

## IN THE SUPREME COURT OF THE VIRGIN ISLANDS

FATHI YUSUF and UNITED CORPORATION,

Appellants/Defendants,

v.

S. Ct. Civ. No. 2013-0040

Re: Super. Ct. Civ. Co. 370/2012 (STX)

MOHAMMAD HAMED by his  
authorized agent WALEED HAMED,

Appellee/Plaintiff.

**APPELLANTS' MOTION TO STRIKE JUNE 27, 2013 DECLARATION OF  
WALEED HAMED**

Appellants/Defendants Fathi Yusuf and United Corporation hereby move to strike the June 27, 2013 Declaration of Waleed Hamed, filed in support of Appellee/Plaintiff Mohammad Hamed's Opposition to Appellants' Renewed Motion to Stay Preliminary Injunction Pending Appeal.

**Prelude**

"Oh what a tangled web we weave; [w]hen first we practice to deceive."<sup>1</sup> But ultimately, and thankfully, "at length [the] truth will out."<sup>2</sup>

**Introduction**

*First*, as a threshold matter, the declaration is perjurious, containing plainly false statements, and should be stricken on this basis alone. *Second*, the declaration is tainted with inadmissible hearsay and lacks personal knowledge, as, among other things, Waleed Hamed, who is not a party to the partnership agreement that is alleged in this action, does not aver that he personally participated in any of the negotiations concerning the alleged partnership. *Third*, the declaration is tainted with Waleed Hamed's own legal conclusions, which are of no moment and must be disregarded. *Fourth*, the declaration raises new testimony and purported evidence that was not raised in the trial court

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<sup>1</sup> Sir Walter Scott (*Marmion*, 1808).

<sup>2</sup> William Shakespeare (*The Merchant of Venice*, Act II, Scene 2).

below and should not be considered for the first time on appeal. *Lastly*, admission of the declaration at this appellate stage of the proceedings would highly prejudice Appellants, who would be deprived the opportunity to subject Appellee and Waleed Hamed to the rigors of cross-examination and who otherwise would be forced to incur additional fees and expenses in responding to Appellee's redundant filings. For these reasons separately and collectively, the declaration should be stricken and disregarded *in its entirety*.

### **Relevant Background**

1. Throughout this action, Appellee has used as a shield his lack of prosecution in the underlying criminal action as the excuse why, when it was convenient to do so, he and his "authorized agents" (a) denied the very allegations that are raised in this action and (b) allowed a federal judge to accept a plea agreement premised upon factual representations that are directly at odds with the ones raised here. (6/27/13 Opp. Brief at 8 (asking, shamelessly, "How can alleged representations made in the criminal case be binding on a non-defendant?")).

2. Appellee now seeks to rely on the criminal action as a sword too.

3. Specifically, for the first time in these proceedings, including in the trial court below, Appellee has asserted that his failure to pay a single tax dollar to any governmental taxing authority for more than 26 years on the income claimed to be attributable to him as an alleged partner with Fathi Yusuf in the Plaza Extra supermarket operations is "because of the criminal case." (6/27/13 Opp. to Renewed Motion to Stay at 9 (arguing, via an unsworn opposition brief, that "because of the criminal case, *all* of United's tax filings *before 2002* were challenged and no new tax returns were filed until this year") (Appellee's original emphasis)).

4. Appellee also argues for the first time on appeal that,

[e]qually important, like United, Hamed has just filed all of his tax returns. He reported 50% of the partnership profits as his income . . . . Likewise, all taxes due on his income have been paid from the profits account that was generated by the operations of the Plaza Extra supermarkets.

(*Id.*).

5. Significantly, according to Appellee, “the [Virgin Islands Bureau of Internal Revenue (“VIBIR”)] has now confirmed *in writing* that Hamed’s taxes are paid *in full* based on his tax returns reporting 50% of the Plaza Extra profits as his income.” (*Id.* at n.6 (Appellee’s original emphasis)).

6. Waleed Hamed, who is Appellee’s son, mouthpiece and putative “authorized agent,” likewise attests to the foregoing recently contrived arguments.<sup>3</sup>

7. Specifically, Waleed Hamed has submitted in this appeal a sworn declaration dated June 27, 2013, wherein, Waleed Hamed attests that, for the first time during the more than 26-year history of the purported “partnership”:

- (a) Appellee “filed all of his tax returns for the time period from 1997 to 2011 on May 16, 2013, as part of the [VIBIR]’s amnesty program known as ‘Operation Last Chance’” (W. Hamed Decl. at ¶ 27);
- (b) Appellee “reported 50% of the profits from the [purported] Plaza Extra partnership as his income” (*id.*);
- (c) Appellee “also reported to the [VIBIR] that the taxes due on [Appellee’s] income [allegedly] had been paid in full by prior

