

S. Ct. Civ. No. 2013-0040

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**In the Supreme Court of the Virgin Islands**

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**FATHI YUSUF and UNITED CORPORATION,**  
Appellants/Defendants,

v.

**MOHAMMAD HAMED, by his**  
authorized agent, **WALEED HAMED,**  
Appellee/Plaintiff.

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**ON APPEAL FROM THE SUPERIOR COURT OF THE VIRGIN  
ISLANDS, DIVISION OF ST. CROIX  
Super. Ct. No. 370/2012 (STX)  
HON. DOUGLAS BRADY, PRESIDING**

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**JOINT APPENDIX VOLUME I**

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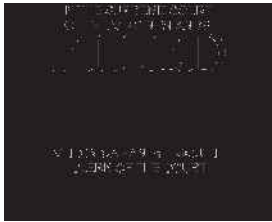
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IN THE SUPREME COURT OF THE VIRGIN ISLANDS

MOHAMMAD HAMED, by his )
authorized agent, WALEED HAMED, )
)
Plaintiffs, )
)
v. )
)
FATHI YUSUF and UNITED CORPORATION, )
)
Defendants. )

RE: CIVIL NO. SX-12-CV-370

NOTICE OF APPEAL

COMES NOW Defendants, FATHI YUSUF and UNITED CORPORATION, by and through their undersigned attorneys hereby gives notice pursuant to VISCR 4 that they appeal the following decisions of the Superior Court:

- 1. Order dated April 25, 2013, granting Plaintiff's emergency motion to renew application for TRO, with memorandum opinion of same date;
2. Order dated April 25, 2013, grating: (1) Plaintiff's notice of filing supplemental deposition exhibits; (2) Plaintiff's second request to take judicial notice and request to supplement the hearing record; (3) Plaintiff's notice of supplementation of the preliminary injunction record; and (4) Plaintiff's reply to opposition to Plaintiff's notice of supplementation of the preliminary injunction record (which included as Exhibit A another document to supplement the record).

This notice of appeal is timely as it is filed within 30 days of an interlocutory order, see 4 V.I.C. § 33(d)(5), and this Court has the power to hear interlocutory appeals of injunctions, see 4 V.I.C. § 33(b).

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//

Respectfully submitted,

May 13, 2013

/s/ Joseph A. DiRuzzo, III

Digitally signed by /s/ Joseph A. DiRuzzo, III  
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*Co-counsel for Defendants Fathi Yusuf and United Corporation*

### CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the foregoing was filed on VISCEFS on May 13, 2013. I hereby certify a true and accurate copy of the foregoing document was served via USPS and email to the following:

*Joel H. Holt, Esq.*, 2132 Company St., St. Croix, VI 00820, [holtvi@aol.com](mailto:holtvi@aol.com)

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*K. Glenda Cameron, Esq.*, Law Offices of K.G. Cameron, 2006 Eastern Suburb, Suite 101, St. Croix, VI 00820, [kglenda@cameronlawvi.com](mailto:kglenda@cameronlawvi.com)

Respectfully submitted,

/s/ Joseph A. DiRuzzo, III

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FOR PUBLICATION

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

MOHAMMED HAMED by his authorized agent	)	
WALEED HAMED,	)	
	)	CIVIL NO. SX-12-CV-370
Plaintiff	)	
v.	)	ACTION FOR DAMAGES;
	)	PRELIMINARY AND PERMANENT
FATHI YUSUF, and UNITED CORPORATON,	)	INJUNCTION; DECLARATORY
	)	RELIEF
Defendants.	)	JURY TRIAL DEMANDED
	)	

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**ORDER**

The Court having issued its Memorandum Opinion of this date, it is hereby

**ORDERED** that Plaintiff's Emergency Motion to Renew Application for TRO, filed January 9, 2013, seeking entry of a temporary restraining order or, in the alternative, preliminary injunction is **GRANTED**, as follows:

**ORDERED** that the operations of the three Plaza Extra Supermarket stores shall continue as they have throughout the years prior to this commencement of this litigation, with Hamed, or his designated representative(s), and Yusuf, or his designated representative(s), jointly managing each store, without unilateral action by either party, or representative(s), affecting the management, employees, methods, procedures and operations. It is further

**ORDERED** that no funds will be disbursed from supermarket operating accounts without the mutual consent of Hamed and Yusuf (or designated representative(s)). It is further

**ORDERED** that all checks from all Plaza Extra Supermarket operating accounts will require two signatures, one of a designated representative of Hamed and the other of Yusuf or a designated representative of Yusuf. It is further

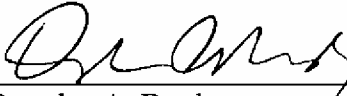
ORDER

Page 2 of 2

**ORDERED** that a copy of this Order shall be provided to the depository banks where all Plaza Extra Supermarket operating accounts are held. It is further

**ORDERED** that Plaintiff shall forthwith file a bond in the amount of Twenty-Five Thousand Dollars (\$25,000.00) with the Clerk of the Court, and shall provide notice of the posting to Defendants. (Plaintiff's interest in the "profits" accounts of the business now held at Banco Popular Securities shall serve as additional security to pay any costs and damages incurred by Defendants if found to have been wrongfully enjoined.)

Dated: *April 25, 2013*

  
\_\_\_\_\_  
Douglas A. Brady  
Judge of the Superior Court

ATTEST:

VENETIA H. VELASQUEZ  
Clerk of the Court

By:   
\_\_\_\_\_  
Chief Deputy Clerk

*4/25/13*

**FOR PUBLICATION**

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

MOHAMMED HAMED, by his authorized )  
agent WALEED HAMED, )  
Plaintiff, ) CIVIL NO. SX-12-CV-370  
v. ) ACTION FOR DAMAGES; PRELIMINARY  
FATHI YUSUF and UNITED CORPORATON, ) AND PERMANENT INJUNCTION;  
Defendants. ) DECLARATORY RELIEF  
JURY TRIAL DEMANDED

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**MEMORANDUM OPINION**

**THIS MATTER** is before the Court on Plaintiff’s Emergency Motion and Memorandum to Renew Application for TRO (“Renewed Motion”), filed January 9, 2013, renewing his September 18, 2012 Motion for a Temporary Restraining Order and/or a Preliminary Injunction. Hearing on the Renewed Motion was held on January 25, 2013 and continued on January 31, 2013. Having reviewed the Renewed Motion, evidence and argument of counsel presented at the hearing, along with the voluminous filings of the parties in support of and in opposition to the Renewed Motion, this matter has been converted to that of a Preliminary Injunction pursuant to Fed. R. Civ. P. 65(a). Upon review of the record, the Court herein makes findings of fact and conclusions of law, pursuant to Fed. R. Civ. P. 52(a)(2), and GRANTS Plaintiff’s Renewed Motion.

*JURISDICTION*

This Court has jurisdiction over this matter pursuant to 4 V.I. Code § 76(a), which grants the Superior Court “original jurisdiction in all civil actions regardless of the amount in controversy.” Likewise, under 5 V.I. Code § 1261, courts of record are empowered to “declare rights, status, and other legal relations whether or not further relief is or could be claimed . . .



The declaration may be either affirmative or negative in form and effect; and such declarations shall have the force and effect of a final judgment or decree.” A request for injunctive relief is addressed to the sound discretion of the Court. *Shire US Inc. v. Barr Laboratories, Inc.*, 329 F.3d 348, 352 (3d Cir. 2003). This Court may grant equitable (i.e. injunctive) relief as Plaintiff seeks in his Renewed Motion to enforce a partner’s rights regarding partnership profits and management and conduct of the partnership business pursuant to 26 V.I. Code §75(b).

#### *STANDARD*

The Court must consider four factors when reviewing a motion for preliminary injunction: (1) whether the movant has shown a reasonable probability of success on the merits; (2) whether the movant will be irreparably injured by the denial of the relief; (3) whether granting preliminary relief will result in even greater harm to the nonmoving party; and (4) whether granting the preliminary relief will be in the public interest. *Petrus v. Queen Charlotte Hotel Corp.*, 56 V.I. 548, 554 (2012), citing *Iles v. de Jongh*, 55 V.I. 1251, 1256 (3d Cir. 2011), (quoting *McTernan v. City of New York*, 577 F. 3d 521, 526 (3d Cir. 2009).

#### *STATEMENT OF ISSUES*

By his Verified Complaint, Plaintiff alleges that Defendants, acting personally and through authorized agents, committed several unilateral acts in contravention of the partnership relationship between Plaintiff and Defendant Fathi Yusuf (“Yusuf”) and established understandings and agreements among the parties. Plaintiff avers that those acts threaten the businesses and his interests in the businesses established by the partnership as a result of those agreements. Accordingly, Plaintiff demands injunctive and declaratory relief to determine the status of the parties’ relationships and the framework under which they must conduct their

business operations in light of those relationships. Upon review of the parties' case and controversy, submissions and presented evidence, the Court makes the following findings of fact.

### FINDINGS OF FACT

1. Plaintiff and Defendant Yusuf have a longstanding friendship and familial history which preceded their business relationship. *January 25, 2013 Evidentiary Hearing Transcript, at 196-198, hereinafter Tr. 196-198, Jan. 25, 2013.*
2. In 1979, Fathi Yusuf incorporated United Corporation ("United") in the U.S. Virgin Islands. *Defendants' Evidentiary Hearing Exhibit, no. 7, hereinafter Def. Ex. 7.*
3. United subsequently began construction on a shopping center located at Estate Sion Farm, St. Croix. Thereafter, Defendant Yusuf desired and made plans to build a supermarket within the shopping center. *Plaintiff's Evidentiary Hearing Exhibit, no. 1 (Transcript, February 2, 2000 Oral Deposition of Fathi Yusuf: Idheileh v. United Corp. and Yusuf, Case No. 156/1997, Territorial Court of the Virgin Islands, Div. St. Thomas and St. John), at 8, lines 1-14; hereinafter Pl. Ex. 1, p. 8:1-14.<sup>1</sup>*
4. Subsequently, Yusuf encountered financial difficulty in completing construction of the shopping center and opening the supermarket, was unable to procure sufficient bank loans, and told Plaintiff Mohammad Hamed ("Hamed") that he was unable to finance the completion of the project,. At Yusuf's request, Hamed provided funding to Yusuf's project from proceeds of Hamed's grocery business. *Pl. Ex. 1, p. 14:4-15:14.*
5. Hamed provided Yusuf with monies to facilitate completion of construction on the shopping center and to facilitate opening the Plaza Extra supermarket in Estate Sion Farm, St Croix. *Tr.197:5—199:13, Jan. 25, 2013.*

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<sup>1</sup> The Court has taken judicial notice of the certified copy of the deposition transcript in the noted Territorial Court action, submitted as Pl. Ex. 1. See discussion at *Tr. 6-9, Jan. 25, 2013.*

6. Upon Yusuf's request, Hamed sold his two grocery stores to work exclusively as a part of Plaza Extra. *Tr. 200:4-15, Jan. 25, 2013.*
7. Hamed contributed to Yusuf's project funds as they were available to him, including the entire proceeds from the sale of his two grocery stores, with the agreement that he and Yusuf would each be a 50% partner in the Plaza Extra Supermarket, "in the winning or loss." *Tr.200:16-23, Jan. 25, 2013.*
8. Hamed initially became a 25% partner of Yusuf, along with Yusuf's two nephews who each also had a 25% interest in the Plaza Extra Supermarket business. *Pl. Ex. 1, p.15:2-14.*
9. Yusuf sought additional bank financing to complete the construction of the building for the Plaza Extra business, which loan application was eventually denied, as a result of which Yusuf's two nephews requested to have their funds returned and to leave the partnership. *Pl. Ex. 1, p. 17:6-24.*
10. With the withdrawal of Yusuf's nephews, the two remaining partners of the Plaza Extra Supermarket business were Hamed and Yusuf. Notwithstanding the financing problems, Hamed determined to remain with the business, having contributed a total of \$400,000 in exchange for a 50% ownership interest in the business. *Pl. Ex. 1, p.17:24-19:10.*
11. Yusuf and Hamed were the only partners in Plaza Extra by the time in 1986 when the supermarket opened for business and Hamed has remained a partner since that time. *Pl. Ex. 28.*<sup>2</sup>

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<sup>2</sup> Subsequent to the evidentiary hearing but before the parties submitted their post-hearing briefs, Plaintiff on February 19, 2013 filed his Second Request to Take Judicial Notice and Request to Supplement the Hearing Record, presenting proposed Plaintiff's Exhibits 28, 29 and 30. By separate Order of this date, Plaintiff's Request was granted. Exhibit 28 is comprised of selected Defendants' Responses to Plaintiff's Second Set of Interrogatories to Defendants in that matter known as *Idheileh v. United Corp. and Yusuf, Case No. 156/1997, Territorial Court of the Virgin Islands, Div. St. Thomas and St. John*

12. As a partner in the Plaza Extra Supermarket business, Hamed was entitled to fifty (50%) percent of the profit and liable for fifty (50%) of the “payable” as well as loss of his contribution to the initial start-up funds. *Tr. 44:12-21; 200:16-23; 206:23-25, Jan. 25, 2013; Pl. Ex. 1, p 18:16-23; p.23:18-25.*
13. Yusuf and Hamed have both acknowledged their business relationship as a partnership of an indefinite term. *Pl. Ex. 1, p.18:18-23* (“I’m obligated to be your partner as long as you want me to be your partner until we lose \$800,000.”); *Tr. 210:4-8, Jan. 25, 2013* (Q: “How long is your partnership with Mr. Yusuf supposed to last? When does it end?” A: “Forever. We start with Mr. Yusuf with the supermarket and we make money. He make money and I make money, we stay together forever.”)
14. Yusuf testified in the *Idheileh* case that it was general public knowledge that Yusuf was a business partner with Hamed even before the Plaza Extra supermarket opened. *Pl. Ex.1, p. 20:10-12.*
15. Yusuf has admitted in this case that he and Hamed “entered into an oral joint venture agreement” in 1986 by which Hamed provided a “loan” of \$225,000 and a cash payment of \$175,000 in exchange for which “Hamed [was] to receive fifty percent (50%) of the net profits of the operations of the Plaza Extra supermarkets” in addition to the “loan” repayment. Yusuf states that the parties’ agreement provided for “a 50/50 split of the profits of the Plaza Extra Supermarket stores.” *Pl. Ex. 2, p.3,4.* Indeed, Yusuf confirms that “[t]here is no disagreement that Mr. Hamed is entitled to fifty percent (50%) of the profits of the operations of Plaza Extra Store....The issue here again is not whether Plaintiff Hamed is entitled to 50% of the profits. He is.” *Pl. Ex. 3, p.11.*

16. In 1992-1993, a second Plaza Extra supermarket was opened on the island of St. Thomas, USVI, initially with a third “partner,” Ahmad Idheileh, who later withdrew leaving a “50/50” ownership interest in the St. Thomas Plaza Extra between Yusuf and Hamed. *Tr.27:1-28:14, Jan. 25, 2013.*
17. At present, there are three Plaza Extra Supermarkets which employ approximately six hundred people on St. Croix and St. Thomas. *Tr. 238:4-6, Jan 25, 2013.*
18. In the *Idheileh* litigation, Yusuf provided an affidavit wherein he stated that “[m]y brother in law, Mohamed Hamed, and I have been full partners in the Plaza Extra Supermarket since 1984 while we were obtaining financing and constructing the store, which finally opened in 1986.” *Pl. Ex. 1, Affidavit of Fathi Yusuf, Deposition Ex. 6*<sup>3</sup>.
19. Hamed and Yusuf have jointly managed the stores by having one member of the Hamed family and one member of the Yusuf family co-manage each of the three Plaza Extra Supermarkets. Originally, Hamed and Yusuf personally managed the first Plaza Extra store, with Hamed in charge of receiving, the warehouse and produce, and Yusuf taking care of the office. *Tr. 26:11-19; 206:20-22, Jan 25, 2013.* Yusuf’s management and control of the “office” was such that Hamed was completely removed from the financial aspects of the business, concerning which Hamed testified “I’m not sign nothing....Fathi is the one, he sign. Mr. Yusuf the one he sign the loan, the first one and the second one.” *Tr. 207:16-21, Jan. 25, 2013.*
20. During recent years, in every store there is, at least, one Yusuf and one Hamed who co-manage all aspects of the operations af each store. Mafeed Hamed and Yusuf Yusuf have

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<sup>3</sup> At the conclusion of the second day of the hearing, counsel agreed to supplement the record to include exhibits to Plaintiff’s Exhibit 1, the February 2, 2000 deposition of Fathi Yusuf. *Tr.129-130, Jan. 31, 2013.* Deposition Exhibits 6 and 7 were provided with Plaintiff’s Notice of Filing Supplemental Deposition Exhibits, filed February 19, 2013.

- managed the Estate Sion Farm store along with Waleed Hamed. Waheed Hamed, Fathi Yusuf and Nejah Yusuf operate the St. Thomas store, and Hisham Hamed and Mahar Yusuf manage the Plaza West store on St. Croix. *Tr. 31:6-35:11; 147:11-20; 160:10-22, Jan. 25, 2013, and Tr. 33:6-17, Jan. 31, 2013.*
21. In operating the “office,” Yusuf did not clearly delineate the separation between United “who owns United Shopping Plaza” and Plaza Extra, despite the fact that from the beginning Yusuf intended to and did “hold the supermarket for my personal use.” *Pl. Ex. 1, p. 8:1-7.* Despite the facts that the supermarket used the trade name “Plaza Extra” registered to United (*Pl. Ex. 4, ¶14*) and that the supermarket bank accounts are in the name of United (*Pl. Ex’s. 15, 16*), “in talking about Plaza Extra...when it says United Corporation...[i]t’s really meant me [Yusuf] and Mr. Mohammed Hamed.” *Pl. Ex. 1, p. 69:13-21.*
  22. Yusuf admitted in the *Idheileh* action that Plaza Extra was a distinct entity from United, although the “partners operated Plaza Extra under the corporate name of United Corp.” *Pl. Ex. 28, Response to Interrogatory 6.*
  23. The distinction between United and the Plaza Extra Supermarkets is also apparent from the fact that United, as owner of United Shopping Center, has sent rent notices to Hamed on behalf of the Sion Farm Plaza Extra Supermarket, and the supermarket has paid to United the rents charged. *Pl. Ex’s. 7, 8, 9; Tr. 48:24-51:9; 212:18-214:15, Jan. 25, 2013.*
  24. In 2003, United was indicted for tax evasion in federal court, along with Yusuf and several other members of the Hamed and Yusuf families in that matter in the District Court of the Virgin Islands, Division of St. Croix, known as *United States and Government of the Virgin Islands v. Fathi Yusuf, et al., Crim. No. 2005-15* (“the Criminal

- Action”) . However, Plaintiff Mohammed Hamed was not indicted. *Tr. 222:11-223:6; 134:15-23, Jan. 25, 2013.*
25. In connection with the Criminal Action, the federal government appointed a receiver in 2003 to oversee the Plaza Extra Supermarkets, who deposits all profits into investment accounts at Banco Popular Securities and, originally, at Merrill-Lynch. Those “profits” accounts remain at Banco Popular Securities to the present. *Tr. 41:15-42:18; 137:13-138:19, Jan. 25, 2013.*
26. In 2011, United pled guilty to tax evasion in the Criminal Action. Charges were dismissed against the other Defendants, by Plea Agreement filed February 26, 2011. *Def. Ex. 2, p.2.*
27. The Criminal Action against United remains pending, as the terms of the Plea Agreement require “complete and accurate” tax filings. United has filed no tax returns since 2002, although estimated taxes have been paid from the grocery store accounts, and mandatory accounting procedures for Plaza Extra have been adopted. *Tr. 241:23-245:12, Jan 25, 2013; Tr. 90:4-16, Jan 31, 2013; Def. Ex. 2.*
28. At some point between late 2009 and 2011, at Yusuf’s suggestion, the Hamed and Yusuf families agreed that all checks drawn on Plaza Extra Supermarket accounts had to be signed by one member of the Hamed family and one member of the Yusuf family. *Tr. 100:11-16, 228:2-11, Jan. 25, 2013.*
29. In late 2011, United had its newly retained accountant review a hard drive containing voluminous financial records related to the Criminal Action, following which Yusuf accused members of the Hamed family of stealing money from the supermarket business

- and threatening to close the store and to terminate the United Shopping Plaza lease. *Tr. 52:5-10, Jan. 31, 2013; Tr. 51:18-52:8, Jan. 25, 2013.*
30. Thereafter, discussions commenced initiated by Yusuf's counsel regarding the "Dissolution of Partnership." *Pl. Ex. 10, 11, 12.* On March 13, 2012, through counsel, Yusuf sent a Proposed Partnership Dissolution Agreement to Hamed, which described the history and context of the parties' relationship, including the formation of an oral partnership agreement to operate the supermarkets, by which they shared profits and losses. *Pl. Ex. 12.*<sup>4</sup> Settlement discussions followed those communications but have not to date resulted in an agreement. *Tr. 58:15-20, Jan. 25, 2013.*
31. Although Plaintiff retired from the day-to-day operation of the supermarket business in about 1996, Waleed Hamed has acted on his behalf pursuant to two powers of attorney from Plaintiff. *Tr. 45:24-48:2; 172:6-173:8; 202:18-25, Jan. 25, 2013; Pl. Ex. 1, Affidavit of Fathi Yusuf, Depos. Exh .6, ¶4.* Both Plaintiff and Yusuf have designated their respective sons to represent their interests in the operation and management of the three Plaza Extra stores. *Tr. 31:6-35:11, Jan. 25, 2013.*
32. It had been the custom and practice of the Yusuf and Hamed families to withdraw funds from the supermarket accounts for their own purposes and use (see *Def. Ex. 1; Pl. Ex. 27*), however such withdrawals were always made with the knowledge and consent of the other partner. *Tr. 138:20-139:8, Jan. 25, 2013; Tr.121:3-123:9, Jan. 31, 2013.*

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<sup>4</sup> These exhibits were admitted at hearing over Defendants' objection premised on Fed. R. Evid. 408. The evidence was not offered to prove the validity or amount of Plaintiff's claims, but rather to put into context the history of the parties' relationship which may be accepted as evidence for another purpose under R. 408(b). Further, the exhibits offer nothing beyond evidence presented wherein Yusuf has similarly characterized the history of his relationship with Plaintiff.



33. Waleed Hamed testified that Fathi Yusuf utilized Plaza Extra account funds to purchase and subsequently sell property in Estate Dorothea, St. Thomas, to which it was agreed that Hamed was entitled to 50% of net proceeds. Although Yusuf's handwritten accounting of sale proceeds confirms that Hamed is due \$802,966, representing 50% of net proceeds (*Pl. Ex. 18*), that payment has never been made to Hamed and the disposition of those sale proceeds is not known to Hamed. *Tr.88:8-90:17, Jan. 25, 2013.*
34. Each of the three Plaza Extra Supermarkets maintains and accounts for its operations separately, with separate bank accounts. In total, the stores maintain a total of approximately eleven accounts. *Tr. 35:12-20; 36:22-38:25; 229:10-13, Jan. 25, 2013.*
35. On or about August 15, 2012, Yusuf wrote a check signed by himself and his son Mahar Yusuf and made payment to United in the amount of \$2,784,706.25 from a segregated Plaza Extra Supermarket operating account, despite written objection of Waleed Hamed on behalf of Plaintiff and the Hamed family, who claimed that, among other objections, the unilateral withdrawal violated the terms of the District Court's restraining order in the Criminal Action. *Tr. 246:1-250:14, Jan. 25, 2013; Pl.Group Ex. 13.*
36. On the first hearing day, Mahar Yusuf, President of United Corporation testified under oath that he used the \$2,784,706.25 withdrawn from the Plaza Extra operating account to buy three properties on St. Croix in the name of United. On the second hearing day, Mahar Yusuf contradicted his prior testimony and admitted that those withdrawn funds had actually been used to invest in businesses not owned by United, including a mattress business, but that none of the funds were used to purchase properties overseas. *Tr. 250:2-251:15, Jan. 25, 2013; Tr. 118:12-120:2, Jan. 31, 2013.*

37. A restraining order was entered by the District Court in the Criminal Action which remains in place and restricts withdrawal of funds representing profits from the supermarkets that have been set aside in the Banco Popular Securites brokerage account pending the conclusion of the Criminal Action or further order of that Court. *Tr. 41:15-42:18; 119:4-12, Jan. 25, 2013.* The Criminal Action will remain pending until past tax returns are filed. *Tr. 134:15-136:22; 242:16-245:5, Jan. 25, 2013.* As of January 18, 2013, the brokerage account had a balance of \$43,914,260.04. *Def. Ex. 9.* This Court cannot enforce the restraining order or otherwise control any aspect of the Criminal Action or its disposition.
38. Funds from supermarket accounts have also been utilized unilaterally by Yusuf, without agreement of Hamed, to pay legal fees of defendants relative to this action and the Criminal Action, in excess of \$145,000 to the dates of the evidentiary hearing. *Tr. 76:5-82:9, Jan. 25, 2013; Pl. Ex. 15, 16.*<sup>5</sup>
39. Since at least late 2012, Yusuf has threatened to fire Hamed family managers and to close the supermarkets. *Tr. 149:20-150:22; 158:18-159:12; 253:25-254:19, Jan. 25, 2013.*
40. On January 8, 2013, Yusuf confronted and unilaterally terminated 15 year accounting employee Wadda Charriez for perceived irregularities relative to her timekeeping records of her hours of employment, threatening to report her stealing if she challenged the firing or sought unemployment benefits at Department of Labor, *Tr. 181:20-185:16, Jan. 25, 2013.* Charriez had a “very critical job” with Plaza Extra (*Tr 179:17-19, Jan. 25, 2013*),

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<sup>5</sup> Plaintiff has submitted Exhibit 30 with his February 19, 2013 Second Request to Take Judicial Notice and Request to Supplement the Hearing Record, granted by separate Order. Defendants’ opposition to Plaintiffs’ Motion did not address Exhibit 30, consisting of two checks in the total sum of more than \$220,000 in payment to defense counsel in this action, dated January 21, 2013 and February 13, 2013, drawn on a supermarket account by Defendants without Plaintiffs’ consent. Although the evidence is cumulative and not essential to the Court’s decision herein, it reflects an ongoing practice of unilateral withdrawals and the possibility of continuing unilateral action in the future.

and the independent accountant retained by Yusuf agreed that she was “a very good worker” and that her work was “excellent.” *Tr. 94:2-6, Jan. 31, 2013*. Because the Hamed co-managers had not been consulted concerning the termination or shown any proof of the employee’s improper activity, Mafeed Hamed instructed Charriez to return to work the following day. *Tr. 179:4-24; 185:17-186:8, Jan. 25, 2013*. On Charriez’ January 9, 2013 return to work, Yusuf started screaming at her, and told her to leave or he would call the police. *Tr. 186:9-187:1, Jan. 25, 2013*. Yusuf did call police and demanded on their arrival that Charriez, and Mufeed Hamed and Waleed Hamed be removed from the store, and threatened to close the store. *Tr. 93:5-94:15; 164:19-165:18; 187:5-188:8, Jan. 25, 2013*. The incident that occurred on January 9, 2013, the same day that Plaintiff’s Renewed Motion was filed, coupled with other evidence presented demonstrates that there has been a breakdown in the co-management structure of the Plaza Extra Supermarkets. *Tr. 141:25-142:18;143:17-146:19; 166:21-167:8, Jan 25, 2013*.

41. “By the time Plaza Extra opened in 1986, Mohamed Hamed and Defendant Yusuf were the only partners. These partners operated Plaza Extra under the corporate name of United Corp.” *Pl. Ex. 28, Response to Interrogatory 6*. Defendants now claim that Yusuf is the owner of only 7.5% of the shares of United (*Pl. Ex. 2, p. 11*), which could adversely affect Plaintiff’s ability to enforce his claims as to the partnership “operated [as] Plaza Extra under the corporate name of United Corp.”

#### *DISCUSSION*

Although this matter is before the Court on Plaintiff’s Renewed Motion that seeks a temporary restraining order, the parties agree that following the full evidentiary hearing

conducted, the relief Plaintiff seeks is a preliminary injunction pursuant to Fed. R. Civ. P. 65(a). The Court cannot issue a preliminary injunction unless on the basis of the evidence on the record, Plaintiff prevails as to each of the four factors recently delineated by the Virgin Islands Supreme Court in *Petrus*, namely: (1) the movant has shown a reasonable probability of success on the merits; (2) the movant will be irreparably injured by the denial of the relief; (3) granting preliminary relief will not result in even greater harm to the nonmoving party; and (4) granting the preliminary relief will be in the public interest. 56 V.I. at 554. Only if the movant produces evidence sufficient to convince the Court that all four factors favor preliminary relief should the injunction issue. *Opticians Association of America v. Independent Opticians of America*, 920 F.2d 187, 192 (3d Cir. 1990).

The evidentiary record before the Court includes the testimony of witnesses and documentary exhibits. Those exhibits include prior filings of the parties in this case by which the parties are bound by virtue of the doctrine of judicial admissions. *Berckley Inv. Group, Ltd. V. Colkitt*, 455 F.3d 195, 211 n. 20 (3d Cir. 2006); *Parilla v. IAP Worldwide Serv., VI, Inc*, 368 F.3d 269, 275 (3d Cir 2004). Those exhibits also include filings in prior unrelated cases, which are admissible as admissions of such party against its interest, pursuant to Fed. R. Evid. 801(d).<sup>6</sup>

The Court will consider the four factors required for the issuance of a preliminary injunction *in seriatim*, and makes the following conclusions of law.

## CONCLUSIONS OF LAW

### Probability of Movant's Success on the Merits.

1. Plaintiff seeks to establish that his business relationship with Yusef of more than 25 years constitutes a Virgin Islands partnership, notwithstanding the lack of any written partnership

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<sup>6</sup> On April 7, 2010, Act No. 7161 became law, section 15 of which established the Federal Rules of Evidence as applicable in this Court. See, *Chinnery v. People*, 55 V.I. 508, 525 (2011).

agreement and the failure of the business to file Virgin Islands partnership tax returns or to provide K-1 forms to report partners' distributive share of income, among other factors urged by Defendants. Whether the relationship will be characterized as a partnership is governed by the Uniform Partnership Act ("UPA"), adopted in 1998 as Title 26, Chapter 1 of the Virgin Islands Code.

2. Under the UPA, "the association of two or more persons to carry on as co-owners a business for profit forms a partnership, whether or not the persons intend to form a partnership." 26 V.I. Code §22(a). In the mid-1980's when the Hamed – Yusuf business relationship began, a Virgin Islands partnership was defined as "an association of two or more persons to carry on as co-owners a business for profit." *Former* 26 V.I. Code §21(a).

3. Under the UPA, "A person who receives a share of the profits of a business is presumed to be a partner in the business..." 26 V.I. Code §22(c)(3). Under the former Code provisions, "the receipt by a person of a share of the profits of a business is prima facie evidence that he is a partner in the business..." *Former* 26 V.I. Code §22(4).<sup>7</sup>

4. Evidence of "a fixed profit-sharing arrangement" and "evidence of business operation" are factors to be considered in the determination of whether the parties in a business relationship had formed a partnership. *Addie v. Kjaer*, Civ. No. 2004-135, 2011 WL 797402, at 3\* (D.V.I. Mar. 1, 2011).

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<sup>7</sup> The Court applies the test in effect at the time the business relationship between the parties was formed (see *Harrison v. Bornn, Bornn & Handy*, 200 F.R.D. 509, 514 (D.V.I. 2001)), and holds that a partnership is found to exist by the admitted sharing of profits of the business unless Defendants' evidence is sufficient to rebut that *prima facie* evidence. However, the distinction between the language in the former statute and the current is of no legal significance. Commentary of the National Conference of Commissioners of Uniform State Laws on the publication of the 1997 of the UPA notes that "no substantive change is intended. The sharing of profits is recast as a rebuttable presumption of a partnership, a more contemporary construction, rather than as prima facie evidence thereof." Formation of Partnership, Unif. Partnership Act §202, cmt. 3 (1997).

5. “A partnership agreement is defined as the agreement, whether written, *oral*, or implied, among the partners concerning the partnership, including amendments to the partnership agreement.” 26 V.I. Code §2(7), *emphasis added*. A “partnership at will” exists where the partners have not agreed to remain partners until the expiration of a definite term or the completion of a particular undertaking.” 26 V.I. Code §2(8).

6. Defendants protest that there is no written partnership agreement to memorialize the understanding between Yusuf and Hamed. However, as noted, the UPA does not require that such agreements be memorialized by a writing, and further sanctions “at will” agreements that have no definite term or duration, and are subject to dissolution by either partner at any time. As such, partnerships are not within the statute of frauds and need not be in writing. *Smith v. Robinson*, 44 V.I. 56, 61 (Terr. Ct. 2001).

7. Even if the statute of frauds were applicable to the formation of a partnership, the doctrine of part performance operates to prevent an inequity where a person is induced or permitted to invest time, money and labor in reliance upon an oral agreement, which agreement would otherwise be voided by the application of the statute of frauds. Accordingly, if a party can show that part of an oral agreement was performed, the oral contract is taken out of the statute of frauds and becomes binding. *Sylvester v. Frydenhoj Estates Corp.*, 47 V.I. 720, 724 (D.V.I. 2006), citations omitted.

8. Defendants suggest that Hamed and Yusuf entered into a joint venture rather than a partnership. A joint venture has been defined as a partnership for a single transaction, recognized as a subspecies of partnership, and is analyzed under Virgin Islands law in the same manner as is a partnership. *Boudreax v. Sandstone Group*, 36 V.I. 86, 97 (Terr. Ct. 1997), citing *Fountain Valley Corp. v. Wells*, 19 V.I. 607 (D.V.I.1983).

9. Yusuf and Hamed, acting under the name “United Corporation,” entered into their relationship with Ahmad Idheileh “to open and operate a supermarket on St. Thomas” by means of a Joint Venture Agreement. *Pl. Ex. 1, Dep. Ex .7*. This “business relationship created by agreement of the parties for the purpose of profit” was formed “for a single undertaking or transaction,” and was to “terminate at the conclusion of their stated purpose, by agreement, or at the will of the parties.” *C&C Manhattan v. Gov’t of the V.I.*, 46 V.I. 377, 384 (D.V.I. 2004), citations omitted. To the contrary, the self-described “partnership” of Hamed and Yusuf, formed for profit, with no set duration, involved the development of a business enterprise, including the three supermarkets and other business projects spanning two and a half decades.

10. The Court concludes that Defendants’ recent claims that the parties have been engaged in a joint venture and not a partnership are not credible as they contradict the record before the Court and the long history prior to this litigation of admissions by Yusuf, who did not testify at the hearing, to the effect that he and Hamed are “50/50” partners. Those pre-litigation admissions of the existence of a partnership have been consistent over many years, including through his notice to Hamed of his dissolution of their partnership in the months prior to this litigation.

11. Defendants argue that Defendant United has owned and operated the businesses known as Plaza Extra, and that Hamed’s claims must fail because he concedes that he has no ownership interest in United. To the contrary, the record clearly reflects that Yusuf’s use of the Plaza Extra trade name registered to United, the use bank accounts in United’s name to handle the finances of the three supermarkets and other participation of the corporate entity in the operation of the stores was all set up in the context of Yusef’s partnership with Hamed, as Yusuf has consistently admitted. The existence of a partnership is not negated by the use of the corporate form to

conduct various operations of the partnership. *McDonald v. McDonald*, 192 N.W. 2d 903, 908 (Wis. 1972). The fact that the partner conducting the business utilizes a corporate form does not change the essential nature of the relationship of the parties. *Granik v. Perry*, 418 F.2d 832, 836 (5th Cir. 1969).

12. Where, as here, the parties agree that one partner is designated to take charge of “the office” and assumes the responsibility for obtaining or filing the relevant documents as a part of his share of the partnership responsibilities, his failure to file that documentation in the name of the partnership does not mean that no partnership exists. Partners may apportion their duties with respect to the management and control of the partnership such that one partner is given a greater share in the management than others. Thus, the fact that one partner may be given a greater day-to-day role in the management and control of a business than another partner does not defeat the existence of the partnership itself. *Al-Yassin v. Al-Yassin*, 2004 WL 625757, \*7 (Cal. Ct. App. 2004). Where one party actively pursues the partnership business, such business must be conducted in keeping with “fundamental characteristics of trust, fairness, honesty, and good faith that define the essence of the partners' relationship.” *Alpart v. Gen. Land Partners Inc.*, 574 F.Supp. 2d 491, 500 (E.D. Pa. 2008).

13. It is undisputed that Plaintiff and Yusuf agreed from the time prior to the opening of the first store to share profits from the business on a 50/50 basis and that they did so share profits. These elements of their business relationship present a *prima facie* case for the existence of a partnership under the former 26 V.I. Code §22(4), applicable at the time of the formation of the



partnership. Defendants have not presented evidence sufficient to overcome Plaintiff's *prima facie* proof of the partnership of the parties.<sup>8</sup>

14. Various other indicia of the existence of the formation of a partnership are present in the record, including the fact that the parties intended to and did associate with each other carry on as co-owners a business for profit (26 V.I. Code §22(a)). The parties agreed to share the net profits of the business "50/50" (26 V.I. Code §22(c)(3)). Each of the parties contributed money and services to commence the business operation. The parties agreed that their relationship would continue without any definite term. The parties jointly shared the risks of the business and agreed to equally share any losses of the business. By dividing the initial management of the business between the warehouse, receiving and produce (Hamed) and the office (Yusuf), the parties jointly managed the business. As years passed and additional stores opened, joint management continued with the sons of each of the parties co-managing all aspects of each of the stores.

15. On the basis of the record before the Court and the foregoing, Plaintiff has demonstrated a reasonable probability that he will succeed on the merits of his claim as to the existence of a partnership between himself and Yusef with regard to the three Plaza Extra stores.

**Irreparable injury to Movant by denial of relief.**

16. As the Court finds that there is a reasonable probability of Plaintiff's success in proving the existence of a partnership, he is entitled to the benefits of his status as a partner, including "an equal share of the partnership profits" and "equal rights in the management and conduct of the partnership business." 26 V.I. Code §71(b) and (f).

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<sup>8</sup> The analysis and the result are the same if the evidence is determined to give rise to the presumption of the existence of a partnership of the parties under the current 26 V.I. Code §22(c)(3), the Virgin Islands UPA. Defendants' proofs are insufficient to rebut the presumption of the existence of a partnership.

17. Plaintiff maintains this action seeking equitable relief, and this Court may grant such equitable (i.e. injunctive) relief to enforce Plaintiff/partner's rights to an equal share of the partnership profits and equal rights in the management and conduct of the partnership, pursuant to 26 V.I. Code §75(b)(1) and (2)(i).

18. Yusuf forcefully contends that this case is solely about money damages, and any damage to Plaintiff is economic damage only, which can be remedied by an award of monetary damages. “[A] preliminary injunction should not be granted if the injury suffered by the moving party can be recouped in monetary damages.” *IDT Telecom, Inc. v CVT Prepaid Solutions, Inc.*, 250 Fed. Appx. 476, 479 (3d Cir. 2007), citations omitted. Although the alleged diversion of more than \$3,000,000 constitutes a primary focus of Plaintiff's claims for relief, he also seeks to remedy what he alleges to be usurpation by Yusuf of his “equal rights in the management and conduct of the partnership.”

19. To establish irreparable harm, Plaintiff must show that his legal remedies (i.e. the potential award of a money judgment) are inadequate. If the plaintiff suffers a substantial injury that cannot be accurately measurable or adequately compensable by an award of money damages, irreparable harm may be found. *Ross-Simonsof Warwick, Inc. v. Baccarat*, 102 F.3d 12, 18-19 (1<sup>st</sup> Cir. 1996). An award of monetary damages may not provide an adequate remedy where the amount of monetary loss alleged is not capable of ascertainment. *Instant Air Freight Co. v. C.F. Air Freight, Inc.*, 882 F. 2d 797, 801 (3d Cir. 1989).<sup>9</sup> Further, injunctive relief may be available where the movant can “demonstrate that there exists some cognizable danger of

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<sup>9</sup> With regard to the August 2012 diversion of more than \$2.7 million by Mahar Yusuf, president of United, to accounts inaccessible to Plaintiff, a real concern exists that continuing diversions will not be traceable as the Plaza Extra store have had no system of internal controls in existence and, to date accounting for the businesses is not completed beyond June 2012. (Testimony of accountant John Gaffney, *Tr. 71:20-72:3; 75:11-21, Jan. 31, 2013.*) As such, the amount of any monetary loss suffered by Plaintiff may not be capable of ascertainment.

recurrent violation of its legal rights.” *Anderson v. Davila*, 125 F. 3d 148, 164 (3d Cir. 1997), quoting *United States v. W.T. Grant Co.*, 345 U.S. 629, 633 (1953), internal quotations omitted.

20. Plaintiff alleges recurring violations of his legal rights to equal participation in the management and conduct of the partnership business. In addition, Plaintiff claims that the diversion of partnership revenues to accounts inaccessible to Plaintiff without accounting or explanation constitutes a showing of irreparable harm because of the threat that similar diversions will occur in the future and diverted funds may be removed from the jurisdiction of the Court rendering a monetary judgment ineffectual. See *Health and Body Store, LLC v. JustBrand Limited*, 2012 WL 4006041, at \*4-5 (E.D. Pa. Sept. 11, 2012).

21. The record reflects that Yusuf has arbitrarily addressed employee issues, including termination of a long-term high level employee and has threatened to close the stores. (See, Findings of Fact, ¶40). Evidence exists in the record to the effect that co-managers in Plaza Extra East no longer speak with each other (*Tr. 166:21-167:8, Jan. 25, 2013*), that employees are fearful for their jobs (*Tr. 158:18-159:12, Jan. 25, 2013*), and that the tensions between Yusuf and the Hamed family have created a “hard situation” for employees (*Tr. 187:5-188:8*). Plaintiff alleges that such circumstances that flow directly from his deprivation of equal participation in management and control of the supermarkets reflect his loss of control of the reputation and goodwill of the business which constitute irreparable injury, not compensable by an award of money damages. *S & R Corp. v. Jiffy Lube Intern., Inc.*, 968 F.2d 371, 378 (3d Cir. 1992).

22. Defendant's actions have deprived Plaintiff of his rights to equal participation in the management and conduct of the business. As such, the Court finds that Plaintiff has met his burden of establishing irreparable injury if injunctive relief is not granted.<sup>10</sup>

**The balance of harms favors the Movant**

23. One of the goals of the preliminary injunction analysis is to maintain the status quo, defined as "the last, peaceable, noncontested status of the parties." *Opticians Association of America, supra*, 920 F.2d at 197, citations omitted. For more than 25 years, the parties have been able to equally manage and control their very successful business enterprise. For reasons delineated above, that Plaintiff's rights to equal management and control have been infringed upon by the actions of Defendant. In considering the relief sought by Plaintiff, the Court must assure that granting injunctive relief will not harm Defendants more than denying relief would harm Plaintiff.

24. The remedy sought and the relief to be imposed does not deprive Yusuf of his statutory partnership rights to equal management and control of the business. Rather, it simply assures that Hamed is not deprived of the same legal rights to which he is entitled. Neither party has the right to exclude the other from any part of the business. *Health and Body Store, LLC, supra*, 2012 WL 4006041, at \*5. The relief sought and granted to provide equal access to all aspects of the business will not harm Defendants more than the denial of such relief harms Plaintiff.

25. Neither party has sought and the Court has not considered the prospect of appointing a receiver or bringing in any other outsider to insure that the joint management and control of the

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<sup>10</sup> Most troubling is the substance of Plaintiff's Motion to Supplement the Record, dated and filed April 23, 2013, after the Opinion was largely completed. Therein, Waleed Hamed states that the Hamed family has been denied access to the supermarket accounts and signature authorization to Hamed family members has been revoked by the depository banks based upon instructions from Yusuf. Deprivation of access to bank accounts and signature authorization on bank accounts clearly constitute denial of partnership management rights not compensable by an award of monetary damages.

partnership is maintained. Rather, notwithstanding the animosity that exists between the parties, they are left to work out issues of equal management and control themselves as they have done successfully over the years.

**Public interest favors injunctive relief.**

26. The public interest is best served by the continued success of Plaza Extra Supermarkets or, in the alternative, by the orderly dissolution or winding down of the business relationship of the parties pursuant to their own agreement. Enforcement of statutory rights of the partners is best suited to accomplish that end.

27. The public interest is served by the continued employment of 600 Virgin Islanders and the continuity of this Virgin Island institution operated according to law and their agreement. "It is not only in the interest of [Plaintiff] that this court grant a preliminary injunction against [Defendants], but it is in the public interest to ensure that the management of [Plaza Extra Supermarkets] be properly maintained and the premises remain available for public use—they being an integral part of the St. Croix economy." *Kings Wharf Island Enterprises, Inc. v. Rehlaender*, 34 V.I. 23, 29 (Terr. Ct. 1996).

