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| **WALEED HAMED**,as the Executor of the Estate of MOHAMMAD HAMED, | **Case No.: SX-2012-CV-370** |
| *Plaintiff/Counterclaim Defendant*, |  |
|   vs.**FATHI YUSUF** and **UNITED CORPORATION** | **ACTION FOR DAMAGES, INJUNCTIVE RELIEF AND DECLARATORY RELIEF** |
|  |  |
|  *Defendants and Counterclaimants*. vs. **WALEED HAMED, WAHEED** **HAMED, MUFEED HAMED, HISHAM HAMED,** **and PLESSEN ENTERPRISES, INC.**,  *Counterclaim Defendants*, | JURY TRIAL DEMANDED |
|  | Consolidated with |
| **WALEED HAMED**,as the Executor of the Estate of MOHAMMAD HAMED, *Plaintiff,* vs.  | **Case No.: SX-2014-CV-287** |
| **UNITED CORPORATION,** *Defendant.* |  |
| *­­­­­­*­­**WALEED HAMED**,as the Executor of the Estate of MOHAMMAD HAMED, *Plaintiff*  vs.  **FATHI YUSUF**, *Defendant.* | Consolidated with**Case No.: SX-2014-CV-278** |
| *­­­­­*­­**FATHI YUSUF**, *Plaintiff*, vs. **MOHAMMAD A. HAMED TRUST***, et al,* *Defendants.* | Consolidated with**Case No.: ST-17-CV-384** |
| *­­­­­*­­**KAC357 Inc.**, *Plaintiff*, vs. **HAMED/YUSUF PARTNERSHIP,** *Defendant.* | Consolidated with**Case No.: ST-18-CV-219** |
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**HAMED REPLY TO YUSUF’S OPPOSITION TO HAMED’S**

**MOTION TO COMPEL RE REVISED CLAIM Y-11 –**

**LIFESTYLE ANALYSIS**

1. **INTRODUCTION**

Hamed filed his Motion to Compel regarding Yusuf’s revised claim, Y-11 (Lifestyle Analysis) on August 1, 2021. Yusuf filed his Opposition on February 3, 2022. Additionally, this is a companion motion -- Hamed filed a Motion for Summary Judgment regarding Yusuf’s revised claim Y-11 – Lifestyle Analysis, on July 31, 2021.

1. **Yusuf’s Opposition**

This reply follows the order of the Yusuf Opposition.

1. **Interrogatory 33**

Given Special Master Ross’s September 5, 2021 Order, Hamed withdraws Interrogatory 33 with respect to domestic accounts and non-parties.

1. **Request for the Produce Documents (“RFPDs”) 30 and 31**
2. RFPD 30

On September 5, 2021, Special Master Ross ordered

ORDERED that Hamed’s motion to compel as to RFPD 30 . . . GRANTED as to the parties on the condition that it is limited as follows:

RFPD 30. Please produce copies of all original tax returns filed by United and Fathi Yusuf from 1986 to date; information unrelated the Partnership fund may be redacted.

 \* \* \* \*

ORDERED that, within thirty (30) days from the date of entry of this order, Yusuf shall file supplemental responses to . . . RFPD 30. . . (pp. 29-30)

Yusuf has not complied with this Order, despite the Special Master ordering that Fathi Yusuf’s tax returns from 1986 to date must be produced, allowing information unrelated to the Partnership fund be redacted. Yusuf stated in his October 22, 2021 Supplemental Responses to Hamed’s Discovery that

John Gaffney, Comptroller for United has access to the United tax returns and those of Mr. Yusuf. He is off-island until December. **However, we have requested his response to provide the information and we will supplement as soon as it is provided.** (p. 6) (Emphasis added.)

About a month later on November 21, 2021, Yusuf produced by email his personal tax returns for 2020-2013 only. Hamed requests that the remainder of Fathi Yusuf’s personal tax returns be produced (1986-2012). There is no dispute about this – it should be ordered again—*until Yusuf produces what he has been ordered to produce and what he has said he will produce.*

1. RFPD 31

Given Special Master Ross’s September 5, 2021 order, Hamed withdraws RFPD 31 with respect to domestic accounts and non-parties.

1. **Interrogatory 35 – Sources of Income**

Contrary to Yusuf’s blanket statement, Interrogatory 35 has not identified “all sources of income for 1) Fathi. . .*from September 17, 2006 to the date of your response* and identify the source of all funds for the acquisition of such assets.” The BDO report did not provide ***any*** information regarding Partnership withdrawals for Fathi Yusuf for the time period of September 17, 2006 to the date of Yusuf’s response. (See BDO revised chart of claims, **Exhibit 11**) It is difficult to believe that Yusuf received no funds from the Partnership from 2006 forward. At a minimum, Yusuf should produce an accounting of the bi-weekly paychecks he received from the Partnership. He also should identify any other Partnership distributions, whether they were made in the form of cash or check.

Hamed does not believe that the Special Master’s September 5, 2021 Order relieves Yusuf of the responsibility to identify sources of Partnership income for Mike, Nejeh and Yusuf Yusuf **as employees of the Partnership**. That is not discovery of a third person, but, rather, of the Partnership. Their payroll checks should be listed at a minimum, as well as other checks and cash distributions from the Partnership accounts.

As an aside, if Yusuf is claiming that the Special Master’s Order requires that only Partnership funds should be considered, then Yusuf’s Lifestyle Analysis should withdraw all of the many deposits, payments to credit cards and investments not purchased or paid for by Partnership funds from the Hamed side of the “lifestyle” analysis prepared by BDO. Either what is good for the goose is good for the gander or it is not—Yusuf cannot have it both ways; using Hamed’s and refusing his own.

