

**RESPONSE TO HAMED'S FOURTH REQUEST FOR PRODUCTION OF
DOCUMENTS NOS. 19-27 OF 50 PURSUANT TO THE CLAIMS DISCOVERY PLAN**

Defendant/Counterclaimants Fathi Yusuf ("Yusuf") and United Corporation ("United")(collectively, the "Defendants") through their attorneys, Dudley, Topper and Feuerzeig, LLP, hereby provide their Responses to Hamed's Fourth Request for Production of Documents Pursuant to the Claims Discovery Plan of 1/29/2018, as to H-1: Reimbursement for Sale of the Dorothea Condo H-144: \$900,00 Estimated Tax Payment Four United Corporation Shareholders Y-2: Rent for Bays 5&8 Y-10: Past Partnership Withdrawals – Receipts Y-11: Lifestyle Analysis Y-14: Half of Value of Six Containers.

GENERAL OBJECTIONS

Defendants make the following general objections to the Requests for Production. These general objections apply to all or many of the Requests for Production, thus, for convenience, they are set forth herein and are not necessarily repeated after each objectionable Requests for Production. The assertion of the same, similar, or additional objections in the individual responses to the Requests for Production, or the failure to assert any additional objections to a discovery request does not waive any of Defendants' objections as set forth below:

(1) Defendants object to these Requests for Production to the extent they may impose obligations different from or in addition to those required under the Virgin Islands Rules of Civil Procedure.

(2) Defendants object to these Requests for Production to the extent that they use the words “any” and “all” as being overly broad, unduly burdensome, immaterial, irrelevant, and not reasonably calculated to lead to the discovery of admissible evidence.

(3) Defendants object to these Requests for Production to the extent they seek information which is protected by the attorney-client privilege or work-product doctrine, including information prepared in anticipation of litigation, or for trial, by or on behalf of Defendants or relating to mental impressions, conclusions, opinions, or legal theories of their attorneys or representatives, or any other applicable privilege or doctrine under federal or territorial statutory, constitutional or common law. Defendants’ answers shall not include any information protected by such privileges or doctrine, and documents or information inadvertently produced which includes such privileged information shall not be deemed a waiver by Defendants of such privilege or doctrine.

(4) Defendants object to these Requests for Production to the extent that they seek information and documents concerning any matter that is irrelevant to the claims or defenses of any party to this action, and not reasonably calculated to lead to the discovery of admissible evidence.

(5) Defendants object to these Requests for Production to the extent that they use terms or phrases that are vague, ambiguous, or undefined. Defendants’ response to such request will be based upon their understanding of the request.

(6) Defendants object to these Requests for Production to the extent they seek documents or information not in the possession, custody or control of Defendants, on the

grounds that it would subject them to undue burden, oppression and expense, and impose obligations not required by the Virgin Islands Rules of Civil Procedure.

(7) Defendants have not completed either their discovery or preparation for trial of this matter. Accordingly, Defendants' responses to these Requests for Production are made without prejudice to their right to make any use of, or proffer at any hearing or at trial evidence later discovered, and are based only upon information presently available. If any additional, non-privileged, responsive information is discovered, these Requests for Production will be supplemented to the extent that supplementation may be required by the Virgin Islands Rules of Civil Procedure.

(8) Defendants object to these Requests for Production to the extent that they are compound and not a single Request. Hence, these Requests for Production should be counted as more than a single Request such that when all of the subparts are included together with other Requests for Production they exceed the 50 Requests for Production established in the Joint Discovery and Scheduling Plan.

RESPONSES TO REQUESTS FOR PRODUCTION

RFPDs 19 of 50:

Request for the Production of Documents, 19 of 50, relates to H-1 (old Claim No. 201):
"Reimbursement for sale of the Dorthea condo."

With respect to H-1, please provide all documents relating to the payment received by Fathi Yusuf for the purchase of the Y & S Corporation 1000 shares, including, but not limited to, documents indicating the dates the payments were made to Fathi Yusuf and bank records

showing the deposits of the payment made to Fathi Yusuf and any disbursements to the actual shareholders by Fathi Yusuf:

2. In consideration of the transfer of its 1000 shares of Y & S Corporation, Inc., Buyer agrees to pay to seller's nominee, Mr. Fathi Yusuf of 9-C Princess Hill, St. Croix the sum of Nine Hundred thousand (\$900,000.00) Dollars.

3. Price: The amount due and payable hereunder shall be paid over a period of four (4) years in four equal yearly installments, of Two Hundred and Twenty-Five Thousand (\$225,000.00) Dollars. The first installments shall become due on January 15, 2001, and the remaining installments shall become due on January 15, 2002, January 15, 2003, and January 15, 2004.

