

Hamed was exposed to criminal liability he was nowhere to be found, yet now that the criminal case is coming to a close he has magically reappeared to feed at the trough.

Furthermore, as detailed below, the Plaintiffs' representations made in this case directly contradict the acts taken in the criminal case. Indeed, the irrefutable evidence shows that the Plaintiffs are attempting to interfere with the resolution of the criminal case, in an attempt to leverage the criminal case to extract a better settlement from the Defendants in the instant case.

The ultimate result of the Plaintiffs' gambit in this case is to prevent the Defendants from comply with the plea agreement, the plea agreement addendum, and effectuate an end-run around the I.R.C. § 7121 Closing Agreement that United and its listed and *de jure* shareholders entered into with the Virgin Islands BIR with the consent of the Federal Government.¹ This case involves both factual and legal issues that are within this Court's jurisdiction and the Motion for Remand should be denied in full.

FACTUAL BACKGROUND

A. The Criminal Action

In or around 2003, as referenced in the Complaint, United, along with certain of its shareholders and non-shareholders, including Mohammed Hamed's son and agent, Waleed Hamed, and son Waheed Hamed, were indicated in a criminal action styled, *United States, et al. v United Corporation, et al.*, case no. 1:05-cr-15 (D.V.I.),² which is pending in this Court. (Complaint ¶¶ 8, 10).

¹ If the Plaintiffs are correct, which they are not, then the factual basis for the plea in the criminal case did not exist. That is to say, if United was not a corporation but instead was a "partnership" under the Internal Revenue Code then United should not have filed a Form 1120S, but instead should have filed a Form 1065, if any was required at all. *See* I.R.C. § 6231(a)(1) (defining a partnership as having 11 or more partners). If that is the case it begs the question as to how can United's 2001 Form 1120S be fraudulent to a material matter when it had no filing obligation in the first place?

² The criminal case has been appealed to the Third Circuit on three (3) different occasions. *See United States v. Yusuf*, 461 F.3d 374 (3d Cir. 2006) ("*Yusuf I*") (reversing and remanding suppression order); *United States v. Yusuf*, 199 Fed. Appx. 127 (3d Cir. 2006) ("*Yusuf II*") (vacating order releasing restrained assets and remanding for further consideration); *United States v. Yusuf*, 536 F.3d 178 (3d Cir. 2008) ("*Yusuf III*") (vacating order dismissing counts related to international money laundering). Notably absent in each of the three Third

During the criminal case numerous motions were filed by the co-defendants seeking funds to pay protective shareholder income tax deposits and shareholder distributions of United. For example, on November 26, 2008, Judge Finch entered an order (found at Doc. # 1004) (Ex. 1) noting that: “The Court previously granted that portion of the motion requesting release of funds to pay protective shareholder income tax deposits and reserved its ruling on the question of whether proportional shareholder distributions would be released.” Ex. 1 at p. 1. Judge Finch goes on to state that:

any shares of Defendants Fathi Yusuf, Waleed Hamed, and Waheed Hamed fall within the TRO’s scope.³ Allowing shareholder distributions to Defendants Fathi Yusuf, Waleed Hamed, or Waheed Hamed would require a modification of the TRO that such Defendants agreed to forego. No other shareholders’ interests are similarly subject to forfeiture and therefore, the shares of the other shareholders do not fall within the bounds of the TRO.

Ex. 1 at p. 2. Ultimately Judge Finch entered an order permitting the release of funds to United’s shareholders with the exception of Fathi Yusuf. Ex. 1 at p. 3.

The Government moved to stay Judge Finch’s November 26, 2008, Order on December 2, 2008 (found at Doc. # 1006) (Ex. 2) and stated:

This matter has been pending for over five years and the non-defendant shareholders have not received any shareholder distributions. Withholding distributions for an additional amount of time should not cause the non-defendant shareholders undue hardship. In contrast, releasing funds could cause great prejudice to the Government. Should the Court release funds to the nondefendant shareholders, there is no guarantee that those funds will be returned should the Court reconsider its Order or the Order be vacated on appeal.

Ex. 2 at p. 2.

Circuit opinions is any reference that Mohammed Hamed was a partner in United (indeed there is no reference to Mohammed Hamed at all). *See Yusuf I*, 461 F.3d at 378, fn. 1 (failing to mention Mohammed Hamed); *Yusuf II*, 199 Fed. Appx. at 129 (“In December 2003, defendants Fathi Yusuf, Maher Yusuf, and Nejeah Yusuf, and non-defendant shareholders Fawzia Yusuf and Yusuf Yusuf, filed a motion requesting a modification of the Temporary Restraining Orders and a release of funds in order to pay their legal defense.); *Yusuf III*, 536 F.3d at 181 (failing to mention Mohammed Hamed). Additionally, Waleed Hamed has been represented by the same counsel during the pendency of the criminal case and in all three Circuit Court cases. ³ However, the first footnote to the November 26, 2008, order states: “*It is the Court’s understanding that Defendants Waleed Hamed and Waheed Hamed are not United shareholders.*” (emphasis added). Ex. 1 p. 2.

On December 6, 2008, the Government moved to reconsider Judge Finch's November 26, 2008, Order (found at Doc. # 1007) (Ex. 3). The Government brought to Judge Finch's attention that "non-defendant petitioners Fawzi Yusuf and Yusuf F. Yusuf submitted motion and pleading to this Court." Ex. 3 at p. 2. The Government goes on to submit that: "the non-defendant shareholders suffer no prejudice when reporting a distributive share of United's income because the tax on that income is being paid with United's assets." Ex. 3 at p. 5. Nowhere in the Government's moving papers is any mention of a "partnership" or an interest in United by Mohammed Hamed. Mohammed Hamed also remained silent on this or any other issue in the criminal case notwithstanding his knowledge of the motions filed in the criminal case.⁴

On December 9, 2008, United and the unindicted shareholders of United (*viz.*, Fawzi Yusuf and Yusuf F. Yusuf) opposed the Government's motion to stay (found at Doc. # 1009) (Ex. 4). Nowhere in said opposition was there any mention of a "partnership" or an interest in United by Mohammed Hamed.

On December 10, 2008, Waleed Hamed through counsel filed a supplement to his motion to dismiss the indictment in the criminal case (found at Doc. # 1011) (Ex. 5) and affirmatively stated that:

As part of its scheme to separate the defendants from use (*sic*) of legitimate sources of income to fund their defenses, the government compels United Corporation's shareholders to pay income tax on their flow-through income from the company, yet seeks to prohibit the shareholders' access to those same taxed funds.

Ex. 5 at p. 6-7.

On December 22, 2008, United responded in opposition to the Government's motion to reconsider (found at Doc. # 1015) (Ex. 6). United's opposition stated:

⁴The Plaintiffs should be equitably estopped from contesting who was/is the "true owner" of United based on their silence. *See New Hampshire v. Maine*, 532 U.S. 742 (2001) (The doctrine of judicial estoppel precludes a party from contradicting its previous position where there has been no change in the law, simply because its interests have changed).

The Court's decision to first rule on the taxation of United Corporation's distributable income and reserve ruling on the issue of shareholder distributions has provided the Court, the Defendants, and United Corporation's shareholders the opportunity to review the Government's position and conduct regarding the treatment of the subject income.

Ex. 6 at p. 5. United's opposition then goes on to state:

[the Government] has accepted tax deposits from these specified shareholders *of over \$10 million* on the premise that flow-through income from United Corporation's retail grocery business for the years 2004 through present is their taxable income and property.

Ex. 6 at 5-6 (emphasis in original).

On February 5, 2009, the Government filed its opposition (found at Doc. # 1039) (Ex. 7) to United's show cause motion. The Government's opposition acknowledged that "the Court denied the motion to intervene filed on behalf of the unindicted shareholders. As such, they lack standing and are not recognized in this forum." Ex. 7 at fn. 1. The unmistakable conclusion from this unrefuted statement is that Mohammed Hamed never moved to intervene in the criminal case asserting an interest (in any form) in United or the profits United generated. Indeed, the Government recognized that "by letter dated January 14, 2009, defendant United Corporation asked the USMS to release \$1.2 million to pay tax deposits on distributable shareholder income for the fourth quarter of 2008." Ex. 7 at 2. Attached to the Government's opposition was a declaration of Leonard Briskman, the monitor of United in the criminal case (found at Doc. # 1039-1). Ex. 8. Mr. Briskman's declaration stated that Randall P. Andreozzi⁵ requested the release of \$1.2M to pay the tax deposits for the shareholders of United. Ex. 8 at ¶5. The Government's February 5th opposition recognized that the: "Defendant's January 14 letter stated the names of the shareholders, their ownership percentages (either 32.5% or 7%), and listed the requested tax deposits of either \$390,000 or \$84,000, depending on the ownership percentage." Ex. 7 at p. 2.

⁵ Mr. Andreozzi is one of the attorneys for Waleed Hamed in the criminal case; the other is Gordon Rhea.

United filed its reply (found at Doc. # 1057) (Ex. 9) to the Government's opposition to the show cause motion on February 17, 2009. United's reply included as an exhibit the USMS acknowledgement of release of funds (found at Doc. # 1059-1) (Ex. 10). The acknowledgement was the hand written authorization of Mr. Briskman on a letter from Randall P. Andreozzi to Mr. Briskman seeking the release of funds to pay United's shareholders' tax deposits.

On March 24, 2009, Mr. Gordon Rhea filed a status report with Judge Barnard (found at Doc. # 1080) (Ex. 11), which listed various docket entries addressing, *inter alia*, shareholder distribution motions. Ex. 11 at p. 1. Of particular relevance, Waleed Hamed, through counsel, acknowledges that Doc. # 564 in the criminal case addresses shareholder distributions. Doc. # 564 in the criminal case was filed on September 20, 2005.

On July 9, 2009, a hearing was held before Judge Finch and a transcript of the hearing was produced (found at Doc. # 1213) (Ex. 12). At the July 9th hearing Mr. Rhea, counsel for Waleed Hamed, deferred to United's counsel regarding the pending shareholder distribution issues. Ex. 12 at 6:25-7:2. United's counsel stated to Judge Finch: "And the Government's motion for reconsideration raises the issue, among other things, as to, for the first time I've seen, in any event, has raised the issue as to whether or not the unindicted shareholders to whom these distributions were to be made are, in fact, the shareholders." Ex. 12 at 7:12-17. The Government's counsel remarked that:

One of the issues that has arisen is who, in fact, owns the shares of United. On paper, it is entirely owned by the Yusuf Family, and it is distributed amongst various family members. However, I believe in civil litigation there was deposition testimony in which it indicated that setting aside the formalities of share certificates, that, in fact, the shares were owned fifty percent by the Yusuf Family and fifty percent by the Hamed Family, and no indication as to how it broke down or even if it broke down between individual family members.

Ex. 12 at 9:15-25. United's counsel on rebuttal told Judge Finch that:

The Virgin Islands Government has insisted throughout this litigation that, in fact, the unindicted shareholders make tax deposits on the estimated flow-through

income from this corporation, has received that without complaint, that money without complaint, and I believe they're estopped from suggesting that those individuals are not, in fact, the proper shareholders of the corporation.

Ex. 12 at 12:6-13. At no point during the July 9th hearing did Waleed Hamed's attorneys (Mr. Rhea or Mr. Andreozzi) ever dispute who the "real" owners of United were nor did they inform Judge Finch that Mohammed Hamed had any interest in United Corporation. *See* Ex. 12, *passim*.

Interestingly, on July 13, 2009, the Government filed a supplement to its motion for reconsideration (regarding shareholder distributions) (found at Doc. # 1151) (Ex. 13) where it raised "that that the individuals identified as shareholders on United Corporation may not actually own any part of the company." Ex. 13 at p. 1. The Government attached a deposition transcript (found at Doc. # 1151-1) (Ex. 14) (the very same deposition transcript that the Plaintiffs have attached to their complaint in the instant case) for the support that Mohammed Hamed may own 50% of United. Ex. 13 at p. 2.

United responded (found at Doc. # 1209) (Ex. 15) to the Government's supplement to its motion for reconsideration (regarding shareholder distributions) on September 8, 2009. In United's response it clearly disavows that Mohammed Hamed was a shareholder in United. Ex. 15 at p. 5. Indeed, United reasserted that United was owned by the individual members of the Yusuf family. Ex. 15 at p. 6.

On December 29, 2009, the Government filed its emergency motion for mediation (found at Doc. # 1233), and as a result of the mediation on February 26, 2010, a plea agreement (found at Doc. # 1248) (Ex. 16) was entered into. As part of the plea agreement:

United agree[d] to cooperate with the Government and the VIBIR in filing complete and accurate corporate income tax returns and gross receipts returns for years 2002, 2003, 2004, 2005, 2006, 2007, and 2008 and in paying the full the amounts due thereupon. United agrees to comply with all current tax reporting and payment obligations between the execution of this agreement and sentencing. In addition, prior to the sentencing hearing in this matter, United's shareholders (FY 32.5%, FY 32.5%, SY 7%, ZY 7%, YY 7%, MY 7%, NY 7%), and the individual defendants

shall file the outstanding returns and reporting documents and shall make full payments of the amounts due thereupon.

Ex. 16 at p. 11. Waleed Hamed's two attorneys executed the plea agreement. Ex. 16 at p. 14.

Appended to the plea agreement was an exhibit establishing that:

The parties agree to meet with each other and with representatives of the Virgin Islands Bureau of Internal Revenue (VIBIR) to try to reach agreement for restitution number for unpaid gross receipts taxes, corporate income taxes, and individual income taxes for the Indictment years 1996, 1997, 1998, 1999, 2000, and 2001.

Ex. 16 at p. 17. On October 1, 2010, Judge Finch accepted United's guilty plea and adjudicated United guilty of Count 60 of the Third Superseding Indictment (found at Doc. # 1289).

Subsequently, on February 7, 2011, the parties in the criminal case filed with this Court an addendum to the plea agreement (found at Doc. # 1304-1) (Ex. 17). As part of the plea agreement addendum United agreed to pay \$10M to the VIBIR for restitution. Ex. 17 at p. 1. Waleed Hamed, by his two attorneys executed the plea agreement addendum. Ex. 17 at p. 5 and 6.

As a result of the plea and plea agreement addendum, United entered into a "Closing Agreement" with the VIBIR pursuant to I.R.C. § 7121. Ex. 18. The Closing Agreement clearly references the plea agreement (Doc. # 1248) and the plea agreement addendum (Doc. # 1304-1) in the criminal case. The Closing Agreement by its very terms was final and conclusive for the tax years at issue and on July 19, 2011, a \$10M check was tendered to the VIBIR.⁶ Ex. 18 at p. 7.

On August 12, 2011, Mr. Andreozzi (attorney for Waleed Hamed) filed a motion for the release of funds from United to the shareholders of United (found at Doc. # 1314) (Ex. 19). Notably absent from the August 12th filing was any mention of Mohammed Hamed. Judge Barnard granted the release of funds motion on August 19, 2011 (found at Doc. # 1316).

At no point in time did Waleed Hamed ever voice his objections to the distributions to the shareholders of United nor did he ever raise the issue that his father, Mohammed Hamed, was a

⁶The Closing Agreement, the plea agreement, the plea agreement addendum are likewise conclusive as to the corporate status and ownership of United.

partner in United or that Mohammed Hamed was entitled to a share of United's profits. The fact that Waleed Hamed, Mohammad Hamed's authorized agent and sole source of the "factual claims" contained in the complaint and motion for a temporary restraining order filed in this case, stood mute in the criminal case for the better part of a decade speaks volumes.

B. Correspondence⁷

On August 31, 2012, counsel for the Plaintiff in this matter sent a letter to the attorneys representing the co-defendants in the criminal case and to the accountants (Mr. Ronald J. Soluri, Sr., CPA and Mr. Howard Epstein, CPA) who were providing accounting services to United and the other co-defendants (Ex. 20). The August 31st letter also included a draft letter that was addressed to the attorney representing the Government in the criminal case. Ex. 20 at p. 7-36. The August 31st letter states in no uncertain terms that: "[h]opefully the US Attorney will understand the situation and (1) take action necessary to enforce the Court injunction and (2) *agree that the filing of partnership returns are acceptable.*" Ex. 20 at p. 2 (emphasis added).

On September 10, 2012, the undersigned sent a letter to Mr. Soluri (Ex. 21). The undersigned merely requested that Mr. Soluri included the undersigned in all further correspondence/communications with the defense team in the criminal case.

On September 11, 2012, Mr. Soluri sent an email to the undersigned asking if the undersigned had been added to the joint defense agreement in the criminal case (Ex. 22).

On September 13, 2012, Mr. Andreozzi, counsel for Waleed Hamed in the criminal case, sent the undersigned a letter via facsimile (Ex. 23). As Mr. Andreozzi clearly states in his September 13th correspondence: "[y]ou have not signed the joint defense agreement or any amendment to it;

⁷The Defendants bring the correspondence to this Court's attention to illustrate that the Plaintiffs are in fact attempting to frustrate the resolution of the criminal case by preventing United from complying with the terms of the plea agreement (i.e., filing of corporate income tax returns), by preventing United's counsel from communicating to the accountants retained to assist in the preparation of United's book, records, and income tax returns, and by unilaterally excommunicating the undersigned from the joint defense team in the criminal case. The Plaintiffs' words say one thing, but their actions tell a very different story.

and I have certainly not entered into a joint defense agreement that includes you as counsel.” Ex. 23 at ¶2. Mr. Andreozzi’s letter goes on to state: “[m]oreover, we understand that you represent, in a pending civil dispute, individuals and interests contrary to those of some (if not all) of the defendants covered under the executed joint defense agreement. Therefore, you are not entitled to any joint defense information, communications or materials.” Ex. 23 at ¶3.

The following day, September 14, 2012, the undersigned sent a letter to the attorneys that were part of the joint defense team in the criminal case (Ex. 24). The September 14th correspondence asked “that everyone, individually, to please state in writing whether they agree with Mr. Andreozzi’s position that I am not covered by the joint defense agreement because I have ‘not signed the joint defense agreement or any amendment to it.’” Ex. 24 at ¶2.

On September 17, 2012, the undersigned received via USPS a letter from Ms. Pamela Colon (counsel for Waheed Hamed) (Ex. 25). Although the September 17th letter indicates that it was sent via email and USPS the undersigned has no record of receiving the letter via email. In any event, the letter appears to be a near identical copy of Mr. Andreozzi’s September 13th letter. *Compare* Exhibit 25 *with* Exhibit 23.

On September 19, 2012, counsel for Waleed Hamed in the criminal case, Mr. Rhea, sent the attorneys representing the respective co-defendants an email terminating the joint defense agreement (Ex. 26).

On September 26, 2012, counsel for the Plaintiffs in the instant case sent an email (which the undersigned was not copied on) to presumably the other attorneys on the then dissolved joint defense team stating in no uncertain terms that: “Folks-I just want to remind everyone that Attorney DiRuzzo is not part of the joint defense team and is in fact hostile to some of the defendants whose counsel and accountants are part of that team. *Please do not share any information*

covered by the Kovel agreement with him absent the express authorization of Wally Hamed.” Ex. 27 (emphasis added).

On October 12, 2012, the undersigned sent opposing counsel correspondence seeking clarification as to what, if any, potential tax exposure he envisions (Ex. 28). On October 22, 2012, counsel for the Plaintiffs responded and detailed three different tax issues (Ex. 29). In the October 22nd correspondence counsel for the Plaintiffs’ posits that:

As there is clearly a partnership, the filing of tax returns showing the supermarket income as being income of Untied would be filing false tax returns. On the other hand, there is a clear opportunity to file proper returns now, which should not be missed. Indeed, even if your client insists that United owns the supermarkets, contrary to the evidence mentioned above, *the far better course would be to await a determination of this issue before filing any returns.*

Ex. 21 at p. 2 (emphasis added).

C. Relevant Procedural Background

On or about September 17, 2012, the Plaintiffs filed their initial complaint with the Virgin Islands Superior Court. Doc. # 1-3. In the initial Complaint the Plaintiffs put front and center the on-going criminal case. *See* Doc. # 1-3 at ¶¶8, 10, and 19(g). On October 4, 2012, the Defendants removed to this Court. Doc. # 1. On October 9, 2012, the Defendants filed motions to dismiss, more definite statement, and to strike. Doc. # 9. On October 11, 2012, the Plaintiffs moved to remand to Superior Court. Doc. # 13. On October 19, 2012, the Plaintiffs’ filed their First Amended Complaint (Doc. # 15) and comparison (i.e., red-lined) document (Doc. # 17). However, as is readily apparent from the Plaintiffs’ comparison document, the Plaintiffs merely deleted any reference to the on-going criminal case. *See* Doc. # 17 at p. 7, 8, and 15

ARGUMENT

As a threshold matter, this Court must first address is: which complaint governs this Court’s analysis? As detailed *infra*, it is the Plaintiffs’ initial complaint.

A court must consider the complaint at the time of removal to determine if removal was appropriate in the first instance. *See Pullman Co. v. Jenkins*, 305 U.S. 534, 537 (1939); *see also In Angus v. Shiley, Inc.*, 989 F.2d 142, 145 (3d Cir. 1993) (concluding that removal jurisdiction established by the plaintiff's original complaint would not be destroyed by an amended complaint). Accordingly, this Court must examine the Plaintiffs' initial complaint (Doc. # 1-4) as that was the pleading at issue when the Defendants removed.

I. This Court Has Exclusive Jurisdiction

48 U.S.C. § 1612(a) provides this Court with “exclusive jurisdiction over the income tax laws applicable in the Virgin Islands.” Contrary the Plaintiffs' assertions, this case does implicate the income tax laws applicable in the Virgin Islands and, as such, this Court and only this Court can address the Plaintiffs' complaint.

What the Plaintiffs are attempting to accomplish is to prevent United from filing its corporate income tax return with the Virgin Islands *as is required* under the terms of the plea agreement. Ex. 16. The plea agreement could not be any clearer – United must file corporate (and not partnership) income tax returns for 2002 – 2008. Ex. 16 at p. 11. To that end, the individual shareholders of United (as identified in the plea agreement as the individual members of the Yusuf family (Ex. 16 at p. 11)) must also file their income tax returns and pay the amount thereon. *Id.* However, if United cannot prepare its Form 1120S, it cannot issue the Schedule K-1s to the respective shareholders. The end result of this case would be that United will be enjoined from complying with the terms of the plea agreement.

Further, the Closing Agreement with the VIBIR by its very term applies to “United Corporation, United's shareholders and all of the individual defendants and related individuals and entities identified in the various pleadings and motions in Case No. 1:05-cr-00015-RLF-GWB for each of the years 1996 through 2001 as addressed with particularity in the Plea Agreement.” Exhibit

18 at p. 2. The Closing Agreement on its face referenced the criminal case, the plea agreement, and the plea agreement addendum, and was made pursuant to I.R.C. § 7121.

By operation of law “United’s shareholders and all of the individual defendants and related individuals and entities identified in the various pleadings and motions in Case No. 1:05-cr-00015-RLF-GWB for each of the years 1996 through 2001 as addressed with particularity in the Plea Agreement” are prohibited from altering any of the tax filings, or seeking a refund of taxes paid for those years. However, as demonstrated in opposing counsel’s October 22nd letter (Ex. 18), Mohammed Hamed and Waleed Hamed are advancing just such a precluded a theory (i.e., that Mohammed Hamed has always been a partner and that United needs to file Form 1605 partnership returns instead of corporate returns (Ex. 18 at p. 2)). Actions such as these are clearly barred by the terms of the I.R.C. § 7121 Closing Agreement. In other words, the die has been cast; the Plaintiffs cannot now, years after the fact, come into to any Court in an attempt to eviscerate the terms, benefits, and burdens United, United’s shareholders, all of the individual defendants, related individuals, and entities received by entering into the plea agreement, the plea agreement addendum, and the Closing Agreement.⁸

I.R.C. § 7121(b) provides finality for taxpayers by being expressly “final and conclusive” “*in any suit, action, or proceeding*, such agreement, or any determination, assessment, collection, payment, abatement, refund, or credit made in accordance therewith, *shall not be annulled, modified, set aside, or*

⁸ Moreover, as detailed above, the timing of the instant case is conspicuous. At no point did anyone in the criminal case come forward and state that Mohammed Hamed was a partner in United and that Mohammed Hamed (and not the disclosed *de jure* shareholders of United) was entitled to a shareholder or partner distribution or that Mohammed Hamed was liable for any unpaid taxes. Indeed, in July of 2009, *see* Ex. 13 and 14, the Government raised the issue of who the “real” owners of United were, but at the July 9, 2009, hearing when United’s counsel refuted the Government’s allegation both Waleed Hamed’s and Waheed Hamed’s respective attorneys remained silent, thus focusing the substantial tax liability at the feet of the Yusuf family members. *See* Ex. 12, *passim*; *see also* Ex. 10 (letter from Waleed Hamed’s attorney to the U.S. Marshal Service seeking a release of funds for United’s shareholders’ tax deposits); Ex. 19 (motion by Waleed Hamed’s attorney seeking release of funds from United to pay the shareholders of United after the I.R.C. § 7121 Closing Agreement was executed).

disregarded.” I.R.C. § 7172(b)(2) (emphasis added). But that is exactly what the Plaintiffs are seeking - to annul, modify, set aside, or disregard that United is a *de jure* corporation with stated shareholders - the Yusuf family members, and has a corporate income tax filing obligation.

The Third Circuit has stated in no uncertain terms that

we hold that the District Court of the Virgin Islands has ‘exclusive jurisdiction’ over proceedings ‘with respect to the income tax laws applicable to the Virgin Islands’ only as against local courts in the Virgin Islands. 48 U.S.C. § 1612(a). The contested language is a division of jurisdiction in favor of the federal courts, in contrast to local courts, with respect to Virgin Islands tax cases.

Birdman v. Office of the Governor, 677 F.3d 167, 177 (3d Cir. 2012). Because the Plaintiffs’ initial complaint (as further detailed in the aforementioned correspondence) seeks to disregard the Closing Agreement entered into pursuant to I.R.C. § 7121, and prohibit compliance with the plea agreement and the terms of probation detailed in the plea agreement, this Court has exclusive jurisdiction over the Plaintiffs’ case while the Superior Court has no jurisdiction.

Additionally, the Plaintiffs’ initial complaint seeks to enforce an Order of this Court entered in the criminal case in the Superior Court. *See* Doc. # 1-3 at ¶ 8 and 10 (“The parties are currently prohibited from removing funds from these accounts other than to operate the three Plaza supermarkets because of an Order entered by the District Court of the Virgin Islands in the criminal matter entitled, *USA v. United Corporation, et al.*, District Court Criminal No. 2005-15.”). Obviously, this Court has the capacity and is best suited to enforce its own Orders, which further support the Defendants’ position that the initial complaint provided the Defendants with the ability to properly remove the case to this Court.

Accordingly, because the Plaintiffs’ initial complaint is predicated upon the Orders of this Court in the criminal case, and because the Plaintiffs seek to disturb the plea agreement, the plea agreement addendum, and the Closing Agreement entered into pursuant to I.R.C. § 7121, this Court

“has exclusive jurisdiction” while the Superior Court lacks jurisdiction to entertain this case. The Plaintiffs’ motion for remand should be denied.

II. This Court has Federal-Question Jurisdiction

In *Grable & Sons Metal Products, Inc. v. Darue Engineering & Manufacturing*, 545 U.S. 308 (2005) the Supreme Court upheld federal jurisdiction in a state-law action turning on the interpretation of a federal tax law. *Grable* recognized that in addition to the frequently used federal jurisdiction statute, 28 U.S.C. § 1441,

[t]here is, however, another longstanding, if less frequently encountered, variety of federal ‘arising under’ jurisdiction, this Court having recognized for nearly 100 years that in certain cases federal-question jurisdiction will lie over state-law claims that implicate significant federal issues. The doctrine captures the commonsense notion that a federal court ought to be able to hear claims recognized under state law that nonetheless turn on substantial questions of federal law, and thus justify resort to the experience, solicitude, and hope of uniformity that a federal forum offers on federal issues.

Grable, 545 U.S. at 312 (internal citation omitted).

Contrary to the Plaintiffs’ contention, this case, although cast as a local level partnership action, implicates significant federal tax issues. These issues, as described above, are the tax issues and obligations set forth in the plea agreement, the plea agreement addendum, the Closing Agreement, and the ultimate resolution of the on-going criminal case. The *Grable* Court cited as a “classic example” *Smith v. Kansas City Title & Trust Co.*, 255 U.S. 180 (1921) “a suit by a shareholder claiming that the defendant corporation could not lawfully buy certain bonds of the National Government because their issuance was unconstitutional. Although Missouri law provided the cause of action, the Court recognized federal-question jurisdiction because the principal issue in the case was the federal constitutionality of the bond issue.” *Grable*, 545 U.S. at 312. The similarities of the case at bar to *Smith* are striking. Here we have a suit by a purported partner claiming that the defendant corporation cannot lawfully file its income tax returns because doing so would be “the

filing of a false tax returns”⁹ (Ex. 21 at p. 2). The principal issues in this case are: (i) whether United as a *de jure* corporation that made a Subchapter S election under the Internal Revenue Code is legally obligated to file its Form 1120S for the years at issue, (ii) whether the I.R.C. § 7121 Closing Agreement prevents the relief the Plaintiffs seek, and (iii) whether United is bound to the terms of the plea agreement to file its “corporate income tax returns.” Ex. 16 at p. 11.

What the Plaintiffs fail to take into account is that once an entity, in this case United, files an “election by a small business corporation” (Form 2553) *available at* <http://www.irs.gov/pub/irs-pdf/f2553.pdf>, under I.R.C. § 1362, that election remains in effect until another valid election is made. Treas. Reg. § 301.7701-3(c)(1)(v)(C). In other words, the Plaintiffs’ attempt to have United file partnership returns (Form 1065) is impermissible under the plea agreement, the plea agreement addendum, the Closing Agreement, *and the applicable Treasury Regulations*.

In the case at bar there is “not only a contested federal issue, but a substantial one, indicating a serious federal interest in claiming the advantages thought to be inherent in a federal forum.” *Grable*, 545 U.S. at 313 (internal citation omitted). Further, given that the operative facts at issue stem from the criminal case, there will not be “any disruptive portent,” *id.* at 314, in this Court exercising federal jurisdiction as Territorial-law claim raises federal issues, that are substantial, disputed, that this Court must entertain under 48 U.S.C. § 1612(a), but in any event, at a minimum may entertain under 28 U.S.C. § 1331. If the meaning of the federal tax provision (I.R.C. § 6335) was an important issue of federal law that sensibly belonged in a federal court in *Grable*, then it follows that the meaning of the plea agreement, the plea addendum, the Closing Agreement under I.R.C. § 7121, and the “check the box” entity election under Treas. Reg. § 301.7701-3 sensibly belong before this Court. Accordingly, there is federal “arising under” jurisdiction as the Territorial-

⁹ The filing of a false return is a crime under I.R.C. § 7206.

law claim more than implicates significant federal issues, this Court has jurisdiction and should deny the Plaintiffs' motion to remand.

III. Federal Officer Authority

Removal is proper when:

[t]he United States or any agency thereof or any officer (or any person acting under that officer) of the United States or of any agency thereof, [is] sued in an official or individual capacity for any act under color of such office or on account of any right, title or authority claimed under any Act of Congress for the apprehension or punishment of criminals or the collection of the revenue.

28 U.S.C § 1442(a)(1).

“The words ‘acting under’ are broad, and [the Supreme] Court has made clear that the statute must be ‘liberally construed.’” *Watson v. Philip Morris Cos.*, 127 S. Ct. 2301, 2304-2305 (2007). The *Watson* Court defined “acting under” as “acting in a certain capacity, considered in relation to one holding a superior position or office” which “typically involves ‘subjection, guidance, or control.’” *Id.* at 2307.

With these definitions in mind it is clear that United and its shareholders have been, and continue to be, subjected to the guidance or control of both the Federal Government and the Virgin Islands Government as detailed in the plea agreement, the plea agreement addendum, and the terms of probation that United must comply with, which includes *inter alia* “a periodic review of financial statements and tax returns of United.” Ex. 16 at p. 5, 7-9. Indeed, “United acknowledge[d] that a special condition of probation will require *that all corporate returns be filed*, and all amounts due and owing under this agreement and all taxes due and owing for tax years 2002 through 2008 must be paid prior to the termination of the period of probation.” Ex. 16 at p. 11 (emphasis supplied).

In contrast to what the Plaintiffs aver, this case requires something more than “complying with the tax laws” or “filling out complex federal tax forms” as United is under the direct supervision and control (as detailed in the plea agreement including United’s term of probation) of

the Federal Government. If the Plaintiffs have it their way United will not be able to file its corporate income tax returns and, as such, will be in violation of the express terms of the plea agreement. United should not have to make the Hobson's choice between failing to comply with the terms of the plea agreement (which of course would result in a revocation of probation hearing under Fed.R.Crim.P. 32.1) and complying (assuming *arguendo*, that the Plaintiffs were able to convince a court to enjoin United from filing its corporate income tax returns) with a local level court order prohibiting the filing of corporate income tax returns.

Because the Defendants are not federal officers, they must satisfy a three-pronged test to entitle them to removal under 28 U.S.C. § 1442(a)(1). First, the Defendants must establish that they are a "person" within the meaning of the statute who "act[ed] under [a federal] officer[.]" 28 U.S.C. § 1442(a)(1). Second, the Defendants must demonstrate that they performed the actions for which they are being sued "under color of [federal] office[.]" *Id.* Third, the Defendants must show that they raised a colorable federal defense. *See Jefferson County v. Acker*, 527 U.S. 423, 431 (1999). Each prong will be discussed in turn.

First, the Defendants are each a "person" under § 1442 which includes both individuals and corporations. *See Bennett v. MIS Corp.*, 607 F.3d 1076, 1085 (6th Cir. 2010) (collecting cases). For the reasons stated above the Defendants are "acting under" the terms of the plea agreement and terms of probation. To that end the Sixth Circuit's opinion in *Bennett* is instructive. In *Bennett* the Sixth Circuit found that a government contractor that was closely monitored by federal officers went beyond "simple compliance with the law" and the relationship met the "acting under" requirement since it involved "detailed regulation, monitoring, and supervision." *Id.* at 1088. Here, the Defendants are, and United will continue to be, subject to detailed regulation, monitoring, and supervision, by the U.S. Probation Office (an extension the Federal Government), during the term

of probation.¹⁰ Accordingly, if the governmental contractor in *Bennett* was “acting under” the authority of a federal officer, United’s compliance with its affirmative obligation to file corporate income tax returns should also qualify as “acting under” for purposes of 28 U.S.C. § 1442.

Second, the Plaintiffs are suing to enjoin the actions of the Defendants under color of federal office.

“To satisfy th[is] [] requirement, [a removing party] must show a nexus, a ‘causal connection’ between the charged conduct and [the] asserted official authority.” [*Acker*, 527 U.S. at 431 (1999)] (quoting *Willingham [v. Morgan]*, 395 U.S. [402] 409 [1969]). In other words, the removing party must show that it is being sued because of the acts it performed at the direction of the federal officer. *See Watson*, 551 U.S. at 148; [additional internal citations omitted]. The Supreme Court has indicated that “[t]he hurdle erected by this requirement is quite low.” *Isaacson [v. Dow Chem. Co.]*, 517 F.3d [129], 137 [2d Cir. 2008] (citing *Maryland v. Soper*, 270 U.S. 9, 33, 46 S. Ct. 185, 70 L. Ed. 449 (1926) (“[i]t is enough that [the federal officer’s] acts or [] presence at the place in performance of his official duty constitute[s] the basis” for the lawsuit).

Bennett, 607 F.3d at 1088. Here, the Defendants are being sued because of the acts that it is about to perform at the direction of the federal officer – the terms of the plea agreement and probation, and the acts that the Defendants already have performed – the execution of the Closing Agreement and attendant payment of \$10M to settle the civil tax liability. The nexus is clear, the Defendants compliance with both the plea agreement and the Closing Agreement have, at least in part, given rise to the impetus for the Plaintiffs initial complaint. Defendants submit that they have cleared this low hurdle.

Third, the Defendants must show that they raised a colorable federal defense. *Acker*, 527 U.S. at 431. However, as the Second Circuit acknowledged: “[c]ourts have imposed few limitations on what qualifies as a colorable federal defense. At its core, the defense prong requires that the

¹⁰ By analogy, if “in the criminal context, an individual who is on parole or released on his or her own recognizance is deemed in custody because of the significant restrictions imposed on his or her freedom,” *Kumarasamy v. AG of the United States*, 453 F.3d 169, 172 (3d Cir. 2006), these restrictions, including affirmative obligation to perform an act, must rise to the level of supervision need to be construed as “acting under” in the context of 28 U.S.C. § 1442.

defendant raise a claim that is ‘defensive’ and ‘based in federal law.’” *Isaacson v. Dow Chem. Co.*, 517 F.3d 129, 138 (2d Cir. 2008). Furthermore, “[c]ompliance with federal law, therefore, provides a colorable federal defense under some circumstances, but it is not coterminous with an immunity defense.” *Id.* Here, the colorable federal defense is the compliance with the plea agreement, the plea agreement addendum, the I.R.C. § 7121 Closing Agreement, and the terms of the conditions of United’s probation. To be “colorable,” the defense need not be “clearly sustainable,” as the purpose of the statute is to secure that the validity of the defense will be tried in federal court. *Willingham*, 395 U.S. at 407. In this context the federal defense is complying with this Court’s orders, the direction of the VIBIR, and direction of the U.S. Probation office. These claims are defensive, based in federal law, and are in compliance of federal law. Accordingly, the third prong is satisfied.

To be sure, the Defendants admit, as they must, that this appears to be a matter of first impression within this Circuit, and from what the undersigned’s research has uncovered in any Circuit. Accordingly, absent any case law to the contrary, the Supreme Court’s guidance that the removal statutes must be “liberally construed,” *see Watson, supra*, militates in favor of finding jurisdiction under the Federal Officer Authority of 28 U.S.C § 1442(a)(1). Thus, the Plaintiffs’ motion for remand should be denied.

IV. Supplemental Jurisdiction

As this Court has jurisdiction over this case as detailed above, this Court would be well within its discretion to exercise supplemental jurisdiction pursuant to 28 U.S.C § 1367(a). The Plaintiffs’ partnership causes of action sounding in the Virgin Islands Uniform Partnership Act “form part of the same case or controversy under Article III¹¹ of the United States Constitution.” 28 U.S.C. § 1367(a).

¹¹ “By virtue of [the 1984 amendments to the Revised Organic Act], the District Court [of the Virgin Islands] now possesses the jurisdiction of a[n Article III] ‘District Court of the United States,’ though it remains an Article IV Court.” *Parrott v. Gov’t of V.I.*, 230 F.3d 615, 619, 43 V.I. 277 (3d Cir. 2000). “In effect, the

CONCLUSION

WHEREFORE, for the reasons stated herein, the Defendants request that this Court enter an Order denying Plaintiffs' Motion to Remand.

Respectfully submitted,

/s/ Joseph A. DiRuzzo, III
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Dated October 25, 2012

CERTIFICATE OF SERVICE

I hereby certify that, on October 25, 2012, I electronically filed the foregoing document with the Clerk of the Court using CM/ECF. I also certify that the foregoing document is being served this day on the following counsel of record via transmission of a Notice of Electronic Filing generated by CM/ECF: Joel H. Holt, Esq., 2132 Company St. Suite 2, Christiansted VI 00820; Carl J. Hartmann III, Esq., 5000 Estate Coakley Bay, L-6, Christiansted, VI 00820.

/s/ Joseph A. DiRuzzo, III
Joseph A. DiRuzzo, III

relationship between the District Court [of the Virgin Islands] and the Superior (formerly Territorial) Court, both of which are Article IV courts, now somewhat resembles the relationship between Article III federal district courts and state courts.” *Birdman v. Office of the Governor*, 677 F.3d 167, 175 (3d Cir. 2012) (internal citations omitted).

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

Case
Hamed et al., v.
Yusuf et al.

Exhibit
1

UNITED STATES OF AMERICA and)
GOVERNMENT OF THE VIRGIN)
ISLANDS,)

Plaintiffs,)

v.)

FATHI YUSUF MOHAMMED YUSUF,)
WALEED MOHAMMED HAMED,)
WAHEED MOHAMMED HAMED,)
MAHER FATHI YUSUF, ISAM)
MOHAMAD YOUSUF, and UNITED)
CORPORATION, dba Plaza Extra)
Supermarkets,)

Defendants.)

CRIM NO. 2005-0015

ORDER

THIS MATTER comes before the Court on the Motion for Release of Additional Funds to Pay Protective Shareholder Income Tax Deposits and Proportional Shareholder Distributions. The Court previously granted that portion of the motion requesting release of funds to pay protective shareholder income tax deposits and reserved its ruling on the question of whether proportional shareholder distributions would be released. At the Court's request, the parties supplemented their briefing on the latter issue.

Among the arguments Defendants and unindicted shareholders make is that they are not requesting relief from the Post-Indictment Temporary Restraining Order issued September 18, 2003 [hereinafter "the TRO"] because the TRO, which restrains all the property specified in the forfeiture allegations, does not encompass their distributions. To the extent that the TRO does not restrain their distributions, they would not be violating the term of the Agreed Amendment to

Restraining Order that they “defer any and all claims to modify the Restraining Order, including to recover the assets affected by the Restraining Order.”

Paragraph 77 of Criminal Forfeiture Allegation 2 alleges that the forfeitable property includes “[t]he interests of individual defendants FATHI YUSUF, WALEED HAMED, and WAHEED HAMED in the enterprise, including individual shares and rights and entitlements to profits and funds from UNITED and other corporate members of the enterprise.” Through the relation-back doctrine, the title to these Defendants’ shares may ultimately be perfected in the United States, dating back to the moment when these shares became forfeitable. See United States v. A Parcel of Land, 507 U.S. 111, 126-127 (1993). Therefore, any shares of Defendants Fathi Yusuf, Waleed Hamed, and Waheed Hamed fall within the TRO’s scope.¹ Allowing shareholder distributions to Defendants Fathi Yusuf, Waleed Hamed, or Waheed Hamed would require a modification of the TRO that such Defendants agreed to forego.

No other shareholders’ interests are similarly subject to forfeiture and therefore, the shares of the other shareholders do not fall within the bounds of the TRO. The forfeitable property includes “[a]ll assets, tangible and intangible, of UNITED,” but does not refer to profits generated from such assets.² Criminal Forfeiture Allegation 2, ¶ 76. Although the assets of Defendant United Corporation [hereinafter “United”] are subject to forfeiture, its profits are not a

¹ It is the Court’s understanding that Defendants Waleed Hamed and Waheed Hamed are not United shareholders.

² The case of United States v. Betancourt, 422 F.3d 240 (5th Cir. 2005), upon which the Government relies, is distinguishable in that the superseding indictment gave Betancourt notice that the United States intended to forfeit his interest in lottery winnings generated from the purchase of a lottery ticket with drug proceeds. In Betancourt, the jury specifically found that the ticket was bought with proceeds from drug trafficking. Id. at 251.

United asset but a form of equity. Whether or not title to the individual shares may pass to the United States should the United States succeed in obtaining a forfeiture judgment against United, at present these shareholders hold title to their individual shares, and the profits presently being generated from United are not subject to forfeiture.

For the foregoing reasons, it is hereby

ORDERED that Motion for Release of Additional Funds to Pay Proportional

Shareholder Distributions is **DENIED** as to Defendants Fathi Yusuf, Waleed Hamed, and Waheed Hamed, and

that the Motion for Release of Additional Funds to Pay Proportional Shareholder Distributions is **GRANTED** as to all other United shareholders.

ENTER:

DATED: November 26, 2008

_____/s/_____
RAYMOND L. FINCH
SENIOR DISTRICT JUDGE

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

Case
Hamed et al., v.
Yusuf et al.

Exhibit
2

UNITED STATES OF AMERICA, and
GOVERNMENT OF THE VIRGIN ISLANDS,
Plaintiff,

v.

FATHI YUSUF MOHAMAD YUSUF,
aka Fathi Yusuf,
WALEED MOHAMMAD HAMED,
aka Wally Hamed,
WAHEED MOHAMMED HAMED,
aka Willie Hamed,
MAHER FATHI YUSUF,
aka Mike Yusuf,
ISAM MOHAMAD YOUSUF,
aka Sam Yousuf,
NEJEH FATHI YUSUF, and
UNITED CORPORATION
d/b/a Plaza Extra,
Defendants.

CRIMINAL NO. 2005-015

GOVERNMENT'S MOTION FOR STAY

The United States of America and the Territory of the Virgin Islands, by and through their undersigned counsel, respectfully move this Court to stay any proceedings or actions which may arise as a result of the Court's November 26, 2008 Order (#1004).

DISCUSSION

The Government is examining the Court's Order and is determining whether it will take an appeal from that Order. In order to permit the Government to complete that deliberative process, it is respectfully requested that the Court enter an order staying any action on the Court's November 26, 2008 Order until the time for the government to file a timely Notice of Appeal has lapsed pursuant to Fed. R. App. P. 4(b)(1)(B)(I) which, at the earliest, would be December 26, 2008.

Further, should the Government file a Notice of Appeal, the Government respectfully requests that the Court enter an order staying any action on the Court's November 26, 2008 Order until the Government either withdraws its Notice of Appeal or a mandate is returned from the Court of Appeals.

This matter has been pending for over five years and the non-defendant shareholders have not received any shareholder distributions. Withholding distributions for an additional amount of time should not cause the non-defendant shareholders undue hardship. In contrast, releasing funds could cause great prejudice to the Government. Should the Court release funds to the non-defendant shareholders, there is no guarantee that those funds will be returned should the Court reconsider its Order or the Order be vacated on appeal.

CONCLUSION

For the reasons stated, the Government respectfully requests that the Court enter an order staying any action regarding the Court's November 26, 2008 Order (#1004) until the time for the government to file a timely Notice of Appeal has lapsed pursuant to Fed. R. App. P. 4(b)(1)(B)(I) which, at the earliest, would be December 26, 2008. Further, should the Government file a Notice of Appeal, the Government respectfully requests that the Court enter an order staying any action on the Court's November 26, 2008 Order until the Government either withdraws its Notice of Appeal or a mandate is returned from the Court of Appeals.

Respectfully Submitted,

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UNITED STATES ATTORNEY

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Dated: December 2, 2008

CERTIFICATE OF SERVICE

I, Mark F. Daly, certify that on this the 2nd day of December, 2008 the foregoing pleading, the GOVERNMENT'S MOTION FOR STAY was file electronically with the Court and served electronically on the counsel listed below:

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

Case
Hamed et al., v.
Yusuf et al.

Exhibit
3

UNITED STATES OF AMERICA, and
GOVERNMENT OF THE VIRGIN ISLANDS,
Plaintiff,

v.

FATHI YUSUF MOHAMAD YUSUF,
aka Fathi Yusuf,
WALEED MOHAMMAD HAMED,
aka Wally Hamed,
WAHEED MOHAMMED HAMED,
aka Willie Hamed,
MAHER FATHI YUSUF,
aka Mike Yusuf,
ISAM MOHAMAD YOUSUF,
aka Sam Yousuf,
NEJEH FATHI YUSUF, and
UNITED CORPORATION
d/b/a Plaza Extra,
Defendants.

CRIMINAL NO. 2005-015

GOVERNMENT'S MOTION FOR RECONSIDERATION

The United States of America and the Government of the Virgin Islands, by and through undersigned counsel, move for reconsideration from that part of the Court's November 26, 2008 Order that granted the release of "proportional shareholder distributions" to the non-defendant shareholders of United Corporation. As grounds, the government respectfully submits that the Court overlooked the fact that to the extent the non-defendant shareholders fail to prove -- at the agreed-upon post-judgment hearing -- that their claimed interests in United are not owned by defendant Fathi Yusuf (or the interests are otherwise forfeitable), not only are their claimed interests forfeitable, but profits allocable to those claimed shares are also forfeitable, under the relation-back doctrine. The Court accordingly erred in ruling that even if the shares in United held by the non-

defendant shareholders are forfeited, “the profits presently being generated from United are not subject to forfeiture.” (Order at 3.)

DISCUSSION

After correctly determining that “[a]llowing shareholder distributions to Defendants Fathi Yusuf, Waleed Hamed, or Waheed Hamed would require a modification of the TRO that such Defendants agreed to forego,” the Court stated that “[n]o other shareholders’ interests are similarly subject to forfeiture.” Based upon that latter determination, the Court held that “the shares of the other shareholders do not fall within the bounds of the TRO.” (Order at 2.)

United Corporation is a defendant, and its assets have been restrained in the TRO. The assets of the corporation are everything it owns, including newly-earned revenue. Therefore the profits earned and accumulated since the TRO was put in place in September 2003 are subject to the restraining order. The shareholders themselves do not own corporate assets - they own shares in the corporation. If United Corporation is convicted and all of its assets are forfeited, the shareholders will lack standing to complain, because it is corporate property that will be forfeited.

