



August 1, 2014

Joel H. Holt, Esq.  
2132 Company Street  
Christiansted, VI 00820

Re: Mohammad Hamed v. Fathi Yusuf and United Corporation

Dear Attorney Holt:

As you know, I am a Certified Public Accountant licensed in the U.S. Virgin Islands. Exhibit 1. You have asked my firm to render certain accounting opinions related to the lawsuit pending between Mohammed Hamed and Fathi Yusuf/United Corporation as follows:

1. Do the tax returns filed by United Corporation in 2013 for the years 2002 to 2012 reflect two separate businesses—one for the three Plaza Extra Supermarkets and one for the United Corporation's shopping center at Sion Farm, St. Croix?
2. Do the tax returns filed by United Corporation in 2013 for the years 2002 to 2012 contain any improper statements based upon the information you have reviewed?
3. Is it possible to provide an accurate accounting of the partnership accounts before 2012 either by reviewing existing accounting records or reconstructing comprehensive or cohesive partnership transactions for Plaza Extra Supermarkets prior to 2012—in order to make any assumptions about which partner owes the other partner specific amounts due to their "partner accounts"?
4. Are there ascertainable post-January 1, 2012 amounts that are clearly owed by Yusuf to the partnership for diverting partnership funds to United's account or for its benefit for the period in which actual accounting records are available?

We have reviewed the Preliminary Injunction opinion entered by Judge Brady, which has provided factual background related to this case. We have also reviewed the items listed in Exhibit 2 regarding the accounting issues related to these four questions you have asked us to consider. This includes testimony and exhibits related to the available accounting information (or lack thereof) for the Partnership from 1986 to present as well as the tax returns filed for United Corporation for the years 2002 to 2012 (all filed in 2013).

We have also been supplied the *Sage 50* accounting program and data for all three Plaza Extra Supermarket operations for the period from January 1, 2012 to July 7, 2013. Data from that system has allowed us to review and understand the financial activities and tax obligations for 2012 to date.

This report will address our opinions with respect to each question in the order raised.

**Question #1-**Applying the "mirror" U.S. Tax Code and Generally Accepted Accounting Principles (GAAP) in the manner routinely employed by accountants, it is our expert opinion that the tax returns filed by United in 2013 for the years 2002 to 2012 reflect two distinct business operations. These tax returns contain the financial information for the operations of the three Plaza Extra Supermarkets in the basic return and then attach a separate schedule for the shopping center business as a separate operation distinct from the three supermarkets.

United was incorporated on March 5, 1979 and elected to be treated as an S-Corporation beginning January 1, 1999. The tax returns filed by United Corporation each year since then have been on *Form 1120S, "U.S. Income Tax Return for an S Corporation."*

An S Corporation is treated for federal income tax purposes in a manner somewhat similar to a partnership. The primary similarity is the requirement to flow the income of the entity out to the owners, and then the owners must report the income on their personal returns.

In order for the shareholders (S-Corp) or partners (partnership) to determine how to report their share of income and expense, the Internal Revenue Service requires that the income or loss from different types of business activities be aggregated into appropriate groups and the net income of each group reported separately to the owners, based on their percentage of ownership.

The United Corporation tax filings as presented clearly indicate two distinct business operations. Page 1 of the Form 1120S tax return as filed by United Corporation contains the financial information for the operations of the three Plaza Extra Supermarkets. This is the same information that was used to file the individual returns for Mohammad Hamed for the same time period. Form 8825, which is included with the

Form 1120S as filed by United Corporation, includes the rental portion of the income and expenses reported on the United Corporation return.

The separation of the two businesses on the tax return is consistent with the view that the Plaza Extra Supermarkets are a separate business operation from the shopping center rental activities. While the income and expenses of the two distinct business activities were separated on the United Corporation filings, there is no allowance for Mohammed Hamed as a shareholder/owner and the United filing did not report Mr. Hamed's allocation of income and expenses when he was clearly a 50% owner in the Plaza Extra Supermarket. In that regard the tax filings by United Corporation are not correct.

A review of the 2012 tax return (in light of information also gained in the accounting data) demonstrates this inconsistency. You have provided me with the rent payment made to United by Plaza Extra in February of 2012. In this regard, the schedule attached for the shopping center reports this rent as income for United, which we understand was placed in the non-supermarket 'shopping center bank account' belonging solely to the Yusuf interests. However, the tax return portion for the Plaza Extra operations reflects this amount as a deduction. By combining the two businesses on the same return, the Yusufs were able to receive the payment of rent from Plaza Extra as income without having to pay any taxes on it since the return also treats that rent payment as a deduction. In short, the treatment of this payment on this return again confirms that the tax return shows two distinct businesses, not one business as the single return would suggest.

**Question # 2-** Applying the "mirror" U.S. Tax Code and Generally Accepted Accounting Principles (GAAP) in the manner routinely employed by accountants, it is our expert opinion that the filing of a single tax return by United for both businesses led to an improper avoidance of income by United. It reported \$5.4 million in income as part of its rental income as a landlord in 2012, which was the rent paid by the Plaza East (Sion Farm) store to United, but United avoided paying any gross receipts or income tax on this item by then deducting this rent payment as one of the business deductions for the Plaza Extra Supermarket partnership. While this was a proper deduction for the supermarket partnership, United should have paid taxes on this income, which was avoided by not filing a separate tax return as it was required to do by law. (I understand the 2013 returns will be filed correctly instead of combining these businesses.)

