

**IN THE SUPERIOR COURT OF THE VIRGIN ISLANDS
DIVISION OF ST. THOMAS/ST. JOHN**

UNITED CORPORATION,

Plaintiff,

v.

WAHEED HAMED,
(a/k/a Willy or Willie Hamed),

Defendant.

Case No.: 2013-CV-101

ACTION FOR DAMAGES

JURY TRIAL DEMANDED

**DEFENDANT WAHEED HAMED'S
FIRST REQUEST FOR THE PRODUCTION OF DOCUMENTS
TO PLAINTIFF UNITED**

Defendant Hamed, by counsel, propounds the following request for production of documents pursuant to Rule 34 of the Federal Rules of Civil Procedure as well as Local Rule 22 as both have been made applicable in this Court on Plaintiff United Corporation:

INSTRUCTIONS

In responding to these Requests for Production of Documents, the following instructions shall apply:

1. The obligations imposed by Fed. R. Civ. P. 26 and 34 are hereby incorporated, including but not limited to, the duty to supplement imposed by Fed. R. Civ. P. 26(e).
2. These requests for production concern all information within United's custody and control.
3. If the Plaintiff lacks information to respond to a particular request for production, in whole or in part, Plaintiff shall state or identify: a) the currently available information; b) any currently unavailable information; c) the efforts Plaintiff has taken, or will take, to obtain the

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currently unavailable information; and d) when the Plaintiff expects to obtain this information. Further, if the Plaintiff believes that any other individual or entity may have information that responds to a specific request, in whole or in part, the Plaintiff shall provide the individual or entity's: a) name, address and telephone number and b) a brief description of the information the Plaintiff believes the entity or individual possesses.

4. Whenever in these requests for production the Plaintiff is directed to produce or "identify" a "document," the Plaintiff shall, besides providing the document itself (if asked to produce), state or identify the following: a) the date the document was prepared; b) the name, address and telephone number of each author or signatory; c) the name, address and telephone number of each recipient (both addressee and recipients of copies); d) the document type (*e.g.*, letter, memorandum, report, etc.); e) the document title; f) the document's control number or Bates number; and g) the name, address and telephone number of the document's custodian.

5. If the Plaintiff no longer possesses any document the Plaintiff requests, the Plaintiff shall state or identify: a) the date the document was prepared; b) the name, address and telephone number of each author or signatory; c) the name, address and telephone number of each recipient; d) the document type (*e.g.*, letter, memorandum, report, etc.); e) what was done with the document; f) the name, address and telephone number of each individual responsible for, or otherwise involved with, transferring or disposing of the document; and g) reason(s) the document was disposed of or transferred; and h) the name, address and telephone of the document's custodian, if known.

6. If the Plaintiff believes any information the Plaintiff requests is privileged and/or protected, in whole or in part, the Plaintiff shall provide the following: a) the document's title;

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b) the document type (*e.g.*, memorandum, letter, report, email etc.), c) the name, address and telephone number of each author or signatory; d) the name, address and telephone number of each recipient; e) the date the document was prepared; f) the privilege(s) and/or protection(s) the Plaintiff is asserting; g) the factual bases for the Plaintiff asserting the privilege(s) and /or protection(s); and h) a summary of the information the Plaintiff is not producing to enable a court of competent jurisdiction to rule whether the information is privileged and/or protected.

7. If the Plaintiff redacts anything from a document it produces in response to these requests for production, the Plaintiff shall state or provide the following: a) a summary of the deleted information; b) the reason(s) for deleting the information; and c) the name, address and telephone number of each person responsible for, or otherwise involved with, deleting the information.

8. The Plaintiff shall respond to each of these requests for production to the fullest extent possible, and in good faith, preserving any valid objections the Plaintiff may have. The Plaintiff may further ask the Plaintiff's attorney to clarify or limit any request for production Plaintiff believes is vague or unduly burdensome.

9. Whenever these requests for production use any word in the plural, the Plaintiff shall understand the word to include the singular as necessary to make the request for production inclusive rather than exclusive. Further, whenever these requests for production use any word in the singular, the Plaintiff shall understand the word to include the plural as necessary to make the request for production inclusive rather than exclusive.

