



Comparison Document (D.V.I. Doc. # 17) comparing the original Complaint with the First Amended Complaint. 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.

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). 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). None of the relief requested by the Plaintiff in Count I of the First Amended Complaint is directed at United Corporation. The First Amended Complaint does *not* seek to pierce the corporate veil of United Corporation.

## 2. APPLICABLE LEGAL STANDARD

"Because summary judgment is a drastic remedy, it should be granted only when 'the pleadings, the discovery and disclosure materials on file, and any affidavits show that there is no genuine issue as to any material fact and that the movant is entitled to judgment as a matter of law.'" *Williams, v. United Corp.*, 50 V.I. 191, 2008 WL 2714211 \*2 (2008) citing Fed. R. Civ. P. 56(c). "The non-moving party then has the burden of 'set[ting] out specific facts showing a genuine issue for trial.'" *Id.* citing to Fed. R. Civ. P. 56(e).

A court must view the underlying facts in the light most favorable to the non-moving party. *Id.* “Therefore, to survive summary judgment, the nonmoving party’s evidence must amount to more than a scintilla, but may amount to less (in the evaluation of the court) than a preponderance.” *Id.* (internal citations and quotations omitted). The Virgin Islands Supreme Court has explicitly stated: “[i]mportantly, in our analysis, this Court may not itself weigh the evidence and determine the truth; rather, we decide only whether there is a genuine issue for trial such that a reasonable jury could return a verdict for the non-moving party.” *Id.* citing to *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 255 (1986). Indeed, in the context of a Rule 56 motion, a trial court is prohibited from weighing the evidence and from making findings of fact. *Joseph v. Daily News Publishing Co., Inc.*, 57 V.I. 566, 2012 WL 5419155 \* 5 (V.I. 2012).

“Under Rule 56 of the Federal Rules of Civil Procedure, when considering a motion for summary judgment, a trial judge can consider material outside the pleadings, including affidavits, responses to discovery, and other evidence to determine if there is a genuine issue of material fact.” *Burd v. Antilles Yachting Services, Inc.*, 57 V.I. 354, 2012 WL 3329249 \*3 (V.I. 2012). Further, this jurisdiction’s high court has remarked that: “[i]t is well-settled that a single, non-conclusory affidavit or witness’s testimony, when based on personal knowledge and directed at a material issue, is sufficient to defeat summary judgment or judgment as a matter of law.” *Id.* (internal citations and quotations omitted). Importantly, “[t]his remains true even if the affidavit is ‘self-serving’ in the sense of supporting the affiant’s own legal claim or interests.” *Id.* (citations omitted).

### 3. DISCUSSION

#### A. PLAINTIFF'S MOTION IS PROCEDURALLY DEFECTIVE

The Plaintiff has not sought to pierce the corporate veil against United Corporation d/b/a and cannot, as a matter of law, obtain relief against a legal entity that he disavows any ownership in

or any business relationship with, i.e., United Corporation d/b/a, 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) (internal 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).

Here, as a matter of law, the Court cannot provide relief to the Plaintiff in respect for relief that he did neither plead nor requested. Further, the Plaintiff's statement of undisputed facts does *not* contain sufficient facts/evidence provided in the discovery, disclosure materials, and any affidavits, to “show that there is no genuine issue as to any material fact and that the [Plaintiff] is entitled to judgment as a matter of law.” *Williams, v. United Corp., supra*. Accordingly, the Court should deny the motion in full to the extent that it has *any effect on United Corporation d/b/a Plaza Extra*.

## **B. PARTIAL SUMMARY JUDGMENT IS INAPPROPRIATE**

The Defendants assert that there are material issues of fact that preclude the “drastic remedy” of the entry of summary judgment. The Defendants incorporate by reference their Response to Plaintiff's Statement of Material Facts & Defendants' Statement of Additional Facts in Opposition to Plaintiff's Motion for Partial Summary Judgment as if set forth herein. Further, the Defendants incorporate the testimony and exhibits entered into the record at the two-day evidentiary hearing this Court has already held. Additionally, the Defendants incorporate the recently executed declarations of Fathi Yusuf and Maher Yusuf, Exhibits A and B, respectively.

### **i. Legal Defenses**

#### **1. Statute of Frauds**

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.

