

S. Ct. Civ. No. 2013-0040

In the Supreme Court of the Virgin Islands

FATHI YUSUF and UNITED CORPORATION,
Appellants/Defendants,

v.

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

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

JOINT APPENDIX VOLUME V

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

MOHAMMAD HAMED by His Authorized Agent WALEED HAMED,)	
)	
<i>Plaintiff,</i>	)	CIVIL NO. SX-12-CV- 370
v.)	
	)	ACTION FOR DAMAGES
FATHI YUSUF and UNITED CORPORATION,	)	INJUNCTIVE AND
	)	DECLARATORY RELIEF
<i>Defendants.</i>)	
		JURY TRIAL DEMANDED

NOTICE OF FILING SUPPLEMENTAL DEPOSITION EXHIBITS.

Attached hereto are the following two deposition exhibits to the February 2, 2000, deposition of Fathi Yusuf -- which was marked as Plaintiff's Hearing Exhibit 1 at the TRO/preliminary injunction ("TRO/PI") hearing on January 25th:

Deposition Exhibit 6- Affidavit of Fathi Yusuf

Deposition Exhibit 7- Joint Venture Agreement

At the end of the January 31st hearing, this Court indicated that any exhibits to that deposition the parties submitted would be added to Exhibit 1. Defendants stated they wanted to submit deposition Exhibit 7, which is attached. The plaintiff wishes to submit deposition Exhibit 6, which is an affidavit of Fathi Yusuf containing the following statements/admissions relevant to the issues now before this Court:

- 2. My 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.
- 3. Mohamed Hamed and I decided to open a St. Thomas Plaza Extra store and used our own capital and later obtained financing to make the store ready for opening.
- 4. Mohamed Hamed gave his eldest son, Walleed (a/k/a Wally), power of attorney to manage his interests for the family.

5. We negotiated a lease for the St. Thomas store with Tutu Park Ltd. and executed the agreement on May 30, 1991.

....

7. Hamed did not want a third partner, but I convinced him that Ahmad could run the store and would protect all of our investments.

....

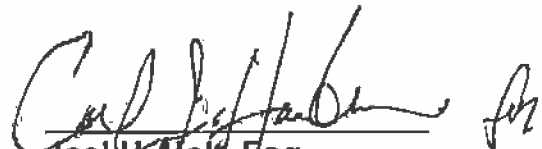
13. United realized that more than one key person was necessary so, in addition to providing Willy Hamed, United assigned Walleed (a/k/a Wally) Hamed and myself to work in the store for free. None of us received any salary for our services and we all worked 18 - 20 hours a day, seven (7) days a week.

....

41. The Hameds and I were able to turn the store around by the last part of 1994.

Thus, pursuant to this Court's directive at the end of the January 31st hearing, these two deposition exhibits 6 and 7 should now be appended at the end of Plaintiff's Hearing Exhibit #1, as part of that exhibit -- although counsel will submit a separate Order directing that be done if the Court would prefer.

Dated: February 19, 2013



Joel H. Holt, Esq.
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Christiansted, VI 00820

Carl J. Hartmann III, Esq.
Co-Counsel for Plaintiff
5000 Estate Coakley Bay,
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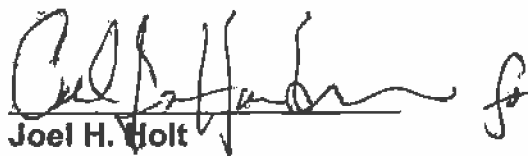
CERTIFICATE OF SERVICE

I hereby certify that on this 19th day of February, 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

And by email (jdiruzzo@fuerstlaw.com) and mail to:

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


Joel H. Holt

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

Defendant.

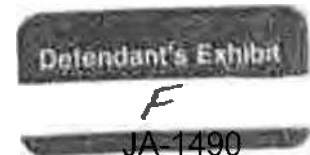
CIVIL NO. 156/1997

ACTION FOR RECESSION BREACH OF
CONTRACT and ACCOUNTING

AFFIDAVIT OF FATHI YUSUF

I, Fathi Yusuf, being first duly sworn, do hereby depose and state as follows:

1. I am an adult resident of the Virgin Islands.
2. My 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.
3. Mohamed Hamed and I decided to open a St. Thomas Plaza Extra store and used our own capital and later obtained financing to make the store ready for opening.
4. Mohamed Hamed gave his eldest son, Walleed (a/k/a Wally), power of attorney to manage his interests for the family.
5. We negotiated a lease for the St. Thomas store with Tutu Park Ltd. and executed the agreement on May 30, 1991.
6. On or about September, 1992, Ahmad Idheileh approached me wanting to invest in the St. Thomas Store.
7. Hamed did not want a third partner, but I convinced him that Ahmad could run the store and would protect all of our investments.
8. On October 16, 1992, a Joint Venture Agreement was entered into between United and Plaintiff. See Exhibit A.



9. Shortly after signing the agreement, Ahmad asked to go to Jordan and he stayed approximately 5 months while Wally and I worked diligently, at no cost to the venture, on the lease amendments, reviewing and verifying the lease agreement, ordering all the necessary equipment and construction materials for the Tutu Park Store. My son, Maher, flew from St. Croix to St. Thomas to install a steel structure for a 8,400 sq. ft. mezzanine, also at no cost to the venture.
10. Under the Joint Venture Agreement, Mr. Idheileh was responsible for, among others, hiring all employees, writing all checks, counting all money, general supervision of all employees, and stocking the store.
11. Under the Joint Venture Agreement, United was to provide a key person to assist Mr. Idheileh in the operation of the store, and United had final say in how things were run. United provided Willy Hamed as the key person.
12. Plaintiff had no background in running a supermarket and that became apparent in the first weeks of operations.
13. United realized that more than one key person was necessary so, in addition to providing Willy Hamed, United assigned Walleed (a/k/a Wally) Hamed and myself to work in the store for free. None of us received any salary for our services and we all worked 18 - 20 hours a day, seven (7) days a week.
14. Plaintiff was using the fact that there were three key people from United, as opposed to "a key person" as stated in the Joint Venture Agreement, as an excuse to get out of the partnership, but in fact he was afraid of losing money and that is why he wanted to get out of the venture. He wanted Wally to return to St. Croix, and kept repeating that demand over and over and even refused to shave until he succeeded in getting Wally out of the store.
15. The parties could not resolve their differences, so on approximately December 15, 1993, Wally and I left the St. Thomas store and returned to St. Croix because Plaintiff refused to work with Wally.
16. When we left, we kept our entire investment in Plaintiff's hands with him retaining all control over the operations of the store.
17. Wally and I went back to St. Croix and within a week to ten (10) days, Ahmad called me because he realized he could not run the store without our assistance. Plaintiff was unable to order properly because our weekly orders fluctuate significantly from week to week. It is necessary to order in expectation of future needs approximately ten days in advance. The vendor relied upon my personal guaranty, but since I was not in that store anymore, vendors would have to look to the store as their sole source of payment.

18. One vendor apparently did not feel secure and would not ship to the store. This situation came at the worst time as it was during the Christmas season. The store's difficult circumstances were brought about by Plaintiff's stubborn refusal to work with Wally, an experienced supermarket manager.
19. Plaintiff's St. Thomas store had run out of critical merchandise and he called for a meeting of the Arab community to mediate the parties' disputes on December 25, 1993 at the Sea Mart store on St. Croix. This is common in our way of solving disputes amongst ourselves.
20. From the large group of businessmen, Plaintiff selected a smaller panel of men to review our differences and to try to resolve them.
21. That panel included, both Plaintiff and Defendant Yusuf and Hassan Rahman, Khalid Ali, Saleh Dawood, Fahri A. Mustafa, Moses Sharmouj, and Plaintiff's older brother Mahmud who acted as an observer. Ali Idheileh came to the meeting later in the negotiations and acted as observer.
22. I did not threaten to wipe Ahmad out, to make him leave the store, nor did I threaten to burn down the store. It would have been to my serious disadvantage for any of that to occur because we had a substantial investment in that store and obviously I wanted it to be profitable.
23. That panel negotiated for many hours and got the parties back together to forget about our differences, to work together to make the store profitable, and gave me the job of store manager, with Plaintiff being given any department of his choosing.
24. After this resolution, we all went back to St. Thomas and noticed that there was no variety of produce and dairy products. Even though Ahmad continually made errors we continued to work well together for approximately two weeks. Eventually the relationship broke down and Idheileh insisted on terminating the joint venture. Idheileh was not entitled to leave the joint venture until five years had passed and there was no provision in the contract that he could terminate the joint venture just because it was experiencing losses.
25. At that time, Mr. Abdel Suid, a very religious and highly respected businessman on St. Thomas, came to me to find out if all the rumors in our community about the parties' difficulties were true. Mr. Suid wanted to act as mediator of our disputes and both Ahmad and I accepted his offer.
26. I showed Mr. Suid our Joint Venture Agreement which stated that Ahmad would be our partner for five (5) years and share 1/3 in both profits and losses and receive a salary of \$50,000 per year.

27. I told Mr. Suid that I did not want to let Ahmad out of the business because he is afraid of losing his investment yet my investment was approximately eight (8) times larger than his. I also wanted to give the store more time to turn itself around and wanted all of us to work toward that goal. I did not want to lose money either but I could not just stop business and both of us get out, so I wanted to wait for a buyer and had even put the word around with intention of getting out of the business and even put it in the newspaper after Idheileh left and received several inquiries, but none resulted in an offer to purchase.
28. Mr. Suid told me he thought it was best if I let Ahmad out of the business. We had many meetings with Mr. Suid about our relative positions, and Mr. Suid kept pressuring me to let Ahmad out of the business.
29. During these negotiations Ahmad and I were in the office and while he was walking down the stairs he emphasized to me that he wanted to get out of the business and would give my his conditions. He walked out. Later I called him up to the office and we discussed that the business was losing money, he agreed, and I told him that whatever money we get has to pay our suppliers and the store is not covering those expenses. I then told Ahmad that we must gross between \$270 to \$275,000 per week just to break even and pay all the store's expenses. I then told him that any week where we gross more than \$275,000 I would give him 30% of everything in excess of \$275,000.00. Idheileh asked how he could trust me to pay that, and I told him it is all computerized and I would even give him a first mortgage on my family home and a second mortgage on United Shopping Center on St. Croix with the condition that he pay the expenses of doing the mortgages and releases upon final payment. I told him that if he goes and if I eventually lose the business, he would still be safe with the mortgages I would give him. At first, he thought the deal was good, but finally said no to my offer. At that time I told him that he has to stay to turn things around.
30. Finally, in the end of the first week or beginning of the second week of January, Ahmad got very angry about wanting to get out of the venture but Mr. Suid felt he could get us to reach an agreement, so I told Mr. Suid I wanted Ahmad's brothers here to witness our negotiations and any agreement we may reach.
31. Mahmud and Ali Idheileh chartered a plane and flew to St. Thomas that same evening and arrived at the negotiations. These two gentlemen and Mr. Suid kept pressuring me to let Ahmad out of the business, but my position was if he is to leave, he must lose one third of his investment (\$250,000) of his investment in the business because he was not only breaking the Joint Venture contract but also because he was forcing me to buy a business that was losing a substantial amount of money weekly.

32. Ahmad, his brothers and Mr. Suid came up with a plan that Mr. Suid, because he was so upright and conscientious, would take over Ahmad's share in the business and work to turn the business around, still allowing Ahmad to receive his 1/3 profits, if any, over the remaining of the five year period as well as sharing 1/3 of the losses over that same period.
33. That solution was agreeable so long as Ahmad realized that once he turned his interest over to Mr. Suid, he is no longer my partner and Mr. Suid would work to earn him profits or to share in losses. Ahmad understood that.
34. That one solution was agreed to by both Ahmad and myself. However, later during our negotiations, Ahmad changed his mind and decided he would get out and lose \$150,000. Ahmad's two brothers felt that was fair.
35. The negotiators pushed me hard to accept that, but I kept telling them I did not have any money to pay him back. Mr. Suid agreed to lend me \$200,000 to pay Ahmad and United could pay the rest in installments of \$100,000 over the next four (4) years.
36. Ahmad agreed to this arrangement because he was anxious to start another business and said he needed \$200,000 to start it.
37. Reluctantly, I agreed to this arrangement. At the time we finalized the agreement, Ahmad demanded that Mr. Suid guaranty my payment and that my older brother also guaranty my payment. Both gentlemen did so.
38. Mr. Suid sent our agreement to his lawyer, Stafford Hillaire, to memorialize the agreement in writing. When I received that document, I took it to my attorneys at Bryant, White & Associates to review. They clarified some of the language and re-typed it making sure the terms were what we agreed upon. That Termination Agreement is attached hereto as **Exhibit B**.
39. Ahmad had this copy for over a week before he signed it and sent it back to me. Mr. Suid gave me the \$200,000 and I gave it to Ahmad.
40. Shortly after this initial payment (\$200,000) under the Termination Agreement, Ahmad continually visited the store several times daily. During one visit Ahmad asked me if I had any objections if he bought the Hometown Convenience Store and Gas Station ("Hometown"). I replied, "I have no objections whatsoever, so go see if you can buy it." Ahmad went to Hometown and negotiated a purchase price. Ahmad came to me excited to purchase Hometown and I encouraged him to proceed with the transaction. Later, Ahmad stopped by the store and told me he was ready to proceed with the purchase of Hometown but was short \$100,000. So, I told him that as soon as I closed my loan from the Bank of Nova Scotia I would give him, \$100,000 as an advance on the following January's payment. Approximately two (2)

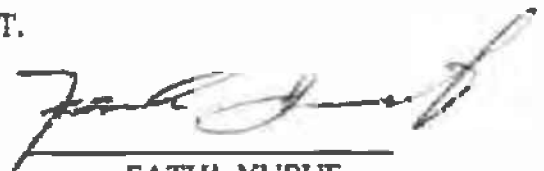
weeks later, Ahmad told me the Hometown transaction had fallen through. Later on that same week, Ahmad and I went to Avis on St. Croix to purchase a vehicle for my daughter. During our travels, Ahmad stated he still wanted the first \$100,000 installment in advance even though the first installment was not due for approximately nine months later, according to the agreement. Ahmad said "this is my money and I want it to put into a savings account." Since he was not going to put the \$100,000 into a business, I saw no reason to pay him ahead of schedule. Ahmad sent several Arab businessmen to me to pressure me to still pay him before it was due. Members of the Arab community, including among others, Ahmad's brothers, Mr. Hannun and Mr. Sharnouj, kept coming to me pressuring me to pay Ahmad the rest of his money in advance. We held yet another meeting at Mr. Hannun's home. Mr. Idheileh had no complaints about the Termination Agreement and the discussions were about United paying Ahmad ahead of schedule. Finally, on or about June 23, 1994, I did pay him his \$100,000 (less \$7,000 that we had given him to buy a car) in advance of the first payment scheduled for January 20, 1995. I had finally received financing from Scotia and used some of that loan money to pay Ahmad on June 23, 1994.

41. The Hameds and I were able to turn the store around by the last part of 1994.
42. As a result of the continuing pressure put upon me by many fellow Arabs, I paid the next installment on May 24, 1995 which was not due until January 20, 1996.
43. The remaining \$200,000 for the last two installments was paid to Ahmad on November 23, 1995 even though the last two installments were not due until January 20, 1997 and January 20, 1998.
44. Ahmad never complained to me that he executed the Termination Agreement under duress or as a result of any threats.

FURTHER AFFIANT SAYETH NAUGHT.

DATED:

9-25-1999



FATHI YUSUF

SUBSCRIBED AND SWORN TO
before me this 25th day of September, 1999.


Notary Public

Print name: EDWIN R. WHITE

Commission # 41/99

My commission expires: 03/02/03

**This is a legally binding contract.
Consult your attorney before signing it.**

JOINT VENTURE AGREEMENT



WHEREAS United Corporation ("United") plans to open and operate a supermarket on St. Thomas, U.S. Virgin Islands at Tutu Park ("the supermarket"); and

WHEREAS, United wishes to secure further investment in the supermarket and the services of a manager for the supermarket; and

WHEREAS Ahmad Idheileh ("Idheileh") desires to act as manager of the supermarket and is willing to invest in the supermarket;

NOW THEN, the parties agree to enter into a joint venture agreement to accomplish the above goals on the following terms and conditions:

1. Idheileh agrees to invest \$750,000 in the supermarket. This investment shall be paid to United at least 30 days before the opening of the supermarket; interest shall not be earned or paid on this investment in the supermarket at any time.
2. For so long as this agreement shall exist, Idheileh will receive 33% of the net profit of the supermarket and must pay 33% of the net loss of the supermarket; profits and losses will be calculated after considering all expenses incurred prior to the opening of the supermarket and all expenses incurred in operating the supermarket including loan carrying costs, loan payments, and any other loan expense incurred by United in providing financing (including capital financing) for the supermarket. It is the intent of the parties that distributions or payments will be made at the time payments are made pursuant to paragraphs 7, 8, 9 or 11 of this agreement.

3. United shall retain complete control over all decisions relating to the supermarket except to the extent it may delegate decisions relating to the day-to-day operation of the supermarket to Idheileh. Any such delegation shall be revokable at United's sole discretion at any time. Notwithstanding the aforesaid, distribution of profits from the supermarket may not be made unless both parties to this agreement agree to such distribution.
4. Idheileh agrees to provide personal, professional, management services to the supermarket under the following conditions:
 - a. From the date of the signing of this agreement to the date the supermarket opens, United will pay to Idheileh a fee of \$25,000 per year (or a pro rata portion of such fee for any part of a year);
 - b. From the date of the opening of the supermarket until this agreement terminates, United will pay to Idheileh a fee of \$50,000 per year (or a pro rata portion of such fee for any part of a year);
 - c. United will provide a key person in its management to assist Idheileh in the operation of the supermarket;
 - d. Idheileh personally agrees to work an average of 84 hours per week in the management of the store;
 - e. Idheileh shall be entitled to 21 days annual vacation with pay; such vacation may be accumulated, but only to a maximum of 42 days of vacation.
5. Each party agrees that it will not enter into, begin or acquire any other

business (or part of a business or interest in a business) on St. Thomas for so long as this agreement shall be in existence. Idheileh agrees that he will not enter into, begin or acquire any other business (or part of a business or interest in a business) on St. Croix for so long as this agreement shall be in existence.

6. Idheileh agrees that he will not invest in, open, acquire, manage or in any other way participate in or be employed by any supermarket on St. Thomas or St. Croix for a period of seven (7) years after the termination of this contract provided, however, that if United terminates this contract pursuant to the buy-out provisions of the contract, this non-competition agreement shall terminate one (1) year from the date this contract is terminated by the buy-out provision. This non-competition clause shall survive the termination of the contract so as to render it fully enforceable after the contract is terminated.
7. If Idheileh commits any intentional misconduct, criminal conduct, or violations of civil rights, United shall have the right to terminate this contract immediately. In the event of such termination, Idheileh's interest in this joint venture shall be bought out under the payment terms described in paragraph eight of this agreement. Idheileh shall not receive payment under the buy-out until five (5) years from the date the supermarket opens or two (2) years after the date of discovery of the misconduct, whichever comes later. Said payments will be based upon the depreciated value at the time of payment,

not at the time the agreement is terminated. Idheileh shall fully indemnify and defend United from any law suits, claims or action that result from such misconduct.

8. Commencing five (5) years from the date of opening of the supermarket, United shall have a two (2) year option to buy out Idheileh subject to the following terms and conditions:
 - a. United shall pay to Idheileh his initial \$750,000 investment without interest to which shall be added one-third (1/3) of all net profits or from which shall be deducted one-third (1/3) of all net losses (as defined in paragraph two of this agreement);
 - b. United shall pay to Idheileh one-third (1/3) of the "depreciated value" (as defined in paragraph 8(c) of this agreement) of all capital expenditures (such as refrigeration equipment, cash registers, fixtures, shelving, the warehouse extension, and other similar assets other than those intended for retail sale);
 - c. Depreciation shall be calculated as follows: the actual cost of all capital expenditures except the cost of building the warehouse extension (of approximately 10,000 sq. feet) shall be totaled and then be reduced by 10% per year (or pro rata portion of a year) from the date the supermarket opens (regardless of when the cost was actually incurred) to the date this agreement terminates. The actual cost to build the warehouse extension shall be reduced by 5% per year (or

pro rata portion of a year) from the date the supermarket opens (regardless of when the cost was actual incurred) to the date this agreement terminates. The sum of these two depreciation calculations shall be the "depreciated value" used in paragraph 8(b);

d. United cannot sell the supermarket or any interest in the supermarket for two (2) years after the exercise of the option created in paragraph eight.

9. Commencing five (5) years after the date of opening of the supermarket, Idheileh shall have the right to terminate this agreement and demand that he be bought out by United subject to the following terms and conditions:

a. Idheileh must give 60 days written notice of the intention to terminate the agreement;

b. The agreement shall terminate on the 60th day after receipt of such notice;

c. Idheileh's interest in this joint venture shall be bought out under the payment terms described in paragraph eight of this agreement;

d. Payments due under paragraph 9(c) of this agreement shall not be due until six (6) months from the date of termination of this agreement pursuant to this paragraph.

10. In the event of Idheileh's death, any one of his brothers may assume Idheileh's rights and duties pursuant to this agreement immediately. United shall have the right to exercise the buy-out provisions of this agreement at

any time following Idheileh's death, notwithstanding that Idheileh's death occurs less than five (5) years after the opening of the supermarket. All payments under the buy-out provisions shall be made to Idheileh's estate.

11. Unless terminated earlier pursuant to this contract, this agreement shall terminate seven (7) years from the date the supermarket opens; if the agreement is terminated pursuant to this paragraph, United shall buy-out Idheileh pursuant to paragraph eight of this agreement.
12. To effectuate the purpose of this agreement, separate financial records and bank accounts for the supermarket shall be maintained.
13. Idheileh acknowledges that the Law Offices of Bryant, White and Associates, P.C. acted solely on behalf of United Corporation in the negotiation of this contract.
14. This Contract is the full agreement of the Buyer and the Seller. None of the parties have made any other agreement or promise that is not included in this Contract.
15. The parties may not change this Contract unless the change is in writing and signed by all of the parties. The parties authorize their attorneys to agree in writing to any changes in dates and time periods provided for in this Contract.
16. This Contract is binding on the Seller and the Buyer, and all those who lawfully succeed to their rights or take their places.

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

MOHAMMAD HAMED by His Authorized Agent WALEED HAMED ,)	
)	
<i>Plaintiff,</i>	)	CIVIL NO. SX-12-CV- 370
v.)	
	)	ACTION FOR DAMAGES
FATHI YUSUF and¹ UNITED CORPORATION,	)	INJUNCTIVE AND
	)	DECLARATORY RELIEF
<i>Defendants.</i>)	
<hr style="width:50%; margin-left:0;"/>	)	JURY TRIAL DEMANDED

**PLAINTIFF'S SECOND REQUEST TO TAKE JUDICIAL NOTICE
AND REQUEST TO SUPPLEMENT THE HEARING RECORD**

Plaintiff respectfully requests leave to supplement the TRO/Preliminary Injunction ("TRO/PI") record with additional exhibits 28, 29 and 30.

First, at the preliminary injunction hearing, counsel jointly requested leave to supplement the hearing record with any documents which could be located that had been exhibits to Plaintiff's Hearing Exhibit #1. (Exhibits to the February 2, 2000 deposition of Fathi Yusuf.) To locate such documents, undersigned counsel went to the Superior Court in St. Thomas to review the archived court file for the case in which the deposition took place. In addition to locating two deposition exhibits, which are being submitted separately (as this Court permitted at the conclusion of the hearing) counsel located two additional documents in the same file, excerpts of which the Court is asked take judicial notice -- pursuant to Rule 201:¹

- 1) Interrogatory Responses #2 and #6 verified under oath by Fathi Yusuf for himself and for United, filed in that case, attached as proposed Plaintiff's Hearing Exhibit # 28;

¹ The relevant portions are attached as the proposed exhibits. Full copies of each document can be submitted if requested.

- 2) Summary Judgment Motion of Fathi Yusuf filed in that case (pages 1, 15 and 18), attached hereto as proposed Plaintiff's Hearing Exhibit # 29.

As these are documents filed by United Corporation (United) and Fathi Yusuf (Yusuf) in the St. Thomas division of this Court, it is respectfully submitted that these documents are proper documents for taking Judicial Notice. Regarding the specific item relevant to the issues before this Court, interrogatory #2 asked United and Yusuf to explain Mohammed Hamed's relationship to the Plaza Extra supermarket business, to which United and Yusuf answered, in part, as follows:

Mohamed Hamed is a partner in Plaza Extra Supermarkets and has been since the mid-1980's.

See Exhibit 28. Interrogatory # 6 asked for the names of all partners Yusuf had had in the past, to which Yusuf answered, in part,

with respect to Plaza Extra, the original partners were Khalid Ali, Isam Yousuf, Mohamed Hamed, and Defendant Yusuf. **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.** and joined Ahmad Idheileh in a joint venture for the St. Thomas Plaza Extra in 1992. (Emphasis added).

Id. With respect to the summary judgment pleading, defendants stated (p. 15):

Again, the opening of Cost-U-Less and an economic tide on St. Thomas away from Plaza Extra certainly was not the fault of Defendants. **The Hameds and Mr. Yusuf worked 18 hour days for free, put their credit on the line, gave personal guarantees to vendors, and did everything they could to make a profit.** (Emphasis added)

See Exhibit 29. These pleadings are directly relevant to the TRO/PI issues now before this Court.

Second, Plaintiff's Hearing Exhibit # 15 (three checks paid from supermarket accounts to counsel here) was admitted at the TRO/PI hearing to show that the

defendants were using partnership funds to pay their lawyers, even though the plaintiff had not agreed to this disbursement from the Plaza Extra Supermarket account. Subsequent to the hearing, the plaintiff discovered that the defendants had made two additional such payments in excess of \$223,000 from a Plaza Extra Supermarket account, one paid just before the first hearing and one paid two weeks after the second hearing was concluded. The plaintiff wishes to supplement the record with these two checks, attached as proposed Plaintiff's Hearing Exhibit # 30.

For the reasons set forth herein, it is respectfully requested that Plaintiff's Exhibits 28, 29 and 30 be admitted as part of the TRO/PI record.

Dated: February 19, 2013

A handwritten signature in black ink, appearing to read "Carl J. Hartmann III", written over a horizontal line. To the right of the signature, the word "for" is written in a cursive script.

Joel H. Holt, Esq.
Counsel for Plaintiff
2132 Company Street,
Christiansted, VI 00820

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

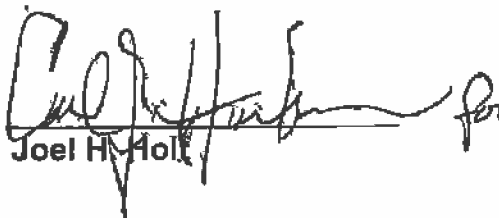
CERTIFICATE OF SERVICE

I hereby certify that on this 19th day of February, 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

And by email (jdiruzzo@fuerstlaw.com) and mail to:

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



Joel H. Holt

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

RECEIVED
JAN 20 1997
10:00 AM
TERRITORIAL COURT
ST. THOMAS, VI

AHMAD IDHEILEH)
Plaintiff,)
vs) CIVIL NO. 156/1997
UNITED CORPORATION and) ACTION FOR RECESSION
FATHI YUSUF, Individually) BREACH OF CONTRACT
Defendants.) and ACCOUNTING
_____) Defendant's Responses to

PLAINTIFF'S SECOND SET OF INTERROGATORIES TO DEFENDANTS

TO: UNITED CORPORATION and
FATHI YUSUF
c/o Bryant, Barnes & Simpson, P.C.
47 King Street, 2nd Floor
Christiansted, St. Croix 00820

The following interrogatories are propounded by plaintiff AHMAD IDHEILEH to UNITED CORPORATION and FATHI YUSUF, pursuant to Rule 33 of the Federal Rules of Civil Procedure. These Interrogatories shall be answered separately and fully in writing, under oath, and shall be signed by the person or persons making such answers, and served on the Law Office of Elmo A. Adams, PO Box 623, St. Thomas, VI 00804, within THIRTY (30) days from receipt hereof.

Please note that:

- (A) These interrogatories are continuing in character so as to require the filing of supplementary answers if further information or different information is obtained before trial.
- (B) Where the name or identity of a person is requested, please state full name, home address and business address, if known.

EXHIBIT
28
Rec'd No. 528

JA-1510

2. State herein the length of employment, job description and duties, rate of pay and other emoluments of Mr. Mohammed Hammad.

Response to Interrogatory No. 2:

Objection. Not reasonably calculated to lead to the discovery of admissible evidence. Further, not reasonably tailored as to time period. Without waiving said objection, Mohamed Hamed is a partner in Plaza Extra Supermarkets and has been since the mid-1980's. Objection as to "rate of pay and other emoluments of Mr. Hamed" as it is irrelevant to the disputes in this case which specifically concern Plaintiff's termination agreement.

6. Please provide the names and addresses of any and all individuals who have entered into joint venture or partnership agreements with defendant Yusuf.

Response to Interrogatory No. 6:

Objection. Irrelevant and not reasonably calculated to lead to the discovery of admissible evidence. Without limiting or waiving said objection, with respect to Plaza Extra, the original partners were Khalid Ali, Isam Yousuf, Mohamed Hamed, and Defendant Yusuf. 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., and joined Ahmad Idheileh in a joint venture for the St. Thomas Plaza Extra in 1992.

VERIFICATION OF RESPONSES

I, HEREBY VERIFY that the foregoing statements made by me to the foregoing interrogatories are true, correct and complete to the best of my knowledge.


Dated:



Officer, United Corporation

Subscribed and sworn to before me this 4th day of Oct 1999.

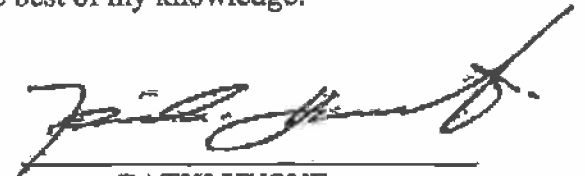




NOTARY PUBLIC
C. Bath Moss, Notary Public
District of St. Croix, U.S. Virgin Islands
LNP-2897

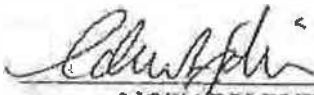
I, HEREBY VERIFY that the foregoing statements made by me to the foregoing interrogatories are true, correct and complete to the best of my knowledge.

Dated:



FATHI YUSUF


Subscribed and sworn to before me this 30th day of Sept 1999.



NOTARY PUBLIC
ANDREW L. CAMPBELL
Notary Public
Territory of the Virgin Islands U.S.A.
My Commission Expires February 10, 2001
LNP-17-97

REVIEWED AND APPROVED:

Dated: 10/4/99



Andrew Simpson
Bryant, Barnes and Simpson, P.C.

CERTIFICATE OF SERVICE

I hereby certify that on the 1st day of June, 1999, I served a true copy of the foregoing Plaintiff's Second Set of Interrogatories on United Corporation and Fathi Yusuf c/o Bryant, Barnes & Simpson P.C., 47 King Street, 2nd Floor, Christiansted, St. Croix 00820, by the U.S. Postal Service, Postage Prepaid.

A handwritten signature in black ink, consisting of several loops and a long horizontal stroke at the end, positioned to the right of the main text.

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

RECEIVED
23 SEP 29 PM 1:10
TERRITORIAL COURT OF
VIRGIN ISLANDS

AHMAD IDHEILEH,

Plaintiff,

CIVIL NO. 156/1997

vs.

UNITED CORPORATION and FATHI YUSUF,
Individually

Defendant.

ACTION FOR RECESSION BREACH
OF CONTRACT and ACCOUNTING

MOTION FOR SUMMARY JUDGMENT

COME NOW Defendants United Corporation ("United" or "Plaza Extra") and Fathi Yusuf, by counsel, and, pursuant to Rule 56 of the Federal Rules of Civil Procedure, respectfully submit their Motion for Summary Judgment and Memorandum of Law in support thereof, and state as follows:

BRIEF BACKGROUND

United Corporation owns Plaza Extra Supermarket. For purposes of this motion, United and Plaza Extra Supermarket are used interchangeably. Defendant Fathi Yusuf is the treasurer of United and has been a business man on St. Croix for nearly 40 years. Fathi Yusuf's brother in law, along with United have been the owners of the Plaza Extra Supermarket since its inception¹. Yusuf and

¹ Defendants have asked for leave of court to amend their answer to ¶ 13 of plaintiff's complaint to deny that paragraph. Wally Hamed is not a third partner to the joint venture but rather is a co-owner of Plaza Extra since the mid-1980's even before the store on St. Croix opened. Wally Hamed was brought to the St. Thomas store as a key person of United, under the Joint Venture Agreement with plaintiff, and provided his services for free.

YANT, BARNES
SIMPSON, P.C.
ing St., 2nd Floor
O. Box 4589
Hansted, St. Croix
Virgin Islands 00822
(40) 773-2785

EXHIBIT
29
JAN 14 2000

JA-1516

~~Whitman, 75 N.J. Super. 228, 183 A.2d 89, 96 (App. Div. 1962), modified, 39 N.J. 397, 189 A.2d 15 (1963), or that he was placed in "such fear as to preclude him from exercising free will and judgment," (citing Rest. 1st Contr., supra, § 493; Restatement (Second) of Contracts § 492(b), E. Farnsworth, Farnsworth on Contracts § § 4.18 at 440 (1990) and 17 C.J.S. Contracts § 168 at 944, 947-48). See also *New Jersey Hosp. Ass'n v. Fishman*, 238 N.J. Super. 253, 661 A.2d 842, 848 (N.J. Super.Ct. App. Div. 1995)(quoting *Warnaco Inc. v. Farkas*, 872 F.2d 539, 546 (2d Cir. 1989). Fear of losing money does not rise to the level of fear that is required under a duress theory because the possibility of loss was not brought about by Defendants' improper conduct.~~

It is important to note that the joint venture was losing money. That economic circumstance was not the fault of either party, as market forces caused that result. Further, it is not duress if external circumstances cause an agreement to be made that the party may not have otherwise has assented to. See 13 S. Williston, supra, § 1608 at 682 "force of circumstances for which the other party is not responsible" is not duress or undue influence; cf., e.g., *Harsco Corp. v. Zlotnicki*, 779 F.2d 906, 911 (3d Cir. 1985) ("economic duress," recognized under Pennsylvania law, is present only if defendant brings about the financial distress), cert. denied, 476 U.S. 1171, 90 L. Ed. 2d 982, 106 S. Ct. 2895 (1986). Again, the opening of Cost-U-Less and an economic tide on St. Thomas away from Plaza-Extra certainly was not the fault of Defendants. The Harneds and Mr. Yusuf worked 18 hour days for free, put their credit on the line, gave personal guarantees to vendors, and did everything they could to make a profit.

Plaintiff does not allege that he was deprived of the exercise of free will. Plaintiff's own business judgment precipitated the termination of the joint venture. Further, Plaintiff got what he


and waited until February, 1997 to complain of duress. The law does not permit a claimant to avoid such contract under these circumstances.

WHEREFORE, for all the foregoing reasons, Defendant's respectfully request that this Court grant their motion, dismiss said case with prejudice, award reasonable costs and attorney fees, and grant as such other and further relief as this court deems just and appropriate.

Respectfully submitted,

Bryant, Barnes & Simpson, P.C.
Attorneys for Defendants

Dated: 9/27/99


BETHANEY J. VAZZANA

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I caused a true copy of the foregoing **Motion for Summary Judgment** to be mailed prepaid postage to **Elmo Adams, Jr.; Esq.**, P.O. Box 623, St. Thomas, VI 00804 on this 27 day of September, 1999.


Trudy Phillip

FUERST ITTLEMAN DAVID & JOSEPH P

Check Number: 4819
Check Date: Feb 13, 2013

Check Amount: \$112,383.32

Item to be Paid - Description	Discount Taker	Amount Paid
39738		7,500.00
39740		104,883.32

UNITED CORPORATION
DBA PLAZA EXTRA
(340) 719-1870
PO BOX 3649
ST CROIX, VI 00851

BANCO POPULAR DE PUERTO RICO
101-667216

4819

DATE
Feb 13, 2013

AMOUNT
\$ ***\$112,383.32

One Hundred Twelve Thousand Three Hundred Eighty-Three and 32/100 Dollars

FUERST ITTLEMAN DAVID & JOSEPH PL
1001 BRICKELL BAY DRIVE
32ND FLOOR
MIAMI, FL 33131

[Handwritten Signature]
AUTHORIZED SIGNATURE

Memo:

UNITED CORPORATION DBA PLAZA EXTRA

4819

FUERST ITTLEMAN DAVID & JOSEPH PL

Check Number: 4642
Check Date: Jan 21, 2013

Check Amount: \$111,660.24
Discount Taker Amount Paid

Item to be Paid - Description

9652		31,765.28
9653		79,894.96

UNITED CORPORATION
DBA PLAZA EXTRA
(340) 719-1870
PO BOX 3849
ST CROIX, VI 00851

BANCO POPULAR DE PUERTO RICO
101-687216

4642
CHECK NO

DATE
Jan 21, 2013

AMOUNT

\$ ***\$111,660.24

One Hundred Eleven Thousand Six Hundred Sixty and 24/100 Dollars

THE
MEMO
FUERST ITTLEMAN DAVID & JOSEPH PL
1001 BRICKELL BAY DRIVE
32ND FLOOR
MIAMI, FL 33131

[Handwritten Signature]

AUTHORIZED SIGNATURE

Memo:

UNITED CORPORATION DBA PLAZA EXTRA

4642

ST. CROIX
THE VIRGIN ISLANDS
SUPERIOR COURT

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

13 MAR -4 P4 57

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

CIVIL NO. SX-12-CV-370

**DEFENDANTS' PROPOSED FINDINGS OF FACT AND CONCLUSIONS OF LAW
RELATING TO PLAINTIFFS' TRO/PRELIMINARY INJUNCTION APPLICATION**

Defendants Fathi Yusuf and United Corporation respectfully jointly submit these proposed findings of fact and conclusions of law in light of the evidence presented at the hearings held before this Court on January 25 and 31, 2013, on Plaintiffs' application for a temporary restraining order ("TRO") and/or a preliminary injunction.

I. Proposed Findings of Fact¹

Relevant Procedural History

1. On or about September 17, 2012, Mohammad Hamed, by his self-appointed "authorized agent Waleed Hamed," filed this commercial dispute against Fathi Yusuf and United

¹ Plaintiffs Mohammad Hamed and Waleed Hamed, as the movants, bear the burden of convincing this Court that *each* of the four injunction factors favors preliminary relief. *Barclays Bus. Credit, Inc. v. Four Winds Plaza P'ship*, 35 V.I. 201, 205-06 (D.V.I. 1996) (noting also that such burden is "quite heavy" and that "[a]n injunction is an 'extraordinary remedy which should be granted only in limited circumstances'") (citation omitted). Accordingly, the proposed findings of fact herein are gleaned primarily from the live oral testimony presented during the January 25 and 31, 2013 hearings, as opposed to the prior written submissions and affidavit testimony. Indeed, Plaintiffs' prior written record has been called into serious question, as, for example, the record now reflects that Mohammad Hamed did not even read his prior affidavits because he does not understand or read written English. *See infra* Proposed Findings of Fact # 120.

Hameds v. Yusuf, CIVIL NO. SX-12-CV-370
Defendants' Proposed Findings and Conclusions Relating to TRO/Preliminary Injunction

Corporation (collectively, "Defendants") regarding the existence of an alleged partnership between Fathi Yusuf and Mohammad Hamed dating back to the "1980's." (Complaint at ¶ 5).

2. The Hameds also filed a Motion for a Temporary Restraining Order and/or a Preliminary Injunction, and an accompanying Memorandum of Law, both dated September 18, 2012 (the "Original TRO Application").

3. Defendants timely removed the action on October 4, 2012. (D.V.I. Doc. # 1).²

4. On October 10, 2012, Defendants moved to dismiss the Complaint or, alternatively, to strike certain portions therein and for a more definite statement. (D.V.I. Doc. # 11).

5. That same date, Defendants also filed their Response in Opposition to the Original TRO Application. (D.V.I. Doc. # 12).

6. The Hameds moved to remand on October 11, 2012. (D.V.I. Doc. # 13).

7. On October 19, 2012, prior to a resolution of Defendants' motion to dismiss, the Hameds filed their First Amended Complaint (D.V.I. Doc. # 15), which added a third count to the First Amended Complaint, and is the only pleading presently before this Court; and the Hameds filed a Comparison Document (D.V.I. Doc. # 17) comparing the original Complaint with the First Amended Complaint.

8. The First Amended Complaint did not allege that United Corporation is anything but a *de jure* corporation

9. The First Amended Complaint did not seek to pierce the corporate veil of United Corporation.

² Citation herein to "D.V.I." docket entries refers to entries in the District Court of the Virgin Islands, Division of St. Croix, in the removed action, Case No. 1:12-cv-00099-WAL-GWC. Citation to D.V.I. docket entries in the Criminal Action refer to Case No. 1:05-cr-00015 and will be referenced as "in the Criminal Action" to avoid any confusion between the two cases.

Hameds v. Yusuf, CIVIL NO. SX-12-CV-370
Defendants' Proposed Findings and Conclusions Relating to TRO/Preliminary Injunction

10. On October 22, 2012, the Hameds filed their Reply (D.V.I. Doc. # 22) to Defendants' Response in Opposition to the Original TRO Application. In this Reply the Plaintiff concedes that "United is a valid corporation. The Plaintiff claims *no ownership* of the corporation, *nor is he a shareholder* in United" (emphasis in original).

11. On November 5, 2012, Plaintiff filed a "Supplementation" (D.V.I. Doc. # 25) to the Original TRO Motion.

12. Defendants moved to dismiss (D.V.I. Doc. # 28) the First Amended Complaint on November 5, 2012, which motion is pending; and filed an accompanying Memorandum of Law (D.V.I. Doc. # 29) the same date.

13. On November 12, 2012, prior to any discovery in this action, any scheduling order or any resolution of various pending substantive motions, the Hameds moved for partial summary judgment regarding Count I of the First Amended Complaint. (D.V.I. Doc. # 36).

14. Count I is the primary relief requested in this action, as the Hameds 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).

15. None of the relief requested by the Plaintiff in Count I of the First Amended Complaint is directed at United Corporation. Surprisingly, all of the relief sought in the pending

Hameds v. Yusuf, CIVIL NO. SX-12-CV-370
Defendants' Proposed Findings and Conclusions Relating to TRO/Preliminary Injunction

Preliminary Injunction Motion *is* directed against the financial operations and management of United Corporation. The Plaintiff has offered no evidence to support any relief against United Corporation.

16. The District Court remanded the action on November 16, 2012. (D.V.I. Doc. # 39).

17. 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."

18. Defendants' motion to strike is pending.

19. On December 20, 2012, in response to the Hameds' 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.

20. Defendants' Rule 56(d) motion is pending.

21. On December 24, 2012, notwithstanding Defendants' Rule 56(d) motion, and rather than limiting any objections thereto to a response brief, the Hameds asked this Court to "deem conceded" their premature summary judgment motion.

22. Defendants filed their Response in Opposition to the Hameds' motion to deem conceded on January 8, 2013.

23. The following day, on January 9, 2013, the Hameds filed their "Emergency Motion and Memorandum to Renew Application for TRO" (the "Renewed TRO Application").

24. By its Order dated January 10, 2013, this Court scheduled a hearing on the Hameds' Renewed TRO Application for January 25, 2013.

25. Defendants filed their Response in Opposition to the Renewed TRO Application on January 24, 2013.

Hameds v. Yusuf, CIVIL NO. SX-12-CV-370
Defendants' Proposed Findings and Conclusions Relating to TRO/Preliminary Injunction

26. That same date, on January 24, 2013, the majority shareholders of United Corporation filed a Motion for Leave, and an accompanying Petition, to intervene in this action and for a declaratory judgment regarding the Hameds' underlying attempt in this action – by alleging the existence of a *de jure* partnership in the Plaza Extra Stores' operations – to dilute the majority shareholders' interest in United Corporation d/b/a Plaza Extra.

27. A hearing was held on the Hameds' Renewed TRO Application on January 25 and 31, 2013.³

28. On January 30, 2013, prior to the January 31, 2013 hearing, the Hameds filed their Reply to Defendants' opposition brief to the Renewed TRO Application.

United Corporation d/b/a Plaza Extra

29. United Corporation was duly organized and incorporated as a corporation in the USVI in January 1979, approximately 34 years ago, by Fathi Yusuf and other members of the Yusuf family. (Articles of Incorporation (DX 7) at 8).

30. Maher Yusuf is the current President of United Corporation. (Jan. 25, 2013 Hr'g Tr. at 211:25-212:1-2).

31. United Corporation alone owns the land located at 4C, 4D and 4H Estate Sion Farm, St. Croix, at which it finished building a shopping center, known as the "United Shopping Plaza," in 1983. (Jan. 25, 2013 Hr'g Tr. at 68:2-10, 220:8-11).

³ Citation herein to the subject hearing transcripts is abbreviated as "Jan. 25, 2013 Hr'g Tr." for the January 25, 2013 hearing, and as "Jan. 31, 2013 Hr'g Tr." for the January 31, 2013 hearing. Citation to the Plaintiff's and Defendants' respective exhibits entered into evidence during the January 25 and 31, 2013 hearings are abbreviated as "PX ___" and "DX ___".

Hameds v. Yusuf, CIVIL NO. SX-12-CV-370

Defendants' Proposed Findings and Conclusions Relating to TRO/Preliminary Injunction

32. United Corporation leases retail spaces at its shopping center to commercial tenants, and operates a “grocery supermarket business” that does business under the trademark name “Plaza Extra.” (Jan. 25, 2013 Hr’g Tr. at 220:12-18).

33. United Corporation has been organized, maintained and owned by the Yusuf family alone. (Jan. 25, 2013 Hr’g Tr. at 112:14-22; Jan. 31, 2013 Hr’g Tr. at 102:1-3).

34. United Corporation likewise is the sole owner of the “Plaza Extra” tradename/trademark, under which it does business. (Jan. 25, 2013 Hr’g Tr. at 110:22 (reflecting Waleed Hamed’s acknowledgement of United Corporation’s “d/b/a Plaza Extra” designation and liability for same), 112:4-7 (same); Jan. 25, 2013 Hr’g Tr. at 112:17-22 (reflecting the Hameds’ counsel’s stipulation in this action to same)).

35. The allegations in this action relate to three supermarket locations that United Corporation operates under United Corporation’s “Plaza Extra” trademark/tradename: Plaza Extra East in Sion Farm, St. Croix (occasionally referred to herein as “Plaza Extra East”); Plaza Extra West in Plesson/Grove, St. Croix (occasionally referred to herein as “Plaza Extra West”); and Plaza Extra St. Thomas in Tutu Park, St. Thomas (occasionally referred to herein as “Plaza Extra St. Thomas”). (First Amended Complaint at ¶ 12).

36. In 1990, the Plaza Extra East store was destroyed in a fire. (Jan. 25, 2013 Hr’g Tr. at 221:13-17).

37. The store was insured by United Corporation, which was the sole beneficiary of the subject insurance policy. (Jan. 25, 2013 Hr’g Tr. at 221:18-22).

Hameds v. Yusuf, CIVIL NO. SX-12-CV-370
Defendants' Proposed Findings and Conclusions Relating to TRO/Preliminary Injunction

38. Mohammad Hamed, the alleged “partner,” testified in the January 25, 2013 hearing. No other testimony from any other person with knowledge of the alleged partnership was offered by the Plaintiff.⁴

39. As he conceded, Mohammad Hamed previously worked, and various of Mohammad Hamed’s sons currently work, at United Corporation d/b/a, Plaza Extra’s three supermarkets (collectively, the “Plaza Extra Stores”), or at any one or combination of them, but only each as an *employee* of United Corporation. (Jan. 25, 2013 Hr’g Tr. at 201:21-24 (reflecting Mohammad Hamed’s own testimony that he (“I”) would agree with “[w]hatever” management decisions Fathi Yusuf ever made, including the decision that Mohammad Hamed and Mohammad Hamed’s sons were mere “employees” “like any [other] employees”), 202:1 (reflecting Mohammad Hamed’s own testimony that, excluding Fathi Yusuf, “[e]ven [a Hamed] son or anybody” was a mere employee of the supermarkets)).

40. Mohammad Hamed also readily admitted that he never worked in any management capacity at any of the Plaza Extra Stores, which role was under the exclusive ultimate control of Fathi Yusuf, as Fathi Yusuf “is in charge for everybody” and everything. (Jan. 25, 2013 Hr’g Tr. at 201:4 (reflecting Mohammad Hamed’s concession, even during his direct testimony, that “Mr. Yusuf he is in charge for everybody”), 201:23-24, 210:21-23 (acknowledging again that Fathi Yusuf is in “charge” of “all the three store[s]”)).

⁴ Plaintiff Mohammad Hamed, who carries the heavy burden of proof in seeking the extraordinary remedy of preliminary injunctive relief, failed to request the testimony of Fathi Yusuf at the subject hearings, as they failed to issue a subpoena for Fathi Yusuf’s appearance thereto. (*Cf.* Jan. 23, 2013 Subpoena to Maher Yusuf; Jan. 30, 2013 Hr’g Tr. at 114:8-10 (electing to call Maher Yusuf “instead”). Plaintiff also opposed Defendants’ desire to conduct limited discovery prior to the hearings. (Jan. 14, 2013 Motion for Protective Order).

Hameds v. Yusuf, CIVIL NO. SX-12-CV-370

Defendants' Proposed Findings and Conclusions Relating to TRO/Preliminary Injunction

41. Moreover, since its inception in 1979, United Corporation d/b/a Plaza Extra has reported all of its tax obligations – and has filed all of its tax returns – as a *corporation* under either Subchapters “C” or “S” of the Internal Revenue Code (“IRC”) – and never as a *partnership* under any partnership designation of the IRC or otherwise. (Jan. 25, 2013 Hr’g Tr. at 227:20-22).

42. Perhaps most importantly, Mohammad Hamed has not provided the Court with any record evidence that he filed a single tax reporting document with either the U.S. Government or the Virgin Islands Government reporting his status as an alleged partner. Mohammad Hamed likewise failed to provide any evidence that he paid a single tax dollar to any governmental taxing authority on the income attributable to him as an alleged partner.

43. Nor has Mohammad Hamed provided any written evidence or documentation establishing that he received a share of the supermarket profits at any time over the past 26 years.

44. Similarly, no income tax filing of United Corporation d/b/a Plaza Extra has ever reflected Mohammad Hamed as an asset owner, partner or shareholder of United Corporation. (Jan. 25, 2013 Hr’g Tr. at 227:23-25-228:1).

45. The Plaintiff has offered no evidence that Fathi Yusuf holds any funds of the alleged partnership with Mohammad Hamed in either his personal name or in trust for Mohammad Hamed.

The Criminal Action

46. In or around 2003, United Corporation d/b/a Plaza Extra, along with certain of its shareholders and non-shareholders, including two of Mohammad Hamed’s sons (Waleed Hamed and Waheed Hamed), were indicted in a criminal action styled, *UNITED STATES OF AMERICA and GOVERNMENT OF THE VIRGIN ISLANDS v. FATHI YUSUF, WALEED MOHAMMAD HAMED, WAHEED MOHAMMED, MAHER FATHI YUSUF, NEJEH*

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FATHI YUSUF, ISAM YOUSUF and UNITED CORPORATION, Case No. 2005-15F/B, pending in the District Court of the Virgin Islands, Division of St. Croix (the "Criminal Action").⁵

47. The United States of America and the Government of the Virgin Islands (collectively, the "Government") alleged in the Criminal Action the violation of various criminal statutes and internal revenue tax regulations, including the unpaid corporate income taxes of United Corporation d/b/a Plaza Extra and the unpaid individual income taxes earned from the Plaza Extra operations owing to the Government and the Virgin Islands Bureau of Internal Revenue ("VIBIR") for the indictment years 1996 through 2001. (*See generally* Sept. 8, 2004 Third Superseding Indictment (hereinafter, the "Criminal Indictment")).

48. Certain matters in the Criminal Action were appealed to the Court of Appeals for the Third Circuit and the United States Supreme Court. *See United States v. Yusuf*, 461 F.3d 374 (3d Cir. 2006) (reversing suppression order and remanding action); *United States v. Yusuf*, 199 Fed. Appx. 127 (3d Cir. 2006) (vacating order releasing restrained assets and remanding action); *United States v. Yusuf*, 536 F.3d 178 (3d Cir. 2008) (vacating order dismissing money laundering counts and remanding action), *cert. denied*, 129 S. Ct. 2764 (2009).

49. The various pleadings and motions in the Criminal Action merely identify Mohammad Hamed as an individual or entity related to United Corporation d/b/a Plaza Extra, United Corporation's shareholders and the individual defendants in that action. (*See, e.g.*, Supplement to Government's Motion for Reconsideration (D.V.I. Doc. # 1151 in the Criminal Action at 3)).

⁵ Defendants have respectfully requested that this Court take judicial notice of the adjudicative facts and filings in the Criminal Action, including the operative indictment therein. (*See* Jan. 18, 2013 Motion for Judicial Notice of Adjudicative Facts; March 4, 2013 Notice of Filing Criminal Indictment (filed concurrently herewith)).

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50. Throughout the Criminal Action, Waleed Hamed and Waheed Hamed represented to the District Court, the Third Circuit, the U.S. Supreme Court, the Government, the VIBIR, and the public in general that: United Corporation d/b/a Plaza Extra alone owned and operated the three Plaza Extra supermarket stores; and that the tax obligations of United Corporation, United Corporation's shareholders, the individual defendants in the Criminal Action and any related entities and individuals for supermarket profits and other such taxable monies were properly calculated based on United Corporation's status as a "C" or "S" corporation, as opposed to as a partnership. (*See, e.g.*, Jan. 25, 2013 Hr'g Tr. at 116:6-19, 126:10-15).

51. Mohammad Hamed never appeared in the Criminal Action as a claimed "partner" of Fathi Yusuf nor did he come forward to identify himself as holding any interest in the supermarket profits at issue in that action. (Jan. 25, 2013 Hr'g Tr. at 116:20-25).

52. Nor do the Hameds dispute that, absent the government's approval, the parties in this action are currently prohibited from removing the significant funds that are currently in United Corporation d/b/a Plaza Extra's "banking and brokerage" accounts for the Plaza Extra Stores, apart for the normal operational issues, because of a restraining "Order" entered by the District Court in the Criminal Action. (Oct. 19, 2012 Comparison Document (D.V.I. Doc. # 17) at 7-8; Jan. 25, 2013 Hr'g Tr. at 119:4-12).

The Plea Agreement, Letter Agreement, and Plea Agreement Addendum

53. On February 26, 2010, the Government, United Corporation d/b/a Plaza Extra, Waleed Hamed, Waheed Hamed and the other defendants in the Criminal Action entered into a Plea Agreement (the "Plea Agreement"). (DX 2; D.V.I. Doc. # 1-11).

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54. As memorialized in the Plea Agreement, the parties thereto acknowledged their agreement to the factual and legal elements of the charges pled as alleged in the Criminal Indictment. (DX 2; Plea Agreement at 3).

55. Those elements include the representations that, at all times relevant, United Corporation “did business as Plaza Extra” (Criminal Indictment at ¶ 1); that the proceeding stems from the sales and profits of Plaza Extra’s “grocer[y]” businesses (*id.*); that Fathi Yusuf “was an owner, director and officer of [United Corporation d/b/a Plaza Extra] and participated in the operation of Plaza Extra” (*id.* at ¶ 2); and that the Hamed co-defendants (Waleed Hamed and Waheed Hamed) were merely “employed” by United Corporation d/b/a Plaza as respective co-“manager[s] of a Plaza Extra supermarket” (*id.* at ¶¶ 3 and 4).

56. The plea also embodies the representation that United Corporation’s operations of the supermarkets was as a corporation and not as a partnership as is now being claimed in this action. (DX 2; Plea Agreement at 2-4; Criminal Indictment at ¶ 8 (discussing the Virgin Islands Code as applied to “corporations”).

57. Via a Letter Agreement dated February 12, 2010 (the “Letter Agreement”), which is attached as Exhibit 2 to the Plea Agreement (DX 2 at p. 17-20), the parties memorialized their agreement regarding the “parameters” of the formal plea. (DX 2 at p. 1).

58. Based on those representations, United Corporation d/b/a Plaza Extra agreed to plead guilty to filing a false 2001 U.S. Corporation Income Tax Return (Form 1120S), in violation of Title 33, Virgin Islands Code, Section 1525(2). (DX 2 at p. 2; DX 2 at p. 17).

59. Upon the entry of such plea, the Government agreed to dismiss with prejudice all counts of the indictment in the Criminal Action against Waleed Hamed, Waheed Hamed and the other individual defendants in that action, and all remaining counts against United Corporation

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d/b/a Plaza Extra; and “agree[d] not to prosecute United Corporation or *any other individual or entity* for any other crimes arising out of the conduct alleged in the Third Superseding Indictment.” (DX 2 at p. 2; DX 2 at p. 17 (emphasis added)).

60. The Hamed defendants and the other parties in the Criminal Action further agreed that, in preparing and filing with the VIBIR a corporate income tax return on Form 1120S as an “S” corporation for the years 1996 - 2001, United Corporation d/b/a Plaza Extra under-reported its gross receipts or sales at the Plaza Extra Stores by approximately \$10 million dollars. (DX 2 at p. 3-4).

61. In addition, prior to sentencing in the Criminal Action, which has not occurred yet, United Corporation d/b/a Plaza Extra, Waleed Hamed, Waheed Hamed and the other defendants in that action agreed to cooperate with the Government and the VIBIR in filing complete and accurate tax returns for the years 2002 through 2008. (DX 2 at p. 11; DX 2 p. 18-19).

62. The Plea Agreement also contains various additional standard contract provisions, including a merger clause and a “modification must be in writing” clause. (DX 2 at p. 12).

63. Significantly, during the criminal proceedings, Waleed Hamed and Waheed Hamed, as co-defendants in the Criminal Action and co-signatories of the Plea Agreement, never expressed the claim that their father, Mohammad Hamed (the plaintiff here), held any interest in the Plaza Extra supermarket operations as an alleged “partner” with Fathi Yusuf or otherwise. (Jan. 25, 2013 Hr’g Tr. at 116:6-10, 116:20-25, 222:14-18 *see also* DX 5, *passim* (transcript of July 9, 2009, hearing)).

64. To the contrary, as noted above, the Hameds actively represented to the Government and others that United Corporation d/b/a Plaza Extra was a de jure Virgin Islands corporation and that no Hamed possessed any interest in United Corporation’s operation of the

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Plaza Extra supermarkets as a partnership or otherwise. (*See, e.g.*, Jan. 25, 2013 Hr'g Tr. at 116:6-19, 126:10-15).

65. An especially telling example occurred on July 9, 2009, when a hearing was held before the District Court (the Hon. Judge Raymond L. Finch) to address United Corporation d/b/a Plaza Extra's shareholder distributions. (*See* DX 5 (D.V.I. Doc. # 1213 in the Criminal Action)).

66. Defense counsel, including Waleed Hamed's counsel, advised Judge Finch during the July 9, 2009 hearing that "the Government's motion for reconsideration raises the issue . . . as to whether or not the unindicted shareholders to whom these distributions were to be made are, in fact, the shareholders." (*Id.* at 7:12-17).

67. The Government's counsel then remarked that:

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

(*Id.* at 9:15-25) (emphasis added)).

68. On rebuttal, defense counsel advised Judge Finch that:

The Virgin Islands Government has insisted throughout this litigation that, in fact, the unindicted shareholders make tax deposits on the estimated flow-through income from this *corporation*, has received that without complaint, that money without complaint, and I believe they're estopped from suggesting that those individuals are not, *in fact, the proper shareholders of the corporation.*

(*Id.* at 12:6-13 (emphasis added)).

69. During these and other exchanges in the Criminal Action, the Hameds' attorneys (Gordon Rhea, Randall Andreozzi and Pamela Colon) never disputed the foregoing representations

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regarding the “proper shareholders of the corporation”; and never otherwise credited the Government’s stated concern as to whether the shares and assets of the Plaza Extra Stores’ operations “were owned fifty percent by the Yusuf family and fifty percent by the Hamed family.” (*See generally id.*).

70. The Hameds likewise never raised to Judge Finch or anyone else the claim that the Plaza Extra supermarkets were actually owned by a partnership between Mohammad Hamed and Fathi Yusuf. (Jan. 25, 2013 Hr’g Tr. at 117:1-12).

71. Once again, on July 13, 2009, the Government filed a supplement to its motion for reconsideration in the Criminal Action regarding the shareholder distributions then at issue, wherein the Government asserted that Mohammad Hamed might own 50% of the Plaza Extra supermarket assets and, therefore, “that that the individuals identified as shareholders on United Corporation may not actually own any part of the company.” (D.V.I. Doc. # 1151 in the Criminal Action).

72. The Government also attached to their supplement the deposition transcript of Fathi Yusuf from a 1997 civil proceeding in support of its foregoing assertion. (*Id.*)⁶

73. United Corporation’s response on September 8, 2009, disavowed that Mohammad Hamed was a shareholder in United Corporation d/b/a Plaza Extra and, thus, that Mohammad Hamed owned any interest in or assets of the Plaza Extra Stores. (D.V.I. Doc. # 1209 in the Criminal Action at 5-6).

⁶ The 1997 proceeding is styled, *AHMAD IDHEILEH v. UNITED CORPORATION and FATHI YUSUF*, Civil No. 156/1997, Territorial Court of the Virgin Islands, Division of St. Thomas and St. John (the “1997 Joint Venture Agreement Action”), and involved claims for recession, breach of contract and accounting based on a Joint Venture Agreement entered into between United Corporation and Ahmad Idheileh relating to the Plaza Extra St. Thomas store. The Government’s stated concern in the Criminal Action as to whether the Plaza Extra Stores’ “shares were owned fifty percent by the Yusuf Family and fifty percent by the Hamed Family” was based on the *same deposition transcript* in the 1997 Joint Venture Agreement Action on which the Hameds rely heavily in this action. *See* PX 1.

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74. On December 29, 2009, the Government filed an emergency motion for mediation (D.V.I. Doc. # 1233 in the Criminal Action); and, as a result of the mediation, the Plea Agreement (DX 2; D.V.I. Doc. # 1248 in the Criminal Action), as noted above, was entered into on February 26, 2010, by the parties in the Criminal Action, including the Hamed defendants therein.

75. On October 1, 2010, the District Court accepted the guilty plea of United Corporation d/b/a Plaza Extra under the Plea Agreement. (D.V.I. Doc. # 1289 in the Criminal Action)).

76. On February 7, 2011, the parties in the Criminal Action entered into a Plea Agreement Addendum (the "Plea Agreement Addendum"). (DX 3; D.V.I. Doc. # 1304-1 in the Criminal Action).

77. In relevant part, Waleed Hamed, Waheed Hamed and the other defendants in the Criminal Action agreed in the Plea Agreement Addendum that United Corporation d/b/a Plaza Extra would pay, pursuant to various provisions of the Plea Agreement: \$5,000 in fines; \$10,000,000 (ten million dollars) to the VIBIR for restitution; and \$1,000,000 (one million dollars) as a substantial monetary penalty. (DX 3 at p. 1).

The Closing Agreement

78. On or about July 19, 2011, pursuant to Section 7121 of the IRC, United Corporation d/b/a Plaza Extra and the VIBIR entered into a Closing Agreement on Final Determination Covering Specific Matters (the "Closing Agreement"). (DX 4; D.V.I. Doc. # 19-18).

79. The Closing Agreement expressly provides that "all the governing principles for this civil tax liability closing agreement are set forth in the Plea Agreement . . . and the Plea Agreement Addendum, . . . the terms of which are incorporated by reference." (DX 4 at p. 1).

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80. Specifically, on behalf of “all the individual defendants and related individuals and entities in the various pleadings and motions in [the Criminal Action],” United Corporation d/b/a Plaza Extra and the VIBIR

agreed upon the amounts of taxes to be assessed and paid by United Corporation in full satisfaction of its civil tax and reporting liabilities and the civil tax and reporting liabilities of United Corporation, United’s shareholders and all of the individual defendants and related individuals and entities identified in the various pleadings and motions in [the Criminal Action] for each of the years 1996 through 2001 as addressed with particularity in the Plea Agreement.

(DX 4 at p. 2).

81. The Closing Agreement further provided that it “establish[ed] with *finality* the civil tax liabilities for the years 1996 through 2001,” and that

[p]erformance of the assessment and payment obligations of [the agreement] fully satisf[ied] all civil tax liabilities of [United Corporation], its individual shareholders, and all of the individual defendants *and related individuals* and entities identified in the various pleadings and motions in [the Criminal Action] for the 1996 through 2001 taxable years.

(DX 4 at p. 1 (emphasis added), 3 (emphasis added)).

82. Such “finality” and “full[] satisf[action] of all civil tax liabilities” for the taxable years 1996 through 2001 benefited not just United Corporation d/b/a Plaza Extra, “its individual shareholders, and all of the individual defendants” in the Criminal Action, but also “all . . . related individuals and entities identified in the various pleadings and motions” in that action, including *Mohammad Hamed* (a “related individual” who was indentified “in the various pleadings and motions”), *Waleed Hamed* (an “individual defendant”), and *Wabeed Hamed* (an “individual defendant”). (*Id.*)

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83. The VIBIR ultimately assessed United Corporation d/b/a Plaza Extra a total tax assessment of \$10 million dollars, which, pursuant to the Closing Agreement, United Corporation was obligated to pay “within 10 days of the execution of” the agreement. (DX 4 at p. 2).

84. The assessment was based on three components: United Corporation d/b/a Plaza Extra’s (a) corporate income tax for the taxable years 1996-1998 based on its status as a “C” corporation, as opposed to a partnership or any other such corporate designation; (b) individual income tax for the taxable years 1999-2001 based on its status as an “S” corporation, as opposed to a partnership or any other such corporate designation; and (c) gross receipts tax for the taxable years 1996-2001. (DX 4 at p. 2).

85. United Corporation d/b/a Plaza Extra timely paid the \$10 million dollar assessment. (Closing Agreement at 7 (July 19, 2011 Letter from Henry Smock, Esq. to Tamarah Parson-Small, Esq.)).

86. By allowing United Corporation d/b/a Plaza Extra to plead guilty to a federal criminal violation and pay significant penalties and fines, including a \$10 million dollar assessment, Mohammad Hamed, Waleed Hamed and Waheed Hamed – a “related individual,” an “individual defendant,” and an “individual defendant,” respectively – each obtained the following substantial rights and benefits, among others:

- a. full satisfaction of their all civil tax liabilities for the tax years 1996 through 2001 (DX 4 at p. 3 (¶¶ 4, 8));
- b. release from any requirement or obligation to file their tax returns for the periods 1996 through 2001 (*id.* at 3 (¶ 5));
- c. release from any requirement or obligation to file their amended tax returns for the periods 1996 through 2001 (*id.*);
- d. final determination of their income tax liabilities (*id.* at 3 (¶ 7)); and

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e. final determination of their gross receipts tax liabilities (*id.*).

87. United Corporation d/b/a Plaza Extra, as the designated "Taxpayer" in the Closing Agreement, likewise received the foregoing rights and benefits, among others. (DX 4 at p. 2-3).

88. As recently as August 12, 2011, Waleed Hamed's counsel in the Criminal Action moved for the release of funds from United Corporation d/b/a Plaza Extra for the benefit of United Corporation's shareholders, without any mention of Mohammad Hamed. (D.V.I. Doc. # 1314 in the Criminal Action).

89. The District Court (the Hon. Magistrate Judge Geoffrey W. Barnard) granted the subject release on August 19, 2011. (D.V.I. Doc. # 1316 in the Criminal Action).

90. On March 3, 2010, based on the plea agreement and plea of guilty by United Corporation d/b/a Plaza Extra, the Government moved (D.V.I. Doc. # 1246 in the Criminal Action) to dismiss all counts of the indictment against the remaining defendants, including Waleed Hamed and Waheed Hamed, which motion the District Court granted on March 19, 2010 (D.V.I. Doc. # 1262 in the Criminal Action).

91. In granting the dismissal motion, the District Court – like the Government and parties who entered into the Plea Agreement – accepted and affirmed the representations embodied in the plea, including expressly that United Corporation d/b/a Plaza Extra is a *de jure corporation* and implicitly that no partnership of any kind exists.

92. United Corporation d/b/a Plaza Extra's dismissal with prejudice will occur "at the time of sentencing," which, as noted, has not been held yet. (DX 2 at p. 2).

The Hameds' Defalcation From United Corporation d/b/a Plaza Extra

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93. In or around late 2011, United Corporation d/b/a Plaza Extra received a hard drive with scanned copies of voluminous records concerning the Criminal Action, and started to review those records. (Jan. 31, 2013 Hr'g Tr. at 52:5-10, 54:21-25, 55:7-10, 62:20-21).

94. This review revealed substantial evidence of financial irregularities, including defalcation by Waleed Hamed of United Corporation d/b/a Plaza Extra monies, about which irregularities Fathi Yusuf confronted Waleed Hamed. (Jan. 25, 2013 Hr'g Tr. at 51:18-25, 52:1).

The Families' Settlement Discussions

95. The Yusuf and Hamed families, directly and through their respective attorneys, thereafter engaged in private settlement "discussions" regarding the suspected defalcation of United Corporation d/b/a Plaza Extra's monies, and the desire to dissolve the families' business relations. (Jan. 25, 2013 Hr'g Tr. at 51:18-25, 52:1, 58:16-20).

96. The parties' settlement discussions were unsuccessful; and, on or about September 17, 2012, *after* United Corporation d/b/a Plaza Extra's payment of the \$10 million dollar assessment, *after* Mohammad Hamed's and Waleed Hamed's receipt of the benefits afforded in the Criminal Action, but *before* United Corporation d/b/a Plaza Extra's sentencing in the Criminal Action, Mohammad Hamed, by his son and self-appointed "authorized agent" Waleed Hamed, filed the instant commercial dispute (the "Civil Action").⁷

Testimony of Mohammad Hamed

⁷ The Hameds' apparent strategy in requesting an injunction in this action, and in filing an alleged defamation action against Fathi Yusuf on or about September 19, 2012, styled *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), which action is pending, is to bring the supermarket operations to a grinding halt and thus somehow extort a private resolution of the Yusufs' claims regarding the Hameds' defalcation prior to the sentencing of United Corporation d/b/a Plaza Extra in the Criminal Action.

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97. Mohammad Hamed testified that he and Fathi Yusuf are from the same "village" in the West Bank in Isreal; they knew each other's families in the West Bank; and are brothers-in-law, as Mohammad Hamed's cousin is married to Fathi Yusuf's sister. (Jan. 25, 2013 Hr'g Tr. at 197:18-22, 199:5).

98. Mohammad Hamed stayed at Fathi Yusuf's residence in St. Croix when Mohammad Hamed first arrived to St. Croix in 1973. (Jan. 25, 2013 Hr'g Tr. at 195:16-17, 196:1-2, 196:18, 196:21-23).

99. Mohammad Hamed's initial employment in St. Croix was as a clothing salesman, which he did for three years. (Jan. 25, 2013 Hr'g Tr. at 197:3-4, 197:7).

100. Fathi Yusuf "was busy building the business," *i.e.*, the "shopping center" business, when Mohammad Hamed first approached Fathi Yusuf about potentially going into business with Fathi Yusuf. (Jan. 25, 2013 Hr'g Tr. at 197:13-16, 204:2-4).

101. Fathi Yusuf "need[ed] money" to re-pay loans to "people" and Fathi Yusuf "d[id]n't have" the money himself. (Jan. 25, 2013 Hr'g Tr. at 198:2-6, 204:14-15).

102. Mohammad Hamed gave Fathi Yusuf money to help re-pay the other loans. (Jan. 25, 2013 Hr'g Tr. at 198:2-6).

103. Mohammad Hamed, who had stayed at Fathi Yusuf's residence upon arriving to St. Croix, offered to give some money to Fathi Yusuf. (Jan. 25, 2013 Hr'g Tr. at 198:2-10).

104. Specifically, Mohammad Hamed gave Fathi Yusuf \$14,000, \$12,000 of which Fathi Yusuf used to re-pay the loan amounts owed to others, and the remainder of which (\$2,000) Fathi Yusuf used "for the family to buy grocery thing." (Jan. 25, 2013 Hr'g Tr. at 198:16-19, 203:15-19, 204:22).

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105. According to his testimony, Mohammad Hamed subsequently loaned to Fathi Yusuf an additional \$250,000, as follows:

- a. a \$20,000 certificate of deposit (Jan. 25, 2013 Hr'g Tr. at 198:22, 205:6-8);
- b. \$20,000 from Mohammad Hamed's lottery winnings (Jan. 25, 2013 Hr'g Tr. at 198:24-25);
- c. \$10,000 from Mohammad's Hamed's independent grocery operations (Jan. 25, 2013 Hr'g Tr. at 199:1-2, 205:11-13); and,
- d. \$200,000 of the proceeds from Mohammad Hamed's eventual sale of his independent grocery operations (Jan. 25, 2013 Hr'g Tr. at 200:4-15, 205:17-22).

106. Because the monies were loans, Fathi Yusuf offered to pay "interest" to Mohammad Hamed, which offer Mohammad Hamed declined as the two were brothers-in-law. (Jan. 25, 2013 Hr'g Tr. at 199:3-6).

107. According to Mohammad Hamed's testimony, Fathi Yusuf indicated that, because Mohammad Hamed had tried to "help" Fathi Yusuf with the various loans, and as repayment thereof, Mohammad Hamed was going to be Mr. Yusuf's "partner" in an existing business arrangement that Mr. Yusuf had with a separate individual, "to open a supermarket." (Jan. 25, 2013 Hr'g Tr. at 199:8-13).

108. Mohammad Hamed agreed to "start with Mr. Yusuf." (Jan. 25, 2013 Hr'g Tr. at 199:14-16).

109. However, Mohammad Hamed concedes that Fathi Yusuf – in Mr. Yusuf's name alone – obtained separate \$1 million and \$2.5 million dollar loans from Banco Popular and Nova

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Scotia, respectively (a portion of the \$2.5M loan was used to pay the outstanding Banco Popular loan), and Fathi Yusuf signed the loan documents and personal guaranties for such financing himself. (Jan. 25, 2013 Hr'g Tr. at 199:17-21, 205:24-25, 206:1, 207:6-21).

110. Mohammad Hamed simply worked in the Plaza Extra East supermarket's warehouse, from which position he "retired" a "[l]ong time" ago. (Jan. 25, 2013 Hr'g Tr. at 202:20, 206:22, 207:4-5).⁸

111. Notwithstanding, Mohammad Hamed maintains that he is Fathi Yusuf's "partner" "forever." (Jan. 25, 2013 Hr'g Tr. at 200:18, 210:4-6).

112. Mohammad Hamed never testified, nor did the Plaintiff ever introduce into the record: (a) any evidence that Mohammad Hamed is a partner with United Corporation, or (b) that he has any ownership interest in United Corporation. Indeed, the only testimony of Mohammad Hamed as to the alleged "partnership" is an alleged partnership between Fathi Yusuf and Mohammad Hamed. (Jan. 25, 2013 Hr'g Tr. at 201:21-24 ("[a]nd Mr. Yusuf tell me, you is my partner, not your son... I tell him I'm not saying nothing, you is my partner.", 209:11-17).

113. However, Mohammad Hamed has not entered into the record any evidence of personal liability for any partnership obligation such as a written guaranty or other documentation reflecting Mohammad Hamed's execution of a single loan document with any bank, financial institution, lender, insurance company, or other institution related to the Plaza Extra Stores.

114. Mohammad Hamed likewise concedes that he has never signed any loan document, written guaranty or other such paper for any documented financial loss or liability of the

⁸ Specifically, Waleed Hamed testified that Mohammad Hamed retired from United Corporation d/b/a Plaza Extra – and, thus, from any alleged partnership or interest therein – in 1996. (Jan. 25, 2013 Hr'g Tr. at 99:14-18).

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supermarket operation. (Jan. 25, 2013 Hr'g Tr. at 207:16-17 (Mohammad Hamed indicating that "I'm [sic] not sign nothing")).

115. Moreover, with respect to the control and management of the supermarket, Mohammad Hamed confirmed that there is no right of joint control or management; instead, "*Mr. [Fathi] Yusuf, he is in charge of everybody*" and in charge of "*all the three store[s]*." (Jan. 25, 2013 Hr'g Tr. at 201:4 (emphasis added), 210:22-23 (emphasis added)).

116. Mohammad Hamed also confirmed that all of his sons, including Waleed Hamed, are mere "employees" of the supermarkets – and thus are *not* in any self-labeled "partner" relationship with Fathi Yusuf. (Jan. 25, 2013 Hr'g Tr. at 201:21-24 (noting Mohammad Hamed's "agree[ment] with "[w]hatever" management decision Fathi Yusuf makes), 209:16-25, 210:1).

117. Indeed, the Hameds – including Mohammad Hamed – have not introduced into the record any evidence of a single filed partnership tax return, statement of partnership, or other regulated declaration or document containing the words "partner" or "partnership" in the approximately 30-year period during which they now claim a supposed partnership existed.

118. Mohammad Hamed has not introduced into the record any evidence of a single document establishing that (a) he ever received a share of the supermarket profits at any time over the past 26 years, as opposed to a salary as a regular employee; or (b) United Corporation d/b/a Plaza Extra or Fahti Yusuf ever shared with or distributed to the plaintiff any profits.

119. Mohammad Hamed likewise did not personally attest to a single reason supporting the requested TRO/Preliminary Injunction, because, as he concedes, he retired a long time ago from the alleged partnership at issue in this action. (Jan. 25, 2013 Hr'g Tr. at 202:20, 206:22, 207:4-5).

120. Although Mohammad Hamed signed an affidavit in this action, he subsequently conceded that he does not know the contents of his affidavit or the contents of Waleed Hamed's

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affidavit because Mohammad Hamed does not read or understand written English. (Jan. 25, 2013 Hr'g Tr. at 201:5-7, 202:16-22, 208:2, 208:7, 208:10-14, 209:7-8). Rather, he "sign [sic] the paper" because his son "want[ed]" it signed. (Jan. 25, 2013 Hr'g Tr. at 208:8-9, 209:3-4).⁹

Testimony of Waleed ("Wally") Hamed

121. Waleed Hamed is an employee of United Corporation d/b/a Plaza Extra and started such employment in 1986 at United Corporation's Plaza Extra East Sion Farm location as a "bagger" and other such duties. (Jan. 25, 2013 Hr'g Tr. at 23:2-7; Criminal Indictment at ¶ 3).

122. Mohammad Hamed was an employee at Plaza Extra East when Waleed Hamed started working there. (Jan. 25, 2013 Hr'g Tr. at 23:19-20).

123. Specifically, when Waleed Hamed started his employment there in 1986, Mohammad Hamed worked in the produce department and warehouse. (Jan. 25, 2013 Hr'g Tr. at 23:22-23).

124. Waleed Hamed eventually became a co-manager at Plaza Extra East. (Jan. 25, 2013 Hr'g Tr. at 24:12-14).

125. Waleed Hamed does not dispute that Fathi Yusuf is and always has been ultimately responsible for the entire office operations of United Corporation d/b/a Plaza Extra. (Jan. 25, 2013 Hr'g Tr. at 26:14-15, 100:2-3).

126. Fathi Yusuf in fact is the only individual who has the "ultimate call" relating to the operations of United Corporation d/b/a Plaza Extra, including to ultimately resolve any disagreements between the respective co-manager employees at the Plaza Extra Stores. (Jan. 25, 2013 Hr'g Tr. at 105:12-15).

⁹ The unresolved agency issues in this action are even further complicated by Hisham Hamed's separate claim that he is "also an agent for [his] father." (Jan. 25, 2013 Hr'g Tr. at 255:13-14). For these reasons, and others, Defendants have moved for an inquiry under Federal Rule of Civil Procedure 17 prior to the resolution of any other substantive motions in this action. (*See generally* Nov. 21, 2012 Motion to Strike Self-Appointed Representative).

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127. Nor does Waleed Hamed dispute that Mohammad Hamed retired from Plaza Extra East in 1996. (Jan. 25, 2013 Hr'g Tr. at 99:14-18).

128. Indeed, during the period when the alleged partnership started until it ended, *i.e.*, “the middle ‘80s until 1996,” when Mohammad Hamed retired, Waleed Hamed attests that Mohammad Hamed never had signatory authority over any Plaza Extra bank account whatsoever. (Jan. 25, 2013 Hr'g Tr. at 99:19-23).

129. Mohammad Hamed likewise has never even written a single check on behalf of any Plaza Extra entity, including when he worked at Plaza Extra East from 1986 to 1996. (Jan. 25, 2013 Hr'g Tr. at 99:24-25, 100:1-3).

130. The Plaza Extra location in St. Thomas opened in late 1992 or early 1993. (Jan. 25, 2013 Hr'g Tr. at 27:4-5).

131. Around that time, as to Plaza Extra St. Thomas only, Waleed Hamed maintains that Fathi Yusuf and Mohammad Hamed “took on another *partner* in St. Thomas,” named Ahmad Idheileh. (Jan. 25, 2013 Hr'g Tr. at 27:21-24 (emphasis added), 28:5-7).

