

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

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

v. )

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

v. )

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

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

v. )

**UNITED CORPORATION**, )  
)  
Defendant. )

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

v. )

**FATHI YUSUF**, )  
)  
Defendant. )

**CIVIL NO. SX-12-CV-370**

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

**Consolidated With**

**CIVIL NO. SX-14-CV-287**

**ACTION FOR DAMAGES AND  
DECLARATORY JUDGMENT**

**CIVIL NO. SX-14-CV-278**

**ACTION FOR DEBT AND  
CONVERSION**

**YUSUF'S BRIEF IN OPPOSITION TO HAMED'S  
MOTION FOR SUMMARY JUDGMENT RE REVISED CLAIM H-146**

COMES NOW, Fathi Yusuf (“Mr. Yusuf”) and files this his Opposition to Hamed’s Motion for Summary Judgment Regarding Revised Claim H-146 – Credit Card Points and shows as follows:

### **INTRODUCTION**

Hamed attempts to make a claim for the value of credit card points earned by Yusuf and Hamed family members for charges on their personal credit cards for Plaza Extra partnership business expenses. Hamed’s claim should fail for the following reasons: 1) there was never any partnership agreement for the redemption by either partner or their family members of credit card points, rather, whomever incurred the points, would have the ability to use those points, 2) there was never any partnership agreement for the two families to equalize the credit cards used in the business, 3) as there was no agreement for tracking or redeeming credit card points, the accounting systems tracked overall credit card payments to credit card vendors, but not necessarily by the individual family member who incurred the expense, and, 4) to the extent that the credit card points constitute a partnership asset subject to division, Hamed has failed to demonstrate how an allocation should be made as to the points, given the different credit capacities of the two families or the amount Hamed family members incurred.<sup>1</sup>

---

<sup>1</sup> Yusuf’s Opposition is timely filed calculated as follows: 30 days from Hamed’s brief is October 8 – a Saturday, the next business day is Tuesday, October 11, 2022.

**STATEMENT OF FACTS**

**I. Yusuf’s Responses to Hamed’s Statement of Undisputed Material Facts.**

Below, in tabular form, are Hamed’s Statement of Undisputed Material Facts (“SUMF”) and Yusuf’s response to them, followed by Yusuf’s Counter-Statements of Undisputed Material Facts (“Counter-SUMF”).

a. Hamed’s SUMF and Yusuf’s Response to Same.

	<b>HAMED’S SUMF</b>	<b>YUSUF’S RESPONSE TO SUMF</b>
1.	It is uncontested that during the course of the Partnership, it was not uncommon for each family to take turns charging Plaza Extra store merchandise, gross receipt taxes and other store expenses to their personal credit cards or to store credit cards issued in their individual names. This method of taking turns allowed <i>each family to earn an equal amount of very valuable credit card points</i> . This was hundreds of thousands of dollars worth of points per year.	Disputed. Yusuf as managing partner who had exclusive control over all financial aspects of the partnership did use credit cards issued to himself and his sons Mike, NejeH and Yusuf-Yusuf to purchase the relatively small (in percentage terms) amount of store inventory that could be purchased with credit cards, and then have United Corporation reimburse them for those purchases. He also permitted the Hamed sons to make some of those purchases with their credit cards and to get reimbursement from United Corporation. Contrary to Hamed’s unsupported implication, he and Mohammed Hamed never agreed that each family would have equal credit card expenditures and hence never agreed that “each family” would “earn an equal amount of very valuable credit card points.” <i>See Exhibit A, Declaration of Fathi Yusuf, ¶¶ 1-2.</i> Yusuf also disputes the statement that “starting in 2012, Hamed noted that this system broke down and credit card points went mainly to the Yusufs, because the absence of any agreement between Mohammed Hamed and Fathi Yusuf regarding credit card purchases and points meant that there could not have been any such “system.” Further, this statement that Hamed first observed a disparity in 2012 does not rely on any record evidence, and therefore may not be taken as an undisputed fact. The only evidence cited in ostensible support is a November 6, 2014 email from Hisham Hamed to Mike Yusuf and Special Master Ross, which attaches a spreadsheet purporting to show a dollar disparity in credit card purchases by Hisham and Mike dating from a meeting with Special Master Ross. <i>See Exhibit 1 to Hamed’s Motion.</i> The spreadsheet sets forth respective credit card purchases from October 1, 2014 to November 5,

