

IN THE SUPERIOR COURT OF THE VIRGIN ISLANDS

DIVISION OF ST. CROIX

WALEED HAMED, as Executor of the)
Estate of MOHAMMAD HAMED,)
)
Plaintiff/Counterclaim Defendant,)

CIVIL NO. SX-12-CV-370

v.)

ACTION FOR INJUNCTIVE)
RELIEF, DECLARATORY)
JUDGMENT, AND)
PARTNERSHIP DISSOLUTION,)
WIND UP, AND ACCOUNTING)

FATHI YUSUF and UNITED CORPORATION,)
)
Defendants/Counterclaimants,)

v.)

WALEED HAMED, WAHEED HAMED,)
MUFEED HAMED, HISHAM HAMED, and)
PLESSEN ENTERPRISES, INC.,)
)
Additional Counterclaim Defendants.)

Consolidated With

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

CIVIL NO. SX-14-CV-287

v.)

ACTION FOR DAMAGES AND)
DECLARATORY JUDGMENT)

UNITED CORPORATION,)
)
Defendant.)

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

CIVIL NO. SX-14-CV-278

v.)

ACTION FOR DEBT AND)
CONVERSION)

FATHI YUSUF,)
)
Defendant.)

**FATHI YUSUF and
UNITED CORPORATION,**

Plaintiffs,

v.

**THE ESTATE OF MOHAMMAD HAMED,
WALEED HAMED, as Executor of the Estate of
Mohammad Hamed, and THE MOHAMMAD A.
HAMED LIVING TRUST,**

Defendants.

CIVIL NO. ST-17-CV-384

**ACTION TO SET ASIDE
FRAUDULENT TRANSFERS**

KAC357, INC., a USVI Corporation,

Plaintiff,

v.

**FATHI YUSUF, a partner, and
THE HAMED-YUSUF PARTNERSHIP
a/k/a THE PLAZA EXTRA SUPERMARKET
PARTNERSHIP,**

Defendants.

CASE NO.: SX-18-CV-219

**ACTION FOR DEBT AND
UNJUST ENRICHMENT**

**FATHI YUSUF’S OPPOSITION TO MOTION FOR
SUMMARY JUDGMENT RE REVISED CLAIM Y-11 – LIFESTYLE ANALYSIS**

In his Motion for Summary Judgment re: Revised Y-11 – Lifestyle Analysis, Hamed argues that Judge Brady’s July 21, 2021 Limitations Order addressed and rejected the “Lifestyle Analysis” that Yusuf’s accounting experts, BDO, are using, in part in their preliminary Report¹ to

¹The preliminary BDO Report in its original form was submitted with Yusuf’s and United’s Proposed Accounting and Distribution Plan on September 30, 2016. The preliminary BDO Report chronicled voluminous records from bank accounts, receipts, loan payments, brokerage accounts and other financial records. Detailed tables and adjustments were provided so as to ensure that double counting was not present. As discussed below, the summary chart in the preliminary Report was amended to remove the allocations prior to September 2006. However, the preliminary report

determine the amount of money that Mohammad Hamed and his sons misappropriated from partnership funds. This contention is belied by the language of the Order and, moreover, Judge Brady's explicitly declined to exclude the BDO Report from evidence in his Order Denying Hamed's Motion to Strike issued the same day. *See* Judge Brady Order - Denying Plaintiff's Motion to Strike Accounting Expert (BDO), dated July 21, 2017. Therein, Judge Brady also noted that given the fact that the case will not be heard by a jury, that "the ability of the Master and the Court to evaluate reports and ascribe to them only such weight as they deserve, militates against striking the reports..." *Id.* at. 1.

I. The Limitations Order Does Not Reject the Accounting Methodology for Identifying Hamed Misappropriations.

According to Hamed, Judge Brady's Limitations Order stated that "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." Hamed's Motion, p. 5. But the bracketed words "lifestyle" do not appear in that sentence in Judge Brady's July 21 Opinion or anywhere else in his Opinion. Judge Brady did not specifically reject a "lifestyle" analysis to determine whether a partner has misappropriated partnership funds. In fact, this statement is clearly *dicta* as Judge Brady's primary reasons for limiting the period of an accounting from September 17, 2006 to the present were the parties own acknowledged and accepted informal accounting practices and BDO's own acknowledgement of gaps in the accounting records it examined. *See* Judge Brady's July 21, 2012

is not in final form and was done based upon the records available but there remain depositions to be taken and a final report will be issued thereafter, by Yusuf's expert.

Limitations Order, p. 24 and n. 25.² These gaps resulted, among other things, from the destruction of accounting records in a 1992 fire at the Plaza Extra East store and Banco Popular's seven-year records retention period. *Id.* at p. 24, n. 25.

BDO acknowledged that it was engaged to provide a proposed "Partnership accounting, with respect to the disbursements of the Partners and their agents during the covered period and [a] proposed allocation to equalize partnership distributions." See **Exhibit A**—Preliminary BDO Report Excerpts, at p.12. BDO noted that a customary partnership would maintain separate books of accounts which would include records of each partners capital contributions and a separate capital account for investments and his share of net income/loss as well as separate withdrawal account. *Id.* The withdrawal account would be used to track the amounts taken from the business for personal use. *Id.* Given the fact that this was an oral partnership, those formal accounting mechanisms did not exist. BDO explained that:

Due to the lack of formal accounting records related to the Partnership withdrawals and to the ongoing disputes between the Partners, BDO was requested to identify through the use of forensic accounting, the amounts that have been withdrawn from the Partnership which could be construed to be Partnership withdrawals and/or distributions. As forensic accountants, we use financial information to reconstruct past events.

Id.

The BDO preliminary analysis was divided into two (2) categories:

1. Known or Documents Withdrawals from Partnership (now labeled as Y-10)
2. Lifestyle Analysis to Identify Undisclosed Withdrawals from the Partnership (now labeled as Y-11).

Id. at 13. As BDO described:

² In fact, Judge Brady's opinion is 34 pages long and the reference Hamed makes is to a single sentence that does not form the basis for his ultimate opinion to limit the period of the accounting claims.

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

Id. These "Known or Documented Withdrawals" are numbered in this process as Y-10.

From there, BDO undertook to "identify all other income received by the Partners... that could be construed to be partnership distributions, *which otherwise had not been disclosed as a withdrawal.*" *Id.* at p. 15 (emphasis added). The Master has previously found that Hamed misappropriated partnership funds and falsely represented to Fathi Yusuf that he had engaged in no additional misappropriations beyond those which Yusuf had discovered up to that time. *See* Master's May 3, 2020 Order at p. 33. In determining how to identify undisclosed distributions (*i.e.*, Hamed misappropriations), BDO premised and grounded its position on Mr. Mohammad Hamed's deposition testimony from April 21, 2014, noting that "Mr. Mohammad Hamed testified that their only source of income was salaries and/or wages, and the distributions received from the Partnership since 1986." *Id.* at p. 15, n. 24; p. 16, n. 32, *citing* M. Hamed April 21, 2014 deposition, at pp. 43-44. Thus, Mr. Hamed's "family's sole source of income was the monies they withdrew from the supermarkets." *Id.* at p. 15. "Therefore, any excess of monies identified over the known sources of income during the period analyzed was assumed to be partnership distributions and/or

partnership withdrawals.” *Id.* By contrast, the Yusuf family testified that they had other sources of income not simply from the grocery store operations such as rental and other businesses.

Based upon Mr. Hamed’s testimony that the partnership was the *sole* source of his and his families’ income, BDO described its analysis:

As part of our analysis, we identified and included all amounts deposited in the respective bank and brokerage accounts, credit card payments, and funds assumed to have been received as partnership distributions/withdrawals identified from cash receipts provided. ...