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<sup>3</sup> Appellee ambiguously attributes the allegations in this action to certain unnamed “authorized agents” acting “from time to time” – *i.e.*, alleging that “[t]he acts referenced [in the Complaint] attributable to Mohammad Hamed are acts done either directly by Mohammad Hamed or for him by his authorized agents, all of whom are family members acting as his authorized agent, from time to time.” (Complaint at ¶ 2 (JA-041)). Appellee also has sought to prosecute this action by and through a representative: “his authorized agent Waleed Hamed,” one of his sons. (*Id.*). However, because Appellee has failed to establish a valid basis to do so, Appellants have challenged the prudential standing of Waleed Hamed, who is a non-party to the alleged *de jure* partnership asserted in this action, to serve as Appellee’s putative agent. (*See* 7/3/13 Motion to Strike Self-Appointed Representative for Lack of Standing). Indeed, the June 27, 2013 declaration at issue in the instant motion further highlights the inappropriateness of Waleed Hamed’s attempt to serve as his father’s surrogate mouthpiece.

payments made by Plaza Extra from the [alleged] partnership accounts held by United Corporation” (*id.*); and

- (d) “Finally, [Appellee] pointed out [to the VIBIR] that significant taxes were still due on [Appellee’s] income reported for the time period between 2002 and 2010, which [allegedly] was in the process of being paid as part of the closure of the criminal case” (*id.*)

8. In addition, addressing “a check for approximately \$6.5 million . . . submitted to the [VIBIR] for taxes owed primarily on the profits of the Plaza Extra Supermarkets” (*id.* at ¶ 29), Waleed Hamed, on the one hand, acknowledges that the check came from United Corporation’s funds in an account in the corporation’s name alone “at Banco Popular Securities” (*id.* at ¶¶ 29-30), but, on the other hand, ambiguously claims than an undisclosed “we” allegedly “had all agreed that the[] [\$6.5 million] would be used for the taxes owed on the profits made by the *Plaza Extra Supermarket* for the 2002 to 2010 time period” (*id.* at ¶ 31 (emphasis added)).<sup>4</sup>

9. It is unclear to which of the *three* Plaza Extra supermarkets at issue in this action Waleed Hamed is referring above. Nor does Waleed Hamed provide any meaningful details regarding his personal knowledge about the alleged “agree[ment]” regarding the \$6.5 million payment, such as who entered into the alleged agreement, when it allegedly was formed and its alleged terms.

10. Regardless, Waleed Hamed then avers, again, absent any personal basis or meaningful context, that “[t]he [VIBIR] accepted these funds [*i.e.*, the \$6.5 million] as payment of taxes due from the profits of the Plaza Extra Supermarkets, including taxes owed by [Fathi] Yusuf and his family members – *and my father on these profits.*” (*Id.* at ¶ 33 (emphasis added)).

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<sup>4</sup>The tax payment referenced in Waleed Hamed’s declaration as being “approximately \$6.5 million” is in fact \$6,586,132. (*See* 5/24/13 Letter from the VIBIR to Nizar DeWood, Esq (attached as Exhibit A); *see also* 6/14/13 Letter from Maggie Doherty, U.S. Marshalls Service, to the undersigned (attached as Exhibit B)).

11. Waleed Hamed similarly suggests that the Hamed family, including his father, Appellee Mohammad Hamed, received from the government a credit or benefit from the \$6.5 million payment, averring that “[t]he [VIBIR] has now confirmed that all income taxes owed by my father for this time period have been paid in full.” (*Id.* at ¶ 34 (citing separate letters from the VIBIR (Claudette Watson-Anderson, Director) dated June 20, 2013)).

12. The subject June 20, 2013 letters from the VIBIR, of course, say no such thing and do not even reference the \$6.5 million payment at issue.<sup>5</sup>

13. As the full record demonstrates, Appellee and his son, Waleed Hamed, say whatever they believe is convenient at any particular point in time – even if their statements are untrue; and even if the audience is a federal district court or, most recently, this Honorable Court.

14. On June 29, 2013, Appellants’ undersigned counsel contacted the United States and Virgin Islands governments (collectively, the “Government”) to expose the falsity of the Hameds’ statements set forth above. (*See* 6/29/13 Letter from Joseph DiRuzzo, III, Esq., to USVI Assistant Attorney General Tamika M. Archer, Esq., VIBIR legal counsel Tamara Parson-Small, Esq., and U.S. Dept. Justice Tax Division trial attorney Lori Hendrickson, (attached as Exhibit C (without Waleed Hamed declaration)).

15. The Government immediately did so: confirming that the Hameds’ such statements “are not based on any representations or promises made by representatives of the [VIBIR] or the United States. [T]he \$6,586,132 was applied only to members of the Yusuf family.” (*See* 7/1/13 Letter from U.S. Dept. Justice Tax Division trial attorney Lori Hendrickson, to the undersigned (attached as Exhibit D)).

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<sup>5</sup> At best, Waleed Hamed’s statement is woefully negligent; at worst, it is an outright lie and a fraud upon this Court.

16. The Government likewise confirmed, in direct contrast to the Hameds' representations to this Court, that “[n]o one from the Hamed family received any credit or benefit from that payment,” *i.e.*, the \$6,586,132 payment. (*Id.*).

17. Similarly, in a separate correspondence, the VIBIR “acknowledge[d] that full payment of tax owed, in the amount of \$6,586,132, has been applied to the returns filed for the [Yusuf] taxpayers **only**.” (*See* 7/1/13 Letter from the Director of the VIBIR - Claudette Watson-Anderson to the undersigned (VIBIR’s original emphasis) (attached as Exhibit E)).

18. At bottom, Waleed Hamed’s declaration is plainly false, improper under the applicable evidentiary and procedural rules, and otherwise highly prejudicial.