*Ebker v. Tan Jay Int'l, Ltd.*, 739 F.2d 812, 827 (2d Cir. 1984) (internal citation omitted). In *Ebker*, 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”).

Based on the testimony of Mohammad Hamed that the alleged partnership at issue was to continue “forever,” the statute of frauds renders the agreement unenforceable which should dispose of this action as a matter of law. *Ebker*, 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”); *Rivkin v. Coleman*, 914 F. Supp. 76, 79 (S.D.N.Y. 1996) (holding that New York statute of frauds barred enforcement of alleged oral joint venture agreement where, as here, plaintiff testified that agreement was to continue “forever”). Accordingly, this Court should deny the motion.

## 2. Statute of Limitations

Plaintiff's purported “agent,” Waleed Hamed, testified to having a power of attorney that Plaintiff executed in either 1995 or 1996. 1.25.13 Hr. 46:1-8. Waleed Hamed also testified that he was aware in either 1999 or 2000 that Fathi Yusuf's ownership interest in United Corporation d/b/a

Plaza Extra, and thus the ownership of the supermarkets at issue in this case, was devolved to Fathi Yusuf's children. 1.25.13 Hr. 134:1-9. It is black letter law that notice of an action taken in derogation of the principal's rights to the agent (Waleed Hamed) is notice to the principal (Plaintiff). Restatement (Second) of Agency, § 275. Further, the longest statute of limitations that might apply in this action is, at most, 10 years. 5 V.I.C. § 31. Accordingly, as late as 2000, Plaintiff was aware that Fathi Yusuf had divested his ownership interests to his children. And, because the case below was brought at least 11 ½ years after Plaintiff was aware of the divestment, the action, irrespective of its merits, is clearly prohibited by the statute of limitations. Accordingly, this Court should deny the motion.

### 3. Retirement of Plaintiff

“When 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 existing partner's claims.” *Id.* at 572-73 (citing Wis. Stat. § 178.37) (emphasis added).

Here, it is undisputed that Plaintiff “retired” from the alleged partnership in or about 1996. 1.25.13 Hr. 202:10-13; 207:4-5; Ex A at ¶28. Accordingly, as simply an “ordinary creditor” of the

alleged partnership, Plaintiff cannot prevail as a matter of law on the partnership issues in this action. *Matteson*, 749 N.W.2d at 568. Accordingly, this Court should deny the motion.

**ii. Material Issues of Fact - Disputed Facts**

Plaintiff in support of his motion relies almost exclusively on Fathi Yusuf's decades-old deposition testimony in a different action, in which Plaintiff was not a party. This reliance was misplaced, as courts may not take judicial notice of either factual findings or the record of another case, including testimony, as substantive proof of the matters asserted. *See, e.g.*, 21B Wright, Miller & Cooper, Fed. Practice & Proc. § 5106.4 (2008) (a court "cannot take judicial notice of truth of facts found in another case"); *Wyatt v. Terhune*, 315 F. 3d 1108, 1114 & n.5 (9th Cir. 2003) ("a court may not take judicial notice of findings of fact from a different case for their truth") (collecting cases). At best, Fathi Yusuf's prior deposition testimony merely means that he "committed to a position at a particular point in time. It does not mean that the witness has made a judicial admission that formally and finally decides an issue." *W.R. Grace & Co. v. Viskase Corp.*, No. 90 C 5383, 1991 WL 211647, at \*2 (N.D. Ill. Oct. 15, 1991); *see also AstenJohnson, Inc. v. Columbia Cas. Co.*, 562 F.3d 213 (3d Cir. 2009) (noting, in an analogous context, that a jury must resolve legal conclusions based on conflicting factual issues).

