

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

**MOHAMMAD HAMED, BY HIS  
AUTHORIZED AGENT WALEED HAMED,**

PLAINTIFF/COUNTERCLAIM DEFENDANT,

v.

**FATHI YUSUF AND UNITED  
CORPORATION,**

DEFENDANTS/COUNTERCLAIMANTS,

v.

**WALEED HAMED, WAHEED HAMED,  
MUFEEED HAMED, HISHAM HAMED,  
AND PLESSEN ENTERPRISES, INC.,**

COUNTERCLAIM DEFENDANTS.

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**WALEED HAMED, AS EXECUTOR OF THE  
ESTATE OF MOHAMMAD HAMED,**

PLAINTIFF,

v.

**UNITED CORPORATION,**

DEFENDANT.

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**MOHAMMAD HAMED,**

PLAINTIFF,

v.

**FATHI YUSUF,**

DEFENDANT.

Civil No. SX-12-CV-370

**ACTION FOR INJUNCTIVE  
RELIEF, DECLARATORY  
JUDGMENT, PARTNERSHIP  
DISSOLUTION, WIND UP, and  
ACCOUNTING**

CONSOLIDATED WITH

Civil No. SX-14-CV-287

**ACTION FOR DAMAGES and  
DECLARATORY JUDGMENT**

CONSOLIDATED WITH

Civil No. SX-14-CV-378

**ACTION FOR DEBT and  
CONVERSION**

**ORDER**

**THIS MATTER** came before the Special Master (hereinafter “Master”) on Hamed’s motion for summary judgment regarding Hamed Claim No. H-16:<sup>1</sup> Najeh Yusuf’s use of Partnership resources for his non-Partnership businesses.<sup>2</sup> Yusuf filed an opposition and Hamed filed a reply thereafter.

### **BACKGROUND**

In 2016 and in 2017, per the Master’s orders, Parties filed their accounting claims and amended accounting claims, respectively. Hamed included this instant claim for Najeh Yusuf’s use of Partnership resources for his non-Partnership businesses in his accounting claims and in his amended accounting claims.<sup>3</sup> On January 22, 2019, Najeh Yusuf was deposed and provided, *inter alia*, testimony related to Hamed Claim No. H-16. On February 25, 2019, Hamed filed this instant motion for summary judgment regarding the aforementioned claim.

### **STANDARD OF REVIEW**

Rule 56 of Virgin Islands Rules of Civil Procedure (hereinafter “Rule 56”) provides that “[a] party may move for summary judgment, identifying each claim or defense – or the part of each claim or defense – on which summary judgment is sought” and “[t]he court shall grant summary judgment if the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law.” V.I. R. CIV. P. 56; *see also Rymer v. Kmart Corp.*, 68 V.I. 571, 575 (V.I. 2018) (“A summary judgment movant is entitled

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<sup>1</sup> Hamed’s motion for summary judgment was for both Hamed Claim No. H-16: NejeH Yusuf’s use of Partnership resources for his non-Partnership businesses and Hamed Claim No. H-34: rents collected by Yusuf but not deposited in the Partnership account. The Master will address the two claims in separate orders; this order will only address Hamed Claim No. H-16.

<sup>2</sup> The Master was appointed by the Court to “direct and oversee the winding up of the Hamed-Yusuf Partnership” (September 18, 2015 order: Order Appointing Master) and “make a report and recommendation for distribution [of Partnership Assets] to the Court for its final determination.” (January 7, 2015 order: Final Wind Up Plan) The Master finds that that Hamed’s instant motion for summary judgment falls within the scope of the Master’s report and recommendation given that Hamed Claim No. H-16 is an alleged debt owed by Yusuf to the Partnership.

