

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,*

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

vs.

**UNITED CORPORATION**, *Defendant.*

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

vs.

**FATHI YUSUF**, *Defendant.*

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**FATHI YUSUF**, *Plaintiff,*

vs.

**MOHAMMAD A. HAMED TRUST**, *et al,*

*Defendants.*

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**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 MOTION FOR SUMMARY JUDGMENT  
RE REVISED CLAIM Y-11 – LIFESTYLE ANALYSIS**

## I. Introduction

Despite Judge Brady's prior holding regarding "Lifestyle Analysis" (sometimes referred to as "psychographic analysis"<sup>1</sup>) Yusuf should have, but has not yet withdrawn his Y-11 Claim "Lifestyle Analysis"<sup>2</sup> prior to scheduled motions to compel. See Brady decision: *Hamed v. Yusuf, et al.*; SX-12-CV-370; SX-14-278; SX-14-287 Memorandum Opinion and Order Re Limitations on Accounting, July 21, 2017, at pp. 23-24.

As part of the accounting and distribution phase of the Wind Up, Yusuf submitted to the Master the report of accountant Fernando Scherrer of the accounting firm BDO, Puerto Rico, P.S.C. (BDO Report). Yusuf contends that this report constitutes a comprehensive accounting of the historical partner withdrawals and reconciliation for the time period 1994-2012." See Opposition to Motion to Strike BDO Report, filed October 20, 2016. However, the BDO report, by its own terms, appears to be anything but comprehensive. **Most tellingly, the body of the BDO Report itself contains a section detailing its own substantial "limitations,"** resulting from the absence or inadequacy of records for each of the grocery stores covering various periods during the life of the partnership.<sup>25</sup> See Plaintiff's Motion to Strike BDO Rep't, Exhibit 1, at 22.

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<sup>1</sup> See, e.g., *Kroy IP Holdings LLC v. Autozone Inc.*, 2014 U.S. Dist. LEXIS 176442 (E.D. Tex. Dec. 23, 2014) ("he admitted upon questioning that the terms "psychographic analysis" and "lifestyle analysis" "tend to be used interchangeably."

<sup>2</sup> Yusuf is seeking relief on his theory that the entire Hamed Family and all of their businesses spent some ascertainable amount for 2006-2012, over what Yusuf seeks to prove they could have earned from the Partnership. Judge Brady points out that **BDO stated** that many of the records as to this are simply missing. Simultaneously, Yusuf has, so far, refused to provide his and his own companies' bank accounts and financials for comparison. Thus, he seeks a fishing trip through all of Hamed's bank accounts, records and unrelated companies after 2006. But to make a comparison meaningful, it would require a comparison to all of the extended Yusuf Family's and their companies' same records. Yusuf refuses to provide those same records for ALL of his, his family's and his controlled companies' own income, spending, business activity and tax reporting for 2006-2012 -- to allow any kind of fair comparison. This would be a huge and impossible discovery undertaking with no possible way, according to BDO, for the Master to ever obtain complete or clear records as many are (according to BDO) missing. For safety, Hamed has filed that motion to compel. Such discovery would fail, but in the attempt it would dwarf all prior discovery in this case combined. It will require all of the bank, security, business records for all of the Hameds and Yusufs, but also for all family members and companies. All this for a marginal legal theory Judge Brady has refused.

Additionally, **the analysis presented in the report rests on the unsupported assumption [about "lifestyle" analysis] that any monies identified in excess of "known sources of income" constitute distributions from partnership funds to the partners' §71(a) accounts.** Thus, even Yusuf's own "expert report" acknowledges the insurmountable difficulties inherent in any attempt to accurately reconstruct the partnership accounts. . . . (Emphasis added.)

Yusuf has not provided discovery responses. As the recent scheduling order required Hamed to file his motion to compel, because of the size, cost and scope of the discovery necessary, this motion for summary judgment is submitted initially. As discussed above, Yusuf will be required to supply ALL of his, his family's and his controlled companies' bank statements, brokerage statements, asset lists, income, spending, credit card statements, business activity and tax reporting for 2006-2012.

Moreover, and even more important, the attempt to use psychographic or "lifestyle analysis" is a "technique" infrequently seen, and mostly in family or insurance fraud cases by which a spouse or insurer attempts to show that there is hidden or wasted money. The terms "lifestyle analysis" and "analysis of lifestyle" appear in only 73 decisions in all of Lexis. As there are multiple decisions in individual cases, that means there are only 64 actual cases. With few exceptions, these are divorce or insurance cases. The *Kroy* case is one of the exceptions. But the term there is used in the business sense there has more to do with the "squishy science" of choices about use of funds rather than actual allocations of funds;)

While Dr. Lewis stated in his declaration and in his testimony that a person of ordinary skill would not have considered "psychographic preferences" to include "behaviors," he admitted upon questioning that the terms "psychographic analysis" and "lifestyle analysis" "tend to be used interchangeably." Claim Construction Hearing Transcript, Dkt. No. 144, at 38. He also agreed that, as a general matter, "certain behaviors ***tend*** to be associated with certain lifestyles." *Id.* at 39-40. (Emphasis added.)

.Kroy at 2014 U.S. Dist. LEXIS 176442, at \*52 (E.D. Tex. Dec. 23, 2014). Here Yusuf attempts to suggest that ALL Hamed spending TENDS to be 'linked' to funds derived from the Partnership – not true at all. This is what Judge Brady referred to as Yusuf's "*unsupported assumption* that any monies identified in excess of "known sources of income" constitute distributions from partnership funds to the partners' §71(a) accounts."

Thus, this claim should be dismissed under the law of the case doctrine. It should also be dismissed because (1) such an analysis of the lifestyles and spending of the Hameds that starts from the assumption that all spending after 2006 **TENDS** to come from the Partnership is "unsupported" and idiotic because (2) as Judge Brady stated, "the body of the BDO Report itself contains a section detailing its own substantial "limitations," resulting from the absence or inadequacy of records. . ." and (3) because the Yusufs have never provided the matching discovery for a comparison despite requests, motions and orders.

## II. **Statement of Material Facts Not in Dispute**

There are no facts not already of record. The only facts relevant to this motion are the Brady decision and the admissions about the lack of (and impossibility of obtaining) necessary records by BDO that Judge Brady quoted.

In other words, the facts of this are merely the basic statement of Yusuf's own claim viewed in light of Judge Brady's Order and the subsequent (lack of) discovery responses.

### III. Argument

There is no such "claims' theory in the USVI, it is a theory that would be impossible to prove given the state of the records as related by BDO, and the Court has already dealt with this claim – holding (in this proceeding) that "the analysis presented in the report rests on the unsupported assumption [about "lifestyle analysis" as a theory] that any monies identified in excess of "known sources of income" constitute distributions from partnership funds . . . ." It is pure lunacy given the state of the financial records as described by Yusuf's own accountants in the same report making the claim.

### IV. Conclusion

Oddly, the holding that Hamed seeks here is EXACTLY the same holding that Judge Brady has already written:

the analysis presented in the report rests on the unsupported assumption [about "lifestyle"] that any monies identified in excess of "known sources of income" constitute distributions from partnership funds to the partners' §71(a) accounts.

The Court not being in the business of providing relief based on "unsupported assumptions," the motion should be granted.

Dated: July 31, 2021



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**CERTIFICATE OF SERVICE**

I hereby certify that on this 31<sup>st</sup> day of July 2021, I served a copy of the foregoing by email (via CaseAnywhere), as agreed by the parties, on:

**Hon. Edgar Ross**

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

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

