

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

MOHAMMAD HAMED <i>by his authorized</i>	)	
<i>agent</i> WALEED HAMED,	)	
	)	
Plaintiff,	)	CIVIL NO. SX-12-CV-99
v.	)	
	)	ACTION FOR DAMAGES
FATHI YUSUF and UNITED CORPORATION,	)	INJUNCTIVE AND
	)	DECLARATORY RELIEF
	)	
Defendants.	)	JURY TRIAL DEMANDED
	)	

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PLAINTIFF’S REPLY TO DEFENDANTS’ OPPOSITION TO  
PLAINTIFF’S MOTION FOR A TEMPORARY RESTRAINING ORDER  
AND/OR A PRELIMINARY INJUNCTION

The plaintiff, Mohammed Hamed (“Hamed”), hereby replies to the defendants’ opposition memorandum to the plaintiff’s motion for Rule 65 relief.<sup>1</sup> Several preliminary comments are in order.

First, while the defendants vehemently deny there is a partnership, they admit that the plaintiff has an interest in the profits -- in their motion to dismiss (DE 11 at p.16):

In the criminal case, the Criminal Defendants have always *truthfully* represented . . . . to the Government that United has always been owned completely by the Yusuf family, **and has only granted Mohammed Hamed a limited interest in the profits of the operations of United.** (Emphasis added).

The “Criminal Defendants” include both defendants in this case, Yusuf and United. Thus, despite the defendants’ rhetoric, they concede profit sharing with Hamed exists.

Second, the defendants assert that the entry of an injunction as requested would bring the operations of the Plaza Extra supermarkets to a halt -- to the contrary, this is a

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<sup>1</sup> While the defendant argues that this motion should be treated as a preliminary injunction since it has notice of this request, the plaintiff still seeks a TRO, as relief is needed now without any attendant delays that may be associated with a preliminary injunction hearing. However, the plaintiff is glad to proceed now on the request for a preliminary injunction as well if such a hearing can be promptly held.

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*status quo* injunction -- being sought to preserve these businesses exactly as they have operated for 25 years -- and to prevent Yusuf from unilaterally removing needed funds and management from these stores, or worse, closing the stores as threatened.

Third, the defendants' bald assertion (without any factual support) that the injunction will interfere with a pending criminal case is totally untrue. The issuance of an injunction as requested would have no impact on that case, as the relief sought here is in no way inconsistent with the plea agreement.

Fourth, the defendants repeatedly argue that in the 25 plus years of this partnership, Mohammed Hamed has never sought the relief now being requested in this case. However, until this past year, Yusuf has always agreed that there is a partnership, cooperating in the joint management of the businesses, joint signing of checks and splitting the profits/losses/investments of the three supermarkets 50/50 (**since 1986!**). Thus, until now, there has been no need to seek such relief.

Fifth, defendants make factual statements about alleged wrongdoing of plaintiff's sons by removing funds without the knowledge and approval of Yusuf. But this is flatly untrue. It is hearsay, which counsel for the defendants in this case have been told is not a correct statement of the facts. See **Exhibit 1**.

Finally, the plaintiff has filed an amended complaint as permitted by Rule 15, but the facts essential to the Rule 65 request remain unchanged.

With the foregoing comments in mind, the plaintiff will address the arguments raised in the defendants' opposition memorandum. As the parties agree on the applicable Rule 65 standard, this reply memorandum will address the four criteria pertinent to injunctive relief in the order followed by both parties. For the reasons

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advanced by the plaintiff, it is respectfully submitted that the record supports entry of the Rule 65 relief being sought.

**I. Success on the merits**

In addition to the evidence already submitted by the plaintiff, there is no doubt that the plaintiff is a partner in the Plaza Extra grocery business based on the defendants' own admissions in their pleadings. For the sake of clarity, each admission will be addressed separately, as each independently supports a finding that the plaintiff is likely to succeed on the merits of this issue. Moreover, as discussed herein, none of the defendants' arguments rebuts the evidence already offered by the plaintiff.

**A. Admission 1: The sharing of profits**

As noted above, defendants admitted in their Rule 12 motion (DE 11 at p. 16):

In the criminal case, the Criminal Defendants have always truthfully represented . . . . to the Government that United has always been owned completely by the Yusuf family, **and has only granted Mohammed Hamed a limited interest in the profits of the operations of United.** (Emphasis added).

The "Criminal Defendants" including Yusuf and United have thus admitted that Mohammed Hamed is entitled to a share of the profits of the operations.

A second, identical admission as to this profit sharing was also made in the defendants' filings. The defendants submitted (as an exhibit to their Rule 12 motion) a letter from their counsel, Nizar DeWood, trying to undo his damaging admissions that there is a partnership between Mohammad Hamed and Fathi Yusuf and detailing its assets. In this letter, even while trying to adhere to the defendants' "new" theory that "United owns it all," Attorney DeWood acknowledges a profit sharing arrangement with the plaintiff regarding the grocery stores, describing it as "a joint venture with respect to

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the net profits." (DE 11-4)<sup>2</sup> As is clear from *Boudreaux v. Sandstone Group*, 1997 WL 289867 6 (Terr.Ct. 1997), a joint venture is a form of partnership analyzed under the Uniform Partnership Act (UPA) which the USVI has adopted as the first part of Title 26.<sup>3</sup>

Thus, by conceding that there is a sharing of the profits with the plaintiff, the defendants have also conceded that there is *prima facie* evidence of the existence of the partnership under Virgin Islands law. In this regard, 26 V.I.C. § 22 provides:<sup>4</sup>

**§ 22. Formation of partnership**

(a) Except as otherwise provided in subsection (b) of this section, the association of two or more persons to carry on as co-owners of a business for profit forms a partnership, whether or not the persons intend to form a partnership.

...

(c) In determining whether a partnership is formed, the following rules apply

...

(3) A person who receives a share of the profits of a business is presumed to be a partner in the business . . .

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<sup>2</sup> This September 18<sup>th</sup> letter was actually sent on September 19<sup>th</sup> (see **Exhibit 2**). This admission, describing the relationship as a "joint venture" in the "net profits," was made after the Complaint and TRO motion had been sent to counsel, making this admission even more damaging. See **Exhibit 3**.

<sup>3</sup> The USVI's rule follows the "fundamental rule of law" that a joint venture is a subspecies of partnership and is thus subject to the UPA. See *Seaboard Sur. Co. v. Richard F. Kline, Inc.*, 91 Md.App. 236, 247, 603 A.2d 1357, 1362 (Md.App. 1992) ("As a partnership, the Joint Venture's conduct is governed by the Maryland UPA. . . ."); *Austin v. Truly*, 721 S.W.2d 913, 920 (Tex.App.—Beaumont,1986) ("It is a fundamental rule of law that a joint venture, such as this one is, is also a general partnership. Being a general partnership, this venture is subject to the Texas UPA [citation omitted]"); *Hallock v Holliday Isle Resort & Marina, Inc.*, 885 So.2d 459, 462 (Fla.App.3 Dist. 2004) ("They are both governed by the Florida's Revised UPA. . . ."); *Stone-Fox, Inc. v. Vandehey Development Co.*, 290 Or. 779, 785, 626 P.2d 1365 (Or. 1981) ("This court has consistently held that partnership law controls joint ventures.") and *Barrett v. Jones, Funderburg, Sessums, Peterson & Lee, LLC*, 27 So.3d 363, 372 (Miss. 2009) ("As a joint venture, SKG was governed by Mississippi's partnership law, the UPA of 1997. . . .")

<sup>4</sup> The version of the UPA in effect when the Partnership was formed stated that the sharing of profits creates a "prima facie" showing of the existence of a partnership. See 22 V.I.C. §22 (1997 main volume, now superseded). In the USVI, the version of the UPA in effect at the formation of the partnership governs the issue of whether a partnership was formed. *Harrison v. Bornn, Bornn & Handy*, 200 F.R.D. 509, 514 (D.V.I. 2001) ("The amendment was enacted on February 12, 1998, and by its express terms took effect May 1, 1998. . . .The Court must therefore look to the previous statute for guidance.")

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(4) The receipt by a person of a share of the profits of the business is **prima facie evidence that he is a partner** in the business. . . .(Emphasis added).

Thus, the fact that Mohammad Hamed received a share of the profits (a fact the defendants concede) is prima facie evidence that a partnership exists -- and thus, that all necessary elements are presumed proved to a preponderance by action of law, with the burden now on the defendants here to prove Yusuf is not a partner.

In summary, the defendants' admission regarding the sharing of profits is enough by itself, absent defendants rebutting this presumption, to find that the plaintiff is likely to succeed on the merits of his claim that he is a partner in the Plaza Extra grocery business and is entitled to protection of his rights as a partner.

**B. Admission 2: The statements regarding rent**

Defendants also concede in their Rule 12 motion that the Plaza Extra store at United's Sion Farm shopping center is operated by a separate entity. This admission constitutes a separate basis for finding that the plaintiff is likely to succeed on his claim that he is a partner in the Plaza Extra grocery business.

In this regard, as noted in the plaintiff's TRO memorandum, United Corporation has sent numerous eviction and rent notices, addressed to "Mohammed Hamed" as "Plaza Extra" at the Plaza Extra store address, regarding the Plaza Extra supermarket located in United's Sion Farm shopping center, attached hereto (again) as **Exhibit 4**. These notices are admissions as to the existence of a separate entity operating in the supermarket location. The language in these notices is quite telling, using terms that acknowledge that United Corporation does not presently possess (or operate) the supermarket premises at United's Sion Farm shopping center, including stating as follows (See **Exhibit 4** (first page)):

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During the month of September 2009, I had a discussion with your son Wally, and within two days I repeat the same request while you were present that United Corporation would like to have its location back. Unfortunately, up to now, I have not seen that you give up the keys.

Therefore as of January 1, 2012 the rent will be \$200,000.00 per month, only for the coming three months. If you do not give up the keys before the three months, it will be \$250,000.00 per month until further notice.

In United's opposition to the TRO, it confirmed this landlord-tenant relationship in the affidavit of United's president, Maher Yusuf, stating under oath (DE 11-2 at ¶ 17):

17. Most importantly, United has always charged rent for the use of part of its retail premises **by the Plaza Extra Supermarket operation** on Sion Farm, St. Croix. **Mohammed Hamed** has always understood that United would charge for the use of its retail space, **and would deduct the value of such rent in arriving at the net profits of the Plaza Extra Supermarkets.** (Emphasis added.)

This admission is particularly significant, as it admits that (1) the partnership occupies the store's premises, (2) that United Corporation owns the building as landlord<sup>5</sup> and therefore deducts rent from the calculation of the profits **in determining the "net profits of the Plaza Extra Supermarkets"** (plural) and (3) that despite the averments that plaintiff is just some retired employee, he is still in fact a partner in the grocery business, as the notice and requests to act are made directly to him; even this month.<sup>6</sup>

In short, the fact that United sends Hamed eviction notices and admits it charges the "Supermarket operation" rent for the space, which it deducts from that operation's profits in determining the Plaza Extra Supermarkets' "net profits," are clear admissions that a partnership does exist with regard to the "Plaza Extra Supermarkets." This is all

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<sup>5</sup> Defendants make this same distinction in their opposition at page 2, stating that "...since 1979, United *alone* has owned and owns **the subject shopping center**, known as the 'United Shopping Plaza,' in fee simple absolute." (Emphasis in original.)

<sup>6</sup> United sent another rent notice on October 1, 2012, to Mohammed Hamed at the "Plaza Extra Supermarket" (signed by Yusuf), which was after United was served with the pleadings in this case. Thus, this admission that Plaza Extra is a separate entity from United -- is particularly damaging since it was sent after defendants were on notice of the claims asserted here. See **Exhibit 4** (last page).

