

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-278

**ACTION FOR DEBT and
CONVERSION**

ORDER

THIS MATTER came before the Master sua sponte for review regarding Yusuf Claim No. Y-10: reconciliation of past Partnership withdrawals and distributions.¹

BACKGROUND²

In his accounting claims and amended accounting claims, Fathi Yusuf (hereinafter “Fathi Yusuf” or “Yusuf”) included Yusuf’s claim for the reconciliation of past Partnership withdrawals and distributions (Yusuf Claim No. Y-10). In support of the aforementioned claim, Yusuf attached an accounting report of the Partnership and a summary of withdrawals prepared by Yusuf’s accounting expert Fernando Scherrer of BDO Puerto Rico, P.S.C (hereinafter “BDO Report” and “BDO’s Summary of Withdrawals,” respectively). The BDO’s Summary of Withdrawals included the following items, which were calculated separately for the Hameds and the Yusufs:³

| Description | Hameds Total | Yusufs Total | Difference |
|--|---------------------|---------------------|-------------------|
| Funds received from partnership through checks | \$1,500,000.00 | \$4,284,706.25 | (\$2,784,706.25) |
| Withdrawals from the partnership with a signed ticket/receipt | \$237,352.75 | \$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 | \$1,778.103.00 | - | \$1,778.103.00 |

¹ The Master was appointed by the Court to “direct and oversee the winding up of the Hamed-Yusuf Partnership” (Sept. 18, 2015 order: Order Appointing Master) and “make a report and recommendation for distribution [of Partnership Assets] to the Court for its final determination.” (Jan. 7, 2015 order: Final Wind Up Plan) The Master finds that Yusuf Claim No. Y-10 falls within the scope of the Master’s report and recommendation given that Yusuf Claim No. Y-10 is related to the distribution of Partnership assets.

² The relevant facts and allegations as to Yusuf Claim No. Y-10 were discussed extensively in the order entered on February 21, 2022, and thus, they will not be recited here in depth.

³ A simplified version of BDO’s Summary of Withdrawals is reproduced here—to wit, (i) the “Lifestyle Analysis” portion of the summary is not included since it is not included in Yusuf Claim No. Y-10, (ii) the columns for the individual Hameds (Mohammad Hamed, Waleed Hamed, Waheed Hamed, Mufeed Hamed, and Hisham Hamed) and individual Yusufs (Fathi Yusuf, Nejah Yusuf, Maher Yusuf, Yusuf Yusuf, Najat Yusuf, Zayed Yusuf, Syaid Yusuf, Amal Yusuf, Hoda Yusuf, and Yacer Yusuf) in the summary are not included and instead, only the columns with the total for the Hameds, the total for the Yusufs, and the differences are included.

ORDER

| | | | |
|---|-----------------------|-----------------------|-----------------------|
| 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 | \$4,121,651.43 | \$237,691.05 | \$3,883,960.38 |
| Funds received by cashier's check | - | - | - |
| TOTAL PARTNERSHIP | \$7,657,418.18 | \$4,524,397.30 | \$3,133,020.88 |

(Yusuf's Amended Accounting Claims, Exhibit J-2.)

On July 31, 2021, Hamed filed a ministerial motion for Yusuf Claim No. Y-10. In his motion, Hamed argued that, to "streamline this claim," Yusuf Claim No. Y-10 should be amended so that all the items in BDO's Summary of Withdrawals should be removed except the following three items: (1) \$237,352.75, alleged "withdrawals from the partnership with a signed ticket/receipt" by Waleed Hamed, (2) \$20,311.00, alleged "payments to third parties on behalf of Hamed/Yusuf with partnership funds either with tickets or checks" by Waleed Hamed, and (3) \$2,000.00, alleged "withdrawals from the partnership with a signed ticket/receipt" by Maher Yusuf.⁴ (July 31, 2021 Motion, p. 2, Charts B, C.)

⁴ Hamed's proposed amendment to Yusuf Claim No. Y-10:

| Description | Hameds Total | Yusufs Total | Difference |
|--|--------------|--------------|--------------|
| Funds received from partnership through checks | \$0 | \$0 | \$0 |
| Withdrawals from the partnership with a signed ticket/receipt | \$237,352.75 | \$2,000.00 | \$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 | \$0 | - | \$0 |
| 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 | \$0 | \$0 | \$0 |

On February 21, 2022, the Master entered an order whereby the Court denied Hamed’s ministerial motion and ordered, inter alia, that “Hamed and Yusuf shall file a joint stipulated notice advising the Master as follows: (a) Which individual accounting claim is also stated as a set off in Yusuf Claim No. Y-10? and (b) As to the individual accounting claim(s) identified in (a), whether it is in dispute or not in dispute that the identified individual accounting claim is not barred by the Limitations Order. If there is a dispute, Hamed and Yusuf should provide support for their respective argument.”⁵ (Feb. 21, 2022 Order.)

| | | | |
|-----------------------------------|---------------------|-------------------|---------------------|
| Funds received by cashier’s check | - | - | - |
| TOTAL PARTNERSHIP | \$237,352.75 | \$2,000.00 | \$255,352.75 |

(July 31, 2021 Motion, Exhibit C.)