The Court erred in basing its ruling upon the presumption that the non-defendant shareholders’ claimed interests are not subject to forfeiture, as the factual question of whether the non-defendants’ shareholder interests are actually owned by defendant Fathi Yusuf, and thus are forfeitable, is yet to be determined. Like the defendants, the non-defendant shareholders agreed to defer a hearing on their claims until after the entry of judgment. Paragraph two of the Agreed Amendment (#184, 2-18-04) states:

“Pursuant to Title 14, Virgin Islands Code, Section 606(f), the Court enabled parties who claim to be affected by the Temporary Restraining Order to be heard. Defendants Fathi Yusuf, Maher F. Yusuf, Neje F. Yusuf, and non-defendant petitioners Fawzi Yusuf and Yusuf F. Yusuf submitted motions and pleadings to this Court. The parties agree that the

opportunity to submit motions and pleadings constitutes a hearing under Section 606(f).” *Id.* at 2.

Paragraph five of the Agreed Amendment states:

“The defendants and non-defendant shareholders agree to defer any and all claims to modify the Restraining Order, including to recover the assets affected by the Restraining Order, until a judgment of forfeiture is ordered by this Court. . . The defendants and non-defendant shareholders agree that the Restraining Order shall remain in full force and effect in all other respects.” *Id.* at 4.

In addition to the non-defendant shareholders’ contractual obligation to not file any claims regarding the restrained assets, the government has the right to insist that the value of its interest in the forfeitable property not be dissipated. The mandatory nature of the pretrial restraining order protects the government’s interest. *See In Re: Certain Assets of Allen Petty, Jr.*, No. 6:02-CV-148 (TJW), 2002 WL 1377707, at *4-5 (E.D. Tex. Apr. 17, 2002) (property held by corporation subject to preindictment restraint).

Importantly, if the shares claimed by the non-defendant shareholders are determined to be owned by defendant Fathi Yusuf (or are otherwise forfeitable), then the shareholder distributions claimed by the non-defendant shareholders would be similarly situated to those purportedly due to Fathi Yusuf. As the Court acknowledged in its Order, the relation-back doctrine dictates that a defendant’s interest in the forfeited property is divested at the time the criminal activity upon which the conviction is predicated occurs. The defendant’s interest in the property is vested in the government *nunc pro tunc* the time at which the criminal activity occurred. *United States v. Pelullo*, 178 F.3d 196, 201 (3d Cir. 1999). The government accordingly obtains all profits accruing to the defendant’s property after the crime giving rise to the forfeiture. Thus, if the interests in United claimed by the non-defendant shareholders are determined to be owned by defendant Fathi

Yusuf (or are otherwise forfeitable), not only are their claimed interests forfeitable, but the profits allocable to those claimed interests are also forfeitable. Because the non-defendant shareholders, as did the defendants, agreed to “defer any and all claims to modify the Restraining Order, including to recover the assets affected by the Restraining Order,” the Court should reconsider its November 26, 2008 Order and deny the Motion for Release of Additional Funds in full.

The ownership in property of a corporation, and the manner in which the income generated by the corporation is reported for tax purposes, are two distinct concepts. However, to the extent that the Court’s ruling was affected by the defense’s statement that United is a Subchapter S corporation and that United’s net income is taxable to United’s shareholders “regardless of whether such earnings and profits are actually distributed to the shareholders” (#572, p. 2), the government advises the Court that 26 U.S.C. § 1341 may remedy any perceived inequity arising from the non-defendant shareholders’ being taxed on United’s net profits. *See e.g., Alcoa, Inc. v. United States*, 509 F.3d 173, 176-177 (3d Cir. 2007). It is true that “a taxpayer must include in his tax return even those items of income which are subject to competing claims, so long as he has full control of those moneys at the end of the tax year.”¹ *Id.* at 176. However, if a taxpayer includes income on a tax return but is forced to relinquish some of the reported income in a later tax year, Internal Revenue Code Section 1341 provides, if certain conditions are satisfied, that the taxpayer can recompute his taxes for the year in which he originally received the money, excluding the amount repaid, or take a deduction in the year the money is repaid. *Id.* at 177. Accordingly, if the non-defendant

¹ Neither the defendants nor the non-defendant shareholders have argued that United’s net income is not currently taxable to them because United’s assets are restrained and they don’t have unrestricted right to the funds. Indeed, they have used their request for funds to pay tax as a bootstrap for requesting additional funds. Because the defendants and the non-defendant shareholders presume that United’s income is currently taxable to them, the government will do the same for purposes of this motion.

shareholders' claimed interests in United are ultimately forfeited to the government, the net distributable income they reported could be backed out in accordance with § 1341. Furthermore, the non-defendant shareholders suffer no prejudice when reporting a distributive share of United's income because the tax on that income is being paid with United's assets.

CONCLUSION

For the reasons stated, the Court should reconsider its November 26, 2008 Order and deny the Motion for Release of Additional Funds in full.

Respectfully Submitted,

PAUL A. MURPHY
UNITED STATES ATTORNEY

s/ Lori A. Hendrickson
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Dated: December 6, 2008

CERTIFICATE OF SERVICE

I, Lori A. Hendrickson, certify that on this the 6th day of December, 2008 the foregoing pleading, the GOVERNMENT'S MOTION FOR RECONSIDERATION, was filed and served on the parties through the Court's ECF system.

s/Lori A. Hendrickson
Lori A. Hendrickson

Case
Hamed et al., v.
Yusuf et al.

Exhibit
4

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

UNITED STATES OF AMERICA, and)
GOVERNMENT OF THE VIRGIN ISLANDS)

Plaintiffs,)

vs.)

CRIMINAL NO. 2005-15F/B

FATHI YUSUF MOHAMAD YUSUF,)
aka Fathi Yusuf)

WALEED MOHAMMAD HAMED,)
aka Wally Hamed)

WAHEED MOHOMMAD HAMED,)
aka Willie Hamed)

MAHER FATHI YUSUF,)
aka Mike Yusuf)

NEJEH FATHI YUSUF and)
UNITED CORPORATION,)
dba Plaza Extra)

Defendants.)

OPPOSITION TO GOVERNMENT’S MOTION FOR STAY

Defendant United Corporation and the unindicted shareholders of United Corporation oppose the Government’s Motion for a Stay of the Court’s November 26, 2008 Order (No. 1104).

IN SUPPORT THEREOF, United Corporation and its unindicted shareholders respectfully state:

1. The government fails to elicit any basis in law for imposing a stay. In support of its Motion, the Government merely asserts that the defendants and shareholders will not be prejudiced or harmed by the requested stay because they have already been deprived of their rightful assets for more than five years, and suggests that any additional time is of no comparative significance.

2. Each day that certain of the defendants and all unindicted shareholders are further deprived of their rightful property effectively continues the government's unjustified deprivation of their property, and magnifies the prejudice and harm already endured. With each day that passes, these individuals lose the ability to enjoy the property restrained, and they are charged with more taxable but still unreachable flow-through income.

3. According to the Government, further deprivation is not prejudicial because it has continued for so long. Such an argument is both callous and illogical. Defendants respectfully request that such assertion be summarily rejected.

4. The Government asserts that it will suffer prejudice if any action is taken on the Court's Order because "there is no guarantee that those funds will be returned". Yet the Government does not and can not provide any basis for the premise that these shareholders would not return the funds in the unlikely event that the Court's Order were reversed.

5. As the Court is likely aware, and as the Government must concede, during the more than five year pendency of this matter, the principals and most of the shareholders of United Corporation have worked earnestly and zealously to ensure that

United Corporation maintained its highest profitability. Indeed, the profits at issue in this motion are largely the result of their collective efforts and managerial acumen.

6. Accordingly, the established history and commitment of United Corporation's principals in conducting sustained profitable operations unequivocally shows there is virtually zero risk that these same principals will suddenly cease exercising sound discretion and using their best efforts in operating the business, fulfilling their managerial duties, and pursuing the corporation's commitment to success.

7. Any distributions made will consider the operating capital requirements of United Corporation, and will fully comply with this Court's November 26, 2008 Order.

8. In view of the above, the government has failed to articulate, much less demonstrate satisfaction of, the factors to be considered for a stay of the Court's order: (1) that the government has made a strong showing that it is likely to prevail on the merits; (2) whether the government will be irreparably injured absent a stay; (3) whether a stay will substantially injure the defendants and unindicted shareholders; and (4) the public interest. *Republic of the Philippines v. Westinghouse Elec. Corp.*, 949 F.2d 653, 658 (3rd Cir. 1991), citing *Hilton v. Braunskill*, 481 U.S. 770, 107 S.Ct. 2113 (1987)

WHEREFORE, the defendants' request that the Government's Motion for Stay be denied.

Respectfully submitted,

HUNTER COLE & BENNETT
Counsel for United Corporation

December 9, 2007

By: /s/
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(340) 773-3535

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 9th day of December, 2008, I caused a true and exact copy of the foregoing to be filed using the Court's ECF system which will serve electronic notice upon:

Mark F. Daly, Esq. U.S. Department of Justice Northern-Criminal Enforcement Section P.O. Box 972 Washington, D.C. 20044 By fax: (202) 616-1786 By email: mark.f.daly@usdoj.gov	Henry Smock, Esq. Smock & Moorhead P.O. Box 1498 Palm Passage Stes. B 18-23 St. Thomas, VI 00804
Pamela Colon, Esq. 27 & 28 King Cross Street Christiansted, VI 00820	John K. Dema, Esq. 1236 Strand Street, Suite 103 Christiansted, VI 00820
Thomas Alkon, Esq. 2115 Queen Street Christiansted, VI 00820	Randall P. Andreozzi, Esq. 9145 Main Street Clarence, NY 14031
Derek Hodge, Esq. Mackay & Hodge No. 12D Bjerge Gade P.O. Box 303678 St. Thomas, VI 00803	Gordon Rhea, Esq. Richardson, Patrick, Westbrook & Brickman, LLC 1037 Chuck Dawley Blvd., Bldg. A Mt. Pleasant, SC 29464

 /s/ Warren B. Cole

Case
Hamed et al., v.
Yusuf et al.

Exhibit
5

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

UNITED STATES OF AMERICA, and)
GOVERNMENT OF THE VIRGIN ISLANDS)
)
Plaintiffs,)
)
vs.)
)
FATHI YUSUF MOHAMAD YUSUF,)
aka Fathi Yusuf)
)
WALEED MOHAMMAD HAMED,)
aka Wally Hamed)
)
WAHEED MOHOMMAD HAMED,)
aka Willie Hamed)
)
MAHER FATHI YUSUF,)
aka Mike Yusuf)
)
NEJEH FATHI YUSUF and)
)
UNITED CORPORATION,)
dba Plaza Extra)
)
)
Defendants.)

CRIMINAL NO. 2005-15F/B

**DEFENDANTS' SUPPLEMENT TO MOTION TO DISMISS INDICTMENT OR
FOR STAY OR MODIFICATION OF TEMPORARY RESTRAINING ORDER**

COMES NOW the Defendant, Waleed Mohammed Hamed, to supplement the Defendants' Motion to Dismiss Indictment or For Stay or Modification of Temporary Restraining Order (originally filed on July 12, 2007) and to advise the Court of the Second Circuit Court of Appeals' decision in *United States v. Stein*, 541 F.3d 130 (2d Cir. 2008), a copy of which is attached hereto as Exhibit One.

Overview of the Stein Case and its Relevance

In its recent opinion in *Stein*, the Second Circuit Court of Appeals addressed the prosecutor's use of a Justice Department policy statement known as the Thompson Memorandum to coerce KPMG into refusing to advance legal fees to its employees who were defendants in the case.

The Thompson Memorandum identifies various principles the Justice Department considers in determining whether to bring prosecutions against a business organization as well as its employees. Among the principles identified in the Memorandum is the business organization's willingness to advance attorney's fees to employees charged with misconduct in carrying out their business duties.

In considering the government's tactics, the trial court held, and the Second Circuit affirmed, that the government unjustifiably interfered with the relationship between the defendants and their counsel, and thus interfered with the defendants' ability to defend themselves. Specifically, the Court held that the government's conduct impaired the defendants' ability to mount a defense because "the post-indictment termination of fees 'caused them to restrict the activities of counsel,' and thus limit the scope of their pre-trial investigation and preparation." *Stein*, 541 F.3d at 158.

The Court of Appeals affirmed the District Court's factual determinations that:

[1.] 'the Thompson Memorandum caused KPMG to consider departing from its long-standing policy of paying legal fees and expenses of its personnel in all cases and investigations even before it first met with the USAO and induced KPMG to seek an indication from the USAO that payment of fees in accordance with its settled practice would not be held against it';

[2.] the government made repeated references to the Thompson Memo in an effort to 'reinforce[] the threat inherent in the Thompson Memorandum';

[3.] 'the government conducted itself in a manner that evidenced a desire to minimize the involvement of defense attorneys'; and

[4.] but for the Thompson Memorandum and the prosecutors' conduct, KPMG would have paid defendants' legal fees and expenses without consideration of cost.

Stein, 541 F.3d at 141.

Based on these facts, the Court of Appeals affirmed the District Court's dismissal of the indictment ruling that;

a defendant has a fundamental right under the Fifth Amendment to fairness in the criminal process, including the ability to get and deploy in defense all 'resources lawfully available to him or her, free of knowing or reckless government interference,'... and that 'the government's reasons for infringing that right in this case could not withstand strict scrutiny....The government's law enforcement interests in taking the specific actions in question [do not] sufficiently outweigh the interests of the KPMG Defendants in having the resources needed to defend as they think proper against these charges.' *Stein*, 541 F.3d at 141..

[...]

[T]he government thus unjustifiably interfered with defendants' relationship with counsel and their ability to mount a defense, in violation of the Sixth Amendment, and ... the government did not cure the violation. Because no other remedy will return defendants to the status quo ante, we affirm the dismissal of the indictment as to all thirteen defendants. *Stein*, 541 F.3d at 136.

The Sixth Amendment ensures that "[i]n all criminal prosecutions, the accused shall enjoy the right . . . to have the Assistance of Counsel for his defense." U.S. Const. Amendment VI. The Sixth Amendment also protects an individual's right to choose the lawyer or lawyers he or she desires and "to use one's own funds to mount the defense that one wishes to present." *United States v. Stein*, 435 F. Supp. 2d 330, 340 (S.D.N.Y. 2006). Applying this rule of law to the facts at issue in *Stein*, the Second Circuit held that:

Because defendants reasonably expected to receive legal fees from KPMG, the fees ‘were, in every material sense, their property.’... Defendants need not make a ‘particularized showing’ of how their defense was impaired,... because ‘[v]irtually everything the defendants do in this case may be influenced by the extent of the resources available to them,’ such as selection of counsel and ‘what the KPMG Defendants can pay their lawyers to do. *United States v. Stein*, 435 F. Supp. 2d 330 (S.D.N.Y. 2006)

The Court went on to state that the Sixth Amendment,:

imposes on the State an affirmative obligation to respect and preserve the accused’s choice to seek this assistance. . . . [A]t the very least, the prosecutor and police have an affirmative obligation not to act in a manner that circumvents and thereby dilutes the protection afforded by the right to counsel.... This is intuitive: the right to counsel in an adversarial legal system would mean little if defense counsel could be controlled by the government or vetoed without good reason. *Stein*, 541 F.3d at 154.

Once the right to counsel has been abridged, no remedy short of dismissal will suffice. In affirming the dismissal of the *Stein* indictment, the Court ruled:

“The appropriate remedy for a constitutional violation is ‘one that as much as possible restores the defendant to the circumstances that would have existed had there been no constitutional error.’ *United States v. Carmichael*, 216 F.3d 224, 227 (2d. Cir. 2007). Since it has been found that, absent governmental interference, KPMG would have advanced unlimited legal fees unconditionally, only the unconditional, unlimited advancement of legal fees would restore defendants to the status quo ante. The government’s in-court statement [that KPMG was free to exercise its business judgment in advancing fees] and the ensuing 16-month delay [during which the defendants ‘enjoyed this remedy’] was not enough. If there was a Sixth Amendment violation, dismissal of the indictment is required.” *United States v. Stein*, 435 F. Supp. 2d 330 (S.D.N.Y. 2006)

The Government’s Conduct in this Case Mandates Dismissal

Dismissal of the indictment in this case is required because the government’s effective effort to block defendants’ ability to mount an effective defense is far more offensive and sweeping than in *Stein*. To illustrate, the Defendants rely on their previously filed Motion to Dismiss Indictment and also present the following:

1. The government *forbids* United Corporation from paying its employees' costs to defend themselves against the government's charges. (See Post-Indictment Temporary Restraining Order Pursuant to 14 V.I.C. §606, filed September 18, 2003; Dkt. No. 7).

2. Absent the governmental influence detailed herein, United Corporation would have advanced unlimited legal fees unconditionally. (See Defendants' Motion for Modification of Temporary Restraining Orders and Release of Funds to Defendants and Non-Defendant Petitioners, Filed December 5, 2003; Dkt. No. 42).

3. The government's conduct accomplished its intent to minimize the involvement of defense attorneys. (See Defendants' Reply to Government's Opposition to Defendants' Motion to Dismiss Indictment or for Stay or Modification of Temporary Restraining Order, Filed September 7, 2007; Dkt. No. 856).

4. As part of its scheme to separate the defendants from use of legitimate sources of income to fund their defenses, the government concocted an Indictment demanding forfeiture of *all property belonging to the defendants*. Once confronted with this impropriety, the government conceded and struck the intimidating but unsupported forfeiture allegations. (See Government's Motion to Strike Surplusage from the Third Superseding Indictment, Filed December 12, 2006; Dkt. No. 658).

5. As part of its scheme to separate the defendants from use of legitimate sources of income to fund their defenses, the government improperly placed *lis pendens* on property belonging to defendants and related non-defendants. The government has acknowledged the impropriety of these *lis pendens* in proceedings before this Court, and

eventually rescinded them. (See Government's Motion regarding Release of *Lis Pendens*, filed April 12, 2007; Dkt. No. 736).

6. The government attempted to use the *ex parte* restraining order to prohibit even United Corporation from funding its own defense (See Mr. Briskman email to Randall Andreozzi on July 11, 2006, Exhibit 2). The government eventually conceded this position prospectively, but has refused to remedy the retrospective harm caused by its deliberate transgression of the terms of the restraining order. (See Government's Opposition to Defendant's Motion to Offset Funds, filed September 4, 2007; Dkt. No. 854).

7. As part of its scheme to separate the defendants from use of legitimate sources of income to fund their defenses, the government contested the defendants' motion to post a performance bond pursuant to the *ex parte* restraining order based on the likelihood that the defendants would use *the proceeds to defend themselves against the government's charges*. (See Government's Opposition to Defendants' Motion to Post Performance Bond Pursuant to Post-Indictment Restraining Order, filed July 10, 2007; Dkt. No. 809).

8. As part of its scheme to separate the defendants from use of legitimate sources of income to fund their defenses, the government has repeated baseless "conflict of interest" allegations between the defendants and their counsel when the defendants fought to secure funds. See, e.g., Government's Reply Memorandum in Support of its Motion for Stay; Dkt. No. 1010).

9. As part of its scheme to separate the defendants from use of legitimate sources of income to fund their defenses, the government compels United Corporation's

shareholders to pay income tax on their flow-through income from the company, yet seeks to prohibit the shareholders' access to those same taxed funds. The government opposed access to such taxed funds, fearing that the defendants would use the funds *to pay for their defense*. See, e.g., Government's Opposition to Defendant United Corporation's Motion for Release of Additional Funds to Pay Protective Shareholders' Income Tax Deposits and Proportional Shareholder Distributions, dated March 12, 2007 (Dkt. No. 716). Most recently, in response to the Court's Order granting release of additional funds to pay proportional shareholder distributions (See Dkt. No. 1004), the government moved for reconsideration and to "stay any proceedings or actions which may arise as a result of the Court's November 26, 2008 Order" (See Dkt. No. 1010). It is noteworthy that the government's narrow stay request makes no reference to a stay of the proceedings in general, or to an adjournment of the June 1, 2009 trial control date (See Dkt. No. 1000). Consistent with its pattern of conduct, the government's objective remains the deprivation of funds that may be used for the litigation of this case.

The government's intent throughout this case has been to wrongfully prohibit the defendants from funding their defense. This, of course, is just one aspect of the multi-faceted prosecutorial misconduct that permeates this case.¹

It is also important to note that the government's behavior in Stein and in the present case is certain to have a chilling effect on business in our fragile economy. The result in *Stein* provides assurance to business entities and their employees that the government cannot interfere with an employer's discretion regarding payment of an

¹ The defendants have also provided this Court with evidence of the misconduct, false statements, and inconsistent positions all of which are enumerated in various pending motions, including, *inter alia*, Defendants' Motion to Dismiss for Selective Prosecution (filed February 15, 2005) with supplemental motions and Defendants' Motion for Evidentiary Hearing and to Dismiss (filed January 10, 2007).

employee's attorney's fees. Many companies are regularly investigated and operate in areas where the law is not always clear. Few people would agree to take high-ranking positions in such companies if they anticipated having to pay huge legal fees every time the company came under scrutiny. As a result, it has long been standard practice for companies to pay the expenses of defending their employees in such circumstances. Because of the economic advantages of employers paying such legal fees, such expenses are deductible under Internal Revenue Code Section 162(a). *See, e.g. O'Malley v. Commissioner*, 91 TC 352 (1988) (legal fees incurred to defend a trustee of a pension fund accused of conspiracy to bribe a Senator, where the activities were related to the trusteeship position); *Ostrom v. Commissioner*, 77 TC 608 (1981) (payment of judgment for president and general manager of a plumbing company's fraudulent misrepresentations concerning the company's financial status).

United Corporation perceives attorney's fees as an ordinary and necessary business expenses, and having evaluated the economics of the situation, is willing to pay them. In fact, the corporation routinely pays lawyers to defend civil suits and to deal with contract and real estate issues. The government, however, has engaged in a five-year battle to prevent the funding of the defense in this case. As a direct consequence of the government's actions, the defendants have been harmed irreparably. When, as here, the government prevents a company from carrying out its business decision to indemnify its officers or employees for legal expenses, that governmental action infringes on the constitutional right to counsel of one's own choice and requires dismissal of the subject indictment.

Finally, the government has also asserted in this case that United's money is not the defendants' money. In *Stein*, however, the Court of Appeals rejected the government's position that defendants have no right to spend "other people's money" to fund a defense:

'[T]he KPMG Defendants had at least an expectation that their expenses in defending any claims or charges brought against them by reason of their employment by KPMG would be paid by the firm,' and '*any benefits that would have flowed from that expectation--the legal fees at issue now--were, in every material sense, their property, not that of a third party.*' *Stein*, 541 F.3d at 141.

The same rationale applies here; any other conclusion deprives defendants of property and violates their Constitutional rights. The charges against the defendants arise from their employment with United Corporation, and the factual allegations are all related to their employment with United Corporation. Like the defendants at KPMG, the defendants here expected their family business to pay legal fees on their behalf. The employee-defendants have an expectation that United will bear the costs of their defense, and United Corporation should not be prohibited from paying the associated expenses of its employees should it wish to do so. While United Corporation may or may not be legally obligated to advance defendants' legal fees (see, *Stein v. KPMG, LLP*, 486 F.3d 753,762 n.3 (2d Cir. 2007)), there is no question that the company is entitled to pay such fees and the governments prevention of that payment mandates dismissal of the indictment.

Conclusion

Absent the governmental influence detailed herein, United Corporation would have advanced unlimited legal fees unconditionally. Under the *Stein* Court's holding, the government's successful efforts in this case to prevent defendants from using lawfully

available funds for their defense are a violation of the defendants' Sixth Amendment right to counsel which cannot be remedied except by dismissal of the Indictment.

For these reasons, defendants request that this Court grant their Motion to Dismiss originally filed on July 12, 2007.

Dated: December 10, 2008

Respectfully submitted,

/s/ Gordon C. Rhea, Esq. _____
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Attorney for the Defendants

CERTIFICATE OF SERVICE

I hereby certify that on the 10th day of December, 2008, I electronically filed the foregoing with the Clerk of Court using the CM/ECF system, which will send a notification of such filing (NEF) to all counsel of record.

By: /s/ Gordon C. Rhea, Esq.
Gordon C. Rhea, Esq.

Case
Hamed et al., v.
Yusuf et al.

Exhibit
6

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

UNITED STATES OF AMERICA, and)
GOVERNMENT OF THE VIRGIN ISLANDS)

Plaintiffs,)

vs.)

CRIMINAL NO. 2005-15F/B

FATHI YUSUF MOHAMAD YUSUF,)
aka Fathi Yusuf)

WALEED MOHAMMAD HAMED,)
aka Wally Hamed)

WAHEED MOHOMMAD HAMED,)
aka Willie Hamed)

MAHER FATHI YUSUF,)
aka Mike Yusuf)

NEJEH FATHI YUSUF and)
UNITED CORPORATION,)
dba Plaza Extra)

Defendants.)

**DEFENDANT UNITED CORPORATION'S RESPONSE TO GOVERNMENT'S
MOTION FOR RECONSIDERATION**

THIS MATTER is before the Court on Defendant United Corporation's Motion for Release of Additional Funds to Pay Protective Shareholder Income Tax Deposits and Proportional Shareholder Distributions.

By Order dated November 26, 2008, the Court granted the release of proportional shareholder distributions to some of United Corporation's shareholders. The Government filed a Motion for Reconsideration of the Court's Order dated December 6, 2008.

Defendant, by and through its undersigned counsel, respectfully responds to the United States' Motion for Reconsideration as follows:

I. Introduction

Local Rule 7.3 (LRCi 7.3) provides that all motions for reconsideration must be based on (1) an intervening change in controlling law; (2) availability of new evidence; or (3) the need to correct clear error or prevent manifest injustice. As is illustrated below, the Government's Motion for Reconsideration raises none of these issues. Instead, it either rehashes arguments already rejected by the Court or suggests arguments never before raised that directly conflict with its position in prior pleadings. The government's motion should be denied on the basis of the local rule alone. *Bostic v. AT&T of the Virgin Islands*, 312 F. Supp. 2d 731 (D.V.I. 2004).

II. The Government's Motion Repeats the Arguments Rejected by the Court.

For the most part, the Government's Motion for Reconsideration simply repeats many of the same arguments it raised in its Opposition. For example, at pages 2-3 of its Motion, the government argues that the defendants and shareholders stipulated away their right to request modification of the Temporary Restraining Order. The Government raised this very argument, with the same references, at pages 2-3 of its March 9, 2007 Opposition. The Government refuses to accept the fact that the undistributed income belongs to the shareholders and, therefore, the Court's Order does not affect the Temporary Restraining Order regarding United Corporation's assets. The assets addressed in the Order are entirely outside of the scope of the Restraining Order.

In view of the above, and for all of the reasons set forth in the Court's Order and the Defendants' pleadings on this Motion, these arguments are without merit.

The Government's Remaining Arguments are Without Merit.

A. The Government Raises an Inconsistent Position on Shareholder Ownership in an Effort to Delay a Determination and Thus Prevent Distribution of the Shareholders' Rightful Assets.

The government argues, for the first time, that "if the interests in United claimed by the non-defendant shareholders are determined to be owned by defendant Fathi Yusuf (or are otherwise forfeitable)," they are not entitled to the flow-through income." The Government does not make the statement as a fact; rather it qualifies the assertion with the word *if*. The Government has never made such an allegation in the Indictments or in any of its numerous pleadings throughout this case. Indeed, in the context of this very motion, when it conceded that the shareholders were taxable on United Corporation's profits and accepted quarterly payments from these shareholders, it never once raised even the possibility that the shareholders might be making unnecessary tax deposits because they really did not own the shares.

The Government's motive becomes apparent in the context of its assertions at pages 1 and 4 of its Motion that the defendants and shareholders should prove their ownership interests in United Corporation at the "agreed-upon post-judgment hearing". There is no such agreement to prove shareholder status at any post-judgment hearing. The argument is a last ditch effort to prevent the shareholders from accessing their rightful assets. When the Government had the opportunity to take money from United's coffers and bring it into its own as shareholder tax deposits, it did not challenge the shareholders' interests in United. Now that this Court has ordered the proper distributions to the shareholders of their rightful income, the Government raises this entirely inconsistent position, but is careful to qualify it with the word "if". The

argument is without merit.

B. The Government Raises an Inconsistent Position Regarding the Shareholders' Control of the Monies at Issue.

At pages 4-5 of its Motion, the Government attempts to convince the Court to ignore any “perceived inequities” caused by the Government’s intent to tax United Corporation’s shareholders on income it claims is not theirs. The Government cites *Alcoa, Inc. v. United States*, 509 F.3d 173 (3d Cir. 2007) for the premise that “a taxpayer must include in his tax return even those items of income which are subject to competing claims, so long as he has full control of those monies at year end.” According to the Government, the shareholders *might*, “if certain conditions are satisfied”, rely on Internal Revenue Code Section 1341 to get a deduction in the event the Government succeeds in taking the monies it has taxed them on.

The Government, through its “assurances,” inadvertently reveals the blatant legal inconsistencies of its effort to have its cake and eat it too. *Alcoa* and Section 1341 are premised upon a fundamental doctrine of income taxation: “If a taxpayer receives earnings under a claim of right and *without restriction as to its disposition*, he has received income which he is required to return, even though it may still be claimed that he is not entitled to retain the money, and even though he may still be adjudged liable to restore its equivalent.” *Alcoa*, 509 F.3d at 176 (*emphasis added*). Thus, if competing claims exist for the same monies, a taxpayer must include the monies in income *only if he has full control of those monies at year end*. Here, it so happens that the competing claimant for the monies is the same taxing authority that attempts to tax the taxpayer on the very monies it claims. So, the Government uses the “relation back doctrine” to prevent the shareholders from controlling or accessing the monies, *and* it uses the “claim of

right” doctrine to tax the shareholders on the same monies on the contradictory premise that they have “full control over those monies”.

The Defendants and shareholders challenge the ethics and policy considerations underlying the Government’s representation to this Court and to the parties on this issue. The Government improperly submits that the shareholders are taxable on the income because they maintain full control of the income at each year, when it affirmatively prohibits their access to that same income because it “belongs to the Government.” Defendant would request that the Government provide (1) any Department of Justice or Internal Revenue Service policy or manual statements that allow such a position, (2) identify all individuals who reviewed and authorized such a position to be taken, and (3) identify any other published cases in which the Government has taken this position. Depending on the Government’s response to these questions, the Defendants will consider supplementing their *Stein* and Selective Prosecution motions to incorporate this most recent transgression.

IV. Conclusion.

The Court’s decision to first rule on the taxation of United Corporation’s distributable income and reserve ruling on the issue of shareholder distributions has provided the Court, the Defendants, and United Corporation’s shareholders the opportunity to review the Government’s position and conduct regarding the treatment of the subject income. The Government could have requested reconsideration or appealed the Court’s determination that the funds at issue are properly the taxable income of the specified shareholders. It chose not to. Instead, the Government acknowledged the shareholders’ obligation to pay tax on their distributable flow-through income from United Corporation. As a result, it has accepted tax deposits from these

specified shareholders *of over \$10 million* on the premise that flow-through income from United Corporation's retail grocery business for the years 2004 through present is their taxable income and property.

Now that the Court has ruled on the shareholder distribution issue, the Government requests reconsideration – but only on that issue – and poses legally and factually contradicting arguments in a desperate attempt to keep these monies from the rightful owners. The Government's motion is factually, logically, and procedurally deficient and must be denied.

Respectfully submitted,

HUNTER COLE & BENNETT
Counsel for United Corporation

December 22, 2008

By: /s/ Warren B. Cole
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IN THE DISTRICT COURT OF THE VIRGIN ISLANDS
DIVISION OF ST. CROIX

Case
Hamed et al., v.
Yusuf et al.

Exhibit
7

UNITED STATES OF AMERICA, and
GOVERNMENT OF THE VIRGIN ISLANDS,
Plaintiff,

v.

FATHI YUSUF MOHAMAD YUSUF,
aka Fathi Yusuf,
WALEED MOHAMMAD HAMED,
aka Wally Hamed,
WAHEED MOHAMMED HAMED,
aka Willie Hamed,
MAHER FATHI YUSUF,
aka Mike Yusuf,
ISAM MOHAMAD YOUSUF,
aka Sam Yousuf,
NEJEH FATHI YUSUF, and
UNITED CORPORATION
d/b/a Plaza Extra,
Defendants.

CRIMINAL NO. 2005-015

**GOVERNMENT'S OPPOSITION TO
MOTION FOR ORDER TO SHOW CAUSE**

The Government respectfully submits this memorandum in opposition to the *Motion for Order to Show Cause* filed by defendant United Corporation.¹ Neither the Government nor the United States Marshals Service (USMS) has violated any orders of this Court. Moreover, based on the circumstances giving rise to Defendant's motion, the Government moves for an order of this Court requiring defendant United Corporation to provide specific financial information, as requested by the USMS, to allow the USMS to

¹ The motion is styled as if it were brought on behalf of United Corporation and the unindicted shareholders of the corporation. However, the Court denied the motion to intervene filed on behalf of the unindicted shareholders. As such, they lack standing and are not recognized in this forum. The mistake is understandable, however, given their attorney's ever-shifting allegiances between them and the corporation.

discharge its duties under the September 18, 2003 *Post-Indictment Temporary Restraining Order Pursuant to V.I.C. § 606* (the “TRO”).

Under the terms of the TRO, all United Corporation payments exceeding \$1,000 outside the ordinary course of business must be approved by the USMS. [TRO, p. 7] Given this restriction, by letter dated January 14, 2009, defendant United Corporation asked the USMS to release \$1.2 million to pay tax deposits on distributable shareholder income for the fourth quarter of 2008. This Court has allowed Defendant to make such deposits for prior quarters, albeit after a proper motion by Defendant. In light of this Court’s previous orders, the Government does not object to the payment of such tax deposits, provided that the amounts paid are documented and appropriate. The Government notes, however, that no order of this Court authorized United Corporation to make tax deposits for the fourth quarter of 2008.

Defendant’s January 14 letter stated the names of the shareholders, their ownership percentages (either 32.5% or 7%), and listed the requested tax deposits of either \$390,000 or \$84,000, depending on the ownership percentage. The request based the deposit amounts on “projections from the unaudited United Corporation’s financial statements as of October 2008.” The request enclosed neither the financial statements or projections referenced in the letter nor any information upon which the USMS could discharge its duties to preserve United Corporation’s property. The USMS, with good reason, requested Defendant to have an officer of United Corporation certify a financial statement before releasing the requested \$1.2 million. Defendant did not do so. On the next day, January 15, 2009, counsel for United Corporation wrote a letter to the USMS

objecting to the “new condition” of a certified financial statement and stating that Defendant would advise the Court of the USMS’s denial of the request.

Although a certified financial statement of United Corporation had not been requested by the USMS previously, such a request as a precondition to releasing over \$1 million in restrained property on short notice is within the Monitor’s authority under the TRO, and the Government regards the USMS’s objection to Defendant’s January 14 request as well-taken. The Defendant, on 24 hours notice, requested the release of \$1.2 million forfeitable funds without providing documentation upon which to determine the basis for the requested release. The USMS acted appropriately to protect and conserve United Corporation property under these circumstances.

The Court should not accept Defendant’s argument that United Corporation need not provide financial information to the USMS because the USMS has access to the company’s books and records under the TRO. [Defendant’s motion, ¶ 4] Forcing the USMS to piece together United Corporation’s operating results and financial condition would impose an unreasonable burden upon the USMS. Officers of defendant United Corporation are in the best position to know the financial results and condition of their company. Defendant should not be allowed to hide the specific information supporting its request within the totality of the records to which the USMS has access.

Accordingly, the Government requests that Defendant’s motion be denied. In addition, the Government requests that, for November 2008 and all subsequent periods, defendant United Corporation be ordered explicitly to provide the financial information described in paragraph three of the Briskman Declaration. As stated in the declaration by

Mr. Briskman, by letter dated July 23, 2007, the USMS requested United Corporation to provide the following financial information in the following timeframes:

Information	Timeframe
Deposits and Disbursements Journal	Weekly
Daily Balance Sheets (Store Sales, Deposits)	Weekly
Aged Payables	Monthly
Aged Receivables	Monthly
Payroll Data	Monthly
Financial Statements	Monthly
Bank Statements for all Operating Accounts	Monthly

With regard to the financial statements and the bank statements for all operating accounts, the USMS has not received such information since October 2008 and September 2008, respectively. The Government regards the request by the USMS for the above financial information as reasonable and appropriate in carrying out its duties as Monitor under the TRO. Without waiving any rights to additional appropriate requests, the Government therefore asks that this Court order such reports to be made to the USMS. Moreover, the Government requests that the monthly financial statements be signed and certified under penalty of perjury by an appropriate officer of the company that such statements are true and complete.

Respectfully Submitted,

PAUL A. MURPHY
ACTING UNITED STATES ATTORNEY

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Dated: February 5, 2009

CERTIFICATE OF SERVICE

I, Mark F. Daly, certify that on this the 5TH day of February, 2009, the foregoing pleading, the GOVERNMENT'S OPPOSITION TO MOITON FOR ORDER TO SHOW CAUSE was file electronically with the Court and served electronically on the counsel listed below:

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

UNITED STATES OF AMERICA, and
GOVERNMENT OF THE VIRGIN ISLANDS,
Plaintiff,

v.

FATHI YUSUF MOHAMAD YUSUF,
aka Fathi Yusuf,
WALEED MOHAMMAD HAMED,
aka Wally Hamed,
WAHEED MOHAMMED HAMED,
aka Willie Hamed,
MAHER FATHI YUSUF,
aka Mike Yusuf,
ISAM MOHAMAD YOUSUF,
aka Sam Yousuf,
NEJEH FATHI YUSUF, and
UNITED CORPORATION
d/b/a Plaza Extra,
Defendants.

CRIMINAL NO. 2005-015

**[PROPOSED] ORDER FOR UNITED CORPORATION TO PROVIDE
FINANCIAL REPORTS TO THE UNITED STATES MARSHALS SERVICE**

THIS MATTER comes before the Court on Motion for Order to Show Cause.

After consideration, it is hereby

ORDERED that the Motion for Order to Show Cause is **DENIED**.

It is further

ORDERED under authority of this Court's September 18, 2003 *Post-Indictment Temporary Restraining Order Pursuant to V.I.C. § 606*, the Court orders United Corporation to provide the following information to the United States Marshals Service in the following timeframes:

Information	Timeframe
Deposits and Disbursements Journal	Weekly

Information	Timeframe
Daily Balance Sheets (Store Sales, Deposits)	Weekly
Aged Payables	Monthly
Aged Receivables	Monthly
Payroll Data	Monthly
Financial Statements	Monthly
Bank Statements for all Operating Accounts	Monthly

The above reports shall be provided beginning with the month November 2008.

The financial statements shall be signed and certified under penalty of perjury by an appropriate officer of United Corporation that such statements are true and complete.

ENTER:

DATED:

RAYMOND L. FINCH
SENIOR DISTRICT JUDGE

ATTEST:

WILFREDO F. MORALES
Clerk of the Court

By: _____
Deputy Clerk

cc: Magistrate Judge Geoffrey W. Barnard
Nelson Jones, AUSA
Alphonso Andrews, AUSA
Mark F. Daly, Esq.
Gordon C. Rhea, Esq
Randall P. Andreozzi, Esq.
Thomas Alkon, Esq.
Pamela Lynn Colon, Esq.
John K. Dema, Esq.
Derek M. Hodge, Esq.
Henry C. Smock, Esq.

**Declaration of Leonard Briskman
pursuant to 28 U.S.C. § 1746**

Case
Hamed et al., v.
Yusuf et al.

Exhibit
8

I, Leonard Briskman, declare the following:

1. I am over 18 years of age, am a resident of Harford and am competent to make this declaration.
2. I am employed by the United States Marshals Service (USMS), which is Monitor of United Corporation under the September 18, 2003 temporary restraining order (TRO) issued by this Court in the case of *United States v. Yusuf et al.*, Criminal No. 2005-15F/B (D. VI.). My duties at the USMS include carrying out the USMS's responsibilities under the TRO.
3. By letter dated July 23, 2007, the USMS requested that United Corporation provide the following records to the USMS according to the following timeframes:

Information	Timeframe
Deposits and Disbursements Journal	Weekly
Daily Balance Sheets (Store Sales, Deposits)	Weekly
Aged Payables	Monthly
Aged Receivables	Monthly
Payroll Data	Monthly
Financial Statements	Monthly

Information	Timeframe
Bank Statements for all Operating Accounts	Monthly

4. United Corporation has not always provided the above information in a timely manner, which has prompted telephone calls to obtain the required information. In particular, last two items listed, the financial statements and the bank statements for operating accounts, have not been timely provided. As of January 29, 2009, the last financial statements provided by United Corporation were for the month of October 2008. The most recent bank statements were for the month of September 2008.
5. On January 14, 2009, attorney Randall P. Andreozzi requested the release of \$1.2 million to pay tax deposits for the shareholders of United Corporation. Mr. Andreozzi did not provide the calculations upon which he based the proposed release of \$1.2 million nor any financial statements upon which I could determine that the \$1.2 million was an accurate figure. I told Mr. Andreozzi that, before releasing the funds, I would need to review a financial statement of United Corporation, certified by an officer of the company, so that I could determine that the requested release was appropriate. Other than the January 14 letter, I did not receive the requested financial

statement, nor any other financial information supporting the proposed release of \$1.2 million.

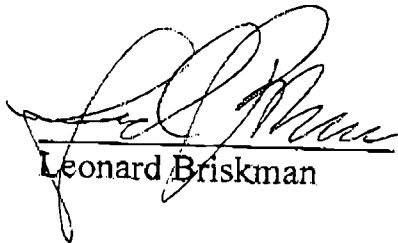
Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing is true and correct.

Executed on:

Feb 5, 2009
Date

Arlington, VA
City, State

By:


Leonard Briskman

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

Case
Hamed, et al. v.
Yusuf, et al.

Exhibit
9

UNITED STATES OF AMERICA, and)
GOVERNMENT OF THE VIRGIN ISLANDS)

Plaintiffs,)

vs.)

CRIMINAL NO. 2005-15F/B

FATHI YUSUF MOHAMAD YUSUF,)
aka Fathi Yusuf)

WALEED MOHAMMAD HAMED,)
aka Wally Hamed)

WAHEED MOHOMMAD HAMED,)
aka Willie Hamed)

MAHER FATHI YUSUF,)
aka Mike Yusuf)

NEJEH FATHI YUSUF and)

UNITED CORPORATION,)
dba Plaza Extra)

Defendants.)

**DEFENDANT UNITED CORPORATION'S RESPONSE TO GOVERNMENT'S
OPPOSITION TO MOTION FOR ORDER TO SHOW CAUSE**

United Corporation, by and through its undersigned counsel, submits this Response to the Government's Opposition (Document #1039) to United Corporation's Motion for Order to Show Cause (Document # 1028). Specifically, United Corporation moved this Court to directing that the Government appear and show cause why it should not be held in contempt for its failure to comply with the Court's Orders (#788-June 18,

2007 and #1004- November 26, 2008), which direct that the United States shall release funds from United Corporation to pay the USVI Bureau of Internal Revenue Service Revenue shareholder-level tax deposits.

Its opposition notwithstanding, the Government has belatedly released the tax deposits and they have been paid (see Exhibit “A” attached hereto – February 12, 2009 USMS acknowledgment of release of funds). Nevertheless, late payment may result in United shareholders being assessed interest and penalties. To the extent United’s original motion was directed to 4th quarter 2008 deposits, the motion is now moot.¹ However, the Government has not acknowledged a responsibility to release such deposits in the future and has requested the Court to expand the TRO to include onerous duties on United as a precondition of conforming to the tax laws that the Government seeks to enforce.

The Government Improperly Seeks Expansion Of The TRO.

Not content with merely opposing United’s motion to compel the Government to release tax deposits on shareholder-level income, the Government is seeking that the TRO be expanded to require United to prepare and produce reports not required by the TRO, within specific time frames not required by the TRO, and in certified form not required by the TRO. The Government cites no legal authority or precedent for such a demand. It is respectfully submitted that this is mere overreaching. Either the Government is required to release these tax deposits or not.² There is no justification for

¹ However, the issue of interest and penalties for late payment may become an issue if the Virgin Islands Bureau of Internal Revenue seeks their assessment. It should be noted in this instance that prompt payment was delayed by the Department of Justice which represents the Virgin Islands in this case.

² It should also be noted that the Court has ordered that accumulated shareholder equity be distributed by United (Docket No. 1004). The Government has requested reconsideration (Docket No. 1007). United has opposed reconsideration (Docket No. 1015). The motion to reconsider remains pending. Should the Court deny reconsideration and the distributions then made, the present motion would seem moot for all

the TRO to be expanded to include onerous additional requirements on United that have not been sought or deemed necessary since the TRO was entered over five years ago.

Of particular note is the Government's "demand" that financial statements be certified under penalty of perjury by an officer of the corporation. Since the corporation and its officers are criminal defendants in this case, the Government is demanding nothing less than that these defendants waive their Fifth Amendment right *not* to make sworn statements to the Government as a condition of "allowing" them to obey the income tax laws requiring shareholders of Subchapter "S" corporations to make quarterly tax deposits on flow-through shareholder income. If the Government knows of legal authority for the proposition that it can demand such a waiver as a precondition for the defendants to be *allowed* to obey the laws the Government seeks to enforce, it is entirely missing from the Government's memorandum in opposition.

The Government's demands would shift its responsibilities under the TRO to the defendants. The TRO mandates that the *Monitor* review the books and records of United Corporation, and that the *Monitor* compile, prepare and share with the Court *and all parties to the case* a written report every 90 days detailing, *inter alia*, the financial status of United Corporation and any problems or issues relating to the company's finances. (TRO p. 6). When the Monitor vacated United Corporation's place of operations several years ago, it adopted a protocol under which it contacts the company and its controller remotely with requests for financial information. United Corporation complies with these requests to the best of its abilities; its officers, controller, and staff have worked cooperatively to provide the Marshal Service with information it requests through its

shareholders other than Mr. Fathi Yusuf, given that tax deposits could then be paid directly from the shareholder distributions themselves.

remote inquiries. The company has thereby complied with the terms of the TRO and provided the Marshal Service with complete and unfettered access to all documents relating to its business operations, including books and records, personnel records, bank account records, general ledgers, financial statements and daily receipts journals.

In response to these facts, the Government complains that the request for release of 4th quarter 2008 tax deposits was made on “short notice.” This ignores the fact that these deposits are a recurring request that ought to be anticipated by the Monitor. The only surprise is why the Monitor should be surprised by the quarterly request.

The Government Is Not Protecting The Interests Of The Government Of The Virgin Islands In This Instance.

The stated reason for the Government’s refusal to release shareholder-level tax deposits is that United’s request did not include sufficient “information upon which the USMS could discharge its duties to preserve United Corporation’s property.”³ One has to assume that by this statement it means to preserve such property for the benefit of the Government in the event United’s property is forfeited. But in making such an argument in this particular case the prosecution ignores the fact that the party seeking forfeiture of United’s assets is the Government of the Virgin Islands⁴ and the party to whom United wishes to make such payments is the very same Government of the Virgin Islands. Under what circumstances need the Government be overly concerned that the payments being made by United to the Government’s own coffers might be overly generous in any particular tax quarter? That question, of course, is rhetorical. Even assuming that United has over-estimates the requested shareholder-level tax payments needed for any particular

³ Government Opposition (Docket No. 1039) at page 3.

⁴ Forfeiture against United is demanded under the Virgin Islands CICO statute, 14 V.I.C. § 606, and not the federal RICO counts. Thus, any forfeiture is for the benefit of the Virgin Islands, not the United States.

quarter, from the Government's perspective (i.e., the Government of the Virgin Islands) this can only benefit the Virgin Islands.

There are only three possible outcomes regarding the CICO forfeiture count: 1) Forfeiture is denied; 2) Forfeiture is granted with respect to United assets but excluding accumulated unindicted shareholder profits earned prior to final judgment; or 3) All assets held by United are forfeited, including the accumulated profits of its shareholders. If the 2008 fourth quarter shareholder-level tax deposits exceeded the shareholders' actual tax liabilities for that quarter, then:

1. Under scenario (1) it makes no difference because the money is the shareholders' all along – but the Virgin Islands has benefited by having the use of the money during the interim.⁵
2. Under scenario (2) the result is exactly as under scenario (1).
3. Under scenario (3) the tax deposits are forfeited to the Virgin Islands Government and it has received the money earlier rather than later.

Ergo: Under what theory has the Marshal's Office and the Department of Justice protected the interests of the Virgin Islands Government by forbidding United to make timely tax deposits on behalf of its shareholders? Again, the question is rhetorical. But it does raise the more interesting question: If this obstruction served no legitimate interest of the Virgin Islands Government, whose interests were being served?

Conclusion

In view of the above, Defendant respectfully submits that the Government has failed to show cause. Accordingly, Defendant requests that this Court order the Government to release the appropriate funds to pay all future tax shareholder-level tax deposits on a

⁵ This is so because shareholder-level tax deposits made by a Subchapter "S" corporation are treated as shareholder distributions for purposes of accounting.

quarterly basis without the necessity of sworn financial statements or other obligations not now imposed upon United by the TRO.

Respectfully submitted,

HUNTER COLE & BENNETT
Counsel for United Corporation

February 17, 2009

By: /s/ Warren B. Cole
Warren B. Cole, Esq.
VI Bar No. 283
1138 King Street
Christiansted, St. Croix
U.S. Virgin Islands 00820
(340) 773-3535

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 17th day of February, 2009, I caused a true and exact copy of the foregoing to be filed using the Court's ECF system which will serve electronic notice upon all counsel of record.