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language **now** used by United, directly refuting the defense counsels' arguments in the Rule 12 memorandum (DE 11 at p. 8) that "the owner and operator Plaza Extra Supermarket is United." In short, United would not be **sending eviction notices to itself** if it was the owner and operator of these three supermarkets!

In summary, neither Yusuf nor United treat the "Plaza Extra supermarket operation" as being OWNED by United. This admission independently supports a finding that the plaintiff will succeed on the merits of his claim that a partnership exists in the Plaza Extra grocery business.

**C. The defendants' other arguments**

The remaining arguments raised by the defendants regarding the "success on the merits" issue are also easy to refute.<sup>7</sup>

The defendants first argue that the affidavits of Fathi Yusuf and his son disprove the plaintiff's position that a partnership exists. As already noted, however, both Yusufs acknowledge that there is an agreement to share the Plaza Extra supermarket profits with the plaintiff, which is *prima facie* evidence that a partnership exists, as previously noted. Moreover, a review of Fathi Yusuf's affidavit reveals that he never denies the existence of the partnership, as he just states that he never executed a "written or memorialized partnership agreement." (DE 11-1 at ¶ 20).

However, as Title 26 states and the defendants concede in their Rule 12 motion (DE 11 at p. 6):

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<sup>7</sup> In their opposition memorandum to the TRO, the defendants incorporated several arguments raised in their memorandum in support of their pending Rule 12 motion. While plaintiff has now filed an amended complaint (as per Rule 15), thus mooting that motion, the arguments raised in the Rule 12 memorandum still need to be addressed herein as they were incorporated by reference in the defendants' TRO opposition.

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There is no requirement that the partnership agreement be in writing, and may be made orally, or it may be found to exist from all of the attending circumstances.

Thus, as Yusuf failed to submit an affidavit denying the sworn assertions submitted by Mohammad Hamed that there was a partnership established between the parties, Yusuf's denial of a **written** agreement is meaningless. In short, Yusuf's limited submission that fails to deny the existence of any oral agreement partnership speaks volumes by this omission, and it fails to directly rebut the statutory presumption that a partnership exists when the profits are shared.<sup>8</sup>

Second, defendants argue that plaintiff cannot establish a partnership due to the failure to produce any partnership tax returns or related documentation of a partnership. This argument is also without merit, as there is no requirement in the V.I. Code or UPA requiring such proof before a court will find that a partnership exists. In fact, courts are not so blind, finding that where one partner controls the paperwork and filings (as was the case here), such a "paperwork trail" is not relevant -- or even works against the defendant. *See e.g., Al-Yassin v. Al-Yassin*, 2004 WL 625757 (Cal.App.1st Dist. 2004) (while the defendant (one brother) held all funds in accounts in his name, paid all taxes and held title to property in his name, the court found a partnership existed.)<sup>9</sup>

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<sup>8</sup> The defendants also argue that the plaintiff failed to provide a factual basis for his claim that the parties used the profits from the Plaza Extra supermarkets to buy other assets on a 50/50 basis. To address this point, the amended complaint lists some of these purchases, which are substantial. Attached hereto is a declaration from Wally Hamed that confirms the 50/50 investment of these partnership profits. See **Exhibit 5**

<sup>9</sup> *See also Dundes v. Fuersich*, 2006 WL 2956005, \*10-\*12 (N.Y.Sup. 2006) (Rejecting defendants' argument that tax filings were conclusive evidence that no partnership existed, finding that this was just a factor to consider in reaching the ultimate determination of whether a partnership or joint venture existed). Likewise, in *Zito v. Fischbein Badillo Wagner Harding* (11 Misc.3d 713 [Sup Ct, N.Y. County 2006] ) and *Prince v. O'Brien* (256 A.D.2d 208 [1st Dept 1998]), the courts recognized that tax documents and documentary evidence of compensation as an employee were *merely*



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Third, the defendants' argument that the statute of frauds bars this claim is without merit, as that defense does not apply to formation of a partnership under the UPA (as per 26 V.I.C. § 22). See Defendants Rule 12 motion at page 6 (DE 11) stating "[t]here is no requirement that the partnership agreement be in writing, and may be made orally, or it may be found to exist from all of the attending circumstances." Moreover, "[p]artnerships and joint ventures without fixed terms are deemed to be 'at will' subject to dissolution by either partner at any time. Therefore, such agreements are not within the Statute of Frauds." *Smith v. Robson*, 2001 WL 1464773 at \*3 (Terr.Ct. 2001).<sup>10</sup>

Finally, the defendants' argument that the plaintiff, Mohammad Hamed, is equitably estopped from raising the partnership issue due to representations made in a criminal case or for unclean hands or defalcation is meritless for two reasons. First, Mohammad Hamed was not a party to any criminal case, so he cannot be bound by statements made in such a case. Second, as already discussed at length, United and Yusuf have asserted to this Court that the exact opposite factual assertion is true -- that Mohammed Hamed **does have**, at the very least, a joint venture agreement to share the profits from the Plaza Extra supermarkets. Thus, even according to their view of what

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*some proof*, and not conclusive, on the issue of whether a person is an employee or a partner. Indeed, one bankruptcy court has even ruled that company and individual tax returns both listing the debtor as a partner of the company, although relevant, were administrative in nature and "not highly probative in regard to proving the intent of the parties" as to whether a partnership existed. See, *In re Ashline*, 37 BR 136, 140 (Bk. N.D. N.Y.1984) See also, *Mardanlou v. Ghaffarian*, 135 P.3d 904 (Utah App. 2006)(*questioned on other grounds*)(Even though all tax and other filings as well as title in one partners name, the court found "Ghaffarian had appropriated the partnership's real property by placing it solely in his name.")

<sup>10</sup> Also, as noted in *Smith*, this defense is unavailable in the USVI where one party has fully performed under a contract. *Id. citing Birnbaum v. Zenda*, 15 V.I. 329 (Terr.Ct. 1978). Even partial performance takes a case out of the Statue of Frauds where it would be inequitable to allow a party to invest time and labor upon the faith of a contract that did not exist. *Smith, supra, citing Henderson v. Resevic*, 6 V.I. 196 (D.V.I.1967).

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was established in a criminal case, a partnership interest was established since a joint venture is just another form of a partnership. *See Boudreaux* and footnote 3 above.

**D. The plaintiff's unrefuted evidence**

Most important, in addition to the other points already made, much of the critical evidence previously submitted by the plaintiff in support of his partnership claim was not even discussed by the defendants, who dealt with it by ignoring these glaring facts. In this regard, the defendants did not even try to address: (1) the rent and eviction notices sent over the last year (DE 1-3, Ex. D, attached again to this reply as **Exhibit 4**), which amply demonstrate the existence of this partnership, and (2) the *explicit* admissions made in Yusuf's sworn testimony in 2000 that Mohammad Hamed is his 50/50 partner in the Plaza Extra grocery business. (DE 1-5, Ex. 2A) As for the eviction/rent notices, that point was discussed at length above and need not be repeated here, even though its importance cannot be overlooked. As for the deposition testimony of Yusuf, its significance does not disappear by trying to ignore it, as it (1) explains exactly how the partnership was formed and (2) admits that the plaintiff is Yusuf's 50/50 partner.

This deposition was given in 2000, just before any of the legal issues arose -- and was made as a representation to third parties.<sup>11</sup> It is, therefore, the last regular, unaffected, detailed statement by Yusuf on the matter. At the very outset, Yusuf admits that he owned only "50 percent of Plaza Extra in 1986," and made the distinction that he owned 100% of the "United Shopping Plaza" (**Exhibit 6** at p.8:1-14), which is consistent with Mohammed Hamed's statement that partnership in the Plaza Extra supermarket began in the mid-1980's. Yusuf then explains in detail how no bank would loan him funds

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<sup>11</sup> While these deposition excerpts were attached to the initial TRO memorandum (DE 1-5), the key testimony in that deposition is attached hereto as **Exhibit 6** in order to assist the Court in reviewing this testimony.

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while he tried to build the shopping center because he did not have any formal specifications. (**Exhibit 6** at p. 10:1-21) He then describes how, when he was broke, plaintiff saved this project, testifying (**Exhibit 6** at pp. 14:5-15:14) (Emphasis added):

When I was in the financial difficulty, when I was in financial difficulty, my brother-in-law, he knew. I shouldn't – he started to bring me money. Okay? He own a grocery, Mohammed Hamed, while I was building, and he have some cash. He knew I'm tight. He started bring me money. Bring me I think 5,000, 10,000. I took it. After that I say, Look we Family, we want to stay family. I can't take no money from you because I don't see how I could pay you back. So he insisted, Take the money. If you can afford to, maybe pay me. And if you can't, forget about it. Okay. He kept giving me. I tell him, Under this condition I will take it. I will take it. He kept giving me until \$200,000. **Every dollar he make profit, he give it to me. He win the lottery twice, he gave it to me. All right? That time the man have a little grocery, they call Estate Carlton Grocery. Very small, less than 1,000 square foot, but he was a very hard worker with his children.** And it was, you know, just like a convenience mom-and-pop stores. He was covering expenses and saving money.

. . . .

I say, Brother-in-law, **you want to be a partner too? He said, Why not?** You know, as a family, we sit down. Says, How much more can you raise. Say, I could raise 200,000 more. **I said, Okay. Sell your grocery. I'll take the two hundred, four hundred. You will become 25 percent partner. So we end up I'm 25 percent, my two nephew 25 each, and my brother-in-law, Mohammad Hamed, 25 percent. I don't recall the year, could be '83 or '84,** but at least thanks God in the year that Sunshine Supermarket opened, because his supermarket is the one who carries these two young men and my brother to go into supermarket with me. [In.14] So I have their money, I finish the building.

Yusuf then continued by explaining how the other two partners decided to leave, resulting in plaintiff becoming his 50/50 partner in the supermarket, fully exposed to loss. (**Exhibit 6** at pp. 17-19:6-10) (Emphasis added):

**Then, but when I been denied [for loans], I have to tell my partner what's going on. I been entrusted to handle the job perfect, and I am obligated to report to my partner to anything that happened.** I told my nephews and I told my partner, Hey, I can't get a loan, but I'm not giving up. So two, three days later **my two nephews split, say, We don't want to be with you no more, and we want our money.** I say I don't have no money to pay you. . . .

We come to an agreement, I pay them 12 percent on their money, and 150,000 default because I don't fulfill my commitment. I accepted that. We wait until my partner, which is my brother, came. He's an older man. And we came up to Mr. Mohammed Hamed, I say, You want to follow them? He say, Yeah, I will follow them, but do you have any money to give? **I say, Look, Mr. Hamed, you know I don't**

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**have no money.** It's in the building, and I put down payment in the refrigeration. But if you want to follow them, if you don't feel I'm doing the best I can, if you want to follow them, you're free to follow them. I'll pay you the same penalty, 75,000. I will give you 12 percent on your 400,000. (Emphasis added):

He says, Hey. If you don't have no money, it's no use for me to split. **I'm going to stay with you.**

**All right. I say, Okay. You want to stay with me, fine.** I am with you, I am willing to mortgage whatever the corporation own. Corporation owned by me and my wife at that time. **And my partner only put in \$400,000. That's all he put in, and he will own the supermarket.** I have no problem. I told my partner, Look, I'll take you under one condition. We will work on this, and I'm obligated to be your partner as long as you want me to be your partner until we lose \$800,000. If I lose 400,000 to match your 400,000, I have all the right to tell you, Hey, we split, and I don't owe you nothing.

They say, Mr. Yusuf, we knows each other. I trust you. I keep going. Okay. Now, I told him about the two partner left, **Mr. Hamed. You know, these two guys, they left, my two nephew, they was your partner and my partner. I give you a choice. If you pay penalty with me and pay the interest with me, whatever they left is for me and you.** But if I must pay them the one-fifty penalty and pay them 12 percent, then Plaza Extra Supermarket will stay three-quarter for Yusuf and only one-quarter for you.