19. The declaration therefore should be stricken from the record and disregarded in its entirety, as addressed below.

### **Argument**

#### **A. The Declaration is Perjurious and Contains Plainly False Statements**

Affidavits that fail to comply with a court’s procedural rules “should be stricken and disregarded.” 35B C.J.S. Federal Civil Procedure § 1214 (2008). Likewise, it is self-evident that a false or perjurious declaration should be stricken and disregarded. Waleed Hamed represented in the sworn declaration at issue, “under penalty of perjury,” that each of the statements therein “is true and correct.” (W. Hamed Decl. at 5 (relying on 28 U.S.C. § 1746)). However, as discussed above, Waleed Hamed’s such representation is demonstratively untrue, as, for example, the Government directly exposed the falsity of Appellee’s and Waleed Hamed’s averments that “the [VIBIR] has now confirmed . . . [Mohammad] Hamed’s taxes are paid *in full* based on his tax returns reporting 50% of the Plaza Extra profits as his income” and that “[t]he [VIBIR] accepted [United Corporation’s \$6.5 million tax payment] as payment of taxes due from the profits of the Plaza Extra Supermarkets,

including taxes owed by . . . [Appellee] on these profits.” (*Compare* Opp. to Renewed Stay Motion at 9 n.6 and W. Hamed Decl. at ¶ 33 with Exhibits C, D, and E).

Waleed Hamed's perjurious declaration should be stricken and disregarded in its entirety, based alone on the false representations therein.<sup>6</sup>

**B. The Declaration Is Tainted With Inadmissible Hearsay and Lacks Personal Knowledge**

As a general rule, “[h]earsay is not admissible.” Fed. R. Evid. 802. Further, “[a] witness may testify to a matter only if evidence is introduced sufficient to support a finding that the witness has *personal knowledge* of the matter.” Fed. R. Evid. 602 (emphasis added). Indeed, testimony that is based on the “repetition” of or “repeated” statements originally made by others is plainly “hearsay inadmissible.” See *White v. Spenceley Realty, LLC*, 53 V.I. 666, 681-83 (V.I. 2010) (addressing former territorial hearsay rule, 5 V.I.C. § 932); *Greene v. V.I. WAPA*, Case No. 1:06-cv-11, 2011 U.S. Dist. LEXIS 80325, at \*31-32 (D.V.I. July 22, 2011) (addressing federal hearsay rule); *Flickinger v. Toys R Us, Inc.*, No. 11-3939, 2012 U.S. App. LEXIS 13677, at \*14 (3d Cir. July 5, 2012) (same). See also *PNY Technologies, Inc. v. Samsung Electronics Co.*, Civ. Action Nos. 10-4587, 10-6803, 2011 U.S. Dist. LEXIS 46500, \*9 (D.N.J. Apr. 29, 2011) (same) (finding that affiant failed to establish personal knowledge regarding the intent underlying the agreements at issue where the affiant failed to aver “that she participated in any of the negotiations concerning the various agreements, or that she attended negotiation sessions” and where the affiant “did not sign any of the relevant agreements”).

In the present action, although Waleed Hamed begins his declaration with the conclusory

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<sup>6</sup> The issue of Appellee's “unclean hands” was raised below in the trial court and has been implicated again in this Court based on Appellee's reliance on Waleed Hamed's perjurious declaration. Because the Hameds' such conduct threatens the integrity of these judicial proceedings, Appellants respectfully request that this Court direct Waleed Hamed to show cause why he should not be held in contempt for making false statements under oath.

assertion that he has personal knowledge of the facts therein, the entire declaration is tainted with classic inadmissible hearsay and otherwise lacks personal knowledge. *See PNY*, 2011 U.S. Dist. LEXIS 46500 at \*8 (noting that the affiant in that case too “beg[an] her declaration with the conclusory assertion that she has personal knowledge of the facts therein). For example, Waleed Hamed, like the declarant in *PNY*, which, as here, focused on the parties’ intent in entering into an agreement, has not declared (and the record does not otherwise reflect) that he participated in any of the negotiations concerning the alleged partnership between his father and Fathi Yusuf; that he attended any negotiation sessions regarding the alleged partnership; or that he signed any relevant agreement establishing the alleged partnership. *See id.* at \*8-9 (disregarding declaration for similar reasons).

Waleed Hamed thus lacks sufficient personal knowledge to address the partnership allegations in dispute. At best, he is simply repeating the possible testimony of other unknown witnesses, in clear violation of the applicable evidentiary and hearsay rules. *See Greene*, 2011 U.S. Dist. LEXIS 80325, at \*31-32 (deposition testimony “based on the repetition of what [the deponent] heard from his co-workers” is “hearsay inadmissible” at trial and otherwise); *White*, 53 V.I. at 682, n.13 (statements in affidavit regarding acts allegedly “reported” to others “constitute[] inadmissible hearsay evidence”) (finding that an affidavit “cannot constitute admissible evidence made on personal knowledge” where affiant “fails to explain” how he could have personally known about acts addressed in his affidavit, and fails to state that he “personally witnessed” those acts); *Flickinger*, 2012 U.S. App. LEXIS 13677, at \*14 (affirming exclusion of “inadmissible hearsay” where “there is no indication . . . that the declarant personally witnessed” the acts at issue, but “rather heard about

[the acts] second-hand").<sup>7</sup>

Accordingly, because Waleed Hamed's declaration is tainted with inadmissible hearsay and lacks personal knowledge, it should be stricken. *See* Fed. R. Evid. 802; Fed. R. Evid. 602.