10. Whenever these requests for production use any word in the masculine, the Plaintiff shall understand the word to include the feminine as necessary to make the request for

production inclusive rather than exclusive. Further, whenever these requests for production use any word in the feminine, the Plaintiff shall understand the word to include the masculine as necessary to make the request for production inclusive rather than exclusive.

11. Verbs written in the present tense shall also be taken to mean and include the past. Verbs written in the past tense shall also be taken to mean and include the present.

12. Whenever these requests for production use the word "and" or the word "or," the Plaintiff shall understand the word conjunctively or disjunctively as necessary to make the request for production inclusive rather than exclusive.

TERMS AND MEANINGS

The terms used in this Discovery have the following meaning:

As used herein, the term "**document(s)**" is used in its broadest sense to include, by way of illustration only and not by way of limitation, all originals and non-identical copies of any writing or any other tangible thing or data compilation in the custody, possession or control of the Plaintiff - whether printed, typed, reproduced by any process, written or produced by hand, including any graphic matter however produced or reproduced, or produced by any other mechanical means and all data, either electronic, magnetic, chemical, mechanical, or other form of data storage capable of being transformed into written or oral matter, including, but not limited to, CD-ROMs, DVDs, computer disks, Hard-drive computer storage mediums — including e-mails, letters, affidavits, filings, engineering studies and/or tests, reports, agreements, communications, correspondence, permits, accounting records, business records, contracts, letters of agreements, telegrams, mailgrams, memoranda, summaries and/or records of personnel or telephone conversations, diaries, calendars, forecasts, photographs, tape recordings,

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facsimiles, models, statistical statements, graphs, charts, plans, drawings, service and/or pump data, logs, minutes or records of meetings, minutes or records of conferences, reports and/or summaries of interviews, reports, conversations, summaries of investigations, opinions or reports of consultants, topographical or geological maps or surveys, appraisals, records, reports or summaries of negotiations, drafts of any document, revisions of drafts of any document, purchase orders, invoices, receipts, original or preliminary notes, financial statements, accounting work papers, promissory notes, film, microfilm, microfiche, punch cards, slides, pictures, videotapes, moving pictures, computer programs, laboratory results, magnetic tapes or any other matter which is capable of being read, heard or seen with or without mechanical or electronic assistance.

"Communication" means any correspondence, contact, discussion, exchange, contract, or agreement between any two or more persons. Without limiting the foregoing, "communication" includes all documents, as defined above, telephone conversations, internet communications, e-mail, facsimile transmissions, voice mail, face-to-face conversations, meetings, and conferences.

"Relevant time period" means 1991 to and including all of 1993. (As Plaintiff's complaint fails, at paragraph 12¹ to specify what years are involved, this period should be expanded by Plaintiff to include other years included in this sentence.)

¹ 30. Note "the years" are not stated in paragraph 12.

12. During a review and inventory of the documents and files delivered and returned by the U.S. Government to Plaintiff United, Plaintiff United reviewed documents comprising tax returns for Waheed Hamed, **including but not limited to Defendant's tax returns for the years**

"United" or "United Corp" shall mean the defendant United Corporation.

"Yusuf" shall mean Fathi Yusuf.

"Hamed" shall mean the Waheed Hamed.

REQUESTS

1. All documents during the Relevant Time Period making reference to any agreement regarding non-competition or mandatory disclosure of other business or financial interests in connection to Hamed's relationship to Fathi Yusuf, Plaza Extra Supermarkets or United. (This shall not include United or Plaza Extra Supermarkets.)

2. All documents making reference to any business being run by Hamed during the Relevant Time Period. (This shall not include United or Plaza Extra Supermarkets.)

3. All documents making reference to any business in which Hamed participated in any manner during the Relevant Time Period. (This shall not include United or Plaza Extra Supermarkets.)

4. All statements, witness interviews, photographs, recording or other physical evidence making reference to any business in which Hamed held an ownership interest or participated in any manner during the Relevant Time Period. (This shall not include United or Plaza Extra Supermarkets.)

5. All contemporaneous recordings (written or otherwise) or other physical evidence making reflecting United, its employees, or members of the Yusuf family observed Hamed holding an ownership interest in, or participating in a business in any manner during the Relevant Time Period.

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6. All documents which show how *profits* from the Plaza Extra Supermarkets were *distributed* from 1986 to 1993 to members of the Yusuf family.