⁵ In the February 21, 2022 order, the Master explained:

At this juncture, for the reasons provided below, the Master does not find it procedurally sound to amend Yusuf Claim No. Y-10 as proposed by Hamed—namely, to remove all the items in BDO’s Summary of Withdrawals except for the three items he identified. First, as to the amount of \$2,784,706.25, Hamed incorrectly noted that the Master “dismissed a \$2.7 million claim by Yusuf on 9/18/2019.”¹⁰ (Motion, Charts B, C.) The September 18, 2019 Order addressed Hamed Claim No. H-2, a claim by Hamed, not a claim by Yusuf, and although the Master granted Hamed’s motion for summary judgment for Hamed Claim No. H-2: Partnership fund in the amount of \$2,784,706.25 that Yusuf unilaterally withdrew in 2012, the Master specifically stated that “the judgment will be subject to and entitled to any set offs not stated as an individual accounting claim that are established hereinafter.” (Sept. 18, 2019 Order, pp. 15-16.) Thus, given that there are set offs that remain in dispute, the judgment for \$2,784,706.25 is not a final amount, and should not be removed from Yusuf Claim No. Y-10 as suggested by Hamed. Second, as to the amount of \$1,600,000.00, while Hamed correctly noted that the Master “dismissed a \$1.6 million claim by Yusuf [on] 9/24/2018,”¹¹ Hamed failed to acknowledge the September 18, 2019 Order, which specifically stated that the Limitations Order only applies to “claimed credits and charges to partner accounts, within the meaning of 26 V.I.C. § 71(a),” and “[a]s such, the Master’s prior finding that Yusuf’s claim for \$1,600,000.00 was barred by the Limitations Order does not automatically bar \$1,600,000.00 as a set off.” (Id., at p. 16, n. 9.) Thus, \$1,600,000.00 should not be removed from Yusuf Claim No. Y-10 as suggested by Hamed. Third, the claims for the amounts \$88,711.00 and \$89,392.00 have not been resolved.¹² Thus, these amounts should not be removed from Yusuf Claim No. Y-10 as suggested by Hamed. Fourth, the attorneys fees have not been resolved in the entirety.¹³ Thus, all the amounts listed for attorneys fees should not be removed from Yusuf Claim No. Y-10 as suggested by Hamed.¹⁴ Fifth, the matching wedding allocations of \$1,500,000.00 to both Hamed and Yusuf have not been resolved.¹⁵ Thus, these allocations should not be removed from Yusuf Claim No. Y-10 as suggested by Hamed. Finally, as Hamed noted in its reply, there is an alternate way to streamline the process to resolve Yusuf Claim No. Y-10 by having “the parties [] get together and remove duplications.” (Reply, p. 2.) As such, the Master will deny Hamed’s ministerial motion for Yusuf Claim No. Y-10 and instead, order Hamed and Yusuf to meet and confer in good faith to determine which individual accounting claim is also stated as a set off in Yusuf Claim No. Y-10,¹⁶ and whether it is in dispute or not in dispute that the identified individual accounting claim is not barred by the Limitations Order. Thereafter, if there is no dispute, or if there is a dispute and the Master determines that the identified individual accounting claim is not barred by the Limitations Order, then the identified individual accounting claim will proceed on its own and be removed as a set off in Yusuf Claim No. Y-10; on the other hand, if the Master determines that the identified individual accounting claim is barred

by the Limitations Order, then the identified individual accounting claim will be removed as an individual accounting claim and proceed as a set off in Yusuf Claim No. Y-10.

¹⁰ In Charts B and C, Hamed indicated in comment D (which was directed at the amount of \$4,284,706.25 listed under “Fathi Yusuf” for the item “funds received from partnership through checks”; the same amount also makes up the total for the Yusufs for that item):

D. Other

The underlying spreadsheets submitted by Yusuf show that this amount is made up of two items – both of which are now out of this claim.

1. The Master dismissed a \$2.7 million claim by Yusuf on 9/18/2019.
2. The other half or the “wedding amount of \$1.5 million to Yusuf explained under Part “A” to the left – for the wedding.

(Motion, Charts B and C.)

¹¹ In Charts B and C, Hamed indicated in comment B (which was directed at the amount of \$1,778,103.00 listed under Waleed Hamed for the item “amount owed by Hamed family to Yusuf as per agreement before raid Sept 2001. As per Mike’s testimony these tickets were burned”; the same amount also makes up the total for the Hameds for that item):

B. Three Items

The underlying spreadsheets submitted by Yusuf show that this amount is made up of three items – each of which is now out of this claim.

1. The Master dismissed a \$1.6 million claim by Yusuf 9/24/2018.
2. A Foreign Account Claim by Yusuf for \$88,711.00 that Wally allegedly withdrew from a St. Martin Bank in 2011 or 2012. This is properly handled under Yusuf [Claim No.] Y-12.
3. A Foreign Account Claim by Yusuf for \$89,392.00 from Jordan (Same).

(Motion, Charts B and C.)

¹² See *supra*, footnote 11.

¹³ In Charts B and C, Hamed indicated in comment C (which was directed at the amounts listed under Waleed Hamed, Waheed Hamed, Fathi Yusuf, NejeH Yusuf, and Majer Yusuf for the item “payments to Attorneys with partnership’s funds):

C. Attny Fees

All outstanding atty. Fees were settled and dismissed by a stipulated order dated 11/9/2018. The only fees remaining after this settlement are due to Hamed under two earlier order:

\$504,591.03 to Hamed on 5/20/2019 & \$332,900.42 that may go to either party or be offset – but in either case, is being dealt with by a separate motion.