	<b>HAMED’S SUMF</b>	<b>YUSUF’S RESPONSE TO SUMF</b>
		2014. Hamed does not allege in this SUMF what the terms of that agreement were. Assuming that they meant that going forward, to the extent possible (i.e., to the extent that the Hamed’s had credit availability equal to the Yusuf’s), those purchases would be made equally between Mike and Hisham (or between Yusuf and Hamed family members as a group), that agreement would only date from approximately October 1, 2014 to the date the Plaza West and Plaza East stores changed ownership – namely, the spring of 2015.
3.	Accordingly, Hamed filed this revised claim to correct the imbalance in credit card points in <i>Hamed's Submission of His Suggestions as to the Further Handling of the Remaining Claims Per the Master's Directions of August, 24, 2017</i> , filed on October 30, 2017.	Undisputed that Hamed filed a revised claim on October 30, 2017.
4.	In 2018, the Parties exchanged discovery pursuant to the August 4, 2018 Scheduling Order. After responses were produced on May 15, 2018, the parties entered into a series of letters and Rule 37 conferences to resolve their differences. Yusuf did not produce sufficient responses.	Undisputed that the parties exchange discovery pursuant to the August 4, 2018 discovery, and that the parties sought to resolve their differences regarding the adequacy of that discovery by means of letters and a Rule 37 conference. Deny that Yusuf failed to provide sufficient responses. <i>See</i> Exhibit A, Declaration of Fathi Yusuf, ¶¶ 6-7 and Exhibit B, Yusuf Discovery Responses.
5.	<p>On February 21, 2018, Hamed propounded the following interrogatory:</p> <p><b><u>Interrogatory 22 of 50</u></b></p> <p>Interrogatory 22 of 50 relates to Claim No. H-146 (old Claim No. 3007): “Imbalance in credit card points,” as described in Hamed’s November 16, 2017 Motion for a Hearing Before Special Master, Exhibit 3 and the September 28, 2016 JVZ Engagement Report and Exhibits.</p> <p>With respect to H-146, state the approximate value of these credit card points, by describing: the approximate number of points in each of the years 2008-the date of</p>	Undisputed.

	<b>HAMED'S SUMF</b>	<b>YUSUF'S RESPONSE TO SUMF</b>
6.	<p>On May 15, 2018, Yusuf refused to respond to Hamed's interrogatory:</p> <p>Defendants object to this interrogatory as vague, ambiguous, and compound such that the total number of interrogatories together with their sub parts and other discovery exceeds the maximum allowable number of interrogatories under the JDSP and violates both the spirit and the terms of the JDSP limiting the number of interrogatory questions.</p> <p>Defendants further object on the grounds that the responsive information cannot be readily obtained by making reasonable inquiries as these inquiries require the skilled and detailed attention and focus of John Gaffney, former Partnership accountant, to revisit his accounting and work papers. Yusuf is no longer being paid to function as the Liquidating Partner to answer questions on behalf of the Partnership and the accounting that took place during the liquidation process. Likewise, John Gaffney is no longer employed by the Partnership to function in the role as Partnership accountant. To respond to these questions, the expertise and knowledge of John Gaffney is necessary, which diverts him away from his employment with United. Rather, if Hamed seeks information from John Gaffney for questions as to the accounting efforts he undertook as the Partnership accountant, Hamed should be required to compensate John Gaffney for his time in researching and preparing those responses. Furthermore, many of these inquiries as to the Partnership accounting are duplicative of questions Gaffney has previously addressed at or near the time that the transactions took place. Reorienting now as to transactions from years ago constitutes an undue burden and causes unnecessary time and expense. If Hamed seeks to revisit these issues, Hamed should bear the cost.</p>	<p>Disputed that Yusuf failed to respond to the interrogatory, as there is a response. The gist of that response is that Gaffney should not have to ascertain whether documents exist that are covered by this request in the partnership records, and then hunt for them and provide them without being compensated for that work, as Hamed, a co-partner, is equally in a position to conduct that search.</p>

	<b>HAMED’S SUMF</b>	<b>YUSUF’S RESPONSE TO SUMF</b>
	<p>Without waiving any objection, Defendants submit that information relating to this request was previously provided to Hamed by John Gaffney in his correspondence dated May 17, 2016 and Defendants incorporate that response as this response as if fully set forth herein verbatim. <b>(Exhibit 4)</b></p>	
7.	<p>On February 16, 2016, per Judge Ross’s request, Hamed prepared questions regarding specific general ledger entries it questioned or did not understand for response by John Gaffney. This item related to the imbalance in credit card points between the Hameds and Yusufs.</p> <p><b>Description:</b> There is an imbalance in credit card points between Yusuf Yusuf and Mafi Hamed, Nejeh Yusuf and Willie Hamed and Mike Yusuf and Shawn Hamed.</p> <p><b>General Ledger - Store, Date, Entry No. &amp; Description</b> [as an example] (if applicable): East, 4/30/13, 29900, V.I.B.I.R - GROSS RECEIPT 3/30/13 PAID W/YUSUF 6073/3791 MIKE C/C 3940 NEJEH C/C5222, \$158,381.20</p> <p><b>Question /Request for info:</b> Are the credit card points reflected in the general ledger and if so, please provide that information. If the credit card points are not reflected on the general ledger, for the years 2012 -2015, would you please account for the amounts paid to each of the following individual's credit cards - Fathi Yusuf, Yusuf Yusuf, Mike Yusuf, Nejeh Yusuf, Wally Hamed, Willie Hamed, Mafi Hamed and Shawn Hamed.</p> <p>Please provide the canceled checks showing payment of Fathi Yusuf, Yusuf Yusuf, Mike Yusuf, Nejeh Yusuf, Wally Hamed, Willie Hamed, Mafi Hamed and Shawn Hamed credit cards. <b>(Exhibit 5)</b></p>	<p>Undisputed. The important point here is that Hamed sought two kinds of information in this “question/request for info”:</p> <ol style="list-style-type: none"> <li>1) information about who received credit points and in what amount, if that information were reflected in the general ledger; and</li> <li>2) if that information was not reflected in the general ledger, then “<i>canceled checks</i> showing payment of Fathi Yusuf, Yusuf Yusuf, Mike Yusuf, Nejeh Yusuf, Wally Hamed, Willy Hamed, Mafi Hamed and Shawn Hamed credit cards.” (emphasis added). Hamed did not include Mohammad Hamed in question 2, because Mohammad Hamed did not use his credit card for inventory purchases in the 2012 to 2015 time period. Nor did Hamed ask for credit card statements in this February 16, 2016 “question/request for info.”</li> </ol>
8.	<p>On May 17, 2016, John Gaffney provided the following response to this question, which Yusuf incorporated by reference in its response to interrogatory 22 of 50 on May 15, 2018. Gaffney noted “This request to identify credit card points creates significant new work such that is its (<i>sic.</i>) completely impractical”:</p>	<p>Disputed, because Hamed has omitted with ellipsis the response to question 2 that is set forth in SUMF number 7, above. In response to question 1, Gaffney’s response stated unequivocally and truthfully that “credit card points are not reflected in the general ledger.” In response to question 2, Gaffney stated that “[y]ou already know from previous conversations [with counsel for Hamed] that we don’t have many cancelled check as</p>

