

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,	)	CIVIL NO. SX-12-CV-370
v.)	
	)	ACTION FOR INJUNCTIVE
FATHI YUSUF and UNITED CORPORATION,	)	RELIEF, DECLARATORY
	)	JUDGMENT, AND
Defendants/Counterclaimants,	)	PARTNERSHIP DISSOLUTION,
v.	)	WIND UP, AND ACCOUNTING
)	
WALEED HAMED, WAHEED HAMED, MUFEED HAMED, HISHAM HAMED, and PLESSEN ENTERPRISES, INC.,)	
)	
<u>Additional Counterclaim Defendants.</u>	)	Consolidated With
)	
WALEED HAMED, as Executor of the Estate of MOHAMMAD HAMED,)	
	)	CIVIL NO. SX-14-CV-287
Plaintiff,)	
v.	)	ACTION FOR DAMAGES AND
	)	DECLARATORY JUDGMENT
UNITED CORPORATION,)	
)	
<u>Defendant.</u>)	
)	
WALEED HAMED, as Executor of the Estate of MOHAMMAD HAMED,	)	CIVIL NO. SX-14-CV-278
)	
Plaintiff,	)	ACTION FOR DEBT AND
v.	)	CONVERSION
)	
FATHI YUSUF,)	
)	
<u>Defendant.</u>)	

**UNOPPOSED MOTION TO MODIFY JOINT DISCOVERY AND SCHEDULING PLAN
AND ORDER REGARDING HAMED CLAIM NO. H-142**

COMES NOW, Fathi Yusuf (“Yusuf”) and United Corporation, Inc. (“United”),
through their undersigned counsel and subject to the approval of the Honorable Edgar D. Ross

(the “Master”), hereby file this Unopposed¹ Motion to Modify the Joint Discovery and Scheduling Plan approved by the Master on January 29, 2018 (the “Discovery Plan”)² and the portion of the Master’s Order dated July 11, 2018 providing that “Discovery in connection with Hamed Claim No. H-142 shall be completed no later than August 10, 2018” (the “July 11 Order”) as follows:³

- 1) Section A, paragraphs 3 and 5 of the Discovery Plan shall be amended to delete the words “by July 31, 2018” and substitute the words “by December 31, 2018 or within five (5) months (consisting of one hundred and fifty (150) days)⁴ of the Master’s disposition of Yusuf’s Motion to Strike Hamed’s Claim Nos. H-41 Through H-141 and Additional “Maybe” Claims (the “Motion to Strike”), whichever is later.”
- 2) Section B, paragraph 9 of the Discovery Plan shall be amended to delete the words “August 31, 2018” and substitute the words “by February 28, 2019 or within six (6) months (consisting of one hundred and eighty (180) days) of the Master’s disposition of the Motion to Strike, whichever is later.”
- 3) Section B, paragraph 11 of the Discovery Plan shall be amended to delete the words “September 17, 2018” and substitute the words “March 18, 2019 or within six and one-half (6½) months (consisting of one hundred and ninety-five (195) days) of the Master’s disposition of the Motion to Strike, whichever is later.”

¹ Yusuf’s counsel is authorized by a stipulation with Hamed’s counsel to make the following representation: “Hamed does not take any position on such a motion, but has agreed not to oppose – and has agreed to withdraw the pending Notice of United’s 30(b)(6) deposition and the emergency motion as to Interrogatory 21” and he is not opposed to the proposed modifications requested herein and incorporated into the proposed Amended Joint Discovery and Scheduling Plan. *See Exhibit A.*

² Nothing in this Stipulation shall modify the Master’s Order dated June 6, 2018 relating to the Discovery Plan.

³ In the event the Master approved this Stipulation, the parties respectfully request the Master to approve the Amended Joint Discovery and Scheduling Plan, which incorporates all of the agreed modifications to the original Discovery Plan, attached as **Exhibit B.**

⁴ Throughout this Stipulation, if a given day falls on a weekend or holiday, the period runs to the next business day.