(Motion, Charts B and C.)

¹⁴ The Master nevertheless acknowledges that Yusuf Claim No. Y-10 needs to be amended to reflect Hamed, KAC357, Inc., Yusuf, and United’s joint stipulation filed on May 30, 2018 and joint stipulation filed on November 9, 2018, but not by simply removing all the amounts listed for attorneys fees as suggested by Hamed.

In the May 30, 2018 stipulation, Hamed, KAC357, Inc., Yusuf, and United jointly advised, inter alia:

As to Hamed’s Claim H-3, Yusuf and United agree that, in exchange for the withdrawal of what Yusuf and United regard as expensive discovery over disputed issues regarding what legal services in the criminal case benefitted the partnership, Yusuf and United will concede the amount claimed by Hamed in H-3 (\$504,591.03)...

and jointly stipulated, inter alia:

The terms of this Stipulation shall remain confidential and not filed with the Superior Court unless and until such time as any party seeks the Superior Court’s final determination of the

On April 2, 2022, Hamed and Yusuf filed their stipulation regarding set offs and claims pursuant to the Court’s February 21, 2022 order.

DISCUSSION

In their April 2, 2022 stipulation, the Hamed and Yusuf made several stipulations. First, Hamed and Yusuf stipulated that, “[a]s to the \$2,784,706.25, none of the setoffs asserted by Yusuf against the \$2,784,706.25 withdrawal by Fathi Yusuf in 2012 (and identified in the Special Master’s September 8, 2019) shall be deemed to also constitute a separate accounting claim by Yusuf in his amended accounting claim”—to wit, the amounts of \$88,711.00 and \$89,392.00 “are not part of any separate accounting claim submitted by Fathi Yusuf.” (Stip.,

Master’s Report and Recommendation for distribution, under section 9, step 6 of the Final Wind Up Plain.

(May 30, 2018 Stip.)

Per the November 9, 2018 stipulation, which was subsequently granted and deemed accepted by the Master, Hamed, KAC357, Inc., Yusuf, and United jointly stipulated, inter alia:

The only Hamed claims related to attorney, professional and accounting fees that survive this stipulation are those in H-17 relating to Hamed’s claim for payment of attorneys’ fees and expense incurred before termination of the Joint Defendant Agreement (“JDA”) in the criminal case, which shall be limited to a maximum of \$332,900.42 with no entitlement to interest. This stipulation does not impact or alter the prior stipulation the parties entered into on May 30, 2018 regarding Hamed claim H-3, Partnership funds used to pay Fathi Yusuf’s personal legal fees.

The only Yusuf claims related to attorney, professional and accounting fees that survive this stipulation are those included in the Y-10 claim for a maximum of \$332,900.42 with no entitlement to interest, which can be made up of any fees paid to attorneys, accountants or professionals in the criminal case from September 17, 2006 until termination of the JDA.

...

The terms of this Stipulation shall remain confidential and not filed with the Superior Court unless and until such time as any party seeks the Superior Court’s final determination of the Master’s Report and Recommendation for distribution, under section 9, step 6 of the Final Wind Up Plain.

(Nov. 9, 2018 Joint Stip.)

¹⁵ In Charts B and C, comment A, Hamed indicated:

A. Wedding

After the U.S. Marshals began monitoring the accounts, both sides agreed to disburse “gifts” for weddings of their children, BDO simply charged both sides \$1.5 million—here for Hamed and as part of Yusuf’s claim over to the right under “D”.

These are the subject of and may offset each other in Hamed’s Claim H-151 (Checks to Fathi).

(Motion, Charts B and C.)

¹⁶ Hamed and Yusuf both acknowledged in their respective briefings that there are duplications.

p. 2.) As to whether these amounts are barred by the Limitations Order,⁶ Yusuf claimed that these amounts were distributed upon the closure of the St. Martin bank account and the Jordan bank account which was after September 17, 2006 and Hamed claimed that “to the extent that any of these amounts can be proven to have been withdrawn by a Hamed after September 17, 2006, they would constitute a claim subject to the claim process as though they had been originally identified like any other.” (Stip., pp. 2-3.) Second, Hamed and Yusuf stipulated that, [a]s to the issue of whether either party is entitled to a credit for up to \$332,900.42 in attorney fees (as referenced in the Order at p. 9, n. 14), this matter is currently pending before the Special Master by way of a “concurrent motion” filed by the parties on October 4, 2021.” (Id., at p. 3.) However, Hamed and Yusuf did not respond to the questions in the February 21, 2022 order. Finally, Hamed and Yusuf stipulated that, as to the amount of \$3,000,000 in wedding gifts, “[t]he Special Master’s Order (at page 10-11) referenced matching wedding gift sums of \$1,500,000 each that were paid with partnership funds to each of two Hamed/Yusuf families, and that are shown on both the Hamed and Yusuf sides of the BDO Draft Report.” (Id.) Hamed and Yusuf disputed as to whether the two gifts should be set off against each other—to wit, Yusuf claimed that “they offset one another, and that neither party has a valid claim for \$1,500,000, and that neither may claim the sum as an offset to some other withdrawal made from partnership monies” and Hamed claimed that “Yusuf personally and individually withdrew \$1,500,000 of Partnership funds and thereafter gave those funds as personal

⁶ On July 25, 2017, the Court entered a memorandum opinion and order limiting accounting (hereinafter “Limitations Order”). In the Limitations Order, 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.” (Limitations Order, pp. 32, 34.) In light of the Limitations Order, the Master ordered the parties to file their amended accounting claims.

wedding gifts... [and]... [t]hus,...the Partnership should recover these funds.” (Id.) However, again, Hamed and Yusuf did not respond to the questions in the February 21, 2022 order.

