

SUPERIOR COURT OF THE VIRGIN ISLANDS
DIVISION OF ST. CROIX

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

Plaintiff/Counterclaim Defendant,

vs.

FATHI YUSUF and **UNITED CORPORATION**

Defendants and Counterclaimants.

vs.

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

Counterclaim Defendants,

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

vs.

UNITED CORPORATION, *Defendant.*

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

vs.

FATHI YUSUF, *Defendant.*

FATHI YUSUF, *Plaintiff,*

vs.

MOHAMMAD A. HAMED TRUST, *et al,*

Defendants.

KAC357 Inc., *Plaintiff,*

vs.

HAMED/YUSUF PARTNERSHIP,

Defendant.

Case No.: SX-2012-CV-370

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

JURY TRIAL DEMANDED

Consolidated with

Case No.: SX-2014-CV-287

Consolidated with

Case No.: SX-2014-CV-278

Consolidated with

Case No.: ST-17-CV-384

Consolidated with

Case No.: ST-18-CV-219

**HAMED MOTION FOR A SECOND RULE 53 REFERENCE
TO SPECIAL MASTER ROSS**

On October 19, 2012, Hamed filed an *amended complaint* in this action, to add a description of (and request for relief with regard to) “wrongful dissociation” pursuant to the *Revised Uniform Partnership Act* (“RUPA”). In his April 7, 2014 motion for an appointment of the Master, Yusuf sought to avoid a determination with regard to wrongful dissociation as part of the winding up process by attempting to dissolve the partnership and render the issue moot.

In Hamed's April 30, 2014 response to that motion, Hamed stated the following at page 2, footnote 3:

While Defendants may argue that Yusuf has not yet been dissociated from the Partnership yet, that is only because this issue has not been determined. Thus, any such motion by him would be premature, **Clearly the intent of the statute allowing dissociation would be thwarted if a partner who engages in wrongful acts warranting dissociation could simply avoid liability by giving a belated notice of dissolution at the eleventh hour.** Indeed, 26 V.I.C. § 175(a) prohibits such a partner from even proposing a dissolution plan.

On May 19, 2014, Yusuf replied that:

Not only has Hamed ignored the provisions of V.I. Code Ann. tit. 26, sec. 122(b), which defines “wrongful dissociation” in such a way as to make clear that the concept does not apply to facts and circumstances of this case, he tortures the language of § 175(a) to equate a ignores the Corrales case, since it teaches that the concept of dissociation simply cannot apply to a two person partnership. . . .

Yusuf's argument to the Court in 2014 completely missed the point—even if this Court accepted that minority rule, an inability of a two-partner partnership to go forward after wrongful dissociation would not affect the ability to obtain the equitable relief and damages that such a determination gives rise to. Yusuf's prophylactic dissolution of the partnership did not erase such damages as they are clearly delineated in RUPA, 26 V.I.C. 122(c) and clearly leaves them as a very live issue:

(c) A partner who wrongfully dissociates is liable to the partnership and to the other partners for damages caused by the dissociation. The liability is in addition to any other obligation of the partner to the partnership or to the other partners. See also, the drafter's comments to the original of this section, RUPA section 602.

As the *Official Comments*¹ to Section 122(c) of VI-RUPA make clear:

3. Subsection (c) provides that a wrongfully dissociating partner is liable to the partnership and to the other partners for any damages caused by the wrongful nature of the dissociation. That liability is in addition to any other obligation of the partner to the partnership or to the other partners. For example, the partner would be liable **for any damage caused by breach of the partnership agreement or other misconduct**. The partnership might also incur substantial expenses resulting from a partner's premature withdrawal from a term partnership, such as replacing the partner's expertise or obtaining new financing. The wrongfully dissociating partner would be liable to the partnership for those and **all other expenses and damages that are causally related to the wrongful dissociation**. (Emphasis added.)

Thus, in 2014, Hamed, as he alleged in the *ad damnum* clause of that amended complaint, continued to seek:

7) An award of compensatory damages against the defendants, jointly and severally, as determined by the trier of fact;

8) A judicial determination under 26 V.I.C. including § 121(5) that it is not practicable to continue the Partnership with Yusuf so that Yusufs partnership interests should be disassociated from the business, allowing Hamed to continue the Partnership business without him pursuant to the provisions of 26 V.I.C. including §§ 122 -123, 130 and what is now Subchapter VII of Title 26;

* * * *

9) A judicial determination that the defendant United Corporation would be unjustly enriched if it does not disburse the Partnership funds and property belonging to the plaintiff forthwith;

In any case, the Court did not address the parties' briefing of the issue of wrongful dissolution at that time, but rather, issued its order adopting a final windup plan (January

¹ www.federal-litigation.com/_01%20Hamed%20Docket%20Entries/RUPA%20Text.pdf

9, 2015). As part of the implementation of that windup plan, Special Master Ross ordered that *partnership accounting* claims be submitted, which both parties did.

On October 17, 2016, when Hamed submitted those claims, he expressed his view that the “wrongful dissociation” claim was part of the main action and had to be determined by the Court, as it was NOT actually an accounting claim as the Master had described as being within his purview under the referral. Hamed filed an objection on this point as part of the claims,² seeking to prevent a situation where the matter was denied because it was not properly before the Master as an accounting claim, but then find that the Court would not hear the matter because it should have been brought as a claim before the Master. Also, out of an abundance of caution, as the Master did not rule on this distinction despite Hamed's formal objection, Hamed included and had to pursue a mirror claim in the accounting (Hamed Claim H-163) in the event that his view was erroneous based on Yusuf's prior position.

What Hamed feared has now come to pass. On November 16, 2021, after extensive discovery, motions practice and briefing on claim H-163 “Wrongful Dissociation,” the Special Master ruled that while Hamed could pursue such a cause of action, the Special Master could not hear the matter of wrongful dissociation because it

² As an example, in his objection filed with the accounting claim, at footnote 8 on page 9, Hamed expressly stated this concern:

Hamed also has additional claims at law for monetary damages relating to conversion, breach of duty and **wrongful dissociation** which are not included in this list, as they are not accounting claims—and has brought the third-party claims as claims at law.

was not properly before him as an accounting claim. He stated that it had to be brought as a *distinct* action under RUPA. (**Exhibit 1**).