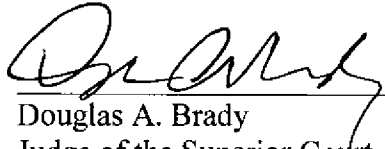
**CONCLUSION**

Injunctive relief is appropriate to preserve the status quo of the parties, their partnership and business operations, by ensuring that the parties' statutory rights are preserved and enforced. The Court's Order entering injunctive relief must state its terms specifically and describe in reasonable detail the act or acts restrained. *Caribbean Healthways, Inc. v. James*, 55 V.I. 691, 700 (2011), quoting Fed. R. Civ. P. 65(d)(1)(B) and (C).

Consistent with this Court's Findings of Fact and Conclusions of Law a separate Order of even date will accompany this Memorandum Opinion, directing the parties as follows:

1. The operations of the three Plaza Extra Supermarket stores shall continue as they have throughout the years prior to this commencement of this litigation, with Hamed, or his designated representative(s), and Yusuf, or his designated representative(s), jointly managing each store, without unilateral action by either party, or representative(s), affecting the management, employees, methods, procedures and operations.
2. No funds will be disbursed from supermarket operating accounts without the mutual consent of Hamed and Yusuf (or designated representative(s)).
3. All checks from all Plaza Extra Supermarket operating accounts will require two signatures, one of a designated representative of Hamed and the other of Yusuf or a designated representative of Yusuf.
4. A copy of the Order accompanying this Opinion will be provided to the depository banks where all Plaza Extra Supermarket operating accounts are held.
5. Plaintiff shall forthwith file a bond in the amount of Twenty-Five Thousand Dollars (\$25,000.00) with the Clerk of the Court, and shall provide notice of the posting to Defendants. (Plaintiff's interest in the "profits" accounts of the business now held at Banco Popular Securities shall serve as additional security to pay any costs and damages incurred by Defendants if found to have been wrongfully enjoined.)

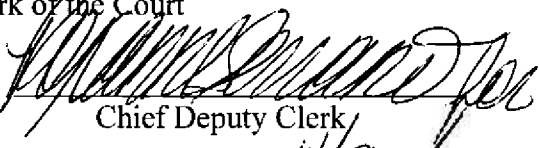
Dated: April 25, 2013

  
\_\_\_\_\_  
Douglas A. Brady  
Judge of the Superior Court

ATTEST:

VENETIA H. VELASQUEZ  
Clerk of the Court

By:

  
\_\_\_\_\_  
Chief Deputy Clerk  
4/25/13

06/10/13 Superior Court of the Virgin Islands  
Civil Division  
CIVIL ACTION DOCKET

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MOHAMMAD HAMED BY HIS AUT CASE NO: SX-12-CV-0000370 DAMG  
VS. FILING DATE: 09/17/12  
JUDGE: Hon. Douglas A. Brady  
YUSUF, FATHI ET AL

PARTY TYPE	LITIGANT	PARTY NAME
ATTORNEY FOR DEFENDA		DEWOOD, NIZAR A.
ATTORNEY FOR PLAINTI	P001	HARTMANN, CARL ESQ.
ATTORNEY FOR ANY OTH	P001	HOLT, JOEL H
PLAINTIFF	P001	MOHAMMAD HAMED BY HIS AUTH. AGENT WALEED
DEFENDANT	D001	YUSUF, FATHI
ATTORNEY FOR DEFENDA	D002	DIRUZZO, III, JOSEPH A. ESQ.
DEFENDANT	D002	UNITED CORPORATION

DATE	FEE/AMOUNT
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06/05/13

NOTICE OF ENTRY OF ORDER COMPLETED BY MELISSA GUADALUPE  
05/31/2013  
JOEL H. HOLT, ESQ.  
JOSEPH A. DIRRUZZO, III., ESQ.  
NIZAR DEWOOD, ESQ.

05/31/13

ORDER DENYING DEFENDANT'S MOTION TO STAY PRELIMINARY INJUNCTION  
ORDER; ORDER GRANTING DEFENDANTS' MOTION TO CLARIFY SCOPE OF  
PRELIMINARY INJUNCTION AS TO UNITED'S FINANCIAL STATEMENTS AND  
UNRESTRICTED ACCESS TO UNITED'S FINANCIAL SYSTEMS; ORDERED THAT  
DEFENDANT UNITED CORPORATION SHALL PROVIDE REVISED FINANCIAL  
STATEMENTS FOR THE THREE PLAZA EXTRA SUPERMARKET STORES ONLY  
WITHIN 30 DAYS OF THE DATE OF THIS ORDER;.....

05/31/13

ORDER DENYTING BOND MODIFICATION

05/29/13

NOTICE AS TO MOTIONS RIPE FOR DISPOSITION FILED BY JOEL H. HOLT,  
ESQ.

05/24/13

NOTICE OF SUPPLEMENTATION OF RECORD RE MOTIONS FILED AFTER THE  
PRELIMINARY INJUNCTION WAS ENTERED  
SUBMITTED BY JOEL HOLT, ESQ.

05/20/13

OPPOSITION TO DEFENDANTS' MOTION TO CLARIFY SCOPE OF PRELIMINARY  
INJUNCTION AS TO UNITED'S FINANCIAL STATEMENTS & UNRESTRICTED ACCESS  
TO UNITED'S FINANCIAL SYSTEMS AND ORDER  
SUBMITTED BY JOEL HOLT, ESQ.

05/16/13

DEFENDANTS' MOTION TO CLARIFY SCOPE OF PRELIMINARY INJUNCTION AS TO  
UNITED'S FINANCIAL STATEMENTS & UNRESTRICTED ACCESS TO UNITED  
FINANCIAL SYSTEMS AND ORDER

□ Superior Court of the Virgin Islands

JA-028

6/10/2013

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	SUBMITTED BY NIZAR DEWOOD, ESQ.		
05/16/13	OPPOSITION TO MOTION TO RECONSIDER AND MODIFY PRELIMINARY INJUNCTION TO TERMINATE EMPLOYEES MUFEED HAMED, WALEED HAMED AND WADDA CHARRIEZ FILED BY ATTY. JOEL H. HOLT		
05/16/13	PLAINTIFF'S OPPOSITION TO DEFENDANTS' "EMERGENCY" MOTION TO RECONSIDER THE PRELIMINARY BOND FILED BY ATTY. JOEL H. HOLT		
05/16/13	OPPOSITION TO DEFENDANT'S EMERGENCY MOTION TO STAY PRELIMINARY INJUNCTION FILED BY ATTY. JOEL H. HOLT		
05/16/13	REPLY TO INTERVENOR'S REQUEST FOR A RULING AND STAY SUBMITTED BY ATTY. JOEL H. HOLT		
05/16/13	APPEAL INFORMATION SHEET RECEIVED PREPARED BY ROXANNE SERRANO, COURT CLERK SUPERVISOR		
05/16/13	CERTIFIED DOCKET FORWARDED TO THE SUPREME COURT OF THE VIRGIN ISLANDS		
05/16/13	NOTICE OF APPEAL COVER LETTER, INFORMATION SHEET, MEMORANDUM OF OPINION, ORDERS AND CERTIFIED DOCKET SHEET FORWARDED TOT HE SUPREME COURT OF THE VIRGIN ISLANDS PREPARED BY ROXANNE SERRANO, COURT CLERK SUPERVISOR		
05/13/13	DOCKETING ORDER RECEIVED SUBMITTED BY SHANTEL ARRINDELL, DEPUTY CLERK I		
05/13/13	DOCKETING LETTER RECEIVED SUBMITTED BY SHANTEL ARRINDELL, DEPUTY CLERK I		
05/13/13	NOTICE OF APPEAL RECEIVED SUBMITTED BY JOSEPH A. DIRUZZO, III, ESQ.		
05/09/13	MOTION FOR EXPEDITED RESOLUTION OF PRIOR MOTION TO INTERVENE AND A STAY OF THE COURT'S ORDER DATED APRIL 25, 2013 SUBMITTED BY K. GLENDA CAMERON, ESQ.		
05/09/13	FILE FORWARDED TO JUDGE BRADY'S CHAMBER		
05/09/13	DEFENDANT'S EMERGENCY MOTION FOR RECONSIDERATION OF PRELIMINARY INJUNCTION ORDER TO STAY OF SAME PENDING POSTING OF ADEQUATE BOND SUBMITTED BY NIZAR DEWOOD, ESQ.		
05/09/13	DEFENDANTS' MOTION TO RECONSIDER AND TO MODIFY PRELIMINARY INJUNCTION TO TERMINATE EMPLOYEES MUFEED HAMED, WALEED HAMED, AND WADDA CHARRIEZ SUBMITTED BY NIZAR DEWOOD, ESQ.		
05/09/13			
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	DEFENDANTS' EMERGENCY MOTION TO STAY PRELIMINARY INJUNCTION ORDER SUBMITTED BY NIZAR DEWOOD, ESQ.		
05/08/13	AS TO BANK OF NOVA SCOTIA		
	RETURN OF SERVICE ISSUED TO BANK OF NOVA SCOTIA		
05/08/13	NOTICE OF ENTRY OF ORDER 05/07/2013 JOEL H. HOLT, ESQ. NIZAR DEWOOD, ESQ. CARL HARTMANN, III, ESQ. JOSEPH DIRUZZO, ESQ. BANK OF NOVA SCOTIA		
05/07/13	ORDER SIGNED BY JUDGE DARRYL DEAN DONOHUE, SR.; THAT DEFENDANT'S MOTION IS GRANTED; THAT DEFENDANT UNITED'S TENANT ACCOUNT NO.9XXX1923 IS NOT SUBJECT TO THIS COURT'S PRELIMINARY INJUNCTION ORDER, ENTERED ON APRIL 25, 2013; THAT NO SIGNATURE SHALL BE REQUIRED FROM PLANITIFF HAMAED FOR DISBURSEMENT OF ANY FUNDS FROM DEFENDANT UNITED'S TENANT ACCOUNT; THAT THIS ORDER BE SERVED ON ALL PARTIES FORTHWITH, AND THE BANK OF NOVA SCOTIA		
05/07/13	PLAINTIFF'S STIPULATION RECEIVED SUBMITTED BY JOEL HOLT, ESQ.		
05/07/13	DEFENDANTS' EXPEDITED MOTION TO CLARIFY PRELIMINARY INJUNCTION DATED APRIL 25, 2013 SUBMITTED BY NIZAR DEWOOD, ESQ.		
05/03/13	DEFENDANTS' MOTION TO STRIKE POST-HEARING PRELIMINARY INJUNCTION EVIDENCE AND LETTER SUBMITTED BY JOSEPH DIRUZZO, ESQ.		
05/03/13	DEFENDANTS' RESPONSE INM OPPOSITION TO PLAINTIFF'S MOTION TO SUPPLEMENT THE RECORD AND LETTER SUBMITTED BY JOSEPH DIRUZZO, ESQ.		
05/03/13	DEFENDANTS' RESPONSE IN OPPOSITION TO PLAINTIFF'S NOTICE OF SUPPLEMENTATION OF THE PRELIMINARY INJUNCTION RECORD AND LETTER SUBMITTED BY JOSEPH A. DIRUZZO, III, ESQ.		
05/02/13	FILE FORWARDED TO JUDGE BRADY'S CHAMBER		
04/29/13	PLAINTIFF'S OPPOSITION TO THE MOTION TI STRIKE RECEIVED SUBMITTED BY JOEL HOLT, ESQ.		
04/25/13	NOTICE OF ENTRY OF ORDER 04/25/2013 JOEL H. HOLT,ESQ. CARL J. HARTMANN III,ESQ.		
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04/25/13	NIZAR DEWOOD, ESQ. JOSEPH A. DIRUZZO III, ESQ.		
04/25/13	ORDER SIGNED BY JUDGE DOUGLAS A. BRADY, THAT DEFENDANTS' RULE 56(d) MOTION IS GRANTED; THAT PLAINTIFF'S MOTION TO DEEM PLAINTIFF'S PRETRIAL SUMMARY JUDGMENT MOTION CONCEDED IS DENIED.		
04/25/13	ORDER SIGNED BY JUDGE DOUGLAS A. BRADY, THAT DEFENDANTS' MOTION TO STRIKE SELF-APPOINTED REPRESENTATIVE IS DENIED		
04/25/13	ORDER SIGNED BY JUDGE DOUGLAS A. BRADY; THAT THE RECORD IS SUPPLEMENTED BY THE ADMISSION OF PLAINTIFF'S EXHIBITS 28, 29 AND 30; PROFERRED NOTICES OF RENTS DUE ARE ADMITTED AS SUPPLEMENTING PLAINTIFF'S EXHIBIT 7; AND CHECKS REPRESENTING PAYMENTS TO DEFENDANT'S COUNSEL ARE ADMITTED AS SUPPLEMENTING PLAINTIFF'S EXHIBIT 15		
04/25/13	NOTICE OF ENTRY OF ORDER 04/25/2013 JOEL H. HOLT, ESQ.; CARL J. HARTMANN III, ESQ. NIZAR DEWOOD, ESQ. JOSEPH A. DIRUZZO III, ESQ. JUDGES OF THE SUPERIOR COURT MAGISTRATES OF THE SUPERIOR COURT LAW CLERKS, IT, RECORD BOOK LAW LIBRARY		
04/25/13	MEMORANDUM OPINION AND ORDER SIGNED BY JUDGE DOUGLAS A. BRADY; THAT PLAINTIFF'S EMERGENCY MOTION TO RENEW APPLICATION FOR TRO, IS GRANTED		
04/23/13	PLAINTIFF'S MOTION TO SUPPLEMENT THE RECORD RECEIVED SUBMITTED BY JOEL HOLT, ESQ.		
04/22/13	NOTICE OF SUPPLEMENTATION OF THE PRELIMINARY INJUNCTION RECORD SUBMITTED BY JOEL HOLT, ESQ.		
04/11/13	NOTICE OF UNAVAILABILITY FILED BY NIZAR DEWOOD, ESQ.		
04/09/13	NOTICE OF SUPPLEMENTATION OF THE PRELIMINARY INJUNCTION RECORD SUBMITTED BY JOEL HOLT, ESQ.		
04/05/13	LETTER RECEIVED SUBMITTED BY DEBORAH MULLER, LEGAL ASSISTANT		
04/05/13	DEFENDANT'S RESPONSE IN OPPOSITION TO PLAINTIFF'S NOTICE OF SUPPLEMENT THE PRELIMINARY RECORD SUBMITTED BY JOSEPH DIRUZZO, ESQ.		
04/04/13	REPLY TO OPPOSITION TO PLAINTIFF'S NOTICE OF SUPPLEMENTATION OF THE PRELIMINARY INJUNCTION RECORD		
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03/21/13 SUBMITTED BY JOEL HOLT, ESQ.

03/21/13 NOTICE OF UNAVAILABILITY FILED BY JOSEPH DIRUZZO, III., ESQ.

03/18/13 LETTER RECEIVED FROM DEBORAH MULLER

03/18/13 NOTICE OF SUPPLEMENTATION OF THE PRELIMINARY INJUNCTION RECORD  
FILED BY JOEL H. HOLT, ESQ. 75.00

03/06/13 FEE RECEIVED  
RECEIPT # - 00080772

03/06/13 LETTER RECEIVED FROM DEBORAH MULLER, LEGAL ASSISTANT

03/06/13 NOTICE OF ERRATA FOR DEFENDANTS' MEMORANDUM OF LAW IN SUPPORT OF  
THEIR PROPOSED FINDINGS OF FACT AND CONCLUSIONS OF LAW REGARDING  
TRO/PRELIMINARY INJUNCTION APPLICATION FILED BY JOSEPH DIRRUZZO,  
ESQ.

03/05/13 DEFENDANTS' NOTICE OF REVISED PROPOSED ORDER AND LETTER RECEIVED  
SUBMITTED BY JOSEPH DIRUZZO, III, ESQ.

03/05/13 REPLY TO DEFENDANTS' OPPOSITION TO PLAINTIFF'S MOTION TO SUPPLEMENT  
THE RECORD AND SECOND REQUEST TO TAKE JUDICIAL NOTICE  
SUBMITTED BY JOEL HOLT, ESQ.

03/05/13 NOTICE OF SERVICE OF PLAINTIFF'S PROPOSED FINDINGS OF FACT AND  
CONCLUSION OF LAW AND ORDER  
SUBMITTED BY JOEL HOLT, ESQ.

03/04/13 DEFENDANT'S NOTICE OF FILING CRIMINAL INDICTMENT FILED BY  
NIZAR DEWOOD AND JOSEPH A. DIRUZZO, III., ESQ.

03/04/13 NOTICE OF FILING RE: DEFENDANTS' MEMORANDUM OF LAW IN SUPPORT  
OF THEIR PROPOSED FINDINGS OF FACT AND CONCLUSIONS OF LAW REGARDING  
TRO/PRELIMINARY INJUNCTION APPLICATION FILED BY NIZAR DEWOOD, ESQ.

03/04/13 DEFENDANTS' PROPOSED FINDINGS OF FACT AND CONCLUSIONS OF LAW  
RELATION TO PLAINTIFFS' TRO/PRELIMINARY INJUNCTION APPLICATION  
FILED BY NIZAR DEWOOD AND JOSEPH DIRRUZZO, III., ESQ.

03/04/13 DEFENDANTS FATHI YUSUF'S AND UNITED CORPORATION'S JOINT  
MEMORANDUM OF LAW IN SUPPORT OF THEIR PROPOSED FINDINGS OF  
FACT AND CONCLUSIONS OF LAW REGARDING TRO/PRELIMINARY INJUNCTION  
APPLICATION FILED BY NIZAR DEWOOD AND JOSEPH A. DIRUZZO, III.,  
ESQ.

03/04/13 DEFENDANTS' RESPONSE IN OPPOSITION TO PLAINTIFF'S SECOND MOTION  
TO TAKE JUDICIAL NOTICE AND REQUEST TO SUPPLEMENT THE HEARING  
RECORD FILED BY NIZAR DEWOOD, ESQ.

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02/28/13

02/28/13 LETTER RECEIVED FROM DEBORAH MULLER, ESQ.  
 02/28/13 DEFENDANTS' RESPONSE TO MOTION FOR LEAVE TO FILE UNDER SEAL FILED BY JOSEPH A. DIRUZZO, III., ESQ.  
 02/28/13 NOTICE OF ENTRY OF ORDER COMPLETED BY MELISSA GUADALUPE  
 02/28/2013  
 JOEL H. HOLT, ESQ.  
 NIZAR DEWOOD, ESQ.  
 JOSEPH A. DIRUZZO, III., ESQ.  
 02/28/13 ORDER GRANTING MOTION TO FILE PLAINTIFF'S PROPOSED FINDINGS OF FACT AND CONCLUSIONS OF LAW UNDER SEAL  
 02/28/13 NOTICE OF ENTRY OF ORDER COMPLETED BY MELISSA GUADALUPE  
 02/28/2013  
 JOEL HOLT, ESQ.  
 NIZAR DEWOOD, ESQ.  
 JOSEPH A. DIRUZZO, III., ESQ.  
 02/28/13 ORDER GRANTING MOTION FOR ENLARGEMENT OF TIME  
 02/27/13 MOTION TO FILE PLAINTIFF'S PROPOSED FINDINGS OF FACT AND CONCLUSIONS OF LAW UNDER SEAL AND ORDER SUBMITTED BY JOEL HOLT, ESQ.  
 02/26/13 SUPPLEMENT TO AGREED MOTION FOR ENLARGEMENT OF TIME, ORDER AND LETTER SUBMITTED BY JOSEPH DIRUZZO, III, ESQ.  
 02/25/13 SUPPLEMENT TO AGREED MOTION FOR ENLARGEMENT OF TIME FILED BY JOSEPH A. DIRUZZO, III., ESQ.  
 02/25/13 STIPULATION FO DISMISSAL WITH PREJUDICE, ORDER AND LETTER SUBMITTED BY LEE J. ROHN, ESQ. & DOUGLAS CAPDEVILLE, ESQ.  
 02/22/13 CERTIFIED TRANSCRIPT RECEIVED BY COURT REPORTER SUZANNE OTWAY-MILLER FOR HEARING HELD ON JANUARY 25, 2013  
 02/21/13 LETTER RECEIVED FROM DEBORAH L. MULLER  
 02/21/13 AGREED MOTION FOR ENLARGEMENT OF TIME FILED BY JOSEPH A. DIRUZZO, III., ESQ.  
 02/19/13 NOTICE OF FILING SUPPLEMENTAL DEPOSITION EXHIBITS AND PLAINTIFF'S SECOND REQUEST TO TAKE JUDICIAL NOTICE AND REQUEST TO SUPPLEMENT THE HEARING RECORD FILED BY JOEL HOLT, ESQ.  
 02/12/13 NOTICE OF NO OPPOSITION AND LETTER

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02/11/13 SUBMITTED BY JOSEPH DIRUZZO, III, ESQ.  
 NOTICE OF APPEARANCE RECEIVED

02/02/13 SUBMITTED BY JOSEPH DIRUZZO, III, ESQ. & CHRISTOPHER DAVID, ESQ.  
 02/02/13 REPLY TO DEFENDANT'S RESPONSE TO PLAINTIFF'S MOTION TO FILE  
 PLAINTIFF'S MOTION TO FILE PLAINTIFF'S PROPOSED FINDINGS OF FACT AND  
 CONCLUSION OF LAW UNDER SEAL  
 01/31/13 SUBMITTED BY JOEL HOLT, ESQ.  
 01/31/13 HEARING CONCLUDED  
 01/31/13 FILE FORWARDED TO JUDGE BRADY'S CHAMBER  
 01/31/13 RECORD OF PROCEEDING COMPLETED BY CLERK IRIS CINTRON, COURT REPORTER  
 SANDRA HALL  
 01/31/13 PLAINTIFF/PETITIONER'S EXHIBIT LIST PREPARED BY CLERK  
 01/31/13 DEFENDANT'S EXHIBIT LIST PREPARED BY CLERK  
 01/31/13 PLAINTIFF/PETITIONER'S EXHIBIT LIST SUBMITTED AT HEARING BY ATTY.  
 JOEL HOLT  
 01/31/13 PLAINTIFF'S RESPONSE TO MOTION TO INTERVENE SUBMITTED BY ATTY. JOEL  
 H. HOLT  
 01/31/13 EXCERPT-CERTIFIED TRANSCRIPT TESTIMONY OF MAHER YUSUF PREPARED BY  
 SUZANNE A. OTWAY-MILLER  
 01/31/13 EXCERPT-CERTIFIED TRANSCRIPT TESTIMONY OF MOHAMMED HAMED PREPARED BY  
 SUZANNE A. OTWAY-MILLER  
 01/30/13 PLAINTIFF MOHAMMAD HAMAD'S REPLY TO DEFENDANTS' OPPOSITION TO  
 PLAINTIFF'S EMERGENCY MOTION AND RENEWED TRO REQUEST  
 SUBMITTED BY JOEL HOLT, ESQ.  
 01/28/13 HEARING SCHEDULED 01/31/2013 09:00 A.M.  
 01/28/13 ORDER FIXING HEARING DATE 01/31/2013 09:00 A.M.  
 01/28/13 NOTICE OF INTENT TO FILE SUBPOENA, FILED BY JOEL H. HOLT, ESQ.  
 01/25/13 AS TO WADDA CHARRIEZ  
 AFFIDAVIT RECEIVED BY PROCESS SERVER FELIPE TORRES FOR SERVICE OF  
 SUBPOENA TO WADDA CHARRIEZ  
 01/25/13 AS TO MAHER YUSUF  
 AFFIDAVIT RECEIVED BY PROCESS SERVER FELIPE TORRES FOR SERVICE OF  
 SUBPOENA TO MAHER YUSUF  
 01/25/13 HEARING CONCLUDED  
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01/25/13			
01/25/13			

RECORD OF PROCEEDING COMPLETED BY CLERK IRIS CINTRON, COURT REPORTER  
SUZANNE MILLER (TRO HEARING)  
01/25/13

PLAINITFF'S EXHIBIT LIST SUBMITTED AT HEARING BY ATTY. JOEL HOLT  
01/24/13

PETITION FOR ADMISSION PRO HAC VICE OF CHRISTOPHER M. DAVID, ESQ.  
(COURTESY COPY) AND LETTER  
SUBMITTED BY JOSEPH DIRUZZO, III, ESQ.  
01/24/13

DEFENDANTS' AMENDED CERTIFICATES OF SERVICE, DEFENDANTS AND RESPONSE  
IN OPPOSITION TO PLAINTIFFS' RENEWED TRO APPLICATION  
SUBMITTED BY JOSEPH DIRUZZO, ESQ.  
01/24/13

MOTION FOR LEAVE TO INTERVENE AND MEMORANDUM OF LAW IN SUPPORT OF  
THE MAJORITY SHAREHOLDERS' MOTION FOR LEAVE TO INTERVENE  
SUBMITTED BY K. GLENDA CAMERON, ESQ.  
01/24/13

PETITION IN INTERVENTION-COMPLAINT FOR DECLARATORY JUDGMENT  
SUBMITTED BY K. GLENDA CAMERON, ESQ.  
01/24/13

NOTICE OF INTENT TO FILE SUBPOENA RECEIVED  
SUBMITTED BY JOEL HOLT, ESQ.  
01/24/13

NOTICE OF INTENT TO FILE SUBPOENA RECEIVED  
SUBMITTED BY JOEL HOLT, ESQ.  
01/23/13

NOTICE OF FILING CERTIFIED COPY OF TRANSCRIPT OF FATHI YSUF, FILED  
BY JOEL HOLT, ESQ.  
01/23/13

REQUEST TO TAKE JUDICIAL FILED BY JOEL HOLT, ESQ.  
01/23/13

DEFENDANTS' RESPONSE IN OPPOSITION TO PLAINTIFFS' MOTION FOR  
PROTECTIVE ORDER RELATED TO LIMITED DEPOSITIONS AND LETTER  
SUBMITTED BY JOSEPH DIRUZZO, ESQ.  
01/22/13

DEFENDANTS' MOTION FOR JUDICIAL NOTICE OF ADJUDICATIVE FACTS  
SUBMITTED BY JOSEPH DIRUZZO, III, ESQ.  
01/22/13

DEFEDNANTS' MOTION TO COMPEL LIMITED DEPOSITIONS OR, ALTERNATIVELY,  
TO EXCLUDE TESTIMONY PENDING COMPLETION OF LIMITED DEPOSITONS  
AND LETTER  
SUBMITTED BY JOSEPH A. DIRUZZO, III, ESQ.  
01/18/13

NOTICE OF ENTRY OF ORDER  
01/18/2013

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JOEL H. HOLT, ESQ.  
NIZAR DEWOOD, ESQ.  
CARL HARTMANN, III, ESQ.  
JOSEPH DIRUZZO, ESQ.

01/18/13

ORDER SIGNED BY JUDGE DOUGLAS A. BRADY; THAT NOTICES OF SCHEDULED  
DEPOSITIONS OF WAHEED HAMED, HISHAM HAMED, MUFEEED HAMED, WALEED

HAMED, AND MOHAMMED HAMED ARE STICKEN AND SUCH DEPOSITIONS SHALL NOT  
NOT GO FORWARD SCHEDULED

01/18/13

OPPOSITION TO MOTION TO COMPEL RECEIVED FROM ATTY. JOEL H. HOLT

01/17/13

NOTICE OF INTENT TO SERVE SUBPOENA DUCES TECUM  
SUBMITTED BY NIZAR DEWOOD, ESQ.

01/17/13

NOTICE OF INTENT TO SERVE SUBPOENA DUCES TECUM  
SUBMITTED BY NIZAR DEWOOD, ESQ.

01/17/13

NOTICE OF INTENT TO SERVE SUBPOENA DUCES TECUM  
SUBMITTED BY NIZAR DEWOOD, ESQ.

01/17/13

SUBPOENA DUCES TECUM ISSUED TO JOEL HOLT, ESQ.

01/17/13

SUBPOENA DUCES TECUM ISSUED TO PAMELA L. COLON, ESQ.

01/17/13

SUBPOENA DUCES TECUM ISSUED TO CART J. HARMANN, ESQ.

01/16/13

SUBPOENA DUCES TECUM RECEIVED ISSUED TO BANCO POPULAR DE PUERTO RICO  
SUBMITTED NIZAR DEWOOD, ESQ.

01/16/13

SUBPOENA DUCES TECUM RECEIVED ISSUED TO GERALD GRONER, ESQ.  
SUBMITTED NIZAR DEWOOD, ESQ.

01/16/13

SUBPOENA DUCES TECUM RECEIVED ISSUED TO EAST END ASSOCIATES LIMITED  
PARTNERSHIP  
SUBMITTED NIZAR DEWOOD, ESQ.

01/16/13

SUBPOENA DUCES TECUM RECEIVED ISSUED TO FIVE-H HOLDINGS, INC.  
SUBMITTED NIZAR DEWOOD, ESQ.

01/16/13

DEFENDANTS' REPLY IN FURTHER SUPPORT OF THEIR RULE 56(d) MOTION  
AND LETTER  
SUBMITTED BY JOSEPH DIRUZZO, III, ESQ.

01/16/13

DEFENDANTS' RESPONSE IN OPPOSITION TO PLAINTIFFS' MOTION TO DEEM  
PARTIAL SUMMARY JUDGMENT CONCEDED  
SUBMITTED BY JOSEPH DIRUZZO, ESQ.

01/16/13

NOTICE OF CANCELLATION OF DEPOSITION RECEIVED FOR MUFEEED HAMED  
AND LETTER

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DATE

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SUBMITTED BY JOSEPH DIRUZZO, III, ESQ.

01/16/13

NOTICE OF CANCELLATION OF DEPOSITION RECEIVED FOR HISHAM HAMED  
SUBMITTED BY JOSEPH DIRUZZO, III, ESQ.

01/16/13

NOTICE OF CANCELLATION OF DEPOSITION RECEIVED FOR WAHEED HAMED  
SUBMITTED BY JOSEPH DIRUZZO, III, ESQ.

01/16/13

NOTICE OF CANCELLATION OF DEPOSITION RECEIVED FOR MOHAMMAD HAMED

JA-036

6/10/2013

01/16/13 SUBMITTED BY JOSEPH DIRUZZO, III, ESQ.  
 NOTICE OF LIMITED DEPOSITION RECEIVED FOR MUFEED HAMED  
 SUBMITTED BY JOSEPH DIRUZZO, III, ESQ.  
 01/16/13 NOTICE OF LIMITED DEPOSITION RECEIVED FOR HISHAM HAMED  
 SUBMITTED BY JOSEPH DIRUZZO, III, ESQ.  
 01/16/13 NOTICE OF LIMITED DEPOSITION RECEIVED FOR WAHEED HAMED  
 SUBMITTED BY JOSEPH DIRUZZO, III, ESQ.  
 01/16/13 NOTICE OF LIMITED DEPOSITION RECEIVED FOR MOHAMMAD HAMED  
 SUBMITTED BY JOSEPH DIRUZZO, III, ESQ.  
 01/15/13 NOTICE OF FILING PROOF OF SERVICE ISSUED TO FAHTI YUSUF RECEIVED  
 SUBMITTED BY JOEL HOLT, ESQ.  
 01/14/13 PLAINTIFF'S MOTION FOR PROTECTIVE ORDER, ORDER AND MEMORANDUM IN  
 SUPPORT OF PLAINTIFF'S MOTION FOR A PROTECTIVE ORDER  
 SUBMITTED BY JOEL HOLT, ESQ.  
 01/11/13 NOTICE OF FILING PROPOSED ORDER RECEIVED  
 SUBMITTED BY JOEL HOLT, ESQ.  
 01/11/13 NOTICE OF FILING SUPPLEMENTAL DOCUMENTS RE PLAINTIFF'S EMERGENCY  
 MOTION AND MEMORANDU TO RENEW APPLICATION FOR TRO  
 SUBMITTED BY JOEL HOLT, ESQ.  
 01/10/13 FILE FORWARDED TO JUDGE BRADY'S CHAMBER  
 01/10/13 HEARING SCHEDULED 01/25/2013 10:00 A.M.  
 01/10/13 NOTICE OF ENTRY OF ORDER  
 01/10/2013  
 JOEL H. HOLT, ESQ.  
 NIZAR DEWOOD, ESQ.  
 JOSEPH DIRUZZO III, ESQ.  
 CARL J. HARTMANN III, ESQ.

01/10/13 ORDER SIGNED BY JUDGE DOUGLAS A. BRADY, SCHEDULING HEARING FOR  
 JANUARY 25, 2013 AT 10:00 AM  
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01/09/13			
	NOTICE OF ENTRY OF JUDGE REASSIGNMENT PREPARED BY ROXANNE SERRANO, COURT CLERK SUPERVISOR		
01/09/13			
	FILE FORWARDED TO JUDGE'S CHAMBER		
01/09/13			
	DIRECT JUDGE REASSIGNMENT FROM: DDD TO: DAB		
01/09/13			
	FILE FORWARDED TO JUDGE'S CHAMBER		
01/09/13			
	PLAINTIFF'S REPLY TO DEFENDANTS' OPPOSITION TO MOTION TO DEEM		



PLAINTIFF'S PARTIAL SUMMARY JUDGMENT MOTION CONCEDED  
SUBMITTED BY JOEL HOLT, ESQ.

01/09/13  
PLAINTIFF'S EMERGENCY MOTION AND MEMORANDUM TO RENEW APPLICATION FOR  
TRO AND ORDER  
SUBMITTED BY JOEL HOLT, ESQ.

12/27/12  
NOTICE OF FILING PROPOSED ORDER GRANTING MOTION TO STRIKE  
SELF-APPOINTED REPRESENTATIVE, ORDER AND LETTER  
SUBMITTED BY JOSEPH DIRUZZO, ESQ.

12/27/12  
DEFENDANTS' REPLY IN FURTHER SUPPORT OF THEIR MOTION TO STRIKE  
SELF-APPOINTED REPRESENTATIVE  
SUBMITTED BY JOSEPH DIRUZZO, ESQ.

12/27/12  
NOTICE OF (7) DEPOSITIONS ISSUED FOR MOHAMMAD HAMED, WALEED HAMAD,  
WAHEED HAMAD, MUFEED HAMAD AND HISHAM HAMAD  
SUBMITTED BY JOSEPH DIRUZZO, ESQ.

12/27/12  
DEFENDANTS' RULE 56(d) MOTION AND ALTERNATIVE MOTION FOR ENLARGEMENT  
OF TIME TO RESPOND TO MOTION FOR PARTIAL SUMMARY JUDGMENT & LETTER  
SUBMITTED BY JOSEPH DIRUZZO, ESQ.

12/27/12  
NOTICE OF APPEARANCE AND LETTER RECEIVED  
SUBMITTED BY CARL HARTMANN, ESQ.

12/24/12  
MOTION TO DEEM PLAINTIFF'S PARTIAL SUMMARY JUDGMENT MOTION CONCEDED  
AND REPLY TO DEFENDANT'S RULE 56 REQUEST  
SUBMITTED BY JOEL HOLT, ESQ.

12/17/12  
MOTION FOR ENLARGEMENT OF TIME, ORDER AND LETTER RECEIVED  
SUBMITTED BY JOSEPH DIRUZZO, III ESQ.

12/13/12  
DEFENDANT'S REPLY TO PLAINTIFF'S OPPOSITION TO DEFENDANTS' RULE  
12 MOTION FILED BY NIZAR DEWOOD, ESQ.

12/07/12  
DEFENDANTS' SECOND MOTION TO EXTEND TIME TO REPLY TO PLAINTIFF'S  
OPPOSITION TO DEFENDANTS'S RULE 12 MOTION FILED BY  
NIZAR DEWOOD, ESQ.

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12/04/12  
PLAINTIFF HAMED'S RESPONSE TO DEFENDANTS' RULE 17 MOTION TO STRIKE  
REPRESENTATIVE AND ORDER  
SUBMITTED BY JOEL HOLT, ESQ.

11/28/12  
AGREED MOTION FOR ENLARGEMENT OF TIME, ORDER AND LETTER  
SUBMITTED BY JOSEPH DIRUZZO, III ESQ.

11/26/12  
DEFENDANTS' MOTION TO STRIKE SELF-APPOINTED REPRESENTATIVE AND ORDER  
SUBMITTED BY JOSEPH DIRUZZO, III ESQ.

11/26/12  
DEFENDANTS' MOTION TO EXTEND TIME TO REPLY TO PLAINTIFF'S OPPOSITION  
TO DEFENDANTS'S RULE 12 MOTION AND ORDER

10/23/12 SUBMITTED BY NIZAR DEWOOD, ESQ.  
 RESPONSE TO COURT'S OCTOBER 12, 2012 ORDER AND LETTER  
 SUBMITTED BY JOSEPH DIRUZZO, III, ESQ.

10/19/12 NOTICE TO THE COURT RECEIVED  
 SUBMITTED BY JOEL HOLT, ESQ.

10/15/12 NOTICE OF ENTRY OF ORDER  
 10/12/2012  
 JOEL HOLT, ESQ.  
 JOSEPH DIRUZZO, III, ESQ.

10/12/12 ORDER SIGNED THAT WITHIN THIRTY (30) DAYS OF THE ENTRY OF THIS ORDER  
 THE PARTIES SHALL INFORM THE COURT OF THE STATUS OF REMOVAL BY THE  
 UNITED STATES DISTRICT COURT FOR THE DISTRICT OF THE VIRGIN ISLANDS.  
 IF REMOVAL IS GRANTED, THE PARTIES SHALL TAKE APPROPRIATE STEPS TO  
 DISMISS AND CLOSE THIR MATTER, IF APPROPRIATE. ALTERNATELY, IF  
 PLAINTIFF OPPOSES REMOVAL, HE SHALL TAKE ANY APPROPRIATE STEPS  
 WITHIN THIRTY DAYS FROM THE DATE OF THIS ORDER FOR THIS COURT  
 RETAIN JURISDICTION HEREIN  
 SIGNED BY JUDGE DARRYL DEAN DONOHUE

10/04/12 NOTICE OF REMOVAL AND LETTER  
 SUBMITTED BY JOSEPH DIRUZZO, III, ESQ.

10/02/12 PLAINTIFF'S REPLY TO DEFENDANTS' MOTION FOR ENLARGEMENT OF TIME  
 SUBMITTED BY JOEL HOLT, ESQ.

10/02/12 FILE FORWARDED TO JUDGE DONOHUE'S CHAMBERS FOR REVIEW

10/02/12 DIRECT JUDGE REASSIGNMENT FROM: JAB TO: DDD

10/02/12 NOTICE OF ENTRY OF RECUSAL OR REASSIGNMENT

10/02/12 NOTICE OF ENTRY OF ORDER  
 10/01/2012

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10/01/12			
	JOEL H. HOLT, ESQ.		
	NOTICE OF REMOVAL AND LETTER SUBMITTED BY JOSEPH DIRUZZO, III, ESQ.		
10/01/12			
	ORDER OF RECUSAL SIGNED BY JUDGE JULIO A. BRADY		
10/01/12			
	DEFENDANTS' MOTION TO PROCEED ON PLAINTIFF'S MOTION FOR A TEMPORARY RESTRAINING ORDER AND/OR PRELIMINARY INJUNCTION AS A MOTION FOR PRELIMINARY INJUNCTION AND FOR ENLARGEMENT OF TIME TO RESPOND TO SAME, ORDER AND LETTER SUBMITTED BY JOSEPH DIRUZZIO, III, ESQ.		
09/24/12			
	NOTICE OF APPEARANCE FOR DEFENDANT SUBMITTED BY ATTORNEY JOSEPH A. DIRUZZO, ESQ.		

09/24/12 LETTER RECEIVED FROM JANNENE CORREA ENCLOSING NOTICE OF APPEARANCE  
 IN THE MATTER OF MOHAMMAD HAMED BY HIS AUTHORIZED AGENT WALEED  
 HAMED V. FATHI YUSUF & UNITED CORPORATION

09/20/12 NOTICE OF FILING PROPOSED ORDER FOR TEMPORARY RESTRAINING ORDER  
 AND/OR A PRELIMINARY INJUNCTION FILED BY ATTY. JOEL H. HOLT

09/19/12 NOTICE OF SERVICE OF MOTIÖN FOR TEMPORARY RESTRAINING ORDER AND/OR A  
 PRELIMINARY INJUNCTION FILED BY ATTY. JOEL H. HOLT

09/18/12 MOTION FOR TEMPORARY RESTRAINING ORDER AND/OR A PRELIMINARY  
 INJUNCTION AND MEMORANDUM IN SUPPORT OF MOTION FOR TEMPORARY  
 RESTRAINING ORDER AND/OR A PRELIMINARY INJUNCTION  
 SUBMITTED BY JOEL HOLT, ESQ.

09/17/12 DOCKETING LETTER AND NOTICE OF JUDGE ASSIGNMENT PREPARED

09/17/12 AS TO UNITED CORPORATION  
 20 DAY SUMMONS ISSUED

09/17/12 AS TO YUSUF, FATHI  
 20 DAY SUMMONS ISSUED

09/17/12 CIVIL COVER SHEET RECEIVED

09/17/12 CIVIL LITIGANT PERSONAL DATA FORM RECEIVED

09/17/12 TRIAL BY JURY DEMANDED

09/17/12 FEE RECEIVED 75.00  
 RECEIPT # - 00076450

09/17/12 FILING FEE ASSESSED

09/17/12 VERIFIED COMPLAINT RECEIVED

09/17/12

Superior Court of the Virgin Islands  
 06/10/13 Civil Division CIVIL ACTION DOCKET PAGE: 14

DATE SX-12-CV-0000370 DAMG FEE/AMOUNT  
 -----

DIRECT JUDGE ASSIGNMENT Hon. Julio A. Brady JAB

TOTAL NUMBER OF ENTRIES: 185

REQUESTED BY: MGUADA

\*\*\*\*\* END OF REPORT \*\*\*\*\*

15  
IN THE SUPERIOR COURT OF THE VIRGIN ISLANDS  
DIVISION OF ST. CROIX  
12

MOHAMMAD HAMED By His Authorized Agent  
Agent WALEED HAMED

Plaintiff,

v.

FATHI YUSUF AND UNITED CORPORATION

Defendant.

SEP 17 AIO 22

CIVIL NO. SX-12-CV-

370

ACTION FOR DAMAGES  
INJUNCTIVE AND  
DECLARATORY RELIEF  
JURY TRIAL DEMANDED

**COMPLAINT**

Comes now, the Plaintiff, Mohammad Hamed, by his authorized agent, Waleed Hamed, and hereby files this Complaint against Fathi Yusuf and the United Corporation, alleging as follows:

1. This Court has jurisdiction over this matter pursuant to Title 4 V.I.C. §76(a) and 5 V.I.C. §1261.
2. Plaintiff, Mohammad Hamed ("Hamed") and his authorized agent Waleed Hamed (a/k/a Wally Hamed) are both adult residents of St. Croix, United States Virgin Islands. The acts referenced herein attributable to Mohammad Hamed are to acts done either directly by Mohammad Hamed or through his family members acting as his authorized agent, hereinafter collectively referred to as "Hamed."
3. Defendant Fathi Yusuf is a resident of the St. Croix, United States Virgin Islands. The acts referenced herein attributable to Fathi Yusuf are to acts done either directly by Fathi Yusuf or through his family members acting as his authorized agent, hereinafter collectively referred to as "Yusuf."
4. The defendant, United Corporation ("United") is a Virgin Islands Corporation.