The Master is puzzled by Hamed and Yusuf’s stipulations and notes their unresponsive answers to the February 21, 2022 order. Hamed and Yusuf both acknowledged in their respective briefings as to Hamed’s July 31, 2021 ministerial motion that there are individual accounting claims that are also stated as set offs in Yusuf Claim No. Y-10—to wit, Yusuf stated in his opposition that “[w]hile Yusuf recognizes that there exists some overlap as to the allocations in Y-10 and certain claims made by Hamed, this simply means that the depositions can be tailored to address those topics together in certain deposition sessions,” (Nov. 1, 2021 Opp., p. 5), and Hamed stated in his reply “many of the matters in this claim [Yusuf Claim No. Y-10] have already been dealt with, or are being dealt with in other claims” and suggested that there is an alternate way to streamline the process to resolve Yusuf Claim No. Y-10 by having “the parties [] get together and remove duplications,” (Nov. 12, 2021 Reply, p. 2.) In fact, in the order denying Hamed’s July 31, 2021 ministerial motion, the Master agreed with Hamed’s suggestion and ordered the parties to meet and confer in good faith to determine which individual accounting claim is also stated as a set off in Yusuf Claim No. Y-10. (Feb. 21, 2022 Order.)

At this juncture, the Master will review Hamed and Yusuf’s individual accounting claims and the set offs stated in Yusuf Claim No. Y-10 and determine whether any of the following set off stated in Yusuf Claim No. Y-10 is also stated as an individual accounting claim: (i) Waleed Hamed’s withdrawal of Partnership funds from the closure of a St. Martin bank account (\$88,711) and a Jordan bank account (\$89,392)—collectively listed under Waleed Hamed for the item “amount owed by Hamed family to Yusuf as per agreement before raid Sept 2001...” in BDO’s Summary of Withdrawals; (ii) wedding gifts to Hisham Hamed

and his spouse (\$1,500,000) and Mufeed Hamed and his spouse (\$1,500,000)—with \$1,500,000 listed under Mohammad Hamed and \$1,500,000 listed under Fathi Yusuf for the item “funds received from partnership through checks” in BDO’s Summary of Withdrawals; and (iii) Attorney’s fees and/or accounting fees (\$332,900.42)—listed under the Yusufs for the item “payments to Attorneys with partnership funds” in BDO’s Summary of Withdrawals.⁷

A. Yusuf Claim No. Y-10: Waleed Hamed’s Withdrawal of a Partnership Funds from the Closure of a St. Martin Bank Account (\$88,711) and a Jordan Bank Account (\$89,392)

In Charts B and C attached to his July 31, 2021 ministerial motion, Hamed indicated in comment B (which was directed at the amount of \$1,778,103.00 listed under Waleed Hamed for the item “amount owed by Hamed family to Yusuf as per agreement before raid Sept 2001...”) that a portion of \$1,778,103.00—\$88,711.00 that Waleed allegedly withdrew from a St. Martin bank at the time of account closure, plus \$89,392.00 that Waleed allegedly withdrew from a Jordan bank at the time of account closure—is also stated as an individual accounting claim, Yusuf Claim No. Y-12.⁸ Yusuf Claim No. Y-12 is Yusuf’s claim for the Hameds’ misappropriation or failure to account for Partnership funds held in various foreign accounts and Partnership assets held as Jordanian properties.⁹ While Yusuf Claim No. Y-12 did not

⁷ This item “payments to Attorneys with partnership funds” has been amended by the parties’ May 30, 2018 and November 9, 2018 stipulations. *See supra*, footnote 5.

⁸ *See supra*, footnote 5.

⁹ Yusuf’s amended accounting claims included the following regarding Yusuf Claim No. Y-12:

VI. Foreign Accounts and Jordanian Properties

As part of the profit sharing arrangement between the Partners, at various points in time, profits of the Partnership were sent to Jordan to be held in bank accounts or invested in real property to the mutual benefit of the Partners. In addition, Partnership profits were also sent to Jordan to be used as charitable donations of the Partners. Based upon Yusuf’s review of bank documentation available to date and information discovered following the FBI raid, Yusuf claims that Hamed (either individually or through his sons or agents) failed to properly invest all Partnership funds with which he had been entrusted and failed to properly account for such funds. As a result, Hamed either breached his fiduciary duties to the Partnership by failing to properly safeguard, account for, and invest these funds as agreed between the Partners or he converted them for his own personal use or the personal use of his family members.