On November 22, 2021, Hamed filed an informational notice with the Special Master pointing out that (1) Hamed had always taken the position that this was not an accounting claim, (2) noting that Hamed had already filed with regard to wrongful dissociation and conversion in the main case, and (3) *stating that Hamed would address the matter to the Court—which is the purpose of the instant motion.* (**Exhibit 2**), Hamed noted that the REVISED (post-1996) version of RUPA allowed all such claims to be brought in a single main action—which Hamed did—obviating the need for a separate, later filing if it was determined not to be an accounting claim. *Id.* at 2 Hamed stated:

RUPA provides that all claims between the partners, by third parties, between the partners and the partnership and involving partnership accountings can now, after the 19971 amendments, **be brought in a single civil action. 26 V.I.C. § 47** (“Actions by and against partnership and partners (a) A partnership may sue and be sued in the name of the partnership. (b) An action may be brought against the partnership and, to the extent not inconsistent with 2section 46 of this chapter, any or all of the partners in the same action or in separate actions.”) (Emphasis added.)^[3]

Hamed further submits that not only did Hamed do so in the amended complaint, but explicitly and repeatedly stated his belief that the Court rather than the Special Master would have to hear this issue because the reference to Judge Ross was being interpreted by him, rightly or wrongly, as only relating to “accounting claims”.

But this case is now far down the road and almost all of the major (“B”) claims have been heard or will be heard early in 2022. Based on this extensive level of the Special Master’s experience with the issues, Hamed now seeks a *second* referral to the Special

³ Hamed also referred the Master to *Andrews v. Gonzalez*, 386 Ill. Dec. 81, 82, 19 N.E.3d 1234, 1235 (2014).

Master specific to the wrongful dissociation and parallel conversion attendant to that dissociation—for four reasons: (1) the Special Master has been fully informed on the premises and has issued discovery orders already, (2) the Special Master has heard many matters in this action and is well-acquainted with the parties, the state of discovery and the issues, (3) the parties and the Special Master have worked out a process for the disposition of issues by brief if possible, but by hearing if that is not possible, and (4) it has already been held that there will be no jury for matters in this case. Rule 53 provides:

Rule 53. Masters

(a) Appointment.

(1) Scope. Unless a statute provides otherwise, a court may appoint a master only to:

(A) perform duties consented to by the parties;

(B) hold trial proceedings and make or recommend findings of fact on issues to be decided **without a jury** if appointment is warranted by:

(i) some exceptional condition; or

(ii) the need to perform an accounting or resolve a difficult computation of damages; or

(iii) address pretrial and posttrial matters that cannot be effectively and timely addressed by an available judge or magistrate judge.

This non-jury matter presents (1) the exceptional condition of the Master's familiarity and the complexity of the case and the dozens of major sub-issues, (2) a difficult computation and accounting because of the many prior rulings and matters he has heard in equity, and (3) would call for the Court to reacquaint itself with complex pre- and post-trial facts and rulings well-known to the Master, which would lead to potential delay.

Conclusion

The Special Master is uniquely placed to determine the specific factual and legal issues involved—and the “wrongful” activity by Yusuf in throwing Hamed out and trying

to take the entire partnership without a RUPA process. Thus, Hamed seeks the following reference:

The Special Master, being uniquely apprised in the premises as to the wrongful dissociation and the parallel conversion (i.e., the conversion of the value of the partnership and assets wrongfully obtained thereby) the Court finds that this is an exceptional condition under Rule 53(a)(1)(B)(i), and refers those issues to the Special Master for determination. Moreover, the unique facts particular to this case and issues presented also allow this referral pursuant to sub-paragraphs ii and iii of Rule 53(a)(1)(B).

Dated: November 30, 2021



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CERTIFICATE OF SERVICE

I hereby certify that on this 30th day of November 2021, I served a copy of the foregoing by email (via CaseAnywhere), as agreed by the parties, on:

Hon. Edgar Ross
Special Master
edgarrossjudge@hotmail.com

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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).



CERTIFICATE OF COMPLIANCE WITH RULE 37(a)(1)

I hereby certify that I made the required efforts in good faith to confer with counsel for United and Yusuf in order to obtain the foregoing requested information.

Dated: November 30, 2021



**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.

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

PLAINTIFF,

v.

UNITED CORPORATION,

DEFENDANT.

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 AND JUDGMENT

In accordance with the Memorandum Opinion entered contemporaneously herewith, it is hereby:

ORDERED, ADJUDGED, AND DECREED that Hamed Claim No. H-163 shall be and is hereby **DISMISSED**.

DONE and so ORDERED this 16th day of November, 2021.



EDGAR D. ROSS
Special Master

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



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

PLAINTIFF/COUNTERCLAIM DEFENDANT,

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

COUNTERCLAIM DEFENDANTS.

Civil No. SX-12-CV-370

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

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

PLAINTIFF,

v.

UNITED CORPORATION,

DEFENDANT.

CONSOLIDATED WITH

Civil No. SX-14-CV-287

**ACTION FOR DAMAGES and
DECLARATORY JUDGMENT**

MOHAMMAD HAMED,

PLAINTIFF,

v.

FATHI YUSUF,

DEFENDANT.

CONSOLIDATED WITH

Civil No. SX-14-CV-378

**ACTION FOR DEBT and
CONVERSION**

MEMORANDUM OPINION

THIS MATTER came before the Special Master (hereinafter “Master”) for a hearing on April 15, 2021 in connection with Hamed Claim No. H-163: loss of assets due to wrongful dissolution, filed on November 18, 2019.