132. Again referring to Ahmad Idheileh as a “partner,” Waleed Hamed maintains that Mr. Idheileh was eventually “bought [] out” as an alleged “partner” in the alleged “partnership,” which, according to Waleed Hamed, was between Fathi Yusuf, Mohammad Hamed and Ahmad Idheileh. (Jan. 25, 2013 Hr'g Tr. at 34:1-5, 106:5-15).

133. In fact, there was no such “partnership,” as Ahmad Idheileh and United Corporation d/b/a Plaza Extra entered into a written *Joint Venture Agreement* relating to the Plaza Extra store and,

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therefore, the parties' rights under that written agreement were subject to *joint venture* law. (Jan. 25, 2013 Hr'g Tr. at 107:20-25; PX 1 at Depo. exhibit 7).¹⁰

134. Waleed Hamed concedes that, in his opinion, there is no difference between a joint venture and a partnership – *i.e.*, according to Waleed Hamed, they are the “same.” (Jan. 25, 2013 Hr'g Tr. at 108:3-6).

135. However, it is undisputed that no Hamed family member, including Mohammad Hamed or Waleed Hamed, signed the agreement guaranteeing the lease of the Plaza Extra store in Tutu Park. (Jan. 25, 2013 Hr'g Tr. at 108:11-16; *see also* DX 8 at p. 56-58 (bates #FY126971-FY126973 (showing Fathi Yusuf alone signed a personal guarantee)).

136. It is also undisputed that Mohammad Hamed has never executed any document guaranteeing personally any debt, liability or loss of United Corporation d/b/a Plaza Extra or any Plaza Extra store. (Jan. 25, 2013 Hr'g Tr. at 109:8-11).

137. The various Plaza Extra Stores, *i.e.*, Plaza Extra East, Plaza Extra West, and Plaza Extra St. Thomas, are managed by various members of the Hamed and Yusuf families, who currently work at the stores as employees. (Jan. 25, 2013 Hr'g Tr. at 31:8-9, 34:19-20).

138. Likewise, Waleed Hamed does not dispute that the managers at each store, including the Hamed managers, currently all have access to the collective monies from all of the Plaza Extra Stores. (Jan. 25, 2013 Hr'g Tr. at 35:15-16).

139. The collective monies are maintained in accounts owned by United Corporation d/b/a Plaza Extra, although each store has several of its own bank accounts for store-specific expenditures and store-specific operational issues. (Jan. 25, 2013 Hr'g Tr. at 36:9-10, 36:22-23).

¹⁰ On February 19, 2013, the Plaintiff filed a Notice of Filing Supplemental Deposition Exhibits, which included the referenced Joint Venture Agreement.

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140. Those store-specific bank accounts include a tele-check account, operating account, payroll account, and credit card account. (Jan. 25, 2013 Hr'g Tr. at 37:4-8).

141. Although Waleed Hamed claims that the Yusuf and Hamed "families" formed corporations to purchase real property from the supermarket "profits" of United Corporation d/b/a Plaza Extra, he did not attest to any documented support for the claim. (Jan. 25, 2013 Hr'g Tr. at 40:20-25, 41:1).

142. Nor did Waleed Hamed attest to any documented actual distribution to the Hameds of any alleged "profits" on a "50/50" basis or otherwise. (Jan. 25, 2013 Hr'g Tr. at 41:2-4).

143. However, since 2000, after the federal "raid" that preceded the filing of the Criminal Action, Waleed Hamed does not dispute that those same "profits" are the subject of the Criminal Action; and that the profits are being held in various securities accounts, which are governed by the orders entered in the Criminal Action. (Jan. 25, 2013 Hr'g Tr. at 41:22-25, 42:1-13).

144. One such account, which is maintained at Banco Popular, has a current balance in excess of \$40 million dollars. (Jan. 25, 2013 Hr'g Tr. at 118:22-24; DX 9).

145. Those funds are currently in this jurisdiction and are currently subject to a restraining order in the ongoing federal Criminal Action. (Jan. 25, 2013 Hr'g Tr. at 119:4-12).

146. Plaza Extra East was destroyed in a fire in 1992, after which it eventually was rebuilt from insurance "funds" of an insurance policy protecting the store. (Jan. 25, 2013 Hr'g Tr. at 27:2-3, 42:22-25).¹¹

¹¹ In fact, the policy owner and beneficiary of the insurance policy at issue was United Corporation d/b/a Plaza Extra. (Jan. 25, 2013 Hr'g Tr. at 221:18-25).

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147. Although Waleed Hamed testified that Fathi Yusuf and Mohammad Hamed “shared the profits” of United Corporation d/b/a Plaza Extra, Waleed Hamed did not attest to any documented support for the claim. (Jan. 25, 2013 Hr’g Tr. at 44:12-15).

148. Similarly, although Waleed Hamed testified that Fathi Yusuf and Mohammad Hamed “shared the loss” of United Corporation d/b/a Plaza Extra, Waleed Hamed did not attest to any documented support for the claim. (Jan. 25, 2013 Hr’g Tr. at 44:16-18).

149. Waleed Hamed maintains that the “problems” between the Yusufs and Hameds that gave rise to this action developed no later than February 7, 2012. (Jan. 25, 2013 Hr’g Tr. at 51:18-20).

150. The Yusufs and Hameds thereafter commenced settlement “discussions” with attorneys. (Jan. 25, 2013 Hr’g Tr. at 58:16-20). These discussions were not successful.

151. Waleed Hamed concedes that the current dispute is over monies claimed to be owed to the Hamed family and that this lawsuit was filed to recover those monies. (Jan. 25, 2013 Hr’g Tr. at 66:13-25).

152. The Plaintiff also complains about monies of United Corporation d/b/a Plaza Extra being used, according to Waleed Hamed, to pay Fathi Yusuf’s attorneys. (Jan. 25, 2013 Hr’g Tr. at 67:23-24).

153. Similarly, Plaintiff complains about the receipt of a share of monies from the sale of certain real property. (Jan. 25, 2013 Hr’g Tr. at 87:3-4, 90:1-15).

154. Waleed Hamed concedes that there is no current operational policy requiring that checks of United Corporation d/b/a Plaza Extra be signed by a member of the Yusuf family and the Hamed family, as the checks simply require two different signatures (from any authorized signatories, regardless of the family designation). (Jan. 25, 2013 Hr’g Tr. at 81:1-3, 82:6-9).

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155. With respect to the Plaintiff's TRO application in this action, Waleed Hamed claims that it is based on the following nine acts:

- a. alleged threats by undisclosed members of the Yusuf family to "fire" undisclosed Hamed "partners" (plural), which alleged firings he does not attest actually have happened (Jan. 25, 2013 Hr'g Tr. at 91:7);
- b. alleged threats by undisclosed members of the Yusuf family to "physically remove" undisclosed Hamed members "from the store," and other ambiguous alleged threats of "physical harm" and "[i]ntimidati[on]," which alleged threats he does not attest actually have happened (Jan. 25, 2013 Hr'g Tr. at 91:8, 91:17-18);
- c. alleged "bad mouthing" or "talking . . . in bad terms" by undisclosed members of the Yusuf family about undisclosed Hamed members to "suppliers, to employees and certain customers," absent any corroborating evidence from the alleged "suppliers, [] employees and certain customers" (Jan. 25, 2013 Hr'g Tr. at 91:8-10);
- d. alleged "ranting and raving in the office" by, presumably, Fathi Yusuf, "in front of employees, in front of suppliers," absent any corroborating evidence from the alleged "employees" and "suppliers" (Jan. 25, 2013 Hr'g Tr. at 91:11-12);
- e. alleged "cancel[ing]" of "orders" by, presumably, Fathi Yusuf, and "limit[ing]" how undisclosed Hamed members "conduct business as far as the ordering, pricing or whatever," absent any corroborating evidence establishing that orders were actually cancelled or business was actually limited (Jan. 25, 2013 Hr'g Tr. at 91:13-15);
- f. Fathi Yusuf requiring that operational issues be "approved by him," notwithstanding that Fathi Yusuf always has been responsible for United Corporation d/b/a Plaza, where Waleed Hamed was working at the flagship store as a "bagger," and Fathi Yusuf always has had the ultimate authority over the operations of United Corporation d/b/a Plaza Extra (Jan. 25, 2013 Hr'g Tr. at 91:15-16);
- g. alleged threats to "take [the Hameds] off of the authorization to sign checks," which directly conflicts with Waleed Hamed's prior concession that the Hameds are currently authorized to sign checks (*compare* Jan. 25, 2013 Hr'g Tr. at 91:18-19 *with* Jan. 25, 2013 Hr'g Tr. at 81:1-3, 82:6-9);

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- h. alleged threats to “close down” each of the Plaza Extra Stores and all of them, which alleged closings he does not – and cannot – attest actually have happened, as the stores are currently operating in the normal course of business (Jan. 25, 2013 Hr’g Tr. at 91:20-22); and
- i. “most recently, the firing of” an alleged “key” employee, Wadda Charriez, a non-essential payroll clerk who intentionally submitted false and fraudulent manual timesheets over a long period of time in clear violation of the stores’ written rules and regulations and was over-paid significant sums by United Corporation d/b/a Plaza Extra for those false and fraudulent representations (Jan. 25, 2013 Hr’g Tr. at 91:22-23).

156. The Plaintiff did not offer any substantive testimony regarding these issues.

157. Notwithstanding the foregoing, Waleed Hamed subsequently conceded that recent actual photographs of Plaza Extra East (DX 6), including of the warehouse and inventory areas therein, “depict a grocery store full of inventory that [] is not about to close any time soon.” (Jan. 25, 2013 Hr’g Tr. at 121:14-17).

158. Waleed Hamed provides ambiguous and conflicting testimony regarding his supposed objection to the removal of \$2.7 million dollars from the accounts of United Corporation d/b/a Plaza Extra, claiming the objection to be, on the one hand, that the withdrawal was “excessive” and, on the other hand, that an undefined “we” “didn’t have an opportunity to” agree to the withdrawal. (Jan. 31, 2013 Hr’g Tr. at 123:1-4).

159. Waleed Hamed testified that after the receiver was in place nobody could write checks without the receiver’s approval. (Jan. 25, 2013 Hr’g Tr. at 138:17-19).

160. With respect to the Criminal Action, in which Waleed Hamed and Waheed Hamed were co-defendants, Waleed Hamed does not dispute that they never advised the District Court in that action, the Government or anyone else about the alleged partnership claims that the Plaintiff alleges for the first time in this action. (Jan. 25, 2013 Hr’g Tr. at 116:6-19, 125:8-13, 126:10-15).

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161. According to Waleed Hamed, who claims to be Mohammad Hamed's self-appointed "representat[ive]," and "agent" the Hamed co-defendants "never had [a] reason to" advise anyone in the Criminal Action about the alleged partnership. (Jan. 25, 2013 Hr'g Tr. at 45:24-25, 116:15).

162. "And when it became an issue [in the Criminal Action] as to who actually owns Plaza Extra, . . . neither [Waleed Hamed or Waheed Hamed] nor [their] attorneys stood up and said [']wait a minute, my father Mohammad Hamed he actually owns 50 percent of Plaza Extra.[']" (Jan. 25, 2013 Hr'g Tr. at 116:20-25, 125:8-13, 126:10-15).

163. With respect to the payroll employee Wadda Charriez, Waleed Hamed does not dispute that "having employees file false time records to reflect hours that they worked when they didn't actually work [is] against company policy." (Jan. 25, 2013 Hr'g Tr. at 122:14-19).

164. Waleed Hamed also agrees that United Corporation d/b/a "Plaza Extra doesn't pay people for hours that they did not work." (Jan. 25, 2013 Hr'g Tr. at 122:14-25).

165. Thus, as Waleed Hamed concedes, a manager of the Plaza Extra Stores would have good cause to fire an employee who steals from and is paid by United Corporation d/b/a Plaza Extra. (Jan. 25, 2013 Hr'g Tr. at 123:21-24).

166. Moreover, Waleed Hamed does not dispute that, because Fathi Yusuf is above management, and Fathi Yusuf has the "ultimate call" relating to the operations of United Corporation d/b/a Plaza Extra, Fathi Yusuf obviously would have unilateral good cause to fire such an employee too. (Jan. 25, 2013 Hr'g Tr. at 105:12-15).

167. Waleed Hamed also concedes that the Hamed family has been exploring other business opportunities to compete with the business of United Corporation d/b/a Plaza Extra, including the purchase of the Marina Market property in the Red Hook area of St. Thomas via a company owned by the Hameds, *i.e.*, 5H Holdings. (Jan. 25, 2013 Hr'g Tr. at 128:14-23, 132:13-16).

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168. In 1999 or early 2000, with respect to the tax status of United Corporation d/b/a Plaza Extra, Waleed Hamed was aware of – and did not oppose – United Corporation's conversion from a "C" corporation to an "S" corporation, and transfer of its shares from Fathi Yusuf and Fathi Yusuf's wife to various Yusuf children. (Jan. 25, 2013 Hr'g Tr. at 133:22-25, 134:1-8).

Testimony of Waheed ("Willy") Hamed

169. Waheed Hamed is an employee of United Corporation d/b/a Plaza Extra and a co-manager of United Corporation's Plaza Extra St. Thomas store. (Jan. 25, 2013 Hr'g Tr. at 141:19-20; Criminal Indictment at ¶ 4).

170. In describing his management duties, Waheed Hamed, as with virtually all of the parties in this action, casually uses the word "partner," indicating that the store is "run by [him] and [his] *partner* which is one Yusuf one Hamed in each store." (Jan. 25, 2013 Hr'g Tr. at 142:2-3 (emphasis added)).

171. Waheed Hamed specifically maintains that his "partner" at the St. Thomas store is Najeh Yusuf. (Jan. 25, 2013 Hr'g Tr. at 152:17-19, 153:8-11).

172. When Waheed Hamed was asked to disclose the terms of any alleged partnership agreement with Najeh Yusuf, Waheed Hamed initially claimed that "[w]e own 50 percent, they own 50 percent, that's all I know," apparently referring mistakenly to the casual use of the word "partner" used by Fathi Yusuf when referring to Mohammad Hamed. (Jan. 25, 2013 Hr'g Tr. at 153:6-15).

173. Waheed Hamed then claimed that he "d[id]n't know at this moment" the terms of any alleged partnership with Najeh Yusuf.

174. With respect to the Plaintiff's TRO application in this action, Waheed Hamed alleges that:

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- a. the litigation, which the Hameds started, allegedly “is hurting the flow of the business” at the Plaza Extra St. Thomas store, absent any evidence to corroborate the allegation (Jan. 25, 2013 Hr’g Tr. at 142:11-12);
 - b. Plaza Extra St. Thomas allegedly “cannot pay vendors because [it] ha[s] no money to pay vendors” (Jan. 25, 2013 Hr’g Tr. at 146:1-2); and
 - c. undisclosed employees of the St. Thomas store allegedly went to Waheed Hamed “[i]n the summer” of 2012, “some crying, some holding their heads,” allegedly fearful of the store’s closing, absent any evidence to corroborate the allegation, absent any meaningful details about the allegation, including the names of the employees, if any, who allegedly were “crying” or allegedly were “holding their heads,” or the exact dates on which the alleged incidents happened, if ever, as the store clearly did not close in the summer of 2012 (Jan. 25, 2013 Hr’g Tr. at 150:9-15).
175. The Plaintiff was unable to offer any substantive testimony about these issues.
176. Tellingly, Waheed Hamed subsequently confirmed that:
- a. the Plaza Extra St. Thomas store did not close in the summer of 2012 and is currently operating (Jan. 25, 2013 Hr’g Tr. at 151:8-9);
 - b. the store’s shelves are adequately stocked (Jan. 25, 2013 Hr’g Tr. at 151:10-13; *see also* DX 6 and DX 11);
 - c. the store’s inventory is adequate (Jan. 25, 2013 Hr’g Tr. at 151:14-15; *see also* DX 6 and DX 11);
 - d. the store has a full complement of employees (Jan. 25, 2013 Hr’g Tr. at 151:18-19);
 - e. all of the store’s employees are being paid (Jan. 25, 2013 Hr’g Tr. at 151:20-21); and
 - f. Fathi Yusuf has not shut down the store (Jan. 25, 2013 Hr’g Tr. at 152:4-5).
177. With respect to United Corporation d/b/a Plaza Extra’s new accountants and new accounting systems, Waheed Hamed is unaware of terms of the Plea Agreement in the Criminal

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Action pursuant to which those new employees were hired and new systems were implemented. (Jan. 25, 2013 Hr'g Tr. at 154:10-13; cf. DX 2 at p. 7-8 (probation term including monitor by independent third party certified public accounting firm)).

178. Waheed Hamed has no accounting experience whatsoever. (Jan. 25, 2013 Hr'g Tr. at 154:21-22).

179. Nor does he know about "accounting controls" or what the term "GAAP" means. (Jan. 25, 2013 Hr'g Tr. at 154:18-25).

180. Waheed Hamed likewise does not know about John Gaffney's accounting work on behalf United Corporation d/b/a Plaza Extra, apart from knowing that Mr. Gaffney "[i]s setting up some accounting [software], Peachtree, that [the St. Thomas store has] used to pay [its] vendors and do [its] accounting." (Jan. 25, 2013 Hr'g Tr. at 155:1-7).

181. However, Waheed Hamed does not dispute that John Gaffney, in response to a request to share a deliverable final product of his team's accounting work, stated: "no problem, I will give you all the [accounting] information that I'm doing up to today." (Jan. 25, 2013 Hr'g Tr. at 155:8-12).

182. Waheed Hamed does not know what Ayman Al-Khaled does on behalf of United Corporation d/b/a Plaza Extra. (Jan. 25, 2013 Hr'g Tr. at 156:7-8).

Testimony of Hisham Hamed

183. Hisham Hamed is an employee of United Corporation d/b/a Plaza Extra and a co-manager of United Corporation's Plaza Extra West store. (Jan. 25, 2013 Hr'g Tr. at 255:10-13).

184. As with his brother (Waleed Hamed), Hisham Hamed claims to be yet another self-appointed "agent for [his] father" (Mohammad Hamed). (Jan. 25, 2013 Hr'g Tr. at 255:13-14).

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185. Hisham Hamed does not know the terms of the alleged partnership between Fathi Yusuf and Mohammad Hamed. (Jan. 25, 2013 Hr'g Tr. at 260:19-20).

186. Rather, Hisham Hamed agrees with whatever such terms Mohammad Hamed alleges. (Jan. 25, 2013 Hr'g Tr. at 262:3-8).

187. Since the Plaintiff sued Fathi Yusuf and United Corporation d/b/a Plaza Extra, the only operational "problem[]" that allegedly has resulted at Plaza Extra West is, according to Hisham Hamed, that he and Maher Yusuf "[are] not getting along." (Jan. 25, 2013 Hr'g Tr. at 258:4).

Testimony of Kareema Dorsette

188. Kareema Dorsette is an employee of United Corporation d/b/a Plaza Extra and works at the Plaza Extra St. Thomas store in the accounts payable department. (Jan. 25, 2013 Hr'g Tr. at 158:2-3, 158:11).

189. Kareema Dorsette attests that Fathi Yusuf was allegedly observed on a single occasion months ago, upon his review of the St. Thomas store's spreadsheet at the time, that Mr. Yusuf stated because the store's funds were low, "the store is not making any money and it's cheaper for us to have the store closed." (Jan. 25, 2013 Hr'g Tr. at 158:20-24).

190. Based on that isolated months-old observation, Kareema Dorsette claimed to be worried, at that time, about losing her job and reported the observation to Waheed "Willy" Hamed. (Jan. 25, 2013 Hr'g Tr. at 159:1-13).

191. Months later, as of the hearing on January 25, 2013, Kareema Dorsette has not lost her job – and the St. Thomas store is still open. (Jan. 25, 2013 Hr'g Tr. at 159:16-20).

Testimony of Mufeed Hamed

192. Mufeed Hamed is an employee of United Corporation d/b/a Plaza Extra and manages the Plaza Extra East store in Sion Farm. (Jan. 25, 2013 Hr'g Tr. at 160:8-11).

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193. Of the three Plaza Extra Stores, according to Mufeed Hamed, Plaza Extra West is the biggest in square footage, and Plaza Extra East is the biggest in terms of sales. (Jan. 25, 2013 Hr'g Tr. at 161:11-16).

194. On January 9, 2013, Mufeed Hamed brought Wadda Charriez back to Plaza Extra East as an employee there after Fathi Yusuf had discharged her the day before. (Jan. 25, 2013 Hr'g Tr. at 162:8-10, 164:19-21).

195. According to Mufeed Hamed, "the situation got very tense" after Fathi Yusuf discovered that Wadda Charriez had returned to the store. (Jan. 25, 2013 Hr'g Tr. at 165:6-7).

196. Fathi Yusuf eventually called the police to help resolve the situation, and the police responded to the store, as did the parties' respective attorneys. (Jan. 25, 2013 Hr'g Tr. at 165:14-15, 165:22-24).

197. Mufeed Hamed claims that he asked for, but has not received yet, the "evidence" establishing Wadda Charriez's submission of false and fraudulent timesheets. (Jan. 25, 2013 Hr'g Tr. at 166:12-20).

198. Mufeed Hamed also claims that, since this litigation has begun, the sole "difficult[y] in the operations" of the Plaza Extra East store is that "Yusuf Yusuf and [Mufeed Hamed] stopped talking," which, according to Mufeed Hamed, has "created a lot of . . . uncomfortable situations . . . making decisions for the store." (Jan. 25, 2013 Hr'g Tr. at 166:21-25, 167:1-5).

199. Nevertheless, Mufeed Hamed subsequently confirmed that:

- a. the Plaza Extra East store is still open (Jan. 25, 2013 Hr'g Tr. at 167:25-168:1);
- b. the store is fully stocked (Jan. 25, 2013 Hr'g Tr. at 168:2-3);
- c. the store's warehouse is fully stocked (Jan. 25, 2013 Hr'g Tr. at 168:4-5; *see also* DX 6);

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- d. the store's vendor's are all getting paid (Jan. 25, 2013 Hr'g Tr. at 168:6-7); and
- e. the store's employees are all getting paid (Jan. 25, 2013 Hr'g Tr. at 168:8-9).

200. Mufeed Hamed, a co-manager at Plaza Extra East, incredibly testified that he *personally* "would really have to consider [] further" whether there would be grounds to fire a hypothetical store employee who stole over \$10,000 from the store by submitting false timesheets. (Jan. 25, 2013 Hr'g Tr. at 169:5-9).

201. However, Mufeed Hamed then conceded that it would be "totally reasonable" for anyone else in his position, having reviewed the facts, to say, "you know what, you stole from me for \$10,000, [and] you're out." (Jan. 25, 2013 Hr'g Tr. at 169:13-18).

202. Mufeed Hamed likewise conceded that he would not even be able to reasonably disagree (or "fight") with someone in his position who said, "I'm firing this person for stealing \$10,000 from [the store] over this year." (Jan. 25, 2013 Hr'g Tr. at 169:19-23).

203. Mufeed Hamed has never seen his father, Mohammad Hamed, contribute further funds to the operation of the grocery stores after the initial loan contributions. (Jan. 25, 2013 Hr'g Tr. at 171:24).

204. With respect to Plaza Extra East's accounting software, Peachtree, Mufeed Hamed has no understanding of how to operate the software. (Jan. 25, 2013 Hr'g Tr. at 175:10-12, 175:20-24).

205. Mufeed Hamed is aware that the Plea Agreement in the Criminal Action requires United Corporation d/b/a Plaza Extra to implement financial controls that are consistent with

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generally accepted accounting principles, though he does not know the meaning of the acronym, GAAP. (Jan. 25, 2013 Hr'g Tr. at 176:20-25, 177:7-8).

206. Mufeed Hamed does not dispute that the accounting information for the stores is available from the accountants who work at the stores. (Jan. 25, 2013 Hr'g Tr. at 177:17-19).

207. Similarly, despite his knowledge since January 9, 2013, of the serious claims regarding Wadda Charriez's fraudulent timesheets, Mufeed Hamed is still waiting to be "shown" evidence by others – and he has not bothered to proactively investigate those claims himself. (Jan. 25, 2013 Hr'g Tr. at 179:8-10).

Testimony of Wadda Charriez

208. Wadda Charriez is an employee of United Corporation d/b/a Plaza Extra, to which she refers as "Plaza Extra United Corporation," and works in payroll at the Plaza Extra East store. (Jan. 25, 2013 Hr'g Tr. at 180:16-19, 181:1).

209. Wadda Charriez does not have a college degree, and has never taken any accounting or similar such classes. (Jan. 25, 2013 Hr'g Tr. at 189:4-5, 189:17-20).

210. Wadda Charriez has never before heard of the term generally accepted accounting principles. (Jan. 25, 2013 Hr'g Tr. at 190:1-5).

211. Wadda Charriez is familiar with most of the options in the Peachtree accounting software, but not all of them. (Jan. 25, 2013 Hr'g Tr. at 190:23-25).

212. Wadda Charriez is paid \$12 an hour. (Jan. 25, 2013 Hr'g Tr. at 191:24-25).

213. If Wadda Charriez works more than 40 hours a week, she is paid \$18 an hour (time and a half) for overtime. (Jan. 25, 2013 Hr'g Tr. at 192:1-5).

214. Store employees, such as Wadda Charriez, do not work on Thanksgiving, which is a holiday, but they are paid eight hours that day. (Jan. 25, 2013 Hr'g Tr. at 192:21-24).

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215. Wadda Charriez in fact did not work on Thanksgiving in 2012, but she manually entered her time to falsely reflect that she worked twelve hours that day, four of which hours she was paid time and a half wages for overtime. (Jan. 25, 2013 Hr'g Tr. at 193:5-13).

216. Upon being confronted with the false timesheet, Wadda Charriez now claims that her manual time-entry that day was a "mistake." (Jan. 25, 2013 Hr'g Tr. at 192:14).

217. Recounting her recollection of the incident's on January 9, 2013, when the police were called to Plaza Extra East, Wadda Charriez claims to have heard Fathi Yusuf allegedly say that:

- a. Fathi Yusuf allegedly would prefer to close the store "until we stay there," which ambiguous allegation she did not subsequently clarify (Jan. 25, 2013 Hr'g Tr. at 187:14-15);
- b. Fathi Yusuf allegedly "fired Mufeed too," though Mufeed Hamed still works at the store (Jan. 25, 2013 Hr'g Tr. at 187:18);
- c. Fathi Yusuf allegedly "fired [Waleed Hamed] too," though Waleed Hamed still works at the store (Jan. 25, 2013 Hr'g Tr. at 187:18-19);

Testimony of Maher ("Mike") Fathi Yusuf

218. Maher Yusuf, as President of United Corporation, testified that:

- a. Fathi Yusuf alone executed the guaranty for the lease relating to the Plaza Extra store in St. Thomas (Jan. 25, 2013 Hr'g Tr. at 218:23-25-219:1-3; *see also* DX 8 at p. 56);
- b. Fathi Yusuf alone exercised all of United Corporation d/b/a Plaza Extra's important management and operational decisions, such as, by way of example, controlling the check-signing policies at the Plaza Extra Stores (Jan. 25, 2013 Hr'g Tr. at 228:8-11);
- c. Mohammad Hamed never signed any loan document, written guaranty or other such paper for any documented financial loss or liability of the supermarket operations (Jan. 25, 2013 Hr'g Tr. at 219:4-10; *accord* DX 8);

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- d. Mohammad Hamed never exercised any management decision in respect to United Corporation d/b/a Plaza Extra (Jan. 25, 2013 Hr'g Tr. at 222:1-4); and
- e. Mohammad Hamed was nowhere to be found during the Criminal Action (Jan. 25, 2013 Hr'g Tr. at 222:11-25-223:1-3).

219. With respect to the Criminal Action, United Corporation took several steps to comply with the Plea Agreement (DX 2), including allowing itself to be monitored by an independent third party certified public accounting firm; hiring new financial consultants and accounts; and developing an effective compliance and ethics program. (Jan. 25, 2013 Hr'g Tr. at 226:1-12, 227:13-19).

220. With respect to the operations of the three Plaza Extra Stores, Maher Yusuf also confirmed that:

- a. the stores are not under any real threat of closing down (Jan. 25, 2013 Hr'g Tr. at 228:12-25, 233:8-11, 234:3-12);
- b. the stores are not under any real threat of reduced operations (Jan. 25, 2013 Hr'g Tr. at 228:16-18, 233:8-11, 234:3-12);
- c. he has never witnessed his father, Fathi Yusuf, threaten physical harm to any Hamed family member (Jan. 25, 2013 Hr'g Tr. at 228:19-22);
- d. he has never witnessed Fathi Yusuf block payment to any vendor (Jan. 25, 2013 Hr'g Tr. at 228:23-25, 234:17-25, 236:6-9);
- e. rather, the vendors are all being paid in the normal course of business (Jan. 25, 2013 Hr'g Tr. at 229:1-3, 234:17-25, 236:6-9; DX 12);
- f. the inventory is being ordered in the normal course of business (Jan. 25, 2013 Hr'g Tr. at 229:4-6, 233:8-11, 234:3-12; DX 12);

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- g. the stores are not in jeopardy of losing customers to competitors outside of the normal course of business (Jan. 25, 2013 Hr'g Tr. at 238:7-9);
- h. the approximately 600 employees at the stores are not in jeopardy of losing their respective jobs (Jan. 25, 2013 Hr'g Tr. at 238:4-6); and
- i. at bottom, the day-to-day operations of the three stores has not changed in any material way since the filing of this action in September 2012 (Jan. 25, 2013 Hr'g Tr. at 229:7-9, 233:8-11, 234:3-12, 234:17-25, 236:6-9, 238:25-239:1-9; DX 12)).

221. Indeed, allowing any of the Hamed family employees to now have "equal" management rights for the Plaza Extra Stores, as requested in the TRO Application, not only would change the status quo of the stores' operations since their inception but would materially harm the stores. (Jan. 25, 2013 Hr'g Tr. at 238:10-15).

222. Moreover, none of the feigned "concerns" that the Plaintiff raised in the original and renewed TRO applications have come true. (Jan. 25, 2013 Hr'g Tr. at 238:7-9).

223. With respect to its finances, United Corporation d/b/a Plaza Extra maintains an investment securities account at Popular Securities in St. Croix. (Jan. 25, 2013 Hr'g Tr. at 230:2-3; *see also* DX 9).

224. United Corporation d/b/a Plaza Extra currently has approximately \$44 million dollars in the Popular Securities account, which, among United Corporation's other accounts, is within this Court's jurisdiction and, separately, is subject to the pending restraining order in the Criminal Action. (Jan. 25, 2013 Hr'g Tr. at 230:4-10; DX 9).

225. Likewise, the respective operating accounts at the respective Plaza Extra Stores are sufficiently funded such that the stores are not facing any liquidity problems. (Jan. 25, 2013 Hr'g Tr. at 230:11-25-231:1-4).

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226. For “good cause,” the Hamed family employees – like the Yusuf family employees – are able to write a check in any amount if the check is signed by two signatures. (Jan. 25, 2013 Hr’g Tr. at 245:25-246:1-7).

227. Further, the Hamed family employees, among other employees at the Plaza Extra Stores, have “full [viewing] access” to United Corporation’s Plaza Extra bank accounts. (Jan. 25, 2013 Hr’g Tr. at 231:5-13; DX 10).

228. Maher Yusuf’s transfer of certain funds from a Plaza Extra bank account was used for the purchase of real property located within this Court’s jurisdiction and/or for other economic activities of United Corporation that are compensable in money. (Jan. 25, 2013 Hr’g Tr. at 237:22-25-238:1-3; Jan. 31, 2013 Hr’g Tr. at 119:24).

229. Further, in direct contradiction to the testimony of Waleed Hamed, Maher Yusuf testified that in respect to the \$2.7M (*see* PX 13) he gave Waleed Hamed documentation supporting the calculation of the \$2.7M and even gave Waleed Hameds, once again, the documentation in Attorney Holt’s office. (Jan. 25, 2013 Hr’g Tr. at 247:4-9, 249:13-24, 250:1-4).

230. The Hamed family employees also have full access to the work of Mr. Gaffney. (Jan. 25, 2013 Hr’g Tr. at 242:11-15).

Testimony of Yusuf Yusuf

231. Yusuf Yusuf has held a management position at Plaza Extra East in Sion Farm since 2000 as a store manager. (Jan. 31, 2013 Hr’g Tr. at 8:1-7, 33:11-13).

232. Mafi Hamed is also one of the store managers at Plaza Extra East. (Jan. 31, 2013 Hr’g Tr. at 33:6-7).

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233. Their respective management positions include the supervision of a non-essential employee, Wadda Charriez, who is a payroll clerk and handles the store's payroll. (Jan. 31, 2013 Hr'g Tr. at 8:17-24, 30:21-25, 31:1-9, 90:21-22).

234. Wadda Charriez has been Plaza Extra East since at least 2000. (Jan. 31, 2013 Hr'g Tr. at 9:5-8).

235. Wadda Charriez is paid on an hourly basis, and is paid time and a half for overtime. (Jan. 31, 2013 Hr'g Tr. at 12:1-5).

236. On January 8, 2013, Wadda Charriez was involved in a workplace incident based on her violation of the rules and regulations (DX 15) of the Plaza Extra East store. (Jan. 31, 2013 Hr'g Tr. at 10:1, 29:6-8).

237. Among other requirements, the rules and regulations require all employees at the Plaza Extra East store to:

- a. punch out for lunch after six hours of work (Jan. 31, 2013 Hr'g Tr. at 28:1-6; DX 15 at Rule # 16);
- b. refrain from cheating, as any employee found cheating will be immediately dismissed (Jan. 31, 2013 Hr'g Tr. at 28:7-10; DX 15 at Rule # 17);
- c. punch their time cards immediately after being relieved of the day's work duties (Jan. 31, 2013 Hr'g Tr. at 28:11-14; DX 15 at Rule # 18); and
- d. refrain from stealing, as any employee found stealing will be immediately dismissed and subject to arrest (Jan. 31, 2013 Hr'g Tr. at 28:20-24; DX 15 at Rule #23).

238. In late November 2012, after a global operational change that Fathi Yusuf had ordered to be implemented, Yusuf Yusuf noticed an irregularity on Wadda Charriez's time-keeping records, *i.e.*, that Ms. Charriez had manually altered her timesheets to reflect a full-day's work on a

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holiday (Thanksgiving) on which she did not in fact work. (Jan. 31, 2013 Hr'g Tr. at 10:5-6, 11:20-23, 44:12-25, 45:1-9; DX 13).

239. Wadda Charriez had not obtained Yusuf Yusuf's permission to manually enter her time on any given day, let alone every day; or, to Yusuf Yusuf's knowledge, any other supervisor's such permission. (Jan. 31, 2013 Hr'g Tr. at 23:1-10).

240. Specifically, Wadda Charriez manually entered her timesheet for November 22, 2012, to reflect that she worked from 7:38 a.m. in the morning to 7:20 p.m. in the evening – nearly a 12-hour shift. (Jan. 31, 2013 Hr'g Tr. at 15:10-14; DX 13 at p. 6).

241. Yusuf Yusuf knew that Wadda Charriez's such entry was false and fraudulent, as he had worked at the store the same day and thus knew firsthand that Ms. Charriez had not worked a minute that day, let alone 12 hours. (Jan. 31, 2013 Hr'g Tr. at 15:17-19).

242. Wadda Charriez's falsification of her November 22, 2012 timesheet also raised suspicions about her time-reporting practices in general. (Jan. 31, 2013 Hr'g Tr. at 15:20-23).

243. For example, Yusuf Yusuf reviewed Wadda Charriez's timesheets for the entire year 2012. (Jan. 31, 2013 Hr'g Tr. at 16:13-18; DX 13 at p. 7-112).

244. The review of those 2012 records showed that Wadda Charriez consistently (a) manually entered her time, as opposed to using the "normal" electronic punch-in system relying on the employee's social security number and handprint; and (b) reported work shifts of approximately 12 hours on a daily basis. (Jan. 31, 2013 Hr'g Tr. at 16:1-7, 16:16-25, 17:1-6).

245. Using the store's DVR system, Yusuf Yusuf then reviewed video-imaged records reflecting the times that Wadda Charriez entered the store to start her work day and the times that she left the store at the end of her work day. (Jan. 31, 2013 Hr'g Tr. at 20:21-25, 21:1-2; DX 14).

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246. The video images showed that Wadda Charriez consistently falsified her timesheets during the 2012 period in question. For example:

- a. on December 3, 2012, Wadda Charriez claimed that she started work that day at 7:36 a.m., when the video images showed that she arrived at the store at 8:37 a.m. (Jan. 31, 2013 Hr'g Tr. at 21:21-25, 22:1-7; DX 14 at p. 1 and p. 2);
- b. on December 3, 2012, Wadda Charriez claimed that she finished work that day at 7:25 p.m., when the video images showed that she left the store at 7:00 p.m. (Jan. 31, 2013 Hr'g Tr. at 22:15-25; DX 14 at p. 1 and p. 3);
- c. on December 18, 2012, Wadda Charriez claimed that she started work that day at 7:36 a.m., when the video images showed that she arrived at the store at 8:45 a.m. (Jan. 31, 2013 Hr'g Tr. at 23:18-20, 25:6-13; DX 14 at p. 33 and p. 37); and
- d. on December 18, 2012, Wadda Charriez claimed that she finished work that day at 7:20 p.m., when the video images showed that she left the store at 6:20 p.m. (Jan. 31, 2013 Hr'g Tr. at 24:8-10, 25:15-20; DX 14 at p. 33 and p. 39).

A comparison of the store's time-keeping records with its video-imaged records during nearly every other work day in 2012 shows a similar pattern of Wadda Charriez submitting false and fraudulent timesheets, for which she was paid by United Corporation d/b/a Plaza Extra, including time and a half pay for alleged overtime. (*See generally* DX 13 and 14).

247. Wadda Charriez's work duties included occasional off-site work, but only "maybe two days maximum out of a week," and, on those occasional days, only in the mornings prior to coming into the store. (Jan. 31, 2013 Hr'g Tr. at 42:11-14, 49:7-22).

248. Wadda Charriez was not authorized to do work after leaving the store; and any *occasional* off-site banking duties, for example, could not possibly have been done during the hours that Wadda Charriez falsely and fraudulently claimed to be leaving the store on a *daily* basis as the

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banks would be closed during those hours. (Jan. 31, 2013 Hr'g Tr. at 22:15-25 (Wadda Charriez claiming that she finished work on December 3, 2012, at 7:25 p.m.), 42:19-25, 43:1, 49:7-18).

249. Before employment at the Plaza Extra Stores, every employee is required to read the Plaza Extra rules and regulations referenced above, and to acknowledge in writing such review of and agreement to abide by those rules and regulations. (Jan. 31, 2013 Hr'g Tr. at 26:12-23, 27:5-7).

250. In fact, prior to her employment, Wadda Charriez read Plaza Extra's rules and regulations, and acknowledged in writing such review of and agreement to abide by those rules and regulations. (Jan. 31, 2013 Hr'g Tr. at 27:11-12, 29:13-25, 30:1-7; DX 15).

251. Based on Wadda Charriez's submission of false and fraudulent timesheets, among other acts, Ms. Charriez violated Plaza Extra's rules and regulations. (Jan. 31, 2013 Hr'g Tr. at 29:6-8; DX 15).

252. Management of Plaza Extra East thus had good cause to terminate Wadda Charriez's employment. (Jan. 31, 2013 Hr'g Tr. at 30:17-20).

253. Mafi Hamed, a co-store manager at Plaza Extra East, has had access at all times to the same information and same DVR system, *i.e.*, the same timesheets and same video-images that Yusuf Yusuf obtained. (Jan. 31, 2013 Hr'g Tr. at 40:25, 41:5-6).

254. Thus, there was and is no need for Yusuf Yusuf to share his findings with any other manager, including Mafi Hamed and Wally Hamed, as, again, these Hamed members have access to the same information as does Yusuf Yusuf. (Jan. 31, 2013 Hr'g Tr. at 40:25, 41:5-6, 46:14-20).

255. Moreover, Wadda Charriez, who assisted with payroll, was not an essential store employee and could be easily replaced. (Jan. 31, 2013 Hr'g Tr. at 30:21-25, 31:1-9).

256. At bottom, Wadda Charriez was initially dismissed, as provided for in the stores' rules and regulations (DX 15), and for the good cause established by the stores' records and video-

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images (DX 13 and 14), for her submission of false and fraudulent timesheets and receipt of payment for those timesheets – and not for any reasons involving the current dispute involving the Plaintiff. (Jan. 31, 2013 Hr'g Tr. at 46:5-13).

257. Yusuf Yusuf also confirmed the following:

- a. inventory at the Plaza Extra East store is fully current (Jan. 31, 2013 Hr'g Tr. at 31:10-13; DX 6);
- b. vendors of the Plaza Extra East store are being paid in the normal course of business (Jan. 31, 2013 Hr'g Tr. at 31:14-17);
- c. there have been no unusual disruptions at the Plaza Extra East related to the order of supplies and merchandise (Jan. 31, 2013 Hr'g Tr. at 31:18-21);
- d. Yusuf Yusuf has not witnessed Fathi Yusuf block or stop any payments to vendors of the Plaza Extra East store, or attempt to do those things (Jan. 31, 2013 Hr'g Tr. at 31:22-24);
- e. the inventory area of the Plaza Extra East store is stocked in the normal course of business (Jan. 31, 2013 Hr'g Tr. at 32:1-5; DX 6);
- f. as to all of the Plaza Extra Stores, there is no credible threat that the closes will prematurely be closed (Jan. 31, 2013 Hr'g Tr. at 32:10-13);
- g. Yusuf Yusuf has not witnessed Fathi Yusuf intimidate any employees of the Plaza Extra Stores, or attempt to do that, including Wadda Charriez (Jan. 31, 2013 Hr'g Tr. at 32:9-11, 45:17-19);
- h. Yusuf Yusuf has no direct knowledge of any threats by Fathi Yusuf to fire Mafi Hamed or Wally Hamed, who are currently employed at the Plaza Extra Stores, or to close the stores (Jan. 31, 2013 Hr'g Tr. at 48:1-4, 48:17-19);
- i. none of the allegations in the Hameds' TRO application, such as the stores' threatened closing, etc., have come to pass (Jan. 31, 2013 Hr'g Tr. at 32:15-24); and

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- j. Fathi Yusuf alone owns all of the Plaza Extra Stores, which are managed and otherwise operated by employees (Jan. 31, 2013 Hr'g Tr. at 46:22-23).

Testimony of Ayman Al-Khaled

258. Ayman Al-Khaled earned a bachelor's degree in accounting in Jordan. (Jan. 31, 2013 Hr'g Tr. at 52:13).

259. Fathi Yusuf and Ayman Al-Khaled are distant (but, not immediate) family members, as Ayman Al-Khaled's mother is Fathi Yusuf's niece, *i.e.*, Ayman Al-Khaled is Fathi Yusuf's great nephew. (Jan. 31, 2013 Hr'g Tr. at 61:9-12).

260. Following his graduation, Ayman Al-Khaled worked in various capacities in the accounting field, including in Kuwait for the Kuwait Investment Authority and in St. Croix for an USVI Economic Development Commission approved entity known as Kazi Management. (Jan. 31, 2013 Hr'g Tr. at 52:18-25).

261. Since approximately 2012, Ayman Al-Khaled has been employed by United Corporation d/b/a Plaza Extra pursuant to a written application. (Jan. 31, 2013 Hr'g Tr. at 51:21-24, 52:2-3, 62:3-5).

262. Fathi Yusuf initially hired Ayman Al-Khaled to work at United Corporation d/b/a Plaza Extra to assist with the review of certain files and records produced in the Criminal Action. (Jan. 31, 2013 Hr'g Tr. at 52:5-10, 54:21-25, 55:7-10, 62:20-21).

263. Ayman Al-Khaled now serves in the capacity of a controller, focusing, at these initial stages of his employment, on the Plaza Extra Stores' operations. (Jan. 31, 2013 Hr'g Tr. at 52:5-10, 63:12-23).

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264. Fathi Yusuf offered the controller position at United Corporation d/b/a Plaza Extra to Ayman Al-Khaled because United's controller at the time was leaving. (Jan. 31, 2013 Hr'g Tr. at 56:5-9).

265. John Gaffney, who had worked at Kazi Management and had supervised Ayman Al-Khaled's there, also endorsed Mr. Al-Khaled for the controller position at United Corporation d/b/a Plaza Extra. (Jan. 31, 2013 Hr'g Tr. at 56:11-16).

266. Ayman Al-Khaled currently works with John Gaffney and under Mr. Gaffney's supervision. (Jan. 31, 2013 Hr'g Tr. at 58:23-25).

267. John Gaffney and Ayman Al-Khaled are in the process of enhancing the accounting procedures at United Corporation d/b/a Plaza Extra, by, among other things, working to have each Plaza Extra Store be autonomous and able to issue accurate financial statements on their respective balance sheets, corrected income statements, and corrected cash flow statements for management. (Jan. 31, 2013 Hr'g Tr. at 59:1-8).

268. The Gaffney team is also revising the record-keeping policies of United Corporation d/b/a Plaza Extra to be in compliance with generally accepted accounting principles ("GAAP"), which is a requirement of the Plea Agreement (DX 2) entered into in the Criminal Action. (Jan. 31, 2013 Hr'g Tr. at 60:21-25, 61:1-8).

269. John Gaffney and Ayman Al-Khaled report to Maher ("Mike") Fathi Yusuf, who is the President of United Corporation d/b/a Plaza Extra. (Jan. 31, 2013 Hr'g Tr. at 59:9-10).

270. John Gaffney and Ayman Al-Khaled have not finished their work yet or finished any deliverable product that can be shared with the greater management team and other employees, including the Hamed family employees at the stores. (Jan. 31, 2013 Hr'g Tr. at 59:11-13, 84:4-5).

271. Consistent with Yusuf Yusuf's testimony, Ayman Al-Khaled also confirmed that:

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- a. inventory at the Plaza Extra Stores is fully current (Jan. 31, 2013 Hr'g Tr. at 59:22-23);
- b. vendors of the Plaza Extra Stores are being paid in the normal course of business (Jan. 31, 2013 Hr'g Tr. at 59:18-19);
- c. there have been no unusual disruptions at the Plaza Extra Stores related to the order of supplies and merchandise (Jan. 31, 2013 Hr'g Tr. at 59:20-21); and
- d. Ayman Al-Khaled has not witnessed Fathi Yusuf cause any harm or make such threat to any Hamed family member (Jan. 31, 2013 Hr'g Tr. at 59:14-17).

Testimony of John Gaffney

272. John Gaffney earned a Bachelor of Science in Business Administration in accounting from the University of Florida in 1973. (Jan. 31, 2013 Hr'g Tr. at 65:19-20).

273. Upon his graduation, John Gaffney worked for a national accounting firm. (Jan. 31, 2013 Hr'g Tr. at 65:23-24, 66:5-7).

274. John Gaffney also was certified as a public accountant in 1975, which license he held for many years until he went inactive. (Jan. 31, 2013 Hr'g Tr. at 67:2-6).

275. John Gaffney subsequently has spent approximately 15 to 20 years in public accounting and another 15 years in private accounting. (Jan. 31, 2013 Hr'g Tr. at 66:18-24).

276. His background in private accounting includes experience in retail accounting and as the director finance for Kazi Management, where he managed an office of approximately 11 controllers who oversaw sales markets throughout the United States and overseas for hundreds of fast food restaurants. (Jan. 31, 2013 Hr'g Tr. at 67:13-15, 67:23-25, 68:2-5).

277. John Gaffney hired Ayman Al-Khaled to work for Kazi Management in or around 2011. (Jan. 31, 2013 Hr'g Tr. at 68:10-13).

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278. John Gaffney describes Ayman Al-Khaled's performance as a controller as "very good." (Jan. 31, 2013 Hr'g Tr. at 68:14-16).

279. John Gaffney is currently employed by United Corporation d/b/a Plaza Extra in a controller capacity. (Jan. 31, 2013 Hr'g Tr. at 65:14-15).

280. John Gaffney started at United Corporation d/b/a Plaza Extra as an outside consultant to evaluate the corporation's system of internal controls and GAAP compliance. (Jan. 31, 2013 Hr'g Tr. at 69:1-25).

281. John Gaffney now serves at United Corporation d/b/a Plaza Extra in a controller capacity. (Jan. 31, 2013 Hr'g Tr. at 65:14-15).

282. Upon starting his consultancy at United Corporation d/b/a Plaza Extra, John Gaffney decided to concentrate initially and primarily on the operations of the three Plaza Extra Stores, as opposed to the operations of the shopping center, as the stores' accounting systems were in far worse shape. (Jan. 31, 2013 Hr'g Tr. at 96:5-8).

283. Indeed, John Gaffney observed that there were essentially four computers among the Plaza Extra Stores that had an accounting system, none of which were integrated or fully-optimized. (Jan. 31, 2013 Hr'g Tr. at 70:18-20).

284. For example, the Plaza Extra West and East locations were under-utilizing the corporation's accounting software system (which is referred to as "Peachtree"), instead were using the software as a mere word processor to simply print checks. (Jan. 31, 2013 Hr'g Tr. at 70:20-25, 71:3-9, 72:8-23).

285. The Plaza St. Thomas Store was treating its account receivables incorrectly and there were other internal control weaknesses. (Jan. 31, 2013 Hr'g Tr. at 79:1-19).

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286. The stores likewise were not integrating their point-of-sale ("POS") systems with the Peachtree accounting software system, which failure was inconsistent with GAAP, and there were systematic credit card processing issues. (Jan. 31, 2013 Hr'g Tr. at 75:8-10, 75:22-23, 80:9-24).

287. Consequently, to rectify the foregoing problems and issues, and otherwise comply with the Plea Agreement and GAAP, John Gaffney and his team set out to establish a "very, very good" set of internal controls and audit trails at United Corporation d/b/a Plaza Extra. (Jan. 31, 2013 Hr'g Tr. at 83:7-13, 90:4-16).

288. John Gaffney also has been training certain employees on various accounting systems and charts; and establishing a system to account for the point-of-sale records. (Jan. 31, 2013 Hr'g Tr. at 86:5-15, 110:2-5).

289. John Gaffney's ultimate intention for the accounting system at United Corporation d/b/a Plaza Extra is that, when the proper accounting system has been set up for the three stores, as well as the shopping center, and is being done on a monthly basis, United will combine the accounting system for all of its operations. (Jan. 31, 2013 Hr'g Tr. at 96:18-25, 97:1).

290. John Gaffney estimates the cost savings to United Corporation d/b/a Plaza Extra of such efforts at approximately \$450,000. (Jan. 31, 2013 Hr'g Tr. at 83:14-17).

291. John Gaffney estimates further that a deliverable product, which can be shared with the greater management team and other employees, including the Hamed family employees at the stores, will be completed by the end of February 2013. (Jan. 31, 2013 Hr'g Tr. at 84:14-23, 85:1-20).

292. In addition, John Gaffney confirmed that Wadda Charriez "is not irreplaceable," *i.e.*, she is a non-essential employee (payroll clerk). (Jan. 31, 2013 Hr'g Tr. at 91:12).

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293. Similarly, other employees of United Corporation d/b/a Plaza Extra can fulfill – and actually have fulfilled – Wadda Charriez's duties when Ms. Charriez has been unavailable, for example, when she has been out sick. (Jan. 31, 2013 Hr'g Tr. at 91:14-20).

294. United Corporation d/b/a Plaza Extra thus could comfortably replace Wadda Charriez with other current employees. (Jan. 31, 2013 Hr'g Tr. at 92:10-12).

295. John Gaffney also confirmed that United Corporation “do[es] business as Plaza Extra.” (Jan. 31, 2013 Hr'g Tr. at 99:20-21, 99:25, 100:1).

296. Thus, the rent notices that United Corporation d/b/a Plaza Extra provided to the Plaza Extra East store were simply “intracompany” internal accounting transactions, *i.e.*, “an intra-company payable due to/from,” which income is “offset by an expense” and thus is “washed” in the final analysis on United's tax returns. (Jan. 31, 2013 Hr'g Tr. at 100:2-6, 101:4-7, 105:22-23, 106:1-6, 107:11-12).

297. In other words, “[t]he net effect on the United tax return is zero.” (Jan. 31, 2013 Hr'g Tr. at 106:1-6).

298. In response to the Plaintiff's counsel's (Attorney Joel Holt's) question that “[p]artnerships have to file tax returns, don't they,” John Gaffney observed that “[t]here is no evidence of partnership” as to United Corporation d/b/a Plaza Extra, which, has filed its taxes as a corporation “for a long time” and has never filed any partnership tax returns. (Jan. 31, 2013 Hr'g Tr. at 101:11-12, 101:20-25; *accord* DX 2, 3, and 4).

299. Indeed, no Hamed family member receives any profits from United Corporation d/b/a Plaza Extra. (Jan. 31, 2013 Hr'g Tr. at 102:9-10).

300. Rather, the Hamed family employees, like all of the other employees at United Corporation d/b/a Plaza Extra, receive payroll checks. (Jan. 31, 2013 Hr'g Tr. at 102:9).

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301. With respect to the Banco Popular Securities account, John Gaffney states that “it’s entirely possible” such account contains profits from both the supermarket operations and rental operations of United Corporation d/b/a Plaza Extra. (Jan. 31, 2013 Hr’g Tr. at 110:17-19, 111:8-9, 111:25, 112:1-2).

302. Further, as John Gaffney notes, it is a “forgone conclusion” that United Corporation d/b/a Plaza Extra is *not* a partnership, as “[t]here is a consistency of how [United’s] tax returns have been filed now for many, many years and there is no question about how they are going to continue to be filed.” (Jan. 31, 2013 Hr’g Tr. at 103:2-6).

II. Proposed Conclusions of Law

Legal Standards

A. This Court’s analysis is controlled by Fed. R. Civ. P. 65. *See also Crucians In Focus, Inc. v. VI 4D, LLLP*, 2012 V.I. Supreme LEXIS 76 (V.I. 2012).

B. In order for a movant to obtain a preliminary injunction the movant “must establish (1) a reasonable likelihood of eventual success on the merits of its claims, (2) irreparable harm absent the TRO, (3) harm from the denial of the TRO that would outweigh any harm to the defendants if relief is granted, and (4) that granting the relief would not adversely affect the public interest.” *Id.* at fn. 1 (internal citations omitted).

C. Further, because the Plaintiff is the party seeking a preliminary injunction, he carries the same “the burdens at the preliminary injunction stage track the burdens at trial.” *Gonzalez v. O Centro Beneficente Uniao do Vegetal*, 546 U.S. 418, 429 (2006).

D. A preliminary “injunction shall issue *only if* the plaintiff produces evidence sufficient to convince the district court that all four factors favor preliminary relief.” *N.J. Hosp. Ass’n v. Waldman*, 73 F.3d 509, 512 (3d Cir. 1995) (citation omitted, emphasis added). In other words, “[a]

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plaintiff's failure to establish any element in its favor renders a preliminary injunction inappropriate.”

NutraSweet Co. v. Vit-Mar Enter., Inc., 176 F.3d 151, 153 (3d Cir. 1999).

i. **There Is No Likelihood of Success on the Merits.**

E. The Plaintiff cannot show a likelihood of success on the merits as against either United Corporation or Fathi Yusuf.

F. 26 V.I.C. § 22(c)(2) provides that “[t]he sharing of gross revenues does *not* by itself establish partnership” (emphasis added). Here, the fact that the Plaintiff has a profits interest does not *ipso facto* mean that he is a partner (as compared to a joint venture).

G. The Plaintiff has not provided sufficient record evidence that Fathi Yusuf and Mohammad Hamed ever intended to enter into a *bona fide* partnership with each other.

H. The Plaintiff has not provided any record evidence that he is a partner with or has any interest in United Corporation.

I. The Plaintiff has not provided sufficient record evidence that Mohammad Hamed ever has had an obligation to share losses of the Plaza Extra Supermarkets. *See, e.g.*, DX 8 (personal guarantee of Fathi Yusuf on Plaza Extra St. Thomas lease). *See also* ¶¶ 113 and 114, *supra*.

J. The Plaintiff has not provided sufficient record evidence that 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”). *See* ¶¶ 115 and 116, *supra*.

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K. The Plaintiff has not provided sufficient record evidence as to the terms of the alleged oral partnership with Fathi Yusuf (and not with United Corporation) agreement other than the fact that it is “50%-50%” and that the duration is indefinite. *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*”) (emphasis added); *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. II. 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. II. 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”). *See* ¶ 111, *supra*.

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L. Plaintiff has failed to introduce into the record any contemporaneous documentation, such as income tax returns, corroborating with objective evidence that he, in fact, considered himself to be a *bona fide* partner with Fathi Yusuf and held himself out to third-parties (e.g. governmental agencies) as such. *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); *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) (plaintiffs “designat[ion] and compensate[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).

M. Plaintiff has not come into this Court with clean hands. Rather, having now admitted to being, at worst, a criminal tax evader or, at best, a criminal tax-non-filer for the past 26 years; having allowed a federal judge in a pending criminal action to accept a plea agreement premised upon factual representations that are directly at odds with the ones asserted in this action; and having introduced and relied upon a false affidavit, Plaintiff’s hands, and the hands of his primary witnesses, including Waleed Hamed and Waheed Hamed, as co-defendants in the subject criminal action, are plainly *unclean*. *Salomon Smith Barney Inc. v. Vockel*, 137 F. Supp. 2d 599, 604 (E.D. Pa. 2000).

N. Moreover, because the Plaintiff has stated in no uncertain terms that he “retired” a long time ago from the alleged partnership with Fathi Yusuf at issue in this action (*see* ¶ 110, *supra*)

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he is, at best, a creditor to the alleged partnership. *Estate of Matteson v. Matteson*, 2008 WI 48, P25; 749 N.W. 2d 557, 567 (Wis. 2008).

O. Because Plaintiff is, at best, a creditor to the alleged partnership with Fathi Yusuf, he cannot show a likelihood of success on the merits. *Accord 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).

P. The Plaintiff has not sought to pierce the corporate veil against United Corporation and cannot, as a matter of law, obtain relief (and hence can show no probability of success on the merits) against a legal entity that he disavows any ownership in or any business relationship with, i.e., United Corporation, because a "court may only pierce the [corporate] veil in 'specific, unusual circumstances', lest it render the theory of limited liability useless." *American Bell, Inc. v. Federation of Tel. Workers*, 736 F.2d 879, 886 (3d Cir. 1984) (interal quotations omitted). See *Todi v. Stursberg*, 2001 U.S. Dist. LEXIS 11270 (E.D. Pa.) (denying request for preliminary injunction and to pierce the corporate veil because, *inter alia*, there was insufficient evidence to establish a complete failure to observe corporate formalities).

ii. **There Is No Irreparable Harm**

Q. The Plaintiff has not introduced into the record sufficient evidence to support the legal conclusion that he will suffer irreparable harm.

R. At bottom this case is about monetary damages for an alleged breach of an alleged oral partnership agreement with Fathi Yusuf (but not against United Corporation). "[A] preliminary injunction should not be granted if the injury suffered can be recouped in monetary damages." *IDT Telecom, Int. v. CVT Prepaid Solutions, Inc.*, 250 Fed. Appx. 476, 479 (3d Cir. 2007) (citing *Frank's GMC*

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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”). *See* ¶ 151, *supra*.

S. Here, because an adequate remedy at law exists, i.e., the partnership dissolution provisions of Title 26 of the Virgin Islands, there is no irreparable harm. *McBean v. Guardian Ins. Agency*, 52 F. Supp. 2d 518, 521 (D.V.I. 1999) (citing, among other cases, *Jaz Ltd. P'ship v. Gov't of the Virgin Islands*, 25 V.I. 364, 369 (D.V.I. 1990) (holding that “no irreparable harm if an adequate remedy at law exists”).

T. Moreover, since “[a] movant’s burden with regard to establishing irreparable harm is quite heavy” and the legal standard is “exacting”, *Banclays Bus. Credit, Inc. v. Four Winds Plaza P'ship*, 938 F. Supp. 304, 310 (D.V.I. 1996) (citation omitted), Plaintiff has not carried his heavy burden in establishing through record evidence the he will suffer irreparable harm.

U. Further, Plaintiff has not established irreparable harm if an order is not directed against United Corporation because the Plaintiff claims no ownership interest in, nor business relationship with, nor has sought to pierce the corporate veil of, United Corporation.

iii. **The Balance of Factors Support the Denial of Injunctive Relief**

V. The Plaintiff has not introduced into the record sufficient evidence supporting the legal conclusion that the balances of factors support the entry of a preliminary injunction against either United Corporation or Fathi Yusuf.

W. The record evidence introduced by the Defendant leads the Court to conclude that allowing the Plaintiff and/or the Hamed family to have “equal” management rights for the Plaza Extra Stores, as requested in the TRO/Preliminary Injunction Application, not only would change the status quo of the stores’ operations since their inception, but would materially harm the stores. *See* ¶ 221, *supra*.

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X. The record evidence leads the Court to conclude that granting the Plaintiff his requested relief would require United Corporation to continue to provide employment to (at least one) employee who has falsified her timesheets for an extended period of time, and who broke United Corporation's Rules and Regulations. *See* DX 13, 14, 15.

Y. The record evidence shows that the balance of factors weighs in favor of the Defendants as the hiring of Ayman Al-Khaled and John Gaffney were done in order to comply with the Plea Agreement (DX 2) and the Plea Agreement Addendum (DX 3). Further, the entry of a Preliminary Injunction against United Corporation would jeopardize both Mr. Al-Khaled and Mr. Gaffney's on-going attempt to comply with the Plea Agreement and ensure that United Corporation's accounting is in compliance with generally accepted accounting principles (GAAP). *See* ¶¶ 267, 268, 287, and 283, *supra*.

Z. Further, Plaintiff has not established that the balance of factors tips in his favor when the Plaintiff claims no ownership interest in, nor business relationship with, nor has sought to pierce the corporate veil of, United Corporation.

iv. **The Public Interest Also Supports the Denial of Injunctive Relief**

AA. The Plaintiff has not introduced into the record sufficient evidence supporting the legal conclusion that the public interest supports the entry of a preliminary injunction.

BB. The Plaintiff has failed to introduce into the record sufficient evidence justifying the imposition of "burdens on defendants above and beyond those necessary to protect plaintiffs' otherwise unsatisfi[ed] claims." *Hoxworth v. Blinder, Robinson & Co.*, 903 F.2d 186, 198 (3d Cir. 1990)).

CC. 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

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against the other purported partner in derogation of the equitable doctrines of laches, unclean hands, and estoppel (judicial and/or quasi).

DD. Further, Plaintiff has not established that the public interest supports his request for a preliminary injunction against United Corporation when the Plaintiff claims no ownership interest in, nor business relationship with, nor has sought to pierce the corporate veil of, United Corporation.

CONCLUSION

The Plaintiff's motion for a preliminary injunction is hereby DENIED.

DONE and ORDERED in Chambers this ____ day of _____, 2013.

Hon. Douglas Brady
Judge of the Superior Court

ATTEST: VENETIA H. VELAZQUEZ, ESQ.
Clerk of the Court

By: _____
Deputy Clerk

Dated: _____

cc: All counsel of record

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

MOHAMMAD HAMED By His Authorized Agent WALEED HAMED,)	
)	
Plaintiff,	)	CIVIL NO. SX-12-CV- 370
v.)	
)	
FATHI YUSUF and UNITED CORPORATION,	)	ACTION FOR DAMAGES
	)	INJUNCTIVE AND
	)	DECLARATORY RELIEF
Defendants.	)	JURY TRIAL DEMANDED
)	

NOTICE OF SERVICE OF PLAINTIFF'S PROPOSED FINDINGS OF FACT AND CONCLUSIONS OF LAW

The plaintiff hereby gives notice that it has served it proposed findings of fact and conclusions of law attached as Exhibit A on the defendant now that the defendant's submission has been filed.

Dated: March 5, 2013



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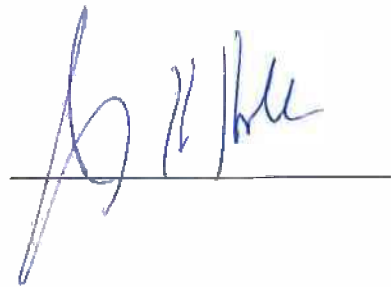
CERTIFICATE OF SERVICE

I hereby certify that on this 5th day of March, 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

And by email (jdiruzzo@fuerstlaw.com) and mail to:

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

A handwritten signature in blue ink is written over a horizontal line. The signature is stylized and appears to be "J. DiRuzzo, III".

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

MOHAMMAD HAMED by His Authorized Agent WALEED HAMED,)	
)	
<i>Plaintiff,</i>	)	CIVIL NO. SX-12-CV- 370
v.)	
	)	ACTION FOR DAMAGES
FATHI YUSUF and UNITED CORPORATION,	)	INJUNCTIVE AND
	)	DECLARATORY RELIEF
<i>Defendants.</i>)	
<hr style="width:40%; margin-left:0;"/>		JURY TRIAL DEMANDED

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Plaintiff filed a request for a temporary restraining order ("TRO") on September 18, 2012. Defendants moved to convert this to a preliminary injunction ("PI") on September 28, 2012. On January 9, 2013, the plaintiff filed a renewed request. An evidentiary hearing with regard to the motions was held on January 25th and continued on January 31, 2013. Thus, this matter is ripe for disposition.

I. Findings of Fact

The Court hereby makes the following findings of fact:

1. In 1973, with the assistance of defendant Fathi Yusuf ("Yusuf") and his family, plaintiff Mohammad Hamed ("Hamed") and his family moved to the U.S. Virgin Islands. 1/25 Tr, p 196:3-23.
2. Yusuf is Hamed's brother-in-law. 1/25 Tr, pp 196:3-15 and 197:17-22.
3. Hamed was initially a salesman, selling merchandise door-to-door. 1/25 Tr, p 197:2-4.
4. After Hamed had saved sufficient funds, he opened a grocery store in Estate Carlton. 1/25 Tr, p 197:5-9.
5. Hamed then opened a second grocery store in Glynn. 1/25 Tr, p 197:10-12.
6. In 1979, Yusuf incorporated United Corporation ("United") in the U.S. Virgin Islands. DEx 7.
7. United subsequently started to build a shopping center at Estate Sion Farm, St. Croix. Yusuf wanted to include a supermarket in the shopping center. PEx1, p 199:7-9 (Fathi Yusuf Feb. 2, 2000, deposition in *Idheileh v United and Yusuf*,



STT Superior Court No. 156/1997 ("Idheileh Case"). Yusuf encountered financial difficulty in completing construction of the shopping center and opening the supermarket, telling Hamed "I owe the people money, I have to pay tomorrow and I don't have it." PEx 1, pp 14:5-15:14.

8. Because of Yusuf's financial difficulties, Hamed provided Yusuf with all of Hamed's life savings to allow Yusuf to complete the shopping center and open the supermarket. 1/25 Tr, p 198:15-197:6; PEx 1, p 14:19-20.
9. Yusuf testified in his 2000 deposition as follows (PEx 1, pp 14:5-15:1):

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.** (Emphasis added).

10. Yusuf had no prior experience in the supermarket business. PEx 1, p 16:3-5.
11. Yusuf told Hamed that he wanted Hamed to be part of the Plaza Extra partnership, but that Hamed would have to sell his two grocery stores and only work with Plaza Extra, which Hamed did. 1/25 Tr, p 200:4-12.
12. Hamed gave the money from the sale of these two stores to Yusuf as his partner in the Plaza Extra supermarket "winning or loss". 1/25 Tr, p 200:13-23.
13. Hamed became a partner with Yusuf, along with Yusuf's two nephews in the Plaza Extra supermarket partnership (PEx 1, p 15:2-14):

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. So I have their money, I finish the building.

14. When the building was finished, the partnership sought a loan to begin operations, but the loan application was denied, causing the two nephews that were partners to request the return of their funds and to leave the partnership. As Yusuf noted in his deposition (PEx 1, pp 17:6-13, 22-24):

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.

15. Yusuf offered to repay Hamed's partnership contribution and have Hamed leave the partnership, as noted in his deposition (PEX 1, pp 17:24-18:8):

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 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.

16. Hamed agreed to stay as a partner with Yusuf, a fact Yusuf has acknowledged (PEX1, pp 18:9-10; 18:16 to 19:10):

He [Hamed] says, Hey. If you [Yusuf] 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.

. . . .

And my partner only put in \$400,000. That's all he put in, **and he will own the supermarket.** I have no problem. . . .

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.**" (Emphasis added).

17. Yusuf repeated this history of the partnership's formation in verified interrogatory answers filed in the *Idheileh* Case, stating in part in a verified response to interrogatories #2 and #6 (PEX 28):

Mohamed Hamed is a partner in Plaza Extra Supermarkets and has been since the mid-1980's. . . .with respect to Plaza Extra, the original partners were Khalid Ali, Isam Yusuf, Mohamed Hamed, and Defendant Yusuf. **By the time Plaza Extra opened in 1986, Mohamed Hamed and Defendant Yusuf were the only partners.** (Emphasis added).

18. As a partner in the Plaza Extra Supermarkets, Hamed was entitled to 50 percent of the profits but was liable for 50% of all payables, as well as being exposed to the loss of his initial partnership contribution. 1/25 Tr, pp 199:17-22, 200:16-23 and 205-24-206:24.

19. Yusuf has acknowledged this fact under oath (PEx 1, pp 23:18-25, 24:1, 4-5):

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

But due to my honesty . . . my partner, he never have it in writing from me. (Emphasis added).

20. Hamed and Yusuf agreed and the Court finds that the partnership term would be indefinite. 1/25 Tr, p 210:4-8 (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."); PEx 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").

21. Yusuf stated under oath and the Court finds that it was public knowledge that Hamed was his partner even before the supermarket, Plaza Extra, opened (PEx 1, p 20:10-12):

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

22. A second Plaza Extra Supermarket was opened in St. Thomas in 1992-93 with a third person. 1/25 Tr, pp 26:24-29:1.

23. Litigation subsequently ensued with this third person in the St. Thomas Superior Court, in *Idheileh v United and Yusuf*, STT Superior Court No. 156/1997. PEx 1.

24. In that litigation, Yusuf signed an affidavit stating in ¶¶ 2-5, and 7 as follows (Depo Exhibit 6 to PEx 1):

- My 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.
- Mohamed Hamed and I decided to open a St. Thomas Plaza Extra store and used our own capital and later obtained financing to make the store ready for opening.
- Mohamed Hamed gave his eldest son, Waleed (a/k/a Wally), power of attorney to manage his interests for the family.

- We negotiated a lease for the St. Thomas store with Tutu Park Ltd. and executed the agreement on May 30, 1991.
 - Hamed did not want a third partner, but I convinced him that Ahmad could run the store and would protect all of our investments.
25. Consistent with Yusuf's affidavit, both Mohammad and Waleed Hamed testified -- and the Court finds -- that Hamed and Yusuf agreed that Waleed Hamed a/k/a Wally Hamed, would act on his father's behalf as to Hamed's partnership rights and obligations pursuant to a power of attorney. 1/25 Tr, pp 46:1-10; 47:5-7; 47:18-48:2 and 202:18-25.
26. The opening of the St. Thomas store caused a strain on the business, as noted by United and Yusuf in their summary judgment pleading in the *Idheileh* Case, requiring the Hameds and Yusuf to have to work long hours, and to give personal guarantees to obtain additional credit (PEX 29 at p 15):
- The Hameds and Mr. Yusuf worked 18 hour days for free, put their credit on the line, gave personal guarantees to vendors, and did everything they could to make a profit.
- Yusuf acknowledged that these joint efforts in the St. Thomas store paid off, stating: "The Hameds and I were able to turn the store around by the last part of 1994." Depo Exhibit 6 to PEX 1, ¶ 41.
27. The third person's interest in the St. Thomas Plaza Extra was eventually bought out. 1/25 Tr, p 28:8-14.
28. In 2002, the partnership opened a third Plaza Extra Supermarket on the west end of St. Croix, known as Plaza Extra West. 1/25 Tr, pp 29:20-31:5.
29. The three Plaza Extra Supermarkets currently employ over 600 people located on both St. Croix and St. Thomas. 1/25 Tr, p 238:4.
30. Defendant Yusuf made a judicial admission in this case that Hamed and Yusuf entered into an oral agreement in 1986 to split the net profits of the Plaza Extra supermarkets 50/50. (PEX 2, p 3):
- 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....Plaintiff Hamed received 50% of the net profits thereafter. (Emphasis added).
- Defendants repeated this admission in a subsequent filing here. (PEX 3, p11):
- There is no disagreement that Mr. Hamed is entitled to fifty percent (50%) of the profits of the operation of Plaza Extra Store.
31. United made similar statements in a complaint in another matter recently filed in this Court -- but alleged that it is the partner with Hamed -- and that Fathi was acting for United in forming the partnership, *United v. Waleed Hamed*, STX Civ. No. 2013/3, alleging (PEX 4, ¶¶ 11, 14):

Sometime in 1986, **Plaintiff United, through its shareholder and then President, Fathi Yusuf, entered into an oral agreement**, whereby Plaintiff United and Defendant Hamed's father, Mohammed Hamed, agreed to operate a grocery store business. . . . In 1986, the joint venture resulted in the first supermarket store being opened. United began using the trade name "Plaza Extra" and the first supermarket in this joint venture was named Plaza Extra Supermarket. Since 1986, two additional stores opened in the U.S. Virgin Islands; the second in Tutu Park, St. Thomas; the third in Grove Place, St. Croix. (Emphasis added.)

32. Over the years, Hamed and Yusuf have jointly shared the profits and losses. 1/25 Tr, p 44:12-15.
33. They shared profits from the Plaza Extra Supermarket operations in part by using them to purchase multiple properties throughout the Virgin Islands, including the real property where Plaza West is located, always splitting the ownership of these properties 50/50, with members of the each family owning 50% of each such corporation used to buy the properties. 1/25 Tr, pp 39:11-41:13.
34. Hamed and Yusuf have jointly managed the stores by having one member of the Hamed family and one member of the Yusuf family together manage each of the Plaza Extra Supermarkets; originally with Mohammad Hamed and Fathi Yusuf, and later with Mafi Hamed and Yusuf Yusuf managing the Sion Farm store along with Wally Hamed, Willie Hamed and Fathi Yusuf along with Nejah Yusuf operating the St. Thomas store and Shawn Hamed and Mike Yusuf managing the Plaza West store on St. Croix. 1/25 Tr, pp 31:6-33:13 and 147:13-20; also 1/31 Tr, p 33:4-17.
35. Hamed acknowledged that Yusuf told him at the outset that it would be best if his name was not on the bank loans, but that he would be liable for 50% of the payments, which Hamed agreed to pay. 1/25 Tr, pp 205:24 to 206:25. As Hamed explained, he let Yusuf "take care of the office" while he was "in charge of the warehouse so it's even." 1/25 Tr, p 206:20-22. The Court finds this deference to allowing Yusuf to take care of the office explains why United's name appeared on many governmental filings.
36. Yusuf admitted that they agreed to operate the partnership this way, using his and United's names, but that Hamed is his 50/50 partner in Plaza Extra Supermarket even though Hamed's name is not part of United Corporation (PEX1, pp 23:18 to 24:5):

But I want you please to be aware that my partner's with me since 1984, and up to now his name is not in my corporation. . . . And I know very well, my wife knows, my children knows, that whatever Plaza Extra owns in assets, in receivable or payable, we have a 50 percent partner. But due to my honesty . . . my partner, he never have it in writing from me."
37. Yusuf admitted under oath that the effect of this agreement is that whenever one is talking about Plaza Extra, its use, even if used along with the name "United Corporation" really means "me and Mr. Mohammed Hamed." PEX 1, p 69:13-21.

38. Yusuf stated in interrogatory response #6 in the *Idheileh* Case that Plaza Extra was a distinct partnership and that the "partners operated Plaza Extra under the corporate name of United Corp":

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.,**(Emphasis added.)

39. The fact that the partnership between Hamed and Yusuf is distinct from United Corporation is also demonstrated by the fact that United, which owns the shopping center, sends rent notices to Hamed at the Plaza Extra Supermarket in Sion Farm (PEX 7), which rent Plaza Extra, as tenant, pays to United, as landlord. PEX 8 and 9. 1/25 Tr, pp 44:25-48:21.

40. Indeed, Mahar ("Mike") Yusuf, who is the President of United Corporation, submitted an affidavit (PEX 19), as to which he testified about at the TRO/PI hearing (1/25 Tr, pp 212:3 to 215:11), that states in paragraph 17 as follows:

More 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).

He testified that it did so because his father and Hamed have a business agreement to share the profits of the Plaza Extra store 50/50. 1/25 Tr, p 214:2-11.

41. Pursuant to this landlord-tenant relationship, in February 2012, Plaza Extra Supermarkets partnership paid United Corporation over \$5 million in back rents for the period 1/2004 through 12/2011 from the Plaza Extra supermarket accounts. PEX 8, 1/25 Tr, pp 48:24-51:9.

42. The supermarket operations have always been referred to as "Plaza Extra." For example, the stores use the letterhead "Plaza Extra" with no mention of United, while United Corporation uses its own letterhead. As Yusuf Yusuf, one of Fathi Yusuf's sons who co-manages the Sion Farm store, explained (DEX 15; 1/31 Tr, pp 33:18-34:16):

Q Okay. And showing you Exhibit Number 15, which is the -- I think the last one. These are the rules and regulations that are dated July of 1997, is that correct?

A Yes.

Q And these are on the letterhead, Plaza Extra, is that correct?

A Correct.

Q And these are for the Plaza Extra store at Sion Farm?

A Correct.

....

Q It doesn't say United Corporation, does it?

A No.

Q And who do you understand owns the Plaza Extra East store?

A My dad.

Q And he ever told you he has a partner?

A Yes.

Q And who is the partner in that store?

A Mohammad Hamed.

43. Likewise, the three Plaza Extra Supermarkets maintain and account for operations separately -- with separate bank accounts distinct from United Shopping Center's bank account. 1/25 Tr, p 35:12-20 and 36:22-38:25.

44. In 2003, United was indicted for tax evasion in federal court, along with Yusuf and several other members of the Hamed and Yusuf families, although the Plaintiff Hamed was not indicted. 1/25 Tr, pp 222:11-223:6 and 134:15-23.

45. The federal government appointed a receiver in 2003 to run the Plaza Extra stores, depositing all profits in investment accounts at Banco Popular Securities and Merrill-Lynch, where they remain through the current date. 1/25 Tr, p 137:13-138:19; 1/25 Tr, pp 41:22 to 42:18

46. In 2011, United pled guilty to tax evasion. Charges were dismissed against the other defendants. 1/25 Tr, p 154:3-9.

47. The criminal proceeding against United is still pending, as the terms of the plea require further "complete and accurate" tax filings, as no tax returns have been filed since 2002 (although estimated taxes in excess of \$10 million have been paid from the grocery store accounts) as well as the adoption of certain accounting procedures for Plaza Extra. 1/25 Tr, pp 241:23-245:12; also 1/31 Tr, p 90:4-16. DEx 2.

48. Around the time of the plea agreement, it was agreed between the Hamed family and the Yusuf family that all checks written on a Plaza Extra Supermarket account had to be signed by one member of the Hamed family and one member of the Yusuf family. 1/25 Tr, pp 100:11-16 and 228: 2-11

49. In February of 2012, Yusuf had his lawyer send a dissolution of partnership notice to Hamed, which stated in part (PEX 10 and 11):

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).

50. Yusuf's lawyer then sent a partnership dissolution agreement on March 13, 2012, to Hamed (referencing the February 12, 2012, letter dissolving the partnership) stating in part the following facts (PEX 12):

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;

....

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

51. The parties then began negotiations to dissolve and separate the partnership assets, though no agreement has yet been reached. 1/25 Tr, p 58:15-20.
52. Although both Hamed and Yusuf had withdrawn funds in their own name previously, and both parties provided copies of such checks (PEX 27 and DEX 1), Wally Hamed testified that such withdrawals were always made with the knowledge and consent of each partner. 1/25 Tr, pp 137:22-139:20; also 1/31 Tr, pp 122:22-123:9. No witness contradicted this testimony, so this Court finds that this was an agreed practice of the partnership.
53. In August of 2012, Yusuf moved \$2.7 million from a segregated Plaza Extra Supermarket operating account despite the fact that Hamed objected to this unilateral withdrawal from this Plaza Extra account in writing, noting that it was a violation of the federal TRO. PEX13; 1/25 Tr, pp 246:1-250:4.
54. Despite demands by the Hamed family, those funds have never been returned to the Plaza Extra Supermarket bank account. 1/25 Tr, p 250:5-17.
55. Wally Hamed testified that Yusuf's withdrawal of \$2.7 million in August of 2012 was the first time Plaza Extra Supermarket funds had ever been withdrawn by either Hamed or Yusuf without the consent of both parties. 1/31 Tr, p 123:5-9. No witness contradicted this testimony, so this Court accepts that statement as an established fact.
56. Wally Hamed also testified that Yusuf had previously diverted \$802,966 from another business investment jointly owned by the Hamed and Yusuf family and that the whereabouts of these funds was unknown. 1/25 Tr, pp 88:8-90:17 and PEX 18. No witness contradicted this testimony, so this Court accepts that statement as an established fact.
57. While Mike Yusuf, United's president, initially testified under oath that the \$2.7 million that was withdrawn from the Plaza Extra bank account was used to buy three properties on St. Croix in United's name (1/25 Tr, pp 250:2 to 251:15), he subsequently changed this testimony, admitting he had testified falsely as to the present location of these funds, as these funds had actually been used to invest

in businesses that are not owned by United, including a mattress business. 1/31 Tr, pp 118:12-120:2.