- 4) Section B, paragraph 12 of the Discovery Plan shall be amended to delete the words “September 28, 2018” and substitute the words “March 29, 2019 or within seven (7) months (consisting of two hundred and ten (210) days) of the Master’s disposition of the Motion to Strike, whichever is later.”
- 5) Section B, paragraph 13 of the Discovery Plan shall be amended to delete the words “October 31, 2018” and substitute the words “April 30, 2019 or within eight (8) months (consisting of two hundred and forty (240) days) of the Master’s disposition of the Motion to Strike, whichever is later.”
- 6) Section B, paragraph 14 of the Discovery Plan shall be amended to delete the words “November 30, 2018” and substitute the words “May 31, 2019 or within nine (9) months (consisting of two hundred and seventy (270) days) of the Master’s disposition of the Motion to Strike, whichever is later.”
- 7) Section B, paragraph 15 of the Discovery Plan shall be amended to delete the words “December 17, 2018” and substitute the words “June 18, 2019 or within nine and one-half (9½) months (consisting of two hundred and eighty-five (285) days) of the Master’s disposition of the Motion to Strike, whichever is later.”
- 8) Section B, paragraph 17 of the Discovery Plan shall be amended to delete the words “January 15, 2019” and substitute the words “July 19, 2019 or within ten and one-half (10½) months (consisting of three hundred and fifteen (315) days) of the Master’s disposition of the Motion to Strike, whichever is later.”
- 9) Section B, paragraph 18 of the Discovery Plan shall be amended to delete the words “January 31, 2019” and substitute the words “July 31, 2019 or within eleven (11)

months (consisting of three hundred and thirty (330) days) of the Master’s disposition of the Motion to Strike, whichever is later.”

- 10) All other terms and provisions of the Discovery Plan shall remain unaffected.
- 11) The July 11 Order is amended to delete the following words appearing on page 11: “Discovery in connection with Hamed Claim No. H-142 shall be completed no later than August 10, 2018.” The parties agree that discovery regarding Hamed Claim No. H-142 may be conducted in accordance with the Discovery Plan as it may be amended pursuant to this Stipulation, if approved by the Master. If the Master determines that discovery with respect to Hamed Claim No. H-142 or any other claim should be completed separately or more promptly than otherwise provided in the Discovery Plan, as amended, then the parties agree that they can take “partial” depositions of witnesses (charged against the total time provided in the Discovery Plan) concerning such claims without prejudice to their right to later complete the depositions with respect to other claims.


WHEREFORE, Yusuf and United request that the Master GRANT this Motion and approve the proposed Amended Joint Discovery and Scheduling Plan attached hereto as Exhibit B making same the Case Management Order in this case.

Respectfully submitted,

DATED: July 24th, 2018

By:

DUDLEY, TOPPER AND FEUERZEIG, LLP



Gregory H. Hodges (V.I. Bar No. 174)
Stefan B. Herpel (V.I. Bar No. 1019)
Charlotte K. Perrell (V.I. Bar No. 1281)

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Attorneys for Defendants/Counterclaimants

CERTIFICATE OF SERVICE

It is hereby certified that on this ^{ju}24 day of July, 2018, I served a true and correct copy of the foregoing **Unopposed Motion to Modify the Joint Discovery and Scheduling Plan and Order Regarding Hamed Claim No. H-142**, which complies with the page and word limitations set forth in Rule 6-1(e), via e-mail addressed to:

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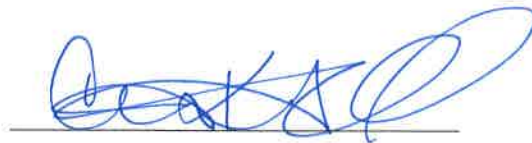


EXHIBIT A

Charlotte Perrell

From: carl@hartmann.attorney
Sent: Tuesday, July 24, 2018 5:12 PM
To: Charlotte Perrell; Stefan Herpel; Gregory Hodges
Cc: 'Kim Japinga'; 'Joel Holt'
Subject: RE: Discovery Conference

Charlotte:

That is fine. I have spoken to the other Hamed counsel as well. The Hameds stipulate to the documents as amended, and the dates. You are authorized to make the representation to the Court on behalf of Hamed's counsel.