Yusuf has repeatedly raised these claims with Hamed and his agent, Waleed Hamed, but has received either unsatisfactory or no responses to questions as to how the funds were spent. The misappropriations or failures to account by Hamed and his agents of which Yusuf is presently aware include:

- a. Hamed and his sons have failed to account for the Partnership funds held in various foreign bank accounts from 1996 to date including, but not limited to, the accounts identified in Exhibit K to the Original Claims. The parties will need to engage in discovery to determine what transactions occurred with respect to those accounts on or after September 17, 2006;
- b. Because Hamed converted \$150,000 previously delivered as a charitable donation for a batch plant in West Bank, his interest in the Partnership should be charged for the transfer of \$150,000.00 to the Bank of Palestine to make good on the original donation; see Exhibit L to the Original Claims, Wire Transfer Information Supporting Claim.¹⁷
- c. Waleed Hamed's unauthorized check of \$536,405 to Hamed on April 29, 1998 and additional checks for \$10,000 and \$15,276; see Exhibit M to the Original Claims.
- d. Waleed Hamed's failure to account for funds that were removed from the Commercial Francaise Bank in Saint Maarten with four (4) checks totaling \$550,373.14 to close out the account in January and February of 1997.
- e. Waleed Hamed's conversion of \$ 1.4 million received in 1996 as reflected in a St. Maarten police report. Items (c) – (e) would appear to be barred by the [Limitations] Order.

Approximately forty (40) parcels of real property were purchased in Jordan using funds from the Plaza Extra Stores. All but two of those properties were jointly titled in the names of Hamed and Yusuf. The Court's assistance in administering or liquidating the jointly titled parcels is not sought at this time. Yusuf does seek the Court's assistance, however, with respect to two (2) parcels that were incorrectly titled in Hamed's name alone. These two parcels are identified in the "Land Value Estimation" attached as Exhibit N to the Original Claims. Yusuf respectfully requests an Order requiring the Executor/Administrator of Hamed's estate to take such action as may be necessary to properly reflect Yusuf's joint ownership of these parcels and to recover the \$434,921.37 reflected in Exhibit R to Yusuf's Amended Supplementation Of Accounting Claims submitted to the Master and counsel on December 12, 2016, (the "Amended Supplementation").

Hamed's interest in another parcel that was purchased in Jordan using funds from Plaza Extra Stores has already been conveyed to Yusuf as part of Hamed's efforts to appease Yusuf following his discovery of the misappropriation of \$2,000,000 sent to Hamed from St. Maarten in or around 1997. A copy of the agreement in Arabic conveying Hamed's interest in such parcel is attached as Exhibit O to the Original Claims.¹⁸ Yusuf had agreed to resolve this misappropriation, but not any others that Yusuf might later discover, by the conveyance of Hamed's interest in two parcels, one in Jordan that is the subject of Exhibit N, and one half acre parcel in St. Thomas, previously titled in the name of Plessen Enterprises, Inc., which is addressed in a number of the Liquidating Partner's Bi-Monthly Reports. See Ninth Bi-Monthly Report at p. 5-6. Yusuf insisted that if Hamed wanted a resolution addressing all Hamed misappropriations, whether known or unknown, Hamed would have to arrange for the conveyance to Yusuf or United of another approximately 9.3 acre parcel located on St. Thomas also titled in the name of Plessen Enterprises, Inc. Hamed, through his son, Waleed, refused to convey this third parcel.

Although Yusuf is not pursuing his claims regarding the misappropriated 2,000,000 [sic], Hamed's sons are still seeking to somehow rescind Hamed's conveyance of his interest in the Jordanian parcel that is the subject of Exhibit N of the Original Claims in their second amended complaint in *Hamed v. Yusuf*, Civil No. SX-12-CV-377. Yusuf asks this Court to bind Hamed's estate by the agreement signed by Hamed.

Disputed/Undisputed, Ripe for Determination or Discovery Needed: It is Yusuf's position that these items are disputed and additional discovery is necessary. Furthermore, some of these claims relate to post - September 17, 2006 transactions or agreements between the Partners and therefore have not been eliminated by the [Limitations] Order.

include the specific amounts of \$88,711.00 and \$89,392.00, it appears that these amounts are nonetheless included in Yusuf Claim No. Y-12 based on Yusuf's description of Yusuf Claim No. Y-12.¹⁰ This issue is further complicated by Hamed Claim No. H-2, Hamed's claim for Partnership funds in the amount of \$2,784,706.25 that Yusuf unilaterally withdrew in 2012, which included such account closure proceeds.¹¹ On September 18, 2019, the Master entered an order whereby the Master, inter alia, pointed out that Yusuf "[did] not dispute that the \$2.78 million dollar check was removed but does dispute that it was unjustified as it was a corresponding matching withdrawal," granted Hamed's motion for summary judgment for Hamed Claim No. H-2 subject to any set offs established hereinafter, and denied Hamed's request for prejudgment interest.¹² (Sept. 18, 2019 Order.)

¹⁷ This payment was made on behalf of the purchaser of the Y&S and R&F stock and represented a portion of the proceeds of the sale of that stock. Accordingly, the amount should be charged against Hamed's interest in the Partnership.

¹⁸ Yusuf is arranging for this document to be translated. An English version will be provided to the Master and counsel upon receipt.

(Yusuf's Amended Accounting Claims, pp. 15-18.)

¹⁰ See *supra*, footnote 9.

¹¹ According to Hamed's briefs and exhibits filed in connection with his February 25, 2019 motion for summary judgment for Hamed Claim No. H-2, \$2,784,706.25 is comprised \$1,600,000.00 (past confirmed withdrawals), plus \$1,095,381.75 (additional withdrawals), plus \$44,355.50 (fifty percent (50%) of St. Maarten bank account), and plus \$44,696.00 (fifty percent (50%) of Cairo Amman bank account). The Master must note that these figures—\$1,600,000.00, \$1,095,381.75, \$44,355.50, and \$44,696.00—when added up together, equal \$2,784,433.25 and not \$2,784,706.25.