58. With regard to the \$2.7 million check reflecting those funds removed from the supermarket operational accounts, both comptrollers for the supermarkets and United hired by Yusuf testified that they could not tell the Court anything about the transaction including how that money had been spent or where it is now. 1/31 Tr, pp 107:22-112:11 (Gaffney "did not have "current day-to-day vision on the cash receipts and disbursements") and 63:14:-64:7 (Al-Khaled "didn't have a chance to touch [United accounts]").
59. Wally Hamed also testified about other checks subsequently being written on partnership bank accounts by Yusuf to Yusuf/United lawyers without Hamed's permission -- in excess of \$145,000. 1/25 Tr, pp 76:5-81:12, PEx15 and 16. No witness contradicted this testimony, which the Court thus accepts as an established fact.
60. Yusuf has continued to unilaterally withdraw funds from the supermarket accounts up to and even after the TRO/PI hearing, writing two checks totaling \$223,000 to Yusuf/United lawyers without Hamed's consent just prior to and shortly after these hearings. PEx 30.
61. United has asserted that there is a TRO in the criminal case addressing such withdrawals of funds. 1/25 Tr, pp 76:5-81:12.
62. This Court heard testimony that Yusuf has violated that TRO in the criminal case because he removed funds from this account without permission, and also because he hired a relative, Ayman Al Khaled. 1/31 Tr, p 61:11-12.
63. Neither Wally Hamed nor his father (who was not indicted) appear to have standing to enforce the TRO in the criminal case, even though they believe the withdrawal of the \$2.7 million and the payments of Yusuf's counsel's fees violate that TRO order. 1/31 Tr, p 126:5-11.
64. In any case, this Court cannot enforce the TRO in the criminal case.
65. Thus, absent an injunction from this Court, as requested by Hamed in this case, there is nothing the Hamed family can do to prevent future withdrawals of Plaza Extra funds by Yusuf of some or all of the funds in Plaza Extra Supermarket's bank account, as has been done recently. 1/31 Tr, pp 124:15-20, 125:21-24, 126:5-11 and PEx 30.
66. On January 8, 2013, defendant Yusuf spoke to a 15 year accounting employee at the Plaza Extra Sion Farm store, Wadda Charriez, who deals with payroll and other central accounting operations at this store. 1/25 Tr, pp 181:24-183:6.
67. She was described by an accountant hired by Yusuf, John Gaffney, as being a "very good worker" and "excellent at her job." 1/31 Tr, p 94:2-6.
68. Despite this fact, Yusuf told Charriez he thought she was given a bonus because the Hamed family was trying to "buy [her]." 1/25 Tr, pp 182:22-183:6.

69. In fact, it was Yusuf Yusuf who had decided to give Charriez a larger bonus, not any member of the Hamed family. 1/25 Tr, pp 184:3 to 185:2.
70. Despite this fact, Fathi Yusuf told Charriez she was fired and he threatened to expose her for stealing if she challenged her firing -- which he stated would render her ineffectual as a witness in "court." 1/25 Tr, p 185:6-16.
71. Because the Hamed sons were co-managers of the Plaza Extra Sion Farm store, Wally and Mafi Hamed, had not been consulted about this termination of a key employee Mafi called Charriez and told her to return to work. 1/25 Tr, pp 185:17-186:8.
72. Mafi Hamed did so because in the past decisions to fire key store employees were always discussed between a Hamed and a Yusuf representative before a decision was made. 1/25 Tr, p 179:4-24.
73. Yusuf Yusuf, the Yusuf son who jointly manages the Sion Farm store with Mafi and Wally Hamed, acknowledged that he did not consult the Hameds before his father told Charriez that she was fired. He testified that he did not need to do so, even though he admitted that Mafi Hamed was an equal manager in the Sion Farm store. 1/25 Tr, pp 166:3-20; also 1/31 Tr. pp 33:7-17; 39:3-20, 40:20-41:10.
74. On January 9, 2013, Charriez returned to work at the Plaza Extra Sion Farm store as instructed by Mafi Hamed. 1/25 Tr, pp 164:19-165:13.
75. Yusuf was present and started screaming at Charriez, telling her to leave or he would call the police. 1/25 Tr, pp 186:9:-187:15.
76. Yusuf also told the two Hamed sons who jointly manage the Plaza Extra Sion Farm store that they both they were "fired" and that they must leave the store at once. 1/25 Tr, pp 94:1-95:2 and 187:12-19.
77. Yusuf then called the police to the store. 1/25 Tr, pp 94:5-25.
78. When Charriez and the Hamed sons would not leave the store, Yusuf demanded that the police officers "immediately arrest" them and remove them from the store. 1/25 Tr, pp 94:1-95:3.
79. Yusuf stated that if the officers did not do so, he would immediately "close the Plaza Supermarket store" 1/25 Tr, p 94:9-95:2, 164:19-165:18, 187:12-15 .
80. No witness contradicted this testimony about what Yusuf said on January 9th, which the Court thus accepts as established facts.
81. Indeed, Mike Yusuf, who was present, acknowledged hearing his father threaten to close the store, which his father had also said he would do on other occasions as well. 1/25 Tr, pp 253:25-254-8.
82. The Hamed manager in the St. Thomas store, Waheed Hamed, also testified that Yusuf would yell in front of store employees that he was firing the Hamed brothers and closing the store, causing these employees to become afraid of losing their jobs. 1/25 Tr, p 149:20 - 150:18.

83. Another Plaza Extra Supermarket employee who works in the St. Thomas store, Kareema Dorsett, also testified that Yusuf has told her he may close the store, which she reported to the Hamed manager because she was worried about losing her job that she needed to support her family. 1/25 Tr, pp 158:18-159:12.
84. Charriez remains employed at Plaza Extra, but she testified that she works under a great deal of stress because of the situation. 1/25 Tr, pp 187:22-188:8.
85. The Court heard conflicting testimony about whether Charriez had properly reported her hours, but this issue is not a determination for this Court to make in these hearings.
86. The Court finds Charriez's attempted discharge is relevant to the request for injunctive relief, however, as it shows (1) the breakdown that has occurred in the Hamed-Yusuf joint management of the Plaza Extra stores and (2) the inappropriate behavior by Yusuf in dealing with store employees.
87. The Court also heard conflicting testimony about whether there were problems in the current operation of the stores regarding the payment of vendors and the purchasing of inventory, particularly in the St. Thomas store. Compare 1/25 Tr, p 143:17-146:19 with 1/25 Tr, p 228:23-229:9 and DEx 11 and 12.
88. The Court heard conflicting testimony about two "accountants" being hired by Yusuf, one Yusuf's nephew, with conflicting testimony being given about both their roles in the business. 1/25 Tr, pp 69:17-73:24 and 1/31 Tr, pp 52:2-10, 54:21-55:10, 56:1-19, 63:14-64:7; 68:17-69:3, 95:11-96:8, 103:13-104:23 and 109:14-110:11.
89. The Court heard conflicting testimony about disputes regarding what tax returns need to be filed to conclude the criminal case, as none have been filed since the criminal case was initiated. 1/25 Tr, pp 134:15 to 136:22; 242:16-245:5.
90. The conflicting testimony about the operation of the stores, the retention of these two "accountants" and the issues related to the filing of tax returns amply demonstrate the tension that now exists between the Hamed and Yusuf interests, which has a negative impact on the current operation of the three Plaza Extra Supermarkets.
91. No profits have been distributed from the "profits" account now at Banco Popular since the criminal indictment was issued -- with a current balance in that account being in excess of \$43 million. 1/25 Tr, p 41:5-25; PEx 26.
92. Those Plaza Extra profits cannot be removed by any party while the TRO in the criminal case is still in effect. 1/25 Tr, p 119:4-6.
93. However, once the TRO in the criminal case is lifted, those funds could be unilaterally removed by Yusuf, as he has done since mid-August, 2012, with funds from the Plaza Extra Supermarket bank accounts.
94. Absent an injunction issued by this Court, there is nothing the Hamed family can do to prevent a similar removal of some or all of the \$43 million of Plaza Extra funds in these investment accounts by Yusuf. 1/31 Tr, pp 125:21-24, 126:5-11.

95. While the criminal case has not yet been dismissed due to a dispute over the filing of the remaining tax returns (1/25 Tr, pp 134:15 to 136:22; 242:16-245:5) this Court has no control over when the criminal case will be dismissed.

96. The defendants have averred in pleadings before this Court that Yusuf recently diluted his ownership in United down to just 7.5%, arguing on page 11 of the defendants Rule 12 opposition memorandum (PEX 2, p 11) as follows:

Even if the Amended Complaint sufficiently alleges that a "Hamed & Yusuf partnership" exists, the only relief Mohammad Hamed would be entitled to is a fifty percent (50%) share of **Defendant Yusuf's 7.5% ownership of Defendant United's outstanding stocks.** (Emphasis added.)

97. The Court finds that this allegation raised by the defendants creates an inference that Yusuf is attempting to minimize his exposure to any judgment obtained by Hamed against him arising out of the operations of the three Plaza Extra Supermarkets.

II. Conclusions of Law

The Court hereby makes the following conclusions of law:

1. While plaintiff initially sought a temporary restraining order, because a full evidentiary hearing was held with both parties and counsel present, this matter will be treated as a motion for a preliminary injunction, as requested by the defendants.
2. As set forth by the Virgin Islands Supreme Court in *Petrus v. Queen Charlotte Hotel Corp.*, 2012 WL 1313744, at *3 (VI. Apr. 10, 2012), before this Court can issue a preliminary injunction, it must consider four factors:
 - (1) whether the movant has shown a reasonable probability of success on the merits;
 - (2) whether the movant will be irreparable 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.
3. In considering these four factors, this Court considers the testimony and other evidence presented by the parties.
4. To the extent that parties made statements in prior court filings in this case, they are barred from taking positions inconsistent with those statements under the doctrine of judicial admissions. *Berkeley Inv. Group, Ltd. v. Colkitt*, 455 F.3d 195, 211 n. 20 (3d Cir. 2006)); see also *Parilla v. IAP Worldwide Serv., VI, Inc.*, 368 F.3d 269, 275 (3d Cir. 2004).
5. Similarly, party admissions against interest in other proceedings, which this Court admitted into evidence, are admissible pursuant to Rule 801(d) of the Federal Rules of Evidence, which are applicable to this Court. See *Virgin Islands v.*

Toussaint, 2011 WL 3875802, at *2 (V.I.Super. 2011) (Footnote 7 provides in part "The Federal Rules of Evidence apply to matters before this Court"); see also *Terrell v. Coral World*, S.Ct. No.2010-0058, at 7 n.7 (V.I. July 20, 2011) ("[T]he Federal Rules of Evidence ... have been recently adopted by the Legislature to replace the Uniform Rules of Evidence....").

6. This Court can also take judicial notice of certain facts under Rule 201 of the Federal Rules of Evidence. The Court took such notice at the hearings.

A. Probability of Success on the Merits Regarding the Partnership

7. This case involves a claim by the plaintiff, Mohammad Hamed ("Hamed") that he formed a partnership in the mid-1980's with Fathi Yusuf ("Yusuf") to own and operate the Plaza Extra Supermarket at Sion Farm, St. Croix, which partnership operations were subsequently expanded to two other locations, one in St. Thomas and one in the west end of St. Croix.
8. Partnerships are interpreted pursuant to Title 26 of the Virgin Islands Code, which is the Uniform Partnership Act ("UPA") as adopted by the Virgin Islands Legislature.
9. While the current rights and duties of partners are covered by the 1998 amendments to the Title 26 implementation of the UPA, the issues related to the formation of a partnership in the Virgin Islands prior to 1998 is interpreted under the 1914 version of the Uniform Partnership Act codified by statute in this jurisdiction in Title 26 (main volume). *Harrison v. Bornn, Bornn & Handy*, 200 F.R.D. 509, 514 (D.V.I. 2001).
10. The version of the UPA in effect prior to 1998, 26 V.I.C. §21 provided:

§ 21. Partnership defined

(a) A partnership is an association of two or more persons to carry on as co-owners a business for profit.

11. The version of the UPA in effect prior to 1998, 26 V.I.C. §22 provided:

§ 22. Rules for determining the existence of a partnership

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)

12. The fact that profit-sharing is a critical factor in determining the existence of a partnership is illustrated by the sole decision in this jurisdiction identifying specific factors to be considered as to the formation of a partnership, where the court considered (1) whether actual business operations ever existed and (2) whether a *fixed formula for profit sharing existed*. *Addie v. Kjaer*, Civ. No. 2004-135, 2011 WL 797402, at *3 (D.V.I. Mar. 1, 2011).
13. This Court finds that the plaintiff has met his burden of showing a reasonable probability of success on the merits because:
 - (1) In demonstrating that there is a partnership between himself and Yusuf in the operation of the three Plaza Extra supermarkets in the Virgin Islands under the pre-

1998 version of the UPA, as it is undisputed that the plaintiff Hamed and Yusuf agreed to share the profits from the grocery business that became known as Plaza Extra Supermarket and then did in fact share those profits 50/50, which creates prima facie evidence of a partnership pursuant to section 22.

(2) Once the sharing of profits is shown, it is defendants' burden to show to a preponderance of the evidence that a partnership was not formed. *DeMarchis v. D'Amico*, 637 A.2d 1029, 1034 (Pa. Super. 1994) (same UPA provision).¹

(3) Defendants have not demonstrated that the various non-dispositive factors regarding partnership formation are absent. Courts look to a variety of traditional factors in determining whether a partnership was or was not formed, such as the intent to form a partnership, the sharing of profits and losses, joint management of the business, the sharing of risks and responsibilities, contributions of capital, whether the agreement was for an indefinite duration and similar factors. *Ziegler v. Dahl*, 691 N.W.2d 271, 277 (N.D. 2005); *Southex Exhibitions, Inc. v. Rhode Island Builders Ass'n., Inc.*, 279 F.3d 94, 99 (1st Cir. 2002) (An agreement to do business together with no fixed termination date is indicative of a partnership arrangement).

(4) This prima facie showing by Hamed that a partnership existed was not rebutted by the defendants to a preponderance of the evidence based upon a review of these traditional partnership factors.

(5) To the contrary, the Court finds that even without that presumption, plaintiff has demonstrated that many of the traditional factors courts consider in determining the existence of a partnership are present here. In this regard, in addition to proving that the parties intended to share and did share the net profits of the Plaza Extra grocery business, the plaintiff has demonstrated by a clear preponderance of the evidence that the other traditional aspects of a partnership also exist here, as set forth in the findings of fact, including (1) Hamed and Yusuf joined together with the intent to establish a partnership to operate a supermarket, (2) for their common benefit, (3) with each contributing funds and services to start the business, (4) for an indefinite

¹ The Court stated:

In determining whether a partnership exists [this section] provides that '[t]he 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 ...' In the instant case, the trial court found that \$40,000.00 was withdrawn from an investment account containing proceeds of the business and appellants received \$20,000.00 of that money. **The trial court was required to view this fact as *prima facie* evidence that a partnership existed between [the parties] for the operation of the automotive repair business, which if unrebutted, would remain sufficient to establish the existence of a partnership.** Once the evidence of a profit distribution was introduced, the burden of proof shifted to . . . the party denying the partnership's existence, to show that the payment was *not* a profit distribution, or that a partnership did not exist. (Emphasis added). *Id.*

period of time, (5) jointly sharing the risks and losses of the business and (6) jointly managing the supermarket business known as Plaza Extra.²

14. Thus, even if the amended version of the UPA adopted by the Legislature in 1998 were applicable regarding the formation of this partnership, which did not adopt the "prima facie evidence" standard found in the 1914 UPA,³ this Court finds that the plaintiff still has met the required showing that there is a reasonable probability of success on the merits in demonstrating that there is a partnership between himself and Yusuf in the operation of the three Plaza Extra supermarkets based on the traditional factors courts consider in determining that a partnership exists.
15. While defendants argue that Hamed and Yusuf only formed a joint venture and not a partnership, a joint venture is analyzed in the same manner as a partnership under the law of the Virgin Islands. It is subject to, and interpreted under the UPA. *Boudreaux v. Sandstone Grp.*, No. CIV. 1014/1991, 1997 WL 289867, at *6 (Terr. V.I. May 16, 1997).
16. Moreover, even if a joint venture were different from a partnership, the Court finds that the facts in the record make it clear that the parties intended to and did form a partnership rather than a joint venture based on the analysis set forth above.
17. Indeed, the Court finds that the recent averments submitted by Yusuf, who did not testify at the hearing, that the parties formed a joint venture and not a partnership are not credible based on the evidence before this Court, including the multiple admissions made by Yusuf over many years before this litigation was filed that a partnership has existed since 1986, including the notice of dissolution of partnership that was given by Yusuf's lawyer to Hamed regarding his partnership with Hamed in the three Plaza Extra Supermarkets.

² Cases from other jurisdictions list a variety of factors that might be considered -- and those lists vary widely because they are all "examples." Plaintiff has satisfied many of them. In Illinois the plaintiff must show that the parties (1) joined together to carry on a trade or venture, (2) for their common benefit, (3) with each contributing property or services to the enterprise, and (4) having a community of interest in the profits. *Landers-Scelfo v. Corp. Office Sys., Inc.*, 827 N.E.2d 1051, 1057-58 (Ill. App Ct. 2005). New York has a long list of factors that can be considered: (1) sharing of profits; (2) sharing of losses; (3) ownership of partnership assets; (4) joint management and control; (5) joint liability to creditors; (6) intention of the parties; (7) compensation; (8) contribution of capital; and (9) loans to the organization. *Murray v. Murray*, 2011 WL 3631310, at *3 (NY Sup. Ct. July 22, 2011). In Texas, to establish a partnership a plaintiff must show (1) an agreement, express or implied, among the members of the group; (2) a common purpose to be carried out by the group; (3) a community of pecuniary interest in that purpose, among the members; and (4) an equal right to a voice in the direction of the enterprise ("equal right of control"). *Burchinal v. PJ Trailers-Seminole Mgmt. Co., LLC*, 372 S.W.3d 200, 215-16 (Tex. App.--Texarkana 2012).

³ As amended, 26 V.I.C. §22 still provides that one "who receives a share of the profits of a business **is presumed to be a partner** in the business. . . ." (Emphasis added).

18. While defendants complain that there is no written partnership agreement, there is no statutory requirement in Title 26 that such agreements be in writing. Likewise, partnerships are deemed to be "at will" agreements, subject to dissolution by either partner at any time. Thus, partnership agreements are not within the Statute of Frauds and need not be in writing. *Smith v. Robson*, 44 V.I. 56, 2001 WL 1464773, at *3 (Terr. V.I. June 26, 2001.)⁴
19. Moreover, even if the Statute of Frauds were applicable to the formation of a partnership, the doctrine of part performance would render it inapplicable here as the parties now have operated this partnership for over 25 years, so that the Statute of Frauds defense would no longer be available. *Id.*, citing *Birnbaum v. Zenda*, 15 V.I. 329 (Terr.Ct. 1978). Even partial performance takes a case out of the Statute 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).
20. While the defendants argue that the parties have used the corporate form of United Corporation to operate their business, Yusuf admitted that the use of United did not mean that Hamed was not his partner and in reality Hamed was his partner in the Plaza Extra Supermarkets.
21. Based on Yusuf's own admissions, the Court concludes that United's involvement in the operations of the partnership does not rebut the fact that a partnership existed. *McDonald v. McDonald*, 192 N.W.2d 903, 908 (Wis. 1972); *Granik v. Perry*, 418 F.2d 832, 836 (5th Cir. 1969) ("The fact that joint adventurers may determine to carry out the purpose of the agreement through the medium of a corporation does not change the essential nature of the relationship"); *Jolin v. Oster*, 172 N.W.2d 12 (1969) (corporation was vehicle for conducting the business of a partnership or joint venture); and *Sheridan Healthcorp, Inc. v. Amko*, 993 So.2d 167, 170 (Fla. Dist. Ct. App 2008) (fact that partner elected to conduct the partnership through the use of a corporate form does not change the essential nature of the relationship).
22. Indeed, where one partner assumes the responsibility for obtaining or filing papers as part of his share of partnership responsibilities, as Yusuf did here, the fact that he does not place those papers in the partnership's name is not in any way dispositive in the determination of the existence of a partnership. *Al-Yassin v. Al-Yassin*, 2004 WL 625757 (Cal. Ct. App Mar. 30, 2004)⁵ and *Mardanlou v. Ghaffarian*, 135 P.3d

⁴ Also, as noted in *Smith*, although an exception to this may exist with regard to partnerships to own real property, *Fountain Valley Corp. v. Wells*, 98 F.R.D. 679 (D.V.I. 1983), plaintiff makes no claims with regard to real property here, so the Court need not address this issue.

⁵ While the defendants try to distinguish *Al-Yassin*, they are unsuccessful as the case closely tracks the facts in the present case. There, two brothers went into business together, with one brother filing all of the official government filings. While telling the other brother that they are partners and taking the second brother's money, the first brother filed paperwork showing himself to be the owner. When the second brother

904 (Utah Ct. App 2006)(questioned on other issues). Thus, the absence of partnership K-1's as being dispositive proof of a lack of partnership can be and has been rejected by reviewing courts -- especially where one of the partners does the business of the operation and controls such filings. *B2B CFO Partners, LLC v. Kaufman*, 856 F.Supp.2d 1084, 1094-1095 (D.Ariz. 2012). Documents such as permits, applications for insurance, the application for a service mark or trade name or W-2's in one partner's name do not contradict the existence of a partnership as a matter of law. *Malone v. Patel*, 2012 WL 1142251, 18-21 (Tex. App.—Houston [1 Dist.] Apr. 5, 2012).

23. In summary, the facts in the record before the Court demonstrate that the plaintiff is likely to prevail on his claim that a partnership exists between himself and Yusuf regarding the three Plaza Extra Supermarkets.

B. Irreparable Harm

24. Having established that he is likely to succeed on the merits regarding the existence of a partnership in the Plaza Extra Supermarkets, Hamed is entitled to 50/50 share in the profits of the partnership business -- as well as protection of his "equal rights in the management and conduct of the partnership business" pursuant to 26 V.I.C. §71 (b) and (f), as amended in 1998.⁶

25. This Court has statutory authority to protect these partnership rights by the issuance of equitable relief (*i.e.*, injunctive relief) if necessary to enforce the partner's rights granted by 26 V.I.C. §71. See 26 V.I.C. § 75(b)(2).

26. In determining whether the plaintiff will suffer irreparable harm if injunctive relief is not granted, the harm anticipated need not be fatal to the business. To establish irreparable harm,

a plaintiff need not demonstrate that the denial of injunctive relief will be *fatal* to its business. It is usually enough if the plaintiff shows that its legal remedies are inadequate. If the plaintiff suffers a **substantial injury that is not accurately measurable or adequately compensable by money damages**, irreparable harm is a natural sequel." *Scarcelli v. Gleichman*, 2012 WL 1430555, at *4 (D. Me. Apr. 25, 2012)(citing *Ross-Simons of Warwick, Inc. v. Baccarat, Inc.*, 102 F.3d 12, 18-19 (1st Cir.1996) (internal citations omitted). (Emphasis added).

27. When considering "irreparable harm" regarding those rights in the context of a closely held partnership, relief is appropriate at "preliminary stages" where the parties have a long personal and family history and dispute whether what was formed was partnership or joint venture -- particularly where there is "significant animosity between the parties" and one is trying to exclude the other partner from

sought his partnership share, the first brother argued that the second brother was not on any of the filed "official" forms. *Id.* at *1. The *Al-Yassin* court rejected this argument. *Id.*

⁶ The prior version of Title 26 had a similar provision codified at §71(5).

control of the business. *Health & Body Store v. JustBrand Ltd.*, 2012 WL 4006041, at *5 (E.D. Pa. Sept. 11, 2012).⁷

28. In a partnership, diversion of revenue to accounts controlled only by one party can cause irreparable harm if funds are removed without explanation of what was done with them, as occurred here, indicating the possibility that all such funds can be removed from these same accounts again and possibly be removed from the jurisdiction of the court. *Health & Body Store, supra* at *4.⁸
29. The Court finds irreparable harm based on that fact that over \$3,000,000 in partnership funds were already diverted by Yusuf from the partnership account, which continued even after the injunction hearings, without any explanation of where the funds are except to the extent they have been invested in an unrelated mattress business, after initially claiming the funds had been used to buy real property in the Virgin Islands. These facts, including the initial attempt to conceal the true facts from the Court, create the reasonable inference that funds may be removed in the future from the jurisdiction, rendering the collectability of a money judgment questionable. *Allstate Ins. Co. v. TMR Medicbill Inc.*, 2000 WL 34011895, at *10 (E.D.N.Y. July 13, 2000); *Republic of the Philippines v. Marcos*, 806 F.2d 344, 354-55 (2d Cir. 1986).
30. Management rights can also be unique and irreplaceable, denial of which rights cannot be adequately compensated by an award of monetary damages, warranting injunctive relief. *Sonwalkar v. St. Luke's Sugar Land P'ship, L.L.P.* 2012 WL 3525384 (Tex. App.—Houston [1 Dist.] Aug. 16, 2012). The Court finds that there has been interference with Hamed's management rights based upon the record before it and that there will be irreparable harm based on the reasonable inference that there will be additional interference with such management rights in the immediate future.
31. As also noted by the Third Circuit, "[g]rounds for irreparable injury include loss of control of reputation, loss of trade and loss of goodwill." *S & R Corp. v. Jiffy Lube Intern., Inc.*, 968 F.2d 371, 378 (3d Cir. 1992) (citing *Opticians Ass'n of America v. Indep. Opticians of America*, 920 F.2d 187, 195 (3d Cir.1990)). The Court finds

⁷ The court in that similar case applied two Third Circuit decisions where there was no written agreement governing the respective rights of the parties. The court found irreparable harm when one party tried to exclude the other partner from the business.

⁸ The court in that same case noted:

Defendants are also diverting revenue to an account which they exclusively control. Under these circumstances . . . Plaintiffs have made a strong showing that at trial they are likely to establish Defendants' breach of their fiduciary duty of loyalty. See *Clement v. Clement*, 436 Pa. 466, 260 A.2d 728, 729 (Pa.1970) (self-dealing and diversion of partnership funds constitutes a breach of fiduciary duty); cf. 15 Pa.C.S. § 8331(5) ("All partners have equal rights in the management and conduct of the partnership business."). *Id.* at * 4.

irreparable harm based on a reasonable inference that absent relief, it is likely that a loss of control of reputation, loss of trade and loss of goodwill will occur.

32. Unilateral interference with employee relationships may also raise an inference of irreparable harm if not addressed by the Court. *Sheridan Broad. Networks, Inc. v. NBN Broad., Inc.*, 693 A.2d 989 (Pa. Super. Ct. 1997).⁹ Such interference has occurred here and is likely to continue absent injunctive relief being entered.
33. Based on the findings made by this Court and the applicable law, this Court finds that the plaintiff has demonstrated that he will be irreparably harmed if a preliminary injunction is not issued for multiple reasons, as follows:

(1) Hamed's statutory right to participate in the management of the partnership business will be jeopardized, particularly since Yusuf is now asserting that Hamed has no rights in the business other than a claim for 50% of the profits, which exclusion from the partnership business cannot be made whole by an award of monetary damages;

(2) The continued day-to-day operation of the partnership business will be jeopardized by the erratic behavior of Yusuf in dealing with the partnership and the partnership employees, as evidenced by the events that took place on January 9th – when the police were called to the Sion Farm store – damaging its good will and reputation; which behavior is likely to continue if injunctive relief is not granted;

(3) The long-term operation of the partnership business is also currently in jeopardy, as Yusuf has threatened to close the business on several occasions, attempted to fire the Hamed managers and threatened at least one other management employee, all which would cause irreparable harm if allowed to continue;

(4) Hamed's statutory right to his share of the partnership profits will be jeopardized by the unchecked ability of Yusuf to divert those funds from the partnership bank accounts and brokerage accounts to accounts beyond the control of the partnership, which Yusuf has already done without Hamed's consent, removing almost \$3,000,00 before the hearings in January and then continuing to remove over \$100,000 after the hearings (again without Hamed's consent), in direct violation of Yusuf's fiduciary duty to the partnership;

(5) There is a clear risk of a monetary judgment being uncollectible by the removal of a significant portion of funds from the business, so that Hamed's right to such funds may likely be uncollectible, as (1) Yusuf has previously diverted funds from the reach of Hamed (2) he has invested partnership money in unrelated ventures, like a mattress company, using other names and (3) he has

⁹ We conclude that the lower court had a reasonable basis to conclude that NBN's interference with employee relationships would irreparably harm Sheridan. *Sovereign, supra*; *John G. Bryant Co., supra* (the unwarranted interference with employee relationships constitutes irreparable harm). *Sheridan*, 693 A.2d at 995.

now given away the bulk of his interest in the United Corporation by transferring it to other family members, significantly diluting his own assets.

C. Balancing of Interests

34. Balancing the parties' interests and potential hardships requires that neither party have the right to exclude the other from any part of the business. *Health & Body Store* 2012 WL 4006041, at *5-6.¹⁰
35. In this regard, there is no greater hardship to Yusuf or United in granting injunctive relief, as the Court is simply directing that the status quo of the Plaza Extra Supermarket operations be maintained as they have been for the last 25 years prior to the current disputes that began just prior to this litigation. See, *Opticians Ass'n of America v. Independent Opticians of America*, 920 F.2d 187, 197 (3rd Cir. 1990)(balancing harm is to maintain status quo by returning to the last "peaceable noncontested status of the parties").

D. Public Interest

36. Regarding the public interest, this case involves three large supermarkets which affect the employment of some 600 Virgin Islanders. Enforcing statutory rights and issuing an injunction to preserve the continued operation of these three stores as well as civility in the work place is certainly in the public's interest.

¹⁰ The Court stated:

Balancing the parties' interests and potential hardships requires that **neither party have the right to exclude the other from any part of the business**, including the Websites, bank accounts, vendor lists, and other proprietary information of the business. Under normal circumstances, the Court would leave it to the parties to effectuate and maintain the business in this fashion through the remainder of this litigation. However, given the current toxic relationship between the parties, directing them to interact for the betterment of HBS while this litigation continues raises serious concerns.

Although this case is only in its preliminary stages, it is clear that there is significant animosity between the parties. Personal and familial issues underlie the parties' business relationship dating back to Zelenko's childhood relationship with Bruce Singer, and his assumption of control....

The circumstances described raise a substantial concern that the parties will be unable to work cooperatively, and that the joint venture will suffer severely as a result. *Id.*

E. Appropriate Relief

Injunctive relief is appropriate to preserve the statutorily defined status quo. Pending the outcome of this matter, Hamed and Yusuf (and their designated representatives) are directed to observe the status quo as follows:

- a) All normal operations of the three Plaza Extra Supermarket stores shall continue as they have for the past 25 years, with Hamed and Yusuf (or their designated representatives) jointly managing the Plaza Extra Supermarket operations, without any unilateral changes of management, employees, methods or activities.
- b) No funds will be disbursed from the supermarket operations accounts without the consent of both Hamed and Yusuf (or their designated representatives), with a signature required on all checks from one of the Hamed representatives and one of the Yusuf representatives. A copy of this order will be provided to the banks holding those funds.
- c) No funds will be removed from the Banco Popular Securities investment account (containing approximately \$43 million at the current time) without the consent of Hamed and Yusuf (or their designated representative). A copy of this order will be provided to any firm holding those funds.
- d) Defendants Yusuf and United will return all funds removed from the partnership bank accounts without Hamed's consent, including the \$2.7 million and the approximately \$365,000 paid to counsel as evidenced by Plaintiff's Hearing Exhibits 13, 15 and 30.
- e) Because there is over \$43 million in partnership profits that are frozen by this Court's order, the need for a bond to protect the plaintiff's partnership rights as provided by statute, is minimal. In this regard, as the Court has made a finding that a partnership exists and that a significant amount of funds exists in what the Court has now made "controlled" accounts, it is clear that a portion of the partnership's significant assets are "placed in escrow" and Hamed's portion serves as additional bond. See, e.g., *Scarcelli v. Gleichman*, 2012 WL 1430555, at *6 ("the Court concludes that it need not require Plaintiff to post any additional security. In light of the escrow established by this injunction, the Court is satisfied that the escrowed amounts would pay any costs and damages should it later be determined that Defendant Gleichman was wrongfully enjoined or restrained by this Order.") The Court finds that a bond of \$5,000 in addition to the escrowed funds is sufficient under the circumstances. The Plaintiff is directed to post a \$5,000 bond with the Clerk of the Court forthwith, providing notice of the posting to the defendants.

Dated:

HONORABLE DOUGLAS A. BRADY
JUDGE, SUPERIOR COURT

ATTEST: VENETIA VELAZQUEZ
Clerk of Court

By: Deputy Clerk

12

RECORDED
THE VIRGIN ISLANDS
SUPREME COURT

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

13 MAR -4 P4:57

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

CIVIL NO. SX-12-CV-370

DEFENDANTS' NOTICE OF FILING CRIMINAL INDICTMENT

The Court in this action has been respectfully requested to take judicial notice of the proceedings in a criminal action styled, *UNITED STATES OF AMERICA and GOVERNMENT OF THE VIRGIN ISLANDS v. FATHI YUSUF, WALEED MOHAMMAD HAMED, WAHEED MOHAMMED, MAHER FATHI YUSUF, NEJEH FATHI YUSUF, ISAM YUSUF and UNITED CORPORATION*, Case No. 2005-15F/B, pending in the District Court of the Virgin Islands, Division of St. Croix (the "Criminal Action"). (See Jan. 18, 2013 Motion for Judicial Notice of Adjudicative Facts).

Related thereto, Defendants hereby provide notice of the filing in this action of the Third Superseding Indictment dated September 8, 2004 (the "Indictment"), a copy of which is attached hereto.

The Indictment is the government's operative pleading in the Criminal Action, and serves as the basis of various subsequent proceedings in that action, including the execution of a Plea Agreement dated February 26, 2010 (D.V.I. Doc. # 1248 in the Criminal Action) wherein the parties acknowledged the factual and legal elements of the charges to which they agreed to plead. In addition, the Indictment contains certain adjudicative facts that are relevant to matters at issue in the present action.

Hameds v. Yusuf, CIVIL NO. SX-12-CV-370
Defendants' Notice of Filing Criminal Indictment

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on March 4, 2013, a true and accurate copy of the foregoing was forwarded via email to the following: *Joel H. Holt, Esq.*, 2132 Company St., St. Croix, VI 00820, holtvi@aol.com; *Carl J. Hartmann III, Esq.*, 5000 Estate Coakley Bay, L-6, Christiansted, VI 00820, carl@carlhartmann.com; and *K. Glenda Cameron, Esq.*, Law Offices of K.G. Cameron, 2006 Eastern Suburb, Suite 101, St. Croix, VI 00820, kglenda@cameronlawvi.com.

Nizar A. DeWood, Esq.

9/18/04

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

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

v.

FATHI YUSUF MOHAMAD YUSUF,
aka Fathi Yusuf,
WALEED MOHAMMAD HAMED,
aka Wally Hamed,
WAHEED MOHAMMED HAMED,
aka Willie Hamed,
MAHER FATHI YUSUF,
aka Mike Yusuf,
ISAM MOHAMAD YOUSUF,
aka Sam Yousuf,
NEJEH FATHI YUSUF and
UNITED CORPORATION,
dba Plaza Extra,

Defendants.

THIRD SUPERSEDING INDICTMENT

CRIMINAL NO. 2003-147

18 U.S.C. § 371
CONSPIRACY TO COMMIT MAIL FRAUD
STRUCTURE FINANCIAL TRANSACTIONS

18 U.S.C. § 1956(b)
CONSPIRACY TO LAUNDER MONEY

18 U.S.C. § 1341
MAIL FRAUD

18 U.S.C. § 1956(a)(2)(B)(i)
MONEY LAUNDERING

26 U.S.C. § 7206(2)
CAUSING FALSE TAX RETURNS

31 U.S.C. § 5324(a)(3)
STRUCTURING FINANCIAL TRANSACTIONS

33 V.I.C. § 1522
CONSPIRACY TO EVADE TAXES

33 V.I.C. § 1525(2)
CAUSING FALSE TAX RETURNS

14 V.I.C. § 605(a)
ENGAGING IN A CRIMINAL ENTERPRISE

14 V.I.C. § 605(d)
CONSPIRACY TO ENGAGE IN A CRIMINAL
ENTERPRISE

18 U.S.C. § 1503
OBSTRUCTION OF JUSTICE

18 U.S.C. § 982
21 U.S.C. § 853
ASSET FORFEITURE

14 V.I.C. § 606
ASSET FORFEITURE

SENTENCING ALLEGATIONS

THE GRAND JURY CHARGES:

GENERAL ALLEGATIONS

At all times relevant to this Indictment:

A. Defendants

1. Defendant UNITED CORPORATION (hereinafter UNITED) was a corporation organized and existing under the laws of the United States Virgin Islands (hereinafter "Virgin Islands") that did business as Plaza Extra (hereinafter "Plaza Extra"). In the mid-1980s, Plaza Extra opened its first store, which was located in St. Croix. In 1993, Plaza Extra opened a second store, which was located in St. Thomas. In 2000, Plaza Extra opened a third store, which also was located in St. Croix. Plaza Extra sold groceries and other merchandise, which was purchased from wholesalers and other suppliers located in states, territories and countries outside of the Virgin Islands. From 1996 through 2001, Plaza Extra's sales totaled over \$300 million.

2. Defendant FATHI YUSUF MOHAMAD YUSUF (hereinafter FATHI YUSUF) is a citizen of the United States and a resident of the Virgin Islands. FATHI YUSUF was an owner, director and officer of defendant UNITED and participated in the operation of Plaza Extra. FATHI YUSUF's duties and responsibilities included management of the business and conduct of the affairs of the corporation. FATHI YUSUF acted with the intent to benefit both himself and UNITED in executing his duties and responsibilities.

3. Defendant WALEED MOHAMMAD HAMED (hereinafter WALEED HAMED) is a citizen of the United States and a resident of the Virgin Islands. WALEED HAMED was employed by UNITED as the manager of a Plaza Extra supermarket in St. Croix. WALEED HAMED's duties and responsibilities included the overall operation and financial management

of the store. WALEED HAMED acted with the intent to benefit both himself and UNITED in executing his duties and responsibilities.

4. Defendant WAHEED MOHAMMED HAMED (hereinafter WAHEED HAMED) is a citizen of the United States, a resident of the Virgin Islands, and the brother of WALEED HAMED. WAHEED HAMED was employed by UNITED as the manager of the Plaza Extra supermarket in St. Thomas. WAHEED HAMED's duties and responsibilities included the overall operation and financial management of the store. WAHEED HAMED acted with the intent to benefit both himself and UNITED in executing his duties and responsibilities.

5. Defendant MAHER FATHI YUSUF (hereinafter MAHER YUSUF) is a citizen of the United States, a resident of the Virgin Islands, and the son of defendant FATHI YUSUF. MAHER YUSUF was an owner, director and officer of UNITED and participated in the operation of Plaza Extra. MAHER YUSUF's duties and responsibilities included management of the business and conduct of the affairs of the corporation. MAHER YUSUF acted with the intent to benefit both himself and UNITED in executing his duties and responsibilities.

6. Defendant ISAM MOHAMAD YOUSUF (hereinafter ISAM YOUSUF) is a citizen of the United States, a resident of St. Maarten, Netherlands Antilles, and the nephew of defendant FATHI YUSUF. ISAM YOUSUF owns and operates Island Appliances, a company located in St. Maarten that sells appliances and furniture.

7. Defendant NEJEH FATHI YUSUF (hereinafter NEJEH YUSUF) is a citizen of the United States, a resident of the Virgin Islands, and the son of defendant FATHI YUSUF. NEJEH YUSUF was an owner and employee of UNITED and participated in the operation of Plaza Extra. NEJEH YUSUF's duties and responsibilities included management of the business

and conduct of the affairs of the corporation. NEJEH YUSUF acted with the intent to benefit both himself and UNITED in executing his duties and responsibilities.

B. Virgin Islands Tax Revenue Collection

8. The Virgin Islands Code requires Virgin Islands corporations to report their gross receipts to the territorial government and pay a tax of four percent (4%) on such gross receipts. Gross receipts tax returns must be completed under oath subject to penalties for perjury and filed monthly with the Virgin Islands Bureau of Internal Revenue. Gross receipts tax revenue collected from corporations in this manner is deposited into the general fund of the treasury for use by the territory. Defendant UNITED was required to file monthly gross receipts tax returns and to pay taxes on its monthly gross sales receipts.

9. United States law provides that the income-tax laws in force in the United States apply to the Virgin Islands, and that the proceeds of such taxes must be paid to the Virgin Islands.

C. Scheme to Defraud

10. Beginning at least as early as in or about January 1996 and continuing through at least in or about September, 2002, defendants FATHI YUSUF, WALEED HAMED, WAHEED HAMED and UNITED defrauded the Virgin Islands of money in the form of tax revenue, specifically territorial gross receipts taxes as well as corporate income taxes, by failing to report at least \$60 million in Plaza Extra sales on gross receipts tax returns and corporate income tax returns.

11. Plaza Extra customers paid for their purchases with cash, checks, credit cards, food stamps, and other forms of payment. After Plaza Extra's sales receipts were collected each day, the funds typically were transferred to a room in the store often referred to as the "cash room," to which only certain individuals, including the defendants, were permitted access. In the cash room, Plaza Extra employees counted the sales receipts and prepared bank deposit slips for the sales receipts.

12. Defendants FATHI YUSUF, WALEED HAMED, WAHEED HAMED, NEJEH YUSUF, and UNITED directed and caused Plaza Extra employees to withhold from deposit substantial amounts of cash received from sales, typically bills in denominations of \$100, \$50 and \$20. Instead of being deposited into the bank accounts with other sales receipts, this cash was delivered to one of the defendants or placed in a designated safe in the cash room. From 1996 through 2001, tens of millions of dollars in cash was withheld from deposit in this manner and as such, was not reported as gross receipts on tax returns filed by UNITED.

13. In this way, defendants FATHI YUSUF, WALEED HAMED, WAHEED HAMED and UNITED caused the filing of dozens of false monthly gross receipts tax returns, which failed to report the cash withheld from deposit as gross receipts, thereby depriving the Virgin Islands of substantial tax revenue. Defendant UNITED's controller prepared and signed Plaza Extra's monthly gross receipts tax returns, declaring under oath that the returns were true and complete, knowing full well that the returns were false in that they failed to report substantial sales receipts.

14. Defendants FATHI YUSUF, WALEED HAMED, WAHEED HAMED and UNITED also caused the filing of false annual corporate income tax returns of UNITED that failed to report the cash withheld from deposit as sales, thereby depriving the Virgin Islands of substantial tax revenue. Defendant FATHI YUSUF signed UNITED's returns, declaring under oath that the returns were true and complete, knowing full well that the returns were false in that they failed to report substantial sales receipts.

D. Concealment of the Fraud Proceeds

15. The defendants engaged in various efforts to disguise and conceal the illegal scheme and its proceeds. For example, defendants FATHI YUSUF, WAHEED HAMED, MAHER YUSUF, and NEJEH YUSUF purchased and directed and caused Plaza Extra employees and others to purchase cashier's checks, traveler's checks, and money orders with unreported cash, typically from different bank branches and made payable to individuals and entities other than the defendants, in order to disguise the cash as legitimate-appearing financial instruments.

16. Defendants FATHI YUSUF, WAHEED HAMED, MAHER YUSUF, and NEJEH YUSUF also purchased and caused others to purchase checks and money orders, and engaged in and caused others to engage in various cash transactions with banks, in amounts designed to evade the legal requirements that banks keep records and file reports regarding cash transactions with the U.S. Treasury Department.

17. Defendants WALEED HAMED and MAHER YUSUF caused unreported currency to be used to cash the checks of Plaza Extra customers and others in order to disguise the cash as legitimate-appearing financial instruments.

18. Defendants FATHI YUSUF and WALEED HAMED caused the checks and money orders described above to be deposited into foreign bank accounts they controlled. For example, defendants FATHI YUSUF and WALEED HAMED compiled the various checks and money orders obtained with unreported cash and caused them to be transported from the Virgin Islands to the Kingdom of Jordan ("Jordan"), where the funds were deposited into accounts they controlled at Cairo Amman Bank, in Amman, Jordan.

19. Defendants WALEED HAMED and WAHEED HAMED used and caused to be used UNITED corporate checks to purchase cashiers' checks made payable to Plaza Extra suppliers and other entities to create the false appearance that the checks were payments to Plaza Extra suppliers. In fact, these cashier's checks were transported to Amman, Jordan and deposited into accounts at Cairo Amman Bank controlled by defendants FATHI YUSUF and WALEED HAMED.

20. Defendants FATHI YUSUF and WALEED HAMED smuggled and caused to be smuggled millions of dollars of unreported cash from the Virgin Islands to the island of St. Martin, in the French West Indies, where it was deposited into accounts at Banque Francaise Commerciale that they and defendant ISAM YOUSUF controlled.

21. To conceal the transfer of unreported cash to foreign bank accounts, defendants FATHI YUSUF and WALEED HAMED failed to file financial reports with the United States, as required by law. Specifically, FATHI YUSUF and WALEED HAMED failed to file required reports with the U.S. Treasury Department that would have revealed: (a) their transfer of monetary instruments and cash in amounts greater than \$10,000 from the Virgin Islands to foreign countries, including Jordan and St. Martin; and (b) their control over bank accounts in

foreign countries, including Jordan and St. Martin.

E. Filing False Personal Income Tax Returns

22. Defendants FATHI YUSUF, WALEED HAMED and WAHEED HAMED also filed and caused to be filed false personal income tax returns that failed to report and pay tax on the cash and other funds that they diverted from Plaza Extra and transferred to bank accounts they controlled and used for their own personal benefit, including for the construction of lavish and expensive personal residences in the Virgin Islands. FATHI YUSUF, WALEED HAMED and WAHEED HAMED signed their personal returns, declaring under oath that the returns were true and complete, knowing full well that the returns were false in that they failed to report substantial income from funds diverted from Plaza Extra.

COUNT 1
(Conspiracy)

23. The allegations in paragraphs 1 through 21 above are realleged as if set forth in full here.

24. Beginning at least as early as in or about January 1996 and continuing through at least in or about September 2002, in the District of the Virgin Islands and elsewhere, defendants

FATHI YUSUF
WALEED HAMED
WAHEED HAMED
MAHER YUSUF
NEJEH YUSUF
and UNITED

knowingly conspired and agreed with each other and with others known and unknown to the grand jury to:

a. Knowingly and willfully devise and intend to devise a scheme and artifice to defraud and to obtain money and property, specifically money belonging to the Virgin Islands in the form of territorial gross receipts tax revenue, by means of material false and fraudulent pretenses, representations and promises, knowing that the pretenses, representations and promises were false when made, and for the purpose of executing and attempting to execute and in furtherance of the scheme and artifice to defraud and for obtaining money and property by means of material false and fraudulent pretenses, representations and promises, did knowingly cause to be sent and moved by the United States Postal Service, Gross Receipts Monthly Tax Returns, Forms 720 V.I., addressed to the Virgin Islands Bureau of Internal Revenue; in violation of Title 18, United States Code, Section 1341; and

b. Knowingly and for the purpose of evading the reporting and record-keeping requirements of Title 31, United States Code, Section 5313(a) and 5325, and the regulations promulgated thereunder, structure, cause to be structured, assist in the structuring, and attempt to structure and assist in the attempted structuring of financial transactions with one or more domestic financial institutions involving: (i) the issuance and sale of bank checks, bank drafts, cashier's checks, and money orders for \$3,000 or more in currency; and (ii) transactions with financial institutions involving more than \$10,000 of currency; in violation of Title 31, United States Code, Section 5324(a)(3) and (d)(2).

A. Purpose and Object of the Conspiracy

25. It was the purpose and object of the conspiracy for the defendants to unlawfully enrich themselves and the corporations they controlled by engaging in a fraudulent scheme to obtain and conceal money belonging to the Virgin Islands in the form of gross receipts tax revenue.

B. Overt Acts

26. In furtherance of the conspiracy and to effect the objects thereof, in the District of the Virgin Islands and elsewhere, the defendants FATHI YUSUF, WALEED HAMED, WAHEED HAMED, MAHER YUSUF, NEJEH YUSUF, UNITED, and others known and unknown to the grand jury committed and caused to be committed the following overt acts, among others:

a. Beginning in or about January 1996 and continuing through in or about September 2002, defendants FATHI YUSUF, WALEED HAMED, WAHEED HAMED, and NEJEH YUSUF directed and caused Plaza Extra employees to withhold from deposit substantial

amounts of cash received from sales, typically bills in denominations of \$100, \$50 and \$20;

b. Beginning in or about January 1996 and continuing through in or about September 2002, defendants FATHI YUSUF, WALEED HAMED, WAHEED HAMED and UNITED's controller caused the mailing and filing of false monthly gross receipts tax returns for defendant UNITED;

c. Beginning at least as early as in or about July 1996 and continuing at least through in or about January 2000, defendants FATHI YUSUF and WALEED HAMED on numerous occasions transported and caused to be transported tens of thousands of dollars in unreported cash, typically bills in denominations of \$100, \$50 and \$20, from the Virgin Islands to St. Martin;

d. Beginning at least as early as in or about July 1996 and continuing at least through in or about January 2000, defendants FATHI YUSUF, WALEED HAMED and ISAM YOUSUF on numerous occasions deposited unreported cash into accounts they controlled at banks in St. Martin;

e. Beginning on or about July 7, 1998 and continuing through on or about October 15, 1998, on numerous occasions defendant WAHEED HAMED purchased and caused others to purchase cashier's checks and traveler's checks with unreported cash;

f. On or about July 22, 1998, defendant WALEED HAMED transported and caused to be transported approximately 23 checks totaling \$79,205.83 from the U.S. Virgin Islands to Cairo Amman Bank, in Amman, Jordan, where the funds were deposited into an account he controlled;

g. On or about August 4, 1998, defendant WALEED HAMED transported and caused to be transported approximately 60 checks totaling \$237,526.64 from the U.S. Virgin Islands to Cairo Amman Bank, in Amman, Jordan, where the funds were deposited into an account he controlled;

h. Beginning on or about August 7, 1998 and continuing through on or about October 8, 1998, on numerous occasions, defendant MAHER YUSUF purchased and caused others to purchase cashier's checks and bank checks with unreported cash;

i. On or about August 21, 1998, defendants WALEED HAMED and MAHER YUSUF transported and caused to be transported approximately 54 checks totaling \$105,225.97 from the U.S. Virgin Islands to Cairo Amman Bank, in Amman, Jordan, where the funds were deposited into an account controlled by defendant WALEED HAMED;

j. On or about September 1, 1998, defendant FATHI YUSUF transported and caused to be transported approximately 265 checks totaling \$135,880.42 from the U.S. Virgin Islands to Cairo Amman Bank in Amman, Jordan, where the proceeds were deposited into an account he controlled;

k. On or about September 11, 1998, defendant WALEED HAMED transported and caused to be transported approximately 138 checks totaling \$171,042.53 from the U.S. Virgin Islands to Cairo Amman Bank, in Amman, Jordan, where the funds were deposited into an account he controlled;

l. On or about September 25, 1998, defendant FATHI YUSUF transported and caused to be transported approximately 3 checks totaling \$179,468.50, including two bank checks totaling \$150,000 payable to a third party whose endorsement was forged, from the U.S.

Virgin Islands to Cairo Amman Bank in Amman, Jordan, where the proceeds were deposited into an account he controlled;

m. On or about October 23, 1998, defendant FATHI YUSUF transported and caused to be transported approximately 42 checks totaling \$106,092.74 from the U.S. Virgin Islands to Cairo Amman Bank, in Amman, Jordan, where the funds were deposited into an account he controlled;

n. On or about October 23, 1998, defendant WALEED HAMED transported and caused to be transported checks totaling \$100,901.44 from the U.S. Virgin Islands to Cairo Amman Bank, in Amman, Jordan, where the funds were deposited into an account he controlled;

o. On or about December 5, 1998, defendant WALEED HAMED transported and caused to be transported approximately 85 checks totaling \$161,846.15 from the U.S. Virgin Islands to Cairo Amman Bank, in Amman, Jordan, where the funds were deposited into an account he controlled;

p. On or about December 22 and 23, 1998, defendant NEJEH YUSUF purchased checks with unreported cash;

q. On or about January 6, 1999, defendant WALEED HAMED transported and caused to be transported approximately 57 checks totaling \$232,788.69 from the U.S. Virgin Islands to Cairo Amman Bank, in Amman, Jordan, where the funds were deposited into an account he controlled;

r. On or about February 18, 1999, defendant WALEED HAMED transported and caused to be transported approximately 80 checks totaling \$152,425.89 from the U.S. Virgin Islands to Cairo Amman Bank, in Amman, Jordan, where the funds were deposited into an

account he controlled;

s. On or about April 15, 1999, defendant FATHI YUSUF transported and caused to be transported approximately 6 checks totaling \$66,660.39 from the U.S. Virgin Islands to Cairo Amman Bank in Amman, Jordan, where the proceeds were deposited into an account he controlled;

t. On or about May 25, 1999, defendant FATHI YUSUF transported and caused to be transported approximately 8 checks totaling \$439,502.62, including a bank check in the amount of \$179,273.64 payable to and endorsed by a third party who had been deceased for over two years, from the U.S. Virgin Islands to Cairo Amman Bank in Amman, Jordan, where the proceeds were deposited into an account controlled by defendant FATHI YUSUF;

u. On or about August 5, 1999, defendant WALEED HAMED transported and caused to be transported approximately 98 checks totaling \$384,145.40 from the U.S. Virgin Islands to Cairo Amman Bank, in Amman, Jordan, where the funds were deposited into an account he controlled; and

v. On or about April 10, 2000, defendant WALEED HAMED transported and caused to be transported approximately 7 checks totaling \$164,576.54 from the U.S. Virgin Islands to Cairo Amman Bank, in Amman, Jordan, where the funds were deposited into an account he controlled.

All in violation of Title 18, Sections 371 and 3551 *et seq.*

COUNT 2
(Money Laundering Conspiracy)

27. The allegations in paragraphs 1 through 13 and 15 through 21 above are realleged as if set forth in full here.

28. Beginning at least as early as in or about January 1996 and continuing through at least in or about October 2001, in the District of the Virgin Islands and elsewhere, defendants

**FATHI YUSUF
WALEED HAMED
WAHEED HAMED
MAHER YUSUF
ISAM YOUSUF
NEJEH YUSUF
and UNITED**

knowingly conspired and agreed with each other and with others known and unknown to the grand jury to:

a. Conduct and attempt to conduct financial transactions, affecting interstate and foreign commerce, knowing that the property involved in the financial transactions represented the proceeds of some form of unlawful activity, which in fact involved the proceeds of specified unlawful activity, that is, mail fraud in violation of Title 18, United States Code, Section 1341, knowing that the financial transactions were designed in whole and in part to conceal and disguise the nature, location, source, ownership, and control of the proceeds of specified unlawful activity, in violation of Title 18, United States Code, Section 1956(a)(1)(B)(i); and

b. Transport and transfer, and attempt to transport and transfer, monetary instruments and funds from a place in the United States, to and through a place outside the United States, knowing that the monetary instruments and funds involved in the transportation

and transfers represented the proceeds of some form of unlawful activity, and knowing that such transportation and transfers were designed in whole and in part to conceal and disguise the nature, location, source, ownership, and control of the proceeds of a specified unlawful activity, that is, mail fraud, in violation of Title 18, United States Code, Section 1341; in violation of Title 18, United States Code, Section 1956(a)(2)(B)(i).

All in violation of Title 18, Section 1956(h) and 3551 *et seq.*

COUNTS 3 - 43
(Mail Fraud)

29. The allegations of paragraphs 1 through 13 and 15 through 21 are realleged as if fully set forth here.

30. Beginning at least as early as in or about January 1996 and continuing through at least in or about September 2002, in the District of the Virgin Islands and elsewhere, defendants

**FATHI YUSUF
WAHEED HAMED
WALEED HAMED
and UNITED**

and others known and unknown to the grand jury, knowingly and willfully devised and intended to devise a scheme and artifice to defraud and to obtain money and property, specifically money belonging to the Virgin Islands in the form of territorial gross receipts tax revenue, by means of material false and fraudulent pretenses, representations and promises, knowing that the pretenses, representations and promises were false when made, as more particularly described in paragraphs 9 through 12 and 14 through 20 of this Indictment.

31. On or about the dates specified in each count below, the defendants, for the purpose of executing and attempting to execute and in furtherance of the aforesaid scheme and artifice to defraud and for obtaining money and property by means of material false and fraudulent pretenses, representations and promises, did knowingly cause to be sent and moved by the United States Postal Service, at the East End United States Post Office in St. Thomas, Gross Receipts Monthly Tax Returns, Forms 720 V.I., addressed to the Virgin Islands Bureau of Internal Revenue, St. Thomas, Virgin Islands, 00802:

Count	Approximate Date of Mailing	Sales Month
3	09/29/1998	August 1998
4	10/30/1998	September 1998
5	11/27/1998	October 1998
6	12/30/1998	November 1998
7	01/29/1999	December 1998
8	03/01/1999	January 1999
9	03/30/1999	February 1999
10	04/30/1999	March 1999
11	06/01/1999	April 1999
12	06/30/1999	May 1999
13	07/30/1999	June 1999
14	08/30/1999	July 1999
15	09/30/1999	August 1999
16	10/29/1999	September 1999
17	11/30/1999	October 1999
18	12/29/1999	November 1999
19	01/29/2000	December 1999
20	02/29/2000	January 2000
21	03/30/2000	February 2000
22	05/01/2000	March 2000
23	05/31/2000	April 2000
24	06/30/2000	May 2000
25	07/31/2000	June 2000
26	08/30/2000	July 2000
27	10/02/2000	August 2000

Count	Approximate Date of Mailing	Sales Month
28	10/30/2000	September 2000
29	11/30/2000	October 2000
30	01/02/2001	November 2000
31	01/30/2001	December 2000
32	02/28/2001	January 2001
33	03/28/2001	February 2001
34	04/30/2001	March 2001
35	05/30/2001	April 2001
36	07/02/2001	May 2001
37	07/30/2001	June 2001
38	08/28/2001	July 2001
39	10/01/2001	August 2001
40	11/02/2001	September 2001
41	11/30/2001	October 2001
42	01/02/2002	November 2001
43	01/30/2002	December 2001

All in violation of Title 18, United States Code, Sections 1341, 2, and 3551 *et seq.*

COUNTS 44 - 52
(Money Laundering)

32. The allegations in paragraphs 1 through 13 and 15 through 21 are realleged as if fully set forth here.

33. On or about the dates listed in each count below, in the District of the Virgin Islands and elsewhere, the defendants listed below, transported and transferred, and attempted to transport and transfer, monetary instruments and funds in amounts described below from a place in the United States, specifically the United States Virgin Islands, to and through a place outside the United States, specifically Amman, Jordan, knowing that the monetary instruments and funds involved in the transportation and transfer represented the proceeds of some form of unlawful activity and knowing that such transportation and transfer was designed in whole and in part to conceal and disguise the nature, location, source, ownership, and control of the proceeds of a specified unlawful activity, that is, mail fraud, in violation of Title 18, United States Code, Section 1341:

Count	Date	Amount	Defendant
44	09/25/98	\$179,468.50	FATHI YUSUF
45	10/23/98	\$106,092.74	FATHI YUSUF
46	12/05/98	\$161,846.15	WALEED HAMED
47	01/06/99	\$232,788.69	WALEED HAMED
48	02/18/99	\$152,425.89	WALEED HAMED
49	04/15/99	\$66,660.39	FATHI YUSUF
50	05/25/99	\$439,502.62	FATHI YUSUF
51	08/05/99	\$384,145.40	WALEED HAMED
52	04/10/00	\$164,576.54	WALEED HAMED

All in violation of Title 18, United States Code, Sections 1956(a)(2)(B)(i), 2, 3551 *et seq.*

COUNT 53
(Structuring Financial Transactions)

34. The allegations of paragraphs 1 through 21 are realleged as if fully set forth here.

35. Beginning on or about July 7, 1998 and continuing through on or about October 15, 1998, in the District of the Virgin Islands, defendant

WAHEED HAMED

knowingly structured and assisted in structuring, and attempted to structure and assist in structuring, the following transaction with the domestic financial institutions listed below for the purpose of evading the record-keeping and reporting requirements of Title 31, United States Code, Section 5325, and the regulations promulgated thereunder, for transactions involving the issuance and sale of a bank check, bank draft, and cashier's check for \$3,000 or more in currency, by purchasing the following cashier's checks and bank checks with currency, and did so as part of a pattern of illegal activity involving more than \$100,000 in a 12-month period, and while violating another law of the United States, to wit: Title 18, United States Code, Sections 1341 and 1956(h), and Title 26, United States Code, Section 7206(2):

Date	Amount	Financial Institution
07/07/98	\$2,975.00	Scotiabank
07/23/98	\$2,943.00	Scotiabank
07/23/98	\$2,900.00	Scotiabank
07/24/98	\$2,750.00	Scotiabank
07/24/98	\$2,900.00	Scotiabank
07/27/98	\$2,501.56	Scotiabank
07/27/98	\$2,891.61	Scotiabank
07/27/98	\$2,598.98	Scotiabank
07/28/98	\$2,541.01	Banco Popular

Date	Amount	Financial Institution
07/28/98	\$2,781.81	Banco Popular
07/29/98	\$2,768.68	Scotiabank
07/29/98	\$2,898.15	Scotiabank
07/29/98	\$2,819.92	Scotiabank
07/29/98	\$2,967.75	Scotiabank
07/29/98	\$2,644.38	Scotiabank
07/29/98	\$2,777.50	Scotiabank
07/29/98	\$2,998.98	Scotiabank
07/29/98	\$2,981.11	Scotiabank
08/10/98	\$2,801.98	Scotiabank
08/10/98	\$2,784.40	Scotiabank
08/10/98	\$2,998.48	Scotiabank
08/10/98	\$2,862.48	Scotiabank
08/11/98	\$2,862.48	Scotiabank
08/12/98	\$2,784.40	Scotiabank
08/20/98	\$2,950.00	Scotiabank
08/20/98	\$2,777.41	Scotiabank
08/20/98	\$2,991.70	Scotiabank
08/20/98	\$2,698.90	Scotiabank
09/11/98	\$2,858.50	First Bank
09/11/98	\$2,879.98	Scotiabank
09/11/98	\$2,990.05	Scotiabank
09/11/98	\$2,995.48	Scotiabank
10/15/98	\$2,805.00	Scotiabank

Date	Amount	Financial Institution
10/15/98	\$2,999.10	Scotiabank
10/15/98	\$2,899.60	Scotiaban

All in violation of Title 31, United States Code, Sections 5324(a)(3) and (d)(2), and Title 18, United States Code, Sections 2 and 3551 *et seq.*

COUNT 54
(Structuring Financial Transactions)

36. The allegations of paragraphs 1 through 21 are realleged as if fully set forth here.

37. From on or about August 6, 1998 through on or about October 8, 1998, in the District of the Virgin Islands, defendant

MAHER YUSUF

knowingly structured and assisted in structuring, and attempted to structure and assist in structuring, the following transaction with the domestic financial institutions listed below for the purpose of evading the record-keeping and reporting requirements of Title 31, United States Code, Section 5325, and the regulations promulgated thereunder, for transactions involving the issuance and sale of a bank check, bank draft, and cashier's check for \$3,000 or more in currency, by purchasing the following cashier's checks and bank checks with currency, and did so as part of a pattern of illegal activity involving more than \$100,000 in a 12-month period, and while violating another law of the United States, to wit: Title 18, United States Code, Section 1956(h):

Date	Amount	Financial Institution
08/06/98	\$2,400.00	Bank of St. Croix
08/06/98	\$2,500.00	Scotiabank
08/10/98	\$2,990.00	Bank of St. Croix
08/10/98	\$2,891.00	Scotiabank
08/10/98	\$2,794.00	Banco Popular
08/10/98	\$2,661.00	Banco Popular
08/10/98	\$2,665.00	Scotiabank
08/11/98	\$2,480.00	Scotiabank
08/12/98	\$2,123.00	Scotiabank

Date	Amount	Financial Institution
08/19/98	\$2,700.00	Scotiabank
08/27/98	\$2,500.00	Banco Popular
08/27/98	\$2,500.00	Scotiabank
09/04/98	\$2,500.00	Scotiabank
09/04/98	\$2,500.00	Banco Popular
10/05/98	\$2,847.00	Banco Popular
10/05/98	\$2,900.00	Scotiabank
10/07/98	\$2,800.00	Bank of St. Croix
10/07/98	\$2,800.00	Scotiabank
10/08/98	\$2,920.00	Scotiabank

All in violation of Title 31, United States Code, Sections 5324(a)(3) and (d)(2), and Title 18, United States Code, Sections 2 and 3551 *et seq.*

COUNT 55
(Conspiracy to Evade Taxes)

38. The allegations in paragraphs 1 through 22 above are realleged as if set forth in full here.

39. Beginning at least as early as in or about January 1996 and continuing through at least in or about September 2002, in the District of the Virgin Islands and elsewhere, defendants

**FATHI YUSUF
WALEED HAMED
WAHEED HAMED
and UNITED**

knowingly and intentionally combined, conspired, confederated and agreed with each other and with others known and unknown to the grand jury to willfully evade and defeat taxes imposed by the Virgin Islands, to wit gross receipts taxes and corporate and individual income taxes.

A. Purpose and Object of the Conspiracy

40. It was the purpose and object of the conspiracy for the defendants to unlawfully enrich themselves and the corporations they controlled by depriving the Virgin Islands of gross receipts tax revenue and corporate and individual income tax revenue.

B. Overt Acts

41. In furtherance of the conspiracy and to effect the objects thereof, in the District of the Virgin Islands and elsewhere, the defendants FATHI YUSUF, WALEED HAMED, WAHEED HAMED, UNITED, and others known and unknown to the grand jury committed and caused to be committed the overt acts described in paragraphs 26(a) through (v); which are realleged as if set forth in full here, in addition to the following overt acts, among others:

a. Between on or about March 4, 1997 and September 11, 2002, defendant WALEED HAMED caused the filing of false annual individual income tax returns, Forms 1040, in his name for the tax years 1996 through 2001;

b. Between on or about April 11, 1997 and September 30, 2002, defendant FATHI YUSUF caused the filing of false annual individual income tax returns, Forms 1040, in his name for the tax years 1996 through 2001;

c. Between on or about August 14, 1997 and September 18, 2002, defendants FATHI YUSUF, WALEED HAMED, WAHEED HAMED and UNITED caused the filing of false annual corporate income tax returns, Forms 1120 and 1120S, on behalf of defendant UNITED, for the tax years 1996 through 2001; and

d. Between on or about April 17, 1998 and April 17, 2001, defendant WAHEED HAMED caused the filing of false annual individual income tax returns, Forms 1040, in his name for the tax years 1997 through 2000.

All in violation of Title 33, Virgin Islands Code, Section 1522.

COUNTS 56 - 60
(Causing False Tax Returns)

42. On or about the dates listed below, in the District of the Virgin Islands, defendants

**FATHI YUSUF
WALEED HAMED
WAHEED HAMED
and UNITED**

the individuals all being residents of the United States Virgin Islands and the corporation, being organized under the laws of the United States Virgin Islands, did willfully cause and aid and assist in, and procure, counsel, and advise, the preparation and presentation to the Virgin Islands Bureau of Internal Revenue, of defendant UNITED's Corporate Income Tax Returns, Forms 1120 and 1120S, for the calendar years listed below, which were false and fraudulent as to a material matter, in that the returns reported sales in the amount listed below, whereas defendants then and there knew and believed that UNITED made substantial sales in addition to the amount reported.

Count	Date	Tax Year	Form	Reported Sales
56	07/11/98	1997	1120	\$36,823,771
57	04/07/99	1998	1120	\$40,706,669
58	07/05/00	1999	1120S	\$47,004,399
59	08/30/01	2000	1120S	\$51,746,933
60	09/18/02	2001	1120S	\$69,579,412

All in violation of Title 33, Virgin Islands Code, Section 1525(2).

COUNTS 61 - 65
(Causing False Tax Returns)

43. On or about the dates listed below, in the District of the Virgin Islands, defendant

FATHI YUSUF

a resident of the Virgin Islands, did willfully cause and aid and assist in, and procure, counsel, and advise, the preparation and presentation to the Virgin Islands Bureau of Internal Revenue, of Individual Income Tax Returns, Forms 1040, for the calendar years listed below, which were filed with the Virgin Islands pursuant to the Internal Revenue Code, Title 26 of the United States Code, section 932(c)(4), and were false and fraudulent as to a material matter, in that the returns reported total income in the amount listed below, whereas he then and there knew and believed that his true total income was substantially more than the amount reported.

Count	Date	Tax Year	Reported Total Income
61	04/15/98	1997	\$58,360
62	04/09/99	1998	\$33,341
63	10/16/00	1999	\$1,936,460
64	09/28/01	2000	\$1,607,800
65	09/30/02	2001	\$3,402,579

All in violation of Title 26, United States Code, Section 7206(2).

COUNTS 66 - 70
(Causing False Tax Returns)

44. On or about the dates listed below, in the District of the Virgin Islands, defendant

WALEED HAMED

a resident of the Virgin Islands, did willfully cause and aid and assist in, and procure, counsel, and advise, the preparation and presentation to the Virgin Islands Bureau of Internal Revenue, of Individual Income Tax Returns, Forms 1040, for the calendar years listed below, which were filed with the Virgin Islands pursuant to the Internal Revenue Code, Title 26 of the United States Code, section 932(c)(4), and were false and fraudulent as to a material matter, in that the returns reported total income in the amount listed below, whereas he then and there knew and believed that he received substantial income in addition to the amount reported.

Count	Date	Tax Year	Reported Total Income
66	03/31/98	1997	\$23,825
67	07/29/99	1998	\$25,598
68	08/10/00	1999	\$23,017
69	08/24/01	2000	\$28,259
70	09/11/02	2001	\$39,052

All in violation of Title 26, United States Code, Section 7206(2).

COUNTS 71 - 74
(Causing False Tax Returns)

45. On or about the date listed below, in the District of the Virgin Islands, defendant

WAHEED HAMED

a resident of the Virgin Islands, did willfully cause and aid and assist in, and procure, counsel, and advise, the preparation and presentation to the Virgin Islands Bureau of Internal Revenue, of Individual Income Tax Returns, Forms 1040, for the calendar years listed below, which were filed with the Virgin Islands pursuant to the Internal Revenue Code, Title 26 of the United States Code, section 932(c)(4), and were false and fraudulent as to a material matter, in that the returns reported total income in the amount listed below, whereas he then and there knew and believed that he received substantial income in addition to the amount reported.

Count	Date	Tax Year	Reported Total Income
71	04/17/98	1997	\$14,700
72	04/15/99	1998	\$16,300
73	04/14/00	1999	\$25,189
74	04/17/01	2000	\$31,293

All in violation of Title 26, United States Code, Section 7206(2).

COUNT 75
(Conduct of Criminal Enterprise)

46. Paragraphs 1 through 22 of this Indictment are hereby realleged and incorporated as if fully set forth herein.

47. Beginning at least as early as in or about January 1996 and continuing through at least in or about September 2002, in the District of the Virgin Islands and elsewhere, defendants

**FATHI YUSUF
WAHEED HAMED
WALEED HAMED
and UNITED**

together and with others known and unknown to the Grand Jury, being persons employed by and associated with the enterprise described in paragraph 48, unlawfully, intentionally, and knowingly conducted and participated, directly and indirectly, in the conduct of the affairs of the enterprise through a pattern of criminal activity, as defined in Title 14, Virgin Islands Code, Sections 604(e)&(j), to wit: the violations described in Counts 1, 2, 3, 15, 27, 39, and 55-60.

48. The enterprise consisted of defendant UNITED and the following corporations, that is, a group of corporations associated in fact:

a. Peter's Farm Investment Corp., a Virgin Islands corporation that was owned and controlled by FATHI YUSUF and others;

b. Plessen Enterprises, Inc., a Virgin Islands corporation that was owned and controlled by FATHI YUSUF, WALEED HAMED, and others; and

c. Sixteen Plus Corporation, a Virgin Islands corporation that was owned and controlled by FATHI YUSUF, WALEED HAMED, and others.

49. The purposes of the enterprise included unlawfully enriching the members and associates of the enterprise by obtaining and concealing money belonging to the Virgin Islands in the form of gross receipts tax revenue and corporate and individual income tax revenue.

50. The defendants participated in the operation and management of the enterprise, as follows:

a. The defendant FATHI YUSUF, an owner and officer of UNITED, was a leader of the enterprise who directed other members of the enterprise in carrying out unlawful and other activities in furtherance of the conduct of the enterprise's affairs;

b. The defendant WAHEED HAMED, a manager of a Plaza Extra supermarket, was a leader of the enterprise who directed other members of the enterprise in carrying out unlawful and other activities in furtherance of the conduct of the enterprise's affairs;

c. The defendant WALEED HAMED, a manager of a Plaza Extra supermarket, was a leader of the enterprise who directed other members of the enterprise in carrying out unlawful and other activities in furtherance of the conduct of the enterprise's affairs; and

d. Under the direction of the leaders of the enterprise, defendant UNITED participated in unlawful and other activities in furtherance of the conduct of the enterprise's affairs.

51. Among the means and methods by which the defendants and their associates conducted and participated in the conduct of the affairs of the enterprise are the acts described in paragraphs 10-22 above, which are incorporated herein as if set forth in full.

In violation of Title 14, Virgin Islands Code, Section 605(a).

COUNT 76
(Conspiracy to Conduct Criminal Enterprise)

52. Paragraphs 1 through 22 of this Indictment are hereby realleged and incorporated as if fully set forth herein.

53. Beginning at least as early as in or about January 1996 and continuing through at least in or about September 2002, in the District of the Virgin Islands and elsewhere, defendants

FATHI YUSUF
WALEED HAMED
WAHEED HAMED
and **UNITED**

together with other persons known and unknown to the Grand Jury, being persons employed by and associated with the enterprise described in paragraph 48 above, knowingly and intentionally conspired to violate Title 14, Virgin Islands Code, Section 605(a), that is, to conduct and participate, directly and indirectly, in the conduct of the affairs of that enterprise through a pattern of criminal activity, as that term is defined by Title 14, Virgin Islands Code, Sections 604(e)&(j). The pattern of criminal activity through which the defendants agreed to conduct the affairs of the enterprise consisted of the acts forth in paragraph 47 of this Indictment, which are incorporated as if fully set forth herein.

54. It was a part of the conspiracy that the defendants agreed that a conspirator would commit at least two acts of criminal activity in the conduct of the affairs of the enterprise.

All in violation of Title 14, Virgin Islands Code, Section 605(d).

COUNT 77
(Structuring Financial Transactions)

55. The allegations of paragraphs 1 through 21 are realleged as if fully set forth here.

56. Beginning on or about December 22, 1998, and continuing through on or about December 23, 1998, in the District of the Virgin Islands, defendant

NEJEH F. YUSUF

knowingly structured and assisted in structuring, and attempted to structure and assist in structuring, the following transaction with the domestic financial institutions listed below for the purpose of evading the reporting requirements of Title 31, United States Code, Section 5313(a), and the regulations promulgated thereunder, for currency transactions involving more than \$10,000 by purchasing the following checks with currency at the following institutions:

Date	Amount	Financial Institution
12/22/98	\$9,000	Banco Popular
12/22/98	\$9,000	Bank of St. Croix
12/22/98	\$9,000	Scotiabank
12/22/98	\$9,000	Scotiabank
12/23/98	\$9,000	Scotiabank

All in violation of Title 31, United States Code, Sections 5324(a)(3) and (d)(2), and Title 18, United States Code, Sections 2 and 3551 *et seq.*

COUNT 78
(Obstruction of Justice)

57. On or about September 19, 2003, in the District of the Virgin Islands, defendant

NEJEH YUSUF

did corruptly endeavor to influence, obstruct and impede the due administration of justice, in that defendant NEJEH YUSUF did knowingly and willfully make false and misleading declarations in the District Court of the Virgin Islands with intent to obstruct and impede the federal grand jury investigation and criminal prosecution involving FATHI YUSUF, MAHER YUSUF, NEJEH YUSUF, UNITED, and others, including in case no. 2003-147, then pending in the Virgin Islands.

58. On the date stated above, during a pre-trial hearing in case no. 2003-147, defendant NEJEH YUSUF gave false and misleading testimony while under oath, including the following underscored declarations:

Q: While you were working at Plaza Extra, cash sales were being withheld from deposit into the company bank accounts, isn't that correct?

A: Not that I can remember.

* * *

Q: Were all the cash sales deposited into the company's bank account while you working there?

A: Like I said, I'm a front end manager and, uh, I have access to the safe, but as far as deposits and so forth, that was no my job directly.

Q: Let me ask the question again. As far as you know, while you were working at Plaza Extra, were all the cash sales deposited into the company's bank accounts?

A: I don't know how you want me to answer that, I mean . . . were all the cash sales deposited into Plaza Extra's bank account?

Q: That's correct.

Court: Of which you have knowledge.

A: I would say eventually yes, they were. I mean that . . . To my knowledge, as far as what I can remember.

* * *

Q: While you were working at Plaza Extra, did you ever instruct or direct anyone to withhold cash from the company's bank account?

A: As far as I can remember, no.

In violation of Title 18, Sections 1503 and 3551 *et seq.*

CRIMINAL FORFEITURE ALLEGATION 1
(18 U.S.C. § 982)

59. The allegations contained in Counts 1, 2 and 27 through 52 of this Indictment are re-alleged and incorporated by reference as if fully set forth herein, for the purpose of alleging forfeitures pursuant to the provisions of Title 18, United States Code, Section 982.

60. Upon conviction of one or more of the offenses charged in Counts 1, 2 and 27 through 52 of this Indictment, the defendants FATHI YUSUF, WALEED HAMED, WAHEED HAMED, ISAM YOUSUF and UNITED shall forfeit to the United States pursuant to Title 18, United States Code, Section 982, any property, real or personal, involved in such offenses, or any property traceable to such property, or any property constituting or derived from proceeds which the defendants obtained directly or indirectly as a result of the commission of said violations.

61. Such forfeitures shall include, but are not limited to:

Money Judgment

62. The sum of at least approximately \$60 million in United States currency and all interest and proceeds traceable thereto, in that such sum, in the aggregate, was involved in and is traceable to, and constitutes and is derived from proceeds which the defendants obtained directly and indirectly as a result of the commission of, the criminal offenses alleged in Counts 1, 2 and 27 through 52, for which the defendants are jointly and severally liable.

Real Property

63. Real property located at 14 and 28-29 Estate Plessen, St. Croix, Parcel 4-06200-0408-00, including all of its appurtenances, improvements, fixtures, attachments, and easements, which is property constituting and derived from proceeds which the defendants obtained directly and indirectly as a result of the commission of violations of Title 18, United

States Code, Sections 371 and 1341.

64. Real property located at 3AA-1 and 4AA St. Joseph and Rosendahl, St. Thomas, Parcels 1-05501-0148-00 and 1-05501-0107-00, including all of its appurtenances, improvements, fixtures, attachments, and easements, which is property constituting and derived from proceeds which the defendants obtained directly and indirectly as a result of the commission of violations of Title 18, United States Code, Sections 371 and 1341.

65. Real property located at 4-15, No. 5 and 6 Tabor and Harmony, St. Thomas, Parcels 1-03104-234-00 and 1-03104-265-00, including all of its appurtenances, improvements, fixtures, attachments, and easements, which is property constituting and derived from proceeds which the defendants obtained directly and indirectly as a result of the commission of violations of Title 18, United States Code, Sections 371 and 1341.

66. Real property located at Remainder Spring Garden, St. Croix, Parcel 4-01900-0101-00, including all of its appurtenances, improvements, fixtures, attachments, and easements, which is property constituting and derived from proceeds which the defendants obtained directly and indirectly as a result of the commission of violations of Title 18, United States Code, Sections 1956(a)(1)(B)(i) and (h).

67. Real property located at Parcel 2, Estate Longpoint and Cotton Garden, St. Croix, Parcel 2-03500-0414-00, including all of its appurtenances, improvements, fixtures, attachments, and easements, which is property constituting and derived from proceeds which the defendants obtained directly and indirectly as a result of the commission of violations of Title 18, United States Code, Sections 1956(a)(1)(B)(i) and (h).