Thank you for the work on this, and your alacrity in getting it done.

Carl

From: Charlotte Perrell <Cperrell@dtflaw.com>
Sent: Tuesday, July 24, 2018 5:03 PM
To: 'carl@hartmann.attorney' <carl@hartmann.attorney>; 'Joel Holt' <holtvi.plaza@gmail.com>; Stefan Herpel <sherpel@dtflaw.com>; Gregory Hodges <Ghodges@dtflaw.com>
Cc: 'Kim Japinga' <kim@japinga.com>
Subject: RE: Discovery Conference

Joel and Carl,

As per my conversation with Carl a few moments ago, please find the attached draft Unopposed Motion to Modify the Joint Discovery and Scheduling Plan and Order Regarding Hamed Claim No. H-142. I have made a notation at footnote 1 to include an email from Counsel for Hamed affirming that Hamed is unopposed to the Motion and utilized the language from Carl's earlier email verbatim.

As I understand it, the dates proposed are acceptable. Please review and advise as to any proposed revisions or if there are none, then provide an email confirming same and that Hamed does not oppose the motion.

Thank you,

Charlotte

Charlotte K. Perrell, Esq.
Dudley, Topper and Feuerzeig, LLP
Law House
1000 Frederiksberg Gade
P.O. Box 756

EXHIBIT B

**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,	)	CIVIL NO. SX-12-CV-370
v.)	
	)	ACTION FOR INJUNCTIVE
FATHI YUSUF and UNITED CORPORATION,	)	RELIEF, DECLARATORY
	)	JUDGMENT, AND
Defendants/Counterclaimants,)	PARTNERSHIP DISSOLUTION,
v.)	WIND UP, AND ACCOUNTING
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WALEED HAMED, WAHEED HAMED,)	
MUFEED HAMED, HISHAM HAMED, and)	
PLESSEN ENTERPRISES, INC.,)	
)	
<u>Additional Counterclaim Defendants.</u>	)	Consolidated With
)	
WALEED HAMED, as Executor of the)	
Estate of MOHAMMAD HAMED,)	
	)	CIVIL NO. SX-14-CV-287
Plaintiff,)	
v.	)	ACTION FOR DAMAGES AND
	)	DECLARATORY JUDGMENT
UNITED CORPORATION,)	
)	
<u>Defendant.</u>)	
)	
WALEED HAMED, as Executor of the)	
Estate of MOHAMMAD HAMED,)	
	)	CIVIL NO. SX-14-CV-278
Plaintiff,)	
v.	)	ACTION FOR DEBT AND
	)	CONVERSION
FATHI YUSUF,)	
)	
<u>Defendant.</u>)	

AMENDED JOINT DISCOVERY AND SCHEDULING PLAN

THE PARTIES, through their undersigned counsel and subject to the approval of the Honorable Edgar D. Ross (the “Master”), hereby stipulate to the modification of the Joint

Discovery and Scheduling Plan approved by the Master on January 29, 2018 (the "Amended Discovery Plan")¹ and the portion of the Master's Order dated July 11, 2018 providing that "Discovery in connection with Hamed Claim No. H-142 shall be completed no later than August 10, 2018" (the "July 11 Order") as follows:

A. Discovery as to Hamed Claims H-41 through H-141

Defendants Fathi Yusuf ("Yusuf") and United Corporation ("United") have filed a Motion to Strike Hamed's Claim Nos. H-41 through H-141 and Additional "Maybe" Claims (the "Motion to Strike"), which, if granted, will obviate the need for any discovery relating to any claim that is stricken. Plaintiff has opposed that Motion.