**1. Intent of Fathi Yusuf**

The record evidence reflects that both sides have historically characterized their relationship through the casual or slang use of the term "partner," including in contexts in which the law clearly would not ascribe any legal meaning to such casual reference. However, Fathi Yusuf's recent affidavit, Exhibit A, explicitly disavows that he is a "partner" with Plaintiff and explains that when he used the term "partner" in his deposition testimony he was not using it as an attorney would. Exhibit A at ¶¶6 and 8. Further, Fathi Yusuf's affidavit is clear – he did not intend to be a "partner"

with Mohammad Hamed. Exhibit A at ¶7. For this reason alone, and in conjunction with the other reasons stated herein, the Court cannot grant the Plaintiff the drastic remedy of summary judgment. That is because, a trial court is prohibited from weighing the evidence in respect to Rule 56 motions, *see Joseph v. Daily News Publishing Co., Inc., supra*, and given the submission of the non-conclusory affidavit of Fathi Yusuf, which is obviously based on personal knowledge, the Defendants have put forth material issues of fact are "sufficient to defeat summary judgment or judgment as a matter of law," *Burd, supra*. Indeed, this is remains true even if this Court wholly discounts Fathi Yusuf's affidavit as "self-serving" because it supports his position. *Id.* The Plaintiff's motion must be denied and the case presented to a finder of fact. Accordingly, this Court should deny the motion.

## 2. Representations in the Criminal Case

When the Government in the Criminal Action questioned whether the Plaza Extra supermarkets were being operated as a partnership, which is the same claim that Plaintiff has alleged in this action and was based upon the very same deposition testimony, the defendants in the Criminal Action, including Waleed Hamed and Waheed Hamed, never expressed the view that their father (the Plaintiff here) held any interest in the supermarket operations as a "partner" or otherwise. 1.25.13 Tr. 116:6-19, 125:8-13, 126:10-15. To the contrary, Plaintiff's supposed agent here, Waleed Hamed, actively represented to the Government and the District Court that the operations of the supermarkets by United Corporation was at all times as a *de jure* corporation, in which Mohammad Hamed held no interest or ownership whatsoever. 1.25.13 Tr. 16:6-10, 116:20-25, 222:14-18 *see also* DX 5, *passim* (transcript of July 9, 2009, hearing)).

Indeed, a jury could easily determine that the failure of the Plaintiff's "authorized agents" to assert that their father is a "partner in the Plaza Extra operations" is indicative that there was in fact



no partnership. Summary judgment is inappropriate under the circumstances given the disputed material facts. Accordingly, this Court should deny the motion.

### 3. Labels Cannot Control

More importantly, Plaintiff's heavy reliance on the parties' own designations is misplaced, as "the existence of a partnership is not determined by the parties' designation of their arrangement. Instead, it depends primarily upon the intention of the parties ascertained from the terms of any agreement, from the parties' acts and from the surrounding circumstances as a whole." *In re Lona*, 393 B.R. 1, \*16 (Bankr. N.D. Cal. 2008) (citation omitted). *See also Byker v. Mannes*, 641 N.W.2d 210, 211, 216 (Mich. 2002) ("In determining whether a partnership exists, . . . it is unimportant whether the parties would have labeled themselves 'partners.'") ("The law must declare what is the legal import of [parties'] agreements, and names go for nothing when the substance of the arrangement shows them to be inapplicable."); *Cont'l Res., Inc. v. PXP Gulf Coast, Inc.*, No. CIV-04-1681-F, 2006 U.S. Dist. LEXIS 72870, at \*54 (W.D. Okla. Oct. 5, 2006) ("the manner in which the written [or oral] agreements characterize or label the parties' relationship is not conclusive in determining whether a partnership [or a joint venture] has been created") (addressing Texas UPA).

The Court must submit this case to the trier of fact; the Court should deny the motion in full.

### 4. Plaintiff Never Had Management Rights and/or Control

Plaintiff—claiming to be a "partner" in an alleged partnership with Fathi Yusuf dating back to the 1980s—testified that, since the very beginning, Fathi Yusuf alone has been and "is in charge of everybody" and in charge of "all the three store[s]" 1.25.13 Tr. 201:4, 210:22-23. The attached affidavits also confirm the Plaintiff's lack of management rights. Exhibit B at ¶12; Exhibit A at ¶11. With the disputed facts that the Plaintiff never had management rights—one of the hallmarks of a

“partnership” – there is sufficient contested material facts that preclude the entry of summary judgment. Accordingly, this Court should deny the motion.

#### 5. No Objective Evidence of a “Partnership” to Third Parties

Indeed, to the outside world, Plaintiff– generally, and to the tax authorities, specifically – has been a *total stranger* to the very partnership that he now claims has existed for the past 26 years.<sup>1</sup> Plaintiff himself testified that Fathi Yusuf alone obtained funding from Banco Popular and Scotia Bank. 1.25.13 T. 199:17-21, 205:24-25, 206:1, 207:6-21. And that he never signed any loan documents in respect to Plaza Extra. 1.25.13 Tr. 207:16-17 (Mohammad Hamed indicating that “I’m [sic] not sign nothing”).