Our examination entailed reviewing and analyzing all known and available bank accounts, brokerage/investment accounts and credit card accounts of each of the Partners, family members and their agents. As part of our analysis, we identified and included all amounts deposited in the respective bank and brokerage accounts, credit card payments, and funds assumed to have been received as partnership distributions/withdrawals. Any excess monies identified from our examination over the known and confirmed income was assumed to be distributions from the partnership.

Id. at 17-18.

Further, although there were gaps in the records, there was not a dearth of information. To the contrary, the information was voluminous – years of records for numerous family members.³ Various procedures were established to ensure that a deposit was not double counted or reflected a known distribution. Based upon the information available and following Judge Brady’s limitation Order, BDO removed potential undisclosed income deposits prior to September 17, 2006. *See Exhibit B-Revised Summary Chart.* Even with the limited timeframe (2006 thru 2013), it appears from the records that the Hameds made deposits into brokerage accounts, payments on credit cars and other investments totaling \$1,966,617.56 for which there is no known partnership

³ The index to the records reviewed reveals the thousands of pages of documents reviewed, to which each account, each statement, each deposit was logged and then cross referenced as to a known partnership withdrawal or distribution so as to be adjusted out and not counted as undisclosed.

withdrawal. *Id.* Every single deposit which comprises this number is documented from a bank statement, tax return, brokerage account or credit card statement, categorized, listed in a table by the name of each family member and further broken down by year and provided with the full tables and supporting documents to opposing counsel.

BDO explained that this type of analysis, a “Lifestyle analysis is the most commonly used method of proving income for an individual in cases where records or documents are not fully available.” *See* Exhibit A—Preliminary BDO Report Excerpts, at p. 15. BDO further explained, that it “relied upon the bank deposits method, one of the traditional indirect methods, to identify the Partners’ withdrawals” because “the bank deposits method is recommended to be used in various situations, specifically when books and records are incomplete, inadequate, or not available, such as in this case.” *Id.* at p. 16.⁴ Hence, BDO tailored its approach to the analysis based upon the available records and there are established accounting methodologies designed for such circumstances.

Judge Brady’s conclusion was that the problems inherent in tabulating payments from partnership monies to Mohammed Hamed and his sons and to Fathi Yusuf and his sons (whether disclosed and authorized or whether undisclosed and therefore, unauthorised) warranted a laches-based cutoff of any accounting claims that predated September 17, 2006. But the inescapable inference is that Judge Brady concluded that these problems period were not so significant after September 17, 2006, so as to prevent a reasonably accurate tabulation of partnership payments to the Hameds and Yusufs for the September 17, 2006 to 2014-15 when the stores were split.

⁴ BDO cites to various sources and cases that have utilized the bank deposit methodology for identifying undisclosed income, acknowledging that “a description of banks deposits computation can be observed in case *United States v. Boulet*, 577 F.2d 1165 (5th Cir. 1978)” and citing to Thomson Reuters/PPC. (2014). *Litigation Support Services: Chapter 11 Criminal Cases*, “1104 Methods of Proving Unreported Income”. *Id.* at nt. 25-29.

BDO also acknowledged the increasing reliability of the record keeping as the time progressed, breaking its analysis down into timeframes based upon certain events which lead to more accurate record keeping. *Id.* at p. 20. Following Judge Brady's Limitations Order, BDO revised their Summary Chart to remove all of its partnership accounting for the period prior to September 17, 2006, and to confine the accounting to the period thereafter. *See* Exhibit B. As described above, the revised Summary Chart prepared by BDO does include a "lifestyle analysis" that purports for the period September 17, 2012 to 2013 to determine undisclosed (i.e., misappropriated) payments made from partnership funds to Mohammed Hamed and his sons. Those records demonstrate that the Hameds made deposits into brokerage accounts, payments on credit cards and other investments totaling \$1,966,617.56 for which there is no known partnership withdrawal. *Id.*

Judge Brady did allude that BDO, had in his view made an assumption which could not be supported – namely, that if their analysis showed that one or more of the Hameds had received money in excess of documented withdrawals or distributions from the Plaza Extras safes or bank accounts, that excess came from partnership monies. *See* Judge Brady's July 21, 2012 Limitations Order, p. 24. However, such statement did not appear to acknowledge Mr. Mohammad Hamed's testimony, as referenced in the preliminary BDO report, that the Hamed family's sole source of income was the partnership. *See* Exhibit A—Preliminary BDO Report Excerpts, at p. 15, n. 24; p. 16, n. 32, *citing* M. Hamed April 21, 2014 deposition, at pp. 43-44. Further, contrary to Hamed's contentions, the concept of a "lifestyle analysis" was not rejected by Judge Brady and it is hardly "idiotic." Hamed's Motion, p. 4. As BDO's Report states, "Lifestyle analysis is the most commonly used method of proving income for an individual in cases where records or documents are not fully available." *See* Exhibit A—Preliminary BDO Report Excerpts, at p. 16. This method,

BDO states, “is not only used in criminal cases but also in civil cases such as divorces and for other purposes where income needs to be proved.” *Id.* at p. 16, n. 26 (citation omitted). To be sure, the preliminary BDO Report contains expert opinions which Hamed is free to challenge with evidence or his own expert testimony, and which Yusuf is free to support with evidence. Furthermore, it is not the final expert report as discovery on these issues is continuing. But Hamed has offered no legal basis for his attempt to argue that the law of the case precludes Yusuf from relying on it or subsequent reports using the same analysis in trying to prove his Y-11 claims for misappropriation of partnership monies by the Hameds during the accounting period of September 17, 2006 to 2015 that the Court has identified as the period for which either side can prove its accounting claim.

II. Discovery As to Y-11 Is Continuing and thus, Summary Judgment is Premature.

The other reason why Hamed’s attempt to have BDO’s preliminary tabulations of misappropriations dismissed on summary judgment grounds is improper is that this claim is one for which the parties previously stipulated that discovery could be undertaken. *See Exhibit C - Stipulation of Parties Regarding Discovery*, p. 4. Yusuf has not yet taken the deposition of Waleed Hamed or any of his brothers to determine what aspects of BDO’s preliminary lifestyle analysis they believe are improper or inaccurate, and why or to explain what appears to be undisclosed partnership withdrawals and thus, another misappropriation. Those depositions will likely be conducted within the next few months. From there, Yusuf’s experts will consider that discovery and render a revised report. Hamed will have an opportunity to engage an expert to challenge, if he so desires. The expert testimony will then be taken. Any motions for partial summary judgment by either of the parties on these methodologies and tabulations of misappropriations based on the

accounting methodology of a lifestyle analysis should await the completion of the party and expert discovery.

Finally, Hamed complains that Yusuf has not provided responses to discovery which Hamed argues are necessary to determine whether Yusuf has made undisclosed withdrawals of partnership monies using the same lifestyle analysis. *See* Hamed's Motion at pp. 1, n. 2, and page 2. However, Hamed has never made a claim that Yusuf engaged in undisclosed withdrawals. The Master recently limited the information sought by Hamed to only those who are parties to the lawsuit and relating to "assets where the Partnership fund was the source of all or partial funds for the acquisition of such assets" and found that "information sought...regarding assets where the Partnership fund was not the source for the acquisition of such assets irrelevant." *See* September 5, 2021 Order, p. 20. Yusuf has responded accordingly.