68. Real property located at Estate Peter's Farm, St. Croix, Parcel 2-04900-0404-00, including all of its appurtenances, improvements, fixtures, attachments, and easements,

which is property constituting and derived from proceeds which the defendants obtained directly and indirectly as a result of the commission of violations of Title 18, United States Code, Sections 1956(a)(1)(B)(i) and (h).

69. Real property located at Estate Perseverance, St. Thomas, Parcel 1-02503-0101-00, including all of its appurtenances, improvements, fixtures, attachments, and easements, which is property constituting and derived from proceeds which the defendants obtained directly and indirectly as a result of the commission of violations of Title 18, United States Code, Sections 1956(a)(1)(B)(i) and (h).

70. Real property located at 6 and 9 Estate Thomas, St. Thomas, Parcel 05404-1505-00, including all of its appurtenances, improvements, fixtures, attachments, and easements, which is property constituting and derived from proceeds which the defendants obtained directly and indirectly as a result of the commission of violations of Title 18, United States Code, Sections 1956(a)(1)(B)(i) and (h).

71. Real property known as Diamond Keturah Land on St. Croix, consisting of:

- a. Estate Cane Garden, Parcel Nos. 8, 9, 10, Remainder No. 46A, Remainder Matriculate No. 32B, Road Plots 11 and 12;
- b. Estate Retreat Parcel 11, Peter's Matriculate No. 37B of Company Quarter and Peter's Matriculate No. 37A and 37BA of Company Quarter, No. 54 of Queen's Quarter;
- c. Estate Granard Remainder Matriculate 32A, Parcel No. 40, Road Plot 41;

and

- d. Estate Diamond, Remainder Matriculate 31, Parcel Nos. 1, 2, 3, 4, Road Plot No. 6; including all appurtenances, improvements, fixtures, attachments, and easements; all of which is property constituting and derived from proceeds which the defendants obtained

directly and indirectly as a result of the commission of violations of Title 18, United States Code, Sections 1956(a)(1)(B)(i), (a)(2)(B)(i) and (h).

Bank Account

72. All United States currency, funds, or other monetary instruments credited to Account No.140-21722 in the name of Fathieh Yousuf (or Yousef), held by Merrill Lynch, which is property involved in and traceable to, and constitutes and is derived from proceeds which the defendants obtained directly and indirectly as a result of the commission of violations of Title 18, United States Code, Sections 371, 1341, and 1956(a)(1)(B)(i) and (h).

SUBSTITUTE ASSETS

73. Pursuant to Title 21, United States Code, Section 853(p), as incorporated by reference by Title 18, United States Code, Section 982(b), if any of the forfeitable property, and any portion thereof, described in the forfeiture section of this Indictment, as a result of any act or omission of the defendants:

- a. cannot be located upon the exercise of due diligence;
- b. has been transferred or sold to, or deposited with, a third party;
- c. has been placed beyond the jurisdiction of the court;
- d. has been substantially diminished in value; or
- e. has been commingled with other property which cannot be divided without difficulty;

it is the intent of the United States to seek forfeiture of any other property of the defendants up to the value of the above forfeitable property, including but not limited to the following:

- f. Real property located at 92C and D, La Grande Princess, St. Croix; Parcel 2-02611-0215-00, including all appurtenances, improvements, fixtures, attachments, and

easements;

g. Real property located at 7 Southgate, St. Croix, Parcel 2-03000-0412-00, including all of its appurtenances, improvements, fixtures, attachments, and easements;

h. Real property located at 92B La Grande Princess, St. Croix, Parcel 2-02611-0214-00, including all appurtenances, improvements, fixtures, attachments, and easements; and

i. Real property located at Green Cay Plantation Subdivision, Frenchman's Bay, St. Thomas, Parcel 07404-0280-00, including all of its appurtenances, improvements, fixtures, attachments, and easements.

j. Real property located at Estate Charlotte Amalie, No. 3 New Quarter, St. Thomas, Parcel No. 2-Remainder, including all of its appurtenances, improvements, fixtures, attachments, and easements.

CRIMINAL FORFEITURE ALLEGATION 2
(14 V.I.C. § 606)

74. The allegations contained in Counts 75 and 76 of this Indictment are re-alleged and incorporated by reference as if fully set forth herein for the purpose of alleging forfeitures pursuant to Title 14, Virgin Islands Code, Section 606.

75. Through the pattern of criminal activity alleged in Counts 75 and 76, defendants FATHI YUSUF, WALBED HAMED, WAHEED HAMED, and UNITED have acquired and maintained real and personal property used in the course of, intended for use in the course of, derived from, or realized through, conduct in violation of Title 14, Virgin Islands Code, Section 605, including property constituting an interest in, or means of control or influence over, the enterprise involved in the conduct in violation of Title 14, Virgin Islands Code, Section 605, and including property constituting proceeds derived from the conduct in violation of Title 14, Virgin Islands Code, Section 605, which is subject to forfeiture to the Government of the Territory of the United States Virgin Islands pursuant to Title 14, Virgin Islands Code, Section 606(c). That forfeitable property includes, but is not limited to:

Corporate Assets and Interests

76. All assets, tangible and intangible, of UNITED, including, but not limited to: all United States currency, funds, or other monetary instruments credited to the following accounts in the name of defendant United Corporation:

- a. Account No. [REDACTED] at Banco Popular;
- b. Account No. [REDACTED] at Banco Popular;
- c. Account No. [REDACTED] at Banco Popular;
- d. Account No. [REDACTED] at Bank of Nova Scotia;

- e. Account No. [REDACTED] at Bank of Nova Scotia;
- f. Account No. [REDACTED] at Bank of Nova Scotia;
- g. Account No. [REDACTED] at Bank of Nova Scotia;
- h. Account No. [REDACTED] at Bank of Nova Scotia; and
- i. Account No. [REDACTED] at Merrill Lynch.

77. The interests of individual defendants FATHI YUSUF, WALEED HAMED, and WAHEED HAMED in the enterprise, including individual shares and rights and entitlements to profits and funds from UNITED and other corporate members of the enterprise.

78. As a result of the commission of the offenses charged in Counts 75 and 76 of this Indictment, the defendants FATHI YUSUF, WALEED HAMED, and WAHEED HAMED shall forfeit to the Government of the Territory of the United States Virgin Islands assets, including, but not limited to, the assets described in paragraphs 62, 64 through 73.

SUBSTITUTE ASSETS

79. Pursuant to Title 14, Virgin Islands Code, Section 606(e), if any of the forfeitable property, and any portion thereof, described in Criminal Forfeiture Allegation One of this Indictment, as a result of any act or omission of the defendant:

- a. cannot be located upon the exercise of due diligence;
- b. has been sold to a bona fide purchaser for value;
- c. has been placed beyond the jurisdiction of the Court;
- d. has been substantially diminished in value; or
- e. has been commingled with other property which cannot be divided without difficulty or injury to third persons;

it is the intent of the United States to seek forfeiture of any other property of said defendants up

to the value of the above forfeitable property, including, but not limited to the property described in paragraphs 68(f) through 68(i).

All in accordance with Title 14, Virgin Islands Code, Section 606.

SENTENCING ALLEGATIONS

80. With respect to count 1 of the Indictment with which each defendant is charged:
- a. The loss from the mail fraud described in count 1(a) was more than \$2,500,000;
 - b. The amount of funds structured described in count 1(b) was more than \$2,500,000;
 - c. The offense otherwise involved sophisticated means; and
 - d. Defendants **FATHI YUSUF, WALEED HAMED, and WAHEED HAMED,** were organizers and leaders of a criminal activity that involved five or more participants and was otherwise extensive.
81. With respect to count 2 of the indictment with which each defendant is charged:
- a. The value of the laundered funds was more than \$1,000,000;
 - b. The offense involved sophisticated laundering; and
 - c. Defendants **FATHI YUSUF, WALEED HAMED, and WAHEED HAMED,** were organizers and leaders of a criminal activity that involved five or more participants and was otherwise extensive.
82. With respect to counts 3 through 43 of the indictment with which each defendant is charged:
- a. The loss from the mail fraud described in counts 3 through 43 more than \$2,500,000;
 - b. The offense otherwise involved sophisticated means; and
 - c. Defendants **FATHI YUSUF, WALEED HAMED, and WAHEED HAMED,** were organizers and leaders of a criminal activity that involved five or more participants and was otherwise extensive.

83. With respect to counts 44 through 52 of the indictment with which each defendant is charged:
- a. The value of the laundered funds was more than \$1,000,000; and
 - b. The offense involved sophisticated laundering.
84. With respect to count 53 of the indictment with which each defendant is charged:
- a. The value of the funds structured was more than \$70,000;
 - b. Defendant **WAHEED HAMED** knew and believed that the funds were proceeds of unlawful activity and were intended to promote unlawful activity; and
 - c. Defendant **WAHEED HAMED** committed the offense as part of a pattern of unlawful activity involving more than \$100,000 in a 12 month period.
85. With respect to count 54 of the indictment with which each defendant is charged:
- a. The value of the funds structured was more than \$30,000;
 - b. Defendant **MAHER YUSUF** knew and believed that the funds were proceeds of unlawful activity and were intended to promote unlawful activity; and
 - c. Defendant **MAHER YUSUF** committed the offense as part of a pattern of unlawful activity involving more than \$100,000 in a 12 month period.
86. With respect to counts 61 through 65 of the indictment with which each defendant is charged:
- a. The tax loss was more than \$7,000,000;
 - b. The offense involved sophisticated means and/or sophisticated concealment; and
 - c. Defendant **FATHI YUSUF** failed to report or to correctly identify the source of income exceeding \$10,000 in any year from criminal activity.

87. With respect to counts 66 through 70 of the indictment with which each defendant is charged:
- a. The tax loss was more than \$1,000,000;
 - b. The offense involved sophisticated means and/or sophisticated concealment; and
 - c. Defendant **WALEED HAMED** failed to report or to correctly identify the source of income exceeding \$10,000 in any year from criminal activity.
88. With respect to counts 71 through 74 of the indictment with which each defendant is charged:
- a. The tax loss was more than \$400,000;
 - b. The offense involved sophisticated means and/or sophisticated concealment; and
 - c. Defendant **WAHEED HAMED** failed to report or to correctly identify the source of income exceeding \$10,000 in any year from criminal activity.
89. With respect to count 77 of the indictment with which each defendant is charged:
- a. The amount of structured funds was more than \$30,000; and
 - b. The offense otherwise involved sophisticated means.
90. With respect to count 78 of the indictment with which each defendant is charged:
- a. The offense involved substantial interference with the administration of justice.

A TRUE BILL

L. A. Casey
FOREPERSON

ANTHONY J. JENKINS
ACTING UNITED STATES ATTORNEY

Nelson L. Jones
NELSON L. JONES
ASSISTANT UNITED STATES ATTORNEY

William J. Lovett
WILLIAM J. LOVETT
TRIAL ATTORNEY
UNITED STATES DEPARTMENT OF JUSTICE

Thomas J. Pinder
THOMAS J. PINDER
TRIAL ATTORNEY
UNITED STATES DEPARTMENT OF JUSTICE

DISTRICT OF THE VIRGIN ISLANDS: *Sept. 8, 2004*

Returned into the District Court by Grand Jurors and filed.

Claudette R. Pinner
DEPUTY CLERK

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

SUPREME COURT
THE VIRGIN ISLANDS
ST. CROIX

'13 MAR -4 P4:57

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 PLAINTIFF'S SECOND MOTION
TO TAKE JUDICIAL NOTICE AND REQUEST TO SUPPLEMENT THE HEARING
RECORD**

Defendants hereby respond in opposition to the Plaintiffs' Second Motion to take Judicial Notice and Request to Supplement the Hearing Record. In support of the Defendants' opposition they state as follows.

At this late stage in the TRO proceedings the Plaintiff asks this Court to take judicial notice not of the fact that interrogatory responses were filed in the case of *Idheileh v. United Corporation, et al.*, case no. STT-civ-156/1997, but for the truth of the matter assert therein. This Court should deny the request for judicial notice on two independent grounds.

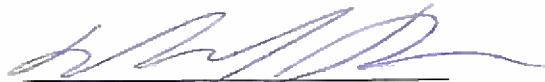
First, the Plaintiff has not shown good cause why the interrogatory responses were not filed sooner. Counsel for the Plaintiff admits that the document was available in the court file of the *Idheileh* case, a court file that counsel for the Plaintiff was acutely aware of given that the basis for the majority of the Plaintiff's claims stems from the deposition of Fathi Yusuf in the *Idheileh* case. The Plaintiff is improperly attempting to put into the record evidence that the Defendants did not have a reasonable opportunity to dispute. Accordingly, the Court should deny the request.

Second, courts may not take judicial notice of either factual findings or the record of a different case, including testimony, as substantive proof. *See U.S. v. Jones*, 29 F.3d 1549, 1552-53

Hameds v. Yusuf, CIVIL NO. SX-12-CV-370
Defendants' Response Re: 2nd Motion to Take Judicial Notice

(11th Cir. 1994) (holding that “findings of fact and references to witness’ testimony from prior case were inadmissible and not subject to judicial notice for the truth of the matter asserted in the other litigation) (internal quotations and citations omitted). Accordingly, for this independent, yet cumulative, reason the Court should deny the Plaintiff’s request.

Respectfully submitted,



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Hameds v. Yusuf, CIVIL NO. SX-12-CV-370
Defendants' Response Re: 2nd Motion to Take Judicial Notice

CERTIFICATE OF SERVICE

I hereby certify that on March 4, 2013, a true and accurate copy of the foregoing was forwarded via email to the following: *Joel H. Holt, Esq.*, 2132 Company St., St. Croix, VI 00820, holtvi@aol.com; *Carl J. Hartmann III, Esq.*, 5000 Estate Coakley Bay, L-6, Christiansted, VI 00820, carl@carlhartmann.com; and *K. Glenda Cameron, Esq.*, Law Offices of K.G. Cameron, 2006 Eastern Suburb, Suite 101, St. Croix, VI 00820, kglenda@cameronlawvi.com.



Nizar A. DeWood, Esq.

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

MOHAMMAD HAMED By His Authorized Agent WALEED HAMED,)	
)	
Plaintiff,	)	CIVIL NO. SX-12-CV- 370
v.)	
)	
FATHI YUSUF and UNITED CORPORATION,	)	ACTION FOR DAMAGES INJUNCTIVE AND DECLARATORY RELIEF JURY TRIAL DEMANDED
)	
Defendants.)	
)	

**REPLY TO DEFENDANTS’ OPPOSITION TO PLAINTIFF’S MOTION TO
SUPPLEMENT THE RECORD AND SECOND REQUEST TO TAKE JUDICIAL
NOTICE**

On February 19th, the plaintiff supplemented the record in this case by submitting deposition exhibit #7 to Fathi Yusuf’s 2002 deposition (a joint venture agreement), as requested by the defendants. as well as exhibit #6 to the same deposition -- an affidavit of Fathi Yusuf.

At the same time, the plaintiff filed a separate motion to permit supplementation of the record by taking judicial notice of certain documents filed in *Idheileh v. United Corporation and Yusuf*, Superior Court of the Virgin Islands, St. Thomas Division, Civ. No. 156/1997, including Fathi Yusuf’s verified interrogatory responses.

The defendants object to the submission of these documents because (1) they claim the evidence should have been produced earlier and (2) the evidence is allegedly not admissible, as it is a “finding” from another case, citing *U.S. v. Jones*, 29 F.3d 1549 (11th Cir. 1994).¹

¹ The defendants did not object to the submission of the other items (the two checks withdrawing funds from the Plaza Extra accounts without Hamed’s consent)

As to the first point, the parties attempted to locate these United Corporation and Yusuf litigation files after the first hearing on January 25th, when the defendants pointed out their existence but noted they could not be obtained before the second hearing date on January 31st. **See Exhibit 1.** The plaintiff agreed to accommodate the defendants to address this problem by agreeing the record could be supplemented with exhibits from the deposition, which the defendant agreed to and which this Court expressly permitted. *See January 31, 2013 Hearing Transcript* at pp. 129-130, attached as **Exhibit 2**, Thus, the submission of the affidavit of Fathi Yusuf, exhibit #6 to the Yusuf's 2002 deposition (PEX 1), **has already been agreed to by the parties and approved by this Court.**

Moreover, when the Superior Court finally located these closed files, Yusuf's sworn interrogatory answers were also located, which were promptly submitted to the Court. **See Exhibit 3.** Thus, the plaintiff acted as diligently as possible under the circumstances in filing this document.

Additionally, the defendants cannot claim surprise or prejudice, as these documents are Yusuf's verified statements submitted to the Superior Court in another case in which both United and Yusuf were defendants! While they argue they do not have an adequate opportunity to respond to these documents, their client knew of the documents and, in any case, have had over 10 days to consider them and respond. The lack of any response is clearly because there is no response to these damaging admissions made under oath. Indeed, to try to refute them would raise ethical issues, as these sworn statements were filed in this same Court in another case.

Finally, these verified documents are not "findings" or a "reference to witnesses testimony" in another case, as these are sworn statements against the interests of a party that are admissible in this case pursuant to Rule 801(d) of the Federal Rules of

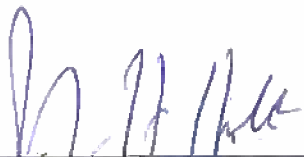
Evidence, which is applicable to this Court. *Virgin Islands v. Toussaint*, 2011 WL 3875802, at *2 n.7 (V.I.Super. 2011); *Terrell v. Coral World*, S.Ct. No.2010-0058, at 7 n.7 (V.I. July 20, 2011) (“[T]he Federal Rules of Evidence ... have been recently adopted by the Legislature to replace the Uniform Rules of Evidence....”).

Thus, while it is understandable why the defendants would not want this Court to consider these damaging admissions, this Court has already agreed to permit the affidavit as it is one of the deposition exhibits. The defendant can hardly complain since they requested leave to submit another exhibit and did not object when the plaintiff asked to submit deposition exhibits that could be located.

As for Yusuf's verified interrogatory responses, they are not a surprise to the defendants (who submitted them to this Court in another case) and they are admissible in this case under FRE 801(d).

As such, it is respectfully submitted that these exhibits should be admitted into the hearing record, just like the supplemental filing of the criminal indictment submitted yesterday by the defendants.

Dated: March 5, 2013



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340-642-4422

CERTIFICATE OF SERVICE

I hereby certify that on this 5th day of March, 2013, I served a copy of the foregoing Reply by hand on:

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

And by email (jdiruzzo@fuerstlaw.com) and mail to:

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

A handwritten signature in blue ink is written over a horizontal line. The signature is stylized and appears to be 'JD' or similar initials.



Joseph A. DiRuzzo, III, Esq., CPA
305.350.5690
jdiruzzo@fuerstlaw.com

January 29, 2013

Via USPS and email: holtvi@aol.com

Joel H. Holt, Esq.
Joel H. Holt, Esq., P.C.
2132 Company Street, Suite 2
Christiansted, St. Croix
U.S. Virgin Islands, 00820

Re: *Hamed v. Yusuf and United*; case no. SX-12-CV-370

Dear Mr. Holt,

As you are aware, on the 25th the Court granted my *ore tenus* motion to supplement/expand the record to include the Joint Venture Agreement (Exhibit No. 7) to the deposition transcript of Fathi Yusuf, which you had admitted into evidence as Plaintiff's Exhibit No. 1.

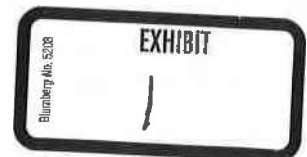
Today I called Cheryl Haase of Caribbean Scribes and she told me that she did not have the Joint Venture Agreement referenced in the deposition transcript. I also looked up in the Virgin Island Bar Association membership directory the two attorneys that were present during Fathi Yusuf's deposition, to wit: Elmo A. Adams and Bethany J. Vazzana. However, I was unable to locate their respective contact information. Finally, I placed a call to the V.I. Superior Court, Division of St. Thomas & St. John, and requested the file of *Idbeileh, v. United Corporation and Fathi Yusuf*, civil case no. 156/1997. The Clerk's Office informed that each Friday an employee goes to archives to pull old files, obviously this Friday is after the TRO hearing that is set for this Thursday, January 31, 2013. Accordingly, I am asking that you provide to us in advance of the hearing the Joint Venture Agreement (Exhibit No. 7) for us to supplement/expand the record. If you are unable or unwilling to do so, we will be moving to strike Plaintiff's Exhibit No. 1 as it violates the rule of completeness.

Please advise me as to your position as soon as possible.

Kind Regards,

Joseph A. DiRuzzo, III

cc: Carl J. Hartmann, III, Esq., via email only: carl@carlhartmann.com
N. DeWood, Esq., via email only: dewoodlaw@gmail.com
K. Glenda Cameron, Esq., via email only: KGlenda@Cameronlawvi.com



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

MOHAMMED HAMED By His) CIVIL NO. SX-12-CV-370
Authorized Agent WALEED HAMED,)
	) ACTION FOR DAMAGES
Plaintiff,	) INJUNCTIVE AND
	) DECLARATORY RELIEF
v.)
)
FATHI YUSUF and UNITED)
CORPORATION,)
	) JURY TRIAL DEMANDED
Defendants.)

Thursday, January 31, 2013
Kingshill, VI 00850

The above-entitled action came on for Hearing on a
TRO, before the Honorable DOUGLAS A. BRADY, Judge, in
Courtroom Number 211, commencing at approximately
9:12 a.m.

SANDRA HALL
REGISTERED PROFESSIONAL REPORTER
OFFICIAL COURT REPORTER II
(340) 778-9750 EXT. 6701



1 recall.

2 MR. DIRUZZO: One more point, your
3 Honor. Yesterday Mr. Holt was so kind as to provide
4 Exhibit 7 to deposition transcript that we received and
5 entered into evidence. And I made the mistake of
6 forgetting to bring it today, so I'll just be filing it
7 with the court.

8 THE COURT: I'm sorry. I didn't really
9 follow that.

10 MR. DIRUZZO: The Exhibit 7 to
11 Plaintiff's Exhibit 1, the deposition transcript had
12 certain exhibits.

13 THE COURT: Oh, right, right, right.

14 MR. DIRUZZO: And Mr. Holt was so kind
15 as to provide that document yesterday via e-mail and I
16 just forgot to bring it out today, so I will just be
17 filing it on paper with the court and get back to --

18 THE COURT: That's fine. That's the
19 exhibit referenced in Plaintiff's Exhibit Number 1.
20 The deposition transcript of Mr. Yusuf included Exhibit
21 7 to that deposition.

22 MR. DIRUZZO: Exactly.

23 THE COURT: And that has been provided
24 and will be added to the record and will be accepted as
25 part of the evidence as a part of Exhibit 1.

1 MR. HOLT: And if we can find somebody
2 to get those exhibits, can we just submit them as well?

3 MR. DIRUZZO: I have no problem with
4 that.

5 THE COURT: That's fine. It's better to
6 have a more complete record than not. Okay. If there
7 is nothing else, then we will adjourn.

8 MR. HARTMANN: Thank you, your Honor.

9 MR. DAVID: Thank you.

10 MR. DIRUZZO: Thank you.

11 (Hearing concluded at approximately
12 11:40 a.m.)

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

MOHAMMAD HAMED By His Authorized Agent WALEED HAMED,)	
)	
Plaintiff,	)	CIVIL NO. SX-12-CV- 370
v.)	
)	
FATHI YUSUF and UNITED CORPORATION,	)	ACTION FOR DAMAGES
	)	INJUNCTIVE AND
	)	DECLARATORY RELIEF
Defendants.	)	JURY TRIAL DEMANDED
)	

DECLARATION OF KIM JAPINGA

I, Kim Japinga, declare, pursuant to 28 U.S.C. Section 1746, as follows:

1. I have direct personal knowledge of the facts set forth herein.
2. After the plaintiff became aware of the fact that the Clerk's Office in St. Thomas might still have a closed file in *Idheileh v. United Corporation and Yusuf*, Superior Court of the Virgin Islands, St. Thomas Division, Civ. No. 156/1997, a request was made to review this file.
3. The St. Thomas Clerk's Office finally was able to make this file available on February 13, 2013, at which time I reviewed it in St. Thomas.
4. I requested that certified copies be provided that were received late in the day on February 14, 2013.
5. The request to take judicial notice was filed on February 19, 2013, after the President's Day holiday.

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

Dated: March 5, 2013


Kim Japinga



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

ACTION FOR DAMAGES
INJUNCTIVE AND
DECLARATORY RELIEF
JURY TRIAL DEMANDED

NOTICE OF SUPPLEMENTATION OF THE PRELIMINARY INJUNCTION RECORD

The Plaintiff hereby gives notice of supplementing the exhibits already submitted into the preliminary injunction hearing by filing two new documents received (attached as Exhibit A) that supplement Plaintiff's Hearing Exhibits # 7 and 15.

Dated: March 18, 2013



Joel H. Holt, Esq.

Counsel for Plaintiff

2132 Company Street,
Christiansted, VI 00820

holtvi@aol.com

340-773-8709

Carl J. Hartmann III, Esq.

Co-Counsel for Plaintiff

5000 Est. Coakley Bay, L6
Christiansted, VI 00820

Carl@carlhartmann.com

340-642-4422

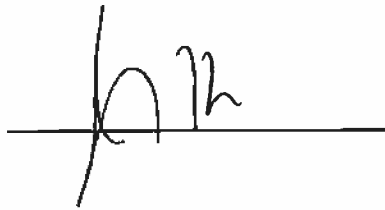
CERTIFICATE OF SERVICE

I hereby certify that on this 18th day of March, 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

And by email (jdiruzzo@fuerstlaw.com) and mail to:

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

A handwritten signature in black ink, appearing to read "JD", is written over a horizontal line.

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

MOHAMMAD HAMED by His Authorized Agent WALEED HAMED,)	
)	
<i>Plaintiff,</i>	)	CIVIL NO. SX-12-CV- 370
v.)	
	)	ACTION FOR DAMAGES
FATHI YUSUF and UNITED CORPORATION,	)	INJUNCTIVE AND
	)	DECLARATORY RELIEF
<i>Defendants.</i>)	
	)	JURY TRIAL DEMANDED
)	

DECLARATION OF WALEED HAMED


I, Walled Hamed a/k/a Wally Hamed, declare, pursuant to 28 U.S.C.

Section 1746, as follows:

1. I have personal knowledge of the facts set forth herein.
2. Attached hereto is another rent notice for March rent sent by United Corporation to Mohammad Hamed for the Plaza Extra supermarket at Sion Farm.
3. Attached hereto is one additional check drawn on the Plaza Extra Supermarket accounts to pay the defendants' counsel (Fuerst Ittleman David & Joseph, PL) that was not agreed to or authorized by my father, Mohammed Hamed, as follows:
 - Check 5005-\$82,274.87 dated March 6, 2013

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

Dated: March 18, 2013



Waleed Hamed a/k/a Wally Hamed

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

March 1, 2013

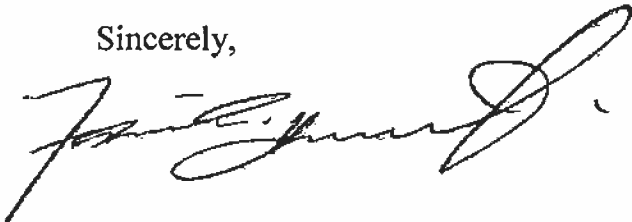
Mohammad Abdul Qader Hamed
Plaza Extra Supermarket
4-C & 4-D Estate Sion Farm
Christiansted, VI 00821

Statement of Rent due for Plaza Extra – East as of March 1, 2013

Rent due for Plaza Extra – East January 1, 2012 through March 1, 2013	Balance Due	\$3,554,481.95
ADD: 1% interest on outstanding Balance		\$ <u>35,544.82</u>
	Amount Due	\$3,590,026.77
March 2013 Rent currently due:		<u>\$250,000.00</u>
	Total Balance due March 1, 2013	<u>\$3,840,026.77</u>

Please forward a check immediately.

Sincerely,



Fathi Yusuf

BANCO POPULAR DE PUERTO RICO
101-667/216

5005
CHECK NUMBER

UNITED CORPORATION
DBA PLAZA EXTRA
(340) 719-1870
PO BOX 3649
ST CROIX, VI 00851

DATE
Mar 6, 2013

AMOUNT
\$ ****\$82,274.87

PAY TO THE ORDER OF: Eighty-Two Thousand Two Hundred Seventy-Four and 87/100 Dollars
FUERST ITTLEMAN DAVID & JOSEPH PL
1001 BRICKELL BAY DRIVE
32ND FLOOR
MIAMI, FL 33131

Memo:

[Handwritten Signature]
AUTHORIZED SIGNATURE

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 PLAINTIFF'S NOTICE OF
SUPPLEMENT THE PRELIMINARY INJUNCTION RECORD**

Defendants hereby respond in opposition to the Plaintiffs' Notice of Supplementation of the Preliminary Injunction Record. In support of the Defendants' opposition they state as follows.

At this late stage in the TRO proceedings the Plaintiff improperly attempts to expand the record by way of "Notice." This is improper and is unsupported by any statute, rule, or any authority whatsoever. This Court should deny the request to supplement the record on two independent grounds.

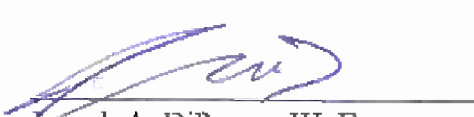
First, the Plaintiff has not shown why the exhibits, which contain facts after the record was closed, should be admitted into evidence. The Plaintiff is improperly attempting to put into the record evidence that the Defendants did not have a reasonable opportunity to dispute the authenticity or relevance. Further, given that the Parties have already filed their proposed findings of fact and conclusions of law, together with memorandum of law in support, the Defendants will be prejudiced because said moving papers will not have incorporated this potentially new evidence. Accordingly, the Court should deny the request.

Hameds v. Yusuf, CIVIL NO. SX-12-CV-370

Defendants' Response Re: Plaintiff's Notice of Supplementation of the Preliminary Injunction Record

Second, a party may not just give "Notice" of supplementing the record. Rather, a party must seek leave of Court to introduce facts into the record. Accordingly, for this independent, yet cumulative, reason the Court should deny the Plaintiff's request.

Respectfully submitted,



4/1/2013

Joseph A. DiRuzzo, III, Esq.

USVI Bar # 1114

Christopher M. David, Esq.

S. Ct. BA. No. 2013-0010 (pro hac vice)

FUERST ITTLEMAN DAVID & JOSEPH, PL

1001 Brickell Bay Drive, 32nd Floor

Miami, Florida 33131

305.350.5690 (O)

305.371.8989 (F)

jdiruzzo@fuerstlaw.com

Co-counsel for Defendants Fathi Yusuf and United Corporation

CERTIFICATE OF SERVICE

I hereby certify that on April 1, 2013, a true and accurate copy of the foregoing was forwarded via email to the following: *Joel H. Holt, Esq.*, 2132 Company St., St. Croix, VI 00820, holtvi@aol.com; *Carl J. Hartmann III, Esq.*, 5000 Estate Coakley Bay, L-6, Christiansted, VI 00820, carl@carlhartmann.com; and *K. Glenda Cameron, Esq.*, Law Offices of K.G. Cameron, 2006 Eastern Suburb, Suite 101, St. Croix, VI 00820, kglenda@cameronlawvi.com.



Joseph A. DiRuzzo, III, Esq.

Carl J. Hartmann III, Esq.
Co-Counsel for Plaintiff
5000 Est. Coakley Bay, L6
Christiansted, VI 00820

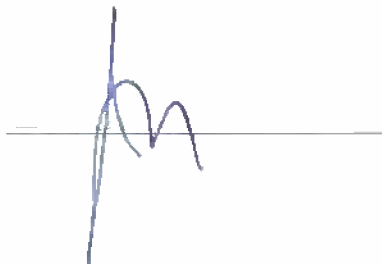
CERTIFICATE OF SERVICE

I hereby certify that on this 4th day of April, 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

And by email (jdiruzzo@fuerstlaw.com) and mail to:

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



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

April 1, 2013

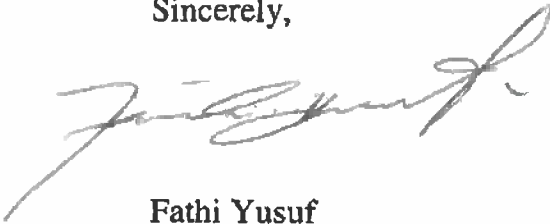
Mohammad Abdul Qader Hamed
Plaza Extra Supermarket
4-C & 4-D Estate Sion Farm
Christiansted, VI 00821

Statement of Rent due for Plaza Extra – East as of April 1, 2013

Rent due for Plaza Extra – East January 1, 2012 through March 31, 2013	Balance Due	\$3,840,026.77
ADD: 1% interest on outstanding Balance		\$ <u>38,400.27</u>
	Amount Due	\$3,878,427.04
April 2013 Rent currently due:		<u>\$250,000.00</u>
	Total Balance due April 1, 2013	<u>\$4,128,427.04</u>

Please forward a check immediately.

Sincerely,



Fathi Yusuf



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

ACTION FOR DAMAGES
INJUNCTIVE AND
DECLARATORY RELIEF
JURY TRIAL DEMANDED

NOTICE OF SUPPLEMENTATION OF THE PRELIMINARY INJUNCTION RECORD

The Plaintiff hereby gives notice of supplementing the exhibits already submitted into the preliminary injunction hearing by filing a new document received (attached as Exhibit A) that supplement Plaintiff's Hearing Exhibits # 15.

Dated: April 8, 2013



Joel H. Holt, Esq.
Counsel for Plaintiff
2132 Company Street,
Christiansted, VI 00820
holtvi@aol.com
340-773-8709

Carl J. Hartmann III, Esq.
Co-Counsel for Plaintiff
5000 Est. Coakley Bay, L6
Christiansted, VI 00820
Carl@carlhartmann.com
340-642-4422

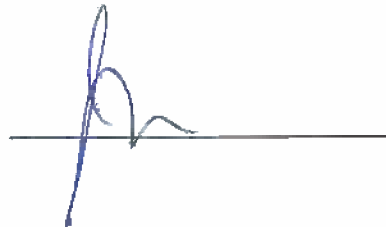
CERTIFICATE OF SERVICE

I hereby certify that on this 8th day of April, 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

And by email (jdiruzzo@fuerstlaw.com) and mail to:

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

A handwritten signature in blue ink is written over a horizontal line. The signature is stylized and appears to be 'JD' or similar initials.

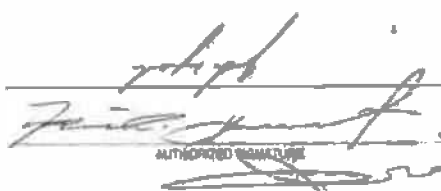
UNITED CORPORATION DBA PLAZA EXTRA
FUERST ITTLEMAN DAVID & JOSEPH PL

5193

Check Number: 5193
Check Date: Apr 3, 2013

Check Amount \$54,938.89
Discount Taker Amount Paid

Item to be Paid - Description	Amount Paid
19932	17,524.50
19933	2,500.00
19934	34,914.39

UNITED CORPORATION DBA PLAZA EXTRA (340) 719-1870 PO BOX 3848 ST CROIX, VI 00851	BANCO POPULAR DE PUERTO RICO 101-867/218	5193 DATE Apr 3, 2013
Fifty-Four Thousand Nine Hundred Thirty-Eight and 89/100 Dollars		AMOUNT \$ ****\$54,938.89
PAY TO THE ORDER OF: FUERST ITTLEMAN DAVID & JOSEPH PL 1001 BRICKELL BAY DRIVE 32ND FLOOR MIAMI, FL 33131	 AUTHORIZED SIGNATURE	
Memo:		

UNITED CORPORATION DBA PLAZA EXTRA

5193

LMP08 M/P CHECK

037215 0010 1



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

ACTION FOR DAMAGES
INJUNCTIVE AND
DECLARATORY RELIEF
JURY TRIAL DEMANDED

PLAINTIFF'S MOTION TO SUPPLEMENT THE RECORD

COMES NOW the plaintiff and hereby supplements the preliminary injunction record with the attached declaration, demonstrating that the operation of the Plaza Extra Supermarkets remains in need of injunctive relief, as the status quo continues to change and has now accelerated.

Dated: April 23, 2013



Joel H. Holt, Esq.
Counsel for Plaintiff
2132 Company Street,
Christiansted, VI 00820
holtvi@aol.com
340-773-8709

Carl J. Hartmann III, Esq.
Co-Counsel for Plaintiff
5000 Est. Coakley Bay, L6
Christiansted, VI 00820
Carl@carlhartmann.com
340-642-4422

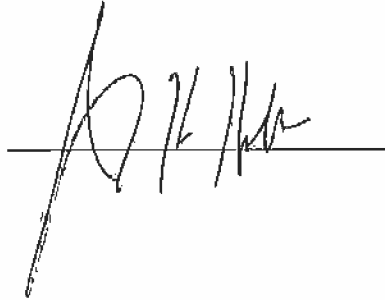
CERTIFICATE OF SERVICE

I hereby certify that on this 5th day of April 23, 2013, I served a copy of the foregoing Reply by hand on:

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

And by email (jdiruzzo@fuerstlaw.com) and mail to:

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

A handwritten signature in black ink, appearing to read "JD DiRuzzo", is written over a horizontal line.

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

MOHAMMAD HAMED by His Authorized Agent WALEED HAMED ,)	
)	
<i>Plaintiff,</i>	)	CIVIL NO. SX-12-CV- 370
v.)	
	)	ACTION FOR DAMAGES
FATHI YUSUF and UNITED CORPORATION,	)	INJUNCTIVE AND
	)	DECLARATORY RELIEF
<i>Defendants.</i>)	
<hr style="width: 40%; margin-left: 0;"/>	)	JURY TRIAL DEMANDED
)	

DECLARATION OF WALEED HAMAD

I, Waleed Hamed a/k/a Wally Hamed, declare, pursuant to 28 U.S.C.


Section 1746, as follows:

1. I have personal knowledge of the facts set forth herein.
2. Despite telling this Court that the status quo will not change, late last week access to the supermarket accounts was denied to the Hamed family by the banks holding the supermarket accounts based on instructions from the defendants.
3. The banks were also instructed that the names of the Hamed family members must be removed as account signatories on these accounts, which has now been done as well.
4. This development has caused a new issue to arise between the partnership and these banks, which has not yet been resolved. See Group Exhibit A (without attachments).
5. Despite telling this Court that 50% of the profits from the Plaza Extra Supermarkets belong to my father, the defendants have now filed tax returns claiming 100% of those profits, as discussed in Group Exhibit B attached, raising a new issue with the IRB which has not been resolved.
6. The day-to-day tension at the three Plaza Extra Supermarkets remains high, with verbal and written exchanges taking place regularly between the members of the Yusuf and Hamed families, often in front of store employees.

7. The landlord, United Corporation, continues to try to interfere with the day to day operations of the Sion Farm store. See, e.g., Group Exhibit C attached.

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

Dated: April 23, 2013



Waleed Hamed aka Wally Hamed

JOEL H. HOLT, ESQ. P.C.

2132 Company Street, Suite 2
Christiansted, St. Croix
U.S. Virgin Islands 00820

Tele. (340) 773-8709
Fax (340) 773-8677
E-mail: holtvi@aol.com

April 18, 2013

Denise Martin
ScotiaBank
c/o Sunny Isles, St. Croix 00820

Sent via email: Denise.martin@scotiabank.com
and by Hand Delivery

Dear Ms. Martin

I was retained in March of 2012 by Mohammad Hamed to deal with a proposed partnership dissolution notice he had recently received from Fathi Yusuf regarding the three Plaza Extra Supermarkets. The proposal was from Nizar DeWood, a St. Croix lawyer who represents Mr. Yusuf, with a cover letter and a draft proposal that stated in part (**Exhibit 1**):

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;

The cover letter described the partnership assets as the three Plaza Extra stores, with the draft dissolution agreement also describing 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



JA-1688

The partnership described in Attorney DeWood's letter and draft dissolution agreement is not something new, as Fathi Yusuf has always acknowledged it. For example, in 2002, there was litigation in St. Thomas over the Plaza Extra Supermarket at the Tutu Mall. In that case Mr. Yusuf testified under oath about the existence of the partnership, excerpts of which are attached as **Exhibit 2**, which detail the creation and existence of the partnership. Also filed in that Court was an affidavit from Mr. Yusuf, attached as **Exhibit 3**, which stated in part as follows:

2. My 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.
3. Mohamed Hamed and I decided to open a St. Thomas Plaza Extra store and used our own capital and later obtained financing to make the store ready for opening.

The efforts to amicably resolve the partnership dissolution did not work out, so litigation was commenced by my client, Mohammad Hamed, in the Superior Court of the Virgin Islands against Fathi Yusuf and United Corporation ("United"), as United hold funds belonging to this partnership.

There is no question that my client is entitled to 50% of the profits from the Plaza Extra Supermarkets. Aside from the documents referenced above, Mr. Yusuf's lawyers have admitted this fact. For example, in one Rule 12 pleading, Mr. Yusuf's and United's lawyers stated (excerpt attached as **Exhibit 4**):

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....Plaintiff Hamed received 50% of the net profits thereafter. (Emphasis added).

This judicial admission was then repeated by Mr. Yusuf's and United's counsel in another pleading (excerpt attached as **Exhibit 5**):

There is no disagreement that Mr. Hamed is entitled to fifty percent (50%) of the profits of the operation of Plaza Extra Store. . . . The issue is not whether Plaintiff Hamed is entitled to 50% of the profits. He is.

Notwithstanding this fact, the bank accounts for this partnership have always been placed in the name of United Corporation. As Yusuf explained in an interrogatory response in the 2002 litigation in St. Thomas (excerpt attached as **Exhibit 6**):

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.,**(Emphasis added.)

This sworn interrogatory response was consistent with his sworn deposition testimony in that case as well (**Exhibit 2** at pp. 23-24):

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

As such, while Mohammad Hamed's name is not on any of the bank accounts opened at your bank and currently used by Plaza Extra to operate the Plaza Extra Supermarkets, my client has a 50% interest in those funds.

This situation was not an immediate concern to me until I learned today that the authorized signatures on the account were just changed without my knowledge or approval, even though it is undisputed that I am a partner in this business. Thus, unless these persons are placed back on the account, you are not authorized to release my 50% interest in any of those accounts, which include the following account numbers:

St. Thomas Plaza Extra Store:

Operating Acct:	04xxxxxxxxxx	Bank of Nova Scotia (BNS)
Payroll Acct:	04xxxxxxxxxx	Bank of Nova Scotia (BNS)
Telecheck Acct:	04xxxxxxxx	Bank of Nova Scotia (BNS)

St. Croix Plaza Extra – WEST

TeleCheck Acct:	05xxxxxxxxxx	Bank of Nova Scotia (BNS)
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St. Croix Plaza Extra – EAST

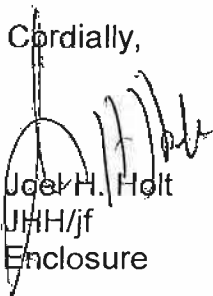
Telecheck Acct:	58xxxxxxxxxx	Bank of Nova Scotia (BNS)
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If you need the full number of these accounts, please let me know.

I should note that United Corporation is the landlord for Plaza Extra East, as United owns the shopping center at Sion Farm and rents the supermarket space to Plaza Extra (see **Exhibit 7**), so Mohammad Hamed has no claim to any funds in any bank accounts for the shopping center itself that you may be holding.

If you have any questions, please let me know as well.

Cordially,


Jger H. Holt
JHH/jf
Enclosure

JOEL H. HOLT, ESQ. P.C.

2132 Company Street, Suite 2
Christiansted, St. Croix
U.S. Virgin Islands 00820

Tele. (340) 773-8709
Fax (340) 773-8677
E-mail: holtvi@aol.com

April 18, 2013

Roberto Rivera Vasquez
Antolin Velasco Velez
Banco Popular
c/o Sunny Isle, St. Croix VI

Sent: via email: robrivera@bppr.com and avelasco@bppr.com
and Hand Delivered

Dear Sirs:

I was retained in March of 2012 by Mohammad Hamed to deal with a proposed partnership dissolution notice he had recently received from Fathi Yusuf regarding the three Plaza Extra Supermarkets. The proposal was from Nizar DeWood, a St. Croix lawyer who represents Mr. Yusuf, with a cover letter and a draft proposal that stated in part (**Exhibit 1**):

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;

The cover letter described the partnership assets as the three Plaza Extra stores, with the draft dissolution agreement also describing 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

The partnership described in Attorney DeWood's letter and draft dissolution agreement is not something new, as Fathi Yusuf has always acknowledged it. For example, in 2002, there was litigation in St. Thomas over the Plaza Extra Supermarket at the Tutu Mall. In that case Mr. Yusuf testified under oath about the existence of the partnership, excerpts of which are attached as **Exhibit 2**, which detail the creation and existence of the partnership. Also filed in that Court was an affidavit from Mr. Yusuf, attached as **Exhibit 3**, which stated in part as follows:

2. My 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.
3. Mohamed Hamed and I decided to open a St. Thomas Plaza Extra store and used our own capital and later obtained financing to make the store ready for opening.

The efforts to amicably resolve the partnership dissolution did not work out, so litigation was commenced by my client, Mohammad Hamed, in the Superior Court of the Virgin Islands against Fathi Yusuf and United Corporation ("United"), as United hold funds belonging to this partnership.

There is no question that my client is entitled to 50% of the profits from the Plaza Extra Supermarkets. Aside from the documents referenced above, Mr. Yusuf's lawyers have admitted this fact. For example, in one Rule 12 pleading, Mr. Yusuf's and United's lawyers stated (excerpt attached as **Exhibit 4**):

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....Plaintiff Hamed received 50% of the net profits thereafter. (Emphasis added).

This judicial admission was then repeated by Mr. Yusuf's and United's counsel in another pleading (excerpt attached as **Exhibit 5**):

There is no disagreement that Mr. Hamed is entitled to fifty percent (50%) of the profits of the operation of Plaza Extra Store. . . . The issue is not whether Plaintiff Hamed is entitled to 50% of the profits. He is.

Notwithstanding this fact, the bank accounts for this partnership have always been placed in the name of United Corporation. As Yusuf explained in an interrogatory response in the 2002 litigation in St. Thomas (excerpt attached as **Exhibit 6**):

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.,**(Emphasis added.)

This sworn interrogatory response was consistent with his sworn deposition testimony in that case as well (**Exhibit 2** at pp. 23-24):

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

As such, while Mohammad Hamed's name is not on any of the bank accounts opened at your bank and currently used to operate the Plaza Extra Supermarkets, my client has a 50% interest in those funds.

This situation was not an immediate concern to me until I learned today that the authorized signatures on the account were just changed without my knowledge or approval, even though it is undisputed that I am a partner in this business. Thus, unless these persons are placed back on the account, you are not authorized to release my 50% interest in any of those accounts, which include the following account numbers:

St. Thomas Plaza Extra Store:

Credit Card Acct: 1xxxxxxx Banco Popular

St. Croix Plaza Extra – WEST

Operating Acct: 19xxxxxx Banco Popular

Credit Card Acct: 19xxxxxx Banco Popular

St. Croix Plaza Extra – EAST

Operating Acct: 19xxxxxx Banco Popular

Credit Card Acct: 19xxxxxx Banco Popular

Mohammad Hamed also has an interest in the securities accounts held by the bank as well, which are as follows:

Popular Securities

PSx-xxxx22

PSx-xxxx63

PSx-xxxx60

PSx-xxxx79

PSx-xxxx01

PSx-xxxx10

PSx-xxxx28

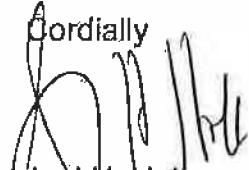
PSx-xxxx36

Please make sure you have Mohammad Hamed's permission before dispersing anything from this fund as well.

If you need the full number of these accounts, please let me know. I should note that United Corporation is the landlord for Plaza Extra East, as United owns the shopping center at Sion Farm and rents the supermarket space to Plaza Extra (see **Exhibit 7**), so Mohammad Hamed has no claim to any funds in any bank accounts for the shopping center itself that you may have.

If you have any questions, please let me know as well.

Cordially



Joel H. Holt
JHH/jf
Enclosure

JOEL H. HOLT, ESQ. P.C.

2132 Company Street, Suite 2
Christiansted, St. Croix
U.S. Virgin Islands 00820

Tele. (340) 773-8709
Fax (340) 773-8677
E-mail: holtvi@aol.com

March 14, 2013

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

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

Re: Plaza Extra

By Email and Mail

Dear Counsel:

As you have stated on numerous occasions, the Plea Agreement in the criminal case requires United Corporation ("United") to file "true and accurate" tax returns for each year since the indictment was filed. I have recently been provided documents stating that United has now filed these tax returns. I have also seen pleadings filed in the District Court of the Virgin Islands signed by you stating that in doing so, United has complied with its obligation under the Plea Agreement to file "true and accurate" tax returns.

However, if United has included 100% of the income from the Plaza Extra Supermarkets as part of its stated income on these tax returns, then these filings cannot be "true and accurate" tax returns based on your own statements made in writing to the District Court and Superior Court of the Virgin Islands.

In this regard, on November 5, 2012, United (and Fathi Yusuf) filed a pleading in the District Court of the Virgin Islands under Mr. DeWood's signature in Hamed v United and Yusuf District Court No. 1:12-cv-099, stating on page 3 of the defendants' memorandum in support of your Rule 12 motion (ECF # 29):

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.... (Emphasis added.)



Of course, Mr. DiRuzzo and his firm were co-counsel of record for United when this pleading was filed.

In the December 13th reply memorandum regarding this same motion, again filed under Mr. DeWood's signature after the case had been remanded to the Superior Court from the District Court, United clearly stated clearly on page 11 as follows:

There is no disagreement that Mr. Hamed is entitled to fifty percent (50%) of the profits of the operation of Plaza Extra Store.

Again, Mr. DiRuzzo and his firm were co-counsel of record for United when this pleading was filed.

In short, those judicial statements were made in both the District Court and the Superior Court of the Virgin Islands.

In light of the judicial statements filed by you on behalf of United in both the U.S. District Court and the Superior Court of the Virgin Islands, under the applicable rules of professional conduct, you cannot now assert that the tax returns filed by United are "true and accurate" if they include my client's portion of the profits as part of United's profits.

Indeed, even if you disagree with the assertion that Mohammed Hamed and Fathi Yusuf have a partnership that shares the Plaza Extra profits, the current filings are still not "true and accurate" returns under your version of that relationship. In this regard, when I asked your current comptroller about this situation at the January 31st hearing, he stated that United would have to issue a 1099 to Mr. Hamed for his share of the profits, which would then be deducted from United's net profits before returns are filed. As Mr. Hamed has not received such a 1099, the returns as filed cannot be "true and accurate" under any scenario you believe exists.


This issue is not new to either of you, as I have written to you both about it on several occasions. However, now that you are asserting that "true and accurate" returns have been filed by your client, when you know your client has submitted returns that are contrary to representations you have made to the Court about the profits of Plaza Extra, I cannot allow you to continue to engage in such conduct any longer since I am an officer of the Court, as are you.

However, before proceeding further, I would like to provide you with an opportunity to explain to me why I am incorrect in my perception about this issue, as perhaps I am overlooking something. If I do not hear from you by March 19th, I will assume that you do not intend to reply and will proceed accordingly.

I am only sending this letter to the two of you, as it is my understanding that it is just the two of you who are handling the criminal matter where these improper statements are

being made. If another lawyer has been admitted in that case on behalf of United, please let me know, as I want to make sure all counsel of record for United in that case get a copy of this letter.

Yours,



Joel H. Holt
JHH/jf
Enclosure



Joseph A. DiRuzzo, III, Esq., CPA
305.350.5690
jdiruzzo@fuerstlaw.com

March 19, 2013

Via USPS and email: holtvi@aol.com

Joel H. Holt, Esq.
2132 Company Street, Suite 2
Christiansted, St. Croix
U.S. Virgin Islands, 00820

Re: United States, et al. v. United Corp.; 1:05-cr-15 (D.V.I.)

Dear Mr. Holt,

I am in receipt of your correspondence dated March 14, 2013, and this is our response thereto.

You represent Mohammad Hamed, not a criminal defendant in the above-referenced case. Your client has no standing in respect to the plea agreement between the Government and the criminal defendants. If your client really believes that he is entitled to 50% of the profits of Plaza Extra, then he should have been reporting on his tax returns that he was liable for the tax on those profits. Your client either does not have the bona fide belief that he is entitled to 50% of the profits, or that notwithstanding his bona fide belief, he failed to report and pay tax on thereon.

Second, in respect to your claims, our position as to the facts were entered into the record via sworn testimony and exhibits before Judge Brady, is set forth in detail in both the Memorandum of Law in Support and the Proposed Findings of Fact and Conclusions of Law Regarding TRO/Preliminary Injunction Application.

Kind Regards,

A handwritten signature in black ink, appearing to be 'JD' with a flourish.

Joseph A. DiRuzzo, III

JAD/

cc: United Corp.
N. DeWood, Esq.

JOEL H. HOLT, ESQ. P.C.

2132 Company Street, Suite 2
Christiansted, St. Croix
U.S. Virgin Islands 00820

Tele. (340) 773-8709
Fax (340) 773-8677
E-mail: holtvii@aol.com

April 12, 2013

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

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

By Email and Mail

Re: Plaza Extra

Dear Counsel:

In response to the March 19th letter sent by Attorney DiRuzzo, which indicates it was sent on behalf of Attorney DeWood as well (please correct me if I am mistaken on this point), Mohammed Hamed has asserted his right to 50% of the profits from the Plaza Extra Supermarkets in the Superior Court litigation, which he testified to under oath. Of course you are fully aware of this fact, so your suggestion that my client does not really believe he is entitled to these profits is absurd.

Moreover, all of the taxes owed on the profits from the Plaza Extra Supermarket have been paid in full, as you know, except for any amount that may still be due for the years 2002 to 2010, which funds are frozen by the TRO in the criminal case. Again, you are fully aware of this fact as well, so your suggestion that the taxes owed on profits due my client have not been paid is incorrect as well.

Since United Corporation has now apparently submitted tax returns claiming that 100% of the profits from the Plaza Extra Supermarkets belong to it and its Sub-S shareholders, my client will correct this false reporting by filing the appropriate tax returns reporting 50% of these net profits as his income.

I attempted to have you both avoid a situation that would place your clients in the position of having filed fraudulent tax returns by pointing out in my March 14th letter the

representations you both made in pleadings filed in the Superior Court (stating that my client is entitled to 50% of the profits from the Plaza Extra Supermarkets). Those judicial statements directly contradict what your client has now apparently told the IRB in its 2002 to 2010 tax filings. I do not understand why you would allow your client to file tax returns that are contrary to judicial statements made you and your clients. I also do not understand how you can represent to the District Court that your clients have now filed accurate tax returns with the IRB.

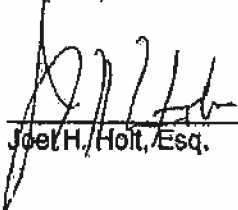
I had hoped to avoid reaching this point, which is why I sent numerous letters about this matter reminding you of the statements that you and your clients have made to both the District Court and the Superior Court of the Virgin Islands. Indeed, the IRB only required accurate returns to be filed, which provided our respective clients with an opportunity to completely clean up the tax issues related to United and the Plaza Extra Supermarkets.

Mr. Hamed had always intended to bring his tax filings current (as he has filed in the past contrary to your suggestion that he has not) once the criminal case reached the point where the filing of the tax returns could be done by all parties. However, as United Corporation chose to proceed without doing so in conjunction with Mr. Hamed, I see no alternative at this time but for Mr. Hamed to proceed with bringing his own tax filings current.

As noted, those filings will be consistent with what he and you have represented to the courts, showing that 50% of the net profits from the Plaza Extra Supermarkets are his income, not United's or its shareholders. Perhaps you should consider having your clients file amended returns now as well to correct their incorrect filings.

Please let me know if you have any questions or have any clarifications you would like to make.

Yours,



Joel H. Holt, Esq.

JOEL H. HOLT, ESQ. P.C.

2132 Company Street, Suite 2
Christiansted, St. Croix
U.S. Virgin Islands 00820

Tele. (340) 773-8709
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E-mail: holtvi@aol.com

April 22, 2013

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

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

By Email and Mail

Re: Plaza Extra

Dear Counsel:

Carl and I tried to contact you both last Wednesday regarding several matters. One item involved the attached letter hand delivered to Mafi Hamed by the Yusufs on April 17th.

While I do not know whether you were consulted before it was sent, please remind your clients that United Corporation is the landlord for the Plaza East store at Sion Farm, as they should know since they send rent notices monthly (seeking an amount of rent never agreed to).

Please advise them that any interference by United with the operation of the tenant's business is an actionable tort. In short, please make sure the landlord does not interfere with the operation of the Plaza Extra Supermarket at Sion Farm.

Yours,



Joel H. Holt





BY HAND DELIVERY

April 17, 2013

**Mufeed Hamed
c/o Plaza Extra Supermarket
4C & 4D Estate Sion Farm
Christiansted, V.I. 00820**

Re: Warning Letter

Mufeed Hamed,

This letter is to warn you about your behavior on several matters that have recently caused serious problems at the Plaza Extra Supermarket Store in Estate Sion Farm, V.I.

I. Firearms & Ammunition

Your desk contains numerous shotgun shells, rifle cartridges, as well as other firearm ammunitions. This is highly unacceptable, and has raised serious fire safety concerns according to the recent fire inspection. In addition, you have put these ammunitions in open view in a highly intimidating manner. I do not have to tell you that these ammunitions could possibly fall in the hands of individuals who are not authorized to possess ammunition and could subject United Corporation to liability. Accordingly, you are asked to remove all ammunition from the premises.

II. Employee Raed Hamed's Insubordination & Termination

You have deliberately instructed your son Raed Hamed not to follow the instructions of manager Yusuf Yusuf. This will not be tolerated. The fact that he is your minor son does not give you authority to tell your son not to follow the repeated instructions of manager Yusuf Yusuf. Because of Raed Hamed's insubordination and confrontational attitude with Yusuf Yusuf, your son was terminated.

Despite your full knowledge of your son's employment termination, you have gone back and placed him on the company's payroll without my authorization. Let me be clear, Raed Hamed is terminated and is not to re-enter the store to work. Should you attempt or instruct anyone else to reinstate Raed Hamed, your employment will be terminated immediately.

III. Unauthorized Office Partition construction.

Apparently, you have also decided to construct office partitions for yourself without the approval of any of United Corporation's officers, or your colleague Yusuf Yusuf. You constructed the first office partition downstairs, and then proceeded to move ahead with plans to construct another partition upstairs. This insubordinate behavior is designed to instigate and cause friction with other employees and officers of United Corporation. What is more disturbing is the fact that these partitions are designed to interfere with the management operations of Plaza Extra's Sion Farm Store.

IV. Wadda Charriez

As a courtesy, we have given you over four (4) months to review employee Charriez's false-time entries, and to give you a chance to comment on our decision to terminate her for theft. In the spirit of cooperation, we have been awaiting your review of her false time records. To date, Ms. Charriez remains employed despite over \$10,000 dollars in losses United Corporation suffered because of her theft.

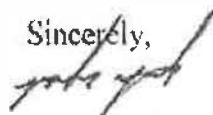
This will not be tolerated for Ms. Charriez or any other employee. Should you have any proof that Ms. Charriez did not engage in reporting false hours, please provide me in writing your basis for keeping Ms. Charriez as employee of United Corporation.

In summary:

- 1) The ammunition must be removed by close of business Friday, April 19th, 2013.
- 2) You are not to unilaterally reinstate your son Raed Hamed, without my written authorization.
- 3) You are to cease any plans for constructing any office partition upstairs, and provide me with a plan to remove the unauthorized partition downstairs by April 25th, 2013, and
- 4) You are to provide in writing why Wadda Charriez should not be terminated by April 25th, 2013 for her theft.

I look forward to full compliance with these issues.

Sincerely,



Maher Yusuf
President of United Corporation

PLAZA EXTRA

P.O. BOX 3649, KINGSHILL
ST. CROIX, U.S. VIRGIN ISLANDS 00851

*Hand Delivery
Manufactured*

PLAZA EXTRA

PHONE: 809-778-6240
FAX: 809-778-1200

P.O. BOX 763, CHRISTIANSTED
ST. CROIX, U.S. VIRGIN ISLANDS 00821

To: Yusuf Yusuf
From: Mufeed Hamed
Date: April 21, 2013

I was handed the attached letter dated April 17, 2013, signed by Maher Yusef in his role as the President of United Corporation. I work for the partnership between my father and Fathi Yusuf, which you know. You and I manage the Plaza Extra store at Sion Farm, so we do not report to Maher, who is the co-manager of the Plaza West store with my brother, Hisham. Since you were present when the letter was handed to me, I will respond to you regarding the four items as follows:

I. Ammunition

Regarding the ammunition mentioned in the letter, that ammunition was purchased by the Yusufs, but I collected and stored it, as it had been left throughout the office. I agree it should be removed. Please do so.

II. Raed Hamed

As for my son, Raed Hamed, your family has harassed my 16 year old son since the filing of the TRO motion. My son has done nothing wrong.

As you know, Employee Hand Book Rule 26 provides: If you feel that your supervisor is harassing you and it hampers the performance of your job, you must report it to the general manager. If the general manager cannot help you, then you should make an appointment to see the owner.

My son reported that you and your family were harassing him months ago (including one of your family member telling him the Hamed family was "stupid" and "they are wrong"). It is amazing you cannot control your family to keep our minor children out of our current dispute. In any event, based on his report to me that he was being harassed by you, I gave him the directives that he is now following.

As for your statement that "Despite your full knowledge of your son's employment termination, you have gone back and placed him on the company's payroll without my authorization," you know full well that the issue of who controls such decisions is before Judge Brady. Indeed, your lawyers have told the Judge that

PLAZA EXTRA

~~the status quo will not be changed while the Court addresses this issue. Should you continue to act unilaterally in such a matter -- regarding my son or any other family member, I will ask our lawyers to immediately seek the Court's assistance.~~

PHONE: 809-778-8240
FAX: 809-778-1200

P.O. BOX 763, CHRISTIANSTED
ST. CROIX, U.S. VIRGIN ISLANDS 00821

III. Partition

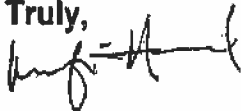
It is curious that United Corporation complains about these partitions, as United Corporation is the landlord for the store, not the owner. As the rent notices indicate, this store is owned by the partnership between my father and your father. When does a landlord tell a tenant what to do or not do in the tenant's business?

In any event, the referenced partitions are the result of complaints by other employees (a copy of one such complaint is attached) and my own need for privacy, as you know.

IV. Wadda Charriez

As for Wadda Charriez, I have not yet finished reviewing what you finally gave me after weeks of asking for the information you believe supports the action you have suggested. From what I have reviewed to date, it does not support your claims. When I am finished, I will meet with you, but I have instructed Wadda not to leave work even if you tell her she is discharged. As for the four hours she admitted to mistakenly reporting on Thanksgiving, that total comes to \$36.00. Enclosed is half of that amount, which represents the 50% loss to you father's interest in the partnership, as my father's 50% interest believes Wadda Charriez is worth what she has been paid without picking on her for this mistake.

Truly,



Mufeed Hamed



PHONE: 340-714-1870 FAX: 340-714-1871

BY HAND DELIVERY

April 17, 2013

Mufeed Hamed
c/o Plaza Extra Supermarket
4C & 4D Estate Sion Farm
Christiansted, V.I. 00820

Re: Warning Letter

Mufeed Hamed,

This letter is to warn you about your behavior on several matters that have recently caused serious problems at the Plaza Extra Supermarket Store in Estate Sion Farm, V.I.

I. Firearms & Ammunition

Your desk contains numerous shotgun shells, rifle cartridges, as well as other firearm ammunitions. This is highly unacceptable, and has raised serious fire safety concerns according to the recent fire inspection. In addition, you have put these ammunitions in open view in a highly intimidating manner. I do not have to tell you that these ammunitions could possibly fall in the hands of individuals who are not authorized to possess ammunition and could subject United Corporation to liability. Accordingly, you are asked to remove all ammunition from the premises.

II. Employee Raed Hamed's Insubordination & Termination

You have deliberately instructed your son Raed Hamed not to follow the instructions of manager Yusuf Yusuf. This will not be tolerated. The fact that he is your minor son does not give you authority to tell your son not to follow the repeated instructions of manager Yusuf Yusuf. Because of Raed Hamed's insubordination and confrontational attitude with Yusuf Yusuf, your son was terminated.

Despite your full knowledge of your son's employment termination, you have gone back and placed him on the company's payroll without my authorization. Let me be clear, Raed Hamed is terminated and is not to re-enter the store to work. Should you attempt or instruct anyone else to reinstate Raed Hamed, your employment will be terminated immediately.

III. Unauthorized Office Partition construction.

Apparently, you have also decided to construct office partitions for yourself without the approval of any of United Corporation's officers, or your colleague Yusuf Yusuf. You constructed the first office partition downstairs, and then proceeded to move ahead with plans to construct another partition upstairs. This insubordinate behavior is designed to instigate and cause friction with other employees and officers of United Corporation. What is more disturbing is the fact that these partitions are designed to interfere with the management operations of Plaza Extra's Sion Farm Store.

IV. Wadda Charriez

As a courtesy, we have given you over four (4) months to review employee Charriez's false time entries, and to give you a chance to comment on our decision to terminate her for theft. In the spirit of cooperation, we have been awaiting your review of her false time records. To date, Ms. Charriez remains employed despite over \$10,000 dollars in losses United Corporation suffered because of her theft.

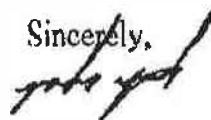
This will not be tolerated for Ms. Charriez or any other employee. Should you have any proof that Ms. Charriez did not engage in reporting false hours, please provide me in writing your basis for keeping Ms. Charriez as employee of United Corporation.

In summary:

- 1) The ammunition must be removed by close of business Friday, April 19th, 2013.
- 2) You are not to unilaterally reinstate your son Raed Hamed, without my written authorization.
- 3) You are to cease any plans for constructing any office partition upstairs, and provide me with a plan to remove the unauthorized partition downstairs by April 25th, 2013, and
- 4) You are to provide in writing why Wadda Charriez should not be terminated by April 25th, 2013 for her theft.

I look forward to full compliance with these issues.

Sincerely,



Maher Yusuf
President of United Corporation

This is a formal letter informing you that I would like more privacy in order to perform my duties.

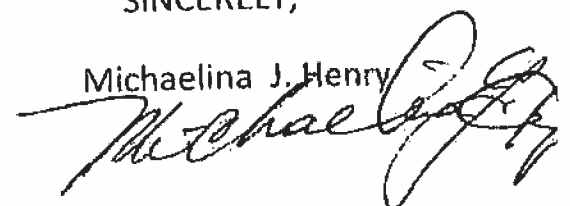
The area that I now operate in has no privacy whatsoever. Due to the fact that merchandisers and employees walk in and out as they please, also the fact that I have to work in a room that has human leaks is unacceptable.

Example: On Monday July 16, 2012, an employee left the store without punching out, but when I was called on the phone concerning the employee the employee happened to walk^{by} at in the same time and stated that he was here. The employee stated that he had punched out, which he usually does. After pulling his time sheet, the employee stated that he forgot to punch out. Someone from the Computer Room had texted that employee and told him that they were inquiring about him.

Please take this into consideration and do not let my request be in vain.

SINCERELY,

Michaelina J. Henry



PLAZA EXTRA
P.O. BOX 763, CHRISTIANSTED
ST. CROIX, U.S. VIRGIN ISLANDS 00821

Hand Deliver:



(2) Plaintiff's request includes two answers to interrogatories of the Defendants in the same *Idheileh v. United* case (proposed Plaintiff's Exhibit 28); an excerpt from Motion for Summary Judgment of Defendants in that case (proposed Plaintiff's Exhibit 29); and two checks dated January 21, 2013 and February 13, 2013, drawn on Plaza Extra Supermarket accounts in payment of Defendants' counsel fees in this matter (proposed Plaintiff's Exhibit 30).

(3) By Plaintiff's "Notice," he supplements Plaintiff's Hearing Exhibits 7 and 15, providing a post-hearing notice of rents due from Defendant United directed to Plaza Extra c/o Plaintiff; and another check drawn on a supermarket account as a post-hearing payment to Defendants' counsel.


(4) Plaintiff's April 4, 2013 filing provides another post-hearing rent notice from United to Plaza Extra c/o Plaintiff.

Defendants object to the proffered new exhibits and supplementation of existing exhibits, claiming that they are presented untimely; that Defendants are deprived of the opportunity to respond and that it is improper for the Court to take judicial notice of matters from another case.

The exhibits submitted as item (1), above, were agreed to by the parties at the hearing. Exhibits 28 and 29, included within item (2) are admissible as admissions against interest (Fed. R. Evid. 801(d)). The fact that they were not discovered until after the hearing has not unduly prejudiced Defendants. Exhibit 30 and the documents included within items (3) and (4), above, simply supplement similar documentation already admitted into the record and, even though they do demonstrate a continuing pattern of conduct, they are all largely cumulative. Defendants are not prejudiced as they are aware of the content and substance of the proffered documents which were generated by them or on their behalf. Thus, having considered the premises, it is hereby

ORDERED that the record is supplemented by the admission of Plaintiff's Exhibits 28, 29 and 30; proffered notices of rents due are admitted as supplementing Plaintiff's Exhibit 7; and checks representing payments to Defendants' counsel are admitted as supplementing Plaintiff's Exhibit 15.

Dated: April 25, 2013



Douglas A. Brady
Judge of the Superior Court

ATTEST:

VENETIA H. VELASQUEZ
Clerk of the Court

By: 

Chief Deputy Clerk

Dated: 4/25/13

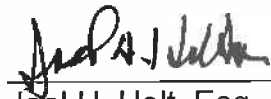
IN THE SUPERIOR COURT OF THE VIRGIN ISLANDS
DIVISION OF ST. CROIX

MOHAMMAD HAMED By His Authorized Agent WALEED HAMED)	
)	
)	
Plaintiff,	)	CIVIL NO. SX-12-CV-370
v.)	
)	
FATHI YUSUF AND UNITED CORPORATION	)	ACTION FOR DAMAGES
	)	INJUNCTIVE AND
	)	DECLARATORY RELIEF
Defendant.	)	JURY TRIAL DEMANDED
)	

NOTICE OF POSTING BOND

Comes now the Plaintiff, Mohammad Hamed, and hereby gives notice of complying with this Court's Order dated April 25, 2013, by posting a bond in the amount of \$25,000 and hereby notifying the defendants of said posting.

Dated: May 1, 2013



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

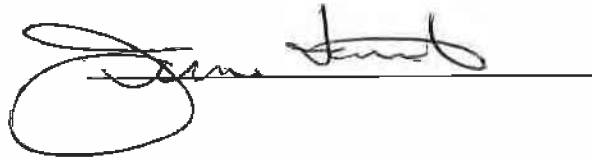
Carl J. Hartmann III, Esq.
Co-Counsel for Plaintiff
5000 Est. Coakley Bay, L6
Christiansted, VI 00820
Carl@carlhartmann.com
340-642-4422

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 1st day of May, I caused a true and exact copy of the foregoing to be served by mail and email to:

Joseph A. DiRuzzo, III
Fuerst Ittleman David & Joseph, PL
1001 Brickell Bay Drive, 32nd. Fl.
Miami, FL 33131
305-350-5690
Email: jdiruzzo@fuerstlaw.com

NIZAR A. DEWOOD
The Dewood Law Firm
2006 Eastern Suburb, Suite 101
Christiansted, VI 00820
340-773-3444
Email: dewoodlaw@gamil.com

A handwritten signature in black ink, appearing to read "Nizar A. Dewood", is written over a horizontal line. The signature is stylized and cursive.

GOVERNMENT OF THE VIRGIN ISLANDS

SUPERIOR COURT
ST. CROIX DIVISION

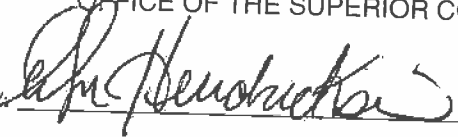
No. 049110

, ST. CROIX, V.I.

RECEIVED FROM			CASE OR PROCEEDING			
HISHAM M. HAMED			MOHAMMAD HAMED/WALEED HAMED VS FATHI YUSUF & UNITED CORPORATION			
DATE		CASE NO.	CODE	ORIGINAL AMOUNT	AMOUNT RECEIVED	BALANCE DUE
5/1/13	CV	370/12	2	25,000.00	25,000.00	0.00

CODES: **CK**
1. SUPPORT **POSTING OF BOND**
2. BOND
3. EXECUTION
4. MISC.

OFFICE OF THE SUPERIOR COURT

BY: 

IN THE SUPERIOR COURT OF THE VIRGIN ISLANDS

DIVISION OF ST. CROIX

13 Mar -7 17:34

MOHAMMED HAMED,

Plaintiff,

v.

FATHI YUSUF,
UNITED CORPORATION

Defendants.

CIVIL NO. SX-12-CV-370

ACTION FOR DAMAGES

**DEFENDANTS' EXPEDITED MOTION
TO CLARIFY PRELIMINARY
INJUNCTION DATED APRIL 25TH, 2013**

UNOPPOSED

**DEFENDANTS' EXPEDITED MOTION TO CLARIFY PRELIMINARY INJUNCTION
DATED APRIL 25TH, 2013**

COME NOW, Defendants Fathi Yusuf and United Corporation, by and through their undersigned counsel and respectfully moves this honorable Court for an Order clarifying the Preliminary Injunction Order to exclude United's Tenants Account no. 9xxx1923 from the scope of the preliminary injunction as that account is a separate account, and is unrelated to the operations of any of the Plaza Extra Stores.

1. On April 25th, 2013, the Court issued a Preliminary Injunction ordering the parties to continue joint management of the operations of the Plaza Extra Stores.
2. The Preliminary Injunction also states that "all Plaza Extra Supermarket operating accounts will require two signatures, one of a designated representative of Hamed and a designated representative of Yusuf."
3. The Bank of Nova Scotia has taken the erroneous position that all operating accounts of United Corporation are covered under the Preliminary Injunction Order, including the United Corporation Tenant Account no. 9xxx1923, which is wholly separate from all of the other Plaza Extra operating accounts. Bank of Nova Scotia has requested that the

court clarify which accounts are to be excluded from the effects of the Preliminary Injunction before it could allow Defendants to disburse any funds without the signature of Plaintiff Hamed or a designated Hamed representative. See Letter of Bank of Nova Scotia, attached as **Exhibit A**.


4. **This Motion is unopposed.** See Plaintiff's Stipulation attached herewith.

Wherefore, it is respectfully requested that the Court enter an Order clarifying the April 25th, 2013 Preliminary Injunction Order to exclude United's Tenant Operating Account No. 9xxx1923 from the scope of the Preliminary Injunction order. A proposed Order is attached herewith.

Date: May 6, 2013

The DeWood Law Firm
Attorney for Defendant

By:




Nizar A. DeWood, Esq.
2006 Eastern Suburb, Suite 102
Christiansted, V.I. 00820
T. (340) 773-3444
F. (888) 398-8428

CERTIFICATE OF SERVICE

It is hereby certified that a true copy of the foregoing Motion was served upon the Plaintiff by Personal Delivery on this 6th day of May, 2013 at the below address.

Joel H. Holt, Esq.
2132 Company Street
Christiansted, VI 00820



Nizar A. DeWood, Esq.

IN THE SUPERIOR COURT OF THE VIRGIN ISLANDS

DIVISION OF ST. CROIX

MOHAMMED HAMED,

Plaintiff,

v.

FATHI YUSUF,
UNITED CORPORATION

Defendants.

CIVIL NO. SX-12-CV-370

ACTION FOR DAMAGES

ORDER

ORDER

Before the Court is Defendants' Motion to Clarify the Court's Preliminary Injunction Order dated April 25th, 2013; the Motion is unopposed and has been stipulated to by the Plaintiff. Duly advised in the premises it is hereby

ORDERED that the Motion is GRANTED; **ORDERED** that Defendant United's Tenant Account No. 9xxx1923 is NOT subject to the Preliminary Injunction Order dated April 25th, 2013.

ORDERED that no signature shall be required from Plaintiff Hamed (or his designee) for the disbursement of any funds from Defendant United's Tenant Account No. 9xxx1923.

ORDERED that Defendants shall serve a copy of this Order on the Bank of Nova Scotia.

ORDERED this _____ day of May, 2013.

HON. DOUGLAS BRADY
SUPERIOR COURT JUDGE

ATTEST:
VENETIA VELASQUES
Clerk of the Court

By: _____
Deputy Clerk

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

MOHAMMED HAMED,

Plaintiff,

v.

**FATHI YUSUF,
UNITED CORPORATION**

Defendants.

CIVIL NO. SX-12-CV-370

ACTION FOR DAMAGES

JURY TRIAL

PLAINTIFF'S STIPULATION

Upon the representation of counsel for Defendants herein, Attorneys DiRuzzo and DeWood that the referenced account will not be used for any financial transaction related to Plaza Extra Supermarkets, Plaintiff hereby stipulates to Defendants' Motion to Clarify Preliminary Injunction Order dated April 25th, 2013, and hereby does not oppose same Motion.

Date: May 6th, 2013



Joel H. Holt, Esq.
2132 Company Street
Christiansted, St. Croix
U.S. Virgin Islands 00820
holtvi@aol.com

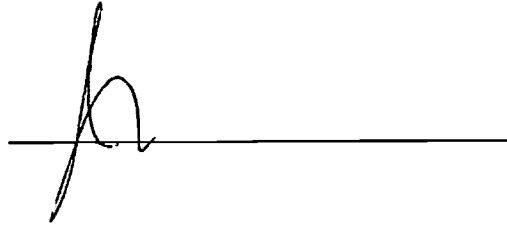
Carl J. Hartmann III, Esq.
Co-Counsel for Plaintiff
5000 Est. Coakley Bay, L6
Christiansted, VI 00820
Carl@carlhartmann.com
340-642-4422

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 6th of May, I caused a true and exact copy of the foregoing to be served by mail and email to:

Joseph A. DiRuzzo, III
Fuerst Ittleman David & Joseph, PL
1001 Brickell Bay Drive, 32nd. Fl.
Miami, FL 33131
305-350-5690
Email: jdiruzzo@fuerstlaw.com

NIZAR A. DEWOOD
The Dewood Law Firm
2006 Eastern Suburb, Suite 101
Christiansted, VI 00820
340-773-3444
Email: dewoodlaw@gamil.com



15

•13 1111-7 117 34

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.)
FATHI YUSUF and UNITED CORPORATON,) ACTION FOR DAMAGES;
Defendants.) JURY TRIAL DEMANDED

ORDER

THIS MATTER is before the Court on Defendant's Motion to Clarify the Court's Preliminary Injunction Order entered on April 25, 2013. Defendant's Motion is unopposed by Plaintiff; moreover, the parties have stipulated to the same. Thus, being fully advised in the premises it is specifically


ORDERED that Defendants' Motion is GRANTED.

ORDERED that Defendant United's Tenant Account No. 9xxx1923 in NOT subject to this Court's Preliminary Injunction Order, entered on April 25, 2013.

ORDERED that no signature shall be required from Plaintiff Hamed (or his authorized agent) for disbursement of any funds from Defendant United's Tenant Account No. 9xxx1923, only.

ORDERED that this Order be served on all parties FORTHWITH, and the Bank of Nova Scotia.

Dated: May 7, 2013


Judge of the Superior Court

ATTEST: VENETIA H. VELASQUEZ
Clerk of the Court

By: 
Chief Deputy Clerk

5/8/13

CERTIFIED TO BE A TRUE COPY
This 8th day of May 20 13
VENETIA H. VELAZQUEZ, ESQ.
CLERK OF THE COURT

By 
Court Clerk

Presumably, any action Defendants desire to undertake regarding the employment of any employee of Defendant United, including the termination of Waleed Hamed and Mufeed Hamed requires a Motion to Modify the April 25th, 2013 Preliminary Injunction Order. In this case, Defendants United and Yusuf seek the termination of the aforementioned employees as a result of various work related misconduct. Most importantly, the Court should reconsider its Preliminary Injunction Order because it is legally inconsistent and substitutes the Courts judgment for that of the Officers and Directors of United¹. See *Browne v. Ritchie*, 559 N.E.2d 808 (Ill. 1990), attached as EXHIBIT E. First, the Court makes the finding that the purported partnership between Plaintiff Hamed and Defendant Yusuf is an at-will partnership. Then the Court takes notice of a Dissolution Notice sent by Defendant Yusuf's counsel on March 13, 2012. Since the notice of dissolution legally terminates the Court's purported at-will partnership, the Court's Preliminary Injunction forcing the parties to continue to jointly manage a terminated partnership is legally invalid. *Id.*

Because of this legal inconsistency and in light of the facts outlined below, the court should grant this Motion and vacate its Preliminary Injunction order. Significantly, in its Findings of Facts & Conclusion of Law, the Court failed to discuss the effects of the dissolution notice upon the validity of the purported at-will partnership. Defendants submit that well-settled legal principles require that the Court vacate its Preliminary Injunction order, and amend its finding of facts and conclusion of law to reflect the real current status of the parties.