In the event the Motion is denied in part or in full, the parties agree to the following discovery regarding any of the Claims H-41 to H-141, which survive that Motion:

1. Mr. Gaffney will be paid by Hamed at the rate of \$150.00 per hour for the time he works, set forth in a contemporaneous kept timesheet for answering the items in this "Section A". Mr. Gaffney will submit daily emails to counsel for Hamed informing them of the hours worked and what was done. Unless counsel for Hamed disapproves the work by the end of the following day, Mr. Gaffney will continue the work. If it is disapproved, the Master will be consulted for a decision before work resumes. These emails will then form the basis of weekly billings that shall be paid within one month of receipt of same.

2. For each of the Hamed Claims numbered H-41 through H-141², which survive the Motion, John Gaffney will provide a written response, in his fiduciary capacity as the Partnership Accountant, to the following two items:

¹ Nothing in this Amended Discovery Plan shall modify the Master's Order dated June 6, 2018 relating to the Discovery Plan.

² Gaffney will be allowed to identify, collect and transport sales journals for Plaza Extra-Tutu Park and Plaza Extra-West from January 2013 through April 2015 as needed. Hamed will arrange or pay for the transport.

a. Interrogatory: Provide a written statement describing this transaction, with reference to when the actual activity or delivery occurred, who the persons/entities are, what amounts were involved, and what it was for (with reference to why the funds are allegedly properly charged to the Partnership) and making reference to any checks, invoices or other relevant documents.

b. Production of Documents: Attach to the above Interrogatory response, the documents referenced in your response.

3. Mr. Gaffney's responses to interrogatories and document requests will be provided in the bi-weekly period in which they are completed and not in groups or all at once, by December 31, 2018 or within five (5) months (consisting of one hundred and fifty (150) days)³ of the Master's disposition of the Motion to Strike, whichever is later. The parties may also subpoena third parties related to the transactions at issue.

4. Hamed shall have a total of fourteen hours to depose Mr. Gaffney with respect to any of the Claims H-41 – H-141 that survive the Motion to Strike. Yusuf and United will be allowed a similar amount of time at each examination for cross-examination, which will not be charged to Hamed's 14 hours, and Hamed re-direct, which will be charged to his 14 hours. The depositions shall be conducted on four separate, non-consecutive days of Hamed's selection based on Mr. Gaffney's reasonable availability, unless Mr. Gaffney agrees to a different schedule, and the Notice of Deposition shall specify the claims and responses to be covered in the deposition. The parties may agree to a tape or video-recorded deposition rather than a court reporter.

5. The written portion of this process will be completed by Mr. Gaffney by December 31, 2018 or within five (5) months (consisting of one hundred and fifty (150) days) of the Master's disposition of the Motion to Strike.

6. No part of these funds paid to Mr. Gaffney by Hamed will be paid by him or shared by him with Yusuf or United or any third person or entity.

³ Throughout this Amended Discovery Plan, if a given day falls on a weekend or holiday, the period runs to the next business day.

B. Remaining Claims of Both Parties

7. Written interrogatories, requests for production of documents, and requests for admissions shall be propounded no later than March 31, 2018, and all responses thereto, including objections, shall be served not later than May 31, 2018.

As to these remaining claims, no party shall propound more than 50 interrogatories, 50 requests for production of documents, and 50 requests for admissions, including all discrete subparts thereof, unless otherwise stipulated by the parties or ordered by the Master.

8. A motion regarding any claim may be filed at any time, without regard for the discovery schedule, and need not be held until the end of this process. Timing of responses and replies shall be governed by the V.I. Rules of Civil Procedure.

