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| **WALEED HAMED**,as the Executor of the Estate of MOHAMMAD HAMED, | **Case No.: SX-2012-CV-370** |
| *Plaintiff/Counterclaim Defendant*, |  |
| vs.  **FATHI YUSUF** and **UNITED CORPORATION** | **ACTION FOR DAMAGES, INJUNCTIVE RELIEF AND DECLARATORY RELIEF** |
|  |  |
| *Defendants and Counterclaimants*.  vs.  **WALEED HAMED, WAHEED** **HAMED, MUFEED HAMED, HISHAM HAMED,** **and PLESSEN ENTERPRISES, INC.**,  *Counterclaim Defendants*, | JURY TRIAL DEMANDED |
|  | Consolidated with |
| **WALEED HAMED**,as the Executor of the Estate of MOHAMMAD HAMED, *Plaintiff,*  vs. | **Case No.: SX-2014-CV-287** |
| **UNITED CORPORATION,** *Defendant.* |  |
| *­­­­­­*­­  **WALEED HAMED**,as the Executor of the Estate of MOHAMMAD HAMED, *Plaintiff*    vs.    **FATHI YUSUF**, *Defendant.* | Consolidated with  **Case No.: SX-2014-CV-278** |
| *­­­­­*­­  **FATHI YUSUF**, *Plaintiff*,  vs.  **MOHAMMAD A. HAMED TRUST***, et al,*  *Defendants.* | Consolidated with  **Case No.: ST-17-CV-384** |
| *­­­­­*­­  **KAC357 Inc.**, *Plaintiff*,  vs.  **HAMED/YUSUF PARTNERSHIP,**  *Defendant.* | Consolidated with  **Case No.: ST-18-CV-219** |
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**Hamed’s Motion For Summary Judgment Re Revised Claim H-146 –**

**Imbalance In Credit Card Points**

1. **Introduction**

After this case was initiated i2 2012, the Hameds provided written notice to the Special Master and to the Yusufs that credit card points worth hundreds of thousands of dollars were being unilaterally taken by the Yusufs. This was at a time when the Yusufs unilaterally controlled certain financial matters. Unfortunately the practice continued unabated until the stores were separated.

On September 30, 2016, both parties filed their partnership claims. As part of the original mutually agreed scheduling process with regard to these, major claims that required full discovery and hearings were designated “B” claims, while those primarily relating to the accounting records and could initially be reviewed and explained by John Gaffney were designated “A” claims. The “B” Claim at issue here is “H-146 Imbalance in Credit Card Points.”

1. **STATEMENT OF FACTS NOT IN DISPUTE**
2. 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 *each family to earn an equal amount of very valuable credit card points.* This was hundreds of thousands of dollars worth of points per year.
3. Starting in 2012,[[1]](#footnote-1) Hamed noted that this system broke down and credit card points went mainly to the Yusufs.[[2]](#footnote-2) The disparities intensified and by 2014, Hamed could not even get the Yusuf credit card records to do calculations. (**Exhibit 1**)
4. Accordingly, Hamed filed this revised claim to correct the imbalance in credit card points in *Hamed's Submission of His Suggestions as to the Further Handling of the Remaining Claims Per the Master's Directions of August*, 24, 2017**,** filed on October 30, 2017.
5. 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.
6. On February 21, 2018, Hamed propounded the following interrogatory:

**Interrogatory 22 of 50**

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.

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 the splitting of the East and West stores[[3]](#footnote-3); 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. (**Exhibit 3**)

1. On May 15, 2018, Yusuf refused to respond to Hamed’s interrogatory:

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.

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.

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. (**Exhibit 4)**

1. 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.

**Description**: 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.

**General Ledger - Store, Date, Entry No. & Description** [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

**Question /Request for info**: 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.

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. (**Exhibit 5**)

1. 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 (*sic.*) completely impractical”:

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.

This request to identify credit card points creates significant new work such that is its (*sic*) completely impractical.

\* \* \*

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 Trofical 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.