¹The Business Judgment rule "prevents the courts from "injecting themselves into a management role for which they were neither trained nor competent." See, *Weiss v. Temporary Inv. Fund*, 692 F.2d 928, 941 (3d Cir.1982) (internal citation omitted)(quoting Duesenberg, *The Business Judgment Rule and Shareholder Derivative Suits: A View from Inside*, 60 Wash.U.L.Q. 311, 314 (1982)("Duesenberg")(emphasis added)).

I. BACKGROUND

A. Facts

1. On September 17th, 2012, Plaintiff Mohammed Hamed (“Hamed”) filed the instant civil action seeking to establish a partnership between Mohammed Hamed and Fathi Yusuf (“Yusuf”). In addition to the Amended Complaint, Plaintiff filed a Motion for Temporary Restraining Order/or Preliminary Injunction. Plaintiff renewed same on January 8th, 2013, citing the pending termination of employee Wadda Charriez.
2. Defendants argued that while Mohammed Hamed is entitled to 50% of the profits of the operations of the Plaza Extra Supermarkets pursuant to an oral agreement entered into in 1986 with Defendant Fathi Yusuf, United Corporation remained a separate legal entity and is owned by the Yusuf family in various percentage shares.
3. Plaintiff’s Amended Complaint never sought to pierce the corporate veil of Defendant United, nor has there been any testimony, evidence, or exhibits to demonstrate why Defendant United’s corporate structure should not be respected.
4. On April 25th, 2013, the Court granted Plaintiff’s Motion for Temporary Restraining Order and Preliminary Injunction. The Court found a likelihood of Plaintiff prevailing on the merits concerning the existence of a partnership between Plaintiff Hamed and Defendant Yusuf. The Court further found that under Virgin Islands law, there is no distinction between a “joint venture” and a “partnership.” *Memorandum Opinion, Conclusions of Law* ¶ 8.
5. The Court then cited among others, a **dissolution notice** dated March 13, 2012 where Defendant Yusuf sought to dissolve the “partnership.” *Memorandum Opinion, Conclusions of Law* ¶10.

6. The Court judicially noticed Defendant Yusuf's intent to terminate the "partnership" in his March 13th, 2012 letter to Plaintiff Hamed as proof of the existence of a partnership, and its subsequent termination. *TRO Findings of Facts* ¶10.
7. Plaintiff Hamed testified that the party's intent under the profit sharing agreement was that Defendant Yusuf is in "charge of all three stores." *January 25th, 2013 TRO Hearing 210:21-24*, attached as **Exhibit B**.
8. Plaintiff Hamed testified that he "cannot do nothing" in the stores since 1996 because of his illness, and then subsequent retirement. *January 25th, 2013 TRO Hearing 210:21-24*, attached as **Exhibit B**.
9. Despite Defendant's Dissolution Notice and termination of any purported partnership, the Court issued a Preliminary Injunction requiring the parties to continue to operate the terminated at-will partnership and jointly manage the operations of the Plaza Extra Stores.
10. Since March 4th, 2013, the closing date for the submission of briefs in the TRO matter, new facts arose making management of the Plaza Extra Operations impossible. The facts underlying each employee's misconduct are fully outlined below according to each of the employees covered herein.

Mufeed Hamed

11. Mufeed Hamed is one of Plaintiff Mohammed Hamed's sons, and has been employed by United Corporation as a co-manager at the Plaza Extra Supermarket – East store.
12. On March 27th, 2013 Mufeed Hamed, along with his brother Waleed Hamed, signed and executed a check in the amount of \$460,000 payable to Waleed Hamed drawn on

an account from Plessen Enterprise, Inc. ("Plessen"). See Check No. 376 attached as **Exhibit A.**

13. Plessen is a duly organized Virgin Islands real estate holding company, and is owned in equal shares between the Yusuf and Hamed families. The unauthorized check effectively reduced Plessen's operating account to almost zero as to cause Plessen to become unable to meet its immediate short term obligations, including but not limited to paying the property taxes immediately due for the year 2011.
14. This type of conduct not only is criminal but demonstrates employee Mufeed Hamed's lack of loyalty and diligence in matters relating to custody of funds. As such, an appropriate civil suit has been filed, captioned as *Yusuf Yusuf v. Waleed Hamed, Mufeed Hamed, et al., Case No. SX-13-CV-120* to vindicate Plessen's interest as well as those of its shareholders. The Complaint, ¶25 through ¶36 provides the following:

¶25 On or about March 27th, 2013 Plaintiff YUSUF paid with his personal credit card the 2011 property taxes of PLESSEN.

¶26 YUSUF was reimbursed for such payment by way of a check drawn on PLESSEN's bank account with Scotiabank.

¶27 However, YUSUF was subsequently informed that an employee of Scotiabank called Fathi Yusuf to inform Fathi Yusuf that the check made payable YUSUF would not be honored, *i.e.*, the check would bounce, because of insufficient funds in PLESSEN's Scotiabank account.

¶28 Specifically, on March 27, 2013, Defendant WALEED HAMED [and MUFEED HAMED], without authorization, issued check number 0376 on a PLESSEN checkbook, in the amount of \$460,000.00 from PLESSEN's Scotiabank account, made payable to Defendant WALEED HAMED. A copy of check number 0376 is attached as Exhibit "D" hereto.

¶29 Defendants WALEED HAMED [and MUFEED HAMED] endorsed check number 0376 “for deposit only” and, upon information and belief, then deposited PLESSEN’s \$460,000 at issue in WALEED HAMED’s personal bank account.

¶30 Further, the INDIVIDUAL DEFENDANTS and Defendant FIVE-H, among other improper acts, have individually and collectively obtained the benefit, use and enjoyment of PLESSEN’s defalcated funds.

Demand on the Board is Excused as Futile

¶31 Plaintiff YUSUF did not make a demand on the Board to bring suit asserting the claims set forth herein because pre-suit demand was excused as a matter of law, as set forth below.

¶32 As noted, as of the time of the filing of this complaint, the PLESSEN Board comprised the following directors: Mohammad Hamed; Defendant WALEED HAMED; Fathi Yusuf; and Maher Yusuf.

¶33 Mohammad Hamed, who is Defendant WALEED HAMED’s father, is incapable of making an independent and disinterested decision to institute and vigorously prosecute this action.

¶34 Likewise, Defendant WALEED HAMED is incapable of making an independent and disinterested decision to institute and vigorously prosecute this action, as WALEED HAMED faces a substantial likelihood of liability for the wrongdoings alleged herein, which acts were not, and could not have been, the product of a good faith exercise of business judgment.

¶35 Separately, because both the Board and shareholders of PLESSEN are comprised 50-50% by members of the Hamed and Yusuf families, and because neither the Articles of Corporation nor the By-Laws of PLESSEN provide a tie-breaker mechanism in the event of a deadlock, any demand upon PLESSEN would be useless based on the familial relationships at issue, the lack of sufficient independence of the Hamed members to institute and vigorously prosecute this action and, again, the lack of a corporate tie-breaker mechanism.

¶36 All conditions precedent to bringing this action have been satisfied, performed, discharged, excused and/or waived.

See Complaint, *Yusuf v. Waleed Hamed, Mufeed Hamed, et al.*, attached as **Exhibit A**.

13. This action is currently pending before the Superior Court, St. Croix Division. As a shareholder of Plessen, Defendant Fathi Yusuf's position and interest in Plessen has been materially affected by the conduct of employee Mufeed Hamed.

14. Defendant Yusuf, whether as a shareholder of United Corporation, or a purported partner in a partnership called the Hamed and Yusuf partnership has every right to terminate the employment of an employee who has signed without authorization a draft check for over \$460,000 from Plessen in collusion, be it an employee of United Corporation or the purported partnership of Hamed & Yusuf.

Waleed Hamed

15. Incorporating the above allegations, co-defendant Waleed Hamed has been equally culpable in the misconduct as outlined in the case of *Yusuf v. Waleed Hamed, et al.* However, the misconduct of Waleed Hamed goes much farther. In a separate civil action, *United Corporation v. Waleed Hamed, SX-13-CV-02*, Defendant United outlines disturbing facts of employee misconduct, defalcation, embezzlement, and other misconduct as demonstrated below in ¶¶18 to 28 of the Complaint:

¶18. During a search of the documents and files delivered by the U.S. Government, Plaintiff United reviewed documents comprising tax returns for Defendant Hamed. An examination of Defendant Hamed's tax returns revealed the following significant assets:

- i. **Tax Year 1992 (Stocks & Investments) ...\$ 408,572.00**
- ii. **Tax Year 1993 (Stocks & Investments) ...\$7,587,483.00**

¶19. The detailed stock acquisitions, which were listed meticulously by date of acquisition, price and number of shares purchased, could only have been acquired by Defendant Hamed through his unlawful access to monies and other properties belonging to Plaintiff United. Defendant Hamed never held any other employment since 1986, other than through his employment with Plaintiff United.

¶20. Defendant Hamed also never had any other significant source of income, business operations, investments, etc., prior to or during his employment tenure with Plaintiff United.

¶21. The income tax returns for the years 1992 and 1993 reflect substantial assets that upon information and belief derived from the unlawful conversion and unauthorized access to funds and monies belonging to Plaintiff United. Plaintiff United never provided Defendant Hamed remuneration of more than \$35,000 for a yearly salary.

¶22. In 1993, Defendant Hamed's personal income tax return showed a loss of \$394,382.00. Plaintiff United, through its Treasurer, inquired of Defendant Hamed where he obtained the money in 1992 to sustain a personal loss of \$394,000 in his equity portfolio.

¶23. Defendant Hamed replied that the significant stocks listed in the schedules attached to his joint tax return was that of "Hamdan Diamond" – an unrelated corporation - that the Certified Public Accountant that had prepared Defendant Hamed's 1993 income tax return had made a "mistake" and that Defendant Hamed "would get to the bottom of it."

¶24. To date, Defendant Hamed has offered no evidence of the "mistake" he claimed was attributed to the Certified Public Accountant.

¶25. Further, upon information, such losses were unlikely to be a "mistake" because Defendant Hamed "carried forward" those losses on his personal income tax returns through 1999.

¶26. An examination of Defendant Hamed's personal tax returns revealed that Defendant Hamed's stock purchases between 1991 and 1996 totaled more than \$7 Million.

¶27. In October of 2011, a review of the U.S. Government records and files further revealed the following defalcation of funds:

- a. Loans totaling \$430,500.00, approved by Defendant Hamed, presumably repaid to Defendant Hamed.
- b. Payments made with respect to the construction of Defendant Hamed's home amounting to \$481,000.00.
- c. Six checks totaling \$135,000, drawn on the operating account of Plaintiff United's Plaza Extra supermarket, and made payable to "Waleed Hamed" personally.

¶28. To this date, Defendant Hamed refuses to explain and account for any of the aforementioned funds.

See Complaint, *United v. Waleed Hamed*, attached as **Exhibit B**.

16. In response to the complaint, employee Waleed Hamed filed a motion to dismiss on grounds of statute of limitations. To date, employee Waleed Hamed has failed to provide Defendant United Corporation or Defendant Fathi Yusuf with an explanation concerning the funds listed in the foregoing complaint.

Wadda Charriez

17. Wadda Charriez commenced employment with United Corporation in 1998, and then was assigned the duties of office manager. On January 8th, 2013, after an investigation, United Corporation sought the termination of Wadda Charriez. The facts underlying the termination are as stated in the case of *United v. Wadda Charriez*, ¶¶8 through 22:

¶8. Plaintiff United is the employer of Wadda Charriez, who began her employment on January 5th, 1998 as a cashier. Thereafter, Defendant Charriez eventually became an office manager was assigned the duties of preparing and issuing payroll checks.

¶9. Plaintiff United utilizes a hand recognition payroll system where every employee must scan his or her right hand to "punch-in" and "punch-out" each day.

The system marks the entry and exit times for each employee, and tabulates the exact number of hours worked.

¶10. The system then automatically feeds the payroll system with time information obtained from each employee's hand scan.

¶11. Any print out or payroll report from the payroll system shows the date and time the hand was scanned. However, if an employee manually enters the entry and exit times, any printout of that employee's time sheets will show an asterisk next to the manually overridden time.

¶12. This time entry by way of hand recognition procedure is required for all hourly wage based employees. Of all the hourly based employees, Defendant Charriez, by virtue of her payroll responsibilities, has manually overridden the payroll system virtually every single time.

¶13. There is only one explanation as to why Defendant Charriez's timesheets would show consistent manual time entries: to report false hours and to cause the payroll system to issue overstated wage paychecks.

¶14. On April 29th, 2013, Plaintiff United Corporation terminated Defendant Wadda Charriez for reporting false hours causing Plaintiff United monetary losses of \$39,699 dollars.

¶15. Upon information, Defendant Charriez reported false hours for the years 2006 through 2009, the records of which are being collected and analyzed.

¶16. For the years 2010 through 2012, Defendant Charriez reported the following total false hours:

i. Year 2010	786 hours	@ \$15.50 = \$12,969
ii. Year 2011.....	832 hours	@ \$18.00 = \$14,976
iii. Year 2012	615 hours	@ \$18.00 = <u>\$11,754</u>
		\$39,699

¶17. Plaintiff United warned Wadda Charriez on January 8th, 2013 of Plaintiff's [United's] intent to terminate her should she fail to explain why Defendant Charriez falsely reported such significant hours, and worse kept all of the proceeds she derived from her wages.

¶18. Plaintiff United provided Defendant Charriez over 120 days to explain her false reporting of work hours.

¶19. On April 29th, 2013, Defendant Charriez's employment was terminated. Employee Charriez never returned any of the monies she received as a result of her false hours, and never explained the reasons for her misconduct.

¶20. As an office manager, and an employee tasked with properly preparing, reporting, and issuing payroll checks for United's employee, Defendant Charriez violated her at-will employment agreement with United Corporation.

¶21. As an employee of Plaintiff United, Defendant violated her duties of loyalty and care owed to her employer Plaintiff United.

¶22. As a result of obtaining \$39,699 dollars in unauthorized and illegal compensation, Defendant Charriez caused Plaintiff United substantial monetary damages.

See Complaint, *United v. Charriez*, ¶¶8-22, attached as **Exhibit C**.

Defendants now move the Court for an Order permitting the termination of employees Mufeed Hamed, Waleed Hamed, and Wadda Charriez. Since this court in its Preliminary Injunction Order made a preliminary finding of the likelihood of the existence of a partnership, and has implicitly disregarded the corporate structure of United Corporation, Defendants file this Motion to Modify the April 25th, 2013 Preliminary Injunction Order. Because Defendants have good cause for the termination of employees Waleed Hamed, Mufeed Hamed, and Wadda Charriez, based on facts arising after the conclusion of the hearings and brief submissions on March 4th, 2013, the attached Motion should be granted.

II. ISSUES

1. Whether the Court should modify the April 25th, 2013 Temporary Restraining Order to permit the termination of employees Waleed Hamed, Mufeed Hamed, and Wadda Charriez?
2. Assuming the existence of the Hamed & Yusuf partnership, whether Defendant Fathi Yusuf as the managing partner has the right to terminate the employment of employees Waleed Hamed, Mufeed Hamed, and Wadda Charriez?

III. ARGUMENTS

A. The Court Should Reconsider its Preliminary Injunction Order Because the Dissolution Notice Provided to Mohammed Hamed Terminated the At-Will Partnership on March 13th, 2012, and by Operation of Well-Settled Principles of Law Preclude the Court from Ordering the Parties to Continue Co-Managing an Already Terminated Partnership-At-Will.

Before addressing Defendants' request to Modify the Preliminary Injunction, Defendants submit that the Court should reconsider and vacate its Order dated April 25th, 2013 Preliminary Injunction for the following reasons:

1. The Court noted that Defendant Fathi Yusuf provided a notice of dissolution on March 13th, 2012 to Plaintiff.
2. Plaintiff's counsel has repeatedly stated that the dissolution notice was evidence of a partnership; so much so that the Plaintiff virtually recites the terms of that notice in each pleading, motion, and correspondence to third parties. In effect, Plaintiff cites the specific provisions of the dissolution as proof of Defendant Fathi Yusuf's view that the "joint venture" is a partnership.

3. Since Plaintiff does not dispute receipt of such notice, the dissolution notice has effectively terminated the purported “at-will partnership” between Defendant Yusuf and Plaintiff Hamed. It is well established that a partnership-at-will ceases to exist upon notice by a partner of his intent to dissolve it. See, *Browne v. Ritchey*, 202 Ill.App.3d 137,141, 598 N.E.2d 808, 811 (1990), attached as *Exhibit E*. See also, *Smith v. Robson*, 286/96, 2001 WL 1464773 (Terr. V.I. June 26, 2001) (recognizing that under Virgin Islands law “Partnerships and joint ventures without fixed terms are deemed to be “at will” subject to dissolution by either partner at any time.”)
4. The *Browne* court dealt with an at-will-partnership which was properly terminated by defendant partner when he sent a telegram to plaintiff partner stating his intent to dissolve partnership. The *Browne* Court noted that since the defendant partner acted within his rights under agreement and partnership law in terminating his relationship with plaintiff, grant of preliminary injunction requiring him to continue in that relationship was an abuse of discretion. See, *Brown*, 202 Ill. App. 3d at.141, 598 N.E.2d at 811.
5. The State of Illinois which has adopted the Uniform Partnership Act, also recognizes the same Preliminary Injunction requirements in the Virgin Islands. In *Browne*, the Illinois Supreme Court, marrying the preliminary injunction requirements with the partnership law regarding dissolution arrived at the following precise and relevant holding:

With respect to their duration, partnerships are formed either for a fixed or specified term or without reference to any term. Partnerships formed without reference to any term are partnerships at will. (59A Am.Jur.2d Partnership §§ 87, 89, (1987).) Such partnerships [] are subject to dissolution at any time by the express will of any partner. (*Maimom v.*

Telman (1968), 240 N.E.2d 652; 59A Am.Jur.2d Partnership §§ 89, 818 (1987).) All that the dissolving partner need do is give notice of his intent to dissolve the partnership to his co-partners. *Id.* (citations omitted).
See, *Brown*, 202 Ill. App. 3d at 141, 598 N.E.2d at 811.

The *Browne* court then held “there is a distinction between the power and right to dissolve a partnership. However, as to partnerships at will, a *dissolution at the election of one of the partners* is not a breach of contract and the dissolving partner incurs no liability regardless of his motive or any injury to his co-partners “who neglected to protect themselves by an agreement to continue for a definite term.” *Id at 811.*

Here, this Court made the following finding of fact:

“Thereafter, **discussion 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.* Settlement discussion followed those communications but have not to date resulted in an agreement.

Memorandum Opinion, Findings of Facts, p.9, ¶30. (Emphasis Supplied).

Here, as in *Browne*, this Court specifically found that the termination of the “partnership” occurred on March 13th, 2012 by way of a “Dissolution Notice”; further, though unsigned, the Dissolution Notice contained an agreement as to the scope and terms of the “partnership.” This notice of dissolution effectively terminates any purported partnership the parties may have had. With the partnership terminated, the court cannot now issue a preliminary injunction order demanding that the parties maintain the same joint management of operations because there are no continuing operations to manage. Moreover, such an Order re-writes and expands the terms of the

purported partnership, because Mohammed Hamed testified that under the terms of the agreement as understood by him, he never had the right to co-manage the operations of the supermarkets. Here, Plaintiff Hamed cannot have it both ways: Plaintiff Hamed cannot use a partnership dissolution notice as proof of the existence of an at-will partnership, and simultaneously ignore its terminative effect upon the partnership. Plaintiff's request for continued joint management seeks a remedy that is unavailable by operation of law, since the claimed "partnership" was effectively dissolved, continues only until the completion of the winding up of partnership affairs. See, e.g., *In re Hunt's Pier Associates*, 162 B.R. 442, 451-52 (E.D. Pa. 1993) aff'd, 31 F.3d 1171 (3d Cir. 1994) (under the Uniform Partnership Act, a partnership upon dissolution continues only for the limited purpose of the winding up of partnership affairs.)

Thus, any request for an injunction to maintain the continued joint management of a partnership or joint venture that has been terminated cannot be entertained at this point. The partnership has now entered a phase of dissolution, and the court must reconsider its Order as it is *void ab initio*.

B. Standard of Review: Modifying Preliminary Injunction Orders

A court can modify a preliminary injunction order for reasons of equity in light of changes in the facts or for any other good reason. *Loudner v. U.S.*, 200 F.Supp. 2nd 1146, 1148 (D. S.D. 2002). As the Ninth Circuit explained, "[a] district court has inherent authority to modify a preliminary injunction in consideration of new facts." *A & M Records, Inc. v. Napster, Inc.*, 284 F.3d 1091, 1098 (9th Cir.2002) (citing *Sys. Fed'n No. 91, Ry. Employees' Dep't v. Wright*, 364 U.S. 642, 647-48, 81 S.Ct. 368, 5 L.Ed.2d 349 (1961); *Tanner Motor Livery, Ltd. v. Avis, Inc.*, 316 F.2d 804, 810 (9th Cir.1963)).

In the Third Circuit, modification of preliminary injunction is proper only when there has been change of circumstances between entry of injunction and filing of motion that would render continuance of injunction in its original form inequitable....*Tehan v. Disability Mgmt. Servs., Inc.*, 111 F. Supp. 2d 542 (D.N.J. 2000).

Because of changed factual circumstances, mainly the wrongful conduct of employees Mufeed Hamed, Waleed Hamed and Wadda Charriez, this court may conduct a hearing to determine if “change of circumstances” has occurred between the entry of injunction and filing of motion that would render continuance of injunction in its original form inequitable.

C. Defendant Yusuf has the right to terminate any employee of the alleged “partnership” because under the undisputed terms of that agreement he is the managing partner, with ultimate decision-making authority.

The Uniform Partnership Act, pursuant to Title 26 of the Virgin Islands Code, states that, except as otherwise provided, the partnership agreement governs relations among the partners and between the partners and the partnership. Partners may agree, therefore, that one or more of them will have exclusive control over the management of the partnership business, so that a managing partner, a committee of managing partners, a designated number of named partners, senior partners, or voting partners can be given the exclusive control of the partnership business. It is well established that Defendant Fathi Yusuf is the person with final authority for all management decisions, including but not limited the hiring and termination of employees. During the January 25th, 2013 hearing, Plaintiff Mohammed Hamed testified that Defendant Fathi Yusuf was “in charge of all three stores” and that he is “in charge of everybody.” This was demonstrated by the following testimony:

A. Mr. Fathi the one. He in charge for it.

Q. What other stores is Mr. Fathi in charge of?

A. For all the three store.

Q. That's all I have, sir. Thank you.

A. You're welcome.

January 25th, 2013 TRO Hearing 210 21-24, attached as EXHIBIT B. (*Emphasis Supplied*).

Further, Plaintiff Mohammed Hamed testified that Defendant Fathi Yusuf was in charge of everyone as shown below:

Q. And who is your oldest son? Who is your oldest son?

A. Mr. Yusuf he is in charge for everybody.

January 25th, 2013 TRO Hearing p. 201:2-5, attached as **EXHIBIT C.** (*Emphasis Supplied*).

There can be no doubt that whatever entity the Court deems to exist at this stage, only Defendant Fathi Yusuf has full and final authority and power to manage every aspect of the Plaza Extra stores. This is the agreement that even Plaintiff Hamed concedes has always existed between the parties from the beginning. Therefore, consistent with his powers and duties of a purported general manager, Defendant Yusuf is entitled to have employees terminated at will, for cause or no cause, so long as the termination is not against public policy. Here, three employees have engaged in fraud, defalcation of funds, and conversion. Defendants are entitled to terminate their employees forthwith.

Last but not least, Plaintiff Hamed testified that he was incapable of managing the affairs of the partnership, forcing him to provide a Power of Attorney to his son Waleed Hamed as demonstrated by Mohammed Hamed's testimony below:

A. Yes. **I'm his partner, not my son.**

Q. And if Mr. -- If Fathi Yusuf has something to talk to you about the partnership, he is to talk to you, correct?

A. Yes.

Q. And nobody else?

A. Nobody else. If I die or I -- after I give my son the power of attorney, yes, he could because I'm not working. **I getting old. I can't do nothing.**

January 25th, 2013 TRO Hearing 210:1, attached as **Exhibit C.**

Mohammed Hamed testified that "*I getting old can't do anything*" in terms of managing the three plaza extra stores. This in turn creates a serious problem concerning the day to day management that the court ordered in its April 25th, Preliminary Injunction Order. At this point, there is a purported partner, Mohammed Hamed who can no longer do anything. Yet he places a designee whose **personal** interests are in direct conflict with Defendant Fathi Yusuf, whether as a purported partner or as the shareholder and treasurer of United Corporation. Plaintiff Hamed has been retired since 1996, and has indicated clearly that he "cannot do nothing." The power to manage a partnership is not a delegable power that a partner can simply assign to another person without the express consent of the other managing partner.

Here, Waleed Hamed has been asked to explain how he acquired millions of dollars' worth of securities listed in detailed fashion in his 1992 and 1993 Tax Returns. Defendant Hamed not only refuses to provide an explanation to his employer, but has taken it upon himself to defend his position by filing procedural defenses. To expect a managing partner to co-manage an operation with someone he views as having defalcated substantial assets from the operations of the Plaza Extra Stores is untenable, and cannot be the subject of a preliminary injunction. Such an Order

constitutes a usurpation of the Management authority of an officer of an entity and “inject[s]” this Court “into a management role” which the business judgment rule, plainly prohibits. See, e.g., *Weiss v. Temporary Inv. Fund*, 692 F.2d 928, 941 (3d Cir.1982) (internal citation omitted)(quoting Duesenberg, *The Business Judgment Rule and Shareholder Derivative Suits: A View from Inside*, 60 Wash.U.L.Q. 311, 314 (1982)

D. CONCLUSION

Defendant United may terminate employees Waleed Hamed, Mufeed Hamed, and Wadda Charriez. The grounds for termination are set out clearly in each civil action before the court, and are therefore proper basis for termination. Even where this court makes the preliminary finding of a partnership, Defendant Fathi Yusuf still has the power and right to terminate employees who have engaged in misconduct. Plaintiff Mohammed has made clear that he “cannot do nothing” in reference to his ability to manage any of the affairs of the partnership or joint venture. This has been the case for the last 17 years. Plaintiff Mohammed Hamed’s proposed designees are now engaged in numerous civil actions with the Defendants. Because the Court is now forcing Defendant Fathi Yusuf to maintain a working relationship with Plaintiff Hamed’s proposed designees who have engaged in various misconduct, the Court should immediately reconsider its April 25th, 2013 Preliminary Injunction Order. As such, the Court should grant this Motion to Modify the Preliminary Injunction Order, and allow Defendant Yusuf to exercise his full rights, whether as the sole general managing “partner” or as a corporate officer of United Corporation.

Date: May 8th, 2013

Respectfully Submitted,

DEWOOD LAW FIRM
Attorneys for Plaintiffs

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 9th day of May, 2013, I caused a true and exact copy of the foregoing Motion To Amend Judgment to Terminate Employees and Proposed Order to be served on counsel for the Plaintiff at the below address.

Joel H. Holt
Law Office of Joel H. Holt
2132 Company Street
Christiansted, VI 00820

/s/ Nizar A. DeWood

Nizar A. DeWood

EXHIBIT

A

Complaint

Yusuf v. Waleed Hamed, Mufeed Hamed

EXHIBIT A

JA-1745

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

YUSUF YUSUF, derivatively on behalf of
PLESSEN ENTERPRISES, INC.,

Plaintiff,

vs.

WALEED HAMED, WAHEED HAMED,
MUFEED HAMED, HISHAM HAMED, and
FIVE-H HOLDINGS, INC.,

Defendants,

-and-

PLESSEN ENTERPRISES, INC.,

Nominal Defendant.

'13 00116 0002

CASE # SX-13-CV-_____

CIVIL ACTION FOR DAMAGES
AND INJUNCTIVE RELIEF

JURY TRIAL DEMANDED

VERIFIED SHAREHOLDER DERIVATIVE COMPLAINT

Plaintiff YUSUF YUSUF ("YUSUF"), by and through his undersigned counsel, derivatively on behalf of PLESSEN ENTERPRISES, INC. ("PLESSEN"), and as a shareholder of PLESSEN, hereby files this Verified Complaint against Defendants WALEED HAMED, WAHEED HAMED, MUFEED HAMED, HISHAM HAMED (collectively, the "INDIVIDUAL DEFENDANTS"), and FIVE-H HOLDINGS, INC. ("FIVE-H"), and against Nominal Defendant PLESSEN, and alleges:

I. BACKGROUND

1. Plaintiff YUSUF brings this shareholder derivative action on behalf of PLESSEN against a member and officer of PLESSEN's Board of Directors (the "Board") and others, including certain shareholders of PLESSEN, to remedy, among other things, the fraudulent misappropriation of PLESSEN's assets, including the recent unauthorized transfer by WALEED HAMED of approximately \$460,000 from PLESSEN's bank accounts, representing approximately 99 percent

(99%) of the monies in those accounts, for the benefit of the INDIVIDUAL DEFENDANTS as well as FIVE-H; breach of fiduciary duties; corporate waste; conversion; unjust enrichment; civil conspiracy; and other relief, including the imposition of a constructive trust and an accounting, and other preliminary and permanent injunctive relief.

II. JURISDICTION, VENUE, & DEMAND FOR JURY TRIAL

2. This Court has jurisdiction over this action pursuant to 4 VIC § 76(a).
3. Venue is proper in this district pursuant to 4 VIC § 78(a).
4. A trial by jury is demanded pursuant to 4 VIC § 80.

III. THE PARTIES

5. Plaintiff YUSUF is a natural person, *sui juris*, and a resident of the U.S. Virgin Islands.
6. Defendant WALEED HAMED is a natural person, *sui juris*, and a resident of the U.S. Virgin Islands.
7. Defendant WAHEED HAMED is a natural person, *sui juris*, and a resident of the U.S. Virgin Islands.
8. Defendant MUFEEED HAMED is a natural person, *sui juris*, and a resident of the U.S. Virgin Islands.
9. Defendant HISHAM HAMED is a natural person, *sui juris*, and a resident of the U.S. Virgin Islands.
10. Defendant FIVE-H is a duly organized Virgin Islands Corporation and is authorized to conduct business in the Virgin Islands.
11. Nominal Defendant PLESSSEN is a duly organized Virgin Islands Corporation and is authorized to conduct business in the Virgin Islands.

IV. FACTS COMMON TO ALL COUNTS

PLESSEN

12. PLESSEN was formed in December 1988. A copy of PLESSEN's Articles of Incorporation is attached as Exhibit "A" hereto. PLESSEN adopted By-Laws on or about April 30, 1997, a copy of which is attached as Exhibit "B" hereto.

13. PLESSEN's original Board was comprised of the following individuals: Mohammed Hamed, Defendant WALEED HAMED and Fathi Yusuf. See Exhibit "A" at p. 3.

14. After PLESSEN's formation, an additional seat on the Board was created.

15. The current members of PLESSEN's Board are: Mohammed Hamed; Defendant WALEED HAMED; Fathi Yusuf; and Maher Yusuf. Attached as Exhibit "C" hereto is a report from the Virgin Islands Department of Licensing and Consumer Affairs that lists Maher Yusuf as a Director of PLESSEN.

16. PLESSEN's current Officers are: Mohammed Hamed (President), Defendant WALEED HAMED (Vice President) and Fathi Yusuf (Treasurer and Secretary). See Exhibit "A" at p. 3.

17. PLESSEN is owned in various shares by the following individuals: Plaintiff YUSUF, Fathi Yusuf, Mohammed Hamed, Fawzia Yusuf, Maher Yusuf, Nejah Yusuf, and Defendants WALEED HAMED, MUFEED HAMED, WAHEED HAMED, and HISHAM HAMED.

18. Plaintiff YUSUF is a shareholder of PLESSEN, was a shareholder of PLESSEN at the time of the wrongdoing alleged herein, has been a shareholder of PLESSEN continuously since that time, and will continue to be a shareholder of PLESSEN throughout the pendency of this action.

19. YUSUF, under Rule 23.1 of the Federal Rules of Civil Procedure, which applies in this action under Rule 7 of the Superior Court, has standing to bring this action and will adequately and fairly represent the interests of PLESSEN and its shareholders in enforcing and prosecuting its rights.

FIVE-H

20. Upon information and belief, Defendant WALEED HAMED is the President of FIVE-H and one of its principal beneficial owners.

21. Upon information and belief, Defendant WAHEED HAMED is an Officer of FIVE-H and one of its principal beneficial owners.

22. Upon information and belief, Defendant MUFEED HAMED is an Officer of FIVE-H and one of its principal beneficial owners.

23. Upon information and belief, Defendant HISHAM HAMED is an Officer of FIVE-H and one of its principal beneficial owners.

24. Upon information and belief, FIVE-H, by and through the INDIVIDUAL DEFENDANTS, seeks to conduct business in the U.S. Virgin Islands.

WALEED HAMED's Misappropriation of \$460,000

25. On or about March 27th, 2013, Plaintiff YUSUF paid with his personal Banco Popular Visa credit card the 2011 property taxes of PLESSEN.

26. YUSUF was reimbursed for such payment by way of a check drawn on PLESSEN's bank account with Scotiabank.

27. However, YUSUF was subsequently informed that an employee of Scotiabank called Fathi Yusuf to inform Fathi Yusuf that the check made to pay Plaintiff YUSUF's Banco Popular Visa credit card account would not be honored, *i.e.*, the check would bounce, because of insufficient funds in PLESSEN's Scotiabank account.

28. It was then revealed that on March 27, 2013, Defendants WALEED HAMED & MUFEED HAMED, without authorization, issued check number 0376 on a PLESSEN in the amount of \$460,000.00 from PLESSEN's Scotiabank account, made payable to Defendant WALEED HAMED. A copy of check number 0376 is attached as Exhibit "D" hereto.

29. Defendant WALEED HAMED then endorsed check number 0376 “for deposit only” and, upon information and belief, then deposited PLESSEN’s \$460,000 at issue in Defendant WALEED HAMED’s personal bank account.

30. Further, the INDIVIDUAL DEFENDANTS and Defendant FIVE-H, among other improper acts, have individually and collectively obtained the benefit, use and enjoyment of PLESSEN’s defalcated funds.

Demand on the Board is Excused as Futile

31. Plaintiff YUSUF did not make a demand on the Board to bring suit asserting the claims set forth herein because pre-suit demand was excused as a matter of law, as set forth below.

32. As noted, as of the time of the filing of this complaint, the PLESSEN Board comprised the following directors: Mohammad Hamed; Defendant WALEED HAMED; Fathi Yusuf; and Maher Yusuf.

33. Mohammad Hamed, who is Defendant WALEED HAMED’s father, is incapable of making an independent and disinterested decision to institute and vigorously prosecute this action.

34. Likewise, Defendant WALEED HAMED is incapable of making an independent and disinterested decision to institute and vigorously prosecute this action, as WALEED HAMED faces a substantial likelihood of liability for the wrongdoings alleged herein, and his acts were not, and could not have been, the product of a good faith exercise of business judgment.

35. Separately, because both the Board and shareholders of PLESSEN are comprised 50-50% by members of the Hamed and Yusuf families, and because neither the Articles of Corporation nor the By-Laws of PLESSEN provide a tie-breaker mechanism in the event of a deadlock, any demand upon PLESSEN would be useless based on the familial relationships at issue, the lack of sufficient independence of the Hamed members to institute and vigorously prosecute this action and, again, the lack of a corporate tie-breaker mechanism.

36. All conditions precedent to bringing this action have been satisfied, performed, discharged, excused and/or waived.

V. CAUSES OF ACTION

COUNT I – FRAUD/CONSTRUCTIVE TRUST (Against All Defendants)

37. Plaintiff YUSUF incorporates paragraphs 1 through 36 above as if fully set forth herein.

38. As alleged in detail herein, the INDIVIDUAL DEFENDANTS and FIVE-H conspired and fraudulently misappropriated, converted and/or received the benefits of PLESSEN'S funds of approximately \$460,000.

39. Such funds were, upon information and belief, used directly and indirectly to acquire personal and/or real property in the benefit of the INDIVIDUAL DEFENDANTS and FIVE-H individually and/or collectively.

40. Defendants' acts constitute a fraud, unconscionable conduct and/or questionable ethics resulting in unjust benefit to the wrongdoers, *i.e.*, Defendants.

41. To remedy such injustice, this Court should impose a constructive trust for the benefit of PLESSEN until the resolution of this action on all personal and/or real property acquired directly and indirectly with PLESSEN's funds by the INDIVIDUAL DEFENDANTS and FIVE-H individually and/or collectively, which trust:

- i. existed and was formed from the time the facts giving rise to it occurred, *i.e.*, from *March 27, 2013*, when Defendant WALEED HAMED, & MUFEED HAMED without authorization, issued check number 0376 in the amount of \$460,000 from PLESSEN's Scotiabank account;
- ii. grants to PLESSEN first rights to any such property;
- iii. is superior to the rights of the Defendants, and each of them;

- iv. is superior to any creditor of the Defendants;
- v. is superior to anyone else asserting an interest in the subject personal or real property;
- vi. and otherwise trumps the rights of any purported bona fide purchaser of the subject property from March 27, 2013 until a resolution of this action, based on the notice provided herein regarding the wrongful misappropriation of PLESSEN's funds as alleged in this Complaint and otherwise.

42. As noted above, "the date upon which a constructive trust is legally deemed to arise relates back in time to when the facts giving rise to such fraud or wrong occur," *i.e.*, March 27, 2013 in this action. *In re: Pitchford*, 410 B.R. 416, 420 (Bankr. W.D. Pa. 2009); *see also Osmond Kean, Inc. v. First Penn. Bank, N.A.*, 22 V.I. 71, 76 (Terr. Ct. 1986) ("The creditors of the constructive trustee are not bona fide purchasers.' Moreover, 'where a person holds property subject to a constructive trust, his creditors are not purchasers for value and are subject to the constructive trust. . . . So also, a creditor who attaches the property . . . is not a bona fide purchaser, although he had no notice of the constructive trust.'" (quoting Restatement of Restitution §§ 160 and 173); *Francois v. Francois*, 599 F.2d 1286 (3d Cir. 1979) (affirming trial court's "equitable power" to impose constructive trust to prevent unjust enrichment).

COUNT II – CONVERSION
(Against WALEED HAMED & MUFEED HAMED)

43. Plaintiff YUSUF incorporates paragraphs 1 through 42 above as if fully set forth herein.

44. As alleged in detail herein, Defendants WALEED HAMED & MUFEED HAMED wrongfully, and without the knowledge, consent or authorization of PLESSEN, misappropriated funds belonging to PLESSEN for his own use and/or benefit and/or for the use and/or benefit of the INDIVIDUAL DEFENDANTS and/or FIVE-H.

45. Defendant WALEED HAMED obtained and retained these funds for his own use and/or benefit and/or for the use and/or benefit of the INDIVIDUAL DEFENDANTS and/or FIVE-H with the intent to permanently deprive PLESSEN of its lawful rights to those funds.

46. Accordingly, Defendants WALEED HAMED & MUFEEED HAMED are liable for conversion.

**COUNT III – BREACH OF FIDUCIARY DUTIES
(Against WALEED HAMED)**

47. Plaintiff YUSUF incorporates paragraphs 1 through 46 above as if fully set forth herein.

48. Defendant WALEED HAMED, as an agent and officer of PLESSEN, owes PLESSEN's shareholders the utmost fiduciary duties of due care, good faith, candor and loyalty.

49. Further, Defendant WALEED HAMED is, and at all relevant times was, required to use his utmost ability to control and manage PLESSEN in a fair, just, honest and equitable manner; to act in furtherance of the best interests of PLESSEN and its shareholders so as to benefit all shareholders equally and not in furtherance of his personal interests or benefit to the exclusion of the remaining shareholders; and to exercise good faith and diligence in the administration of the affairs of PLESSEN and in the use and preservation of its property and asserts.

50. By virtue of the foregoing duties, Defendant WALEED HAMED was required to, among other things:

- i. exercise good faith in ensuring that the affairs of PLESSEN were conducted in an efficient, business-like manner so as to make it possible to provide the highest quality performance of its business in accordance with applicable laws;
- ii. refrain from wasting PLESSEN's assets;
- iii. refrain from unduly benefiting himself and other non-shareholders at the expense of PLESSEN;

- iv. refrain from self-dealing;
- v. exercise the highest obligations of fair dealing; and
- vi. properly disclose to PLESSEN's shareholders all material information regarding the company.

51. However, by virtue of his position as Director and Officer of PLESSEN, and his exercise of control over the business and corporate affairs of PLESSEN, Defendant WALEED HAMED has, and at all relevant times had, the power to control and influence – and did control and influence – PLESSEN to engage in the wrongdoings alleged herein.

52. Specifically, as alleged in detail herein, Defendant WALEED HAMED breached his fiduciary duties by, among other things, unlawfully obtaining approximately \$460,000 of PLESSEN's funds; knowingly failing to inform PLESSEN regarding all material information related to such taking prior to the subject withdrawals; and otherwise knowingly failing to adhere to PLESSEN's corporate formalities, policies and procedures.

53. As a direct and proximate result of the foregoing breaches, PLESSEN has sustained damages, including, but not limited to, damage to its reputation and loss of the funds unlawfully obtained from its Scotiabank account.

**COUNT IV – WASTE OF CORPORATE ASSETS
(Against WALEED HAMED)**

54. Plaintiff YUSUF incorporates paragraphs 1 through 53 above as if fully set forth herein.

55. As alleged in detail herein, Defendant WALEED HAMED, an agent and officer of PLESSEN, knowingly withdrew approximately \$460,000 of PLESSEN's funds, which withdrawal constituted an exchange of corporate assets under circumstances which no business person of ordinary, sound judgment could conclude that PLESSEN received adequate consideration.

56. As a direct and proximate result of the foregoing waste of corporate assets, PLESSEN has sustained damages, including, but not limited to, damage to its reputation and loss of the funds unlawfully obtained from its Scotiabank account.

**COUNT V – UNJUST ENRICHMENT
(Against All Defendants)**

57. Plaintiff YUSUF incorporates paragraphs 1 through 56 above as if fully set forth herein.

58. As alleged in detail herein, the INDIVIDUAL DEFENDANTS and FIVE-H individually and collectively were unjustly enriched by their receipt, benefit, use, enjoyment and/or retention of PLESSEN's assets.

59. It would be unconscionable to allow the INDIVIDUAL DEFENDANTS and FIVE-H individually or collectively to retain the benefits thereof.

**COUNT VI – CIVIL CONSPIRACY
(Against All Defendants)**

60. Plaintiff YUSUF incorporates paragraphs 1 through 59 above as if fully set forth herein.

61. As alleged in detail herein, the INDIVIDUAL DEFENDANTS and FIVE-H had a unity of purpose or a common design and understanding, or a meeting of minds in an unlawful arrangement, *i.e.*, to, among other things, unlawfully defalcate or misappropriate the funds of PLESSEN.

62. The INDIVIDUAL DEFENDANTS and FIVE-H knowingly performed overt acts and took action to further or carry out the unlawful purposes of the subject conspiracy, including, but not limited to, Defendant WALEED HAMED's issuing and cashing of check number 0376 to the conspirators' benefit and PLESSEN's detriment.

63. As a direct and proximate result of the foregoing civil conspiracy, PLESSEN has sustained damages, including, but not limited to, damage to its reputation, loss of the funds unlawfully obtained from its Scotiabank account, and lack of control of PLESSEN's management and corporate affairs.

**COUNT VII – ACCOUNTING
(Against All Defendants)**

64. Plaintiff YUSUF incorporates paragraphs 1 through 63 above as if fully set forth herein.

65. As alleged in detail herein, the INDIVIDUAL DEFENDANTS and FIVE-H unlawfully benefited from and/or misappropriated PLESSEN's funds.

66. Further, at all times relevant, Defendant WALEED HAMED, as an agent and officer of PLESSEN, owed to PLESSEN a fiduciary duty to account to the company and its shareholders in a timely and accurate manner.

67. At all times relevant, the INDIVIDUAL DEFENDANTS and/or FIVE-H held the exclusive possession and/or control over documentation that would establish the funds unlawfully taken from PLESSEN.

68. Absent such documentation, PLESSEN is without the means to determine, among other things, if funds are owned to it and, if yes, how much; and if its misappropriated funds were used to purchase any real or personal property, in which case it has an ownership interest in such property.

69. PLESSEN is without a sufficient remedy at law to ascertain its losses and/or interests in the misappropriated funds as set forth herein.

70. Accordingly, a full accounting is warranted.

VI. RELIEF REQUESTED

WHEREFORE, Plaintiff YUSUF prays for a Final Judgment against Defendants, jointly and severally, as follows:

A. Determining that YUSUF may maintain this action on behalf of PLESSEN and that YUSUF is an adequate representative of PLESSEN;

B. Determining that this action is a proper derivative action that is maintainable under law and in which a pre-suit demand was excused;

C. Awarding to PLESSEN the actual and compensatory damages that it sustained as a result of the causes of action set forth herein, which damages will be determined at trial;

D. Awarding to PLESSEN punitive damages justified by the acts set forth herein, which damages will be determined at trial;

E. Ordering the disgorgement to PLESSEN of all funds that were unlawfully misappropriated from its possession;

F. Enjoining, preliminarily and permanently, the Defendants' benefit, use or enjoyment of PLESSEN's misappropriated funds;

G. Imposing a constructive trust for the benefit of PLESSEN on all personal or real property acquired directly and indirectly with PLESSEN's funds by the INDIVIDUAL DEFENDANTS and FIVE-H individually and/or collectively, which trust

- i. existed and was formed from the time the facts giving rise to it occurred, *i.e.*, from *March 27, 2013*;
- ii. grants to PLESSEN first rights to any such property;
- iii. is superior to the rights of the Defendants, and each of them;
- iv. is superior to any creditor of the Defendants;

- v. is superior to anyone else asserting an interest in the subject personal or real property;
- vi. and otherwise trumps the rights of any purported bona fide purchaser of the subject property from March 27, 2013 until a resolution of this action;

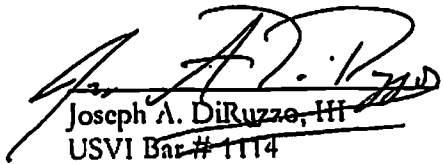
H. Awarding a full accounting of all monies, funds and assets that the Defendants received from PLESSEN;

I. Awarding to PLESSEN the costs and disbursements of this action, including, but not limited to, reasonable attorneys' fees, accountants' and experts' fees, costs and expenses;

J. Awarding pre- and post-judgment interest on any monetary award at the highest rates allowed by law; and,

K. Awarding such further equitable and monetary relief as the Court deems just and appropriate.

Dated April 16, 2013



Joseph A. DiRuzzo, III
USVI Bar # 1114
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VERIFICATION

I, *Yusuf Yusuf*, hereby verify that I have authorized the filing of the foregoing Verified Shareholder Derivative Complaint; that I have reviewed the Complaint; and that the facts therein are true and correct to the best of my knowledge, information and belief.

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

DATE: 4/16/2013



Yusuf Yusuf, Shareholder
Plessen Enterprises, Inc.

EXHIBIT

B

January 25th, 2013 TRO Hearing 210:21-24

EXHIBIT B

1 A Nobody else. If I die or I -- after I give my
2 son the power of attorney, yes, he could because I'm not
3 working. I getting old. I can't do nothing.

4 Q How long is your partnership with Mr. Yusuf
5 supposed to last? When does it end?

6 A Forever. We start with Mr. Yusuf with the
7 supermarket and we make money. He make money and I make
8 money, we stay together forever.

9 MR. DAVID: Okay. One moment, Your Honor, I
10 maybe done.

11 **(Discussion off the record.)**

12 BY MR. DAVID:

13 Q Sir, have you ever signed any -- strike that.
14 Are you aware that there is a lease?

15 A I don't know. I didn't hear you.

16 Q Is there a lease for the St. Thomas store?

17 A Lease?

18 Q Lease.

19 A To St. Thomas store?

20 Q Yes, sir.

21 A Mr. Fathi the one. He in charge for it.

22 Q What other stores is Mr. Fathi in charge of?

23 A For all the three store.

24 Q That's all I have, sir. Thank you.

25 A You're welcome.

EXHIBIT

C

Check No. 376

EXHIBIT C

JA-1762

TBP - Web Page Dialog

Document Information

Document Type: Cheque Image Date Processed: 03/27/2013

Transit Number: 30585 Cheque Serial Number: 0000376

Account Number: 45012 Amount: (\$460,000.00)

Image: <<< >>> ZoomIn ZoomOut Back Next

0376

PLESSEN ENTERPRISES, INC.
P.O. BOX 763
C'STED., VI 00321

191-605-218

PAY TO THE ORDER OF Waleed Hamed

\$460,000.⁰⁰/₁₀₀

four hundred sixty thousand

MAR 27 2013

Scotiabank THE BANK OF NOVA SCOTIA

FOR: [Redacted]

[Signature]

OK Print

http://ais006:9162/TBPWeb/bp/product/pages/ChequeImagePopUp.jsf?_af7ched?am=00000376&postDate=0327&trAmt=46000000&trTrn Local Internet

EXHIBIT

D

United v. Waleed Hamed

II. JURISDICTION, VENUE, & DEMAND FOR JURY TRIAL

2. This Court has personal jurisdiction, subject matter jurisdiction, and the amount in controversy is satisfied, pursuant to 4 VIC §76.

3. Venue is proper in the District of St. Croix because all of the parties are residents of the District of St. Croix, U.S. Virgin Islands, and the cause(s) of action arose in said District, pursuant to 4 VIC § 78.

4. A trial by jury is demanded pursuant to 4 VIC § 80.

III. THE PARTIES

5. Plaintiff United Corporation is a duly organized Virgin Islands Corporation since January of 1979, and is authorized to conduct business in the Virgin Islands. Plaintiff is *sui juris*.

6. Plaintiff is owned completely in various shares by Fathi Yusuf, Fawzia Yusuf, Maher Yusuf, Nejah Yusuf, Zayed Yusuf, and Yusuf Yusuf, hereinafter collectively referred to as the "Yusuf Family".

7. Defendant Waleed Hamed is a natural person and is a resident of the U.S. Virgin Islands. Defendant Hamed is *sui juris*. At all times relevant to this action, Defendant Hamed has been an employee and agent of Plaintiff United.

8. Defendants John Doe 1 to 10, upon information, are employees, family, friends, and agents of Defendant Hamed who have participated and/or assisted defendant Waleed Hamed with the defalcation, conversion, and concealment of substantial assets that are the sole property of Plaintiff United. John Does 1 to 10 are natural persons and are each *sui juris*.

IV. FACTS

9. Plaintiff United was organized and authorized to conduct business in the U.S. Virgin Islands on January 15th, 1979 by its then shareholders Fathi Yusuf and his family. Plaintiff United has always been owned wholly in various percentage shares by the various members of the Yusuf family.

10. The Corporate officers of Plaintiff United have always been members of the Yusuf family.

11. Sometime in 1986, Plaintiff United, through its shareholder and then President, Fathi Yusuf, entered into an oral agreement, whereby Plaintiff United and Defendant Hamed's father, Mohammed Hamed, agreed to operate a grocery store business.

12. As a result of this oral agreement, Plaintiff United agreed to rent a portion of its real property, United Shopping Plaza, to this supermarket joint venture.

13. United Shopping Plaza is located on the Island of St. Croix, U.S. Virgin Islands.

14. In 1986, the joint venture resulted in the first supermarket store being opened. United began using the trade name "Plaza Extra" and the first supermarket in this joint venture was named Plaza Extra Supermarket. Since 1986, two additional stores opened in the U.S. Virgin Islands; the second in Tutu Park, St. Thomas; the third in Grove Place, St. Croix.

15. In 1986, Plaintiff United hired Waleed Hamed as an employee, and assigned him managerial duties at the Plaza Extra supermarket located in Sion Farm, St. Croix, U.S. Virgin Islands. Defendant Hamed managed and collected significant cash and other assets on behalf of Plaintiff United during the course of his employment.

16. In 2003, Plaintiff United, its shareholders Fathi Yusuf, Maher Yusuf, and Defendant Hamed, and the Defendant's brother Waheed Hamed were indicted in the case of *U.S. v United Corporation*, case no. 15-cr-2005 (D.V.I.).

17. During nine years of criminal proceedings, the U.S. Department of Justice and federal law enforcement (collectively the "U.S. Government"), gathered *significant financial documents*, including but not limited to tax returns, financial ledgers, accounting records, and various other documents concerning the parties herein. Prior to the release of the documents in October of 2011 to Plaintiff United, none of the officers of Plaintiff United had any actual or constructive knowledge of Defendant Hamed's conduct.

Defendant's Acquisition of Substantial Securities through Defalcation of Plaintiff's Assets

18. During a search of the documents and files delivered by the U.S. Government, Plaintiff United reviewed documents comprising tax returns for Defendant Hamed. An examination of Defendant Hamed's tax returns revealed the following significant assets:

- a. **Tax Year 1992 (Stocks & Investments)\$ 408,572.00**
- b. **Tax Year 1993 (Stocks & Investments)\$7,587,483.00**

19. The detailed stock acquisitions, which were listed meticulously by date of acquisition, price and number of shares purchased, could only have been acquired by Defendant Hamed through his unlawful access to monies and other properties belonging to Plaintiff United. Defendant Hamed never held any other employment since 1986, other than through his employment with Plaintiff United.

20. Defendant Hamed also never had any other significant source of income, business operations, investments, etc., prior to or during his employment tenure with Plaintiff United.

21. The income tax returns for the years 1992 and 1993 reflect substantial assets that upon information and belief derived from the unlawful conversion and unauthorized access to funds and monies belonging to Plaintiff United. Plaintiff United never provided Defendant Hamed remuneration of more than \$35,000 for a yearly salary.

22. In 1993, Defendant Hamed's personal income tax return showed a loss of \$394,382.00. Plaintiff United, through its Treasurer, inquired of Defendant Hamed where he obtained the money in 1992 to sustain a personal loss of \$394,000 in his equity portfolio.

23. Defendant Hamed replied that the significant stocks listed in the schedules attached to his joint tax return was that of "Hamdan Diamond" – an unrelated corporation - that the Certified Public Accountant that had prepared Defendant Hamed's 1993 income tax return had made a "mistake" and that Defendant Hamed "would get to the bottom of it."

24. To date, Defendant Hamed has offered no evidence of the "mistake" he claimed was attributed to the Certified Public Accountant.

25. Further, upon information, such losses were unlikely to be a "mistake" because Defendant Hamed "carried forward" those losses on his personal income tax returns through 1999.

26. An examination of Defendant Hamed's personal tax returns revealed that Defendant Hamed's stock purchases between 1991 and 1996 totaled more than \$7 Million.

27. In October of 2011, a review of the U.S. Government records and files further revealed the following defalcation of funds:

- a. Loans totaling \$430,500.00, approved by Defendant Hamed, presumably repaid to Defendant Hamed.
- b. Payments made with respect to the construction of Defendant Hamed's home amounting to \$481,000.00.

c. Six checks totaling \$135,000, drawn on the operating account of Plaintiff United's Plaza Extra supermarket, and made payable to "Waleed Hamed" personally.

28. To this date, Defendant Hamed refuses to explain and account for any of the aforementioned funds.

V. CAUSES OF ACTION

FIRST CAUSE OF ACTION BREACH OF FIDUCIARY DUTIES

29. Plaintiff incorporates paragraphs 1 through 28 inclusive as if fully set forth verbatim herein.

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

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

- a. Duty of Loyalty
- b. Duty of good faith and candor;
- c. Duty to manage the day-to-day operations of Plaintiff United's Plaza Extra supermarket for the benefit of United;
- d. Duty of full disclosure of all matters affecting his employer Plaintiff United;

- e. Duty to refrain from self-dealing, and/or general prohibition against the fiduciary using his relationship to benefit his personal interest; and
- f. Duty to manage any funds, assets, and/or property belonging to Plaintiff United by virtue of its operation of the Plaza Extra Supermarket stores in accordance with applicable laws.

**SECOND CAUSE OF ACTION
CONSTRUCTIVE TRUST/RECOUPMENT**

32. Plaintiff incorporates paragraphs 1 through 31 as if fully set forth verbatim herein.
33. As an agent and employee of Plaintiff United, Defendant Hamed owes numerous fiduciary duties to Plaintiff United and its shareholders. Not only is it Defendant Hamed's duty to properly manage the business affairs of the Plaza Extra Supermarket stores for the benefit of Plaintiff United, but Defendant Hamed also is not permitted to place himself in a position where it would be for his own benefit to violate the duty.
34. Defendant Hamed has engaged in systemic misappropriation of substantial and valuable assets of Plaintiff United causing substantial injury to Plaintiff United. As a result, Plaintiff United has sustained significant financial injury.
35. As such, a constructive trust should be imposed to gather and account for all assets misappropriated by Defendant Hamed that belongs to Plaintiff United.

**THIRD CAUSE OF ACTION
CONVERSION**

36. Plaintiff re-incorporates paragraphs 1 through 35 inclusive as if fully set forth verbatim herein.

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

**FOURTH CAUSE OF ACTION
BREACH OF CONTRACT**

38. Plaintiff incorporates paragraphs 1 through 37 inclusive as if fully set forth verbatim herein.

39. Defendant was an at-will employee of Plaintiff United.

40. As an at-will employee of Plaintiff United, Defendant Hamed had a contractual duty to act in good faith, and to properly manage the business affairs of the Plaza Extra Supermarket stores for the benefit of Plaintiff United.

41. Defendant Hamed has breached his contractual duties to Plaintiff United, causing Plaintiff substantial economic and financial harm. As a result, Defendant Hamed is liable to Plaintiff for breach of contract.

**SIXTH CAUSE OF ACTION
ACCOUNTING**

42. Plaintiff incorporates paragraphs 1 through 41 inclusive as if fully set forth verbatim herein.

43. As agent and employee of Plaintiff United, Defendant Hamed was under full contractual obligation and other fiduciary duties to perform his functions as a manager with competence, integrity, and honesty to Plaintiff United Corporation and its shareholders. Defendant Hamed was not permitted to place himself in a position where it would be for his own benefit to violate the duty.

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

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

VI. RELIEF REQUESTED

Wherefore, Plaintiff United Corporation, and its shareholders, respectfully pray for the following relief:

- a. Actual and compensatory damages to be determined at trial.
- b. Punitive damages for the intentional defalcation of funds and damages caused to Plaintiff United Corporation.
- c. A complete accounting and constructive trust of all funds, assets, opportunities, and other valuables converted and or misappropriated by Defendant Hamed.
- d. Costs of all professional fees that may be required for the audit and investigation of this matter.
- e. A return of all documents, including but not limited to electronically stored information, belonging to Plaintiff United in the possession (both actual and constructive) of Defendant Hamed.
- f. A Restraining Order precluding Defendant Hamed from:
 - i. Physically returning, or attempting to return, to any of the Plaza Extra supermarket stores;

- ii. Accessing, or attempting to access, any bank accounts belonging to United Corporation for any purpose;
- iii. Contacting, or attempting to contact, any employee of Plaintiff United concerning the operations and management of the Plaza Extra Supermarkets;
- iv. Preclude Defendant Hamed from contacting any business associates of Plaintiff United;
- v. Preclude Defendant Hamed from representing to third-parties that he is an employee of Plaza Extra;
- vi. Accessing, or attempting to access, any of Plaintiff United's, including but not limited to the Plaza Extra Supermarkets, books, records, and information regarding as to location or manner of storage;
- vii. Attorneys fees, court costs, and any other relief the court deems equitable.

Date: January 8, 2013

Respectfully Submitted,

DeWood Law Firm
Counsel for Plaintiff United

By:

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Christiansted, V.I. 00820
t. (340) 773-3444
f. (888) 398-8428

EXHIBIT

E

Browne v. Ritchey

EXHIBIT E

JA-1776

202 Ill.App.3d 137
Appellate Court of Illinois,
First District, Third Division.

William BROWNE, Individually and as President
of Nationwide Truck Driving School, Inc.,
Plaintiffs–Appellees,

v.

William E. RITCHEY, Individually and as
President of Federal Truck Driving School of San
Diego, Inc., Defendants–Appellants.

No. 1–90–0578. | Aug. 8, 1990.

Plaintiff **partner** brought action against defendant **partner** seeking **preliminary injunction** requiring defendant to **continue** in the relationship. The Circuit Court, Cook County, Monica D. Reynolds, J., granted **preliminary injunctive** relief. Defendant appealed. The Appellate Court, Freeman, J., held that partnership was one at will which was properly terminated by defendant; therefore, grant of **preliminary injunction** requiring defendant to **continue** in the relationship was an abuse of discretion.

Reversed.

West Headnotes (6)

- ^[1] **Injunction**
↪Grounds in general: multiple factors
Injunction
↪Preponderance of evidence

To obtain **preliminary injunctive** relief, plaintiff must show, by preponderance of the evidence, that he has a clearly ascertainable right in need of protection; he will suffer irreparable harm without relief requested; he has no adequate remedy at law; and there is likelihood of success on merits.

- ^[2] **Partnership**
↪Partnership at will

Partnerships formed without reference to any term are “partnerships at will.”.

- ^[3] **Partnership**
↪Partnership at will

Partnerships at will are subject to dissolution at any time by express will of any **partner**.

- ^[4] **Partnership**
↪Partnership at will

All that **partner** needs to do to dissolve partnership at will is give notice to copartners of intent to dissolve partnership.

- ^[5] **Partnership**
↪Partnership at will

As to partnerships at will, dissolution at election of one **partner** is not a breach of contract and dissolving **partner** incurs no personal liability regardless of his motive for any injury to copartners who neglected to protect themselves by agreement to **continue** for definite term.

- ^[6] **Injunction**
↪Partnerships

Partnership

↪Partnership at will

Partnership was a "partnership at will" which was properly terminated by defendant partner when he sent telegram to plaintiff partner stating his intent to dissolve partnership where oral partnership agreement between parties did not include any agreement as to duration of partnership; therefore, as defendant partner acted within his rights under agreement and partnership law in terminating his relationship with plaintiff, grant of **preliminary injunction** requiring him to **continue** in that relationship was an abuse of discretion.

Attorneys and Law Firms

****809 *138 ***469** Donald G. Mulack, Anthony J. Smith of Keck, Mahin & Cate, Chicago, for defendants-appellants.

Nicholas J. Motherway, Robert J. Napleton of Motherway & Glenn, P.C., Chicago, for plaintiffs-appellees.

Opinion

Justice FREEMAN delivered the opinion of the court:

Plaintiff, William Browne, individually and as president of Nationwide Truck Driving School, Inc. (hereinafter Nationwide), filed a complaint to enjoin Defendant, William Ritchey, individually and as president of Federal Truck Driving School of San Diego, Inc. (hereinafter Federal), from breaching an agreement between the parties. Under the agreement, Nationwide was to operate a truck driving school in Chicago as a branch of Federal and to divide any profits realized equally with Federal in exchange for utilization of Federal's accreditation. Federal held its accreditation from the Accrediting Counsel for **Continuing** Education and Training (hereinafter ACCET). Plaintiff alleged that defendant had breached the agreement by closing its Chicago branch and removing the accreditation contracted for by Nationwide. After an evidentiary hearing, the trial court granted plaintiff a mandatory **preliminary injunction** ordering defendant to,

inter alia, restore to plaintiff's use the accreditation granted defendant by ACCET. Defendant appeals from that order.

Plaintiff testified to the following at the evidentiary hearing. Plaintiff had operated a truck driving school in Chicago for about 14 years as of 1989. From December 1985 to about June 1987, plaintiff's school had been accredited. Accreditation was important to a school because it was a ****810 ***470** prerequisite for Federal financial aid to its students. Plaintiff approached defendant in the fall of 1987 to explore the idea of a partnership in Chicago. In April 1988, the parties reached an agreement to open a truck driving school in Chicago and to split the profits equally. Additional terms of the parties' agreement were that: the school would be accredited by becoming a branch of Federal; the school would be named "Federal Truck Driving School d/b/a Nationwide Truck Driving School, Inc."; plaintiff was to run the school and pay its expenses; defendant was to receive 100% of the stock of Nationwide; and, plaintiff was to have an option to repurchase 49% of the stock after six months. Plaintiff operated the Chicago school under Federal's existing accreditation from May to August 1, 1988. On ***139** August 1, 1988, defendant notified plaintiff that he was closing Federal's Chicago branch and that the school could no longer use Federal's accreditation. At that time there were approximately 135 students with unfulfilled contracts to attend the school. Plaintiff believed that if the Chicago school did not fulfill its obligation to train these students it would risk losing its license from the Illinois Secretary of State. It would also risk being unable to obtain accreditation from ACCET on its own. Defendant did not receive Nationwide's stock because he never asked for it and plaintiff was "holding it in abeyance." Plaintiff's agreement with defendant did not depend on their execution of a written agreement, prepared by plaintiff's attorney, containing the terms to which they had otherwise agreed. If denied the use of Federal's accreditation, it would take the Chicago school about a year to obtain its own accreditation, which would not be in sufficient time to allow plaintiff to fulfill its student contracts.

On cross-examination, plaintiff testified as follows. Defendant had asked for Nationwide's stock on one occasion but plaintiff did not tender it to him at that time. It was not part of the parties' agreement that independent accreditation would be sought for Nationwide separate and apart from Federal's accreditation for its Chicago branch. Paragraph 6 of the written agreement, which the parties had included in their oral agreement had nothing to do with obtaining that independent accreditation. Plaintiff never intended to obtain such accreditation. Nor did plaintiff

want to run the school separately from Federal.

Defendant, called as a witness by plaintiff, testified as follows. He and plaintiff reached an oral agreement to operate a school in Chicago, the terms of which were the same as those contained in the unexecuted written agreement drafted by plaintiff's attorney. Although he never gained actual possession of Nationwide's stock, defendant considered himself the owner of the Chicago school. Defendant's failure to gain possession of the stock had nothing to do with his decision to close the Chicago school. On cross-examination, defendant testified that he did not execute the written agreement because he never received the Nationwide stock.

On his own behalf, defendant testified as follows. The oral agreement that he had with plaintiff was that they would operate a branch of Federal in Chicago and seek independent accreditation for Nationwide. Because, under Federal regulations, an accredited school cannot loan its accreditation to a nonaccredited school and in order to protect Federal's accreditation. Defendant made sure that the Chicago school was accredited as a branch of Federal. In order to apply for and obtain *140 independent accreditation for Nationwide, pursuant to the agreement with plaintiff, defendant was required by ACCET to own at least 51% of Nationwide's stock. Defendant never received the Nationwide stock. Paragraph six of the unexecuted written agreement provided, with respect to the independent accreditation that defendant was to obtain for Nationwide, that Nationwide's stock was to be sold to Federal. Plaintiff's failure to tender the Nationwide stock to defendant made it impossible for him to seek independent accreditation for Nationwide. Defendant did not execute the written agreement because he did not agree with two of its provisions. Defendant treated plaintiff as an employee upon plaintiff's failure to transfer the Nationwide stock to him and defendant's failure to sign the written agreement. Neither an **811 ***471 applicant for enrollment in a Federal school nor Federal are bound if the applicant does not pay any tuition.

In granting plaintiff a **preliminary injunction**, the trial court found that the parties entered into an oral agreement whereby plaintiff was to be the **manager** of a Chicago branch of Federal. It further found that despite plaintiff's failure to tender the Nationwide stock to defendant the parties operated as **partners** for nine months. The trial court further concluded that the oral agreement was a legally enforceable contract because there was mutual assent to it and that irreparable injury would result, without the injunction, because refusing accreditation "destroys the

school."

OPINION

¹¹¹ Preliminarily we must note that, in order to obtain **preliminary injunctive relief**, a plaintiff must show, by a preponderance of the evidence that: (1) he has a clearly ascertainable right in need of protection; (2) he will suffer irreparable harm without the relief requested; (3) he has no adequate remedy at law; and (4) there is a likelihood of success on the merits. (*Service Systems Corp. v. Van Bortel* (1988), 174 Ill.App.3d 412, 123 Ill.Dec. 833, 528 N.E.2d 378.) On appeal, defendant relies upon several grounds to argue that the trial court erred in entering the **preliminary injunction** for plaintiff. In view of our conclusion that plaintiff lacks a clearly ascertainable right entitled to protection, we need only address defendant's contention that his partnership with plaintiff was a partnership at will and thus terminable at any time.

¹²¹ ¹³¹ ¹⁴¹ ¹⁵¹ With respect to their duration, partnerships are formed either for a fixed or specified term or without reference to any term. Partnerships formed without reference to any term are partnerships at will. (59A Am.Jur.2d Partnership §§ 87, 89, (1987).) Such partnerships *141 are subject to dissolution at any time by the express will of any **partner**. (*Maimom v. Telman* (1968), 40 Ill.2d 535, 538, 240 N.E.2d 652; *Blake v. Sweeting* (1887), 121 Ill. 67, 70, 12 N.E. 67; *Sjo v. Cooper* (1975), 29 Ill.App.3d 1016, 1017, 331 N.E.2d 206; *Salter v. Condon* (1925), 236 Ill.App. 17, 25; Ill.Rev.Stat.1987, ch. 106 ½, par. 31(1)(b); 59A Am.Jur.2d Partnership §§ 89, 818 (1987).) All that the dissolving **partner** need do is give notice of his intent to dissolve the partnership to his **co-partners**. (*Blake*; *Sjo*; *Salter*; 59A Am.Jur.2d Partnership § 820 (1987).) There is a distinction between the power and right to dissolve a partnership. However, as to partnerships at will, a dissolution at the election of one of the **partners** is not a breach of contract and the dissolving **partner** incurs no liability regardless of his motive or any injury to his **co-partners** "who neglected to protect themselves by an agreement to **continue** for a definite term." 59A Am.Jur.2d Partnership § 819, at 641 (1987) citing, *inter alia*, *Thanos v. Thanos* (1924), 313 Ill. 499, 145 N.E. 250.¹

¹⁶¹ The record in this case reveals that the oral partnership agreement between the parties did not include any agreement as to the duration of their partnership. Moreover, plaintiff does not so allege on appeal. Therefore, the agreement and the parties' rights thereunder were governed by the foregoing rules. Defendant had the right

to dissolve his partnership at will with plaintiff at any time as long as he gave notice of his intent to do so. Defendant's telegram to plaintiff on August 1, 1989 stating that he was closing the Chicago branch of Federal satisfied his notice obligation. As defendant acted within his rights under the parties' agreement and partnership law in terminating his relationship with plaintiff, the grant of a **preliminary injunction** requiring him to **continue** in that relationship was an abuse of discretion.

Plaintiff concedes the general validity of the foregoing rules of partnership law. However, he argues that defendant cannot ****812 ***472** evade the specific performance of their oral contract by claiming that the partnership created thereby was terminable at will. Plaintiff so reasons ***142** based on: (1) the rule that partnerships are contractual relationships to which principles of contract law are fully applicable; (2) the contract law principle that an essential element for the formation of a contract is the parties' mutual assent to its terms; and (3) the rule that the existence of a partnership depends upon the parties' intent. Applying these principles here, plaintiff concludes that the trial court, having found that he and defendant had agreed to operate as **partners**, properly exercised its equitable powers.

As we understand it, plaintiff's argument is that, having once manifested an intent to form and conduct a partnership with him, defendant could not thereafter withdraw from that partnership as he pleased or chose. The problem with plaintiff's argument, however, is that neither the principles upon which he relies for that conclusion nor

the case from which they are cited, *Allen v. Amber Manor Apartments Partnership* (1981), 95 Ill.App.3d 541, 51 Ill.Dec. 26, 420 N.E.2d 440, provide any support for it. *Allen* did not involve the question here presented. More importantly, that partnerships are subject to contract law principles is of no avail to plaintiff absent citation to any such principle requiring a conclusion contrary to that which we have reached in this case. That mutual assent is required for the formation of a contract and that the existence of partnership depends on the parties' intent are not such principles. Rather, those rules have nothing whatsoever to do with a **partner's** exercise of his right to withdraw from a partnership at will. Plaintiff's arguments are without merit.

For the foregoing reasons, we reverse the order granting a **preliminary injunction** against defendant.

REVERSED.

CERDA, P.J., and WHITE, J., concur.

Parallel Citations

202 Ill.App.3d 137, 559 N.E.2d 808

Footnotes

- ¹ It could be argued, based on defendant's testimony that he and plaintiff agreed to obtain independent accreditation for Nationwide, that the parties formed a partnership for a particular undertaking and that it was thus not terminable at will. (See, generally, Ill.Rev.Stat.1987, ch. 106 ½, par. 31(1)(b).) However, plaintiff's denial of this intent at the evidentiary hearing as a part of their agreement precludes a finding of mutual assent to that term and reliance thereon to reach a conclusion contrary to that which we reach in this case.

EXHIBIT

F

January 25th, 2013 TRO Hearing p. 201:2-5

EXHIBIT F

JA-1781

1 A Yes, sir.

2 Q And who is your oldest son? Who is your oldest
3 son?

4 A Mr. Yusuf he is in charge for everybody.

5 Q What is your oldest son's name? Who is your
6 oldest son?

7 A My oldest son is Waleed Hamed.

8 Q And did there come a time that you stopped
9 working in the business every day?

10 A No.

11 Q Okay. Tell me what you did in the business?

12 A He used to work with me and in the supermarket,
13 without payment before we open. They build a beam and
14 they have somebody from St. Lucia, Charlie, he used to
15 work, and he will help him hold the beam with him until 12
16 o'clock in the night.

17 Q Okay. After a while did you get the supermarket
18 open?

19 A After the work in the supermarket.

20 Q Okay.

21 A And Mr. Yusuf tell me, you is my partner, not
22 your son. Your son employees, the two, 4.65 an hour, and
23 I like any employees. I tell him I'm not saying nothing,
24 you is my partner. Whatever you say I agree with you.

25 Q Okay.

EXHIBIT

G

Complaint, *United v. Charriez*

Superior Court of the Virgin Islands
Division of St. Croix



OFFICE OF THE CLERK
(340) 778-9750

Date: May 6, 2013

Plaintiff s/Attorney's name NIZAR A. DEWOOD, ESQ.

Address 2006 EASTERN SUBURB, STE. 101 C'STED VI 00820

Address _____

DOCKETING LETTER AND NOTICE OF JUDGE ASSIGNMENT

Dear ATTORNEY DEWOOD

The Court is in receipt of your CIVIL CRIMINAL / FAMILY / PROBATE filing,
which was docketed on MAY 6, 2013 and assigned Case Number
SX-13-CV-152

The Judge / Magistrate Assigned to your case is the Honorable
JUDGE HAROLD WILLOCKS

If there is a fee associated with your filing, such fee must be filed along with your
petition/complaint, or within five (5) days thereafter. Failure to pay the required fee may
result in your petition / complaint being dismissed for failure to prosecute.

If you have any questions or concerns, you may contact the Office of the Clerk of the
Court at (340) 778-9750 (St. Croix) or 774-6680 (St. Thomas-St. John).

Sincerely,
Venetia Velazquez, Esq.
Clerk of the Court


BY: TAMARA N. ALLEN, COURT CLERK II

Cc: WADDA CHARRIEZ, Defendant
Case File

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

13 NOV 13 11:49

UNITED CORPORATION,	)	CIVIL NO. SX-13-CV- <u>152</u>
)	
)	
Plaintiff	)	CIVIL ACTION
)	
Vs.	)	ACTION FOR DAMAGES
	)	& RECOUPMENT
WADDA CHARRIEZ)	
	)	COMPLAINT
)	
Defendant	)	JURY TRIAL DEMAND
_____)	

COMPLAINT

Plaintiff United Corporation ("United"), and by and through its undersigned counsel files this action for damages and alleges as follows:

I. BACKGROUND

1. This is a civil action for damages, compensatory and punitive, arising out of Defendant Charriez for fraud, breach of contract, breach of fiduciary duties, and conversion.

II. JURISDICTION, VENUE, & DEMAND FOR JURY TRIAL

2. This Court has jurisdiction pursuant to 4 VIC §76.
3. Venue is proper in the District of St. Croix because all of the parties are residents of the District of St. Croix, and the cause(s) of action arose in said District, pursuant to 4 VIC § 78.
4. A trial by jury is demanded pursuant to 4 VIC § 80.

III. THE PARTIES

5. Plaintiff United Corporation is a duly organized Virgin Islands Corporation since January of 1979, and is authorized to conduct business in the Virgin Islands. Plaintiff is *sui juris*.

6. Defendant Wadda Charriez is a natural person and is a resident of the U.S. Virgin Islands. Defendant Charriez is *sui juris*. At all times relevant to this action, Defendant Charriez has been an at-will employee of Plaintiff United.

IV. FACTS

7. Plaintiff United operates three supermarket stores throughout St. Croix and St. Thomas under the trademark of "Plaza Extra" located in 4C & 4D Estate Sion Farm, St. Croix, 14 Estate Plessen, St. Croix and 4605 Tutu Park Mall, Suite 200, St. Thomas.

8. Plaintiff United is the employer of Wadda Charriez, who began her employment on January 5th, 1998 as a cashier. Thereafter, Defendant Charriez eventually became an office manager was assigned the duties of preparing and issuing payroll checks.

9. United utilizes a hand recognition payroll system where every employee must scan his or her right hand to "punch-in" and "punch-out"

10. The system then automatically feeds the payroll system with time information obtained from each employee's hand scan.

11. Any print out from the payroll system would then show the date and time the hand was scanned. However, if an employee manually enters the entry and exit times, any printout of that employee's time sheets will show an asterisk next to the manually overridden time.

12. This punch-in and punch-out hand recognition procedure is required for all hourly wage based employees. Of all the hourly based employees, Defendant Charriez and by virtue payroll responsibilities has manually overridden the payroll system virtually every single time.

13. There is only one explanation as to why Defendant Charriez's timesheets would show consistent manual time entries: to report false hours and to cause the payroll system to issue overstated wages.

14. On April 29th, 2013, Plaintiff United Corporation terminated Defendant Wadda Charriez for reporting false hours causing Plaintiff United monetary losses of \$40,878 dollars.

15. Upon information, Defendant Charriez reported false hours for the years 2006 through 2009, the records of which are being collected and analyzed.

16. For the years 2010 through 2012, Defendant Charriez reported the following total false hours:

i. Year 2010	786 hours @ \$18.00 = \$14,148
ii. Year 2011.....	832 hours @ \$18.00 = \$14,976
iii. Year 2012	615 hours @ \$18.00 = <u>\$11,754</u>
	\$40,878

17. Plaintiff United warned Wadda Charriez on January 7th, 2013 of Plaintiff's intent to terminate her should she fail to explain why Defendant Charriez falsely reported such significant hours.

18. Plaintiff United provided Defendant Charriez over 120 days to explain her false reporting of work hours.

19. On April 29th, 2013, Defendant Charriez's employment was terminated. Employee Charriez never returned any of the monies she received as a result of her false hours, and never explained the reasons for her misconduct.

20. As an office manager, and an employee tasked with properly preparing, reporting, and issuing payroll checks for United's employee, Defendant Charriez violated her at-will employment agreement with United Corporation.

21. As an employee of Plaintiff United, Defendant violated her duties of loyalty and care owed to her employer Plaintiff United.

22. As a result of obtaining \$40,878 dollars in unauthorized and illegal compensation, Defendant Charriez caused Plaintiff United substantial monetary damages.

V. CAUSES OF ACTION

FIRST CAUSE OF ACTION FRAUD

23. Plaintiff incorporates paragraphs 1 through 22 inclusive as if fully set forth verbatim herein.

24. Defendant Charriez fraudulently reported hours of work to Plaintiff United during the period of January 1st, 2010 through December 15th, 2012, causing Plaintiff losses of \$40,878 dollars.

25. Plaintiff United materially relied on the representations of Defendant Charriez, and as a result issued numerous checks for overstated amounts to Defendant Charriez.

SECOND CAUSE OF ACTION

BREACH OF FIDUCIARY DUTIES

26. Plaintiff incorporates paragraphs 1 through 25 inclusive as if fully set forth verbatim herein.

27. Defendant Charriez is an employee of Plaintiff United; as such Defendant owes Plaintiff various duties, including duty of loyalty and duty of care.

28. Defendant Charriez's reporting of false hours to gain for her personal benefit in the amount of \$40,878 is a breach of each of these duties. Defendant Charriez is therefore liable to Plaintiff for all damages sustained by Plaintiff United as a result of Defendant Charriez' breach of their duties.

THIRD CAUSE OF ACTION

CONVERSION/RECOUPMENT

29. Plaintiff incorporates paragraphs 1 through 28 inclusive as if fully set forth verbatim herein.

30. Defendant obtained and received \$40,878 in unauthorized and fraudulent compensation from Plaintiff United. Defendant is liable to Plaintiff for the conversion of said funds to her benefit.

31. As such, Plaintiff United is entitled to full recoupment of these funds including but not limited to a constructive trust in favor of Plaintiff United.

VI. RELIEF REQUESTED

Wherefore, Plaintiff United Corporation, respectfully prays for the following relief:

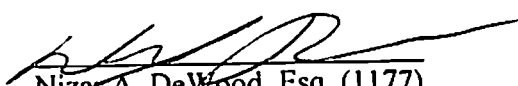
- i. Compensatory damages in the amount of \$40,878 dollars.
- ii. Punitive damages in an amount to be determined at trial.
- iii. Attorney's fees and court costs for filing the Action
- iv. Any other relief the court deems equitable.