1. **Interrogatory 37—Partnership Distributions to Yusuf Family and United**

Again, Yusuf is evading answering Interrogatory 37, which requests that all distributions from the Partnership to the Yusuf family and the United Corporation be identified. From September 17, 2006 to the date of the BDO report, no distributions from the Partnership are listed for Yusuf, Yusuf’s family or the United Corporation. (See **Exhibit 11**) At a bare minimum, the payroll checks for Yusuf and his family members should have been listed. This is goose and gander again—Yusuf (and BDO use these amounts from Hamed but refuse them for Yusuf. THIS IS DISCOVERY, how can the identical comparative numbers be totally irrelevant ? During this timeframe, additional Yusuf family members not working for the Partnership received Partnership distributions to pay taxes. (See, e.g., **Exhibit 13**). Those MANY distributions were not identified in the BDO report. Additionally, any payments from the Partnership to the United Corporation should have been listed as well. None were produced in the BDO report, nor were any independently listed as a response to this interrogatory. Thus, Yusuf’s assertion that “the responses originally provided are more than adequate. . .” is not true.

**Yusuf states in his Opposition, “[t]o the extent that there are limited distributions after September 17, 2006, that is consistent as to all of the parties. Even the Hamed parties’ distributions appear to decline during the timeframe.” (p. 5) In that case, this entire claim should be dismissed, as that is now (After Judge Brady’s Limitation Order) the SOLE basis for the Yusuf claim. Thus, Yusuf must produce his.** That is not an excuse for failing to identify Partnership distributions, no matter how large or small. Rule 26 of Virgin Islands Rules of Civil Procedure (“Rule 26”) is the foundational rule governing discovery. It broadly allows discovery regarding “**any nonprivileged matter that is relevant to any party’s claim or defense**. Information within this scope of discovery need not be admissible in evidence to be discoverable.” V.I. R. CIV. P. 26(b)(1), emphasis added. There is no exception for “limited distributions.” As with all of these interrogatories and document requests, the information is needed for Hamed’s defense of determining Yusuf offsets to the Hamed family withdrawals.

1. **RFPD 26—Bank, Brokerage, Retirement and Credit Card Statements**

Yusuf states that the Special Master’s Order of September 5, 2021 is limited to parties to the case. Even with this limitation, Yusuf has not responded to this request. First, the BDO report did not cover any Yusuf documents from September 17, 2006-September 30, 2016 for Fathi Yusuf or other Yusuf family members. No documents for that time period were produced in response to this document request. (See **Exhibit** **11**)

Second, Yusuf states that “(‘…[t]he Master finds the information sought…regarding assets where the Partnership fund was not the source for the acquisition of such assets irrelevant.’).” (p. 6) If Yusuf is using this data for the Hameds, this does not exempt Yusuf from producing any statements showing funds sitting in his bank, brokerage and retirement accounts that were a result in whole or in part of deposits from Partnership funds and any statements showing withdrawals derived from funds originating from the Partnership. These categories are the entire basis of the Yusuf’s lifestyle analysis. Yusuf is claiming that **any**, regardless of whether it came from Partnership funds or not, deposits to bank, brokerage or retirement accounts should be credited to Yusuf. Similarly, Yusuf claims that any Hamed payments to their personal credit cards should be credited to Yusuf, whether the source of those payments came from other income not related to the Partnership (such as the rental income the Hameds received from apartments they own) or the source was from Partnership issued paycheck.

Finally, to the extent that the Partnership paid the credit card charges for Yusuf family members, those documents should be produced as well. Yusuf family members (as well as Hamed family members) have used their own credit cards to pay for Partnership expenses and then were reimbursed by the Partnership. (See **Exhibit 14**) Irrespective of whether the Hamed family members were paying for Partnership expenses, Yusuf claims in his lifestyle analysis that these reimbursements should be credited to Yusuf (and in a leap toward the absurd, Yusuf actually claims that ***any*** payments the Hameds made toward their credit card charges should be a Partnership credit to him).

 In order to prepare his defense to this nonsensical claim, Hamed needs to understand how much Yusuf and his family has received from the Partnership for this time period to understand the offset.

1. **Sanctions**

If the Special Master deems it appropriate, Hamed is requesting sanctions with respect to Interrogatory 30. He will not collect monetary amounts, but the point should be made. This interrogatory should have been fully answered in October 2021 and it is still outstanding in February 2022.

1. **Conclusion**

Hamed’s interrogatory and request for documents discussed above clearly fall within Rule 26’s scope allowing discovery regarding “**any nonprivileged matter that is relevant to any party’s claim or defense**.” (Emphasis added). Hamed has patiently been trying to get responses to this discovery since *May 15, 2018*, with no success. Accordingly, Hamed respectfully requests that the Master compel Yusuf to answer Interrogatories 35 and 37 and RFPDs 26 and 30.

**Dated:** February 7, 2022 A

**Carl J. Hartmann III, Esq.**

*Co-Counsel for Plaintiff*

2940 Brookwind Drive

Holland, MI 49424

Email: carl@carlhartmann.com

Tele: (340) 642-4422

 **Joel H. Holt, Esq.**

 *Counsel for Plaintiff*

 Law Offices of Joel H. Holt

 2132 Company Street,

 Christiansted, Vl 00820

**CERTIFICATE OF SERVICE**

 I hereby certify that on this 7th day of February 2022, 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

**Charlotte Perrell**

**Stefan Herpel**

Law House, 10000 Frederiksberg Gade

P.O. Box 756

St. Thomas, VI 00802

Cperrell@dnfvi.com

Sherpel@dnfvi.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).

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**Dated**: February 7, 2022