Conclusion

In short, Judge Brady does not specifically address BDO's preliminary lifestyle analysis in his Limitations Order, and nothing stated in that opinion regarding the limitations in the accounting records that led to the 2006 cutoff for accounting claims bars Yusuf's use of certain accounting methods for ascertaining the dollar amount of misappropriations for periods after September 17, 2006. The parties are free to use information obtained in the discovery that has been done or will be done on this subject to either support or challenge Yusuf's experts' final conclusions but Judge Brady plainly did not rule the methodology out of bounds.

For all of the of the foregoing reasons, Hamed's Motion for Summary Judgment re: Revised Y-11 – Lifestyle Analysis should be denied.

Respectfully submitted,

DUDLEY NEWMAN FEUERZEIG LLP

DATED: November 2, 2021

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CERTIFICATE OF SERVICE

I hereby certify that on this 2nd day of November, 2021, I caused the foregoing **FATHI YUSUF'S OPPOSITION TO MOTION FOR SUMMARY JUDGMENT RE REVISED CLAIM Y-11 – LIFESTYLE ANALYSIS**, which complies with the page or word limitation set forth in Rule 6-1(e), to be served upon the following via the Case Anywhere docketing system:

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**Exhibit A -
Preliminary BDO
Report Excerpts**

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

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4. METHODOLOGY AND PROCEDURES PERFORMED TO DETERMINE WITHDRAWALS FROM PARTNERSHIP

In the Virgin Islands, partnerships are governed by the Uniform Partnership Act (“UPA”), adopted in 1998 as Title 26, Chapter I of the Virgin Islands Code. A partnership is defined as “an association of two or more persons who carry on a business, as co-owners, for profit”.²² Typically, unless a written partnership agreement stipulates otherwise, certain general rules apply with respect to management, profits, and losses. For example, unless otherwise stipulated in writing, each partner has an equal voice in the management of the partnership's business and all partners share equally in profits and losses of the partnership.

Customarily, a partnership maintains separate books of account, which typically include records of the partnership's financial transactions and each partner's capital contributions. Usually, each partner has a separate capital account for investments and his share of net income/loss, and a separate withdrawal account. A withdrawal account is used to track the amounts taken from the business for personal use. On the other hand, net income or loss is added to the capital accounts in the closing process.

As previously indicated, the present claim arises from disputes over the Partnership and partnership distributions. At present, the Court has ruled that the Supermarkets are owned by the Partnership composed of Mr. Hamed and Mr. Yusuf on a fifty-fifty basis, thus net income/loss is shared equally among the partners. With respect to the Partnership distributions/withdrawals, no agreement has been reached by the parties and they are presently disputing amounts owed to or from the respective partner.

Due to the lack of formal accounting records related to the Partnership withdrawals and to the ongoing disputes between the Partners, BDO was requested to identify through the use of forensic accounting, the amounts that have been withdrawn from the Partnership which could be construed to be Partnership withdrawals and/or distributions. As forensic accountants, we use financial information to reconstruct past events. It should be noted that the findings and the report are impacted by the quality of the information provided and/or by the lack or limitation of the information provided for analysis. In the following paragraphs and sections, we will discuss the methodology and assumptions used during the engagement and the limitations we encountered in connection with the information provided.

²² Refer to Exhibit 16.

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.

Tickets/receipts signed by third parties were observed acknowledging the receipt of money as a result of a loan; these tickets/receipts were also signed by Partners, family members and/or their agents who authorized the loan. Available tickets/receipts of the repayment of loans were also observed, signed by Partners, family members and/or their agents. If both tickets/receipts were identified, loan originated and loan repayment, we proceeded to adjust the amounts. However, if only one ticket/receipt was observed, said amounts were considered as partnership distributions.

Payments to attorneys with partnership's funds

During our examination a number of payments for legal services issued by either Partners, family members and/or their agents were analyzed and deemed not related to Partnership benefits or agreed upon. As a result, such payments were considered partnership distributions.

Funds withdrawn by cashier's checks

In order to identify any additional monies withdrawn, not directly identifiable through the Partnership or directly linked to the Partnership which could be construed to be partnership distributions, we examined available **cashier's checks** issued to either Partners, family members and/or their agents. Furthermore, we also reviewed any available supporting documentation related to such disbursements in order to determine whether such withdrawals/disbursements constituted partnership distributions.

4.1.2 Lifestyle Analysis to Identify Undisclosed Withdrawals from the Partnership

Our examination was aimed to identify all other income received by the Partners, family members and/or their agents that could be construed to be partnership distributions, which otherwise had not been disclosed as a withdrawal. Mr. Mohammad Hamed testified that their only source of income was salaries and/or wages, and the distributions received from the Partnership since 1986.²⁴ Therefore, any excess of monies identified over the known sources of income during the period analyzed was assumed to be partnership distributions and/or partnership withdrawals.

Yusuf's family has testified that their source of income was not only related to the supermarket activities, but also from United's rental and other businesses not related to the supermarket operation. Any unidentified deposit was considered a withdrawal from the Partnership.

Lifestyle analysis is the most commonly used method of proving income for an individual in cases where records or documents are not fully available. This method considers the person's spending patterns in

²⁴ Refer to Case No. SX-12-CV370, Oral deposition of Mr. Hamed dated April 21, 2014, pages 43 to 44.

relation to their known sources of funds.²⁵ If a person has declared income that is well below the cost of the lifestyle he or she is living, the lifestyle analysis may suggest that undisclosed sources of income exist. When the total is compared to reported or known sources of income, there may be a big gap, which can indicate other sources of income.

There are different methods to prove income, depending on factors such as the availability and adequacy of the individual's books and records, whether the individual spends all income or accumulates it, the type of business involved, etc. The methods commonly used are the following:²⁶

- a. Direct (specific item or transaction) method
- b. Indirect methods:
 - i. Net worth method
 - ii. Expenditures method
 - iii. Bank deposits method
 - iv. Cash method
 - v. Percentage markup method
 - vi. Unit and volume methods

We relied upon the bank deposits method²⁷, one of the traditional indirect methods, to identify the Partners' withdrawals. The bank deposits method is recommended to be used in various situations, specifically when books and records are incomplete, inadequate, or not available, such as in this case.²⁸

This method is based on the theory that if a person is engaged in an income producing business or occupation and periodically deposits money in bank accounts in his or her name or under his or her control, an inference can be drawn that such bank deposits represent income unless it appears that the deposits represented re-deposits or transfers of funds between accounts, or that the deposits came from a non-related sources such as gifts, inheritances, or loans. In other words, under this method, all bank deposits are deemed to be income, unless they can be traced to another source of funds.²⁹

²⁵ Sources of income or funds can include wages, bonuses, stocks sold, bank loan proceeds, gifts, gambling winnings, among others.

²⁶ Thomson Reuters/PPC. (2014). *Litigation Support Services: Chapter 11 Criminal Cases, "1104 Methods of Proving Unreported Income". These methods are not only used in criminal cases but also in civil cases such as divorces and for other purposes where income needs to be proved.*

²⁷ A description of banks deposits computation can be observed in case United States v. Boulet, 577 F.2d 1165 (5th Cir. 1978).

²⁸ Thomson Reuters/PPC. (2014). *Litigation Support Services: Chapter 11 Criminal Cases, "1104 Methods of Proving Unreported Income".*

²⁹ This may include bank loans, transfer from another account, a gift, or another documented source. The Fraud Files Blog. (2010, February 28). *Lifestyle Analysis in Criminal Cases: Proving Income without Full Documentation.* <http://www.sequenceinc.com/fraudfiles/2010/02/lifestyle-analysis-in-criminal-cases-proving-income-without-full-documentation/>.