**C. The Declaration Is Tainted With Inadmissible Legal Conclusions**

Separately, legal conclusions in a lay person's affidavit or declaration are "of no moment" and thus "must be disregarded." *See, e.g., Abramovitz v. Finizio*, 20 V.I. 539, 542 (D.V.I. 1984) (noting that an affiant's mere legal conclusions "would not be admissible in evidence") (citing Fed. R. Evid. 701); *PNY*, 2011 U.S. Dist. LEXIS 46500 at \*3 (noting that the governance of a contract for purposes of appellate review "is a legal conclusion for the [appellate] court" and an affiant's views about such legal conclusions are irrelevant); *In re Integrated Health Servs., Inc.*, 233 Fed. Appx. 115, 119 (3d Cir. 2007) (finding affiant's own legal conclusions related to the parties' intent in entering into an agreement "to be irrelevant because his testimony as to a legal conclusion is not proper evidence") (internal citation, alternation and quotation omitted).

The declaration at issue is tainted with Waleed Hamed's own legal conclusions regarding the alleged "partnership." (*See, e.g.,* W. Hamed Decl. at ¶¶ 28 (opining that documents allegedly submitted by Appellee to the VIBIR "demonstrat[e] that the three Plaza Extra Supermarkets were

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<sup>7</sup> Among the many examples of classic hearsay and lack of personal knowledge in the subject declaration, Waleed Hamed avers to "repeated threats by Yusuf," "attempts by Yusuf to fire key managerial employees" and "repeated statements by Yusuf that he would close the stores" (W. Hamed Decl. at ¶ 18), but does not set forth a sufficient personal basis for the averments, including whether he personally witnessed the alleged "repeated" threats and statements by Fathi Yusuf. Waleed Hamed also fails to provide any meaningful details regarding the averments, such as *what* exactly allegedly was repeated, *when* it allegedly was repeated, and *to whom* it allegedly was repeated. Similarly, although Waleed Hamed focuses heavily on the alleged "partnership" between his father and Fathi Yusuf (*id.* at ¶¶ 2, 4, 13, 15), he, as noted above, never personally participated in any of the negotiations concerning the alleged partnership; never personally attended any negotiation sessions; and never personally signed any relevant agreement establishing the alleged partnership. Tellingly, when the Government raised the issue of the supermarkets' ownership in the criminal action, the Hameds, including Waleed Hamed, denied the very partnership allegations raised in this action.

operated by a partnership”), 31 (opining that “the escrowed profits belong equally to [Appellee]”) and 36 (opining that Appellee is not “a ‘criminal tax evader or non-filer’”). Because the courts and/or the very jury that Appellee has demanded will ultimately decide the foregoing legal issues, including whether or not a partnership ever existed or exists, Waleed Hamed’s own conclusions on these issues are of no moment and must be disregarded. *Abramowitz*, 20 V.I. at 542; *PNY*, 2011 U.S. Dist. LEXIS 46500 at \*3; *Integrated Health*, 233 Fed. Appx. at 119.

**D. The Declaration Raises Issues That Should Not Be Considered For the First Time on Appeal**

This Court “generally refuse[s] to consider issues that are raised for the first time on appeal.” *St. Thomas-St. John Bd. of Elections v. Daniel*, 49 V.I. 322, 336-37 (V.I. 2007) (quoting *Newark Morning Ledger Co. v. United States*, 539 F.2d 929, 932 (3d Cir. 1976)). See also *In re Mystic Tank Lines Corp.*, 544 F.3d 524, 528 (3d Cir. 2008) (“[T]he Third Circuit] has consistently held that it will not consider issues that are raised for the first time on appeal,” absent “exceptional circumstances”) (citing *Harris v. City of Philadelphia*, 35 F.3d 840, 845 (3d Cir. 1994) and *Delaware Nation v. Pennsylvania*, 446 F.3d 410, 416 (3d Cir. 2006)); *Virgin Islands Port Authority v. Joseph*, 49 V.I. 424, 428 (V.I. 2008) (barring a litigant from raising arguments for the first time on appeal when the litigant “has not presented the Court with any exceptional circumstances which warrant a departure from the general rule”).

Paragraphs 20 through 38 of Waleed Hamed’s declaration each raises issues for the first time on appeal, *i.e.*, “now that the preliminary injunction has been issued.” (W. Hamed Decl. at ¶ 20). Because Appellee “has not presented the Court with any exceptional circumstances which warrant a departure from the general rule” (that issues raised for the first time on appeal will not be considered), those paragraphs should be stricken on that basis alone. *VIPA*, 49 V.I. at 428; see also

*Board of Elections*, 49 V.I. at 336-37; *Mystic Tank*, 544 F.3d at 528. Further, among the other evidentiary issues addressed in this motion, the newly raised paragraphs are plainly false and their admission at this stage of the proceedings would greatly prejudice Appellants.<sup>8</sup>