<sup>3</sup> This claim was formerly identified as Hamed Claim No. H-253 in Hamed’s accounting claims and is currently identified as Hamed Claim No. H-16 in Hamed’s amended accounting claims.

to judgment as a matter of law if the movant can demonstrate the absence of a triable issue of material fact in the record.”). “Once the moving party has identified the portions of the record that demonstrate no issue of material fact, “the burden shifts to the non-moving party to present affirmative evidence from which a jury might reasonably return a verdict in his favor.” *Rymer*, 68 V.I. at 576 (citing *Chapman v. Cornwall*, 58 V.I. 431, 436 (V.I. 2013) (internal citations and quotation marks omitted). The non-moving party “may not rest upon mere allegations, [but] must present actual evidence showing a genuine issue for trial.” *Rymer*, 68 V.I. at 576 (quoting *Williams v. United Corp.*, 50 V.I. 191, 194 (V.I. 2008)). The reviewing court must view all inferences from the evidence in the light most favorable to the nonmoving party, and take the nonmoving party's conflicting allegations as true if properly supported. *Williams*, 50 V.I. at 194; *Perez v. Ritz-Carlton (Virgin Islands), Inc.*, 59 V.I. 522, 527 (V.I. 2013). Because summary judgment is “[a] drastic remedy, a court should only grant summary judgment when the ‘pleadings, the discovery and disclosure materials on file, and any affidavits, show there is no genuine issue as to any material fact.’” *Rymer*, 68 V.I. at 575-76 (quoting *Williams*, 50 V.I. 191, 194).

Rule 56 provides that “[e]ach summary judgment motion shall include a statement of undisputed facts in a separate section within the motion” and that “[e]ach paragraph stating an undisputed fact shall be serially numbered and each shall be supported by affidavit(s) or citations identifying specifically the location(s) of the material(s) in the record relied upon regarding such fact.” V.I. R. CIV. P. 56(c)(1). Rule 56 also provides that “[a] party opposing entry of summary judgment must address in a separate section of the opposition memorandum each of the facts upon which the movant has relied pursuant to subpart (c)(1) of this Rule, using the corresponding serial numbering...” V.I. R. CIV. P. 56(c)(2)(B). Furthermore, under Rule 56, “a party opposing summary judgment may, if it elects to do so, state additional facts that

the party contends are disputed and material to the motion for summary judgment, presenting one or more genuine issues to be tried” and “[t]he party shall supply affidavit(s) or citations specifically identifying the location(s) of the material(s) in the record relied upon as evidence relating to each such material disputed fact, by number.” V.I. R. CIV. P. 56(c)(2)(C). “If the non-moving party has identified additional facts as being material and disputed, as provided in subpart (c)(2)(C) of this Rule, the moving party shall respond to these additional facts by filing a response using the corresponding serial numbering of each such fact identified by the non-moving party...” V.I. R. CIV. P. 56(c)(3). Additionally, Rule 56 states that “[i]f 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.” V.I. R. CIV. P. 56(e). Finally, Rule 56 requires the court to “state on the record the reasons for granting or denying the motion.” V.I. R. CIV. P. 56(a).

### **DISCUSSION**

In his motion, Hamed argued that Najeh Yusuf took the following Partnership assets located at the Plaza Extra-Tutu Park store: security cameras, a pressure washer, a laptop, a computer, a monitor, and a TV, and that these assets should be returned. In support of his argument, Hamed pointed to Najeh Yusuf’s testimony at his January 22, 2019 deposition: (1) “Nejeh [sic] Yusuf confirmed that he purchased security cameras for Wireless Tech<sup>4</sup>” (Motion, p. 2; Hamed SOF ¶ 9, Exhibit 4-Najeh Yusuf Dep. 22-27, Jan. 22, 2019); (2) “[Najeh Yusuf]” also admitted that he used a Partnership container from Miami, FL to ship the cameras to St.

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<sup>4</sup> Wireless Tech is a non-Partnership company that Najeh Yusuf formed with the Monsour brothers