¹² In the September 18, 2019 order, the Master explained that:

Yusuf does not dispute the fact that he withdrew \$2,784,706.25 from the Partnership in 2012; instead, he argued that the withdrawal was an equal set off to withdrawals made by Hamed, more specifically it included \$1,600,000.00 (past confirmed withdrawals), plus \$1,095,381.75 (additional withdrawals), plus \$44,355.50 (fifty percent (50%) of St. Maarten bank account), and plus \$44,696.00 (fifty percent (50%) of Cairo Amman bank account). See *Opp.*, at p. 3 ("Yusuf does not dispute that the \$2.78 million dollar check was removed but does dispute that it was unjustified as it was a corresponding matching withdrawal.") As such, the Master concludes that Hamed has satisfied his burden of establishing that there are no genuine dispute as to any material fact regarding Hamed Claim No. H-2: Partnership fund in the amount of \$2,784,706.25 that Yusuf unilaterally withdrawn in 2012, and thus, Hamed is entitled to judgment as a matter of law. See *Rymer*, 68 V.I. at 575 ("A summary judgment movant is entitled to judgment as a matter of law if the movant can demonstrate the absence of a triable issue of material fact in the record.")

(Sept. 18, 2019 Order, p. 15.)

Upon review, the Master finds that it is better suited for these account closure proceeds—\$88,711.00 and \$89,392.00—to proceed as an individual accounting claim as part of Yusuf Claim No. Y-12 instead of as a set off as part of Yusuf Claim No. Y-10. While Hamed and Yusuf stipulated that “[a]s to the \$2,784,706.25, none of the setoffs asserted by Yusuf against the \$2,784,706.25 withdrawal by Fathi Yusuf in 2012 (and identified in the Special Master’s September 8, 2019) shall be deemed to also constitute a separate accounting claim by Yusuf in his amended accounting claim,” they never explained why these account closure proceeds are not included as part of Yusuf Claim No. Y-12. Here, the Master already granted Hamed’s motion for summary judgment for Hamed Claim No. H-2, which included \$44,355.50 (50% of the St. Martin bank account) and \$44,696.00 (50% of the Jordan bank account), and awarded Hamed such an amount subject to any set offs established hereinafter. On one hand, if these account closure proceeds proceed as part of Yusuf Claim No. Y-12, then in the event that the Master finds that Hamed misappropriated or failed to account for the account closure proceeds and awards all or a portion of the account closure proceeds to Yusuf, such an amount would be allowed to set off directly against the amount awarded to Hamed for Hamed Claim No. H-2. On the other hand, if these account closure proceeds proceed as part of Yusuf Claim No. Y-10, then the calculation would not be as clean and direct because the account closure proceeds that Waleed Hamed allegedly withdrew and the corresponding withdrawal of the account closure proceeds that Fathi Yusuf made were not listed under the same item in the BDO’s Summary of Withdrawal—to wit, the former is included in the amount of \$1,778,103.00 listed under Waleed Hamed for the item “amount owed by Hamed family to Yusuf as per agreement before raid Sept 2001...”¹³ and the latter is included in the amount of

¹³ Interestingly, this item in the BDO’s Summary of Withdrawals is labeled “amount owed by Hamed family to Yusuf as per agreement before raid Sept 2001...” so presumably, nothing would be included under this item for the Yusufs. There is no corresponding item labeled “amount owed by Yusuf family to Hamed.”

\$4,284,706.25 amount listed under Fathi Yusuf for the item “funds received from partnership through checks”—and plus, any amount the Master finds would need to account for, and be calculated together with, potential set offs of other past withdrawals and distributions of Hamed and Yusuf. The Master will give Hamed and Yusuf the opportunity to brief the issue of why these account closure proceeds—\$88,711.00 and \$89,392.00—should not proceed as an individual accounting claim as part of Yusuf Claim No. Y-12 instead of as a set off as part of Yusuf Claim No. Y-10.

B. Yusuf Claim No. Y-10: Wedding Gifts to Hisham Hamed and His Spouse (\$1,500,000.00) and Mufeed Hamed and His Spouse (\$1,500,000.00)¹⁴

In Charts B and C attached to his July 31, 2021 ministerial motion, Hamed indicated in comment A (which was directed at the amount of \$1,500,000.00 listed under Mohammad Hamed and a portion of the amount of \$4,284,706.25 listed under Fathi Yusuf for the item “funds received from partnership through checks”) that “[a]fter the U.S. Marshals began monitoring the accounts, both sides agreed to disburse ‘gifts’ for weddings of their children, BDO simply charged both sides \$1.5 million—here for Hamed and as part of Yusuf’s claim over to the right under ‘D’” and that “[t]hese are the subject of and may offset each other in Hamed’s Claim H-151 (Checks to Fathi).”¹⁵ Hamed Claim No. H-151 is Hamed’s claim for Partnership funds taken by Fathi Yusuf via checks written from the Partnership account(s) to himself or United for personal use. According to the April 2, 2022 stipulation, Hamed claimed that “Yusuf personally and individually withdrew” these amounts from the Partnership accounts. This was not disputed by Yusuf in the April 2, 2022 stipulation. Thus, it appears that these amounts are included in Hamed Claim No. H-151 given that Yusuf withdrew these amounts from Partnership account(s) via checks written from the Partnership account(s) to

¹⁴ The spouses of Mufeed Hamed and Hisham Hamed are daughters of Fathi Yusuf. (The BDO Report.)