This method also contemplates, that any expenditures made by the person in cash or currency from funds not deposited in any bank and not derived from a known source, similarly raises an inference that such cash or currency represents additional income.

The deposits method can stand on its own as proof of taxable income; it need not be corroborated by another method and its use is not limited to validating another method. In using the deposits method, care must be taken to observe the following procedures:

- a. Deposits to all types of financial institutions should be considered; for example, banks, savings and loan associations, investment trusts, mutual funds, brokerage accounts, etc.
- b. Cash payments (whether for business expenses, personal expenses, investments, etc.) made from cash receipts not deposited must be counted (added) as additional gross income.
- c. Deposits that do not represent taxable income, such as deposits of gifts, inheritances, loan proceeds, insurance proceeds, etc., must be deducted from total deposits.
- d. Calculating taxable income, deductible business expenses, whether paid by cash or check, must be deducted from the total deposit, a deduction for depreciation must also be allowed.³⁰
- e. Care must be taken not to double count transfers between accounts, deposits of previously withdrawn checks, checks in transit at the end of the period, bounced checks, debit and credit **advices or deposits reported on the prior period's tax return but not deposited until the current period.** Also, only the net deposit should be counted if the deposit slip lists all checks and then deducts an amount to be paid to the taxpayer in cash.

Based on the deposit method, we decided to examine the bank accounts, credit card accounts, and brokerage/investment accounts of each of the Partners, family members and their agents. As part of our analysis, we identified and included all amounts deposited in the respective bank and brokerage accounts, credit card payments, and funds assumed to have been received as partnership distributions/withdrawals identified from cash receipts provided. In order to confirm the funds and sources of income of both families, we used their known salaries/wages.

Our examination entailed reviewing and analyzing all known and available bank accounts, brokerage/investment accounts and credit card accounts of each of the Partners, family members and their agents. As part of our analysis, we identified and included all amounts deposited in the respective

³⁰ Thomson Reuters/PPC. (2014). *Litigation Support Services: Chapter 11 Criminal Cases, "1104 Methods of Proving Unreported Income"*.

bank and brokerage accounts, credit card payments, and funds assumed to have been received as partnership distributions/withdrawals. Any excess monies identified from our examination over the known and confirmed income was assumed to be distributions from the partnership. In order to confirm the funds and sources of income of both families, we obtained from the Partnership records the salaries and wages earned by the Partners, family members and their agents.

Through our forensic analysis, we were also able to identify a number of disbursements related to a construction of a residence belonging to Waleed Hamed (son of Mohammad Hamed). Such amounts were considered in our analysis of the partnership distributions.

In order to avoid double counting of data, our lifestyle analysis required that certain adjustments be made to the amounts of withdrawals/distributions identified for each of the Partners, family members and/or their agents. Following, list of the type of adjustments that were made:

1. Deduction from the amounts deposited, any amounts identified from sources other than the supermarket business. (Transfers from family members and/or transfers from other owned accounts).
2. Deduction of payments made to credit card accounts using funds from other personal accounts.
3. Deduction of amounts identified through cash tickets/receipts, related to withdrawals from the Partnership which we were able to identify as having been deposited in the bank and/or brokerage accounts.
4. Deduction of checks issued from Plaza Extra's accounts which we identified as having been deposited in the bank or brokerage accounts representing reimbursement of business expenses.

The above described procedures were applied to each of the Partners, family members and their agents in order to calculate the excess monies received per each individual over their stated or known sources of income. The calculated withdrawals and/or construed partnership distribution were tallied per Partner, family member, agent and family (i.e. Hamed Family vs. Yusuf Family). Following is a list of the Partnership families - Hamed & Yusuf:

Hamed Family

- a. Mohammad Hamed
- b. Waleed Hamed
- c. Waheed Hamed
- d. Mufeed Hamed

e. Hisham Hamed

Yusuf Family

- a. Fathi Yusuf
- b. Nejeh Yusuf
- c. Maher Yusuf
- d. Yusuf Yusuf
- e. Najat Yusuf
- f. Zayed Yusuf

4.2 Yusuf Family Members

We also performed a Partnership withdrawal analysis and a lifestyle analysis of the following additional Yusuf family members:

- Syaid Yusuf
- Amal Yusuf
- Hoda Yusuf

Our analysis entailed identifying checks and cash withdrawals, payments to third parties, payments to attorneys and withdrawals through **cashier's checks from Partnership accounts**. As well as reviewing and analyzing deposits to available bank accounts and brokerage/investment accounts, and payments to credit card accounts. However, our examination did not reveal any of the latter, checks or cash withdrawals; No deposits were made to bank accounts, brokerage/investment accounts or payments to credit cards. In accordance with the information presented, our analysis did not reveal Partnership withdrawals for the benefit of Amal, or Hoda Yusuf family members for 1994 to 2012. Hence, no adjustments were required. For Syaid Yusuf, we only observed three checks associated with tax expenses for the year 2000 and 2001 and therefore adjusted. No further analysis was needed.

4.3 Periods for Analysis

Due to the lack of formal accounting records related to the Partnership withdrawals prior to Mr. Gaffney's appointment, we divided into four periods the result of our work and the proposed adjustments to the partnership distributions based on the availability of the information. Following is a description of the periods:

1. January 1994 thru September 2001: this is the accounting period prior to the FBI raid and government scrutiny. During this period, it was common for the Partners, family members and their agents to withdraw monies via a check or cash by just signing a cash ticket/receipt. Neither formal supervision nor formal accounting was in place during this period.
2. October 2001 thru December 2012: this is the period after the FBI raid and government scrutiny; accounting was improved, however, Gaffney was not in place and most withdrawals were limited to salaries; partnership distributions were limited as the government supervision/monitoring was in place.
3. January 2013 thru January 30, 2015: the Gaffney years - accounting information is formal and comprehensive. During this period, all withdrawals were made with Gaffney's supervision and therefore, were recognized in the general ledger.
4. January 30, 2015 thru August 31, 2016: this is the period of the liquidation of the Partnership assets; during this period, all transactions were performed with Gaffney's supervision and therefore, recognized in the general ledger. Additionally, during this period the Partnership activity was supervised by the Court through the appointed Master.

We should clarify that before 1994 only one store was open, a fire in 1992 destroyed the store and with it most of the financial/accounting information that was available. It had also been established that the Partnership kept a “black book” or a ledger to reconcile withdrawals from the Partnership. Prior to 1993, no amounts had been disputed by either Partner. However, as a result of the current litigation process, Mr. Yusuf became aware of certain investments reported by Waleed Hamed in his personal income tax returns of 1992 and 1993. Due to the amounts involved it was decided to evaluate and consider such amounts as part of our analysis.

Our analysis included information until August 2014, however we decided to adjust all transactions after January 2013 considering that during that period Mr. Gaffney was in control of all the transactions related to the partnership and all withdrawals should be accounted for.

4.4 Documents Examined

As part of our analysis, we have examined documents for each of the family members of the Hamed and Yusuf families, the Supermarkets (includes Plaza Extra-East, Plaza Extra-West, and Plaza Extra-Tutu Park), United Corporation, and other related entities. All information, documents, evidence examined

and used by BDO was provided by Dudley.³¹ The following is a summary of documents examined and used in our analysis.