 /s/ Warren B. Cole

ANDREOZZI FICKESS | LLP

Edward D. Fickess, Partner
Randall P. Andreozzi, Partner

Case
Hamed et al., v.
Yusuf et al.

Exhibit
10

February 12, 2009

VIA FACSIMILE & US MAIL

Leonard Briskman
c/o US Marshall Service
CS-3, Suite 402
Washington, DC 20530-1000

Re: United Corporation Tax Matters

Dear Mr. Briskman:

Pursuant to our phone conference this morning, with Mr. Soluri, this letter is to confirm that you now agree to the release of the shareholders' tax deposits for the fourth quarter of 2008, totaling \$1,200,000.

Thank you for your consideration in this matter.

Very truly yours,



Randall P. Andreozzi

OK
Blom
5:20 PM 02/12/09



RICHARDSON, PATRICK,
WESTBROOK & BRICKMAN, LLC

Gordon C. Rhea
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H. Blair Hahn
Daniel S. Haltiwanger
Matthew D. Hamrick
Christian H. Hartley
David Hendricks
Gregory A. Lofstead
Christiaan A. Marcum
Katie McElveen
Daniel O. Myers
Karl E. Novak
Kimberly Keevers Palmer
Charles W. Patrick, Jr.
Gordon C. Rhea (CA, DC & USVI only)
Terry E. Richardson, Jr.
Thomas D. Rogers
A. Hoyt Rowell, III
Matthew J. Thiesing
T. Christopher Tuck
James L. Ward, Jr.
Edward J. Westbrook
Kenneth J. Wilson
Robert S. Wood

March 24, 2009

District Court of the Virgin Islands
Magistrate Judge Geoffrey W. Barnard
5500 Veterans Drive, Suite, 345
St. Thomas, USVI 00802-6424

Dear Magistrate Barnard:

Pursuant to the Court's request during the March 20, 2009 status conference, we set forth below the various document numbers associated with the pending motions identified by defense counsel.

Of Counsel:
James H. Rion, Jr.
Howard Siegel (DC & MD only)
David L. Suggs (MN & NY only)
Robert M. Turkewitz

<u>MOTION:</u>	<u>Document Filing Nos.</u>
<u>Stein Motion:</u>	811; 845; 856; 1011
<u>Shareholder Distribution Motion:</u>	564; 572; 648; 651; 659; 660; 695; 702; 712; 716; 725; 788; 849; 851; 870; 871; 873; 1004; 1006; 1007; 1015
<u>Electronic Monitoring Motion:</u>	989
<u>Selective Prosecution Motion:</u>	454; 492; 2-15-2005 (no document no.); 794; 962
<u>Spoliation Motion:</u>	1038; 1040; 1067; 1070; 1073; 1076
<u>Motions to Compel Production:</u>	Foreign Bank Records Docket Nos: 501; 694; 704; 705; 794; 912; 919; 920; 925; 931; 999; 1012; 1017; 1023; 1031; 1033; 1036; 1066; 1072; 1075. Defense intends to file additional motions pending review of government production.
<u>Prosecutorial Misconduct Motion:</u>	Original Motion no document number, dated 1-11-2007; 677; 684; 692

Respectfully submitted,

/s/Gordon C. Rhea
Gordon C. Rhea, Esq.
Attorney for Waleed Mohammed Hamed

**Case
Hamed et al., v.
Yusuf et al.**

**Exhibit
11**

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 24th day of March, 2009, I electronically filed the foregoing with the Clerk of the Court using CM/ECF system which will send a notice of electronic filing (NEF) to all counsel of record.

/s/Gordon C. Rhea
Gordon C. Rhea, Esq.

Case
Hamed et al., v.
Yusuf et al.

Exhibit
12

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

UNITED STATES OF AMERICA)
and)
GOVERNMENT OF THE VIRGIN ISLANDS,)
)
Plaintiffs,)

v.)

CRIM. NO. 2005-0015

FATHI YUSUF MOHAMMED YUSUF,)
aka Fathi Yusuf,)
WALEED MOHAMAD HAMED,)
aka Wally Hamed,)
WAHEED MOHAMMED HAMED,)
aka Willie Hamed,)
MAHER FATHI YUSUF,)
aka Mike Yusuf,)
ISAM MOHAMAD YOUSEF,)
aka Sam Yousuf,)
NEJEH FATHI YUSUF, and)
UNITED CORPORATION,)
d/b/a Plaza Xtra,)

Christiansted,
St. Croix, USVI

July 9, 2009
11:00 a.m. to 12:15 p.m.

Defendants.)

UNITED STATES OF AMERICA,)
)
Plaintiff,)

v.)

CRIM. NO. 2003-147

FATHI YUSUF MOHAMMED YUSUF,)
aka Fathi Yusuf,)
WALEED MOHAMAD HAMED,)
aka Wally Hamed,)
WAHEED MOHAMMED HAMED,)
aka Willie Hamed,)
MAHER FATHI YUSUF,)
aka Mike Yusuf,)
ISAM MOHAMAD YOUSUF,)
aka Sam Yousuf,)
NEJEH FATHI YUSUF, and)
UNITED CORPORATION,)
d/b/a Plaza Xtra,)

Christiansted,
St. Croix, USVI

July 9, 2009
11:00 a.m. to 12:15 p.m.

Defendants.)

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TRANSCRIPT OF

HEARING ON MOTIONS FOR ORAL ARGUMENT

BEFORE: THE HONORABLE SR. JUDGE RAYMOND L. FINCH, PRESIDING

APPEARANCES:

For Plaintiffs:

KENRICK ROBERTSON, ESQ., AAG
ALPHONSO ANDREWS, ESQ., AAG
NELSON JONES, ESQ., AAG
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MARK F. DALY, ESQ.
Trial Attorney
U.S. Department of Justice
Tax Division
Northern Criminal Enforcement Section
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Washington, DC 20044

On Behalf of the United States

VALERIE LAWRENCE, RPR
Official Court Reporter
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U.S. Virgin Islands 00820-4355

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7 By: KYLE R. WALDNER, ESQ.

8 On Behalf of Fathi Yusuf Mohammed Yusuf

9 THOMAS ALKON, ESQ.
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11 2115 Queen Street
12 Christiansted, Virgin Islands 00820

13 On Behalf of United Corporation

14 PAMELA LYNN COLON, ESQ.
15 Law Offices of Pamela Lynn Colon
16 36C Strand Street, Third Floor
17 Christiansted, Virgin Islands 00820

18 On Behalf of Waheed Mohammed Hamed

19 DEREK M. HODGE, ESQ.
20 MacKay & Hodge
21 P.O. Box 303678
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23 On Behalf of Negeh Yusuf

24 GORDON C. RHEA, ESQ.
25 Richardson, Patrick, Westbrook &
Brickman, LLC
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Mount Pleasant, SC 29465

On Behalf of Waleed Hamed

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APPEARANCES:
(Continued)

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Clarence, NY 14031

On Behalf of Waleed Mohammed Hamed

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Law Offices of John K. Dema, P.C.
1236 Strand Street, Suite 103
Christiansted, VI 00820-5008
BY: Gordon C. Rhea, Esq.,
On Behalf of Maher Fathi Yusuf

WARREN B. COLE, ESQ.
Hunter, Cole & Bennett
Pentheny Building, 3rd Floor
1138 King Street, Ste. 301
Christiansted, St. Croix, VI 00820

On Behalf of Unindicted Shareholders

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P-R-O-C-E-E-D-I-N-G-S

* * *

THE CLERK: United States of America versus
Fathi Yusuf et al., 2005-0015.

THE COURT: Good morning, Counsels.

THE CLERK: Motion hearing.

THE COURT: May I have your appearances,
please, beginning with the Government.

MR. DALY: Your Honor, Mark Daly, for the
United States Department of Justice.

MR. ROBERTSON: Good morning, Your Honor.
Kenrick Robertson for the Justice Department.

MR. RHEA: Good morning, Your Honor. Gordon
Rhea for Waleed Hamed.

MR. ANDREOZZI: Good morning, Your Honor.
Randall Andreozzi, on behalf of Waheed Hamed.

MS. COLON: Pamela Colon, on behalf of Waheed
Hamed.

MR. HODGE: Derek Hodge, on behalf of Neje
Yusuf.

MR. ALKON: Thomas Alkon. Good morning. On
behalf of United Corporation.

MR. COLE: Warren Cole on behalf of United
Corporation as well.

MR. WALDNER: Kyle Waldner standing in for

1 Henry Smock on behalf of Fathi Yusuf.

2 THE COURT: Thank you, Counsels.

3 I saw that you have received my orders that
4 were entered this week. The result of which leaves the
5 following motions for consideration: Prosecutorial
6 misconduct, spoliation, shareholder distribution issue,
7 and the Stein motion.

8 MR. RHEA: Good morning, Your Honor. Gordon
9 Rhea speaking.

10 THE COURT: Good morning.

11 MR. RHEA: One matter I think we can dispose
12 of fairly quickly. Counsel for the Virgin Islands
13 Government here, apparently because of logistical
14 problems, Miss Somersall was unable to make it here
15 today, and I had spoken with him, and we've -- and also
16 with Mr. Daly for the U.S. Government, and we've agreed
17 that we will work out a way to either get her deposed
18 by consent of the parties, or otherwise the testimony
19 of her. I believe we just need basically the answer to
20 one question. So I'd ask that we could handle it that
21 way, since she was unable to be here today.

22 THE COURT: Any objection, Counsel?

23 MR. DALY: None, Your Honor.

24 THE COURT: Very well. I will look at it.

25 MR. RHEA: Thank you, sir. If it's all right

1 with Your Honor, we would like to next have Mr. Cole
2 address Your Honor on the shareholder issues.

3 THE COURT: Very well.

4 MR. RHEA: Thank you, sir.

5 MR. COLE: Your Honor, this is actually the
6 Government's motion for reconsideration, because the
7 Court has ordered the distribution.

8 THE COURT: Yes.

9 MR. COLE: Your Honor, there is now pending,
10 also, which the Court has deferred, the motion to
11 dismiss the forfeiture counts with respect to the
12 United Corporation. And the Government's motion for
13 reconsideration raises the issue, among other things,
14 as to, for the first time I've seen, in any event, has
15 raised the issue as to whether or not the unindicted
16 shareholders to whom these distributions were to be
17 made are, in fact, the shareholders. That does not
18 appear in the Indictment. And this is the first time
19 that I've seen this issue raised.

20 However, the distribution issue also is
21 impacted by the question of whether or not the
22 restraint of United's assets, including the
23 post-Indictment income, is proper in the first
24 instance. And that is all tied in with our motion to
25 dismiss the forfeiture counts with respect to United.

1 So I would suggest, Your Honor, that we defer
2 argument on that motion, that is, their motion to
3 reconsider, until we have the full briefing schedule
4 completely done with respect to the motion to dismiss,
5 because it really is in many ways one issue. That is,
6 whether or not the restraint of United's assets is
7 proper in the first instance.

8 THE COURT: Very well. Counsel.

9 MR. DALY: Your Honor, we have no objection to
10 Mr. Cole's suggestion. If, in fact, the Court finds
11 that the assets are not, that the forfeiture is not
12 proper, then the shareholder distribution motion would
13 be moot. There would be no reason to make an issue and
14 order on the motion for reconsideration.

15 MR. COLE: Yes, Your Honor, with the caveat
16 that there is an additional scenario possible, portions
17 of the forfeiture count might remain. Yet the
18 restraint of these particular assets might be
19 determined to be improper.

20 THE COURT: Very well.

21 MR. COLE: I agree that it all ought to be
22 hashed out in one hearing.

23 THE COURT: Very well.

24 Counsel.

25 MR. DALY: Your Honor, I think -- do you want

1 me to go forward on the motion regardless?

2 THE COURT: Yes, please.

3 MR. DALY: Okay.

4 Your Honor, the motion for reconsidering, the
5 Government asks the Court to reconsider its order
6 granting shareholder distributions to the unindicted
7 shareholders, several members of the Yusuf Family. The
8 Government has raised a number of issues in its motion,
9 triple E, fairly well briefed.

10 The first is a, a factual one, a procedural
11 issue, with the forfeiture proceeding. Factual issues
12 have to be reached to determine that an ancillary
13 hearing following a conviction, if a conviction is, in
14 fact, returned.

15 One of the issues that has arisen is who, in
16 fact, owns the shares of United. On paper, it is
17 entirely owned by the Yusuf Family, and it is
18 distributed amongst various family members.

19 However, I believe in civil litigation there
20 was deposition testimony in which it indicated that
21 setting aside the formalities of share certificates,
22 that, in fact, the shares were owned fifty percent by
23 the Yusuf Family and fifty percent by the Hamed Family,
24 and no indication as to how it broke down or even if it
25 broke down between individual family members. That

1 issue can't be resolved with the pretrial motion, if
2 for no other reason than under the agreed amendment and
3 restraining order, all of those individuals gave up a
4 right to such a determination when they accepted
5 additional funds that had previously been restrained.

6 Another issue is that the Government
7 respectfully requests that the Court reconsider the
8 treatment of what has been described as the profits of
9 the shareholder distributions. Every penny that comes
10 into the coffers of United Corporation is considered
11 its asset at the moment it's received. At that point
12 that it enters the coffers, it's restrained.

13 If later, at some point, the corporation does
14 a financial analysis, and for tax purposes determines
15 that it has a profit, it doesn't change the character
16 of what that money is, which is an asset of United
17 Corporation. Regardless of whether it's an
18 S corporation or not, when that money is in the
19 coffers, it is an asset, and so it should be
20 restrained.

21 Part 2, another additional reason as to why
22 the shareholder distribution shouldn't be received,
23 there is a question as to if, in fact, United has shown
24 profits. At this point, United does not have audited
25 financial statements. It has fairly rudimentary income

1 statements that it produces.

2 Another, other issues that have come up are as
3 to whether those are, in fact, accurate, as the
4 Government has realized there are additional, what
5 could only be described as off-book assets that belong
6 to United.

7 It calls into question the very nature and
8 quality of the reporting that goes on. Without more
9 assurance, releasing what could be up to 15 million
10 dollars to the Yusuf Family would dissipate the assets
11 that rightly have been restrained by the United States.

12 And even so, if the Court releases that
13 amount, and later it's found that the portions were not
14 accurate, it would be very difficult for the Government
15 to claim those millions of dollars. I think the papers
16 will speak for themselves.

17 I will turn it over to Mr. Cole.

18 MR. COLE: First of all, Your Honor, with
19 respect to the issue of whether or not the shares that
20 are listed on the corporate books, in fact, belong to
21 the unindicted members of the Yusuf Family, this is the
22 first time that I have, quite frankly, heard that made.
23 It's not in the Indictment.

24 It was in the Motion To Reconsider, and I find
25 it difficult to understand exactly how the Government

1 tends to prove what it has not pleaded.

2 Going beyond that, however, Your Honor, the
3 restraint of the United assets is under the local
4 statute, not under the federal statute. So, the
5 claimant for the assets being restrained is the Virgin
6 Islands Government. The Virgin Islands Government has
7 insisted throughout this litigation that, in fact, the
8 unindicted shareholders make tax deposits on the
9 estimated flow-through income from this corporation,
10 has received that without complaint, that money without
11 complaint, and I believe they're estopped from
12 suggesting that those individuals are not, in fact, the
13 proper shareholders of the corporation.

14 Another thing that I just heard, which I
15 don't recall seeing in the papers before, is a
16 suggestion that the corporation is not making profits
17 from which distributions can be made. I find that
18 rather remarkable, considering the fact that the entire
19 basis for this case is the allegation that they made
20 huge profits that were not previously reported.

21 One could also examine the bank accounts of
22 the corporation, and see that over a period of time it
23 retained earnings balances in those bank accounts and
24 various assets have steadily increased over time.

25 I think you can logically conclude from that

1 fact alone that there are substantial profits retained
2 in the corporation that can properly be distributed.
3 In any event we are prepared to inform the, the amount
4 of distribution we intend to make, so that they can
5 assure themselves there is a correct amount of retained
6 earnings left in the corporation to fund its current
7 operations.

8 Finally, Your Honor, we are talking about
9 post-Indictment income, or that income that the
10 corporations have while under the strict supervision of
11 the Marshal's Service. The entire basis for the
12 Government's contention that those funds are subject to
13 being restrained and ultimate forfeiture is the motion
14 that the, all of the working assets of the corporation
15 belong to the Government as of the date of the alleged
16 offenses, and, therefore, all earnings from, derived
17 from those assets, belong to the, belong to the
18 Government as well, notwithstanding the fact that
19 they're clearly the results of the lawful operations of
20 a lawful business.

21 The problem with that is that they really
22 haven't stated in the Indictment any grounds for
23 believing or for concluding that the assets in the
24 corporations themselves are subject to forfeiture at
25 all, or properly restrained, because all the classes of

1 assets that they could logically seek forfeiture of
2 were, in fact, by their theory, taken out of the
3 corporation, not left in the corporation. So by
4 definition, what's left in the corporation are
5 untainted assets that they can't reach.

6 Now, there is going to be some extensive
7 briefing on that issue, I expect, in the subsequent
8 briefs that we're to file with respect to the motion to
9 dismiss the forfeiture counts. And so we'll await that
10 briefing to be completed before I complete the
11 explication of that particular theory.

12 Thank you, Your Honor.

13 MR. DALY: Your Honor, if I could just respond
14 to one quick issue. Your Honor, Mr. Cole has raised
15 the issue as to whether the forfeiture was properly
16 depleted. Forfeiture under this provision is merely a
17 notice, provision to inform individuals as to what
18 might be forfeited, and I believe that in the
19 forfeiture provision itself it states that all of the
20 interests of Fathi Yousef, at least Waleed Yusuf, are
21 subject to forfeiture. That creates a factual issue as
22 to what, in fact, are his interests in United
23 Corporation.

24 By that I mean Mr. Hamed, such an issue can
25 only be resolved at an ancillary hearing after

1 trying -- it can't be determined on the face of the
2 Indictment. The defense is not allowed to peek behind
3 the Indictment and see the proper basis for that.

4 It can't be resolved at a hearing prior to
5 trial because they've all renounced such a right, and
6 by doing that, they've conceded that it has to be done
7 at the conclusion of the trial.

8 THE COURT: How will that be renounced?

9 MR. DALY: Under the agreement, every single
10 one of them said that they would not contest the
11 forfeiture itself. Now, I understand in the Court's
12 motion for reconsideration, or in the Court's orders,
13 it's premised upon what the Court defines as the
14 profits, and what the Court defines as the assets.

15 But such an issue as to whose profits can't be
16 resolved until the Court, until the factual
17 determination is made as to who the true shareholders
18 are, who holds the true interests. And so there can't
19 be -- you can't allocate profits to any individual
20 until you know who owns rightful title.

21 And that can't be decided until the ancillary
22 hearing.

23 THE COURT: Very well.

24 MR. DALY: Thank you.

25 THE COURT: Thank you.

1 MR. COLE: Your Honor, one comment.

2 I'm not sure that Mr. Daly is correct with
3 respect to the determination of the ownership of the
4 corporate shares occurring in an ancillary hearing. I
5 believe that, I believe that the forfeiture count
6 applicable to those interests, that is the shares
7 themselves, are under the federal forfeiture count, not
8 for local. I'd probably have to spend thirty minutes
9 going over the Indictment and confirming that, but I
10 believe that is correct.

11 And under the federal statute, that has to be,
12 that has to be a fact determined by the Jury. They
13 have to prove at trial what, what they're to forfeit,
14 so I don't believe that that will be the subject of the
15 ancillary hearing post trial.

16 Thank you.

17 THE COURT: Very well. Spoliation portion.

18 MR. RHEA: Yes, sir. Mr. Andreozzi will be
19 presenting that, Your Honor.

20 THE COURT: Very well.

21 MR. ANDREOZZI: Good morning, Your Honor.

22 THE COURT: Good morning.

23 MR. ANDREOZZI: Your Honor, this is an issue
24 that came to the defense team's attention in November
25 of this year when we went to visit the FBI office to

1 introduce some of our newest expert witnesses to the
2 documents that were held there.

3 By way of some background, as you know, in the
4 raids in 2001, the Government agents came into the
5 Defendants' businesses and homes, and seized hundreds
6 of boxes of documents, and per their protocol they
7 numbered and bar coded these boxes they stored.

8 They went from room to room, from office to
9 office, compiled the documents, gathered them up, put
10 them in bar coded boxes, and stored them at FBI
11 headquarters in St. Thomas. The Government, the
12 Government agents then proceeded to Bates stamp some of
13 these documents.

14 They had them all there, hundreds of boxes in
15 their storage rooms there, and chose to Bates stamp
16 some, but not all of the documents. And the Bates
17 stamping are sporadic. The Bates stamps on the
18 documents, the previous figures correspond to the bar
19 codes on each of the boxes. So, for example, a box
20 that said 225, would start with the Bates prefix 225
21 something or other, so that they knew which documents
22 were arranged in which boxes and sourced them for the
23 search warrant returns to the various offices and
24 shelves in the businesses.

25 Now, thousands of the documents were not Bates

1 stamped, probably, estimating probably thirty to forty
2 percent of the documents that we found in the FBI
3 office were also Bates stamped by the agents. And with
4 respect to the documents, well, what happened next was
5 they would then return some of the boxes of documents
6 to the defense. They would gather up boxes that they
7 deemed to be irrelevant, and ship them back to the
8 Defendants, and they were returned back to the stores
9 and the various homes et cetera.

10 With respect to the rest, the documents that
11 they kept, which are presumably, they deem to be
12 relevant in the case, they had some that were Bates
13 stamped and some that were not. And they held on to
14 these.

15 With respect to exhibits that the Government
16 lawyers were going to use at trial, they did a protocol
17 by which the agents would gather up the exhibits,
18 encase them in plastic binders, and relate the Bates
19 stamps to the boxes et cetera and store them in trial
20 binders, and they showed us these binders during visits
21 back in 2004. So they had these all set up for trial.

22 And they were -- again, they were
23 cross-referenced with the bar codes on the boxes, to
24 preserve the integrity of the evidence. With respect
25 to the documents that they weren't going to use at

1 trial, the non Bates-stamped documents, things like
2 that, they left those. They let those stay in the
3 boxes.

4 What we learned recently was that the agents
5 then proceeded, consciously, to reorganize the
6 documents when those boxes, some Bates-stamped, some
7 not Bates-stamped, in that manner, lost track of the
8 integrity of the various documents that were being held
9 in the FBI offices.

10 Now, the Government could have Bates stamped
11 the documents that are retained, all of them. They
12 started the process -- they did it sporadically -- but
13 they chose not to. They could have returned the non
14 Bates-stamped documents to the defense. They did it on
15 various occasions. They returned other documents.

16 They didn't return these. They kept them, and
17 then proceeded to reorganize them among the boxes.
18 Basically, they could have cared for these documents in
19 the same manner and with the same meticulous
20 organization that they cared for their trial exhibits.
21 They didn't.

22 In November of 2008 we discovered this. At
23 that time, we brought some of our newer experts in,
24 because we needed to acclimate them with the documents,
25 introduce them to all of the exhibits and everything

1 else, and Mr. Daly accommodated us, and we, I think on
2 November 10th went there.

3 We had some issues to iron out as to the
4 protocol for reviewing the documents, and we worked
5 those out with the Special Agent in the office,
6 Christine Zeeber. We finally started reviewing
7 documents. Let me take a step back.

8 The Government implemented a new protocol when
9 we were there, and we had to work through this. And
10 part of the protocol was that they would give us, they
11 would only let one person touch the documents at a
12 time. Only one box at a time could be reviewed at the
13 table, in order to preserve the integrity of the
14 documents. We understood that. We worked with that.

15 But then they decided to provide the documents
16 in random order. In other words, the boxes in random
17 order, so we didn't get to see box one, two, three,
18 four as they were numbered. They would just bring them
19 to us randomly.

20 The -- here's how we found this out. We found
21 out the problem. They gave us a box that was marked
22 131, placed it on the table. We went in and looked at
23 the Box 131, bar coded 131, and we found documents that
24 were Bates-stamped with the prefix 295 in that box.

25 And so what we did was we asked Agent Zeeber,

1 who was present monitoring the review, why these
2 documents were in this box. And it was then that Agent
3 Zeeber told us that she had reorganized the boxes to
4 fit her organizational method.

5 We asked her, then, -- and taking a step back,
6 when we visited in 2004, the defense team was compiling
7 an index, a general index of the documents, to make
8 sure that we knew what was in each box, and organized
9 for our benefit. They weren't detailed. They didn't
10 have every single document, nor did the Government's
11 returns have every single document identified, but
12 there they were general categories, and we were relying
13 on those, again, during this trip.

14 She said that she had reorganized those. And
15 we were trying to figure out the extent of the
16 reorganization, so we asked her for her methodology,
17 and Miss Zeeber would not give it to us. She refused
18 to provide that.

19 So I asked, well, just to summarize, if we,
20 say, looked at Box 200, if we looked at Box 200, and we
21 refer to our Index, would we -- would the content in
22 Box 200 match what we have in our exhibit, and she
23 said, in no uncertain terms, no, they wouldn't.

24 They're not going to match anymore. They're
25 not going to match the original Bates, the original bar

1 code numbers that were on the, on the boxes from the
2 seizure.

3 And according to Miss Zeeber, she said I had
4 no idea the defense relied on the order of the
5 documents in the particular box, rearranged them how I
6 was doing them, and what made sense to me. This, even
7 though the FBI bar codes were there, and they
8 corresponded to the Bates numbers.

9 We indicated that we had a problem with this,
10 because now our index was completely off. And that was
11 when Miss Zeeber called in Attorney Hendrickson, and
12 Agent Petri, who were on-site but not monitoring the
13 search.

14 We wanted to talk to the Department of Justice
15 about this. And when they came in, Agent Petri stated
16 that it may have been the fault of the defense team in
17 the reorganization of the documents, the document, and
18 what he said was, back in 2004 he had occasion on one
19 day to, after the team left to go in and look at the
20 boxes that we were reviewing, and he had to replace and
21 move boxes around, documents back around because we
22 misplaced them among the documents.

23 So he accused the defense team. He said,
24 maybe that's why Box, documents 295 are in Box 131.
25 And what he said was, this is why we have to have an

1 agent watching you to preserve the integrity of the
2 documents.

3 And our question then was, if the integrity,
4 if there is integrity to the order of the boxes and the
5 documents as the agent is saying, and Agent Zeeber just
6 informed us that she rearranged the documents among the
7 box, why wouldn't the FBI provide us with this
8 methodology? Perhaps we can fix things.

9 And it was then that Petri looked at Agent
10 Zeeber and said, you rearranged the documents? And he
11 didn't participate in the discussion anymore.

12 And so we are faced with this problem right
13 now. The Government intentionally seized the
14 Defendants' property. They selectively Bates stamped
15 some of the documents that they determined were
16 relevant to their case, instrumental to their
17 prosecution, and they preserved their organizational
18 integrity.

19 They painstakingly preserved those documents
20 and have them ready for trial right now. Instead of
21 returning the rest to us, or keeping them pristine,
22 they held onto them, and reorganized them. And
23 knowingly and willfully destroyed the integrity of
24 these documents. None of this is accidental.

25 And it was -- it was not as if the agent

1 dropped the documents on the floor, you know,
2 accidentally mixed them up. There was a deliberate
3 conscious action by the agents, reorganizing the
4 documents.

5 And this is an egregious harm to our ability
6 to go in and present our case. And it's simply
7 inconsistent treatment between the documents that
8 preserve the Government's case in chief, their case is
9 set, and the defense's case. Documents held at the
10 Government headquarters, not in the Defendants' hands,
11 are now destroyed in their organizational integrity.

12 The consequences of these actions are
13 numerous. We can't establish or contest the
14 authenticity of the non Bates-stamped documents. We
15 can't continue or contest the source of the non
16 Bates-stamped documents now that the source of the
17 documents are undeterminable.

18 We lose the ability to invoke attorney-client
19 privilege with respect to documents that may have been
20 protected by such privilege. We can't establish or
21 contest whether an individual had access to a
22 particular document, and since the Government alleges
23 concealment in this tax case, that's a key issue. Who
24 saw these? Who had access to the documents? Did the
25 accountants? Did other people in the company have

1 access to this? Was this concealed so only certain
2 Defendants had access? We can now not establish that
3 with respect to the non Bates-stamped documents.

4 This is devastating. We can't meaningfully
5 cross-examine Government witnesses with respect to non
6 Bates-stamped documents because we don't know if they
7 saw them. And this impairs the Defendants' Sixth
8 Amendment rights.

9 We can't determine whether documents pertinent
10 to the case are all accounted for. Therefore,
11 admission of any one particular document may well
12 violate the rule of completeness. We also can't
13 determine whether the Government may have procured
14 certain documents solely through improper means.

15 As the Court noticed we have a defense motion
16 regarding the foreign bay groups. If the Government
17 made improper representations to these foreign
18 agencies, for instance, Jordan, with respect to
19 gathering these documents, if the records that they
20 collected from these agencies are now intermixed with
21 the documents seized, we could never sort of unscramble
22 the output to determine what to take out and what to
23 leave in.

24 What we've done is, the defense has, to the
25 best it can, based on the indexes and our review,

1 compiled categories of problems that we found. We kind
2 of narrowed into seven categories of omission,
3 documents missing from certain boxes, boxes missing in
4 their entirety, some documents or boxes having more
5 documents than they started out with, and we've
6 organized -- our team here has organized those to the
7 best that we can. We have to date, still working on
8 this, determined that there is, there is at least seven
9 boxes right now that are affected. There could be
10 more.

11 We're going to try to go back and review these
12 to the best of our ability. And we have certainly, if
13 the -- we have the affidavits from the witnesses that
14 were present that are attached to the, to the motion,
15 and some of the ones are here in the event that the
16 Court wishes to inquire. And we can provide and share
17 with you the information that we sort of put together
18 with respect to the analysis of the problems.

19 In essence, in U.S. versus Enriquez, the Court
20 said, the Government has long been on notice of its
21 duty to preserve discoverable evidence, and has been
22 repeatedly warned of the jeopardy in which it places
23 its prosecutions when it disregards this obligation.
24 Whereas here destruction is deliberate, sanctions will
25 normally follow. Irrespective of the perpetrator's

1 motive, unless the Government can bear the heavy burden
2 of demonstrating that no prejudice resulted to the
3 Defendant.

4 In this case the prejudice is clear. Our
5 ability to defend this case has been prejudiced to no
6 end. I've only identified a few of the problems that
7 we're facing, and we'll probably cover more as we move
8 on.

9 Our prayer for relief in the motion was,
10 first, dismissal of the document in its entirety.
11 There were other alternative remedies that the courts
12 have determined. For example, suppression of the
13 evidence, seized or otherwise obtained by the
14 Government; adapting appropriate evidentiary rulings;
15 jury, curative Jury instruction, et cetera.

16 The consensus of the defense counsel is that
17 these other alternative remedies either may be
18 unrealistic or not appropriate to remedy the severity
19 of the harm. We would encourage the Court, with all
20 respect, to dismiss the Indictment in its entirety due
21 to the problems that were caused.

22 At 5:50 p.m. last night the Government filed a
23 reply, and that reply was, I think, three pages long,
24 and it held certain affidavits from the agents in
25 there, documenting the meetings, Forms 302, documenting

1 meetings and making statements. We filed a motion to
2 strike last night because we had the ability, we were
3 working through these, and we read through the
4 response. And one of the things that we noticed from
5 the response is that it's vague.

6 It alleges, in its three pages, that the
7 defense made numerous false allegations. It doesn't
8 define or identify what those false allegations were.
9 The defense had the affidavit for months. They had our
10 motions for months. Last night at 5:50 p.m. they filed
11 this.

12 We looked at it, and made the determination
13 that with these vague allegations and with the
14 declarations of the agents -- the agents do not deny
15 the allegations made in the motion. They're not
16 complete, if you read their allegations, their
17 allegations every time they did 302 forms.

18 In November or January during our trip, after
19 we put them on notice that we were going to be filing a
20 motion with Judge Barnard in the hearing on November
21 14th, and they did -- updated two pages or three-page
22 affidavits last night, July 8th. None of them deny
23 that they reorganized the documents. They don't say
24 they didn't.

25 They say they reorganized boxes, but they

1 never denied that. They don't deny the allegations
2 that are stated in the affidavits, and in the motions.
3 All they do is paint a different picture, with facts.
4 If you read the sentences one at a time, you would say
5 that's true, that's true, that's true, but the picture
6 is incomplete. The true picture is what we illustrated
7 here.

8 And if the Court deems that that is, that
9 warrants a remedy, which we believe it does, we ask for
10 the appropriate ruling.

11 Thank you.

12 THE COURT: What evidence do you have that the
13 acts of the Government are acts done in bad faith?

14 MR. ANDREOZZI: The Government could have
15 given these documents back to us. What they did --
16 Your Honor, that's a good question. The bad faith in
17 our view is this: When the FBI or the IRS criminal
18 investigations seizes documents in a case, -- for
19 example, we had a case here, a criminal case, a while
20 back, where the evidence that was, special agents
21 testified on the stand, they would look at a document.

22 The lady would look at a document and say, and
23 the lawyer would ask, how do you know where that
24 document came from? She wasn't even at the scene of
25 the seizure. She would look and say, this Bates stamp

1 means that we found the document in this room, in this
2 shelf, and in this area, precisely.

3 The Government could have, they knew the Bates
4 stamp and organized their exhibits that way, and they
5 did it, and they preserved them. They deliberately
6 didn't Bates stamp the others. And it wasn't -- at
7 first we thought that one of the agents said to us, we
8 ran out of money. So the first thought, we weren't
9 really thinking about it back in 2004, but you would
10 think that if you ran out of money, the first two
11 hundred boxes would, say, be Bates-stamped and the rest
12 wouldn't.

13 Here the Bates stamping is deliberate. It's
14 sporadic, and the exhibits that they're using at trial
15 are Bates-stamped, they're preserved. The others
16 aren't.

17 Then what they did, not by accident, was at
18 their convenience, reorganize the documents. We didn't
19 get to go into the FBI office until, from 200- -- I
20 think Four or Six was our last visit, until '08, so we
21 weren't privy to what happened. We were never told.

22 If this didn't come up, if we didn't notice
23 this, the agent would never have told you. She knew
24 she reorganized the documents. She knew she
25 reorganized non Bates-stamped documents. They never

1 would have told us.

2 We never would have known had we not looked
3 and had them indexed from before. That act, the
4 combination of acts illustrates bad faith.

5 They could have Bates stamped them all. They
6 should have. They won't give us their protocol, and
7 IRS dictates that they Bates stamp everything. We
8 should have -- the FBI has done in the past, they have
9 the ability, the means, in a case like this, of this
10 gravity, to take care of these documents. They chose
11 not to.

12 And interestingly, the documents that they
13 cared for are the ones that they're using as exhibits.
14 The documents that they didn't care for, and now their
15 integrity is lost, are held onto by them, presumably
16 relevant, but not part of their case in chief. That in
17 our view is the bad faith.

18 THE COURT: Thank you, counsel.

19 MR. ANDREOZZI: Thank you, Your Honor.

20 MR. DALY: Your Honor, we'll forego a factual
21 recitation.

22 I think that the declaration raised, of both
23 Special Agent Petri and Zeeber set that forth, as well
24 as the Forms 302 attached to Special Agent Zeeber's
25 declaration which, contrary to Mr. Andreozzi's

1 assertions, do un-categorically state that she never
2 redistributed documents within boxes, but setting that
3 aside, what's curious about the Defendants'
4 presentation is that there is actually no discussion of
5 case law. And that is the legal standard for
6 spoliation motion, which the Government has presented
7 in its reply.

8 And the three factors are that there must be
9 bad faith, which the Court has identified; the evidence
10 must be exculpatory; and it must be irreplaceable.
11 Starting with bad faith, the defense confuses inference
12 with evidence. There is no evidence of bad faith here.
13 If the Court were to look at the declaration of Special
14 Agent Petri, he discusses how, in 2003 and 2004 the
15 Defendants were given virtually unfettered access to
16 the seized evidence, evidence obtained by a Grand Jury
17 subpoena, Form 302, essentially the Government's entire
18 case file, in the building of the FBI office in the
19 conference room, because there was no classified top
20 secret or Grand Jury information there. They were
21 allowed to access that material at their leisure, and I
22 think as Special Agent Petri's declaration describes
23 it, there were up to ten people, copying, scanning,
24 reviewing documents.

25 Petri reviewed the documents and realized that

1 the documents had been misplaced. He didn't make a big
2 deal, didn't boo hoo and cry, simply replaced them.
3 And as he said, he can't be certain that he did that in
4 every single instance.

5 Zeeber stated in her 302s, Special Agent
6 Zeeber, that the evidence was not, in fact, kept in the
7 lower building in the numerical order, and I believe
8 that is the root of confusion. It is a much smaller
9 space, not an entire conference room.

10 Documents were in a locked storage room and
11 what is essentially the central work area where secret
12 and Grand Jury information is kept. Therefore, it
13 wasn't possible to give the Defendants complete access.
14 It also wasn't possible to keep everything in numerical
15 order.

16 Once the Defendants identified that as their
17 major issue, they were accommodated. There is no
18 evidence of bad faith, no evidence that somebody
19 decided to take something from one box and put it in
20 another.

21 I think, just to bring me to the second point,
22 which kind of folds into it, as you can see, I believe
23 it was attached to Government's initial response. The
24 Government has repeatedly asked the Defendants to
25 identify what's missing, what's jumbled. Just give us

1 a list. This can be resolved. If there are issues at
2 the end, then have at it, but at this point, tell us
3 what's wrong.

4 And it's kind of this hide-the-ball game.
5 They've done it again here before the Court. They talk
6 about one box that had documents from, purportedly from
7 another box. Quite frankly, considering the volume of
8 pleadings that they've submitted, that's, that's
9 pretty, that's pretty weak tea. There has got to be
10 some substantial harm that occurs, and so far, outside
11 of the fact the Defendants say their Index doesn't
12 match with what's in the box, that's about it.

13 Now, they haven't provided the Index. They
14 haven't told the Government how they indexed the
15 documents. Government has no way to verify that that
16 Index was correct, so they're basically asking the
17 Court to just accept whatever summary index they
18 created as the gold standard, and say everything that
19 doesn't marry with it, even if you don't tell me what's
20 missing, I'm going to suppress all the evidence.

21 The evidence also has to be exculpatory. They
22 haven't identified a single category of documents that
23 they purport missing or moved. There is no basis for
24 the Court to determine whether that was exculpatory or
25 whether it was irreplaceable.

1 THE COURT: How would they know if you were
2 holding the documents?

3 MR. DALY: Clearly, they have created the
4 Summary Index. If there were some sort of documents,
5 be it, you know, I'm trying to think of, invoice,
6 something of that nature, which would show that perhaps
7 United's money wasn't used to pay for an item, a check,
8 Third Circuit could say, look, show us the invoices,
9 and at least at that point, Government could say, that
10 could potentially be exculpatory.

11 Let's go back. Is it in the original box? If
12 not, is it elsewhere? We haven't been afforded that
13 opportunity. I mean, it's just as, you know, the Court
14 is in the same situation.

15 The other issue is the standard is extremely
16 high in order to provide any remedy. The Defendants
17 have not cited any cases within this Third Circuit to
18 support their contention. Government has looked at a
19 few examples. U.S. versus Chandry, which was decided
20 in April by the Third Circuit, 2009 West Law, 905, 065,
21 was, I believe, a child pornography prosecution,
22 involved Instant Messages. The defendant claimed that
23 the Indictment should be dismissed because the
24 Government hadn't produced all that Internet Instant
25 Messages. The Court denied relief, stating simply, the

1 defendant couldn't prove that additional messages
2 existed. And as such, there was no basis to dismiss
3 the Indictment.

4 We're in the same situation here. We have yet
5 to be presented with any indication of what's missing
6 or what has been moved. To the extent that this motion
7 is premature, the Court could put it off, but under the
8 legal standard, it should be denied on its face,
9 because there is no evidence of bad faith, and that
10 should be where the discussion begins and ends.

11 To the extent that they claim that they've
12 been harmed and that they can't authenticate the
13 source, discuss who had access to documents, that's
14 really whether the document will be accepted into
15 evidence. All of those objections could be raised at
16 the time either through a motion in limine or at the
17 time of the trial.

18 It's the Government's burden to introduce this
19 evidence. If the Government is unsuccessful, then the
20 Court certainly could deny its introduction. So, at
21 this point, it's a bit academic to sit here and say
22 that I can't -- none of these things could be
23 published. Whether the defense will turn over their
24 seven categories, I don't know.

25 I guess we'll have to wait and see as to what

1 they claim is missing. Until -- and until that
2 statement, and they can substantiate that and give the
3 Government an opportunity to reply, there is really
4 nothing for the Court to rule on.

5 MR. ANDREOZZI: Your Honor, to address some of
6 these points. Mr. Daly references the defense's Index,
7 and says, well, they never showed us the Index. In the
8 original reply, the defense, or the Government
9 immediately said, when we reached our Index, they said,
10 that index is inherently unreliable because it was
11 created by the defense. In other words, we're not
12 going to believe them. Even if they said this, they
13 could just be making it up. That's the fear. That's
14 the worry we have with respect to trial.

15 It's one thing to be able to stand here and
16 say, of the un Bates-stamped documents, I think I could
17 have found a check or an invoice written. I'm sure the
18 agent didn't memorize the organization of the un
19 Bates-stamped documents. They can't find them. That's
20 lost forever.

21 They want us to pinpoint and identify which un
22 Bates-stamped documents were reorganized. It's an
23 impossibility. They can't do it based on their Index.
24 Their returns were general, vague. Their returns would
25 say boxes of documents. That's what would be on the

1 forms, the search warrant returns, boxes of documents.

2 We tried the best we could to generalize, and
3 to get the categories, and identify things. We have,
4 Your Honor, for the Court's review, if you wish, our
5 Index. The Index, though, has notes, things, documents
6 that we feel, you know, that we were looking at with
7 respect to the case in chief.

8 To identify those to the prosecution would be
9 to provide the Government with impeachment evidence,
10 documents that we think are relevant to the case, et
11 cetera. We would be happy and more than willing to
12 allow the Court to look at that, or to view it, if you
13 deem it appropriate, in camera with our Index.

14 We have an Index here, this thick, identifying
15 the categories of the document, and we can provide that
16 for the Court's in-camera review and give the Court
17 some indication as to the, some of the categories of
18 documents that we have concerns about, where the
19 defense is, et cetera.

20 The problem is, at this point in time, we fear
21 to do that would be to provide impeachment information
22 to the Government, et cetera, and to improperly
23 compromise our ability to defend this case.

24 But to be clear, we have very specific
25 concerns, and we can identify documents that were

1 placed in one box and not in others. Many
2 Bates-stamped, those are the easier ones, but also many
3 not Bates-stamped.

4 The other point that, another point that
5 Mr. Daly makes is that Mr. Petri said that he had
6 replaced the documents. And he found them and replaced
7 them.

8 And he then said later on that we never gave
9 the Government the chance to cure the harm. The
10 problem that we have here is that Agent Petri and the
11 other agent can easily replace Bates-stamped documents.

12 If they look and they say here's Document 295,
13 should go into Box 25, we knew that, too. The problem
14 is, the problem is you can never do that with the non
15 Bates-stamped documents.

16 And I don't think Mr. Daly would be able to
17 stand up here and say to the Court that, in fact, they
18 can cure that. It's in that sense it's irreparable.

19 And the last point Mr. Daly makes is,
20 beginning of his reply, he says, that Miss Zeeber's
21 statement categorically and definitively says that she
22 did not reorganize the documents. I'll let the
23 Court -- the Court can look at that and make its own
24 determination but it doesn't -- we did not see that in
25 there.

1 And the witnesses for the defense, from
2 different firms, from my staff, all witnessed the same
3 representations that she did state definitively, with
4 Mr. Hendrickson in the room, Attorney Hendrickson, that
5 she reorganized the documents. As a matter of fact,
6 Attorney Hendrickson said to me, "What's done is done."

7 Thank you.

8 MR. DALY: Your Honor, with the Court's
9 indulgence, just two quick points.

10 I don't really know what the point of an
11 in-camera inspection of the Index would be. If the
12 Government isn't privy to what's missing or misplaced,
13 it's impossible to respond. Documents may still be
14 there. Both, I believe the Government's indexing and I
15 guess what I understand to be the Defendants' Index are
16 done by category. Categories of documents could be
17 moved.

18 For them to say that things can't be cured
19 begs the question. Cure what? So far we've identified
20 no harm.

21 I just want to pick up on one last point that
22 I failed to respond to the first time. Mr. Andreozzi
23 said from 2006 to 2008 the defense team was not allowed
24 to review evidence. The Government identified that as
25 false. Had urged the Defendants to provide any

1 evidence that a request was made and denied.

2 I think actually, if you look at both Special
3 Agent Petri and Special Agent Zeeber's declarations
4 you'll find that each time the Defendants have asked
5 they've been given access. We've devoted extensive
6 Government resources to it.

7 This is just another one of those wild
8 allegations piled onto another, and there is never any
9 consequence for making them. Simply allowed to smear
10 the Government without any basis, and there is no
11 consequence. What's curious about that is that that
12 contention actually contradicts their Stein motion.

13 They've pled profit. There is no money to do
14 anything. I can only sit and respond to money issues
15 I believe from 2006 to 2008, so if they had no money to
16 work on the case, why would they have been requesting,
17 again and again, to come to review evidence? It simply
18 doesn't make sense, simply a total contradiction of
19 what they've represented to the Court as this terrible,
20 horrible harm that they suffered, purportedly as the
21 Government's misconduct. They cannot simply be
22 reconciled.

23 MR. RHEA: Your Honor, may I briefly address
24 the Court on behalf of my client on this same issue?

25 THE COURT: Go ahead.

1 MR. RHEA: Before I begin, Mr. Dema was unable
2 to be here today. His client, Mr. Maher Yusuf is in
3 the courtroom. I've spoken with both of them, and they
4 have before authorized me to represent Mr. Maher Yusuf
5 in this hearing as well.

6 Very briefly, as I understand the state of the
7 evidence, and we again direct you to the affidavit that
8 we filed in conjunction with our briefs in this matter,
9 we no longer can have any confidence with respect to
10 the un Bates-stamped documents. They comprise, as I
11 understand what Mr. Andreozzi said, somewhat anywhere
12 from half to two-thirds of the documents in the
13 Government's sole possession. The documents that we
14 have is monumental, tens of thousands.

15 The consequence of that is that we do not now
16 know where any given unstamped documents came from.
17 Did it come from my client's desk, from the Captain's
18 office? We simply don't know. The Government doesn't
19 know. That's a Humpty Dumpty that can't be put back
20 together again.

21 Intent, knowledge are critical elements in
22 this criminal case, as is concealment. We have now
23 basically been deprived of the use of half the
24 documents that exist in this case because of the
25 Government's scrambling of those documents. It's the

1 only element that can't be unscrambled. We don't know
2 where they came from, and the Government no longer
3 does.

4 We're deprived of evidence critical to our
5 evidence, in the sole possession of the Government, and
6 the Government knew how to keep it properly, because it
7 did keep the documents that it thought was important
8 properly.

9 Because of that, Your Honor, we think there is
10 bad faith, in the legal sense of the word. We also
11 believe that we've been deprived of exculpatory
12 evidence, and again, I can't point you to an un
13 Bates-stamped document and say that that one's
14 exculpatory because it came from a place where my
15 client wasn't, because I don't know where it came from,
16 and the Government can't tell me, and the reason I
17 can't tell where it came from is because of the
18 Government. This is irreparable.

19 We would ask for the dismissal of the
20 Indictment, based upon this harm. In the alternative,
21 all of the evidence seized or by subpoena in this case,
22 be excluded. The Government shouldn't be able to use
23 it, procured by the subpoena, because we do not know
24 about the integrity of the documents. If the
25 Government's position as I understand it is that it

1 knows where some documents came from, and should at
2 least be able to use those, our counter would be that
3 we don't have available the other documents to refute
4 whatever the Government might say. So we think the
5 harm here is irreparable.

6 On behalf of my client, and Mr. Maher Yusuf,
7 we would ask for dismissal of the Indictment, or
8 exclusion of all evidence seized or subpoenaed by the
9 Government.

10 THE COURT: Thank you.

11 MR. DALY: One last final statement. The
12 Defendants have made a representation that for some
13 reason there is no reason to track the non
14 Bates-stamped documents. I don't think there is any
15 evidence of that. They haven't asked for Government to
16 provide them with a non Bates-stamped document, no
17 categories. There is no basis to make that assertion.

18 Finally, prosecutorial misconduct, or
19 spoliation of this matter, there is no evidence to
20 support the motion. Even if there were, the Court must
21 order the least restrictive measure of sanction, and in
22 this instance, certainly dismissal is not warranted.
23 Suppression is not warranted. At most, a curative
24 instruction at best, or some sort of instruction, but
25 certainly, nothing remotely akin to the extreme

1 sanction that Defendants seek would be appropriate in
2 this situation.