9. All fact witness depositions, including depositions of non-parties, taken for purposes of discovery and/or to preserve testimony for trial, shall be completed by February 28, 2019 or within six (6) months (consisting of one hundred and eighty (180) days) of the Master's disposition of the Motion to Strike, whichever is later.

10. No party shall take more ten (10) fact and expert witness depositions, no single deposition shall exceed more than seven (7) hours in duration, and any single deposition shall be completed on the same day on which it is commenced, unless otherwise stipulated by the parties or ordered by the Master.

11. All motions to compel, for discovery, sanctions, or for protective orders with respect to fact discovery, shall be filed and served not later than March 18, 2019 or within six and one-half (6½) months (consisting of one hundred and ninety-five (195) days) of the Master's disposition of the Motion to Strike, whichever is later.

12. Plaintiff shall serve notices identifying all of his expert witnesses, and said expert witnesses' curriculum vitae and written reports, not later than March 29, 2019 or within seven (7) months (consisting of two hundred and ten (210) days) of the Master's disposition of the Motion to Strike, whichever is later.

13. Defendants shall serve notices identifying all of their expert witnesses, and said expert witnesses' curriculum vitae and written reports, not later than April 30, 2019 or within eight (8) months (consisting of two hundred and forty (240) days) of the Master's disposition of the Motion to Strike, whichever is later.

14. All expert witness depositions, for purposes of discovery and to preserve testimony for trial, shall be completed not later than May 31, 2019 or within nine (9) months (consisting of two hundred and seventy (270) days) of the Master's disposition of the Motion to Strike, whichever is later.

15. All motions to compel, for sanctions, or for protective orders with respect to expert discovery, shall be filed and served not later than June 18, 2019 or within nine and one-half (9½) months (consisting of two hundred and eighty-five (285) days) of the Master's disposition of the Motion to Strike, whichever is later.

16. The parties shall jointly contact the Master to attempt an informal resolution of any discovery disputes prior to filing discovery motions.

17. All dispositive motions, except for motions challenging subject matter jurisdiction which may be filed at any time, and *Daubert/Kuhmo* motions shall be filed and served not later than July 19, 2019 or within ten and one-half (10½) months (consisting of three hundred and fifteen (315) days) of the Master's disposition of the Motion to Strike, whichever is later.

18. All motions in limine and V.I. Rule of Evidence 104 motions shall be filed and served not later than July 31, 2019 or within eleven (11) months (consisting of three hundred and thirty (330) days) of the Master's disposition of the Motion to Strike, whichever is later.

19. This Joint Discovery and Scheduling Plan may not be amended, except as ordered by the Master for good cause shown.

20. The July 11 Order is amended to delete the following words appearing on page 11: "Discovery in connection with Hamed Claim No. H-142 shall be completed no later than August 10, 2018." The parties agree that discovery regarding Hamed Claim No. H-142 may be conducted in accordance with the Amended Discovery Plan. If the Master determines that discovery with respect to Hamed Claim No. H-142 or any other claim should be completed separately or more promptly than otherwise provided in the Amended Discovery Plan, than the parties agree that they can take "partial" depositions of witnesses (charged against the total time provided in the Amended Discovery Plan) concerning such claims without prejudice to their right to later complete the depositions with respect to other claims.

Respectfully submitted,

LAW OFFICES OF JOEL H. HOLT

DATED: July _____, 2018

By:

Joel H. Holt
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Facsimile: (340) 773-8677
Email: holtvi.plaza@gmail.com

Attorneys for Plaintiff/Counterclaim Defendant

DUDLEY, TOPPER AND FEUERZEIG, LLP

DATED: July _____, 2018

By:

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Stefan B. Herepl (V.I. Bar No. 1019)
Charlotte K. Perrell (V.I. Bar No. 1281)
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Attorneys for Defendants/Counterclaimants

The foregoing Amended Joint Discovery and Scheduling Plan is **APPROVED** and is made the Case Management Order in this case.

Dated: July _____, 2018

Hon. Edgar D. Ross
Master