- General ledgers of the Supermarkets
- Cash receipts of the Supermarkets
- Monthly bank statements of the Supermarkets' bank accounts
- Monthly bank statements of each Partner's bank accounts
- **Monthly bank statements of each of the Partner's family members' bank accounts**
- **Monthly bank statements of each of the Partner's agents' bank accounts**
- Monthly brokerage/investment statements of each Partner's investment accounts
- Monthly **brokerage/investment statements of each of the Partner's family members' investment accounts**
- **Monthly brokerage/investment statements of each of the Partner's agents' investment accounts**
- Credit card statements of each Partner's credit card accounts
- **Credit card statements of each Partners' family members' credit card accounts**
- **Credit card statements of each Partners' agents' credit card accounts**
- Income tax return of each Partner
- **Income tax return of each Partner's family members**
- Income tax return of each Partner's agents
- Legal documents: Court Orders, Motions and depositions
- Letters, black book (cash receipts ledger) and other documents

As indicated under Section 4.5 Limitations, we encountered certain limitations with respect to the information provided; not all of the information examined was complete. Due to the volume of documents provided, we have included a complete list of documents examined and used in our report. Therein, we have listed the documents received along with the corresponding dates. In addition, any missing statements and/or documents are also disclosed therein.

In the following sections, we describe the specific procedures that were applied to enable us to identify any withdrawals made by the Partners, family members and/or their agents that could be construed to be partnership distributions for the covered period.

³¹ Information obtained from of the following sources: (1) FBI files related to Criminal Case No. 2005-CR-0015, (2) documents provided by Mr. Hamed through the discovery process in the Case, (3) documents provided by Mr. Yusuf and United Corp. through the discovery process in the Case.

List of Documents Reviewed

1. Expert Report of J. David Jackson, CPA 8-1-14 (Civil No. SX-12-cv-370), including Exhibits
2. Merrill Lynch Statements Subpoena - Waleed Hamed (Civil No. SX-12-cv-370)
3. Banco Popular Subpoena - Mohammad Hamed
4. Document Production 9-29-2014 (Waleed, Mufeed and Hisham Hamed)
5. Document Production 9-9-2014 (Waleed, Mafi and Shawn Hamed)
6. Information from Julio Miranda, including back-up documents and working papers
7. FBI Files
8. Scotia Bank Documents Produced on 9-24-14, FY 010987 - 011468
9. Banco Popular Documents Produced on 9-23-14, FY 011469 - 012055
10. Banco Popular Documents Subpoenaed - Waleed Hamed
11. Banco Popular Documents Subpoenaed - 10-8-2014 - Mufeed Hamed
12. Information received from Mr. Yusuf
13. Legal Documents, including:
 - A. Depositions of Mohammad Hamed
 - B. **Expert's Report** - Holt (Hamed) (Civil No. SX-12-cv-370)
 - C. **Plaintiff's Discovery** - 12-13
 - D. **Plaintiff's First Amended Complaint** - 15-Dist. Ct. 1:12-cv-00099-WAI-GWC
 - E. First Amended Counterclaim
 - F. Memorandum in Support of Motion to Appoint Master or Receiver
 - G. Second Amended Scheduling Order
 - H. Motion to Appoint Master Receiver
 - I. Response to Motion to Appoint Master
 - J. **Defendants Reply to Plaintiff's Response** to Motion to Appoint Master
 - K. Requests for Production of Documents to Waleed Hamed (updated)
 - L. Requests for Production of Documents to Waleed Hamed
14. **United Corporation's U.S. Income Tax Returns (1999-2010)**
15. Documents received from Dudley, Topper and Feuerzeig, LLP
16. Adjustments Suggested by Fathi Yusuf and supporting documentation for same
17. Information received on 6-9-2015, including:
 - A. FY 012930 - 013048 - Group 1
 - B. FY 13049 - 13297 - Group 2
 - C. FY 13298 - 13446 - Group 3 (1)
 - D. FY 13447 - 13730 - Group 3 (2)
 - E. FY 13731 - 13900 - Group 3 (3)
 - F. FY 13901 - 14039 - Group 4
 - G. FY 14040 - 14333 - Group 5
 - H. FY 14334 - 14436 - Group 6 (1)
 - I. FY 14437 - 14834 - Group 6 (2)
 - J. Index of Ledgers
18. Ledgers from Plaza Extra Stores, FY 012930 - 014870 and those received by all parties from John Gaffney
19. Information received on 10-24-2014, including:
 - A. 9-29-2014 **Waheed Hamed Supplemental Responses to D's 5-23-2014 RFPD's**
 - B. 9-30-2014 Waleed Hamed 3rd **Supplemental Production to D's 5-23-2014 RFPD's**
 - C. FY 010987-011468 Scotia Bank Docs Produced on 9-24-2014
 - D. FY 011469 - 012055 Banco Popular Documents Produced on 9-23-2014
 - E. FY 012066 - 012067 - Mufeed Checks
 - F. FY 01206 - 012069 - Hisham Checks
 - G. FY 012070 - 012112 - Additional Checks
 - H. FY 012167 - 012929 - Banco Popular Documents Produced on 10-8-2014

20. Chart United
21. Claims for Off-sets
22. Notice of Withdrawal August 15, 2012
23. CD of Banco Popular Documents
24. Documents from Banco Popular CD - Mohammed Hamed
25. Demah, Inc. d/b/a Moes Fresh Market - Corp. Info.
26. 1640835 Independent Monitoring Report - Final
27. Control Logs of Received Information



Dudley, Topper and Feuerzeig, LLP
 United Corporation
 Civil No. SX-12-CV-99
 Summary calculation of Additional Income as a result of withdrawals from Supermarkets' accounts (or partnership's accounts) - January 1994 to August 2014. (Including adjustments for withdrawals before 9/17/2006 as instructed by the Court)

Summary of Withdrawals

Description	Hamed					Total
	Mohammad	Waleed	Waheed	Mufeed	Hisham	
Funds received from partnership through checks	\$ 1,500,000.00	\$ -	\$ -	\$ -	\$ -	\$ 1,500,000.00
Withdrawals from the partnership with a signed ticket/receipt	-	237,352.75	-	-	-	237,352.75
Amount owed by Hamed family to Yusuf as per agreement before raid Sept. 2001. As per Mike's testimony these tickets were burned. (Refer to Letter dated August 15, 2012)	-	1,778,103.00	-	-	-	1,778,103.00
Payments to third parties on behalf of Hamed/Yusuf with partnership funds either with tickets or checks	-	20,311.00	-	-	-	20,311.00
Payments to Attorneys with partnership's funds	-	3,749,495.48	372,155.95	-	-	4,121,651.43
Funds received by cashier's checks	-	-	-	-	-	-
Total Partnership	1,500,000.00	5,785,262.23	372,155.95	-	-	7,657,418.18
Deposits to bank and brokerage accounts	16,505.80	430,439.13	100,000.00	306,999.56	510,061.57	1,364,006.06
Payments to credit cards	-	422,824.70	-	179,786.80	-	602,611.50
Investments (cost) sold as per tax returns	-	-	-	-	-	-
Subtotal Lifestyle analysis	16,505.80	853,263.83	100,000.00	486,786.36	510,061.57	1,966,617.56
Net Withdrawals	\$ 1,516,505.80	\$ 6,638,526.06	\$ 472,155.95	\$ 486,786.36	\$ 510,061.57	\$ 9,624,035.74