He says, Do whatever you think is right. **I tell him, You want my advice? I be honest with you. You better off take 50 percent. So he took the 50 percent.**

Yusuf concluded this testimony stating (**Exhibit 6** at p. 20)(Emphasis added):

**Every single Arab in the Virgin Islands knew that Mr. Mohammed Hamed is my partner, way before Plaza Extra was opened.**

Thus, this sworn testimony, ignored by the defendants, details how this 50/50 partnership was created between Yusuf and Mohammad Hamed. Thus, plaintiff respectfully submits that he will prevail in his claim that he is a 50/50 partner in the Plaza Extra supermarkets based on Yusuf's sworn, detailed and specific testimony.

#### **E. The plaintiff's disputed evidence**

Finally, the defendants vehemently argue that the admissions contained in Attorney DeWood's correspondence are inadmissible. That argument is without merit for several reasons. First, the February 10, 2012 email giving notice of the partnership

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dissolution was not a "settlement" proposal, but a dissolution notice (DE 1-5, Ex. 2B) The letter (DE 1-5, Ex. 2B) factually described the assets.

As it stands, the partnership has three major assets: Plaza Extra - West (Grove Place, including the real property), Plaza Extra - East (Sion Farm) and Plaza Extra (Tutu Park, St. Thomas).

Second, the relevant language to which plaintiff refers was a stated fact in a letter to Hamed (not any lawyer) that did not contain any language indicating that it was being sent for settlement purposes. The same is true of the statements in the dissolution agreement sent by Attorney DeWood, which identified these three stores as being partnership assets, and which also included these "Whereas" clauses (DE 1-5, Ex. 2C):

WHEREAS, the Partners have operated the Partnership under an **oral** partnership Agreement since 1986. (Emphasis in original)

WHEREAS, the Partnership was formed for the purposes of operating Super Markets in the District of St. Croix, and St. Thomas; and

. . . .

WHEREAS, the Partners have shared profits, losses, deductions, credits, and cash of the Partnership;

Thus, these facts, as communicated by the defendants' counsel, cannot be hidden under the newly minted argument designed to create a dispute -- that they were made for settlement purpose. To hold otherwise would allow counsel to commit a fraud on this Court by trying to argue that there was in fact never a partnership when his client authorized him to **dissolve the partnership**.

Finally, defendants have put one of the letters in this chain of correspondence into evidence -- and cannot now be heard to protest about the other letters in the chain. Once the party that is attempting to exclude settlement evidence has put one letter in that chain before the Court, the others should be allowed. *See e.g. Evans v. Covington*, 795 S.W.2d 806, 808-809 (Tex.App. 1990) ("One may not complain of improper evidence

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produced by the other side when he has introduced the same evidence or evidence of a similar character”).

**F. Conclusion as to success on the merits**

Based on the applicable law and the undisputed facts before this Court, it is respectfully submitted that the plaintiff will succeed on the merits in establishing that he is a partner in the Plaza Extra grocery business. Plaintiff is certainly entitled to the injunctive relief he now seeks -- enjoining the defendants from interfering with the *status quo* and thus his partnership rights in operating the three supermarkets, as 26 V.I.C. § 71 regarding “**Partner’s rights and duties**” provides:

(f) Each partner has equal rights in the management and conduct of the partnership business.

Likewise, he is entitled to protection against Yusuf improperly removing any profits, as 26 V.I.C. § 71 also provides:

(a) Each partner is entitled to an equal share of the partnership profits. . . .

Plaintiff has satisfied this important prong in seeking Rule 65 relief, as the plaintiff has demonstrated that he is likely to prevail on his claim that he is a partner in the grocery business of the three Plaza Extra supermarkets.

**II. Irreparable harm**

Despite a rambling analysis, the defendants’ argument boils down to the contentions that the plaintiff cannot show irreparable harm because: (1) the acts the plaintiff complains about have already happened, (2) there is no reasonable basis for thinking the operations of the Plaza Extra supermarket operations will change immediately, (3) the TRO order in a pending criminal case provides any protection needed and (4) there is no threatened harm to the plaintiff that needs protection, as

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monetary damages will be adequate if the plaintiff prevails at trial. Each point will be addressed separately for the sake of clarity.

**(1) The acts sought to be enjoined have not already occurred**

While some acts have occurred that can no longer be prevented, injunctive relief can still be appropriate. As noted by the Supreme Court in *U.S. v. W.T. Grant Co.*, 345 U.S. 629, 633 (1953), just because a party claims it has stopped its past transgressions does not mean an injunction cannot be entered, as a cognizable danger of recurrent violations will still support the entry of injunctive relief. Thus, this argument is directly contrary to the established law regarding the potential reoccurrence of such conduct.

**(2) The normal operations of the partnership operations are threatened**

Apparently recognizing the weakness of their first argument, the defendants argue that there is no 'reasonable' basis for thinking that they will take any of the actions that the plaintiff seeks to enjoin. **However, if it is true that the defendants do not intend to change the current operations of the Plaza Extra supermarket operations or remove any more funds from the partnership accounts, then the defendants should just stipulate to the entry of the injunction.**<sup>12</sup>

In this case, such relief is still needed, as there is more than ample reason to believe that the defendants will take such action based on what has transpired in this case. In this regard, Attorney DeWood's June 19<sup>th</sup> letter *specifically threatened such unilateral action*. (DE 11-4, Ex. A) Those threats continue. In addition, on August 15, 2012 when Yusuf stated that he would be removing \$2.7 million from the partnership account (see **Exhibit 5**), the plaintiff vehemently objected. See **Exhibit 5**. However, as it

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<sup>12</sup> These accounts are identified in the declaration of Wally Hamed that is attached to the TRO motion. (DE 1-5, Ex. 2)

**Plaintiff's Reply to Opposition to Motion for TRO and/or Preliminary Injunction**  
**Page 16**

turns out, Yusuf had already removed the \$2.7 million ***before*** he even sent the first letter. See **Exhibit 5**.

Thus, this conduct is indicative of the real threat that still exists of the defendants taking unilateral action before the plaintiff can take the appropriate steps to prevent it. Additionally, the defendants can also be ordered to return the substantial funds that have been removed from the partnership (before they become totally unreachable) to prevent further harm to the Plaza Extra supermarket operations.

**(3) The TRO in the criminal case does not provide the needed protection**

There is a TRO in place in a criminal case that prohibits United from removing assets from the corporation. See **Exhibit 7**. However, it does not protect the plaintiff from the defendants invading the accounts used by the Plaza Extra supermarkets and moving those funds to United's other accounts to which the plaintiff and grocery operations lack access. That has happened to the tune of \$2.7 million. (See **Exhibit 5**)

To put it another way, the plaintiff and the Plaza Extra supermarket managers have access to the bank accounts listed in the declaration of Wally Hamed, but they do not have access to other unrelated 'transferee' bank accounts in United's name. Thus, the operating funds are being removed from the access and use of the supermarkets despite the existence of the TRO in the criminal case. As such, it is clear that the TRO in the criminal case does not protect the plaintiff from the removal of partnership assets.<sup>13</sup>

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<sup>13</sup> Indeed, there is nothing in the TRO order in the criminal case that prevents United from opening an account outside of the United States and removing funds to those accounts. In short, the TRO in the criminal case does not protect the plaintiff's interest in the Plaza Extra supermarket funds that belong to the partnership.



**(4) Monetary damages are not sufficient to protect the plaintiff**

Contrary to the defendants' assertions, monetary relief will not protect the plaintiff for several reasons. First, there is nothing to prevent the defendants from removing assets out of the country, which they have done in the past. Indeed, Yusuf has told Wally Hamed that he has put another \$1.6 million in funds belonging to the partnership out of the country, refusing to place these funds into the partnership account or giving the plaintiff his 50% interest in these funds. See **Exhibit 5**. In the case also cited by defendants, *Hoxworth*, the court cites with approval *In re Feit & Drexler, Inc.*, 760 F.2d 406, 416 (2<sup>nd</sup> Cir.1985) for the proposition that:

[E]ven where the ultimate relief sought is money damages, federal courts have found preliminary injunctions appropriate where it has been shown that the defendant 'intended to frustrate any judgment on the merits' by **'transfer[ring] its assets out of the jurisdiction.'** "

*Hoxworth v. Blinder, Robinson & Co., Inc.*, 903 F.2d 186, 205 (3d Cir. 1990).<sup>14</sup>

Defendants also cite *Dubois v. Abode*, 2004 U.S. Dist. LEXIS 30596 (D.N.J. 2004) for the proposition that one cannot come to the

conclusion that, because the defendant was an Arab (a native of Lebanon), he was likely to transfer his assets there, [as that would be] "far too thin to support preliminary injunctive relief"; requiring **instead a showing of definite "plans to remove . . . assets from the reach of a possible judgment"** (unpublished opinion). (Emphasis added.)

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<sup>14</sup> See also *Allstate Ins. Co. v. TMR Medicbill Inc.*, 2000 WL 34011895 17 (E.D.N.Y. 2000) ("A preliminary injunction may issue to preserve assets as security for a potential money judgment where the evidence demonstrates that a party intends to frustrate a judgment by making it uncollectible"). See *Republic of the Philippines v. Marcos*, 806 F.2d 344, 356 (2d Cir.1986) ("Here, the preliminary relief sought. . .is intended to prevent any transfer or encumbrance of the properties that would place them beyond. . .reach or would prevent reconveyance of the properties to The Republic."); and *Signal Capital Corporation v. Frank*, 895 F.Supp. 62, 64 (S.D.N.Y.1995) ("Such a demonstration of intent to frustrate a judgment will satisfy the requirement of a showing of irreparable harm [citation omitted]").

**Plaintiff's Reply to Opposition to Motion for TRO and/or Preliminary Injunction**  
**Page 18**

However, there is no such assumption being asserted here -- it is an admission by a party, not simply that it is going to happen, but that it is already being done. Moreover, this is not merely securing assets to protect a money judgment -- these are the assets where defendants have admitted that the plaintiff has at least some right to these funds.

In addition to the problem of these substantial funds being removed from the jurisdiction, the potential damage to the operations of the Plaza Extra supermarkets by shifting funds to accounts that cannot be accessed has been made clear to this Court in the declaration of the actual manager of the store, Wally Hamed, who stated as follows:

21. If these funds are not returned and the partnership's operations are not secured immediately, **the continued operation of the three Plaza stores will be in jeopardy as well as the continued employment of its 600 plus employees,** resulting in irreparable harm to these partnership assets. (Emphasis added). (DE 1-5, Ex 2)

Of course, while the defendants argued this was not true, they did not file any sworn statements contradicting the obvious fact that the depletion of a company's bank accounts and management can bring its operations to a halt and irreparably injure them.

Thus, monetary damages will not protect the plaintiff if the defendants can remove his funds out of the country, as has already been done. Likewise, if the supermarkets cannot operate as they have done in the past due to funds being removed from their bank accounts; these stores will suffer in a way that may make an award of monetary damages speculative. As such, monetary damages alone will not protect the plaintiff, while an injunction will.<sup>15</sup>

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<sup>15</sup> The "paramount purpose" of preliminary injunctive relief is to assure that the non-movant does not take unilateral action which would prevent the court from providing effective relief to the movant should he ultimately prevail on the merits. *O Centro Espirita Beneficiante Uniao Do Vegetal v. Ashcroft*, 389 F.3d 973, 977 (10<sup>th</sup> Cir. 2004) (citing 11A C. Wright et al., *Federal Practice & Procedure* § 2947, p. 123 (2d ed.1995)) *See also*, *Semmes Motors v. Ford Motor Co.*, 429 F.2d 1197, 1205 (2d Cir. 1970), where Judge

### **(5) Conclusion as to irreparable harm**

For the reasons established in this record, the plaintiff has certainly provided sufficient facts for this Court to find that there will be irreparable harm unless Rule 65 relief is granted. Indeed, as noted, if the defendants do not intend to change the current operations of the Plaza Extra supermarket operations or remove any more funds from the partnership accounts again, **then the defendants should just stipulate to the entry of the injunction.**

### **III. Balancing of Factors**

While the defendants assert the grocery business will be irreparably harmed if the injunction is issued as requested, the defendants are not being asked to do anything other than to continue operating the supermarkets exactly as they have been operated for over 25 years, preserving the *status quo* until this Court can sort out the claims being asserted by the plaintiff. As their "rent" letters make clear, even they do not believe they legally have unilateral control. Thus, the entry of the relief sought does not irreparably harm the defendants—to the contrary, it allows the supermarkets to operate as they always have pending resolution. This Rule 65 factor weighs in favor of granting relief.