5. In the mid-1980's, Hamed and Yusuf formed a partnership to operate a grocery supermarket on the east side of St. Croix, named Plaza Extra, which was located in a shopping center operated by United.
6. The partnership between Hamed and Yusuf subsequently expanded to two other supermarket locations, one in the west end to St. Croix and one in St. Thomas, both of which also operated under the name Plaza Extra. The partners generally refer to these three stores as Plaza Extra East (Sion Farm, St. Croix), Plaza Extra West (Plesson/Grove, St. Croix) and Plaza Extra St. Thomas (Tutu Park, St. Thomas). The Plaza supermarkets have grown in size, currently employing in excess of 600 employees in the three stores.
7. At all times relative hereto, the three Plaza Extra supermarkets have been managed jointly by Hamed and Yusuf, operating as a partnership with separate accounting records and separate bank accounts for each store, even though the partnership utilized the corporate entity of United for the reporting of tax obligations.
8. The bank accounts for the three Plaza Extra supermarkets have always been accessible equally to Hamed and Yusuf, with the parties agreeing that one family member from each of the Hamed and Yusuf families will sign each check written on these bank accounts. 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. The current bank accounts for each of the three Plaza stores are:

**St. Thomas Plaza Extra Store:**

Operating Acct:	04xxxxxxxxxx	Bank of Nova Scotia (BNS)
Payroll Acct:	04xxxxxxxxxx	Bank of Nova Scotia (BNS)
Telecheck Acct:	04xxxxxxx	Bank of Nova Scotia (BNS)
Credit Card Acct:	1xxxxxxx	Banco Popular

**St. Croix Plaza Extra – WEST**

Operating Acct:	19xxxxxx	Banco Popular
Credit Card Acct:	19xxxxxx	Banco Popular
TeleCheck Acct:	05xxxxxxxxxx	Bank of Nova Scotia (BNS)

**St. Croix Plaza Extra – EAST**

Operating Acct:	19xxxxxx	Banco Popular
Credit Card Acct:	19xxxxxx	Banco Popular
Telecheck Acct:	58xxxxxxxxxx	Bank of Nova Scotia (BNS)

9. United has always had separate accounting records and separate bank accounts for its shopping center and business operations that were unrelated to the three Plaza Extra supermarket stores. Hamed does not have access to these separate bank accounts used by United for its shopping center and other businesses unrelated to the three Plaza Extra supermarkets.
10. At all times relative hereto, the Hamed and Yusuf partnership profits from the Plaza Extra stores have always been held in banking and brokerage accounts completely separate from the profits of United's other unrelated businesses, even though the banking and brokerage accounts holding the profits from the Hamed and Yusuf partnership are in United's name as well. The parties are currently prohibited from removing funds from these accounts because of the same Order

entered by the District Court of the Virgin Islands in *USA v. United Corporation et al.*, District Court Criminal No. 2005-15. The current brokerage accounts holding these profits are:

**Popular Securities**

PSx-xxxx22

PSx-xxxx63

PSx-xxxx60

PSx-xxxx79

PSx-xxxx01

PSx-xxxx10

PSx-xxxx28

PSx-xxxx36

11. At all times relative hereto, Hamed and Yusuf have equally shared the profits distributed from the three Plaza supermarkets.
12. From time to time, Hamed and Yusuf have used these profits to buy other businesses and real property, always owning these jointly held assets on a 50/50 basis.
13. In this regard, Hamed and Yusuf have also maintained records of withdrawals from the partnership account to each of them (and their respective family members), to make sure there would always be an equal (50/50) amount of these withdrawals for each partner's family members.
14. Yusuf has repeatedly confirmed the existence of this partnership between himself and Hamed, including statements made under oath.
15. On February 10, 2012, Yusuf's attorney, Nizar DeWood ("DeWood"), informed Hamed (through his agent Wally Hamed) that Yusuf wanted to dissolve the partnership. See Exhibit A.

16. On February 12, 2012, (See Exhibit B) DeWood sent a letter on Yusuf's behalf to Hamed announcing that Yusuf was ready to proceed with dissolving the partnership, describing the partnership assets to be divided 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).

17. DeWood then sent a proposed partnership dissolution agreement on behalf of Yusuf on March 13, 2012, to Wally Hamed, regarding the proposed dissolution of the partnership. That document (See Exhibit C) then went on to state 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

18. The parties thereafter met on numerous occasions to try to address the division of the partnership assets, including the three Plaza Extra Stores and the



partnership profits held in the various bank and brokerage accounts. However, to date no agreement has been reached regarding the division of these partnership assets.

19. In the interim time period, Yusuf has engaged in and continues to engage in numerous acts in breach of his obligations as a partner in his partnership with Hamed, all of which are designed to undermine the partnership's operations and success, including but not limited to the following acts:

- a) Threatening to terminate the Hamed family employees in the three Plaza Extra stores;
- b) Threatening to have United evict the Plaza Extra store located in the United shopping center on the east side of St. Croix (See Group Exhibit D), including the threat of using self help to remove the partnership from the premises without using judicial process;
- c) Attempting to have United impose excessive rent obligations on this store (See Group Exhibit D);
- d) Failing to recognize Plaza Extra's rights in the premises where its Plaza store in the United Shopping Center is located, as the store was damaged by fire in 1992 and was rebuilt entirely with insurance funds from the Plaza supermarket and not from United, including using said partnership funds for the purchase of additional adjacent land for use by the supermarket;

- e) Attempting to discredit the operations of these three stores by making defamatory statements about Hamed and his family members to third parties, including suppliers for the three stores, which are completely untrue;
- f) Attempting to unilaterally change how the stores have operated by threatening to impose new and unreasonable restrictions on the operations of these three stores, all of which are aimed at undermining Hamed's partnership interest in the three stores.
- g) Refusing to pay valid obligations owed by the partnership, including but not limited to attorney's fees incurred in litigation in the pending District Court criminal case, in an effort to undermine the partnership's operations;
- h) Threatening to close down the Plaza Supermarkets;
- i) Threatening the Hamed family members working in the Plaza supermarkets with physical harm, trying to intimidate them into leaving the stores;
- j) Giving false information to third parties, including suppliers of the three Plaza Supermarkets, regarding its future operations, jeopardizing the good will of the Three Plaza supermarkets;
- k) Unilaterally canceling orders placed with vendors and not ordering new inventory for the three Plaza supermarkets; and
- l) Spending funds from the bank accounts of the three Plaza supermarkets to support his other personal business interests unrelated to the three Plaza supermarkets.

20. Finally, on or about August 20, 2012, Yusuf unilaterally and wrongfully converted \$2.7 million from the Plaza Extra supermarket accounts used to operate the partnership's three stores, placing the funds in a separate United account controlled only by him. Said conversion was a willful and wanton breach of the partnership agreement between Hamed and Yusuf.
21. Despite repeated demands, he has not returned these funds to the Plaza Extra bank accounts from which they were withdrawn, which not only violates the partnership agreement, but also threatens the financial viability of these three Plaza supermarkets and the employment of its 600 employees.
22. Upon information and belief, Yusuf has used these funds to purchase other assets in United's name, such as real property on St. Croix recently purchased for \$1.7 million. See Exhibit E.
23. The acts in question were designed in part to take advantage of Hamed's failing health to force him out of the partnership and deny him his rightful partnership assets and profits.

#### COUNT I

24. All preceding allegations are realleged and incorporated herein by reference.
25. The foregoing acts all violate the partnership rights of Hamed as well as the terms of the partnership agreement between Yusuf and Hamed.
26. As such, pursuant to 26 V.I.C. § 75, Hamed is entitled to legal and equitable relief as deemed appropriate to protect and preserve his partnership rights.

27. In this regard Hamed is entitled to declaratory relief as to his rights as well as injunctive relief to protect those rights, including the return of funds to the partnership improperly taken or spent by Yusuf to date in violation of the agreement between the parties.

28. Hamed is also entitled to compensatory damages for all financial losses inflicted by Yusuf on the partnership and/or his partnership interest as well as punitive damages against Yusuf for his willful and wanton misconduct.

#### COUNT II

29. All preceding allegations are realleged and incorporated herein by reference.

30. The foregoing acts by Yusuf also constitute intentional misconduct, or reckless and grossly negligent conduct, which has adversely and materially affected the partnership between Hamed and Yusuf regarding the three Plaza supermarkets.

31. As such, Hamed is also entitled to a judicial determination under 26 V.I.C. § 121(5) that it is not practicable to continue the partnership with Yusuf so that Yusuf's partnership interests should be disassociated from the business, allowing Hamed to continue the partnership business without him pursuant to the provisions of 26 V.I.C. §§ 122-123 and Subchapter VII of Title 26.

WHEREFORE, the Plaintiff seeks the following relief from this Court as follows:

- 1) Declaratory Relief against both defendants to establish Hamed's rights under his partnership with Yusuf, including his rights regarding the operation of the three Plaza Extra supermarkets and the withdrawal of funds from the partnership accounts associated with these three Plaza supermarkets;
- 2) Injunctive Relief enjoining the defendants from interfering with Hamed's partnership rights, including enjoining Yusuf from interfering with the operations of the three Plaza Extra supermarkets and enjoining Yusuf from withdrawing any


funds from any partnership bank accounts or brokerage accounts without the consent of Hamed;

- 3) Declaratory Relief and Injunctive Relief against both defendants requiring the immediate return of of all funds improperly withdrawn from the bank accounts of the three Plaza supermarket accounts by Yusuf, including but not limited to the \$2.7 million recently removed by Yusuf to an account to which Hamed does not have access;
- 4) Declaratory Relief and Injunctive Relief against both defendants regarding the property rights of the Plaza Extra store located at the United Shopping Center on the east side of St. Croix.
- 5) Declaratory Relief as to the partnership's rights in any businesses and/or assets purchased by United using partnership assets or obtained without providing the partnership the opportunity to participate in the ownership of these newly acquired businesses and/or assets;
- 6) An award of compensatory damages against the defendants, jointly and severally, as determined by the trier of fact;
- 7) A judicial determination under 26 V.I.C. § 121(5) that it is not practicable to continue the partnership with Yusuf so that Yusuf's partnership interests should be disassociated from the business, allowing Hamed to continue the partnership business without him pursuant to the provisions of 26 V.I.C. §§ 122-123 and Subchapter VII of Title 26.
- 8) An award of prejudgment interest at the statutory rate of 9%;
- 9) An award of punitive damages against Yusuf as determined by the trier of fact;
- 10) An award of attorney's fees and costs against both defendants; and
- 11) Any other relief the Court deems appropriate as warranted by the facts and the applicable law.

**A TRIAL BY JURY IS DEMANDED AS TO ALL ISSUES TRIABLE BY A JURY**

Complaint  
Page 11

Dated: September 17, 2012



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Joel H. Holt, Esq.  
2132 Company Street  
St. Croix, VI 00820  
(340) 773-8709  
holtvi@aol.com

# EXHIBIT A

From: Nizar DeWood <dewoodlaw@gmail.com>  
Date: February 10, 2012 10:58:39 AM EST  
To: "Wally Hamed" <wallyhstx@yahoo.com>  
Subject: Powers of Attorney - Dissolution of Partnership


Hello 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





# EXHIBIT B

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,

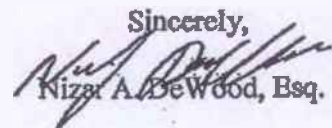
This letter is to confirm the parties' desire to dissolve the above referenced partnership. Partnership dissolution will involve appropriate planning to properly account for each of the partner's interest in the partnership, and a well-executed agreement memorializing the understanding of the parties.

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 30<sup>th</sup>, 2012 on that property.

I look forward to hearing from you. Thank you.

Sincerely,

  
Nizar A. DeWood, Esq.

cc: Fathi Yusuf



JA-055

# EXHIBIT C

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



JA-057





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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 31<sup>st</sup>, 2012. Thereafter, the monthly rental rate shall increase to \$250,000 per month until June 30<sup>th</sup>, 2012. After such date, the tenancy shall terminate forthwith without further notice. Failure to vacate the premises by June 30<sup>th</sup>, 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 27<sup>th</sup>, 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 27<sup>th</sup>, 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.



( ) ( )

**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 5 <sup>th</sup> , 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 <sup>th</sup> , 2012 by way of check drawn on the account of United Corporation. Accordingly, the rental arrears for the period of (May 5 <sup>th</sup> , 2004 to Dec. 31 <sup>st</sup> , 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 <sup>th</sup> , 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.



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.

00 00

IN WITNESS WHEREOF, the parties have executed this Agreement on the day and year first written above.

\_\_\_\_\_  
Fathi Yusuf, Partner

\_\_\_\_\_  
Mohammad Hamed, Partner

# EXHIBIT D

UNITED CORPORATION

4C & 4D Sion Farm

St Croix, USVI 00821

Phone (340) 778-6240

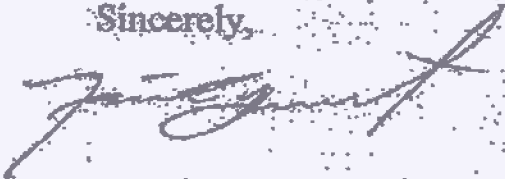
January 12, 2012

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

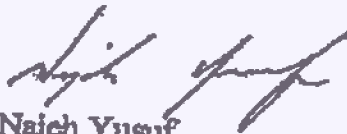
Mr. Mohamed Hamed,

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 30<sup>TH</sup>, 2012.

Dear Mr. Hamed,

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

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



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

Sincerely,

United Corporation

By: 

Fathi Yusuf, CEO

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

April 4, 2012

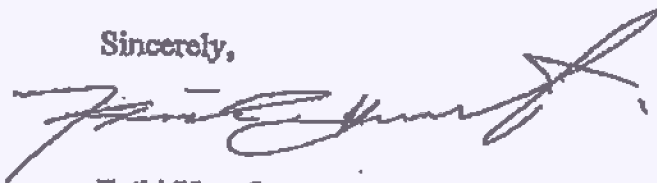
Mohammad Abdul Qader Hamed  
Plaza Extra Supermarket  
4-C & 4-D Estate Sion Farm  
Christiansted, VI 00820

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

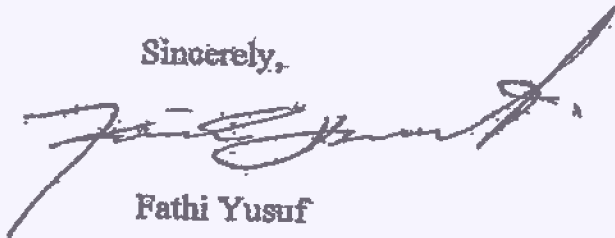
Mohammad Abdul Qader Hamed  
Plaza Extra Supermarket  
4-C & 4-D Estate Sion Farm  
Christiansted, VI 00821

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	\$1,119,585.00
June 2012 Rent currently due:		<u>\$250,000.00</u>
	Total Balance due June 1, 2012	<u>\$1,369,585.00</u>

Please forward a check immediately.

Sincerely,



Fathi Yusuf

CC: Wally Hamed

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

July 1, 2012

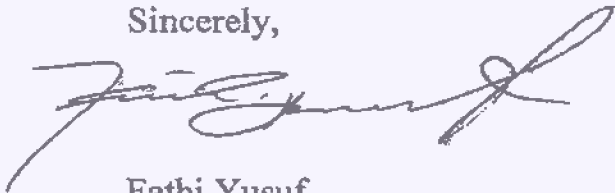
Mohammad Abdul Qader Hamed  
Plaza Extra Supermarket  
4-C & 4-D Estate Sion Farm  
Christiansted, VI 00821

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

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

Please forward a check immediately.

Sincerely,



Fathi Yusuf

CC: Wally Hamed

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

August 1, 2012

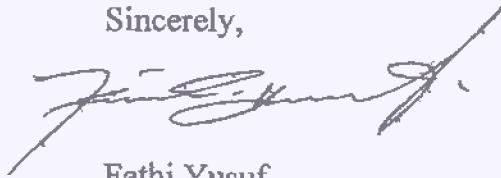
Mohammad Abdul Qader Hamed  
Plaza Extra Supermarket  
4-C & 4-D Estate Sion Farm  
Christiansted, VI 00821

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

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

Please forward a check immediately.

Sincerely,



Fathi Yusuf

CC: Wally Hamed

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

September 1, 2012

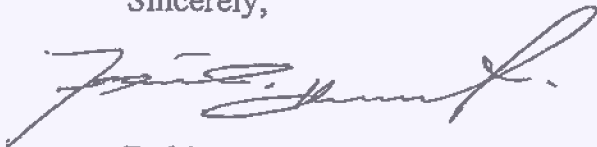
Mohammad Abdul Qader Hamed  
Plaza Extra Supermarket  
4-C & 4-D Estate Sion Farm  
Christiansted, VI 00821

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

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

Please forward a check immediately.

Sincerely,



Fathi Yusuf

# EXHIBIT E



# 55695  
OLG Drawing No. 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 w/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. 3810 (the Covenants and Warranties in the last paragraph of this deed do not apply to these easements and water rights)

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;

*Althea L. Pedro*  
Recorder

\$ 1,712.00  
\$ 4.00  
\$ 31,000.00

Doc# 2012002041

Books: 1308  
Pages: 87  
Filed & Recorded  
05/23/2012 2:48PM  
ALTHEA PEDRO  
RECORDER OF DEEDS  
ST. CROIX  
RECORDING FEE  
PER PAGE FEE  
DEED DOC STAMP



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 seized 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 w/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 25<sup>th</sup> day of May, 2012 by Robert L. Merwin, Co-Trustee M.K. Armstrong Trust w/d/t dated May 12, 1969 as amended by First Amendment dated December 30, 1972.

GERALD T GRONER  
Notary Public  
St. Croix, U.S. Virgin Islands  
LNP-022-11  
My Commission Expires November 10, 2018

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 \$ 940<sup>00</sup>

  
SURVEY & DEEDS SECTION  
MARGARET F. ACOSTA  
SPECIAL ASSISTANT

Doc# 2012002041  
Book: 1308  
Pages: 27  
Filed & Recorded  
05/25/2012 2:48PM  
ALTHEA PEDRO  
RECORDER OF DEEDS  
ST CROIX

RECORDER  
ST CROIX  
RECORDING FEE \$ 1,712.00  
PER PAGE FEE \$ 4.00  
DEED DOC STAMP \$ 51,000.00



GOVERNMENT OF  
THE UNITED STATES VIRGIN ISLANDS

**OFFICE OF THE LIEUTENANT GOVERNOR  
DIVISION OF REAL PROPERTY TAX**

1106 King Street • Christown, Virgin Islands 00820 • 340.773.3441 • Fax 340.773.8330  
18 Kongens Gade • Charlotte Amalie, Virgin Islands 00882 • 340.774.2711 • Fax 340.774.8953

**REAL PROPERTY TAX CLEARANCE LETTER**

**TO:** Office of the Recorder of Deeds

**FROM:** Office of the Tax Collector

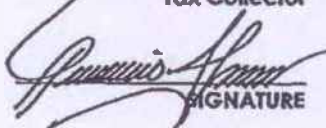
In accordance with Title 28, Section 121, as amended, this shall certify that there are no outstanding Real Property Tax obligations for the following:

<b>PARCEL NUMBER</b>	<b>2-06800-0204-00</b>
<b>LEGAL DESCRIPTION</b>	<b>REM ESTATE GRANGE</b>
<b>OWNER'S NAME</b>	<b>ARMSTRONG, MALCOLM &amp; OTHERS</b>

Taxes have been researched up to and including 2009.

**CERTIFIED TRUE AND CORRECT BY**

**Valencio Jackson**  
Tax Collector



**SIGNATURE**

**May 22, 2012**  
**DATE**

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

MOHAMMAD HAMED By His Authorized  
Agent WALEED HAMED

Plaintiff,

v.

FATHI YUSUF AND UNITED CORPORATION

Defendant.

CIVIL NO. SX-12-CV-370

ACTION FOR DAMAGES  
INJUNCTIVE AND  
DECLARATORY RELIEF  
JURY TRIAL DEMANDED

MOTION FOR A TEMPORARY RESTRAINING ORDER  
AND/OR A PRELIMINARY INJUNCTION

Comes now the plaintiff, Mohammad Hamed ("Hamed"), and respectfully requests this Court to enter a Temporary Restraining Order or a Preliminary Injunction against both defendants pursuant to Rule 65 of the Rules of Civil Procedure, which is applicable to this Court. The basis for the motion is set forth in the attached memorandum, which is incorporated herein by reference. For the reasons set forth therein, it is respectfully submitted that the relief sought be granted forthwith.

A copy of this motion and the accompanying pleadings is being served in the defendants by a process server. The plaintiff will provide the Court with notice of service as soon as it is served.

Dated: September 18, 2012

  
\_\_\_\_\_  
Joel H. Holt, Esq.  
Attorney for Plaintiff  
2132 Company Street  
St. Croix, VI 00820  
(340) 773-8709  
holtvi@aol.com

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

**MOHAMMAD HAMED By His Authorized Agent WALEED HAMED** )

**Plaintiff,** )

**v.** )

**FATHI YUSUF AND UNITED CORPORATION** )

**Defendant.** )

**CIVIL NO. SX-12-CV- 370**

**ACTION FOR DAMAGES  
INJUNCTIVE AND  
DECLARATORY RELIEF  
JURY TRIAL DEMANDED**

**MEMORANDUM IN SUPPORT OF MOTION FOR A TEMPORARY RESTRAINING  
ORDER AND/OR A PRELIMINARY INJUNCTION**

Comes now the plaintiff, Mohammed Hamed ("Hamed"), and respectfully requests that this Court enter a temporary restraining order pursuant to Rule 65(b), or a preliminary injunction, pursuant to Rule 65(a).<sup>1</sup> The plaintiff will first review the applicable facts and then will apply the applicable law to these facts so that this Court can understand why the plaintiff is entitled to Rule 65 relief at this time.

**I. Factual Background**

The facts giving rise to this motion are all verified in the attached affidavits of Mohammad Hamed (Exhibit 1) and Waleed Hamed (Exhibit 2). These affidavits explain the creation of the partnership in dispute in this case as well as the factual issues leading to the need for injunctive protection under Rule 65, as follows:

1. Mohammad Hamed, entered into a partnership with Fathi Yusuf in the 1980's to operate a supermarket known as Plaza Extra, located in the United Shopping Center located on the east end of St. Croix.

---

<sup>1</sup> The only difference between issuing a TRO and a preliminary injunction is that a TRO can be issued without notice to the opposing party. In this case, the defendants are being served with copies of the TRO/preliminary injunction pleadings immediately, so this matter should be able to just proceed as a preliminary injunction.

2. The partnership has since expanded to two other locations in the Virgin Islands, operating the Plaza Extra supermarket on the west end of St. Croix at Estate Plessen (Grove Place) and the Plaza Extra supermarket on St. Thomas located at the Tutu Park Mall.
3. The partnership between Hamed and Yusuf currently operates the same three Plaza supermarket locations, currently employing in excess of 600 employees in the three stores.
4. Since its formation, the three Plaza Extra supermarkets have been managed jointly by Mohammad Hamed and Fathi Yusuf, operating as a partnership with separate accounting records and separate bank accounts for each of the three stores. These separate bank accounts for each store are in the name of United Corporation (United).
5. The bank accounts for the three Plaza Extra supermarkets have always been accessible equally to Mohammad Hamed and Fathi Yusuf, with the parties ultimately agreeing in 2010 that one family member from each of the Hamed and Yusuf families will sign each check written on the bank accounts for these three Plaza Extra supermarkets.
6. United also owns a shopping center. The bank accounts for United's shopping center operations, which are unrelated to the three Plaza Extra supermarkets, are maintained separately by Fathi Yusuf and United. Mohammad Hamed does not have access to these separate bank accounts used by United for its shopping center (and other businesses) unrelated to the three Plaza Extra supermarkets.
7. At all times relative hereto, the Hamed and Yusuf partnership profits from the Plaza Extra stores have always been held in banking and brokerage accounts completely separate from the profits of United's other unrelated businesses, even though the banking and brokerage accounts holding the profits from the Hamed and Yusuf partnership are in United's name as well.
8. At all times relative hereto, Mohammad Hamed and Fathi Yusuf have equally shared the profits distributed from the three Plaza supermarkets.
9. Mohammad Hamed and Fathi Yusuf have also maintained records of any withdrawals from the partnership account to each of them (and their respective family members), to make sure there would always be an equal (50/50) amount of these withdrawals for each partner's family members.
10. Mohammad Hamed has authorized his son, Waleed Hamed a/k/a Wally Hamed to act on his behalf regarding the partnership with Fathi Yusuf.

11. Fathi Yusuf has repeatedly confirmed the existence of this partnership between himself and Mohammed Hamed. See deposition excerpts in Exhibit A attached to Wally Hamed's affidavit (Exhibit 2).
12. On February 10, 2012, Fathi Yusuf's attorney, Nizar DeWood ("DeWood"), informed Wally Hamed that Fathi Yusuf wanted to dissolve the partnership, which he followed up with in a subsequent letter, announcing that Mr. Yusuf was ready to proceed with dissolving the partnership, describing the partnership assets to be divided as follows See Group Exhibit B attached to Wally Hamed's affidavit (Exhibit 2):

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).

The letter went on to note that the dissolution would result in each of them retaining different stores in the partnership dissolution.

13. DeWood then sent a proposed partnership dissolution agreement on behalf of Fathi Yusuf on March 13, 2012, to Hamed, with a proposal to dissolve the partnership. That document then went on to state in part as follows See Exhibit C attached to Wally Hamed's affidavit (Exhibit 2):

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



14. To date no agreement has been reached regarding the division of these partnership assets.
15. As these discussions progressed, Fathi Yusuf has engaged in and continues to engage in numerous acts in breach of his fiduciary obligations as a partner in his partnership with Hamed, all of which are designed to undermine the partnership's operations, jeopardizing their continued success and existence. These acts include but are not limited to the following acts:
  - a) Threatening to terminate the Hamed family employees in the three Plaza Extra stores;
  - b) Attempting to discredit the operations of these three stores by making defamatory statements about Hamed and his family members to third parties, including suppliers for the three stores, which are completely untrue;
  - c) Attempting to unilaterally change how the stores have operated by threatening to impose new and unreasonable restrictions on the operations of these three stores, all of which are aimed at undermining Hamed's partnership interest in the three stores.
  - d) Threatening to close down the Plaza Extra Supermarkets;
  - e) Threatening the Hamed family members working in the Plaza Extra supermarkets with physical harm, trying to intimidate them into leaving the stores;
  - f) Unilaterally canceling orders placed with vendors and not ordering new inventory for the three Plaza Extra supermarkets;
  - g) Giving false information to third parties, including suppliers of the three Plaza Extra Supermarkets, regarding its future operations, jeopardizing the goodwill of the three Plaza Extra supermarkets; and
  - h) Spending funds from the bank accounts of the three Plaza Extra supermarkets to support his other personal business interests unrelated to the three Plaza Extra supermarkets.
16. Finally, on or about August 20, 2012, Fathi Yusuf indicated he wanted to withdraw \$2.7 million from the partnership, which Mohammad Hamed refused to agree to. See Exhibit D attached to Wally Hamed's affidavit (Exhibit 2).
17. Thereafter, Yusuf unilaterally and wrongfully converted \$2.7 million from the Plaza Extra supermarket accounts used to operate the partnership's three stores, placing the funds in a separate United bank account controlled only by him. See Exhibit D attached to Wally Hamed's affidavit (Exhibit 2).
18. Said conversion essentially looted the funds used to operate the three Plaza Extra supermarkets, which was a willful and wanton breach of the partnership agreement between Mr. Hamed and Mr. Yusuf.
19. Despite repeated demands, Fathi Yusuf has not returned these funds to the Plaza Extra bank accounts from which they were withdrawn.

20. If the partnership's operations are not secured immediately, the continued operation of the three Plaza Extra stores will be in jeopardy, as well as the continued employment of its 600 plus employees, resulting in irreparable harm to these partnership assets. Indeed, Plaza Extra is in serious jeopardy of losing customers to other stores, losing employees due to moral problems, losing suppliers, and otherwise losing its goodwill, which it has built up over past 25 years.
21. The Hamed family has operated this partnership for over 25 years and wants to continue these businesses into the future for its current family members.
22. Yusuf has extensive investments overseas, so that he could easily transfer these funds improperly removed by him to someplace outside the jurisdiction of this Court if the relief sought is not granted.

With these facts in mind, it is now appropriate to address the Rule 65 standard under which relief is being sought in this motion.

## II. The Rule 65 Standard

As recently noted by the V.I. Supreme Court in *Petrus v. Queen Charlotte Corp.*, S. Ct. Civ. 2011-0083 at \*7 (Sup. Ct. 2012):

Before the Superior Court may grant a motion for a preliminary injunction, it must consider:

(1) whether the movant has shown a reasonable probability of success on the merits; (2) whether the movant will be irreparably injured by denial of the relief; (3) whether granting preliminary relief will result in even greater harm to the nonmoving party; and (4) whether granting the preliminary relief will be in the public interest.

With this standard in mind, the plaintiff will now explain why entry of the Rule 65 relief is warranted as to the following two matters based on these four criteria:

- 1) Injunctive Relief enjoining the defendants from interfering with Hamed's partnership rights in his partnership with Yusuf in operating of the three Plaza Extra supermarkets located on St. Croix and St. Thomas;
- 2) Injunctive Relief enjoining Yusuf from withdrawing any funds from any partnership bank accounts or brokerage accounts without the consent of Hamed and directing both defendants to immediately return the \$2.7 million improperly withdrawn from the bank accounts of the three Plaza supermarket accounts by Yusuf.

**III. The Plaintiff Is Entitled to Rule 65 Relief**

For the sake of clarity, the plaintiff will address the facts in the four areas listed in *Petrus, supra*. Based on the foregoing analysis, it is respectfully submitted that the relief sought should be granted.

**A. The plaintiff has a reasonable probability of success on the merits.**

It is undisputed that there is a partnership between the plaintiff and Fathi Yusuf regarding the operation of the three Plaza Extra supermarkets in question. Indeed, Yusuf has repeatedly recognized the existence of this partnership, both in his statements under oath as well in the various statements made by his counsel in attempting to dissolve the partnership. Likewise, Hamed and Yusuf have shared the profits distributed from these three Plaza Extra supermarkets since the mid-1980's.

Regarding the formation of a partnership, 26 V.I.C. § 22 provides in part as follows:

**§ 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 ...

Based in the applicable law and the undisputed facts before this Court, It is respectfully submitted that Hamed has demonstrated that a partnership exists, so he will prevail on this issue.

Additionally, regarding the first request for injunctive relief in this motion -- enjoining the defendants from interfering with Hamed's partnership rights in operating of the three Plaza Extra supermarkets -- 26 V.I.C. § 71 provides in part as follows:

**§ 71. Partner's rights and duties**

...

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

Thus, based on this statutory section, Hamed will certainly prevail on this point as well, satisfying the requirement of showing he has a reasonable probability of success on the merits regarding his right to fully participate in the management and conduct of the three Plaza Extra supermarkets.

Regarding the second request for injunctive relief in this motion -- enjoining Yusuf from withdrawing any funds from any partnership bank/brokerage accounts and directing the immediate return the \$2.7 million improperly withdrawn from the Plaza Extra supermarket accounts by Yusuf-- 26 V.I.C. § 71 provides further in part as follows:

**§ 71. Partner's rights and duties**

...

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

Thus, based on this statutory section, Hamed will prevail on this point as well at trial, requiring all partnership profits to be distributed on a 50/50 basis, satisfying the requirement of showing he has a reasonable probability of success on the merits regarding this claim.

As such, the plaintiff has satisfied this important prong in seeking Rule 65 relief, warranting the entry of an injunction (1) to protect his partnership rights in the participating in the daily operations of the three Plaza Extra supermarkets and (2) to

enjoin the defendants from improperly removing funds from the partnership bank/brokerage accounts.

**B. The plaintiff will be irreparably injured by denial of the relief.**

The record in this case also demonstrates that the plaintiff will be irreparably harmed if the requested Rule 65 relief is not granted.

First, the record demonstrates that Yusuf has already engaged in numerous acts to try to interfere with Hamed's statutory right to participate in the operation of the three Plaza Extra stores, jeopardizing the success of these three Plaza Extra stores and threatening their very existence. See Exhibit 2 at #18-#19.

Second, Yusuf has already unilaterally removed \$2.7 million from the three Plaza Extra supermarket accounts. See Exhibit 2 at #19-#20. As noted by Wally Hamed's affidavit (See Exhibit 2 at #21 and #22):

**21. If 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.**

**22. Indeed, Plaza is in serious jeopardy of losing customers to other stores, destroying its good will built up over the years. (Emphasis added).**

As Hamed further noted (See Exhibit 2 at #23):

**23. The Hamed family has operated this partnership for over 25 years and wants to continue these businesses into the future for its current family members.**

Thus, the threat to the continued operation of the three Plaza Extra supermarkets warrants a finding of irreparable harm in support of the request for injunctive relief.

As noted in *Anderson v. Davila*, 125 F.3d 148 (3<sup>rd</sup> Cir. 1997):

To show irreparable harm, the party seeking injunctive relief must at least demonstrate "that there exists some cognizable danger of recurrent violation" of his legal rights. *Id.* at 164.

In this case, Yusuf's repeated violations of Hamed's statutory rights under Title 26 of the V.I. Code, which erupted when the partnership dissolution negotiations began, warrant a finding of irreparable harm under the *Anderson* standard. Indeed, this conduct is not only going on at the current time, but it has become even more serious as time passes.

Likewise, the threatened harm to the goodwill and loss of customers of Plaza Extra also warrants a finding of irreparable harm. As noted in *Multi-Channel TV Cable Company v. Charlottesville Quality Cable Operating Company*, 22 F.3d 546 (4<sup>th</sup> Cir. 1994):

When the failure to grant preliminary relief creates the possibility of permanent loss of customers to a competitor or the loss of goodwill, the irreparable injury prong is satisfied. *Id.* at 552.

Likewise, the fact that the Hamed family has operated these three supermarkets for over 25 years along with the fact that they want to keep these successful stores in the family business in the future for new family members also warrants a finding of irreparable harm. As the court held in *Semmes Motors, Inc. v. Ford Motor Company*, 429 F.2d 1197 (U.S.C.A. 1970):

But 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.

Indeed, courts have found irreparable harm in numerous other cases where the facts are similar to those in this case. See, e.g., *Bryne v. Calastro*, 205 Fed. Appx. 10, 16 (3<sup>rd</sup> Cir. 2006)(allegations of financial misconduct constitute irreparable harm); *Kendall v. Russell*, 2008 WL 219762 at \*13 (D.V.I. 2008) (harm to reputation constitutes irreparable harm).

Finally, the Third Circuit has repeatedly held irreparable harm may be found where there is a request for injunctive relief to freeze assets if it appears those assets may be removed if such relief is not granted. See, e.g., *Elliott v. Kiesewetter*, 98 F. 3d 47, 58 (3<sup>rd</sup> Cir. 1996); *Hoxworth v. Blinder, Robinson & Co., Inc.*, 903 F.2d 186, 205 (3<sup>rd</sup> Cir. 1990). In this regard, Yusuf has extensive investments overseas, so that he could easily remove these significant assets beyond the jurisdiction of this Court if the relief sought is not granted. See Exhibit 2 at #23.

In summary, the plaintiff has certainly provided sufficient facts for this Court to find that there will be irreparable harm unless the two specific requests for Rule 65 relief are not granted.

**C. The granting preliminary relief will not result in an even greater harm to the nonmoving party.**

There is no harm to the defendants in granting the relief sought for several reasons. First, the defendants are not being asked to do anything other than honor the partnership obligations that have existed for over 25 years, preserving the status quo until this Court can sort out the claims being asserted by the plaintiff. Second, the entry of the relief sought does not deprive the defendants of any of his respective partnership rights pending the resolution of this case. Thus, this Rule 65 factor weighs in favor of granting the relief sought.

**D. Granting the preliminary relief will be in the public interest.**

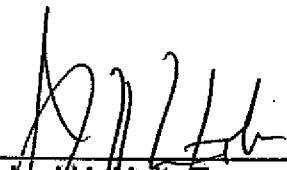
There is no doubt that the continued operation of these three large supermarkets servicing the Virgin Islands, with the continued employment of over 600 people, is in the public interest. Thus, this prong has also been met, warranting the entry of injunctive relief as requested.

#### IV. Conclusion

For the reasons set forth herein, it is respectfully submitted that the plaintiff has met the required burden of Rule 65, so that a temporary restraining order or preliminary injunction should be issued as to the following matters:

- 1) Injunctive Relief enjoining the defendants from interfering with Hamed's partnership rights in his partnership with Yusuf in operating of the three Plaza Extra supermarkets located on St. Croix and St. Thomas;
- 2) Injunctive Relief enjoining Yusuf from withdrawing any funds from any partnership bank accounts or brokerage accounts without the consent of Hamed and directing both defendants to immediately return the \$2.7 million improperly withdrawn from the bank accounts of the three Plaza Extra supermarket accounts by Yusuf.

Dated: September 18, 2012

  
\_\_\_\_\_  
Joel H. Holt, Esq.  
Attorney for Plaintiff  
2132 Company Street  
St. Croix, VI 00820  
(340) 773-8709  
holtvi@aol.com



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

MOHAMMAD HAMED By His Authorized  
Agent WALEED HAMED

Plaintiff,

v.

FATHI YUSUF AND UNITED CORPORATION

Defendant.

CIVIL NO. SX-12-CV-370

ACTION FOR DAMAGES  
INJUNCTIVE AND  
DECLARATORY RELIEF  
JURY TRIAL DEMANDED

AFFIDAVIT OF MOHAMMAD HAMED

Mohammed Hamed, duly sworn, hereby avers as follows:

1. I am an adult resident of St. Croix and am personally knowledgeable about each fact set forth in this affidavit.
2. In the 1980's, I entered into a partnership with Fahti Yusuf in the 1980's to operate a supermarket known as Plaza Extra, located in the United Shopping Center located on the east end of St. Croix. The partnership has since expanded to tow other locations in the Virgin Islands, operating the Plaza Extra supermarket on the west end of St. Croix at Estate Plessen (Grove Place) and the Plaza Extra supermarket on St. Thomas located at the Tutu Park Mall.
3. Since the formation of this partnership, I have always shared equally with Fathi Yusuf in the 50/50 distribution of profits by the partnership.
4. I have given my son, Waleed Hamed, a power of attorney to act on my behalf in all aspects of the Plaza partnership business I have with Fathi Yusuf.
5. I have reviewed the affidavit signed by my son, Waleed Hamed, in support of the request for a temporary restraining order filed in this case. All of the statements contained in his affidavit are true and correct to the best of my knowledge.

Dated: September 17 , 2012

  
Mohammad Hamed

EXHIBIT

Bunbury, Va. 22026

JA 884

SWORN AND SUBSCRIBED TO BEFORE  
ME THIS 17th DAY OF September, 2012



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NOTARY PUBLIC

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NOTARY PUBLIC  
JERRI FARRANTE  
Commission Exp: August 26, 2015  
NP 078-11

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

**MOHAMMAD HAMED By His Authorized  
Agent WALEED HAMED**

**Plaintiff,**

**v.**

**FATHI YUSUF AND UNITED CORPORATION**

**Defendant.**

**CIVIL NO. SX-12-CV-370**

**ACTION FOR DAMAGES  
INJUNCTIVE AND  
DECLARATORY RELIEF  
JURY TRIAL DEMANDED**

**AFFIDAVIT OF WALEED HAMED A/K/A WALLY HAMED**

Waleed Hamed, a/k/a Wally Hamed, duly sworn, hereby avers as follows:

1. I am an adult resident of St. Croix and am personally knowledgeable about each fact set forth in this affidavit.
2. I am also known by most people as Wally Hamed.
3. My father, Mohammad Hamed, entered into a partnership with Fathi Yusuf in the 1980's to operate a supermarket known as Plaza Extra, located in the United Shopping Center located on the east end of St. Croix.
4. The partnership has since expanded to two other locations in the Virgin Islands, operating the Plaza Extra supermarket on the west end of St. Croix at Estate Plessen (Grove Place) and the Plaza Extra supermarket on St. Thomas located at the Tutu Park Mall.
5. My father has given me a power of attorney to act on his behalf in all aspects of the Plaza partnership business he has with Fathi Yusuf.
6. The partnership between Hamed and Yusuf currently operates the same three Plaza supermarket locations, currently employing in excess of 600 employees in the three stores.
7. Since its formation, the three Plaza Extra supermarkets have been managed jointly by my father with Fathi Yusuf, operating as a partnership with separate accounting records and separate bank accounts for each of the three stores, even though the partnership utilized the corporate entity of United Corporation ("United") for the reporting of tax obligations.

Exhibits 1/16/2012

**EXHIBIT**

**2**

JA-096

8. United owns additional assets other than the three Plaza supermarkets that my father does not have an interest in.
9. The bank accounts for the three Plaza Extra supermarkets, placed in the name of United, have always been accessible equally to my father and Fathi Yusuf, with the parties agreeing in 2010 that one family member from each of the Hamed and Yusuf families will sign each check written on these bank accounts. The current bank accounts for each of the three Plaza stores are:

**St. Thomas Plaza Extra Store:**

Operating Acct:	04xxxxxxxxxx	Bank of Nova Scotia (BNS)
Payroll Acct:	04xxxxxxxxxx	Bank of Nova Scotia (BNS)
Telecheck Acct:	04xxxxxxx	Bank of Nova Scotia (BNS)
Credit Card Acct:	1xxxxxxx	Banco Popular

**St. Croix Plaza Extra – WEST**

Operating Acct:	19xxxxxx	Banco Popular
Credit Card Acct:	19xxxxxx	Banco Popular
TeleCheck Acct:	05xxxxxxxxxx	Bank of Nova Scotia (BNS)

**St. Croix Plaza Extra – EAST**

Operating Acct:	19xxxxxx	Banco Popular
Credit Card Acct:	19xxxxxx	Banco Popular
Telecheck Acct:	58xxxxxxxxxx	Bank of Nova Scotia (BNS)

10. The accounts for United's shopping center operations and business operations that are unrelated to the three Plaza Extra supermarket stores are maintained separately by Fathi Yusuf and United. My father does not have access to these separate bank accounts used by United for its shopping center and other businesses unrelated to the three Plaza Extra supermarkets.
11. At all times relative hereto, the Hamed and Yusuf partnership profits from the Plaza Extra stores have always been held in banking and brokerage accounts completely separate from the profits of United's other unrelated businesses, even though the banking and brokerage accounts holding the profits from the Hamed and Yusuf partnership are in United's name as well. The current brokerage accounts holding these profits, well in excess of several million dollars, are:

**Popular Securities**

PSx-xxxx22

PSx-xxxx63

PSx-xxxx60  
PSx-xxxx79  
PSx-xxxx01  
PSx-xxxx10  
PSx-xxxx28  
PSx-xxxx36

**Merrill Lynch**  
14X-XXXXX

12. At all times relative hereto, my father and Fathi Yusuf have equally shared the profits distributed from the three Plaza supermarkets.
13. In this regard, my father and Fathi Yusuf have also maintained records of all withdrawals from the partnership account to each of them (and their respective family members), to make sure there would always be an equal (50/50) amount of these withdrawals for each partner's family members.
14. Fathi Yusuf has repeatedly confirmed the existence of this partnership between himself and my father, including statements made under oath. **See Exhibit A.**
15. On February 10, 2012, Fathi Yusuf's attorney, Nizar DeWood ("DeWood"), informed me, as the agent for my father, that Fathi Yusuf wanted to dissolve the partnership, which he again mentioned in a follow up letter. **See Group Exhibit B** The letter stated that Mr. Yusuf was ready to proceed with dissolving the partnership, describing the partnership assets to be divided 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).

The letter then discussed each partner getting their own store from the partnership.
16. DeWood then sent a proposed partnership dissolution agreement on behalf of Fathi Yusuf on March 13, 2012, to me, regarding Yusuf's request to dissolve the partnership. That document (**See Exhibit C**) then went on to state 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**

- 17. All interested parties subsequently met on numerous occasions to try to address the division of the partnership assets, including the three Plaza Extra Stores and the partnership profits held in the various bank and brokerage accounts. However, to date no agreement has been reached regarding the division of these partnership assets.**
- 18. As these discussions progressed, Fathi Yusuf began to engage in, and continues to engage in, numerous acts in breach of his obligations as a partner in his partnership with Hamed. These acts are clearly designed to undermine the partnership's operations, jeopardizing their continued success and existence. These acts include but are not limited to the following acts:**
  - a) Threatening to terminate the Hamed family employees in the three Plaza Extra stores;**
  - b) Attempting to discredit the operations of these three stores by making defamatory statements about Hamed and his family members to third parties, including suppliers for the three stores, which are completely untrue;**
  - c) Attempting to unilaterally change how the stores have operated by threatening to impose new and unreasonable restrictions on the operations of these three stores, all of which are aimed at undermining Hamed's partnership interest in the three stores.**
  - d) Threatening to close down the Plaza Supermarkets;**
  - e) Threatening the Hamed family members working in the Plaza supermarkets with physical harm, trying to intimidate them into leaving the stores;**
  - f) Unilaterally canceling orders placed with vendors and not ordering new inventory for the three Plaza supermarkets;**

- g) Giving false information to third parties, including suppliers of the three Plaza Supermarkets, regarding its future operations, jeopardizing the good will of the Three Plaza supermarkets; and
  - h) Spending funds from the bank accounts of the three Plaza supermarkets to support his other personal business interests unrelated to the three Plaza supermarkets.
19. Finally, on or about August 20, 2012, Fathi Yusuf indicated he wanted to withdraw \$2.7 million from the partnership, which my father (through me) refused to agree to. See Exhibit D. Thereafter, Yusuf unilaterally and wrongfully converted \$2.7 million from the Plaza Extra supermarket accounts used to operate the partnership's three stores, placing the funds in a separate United account controlled only by him. Said conversion was a willful and wanton breach of the partnership agreement between my father and Mr. Yusuf. See Exhibit E.
20. Despite repeated demands, Fathi Yusuf has not returned these funds to the Plaza Extra bank accounts from which they were withdrawn.
21. If 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.
22. Indeed, Plaza is in serious jeopardy of losing customers to other stores, losing employees due to moral problems, losing supplies, and otherwise losing its goodwill, which it has built up over past 25 years.
23. The Hamed family has operated this partnership for over 25 years and wants to continue these businesses into the future for its current family members.
24. Yusuf has extensive investments overseas, so that he can easily remove these significant assets beyond the jurisdiction of this Court if the relief sought is not granted, as he has done with other profits received by him over the past 25 years.