4. Interest: The installments due hereunder shall accrue interest on the outstanding balance at a rate of twelve percent (12%) per annum until the entire balance is paid in full. Payment of interest is waived provided payment of each installment due is made within 30 days of the due date for such installment. In the event that an installment is late, the interest payable or accruable to the date of the late payment shall be paid to the IQRA School in St. Croix, United States Virgin Islands. Further, in the event of default, as default is defined hereunder, all interest accruable under this agreement shall be payable to the IQRA School. (See, HAMD601620 – HAMD601624 at pp. HAMD601620-21.

Response:

Defendants object to this Request as it involves a transaction which occurred prior to the Accounting Order limiting claims between the Partners to those transactions which occurred prior to September 17, 2006. Hence, Yusuf objects to this Request on the grounds that it is not relevant to any party's claim or defense. V.I. Civ. R. P. 26(b)(2)(C)(iii).

RFPDs 20 of 50:

Request for the Production of Documents, 20 of 50 relates to H-144 (old Claim No. 492):
“\$900,000 Estimated tax payment for United Corporation shareholders.”

With respect to H-144, an estimated tax payment in April 2013 using Partnership funds was made for United Corporation shareholders. Please provide all documents related to this

expenditure, including but not limited to: any written agreements that Partnership funds would be used in this manner, tax returns for each United shareholder documenting any such payments, as well as any documentation showing that the Hamed's tax for the same time period were paid by the Partnership.

Response:

Defendants 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.

RFPDs 21 of 50:

Request for the Production of Documents, 21 of 50, relates to Y-2: "Rent for Bays 5 & 8,"

With respect to Y-2, please provide all documents demonstrating a written agreement that Hamed or the Partnership agreed to pay rent for Bays 5 & 8, including any documents establishing the amount of rent, a signed lease agreement and any prior payments of rent on Bays 5 & 8, include but do not limit this to any writings after Hamed brought suit in September of 2012, that would show any such consent or agreement continued after that suit.

Response:

Defendants submit that information responsive to this Request for Production is set forth in Fathi Yusuf's earlier declaration he explained that "[u]nder the business agreement between Hamed and me that I now describe as a partnership, profits would be divided 50-50 after deduction for rent owed to United, among other expenses" and that "[u]nder our agreement, I was the person responsible for making all decisions regarding when the reconciliation would take place" and that Yusuf had the discretion to determine when the reconciliation would take place. *See* August 12, 2014 Yusuf Declaration, p. 2.

[Need to find out from Mr. Yusuf whether any prior payments were made as to Bays 5 and 8.]

RFPDs 22 of 50:

Request for the Production of Documents, 22 of 50, relates to Y-10, "Past Pship Withdrawals – Receipts."

With respect to Y-10, please provide all documents demonstrating a reconciliation of the Plaza Extra West and St. Thomas stores receipts occurring at the same time as the Plaza Extra East

reconciliation, as referenced as “[a]mount owed by Hamed family to Yusuf as per agreement before raid Sept 2001. As per Mike’s testimony these tickets were burned ([r]efer to Letter dated August 15, 2012)” in the revised BDO Exhibit J-2, attached to Yusuf’s Amended Accounting Claims Limited to Transactions Occurring On or After September 17, 2001, filed on October 30, 2017.

Response:

Defendants object to this Request for Production as vague, ambiguous, and compound such that the total number of Requests for Production together with their sub parts and other discovery exceeds the maximum allowable number of Requests for Production under the JDSP and violates both the spirit and the terms of the JDSP limiting the number of Requests for Production.

Documents supporting the allocation of partner accounts has been set forth in the BDO Report Tables and supporting documentation provided to Hamed via flashdrive on October 4, 2016.

RFPDs 23 of 50:

Request for the Production of Documents, 23 of 50, relates to Y-10, “Past Pship Withdrawals – Receipts.”

With respect to Y-10, please provide all documents substantiating the alleged \$237,352.75 in “[w]ithdrawals from the partnership with a signed ticket/receipt” by Waleed Hamed, as referenced on the revised BDO Exhibit J-2, title “Summary calculation of Additional Income as a result of withdrawals from Supermarkets’ accounts (or partnership’ accounts) – January 1994 to August 2014. (Including adjustments for withdrawals before 9/17/2006 as instructed by the

Court),” attached to Yusuf’s Amended Accounting Claims Limited to Transactions Occurring On or After September 17, 2001, filed on October 30, 2017.

Response:

All documents supporting has been previously provided in the Tables to the BDO Reports and supporting documentation provided to Hamed on October 4, 2016.