¹⁵ *See supra*, footnote 5.

himself then he turned around and gave the money as weddings gifts to Hisham Hamed and his spouse and Mufeed Hamed and his spouse, which Hamed considered as a personal use by Yusuf.¹⁶

Upon review, the Master finds that it is better suited for these wedding gifts—Hisham Hamed and his spouse (\$1,500,000) and Mufeed Hamed and his spouse (\$1,500,000)—to proceed an individual accounting claim as part of Hamed Claim No. Y-151 instead of as a set off as part of Yusuf Claim No. Y-10. The BDO’s Summary of Withdrawals did not correctly reflect the withdrawal Yusuf made for the weddings gifts via checks written from the Partnership account(s) to himself. Here, based on the BDO Report and the April 2, 2022 stipulation,¹⁷ it is not disputed that Yusuf personally withdrew \$3,000,000 from Partnership account(s) via checks written from the Partnership account(s) to himself and thereafter gave the money as wedding gifts to Hisham Hamed and his spouse and Mufeed Hamed and his spouse. Interestingly, although it was Fathi Yusuf who personally withdrew \$3,000,000 and not Mohammad Hamed, albeit the money was ultimately given away as weddings gifts to Hisham Hamed and his spouse and Mufeed Hamed and his spouse, the BDO’s Summary of Withdrawals divided the amount of \$3,000,000 between Mohammad Hamed and Fathi Yusuf and listed \$1,500,000 each under Mohammad Hamed and Fathi Yusuf for the item “funds

¹⁶ However, if, unlike what Hamed indicated, these gifts were checks written from the Partnership accounts made payable directly to Hisham Hamed and his spouse and Mufeed Hamed and his spouse, then these amounts would not be included in Hamed Claim No. H-151 since the checks were not written to Fathi Yusuf/United.

¹⁷ According to the BDO Report, “[d]uring the period covering October 2001 through December 2012, a total of \$3,000,000 was withdrawn through checks issued from the Partnership as gifts to Hisham Hamed and his spouse (\$1,500,000) and Mufeed Hamed and his spouse (\$1,500,000)” and “[t]herefore, for purposes of our analysis it was determined that this amount represented distributions from the Partnership” and “[w]e adjusted Mr. Hamed’s and Mr. Yusuf’s distribution by \$1,500,000 for said period.” (BDO Report, p. 23.) According to the April 2, 2022 stipulation, Yusuf claimed that “they offset one another, and that neither party has a valid claim for \$1,500,000, and that neither may claim the sum as an offset to some other withdrawal made from partnership monies” and Hamed claimed that “Yusuf personally and individually withdrew \$1,500,000 of Partnership funds and thereafter gave those funds as personal wedding gifts... [and]... [t]hus,...the Partnership should recover these funds.” (Stip., p. 3.)

received from partnership through checks” when Mohammad Hamed never received such Partnership funds via checks. In fact, the BDO Report stated that “[o]ur examination did not reveal any checks made to the order of Mohammad Hamed from the Partnership accounts.” (The BDO Report, p. 23.) The BDO Report, the BDO’s Summary of Withdrawals, or the April 2, 2022 stipulation did not explain the reason for such division of \$3,000,000 in the BDO’s Summary of Withdrawals or explain why the amount of \$1,500,000 to Hisham Hamed and his spouse would set off against the amount of \$1,500,000 to Mufeed Hamed and his spouse. Nevertheless, even if the BDO’s Summary of Withdrawals is amended to correctly reflect the withdrawal Yusuf made for the weddings gifts, the Master still finds that it is better suited for these wedding gifts to proceed an individual accounting claim as part of Hamed Claim No. Y-151 instead of as a set off as part of Yusuf Claim No. Y-10. The only dispute as to the wedding gifts is whether giving the money as wedding gifts to Hisham Hamed and his spouse and Mufeed Hamed and his spouse was considered Yusuf’s personal use—Hamed claimed that it was for Yusuf’s personal use and therefore, the Partnership should recover these funds, while Yusuf claimed that it was not for his personal use and that the amount of \$1,500,000 to Hisham Hamed and his spouse should set off against the amount of \$1,500,000 to Mufeed Hamed and his spouse.¹⁸ On one hand, if these wedding gifts proceed as part of Hamed Claim No. H-151, then regardless of whether the Master finds that these weddings gifts are considered as a personal use by Yusuf, such an amount is simply part of Hamed Claim No. H-151 and would not need to account for potential set offs of other past withdrawals and distributions of Hamed and Yusuf. On the other hand, if these wedding gifts proceed as part of Yusuf Claim No. Y-10, then the calculation would not be as clean and direct because any amount the Master finds would need to account for, and be calculated together with, potential set offs of other past

¹⁸ *See supra*, footnote 17.

withdrawals and distributions of Hamed and Yusuf. The Master will give Hamed and Yusuf the opportunity to brief the issue if why these weddings gifts—\$3,000,000—should not proceed as part of Hamed Claim No. Y-151 instead of as a set off as part of Yusuf Claim No. Y-10.

