

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

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

*Plaintiff/Counterclaim Defendant,*

vs.

**FATHI YUSUF** and **UNITED CORPORATION**

*Defendants and Counterclaimants.*

vs.

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

*Counterclaim Defendants,*

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

vs.

**UNITED CORPORATION**, *Defendant.*

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

vs.

**FATHI YUSUF**, *Defendant/Plaintiff*

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vs.

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

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**KAC357 Inc.**, *Plaintiff,*

vs.

**HAMED/YUSUF PARTNERSHIP**,  
*Defendant.*

**Case No.: SX-2012-CV-370**

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

**JURY TRIAL DEMANDED**

Consolidated with

**Case No.: SX-2014-CV-287**

Consolidated with

**Case No.: SX-2014-CV-278**

Consolidated with

**Case No.: ST-17-CV-384**

Consolidated with

**Case No.: ST-18-CV-219**

**REPLY**

**REGARDING HAMED'S MOTION TO PARTIALLY STRIKE  
RE YUSUF'S PROPOSED FINDINGS OF FACT AND CONCLUSIONS OF LAW  
AS TO CLAIM H-146: THE CREDIT CARD IMBALANCE**

On March 21, 2023, Yusuf filed his *Proposed Findings and Conclusions* as to Claim H-146. Yusuf's filing contains two sets of improper assertions which must be stricken:

**1. Yusuf Improperly Argued the Master Should “Re-Visit” His Prior Order**

As Hamed noted in the motion:

As Yusuf well knows, the time for seeking reconsideration of an order under Rule 6-4 is within the 14-day time period allowed—not much later, absent notice, in a *Proposed Findings and Conclusions*. His (repeated) requests that the Master do so are untimely, factually erroneous *and to the extent Yusuf intended to do so at the time of the hearing, quite improper.*

Yusuf does not dispute either the language or the intent of the rule. Yusuf fails to address his active request for a reconsideration—which is the gravamen of the rule. Yusuf clearly violated the rule. All that is left of the opposition after that are some inapplicable musings about general discretion of the Court. Hamed does not seek to stop the Court from whatever latitude it may have—merely strike to improper, CLEARLY violative portions of Yusuf's Findings and Conclusions where he seeks reconsideration. After that, the Master can do as he will. Yusuf admits there is no basis for denying the motion.

**2. Yusuf Had a Full Copy of the CPA Report and Was on Notice of Its Use**

Yusuf does not dispute what he was ordered to do: “a. The Master had **ordered** (7/14 & 11/16/2021) *identification of experts and reports.*” He does not dispute that he failed to do so.

Yusuf does not dispute that “b. Hamed timely complied, identifying the Report at issue and stating it would be used.” Thus he concedes this as well.

Most importantly, Yusuf does not dispute that “c. Yusuf had neither IDENTIFIED AN EXPERT nor had he SUBMITTED AN EXPERT REPORT AS ORDERED. Yet he used the Partnership Accountant as his expert and sought”.

His defense to the violation of the orders and the improper attempt to use Gaffney as an expert--and introduce new materials not provided on a timely basis is simple—at page 3 of the opposition, Yusuf states the following:

Counsel for Hamed raised only a single objection at the March 1 trial to a what he regarded as an attempt to elicit expert opinion testimony from Gaffney.

Thus, Yusuf's entire argument is that while he violated the specific order on experts, did not provide materials used in discovery, did not identify an expert, and did not provide an expert report.....he was allowed to introduce new materials, testimony and expert facts/conclusion because Hamed did not object MORE,

As Hamed noted in the motion:

*Yusuf never did identify an expert or a report as ordered. The content of the Proposed Findings and Conclusions, much of which Mr. Gaffney newly adduced at the hearing (and some of which is new here) was not in any discovery, nor in an expert report. Everything new (beyond the original Yusuf discovery responses) in exhibits and testimony was, thus improper. Similarly, use of Gaffney for new expert testimony/materials was improper—and violated those orders.*

**But Yusuf was served with both Hamed's full report and separate, later notice it would be used.** See Ex. 1 for that history. Thus, he could have brought and cross-examined with his copy of the Report to his heart's content. it is Yusuf's attempt to use Mr. Gaffney as an expert and to introduce new (expert and undisclosed) material that is vastly improper.

Thus, the (several) requests for reconsideration should be struck, and the testimony by Gaffney as to anything other than the initial spreadsheet Yusuf supplied in discovery should be stuck. Gaffney's musings on everything other than that original submission should be struck. And Yusuf should be admonished for violating the rules, failing to submit an expert report and expert identification as ordered—for wasting the time of the Master and opposing counsel and with a dilatory opposition that is totally unresponsive to the actual legal content of tand points raised in the motion.

**Dated:** April 13, 2023

/s/

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### **CERTIFICATE OF SERVICE**

I hereby certify that on this 13th day of April, 2023, I served a copy of the foregoing Reply which conforms with page and word limitations, by email (via CaseAnywhere), as agreed by the parties, on:

**Hon. Edgar Ross**

Special Master

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**Charlotte Perrell**

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/s/ Carl J. Hartmann