3 Thank you, Your Honor.

4 MR. HODGE: Your Honor, please, on behalf of
5 Nejeih Yusuf, we join the Codefendants' arguments.

6 THE COURT: Very well.

7 MR. WALDNER: Fathi Yusuf joins the motion.

8 THE COURT: Very well.

9 MR. ANDREOZZI: Your Honor, for the record,
10 with respect to the assertion that, the denial of
11 access to the FBI offices, we do have correspondence
12 from Attorney Igno, who was a prosecutor in this case
13 during 2005 and 2006, and we would like to submit this
14 as an exhibit to this particular motion, with the
15 Court's permission.

16 THE COURT: Pass it to Mr. Daly, please.

17 MR. DALY: Your Honor, we have no objection,
18 but these provide no factual support. We have no
19 objection to there being entered.

20 MR. ANDREOZZI: These will speak for
21 themselves, Your Honor.

22 THE COURT: Very well. Pass them, please.

23 MR. ANDREOZZI: Thank you, Your Honor.

24 MR. DALY: Your Honor, oh, I see.

25 Actually, Your Honor, one of these documents

1 is undated, the top copy, so there is really -- it
2 appears to be some time in 2006, but I don't know if
3 the Defendants have a better copy. The top line is cut
4 off and there is no date on the fax cover sheet.

5 THE COURT: We will now proceed, then, to the
6 Stein motion.

7 MR. RHEA: Your Honor, Gordon Rhea. Again,
8 I'll make a brief presentation, if I might.

9 I think this issue has been fully briefed in
10 front of Your Honor, so I will hit one or two of the
11 high points that we think are critical.

12 As Your Honor knows, the dismissal of the
13 Indictment is an appropriate remedy where a company
14 would have made the Defendants' legal defense costs but
15 for the Government's knowing or reckless interferences
16 with resources that were lawfully available to the
17 Defendant. The interferences, as the Stein case
18 teaches us, violate Fifth Amendment due process, and
19 the Sixth Amendment assistance of counsel rights.

20 As Your Honor is aware, in Stein, which was
21 approved by the Second Circuit, the district court
22 dismissed indictments against certain KPMG partners and
23 employees, where the Government cut off the funds by
24 threatening KPMG with possible adverse consequences if
25 it funded their defenses.

1 Our case involves a much more dramatically
2 intrusive governmental conduct, because here we have an
3 absolute act of interference. In brief, the Stein case
4 gives us some instructive language, instructs us to ask
5 whether the Government's actions to deprive defendants
6 of funds are part of a broader pattern of governmental
7 misconduct.

8 If so, says Stein, deterrence of future
9 misconduct is a future consideration, and Stein says
10 what it means by misconduct, the Government's
11 deliberate interference with a defendant's rights was
12 outrageous and shocking in the constitutional sense,
13 because it was fundamentally at odds with our two most
14 basic constitutional values, the right to counsel and
15 the right to criminal -- fair criminal proceedings.

16 The chief issue, Stein tells us, is whether
17 the Government acted with a desire to minimize the
18 involvement of the defense counsel, basically what was
19 their motive. Says the Second Circuit, in a nutshell,
20 the Sixth Amendment protects against unjustified
21 governmental interference with the right to defend
22 oneself using whatever assets one has or might
23 reasonably obtain.

24 Briefly, Your Honor, our position is that the
25 parade of events set forth in our motion show that the

1 Government here clearly met the knowing and reckless
2 interference standard.

3 As you will recall, the very day that our
4 clients were arrested, the Government came to the court
5 with an ex parte temporary restraining order that it
6 had drafted that expressly prohibited United
7 Corporation from using its own funds to help finance
8 the defense of its officers and shareholders. Those
9 are our Defendants.

10 And that same temporary restraining order, in
11 conjunction with the wording of the Indictment, had
12 sweeping provisions that converted every asset of the
13 defendants virtually into substitute assets that were
14 frozen. This goes way beyond anything that happened in
15 Stein, to prohibit, simply some veiled threats from a
16 prosecutor.

17 The Government later admitted, this is all in
18 the record on the motions, that it had made a
19 scrivener's error in including many of these substitute
20 assets. The temporary restraining order, basically by
21 the Government's own admission, was certainly in error.
22 We believe this was a knowing interference.

23 The purpose of it was to stop the flow of
24 funds so that our client could not get a good defense,
25 but even if it was not intentional, it certainly was a

1 reckless interference. The effect of it, indeed, was
2 to have a high impact on our ability to fund this case.

3 You've got an idea, I'm sure, from what has
4 happened, at the massive size of the case, we've had to
5 reconstruct probably the largest private employer in
6 the Virgin Islands' books for a period of years; to get
7 around the Draconian bar; TRO imposed; and to fund the
8 defense. We negotiated an agreement with the first
9 prosecutor in this case, looking into their release of
10 some two and a half million dollars.

11 That agreement, as you will recall, also had
12 some provisions looking, permitting us to request
13 additional funds. We felt we had the satisfactory
14 arrangement which let us proceed. To our astonishment,
15 Your Honor, a new prosecutor interpreted the same
16 document as meaning that the assets that we got under
17 the new agreement will be used to fund the individual
18 cases, and the corporation's cases, United's cases, in
19 other words, United, by this new interpretation,
20 couldn't use its own assets, even for itself, meaning
21 that it was now deprived of the use of its own money,
22 which, of course, rapidly depleted our funds.

23 By the time this got to the Third Circuit, the
24 Government changed its tune, conceded that the United
25 could use its own money to fund its defense, but then

1 took the position that United didn't have to reimburse
2 for the money expended on United's behalf, and as Your
3 Honor is aware, that was litigated. The Government
4 adhered, until the Court ordered otherwise.

5 A lot of time is passing during this
6 narrative, Your Honor, and during that time, defense
7 counsel were not getting paid. From the affidavits you
8 can see that basically, no one was paid from a period
9 of time running, basically, from December of 2005, up
10 until the springtime, probably March or April of 2007.

11 During that time, myself and the other defense
12 attorneys worked without funding. It's true that we
13 worked vigorously on our clients' behalf. We believed
14 in our clients but we had to make a lot of hard
15 choices, as to what we would pursue and what we would
16 do. We had to basically take the chance that
17 ultimately funding issues would get cleared up. The
18 kinds of decisions we had to make are set out in the
19 affidavits.

20 The story doesn't stop there, though, Your
21 Honor. The Government continued to try to keep assets
22 from us. The lis pendens issues came up next. We
23 discovered, on our own, that these substitute assets
24 acquired the year before there were a claimed criminal
25 act were tied up with lis pendens. We found out about

1 that in title searches, filed motions for release of
2 lis pendens. The Government conceded its error, but
3 again, blamed its error on a scrivener's fault, amended
4 the Indictment, so it now wouldn't include what it had
5 before with respect to the substitute assets. That
6 still didn't clear things up, because we later, as our
7 papers tell you, found out that the lis pendens
8 remained on many of the properties, and that issue was
9 not cleaned up until June 26th, 2007, clearly a
10 Government fault.

11 But it gets worse. After these illegal lis
12 pendens were finally lifted, we proposed proceeding
13 under the terms of restraining orders, and posting some
14 of this property as bond for the release of funds, and
15 the Government opposed that. Why? Well, Government's
16 main grounds for opposing the posting of property for
17 the release of funds, as the TRO says we can do, was
18 that we might use the money to defend ourselves.

19 Let me say that again. The Government
20 expressly advanced as the first and primary reason for
21 not honoring the request to post bonds under the terms
22 of the restraining order, the fact that the money would
23 be used to help pay defense costs. Page four of the
24 opposition to post bonds, pursuant to the TRO, says
25 that. Again, in the record of this case.

1 No question about purpose and intent here,
2 Your Honor. The provisions involving bonds in the TRO,
3 don't list the purposes for which the funds released
4 have to be used. By the Government's reasoning, we
5 could have asked for the funds to buy a car, to buy an
6 island in the Caribbean, or whatever, and that would be
7 fine, but if we wanted to use the funds to defend
8 ourselves, that money should not be released. That is
9 intentional interference, Your Honor.

10 There can be but one conclusion from the
11 Government's response. It wanted to prevent us from
12 using money that our clients were otherwise entitled
13 to, to finance their defense. This lands on all fours
14 smack dab in the middle of Stein, showing the
15 constitutional sense, and requires dismissal under that
16 case.

17 There is more. The Government's opposition to
18 the release of the unindicted shareholder funds that we
19 talked about a little bit earlier today is part of the
20 same pattern. The Government permits United to release
21 funds to pay unindicted shareholder quarterly tax
22 payments, but refuses to release the underlying funds
23 that they're paying taxes on. This, we believe, Your
24 Honor, further deprives our client of funds that could
25 be available for their defense.

1 The issue of prejudice is important in this
2 case, Your Honor. If you look closely at Gonzales
3 Lopez, 126 Supreme Court 1557, and 1557 -- 255, in
4 Stein, it shows no prejudice to the defense required,
5 because interference of the defense of counsel is
6 complete. As the Stein court explains it, Sixth
7 Amendment deprivations of right to active counsel is
8 structural. It cannot be remedied. We do not need to
9 show specific harm.

10 But even if the Court decides that we do need
11 to show specific harm, we believe that we have done so.
12 We would ask that you look at the affidavit that we
13 attached to our motion. You will see that we worked
14 for approximately a year and a half without funding.
15 We explained in those affidavits the charges we had to
16 make, to do. We worked for free. We advanced our own
17 travel and other costs.

18 Also, we expended huge amounts of time and
19 money on litigating these funding issues, which
20 obviously affected our ability to respond to
21 substantive issues.

22 In sum, I would simply remind you that United
23 would have paid the individual Defendant's legal
24 defense costs but for the Government's knowing and
25 reckless interference with resources that lawfully

1 should have been available to the Defendants, under the
2 teachings of Stein in the Second Circuit. Dismissal is
3 the appropriate remedy for this per se constitutional
4 violation.

5 Your Honor, if you have any questions, I would
6 be glad to address them. Otherwise, I think we've
7 fully briefed them in our papers.

8 Thank you.

9 THE COURT: From what you've said, it would
10 appear as though the Government would allow you to
11 assist Mr. Berlusconi in Italy with his expenses.

12 MR. RHEA: Maybe. Maybe, sir.

13 THE COURT: Thank you.

14 MR. DALY: Your Honor, 2007, the Defendants
15 cut across the violation of Sixth Amendment legal
16 precedent and latched on to the Stein motion, as yet
17 another means in an attempt to dismiss the case. The
18 problem is that Stein on its face is wholly
19 distinguishable. On its face in Stein certain KPMG
20 partners had been indicted for, among other things,
21 creating tax shelters. KPMG was not a defendant.

22 In this case, United is a Defendant. United
23 is a Defendant individually, also a Defendant in the
24 Rico counts. On that basis alone, the two are wholly
25 different. United property was all subject to

1 forfeiture. Granted, the Court at this point, six
2 years later, has raised an issue as to whether it's
3 proper. We've operated for six years that it was.
4 Because all of its assets were properly restrained,
5 Defendants did contest the TRO, but, and this, after
6 they were given a certain amount of money, gave up
7 anyway, which is in itself a concession that the assets
8 of United were properly restrained. Because of that,
9 they never had a right to any amount of the legal fees
10 for their own representation.

11 And, in fact, what Defendants have done
12 instead is they've made certain tactical choices. They
13 made a tactical choice to create the appearance that
14 there is no money to fund their defense. Defendants
15 have never filed any financial affidavits indicating
16 what personal resources they or their family members
17 have at the bail hearing. In fact, I believe there
18 were certain findings that Fathi Yusuf had numerous
19 assets overseas.

20 There is also evidence that the Defendants are
21 shareholders in Peters' Farm, 16 Plus. And finally,
22 there is evidence, in fact, that there were funds.
23 While this was pending, the Defendants, as is their
24 fashion, have filed numerous motions to travel, and I
25 don't have the numbers, but I can get it for the Court,

1 but there were two that struck the Government as
2 luxurious, given the pleas of poverty.

3 One Defendant asked to travel with his
4 children to Northfield, Mount Harmon, so they could
5 attend a preparatory school, not sure whether they're
6 on scholarship, if they have sufficient funds to pay
7 for private school, sufficient for representation.
8 Even more, Miami, so he could purchase furniture for
9 his new house. How is a Defendant who can't afford to
10 pay his own defense asking for permission to go buy
11 furniture for a new house? Simply, the Defendants' own
12 actions contradict their own claims.

13 Whether they chose to starve their legal
14 defense of sufficient funds to defend this case is
15 their own choice, but no action of the Government. The
16 remaining allegations, regarding pleadings filed and
17 motions resolved, are simply the Government's zealously
18 protecting the assets. They're subject to forfeiture.
19 Government is charged with preventing their
20 dissipation. The Government won some of those and lost
21 a few, but at no part was there bad faith on the part
22 of the Government. That's all.

23 THE COURT: Anything else?

24 MR. RHEA: Just very briefly, Your Honor. In
25 the Stein case, it's true. KPMG was not charged, and

1 in this case United is, but I don't see where that cuts
2 across any Sixth Amendment rights. The fact that the
3 Government has zealously fought every possible motion
4 to prevent the Defendants from obtaining money,
5 including raising the fact they might use it as a
6 defense is a grounds, I think tells us exactly what
7 they've been up to and goes to the heart of what Stein
8 is about, the zealous representation of defendants, and
9 the funding of, the availability of the funds that
10 those defendants are entitled to is what is critical
11 and what needs to be looked at.

12 Our clients, obviously, have not taken a vow
13 of poverty, and obviously they do continue to lead
14 their lives, try to educate their children as best they
15 can. That is not the issue either. The issue is
16 whether they were deprived of money that they were
17 lawfully entitled to through the Government, which, in
18 my opinion, Your Honor, would make what they did with
19 whatever resources they had otherwise an irrelevant
20 inquiry here.

21 Thank you, sir.

22 THE COURT: Very well. Thank you, Counsels.

23 I will take these motions under advisement.

24 MR. RHEA: I believe, Your Honor, one other
25 item, Miss Colon was going to argue the selective

1 prosecution issues.

2 I understand those are still pending, but are
3 just simply not ripe for argument or determination
4 because of the evidentiary and discovery issues out
5 there, so I just wanted to make it clear we've not
6 withdrawn that motion, but deferred it.

7 THE COURT: Very well.

8 MR. RHEA: Thanks.

9 MS. COLON: Your Honor, the only thing, if I
10 may address the Court, briefly, on behalf of Waheed
11 Hamed, I would join in all of the arguments made by
12 co-counsel today. I believe we have joined in the
13 motions in written format, but I would join all the
14 arguments of the defense counsel.

15 I just want to point out one last thing about
16 the Stein matter. To say that someone bought furniture
17 or someone paid for tuition, can't nearly compare to
18 the millions of dollars that this defense has already
19 cost, and is going to continue to cost. And the, the
20 argument that there should be some sort of punishment
21 for the Defendants who continue to lead their lives,
22 and do actually get a salary, but certainly not a
23 salary that would be anywhere sufficient to support
24 this kind of defense, is irrelevant to the issues that
25 are before the Court.

1 Thank you.

2 MR. HODGE: Your Honor, just briefly, Nejah
3 Yusuf also joins the arguments of counsel. You've
4 heard the statements and the conduct of the Government,
5 "cocobay on top of yaws", and it just got worse and
6 worse.

7 Thank you.

8 THE COURT: Very well. Thank you, Counsel.

9 Before we adjourn, I would like to recognize
10 the appearance of former Magistrate, Magistrate
11 Resnick. Welcome to my court, Magistrate Resnick.

12 Very well. We stand adjourned.

13 (Thereupon, court adjourned at 12:15 p.m.)

14 * * *

15

16 I HEREBY CERTIFY that the foregoing is a
17 correct transcription of the record of the proceedings
18 in the above-entitled matter this 15th day of
19 September, 2009.

20

21 s/s
VALERIE LAWRENCE, RPR

22

23

24

25

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

Case
Hamed et al., v.
Yusuf et al.

Exhibit
13

UNITED STATES OF AMERICA, and
GOVERNMENT OF THE VIRGIN ISLANDS,
Plaintiff,

v.

FATHI YUSUF MOHAMAD YUSUF,
aka Fathi Yusuf,
WALEED MOHAMMAD HAMED,
aka Wally Hamed,
WAHEED MOHAMMED HAMED,
aka Willie Hamed,
MAHER FATHI YUSUF,
aka Mike Yusuf,
ISAM MOHAMAD YOUSUF,
aka Sam Yousuf,
NEJEH FATHI YUSUF, and
UNITED CORPORATION
d/b/a Plaza Extra,
Defendants.

CRIMINAL NO. 2005-015

SUPPLEMENT TO GOVERNMENT’S MOTION FOR RECONSIDERATION

The United States of America and the Government of the Virgin Islands, by and through undersigned counsel, file this memorandum and the exhibit to supplement the Government’s Motion for Reconsideration (No. 1007 - Dec. 6, 2008). The exhibit, a transcript of the deposition testimony of defendant Fathi Yusuf in a civil action before the then-Territorial Court, Idheileh v. United Corporation, Case No. 156/1997, provides evidence that the individuals identified as shareholders on United Corporation may not actually own any part of the company. Instead, by Mr. Yusuf’s own admissions, it appears that the shares and their holders reported on the books and records of United may not bear any relation to the actual ownership of the corporation. Given the

uncertainty regarding the true ownership of the company, any distribution of United's profits must wait until a post-conviction hearing when the true ownership of the company can be determined.

DISCUSSION

The civil action from which the attached transcript is taken concerns a joint venture entered into between United Corporation and Mr. Idheileh. As the deposition transcript shows, much of defendant Fathi Yusuf's testimony was consumed with an attempt to identify the actual owners of United Corporation. Mr. Yusuf began with a lengthy history of United Corporation and its various shareholders. See Exhibit A. In 1983 or 84, Mr Yusuf owned 25% of the corporation, Mohamed Hamed, his brother-in-law, owned 25%, and the remanding 50% was owned by Mr. Yusuf's two nephews. Ex. A, p. 15. It appears that at some point the two nephews were bought out and Mr. Yusuf and Mr. Hamed each owned 50% of United. Id., pp. 18-20. Such statements were not the product of trickery. When asked by his own attorney about the ownership of United Corporation Mr. Yusuf stated as follows:

Q: Okay. Okay. You were asked by Attorney Adams, when it says United Corporation in this Joint Venture Agreement, in talking about Plaza Extra, talking about the supermarket on St. Thomas, who owned or who was partners in United Corporation Plaza Extra at the time before you entered into that Joint Venture Agreement?

A. It's always, since 1984, Mohammed Hamed.

Q: Okay. So when it says United Corporation –

A. It's really meant me and Mr. Mohammed Hamed.

Id., p. 69.

The books and records did not reflect that Mohamed Hamed owned any interest in United. Such an omission was not an oversight. In Mr. Yusuf's own words:

But I want you please to be aware that my partner's with me since 1984, and up to now his name is not in my corporation. And that -- excuse me and that prove my honesty. Because if I was not honest, my brother-in-law will not let me control his 50 percent. And I know very well, my wife knows, my children knows, that whatever Plaza Extra owns in assets, in receivable or payable, we have a 50 percent partner.

Id., p. 23. Indeed, although Mr. Hamed is a 50% partner in United, he was not a director, officer or even considered a shareholder. Id., pp. 24-25, 26.

At some point, it appears that defendant Waleed Hamed also received an interest in either United Corporation or the assets held by United. For example:

- Q. Did there come a time that you indicated to Mr. Idheileh that [Waleed Hamed] was going to be a partner in the St. Thomas store?
- A. Wally father partner in Plaza Extra since 1984. Mr. Idheileh, I swear to that, he's aware of that.
- Q. But is that stated in the joint Venture Agreement?
- A. Excuse me?
- Q. Is that stated in the Joint –
- A. I could no way signed this with Mr. Idheileh without Wally and his father approval. I already stated that.
- Q. And again, I'm going to ask you, sir,
- A. Sure, no problem.
- Q. -- does Wally's name or his father appear on that Joint Venture Agreement?
- A. No, sir.

Id., p. 49. As with his father's ownership interest, Waleed Hamed was not formally documented as an owner of United or any of its assets even though Mr. Yusuf freely conceded it. Id., p. 57 (describing Waleed Hamed as a "partner" in the grocery business).

By Fathi Yusuf's own admission, there was at least one and possibly two partners in United Corporation who's interests are not – and would not – be reflected on corporate the books and records. Indeed, he stated that his wife and children, the putative shareholders of the corporation would know and admit that “whatever Plaza Extra owns in assets, in receivable or payable, we have a 50 percent partner.” Given those admissions, there exists an issue of fact over the true ownership of United Corporation. It is a question of fact that cannot be resolved by resort to an examination of the books and records of the corporation but must be resolved at a post-conviction hearing.

CONCLUSION

For the reasons stated above as well as in the Government's Motion for Reconsideration, the Court should reconsider its November 26, 2008 Order and deny the Motion for Release of Additional Funds in full.

Respectfully Submitted,

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Dated: July 13, 2009

CERTIFICATE OF SERVICE

I, Mark F. Daly, certify that on this the 13th day of July, 2009 the foregoing pleading, the SUPPLEMENT TO GOVERNMENT'S MOTION FOR RECONSIDERATION, was filed and served on the parties through the Court's ECF system.

/s/ Mark F. Daly
MARK F. DALY

Case
Hamed et al., v.
Yusuf et al.

Exhibit
14

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

Cheryl L. Haase
(340) 773-8161

COPY

A-P-P-E-A-R-A-N-C-E-S

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By: Bethaney J. Vazzana

Also Present:

Ahmad Idheileh

EXHIBIT INDEX

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E-X-H-I-B-I-T-S

Exhibit No. 134
Deposit Slip

Exhibit No. 236
Deposit Slip

Exhibit No. 336
Wire Transfer

Exhibit No. 437
Prudential-Bache Deposit Slip

Exhibit No. 538
Trust Account Checks

Exhibit No. 647
Affidavit of Fathi

Exhibit No. 749
Joint Venture Agreement

Exhibit No. 891
January 4, 1994 Letter

Exhibit No. A82
Newspaper Article

1 FATHI YUSUF,

2 Called as a witness, having been first duly sworn,

3 Testified on his oath as follows:

4 DIRECT EXAMINATION

5 BY MR. ADAMS:

6 Q. Good afternoon, Mr. Yusuf.

7 A. Good afternoon, sir.

8 Q. As you are aware, we are here today to take your
9 deposition in the matter of Ahmad Idheileh v.

10 United Corporation and yourself.

11 A. Yes.

12 Q. In that light, sir, I would like to ask you a few
13 questions. And maybe to begin, if we could get a little
14 background history on your relationship with Mr. Idheileh.

15 When did you and Mr. Idheileh first meet, if
16 you can recall?

17 A. We met, I don't know, about twenty, twenty-five
18 years ago. I don't remember exactly.

19 Q. And at that time what was the relationship like
20 before you entered into the business venture?

21 A. Just like an ordinary Arab, just like we came a
22 little bit earlier before. That's all.

23 Q. So you would say it was a very amicable and
24 friendly relationship?

25 A. At the first maybe five or ten years, it was no

1 friendly in there. It was just an Arab who's on St. Croix.

2 Q. Uh-huh.

3 A. Walking from house to house, meet him in the
4 road, I say hello, he meet me in the road. Some occasion we
5 have met some parties or something. Just an ordinary Arab,
6 just like a person not what you call a close friend.

7 Q. Did there ever come a time that the relationship
8 became a much more friendly and amicable one?

9 A. Oh, yes. I think after the first ten years we
10 get to know each other more and more, and we become a person
11 that I respect, but is not my type of friend. I don't go
12 beach with him. I don't go dance. We don't go to casino.
13 We don't go no mosque together. It's just a person I
14 respect. I make sure I respect him if he walk into my
15 premises.

16 Q. Did there come a time during those early years
17 that Mr. Idheileh returned to Jordan, and he -- well, first
18 let me rephrase the question.

19 Are you aware of Mr. Idheileh's business
20 venture into Sea-Mart?

21 A. If I knew?

22 Q. Of his business relationship with Sea-Mart.

23 A. Yes, I'm aware of it, yes.

24 Q. Did there come a time that he left Sea-Mart?

25 A. Yes.

FATHI YUSUF -- DIRECT

1 Q. And did there come a time that Mr. Idheileh, upon
2 leaving Sea-Mart, was returning to Jordan?

3 A. Repeat the question please.

4 Q. Was there a time, upon his leaving Sea-Mart, that
5 he was returning home to Jordan?

6 A. Yeah. That's my understanding from him.

7 Q. Did he, at that time, ask you to or give you a
8 Power of Attorney to settle all of his matters with Sea-Mart,
9 collect his partnership interest?

10 A. Well, the gentleman, as I told you, he was an
11 ordinary Arab and we getting closer and closer and closer.

12 In 1986 I needed money.

13 Q. Uh-huh.

14 A. When I opened up Plaza Extra, I was short of
15 money. I ask him if he will lend me some money. He said,
16 Why not? I'll get it for you tomorrow. I don't remember the
17 amount of money it was, but in the thousands. I honestly
18 don't remember exactly. He have give me the money, I asked
19 him if he need a check from me as a collateral. He said, No,
20 I trust you. If you want more, I get you more. I get the
21 money from him because I was short of capital in 1986.

22 And he was coming very often to the store,
23 sometime with his wife to shop. His wife would stay in the
24 store shopping, and he come up to my office and we start to
25 chat. And the man at that time was looking for me very

FATHI YUSUF -- DIRECT

1 decent. He speaks to me nothing but out of what the Qurán
2 says, and I'm a person who like to hear these stories, God
3 says this, God says that.

4 So in -- but when he used to come to my office
5 when I have Plaza Extra in Sion Farm, Mr. Idheileh was aware
6 very, very well that I have more people with me, such as
7 Mr. Mohammed Hamed and his son Wally.

8 Q. But before -- before we get to that, was --

9 A. No, no, because I'm afraid I might forget what
10 I'm going to say.

11 Q. But --

12 A. Let me please tell you, you ask me my relation
13 with Mr. --

14 Q. Okay.

15 A. I am at this moment very happy to explain myself.

16 Q. Okay.

17 A. I promise Mr. Idheileh that I will pay him as
18 soon as I get the money, --

19 Q. Did he --

20 A. -- his loan to me.

21 Q. But did he ask you for a repayment?

22 A. No. I promise him within as soon as the store
23 open, we have excess cash, he'll be the first one to get
24 paid.

25 Q. Okay.

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 MS. VAZZANA: Sure.

2 A. I have a problem getting a loan. Finally, I been
3 promised verbally from Nova Scotia in the past, and when my
4 steel came in, the way the steel came in unfabricated, they
5 deny me any loan.

6 THE REPORTER: Unfabricated?

7 THE WITNESS: Unfabricated. It's raw steel.

8 At that time I don't have no money to buy
9 fabricated steel, so I went to the mill in Houston and I
10 bought unfabricated steel. And when the bank comes in, when
11 the steel comes in and the bank sees it, they says, How you
12 want me to loan money against this steel? How you going to
13 put it up? You have no experience.

14 I explain to them how I would put it up. They
15 say, Show me your plan. I show them my plan. Granted the
16 man who did the plan with me at that time is with the chief
17 building permit at Public Work. He just give me a plan with
18 not too much specification, because I have no intention to
19 give it on bid. My intention is I don't have enough money, I
20 will put this building together.

21 So what I have is a plan approved by Public
22 Works with not too much specification on it, and the bank
23 saw, asked me how could I build the building? I explain to
24 them and they say, We don't do business that way. They say,
25 I'm sorry. That's all I have.

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

FATHI YUSUF -- DIRECT

1 don't see how you going to put it up. I say, Don't worry,
2 man. I'll put it together.

3 He promised me at that time, Mr. Yusuf, I
4 promise you if you are able to put this steel, turn it into a
5 shopping center, as soon as you finish, come. I will give
6 you all the money you need for the supermarket. I says,
7 Thank you very much, sir.

8 I know I was at fault. I was not prepared,
9 you know. I don't have nothing saleable to a bank. So I
10 rely on my brother for financing, a brother of mine who's in
11 Kuwait.

12 And go back a little bit, before I was looking
13 for financing, my brother was asking me if he could join me
14 as partner. I said no, I really want to put something for my
15 children to secure their future and see if the bank give me,
16 fine. I'm sure I could get it.

17 After I fail, I called my brother, I said, Are
18 you still interested? He said yes. He did it for two
19 reason. He did it to help me as a brother because he don't
20 want to see me go bankrupt. And at the same time he want to
21 make sure that he maybe could make some money.

22 Q. Uh-huh.

23 A. And my brother, we knows each other very well.
24 He have a lot of confidence in me. He say if I will do
25 something, I'll do it. Then my brother start to send me

FATHI YUSUF -- DIRECT

1 money.

2 Because of my ignorant in expertise, I
3 underestimate to my brother. I told him, Oh, I think I could
4 put this building for a million-and-a-half. The
5 million-and-a-half run out, so my brother says, Hey, you told
6 me that amount you'll have a shopping center, and I see
7 you're too far out.

8 I say, Brother, all I could tell you is all
9 your money and my money is going into the building. If I
10 underestimating, this is nothing but a matter of ignorance.
11 It's not a matter of trust. He say, I know you, you don't
12 keep my money.

13 So what we did with my brother, I was supposed
14 to do 60 percent for me, 40 percent for my brother. As the
15 number I gave him used, he says, Look, I enter with you to
16 give me forty and you sixty. I will give you more money if
17 you would give me 50 percent.

18 Q. So that's how you ended up with 50 percent.

19 A. I would give you -- I will, if you would give me
20 50/50, I'll send you more money to finish the building.

21 I say, Look, man. Your children and my
22 children are the same. You's my brother. I'm not going
23 to -- you'll get fifty, right? I told him that on the phone.

24 He send. His money finish. I asked him for
25 the last 300,000. I could finish the shopping center with

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1 the last 300,000. My brother denied he don't have any more
2 money to give me. I should go and look somewhere else.

3 I know my brother have, but my brother, with
4 respect to him, a man don't like to go with tough decision,
5 so he deny me that he have any more money. And I was
6 struggling going to the bank to get some loan. But at the
7 same time, really, I don't want to mortgage a whole shopping
8 center with five-and-a-half acre for about three hundred
9 thousand dollars. I don't want to hook myself.

10 So while I was building, Sunshine Supermarket
11 opened. Okay? And it happened that somebody part owner on
12 Sunshine spread the word around or mention some word how much
13 they sold as their grand opening. So I have two nephew, one
14 my brother's side and one from my sister's side, and I have
15 my brother-in-law is Mr. Mohammed Hamed. I know the three of
16 them have money, and I know and they know that I don't have
17 the money.

18 They says, Uncle, I don't think we should stay
19 in the furniture business. I think we should open up a
20 supermarket. I says, Well, if you want, you guys bring me
21 the money, I finish the building and I can assure you that a
22 loan will come.

23 So I have a brother, Sam, I remember he gave
24 me I don't remember exactly, 245,000. My daughter -- my
25 sister son, the one who was translating this morning, think

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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

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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.

FATHI YUSUF -- DIRECT

1 But I was confident in myself. I have, when I
2 determine something, I have strong determination and I'm not
3 afraid to work. So as I hit the bank and says, Hey, you got
4 away with the building, how I know you going to make it in
5 supermarket? You have no experience in the supermarket. How
6 could you make it?

7 I say, Look, man, you promised me. And then
8 look, my friend, I'm not trying to learn how to drive. I am
9 a driver. I'm a retailer. If you move me from clothing,
10 shoes, furniture to supermarket, it will take me no time to
11 learn, because the retailing business is already in my blood,
12 just like a driver. He drive a small standard car or a small
13 pickup, it wouldn't take him no too long to drive a trailer
14 tractor, because he know the basic of the traffic, where to
15 stop, where to yield, where to speed, which gear to change.

16 And I told him, trying to convince the bank
17 manager, Don't worry, man. I could be like a driver
18 switching from driving a pickup, I could drive a trailer load
19 easy in two weeks. It's completely different to somebody
20 that never knows how to drive. You want to bring him from
21 never knows how to drive, it could be, never being in a car,
22 and you may want him to drive a trailer. I'm not that type
23 of person.

24 This is one of the ways I was convincing the
25 bank manager. Unfortunate at that time, I was talking to the

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

FATHI YUSUF -- DIRECT

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

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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.

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1 Q. But first --

2 A. I'll answer it if I'm allowed to explain it.

3 Q. Okay. But not too long, please.

4 A. See, when I owned United Shopping Plaza, that
5 building is absolutely for me and my family. And I was
6 occupying a small office in that shopping center.

7 Oh, I'm -- let me go back a little bit. The
8 reason why I was in that office, because my supermarket was
9 burned down. Otherwise, I will never be out of Plaza Extra.
10 And I was doing my work in a small office in United Shopping
11 Plaza. I used to go, you know, all my books, my record, have
12 a desk, coffee machine, make my rent invoices. I do what I
13 have to do.

14 I see Mr. Idheileh come knock on my door, Come
15 on in. Shake hand, I offer him coffee. I don't remember
16 whether he took it or not. I say, I tell him, What can I do
17 for you? How come you're back? I understand that you sold
18 Sea-Mart not to come back to the Virgin Islands. Your
19 intention was to sell Sea-Mart and go home. I could see you
20 here now.

21 He say, Yes, things is tough back home and I
22 decided to come back. I say, Well, what are you planning to
23 do? It's a friendly discussion. He say, I would like to be
24 your partner in St. Thomas too. I says, You know, I don't
25 have the final word. I will check with my partner,

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1 Mr. Hamed.

2 And he were telling me that he's the man was
3 running Sea-Mart, he's this and he's that and he's that and
4 he's that. And I want to make a comment on this. There is
5 no one in the Virgin Islands can put words together more than
6 this man, and I could -- excuse me --

7 Q. Mr. Yusuf --

8 A. -- I could swear that 90 percent of what he says
9 is false. I get to know him.

10 Q. Mr. Yusuf --

11 A. Excuse me. Let me -- now, when he say I want a
12 partner, I have confidence in this man could run a business
13 based on what he told me.

14 Q. Okay. Well, Mr. Yusuf -- Mr. Yusuf, --

15 A. Uh-huh.

16 Q. -- outside of that, did the two of you reach to
17 an agreement where there will be a partnership?

18 A. After I consult with my partner.

19 Q. Okay. Now, did there come a point in time that a
20 Joint Venture Agreement was signed?

21 A. Yes.

22 Q. And who were the signatories to that Joint
23 Venture Agreement?

24 A. I honestly, I haven't looked at it for a long
25 time. If you will show it to me --

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1 MR. ADAMS: Let the record indicate I'm
2 showing Mr. Yusuf a copy of the Joint Venture Agreement.

3 A. I sees Mr. Idheileh and myself and Notary Public,
4 and I believe it's a witness underneath. I don't know.

5 Q. (Mr. Adams) Now --

6 A. Notary Public someplace else, and the same
7 witness, and my signature repeated again on a different page.
8 My son. Yeah, my son is the president of United Corporation.

9 Q. Now, sir, the Joint Venture Agreement is between
10 whom?

11 A. Between -- if you have to look at it this way, --

12 Q. No, no, I'm looking --

13 A. -- between me, my partner and him.

14 Q. No, Mr. Yusuf. Let us look at the Joint Venture
15 Agreement that was signed.

16 A. Yeah, I seen it. United Corporation.

17 Q. Thank you.

18 A. But I want you please to be aware that my
19 partner's with me since 1984, and up to now his name is not
20 in my corporation. And that -- excuse me -- and that prove
21 my honesty. Because if I was not honest, my brother-in-law
22 will not let me control his 50 percent. And I know very
23 well, my wife knows, my children knows, that whatever
24 Plaza Extra owns in assets, in receivable or payable, we have
25 a 50 percent partner.

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1 But due to my honesty --

2 Q. Now --

3 A. Excuse me. I want to clear who I am.

4 -- my partner, he have never have it in
5 writing from me.

6 Q. Mr. Yusuf --

7 MS. VAZZANA: Okay. The question was the
8 question was simple: Who it says the Joint Venture Agreement
9 is between.

10 THE WITNESS: Actually, between
11 United Corporation and Mr. Ahmad Idheileh.

12 Q. (Mr. Adams) Is there anywhere in that Joint
13 Venture Agreement does the name Mr. Mohammed Hamed --

14 MS. VAZZANA: Hamed.

15 Q. -- appear anywhere in that joint venture?

16 A. No.

17 Q. Is United Corporation the owner of Plaza Extra
18 St. Croix?

19 A. Yes.

20 Q. Is Mr. Hamed an officer of United Corporation?

21 A. Who?

22 Q. Mohammed Hamed.

23 A. No, he's not an officer.

24 Q. He's not an officer of United Corporation?

25 A. No.

1 Q. Is he a member of the Board of Directors of
2 United Corporation?

3 A. No.

4 Q. Is he a shareholder in United Corporation?

5 A. No.

6 Q. So as far as this Joint Venture Agreement is
7 concerned, --

8 A. Uh-huh.

9 Q. -- it was a Joint Venture Agreement between
10 United Corporation and Mr. Ahmad Idheileh?

11 A. Oh, you can put it how you want to put it. My
12 understanding and Mr. Idheileh understanding --

13 Q. Sorry --

14 A. Wait a minute. We have to go to the fact. You
15 looking to find facts, and I am telling you the fact. The
16 venture agreement can no way be done without the approval of
17 Mr. Mohammed Hamed. And Mr. Idheileh knew when he come to
18 me, I tell him I cannot give you an answer, but I promise you
19 I will convince my partner.

20 And I was successful in convincing my partner
21 to accept him as an additional partner.

22 Q. Now, if that is the case, sir --

23 A. This is the case.

24 Q. If that was the case, sir, then why was not
25 there -- why does Mr. Hamed's name not appear on the Joint

1 Venture Agreement?

2 A. Because he's not in the -- Mohammed is not with
3 me, in the past anyhow, nine years ago. Where he going to
4 come from with no base? Can you put roof without foundation?
5 You's an attorney. Answer my question.

6 MS. VAZZANA: He doesn't have to answer your
7 question.

8 A. There's a confidence between me and my partner,
9 my family. There is a very, very, very high confidence.

10 Q. (Mr. Adams) Mr. Yusuf, granted that may be the
11 case.

12 A. But see, the main point, sir, Mr. Idheileh could
13 no way get in without Mr. Mohammed Hamed approval.

14 Q. Then I again ask you, Mr. Yusuf, is Mr. Hamed
15 either an officer, director or shareholder of
16 United Corporation?

17 A. Who, Hamed?

18 Q. Hamed.

19 A. No, he's not.

20 Q. Thank you, sir.

21 Pursuant to the Joint Venture Agreement, if we
22 can look at Paragraph 1?

23 A. Yeah, I see it.

24 Q. Mr. Idheileh agreed to invest \$750,000 in the
25 supermarket, is that correct?

1 A. That's correct.

2 Q. Pursuant to Paragraph 2, he would then receive
3 33 percent of the net profits and share in 33 percent of the
4 net loss, is that correct?

5 A. That's correct.

6 Q. Is there anywhere in this Joint Venture
7 Agreement, sir, that indicate what United Corporation's
8 investment into this Joint Venture Agreement would be?

9 A. The investment is the --

10 Q. In terms of --

11 A. -- collateral, --

12 Q. In terms of --

13 A. -- whatever loan is necessary.

14 Q. Is that stated in the Joint Venture Agreement?

15 A. The collateral of whatever money needed to run
16 that supermarket.

17 Q. Sir, is that stated in the Joint Venture
18 Agreement?

19 A. I think so. I don't know.

20 (To Attorney Vazzana:) Says that?

21 MS. VAZZANA: No.

22 THE WITNESS: Well, we have to -- it does say
23 someplace.

24 No, we get a loan. Put together a \$5 million
25 loan just because you have a clean shirt and clean pants?

1 Q. My point is, sir --

2 A. Just on the basis of --

3 Allow me to read this, because it's
4 understood.

5 Q. Sir, I will give you a couple minutes so that you
6 will be able to read the document so you can refresh your
7 memory.

8 (Short recess taken.)

9 MS. VAZZANA: Let's get back on the record
10 with the answer to that question.

11 Do you want to read that last question,
12 Cheryl?

13 THE REPORTER: "Sir, is that stated in the
14 Joint Venture Agreement?"

15 A. Ask me the question again please.

16 Q. (Mr. Adams) Sir, does the Joint Venture
17 Agreement mention what the initial investment of
18 United Corporation would be?

19 A. Oh. I permit to explain?

20 Q. No, no. Is it mentioned in --

21 A. I don't know. I don't know. I see you laughing.
22 Supermarket need \$8 million, not 750,000.

23 Q. Sir. Sir, again, the Joint Venture Agreement
24 states that Mr. Idheileh's initial investment would be
25 \$750,000?

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1 A. Yeah.

2 Q. Is there anywhere in that Joint Venture Agreement
3 or anywhere does it mentions what the initial investment of
4 United Corporation --

5 A. The initial investment was our collateral.

6 MS. VAZZANA: Hold on. He wants you to look
7 at the paper and say yes or no, is there anything in the
8 paper that says that?

9 A. No.

10 Q. (Mr. Adams) Okay. The Joint Venture Agreement
11 stated Mr. Idheileh will receive 33 percent of the profit and
12 pay 33 percent of the net loss.

13 A. Uh-huh.

14 Q. Does the Joint Venture Agreement state what the
15 percentage of net profits and loss for United Corporation
16 would be?

17 A. No. That particular supermarket --

18 Q. Does the joint venture --

19 A. Excuse me. You want to talk to me or to my
20 cousin? You talking to me, you need the truth from me.

21 Q. Mr. Yusuf --

22 A. This contract mean St. Thomas store, St. Thomas
23 Plaza Extra store.

24 Q. That's what we're talking about, sir.

25 A. That's it.

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1 Q. Does the Joint Venture Agreement --

2 A. Uh-huh.

3 Q. -- which you entered into with Mr. Idheileh --

4 A. Yeah.

5 Q. -- state what the net profit or percentage net
6 profit or loss would be for United Corporation?

7 A. Oh, no. Nobody could have printed that.

8 Q. But yet it states Mr. Idheileh will receive
9 33 percent of the net profit and 33 percent of the net loss,
10 does it not?

11 A. Yeah. But this contract is made to run
12 Plaza Extra in St. Thomas.

13 Q. Yes, sir. I agree that's the only thing that
14 we're concerned about.

15 A. This is the intention of this contract.

16 MS. VAZZANA: Right.

17 Q. (Mr. Adams) Agreed.

18 A. And he's entitled of 33 of the profit of that
19 business, and he is responsible for 33 percent of that loss.

20 Q. And that is what is stated in the agreement.

21 A. Yeah.

22 Q. But my question to you, sir, does the agreement
23 state what the percentage profit or the percentage loss for
24 United Corporation would be?

25 A. Yeah, it's matching him.

1 Q. Is it stated in this document?

2 A. No, no. In this it says 66 percent.

3 Q. Can you show that to me?

4 A. Someplace in there it's 66 percent, it say. And
5 if it doesn't say, everything is a hundred percent.

6 Everything is a hundred percent. Thirty-three percent is a
7 third. Even if it isn't mentioned, if he's responsible for
8 33 percent of the loss --

9 Q. Mr. Yusuf --

10 A. Excuse me. Let me finish. I have a turn to
11 talk.

12 -- and he is entitled to 33 percent of the
13 profit, --

14 MS. VAZZANA: Okay.

15 A. -- 33 percent of what?

16 Of 100 percent. So if it not mentioned here,
17 I don't know if it mentioned. You could read it and see.

18 MS. VAZZANA: No, it doesn't say.

19 THE WITNESS: Yeah. But it automatically
20 applies.

21 MS. VAZZANA: That's all you need to say, it
22 doesn't say it but --

23 THE WITNESS: It automatically applied.

24 MR. ADAMS: I lost my train of thought. One
25 minute please.

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1 Q. Mr. Yusuf, can you state for the record, since
2 you were a party to this agreement and since this is an
3 agreement that was entered into between you, as a negotiator
4 for United Corporation, and Mr. Idheileh, can you state why
5 the initial investment for United Corporation was not
6 included in this agreement?

7 A. No, we couldn't include it because we --
8 United Corporation have an assets and have reputation and
9 already dealt with lending institute. We was not determining
10 exactly, exactly how much Plaza Extra in St. Thomas is going
11 to cost us.

12 Q. Now --

13 A. Excuse me.

14 Q. Now --

15 A. I told the gentleman, Pay the seven-fifty and I
16 will get whatever loan necessary to keep that store
17 operating.

18 Q. Now, Mr. Yusuf, was that statement that you told
19 to Mr. Idheileh included in the Joint Venture Agreement?

20 A. It's understood, but it's not included maybe.

21 Q. Now, you stated that it was understood that
22 66 percent would be United Corporation's share?

23 A. For me and my partner.

24 Q. United Corporation's share?

25 A. And that meant --

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1 Q. Now --

2 A. -- and that meant with the 100 percent knowledge
3 of Mr. Ahmed Idheileh.

4 Q. Now, sir, was that assumption, or as you state,
5 that's not included in this agreement, is it?

6 A. But it meant to.

7 Q. It was meant to, but it is not included.

8 A. It meant to. That's what count. This is just a
9 piece of paper. Trust me.

10 Q. Thank you very much, sir.

11 A. It is a piece of paper to show an agreement.

12 Q. Thank you very much, sir.

13 A. But it is not in detail.

14 Q. Thank you very much.

15 Mr. Yusuf, did there come a point, or a point
16 in time that Mr. Idheileh started to pay down on his
17 investment?

18 A. Excuse me?

19 Q. Did there come a point in time that Mr. Idheileh
20 started to pay down on his investment?

21 A. Yeah, he paid. He paid me two payment, I think.

22 MR. ADAMS: I have one of these that's
23 missing. I apologize. I'll have to get a copy for you.

24 MS. VAZZANA: Oh, our production to you? Our
25 production of documents?

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1 MR. ADAMS: No. These are just -- my client
2 just gave them to me.

3 MS. VAZZANA: We need to see them before you
4 show it to him.

5 MR. ADAMS: Yeah.

6 And I will show first to your attorney and
7 then to you, sir, a copy of a bank receipt, deposit receipt
8 dated December 2nd, 1992 in the amount of \$52,960.

9 MS. VAZZANA: Do you want to mark that first
10 before you ask the question?

11 (Deposition Exhibit No. 1 was
12 marked for identification.)

13 Q. (Mr. Adams) Now, before I ask you a question on
14 the exhibit, Mr. Yusuf, at the time that you started
15 construction of Plaza Extra on St. Thomas, --

16 A. Uh-huh.

17 Q. -- was there an account open at any banking
18 institution for Plaza Extra St. Thomas on St. Thomas?

19 A. Well, it was opened, but I don't remember when.

20 Q. But would you say was the account opened during
21 the time or at the time you entered into the agreement with
22 Mr. Ahmad Idheileh?

23 A. Yeah, it was an account opened, but it --
24 signature was on it.

25 Q. Now, I show you what has been marked as plaintiff

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1 Exhibit No. 1, and ask if you recognize that document?

2 A. I've seen it. It's a CoreStates deposit slip of
3 \$52,960 dated September 2nd, 1992.

4 Q. Now, do you recall if that represents the first
5 payment given to you by Mr. Idheileh?

6 A. I don't remember.

7 Q. Okay. And to whose account was this money
8 deposited?

9 A. Excuse me, sir?

10 Q. To whose account was this money deposited?

11 A. I don't remember whose account. The reason I say
12 I don't remember, because we have several accounts.

13 Q. Okay. Sir, if you can look at the deposit slip.

14 A. Oh, look at it closer? Okay.

15 It was deposited into United Corporation.

16 Q. And sir, it could be that this money may
17 represent money that was paid to you by Mr. Idheileh?

18 A. What I remember, sir, is Mr. Idheileh transfer
19 some money to me from Cayman Island, about four hundred and
20 change. That's, to my recollection, that's his first
21 payment.

22 Q. Okay. Okay. Going to have marked as Plaintiff's
23 Exhibit No. 2 another deposit slip.

24 A. Uh-huh.

25 Q. In the amount of --

1 A. 29,000.

2 Q. -- \$29,900, December 9, 1992, with the same I
3 think CoreStates Bank to the account of United Corporation.

4 (Deposition Exhibit No. 2 was
5 marked for identification.)

6 Q. (Mr. Adams) Does that reflect or refresh your
7 memory as to whether or not it represents a payment that was
8 made to you by Mr. Idheileh?

9 A. I already answered that question, sir. I told
10 you the first payment, as far as I'm concerned, to the best
11 of my ability and knowledge, I received it through a cable
12 from Cayman Islands. That's all I remember.

13 Q. Okay. Now, you said you also stated you recall
14 that it was two payments. That you -- you believe that
15 Mr. Idheileh paid you in two payments?

16 A. I don't even recall he pay me these payments. I
17 don't recall. I told you what I recall.

18 Q. Okay. Sir, I will show you what we will mark as
19 Plaintiff's Exhibit No. 3.

20 (Deposition Exhibit No. 3 was
21 marked for identification.)

22 A. Excuse me. Let me look at it.

23 Yeah, that's the one I remember.

24 Q. (Mr. Adams) Okay. Sir, so do you recall that
25 payment?

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1 A. Yeah, I recall that.