Dated: September 18, 2012

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

SWORN AND SUBSCRIBED TO BEFORE  
ME THIS 18<sup>th</sup> DAY OF September, 2012

  
\_\_\_\_\_  
NOTARY PUBLIC

NOTARY PUBLIC  
JERRI FARRANTE  
Commission Exp: August 26, 2015  
NP 078-11

# EXHIBIT A



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

EXHIBIT  
A

Cheryl L. Haase  
(340) 773-8161

COPY  
JA-102

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

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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?

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JA-104

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

FATHI YUSUF -- DIRECT

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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(340) 773-8161

JA-109



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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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 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.

Cheryl L. Haase

JA-111

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

Cheryl L. Haase

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

Cheryl L. Haase

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

Cheryl L. Haase

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 B**

From: Nizar DeWood <[dewoodlaw@gmail.com](mailto:dewoodlaw@gmail.com)>  
Date: February 10, 2012 10:58:39 AM EST  
To: "Wally Hamed" <[wallyhstx@yahoo.com](mailto:wallyhstx@yahoo.com)>  
Subject: Powers of Attorney - Dissolution of Partnership

Hello 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

Brimberg No. 0200

EXHIBIT

B

JA-117



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,

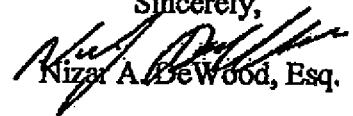
This letter is to confirm the parties' desire to dissolve the above referenced partnership. Partnership dissolution will involve appropriate planning to properly account for each of the partner's interest in the partnership, and a well-executed agreement memorializing the understanding of the parties.

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 30<sup>th</sup>, 2012 on that property.

I look forward to hearing from you. Thank you.

Sincerely,

  
Nizar A. DeWood, Esq.

cc: Fathi Yusuf

# EXHIBIT C

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



JA-120

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## 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 10<sup>th</sup>, 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:

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## 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 10<sup>th</sup>, 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 20<sup>th</sup>, 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

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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 31<sup>st</sup>, 2012. Thereafter, the monthly rental rate shall increase to \$250,000 per month until June 30<sup>th</sup>, 2012. After such date, the tenancy shall terminate forthwith without further notice. Failure to vacate the premises by June 30<sup>th</sup>, 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 27<sup>th</sup>, 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 27<sup>th</sup>, 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.

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.	<b>Rent (for the period of May 5<sup>th</sup>, 2004 to Dec. 31<sup>st</sup>, 2011).</b> 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 <sup>th</sup> , 2012 by way of check drawn on the account of United Corporation. Accordingly, the rental arrears for the period of (May 5 <sup>th</sup> , 2004 to Dec. 31 <sup>st</sup> , 2011) are now satisfied.
2.	<b>Other Outstanding Rent (Pre 2004).</b> 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 <sup>th</sup> , 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"> <li>1. Arab Bank, Ltd (Worldwide branches)</li> <li>2. Banque Francaise Commerciale in St. Maarten.</li> <li>3. Cairo-Amman Bank (worldwide branches)</li> <li>4. Bank of Nova Scotia (worldwide branches)</li> <li>5. Merrill Lynch Investments</li> <li>6. First Bank (formerly known as VI Community Bank)</li> <li>7. Any other Bank either party determines to be relevant for purpose of inquiry, investigation, and full accounting.</li> </ol>

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.

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**IN WITNESS WHEREOF**, the parties have executed this Agreement on the day and year first written above.

\_\_\_\_\_  
**Fathi Yusuf, Partner**

\_\_\_\_\_  
**Mohammad Hamed, Partner**

# EXHIBIT D

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

BY HAND DELIVERY

*Received by  
8/16/2012*

Date: August 15, 2012

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

Re: Notice of Withdrawal

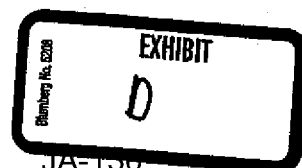
Dear Mr. Hamed,

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

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

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

Yours  
*Fathi Yusuf*  
for Fathi Yusuf



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

**BY HAND DELIVERY**

Date: Thursday, August 16, 2012

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

Dear Mr. Yusuf:

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

Cordially,

  
Waleed Hamed

**UNITED CORPORATION**  
4-C & 4-D Estate, Stone Farm  
P.O. Box 763  
Christiansburg, VA 00820

Date: August 22, 2012

HAND DELIVERY

Mohammed Hamed  
By: Waheed Hamed

Dear Mohammed Hamed,

RE: SBI-OT

Your response letter, through your agent, Waheed Hamed, does not deny the validity of any of the amounts stated as owing and outstanding to United Corporation. Your letter requests that an accounting be done for other matters, which is a separate issue. Please reduce to writing those other matters you contend are owed, and provide the supporting documentation. Accordingly, the amount requested will be withdrawn.

Thank you.

Confidential  
Print Name

Out-Of-Office  
mikefyusuf@yahoo.com  
nejeh27@earthlink.net

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

Saturday, August 25, 2012

Dear Mr. Yusuf:

Your suggestion that the Hamed family agreed to your calculations of any sums due you is incorrect. The Hamed family disputes those calculations and insists on a full accounting.

Moreover, any unilateral withdrawal of funds by you would violate the Court's Order currently in place. It would also violate the agreement between our families. If you attempt to take any funds as threatened, we will instruct our counsel to advise the District Court Judge of this violation of its Order, as well as to take any other appropriate action he deems appropriate .

Cordially,  
Waleed Hamed

W. M. Hamed

**Confidentiality Notice:** The information contained in and transmitted with this communication is strictly confidential, is intended only for the use of the intended recipient. If you are not the intended recipient, you are hereby notified that any use of the information contained in or transmitted with the communication or dissemination, distribution, or copying of this communication is strictly prohibited by law. If you have received this communication in error, immediately return this communication to the sender and delete the original message and any copy of it in your possession.



UNITED CORPORATION D/B/A  
PLAZA EXTRA

340-779-4240  
PO BOX 763  
CHRISTIANSTED, USVI 00821-0763

1154

101-808216



To The Order of

United Corporation

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

\$ 2,784,700.25

Two million Seven Hundred Eighty-Four Thousand Seven Hundred Six Dollars & 25/100 Dollars

Scotiabank  
THE BANK OF NOVA SCOTIA  
111 South Street, Suite 1000  
Halifax, NS B3H 2Y6

*[Handwritten signatures]*

For



**IN THE SUPERIOR 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-370

**DEFENDANTS' MOTION TO PROCEED ON PLAINTIFF'S MOTION FOR A  
TEMPORARY RESTRAINING ORDER AND/OR A PRELIMINARY INJUNCTION AS  
A MOTION FOR PRELIMINARY INJUNCTION AND FOR ENLARGEMENT OF  
TIME TO RESPOND TO SAME**

Defendants Fathi Yusuf and United Corporation (collectively, "Defendants"), pursuant to Super. Ct. R. 7, Local Rule 7.1(e)(1) of the Local Rules of Civil Procedure of the District Court of the Virgin Islands, Rule 65 of the Federal Rules of Civil Procedure and otherwise, jointly request that this Court proceed on the Motion for a Temporary Restraining Order and/or a Preliminary Injunction (the "TRO Motion") filed by Plaintiff Mohammad Hamed as a motion for a preliminary injunction and grant Defendants an enlargement of seven days, *through and including October 9, 2012*, within which to respond to the TRO Motion. In support of this motion, Defendants state the following:

1. Plaintiff initiated this action, a commercial dispute, on or about September 17, 2012, the date of the Complaint.
2. Plaintiff also filed a Motion for a Temporary Restraining Order and/or a Preliminary Injunction and an accompanying Memorandum in Support of Motion for a Temporary Restraining Order and/or a Preliminary Injunction, both dated September 18, 2012 (collectively, the "TRO Motion").

3. Defendants were served the Complaint and TRO Motion on September 18, 2012. (Sept. 19, 2012 Notice of Service).

4. On September 20, 2012, Plaintiff filed a Proposed Order for Temporary Restraining Order and/or a Preliminary Injunction (the "Proposed TRO Order"). (Sept. 20, 2012 Notice of Filing).

5. Defendants promptly engaged the undersigned counsel, who entered an appearance in the matter on September 21, 2012. (Sept. 21, 2012 Notice of Appearance).

6. The Complaint, while both legally and factually deficient, is apparently premised on the naked assertion that, "[i]n the mid-1980's, Hamed and Yusef formed a partnership to operate" three commercial supermarket businesses, which are located on properties operated by United Corporation. (Complaint ¶¶ 5-6).

7. Plaintiff alleges that "Yusef has engaged in and continues to engage in numerous acts in breach of his obligations as [an alleged] partner in [the alleged] partnership with Hamed," including an alleged wrongful conversion of \$2.7 million from certain commercial accounts at issue. (Complaint ¶¶ 19-20). This alleged conduct, even if properly plead and proven, does not support injunctive relief.

8. Among other preliminary injunctive relief, Plaintiff requests that "Yusef [be enjoined] from withdrawing any funds from any [alleged] partnership bank accounts or brokerage accounts without the consent of Hamed—a stranger to the corporation—and directing both defendants to immediately return the \$2.7 million [allegedly] improperly withdrawn from the bank accounts of the three Plaza Extra supermarket accounts by Yusuf." (TRO Motion at 11; see also Proposed TRO Order at 2-3).

9. Notwithstanding the allegations involving economic harms of, at a minimum, \$2.7 million dollars, Plaintiff incredibly proposes to post a bond of merely “\$10,000 as security” to compensate Defendants if they are incorrectly enjoined. (TRO Motion at 3).<sup>1</sup>

10. Defendants bitterly dispute the allegations in the Complaint, including the existence and scope of the alleged “partnership” that serves as the foundation of Plaintiff’s Complaint and TRO Motion.

11. Defendants likewise believe that the Complaint and TRO Motion are legally and factually baseless.

12. As a threshold procedural matter, at issue is whether the Court should proceed on Plaintiff’s TRO Motion as request for a temporary restraining order or a preliminary injunction.

13. “An injunction is an ‘extraordinary remedy which should be granted only in limited circumstances.’” *Barclays Bus. Credit, Inc. v. Four Winds Plaza P’ship*, 938 F. Supp. 304, 307 (quoting *American Telephone & Tel. Co. v. Winback & Conserve Program, Inc.*, 42 F.3d 1421, 1426-27 (3d Cir. 1994) (citation omitted)).

14. “‘This proposition is particularly apt in motions for preliminary injunctions, when the motion comes before the facts are developed to a full extent through the normal course of discovery.’” *Barclays*, 938 F. Supp. at 307 (quoting *American Telephone*, 42 F.3d at 1427).

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<sup>1</sup> See Fed. R. Civ. P. 65(c) (“The court may issue a preliminary injunction or a temporary restraining order only if the movant gives security in an amount that the court considers proper to pay the costs and damages sustained by any party found to have been wrongfully enjoined or restrained.”). “An incorrect interlocutory order may harm defendant[s] and a bond provides a fund to use to compensate incorrectly enjoined defendants. Such protection is important in the preliminary injunction context, for because of attenuated procedure, an interlocutory order has a higher than usual chance of being wrong.” *Haxworth v. Blinder, Robinson & Co.*, 903 F.2d 186, 210 (3d Cir. 1990) (internal quotation and citation omitted).

15. Rule 65 of the Federal Rules of Civil Procedure governs preliminary injunctions and temporary restraining orders. *See* Fed. R. Civ. P. 65(a) (preliminary injunctions) and 65(b) (temporary restraining orders).

16. The primary difference is that a temporary restraining order may be issued “without written or oral notice to the adverse party or its attorney” and without affording the adverse party an opportunity to “be heard in opposition.” Fed. R. Civ. P. 65(b)(1) (setting forth the requirements for the issuance of a temporary restraining order).

17. In the present action, although Plaintiff seeks “a temporary restraining order, pursuant to Rule 65(b), or a preliminary injunction, pursuant to Rule 65(a),” Plaintiff concedes that the matter should appropriately “just proceed as a preliminary injunction” under Rule 65(a). (TRO Motion at 1; *see also* Proposed TRO Order at 1).

18. Indeed, even assuming Plaintiff could satisfy the requirements for a temporary restraining order under Rule 65(b), which he cannot do, a temporary restraining order would be improper as Plaintiff has failed to “certif[y] in writing . . . the reasons why [notice to Defendants] should not be required” prior to the issuance of any such relief or why Defendants should not “be heard in opposition” prior to any ruling in the matter. *See* Fed. R. Civ. P. 65(b)(1).

19. As a separate procedural matter, pursuant to Local Rule 7.1(e)(1) of the Local Rules of Civil Procedure of the District Court of the Virgin Islands, Defendants’ response to the TRO Motion, assuming the Court proceeds on the motion as a motion for a preliminary injunction, is currently due on October 2, 2012. LRCr 7.1(e)(1).

20. Defendants’ counsel, as noted above, appeared in the matter on September 21, 2012, three days after service of process.

21. Defendants thus respectfully request an enlargement of one (1) week, through and including October 9, 2012, within which to prepare and finalize their joint response to the TRO Motion.

22. The enlargement of time is requested simply to afford Defendants, including United Corporation, which, as alleged, "currently employ[s] in excess of 600 employees" in the businesses at issue (Complaint ¶ 6), sufficient time to consult with their counsel, key corporate personnel and witnesses, and to fully investigate Plaintiff's legal and factual claims.

23. The relief requested in this motion is made in good faith and not for any dilatory tactic.

24. Moreover, because "[a]n injunction is an 'extraordinary remedy which should be granted only in limited circumstances,'" *Bardays*, 938 F. Supp. at 307, and because "an interlocutory order has a higher than usual chance of being wrong," *Hoxworth*, 903 F.2d at 210, no party will be unduly prejudiced or harmed by the grant of this motion.

25. Undersigned counsel conferred on this motion with Plaintiff's counsel, who expressed no position as to proceeding on the TRO Motion as a preliminary injunction and who indicated that Plaintiff opposed the requested enlargement.

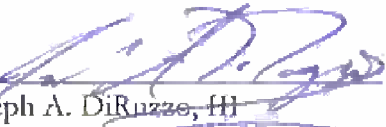
**WHEREFORE**, Defendants Fathi Yusuf and United Corporation respectfully request that this Court proceed on Plaintiff's Motion for a Temporary Restraining Order and/or a Preliminary Injunction as a motion for a preliminary injunction, and thereby afford Defendants an opportunity to be heard in opposition, and grant Defendants an enlargement *through and including October 9, 2012*, within which to file their joint response to the TRO Motion.

A proposed such Order is attached hereto.

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Respectfully Submitted,

Dated Sept. 28, 2012

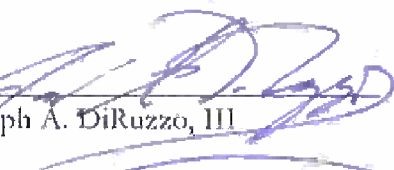
By:   
Joseph A. DiRuzzo, III  
USVI Bar #1114

FUERST ITTLEMAN DAVID & JOSEPH, PL  
1001 Brickell Bay Drive, 32<sup>nd</sup> Floor  
Miami, Florida 33131  
305.350.5692 (O)  
305.371.8989 (F)  
[jdiruzzo@fuerstlaw.com](mailto:jdiruzzo@fuerstlaw.com)

*Attorneys for Defendants*

**CERTIFICATE OF SERVICE**

I hereby certify that, on September 28, 2012, a true and accurate copy of the foregoing document was served via USPS and email to the following: Joel H. Holt, Esq., 2132 Company St., St. Croix, VI 00820, [holvi@aol.com](mailto:holvi@aol.com).

By:   
Joseph A. DiRuzzo, III





DONE AND ORDERED this \_\_\_\_ day of \_\_\_\_\_, 2012.

\_\_\_\_\_  
Judge of the Superior Court

ATTEST: VENETIA VELAZQUEZ  
Clerk of the Court

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

cc: Joel Holt, Esq.  
Joseph A. DiRuzzo, III, Esq.

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

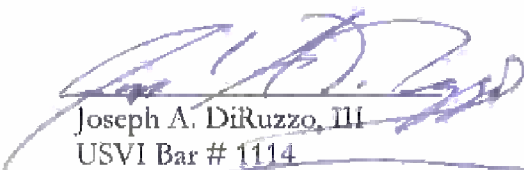
MOHAMMAD HAMED By His Authorized :  
Agent WALEED HAMED :  
Plaintiff, : CASE # SX-12-CV-370  
 :  
vs. :  
 :  
FATHI YUSUF & UNITED CORPORATION, :  
 :  
Defendants. :  
\_\_\_\_\_ :

NOTICE OF REMOVAL

COMES NOW Defendants, FATHI YUSUF & UNITED CORPORATION, hereby give notice that the Defendant have removed the instant case to the District Court of the Virgin Islands pursuant to 28 U.S.C. § 1446. A copy of the Notice of Removal as filed with the District Court of the Virgin Islands is attached hereto as Exhibit A as required pursuant to 28 U.S.C. § 1446(d).

Further, pursuant to 28 U.S.C. § 1446(d) the Defendants ask that this Court to not proceed any "further unless and until the case is remanded."

Respectfully submitted,

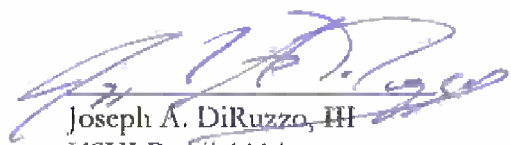
  
Joseph A. DiRuzzo, III  
USVI Bar # 1114  
FUERST LITTLEMAN DAVID & JOSEPH, PL.  
1001 Brickell Bay Drive, 32<sup>nd</sup> Floor  
Miami, Florida 33131  
305.350.5690 (O)  
305.371.8989 (F)  
[jdiruzzo@fuerstlaw.com](mailto:jdiruzzo@fuerstlaw.com)

Dated Oct. 4, 2012

**CERTIFICATE OF SERVICE**

I hereby certify a true and accurate copy of the foregoing document was served via USPS to the following: Joel H. Holt, Esq., 2132 Company St., St. Croix, VI 00820, and via email: holtvi@aol.com.

Respectfully submitted,



Joseph A. DiRuzzo, III  
USVI Bar # 1114

Dated Oct. 4, 2012

FUERST LITTLEMAN DAVID & JOSEPH, PL  
1001 Brickell Bay Drive, 32<sup>nd</sup> Floor  
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IN THE DISTRICT COURT OF THE VIRGIN ISLANDS  
DIVISION OF ST. CROIX

Case  
Hamed v. Yusuf  
and United Corp.

Exhibit  
A

MOHAMMAD HAMED, by his	)	Case No.1:12-cv-99
authorized agent, WALEED HAMED,	)	
	)	
Plaintiff,	)	
	)	
v.	)	
	)	
FATHI YUSUF and UNITED CORPORATION,	)	
	)	
Defendants.	)	
	)	

**NOTICE OF REMOVAL**

PLEASE TAKE NOTICE that:

Defendants, FATHI YUSUF and UNITED CORPORATION (collectively, "Defendants"), pursuant to 28 U.S.C. §§ 1446, hereby give notice of the removal of this action from the Superior Court of the Virgin Islands, St. Croix Division, to the District Court of the Virgin Islands, St. Croix Division. In support of this Notice of Removal, Defendants state as follows:

1. On or about September 17, 2012, Plaintiff Mohammad Hamed ("Plaintiff"), by his authorized agent, filed a civil complaint (the "Complaint") in the Superior Court of the Virgin Islands, St. Croix Division, styled *MOHAMMAD HAMED by His Authorized Agent WALEED HAMED v. FATHI YUSUF & UNITED CORPORATION*, Case No. SX-12-CV-370, which case was assigned to the Honorable Julio A. Brady (the "State Court Action").

2. On or about September 18, 2012, Plaintiff also filed a Motion for a Temporary Restraining Order and/or a Preliminary Injunction and an accompanying Memorandum in Support of Motion for a Temporary Restraining Order and/or a Preliminary Injunction (collectively, the "TRO Motion").

3. Defendants were served with Summonses and copies of the Complaint and TRO Motion on September 18, 2012:

4. Defendants promptly engaged the undersigned counsel and, on or about September 28, 2012, filed a Motion to Proceed on Plaintiff's Motion for a Temporary Restraining Order and/or a Preliminary Injunction as a Motion for Preliminary Injunction and for Enlargement of Time to Respond to Same.

5. On or about October 2, 2012, Plaintiff filed his Reply to Defendant's Motion to proceed as a preliminary injunction.

6. No process, pleadings or orders have been filed in the State Court Action since Plaintiff's October 2, 2012 Reply.

7. Pursuant to 28 U.S.C. § 1446(a), a copy of all process, pleadings and orders served upon Defendants in the State Court Action to date are separately attached hereto, namely:

- (a) Superior Court Summons dated September 17, 2012;
- (b) Superior Court Docketing Letter and Notice of Judge Assignment dated September 17, 2012;
- (c) Complaint dated September 17, 2012;
- (d) Motion for a Temporary Restraining Order and/or a Preliminary Injunction dated September 18, 2012;
- (e) Memorandum in Support of Motion for a Temporary Restraining Order and/or a Preliminary Injunction dated September 18, 2012;
- (f) Notice of Service of Motion for a Temporary Restraining Order and/or a Preliminary Injunction dated September 19, 2012;
- (g) Notice of Filing Proposed Order for Temporary Restraining Order and/or a Preliminary Injunction dated September 20, 2012;
- (h) Notice of Appearance by Joseph A. DiRuzzo, III dated September 21, 2012;

(i) Defendants' Motion to Proceed on Plaintiff's Motion for a Temporary Restraining Order and/or a Preliminary Injunction as a Motion for Preliminary Injunction and for Enlargement of Time to Respond to Same dated September 28, 2012; and

(j) Plaintiff's Reply to Defendant's Motion for Enlargement of Time dated October 2, 2012.

8. This Notice of Removal is timely, as Defendants were served the Complaint on September 18, 2012. *See* 28 U.S.C. § 1446(b).

9. The underlying action, which is ostensibly brought pursuant to the partnership provisions of the Virgin Islands Code, Title 26, is premised on the naked assertion that, "[i]n the mid-1980's, Hamed and Yusef formed a partnership to operate" three commercial supermarket businesses, which are located on properties owned and/or operated by Defendant United Corporation. (Complaint ¶¶ 5-6).

10. Among other legal and factual defects, the Complaint does not attach or reference a single tax return, corporate declaration, or other public document supporting the existence of any partnership or partnership agreement.

11. Nevertheless, Plaintiff alleges that "Yusef has engaged in and continues to engage in numerous acts in breach of his obligations as [an alleged] partner in [the alleged] partnership with Hamed," including an alleged wrongful conversion of \$2.7 million from certain commercial accounts at issue. (Complaint ¶¶ 19-20).

12. Plaintiff seeks, "pursuant to 26 V.I.C. § 75, . . . legal and equitable relief as deemed appropriate to protect and preserve [his alleged] partnership rights," "including the return of funds to the [partnership [allegedly] improperly taken or spent by Yusuf to date in violation of the agreement between the parties" and "compensatory damages for all [alleged] financial losses inflicted

by Yusuf on the partnership and/or his partnership interest as well as punitive damages against Yusuf for his [alleged] willful and wanton misconduct.” (Complaint ¶¶ 26-28).

13. Plaintiff also seeks “a judicial determination under 26 V.I.C. § 121(5) that it is not practicable to continue the [alleged] partnership . . .” (Complaint ¶ 31).

14. Significantly, the Complaint refers to a federal criminal action in the District Court of the Virgin Islands, St. Croix Division, styled *UNITED STATES OF AMERICA and GOVERNMENT OF THE VIRGIN ISLANDS v. FATHI YUSUF MOHAMAD YUSUF, WALEED MOHAMMAD HAMED, WAHEED MOHAMMAD, MAHER FATHI YUSUF, NEJEH FATHI YUSUF, ISAM YUSUF and UNITED CORPORATION*, Case No. 2005-15F/B, which case was assigned to and is currently pending before the Honorable Wilma A. Lewis (the “Federal Court Criminal Action”). (Complaint ¶¶ 8, 10).

15. As alleged in the Complaint, the “parties” are currently prohibited from removing funds from United Corporation’s accounts at issue pursuant to an Order entered in the Federal Court Criminal Action. (Complaint ¶¶ 8, 10).

16. Fathi Yusuf and United Corporation, who are the defendants in the present action, together with Waleed Hamed, who is the plaintiff’s “authorized agent” in this action, are co-defendants in the Federal Court Criminal Action.

17. Indeed, on or about February 26, 2010, in the Federal Court Criminal Action, United Corporation, its attorneys, the individual defendants in that action, the United States Department of Justice, Tax Division, and the United States Attorney for the District of the Virgin Islands entered into a Plea Agreement (the “Plea Agreement,” which is DE # 1248 in the Federal Court Criminal Action and is attached as Exhibit “A” hereto).

18. As reflected in the Plea Agreement, United Corporation agreed to plead guilty in the Federal Court Criminal Action to a violation of “Title 33, Virgin Islands Code, Section 1525(2)” relating to the filing of a corporate income tax return on Form 1120S for the year 2001 and the underreporting of gross income. (Plea Agreement at 2-4).

19. In turn, the “Government” (defined in the Plea Agreement collectively as “the Department of Justice, Tax Division, and the United States Attorney for the District of the Virgin Islands”) agreed, in relevant part, to “dismiss all counts of the Indictment with prejudice against [the individual defendants]” and “not to file any additional criminal charges against United [Corporation] or any of the individual defendants for conduct arising out of the facts alleged in the Indictment.” (Plea Agreement at 1-2).

20. The United States Department of Justice of the Virgin Islands also agreed in the Plea Agreement “that it will file no criminal charges against United [Corporation] or any of the individual defendants for any conduct arising out of the facts alleged in the Indictment.” (Plea Agreement at 2).

21. As a further condition of the Plea Agreement, the defendants in the Federal Court Criminal Action, including Plaintiff Mohammad Hamed’s authorized agent and Defendants Fathi Yusuf and United Corporation here, agreed, prior to sentencing, which has not occurred yet, to file “complete and accurate” corporate and individual income tax returns and reporting documents for the years 2002, 2003, 2004, 2005, 2006, 2007 and 2008, and to pay in full the amounts due upon the returns for those years. (Plea Agreement at 11).

22. Related to the filing of such tax returns, the Plea Agreement identifies “restitution numbers for tax loss” derived from United Corporation’s gross receipts for the years 1996-2001,



United Corporation's corporate income taxes for the years 1996-1998, and the individual income taxes of United Corporation's shareholders for the years 1999-2001. (Plea Agreement, Exhibit 1).

23. At bottom, the Plea Agreement is undisputedly based on the representations by the defendants in the Federal Court Criminal Action, and their counsel, to the Government that United Corporation exists and has always existed as a corporation, not a partnership; and that, related to the corporate and individual income tax returns at issue in that action, no partnership exists or ever existed during the relevant tax periods.

24. Among other important provisions, the Plea Agreement also contains a waiver of United Corporation's appellate rights and ability to "collaterally attack" any conviction and sentence in the Federal Court Criminal Action, an integration clause, and a "no oral modification" clause requiring that any modification of the Plea Agreement be signed in writing "by the Government, United [Corporation], the individual defendants, and [United Corporation]'s shareholders." (Plea Agreement at 10, 12).

25. At all times relevant to the allegations in the Complaint, Plaintiff, by his authorized agent and otherwise, was aware of the Federal Court Criminal Action, including the representations made therein and the execution of the Plea Agreement.

26. Clearly, the present allegations of a supposed "partnership" relating to United Corporation's ownership, operations and tax status, as alleged in the Complaint, are anathema to the Plea Agreement and seek to implode the Federal Court Criminal Action and otherwise turn it on its head.<sup>1</sup>

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<sup>1</sup> A meaningful review of the Complaint reveals that Plaintiff has manipulated his pleading to avoid presenting the obvious federal questions addressed in this Notice of Removal and thus avoid federal jurisdiction. Indeed, shortly before filing the Complaint, Plaintiff, through his counsel, transmitted to the United States Department of Justice a self-serving letter expressing "certain concerns" and claimed "confusion" regarding the representations made by certain defendants in the Federal Court

27. The present allegations, on their face, thus necessarily raise substantial and significant federal issues, which sensibly belong in federal court, including, at a minimum, the interpretation of the Internal Revenue Code, the Treasury Regulations thereunder, and the federal criminal statutes at issue in the Federal Court Criminal Action.

28. Accordingly, under 28 U.S.C. §§ 1331 and 1441, this Court has original jurisdiction over the present claims and the action is properly removed thereto. *See, e.g., Grable & Sons Metal Products, Inc. v. Darne Engineering & Manufacturing*, 545 U.S. 308 (2005) (upholding federal jurisdiction in a state-law action turning on the interpretation of a federal tax law).

29. In addition, under the Supremacy Clause of the United States Constitution, the claims in this action are completely preempted by federal law, as the interpretation of federal tax law and federal criminal statutes are plainly federal in character and within the sole province of the federal courts. U.S.C.A. Const. Art. VI, cl. 2.

30. Indeed, because the allegations in the Complaint necessarily implicate the income tax laws applicable to the Virgin Islands, as the Government of the Virgin Islands is a party in the Federal Court Criminal Action and otherwise, this Court has exclusive jurisdiction over this action. *See* 48 U.S.C. § 1612(a) (providing that “[t]he District Court of the Virgin Islands shall have exclusive jurisdiction over all criminal and civil proceedings in the Virgin Islands with respect to the income tax laws applicable to the Virgin Islands”); *see also Birdman v. Office of the Governor*, 677 F.3d 167 (3d

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Criminal Action, and the defendants’ counsel, to the Government regarding the alleged “partnership” (or lack thereof) between “Mr. Yusuf and Mr. Hamed,” and indicating the representations were “misleading.” (*See* Aug. 31, 2012 Letter from Joel H. Holt, Esq., to Lori Hendrickson, Assistant United States Attorney (attached as Exhibit “B” hereto)). The August 31, 2012 letter demonstrates Plaintiff’s true intentions in bringing the Complaint in State court – *i.e.*, to attempt an end-run around the Federal court’s proper jurisdiction and thereby both, for his part, somehow evade the “misleading” representations and falsehoods Plaintiff directly and/or indirectly made to the Government and the court in the Federal Court Criminal Action and, on Defendant Fathi Yusuf’s and United Corporation’s part, somehow enjoin their actions and representations in that federal action. Plaintiff’s such tactics are disingenuous and disturbing.

Cir. 2012) (holding that the District Court of the Virgin Islands' "exclusive jurisdiction" under 48 U.S.C. § 1612(a) over the "income tax laws applicable to the Virgin Islands" is vis-à-vis the court created under Virgin Islands local law, *i.e.*, the Virgin Islands Superior Court and Virgin Islands Supreme Court)).

31. An additional and separate basis for removal jurisdiction is the federal officer removal statute, 28 U.S.C. § 1442, which allows removal 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) (emphasis added). *See also Jamison v. Wiley*, 14 F.3d 222, 238 (4th Cir. 1994) (observing that removal under § 1442 is not constrained by the well-pleaded complaint rule, but is appropriate "when [the defendant acting under a federal officer] can allege a colorable federal defense to [an] action") (internal quotation marks omitted).

32. This statute applies to claims, as here, arising out of a private party's "effort to *assist*, or to help *carry out*, the duties or tasks of the federal superior." *Watson v. Philip Morris Cos.*, 551 U.S. 142, 152 (2007) (original emphasis).

33. Specifically, Defendants Fathi Yusuf and United Corporation here, as co-defendants in the Federal Court Criminal Action, easily fall within § 1442(a)(1)'s scope, because they are subject to a binding agreement with the Government, *i.e.*, the Plea Agreement; they will be asserting colorable federal defenses based on that agreement, including under the waiver, integration and "no oral modification" clauses therein; and there is a causal nexus between Defendants' actions as alleged in the Complaint, which actions were and are informed by the Government's directions in

the Federal Court Criminal Action and the Plea Agreement, and Plaintiff's present claims. *See, e.g., Jamison*, 14 F.3d at 238-39 (finding that state-law tort action was properly removed under § 1442(a)(1) where defendant sufficiently alleged a colorable federal defense of immunity) (cautioning that a defendant need not prove that it will actually prevail on its colorable federal defense, and that “[n]othing in the federal removal statute authorizes the remand of a case that has been properly removed under § 1442(a)(1) on the ground that the [alleged colorable federal defense] is later rejected”) (citation omitted).

34. Lastly, pursuant to the bases of original jurisdiction set forth above, this Court has supplemental jurisdiction over all the claims set forth in the Complaint, because the claims “are so related to claims in the action within such original jurisdiction that they form part of the same case or controversy under Article III of the United States Constitution.” 28 U.S.C. § 1367(a).

35. Upon filing this Notice of Removal, Defendants, by and through their undersigned counsel, will promptly give written notice thereof to Plaintiff, through his counsel, and will file a copy of this Notice of Removal with the Clerk of the Superior Court of the Virgin Islands, St. Croix Division. *See* 28 U.S.C. § 1446(d) (directing the State court, upon receipt of the notice, to “effect the removal and . . . proceed no further unless and until the case is remanded”).

**WHEREFORE**, Defendants Fathi Yusuf and United Corporation pray that this action proceed in this Court as an action properly removed thereto.

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Respectfully submitted,

/s/ Joseph A. DiRuzzo, III Digitally signed by /s/ Joseph A. DiRuzzo, III  
DN: cn=/s/ Joseph A. DiRuzzo, III, o=Fuerst Littleman, PL, ou,  
email=jdiruzzo@fuerstlaw.com, c=US  
Date: 2012.10.04 15:12:13 -0400  
Joseph A. DiRuzzo, III  
USVI Bar # 1114; FL Bar # 0619175  
FUERST LITTLEMAN DAVID & JOSEPH, PL  
1001 Brickell Bay Drive, 32<sup>nd</sup> Floor  
Miami, Florida 33131  
305.350.5690 (O)  
305.371.8989 (F)  
[jdiruzzo@fuerstlaw.com](mailto:jdiruzzo@fuerstlaw.com)

Dated October 4, 2012

**CERTIFICATE OF SERVICE**

I hereby certify that, on October 4, 2012, a true and accurate copy of the foregoing document was served via USPS and email to the following: Joel H. Holt, Esq., 2132 Company St., St. Croix, VI 00820, holtvi@aol.com.

/s/ Joseph A. DiRuzzo, III Digitally signed by /s/ Joseph A. DiRuzzo, III  
DN: cn=/s/ Joseph A. DiRuzzo, III, o=Fuerst Littleman, PL, ou,  
email=jdiruzzo@fuerstlaw.com, c=US  
Date: 2012.10.04 15:12:24 -0400  
Joseph A. DiRuzzo, III

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

MOHAMMAD HAMED,	)	Case No. 1:12-cv-00099
	)	
Plaintiff,	)	
	)	
v.	)	
	)	
FATHI YUSUF and UNITED CORPORATION,	)	
	)	
Defendants.	)	

**DEFENDANTS’ RESPONSE IN OPPOSITION TO MOTION FOR A TEMPORARY  
RESTRAINING ORDER AND/OR A PRELIMINARY INJUNCTION**

Defendants submit this response in opposition to Plaintiff’s Motion for a Temporary Restraining Order and/or a Preliminary Injunction (the “TRO Motion”) (Doc. # 1-4).

**Introduction**

Mohammad Hamed’s (“Hamed”) true motivation in seeking the extraordinary remedy of injunctive relief is not to protect any alleged “partnership” rights. Rather, Hamed, through his son and “authorized agent,” Waleed Hamed, who is a defendant in a related pending criminal action, and on behalf of the entire Hamed family, seeks, under the guise of an injunction, to bring United Corporation’s (“United”) operations to a grinding halt and thus somehow leverage the injunction as a means of extorting a private resolution of Defendants’ claims regarding the Hameds’ defalcation and skimming of the corporation’s accounts. The TRO Motion should be denied.

**Factual Background<sup>1</sup>**

**A. United Corporation**

United was duly organized and incorporated as a corporation in the USVI on January 15, 1979, approximately 34 years ago, by Fathi Yusuf. (F. Yusuf Aff. ¶ 3; M. Yusuf Aff. ¶¶ 2-3).<sup>2</sup>

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<sup>1</sup> For a general discussion *see* Doc. # 11 at p. 2-3.

United, in relevant part for purposes of this action, is in the “supermarket” business. (Complaint ¶¶ 5-7). Indeed, United always has been organized, maintained and owned by the Yusuf family. (M. Yusuf Aff. ¶ 4).

**B. The “Plaza Extra Stores”**

The Complaint references “a grocery supermarket on the east side of St. Croix named Plaza Extra, which was [and is] located in a shopping center operated by United.” (Complaint ¶ 5). In fact, since 1979, United *alone* has owned and owns the subject shopping center, known as the “United Shopping Plaza,” in fee simple absolute. (F. Yusuf Aff. ¶ 5; M. Yusuf Aff. ¶ 6). United finished building the United Shopping Plaza in 1983. (F. Yusuf Aff. ¶ 5).

**C. The Criminal Action**

In or around 2003, as referenced in the Complaint, United, along with certain of its shareholders and non-shareholders, including two of Hamed’s sons, Waleed Hamed and Waheed Hamed, were indicated in a criminal action styled, *UNITED STATES OF AMERICA, et al. v. YUSUF, et al.*, Case No. 2005-15F/B (the “Criminal Action”), which is pending in this Court. (Complaint ¶¶ 8, 10; M. Yusuf Aff. ¶ 9).

As alleged, the “parties” are currently prohibited from removing funds from United’s “banking and brokerage” accounts for the Plaza Extra Stores, apart for the stores’ normal operations, because of an “Order” entered by this Court in the Criminal Action. (Complaint ¶¶ 8, 10). Additionally, on February 26, 2010, in the Criminal Action, United, its attorneys, the individual defendants in the action, and the Government entered into a Plea Agreement (the “Plea Agreement,” which is Doc. # 1248 in the Criminal Action, and a copy of which is available in this action at Doc. # 1-11).

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<sup>2</sup> The October 9, 2012 Affidavit of Fathi Yusuf (Doc. # 11-1) is cited herein as “F. Yusuf Aff.” and the October 9, 2012 Affidavit of Maher Yusuf (Doc. # 11-2) is cited as “M. Yusuf Aff.”

At bottom, as explained in greater detail in the Notice of Removal (Doc. # 1 ¶¶ 14-26), the Plea Agreement is undisputedly based on the representations by the defendants in the Criminal Action, and their counsel, to the Government that, United exists and has always existed as a corporation, not a partnership; and that, related to the corporate and individual income tax returns at issue in the Criminal Action, no partnership exists or ever existed during the relevant tax periods.

At all relevant times, Hamed, through his sons, and otherwise, was aware of the proceedings in the Criminal Action, including the representations made therein, the execution of the Plea Agreement, and the entry of “Order[s]” as acknowledged in the Complaint. (Complaint ¶¶ 8, 10). Significantly, during those proceedings, Waleed and Waheed Hamed, as co-defendants in the Criminal Action and co-signatories of the Plea Agreement, never expressed the view that their father, Hamed (the plaintiff here), was a partner with Fathi Yusuf and/or a partner in United. (M. Yusuf Aff. ¶ 9). To the contrary, the defendants in the Criminal Action, including the Hamed sons, through their respective counsel and otherwise, represented at all relevant times to the Government and others that United was a corporation and that the Hameds’ affiliation with United was a mere business arrangement – not a partnership. (F. Yusuf Aff. ¶¶ 11, 16; M. Yusuf Aff. ¶¶ 9-12).

#### **D. The Hameds’ “Skimming” From United Corporation**

In 2011, United received a hard drive with scanned copies of voluminous records concerning the Criminal Action. (M. Yusuf Aff. ¶ 19). The records revealed substantial evidence of financial irregularities, including defalcation by Waleed Hamed of United’s monies. (F. Yusuf Aff. ¶¶ 8-9; M. Yusuf Aff. ¶ 19). At all relevant times, Waleed Hamed had worked at the Plaza Extra store in Sion Farm in the sole capacity of an employee. (F. Yusuf Aff. ¶¶ 6; M. Yusuf Aff. ¶ 19).

For example, the records provided to United in the Criminal Action revealed that Waleed Hamed declared more than \$7.5 million in stock and bond purchases in 1994, when his only salary as an employee of United never had exceeded \$75,000 during the 1990s and he had no other known



source of income during that period. (F. Yusuf Aff. ¶ 8). Even the Government took the position that Waleed Hamed and his brother, Waheed Hamed, had “skimmed” money from United. (F. Yusuf Aff. ¶ 10).

#### **E. The Families’ Private Settlement Discussions**

Fathi Yusuf confronted the Hameds in private about his serious concerns regarding their defalcation of and skimming from United’s monies, and his desire to dissolve the two families’ business relations. (F. Yusuf Aff. ¶¶ 8, 12). During subsequent attempts to settle the matter privately, the relations soured and the Hameds adopted a threatening, aggressive and hostile posture towards the Yusufs. (M. Yusuf Aff. ¶¶ 20-21). Although the parties’ private negotiations continued until June 2012, no settlement agreement was reached, because, once the Yusufs’ attorneys realized the Hameds’ true intent in seeking to interject the term “partnership” into the negotiations, the parties could not agree on the fact that any Hamed family member, including Hamed, was actually ever a true partner with Fathi Yusuf and United or either of them. (F. Yusuf Aff. ¶ 13; M. Yusuf Aff. ¶ 24). Indeed, upon the realization of the Hameds’ true and disturbing intent in seeking to use those terms, as noted above, Fathi Yusuf now understands that any formal or legal reference to Hamed as a “partner” in or with United and/or Fathi Yusuf would be untrue and misleading. (F. Yusuf Aff. ¶ 15).

#### **E. The Complaint**

In September, 2012, because their settlement demands were ineffective, the Hameds adopted and embarked upon a different extortion strategy – spiteful scorched-earth litigation, including the filing of the instant action on or about September 17, 2012.<sup>3</sup>

#### **Argument<sup>4</sup>**

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<sup>3</sup> On or about September 19, 2012, the Hameds also filed against the Yusufs an alleged defamation action, styled as *Mohammad Hamed, Waleed “Wally” Hamed, Waheed “Willy” Hamed, Mufeed “Mafi” Hamed, and Hisham “Shawn” Hamed v. Fathi Yusuf*, case no. SX-12-cv-377 (V.I. Superior Court).

A preliminary injunction “is an extraordinary and drastic remedy, one that should not be granted unless the movant, by a clear showing, carries the burden of persuasion.” *Mazurek v. Armstrong*, 520 U.S. 968, 972 (1997) (citation omitted). An injunction likewise “should be granted only in limited circumstances.” *Barclays Bus. Credit, Inc. v. Four Winds Plaza P’ship*, 938 F. Supp. 304, 307 (quoting *American Telephone & Tel. Co. v. Winback & Conserve Program, Inc.*, 42 F.3d 1421, 1426-27 (3d Cir. 1994) (additional citation omitted)). “This proposition is particularly apt in motions for preliminary injunctions, when the motion comes before the facts are developed to a full extent through the normal course of discovery,” as applies here. *Barclays*, 938 F. Supp. at 307 (quoting *American Telephone*, 42 F.3d at 1427).

In particular, a preliminary injunction is appropriate “only if the [movant] ‘produces evidence sufficient to convince the [trial] court’ that *each* of four factors favor preliminary relief: 1) the likelihood that the plaintiff will prevail on the merits at the final hearing; 2) the extent to which the plaintiff is being irreparably harmed by the conduct complained of; 3) the extent to which the defendant will suffer irreparable harm if the preliminary injunction is issued; and 4) the public interest. *Barclays*, 938 F. Supp. at 307 (quoting *New Jersey Hosp. Assoc. v. Waldman*, 73 F.3d 509 (3d Cir. 1995) (additional citation omitted)). “[A] failure . . . to make the requisite showing regarding any one of these four factors must result in this Court denying [the] motion for a preliminary injunction.” *Id.* (citing *In re Arthur Treacher’s Franchisee Litigation*, 689 F.2d 1137, 1143 (3d Cir. 1982)).

### **I. There Is No Likelihood of Success on the Merits.**

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<sup>4</sup> Although the TRO Motion requests “a temporary restraining order, pursuant to Rule 65(b), or a preliminary injunction, pursuant to Rule 65(a),” Plaintiff concedes that the matter should appropriately “just proceed as a preliminary injunction” under Rule 65(a). (Doc. # 1-4 at 1). Based on this concession, among other reasons, Defendants have moved to proceed on the TRO Motion as a request for a preliminary injunction and have framed the analysis in this Response in the context of Rule 65(a). Defendants’ motion to proceed (Doc. # 1-9) is pending.