7. All documents which show how *profits* from the three Plaza Extra Supermarkets were *distributed* from 1986 to 1993 to members of the Hamed family.

8. The filed tax returns of Plaintiff or its predecessor for the years 1986 to 1993.

9. All correspondence between Plaintiff (or counsel for defendant) and the U.S. Attorney's Office, U.S. Marshal's Office or the VI BIR from January 1, 2013 to date.

10. All documents evidencing sale, gift or other transfer of stock of United corporation from Yusuf or his wife from 1979 to 1993.

11. All documents evidencing sale, gift or other transfer of stock of United corporation by any other person than Yusuf or his wife from 1979 to 1993.

12. All documents and other physical evidence supporting United's averment in the Amended Complaint, within paragraph 1, that:

Further, this civil action names John Doe 1-10 [hereinafter referred to as the "Does"] as persons who have worked knowingly, and jointly with Waheed Hamed in the commission of each of the causes of action alleged herein.

13. All documents and other physical evidence regarding United's averment in the Amended Complaint as to the identity or involvement with Defendant, of Does 1-10.

14. All documents and other physical evidence supporting United's averment in the January 8, 2013, United Corporation complaint in the V.I. Superior Court, St. Croix Division, against Waleed Hamed and John Does 1-10, *United Corporation v Waleed Hamed, et. al.*, Civil No. SX-13-CV-3 that:

11. Sometime in 1986, Plaintiff United, through its shareholder and then President, Fathi Yusuf, entered into an oral agreement, whereby Plaintiff United

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and Defendant Hamed's father, Mohammed Hamed, agreed to operate a grocery store business.

15. All documents and other physical evidence demonstrating that any goods or inventory from Plaza Extra Supermarket(s) was lost or stolen in 1992 or 1993.

16. All documents and other physical evidence reflecting that United filed this instant action with the consent or agreement of Mohammad Hamed or his family.

17. All documents and other physical evidence supporting United's averment as a fact in the Amended Complaint, within paragraph 16, that:

16. Defendant Waheed Hamed was never permitted to acquire, engage, or manage any business that may compete with the operations of the Plaza Extra Stores.

18. All documents and other physical evidence regarding the existence or operation of a wholesale grocery business called "5 Corner's Mini Mart" as the same is described in paragraph 16 of the Amended Complaint.

19. Written legal agreements, contracts, or other documentation wherein either United (or United d/b/a Plaza Extra Supermarkets) is a party and defendant Hamed is a party.

20. Written legal agreements, contracts, or other documentation wherein either United (or United d/b/a Plaza Extra Supermarkets) is a party along with any person or entity -- agreement contains a limitation on competition or a requirement not to disclose.

21. Any and all contracts, writings, licenses, articles of incorporation or other documents stating or in any manner reflecting that defendant Hamed was operating a separate wholesale grocery business called "5 Corner's Mini Mart."

22. A list of the documents scanned and copied by United's counsel from 2002-present out of the set described in paragraphs 11 and 12 of the Amended Complaint.

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During nine years of criminal proceedings, the U.S. Department of Justice and federal law enforcement (collectively the "U.S. Government"), gathered *significant financial documents*, including but not limited to tax returns, financial ledgers, accounting records, and various other documents concerning the parties herein. Prior to the release of the documents in October of 2010 to Plaintiff United, none of the officers of Plaintiff United had any actual or constructive knowledge of Defendant Hamed's conduct, financial affairs, or tax returns.

During a review and inventory of the documents and files delivered and returned by the U.S. Government to Plaintiff United, Plaintiff United reviewed documents comprising tax returns for Waheed Hamed, including but not limited to Defendant's tax returns for the years. (Referred to as "These Documents" hereinafter.)

23. Attorneys billings by United's counsel reflecting the inspection of documents held by the federal government by United's counsel in 2004, to wit,

In a Declaration dated July 8, 2009, Special Agent Thomas L. Petri avers in a document filed in *United States of America v. Fathi Yusuf Mohammed Yusuf et al.*, Criminal No. 2005-015 (DE 1148-1), that:

8. In 2004, a different set of attorneys presently representing the defendants reviewed the evidence seized in the course of the execution of the search warrants. By my estimation, document review team included up to ten people at any one time. The defense team spent several weeks reviewing the evidence. They had with them at least one copier and one scanner with which they made numerous copies and images of the evidence.