Further, these facts (as far as the Defendants are concerned) are undisputed:

- United Corporation d/b/a has never filed partnership statement(s) with the Office of the Lt. Governor. Exhibit A at ¶13.
- United Corporation d/b/a has never filed partnership statement(s) with the Office of the Lt. Governor. Exhibit A at ¶14.
- The purported “Fathi Yusuf & Mohammad Hamed partnership” has never filed partnership statement(s) with the Office of the Lt. Governor. Exhibit A at ¶15.
- United Corporation d/b/a Plaza Extra has never filed a Statement of Partnership Authority with the Office of the Lt. Governor. Exhibit A at ¶16.

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<sup>1</sup> See, e.g., *In re PCH Assocs.*, 949 F.2d 585, 602-03 (2d Cir. 1991) (“most important[ ]” “evidentiary fact[ ]” relating to partnership issues is “conduct of the parties . . . with respect to third parties”) (finding no joint venture relationship where, among other reasons, “nothing in the record indicated that any third parties that dealt with the [business or defendant] believed [the movant] to be a participant in the business or looked to [the movant]’s creditworthiness as a basis for doing business”).

- The purported “Fathi Yusuf & Mohammad Hamed partnership” has never filed a Statement of Partnership Authority with the Office of the Lt. Governor. Exhibit A at ¶17.
- United Corporation d/b/a Plaza Extra has never acquired property in the name of “United Corporation Partnership.” Exhibit A at ¶18.
- The purported “Fathi Yusuf & Mohammad Hamed partnership” has never acquired property in the name of the “Fathi Yusuf & Mohammad Hamed partnership.” Exhibit A at ¶19.
- Fathi Yusuf has never acquired property on behalf of the purported “Fathi Yusuf & Mohammad Hamed partnership” by way of “Fathi Yusuf, as a partner with Mohammad Hamed, a partnership formed under the law of the U.S. Virgin Islands.” Exhibit A at ¶20.
- Fathi Yusuf has never acquired property on behalf of the purported “Fathi Yusuf & Mohammad Hamed partnership” by way of “Fathi Yusuf, as a partner with Mohammad Hamed, a *de facto* and/or oral partnership.” Exhibit A at ¶21.
- No property has ever been conveyed to “Fathi Yusuf, as a partner” in “Fathi Yusuf & Mohammad Hamed partnership.” Exhibit A at ¶22.
- No income tax return of United Corporation d/b/a Plaza Extra has ever indicated that it is a partnership. Exhibit A at ¶23.
- The purported “Fathi Yusuf & Mohammad Hamed partnership” has never filed a partnership income tax return. Exhibit A at ¶24.

At bottom, there is sufficient record evidence (as introduced at the two-day evidentiary hearing) and with the attached exhibits to establish that “there is a genuine issue for trial such that a

reasonable jury could return a verdict for the non-moving party.” *Anderson v. Liberty Lobby, Inc.*, *supra*. Rule 56 relief is inappropriate.

#### 6. No Partnership Distributions

The affidavits of Maher Yusuf and Fathi Yusuf establish that Plaintiff has never received profits from the purported “Fathi Yusuf & Mohammad Hamed partnership” nor from Plaza Extra. *See* Exhibit A at ¶30; Exhibit B at ¶7. The fact that the Plaintiff has *never* received “partnership distributions” could easily lead a trier of fact to determine that there was never in fact a partnership agreement. This is especially true since (as the Plaintiff admits) “*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.*” Plaintiff’s Rule 56 motion at p. 7 (emphasis added). Here there is a contested issue as to whether the Plaintiff ever received profits. The Defendants’ position (in tandem with other arguments) is simple – no receipt of profits = no partnership. A rational jury could agree with the Defendants as to this point and, as such, this is a genuine issue of fact that precludes Rule 56 relief. Accordingly, this Court should deny the motion.