### **IV. Public interest**

The defendants do not disagree that the continued operation of these three supermarkets and the continued employment of more than 600 employees in a

---

Friendly noted that having run the business for 20 years, a families' loss of business was not entirely measurable in monetary terms: "the right to continue a business in which William Semmes had engaged for twenty years and into which his son had recently entered is not measurable entirely in monetary terms; the Semmes want to sell automobiles, not to live on the income from a damages award [*citation omitted*]." Combining the 25 years the Plaza stores have been open with 15 years Mohammad Hamed was in a prior grocery store (sold to fund the Plaza store) gives the Hamed family 40 years of hard work in the grocery business.

**Plaintiff's Reply to Opposition to Motion for TRO and/or Preliminary Injunction**  
**Page 20**

devastated economy is in the public interest. Instead, they argue that the issuance of a *status quo* injunction will threaten these operations. That argument has no merit as noted in the preceding section.

The defendants also argue that this issuance of an injunction will interfere with the closure of a pending criminal case against United, but nothing in the requested injunction interferes with the final resolution of that case. It is a bizarre claim. Indeed, the defendants have not explained why the requested relief would interfere. Defendant's argument is no more than crying "wolf" to see if the Court will buy this unsupported assertion. Moreover, if the injunction did interfere with that case at some future point, the defendants could simply bring this point to the Court's attention and seek relief from the injunction at that time, as the plaintiff certainly does not want to interfere with the resolution of that case either. Thus, this prong has also been met, warranting the entry of injunctive relief.

**V. Conclusion**

For the reasons set forth herein, it is respectfully submitted that the plaintiff has met the required burden of Rule 65, so that Rule 65 relief should be issued. To make its requested relief clearer, it suggests wording as follows:

- 1) Injunctive Relief enjoining the defendants from changing operations or accounts in the grocery operations, a *status quo* order;
- 2) Injunctive Relief enjoining Yusuf from withdrawing funds from any of the segregated (listed) "supermarket accounts" (operational or brokerage) without the agreement of Hamed or, in the alternative, a special master to be appointed by the Court -- and directing both defendants to immediately return the \$2.7 million and any other funds improperly withdrawn from those accounts by Yusuf.

**Plaintiff's Reply to Opposition to Motion for TRO and/or Preliminary Injunction**  
**Page 21**

**Dated:** October 22, 2012

/s/Joel H. Holt, Esq.  
**Joel H. Holt, Esq.**  
*Counsel for Plaintiff*  
Law Offices of Joel H. Holt  
2132 Company Street,  
Christiansted, St. Croix  
U.S. Virgin Islands 00820  
(340) 773-8709  
holtvi@aol.com

**Dated:** October 22, 2012

/s/Carl J. Hartmann, III, Esq.  
**Carl J. Hartmann III, Esq.**  
*Co-Counsel for Plaintiff*  
5000 Estate Coakley Bay,  
Unit L-6  
Christiansted, St. Croix  
U.S. Virgin Islands 00820  
(340) 719-8941  
carl@carlhartmann.com

**CERTIFICATE OF SERVICE**

I hereby certify that on this 22<sup>nd</sup> day of October, 2012, I filed the foregoing with the Clerk of the Court, and delivered by ECF to the following:

Joseph A. DiRuzzo, III  
Fuerst Ittleman David & Joseph, PL  
1001 Brickell Bay Drive, 32<sup>nd</sup>. Fl.  
Miami, FL 33131  
[jdiruzzo@fuerstlaw.com](mailto:jdiruzzo@fuerstlaw.com)

NIZAR A. DEWOOD  
The Dewood Law Firm  
2006 Eastern Suburb, Suite 101  
Christiansted, VI 00820  
340-773-3444  
Fax: 973-842-0755  
Email: [dewoodlaw@gmail.com](mailto:dewoodlaw@gmail.com)

/s/Joel H. Holt, Esq.

# EXHIBIT 1

Subj: RE: Responses to Diruzzo's letters  
Date: 10/5/2012 8:02:45 A.M. Atlantic Standard Time  
From: [dewoodlaw@gmail.com](mailto:dewoodlaw@gmail.com)  
To: [grhea@rpwb.com](mailto:grhea@rpwb.com)  
CC: [pamelacolon@msn.com](mailto:pamelacolon@msn.com), [rae@abfmwb.com](mailto:rae@abfmwb.com), [Holtvi@aol.com](mailto:Holtvi@aol.com), [smock@islands.vi](mailto:smock@islands.vi), [JD'Ruzzo@fuerstlaw.com](mailto:JD'Ruzzo@fuerstlaw.com)

I certainly would like all communications. Mr. Smock advised me that he did not have the bulk of documents and files in the criminal matter. Please advise where I can obtain all of these records.

---

**From:** Gordon Rhea [<mailto:grhea@rpwb.com>]  
**Sent:** Friday, October 05, 2012 7:59 AM  
**To:** Nizar A. DeWood  
**Cc:** Pamela Colon ; Randy Andreozzi; [Holtvi@aol.com](mailto:Holtvi@aol.com); Hank Smock  
**Subject:** RE: Responses to Diruzzo's letters

Mr. Daley's position was that all of the Defendants were "skimming," including Mr. Yusuf. Remember, the money laundering charges involved the government's contention that all of the defendants, Mr. Yusuf included, had skimmed some \$20 million and sent it to Jordan. Mr. Yusuf was also alleged to have sent a million dollars to Saddam Hussein, and Mr. Daley and other prosecutors believed that Mr. Yusuf was skimming money from Plaza Extra and "laundering" it through accounts in St. Martin. I do not recall any instances in which the prosecution claimed that any defendants were "skimming" without the knowledge of the other defendants; rather, it was the Government's position that they were all using Plaza Extra like a personal piggy bank, and that they were doing it together – hence the conspiracy counts. All defendants, including the attorneys for all defendants, were fully aware of these allegations and a myriad of others. I can assure you that Mr. Yusuf and his attorney Mr. Smock were cognizant of what Mr. Daley and his successors were alleging. If you would like a full list of the Government's various allegations of transgressions, I am sure Mr. Smock can provide it for you.

---

**From:** Nizar A. DeWood [<mailto:dewoodlaw@gmail.com>]  
**Sent:** Friday, October 05, 2012 7:43 AM  
**To:** Gordon Rhea  
**Cc:** Pamela Colon ; Randy Andreozzi; [Holtvi@aol.com](mailto:Holtvi@aol.com); Hank Smock  
**Subject:** Responses to Diruzzo's letters

Good morning Gordon,

I reviewed Mr. Diruzzo's letter to the Hameds' various defense attorneys regarding what Diruzzo heard from Andriozzi during the last telephonic conference. It was not accusatory in nature as suggested by the unusually aggressive responses. How everyone assumed that Diruzzo was accusing anyone of theft or dishonesty is beyond me.

When an extremely competent attorney like Andriozzi uses the word "answer" instead of the words "Reply" or "Response," of course, I and Mr. Diruzzo have to be concerned, especially when the draft answer was never filed. I am sure you would as well.

Also, I recently obtained copies of email correspondences between you [Gordon Rhea] and Mark Daley, from the Justice Department where Mr. Daley specifically states Waleed Hamed and Waheed Hamed were "skimming" from United Corporation. Why would Daley tell you this? When were you planning to tell Mr. Yusuf and United about the skimming by Waleed Hamed and Waheed Hamed? I saw no response from you to Daley denying these allegations, nor demanding an explanation.

Since you all had signed a joint defense agreement, at what point did the attorneys' for the Hameds planned to tell the attorneys for Mr. Yusuf about the "skimming" by Waleed Hamed and Waheed Hamed of United's assets.

As for Holt's disrespectful assertion of "paranoia" against Mr. Yusuf, perhaps Holt should also ask Mark Daley if he is also "paranoid" about Waleed and Waheed Hamed's "skimming" from United. Apparently, the U.S. Justice Department knew something about your client Waleed and attorney Colon's client Waheed that Yusuf did not know until late 2011.

I can now begin to appreciate the unusually aggressive responses I read.

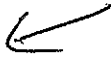
Nizar A. DeWood, Esq.



# EXHIBIT 2



Subj: **FW: United Corp. - Response to Hamed's Aug. 31st Letter to AUSA Lori Hendrickson**  
Date: 10/11/2012 4:13:41 P.M. Atlantic Standard Time  
From: [JDiRuzzo@fuerstlaw.com](mailto:JDiRuzzo@fuerstlaw.com)  
To: [Holtvi@aol.com](mailto:Holtvi@aol.com)  
CC: [FMassabki@fuerstlaw.com](mailto:FMassabki@fuerstlaw.com), [dewoodlaw@gmail.com](mailto:dewoodlaw@gmail.com), [JaCorrea@fuerstlaw.com](mailto:JaCorrea@fuerstlaw.com)  
Mr. Holt,

It appears that the date may have been off by a day. See below and attached. 

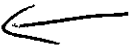
Joseph A. DiRuzzo, III, Esq., CPA  
FUERST ITTLEMAN DAVID & JOSEPH, PL  
1001 Brickell Bay Drive  
32nd Floor  
Miami, FL 33131  
305.350.5690 (o)  
305.371.8989 (f)  
[jdiruzzo@fuerstlaw.com](mailto:jdiruzzo@fuerstlaw.com)  
[www.fuerstlaw.com](http://www.fuerstlaw.com)

IMPORTANT: This e-mail is subject to the Electronics Communications Privacy Act, 18 U.S.C. §§2510-2521, and contains information which is or may be confidential and/or privileged. The information contained in this e-mail message, together with any attachments or links contained herein, is strictly confidential and intended only for the use of the recipient named above. If the reader of this email is not the intended recipient, you are notified that any use, distribution, or copying of this communication is STRICTLY PROHIBITED. If you have received this communication in error, please notify Joseph A. DiRuzzo, III, immediately by telephone 305-350-5690, and return the original message to him at the above address via the United States Postal Service. Thank You.

TAX ADVICE DISCLOSURE and NOTICE OF CONFIDENTIALITY: IRS Circular 230 Disclosure: This communication is not intended to be a covered opinion as defined in Treasury Regulations and, therefore, is not intended to be used as, and cannot be relied upon as, a defense against penalties that may be imposed by the IRS.

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**From:** Nizar A. DeWood [mailto:[dewoodlaw@gmail.com](mailto:dewoodlaw@gmail.com)]  
**Sent:** Wednesday, September 19, 2012 7:49 AM  
**To:** [joel@holtvi.com](mailto:joel@holtvi.com)  
**Cc:** Joseph DiRuzzo; Mike Yusuf; Neje F. Yusuf; Hank Smock ; Pamela Colon ; Randy Andreozzi  
**Subject:** United Corp. - Response to Hamed's Aug. 31st Letter to AUSA Lori Hendrickson



See attached response to your letter to Lori Hendrickson. I believe you have forgotten to put Exhibit A as an additional exhibit to your letter to Ms. Hendrickson.

Nizar A. DeWood, Esq.