BACKGROUND

On September 17, 2012, Hamed¹ filed a complaint against Fathi Yusuf (hereinafter “Fathi Yusuf” or “Yusuf”) and United Corporation (hereinafter “United”) whereby Hamed sought, inter alia, “Declaratory Relief against both defendants to establish Hamed’s rights under his partnership with Yusuf...” (Compl.) Subsequently, Yusuf and United filed their counterclaim on December 23, 2013, followed by their first amended counterclaim on January 13, 2014 (hereinafter “Counterclaim”).

On September 22, 2014, the Court entered an order appointing the Honorable Edgar D. Ross to serve as the judicial master (hereinafter “Master”) “to direct and oversee the winding up of the Hamed-Yusuf Partnership.” (Sept. 22, 2014 Order.) On January 9, 2015, the Court entered an order adopting the parties’ proposed final wind up plan as the final wind up plan for the Partnership (hereinafter “Final Wind Up Plan”). The Final Wind Up Plan “is a liquidating plan” and requires as follows:

Upon conclusion of the Liquidation Process, the funds remaining in the Liquidation Expenses Account, if any, shall be deposited into the Claims Reserve Account. Within forty-five (45) days after the Liquidating Partner completes the liquidation of the Partnership Assets, Hamed and Yusuf shall each submit to the Master a proposed accounting and distribution plan for the funds remaining in the Claim Reserve Account. Thereafter, the Master shall make a report and recommendation for distribution to the Court for its final determination. Nothing herein shall prevent the Partners from agreeing to distribution of Partnership Assets between them rather than liquidating Partnership Assets by sale and distributing proceeds of such sale(s).²

¹ To clarify, in this memorandum opinion, whenever references are made to “Hamed,” the Master is referencing the plaintiff/counterclaim defendant party, and whenever references are made specifically to “Mohammad Hamed,” the Master is referencing the individual—Mohammad Hamed.

² Under the Final Wind Up Plan, the following relevant terms are defined as follows:

“Available Cash” means the aggregate amount of all unencumbered cash and securities held by the Partnership including cash realized from any Litigation Recovery or any Liquidation Proceeds.

“Claims Reserve Account” means one or more interest-bearing bank account(s), money market or securities account(s) to be established and held in trust by the Master for the purpose of holding the Available Cash

(Jan. 9, 2015 Order.)

In 2016, per the Master's order, the parties filed their respective accounting claims. Hamed, in his accounting claims filed on October 17, 2016 (hereinafter "Hamed's Accounting Claims"), included Hamed's claim for the loss of assets due to wrongful dissolution:

M. Loss of Assets due to Wrongful Dissolution

As plaintiff has repeatedly pled and stated, the dissolution was wrongful. It was conversion of all of the partner's assets. Under RUPA, that is to be held against the partner that acted wrongfully. This includes the right to continue the partnership.

(Hamed's Accounting Claims, Exhibit A, p. 11.)

until distributed in accordance with the Plan and any interest, dividends or other income earned upon the investment of such Claims Reserve Account. The Claims Reserve Account will be further funded from time to time by the Liquidating Partner with: (i) any Liquidation Proceeds realized, plus (ii) any Litigation Recovery realized, minus (iii) any amounts necessary to pay Wind Up Expenses.

"Criminal Case" means Case No. 1:05 -CR- 00015- RLF -GWB pending in the District Court of the Virgin Islands.

"Disputed Claim" means any Claim or portion of a Claim as to which an objection to the allowance thereof has been interposed, which objection has not been withdrawn or determined by Final Order.

"Encumbered Cash" means all of the cash and securities encumbered by a restraining order issued by the District Court in the Criminal Case.

"Liquidating Expenses Account" means one or more checking account(s) to be utilized by the Liquidating Partner for Wind Up Expenses based upon the Wind Up Budget and to satisfy debts of the Partnership.

"Liquidating Partner" means Yusuf.

"Liquidating Proceeds" means any cash or other consideration paid to or realized by the Partnership or the Liquidating Partner, as applicable, upon the sale, transfer, assignment or other distribution of the Partnership Assets.

"Litigation" means the interest of the Partnership or the Liquidating Partner, as applicable, in any and all claims, rights and causes or action that have ben or may be commenced by the Partnership or the Liquidating Partner including, without limitation, any action: (i) to avoid and recover any transfers of property determined to be avoidable pursuant to V.I. Code Ann. tit. 28, §§ 171 -212 or other applicable law; (ii) for the turnover of property to the Partnership or Liquidating Partner, as applicable; (iii) for the recovery of property or payment of money that belongs to or can be asserted by the Partnership or the Liquidating Partner, as applicable; and (iv) for compensation for damages incurred by the Partnership.

"Litigation Recovery" means any cash or other property received by the Partnership or the Liquidating Partner, as applicable, from all or any portion of the Litigation including, but not limited to, awards of damages, attorneys' fees and expenses, interest and punitive damages, whether recovered by way of settlement, execution on judgment or otherwise.

"Partnership Assets" means any and all property, assets, rights or interest of the Partnership whether tangible or intangible, and any Liquidation Proceeds realized therefrom, including without limitation, all Available Cash, Encumbered Cash, Litigation, and any Litigation Recovery.

"Wind Up Expenses" means the costs and expenses incurred by the Liquidating Partner for the purpose of: (i) operating the Plaza Extra Stores during the period required to liquidate the Partnership Assets; (ii) prosecuting or otherwise attempting to collect or realize upon the Litigation. (iii) assembling and selling any of the Partnership Assets or otherwise incurred in connection with generating the Liquidation Proceeds; (iv) resolving Disputed Claims and effectuating distributions to Creditors under the Plan; or (v) otherwise implementing the Plan and winding up the Partnership.