9 During the 2004 review, the defense team was afforded unfettered access to discovery. They were permitted to review any box of documents at any time, including evidence seized during the searches, foreign bank records, documents obtained either consensually or by grand jury subpoena, and FBI Forms 302. The defense team pulled numerous boxes at one time with many different people reviewing different documents from different boxes.

24. Attorneys billings by United's counsel reflecting the inspection of United's documents by it counsel in years after 2004.

25. Letters, correspondence, email and other documents reflecting when United obtained access or the right to access seized documents in the federal government's control.

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26. Documents reflecting the fact that on January 4, 2002 the Plaza Extra East Store was burned down in a fire.

27. Documents reflecting the fact that after January 4, 2002 when the Plaza Extra East Store was burned down in a fire, it did not re-open until May of 2003.

28. Documents reflecting the fact that the Plaza Extra Store on St. Thomas did not open until October of 2012.

29. With regard to the averments of the Amended Complaint, produce the documents upon which the averment was made.

8. Defendants John Doe 1 to 10, **upon information**, are employees, family, friends, and agents of Defendant Hamed who have participated and/or assisted defendant Waheed Hamed with the defalcation, conversion, and concealment of substantial assets that are the sole property of Plaintiff United. John Doe 1 to 10 may be both natural persons and/or incorporated or unincorporated associations/entities.

30. With regard to the averments of the Amended Complaint, produce the documents upon which the averment was made. (Note "the years" are not stated -- produce all records reviewed for the applicable years.)

12. During a review and inventory of the documents and files delivered and returned by the U.S. Government to Plaintiff United, Plaintiff United reviewed documents comprising tax returns for Waheed Hamed, including but not limited to Defendant's tax returns for the years

31. With regard to the averments of the Amended Complaint, produce the documents upon which the averment was made which: (1) reflect gifts from other family members, reflect loans from other family members, reflect loans from third parties, reflect gifts from his father, reflect gifts from others, reflect investments provided to him from others.

13. With the exception of his salaried position with United Corporation, Defendant Waheed Hamed never had any other significant source of income from business operations, investments, etc., prior to or during his employment tenure

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with Plaintiff United.

32. With regard to the averments of the Amended Complaint, produce the documents upon which the averment was made.

14. Defendant Waheed Hamed owed an absolute duty of loyalty and care to United Corporation to act in its best interest and not to usurp any of Plaintiff's assets and business opportunity that would otherwise inure to Plaintiff's benefit.

33. With regard to the averments of the Amended Complaint, produce the documents upon which the averment was made.

15. A further review of Defendant Waheed Hamed's tax returns, including Defendant's 1992 Tax Return, obtained from the United States Government also revealed that Defendant Hamed had engaged in a separate and secretive wholesale grocery business called 5 Corner's Mini Mart.

34. With regard to the averments of the Amended Complaint, produce the documents upon which the averment was made.

16. Defendant Waheed Hamed was never permitted to acquire, engage, or manage any business that may compete with the operations of the Plaza Extra Stores. Defendant Hamed. . .

35. With regard to the averments of the Amended Complaint, produce the documents upon which the averment was made.

18. The scale and scope of the wholesale business as indicated in Defendant Hamed's tax returns demonstrates substantial inventory, upon information, belonging to Plaintiff United were misappropriated by Defendant Hamed to operate his wholesale business.

36. With regard to the averments of the Amended Complaint, produce the documents upon which the averment that Hamed has ever refused a request to explain or account was made other than part of settlement negotiations.

19. To date, Defendant Waheed Hamed **refuses to explain** and account to Plaintiff United for any of the aforementioned funds, inventory, and the business opportunities Defendant Hamed diverted to his personal benefit.

37. With regard to the averments of the Amended Complaint, produce the documents upon which the averment that Hamed has ever refused a request to explain or account was made in settlement negotiations.

19. To date, Defendant Waheed Hamed **refuses to explain** and account to Plaintiff United for any of the aforementioned funds, inventory, and the business opportunities Defendant Hamed diverted to his personal benefit.

38. With regard to the averments of the Amended Complaint, produce the documents upon which the averment was made that business opportunities were diverted.