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 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 leger (*sic*) 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. . . . (**Exhibit 6**)

1. On July 7, 2021, Hamed sent a letter to Yusuf’s counsel requesting a Rule 37 conference on Interrogatory 22 of 50. (**Exhibit 7**).
2. On July 28, 2021, Hamed filed his motion to compel regarding this issue.
3. On February 3, 2022, Yusuf filed the opposition to the motion to compel.
4. On February 22, Hamed filed his reply.
5. On April 21, 2022, the Special Master issued an order in which he required Yusuf to do two critical acts:
6. Provide the actual credit card *statements* for which points had been allocated, and
7. Provide a calculation showing Yusuf’s view of the valuation of points – showing all references and work.
8. On May 24, 2022, Yusuf provided a “Supplementation” that did *neither*. 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, *not attaching any actual credit card statement*s. (**Exhibit 9**.)
9. Gaffney’s results were as follows, as summarized in a deficiency email to Yusuf by Hamed dated September 2, 2022[[4]](#footnote-4):

**Not confidential or privileged – Demand for Production Pursuant to Court Order**

Stefan & Charlotte:

On April 21, 2022, SM Ross stated the following requirements in his order regarding credit card points:

1. First, he required you to provide Yusuf’s valuation of the points in dispute:

ORDERED that Hamed’s motion to compel as to Interrogatory 22 is GRANTED. Interrogatory 22 shall be revised as follows: “With respect to H-146, **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.**

            That should include an Excel spreadsheet in which you “show your work.”

1. Second, he ordered two sets of financials and underlying documents be produced. The statements 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.

ORDERED that, **within thirty (30) days** 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:

1. for the period January 1, 2012 through March 9, 2015: **all credit card statements of the Partnership's business credit cards with the cardholders identified as Fathi Yusuf, Maher Yusuf, Nejeh 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, Nejeh 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**. 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.

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 similar negotiation or stipulation with regard to these credit card financials.

Even using Gaffney’s numbers, the amount claimed by Hamed would be **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**). See <https://frequentmiler.com/airline-miles-worth/#:~:text=With%20most%20frequent%20flyer%20programs,how%20the%20miles%20are%20used>.

# What are airline miles worth? ****Airline miles are worth 1.4 cents each****.  What this means.  With most frequent flyer programs, it is ****reasonable**** to expect to get****at least**** 1.4 cents per mile value.  The actual value you get from your miles will vary depend upon how the miles are used.

Thus, we need your calculations and the documents, as ordered, by the 15th of this month.[[[5]](#footnote-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.

|  |  |  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- | --- | --- |
| **East** |  |  |  |  |  |  |  |
| Yusuf | 8,081,771.12 |  |  |  |  |  |  |
| Hamed | 6,375,102.62 |  |  |  |  |  |  |
| Difference | **1,706,668.50** |  |  |  |  |  |  |
|  |  |  |  | Total Difference for 2 Stores West & East | | | |
| **West** |  |  |  |  | **10,582,226.85** |  |  |
| Yusuf | 12,695,951.83 |  |  |  |  |  |  |
| Hamed | 3,820,393.48 |  |  |  |  |  |  |
| Difference | **8,875,558.35** |  |  |  |  |  |  |
|  |  |  |  |  |  |  |  |
| **STT** |  |  |  |  |  |  |  |
| Yusuf |  |  |  |  |  |  |  |
| Hamed |  |  |  |  |  |  |  |
| Difference | Unknown |  |  |  |  |  |  |
|  |  |  |  |  |  |  |  |
| **Unknown** | |  |  | Total Unknown for all stores | | |  |
| East | 118,320.79 |  |  |  | **12,015,372.24** |  |  |
| West | 1,754,350.08 |  |  |  |  |  |  |
| STT | 10,142,701.37 |  |  |  |  |  |  |
|  | **12,015,372.24** |  |  | **Total** | **22,597,599.09** |  |  |

1. 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.
2. 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.
3. 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.
4. **Law**

The Special Master has repeatedly set forth the applicable standard. Rule 56 of Virgin Islands Rules of Civil Procedure (hereinafter “Rule 56”) governs motions for summary judgment and sets forth the procedures thereto. Under Rule 56, “[a] party may move for summary judgment, identifying each claim or defense – or the part of each claim or defense – on which summary judgment is sought” and “[t]he court shall grant summary judgment if the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law.” V.I. R. CIV. P. 56; *see also Rymer v. Kmart Corp.,* 68 V.I. 571, 575 (V.I. 2018) (“A summary judgment movant is entitled to judgment as a matter of law if the movant can demonstrate the absence of a triable issue of material fact in the record.”). “A factual dispute is deemed genuine if ‘the evidence is such that a reasonable jury could return a verdict for the nonmoving party[,]’” and a fact is material only where it “might affect the outcome of the suit under the governing law[.]” *Todman v. Hicks*, 70 V.I. 430, 436 (V.I. Super. Ct. April 17, 2019)(quoting *Williams v. United Corp.*, 50 V.I. 191, 194 (V.I. 2008)).