Description	Yusuf										Total	Difference
	Fathi	Nejeh	Maher	Yusuf	Najat	Zayed	Syaid	Amal	Hoda	Yacer		
Funds received from partnership through checks	\$ 4,284,706.25	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ 4,284,706.25	\$ (2,784,706.25)
Withdrawals from the partnership with a signed ticket/receipt	-	-	2,000.00	-	-	-	-	-	-	-	2,000.00	235,352.75
Amount owed by Hamed family to Yusuf as per agreement before raid Sept. 2001. As per Mike's testimony these tickets were burned. (Refer to Letter dated August 15, 2012)	-	-	-	-	-	-	-	-	-	-	-	1,778,103.00
Payments to third parties on behalf of Hamed/Yusuf with partnership funds either with tickets or checks	-	-	-	-	-	-	-	-	-	-	-	20,311.00
Payments to Attorneys with partnership's funds	183,607.05	20,370.00	33,714.00	-	-	-	-	-	-	-	237,691.05	3,883,960.38
Funds received by cashier's checks	-	-	-	-	-	-	-	-	-	-	-	-
Total Partnership	4,468,313.30	20,370.00	35,714.00	-	-	-	-	-	-	-	4,524,397.30	3,133,020.88
Deposits to bank and brokerage accounts	-	-	-	-	-	-	-	-	-	-	-	1,364,006.06
Payments to credit cards	-	-	-	-	-	-	-	-	-	-	-	602,611.50
Investments (cost) sold as per tax returns	-	-	-	-	-	-	-	-	-	-	-	-
Subtotal Lifestyle analysis	-	-	-	-	-	-	-	-	-	-	-	1,966,617.56
Net Withdrawals	\$ 4,468,313.30	\$ 20,370.00	\$ 35,714.00	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ 4,524,397.30	\$ 5,099,638.44

Note:
 1 Total amounts include adjustments made for withdrawals in 2016.

**Exhibit B -
 Revised Summary Chart**

Exhibit C-
Scheduling
Order

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

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

Plaintiff/Counterclaim 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

SECOND AMENDED JOINT DISCOVERY AND SCHEDULING PLAN

THE PARTIES to the above-captioned civil action, in accordance with Virgin Islands Rules of Civil Procedure 16 and 26, and the instructions of the Honorable Edgar D. Ross (the “Master”) agree and stipulate to the following discovery and scheduling plan for incorporation into a Case Management Order.

I. Current Status

On December 1, 2018, the Special Master entered an Order (the “December 1, 2018 Order”) following a telephonic conference with counsel as to the status of the claims. *See Exhibit A – December 1, 2018 Order*. The December 1, 2018 Order amended the discovery plan agreed to by the Parties and entered by the Master on January 29, 2018, as modified by Order dated August 6, 2018.

On October 5, 2019, the Master entered the latest amended discovery plan agreed to and submitted by the Parties. *See Exhibit B – October 5, 2019 Amended Scheduling Order*.

Therein, the claims were divided into two groups. Group A consisted of claims by Hamed that required the input of Accountant John Gaffney and Group B were party claims that did not require input from Gaffney. Of the Group B claims, they were further divided into sub-categories: B-1 and B-2. The B-1 Claims involved matters that did not need expert discovery and the B-2 Claims were those that may need expert testimony.

In March 2020, the COVID19 Pandemic impacted much of the progress and delayed adherence to the October 5, 2019 Amended Scheduling Order. Nonetheless, the parties submitted briefs and motions, undertook remote depositions, participated in remote interlocutory hearings and the Master has entered rulings as to various B-1 claims. The status of the B-1 Claims is set forth below and is nearing completion. As to the remaining B-2 Claims, new deadlines have been

provided that maintain the same cadence and sequence as originally contemplated in the prior Amended Scheduling Order, albeit it with new deadlines.

II. Remaining “Part B” Claims:

The remaining Part B Claims will continue to be addressed in two phases.

A. Part B(1) Claims

These claims consist of the following:

- Y-05 Reimburse United for Gross Receipt Taxes (B-1)
- Y-07 Ledger Balance Owed to United (B-1)
- Y-08 Water Revenue Owed United (B-1)
- Y-09 Unreimbursed Transfers to United (B-1)
- H-142 Half Acre in Estate Tutu (B-1)
- H-150 United Shopping Center’s Gross Receipt Taxes (B-1)
- H-160 United Shopping Centers gross receipt taxes (B-1)
- H-165 Outstanding debts identified by Yusuf (B-1)

1. Current Status:

Of the B(1) claims listed above, the Court has issued various rulings. Only two remain incomplete.

- a. Y-8 Claim – Water Revenue Owed to United – An interlocutory hearing on this matter was recently held and the parties have submitted their proposed findings to the Master for his consideration and ruling.
- b. H-142 Half Acre in Estate Tutu – The Master has determined through prior rulings that this claim requires an evidentiary hearing. The parties and counsel are coordinating for a proposed hearing date. As COVID19 protocols remain in place, counsel is attempting to schedule a hearing for a point in which an in-person hearing can

take place. After the hearing, the parties will submit their proposed findings of fact and conclusions of law to the Master for a ruling.

B. Part B(2) Claims

These claims consist of the following:

- Y-10 Past Partnership Withdrawals (B-2)
- Y-11 Lifestyle Analysis (B-2)
- Y-12 Foreign Accounts and Jordanian Property (B-2)
- ~~H-33 Merrill Lynch Accounts (B-2)~~¹
- H-146 Imbalance in Credit Card Points (B-2)
- H-151 Checks written to Fathi Yusuf for personal use (B-2)
- H-162 Claims based on monitoring reports/accounting 2007-2012 (B-2)
- ~~H-163 Loss of Assets as a result of Wrongful Dissolution~~²

1. Schedule for Remaining Discovery As to the Part B(2) Claims:

All written interrogatories, requests for production of documents, and requests for admissions have been exchanged between the parties as to these claims. Any motions to compel will be filed by August 16, 2021. Remaining fact witness depositions, including depositions of non-parties, taken for purposes of discovery and/or to preserve testimony for trial, shall be completed on a per-claim basis as agreed between the parties before November 15, 2021.

2. Schedule for Disposition of Part B(2) Claims:

The parties will each file motions for summary judgment on their affirmative remaining Part B(2) Claims by January 15, 2022. Claims for which the Master feels an evidentiary hearing is deemed necessary will be scheduled to occur promptly after denial of a summary judgment motion as the Master, the parties and counsel will be familiar and well versed on the issues, rather than waiting until a later date.

¹ This claim was stricken per Order dated July 7, 2020.

² This claim has already been the subject of briefing and an interlocutory hearing and is currently pending before the Master.

a. Expert Discovery and Disposition of remaining Part B(2) Claims:

The parties anticipate that following the close of the fact discovery of the Part B(2) claims, that many will require expert testimony and thus, expert discovery will be necessary.

The party asserting the claim(s) shall serve notices identifying all of his expert witnesses, and said expert witnesses' curriculum vitae and written reports, not later than February 15, 2022.

The party defending the claim(s) shall serve notices identifying all of their expert witnesses, and said expert witnesses' curriculum vitae and written reports, not later than March 15, 2022.

All expert witness depositions, for purposes of discovery and to preserve testimony for trial, shall be completed not later than April 30, 2022.

All motions to compel, for sanctions, or for protective orders with respect to expert discovery, shall be filed and served not later than May 15, 2022.

The parties shall jointly contact the Master to attempt an informal resolution of any discovery disputes prior to filing expert discovery motions.

Daubert/Kuhmo motions shall be filed and served not later than June 15, 2022.

b. Disposition of Claims After Expert Testimony:

As to the remaining claims that exist following the close of the expert discovery phase and *Daubert/Kuhmo* motions, to the extent any remaining claims may be disposed of through a summary judgment process, the parties will each file motions for summary judgment on their affirmative remaining Part B(2) claims by July 15, 2022. Claims for which the Master feels an evidentiary hearing is deemed necessary will be scheduled to occur promptly after any denial of a

summary judgment motion as the Master, the parties and counsel will be familiar and well versed in the topic, rather than waiting until a later date.