Thomas, VI.” (Motion, pp. 2-3; Hamed SOF ¶ 9, Exhibit 4-Najeh Yusuf Dep. 22-27, Jan. 22, 2019); (3) “Nejeh [sic] Yusuf testified at one point that the security cameras ‘belong to myself and Wireless Tech’ and at another point testified that ‘...the cameras came in. I bought it for the purpose of Plaza Extra saving funds, because we were buying it over \$150 a camera from the local people.” (Motion, p. 3; Hamed SOF ¶ 9, Exhibit 4-Najeh Yusuf Dep. 22-27, Jan. 22, 2019) (Emphasis omitted); and (4) “Nejeh [sic] Yusuf did admit that he also kept a power washer belong to Plaza Extra Tutu...” (Motion, p. 3; Hamed SOF ¶ 11, Exhibit 4-Najeh Yusuf Dep. 30:1-18, Jan. 22, 2019). Hamed also pointed to Waheed Hamed’s testimony at his January 22, 2019 deposition: (1) “Waheed (“Willie”) Hamed testified...that Nejeh [sic] Yusuf took security cameras, a laptop, a computer, a monitor and a TV belonging to Plaza Extra-Tutu Park shortly before the sale of the Tutu store” (Motion, p. 3; Hamed SOF ¶ 10, Exhibit 7-Willie Hamed Dep. 60, 65, 79-80, Jan. 22, 2019); (2) “Willie Hamed said that only Nejeh [sic] Yusuf could have taken the items because no one else in the store had access to the items other than Yusuf and himself” (Id.); and (3) “[Willie Hamed] also stated that Fadi Mansour related his conversation with Nejeh [sic] Yusuf where Yusuf told him that he had stolen the cameras.” (Id.) As such, Hamed requested the Master to grant is motion for summary judgment regarding Hamed Claim No. H-16 and order “the return of the power washer and the security cameras, laptop, monitor and TV.” (Motion, p. 5)

In his opposition, Yusuf argued that “there exists genuine issues of material fact, which precludes summary judgment in favor of Hamed as to the items claimed.” (Opp., p. 2) In support of his argument, Yusuf pointed to Najeh Yusuf’s testimony at his January 22, 2019 deposition and Najeh Yusuf’s declarations in his April 1, 2019 declaration: (1) “Najeh Yusuf testified that he was able to secure a deal from a supplier in China for \$30-40 per camera,” that “[t]he Plaza Extra-Tutu Park store would need to utilize over 40 such cameras,” that “[t]he

cameras were then put in a Plaza Extra-Tutu Park container and delivered to the Plaza Extra-Tutu Park store,” (Opp., pp. 2-3; Yusuf CSOF ¶¶ 1-4, Exhibit A-Nejeh Yusuf Dep. 27, Jan. 22, 2019); (2) “The bulk purchase (combining the Plaza Extra-Tutu Park cameras with others for Najeh Yusuf and Wireless Tech into a single purchase) benefitted the partnership as they were able to utilize the cost savings” (Opp., p. 3; Yusuf CSOF ¶ 7, Exhibit B-Nejeh Yusuf Decl., April 1, 2019); (3) “The cameras purchased for the Plaza Extra-Tutu Park store were installed,” that “Najeh Yusuf, personally installed the cameras in the Plaza Extra-Tutu Park store along with other Plaza Extra employees, Amer Zata and Andrew Escobar, often while Willie Hamed was present watching,” and that “[t]he cameras purchased for Wireless Tech were delivered to or retrieved by Wireless Tech” (Opp., p. 3; Yusuf CSOF ¶¶ 8-11, Exhibit B-Nejeh Yusuf Decl., April 1, 2019); (4) “Najeh Yusuf did not take any cameras from the Plaza Extra-Tutu Park store that were for the store” (Opp., p. 3; Yusuf CSOF ¶ 11, Exhibit A-Najeh Yusuf Dep. 28, Jan. 22, 2019); (5) “As far as payment, while Najeh Yusuf does not specifically remember who initially purchased the cameras, he does recall that when the cameras were divided (either to Najeh Yusuf or Wireless Tech or installed by Plaza), that the proper reimbursement occurred (Opp., pp. 3-4; Yusuf CSOF ¶ 12, Exhibit B-Najeh Yusuf Decl., April 1, 2019); (6) “At this time, the stores were requiring two signatures-one Hamed and one Yusuf-for any checks including reimbursement checks,” that “[t]herefore, Najeh Yusuf would not have received a reimbursement check without someone from the Hamed family approving it,” and that “[i]f Najeh Yusuf purchased the cameras directly, he would have sought a reimbursement from Plaza Extra Tutu-Park [sic] for those used by the Plaza Extra-Tutu Park store.” (Opp., p. 4; Yusuf CSOF ¶ 14, Exhibit B-Najeh Yusuf Decl., April 1, 2019); (7) “As to the pressure washer, Najeh Yusuf has always maintained that the Plaza Extra-Tutu Park store can retrieve the item.” (Opp., p. 5; Yusuf CSOF ¶ 20, Exhibit A-Nejeh Yusuf Dep. 30, Jan. 22, 2019); and (8) “As to