The first requisite showing the Court must consider in deciding whether to issue a preliminary injunction is “the likelihood that the plaintiff will prevail on the merits at the final hearing.” *Barclays*, 938 F. Supp. at 307 (“the burden is on the party seeking [injunctive] relief to make a *prima facie* case showing a reasonable probability that it will prevail on the merits”). Here, Plaintiff alleges two causes of action under the VIUPA, both of which are premised on the supposed “partnership” between “Hamed and Yusuf” that allegedly was “formed” “[i]n the mid-1980’s.” (Complaint ¶ 5). However, as set forth in greater detail in the Motion to Dismiss (Doc. # 11), which is hereby incorporated by reference, Plaintiff clearly does not – and, as a matter of law – cannot “make a *prima facie* case showing a reasonable probability that he will prevail on the merits.” *Barclays*, 938 F. Supp. at 307

Specifically, Plaintiff asserts “[i]t is undisputed that there is a partnership between the plaintiff and Fathi Yusuf regarding the operation of the three Plaza Extra supermarkets in question.” (TRO Memo. at 6). This assertion is simply *false*. As reflected in the Affidavits of Fathi Yusuf (Doc. # 11-1) and Maher Yusuf (Doc. # 11-2), the parties bitterly dispute the existence of any such supposed partnership. Instead, the only relevant and truly “undisputed” facts between the parties are the absence of any written or memorialized partnership agreement supporting Plaintiff’s fanciful claims; and absence of the existence of even a single partnership tax return, statement of partnership or other regulated declaration or document containing the words “partner” or “partnership” in the 29-year period during which Plaintiff incredibly now claims a supposed partnership existed. (*See, e.g.*, F. Yusuf Aff. ¶ 17).

Under these and similar circumstances, an injunction should not issue.<sup>5</sup> At bottom, because the supposed partnership between “Hamed and Yusuf” (Complaint ¶ 5) never existed, Plaintiff’s

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<sup>5</sup> *See, e.g., Southex Exhibitions, Inc. v. Rhode Island Builders Ass’n*, 279 F.3d 94, 97-98 (1st Cir. 2002) (affirming trial court’s denial of preliminary injunction based on lack of likelihood of ultimate

causes of action under the VIUPA necessarily fail. (*See* Doc. #11 at 4-13). Separately, based on Plaintiff's active denial and general silence *for the past 29 years*, at least, of the supposed partnership, the doctrines of judicial estoppel, quasi-estoppel, unclean hands and/or issue preclusion bar Plaintiff from bringing the instant claims. (*See id.* at 13-18, 19-20). Lastly, the statute of frauds likewise bars any of Plaintiff's implied claims of interest in any real property allegedly owned by the supposed partnership. (*See id.* at 18). Accordingly, because Plaintiff has failed to establish the likelihood of ultimate success on the merits, the TRO Motion should be denied on this basis alone.<sup>6</sup>

## II. There Is No Irreparable Harm.

A movant's failure to "meet their burden of demonstrating that they would suffer irreparable harm" in the absence of a preliminary injunction "constitutes a sufficient basis on which to deny the injunction." *IDT Telecom, Inc. v. CVT Prepaid Solutions, Inc.*, 250 Fed. Appx. 476, 478 (3d Cir. 2007). Specifically, "a preliminary injunction should not be granted if the injury suffered can be recouped in monetary damages." *Id.* at 479 (citing *Frank's GMC Truck Center, Inc. v. Gen. Motors Corp.*, 847 F.2d

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success on the merits where, among other reasons in dispute regarding alleged partnership, the written agreement at issue, which described the contracting parties as "partners," "[wa]s simply entitled 'Agreement,' rather than 'Partnership Agreement'; the alleged partner "only" agreed to advance monies, as opposed to "shar[ing] equally or at least proportionately in partnership losses"; and the alleged partner "never filed either a federal or state partnership tax return"; *Envirogas Inc. v. Walker Energy Partners*, 641 F. Supp. 1339, 1346 (W.D.N.Y. 1986) (finding, in partnership dispute, that movant seeking preliminary injunction failed to establish likelihood on the merits where, as here, there were "litigable questions as to the nature of the relationship of the parties and their intent under the [partnership] agreements" at issue in that case); *Bloomington Partners, LLC v. City of Bloomington*, 364 F. Supp. 2d 772, 780 (C.D. Il. 2005) (finding that movant seeking preliminary injunction failed to establish likelihood on the merits without first "convince[ing] th[e] court that an enforceable, complete, and unambiguous agreement existed" supporting the allegations); *Hull v. Paige Temporary, Inc.*, No. 04 C 5129, 2005 U.S. Dist. LEXIS 28826, at \*44-45 (N.D. Il. Nov. 16, 2005) (finding, as a matter of law, that an alleged "phantom partnership program [wa]s unenforceable for indefiniteness" where "[n]o aspect of the phantom partnership program was ever put into writing," and the plaintiff's "statement" supporting her "interpret[ation]" of the alleged partnership contract "constitute[d] the only terms of the contract").

<sup>6</sup> Even assuming, *arguendo*, Plaintiff could establish merely *some* chance of prevailing on the merits, the TRO still should be denied. *See Valentino McBean v. Guardian Ins. Agency*, 52 F. Supp. 2d 518, 522 (D.V.I. 1999) (affirming Territorial Court's denial of preliminary injunction where the plaintiffs therein showed only "*some* chance of prevailing on the merits") (emphasis added).

100, 102 (3d Cir. 1988) (“[A] purely economic injury, compensable in money, cannot satisfy the irreparable injury requirement . . .”).

Rather, “[a] clear showing of irreparable injury is an absolute necessity. The requisite injury must be more than merely serious or substantial, and it must be of a peculiar nature, so that money cannot atone for it.” *McBean v. Guardian Ins. Agency*, 52 F. Supp. 2d 518, 521 (D.V.I. 1999) (internal citation omitted). “Further, there is no irreparable harm if an adequate remedy at law exists.” *Id.* (citing, among other cases, *Jaz Ltd. P’ship v. Gov’t of the Virgin Islands*, 25 V.I. 364, 369 (D.V.I. 1990)). “A movant’s burden with regard to establishing irreparable harm is quite heavy” and the legal standard is “exacting.” *Barclays*, 938 F. Supp. at 310. In the present action, Plaintiff argues “that [he] will be irreparably harmed [in five ways] if the requested [injunction] is not granted.” (TRO Motion at 8). Plaintiff’s argument is baseless.

**a. Past Alleged Acts**

Plaintiff points to “numerous [past] acts” that already have allegedly interfered with his supposed “statutory right to participate in the operation of the three Plaza Extra stores, jeopardizing the success of these three Plaza Extra stores and threatening their very existence,” including the past act of “remove[ing] \$2.7 million from the three Plaza Extra supermarket accounts.” (TRO Motion at 8).

However, as here, where alleged damage due to past acts “has already been suffered” and the movant seeks the correction of past alleged wrongs, there is no irreparable harm. *See, e.g., Envirogas*, 641 F. Supp. at 1344 (denying preliminary injunction where, among other reasons, “a large part of the predicted damage to [the movant]’s reputation ha[d] already been suffered” and “[a]ny further damage . . . as a result of a denial of a request for injunctive relief would appear to be minimal”); *First Health Group Corp. v. Nat’l Prescription Adm’rs, Inc.*, 155 F. Supp. 2d 194, 235 (M.D. Pa. 2001) (“[S]ince the purpose of a preliminary injunction is to deter, not to punish, any irreparable harm

alleged by Plaintiff must be prospective. A preliminary injunction is not a vehicle through which a plaintiff can seek correction of past wrongs.” (internal citation omitted). Moreover, the challenged acts, including the removal of \$2.7 million dollars, are “a purely economic injury, compensable in money, [and thus] cannot satisfy the irreparable injury requirement.” *IDT*, 250 Fed. Appx. at 478 (internal quotation and citation omitted).

**b. Continued Operation of the Stores**

Second, Plaintiff fears “the continued operation of the three Plaza Extra supermarkets.” (TRO Motion at 8. However, there is nothing in the record to indicate that this fear has any reasonable basis whatsoever. *See McBean*, 52 F. Supp. 2d at 521 (finding that the movants therein failed to demonstrate the irreparable injury required for a preliminary injunction where “there [wa]s nothing in the record” credibly supporting the professed fear). The fear is likewise remote and speculative. *See Jaz*, 25 V.I. at 369 (“Remote or speculate harm is not sufficient to establish irreparable harm.”) (citation omitted) (finding that allegation something “may” happen was insufficient to establish irreparable harm). Indeed, the record evidence shows that Plaintiff’s fear regarding the continued operation of the subject stores is wholly unfounded. (*See* F. Yusuf Aff. ¶¶ 18-20).

In support of his supposed fear concerning the future operation of the stores, Plaintiff quotes, without any analysis, *Anderson v. Davila*, 125 F.3d 148 (3d Cir. 1997). (TRO Motion at 8-9).<sup>7</sup>

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<sup>7</sup> In *Anderson*, the court observed that irreparable harm requires “at least . . . some cognizable danger of recurrent violation of [] legal rights.” 125 F.3d at 164 (internal citation and quotation omitted). The plaintiff in *Anderson*, a retired police officer, claimed that the Virgin Islands Police Department commenced an unlawful surveillance operation of him and his attorney solely in response to the officer’s filing of an employment discrimination complaint against the Police Department, in violation of the officer’s First Amendment constitutional freedoms. *Id.* at 159-60. Following the trial court’s two-day hearing on the officer’s motion for a preliminary injunction to terminate the surveillance operation pending a hearing on the merits, the “court found the Government’s [*i.e.*, the Police Department’s] witnesses ‘completely unbelievable’ and held that the sole

The facts of this action are easily distinguished from the facts in *Anderson*. Moreover, the Third Circuit in *Anderson* found that the trial court, in ruling on the officer's motion for a preliminary injunction, had "err[ed]" in its analysis of irreparable harm. *Id.* at 163. Specifically, the Third Circuit found that the trial "court had failed to set forth findings regarding the Government's intention to continue its surveillance in the future" and had failed to "address the following questions: (1) whether the government's surveillance is ongoing, and (2) whether there is a credible threat that it will recur in the future." *Id.* at 163-64. In the present action, as set forth above, and in sharp contrast to *Anderson*, Plaintiff has failed to establish not only that his claims on the merits are credible, but also that there is a credible threat to the stores' future operation. *Cf. Anderson*, 125 F.3d at 159 (noting the trial court's finding, following a 2-day injunction hearing, that the government's witnesses were "completely uncredible" and finding that the police officer had established a likelihood on the merits, *i.e.*, that the "sole reason" for the subject police surveillance operation was an unlawful retaliation to the lawsuit filed against the Police Department) and 164 (observing that, if the professed risk of continued surveillance was not "true" or did not credibly exist, then "an injunction is unnecessary and unsupportable").

Moreover, "[m]ore than a risk of irreparable harm must be demonstrated." *Barclays*, 938 F. Supp. at 310 (noting also that an injunction "may not be used simply to eliminate a possibility of a remote future injury") (quoting *Acierno v. New Castle Co.*, 40 F.3d 645, 655 (3d Cir. 1994)). Here, the fear concerning the continued operation of the subject stores is simply "a remote future injury," which does not constitute irreparable harm supporting injunctive relief under Plaintiff's "heavy" burden. *Id.* Any theoretical risks related to the stores' future operations likewise "can be adequately remedied by an award of monetary damages at a trial on the merits." *See McBean*, 52 F. Supp. 2d at

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reason for the Government's surveillance of [the police officer] and his attorney was the filing of [the officer]'s lawsuit" against the Police Department. *Id.* at 159.

521 (finding that risk exposure due to inability to obtain insurance and any additional future damage to insured property due to deterioration for lack of proceeds to rebuild can be adequately remedied by a monetary damages award).

**c. Goodwill, Customers and Reputation**

Plaintiff also fears the “the threatened harm to the goodwill and loss of customers of Plaza Extra.” (TRO Motion at 9). This fear, however, as with any fear concerning the continued operation of the stores, is not credibly supported by any record evidence, as required, *McBean*, 52 F. Supp. 2d at 521; and, at best, is simply a “remote future injury” that does not constitute potential irreparable harm, *Barclays*, 938 F. Supp. at 310. In addition, the Third Circuit has made clear that injuries such loss of goodwill, consumers and reputation are “limited to ‘the special problem of [consumer] confusion that exists in cases involving trademark infringement and unfair competition.’” *IDT*, 250 Fed. Appx. at 479 (citing *Acierno*, 40 F.3d at 653-54). “As the harm claimed by [Plaintiff in this action] is not analogous to the harm caused by consumer confusion, the line of cases recognizing loss of goodwill or reputation as irreparable harm is not applicable.” *Id.*<sup>8</sup>

**d. Future Family Business**

Plaintiff further claims “that the Hamed family has operated these three supermarkets for over 25 years along with the fact that they want to keep these successful stores in the family business

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<sup>8</sup> In support of his argument that the potential harm to the goodwill and loss of customers of Plaza Extra somehow warrants a finding of irreparable harm, Plaintiff relies on *Multi-Channel TV Cable Co. v. Charlottesville Quality Cable Operating Co.*, 22 F.3d 546 (4th Cir. 1994). (TRO Motion at 9). Such reliance is unavailing. As noted above, the Third Circuit has limited the applicability of cases recognizing loss of goodwill, reputation or customers as irreparable harm between *competitors* “to the special problem of [consumer] confusion that exists in cases involving trademark infringement and unfair competition.” *IDT*, 250 Fed. Appx. at 479 (internal citation and quotation omitted). *Multi-Channel TV* is a case between “*competing* cable television providers,” 22 F.3d at 548 (emphasis added), and thus is inapplicable here. Moreover, “the decisions of other circuits,” such as *Multi-Channel TV*, a Fourth Circuit decision, “are not binding on the district courts in this Circuit.” *United States v. Maury*, Nos. 09-2305/09-2306/09-2345/09-2346/09-2356, 2012 U.S. App. LEXIS 19474, at \*81 n.27 (3d Cir. Sept. 17, 2012).



in the future for new family members also warrants a finding of irreparable harm.” (TRO at 9). In support of this claim, Plaintiff quotes, without any analysis, *Semmes Motors, Inc. v. Ford Motor Co.*, 429 F.2d 1197 (2d Cir. 1970).<sup>9</sup> The claim is baseless.

*Semmes*, which was decided in 1970 in the context of a “strict appellate review standard,” is inapposite. See *Augusta News Co. v. News Am. Publ’g*, 750 F. Supp. 28, 32 n.8 (D. Me. 1990) (analyzing *Semmes* and noting that the appellants in that case “failed to establish that there were abuses of discretion or clear errors of law in the trial courts’ findings that the destruction of the appellees’ businesses constituted irreparable harm”). Rather, as in *Augusta News*, “[t]he standard in this proceeding requires Plaintiff to establish that its business *will be destroyed* without the protection of a preliminary injunction.” 750 F. Supp. at 32 n.8 (emphasis added). See also *Buffalo Courier-Express, Inc. v. Buffalo Evening News, Inc.*, 601 F.2d 48, 57 (2d Cir. 1979) (requiring, in the context of irreparable harm analysis, a credible showing of an “immediate [financial] disaster”) (citing *Semmes*); *SCM Corp. v. Xerox Corp.*, 507 F.2d 358, 363 n.5 (2d Cir. 1974) (requiring, in the context of irreparable harm analysis, a credible showing of “an immediate and drastic financial peril”) (citing *Semmes*).

Significantly, subject to this standard, Hamed has not established that the Plaza Extra stores “will be destroyed” without an injunction, or that there exists an “immediate disaster” or a “drastic

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<sup>9</sup> Plaintiff also relies on *Bryne v. Calastro*, 205 Fed. App. 10 (3d Cir. 2006) and *Kendall v. Russell*, No. 2007-126, 2008 U.S. Dist. LEXIS 3420, 49 V.I. 602 (D.V.I. Jan. 16, 2008), as cases “where the facts,” according to Plaintiff, “are similar to those in this case.” (TRO Motion at 9). However, a plain reading of those cases shows that the facts therein have no meaningful similarity to the facts here. Specifically, *Bryne* involves ERISA. 205 Fed. App. at \*12. Following a preliminary injunction hearing to remove the administrators pending a full hearing on the merits, the trial court in *Bryne* found “an overwhelming amount of documentary support for [the union’s] allegations concerning excessive expenditures and salaries,” though “the record [wa]s almost completely devoid of any facts contradicting [the union’s] assertions.” *Id.* at \*13. No such situation or “overwhelming” disparity of evidence exists in this action. *Kendall* involves an action brought by a sitting judge of the Superior Court against the members of the Virgin Islands Commission on Judicial Disabilities arising under the Revised Organic Act and challenging the commission’s commencement of removal proceedings against the judge under a codified legislative act. 49 V.I. at 606-608. The facts in *Kendall* thus are hardly “similar” to those in this action, as Plaintiff claims.

financial peril,” and has not even addressed these showings. Plaintiff also has not established, or even addressed, what percentage, if any, of the businesses at issue “will be destroyed” without an injunction. See *Augusta*, 750 F. Supp. at 32-33 (noting its “satisf[action] that a ten percent loss of business cannot constitute irreparable injury justifying the radical remedy of a preliminary injunction” and that even a proven “loss of thirty percent of . . . business was not sufficient to constitute irreparable injury”) (citing *Stendig Int’l, Inc. v. B & B Italia, S.p.A.*, 633 F. Supp. 27, 28 n.3 (S.D.N.Y. 1986)). Plaintiff likewise has failed to present any evidence whatsoever regarding his or his family’s own finances, for purposes of somehow arguing, under *Semmes*, that he “cannot survive” without the drastic remedy of an injunction until a full trial can be had on the merits. See *Buffalo Courier-Express*, 601 F.2d at 57 (rejecting alleged irreparable harm where the evidence did not establish a financial threat of “immediate disaster”) (distinguishing *Semmes* on this basis); *SCM*, 507 F.2d at 363 n.5 (affirming denial of preliminary injunction where the evidence did not establish “an immediate and drastic financial peril”) (distinguishing *Semmes* on this basis).

Further, Defendants strongly dispute the claim that any member of the Hamed family has ever “operated” the stores as a partner or otherwise. (TRO Motion at 9). Indeed, Defendants aver exactly the opposite. (See *F. Yusuf Aff.* ¶6; *M. Yusuf Aff.* ¶19). Thus, unlike in *Semmes*, a franchisor-franchisee dispute in which the movant (the franchisee) relied on the terms of an “existing valid” written franchise agreement with Ford Motor Company (the franchisor) in seeking an injunctive, 429 F.2d at 1206, there is no such “existing valid” partnership agreement in this action. See *Augusta*, 750 F. Supp. at 33-34 (distinguishing *Semmes* on this basis, and noting that a party seeking injunctive relief “cannot reasonably expect that the law would guarantee the continued existence of [an alleged business] relationship . . . simply because the consequence of discontinuing that relationship would be the loss of its business,” where, as here, the party has failed to credibly establish the existence of an “existing valid contract[]” or enforceable promise). Nor does Plaintiff establish, or even assert in

the TRO Motion, any material “unequal status as existed in *Semmes*.” See *Rumbaugh v. Beck*, 491 F. Supp. 511, 519 (E.D. Pa. 1980) (stating that, where the company at issue in that case was “a two-man enterprise consisting of the plaintiff and the defendant,” which company “hardly [could] be likened to a Ford Motor Company” against one of its franchisees, “any analogy with the application of *Semmes*” was “militate[d]”).

**e. Removal of Assets**

Plaintiff’s final purported fear of irreparable injury is that, because, in Plaintiff’s own estimation, “Yusuf has extensive investments overseas,” it somehow follows “that [Yusuf] could easily remove these significant assets beyond the jurisdiction of this Court if the [injunctive] relief sought is not granted.” (TRO Motion at 10). In support of this fanciful argument, Plaintiff claims that “the Third Circuit has repeatedly held irreparable harm may be found where there is a request for injunctive relief to freeze assets if it appears those assets may be removed if such relief is not granted.” (*Id.* (citing *Elliott v. Kiesewetter*, 98 F.3d 47, 58 (3d Cir. 1996) and *Hoxworth v. Blinder, Robinson & Co.*, 903 F.2d 186, 205 (3d Cir. 1990))). The argument is meritless, as Plaintiff’s claim of what “the Third Circuit has repeatedly held” in *Elliott* and *Hoxworth* is misleadingly inaccurate and misstates the applicable standards. In addition, any additional freeze order would be unnecessary given the freeze order that is currently in place, and thus does not constitute irreparable harm.

In *Elliott*, involving intra-family claims brought by the beneficiaries of a family estate against the estate administrator, the Third Circuit expressly “emphasize[d] that this is an *extraordinary case* that demanded *extraordinary measures* by the district court to preserve what was left of the family assets.” 98 F.3d at 58 (emphasis added). Indeed, in sharp contrast to the situation here, the underlying litigation in *Elliott* involved three separate proceedings – (1) an “Accounting Action,” which “was a demand for an accounting of the[] family’s assets and [wa]s premised on various claims against [the administrator] alleging breach of fiduciary duties, fraud, unjust enrichment and

violations of the Uniform Gifts to Minors Act,” *id.* at 50; (2) a “Fraudulent Conveyance Action,” which was “a second lawsuit alleging that [the administrator] and his second wife [] fraudulently conveyed [the subject] family assets . . . into the joint or individual name of [the administrator’s wife] . . . in order to protect the assets from a judgment in the Accounting Action,” *id.*; and (3) a third action before the trial court seeking an injunction to, in relevant part, “to preserve the [family] assets . . . in the possession, custody or control of [the administrator] that w[ould] be necessary to satisfy the judgment and other equitable remedies ultimately to be entered in the Accounting Action,” *id.* at 52. The trial court, after considering the relevant evidence, entered an injunction, referred to as the “Freeze Order,” which on appeal was the subject of the Third Circuit’s relevant discussion in *Elliott*. *Id.* at 52.

Importantly, the primary basis supporting the issuance of the Freeze Order in *Elliott* was that, prior to its issuance, a full trial on the merits already had occurred in the Accounting Action, in which trial a “jury [had] returned a verdict” against the administrator; the jury had “determined, *inter alia*, that [the administrator] had breached various fiduciary duties that he owed to the Beneficiaries”; and the “[e]vidence at trial” revealed that the Beneficiaries held property interests in numerous assets that the administrator had acquired. 98 F.3d at 51-52. “The evidence at trial [also] revealed that the total principal value of the family assets to which the Beneficiaries had an interest equaled over \$ 3.4 million,” and the jury separately awarded punitive damages. *Id.* at 54. Following the jury trial in the Accounting Action, the administrator “moved for a new trial or alternatively for judgment notwithstanding the verdict,” in which motion the administrator challenged neither “the sufficiency of the trial evidence” nor “the jury’s findings of liability on the basis that the evidence was insufficient.” *Id.*

Accordingly, under the “extraordinary” facts at issue in *Elliott*, none of which are at issue here, the Third Circuit found that the district court had not abused its discretion in entering an

injunction freezing the assets of the administrator. *Id.* at 55. Indeed, “[t]he district court entered the Freeze Order only after the jury found that the Beneficiaries had a legitimate interest in the [subject] family assets and that [the administrator], in acquiring the Beneficiaries’ interests in the assets, had breached his fiduciary duties, committed fraud, and unjustly enriched himself.” *Id.*

*Hoxworth*, involving the Third Circuit’s review of a “preliminary injunction designed to protect a potential future damages remedy in a class action alleging securities fraud and civil RICO violations,” also presented “extraordinary circumstances,” none of which are present here. 903 F.2d at 189. Like in *Elliott*, but unlike here, the plaintiff-penny stock purchasers in *Hoxworth* “filed three separate” actions, which eventually “were consolidated for purposes of pretrial proceedings.” *Id.* at 190-91. The plaintiffs in *Hoxworth* then moved for a preliminary injunction freezing the assets of the defendant-securities dealers, whereupon the district court conducted a four-day evidentiary hearing on the preliminary injunction and granted it. *Id.* at 191.

Based on the weight of “undisputed evidence” introduced at the subject injunction hearing, including “essentially uncontroverted evidence regarding [the securities dealers’] sagging financial fortunes,” the district court in *Hoxworth* found, in relevant part, that the stock purchasers “were likely to prevail on the merits of their various securities claims,” the securities dealers’ “markups and markdowns were excessive,” and the dealers “intentionally withheld [material] information from its customers,” the stock purchasers. *Id.* at 193. With respect to irreparable harm, the district “court [also] determined that in light of [the dealers’] significant financial and legal difficulties,” the dealers were “unlikely to have sufficient assets to satisfy plaintiffs’ potential future judgment.” *Id.* The district court likewise determined that a specific dealer, a co-defendant in *Hoxworth*, had “failed to offer a plausible business explanation for [certain] asset transfers” that he *already* had made. *Id.* “Based on those findings, the district court concluded that [this co-defendant] was attempting to put

his assets beyond the reach of the court, which threatened the irreparable injury of making plaintiffs' likely future judgment against [the dealer] unenforceable." *Id.*

In the case at bar, in sharp contrast to *Hoxworth*, Plaintiff has not established that an injunction is warranted due to Defendants Fathi Yusuf's and United Corporation's "escalating financial difficulties" or prior "substantial transfers of assets beyond the power of this court." *Cf. Hoxworth*, 903 F.2d at 205 (affirming district court's finding of irreparable harm based on evidence of the securities dealers' prior "substantial transfers of asserts beyond the power of th[e] court" and "escalating financial difficulties") (internal quotation and citation omitted).

Notwithstanding Plaintiff's statement of belief regarding undisclosed "investments overseas" (TRO Motion at 9), and his belief as to "eas[e]" of transfer to those jurisdictions (*id.*), Plaintiff likewise has introduced no evidence whatsoever regarding "the likelihood that [any] particular foreign jurisdiction at issue will fail to allow plaintiffs their day in court." *Hoxworth*, 903 F.2d at 207. Indeed,

[a]s the discussion in *Hoxworth* shows, "a mere statement of belief that the defendant can easily make away with or transport his money or goods" is an insufficient basis for a finding of likely irreparable harm. Cases in which courts have restrained the disposition of assets to protect damages remedies have, like *Hoxworth*, commonly involved evidence that the defendants have already attempted to put assets out of reach or engaged in financial misconduct. This is not such a case. Here Plaintiff has provided no real basis for his assertion that Defendant plans to transfer assets out of the country, and nothing in his submissions or the record as a whole provides support for such a belief.

*Dubois v. Abode*, 2004 U.S. Dist. LEXIS 30596, at \*6 (D.N.J. 2004)(internal citations omitted) (simple conclusion that, because the defendant was an Arab (a native of Lebanon), he was likely to transfer his assets there, was "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).

The Third District also cautioned in *Elliott* that “the equitable power in certain situations to protect a future damages remedy . . . is far from unlimited.” *Id.* at 57 (citing *Hoxworth*, 903 F.2d at 197). Further, though a trial court enjoys this equitable power, it “does not mean that such an injunction [freezing assets] is appropriate in a run-of-the-mill damages action. The traditional requirements for obtaining equitable relief must be met.” *Id.* (quoting *Hoxworth*, 903 F.2d at 197). Similarly, “a court may not preserve a potential money judgment by freezing a defendant’s assets that are unrelated to the underlying litigation.” *Id.* at 58 n.8 (citation omitted). In addition, “as a general rule an injunction will not be issued in a money damages case,” such as the present case, “prior to a determination of liability and an award of damages.” *Hoxworth*, 903 F.2d at 197 n.16 (quoting *Fechter v. HMW Indus., Inc.*, 879 F.2d 1111, 1119 (3d Cir. 1989)).

At bottom, Plaintiff’s reliance on *Elliott* and *Hoxworth* is unavailing in the present run-of-the-mill damages case involving an alleged “partnership” dispute, especially prior to any determination of liability and damages award.<sup>10</sup>

**III. The Defendant Will Suffer Irreparable Harm if the Preliminary Injunction is Issued.**

Plaintiff’s request for injunctive relief, if given, would irreparably harm United Corporation as a going concern. Plaintiff has requested that this Court “enjoin[] Yusuf *from withdrawing any funds from any* partnership bank account or brokerage account without the consent of Hamed . . .” (TRO Memo. at p. 11 (emphasis added)). United Corporation’s day-to-day business operations and, in turn, its value as a going concern, would be irreparably harmed as Hamed would be allowed to veto any request to withdraw any fund from any bank account. The relief requested would allow Hamed

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<sup>10</sup> Separately, even if the requested asset freeze was supportable legally and factually, which it clearly is not, it would be wholly unnecessary in light of the asset freeze that is already in place in the Criminal Action, as Plaintiff acknowledges. (Complaint ¶¶ 8, 10).

to micro-manage United Corporation and would provide unfettered discretion, and by extension complete control, of United Corporation.

Indeed, if “one of the goals of the preliminary injunction analysis is to maintain the status quo,” *Opticians Ass'n of America v. Independent Opticians of America*, 920 F.2d 187, 197 (3d Cir. 1990) (internal citation omitted), then this goal would not be achieved as the preliminary injunction gives the Plaintiff much more control than he has ever had. What could be more of a harm than to allow a party, whose interest's are clearly adverse to Defendants, complete and total control of cash flow of a business that processes thousands of transactions a day? In essence, the business interloper will have ascended to the throne of United Corporation. This Court should reject Plaintiff's invitation to do so.

#### **IV. A Preliminary Injunction is Not in the Public's Interest.**

“[T]he public interest is hardly served by the sheer *in terrorem* effect of allowing plaintiffs to impose (or even threaten to impose) burdens on defendants above and beyond those necessary to protect plaintiffs' otherwise unsatisfiable claims.” *Hoxworth*, 903 F.2d at 198. Contrary to the Plaintiff's assertion, in this case an injunction is not only *not* in the public's interest it is actually contrary to the public's interests.

As stated above, the true intent of the Plaintiff's Complaint is to delay and frustrate the ongoing Federal Criminal Court case. However, as Congress has provided in the Speedy Trial Act, 18 U.S.C. §§ 3161-3174, that, in general, federal criminal cases must come to a prompt resolution in 70 days. *See also* Fed.R.Crim.P. 50 (calling for the prompt disposition of criminal cases and providing that criminal cases take precedence over civil cases).

Because a grant of a preliminary injunction in this civil case will delay and frustrate the prompt resolution of the Criminal Action the public's interest is not served under any objective view of the facts.



Additionally, as detailed in the Defendants' motion to dismiss (Doc. # 11), the Plaintiff's case rests upon an oral argument that fails to comport with the VIUPA and the Statute of Frauds. The public interest is *not* served by permitting a litigant to wait decades after a purported partnership was made and then allow him to bring a civil case against the other purported partner. Simply stated, the equity doctrines of laches, unclean hands, estoppel (judicial and/or quasi), *see* Doc. # 11 at p. 13-18, militates in favor of finding *against* the imposition of a preliminary injunction.

Finally, in respect to the Plaintiff's claim that the continued operation of three large supermarkets is in jeopardy (and by extension the hundreds of employees working there), such an allegation is specious, at best. As demonstrated in the affidavit of Fathi Yusuf, there has been no effect on United's day-to-day operations, nor is there any plan to cease operations. (*See* F. Yusuf Aff. at ¶18). What Plaintiff has done is to raise the specter of a non-existent problem to create a situation that the resolution of, i.e., the imposition of a preliminary injunction, is the very outcome he desires. The Court should reject such an Hegelian construct. Accordingly, this fourth factor also weighs against the request for equitable relief.

### **Conclusion**

For all of the foregoing reasons, Defendants request that this Court enter an Order denying Plaintiff's Motion for a Temporary Restraining Order and/or a Preliminary Injunction, and awarding to Defendants such further relief as the Court deems appropriate.

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Respectfully submitted,

/s/ Joseph A. DiRuzzo, III  
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Dated October 10, 2012

**CERTIFICATE OF SERVICE**

I hereby certify that, on October 10, 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

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

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

**FIRST AMENDED COMPLAINT**

Comes now the Plaintiff, Mohammad Hamed, by his authorized agent, Waleed Hamed, and hereby files this First Amended Complaint against Fathi Yusuf and the United Corporation,<sup>1</sup> alleging as follows:

1. This Court has jurisdiction over this matter pursuant to Title 4 V.I.C. §76(a) and Title 5 V.I.C. §1261.
2. Plaintiff, Mohammad Hamed ("Hamed") and his authorized agent Waleed Hamed (a/k/a Wally Hamed) are both adult residents of St. Croix, United States Virgin Islands. The acts referenced herein attributable to Mohammad Hamed are acts done either directly by Mohammad Hamed or for him by his authorized agents, all of whom are family members acting as his authorized agent from time to time.
3. Defendant Fathi Yusuf ("Yusuf") is a resident of the St. Croix, United States Virgin Islands.

<sup>1</sup> This original Complaint (DE 1-3) was a pleading "to which a responsive pleading is required." The plaintiffs are entitled to file an amended complaint as a matter of right pursuant to Fed.R.Civ.P. 15(a)(1)(B) "within 21 days after service of. . . a motion under Rule 12(b)." Defendants filed such a motion on October 9, 2012. (DE 9 and 10)

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4. Defendant United Corporation ("United") is a Virgin Islands Corporation.
5. In the 1970's, Mohammad Hamed opened and operated a successful grocery business on St. Croix.
6. In the early 1980's, Yusuf began to build a shopping center at Sion Farm, St. Croix, which he hoped would include a supermarket, even though he had never operated a grocery business before.
7. During the construction of that shopping center, Yusuf continually ran out of money and was unable to get any loans from any banks. As such, he sought help from Mohammed Hamed, which Mohammed Hamed agreed to provide.
8. Mohammad Hamed provided funds to complete the construction of the shopping center. In addition, when more funds were needed to create and open the supermarket, Mohammad Hamed sold his grocery store and contributed all of his life savings to the supermarket project in addition to the funds previously provided for the shopping center construction, devoting his full time and energy to getting the supermarket open as well.
9. During this time period, Mohammad Hamed and Yusuf agreed to enter into a 50/50 partnership (hereinafter referred to as the "Partnership") to create, fund and operate this new grocery supermarket business, which they named Plaza Extra Supermarket. It was located in the shopping center.
10. As both Mohammed Hamed and Yusuf agreed to contribute their time and their personal funds to create this Partnership, both risked the loss of their significant initial investments. Moreover, they both agreed that going forward each partner

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was responsible for 50% of all losses, and was entitled to 50% of all profits from the supermarket business' operations. Indeed, defendants have admitted that the profits of the grocery business were shared with plaintiff -- in pleadings filed in this case.

11. When the supermarket at Sion Farm opened in 1986, Mohammad Hamed used his experience and contacts in the grocery business to get the store stocked and open successfully.
12. The Partnership between Hamed and Yusuf subsequently expanded to two other supermarket locations, one in the west end of St. Croix (both built and initially stocked from the profits of the Partnership) and one in St. Thomas (also both built and initially stocked from the profits of the Partnership). Both of these supermarkets were also operated under the name Plaza Extra. The Partners generally refer to these three stores as Plaza Extra East (Sion Farm, St. Croix), Plaza Extra West (Plesson/Grove, St. Croix) and Plaza Extra St. Thomas (Tutu Park, St. Thomas). These supermarkets have grown in size, currently employing in excess of 600 employees in the three stores.
13. At all times relative hereto, the three Plaza Extra supermarkets have been managed jointly by the Partnership, with each Partner having an active role in the operations of the three stores either through their direct actions or through the actions of their authorized agents. In this regard, each Partner always has had a designated family member in a top managerial position in each store, acting as

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each Partner's representative and agent. The designated managers from each Partner's family jointly manage the respective stores together.

14. The Partnership has always had separate, segregated books and accounts for each of the three Plaza Extra Supermarkets, and kept a detailed accounting open to both partners for the expenses and profits of the Partnership wholly separate from the unrelated business operations of United in its operation of the United shopping center located at Sion Farm St. Croix.
15. As part of his Partnership activities Yusuf made the decision that the reporting of all accounting and other filings for these Partnership operations to the Government would be done by United, such as all tax filings and similar matters - he provided the services of United as part of his partnership contribution, to which Mohammad Hamed did not object.
16. The bank accounts for the three Plaza Extra supermarkets were created for the benefit of, and have always been accessible to (and transacted on) equally by the partners, Mohammad Hamed and Yusuf, with the Partners agreeing that -- to maintain management control -- Yusuf and Hamed (or one family member from each of the Hamed and Yusuf families as their agents) would sign each check written on these supermarket bank accounts. The current, segregated "supermarket" bank accounts kept by United for the Partnership for each of the three Plaza stores are:

**St. Thomas Plaza Extra Store:**

Operating Acct: 04xxxxxxxxxx  
Payroll Acct: 04xxxxxxxxxx

Bank of Nova Scotia (BNS)  
Bank of Nova Scotia (BNS)

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Telecheck Acct:	04xxxxxxx	Bank of Nova Scotia (BNS)
Credit Card Acct:	1xxxxxxx	Banco Popular

**St. Croix Plaza Extra – WEST**

Operating Acct:	19xxxxxx	Banco Popular
Credit Card Acct:	19xxxxxx	Banco Popular
TeleCheck Acct:	05xxxxxxxxxx	Bank of Nova Scotia (BNS)

**St. Croix Plaza Extra – EAST**

Operating Acct:	19xxxxxx	Banco Popular
Credit Card Acct:	19xxxxxx	Banco Popular
Telecheck Acct:	58xxxxxxxxxx	Bank of Nova Scotia (BNS)

17. United has always had completely separate accounting records and separate bank accounts for its operations of the 'non-supermarket' shopping center and business operations that were unrelated to the three Plaza Extra supermarket stores. Neither Mohammad Hamed nor his agents have access to these separate "non-supermarket" United bank accounts used by United for its shopping center and other businesses unrelated to the three Plaza Extra supermarkets.

18. At all times relative hereto, the Partnership profits from the Plaza Extra stores have always been held in the identified "supermarket" banking and brokerage accounts completely separate from the profits of United's other unrelated businesses, even though the banking and brokerage accounts holding the profits from the Partnership are in accounts solely used by the Partnership and kept for the Partnership by United in segregated United accounts. The current brokerage accounts holding these profits are:

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**Popular Securities**

PSx-xxxx22

PSx-xxxx63

PSx-xxxx60

PSx-xxxx79

PSx-xxxx01

PSx-xxxx10

PSx-xxxx28

PSx-xxxx36

At all times relative hereto, for more than 25 years, Mohammad Hamed and Yusuf have equally shared all the profits distributed by United to the Partnership - from the operation of the three Plaza supermarkets -- and been responsible for all losses. Except for the recent unauthorized removal of funds described herein, for 25 years, all such distributions from the supermarket accounts have been split 50/50 between the Partners.

19. The partners also agreed that all stores would employ and would rely on joint decisions of themselves (or their respective family members from each family assigned to each store), so that management would be by a working consensus of the two Partners directly or through their designated agents, all of whom are family members.
20. From time to time, Mohammad Hamed and Yusuf have used these profits, distributed solely from these "supermarket accounts" 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



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using 50/50 distributions Partnership profits from the three Plaza Extra supermarkets -- from the "supermarket" accounts:

- 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, all of which was purchased over the years at different times from the Partnership's profits.
- 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;
- c) Plessen Enterprises, Inc. - This Virgin Islands corporation, owned 50/50 between the two families, owns over 100 acres on the west end 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

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\$1,600,000, even though Faith Yusuf has refused to turn over the funds to the Partnership.

21. In this regard, Hamed and Yusuf have also scrupulously maintained records of withdrawals from the United-held "supermarket" Partnership profit account to each of them (and their respective family members), to make certain there would always be an equal (50/50) amount of these withdrawals for each partner directly or to designated family members.
22. Yusuf has repeatedly confirmed the existence of this Partnership between himself and Hamed to third parties intending them to rely on the representations, including in transcribed statements made under oath. See **Exhibit A**.
23. On February 10, 2012, Yusuf's attorney, Nizar DeWood ("DeWood"), gave notice to Hamed (through his agent Wally Hamed) that Yusuf was dissolving the Partnership. See **Exhibit B**.
24. DeWood attached a letter to this email (Exhibit B), sent on Yusuf's behalf to Hamed, confirming that Yusuf was proceeding with dissolving the Partnership and describing the Partnership assets to be divided 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).

No mention was ever made in the Notice of United being the sole entity, of the non-existence of the Partnership or of the claims Yusuf now makes to United's ownership of the profits and assets of the Partnership.

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25. DeWood then sent a partnership dissolution agreement on behalf of Yusuf on March 13, 2012, to Wally Hamed, regarding the dissolution of the Partnership. That document (see **Exhibit C**) stated in part as follows (use of the capitalized "P" to refer to both the Partners and the Partnership in the original):

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

26. The parties thereafter met on numerous occasions to try to address the division of the Partnership assets, including the three Plaza Extra Stores and the Partnership profits held in the various bank and brokerage accounts. No mention was ever made of United being the sole entity for grocery operations, of the non-existence of the Partnership or of the claims Yusuf now makes to United's ownership of the profits and assets of the Partnership.

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27. In the interim time period during 2012, Yusuf has continued (as recently as October 1, 2012) to address letters to the Partnership regarding its obligations of rent to "Mohammad Hamed" as "Plaza Extra Supermarket" at the store address - - and demanded that plaintiff cause Plaza Extra to make rent payments to United from Plaza Extra Supermarket. See **Group Exhibit D**.

28. Notwithstanding this fact, Yusuf has engaged in and continues to engage in numerous acts in breach of his obligations and duties as a partner in his partnership with Hamed, all of which are designed to undermine the Partnership's operations and success, including but not limited to the following acts:

- a) Threatening to terminate the Hamed family employees in the three Plaza Extra stores;
- b) Threatening immediate eviction of the Partnership and the Plaza Extra supermarket from the United shopping center on the east side of St. Croix (see **Group Exhibit D**), which would close the stores -- including the threat of using illegal self-help to immediately remove the Partnership's supermarket from the premises in violation of the law prohibiting a landlord from using self help to try to remove a tenant;
- c) Attempting to have United impose excessive rent obligations on this store inconsistent with all other leases (see **Group Exhibit D**) to try to close down the Sion store;

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- d) Failing to recognize the Partnership's rights in the premises where its Plaza Extra store in the United Shopping Center is located, as the store was damaged by fire in 1992 and was rebuilt entirely with insurance funds from the Plaza Extra supermarket and not from United, including using said Partnership funds for the purchase of additional adjacent land for use by the supermarket (which is, unlike the rest of the shopping plaza, a Partnership asset);
- e) Attempting to verbally discredit the operations of the Partnership;
- f) Attempting to unilaterally change how the stores have operated by threatening to impose new and unilateral restrictions on the operations of these three stores, all of which are aimed at undermining Hamed's partnership interest in the three stores.
- g) Refusing to pay valid obligations owed by the Partnership in an effort to undermine the Partnership's operations;
- h) Threatening to close down the Plaza Supermarkets;
- i) Threatening the Hamed family members working in the Plaza supermarkets with physical harm, trying to intimidate them into leaving the stores;
- j) Giving false information to third parties, including suppliers of the three Plaza Supermarkets, regarding its future operations – jeopardizing the good will of the Three Plaza supermarkets;
- k) Unilaterally canceling orders placed with vendors and not ordering new inventory for the three Plaza supermarkets; and

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- l) Spending funds from the bank accounts of the three Plaza supermarkets to support his other personal business interests unrelated to the three Plaza supermarkets.
29. On or about August 20, 2012, Yusuf unilaterally and wrongfully converted \$2.7 million from Plaza Extra "supermarket accounts" used to operate the Partnership's three stores, placing the funds in a separate "non-supermarket" United account controlled only by him. Said conversion was a willful and wanton breach of the Partnership agreement between Hamed and Yusuf.
30. Despite repeated demands, he has not returned these funds to the Plaza Extra "supermarket accounts" from which they were withdrawn, which not only violates the Partnership agreement, but also threatens the financial viability of these three Plaza supermarkets and the employment of its 600 employees.
31. Upon information and belief, Yusuf has used additional Partnership funds to purchase other assets in United's name, such as real property on St. Croix recently purchased for \$1.7 million. See **Exhibit E**.
32. Upon information and belief, Yusuf has also now diverted more than \$1.6 million in partnership funds from the Partnership interest the Dorthea Property and, upon information and belief based on a statement he made to Waleed Hamed, removed those funds to a place out of the jurisdiction of the Court
33. The acts in question were designed in part to take advantage of Mohammad Hamed's health to force him out of the Partnership and deny him his rightful partnership assets and profits.

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**COUNT I**

34. All preceding allegations are realleged and incorporated herein by reference.
35. A partnership was formed between the two parties. The Partnership has as its terms, by oral agreement: 50/50 sharing of profits, 50/50 sharing of losses, joint management of the three Plaza Extra supermarkets, joint control of all Partnership funds, authority of the partners to act for the Partnership as its agents, joint ownership of the property and assets of the Partnership, and the joint control of the accounting operations of the Partnership as a distinct entity. The foregoing acts by Yusuf all violate the Partnership rights of Mohammed Hamed as well as the terms of the partnership agreement between Yusuf and Mohammad Hamed.
36. As such, pursuant to 26 V.I.C., including § 75, Mohammad Hamed is entitled to legal and equitable relief as deemed appropriate to protect and preserve his partnership rights.
37. In this regard Mohammad Hamed is entitled to declaratory and equitable relief as to his rights as well as injunctive relief to protect those rights, including the return of funds or creation of a trust as to the Partnership funds improperly taken or spent by Yusuf and/or United to date in violation of the agreement between the parties.
38. Mohammed Hamed is also entitled to compensatory damages for all financial losses inflicted by Yusuf on the Partnership and/or his partnership interest as well as punitive damages against Yusuf for his willful and wanton misconduct.