C. Yusuf Claim No. Y-10: Attorney’s Fees and/or Accounting Fees (\$332,900.42)

In Charts B and C, Hamed indicated in comment C (which was directed at the amounts listed under Waleed Hamed, Waheed Hamed, Fathi Yusuf, NejeH Yusuf, and Majer Yusuf for the item “payments to attorneys with partnership’s funds) that “\$332,900.42 that may go to either party or be offset – but in either case, is being dealt with by a separate motion.”¹⁹ To be clear, there are two separate claims for attorney’s fees and/or accounting fees—Hamed’s claim for reimbursement from the Partnership for the attorney’s fees and accounting fees that Waleed Hamed and Waheed Hamed personally paid in *United States of America v. United, et al.*, Case No. 1:05-cr-00015 (hereinafter “Criminal Case”) in the amount of \$332,900.42 (Hamed Claim No. H-17) and Yusuf’s claim for the reconciliation of the Partnership funds used to pay for Waleed Hamed and Waheed Hamed in the Criminal Case after the entry of the plea agreement on February 26, 2010 in the amount of \$332,900.42 (Yusuf Claim No. Y-10). In fact, according to BDO’s Summary of Withdrawals, Yusuf Claim No. Y-10 only addressed Partnership funds used to pay for Hamed and his family’s attorney’s fees and Yusuf and his family’s attorney’s

¹⁹ See *supra*, footnote 5.

In an order recently entered denying Hamed and Yusuf’s concurrent motions filed on October 4, 2021, the Master noted that: (i) in the May 30, 2018 stipulation, Yusuf and United conceded to Hamed’s claim for the Partnership funds used to pay for Yusuf’s personal civil legal fees in this case in the amount of \$504,591.03 (Hamed Claim No. H-3), (ii) in the November 9, 2018 stipulation, the relevant parties conceded that Hamed’s claim for reimbursement from the Partnership for the attorney’s fees and accounting fees that Waleed Hamed and Waheed Hamed personally paid in the Criminal Case (Hamed Claim No. H-17) and Yusuf’s claim for the reconciliation of the Partnership funds used to pay for Hamed and his family’s attorney’s fees and Yusuf and his family’s attorney’s fees as part of Yusuf Claim No. Y-10 will both be limited to a maximum of \$332,900.42, and (iii) Yusuf Claim No. Y-10 was amended to be limited to the attorney’s fees that the Partnership paid for Waleed Hamed and Waheed Hamed in the Criminal Case after the entry of the plea agreement on February 26, 2010. (April 5, 2022 Order) (footnotes omitted.)

fees as part of Yusuf Claim No. Y-10 and did not address Waleed Hamed and Waheed Hamed's personal funds used to pay the attorney's fees in the Criminal Case. In other words, Hamed claimed in Hamed Claim No. H-17 that the Partnership owes Hamed \$332,900.42 and Yusuf claimed in Yusuf Claim No. Y-10 that the Partnership owes Yusuf \$332,900.42. Thus, the amount of \$332,900.42 claimed in Hamed Claim No. H-17 should not be construed as an entry in Yusuf Claim No. Y-10, and thereby a set off to Yusuf's claim simply because both claims relate to attorney's fees and/or accounting fees. Simply put, this is not money the partners alleged that they owe each other but money Hamed alleged that the Partnership owes him and money Yusuf alleged that the Partnership owes him, and thus, there can be no set offs between the final amounts, if any, that the Partnership is found to owe to Hamed and Yusuf. Going forward, Hamed and Yusuf should continue to proceed with their respective claims separately—\$332,900.42 claimed by Hamed as an individual accounting claim (Hamed Claim No. H-17) with \$332,900.42 claimed by Yusuf as a set off (Yusuf Claim No. Y-10)—and refrain from describing them as set offs to each other.

CONCLUSION

Based on the foregoing, the Master will order Hamed and Yusuf to file supplemental briefs to address the issues raised above. Accordingly, it is hereby:

ORDERED that, **within thirty (30) days from the date of entry of this Order**, Hamed and Yusuf **SHALL** each file a supplemental brief addressing the issues listed below:

1. Why these account closure proceeds—\$88,711.00 and \$89,392.00—should not proceed as an individual accounting claim as part of Yusuf Claim No. Y-12 instead of as a set off as part of Yusuf Claim No. Y-10?
2. Why these weddings gifts—\$3,000,000—should not proceed as part of Hamed Claim No. Y-151 instead of as a set of as part of Yusuf Claim No. Y-10?

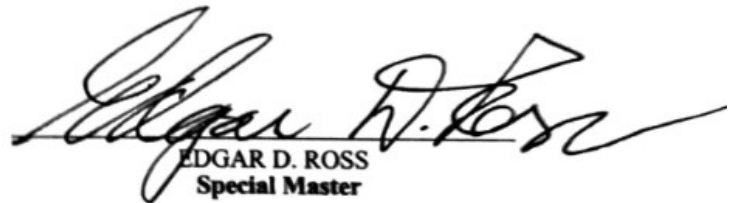
And it is further:

ORDER

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ORDERED that this Order shall remain confidential and shall not be filed with the Court unless and until such time as any party seeks the Court's final determination of the Master's report and recommendation for distribution, or alternatively, if filed with the Court for any other reasons, then footnote 14 of the February 21, 2022 order contained in footnote 5 should be redacted.

DONE and so ORDERED this 8th day of June, 2022.


EDGAR D. ROSS
Special Master