HAMED'S SUMF	YUSUF'S RESPONSE TO SUMF
<p>See objection to Item No. 3002. Without waiving that objection, credit card points are not reflected in the general ledger. You already know that because you were provided complete backups of Plaza accounting systems for all years and you loaded them into Sage software on your computers. You were given all rights to run not only complete general ledgers, but you also have the ability to run vendor reports showing all payments with credit cards.</p> <p>This request to identify credit card points creates significant new work such that is its (<i>sic</i>) completely impractical.</p> <p style="text-align: center;">* * *</p> <p>Included herein are copies of vendor reports for credit cards used at Plaza East. These reports reflect all activity since January 1, 2013 (the accounting conversion date). Prior to 2013, it is impractical if not impossible to provide all credit card activity as vendor accounts for credit cards never reflected activity properly. Sample general ledgers for the months of December 2012 and January 2013 are provided to demonstrate the deficiencies prior to my employment. Note that in 2012 all freight activity was rolled into single journal entries for St. Croix and in one account for both stores. Note also that in St. Thomas most of the freight was paid using Banco Popular credit cards. However, these payments are not associated with a vendor account for the corresponding Banco Popular credit cards. Instead, the AP clerk would simply change the name on the true vendor's account (probably Tropical Freight) when he or she was making the payment. So while a vendor account might have first been created at Tropical Freight, there were countless payments to the various credit cards actually used to pay Tropical Freight. Add to this the confusion of constantly changing addresses so that a payment to Banco Popular didn't get mailed to Tropical Freight. This was complete circumvention of controls.</p> <p>Note the difference beginning in 2013. There are no payments in Freight Expense with a description of "Banco Popular." In 2013 a true system of controls was implemented to show WHO the vender is. Furthermore, the control system was designed to ensure that any credit card payments appearing in the general ledger expense</p>	<p>the banks refused to provide them.” See Exhibit 6, to Hamed’s Motion, p. 5. Gaffney goes on to describe in detail how each bank that United did business with failed to provide cancelled checks.</p>

	<b>HAMED’S SUMF</b>	<b>YUSUF’S RESPONSE TO SUMF</b>
	accounts were conspicuous. This assures system integrity and guards against the likelihood of payment of non- business items by anyone. Simple stated, if I see a Banco credit card voucher in the general ledger ( <i>sic</i> ) account for freight expense, I immediately know it's a posting error. And if the control account used to clear business expenses against payments with credit cards is anything other than zero, I am immediately alerted to a posting error. . . . <b>(Exhibit 6)</b>	
9.	On July 7, 2021, Hamed sent a letter to Yusuf’s counsel requesting a Rule 37 conference on Interrogatory 22 of 50. <b>(Exhibit 7)</b> .	Undisputed.
10.	On July 28, 2021, Hamed filed his motion to compel regarding this issue.	Undisputed
11.	On February 3, 2022, Yusuf filed the opposition to the motion to compel.	Undisputed.
12.	On February 22, Hamed filed his reply.	Undisputed.
13.	On April 21, 2022, the Special Master issued an order in which he required Yusuf to do two critical acts:  A. Provide the actual credit card <i>statements</i> for which points had been allocated, and  B. Provide a calculation showing Yusuf’s view of the valuation of points – showing all references and work.	This is a paraphrase of the Special Master’s ruling, and Yusuf does not dispute its general accuracy. Yusuf believes that implicit in the April 21, 2022 order is that Yusuf need only provide credit card statements to the extent that they exist or are accessible from the issuing banks.
14.	On May 24, 2022, Yusuf provided a “Supplementation” that did <i>neither</i> . Instead, Yusuf supplied calculations by John Gaffney as to Yusuf’s position on how many credit card points were involved—using the accounting system summarization, <i>not attaching any actual credit card statements</i> .	Disputed. In response to the April 21, 2022 Order and a revised interrogatory promulgated by Hamed, Yusuf requested John Gaffney to use the computerized accounting system to try to get at the credit card point information by examining vendor payments (which would include payments to banks for charges placed on credit card used by the Hamed and Yusuf family members. Gaffney was able to generate information showing for each of the three stores that identified credit card payments made by the partnership on various credit cards used by both families for that purpose. But he was only able to identify whether the credit card payment in question was for a Hamed card