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**COUNT II**

39. All preceding allegations are realleged and incorporated herein by reference.
40. The foregoing acts by Yusuf also constitute intentional misconduct, or reckless and grossly negligent conduct, which has adversely and materially affected the Partnership between Mohammed Hamed and Yusuf regarding the three Plaza supermarkets.
41. United was at the time of the formation of the Partnership, controlled by Yusuf, who, as the partner making such financial arrangements for the Partnership, committed it to do acts and hold funds and property for the Partnership either as an agent, or, alternatively under an agreement or under a trust. United, which is also an alter ego of Yusuf, now refuses to pay over said funds -- which breaches the agreement and the duties due to the Partnership and his Partner.
42. As such, Mohammad Hamed is also entitled to a judicial determination under 26 V.I.C. including § 121(5) that it is not practicable to continue the Partnership with Yusuf so that Yusuf's partnership interests should be disassociated from the business, allowing Hamed to continue the Partnership's business without him pursuant to the provisions of 26 V.I.C. including §§ 122-123, 130 and what is now Subchapter VII of Title 26.

**COUNT III**

43. All preceding allegations are realleged and incorporated herein by reference.
44. United was at the time of the formation of the Partnership, controlled by Yusuf who, as the partner making such financial arrangements for the Partnership,



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committed it to do acts and hold funds and property for the Partnership either as an agent, or, alternatively under contract or under a trust. United, which is also an alter ego of Yusuf, now refuses to pay over said funds -- which breaches the agreement and the duties due to the Partnership and his Partner.

45. The defendant United Corporation would violate its agency, violate Mohammad Hamed's contribution of its services to the Partnership, and be unjustly enriched if it did not distribute the 50% of the Partnership funds and 50% of the Partnership property belonging to the plaintiff, Mohammed Hamed.

46. Mohammad Hamed is entitled to declaratory relief finding that all funds belonging to the plaintiff held by United Corporation are held in either in the course of business as an agent, as Yusuf's alter ego or as a constructive trust for the plaintiff, which must be returned forthwith. United should also be equitably estopped from denying the obligation to provide such funds and property to plaintiff. In the alternative Mohammad Hamed is entitled to declaratory relief finding that an amount equal to 50% of the Partnership profits and property held in United for distribution to or for the benefit of Yusuf are owed to Hamed under the Partnership Agreement or pursuant to a constructive trust for Hamed.

**WHEREFORE**, the Plaintiff seeks the following relief from this Court as follows:

- 1) A full and complete accounting to be conducted by a court-appointed Master, with Declaratory Relief against both defendants to establish Hamed's rights under his Yusuf/Hamed Partnership with Yusuf, including his rights regarding the operation of the three Plaza Extra supermarkets and the withdrawal of funds from the Partnership accounts associated with these three Plaza supermarkets;

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- 2) Injunctive Relief enjoining the defendants from interfering with Hamed's partnership rights, including enjoining Yusuf from interfering with the operations of the three Plaza Extra supermarkets and enjoining Yusuf from withdrawing any funds from any partnership bank accounts or brokerage accounts without the consent of Hamed;
- 3) Declaratory Relief and Injunctive Relief against both defendants requiring the immediate return of all funds improperly withdrawn from the bank accounts of the three Plaza supermarket accounts by Yusuf, including but not limited to the \$2.7 million recently removed by Yusuf to an account to which Hamed does not have access;
- 4) Declaratory Relief requiring Yusuf to account for and return all funds of the Partnership related to the Dorthea Beach investment and any other funds or property recently removed without a 50% distribution to Hamed;
- 5) Declaratory Relief and Injunctive Relief against both defendants regarding the property rights of the Plaza Extra store located at the United Shopping Center on the east side of St. Croix;
- 6) Declaratory Relief as to the Partnership's rights in any businesses and/or assets purchased by United using partnership assets or obtained without providing the Partnership the opportunity to participate in the ownership of these newly acquired businesses and/or assets;
- 7) An award of compensatory damages against the defendants, jointly and severally, as determined by the trier of fact;
- 8) A judicial determination under 26 V.I.C. including § 121(5) that it is not practicable to continue the Partnership with Yusuf so that Yusuf's partnership interests should be disassociated from the business, allowing Hamed to continue the Partnership business without him pursuant to the provisions of 26 V.I.C. including §§ 122-123, 130 and what is now Subchapter VII of Title 26;
- 9) A judicial determination that the defendant United Corporation would be unjustly enriched if it does not disburse the Partnership funds and property belonging to the plaintiff forthwith;
- 10) A judicial determination that the Partnership funds and property held by United Corporation which belong to the plaintiff are subject to a constructive trust in favor of the plaintiff, which must be distributed to the plaintiff forthwith;
- 11) An award of prejudgment interest at the statutory rate of 9%;

**First Amended Complaint  
Page 17**

- 12) An award of punitive damages against Yusuf as determined by the trier of fact;
- 13) An award of attorney's fees and costs against both defendants; and
- 14) Any other relief the Court deems appropriate as warranted by the facts and the applicable law.

**A TRIAL BY JURY IS DEMANDED AS TO ALL ISSUES TRIABLE BY A JURY**

Dated: October 19, 2012

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

Dated: October 19, 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 19<sup>th</sup> day of October, 2012, I filed the foregoing with the Clerk of the Court, and delivered by ECF to the following:

Joseph A. DiRuzzo, III  
Fuerst Ittleman David & Joseph, PL  
1001 Brickell Bay Drive, 32<sup>nd</sup>. Fl.  
Miami, FL 33131  
jdirusso@fuerstlaw.com

NIZAR A. DEWOOD  
The Dewood Law Firm  
2006 Eastern Suburb, Suite 101  
Christiansted, VI 00820  
Email: dewoodlaw@gmail.com

*/s/Joel H. Holt, Esq.*

# EXHIBIT A

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  
EXHIBIT  
A  
8/13/2009  
1094

FATHI YUSUF -- DIRECT

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

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

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

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

FATHI YUSUF -- DIRECT

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

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

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

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

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

FATHI YUSUF -- DIRECT

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

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

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

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



1 saving money.

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

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

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

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

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

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

16 How we going to get paid?

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

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

Cheryl L. Haase

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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 B

From: Nizar DeWood <dewoodlaw@gmail.com>  
To: Wally Hamed <wallyhstx@yahoo.com>  
Sent: Friday, February 10, 2012 10:58 AM  
Subject: Powers of Attorney - Dissolution of Partnership

Hello 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.

**I. 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.

**II. 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



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**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,

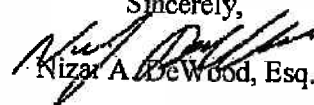
This letter is to confirm the parties' desire to dissolve the above referenced partnership. Partnership dissolution will involve appropriate planning to properly account for each of the partner's interest in the partnership, and a well-executed agreement memorializing the understanding of the parties.

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 30<sup>th</sup>, 2012 on that property.

I look forward to hearing from you. Thank you.

Sincerely,

  
Nizar A. DeWood, Esq.

cc: Fathi Yusuf



# EXHIBIT C

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

Blairburg No. 8205

EXHIBIT

C

JA-207



20 20

**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 10<sup>th</sup>, 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 20<sup>th</sup>, 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

00 00

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 31<sup>st</sup>, 2012. Thereafter, the monthly rental rate shall increase to \$250,000 per month until June 30<sup>th</sup>, 2012. After such date, the tenancy shall terminate forthwith without further notice. Failure to vacate the premises by June 30<sup>th</sup>, 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 27<sup>th</sup>, 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 27<sup>th</sup>, 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.

**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 5 <sup>th</sup> , 2004 to Dec. 31 <sup>st</sup> , 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 <sup>th</sup> , 2012 by way of check drawn on the account of United Corporation. Accordingly, the rental arrears for the period of (May 5 <sup>th</sup> , 2004 to Dec. 31 <sup>st</sup> , 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 <sup>th</sup> , 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 Waheed 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"> <li>1. Arab Bank, Ltd (Worldwide branches)</li> <li>2. Banque Francaise Commerciale in St. Maarten.</li> <li>3. Cairo-Amman Bank (worldwide branches)</li> <li>4. Bank of Nova Scotia (worldwide branches)</li> <li>5. Merrill Lynch Investments</li> <li>6. First Bank (formerly known as VI Community Bank)</li> <li>7. Any other Bank either party determines to be relevant for purpose of inquiry, investigation, and full accounting.</li> </ol>

**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.

00 00

**IN WITNESS WHEREOF**, the parties have executed this Agreement on the day and year first written above.

\_\_\_\_\_  
**Fathi Yusuf, Partner**

\_\_\_\_\_  
**Mohammad Hamed, Partner**

# EXHIBIT D

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

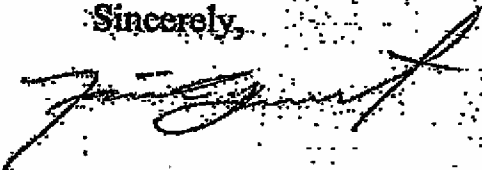
January 12, 2012

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

EXHIBIT  
0

01/13/2012 02:07

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PLAZA EXTRA ST

PAGE 01/01

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

January 13, 2012

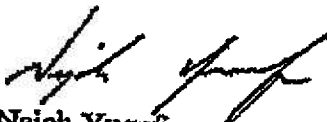
Mr. Mohamed Hamed,

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 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 30<sup>TH</sup>, 2012.

Dear Mr. Hamed,

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

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

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

Sincerely,

United Corporation

By: 

Fathi Yusuf, CEO

04/05/2012 04:03 3487755766

PLAZA EXTRA STT

PAGE 01/03

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

April 4, 2012

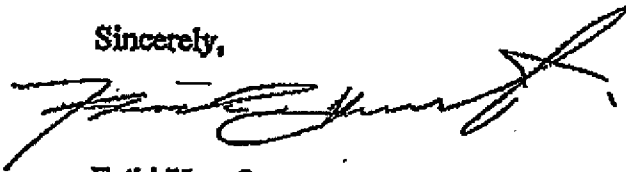
Mohammad Abdul Qader Hamed  
Plaza Extra Supermarket  
4-C & 4-D Estate Sion Farm  
Christiansted, VI 00820

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		<u>\$ 8,500.00</u>
	Amount Due	\$858,500.00
May 2012 Rent currently due:		<u>\$250,000.00</u>
	Total Balance due May 1, 2012	<u>\$1,108,500.00</u>

Please forward a check immediately.

Sincerely,

  
Najeh Yusuf for Fathi Yusuf

CC: Wally Hamed

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

June 1, 2012

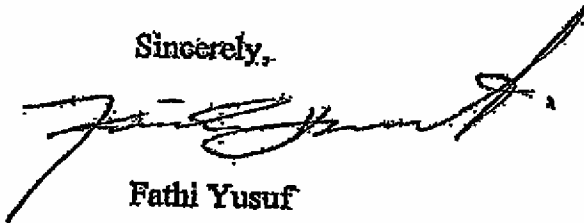
Mohammad Abdul Qader Hamed  
Plaza Extra Supermarket  
4-C & 4-D Estate Sion Farm  
Christiansted, VI 00821

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

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

Please forward a check immediately.

Sincerely,



Fathi Yusuf

CC: Wally Hamed

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

July 1, 2012

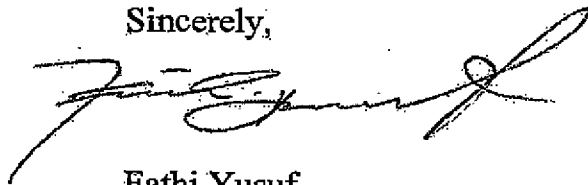
Mohammad Abdul Qader Hamed  
Plaza Extra Supermarket  
4-C & 4-D Estate Sion Farm  
Christiansted, VI 00821

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

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

Please forward a check immediately.

Sincerely,



Fathi Yusuf

CC: Wally Hamed

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

August 1, 2012

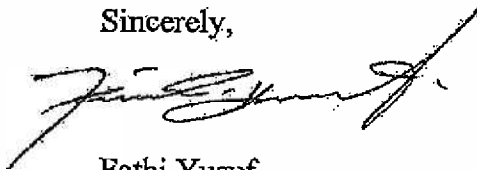
Mohammad Abdul Qader Hamed  
Plaza Extra Supermarket  
4-C & 4-D Estate Sion Farm  
Christiansted, VI 00821

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

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

Please forward a check immediately.

Sincerely,



Fathi Yusuf

CC: Wally Hamed

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

September 1, 2012

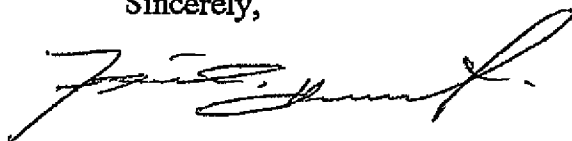
Mohammad Abdul Qader Hamed  
Plaza Extra Supermarket  
4-C & 4-D Estate Sion Farm  
Christiansted, VI 00821

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

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

Please forward a check immediately.

Sincerely,



Fathi Yusuf

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

October 1, 2012

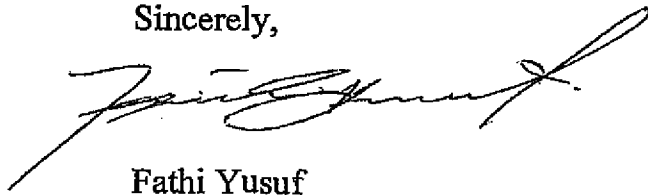
Mohammad Abdul Qader Hamed  
Plaza Extra Supermarket  
4-C & 4-D Estate Sion Farm  
Christiansted, VI 00821

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

Rent due for Plaza Extra – East, January 1, 2012 through Sept. 30, 2012	Balance Due	\$2,168,609.80
ADD: 1% interest on outstanding Balance		<u>\$ 21,686.10</u>
	Amount Due	\$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 E

Doc# 2012002041

# 23695  
all the listed  
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)

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;

Doc# 2012002041  
 Books: 1308  
 Pages: 4  
 Filed & Recorded: 05/25/2012 2:40PM  
 ALTHEA PERRO  
 RECORDER OF DEEDS  
 ST. CROIX  
 RECORDING FEE  
 PER PAGE FEE  
 DEED DOC STAMP

*Althea Perro*  
Recorder

\$ 1,712.00  
\$ 4.00  
\$ 31,000.00





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 seized 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]

R.L. Merwin  
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 24 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

GERALD T GRONER  
Notary Public  
St. Croix, U.S. Virgin Islands  
LNP-022-11  
My Commission Expires November 10, 2015

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 \$ 940<sup>00</sup>

  
SURVEY & DEEDS SECTION  
MARGARET F. ACOSTA  
SPECIAL ASSISTANT

Doc# 2012002841  
Book: 1508  
Pages: 37  
Filed & Recorded  
05/25/2012 2:48PM  
ALTHEA PEDRO  
RECORDER OF DEEDS  
ST CROIX  
RECORDING FEE \$ 1,712.88  
PER PAGE FEE \$ 4.88  
DEED DOC STAMP \$ 51,882.88



GOVERNMENT OF  
THE UNITED STATES VIRGIN ISLANDS

**OFFICE OF THE LIEUTENANT GOVERNOR  
DIVISION OF REAL PROPERTY TAX**

1105 King Street • Christ Church, Virgin Islands 00820 • 340.773.4449 • Fax 340.773.0330  
18 Kongens Gade • Charlotte Amalie, Virgin Islands 00802 • 340.774.2111 • Fax 340.774.4253

**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:

<b>PARCEL NUMBER</b>	2-06800-0204-00
<b>LEGAL DESCRIPTION</b>	REM ESTATE GRANGE
<b>OWNER'S NAME</b>	ARMSTRONG, MALCOLM & OTHERS

Taxes have been researched up to and including 2009.

CERTIFIED TRUE AND CORRECT BY

Valencio Jackson  
Tax Collector

*Valencio Jackson*  
SIGNATURE

May 22, 2012  
DATE

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

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

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

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

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

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

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

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

---

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

**Plaintiff's Reply to Opposition to Motion for TRO and/or Preliminary Injunction**  
**Page 2**

*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

**Plaintiff's Reply to Opposition to Motion for TRO and/or Preliminary Injunction**  
**Page 3**

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

Plaintiff's Reply to Opposition to Motion for TRO and/or Preliminary Injunction  
Page 4

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

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

**§ 22. Formation of partnership**

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

...

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

...

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

---

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

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

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

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

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

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

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

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

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



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

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

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

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

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

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

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

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

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

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

**C. The defendants' other arguments**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

. . . .

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

. . . .

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

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

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



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

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

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

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

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

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

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

**II. Irreparable harm**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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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.<sup>15</sup>

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

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

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

**III. Balancing of Factors**

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

**IV. Public interest**

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

---

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

**Plaintiff's Reply to Opposition to Motion for TRO and/or Preliminary Injunction**  
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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,  
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Christiansted, St. Croix  
U.S. Virgin Islands 00820  
(340) 719-8941  
carl@carlhartmann.com

**CERTIFICATE OF SERVICE**

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

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

NIZAR A. DEWOOD  
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*/s/Joel H. Holt, Esq.*



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

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

---

PLAINTIFF'S SUPPLEMENTATION OF TRO MOTION

In the plaintiff's October 22<sup>nd</sup> TRO reply memorandum (DE 18), it was pointed out that the defendants were still sending rent notices to the plaintiff regarding the Plaza Supermarket store located in Sion Farm ("Plaza East"). This point was made to demonstrate that United does not own this store, despite the defendants' assertions to the contrary. In short, United is only the landlord of the Plaza East store, not the owner. Notwithstanding this point made in the October 22<sup>nd</sup> reply, on November 1, 2012, the defendants sent a new rent notice to the plaintiff at the Plaza Extra Supermarket, again admitting that United does not own this store, a copy of which is attached as Exhibit A.

Dated: November 5, 2012

Is/Joel H. Holt, Esq.  
Joel H. Holt, Esq.  
Counsel for Plaintiff  
Law Offices of Joel H. Holt  
2132 Company Street,  
Christiansted, VI 00820

Dated: November 5, 2012

Is/Carl J. Hartmann, III, Esq.  
Carl J. Hartmann III, Esq.  
Co-Counsel for Plaintiff  
5000 Estate Coakley Bay, L-6  
Christiansted, VI 00820

Plaintiff's Notice of Filing  
Page 2

### CERTIFICATE OF SERVICE

I hereby certify that on this 5<sup>th</sup> day of November, 2012, I filed the foregoing with the Clerk of the Court, and delivered by ECF to the following:

Joseph A. DiRuzzo, III  
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1001 Brickell Bay Drive, 32<sup>nd</sup>. Fl.  
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[info@dewood-law.com](mailto:info@dewood-law.com)

/s/ Joel H. Holt

# EXHIBIT A

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

November 1, 2012

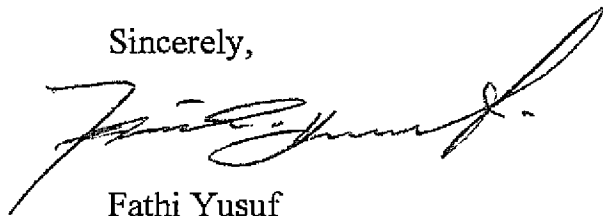
Mohammad Abdul Qader Hamed  
Plaza Extra Supermarket  
4-C & 4-D Estate Sion Farm  
Christiansted, VI 00821

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

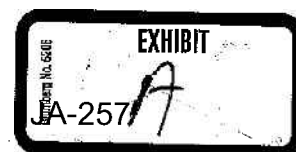
Rent due for Plaza Extra – East, January 1, 2012 through Oct. 31, 2012	Balance Due	\$2,440,295.90
ADD: 1% interest on outstanding Balance		<u>\$ 24,402.96</u>
	Amount Due	\$2,464,698.86
November 2012 Rent currently due:		<u>\$250,000.00</u>
Total Balance due November 1, 2012		<u>\$2,714,698.86</u>

Please forward a check immediately.

Sincerely,



Fathi Yusuf



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

MOHAMMAD HAMED,	)	CIVIL NO. 1:12-CV-099
	)	
Plaintiff	)	<b>MEMORANDUM OF LAW IN SUPPORT</b>
	)	<b>OF DEFENDANTS’ <u>RENEWED</u> MOTION TO</b>
Vs.	)	<b>DISMISS, AND IN THE ALTERNATIVE FOR</b>
	)	<b>A MORE DEFINITE STATEMENT, AND</b>
	)	<b>TO STRIKE EXHIBITS “B” through “D”</b>
	)	<b>OF THE AMENDED COMPLAINT PURSUANT</b>
FATHI YUSUF and	)	<b>TO RULES 12(b)(6), 12(e), and 12(f) OF THE</b>
UNITED CORPORATION	)	<b>FEDERAL RULES OF CIVIL PROCEDURE</b>
	)	
Defendants.	)	
_____	)	

**MEMORANDUM OF LAW IN SUPPORT OF DEFENDANTS’ RENEWED MOTION TO DISMISS, MOTION FOR A MORE DEFINITE STATEMENT, AND MOTION TO STRIKE EXHIBITS “B” THROUGH “D” OF THE AMENDED COMPLAINT**

**I. INTRODUCTION**

On September 18<sup>th</sup>, 2012, Plaintiff Mohammed Hamed (“Hamed”) filed a complaint (“Original Complaint”) against Defendants United Corporation (“United”) and Fathi Yusuf (“Yusuf”) alleging for the first time in 26 years the existence of a “partnership” with Defendant Yusuf, referring to it as the “Hamed & Yusuf” partnership. *Complaint* ¶3 [DOCKET ENTRY #1, attachment 3]. On October 19<sup>th</sup>, 2012, Plaintiff Mohammed Hamed filed an Amended Complaint in this action alleging that a “50/50 Partnership was created to create, fund, and operate this new grocery supermarket business, which they named Plaza Extra Supermarket.” *Amended Complaint* ¶9 [DOCKET ENTRY #15].

With the Amended Complaint still failing to plead sufficient facts alleging the scope, nature, and extent of the partnership Plaintiff Hamed alleges to have with Defendant Yusuf,

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Defendants now respectfully again move to dismiss the Amended Complaint for failure to state a cause of action upon which relief can be granted pursuant to Rule 12(b)(6) of the Federal Rules of Civil Procedure. In the alternative, Defendants also move for a more definite statement under Fed. R. Civ. Proc. 12(e) as the Amended Complaint impermissibly and vaguely defines the existence of a "50/50 partnership." *Amended Complaint* ¶9 [DOCKET ENTRY #15]. The Amended Complaint fails to specify the nature, ownership, and scope of this alleged partnership, and why Defendant United is named as a party to this suit. Further, as Plaintiff Hamed through his agent and son Waleed Hamed have already conceded before the District Court of the Virgin Islands and the U.S. Attorney's Office for the last seven (7) years that the business arrangement between Plaintiff Hamed and Defendant Yusuf is a contractual joint venture, Plaintiff Hamed is estopped from now asserting a partnership under the equitable doctrines of Judicial and Quasi Estoppel, Issue Preclusion, and laches. As such, dismissal of the Amended Complaint is warranted. In the alternative Plaintiff should be ordered to provide Defendants with a more definite statement as to the formation, scope and nature of the alleged partnership to enable Defendants to properly respond to allegations of the Amended Complaint.

Last but not least, Defendants move to strike Exhibits "B", "C" and "D" under Fed. R. Civ. Proc. Rule 12(f). The Amended Complaint incorporates unsigned documents that were produced during private settlement discussions. An Order striking these exhibits is warranted in light of Plaintiff's intentional failure to attach numerous other proposed confidential unsigned settlement agreements where none mention the word "partnership." Plaintiff simply cannot cherry pick two emails and an unsigned proposed settlement agreement when Plaintiff has for 26 years denied the existence of a partnership, and when his Plaintiff's son and agent Waleed Hamed

represented to the District Court of the Virgin Islands, and the U.S. Attorney's Office that no partnership ever existed between his father Plaintiff Hamed and Defendant Yusuf, but instead only a joint venture agreement granting Plaintiff Hamed fifty percent (50%) of the profits of the operations of the Plaza Extra Supermarkets.

## II. FACTS

On January 15<sup>th</sup>, 1979, Defendant United Corporation ("United") was organized and incorporated in the Virgin Islands. Since 1979, Defendant United has always been wholly owned by Defendant Yusuf and his family in various shares. **Exhibit A: Yusuf Affidavit ¶3.** In 1983, Defendant United completed the construction of a shopping mall on land parcels 4-C & 4-D of Estate Sion Farm; these parcels have always been owned by Defendant United in fee simple absolute, and remain so to this date. The shopping mall was named United Shopping Plaza ("Shopping Plaza"). Further, Defendant United acquired the trademark "Plaza Extra" and has since utilized the trademark name in all of its supermarket operations. **Exhibit A: Yusuf Affidavit ¶ 7.** Since 1986, Defendant United has continually used that trademark and never transferred or otherwise permitted anyone to have any kind of interest in the "Plaza Extra" trademark. **Exhibit A: Yusuf Affidavit ¶ 7.**

In 1986, due to financial constraints, Defendant Yusuf and Plaintiff Hamed entered into an oral joint venture agreement. The agreement called for Plaintiff Hamed to receive fifty percent (50%) of the net profits of the operations of the Plaza Extra supermarkets in exchange for a loan of \$225,000 and \$175,000 cash payment. The loan was repaid in full, and Plaintiff Hamed received 50% of the net profits thereafter. At no point did Plaintiff Hamed ever acquire a

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shareholder interest in Defendant United. Nothing in the Amended Complaint or any of the exhibits attached thereto demonstrate any shareholder interest by Plaintiff Hamed in Defendant United. Since its inception, Defendant United has always maintained separate bank accounts to collect rents and other incomes unrelated to its supermarket operations. At no point did Plaintiff Hamed ever receive any rental proceeds or other profits from United's other operations. **Exhibit A: Yusuf Affidavit ¶ 7. Original Complaint ¶14** [DOCKET ENTRY # 15]. Nothing in the Amended Complaint alleges that Plaintiff Hamed is entitled to any proceeds other than from the operations of the Plaza Extra supermarkets. As such, the parties contemplated only a 50/50 split of the profits of the Plaza Extra Supermarket stores.

**A. Plaza Extra Tutu Park St. Thomas Store (“Plaza Extra – St. Thomas”)**

In October 1993, Defendant United expanded its supermarket operations by opening another Plaza Extra Store in Tutu Park Mall, St. Thomas. **Exhibit A: Affidavit of Yusuf, ¶8.** United's treasurer Defendant Yusuf negotiated and signed the leased premises for the Plaza Extra – St. Thomas store and was the **only** party to guarantee its lease. **Exhibit A: Affidavit of Yusuf, ¶8.** Nothing in the Amended Complaint alleges that Plaintiff Hamed ever shared in the risk of losses or obligations under the Plaza Extra St. Thomas store lease, nor that Plaintiff Hamed ever co-signed, or was a surety regarding any obligations of Defendant United. In sum, both the original complaint and the Amended Complaint fail to allege any facts concerning Plaintiff's risk of loss in any “partnership” Plaintiff Hamed alleges to have with Defendant Yusuf.



**B. The Alleged “Hamed & Yusuf Partnership”**

Plaintiff, in his original Complaint, and for the first time in 26 years, alleges that he is a partner in a partnership called the “Yusuf & Hamed partnership.” *Original Complaint* ¶3 [DOCKET ENTRY #1, attachment 3]. The original Complaint, without specificity, alleges that the parties created the “Hamed & Yusuf partnership” and “used a corporate form in mid-1986 for tax purposes.” This allegation has now changed in the Amended Complaint, which completely removes any reference to Defendant United being used “for tax reporting purposes” but instead alleges that Defendant Yusuf offered Defendant United to report the tax obligations of the alleged partnership through Defendant United. *Amended Complaint* ¶8 [DOCKET ENTRY # 15].

The Amended Complaint fails to attach a single legal document, resolution, decision, memorandum of minutes, tax returns or schedules, or other communications showing the existence of a partnership of the magnitude that Plaintiff Hamed alleges - despite Plaintiff’s contention that he has been a partner for over 26 years. Indeed, during seven (7) years of court proceedings in the criminal matter of *U.S. v. United, 05-cr15*, Plaintiff’s agent Waleed Hamed, as well as his brother Waheed Hamed through his attorneys have always declared to the District Court of the Virgin Islands, and the U.S. Attorney’s Office that the relationship between their father Plaintiff Hamed and Defendant Yusuf is a “joint venture” entitling Plaintiff Hamed to fifty percent (50%) of the net profits of United’s operations of the Plaza Extra Supermarket stores.

**C. Exhibits B & C of the Amended Complaint: The Confidential Proposed Settlement Letters**

The Amended Complaint annexes five exhibits - “A” through “D” - in support of whatever alleged partnership that may exist between Plaintiff Hamed and Defendant Yusuf:

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- 1) **Exhibit A:** a 10 page transcript of a 1997 Oral Deposition of Defendant Yusuf in the case of *Idheileh v. United Corporation*, STT-156-CV-1997,
- 2) **Exhibit B:** an Email from DeWood Law Firm to Waleed Hamed;
- 3) **Exhibit C:** an unsigned Proposed Dissolution Agreement from DeWood Law Firm to Waleed Hamed.
- 4) **Exhibit D:** Letter from Fathi Yusuf to Mohammed Hamed concerning increased rent.
- 5) **Exhibit E:** Warranty Deed to Plot No. 9 Estate Grange and Plot No. 70 Estate Grange

The Amended Complaint fails to advise the court that Exhibits “B” through ”D” were communications regarding attempts to privately settle a serious and costly dispute between the parties. Additionally, none of the foregoing exhibits show that either party has ever adopted the position that a partnership called the “Hamed & Yusuf partnership” ever existed. That position was rejected by both Defendants and Plaintiff, and as such neither party ever signed the proposed dissolution agreement attached as Exhibit “C” to the Amended Complaint. [DOCKET ENTRY # 15, attachment 3]. Further, the Amended Complaint fails to point to a single communication where Plaintiff Hamed accepted any terms of the unsigned dissolution agreement. The Amended Complaint fails to attach copies of numerous other Proposed Settlement Agreements circulated between the parties in June and August of 2012. These unsigned proposed agreements, as with the single proposed dissolution agreement, were designed to resolve the parties’ substantial differences, and to address Plaintiff’s agent Waleed Hamed’s threat to prevent Defendant United from filing its tax returns in the criminal matter. **Exhibit A:** *Affidavit of Fathi Yusuf*.

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Defendants again renew their Motion pursuant to Fed. R. Civ. Proc. 12(b)(6) to dismiss Plaintiff's Amended Complaint. In the alternative, the Court should grant Defendants' Motion for a More Definite Statement pursuant to Rule 12(e) as the Amended Complaint fails to specify the facts necessary to establish the scope, intent, and nature of the partnership it alleges. Finally, Plaintiff's attempt to use an **unsigned** and rejected proposal to settle the parties' differences short of litigation should be stricken as an exhibit pursuant to Fed. R. Civ. Pro. 12(f). Based on the arguments stated below, this Motion should be granted.

### III. ARGUMENT

#### A. **Plaintiff's Amended Complaint Fails to State a Claim Entitling Plaintiff To Relief Pursuant to 26 VIC § 75 because no "Partnership" Exists Between Plaintiff Hamed and Defendant Yusuf.**

##### i. **The Standard of Review for Rule 12(b)(6) Motions.**

When considering a Rule 12(b)(6) motion to dismiss for failure to state a claim upon which relief can be granted, a court must accept all well-pleaded allegations as true and view them in the light most favorable to the plaintiff. *Evancho v. Fisher*, 423 F.3d 347, 350 (3d Cir. 2005). To survive a motion to dismiss based on Rule 12(b)(6), Plaintiff's complaint must set forth "enough facts to state a claim to relief that is plausible on its face." *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 570 (2007). A claim is plausible if it "pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged." *Ashcroft v. Iqbal*, 556 U.S. 662 (2009) (citing *Twombly*, 550 U.S. at 556). "The plausibility standard is not akin to a 'probability requirement,' but it asks for more than a sheer possibility that a defendant has acted unlawfully." *Id.* (citing *Twombly*, 550 U.S. at 556). "A pleading that

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offers '**labels and conclusions**' or 'a formulaic recitation of the elements of a cause of action will not do.' Nor does a complaint suffice if it tenders 'naked assertion[s]' devoid of 'further factual enhancement.' ” *Id.* (quoting *Twombly*, 550 U.S. at 555, 557) (Emphasis Supplied).

In deciding a motion to dismiss, the Court **should consider** the allegations in the complaint, exhibits attached to the complaint and **matters of public record**. *See Pension Benefit Guar. Corp. v. White Consol. Indus., Inc.*, 998 F.2d 1192, 1196 (3d Cir.1993) (Emphasis Supplied). The Court may also consider “undisputedly authentic” documents where the plaintiff’s claims are based on the documents and the defendant has attached a copy of the document to the motion to dismiss. *Id.* The court need **not** assume that the plaintiff can prove facts that were not alleged in the complaint, *see City of Pittsburgh v. West Penn Power Co.*, 147 F.3d 256, 263 (3d Cir.1998), nor credit a complaint’s “bald assertions” or “legal conclusions.” *Morse v. Lower Merion Sch. Dist.*, 132 F.3d 902, 906 (3d Cir.1997).

As will be demonstrated, Plaintiff’s Amended Complaint makes only a bald assertion of a “50/50 partnership” and fails to define the requisite elements of an alleged oral or implied “partnership.”

**i. Background: The V.I. Uniform Partnership Act (VIUPA)**

Under the VIUPA a partnership is defined as “an association of two or more persons to carry on as co-owners a business for profit formed under **section 22** of this chapter, predecessor law, or comparable law of another jurisdiction.” 26 VIC § 2 (Emphasis Supplied). The Uniform Partnership Act (“UPA”) has been adopted by numerous states, and interpreted amply by those jurisdictions’ state and federal courts. To determine if a partnership exists, there must be “**clear, mutual assent** on the part of two or more persons” to form a partnership. *In Re Jackson*, 28 B.R.

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559, 562-63 (Bankr. E.D.Pa.1983) (Emphasis Supplied). 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. *See Ruth v. Crane*, 392 F.Supp. 724, 733 (E.D.Pa.1975). An established pattern of profit and loss sharing may support a finding of a partnership, but is **not conclusive**. *See Canfield v. Canfield*, 4 Pa. D. & C.3d 110, 113 (Pa.Com.Pl.1977) (Emphasis supplied). Further, intent to form a partnership may also be found through a partnership tax return. *Leprino Foods Co. v. Gress Poultry, Inc.*, 379 F.Supp.2d 650 (2005).

The determination of whether a partnership exists is a question of fact concerning the intent of the parties. The burden of proof to show a partnership is on the one **alleging** the partnership. *Falkner v. Falkner*, 24 Mich. App. 633 (1970); *Fletcher v. Fletcher*, 197 Mich. 68 (1917). However, the burden is stricter **when relatives<sup>1</sup> are the alleged partners**. *Falkner, supra*; *Lobato v. Paulino*, 304 Mich. 668 (1943). The UPA provides some guidelines for determining the existence of a partnership. In *Barnes v. Barnes*, 355 Mich. 458, 461 (1959), the court held “at the present time no test is conclusive, though in modern law the factor of the intent of the parties, gauged by the legal effect of their agreement, bulks large.” *Id.*

Further, the elements of a partnership include a voluntary association of two or more people with legal capacity in order to carry on, via co-ownership, a business for profit. Co-ownership of the business requires more than merely joint ownership of the property and is usually evidenced by **joint control** and the **sharing of profits and losses**; another indicia of co-ownership is **mutual agency**. *Id.*

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<sup>1</sup> The Hamed family and the Yusuf family are related by marriage.

**ii. Hamed's Amended Complaint Alleges an Oral/Implied "Partnership" that Even if it Exists, Cannot Provide Plaintiff with the Relief Requested.**

Plaintiff allege in his original Complaint that in 1986 an oral partnership called "Hamed and Yusuf partnership" was formed. *Original Complaint*, ¶3 [DOCKET ENTRY #1, attachment 3]. This bare allegation, repeated in different words in the Amended Complaint, still fails to specifically plead how that alleged partnership was formed. Further, it erroneously alleges that the "Hamed & Yusuf partnership" was formed to operate the Plaza Extra supermarket store in Estate Sion Farm only. This is factually impossible. This alleged "partnership" could not have existed in mid-1986 to operate the Plaza Extra Supermarket stores because United has been the owner of the United Shopping Plaza since 1983. Defendant Yusuf is only a minority shareholder of United, and does not directly own any of the Plaza Extra supermarkets. Only Defendant United owns and operates the Plaza Extra Supermarkets. The Amended Complaint fails to allege that crucial legal and factual distinction, and fails to allege if this alleged "partnership" ever acquired any shares of Defendant United. To this date, Plaintiff seems incapable of asserting any claim against Defendant United. As such, nothing in the Amended Complaint establishes any claim for relief against Defendant United.

The Amended Complaint further fails to allege the ownership interest of Defendant United in the operations of the Plaza Extra Supermarkets. The Amended Complaint, suddenly drops any mention of Defendant United as being formed "as a tax reporting entity" as it did in ¶5 of the original complaint, and now alleges that Defendant Yusuf used United Corporation as a tax reporting service for the partnership between Plaintiff Hamed and Defendant Yusuf. This absurd representation that a partnership needs a corporation to report taxes is a novel one, and unheard of. Plaintiff's Amended Complaint conveniently omits when Defendant United was incorporated,

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who the shareholders are, and the fact that Defendant United existed seven (7) years before Yusuf and Hamed met in mid-1986 to discuss any business agreements. Intentionally omitted from Plaintiff's complaints is the fact that Plaintiff Hamed is not even entitled to any of the rent proceeds United collects exclusively for the benefit of its shareholders. Clearly, Plaintiff Hamed cannot be a "50/50" partner when he has never been entitled to any rent profits of Defendant United, and where Defendant United had always exclusive right to all rents from its management and operations of the United Shopping Plaza.

Even if the Amended Complaint sufficiently alleges that a "Hamed & Yusuf partnership" exists, the only relief Mohammed Hamed would be entitled to is a fifty percent (50%) share of Defendant Yusuf's 7.5% ownership of Defendant United's outstanding stocks. However, this is not what Plaintiff Hamed contemplates in his Amended Complaint. Instead, Plaintiff Hamed ambiguously alleges a massive legal partnership with dubious and unspecific claims to properties and assets that are unsupported by specific facts. Simply stated, and as a matter of public record, Defendant Yusuf never did business as (d/b/a) Plaza Extra Supermarket, and never owned outright all of the shares of Defendant United Corporation. The Amended Complaint, like the original complaint, fails to annex a single legal document, tax return, informational return, etc., to demonstrate the existence of the alleged "Hamed & Yusuf" partnership.

**iii. No Joint Control and Joint Management**

Hamed's sole job at the Plaza Extra Supermarket in Sion Farm was that of a warehouse supervisor. Plaintiff ceased working for United in 1996, and moved overseas. **Exhibit B: Affidavit of Maher Yusuf** at ¶ 13. Hamed has never participated in a single management decision, nor ever

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risked any losses in the so called alleged “partnership” that Hamed now alleges to exist. **Exhibit**

**A: Affidavit of Yusuf** at ¶ 6.

In sum, United Shopping Plaza, which is situated on approximately 6 acres in Estate Sion Farm, has always been owned in fee simple absolute, operated, and managed by Defendant United as far back as 1983: more than three (3) years before Plaintiff’s alleged “Partnership” existed. **Exhibit B: Affidavit of Maher Yusuf** at ¶ 6.

Paragraph 12 of the Amended Complaint alleges that “the partnership between Hamed and Yusuf subsequently expanded to two other supermarket locations, one in the west end to St. Croix, and one in St. Thomas.” This again is incorrect for the following reasons:

- a. Only Defendant United has ever operated and carried the trademark name “Plaza Extra.” The Complaint does **not** allege there is a partnership between Hamed and United. It only refers to Hamed and Yusuf.
- b. Yusuf is only a minority shareholder of United. United is owned in various shares by numerous members of the Yusuf family.<sup>2</sup> The Complaint fails to allege that United ever transferred any of its shares to this newly alleged “Hamed & Yusuf Partnership.”
- c. The Complaint fails to allege that Plaza Extra Supermarket in Tutu Park was leased by United, with Yusuf personally guaranteeing all lease obligations.
- d. The Complaint fails to allege that Hamed ever signed a single lease or guaranteed a single contractual or monetary obligation for Defendant United, including the lease agreement with the landlord/owners of the Tutu Park Mall location.

### **¶13 of the Amended Complaint**

Paragraph 13 alleges “that the three Plaza Extra supermarkets have been managed jointly by the Partnership” – however, there is no mention of what duties and decisions Hamed undertook, or what obligations Plaintiff guaranteed jointly with either United or Yusuf as a

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<sup>2</sup> See *supra* at footnote 5.



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purported partner. Without more ¶13 fails to describe what central management duties Hamed engaged in, executed, and implemented. Without joint management and risk of loss to a partner the complaint fails to properly allege the requisites of a “partnership.”

### **¶16 of the Amended Complaint**

In ¶16 of the Amended Complaint, Plaintiff asserts that “the bank accounts for the three Plaza Extra supermarkets have always been accessible equally to Hamed and Yusuf, with the parties agreeing that one family member from each of the Hamed and Yusuf families will sign each check written on these bank accounts.” This representation is ambiguous as to lead the court to believe that a partnership existed requiring the parties to equally access the accounts. **Equal access to accounts does not translate to equal ownership of the accounts.** The Amended Complaint fails to allege that anyone else but United is the owner of these bank accounts.

Paragraph 9 of the Complaint alleges that “United has always had separate accounting records and separate bank accounts for its shopping center and business operations that were unrelated to the Plaza Extra supermarkets.” This clearly demonstrates Plaintiff’s lack of any ownership interest in Defendant United since even the Amended Complaint admits that United had separate bank accounts unrelated to the Plaza Extra supermarkets that are for the sole benefit of United’s shareholders.

Paragraph 20 of the Complaint alleges that “from time to time, Mohammed Hamed and Yusuf have used these profits distributed solely from these supermarkets accounts 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.” Incredibly, the Complaint fails to state the name of a single business that the parties purchased and operated jointly. Though the parties have formed

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corporations for various purposes, the parties never acquired nor invested in any **other** businesses jointly as partners, but rather as shareholders in specific corporations formed for specific purposes. Further, the Amended Complaint fails to state whether those alleged businesses are the assets of the so called entity called "Hamed & Yusuf partnership" or the assets of other corporate entities. Plaintiff fails to allege what business the so called "Hamed & Yusuf partnership" purchased, from whom and when these businesses were purchased. Again, the Amended Complaint fails to allege with the required specificity what joint assets and businesses were purchased under the alleged "Hamed & Yusuf partnership."

Last but not least, nothing in the Amended Complaint alleges when Plaintiff Hamed appointed Waleed Hamed as his agent. This omission is convenient for the Plaintiff because it demonstrates clearly the fact Hamed was no longer associated with United since 1996. **Exhibit A: Yusuf Affidavit.** Even assuming there is a valid Power of Attorney to Waheed Hamed, the Amended Complaint fails to allege the scope and details of that power of attorney. The Amended Complaint further fails to allege what central management duties Waleed Hamed undertook on behalf of his father Mohammed Hamed. Failure to allege these necessary facts is fatal to Plaintiff's alleged partnership.

**C. Judicial Estoppel and Quasi Estoppel Precludes Hamed from Asserting the Existence of a Partnership.**

Even if the facts were to support the existence of an oral partnership, the doctrine of Judicial and Quasi Estoppel precludes Hamed from now asserting the existence of a "partnership" that Plaintiff has actively denied for the last twenty six (26) years. Plaintiff cannot produce a single signed document showing he is a partner with Yusuf, other than a deposition transcript

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where the term “partner” is used to refer to the joint venture agreement Plaintiff Hamed entered into with Defendant Yusuf . For the last seven (7) years, Plaintiff through his agent Waleed Hamed, represented to the Government that no “partnership” existed between Plaintiff Hamed and Defendant Yusuf in the case of *U.S. v. United*. In short, even if a “partnership” is found, Plaintiff is estopped from asserting this newly contrived entity called the “Hamed & Yusuf partnership” to ensure equity and avoid grave injustice and prejudice to defendants United and Yusuf. The doctrine of judicial estoppel and quasi-estoppel are implicitly permitted under 26 V.I.C. §2(a), which states “Unless displaced by particular provisions of this chapter, the principles of law and **equity supplement** this chapter.”