19. To date, Defendant Waheed Hamed **refuses to explain** and account to Plaintiff United for any of the aforementioned funds, inventory, and the **business opportunities Defendant Hamed diverted to his personal benefit.**

39. With regard to the averments of the Amended Complaint, produce the documents upon which the averment that Hamed was an "agent" for United was made.

21. **As an agent** and employee of Plaintiff United, a corporate entity, Defendant Waheed Hamed owes fiduciary duties to the entity. Included in the fiduciary duty is the duty of loyalty. Not only is it Defendant Waheed Hamed's duty to properly manage the business affairs of the Plaza Extra Supermarket stores for the benefit of Plaintiff United, he is not permitted to place himself in a position where it would be for his own benefit to violate the duty.

40. With regard to the averments of the Amended Complaint, produce the documents upon which the averment was made.

22. Defendant Waheed Hamed has breached the following duties (the list of duties violated by Defendant Hamed, below is not intended to be an exhaustive or exclusive list):

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- a. Duty of Loyalty
- b. Duty of good faith and candor;
- c. Duty to manage the day-to-day operations of Plaintiff United's Plaza Extra supermarket for the benefit of United;
- d. Duty of full disclosure of all matters affecting his employer Plaintiff United;
- e. Duty to refrain from self-dealing, and/or general prohibition against the fiduciary using his relationship to benefit his personal interest; and
- f. Duty to manage any funds, assets, and/or property belonging to Plaintiff United by virtue of its operation of the Plaza Extra Supermarket stores in accordance with applicable laws.

41. With regard to the averments of the Amended Complaint, produce the documents upon which the averment was made.

28. Defendant Waheed Hamed has knowingly converted substantial funds and assets belonging to Plaintiff United. Plaintiff never consented or agreed to Defendant Hamed's unauthorized use of its funds and assets. As such, Defendant Hamed is liable for conversion.

42. With regard to the averments of the Amended Complaint, produce the documents upon which the averment was made.

35. Defendant Hamed has breached his employment contractual agreement with Plaintiff United by mismanaging, misappropriating, and converting funds, monies, and other valuables to his personal use. As a result, Plaintiff United has sustained substantial financial damages.

36. As such, Plaintiff United is entitled a full accounting of all monies, funds, and assets unlawfully appropriated by Defendant Hamed.

43. With regard to the Relief requested in the Amended Complaint, produce the documents which show the basis for the relief, the calculations of the amount and type of relief and all analyses performed by plaintiff, its consultants and its experts.

a. Actual damages

(a1) Compensatory damages

b. Punitive damages

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- c. Any accounting done by United of funds, assets, opportunities, and other valuables converted and or misappropriated by Defendant Hamed.
- d. Costs to date of all professional fees for the audit and investigation of this matter.
- e. A listing of any documents, including but not limited to electronically stored information, belonging to Plaintiff United in the possession (both actual and constructive) of Defendant Hamed.
- f. The factual bases of a Restraining Order precluding Defendant Hamed from:
 - i. Physically returning, or attempting to return, to any of the Plaza Extra supermarket stores;
 - ii. Accessing, or attempting to access, any bank accounts belonging to United Corporation for any purpose;
 - iii. Contacting, or attempting to contact, any employee of Plaintiff United concerning the operations and management of the Plaza Extra Supermarkets;
 - iv. Preclude Defendant Waheed Hamed from contacting any business associates of Plaintiff United;
 - v. Preclude Defendant Waheed Hamed from representing to third-parties that he is an employee of Plaza Extra;

Dated: August 23, 2013

Carl J. Hartmann III, Esq.
(V.I. Bar No. 48)
Counsel for Defendant Hamed
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Christiansted, VI 00820
Telephone: (340) 719-8941
Email: carl@carlhartmann.com

CERTIFICATE OF SERVICE

I hereby certify that on August 23, 2013, a true and accurate copy of the foregoing was served by email and U.S. Mail on:

Nizar A. DeWood, Esq.
The Dewood Law Firm
2006 Eastern Suburb, Suite 101
Christiansted, VI 00820

and by email as a courtesy on:

Joseph A. DiRuzzo, III, Esq.
Christopher David, Esq.
Fuerst Ittleman David & Joseph, PL
1001 Brickell Bay Drive, 32nd. Fl.
Miami, FL 33131

Carl J. Hartmann III, Esq.