#### 7. Rent Notices are not Dispositive

However, it is undisputed that United Corporation does business as “Plaza Extra.” Thus, as John Gaffney (one of United Corporation d/b/a Plaza Extra’s controllers) explained, 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. 1.31.13 Tr. 100:2-6, 101:4-7, 105:22-23, 106:1-6, 107:11-12. At best, the parties’ dispute regarding this rent issue is a material issue of fact, as with all of their factual disputes concerning the alleged partnership, should be decided by the fact-finder, *i.e.*, a jury, at a trial on the merits and not by way of summary judgment. Accordingly, this Court should deny the motion.

4. CONCLUSION

Since all that a non-movant needs to show is that there is more than a scintilla worth of evidence that there is a genuine issue for trial, here the Defendants clearly carried their low burden. The record evidence (or lack thereof) combined with the affidavits of Fathi Yusuf and Maher Yusuf provide ample support that there are material facts as to the establishment of a partnership between Mohammed Hamed and Fathi Yusuf. Further, this Court must view the facts in the light most favorable to the non-moving party, here the Defendants. Accordingly, since there is a genuine issue as to the formation and/or continued existence of a partnership, the Plaintiff's motion for partial summary judgment must be denied. *See Williams, supra.*

WHEREFORE, the Defendants pray that the Court deny the Plaintiff's motion in full.

Dated Sept. 16, 2013

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CERTIFICATE OF SERVICE

I hereby certify that, on Sept. 16, 2013, a true and accurate copy of the foregoing document was served via USPS and email to the following: Joel H. Holt, Esq., 2132 Company St., St. Croix, VI 00820, holtvi@aol.com.

By: \_\_\_\_\_

  
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. )  
FATHI YUSUF and UNITED CORPORATION, )  
 )  
Defendants. )  
\_\_\_\_\_ )

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

**DEFENDANTS' RESPONSE TO PLAINTIFF'S STATEMENT OF MATERIAL FACTS  
& DEFENDANTS' STATEMENT OF ADDITIONAL FACTS IN OPPOSITION TO  
PLAINTIFF'S MOTION FOR PARTIAL SUMMARY JUDGMENT**

**COME NOW**, Defendants Fathi Yusuf and United Corporation (collectively, "Defendants"), pursuant to LCRi 56.1, and hereby provide their response to all paragraphs of Plaintiff's Rule 56.1 Statement of Undisputed Facts in Support of Plaintiff's Motion for Partial Summary Judgment on Count 1 (filed on November 12, 2012). The Defendants respond to each of the Plaintiff's numbered paragraphs as follows:

1. Defendants agree that the allegation contained in Plaintiff's ¶1 is a procedural fact, but dispute whether this is a material fact for purposes of Fed. R. Civ. P. 56.
2. Defendants agree that the allegation contained in Plaintiff's ¶2 is a procedural fact but dispute whether this is a material fact for purposes of Fed. R. Civ. P. 56. Defendants dispute whether the oral agreement is enforceable by operation of, *inter alia*, the statute of frauds, statute of limitations, and various equitable defenses.

3. Defendants agree that Fathi Yusuf was deposed as alleged in Plaintiff's ¶3; Defendants dispute that the term "partner" was used by Fathi Yusuf as defined by the Uniform Partnership Act and/or any other applicable provision of the Virgin Islands Code.

4. Defendants agree that Fathi Yusuf testified as transcribed in the deposition as alleged in Plaintiff's ¶4; Defendants dispute that the term "partner" was used by Fathi Yusuf as defined by the Uniform Partnership Act and/or any other applicable provision of the Virgin Islands Code, and dispute that that the oral agreement is enforceable.

5. Defendants agree that Fathi Yusuf testified as transcribed in the deposition as alleged in Plaintiff's ¶5; Defendants dispute that the term "partner" was used by Fathi Yusuf as defined by the Uniform Partnership Act and/or any other applicable provision of the Virgin Islands Code, and dispute that the oral agreement is enforceable.

6. Defendants agree that Fathi Yusuf testified as transcribed in the deposition as alleged in Plaintiff's ¶6; Defendants dispute that the term "partner" was used by Fathi Yusuf as defined by the Uniform Partnership Act and/or any other applicable provision of the Virgin Islands Code, and dispute that the oral agreement is enforceable.