**E. The Declaration is Highly Prejudicial**

Specifically, because Appellants have not had the opportunity to challenge the issues that Appellee has raised for first time on appeal, including the testimony in Waleed Hamed's recent declaration, those issues and testimony "sh[ould] be stricken from the record." *See Security Works!, Inc. v. Security World Int'l, Inc.*, No. 94-6625-CIV, 1994 U.S. Dist. LEXIS 19938, at \*36-37 (S.D. Fla. Nov. 15, 1994) (striking post-hearing supplemental declarations, where the declarations, as here, "were submitted after an evidentiary hearing on Plaintiff's motion for preliminary injunction" and where the court, again, as here, "granted the parties permission to submit written closing arguments . . . so that the parties might summarize the evidence presented *at the hearing*") (emphasis added). *See also Delta Western Group, LLC v. Ruth's Chris Steak Houses*, 24 Fed. Appx. 957, 959 (10th Cir. 2001) (noting, "[a]s a preliminary [procedural] matter" in any appeal, that a court should deny a party's motion to supplement the record "with materials not before the [trial] court at the preliminary injunction hearing"). Indeed, the post-hearing written submissions that the trial court afforded to the parties below, as noted by the court in *Security Works!*, "were not intended to allow the parties to admit additional evidence [for the first time on appeal] that had not been offered at the evidentiary hearing[s] and subjected to the rigors of cross examination or otherwise challenged." 1994 U.S. Dist. LEXIS

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<sup>8</sup> Appellee's attempt to raise issues for the first time on appeal is further complicated by the pendency below of Appellants' Renewed Motion to Dismiss and by the lack of any discovery to date, including depositions, as ordered by the trial court. (*See* Jan. 18, 2013 Order (attached as Exhibit F). Regardless, should this Court allow Appellee to expand the record with new evidence and allow Waleed Hamed's declaration to stand, Appellants respectfully request the right to respond to the declaration via their own sworn affidavit testimony.

19938, at \*36-37 (emphasis added). Appellants' inability at this stage of the proceedings to subject Appellee and Waleed Hamed "to the rigors of cross examination" or to "otherwise challenge[]" the new testimony would materially prejudice Appellants.

Moreover, redundancy of filings (including, as here, of testimony) unduly prejudices an opposing party who, among other things, is forced to incur fees and expenses related to responding to the redundant or duplicative filings. *See, e.g., Sanders v. Prince George's Pub. Sch. Sys.*, No. 08-cv-501, 2011 U.S. Dist. LEXIS 19999, at \*9 (D. Md. Feb. 28, 2011) (granting motion to strike plaintiff's additional affidavit and separate opposition brief that were "duplicative" of earlier filings; "agree[ing]" with the defendant "that the redundancy in the filings by Plaintiff is prejudicial to the Defendant who is forced to incur fees and expenses related to responding to Plaintiff's [redundant] filings"). Paragraphs 1 through 19 of Waleed Hamed's June 27, 2013 declaration are materially redundant of his prior testimony in this action, including his testimony in the preliminary injunction evidentiary hearings. (*See* JA-1546 to -1554 at ¶¶ 121-168). The foregoing paragraphs in the declaration are therefore "prejudicial" to Appellants, who should not be "forced to incur fees and expenses related to responding to" Appellee's and his son's redundant filings. *Sanders*, 2011 U.S. Dist. LEXIS 19999, at \*9.<sup>9</sup>

### **Conclusion**

Wherefore, Appellants pray that this Court enter an Order (a) striking from the record Waleed Hamed's June 27, 2013 declaration in its entirety; (b) disregarding any reference or reliance

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<sup>9</sup> Because, in preparing this motion, Appellants have been "forced to incur fees and expenses related to responding to" Appellee's and his son's redundant (and perjurious) filings, Appellants respectfully request that this Court's ruling on the motion include an award for such fees and expenses. *Sanders*, 2011 U.S. Dist. LEXIS 19999, at \*9. Upon any such ruling, Appellants will submit for the Court's consideration itemized billing records reflecting their counsel's expenses and fees incurred in responding to the subject declaration.

on the offending declaration, including, without limitation, in Appellee's filings in this appeal and below; (c) directing Waleed Hamed to show cause why he should not be held in contempt for making false statements under oath; (d) awarding to Appellants their fees and expenses incurred in responding to the declaration; and (e) granting any additional appropriate relief.

Respectfully submitted,

/s/ Joseph A. DiRuzzo, III Digitally signed by /s/ Joseph A. DiRuzzo, III  
DN: cn=/s/ Joseph A. DiRuzzo, III, o=Fuerst Ittleman, PL, ou,  
email=diruzzo@fuerstlaw.com, c=US  
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*Counsel for Appellants/Defendants Fathi Yusuf and United Corporation*

Dated: July 5, 2013

### **CERTIFICATE OF SERVICE**

The undersigned hereby certifies that a true and correct copy of the foregoing was filed on VISCEFS on July 5, 2013, and, pursuant to Rule 15(d), that the Clerk will electronically serve the foregoing on:

*Joel H. Holt, Esq.*, counsel for Appellee/Plaintiff, 2132 Company St., St. Croix, VI 00820, [holtvi@aol.com](mailto:holtvi@aol.com); and

*Carl J. Hartmann III, Esq.*, counsel for Appellee/Plaintiff, 5000 Estate Coakley Bay, L-6, Christiansted, VI 00820, [carl@carlhartmann.com](mailto:carl@carlhartmann.com).