2 Q. Where was that payment deposited, sir?

3 A. I have no idea. Let me see. It have to be in
4 one of our accounts.

5 Q. Would it be fair to say, sir, that you deposited
6 it into a Prudential-Bache account?

7 Would it be fair to say it may have been
8 deposited into a Prudential-Bache account?

9 A. I don't know. Could be.

10 Q. Do you recall at any time, sir, receiving payment
11 in the amount of \$164,845.27 from Mr. --

12 A. I don't recall all this. All I recall, sir, is I
13 received \$750,000 from Mr. Ahmed Idheileh. That's all I
14 could put my life into. No more, no less.

15 Q. Now, do you recall, sir, whether that payment of
16 \$164,000 was deposited into United Corporation's account?

17 A. I have no idea.

18 Q. I will show you what we'll mark as Plaintiff's
19 Exhibit No. 4.

20 (Deposition Exhibit No. 4 was
21 marked for identification.)

22 A. This is into Prudential-Bache.

23 Q. (Mr. Adams) Would that represent payment from
24 Mr. Idheileh?

25 A. Could be.

1 Q. Let me show you what will be marked as
2 Plaintiff's Exhibit No. 5.

3 (Deposition Exhibit No. 5 was
4 marked for identification.)

5 Q. (Mr. Adams) Do you recognize those checks, sir?

6 A. Yes.

7 Q. Do those two checks represent the total that was
8 included in Plaintiff's Exhibit No. 4?

9 A. Whatever they give, whatever this is -- yes.
10 Yes.

11 Q. Now, looking at Plaintiff's Exhibit No. 4, --

12 A. Uh-huh.

13 Q. -- in whose name is the account?

14 A. United Corporation.

15 Q. And what is the purpose of that account at
16 Prudential-Bache?

17 A. Stocks.

18 Q. At the time that you entered into the agreement
19 with Mr. Idheileh, did you at any time indicate to him that
20 his investments would be placed in the stock market?

21 A. He pays me --

22 Q. Sir, it's either a yes or no answer.

23 A. I don't recall. I maybe told him that. I maybe
24 told him that. Maybe yes, maybe no. He didn't give me the
25 money to walk with it in the street. I'm free to put it

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1 anywhere, but I'm responsible for it.

2 Q. Mr. Yusuf, pursuant to the Joint Venture
3 Agreement --

4 A. Uh-huh.

5 Q. -- that you entered into with Mr. Idheileh, --

6 A. Yes.

7 Q. -- would you consider him to be a partner?

8 A. Yes.

9 Q. And as a partner, will he not have to be informed
10 as to the income or the investments of the partnership?

11 A. He was a partner.

12 Q. Yes or no, sir?

13 A. Excuse me. He was an active partner.

14 Q. Yes or no, sir? Will he not have to be informed
15 about the investments of the partnership?

16 A. It was not, if it's anything that was not
17 invested for me and him.

18 Q. Yes or no, sir. Would, as a full partner, would
19 he not have to be informed?

20 A. He was not my partner at that time in actual
21 work. He was my partner in paper. He was my partner on
22 paper until we finish Plaza Extra St. Thomas.

23 Q. Sir, this Joint Venture Agreement --

24 A. Uh-huh.

25 Q. -- was signed prior to construction at Plaza

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1 Extra St. Thomas, was it not, sir?

2 A. I think it's -- let me look at the date.

3 Q. Is it before?

4 A. I think it was during, during construction.

5 See, I want you please to be aware I was not
6 responsible for the construction. The landlord --

7 Q. We're not talking about that, sir.

8 MS. VAZZANA: He just asked you the date.

9 A. I'll tell you. Hold on.

10 Ninety-two, about close to a year earlier
11 before the store opened.

12 Q. So it was during -- during the, would you say it
13 was during the construction period that you entered into this
14 agreement with Mr. Idheileh?

15 A. Yes.

16 Q. And at that time, pursuant to this agreement, was
17 he a partner with United Corporation in Plaza Extra
18 St. Thomas?

19 A. Yes.

20 Q. As a partner, was he not entitled to know about
21 the investments of the partnership?

22 A. The money he gave --

23 Q. Yes or no, sir? Was he not entitled to know
24 about the investments of the partnership and where the
25 investments went?

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1 A. It was not an investment for me and him. It was
2 a down payment until the store opened.

3 Q. Sir, I would direct your attention once again to
4 Paragraph 1 on Page 1 of the Joint Venture Agreement.

5 A. Yeah.

6 Q. Can you read that for me, sir?

7 A. Idheileh agrees to invest 750,000 in the
8 supermarket. This investment shall be paid to United at
9 least thirty days before the opening of the supermarket.
10 Interest shall not be earned or paid on this investment in
11 the supermarket at any time.

12 Q. Okay. Now, based on what you just read, --

13 A. Uh-huh.

14 Q. -- does this document state that Mr. Idheileh's
15 \$750,000 was a down payment, or an investment into the
16 supermarket?

17 A. Investment into the supermarket, and all the
18 investment he's exposed to.

19 Q. Okay. Now, I ask you once again, once he paid
20 his investment into the supermarket, into Plaza Extra, once
21 he paid you his investment, was he not entitled to know where
22 the money went?

23 A. No, he's not entitled to know, because it's
24 not he going to say. He know very well --

25 Q. No, sir.

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1 A. -- his money is safe.

2 And this is not the only egg I have, my
3 friend.

4 Q. My question to you, sir --

5 So let me get back to Plaintiff's Exhibit
6 No. 4. Did you, to the best of your recollection, ever tell
7 Mr. Idheileh that his money was going to be invested into
8 Prudential-Bache?

9 A. Maybe I told him that. I could have. We could
10 have discussed it at the time.

11 Q. Was that discussed prior to the signing of this
12 agreement?

13 A. It could be. It could be. He gave me that money
14 conditioned to be a partner in the supermarket. I did not
15 receive that money under no any other condition what to do
16 with it.

17 Q. Okay. Then let me ask you this question, sir:
18 Then you're stating that once he paid his investment to
19 you, --

20 A. Uh-huh.

21 Q. -- he had no further say as to how that money was
22 to be used?

23 A. If it's the supermarket, I don't make a move
24 without consulting with my partner.

25 Q. No, that's not my question, sir. My question to

FATHI YUSUF -- DIRECT

1 you is that after he paid his \$750,000, --

2 A. Uh-huh.

3 Q. -- is it your position that he had nothing
4 further to say about that money, or how it was to be used?

5 A. Sure he have to -- he have entitled to know where
6 his money went.

7 Q. That's what I've been asking, sir.

8 A. Uh-huh.

9 Q. That was just --

10 A. I wouldn't deny that, no.

11 Q. Then, again, to the best of your recollection,
12 was he aware that his \$750,000 was going to be used in the
13 stock market?

14 A. Maybe we discussed it, you know. It was not done
15 secretly. I mean we were friend. We could have discussed
16 it.

17 Q. Was it a part -- was it a part of your agreement
18 in your agreement at the time that you were negotiating, was
19 it discussed at that point?

20 A. The agreement?

21 Q. Was it discussed at that point what his \$750,000
22 was to be used for?

23 A. I'm not sure. I'm sure maybe we discussed it.
24 Maybe we discussed. I cannot answer this yes or no, because
25 if I do something, I don't do anything in hiding.

FATHI YUSUF -- DIRECT

1 Q. Now, sir, did there come a time that -- or did
2 you secure any type of financing to assist with the
3 construction of Plaza Extra St. Thomas?

4 A. Yeah, I secured financing I think in June.

5 Q. And do you recall what the amount -- the amount
6 of that financing was?

7 A. I think it was about -- I'm not too sure exactly.
8 Could be five or five-and-a-half million.

9 Q. Okay, sir --

10 A. But around that neighborhood.

11 Q. And that loan was made out to whom?

12 A. To United Corporation.

13 Q. Was that loan made prior to or after the joint --
14 the signing of the joint venture?

15 A. After.

16 Q. After the signing of the joint venture?

17 A. Yes, sir.

18 Q. Did you consult with Mr. Idheileh about the
19 securing of this loan?

20 A. Repeat the question please.

21 Q. Did you consult with Mr. Idheileh about the
22 securing of this loan.

23 A. The sharing of that loan?

24 Q. The securing. Did you consult with him that
25 United Corporation would receive this loan for --

FATHI YUSUF -- DIRECT

1 A. Yeah.

2 Q. -- Plaza Extra St. Thomas?

3 A. Yeah, he's aware of that.

4 Q. Was that United Corporation's initial investment
5 into Plaza Extra St. Thomas?

6 A. Yes.

7 Q. And --

8 A. And go back a little bit. I think we have a lot
9 more investment before the loan. I think we invested maybe a
10 million dollars before we get the loan, you know.

11 Q. Okay. Now --

12 A. At least, I would say at least a million dollars
13 before we get the loan.

14 Q. Was Mr. Idheileh aware of that?

15 A. Excuse me?

16 Q. Was Mr. Idheileh, as a partner in the joint
17 venture, aware of that investment?

18 A. Yeah, he's aware.

19 Q. Now, once you secured the loan, was the loan used
20 to pay -- to assist in the payment for inventory as well as
21 equipment and merchandise for the store?

22 A. Yes.

23 Q. Was any of that money used or placed into the
24 Prudential-Bache account?

25 A. Maybe. Because maybe I lend St. Thomas store all

FATHI YUSUF -- DIRECT

1 of my money. See, the deal between me and Mr. Idheileh is he
2 put seven-fifty, and I secure the necessary loan, and we run
3 the store and all of us pays the interest. Now, way before I
4 get the loan, I already pay three-fifty to the landlord to
5 give me additional 10,000 square foot free of rent, and this
6 has got to be before June. And I put deposit on all the
7 necessary equipment way before I get the loan.

8 Naturally, I must have spent a lot more than
9 seven-fifty, so if I send a two thousand two, thousand four,
10 I don't remember. He was aware of all the books.

11 Q. Now, is this --

12 A. Excuse me now. And any excess of the seven-fifty
13 I know in St. Thomas owes Mr. Idheileh to go in seven-fifty,
14 but I'm entitled to get back anything that I invested before
15 the loan anything in excess of the seven-fifty.

16 Q. Now, was there any written agreement to that
17 effect?

18 A. We have no written. We have understanding, but
19 no written agreement.

20 Q. No written agreement to that effect?

21 A. No.

22 Q. Is there any documentation to show your initial
23 investment?

24 Let me ask for point of clarification, was it
25 your personal investment or United Corporation's?

FATHI YUSUF -- DIRECT

1 A. United Corporation investment in my behalf and my
2 partner behalf.

3 Q. No, sir. I'm asking was the money that you state
4 that may have been initially invested somewhere in the
5 neighborhood of a million dollars, --

6 A. Maybe more.

7 Q. -- maybe more, was that money invested by you
8 personally or was it invested by United Corporation?

9 A. By United Corporation.

10 Q. Was there any agreement between
11 United Corporation and Mr. Idheileh that there would be some
12 sort of repayment for that money?

13 A. There's no such an agreement, no.

14 Q. Okay, sir. Now, I direct your attention to your
15 affidavit. You state that on Paragraph No. 10 --

16 A. Uh-huh.

17 Q. -- on Paragraph No. 10, and I would have that
18 marked as 6, under the Joint Venture Agreement Mr. Idheileh
19 was responsible, among others, hiring all employees, writing
20 all checks, counting all money, general supervision of all
21 employees and stocking the store?

22 (Deposition Exhibit No. 6 was
23 marked for identification.)

24 A. Yes.

25 Q. (Mr. Adams) Did there come a time that

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1 Mr. Idheileh's responsibility as far as stated in Paragraph
2 10 was taken away from him?

3 A. Never.

4 Q. Did there come a time that Mr. Wally Hamed was
5 given the authority to hire all employees?

6 A. It could have been. It could be we discussed
7 with everybody approval.

8 Q. And when you say everybody's approval, who are
9 you talking about?

10 A. Mr. Idheileh, myself and Wally.

11 Q. Did there come a time that the general
12 supervision of all the employees shifted from Mr. Idheileh to
13 Mr. Wally Hamed?

14 A. Mr. Idheileh was highly, highly respected during
15 our partnership. We have never take any authority from him
16 without his approval.

17 Q. Now, did there come a time that you indicated to
18 Mr. Idheileh that Wally was a partner in the St. Thomas
19 store?

20 A. Repeat the question please.

21 Q. Did there come a time that you indicated to
22 Mr. Idheileh that Wally was going to be a partner in the
23 St. Thomas store?

24 A. Wally father partner in Plaza Extra since 1984.
25 Mr. Idheileh, I swear to that, he's aware of that

Cheryl L. Haase

FATHI YUSUF -- DIRECT

1 100 percent. I don't have to tell him because he's already
2 aware of that.

3 Q. But is that stated in the Joint Venture
4 Agreement?

5 A. Excuse me?

6 Q. Is that stated in the Joint --

7 A. I could no way signed this with Mr. Idheileh
8 without Wally and his father approval. I already stated
9 that.

10 Q. And again, I'm going to ask you, sir, --

11 A. Sure, no problem.

12 Q. -- does Wally's name or his father appear on that
13 Joint Venture Agreement?

14 A. No, sir.

15 MS. VAZZANA: Objection. Asked and answered
16 about twenty minutes ago.

17 (Discussion held off the record.)

18 (Deposition Exhibit No. 7 was

19 marked for identification.)

20 MR. ADAMS: Okay. Back on the record.

21 Q. Sir, did you -- did Mr. Idheileh agree to Wally's
22 presence in Plaza Extra St. Thomas?

23 A. Yes, sir.

24 Q. He agreed?

25 A. Yes, sir.

FATHI YUSUF -- DIRECT

1 Q. And what was Wally's responsibilities? What was
2 his duties?

3 A. It wasn't no -- it was no specific responsibility
4 to any one of us. We was working together as a team.
5 Wherever you could fit, go.

6 Q. So you did not tell Wally or give Wally any
7 indication as to what he would or would not be responsible
8 for in Plaza Extra St. Thomas?

9 A. Sir, we do not operate like a big, big
10 corporation, you know. We operate as a friend. If he can
11 off-load the trailer and he feel good, he will off-load it.
12 And if he's tired and sleepy, he can go and sleep. That's no
13 problem.

14 Q. Now, did there come a time that your relationship
15 with Mr. Idheileh started to deteriorate?

16 A. Yes.

17 Q. And what was the basis for that deterioration?

18 A. Taking me to court after I'd already paid him off
19 for his shares. But never before that.

20 Q. No, I'm talking about during the time that you
21 were in joint venture together.

22 A. No, no, no. We always was working very friendly
23 to the best interest of the store.

24 Q. So there was no point during that time that you
25 would say that there were disagreements between you and

FATHI YUSUF -- DIRECT

1 Mr. Idheileh?

2 A. Yeah, we have our disagreements, but it wasn't
3 disagreement in what to do things. It's about he say his
4 idea, I say my idea, I go along with this or he oppose it
5 just like any other partners.

6 Q. Did there come a time that you indicated to him
7 that the store was losing money?

8 A. Excuse me, sir?

9 Q. Did there come a point in time that you indicated
10 to Mr. Idheileh that the store was losing money?

11 A. I didn't understand it. Slowly please.

12 Q. I forgot.

13 Did there come a point in time that you
14 indicated to Mr. Idheileh that the store was losing money?

15 A. Oh, yes, several time.

16 Q. Did you show him any proof that the store was
17 losing money?

18 A. Several time.

19 Q. And what was that proof?

20 A. Proof at that time, sir, that Mr. Idheileh was
21 the manager and he was in charge of the money. From the time
22 the store opened until the time Mr. Idheileh left, I have not
23 touched Plaza Extra money. And he aware of the sale. Our
24 sale from the time we open up, we open up, I think -- I don't
25 remember the numbers really -- but I know we end up with

1 235,000 a week. Now, Mr. Idheileh used to ask me questions,
2 Business bad, and now is the middle of the season.

3 Q. I don't understand. I didn't understand that.

4 A. Business is bad.

5 Q. Uh-huh.

6 A. And now is the middle of the season.

7 Q. Uh-huh.

8 A. We're not aware of what season is, but we been
9 told in St. Thomas, because none of us ever lived in
10 St. Thomas before 1993, but we understand from everybody the
11 season in St. Thomas I think is October 15 till May 15.

12 Q. Uh-huh.

13 A. And it happened that Plaza Extra opened up
14 October 28th, so we opened right in the middle of the season.

15 Q. Uh-huh.

16 A. And we all we was wondering, What can we do? Our
17 sale went down every week. It's going down, going down,
18 going down until the time he left, if I recall, I believe
19 it's around 235,000 in sale per week.

20 Q. So now you're stating -- let me, because I'm
21 trying to understand what you said -- that you first started
22 out with sales of how much?

23 A. He's the one to answer the sale. He was in
24 charge of all the numbers.

25 Q. Did you -- was he your accountant?

1 A. No, he was my partner, and he was in charge of
2 the money part of it.

3 Q. Where in the Joint Venture Agreement will it
4 state that he was in charge of the money?

5 A. He choose to accept that, because we was there in
6 St. Thomas a partner, we have a lot of money invested, and we
7 was, myself and Wally, was giving Mr. Idheileh a hand.

8 Q. Okay. So Mr. Idheileh was responsible for
9 keeping the books then?

10 A. Yes.

11 Q. So if Mr. Idheileh was responsible for keeping
12 the books, then how could you reach to the assumption that
13 the store was losing money?

14 A. Sir, he keep the books, but the numbers of sale
15 is known to all of us every single night. We clear our
16 system every Sunday.

17 Q. Uh-huh.

18 A. Supermarket industries, they don't look at days,
19 a daily sale, because it goes up and down during the week.
20 They normally go on a full week. And my recollection, our
21 sale was getting shorter and shorter and shorter, two
22 thirty-five. Now, we all know this is the sale.

23 Now, Mr. Idheileh used to come to me over and
24 over, and we always said that the store is losing money.

25 Q. Now, would that be --

1 A. Excuse me. I want to finish.

2 Mr. Idheileh asked me many time, Show me how
3 we losing money. I happened to know this not by accident. I
4 know this from experience.

5 Q. Now, sir, would it be unusual for a store that
6 just opened to go through a period like this?

7 A. No, this is normal.

8 Q. So it's normal.

9 A. Yeah. May I?

10 Q. So now what you're saying, it's normal --

11 A. May I explain this? Supermarket is a habit, sir.
12 Supermarket shopping is a habit. The customer know the store
13 almost -- almost as much as the owner. And it's not easy for
14 me to come in between Cost-U-Less, Pueblo and Kmart and
15 switch the people habit from their to me. They don't know
16 where the salt is, they don't know where the oil is, they
17 don't know where the bread is.

18 It takes time, time and effort on our part to
19 advertise, to sell very cheap, to be very kind to the
20 customer, to bring them to become the store customer slowly.

21 Q. So, Mr. Yusuf, you will say that it was not
22 unusual.

23 A. No, it's normal.

24 Q. So it's normal.

25 A. Yeah.

FATHI YUSUF -- DIRECT

1 Q. Okay. Thank you, sir.

2 Did there come a time that the dispute between
3 you, or the disagreements between you and Mr. Idheileh had to
4 be resolved before a panel of wise men?

5 A. Yeah.

6 Q. Did you state to them at that time that the store
7 was losing money?

8 A. Yes.

9 Q. Did Mr. Idheileh, prior to that, or on that
10 evening, inform you that he wanted to get out of the
11 business?

12 A. May I comment on this?

13 Q. Yes or no, sir. Did he tell you he wanted to get
14 out of the business?

15 A. Yes.

16 Q. Did he state why?

17 A. He hates Wally. He hate Wally. And I used to
18 beg him, Tell me what's wrong with Wally? Wally's working
19 for you, he's not charging you for anything. He's a young
20 man. Why? I was asking him the question, Why?

21 Q. Now, was there a resolution reached after that
22 meeting?

23 A. Which meeting, sir?

24 Q. With the panel of wise men at Sea-Mart?

25 A. No, you see --

1 Q. Did the panel of wise men come up with a
2 resolution?

3 A. Let me answer what caused us to be there. I
4 think this is very, very important. It's what caused us to
5 be in front of the wise men. I want to be permitted to
6 explain it.

7 You see, Mr. Idheileh, he asked me my opinion,
8 how much I think the supermarket in St. Croix -- I mean
9 Plaza Extra in St. Thomas will do business. I give him,
10 honest to God, to the best of my ability, an estimate. And I
11 say, We'll push the work. Hopefully we'll do more.

12 But Mr. Idheileh, you know, when I'm in
13 St. Croix, we're talking about St. Thomas, I can't guarantee
14 you anything. So we went, while we already committed to the
15 lease, the man has become my partner, Cost-U-Less came in.
16 None of us was aware of Cost-U-Less is coming into
17 St. Thomas. None. It came in all of a sudden. In no time
18 he open up. And the people was very, very crowded there.
19 And the store existing there next door, almost next door to
20 Cost-U-Less, which is Pueblo, since the sixties in
21 St. Thomas, I understand from Mr. Idheileh that Pueblo's not
22 doing any good. Cost-U-Less is taking all the business. I
23 says, Well, we'll see what we can do. We're going to try to
24 see how we can face this guy.

25 And before the store opened, the man hated

1 Wally. Hated Wally. I investigated very toughly, very hard
2 to find why, to show me why, until one day he tell me he's
3 not my partner in the paper. I say, Oh, Wally be your
4 friend. If you don't want him because he's not in the paper,
5 I will make Wally leave.

6 Q. Did there come a time that Wally left the store?

7 A. He left, yes.

8 Excuse me. I begged the man, Mr. Idheileh, I
9 begged him many time not to kick Wally out just because he's
10 not in the paper. Come on, Mr. Idheileh, he's our partner.
11 He say, I don't want him.

12 Q. But --

13 A. Excuse me.

14 Q. But I mean let's move on, Mr. Yusuf.

15 A. But I'm moving on. I'm explaining how I could
16 reach the wise men.

17 Q. Talking about --

18 A. Excuse me. No, no, no. When the gentleman tell
19 me, I don't wanted Wally because he's not in the contract, I
20 want to cut it short, be peaceful with the man. I tell Wally
21 go. But I told Mr. Idheileh, Wally leave, according to our
22 agreement I'm not supposed to work for you for nothing. If
23 Wally leave, Wally is my right hand. If he leave, I will
24 leave.

25 Q. Now --

1 A. Excuse me. Now, we left.

2 Q. Mr. --

3 MS. VAZZANA: I'll give you the opportunity to
4 explain that --

5 THE WITNESS: Okay.

6 MS. VAZZANA: -- but you got to wait for me.

7 Q. (Mr. Adams) Now, Mr. Yusuf, did you suggest to
8 or tell Mr. Idheileh that Wally would oversee all the books
9 as a representative of Plaza Extra?

10 A. Sir --

11 Q. Yes or no?

12 A. No.

13 Q. Did there come a time that Waheed, Wally's
14 brother, moved over to St. Thomas?

15 A. Yes.

16 Q. And what was Waheed's responsibility?

17 THE REPORTER: Waheed? How do you spell that?

18 THE WITNESS: Willy. We call him willy.

19 MS. VAZZANA: W-A-H-E-E-D.

20 Q. (Mr. Adams) What was Waheed's responsibility?

21 A. Waheed, his responsibility, sir, was a front-end
22 manager. The front-end manager duty is make sure that the
23 cashier is running smooth; any void, he issue the void; he
24 make sure that the bagger go to the parking lot and come
25 back. It's front-end supervisor.

1 Q. Okay. Did there come a point in time that
2 Plaza Extra St. Croix started to place orders for Plaza Extra
3 St. Thomas without Mr. Idheileh's consent?

4 A. No. No, to -- no, with explanation if you want
5 it.

6 There was no Plaza Extra St. Croix. At the
7 time that we opened St. Thomas Plaza Extra, Plaza Extra
8 St. Croix was not existing. It was under fire and we were
9 rebuilding it to reopen it.

10 Q. Okay. Sir, now, let's get back to the Joint
11 Venture Agreement for a moment.

12 In the Joint Venture Agreement it states that
13 Mr. Idheileh would receive a fee or a salary of \$25,000 per
14 year.

15 A. That's right.

16 Q. Did he receive that money?

17 A. No.

18 Q. Why not?

19 A. Why not? When we signed that agreement, we come
20 to an agreement, I was fully aware that the store was away
21 about a year from the opening. Eight, nine months, could be
22 a year. And the man have a family, he have responsibility,
23 and at that time I figure out he should be compensated. You
24 can't go and establish a business if he waiting for a
25 business to open, and this kind of man cannot go and work for

1 five dollars an hour. We have to pay him to compensate him,
2 until the store is open, half of his salary. And that's why
3 I even offered it to him.

4 But unfortunate, after we sign the agreement,
5 the man says, Mr. Yusuf, when we open up Plaza Extra, you
6 know, we all going to be busy and tired. I don't remember if
7 he told me I want to take my children and wife home, or I
8 want to go and see my family for a week or two weeks. I
9 said, I have no use for you. If you wish to go home, back
10 home, I wish you good luck. You know? That he can prepare
11 himself back when the store is open.

12 But what I learned, unfortunate, that he went
13 and instead of taking care of the wife back home and the
14 children, what I heard from friends, that he divorced that
15 lady and he met another lady. And he did not come back to
16 St. Thomas, to St. Croix or St. Thomas for the -- for four
17 months.

18 So how you expect me to pay somebody, he was
19 not working, he was not even engaged in the business?

20 Q. Now -- now -- now, Mr. Yusuf?

21 A. Yes, sir.

22 Q. The contract, the agreement states that from the
23 date of signing of this agreement to the date the supermarket
24 opens, United will pay to Idheileh a fee of \$25,000 per year.

25 A. Yeah.

1 Q. Okay? Upon his return to St. Thomas, was he paid
2 that?

3 A. No. And I could explain more, beside he was not
4 in the area, you see, I put all my time with no pay. I
5 bought all the equipment, negotiation with the landlord. He
6 could see everything that the store needed, I was working in
7 St. Croix, me and Wally concluded the loan package, and not
8 only two of us. My son, I have to send him from St. Croix to
9 put a mezzanine of 8,400 square feet. My son did not charge
10 a penny.

11 So it was known at any given time we have any
12 misunderstanding, he know very well he don't deserve it. He
13 never ask for it. Because if he asked for it, then he have
14 to end up paying my son.

15 Q. No, my question to you, sir, my question to
16 you --

17 A. Yes, sir.

18 Q. -- was upon his return to St. Thomas and his
19 involvement with the store on St. Thomas, was he paid?

20 A. I don't recall, honestly. Because his name I
21 believe was on the account. I honestly don't recall.

22 Q. Do you recall whether he signed for his own
23 paycheck?

24 A. He was authorized to do it.

25 Q. Did you at any time sign his paycheck?

FATHI YUSUF -- DIRECT

1 A. Yeah, I did sign it. Several time.

2 Q. Now, there came a point that there was a meeting
3 on St. Thomas with you, Mr. Abdel Suid, Ali and Mahmud
4 Idheileh, Mr. Ahmad Idheileh, and I think there was someone
5 else. I can't recall.

6 A. Sam Yusuf.

7 Q. Sam Yusuf.

8 What was the purpose of that meeting?

9 A. The purpose of that meeting, sir, is the man just
10 don't want to work with us. He just simply don't want to
11 work with us. And we trying to find out how can we separate
12 from each other respectfully and peacefully.

13 Q. Now, did you at any time tell Mr. Idheileh or
14 threaten Mr. Idheileh that you would destroy him?

15 A. Sir, I am not that type of person but sometime if
16 I ever say that, it will be in answer to a threat from him.
17 I will never start the badness. Never.

18 Q. Did there, at any time, did you at any time tell
19 suppliers that -- let me strike that.

20 Did you at any time tell the employees that
21 Mr. Idheileh was no longer in charge of the store and that he
22 did not have any authority within the store?

23 A. I don't think I will ever do that. I don't think
24 I would ever say that. I don't think so. Maybe I said it
25 after he left, after he sold.

1 Q. Did you at any time inform suppliers that
2 Mr. Idheileh did not have any authority to sign on behalf of
3 Plaza Extra St. Thomas for merchandise?

4 A. Never.

5 Q. Now, getting back to the meeting at Plaza Extra,
6 what was the agreement that was reached?

7 A. The agreement was reached that the man, because
8 the store was losing money, he was -- he don't see that the
9 store could be turned around, even though we was always
10 encouraging him to be patient. I could tell you very highly
11 about me, I'm positive of that. Just be patient,
12 Mr. Idheileh. We working on the store to turn it around. We
13 were not expecting Cost-U-Less to open up, and just be
14 patient.

15 And the man just insisted he want to go out.
16 And I didn't even have money to pay him.

17 Q. And was it agreed that Mr. Idheileh would sell
18 his shares to Mr. Abdel Suid?

19 A. Sir, no.

20 Q. So it was not agreed that Mr. Idheileh would sell
21 his share to Mr. Suid?

22 A. No, sir. May I clear this point? Mr. Suid is a
23 very religious person. Very, very religious person. And he
24 will never have his name as an owner or part owner in any
25 business whatsoever that sells liquor and pork. And -- but I

1 recall that this gentleman, Mr. Idheileh, keep saying he
2 don't want to be with us, he don't want to be with us, he
3 don't want to be with us.

4 They came to a conclusion, and I keep saying I
5 don't need to buy him, I don't need to buy a losing business,
6 because I know the business is losing. I pay one-third of
7 the loss, better than 50 percent of the loss. And then they
8 suggested if we can live together, why didn't he go and let
9 Mr. Suid take -- look after Mr. Idheileh's interest? They
10 asked me if I have any objection. I told them I have no
11 objection. If he want to leave, leave somebody in charge of
12 his interest, I don't have no objection.

13 Q. So it was agreed then that Mr. Suid would have,
14 or that -- excuse me, let me rephrase the question.

15 It was agreed then Mr. Idheileh's interest
16 would have transferred to Mr. Suid?

17 A. Not transferred, sir. The man was no way you
18 could put any liquor store in his name. He's very religious.

19 Q. So your -- then you will say that Mr. Suid in his
20 deposition was inaccurate when he said that?

21 MS. VAZZANA: Can we have an off-the-record
22 quickly?

23 (Discussion held off the record.)

24 MR. ADAMS: Back on the record.

25 Q. So but there was some agreement that Mr. Suid

FATHI YUSUF -- DIRECT

1 would have --

2 A. Yeah.

3 Q. -- on paper?

4 A. No, it was not on paper, no.

5 Q. Okay.

6 A. It was not on paper. It was hopefully we could
7 come to an agreement. It's one of the ideas that is being
8 offered to me. I don't want to buy him out. He can either
9 wait until we turn the store around, or we sell it.

10 Q. Okay. Who is Joe Jaber?

11 A. Joe Jaber is a friend of ours. He's in the real
12 estate business and he lives on St. Croix.

13 Q. Did you at any time send Mr. Jaber to buy
14 Mr. Idheileh's shares, to purchase Mr. Idheileh's shares in
15 Plaza Extra?

16 A. No, I have never sent him personally.

17 Q. Do you know if Mr. Jaber went and approached
18 Mr. Idheileh about selling his shares in Plaza Extra?

19 A. Yes, I'm aware of that.

20 Q. Did Mr. Jaber inform you he was going to do that
21 before he went, or was there any discussion?

22 A. It could a be. It could a be.

23 Q. So you're saying there have been discussions?

24 A. It could be.

25 MR. ADAMS: No further questions at this time.

CROSS-EXAMINATION

1
2 BY MS. VAZZANA:

3 Q. Okay. I have just a few for clarification,
4 Mr. Yusuf.

5 Mr. Yusuf, as part of your relationship with
6 Mr. Idheileh, did you have any involvement in his getting out
7 of Sea-Mart?

8 A. Yes.

9 Q. What was your role?

10 A. What I know is, as I stated in the past,
11 Mr. Idheileh is a number one putting words together. And he
12 used to go to me, you know, as a friend to the store and he
13 was a partner I think with four people in Sea-Mart, and he
14 keep coming to me and complaining about Mr. Naem Suid and
15 tell me what's going on in Sea-Mart, as a friendly
16 discussion. And he keep telling me, I afraid one of these
17 days I shoot that guy, or that guy shoot me.

18 So Mr. Idheileh language have moved me to
19 interfere, because both of them is my friend. You know, I
20 have business to run. I really don't have no time to know
21 people news, but my interest was since he was going to be
22 telling me all the time, I said no, no, no, I don't want to
23 see no bloodshed. If I go, I'm going to find a solution for
24 the partnership. Some of the partner left already, and he
25 was left I think with Mr. Suid, the owner, the one who took

FATHI YUSUF -- CROSS

1 it, and him. They put me as a referee.

2 See, back home our custom, if they put you as
3 a referee, of course they evaluate the person who they want
4 to put and that referee will say two things. Either he take
5 the responsibility to enforce it, or he say I'm only going to
6 say my opinion, and it's up to you guys to approve it or not.

7 So I did not want to enforce anything. I
8 went, everybody tell me his story. So finally took us a
9 meeting about three, four hours.

10 Finally they sold. Mr. Idheileh used to tell
11 me over and over and over, he have to get out of that
12 business because Kmart is coming in Williams Delight. You
13 know? But that doesn't bother me. This is an economic
14 issue. I'm not interfering with somebody because of an
15 economic issue, because he don't want to lose money in
16 Sea-Mart. I interfere in the issue because I see a bloodshed
17 issue based on his statement.

18 I went in there, I said, Look, gentlemen, you
19 get together friendly, leave friendly. Okay? Finally
20 Mr. Naem Suid sold his share to the owner, Hassan Rahman, and
21 this gentleman, Mr. Idheileh, sold his share to Hassan
22 Rahman. And when they did the sale, none of us look at any
23 book whatsoever. It just, you look at the store, everybody
24 says his story, I went around and look at the store to see if
25 somebody, when they come up with this story, when they say

FATHI YUSUF -- CROSS

1 come and see what we have, so it's my duty to take a look
2 that I could. Finally, we get them together to settle
3 friendly, and they left. They left.

4 Unfortunately, the buyer went bankrupt. And I
5 understand I was told, I can't guarantee that, that the owner
6 who bought Sea-Mart still owes him money, \$40,000. That's
7 what I was told. But I can't sign to it.

8 Q. Well --

9 A. With our case, it was the same thing. The man is
10 leaving. Now, when we used to negotiate with each other, I
11 used to tell Mr. Idheileh, Look, do me a favor. What you did
12 in Sea-Mart, you're not going to do it in Plaza.

13 Q. What do you mean by that?

14 A. I don't want you out. I want you to stay with me
15 to help me, to help me in this. At least then if I lose
16 50 percent, I will only lose 33. Why should I lose
17 17 percent more? Because if we making money, not even United
18 States can move this gentleman out of that store, because he
19 have the right.

20 And this man will, I'm saying plain, he's very
21 intelligent. He is not going to -- he is not going to accept
22 an apple and leave. If he know there's a juice in Plaza
23 Extra, that man is not leaving.

24 But I bought it, I bought it because I respect
25 him, and I respect his two brothers. And I was able to

1 convince my partner's son, Look, we got \$6 million in this
2 store. This man, we come to an agreement --

3 Q. We're talking about Sea-Mart.

4 A. Okay.

5 Q. So in Sea-Mart, when you negotiated that
6 transaction that Mr. Idheileh would be able to be out of
7 Sea-Mart, --

8 A. Yes.

9 Q. -- was that based upon the books or just on a
10 hand shake?

11 A. There was no book whatsoever. Based on their
12 conversation.

13 Q. Okay. Okay. You were asked by Attorney Adams,
14 when it says United Corporation in this Joint Venture
15 Agreement, in talking about Plaza Extra, talking about the
16 supermarket on St. Thomas, who owned or who was partners in
17 United Corporation Plaza Extra at the time before you entered
18 into that Joint Venture Agreement?

19 A. It's always, since 1984, Mohammed Hamed.

20 Q. Okay. So when it says United Corporation --

21 A. It's really meant me and Mr. Mohammed Hamed.

22 Q. Okay.

23 A. Mr. Idheileh is well aware of that.

24 Q. Okay. Well, we're talking now Plaza Extra
25 St. Thomas. Who was responsible for hiring employees?

FATHI YUSUF -- CROSS

1 A. See, really, we left all the hiring to him.

2 Q. And who set the wages?

3 A. I advise him. He was thinking of giving big
4 money. I say, Mr. Idheileh, you going to end up with about
5 150, 160 employees. Do not give anybody whatsoever above the
6 minimum. Don't. Because if you do, you's in big trouble. I
7 told him plain, what put Grand Union out of business is the
8 high wages. I advise him.

9 But he did all the hiring. What I do is, a
10 good employee, I give them overtime. They end up making like
11 7.75 an hour. This is our policy. I don't wish to discuss
12 it.

13 Anyhow, but I advise him and I explained to
14 him, You'll put yourself in big trouble if you start to put
15 seven and eight dollars an hour.

16 Q. What was Mr. Idheileh's position at Plaza
17 St. Thomas?

18 A. Mr. Idheileh position was the general manager of
19 Plaza Extra St. Thomas.

20 Q. And did he have a special office in Plaza Extra?

21 A. Yes, he have a special office.

22 Q. Did anybody else?

23 A. No, he have a special office and a special
24 secretary. No one else have a private office that where you
25 have to knock the door to enter except Mr. Ahmed Idheileh.

FATHI YUSUF -- CROSS

1 Q. Who kept the books?

2 A. Excuse me?

3 Q. Who kept the books at Plaza Extra St. Thomas?

4 A. Mr. Idheileh kept the cash part of it, but my
5 policy is if you have a partner, do not lock anything. If
6 you work with a book, leave your book on the table. Don't
7 let your partner become suspicious of you.

8 So if I'm holding the book or you holding the
9 book, it really doesn't matter because the other partner have
10 100 percent access to it.

11 Q. Who was in charge of cash at night, counting the
12 cash at night?

13 A. Excuse me?

14 Q. Who was in charge of counting the cash at night?

15 A. Who was in charge of counting? The system of the
16 cash is customer dispense the money to the cashier, the
17 cashiers -- excuse me. I want to start.

18 The cashier would have certain amount of money
19 daily, fifty dollars, sixty dollars. She signs for that.
20 When she takes it, she have a void form, she go to her cash
21 register. Whatever she sell, she close her cash. After she
22 finish, she close her cash register, and she have to go and
23 check it with the receiving supervisor. Not work supervisor,
24 the people that receive the money.

25 And that cashier, if she's short, she'll be

1 penalized, and if she's over she'll be penalized. She have
2 to come up within reasonable. We all are human being, we all
3 make mistakes. If she does it very often, she will be write
4 up and gone.

5 Now, that money, somebody receive it from the
6 cashier, put it individual envelope, and goes up to his
7 department where it goes into the two guys that work under
8 his immediate supervision. Because if some money short, I'm
9 not going and check with the guys. I'm going to check with
10 the guy who's in charge.

11 So the policy with us, if something goes wrong
12 downstairs, we must know the very second day. But even
13 though sometimes our relation was hot and cold, we have never
14 mistrust each other. You know, we have never questioned his
15 honesty money-wise.

16 Q. Okay. In the operation of Plaza St. Thomas, did
17 you provide a personal guaranty to any vendors?

18 A. I might have, yes.

19 Q. Did Mr. Idheileh?

20 A. No.

21 Q. Did you sign the loan for the bank loan that you
22 received?

23 A. Yes, I did sign and I put my property.

24 Q. Did Mr. Idheileh sign the loan?

25 A. No.

FATHI YUSUF -- CROSS

1 Q. Did he put up any property?

2 A. No.

3 Q. You were describing earlier when Attorney Adams
4 was asking you about how you arrived at the meeting of wise
5 men at Sea-Mart, when you were giving your explanation of
6 what led up to that --

7 A. Yes, I will glad, be glad to say that, because
8 this gentleman, I know him for many years, and he been
9 playing washing my brain for twenty years, until I get to
10 live with him. He's telling me, I hate Wally. I just don't
11 want Wally. You see, I always try to investigate, What's
12 wrong with Wally, Mr. Ahmad? He's our partner. The man is
13 not lazy. He don't even get paid.

14 Until I find what he driving at. The man was
15 building a case. I wasn't aware of it. He says, Hey, he's
16 not in the agreement with us, and I want him out. I beg him
17 that without Wally I can't work. He say, No, he have to
18 leave. I told Wally, Wally, buy a ticket for me and you.
19 The agreement with Mr. Idheileh is to run the store. Here's
20 the store. You want to drop us to the airport or you want us
21 to ask Willy to drop us to the airport? He say, No, I will
22 drop you to the airport.

23 He himself take us in his car to the airport,
24 and he said, When can we meet? I said, At your convenience.
25 Now, we suggested January 1st would be a proper date. Nobody

FATHI YUSUF -- CROSS

1 working, and we'll meet January 1st. And we shake hands,
2 bye-bye, bye-bye. So when we left, three days later he call
3 me and he says, Mr. Yusuf, we don't have no frozen food. I
4 say, Mr. Idheileh, you know where we get the frozen food
5 from. Go to the folder, find Waltkoch, and place your order.

6 MS. VAZZANA: That's Waltkoch,

7 W-A-L-T-K-O-C-H.

8 (Discussion held off the record.)

9 A. So I tell him, Go ahead and place an order. I
10 have nothing to do with it. You don't want me in the store,
11 you handle your own work. He place the order, and I think
12 the second day or the third day a phone call I receive from
13 Waltkoch Company. They want to talk to me. He tell me, Your
14 partner place an order. We'd like to discuss it with you.

15 The reason why he called me, I want to make
16 the point clear, that Waltkoch Company, they sell to me
17 freight is included in the product, CIF. It's not FOB. The
18 responsibility, he deliver it to the dock in St. Thomas or
19 St. Croix. The freight is not my responsibility. So
20 whenever we place an order, it's always the order is too much
21 or too small, Mr. Waltkoch, his office normally call us for
22 adjustment. They normally get the adjustment from me or from
23 Wally.

24 So when he asked to talk to me, I tell him --
25 he said, What you doing in St. Croix? I say, We get into

FATHI YUSUF -- CROSS

1 disagreement with my partner, and I'm no longer in the store.
2 And I am not going to adjust your order. You know, I told
3 him the story, The man kick Wally, and I have to leave.

4 So he says -- and I told him, You could go
5 ahead and ship. The store have, to my knowledge, at least
6 \$7 million investment. Your shipment is only 40,000. Go
7 ahead and ship. But I have nothing to do with it as a
8 person. He says, Okay.

9 Now, I would like to make it clear again that
10 Waltkoch does not represent more than one percent of
11 Plaza Extra supply item. Plaza Extra, I -- we're not talking
12 to the major supplier. If I mean to hurt Plaza Extra, which
13 is no way I'll do that because if I hurt Plaza Extra, I'll
14 hurt myself, I did not tell Coca-Cola not to ship. I did not
15 tell the milk people and bread people. And we have a major
16 supplier who give us 60 percent of what the store need
17 weekly. If I want to block Plaza Extra, I would have called
18 that supplier, who I guaranty my store loan with two property
19 of mine. Mr. Idheileh have nothing to do with it. I
20 guarantee 150-acre and 109-acre as a guarantee to back up
21 Plaza Extra, and still I did not tell them not to ship.

22 And Mr. Idheileh, if he was a capable manager,
23 he could have substituted what he want from Waltkoch from our
24 major supplier, because they sell the same product. He
25 maybe -- he maybe sell it for three to five percent higher.

FATHI YUSUF -- CROSS

1 It was not a major issue. And I don't create it, neither.

2 Q. Okay. At the meeting at Sea-Mart, who called
3 that meeting?

4 A. I believe he called for it. Because when
5 Sea-Mart -- by the way, when he took us to the airport, me
6 and Wally, we start to talk, and he start to complain. I
7 said, Why you complaining, Mr. Ahmed? All this it's you
8 create. You don't want us in the store, we'll leave. You're
9 the manager.

10 Then we set a date that he could see whoever
11 he want. I'm willing to go any place any time for a meeting.
12 He say, How about January 1st? I say it's fine with me.
13 Then a week later he call me and says, Mr. Yusuf, if we don't
14 have that meeting earlier, we're going to lose Plaza Extra.
15 The store is getting hurt.

16 I says, Mr. Idheileh, it's up to you. You
17 want to bring the meeting earlier, it's fine with me. And he
18 says, How about December 25th? I say, I have no objection to
19 see these people. I'm willing to come.

20 When we went to Sea-Mart, he says his story, I
21 said mine. They have never find me wrong. The only thing
22 that they -- one of the two guys -- is about twenty, twenty
23 people of the whole panel, but the referee was I think three
24 to five, they say, Buy him out. I say, No, no, no. He buy
25 me out if he want. I am in no position to buy this man out.

FATHI YUSUF -- CROSS

1 I'm in no position to buy a losing business. I'm begging
2 Mr. Idheileh, Be patient. We will turn the store around. If
3 he don't want to wait, what can I do?

4 Then Mr. Mohammed Hamed was there, he did not
5 say one single word. And we have about twenty people, and
6 Mr. Mohammed Hamed there just because he's involved, he's a
7 partner. And I know I do this in good faith with
8 Mr. Idheileh, not to trick Mr. Idheileh. And I kept
9 complaining to Mr. Idheileh, I can't buy you out. First, the
10 store is losing money. Second, I have no money. I can't
11 give you the milk money or the bread money, because I want to
12 replace the inventory.

13 Finally Mr. Suid voluntarily --

14 Q. No, no. We're talking about Sea-Mart.

15 A. Oh, okay.

16 Q. At that meeting --

17 A. Yes.

18 Q. -- of the wise men at Sea-Mart, did you demand
19 that Mr. Idheileh provide \$200,000 more of money?

20 A. Excuse me?

21 Q. Did you make Mr. Idheileh give more money if he
22 wanted to get that store operating?

23 A. We never need money. I have never say that. We
24 never needed money.

25 Q. Did Mr. Idheileh ever demand to see the books at

1 that meeting?

2 A. Excuse me?

3 Q. Did Mr. Idheileh demand to see the books of the
4 business?

5 A. He didn't demand, but he asked, and I show it to
6 him. And I left it many time on my desk. Up to now I don't
7 have lockers. I don't believe in that. If I use a locker
8 for my partner, I'm a thief. I leave my door open. Let my
9 partner have the opportunity to go through my record any
10 time, that's my philosophy, if I want to live with my
11 partner. And this is my philosophy.

12 Q. That was your philosophy while Mr. Idheileh was
13 there as well?

14 A. Same philosophy, and will never change. He might
15 think what happened to me with him, it might end up being a
16 lesson to me, but because of the nature of the human being, I
17 am ten times stronger to what he did to us. I'm not going to
18 change my habit.

19 Q. During that meeting of wise men, were you
20 threatening Mr. Yusuf to lose all his investment -- I mean
21 Mr. Idheileh to lose all of his investment?

22 A. I may be, but again, I would like to explain
23 myself again. I never, ever -- every Arab in St. Croix
24 especially will say, testify, I've never, ever put my
25 position in an aggressive position. I will never do that.

FATHI YUSUF -- CROSS

1 If the man tell me, Well, hey, I'm going to make you lose
2 \$6 million, you know, I say, No, no, no, no, make me lose \$6
3 million dollars? No, no. You put seven-fifty, and if you
4 owe me, I'll follow you for my difference, because you are
5 entitled to one-third of the profit and you are responsible
6 for one-third of the loss.

7 I could have answered something like that, but
8 based on a position from him. Believe me, I don't start
9 badness with people. But as a human being, I never panic. I
10 will never panic, I never coward, but my hand is short. I
11 don't bother people, but after all, I have all the right to
12 defend my interest.

13 Q. At the conclusion of the Sea-Mart meeting, did
14 you shake hands and go back to work out together to make a
15 profit? At the end of the Sea-Mart meeting did you shake
16 hands?

17 A. Yeah. The people was suggested that all of what
18 we say will never work. We can't find a buyer, I will never
19 buy him, he'll never buy me. The best solution is go back
20 and work together and upgrade the store, and then if we was
21 able to operate the store, the store can be marketed. It
22 will have a value.

23 And they advised Mr. Idheileh to have me have
24 the final word, after consultation. I know I'm not in an
25 army, I'm dealing with a partner. An army you give orders.

1 With a partner you sit down and discuss things, and exactly
2 what I was doing with Mr. Idheileh; sit down and discuss
3 things. I was not pushing orders. That's not my style.

4 How can I live with him in peace if I keep
5 harassing him? I want to live with him in peace.

6 Q. Did there come a time when you decided to try to
7 go find a buyer for Plaza Extra St. Thomas?

8 A. We always, everybody knows there's a buyer. One
9 time Pueblo come, Pueblo president walk into my store and I
10 offer him the store. I told him plain out, I told him I come
11 to St. Thomas to make money, but it seems to me I'm not
12 making no money. I came up with that statement because I
13 cannot fool a chairman, a president over a company that's
14 fifty-two stores. From the time he look at my store, he
15 could see. He could grade my store to what level it is.

16 So I have no choice but to come to the man
17 with the truth, because money does not concern me. What
18 concern me, if you find me a liar. And I'm not going to lie
19 to the president of Pueblo. I told him perfect, everything.
20 I told him, Why didn't you buy me out? I think if I was you,
21 you will buy me out, you will rent Four Winds to a furniture
22 store, and you will eliminate competition.

23 The man was drinking coffee with me. The man
24 laugh, watch me and laugh, and says, We'll buy you out later.
25 We'll buy you out later. His intention to me is when it goes

FATHI YUSUF -- CROSS

1 to the marshal, he'll pick it up. And he left. I tell him,
2 Sir, I remember mentioning the man name, I says, Look, you
3 see how my pants is dropping off and my shirt is coming out
4 of my pants? I promise you as a man, I either put you to
5 break even in both island, or make you lose money. I know
6 you underestimate me now. Fine.