The reviewing court must view all inferences from the evidence in the light most favorable to the nonmoving party and take the nonmoving party's conflicting allegations as true if properly supported. *Kennedy Funding, Inc. v. GB Properties, Ltd.*, 2020 V.I. 5, ¶14 (V.I. 2020). “The movant may discharge this burden simply by pointing out to the … court that there is an absence of evidence to support the nonmoving party's case.” *Id.* (internal quotation marks and citation omitted).

Once the moving party meets this burden, “the non-moving party then has the burden of set[ting] out specific facts showing a genuine issue for trial.” *Id.* (internal quotation marks and citation omitted). The non-moving party “may not rest upon mere allegations, [but] must present actual evidence showing a genuine issue for trial.” *Rymer,* 68 V.I. at 576 (quoting *Williams v. United Corp.*, 50 V.I. 191, 194 (V.I. 2008)). “Such evidence may be direct or circumstantial, but the mere possibility that something occurred in a particular way is not enough, as a matter of law, for a jury to find it probably happened that way.” *Kennedy,* 2020 V.I. 5, ¶14.

Moreover, the court “should not weigh the evidence, make credibility determinations, or draw ‘legitimate inferences’ from the facts when ruling upon summary judgment motions because these are the functions of the jury.” *Todman*, 70 V.I. at 437 (quoting *Williams*, 50 V.I. at 197); *see Kennedy,* 2020 V.I. 5, ¶14; *see also, Rymer*, 68 V.I. at 577 (“When considering a summary judgment motion, a trial judge may not weigh the credibility of evidence or witnesses.”). In deciding a motion for summary judgment, the court’s role “is not to determine the truth, but rather to determine whether a factual dispute exists that warrants trial on the merits.” *Todman*, 70 V.I. at 437 (citations omitted); *see Kennedy,* 2020 V.I. 5, ¶14 (noting that the court “decide only whether there is a genuine issue for trial such that a reasonable jury could return a verdict for the non-moving party”). Accordingly, “if a credibility determination is necessary as to the existence of a material fact, a grant of summary judgment would be improper.” *Rymer*, 68 V.I. at 577.

Because summary judgment is “[a] drastic remedy, a court should only grant summary judgment when the ‘pleadings, the discovery and disclosure materials on file, and any affidavits, show there is no genuine issue as to any material fact.’” *Rymer,* 68 V.I. at 575-76 (quoting *Williams,* 50 V.I. at 194). The Court is required to “state on the record the reasons for granting or denying the motion.” V.I.

R. CIV. P. 56(a).

Here, there are no facts in dispute, as Hamed has accepted, for the purpose of this motion the facts as stated by Yusuf – in Gaffney’s accounting.

1. **Analysis**

Yusuf states that he took $**10,582,226.85** worth of points more than Hamed from the East and West stores. There is no dispute. Partial Judgment should be entered. Moreover, at a time when Fathi Yusuf was at (and controlling) the Tutu store, and totally in control of its financials, that store mysteriously is unable to show the division of points—but CAN say that $**12,015,372.24 worth of points were accumulated.**

It is apparently Yusuf’s intent to once again stonewall, force Hamed through endless discovery, only to eventually get the calculations and statements as previously ordered. However, Hamed declines this invitation. Instead, with Yusuf in violation of the order to compel—having not produced EITHER the actual credit card statements or his own calculations as to the value of a point—Hamed asks the Court for summary judgment based on Yusuf’s refusals plus what Gaffney WAS able to provide.

To use the technical language of summary judgment, ““The court shall grant summary judgment if the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law.” Here $**10,582,226.85** worth of points are undisputed. Nor has Yusuf been able to put the two other necessary facts in dispute: (1) while he was in charge of the Tutu store, $12,015,372.24 worth of points were accumulated but he can produce no documentation, and has refused to produce the statements underlying them despite a clear court order. He has had more than 4 months to do so, and (2) how is either unwilling or unable to produce calculations as to the dollar to point value of those points.