The DeWood Law Firm  
2006 Eastern Suburb, Suite 102  
Christiansted, V.I. 00820  
T. 340.773.3444  
C. 443.799.6996  
F. 888.398.8428



# EXHIBIT 3

Subj: **Fathi Yusuf**  
Date: 9/18/2012 5:45:53 P.M. Atlantic Standard Time  
From: [Holtvi@aol.com](mailto:Holtvi@aol.com)  
To: [dewoodlaw@gmail.com](mailto:dewoodlaw@gmail.com), [hsmock@smvilaw.com](mailto:hsmock@smvilaw.com)

Attached are courtesy copies of self explanatory pleadings filed in the Superior Court that were served on Mr. Yusuf this afternoon.

Joel H. Holt  
2132 Company Street  
Christiansted, St. Croix  
Virgin Islands 00820

340-773-8709

Thursday, October 18, 2012 AOL: Holtvi



# EXHIBIT 4

20

UNITED CORPORATION

4C & 4D Sion Farm  
St Croix, US VI 00821  
Phone: (340) 758-6240

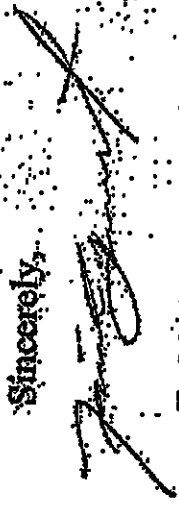
January 12, 2012

Mr. Mohamed Hamed,

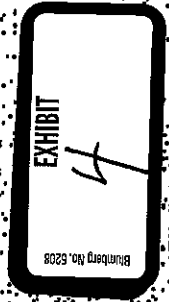
During the month of September 2009, I had a discussion with your son Wally, and within two days I repeat the same request while you were present that United Corporation would like to have its location back. Unfortunately, up to now, I have not seen that you give up the keys.

Therefore as of January 1, 2012 the rent will be \$200,000.00 per month, only for the coming three months. If you do not give up the keys before the three months, it will be \$250,000.00 per month until further notice.

Sincerely,



Pathi Yusuf



01/13/2012 02:07

3487

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PAGE 01/01

UNITED CORPORATION  
4C & 4D Sion Farm  
St Croix, USVI 00821  
Phone (340) 778-6240

January 13, 2012

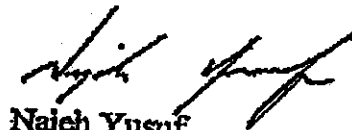
Mr. Mohamed Hamed,

Based on my father's phone call this morning, yesterday's letter (Jan 12, 2012) should read as follows; "During the month of September 2010 (not 2009)... I had a discussion with your son Wally, and within two days I repeat the same request while you were present that United Corporation would like to have its location back. Unfortunately, up to now, I have not seen that you give up the keys".

"Therefore as of January 1, 2012 the rent will be \$200,000.00 per month, only for the coming three months. If you do not give up the keys before the three months, it will be \$250,000.00 per month until further notice".

I am sorry for the error, he was hurrying to catch a plane.

Sincerely,



Najeh Yusuf  
for Rathi Yusuf

CC: Wally Hamed

United Corporation  
4-C & 4-D Estate Sion Farm  
P.O. Box 763  
Christiansted, VI 00820

Date: January 19, 2012

**\*\*VIA CERTIFIED MAIL -- RETURN RECEIPT REQUESTED\*\***

Mohammad Abdul Qader Hamed  
Plaza Extra Supermarket  
4-C & 4-D Estate Sion Farm  
Christiansted, V.I. 00820

Re: - **NOTICE & CONFIRMATION OF INCREASED RENT FOR PLAZA EXTRA -  
SION FARM - FOR THE PERIOD OF JANUARY 1, 2012 THROUGH JUNE 30,  
2012.**

- **NOTICE OF LEASE TERMINATION FOR PLAZA EXTRA - SION FARM  
AS OF JUNE 30<sup>TH</sup>, 2012.**

Dear Mr. Hamed,

This notice is to confirm the increased rent for the above referenced premises. As you will know, I have given both you and your son Waleed Hamed oral notice in September 2010 to vacate the premises. At that time, I have advised you that the rent will increase to Two Hundred Thousand Dollars (\$200,000.00) per month for each of the first three months of January, February, and March, 2012. Thereafter, the rent shall increase to Two Hundred & Fifty Thousand Dollars (\$250,000.00) each month commencing April 1, 2012 through June 30<sup>th</sup>, 2012. The last date for this lease is June 30<sup>th</sup>, 2012. There will be no additional extensions of tenancy to Plaza Extra - Sion Farm.

An orderly inspection will be done to evaluate the condition of the premises. Kindly, advise as to when you are available to conduct an inspection, and to inventory all fixtures and improvements that will remain on the premises. Should you have any concerns regarding this notice, or any other matters concerning this lease, please ensure that same be made in writing,

and delivered by way of certified mail, return receipt requested to the address above. Thank you for your prompt attention in this matter.

Sincerely,

United Corporation

By: 

Fathi Yusuf, CEO



04/05/2012 04:03

3407755766

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PAGE 01/03

**UNITED CORPORATION**  
**4C & 4D Sion Farm**  
**St Croix, USVI 00821**  
**Phone (340) 778-6240**

April 4, 2012

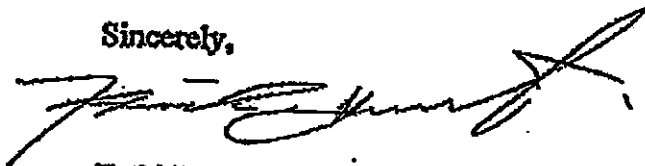
Mohammed Abdul Qader Hamed  
Plaza Extra Supermarket  
4-C & 4-D Estate Sion Farm  
Christiansted, VI 00820

Re: Notice of Increased Rent commencing April 1, 2012

Mr. Mohamed Hamed,

Please note that according to my letter dated January 19, 2012 the rent of Plaza Extra East starting April 1, 2012 has now increased to \$250,000.00 per month. Please forward me the rent due from January 1, 2012 through April 1, 2012 for a total of \$850,000.00 immediately. If I do not receive this amount by the end of April 2012, I will add interest at a rate of 12% starting May 1, 2012. This will be my last notice to you of back rent due.

Sincerely,



Fathi Yusuf

CC: Wally Hamed

UNITED CORPORATION  
4C & 4D Sion Farm  
St Croix, USVI 00821  
Phone (340) 778-6240

May 4, 2012

Mohammad Abdul Qader Hamed  
Plaza Extra Supermarket  
4-C & 4-D Estate Sion Farm  
Christiansted, VI 00821

**Statement of Rent due for Plaza Extra -- East as of May 1, 2012**

Rent due for Plaza Extra -- East, January 1, 2012 through April 1, 2012	Balance Due	\$850,000.00
ADD: 1% interest on outstanding Balance		<u>\$ 8,500.00</u>
	Amount Due	\$858,500.00
May 2012 Rent currently due:		<u>\$250,000.00</u>
	Total Balance due May 1, 2012	<u>\$1,108,500.00</u>

Please forward a check immediately.

Sincerely,



Najeh Yusuf for Fathi Yusuf

CC: Wally Hamed

UNITED CORPORATION  
4C & 4D Sion Farm  
St. Croix, USVI 00821  
Phone (340) 778-6240

June 1, 2012

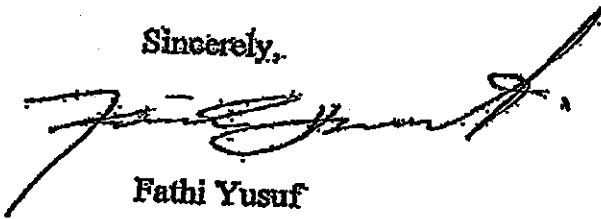
Mohammad Abdul Qader Hamed  
Plaza Extra Supermarket  
4-C & 4-D Estate Sion Farm  
Christiansted, VI 00821

**Statement of Rent due for Plaza Extra -- East as of June 1, 2012**

Rent due for Plaza Extra -- East, January 1, 2012 through May 1, 2012	Balance Due	\$1,108,500.00
ADD: 1% interest on outstanding Balance		<u>\$ 11,085.00</u>
	Amount Due	\$1,119,585.00
June 2012 Rent currently due:		<u>\$250,000.00</u>
	Total Balance due June 1, 2012	<u>\$1,369,585.00</u>

Please forward a check immediately.

Sincerely,



Fathi Yusuf

CC: Wally Hamed

UNITED CORPORATION  
4C & 4D Sion Farm  
St Croix, USVI 00821  
Phone (340) 778-6240

July 1, 2012

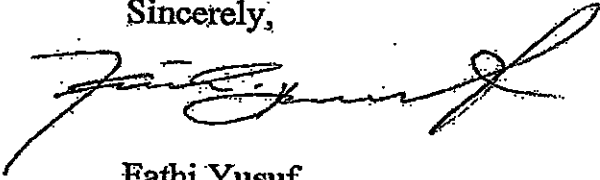
Mohammad Abdul Qader Hamed  
Plaza Extra Supermarket  
4-C & 4-D Estate Sion Farm  
Christiansted, VI 00821

**Statement of Rent due for Plaza Extra – East as of July 1, 2012**

Rent due for Plaza Extra – East, January 1, 2012 through June 1, 2012	Balance Due	\$1,369,585.00
ADD: 1% interest on outstanding Balance		<u>\$ 13,695.85</u>
	Amount Due	\$1,383,280.85
July 2012 Rent currently due:		<u>\$250,000.00</u>
	Total Balance due July 1, 2012	<u>\$1,633,280.85</u>

Please forward a check immediately.

Sincerely,



Fathi Yusuf

CC: Wally Hamed

UNITED CORPORATION  
4C & 4D Sion Farm  
St Croix, USVI 00821  
Phone (340) 778-6240

August 1, 2012.

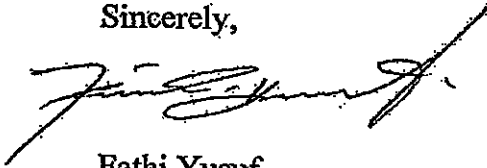
Mohammad Abdul Qader Hamed  
Plaza Extra Supermarket  
4-C & 4-D Estate Sion Farm  
Christiansted, VI 00821

**Statement of Rent due for Plaza Extra – East as of August 1, 2012**

Rent due for Plaza Extra – East, January 1, 2012 through July 31, 2012	Balance Due	\$1,633,280.85
ADD: 1% interest on outstanding Balance		<u>\$ 16,332.81</u>
	Amount Due	\$1,649,613.66
August 2012 Rent currently due:		<u>\$250,000.00</u>
	Total Balance due August 1, 2012	<u>\$1,899,613.66</u>

Please forward a check immediately.

Sincerely,



Fathi Yusuf

CC: Wally Hamed

UNITED CORPORATION  
4C & 4D Sion Farm  
St Croix, USVI 00821  
Phone (340) 778-6240

September 1, 2012

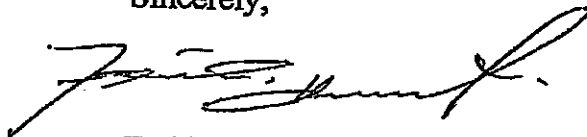
Mohammad Abdul Qader Hamed  
Plaza Extra Supermarket  
4-C & 4-D Estate Sion Farm  
Christiansted, VI 00821

**Statement of Rent due for Plaza Extra – East as of September 1, 2012**

Rent due for Plaza Extra – East, January 1, 2012 through Aug. 31, 2012	Balance Due	\$1,899,613.66
ADD: 1% interest on outstanding Balance		<u>\$ 18,996.14</u>
	Amount Due	\$1,918,609.80
September 2012 Rent currently due:		<u>\$250,000.00</u>
Total Balance due September 1, 2012		<u>\$2,168,609.80</u>

Please forward a check immediately.