	HAMED'S SUMF	YUSUF'S RESPONSE TO SUMF
		<p>or a Yusuf card with respect to a portion of the credit card payments. For example, for the Plaza Extra East store, the system showed \$10,142,701.37 in credit card payments that could not be allocated to either a Hamed or a Yusuf. <i>See</i> Exhibit 9 to Hamed's Motion and <i>See</i> Exhibit A, Declaration of Fathi Yusuf, ¶¶ 6-7 and Exhibit B, Discovery Responses. Based on information provided by Gaffney, Yusuf also pointed out that a clerk from the Tutu Park store may have a list of which cards correspond to which family members, in which case this information could be compiled. <i>See id.</i> Hamed has not said whether he has made inquiry of any of the Tutu Park store clerks.</p>
15.	<p>Gaffney's results were as follows, as summarized in a deficiency email to Yusuf by Hamed dated September 2, 2022<sup>4</sup>:</p> <p><b>Not confidential or privileged – Demand for Production Pursuant to Court Order</b></p> <p>Stefan &amp; Charlotte:  On April 21, 2022, SM Ross stated the following requirements in his order regarding credit card points:</p> <p>1. First, he required you to provide Yusuf's valuation of the points in dispute:</p> <p><b>ORDERED</b> that Hamed's motion to compel as to Interrogatory 22 is GRANTED. Interrogatory 22 shall be revised as follows: "With respect to H-146, <b>state the approximate value of these credit card points, by describing: the approximate number of points from January 1, 2012 through March 9, 2015; the present value of that many points if negotiated on the date of these answers at the point-to-dollar value now -- and show all of your calculations, sources of information and support for this approximation.</b></p> <p>That should include an Excel spreadsheet in which you "show your work."</p> <p>2. Second, he ordered two sets of financials and underlying documents be produced. The statements</p>	<p>Disputed that this is a fair characterization of the information from John Gaffney provided in the interrogatory response. <i>See</i> Exhibit A, Declaration of Fathi Yusuf, ¶¶ 5-7. Any such statements must be obtained directly from the issuing banks. Yusuf's law firm has been seeking those documents but thus far because of document retention periods or other reasons, none have been forthcoming. Nejeah Yusuf did have a copy of credit card statements in his personal file that were responsive to this request, and he did produce them to Hamed on September 1, 2022 as Bates numbered documents FY016919-017161. The Hamed sons apparently have not retained their credit card statements either, because if they had a complete set, then production of those records would be enough, by themselves to identify which portion of the \$12,015,327.24 identified by Gaffney (the sum which Hamed calls the "total unknown for all stores") should be allocated to the Hamed family and which to the Yusuf family. <i>Id.</i></p>

HAMED'S SUMF	YUSUF'S RESPONSE TO SUMF
<p>and financials themselves—not a one page summary from you. I remind you that these points were purloined after the case started, and after notice to you/the Special Master in writing...so any “unknown” amounts are on your tab. This is when Hamed was excluded and against his protests.</p> <p>ORDERED that, <b>within thirty (30) days</b> from the date of entry of this Order, Fathi Yusuf, as the former managing partner of the Partnership and as the current liquidating partner under the Final Wind Up Plan, shall PRODUCE the following documents on behalf of the Partnership in response to RFPD 26:</p> <p>(i) for the period January 1, 2012 through March 9, 2015: <b>all credit card statements of the Partnership's business credit cards with the cardholders identified as Fathi Yusuf, Maher Yusuf, Negeh Yusuf, and Yusuf Yusuf, and (ii) for the period January 1, 2012 through March 9, 2015: all credit card statements of Fathi Yusuf, Maher Yusuf, Negeh Yusuf, and Yusuf Yusuf (individually and any combination of joint accounts between them and all joint accounts with their spouses) that included purchases made/expenses paid on behalf of the Partnership which were subsequently submitted to the Partnership and reimbursed by the Partnership.</b> This order shall not limit the March 17, 2022 order in any way and Fathi Yusuf shall continue to comply with the March 17, 2022 order. And it is further: ORDERED that Fathi Yusuf MUST RESPOND to Interrogatory 22 and RFPD 26 in compliance with the Virgin Islands Rules of Civil Procedure; Fathi Yusuf CANNOT answer by reference.</p> <p>On May 5, 2022, Hamed served a Rule 37 letter on Yusuf, attached. Yusuf supplied some supplemental statements from John Gaffney which were entirely non-conforming. In the Rule 37 conference in this matter, Yusuf asked for and received a 4 month extension – to August 1st – to produce the item (i) and item (ii) documents. Although the parties were able to reach agreement on the “lifestyle” claim, there has been no</p>	