/s/ Joseph A. DiRuzzo, III Digitally signed by /s/ Joseph A. DiRuzzo, III  
DN: cn=/s/ Joseph A. DiRuzzo, III, o=Fuerst Ittleman, PL, ou,  
email=diruzzo@fuerstlaw.com, c=US  
Date: 2013.07.05 11:42:48 -04'00'

Joseph A. DiRuzzo, III

07/05/2013

VERONICA HANDY, ESQUIRE  
CLERK OF THE COURT

**GOVERNMENT OF  
THE VIRGIN ISLANDS OF THE UNITED STATES**  
-----0-----  
**VIRGIN ISLANDS BUREAU OF INTERNAL REVENUE**



6115 Estate Smith Bay, Suite 225  
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May 24, 2013

Nzar Dewood, Esq.  
Dewood Law Firm  
2006 Eastern Suburb, Suite 102  
Christiansted, St. Croix VI 00820

Dear Attorney Dewood:

Pursuant to our conversation of May 24, 2013, Listed below is the net tax due after all payments have been applied and the separation of the penalties and accrued interest portions. This statement constitutes the amount of taxes due without penalties and interest for tax years 2002 through 2010 in accordance with plea agreements of the shareholders of United Corp & Related entities.

<b>Unpaid Assessment</b>	<b>\$15,804,743</b>
<b>Deduct:</b>	
<b>Interest</b>	3,829,384
<b>Penalties</b>	5,389,227
<b>Total Penalties &amp; Interest</b>	9,218,611
<b>Tax</b>	<b>\$6,586,132</b>

Please review and contact the Bureau's Federal Disclosure officer, Ms. Marcella Somersall if there are any questions about the amounts as summarized. Her direct line is 714-9303.

Sincerely,

Claudette Watson-Anderson, CPA  
Director

**Case  
Yusuf and United  
Corp. v. Hamed**

**Exhibit  
A**



U.S. Department of Justice

United States Marshals Service

*Asset Forfeiture Division*

IN THE SUPREME COURT  
OF THE VIRGIN ISLANDS

**FILED**

07/05/2013

VERONICA HANDY, ESQUIRE  
CLERK OF THE COURT

*Alexandria, VA 22301-1025*

June 14, 2013

Joseph DiRuzzo  
Fuerst Ittleman David and Joseph PL  
1001 Brickell Bay Dr  
32<sup>nd</sup> Floor  
Miami, FL 33131

Dear Mr. DiRuzzo:

Per your letter dated May 24, 2013, the United States Marshals Service authorizes you to request the release of \$6,586,132 from the Banco Popular Securities account so that payment of taxes due to the Virgin Islands may be remitted.

If you have any questions please feel free to contact me at [Maggie.Doherty@usdoj.gov](mailto:Maggie.Doherty@usdoj.gov) and by phone at (202).353.8333.

Sincerely,

Maggie Doherty  
Case Manager  
Complex Assets Unit  
Asset Forfeiture Division

Case  
Yusuf and United  
Corp. v. Hamed

Exhibit  
B



Joseph A. DiRuzzo, III, Esq., CPA  
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June 29, 2012

*Via USPS and email: tarcher@doj.vi.gov*

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Ben Franklin Station  
Washington, DC 20044

**Re: *United States, et al. v. United Corporation, et al.*; case no. 1:05-cr-15 (D.V.I.)**

Dear Attorneys,

Attached please find a copy of the declaration of Waleed Hamed filed earlier today in the Supreme Court of the Virgin Islands in the civil litigation that was explicitly mentioned during the recent mediation before Judge Barnard, *viz: Fathi Yusuf and United Corporation v. Mohammad Hamed by his authorized agent Waleed Hamed*, case no. 2013-cv-0040.

At ¶29 Waleed Hamed declares: “[o]n June 19, 2013, as part of the closure of the criminal case, a check for approximately \$6.5 million was submitted to the IRB for taxes owed primarily on the profits of the Plaza Extra Supermarkets.”

At ¶32 Waleed Hamed declares: “[a]s such, my father agreed to ratify the withdrawal of these funds so long as they were used to pay taxes due on the profits of the three Plaza Extra Supermarkets – both those of Yusuf and those of Hamed.”

On pages 7 and 8 of the attachment are letters (dated June 20, 2013) from the VIBIR to Mohammad Hamed that states that the VIBIR has “received payment in full for income taxes for” tax years 1997 – 2010.

At ¶34 Waleed Hamed declares: “[t] the IRB has now confirmed that all income taxes owed by my father for this time period have been paid in full, as per the attached letter[s].”

This is a material breach of the agreement that was reached in the mediation conducted before Judge Barnard. The Parties to the mediation explicitly agreed that the \$6.5M tendered was to satisfy only the Yusuf family members’ tax liabilities for the years 2002 – 2010 and not for any tax liability of Mohammad Hamed (and by extension any of the Hamed family members). We made clear that this term was non-negotiable. Everyone present agreed that Mohammed Hamed was not to be covered and under no circumstances would any portion of the \$6.5M be credited/transferred to the tax account or to satisfy any tax liability of another taxpayer (and in particular Mohammad Hamed or his family members). This agreement is evidenced by the fact that the 3<sup>rd</sup>, 4<sup>th</sup>, and 5<sup>th</sup> paragraphs to the document that was circulated prior to lunch was never agreed to and, indeed, as explicitly objected to.