Subsequently, on July 25, 2017, the Court contemporaneously entered a memorandum opinion and order striking the jury demand (hereinafter “Striking the Jury Demand Order”) and a memorandum opinion and order limiting accounting (hereinafter “Limitations Order”). In the Striking the Jury Demand Order, the Court provided a detailed analysis of the nature of the claims presented by the parties in this action and explained that “despite the misleading form of the Complaint and Counterclaim, Hamed presents only a single action for dissolution, wind up, and accounting, while Yusuf presents an action for accounting, and an action for corporate dissolution, and United presents an action for debt/breach of contract for failure to pay rent.” (Limitations Order, p. 10, footnote 9.) In the Limitations Order, the Court noted that “[a]s explained in detail in the [Striking Jury Demand Order] entered contemporaneously herewith, both Hamed and Yusuf have presented in this matter competing equitable actions to compel the dissolution, winding up, and accounting of their partnership pursuant to 26 V.I.C. §75(b)(2)(iii)” and “[a]s an accounting in this context is both an equitable cause of action and an equitable remedy in itself, the Court is granted considerable flexibility in fashioning the specific contours of the accounting process.” (Limitations Order, pp. 13-14) (citations and footnote omitted.) As such, the Court “exercise[d] the significant discretion it possesses in fashioning equitable remedies to restrict the scope of the accounting in this matter and ordered, *inter alia*, that “the accounting in this matter, to which each partner is entitled under 26 V.I.C. §177(b), conducted pursuant to the Final Wind Up Plan adopted by the Court, shall be limited in scope to consider only those claimed credits and charges to partner accounts, within the meaning of 26 V.I.C. §71(a), based upon transactions that occurred on or after September 17, 2006.” (Id., at pp. 32, 34.)

In light of the Limitations Order, the Master ordered the parties to file their amended accounting claims. Hamed’s claim for the loss of assets due to wrongful dissolution was again included in Hamed’s amended accounting claims, filed on October 30, 2017 (hereinafter

“Hamed’s Amended Accounting Claims”).³ (Hamed’s Amended Accounting Claims, Exhibit A, p. 14.)

On November 18, 2019, Hamed filed a motion for partial summary judgment for Hamed Claim No. H-163 whereby Hamed sought “only a determination of ‘wrongful dissociation’ of the Partnership by Yusuf [and] not...a determination of the damages or the amounts of such damages at this time” and argued that Yusuf’s dissociation was wrongful under Title 26 V.I.C. §122(b)(1) and Title 26 V.I.C. §122(b)(2)(i) because “the partnership had a specific term as to when it would end—Yusuf stated it would end if it began to lose money in excess of \$800,000” and “[the Partnership] did not lose money, but Yusuf ended the Partnership.” (Nov. 18, 2019 Motion, pp. 1, 15) (emphasis and footnotes omitted.) On April 19, 2021, Yusuf filed his opposition whereby Yusuf, inter alia, raised the issue that the Court already found, and the Virgin Islands Supreme Court affirmed, that the Partnership is an at-will partnership of indefinite duration and that Hamed’s current position contradicts with Hamed’s previous position, and made arguments thereto. On May 2, 2021, Hamed filed a reply whereby Hamed conceded that the Partnership “was an ‘at-will’ partnership and withdraws any inconsistent or contrary argument in its initial motion,” but also stated that the Partnership was “an at-will partnership that has a particular undertaking—the agreement to operate the Plaza Supermarkets until they lost \$800,000 if that event ever occurred.” (May 2, 2021 Reply, pp. 8-9, footnotes 2, 3.)

On June 2, 2020, the Master entered an order whereby the Master, based on Hamed’s representations in his briefs, treated Hamed Claim No. H-163 as wrongful dissociation accounting claim and ordered as follows: (i) denied Hamed’s motion for partial summary judgment for Hamed Claim No. H-163, (ii) granted summary judgment regarding the narrow issue that Hamed Claim

³ Hamed’s Amended Accounting Claims provided:

New Claim No.	Previous Item No.	Description	...	Amount Due to Partnership From Yusuf
163	Exhibit A-M	Loss of assets due to wrongful dissolution – attorney’s fees		Pending discovery

No. H-163 is not an action for damages and struck any damages sought pursuant to Hamed Claim No. H-163, (iii) in the event that the Master subsequently finds in favor of Hamed as to his wrongful dissociation accounting claim (Hamed Claim No. H-163), any relief sought thereto shall not include items that are already raised as independent Accounting Claims, and (iv) in the event that the Master subsequently finds in favor of Hamed as to his wrongful dissociation accounting claim (Hamed Claim No. H-163), any relief sought thereto must comply with the Court's Limitations Order.⁴

⁴ In the June 2, 2020 order, the Master explained:

B. The Court's Prior Rulings: The Striking the Jury Demand Order and the Limitations Order

Hamed argued that he is permitted damages for Yusuf's wrongful dissociation in this instance. The Master disagrees. In the Striking the Jury Demand Order and the Limitations Order, the Court made it abundantly clear that "both Hamed and Yusuf have presented in this matter competing equitable actions to compel the dissolution, winding up, and accounting of their partnership pursuant to 26 V.I.C. §75(b)(2)(iii)."²³ (Limitations Order, p. 13) Based on the Court's prior rulings, it follows that the Court did not find a separate cause of action on behalf of Hamed in the form of wrongful dissociation²⁴ and as a result, Hamed is raising Hamed Claim No. H-163 as an accounting claim for equitable relief and is foreclosed from seeking damages.²⁵ (Striking the Jury Order, p. 8) ("The Supreme Court of the United States has 'long recognized the distinction between an action at law for damages — which are intended to provide a victim with monetary compensation for an injury to his person, property, or reputation — and an equitable action for specific relief— which may include an order providing for the reinstatement of an employee with backpay, or for 'the recovery of specific property or *monies*, ejectment from land, or injunction either directing or restraining the defendant officer's actions.'"") As such, the Master will grant summary judgment regarding the narrow issue that, in the event that the Master subsequently finds in favor of Hamed as to his wrongful association accounting claim (Hamed Claim No. H-163), Hamed Claim No. H-163 does not include an action for damages. Accordingly, any damages sought pursuant Hamed Claim No. H-163 must be stricken.