7. Defendants agree that Fathi Yusuf testified as transcribed in the deposition as alleged in Plaintiff's ¶6; Defendants dispute that the term "partner" was used by Fathi Yusuf as defined by the Uniform Partnership Act and/or any other applicable provision of the Virgin Islands Code, and dispute that the oral agreement is enforceable.

8. Defendants agree with the allegation in Plaintiff's ¶8, that rent notices have been sent; Defendants dispute the legal effect of the rent notices.

9. Defendants agree with the allegation in Plaintiff's ¶9, that Maher Yusuf made said statement; Defendants dispute that the oral agreement is enforceable.



**DEFENDANTS' STATEMENT OF ADDITIONAL MATERIAL FACTS**

**United Corporation d/b/a Plaza Extra**

1. 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)<sup>1</sup> at 8).
2. Maher Yusuf is the current President of United Corporation. (Jan. 25, 2013 Hr'g Tr. at 211:25-212:1-2).
3. 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).
4. 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).
5. United Corporation likewise is the sole owner of the "Plaza Extra" trade name/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)).
6. In 1990, the Plaza Extra East store was destroyed in a fire. (Jan. 25, 2013 Hr'g Tr. at 221:13-17).

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1 The Defendants' Exhibits ("DX") and the Plaintiff's Exhibits ("PX") are from the two day evidentiary hearing and are incorporated herein as they are already part of the record before this Court.

7. 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).

8. 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)).

9. 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]")).

10. 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).

11. 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.

12. Mohammad Hamed has not provided any written evidence or documentation establishing that he received a share of the supermarket profits at any time over the past 26 years.

13. 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).

14. The Plaintiff has offered no evidence (and there is no evidence before this Court) 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**

15. 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 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").<sup>2</sup>

16. 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

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<sup>2</sup> 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).

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")).

17. 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)).

18. 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).

19. 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).

20. 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**

21. 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).

22. 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).

23. 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).

24. The plea also embodies the representation that United Corporation's operations of the Plaza Extra 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")).

25. 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).

26. 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).

27. 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 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)).

28. 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).

29. 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 at p. 18-19).

30. 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).

31. 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)).

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

33. 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)).

34. 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).

35. 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)).

36. 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)).

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

38. 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).

39. 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).

40. 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.*)<sup>3</sup>

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<sup>3</sup> 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



41. 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).

42. 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.

43. 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)).

44. 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).

45. 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**

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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.

46. 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).

47. 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).

48. 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).

49. 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)).

50. 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 *Waheed Hamed* (an “individual defendant”). (*Id.*)

51. 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).

52. 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).

53. 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.)).

54. 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
- e. final determination of their gross receipts tax liabilities (*id.*).

55. 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).

56. 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).

57. 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).

58. 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).

59. 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.

60. 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).

### Testimony of Mohammad Hamed

61. 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).

62. 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).

63. 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).

64. Mohammad Hamed testified that Fathi Yusuf – in Mr. Yusuf’s name alone – obtained separate \$1 million and \$2.5 million dollar loans from Banco Popular and Nova 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).

65. 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).<sup>4</sup>

66. However, Mohammad Hamed did not entered into the record any evidence of personal liability for any partnership obligation such as a written guaranty or other documentation reflecting

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<sup>4</sup> 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).

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.

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

68. 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)).

69. 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.

70. 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 Fathi Yusuf ever shared with or distributed to the plaintiff any profits.

### **Testimony of Waleed ("Wally") Hamed**

71. 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).

72. 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).

73. 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).

74. 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).

75. 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).

76. 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).

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

78. 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).

79. 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).

80. 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, 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).<sup>5</sup>

81. 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))).

82. 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).

83. 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).

84. 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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<sup>5</sup>On February 19, 2013, the Plaintiff filed a Notice of Filing Supplemental Deposition Exhibits, which included the referenced Joint Venture Agreement.



85. According to Waleed Hamed, who claims to be Mohammad Hamed's self-appointed "representative," 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).

86. "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).

87. 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**

88. 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).

89. 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)).

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

91. When Waheed Hamed was asked to disclose the terms of any alleged partnership agreement with Nejeih 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).

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

#### **Testimony of Hisham Hamed**

93. 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).

94. 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).

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

#### **Testimony of Mufeed Hamed**

96. 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).

97. 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).

**Testimony of Maher ("Mike") Fathi Yusuf**

98. 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);
- 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).