HAMED'S SUMF	YUSUF'S RESPONSE TO SUMF																																																			
<p>similar negotiation or stipulation with regard to these credit card financials.</p> <p>Even using Gaffney's numbers, the amount claimed by Hamed would be <b>22,597,599 points to be transferred to him. (See below) If, not the value in the real world is now just under 1.4 cents per mile (We rounded down 1 cent per mile to 1.3).</b> See <a href="https://frequentmiler.com/airline-milesworth/#:~:text=With%20most%20frequent%20flyer%20programs,how%20the%20miles%20are%20used.">https://frequentmiler.com/airline-milesworth/#:~: text=With% 20most% 20frequent% 20flyer% 20progr ams,ho w% 20the% 20miles% 20are% 20used.</a></p> <p>What are airline miles worth? <b>Airline miles are worth 1.4 cents each.</b> What this means. With most frequent flyer programs, it is <b>reasonable</b> to expect to get <b>at least</b> 1.4 cents per mile value. The actual value you get from your miles will vary depend upon how the miles are used.</p> <p>Thus, we need your calculations and the documents, as ordered, by the 15th of this month.[5] That is two weeks from now.....which gives you a total of 45 more days than requested by Yusuf and agreed to by Hamed.</p> <p><b>East</b></p> <table border="0"> <tr> <td>Yusuf</td> <td>8,081,771.12</td> <td></td> </tr> <tr> <td>Hamed</td> <td><u>6,375,102.62</u></td> <td></td> </tr> <tr> <td>Difference</td> <td><b>1,706,668.50</b></td> <td></td> </tr> <tr> <td></td> <td></td> <td>Total Difference for 2 Stores West</td> </tr> <tr> <td><b>&amp; East</b></td> <td></td> <td></td> </tr> <tr> <td><b>West</b></td> <td></td> <td><b>10,582,226.85</b></td> </tr> <tr> <td>Yusuf</td> <td>12,695,951.83</td> <td></td> </tr> <tr> <td>Hamed</td> <td><u>3,820,393.48</u></td> <td></td> </tr> <tr> <td>Difference</td> <td><b>8,875,558.35</b></td> <td></td> </tr> <tr> <td><b>STT</b></td> <td></td> <td></td> </tr> <tr> <td>Yusuf</td> <td></td> <td></td> </tr> <tr> <td>Hamed</td> <td></td> <td></td> </tr> <tr> <td>Difference</td> <td>Unknown</td> <td></td> </tr> <tr> <td><b>Unknown</b></td> <td></td> <td>Total Unknown for all stores</td> </tr> <tr> <td>East</td> <td>118,320.79</td> <td><b>12,015,372.24</b></td> </tr> <tr> <td>West</td> <td>1,754,350.08</td> <td></td> </tr> <tr> <td>STT</td> <td><u>10,142,701.37</u></td> <td></td> </tr> </table>	Yusuf	8,081,771.12		Hamed	<u>6,375,102.62</u>		Difference	<b>1,706,668.50</b>				Total Difference for 2 Stores West	<b>&amp; East</b>			<b>West</b>		<b>10,582,226.85</b>	Yusuf	12,695,951.83		Hamed	<u>3,820,393.48</u>		Difference	<b>8,875,558.35</b>		<b>STT</b>			Yusuf			Hamed			Difference	Unknown		<b>Unknown</b>		Total Unknown for all stores	East	118,320.79	<b>12,015,372.24</b>	West	1,754,350.08		STT	<u>10,142,701.37</u>		
Yusuf	8,081,771.12																																																			
Hamed	<u>6,375,102.62</u>																																																			
Difference	<b>1,706,668.50</b>																																																			
		Total Difference for 2 Stores West																																																		
<b>&amp; East</b>																																																				
<b>West</b>		<b>10,582,226.85</b>																																																		
Yusuf	12,695,951.83																																																			
Hamed	<u>3,820,393.48</u>																																																			
Difference	<b>8,875,558.35</b>																																																			
<b>STT</b>																																																				
Yusuf																																																				
Hamed																																																				
Difference	Unknown																																																			
<b>Unknown</b>		Total Unknown for all stores																																																		
East	118,320.79	<b>12,015,372.24</b>																																																		
West	1,754,350.08																																																			
STT	<u>10,142,701.37</u>																																																			

	<b>HAMED'S SUMF</b>	<b>YUSUF'S RESPONSE TO SUMF</b>
	<b>12,015,372.24      Total 22,597,599.09</b>	
16.	For the purpose of this motion only, Hamed accepts the Gaffney calculation that between the East and West stores, Hamed was deprived of 10,582,226.85 points.	Disputed that Gaffney's calculation of the \$10,582,226.85 difference for the East and West stores shows that Hamed was deprived of that sum in points. Gaffney has also shown that there is \$12,015,272.24 in unknown payments and if those could be allocated, then the \$10,582,226.85 amount would have to be adjusted downward accordingly, and could even result in a disparity in favor of Hamed. <i>See</i> Exhibit A, Declaration of Fathi Yusuf, ¶¶ 5-7 and Exhibit B, Discovery Responses.
17.	Hamed also accepts, for the purpose of this motion only, that Yusuf did not keep sufficient records at the St. Thomas (Tutu) store during this period to be able to distinguish the number of points taken by Yusuf – but that there were 12,015,373.24 points accumulated.	Disputed that the failure to keep credit card statements represents any breach of any responsibility Yusuf had as managing partner regarding record retention. <i>See</i> Exhibit A, Declaration of Fathi Yusuf, ¶¶ 5-7. The evidence provided by Hamed in his Exhibit 1 shows that the issue of a disparity in credit card usage was not even raised until approximately October 1, 2014. None of Hamed's discovery requests preceding the Master's April 21, 2022 Order sought credit card statements. If Hamed believed credit card statements were important to resolution of any claims in this case, why did the Hamed sons apparently not retain them either?
18.	Finally, in the absence of Yusuf calculations (as ordered by the Special Master) as to the value per point, Hamed notes, and asks the master to take judicial notice of the fact that many of the website dealing with such matters, such as the one cited by Hamed, value each point at 1.4 cents per point.	Disputed. Yusuf shows that his research determined that at best a 1.0 cent valuation is supported for the purposes of this motion. <i>See</i> Exhibit B, Discovery Responses