III. Interlocutory Hearings

To be efficient with the Master's and parties' time and resources, in the event that certain matters require an evidentiary hearing for the Part B(1) and (2) claims, the parties will attempt to group the claims to be heard at any single hearing with overlapping issues, documents and witnesses. No later than 10 days prior to any scheduled Interlocutory Hearing, all motions in limine and V.I. Rule of Evidence 104 motions shall be filed and served.

The parties ask the Master to tentatively schedule³ the first of these for the already briefed H-142 (half-acre at Tutu) for a full, in person hearing on Wednesday, September 8, 2021. If this is not convenient, other suggested dates are: August 30, September 1 or September 2, 2021.

IV. Remaining Part A Claims:

A. Claims to John Gaffney. With regard to the Part A Claims:

It should be noted that the Gaffney (Part A) process involved the Court less than the full-briefing (Part B) process – and thus 30 claims were added to the original 101 Part A claims. Thus, the “starting figure” for Part A claims was actually 131.

1. 101 original claims were designated as Part A Claims requiring a report from John Gaffney.
2. 30 Part B claims were moved to Gaffney / Part A.
3. Thus, **a total of 131 claims** are being submitted to Gaffney.
4. To date Gaffney has completed 30 claims.

³ Yusuf and United believe that this date is available, and thus, seek to hold it as a possible hearing date. Yusuf and United will be able to confirm their availability for these dates in July.

5. To date, Hamed has conceded approximately \$536,556, and Yusuf \$44,619.28.
6. Hamed has removed 6 other claims unilaterally.
7. 96 claims remain to be submitted to Gaffney.

While the process is slow, it has already diverted 30 of the original Part B claims from the need for full consideration by the Court. Therefore, the parties request that the Master allow it to continue at the current pace and to provide a status report every ninety (90) days to alert the Master if there have been any unforeseen delays.

If it appears after the submission of any particular report by Gaffney that the claim to which it pertains remains an open issue and is not resolved, the parties will confer to determine if any further discovery, including possible expert discovery, is needed and if not, then the claim will be briefed via a motion for summary judgment within 90 days of completion of the Gaffney claims – and if the Master feels an evidentiary hearing is deemed necessary it will be scheduled to occur thereafter.

V. Final Accounting Report and Ultimate Distribution Recommendation

The parties are undertaking to develop a comprehensive template for a Final Accounting Report and Ultimate Distribution Recommendation based upon the various interim rulings made by the Master. The parties anticipate they will stipulate to the format of the template and such template can be used by the Master to reflect the accounting allocations between the parties as determined by his various interlocutory Orders with his Final Accounting Report and Ultimate Distribution Recommendation submitted to Judge Brady.

Respectfully submitted,

LAW OFFICES OF JOEL H. HOLT

DATED: June 11, 2021

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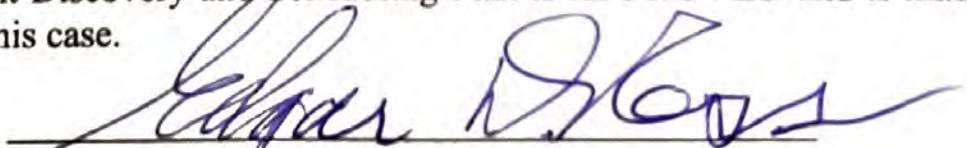
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Attorneys for Fathi Yusuf and United Corporation

The foregoing Amended Joint Discovery and Scheduling Plan is **APPROVED** and is made the Case Management Order in this case.

Dated: June 14th, 2021



Hon. Edgar D. Ross
Master

CERTIFICATE OF SERVICE

It is hereby certified that on this 11th day of June, 2021, I served a true and correct copy of the foregoing **Second Amended Joint Discovery and Scheduling Plan**, which complies with the page and word limitations set forth in Rule 6-1(e), via e-mail addressed to:

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

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

Plaintiff/Counterclaim Defendant,

vs.

FATHI YUSUF and UNITED CORPORATION

Defendants and Counterclaimants.

vs.

WALEED HAMED, WAHEED HAMED, MUFEEED HAMED, HISHAM HAMED, and PLESSEN ENTERPRISES, INC.,

Counterclaim Defendants,

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

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.

ORDER

THIS MATTER, having come on before the Special Master in a telephonic conference on November 29, 2018, on the joint motion of the parties. It is hereby

ORDERED:

1. Due to the progress being made with regard to the Part A claims (Gaffney review) and the Special Master having allowed the movement of Part B claims to the Part A process, adjustments to the original Scheduling Order are necessary.
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3. The parties will work together and with John Gaffney to complete Gaffney's review of and reporting on the Part A claims by Thursday, August 29, 2019.
4. A telephonic status conference is hereby scheduled for 10:00 a.m. on Friday, August 30, 2019 to review that progress and discuss further amending the Scheduling Order to provide for the completion of the then outstanding Part A and Part B claims, which will include the discovery and briefing schedule for any of those claims that remain.
5. The following Part B claims requiring expert discovery will be moved to the Part A *schedule* in that they will be dealt with after completion of the Part A process provided above:

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- H-150 United Shopping Center's gross receipt taxes
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- H-160 United Shopping Center's gross receipt taxes
- H-162 Claims based on monitoring reports/accounting 2007-2012
- H-165 In Yusuf's Accounting and Proposed Distribution Plan filing on September 30, 2016, Yusuf stated that "[t]here are Debts totaling \$176,267.97, which must be paid prior to any distribution of the remaining Partnership Assets to the Partners." (Footnote omitted)
This is an unclear accounting entry.

Dated: Dec. 1, 2018


Hon. Edgar D. Ross, Special Master

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

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Plaintiff/Counterclaim Defendant,

vs.

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KAC357 Inc., *Plaintiff,*

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HAMED/YUSUF PARTNERSHIP,
Defendant.

JOINT DISCOVERY AND SCHEDULING PLAN

THE PARTIES to the above-captioned civil action, in accordance with Virgin Islands Rules of Civil Procedure 16 and 26, and the instructions of the Honorable Edgar D. Ross (the “Master”) agree and stipulate to the following discovery and scheduling plan for incorporation into a Case Management Order.

I. Current Status

On December 1, 2018, the Special Master entered an Order (the “December 1, 2018 Order”) following a telephonic conference with counsel as to the status of the claims. *See Exhibit A – December 1, 2018 Order.* The December 1, 2018 Order amended the discovery plan agreed to by the Parties and entered by the Master on January 29, 2018, as modified by Order dated August 6, 2018.

After lengthy discussions as to how to best proceed through the remaining claims so as to remain efficient, the parties believe the claims and their processing should be addressed as set forth herein.

II. Remaining “Part B”¹ Claims:

The sixteen (16) remaining Part B Claims will be addressed in two phases.

A. Part B(1) Claims

These claims consist of the following:

- Y-05 Reimburse United for Gross Receipt Taxes (B-1)
- Y-07 Ledger Balance Owed to United (B-1)

¹ The parties divided the claims into two tracks—Part A and Part B. The Part A claims were those claims that John Gaffney was needed to provide an accounting explanation and originally were identified as claims H-41 thru H-141. An additional 30 claims were moved to the Part A track, for a total of 131 claims. The Part B claims are the remaining claims that do not require Gaffney input or explanation. Summary judgment motions concerning 5 Part B claims have been submitted to the Master. Of the remaining Part B claims, 8 Part B(1) claims do not require expert testimony and will be addressed next. The final 8 Part B(2) claims may require expert testimony and will be addressed last.