7 Because he, as a businessman, as the president
8 of a company, to tell me I buy you out later is an insult to
9 me. That means you want to buy me from the marshal. He
10 knows the store is not doing any good, and it's nothing
11 hidden.

12 Two thirty-five, his initial, he's the one in
13 charge. At that time so much stores open up at one time,
14 Cost-U-Less beat the price, Pueblo have to beat the price,
15 Kmart. We was operating 26, 27 percent. And from now until
16 a hundred years I can prove the store have to have, even up
17 to now with the loan paid, I have to have 275,000 per week to
18 break even.

19 Q. About a week after the meeting at Sea-Mart, did
20 you give an interview to the **Daily News** --

21 A. Yes.

22 Q. -- saying you were looking for a buyer?

23 A. Yes.

24 Q. I want to mark this as Defendant's 1 --

25 Defendant's A, since he's marking his with numbers.

FATHI YUSUF -- CROSS

1 (Deposition Exhibit No. A was
2 marked for identification.)

3 Q. (Ms. Vazzana) Okay. Mr. Yusuf, in that
4 interview did you explain that the store wasn't making money?

5 A. The store wasn't making money at all, not even
6 near what we expecting. And I know the cost of it because we
7 were never expecting Cost-U-Less to open. Otherwise I would
8 never go with the investment to start with. But I already
9 bought my equipment, I already signed the lease, and all of a
10 sudden Cost-U-Less came, boom, and open up. And when you get
11 into a fight, natural, any time you give up, you admitting
12 you losing. In life, you have to keep fighting, fighting,
13 fighting, fighting until you win.

14 And thanks God, now I am one hundred percent
15 winner. But this is my effort and my blood.

16 Q. And was this article printed in the **Daily News**
17 while you were still partners with Mr. Idheileh?

18 A. Excuse me?

19 Q. Was this article printed in the **Daily News** while
20 you were still partners with Mr. Idheileh?

21 A. No, this is way after he left.

22 Q. No, it's about a week after the Sea-Mart meeting.

23 A. This is in '95.

24 Q. Right. It was December '94 when the --

25 A. Yeah, it's way after he left. He left '93. We

FATHI YUSUF -- CROSS

1 open --

2 Q. Right, you opened in '94, October.

3 A. Ninety-three, I think we opened in '93, I
4 believe. To the best of my recollection, October 28th, 1993.
5 And Mr. Idheileh, he left before April -- exact date, I don't
6 remember -- of '94. And this article, even eight months
7 later, my intention was to sell. I'm stuck in St. Thomas. I
8 just want to get out.

9 My offer to Pueblo, by the way, take the
10 improvement. I want to get out. The man won't take it.
11 Okay. United Corporation, you know, signed that loan and
12 that loan have to be paid. Otherwise, I lose my shopping
13 center and the house. Mr. Idheileh's exposure was only
14 seven-fifty. My exposure is a lot more than seven-fifty.
15 Tutu Park can sue me for the 25 years of rent. I'm stuck. I
16 have to fight. I told my people, Run. Run around the clock.
17 You get sleepy, go upstairs and sleep, hour, two hours, wash
18 your face and go down and work.

19 But thanks God, we was able to turn the store
20 around. But we put a lot of effort. And I explained to
21 Mr. Idheileh, Please, I beg you to be patient. The man
22 wouldn't be patient. What can I do?

23 Q. So was there a time after the Sea-Mart meeting
24 when you had to get together with another group of Arab men
25 to resolve your dispute between you and Mr. Idheileh?

FATHI YUSUF -- CROSS

1 A. Okay. You see, when I bought from the gentleman,
2 we make the deal. I find an honest, honorable person to give
3 me the money to encourage me to go for the deal. I did. Two
4 hundred down, and 400,000 to be paid one hundred annually.
5 We signs it. I don't know anybody in St. Thomas.
6 Mr. Idheileh don't know anybody in St. Thomas. The one that
7 is St. Thomas resident is Mr. Suid. He say, I will have my
8 lawyer draw the contract.

9 Okay. We signs it and it happened Mr. Suid
10 guaranty that I will pay on time. And after he get
11 Mr. Suid's guarantee, he insist he must have my nephew and my
12 older brother guaranty also, because he was not confident we
13 will ever make it to pay him back. And then Mr. Suid told
14 Mr. Idheileh, This man, if he sign to something, he's
15 honorable. Don't go too far. He say no.. He tell him I
16 signs it, he say it's not enough. I want his older brother
17 to be responsible. Just to show you how this man was so sure
18 we going to fail. Okay?

19 Then the man still is our friend, I was his
20 partner, even he is no longer our partner, but he was in the
21 store very frequent. He says, I want to look for a smaller
22 business. I say, It's up to you.

23 Finally, he find a business a little bit above
24 Plaza Extra, a gas station on the part of the Skyline, I
25 don't know, you know where it is. He say, I find a business

1 for sale, and the man wanted so much, and I offer him so
2 much. I don't remember the numbers but, Mr. Yusuf, I believe
3 I want to take that place. You have any objection? I told
4 him no. I told him our agreement is if you ever leave the
5 partnership, you're not allowed to work in supermarket.

6 I put that clause because I didn't want to
7 create a capital to the gentleman, plant experience in his
8 chest, and in the future become my competitor. So I puts it.
9 But since the man left, he left with a loss, clear like the
10 sun, he want to go into another business, I have no
11 objection.

12 He say, Would you object I sell grocery? I
13 say no. He say, Mr. Yusuf, I'll be short a hundred thousand
14 dollar. That's my biggest problem. I say, It's a good deal.
15 Go for it, and I will give you the \$100,000. I'll find ways
16 and means to raise the hundred thousand and give you.

17 That's to prove he did not sell under threat,
18 because we're still friend. Okay? Then -- and he kept going
19 about five or six times a day to the store. All right? One
20 day he was in St. Thomas, and it happened he bought three
21 cars for us for our person, and it happened he get to know
22 the people for Avis. I wanted to buy a car for my daughter.
23 We went to St. Croix as a friend, not enemy. You can't work
24 with your enemy. If he wasn't a friend, up to that minute
25 you can't work with him.

FATHI YUSUF -- CROSS

1 Then he asked me when can I give him the
2 \$100,000? I said, Mr. Idheileh, come on. You asking me
3 for -- you say you'll be short of a hundred thousand dollars.
4 I'm going to squeeze myself, raise the money just to let you
5 run your business, but now you and the man did not come to an
6 agreement. I don't feel obligated to give you what I promise
7 you.

8 He say, No, I want my money to put in a
9 savings account. I say, You better wait until you do. Then
10 we spoke with a little bit rough voice. Then the man went
11 and he get all the Arab community into my brother-in-law
12 house, and he said his story, and I say my story what is the
13 100,000, what it is.

14 And we both accept the condition of the panel,
15 of the judgment. I told them why I offer him the hundred
16 before its due date. And he says no, he's entitled to it.
17 It's his money. Anyhow, the panel rule against me and says,
18 Look, the man sell it to you.

19 Now, during that meeting there was no threat,
20 nothing whatsoever. Just about the \$100,000. They said,
21 Mr. Yusuf, I think you should give the man the hundred
22 thousand dollars, you know? I smile. I accept their ruling.
23 It's a condition before we -- as soon as we meet. Then I
24 say, No problem. I have to pay 100,000 within six months
25 anyhow. You guys rule against me to pay it now. I don't

FATHI YUSUF -- CROSS

1 mind. He come and stand up and say, No, no, no, no, not from
2 the first payment. The one hundred have to be from the last
3 payment. I say, No, you got to be crazy.

4 The panel tell him, Mr. Idheileh, look, we are
5 pushing the man. He don't have to give you the 100,000 now.
6 You want him to give you a hundred now and six months later
7 and it's from the last payment? And then he said, I won't
8 accept it. I know what he want to do. I tell the man let
9 him do whatever he want. It's a free country.

10 Then a week later my brother-in-law come and
11 say, Man, pay the man his money. I say, No way I will pay
12 him, based on the panel, not four days later. Then I think
13 about ten days later, my brother-in-law say, Here, the man
14 accept it. Give him the hundred thousand dollars. I say
15 fine.

16 When the man bought three cars when he was in
17 charge of St. Thomas, he bought a car and register it in his
18 name. He move it to St. Croix, that cost you \$7,000. I owe
19 the man a hundred, well, the panel rule for. I deduct my
20 7,000 for the car, and here is a check for ninety-three.
21 Give it to him, and I finish.

22 Q. Was there a time when Mr. Sharmouj came to you to
23 ask that you pay Mr. Idheileh early?

24 A. Mr. Sharmouj, after the meeting in my
25 brother-in-law house, I recall at least once he come to my

FATHI YUSUF -- CROSS

1 office at least once, but it could be twice or three times,
2 asking me that we making money now, he knows the whole store,
3 and the man keep bugging him for his money. We want you to
4 give the money in advance before the due date. I say, No
5 way, man, we're finished with him. You already press me for
6 the hundred. I accept the ruling. I did it. I don't owe
7 the man anything else. He have to sit tight until the due
8 date.

9 Then his brother came to me and I explain
10 myself. They understand. Then my brother-in-law came, you
11 know? And each time I go from St. Thomas to St. Croix, there
12 is someone waiting for me, want Mr. Idheileh 300,000.

13 I tell Wally, Wally, come on. We don't need
14 this. We have money. Let the man have his money earlier and
15 let the man go. I told Mr. Idheileh finally, after I
16 convince Wally, I'm a person who respect my partner. I don't
17 make a single serious move until I get my partner approval.
18 He says, We'll pay him.

19 Then I pay the \$100,000, I tell him, Look, you
20 want the money early. Go to St. Maarten, sign for it in
21 St. Maarten, and when you come back, and my nephew tell me to
22 give it to you, I will be more than happy to give it to you,
23 but I'm going to tell my nephew the story.

24 He went, he sign for the hundred thousand, and
25 when he come, that money, I told Wally, Do not give it to

FATHI YUSUF -- CROSS

1 your brother, to your uncle. Wally uncle is the same, my
2 brother-in-law, because Wally mother and my wife are sisters.

3 Do not give the money to your uncle unless you
4 have at least one of his brother present, and I need
5 witnesses. So they gave it to him. Where they give the
6 money, in which house, I have nothing to do with that. Maybe
7 they told me, but it wasn't concern me. And I have thought,
8 I told him hopefully later things come better, I'll just give
9 him the rest.

10 Then I start to receive more and more pressure
11 for the last two. I told Wally, Man, come on. If he go back
12 St. Maarten again, let him go and sign in St. Maarten. When
13 he come, I give it to him. I gave this gentleman two, three
14 hundred thousand at least two years before the due date.

15 Did you think I don't know the value of the
16 money? I could have put a saving account and make eight,
17 nine thousand dollars annually, but I am not a troublemaker.
18 I want to avoid people keep coming to me and say, Pay the man
19 his money.

20 Q. At the time the last money was paid, did
21 Mr. Idheileh ever make any complaints that he was owed more
22 money than that?

23 A. That --

24 Q. That he was owed more money?

25 A. Up to the last payment, I have never heard a word

FATHI YUSUF -- CROSS

1 from Mr. Ahmad Idheileh, or through him through anybody else
2 that he have a bad deal or he needed more money. Never. And
3 if he asked for it, I won't give it to him, because he's not
4 entitled.

5 **MS. VAZZANA:** Okay. No further questions.

6 **REDIRECT EXAMINATION**

7 **BY MR. ADAMS:**

8 **Q.** Hopefully, these will be the last ones.

9 (Discussion held off the record.)

10 **Q.** (Mr. Adams) Mr. Yusuf, --

11 **A.** Yes.

12 **Q.** -- you stated that, again, that the store was
13 losing money.

14 Now, my question to you, did you look at the
15 daily receipts or the cash deposits to make that
16 determination?

17 **A.** I get the information -- the information from
18 Mr. Idheileh, how much we sold last week, how much we sold
19 the week before.

20 **Q.** So that would be the daily receipts?

21 **A.** Daily information.

22 **Q.** Okay. Do you recall Mr. Idheileh requesting,
23 through Attorney Watts, that he see or inspect the books?

24 **A.** Let me explain this for you.

25 **Q.** Did you sir, yes or no?

FATHI YUSUF -- REDIRECT

1 A. What you say? Give me the question.

2 Q. Did you receive a request from Mr. Idheileh
3 through Attorney Fred Watts that he inspect the books?

4 A. Yes, I did receive a letter.

5 Q. And I'd like to show you what is marked as
6 number -- show you what will be marked as Plaintiff's
7 Exhibit 8.

8 (Deposition Exhibit No. 8 was
9 marked for identification.)

10 Q. (Mr. Adams) Do you recognize that letter, sir?

11 A. Yes.

12 Q. Is that the letter you received from Attorney
13 Watts?

14 A. Maybe. If it's addressed to me, I have no proof
15 to say no.

16 Q. Did you comply with Mr. Attorney Watts' request
17 as far as having the books?

18 A. I would like to answer that with explanation
19 please.

20 Q. Well, first, sir, did you comply with the request
21 to have the books audited?

22 A. No, I did not.

23 Q. If we were to request an audit of those books or
24 to see those books for that period of time, would those books
25 be made available?

FATHI YUSUF -- REDIRECT

1 A. No, I -- a lot of our record, unfortunate, been
2 disappearing from the time Mr. Idheileh was our partner. We
3 left, and when this gentleman left, left in good faith, we
4 never thought anything going to go like that.

5 Q. So Mr. Yusuf, are you stating for the record that
6 during the time that Mr. Idheileh was partner with the
7 business that the books started to disappear?

8 A. Some information that we can't find, we just
9 simply can't find it.

10 Q. And what information would that be?

11 A. Any information. Sometime you go for an item,
12 and if we know it's in that period of time, we become
13 suspicious that Mr. Idheileh either took it or destroyed it.

14 Q. So are you now at this point in time suggesting
15 that --

16 A. Suggesting?

17 Q. -- suggesting that Mr. Idheileh was involved in
18 some sort of illegal activity within the store?

19 A. I have reason to believe.

20 Q. Yes or no, sir?

21 A. Yes.

22 Q. For the record, you're stating that?

23 A. Yes.

24 Q. Did you have an audit of the books done at the
25 time Mr. Idheileh left the store?

FATHI YUSUF -- REDIRECT

1 A. No.

2 Q. If you had that suspicion, sir, why did you not
3 request an audit?

4 THE WITNESS: (To Attorney Vazzana:) Now I can
5 explain, right?

6 MS. VAZZANA: Uh-huh.

7 A. When we have this argument with Mr. Idheileh all
8 the time, because he created it, one day he says I'm going to
9 my lawyer. You're free to go. He went to his lawyer, of
10 course what he have is the joint, a partner agreement, right.
11 He show it to his lawyer, explain to him what is this
12 agreement all about, and his lawyer have wrote me this
13 letter.

14 I told Mr. Idheileh, Mr. Idheileh, I have
15 received a letter from your lawyer. Now, we're only opening
16 for a week or two weeks, I don't remember exactly, but I'll
17 be more than happy to show to your lawyer, under one
18 condition. We're friend. I would love to remain friend.
19 Under one condition: If I can't prove everything I state,
20 which is in front of the Book, go through it if you want, I
21 will just leave Plaza Extra. I will be very shameful to come
22 back to it. You could keep it. But if I can prove every
23 penny is there, I'm going to bring a CPA, I will charge you
24 whatever the CPA cost.

25 Mr. Idheileh answer, Come on, Mr. Yusuf.

FATHI YUSUF -- REDIRECT

1 We're friend. I don't mean that. I'm sorry, I made a
2 mistake.

3 And in proof to what I said, he have never
4 have such complaint in front of the two wise committees. We
5 never mistrust each other. But this now, after when I see he
6 taking into court, the man was building a case against me
7 without I'm aware of it. He was just simply building a case
8 against me.

9 Q. Mr. Yusuf, do you recall Mr. Suid's deposition?

10 A. Yeah, I recall that he was deposition, yes.

11 Q. One minute. I'm trying to find it.

12 There's a part in here, he was talking
13 about -- I forgot to mark where he was asked about opening
14 the books.

15 (Discussion held off the record.)

16 **MR. ADAMS:** Back on the record.

17 Q. Now, Mr. Yusuf, do you recall Mr. Suid's -- or I
18 will direct your attention to Mr. Suid's deposition.

19 A. Yes.

20 Q. And the question was asked of him: But
21 Mr. Idheileh did not agree that the store was losing money?
22 Mr. Suid answered, I do not recall, but I know he was in
23 disagreement with that, because I think he had asked for to
24 open the books, or he hired a lawyer or something. So I'm
25 sure he was in disagreement with that, yes.

FATHI YUSUF -- REDIRECT

1 So now, Mr. Yusuf, would you still state that
2 Mr. Idheileh did not, outside of the request to you, mention
3 or make a request for an audit of the books to anyone else?

4 A. Sir, I know a letter I receive. Before I did any
5 action -- I was more than happy to, because it wasn't a big
6 problem, I have to go back to my partner and say what did I
7 receive. We trust each other, or we don't trust each other?
8 If you want, if you find me stealing, I'll let you have
9 Plaza Extra for you alone.

10 And if you don't, if you want me I could hire
11 a CPA tomorrow. But if I'm clean, which the record in front
12 of you, I make you pay for the CPA.

13 I have never knew this man is putting up trap
14 for me, because he have never requested again, never. He
15 have never complained to any one of the witness you asked
16 today. I mean if you have a pain, you scream. Because it
17 wasn't as issue.

18 I'm a very trusty person, trust me. I have to
19 tell you, because you don't know me, but he already gave me
20 money without signature.

21 **MR. ADAMS:** Okay. Thank you, Mr. Yusuf.

22 (Whereupon the deposition concluded

23 at 4:05 p.m.)

CERTIFICATE

C-E-R-T-I-F-I-C-A-T-E

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I, CHERYL L. HAASE, a Registered Professional Reporter and Notary Public for the U.S. Virgin Islands, Christiansted, St. Croix, do hereby certify that the above and named witness, Fathi Yusuf, was first duly sworn to testify the truth; that said witness did thereupon testify as is set forth; that the answers of said witness to the oral interrogatories propounded by counsel were taken by me in Stenotype and thereafter reduced to typewriting under my personal direction and supervision.

I further certify that the facts stated in the caption hereto are true; and that all of the proceedings in the course of the hearing of said deposition are correctly and accurately set forth herein:

I further certify that I am not counsel, attorney or relative of either party, nor financially or otherwise interested in the event of this suit.

IN WITNESS WHEREOF, I have hereunto set my hand as such Certified Court Reporter on this the 4th day of February, 2000, at Christiansted, St. Croix, United States Virgin Islands.

CERTIFIED TRUE COPY
Cheryl L. Haase
Cheryl L. Haase, RPR

Case
Hamed et al., v.
Yusuf et al.

Exhibit
15

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

UNITED STATES OF AMERICA, and)
GOVERNMENT OF THE VIRGIN ISLANDS)

Plaintiffs,)

vs.)

CRIMINAL NO. 2005-15F/B

FATHI YUSUF MOHAMAD YUSUF,)
aka Fathi Yusuf)

WALEED MOHAMMAD HAMED,)
aka Wally Hamed)

WAHEED MOHOMMAD HAMED,)
aka Willie Hamed)

MAHER FATHI YUSUF,)
aka Mike Yusuf)

NEJEH FATHI YUSUF and)
UNITED CORPORATION,)
dba Plaza Extra)

Defendants.)

**UNITED CORPORATION’S RESPONSE TO GOVERNMENT’S SUPPLEMENT
MOTION FOR RECONSIDERATION RE: SHAREHOLDER DISTRIBUTIONS**

By Order dated November 26, 2008 (Doc. No. 1004), the Court granted the release of proportional shareholder distributions to United Corporation’s shareholders other than Mr. Fathi Yusuf. These shareholders represent 67.5% of the capital interests in the corporation. The Government filed a Motion for Reconsideration of the Court’s Order dated December 6, 2008 (Doc. No. 1007), to which United responded on December 22, 2008 (Doc. No. 1015). The

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Government, without leave of court, filed a “Supplement” to its motion on July 13, 2009 (Doc. No. 1151) raising for the first time certain matters contained in a civil deposition given by Mr. Fathi Yusuf in February of 2000. The Government’s Motion to Reconsider must be denied for the following reasons:

1. It is procedurally defective under L.R.Ci. 7.3:
 - a. The rule requires such motions to be filed within ten days of the subject court order, and only for limited purposes. The initial motion for reconsideration was based on alleged “clear error” or “manifest injustice”. This “supplement” is based on previously omitted evidence, and is thus a new motion entirely, filed well beyond the ten days required by the local rule.
 - b. Even if it were not out of time, Rule 7.3 requires that such motions be based on “new evidence”, which requires a showing that the proponent could not have discovered it by exercise of due diligence prior to the entry of the order in question. The Government has not even attempted to make such a showing.
2. The Government’s assumption that it can restrain all shareholder distributions by mere allegation of an “issue of fact” is unwarranted. The Government bears the burden of demonstrating probable cause, and has not done so.
3. The entire “Supplement” appears to be based on the notion that persons other than the Stockholders of United Corporation may have some inchoate or vaguely defined interest in United. However, this is inconsistent with the Government’s assertions throughout the case, and Mr. Yusuf’s testimony quite clearly says that such person (Mr. Mohammad Hamed) is not a stockholder, officer, or director of United.
4. The deposition simply does not say what the Government suggests. Even if one were to consider this “new evidence” it might only tend to suggest that 50% of the capital interest in the corporation is held by Mr. Mohammad Hamed, a person not under indictment, and that the interests of the shareholders of record are diluted by 50%. Thus, Mr. Fathi Yusuf’s interest would be a mere 16.25% and United should be able to make distributions representing 83.75% of the remaining capital interests rather than the 67.5% now permitted by the Court.

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5. As demonstrated by the pending motion to dismiss the CICO forfeiture allegations (see Doc. Nos. 1129 and 1202), United's business assets and the post-indictment profits generated from them are not subject to direct forfeiture under any circumstances and ought never have been restrained in the first place.
6. Also as demonstrated by the pending motion to dismiss the CICO forfeiture allegations, United cannot be a "criminal enterprise", thus none of the corporate stock is subject to forfeiture, and therefore no distributions on account of the stock can be forfeited or restrained.

I. The Government's "Supplement" is Procedurally Defective.

A. The Government's "Supplement" is Untimely.

Local Rule 7.3 (L.R.Ci. 7.3) provides that all motions for reconsideration must be filed within ten days of the challenged order and must be based on (1) an intervening change in controlling law; (2) availability of new evidence; or (3) the need to correct clear error or prevent manifest injustice. The initial motion to reconsider did not actually state the ostensible grounds for its filing, but there was most certainly no suggestion of "new evidence" that could not have been presented prior to entry of the order. Thus, this "Supplement" is a new motion entirely, is out of time, and should be disregarded. *Liles v. Revetaw, Inc.*, 2009 WL 982471 (D.V.I. 2009)

B. The Supplement Does Not Present "Newly Discovered Evidence".

The Government provides Mr. Yusuf's deposition transcript with no explanation of when or how it was received, or any explanation of why it was not presented prior to entry of the Court's Order of November 26, 2008 – nearly a year ago. In order to qualify as "newly discovered", the Government must show not only that it obtained the transcript recently, but that it could not have been discovered by the Government by exercise of due diligence prior to November 26, 2008. See, e.g., *Krepps v. Gov't. of the Virgin Islands*, 2006 WL 1149216, *11

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(D.V.I. 2006). As the Government has not even attempted to suggest the transcript is “newly discovered”, it cannot be grounds for reconsideration.

II. The Government Seeks to Avoid Its Burden Of Proof.

The Government contends, without the support of legal authority or coherent argument, that all shareholder distributions must be restrained merely because it alleges an issue of fact to be resolved at a post-trial hearing. The Government seeks to shirk its responsibilities – it bears the burden of showing probable cause for pre-trial restraint, and must prove forfeiture at trial beyond a reasonable doubt. It cannot restrain property on the basis of bald allegations and the indictment alone; and cannot shift the burden of forfeiture to innocent claimants in post-trial proceedings.

By its Order of November 26, 2008 the Court found that only the shares of Mr. Fathi Yusuf are restrained under the TRO.¹ And because the remaining shares are not restrained, neither are the distributable profits allocable to those shares. The Government now wishes to restrain the shares of the remaining shareholders based only on its bald assertion of “uncertainty” over what shares are owned by Mr. Yusuf. The defect in this argument is that any such “uncertainty” is the Government’s problem and cannot be foisted off on the remaining shareholders – who for six years have been taxed on, but deprived of, the fruits of their capital interests.

The law in this Circuit is quite clear. In order to restrain assets prior to trial, the Government must show that it is likely to prove beyond a reasonable doubt: (a) a particular

¹ The Order also excepted the shares of Mr. Waleed Hamed and Mr. Waheed Hamed. However, this does not affect the distribution because these gentlemen are not stockholders.

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defendant is guilty of the offense charged; and (b) the particular property at issue is subject to forfeiture. *U.S. v. Long*, 654 F.2d 911, 915 (3d Cir. 1981). The Government must make this showing at a full hearing, and cannot rely on the indictment alone. *Id.*

As the Government concedes, the books and records of the corporation show 32.5% of the stock to be owned by Mr. Fathi Yusuf and the remainder owned by persons whose capital interests are not restrained. If the Government seriously wishes to restrain any part of the remaining 67.5% of the corporate stock, it must demonstrate to the Court that it is likely to prove at trial, beyond a reasonable doubt, that such stock is owned by Mr. Fathi Yusuf. Given the fact that the indictment itself states otherwise, and the flimsiness of the “evidence” upon which the Government bases its contentions, its reluctance to undertake this burden is understandable. Nevertheless, it must meet such burden before it can ask the Court to reconsider its Order allowing shareholder distributions.

III. Mr. Mohammad Hamed is Not a Stockholder.

The purpose for which the Government proffers the deposition testimony is to suggest that the ownership of the stock of United is “uncertain”, must be determined in some procedurally unspecified post-trial hearing, and thus no distribution of post-indictment profits should be made. However, the unequivocal testimony of Mr. Yusuf is that Mr. Mohammad Hamed owns no stock in the corporation and has no management authority:

Q. Is [Mohammed] Hamed an officer of United Corporation?

A. Who?

Q. Mohammed Hamed.

A. No, he’s not an officer.

Q. He’s not an officer in United Corporation?

A. No.

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Q. Is he a member of the Board of Directors of United Corporation?

A. No.

Q. Is he a shareholder in United Corporation?

A. No.²

The deposition does not suggest Mr. Mohammed or anyone other than the shareholders of record hold stock in United Corporation. There is no “uncertainty” over stock ownership that need concern the Government or the Court.

Moreover, throughout this litigation, all parties, including the Government, have proceeded without question that the ownership of United stock is as follows:

Fathi Yusuf	32.5%
Fawzia Yusuf	32.5%
Maher Yusuf	7%
Najeh Yusuf	7%
Syaid Yusuf	7%
Zayed Yusuf	7%
Yusuf Yusuf	7%

The fact of such corporate ownership has been consistently recognized by the Governments of the Virgin Islands and the United States by their approval and acceptance of quarterly tax deposits made by United on behalf of these shareholders. For the Government to now question the right of these same stockholders to receive distributions on the same income for which it has collected tax deposits is beyond irony.

IV. The Deposition Testimony is Irrelevant to the Authorized Distribution.

Even if one were to consider the deposition testimony proffered as “new evidence” by the Government, it is not material to the shareholder distributions now authorized by the Court. By its order, the Court allowed appropriate distribution of retained post-indictment earnings to be

² February 2, 2000 Deposition of Fathi Yusuf at 24:20 – 25:5.

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made to all shareholders other than Mr. Fathi Yusuf. That allows distributions on account of 67.5% of the capital stock. Assuming, without evidence and *arguendo*, that Mr. Mohammad Hamed does own half of the corporation's capital, this would merely dilute the restrained share of Mr. Fathi Yusuf, resulting in an allowed distribution on account of 83.75% of the capital stock. In other words, the Government's "new evidence" could only increase the distributable amount of post-indictment retained earnings.

Notwithstanding the foregoing, United will limit itself to a 67.5% distribution.

V. Post-Indictment Retained Earnings Are Not Lawfully Restrained.

The Government has, since inception, contended that the cash and business assets of United are directly forfeitable and thus subject to pre-trial restraint. Indeed, were the corporations assets not restrained there would be no necessity to seek Court approval of the distribution of post-indictment retained earnings (the Government theory being that these earnings are "proceeds of proceeds" and thus subject to forfeiture). If, in fact, the corporation's assets are not subject to pre-trial restraint, then distribution of its post-indictment earnings cannot be restrained either.

The Government's assumption is simply not true. The assets held by United at the time of the indictment simply do not qualify for forfeiture under 14 V.I.C. § 606(c) and cannot be restrained pre-trial under CICO. United has no desire to rehash arguments already fully briefed and presented, but respectfully refers the Court to United's briefs filed in support of dismissal of the CICO forfeiture allegations, Doc. Nos. 1129 and 1202. If United's assets cannot be restrained, then the distribution of its income cannot be restrained.

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VI. United's Capital Stock is Not Subject to Forfeiture – Regardless of Ownership.

The theory under which the Government seeks to restrain the distribution of Mr. Fathi Yusuf's share of retained post-indictment earnings is that the Government seeks forfeiture of Mr. Yusuf's stock under 14 V.I.C. § 606(c) as "property constituting an interest in, or means of control or influence over, the [criminal] enterprise." According to the Government, it therefore would be entitled to his share of post-indictment earnings. Again, as argued in United's motion to dismiss the CICO forfeiture allegations, United cannot be a criminal enterprise as defined by the statute. And if it cannot be a criminal enterprise, its stock cannot be forfeited regardless of who owns it. And if the stock cannot be forfeited, it cannot be restrained. And if the stock cannot be restrained, neither can the stockholder's share of distributable earnings. The Court is again respectfully referred to Doc. Nos. 1129 and 1202.

VII. Conclusion.

The Governments "Supplement" to its motion to reconsider is untimely. The "Supplement" is not based on "newly discovered evidence" and ought not be considered. The Government has not met its burden of showing the propriety of restraint of retained earnings belonging to the remaining shareholders. The "new evidence" proffered by the Government is irrelevant to the distributions the Court has authorized. The money to be distributed by United is not lawfully restrained under any legal theory. The Government's motion to reconsider should be denied.

Case
Hamed, et al., v.
Yusuf, et al.

Exhibit
16

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

**UNITED STATES OF AMERICA, and
GOVERNMENT OF THE VIRGIN ISLANDS,
Plaintiffs,**

vs.

**FATHI YUSUF MOHAMAD YUSUF,
aka Fathi Yusuf
WALEED MOHAMMAD HAMED,
aka Wally Hamed
WAHEED MOHOMMAD HAMED,
aka Willie Hamed
MAHER FATHI YUSUF,
aka Mike Yusuf
NEJEH FATHI YUSUF
ISAM YUSUF, and
UNITED CORPORATION,
dba Plaza Extra,
Defendants.**

CRIMINAL NO. 2005-15F/B

RECEIVED
2010 FEB 26 PM 4:00
DISTRICT OF THE VIRGIN ISLANDS

PLEA AGREEMENT

I.

INTRODUCTION

This agreement is entered into by and between defendant United Corporation, d/b/a Plaza Extra (hereinafter "United"), Thomas Alkon, Esquire, and Warren B. Cole, Esquire, Attorneys for United; Fathi Yusuf Mohamad Yusuf, Waleed Mohammad Hamed, Waheed Mohammad Hamed, Maher Fathi Yusuf, NejeH Fathi Yusuf, and the Department of Justice, Tax Division, and the United States Attorney for the District of the Virgin Islands (collectively referred to as the "Government").

The parties agree to the following terms:

A. United will plead guilty to Count Sixty of the Third Superseding Indictment, which charges willfully making and subscribing a 2001 U.S. Corporation Income Tax Return (Form 1120S), in violation of Title 33, Virgin Islands Code, Section 1525(2).

B. At the time that United enters its plea to the above-referenced count, the Government will dismiss all counts of the Indictment with prejudice against FATHI YUSUF MOHAMAD YUSUF, aka Fathi Yusuf, WALEED MOHAMMAD HAMED, aka Wally Hamed, WAHEED MOHAMMED HAMED, aka Willie Hamed, MAHER FATHI YUSUF, aka Mike Yusuf, ISAM MOHAMAD YOUSUF, aka Sam Yousuf, and NEJEH FATHI YUSUF (all collectively referred to as "individual defendants"), including the temporary restraining order and forfeiture allegations. The Government agrees not to file any additional criminal charges against United or any of the individual defendants for conduct arising out of the facts alleged in the Indictment. In accordance with paragraph VI. below, the Department of Justice of the Virgin Islands also agrees that it will file no criminal charges against United or any of the individual defendants for any conduct arising out of the facts alleged in the Indictment.

The Government agrees to dismiss with prejudice all remaining counts of the Indictment against United, including the temporary restraining order and forfeiture allegations, at the time of sentencing.

II.

NATURE OF THE OFFENSE

United agrees to plead guilty to Count Sixty of the Indictment, which charges a violation of Title 33, Virgin Islands Code, Section 1525(2). United acknowledges that the offense to which it is pleading has the following elements:

A. Elements

1. United aided, assisted, procured, counseled, advised, or caused the preparation and presentation of a return;
 2. The return was fraudulent or false as to a material matter;
- and
3. United acted willfully.

B. Elements Understood and Admitted.

United, through a representative empowered to accept this plea by virtue of a duly enacted resolution of its Board of Directors, has fully discussed the facts of this case with defense counsel. United committed each of the elements of the crime charged in Count Sixty of the Indictment and admits that there is a factual basis for a plea of guilty to the charge.

C. Factual Basis.

The parties agree that the following facts are true and undisputed:

On or about September 18, 2002, United willfully aided, assisted, procured, counseled, advised, or caused the preparation and presentation of a materially false corporate income tax return on Form 1120S for the year 2001 and filed such return with the Virgin Islands Bureau of Internal Revenue (VIBIR).

Specifically, United reported gross receipts or sales on line 1c as \$69,579,412, knowing that the true amount was approximately \$79,305,980.

III.

PENALTIES

A. United acknowledges that the maximum penalties for violation of Count Sixty are the following:

1. A maximum fine of \$5,000;
2. The Government may seek costs of prosecution, including but not limited to 1) costs incurred to produce discovery in the investigation and prosecution of this matter; 2) costs incurred by the United States Marshal's Service to monitor the operations of Defendant United pursuant to the Temporary Restraining Order, currently estimated at approximately \$1.5 million; and 3) costs related to witness appearance and travel fees in the investigation and prosecution of this matter. United reserves the right to object to the imposition of the aforementioned costs and to contest the amounts claimed by the Government.

3. Restitution in an amount that represents any and all unpaid gross receipts taxes, corporate income taxes, and individual income taxes owing to the VIBIR for the Indictment years 1996, 1997, 1998, 1999, 2000, and 2001. Said restitution is to be determined by the Court in accordance with the figures and ranges set forth in Exhibit 1, accepting as proven those figures stipulated by the parties. For those numbers still in dispute, the Court will determine the appropriate amount within the ranges proposed by the parties in Exhibit 1, following briefing, evidentiary presentation, and argument. In making its

determination, the Court may consider all relevant and material evidence presented by the parties without regard to the Federal Rules of Evidence, so long as such evidence is disclosed in advance to the opposing party. Prior to submitting restitution amounts for the Court's consideration in preparation for sentencing, the parties agree to negotiate in good-faith to arrive at a mutually acceptable amount.

4. A term of probation of one year, with conditions as set forth in paragraph VIII.E. United understands that failure to comply with any of the conditions of probation may result in the imposition of further penalties.

B. In addition to the statutory penalties for violation of Title 33, Virgin Islands Code, Section 1525(2), United shall pay a substantial monetary penalty within the range set forth in paragraph VIII.B., as determined by the Court following briefing and argument by the parties.

IV.

WAIVER OF TRIAL RIGHTS

United understands that this guilty plea waives all of the following rights:

- A. To plead not guilty and to require the Government to prove the elements of the crimes beyond a reasonable doubt;
- B. To a speedy and public trial by jury;
- C. To assistance of counsel at all stages of trial;
- D. To confront and cross-examine witnesses against United; and
- E. To present evidence and to have witnesses testify on United's behalf.

V.

UNITED'S REPRESENTATION THAT GUILTY PLEA IS KNOWING
AND VOLUNTARY

United represents that:

A. United has had a full opportunity to discuss all the facts and circumstances of this case with its counsel and has a clear understanding of the charges and the consequences of pleading guilty;

B. No one has made any promises or offered any rewards in return for United's guilty plea, other than those contained in this Plea Agreement, in Exhibit 2, which contains the letter of understanding dated February 12, 2010 (this plea agreement controls in the event of any conflicts), or otherwise disclosed to the Court;

C. No one has threatened United to induce this guilty plea; and

D. United is pleading guilty because in truth and in fact United *is* guilty and for no other reason.

VI.

AGREEMENT LIMITED TO UNITED STATES ATTORNEY'S OFFICE FOR THE
DISTRICT OF THE VIRGIN ISLANDS AND TAX DIVISION

This Plea Agreement is between United Corporation, the Individual Defendants, and the Government. This Agreement is not intended to bind any other federal, state, or local prosecuting, administrative, or regulatory authorities except to the extent specifically expressed herein. The Government will bring this Plea Agreement to the attention of other authorities if requested by United.

VII.

PLEA AGREEMENT SUBJECT TO COURT APPROVAL

Pursuant to Rule 11(c)(1)(C) of the Federal Rules of Criminal Procedure, the parties acknowledge and agree that United should be ordered to pay the fine, restitution, and monetary penalties contained within this Plea Agreement and should be sentenced to a term of probation of one year.

If the Court does not adopt the agreement of the parties pursuant to Rule 11(c)(1)(C), both United and the Government reserve the right to withdraw from this Plea Agreement.

VIII.

PARTIES' SENTENCING RECOMMENDATIONS

A. **Fine.** The parties agree that the maximum statutory fine of \$5,000 should be imposed.

B. **Monetary Penalty:** The parties propose that the monetary penalty to be imposed pursuant to paragraph III.B. above be imposed in an amount between \$250,000 to \$5,715,748.

C. **Costs of Prosecution:** The Government proposes that costs of prosecution be imposed as discussed above in paragraph III.A.2. United contests said number and the categories of costs to be awarded.

D. **Restitution.** The parties propose the restitution amounts and ranges as set forth in Exhibit 1, as referenced in paragraph III.A.3. above.

E. **Terms of Probation**

1. United agrees to a term of probation of one year and agrees to be monitored by an independent third party certified public accounting firm to

assure its compliance with the tax laws of the VIBIR. United agrees to cooperate with the independent third party in carrying out such party's obligations under this agreement. The selection of a certified public accounting firm as the independent third party will be expressly approved by the Government prior to the beginning of the term of probation. If the parties cannot reach agreement on a third party, the independent third party will be selected by the Court.

2. The independent third party shall make quarterly reports to the Government, the Court, and United of United's financial condition, results of business operations, tax filings, tax payments, and accounting for the disposition of all funds received.

3. United shall submit to:

(a) a reasonable number of regular or unannounced examinations of its books and records at appropriate business premises by the independent third party; and

(b) a periodic review of financial statements and tax returns of United.

4. United shall be required to notify the court or independent third party immediately upon learning of (a) any material adverse change in its business or financial condition or prospects, or (b) the commencement of any bankruptcy proceeding, major civil litigation, criminal prosecution, or administrative proceeding against United, or any investigation or formal inquiry by governmental authorities regarding United's financial operations.

5. United shall make periodic payments, as specified by the Court, in the following priority: (a) restitution; (b) fine; and (c) substantial monetary penalty. After sentencing, the Government agrees to release all lis pendens, restraining orders, liens, or other encumbrances or property except to the extent necessary to assure valid security for the payments of all amounts referenced above. United shall develop and submit to the Court an effective compliance and ethics program consistent with §8B2.1 (Effective Compliance and Ethics Program) of the United States Sentencing Guidelines. United shall include in its submission a schedule for implementation of the compliance and ethics program.

6. Upon approval by the Court of the ethics program referred to above, United shall notify its owners, shareholders, directors, officers, and employees of its criminal behavior and its programs referred to above. Such notice shall be in a form prescribed by the Court.

7. United shall make periodic reports to the Government and to the Court at intervals and in a form specified by the Court, regarding the organization's progress in implementing the ethics program referred to above. Among other things, such reports shall disclose any criminal prosecution, civil litigation, or administrative proceeding commenced against United, or any investigation or formal inquiry by governmental authorities concerning United's financial operations of which United learned since its last report.

IX.

UNITED WAIVES APPEAL AND COLLATERAL ATTACK

In exchange for the Government's concessions in this Plea Agreement, United waives, to the full extent of the law, any right to appeal or collaterally attack the conviction and sentence, including any restitution order, except in the following circumstances: (i) the sentence exceeded the maximum statutory penalty; or (ii) the sentence violated the Eighth Amendment to the United States Constitution.

X.

FURTHER CRIMES OR BREACH OF THE AGREEMENT WILL PERMIT THE GOVERNMENT TO RECOMMEND A HIGHER SENTENCE OR TO SET ASIDE THE PLEA

This Plea Agreement is based on the understanding that United will commit no additional criminal conduct before sentencing. If United engages in additional criminal conduct between the time of execution of this agreement and the time of sentencing, or breaches any of the terms of any agreement with the Government, the Government will not be bound by the recommendations in this Plea Agreement and may recommend any lawful sentence.

XI.

COOPERATION WITH INTERNAL REVENUE SERVICE AND VIRGIN ISLANDS BUREAU OF INTERNAL REVENUE

During the pendency of this matter, United, its shareholders, the individual defendants in this case, and certain related entities and individuals identified in various pleadings or motions in this case, upon the specific advice of their counsel in this matter, did not file tax returns and certain other reporting

documents to the United States or the United States Virgin Islands (USVI) on Fifth Amendment grounds. During the pendency of this matter, those same individuals and entities endeavored to work cooperatively with the U.S. Marshals Service and the USVI governments to pay over as deposits their best estimate of taxes owed on those returns.

Prior to sentencing, United agrees to cooperate with the Government and the VIBIR in filing complete and accurate corporate income tax returns and gross receipts returns for years 2002, 2003, 2004, 2005, 2006, 2007, and 2008 and in paying in full the amounts due thereupon. United agrees to comply with all current tax reporting and payment obligations between the execution of this agreement and sentencing. In addition, prior to the sentencing hearing in this matter, United's shareholders (FY 32.5%, FY 32.5%, SY 7%, ZY 7%, YY 7%, MY 7%, NY 7%), and the individual defendants shall file the outstanding returns and reporting documents and shall make full payments of the amounts due thereupon. United acknowledges that a special condition of probation will require that all corporate returns be filed, and all amounts due and owing under this agreement and all taxes due and owing for tax years 2002 through 2008 must be paid prior to the termination of the period of probation.

The Government agrees that no foreign bank account-related charges or discretionary penalties shall be applied with respect to United or any of the individual defendants so long as such reporting and regulatory compliance is made for each of the years 1996 through 2008 prior to sentencing.

XII.

ENTIRE AGREEMENT

The Plea Agreement and Exhibit 2 embody the entire agreement between the parties.

Upon the acceptance of the plea of guilty to Count Sixty by United in accordance with this agreement, the Government agrees to promptly move the Court for an Order dismissing the restraining orders against the individual defendants, except to the extent necessary to assure valid security for the payments of all amounts referenced in paragraph VIII., and shall move for entry of an order removing of record all notices of lis pendens or other encumbrances filed in connection with this case against all properties owned in whole or in part by any persons other than United. The parties agree to meet and confer to determine a schedule to remove pending lis pendens, liens, and other restrictions.

XIII.

MODIFICATION OF AGREEMENT MUST BE IN WRITING

No modification of the Plea Agreement shall be effective unless in writing signed by the Government, United, the individual defendants, and United's shareholders.

XIV.

UNITED AND COUNSEL FULLY UNDERSTAND AGREEMENT

By signing this Plea Agreement, United's representative certifies that he or she has been given lawful authority to enter into this Plea Agreement. United further certifies that its counsel has discussed the terms of this Plea Agreement

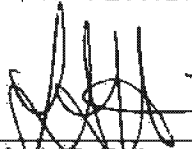
with appropriate officer and directors of United and that United fully understands its meanings and effect.

The Government agrees to the terms set forth in this Plea Agreement.

RONALD SHARPE
UNITED STATES ATTORNEY

JOHN A. DICICCO
ACTING ASSISTANT ATTORNEY GENERAL
DEPARTMENT OF JUSTICE, TAX DIVISION


Dated: 2/26/10



Mark F. Daly
Lori A. Hendrickson
Kevin C. Lombardi
Trial Attorneys


The defendant United Corporation agrees to the terms set forth in this Plea Agreement.

Dated: 2/26/10



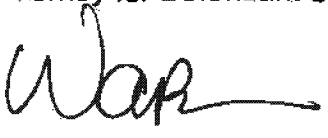
Thomas Alkon, Esq.
Attorney for Defendant United Corporation

Dated: 2/26/10

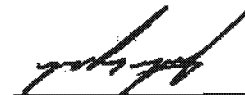



Warren B. Cole, Esq.
Attorney for Defendant United Corporation


Dated: 2/26/10




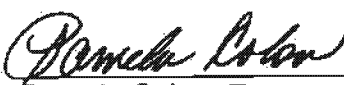
Warren B. Cole, Esq.
Attorney for Defendant's unindicted shareholders

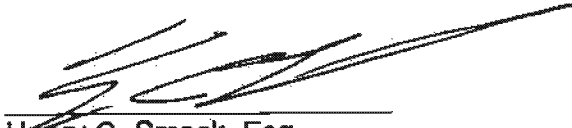
Dated: 2-26-10 
Maher Fathi Yusuf
President, Defendant United Corporation

Dated: 2/26/10 
Gordon C. Rhea, Esq.
Attorney for Defendant Waleed Mohammed Hamed

Dated: 2/26/10 
Randall P. Andreozzi, Esq.
Attorney for Defendant Waleed Mohammed Hamed

Dated: 2/26/10 
Derek M. Hodge, Esq.
Attorney for Defendant Neieh Fathi Yusuf

Dated: 2/26/10 
Pamela Colon, Esq.
Attorney for Defendant Waheed Mohammed Hamed

Dated: 2/26/10 
Henry C. Smock, Esq.
Attorney for Defendant Fathi Yusuf Mohamad Yusuf

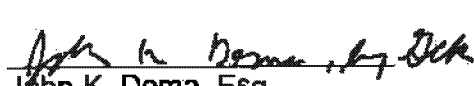
Dated: 2/26/10 
John K. Dema, Esq.
Attorney for Defendant Maher Fathi Yusuf

EXHIBIT I - RESTITUTION NUMBERS FOR TAX LOSS

Description	Government	Defendant
Gross Receipts Tax 1996	\$324,149.55	\$0.00
Gross Receipts Tax 1997	\$234,506.94	\$0.00
Gross Receipts Tax 1998	\$619,496.89	\$272,251.00
Gross Receipts Tax 1999	\$558,830.86	\$603,633.00
Gross Receipts Tax 2000	\$642,057.28	\$642,057.00
Gross Receipts Tax 2001	\$478,832.33	\$386,081.00
TOTAL GROSS RECEIPTS TAXES	\$2,857,873.85	\$1,904,022.00
Corporate Income Tax - 1996	\$2,214,307.41	\$0.00
Corporate Income Tax - 1997	\$2,360,868.66	\$427,011.00
Corporate Income Tax - 1998	\$3,993,535.34	\$488,323.00
TOTAL CORPORATE INCOME TAX	\$8,568,711.41	\$915,334.00
Individual Income Tax - 1999 - FY 32.5%	\$1,046,359.70	\$0.00
Individual Income Tax - 1999 - FY 32.5%	\$1,046,359.70	\$0.00
Individual Income Tax - 1999 - SY 7%	\$225,369.78	\$0.00
Individual Income Tax - 1999 - ZY 7%	\$225,369.78	\$0.00
Individual Income Tax - 1999 - YY 7%	\$225,369.78	\$0.00
Individual Income Tax - 1999 - MY 7%	\$225,369.78	\$0.00
Individual Income Tax - 1999 - NY 7%	\$225,369.78	\$0.00
TOTAL INDIVIDUAL INCOME TAX - 1999	\$3,219,568.31	\$0.00
Individual Income Tax - 2000 - FY 32.5%	\$1,458,473.19	\$0.00
Individual Income Tax - 2000 - FY 32.5%	\$1,458,473.19	\$0.00
Individual Income Tax - 2000 - SY 7%	\$314,132.69	\$0.00
Individual Income Tax - 2000 - ZY 7%	\$314,132.69	\$0.00
Individual Income Tax - 2000 - YY 7%	\$314,132.69	\$0.00
Individual Income Tax - 2000 - MY 7%	\$314,132.69	\$0.00
Individual Income Tax - 2000 - NY 7%	\$314,132.69	\$0.00
TOTAL INDIVIDUAL INCOME TAX - 2000	\$4,487,609.81	\$0.00
Individual Income Tax - 2001 - FY 32.5%	\$1,545,993.69	\$0.00
Individual Income Tax - 2001 - FY 32.5%	\$1,545,993.69	\$0.00

Individual Income Tax - 2001 - SY 7%	\$332,983.26	\$0.00
Individual Income Tax - 2001 - ZY 7%	\$332,983.26	\$0.00
Individual Income Tax - 2001 - YY 7%	\$332,983.26	\$0.00
Individual Income Tax - 2001 - MY 7%	\$332,983.26	\$0.00
Individual Income Tax - 2001 - NY 7%	\$332,983.26	\$0.00
TOTAL INDIVIDUAL INCOME TAX - 2001	\$4,756,903.67	\$0.00
TOTAL ALL TAXES	\$23,890,667.04	\$2,819,356.00

Exh: 61 2

February 12, 2010

Lori A. Hendrickson, Esq.
US DOJ/Tax Division/N.Criminal Section
601 D. Street NW, Room 7814
Washington, DC 20004-2904

Re: United States v. Fathi Yusuf, Crim. No. 05-0015

Dear Ms. Hendrickson:

We write to memorialize the process and parameters that will culminate in a formal plea agreement in this case. The parties have agreed to the following terms:

- Defendant United Corporation (d.b.a. Plaza Extra) agrees to plead guilty to Count Sixty, filing a false 2001 Form 1120S, in violation of Title 33, Virgin Islands Code, Section 1525(2);
- The government agrees to dismiss the pending charges against the individual defendants immediately after defendant United Corporation's guilty plea has been entered in court by an authorized representative of defendant United Corporation, according to the terms of a signed plea agreement. The Government agrees not to prosecute United Corporation or any other individual or entity for any other crimes arising out of the conduct alleged in the Third Superseding Indictment;
- The government agrees to dismiss the remaining pending charges against United at the sentencing hearing;
- The parties agree to meet with each other and with representatives of the Virgin Islands Bureau of Internal Revenue (VIBIR) to try to reach agreement for restitution numbers for unpaid gross receipts taxes, corporate income taxes, and individual income taxes for the Indictment years 1996, 1997, 1998, 1999, 2000, and 2001. The numbers for which the parties are able to agree will be set forth in the plea agreement;
- If the parties are unable to reach agreement on any of the tax loss numbers for the Indictment years, they will set forth their own tax loss numbers for each year and for each particular tax, in a format identical to the attached chart. The parties agree that the final determination of the restitution amount for the unpaid gross receipts taxes, corporate income taxes, and individual income taxes for the Indictment years 1996, 1997, 1998, 1999, 2000, and 2001, will be made by Judge Finch after the

Letter of Agreement

February 12, 2010

Page 2 of 5

parties submit sentencing memoranda and present testimonial and documentary evidence at a hearing. The parties agree that Judge Finch will determine a liability based on the range of numbers asserted by the parties in the plea agreement.