b. Yusuf's Counter-SUMF

	<b>YUSUF'S COUNTER-SUMF</b>	<b>HAMED'S RESPONSE TO COUNTER-SUMF</b>
1.	<p>Fathi Yusuf and Mohammed Hamed never made any agreement with one another that the Yusufs (Fathi, Mike, Negeh and Yusuf-Yusuf) and the Hameds (Mohammad, Waleed, Mufeed, Willy and Hisham) would spend equal amounts on their credit cards for buying inventory or paying other expenses, and never agreed that each family would earn an equal amount of credit card points. <i>See</i> Exhibit A, Yusuf Declaration, ¶ 1. Yusuf's best recollection is that Mohammad Hamed rarely if ever used his credit card to pay for store expenses. <i>Id.</i>, ¶ 1.</p>	
2.	<p>As the managing partner in charge of all financial matters, Yusuf did permit his sons and the Hamed sons to pay certain store expenses with credit cards issued in their names, and then have United Corporation reimburse them. Yusuf did not monitor how many credit card points were accruing to each of them. Yusuf had no duty under his partnership agreement to have equality of credit card purchases (and thus credit card points) between the Yusufs and the Hameds, and made no attempt to accomplish that. <i>See</i> Exhibit A, Yusuf Declaration, ¶¶ 2-3.</p>	
3.	<p>Yusuf had full discretion to decide how credit cards were used for store expenses. One factor that influenced the permitted use of credit cards by the Hameds is that their collective credit availability on their cards was less the total credit availability Yusuf and his three sons had. <i>See</i> Exhibit A, Yusuf Declaration, ¶ 3.</p>	
4.	<p>Yusuf did not retain his credit card statements after he received them and had an opportunity to review them. <i>See</i> Exhibit A, Yusuf Declaration, ¶ 4. Yusuf and his sons Mike, Negeh and Yusuf-Yusuf gave the Dudley Newman law firm signed authorizations enabling the law firm paralegal to attempt to get those credit card statements, if they still have retained them. <i>Id.</i></p>	
5.	<p>The accounting department for the Partnership did not keep paper copies of credit card statements for the Yusufs or the Hamed sons for credit card purchases made by any of them for store inventory or other store expenses. <i>See</i> Exhibit A, Yusuf Declaration, ¶5. Rather,</p>	

	<b>YUSUF’S COUNTER-SUMF</b>	<b>HAMED’S RESPONSE TO COUNTER-SUMF</b>
	the accounting department was never provided credit card statements, but instead, credit charges were paid from credit card slips attached to the item that was paid, making the payments for specific items and more precise. <i>See Exhibit A, Yusuf Declaration, ¶¶ 5-7.</i>	
6.	The accounting department for the Partnership paid the credit cards directly as vendors. <i>See Exhibit A, Yusuf Declaration, ¶5.</i> Yusuf provided information as to any credit card vendor for the time requested as well as a summary of which credit cards were paid. <i>See Exhibit A, Yusuf Declaration, ¶¶ 5-7.</i> The accounting system did not always identify the credit cards that were being used by the individual whose name it was in. <i>See Exhibit A, Yusuf Declaration, ¶¶ 5-7.</i>	
7.	Since there was never an agreement for equalization of charges or allocation of points, there was no need for the partnership to track or specifically identify which family member incurred an expense, rather it just needed to track that particular business expense was incurred, paid by a card and then that the card was paid for that expense. <i>See Exhibit A, Yusuf Declaration, ¶¶ 1, 5-7.</i>	
8.	Yusuf provided information from the accounting records demonstrating what credit card expenses were incurred during the relevant time period. That information is included in Exhibit B – Yusuf’s Discovery Responses from May 23, 2022 and September 1, 2022.	

## ARGUMENT

### **I. There Was No Agreement to Divide Credit Card Purchases 50-50.**

The critical unsupported and unspoken premise of Hamed's Motion for Summary Judgment is that Fathi Yusuf and Mohammad Hamed had an agreement by which it was agreed that, insofar as the costs of Plaza Extra inventory and certain taxes could be paid by credit cards issued in the names of Fathi and his sons Mike, Nejeah and Yusuf-Yusuf, and Waleed, Waheed, Hisham and Willy Hamed, those credit card purchases would be divided 50-50 in dollar terms between the Hameds and the Yusufs, so that credit card points would be earned in equal amounts by the two families. Hamed has produced no evidence that there was such an agreement, and instead can do no more than make the bare allegation that there was a "not uncommon" practice that allowed "allowed each family to earn an equal amount of very valuable credit card points." *See* Hamed's SUMF, ¶ 1.