The Master may apply any one of a number of legal theories to conclude that Yusuf ahs failed. The law of summary judgment requires Yusuf to “discharge this burden simply by pointing out to the … court that there is an absence of evidence to support the nonmoving party's case.” Keeping in mind that Yusuf “may not rest upon mere allegations, [but] must present actual evidence showing a genuine issue for trial.” Yusuf has refused, when given the opportunity to do so, to comply with the Court order and state his calculations he stated only that 12 million was missing from when he was in charge. That is not only contempt—it is a failure to raise facts contesting an issue. Moreover, he has similarly refused or is unable to produce the credit card states—again, either contempt or a failure to raise facts contesting an issue. Or the Master could find spoliation. Yusuf was on clear written notice of this accounting issue very early on—and failed to keep records that would allow differentiation.

In any case, Hamed expects what will really happen is that Yusuf will comply with the Court’s order in his opposition to this motion--as has frequently been the case. Only then will we discover what the credit card statements (if they were actually kept) will show. Only in reply will Hamed be able to address the calculation and arguments as to point value as ordered by the Master. Hamed hopes that this “litigation by withholding” will not continue in this manner—but even orders are clearly insufficient to obtain compliance.

**V. Conclusion**

Hamed seeks relief in one of two forms. His preferred relief is simply the transfer, over the next year of 22,597,599.09 worth of points in any of the major credit cards: Mastercasrd, Visa, or American Express. Yusuf has or will generate this number and the transfer is simple. In the alternative judgment in the amount of 22,597,599.09 x $0.014 = **$316,366.38** should be granted.

Even if this is not the case, there is no issue whatsoever as to the East/West differential of $10,582,226.85. This number of points in any of the major credit cards: Mastercard, Visa, or American Express ahould be ordered transferred. Yusuf has or will generate this number and the transfer is simple. In the alternative judgment in the amount of 10,582,226.85 x $0.014 = $148,151.17 should be granted.

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**Dated:** September 8, 2022 A

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**CERTIFICATE OF SERVICE**

I hereby certify that on this 8th day of September, 2021, I served a copy of the foregoing by email (via CaseAnywhere), as agreed by the parties, on:

**Hon. Edgar Ross**

Special Master

edgarrossjudge@hotmail.com

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**CERTIFICATE OF COMPLIANCE WITH RULE 6-1(e)**

This document complies with the page or word limitation set forth in Rule 6-1(e).

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**CERTIFICATE OF COMPLIANCE WITH RULE 37(a)(1)**

I hereby certify that I made the required efforts in good faith to confer with counsel for United and Yusuf in order to obtain the foregoing requested information.

**Dated**: September 8, 2022     A

1. The original Hamed claim for this covered the period from the Brady Limitation Order date in 2006 to the time the stores were conveyed by the Master in March and May of 2015. However, since Yusuf has made it clear that these records were not kept in 2006-2011 and Hamed despairs of forcing discovery for those years, **Hamed voluntarily limits his claims to the period from 2012 to 2015**. Since the legal action began on September 17, 2012, any failure to keep the records after that date is spoliation – thus Yusuf’s refusal to produce is without any merit whatsoever. Moreover, Hamed has previously, voluntarily provided Yusuf with powers of attorney and other documents requested to allow Yusuf access to all of Hamed’s bank accounts requested, and to all of Hamed’s foreign accounts. Despite discovery, motions and even orders, Yusuf has not provided these. [↑](#footnote-ref-1)
2. **Exhibit 2** contains the narrative and exhibits from the engagement report prepared by Hamed’s CPA, Jackson Vizcaino and Zoomerfeld, LLP. [↑](#footnote-ref-2)
3. For purposes of this Motion to Compel only, Hamed limits this request to the time period from January 1, 2012-March 9, 2015, the date of the split of the East and West stores. [↑](#footnote-ref-3)
4. **Exhibit 8.** The text of that letter is set forth here verbatim. [↑](#footnote-ref-4)
5. This motion is filed in advance of the stated date as no response to this email was received accepting that extension. If the materials are produced by that date, in full, this motion will be withdrawn. [↑](#footnote-ref-5)