Sincerely,



Fathi Yusuf

**UNITED CORPORATION**  
**4C & 4D Sion Farm**  
**St Croix, USVI 00821**  
**Phone (340) 778-6240**

October 1, 2012

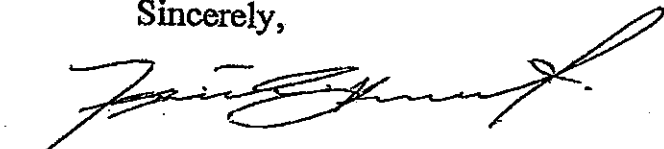
Mohammad Abdul Qader Hamed  
Plaza Extra Supermarket  
4-C & 4-D Estate Sion Farm  
Christiansted, VI 00821

**Statement of Rent due for Plaza Extra – East as of October 1, 2012**

Rent due for Plaza Extra – East, January 1, 2012 through Sept. 30, 2012	Balance Due	\$2,168,609.80
ADD: 1% interest on outstanding Balance		<u>\$ 21,686.10</u>
	Amount Due	<u>\$2,190,295.90</u>
October 2012 Rent currently due:		<u>\$250,000.00</u>
	Total Balance due October 1, 2012	<u>\$2,440,295.90</u>

Please forward a check immediately.

Sincerely,



Fathi Yusuf

# EXHIBIT 5



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

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

CIV. No. 1:12-cv-99

Jury Trial Requested

DECLARATION OF WALEED HAMED A/K/A WALLY HAMED

I, Waleed Hamed, a/k/a Wally Hamed, declare, pursuant to 28 U.S.C. Section 1746, as follows:

1. I am an adult resident of St. Croix and am personally knowledgeable about each fact set forth in this affidavit.
2. For many years my father, Mohammad Hamed, and Fathi Yusuf have used the profits distributed from the three Plaza Extra supermarkets to buy other businesses and real property -- always then owning these jointly held assets, regardless of the form of ownership, on a 50/50 basis. The following assets, now owned 50/50 between the Hamed and Yusuf (or their families through them) were purchased using 50/50 distributions Partnership profits from the three Plaza Extra supermarkets -- from the "supermarket" accounts held for the Partnership by United:
  - a) Peter's Farm Investment Corporation - This Virgin Islands corporation, owned 50/50 between the two families, owns hundreds acres of unimproved land on St. Croix and St. Thomas, some near Christiansted, some out east on St. Croix, some out west on St. Croix and some on the west end of St. Thomas.
  - b) Sixteen Plus Corporation - This Virgin Islands corporation, owned 50/50 between the two families, owns over 300 acres of unimproved beachfront land on the South shore of St. Croix and several acres of unimproved land in St. Thomas, as well.
  - c) Plessen Enterprises, Inc. - This Virgin Islands corporation, owned 50/50 between the two families, owns over 100 acres on the west end

Blumberg No. 2208  
EXHIBIT  
5

**Declaration of Wally Hamed**  
**Page 2**

of St. Croix where the Plaza Extra West store is located (and does not charge any rent to Plaza Extra West, which store was constructed at a cost of millions of dollars, also from the profits made from the Partnership in the supermarket accounts) as well as another 150 acres on St. Croix in Estate Diamond and land in St. Thomas, including 2 acres of improved property known as Mandela Circle and 9 acres of unimproved land known as Fort Milner.

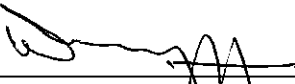
- d) Y and S Corporation - ("Dorthea Property") - Land and condos located in St. Thomas, owned 50/50 between the two families, which was recently sold for \$1,500,000, even though Fathi Yusuf has refused to turn over the funds to the Partnership.
3. Moreover, the profits from the Plaza Extra supermarkets were used to expand the business, including but not limited to the construction of the building where the Plaza Extra West supermarket is located on St. Croix, as well as to provide all equipment and inventory for the start up of this store. Indeed, the investment of the partnership profits into this one store was well in excess of \$5 million dollars.
  4. On August 16, 2012, I received a letter from Fathi Yusuf dated August 15<sup>th</sup> stating that he intended to withdraw \$2,784,706.25 from the partnership funds in the operating account of Plaza Extra Supermarket held by United for the Partnership. The letter stated that receipts were attached to justify this withdrawal as part of the ordinary distribution to the partners from the account. On that same date, I wrote back objecting to this withdrawal, noting that no agreement had been reached regarding this withdrawal, and that no receipts were attached as indicated.
  5. I subsequently learned that Fathi Yusuf had already withdrawn these partnership funds on August 15, 2012 from the bank account for the Plaza Extra supermarket account for the Sion Farm store. A copy of that check is attached to this declaration. Despite repeated demands he has never returned these funds nor produced the alleged receipts. I understand he deposited these funds into another bank account for United Corporation that is unrelated to the Plaza Extra supermarkets, which my father cannot access.
  6. As noted above, one of the investments made from the profits of the Partnership was in an entity known as Y&S Corporation to buy certain property and condominiums in St. Thomas, USVI known as Dorthea Beach. This investment was sold last year for approximately \$1.5 million, to which my father is entitled to 50%, which Yusuf admitted in a handwritten calculation, which included other funds owed as well, a copy of which is attached to this declaration. Yusuf has never returned these funds to the Partnership account, nor has he turned the portion owed my

**Declaration of Wally Hamed**  
**Page 3**

father over to him, as noted in my August 16<sup>th</sup> letter, which is attached. When asked about these funds, Fathi Yusuf told me he had removed them to Jordan.

I declare under penalty of perjury that the foregoing is true and correct.

Dated: October 22, 2012

  
\_\_\_\_\_  
Waleed Hamed a/k/a Wally Hamed

**UNITED CORPORATION**  
**d/b/a PLAZA EXTRA SUPERMARKET**  
**4C & 4D Sion Farm**  
**Christiansted, VI 00820**

BY HAND DELIVERY

*Received by*  
*8/16/2012*

Date: August 15, 2012

Mohammed Hamed  
By and through Waleed Hamed  
Plaza Extra Supermarket  
Sion Farm Store  
Christiansted, V.I. 00820

Re: Notice of Withdrawal

Dear Mr. Hamed,

The amount of \$2,784,706.25 will be withdrawn from United's operating account effective August 15<sup>th</sup>, 2012. This amount equals the proceeds you previously withdrew through your agent Waleed Hamed. To ensure full accuracy, attached are the receipts you requested during mediation demonstrating the \$1,095,381.75 of withdrawals. The below itemized amounts are not in dispute.

Past Confirmed Withdrawals .....	\$1,600,000.00
Additional Withdrawals per the attached requested receipts .....	\$1,095,381.75
Fifty percent (50%) of St. Maarten Bank Account .....	\$44,355.50
Fifty percent (50%) of Cairo Amman Bank .....	\$44,696.00

Should you have any concerns about these amounts, please provide the basis for your concerns in writing. Thank you.

Yours  
*Fathi Yusuf*  
for Fathi Yusuf

**Waleed Hamed  
Plaza Extra  
4C 4D Estate Sion Farm  
Christiansted, VI 00821**

**BY HAND DELIVERY**

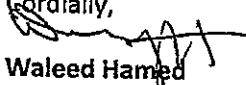
Date: Thursday, August 16, 2012

**Fathi Yusuf  
Plaza Extra Supermarket  
4605 TuTu Park Mall Ste 200  
St.Thomas, VI 00805**

Dear Mr. Yusuf:

In response to your August 15th letter re "Notice of Withdrawal", these figures have not been agreed to. Indeed, there were no attachments as indicated and there are numerous other funds that have to be included in any such calculations before any disbursements can be made. For example, all withdrawal receipts have to be reviewed before any withdrawals are paid, no mention or indication of the amounts that the Yusuf family has previously withdrawn. By way of another example, the \$800,000 plus due the Hamed family for the sale of the condo property in St. Thomas would have to be included. In short, while these are just a few examples, no withdrawals will be issued until a full accounting is done and agreed to in writing.

Cordially,

  
Waleed Hamed

UNITED CORPORATION D/B/A  
PLAZA EXTRA

340-778-6240  
PO BOX 763  
CHRISTIANSTED, USVI 00821-0763

1154

101-606216

Date 8/15<sup>th</sup> 2012.

United Corporation

\$ 2,784,700.25

Two million Seven hundred Eighty-Four Thousand Seven Hundred Six Dollars & <sup>25</sup>/<sub>100</sub> Cents

Scotiabank  
THE BANK OF NOVA SCOTIA  
5700 BAYVIEW AVENUE  
SCOTIA, ONTARIO M1S 5T7

*[Handwritten Signature]*

⑆001154⑆ ⑆021606069⑆ ⑆058⑆8008113⑆



Dorothia  
Jordan Fund 75,000 - Dinar

1,500,000.00  
105,932.00

---

1,605,932.00

Fathi YUSUF

← 617,000.00

From Jordan " "

← 105,932.00

Balance for Fathi YUSUF

80,034.00 -

---

802,966.00

2

1,605,932.00

802,966.00

# EXHIBIT 6



IN THE TERRITORIAL COURT OF THE VIRGIN ISLANDS  
DIVISION OF ST. THOMAS AND ST. JOHN

AHMAD IDHEILEH,	)	
	)	
Plaintiff,	)	
	)	
vs.	)	Case No. 156/1997
	)	
UNITED CORPORATION and	)	
FATHI YUSUF, Individually,	)	
	)	
Defendants.	)	

THE ORAL DEPOSITION OF FATHI YUSUF  
 was taken on the 2nd day of February 2000, at the Offices of  
 Caribbean Scribes, 2132 Company St., Ste. 3, Christiansted,  
 St. Croix, U.S. Virgin Islands, between the hours of  
 1:05 p.m. and 4:05 p.m. pursuant to Notice and Federal Rules  
 of Civil Procedure.

Reported by:

Cheryl L. Haase  
 Registered Professional Reporter  
 Caribbean Scribes, Inc.  
 2132 Company Street, Suite 3  
 Christiansted, St. Croix U.S.V.I.  
 (340) 773-8161



FATHI YUSUF -- DIRECT

1           A. I personally own 50 percent of Plaza Extra in  
2 1986. I own United Shopping Plaza. I'm a member of  
3 United Corporation, who owns United Shopping Plaza. I build  
4 that store, I was struggling for a loan. The whole island  
5 know what I went through. I said I'm going to build this  
6 building no matter what, and hold the supermarket for my  
7 personal use.

8                       It took me three years. I give an offer to  
9 two nephew of mine and my brother-in-law, Mr. Hamed, if they  
10 would like to join me in building up this store together, and  
11 we should not have any problem, if I finish build up the  
12 building, we should have no problem whatsoever to go to the  
13 bank and the bank will grant us the loan to operate the  
14 supermarket. Okay?

15                       During construction -- I'm going to go a  
16 little bit back to tell you what is my background. During  
17 construction, I was struggling for loan. And at that time  
18 Banco Popular, I remember, came into the Virgin Islands and  
19 took over the majority of interest of First National  
20 Citibank. They buy all their customers, and they was very  
21 hungry to do business in the island because they have  
22 expenses to face and they like to issue loan as fast as  
23 possible to cover their expenses.

24                       Excuse me. Can I have water please if you  
25 don't mind?

FATHI YUSUF -- DIRECT

1 So I left Nova Scotia, struggling, left them  
2 not to get a loan, but did not close my account. I struggle  
3 all over looking to get a loan. I went to all local banks at  
4 that time, and everybody says, I'm sorry, we can't help you.  
5 So I find it is a golden opportunity for me to go to Banco  
6 Popular.

7 So I went to the manager there, I explained to  
8 him my story what Scotia did to me and so he say, I will come  
9 to the site.

10 When he come to the site where I'm building,  
11 he says, How you going to put this building together?  
12 Where's your plan? I show it to him. It's almost zero, the  
13 specification. Just numbers for me, columns, but the column  
14 doesn't say what thick, what wide. It just give me the  
15 height.