Fathi Yusuf unequivocally states that there was no such agreement between Mohammad Hamed and himself. *See* Exhibit A, Yusuf Declaration, ¶ 1. Moreover, Mohammed Hamed never testified to the existence of such an agreement in his 2014 deposition in this case. It appears from the email from Hisham Hamed attached to Hamed's motion that on or about October 1, 2014, there was a meeting with Judge Ross and one or more of the Hameds and Yusufs at which one of the Hamed family members was seeking to have parity with the credit card expenses and raised the issue, but this does not reflect an agreement or prior partnership arrangement. *See* Exhibit 1 to Hamed's Motion.

Since there was no agreement on this point, Yusuf's role as managing partner left him with full discretion to decide how credit cards would be used for expenses and thus, whether and to

what extent Hamed's sons,<sup>2</sup> who after all were only employees of Plaza Extra, would be able to make credit card purchases and earn points. *See* Exhibit A, Yusuf Declaration, ¶ 2. Yusuf explains that he allowed the various family members to make the purchases as they were needed and to retain the points earned on their respective cards. *Id.* at ¶¶ 2-3. There was no agreement to ensure that the charges were equally divided between the two families and such parity could not have happened given the credit limits of those individuals. *Id.* at ¶¶ 2-3.<sup>3</sup> In his October 20, 2020 Order re: Claims Y-7 and Y-9, Special Master Ross cited the finding by Judge Brady in a July 2017 ruling that "Yusuf was the managing partner and that Hamed was completely removed from financial aspects of the business."<sup>4</sup> October 20, 2020 Order at 23. "In other words," Judge Ross said, "Yusuf, as the managing partner, made all the financial decisions of the partnership..." *Id.* at 24. How to pay for inventory and gross receipts taxes was a fundamental aspect of Yusuf's responsibilities as managing partner, and this was a matter left to his judgment. In the absence of any agreement, Hamed's Claim H-146 is doomed, and if anything, summary judgment should be entered in Yusuf's favor dismissing this claim.

## **II. Alternatively, Gaffney's Supplemental Answers Show that There are Genuine Issues Regarding whether the Yusufs or Hameds had more Credit Card Usage.**

Even assuming *arguendo* that Hamed had shown conclusively the existence of an agreement between Fathi Yusuf and Mohammed Hamed establishing the need for 50-50 use of

---

<sup>2</sup>Mohammad Hamed did not express any interest in making credit card purchases for the Plaza Extra supermarket on his own cards, and did not do so. *See* Exhibit A. Yusuf Declaration, ¶ 1. Yusuf and his sons had more credit availability in total on their cards than the Hamed sons had on theirs. *See id.* at ¶ 3.

<sup>4</sup>*See Hamed v. Yusuf*, 69 V.I. 168, 175, n.4 (V.I. Super. 2017) (finding that "Yusuf acted as the managing partner" and that Hamed was "completely removed from the financial aspects of the business"). This was Judge Brady's order and opinion granting Yusuf's and United's motion to strike jury demand.

credit cards (when actually he has adduced no facts to support that), the information provided by John Gaffney in the supplemental interrogatory answers of May of this year does not establish that Yusuf and his sons had \$10,582,226.856 more in credit card charges than the Hamed sons. That sum is the difference between Yusuf and Hamed credit card usage for 2013 to 2015 for the Plaza Extra East and West stores only. *See* Exhibit 9. For the Tutu Park store in St. Thomas, Gaffney was only able to use the accounting software to show a total of \$10,142,701.37 in credit card payments for the entire store, without being able to break that down by who owned the credit card. That \$10,142,701.37 in “unknown” credit card payments was supplemented by Gaffney’s determination from the system that there is \$1,754,350.08 in unknown charges for the West store and \$118,320.79 for Plaza Extra East, bringing the total in credit card charges that could not be broken down to \$12,015,372.24. Since the total unknown figure is larger than the known figure of \$10,582,226.85, it follows plainly that the \$10,582,226.85 number means very little, and that there are genuine issues regarding what the true breakdown is for the three stores in the relevant period.

Hamed argues that Yusuf cannot contest the \$12 million in unknown charges as a result of the discovery responses provided. Hamed is mistaken. As set forth above, the partnership did not specifically track which family member was incurring any particular amount of expenses for reimbursement, rather, it was tracking the payments to be made to the credit cards per the particular business expense that was paid and which card would need to be paid to reimburse for that expense. *See* Exhibit A, Yusuf Declaration, ¶¶ 5-7. Sometimes, when the card was entered into the accounting system as a vendor for payment, it was identified with certain limited information, such as “Nejeh Visa #1234” other times, the card was simply identified as “Visa #5678” without the family member to whom it was associated. *Id.* *See also* Exhibit B – Yusuf Discovery Responses,

specifically by way of example, B-2, BATES No. FY-016712 identifying the card with a Vendor Id as “BP Mafi 1829”; or FY-016733 identifying the card with a Vendor Id as “BP Yusuf 7727”; or FY-016746 identifying the card with a Vendor Id as “CITI Cards.” Because the information as to who incurred the expense was not relevant to the partnership agreement regarding use of credit cards, it was not necessary information to be identified. Likewise, the accounting department was never provided credit card statements, but instead, credit charges were paid from credit card slips attached to the item that was paid, making the payments for specific items and more precise. *Id.* Hence, the inability to account for which family member incurred what amount of the \$12 million in credit card charges, is not the result of a failure to provide discovery. Such information was never tracked that way by the partnership as there was never any agreement to allocate the charges or the resulting points. *Id.* at ¶¶ 1, 5-7. Therefore, Yusuf can contest it.