the alleged removal of any other items from the Plaza Extra-Tutu Park store by Najeh Yusuf, he testified that nothing was removed...” (Opp., p. 4; Yusuf CSOF ¶ 14, Exhibit A-Najeh Yusuf Dep. 29, Jan. 22, 2019). As such, Yusuf requested the Master to deny Hamed’s motion for summary judgment regarding Hamed Claim No. H-16. (Id.)

In his reply, Hamed reiterated his argument that Najeh Yusuf took the following Partnership assets located at the Plaza Extra-Tutu Park store: security cameras, a pressure washer, a laptop, a computer, a monitor, and a TV, and that these assets should be returned. As to the pressure washer, Hamed pointed out that “[i]t is undisputed that NejeH [sic] Yusuf took a pressure washer to his home from the Plaza Extra Tutu store and has not returned it.” (Opp., p. 2) As to the security cameras, Hamed pointed out that “[i]t is undisputed the NejeH [sic] Yusuf used Partnership resources to ship cameras for his personal business venture (Wireless Tech) from Florida to St. Thomas, VI” and that “at the very least, the amount of the shipping is owed.” Hamed also pointed out that “Yusuf had control over the books as the Liquidating Partner, but did not offer any proof that Wireless Tech, rather than Plaza Extra, paid for its share of the security cameras,” that “[Najeh] Yusuf testified that the security cameras were paid for by either him personally or Wireless Tech [and] [i]n neither instance did Yusuf provide evidence that this was true,” and that “[t]he fact that Hamed may have signed a check for the purchase of the security cameras does not mean Hamed agreed to pay for security cameras Wireless Tech planned to sell in its own stores.” (Id., at p. 4) Hamed further pointed out that “[t]o say that a dual signature meant agreement with the expenditure is untrue” because “[t]o keep the stores running in an orderly fashion, the Hamed family signed checks, even though they protested the expenditures.” (Id.) As to the laptop, the computer, the monitor, and the TV, Hamed again pointed to Willie Hamed’s testimony at his January 22, 2019 deposition. (Id., at p. 3) As such, Hamed requested the Master to grant is motion for summary judgment regarding

Hamed Claim No. H-16 and order the return of “the power washer, the security cameras, laptop, monitor and TV.” (Id., at p. 5)

A. Security Cameras

Here, based on the record before the Master, the Master finds the following facts undisputed as to the security cameras: (1) the security cameras were purchased in bulk from China at a discounted price and (2) the security cameras were shipped from Miami, Florida to St. Thomas, U.S. Virgin Islands via a Partnership’s container. However, it is in dispute whether Najeh Yusuf, Wireless Tech, or the Partnership paid for all the security cameras, whether necessary reimbursements were made, and the ownership of the security cameras removed by Najeh Yusuf. Hamed seems to believe that the Partnership paid for all the security cameras purchased, and thereby the security cameras belonged to the Partnership, and thus he argued that the security cameras taken from the Plaza Extra-Tutu Park store must be returned. Yusuf disputed Hamed’s allegation and argued that Najeh Yusuf, Wireless Tech, and the Partnership have previously settled the payment and/or reimbursements related to the security cameras and thus, the security cameras taken from the Plaza Extra-Tutu Park store belonged to Wireless Tech and do not need to be returned.<sup>5</sup> There is clearly a genuine dispute as to the payment and/or reimbursements related to the security camera and the ownership of the security cameras