- The determination of Judge Finch of the restitution by United Corporation shall be conclusive of all taxes due and owing to the Government of the Virgin Islands for years 1996, 1997, 1998, 1999, 2000, and 2001 with respect to all taxes of the shareholders of United Corporation, both indicted and non-indicted, and employees of United, including Waheed Hamed and Waleed Hamed, due on or for or on account of income earned by United Corporation during said years and upon payment all such tax liabilities shall be deemed satisfied in full.
- Defendant United Corporation agrees to a term of probation of one year, and agrees to be monitored by an independent third party certified public accounting firm during the term of probation to assure its compliance with the tax laws of the VIBIR. The selection of the independent third party will be expressly approved by the government prior to the beginning of the term of probation. If the parties cannot reach agreement on a third party, the independent third party will be selected by the Court;
- The government agrees not to prosecute United Corporation or individual defendants, or assert any civil or criminal accuracy related or reporting penalties, in years 2002, 2003, 2004, 2005, 2006, 2007, and 2008, provided that the individual defendants tender documentary proof that they have filed tax returns and paid tax due as set forth on those returns and as reviewed and accepted by the VIBIR;
- United, its shareholders, and the individual defendants referenced in the Indictment agree to cooperate with VIBIR to file full and complete tax returns for all post indictment years through present and to make full payment on any amounts due thereon. The Government agrees that no interest, penalties, or time and interest sensitive penalties should be imposed on the post-indictment returns so long as said returns are filed in accordance with this agreement. To the extent tax deposits already submitted exceed the amount owed on the post indictment returns as filed, such deposits should be reallocated to other tax periods or refunded to the particular tax payer. The VIBIR reserves the right to review the returns to be filed hereunder to determine whether they are accurate as filed.
- No foreign bank account-related charges or discretionary penalties shall be applied with respect to any of the individuals and entities so long as such reporting and regulatory compliance is made for the subject post-indictment years. (United States Department of Justice, and not VIBIR, has authorization over this provision).
- The parties agree that United will pay a \$5,000 fine and that the Government may seek a substantial monetary penalty. The parties will negotiate in good faith to determine the character of this penalty and will set forth a defined range from

Letter of Agreement
February 12, 2010
Page 3 of 5

which Judge Finch will make a final ruling. The parties agree that the Government may also seek reimbursement from United for the actual costs of prosecution, which will be set forth in the plea agreement. United reserves the right to contest the above mentioned penalties and prosecution costs.

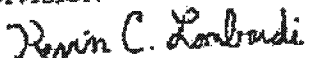
- Defendant United Corporation, the individual defendants, and the shareholders of United Corporation, all agree to file original individual income tax returns (or correcting amended returns, if appropriate) for the years 2002, 2003, 2004, 2005, 2006, 2007, and 2008, and provide any documentation or information requested by the VIBIR in order for the VIBIR to make their own independent review and assessment of the accuracy of such returns. Defendant United Corporation, the individual defendants, and the shareholders of United Corporation all agree to take these actions prior to the sentencing hearing;

The United States government and the United States Virgin Islands government agree to the terms set forth in this Letter of Agreement.


RONALD SHARPE
UNITED STATES ATTORNEY

JOHN A. DICICCO
ACTING ASSISTANT ATTORNEY GENERAL
DEPARTMENT OF JUSTICE
TAX DIVISION


Dated: 2/12/2010


Mark F. Daly
Lori A. Hendrickson
Kevin C. Lombardi
Trial Attorneys

Dated: 2/15/10


Claudette Watson Anderson
Director
Virgin Islands Bureau of Internal Revenue

Dated: 2/18/10


Denise George
Assistant Attorney General
Virgin Islands Department of Justice
Office of the Attorney General

The defendant United Corporation agrees to the terms set forth in this Letter of Agreement.

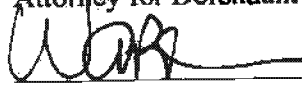
Letter of Agreement
February 12, 2010
Page 4 of 5

Dated: 2/26/10



Thomas Alkon, Esq.
Attorney for Defendant United Corporation

Dated: 2/26/10



Warren B. Cole, Esq.
Attorney for Defendant United Corporation

Dated: 2/26/10



MAHER FATHI YUSUF
President, Defendant United Corporation

Dated: 2/26/10



Gordon C. Rhea, Esq.
Attorney for Defendant Waleed Mohammed Hamed

Dated: 2/26/10



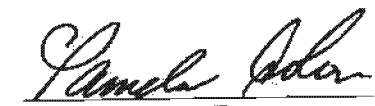
Randall P. Andreozzi, Esq.
Attorney for Defendant Waleed Mohammed Hamed

Dated: 2/26/10



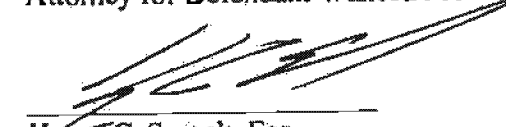
Derek M. Hodge, Esq.
Attorney for Defendant Nejeah Fathi Yusuf

Dated: 2/26/10



Pamela Colon, Esq.
Attorney for Defendant Waheed Mohammed Hamed

Dated: 2/26/10



Henry C. Smock, Esq.
Attorney for Defendant Fathi Yusuf Mohamad Yusuf

Dated: 2/26/10



John K. Dema, Esq.
Attorney for Defendant Maher Fathi Yusuf

Case
Hamed, et al., v.
Yusuf, et al.

Exhibit
17

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

UNITED STATES OF AMERICA, and
GOVERNMENT OF THE VIRGIN ISLANDS,
Plaintiffs,

vs.

FATHI YUSUF MOHAMAD YUSUF,
aka Fathi Yusuf
WALEED MOHAMMAD HAMED,
aka Wally Hamed
WAHEED MOHOMMAD HAMED,
aka Willie Hamed
MAHER FATHI YUSUF,
aka Mike Yusuf
NEJEH FATHI YUSUF
ISAM YUSUF, and
UNITED CORPORATION,
dba Plaza Extra,

Defendants.

CRIMINAL NO. 2005-15F/B

PLEA AGREEMENT- ADDENDUM

The parties agree to the following:

- 1) United will pay a \$5,000 fine, as set forth in Paragraphs III.A.1 and VIII.A;
- 2) United will pay \$10 million to the VIBIR for restitution, as set forth in Paragraphs III.A.3 and VIII.D;
- 3) United will pay \$1 million as a substantial monetary penalty, as set forth in Paragraphs III.A.2, III.B, VIII.B, and VIII.C.

In consideration of the settlement herein, United, the individual defendants, and United's shareholders, and their heirs, executors, administrators, or assigns do hereby stipulate and agree to pay the agreed upon

sums, and to waive and release any and all claims, demands, rights, and causes of action of whatsoever kind and nature, whether sounding in tort, contract, or any other theory of legal liability, including any claims for fees, interest, costs, and expenses, arising from, and by reason of, any and all known and unknown, foreseen and unforeseen, bodily and personal injuries, death, or damage to property, and the consequences thereof, which United, the individual defendants, and United's shareholders, or their heirs, executors, administrators, or assigns may have or hereafter acquire against the United States, its agents, servants, and employees on account of the same subject matter that gave rise to the above-captioned action. United, the individual defendants, and United's shareholders, and their heirs, executors, administrators, and assigns do hereby further agree to reimburse, indemnify, and hold harmless the United States and its agents, servants, and employees from and against any and all such claims, causes of action, liens, rights, or subrogated or contribution interests incident to, or resulting or arising from, the acts or omissions that gave rise to the above-captioned action. Provided, however, that the duties to reimburse, indemnify and hold harmless the United States and its agents as set forth in the preceding sentence shall be strictly limited to claims made by United, the individual defendants, United's shareholders, or their executors, administrators, assigns, or their family members.

**UNITED AND COUNSEL FULLY UNDERSTAND PLEA AGREEMENT-
ADDENDUM**

By signing this Plea Agreement-Addendum, United's representative certifies that he has been given lawful authority to enter into this Plea Agreement-

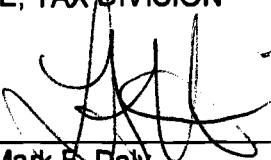
Addendum. United further certifies that its counsel has discussed the terms of this Plea Agreement- Addendum with appropriate officers, directors, and shareholders of United and that United fully understands its meanings and effect.

The Government agrees to the terms set forth in this Plea Agreement- Addendum.

RONALD SHARPE
UNITED STATES ATTORNEY

JOHN A. DICICCO
ACTING ASSISTANT ATTORNEY GENERAL
DEPARTMENT OF JUSTICE, TAX DIVISION


Dated: 2/2/2011



Mark F. Daly
Lori A. Hendrickson
Kevin C. Lombardi
Trial Attorneys

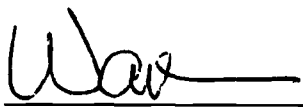
The defendant United Corporation agrees to the terms set forth in this Plea Agreement-Addendum.

Dated: 1/20/11



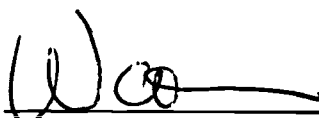
Thomas Atkon, Esq.
Attorney for Defendant United Corporation

Dated: 1/20/11

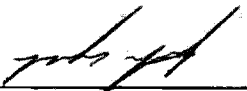


Warren B. Cole, Esq.
Attorney for Defendant United Corporation

Dated: 1/20/11



Warren B. Cole, Esq.
Attorney for Defendant's unindicted shareholders

Dated: _____ 
Maher Fathi Yusuf
President, Defendant United Corporation

Dated: _____
Gordon C. Rhea, Esq.
Attorney for Defendant Waleed Mohammed Hamed

Dated: _____
Randall P. Andreozzi, Esq.
Attorney for Defendant Waleed Mohammed Hamed

Dated: _____
Derek M. Hodge, Esq.
Attorney for Defendant Nejeh Fathi Yusuf

Dated: _____
Pamela Colon, Esq.
Attorney for Defendant Waheed Mohammed Hamed

Dated: _____
Henry C. Smock, Esq.
Attorney for Defendant Fathi Yusuf Mohamad Yusuf

Dated: _____
John K. Dema, Esq.
Attorney for Defendant Maher Fathi Yusuf

Dated: _____

Maher Fathi Yusuf
President, Defendant United Corporation

Dated: 1/20/2011

Gordon C. Rhea
Gordon C. Rhea, Esq.
Attorney for Defendant Waleed Mohammed Hamed

Dated: _____

Randall P. Andreozzi, Esq.
Attorney for Defendant Waleed Mohammed Hamed

Dated: 2/2/11

Derek M. Hodge
by WABA with authorization
Derek M. Hodge, Esq.
Attorney for Defendant Neje Fathi Yusuf

Dated: _____

Pamela Colon, Esq.
Attorney for Defendant Waheed Mohammed Hamed

Dated: _____

Henry C. Smock, Esq.
Attorney for Defendant Fathi Yusuf Mohamad Yusuf

Dated: _____

[Signature]
John K. Dema, Esq.
Attorney for Defendant Maher Fathi Yusuf

Dated: _____

Maher Fathi Yusuf
President, Defendant United Corporation

Dated: _____

Gordon C. Rhea, Esq.
Attorney for Defendant Waleed Mohammed Hamed

Dated: 1/24/11



Randall P. Andreozzi, Esq.
Attorney for Defendant Waleed Mohammed Hamed

Dated: _____

Derek M. Hodge, Esq.
Attorney for Defendant Nejeh Fathi Yusuf

Dated: _____

Pamela Colon, Esq.
Attorney for Defendant Waheed Mohammed Hamed

Dated: _____

Henry C. Smock, Esq.
Attorney for Defendant Fathi Yusuf Mohamad Yusuf

Dated: _____

John K. Dema, Esq.
Attorney for Defendant Maher Fathi Yusuf

Dated: _____

Maher Fathi Yusuf
President, Defendant United Corporation

Dated: _____

Gordon C. Rhea, Esq.
Attorney for Defendant Waleed Mohammed Hamed

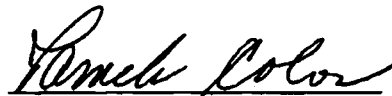
Dated: _____

Randall P. Andreozzi, Esq.
Attorney for Defendant Waleed Mohammed Hamed

Dated: _____

Derek M. Hodge, Esq.
Attorney for Defendant Neje Fathi Yusuf

Dated: 2/1/11



Pamela Colon, Esq.
Attorney for Defendant Waheed Mohammed Hamed

Dated: _____

Henry C. Smock, Esq.
Attorney for Defendant Fathi Yusuf Mohamad Yusuf

Dated: _____

John K. Dema, Esq.
Attorney for Defendant Maher Fathi Yusuf


Dated: _____
Maher Fathi Yusuf
President, Defendant United Corporation

Dated: _____
Gordon C. Rhea, Esq.
Attorney for Defendant Waleed Mohammed Hamed

Dated: _____
Randall P. Andreozzi, Esq.
Attorney for Defendant Waleed Mohammed Hamed

Dated: _____
Derek M. Hodge, Esq.
Attorney for Defendant Nejeah Fathi Yusuf

Dated: _____
Pamela Colon, Esq.
Attorney for Defendant Waheed Mohammed Hamed

Dated: 1-25-11

Henry C. Smock, Esq.
Attorney for Defendant Fathi Yusuf Mohamad Yusuf

Dated: _____
John K. Dema, Esq.
Attorney for Defendant Maher Fathi Yusuf



GOVERNMENT OF
THE VIRGIN ISLANDS OF THE UNITED STATES

-----0-----

VIRGIN ISLANDS BUREAU OF INTERNAL REVENUE



Case
Hamed, et al., v.
Yusuf, et al.

Exhibit
18

9601 Estate Thomas
St. Thomas VI 00802
Phone: (340) 715-1040
Fax: (340) 714-9345

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

Form 906 : Closing Agreement on Final Determination Covering Specific Matters

Under section 7121 of the Internal Revenue Code, as applicable to the Virgin Islands under the mirror code, United Corporation, ("Taxpayer"), and the Director of the Virgin Islands Bureau of Internal Revenue ("Director"), make the following agreement:

WHEREAS, Taxpayer is among the named defendants in Criminal Action No. 2005-15F/B, in the United States District Court for the District of the Virgin Islands, Division of St. Croix;

WHEREAS, all the governing principles for this civil tax liability closing agreement are set forth in the Plea Agreement for the above case, duly executed and filed as ECF Document # 1248 in Case: 1:05-cr-00015-RLF-GWB ("Plea Agreement"), and the Plea Agreement Addendum, duly executed and filed as ECF Document #1304-1, copies of which are appended to this closing agreement and the terms of which are incorporated by reference;

WHEREAS, Taxpayer and the Director, each with the advice and consent of their counsel, mutually seek through this agreement to establish with finality the civil tax liabilities for the years 1996 through 2001;

WHEREAS, it is desirable for income and gross receipts tax purposes to agree on the taxes to be assessed and paid by Taxpayer and its individual shareholders for the years 1996 through 2001;

WHEREAS, the Taxpayer has determined that the Agreement set forth herein is in its best interests;

WHEREAS, the Director, through authorized representatives and counsel, has determined that the Agreement set forth herein is also in its best interest by promoting the effective administration of United States Virgin Islands taxes;

WHEREAS, Taxpayer and Director have agreed upon the amounts of taxes to be assessed and paid by United Corporation in full satisfaction of its civil tax and reporting liabilities and the civil tax and reporting liabilities of United Corporation, United's shareholders and all of the individual defendants and related individuals and entities identified in the various pleadings and motions in Case No. 1:05-cr-00015-RLF-GWB for each of the years 1996 through 2001 as addressed with particularity in the Plea Agreement.

NOW IT IS HEREBY DETERMINED AND AGREED, for income and gross receipts tax purposes for each of the taxable years addressed in the Plea Agreement, that:

1. United Corporation consents to prompt assessment by the Director of income and gross receipts taxes for the following years and amounts.

Taxpayer	Type of Tax	Taxable Year(s)	Amount to be Assessed
United Corporation (C Corp)	Corporate Income Tax	1996-1998	\$915,334
United Corporation (S Corp)	Individual Income Tax	1999 – 2001	\$6,520,428
United Corporation	Gross Receipts Tax	1996-2001	\$2,564,238
Total assessment			\$10,000,000

2. United Corporation shall pay to the Director, within 10 days of the execution of this Closing Agreement, the full amount(s) of income and gross receipts taxes to be assessed. Amounts received by the Director prior to actual assessment of taxes shall be held in trust as an advance deposit to be applied to taxes to be assessed pursuant to this Agreement.
3. No interest or penalties shall be charged, assessed or deemed accrued by the Director on the Income and Gross Receipts taxes to be assessed.

4. Prompt assessment by the Director and timely payment by the Taxpayer of the above tax amounts (as detailed in Attachment A) shall fully satisfy the civil tax liabilities of Taxpayer, its individual shareholders, and all of the individual defendants and related individuals and entities identified in the various pleadings and motions in Case No. 1:05-cr-00015-RLF-GWB for tax years 1996 through 2001.
5. Taxpayer, its individual shareholders, and all of the individual defendants and related individuals and entities identified in the various pleadings and motions in Case No. 1:05-cr-00015-RLF-GWB, shall not be required or obligated to file any returns or amended returns for the periods 1996 through 2001.
6. By signing this agreement, Taxpayer and its shareholders, waive all restrictions on the assessment of the income and gross receipts tax liabilities specified in this Closing Agreement.
7. This Closing Agreement determines with finality the income and/or gross receipts tax liabilities for Taxpayer, its individual shareholders, and all of the individual defendants and related individuals and entities identified in the various pleadings and motions in Case No. 1:05-cr-00015-RLF-GWB for the 1996 through 2001 taxable years.
8. Performance of the assessment and payment obligations of this Closing Agreement fully satisfy all civil tax liabilities of Taxpayer, its individual shareholders, and all of the individual defendants and related individuals and entities identified in the various pleadings and motions in Case No. 1:05-cr-00015-RLF-GWB for the 1996 through 2001 taxable years.
9. This Closing Agreement contains the complete Agreement between the parties.

This agreement is final and conclusive.

By signing, the above parties certify that they have read and agreed to the terms of this document. Neither party shall be considered the drafter of this closing agreement, or any provision hereof, for the purpose of any rule of interpretation or construction that would or might cause any provision to be construed against the drafter.

This agreement must be signed and filed in triplicate. (All copies must have original signatures.)

The original and copies of the agreement must be identical.

The name of each Taxpayer must be stated accurately.

The agreement may relate to one or more years.

If an attorney or agent signs the agreement for the taxpayer, the power of attorney (or a copy) authorizing that person to sign must be attached to the Agreement. If the Agreement is made for a year when a Joint income tax return was filed by a husband and wife, it should be signed by or for both spouses. One spouse may sign as agent for the other if the document (or a copy) specifically authorizing that spouse to sign is attached to the agreement.

If the taxpayer is a corporation, the agreement must be dated and signed with the name of the corporation, the signature and title of an authorized officer or officers, or the signature of an authorized attorney or agent. It is not necessary that a copy of an enabling corporate resolution be attached. See 26 C.F.R. 601.504(b)(2)(ii) as to dissolved corporations.

By signing, the parties certify that they have read and agreed to the terms of this document.

United Corporation

Date:

By: Maher Fathi Yusuf
President – Duly Authorized

Date:

Fawzia Yusuf – Shareholder

Date:

Fathi Yusuf – Shareholder

Date:

Syaid Yusuf – Shareholder

Date:

Zayed Yusuf – Shareholder

Date: _____
Yusuf Yusuf – Shareholder

Date: _____
Maher Yusuf – Shareholder

Date: _____
Nejeh Yusuf – Shareholder

Virgin Islands Bureau of Internal
Revenue

Date: _____
By:
Title:

SMOCK & MOOREHEAD

ATTORNEYS AT LAW

P.O. BOX 1498

NO. 11A NORRE GADE, KONGENS QTR.

CHARLOTTE AMALIE, ST. THOMAS

UNITED STATES VIRGIN ISLANDS 00804

HENRY C. SMOCK
SUSAN BRUCH MOOREHEAD

July 19, 2011

KYLE R. WALDNER

MONICA M. HOWARD

NAGESH V. TAMMARA

VIA HAND DELIVERY:

Tamarah Parson-Smalls, Esquire
VI Bureau of Internal Revenue
P.O. Box 306421
St. Thomas, Virgin Islands 00803

Re: **Closing Agreement with United Corporation**

Dear Attorney Smalls:

I am pleased to enclose with this letter the following:

1. Closing Agreement with the original signatures of Maher Fathi Yusuf, Fawzia Yusuf and Fathi Yusuf. Syaid Yusuf and Zayed Yusuf also signed and scanned their signatures. For the sake of good order, I am circulating three copies of the Agreement which will be executed again as originals and returned to me, which I will then forward to you. You and I have agreed that the delivery of the settlement check should not be delayed while these new originals are being circulated; and
2. Bank Manager's Check No. 024799 in the amount of Ten Million Dollars (\$10,000,000.00), payable to the Virgin Islands Internal Revenue.

Simultaneously with the delivery of these documents, you will deliver to me the Closing Agreement with the signature of the Director of the Bureau affixed.

Thank you as always for your courtesy and cooperation.

Sincerely,

Henry C. Smock

HCS:cad

Enclosure:

cc: Gordon Rhea, Esquire
Warren Bruce Cole, Esquire
Ranndall P. Andreozzi, Esquire



GOVERNMENT OF
THE VIRGIN ISLANDS OF THE UNITED STATES



-----0-----

VIRGIN ISLANDS BUREAU OF INTERNAL REVENUE

9601 Estate Thomas
St. Thomas VI 00802
Phone: (340) 715-1040
Fax: (340) 714-9345

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

Form 906 : Closing Agreement on Final Determination Covering Specific Matters

Under section 7121 of the Internal Revenue Code, as applicable to the Virgin Islands under the mirror code, United Corporation, ("Taxpayer"), and the Director of the Virgin Islands Bureau of Internal Revenue ("Director"), make the following agreement:

WHEREAS, Taxpayer is among the named defendants in Criminal Action No. 2005-15F/B, in the United States District Court for the District of the Virgin Islands, Division of St. Croix;

WHEREAS, all the governing principles for this civil tax liability closing agreement are set forth in the Plea Agreement for the above case, duly executed and filed as ECF Document # 1248 in Case: 1:05-cr-00015-RLF-GWB ("Plea Agreement"), and the Plea Agreement Addendum, duly executed and filed as ECF Document #1304-1, copies of which are appended to this closing agreement and the terms of which are incorporated by reference;

WHEREAS, Taxpayer and the Director, each with the advice and consent of their counsel, mutually seek through this agreement to establish with finality the civil tax liabilities for the years 1996 through 2001;

WHEREAS, it is desirable for income and gross receipts tax purposes to agree on the taxes to be assessed and paid by Taxpayer and its individual shareholders for the years 1996 through 2001;

VIRGIN ISLANDS BUREAU OF
INTERNAL REVENUE ST. THOMAS VI

RECEIVED
DISCUSSION OFFICE - US CIVIL
JUL 19 2011
[Handwritten signature]

The original and copies of the agreement must be identical.

The name of each Taxpayer must be stated accurately.

The agreement may relate to one or more years.

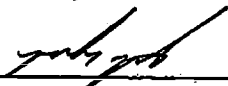
If an attorney or agent signs the agreement for the taxpayer, the power of attorney (or a copy) authorizing that person to sign must be attached to the Agreement. If the Agreement is made for a year when a Joint Income tax return was filed by a husband and wife, it should be signed by or for both spouses. One spouse may sign as agent for the other if the document (or a copy) specifically authorizing that spouse to sign is attached to the agreement.

If the taxpayer is a corporation, the agreement must be dated and signed with the name of the corporation, the signature and title of an authorized officer or officers, or the signature of an authorized attorney or agent. It is not necessary that a copy of an enabling corporate resolution be attached. See 26 C.F.R. 601.504(b)(2)(ii) as to dissolved corporations.

By signing, the parties certify that they have read and agreed to the terms of this document.

United Corporation

Date:


By: Maher Fathi Yusuf
President – Duly Authorized

Date:


Fawzia Yusuf – Shareholder

Date:


Fathi Yusuf – Shareholder

Date:


Syaid Yusuf – Shareholder

Date:


Zayed Yusuf – Shareholder

satisfaction of all income and gross receipts tax restitution amounts referenced in the Plea Agreement.

4. The shareholders of United Corporation request distribution of \$4 million from United Corporation for use in satisfaction of various family debts, obligations and medical expenses that have accrued over the pendency of this matter.
5. The Government does not object to this one-time release of restrained funds prior to sentencing.

WHEREFORE, Defendants respectfully request that the Court issue an Order granting the release of \$4 million from United Corporation to the Shareholders of United Corporation.

DATED: August 12, 2011

Respectfully submitted,

/s/Randall P. Andreozzi
Randall P. Andreozzi, Esq.
ANDREOZZI FICKESS, LLP
9145 Main St.
Clarence, NY 14031
(716) 565-1100
(716) 565-1920 (Facsimile)

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 12th day of August, 2011, I electronically filed the foregoing DEFENDANTS' MOTION FOR RELEASE OF FUNDS FROM UNITED CORPORATION TO THE SHAREHOLDERS OF UNITED CORPORATION with the Clerk of the Court using CM/ECF system which will send a notice of electronic filing (NEF) to all counsel of record.

/s/ Randall P. Andreozzi
Randall P. Andreozzi

Case
Hamed, et al., v.
Yusuf, et al.

Exhibit
20

JOEL H. HOLT, ESQ. P.C.

2132 Company Street, Suite 2
Christiansted, St. Croix
U.S. Virgin Islands 00820

Tele. (340) 773-8709
Fax (340) 773-8677
E-mail: holtvi@aol.com

August 31, 2012

To: Hank Smock
Randy Andreozzi
Gordon Rhea
Pam Colon
Bruce Cole
Jack Dema
Ron Soluri
Howard Epstein

From: Joel H. Holt

Re: Plaza Extra

Folks- As you know, I have tried hard to resolve the Hamed/Yusuf issues, without success. While I am willing to continue pursuing this objective, the removal of the \$2.7 million has created an impasse that if not resolved will derail this process.

In this regard, there is no dispute that the funds were unilaterally removed by Mr. Yusuf from a recognized partnership account to a United account that only he controls. While he claims the transfer does not violate the Court's injunction and that the funds are secure, his actions cannot be tolerated.

Aside from the fact that is an obvious breach of the parties' understanding of how the partnership funds will be handled and withdrawn, Mr. Yusuf has been spending funds from this separate United account to purchase other assets, such as a large tract of land United recently purchased for \$1.7 million. A copy of that deed is attached. In short, the withdrawal is in direct contravention of the long-standing agreement between the parties, it violates the Court Injunction (as does the land purchase) and it jeopardizes the financial structure of the supermarkets.

If in fact Mr. Yusuf is simply leaving the funds in the United account, it makes even less sense for him not to simply return it. On the other hand, if he does not return it, Mohammad Hamed has three options as I see it as follows:

- 1) Ignore the transfer and live with it;
- 2) File a suit to recover the partnership funds; or
- 3) Notify the US Attorney of the situation and see what response that brings.

Memo dated August 31, 2012

Page 2

As for the first option, Mohammad Hamed is not willing to stand down and do nothing. As for the second option, litigation makes sense, except that I have always been told that if such a suit is filed, you will have to notify the US Attorney about it (I read the Plea Agreement the same way). As such, pursuing option #2 will ultimately end up triggering option #3 anyway. Thus, the Mohammad Hamed has asked me to draft a letter to send to the US Attorney if these funds are not returned to the Plaza account so we can all return to the negotiating table.

In this regard, attached is the draft letter that I have sent to the Mohammad Hamed for his review. Once he authorizes me to file it, I will let you know. I would again hope all of this could be avoided, but it appears that despite everyone's best efforts, Mr. Hamed really has no other choice but to pursue this third option. Hopefully the US Attorney will understand the situation and (1) take the action necessary to enforce the Court injunction and (2) agree that the filing of partnership returns are acceptable.

Doc# 2012002041

55695
01/11/12
1894879
069698

WARRANTY DEED

INDENTURE made this 18th day of May, 2012, by and between Robert L. Merwin, Co-Trustee of the M.K. Armstrong Trust u/d/t dated May 12, 1969 as amended by First Amendment dated December 30, 1972, hereinafter referred to as "Grantor", and United Corporation, a U.S. Virgin Islands corporation of P.O. 763, Christiansted, VI 00821, hereinafter referred to as "Grantee".

WITNESSETH that in consideration of Ten Dollars (\$10.00) and other good and valuable consideration to him in hand paid, receipt of which is hereby acknowledged, Grantor does hereby grant and convey unto Grantee, its successors and assigns, the following described real property situated in St. Croix, U.S. Virgin Islands, to wit:

Rem. Matr. Plot No. 9 Estate Grange, Company Quarter, consisting of 80.7119 U.S. acres, more or less, as more fully shown on OLG Drawing No. A9-80-C012 dated May 15, 2012; and

Road Plot No. 70 Estate Grange, Company Quarter, consisting of 10.298 U.S. acres, more or less, as more fully shown on OLG Drawing No. A9-80-C012 dated May 15, 2012; and

Together with all of Grantor's right, if any, to the easements and water rights reserved in that certain Deed dated April 20, 1995 on No. 1 Estate Hermon Hill, recorded on November 6, 1995 at PC 558, page 215, Doc. No. 5810 (the Covenants and Warranties in the last paragraph of this deed do not apply to these easements and water rights)

\$ 1,712.00
\$ 4.00
\$ 51,000.00

RECORDING FEE
PER PAGE FEE
DEED DOC STAMP

Recorder

Althea B. Pedro

Doc# 2012002041
Book: 1308
Pages: 87
Filed & Recorded
05/25/2012 2:40PM
ALTHEA PEDRO
RECORDER OF DEEDS
ST CROIX

TOGETHER with all the tenements, hereditaments, buildings, and appurtenances thereunto belonging.

SUBJECT, HOWEVER, to the following (the "Permitted Exceptions"):

- a) The standard exclusions from coverage set forth in an ALTA owner's policy - 6-17-06;
- b) The lien of all taxes, special assessments or reassessments, which are not shown as existing liens by the records in the Office of the Tax Assessor for St. Croix, Virgin Islands, nor any taxes or bills for the year 2010 or thereafter, not yet submitted, due or payable;
- c) Any lien which may heretofore or hereafter attach pursuant to the provisions of Title 19, §1538 of the Virgin Islands Code, with regard to municipal sewer charges, not yet due and payable, as may be applicable;

Warranty Deed

Robert L. Merwin, Co-Trustee of the M.K. Armstrong Trust u/d/t dated May 12, 1969 as amended by First Amendment dated December 30, 1972, to United Corporation

Page 2

d) Virgin Islands Zoning, Coastal Zone Management, Conservation, or Building laws and regulations, ordinances or common law applicable or relating to the use and occupancy of the premises;

e) Title to any filled in land, littoral rights, riparian rights, or other rights not shown in the public records;

TO HAVE AND TO HOLD the said described real property unto United Corporation, its successors and assigns, in fee simple forever.

GRANTOR COVENANTS AND WARRANTIES that he is lawfully seised of said premises in fee simple and has good right to convey same; that Grantee shall quietly enjoy said premises; that the premises are free from encumbrances except as herein provided; that Grantor will execute or procure any further necessary assurances of title to said premises; and that Grantor will forever warrant and defend the title in said premises. The Trustee, for himself, his heirs, representatives, successors and assigns states that he is the lawful Co-Trustee of the M.K. Armstrong Trust u/d/t dated May 12, 1969 as amended by First Amendment dated December 30, 1972 and, as such, has the power to convey as aforesaid. The Trustee further covenants that he has in all respects made this conveyance pursuant to the authority granted by the Trust; provided, however, that Grantor has executed this Trustee's Deed in his capacity as Trustee of the Trust and that the liability of the Grantor under this covenant and general warranty shall be limited to the assets of the Trust.

WITNESSES:

M.K. Armstrong Trust
u/d/t dated May 12, 1969
as amended by First Amendment
dated December 30, 1972

Rebecca Merwin
[Signature]

[Signature]
Robert L. Merwin, Co-Trustee
Dated: 5/18/2012

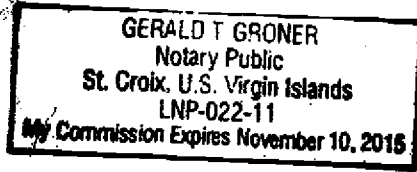
Warranty Deed

Robert L. Merwin, Co-Trustee of the M.K. Armstrong Trust u/d/t dated May 12, 1969 as amended by First Amendment dated December 30, 1972, to United Corporation
Page 3

ACKNOWLEDGMENT

TERRITORY OF THE VIRGIN ISLANDS)
JUDICIAL DIVISION OF ST. CROIX) SS:

The foregoing instrument was acknowledged before me this 05 day of May, 2012 by Robert L. Merwin, Co-Trustee M.K. Armstrong Trust u/d/t dated May 12, 1969 as amended by First Amendment dated December 30, 1972.



Notary Public
Name: _____
Notary No. _____
Commission Expires: _____

CERTIFICATE OF VALUE

IT IS HEREBY CERTIFIED that the value of the property described in the foregoing deed, for recording and transfer stamp tax purposes, does not exceed the sum of \$ 1,700,000.00. The 2009 property tax assessment of the property is \$969,549.10 by allocation.

Robert L Merwin, Trustee

CERTIFICATE OF PUBLIC SURVEYOR

IT IS HEREBY CERTIFIED that, according to the records in the office of the Public Surveyor, the property described in the foregoing Warranty Deed has undergone no changes with respect to boundary and area.

DATE: **MAY 24 2012**
FEES \$ **940⁰⁰**

SURVEY & DEEDS SECTION
MARGARET F. ACOSTA
SPECIAL ASSISTANT

Doc# 2012002041

Book: 1308
Pages: 57
Filed & Recorded
05/25/2012 2:48PM

ALTHEA PEDRO
RECORDER OF DEEDS
ST CROIX
RECORDING FEE \$ 1,712.00
PER PAGE FEE \$ 4.00
DEED DOC STAMP \$ 51,000.00

Recorder



GOVERNMENT OF
THE UNITED STATES VIRGIN ISLANDS

**OFFICE OF THE LIEUTENANT GOVERNOR
DIVISION OF REAL PROPERTY TAX**

1105 King Street • Christiansted, Virgin Islands 00820 • 340.773.6449 • Fax 340.773.0330
18 Kongens Gade • Charlotte Amalie, Virgin Islands 00802 • 340.774.2991 • Fax 340.774.6953

REAL PROPERTY TAX CLEARANCE LETTER

TO: Office of the Recorder of Deeds

FROM: Office of the Tax Collector

In accordance with Title 28, Section 121, as amended, this shall certify that there are no outstanding Real Property Tax obligations for the following:

PARCEL NUMBER	2-06800-0204-00
LEGAL DESCRIPTION	REM ESTATE GRANGE
OWNER'S NAME	ARMSTRONG, MALCOLM & OTHERS

Taxes have been researched up to and including 2009.

CERTIFIED TRUE AND CORRECT BY

Valencio Jackson
Tax Collector


SIGNATURE

May 22, 2012
DATE

JOEL H. HOLT, ESQ. P.C.

2132 Company Street, Suite 2
Christiansted, St. Croix
U.S. Virgin Islands 00820

Tele. (340) 773-8709
Fax (340) 773-8677
E-mail: holtvi@aol.com

August 31, 2012

Lori Hendrickson
US DOJ/Tax Division/N. Criminal Section
P.O. Box 972
Ben Franklin Station
Washington, DC 20044

By Fax and Email to Lori.A.Hendrickson@usdoj.gov

Re: *United States of America v. Yusuf*
Crim No. 2005-15 F/B

Dear Attorney Hendrickson:

I am a lawyer in the Virgin Islands and was retained earlier this year by Mohammad Hamed. My task was to address the division of assets between Mr. Hamed and Fathi Yusuf involving the Plaza Extra supermarkets and other related assets.

It is my understanding that you are the prosecutor in the above captioned criminal case involving certain tax issues and other matters related to these same assets. Because of certain concerns I have about representations made in the criminal case, I have decided I need to raise these concerns with you. I will first give you some background on what I have learned since being retained in this matter.

I learned that relationship between Mr. Yusuf and Mr. Hamed was a partnership which that the parties desired to dissolve, so the assets could be distributed between them. In this regard, I was initially provided an email dated February 10, 2012 from Mr. Yusuf's lawyer to Mr. Hamed regarding Mr. Yusuf's desire to dissolve the partnership as well as a letter dated February 12, 2012, sent by the same lawyer on the same subject (copies of which are attached as **Exhibit A**). The letter stated in part as follows:

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).

I was then provided a proposed partnership dissolution agreement sent on March 13, 2012, to Mr. Hamed's son (who has a power of attorney for his father), which referenced

Letter dated August 31, 2012
Page 2

the February 12, 2012, letter dissolving the partnership, which I have attached as **Exhibit B**. That document provided in part as follows:

WHEREAS, the Partners have operated the Partnership under an oral partnership Agreement since 1986.

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;

WHEREAS, the Partners have certain rights and responsibilities under the Virgin Islands Revised Uniform Partnership Act ("Act") governing dissolution of partnerships, and hereby desire to vary or confirm by the terms of this Agreement;

That document then described the partnership assets as follows:

Section 1.1: Assets of the Partnership

1. PLAZA EXTRA EAST- Estate Sion Farm. St. Croix
2. PLAZA EXTRA WEST- Estate Grove, St. Croix (Super Market Business ONLY)
3. PLAZA EXTRA - Tutu Park. St. Thomas

Finally, I received an email from Mr. Yusuf's lawyer asking me to meet to discuss the dissolution of the partnership. **See Exhibit C**.

However, I was also told by the lawyers representing the various Yusuf and Hamed family members that representations had been made to you and to the Court that the assets did not belong to a partnership, but to United Corporation.

I found it curious that the parties were describing their relationship as a partnership, which owned certain partnership assets, while the lawyers stated otherwise. It is now my understanding that the lawyers were basing their statements primarily on the fact that United Corporation had always included the income, expenses, etc. from the three stores as part of the financial information included in the corporate tax returns of United Corporation, even though Mr. Yusuf and Mr. Hamed had always kept the accounting for these three stores separate from each other and from the other business interests of United.

However, it is clear that Mr. Yusuf and Mr. Hamed believe these stores are owned and operated as separate partnerships. For example, Fathi Yusuf has sent numerous letters just this year on behalf of United Corporation as the Landlord of the Plaza East store on St. Croix to the Mr. Hamed, discussing rent for the store as well as threatening to evict the store. **See Exhibit D**. If United Corporation owned the supermarket, it would not be sending rent demands and eviction letters to itself.

I decided to look into the matter further and found a deposition given by Fathi Yusuf some time ago, where he describes the creation of this partnership years ago, in which

Letter dated August 31, 2012
Page 3

each party had a 50/50 interest. I have attached a brief excerpt of the sworn deposition in this deposition as **Exhibit E**.

Notwithstanding this confusion, I proceeded to try to negotiate a settlement, but I continually ran into the following problem—my clients would have to agree to the filing of tax returns that did not accurately reflect the true nature of the business relationship between the parties. In short, they would have to file returns to end the criminal case which do not accurately reflect the true nature of these businesses. Indeed, I found other discrepancies as well in working on these matters.

Thus, I have decided I need to bring this issue to your attention as I fear that misleading statements have been made that have now placed my clients at risk. I would like to discuss these matters with you as soon as possible to see if I have incorrectly understood the situation or if there is some way to address these concerns properly if I have correctly understood the situation. Can you please review this matter and get back to me at your earliest convenience.

Respectfully,

Joel H. Holt
JHH/jf
Enclosure

EXHIBIT A

From: Nizar DeWood <nwoodlaw@gmail.com>
To: "Wally Hamed" <wallyhstx@yahoo.com>
Subject: Powers of Attorney - Dissolution of Partnership

Helio Wally,

I wish to confirm our discussions in the following two matters: 1) Power of Attorneys to verify and audit financial information currently in dispute, 2) Partnership Dissolution.

<!--[if !supportLists]-->I. <!--[endif]-->Power of Attorney
As agreed between you and Mr. Yusuf, the Power of Attorney will be required for each of you, your father, brothers, wife, and adult children. This power of attorney will be limited to obtaining any and all information regarding bank and investment accounts that may have been opened, closed, used for wire transfers, and opened on behalf of other third parties. The banks that will be covered will include the Virgin Islands, St. Maarten, New York, and the Middle East.

Any and all information obtained will be held in confidence by my office, and will be used for the sole purpose of financial verification.

<!--[if !supportLists]-->II. <!--[endif]-->Dissolution of Partnership (Yusuf & Hamed)

I will be sending a formal notice of partnership dissolution notice, with a list of to-dos that will be required to complete an orderly dissolution. See attached email. I understand that you and Mr. Yusuf are still discussing various terms and aspects of the dissolution. I will await the final decision made.



Your mailing address to address all originals will be:

Mohammad Hamed
Walid Hamed
PO 763
Christiansted, VI 00821

Thank you.

Nizar A. DeWood, Esq.

The DeWood Law Firm
3070 Kronprindsens Gade, Suite 208
St. Thomas, V.I. 00802
T. (340) 774-0405
F. (888) 398-8428



THE DEWOOD LAW FIRM

3070 Kronprindsens Gade, Suite 208
St. Thomas, V.I. 00802
T. (340) 774-0405
F. (888) 398-8428
info@dewood-law.com

**Mohammad Hamed
c/o Walid Hamed
PO Box 763
Christiansted, V.I. 00821**

VIA EMAIL ONLY

Re: **Dissolution of Partnership
Yusuf & Hamed**

Dear Mr. Hamed,

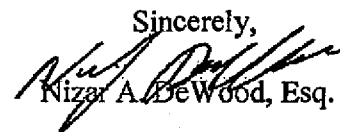
This letter is to confirm the parties' desire to dissolve the above referenced partnership. Partnership dissolution will involve appropriate planning to properly account for each of the partner's interest in the partnership, and a well-executed agreement memorializing the understanding of the parties.

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). I have been advised that there are ongoing discussions between you, as your father's fully authorized agent, and Mr. Yusuf regarding which of the stores each partner will retain upon dissolution. Accordingly, I will await the final decision that you and Mr. Yusuf may reach.

Additionally, as Mr. Yusuf has indicated, he remains resolute about the rental terms of the Plaza Extra – East. Unless the parties arrive at a different understanding, I will assume that Mr. Yusuf will not agree to continue the lease beyond June 30th, 2012 on that property.

I look forward to hearing from you. Thank you.

Sincerely,


Nizar A. DeWood, Esq.

cc: Fathi Yusuf

EXHIBIT B

From: Nizar DeWood <dewoodlaw@gmail.com>
Date: March 13, 2012 12:41:36 PM EDT
To: "Wally Hamed" <wallyhstx@yahoo.com>
Subject: Partnership dissolution agreement

Salam Wally,

Please find the attached proposed Partnership Dissolution Agreement. I look forward to hearing from you at your earliest convenience. ✓

Thank you.

Nizar A. DeWood, Esq.

The DeWood Law Firm
3070 Kronprindsens Gade, Suite 208
St. Thomas, V.I. 00802
T. (340) 774-0405
F. (888) 398-8428

=



PROPOSED PARTNERSHIP DISSOLUTION AGREEMENT

THIS AGREEMENT, dated this ____ day of March 2012, is by and between **FATHI YUSUF** and **MOHAMMAD HAMED** (collectively called "Partners"), formerly partners of a partnership known informally as *Yusuf & Hamed* (the "Partnership").

WHEREAS, the Partners have operated the Partnership under an oral partnership Agreement since 1986.

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

WHEREAS, serious dispute and disagreement between the partners relating to financial matters of the partnership, resulting in the partners unable to continue as partners; and

WHEREAS, Fathi Yusuf (the "Withdrawing Partner") has withdrawn from the Partnership by written notice dated February, 2012, for withdrawal as of February 10th, 2012 (the "Withdrawal Notice"); and

WHEREAS, the Partners desire to dissolve the partnership by way of liquidation and distribution of its assets, unless each partner submits in writing a buyout offer for each of the three major assets constituting the partnership, as herein shown in Section 1 of this agreement; and

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

WHEREAS, the Partners have certain rights and responsibilities under the Virgin Islands Revised Uniform Partnership Act ("Act") governing dissolution of partnerships, and hereby desire to vary or confirm by the terms of this Agreement;

NOW, THEREFORE, in consideration of the mutual covenants, promises, and conditions contained herein, the parties agree as follows:

SECTION 1. ASSETS SUBJECT TO LIQUIDATION

The Partners agree that the following three on-going businesses constitute the assets of the Partnership.

Section 1.1: Assets of the Partnership

1. **PLAZA EXTRA EAST- Estate Sion Farm, St. Croix**
2. **PLAZA EXTRA WEST- Estate Grove, St. Croix (Super Market Business ONLY)**
3. **PLAZA EXTRA – Tutu Park, St. Thomas**

Section 1.2. Dissolution of Partnership.

The Partnership shall be dissolved effective as of the date specified in the Withdrawal Notice, and the business of the Partnership shall cease effective February 10th, 2012. Any continuing operation shall be for the sole purpose of winding down the partnership. The parties agree that the Withdrawal Notice is effective to dissolve the Partnership and is not a breach of the partnership relationship. The parties agree to the following buyouts of the assets listed in Section 1.1.

Section 1.3 FIRST PARTNERSHIP ASSET: Plaza Extra East – Sion Farm, St. Croix

Partner Fathi Yusuf (“Partner Yusuf”) has orally terminated the lease agreement for Plaza Extra East in September 2010. A written confirmatory termination letter was mailed on January 20th, 2012. Partner Yusuf shall make the following buy-out offer:

1. Acquire the assets & fixtures - \$250,000 (50% of Partner Hamed’s interest)
2. Acquire Inventory based on cost (50% of Partner Hamed’s Interest).
3. The parties agree that the equipment and fixtures is in proper working condition during the first six months from the date of closing. Should any equipment experience a breakdown during the first six months of closing, both parties shall bear the cost of the repairs equally.