Date: May 3, 2013

Respectfully Submitted,

DeWood Law Firm
Counsel for Plaintiff United

By:


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13 MAY -9 19:05

SUPERIOR COURT
THE DISTRICT OF COLUMBIA

JA-1791

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' *EMERGENCY* MOTION FOR RECONSIDERATION OF
PRELIMINARY INJUNCTION ORDER AND FOR STAY OF SAME PENDING
POSTING OF ADEQUATE BOND

Defendants hereby move, on an *emergency* basis, for reconsideration of the Court's April 25, 2013 Memorandum Opinion and Order (the "Preliminary Injunction Order") on Plaintiff's January 19, 2013 Emergency Motion and Memorandum to Renew Application for TRO, and for a temporary stay of the Preliminary Injunction Order pending Plaintiff's posting of an adequate bond.¹

Introduction

Trial courts should err on the *high side* when setting the amount of a security bond. Here, however, the current bond of \$25,000 was arbitrarily set without any discussion or argument on the bond issue during the January 25 and 31, 2013 preliminary injunction hearings or otherwise. Indeed, the meager bond clearly cannot satisfy its primary purpose, *i.e.*, "to pay the costs and damages sustained by any party found to have been wrongfully enjoined or restrained," Fed. R. Civ. P. 65(c), which costs in this action exceed \$80 million, including the \$68 million net equity of Defendant United Corporation d/b/a Plaza Extra, whose assets and operations have been usurped by the

¹ This motion addresses the legal insufficiency of the current bond only, and otherwise is made without waiver of any of Defendants' arguments that the Preliminary Injunction Order was wrongfully issued. Defendants' undersigned counsel received notice of the entry of the Order via an e-mail from the Court dated April 30, 2013.

Preliminary Injunction Order and whose continued existence has been placed in serious jeopardy. Nor does the Preliminary Injunction Order presently require that the bond be held in an interest-bearing account until the entry of final judgment.

Accordingly, as addressed in greater detail below, Defendants respectfully request that this Court forthwith schedule a bond hearing to determine a legally sufficient bond amount to be posted by Plaintiff in an interest-bearing account prior to the effective date of any interlocutory injunction order; or, in lieu of a bond hearing, rely upon the damages figure offered herein by Defendants, *i.e.*, \$80 million, as the sufficient bond amount.

Relevant Background²

A. The Current Security Bond

1. The January 25 and 31, 2013 hearings on Plaintiff's underlying preliminary injunction motion were devoted to the merits of Plaintiff's extraordinary and drastic request for equitable relief.

2. Significantly, the issue of a bond, including the costs and damages that Defendants would sustain if wrongfully enjoined, was never discussed or argued during the merits-based hearings or otherwise.

3. Notwithstanding, in granting the injunction, this Court set "a bond in the amount of Twenty-Five Thousand Dollars (\$25,000.00)" absent any factual findings or other record evidence regarding Defendants' respective costs and damages if an injunction were wrongfully issued. (Preliminary Injunction Order at 23).

² The Preliminary Injunction Order sets forth additional factual findings as gleaned, almost exclusively, from Plaintiff's one-sided proposed factual findings and conclusions of law. The Order otherwise makes no attempt to distinguish or even discuss the factual findings and conclusions of law that Defendants proposed in their post-hearing submissions. The Order likewise was entered prior to a resolution of Defendants' November 5, 2012 Renewed Motion to Dismiss.

4. Similarly, although the Preliminary Injunction Order provides that “Plaintiff’s interest in [United Corporation d/b/a Plaza Extra’s] ‘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,” that “security” is illusory. Indeed, upon a finding that Defendants were wrongfully enjoined and, necessarily, that United Corporation alone owns full interest in the accounts held in its name, Plaintiff would own no interest in those accounts. In other words, Plaintiff’s alleged interest in the accounts held at Banco Popular Securities cannot somehow serve as “additional security” because, *if Plaintiff is found not to own any interest in those accounts*, that “additional security” would be zero. Thus, upon a finding that Defendants were wrongfully enjoined, they would be limited to the meager \$25,000 bond.

5. Further, although a bond is the only source of Defendants’ recovery if found to have been wrongfully enjoined, the Court did not concurrently direct that the instant bond amount actually reflect the “additional security” suggested in the Preliminary Injunction Order.

6. Nor does the current \$25,000 bond reflect any attempt to ensure that the value of United Corporation d/b/a Plaza Extra’s assets encumbered bear some reasonable relationship to (a) Plaintiff’s expected recovery in this action or (b) as noted, Defendants’ *respective* costs and damages resulting from the current injunction.

B. Defendants’ Costs and Damages

7. Although the Preliminary Injunction Order endeavors “to preserve the status quo of the parties,” the Order in fact does the exact opposite – it turns the status quo on its head. (Preliminary Injunction Order at 22).

8. Specifically, disregarding the undisputed hearing testimony, the Preliminary Injunction Order gives rise for the first time to a crippling corporate deadlock “affecting the

management, employees, methods, procedures and operations” of the Plaza Extra stores based on the directive that the Hameds and Yusufs now “jointly manag[e] each store.” (*Id.* at 23).

9. This directive purports to usurp the ultimate decision-making authority that Defendant Fathi Yusuf has exercised since he incorporated United Corporation in 1979 (*id.* at 3), began building the first of its three supermarkets (*id.*), and thereafter has managed and been in charge of all of the three stores through the present – *as even Plaintiff and his own witnesses do not dispute.* (*See, e.g.*, Jan. 25, 2013 Hr’g Tr. at 201:4 (Mohammad Hamed conceding, during his direct testimony, that “Mr. [Fathi] Yusuf he is in charge for everybody”), 201:23-24 & 210:21-23 (Mohammad Hamed acknowledging, again, that Fathi Yusuf is in “charge” of “all the three store[s]”); Jan. 25, 2013 Hr’g Tr. at 26:14-15 & 100:2-3 (Waleed Hamed conceding that Fathi Yusuf is and always has been ultimately responsible for the entire office operations of United Corporation d/b/a Plaza Extra), Jan. 25, 2013 Hr’g Tr. at 105:12-15 (Waleed Hamed reaffirming that Fathi Yusuf is the only individual who has the “ultimate call” relating to the supermarket operations, including to ultimately resolve any disagreements between the respective co-manager employees at the stores)).

10. The Preliminary Injunction Order’s incredible overhaul of ultimate decision-making regarding the stores’ operations – *i.e.*, from the parties’ longstanding *prior regime* since 1979 of Fathi Yusuf as the ultimate decision-maker and tie-breaker to the Court’s judicially-imposed *new regime* of “joint management” based on a preliminary record – threatens the very existence of United Corporation d/b/a Plaza Extra and of the Plaza Extra stores.

11. The Preliminary Injunction Order also usurps the finances of United Corporation d/b/a Plaza Extra, based on the directives that “[n]o funds will be disbursed from [United’s] supermarket operating accounts without the mutual consent of Hamed and Yusuf” and that “[a]ll

checks from all Plaza Extra Supermarket operating accounts will require two signatures," one from each family. (*Id.* at 23).

12. These directives, among other injury to Defendants, likewise threaten United Corporation's continued existence, and also purport to relieve Plaintiff from his obligation to pay certain rent owed to United.

13. Further, the directives materially impact United Corporation's obligations in various pending criminal and civil legal proceedings in which it is a party.

14. Thus, given the unprecedented restraints in the Preliminary Injunction Order, Defendants – and each of them – will sustain significant costs and damages complying with the Order. Those costs and damages include, at a minimum:

(a) the earnings that the injunction presently directs be paid to certain employees, including four Hamed employees and Wadda Charriez, irrespective of Defendants' ultimate consideration of whether those employees, among others, should remain employed through the entry of a final judgment in this action;

(b) the outstanding rent owed by Plaintiff for the lease of the Sion Farm Plaza Extra Supermarket through the entry of a final judgment in this action;

(c) Defendants' costs, including attorneys' fees, incurred in complying with the present injunction order through the entry of a final judgment in this action;

and, perhaps most importantly,

(d) the net equity of United Corporation, whose assets and operations, as noted, have been completely usurped from it.

15. With respect to the forced earnings component of the present injunction and assuming that a final judgment on the merits will not be entered in this action for another two years, *i.e.*, until May 2015, the combined earnings of the Hameds who are employed at the supermarket stores, together with the earnings of Wadda Charriez, from May 2013 through May 2015, is

\$2,866,442.00. (See May 8, 2013 Declaration of John Gaffney at ¶ 5 (attached as Exhibit "A" hereto)).

16. With respect to the unpaid rent damages arising from the injunction, Plaintiff's continued failure to account for various lease obligations at the Sion Farm Plaza Extra Supermarket currently includes \$9,012,759.50 in outstanding rent owed to United Corporation d/b/a Plaza Extra. (See Gaffney Decl. at ¶¶ 8-9).

17. With respect to the compliance component of the injunction, Defendants' estimated costs, including attorneys' fees, incurred in complying with the injunction are \$380,000-\$625,000. (See May 8, 2013 Declaration of Nizar A. DeWood at ¶ 13 (attached as Exhibit "B" hereto)).

18. Lastly, with respect to the value of United Corporation d/b/a Plaza Extra and its supermarket stores, whose continued existence the injunction has seriously jeopardized, the present net equity of United Corporation exceeds \$68,000,000.00. (See Gaffney Decl. at ¶ 10).

19. In sum, Defendants' out-of-pocket compliance costs and potential damages as a result of the instant injunction total more than **\$80 million**.

20. As discussed below, Defendants should be fully protected against those costs and damages in the event the Preliminary Injunction Order should not have been imposed – and the current \$25,000 bond does not satisfy that purpose and thus is legally inadequate.

Argument

A. Legal Standards

"The purpose of the bond requirement is to protect the enjoined party in the event the injunction should not have been imposed." See *Howmedica Osteonics v. Zimmer, Inc.*, 461 Fed. Appx. 192, 198 (3d Cir. 2012) (vacating trial court's grant of preliminary injunction where, among other reasons, court failed to conduct a "full hearing" on the bond requirement). Thus, although a trial

court has equitable discretion to set the amount of a bond securing the issuance of a preliminary injunction, such security must reflect “the costs and damages sustained by any party found to have been wrongfully enjoined or restrained.” Fed. R. Civ. P. 65(c). The trial court also must “ensure that the value of assets encumbered b[ear] some reasonable relationship to the likely amount of [the movant]’s expected recovery.” See *Hoxworth v. Blinder, Robinson & Co.*, 903 F.2d 186, 189 (3d Cir. 1990) (“agree[ing] with defendants that the injunction suffers at least one fatal defect: the [trial] court made no attempt to ensure that the value of assets encumbered bore some reasonable relationship to the likely amount of plaintiffs’ expected recovery” and thus “conclud[ing] that the preliminary injunction *must be set aside*”) (emphasis added). See also *Mead Johnson & Co. v. Abbott Labs.*, 201 F.3d 883, 887 (7th Cir. 2000) (advising trial courts, in advance of preliminary injunction hearings, to “notify the parties of the ground rules and endeavor to set bonds at levels reflecting *full consequences*”) (emphasis added).

“[T]he posting of adequate security is a ‘condition precedent’ to injunctive relief.” *Scanvec Amiable Ltd. v. Chang*, 80 Fed. Appx. 171, 176 (3d Cir. 2003) (citations omitted). Further, the text and policies of Rule 65(c) are interpreted “very strictly.” *Hoxworth*, 903 F.2d at 210. See also *Arlington Indus., Inc. v. Bridgeport Fittings, Inc.*, No. 3:06-CV-1105, 2011 U.S. Dist. LEXIS 119438, at *9-10 (M.D. Pa. Oct. 17, 2011) (“The Third Circuit strictly interprets the security bond requirement of Rule 65(c).”). Indeed,

[t]here are important policies undergirding a strict application of the bond requirement . . . *Instant Air Freight Co. v. C.F. Air Freight, Inc.*, 882 F.2d 797, 805-06 n.9 (3d Cir. 1989). An incorrect interlocutory order may harm defendant and a bond provides a fund to use to compensate incorrectly enjoined defendants. *Id.* at 804. 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. *Id.* (citation omitted).

Hoxworth, 903 F.2d at 210 (internal quotation omitted). “Plaintiffs too derive some protection from the bond requirement, for defendants injured by wrongfully issued preliminary injunctions can recover only against the bond itself.” *Id.* at 210 n.31 (citing *W.R. Grace & Co. v. Local Union 759*, 461 U.S. 757, 770 (1983)).

“Very strict” application of the bond requirement fulfills an additional key purpose: to deter “rash applications” for preliminary relief by causing plaintiffs to “think carefully beforehand.” *Id.* at 211 (citing *Instant Air Freight*). See also *Howmedica*, 461 Fed. Appx. at 198 (“The bond serves to inform [plaintiffs] of the price they can expect to pay if the injunction was wrongfully issued.”) (citation and quotation omitted); *Mead Johnson*, 201 F.3d at 888 (“Shifting back to the plaintiff the complete injury occasioned by the errors that sometimes occur when preliminary relief is issued after an abridged judicial inquiry will hold in check the incentive [plaintiffs] have to pursue [preliminary injunctive] relief”); *Zambelli Fireworks Mfg. v. Wood*, 592 F.3d 412, 426 (3d Cir. 2010) (“The requirement of security is rooted in the belief that a defendant deserves protection against a court order granted without the full deliberation a trial offers.”).

Accordingly, trial courts “**should err on the high side**” when setting the amount of a security bond under Rule 65(c). *Mead Johnson*, 201 F.3d at 888 (emphasis added). As the court explained in *Mead Johnson*,

[i]f the [trial] judge had set the bond at \$ 50 million, as [defendant] requested, this would not have entitled [defendant] to that sum; [defendant] still would have to prove its loss *An error in setting the bond too high thus is not serious.* . . . Unfortunately, an error in the other direction produces irreparable injury, because the damages for an erroneous preliminary injunction cannot exceed the amount of the bond.

Id. (emphasis added) (citations omitted). *See also Arlington*, 2011 U.S. Dist. LEXIS 119438, at *9-16 (holding it would be “manifestly unjust” to maintain a bond at below 100% “of the damages [the enjoined party] will purportedly suffer should the preliminary injunction be deemed erroneous”).

Trial courts also **should hold a “full hearing”** on the bond requirement when, as here, the initial preliminary injunction hearing was “devoted to the merits of that request, rather than to fixing the amount of bond.” *Mead Johnson*, 201 F.3d at 887. *See also Zambelli*, 592 F.3d at 426 (noting that Rule 65(c) “does not impose any obligation on the parties to seek a bond” at the initial preliminary injunction hearing on the merits); *H.I. Constr., LLC v. Bay Isles Assocs., LLLP*, 53 V.I. 206, 223 (Terr. Ct. 2010) (clarifying that trial court “is *unable to impose a reasonable bond* as required as part of an order for injunctive relief” absent testimony on the Rule 65(c) considerations, including the enjoined party’s financial ability) (emphasis added); *Howmedica*, 461 Fed. Appx. at 198 (remanding matter for “full hearing on the [bond] issue” where the issue was not addressed at the initial preliminary injunction hearing); *Deborah Heart and Lung Center v. Children of the World Foundation*, 99 F. Supp. 2d 481, 495 (D.N.J. 2000) (scheduling, at the conclusion of preliminary injunction hearing on the merits, a separate “bond hearing” to determine appropriate bond requirement); *EH Yacht, LLC v. Egg Harbor, LLC*, 84 F. Supp. 2d 556, 573 (D.N.J. 2000) (ordering separate bond hearing “for a determination of appropriate security to be posted pending further proceedings,” and ordering that injunction order “be temporarily stayed and be[] effective as of the plaintiff’s posting of a bond” as determined after the bond hearing); *Doebler’s Pennsylvania Hybrids, Inc. v. Doebler*, No. 4:CV-03-1079, 2003 U.S. Dist. LEXIS 27098, at *4 (M.D. Pa. Oct. 15, 2003) (granting motion for reconsideration to “schedule[] a hearing to address the amount and nature of the security for the injunction,” which matters were not addressed at the initial hearing on the merits).

Lastly, because “the only recourse for a defendant wrongfully enjoined is against the security bond,” trial courts in this context should “retain the security bond in an interest-bearing account until the entry of final judgment.” *Arlington*, 2011 U.S. Dist. LEXIS 119438, at *16-17 (granting enjoined party’s motion for reconsideration to “modify [the court’s initial preliminary injunction order] and direct the Clerk of Court to retain the security bond in an interest-bearing account until the entry of final judgment”). Indeed, retention of the bond in an interest-bearing account until the entry of final judgment is advisable because “recovery under the security bond is triggered only after final judgment on the merits in favor of the enjoined party.” *Id.* at *17 (citing *Clark v. K-Mart Corp.*, 979 F.2d 965, 969 (3d Cir. 1992) and *Am. Bible Soc’y v. Blount*, 446 F.2d 588, 594-95 & n.12 (3d Cir. 1971)).

Where a trial court fails to comply with the foregoing legal standards, a motion for reconsideration is appropriate “to correct clear error or prevent manifest injustice.” LRCi 7.3. *See also Arlington*, 2011 U.S. Dist. LEXIS 119438, at *6-7 (“The purpose of a motion for reconsideration is to . . . correct manifest errors or law or fact” and “[t]he court [also] possesses inherent power to reconsider its interlocutory orders when it is consonant with justice to do so”) (citation omitted); Fed. R. Civ. P. 60(b)(6) (allowing relief from an order for any “reason that justifies relief”).

B. Reconsideration is Warranted in This Action

In the present action, the Court did *not* “err on the high side” when setting the current bond amount of \$25,000; did *not* hold a “full hearing” on the bond requirement, as the initial preliminary injunction hearings were devoted to the merits of the underlying injunction request; and did *not* direct that the bond be held in an interest-bearing account until the entry of final judgment on the merits. Based on the authority cited herein, those failures collectively, and each of them individually, constitute clear error and would lead to manifest injustice if not remedied. *See, e.g., Arlington*, 2011

U.S. Dist. LEXIS 119438, at *9-16 (holding it would be “erroneous” and “manifestly unjust” to set bond at any amount below the full damage figure an enjoined party purportedly would suffer; increasing initial bond of 25% of the defendant’s suggested damages figure to 100% of the suggested figure).

Alternatively, the Court may dispense with the bond hearing by relying upon the damages figure suggested by Defendants in this motion. *See, e.g., Arlington*, 2011 U.S. Dist. LEXIS 119438, at *12-13 (noting that the court therein “specifically relied upon [the enjoined party]’s calculation of lost profits, which was asserted by [the party]’s counsel”); *Christiana Indus. Inc. v. Empire Elecs., Inc.*, 443 F. Supp. 2d 870, 884 (E.D. Mich. 2006) (granting emergency motion for reconsideration to increase bond amount from \$100,000 to \$2.5 million where “Plaintiff d[id] not contest the amount presented by Defendant as its potential loss”); *Merry Maids, L.P. v. WWJD Enters., Inc.*, No. 8:06CV36, 2006 U.S. Dist. LEXIS 49788, at *8 (D. Neb. July 20, 2006) (adopting “figure suggested by the defendants” as bond amount where “the matter of the security required by Rule 65(c) was not discussed or argued at the time of the hearing”). Towards that end, Defendants’ potential loss as a result of being wrongfully enjoined or restrained in this action is \$80 million, comprising the net value of United Corporation and the other costs and damages set forth herein, which amount Plaintiff should be required to post with the Court as security in an interest-bearing account until final judgment. *See, e.g., Mead Johnson*, 201 F.3d at 887 (expressing “concern” over \$1 million bond that failed to adequately consider the defendant’s *full* out-of-pocket compliance costs and potential loss of market share as a result of the injunction, which costs defendant estimated to be \$21.8 million); *Stouder v. Me&A Tech., Inc.*, No. 09-4113, 2010 U.S. Dist. LEXIS 85616, at *9 (D. Kan. Aug. 19, 2010) (including income, *i.e.*, base salary plus commissions, as bond component); *Scanvec*, 80 Fed. Appx. at 178 (including “expenses” incurred in complying with injunction as bond component).

Conclusion

For the foregoing reasons, Defendants pray that the Court, on an emergency basis, enter an Order (a) scheduling a bond hearing to determine the legally sufficient security to be posted pending further proceedings or, alternatively, adopting the damages figure suggested by Defendants in this motion, *i.e.*, \$80 million, as the sufficient security bond; (b) directing Plaintiff to post the amended security with the Clerk of the Court in an interest-bearing account until the entry of final judgment; (c) staying any preliminary injunction order until Plaintiff's such posting of the amended security and notice to the Court thereof; and (d) granting any additional relief deemed to be just under the circumstances.

Respectfully submitted,

May 9, 2013

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-and-



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Counsel for Defendants Fathi Yusuf and United Corporation

CERTIFICATE OF SERVICE

I hereby certify that on May 9, 2013, a true and accurate copy of the foregoing was forwarded via email to the following: *Joel H. Holt, Esq.*, 2132 Company St., St. Croix, VI 00820, holtvi@aol.com; *Carl J. Hartmann III, Esq.*, 5000 Estate Coakley Bay, L-6, Christiansted, VI 00820, carl@carlhartmann.com; and *K. Glenda Cameron, Esq.*, Law Offices of K.G. Cameron, 2006 Eastern Suburb, Suite 101, St. Croix, VI 00820, kglenda@cameronlawvi.com.



Nizar A. DeWood, Esq.

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

MOHAMMAD HAMED, by his)	
authorized agent, WALEED HAMED,)	
)	
Plaintiff,)	
)	
v.)	CIVIL NO. SX-12-CV-370
)	
FATHI YUSUF and UNITED CORPORATION,)	
)	
Defendants.)	
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EXHIBIT "A" – May 8, 2013 Declaration of John Gaffney

(in support of Defendants' May 8, 2013 *Emergency* Motion for Reconsideration of Preliminary
Injunction Order and For Stay of Same Pending Posting of Adequate Bond)

through that date, the combined salaries of Waleed Hamed, Mufeed Hamed, Hisham Hamed, Waheed Hamed and Wadda Charriez to be paid by United Corporation d/b/a Plaza Extra to those employees from May 2013 through May 2015 is \$2,866,442.

6. Plaintiff Mohammad Hamed's last rent payment to United Corporation d/b/a Plaza Extra for the lease at the Sion Farm Plaza Extra East supermarket was made on or about February 7, 2012, in the amount of \$5,408,806.74 for the period May 2004 through December 2011.

7. Additional rent for the Plaza Extra East store remains unpaid and is due and owing to United Corporation d/b/a Plaza Extra.

8. Specifically, with respect to the areas referred to by the parties as "Bay No. 1," "Bay No. 5," and "Bay No. 8" of the Plaza Extra East store:

- a. \$3,967,894.19 is owed for Bay No. 1 from January 1, 1994, through April 4, 2004;
- b. \$243,904.00 is owed for Bay No. 5 from May 1, 1994, through October 31, 2001; and
- c. \$381,250.00 is owed for Bay No. 8 from April 1, 2008, through May 30, 2013;

for a combined amount as of those dates of \$4,593,048.19.

9. Separately, as of May 1, 2013, Plaintiff Mohammad Hamed owes to United Corporation d/b/a Plaza Extra \$4,419,711.31 in outstanding rent, including base rent and late fees, for the lease at the Sion Farm Plaza Extra supermarket from January 1, 2012, through May 1, 2013.

10. As of December 31, 2011, the net equity of United Corporation d/b/a Plaza Extra exceeds \$68 million.

I declare under penalty of perjury, on this 8th day of May, 2013, that the foregoing is true and correct.



JOHN GAFFNEY

**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

EXHIBIT "B" – May 8, 2013 Declaration of Nizar DeWood

(in support of Defendants' May 8, 2013 *Emergency* Motion for Reconsideration of Preliminary
Injunction Order and For Stay of Same Pending Posting of Adequate Bond)

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 and UNITED CORPORATION,	:	
	:	
Defendants.	:	
	:	

DECLARATION OF NIZAR A. DeWOOD

I, Nizar A. DeWood, pursuant to 28 U.S.C. § 1746, declare as follows:

1. This declaration is based on my personal knowledge and, if called as a witness, I could and would testify competently to the statements herein.
2. I am the founding partner of the DeWood Law Firm, which is Defendants' co-counsel in this action.
3. I am a member in good standing of the Virgin Islands Bar Association and I have been a member of that bar since November 2010.
4. I have worked on various matters in this action since its inception and I am familiar with the filings therein, including the Court's April 25, 2013 Memorandum Opinion and Order (the "Preliminary Injunction Order") on Plaintiff's January 19, 2013 Emergency Motion and Memorandum to Renew Application for TRO.
5. I likewise am familiar with Defendant's *Emergency* Motion for Reconsideration of Preliminary Injunction Order and for Stay of Same Pending Posting of Adequate Bond, which has been filed concurrently herewith without waiver of any arguments that the Order was wrongfully issued.
6. This Court, on a preliminary record, has questioned whether United Corporation d/b/a Plaza Extra remains a viable corporate entity vis-à-vis its supermarket operations or is "distinct" from the Plaza Extra operations (Preliminary Injunction Order at 7); and, independently, has found that Mohammad Hamed has a present ownership interest in United Corporation's supermarket profits dating back to the 1980s (*id.* at 16-17).
7. The Court thus has directed, among other things, that "[n]o funds will be disbursed from [United Corporation d/b/a Plaza Extra's] supermarket operating accounts without the mutual

consent of [Mohammad] Hamed and [Fathi] Yusuf” and that “[a]ll checks from all Plaza Extra Supermarket operating accounts will require two signatures,” one from each family. (*Id.* at 23).

8. Related to those directives, United Corporation d/b/a Plaza Extra and/or its officers and directors are currently a party in numerous pending criminal and civil actions in the Virgin Islands, including the following:

<u>Action</u>
United States of America and Government of the Virgin Islands v. Government of the Virgin Islands v. United Corporation d/b/a Plaza Extra, <i>et al.</i>
Edwards v. United Corporation d/b/a Plaza Extra
Fell v. United Corporation d/b/a Plaza Extra
Gilbert v. United Corporation, Inc. d/b/a Plaza Extra
Hartzog v. United Corporation d/b/a Plaza Extra
Hay v. United Corporation d/b/a Plaza Extra
Jackman v. United Corporation d/b/a Plaza Extra
Javois v. United Corporation
Melendez v. Mike Yusuf, <i>et al.</i>
Pemberton v. United Corporation d/b/a Plaza Extra
Philip v. United Corporation d/b/a Plaza Extra
Powell v. United
Samuel v. United Corporation d/b/a Plaza Extra
Santiago v. United Corporation d/b/a Plaza Extra (West)
United Corporation d/b/a Plaza Extra v. Tutu Park, Limited (Light Poles)
United Corporation d/b/a Plaza Extra v. Tutu Park, Limited
Williams v. United Corporation d/b/a Plaza Extra
Yarwood v. United Corporation, Inc. d/b/a Plaza Extra Supermarket

9. With respect to the criminal action identified on the first line above, the Preliminary Injunction Order purports to require Defendants to do the following, without limitation:

- a. move to vacate the current plea, which is premised upon the Hameds’ affirmative representations to the District Court that United Corporation d/b/a Plaza Extra alone owned and operated the three Plaza Extra supermarket stores during the relevant periods; and that the tax obligations of United Corporation, United Corporation’s shareholders, the individual defendants in the Criminal Action and any related entities and individuals for supermarket profits and other such taxable monies were properly calculated based on United Corporation’s status as a “C” or “S” corporation, as opposed to the partnership alleged in this action, which partnership this Court has acknowledged for the first time in its supposed 30-year history; and
- b. seek from Mohammad Hamed indemnification for all taxes, fines and other penalties that United Corporation d/b/a

Plaza Extra already has paid, for which liabilities this Court now has determined Mohammad Hamed to be jointly and/or severally liable.

Defendants estimate such compliance costs, including the attorneys' fees necessarily related thereto, to be \$75,000-\$100,000.

10. As to the 17 remaining above-referenced civil actions, based on the unique circumstances of each of those cases, the Preliminary Injunction Order purports to require Defendants to do the following in compliance thereof, including, but not limited to:

- a. obtain the Hameds' consent to continuation of each of the subject lawsuits;
- b. obtain the Hameds' consent to the continued retention of United Corporation's respective counsel in each of the subject lawsuits;
- c. revise every existing engagement letter between United Corporation and its respective counsel to incorporate this Court's findings and conclusions of law in the Preliminary Injunction Order, including, but not limited to, Mohammad Hamed alleged interest in the Plaza Extra profits and liability for same;
- d. draft, file and serve notices in each of the subject lawsuits notifying all parties of Mohammad Hamed's joint and several liability for any awards or orders in those lawsuits, including any damage claims against United Corporation d/b/a Plaza Extra; and
- e. prepare and execute indemnification agreements in each of the subject lawsuits to be executed by Mohammad Hamed for indemnification of United Corporation d/b/a Plaza Extra's expenses, including attorneys' fees and adverse damages judgments, in the lawsuits.

Defendants estimate such compliance costs, including the attorneys' fees necessarily related thereto, to be \$15,000-\$25,000 for *each* of the subject civil actions, *i.e.*, \$255,000-\$425,000.

11. The attached letter dated May 8, 2013 from one of United Corporation's current attorneys in certain of the pending actions referenced above highlights the issues in this context. (*See* May 8, 2013 Letter from Carl A. Beckstedt, III, Esq. (attached as Exhibit 1 hereto)).

12. Further, the Court's findings and conclusions of law in the Preliminary Injunction Order establish the basis for certain counter-claims in this action against Mohammad Hamed, including, but not limited to, reimbursement for all costs and damages that Fathi Yusuf and/or United Corporation d/b/a Plaza Extra has paid during the period of the alleged partnership absent

Mohammad Hamed's attendant liability for same as an alleged "partner" in the supermarket operations. Defendants estimate the costs of preparing and filing those counter-claims, including the attorneys' fees necessarily related thereto, to be \$50,000-\$100,000.

13. In sum, the total compliance component of the costs and damages that Defendants' now face as addressed herein based on the Preliminary Injunction Order is \$380,000-\$625,000.

I declare under penalty of perjury that the foregoing is true and correct on this 8th day of May, 2013.



NIZAR A. DeWOOD

EXHIBIT 1

(in support of May 8, 2013 Declaration of Nizar A. DeWood)

May 8, 2013

Via US Mail & Email to mike@plazaextra.com

Mr. Fathi Yusuf
Plaza Extra
P.O. Box 763
Christiansted, VI 00820

Via U.S. Mail & Email to mike@plazaextra.com

Mr. Mike Yusuf
President
United Corporation
P.O. Box 3649
Kingshill, VI 00851

Via U.S. Mail & Email to wally@plazaextra.com

Mr. Mohammad Hamed
c/o Mr. Wally Hamed, his authorized agent
Plaza Extra
P.O. Box 763
Christiansted, VI 00820

Re: Plaza Extra Litigation

Gentlemen:

I am in receipt of Wally's May 3, 2013 email requesting a status on all Plaza Extra litigation and copies of Judge Brady's Orders and Memorandum Opinion dated April 25, 2013, in the matter of *Mohammed Hamed v. Fathi Yusuf and United Corporation*, SX-12-CV-370 (the "Litigation"). I am also in receipt of Wally's letter of today's date indicating that the Hamed interests in Plaza Extra want me to continue as counsel in all litigation for the Plaza Extra Supermarkets that I am currently handling. Wally also advises that they make no claim as to the corporate operation of the shopping plaza or the rentals therefrom.

Attached is a list of the cases involving Plaza Extra Supermarket litigation which I am currently defending. (I note that in two cases I am appointed directly by the insurers, ACE and Admiral. Also, as to the cases covered by First Mercury, while they remain under the Self Insured Retention at this time, I am approved panel counsel once they exceed retention.) Note one of the cases is against Mike Yusuf, individually, however, it is my opinion that this matter clearly arises out of his managerial position at Plaza Extra West and is related to the supermarket

Fathi Yusuf
Mike Yusuf
Wally Hamed
May 8, 2012
Page 2

business. Indeed, coverage has been accepted by First Mercury under the insurance coverage for the store.

At a very minimum, Judge Brady's Order suggests that my client in these matters is the Yusuf/Hamed partnership, not United Corporation. It is my opinion that, in view of this Order, I cannot ethically proceed to represent the defendants in these actions without confirmation as to my retention by Fathi Yusuf, Mohammed Hamed (through Wally Hamed as his authorized representative) and United Corporation (as named defendant in all but one of these cases). I also need clear and agreed instruction as to invoicing, the person or persons to whom I am to report and the person or persons from whom I am to receive authorization/approval on litigation matters.

Assuming that all parties agree to continue my retention and defense of these cases and can also agree on a method of instruction for my services, then I can prepare an Engagement Letter for signature that embodies that consent and agreement. Given that there are many matters that need immediate attention, I recommend that this issue be resolved as soon as possible.

Thank you for your quick response.

Very truly yours,



Carl A. Beckstedt III, Esq.

CAB:jlz

PENDING PLAZA EXTRA SUPERMARKET LITIGATION

MATTER	CARRIER
Edwards, Sonia v. United Corporation d/b/a Plaza Extra	No suit filed
Fell, Isaline v. United Corporation d/b/a Plaza Extra	First Mercury Insurance Company
Gilbert, Felicite v. United Corporation, Inc., d/b/a Plaza Extra	
Hartzog, Amanda individually and as Next of Friend of Jahmil Perez, a minor v. United Corporation d/b/a Plaza Extra	
Hay, Carol L. v. United Corporation d/b/a, Plaza Extra	First Mercury
Jackman, Francis v. United Corporation d/b/a Plaza Extra	
Javois, Kyshama and Ferdinand Javois as parents of Kai Javois, a minor v. United Corporation	No suit filed
Melendez, Carlos, Jr. v. V.I. Asphalt Products Corporation (VIAPCO) and Mike Yusuf	First Mercury Insurance Company
Pemberton, Rita v. Plaza Extra Supermarket and United Shopping Plaza	
Phillip, Nelda P. v. United Corporation d/b/a Plaza Extra	Admiral Insurance
Powell, Paula v. United	No suit filed
Samuel, Velma v. United Corporation d/b/a Plaza Extra	ACE Global Solutions
Santiago, Jacqueline v. United Corporation d/b/a Plaza Extra (West)	
United Corporation d/b/a Plaza Extra v. Tutu Park, Limited (Light Poles)	
United Corporation d/b/a Plaza Extra v. Tutu Park, Limited	
Williams, Edith v. United Corporation d/b/a Plaza Extra	
Yarwood, Christie v. United Corporation, Inc., d/b/a Plaza Extra Supermarket	First Mercury

THE UNITED STATES OF AMERICA

<p>Plaintiff</p>	<p>vs.</p>
<p>Defendant</p>	<p>Plaintiff</p>
<p>Plaintiff</p>	<p>Defendant</p>
<p>Plaintiff</p>	<p>Defendant</p>
<p>Plaintiff</p>	<p>Defendant</p>
<p>Plaintiff</p>	<p>Defendant</p>
<p>Plaintiff</p>	<p>Defendant</p>
<p>Plaintiff</p>	<p>Defendant</p>
<p>Plaintiff</p>	<p>Defendant</p>
<p>Plaintiff</p>	<p>Defendant</p>
<p>Plaintiff</p>	<p>Defendant</p>

13 MAY -9 19:03

SUPERIOR COURT
THE FAIR PLAY

The Plaintiff claimed that the Defendants have crossed the Rubicon, but the Court's Order has brought the Rubicon's deluge to United Corporation. A stay must be entered *instanter*.

II. Procedural History

On April 30, 2013, this Court entered an order granting Plaintiff's motion for a preliminary injunction finding, *inter alia*, that the Plaintiff had demonstrated that there was an at-will partnership between Fathi Yusuf and the Plaintiff. The Court also found that the at-will partnership had been terminated by Fathi Yusuf it nevertheless compelled the continuation of the partnership.

III. Basis for Request for Emergency Relief

Defendants' instant motion should be treated as an emergency motion because the relief provided to the Plaintiff in the Court's April 30th order drastically changes the status quo and threatens the very existence of the Plaza Extra Supermarkets, and at the same time compromises United Corporation as a *de jure* entity. Indeed, the way the Court has structured its order, in the event that a Hamed family member and a Yusuf family member cannot agree on any detail (no matter how small), no action can be taken because the order precludes any "unilateral action by either party, or representative(s), affecting the management, employees, methods, procedures and operations." The Court has engineered an untenable situation which will eventually cause the stores to grind to a halt as the order has removed Fahti Yusuf as the authority who has, since the opening of the stores, had the final decision making power.¹

Moreover, and more importantly, the Court's finding that there is a terminated at-will partnership, while at the same time requiring the terminated partnership to continue, is directly at odds with forcing the purported partners to coexist on an on-going basis—once the partnership is

¹ The Plaintiff and each of his sons testified that in the event there was a dispute between a Hamed manager and a Yusuf manager the dispute would be resolved by Fahti Yusuf alone. Jan. 25, 2013 Hr'g Tr. at 105:12-15; 201:4; 210:22-23.

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Defendants' Motion to Stay Preliminary Injunction Order

terminated the only remedy is dissolution. The Court's ruling has forced these disputed at will partners into a partnership for an indefinite term long after the alleged partnership was terminated according to the Court's findings. These practical problems require this Court to address this motion on an emergency basis.

IV. Standard for Motion to Stay

"Requests for a stay of judgment or order of the Superior Court pending appeal, . . . , or for an order suspending, modifying, restoring, or granting an injunction during the pendency of an appeal in a civil case must ordinarily be made in the first instance to the Superior Court." V.I. Supreme Ct. R. 8(b). In considering a motion for stay pending an appeal, the Court should consider the following factors: (1) whether the movant is likely to prevail on the merits on appeal; (2) whether the movant will be irreparably injured absent a stay; (3) whether the adverse party will suffer substantial harm from the issuance of the stay; and (4) whether a stay will serve the public interest. *Garcia-Mir v. Meese*, 781 F.2d 1450, 1453 (11th Cir. 1986)).

The Eleventh Circuit Court of Appeals has stated that "[o]rdinarily the first factor is the most important ... [b]ut the movant may also have his motion granted upon a lesser showing of a 'substantial case on the merits' when the 'the balance of the equities [identified in factors 2, 3, and 4] weighs heavily in favor of granting the stay.'" *Garcia-Mir*, 781 F.2d at 1453 (quoting *Ruiz v. Estelle*, 650 F.2d 555, 565 (5th Cir.1981) (per curiam), cert. denied, 460 U.S. 1042 (1983)); see also *Devcon Corp. v. Woodhill Chern. Sales Corp.*, 455 F.3d 830, 832 (5th Cir. 1980) (granting stay of preliminary injunction where plaintiff did not establish that it would suffer irreparable harm "during the relatively short interval in which the case was being tried.")

Moreover, where, absent a stay, the appeal is effectively mooted, a stay pending appeal is warranted based on the irreparable harm to the movant. See *Providence Journal Co. v. FBI*, 595 F.2d 889

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(1st Cir. 1979) (granting stay where failure to grant stay would “utterly destroy status quo” and thus appellant’s right to meaningful appellate review).

A. The Equities Strongly Favor Granting the Stay

The equities in this case substantially weigh in favor of granting the stay. *Garcia-Mir*, 781 F.2d at 1453. This is, in large part, because the relief granted in the Injunction Order compels the alleged partners to continue a terminated at-will partnership when the relief is based on a limited record and runs contrary to the evidence introduced into the record. Further, as shown in the Defendant’s motion for clarification, the Court’s Order is unworkable. Indeed, the very evil that the Plaintiff claimed in his moving papers, i.e., that the stores’ operations would be compromised, has resulted in the Court changing the status quo so that now every decision needs to be made with joint authorization, which, in turn, has compromised the business’ ability to run as a going concern. The Court’s Order will result in a deadlock with no manner for a tie-breaker to be enforced.

If the Defendants are forced to comply with the Injunction Order and allow the Plaintiff and his children to have equal management rights and de facto veto power over any business decision, regardless of how the Virgin Islands Supreme Court rules on the appeal, the harm will be done. Indeed, two of the Plaintiff’s adult sons (Wally Hamed and Mafi Hamed) have acted in concert to steal \$460,000.00 from a *de jure* entity owned by members of the Hamed and Yusuf family. *See Yusuf Yusuf, derivatively on behalf of Plessen Enterprises, Inc., v. Waleed Hamed, Waheed Hamed, Musfeed Hamed, Hisham Hamed, and Five-H Holdings, Inc., and Plessen Enterprises, Inc.*, case no. SX-13-CV-120, a copy of the verified complaint with exhibits is attached hereto as Exhibit A. There can be no dispute to the theft of funds as \$230,000.00 was deposited with the Clerk of the Court mere days after the *Plessen* complaint was filed, a copy of which is attached hereto as Exhibit B. Having two employees, who have demonstrated such a proclivity for outright theft, continue to be present in the stores on a daily

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basis is not only an indisputably poor employment decision, it is also allows the proverbial “fox in hen house.” The Order must not be allowed to remain in effect.

In comparison, if the stay is granted (the Plaintiff testified that he would agree with “[w]hatever” management decisions Fathi Yusuf ever made, including the decision that Mohammad Hamed and Mohammad Hamed’s sons were mere “employees” “like any [other] employees”, Jan. 25, 2013 Hr’g Tr. at 201:21-24), it will only be delayed for an additional, relatively short, period of time until the appeal is resolved. In comparison, if the stay is not granted, even if the Virgin Islands Supreme Court reverses the Injunction Order, the Defendants will have suffered irreparable injury to not only to the day-to-day operations of the stores, but to the goodwill and continued viability of United Corporation as a going-concern.

1. Defendants Have Shown a Likelihood of Success on the Merits

The Third Circuit has stated in no uncertain terms that: “when the preliminary injunction is directed not merely at preserving the status quo but, as in this case, *at providing mandatory relief, the burden on the moving party is particularly heavy.*” *Punnett v. Carter*, 621 F.2d 578, 582 (3d Cir. 1980) (emphasis added).

The Court’s Order provided mandatory relief, *viz.* (i) Hamed and a Yusuf signature be on every check from all Plaza Extra Supermarket operating accounts; (ii) “no funds will be disbursed from supermarket operating accounts without the mutual consent of Hamed and Yusuf (or designated representative(s))”; (iii) “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 operation.”

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However, the testimony of the Plaintiff was clear when he admitted that he never worked in any management capacity at any of the Plaza Extra Stores, which role was under the exclusive ultimate control of Fathi Yusuf, as Fathi Yusuf “*is in charge for everybody*” and everything. Jan. 25, 2013 Hr’g Tr. at 201:4 (reflecting Mohammad Hamed’s concession, even during his direct testimony, that “*Mr. Yusuf he is in charge for everybody*”), 201:23-24, 210:21-23 (acknowledging again that Fathi Yusuf is in “charge” of “all the three store[s]”) (emphasis added). In addition, as noted above, the Court’s order makes no provision for the resolution of disputes (as has been the case “throughout the years prior” to this action) by removing Fathi Yusuf’s from his supervisory role at the stores. The Court’s Order has provided mandatory relief that, under the record before this Court, cannot be justified as the Plaintiff has not carried his particularly heavy burden. For this reason alone, and of course in combination with the reasons provided below, the Court should grant the instant motion to enter a stay *instanter*.

i. Damages Case

The Defendants have shown that this case is nothing more than a damages case, and since “[t]he 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). The record evidence shows that this commercial dispute concerns only money. Plaintiff’s self-appointed “agent,” Waleed Hamed, conceded as much, acknowledging that the lawsuit was filed to seek the return of monies. Jan. 25, 2013 Hr’g Tr. at 66:13-25. Although Plaintiff complains about the alleged “diversion” of \$2.7 million dollars from United Corporation d/b/a Plaza Extra’s accounts and alleged improper “removal” of other such funds for legal fees, etc., which are all disputed factual issues, the foregoing such complaints make it clear that “a preliminary injunction should not [have] be[en] granted [when] the injury suffered can

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Defendants' Motion to Stay Preliminary Injunction Order

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 . . .”).

Similarly, the feigned fears of the Plaintiff regarding goodwill, customers and reputation are unsupported by the record evidence, which cannot be disputed, as the supermarket stores were, prior to the entry of the Court’s Order, operating normally and Plaintiff otherwise has failed to credibly support those fears, as required, *McBean*, 52 F. Supp. 2d at 521; and which, at best, are simply “remote future injur[ies]” that do not constitute potential irreparable harm for preliminary injunction purposes, *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 here] 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.*

ii. There is No Enforceable “Partnership” Agreement

a. Statute of Frauds

The Court acknowledged that the term of the alleged partnership agreement was “forever.” Memo. Op. at p. 5, ¶13. In this context, where an unwritten agreement purports to provide a stated term of greater than one year, the Second Circuit Court of Appeals has clarified that:

Despite some sweeping pronouncements to the effect that the New York statute of frauds [] does not apply to joint ventures, these must mean only that a writing is not required simply because the transaction is a joint venture, and the statute must apply to joint ventures having a stated term of more than one year, as the plain language of [the statute] dictates. We perceive no difference relevant for the purpose of the statute of frauds between joint ventures for a stated term and partnerships for a

Hameds v. Yusuf, CIVIL NO. SX-12-CV-370
Defendants' Motion to Stay Preliminary Injunction Order

stated term. The statements that the New York statute of frauds does not apply to joint ventures doubtless arise from the fact that joint ventures are usually not for a stated term but for a stated purpose, and the implicit assumption that, however unlikely, this purpose could be achieved within one year.

Ebker v. Tan Jay Int'l, Ltd., 739 F.2d 812, 827 (2d Cir. 1984) (internal citation omitted).

On appeal, the Second Circuit found that “the statute of frauds renders unenforceable the oral joint venture agreement containing a stated term of [greater than one year] as found by the jury.” *Id.* at 828 (rejecting the argument that the “Statute of Frauds did not apply to joint ventures at all” and alternative argument that, even “if the statute applied, the five-year joint venture agreement would be treated as a partnership at will”).

Here, as this Court found the alleged partnership to last “forever,” the statute of frauds renders the agreement unenforceable which should dispose of this action as a matter of law. *Ebkar*, 739 F.2d at 828. *See also Fountain Valley Corp. v. Wells*, 98 F.R.D. 679, 683-65 (D.V.I. 1983) (holding that, under Virgin Islands law, “statute of frauds . . . bar[s] this Court from enforcing any alleged joint venture agreement” that “was to exist for more than one year”).

b. Statute of Limitations

Mohammed Hamed’s purported Agent Waleed Hamed testified that he has a power of attorney that the Plaintiff executed in either 1995 or 1996. Jan. 25, 2013 Hr’g Tr. at 46:1-5. Waleed Hamed also testified that he was aware in either 1999 or 2000 that Fathi Yusuf’s ownership interest was devolved to his children. Jan. 25, 2013 Hr’g Tr. at 134:1-9.

It is black letter law that notice to the agent (i.e., the BIR) is notice to the principal (i.e., the Service). Restatement (Second) of Agency, § 275. Accordingly, as late as 2000 Plaintiff was aware that Fathi Yusuf had divested his ownership interests to his children. And because the instant case was brought at least 11 ½ years after Mohammed Hamed was aware of the divestment it clearly is prohibited by the statute of limitations.

Hameds v. Yusuf, CIVIL NO. SX-12-CV-370
Defendants' Motion to Stay Preliminary Injunction Order

The longest statute of limitations in the Virgin Islands is 20 years, but that applies only for actions to recover real property, upon a judgment, and upon a sealed instrument. 5 V.I.C. § 31. All other applicable statutes are 10 years or less. So, no matter how the Plaintiff attempts to style his cause of action, since it clearly does not fall within the three actions that have a 20 year period, this case is barred by the statute of limitations. Thus, the Defendant has demonstrated a more than reasonable likelihood of success on appeal.

c. Retirement of Mohammed Hamed

The Defendants have also established a likelihood success on the merits of their position that, assuming *arguendo*, there was a partnership, because “[w]hen a partner retires . . . , the partnership is dissolved.” *Estate of Matteson v. Matteson*, 749 N.W.2d 557, 568 (Wis. 2008) (applying Wisconsin Uniform Partnership Act provisions) (citation omitted). “An existing partner has two primary options upon initiating a partnership dissolution[:]. . . (1) (continuation) to permit the business to continue and claim his or her interest in the dissolution value as a *creditor*, or (2) (wind-up) to force the dissolved business to wind up and take his or her part of the proceeds.” *Id.* (citation omitted) (emphasis added). Upon election of a continuation, when the remaining partner ultimately ends and dissolves the business, the retiring/exiting partner receives his elected sum of the partnership’s dissolution value “as an *ordinary creditor*,’ with creditors of the dissolved partnership having priority over an exiting partner’s claims.” *Id.* at 572-73 (citing Wis. Stat. § 178.37) (emphasis added).

Here, the Court found that the Plaintiff “retired from the day-to-day operation of the supermarket business in about 1996.” Memo. Op. at p. 9, ¶31. Accordingly, as simply an “ordinary creditor” of the alleged partnership, the Defendants have established a more than reasonable

likelihood of success on the partnership issues in this action, or in proving that a money judgment could not satisfy the Plaintiff who is, at best, an ordinary creditor. *Matteson*, 749 N.W.2d at 568.²

d. No Evidence of Partnership Distributions

The Plaintiff has not shown, nor has the Court made any findings of fact, that (a) that the Plaintiff has ever received a share of the supermarket profits at any time over the past 26 years, as opposed to a salary as a regular employee; or (b) that United Corporation d/b/a Plaza Extra ever shared with or distributed to Plaintiff any of its profits. Further, during the criminal proceedings, Waleed Hamed and Waheed Hamed, as co-defendants in the Criminal Action and co-signatories of the Plea Agreement, never expressed the claim that Plaintiff held any interest in the Plaza Extra supermarket operations as an alleged “partner” with Fathi Yusuf or otherwise; or the claim that any Hamed family member had received any share of the profits distributed from the supermarket operations. To the contrary, the Hameds actively represented to the Government and others that United Corporation d/b/a Plaza Extra was a *de jure* Virgin Islands corporation and that no Hamed possessed any interest in Plaza Extra as a partnership or otherwise. Accordingly, the Court’s conclusion that the “partial performance” doctrine applies to this case is belied by the record before the Court.

e. The alleged Partnership was Terminated.

The Court has concluded in the Order that the partnership was terminated by delivery of the notice by counsel for Yusuf to Waleed Hamed on March 13, 2012. *See* Memo. Op. at p. 9, ¶30. Plaintiff has repeatedly stated that the dissolution notice was evidence of a partnership; so much so that the Plaintiff virtually recites the terms of that notice in each pleading and letter to third parties.

² Plaintiff’s admitted “retire[ment]” in 1996 also raises serious issues regarding the statute of limitations, such that, again, Plaintiff cannot establish a likelihood of success on the merits. (*See also* Defendants’ Nov. 5, 2012 Renewed Motion to Dismiss (D.V.I. Doc. # 29)).

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In effect, Plaintiff cites the specific provisions of the dissolution as proof of Defendant Fathi Yusuf's view that the "joint venture" as a partnership.

The dissolution notice has terminated the "at-will partnership" between Defendant Yusuf and Plaintiff Hamed. It is well established that a partnership at will ceases to exist upon notice by a partner of his intent to dissolve it. See *Browne v. Ritchey*, 202 Ill.App.3d 137 (1990). Before the *Browne* court was an at-will-partnership which was properly terminated by defendant partner when he sent a telegram to plaintiff partner stating his intent to dissolve partnership. The *Browne* Court noted that since the defendant partner acted within his rights under agreement and partnership law in terminating his relationship with plaintiff, grant of preliminary injunction requiring him to continue in that relationship was an abuse of discretion.

Here, this Court made the following finding of fact:

"Thereafter, discussion 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. Settlement discussion followed those communications but have not to date resulted in an agreement.

Preliminary Injunction Order, p.9, ¶30. (Emphasis Supplied).

Here, as in *Browne*, this Court specifically found that the termination of the "partnership" occurred on March 13th, 2012 by way of a "Dissolution Notice"; further, though unsigned, the Dissolution Notice contained an agreement as to the scope and terms of the "partnership." With the partnership terminated, the court cannot now issue a preliminary injunction order demanding that the parties continue to operate the disputed partnership because there are no continuing partnership operations to manage.

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The State of Illinois which has adopted the Uniform Partnership Act, also recognizes the same Preliminary Injunction requirements in the Virgin Islands. In *Browne*, the Illinois Supreme Court, marrying the preliminary injunction requirements with the partnership law regarding dissolution arrived at the following precise and relevant holding:

“With respect to their duration, partnerships are formed either for a fixed or specified term or without reference to any term. Partnerships formed without reference to any term are partnerships at will. (59A Am.Jur.2d Partnership §§ 87, 89, (1987).) Such partnerships [] are subject to dissolution at any time by the express will of any partner. (*Maimom v. Telman* (1968), 240 N.E.2d 652; 59A Am.Jur.2d Partnership §§ 89, 818 (1987).) All that the dissolving partner need do is give notice of his intent to dissolve the partnership to his co-partners. *Id.* (citations omitted).

The *Browne* court then held “there is a distinction between the power and right to dissolve a partnership. However, as to partnerships at will, a *dissolution at the election of one of the partners* is not a breach of contract and the dissolving partner incurs no liability regardless of his motive or any injury to his co-partners “who neglected to protect themselves by an agreement to continue for a definite term.” *Id.* at 811.

Plaintiff Hamed cannot use a partnership dissolution notice as proof of the existence of an at-will partnership and simultaneously ignore its terminative effect upon the partnership. Plaintiff's request for continued joint management is therefore invalid, since the partnership does not exist beyond the termination notice. Thus, any request for an injunction to maintain the continued joint management of a partnership or joint venture that has been terminated must be denied.

ii. Irreparable Injury to the Defendants

As a threshold matter, “[w]here, as here, the denial of a stay will utterly destroy the status quo, irreparably harming appellants, but the granting of a stay will cause relatively slight harm to appellee, *appellants need not show an absolute probability of success in order to be entitled to a stay.*” *Providence Journal Co. v. FBI*, 595 F.2d at 890 (emphasis added). As detailed above, the Court's Order destroys

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the status quo by providing the Plaintiff with management rights that he never had via mandatory relief. Thus, under this reduced standard, the Defendants have demonstrated that they are entitled to a stay.

Further, insofar as United Corporation is concerned, the Court's Order effectively (although not explicitly stating) pierces the corporate veil of a *de jure* corporation. This was legal error as the Plaintiffs have neither plead, nor introduced into the record any evidence that would support piercing of the corporate veil. *See Radaszewski v. Telecom Corp.*, 981 F.2d 305, 306 (8th Cir. 1992) (discussing tripartite test to pierce the corporate veil).

As a result Defendant United Corporation is left in an untenable position as some assets (the determination of which the Court never made) may be enjoined, while others may not be enjoined. Further, the Court's Order has now compromised all of the contracts United Corporation has entered into as the collateral for those transactions has been effectively eviscerated. This will invariably result in United Corporation being in violation of covenants, representations, and warranties made to third-parties. Consequently, United Corporation must now review every potential contract to ascertain whether United Corporation is in default of any term of every contract. Of course this will result in United Corporation being exposed to civil liability for its default and/or breach of contract.

iii. There Will be no Irreparable Injury to the Plaintiff if the Injunction Order is Stayed

The record evidence is clear – the Plaintiff retired in 1996. There has been no evidence that he has attempted to reintroduce himself to the day-to-day operations. Thus, a stay will place the Plaintiff in exactly the same position that he was in for the better part of two decades. Indeed, the Plaintiff filed his initial motion in September of last year, and this Court did not grant the motion until the very end of April, a span of over half a year. If the Plaintiff suffered no irreparable injury in

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waiting for six months for this Court to rule, it follows that waiting another few months for the Virgin Islands Supreme Court to rule cannot be an irreparable injury as well.

Further, the Plaintiff's "authorized agents" have not been fired without cause. And, indeed, this Court heard testimony that they are, in fact, still employed. Moreover, assuming that the Plaintiff is a "partner" (again a point we dispute), the appointment of his sons as his "authorized agents" is nothing more than the substitution/admission of new partners – which is explicitly prohibited by statute without the consent of the existing partners. 26 V.I.C. § 71. Accordingly, the Plaintiff will suffer no irreparable injury.

iv. A Stay of the Injunction Order Will not Cause any Harm to the Public

This Court's Memorandum Opinion concluded that the Plaza Extra Supermarkets should continue to operate because the public interest is served by the continued employment of 600 Virgin Islanders. Memo. Op. at p. 22, ¶27. Based on the Court's reasoning, the closing of the Plaza Extra Supermarkets will not be in the public's interest, but that is exactly what the Court's Order precipitates.

The Court has concluded that there is an at-will partnership (a conclusion we will continue to dispute), but any at-will partnership can be terminated by any of the partners, regardless of cause, at any time. 26 V.I.C. § 171(1). The Defendants anticipate that every employee will be terminated as the purported "partnership" can, and will, be dissolved. Consequently, contrary to the Court's conclusion, the very continued employment of 600 Virgin Islands is put at risk (and not saved) by the Court's Order.

C. The Order Violates Rule 65(e)(1)

The Court's Order, to the extent it addresses employer and employee issues is explicitly prohibited by Fed. R. Civ. P. 65(e)(1) which make clear that Rule 65, and any attendant order issued

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under Rule 65's power, does not modify any statute relating to TRO's and/or preliminary injunctions. 24 V.I.C. § 341 provides, in full, that: "[n]o court of the Virgin Islands shall have jurisdiction to issue any restraining order or temporary or permanent injunction in a case involving or growing out of a labor dispute, except in strict accordance with the provisions of this chapter."

Mohammad Hamed testified that: "And Mr. Yusuf tell me, you is my partner, not your son. *Your son employees, the two, 4.65 an hour, and I like any employees.* I tell him I'm not saying nothing, you is my partner. Whatever you say I agree with you." Jan. 25, 2013 Hr'g Tr. at 201:21-24 (emphasis added). And the Plaintiff made clear, lest there be any mistake, when he answered responded to the following questions:

Q: Is Fathi Yusuf partners with Waleed?

A: Ha?

Q: Is Fathi Yusuf partners with Waleed, your son Waleed?

A: No. But he is my partner. I, not my son.

Q: Your other sons are not partners with Fathi Yusuf, correct?

A: Yes. I'm his partner, not my son.

Jan. 25, 2013 Hr'g Tr. at 209:13-20.

Accordingly, based on the undisputed record evidence the Mohammed Hamed's son are nothing more that employees, the Order the attempts to interfere with the employer-employee relations is void *ab initio* as a matter of law.

D. The Bond Amount is Entirely Inadequate and Unsupported by Any Evidence

As described in detail in the concurrently filed emergency motion for reconsideration or preliminary injunction order and for stay of same pending posting of adequate bond, this Court should also stay the effect of its order pending said motion.

This Court's ruling runs afoul of Rule 65(c) and Third Circuit precedent regarding what qualifies as an adequate bond. *See Hoxworth v. Blinder, Robinson & Co.*, 903 F.2d 186, 189 (3d Cir. 1990) ("agree[ing] with defendants that the injunction suffers at least one fatal defect: the [trial]

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court made no attempt to ensure that the value of assets encumbered bore some reasonable relationship to the likely amount of plaintiffs' expected recovery" and thus "conclud[ing] that the preliminary injunction *must be set aside*" (emphasis added). Accordingly, a stay should be entered.

E. The Entry of a Preliminary Injunction is Procedurally Improper Given the Pending Renewed Motion to Dismiss

A separate basis supporting a stay of the Preliminary Injunction Order, pending its appeal, is the pendency of Defendants' November 5, 2012 Renewed Motion to Dismiss. *See, e.g., Gilles v. Garland*, 281 Fed. Appx. 501, 503 (6th Cir. 2008) (noting trial court's issuance of "a calendar order directing that the preliminary injunction motion be held in abeyance pending a ruling on the motion to dismiss"); *Leslie v. Federal Nat'l Mortgage Ass'n*, No. 3:10-cv-963, 2010 U.S. Dist. LEXIS 79180, at *6 (D. Conn. Aug. 5, 2010) (noting trial court's grant of "Motion to Stay consideration of the TRO and preliminary injunction motions pending resolution of [Fed. R. Civ. P. 12] motion to dismiss," raising, as here, Rule 12(b)(6) challenges for failure to state a cause of action).

Indeed, Defendants' Rule 12 challenges to the Amended Complaint should be resolved at the earliest stages of litigation, so as to conserve the time and resources of the Court and the parties should the Court grant any of those challenges and thus narrow and/or clarify the scope of these proceedings. Similarly, if this Court grants any of the relief requested in Defendant's motion to dismiss prior to the Virgin Islands Supreme Court's resolution of the forthcoming appeal of the Preliminary Injunction Order, significant judicial and party resources will have been wasted. Accordingly, given that the entire case can, and should, be dismissed for the reasons articulated in the pending Renewed Motion to Dismiss, this Court should stay the Preliminary Injunction Order.

V. CONCLUSION

WHEREFORE, for the reasons articulated and set forth *supra*, this Court should stay its preliminary injunction order *instanter*.

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Respectfully submitted,



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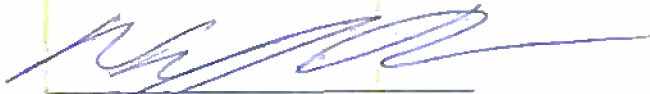
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Dated: May 9, 2013

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CERTIFICATE OF SERVICE

I hereby certify that on May 9, 2013, a true and accurate copy of the foregoing was forwarded via email to the following: *Joel H. Holt, Esq.*, 2132 Company St., St. Croix, VI 00820, holtvi@aol.com; *Carl J. Hartmann III, Esq.*, 5000 Estate Coakley Bay, L-6, Christiansted, VI 00820, carl@carlhartmann.com; and *K. Glenda Cameron, Esq.*, Law Offices of K.G. Cameron, 2006 Eastern Suburb, Suite 101, St. Croix, VI 00820, kglenda@cameronlawvi.com.



Nizar A. DeWood, Esq.

EXHIBIT

A

Verified Shareholder Derivative
Complaint

(99%) of the monies in those accounts, for the benefit of the INDIVIDUAL DEFENDANTS as well as FIVE-H; breach of fiduciary duties; corporate waste; conversion; unjust enrichment; civil conspiracy; and other relief, including the imposition of a constructive trust and an accounting, and other preliminary and permanent injunctive relief.

II. JURISDICTION, VENUE, & DEMAND FOR JURY TRIAL

2. This Court has jurisdiction over this action pursuant to 4 VIC § 76(a).
3. Venue is proper in this district pursuant to 4 VIC § 78(a).
4. A trial by jury is demanded pursuant to 4 VIC § 80.

III. THE PARTIES

5. Plaintiff YUSUF is a natural person, *sui juris*, and a resident of the U.S. Virgin Islands.
6. Defendant WALEED HAMED is a natural person, *sui juris*, and a resident of the U.S.

Virgin Islands.

7. Defendant WAHEED HAMED is a natural person, *sui juris*, and a resident of the U.S.

Virgin Islands.

8. Defendant MUFEEED HAMED is a natural person, *sui juris*, and a resident of the U.S.

Virgin Islands.

9. Defendant HISHAM HAMED is a natural person, *sui juris*, and a resident of the U.S.

Virgin Islands.

10. Defendant FIVE-H is a duly organized Virgin Islands Corporation and is authorized to conduct business in the Virgin Islands.

11. Nominal Defendant PLESSEN is a duly organized Virgin Islands Corporation and is authorized to conduct business in the Virgin Islands.

IV. FACTS COMMON TO ALL COUNTS

PLESSEN

12. PLESSEN was formed in December 1988. A copy of PLESSEN's Articles of Incorporation is attached as Exhibit "A" hereto. PLESSEN adopted By-Laws on or about April 30, 1997, a copy of which is attached as Exhibit "B" hereto.

13. PLESSEN's original Board was comprised of the following individuals: Mohammed Hamed, Defendant WALEED HAMED and Fathi Yusuf. See Exhibit "A" at p. 3.

14. After PLESSEN's formation, an additional seat on the Board was created.

15. The current members of PLESSEN's Board are: Mohammed Hamed; Defendant WALEED HAMED; Fathi Yusuf; and Maher Yusuf. Attached as Exhibit "C" hereto is a report from the Virgin Islands Department of Licensing and Consumer Affairs that lists Maher Yusuf as a Director of PLESSEN.

16. PLESSEN's current Officers are: Mohammed Hamed (President), Defendant WALEED HAMED (Vice President) and Fathi Yusuf (Treasurer and Secretary). See Exhibit "A" at p. 3.

17. PLESSEN is owned in various shares by the following individuals: Plaintiff YUSUF, Fathi Yusuf, Mohammed Hamed, Fawzia Yusuf, Maher Yusuf, Nejah Yusuf, and Defendants WALEED HAMED, MUFEED HAMED, WAHEED HAMED, and HISHAM HAMED.

18. Plaintiff YUSUF is a shareholder of PLESSEN, was a shareholder of PLESSEN at the time of the wrongdoing alleged herein, has been a shareholder of PLESSEN continuously since that time, and will continue to be a shareholder of PLESSEN throughout the pendency of this action.

19. YUSUF, under Rule 23.1 of the Federal Rules of Civil Procedure, which applies in this action under Rule 7 of the Superior Court, has standing to bring this action and will adequately and fairly represent the interests of PLESSEN and its shareholders in enforcing and prosecuting its rights.

FIVE-H

20. Upon information and belief, Defendant WALEED HAMED is the President of FIVE-H and one of its principal beneficial owners.

21. Upon information and belief, Defendant WAHEED HAMED is an Officer of FIVE-H and one of its principal beneficial owners.

22. Upon information and belief, Defendant MUFEED HAMED is an Officer of FIVE-H and one of its principal beneficial owners.

23. Upon information and belief, Defendant HISHAM HAMED is an Officer of FIVE-H and one of its principal beneficial owners.

24. Upon information and belief, FIVE-H, by and through the INDIVIDUAL DEFENDANTS, seeks to conduct business in the U.S. Virgin Islands.

WALEED HAMED's Misappropriation of \$460,000

25. On or about March 27th, 2013, Plaintiff YUSUF paid with his personal Banco Popular Visa credit card the 2011 property taxes of PLESSEN.

26. YUSUF was reimbursed for such payment by way of a check drawn on PLESSEN's bank account with Scotiabank.

27. However, YUSUF was subsequently informed that an employee of Scotiabank called Fathi Yusuf to inform Fathi Yusuf that the check made to pay Plaintiff YUSUF's Banco Popular Visa credit card account would not be honored, *i.e.*, the check would bounce, because of insufficient funds in PLESSEN's Scotiabank account.

28. It was then revealed that on March 27, 2013, Defendants WALEED HAMED & MUFEED HAMED, without authorization, issued check number 0376 on a PLESSEN in the amount of \$460,000.00 from PLESSEN's Scotiabank account, made payable to Defendant WALEED HAMED. A copy of check number 0376 is attached as Exhibit "D" hereto.

29. Defendant WALEED HAMED then endorsed check number 0376 “for deposit only” and, upon information and belief, then deposited PLESSEN’s \$460,000 at issue in Defendant WALEED HAMED’s personal bank account.

30. Further, the INDIVIDUAL DEFENDANTS and Defendant FIVE-H, among other improper acts, have individually and collectively obtained the benefit, use and enjoyment of PLESSEN’s defalcated funds.

Demand on the Board is Excused as Futile

31. Plaintiff YUSUF did not make a demand on the Board to bring suit asserting the claims set forth herein because pre-suit demand was excused as a matter of law, as set forth below.

32. As noted, as of the time of the filing of this complaint, the PLESSEN Board comprised the following directors: Mohammad Hamed; Defendant WALEED HAMED; Fathi Yusuf; and Maher Yusuf.

33. Mohammad Hamed, who is Defendant WALEED HAMED’s father, is incapable of making an independent and disinterested decision to institute and vigorously prosecute this action.

34. Likewise, Defendant WALEED HAMED is incapable of making an independent and disinterested decision to institute and vigorously prosecute this action, as WALEED HAMED faces a substantial likelihood of liability for the wrongdoings alleged herein, and his acts were not, and could not have been, the product of a good faith exercise of business judgment.

35. Separately, because both the Board and shareholders of PLESSEN are comprised 50-50% by members of the Hamed and Yusuf families, and because neither the Articles of Corporation nor the By-Laws of PLESSEN provide a tie-breaker mechanism in the event of a deadlock, any demand upon PLESSEN would be useless based on the familial relationships at issue, the lack of sufficient independence of the Hamed members to institute and vigorously prosecute this action and, again, the lack of a corporate tie-breaker mechanism.

36. All conditions precedent to bringing this action have been satisfied, performed, discharged, excused and/or waived.

V. CAUSES OF ACTION

COUNT I – FRAUD/CONSTRUCTIVE TRUST (Against All Defendants)

37. Plaintiff YUSUF incorporates paragraphs 1 through 36 above as if fully set forth herein.

38. As alleged in detail herein, the INDIVIDUAL DEFENDANTS and FIVE-H conspired and fraudulently misappropriated, converted and/or received the benefits of PLESSEN'S funds of approximately \$460,000.

39. Such funds where, upon information and belief, used directly and indirectly to acquire personal and/or real property in the benefit of the INDIVIDUAL DEFENDANTS and FIVE-H individually and/or collectively.

40. Defendants' acts constitute a fraud, unconscionable conduct and/or questionable ethics resulting in unjust benefit to the wrongdoers, *i.e.*, Defendants.

41. To remedy such injustice, this Court should impose a constructive trust for the benefit of PLESSEN until the resolution of this action on all personal and/or real property acquired directly and indirectly with PLESSEN's funds by the INDIVIDUAL DEFENDANTS and FIVE-H individually and/or collectively, which trust:

- i. existed and was formed from the time the facts giving rise to it occurred, *i.e.*, from *March 27, 2013*, when Defendant WALEED HAMED, & MUFEEED HAMED without authorization, issued check number 0376 in the amount of \$460,000 from PLESSEN's Scotiabank account;
- ii. grants to PLESSEN first rights to any such property;
- iii. is superior to the rights of the Defendants, and each of them;

- iv. is superior to any creditor of the Defendants;
- v. is superior to anyone else asserting an interest in the subject personal or real property;
- vi. and otherwise trumps the rights of any purported bona fide purchaser of the subject property from March 27, 2013 until a resolution of this action, based on the notice provided herein regarding the wrongful misappropriation of PLESSEN's funds as alleged in this Complaint and otherwise.

42. As noted above, "the date upon which a constructive trust is legally deemed to arise relates back in time to when the facts giving rise to such fraud or wrong occur," *i.e.*, March 27, 2013 in this action. *In re: Pitchford*, 410 B.R. 416, 420 (Bankr. W.D. Pa. 2009); *see also Osmond Kean, Inc. v. First Penn. Bank, N.A.*, 22 V.I. 71, 76 (Terr. Ct. 1986) ("The creditors of the constructive trustee are not bona fide purchasers.' Moreover, 'where a person holds property subject to a constructive trust, his creditors are not purchasers for value and are subject to the constructive trust. . . . So also, a creditor who attaches the property . . . is not a bona fide purchaser, although he had no notice of the constructive trust.'") (quoting Restatement of Restitution §§ 160 and 173); *Francois v. Francois*, 599 F.2d 1286 (3d Cir. 1979) (affirming trial court's "equitable power" to impose constructive trust to prevent unjust enrichment).

COUNT II – CONVERSION
(Against WALEED HAMED & MUFEED HAMED)

43. Plaintiff YUSUF incorporates paragraphs 1 through 42 above as if fully set forth herein.

44. As alleged in detail herein, Defendants WALEED HAMED & MUFEED HAMED wrongfully, and without the knowledge, consent or authorization of PLESSEN, misappropriated funds belonging to PLESSEN for his own use and/or benefit and/or for the use and/or benefit of the INDIVIDUAL DEFENDANTS and/or FIVE-H.

45. Defendant WALEED HAMED obtained and retained these funds for his own use and/or benefit and/or for the use and/or benefit of the INDIVIDUAL DEFENDANTS and/or FIVE-H with the intent to permanently deprive PLESSEN of its lawful rights to those funds.

46. Accordingly, Defendants WALEED HAMED & MUFEED HAMED are liable for conversion.

**COUNT III – BREACH OF FIDUCIARY DUTIES
(Against WALEED HAMED)**

47. Plaintiff YUSUF incorporates paragraphs 1 through 46 above as if fully set forth herein.

48. Defendant WALEED HAMED, as an agent and officer of PLESSEN, owes PLESSEN's shareholders the utmost fiduciary duties of due care, good faith, candor and loyalty.

49. Further, Defendant WALEED HAMED is, and at all relevant times was, required to use his utmost ability to control and manage PLESSEN in a fair, just, honest and equitable manner; to act in furtherance of the best interests of PLESSEN and its shareholders so as to benefit all shareholders equally and not in furtherance of his personal interests or benefit to the exclusion of the remaining shareholders; and to exercise good faith and diligence in the administration of the affairs of PLESSEN and in the use and preservation of its property and asserts.

50. By virtue of the foregoing duties, Defendant WALEED HAMED was required to, among other things:

- i. exercise good faith in ensuring that the affairs of PLESSEN were conducted in an efficient, business-like manner so as to make it possible to provide the highest quality performance of its business in accordance with applicable laws;
- ii. refrain from wasting PLESSEN's assets;
- iii. refrain from unduly benefiting himself and other non-shareholders at the expense of PLESSEN;

- iv. refrain from self-dealing;
- v. exercise the highest obligations of fair dealing; and
- vi. properly disclose to PLESSEN's shareholders all material information regarding the company.

51. However, by virtue of his position as Director and Officer of PLESSEN, and his exercise of control over the business and corporate affairs of PLESSEN, Defendant WALEED HAMED has, and at all relevant times had, the power to control and influence – and did control and influence – PLESSEN to engage in the wrongdoings alleged herein.

52. Specifically, as alleged in detail herein, Defendant WALEED HAMED breached his fiduciary duties by, among other things, unlawfully obtaining approximately \$460,000 of PLESSEN's funds; knowingly failing to inform PLESSEN regarding all material information related to such taking prior to the subject withdrawals; and otherwise knowingly failing to adhere to PLESSEN's corporate formalities, policies and procedures.

53. As a direct and proximate result of the foregoing breaches, PLESSEN has sustained damages, including, but not limited to, damage to its reputation and loss of the funds unlawfully obtained from its Scotiabank account.

**COUNT IV – WASTE OF CORPORATE ASSETS
(Against WALEED HAMED)**

54. Plaintiff YUSUF incorporates paragraphs 1 through 53 above as if fully set forth herein.

55. As alleged in detail herein, Defendant WALEED HAMED, an agent and officer of PLESSEN, knowingly withdrew approximately \$460,000 of PLESSEN's funds, which withdrawal constituted an exchange of corporate assets under circumstances which no business person of ordinary, sound judgment could conclude that PLESSEN received adequate consideration.

56. As a direct and proximate result of the foregoing waste of corporate assets, PLESSEN has sustained damages, including, but not limited to, damage to its reputation and loss of the funds unlawfully obtained from its Scotiabank account.

**COUNT V – UNJUST ENRICHMENT
(Against All Defendants)**

57. Plaintiff YUSUF incorporates paragraphs 1 through 56 above as if fully set forth herein.

58. As alleged in detail herein, the INDIVIDUAL DEFENDANTS and FIVE-H individually and collectively were unjustly enriched by their receipt, benefit, use, enjoyment and/or retention of PLESSEN's assets.

59. It would be unconscionable to allow the INDIVIDUAL DEFENDANTS and FIVE-H individually or collectively to retain the benefits thereof.

**COUNT VI – CIVIL CONSPIRACY
(Against All Defendants)**

60. Plaintiff YUSUF incorporates paragraphs 1 through 59 above as if fully set forth herein.

61. As alleged in detail herein, the INDIVIDUAL DEFENDANTS and FIVE-H had a unity of purpose or a common design and understanding, or a meeting of minds in an unlawful arrangement, *i.e.*, to, among other things, unlawfully defalcate or misappropriate the funds of PLESSEN.

62. The INDIVIDUAL DEFENDANTS and FIVE-H knowingly performed overt acts and took action to further or carry out the unlawful purposes of the subject conspiracy, including, but not limited to, Defendant WALEED HAMED's issuing and cashing of check number 0376 to the conspirators' benefit and PLESSEN's detriment.

63. As a direct and proximate result of the foregoing civil conspiracy, PLESSEN has sustained damages, including, but not limited to, damage to its reputation, loss of the funds unlawfully obtained from its Scotiabank account, and lack of control of PLESSEN's management and corporate affairs.

COUNT VII – ACCOUNTING
(Against All Defendants)

64. Plaintiff YUSUF incorporates paragraphs 1 through 63 above as if fully set forth herein.

65. As alleged in detail herein, the INDIVIDUAL DEFENDANTS and FIVE-H unlawfully benefited from and/or misappropriated PLESSEN's funds.

66. Further, at all times relevant, Defendant WALEED HAMED, as an agent and officer of PLESSEN, owed to PLESSEN a fiduciary duty to account to the company and its shareholders in a timely and accurate manner.

67. At all times relevant, the INDIVIDUAL DEFENDANTS and/or FIVE-H held the exclusive possession and/or control over documentation that would establish the funds unlawfully taken from PLESSEN.

68. Absent such documentation, PLESSEN is without the means to determine, among other things, if funds are owned to it and, if yes, how much; and if its misappropriated funds were used to purchase any real or personal property, in which case it has an ownership interest in such property.

69. PLESSEN is without a sufficient remedy at law to ascertain its losses and/or interests in the misappropriated funds as set forth herein.

70. Accordingly, a full accounting is warranted.

VI. RELIEF REQUESTED

WHEREFORE, Plaintiff YUSUF prays for a Final Judgment against Defendants, jointly and severally, as follows:

A. Determining that YUSUF may maintain this action on behalf of PLESSEN and that YUSUF is an adequate representative of PLESSEN;

B. Determining that this action is a proper derivative action that is maintainable under law and in which a pre-suit demand was excused;

C. Awarding to PLESSEN the actual and compensatory damages that it sustained as a result of the causes of action set forth herein, which damages will be determined at trial;

D. Awarding to PLESSEN punitive damages justified by the acts set forth herein, which damages will be determined at trial;

E. Ordering the disgorgement to PLESSEN of all funds that were unlawfully misappropriated from its possession;

F. Enjoining, preliminarily and permanently, the Defendants' benefit, use or enjoyment of PLESSEN's misappropriated funds;

G. Imposing a constructive trust for the benefit of PLESSEN on all personal or real property acquired directly and indirectly with PLESSEN's funds by the INDIVIDUAL DEFENDANTS and FIVE-H individually and/or collectively, which trust

- i. existed and was formed from the time the facts giving rise to it occurred, *i.e.*, from *March 27, 2013*;
- ii. grants to PLESSEN first rights to any such property;
- iii. is superior to the rights of the Defendants, and each of them;
- iv. is superior to any creditor of the Defendants;

- v. is superior to anyone else asserting an interest in the subject personal or real property;
- vi. and otherwise trumps the rights of any purported bona fide purchaser of the subject property from March 27, 2013 until a resolution of this action;

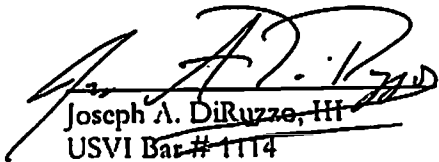
H. Awarding a full accounting of all monies, funds and assets that the Defendants received from PLESSEN;

I. Awarding to PLESSEN the costs and disbursements of this action, including, but not limited to, reasonable attorneys' fees, accountants' and experts' fees, costs and expenses;

J. Awarding pre- and post-judgment interest on any monetary award at the highest rates allowed by law; and,


K. Awarding such further equitable and monetary relief as the Court deems just and appropriate.

Dated April 16, 2013



Joseph A. DiRuzze, III
USVI Bar # 1114

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EXHIBIT A

**ARTICLES OF INCORPORATION
PLESSEN ENTERPRISES, INC.**

CERTIFICATION
Certified to be a true and correct copy
Kenneth E. Mapp
Kenneth E. Mapp
Lieutenant Governor

ARTICLES OF INCORPORATION

OF

FLESSEN ENTERPRISES, INC.

(A Virgin Islands Corporation)

We, the undersigned, being natural persons of lawful age, do hereby unite together by these articles of incorporation to form a stock corporation for the purposes hereinafter mentioned, under the laws of the Virgin Islands of the United States and by virtue of Chapter One of Title 13 of the Virgin Islands Code, and to that end we do, by this our certificate, set forth:

FIRST: The name of the corporation is

FLESSEN ENTERPRISES, INC.

SECOND: The purposes for which the corporation is formed are:

(a) To acquire by purchase or lease, or otherwise, lands and interests in lands, and to own, hold, improve, develop, and manage any real estate so acquired and to erect or cause to be erected on any lands owned, held, or occupied by the Corporation, buildings, or other structures with their appurtenances, to rebuild, enlarge, alter, or improve any buildings or other structures now or hereafter erected on any lands so owned, held, or occupied, and to mortgage, sell, lease or otherwise dispose of any lands or interests in lands and in buildings or other structures and any stores, shops, suites, rooms or parts of any buildings, or other structures at any time owned or held by the corporation;

(b) To build, erect, construct, lease, or otherwise acquire, manage, occupy, maintain, and operate buildings for hotel purposes, dwelling houses, apartment houses, office buildings, and business structures of all kinds for the accommodation of the public and of individuals, including shopping centers.

