusuf Bank Banque Francaise Commerciale 0 40 60 63877 90
/Invest.

NOT in BDO [In FBI]

Fathi Yusuf Bank Cairo Amman Bank 02 503 172349 00
/Invest.

NOT in BDO [In FBI]

Fathi Yusuf Bank Cairo Amman Bank 02 528 172349 00
/Invest.

NOT in BDO [In FBI]

Fathi Yusuf/
Hamdan Bank Banque Francaise Commerciale 0 40 60 63887 90
Diamond /Invest.
Corp./Isam
Yousuf

NOT in BDO [In FBI]