Should the foregoing terms of the buyout offer set forth in paragraphs 1 to 3 above is rejected, the assets, fixtures, and inventory of Plaza Extra – East shall be liquidated and the

THE DEWOOD LAW FIRM

3070 Kronprindsens Gade, Suite 208 St. Thomas, V.I. 00802 T. (340) 774-0405 F. (888) 398-8428

Yusuf & Hamed: Partnership Dissolution Agreement

Page 2 of 8

premises turned over to Partner Yusuf immediately. Partner Yusuf, by virtue of his ownership of the premises, will hereby enforce the new rental rate of \$200,000 per month commencing January 31, 2012 until March 31st, 2012. Thereafter, the monthly rental rate shall increase to \$250,000 per month until June 30th, 2012. After such date, the tenancy shall terminate forthwith without further notice. Failure to vacate the premises by June 30th, 2012 shall result in an action for unlawful detainer be filed in the Superior Court of the Virgin Islands.

Section 1.4 SECOND PARTNERSHIP ASSET: Plaza Extra West – Grove Place, St. Croix

Partner Yusuf hereby makes the following buy-out offer:

1. Acquire the assets & fixtures - \$375,000 (50% of Partner Hamed's interest).
2. Acquire Inventory based on cost (50% of Partner Hamed's Interest).
3. Acquire Lease for the premises for a term of 20 years, with an option to terminate lease subject to a SIX (6) months written notice. Rent is hereby offered for \$24,000 a month. Property tax assessments shall be paid in half by each partner.
4. The parties agree that the equipment and fixtures is in proper working condition during the first six months from the date of closing. Should any equipment experience a breakdown during the first six months of closing, both parties shall bear the cost of the repairs equally.
5. All inventory, improvements, and fixtures will be transferred by a Bill of Sale, with the applicable UCC-4 Bulk Transfer notices according to the terms set out in Exhibit B of this Agreement at the time of closing.

Section 1.5

THIRD PARTNERSHIP ASSET: Plaza Extra – Tutu Park, St. Thomas

1.5.1 Unless Partner Hamed makes a written offer for the purchase of Plaza Extra – Tutu Park, St. Thomas, said business shall be liquidated with its assets, inventory, and fixtures sold at fair market value. The lease for this asset shall expire on October 27th, 2018, and is in the name of United Corporation only. Should Partner Hamed wishes to make an offer for the purchase of Partner Yusuf's partnership interest in Plaza Extra Tutu Park, St. Thomas, Partner Hamed shall do so in writing within 14 days.

1.5.2 Should Partner Hamed refuse to offer to purchase said asset, Partner Yusuf hereby makes the following written offer of purchase:

- i) Partner Hamed's fifty (50%) interest in Inventory at actual cost plus freight and insurance to be determined at time of closing.
- ii) Equipment and fixture at \$250,000 (50% interest of Partner Hamed).
- iii) The parties agree that the equipment and fixtures is in proper working condition during the first six months from the date of closing. Should any equipment experience a breakdown during the first six months of closing, both parties shall bear the cost of the repairs equally.
- iv) Partner Yusuf agrees to pay \$1,000,000 a year to Partner Hamed until the expiration of the lease on October 27th, 2018 for a total lease amount of \$6,500,000. Partner Yusuf will also assume all obligations under the lease currently existing in the name of United Corporation, and guaranteed personally by Partner Yusuf.

1.5.3 Rejection of Offer: Should Partner Hamed reject the terms of the offer provided in section 1.5.2, Partner Hamed may acquire the Plaza Extra – Tutu Park, St. Thomas within 14 days of date of this agreement on the same aforementioned terms.

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Yusuf & Hamed: Partnership Dissolution Agreement

SECTION 2.0

PARTNERSHIP CONTRIBUTIONS

The parties agree to address the following outstanding partner and partnership obligations

	<u>Description of Partnership Obligation</u>	<u>Agreed Upon Course of Action to Resolve Dispute</u>
1.	Rent (for the period of May 5th, 2004 to Dec. 31st, 2011). Partnership Yusuf & Hamed owe rent arrears of \$5,408,806.74 to Partner Yusuf as owner and landlord of the property upon which Plaza Extra East is located.	The parties agree that said amount was paid on February 13 th , 2012 by way of check drawn on the account of United Corporation. Accordingly, the rental arrears for the period of (May 5 th , 2004 to Dec. 31 st , 2011) are now satisfied.
2.	Other Outstanding Rent (Pre 2004). The partners shall discuss and calculate the rent owing to Partner Yusuf for an approximate period of 10 years, for the 10 years prior to May 5 th , 2004.	The rental term and rent amount due will be determined upon the return of the partnership records from the U.S. Government.

SECTION 3.0

OTHER FINANCIAL DISPUTES

The parties acknowledge that serious financial disputes have arisen between the parties. Specifically, Partner Yusuf desires a full accounting of certain disputes with Partner Hamed and his agent Waleed Hamed and Waheed Hamed, and all of their spouses, children, assigns, and agents.

The parties agree that the following items of financial disputes will be negotiated, investigated, and resolved in good faith by the parties.

	<u>Description of Financial Dispute</u>	<u>Agreed Upon Course of Action to Resolve Dispute</u>
1.	<p>Partner Yusuf alleges that Two Million Dollars (\$2,000,000) was transferred from Banque Francaise Commerciale in St. Maarten to Arab Bank, Ltd., specifically to an Arab Bank Branch in the West Bank, Palestine. Partner Hamed disputes this allegation. Partner Yusuf's allegation arises out of facts obtained during a criminal investigation by the Federal Bureau of Investigation that concludes there was a transfer of \$2,000,000 to the benefit of Partner Hamed.</p> <p>Partner Yusuf desires full accounting and verification of all financial discrepancies, and irregularities currently existing, or that may arise during the dissolution of the partnership.</p> <p>The parties hereby agree to negotiate and resolve this matter fully and in good faith.</p>	<p>1) Partner Hamed agrees to execute a special power of attorney authorizing the DeWood Law Firm, its attorney, agents, and assigns, to obtain <u>ALL</u> bank account information for any bank account that may have been opened, including but not limited to the following banks:</p> <ol style="list-style-type: none"> 1. Arab Bank, Ltd (Worldwide branches) 2. Banque Francaise Commerciale in St. Maarten. 3. Cairo-Amman Bank (worldwide branches) 4. Bank of Nova Scotia (worldwide branches) 5. Merrill Lynch Investments 6. First Bank (formerly known as VI Community Bank) 7. Any other Bank either party determines to be relevant for purpose of inquiry, investigation, and full accounting.

2. **Notice to Withdraw.** Partners agree to give actual notice of the dissolution of the Partnership to all creditors who have extended credit to the Partnership prior to dissolution

3. Determination and Distribution of Capital Account. The Partnership will cause to be prepared financial statements as of the date specified in the Withdrawal Notice, including a balance sheet specifying the assets, liabilities, and equity accounts, and an income statement for the portion of the year then ended. The financial statements will also detail all accounts payable and accounts receivable of the Partnership. The cost of obtaining such financial statements shall be borne by the Partnership, and the expense of preparation of such financial statements shall be reflected in income or loss as of the date specified in the Withdrawal Notice.

The capital account of the Withdrawing Partner will include the Withdrawing Partner's actual equity account plus the Withdrawing Partner's share of income or minus the Withdrawing Partner's share of loss according to the Sharing Ratio as of the date of the financial statements. The parties agree that these financial statements will conclusively reflect the accounts of the Partnership. The capital account of the Withdrawing Partner shall be distributed to the Withdrawing Partner in cash within 30 days following the date specified in the Withdrawal Notice.

5. Loans. The Partnership has no loans outstanding other than Accounts Payable with inventory suppliers.

6. Ledgers and Files. The Partnership shall, at the Partnership's expense, copy all ledgers and files of the Partnership for the Withdrawing Partner's use upon the reasonable written request by the Withdrawing Partner which specifies the ledgers and files and is delivered to the Partnership at least 10 days before the date specified in the Withdrawal Notice.

7. Full Disclosure and Access to Records. All parties agree to fully disclose all facts which relate to the operation of the Partnership and warrant and represent that all material facts concerning the financial condition and operation of the Partnership have been fully disclosed to each other. All parties shall have full access to the books and records of the Partnership, including client files, for purposes of verifying information furnished under this Agreement until this Agreement.

8. Assets and Liabilities of the Partnership. Upon payment of the amounts due to the Withdrawing Partner hereunder, all assets and liabilities of the Partnership as they exist on the financial statements dated as of the date specified in the Withdrawal Notice shall belong to the remaining Partners, and the Withdrawing Partner shall claim no right, title, or interest therein.

IN WITNESS WHEREOF, the parties have executed this Agreement on the day and year first written above.

Fathi Yusuf, Partner

Mohammad Hamed, Partner

EXHIBIT C

Subj: Yusuf & Hamed
Date: 3/27/2012 2:07:54 P.M. Atlantic Standard Time
From: dewoodlaw@gmail.com
To: holtvi@aol.com

Dear Joe,

Could you please call me regarding Yusuf & Hamed partnerships when you have a chance. I have referred Mr. Wally (agent for partner Mr. Mohammed Hamed) to seek counsel, and I recommended you.

I was just informed that you asked CPA Ronald J. Soluri not to file the tax returns for United Corporation, Inc. You do not represent United Corporation, Inc., or any of its shareholders or officers. By what authority did you instruct Mr. Soluri not to file the tax returns?

I look forward to hearing from you.

Nizar A. DeWood, Esq.

The DeWood Law Firm
2006 Eastern Suburb, Suite 102
Christiansted, V.I. 00820
T. (340) 773-3444
F. (888) 398-8428
C. (340) 642-8505



EXHIBIT D

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

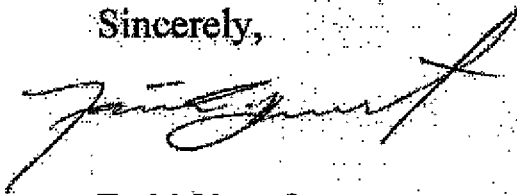
January 12, 2012

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,



Fathi Yusuf



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

January 13, 2012

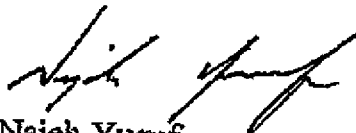
Mr. Mohamed Hamed,

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 Fathi 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 30TH, 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 30th, 2012. The last date for this lease is June 30th, 2012. There will be no additional extensions of tenancy to Plaza Extra – Sion Farm.

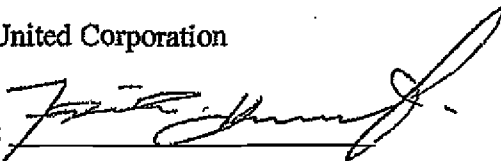
An orderly inspection will be done to evaluate the condition of the premises. Kindly, advise as to when you are available to conduct an inspection, and to inventory all fixtures and improvements that will remain on the premises. Should you have any concerns regarding this notice, or any other matters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

A handwritten signature in black ink, appearing to read 'Fathi Yusuf', written over a horizontal line.

Fathi Yusuf, CEO

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

April 4, 2012

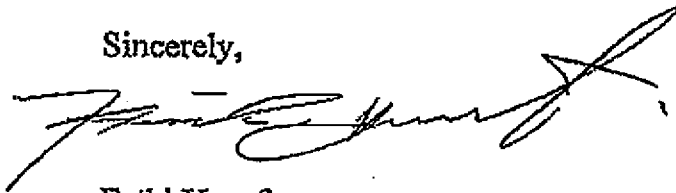
Mohammad Abdul Qader Hamed
Plaza Extra Supermarket
4-C & 4-D Estate Sion Farm
Christiansted, VI 00820

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

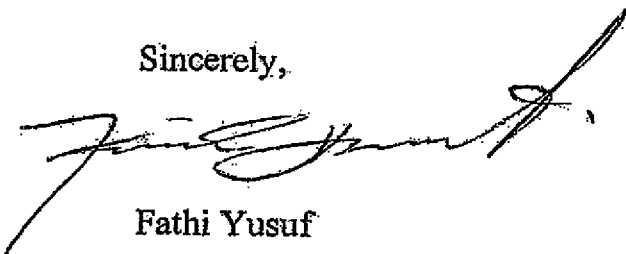
Mohammad Abdul Qader Hamed
Plaza Extra Supermarket
4-C & 4-D Estate Sion Farm
Christiansted, VI 00821

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	<u>\$1,119,585.00</u>
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

EXHIBIT E

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

EXHIBIT
E

Cheryl L. Haase
(340) 773-8161

COPY

FATHI YUSUF -- DIRECT

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

FATHI YUSUF -- DIRECT

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.



Case
Hamed, et al., v.
Yusuf, et al.

Exhibit
21

Joseph A. DiRuzzo, III, Esq., CPA
305.350.5690
jdiruzzo@fuerstlaw.com

September 10, 2012

Via USPS and email: ron.soluri@freedmaxick.com

Ronald J. Soluri, Sr., CPA
Freed Maxick CPAs, P.C.
424 Main St., Suite 800
Buffalo, NY 14202

Re: United States, et al. v. United Corp.; 1:05-cr-15 (D.V.I.)

Dear Mr. Soluir,

Please be advised that I have been retained by United Corporation as counsel of record for the above-reference case. Enclosed please find my notice of appearance I that I filed late last week. Going forward, please include me on all correspondence and/or communications to the defense team pursuant to the *Kovel* agreement that you are working under.

Kind Regards,

Joseph A. DiRuzzo, III

JAD/

cc: United Corp.

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

THE UNITED STATES OF AMERICA	:	
	:	
Plaintiff,	:	CASE # 1:05-cr-15
	:	
vs.	:	
	:	
UNITED CORPORATION, et al.	:	
	:	
Defendants.	:	
_____	:	

NOTICE OF APPEARANCE

COMES NOW Defendant, UNITED CORPORATION, by and through the undersigned, and hereby give notice of the undersigned's appearance before this Court. All Orders, notices, pleadings and other papers in the above-captioned matter should be directed to the undersigned counsel.

Respectfully Submitted,

Dated Sept. 7, 2012

By: /s/ Joseph A. DiRuzzo, III Digitally signed by /s/ Joseph A. DiRuzzo, III
DN: cn=/s/ Joseph A. DiRuzzo, III, o=Fuerst Ittleman, PL, ou=
email=jdiruzzo@fuerstlaw.com, c=US
Date: 2012.09.07 11:03:57 -0400'

Joseph A. DiRuzzo, III
USVI Bar #1114
Fuerst Ittleman David & Joseph, PL
1001 Brickell Bay Drive
32nd Floor
Miami, Florida 33131
305.350.5692 (O)
305.371.8989 (F)
jdiruzzo@fuerstlaw.com

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the foregoing was filed on ECF on Sept. 7, 2012, and a NEF will be delivery upon the following:

Henry C. Smock
Smock & Moorehead
P.O. Box 1498
Suites B18-23 Palm Passage
No. 24 Dronningens Gade
St Thomas, VI 00804-1498

Gordon C Rhea
Richardson, Patrick, Westbrook &
Brickman, LLC
1037 Chuck Dowley Boulevard, Building A
Mount Pleasant, SC 29464

Randall P. Andreozzi
Andreozzi, Bluestein, Fickess, Muhlbauer
Weber, Brown LLP
9145 Main Street
Clarence, NY 14031

W. B Cole
Hunter, Cole & Bennett
Pentheny Bldg., 3rd Fl.
1138 King Street, Suite 301
St Croix, VI 00820

Pamela L Colon
Law Offices of Pamela L. Colon
27 & 28 King Cross Street, First Floor
Christiansted, St.croix, VI 00820

John K Dema
1236 Strand Street Suite 103
St Croix, VI 00820-5008

Thomas Alkon
Thomas Alkon, P.C.
2115 Queen Street
Christiansted, VI 00820

Joseph DiRuzzo

Case
Hamed, et al., v.
Yusuf, et al.

Exhibit
22

From: Soluri Sr., Ron [ron.soluri@freedmaxick.com]
Sent: Tuesday, September 11, 2012 11:20 AM
To: Joseph DiRuzzo
Cc: Jannese Correa
Subject: RE: USA v. United Corp

Joe, I assume you have contacted the defense team and apprised them of your request. Additionally there is a joint defense agreement signed by the attorneys and the client , have you been added? This I would believe would be necessary to protect the Kovel. Regards Ron

Ronald J. Soluri, Sr.
Managing Director
Freed Maxick CPAs, P.C.
800 Liberty Building
Buffalo, NY 14202
(716) 847-2651 Ron
(716) 332-2641 DID
(716) 864-8374 Cell



From: Joseph DiRuzzo [<mailto:JDiRuzzo@fuerstlaw.com>]
Sent: Monday, September 10, 2012 7:34 PM
To: Soluri Sr., Ron
Cc: Jannese Correa
Subject: USA v. United Corp

Ron,

Please see attached. Let me know when you are available for a call.

Regards,

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
www.fuerstlaw.com

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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: Pursuant to Internal Revenue Service Circular 230, we are required to advise you that if there is any tax advice contained in this email, it was neither written nor intended by the sender or this firm to be used, and cannot be used, by the addressee, recipient, or any taxpayer, for the purpose of avoiding penalties that may be imposed by or under United States law, including but not limited to the Internal Revenue Code. Moreover, if any person intends to use or refers to any such tax advice in promoting, marketing or recommending a partnership or other entity, investment plan or arrangement, the regulations under Circular 230 require that we advise you as follows: (1) This writing is not intended or written to be used, and cannot be used, for the purpose of avoiding tax penalties that may be imposed on a taxpayer; (2) The taxpayer should seek other or additional advice based on the taxpayer's particular circumstances from an independent tax advisor.

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Circular 230 Disclosure: Any advice contained in this email (including any attachments unless expressly stated otherwise) is not intended or written to be used, and cannot be used, for purposes of avoiding tax penalties that may be imposed on any taxpayer.

ANDREOZZI, BLUESTEIN, FICKESS, MUHLBAUER WEBER, BROWN, LLP

9145 MAIN STREET
CLARENCE, NEW YORK 14031
PHONE: (716) 565-1100
FAX: (716) 565-1920

Case
Hamed, et al., v.
Yusuf, et al.

Exhibit
23

September 13, 2012

VIA FACSIMILE & MAIL

Joseph A. DiRuzzo, III, Esq., CPA
Fuerst Ittleman, PL
1001 Brickell Bay Drive
32nd Floor
Miami, FL 33131
Fax: 305.371.8989

Re: United States v. United Corporation, et al

Dear Attorney DiRuzzo;

We are in receipt of your notice of your appearance for United Corporation in the referenced matter.

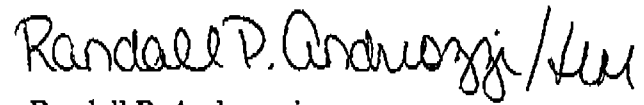
I have conferred with my co-counsel on the defense team in this matter, and we recognize that any criminal defendant may engage the representation of an attorney of its choosing. I am advised, however, that you have represented to others, including the forensic accounts engaged by the defense team in this case and possibly the prosecutor in this matter, that you are counsel under our executed joint defense agreement and are thereby entitled to information pursuant to the Kovel letter in this case. That is, as you know, not the case. You have not signed the joint defense agreement or any amendment to it; and I have certainly not entered into a joint defense agreement that includes you as counsel.

Moreover, we understand that you represent, in a pending civil dispute, individuals and interests contrary to those of some (if not all) of the defendants covered under the executed joint defense agreement. Therefore, you are not entitled to any joint defense information, communications or materials.

You are on notice that should you continue to incorrectly represent to others that you are part of the joint defense agreement to the detriment of my client or of any of the other defendants covered under the agreement, or if you take any action whatsoever that may harm or place at risk my client or any of the defendants covered under the joint defense agreement, you will be held responsible for any adverse consequences your conduct or actions may create. Moreover, if you continue in your attempts to obtain

confidential joint defense information, communications and materials appropriate intervention will be obtained.

Sincerely,

Handwritten signature of Randall P. Andreozzi in black ink.

Randall P. Andreozzi

Cc: Gordon Rhea, Esq.
Waleed Hamed



Case
Hamed, et al., v.
Yusuf, et al.

Exhibit
24

Joseph A. DiRuzzo, III, Esc. CPA
305.350.5690
jdiruzzo@fuerstlaw.com

September 14, 2012

Via USPS and FAX 716.565.1920

Randall P. Andreozzi
Andreozzi, Bluestein, Fickess, Muhlbauer
Weber, Brown LLP
9145 Main Street
Clarence, NY 14031

Via USPS and FAX 340.777.5758

Henry C. Smock
Smock & Moorehead
P.O. Box 1498
Suites B18-23 Palm Passage
No. 24 Dronningens Gade
St Thomas, VI 00804-1498

Via USPS and FAX 340.773.3944

John K Dema
1236 Strand Street Suite 103
St Croix, VI 00820-5008

Via USPS and FAX 843.727.6656

Gordon C Rhea
Richardson, Patrick, Westbrook &
Brickman, LLC
1037 Chuck Dowley Boulevard, Building A
Mount Pleasant, SC 29464

Via USPS and FAX 340.719.7700

Pamela L Colon
Law Offices of Pamela L. Colon
27 & 28 King Cross Street, First Floor
Christiansted, St. Croix, VI 00820

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

Dear All,

I am in receipt of a letter dated September 13, 2012, from Mr. Andreozzi. For your convenience I have enclosed a copy herewith. The letter indicates that because I have not executed the joint defense agreement I am not covered by it. Further, the letter indicates that Mr. Andreozzi's position is supported by "co-counsel on the defense team" but did not carbon copy every defense attorney to the above-referenced criminal litigation.

At this point in time, I would ask that everyone, individually, to please state in writing whether they agree with Mr. Andreozzi's position that I am not covered by the joint defense agreement because I have "not signed the joint defense agreement or any amendment to it."

I thank you in advance for your prompt attention to this matter.

//

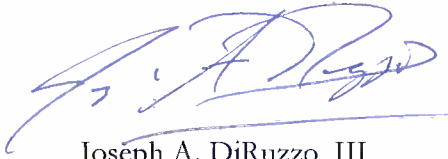
//

In re: *United States v. United Corp.*

Sept. 14, 2012

Page – 2 –

Kind Regards,



Joseph A. DiRuzzo, III

JAD/

cc: M. Yusuf

Enc. Sept. 13, 2012, letter (3 pages)

ANDREOZZI, BLUESTEIN, FICKESS, MUHLBAUER WEBER, BROWN, LLP
9145 Main Street
Clarence, NY 14031
Telephone: (716)565-1100
Facsimile: (716)565-1920

Fax

To: Joseph DiRuzzo, Esq.	From: Randall Andreozzi, Esq.
Fax: 305.371.8989	Pages: 3 Total
Phone: 305.350.5690	Date: 9/13/2012
Re: U.S. v. United Corporation et al.	Matter:

Urgent **For Review** **Comment** **Original Will Not Follow** **Original To Follow**

Original to follow via mail.

The information contained in this facsimile message is attorney privileged and confidential, intended only for the use of the individual or entity named above. If the reader of this message is not the intended recipient, you are hereby notified that dissemination, distribution or copying of this information is prohibited. If you have received this communication in error, please notify us immediately by telephone at (716) 565-1100.

ANDREOZZI, BLUESTEIN, FICKESS, MUHLBAUER WEBER, BROWN, LLP
9145 MAIN STREET
CLARENCE, NEW YORK 14031
PHONE: (716) 565-1100
FAX: (716) 565-1920

September 13, 2012

VIA FACSIMILE & MAIL

Joseph A. DiRuzzo, III, Esq., CPA
Fuerst Ittleman, PL
1001 Brickell Bay Drive
32nd Floor
Miami, FL 33131
Fax: 305.371.8989

Re: United States v. United Corporation, et al

Dear Attorney DiRuzzo;

We are in receipt of your notice of your appearance for United Corporation in the referenced matter.

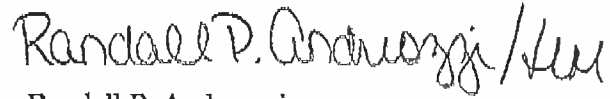
I have conferred with my co-counsel on the defense team in this matter, and we recognize that any criminal defendant may engage the representation of an attorney of its choosing. I am advised, however, that you have represented to others, including the forensic accounts engaged by the defense team in this case and possibly the prosecutor in this matter, that you are counsel under our executed joint defense agreement and are thereby entitled to information pursuant to the Kovel letter in this case. That is, as you know, not the case. You have not signed the joint defense agreement or any amendment to it; and I have certainly not entered into a joint defense agreement that includes you as counsel.

Moreover, we understand that you represent, in a pending civil dispute, individuals and interests contrary to those of some (if not all) of the defendants covered under the executed joint defense agreement. Therefore, you are not entitled to any joint defense information, communications or materials.

You are on notice that should you continue to incorrectly represent to others that you are part of the joint defense agreement to the detriment of my client or of any of the other defendants covered under the agreement, or if you take any action whatsoever that may harm or place at risk my client or any of the defendants covered under the joint defense agreement, you will be held responsible for any adverse consequences your conduct or actions may create. Moreover, if you continue in your attempts to obtain

confidential joint defense information, communications and materials appropriate intervention will be obtained.

Sincerely,

A handwritten signature in black ink that reads "Randall P. Andreozzi /ku". The signature is written in a cursive, slightly slanted style.

Randall P. Andreozzi

Cc: Gordon Rhea, Esq.
Waleed Hamed

Send Result Report



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Page: 005

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Document: **doc20120914140448**

FJ FUERST LITTLEMAN
DAVID & JOSEPH P.L.L.C.

Joseph A. DiStasio, III, Esq., U.S.A.
305.543.5600
jdiastasio@fuerstl.com

September 14, 2012

Via USPS and FAX 716.563.1920

Randa L.P. Ardizzone
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Brianna, LLC
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St Thomas, VI 00804-1498

Via USPS and FAX 440.740.7700

Patricia L. Colon
Law Offices of Patricia L. Colon
27 & 26 King Cross Street, First Floor
Charlottesville, VA 22902

Via USPS and FAX 440.774.3949

John K. Dema
1226 Grand Street Suite 103
St. Charles, VA 22620-5038

Re: *United States v. United Corporation, et al*, case no. 105-cr-16 (D.V.I.)

Dear All,

I am in receipt of a letter dated September 13, 2012, from Mr. Ardizzone. For your convenience I have enclosed a copy herewith. The letter indicates that because I have not executed the joint defense agreement I am not covered by it. Further, the letter indicates that Mr. Ardizzone's position is supported by "co-counsel on the defense team" but did not carbon copy every defense attorney to the above-referenced criminal litigation.

At this point in time, I would ask that everyone, individually, to please state in writing whether they agree with Mr. Ardizzone's position that I am not covered by the joint defense agreement because I have "not signed the joint defense agreement or any amendment to it."

I thank you in advance for your prompt attention to this matter.

//
//

Fuerst Littleman David & Joseph P.L.L.C.
1071 Rockwell Way, Chesapeake, VA 23030 • T: 301.250.3661 • F: 301.250.3662

No.	Date and Time	Destination	Times	Type	Result	Resolution/ECM
001	09/14/12 14:05	17165651920	0'00'43"	FAX	OK	200x100 Normal/On

Case
Hamed, et al., v.
Yusuf, et al.

Exhibit

25

(340) 719-7100 TEL

(340) 719-7700 FAX

pamelalcolon@msn.com

LAW OFFICES OF PAMELA LYNN COLON, LLC
27 & 28 KING CROSS STREET - FIRST FLOOR
CHRISTIANSTED, VI 00820

PAMELA LYNN COLON, ESQ.
(LIC. ILLINOIS AND U.S.V.I.)

September 13, 2012

VIA EMAIL: jdiruzzo@fuerstlaw.com

& U.S. MAIL

Joseph DiRuzzo, Esq.
Fuerst Littleman, PL
1001 Brickell Bay Drive, 32nd Fl.
Miami, FL 33131

Re: *United States v. United Corporation, et al*

Dear Attorney DiRuzzo,

While I did not receive notice of your appearance, I have been advised by the other attorneys in this criminal case that you have filed an appearance on behalf of United Corporation. Please forward to me a copy of that notice and appearance.

Of course, any criminal defendant can engage the representation of an attorney of its choosing. However, I am also advised that you have represented to others, including the forensic accounts who have been working on this case and possibly the prosecutor in this matter, that you are counsel under the joint defense agreement and thus entitled to information pursuant to the Kovel letter in this case. That is not true.

Indeed, you have represented clients and interests opposed to those of my client, Waheed Hamed, in a civil dispute. Consequently, it would be an extreme conflict of interest for you to assert that you are a party to a joint defense agreement in this case that would permit you to participate in confidential attorney/client communications with my client.

On an even more basic level, you have not signed the joint defense agreement or any amendment to it. Additionally, neither I nor my client signed a joint defense agreement that includes you. Therefore, you are not entitled to any joint defense information, communications or materials.

Please be advised that should you continue to incorrectly represent to others that you are part of the joint defense agreement to the detriment of my client you will be held

responsible for any adverse consequences to my client. Moreover, if you continue in your attempts to obtain confidential joint defense information, communications and materials appropriate intervention will be obtained.

Sincerely,

A handwritten signature in cursive script, appearing to read "Pamela Lynn Colon".

Pamela Lynn Colon, Esquire

PLC/mt

Joseph DiRuzzoCase
Hamed, et al., v.
Yusuf, et al.Exhibit
26

From: Gordon Rhea [grhea@rpwb.com]
Sent: Wednesday, September 19, 2012 9:59 AM
To: Randy Andreozzi; 'Pamela Colon'; 'balkon@alkonlaw.com'; Warren "BRUCE" Cole (WBCOLE@hcbvilaw.com); Jack Dema; Joseph DiRuzzo; Henry C. Smock (hsmock@smvilaw.com)
Subject: Termination of joint defense agreement

It is with sadness that I must announce the termination of the joint defense team that we assembled in the early stages of the Federal criminal case against United Corporation, the Yusufs, and the Hameds. Working in harmony toward a common purpose, we brought a difficult case to a remarkably successful conclusion, resulting in the dismissal of all charges against all individuals. The joint defense agreement was formed to advance the common interests of all defendants in the criminal matter; sadly, it no longer appears capable of discharging that function.

Recent events have eroded the once-harmonious relationship among our clients, who are now divided into camps that are at serious odds with one another. The Hamed and Yusuf families are engaged in a bitter civil dispute, each has retained attorneys to pursue their civil disagreements, and civil litigation is in train. United Corporation has directed attorneys Alkon and Cole, who skillfully represented that entity during the active phase of the criminal case, to withdraw, and has replaced them with an attorney who represents the Yusuf family interests and who has acted unilaterally by making overtures to the Federal prosecutor without consulting the defense team. In addition, the Yusufs have directed United not to pay the fees of various defense team members who represent Hameds, contrary to the protocol followed in the past.

Pursuant to the joint defense agreement, we are all required to return all individual client materials (and copies thereof) that we obtained by way of the Joint Defense Agreement. Please provide all such documents and materials to me that relate to my client, Waleed Hamed. Examples of such material includes, but is not limited to, drafts of Waleed Hamed's FBAR filings, individual tax returns, bank accounts, and private financial information. Under no circumstances should you provide any of these materials to present counsel for United Corporation, who also represents interests adverse to my client.

By this email, I also am putting counsel for United Corporation on notice of United Corporation's obligations to all former defendants under the joint plea agreement with the Department of Justice. If United Corporation fails to take the steps necessary under that agreement to bring the criminal matter to a speedy and favorable resolution through the sentencing of United as contemplated under that agreement, we will intervene and take appropriate action.

In closing, I want to express to all of you the pride and satisfaction that I have experienced in working with the attorneys in the joint defense team and in representing the defendants, be they Hameds or Yusufs. You are all more than clients – you are my friends. It is my sincere hope that the divisions among you that have made the dissolution of the joint defense team necessary are one day healed.

This communication may be attorney-client privileged or otherwise confidential. If you are not the intended recipient, please delete this message and notify the sender of this error.

Case
Hamed, et al., v.
Yusuf, et al.

Joseph DiRuzzo

Exhibit
27

From: Joseph DiRuzzo
Sent: Thursday, October 18, 2012 2:56 PM
To: Joseph DiRuzzo
Subject: FW: Plaza

From: Jack [<mailto:jdema@lojkd.com>]
Sent: Wednesday, September 26, 2012 8:15 PM
To: Joel Holt
Cc: rpa@abfmwb.com; qrhea@rpwb.com; hsmock@smvilaw.com; ron.soluri@freedmaxick.com;
howard.epstein@freedmaxick.com
Subject: Re: Plaza

Let's be clear: I have been notified the "joint defense agreement" has ended. It has ended. If you wish it to resurrected, plz advise so I can advise my client, Mike Yusuf.

Jack
Sent from my iPhone

On Sep 26, 2012, at 5:48 PM, Joel Holt <holtvi@aol.com> wrote:

Folks-I just want to remind everyone that Attorney DiRuzzo is not part of the joint defense team and is in fact hostile to some of the defendants whose counsel and accountants are part of that team. Please do not share any information covered by the Kovel agreement with him absent the express authorization of Wally Hamed.



Case
Hamed, et al., v.
Yusuf, et al.

Exhibit
28

Joseph A. DiRuzzo, III, Esq., CPA
305.350.5690
jdiruzzo@fuerstlaw.com

October 12, 2012

Via USPS and email: holtvi@aol.com

Joel H. Holt, Esq.
Joel H. Holt, Esq., P.C.
2132 Company Street, Suite 2
Christiansted, St. Croix
U.S. Virgin Islands, 00820

Re: *Hamed v. Yusuf and United*, case no. 1:12-cv-99 (D.V.I.)

Dear Mr. Holt,

This letter is in response to your correspondence from October 8, 2012. While I disagree with most of the comments contained in your October 8th correspondence I write because one statement you made I need further clarification on. Specifically at page 2, second full paragraph you state: “[w]hen contemplating the filing of tax returns for United Corporation, you need to keep partnership accounting for the partnership funds it holds in mind. Otherwise, you may expose your clients to extensive tax liabilities if the partnership accounting is not addressed in these returns.”

I would ask that you please describe what you envision the exposure to be. In particular, please cite to the appropriate Internal Revenue Code section and/or Treasury Regulation that you believe would result in avoidable adverse tax consequences. Further, if possible, quantify the exposure.

I thank you in advance for your attention to this matter.

Kind Regards,

Joseph A. DiRuzzo, III

JAD/

cc: Carl J. Hartmann III, Esq., via email only: carl@carlhartmann.com
N. DeWood, Esq. via email only: dewoodlaw@gmail.com

Case
Hamed, et al., v.
Yusuf, et al.

Exhibit
29

JOEL H. HOLT, ESQ. P.C.

2132 Company Street, Suite 2
Christiansted, St. Croix
U.S. Virgin Islands 00820

Tele. (340) 773-8709
Fax (340) 773-8677
E-mail: holtvi@aol.com

October 22, 2012

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

By Email and Mail

Re: *Hamed v. Yusuf and United Corporation*

Dear Attorney DiRuzzo:

I am writing in response to your letter dated October 12, 2012. You inquired as to what I perceive as the exposure for your client and possibly your firm with regard to the filing of corporate tax returns on behalf of United Corporation ("United"). I see three different issues that need to be considered by you and your clients:

1. The filing of a false return if United claims it owns the profits of the supermarkets;
2. Exposure to interest and penalties that can be avoided if proper returns are filed;
3. Mistakenly overpaying taxes, for obtaining a refund could be problematic.

While your client's apparent position is that United Corporation owns the supermarkets and therefore United should report the supermarket income as its own, the evidence is overwhelming that this is not the case. Aside from the facts set forth in the pleadings already filed in this case, we have now filed a reply (copy attached) to your TRO opposition that sets forth why there is a partnership even under your version of the facts. In this regard, the evidence that Fathi Yusuf and Mohammed Hamed operated the supermarkets as a partnership is overwhelming. Indeed, the affidavit of Maher Yusuf submitted to the Court states, in part, as follows:

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.)

Letter dated October 22, 2012

Page 2

Equally significant, the rent letter sent by United to Mohammad Hamed (copy attached) is an equally damaging admission of the fact the supermarkets are not operated by United since it was sent after your clients were served with the complaint and TRO pleadings.¹

Thus, any tax filing that does not take into account this partnership (which your client has described in detail as a 50/50 partnership under oath) creates the problems set forth above.

As for point #1 above, I understand from speaking with the lawyers handling the criminal case, the IRS and IRB just want accurate returns filed, without any collateral risk of further problems if United does not claim all of the supermarket profits as it has done in the past. As there is clearly a partnership, the filing of tax returns showing the supermarket income as being income of United would be filing false tax returns. On the other hand, there is a clear opportunity to file proper returns now, which should not be missed. Indeed, even if your client insists that United owns the supermarkets, contrary to the evidence mentioned above, the far better course would be to await a determination of this issue before filing any returns.

As for point #2 above, it is also my understanding that the filing of proper tax returns under the current protections set forth in the Plea Agreement will avoid interest and penalties. The potential amount of this exposure to the partnership is significant, so if it can be prevented by a proper filing of tax returns now, then this opportunity should not be missed.

As for point #3, if United files tax returns showing that the supermarket's profits are its profits, then a subsequent determination that the supermarket is a partnership will result in United having substantially overpaid its taxes. When these returns are corrected, United may have difficulty in getting this overpayment back from the Government for obvious reasons.

To avoid the foregoing exposure, what has to be done is simple:

1. Pursuant to Subchapter K of Chapter 1 of the U.S. Internal Revenue Code (Title 26 U.S.C.) the Partnership should file its annual information returns (Form 1065) to report the income, deductions, gains, losses, etc., from its operations -- of which there really only is one item each year -- net income/loss to the Partnership from its agent, United. To the extent that it has "passed through" any such profits (or losses) to its partners, the Partnership must provide them with the K-1's generated from the 1065 preparation. (Obviously the distributive share for each year must be reported

¹ Indeed, even you have admitted there is at least a *joint venture* as to profits, which is still a partnership under VI law. While that argument is a convenient way to try to make the round peg go in the square hole, the actual evidence (including Attorney DeWood's letters) will be reviewed by IRB at some point -- regardless of your Rule 408 position.

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regardless of whether the funds are paid out.²) Each partner must then include his share of the Partnership's income or loss on his tax return, as per 1040 Schedule E, page 2. (Since the partners are not employees with regard to the profits, and the distribution of profits not wages, issuance of a W-2 or 1099 for the profits would be fraudulent -- as would calling these corporate profits of United. Thus, there would be no 940 or 941 filings as there are no employees.)

2. United should show all gross receipts from the supermarket operations as what they are -- gross income taken in by the agent in the operations of its principal. Similarly, all expenses, gross receipts taxes paid, rents and other payments on behalf of the supermarket operations should be accounted for properly (by amended filings if necessary) -- this includes any net profits/losses to the partners, which, even when accrued and held should still be subject to a K-1 as above.

In short, the financial risks to your clients of a false filing now are that United will pay taxes on the illusory 'corporate' profits and Yusuf on dividends. Once this is done, Yusuf will still owe taxes on 50% of the Partnership income (possibly subject to 26 U.S.C. §§ 6662/6663 as well) and will have to try to recover payments from IRB as a tax refund. As you know this can be problematic. The legal risk is that up to now United has not filed any false returns in the past ten years -- since the accounts were frozen -- just estimated payments. Once a false return is filed, there will be the consequences of a false filing, particularly if it determined that this was intentional.

Similarly, if it is determined that either Yusuf violated his duty of loyalty to the Partnership in completing, filing and payment (or non-payment) of taxes -- or that United was grossly negligent in its accounting, filings and actions as agent with regard to the Partnership accounts/taxes -- they will be paying all interest and penalties including any 20% super penalty under 6662, as damages.

As you can see, this is not an optimal situation from a tax perspective. However, the lawyers and accountants handling the other matters can effectively accomplish all of this rather quickly and, most importantly, safely from the perspective of everyone's potential liability. Indeed, they are the ones to best handle these negotiations with the IRS and the IRB, as your involvement only threatens to undo what they have accomplished to date in my view.

In summary, while your client's actions in this regard have created quite a tax problem, it can still be corrected if done before improper tax returns are filed. To ignore this opportunity at this critical juncture creates the liability I referred to on page 2 of my October 12th letter. Indeed, should your clients end up where I think they will if they take the route now being espoused, I am sure he will look to you and your firm to recover his losses, as in the end he will say he relied upon the tax advice being given by you and

² I understand that there could be no such distributive share paid to my client from 2002 to the present due to the freezing actions of the government (i.e., the TRO presently in place), which has precluded any distributive share until now.

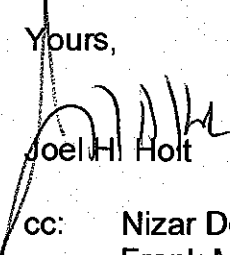
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your law firm. To the extent, such conduct harms my client, I am sure he will do the same.

A final comment regarding the filing of tax returns is in order. It has been suggested that the civil litigation commenced by my client is an attempt to delay or hinder the filing of United's tax returns in order to somehow interfere with the disposition of the criminal case. That is untrue. My client filed that suit because Mr. Yusuf began to take unilateral action contrary to the practice over many years of his partnership relationship with my client, such as the removal of the \$2.7 million in August, of which allegations you are fully aware. As for United filing its tax returns, that is something United has control over, but my client certainly believes correct returns should be filed (for the reasons noted in this letter). Indeed, as I understand it from the lawyers handling the criminal case, the current requirement that tax returns must be filed before the case can be dismissed might be waived. In any event, the civil case has nothing to do with the criminal matter.

If you have any further questions or want to discuss this further with me, please let me know.

Yours,


Joel H. Holt

cc: Nizar Dewood dewoodlaw@gmail.com
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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.

CIVIL NO. SX-12-CV-99

ACTION FOR DAMAGES
INJUNCTIVE AND
DECLARATORY RELIEF

JURY TRIAL DEMANDED

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.¹ 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

¹ 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)² 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 26.³

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:⁴

§ 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
...

² This September 18th letter was actually sent on September 19th (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**.

³ 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. . . .")

⁴ 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 landlord⁵ 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.⁶

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

⁵ 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.)

⁶ 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.⁷

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):

⁷ 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.⁸

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.)⁹

⁸ 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**

⁹ 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).¹⁰

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

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, *Mardaniou 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.")

¹⁰ 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.¹¹ 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

¹¹ 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

Plaintiff's Reply to Opposition to Motion for TRO and/or Preliminary Injunction
Page 13

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

Plaintiff's Reply to Opposition to Motion for TRO and/or Preliminary Injunction
Page 14

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

Plaintiff's Reply to Opposition to Motion for TRO and/or Preliminary Injunction
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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.¹²

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 19th 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

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

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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.¹³

¹³ 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.

Plaintiff's Reply to Opposition to Motion for TRO and/or Preliminary Injunction
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(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 (2nd 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).¹⁴

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.)

¹⁴ 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
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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.¹⁵

¹⁵ 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 Beneficiente Uniao Do Vegetal v. Ashcroft*, 389 F.3d 973, 977 (10th 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

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Page 19

(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 22nd 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, 32nd. Fl.
Miami, FL 33131
idiruzzo@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

/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
To: grhea@rpwb.com
CC: pamelacoln@msn.com, mpa@abfmwb.com, Holtvi@aol.com, smock@islands.vi, JDIRuzzo@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; 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; 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.


Bloomberg No. 6208

EXHIBIT

1

EXHIBIT 2

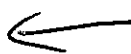
Subj: **FW: United Corp. - Response to Hamed's Aug. 31st Letter to AUSA Lori Hendrickson**
Date: 10/11/2012 4:13:41 P.M. Atlantic Standard Time
From: JDiRuzzo@fuerstlaw.com
To: Holtvi@aol.com
CC: FMassabki@fuerstlaw.com, dewoodlaw@gmail.com, JaCorrea@fuerstlaw.com
Mr. Holt,

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

Joseph A. DiRuzzo, III, Esq., CPA
FUERST TITTLEMAN DAVID & JOSEPH, PL
1001 Brickell Bay Drive
32nd Floor
Miami, FL 33131
305.350.5690 (o)
305.371.8989 (f)
jdiruzzo@fuerstlaw.com
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.

From: Nizar A. DeWood [<mailto:dewoodlaw@gmail.com>]
Sent: Wednesday, September 19, 2012 7:49 AM
To: joel@holtvi.com
Cc: Joseph DiRuzzo; Mike Yusuf; Nejah 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
To: dewoodlaw@gmail.com, 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



EXHIBIT 4

000

000

UNITED CORPORATION
40 & 41 STION PARK
ST. CROIX, MISSYI 00821
Phone (340) 756-6240

January 12, 2012

Mr. Mohamed Elmed

During the month of September 2009, I had a discussion with your son, Wally, and within two days I recall the same request while you were present and I stated 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 and further notice.

Sincerely,



Raddi Yusuf



01/13/2012 02:07

3407

PLAZA EXTRA ST

PAGE 01/01

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

January 13, 2012

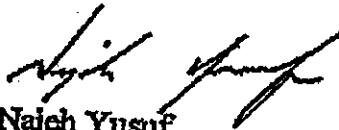
Mr. Mohamed Hamed,

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 Rafii 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 30TH, 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 30th, 2012. The last date for this lease is June 30th, 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 3407758765

PLAZA EXTRA STT

PAGE 01/03

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

April 4, 2012

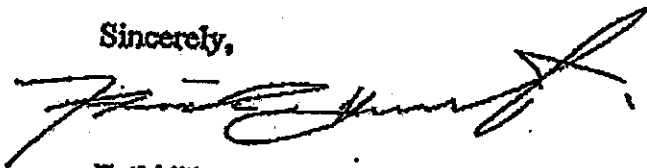
Mohammad Abdul Qader Hamed
Plaza Extra Supermarket
4-C & 4-D Estate Sion Farm
Christiansted, VI 00820

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	Amount Due	<u>\$ 8,500.00</u>
		<u>\$858,500.00</u>
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

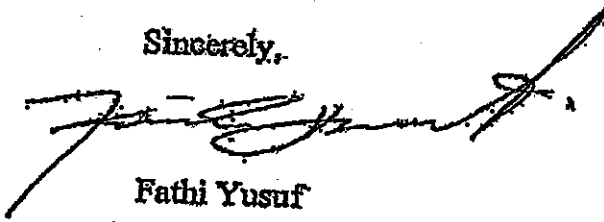
Mohammad Abdul Qader Hamed
Plaza Extra Supermarket
4-C & 4-D Estate Sion Farm
Christiansted, VI 00821

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

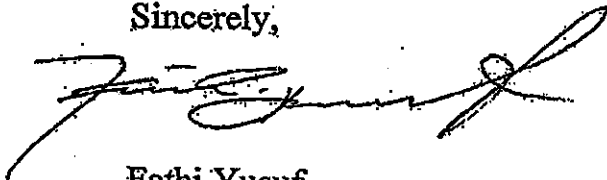
Mohammad Abdul Qader Hamed
Plaza Extra Supermarket
4-C & 4-D Estate Sion Farm
Christiansted, VI 00821

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

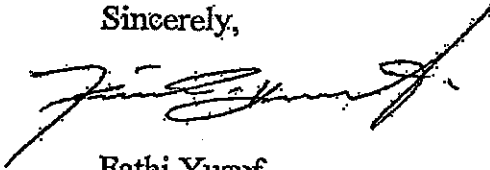
Mohammad Abdul Qader Hamed
Plaza Extra Supermarket
4-C & 4-D Estate Sion Farm
Christiansted, VI 00821

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		\$ 16,332.81
	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

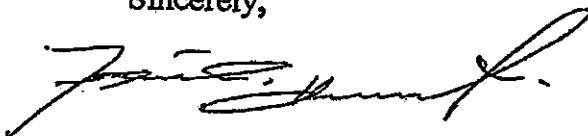
Mohammad Abdul Qader Hamed
Plaza Extra Supermarket
4-C & 4-D Estate Sion Farm
Christiansted, VI 00821

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	<u>\$1,918,609.80</u>
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

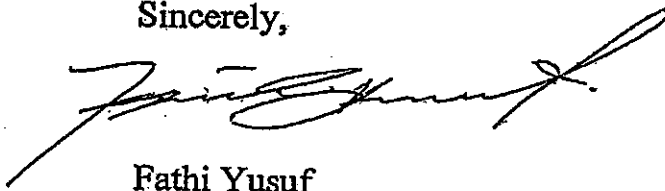
Mohammad Abdul Qader Hamed
Plaza Extra Supermarket
4-C & 4-D Estate Sion Farm
Christiansted, VI 00821

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	\$2,190,295.90
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

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 15th 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 16th 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 15th, 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
[Signature]
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.

Gordially,


Waleed Hamed

UNITED CORPORATION D/B/A
 PLAZA EXTRA
 340-778-8240
 P.O. BOX 763
 CHRISTIANSTEDT, USA 00821-0763

1154

8/15/2012

\$ 238,700.75

Ten Million Seven Hundred Eighty Four Thousand Seven Hundred Sixty Nine and 75/100

United Corporation

Scotiabank
 BANK OF SCOTIA

[Signature]

[Signature]

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.

UNITED CORPORATION and
FATHI YUSUF, Individually,

Defendants.

Case No. 156/1997

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

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

FATHI YUSUF -- DIRECT

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 2
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
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,
WALBED MOHAMMED HAMED,
aka Willie Hamed,
WAHBED 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 OF COURT

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
Shamba No. 0208

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. Penna
Deputy Clerk

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

CERTIFIED A TRUE COPY THIS

18th DAY OF *September* 20 *03*

WILFREDO F. MORALES
CLERK OF THE COURT

BY: Claudette A. Penna
DEPUTY

CLERK OF THE
DISTRICT COURT
ST. TAMMÁS

03 SEP 18 P2:MR

RECEIVED