In direct breach of the agreement, the June 20<sup>th</sup> letters from the VIBIR to Mohammad Hamed state that his tax obligations have been paid in full, from funds which Waleed Hamed states came from the very \$6.5M check that was tendered at the end of the mediation. As such, we can only conclude that the terms of our mediation agreement have been intentionally breached.

In order to cure the breach we demand (i) that the VIBIR retract the June 20<sup>th</sup> letters issued to Mohammad Hamed (and confirm in writing its withdrawal to us) and (ii) that the VIBIR issue us a letter confirming that the \$6.5M paid was used to satisfy only the tax liabilities of the Yusuf family members (as shareholders of United Corporation, as an Subchapter S-Corp under the Internal Revenue Code) and not to satisfy any tax liability of Mohammad Hamed or any other taxpayer (including but not limited to other Hamed family members).

If the VIBIR does not cure this breach immediately we will seek to recoup the \$6.5M that was tendered as it was obtained either (i) by mutual mistake, (ii) in bad faith, or (iii) by fraud. We are also considering filing other motions with the District Court based on these events.

Kind Regards,

/s/ Joseph A. DiRuzzo, III

Digitally signed by /s/ Joseph A. DiRuzzo, III  
DN: cn=/s/ Joseph A. DiRuzzo, III, o=Fuerst Ittleman,  
PL, ou, email=jdiruzzo@fuerstlaw.com, c=US  
Date: 2013.06.29 12:35:28 -0400

Joseph A. DiRuzzo, III

JAD/

cc: Hon. G. Barnard, USMJ via email only: [Judge\\_Geoffrey\\_Barnard@vid.uscourts.gov](mailto:Judge_Geoffrey_Barnard@vid.uscourts.gov)



U.S. Department of Justice  
Tax Division

IN THE SUPREME COURT  
OF THE VIRGIN ISLANDS

**FILED**

07/05/2013

VERONICA HANDY, ESQUIRE  
CLERK OF THE COURT

P.O. Box 972, Ben Franklin Station  
Washington, D.C. 20044

(202) 514-2174  
Telefax: (202) 514-9623

DJ 5-90-327  
2003201580

July 1, 2013

Joseph A. DiRuzzo, III  
Fuerst Ittleman David & Joseph PL  
1001 Brickell Bay Drive, 32nd Floor  
Miami, Florida 33131

Re: United States v. Fathi Yusuf, Crim. No. 05-0015 (D.V.I.)

Mr. DiRuzzo:

I am in receipt of your letter dated June 29, 2013 and the declaration of Waleed Hamed dated June 27, 2013. The statements from the declaration you quoted in your letter are not based on any representations or promises made by representatives of the Virgin Islands Bureau of Internal Revenue (VIBIR) or the United States. As we all agreed, the \$6,586,132 was applied only to members of the Yusuf family for taxes owed for 2002 through 2010. This is confirmed, as you requested, in the attached letter dated July 1, 2013 signed by the Director of the VIBIR. No one from the Hamed family received any credit or benefit from that payment.

To avoid any future misunderstandings, may I suggest we ask Judge Barnard to enter a protective order that prohibits the dissemination or use of any discussions or documents in the criminal case until further order of the court. The government would not oppose the exclusion of the attached letter from the Director of the VIBIR from that protective order should you make such a request.

Sincerely,

Lofi A. Hendrickson  
Trial Attorney

cc: Honorable Geoffrey W. Barnard via email to: Judge\_Geoffrey\_Barnard@viduscourts.gov

Case  
Yusuf and United  
Corp. v. Hamed  
  
Exhibit  
D

07/05/2013

VERONICA HANDY, ESQUIRE  
CLERK OF THE COURT



**GOVERNMENT OF  
THE VIRGIN ISLANDS OF THE UNITED STATES**  
-----0-----  
**VIRGIN ISLANDS BUREAU OF INTERNAL REVENUE**



6115 Estate Smith Bay - Suite 225  
St. Thomas VI 00802  
Phone: (340) 715-1040  
Fax: (340) 774-2672

4008 Estate Diamond Plot 7B  
Christiansted VI 00820-4421  
Phone: (340) 773-1040  
Fax: (340) 773-1006

July 1, 2013

Joseph A. DiRuzzo, III, Esq., CPA  
FUERST ITTLEMAN DAVID & JOSEPH, PL  
1001 Brickell Bay Drive  
32nd Floor  
Miami, FL 33131

Dear Attorney DiRuzzo:

In response to your letter dated June 29, 2013, the Bureau hereby acknowledges that full payment of tax owed, in the amount of \$6,586,132, has been applied to the returns filed for the following taxpayers **only**:

Fathi & Fawzia Yusuf  
Yusuf & Ala Yusuf  
Zeyad Yusuf  
Maher & Najat Yusuf  
Nejah Yusuf  
Zayed Yusuf

Sincerely,

Claudette Watson-Anderson, CPA  
Director

Case  
Yusuf and United  
Corp. v. Hamed

Exhibit  
E

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

MOHAMMAD HAMED, by his authorized ) Agent WALEED HAMED ) Plaintiff, )	CIVIL NO. SX-12-CV-370
vs. )	ACTION FOR DAMAGES
FATHI YUSUF, and UNITED CORP., ) Defendants. )	INJUNCTIVE AND DECLARATORY RELIEF
	<b>JURY TRIAL DEMANDED</b>

**ORDER**

**THIS MATTER** is before the Court on Plaintiff's Motion for a Protective Order pursuant to Fed. R. Civ. P. 26, 30 and 37, regarding notices of five (5) depositions of various members of Plaintiff's family, scheduled by Defendant for January 23, and 24, 2013. For the following reasons, Plaintiff's Motion is GRANTED.