**Testimony of John Gaffney**

99. 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).

100. 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).

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

102. 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).

103. 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).

104. 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).

105. 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).

#### **Affidavits of Fathi Yusuf**

106. On September 14, 2013, Fathi Yusuf executed the attached affidavit, which is incorporated by reference as Exhibit A.

107. Fathi Yusuf is not a lawyer, he has never studied law, and he did not (before the commencement of this litigation) know the legal definition of the terms "partner" or "partnership." Exhibit A at ¶6.

108. Fathi Yusuf did not intend for the 1984 oral agreement with Mohammad Hamed to be a partnership agreement. Exhibit A at ¶7.

109. When Fathi Yusuf has used the term "partner" he has done so as the term is casually used in the USVI and not as a legal term. Fathi Yusuf used that term during the case of Ahmad Idheileh, who sued him in 1999 alleging that Mr. Idheileh was a "partner." That case was dismissed, and Mr. Idheileh was never found to be a partner. Fathi Yusuf have the same relationship with Mohammed Hamed. Exhibit A at ¶8.

110. The 1984 oral agreement provided that Mohammad Hamed would NOT have any management rights, interests, and duties in United Corporation d/b/a Plaza Extra. Fathi Yusuf alone has personally guaranteed all loans that were taken out from time to time. Mohammed Hamed never ever completed a single loan application in his name, and/or personally guaranteed any obligations of the Plaza Extra Stores. Exhibit A at ¶9.

111. In 2003, when the United States government indicted Fathi Yusuf and United Corporation and others, Mohammed Hamed was never indicted, nor did Mohammed Hamed ever come to court to state that he was a "partner" of any entity. At the time Mohammed Hamed was living in Jordan, and was not subject to any criminal and civil liability in the criminal court. For the last nine years in open court, Mohammed Hamed, his sons Waleed Hamed and Waheed Hamed have never declared United Corporation d/b/a Plaza Extra and/or the Plaza Extra supermarkets to be partnership. Exhibit A at ¶10.

112. Mohammad Hamed has never had, nor exercised, management rights in respect to any of the Plaza Extra grocery stores. Mohammed Hamed has confirmed that during his testimony before this court at the January 25<sup>th</sup>, 2013 Preliminary Injunction Hearing. Exhibit A at ¶11.

113. Mohammed Hamed has worked at the Plaza Extra grocery stores in the sole capacity as an employee until his retirement in 1996, when Mohammed Hamed moved to the country of Jordan.

Mohammed Hamed has never worked in any management capacity at the Plaza Extra stores. Exhibit A at ¶12.

114. Mohammed Hamed's sons (Waheed Hamed, Waleed Hamed, Mufeed Hamed, and Hisham Hamed) have worked at the Plaza Extra grocery store locations and were hired as employees only. Exhibit A at ¶13.

115. United Corporation d/b/a has never filed partnership statement(s) with the Office of the Lt. Governor. Exhibit A at ¶13.

116. United Corporation d/b/a has never filed partnership statement(s) with the Office of the Lt. Governor. Exhibit A at ¶14.

117. The purported "Fathi Yusuf & Mohammad Hamed partnership" has never filed partnership statement(s) with the Office of the Lt. Governor. Exhibit A at ¶15.

118. United Corporation d/b/a Plaza Extra has never filed a Statement of Partnership Authority with the Office of the Lt. Governor. Exhibit A at ¶16.

119. The purported "Fathi Yusuf & Mohammad Hamed partnership" has never filed a Statement of Partnership Authority with the Office of the Lt. Governor. Exhibit A at ¶17.

120. United Corporation d/b/a Plaza Extra has never acquired property in the name of "United Corporation Partnership." Exhibit A at ¶18.

121. The purported "Fathi Yusuf & Mohammad Hamed partnership" has never acquired property in the name of the "Fathi Yusuf & Mohammad Hamed partnership." Exhibit A at ¶19.

122. Fathi Yusuf has never acquired property on behalf of the purported "Fathi Yusuf & Mohammad Hamed partnership" by way of "Fathi Yusuf, as a partner with Mohammad Hamed, a partnership formed under the law of the U.S. Virgin Islands." Exhibit A at ¶20.