In his motion, Hamed provided "an example of the amounts that will be sought at a later date."²⁶ (Motion, p. 16). It appears that some of these items were already raised, and some even adjudicated and/or resolved,²⁷ as separate claimed credits and charges to partner accounts (hereinafter "Accounting Claims," each, an "Accounting Claim").²⁸ Hamed himself noted in his motion that "[s]ome of these damages have already been partially recovered," such as Partnership funds in the amount of \$504,591.03 used to pay Yusuf's counsel, Fuerst Ittleman David & Joseph, PL. (Id., at p. 7) However, it appears that Hamed has mistaken the meaning of the Accounting Claims. As the Court stated in the Limitations Order, "under the RUPA framework, the "claims" to which the parties refer are, in fact, nothing more than the parties' respective assertions of credits and charges to be applied in ascertaining the balance of each partner's individual partnership account." (Limitations Order, p. 11) Thus, the resolution of an Accounting Claim should not be viewed as "damages" awarded against one partner and recovered by the other partner, and instead, it should be viewed as credits or charges to be applied in ascertaining the balance of each partner's individual partnership account. There is no reason to include an Accounting Claim twice in the calculation— once as an independent Accounting Claim and a second time as a relief for the wrongful dissociation accounting claim. As such, the Master will grant summary judgment regarding the narrow issue that, in the event that the Master subsequently finds in favor of Hamed as to his wrongful association accounting claim (Hamed Claim No. H-163), any relief sought thereto shall not include items that are already raised as independent Accounting Claims. Additionally, in the event that the Master subsequently finds in favor of Hamed as to his wrongful association accounting claim (Hamed Claim No. H-163), any relief sought thereto must comply with the Court's Limitations Order.²⁹

On April 15, 2021, the parties appeared for a hearing on Hamed Claim No. H-163. Hamed and Yusuf each presented witness testimony and exhibits. More specifically, the Master heard oral

²³ In the Striking the Jury Demand Order, the Court concluded “that Plaintiffs [Hamed] cause of action and accompanying prayers for relief are properly considered equitable in nature and, in any event, necessarily entail a detailed, complicated accounting such that they may only be adequately and justly resolved by a court of equity” and that, “with the exception of [United’s claim for rent-]Count XII (Rent), Defendants [Yusuf and United] have presented claims traditionally lying in equity and requesting exclusively equitable relief.” (Striking the Jury Demand Order, pp. 13, 18)

In the Limitations Order, the Court noted that “[a]s discussed in detail in the [Striking the Jury Demand Order] entered contemporaneously herewith, despite the misleading form of both Hamed’s Complaint and Yusuf’s Counterclaim, each part has presented in this matter only a single, tripartite cause of action for the dissolution, wind up, and accounting of the partnership pursuant to 26 V.I.C. §75(b)(2)(iii)” but “Count XII of Defendants’ Counterclaim also presents a separate cause of action on behalf of United for debt in the form of rent.” (Limitations Order, pp. 6-7)

²⁴ The Court found that the Counterclaim presented a separate cause of action on behalf of United for debt in the form of rent. *See supra*, footnote 10.

²⁵ *See supra*, footnote 23.

²⁶ *See supra*, footnote 4.

²⁷ For example, (i) Partnership funds in the amount of \$504,591.03 used to pay Yusuf’s counsel, Fuerst Ittleman David & Joseph, PL was raised in Hamed Claim No. H-3 (Hamed’s Amended Accounting Claims, Exhibit A, p. 1); and (ii) Payment of John Gaffney’s fees was raised in Hamed Claim No. H-9 and also stipulated to by Parties (Id.; Joint Discovery and Scheduling Plan, January 12, 2018). (June 2, 2021 Order, pp. 19-23.)

²⁸ In the Limitations Order, the Court stated:

Though the parties have submitted lengthy briefs presenting their respective positions on how the limited case law interpreting this section of RUP A affects the “claims” purportedly presented by Yusuf and United, there is significant confusion surrounding precisely what is meant by the term “claims.” As it is often used in legal parlance, the term “claim” is essentially synonymous with “cause of action.” Used in this sense, Hamed and Yusuf have each, in their respective pleadings, presented only a single, tripartite cause of action, or claim, for an equitable partnership dissolution, wind up, and accounting under 26 V.I.C. §75(b)(2)(iii). However, as used by both the Court and the parties in the context of this litigation, the term “claims” has also taken on an entirely different, and more specific meaning, by which the term “claims” refers not to the parties’ respective causes of action for accounting, but rather to the numerous alleged individual debits and withdrawals from partnership funds made by the partners or their family members over the lifetime of the partnership that have been, and, following further discovery, will continue to be, presented to the Master for reconciliation in the accounting and distribution phase of the Final Wind Up Plan.

Pursuant to 26 V.I.C. §71(a), “[e]ach partner is deemed to have an account that is: (1) credited with an amount equal to the money plus the value of any other property, net of the amount of any liabilities, the partner contributes to the partnership and the partner’s share of the partnership profits; and (2) charged with an amount equal to the money plus the value of any other property, net of the amount of any liabilities, distributed by the partnership to the partner and the partner’s share of the partnership losses.” **Thus, under the RUPA framework, the “claims” to which the parties refer are, in fact, nothing more than the parties’ respective assertions of credits and charges to be applied in ascertaining the balance of each partner’s individual partnership account.** (Limitations Order, pp. 10-11) (Emphasis added) (Footnotes omitted)

²⁹ Hamed conceded in his reply that “any such damages can only include damages [sic] September 7, 2006, under [the Limitations Order].” (Reply, p. 12)

(June 2, 2021 Order, pp. 23-26.)

testimony from Fathi Yusuf, Waleed Hamed, and Mafi Hamed.⁵ At the conclusion of the hearing, the Master took the matter under advisement and ordered Hamed and Yusuf to file their respective proposed findings of fact and conclusions of law. Thereafter, Hamed and Yusuf timely filed their post-hearing filings.