16 So the bank, he says, Mr. Yusuf, I'm sorry.  
17 We don't do business that way. We have to have somebody  
18 professional plan with full specification. I could see your  
19 plan approved, I could see the steel here, but it's -- you  
20 don't have the proper material or record to take to my board  
21 of director to approve a loan in the millions.

22 So I understood. My answer to that gentleman  
23 was, unfortunate because of my financial situation, I have to  
24 choose this route. But I promise you, as a man, I will put  
25 that building together. The man told me at that time, I

1 he gave me about 275,000, and to be 25 percent each,  
2 25 percent for my sister son, 25 percent for my brother son,  
3 25 percent for me.

4 But before I continue, I'm going to -- I would  
5 like to go back a little bit more to clear something. When I  
6 was in the financial difficulty, when I was in financial  
7 difficulty, my brother-in-law, he knew. I shouldn't -- he  
8 start to bring me money. Okay? He own a grocery, Mohammed  
9 Hamed, while I was building, and he have some cash. He knew  
10 I'm tight.

11 He start to bring me money. Bring me I think  
12 5,000, 10,000. I took it. After that I say, Look, we  
13 family, we want to stay family. I can't take no money from  
14 you because I don't see how I could pay you back. So he  
15 insisted, Take the money. If you can afford to, maybe pay  
16 me. And if you can't, forget about it. Okay. He kept  
17 giving me. I tell him, Under this condition I will take it.  
18 I will take it.

19 He kept giving me until \$200,000. Every  
20 dollar he make profit, he give it to me. He win the lottery  
21 twice, he gave it to me. All right? That time the man have  
22 a little grocery, they call Estate Carlton Grocery. Very  
23 small, less than 1,000 square foot, but he was a very hard  
24 worker with his children. And it was, you know, just like a  
25 convenience mom-and-pop stores. He was covering expenses and

1 saving money.

2 I say, Brother-in-law, you want to be a  
3 partner too? He said, Why not? You know, as a family, we  
4 sit down. Says, How much more can you raise? Say, I could  
5 raise 200,000 more. I said, Okay. Sell your grocery. I'll  
6 take the two hundred, four hundred. You will become  
7 25 percent partner.

8 So we end up I'm 25 percent, my two nephew 25  
9 each, and my brother-in-law, Mohammed Hamed, 25 percent. I  
10 don't recall the year, could be '83 or '84, but at least  
11 thanks God in the year that Sunshine Supermarket opened,  
12 because his supermarket is the one who carries these two  
13 young men and my brother to go into the supermarket with me.  
14 So I have their money, I finish the building.

15 We call the refrigeration manufacturer, not to  
16 waste time. We book an order for our refrigeration, and we  
17 committed to it. And from their money I have paid \$100,000  
18 deposit on the equipment. I was so sure the gentleman at  
19 Banco Popular, he promised me, you know. Everything were  
20 look to go me encouraging. And especially at that time I'm  
21 sure anybody in St. Croix in the past twenty, thirty years,  
22 he knew that that building will never go up. Only maybe six  
23 people in St. Croix at that time says I might be able to put  
24 it up. But 99.9 of St. Croix resident, they were looking at  
25 me as a fool.

1 man and he look at me, he underestimate. It came to an  
2 extent, I tell him, Look, sir. I respect your profession.  
3 You're the bank manager. I respect that. And I want you to  
4 respect my profession. I'm a retailer. Everybody have a way  
5 of making a living. Oh, I been denied.

6 Then, but when I been denied, I have to tell  
7 my partner what's going on. I been entrusted to handle the  
8 job perfect, and I am obligated to report to my partner to  
9 anything that happened. I told my nephews and I told my  
10 partner, Hey, I can't get a loan, but I'm not giving up.

11 So two, three days later my two nephews split,  
12 say, We don't want to be with you no more, and we want our  
13 money. I say I don't have no money to pay you. The money's  
14 there, but if you want to leave because I default, you free  
15 to leave.

16 How we going to get paid?

17 I says, Shopping center is 50 percent owned by  
18 you uncle and 50 percent by me. I have to feed my children  
19 first, and whatever left over, I'll be more than happy to  
20 give it to you. Okay. What do you want us -- what do you  
21 want to pay us for rent of our money?

22 We come to an agreement, I pay them 12 percent  
23 on their money, and 150,000 default because I don't fulfill  
24 my commitment. I accepted that. We wait until my partner,  
25 which is my brother, came. He's an older man. And we came

1 up to Mr. Mohammed Hamed, I say, You want to follow them? He  
2 say, Yeah, I will follow them, but do you have any money to  
3 give? I say, Look, Mr. Hamed, you know I don't have no  
4 money. It's in the building, and I put down payment in the  
5 refrigeration. But if you want to follow them, if you don't  
6 feel I'm doing the best I can, if you want to follow them,  
7 you're free to follow them. I'll pay you the same penalty,  
8 75,000. I will give you 12 percent on your 400,000.

9 He says, Hey. If you don't have no money,  
10 it's no use for me to split. I'm going to stay with you.  
11 All right. I say, Okay. You want to stay with me, fine. I  
12 am with you, I am willing to mortgage whatever the  
13 corporation own. Corporation owned by me and my wife at that  
14 time.

15 Q. Uh-huh.

16 A. And my partner only put in \$400,000. That's all  
17 he put in, and he will own the supermarket. I have no  
18 problem. I told my partner, Look, I'll take you under one  
19 condition. We will work on this, and I'm obligated to be  
20 your partner as long as you want me to be your partner until  
21 we lose \$800,000. If I lose 400,000 to match your 400,000, I  
22 have all the right to tell you, Hey, we split, and I don't  
23 owe you nothing.

24 They say, Mr. Yusuf, we knows each other. I  
25 trust you. I keep going. Okay. Now, I told him about the

1 two partner left, Mr. Hamed. You know, these two guys, they  
2 left, my two nephew, they was your partner and my partner. I  
3 give you a choice. If you pay penalty with me and pay the  
4 interest with me, whatever they left is for me and you. But  
5 if I must pay them the one-fifty penalty and pay them  
6 12 percent, then Plaza Extra Supermarket will stay  
7 three-quarter for Yusuf and only one-quarter for you.

8 He says, Do whatever you think is right. I  
9 tell him, You want my advice? I be honest with you. You  
10 better off take 50 percent. So he took the 50 percent.

11 Q. Not to cut you short, Mr. Yusuf, but we have to  
12 play with time, and I appreciate the history as far as  
13 Plaza Extra St. Croix and United Corporation, but I want to  
14 focus primarily right now on your relationship with  
15 Mr. Idheileh.

16 There came a time that the two of you entered  
17 into talks about Plaza Extra on St. Thomas?

18 A. May I interrupt you, sir? I cannot build a roof  
19 before a foundation. The problem is you ask me who I am,  
20 where I come from. I am explaining myself. I want to show  
21 to you and the court that Mohammed Hamed is way before  
22 Plaza Extra was opened with me, he was my partner. And  
23 Mr. Idheileh, he himself knows, because the money he lend me  
24 when I open up Plaza Extra, he was getting paid from Wally.

25 I'm a person, if I run a business, I want to



1 stay clean. You know what I mean, clean? I'm the final  
2 decision man. I don't give that to anybody. Excuse me. But  
3 when it come to money, I don't touch.

4 When I open up Plaza Extra Supermarket, who  
5 was in charge of the money at that time is Wally Hamed. When  
6 this gentleman, Mr. Idheileh, lend me his money as a friend,  
7 I have never signed for him. Who paid him? I never pay him  
8 back. My partner's son is the one who pay him back. And he  
9 knew, because he come to my office once or twice a week. And  
10 he's not the only one knew. Every single Arab in the Virgin  
11 Islands knew that Mr. Mohammed Hamed is my partner, way  
12 before Plaza Extra was opened.

13 Now, should I ask him or continue?

14 MS. VAZZANA: He's ready to give you a next  
15 question.

16 Q. (Mr. Adams) My question to you, sir, is there  
17 came a point in time that you and Idheileh started to, or  
18 started to have some discussions about Plaza Extra on  
19 St. Thomas, is that correct?

20 A. Repeat the question please.

21 Q. There came a point in time that you and  
22 plaintiff, Mr. Idheileh, entered into negotiation about a  
23 partnership, entering into a partnership with Plaza Extra on  
24 St. Thomas, is that correct?

25 A. I can answer that if I could explain it.

# EXHIBIT 7

UNDER SEAL

IN THE DISTRICT COURT OF THE VIRGIN ISLANDS  
DIVISION OF ST. THOMAS AND ST. JOHN

UNITED STATES OF AMERICA,

Plaintiff,

CRIMINAL NO. 2003-147

v.

FATHI YUSUF MOHAMMED YUSUF,  
aka Fathi Yusuf,

WALEED MOHAMMED HAMED,  
aka Willie Hamed,

WAHED MOHAMMED HAMED,  
aka Wally Hamed,

MAHER FATHI YUSUF,  
aka Mike Yusuf,

ISAM MOHAMAD YOUSUF  
aka Sam Yousuf, and

UNITED CORPORATION,  
dba Plaza Extra Supermarkets,

Defendants.

RECEIVED  
03 SEP 18 7:23 AM  
CLERK'S OFFICE

POST-INDICTMENT TEMPORARY RESTRAINING ORDER PURSUANT  
TO 14 V.I.C. § 606

1. The United States has made an *ex parte* application to this Court, pursuant to 14 U.S.C. § 606, for a temporary restraining order to preserve the availability of certain property that is subject to forfeiture in the above-referenced criminal action. Upon consideration of the government's application and the Indictment of the above-named defendants, it appears to the Court that there is reasonable cause to enter a temporary restraining order to preserve the subject property based upon the following:

2. That pursuant to 14 V.I.C. § 606(f) and (h), this Court is authorized to enter a

EXHIBIT  
7  
Blumberg No. 5008

temporary restraining order or injunction, require the execution of satisfactory performance bond, or take any other action to preserve the availability of property subject to forfeiture;

3. That a federal grand jury of this district has returned an Indictment against the defendants on charges of, among others, conducting a criminal enterprise in violation of 14 V.I.C. § 605(a), and conspiracy to conduct a criminal enterprise in violation of 14 V.I.C. § 605(d). As part of said Indictment, the United States is seeking the criminal forfeiture under 14 V.I.C. § 606 of the property specified in the forfeiture allegations portion of the indictment (hereafter referred to as subject property), including but not limited to:

**Corporate Assets**

a. All assets, tangible and intangible, of United Corporation, including but not limited to:

(1) Real property located at 4C, D and H, Sion Farm, St. Croix, Parcel 2-04700-0439-00, including all of its appurtenances, improvements, fixtures, attachments, and easements;

(2) Real property located at 14 and 28-29 Estate Plessen, St. Croix, Parcel 4-06200-0408-00, including all of its appurtenances, improvements, fixtures, attachments, and easements.

(3) all United States currency, funds, or other monetary instruments credited to the following accounts in the name of defendant United Corporation:

(a) Account No. 191-063789 at Banco Popular;

(b) Account No. 191-013307 at Banco Popular;

(c) Account No. 192-026143 at Banco Popular;

- (d) Account No. 65811 at Bank of Nova Scotia;
- (e) Account No. 55312010 at Bank of Nova Scotia;
- (f) Account No. 60086413 at Bank of Nova Scotia;
- (g) Account No. 60092918 at Bank of Nova Scotia;
- (h) Account No. 55356719 at Bank of Nova Scotia; and
- (i) Account No. 140-07759 at Merrill Lynch.

**Bank Accounts**

b. All United States currency, funds, or other monetary instruments credited to Account No. 140-21722 in the name of Fathieh Yousuf (or Yousef), held by Merrill Lynch.