Y-08 Water Revenue Owed United (B-1)
Y-09 Unreimbursed Transfers to United (B-1)
H-142 Half Acre in Estate Tutu (B-1)
H-150 United Shopping Center's Gross Receipt Taxes (B-1)
H-160 United Shopping Centers gross receipt taxes (B-1)
H-165 Outstanding debts identified by Yusuf (B-1)

1. Schedule for remaining discovery as to the Part B(1) Claims:

All written interrogatories, requests for production of documents, and requests for admissions have been exchanged between the parties as to these claims. Any motions to compel will be filed by October 15, 2019. Remaining fact witness depositions, including depositions of non-parties, taken for purposes of discovery and/or to preserve testimony for trial, shall be completed on a per-claim basis as agreed between the parties before February 15, 2020.

2. Schedule for Disposition of Part B(1) Claims:

The parties will each file motions for summary judgment on their affirmative remaining Part B(1) Claims by April 1, 2020. Claims for which the Master feels an evidentiary hearing is deemed necessary will be scheduled to occur promptly after denial of a summary judgment motion as the Master, the parties and counsel will be familiar and well versed on the issues, rather than waiting until a later date.

B. Part B(2) Claims

These claims consist of the following:

Y-10 Past Partnership Withdrawals (B-2)
Y-11 Lifestyle Analysis (B-2)
Y-12 Foreign Accounts and Jordanian Property (B-2)
H-33 Merrill Lynch Accounts (B-2)
H-146 Imbalance in Credit Card Points (B-2)
H-151 Checks written to Fathi Yusuf for personal use (B-2)
H-162 Claims based on monitoring reports/accounting 2007-2012 (B-2)
H-163 Loss of Assets as a result of Wrongful Dissolution

1. Schedule for Remaining Discovery As to the Part B(2) Claims:

All written interrogatories, requests for production of documents, and requests for admissions have been exchanged between the parties as to these claims. Any motions to compel will be filed by July 1, 2020. Remaining fact witness depositions, including depositions of non-parties, taken for purposes of discovery and/or to preserve testimony for trial, shall be completed on a per-claim basis as agreed between the parties before February 15, 2021.

2. Schedule for Disposition of Part B(2) Claims:

The parties will each file motions for summary judgment on their affirmative remaining Part B(1) Claims by April 1, 2021. Claims for which the Master feels an evidentiary hearing is deemed necessary will be scheduled to occur promptly after denial of a summary judgment motion as the Master, the parties and counsel will be familiar and well versed on the issues, rather than waiting until a later date.

a. Expert Discovery and Disposition of remaining Part B(2) Claims:

The parties anticipate that following the close of the fact discovery of the Part B(2) claims, that many will require expert testimony and thus, expert discovery will be necessary.

The party asserting the claim(s) shall serve notices identifying all of his expert witnesses, and said expert witnesses' curriculum vitae and written reports, not later than April 15, 2021

The party defending the claim(s) shall serve notices identifying all of their expert witnesses, and said expert witnesses' curriculum vitae and written reports, not later than May 15, 2021.

All expert witness depositions, for purposes of discovery and to preserve testimony for trial, shall be completed not later than June 15, 2021.

All motions to compel, for sanctions, or for protective orders with respect to expert discovery, shall be filed and served not later than July 15, 2021.

The parties shall jointly contact the Master to attempt an informal resolution of any discovery disputes prior to filing expert discovery motions.

Daubert/Kuhmo motions shall be filed and served not later than August 15, 2021.

b. Disposition of Claims After Expert Testimony:

As to the remaining claims that exist following the close of the expert discovery phase and *Daubert/Kuhmo* motions, to the extent any remaining claims may be disposed of through a summary judgment process, the parties will each file motions for summary judgment on their affirmative remaining Part B(2) claims by September 1, 2021. Claims for which the Master feels an evidentiary hearing is deemed necessary will be scheduled to occur promptly after any denial of a summary judgment motion as the Master, the parties and counsel will be familiar and well versed in the topic, rather than waiting until a later date.

III. Interlocutory Hearings

To be efficient with the Master's and parties' time and resources, in the event that certain matters require an evidentiary hearing for the Part B(1) and (2) claims, the parties will attempt to group the claims to be heard at any single hearing with overlapping issues, documents and witnesses. No later than 10 days prior to any scheduled Interlocutory Hearing, all motions in limine and V.I. Rule of Evidence 104 motions shall be filed and served.

IV. Remaining Part A Claims:

A. Claims to John Gaffney. With regard to the Part A Claims:

It should be noted that the Gaffney (Part A) process involved the Court less than the full-briefing (Part B) process – and thus 30 claims were added to the original 101 Part A claims. Thus, the “starting figure” for Part A claims was actually 131.

1. 101 original claims were designated as Part A Claims requiring a report from John Gaffney.
2. 30 Part B claims were moved to Gaffney / Part A.
3. Thus, **a total of 131 claims** are being submitted to Gaffney.
4. To date Gaffney has completed 30 claims.
5. To date, Hamed has conceded approximately \$536,556, and Yusuf \$44,619.28.
6. 101 claims remain to be submitted to Gaffney.

While the process is slow, it has already diverted 30 of the original Part B claims from the need for full consideration by the Court. Therefore, the parties request that the Master allow it to continue at the current pace and to provide a status report every ninety (90) days to alert the Master if there have been any unforeseen delays.

If it appears after the submission of any particular report by Gaffney that the claim to which it pertains remains an open issue and is not resolved, the parties will confer to determine if any further discovery, including possible expert discovery, is needed and if not, then the claim will be briefed via a motion for summary judgment within 90 days of completion of the 131 Gaffney claims – and if the Master feels an evidentiary hearing is deemed necessary it will be scheduled to occur thereafter.

V. Final Accounting Report and Ultimate Distribution Recommendation

The parties are undertaking to develop a comprehensive template for a Final Accounting Report and Ultimate Distribution Recommendation based upon the various interim rulings made by the Master. The parties anticipate they will stipulate to the format of the template and such template can be used by the Master to reflect the accounting allocations between the parties as determined by his various interlocutory Orders with his Final Accounting Report and Ultimate Distribution Recommendation submitted to Judge Brady.

Respectfully submitted,

LAW OFFICES OF JOEL H. HOLT

DATED: September 18, 2019

By: /s/ Carl J. Hartmann
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Attorneys for Plaintiff/Counterclaim Defendant

DUDLEY NEWMAN FEUERZEIG LLP

DATED: September 18, 2019

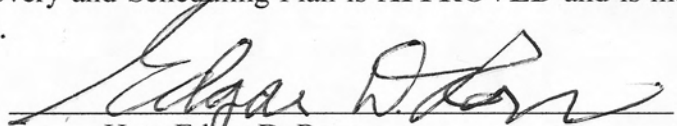
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Attorneys for Fathi Yusuf and United Corporation

Hamed v. Yusuf, et al.
Civil No. SX-12-cv-370
Page 8

The foregoing Amended Joint Discovery and Scheduling Plan is **APPROVED** and is made the Case Management Order in this case.

Dated: ~~September~~ ^{October 4th}, 2019

A handwritten signature in black ink, appearing to read "Edgar D. Ross", written over a horizontal line.

Hon. Edgar D. Ross
Master

CERTIFICATE OF SERVICE

It is hereby certified that on this 18th day of September, 2019, I served a true and correct copy of the foregoing **Joint Discovery and Scheduling Plan**, which complies with the page and word limitations set forth in Rule 6-1(e), via e-mail addressed to:

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/s/Charlotte K. Perrell

Exhibit A

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Dated: Dec. 1, 2018


Hon. Edgar D. Ross, Special Master

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