*DISCUSSION*

Among the plethora of motions before the Court in this matter, in addition to Plaintiff's Motion for Protective Order, filed January 14, 2013, the Court is in possession of an electronically transmitted version of Defendants' Motion to Compel Limited Depositions or, Alternatively, to Exclude Testimony Pending Completion of Limited Depositions.<sup>1</sup>

Fed. R.Civ. P. 26(c)(1) states in pertinent part that a party from whom discovery is sought may move for a protective order so long as that motion certifies that the parties have met or attempted to meet to resolve the dispute. Further, upon that showing, the court may issue an order to protect a party or person from annoyance, embarrassment, oppression, or undue burden or expense. Moreover, Fed.R. Civ. P. 26(d) and (f) set forth the timing for party conferencing

<sup>1</sup> At the time of this writing, Defendants' referenced motion has not been filed with the Superior Court clerk's office and therefore is not considered.

<p>Case Yusuf and United Corp. v. Hamed</p> <p><b>Exhibit F</b></p>
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and discovery planning and disclosures. Specifically, Fed. R. Civ. P. 26(d) prohibits discovery “from any source before the parties have conferred as required by Rule 26(f).” Here, Plaintiff avers that no such conference has occurred nor have either of the parties made self-disclosures of documents pursuant to Rule 26(a)(1).

This order does not address Defendants’ Rule 56(d) Motion and Alternative Motion for Enlargement of Time to Respond to Motion for Partial Summary Judgment, filed December 27, 2012, opposed by Plaintiff. Plaintiff’s pending Motion for Partial Summary Judgment will not be determined at the January 25, 2013 hearing which is limited to (and evidence presented, if any, will be restricted to) the issues presented relative to Plaintiff’s Emergency Motion and Memorandum to Renew Application for TRO, filed January 9, 2013.

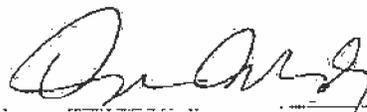
Being advised in the premises, it is hereby

**ORDERED** that the notices of scheduled depositions of Waheed Hamed, Hisham Hamed, Mufeed Hamed, Waleed Hamed and Mohammed Hamed are hereby STRICKEN, and such depositions shall not go forward as scheduled.

**ORDERED** that a copy of this Order shall be served on all counsel.

**DONE AND SO ORDERED** this 18<sup>th</sup> day of January, 2013.

DATED: Jan. 18, 2013



DOUGLAS A. BRADY

Judge of the Superior Court of the Virgin Islands

ATTEST:

VENETIA H. VELAZQUEZ, ESQ.  
CLERK OF THE COURT

By: 

Dated: January 18<sup>th</sup>, 2013

07/05/2013

VERONICA HANDY, ESQUIRE  
CLERK OF THE COURT

**IN THE SUPREME COURT OF THE VIRGIN ISLANDS**

FATHI YUSUF and UNITED CORPORATION, )  
)  
Appellants/Defendants, )  
)  
v. )  
)  
MOHAMMAD HAMED, by his )  
authorized agent, WALEED HAMED, )  
)  
Appellee/Plaintiff. )  
\_\_\_\_\_ )

S. Ct. Civ. No. 2013-0040  
Re: Super. Ct. Civ. No. 370/2012(STX)

On Appeal from the Superior Court of the Virgin Islands

**ORDER**

**THIS MATTER** is before the Court on Appellants/Defendants’ motion to strike the declaration of Waleed Hamed, based on the arguments set forth in Appellants/Defendants’ moving papers, and the premises considered, it is hereby

**ORDERED** that said motion is hereby **GRANTED**. It is further

**ORDERED** that copies of this Order shall be served on the Parties.

**SO ORDERED** this \_\_\_\_ day of \_\_\_\_\_, 2013.

\_\_\_\_\_  
Justice of the Supreme Court of the Virgin Islands

ATTEST:  
VERONICA J. HANDY, ESQ.  
Clerk of the Court

By: \_\_\_\_\_  
Deputy Clerk  
Dated: \_\_\_\_\_

Copies to:  
Justices of the Supreme Court  
Honorable Douglas A. Brady, Superior Court Judge  
Joseph A. DiRuzzo, III, Esq.

*Yusuf, et al. v. Hamed*

S. Ct. Civ. No. 2013-0040

Order

Page 2 of 2

Joel H. Holt, Esq.

Carl J. Hartmann, III, Esq.

K. Glenda Cameron, Esq.

Veronica J. Handy, Esq., Clerk of the Supreme Court

Venetia H. Velazquez, Esq., Clerk of the Superior Court

Supreme Court Law Clerks

Supreme Court Secretaries

Order Book