4. That said Indictment alleges that the property with respect to which this order is concerned would, in the event of the defendants' conviction, be subject to forfeiture under 14 V.I.C. § 606. The affidavit of Special Agent Ted Sulzbach was submitted in further support of the Government's application for a temporary restraining order;

5. That the federal grand jury's indictment of the defendants, which specifically identified property as being subject to forfeiture under 14 V.I.C. § 606, together with the submitted affidavit of Special Agent Ted Sulzbach, establishes sufficient cause for the issuance of this temporary restraining order;

6. That the property is in the possession or control of the parties against whom the temporary restraining order is to be entered; and

7. That the nature of the property is such that it can be disposed of or placed beyond the jurisdiction of the Court before any party may be heard in opposition.

**General Protective Order Provisions**

Accordingly, it is hereby

**ORDERED** that, effective immediately, the defendants, their agents, servants, employees, attorneys, family members and those persons in active concert or participation with them, and those persons, financial institutions, or other entities who have any interest or control over the subject property are hereby **RESTRAINED, ENJOINED, AND PROHIBITED**, without prior approval of this Court and upon notice to the United States and an opportunity for the United States to be heard, from attempting or completing any action that would affect the availability, marketability or value of said property, including but not limited to selling, transferring, assigning, pledging, distributing, encumbering, wasting, secreting, depreciating, damaging, or in any way diminishing the value of, all or any part of their interest, direct or indirect, in the property listed in paragraph 3 above.

**IT IS FURTHER ORDERED** that the property owner(s) are required to maintain the present condition of any real property subject to this Order, including timely payment of all mortgage payments, and insurance, utilities, taxes, and assessments until further order of this Court. The government is hereby authorized to enter said real properties to videotape conditions in order to verify that said properties are being maintained.

**IT IS FURTHER ORDERED** that any financial institutions holding any accounts subject to this Order shall take no offsets against such accounts. They shall continue to credit any deposits, interest, dividends, or other credits to such accounts in the normal course of business, and such deposits, interest, dividends, and other credits shall be subject to this Order. Payments from bank accounts for automated drafts initiated prior to the date of entry of this Order, and

payments upon checks delivered to third parties before the date of entry of this Order are excepted from restraint for ten (10) days from the date of entry of this Order. In addition, upon receiving notice of this Order, each financial institution shall promptly inform the government as to the account balances at the time of notice, and shall thereafter supplement such information by reporting to the government any changes to the accounts, and by responding promptly to requests by the government for information on the accounts' current status.

**IT IS FURTHER ORDERED** that any financial institutions holding mortgages on real properties subject to this Order shall respond promptly to requests by the government for information on said mortgages' current status.

**IT IS FURTHER ORDERED** that any Subject of this Order shall be permitted to execute a satisfactory performance bond pursuant to 14 V.I.C. § 606(f)(2) as an alternative to the restraint of the subject property. After notice to the United States and an opportunity to be heard, the Court shall determine whether any proposed bond is a satisfactory performance bond.

#### **Specific Provisions for United Corporation**

**IT IS FURTHER ORDERED**, that the United States Marshal Service (USMS) is hereby appointed as Monitor ("Monitor") of United Corporation (United) to ensure that the assets of that specific subject property are not sold, dissipated, or wasted during the pendency of this action.

**IT IS FURTHER ORDERED**, that notwithstanding any general provision above, the Monitor shall have all power to monitor the daily activities of United, including, but not limited to, the following powers:

1. To review, inspect, and copy all documents relating to the operation of United, including but not limited to, all books and records, all personnel records of employees, all

records of bank accounts, and other assets, and all lists of customers and routes;

2. To enter the premises and business offices of United at any time and to observe all aspects of the business of United, whether conducted at the business offices or elsewhere;

3. To observe the daily accounting of cash and other receipts, including the making of bank deposits and the recording of daily gross receipts on the business records;

4. To interview employees of United with respect to making reasonable inquiries necessary to preserve the assets of United consistent with this Order; and

5. To petition the Court if access to any of the personnel, property, or assets of United is denied or if this Order is violated in any other manner.

**IT IS FURTHER ORDERED**, that the Monitor shall be permitted to utilize agents of other federal agencies and to hire, in its discretion, individuals or entities to assist in the monitoring of the operations of United.

**IT IS FURTHER ORDERED**, that the Monitor, or its subcontractor(s), shall file with the Court and serve upon the United States Attorney for the District of the Virgin Islands and upon counsel for all parties herein, a written report, commencing 30 days after the entry of this Order, and every 90 days thereafter, summarizing:

- a. The financial status of United;
- b. The activities and progress of the monitoring in identifying and preserving the asset; and
- c. Recommendations of additional action needed to ensure the asset is preserved.

**IT IS FURTHER ORDERED**, that all costs and expenses of this monitoring be paid for by the government out of the Assets Forfeiture Fund, 28 U.S.C. § 524(c), pursuant to the terms



and conditions of a contract established by the USMS containing a Statement of Work agreed upon by the USMS and the contractor. Any costs and expenses paid by the government shall be reimbursed as a first priority from any income derived from the operation or sale of the subject property subsequent to its forfeiture pursuant to 14 V.I.C. § 608(d)(1), or from any sale of the subject property pending resolution of this matter.

**IT IS FURTHER ORDERED**, that United shall maintain all insurance policies during the pendency of this action and that within seven (7) days of the entry of this Order, United shall add the Monitor as an additional named insured on any of its property and/or general liability insurance policies presently in effect, and shall provide certificate(s) of insurance to that effect to the Monitor.

**IT IS FURTHER ORDERED**, that United shall not issue any checks or counterchecks, or withdraw funds, or effect any wire transfers, in excess of \$1,000.00, without the prior written approval of the Monitor except when made in compliance with the provisions of paragraphs 2 and 6 below.

**IT IS FURTHER ORDERED**, that United shall collect and deposit all revenues into existing financial institution accounts, said accounts being identified as:

- a. Account No. 191-063789 at Banco Popular
- b. Account No. 191-013307 at Banco Popular
- c. Account No. 192-026143 at Banco Popular
- d. Account No. 65811 at Bank of Nova Scotia
- e. Account No. 55312010 at Bank of Nova Scotia
- f. Account No. 60086413 at Bank of Nova Scotia

- g. Account No. 60092918 at Bank of Nova Scotia
- h. Account No. 55356719 at Bank of Nova Scotia
- i. Account No. 140-07759 at Merrill Lynch.

United may continue to manage the investments in Account No. 140-07759 at Merrill Lynch, provided that no withdrawals of any kind may be made from that account without the written permission of the Monitor, except for withdrawals to pay for reasonable fees imposed by Merrill Lynch. United shall not open or close any accounts with any financial institutions without notifying the Monitor of the name(s) of the financial institution, the account number(s), and the authorized signatories. Any said new accounts established by United shall be subject in all respects to the provisions of this Order.

**IT IS FURTHER ORDERED**, that in the Monitor's discretion, the Monitor is authorized to contact and obtain from the respective financial institutions where United has its accounts, daily transactions and account balances, monthly bank statements for said accounts and any accompanying information thereto.

**IT IS FURTHER ORDERED**, that

1. As used herein the term "ordinary course of business" refers to the following types of expenditures and transactions made by United directly in bona fide arm's length transactions as part of United's regularly conducted business; (i) purchase and/or necessary use of supplies and equipment; (ii) payment of accounts payable, including but not limited to, those relating to rent, mortgage, insurance premiums, license fees, utilities, and taxes; (iii) payment of reasonable and necessary employee salaries; and (iv) payment of the normal and necessary upkeep and/or maintenance of any real property, equipment, and furnishings and fixtures necessary for regularly

conducted business operations.

2. All transactions described in the preceding paragraph and the last sentence of this paragraph shall be recorded in accordance with generally accepted accounting principles and shall be evidenced by cash register slips, sales receipt journal(s), bank deposits, numerical invoices and order forms, disbursements, journals, checks, computer printouts, inventory lists, and any other ordinary business records. United shall, in accordance with the provisions of this Order, use checks drawn from its business accounts to pay for ordinary business transactions allowed herein, subject to the provisions of paragraph 6 below and shall not use cash in excess of \$1,000.00, any cashier's checks, any money orders, any wire transfers or drafts to pay for any of the ordinary business transactions allowed herein, or use said instruments for the purpose of transferring funds.

3. United, except in the ordinary course of business, as defined above, shall not transfer, sell, assign, pledge, hypothecate, encumber, dissipate, or move in any manner, or cause to be transferred, sold, assigned, pledged, hypothecated, encumbered, dissipated, or moved in any manner, any property or other interest belonging or owed to United.

4. United may use checks drawn from its business accounts to pay reasonable fees to attorneys, experts, investigators, and accountants who provide services to United, but not to corporate officers or shareholders.

5. United and the individual defendants shall not destroy any of their business records, including those required to be maintained by the Monitor, without the Monitor's prior consent.

6. In addition to the foregoing, United shall:

- a. make payments of all lawful obligations on a current basis;
- b. pay all lawful past-due obligations in full within 90 days of entry of the Order;
- c. make best efforts to collect, within 90 days of the entry of this Order, legitimate past-due obligations, including but not limited to, loans and interest receivables;
- d. obtain pre-approval by the Monitor of all payments in excess of \$10,000.00, provided that the Monitor may give approval to recurring payments;
- e. make no new loans without approval of the Monitor and no new loans may be made to officers, employees, or their relatives;
- f. except in the ordinary course of business, make no salary increases and give no bonuses without prior approval of the Monitor;
- g. except as to relatives presently employed, not hire any relative of the individual defendants without approval of the Monitor, and no new employee or consultant with compensation in excess of \$10,000 per year may be hired or retained without prior approval of the Monitor, unless that person is being retained to assist in the defense of the underlying criminal action against United;
- h. not refuse to pay any lawful obligation without approval of the Monitor;
- i. not make any artificially high bid for a contract, or refuse to bid on an existing contract without prior approval of the Monitor;

- j. not deliberately lower their standards or frequency of service to customers without approval of the Monitor;
- k. properly maintain all tangible assets; and
- l. fully comply with all federal, territorial and local tax, regulatory requirements, and lawful orders and requests.

**IT IS FURTHER ORDERED**, that subject to the restrictions set forth in the prior paragraph, all parties are permitted to contact the Monitor on an *ex parte* basis.

**IT IS FURTHER ORDERED**, that any questions by non-parties to this action regarding the terms and conditions of this order shall be referred to Special Agent Thomas Petri of the Federal Bureau of Investigation or Assistant United States Attorney Nelson Jones, or such other individuals as may be designated by the Federal Bureau of Investigation and the United States Attorney's Office.

**IT IS FURTHER ORDERED**, that the government's application, affidavit, and the temporary restraining order be sealed until further order of the Court.

**IT IS FURTHER ORDERED**, that the Clerk of the United States District Court deliver a copy of this Order to the United States Marshal for the District of the Virgin Islands and that the United States Marshal or his designee shall, as soon as practicable after the unsealing of the temporary restraining order, serve copies of this Order upon defendants, Fathieh Yousuf, corporate shareholders, mortgage holders of real property identified herein, and Merrill Lynch, and make a return thereon reflecting the date and time of service.

Dated:

*Sept 18, 2013*



THOMAS K. MOORE  
District Judge

ATTEST:

WILFREDO F. MORALES  
CLERK OF THE COURT

By: Claudette A. Penwa  
Deputy Clerk

cc: Joseph Capone, Trial Attorney  
Michael Panzé, Trial Attorney  
John E. Stevens, AUSA  
Conrad Hoover, U.S. Marshal

CERTIFIED A TRUE COPY THIS

18<sup>th</sup> DAY OF September 2003

WILFREDO F. MORALES  
CLERK OF THE COURT

BY: Claudette A. Penwa  
DEPUTY

CLERK OF THE  
DISTRICT COURT  
AT THUNDERBOLT

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