Hamed cannot demonstrate that the \$12 million in credit card charges were made by the Yusufs to the exclusion of the Hameds. Moreover, Hamed cannot demonstrate any percentage of the \$12 million credit card charges made by the Yusufs or the Hameds. Hence, there remains a genuine issue of fact as to which family members incurred the \$12 million in credit card charges that were paid for by the partnership. While this may be fatal to Hamed’s claim, again, historically, there was never any agreement to allocate these charges—rather, if a family member incurred the charges and was reimbursed, then any points earned were simply theirs to dispose of as they chose. Further, Hamed cannot demonstrate that the points used by any of the Yusufs were not for business obligations. Lastly, if the Hameds maintained their credit card statements, presumably they would have produced them to demonstrate how much they had received in terms of reimbursement (and/or points). Under Hamed’s theory, his own credit card statements would prove how much was incurred by his family members for partnership expenses, what amount was reimbursed and

the value of the points earned, if any. It was not the partnership's obligation to secure and provide such information for Hamed, since credit card statements were not kept in the ordinary course of business of the partnership, the partnership did not fail to maintain any such records.

## **CONCLUSION**

Hamed has attempted to create a partnership claim where none ever existed. The partnership benefitted from the use of the individuals credit cards to pay business expenses immediately. In fact, Yusuf never charged the partnership for the access that it had to his expanded credit limits which was an additional benefit to the partnership. The Yusufs' combined credit was used by the partnership as was the Hameds' credit. Yusuf never had an agreement to ensure that the two families split the expenses incurred on the credit cards evenly. Given the disparity in the credit limits between the families, Yusuf is uncertain that this could even be done but it was never part of the partnership agreement. Nor was there any agreement to allocate the credit card points that were incurred. Rather, Yusuf allowed whichever family member who incurred an expense to keep any points earned on that card. As for Yusuf, sometimes he used points for additional business expenses. Because there was no agreement to equalize the credit card charges between the families or the resulting points, there was no need to maintain credit card statements in the partnership records. Rather, the partnership merely tracked the expenses incurred and the card which was used for the expense. The particular family member was not relevant to the accounting information needed or maintained. Hamed cannot demonstrate an agreement to incur equal costs or allocate equal points. Likewise, Hamed cannot demonstrate how much was incurred by each family member. At best, Hamed assumes all unknown credit card payments must be allocated to

Yusuf, but he offers no evidence to support that assumption and there exists questions of fact as to which party incurred the expense precluding summary judgment to Hamed.

Respectfully submitted,

**DUDLEY NEWMAN FEUERZEIG LLP**

**DATED:** October 11, 2022

By: /s/ Charlotte K. Perrell  
**CHARLOTTE K. PERRELL** (V.I. Bar No. 1281)  
P.O. Box 756  
St. Thomas, VI 00804-0756  
1000 Frederiksberg Gade  
St. Thomas, VI 00802-6736  
Telephone: (340) 774-4422  
E-Mail: [cperrell@DNFvi.com](mailto:cperrell@DNFvi.com)

**CERTIFICATE OF SERVICE**

I hereby certify that on this 11<sup>th</sup> day of October, 2022, I caused the foregoing **YUSUF'S BRIEF IN OPPOSITION TO HAMED'S MOTION FOR SUMMARY JUDGMENT RE REVISED CLAIM H-146**, which complies with the page or word limitation set forth in Rule 6-1(e), to be served upon the following via the Case Anywhere docketing system:

Joel H. Holt, Esq.  
**LAW OFFICES OF JOEL H. HOLT**  
Quinn House - Suite 2  
2132 Company Street  
Christiansted, St. Croix  
U.S. Virgin Islands 00820

E-Mail: [holtvi@aol.com](mailto:holtvi@aol.com)

Carl J. Hartmann, III, Esq.  
5000 Estate Coakley Bay – Unit L-6  
Christiansted, St. Croix  
U.S. Virgin Islands 00820

E-Mail: [carl@carlhartmann.com](mailto:carl@carlhartmann.com)

The Honorable Edgar D. Ross  
E-Mail: [edgarrossjudge@hotmail.com](mailto:edgarrossjudge@hotmail.com)

and via U.S. Mail to:

The Honorable Edgar D. Ross  
Master  
P.O. Box 5119  
Kingshill, St. Croix  
U.S. Virgin Islands 00851

Alice Kuo  
5000 Estate Southgate  
Christiansted, St. Croix  
U.S. Virgin Islands 00820

s/Charlotte K. Perrell