STANDARD OF REVIEW

Rule 52 of the Virgin Islands Rules of Civil Procedure provides:

In an action tried on the facts without a jury or with an advisory jury, the court must find the facts specially and state its conclusions of law separately. The findings and conclusions may be stated on the record after the close of the evidence or may appear in an opinion or a memorandum of decision filed by the court. Judgment must be entered under Rule 58.

V.I. R. Civ. P. 52(a)(1)(A).

DISCUSSION

While Hamed described Hamed Claim No. H-163 as “loss of assets due to wrongful **dissolution**” in Hamed’s Accounting Claims and Hamed’s Amended Accounting Claims, Hamed described Hamed Claim No. H-163 as a wrongful **dissociation** claim at the April 15, 2021 hearing and in his post-hearing brief. (Hamed’s Accounting Claims, Exhibit A, p. 11; Hamed’s Amended Accounting Claims, Exhibit A, p. 14; Post-hearing Brief) (emphasis added.) However, “wrongful dissociation” and “wrongful dissolution” does not mean the same thing. Under the U.S. Virgin Islands Uniform Partnership Act (hereinafter “USVI UPA”),⁶ “dissociation” occurs when any partner ceases to be involved in the partnership⁷ and “dissolution” occurs when the USVI UPA

⁵ Mohammad Hamed’s sons and Yusuf’s sons were delegated the authority to operate the Plaza Extra stores under the supervision, directions, and control of Fathi Yusuf.

⁶ By Act No. 6205, the Revised Uniform Partnership Act (RUPA) was adopted in the U.S. Virgin Islands, effective May 1, 1998, the “Uniform Partnership Act.”⁶ Title 26 V.I.C. §1, et seq.

⁷ Title 26 V.I.C. §123 provides:

§123. Effect of partner’s dissociation

(a) If a partner's dissociation results in a dissolution and winding up of the partnership business, subchapter VIII of this chapter applies; otherwise, subchapter VII of this chapter applies.

(b) Upon a partner's dissociation:

(1) the partner's right to participate in the management and conduct of the partnership business terminates, except as otherwise provided in section 173 of this chapter;

requires the partnership to wind up and terminate;⁸ dissociation does not necessarily cause dissolution.⁹ The USVI UPA defines wrongful dissociation in Title 26 V.I.C. §122¹⁰ but it does

(2) the partner's duty of loyalty under section 1404, subsection (b), item (3) of this chapter terminates; and

(3) the partner's duty of loyalty under section 74, subsection (b), items (1) and (2) of this chapter and duty of care under section 74, subsection (c) of this chapter continue only with regard to matters arising and events occurring before the partner's dissociation, unless the partner participates in winding up the partnership's business pursuant to section 173 of this chapter.

⁸ Title 26 V.I.C. §171 provides:

§171. Events causing dissolution and winding up of partnership business

(1) in a partnership at will, the partnership's having notice from a partner, other than a partner who is dissociated under Section 121, subsections (2) through (10) of this chapter, of that partner's express will to withdraw as a partner, or on a later date specified by the partner;

(2) in a partnership for a definite term or particular undertaking:

(i) within 90 days after a partner's dissociation by death or otherwise under Section 121, items (6) through (10) of this chapter, or wrongful dissociation under Section 122, subsection (b) of this chapter, the express will of at least half of the remaining partners to wind up the partnership business for which purpose a partner's rightful dissociation pursuant to Section 122, subsection (b), item (2), subitem (i) of this chapter, constitutes the expression of that partner's will to wind up the partnership business;

(ii) the express will of all of the partners to wind up the partnership business; or

(iii) the expiration of the term or the completion of the undertaking;

(3) an event agreed to in the partnership agreement resulting in the winding up of the partnership business;

...

⁹ *Id.*

¹⁰ Title 26 V.I.C. §122 provides:

§122. Partner's power to dissociate; wrongful dissociation

(a) A partner has the power to dissociate at any time, rightfully or wrongfully, by express will pursuant to section 121, subsection (1) of this chapter.

(b) A partner's dissociation is wrongful only if:

(1) it is in breach of an express provision of the partnership agreement; or

(2) in the case of a partnership for a definite term or particular undertaking, before the expiration of the term or the completion of the undertaking:

(i) the partner withdraws by express will, unless the withdrawal follows within 90 days after another partner's dissociation by death or otherwise under section 121, subsections (6) through (10) of this chapter or wrongful dissociation under this subsection;

(ii) the partner is expelled by judicial determination under section 121, subsection (5) of this chapter;

(iii) the partner is dissociated by becoming a debtor in bankruptcy; or

(iv) in the case of a partner who is not an individual, trust other than a business trust, or estate, the partner is expelled or otherwise dissociated because it willfully dissolved or terminated.

(c) A partner who wrongfully dissociates is liable to the partnership and to the other partners for damages caused by the dissociation. The liability is in addition to any other obligation of the partner to the partnership or to the other partners.

not expressly define wrongful dissolution. Given that Hamed argued, and Yusuf in response similarly argued, Hamed Claim No. H-163 as a wrongful dissociation claim, the Master will address Hamed Claim No. H-163 as a wrongful dissociation claim and not a wrongful dissolution claim.¹¹

Regarding Hamed Claim No. H-163, Hamed claimed the Partnership is not an at-will partnership but a partnership for a definite term or particular undertaking—namely, Mohammad Hamed and Fathi Yusuf will remain partners and that the Partnership would continue until a loss of \$800,000—and that Yusuf wrongfully dissociated from the Partnership in 2012 under Title 26 V.I.C. §122(b)(2)(i) because there was no loss of \$800,000 by the Partnership.¹² Thus, Hamed concluded that he is entitled to relief from Yusuf personally for his wrongful dissociation in the total amount of \$1,377,573.60, which is half of \$2,755,147.20,¹³ for his leasehold improvements to the Plaza Extra Store-East building in the United Shopping Center. On the other hand, Yusuf argued that Hamed Claim No. H-163 is barred by the Limitations Order and that under the law-of-the-case doctrine and the judicial estoppel doctrine, Hamed is foreclosed from arguing that the Partnership is not an at-will partnership but a partnership for a definite term or particular undertaking. Yusuf also argued that even if the Master finds that Yusuf wrongfully dissociated,