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<sup>5</sup> Yusuf cited to Najeh Yusuf’s testimony at his January 22, 2019 deposition and Najeh Yusuf’s declaration in his April 1, 2019 declaration. Najeh Yusuf testified at his January 22, 2019 deposition that “[he] believe[s] that [the security cameras] were purchased by either [him] or Wireless Tech store in the mall,” that “[he] can’t remember how it’s situated, if it’s in my name or Wireless Tech’s name,” that “[t]o think about it now, it could have been in Plaza Extra’s name, because Willie was aware of it...,” that “[he] didn’t take cameras out of the store -- that didn’t belong -- that [he] didn’t take cameras out of the store and sold it to Wireless Tech,” and that “[he] took cameras that came in on the dock -- and gave it to Wireless Tech, because that’s the agreement I had with them.” (Najeh Yusuf Dep. 22, 27-28, Jan. 22, 2019) Najeh Yusuf also later declared in his April 1, 2019 declaration that “[t]he cameras purchased for Wireless Tech were delivered to or retrieved by Wireless Tech,” that “[he] did not take any cameras from the Plaza Extra-Tutu Park store that were for the store,” that “[a]s far as payment, while I do not specifically remember who initially purchased the cameras, I do recall that when the cameras were divided (either to myself or Wireless Tech or installed at Plaza), that the proper reimbursement occurred,” that “[i]f [he] purchased the cameras directly...[he] would have sought a reimbursement from Plaza Extra-Tutu-Park [sic] for those used by the Plaza Extra-Tutu Park store,” and that “[he] would not have received a reimbursement without someone from the Hamed family approving it. (Najeh Yusuf Decl., April 1, 2019)



removed by Najeh Yusuf. As such, the Master concludes that Hamed has not satisfied his burden of establishing that there are no genuine dispute as to any material fact regarding Hamed Claim No. H-16 as to the security cameras. *See Rymer*, 68 V.I. at 575-76 (quoting *Williams*, 50 V.I. 191, 194) (“Because summary judgment is “[a] drastic remedy, a court should only grant summary judgment when the ‘pleadings, the discovery and disclosure materials on file, and any affidavits, show there is no genuine issue as to any material fact.’”)

Hamed also requested the shipping fees owed to the Partnership for the security cameras. At this juncture, the Master cannot determine whether shipping fee is owed to the Partnership. Although it is not in dispute that the security cameras were shipped from Miami, Florida to St. Thomas, U.S. Virgin Islands via a Partnership’s container, the issue regarding the payment and/or reimbursements related to the security camera must be resolved first—in the event that the Partnership paid for all the security cameras, then no shipping fees would be owed to the Partnership since all the security cameras belonged to the Partnership; but in the event that Najeh Yusuf, Wireless Tech, and the Partnership each paid for their share of the security cameras, then shipping fees would be owed to the Partnership for the security cameras that belonged to Najeh Yusuf or Wireless Tech.

B. Pressure Washer

Hamed alleged that Najeh Yusuf removed a pressure washer from the Plaza Extra-Tutu Park store—a Partnership asset at the time. Yusuf did not dispute that Najeh Yusuf removed a pressure washer from the Plaza Extra-Tutu Park store; instead, he argued that “Najeh Yusuf has always maintained that the Plaza Extra-Tut Park store can retrieve the item.” (Opp., p. 5) As such, the Master concludes that Hamed has satisfied his burden of establishing that there are no genuine dispute as to any material fact regarding Hamed Claim No. H-16 as to the pressure washer. *See Rymer*, 68 V.I. at 575 (“A summary judgment movant is entitled to

judgment as a matter of law if the movant can demonstrate the absence of a triable issue of material fact in the record.”).

### C. Laptop, Computer, Monitor, and TV

Hamed alleged that Najeh Yusuf removed a laptop, a computer, a monitor, and a TV from the Plaza Extra-Tutu Park store—all Partnership assets at the time—shortly before the sale of the Plaza Extra-Tutu Park store. Yusuf disputed Hamed’s allegation and argued that: (1) Najeh Yusuf did not remove a monitor or a TV from the Plaza Extra-Tutu Park store and (2) the laptop computer<sup>6</sup> removed by Najeh Yusuf belonged to him personally and did not belong to the Partnership.<sup>7</sup> There is clearly a genuine dispute as to whether Najeh Yusuf removed a monitor and a TV and whether the Partnership or Najeh Yusuf owned the laptop computer Najeh Yusuf removed. As such, the Master concludes that Hamed has not satisfied his burden of establishing that there are no genuine dispute as to any material fact regarding Hamed Claim No. H-16 as to the laptop, the computer, the monitor, and the TV. *See Rymer,*

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<sup>6</sup> It is unclear whether Parties are discussing both a laptop and a computer or a single laptop computer. In Hamed’s motion and statement of facts, Hamed referred to both a laptop and a computer separately. In Yusuf’s opposition and response to Hamed’s statement of facts, Yusuf referred to a single laptop computer.