RFPDs 24 of 50:

Request for the Production of Documents, 24 of 50, relates to Y-10, “Past Pship Withdrawals – Receipts.”

With respect to Y-10, please provide all documents substantiating the alleged \$20,311.00 in “[p]ayments to third parties on behalf of Hamed/Yusuf with partnership funds either with tickets or checks” by Waleed Hamed, as referenced on the revised BDO Exhibit J-2, titled “Summary calculation of Additional Income as a result of withdrawals from Supermarkets’ accounts (or partnership’s accounts) – January 1994 to August 2014. (Including adjustments for withdrawals before 9/17/2006 as instructed by the Court),” attached to Yusuf’s Amended Accounting Claims Limited to Transactions Occurring On or After September 17, 2001, filed on October 30, 2017.

Response:

All documents supporting has been previously provided in the Tables to the BDO Reports and supporting documentation provided to Hamed on October 4, 2016.

RFPDs 25 of 50:

Request for the Production of Documents, 25 of 50, relates to Y-10, "Past Pship Withdrawals – Receipts."

With respect to Y-10, please provide all documents substantiating the alleged \$1,778,103.00 in the "[a]mount owed by Hamed family to Yusuf as per agreement before raid Sept 2001. As per Mike's testimony these tickets were burned ([r]efer to Letter dated August 15, 2012)" by Waleed Hamed, as referenced on the revised BDO Exhibit J-2, titled "Summary calculation of Additional Income as a result of withdrawal from Supermarkets' accounts (or partnership's accounts) – January 1994 to August 2014. (Including adjustment for withdrawals before 9/17/2006 as instructed by the Court)," attached to Yusuf's Amended Accounting Claims Limited to Transactions Occurring On or After September 17, 2001, filed on October 30, 2017.

Response:

All documents supporting has been previously provided in the Tables to the BDO Reports and supporting documentation provided to Hamed on October 4, 2016.

RFPDs 26 of 50:

Request for the Production of Documents, 26 of 50, relates to Y-11, "Lifestyle Analysis." With respect to Y-11, please provide all bank account statements documenting deposits, all brokerage and retirement accounts documenting deposits and all credit card statements in the names of Fathi, Maher, Nejeh and Yusuf Yusuf (individually and any combination of joint accounts between them and all joint accounts with their spouses), from September 17, 2006 to September 30, 2016. Include but do not limit this to:

- All bank account statements documenting deposits or withdrawals

- All brokerage and retirement account statements documenting deposits or withdrawals
- All credit card statements

Response:

Defendants object to this Request for Production because it seeks personal financial information concerning Yusuf's sons, who are not parties to this case.

Defendants further object to this Request because it seeks personal information when there has been no allegation that monies were removed from the partnership by any member of the Yusuf family which were not otherwise disclosed to the Hameds. Furthermore, unlike the Hameds, the Yusufs had sources of income other than the partnership which would account for income and assets in excess of the funds acknowledged to have been withdrawn from the partnership. Hence, the discovery is irrelevant because "the proposed discovery is not relevant to any party's claim or defense." V.I. R. Civ. P. 26(b)(2)(C)(iii).

To the extent documents already exist in the records, they may be found within the BDO Report which has been previously provided in the Tables to the BDO Reports and supporting documentation provided to Hamed on October 4, 2016.

RFPDs 27 of 50:

Request for the Production of Documents, 26 of 50, relates to Y-14, "Half of Value of Six Containers."

With respect to Y-14, please provide all documents substantiating your claim, including the itemized pricing and contents of the six containers.

Response:

To the extent that information has not already been provided to Hamed pursuant to briefing relating to this claim, Defendants will supplement their response to this Request.

DUDLEY, TOPPER AND FEUERZEIG, LLP

DATED: May 15th, 2018

By: 

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CERTIFICATE OF SERVICE

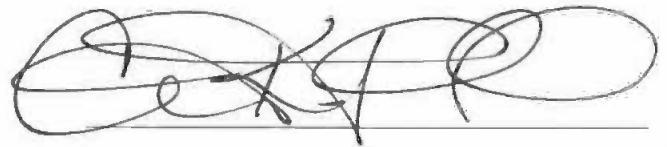
It is hereby certified that on this 15th day of May, 2018, I caused the foregoing a true and exact copy of the foregoing **RESPONSE TO HAMED'S FOURTH REQUESTS FOR THE PRODUCTION OF DOCUMENTS NOS. 19-27 OF 50 PURSUANT TO CLAIMS DISCOVERY PLAN** to be served upon the following via Case Anywhere docketing system:

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