**i. Judicial Estoppel: Background**

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. *See New Hampshire v. Maine*, 532 U.S. 742 (2001). The doctrine’s purpose is principally “to protect the integrity of the judicial process by prohibiting parties from deliberately changing positions according to the exigencies of the moment.” *New Hampshire*, 532 U.S. at 749. The government is no exception. *See McCarron v. FDIC*, 111 F.3d 1089 (3d Cir. 1996).

“Judicial estoppel prevents a party from ‘playing fast and loose with the courts,’” *Scarano v. Central R. Co.*, 203 F.2d 510, 513 (3d Cir. 1953) (internal citation omitted). In *New Hampshire*, the Supreme Court cited to three non-exhaustive factors indicating whether to apply judicial estoppel:

First, a party’s later position must be ‘clearly inconsistent’ with its earlier position. Second, courts regularly inquire whether the party has succeeded in persuading a court to accept that party’s earlier position, so that judicial acceptance of an inconsistent position would create ‘the perception that either the first or the second

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court was misled,' ... A third consideration is whether the party seeking to assert an inconsistent position would derive an unfair advantage or impose an unfair detriment on the opposing party if not estopped.

*Id.* at 750, 751. Moreover, the court noted that it cannot apply one party's inconsistent positions without "undermining the integrity of the judicial process." *Id.* at 755.

The Third Circuit has "consistently held that judicial estoppel precludes a party from assuming a position in a legal proceeding inconsistent with one previously asserted" and emphasizes that such a practice is "an evil the courts should not tolerate." *Gov't of Virgin Islands v. Paniagua*, 922 F.2d 178 (3d Cir. 1990); *Delgrosso v. Spang*, 903 F.2d 234, 241 (3d Cir. 1990). Such that, "a party should not be allowed to gain an advantage on one theory, and then seek an inconsistent advantage by pursuing an incompatible theory." *Krystal Cadillac-Oldsmobile GMC Truck, Inc. v. Gen. Motors Corp.*, 337 F.3d 314, 319-20 (3d Cir. 2003). The test is whether a party has taken "(1) irreconcilably inconsistent positions; (2) adopted . . . in bad faith; and (3) a showing that . . . estoppel . . . addresses the harm and . . . no lesser sanction [is] sufficient." *G-I Holdings, Inc. v. Reliance Ins. Co.*, 586 F.3d 247, 262 (3d Cir. 2009).

The doctrine of estoppel springs from equitable principles and the equities in the case, and the doctrine is invoked to prevent injustice, as well as promote the ends of justice. It is invoked in the interests of justice, morality, and common fairness. **The doctrine also stands for the basic precepts of common honesty, clear fairness, and good conscience.** *Omega Indus., Inc. v. Raffaele*, 894 F. Supp. 1425 (D. Nev. 1995). Estoppel is an equitable remedy that the courts may invoke to prevent a party from benefiting from **its misconduct**; it is designed to prevent one party from suffering gross wrong at the hands of another party who has brought about the

condition. The doctrine of estoppel is designed to prevent injustice by not permitting a party to repudiate a course of action on which another party has relied to his or her detriment. *Id.*

**ii. Hamed's Misconduct, Individually, and by his "Authorized Agent Waleed Hamed, Precludes him from Asserting a Partnership.**

The following factual outline sets clearly Plaintiff's misconduct and the necessity of avoiding injustice by invoking judicial and quasi-estoppel:

- a. Plaintiff worked as a warehouse supervisor at the Plaza Extra – Estate Sion Farm store only from 1986 to 1996, when Plaintiff retired and moved to live in Jordan. Plaintiff's The Amended Complaint fails to allege anything concerning Hamed's joint management duties, if any exist.
- b. Plaintiff never filed or signed a single partnership tax return, partnership information return, statement of partnership, or any other document purporting the existence of any type of partnership. Absent from the Complaint is any reference whatsoever to a single return or document Plaintiff has ever filed with any government agency showing the existence of a "partnership."
- c. Plaintiff through his agent Waleed Hamed repeatedly represented for the last seven (7) years to the Government and this Court that no partnership ever existed, thereby severely prejudicing Defendants' legal position with the Government in the criminal case. **Exhibit A: Yusuf Affidavit ¶ 7.**
- d. In the criminal case, the Criminal Defendants have always truthfully represented with the consent of each defense counsel representing agent Waleed Hamed and Waheed Hamed 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. See **Exhibit B: Affidavit of Maher Yusuf.**
- e. Mohammed Hamed never intervened for the last seven (7) years in the case of *U.S. v United Corporation* to assert the existence of a partnership. Plaintiff is thus precluded under the doctrine of issue preclusion from asserting this issue in the current proceedings. The Amended Complaint fails to allege what measures or actions Plaintiff undertook to assert a partnership interest in the criminal case.
- f. United and Yusuf have to their great detriment during the last 26 years relied on the representations of Hamed to the public and to the IRS and VIBIR the true nature of

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their agreement, mainly that their relationship is one of a contractual joint venture and not a partnership. As such, United has always operated as a *de jure* corporation, and filed its returns as a corporation. **Exhibit B:** *Affidavit of Maher Yusuf*.

- g. To permit Plaintiff to now declare a “partnership” would mean substantial tax consequences to United and Yusuf, for which they cannot possibly amend and correct.<sup>3</sup>

The conclusion is simple: if Plaintiff was a partner he should have said so 26 years ago. Plaintiff cannot now seek declaratory relief as a partner just because it now suits him financially. As such, Plaintiff must be estopped pursuant to the doctrines of Judicial Estoppel and Quasi-Estoppel from asserting a partnership even if the court were to conclude that an oral or implied “partnership” did exist.

**iii. The Doctrine of Unclean Hands Precludes Assertion of any Partnership by Plaintiff Hamed.**

Similar to its Judicial and Quasi Estoppel cousins, the doctrine of unclean hands is applicable here. This doctrine is designed to preclude a party acting in bad faith from using the judicial system to further its ends. “The unclean hands doctrine derives from the equitable maxim that ‘he who comes into equity must come with clean hands.’” *Ellenburg v. Brockway, Inc.*, 763 F.2d 1091, 1097 (9th Cir.1985). “This maxim ‘closes the doors of a court of equity to one tainted with inequity or bad faith relative to the matter in which he seeks relief, however improper may have been the behavior of the defendant.’” *Id.*, citing *Precision Inst. Mfg. Co. v. Automotive Maintenance Mach. Co.*, 324 U.S. 806, 814 (1945).

Application of the unclean hands doctrine is left to the broad discretion of the trial court. *Precision Instrument, supra*; *Washington Capitols Basketball Club, Inc. v. Barry*, 419 F.2d 472, 478 (9th Cir.1969). This doctrine will bar a party from receiving an equitable remedy where

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<sup>3</sup> See I.R.C. § 6511 (establishing statute of limitations to file amended income tax returns).

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that party has acted in **bad faith** (*Wells Fargo & Company v. Stagecoach Properties, Inc.*, 685 F.2d 302, 308 (9th Cir.1982)) with respect to the subject matter of its claims. *Fuddrucker, Inc. v. Doc's B.R. Others, Inc.*, 826 F.2d 837, 847 (9th Cir.1987) (Emphasis Supplied), citing, *CIBA-GEIGY Corp. v. Bolar Pharmaceutical*, 747 F.2d 844, 855 (3d Cir.1984). The party asserting this doctrine has the burden of proving its application. *See e.g. Conan Properties, Inc. v. Conans Pizza, Inc.*, 752 F.2d 145, 150 (5th Cir.1985).

Hamed through his agent Waleed Hamed has repeatedly represented to every government agency through years of tax returns and through their attorneys that Plaintiff was never a partner with either Yusuf or United. Reincorporating the facts outlined in in the Judicial and Quasi Estoppel arguments, it is submitted that Plaintiff's actions amount to bad faith as contemplated under the doctrine of "unclean hands." As such, Plaintiff's assertion that a partnership exists must be denied.

**D. The Statute of Frauds Precludes Any of Plaintiff's Implied or Express Claims for Interest in Real Property Owned by Defendant United.**

The Statute of Frauds clearly bars any of Plaintiff's implied claims of interest in any real property owned by Defendant United. As early as 1979, United has purchased and acquired in fee simple absolute five of the six acres of the land where the United Shopping Plaza currently situates. In 1992, United acquired an additional acre of land. Not a single allegation in the Amended Complaint shows any transfer of United's property to Mohammed Hamed, or any other entity. Moreover, a mere allegation of an oral partnership cannot circumvent the clear reach of the Statute of Frauds to real estate transactions and title to property.

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**E. Plaintiff is Precluded from Asserting a Partnership Under the Doctrine of Issue Preclusion.**

The doctrine of issue preclusion derives from the simple principle that “later courts should honor the first actual decision of a matter that has been actually litigated.” This doctrine ensures that “once an issue is actually and necessarily determined by a court of competent jurisdiction, that determination is conclusive in subsequent suits based on a different cause of action involving a party to the prior litigation,” *Montana v. United States*, 440 U.S. 147, 153 (1979). The prerequisites for the application of issue preclusion are satisfied when: i) the issue sought to be precluded is the same as that involved in the prior action; ii) that issue was actually litigated; iii) it was determined by a final and valid judgment; and iv) the determination was essential to the prior judgment.” *See In re Graham*, 973 F.2d 1089, 1097 (3d Cir.1992) (quoting *In re Braen*, 900 F.2d 621, 628-29 n. 5 (3d Cir.1979)). Complete identity of parties in the two suits is **not** required for the application of issue preclusion.

**i. The Issue Sought to be Precluded is the Same as that Involved in the Prior Action**

Hamed was not a party to the criminal case. However, Hamed’s business status and relationship with Yusuf was raised repeatedly in the criminal case and affirmatively declared to be not be a “partnership” but a joint venture agreement. There, Plaintiff’s agent Waleed Hamed made binding representations that the business agreement with Defendant Yusuf is only a joint venture giving Hamed only an interest in the net profits of Defendant United’s Plaza Extra supermarket operations. As such, the parties in the criminal case were able to resolve the criminal proceedings because the business relationship between Hamed and Yusuf was declared to be a contract, and not a partnership.



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**ii. The Issue was Actually Litigated**

The status of the parties was litigated and resolved by Plaintiff's agent Waleed Hamed in the criminal case. There, Hamed's agent specifically asserted that no partnership existed, and consented to the plea agreement entered into between United and the Government because the entity was declared to be a non-partnership. As such, Hamed is precluded under the "offensive non-mutual collateral estoppel" from now asserting a partnership his agent denied to have ever existed. *See Parklane Hosiery Co. v. Shore*, 439 U.S. 322, 326 (1979) (where the court concluded that "a litigant who was not a party to a prior judgment may nevertheless use that judgment 'offensively' to prevent a defendant from re-litigating issues resolved in the earlier proceeding" subject to an overriding fairness determination by the trial judge. Here, Yusuf is seeking to preclude Hamed from now asserting an issue that has already been adjudicated in the criminal case – by way of stipulation and admission of Hamed's agent through his attorneys, over a seven (7) year period – that no partnership existed between the parties, and that Hamed's interest is only a limited (50%) interest in the net profits of the Plaza Extra supermarket operations. As such, Plaintiff Hamed is now precluded from asserting the existence of a partnership that he denied to have ever existed. Additionally, the declaration by Plaintiff's agent Waleed Hamed that no partnership existed between Hamed and the Defendants was necessary for the resolution of the criminal case.

**F. The Amended Complaint Requires a More Define Statement**

"If a pleading . . . is so vague or ambiguous that the responding party cannot reasonably be required to frame a responsive pleading, the responding party may move for a more definite

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statement.” *Bacon v. Mandell*, 2012 U.S. Dist. LEXIS 132231 (D.N.J. Sept. 14, 2012). *See also Wood & Locker, Inc. v. Doran & Assocs.*, 708 F. Supp. 684, 691 (W.D. Pa. 1989) (“The basis for granting such a motion is unintelligibility, not lack of detail.”).

On its face, the Amended Complaint is fatally defective for two primary reasons: it (1) defines the allegations “attributable to” Mohammad Hamed and Fathi Yusuf as “acts done either directly by the Plaintiff or indirectly through his family members acting as [his respective] authorized agent” and (2) “collectively” refers to Mohammad Hamed as “Hamed” regardless of whether such collective reference, as defined in the Amended Complaint, relates to acts allegedly done “directly” by Mohammad Hamed or indirectly, i.e., “through his family members acting as his authorized agent.” (Amended Complaint ¶2). Such convoluted pleading leaves Defendants – and the Court – guessing about the allegations asserted in the Amended Complaint.

By way of example, pursuant to the definitions of “Hamed” employed in the Amended Complaint, it is entirely unclear whether the allegation that “Hamed and Yusuf formed a partnership” (Amended Complaint ¶ 5) alleges that Mohammad Hamed and Fathi Yusuf formed a partnership; or one of Mohammad Hamed’s undisclosed family members acting as Mohammad Hamed’s authorized agent and Fathi Yusuf formed a partnership; or whether any number of undisclosed “family members acting as [an] authorized agent” for Mohammad Hamed and Defendant Yusuf formed a partnership. Each of those interpretations is possible under the current version of the Amended Complaint. Similarly, it is entirely unclear whether the allegation that “the three Plaza Extra supermarkets have been managed jointly by Hamed and Yusuf” (Amended Complaint ¶ 7) alleges that Mohammad Hamed and Defendant Fathi Yusuf jointly managed the supermarkets; or one of Mohammad Hamed’s family members acting as Mohammad Hamed’s

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authorized agent and Fathi Yusuf jointly managed the supermarkets; or whether any number of undisclosed “family members acting as [an] authorized agent” for Mohammad Hamed and Defendant Fathi Yusuf, jointly managed the supermarkets. The vast majority, if not all, of the material allegations in the Amended Complaint are equally unintelligible and cannot reasonably serve as a basis upon which relief can be granted, and otherwise allow Defendants to reasonably frame any defensive pleadings and papers. Accordingly, requiring Plaintiff Hamed to replead is appropriate under the circumstances.

**G. Striking The Factual Allegations and Exhibits**

Motions to strike pleadings are governed by Federal Rule of Civil Procedure 12(f), which allows the court, “upon motion made by a party . . . or upon the court's own initiative at any time . . . [to strike] from any pleading any insufficient defense or any redundant, immaterial, impertinent, or scandalous matter.” However, “even where the challenged material is redundant, immaterial, impertinent, or scandalous, a motion to strike should not be granted unless the presence of the surplusage will prejudice the adverse party.” *Symbol Techs., Inc. v. Aruba Networks, Inc.*, 609 F. Supp. 2d 353, 359 (D. Del. 2009). But it is beyond quibble that communications in furtherance of settlement discussions are inadmissible under Fed. R. Evid. 408. Indeed, the Third Circuit has approved the 10<sup>th</sup> Circuit’s holding that even “if application of Rule 408 exclusion [is] doubtful, [the] better practice is to exclude evidence of compromise negotiations.” *Affiliated Mfrs. v. Aluminum Co. of Am.*, 56 F.3d 521, 528 (3d Cir. 1995) citing *Bradbury v. Phillips Petroleum Co.*, 815 F.2d 1356, 1364 (10th Cir. 1987).

Moreover, courts within the Third Circuit have found that motions to strike references to settlement negotiations are appropriate when they found factual allegations to be inadmissible

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under Rule 408 and thus immaterial. *See, e.g., Ciolli v. Iravani*, 625 F. Supp. 2d 276, 284-89 (E.D. Pa. 2009); *Bergman v. Jefferson-Pilot Life Ins. Co.*, 2003 U.S. Dist. LEXIS 23689, 2003 WL 23142155, at \*1 (E.D. Pa. Dec. 30, 2003); *Scott v. Twp. of Bristol*, 1991 U.S. Dist. LEXIS 3303, 1991 WL 40354, at \*5 (E.D. Pa. Mar. 20, 1991); *Agnew v. Aydin Corp.*, 1988 U.S. Dist. LEXIS 9911, 1988 WL 92872, at \*4 (E.D. Pa. Sept. 6, 1988).

Here, Hamed has cherry-picked selective documents exchanged between Hamed and Yusuf during settlement discussions. Because Rule 408 militates in favor of excluding the contents of the settlement discussions and the documents produced in relation to the settlement discussions, the Defendants would be prejudiced if the product of the settlement discussions were used against them. To that end, because the Third Circuit's decision in *Affiliated Mfrs* dictates that Rule 408 requires the exclusion of the by-product of the parties' settlement discussion, the only way to effectuate Rule 408's intent and purpose is to utilize Rule 12(f) to strike the offending exhibits and references in the Complaint. *Accord Ciolli, supra* at 289. Accordingly, this Court should require Hamed to replead the Complaint to remove all of the offending material and, in turn, then allow the Defendants to file a responsive pleading. This is especially warranted in light of Plaintiff Hamed's agent, Waleed Hamed's representation to the District Court and the U.S. Attorney's Office concerning the true nature of the business arrangement between Plaintiff Hamed and Defendant Yusuf as one of a joint venture agreement, and not a partnership.

#### IV. CONCLUSION

For the reasons stated above, this Court should grant Defendant's motion to dismiss; and in the alternative order Plaintiff to replead with specificity the scope, nature, and extent of the alleged partnership between Plaintiff Hamed and Defendant Yusuf as to enable Defendants to

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respond to Plaintiff's Amended Complaint. Further, the Court should strike the exhibits and factual allegations produced by the parties' settlement discussions.

Wherefore, it is respectfully requested that the Court grant this Motion.

Date: November 5, 2012

**RESPECTFULLY SUBMITTED,**

**THE DEWOOD LAW FIRM**  
Counsel for Defendants Fathi Yusuf  
And United Corporation

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### CERTIFICATE OF SERVICE

I hereby certify that a true copy of the foregoing Defendants' Memorandum of Law in Support of Motion to Dismiss in Support thereof was served on the Plaintiff Mohammed Hamed through his counsel on the below date via ECF.

Date: October 9, 2012

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/s/ Nizar A. DeWood, Esq.  
Nizar A. DeWood, Esq.

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

<b>MOHAMMAD HAMED, by his authorized</b>	)
<b>agent, WALEED HAMED,</b>	)
	)
<b>Plaintiff,</b>	)
	)
<b>v.</b>	)
	)
<b>FATHI YUSUF and UNITED</b>	)
<b>CORPORATION,</b>	)
	)
<b>Defendants.</b>	)
<hr style="width: 100%;"/>	)

**Civil Action No. 2012-099**

**Attorneys:**

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*For the Defendants*

**ORDER**

**UPON CONSIDERATION** of Plaintiff’s Motion for Remand (Dkt. No. 13), Defendants’ Opposition to same (Dkt. No. 19), and Plaintiff’s Reply (Dkt. No. 22), and for the reasons stated in the accompanying Memorandum Opinion, filed contemporaneously herewith, it is hereby

**ORDERED** that Defendant’s Motion for Remand is **GRANTED**; and it is further

**ORDERED** that the Clerk of Court is instructed to **REMAND** the above-captioned matter to the Superior Court of the Virgin Islands. *See* 28 U.S.C. § 1447(c).

**SO ORDERED.**

Date: November 16, 2012

\_\_\_\_\_/s/\_\_\_\_\_  
WILMA A. LEWIS  
District Judge



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

MOHAMMAD HAMED )  
 ) CIVIL NO. SX-12-CV-370  
 Plaintiff, )  
 v. )  
 ) ACTION FOR DAMAGES, et al.  
 UNITED CORPORATION )  
 FATHI YUSUF ) DEFENDANTS' REPLY  
 ) TO PLAINTIFF'S OPPOSITION  
 ) TO DEFENDANTS' RULE 12  
 Defendants. ) MOTION  
 )

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**DEFENDANTS' REPLY TO PLAINTIFF'S OPPOSITION TO  
DEFENDANTS' RULE 12 MOTION**

COME NOW Defendants United Corporation and Fathi Yusuf, through their undersigned counsel and respectfully file this Reply to Plaintiff's Response in Opposition to Defendants' Motion to Dismiss. For the reasons stated below, and reincorporating fully the arguments set out in Defendants' Rule 12 Motion to Dismiss Plaintiff's Amended Complaint, it is respectfully requested that the court grant Defendants' Motion to Dismiss.

**I. INTRODUCTION**

Plaintiff's Opposition to Defendants' Rule 12 Motion to Dismiss can be reduced to the following three arguments:

1. Because the parties agreed to split the profits "50/50" the court must find a partnership between the parties; that there is no such thing as a contractual "joint venture" and use

of such term is a matter of semantics. Accordingly, Plaintiff argues that the Virgin Islands Uniform Partnership Act ("VIUPA") governs every scenario where the parties agree to divide profits equally, entitling Plaintiff to the various reliefs available to a partner, as opposed to relief under contract law.

2. The Plaintiff need not plead any facts concerning the parties' intent, prior dealings, Plaintiff's representations to the Virgin Islands and United States government agencies, through his agent, that no partnership ever existed; or the fact that Plaintiff has failed to ever file a single partnership return, or a single document demonstrating the existence of a partnership. Rather, Plaintiff contends, the court only need to look at a portion of a transcript from a prior deposition to summarily conclude that Defendant Yusuf meant the word "partner" to be a partner of a general partnership under the VIUPA, and not an association or relationship between two persons to carry-on an objective, such as a contractual joint venture.
3. Plaintiff then argues that the court should disregard at this point any judicial and equitable bars against the Plaintiff because they are merely defenses and cannot be asserted in a Rule 12(b)(6) Motion. This despite the fact that these equitable bars are essential in determining whether or not a "partnership" could be found to exist at this stage.

**I. Equal Distribution of Profits, solely, does not make a Partnership.**

Plaintiff argues first that because Defendants admit to an agreement with the Plaintiff to equally share the profits from the operations of the Plaza Extra Stores, the court must automatically conclude that a partnership exists between Plaintiff and Defendants. Plaintiff cites 26 VIC §22(4), which provides:

In determining whether a partnership exists, these rules shall apply -

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

The term "*prima facie*" means "at first view; on the first appearance." Merriam Webster's Dictionary 11<sup>th</sup> Edition. Clearly, nothing in 26 VIC §22(4) states that equal division of profits amounts automatically to a partnership; section 22(4) cites one factor for the court to consider in determining the existence of a partnership. Therefore, Plaintiff's contention that any agreement to equally split profits amounts to a "partnership" under the VIUPA is a misreading of 26 VIC §22(4). Having conveniently misconstrued 26 VIC §22(4), Plaintiff then proceeds to argue that "the only dispute now appears to be whether the admitted relationship should be called a "partnership" or a "joint venture." Plaintiff Hamed refers to this distinction as a "semantic" dispute and therefore is irrelevant because under V.I. law a joint venture is a subspecies of partnership and is thus subject to the UPA. See *Plaintiff's Response in Opposition to Defendant's Rule 12 Motion to Dismiss*, p. 4.

Again, 26 VIC §22(4) states that equal profit sharing is only *prima facie* evidence of a partnership; nothing under Title 26 states that a partnership arises automatically by operation of law simply because of equal division of profits. Plaintiff therefore argues that no matter the intent and agreement between the parties, the law in the Virgin Islands does not recognize a contractual joint venture agreement, and anything else is essentially a partnership. This position would lead in turn to this absurd conclusion: No matter what the parties intended, no matter what the Plaintiff represented to other third

parties for the last 26 years, as long as there is a division of profits equally, there must be a partnership - even if the parties never intended for a partnership to exist, and even if the Plaintiff has always denied the existence of a partnership.

As such, Plaintiff wants the court to ignore the parties' understanding, prior dealings, equitable principles, and the parties' contractual intent because a "joint venture" is and will always be a partnership. Because nothing in the opposition supports this sweeping conclusion, the court should grant Defendant's Motion to Dismiss.

**II. The Amended Complaint still fails to plead a proper "partnership" and the scope of the alleged partnership.**

Plaintiff argues that the Amended Complaint sufficiently pleads the existence of a partnership. Plaintiff's Opposition re-incorporates ¶¶ 5 through 22 of the Amended Complaint to demonstrate a properly pled Amended Complaint. Therefore, each of the foregoing paragraphs of the Amended Complaint are addressed separately below.

**¶5. In the 1970's, Mohammad Hamed opened and operated a successful grocery business on St. Croix.**

This allegation is irrelevant. Whether Mohammed Hamed operated a successful grocery business on St. Croix or not is irrelevant to whether a partnership exists between the parties.

**¶6. In the early 1980's, Yusuf began to build a shopping center at Sion Farm, St. Croix, which he hoped would include a supermarket, even though he had never operated a grocery business before.**

This allegation supports the fact that Defendant Yusuf and his family, through Defendant United Corporation, have always maintained separate ownership of the shopping center at Sion Farm. It is irrelevant as to the issue of what partnership, if ever, existed between the parties, and the nature and scope of the alleged partnership, which Plaintiff concedes is only to operate a grocery business called Plaza Extra Supermarket.

**¶7. During the construction of that shopping center, Yusuf continually ran out of money and was unable to get any loans from any banks. As such, he sought help from Mohammed Hamed, which Mohammed Hamed agreed to provide.**

This allegation again is irrelevant as to what partnership existed between the parties, and the nature of the partnership.

**¶8. Mohammad Hamed provided funds to complete the construction of the shopping center. In addition, when more funds were needed to create and open the supermarket, Mohammad Hamed sold his grocery store and contributed all of his life savings to the supermarket project in addition to the funds previously provided for the shopping center construction, devoting his full time and energy to getting the supermarket open as well.**

This general assertion is belied directly by the fact that United Corporation has always owned the United Shopping Plaza ("Plaza") where the parties agreed to operate the Plaza Extra Supermarkets. All rental proceeds from the Plaza have always gone to Defendant United, which is owned completely by the Yusuf family. Not one penny from the rental proceeds has ever gone to Plaintiff Hamed. Therefore, on the one hand, Plaintiff pleads that he contributed to the construction of United Shopping Plaza, and on the other hand, Plaintiff concedes that he has never had any interest in the ownership of the United

Shopping Plaza as shown by Plaintiff's admission that there has always been a separation of accounts concerning the non-business operations of Defendant United.

Therefore, the Amended Complaint fails to make clear the nature and scope of this alleged partnership: Is it a partnership that concerns only the operations of the Plaza Extra supermarkets or is it a partnership that encompasses other assets? Therefore, even if the court concludes a *prima facie* showing of a partnership at this point, Plaintiff still fails to advise the Defendants as to the nature assets and liabilities of this partnership. This in turn deprives Defendants from understanding the alleged scope of this partnership, the alleged assets this partnership has, and what tax implications this sudden assertion of partnership creates for the Defendants.

**¶9. During this time period, Mohammad Hamed and Yusuf agreed to enter into a 50/50 partnership (hereinafter referred to as the "Partnership") to create, fund and operate this new grocery supermarket business, which they named Plaza Extra Supermarket. It was located in the shopping center.**

Here, Plaintiff readily admits that the "50/50 partnership" was only for the purpose of operating a new grocery supermarket business called "Plaza Extra Supermarket." However, in ¶8, Plaintiff makes the contrary assertion that he has impliedly some interest in the real property known as United Shopping Plaza. Again, Plaintiff fails to plead with specificity the assets of this partnership. Again, this in turn makes it next to impossible for the Defendants to understand what "partnership" Plaintiff alleges to have with Defendant Yusuf. If the only assets of the partnership are

the operations of the Plaza Extra stores, the Amended Complaint has failed to clearly state so. The Defendants cannot be expected to defend against an ill-defined alleged partnership. Defendant Yusuf has always been truthful and honest about his status as a percentage shareholder of Defendant United Corporation. The remaining shares of Defendant United are owned by Defendant Yusuf's children. This is demonstrated by the parties history of tax returns, government filings, and representations to the District Court of the Virgin Islands, and the U.S. Attorneys' Office. Plaintiff Hamed has never objected to Defendants' representation as to their status, and complete ownership of Defendant United.

**¶ 10. As both Mohammed Hamed and Yusuf agreed to contribute their time and their personal funds to create this Partnership, both risked the loss of their significant initial investments. Moreover, they both agreed that going forward each partner was responsible for 50% of all losses, and was entitled to 50% of all profits from the supermarket business' operations. Indeed, defendants have admitted that the profits of the grocery business were shared with plaintiff -- in pleadings filed in this case.**

Plaintiff fails to allege a single fact showing any risk of loss by Plaintiff Hamed. Plaintiff fails to attach a single exhibit showing any risk of loss assumed by the Plaintiff. Despite the clear Affidavit of Fathi Yusuf concerning Plaintiff Hamed's failure to carry any risk of loss during the 26 year relationship both parties had, Plaintiff cannot allege a single contract, obligation, or loan that Plaintiff Hamed ever risked other than the initial investment Plaintiff invested in the joint venture.

For example, Defendant Yusuf personally and solely guaranteed the lease of the

Plaza Extra Store in St. Thomas, V.I., and personally guaranteed the substantial loans taken from various banks for the benefit of Defendant United. Both the risk of loss and sharing of profits are critical components of any partnership. It is precisely why 26 VIC §22(4) states that splitting of profit is only prima facie evidence and not conclusive proof of a partnership.

**¶11. When the supermarket at Sion Farm opened in 1986, Mohammad Hamed used his experience and contacts in the grocery business to get the store stocked and open successfully.**

This factual allegation is irrelevant to the formation of a partnership. The fact is that Plaintiff Hamed was employed as a warehouse clerk for Defendant United until 1998, and was compensated accordingly. Nothing in this allegation states how, where, and why Plaintiff's experience in the grocery business has ever benefitted Defendants in any way. As demonstrated in the Defendants' Motion to Dismiss, it is telling that Plaintiff Hamed has always been employed as a warehouse clerk, and never had any supervisory managerial responsibilities.

**¶12. The Partnership between Hamed and Yusuf subsequently expanded to two other supermarket locations, one in the west end of St. Croix (both built and initially stocked from the profits of the Partnership) and one in St. Thomas (also both built and initially stocked from the profits of the Partnership). Both of these supermarkets were also operated under the name Plaza Extra. The Partners generally refer to these three stores as Plaza Extra East (Sion Farm, St. Croix), Plaza Extra West (Plesson/Grove, St. Croix) and Plaza Extra St. Thomas (Tutu Park, St. Thomas). These supermarkets have grown in size, currently employing in excess of 600 employees in the three stores.**

The growth of a business neither supports the existence of a partnership, nor the intent of the parties as to the operations of the three stores.



**¶13. At all times relative hereto, the three Plaza Extra supermarkets have been managed jointly by the Partnership, with each Partner having an active role in the operations of the three stores either through their direct actions or through the actions of their authorized agents. In this regard, each Partner always has had a designated family member in a top managerial position in each store, acting as each Partner's representative and agent. The designated managers from each Partner's family jointly manage the respective stores together.**

None of the allegations here demonstrate the nature, scope, and risk and profit sharing between Mr. Yusuf and Mohammed Hamed. Thus, the Amended Complaint, like the original one, still cannot allege a single managerial decision made by Plaintiff Hamed in the 26 year history of this alleged partnership.

**¶14. The Partnership has always had separate, segregated books and accounts for each of the three Plaza Extra Supermarkets, and kept a detailed accounting open to both partners for the expenses and profits of the Partnership wholly separate from the unrelated business operations of United in its operation of the United shopping center located at Sion Farm St. Croix.**

Plaintiff admits here that Defendant United has always kept separate accounts for its "unrelated" business operations of the United Shopping center. Clearly, Plaintiff admits that he has no interest in the United Shopping Center, and that Defendant United is the owner of United Shopping Center. Therefore, this points to an agreement to operate the Plaza Extra Supermarkets, rather than a partnership.

**¶ 15. As part of his Partnership activities Yusuf made the decision that the reporting of all accounting and other filings for these Partnership operations to the Government would be done by United, such as all tax filings and similar matters – he provided the services of United as part of his partnership contribution, to which Mohammad Hamed did not object.**

This assertion fails to allege why a partnership would utilize a corporation simply for filing taxes. As pointed out in the Motion to Dismiss, Defendant United has existed for seven (7) years prior to Plaintiff's joint venture agreement with Defendant United regarding the operations of the Plaza Extra Supermarkets. Defendant United has always owned in fee simple various real properties before it ever entered into a joint venture agreement with Plaintiff to only operate the Plaza Extra Supermarkets.

This is amply demonstrated by the fact that Plaintiff never filed a single partnership tax return throughout the existence of this alleged partnership. Instead, Plaintiff now seeks to link his failure to ever declare partnership taxes, and his 26 years of misrepresentation to the Government of the Virgin Islands, the U.S. Attorney's Office, and the District Court of the Virgin Islands to the fact that he simply agreed to allow Defendant Yusuf to utilize Defendant United as a tax reporting entity.

It is precisely why the Amended Complaint, like the original one, remains deficient, and must be dismissed for failure to establish the scope and nature of Plaintiff's alleged partnership.

**¶16. The bank accounts for the three Plaza Extra supermarkets were created for the benefit of, and have always been accessible to (and transacted on) equally by the partners, Mohammad Hamed and Yusuf, with the Partners agreeing that – to maintain management control – Yusuf and Hamed (or one family member from each of the Hamed and Yusuf families as their agents) would sign each check written on these supermarket bank accounts. . . .**

Plaintiff fails to allege any facts showing that a "partnership" owns these bank accounts. To date, these accounts remain the property of Defendant United. There is no disagreement that Mr. Hamed is entitled to fifty percent (50%) of the profits of the operations of Plaza Extra Store. This is what Plaintiff Hamed, through his agent, has represented to everyone for the last 26 years, including representations in prior proceedings before the District Court of the Virgin Islands and the U.S. Attorney's Office. The issue here again is not whether Plaintiff Hamed is entitled to 50% of the profits. He is. The issue is whether Plaintiff Hamed can come to the court after 26 years and declare a partnership the parties never intended. As such, the Amended Complaint should be dismissed for failure to properly plead the existence of well-defined partnership with accurate allegations of assets and liabilities.

**¶17. United has always had completely separate accounting records and separate bank accounts for its operations of the "non-supermarket" shopping center and business operations that were unrelated to the three Plaza Extra supermarket stores. Neither Mohammad Hamed nor his agents have access to these separate "non-supermarket" United bank accounts used by United for its shopping center and other businesses unrelated to the three Plaza Extra supermarkets.**

Plaintiff concedes there is a separation between the accounts for the operation of the Plaza Extra supermarkets and the "non-supermarket" shopping center. This clearly again points to the fact that Defendant United has an agreement with Plaintiff and not a partnership: Why else would there be specially segregated United Corporation bank accounts that Plaintiff Hamed has no control or interest in if this is a partnership? The Amended Complaint does not properly allege the reason for these separate accounts, which is mainly because the parties have a joint

agreement to operate only the Plaza Extra Supermarkets, and not a general partnership under the VIUPA.

**¶18. At all times relative hereto, the Partnership profits from the Plaza Extra stores have always been held in the identified "supermarket" banking and brokerage accounts completely separate from the profits of United's other unrelated businesses, even though the banking and brokerage accounts holding the profits from the Partnership are in accounts solely used by the Partnership and kept for the Partnership by United in segregated United accounts.**

The allegations of ¶18 reconfirms the fact that United Corporation has accounts wholly separate from the operating accounts for the Plaza Extra Supermarkets. Nothing in the Amended Complaint specifies what ownership interest and access rights Plaintiff Hamed has in which account. Instead, the Amended Complaint makes sweeping vague allegations of joint-ownership, and then contradicts itself by confirming that there are separate accounts Defendant United controls for purposes of the non-grocery business operations. These accounts belong solely to Defendant United and its shareholders because Defendant United has operations other than the Plaza Extra supermarket businesses.

**¶19. At all times relative hereto, for more than 25 years, Mohammad Hamed and Yusuf have equally shared all the profits distributed by United to the Partnership – from the operation of the three Plaza supermarkets – and been responsible for all losses. Except for the recent unauthorized removal of funds described herein, for 25 years, all such distributions from the supermarket accounts have been split 50/50 between the Partners.**

The Amended Complaint fails to allege when and Plaintiff Hamed was ever responsible for any losses, loans, and any other obligations for United Corporation. Again, not a single factual allegation is alleged in this supposed 26 year old

partnership where Plaintiff Hamed has ever taken out a loan, signed a contract, or risked any loss on behalf of Defendant United. The risk of loss is an essential component of a partnership. The Amended Complaint could not cite a single fact because the record is clear that Plaintiff Hamed never risked any loss, other than his initial investment. For that investment, Plaintiff Hamed received handsome returns of 50% of the profits of the operations of the Plaza Extra supermarket. Plaintiff still cannot allege a single fact showing Plaintiff Hamed risking any personal loss in this alleged partnership.

**¶20. The partners also agreed that all stores would employ and would rely on joint decisions of themselves (or their respective family members from each family assigned to each store), so that management would be by a working consensus of the two Partners directly or through their designated agents, all of whom are family members.**

The employment of various members of the Yusuf and Hamed families is not indicative of a partnership. Nothing in ¶20 alleges what and when any management decisions were ever made by Plaintiff Hamed or any of his children.

**¶21. From time to time, Mohammad Hamed and Yusuf have used these profits, distributed solely from these "supermarket accounts" 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. ...[identifying several such assets]**

The allegations of ¶21 fail to state whether the alleged "assets and businesses" are properties of the alleged partnership, or that such assets are jointly held separately by the parties in separate legal entities. To date, Defendants remain uncertain what "other businesses" Plaintiff's purported partnership owns other than the Plaza Extra supermarket

operations. This type of uncertainty in pleading is unacceptable, and warrants an Order dismissing the Amended Complaint, or in the alternative for a more definite statement.

## V. CONCLUSION

There is no dispute that Plaintiff is entitled to 50% of the profits from the operations of the Plaza Extra supermarkets pursuant to a joint venture agreement. This is a position that Plaintiff, his agent Waleed Hamed, and the Defendants have always maintained before the public, the Virgin Islands Government, the United States Attorney's Office, and the District Court of the Virgin Islands. What Plaintiff seeks now is to declare a partnership that is vaguely defined, whose assets and liabilities cannot be pled with specificity. Defendants cannot be tasked with answering and defending an action to declare a partnership that Plaintiff seems unable to properly define in his original and amended complaints.

As such, Defendants' Motion to Dismiss is appropriate, and should be granted. In the alternative, Plaintiff should be ordered to provide a more definite statement as to the scope of this partnership, including what assets and liabilities are due this partnership.


**WHEREFORE**, it is respectfully requested that Defendant's Motion to Dismiss be granted, or in the alternative, for a more definite statement.

Date: December 13, 2012

Respectfully Submitted,

DeWood Law Firm  
Counsel for Defendants


By:

  
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t. 340.773.3444  
f. 888.398.8428

**CERTIFICATE OF SERVICE**

**IT IS HEREBY CERTIFIED** that a true copy of Defendant's Reply to Plaintiff's Opposition to Defendants' Rule 12 Motion to Dismiss was served on the Plaintiff via his counsel at the below address and date on this 13<sup>th</sup> day of December, 2012.

Joe Holt, Esq. 2132 Company St. Suite 2 Christiansted VI 00820	CARL J. HARTMANN III Attorney-at-Law 5000 Estate Coakley Bay, L-6 Christiansted, VI 00820
--	--

  
Nizar A. DeWood, Esq.

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

<b>MOHAMMAD HAMED,</b>	)	
Plaintiff,	)	<b>CIVIL NO. SX-12-CV- 370</b>
v.	)	
<b>FATHI YUSUF and UNITED CORPORATION,</b>	)	<b>ACTION FOR DAMAGES</b>
Defendants.	)	<b>INJUNCTIVE AND</b>
	)	<b>DECLARATORY RELIEF</b>
	)	<b>JURY TRIAL DEMANDED</b>
	-)	

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**PLAINTIFF'S EMERGENCY MOTION AND MEMORANDUM  
TO RENEW APPLICATION FOR TRO**

Plaintiff Hamed hereby renews his application for a temporary restraining order or, in the alternative, for a preliminary injunction -- *on an emergency basis*. He does so because of a dangerously accelerating series of recent acts by defendant Yusuf that have adversely affected the Plaza Extra Supermarkets. This new wave of activity began in late 2012, but has suddenly picked up to such a fervent rate that the present supermarket operations may be so compromised that they will no longer be viable if the Court does not intervene. Indeed, store employees are being intimidated-- threatening a major business and 600 jobs.

In fact, just yesterday defendant Yusuf openly intimidated a critical long time employee, telling her that the Hameds "bought you out" and then telling her she was fired, even though Yusuf is not the manager of the store where she works. The store's manager, Mafi Hamed, has rescinded that attempted termination, but absent Court intervention, the threat of irreparable harm now clearly exists at this store, as Yusuf has called the police to remove her, which is an on-going situation as this motion is being



filed.<sup>1</sup>

Moreover, since the initial TRO request, the defendants have also illegally removed funds from segregated grocery accounts. They have changed banking account access and mailings to hide such improper illegal transactions. They have refused to pay valid supplier amounts -- and interfered with ordering. They have hired mysterious new "financial employees" who they have improperly put on the grocery payroll -- but who work on litigation in locked offices. Thus, for the reasons set forth herein, it is requested that this Court grant TRO relief on an emergency basis to avoid irreparable harm to the current operations of the Plaza Extra supermarkets.

## II. Facts

The history of the relevant proceedings in this case is fairly simple.<sup>2</sup> The facts

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<sup>1</sup> This employee, who is married with 2 children is a critical employee, as she is the Office Manager/Payroll/Human Resources for the Plaza East store.

<sup>2</sup> The relevant procedural history with regard to this TRO motion is as follows:

On or about September 17, 2012, plaintiff Mohammad Hamed filed the complaint and on September 18, 2012, also filed a motion for a temporary restraining order and/or a preliminary injunction -- and an accompanying memorandum in support. (Collectively, the "TRO Motion").

On October 4, 2012, defendants removed the case to the District Court of the Virgin Islands, and then on October 10, 2012, filed their opposition to the Motion for TRO.

On October 19, 2012, plaintiff amended his complaint by right. That is now the operative complaint in this action.

On October 22, 2012, plaintiff Hamed filed his reply to the motion for TRO.

On November 12, 2012, plaintiff Hamed filed a motion and memorandum in support for partial summary judgment as to Count I of the amended complaint -- because defendants had admitted, either in pleadings or in prior sworn testimony that an agreement to split profits on a 50/50 basis did exist and that there was an oral agreement between the parties, which motion further supports the TRO request on the TRO prong regarding the likelihood of success on the merits of the case.

On November 16, 2012, the District Court issued an opinion and order remanding the action to this Court.

regarding the extraordinary strength of plaintiff's underlying case are set forth in detail in plaintiff Hamed's memorandum in support of his motion for partial summary judgment. That motion is based solely on admissions of defendants in their pleadings here or in sworn testimony -- no supporting affidavits or materials other than the record are relied upon. The facts related to the TRO pleadings are equally clear, as the basic facts relating to the original motion for TRO are set forth in plaintiff's original supporting memorandum and reply. To make the requested relief clearer, in that reply, plaintiff Hamed suggested simple, direct wording for the TRO 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.

Since the filing of the motion, Yusuf has engaged in numerous acts that now have arisen to the level of requiring emergency relief as follows:

1. **Threats to close the store as a means of intimidating employees**-Yusuf has personally threatened that because of this litigation he may be "closing the stores" altogether. He has said this directly to employees and others. **Exhibit 1.** Rumors of this are devastating.
2. **Refusal to pay valid supplier amounts & interference with ordering**-Yusuf has personally blocked payments to suppliers, refused to pay -- and interfered with ordering. **Exhibit 1.** Rumors of this are devastating.
3. **Hiding Banking Information and the Removal of Segregated Funds**-In just the recent past, defendants have re-directed bank statements -- so it is not possible to say what has gone on since plaintiff Hamed learned of three checks. **Exhibit 1.** But as can be seen from what plaintiff has been able to obtain, almost \$150,000 has been removed from the segregated grocery accounts for non-grocery personal obligations of Yusuf. **Exhibit 1** (*Checks Drawn in 29 Days by F. Yusuf from Segregated "Grocery Operations"*)

*Accounts and Paid to Fuerst Ittleman as Attorney Fees from October 19 to November 16, 2012 totaling \$143,33.21.)* It is impossible to say what else is going on.

4. **New "financial employees"**-On October 22, 2012, a relative of Yusuf's showed up at one of the stores and told the manager that "he is going to be our new comptroller." For years the three stores ran with one comptroller. Since that time new employees have been hired without joint agreement, put to work on secret projects at Yusuf's direction (apparently litigation related) and are charged to grocery accounts. Suddenly there was (allegedly) a comptroller in St. Thomas working weekends and an "assistant comptroller" working full-time plus "accounting people" in St. Croix. **Exhibit 1.**
5. **Attempting to terminate employees for vindictive reasons-** On January 8, 2013, a 15-year employee of the grocery operations, Wadda Charriez, was confronted by Yusuf. He told her "[the Hameds] bought you out" so he was going to fire her on a trumped up allegation. He then terminated her on a totally trumped up allegation regarding a common practice. More to the point - there could not be a more "high visibility" act of intimidation. **See Exhibit 1.**

In short, the defendants have crossed the Rubicon -- they are out of control. Thus, the applicable legal principles are set forth in plaintiff's TRO Motion (and Reply) warrant an emergency TRO now to avoid further harm.