(c) To buy, sell, trade, manufacture, deal in and deal with goods, wares, utilities, including water, and merchandise of every kind and nature, and to carry on such business as manufacturers, wholesalers, retailers, importers, exporters, and as representatives of manufacturers and producers of such goods, wares and merchandise or of any agency of such manufacturers.

(d) To purchase or otherwise acquire, and to hold, mortgage, pledge, sell exchange or otherwise dispose of securities (which term for the purpose of this Article SECOND includes, without limitation of the generality thereof, any shares of stock, bonds, debentures, notes, mortgages or other obligations and any certificates, receipts or other instruments representing rights to receive, purchase or subscribe for the same, or representing any other rights or interests therein or in any property or assets) created or issued by any one or more persons, firms, associations, corporations or governments; to make payment therefore in any lawful manner; and to exercise as the owner or holder of any securities any and all rights, powers and privileges in respect thereof; and to make, enter into, perform and carry out contracts of every kind and description with any person, firm, association, corporation or government.

(e) To acquire by purchase, exchange or otherwise, all or any part of, or any interest in, the property, assets, business and good will of any one or more persons, firms, associations, corporations or governments heretofore or hereafter engaged in any business for which a corporation may now or hereafter be organized under the laws of the Virgin Islands of the United States; to pay for the same in cash, property or its own or other securities; to hold, operate, reorganize, liquidate, sell or in any manner dispose of the whole or any part thereof; and in connection therewith, to assume or guarantee performance of any liabilities, obligation, or contracts of such persons, firms, associations, corporations, or governments, and to conduct the whole or any part of any business thus acquired.

ARTICLES OF INCORPORATION
(Plessen Enterprises, Inc.)

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TENTH: The names and places of residences of the undersigned incorporators, being all of the persons forming the corporation are:

<u>NAME</u>	<u>ADDRESS</u>
MOHAMAD HAMED	6-H Carlton Garden P.O. Box 2926 Fsted, St. Croix U.S. Virgin Islands
WALBED HAMED	6-H Carlton Garden P.O. Box 2926 Fsted, St. Croix U.S. Virgin Islands
FATHI YUSUP	92 A & B La Grande Princess Christiansted, St. Croix U.S. Virgin Islands

ELEVENTH: For the management of the business and the conduct of the affairs of the corporation, and in further definition, limitation and regulation of the powers of the corporation and of its directors and stockholders, it is further provided:

(a) The number of directors of the corporation set in the By-Laws of the corporation may from time to time be increased, or decreased to not less than three, in such manner as may be proscribed by the By-Laws. Subject to the then applicable provisions of the By-Laws, the election of directors need not be by ballot and directors need not be stockholders.

(b) In furtherance and not in limitation of the powers conferred by the laws of the Virgin Islands of the United States, the Board of Directors is expressly authorized and empowered:

(1) To make, alter, amend, and repeal By-Laws for the management of the affairs of the corporation not inconsistent with law, subject to the right of a majority of the stockholders to amend, repeal, alter or modify such By-Laws at any regular meeting or at any special meeting called for such purpose.

(ii) Subject to the then applicable provisions of the By-Laws then in effect, to determine, from time to time, whether and to what extent and at what times and places and under what conditions and regulations the accounts and books of the corporation, or any of them, shall be open to the inspection of the stockholders, and no stockholders shall have any right to inspect any account or book or document of the corporation, except as conferred by the laws of the Virgin Islands of the United States, unless and until authorized so to do by resolution of the Board of Directors or of the stockholders of the corporation.

(iii) Without the assent or vote of the stockholders, to authorize and issue obligations of the corporation, secured or unsecured, to include therein such provisions as to redeemability, convertibility or otherwise, as the Board of Directors in its sole discretion may determine, and to authorize the mortgaging or pledging, as security therefor, of any property of the corporation, real or personal, including after-acquired property, to the extent permitted by law.

(iv) To determine whether any, and if any, what part of the corporate funds legally available therefor shall be declared in dividends and paid to the stockholders, and to direct and determine the use and disposition of any such funds.

ARTICLES OF INCORPORATION
(Plessen Enterprises, Inc.)

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(v) To set apart out of the funds of the corporation available for dividends a reserve or reserves for any proper purpose and to abolish or reduce the amount of any such reserve in the manner in which it was created.

(vi) To fix from time to time the amount of earnings of the corporation to be reserved as working capital or for any other lawful purpose.

(vii) To establish and amend pension, bonus, profit-sharing or other types of incentive or compensation plans for the employees (including officers and directors) of the corporation and to fix the amount of funds legally available therefor and to determine, or establish procedures for determining, the persons to participate in any such plans and the amounts of their respective participations.

(c) In addition to the powers and authorities hereinbefore or by statute expressly conferred upon it, the Board of Directors may exercise all such powers and do all such acts and things as may be exercised or done by the corporation, subject, nevertheless, to the provisions of the laws of the Virgin Islands of the United States, of the Articles of Incorporation, and of the By-Laws of the corporation.

(d) Any director or any officer elected or appointed by the stockholders or by the Board of Directors may be removed at any time in such manner as shall be provided in the By-Laws of the corporation.

(e) No contract or other transaction between the corporation and any other corporation and no other act of the corporation shall, in the absence of fraud, in any way be affected or invalidated by the fact that any of the directors of the corporation are pecuniarily or otherwise interested in, or are director or officers of, such other corporation. Any directors of the corporation individually or any firm or association of which any director may be member, may be a party to, or may be pecuniarily or otherwise interested in, any contract or transaction of the corporation, provided that the fact that he individually or such firm or association is so interested shall be disclosed or shall have been known to the Board of Directors or a majority of such members thereof as shall be present at any meeting of the Board of Directors at which action upon such contract or transaction shall be taken. Any director of the corporation who is also a director or officer of such other corporation or who is so interested may be counted in determining the existence of a quorum at any meeting of the Board of Directors which shall authorize any such contract or transaction, and may vote thereat to authorize any such contract or transaction, with like force and effect as if he were not such director or officer of such other corporation or not so interested. Any director of the corporation may vote upon any contract or other transaction between the corporation and any parent, subsidiary or affiliated corporation without regard to the fact that he is also a director of such parent, subsidiary or affiliated corporation.

(f) Any contract, transaction or act of the corporation or of the directors which shall be ratified by a majority of a quorum of the stockholders of the corporation at any annual meeting or at any special meeting called for such purpose, shall, insofar as permitted by law, be as valid and as binding as though ratified by every stockholder of the corporation; provided, however, that any failure of the stockholders to approve or ratify any such contract, transaction or act, when and if submitted, shall not be deemed in any way to invalidate the same or deprive the corporation, its directors officers or employees, of its or their right to proceed with such contract, transaction or act.

(g) Subject to any limitation in the By-Laws, the members of the Board of Directors shall be entitled to reasonable fees, salaries or other compensation for their services and to reimbursement for their expenses as such members. Nothing contained herein shall preclude any director from serving the corporation, or any subsidiary or affiliated corporation, in any other capacity and receiving proper compensation therefor.

ARTICLES OF INCORPORATION
(Plessen Enterprises, Inc.)

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(h) If the By-Laws so provide, the stockholders and Board of Directors of the corporation shall have the power to hold their meetings, to have an office or offices and to keep the books of the corporation, subject to the provisions of the laws of the Virgin Islands of the United States, within or without said Islands at such place or places as may from time to time be designated by them.

(i) Any person who shall have acted at any time as a director or officer of the corporation or served at its request as a director or officer of another corporation in which it then owned shares of capital stock or of which it was then a creditor shall be entitled to be indemnified by this corporation against all expenses actually and necessarily incurred by him in connection with the defense of any action, suit or proceeding in which he is made a party by reason of being or having been a director or officer of this corporation, or of such other corporation, except in relation to matters as to which he shall be adjudged in such action, suit or proceeding to be liable for negligence or misconduct in the performance of duty. Such indemnification shall not be deemed exclusive of any other rights to which those indemnified may be entitled, under any By-Law, agreement, vote of stockholders or otherwise.

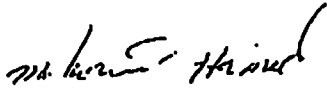
(j) The shares of stock which the corporation shall have authority to issue may be issued by the corporation from time to time for such consideration as may be fixed from time to time by the Board of Directors; and any and all shares so issued, the consideration for which so fixed has been paid or delivered, shall be fully paid stock and shall not be liable to any further call or assessment thereon, and the holders of such shares shall not be liable for any further payments in respect of such shares. No holder of shares of stock of the corporation shall have any preemptive or preferential right of subscription to any shares of stock of the corporation, issued or sold, nor any right of subscription to any thereof other than such, if any, as the Board of Directors of the corporation in its discretion may from time to time determine and at such price and upon such terms and conditions as the Board of Directors may issue stock of the corporation or obligations convertible into such stock or optional rights to purchase or subscribe, or both, to such stock without offering such issue, either in whole or in part, to the stockholders of the corporation. The acceptance of stock in the corporation shall be a waiver of any such preemptive or preferential right which in the absence of this provision might otherwise be asserted by stockholders of the corporation or any of them.

TWELFTH: From time to time any of the provisions of these Articles of Incorporation may be amended, altered or repealed, and other provisions then authorized or permitted by the laws of the Virgin Islands of the United States may be added or inserted in the manner then prescribed or permitted by said laws. All rights at any time conferred upon the stockholders of this corporation by these Articles of Incorporation and granted subject to the provisions of this Article TWELFTH.

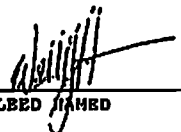
ARTICLES OF INCORPORATION
(Plossen Enterprises, Inc.)

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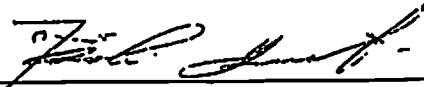
IN WITNESS WHEREOF, we, the undersigned, being all of the incorporators hereinbefore named, for the purposes aforesaid, have signed, sealed and acknowledged these Articles of Incorporation in triplicate, hereby declaring and certifying that the facts therein stated are true, this 22 day of December, 1988.



MOHAMAD HAMED



WALEEH HAMED




PATHI YUSUP

ACKNOWLEDGEMENT

TERRITORY OF THE VIRGIN ISLANDS)
DIVISION OF ST. CROIX) SS:

On this 22nd day of December, 1988 before me personally came and appeared MOHAMAD HAMED, WALEEH HAMED, AND PATHI YUSUP, to me known and known to me to be the persons whose names are subscribed to the foregoing Articles of Incorporation, and they did severally acknowledge that they signed, sealed and delivered the same as their voluntary act and deed, for the purposes therein stated, and that the fact therein are truly set forth.

IN WITNESS WHEREOF, I hereunto set my hand and official seal.



Notary Public

EXHIBIT B

BY-LAWS

PLESSEN ENTERPRISES, INC.

**BY-LAWS
OF
PLESSEN ENTERPRISES, INC.
Adopted on April 30, 1997**

**ARTICLE I
STOCKHOLDERS**

Section 1.1 Annual Meeting. The annual meeting of the Stockholders of the Corporation shall be held each year during the third month after the close of the Corporation's fiscal year, on a day to be duly designated by the Board of Directors, for the purpose of electing Directors and for the transaction of any other corporate business that may come before the meeting.

Section 1.2 Special Meetings. A special meeting of the Stockholders may be called, at any time and for any purpose or purposes, by the President, by a Vice President, or by a majority of the Board of Directors. A special meeting of the Stockholders shall be called forthwith by the President, by a Vice President, by the Secretary, or by any Director of the Corporation at any time, upon the written request of the Stockholders entitled to cast at least twenty-five percent (25%) of all the votes entitled to be cast at the meeting. However, a special meeting need not be called to consider any matter that is substantially the same as a matter voted on at any special meeting of the Stockholders held during the preceding twelve (12) months, unless requested by the Stockholders entitled to cast a majority of all votes entitled to be cast at the meeting. Whenever a special meeting is called by written request of the Stockholders, the request shall state the purpose or purposes of the meeting. Business transacted at any special meeting of Stockholders shall be confined to the purpose or purposes stated in the notice of the meeting.

Section 1.3. Place of Holding Meetings. All meetings of Stockholders shall be held at the principal office of the Corporation, or elsewhere in the United States or its Territories as may be designated by the Board of Directors.

Section 1.4. Notice of Meetings. Written notice of each meeting of the Stockholders shall be given to each Stockholder in accordance with Section 7.2 of these By-Laws, at least ten (10) days and not more than ninety (90) days before the meeting. The notice shall state the place, day, and hour at which the meeting is to be held; in the case of a special meeting, the notice also shall state briefly the purpose or purposes of that special meeting.

Section 1.5. Quorum. Except as otherwise specifically provided by law, by the Charter of the Corporation, or by these By-Laws, at each meeting of the Stockholders, the presence in person or by proxy of the holders of record of a majority of the shares of the capital stock of the Corporation issued and outstanding and entitled to vote at the meeting constitutes a quorum. If less than a quorum is in attendance at the time for which the meeting has been called, the meeting may be adjourned from time to time by a majority vote of the Stockholders present in person or by proxy, without any notice other than by announcement at the meeting, until a quorum is in attendance. At any adjourned meeting

at which a quorum is in attendance, any business may be transacted that might have been transacted if the meeting had been held as originally called.

Section 1.6. Conduct of Meetings. Each meeting of the Stockholders shall be presided over by a chairman. The chairman shall be the President of the Corporation or, if the President is not present, a Vice President, or, if none of these Officers is present, a person to be elected at the meeting. The Secretary of the Corporation or, if the Secretary is not present, any Assistant Secretary shall act as secretary of the meeting; in the absence of the Secretary and any Assistant Secretary, the chairman of the meeting shall appoint a person to act as secretary of the meeting.

Section 1.7. Voting.

A. At each meeting of the Stockholders, every Stockholder entitled to vote at the meeting has one (1) vote for each share of stock standing in his or her name on the books of the Corporation on the date established for the determination of Stockholders entitled to vote at the meeting. This vote may be cast by the Stockholder either in person or by written proxy signed by the Stockholder or by the Stockholder's duly authorized attorney in fact. Unless the written proxy expressly provides for a longer period, it shall bear a date not more than eleven (11) months prior to the meeting. The written proxy shall be dated, but need not be sealed, witnessed, or acknowledged.

B. Except as otherwise specifically provided by law, by the Charter of the Corporation, or by these By-Laws, all elections shall be had and all questions shall be decided by a majority of the votes cast at a duly constituted meeting. If the chairman of the meeting so determines, a vote by ballot may be taken upon any election or matter. A vote by ballot shall be taken upon the request of the Stockholders entitled to cast at least ten percent (10%) of all the votes entitled to be cast on the election or matter. The chairman of the meeting may appoint one or more tellers of election. In that event, the proxies and ballots shall be held by the tellers, and all questions as to the qualification of voters, the validity of proxies and the acceptance or rejection of votes shall be decided by the tellers. If no teller is appointed, these duties shall be performed by the chairman of the meeting.

Section 1.8 Informal Action by Stockholders. Any action required or permitted to be taken at any meeting of the Stockholders may be taken without a meeting pursuant to the provisions of Title 13 V.I.C. Section 196, as from time to time amended.

ARTICLE II
BOARD OF DIRECTORS

Section 2.1. General Powers. The property and business of the Corporation shall be managed under the direction of the Board of Directors of the Corporation.

Section 2.2. Number and Term of Office. The number of Directors shall be such

number as may be designated from time to time by resolution of a majority of the entire Board of Directors. However, the number of Directors may not be less than three. Directors need not be Stockholders. Except as otherwise provided in these By-Laws, the Directors shall be elected each year at the annual meeting of the Stockholders, and each Director shall serve until his or her successor is duly elected and qualifies.

Section 2.3. Removal of Directors. Except as otherwise provided in this Section and unless the Charter of the Corporation provides otherwise, the Stockholders may remove any Director from office, with or without cause, by the affirmative vote of a majority of all the votes entitled to be cast for the election of Directors.

Section 2.4. Filling of Vacancies.

A. If a vacancy in the Board of Directors results from the removal of a Director, the Stockholders may elect a successor to fill that vacancy. However, if the Stockholders of any class or series are entitled separately to elect one or more Directors, the Stockholders of that class or series may elect a successor to fill any vacancy that results from the removal of a Director elected by the class or series.

B. Except as otherwise provided in this Section, (i) if a vacancy in the Board of Directors results from an increase in accordance with these By-Laws of the number of Directors, a majority of the entire Board of Directors may elect the person to fill that vacancy, and (ii) if a vacancy in the Board of Directors results from any other cause whether by reason of a Director's death, resignation, disqualification, or otherwise a majority of the remaining Directors, whether or not sufficient to constitute a quorum, may elect a successor to fill that vacancy.

C. A Director elected to fill a vacancy shall serve until the next annual meeting of the Stockholders and, thereafter, until his or her successor is duly elected and qualifies.

Section 2.5. Annual and Regular Meetings. The annual meeting of the Board of Directors shall be held immediately following the annual Stockholders' meeting at which a Board of Directors is elected. Regular meetings of the Board of Directors may be held, without notice, at such time and place as determined from time to time by resolution of the Board. However, notice of every resolution of the Board fixing or changing the time or place for the holding of regular meetings of the Board shall be mailed to each Director at least ten (10) days before the first meeting held pursuant to the resolution. Any business may be transacted at the annual meeting and at any regular meeting of the Board.

Section 2.6. Special Meetings. A special meeting of the Board of Directors may be called, at any time and for any purpose or purposes, by the President or by a Vice President. A special meeting of the Board of Directors shall be called forthwith by the President or by the Secretary upon the written request of a majority of the Board of Directors. Written notice of each special meeting of the Board of Directors shall be given to each Director by

mailing that notice, in accordance with Section 7.2 of these By-Laws, at least three (3) days before the meeting, or by telegraphing or hand-delivering that notice at least one (1) day before the meeting. Any business may be transacted at any special meeting of the Board. Any Director may, in writing, waive notice of the time, place, and purposes of any special meeting. Any meeting of the Board of Directors whether an annual, regular, or special meeting may be adjourned from time to time to reconvene at the same or some other place, and no notice need be given of the reconvened meeting other than by announcement at the adjourned meeting.

Section 2.7. Place of Meeting and Offices. The Board of Directors may hold its meetings, have one or more offices, and keep the books of the Corporation at such place or places, either within or without the Territory of the United States Virgin Islands, as determined from time to time by resolution of the Board of Directors or by written consent of all of the Directors. Members of the Board of Directors or a committee of the Board of Directors may participate in a meeting by means of a conference telephone or similar communications equipment if all persons participating in the meeting can hear each other at the same time, and such participation in a meeting shall be deemed to constitute presence in person at such meeting.

Section 2.8. Quorum. At each meeting of the Board of Directors, a majority of the entire Board of Directors constitutes a quorum for the transaction of business. If less than a quorum is present at any meeting, a majority of those present may adjourn the meeting from time to time. Except as otherwise specifically provided by law, by the Charter of the Corporation, or by these By-Laws, the act of a majority of the Directors present at any meeting at which there is a quorum constitutes the act of the Board of Directors.

Section 2.9. Compensation of Directors. Directors shall not receive any stated salary for their services as such. However, each Director is entitled to receive from the corporation reimbursement of the expenses incurred by the Director in attending any annual, regular, or special meeting of the Board or of a committee of the Board. In addition, by resolution of the Board of Directors, a fixed sum may be also be allowed for attendance at each annual, regular, or special meeting of the Board or of a committee of the Board. Reimbursement and compensation to a Director for attending a meeting shall be payable even if the meeting was adjourned because of the absence of a quorum. Nothing contained in this Section shall be construed to preclude any Director from serving the Corporation in any other capacity and receiving compensation for that service.

Section 2.10. Executive Committee. By resolution of a majority of the entire Board of Directors, the Board may appoint an executive committee consisting of two or more Directors. The executive committee may exercise all of the powers and authority of the Board of Directors between meetings of the Board, except the power or authority to declare dividends or distributions on stock, to issue stock, to recommend to the Stockholders any action requiring Stockholder approval, to alter or amend these By-Laws, to approve any merger or share exchange not requiring Stockholder approval, or to fill vacancies in the

Board of Directors or in the executive committee's own membership. Vacancies in the executive committee shall be filled by the Board of Directors. The executive committee shall meet at stated times or on notice to all of its members by any one of its members. It shall fix its own rules of procedure. Unanimous vote or consent shall be necessary in every case. The executive committee shall keep regular minutes of its proceedings and report those proceedings to the Board of Directors. Without limiting the generality of the foregoing, the executive committee is specifically authorized to execute customary banking resolutions for corporate accounts and for borrowing.

Section 2.11. Additional Committees. By resolution of a majority of the entire Board of Directors, the Board may designate one or more additional committees, each committee to consist of two or more Directors. To the extent provided in the resolution, each committee may exercise all of the powers and authority of the Board of Directors, except the power or authority to declare dividends or distributions on stock, to issue stock, to recommend to the Stockholders any action requiring Stockholder approval, to alter or amend these By-Laws, to approve any merger or share exchange not requiring Stockholder approval, or to fill vacancies in the Board of Directors or in the committee's own membership. Vacancies in a committee shall be filled by the Board of Directors. Each committee shall have the name designated from time to time by resolution of the Board of Directors.

Section 2.12. Informal Action by Directors. Any action required or permitted to be taken at any meeting of the Board of Directors or of any committee of the Board may be taken without a meeting pursuant to the provisions of Title 13 V.I.C. Section 67(b), as from time to time amended.

ARTICLE III OFFICERS

Section 3.1. Election, Tenure, and Compensation. The Officers of the Corporation shall be a President, a Secretary, and a Treasurer. The Corporation shall have such other Officers e.g., one or more Vice Presidents and one or more Assistant Secretaries or Assistant Treasurers as the Board of Directors from time to time considers necessary for the proper conduct of the business of the Corporation. The Officers shall be elected by the Board of Directors and shall serve at the pleasure of the Board. The President shall be a Director; the other Officers may, but need not be, Directors. Any two or more offices, except those of President and Secretary, may be held by the same person; however, no Officer may execute, acknowledge, or verify any instrument in more than one capacity if that instrument is required by law or by these By-Laws to be executed, acknowledged, or verified by two or more Officers. The compensation or salary paid all Officers of the Corporation may be fixed by resolutions of the Board of Directors. Except where otherwise expressly provided in a contract duly authorized by the Board of Directors, all Officers, agents, and employees of the corporation are subject to removal at any time by the Board of Directors and shall hold office at the discretion of the Board of Directors or of the Officers appointing

them.

Section 3.2. Powers and Duties of the President. The President shall be the Chief Executive Officer of the Corporation and shall have general charge and control of all its business affairs and properties. The President shall preside at all meetings of the Stockholders. The President may be a member of the Board of Directors and, if a member, shall preside at all meetings of the Board of Directors unless the Board of Directors, by a majority vote of a quorum of the Board, elects a Chairman other than the President to preside at meetings of the Board of Directors. The President may sign and execute all authorized bonds, contracts, or other obligations in the name of the Corporation. The President shall have the general powers and duties of supervision and management usually vested in the office of president and of corporation. The President shall be an ex-officio voting member of all standing committees. The President shall perform such other duties as from time to time are assigned to the President by the Board of Directors.

Section 3.3 Powers and Duties of the Vice President. The Board of Directors may appoint one or more Vice Presidents. Each Vice President (except as otherwise provided by resolution of the Board of Directors) shall have the power to sign and execute all authorized bonds, contracts, or other obligations in the name of the Corporation. Each Vice President shall have such other powers and shall perform such other duties as from time to time are assigned to that Vice President by the Board of Directors or by the President. In case of the absence or disability of the President, the duties of that office shall be performed by a Vice President; the taking of any action by any Vice President in place of the President shall be conclusive evidence of the absence or disability of the President.

Section 3.4 Secretary. The Secretary shall give, or cause to be given, notice of all meetings of Stockholders and Directors and all other notices required by law or by these Stockholders and of the Directors in books provided for that purpose and shall perform such other duties as from time to time are assigned to the Secretary by the Board of Directors or the President. The Secretary shall attest to or witness all instruments executed by or on behalf of the Corporation requiring same. In general, the Secretary shall perform all the duties generally incident to the office of Secretary of a corporation, subject to the control of the Board of Directors and the President.

Section 3.5. Treasurer. The Treasurer shall have custody of all the funds and securities of the Corporation and shall keep full and accurate account of receipts and disbursements in books belonging to the corporation. The Treasurer shall deposit all of the Corporation's money and other valuables in the name and to the credit of the Corporation in such depository or depositories as from time to time designated by the Board of Directors. The Treasurer shall disburse the funds of the Corporation as ordered by the Board of Directors, taking proper vouchers for those disbursements. The Treasurer shall render to the President and the board of Directors, whenever either of them so requests, an account of all of his or her transactions as Treasurer and of the financial condition of the Corporation. If required by the Board of Directors, the Treasurer shall give the Directors,

for the faithful performance of the duties of his or her office and for the removal from office, of all books, papers, vouchers, money, and other property belonging to the Corporation, of whatever kind, in his or her possession or under his or her control. In general, the Treasurer shall perform all the duties generally incident to the office of treasurer of a corporation, subject to the control of the Board of Directors and the President.

Section 3.6. Assistant Secretary. The Board of Directors or the President may appoint one or more Assistant Secretaries. Each Assistant Secretary (except as otherwise provided by resolution of the Board of Directors) shall have the power to perform all duties of the Secretary in the absence or disability of the Secretary and shall have such other powers and shall perform such other duties as from time to time are assigned to that Assistant Secretary by the Board of Directors or the President. In case of the absence or disability of the Secretary, the duties of that office shall be performed by an Assistant Secretary; the taking of any action by any Assistant Secretary in place of the Secretary shall be conclusive evidence of the absence or disability of the Secretary.

Section 3.7. Assistant Treasurer. The Board of Directors may appoint one or more Assistant Treasurers. Each Assistant Treasurer (except as otherwise provided by resolution of the Board of Directors) shall have the power to perform all duties of the Treasurer in the absence or disability of the Treasurer and shall have such other powers and shall perform such other duties as from time are assigned to that Assistant Treasurer by the Board of Directors or the President. In case of the absence or disability of the Treasurer, the duties of that office shall be performed by an Assistant Treasurer; the taking of any action by any Assistant Treasurer in place of the Treasurer; the conclusive evidence of the absence or disability of the Treasurer.

Section 3.8. Subordinate Officers. The Corporation may have such subordinate officers as the Board of Directors from time to time deems advisable. Each subordinate officer shall hold office for such period and shall perform such duties as from time to time are prescribed by the Board of Directors, the President, or the committee or officer designated pursuant to this Article.

ARTICLE IV CAPITAL STOCK AND OTHER SECURITIES

Section 4.1. Issue of Certificates of Stock. The certificates for shares of the capital stock of the Corporation shall be of such form, not inconsistent with the Charter of the Corporation, as has been approved by the Board of Directors. All certificates shall be signed by the President or by a Vice President and countersigned by the Secretary or by an Assistant Secretary. Any signature or countersignature may be either manual or facsimile signature. All certificates for each class of stock shall be consecutively numbered. The name and address of the person owning the shares issued shall be entered in the

Corporation's books.

Section 4.2. Transfer of Shares. Shares of the capital stock of the Corporation may be transferred on the books of the Corporation only by the holder of those shares, in person or by his or her attorney in fact, and only upon surrender and cancellation of certificates for a like number of shares. All certificates surrendered to the Corporation for transfer shall be cancelled, and no new certificates representing the same number of shares may be issued until the former certificate or certificates for the same number of shares have been so surrendered and canceled.

Section 4.3. Registered Stockholders. The Corporation is entitled to treat the holder of record of any shares of stock as the holder in fact of those shares. Accordingly, the Corporation is not bound to recognize any equitable or other claim to, or interest in, those shares in the name of any other person, whether or not the Corporation has had express or other notice of that claim or interest, except as expressly provided by the laws of the Territory of the United States Virgin Islands.

Section 4.4. Record Date and Closing of Transfer Books. The Board of Directors may set a record date or direct that the stock transfer books be closed for a stated period for the purpose of making any proper determination with respect to Stockholders, including which Stockholders are entitled to be notified of a meeting, vote at a meeting, receive a dividend, or be allotted other rights. The record date may not be more than fifty (50) days before the date on which the action requiring the determination will be taken. The transfer books may not be closed for a period longer than twenty (20) days. In the case of a meeting of Stockholders, the record date or the closing of the transfer books shall be at least ten (10) days before the date of the meeting.

Section 4.5. Lost Certificates. The Board of Directors may direct a new certificate to be issued in place of any certificate that is alleged to have been lost, stolen, or destroyed, upon the making of an affidavit of that fact by the person claiming the certificate to be lost, stolen, or destroyed. In its discretion and as a condition precedent to the issuance of a new certificate, the Board of Directors may require the owner of the certificate or the owner's legal representative to give bond, with sufficient surety, to indemnify the Corporation against any loss or claim that may arise by reason of the issuance of a new certificate.

Section 4.6. Restrictions on Transfer. Notwithstanding any other provision of these By-Laws to the contrary, no securities issued by the Corporation may be transferred unless (i) those securities are registered with the Securities and Exchange Commission or other jurisdiction, as appropriate, or (ii) the Corporation has received an opinion of counsel for the transferor or transferee, acceptable to counsel for the Corporation, that the transfer would not violate applicable state and federal securities laws, provided, however, that the restrictions set forth in clauses (i) and (ii), above, shall be deemed waived as to a specific transfer of securities in the event the Corporation transfers such securities on its books without having received either evidence of such registration or such opinion of counsel.

ARTICLE V
BANK ACCOUNTS AND LOANS

Section 5.1. Bank Accounts.

A. Such Officers or agents of the Corporation as from time to time have been designated by the Board of Directors shall have authority to deposit any funds of the Corporation in such financial institutions as from time to time have been designated by the Board of Directors. Such Officers or agents of the Corporation as from time to time have been designated by the Board of Directors shall have authority to withdraw any or all of the funds of the Corporation so deposited in a financial institution, upon checks, drafts, or other instruments or orders of the payment of money, drawn against the account or in the name or behalf of the Corporation, and made or signed by those designated Officers or agents.

B. From time to time the Corporation shall certify to each financial institution in which funds of the Corporation are deposited, the signatures of the Officers or agents of the Corporation authorized to draw against those funds. Each financial institution with which funds of the Corporation are deposited is authorized to accept, honor, cash, and pay, without limit as to amount, all checks, drafts, or other instruments or orders for the payment of money, when drawn, made, or signed by Officers or agents so designated by the Board of Directors, until the financial institution has received written notice that the Board of Directors has revoked the authority of those Officers or agents.

C. If the Board of Directors fails to designate the persons by whom checks, drafts, and other instruments or orders for the payment of money may be signed, as provided in this Section, all checks, drafts, and other instruments or orders for the payment of money shall be signed by the President or a Vice President and countersigned by the Secretary or Treasurer or by an Assistant Secretary or Assistant Treasurer of the Corporation.

Section 5.2. Loans.

A. Such Officers or agents of the Corporation as from time to time have been designated by the Board of Directors shall have authority (i) to effect loans, advances, or other forms of credit at any time or times for the Corporation, from such banks, trust companies, institutions, corporations, firms, or persons, in such amounts and subject to such terms and conditions, as the Board of Directors from time to time has designated; and (ii) as security for the repayment of any loans, advances, or other forms of credit authorized, to assign, transfer, endorse, and deliver, either originally or in addition or substitution, any or all personal property, real property, stocks, bonds, deposits, accounts, documents, bills, accounts receivable, and other commercial paper and evidences of debt or other securities, or any rights or interests at any time held by the Corporation; and (iii) in connection with any loans, advances, or other forms of credit so authorized, to make, execute, and deliver one or more notes, mortgages, deeds of trust, financing statements, security agreements,

acceptances, or written obligations of the Corporation, on such terms and with such provisions as to the security or sale or disposition of them as those Officers or agents deem proper; and (iv) to sell to, or discount or rediscount with, the banks, trust companies, institutions, corporations, firms, or persons making those loans, advances, or other forms of credit, any and all commercial paper, bills, accounts receivable, acceptances, and other instruments and evidences of debt at any time held by the Corporation, and, to that end, to endorse, transfer, and deliver the same.

B. From time to time the Corporation shall certify to each bank, trust company, institution, corporation, firm, or person so designated, the signatures of the Officers or agents so authorized. Each bank, trust company, institution, corporation, firm, or person so designated is authorized to rely upon such certification until it has received written notice that the Board of Directors has revoked the authority of those Officers or agents.

ARTICLE VI INDEMNIFICATION

Section 6.1. Indemnification to Extent Permitted by Law. The Corporation shall indemnify to the full extent permitted by law any person who was or is a party, or is threatened to be made a party, to any threatened, pending, or completed action, suit, or proceeding, whether civil, criminal, administrative, or investigative, by reason of the fact that the person is or was a Director, Officer, employee, or agent of the corporation, or is or was serving at the request of the Corporation as a director, officer, employee, or agent of another corporation, partnership, joint venture, trust, or other enterprise, or is or was serving at the request of the Corporation as a trustee or administrator or in any other fiduciary capacity under any pension, profit sharing, or other deferred compensation plan, or under any employee welfare benefit plan of the Corporation.

Section 6.2. Payment of Expenses in Advance of Final Disposition of Action. Expenses (including attorneys' fees) incurred in defending a civil, criminal, administrative, or investigative action, suit, or proceeding shall be paid by the Corporation in advance of the final disposition of that action, suit, or proceeding, on the conditions and to the extent permitted by law.

Section 6.3. Non-Exclusive Right to Indemnity; Insurer to Benefit of Heirs and Personal Representatives. The rights of indemnification set forth in this Article are in addition to all rights to which any Director, Officer, employee, agent, trustee, administrator, or other fiduciary may be entitled as a matter of law, and shall continue as to a person who has ceased to be a Director, Officer, employee, agent, trustee, administrator, or other fiduciary, and shall inure to the benefit of the heirs and personal representatives of that person.

Section 6.4. Insurance. The Corporation may purchase and maintain insurance on behalf of any person who is or was a Director, Officer, employee, or agent of the

Corporation, or is or was serving at the request of the Corporation as a director, officer, employee, or agent of another corporation, partnership, joint venture, trust, or other enterprise, or is or was serving at the request of the Corporation as a trustee or administrator or in any other fiduciary capacity under any pension, profit sharing, or other deferred compensation plan, or under any employee welfare benefit plan of the Corporation, against any liability asserted against and incurred by that person in any such capacity, or arising out of that person's status as such, whether or not the Corporation would have the power or would be required to indemnify that person against that liability under the provisions of this Article or the laws of this State.

Section 6.5. Certain Persons not to be Indemnified. Notwithstanding the provisions of this Article, the Corporation may not indemnify any bank, trust company, investment adviser, or actuary against any liability which that entity or person may have by reason of acting as a "fiduciary" of any employee benefit plan (as that term is defined in the Employees Retirement Income Security Act, as amended from time to time) established for the benefit of the Corporation's employees.

ARTICLE VII **MISCELLANEOUS PROVISIONS**

Section 7.1. Fiscal Year. The fiscal year of the Corporation shall be such as has been duly designated by the Board of Directors.

Section 7.2. Notices.

A. Except as otherwise provided by law or these By-Laws, whenever notice is required by law or these By-Laws to be given to any Stockholder, Director, or Officer, it shall be construed to mean either (i) written notice personally served against written receipt at the address that appears for that person on the books of the Corporation, or (ii) written notice transmitted by mail, by depositing the notice in a post office or letter box, in a post-paid sealed wrapper, addressed to the Stockholder, Director, or Officer at the address that appears for that person on the books of the Corporation or, in default of any other address for a Stockholder, Director, or Officer, at the general post office situated in the city or county of his or her residence, which notice shall be deemed to be given at the time it is thus mailed.

B. All notices required by law or these By-Laws shall be given by the Secretary of the Corporation. If the Secretary is absent or refuses or neglects to act, the notice may be given by any person directed to do so by the President or, with respect to any meeting called pursuant to these By-Laws upon the request of any Stockholders or Directors, by any person directed to do so by the Stockholders or Directors upon whose request the meeting is called.

C. Any Stockholder, Director, or Officer may waive any notice required to be

given under these By-Laws.

Section 7.3. General Counsel. The Board of Directors may appoint a general counsel to have dominion over all matters of legal import concerning the Corporation. It shall be the duty of the Officers and the Directors to consult from time to time with the general counsel (if one has been appointed), as legal matters arise. The general counsel shall be given notice of all meetings of the Board of Directors, in the manner provided in Section 2.5 and 2.6 of the By-Laws, and the general counsel shall be accorded the opportunity to attend these meetings for the purpose of consulting with and advising the Board of Directors on any matters of a legal nature. The general counsel to the Corporation shall be subject to removal and replacement by the Board of Directors.

Section 7.4. Corporate Seal. The Board of Directors may provide a suitable seal, bearing the name of the Corporation, which shall be in the charge of the Secretary. The Board of Directors may authorize one or more duplicate seals and provide for their custody. Regardless of whether a seal is adopted by the Board of Directors, whenever the Corporation is required to place its corporate seal on a document, it shall be sufficient to meet the requirements of any law, rule, or regulation relating to a corporate seal to place the word ("seal") adjacent to the signatures of the person authorized to sign the document on behalf of the Corporation.

Section 7.5. Books and Records. The Corporation shall keep correct and complete books and records of its accounts and transactions and minutes of the proceedings of its Stockholders and Board of Directors and of any executive or other committee when exercising any of the powers or authority of the Board of Directors. The books and records of the Corporation may be in written form or in any other form that can be converted within a reasonable time into written form for visual inspection. Minutes shall be recorded in written form, but may be maintained in the form of a reproduction.

Section 7.6. Bonds. The Board of Directors may require any Officer, agent or employee of the Corporation to give a bond to the Corporation, conditioned upon the faithful discharge of his or her duties, with such surety and in such amount as is satisfactory to the Board of Directors.

Section 7.7. Severability. The invalidity of any provision of these By-Laws shall not affect the validity of any other provision, and each provision shall be enforced to the extent permitted by law.

Section 7.8. Gender. Whenever used in these By-Laws, the masculine gender includes all genders.

ARTICLE VIII **AMENDMENTS**

The Board of Directors has full power and authority to amend, alter, supplement, or repeal these By-Laws, or any provision of them, at any annual, regular, or special meeting a part of the general business of that meeting subject to the power of the Stockholders to amend, alter, supplement, or repeal these By-Laws, or any provision of them, at any annual meeting as part of the general business of that meeting, or at any special meeting for which the notice of that special meeting stated the substance of the proposed amendment, alteration, supplement, or repeal.



EXHIBIT C

**DEPARTMENT OF CONSUMER AFFAIRS
PRINT-OUT WITH A LIST OF CORPORATE
OFFICERS**

Control #: 30805

Business Information

Organization Type: CORPORATION	Contact First Name: WALLEED
Business Name: PLESSEN ENTERPRISES, INC.	Last Name: HAMED
Business Phone: 340 778-8240	Phone #: 340-690-9395
Business EIN: [REDACTED]	Email: WALLY@PLAZAEXTRA.COM
	Fax: 340 778-1200
Physical Address	Mailing Address
Street1: #14 EST. PLESSEN	Street1: P.O. BOX 763
Street2:	Street2:
City: FREDERIKSTED	City: CHRISTIANSTED
State: VI ZIP: 00840	State: VI ZIP: 00821
Island: ST. CROIX	Island: ST. CROIX
Country: US VIRGIN ISLANDS	Country: US VIRGIN ISLANDS

Person Information

Person 1:

First Name: MAHER	Position/Title: DIRECTOR
Last Name: YUSUF	Place of Birth: JORDAN
Date of Birth: 04/28/1967	SSN: [REDACTED]
Physical Address	Mailing Address
Street1: #14 ESTATE PLESSEN	Street1: P.O. BOX 3649
Street2:	Street2:
City: FSTED	City: FSTED
State: VI ZIP: 00851	State: VI ZIP: 00851
Island: ST. CROIX	Island: ST. CROIX
Country: UNITED STATES	Country: UNITED STATES
Country of Citizenship: USA	

Have you ever been convicted of a felony or crime involving moral turpitude? N
If YES, explain the nature of the crime, date of conviction, and place of conviction:

Person 2:

First Name: WALEED	Position/Title: VICE PRESIDENT
Last Name: HAMED	Place of Birth: JORDAN
Date of Birth: 01/22/1962	SSN: [REDACTED]
Physical Address	Mailing Address
Street1: 4 C & D ESTATE SION FARM	Street1: P.O. BOX 763
Street2:	Street2:
City: CHRISTIANSTED	City: CHRISTIANSTED
State: VI ZIP: 00821	State: VI ZIP: 00821
Island: ST. CROIX	Island: ST. CROIX
Country: US VIRGIN ISLANDS	Country: US VIRGIN ISLANDS
Country of Citizenship: USA	

Have you ever been convicted of a felony or crime involving moral turpitude? N
If YES, explain the nature of the crime, date of conviction, and place of conviction:

Person 3:

First Name: MOHAMMAD	Position/Title: PRESIDENT
Last Name: HAMED	Place of Birth: JORDAN
Date of Birth: 02/17/2011	SSN: [REDACTED]
Physical Address	Mailing Address
Street1: 6F & H CARLTON	Street1: P.O. BOX 763
Street2:	Street2:

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

City: UNINCORPORATED
State: VI ZIP: 00821
Island: ST. CROIX
Country: US VIRGIN ISLANDS
Country of Citizenship: USA

City: UNINCORPORATED
State: VI ZIP: 00821
Island: ST. CROIX
Country: US VIRGIN ISLANDS

Have you ever been convicted of a felony or crime involving moral turpitude? N
If YES, explain the nature of the crime, date of conviction, and place of conviction:

Person 4:

First Name: FATHY
Last Name: YUSUF
Date of Birth: 04/15/1941
Physical Address
Street1: #26A TUTU PARK MALL
Street2:
City: ST. THOMAS
State: VI ZIP: 00802
Island: ST. THOMAS
Country: UNITED STATES
Country of Citizenship: USA

Position/Title: TREASURER
Place of Birth: JORDAN
SSN: ██████████
Mailing Address
Street1: #26A TUTU PARK MALL
Street2:
City: ST. THOMAS
State: VI ZIP: 00802
Island: ST. THOMAS
Country: UNITED STATES

Have you ever been convicted of a felony or crime involving moral turpitude? N
If YES, explain the nature of the crime, date of conviction, and place of conviction:

Location Information

Location 1:

Physical Address
Street1: #14 EST. PLESSEN
Street2:
City: FREDERIKSTED
State: VI ZIP: 00840
Island: ST. CROIX
Country: US VIRGIN ISLANDS

Mailing Address
Street1: P.O. BOX 763
Street2:
City: CHRISTIANSTED
State: VI ZIP: 00821
Island: ST. CROIX
Country: US VIRGIN ISLANDS

Do you have employee(s) at this location? N Trade Name/DBA: PLESSEN ENTERPRISES, INC.
Explain in detail the type of proposed business activity for which the license(s) (has/have) been requested.
RETAIL INVESTMENT/PROPERTY LEASE

Location 2:

Physical Address
Street1: #6&9 EST. THOMAS
Street2:
City: ST. THOMAS
State: VI ZIP: 00802
Island: ST. THOMAS
Country: US VIRGIN ISLANDS

Mailing Address
Street1: P.O. BOX 763
Street2:
City: CHRISTIANSTED
State: VI ZIP: 00821
Island: ST. CROIX
Country: US VIRGIN ISLANDS

Do you have employee(s) at this location? N Trade Name/DBA: PLESSEN ENTERPRISES, INC.
Explain in detail the type of proposed business activity for which the license(s) (has/have) been requested.
RENTAL OF REAL PROPERTY OTHER THAN BUILDINGS

License Information

[REDACTED]

Location	License Type	Issue Date	Expire Date	Status	Fee Amount
#14 EST. PLESSEN, FREDERIKSTED,VI,00840 #6&9 EST. THOMAS, ST.THOMAS,VI,00802	RENT OF REAL PROPERTY OTHER THAN BUILDINGS (PLESSEN ENTERPRISES, INC.)	01/01/2013	01/31/2014	PENDING	130.00
Total Amount:					130.00

Payment Information

Billing Information	
First Name: WALEED Last Name: HAMED Card Type: VISA Credit Card Number: XXXX-XXXX-XXXX Expiration Date: 10/2014 Country: US	Street1: P.O. BOX 24363 Street2: City: CHRISTIANSTED State: VI ZIP: 00824 Island: ST. CROIX
BIR Information	
First Name: WALEED Last Name: HAMED	Relationship: VICE PRESIDENT

EXHIBIT D

CHECK NO. 0376

IBP - Web Page Dialog

Document Information

Document Type: Cheque Image Date Processed: 03/27/2013

Transit Number: 30585 Cheque Serial Number: 0000376

Account Number: 45012 Amount: (\$460,000.00)

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131-606-218

PLESEN ENTERPRISES, INC.
P.O. BOX 763
C-STED., VI 00321

PAY TO THE ORDER OF Waleed Hamed

four hundred sixty thousand

Scotiabank THE BANK OF NOVA SCOTIA
1 FORTY-NINTH AVENUE
HALF-WAY ST. CROSSING

FOR _____

THE BANK OF NOVA SCOTIA
3/27/13
MAR 27 2013
\$460,000.00

045 30585-002

045 30585-002

OK Print

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Document Information

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ENDORSE HERE:

DO NOT SIGN / WRITE / STAMP BELOW THIS LINE

FOR FINANCIAL INSTITUTIONS ONLY

Ben. [Signature]

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OK Print

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EXHIBIT

B

NOTICE OF DEPOSITING FUNDS IN ESCROW WITH THE CLERK OF THE COURT

Case
Hamed v. United
and Yusuf

Exhibit
B

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

YUSUF YUSUF, derivatively on behalf
of PLESSEN ENTERPRISES, INC.,

Plaintiff,

v.

WALEED HAMED, WAHEED HAMED,
MUFEED HAMED, HISHAM HAMED
and FIVE-H HOLDINGS, INC.

Defendants,

and

PLESSEN ENTERPRISES, INC.

Nominal Defendant.

Case No.:SX-13-CV-120

CIVIL ACTION FOR DAMAGES
AND INJUNCTIVE RELIEF

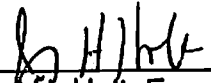
JURY TRIAL DEMANDED

13 APR 19 11:50

NOTICE OF DEPOSITING FUNDS IN ESCROW WITH THE CLERK OF COURT

COME NOW the individual defendants named in this case (Waleed Hamed, Waheed Hamed, Mufeed Hamed, and Hisham Hamed) by counsel and hereby give notice of depositing Two Hundred Thirty Thousand dollars \$230,000 with the Clerk of the Court (see Exhibit A), which represents 50% of the funds in the account of the Plessen Enterprises, Inc. at issue, which is the maximum possible amount due the shareholders bringing this derivative lawsuit. The amount retained by these defendants represents the amount due the Hamed family as 50% shareholders in Plessen Enterprises, Inc. from the total amount of funds in the account in dispute.

Dated: April 19, 2013



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

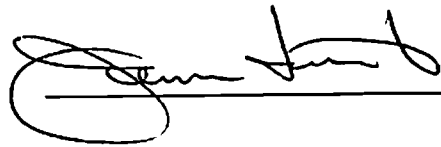
CERTIFICATE OF SERVICE

I hereby certify that on this 19th day of April, 2013, I served a copy of the foregoing by hand on:

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

And mailed to:

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





BANCO POPULAR.

BANCO POPULAR DE PUERTO RICO
PO Box 362708 San Juan, Puerto Rico 00936-2708
Orange Grove 190 20130418

**OFFICIAL CHECK
CUSTOMER RECEIPT
AND AGREEMENT**

Payee: CLERK OF THE SUPERIOR COURT

Check No.

Date: 04/18/2013

Remitter: WALEED HAMED

Amount: \$230,000.00

Fee: \$15.00

Total: \$230,015.00

190 VI45917 0391 04/18/2013 14:54 BankChecksCHCK

NOTICE TO CUSTOMERS:
You usually cannot stop payment of the attached check after you send it to the payee. If it is lost, stolen, or destroyed, notify Source Bank immediately. You may be required to buy an indemnity or surety bond before a replacement or refund is issued.

HK-001 / 05-06

THIS DOCUMENT HAS A VOID PANTOGRAPH - BORDER CONTAINS MICROPRINTING AND A TRUE WATERMARK - HOLD TO LIGHT TO VERIFY WATERMARK



BANCO POPULAR.

BANCO POPULAR DE PUERTO RICO
PO Box 362708 San Juan, Puerto Rico 00936-2708
Orange Grove 190 20130418

OFFICIAL CHECK

Check No.

Date 04/18/2013

215

PAY: TWO HUNDRED THIRTY THOUSAND
DOLLARS AND 00/100

\$230,000.00

Over \$25,000.00 Two Signatures Required

TO THE CLERK OF THE SUPERIOR COURT
ORDER OF

Re: Plessen Enterprises Yusuf Shareholders

REMITTER: WALEED HAMED
FDIC Member and Federal Reserve System

Authorized Signature

Authorized Signature



JA-1884

GOVERNMENT OF THE VIRGIN ISLANDS

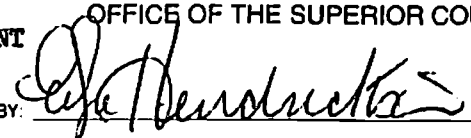
SUPERIOR COURT
ST. CROIX DIVISION

No. 049070

_____, ST. CROIX, V.I.

RECEIVED FROM			CASE OR PROCEEDING		
WALEED HAMED			YUSUF YUSUF OBO-PLESSEN ENTERPRISES, I VS WALEED HAMED, HISHAM HAMED, ET AL		
DATE	CASE NO.	CODE	ORIGINAL AMOUNT	AMOUNT RECEIVED	BALANCE DUE
4/19/13	CV 120/13	4	230,000.00	230,000.00	0.00

CKf- _____ OFFICE OF THE SUPERIOR COURT
INTEREST BEARING ACCOUNT
 CODES:
 1. SUPPORT
 2. BOND
 3. EXECUTION
 4. MISC.

BY: 

WHEREFORE, Defendants respectfully request an expedited hearing and an Order clarifying the scope of United's disclosure of financial statements.

Date: May 16, 2013

Respectfully Submitted,

DEWOOD LAW FIRM
Attorneys for Plaintiffs

By: *Nizar A. DeWood*
Nizar A. DeWood, Esq.
(VI Bar No. 1177)
2006 Eastern Suburbs, Suite 102
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F. (888) 398-8428

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 16th day of May, 2013, I caused a true and exact copy of the foregoing Motion To Clarify Scope of Preliminary Injunction regarding United's Financial Statements and Access to United's Financial Systems, Memorandum of Law and Exhibits A through G, and Proposed Order to be served on counsel for the Plaintiff at the below address via mail and email.

Joel H. Holt
Law Office of Joel H. Holt
2132 Company Street
Christiansted, VI 00820
Holtvi@aol.com

Carl Hartmann, Esq.
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Christiansted, VI 00820
carl@carlhartmann.com

/s/ Nizar A. DeWood

Nizar A. DeWood

IN THE SUPERIOR COURT OF THE VIRGIN ISLANDS

DIVISION OF ST. CROIX

MOHAMMAD HAMED	:	
	:	CIVIL NO. SX-12-CIV-370
Plaintiff	:	
	:	CIVIL ACTION
	:	
Vs.	:	ACTION FOR DAMAGES
	:	
FATHI YUSUF	:	MEMORANDUM OF LAW IN SUPPORT OF
UNITED CORPORATION	:	DEFENDANTS' MOTION TO CLARIFY
	:	SCOPE OF PRELIMINARY INJUNCTION
	:	WITH RESPECT TO UNITED
Defendants	:	CORPORATION'S FINANCIAL
	:	STATEMENTS, AND ACCESS TO
	:	UNITED'S FINANCIAL SYSTEMS

**MEMORANDUM OF LAW IN SUPPORT OF DEFENDANTS' MOTION TO CLARIFY
SCOPE OF PRELIMINARY INJUNCTION WITH RESPECT TO UNITED
CORPORATION'S FINANCIAL STATEMENTS, AND ACCESS TO UNITED'S
FINANCIAL SYSTEMS**

COME NOW, Defendants United Corporation and Fathi Yusuf and respectfully file this Memorandum of Law in Support of Defendants' Motion to Clarify Scope of Preliminary Injunction Order with Respect to United Corporation's Financial Statements, right of access to sensitive financial data and trade secrets, access to passwords and computer codes, and third party access to United's financial statements. In light of the Court's preliminary injunction forcing a purported general partner, Defendant Yusuf, to jointly manage an at-will "partnership" with four designees of a disabled and retired partner, this Court should clarify its sweeping preliminary injunction with respect to 1) the scope of access to United's financial statements, 2)

the protection of passwords to critical financial systems, 3) the period of time United is required to provide a designee of Plaintiff Hamed with financial statements.

For the below reasons, that court should grant this Motion, and conduct a full evidentiary hearing to determine the appropriate parameters for disclosures of Defendant United's financial data and secrets.

I. PRELIMINARY BACKGROUND

On April 25th, 2013, this Court issued a Preliminary Injunction Order, which provides among other things:

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 representatives, and Yusuf, or his designated representatives, jointly managing each store, without unilateral action by either party, or representatives affecting the managing, employees, methods, procedures and operations.

Out of abundance of caution, Defendants seek clarification of this Court's order as to the dissemination of financial documents, trade secrets, access to its computers as well as to restrict which parties may view these materials.

More importantly, Defendants seek to address the continuous and baseless allegations of misconduct that seem to be Plaintiff's theme from day one in this litigation. Frankly, whether it is allegations of Defendant Yusuf "screaming" and "threatening" to close the stores, to baseless allegations of employee threats and intimidation, to allegations of Defendants finally crossing the "Rubicon" this Court has been unusually swayed by these sensational allegations without a single fact supporting them, other than the self-serving testimony of Waleed Hamed, Mufeed

Hamed, and Waheed Hamed. Unfortunately, this Court never noted that each of these individuals is the subject to a civil lawsuit for conversion, accounting, breach of contract, and unjust enrichment. What else will a Hamed designee testify to other than highly charged emotionally baseless allegations against Defendant Yusuf?

Now new allegations of the Defendants acting in bad faith is coming from Attorney Carl Hartmann as a pretext to Hisham Hamed's request for financial statements. This of course is to impart the impression of uncooperative Defendants who have no regard for this Court's Preliminary Injunction order. According to the Plaintiff, first, it was scary Defendant Yusuf shutting down everything and intimidating the employees and suppliers. Of course, these allegations were accepted by the court with nothing more than the oral testimony of Hamed designees who themselves are being sued for financial misconduct by the Defendants.

Now Plaintiff launch another sensation: Defendants refuse to respect the Court's order. This has forced Defendants to seek the Court's intervention in all matters that may be construed as falling within the ambit of the Court's Preliminary Injunction Order. As such, this Motion is appropriate to outline critical facts concerning the past management practices at United Corporation as they pertain to the operations of the Plaza Extra stores, and the need to maintain appropriate security and mechanism in place to resolve this case.

There is no dispute that Defendant Fathi Yusuf has always been the ultimate decision maker. This was the status quo then, and it should remain so now. The court order states in no uncertain terms in its Preliminary Injunction Order "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.**" Preliminary Injunction Order.

Now Defendant Yusuf is forced to co-manage an at-will oral “partnership” with designees that are the subject of several lawsuits for accounting, conversion, breach of contract, and constructive trust. Additionally, as recently as March 17th, 2013, Waleed Hamed, Mufeed Hamed have displayed nothing short of contempt for the assets and funds of Plessen Enterprises, Inc. to enrich the personal interest. Waleed Hamed and Mufeed Hamed issued a check drawn on Plessen’s operating account causing Plessen to become immediately unable to pay its short term obligations. This behavior of Plaintiff’s own designees is the root cause of Defendants desire to cease their business relationship with Plaintiff Hamed.

While Defendants respectfully disagree with the Court’s sweeping Preliminary Injunction Order¹, Defendants desire to ensure that the terms of the Preliminary Injunction Order is clear. The current untenable situation between the purported general partner Defendant Yusuf and designees of Plaintiff Hamed has rendered operations of Plaza Extra impossible.

Based on the below points of facts and legal authority, and reincorporating the facts and arguments of Defendants’ May 9th, 2013 Motion to Modify the Preliminary Injunction Order to Terminate certain employees of United Corporation, Defendant respectfully request an immediate hearing to determine the scope of access to United’s financial systems and information.

I. FACTS

1. On September 17th, 2012, Mohammed Hamed filed a civil action against Defendants seeking a judicial declaration of a partnership, along with a Motion for Temporary

¹ Defendants have filed an Emergency Motion to Stay Enforcement of the Preliminary Injunction; Motion for Bond Redetermination, and a Motion to Permit the Termination of Employees Waleed Hamed, Mufeed Hamed, and Wadda Charriez.

Restraining Order/or Preliminary Injunction. Plaintiff renewed same TRO Motion on January 8th, 2013.

2. On October 17th, 2012, Defendants filed a Rule 12(b)(6) Motion, which to date remains pending before this court.
3. On January 25th and February 1st, 2013, the Court held a hearing on Plaintiff's Preliminary Injunction. At the hearing, the following pertinent facts emerged:
 - a. The parties entered into an oral agreement in 1986, where each party is entitled to fifty percent (50%) of the profits of the operations of the Plaza Extra stores.
 - b. Defendant Fathi Yusuf has been the exclusive decision maker, and has undertaken all liabilities concerning the operations of the supermarkets.
 - c. Defendant Fathi Yusuf has always been the sole decision maker. Plaintiff Hamed testified that Defendant Yusuf is in "charge of all three stores." *January 25th, 2013 TRO Hearing 210:21-24, EXHIBIT D.*
 - d. In 1996, Plaintiff Hamed retired. A power of attorney was prepared authorizing Waleed Hamed to act on Plaintiff Hamed's behalf. Plaintiff Hamed testified that he "cannot do nothing" in the stores since 1996 because of his illness. *January 25th, 2013 TRO Hearing 210:21-24, EXHIBIT D.*
 - e. In March 2012, Plaintiff received a document titled "Notice of Dissolution of Partnership." The Court acknowledged the dissolution notice, but noted that the parties did not agree to the terms. This notice of dissolution which would have effectively terminated the purported partnership was ignored by the court with respect to its legal effect.

4. On April 25th, 2013, the Court granted Plaintiff's Motion for Temporary Restraining Order and Preliminary Injunction, and found that Plaintiff was likely to prevail on the merits concerning the existence of an at-will oral partnership.
5. On March 27th, 2013 Mufeed Hamed, and his brother Waleed Hamed, signed and executed a check in the amount of \$460,000 payable to Waleed Hamed drawn on an account from Plessen Enterprise, Inc. ("Plessen"). See Check No. 376 attached as **Exhibit C**.
6. Plessen Enterprises, Inc., ("Plessen") a duly organized Virgin Islands real estate holding company, saw its operating bank account effectively reduced to almost zero as a result of Mufeed Hamed and Waleed Hamed's unlawful conduct of issuing a check for \$460,000 without authorization or notice to Plessen for their personal gain.
7. Because of Mufeed and Waleed Hamed's unlawful conduct which demonstrates these employees lack of loyalty and diligence in matters relating to custody of funds, an appropriate civil suit has been filed, captioned as *Yusuf v. Waleed Hamed, Mufeed Hamed, et al.*, Case No. SX-13-CV-120 to vindicate Plessen's interest as well as those of its shareholders. This case remains pending and has been assigned to the Honorable Harold Willocks of the Virgin Islands Superior Court, St. Croix Division.
8. On May 9th, 2013, Defendants filed a Motion to Modify the April 25th, 2013 Preliminary Injunction Order to terminate the employment of Waleed Hamed, Mufeed Hamed, and

Wadda Charriez. The grounds for the termination of each of these employees is outlined in Defendants' Motion.

Plaintiff's New Allegations

9. On May 3rd, 2013, Plaintiff's son Hisham Hamed requested for the first time in 27 years a copy of financial statements for the Plaza Extra Stores. Although it is unclear as to why Hisham Hamed has taken a sudden and immediate interest in these financial statements. Hisham Hamed was advised by both Defendant United's President and Comptroller John Gaffney that same financial statements would be provided within the coming weeks.
10. When asked about the purpose of the financial statements, Hisham Hamed refused to answer. When Defendant United inquired as to which third parties these statement would be viewed by, Hisham Hamed still refused to answer, other than to say that the Court's order says so. See *Affidavit of Maher Yusuf*, **EXHIBIT A**. See *Affidavit of John Gaffney*, **EXHIBIT B**.
11. Between May 3rd and May 14th, 2013, an unexplained flurry of emails with numerous allegations were sent by Attorney Carl Hartmann to Defendants' counsels. These emails contained baseless accusations of Defendants' failure to abide by the terms of the Preliminary Injunction Order by refusing to provide Hisham Hamed with immediate financial statements.
12. Hisham Hamed then began requesting access to the passwords of critical financial systems. United Corporation became very concerned about Hisham Hamed's sudden interest to immediately access critical information without supervision, especially when

Hisham Hamed has never accessed the financial information on United's accounting systems. This concern arises out of the following series of events:

- a. On January 9th, 2013, United saw the unexplained loss of virtually its entire corporate files in its Plaza Extra Sion Farm location. Virtually every documents, bylaws, and corporate documents were completely removed from the Plaza Extra store in Sion Farm, St. Croix location. See *Affidavit of Maher Yusuf*, attached as **EXHIBIT A**.
 - b. On December 18th, 2012, United's St. Thomas accounting system was completely "wiped out" in the Tutu Park, St. Thomas location. Fortunately, accountant Ayman Khalid and comptroller John Gaffney had made a backup of the system, and were able to restore it on St. Croix. See *Affidavit of John Gaffney*, **EXHIBIT B**.
13. On May 9th, 2013, Attorney Carl Hartmann sent an email to the undersigned counsel alleging that United does not wish to provide Hisham Hamed with financial statements. See May 9th, 2013, Hartmann email as **EXHIBIT E**.
14. On May 10th, 2013, Attorney Hartmann sent another email. This time with more sensational hearsay allegations by no one other Hisham Hamed. See May 9th, 2013, Hartmann email as **EXHIBIT F**.
15. In a span of a week, there has been a concerted effort to portray Defendants as defying the Court's Preliminary Order.

16. Each of the allegations in those emails are over exaggerated and conceal Defendants own valid concerns as to the use, access, and security of Defendant United's systems. *See Affidavit of Maher Yusuf, EXHIBIT A.*
17. With major civil actions pending against Plaintiff Hamed's designees Waleed Hamed, Mufeed Hamed, and Waheed Hamed, Defendant United inquired of Hisham Hamed about the need to properly supervise all access to its financial information, computers, and systems.
18. To date, Plaintiff Hamed has not set foot in any of the stores, and is virtually without knowledge as to a single fact on the ground at any of the Plaza Extra Stores, other than through what his designees tell him. The same designees who are the subject of numerous law suits for various misconduct, and are at extreme odds with the purported managing partner.
19. With these security breaches occurring, and with the Court's Preliminary Injunction Order essentially forcing Defendant Yusuf to work jointly with designees who are accused of embezzlement of funds, Defendants seek a Court order restricting the access to sensitive financial information, and limit the supervision of all parties.

II. ISSUES

1. Whether the Court should clarify the April 25th, 2013 Preliminary Injunction Order, and order proper security measures for Defendant United's financial systems, documents, and restrict the access of these information to the proper parties?

III. ARGUMENTS

A. Standard of Review: Modifying Preliminary Injunction Orders

A court can modify a preliminary injunction order for reasons of equity in light of changes in the facts or for any other good reason. *Loudner v. U.S.*, 200 F.Supp. 2d 1146, 1148 (D. S.D. 2002). As the Ninth Circuit explained, “[a] district court has inherent authority to modify a preliminary injunction in consideration of new facts.” *A & M Records, Inc. v. Napster, Inc.*, 284 F.3d 1091, 1098 (9th Cir.2002) (citing Sys. Fed'n No. 91, *Ry. Employees' Dep't v. Wright*, 364 U.S. 642, 647–48, 81 S. Ct. 368, 5 L.Ed.2d 349 (1961); *Tanner Motor Livery, Ltd. v. Avis, Inc.*, 316 F.2d 804, 810 (9th Cir.1963)).

In Third Circuit, modification of preliminary injunction is proper only when there has been change of circumstances between entry of injunction and filing of motion that would render continuance of injunction in its original form inequitable....*Tehan v. Disability Mgmt. Servs., Inc.*, 111 F. Supp. 2d 542 (D.N.J. 2000).

Because of changed factual circumstances, mainly the sudden and inexplicable immediate demand for financial statements, access to United’s financial systems, and in light of previous security breaches, this court may conduct a hearing to determine the scope of access and third party supervision of United’s financial systems.

B. With Deadlocked management, the Court must issue an order clarifying the scope and access to Defendant United’s financial systems.

As stated in Defendants’ previous Motions, it is well settled that partners may agree that one or more of them will have exclusive control over the management of the partnership business, so that a managing partner, a designated number of named partners, senior partners, or

voting partners can be given the exclusive control of the partnership business. Here, the record is clear that Defendant Fathi Yusuf² is the person responsible for all management decisions, and the operation of the three Plaza Extra Stores as illustrated by Plaintiff Hamed's own testimony "**Mr. Fathi the one. He in charge for it**" and that Defendant Yusuf is in charge "**for all the three store.**" January 25th, 2013 TRO Hearing 210:21-24, **EXHIBIT D.** (Emphasis Supplied). "**Mr. Yusuf he is in charge for everybody**". January 25th, 2013 TRO Hearing p. 201:2-5, **EXHIBIT E.** (Emphasis Supplied).

C. Because Plaintiff Hamed has never managed the affairs of the Purported "Yusuf and Hamed" Partnership, and to be unable to do so, the Court must clarify how Plaintiff's designees may access critical financial systems belonging to Defendant United.

Even when the Court declared the likelihood of the existence of an at-will oral partnership, the Court did not consider the fact that Plaintiff Hamed is utterly incapable of managing the affairs of this previously non extant "Yusuf & Hamed partnership." As Plaintiff Hamed has stated so eloquently, "**getting old. I can't do nothing.**"

This Court also failed to consider that the Preliminary Injunction Order has resulted in the untenable situation of forcing Defendant Yusuf, who by the Court's own finding is a full purported partner, to manage the store with three Hamed designees whose personal interests are at extreme odds with those of Defendant Yusuf. In its Preliminary Injunction Memorandum Opinion the Court's quick reference to allegations of financial misconduct by designee Waleed Hamed failed to appreciate the conflict that has made management impossible.

² The Court has deemed for purposes of the Preliminary Injunction that Fathi Yusuf is a purported partner of a partnership called the "Yusuf and Hamed" partnership.

Thus before the Court is the following question: How can the Court force a partner to work with the other partner's designee who being accused of outright theft and are the subject of numerous lawsuits by the managing partner?

D. A Clarifying Order is Necessary to Protect The Confidential Financial Information of Untied Corporation.

At this point, before the Court is the following surreal situation:

1. A purported partner, Mohammed Hamed who "can't do nothing" has appointed four designees, three designees of which are the subject of various lawsuits for accounting, conversion, breach of contract, and constructive trust.

2. The disappearance of United's entire corporate file from the Plaza Extra – East store, especially when these files have existed for decades without problem, only to conveniently disappear at the outset of the dispute between Defendant Yusuf had with Waleed Hamed regarding defalcated funds.

4. The unexplained computer failure of the financial system on December 15th, 2012, and the unusual inquiry by Waheed Hamed for a backup of the data. This is especially suspect since Waheed Hamed had never utilized the computer system containing virtually all of the financial records of Plaza Extra.

See *Affidavit of Maher Yusuf*, **EXHIBIT A**; See *Affidavit of John Gaffney*, **EXHIBIT B**.

It is well established that the power to manage a partnership is not a delegable power that a partner can simply assign to another person without the express consent of the other managing "partner" especially one as Defendant Yusuf who from the outset of this joint venture /

partnership / business agreement has been the driving force in managing all affairs of the Plaza Extra operations.

Here, Waleed Hamed is asked to explain how he acquired millions of dollars' worth of securities listed in detailed fashion in his 1992 and 1993 Tax Returns. Defendant Hamed not only refuses to provide an explanation to his employer, but has taken it upon himself to defend his position by filing procedural defenses, instead of coming forward with a full accounting and documents addressing Defendants concerns. To expect a managing partner to co-manage an operation with someone he views as having defalcated substantial assets from the operations of the Plaza Extra Stores is untenable. As such, appropriate restrictions must be placed to ensure that all financial information, passwords, and passcodes are properly protected.

IV. CONCLUSION

The Court should enter a detailed and clear Order protecting the financial statements, computer and accounting systems of United Corporation. The Court's Preliminary Injunction Order is vague as to these issues. Further, because the Court is now forcing a purported managing partner to operate a business with Plaintiff designees that are the subject of several lawsuits for conversion, theft, and breach of contract, among others, the Court should clarify the scope of access to United's financial statements.

Finally, Plaintiff Mohammed has made clear that he "cannot do nothing" in reference to his ability to manage any of the affairs of the partnership or joint venture. This has been the case for the last 17 years. Plaintiff Mohammed Hamed's designees are now engaged in numerous civil actions with the Defendants. Because the Court is now forcing Defendant Fathi Yusuf to

maintain a working relationship with Plaintiff Hamed's designees who have engaged in various misconduct, the Court should immediately reconsider its April 25th, 2013 Preliminary Injunction Order.

As such, the Court should grant this Motion to Modify the Preliminary Injunction Order, and allow Defendant Yusuf to exercise his full rights, whether as the sole general managing "partner" or as a corporate officer of United Corporation.

Date: May 16, 2013

Respectfully Submitted,

DEWOOD LAW FIRM

Attorneys for Plaintiff

By: _____



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F. (888) 398-8428

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 16th day of May, 2013, I caused a true and exact copy of the foregoing Motion to Clarify and Proposed Order to be served on counsel for the Plaintiff at the below address and by email.

Joel H. Holt
Law Office of Joel H. Holt
2132 Company Street
Christiansted, VI 00820

Carl Hartmann, III
5000 Estate Coakley Bay, L-6,
Christiansted, St. Croix, VI 00820

/s/ Nizar A. DeWood

Nizar A. DeWood

EXHIBIT

A

AFFIDAVIT OF MAHER YUSUF

Gaffney to provide him with the available profits & loss statements for 2011 which dealt with the operations of the Plaza Extra Stores.

5. Hisham's sudden requests and refusal to discuss any restrictions on the use of the financial statements and unrestricted access to the accounting system has raised serious security concerns especially because of the complete meltdown of our financial system and computer in the Plaza Extra Store in St. Thomas on December 18th, 2012. At that time, the hard drive failed inexplicably and completely. If it was not for the backup that our controller John Gaffney put in place, we would have lost virtually everything, including tax records, and employee records among other things.
6. I told Hisham Hamed that providing password with full access to a vital financial system raises serious concerns. I asked why he wanted all of this access so suddenly, he refused to answer. He would not even agree to discuss a supervised access of the accounting system.
7. Moreover, on January 9th, 2013, I noticed that the entire United Corporation file went missing from the Plaza Extra – East store. Not a single document could be found of the original bylaws, corporate charter, and other critical documents. These documents have existed for decades without problem.
8. I approached Wadda Charriez, the office manager about the file. She stated that Waleed Hamed had the file. I asked Waleed Hamed about the file, he told me that he did not have it, and to check back with Wadda Charriez.
9. It is unfortunate that United's original file would go missing and conveniently disappear after the dispute arose between United and Fathi Yusuf arose with Waleed Hamed.
10. With a missing large file with all of United Corporation's original documents, and a destroyed computer drive in December of 2012, the court must protect the unobstructed access of United's critical financial systems.
11. At this point, United has two pending lawsuits against Waleed Hamed and Waheed Hamed because of missing funds, and other conduct. This makes it next to impossible to provide Hisham Hamed with unrestricted access to United's accounting system.
12. To ensure that United does not act in a manner contrary to the court order, United is filing the Motion to clarify the preliminary injunction to obtain an Order from the court to protect United's financial system

13. Security of United Corporation's financial systems is very important and should not be given to untrained managers or individuals without proper supervision. The court should put in place the proper restrictions, including who may access such financial information and systems and under whose supervision.

Date: May 15, 2013



Maher Yusuf, as president of United Corporation

EXHIBIT

B

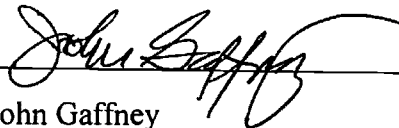
AFFIDAVIT OF JOHN GAFFNEY

5. Then Hisham Hamed requested the password to Peachtree Accounting database. Hisham's requests for financials and passwords were a daily occurrence. At one point, I told him I didn't think the provision of system passwords should come from me.
6. As an accountant for almost 40 years, it is highly unusual for a manager to request access to the entire financial database. The reason being is to preclude tampering, and avoid unauthorized access that may occur when system is not logged off. Most importantly, it prevents the corruption of the database.
7. Hisham has not indicated to me why he needs the password to the accounting system, especially after the sudden and unexplained failure of the system in the Plaza Extra Store in St. Thomas. I implemented a backup system when I began my employment in October of 2012. Were it not my specific instructions to Nejeih Yusuf, one of the managers of the Plaza Extra store in St. Thomas, United would have lost virtually all accounting and financial information.
8. Notwithstanding the backup, we did lose some vital support records and had to reconstruct other work
9. On December 18th, 2012, I was advised that the entire hard drive crashed. I have requested Waheed Hamed to provide me with the actual drive to send to a hard drive retrieval service in Florida.
10. If it wasn't for the backup it would have been virtually impossible to do any of the regulatory quarterly VIESA report, W-2s for 2012 for the employees, and other tax obligations of United Corporation.
11. On December 24th, 2013, I asked Ayman Khaled to obtain the hard drive so we could attempt data recovery. Ayman made repeated requests to Waheed Hamed, but the hard drive was never provided to me, nor to any of United's corporate officers.
12. Security and redundancy are paramount in every accounting system. Passwords to such critical financial systems should not be given to untrained managers or individuals without proper supervision. Messers. Hamed have no general accounting training and have no specific training related to the financial databases that are the subject of the passwords they seek. This lack of training and inability to operate the systems properly will likely lead to corruption of the databases and a myriad of problems that will result from such corruption.

13. While the Hamed designees are entitled to view information, and request copies of reports, data, and completed financial statements, providing direct access to the computer databases of a financial system could easily result in the same being compromised. As such, providing a password to untrained and unfamiliar persons is against sound financial and management policy.

14. I attest that the above is true to the best of my knowledge.

Date: May 15, 2013


John Gaffney

EXHIBIT

C

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PLESSEN ENTERPRISES, INC.
P.O. BOX 763
C STED., VI 00821

0376
101-606/218

PAY TO THE ORDER OF Waleed Hamed

30585-002 045
THE BANK OF NOVA SCOTIA
3/27/13
MAR 27 2013
\$460,000.⁰⁰/₁₀₀

four hundred sixty thousand
045 30585-002
DOLLARS

Scotiabank
THE BANK OF NOVA SCOTIA
1000 WALKER BLVD
FREDERICTON, ST. JOHN'S, NS

FOR [Redacted]

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EXHIBIT

D

January 25th, 2013 TRO Hearing 210:21-24

1 A Nobody else. If I die or I -- after I give my
2 son the power of attorney, yes, he could because I'm not
3 working. I getting old. I can't do nothing.

4 Q How long is your partnership with Mr. Yusuf
5 supposed to last? When does it end?

6 A Forever. We start with Mr. Yusuf with the
7 supermarket and we make money. He make money and I make
8 money, we stay together forever.

9 MR. DAVID: Okay. One moment, Your Honor, I
10 maybe done.

11 **(Discussion off the record.)**

12 BY MR. DAVID:

13 Q Sir, have you ever signed any -- strike that.
14 Are you aware that there is a lease?

15 A I don't know. I didn't hear you.

16 Q Is there a lease for the St. Thomas store?

17 A Lease?

18 Q Lease.

19 A To St. Thomas store?

20 Q Yes, sir.

21 A Mr. Fathi the one. He in charge for it.

22 Q What other stores is Mr. Fathi in charge of?

23 A For all the three store.

24 Q That's all I have, sir. Thank you.

25 A You're welcome.

EXHIBIT

E

January 25th, 2013 TRO Hearing p. 201:2-5

1 A Yes, sir.

2 Q And who is your oldest son? Who is your oldest
3 son?

4 A Mr. Yusuf he is in charge for everybody.

5 Q What is your oldest son's name? Who is your
6 oldest son?

7 A My oldest son is Waleed Hamed.

8 Q And did there come a time that you stopped
9 working in the business every day?

10 A No.

11 Q Okay. Tell me what you did in the business?

12 A He used to work with me and in the supermarket,
13 without payment before we open. They build a beam and
14 they have somebody from St. Lucia, Charlie, he used to
15 work, and he will help him hold the beam with him until 12
16 o'clock in the night.

17 Q Okay. After a while did you get the supermarket
18 open?

19 A After the work in the supermarket.

20 Q Okay.

21 A And Mr. Yusuf tell me, you is my partner, not
22 your son. Your son employees, the two, 4.65 an hour, and
23 I like any employees. I tell him I'm not saying nothing,
24 you is my partner. Whatever you say I agree with you.

25 Q Okay.

EXHIBIT

F

EMAIL from Carl Hartmann dated May 9th, 2013

From: [Carl Hartmann](#)
To: dewoodlaw@gmail.com
Subject: A very polite request
Date: Thursday, May 09, 2013 9:40:18 AM

Attorney DeWood:

This is a request for your assistance in complying with the Court's order – I am making it informally to you without copies to others. I will not attach it or refer to it in any communications with the Court. It is also the last and only such informal request I will make.

I preface this by noting that I have a lot of experience in enforcing court orders. This includes obtaining multiple contempt determinations. Please see, as an example, my website with regard to Jackson v. City of Albuquerque. <http://www.federal-litigation.com/Cases/Jackson%20Contempt%20Brief.pdf>

The idea in responding to a judge's order is to avoid upsetting him with obvious crap. We have strongly counseled our clients on cooperating with your clients, being professional, being responsive and trying to jointly manage in a non-confrontational manner. They have avoided hostile actions and anything that would expose your clients to embarrassment.

Your filing of an action against Wadda was not a good start and sets a bad tone. I understand you are considering Joel's request to withdraw. Similarly, Shawn has been trying, politely, to get the 2011 Plaza Extra Supermarket financials from Mr. Gaffney for almost a week now. (See email below.)

PLEASE do not confuse our polite and respectful approach, or our client's non-confrontational efforts to obtain compliance with tentative or weak responses. They are not.

To this end, Mr. Gaffney had a conversation with Shawn in which he first told him that he "would not be able to get the 2011 financials done until Friday" and later said that the real problem was that the financials were available but that he would have to "get permission to give them to Shawn." These financials are not for use in the litigation – this is a business request.

So "checking whether he can release" the most basic financials to the Hamed – information expressly mentioned by the Court -- is not the way to do this.

Please – to avoid something that your clients will not want in terms of their relationship to the Court – please instruct them to comply with the letter and spirit of the order.

In the present that means communicating where necessary – and not withholding materials the Court specifically mentioned in its order.

Please ask your client to instruct Mr. Gaffney to turn the financials, whatever form they are in, over by the end of day.

Carl Hartmann

--- On **Sat, 5/4/13**, **Hisham (Shawn) Hamed** <shawnhamed@yahoo.com> wrote:

From: Hisham (Shawn) Hamed <shawnhamed@yahoo.com>

Subject: Financials

To: "John Gaffney" <johngaffney@tampabay.rr.com>

Cc: "Mike Yusuf" <mike@plazaextra.com>

Date: Saturday, May 4, 2013, 1:05 PM

John,

I want to thank you for informing me that in a couple days you should have 2011 financials that I requested to me, I will follow up with you on Tuesday. Also for letting me know that you are working with Margie to finish off Nov and Dec of 2012, and that if she doesn't do it you will, and get it to me.

However, I am somewhat concerned about your responses to my requests on the passwords and access -- where you said that I had to ask Mike or Ayman. I want to make it very clear from the start that neither of them can direct you to keep materials related to Plaza Extra Supermarkets from me. Please respond in writing that you will comply with my request -- or explain in a responsive email why you will not. Should you wish to meet with Mike and myself to clear this up, please set up a meeting convenient for the two of you and I will attend. I will make myself available anytime. We have to return to working jointly and not having secrets and secret instructions internally.

Regards,

Hisham (Shawn) Hamed

Plaza Extra West

US Virgin Islands

Tel: 340.719-1870

Fax: 340.719-1874

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.

)

EXHIBIT

G

EMAIL from Carl Hartmann dated May 13th, 2013

Nizar A. DeWood, Esq.