¹¹ Furthermore, as noted above, the Court previously found that “both Hamed and Yusuf have presented in this matter competing equitable actions to compel the dissolution, winding up, and accounting of their partnership pursuant to 26 V.I.C. §75(b)(2)(iii).” (Limitations Order, p. 13.) Thus, given that both Hamed and Yusuf are compelling dissolution and that the Partnership is in the process of winding up with the Master’s oversight and supervision, Hamed Claim No. H-163 cannot be a wrongful dissolution claim. (Jan. 9, 2015 Order.)

¹² Title 26 V.I.C. §122(b)(2)(i) provides that “[a] partner's dissociation is wrongful only if: in the case of a partnership for a definite term or particular undertaking, before the expiration of the term or the completion of the undertaking: the partner withdraws by express will, unless the withdrawal follows within 90 days after another partner's dissociation by death or otherwise under section 121, subsections (6) through (10) of this chapter or wrongful dissociation under this subsection.” Although Hamed previously argued in his motion for partial summary judgment that Yusuf’s dissociation was wrongful under both Title 26 V.I.C. §122(b)(2)(i) and Title 26 V.I.C. §122(b)(1), which provides that “[a] partner's dissociation is wrongful only if: (1) it is in breach of an express provision of the partnership agreement,” Hamed only argued that Yusuf’s dissociation was wrongful under Title 26 V.I.C. §122(b)(2)(i) at the April 15, 2021 hearing and in his post-hearing brief.

¹³ Hamed arrived at this figure by dividing the assessed value of the United Shopping Center in 2012 (\$5,931,500) by the total square footage of the United Shopping Center (149,955 sq. ft.), which equals \$39.54 per square foot, and multiplying that rate by the square footage of Plaza Extra-East store (69,680 sq. ft.), which equals \$2,755,147.20.

the relief sought by Hamed for Hamed Claim No. H-163 is improperly based on Hamed's leasehold improvements to the Plaza Extra Store-East building in the United Shopping Center and therefore not recoverable.

In accordance with Rule 52(a) of the Virgin Islands Rules of Civil Procedure and having reviewed the entire record, the Master now makes the following findings of fact and conclusions of law.

Findings of Fact

1. Hamed Claim No. H-163 is not a claim brought by Hamed against the Partnership for an alleged individual debit and withdrawal from the Partnership funds made by Yusuf.
2. Hamed Claim No. H-163 is not Hamed's assertion of credits and charges to be applied in ascertaining the balance of each partner's individual Partnership account during the dissolution and winding up of the Partnership.
3. Hamed Claim No. H-163 is a separate cause of action brought by Hamed against his partner Yusuf for Yusuf's alleged wrongful dissociation from the Partnership under Title 26 V.I.C. §122(b)(2)(i)—to wit, Hamed claimed that he is entitled to relief from Yusuf personally for Yusuf's wrongful dissociation.
4. The resolution of Hamed Claim No. H-163 would not add to or detract from the asset of the Partnership.

Conclusions of Law

Here, although Hamed raised Hamed Claim No. H-163 as an accounting claim against the Partnership, Hamed Claim No. H-163 is a separate cause of action brought by Hamed against his partner Yusuf personally for Yusuf's alleged wrongful dissociation. In other words, Hamed Claim No. H-163 is not a claim brought by Hamed against the Partnership for an alleged individual debit and withdrawal from the Partnership funds made by Yusuf, and therefore, Hamed Claim No. H-163 is not Hamed's assertion of credits and charges to be applied in ascertaining the balance of each partner's individual Partnership account during the dissolution and winding up of the Partnership.¹⁴ In fact, Hamed made it abundantly clear that he is claiming that Yusuf personally,

¹⁴ In the Limitations Order, the Court explained:

and not the Partnership, is liable for Yusuf's alleged wrongful dissociation in Hamed Claim No. H-163. Thus, the resolution of Hamed Claim No. H-163 would not add to or detract from the asset of the Partnership. As such, given that Hamed Claim No. H-163 is an alleged debt owed by Yusuf personally to his partner Mohammad Hamed, the Master finds that Hamed Claim No. H-163 falls outside the scope of the Master's report and recommendation for the dissolution and winding up of the Partnership and that Hamed Claim No. H-163 is not a proper claim for the Master to adjudicate under the September 22, 2014 order appointing the Master and the Final Wind Up Order.

In light of the Master's conclusion, the Master will dismiss Hamed Claim No. H-163 without addressing the merits of Hamed Claim No. H-163. If Hamed wishes to proceed with a wrongful dissociation cause of action against Yusuf personally, then Hamed needs to file a separate lawsuit against Yusuf personally for Yusuf's alleged wrongful dissociation;¹⁵ Hamed

Though the parties have submitted lengthy briefs presenting their respective positions on how the limited case law interpreting this section of RUPA affects the "claims" purportedly presented by Yusuf and United, there is significant confusion surrounding precisely what is meant by the term "claims." As it is often used in legal parlance, the term "claim" is essentially synonymous with "cause of action." Used in this sense, Hamed and Yusuf have each, in their respective pleadings, presented only a single, tripartite cause of action, or claim, for an equitable partnership dissolution, wind up, and accounting under 26 V.I.C. §75(b)(2)(iii). However, as used by both the Court and the parties in the context of this litigation, the term "claims" has also taken on an entirely different, and more specific meaning, by which the term "claims" refers not to the parties' respective causes of action for accounting, but rather to the numerous alleged individual debits and withdrawals from partnership funds made by the partners or their family members over the lifetime of the partnership that have been, and, following further discovery, will continue to be, presented to the Master for reconciliation in the accounting and distribution phase of the Final Wind Up Plan.