In summary, the defendants are stalling for time -- and while doing so they are looting funds, hiring allies, firing and intimidating witnesses and trying to damage the operations of the store and their reputations.

The "status quo order" should return the parties to the date it was sought -- the funds should be replaced, new "employees" removed, and the other items remedied. The operations should return to how they have run for more than 25 years pending litigation -- otherwise there will be nothing left to save.

Dated: January 9, 2013



**Joel H. Holt, Esq.**  
*Counsel for Plaintiff*  
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(340) 773-8709

**Carl J. Hartmann III, Esq.**  
*Co-Counsel for Plaintiff*  
5000 Estate Coakley Bay,  
Christiansted, VI 00820  
(340) 719-8941

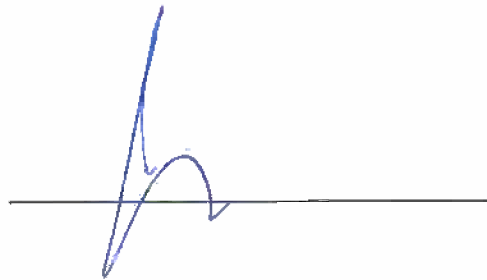
### CERTIFICATE OF SERVICE

I hereby certify that on this 9th day of January, 2013, I served a copy of the foregoing motion by hand on:

Nizar A. DeWood  
The DeWood Law Firm  
2006 Eastern Suburb, Suite 101  
Christiansted, VI 00820  
340-773-3444

And by email and mail on:

Joseph A. DiRuzzo, III  
Fuerst Ittleman David & Joseph, PL  
1001 Brickell Bay Drive, 32<sup>nd</sup>. Fl.  
Miami, FL 33131  
305-350-5690



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

<b>MOHAMMAD HAMED,</b>	)	
	)	
Plaintiff,	)	<b>CIVIL NO. SX-12-CV- 370</b>
v.	)	
	)	
<b>FATHI YUSUF and UNITED CORPORATION,</b>	)	<b>ACTION FOR DAMAGES</b>
	)	<b>INJUNCTIVE AND</b>
Defendants.	)	<b>DECLARATORY RELIEF</b>
	)	<b>JURY TRIAL DEMANDED</b>

---

**DECLARATION OF WALEED HAMED IN SUPPORT OF  
PLAINTIFF'S EMERGENCY MOTION AND MEMORANDUM  
TO RENEW APPLICATION FOR TRO**

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

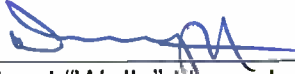
1. On January 8, 2013, a 15-year employee of the grocery operations, Wadda Charriez, was confronted by Yusuf. It was reported to me that he told her "[the Hameds] bought you" so he was going to fire her on a trumped up allegation. He then tried to terminate her, but since he is not the store manager, she was told to return to work today. Yusuf has now threatened her again and has threatened to call the police, which is an on-going scene as this declaration is being signed.
2. Wadda Charriez is not a low-level employee. She is married with 2 children, and is Office Manager/Payroll/Human Resources. She is an office manager who is critical to operations.
3. Yusuf has personally threatened that because of this litigation he may be "closing the stores" altogether. He has said this directly to employees and others.
4. Yusuf has personally blocked payments to suppliers, refused to pay -- and interfered with ordering. He has also paid his own lawyers from the supermarket accounts after the manager refused to sign these checks which are for his personal use, not for any business purpose of the supermarkets, copies of which are attached.
5. On October 22, 2012, a relative of Yusuf's showed up at one of the stores and told the manager that "he is going to be our new comptroller." For years the three stores ran with one comptroller. Since that time new employees have been hired without joint

agreement, put to work on secret projects at Yusuf's direction (apparently litigation related) and are charged to grocery accounts. Suddenly there was (allegedly) a comptroller in St. Thomas working weekends and an "assistant comptroller" working full-time plus "accounting people" in St. Croix.

6. The defendants are clearly out of control and are threatening the existence of the Plaza Extra supermarket operations.

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

Dated: January 9, 2013.

  
\_\_\_\_\_  
Waleed "Wally" Hamed

Checks Drawn in 29 Days by F. Yusuf from Segregated "Grocery Operations Accounts" Paid to Fuerst Ittleman as Attorney Fees from October 19 to November 16, 2012

Total = \$143,333.21

11/16/2012 \$99,254.45

10/19/2012 \$29,011.50

10/19/2012 \$15,067.26

4195  
Banco Popular de Puerto Rico  
101-697516

UNITED CORPORATION  
BNA PLAZA EXTRA  
(940) 719-1070  
PO BOX 3649  
ST CROIX, VI 00851

DATE: Nov 16, 2012  
AMOUNT: \$ 998,254.45

Ninety-Nine Thousand Two Hundred Fifty-Four and 45/100 Dollars  
FUERST ITTLEMAN DAVID & JOSEPH, PL  
1001 BRICKELL BAY DRIVE  
32ND FLOOR  
MIAMI, FL 33131

Memor: *F. Yusuf*

PAY TO THE ORDER OF: *F. Yusuf*

3977  
Banco Popular de Puerto Rico  
101-697516

UNITED CORPORATION  
BNA PLAZA EXTRA  
(940) 719-1070  
PO BOX 3649  
ST CROIX, VI 00851

DATE: Oct 19, 2012  
AMOUNT: \$ 29,011.50

Twenty-Nine Thousand Eleven and 50/100 Dollars  
FUERST ITTLEMAN DAVID & JOSEPH, PL  
1001 BRICKELL BAY DRIVE  
32ND FLOOR  
MIAMI, FL 33131

Memor: *F. Yusuf*

PAY TO THE ORDER OF: *F. Yusuf*

3979  
Banco Popular de Puerto Rico  
101-697516

UNITED CORPORATION  
BNA PLAZA EXTRA  
(940) 719-1070  
PO BOX 3649  
ST CROIX, VI 00851

DATE: Oct 19, 2012  
AMOUNT: \$ 15,067.26

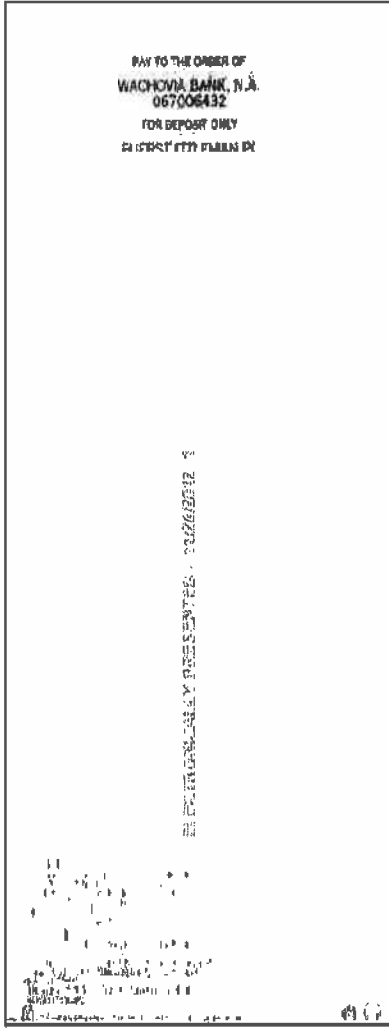
Fifteen Thousand Sixty-Seven and 26/100 Dollars  
FUERST ITTLEMAN DAVID & JOSEPH, PL  
1001 BRICKELL BAY DRIVE  
32ND FLOOR  
MIAMI, FL 33131

Memor: *F. Yusuf*

PAY TO THE ORDER OF: *F. Yusuf*

# CHECK 4195

**Dated:** Friday, November 16, 2012  
**Amount:** \$99,254.45  
**Cleared:** Sunday, November 25, 2012  
**Depository:** Fuerst Ittleman PL  
**Account:** Wachovia Bank N.A.



**4195**  
BANK OF AMERICA

**DATE**  
Nov 16, 2012

**AMOUNT**  
\$ 99,254.45

**BANCO POPULAR DE PUERTO RICO**  
101-057216

**UNITED CORPORATION**  
DEBA PLAZA EXTRA  
C3001 719-1670  
PO BOX 3849  
ST CROIX, VI 00061

**Pay to the order of:**  
Ninety-Nine Thousand Two Hundred Fifty-Four and 45/100 Dollars  
FUERST ITTLEMAN DAVID & JOSEPH, PL  
1001 BRICKELL BAY DRIVE  
32ND FLOOR  
MIAMI, FL 33131

**Authorized Signature:**  
*[Signature]*

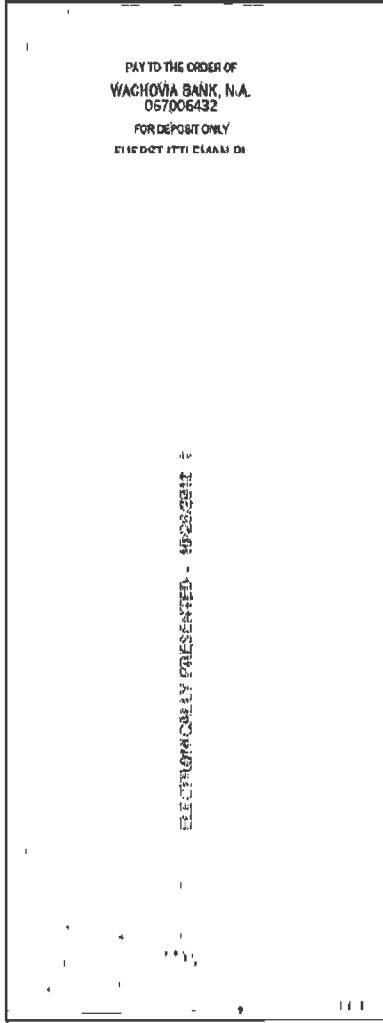
**Memo:**




# CHECK 3977

PAGE 3 of 4

**Dated:** Friday, October 19, 2012  
**Amount:** \$99,254.45  
**Cleared:** Sunday, October 28, 2012  
**Depository:** Fuerst Ittleman PL  
**Account:** Wachovia Bank N.A.



<b>UNITED CORPORATION</b> DESA PLAZA EXTRA (340) 719-1870 PO BOX 3649 ST CROIX, VI 00851	<b>BANCO POPULAR DE PUERTO RICO</b> 101-687216	<b>3977</b> CHECK NUMBER
<b>PAY TO THE ORDER OF:</b> Twenty-Nine Thousand Eleven and 50/100 Dollars FUERST ITTLEMAN DAVID & JOSEPH, PL 1001 BRICKELL BAY DRIVE 32ND FLOOR MIAMI, FL 33131	<b>DATE:</b> Oct 19, 2012	<b>AMOUNT:</b> \$ 29,011.50
<b>Memo:</b>	 AUTHORIZED SIGNATURE	

# CHECK 3979

PAGE 4 of 4

**Dated:** Friday, October 19, 2012  
**Amount:** \$15,067.26  
**Cleared:** Sunday, October 28, 2012  
**Depository:** Fuerst Ittleman PL  
**Account:** Wachovia Bank N.A.

ELECTRONICALLY PRESENTED - 024632632 1

PAY TO THE ORDER OF  
WACHOVIA BANK, N.A.  
067006432  
FOR DEPOSIT ONLY  
FUERST ITTLEMAN PL

**3979**

**BANCO POPULAR DE PUERTO RICO**  
T01-067/210

**DATE**  
Oct 19, 2012

**AMOUNT**  
\$ \$15,067.26

**UNITED CORPORATION**  
DBA PLAZA EXTRA  
(340) 719-1870  
PO BOX 3646  
ST CROIX, VI 00851

**Pay TO THE ORDER OF:**  
Fifteen Thousand Sixty-Seven and 26/100 Dollars  
FUERST ITTLEMAN DAVID & JOSEPH, PL  
1001 BRICKELL BAY DRIVE  
32ND FLOOR  
MIAMI, FL 33131

**Signature:** *Fuerst Ittleman*  
**AUTHORIZED SIGNATURE**

**Memo:**

Details on back

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

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

**CIVIL NO. SX-12-CV-370**

**DEFENDANTS' RESPONSE IN OPPOSITION TO PLAINTIFFS'  
RENEWED TRO APPLICATION**

Defendants hereby file this response in opposition to Plaintiffs' January 9, 2013 "Emergency Motion and Memorandum to Renew Application for TRO" ("Renewed TRO").

**Introduction**

In September 2012, when Plaintiffs filed this commercial dispute and initially sought the *extraordinary* and *drastic* remedy of a preliminary injunction, Plaintiffs sensationally predicted that, "[i]f the [alleged] partnership's operations are not secured immediately, the continued operation of the three Plaza Extra stores [1] will be in jeopardy, as well as the [2] continued employment of its 600 plus employees," and that "Plaza Extra [3] is in serious jeopardy of losing customers to other stores, [4] losing employees due to moral problems, [5] losing suppliers, and otherwise [6] losing its goodwill." (Sept. 18, 2012 TRO Motion at 5). Plaintiffs also claimed – ironically, as the record now confirms – that Defendants were "no more than crying 'wolf'" in arguing against the necessity of a preliminary injunction. (Oct. 22, 2012 Reply at 20).

Significantly, approximately four months later, *none* of Plaintiffs' initial predictions has come true. The supermarkets have operated and continue to operate in the normal course, and they are not in jeopardy; the "600 plus employees" have retained their employment in the normal course; no customers have been lost to other stores outside of the normal course; no employees have been lost in the normal course due to "moral problems"; no suppliers have been lost outside of the normal course; and no goodwill has been lost outside of the normal course.

Undeterred, Plaintiffs renew their sensationalism, claiming this time that "the defendants have crossed the Rubicon – they are out of control," and that they, according to Plaintiffs, "are looting funds, hiring allies, firing and intimidating witnesses and trying to damage the operations of the stores and their reputations." (Renewed TRO at 4). Relying on the inadmissible hearsay of Waleed Hamed, Mohammad Hamed's son and self-appointed "authorized agent," Plaintiffs similarly claim in their Renewed TRO that a "new wave of activity" now requires emergency relief. (*Id.* at 1).

Nothing has changed since Plaintiffs initially moved for preliminary injunctive relief – the request for injunctive relief was meritless back then, and is meritless now. Plaintiffs, under the guise of an injunction, still seek to bring United Corporation's operations to a grinding halt and thus somehow leverage the desired injunction as a means of extorting a private resolution of Defendants' own claims regarding the Hameds' defalcation and

skimming of the corporation's accounts. The TRO request – both in its original and “renewed” versions – should be denied in its entirety.<sup>1</sup>

### **Relevant Factual Background**

1. The relevant factual background is more fully set forth in Defendants' October 10, 2012 Response (D.V.I. Doc. # 12) to the initial TRO request.

2. Subsequently, on October 19, 2012, and prior to a resolution of Defendants' motion to dismiss the original complaint, Plaintiffs filed their First Amended Complaint, which added a third count to the First Amended Complaint, and is the only pleading presently before the Court.

3. On November 2, 2012, Defendants moved to strike the October 22, 2012 Declaration of Waleed Hamed (D.V.I. Doc. # 18-5) that Plaintiffs attached to their October 22, 2012 Reply (D.V.I. Doc. # 18) in support of their original TRO request; or, in the alternative, moved for leave to file a sur-reply to the arguments that Plaintiffs raised for the first time in their reply brief.

4. Defendants' such motion to strike is pending.

5. On November 5, 2012, Defendants moved to dismiss the First Amended Complaint, which motion is pending.

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<sup>1</sup> Defendants hereby repeat their request that this Court proceed on Plaintiffs' instant Renewed TRO as a motion for a preliminary injunction, as opposed to a temporary restraining order; and, in support thereof, hereby rely on and incorporate herein Defendants' September 28, 2012 Motion to Proceed, which prior motion is pending and raises the same request with respect to Plaintiffs' initial TRO motion.

6. On November 12, 2012, prior to any meaningful discovery in this action, any scheduling order or any resolution of various pending substantive motions, Plaintiffs moved for partial summary judgment regarding Count I of the First Amended Complaint. (D.V.I. Doc. # 36).

7. Count I is the primary relief requested in this action, as Plaintiffs seek summary judgment therein as to:

- i. a judicial declaration regarding the existence of an alleged partnership between Mohammad Hamed and Fathi Yusuf;
- ii. Mohammad Hamed's supposed entitlement, under 26 V.I.C. § 71(a), to 50% of the alleged partnership's profits, assets and receivables; and
- iii. Mohammad Hamed's supposed entitlement, under 26 V.I.C. § 71(f), to "fully and equally participate" in the alleged partnership's operations.

(Nov. 12, 2012 Motion for Partial Summary Judgment at 12).

8. The District Court remanded the action three days later, on November 16, 2012. (D.V.I. Doc. # 39).

9. On November 21, 2012, Defendants filed their Motion to Strike Self-Appointed Representative, requesting that, prior to resolving any other substantive motions, this Court strike Waleed Hamed as Mohammad Hamed's self-appointed representative or "authorized agent." (Nov. 21, 2012 Motion to Strike Self-Appointed Representative at 1).

10. Defendants' such motion to strike is pending.

11. On December 20, 2012, in response to Plaintiffs' premature summary judgment motion, Defendants filed their Rule 56(d) Motion and Alternative Motion for Enlargement of Time to Respond to Motion for Partial Summary Judgment.

12. Defendants' Rule 56(d) motion is pending.

13. On December 24, 2012, notwithstanding Defendants' Rule 56(d) motion, and rather than limiting any objections thereto to a response brief, Plaintiffs asked this Court to "deem conceded" the premature summary judgment motion. (Dec. 24, 2012 Motion to Deem Conceded).

14. On January 9, 2013, Plaintiffs also filed their Renewed TRO, which is the subject of this response brief.

15. The following day, by its Order dated January 10, 2013, this Court scheduled a hearing on the TRO request for January 25, 2013.

16. Plaintiffs' feigned "emergency" relies on the statements in the January 9, 2013 Declaration of Waleed Hamed attached to the Renewed TRO.

17. Significantly, Defendants have moved to strike the January 9, 2013 Declaration of Waleed Hamed in its entirety, as it disregards fundamental evidentiary rules that bar hearsay statements and require a declarant's testimony to be based on personal knowledge. (Jan. 21, 2013 Motion to Strike).

18. Separately, the Renewed TRO is meritless.

### Argument

#### **A. Legal Standards**

As noted in Defendants' response to the initial TRO motion, which Defendants incorporate herein in full, a preliminary injunction "is an extraordinary and drastic remedy, one that should not be granted unless the movant, by a clear showing, carries the burden of persuasion." (Oct. 10, 2012 Response at 5 (citing *Mazurek v. Armstrong*, 520 U.S. 968, 972 (1997))). An injunction is appropriate "only if the [movant] 'produces evidence sufficient to convince the [trial] court' that *each* of four factors favor preliminary relief: 1) the likelihood that the plaintiff will prevail on the merits at the final hearing; 2) the extent to which the plaintiff is being irreparably harmed by the conduct complained of; 3) the extent to which the defendant will suffer irreparable harm if the preliminary injunction is issued; and 4) the public interest." *Barclays Bus. Credit, Inc. v. Four Winds Plaza P'ship*, 938 F. Supp. 304, 307 (D.V.I. 1996) (citation omitted).

**B. There Is No Likelihood of Success on the Merits.**

Plaintiffs insist on the fiction that, in their one-sided interpretation of "the defendants' own admissions in their pleadings," Mohammad Hamed "is a [*bona fide*] partner in the Plaza Extra grocery business." (Oct. 22, 2012 Reply at 3). The interpretation is both legally and factually incorrect.

**i. Sharing of Profits**

According to Plaintiffs, "the defendants' admissions regarding the sharing of profits is enough by itself . . . to find that [Mohammad Hamed] 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." (*Id.* at 5). However, the Virgin Islands Uniform Partnership Act



(“VIUPA”) provides that “[t]he sharing of gross revenues does *not* by itself establish a partnership . . .” V.I. Code Ann. tit. 26, § 22(c)(2) (emphasis added). Further, receipt of a share of profits does *not* create a presumption of a partnership if, as here, “the profits were received in payment of a debt by installments or otherwise.” V.I. Code Ann. tit. 26, § 22(c)(3)(i).

Even if the presumption of a partnership under any version of the Uniform Partnership Act (“UPA”), including the VIUPA, did apply in this action, which Defendants dispute, the presumption is rebuttable. Significantly, the instant record reflects a fundamental dispute as to whether, among other material issues: (a) Fathi Yusuf and Mohammad Hamed ever intended to enter into a *bona fide* partnership with each other; (b) Mohammad Hamed ever has had an obligation to share losses of the Plaza Extra Supermarkets; and (c) Mohammad Hamed ever has had the right to exercise any authority over any decisions of any of the Plaza Extra Supermarkets, let alone “major business decisions.” *See, e.g., Eagan v. Gory*, 374 Fed. Appx. 335, 340 (3d Cir. 2010) (“agree[ing]” with trial court that partnership presumption under New Jersey UPA “was rebutted by evidence that,” among other trial evidence, the defendant in that case “did not intend to enter a [*bona fide*] partnership” and the plaintiff in that case “had neither an obligation to share losses nor authority over major business decisions”).<sup>2</sup>

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<sup>2</sup> Plaintiffs’ state that “[Defendants] have [] admitted that Mohammad Hamed is entitled to a share of the profits of the operations.” (Oct. 22, 2012 Reply at 3). The statement, in its full context, is false. Indeed, the record evidence does not support the alleged admission.

ii. Rent Issues

Plaintiffs rely heavily on the so-called “rent issues,” arguing that “United [Corporation] would not be *sending eviction notices to itself* if it was the owner and operator of these three supermarkets!” (Oct. 22, 2012 Reply at 3) (original emphasis). Such reliance is misplaced, as the issuance of rent notices is consistent with the parties’ agreement. Indeed, the “net income” for the Plaza Extra operations can only be calculated *after* rent is properly accrued and accounted for. In other words, revenue less expenses is the accounting calculus that must be performed *before* net income can be determined, and, in turn, before profits be accounted for in order to arrive at the Plaintiffs’ interests.

iii. Other Issues

As noted in Defendants’ response to the initial TRO motion, an injunction should not issue absent “the likelihood that the plaintiff will prevail on the merits at the final hearing.” *Barclays*, 938 F. Supp. at 307 (“the burden is on the party seeking [injunctive] relief to make a *prima facie* case showing a reasonable probability that it will prevail on the merits”). Indeed, in the present action, an injunction cannot issue based on the parties’ fundamental dispute as to the alleged “partnership,” including: the specific terms of any such agreement; the parties’ respective intent, viewed objectively, in entering into any business arrangement; the alleged sharing of losses thereunder; and the alleged joint management of the supermarkets at issue. *See, e.g., Southex Exhibitions, Inc. v. Rhode Island Builders Ass’n*, 279 F.3d 94, 97-98 (1st Cir. 2002) (affirming trial court’s denial of preliminary injunction based on lack of likelihood of ultimate success on the merits where, among other reasons in dispute

regarding alleged partnership, the written agreement at issue, which described the contracting parties as “partners,” “[wa]s simply entitled ‘Agreement,’ rather than ‘Partnership Agreement’”; the alleged partner “only” agreed to advance monies, as opposed to “shar[ing] equally or at least proportionately in partnership losses”; and the alleged partner “never filed either a federal or state partnership tax return”); *Envirogas Inc. v. Walker Energy Partners*, 641 F. Supp. 1339, 1346 (W.D.N.Y. 1986) (finding, in partnership dispute, that movant seeking preliminary injunction failed to establish likelihood on the merits where, as here, there were “litigable questions as to the nature of the relationship of the parties and their intent under the [partnership] agreements” at issue in that case); *Bloomington Partners, LLC v. City of Bloomington*, 364 F. Supp. 2d 772, 780 (C.D. Il. 2005) (finding that movant seeking preliminary injunction failed to establish likelihood on the merits without first “convince[ing] th[e] court that an enforceable, complete, and unambiguous agreement existed” supporting the allegations); *Hull v. Paige Temporary, Inc.*, No. 04 C 5129, 2005 U.S. Dist. LEXIS 28826, at \*44-45 (N.D. Il. Nov. 16, 2005) (finding, as a matter of law, that an alleged “phantom partnership program [wa]s unenforceable for indefiniteness” where “[n]o aspect of the phantom partnership program was ever put into writing,” and the plaintiff’s “statement” supporting her “interpret[ation]” of the alleged partnership contract “constitute[d] the only terms of the contract”). The foregoing cases, and the others cited in Defendants’ papers, are dispositive of the instant TRO request.<sup>3</sup>

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<sup>3</sup> Even assuming, *arguendo*, that Plaintiffs could establish only *some* chance of prevailing on the merits, the TRO still should not issue. See *Valentino McBean v. Guardian Ins. Agency*, 52 F. Supp. 2d

Plaintiffs ignore these cases. Instead, Plaintiffs argue that Fathi Yusuf has “never denie[d] the existence of the partnership.” (Oct. 22, 2012 Reply at 7). The record belies this argument. For example, Fathi Yusuf has stated that he “could not and cannot use the words ‘partner’ or ‘partnership’ as relating to Mohammad Hamed in any legal or formal document, based on [his] view that doing so would be a lie and a dishonest misrepresentation to the U.S. Government and the public.” (Oct. 9, 2012 Affidavit of Fathi Yusuf at ¶ 15). He likewise has stated that “[t]he central allegations in the [c]omplaint in this action and the motion for a temporary restraining order as not true.” (*Id.* at 19). These record statements, among others, plainly establish that Fathi Yusuf denies the existence of the alleged partnership. Plaintiffs’ argument to the contrary is simply absurd.

Plaintiffs also dispute Defendants’ argument, as re-cast by Plaintiffs, “that [Mohammad Hamed] cannot establish a partnership due to the failure to produce any partnership tax returns or related documentation of a partnership.” (Oct. 22, 2012 Reply at 8). Plaintiffs are wrong both in their recasting of Defendants’ argument and, perhaps most importantly, in their understanding of the applicable legal standards.<sup>4</sup>

As Defendants note, “[o]ne of the most important tests of whether a partnership exists between two persons is the intent of the parties.” *Ziegler v. Dahl*, 691 N.W.2d 271, 275 (N.D. 2005) (citing, among other authorities, 59A Am. Jur. 2d *Partnership* § 136 (2003)). (*See*

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518, 522 (D.V.I. 1999) (affirming Territorial Court’s denial of preliminary injunction where the plaintiffs therein showed only “*some* chance of prevailing on the merits”) (emphasis added).

<sup>4</sup> Plaintiffs’ mischaracterization and/or misleading interpretation of (a) the record evidence, (b) the applicable case law, including Plaintiffs’ own cases, and (c) Defendants’ position is rampant in all of Plaintiffs’ papers, including their October 22, 2012 reply brief.

also Defendants' Jan. 8, 2013 Reply in Further Support of Rule 56(d) Motion at 7-9 (citing additional cases and refuting Plaintiffs' position that intent is "irrelevant"). While the absence of partnership tax returns and related publicly filed documentation does not, standing alone, conclusively establish that a partnership or joint venture does not exist, it is both relevant to and probative evidence of a party's objective intent that no partnership or joint venture exists. Indeed, Plaintiffs' *own cases* belie their position regarding the lack of any tax or corporate documentation in this action. *See, e.g., Dundes v. Fuersich*, 831 N.Y.S.2d 347, \*\*\*34-35 (N.Y. Sup. Ct. 2006) (lack of any partnership tax returns is "clearly evidence" supporting lack of alleged partnership, though "not conclusive" evidence) (cited by Plaintiffs); *Zito v. Fischbein*, 11 Misc. 3d 713, 716 (N.Y. Sup. Ct. 2006) (lack of partnership tax returns, among other "indicia of partnership," stands as an "affirmative indication" that party is "an employee . . . , not a true partner, for a partner would have had to receive a K-1 to record his partnership distribution for the tax year") (cited by Plaintiffs); *Prince v. O'Brien*, 256 A.D.2d 208, 212-13 (N.Y. App. 1998) (plaintiff's "designat[ion] and compensat[ion] as an employee of defendants' corporation," not as a partner, among other "traditional indicia of partnership" relevant to trial court's finding that "no viable [partnership] claims" existed) (cited by Plaintiffs).

Plaintiffs also claim that "courts are not so blind, finding," in Plaintiffs' strained re-statement of the case law, "that where one partner controls the paperwork and filings . . . such a 'paperwork trail' is not relevant – or even works against the defendant." (Oct. 22, 2012 Reply at 8). The cases state no such thing. For example, in *Al-Yassin v. Al-Yassin*, Case

No. A099324, 2004 Cal. App. Unpub. LEXIS 2880 (Cal. App. Ct. Mar. 30, 2004) (unpublished), the court did not find that a partnership existed simply because “one partner control[ed] the paperwork,” as Plaintiffs suggest. Rather, under the specific facts in that case, the trial court in *Al-Yassin* based its finding on a determination, “following the presentation of testimony and evidence to the court” after a trial on the merits, that the defendant therein “acted as though he and [the plaintiff] were partners,” including by submitting financial information to accountants for an accounting of the parties’ respective “shares” in the business arrangement. 2004 Cal. App. Unpub. LEXIS 2880, at \*8, \*18-19.<sup>5</sup> Of course, no such finding on the merits has been made in this action. *Cf. Dundes*, 831 N.Y.S.2d at \*\*\*23 (denying motion for summary judgment where “record contain[ed] disputed issues of fact as to the existence of a joint venture . . . requiring a trial of all [] causes of action” and where the “evidence . . . reveal[ed] disputed issues of fact concerning the parties’ intent regarding their business arrangement”) (cited by Plaintiffs); *Zito*, 11 Misc. 3d at 717 (granting summary judgment that alleged partnership *did not exist* where lack of partnership tax returns, and other evidence, “together with the absence of contradictory evidence sufficient to establish indicia of partnership, mandate[d] dismissal of the [alleged partnership] claims) (cited by Plaintiffs); *Prince v. O’Brien*, 256 A.D.2d 208, (N.Y. App. 1998) (affirming trial court’s summary judgment that alleged partnership *did not exist* where, “at

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<sup>5</sup> *Al-Yassin* involved the appeal from a “final judgment.” 2004 Cal. App. Unpub. LEXIS 2880 at \*1. In sharp contrast, the present issues involve a request for preliminary relief absent any meaningful discovery whatsoever, let alone a final judgment after a full trial on the merits. *Cf. id.* at \*18 (“well established that the question whether a partnership or joint venture exists is primarily one of fact, to be determined by the trier of fact from the evidence and inferences to be drawn therefrom”) (citation omitted).

trial, the evidence of any traditional indicia of partnership was clearly insufficient,” and where “defendant referred to plaintiff as his ‘partner’ in a promotional video, but [later] claim[ed] it was only in the slang sense”) (cited by Plaintiffs); *In re Ashline*, 37 B.R. 136, 140-41 (Bankr. N.D. N.Y. 1984) (concluding, based on “the testimony and conduct of the parties and the documentary evidence,” that IRS failed “to demonstrate the existence of the alleged partnership agreement,” where, among other factors regarding the parties’ intent, “there was no probative evidence submitted to show any form of co-ownership,” “all required insurance certificates [were] in [an] individual capacity and not in the name of the partnership,” and there was an “absence to establish what, if any, control the [alleged partner] maintained over general business decisions”) (cited by Plaintiffs); *Mardanlou v. Ghaffarian*, 135 P.3d 904, (Utah App. Ct. 2006) (“indicating that the necessity of each [alleged partnership] factor will be based largely on the facts of the case,” and affirming trial court’s final judgment on the merits where, among other factors, a “lease/purchase agreement establishe[d] that [the parties] entered into this [lease] agreement . . . as either a partnership agreement or joint venture,” and an “insurance document contain[ed] both plaintiff and defendant [] as insureds under the policy inferring a partnership”) (cited by Plaintiffs).

Plaintiffs also argue that the statute of frauds “defense does not apply to formation of a partnership under the UPA” and that “this defense is unavailable in the USVI where one party has fully performed under a contract.” (Oct. 22, 2012 Reply at 9 (citing *Smith v. Robson*, 44 V.I. 56, 61 (Terr. Ct. 2001)). These arguments are unavailing. First, the decision in *Smith* conflicts with the district court’s decision in *Fountain Valley Corp. v. Wells*, 98 F.R.D. 679,

683-65 (D.V.I. 1983), which foreclosed claims relating to an alleged oral joint venture agreement based on the statute of frauds. Thus, “[w]here, as here, the facts permit competing inferences concerning the existence of an agreement to form a joint venture, the issue must be submitted to the fact finder.” *United States v. USX Corp.*, 68 F.3d 811, 827 (3d Cir. 1995) (reversing trial court’s grant of summary judgment as to alleged business partner where there was disputed evidence regarding partner’s status as a joint venturer). *See also Saga Petroleum, LLC v. Arrowhead Drilling, LLC*, Case No. CV-08-110, 2010 U.S. Dist. LEXIS 53168, at \* (D. Mont. Mar. 11, 2010) (noting that, “[g]enerally,” whether the circumstances of a particular case fall within an exception to the statute of frauds is a question of fact, as well as whether a joint venture is “actually” a partnership, “and depends on the rights and responsibilities assumed by the joint venturers”) (recommending that motion for partial summary judgment regarding joint venture issues be denied).

*Smith* actually supports Defendants’ argument that Plaintiffs cannot establish a likelihood of success on the merits, as the court in *Smith* denied summary judgment where, under the facts of that case, “there [wa]s an issue of material fact as to the existence of the alleged oral [partnership] agreement.” 44 V.I. at 61. Indeed, “where there is an issue of material fact as to the existence or substance of an alleged agreement summary judgment *must be denied.*” *Id.* at 60 (emphasis added) (citation omitted). The same reasoning applies in the context of a TRO, where “[d]eciding whether there was a [partnership] contract . . . requires a determination of the intent of the parties – whether they manifested a mutual



intent to be bound – and this question is one for the fact finder” (*id.*), not for the court in a TRO or preliminary injunction hearing.

Plaintiffs’ arguments regarding full and/or partial performance issues fail for the same reason, *i.e.*, these disputed issues of material fact simply cannot be decided at this stage of the proceedings. *See, e.g., Burns v. Caribbean Villas & Resorts Mgmt., Inc.*, Case No. CV-03-234, 2005 Me. Super. LEXIS 83, at \*37 (Me. Supr. Ct. July 25, 2005) (“Because the court concludes that . . . there are disputes of material fact relating to [performance] issues, summary judgment cannot be granted”) (noting also “that the part performance doctrine does not apply,” as here, “when damages are sought”); *Spiller v. Lucci*, Case No. 06-83, 2010 U.S. Dist. LEXIS 76383, at \*11-12 (D.V.I. July 28, 2010) (“find[ing] that genuine issues of material fact exist[ed] as to whether [plaintiff] can avoid the bar of the Statute of Frauds,” and thus denying plaintiff’s motion for summary judgment).<sup>6</sup>

At bottom, because Plaintiffs cannot establish a likelihood of success on the merits, this Court “must” deny the present preliminary injunction motion. *Barclays*, 938 F. Supp. at 307 (“a failure . . . to make the requisite showing regarding any one of these four

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<sup>6</sup> Plaintiffs’ remaining claims in this context are frivolous, including the unsupported claim that, because “Mohammad Hamed was not a party to any criminal case, so he cannot be bound by the statements made in such a case” (Oct. 22, 2012 Reply at 9). (*See, e.g.,* Renewed Motion to Dismiss at 13-18, 19-20 (citing cases)). At best, the claims present yet additional disputed material facts that should be decided by the ultimate trier of fact – the jury. Similarly, as addressed herein and in Defendants’ prior papers, Plaintiffs’ reliance on Fathi Yusuf’s prior deposition testimony and on the parties’ settlement negotiations is entirely misplaced. Moreover, *Evans v. Covington*, 795 S.W.2d 806 (Tex. App. Ct. 1990), on which Plaintiffs rely in attempting to introduce evidence of settlement negotiations, is easily distinguished. In *Evans*, unlike here, the party who was objecting to the settlement negotiation evidence was also the same party who “first introduced” the evidence. 795 S.W.2d at 809. Plaintiffs – not Defendants – invited the error in this action.

[preliminary injunction] factors *must* result in this Court denying [the] motion for a preliminary injunction.”) (citation omitted) (emphasis added).

**C. There Is No Irreparable Harm.**

“[A] preliminary injunction should not be granted if the injury suffered can be recouped in monetary damages.” *IDT Telecom, Inc. v. CVT Prepaid Solutions, Inc.*, 250 Fed. Appx. 476, 479 (3d Cir. 2007) (citing *Frank's GMC Truck Center, Inc. v. Gen. Motors Corp.*, 847 F.2d 100, 102 (3d Cir. 1988) (“[A] purely economic injury, compensable in money, cannot satisfy the irreparable injury requirement . . . .”). Rather, “[a] clear showing of irreparable injury is an absolute necessity. The requisite injury must be more than merely serious or substantial, and it must be of a peculiar nature, so that money cannot atone for it.” *McBean v. Guardian Ins. Agency*, 52 F. Supp. 2d 518, 521 (D.V.I. 1999) (internal citation omitted). “Further, there is no irreparable harm if an adequate remedy at law exists.” *Id.* (citing, among other cases, *Jax Ltd. P'ship v. Gov't of the Virgin Islands*, 25 V.I. 364, 369 (D.V.I. 1990)). “A movant’s burden with regard to establishing irreparable harm is quite heavy” and the legal standard is “exacting.” *Barclays*, 938 F. Supp. at 310.

The challenged past acts in the present action, including the removal of \$2.7 million dollars, all constitute “a purely economic injury, compensable in money, [and thus] cannot satisfy the irreparable injury requirement.” *IDT*, 250 Fed. Appx. at 478 (internal quotation and citation omitted). Plaintiffs in their October 22, 2012 Reply side-step any meaningful analysis of the irreparable harm factor, with the exception of four cases, addressed below. The cases are inapposite.

First, Plaintiffs reference a 1953 case, *United States v. W.T. Grant Co.*, 345 U.S. 629, 633 (1953), and then sweepingly conclude that Defendants' argument with respect to past acts is "directly contrary to the established law," presumably, *Grant*. Tellingly, Plaintiffs ignore any discussion of the "established law" that is cited and discussed in Defendants' October 10, 2012 Response. Those cases are dispositive of Plaintiffs' claims. *See, e.g., Envirogas*, 641 F. Supp. at 1344 (denying preliminary injunction where, among other reasons, "a large part of the predicted damage to [the movant]'s reputation ha[d] already been suffered" and "[a]ny further damage . . . as a result of a denial of a request for injunctive relief would appear to be minimal"); *First Health Group Corp. v. Nat'l Prescription Adm'rs, Inc.*, 155 F. Supp. 2d 194, 235 (M.D. Pa. 2001) ("[S]ince the purpose of a preliminary injunction is to deter, not to punish, any irreparable harm alleged by Plaintiff must be prospective. A preliminary injunction is not a vehicle through which a plaintiff can seek correction of past wrongs.") (internal citation omitted). These cases are consistent with *Grant*, which affirmed the trial court's denial of injunctive relief and emphasized the "necess[ity] . . . [of] some cognizable danger of recurrent violation, something more than the mere possibility" of such violation. 345 U.S. at 633 (noting that the alleged injury in that case "had been voluntarily terminated and intention to resume them had been negated under oath").

Second, relying on hearsay and/or unsupported speculation, Plaintiffs maintain that "monetary relief will not protect" them. (Oct. 22, 2012 Reply at 17 n.14 (citing *Allstate Ins. Co. v. TMR Medibill Inc.*, Case No. CV-00-0002, 2000 U.S. Dist. LEXIS 23142 (E.D.N.Y. July 13, 2000), *Republic of the Philippines v. Marcos*, 806 F.2d 344 (2d Cir. 1986), and *Signal Capital*

*Corp. v. Frank*, 895 F. Supp. 62 (S.D.N.Y. 1995)). *Allstate, Marcos* and *Signal* actually support Defendants' position – not Plaintiffs' position.

*Allstate* involved a massive insurance fraud scheme in which certain defendants “admitted in their plea allocations [in a separate criminal action] that their insurance fraud scheme was committed with the knowledge and participation” of other defendants in the civil action, and “admitted the factual allegations contained in each relevant count of the indictment.” 2000 U.S. Dist. LEXIS 23142, at \*13, \*18-19. The defendants in *Allstate* also “d[id] not [] dispute the fact that they w[ould] be liable for substantial damages” in the civil action. *Id.* at \*14. Further, there was record evidence that the “defendants began systematically to dissolve defendant corporations, close bank accounts, and dispose of real property after defendants learned of a criminal investigation into the insurance fraud scheme.” *Id.* at \*22. Under those facts, the court in *Allstate* concluded that a preliminary injunction was warranted, finding that “the dissolution of . . . defendant corporations following the investigation . . ., in conjunction with the closing of all of their corporate bank accounts . . ., raise[d] a strong inference of a concerted attempt to frustrate a potential judgment.” *Id.* at \*32. The record in this action clearly does not support any such “inference.” *Cf. id.* at \*39-40 (noting that, unlike here, the plaintiffs in *Allstate* had offered evidence of “actual . . . transfers or dispositions of assets that would frustrate a judgment”) (citing *Signal*).

*Marcos*, involving the former dictator, Ferdinand Marcos, his family, and the “well-publicized circumstances leading up to the [] upheaval in the Philippines,” is also easily

distinguished from the instant case. 806 F.2d at 348 (noting that the allegations included “a variety of activities constituting a gross denial of human rights, including abduction, murder, torture, summary incarceration . . . [and] widespread and systematic theft of funds and properties”). Similarly, the Republic of the Philippines, as the plaintiff therein who was seeking a preliminary injunction, “ha[d] also presented evidence that the funds used to acquire the properties [subject to the requested injunction] were illegally obtained.” *Id.* at 354-55. This action involves no analogous facts whatsoever.

Lastly, in *Signal*, also cited by Plaintiffs, the court emphasized in this context that “intent to defraud [a potential adverse judgment] is required and may not be lightly inferred.” 895 F. Supp. at 64 (citation omitted) (discussing the plaintiff’s request for an order of attachment and a preliminary injunction). The court in *Signal* denied the requested attachment and preliminary injunction, based on its “find[ing] that [plaintiff] ha[d] not demonstrated an intent on the part of [defendants] to frustrate any judgment.” *Id.* at 64-65.

In sum, even the cases on which Plaintiffs rely – *Allstate*, *Marcos* and *Signal* – support Defendants’ position that this is a damages case at its core and, therefore, that Plaintiffs have failed to establish the “heavy” and “exacting” showing of irreparable injury.

**D. The Balance of Factors Supports the Denial of Injunctive Relief.**

Plaintiffs baldly assert in this context that “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.” The record, including Defendants’ Renewed Motion to Dismiss and any evidence that will be admitted at the January 25, 2013 TRO hearing, expressly

refutes this assertion. In fact, the entry of an injunction would afford rights that Plaintiffs have never enjoyed – and would irreparably harm Defendants in an amount that no bond could reasonably secure.

**E. The Public Interest Also Supports the Denial of Injunctive Relief.**

“[T]he public interest is hardly served by the sheer *in terrorem* effect of allowing plaintiffs to impose (or even threaten to impose) burdens on defendants above and beyond those necessary to protect plaintiffs’ otherwise unsatisfiable claims.” *Hoxworth v. Blinder, Robinson & Co.*, 903 F.2d 186, 198 (3d Cir. 1990)). Here, as noted in Defendants’ October 10, 2012 Response, the public interest would not be served by (a) turning the supermarkets’ operations upside down; (b) frustrating the pending federal criminal court case; and (c) permitting a litigant to wait decades after a purported partnership was made and then allowing him to bring a civil case against the other purported partner in derogation of the equitable doctrines of laches, unclean hands, and estoppel (judicial and/or quasi).

**Conclusion**

For all of the foregoing reasons, and the reasons to be raised at the January 25, 2013 hearing and any future briefing papers, Defendants request that this Court enter an Order denying Plaintiffs’ request for preliminary injunctive relief in its entirety; and awarding to Defendants such further relief as the Court deems appropriate.

Respectfully submitted,



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January 24, 2013

**CERTIFICATE OF SERVICE**

I hereby certify that on January 24, 2013, a true and accurate copy of the foregoing was forwarded via hand delivery to *Joel H. Holt, Esq.*, 2132 Company St., St. Croix, VI 00820, [holtvi@aol.com](mailto:holtvi@aol.com); and email delivery to *Carl J. Hartmann III, Esq.*, 5000 Estate Coakley Bay, L-6, Christiansted, VI 00820, [carl@carlhartmann.com](mailto:carl@carlhartmann.com).



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