From: Carl Hartmann <carl@carlhartmann.com>
Sent: Monday, May 13, 2013 9:33 PM
To: Frank Massabki; Joseph DiRuzzo
Cc: Joel Holt; Japinga KiM; dewoodlaw@gmail.com
Subject: RE: Hameds v. Yusuf/United Corporation - response to May 11, 2013 e-mail

Attorney Massabki, Attorney DiRuzzo and Attorney DeWood:

I was traveling back to St. Croix, and responded to Attorney Massabki's email with the message below before I had a chance to talk to the client. My client informs me that while the 2011 financials were provided today (for which I thank you), three problems still remain:

1. There were no 2012 financials. As I said – they need not be in final form – whatever your client has needs to be provided immediately,
2. When the designee asked Mr. Gaffney for the financials, he was told the following – which is a violation of the Court's order. This must stop. Mr. Gaffney is now and has always been paid from Plaza Extra Supermarket accounts. In the hearing, he was asked if he even worked on United materials and he said "no." A request will be made courteously and professionally tomorrow for the 2012 financials in whatever form they are in. So your responsive letter should explain the contempt of any continuing refusal in clear, precise detail.

Gaffney stated that he reports only to Mike. When I asked Mike for them he asked me to sign that I received it after I signed them he gave me a cover letter stating it is for management purposes only and not to be used in litigation or a third party. Reports have a footer on each page stating for management purposes only.

3. The idea that your client is affixing restraining language or legends on the very most basic management materials is error for two reasons. First, your client has no more right to the basic financials of the stores than does mine – and thus cannot "condition" turnover. Second, your client has obviously instructed Mr. Gaffney of the same thing – more contempt. Again, please address what legal right exists for this under the order in your responsive letter.

Not that it is any of your client's business, but the immediate use is not for litigation. Folks are actually still trying to do business and operate in the real world. But that hardly matters, as the conditions are meritless. I will expect the 2012 materials completed to date, plus the related documents I have requested will be turned over tomorrow.

Thank you.

Carl Hartmann

From: Carl Hartmann [mailto:carl@carlhartmann.com]
Sent: Monday, May 13, 2013 7:36 PM

To: Frank Massabki
Cc: Joel Holt; Japinga KiM
Subject: Re: Hameds v. Yusufs/United Corporation - response to May 11, 2013 e-mail

Please attach the financials if they were not provided today.

Carl
carl@carlhartmann.com

On May 13, 2013, at 7:11 PM, Frank Massabki <FMassabki@fuerstlaw.com> wrote:

Dear Attorney Hartmann:

I understand that you sent to Attorney DiRuzzo an e-mail dated May 11, 2013.

Attorney DiRuzzo will be out of the office for the next few days on business travel.

Nevertheless, please note that we will be providing a substantive response to your e-mail by tomorrow.

In the interim, please feel free to contact me via reply e-mail or telephone at (305) 350-5690.

Thank you.

Frank Massabki, Esq.
Fuerst Littleman David & Joseph, PL
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**IN THE SUPERIOR COURT OF THE VIRGIN ISLANDS
DIVISION OF ST. CROIX**

MOHAMMAD HAMED By His Authorized Agent WALEED HAMED)	
)	
Plaintiff,	)	CIVIL NO. SX-12-CV-370
v.)	
)	
FATHI YUSUF AND UNITED CORPORATION	)	ACTION FOR DAMAGES INJUNCTIVE AND DECLARATORY RELIEF JURY TRIAL DEMANDED
)	
Defendant.)	
)	

**OPPOSITION TO MOTION TO RECONSIDER AND MODIFY
PRELIMINARY INJUNCTION TO TERMINATE EMPLOYEES
MUFEED HAMED, WALEED HAMED AND WADDA CHARRIEZ**

On May 9, 2013, defendants filed three motions, including a motion to reconsider and to modify the preliminary injunction to terminate Mufeed Hamed, Waleed Hamed, and Wadda Charriez. This memorandum addresses that motion for reconsideration or to modify this Court's Order.

While defendants' motion discusses multiple issues, it limits the relief sought to the request to modify the order entered in order to terminate these three employees for "employee misconduct," so this opposition memorandum is limited to that issue. However, one other matter needs to be addressed in light of the defendants' arguments regarding the alleged dissolution of the partnership.

The plaintiff will first discuss the applicable standard for addressing such motions, before addressing these issues.

I. Applicable Procedural Standard For Addressing This Motion

Regarding Motions For Reconsideration, District Court Local Rule 7.3, applicable in this Court pursuant to Superior Court Rule 7, provides:

A party may file a motion asking the Court to reconsider its order or decision. . . .A motion to reconsider shall be based on:

1. intervening change in controlling law;
2. availability of new evidence, or;
3. the need to correct clear error or prevent manifest injustice.

Moreover, “new evidence” must be based on something that was not available prior to the filing of the motion for reconsideration. See, e.g., *Worldwide Flight Services v. Government of Virgin Islands*, 51 V.I. 105, 2009 WL 152316 at *3 (VI Supreme Ct. 2009) (motions for reconsideration are not for arguments that could have been raised before but which were not raised); *In re Hartlage*, 54 V.I. 449, 2010 WL 4961744 (VI Supreme Ct. 2010) (motions for reconsideration are not permitted to address evidence that was previously available).

Regarding the Motion to Modify an Injunction, as noted by the case cited by defendants, *Tehan v. Disability Mgmt. Servs., Inc.*, 111 F. Supp. 2d 542 (D.N.J. 2000), the Third Circuit has adopted the following standard for granting such motions:¹

In the Third Circuit, however, “modification of a[] [preliminary] injunction is proper only when there has been a change of circumstances between entry of the injunction and the filing of the motion that would render the continuance of the injunction in its original form inequitable.” *Favia v. Indiana Univ.* 7 F.3d 332 (3d Cir.1993); see also *Township of Franklin Sewerage Auth. v. Middlesex County Utils. Auth.*, 787 F.2d 117, 121 (3d Cir.1986) (holding that “[t]he standard that the district court must apply when considering a motion to dissolve an injunction is whether the movant has made a showing that changed circumstances warrant the discontinuation of the order”). *Id.* at 550.

With these standards in mind, the plaintiff will now address the defendants’ arguments.

¹ While the Third Circuit no longer hears appeals from the local court system, absent a case on point from the VI Supreme Court, it can be presumed that local courts will still be guided by its decisions, particularly since the VI District Court is still bound by such holdings.

II. Dissolution of the Partnership

On April 25, 2013, the Court entered a preliminary injunction regarding a partnership formed in 1986, finding *inter alia* that a proposed notice of dissolution was given on February 12, 2012. (Memorandum ¶ 30 at p. 9.) The defendants argue that this finding somehow prohibits this Court from issuing an order dealing with the on-going business since it is now allegedly dissolved, citing *Browne v Ritchie*, 559 N.E. 2d 808 (Ill. App. 1 Dist. 1990). Presumably the defendants are relying upon provisions of Rule 7.3 in making this argument.

At the outset, the defendants misstate what the Court found in ¶ 30:

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 (footnote omitted). Settlement discussions followed those communications but have not to date resulted in an agreement. Tr. 58: 15-20, Jan. 25, 2013.

Thus, the Court only found that there was a "proposed" notice of dissolution, followed by unsuccessful negotiations to reach an agreement as to how the partnership should be dissolved.² Indeed the Court heard testimony at length about the continued, current operations of the three partnership assets—the three supermarkets—so dissolution of the businesses has not yet even begun to occur.

² The exhibits referenced by the Court in ¶ 30 (Exhibits 10, 11 and 12) do not state "this partnership is dissolved." For example, Exhibit 11 states Yusuf's "desire" to terminate the partnership, followed by an analysis of what "will" need to be done to reach a "well-executed agreement" to effectuate such a termination. Similarly, Exhibit 12 uses the word "proposed" in outlining the partnership dissolution.

Thus, the *Browne* decision cited by the defendants is easily distinguishable, as the withdrawing partner had given notice that he was in fact terminating his business and dissolving the partnership. When his partner sued him to enjoin him from doing so, the Court held that a partner cannot be forced to continue the partnership since a partnership is not a contract that requires a partner to continue against his wishes. *Browne, supra* at 141-142.

In this case, Yusuf did not give notice that he intended to immediately cease and desist as to all operations. To the contrary, the parties then began to negotiate while continuing to operate the business which is the normal process set forth in the UPA.

More importantly, regardless of whether a dissolution notice had been given, a partnership that is "winding up" pursuant to Chapter VIII of the Uniform Partnership Act (UPA), codified at 26 V.I.C. §§ 171-177, can clearly still seek court oversight regarding this process pursuant to 26 V.I.C. §173(a).³ Thus, even if Yusuf had formally given notice of dissolving the partnership, the plaintiff could still seek the judicial relief under the UPA, as codified in the Virgin Islands, which contains multiple remedies that can be sought from the Court.⁴

Thus, the defendants' assertion that this Court could no longer issue orders about the operation of the partnership is without merit as (1) no dissolution notice was

³ It would be an absurd result if a party who is violating the partnership rights of his partner could avoid judicial scrutiny simply by saying "I dissolve this partnership."

⁴ In fact, the plaintiff has asked that the Court find that he is entitled to "buy out Yusuf" and operate the businesses without him pursuant to 26 V.I.C § 121(5) and §§ 121-123 as part of the relief sought in the complaint.

given (only a “proposed” notice was sent) and (2) even if a notice had been given, a court can become involved in the winding up of a partnership if needed.

III. “Employee Misconduct”

The request to modify or reconsider the injunction to now allow the defendants to terminate two members to the Hamed family and a key accounting employee, whose value was recognized by this Court,⁵ appears to be purely vindictive in nature. In any event, the relief sought has no merit under a motion for reconsideration or a motion to modify this Court’s Order.

A. Motion To Modify To Allow Termination

The request to modify the preliminary injunction to allow such action fails to meet the required standard for granting such motions, which requires a showing of “a change of circumstances between entry of the injunction and the filing of the motion that would render the continuance of the injunction in its original form inequitable.” *See Tehan, supra* (citing *Favia v. Indiana Univ.*, 7 F.3d 332 (3d Cir.1993)).

⁵ As this Court stated in part in Finding ¶ 40 at p. 11-12 (emphasis added):

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*), 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*. . . .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; 143:1 7-146:19; 166:21-167:8, Jan 25, 2013*.

In this regard, there has been no change in the circumstances regarding Wadda Charriez, as the alleged basis for terminating her is the same evidence already presented to this Court. Rather than re-argue “old facts,” the defendants have to show that Ms. Charriez has done something “new” warranting modification of the preliminary injunction to allow the defendants to fire her without consulting the Hameds.

Similarly, the request to terminate Waleed Hamed for alleged “**employee misconduct**” is based on a lawsuit filed against Waleed “Wally” Hamed (attached as Exhibit D the defendants’ motion) on January 6, 2013, well before the hearings in late January.⁶ Again, that evidence that was also available to the defendants prior to this Court’s order, so it is not “new” evidence since the entry of the injunction. Thus, this evidence is not a proper basis for seeking modification of this Court’s order.

The derivative lawsuit filed by Yusef Yusef on behalf of Plessen Enterprises, Inc., against Mufeed “Mafi” Hamed and Waleed “Wally” Hamed (attached as Exhibit A to the defendants’ motion) is also not a change of circumstances since the preliminary injunction was issued. Equally important, that lawsuit involves another business that has nothing to do with the Plaza Extra Supermarkets. Thus, **those allegations have nothing to do with “employee misconduct”** which further demonstrates that the relief now sought is simply vindictive in nature.

In summary, none of the proffered reasons for seeking a modification of the preliminary injunction meets the required standard for granting such motions, as none of

⁶ As noted in the defendants’ motion, there is a pending motion to dismiss this case due to the statute of limitations defense, as the alleged misconduct occurred **in the 1990’s**.

the events relied upon in seeking the relief in question occurred after the issuance of the preliminary injunction order.⁷

B. Motion To Reconsider To Allow Termination

Recognizing the weakness of its motion to modify the preliminary injunction, the defendants then ask this Court to reconsider its Order to allow Fahti Yusuf to terminate anyone he wants with or without cause. Presumably the defendants are relying upon the “clear error” provisions of Rule 7.3 in making this argument.

In making this argument, the defendants attempt to narrowly construe Mohammad Hamed’s role in the partnership, suggesting his interest as a partner are no longer active. However, as this Court noted in Finding ¶ 31 at p. 9:

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.*

One of the exhibits the court relied upon in making this finding was Exhibit 6 to Yusuf’s 2002 deposition, where he stated under oath in part as follows:

4. Mohamed Hamed gave his eldest son, Waleed (a/k/a Wally), power of attorney to manage his interests for the family.

Thus, clearly Yusuf acquiesced in his partner’s son performing in his father’s stead and representing his father’s interest in the partnership, which he has now done for more than 15 years -- just as his own sons now do much of what he once did.

⁷ None of this evidence is “new” either so these arguments fail under Rule 7.3 as well.

The Court clearly recognized this point, stating in part in Conclusion ¶ 14 at p. 18 as follows:

14. . . . 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.

Indeed, every Hamed or Yusuf family member who testified at the hearing acknowledged that this management arrangement had been in place for years. Moreover, Fathi Yusuf never testified to the contrary, nor has he submitted any affidavits that contradict the Court's findings. To the contrary, his sworn statements made more than a decade ago in the 2000 litigation in St. Thomas demonstrate that the stores have operated this way for a long, long time.

Thus, once the testimony of Mohammad Hamed quoted by the defendants is put into its historical context, as the Court did, there is no "clear error" in the Court's findings, as suggested by the defendants. Indeed, this Court's order was amply supported by the evidence of the management in place before Yusuf began to unilaterally remove funds and take other actions inconsistent with the joint management of the partnership.

Indeed, the Court found in Conclusion ¶ 21 at p. 20 that a preliminary injunction was warranted in part because:

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).

The desire to fire two members of the Hamed managers because of (1) an unrelated business transaction and (2) conduct that allegedly occurred in the 1990's is precisely the type of arbitrary conduct that warrants the relief entered, as such protection is clearly needed in this case.

In summary, the request to reconsider this Court's Order so as to allow Fathi Yusuf to terminate employees with or without cause is without merit under the applicable Rule 7.3 standard.

IV. Conclusion

For the reasons set forth herein, it is respectfully submitted that the motion to reconsider or modify the preliminary injunction so as to allow the defendants to discharge Mufeed Hamed, Waleed Hamed and Wadda Charriez be denied.

Dated: May 16, 2013



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

Carl J. Hartmann III, Esq.
Co-Counsel for Plaintiff
5000 Est. Coakley Bay, L6
Christiansted, VI 00820
340-642-4422

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 16th day of May 2013, I caused a true and exact copy of the foregoing to be served by mail and email to:

Joseph A. DiRuzzo, III
Fuerst Ittleman David & Joseph, PL
1001 Brickell Bay Drive, 32nd. Fl.
Miami, FL 33131
305-350-5690
Email: jdiruzzo@fuerstlaw.com

NIZAR A. DEWOOD
The Dewood Law Firm
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Email: dewoodlaw@gamil.com



Joel H. Holt, Esq.

As the Third Circuit noted in *Hoxworth v. Blinder, Robinson & Co.*, 903 F. 2d 186 (3rd Cir. 1990), while Rule 65(c) requires a bond to be posted, "the amount of the bond is left to the discretion of the court." *Id.* at 210. The Court is free to consider the testimony and exhibits in setting that amount. Here there was significant testimony and evidence over two days of hearings as to the financials records and business operations of the Plaza Extra Supermarkets submitted by both parties.

After the hearing in this case, the Court then required the plaintiff to post a substantial bond before the preliminary injunction took effect pursuant to Rule 65(c). Thus, the setting of the bond in this case fully complied with the procedural requirements of Rule 65.

Thus, this Court can summarily reject the defendants' argument that a second "bond" hearing is required. Indeed, many of the cases cited by the defendants are easily distinguishable as they involve cases where no bond was set, so a remand was required to address the posting of a bond. *See, e.g., Howmedica Osteonics v. Zimmer, Inc.*, 461 Fed. Appx. 192, 198 (3d Cir. 2012)(court erred in not setting bond after converting TRO--where a bond had been set--to a preliminary injunction with no bond requirement); *Zambelli Fireworks Mfg. Co., Inc. v. Wood*, 592 F.3d 412, 426 (3d Cir. 2010)(court erred in not requiring bond just because defendant did not ask for one); *Hoxworth v. Blinder, Robinson & Co.*, 903 F. 2d at 210 (3rd Cir. 1990)(court erred in not requiring a bond).

Once this point is clarified, the motion for reconsideration boils down to two remaining factual arguments regarding the bond. First, did this Court err in allowing a portion of the escrowed profits to be used as additional security for the bond? Second, should the Court consider the additional evidence submitted with the defendants' motion

in setting the bond? Each will be addressed separately after a brief review of the applicable standard for such motions.²

I. Applicable Procedural Standard For Ruling On This Motion

District Court Local Rule 7.3 (Motions for Reconsideration), applicable in this Court pursuant to Superior Court Rule 7, provides:

A party may file a motion asking the Court to reconsider its order or decision. . . .A motion to reconsider shall be based on:

1. intervening change in controlling law;
2. availability of new evidence, or;
3. the need to correct clear error or prevent manifest injustice.

Moreover, it is firmly established that "new evidence" must be something that was not available to the moving party prior to the filing of the motion for reconsideration. See, e.g., *Worldwide Flight Services v. Gov't of Virgin Islands*, 51 V.I. 105, 2009 WL 152316 at *3 (VI Supreme Ct. 2009)(motions for reconsideration are not for arguments that could have been raised before but which were not raised); *In re Hartlage*, 54 V.I. 449, 2010 WL 4961744 (VI Supreme Ct. 2010)(motions for reconsideration are not permitted to address evidence that was previously available). See also, *Doebler's Pennsylvania Hybrids, Inc. v. Doebler*, 2003 U.S. Dist. LEXIS 27098, at p. 4 (M.D. Pa. Oct. 15, 2003) (in a case cited by the defendants, the court held that only evidence that was not previously available could be considered in a motion for reconsideration).

II. The Escrowed Profits

In setting the bond, the Court stated in part:

² The defendants also argued that the bond should be placed in an interest bearing account. The funds in the Banco Popular Securities are already in such an account, but the plaintiff has no objection if the \$25,000 deposit with the Clerk of Court is removed to an interest bearing account. Thus, this point is not contested.

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.

In this regard, it was established at the preliminary injunction hearing that all of the profits from the operations of the Plaza Extra Supermarkets since 2003 have been deposited into this Banco Popular account, where they remain. Those accounts now contain in excess of \$43,000,000. See Court's Finding ¶ 37 at p. 11. See also, 1/25 Tr, p 41:5-25; p 42:1-18; PEx 26.

The defendants assert that the Court erred in allowing this account to be used as part of the bond, arguing that these are United's funds so they cannot be used as part of the bond. Presumably, the defendants are relying upon the "clear error" provisions of Rule 7.3 in making this argument.

Incredibly, the defendants make this argument even though **they still admit** on page 3 of their companion *Motion to Reconsider and Modify Preliminary Injunction to Terminate Employees Mufeed Hamed, Waleed Hamed and Wadda Charriez* (filed at the same time as this "bond" motion) that they previously agreed in arguments to this Court **that Mohammad Hamed is entitled to 50% of the profits of the operations of the Plaza Extra Supermarkets.** It is hardly error for this Court to rely upon such judicial admissions of a party in making a finding that the plaintiff is entitled to 50% of these escrowed profits.

Indeed, as this Court noted in its findings, the defendants have *repeatedly* admitted that one-half of these profits belong to Hamed. See, e.g., Finding ¶ 15 at 5 (emphasis added):

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*.

Even United's President, Maher Yusuf, conceded this fact. 1/25 Tr at p 214:2-11.

Thus, the multiple admissions made under oath by Yusuf and United, as well as the judicial admissions included in pleadings signed by their lawyers, that the plaintiff is entitled to 50% of these profits is an established fact--it is an uncontested admission by both defendants.

As such, this Court certainly did not err in finding that 50% of these funds belonged to the plaintiff. Moreover, the use of the plaintiff's 50% interest of this \$43 million fund as part of the bond is certainly "erring on the high side" of what is needed to protect the defendants, as they have urged the Court to do, citing *Mead Johnson & Co. v. Abbott Labs., supra*.

Finally, it is certainly proper for the Court to use such funds as part of the bond. See, e.g., *Scarcelli v. Gleichman*, No. 2:12-cv-72-GZS, 2012 WL 1430555, at *5 (D. Me. Apr. 25, 2012) ("the Court concludes that it need not require Plaintiff to post any additional security. In light of the escrow established by this injunction, the Court is satisfied that the escrowed amounts would pay any costs and damages should it later be determined that Defendant Gleichman was wrongfully enjoined or restrained by this Order."). Indeed, the defendants have not challenged this holding, as they only argued that the escrowed funds were United's funds, which is untrue as noted since it is conceded that 50% of the funds belong to the plaintiff.

Thus, the finding that half of these escrowed profits (totaling in excess of \$43,000,000) could and does serve as half of the bond was not "clear error," so that this aspect of the defendants' motion should be denied.

III. The "New Evidence" Submitted By The Defendants

The defendants also argue that this Court should have considered hypothetical costs that the defendant may incur that were not previously submitted to the Court, including (1) salaries to three employees they want to fire, (2) rent allegedly due from 1994 through the current date, (3) legal fees that will be incurred in complying with the injunction and (4) the alleged loss of the company's "net equity."

Presumably the defendants are relying upon the "new evidence" section of Rule 7.3 in making this argument. However, these items are not "new" as this information was available at the time of the hearing. Thus, this Court can summarily reject these other items as not being proper matters to consider on a motion for reconsideration.

Moreover, none of these other items would have justified any increase in the bond even if they had been timely raised for the following reasons:

1. **Rent**-The defendants claim there is rent due United Corporation by Plaza Extra for the Sion Farm location. However, any rent allegedly owed United Corporation by Plaza Extra for the Sion Farm supermarket is not an asset of the partnership, so it is not a "cost" that is at risk of being lost by the partnership due to the preliminary injunction. Indeed, the preliminary injunction does not prohibit United Corporation from pursuing this debt.³

³ If there is any question about whether United is prohibited from pursuing such a claim now, it can be clarified by stipulation, just as the matter of the shopping center bank account was clarified by mutual action. See **Exhibit 1**. There are also multiple

2. **Net Equity**-While John Gaffney states that United has a "net equity" of \$68,000,000, no one explains how this amount, which is nothing more than an accounting figure, will be "lost" to United if the preliminary injunction is found to have been entered improperly. Of course, if the injunction is found to have been entered improperly, **this accounting figure will be the unchanged**, which is clearly why even Mr. Gaffney did not suggest otherwise. In short, this is a "lawyer created" claim, created to try to inflate the bond requirement in this case, which has no factual basis or legal support.
3. **Legal Fees**-While the defendants assert that legal fees between \$255,000 and \$425,000 will have to be incurred in dealing with the criminal case and the 17 pending personal injury lawsuits against Plaza Extra, those costs outlined in the declaration of Nizar DeWood are nothing but speculation.⁴ Indeed, no estimate of the time needed or the hourly fees is included in his declaration, so it is impossible to verify how such calculations were made. However, they are clearly inflated. For example, DeWood asserts that there will be a cost to obtain Hamed's consent to continue each personal injury lawsuit with current counsel in place, but those letters were sent by Hamed before this motion was even filed (at

problems with this rent claim, including a statute of limitations defense to amounts more than six years old, as well as a dispute as to the amount of the current rent due. See **Exhibit 2**. Indeed, the declaration by Mr. Gaffney as to amounts allegedly due before he was hired in September of 2012 (1/31 Tr at p 68) are beyond his personal knowledge, so his declaration should be stricken as to this point. However, these issues need not be addressed since this claim for rent is not relevant to the bond issue.

⁴ It is the defendant's burden to prove the amount needed for a bond, which cannot be based on counsel's speculation. See, *AB Electrolux v. Bermil Indus. Corp.*, 481 F. Supp. 2d 325, 336-37 (S.D.N.Y. 2007) (The defendant has burden as to demonstrating a rational basis for the amount required for a bond and it **cannot be speculative**).

no cost to Plaza Extra). **See Group Exhibit 3.** Likewise, the preparation of any revisions of counsel's engagement and an alleged indemnification agreement will be the same for each case, so this would just be a one-time charge, not an expense that will re-occur in each case. In short, these estimated figures have no reasonable basis for the Court to realistically evaluate in setting the bond. Moreover, the bond as set includes the plaintiff' 50% interest in the escrowed profits in excess of \$43,000,000, so even if this cost had been properly calculated, it is covered by this bond.

4. **Employee Wages-**As for the claim that the bond needs to be increased to address the alleged need to fire three employees, that argument likewise has no merit. First, as noted in the opposition to the companion motion addressing this issue, which is incorporated herein by reference, there is no merit to any such firings. Second, even if these employees were discharged, the partnership would still have to hire individuals to work these three key positions, so there is no "cost" that needs to be protected by the issuance of the preliminary injunction. Finally, the bond as set, which includes the plaintiff' 50% interest in the escrowed profits in excess of \$43,000,000, certainly covers this potential cost.

Once these alleged "costs" are analyzed, it is clear they are nothing more than defense counsel crying "wolf" to try to get an unwarranted increase in the size of the bond. Thus, even if these figures had been timely raised, they would not have supported an increase in the bond as set.

In summary, once analyzed, the "evidence" submitted in support of the need for an increased bond must fail. It is untimely and, even if it had been timely raised, it is unsupported by any evidence that would warrant an increase in the bond. **Indeed, if**


anything, the fact the defendants cannot come up with anything more than what they have now submitted to the Court demonstrates (1) that the bond as set by the Court is certainly reasonable and (2) if anything, the Court has erred on the "high side" of the bond needed to protect the defendants.

IV. Conclusion

This Court held a two-day hearing on the preliminary injunction. It then requested findings of fact and conclusions of law to be submitted. The defendants did not seek to sever the bond issue. Instead, their litigation strategy was to proceed as if they would prevail on the merits and ignore this issue. As such, they cannot now argue that they lacked an opportunity to address the bond issue.

In any event, for the reasons set forth herein, it is respectfully submitted that the Court did not err in setting the bond, so that the motion to reconsider the bond should be denied, except that the plaintiff has no objection to the bond being placed in an interest bearing account.

Dated: May 16, 2013



Joel H. Holt, Esq.
Counsel for Plaintiff
2132 Company Street,
Christiansted, VI 00820

Carl J. Hartmann III, Esq.
Co-Counsel for Plaintiff
5000 Est. Coakley Bay, L6
Christiansted, VI 00820


CERTIFICATE OF SERVICE

I hereby certify that on this 16th day of May 2013, I served a copy of the foregoing Reply by hand on:

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

And by email (jdiruzzo@fuerstlaw.com) and mail to:

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



Joel H. Holt, Esq.

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

MOHAMMED HAMED by his authorized agent)
WALEED HAMED,)
)
) Plaintiff,)
)
) v.)
)
) FATHI YUSUF and UNITED CORPORATON,)
)
) Defendants.)

CIVIL NO. SX-12-CV-370
ACTION FOR DAMAGES;
JURY TRIAL DEMANDED

ORDER

THIS MATTER is before the Court on Defendant's Motion to Clarify the Court's Preliminary Injunction Order entered on April 25, 2013. Defendant's Motion is unopposed by Plaintiff; moreover, the parties have stipulated to the same. Thus, being fully advised in the premises it is specifically


ORDERED that Defendants' Motion is GRANTED.


ORDERED that Defendant United's Tenant Account No. 9xxx1923 in NOT subject to this Court's Preliminary Injunction Order, entered on April 25, 2013.

ORDERED that no signature shall be required from Plaintiff Hamed (or his authorized agent) for disbursement of any funds from Defendant United's Tenant Account No. 9xxx1923, only.

ORDERED that this Order be served on all parties FORTHWITH, and the Bank of Nova Scotia.


Dated: *May 7, 2013*


Judge of the Superior Court

ATTEST: VENETIA H. VELAZQUEZ
Clerk of the Court
By: 
Chief Deputy Clerk

5/8/13

EXHIBIT
1
Numbering No. 5208

CERTIFIED TO BE A TRUE COPY
This *8th* day of *May* 20 *13*
VENETIA H. VELAZQUEZ, ESQ.
CLERK OF THE COURT
By  Court Clerk

IA 1943

JOEL H. HOLT, ESQ. P.C.

2132 Company Street, Suite 2
Christiansted, St. Croix
U.S. Virgin Islands 00820

Tele. (340) 773-8709
Fax (340) 773-8677
E-mail: holtvi@aol.com


May 11, 2012

Fathi Yusuf
United Corporation
4C & 4D Sign Farm
St. Croix, USVI 00821

Dear Mr. Yusuf:

Wally Hamed received the Statement of Rent allegedly due for Plaza Extra dated May 4, 2012, signed by Najeh Yusuf on your behalf, a copy of which is attached. He has requested that I respond to it on behalf of his family. Mr. Hamed finds it difficult to believe that you think the store has agreed to pay such rent, as it has not. Indeed, it would be a dereliction of the manager's interest to ever agree to such rent. Your efforts to act unilaterally are not in the interest of the business or its owners, much less its creditors, customers and the community it serves. Such actions will not be recognized as valid. Please have your lawyer contact me if you have any questions.

Cordially,


Joel H. Holt
JHH/jf

cc: Nizar Dewood



JA-1944

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

PLAZA EXTRA

PHONE: 809-778-6240
FAX: 809-778-1200

P.O. BOX 763, CHRISTIANSTED
ST. CROIX, U.S. VIRGIN ISLANDS 00821

Carl A. Beckstedt, III, Esq.
Beckstedt & Associates
5025 Anchor Way, Suite 2
Christiansted, VI 00820

May 8, 2013

Re: Plaza Extra Litigation

Sent via Email: carl@beckstedtlaw.com

Dear Carl:

To follow up on the April 25, 2013 memorandum opinion and order entered by Judge Brady that was sent to you last week, this letter will confirm that the Hamed interests in Plaza Extra want you to continue as counsel in all litigation for the Plaza Extra Supermarkets that you are currently handling. Please keep me informed of all developments as you do in the normal course of business regarding these cases.

I want to assure you that any bills you present for such work will be approved by the Hameds promptly so payment can be made. Please note that if you are doing work for United Corporation or any member of the Yusuf family, you need to bill that separately to them. The Hamed make no claim as to corporate operation of the shopping plaza or the rentals therefrom. If you feel that Plaza Extra Supermarket should pay for any work for United or any member of the Yusuf family because it is arguably related to the supermarket business, just let me know and I will review it (and approve it if correct).

Please let me know if you have any questions. If there are any outstanding bills owed to you at the current time, please let me know and I will make sure they are promptly processed.

Yours,



Wally Hamed



From: Carl Hartmann <carl@carlhartmann.com>
To: Joseph DiRuzzo <JDiRuzzo@fuerstlaw.com>; dewoodlaw <dewoodlaw@gmail.com>
Cc: Joel Holt <holtvi@aol.com>; Kim Japinga <kim@japinga.com>
Subject: Letter to Attorney Dema and Attorney Beckstedt
Date: Wed, May 8, 2013 7:23 pm
Attachments: image.pdf (250K)

Attorney DiRuzzo and Attorney DeWood:

Appended is a letter from Willie Hamed to Attorney Dema and Attorney Beckstedt regarding ongoing legal matters.

No response has been received yet.

Please contact Joel Holt if you have any questions or we can be of further assistance.

Thank you,

Carl Hartmann

From: Carl Hartmann [mailto:carl@carlhartmann.com]
Sent: Wednesday, May 08, 2013 3:19 PM
To: 'Joseph DiRuzzo'; 'dewoodlaw@gmail.com'
Cc: 'Joel Holt'; 'Kim Japinga'
Subject: Letter to Attorney Beckstedt and his response

Attorney DiRuzzo and Attorney DeWood:

Appended are two letters. The first is from Wally Hamed (as his father's designee) to Attorney Beckstedt regarding ongoing legal matters.

The second is the response.

A similar letter is being sent by Willie Hamed – to include Attorney Dema – which I will provide as soon as we have a response as well.

As was the case with the stipulation regarding the tenant account, we are trying to cooperate in moving matters along.



PLAZA EXTRA

U. S. VIRGIN ISLANDS

PHONE: 340-775-5646 FAX 340-775-5766

John K. Dema, Esq.
LAW OFFICES OF JOHN K. DEMA, P.C.
1236 Strand Street, Suite 103
Christiansted, VI 00820-5008

Carl A. Beckstedt, III, Esq.
Beckstedt & Associates
5025 Anchor Way, Suite 2
Christiansted, VI 00820

Re: Plaza Extra St. Thomas/Tutu Park litigation

Sent via email: jdema@ljkdc.com, carl@beckstedtflaw.com

Dear Counsel:

To follow up on the memorandum opinion and order entered by Judge Brady that was sent to you last week, this letter will confirm that the Hamed interests in Plaza Extra want you to continue as counsel in all litigation for the Plaza Extra Supermarkets that you are currently handling. Please keep me informed of all developments as you do in the normal course of business regarding these cases.

I want to assure you that any bills you present for such work will be approved promptly so payment can be made. If you are doing work for any member of the Yusuf family, you need to bill that separately to them. If you feel that Plaza Extra Supermarket should pay for any work for any member of the Yusuf family because it is related to the supermarket business, just let me know and I will review it (and approve it if correct).

Please let me know if you have any questions. If there are any outstanding bills owed to you at the current time, please let me know and I will make sure they are promptly processed.

Yours,



Willie Hamed

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

MOHAMMAD HAMED By His Authorized Agent WALEED HAMED)	
)	
Plaintiff,	)	CIVIL NO. SX-12-CV-370
v.)	
)	
FATHI YUSUF AND UNITED CORPORATION	)	ACTION FOR DAMAGES INJUNCTIVE AND DECLARATORY RELIEF JURY TRIAL DEMANDED
)	
Defendant.)	
)	

**OPPOSITION TO DEFENDANTS' EMERGENCY MOTION TO
STAY PRELIMINARY INJUNCTION**

The plaintiff, Mohammad Hamed, hereby responds to defendants' motion to stay the preliminary injunction issued in this case. Presumably defendants filed pursuant to Rule 62(c). That rule deals with stays of an injunction pending appeal, as the defendants have also filed a notice of appeal.

Without any evidentiary support, the defendants claim the preliminary injunction has caused it economic chaos, with secured and unsecured creditors "flapping in the wind," but those claims are unsupported by any affidavits or other evidence and in fact are untrue. See **Exhibit 1**. Likewise, the suggestion that the day-to-day supermarket operations will "grind to a halt" with the loss of "good will" as a result of the injunction is also unsupported by the evidence and is without merit. See **Exhibit 1**. Indeed, the only problem with the injunction to date is the defendants' failure to comply with it, which violations the plaintiff is trying to amicably resolve. See, e.g., **Exhibit 2**.

With this comment in mind, it is respectfully submitted that the motion be denied for the reasons set forth herein.

I. Applicable Standard For Reviewing Motions To Stay

The United States Supreme Court has succinctly set forth the standard for addressing motions to stay an order or judgment in *Hilton v. Braunskill*, 481 U.S. 770 (1987) as follows:

Different Rules of Procedure govern the power of district courts and courts of appeals to stay an order pending appeal. See Fed.Rule Civ.Proc. 62(c); Fed.Rule App.Proc. 8(a). Under both Rules, however, the factors regulating the issuance of a stay are generally the same: (1) whether the stay applicant has made a strong showing that he is likely to succeed on the merits; (2) whether the applicant will be irreparably injured absent a stay; (3) whether issuance of the stay will substantially injure the other parties interested in the proceeding; and (4) where the public interest lies. *Id* at 776.

With this standard in mind, the plaintiff will now address the defendants' motion.

II. Defendants have not made a strong showing they will prevail on the merits

In order to prevail on this issue, defendants need to make a "strong showing" they will prevail on the merits of the case, a difficult hurdle to overcome. In their motion, the defendants raise multiple arguments that have already been extensively briefed before this Court. As such, plaintiff will only briefly respond to these issues, which will be addressed in the order raised on pp. 6-12 of defendants' motion regarding the "likelihood of success on the merits."

1. "Damages Case"

The defendants argue that this is just a "damages case" so that equitable relief in the form of an injunction is improper. This Court took note of that assertion in Conclusion ¶ 18 at p. 19 of its Memorandum Opinion. This Court then established what is needed to demonstrate irreparable harm in Conclusion ¶ 19. After taking note of the

plaintiff's reasons for seeking injunctive relief in Conclusion ¶ 20, the Court explained in Conclusions ¶¶ 21-22 why the evidence in this case demonstrated that the plaintiff would suffer irreparable harm if injunctive relief were not granted, finding that such relief was warranted. Thus, these Conclusions explain why this is not just a damages case, so that basis for seeking a stay is without merit.

2. Statute of Frauds

The statute of frauds issue was extensively briefed by the plaintiff in his pre-hearing pleadings, as well as in his proposed findings of fact -- which are incorporated herein by reference. This Court then addressed this issue in Conclusions ¶¶ 6 and 7, p. 15, explaining why this defense was not applicable. Again, the Court's ruling on this issue explains why this basis for seeking a stay is without merit, so no further discussion of this issue is warranted.

3. Statute of Limitations

The statute of limitations defense was not previously raised in this case, nor was it raised in the pending motion for reconsideration of the preliminary injunction order. Thus, it is difficult to understand why it supports a new finding that the defendants have a strong likelihood of prevailing on the merits of this issue. In any event, Mohammad Hamed's claims are clearly not barred by the statute of limitations, as the partnership is still operational.

Indeed, Maher Yusuf (testifying as the President of United) stated at the January 25, 2013 hearing that his father and Mr. Hamed had a *presently effective* agreement to operate the three Plaza Extra Supermarkets (See 1/25 Tr at p 214:2-15):

Q Why are you sending the notices to Mohammed Hamed?

A Because Mohammad Hamed has a business agreement.

Q So he does have a business agreement?

A He does have a business agreement.

Q To operate the store?

A To operate the store.

Q And you understand the agreement is to share the profits 50/50?

A Yes.

Q And you're still sending these letters to Mr. Hamed in 2012 and 2013, so take it that business agreement is still in place?

A As far as I know.

Moreover, the violations of Hamed's partnership rights all occurred in 2012 and 2013, as noted in the hearing testimony and this Court's findings.

The defendants' motion also refers to Fathi Yusuf divesting himself of his interest in United, but the critical transfer of Yusuf's stock where he diluted his interest to 7.5% (which this Court found to be relevant in Finding ¶ 41, p. 12) was not known to Mr. Hamed until after this case was filed in 2012, so why the defendants think this issue is barred by the statute of limitations is unknown.¹

¹ This dilution of Yusuf's interest in United from a majority owner to a minority owner was first raised in pleadings in this case, as noted in the plaintiff's proposed findings:

96. The defendants have averred in pleadings before this Court that Yusuf recently diluted his ownership in United down to just 7.5%, arguing on page 11 of the defendants Rule 12 opposition memorandum (PEX 2, p 11) as follows:

Even if the Amended Complaint sufficiently alleges that a "Hamed & Yusuf partnership" exists, the only relief Mohammad Hamed would be entitled to is a fifty percent (50%) share of **Defendant Yusuf's 7.5% ownership of Defendant United's outstanding stocks.** (Emphasis added.)

Thus, the statute of limitations defense is not a valid defense, even if it had been timely raised, as the plaintiff's alleged breach of the partnership agreement all stem out of conduct that occurred in 2012 and 2013. As such, this argument does not support the entry of a stay of this Court's Order.

4. Retirement of Mohammad Hamed

The defendants' argue that the retirement of Mohammad Hamed is the equivalent of him withdrawing from the partnership and terminating his interest in the partnership, supposedly making him nothing more than a "creditor" of the partnership. Again, this argument was not previously raised.

In any event, while Hamed did not participate in the supermarket operations on a day-to-day basis after 1996, he testified that he gave his eldest son, Wally Hamed, a power of attorney to act for him and to undertake his responsibilities. Several years later Fahti Yusuf provided both sworn testimony and discovery responses stating that he acknowledged that Wally was acting for his father pursuant to this power of attorney. *Thus, Yusuf clearly agreed that the partnership was operating under these conditions.*²

² This issue was addressed at the hearing, as noted in Plaintiff's Proposed Findings and Conclusions ¶¶ 24-25:

24. In that litigation, Yusuf signed an affidavit stating in ¶¶ 2-5, and 7 as follows (Depo Exhibit 6 to PEx 1):

- Mohamed Hamed gave his eldest son, Waleed (a/k/a Wally), power of attorney to manage his interests for the family.

25. Consistent with Yusuf's affidavit, both Mohammad and Waleed Hamed testified -- and the Court finds -- that Hamed and Yusuf agreed that Waleed Hamed a/k/a Wally Hamed, would act on his father's behalf as to Hamed's partnership rights and obligations pursuant to a power of attorney. 1/25 Tr, pp 46:1-10; 47:5-7; 47:18-48:2 and 202:18-25.

This Court then found as follows at Finding ¶ 31 on p. 9:

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; 172:6-1 73:8; 202: 1 8-25, 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.

As such, the facts do not support a finding that the plaintiff had withdrawn from the partnership or terminated his interest. Indeed, Yusuf has never submitted any sworn statements to this effect either.

In short, this is just another (belated) “lawyer created” argument unsupported by any facts, so that this issue does not support the entry of a stay either.

5. Partnership Distributions

This Court found in Conclusion ¶ 13, pp. 17-18, that the plaintiff and Fathi Yusuf not only agreed to share profits, but in fact shared such profits from the supermarket operations. Defendants have both admitted this repeatedly, stating that not only is Mr. Hamed entitled to such profits -- but *has received them to date.* For example, in defendants' memorandum in support of their Rule 12 motion, the defendants admitted this (D.V.I. Docket No. 29 at p. 3)(emphasis added):

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....**Plaintiff Hamed received 50% of the net profits thereafter.**

As a result to these admissions, this Court stated in Finding ¶ 15 at 5 (emphasis added):

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*.

Even United's President, Maher Yusuf, conceded this fact. 1/25 Tr at p 214:2-11.³

As such, there was ample evidence of partnership distributions.⁴ Thus, this aspect of the defendants' motion must be denied as well.

³ Indeed, defendants admit on page 3 of their companion *Motion to Reconsider and Modify Preliminary Injunction to Terminate Employees Mufeed Hamed, Waleed Hamed and Wadda Charriez* (filed at the same time as this motion) that they previously agreed in arguments to this Court that Mohammad Hamed is entitled to 50% of the profits of the operations of the Plaza Extra Supermarkets.

⁴ As set forth in the plaintiff's proposed findings submitted to this Court, there is unrefuted testimony that these profits were split 50/50 between the plaintiff and Yusuf:

32. Over the years, Hamed and Yusuf have jointly shared the profits and losses. 1/25 Tr, p 44:12-15.

33. They shared profits from the Plaza Extra Supermarket operations in part by using them to purchase multiple properties throughout the Virgin Islands, including the real property where Plaza West is located, always splitting the ownership of these properties 50/50, with members of the each family owning 50% of each such corporation used to buy the properties. 1/25 Tr, pp 39:11-41:13.

6. Partnership “Termination”

This issue was addressed on pages 3 to 5 of the plaintiff’s response to the defendants’ motion for reconsideration or to modify the injunction, filed at the same time as this response. That argument is incorporated herein by reference, as there is no need to repeat it in full once again. As noted therein, this issue is also without merit.

III. The defendants are not irreparably harmed by the preliminary injunction

The defendants argue that they are irreparably harmed by the preliminary injunction, but they failed to submit any evidence to support this assertion. How can the Court even be expected to consider this critical issue without any evidence being proffered by the defendants to support these assertions? In any event, the dire consequences the defendants assert have created “irreparable harm” to them have not in fact occurred. See **Exhibit 1**.

Thus, despite their rhetoric, the defendants have not offered any evidence that would support a finding of irreparable harm to them as a result of the preliminary injunction, which only re-established the status quo that has existed for decades in running these very successful supermarkets.

IV. The preliminary injunction does not substantially injure other parties

The defendants failed to even address this issue, arguing instead that there would be no irreparable injury to the plaintiff if the motion to stay was granted. Of course, this assertion is directly contrary to the findings made by this Court, which found that the plaintiff would be irreparably harmed if the relief sought was not granted.

In any event, the defendants have made no showing that the preliminary injunction substantially injures any other party, so this factor is totally unsupported by any evidence as well.

V. The public interest lies with the issuance of the injunctive relief.

This Court fully addressed the public interest in Conclusions ¶¶ 26 and 27, p. 22. The defendants' bald assertion that these three stores will now close and these employees will be laid off is unsupported by any evidence. In fact, these three stores are all open and these employees all continue to be fully employed today. See **Exhibit 1**. As such, this argument is without merit as well.

VI. Rule 65(c)

This issue was addressed in full in the plaintiff's response to the defendants' motion challenging the bond required in this case, filed at the same time as this response. That argument is incorporated herein by reference, as there is not a need to repeat it in full here. As noted therein, this issue is also without merit.

VII. The Pending Rule 12 Motion

The defendants argue that this Court should have ruled on the pending Rule 12 motion before addressing the injunction issue. While a court may chose to proceed in that fashion, there is no requirement that it do so. In fact, the defendant did request such a ruling during the hearing or prior to the entry of the preliminary injunction.

Moreover, the Court's ruling makes it clear that the plaintiff has stated a viable claim and that he is likely to succeed on that claim, demonstrating that the pending Rule 12 motion is without merit and should be summarily denied. Indeed, the defendants'

Rule 12 memorandum as well as their reply memorandum both concede that the plaintiff is entitled to 50% of the profits, as repeatedly noted. Likewise, the plaintiff's opposition to the defendants' Rule 12 motion also makes it clear why that motion should be denied.

In any event, the fact that this motion is pending does not support the entry of a stay, particularly since it obviously has no merit.

VIII. Conclusion

As noted in *Millennium Pipeline Co., L.L.C. v. Certain Permanent and Temporary Easements*, 812 F.Supp.2d 273 (W.D.N.Y. 2011):

As one court has observed, "[l]ogic dictates that a court will seldom [issue an order or judgment and] then turn around and grant [a stay] pending appeal, finding, in part, that the party seeking [the stay] is likely to prevail on appeal, i.e. that it is likely that the court erred in [issuing the underlying order or judgment]." *Id.* at 275.

For the reasons set forth herein, it is respectfully submitted that this case falls within the mainstream of such motions, so that the motion to stay the preliminary injunction should be denied.

Dated: May 16, 2013



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

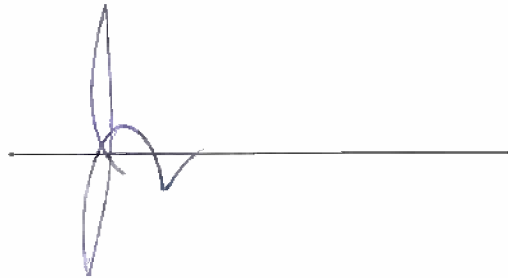
Carl J. Hartmann III, Esq.
Co-Counsel for Plaintiff
5000 Est. Coakley Bay, L6
Christiansted, VI 00820
Carl@carlhartmann.com
340-642-442

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 16th day of May 2013, I caused a true and exact copy of the foregoing to be served by mail and email to:

Joseph A. DiRuzzo, III
Fuerst Ittleman David & Joseph, PL
1001 Brickell Bay Drive, 32nd. Fl.
Miami, FL 33131
305-350-5690
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NIZAR A. DEWOOD
The Dewood Law Firm
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340-773-3444
Email: dewoodlaw@gmail.com

A handwritten signature in blue ink is positioned over a horizontal line. The signature is stylized and appears to be the name 'Nizar A. Dewood'.

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

MOHAMMAD HAMED by His Authorized Agent WALEED HAMED,)	
)	
<i>Plaintiff,</i>	)	CIVIL NO. SX-12-CV- 370
v.)	
	)	ACTION FOR DAMAGES INJUNCTIVE AND DECLARATORY RELIEF
FATHI YUSUF and UNITED CORPORATION,)	
)	
<i>Defendants.</i>	)	JURY TRIAL DEMANDED
)	

DECLARATION OF WALEED HAMED

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

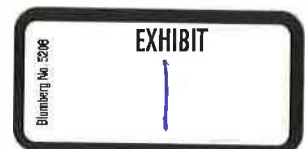
1. I have personal knowledge of the facts set forth herein.
2. Despite the defendants telling this Court that there are problems with secured and unsecured creditors, no such problems exist, as all creditors are being paid in the normal course of business. Indeed, no creditor has questioned anything regarding this Court's order.
3. The three Plaza Extra Supermarkets are open as usual, with all 600 employees working as scheduled, without any negative feedback from the employees or the public.

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

Dated: May 16, 2013



Waleed Hamed a/k/a Wally Hamed



JOEL H. HOLT, ESQ. P.C.

2132 Company Street, Suite 2
Christiansted, St. Croix
U.S. Virgin Islands 00820

Tele. (340) 773-8709
Fax (340) 773-8677
E-mail: holtvi@aol.com

May 7, 2013

Nizar A. Dewood, Esq.
2006 Eastern Suburb, Ste. 101
Christiansted, VI 00820

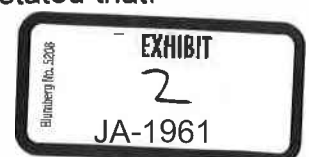
RE: Suit filed against WADDA CHARRIEZ, SX-13-CV-152

Dear Attorney DeWood:

I am writing you regarding the lawsuit you filed against Wadda Charriez on May 3rd. As you know, Ms. Charriez was specifically identified by Judge Brady as being an employee of Plaza Extra Supermarkets, at ¶ 40 of the opinion:

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*), 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 Plaintiffs 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.* (Emphasis added.)

In the Court's April 25th Order accompanying the memorandum opinion, he stated that:



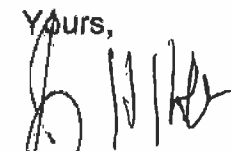
1. The operations of the three Plaza Extra Supermarket stores shall continue ***as they have throughout the years prior to this commencement of this litigation***, with Hamed, or his designated representative(s), and Yusuf, or his designated representative(s), ***jointly managing each store, without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

The bringing of a legal action against a Plaza Extra Supermarket management employee without an agreement of the Hameds violates the Court's order. Indeed, the retention of your firm to represent Plaza Extra Supermarkets without the approval of the Hameds violates the "without unilateral action" provisions of the Court's Order.

I prefer to resolve this breach of the Court's Order without having to involve the Court. As such, please remedy this breach by promptly dismissing this case this week and sending me a stamped copy of the Notice of Dismissal. Otherwise you will leave my client with no alternative but to ask that you and your client be held in contempt of the Court's Order.

If you have any questions, please let me know as well.

Yours,



Joel H. Holt
JHH/jf

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

MOHAMMAD HAMED By His Authorized Agent WALEED HAMED,)	
)	
Plaintiff,	)	CIVIL NO. SX-12-CV- 370
v.)	
)	
FATHI YUSUF and UNITED CORPORATION,	)	ACTION FOR DAMAGES
	)	INJUNCTIVE AND
	)	DECLARATORY RELIEF
Defendants.	)	JURY TRIAL DEMANDED
_____)	

**NOTICE OF SUPPLEMENTATION OF RECORD RE
MOTIONS FILED AFTER THE PRELIMINARY INJUNCTION WAS ENTERED**

The Plaintiff hereby gives notice of supplementing the record re the motions filed after the entry of the preliminary injunction with the following documents (listed in chronological order):

- 1) Email re notice of Mohammad Hamed filing tax returns (Exhibit 1).
- 2) New claim for additional back rent from United (landlord) to Plaza Extra (tenant) dating back to 1994 (Exhibit 2).
- 3) Directive from Yusuf (Plaza Extra letterhead) re no hiring of new employees (Exhibit 3).
- 4) Request For Clarification from Willie Hamed re Yusuf memo (Exhibit 4).

Dated: May 24, 2013



Joel H. Holt, Esq.
2132 Company Street,
Christiansted, VI 00820
holtvi@aol.com
340-773-8709

Carl J. Hartmann III, Esq.
5000 Est. Coakley Bay, L6
Christiansted, VI 00820
Carl@carlhartmann.com
340-642-4422

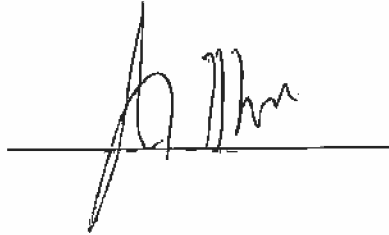
CERTIFICATE OF SERVICE

I hereby certify that on this 24th day of May, 2013, I served a copy of the foregoing Notice by hand on:

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

And by email (jdiruzzo@fuerstlaw.com) and mail to:

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

A handwritten signature in black ink, appearing to read "Christopher David", is written over a horizontal line.

From: Joel Holt <holtvi@aol.com>

To: jdiruzzo <jdiruzzo@fuerstlaw.com>; dewoodlaw <dewoodlaw@gmail.com>; c david <c david@fuerstlaw.com>; kglenda <kglenda@cameronlawvi.com>

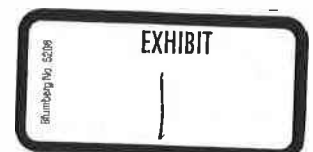
Bcc: carl <carl@carlhartmann.com>; kimjapinga <kimjapinga@gmail.com>; wallyhstx <wallyhstx@yahoo.com>; williemhamed <williemhamed@yahoo.com>; mafihamed <mafihamed@hotmail.com>; shawnhamed <shawnhamed@live.com>

Subject: Mohammad Hamed

Date: Thu, May 16, 2013 2:59 pm

Counsel-I want to let you know that my client, Mohammad Hamed, filed all of his previously un-filed tax returns today under the current VI program "Operation Last Chance" with the IRB, reporting 50% of the net income from the three Plaza Extra supermarkets as his income. The IRB was provided with a copy of Judge Brady's opinion (we had previously provided them with other documents as well). I have repeatedly questioned why you have allowed your clients to file tax returns claiming 100% of this income as their income. I would hope you would correct those filings to be consistent with what you and your clients have repeatedly told the Court--that my client is entitled to 50% of this net income. Please let me know if you have any questions.

Joel H. Holt, Esq.
2132 Company Street
Christiansted, St. Croix
U.S. Virgin Islands 00820
(340) 773-8709



DEWOOD LAW FIRM

2006 Eastern Suburb Suite 101
Christiansted, V.I. 00820
Admitted: NY, NJ, MD, & VI
T. 340.773.3444
F. 888.398.8428
info@dewood-law.com

BY: FIRST CLASS MAIL & EMAIL ONLY

May 17, 2013

Joel Holt, Esq.
2132 Company Street
Christiansted, VI 00820


Re: Rent Due – Plaza Extra – East Operations

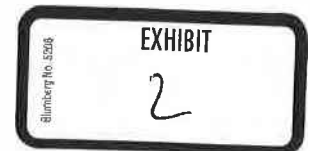
Dear Attorney Holt,

On behalf of United Corporation, the following is a notice of the value of rents due as follows:

Rent due for Plaza Extra – East		
Bay No. 1 January 1, 1994 through April 4, 2004		
69,680 SQ. FT. at \$5.55 10 years and 95 days	Balance Due	\$3,967,894.19
Bay No. 5 May 1, 1994 through October 31, 2001		
3,125 SQ. FT. at \$12.00 6 years and 184 days	Balance Due	\$243,904.00
Bay No. 8 April 1, 2008 through May 30, 2013		
6,250 SQ. FT. at \$12.00 5 years and one month	Balance Due	\$381,250.00
Total Amount Due		<u>\$4,593,048.19</u>

These amounts are undisputed, and have been outstanding for a very long time - before 2012. This amount does not reflect the rent increase requested and noticed to Mohammed Hamed since January 1, 2012. We reserve our client’s right for the additional rents due and owing based on the rent increase after January 1, 2012. Kindly review the amount with your client, and advise when a check can be issued. Thank you.

Sincerely,

Nizar A. DeWood, Esq.



JA-1966

UNITED CORPORATION^{DBA}

PLAZA EXTRA

U. S. VIRGIN ISLANDS

PHONE: 340-719-1870

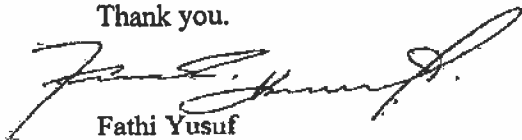
FAX: 340-719-1874

Date: May 21, 2013

To All:

Please note that there will be no new hiring of any family members. This applies to all members of the Yusuf and Hamed family. No wages, salaries, stipends or any kind of payment will be paid to any new hires.

Thank you.



Fathi Yusuf

Secretary & Treasurer





PLAZA EXTRA
U. S. VIRGIN ISLANDS
PHONE: 340-775-5646 FAX 340-775-5766

May 22, 2013

Dear Fathi Yusuf:

You sent a letter yesterday that ended by saying "No wages, salaries, stipends or any kind of payment will be paid to any new hires." Did you mean to say that Plaza Extra will not hire anyone else in the future? Please clarify.



Willie Hamed

Father's representative



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

MOHAMMAD HAMED By His)	
Authorized Agent WALEED HAMED,)	
	)	CIVIL NO. SX-12-CV-370
Plaintiff,)	
	)	ACTION FOR DAMAGES
vs.	)	INJUNCTIVE AND DECLARATORY
	)	RELIEF.
FATHI YUSUF AND UNITED)	
CORPORATION,	)	(JURY)
)	
Defendants.)	

ORDER DENYING BOND MODIFICATION

THIS MATTER is before the court on “Defendants’ Emergency Motion for Reconsideration of Preliminary Injunction Order and for Stay of Same Pending Posting of Adequate Bond,” filed May 9, 2013 and Plaintiff’s Opposition thereto filed on May 16, 2013.

By their Motion, Defendants seek (1) the scheduling of a bond hearing to determine a legally sufficient security to be posted by Plaintiff or, alternatively, the adoption of Defendants’ proposed bond figure of \$80 million; (2) an order directing Plaintiff to post the security bond with the Clerk of the Court in an interest bearing account until entry of final judgment; (3) an order staying the preliminary injunction order pending Plaintiff’s posting of the amended security; and (4) any additional relief deemed just under the circumstances.

The Court’s Order granting injunctive relief came after two days of evidentiary hearings, including legal arguments (January 25, 2013 and January 31, 2013) and extensive briefing on the facts and legal issues. No evidence was presented at the evidentiary hearing, or thereafter, relative to the costs and damages Defendants would sustain if it were to be determined that injunctive relief had been entered wrongfully. Even now, Defendants proffer no case law to the effect that a second and separate hearing on the setting of security bond is required or appropriate.

Defendants have admitted in this action that Plaintiff is entitled to 50% of the profits of the three Plaza Extra Supermarket stores. Evidence adduced at the hearing shows that profits from the operations of those stores since at least 2003 has been deposited into investment accounts now frozen in connection with the pending tax evasion prosecution in Federal Court with a current balance in those accounts in excess of \$43 million. On these bases, the Court determined that a cash bond in the amount of \$25,000.00, together with the additional security of Plaintiff’s interest in the

“profits” accounts constituted a bond sufficient to pay costs and damages that might be sustained by Defendants if found to have been wrongfully enjoined. On the basis of the foregoing, it is hereby


ORDERED that Defendants’ request for the scheduling of a bond hearing to determine legally sufficient security is DENIED. It is further

ORDERED that Defendants’ request that the posted security bond be held in an interest-bearing account is GRANTED, and Plaintiff shall take such steps as are required to make arrangements with the Clerk of the Court for deposit of the bond proceeds into an interest bearing account and to provide notice of such deposit to Defendants. It is further

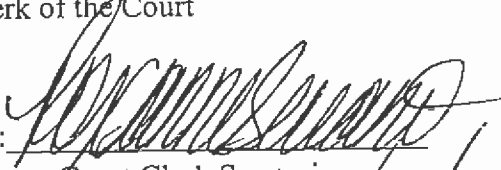
ORDERED that Defendants’ request for a stay of the preliminary injunction Order pending posting of amended security is DENIED.

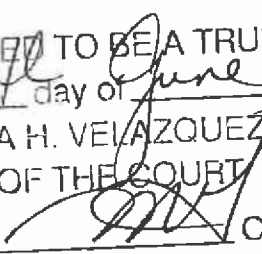
ORDERED that a copy of this Order be served on the Parties, **FORTHWITH**.

DATED: May 31, 2013.


DOUGLAS A. BRADY, JUDGE

A T T E S T:
VENETIA H. VELAZQUEZ, ESQ.
Clerk of the Court

By: 
Court Clerk Supervisor
5/31/13

CERTIFIED TO BE A TRUE COPY
This 6th day of June 2013
VENETIA H. VELAZQUEZ, ESQ.
CLERK OF THE COURT
By:  Court Clerk

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

MOHAMMAD HAMED By His)	
Authorized Agent WALEED HAMED,)	
	)	CIVIL NO. SX-12-CV-370
Plaintiff,)	
	)	ACTION FOR DAMAGES
vs.	)	INJUNCTIVE AND DECLARATORY
	)	RELIEF.
FATHI YUSUF AND UNITED)	
CORPORATION,	)	(JURY)
)	
_____ Defendant.)	

ORDER

THIS MATTER is before the Court on “Defendants’ Emergency Motion to Stay Preliminary Injunction Order,” filed on May 9, 2013, and Plaintiff’s Opposition thereto filed on May 16, 2013. Also before the Court is “Defendants’ Motion to Clarify Scope of Preliminary Injunction as to United’s Financial Statements & Unrestricted Access to United’s Financial Systems,” filed on May 16, 2013, and Plaintiff’s Opposition thereto which was filed on May 20, 2013.

Defendants’ Emergency Motion to Stay alleges that the Court’s Order “drastically changes the *status quo* and threatens the very existence of Plaza Extra Supermarkets, and at the same time compromises United Corporation as a *de jure* entity.” Although unsupported by any evidence, Defendants allege “an untenable situation which will eventually cause the stores to grind to a halt...” Yet, this Court’s Order entered on April 25, 2013 specifically required that the *status quo* of the business operations be maintained:

“ORDERED that the operations of the three Plaza Extra Supermarkets continue as they have throughout the years prior to the commencement of this litigation...”

Defendants’ subsequent Motion to Clarify seeks an order to provide guidance to “deadlocked management” concerning compliance with the Court’s Order. Plaintiff’s Opposition concurs with the substance of Defendants’ proposed order. In light of the foregoing, it is hereby

Order

Hamed v. Yusef, SX-12-CV-370

Page 2 of 2

ORDERED that Defendants' Emergency Motion to Stay Preliminary Injunction Order is DENIED. It is further

ORDERED that Defendants' Motion to Clarify Scope of Preliminary Injunction as to United's Financial Statements & Unrestricted Access to United's Financial Systems is GRANTED;

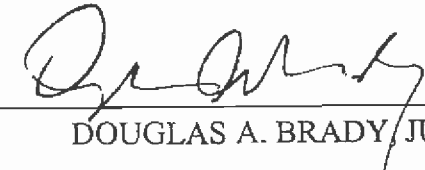
ORDERED that Defendant United Corporation shall provide revised financial statements for the three Plaza Extra Supermarket stores only within 30 days of the date of this Order;

ORDERED that said financial statements for the three Plaza Extra Supermarket stores shall be used for internal purposes only, and may not be disseminated to any third parties (excepting legal, accounting and tax advisors of the Parties) without the written consent of the other Party; and

ORDERED that only mutual access of all sensitive financial data, records and financial statements shall be permitted according to a process to be determined by the Parties. Finally, it is

ORDERED that a copy of this Order be served on the Parties, FORTHWITH.

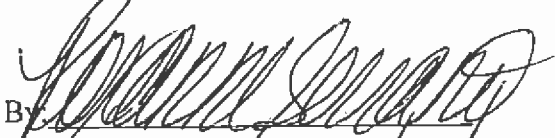
DATED: May 31, 2013.


DOUGLAS A. BRADY, JUDGE

ATTEST:

VENETIA H. VELAZQUEZ, ESQ.

Clerk of the Court

By 
Court Clerk Supervisor
5/31/13

CERTIFIED TO BE A TRUE COPY
This 31 day of June 2013
VENETIA H. VELAZQUEZ, ESQ.
CLERK OF THE COURT

By  Court Clerk

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

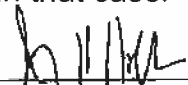
MOHAMMAD HAMED By His Authorized Agent WALEED HAMED,)	
)	
Plaintiff,	)	CIVIL NO. SX-12-CV- 370
v.)	
)	
FATHI YUSUF and UNITED CORPORATION,	)	ACTION FOR DAMAGES
	)	INJUNCTIVE AND
	)	DECLARATORY RELIEF
Defendants.	)	JURY TRIAL DEMANDED
)	

SECOND NOTICE OF SUPPLEMENTATION OF RECORD RE MOTIONS FILED
AFTER THE PRELIMINARY INJUNCTION WAS ENTERED

The Plaintiff hereby gives a second notice of supplementing the record re the motions filed after the entry of the preliminary injunction with the following documents (listed in chronological order):

- 1) Rent Notice For June 2013 sent by United Corporation to Plaza Extra Supermarkets (**Exhibit 1**).
- 2) May 31, 2013, Reply Memorandum filed in the Superior Court by United Corporation in *Williams v. United*, acknowledging that the Plaza Extra Supermarket stores are operated as a partnership (**Exhibit 2**) and using this fact to its benefit in trying to obtain affirmative relief in that case.

Dated: June 10, 2013



Joel H. Holt, Esq.
2132 Company Street,
Christiansted, VI 00820
holtvi@aol.com
340-773-8709

Carl J. Hartmann III, Esq.
5000 Est. Coakley Bay, L6
Christiansted, VI 00820
Carl@carlhartmann.com
340-642-4422

CERTIFICATE OF SERVICE

I hereby certify that on this 10th day of June, 2013, I served a copy of the foregoing Notice by hand on:

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

And by email (jdiruzzo@fuerstlaw.com) and mail to:

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



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

June 1, 2013

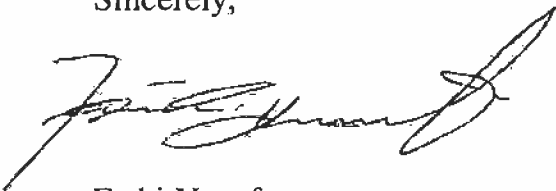
Mohammad Abdul Qader Hamed
Plaza Extra Supermarket
4-C & 4-D Estate Sion Farm
Christiansted, VI 00821

Statement of Rent due for Plaza Extra – East as of June 1, 2013

Rent due for Plaza Extra – East January 1, 2012 through May 31, 2013	Balance Due	\$4,419,711.31
1% interest on outstanding Balance	Amount Due	\$ <u>44,197.11</u>
		\$4,463,908.42
June 2013 Rent currently due:		<u>\$250,000.00</u>
	Total Balance due June 1, 2013	<u>\$4,713,908.42</u>

Please forward a check immediately.

Sincerely,



Fathi Yusuf



H

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

EDITH WILLIAMS,

Plaintiff,

v.

UNITED CORPORATION d/b/a,
PLAZA EXTRA

Defendant.

CIVIL NO. SX-02-CV-0478

ACTION FOR DAMAGES

Jury Trial Demanded

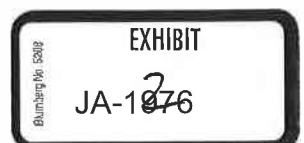
**DEFENDANT'S RESPONSE TO PLAINTIFF'S MOTION TO LIFT STAY AND FOR
RULING ON DEFENDANT'S MOTION TO DISQUALIFY ATTORNEY LEE J. ROHN
AND THE LAW OFFICES OF LEE J. ROHN**

COMES NOW, Defendant, United Corporation d/b/a Plaza Extra ("Plaza Extra") by and through undersigned counsel, and files its Response to Plaintiff's Motion to: (1) lift the stay imposed by the Court; and (2) rule on Plaza Extra's Motion to disqualify Plaintiff's counsel, Attorney Lee J. Rohn, and her law office, Lee J. Rohn and Associates, LLC (collectively "Attorney Rohn") due to a conflict of interest.

I. INTRODUCTION

In the underlying tort action, Edith Williams sued Plaza Extra for injuries she allegedly sustained upon falling in Plaza Extra's grocery store on the west end of St. Croix. This is one of three Plaza Extra grocery stores in the Virgin Islands. The Superior Court has recently issued an opinion that states that the Plaza Extra grocery stores are jointly owned by Mohammed Hamed and Fathi Yusuf and operated through their respective sons. *Hamed v. United Corp.*, No. SX-12-CV-370, 2013 V.I. LEXIS 25 (V.I. Super. Ct. April 24, 2013) ("*Hamed v. United Corp.*")

Attorney Rohn represents Williams in the instant tort action against Plaza Extra, and she also represents Mohammed Hamed and his sons Walled "Wally" Hamed, Waheed "Willy"



Hamed, Mufeed "Mafi" Hamed, Hisham "Shawn" Hamed in a separate law suit against Fathi Yusuf. See Compl., *Hamed v. Yusuf*, No. SX-12-CV-377 (filed Sept. 19, 2012), Def.'s Mot. to Disqualify, Ex. A. Based on the palpable conflict posed by representing both Williams, who is suing Plaza Extra, and representing the Hameds, who have now been held by the Surperior Court in *Hamed v. United Corp.* to own one-half of Plaza Extra and jointly operate the stores, this Court is called to disqualify Attorney Rohn from this action.

Plaintiff has now moved the Court for a ruling on the motion to disqualify Attorney Rohn, and she tells the Court that an order in *Samuel v. United Corp. d/b/a Plaza Extra*, No. ST-12-CV-457 (V.I. Super. Ct. March 25, 2013) (order on motion to disqualify) demonstrates that Attorney Rohn should not be disqualified in the instant case. But Plaintiff neglects to inform the Court of the *Hamed v. United Corp.* decision that unmistakably establishes Attorney Rohn's conflict of interest in this case and in *Samuel*, and that essentially abrogates the court's decision in *Samuel*. As discussed below, in *Hamed v. United Corp.* the Superior Court issued a memorandum opinion addressing the Hameds' business relationship with Plaza Extra, and based upon this opinion Attorney Rohn is representing clients—Williams and the Hameds—with substantial, adverse interests. Thus, it is respectfully submitted that, for the reasons which follow, the salient authority requires the disqualification of Attorney Rohn in this action.

II. DISCUSSION

A. Plaintiff's Reliance on *Samuel v. Plaza Extra* is clearly misplaced.

Samuel v. Plaza Extra is another tort action in which a plaintiff, represented by Attorney Rohn, alleges that Plaza Extra is liable for injuries sustained upon tripping and falling in the St.

Thomas Plaza Extra grocery store. Plaza Extra moved the *Samuel* court to disqualify Attorney Rohn based upon the same conflict of interests that have been raised in the instant case: Attorney Rohn is representing a plaintiff suing Plaza Extra, while simultaneously representing the Hameds who allege half ownership and joint operation of Plaza Extra. The *Samuel* court, however, denied the motion *without prejudice*, essentially ruling, as stated by Plaintiff in the instant motion, that the named defendant in that case, United Corporation, "is a separate legal entity and while it may be made up of officers, directors, [and] shareholders[,] the corporation itself is a legal entity separate and apart from those persons." (Pl.'s Mot. for Ruling 1.) The *Samuel* court also denied the motion to disqualify because there was no evidence as to the extent of the Hameds' management of the Plaza Extra store. *See Samuel*, No. ST-12-CV-457, Order at 4-5 ("Although Waheed Hamed may have taken Plaintiff's statement and had knowledge of Defendant's policies with respect to slip and fall incidents, the facts as presented do not suggest that Waheed Hamed was responsible for the acts Plaintiff claims caused her injuries.")

To be fair, when the *Samuel* court issued that Order, the Superior Court had not yet entered its ruling in *Hamed v. United Corp.*, and there was apparent ambiguity in the record concerning the extent of the Hameds' management responsibilities at the Plaza Extra store on St. Thomas. In *Hamed v. United Corp.*, Mohammed Hamed, the father of the Hamed sons, sued Fathi Yusuf, the father of the Yusuf sons, and United Corporation, seeking injunctive relief concerning Hamed's ownership interests in the Plaza Extra grocery stores and the Hamed sons' rights to fully participate in the operation and management of those stores. On April 24, 2013, following an evidentiary hearing, the court issued a memorandum opinion which, as stated

above, essentially abrogates the order issued by the *Samuel* court. Specifically, as discussed below, the court ruled that the Plaza Extra grocery stores are *not owned by a corporation*. Instead, the court ruled that the stores are owned by Mohammed Hamed and Fathi Yusuf as partners and that *every aspect* of the operations of the stores is co-managed, and must continue to be co-managed by the Hameds and the Yusufs.

Specifically, the court ruled that although the corporate name, United Corporation, was utilized in operating some aspects of the Plaza Extra stores, the stores were actually owned by Mohammed Hamed and Fathi Yusuf acting as partners, and the use of the corporate name did not negate or change the essential nature of this partnership. *Hamed v. United Corp.*, 2013 V.I. LEXIS 25 at *25-29.

And equally important, for the present discussion, the court found that:

[d]uring recent years, in every store there is, at least, one Yusuf and one Hamed who co-manage *all aspects of the operations* of [sic] each store. Mafeed Hamed and Yusuf Yusuf have 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.

Hamed v. United Corp., 2013 V.I. LEXIS 25, at *9-10 (Emphasis added); *accord id.* at *14 (“Both Plaintiff and Yusuf have designated their respective sons to represent their interests in the operation and management of the three Plaza Extra stores.”); *id.* at *29 (“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.*”) (Emphasis added).

In light of these conclusions, the court ordered:

The operations of the three Plaza Extra Supermarket stores shall continue as they have throughout the years prior to the 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.

2013 V.I. LEXIS 25, at *36.

Thus, according to the court's opinion: (1) Plaza Extra is not owned by a corporation, but by Hamed and Yusuf as partners; (2) the Hamed sons have always co-managed *every aspect* of the store operations; and (3) going forward the Hameds are required to be involved in every action and decision affecting "management, employees, methods, procedures and operations."

Id. Inasmuch as the *Samuel* court based its decision on the absence of these predicates, Plaintiff's reliance on *Samuel* in support of her instant motion is clearly misplaced.

B. The court's decision in *Hamed v. United Corp.* establishes that Attorney Rohn has plain and palpable conflicts of interest in her continued representation of the plaintiff in this case.

In its briefing on the Motion to Disqualify Attorney Rohn, Plaza Extra presented the Court with the numerous interests of Attorney Rohn's clients that are being actively compromised by her attorney-client relationship with the parties on both sides of this case. Indeed, it is impossible to discern how Attorney Rohn can justify simultaneously representing clients with such adverse interests. To whom does Attorney Rohn's undivided loyalty flow, and how does she prevent the exploitation of confidential information that each of these adverse clients are presumed to have disclosed to her?¹

¹ Virgin Islands law assumes "that confidential information has passed between the attorney and the former client, notwithstanding the attorney's declaration to the contrary." *Bluebeard's Castle v. Delmar Mktg.*, 886 F. Supp. 1204, 1207 (D.V.I. 1995)

The arguments advanced in the original Motion to Disqualify were sufficiently compelling to require Attorney Rohn's disqualification. But considering the court's recent Memorandum Opinion in *Hamed v. United Corp.*, it is quite simply outrageous that Plaintiff, through her counsel, Attorney Rohn, would continue to insist that no conflict exists.² The court in *Hamed v. United Corp.* ruled that Plaza Extra, the defendant in this case, is jointly owned by Rohn's client, Mohammed Hamed in partnership with Fathi Yusuf. Thus, Attorney Rohn's client, Edith Williams, is suing Attorney Rohn's other client, Hamed. Clearly, they have adverse interests based upon this recent ruling. See *HB Gen. Corp. v. Manchester Partners*, 95 F.3d 1185, 1193 n.3 (3d Cir. 1996) ("A partnership's interests can never be known except through those who comprise it."). And, if there was any lingering doubt about the extent of the adversity, the Court need only look to Virgin Islands law governing partnerships, which, under the *Hamed v. United Corp.* decision, renders Attorney Rohn's client, Hamed, jointly and severally liable for any obligation which would arise from a judgment, or settlement, in favor of Rohn's other client, Williams. See 26 V.I.C. § 46 ("all partners are liable jointly and severally for all obligations of the partnership unless otherwise agreed by the claimant or provided by law.") Because Attorney Rohn's dual representation involves "the assertion of a claim by one client against another client," the conflict waivers Plaintiff relies upon are not, with due respect for the clients who

² Even if, for the reasons stated by the court in *Samuel v. Plaza Extra*, Attorney Rohn's refusal to disqualify herself was justified *before* the court's decision in *Hamed v. United Corp.*, the rulings by the *Hamed* court concerning the ownership and operational history and rights of the Hameds in Plaza Extra constituted such a significant shift in the organizational affiliations that there is no longer any doubt that she is actively representing adverse parties on both sides of the instant case. The Model Rules of Professional Conduct recognize that such developments can occur in the midst of representation, but do not excuse an attorney from withdrawing her representation due to the changed circumstances. See *Model Rules of Prof'l Conduct* R. 1.7 cmt. 5 ("Unforeseeable developments, such as changes in corporate and other organizational affiliations or the addition or realignment of parties in litigation, might create

signed them, worth the paper they are written on. *Model Rules of Prof'l Conduct* R. 1.7(b)(3).³ Furthermore, to the extent that Edith Williams believes that there is no conflict; she necessarily reached this conclusion upon consulting with Attorney Rohn. But Attorney Rohn's advice on this very issue is tainted by her own pecuniary interests in representing as many plaintiffs as the courts permit; yet another conflict Attorney Rohn introduces into this matter.

The court's ruling in *Hamed v. United Corp.* also significantly heightens concerns about another unjust advantage Plaintiff is realizing due to Attorney Rohn's impermissible dual representation of adverse clients: the advantage of having counsel, Attorney Rohn, who is privy to the confidential communications of Plaza Extra's litigation and settlement strategies. Plaza Extra's undersigned counsel is required to consult with his client concerning numerous important, but confidential matters of litigation and settlement strategy. *See Model Rules of Prof'l Conduct* R. 1.2 cmt. 1, R. 1.4 cmts. 1-3. The court's ruling in *Hamed v. United Corp.* leaves no doubt that the Hameds are permitted, indeed required, to participate in all matters concerning Plaza Extra, and this directive necessarily includes the litigation and settlement strategies of Plaza Extra not only in the instant case, but the numerous cases in which Attorney Rohn is prosecuting claims against Plaza Extra. Virgin Islands law presumes that the Hameds have, and will continue to disclose this confidential litigation and settlement strategies to Attorney Rohn, *see Bluebeard's Castle v. Delmar Mktg.*, 886 F. Supp. 1204, 1207 (D.V.I. 1995), and the obvious advantages gained by Attorney Rohn and her plaintiffs from this knowledge

conflicts in the midst of a representation, as when a company sued by the lawyer on behalf of one client is bought by another client represented by the lawyer in an unrelated matter.”).

³ In fact, Plaintiff has already acknowledged that a Rule 1.7, “Paragraph (b)(3) conflict is the only type of conflict that cannot be waived by the client after informed consent.” (Pl.’s Oppn. Mot. to Disqualify 9.)

cannot be overstated.

III. CONCLUSION

Plaintiff has moved the Court for ruling on the motion to disqualify Attorney Rohn. Plaza Extra agrees that an expedited ruling is essential. In *Hamed v. United Corp.*, the court recently entered an opinion which leaves no doubt that Attorney Rohn is conflicted in prosecuting Edith Williams' claim against Plaza Extra. She undisputedly represents Mohammed Hamed, who the Superior court has ruled is a co-owner of Plaza Extra. Indeed, Mr. Hamed has not been found to be a mere shareholder of an owner-corporation, but a partner in the business venture and thus Mr. Hamed may, as a matter of law, be held jointly and severally liable for any judgment or settlement Rohn obtains for her client Williams. Similarly the court ruled that the Hameds are to continue to be involved in the co-management of all aspects of the operations. Thus, equally disturbing is the fact that Attorney Rohn is now presumed to know all the details of Plaza Extra's litigation and settlement strategies as well as business operations. Plaza Extra cannot discern circumstances that more forcefully compel the conclusion that Attorney Rohn can no longer represent the plaintiff in this case. For these reasons, Attorney Rohn must be disqualified, but until the disqualification order is issued, the stay must remain in place.

Respectfully submitted,

BECKSTEDT & ASSOCIATES
Attorneys for Defendant

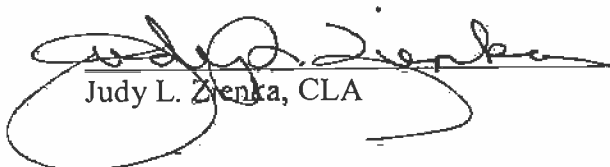


Dated: May 31, 2013

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 31ST day of JUNE, 2013, I caused a true and correct copy of the foregoing document to be served via *hand delivery upon* Lee J. Rohn, Esq., Lee J. Rohn and Associates, LLC, 1101 King Street, Christiansted, VI 00820



Judy L. Zenka, CLA