In addition, the tax returns filed by United Corporation are improper since United is a corporation owned by individuals from the Yusuf family, with no allowance for Mr. Hamed's ownership in the Plaza Extra Shopping Center. However, as noted in the multiple documents provided, United and Mr. Yusuf concede that Mohammed Hamed is entitled to 50% of the net income from the operations of the three Plaza Extra stores. Thus, reporting 100% of the income from the operations of the three Plaza Extra Supermarkets as part of the income of United Corporation is improper. S Corporations differ from partnerships in that they do not allow for uneven allocations of earnings and expense. In other words all of the income and expenses of the S Corporation have to

be allocated based on ownership percentage. Mr. Hamed is not a shareholder in United when in fact he is entitled to 50% of the earnings of the Plaza Extra Shopping Center since inception, therefore the filings are improper.

**Question # 3-** Applying Generally Accepted Accounting Principles (GAAP), the answer to this question is "no." In reaching this conclusion, we note as follows:

- We have examined, operated and are entirely familiar with the data supplied by Defendants and the Controller (Gaffney) for the three Plaza Expert Stores on the Sage50 computer system. (John Gaffney is the "Controller" for United, and we have relied on his sworn statements in a preliminary injunction hearing and deposition (Exhibit 3) as to the state of the accounting records in United's possession prior to Defendant Yusuf's April 7, 2014 concession that Plaza Extra Supermarkets is a partnership.)
- We work frequently with this and similar accounting systems and are experienced in their use —and the act of accounting for different businesses on such systems.
- The present "books and accounting records" of Plaza Extra Supermarkets as kept on the Sage50 system began with 2012. (Gaffney).
- No cohesive books and records for the period 2003 to 2012 have been supplied to us (to Plaintiff) in discovery that reflect transactions prior to 2012. (Gaffney and Sage 50). A large number of documents obtained from the U.S. Attorney/FBI and supplied to Mr. Hamed do contain some information from pre-2003<sup>1</sup> —but no cohesive accounting.
- The computer disk containing some or all of the 2003-2012 accountings was destroyed or damaged by defect, and Gaffney states there was no full backup kept.
- Gaffney has testified that he believes that there may be some paper records somewhere in warehouses for transactions prior to 2012.
- No such records have been produced. Exhibit 3.
- In any case, Gaffney also testified that the records before 2012 were of little accounting value, and were little more than bank reconciliations.
- We have also viewed records seized by the FBI and Justice Department prior to 2003 (Exhibit 4), and the two plea agreements involving the computation of income and taxes for the period from 2001 to 2013. Exhibit 5.

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<sup>1</sup> This disk was supplied by Defendants. Exhibit 4.

Based on all available data, it is our expert opinion that no set of useable or reliable accounting records exist for two reasons<sup>2</sup> and that it is impossible to reconstruct the accounting transactions of Plaza Extra Supermarkets for the years 2002 through 2011—and for period 1986 through 2001. It is impossible to:

- a. Reconstruct the individual partnership accounts before 2012. (Thus, the only appropriate method to determine partnership accounts is to accept what both partners have used as a practical matter—the Sage50 accounting records to date which they began keeping as of 2012.)
- b. Reconstruct any comprehensive or cohesive partnership disbursements for Plaza Extra Supermarkets prior to 2012.
- c. Reconstruct how single documents purporting to show disbursements or removal of funds relate to one another, to the partnership's accounting or to each other. Thus, no such individual records taken out of context can reflect anything about the value of either partner's "partner account" or what might be owed at dissolution.

**Question # 4-** Attached as Exhibit 8 (3 files prepared on 07/07/14, one for each store) is the most recent backup of the Sage 50 accounting for Plaza Extra Supermarkets compiled and supplied by the Controller, John Gaffney. Under the applicable U.S. Virgin Islands enactment of the Revised Uniform Partnership Law (RUPA), this new, mutually used accounting is the only possible method of calculating the value of each partner's account—each being entitled to 50% of the value reflected therein with only "corrections" shown in that accounting after the date the accounting became reliable—such as the following payments made from the Plaza Extra accounts:

1. Payment of \$2.7 million to Fathi Yusuf/United objected to by Hamed as shown in Exhibit 9.

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<sup>2</sup> First, prior to 2003, Yusuf maintained two completely separate systems by which funds were removed from Plaza Extra Supermarkets. One consisted of the books and reporting showed to VI and US taxing authorities. The other was a sophisticated enterprise removing millions of unaccounted dollars of Plaza Extra Supermarkets funds prior to ANY accounting, converting these funds to transferable mechanisms and depositing them in overseas property and institutions. Exhibit 6 is a letter sent to Fathi Yusuf—with a chart reflecting the general nature of the enterprise by which he and others removed such funds. As additional examples, Exhibit 7 is a listing of Fathi Yusuf's transactions involving millions of dollars of such funds at the Cairo Amman Bank, and Exhibit 5, Plea Agreement, Section II, *Nature of the Offense*.

Second, computer and other records from the time after the FBI raided the business and placed a federal monitor, have been destroyed and/or lost, as set forth above.

2. Payment of \$504,591.03 to Joseph DiRuzzo for United's attorney fees as shown in Exhibit 10.

3. Payment of \$49,808.13 in V.I. Gross Receipts taxes on behalf of United as shown in Exhibit 11.

4. Payment of \$211,351.04 in insurance by Plaza Extra for the United Shopping Center (non-supermarket) coverage from January 1, 2012, shown in Exhibit 12.

The foregoing opinions are subject to supplementation if further information becomes available. Please let me know if you have any questions, or need anything else.

Respectfully submitted,

A handwritten signature in blue ink, consisting of a stylized 'J' followed by 'D' and 'J', with a horizontal line extending to the right. To the right of the signature, the letters 'CPA' are written in blue ink.

J. David Jackson, CPA