Pursuant to 26 V.I.C. §71(a), "[e]ach partner is deemed to have an account that is: (1) credited with an amount equal to the money plus the value of any other property, net of the amount of any liabilities, the partner contributes to the partnership and the partner's share of the partnership profits; and (2) charged with an amount equal to the money plus the value of any other property, net of the amount of any liabilities, distributed by the partnership to the partner and the partner's share of the partnership losses." **Thus, under the RUPA framework, the "claims" to which the parties refer are, in fact, nothing more than the parties' respective assertions of credits and charges to be applied in ascertaining the balance of each partner's individual partnership account.**

(Limitations Order, pp. 10-11) (emphasis added) (footnotes omitted).

¹⁵ The Master is simply stating what needs to be done if Hamed wishes to pursue his wrongful dissociation cause of action against Yusuf personally and is not making any comment as to the timeliness of such a claim if subsequently brought by Hamed.

cannot interject his wrongful dissociation cause of action against Yusuf personally as part of his accounting claims against the Partnership for the dissolution and winding up of the Partnership.

CONCLUSION

Based on the foregoing, the Master will dismiss Hamed Claim No. H-163. An order and judgment consistent with this Memorandum Opinion will be entered contemporaneously herewith.

DONE this 16th day of November, 2021.



EDGAR D. ROSS
Special Master

**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,

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

vs.

UNITED CORPORATION, *Defendant.*

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

vs.

FATHI YUSUF, *Defendant.*

FATHI YUSUF, *Plaintiff,*

vs.

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

KAC357 Inc., *Plaintiff,*

vs.

HAMED/YUSUF PARTNERSHIP,
Defendant.

Case No.: SX-2012-CV-370

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

JURY TRIAL DEMANDED

Consolidated with

Case No.: SX-2014-CV-287

Consolidated with

Case No.: SX-2014-CV-278

Consolidated with

Case No.: ST-17-CV-384

Consolidated with

Case No.: ST-18-CV-219

**HAMED'S INFORMATIONAL NOTICE REGARDING MASTER'S
NOVEMBER 16, 2021 ORDER (WRONGFUL DISSOCIATION)**

The Master's November 16, 2021 Order held that the issue of wrongful dissociation is not a claim within a RUPA partnership accounting, but rather, is an independent cause of action that must be litigated between the partners. However, Hamed notes that the Master's comments that another action can be brought to prosecute this claim is not applicable under the present procedural posture of the case. Hamed requests no action by the Master, but files this informational notice to further good order.

RUPA provides that all claims between the partners, by third parties, between the partners and the partnership and involving partnership accountings can now, after the 1997¹ amendments, be brought in a single civil action. 26 V.I.C. § 47 ("Actions by and against partnership and partners (a) A partnership may sue and be sued in the name of the partnership. (b) An action may be brought against the partnership *and, to the extent not inconsistent with* ²*section 46 of this chapter, any or all of the partners in the same action or in separate actions.*") In bringing an action against the partnership, the plaintiff may sue in the names of the partners as individuals doing business as the partnership, or in the firm name, or both, *Andrews v. Gonzalez*, 386 Ill. Dec. 81, 82, 19 N.E.3d 1234, 1235 (2014).

¹ Adopted in the USVI in 1998.

² Similarly, in jurisdictions where this has arisen, it has been held that if the cause wasn't initially pursued together, if a separate, subsequent suit is necessary, the statute of limitations is considered tolled. *See, e.g., Kingsbury v. Westlake Mgmt. Co.*, No. CIV-14-468-M, 2015 U.S. Dist. LEXIS 47849, at *5-6 (W.D. Okla. Apr. 13, 2015). ("In allowing separate suits, the Legislature must have contemplated that at least some subsequent actions against partners would be brought outside of the original limitations period.")

Therefore, when Hamed, a partner, filed the original action in this matter he sued not only for an accounting, but also pursuant to the statutory dissociation provisions of RUPA—individually, against Yusuf as a partner. See Count 2 of the October 19, 2012 *First Amended Complaint*, at paragraphs 41-42. (“Yusufs partnership interests should be disassociated from the business. . . .”) Moreover, in that amended complaint, Hamed sought the identical *relief* sought in his motion for summary judgment—redress for unjust enrichment.³ See *ad damnum* section at paragraphs 8 and 9, *First Amended Complaint* at 16.

8) A judicial determination under 26 V.I.C. including § 121(5) that it is not practicable to continue the Partnership with Yusuf so that Yusufs partnership interests should be disassociated from the business, allowing Hamed to continue the Partnership business without him pursuant to the provisions of 26 V.I.C. including §§ 122 -123, 130 and what is now Subchapter VII of Title 26;

9) A judicial determination that the defendant United Corporation would be unjustly enriched if it does not disburse the Partnership funds and property belonging to the plaintiff forthwith;

Therefore, Hamed will address the issue of dissociation directly—before Judge Brady, as the Master has made it clear that this is not a RUPA accounting claim *yet* assigned to him, and is, therefore is presently subject to broader individual litigation between the partners—which is still before Judge Brady along with the balance of this action.

³ In the instant motion, Hamed sought a judicial determination that the defendant United Corporation would be unjustly enriched if it does not disburse the Partnership funds associated with the wrongful dissociation.

Dated: November 22, 2021

A handwritten signature in blue ink, reading "Carl J. Hartmann III". The signature is fluid and cursive, with a long horizontal flourish extending to the right.

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CERTIFICATE OF SERVICE

I hereby certify that on this 22th day of November 2021, I served a copy of the foregoing by email (via CaseAnywhere), as agreed by the parties, on:

Hon. Edgar Ross

Special Master

edgarrossjudge@hotmail.com

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CERTIFICATE OF COMPLIANCE WITH RULE 6-1(e)

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