<sup>7</sup> Hamed’s statement of facts and Yusuf’s response thereto:

10. On January 22, 2019, Willie Hamed testified that NejeH [sic] Yusuf took security cameras, a laptop, a computer, a monitor and a TV belonging to Plaza Extra-Tutu shortly before the sale of the Tutu store. Willie Hamed said that only NejeH [sic] Yusuf could have taken the items because no one else in the store had access to the items other than Yusuf and himself. He also stated that Fadi Mansour related his conversation with NejeH [sic] that he had stolen the cameras. Finally, when these missing items were brought to Special Master Ross’s attention on the day of the Plaza Extra-Tutu store auction, he told Willie Hamed to put a claim in for the missing items.

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Yusuf 10. Disputed. Najeh Yusuf did not take any cameras from the Plaza Extra-Tutu Park store that were for the store. *See Exhibit A-Najeh Depo.*, 28:3-18. As to the alleged removal of any other items from the Plaza Extra-Tutu Park store by Najeh Yusuf, he testified that nothing was removed...

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

...If not otherwise clear, Najeh Yusuf affirmatively states that he did not take a monitor or a T.V. from the Plaza Extr-Tutu Park store. *See Exhibit B-Declaration of Najeh Yusuf* - ¶ 7. Both Willie Hamed and Najeh each had personal laptop computer and Judge Ross advised that he could take it with him.

68 V.I. at 575-76 (quoting *Williams*, 50 V.I. 191, 194) (“Because summary judgment is “[a] drastic remedy, a court should only grant summary judgment when the ‘pleadings, the discovery and disclosure materials on file, and any affidavits, show there is no genuine issue as to any material fact.’”)

### CONCLUSION

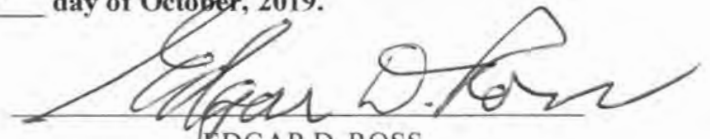
Based on the following, the Master will grant in part and deny in part Hamed’s instant motion for summary judgment regarding Hamed Claim No. H-16—grant as to the pressure washer and deny as to the security cameras and the shipping fees thereto, the laptop, the computer, the monitor, and the TV. Accordingly, it is hereby:

**ORDERED** that Hamed’s motion for summary judgment regarding Hamed Claim No. H-16: Najeh Yusuf’s retention of Partnership resources, the pressure washer, for his non-Partnership businesses is **GRANTED**. It is further:

**ORDERED** that, **within seven (7) days from the date of entry of this Order**, Yusuf shall return the pressure washer to the Plaza Extra-Tutu Park store.<sup>8</sup> **And** it is further:

**ORDERED** that Hamed’s motion for summary judgment regarding the remainder of Hamed Claim No. H-16: Najeh Yusuf’s use of Partnership resources for his non-Partnership businesses is **DENIED** as to the security cameras and the shipping fees thereto, the laptop, the computer, the monitor, and the TV.

**DONE and so ORDERED** this 7<sup>th</sup> day of October, 2019.

  
EDGAR D. ROSS  
Special Master

<sup>8</sup> The pressure washer was a Partnership asset located at the Plaza Extra-Tutu Park store at the time Nejah Yusuf removed it. However, since the sale of the Plaza Extra-Tutu Park store to Hamed, including inter alia, the inventory and equipment per the Final Wind Up Plan, the pressure washer should now be returned directly to the Plaza Extra-Tutu Park store and not the Partnership.