123. Fathi Yusuf has never acquired property on behalf of the purported "Fathi Yusuf & Mohammad Hamed partnership" by way of "Fathi Yusuf, as a partner with Mohammad Hamed, a *de facto* and/or oral partnership." Exhibit A at ¶21.

124. No property has ever been conveyed to "Fathi Yusuf, as a partner" in "Fathi Yusuf & Mohammad Hamed partnership." Exhibit A at ¶22.

125. No income tax return of United Corporation d/b/a Plaza Extra has ever indicated that it is a partnership. Exhibit A at ¶23.

126. The purported "Fathi Yusuf & Mohammad Hamed partnership" has never filed a partnership income tax return. Exhibit A at ¶24.

127. Waleed Hamed, purportedly acting for his father Mohammed Hamed, said that he (Waleed Hamed) wanted the word "partnership" in any proposed agreements. Fathi Yusuf refused to sign any such agreement because it would not have reflected the nature of the 1984 agreement. Exhibit A at ¶25.

128. During private settlement talks numerous draft proposed settlement agreements were revised. None of them contained the word "partnership." None of them were signed because Fathi Yusuf is not a partner with Mohammed Hamed. Exhibit A at ¶26.

129. Mohammed Hamed never received a Schedule K-1 (Partner's Share of Income, Deductions, Credits, etc.) from United Corporation d/b/a Plaza Extra nor from the purported "Fathi Yusuf & Mohammad Hamed partnership." Exhibit A at ¶27.

130. Mohammed Hamed retired as an employee of United Corporation d/b/a Plaza Extra in 1996. Exhibit A at ¶28.

131. Every accountant that United Corporation d/b/a Plaza Extra has ever hired has always filed U.S. Corporate Tax Returns (either IRS Form 1120 or IRS Form 1120S). Exhibit A at ¶29.

132. Mohammed Hamed has never received profits from the purported "Fathi Yusuf & Mohammad Hamed partnership." Exhibit A at ¶30.

133. Until the commencement of this litigation Mohammed Hamed had never held himself out as a partner in the purported "Fathi Yusuf & Mohammad Hamed partnership." Exhibit A at ¶31.

**Affidavits of Maher Yusuf**

134. On September 13, 2013, Maher Yusuf executed the attached declaration, which is incorporated by reference as Exhibit B.

135. United Corporation d/b/a Plaza Extra never distributed any profits to Mohammed Hamed. Exhibit B at ¶7.

136. In 2003, United Corporation d/b/a Plaza Extra was indicted in the case of *United States, et al., v. United Corporation, et al.*, docket no. 1:05-cr-15 (D.V.I.) ("the criminal case"). Exhibit B at ¶8.

137. In all proceedings concerning the criminal case, Maher Yusuf has always appeared for United Corporation d/b/a Plaza Extra as its President during all court proceedings. At no time did Waleed Hamed and Waheed Hamed ever declare that their father Mohammed Hamed is a partner with Fathi Yusuf or have an interest in the Plaza Extra grocery stores. Exhibit B at ¶9.

138. The U.S. Justice Department has always received representations from each criminal defense attorney for the Hameds that the business arrangement is one of a business agreement. Exhibit B at ¶10.

139. As United Corporation d/b/a Plaza Extra's president, Maher Yusuf attested that Mohammed Hamed has never requested a K-1 Partnership schedule, or ever declared to have a partnership with Fathi Yusuf or have an interest in the Plaza Extra grocery stores to a single governmental or taxing agency. Exhibit B at ¶11.



140. Mohammad Hamed has never had, nor exercised, management rights in respect to any of the Plaza Extra grocery stores. Exhibit B at ¶12.

141. Mohammed Hamed has occasionally worked at the Plaza Extra grocery stores in the sole capacity as an employee, and has never worked in any management capacity at the Plaza Extra stores. Exhibit B at ¶13.

142. Mohammed Hamed's sons (Waheed Hamed, Waleed Hamed, Mufeed Hamed, and Hisham Hamed) have worked at the Plaza Extra grocery store locations and were hired because they are Fathi Yusuf's wife's nephews. Exhibit B at ¶14.

143. Mohammed Hamed's sons (Waheed Hamed, Waleed Hamed, Mufeed Hamed, and Hisham Hamed) have not acted as their father's "authorized agent" during the course of their employment with United Corporation d/b/a Plaza Extra. Exhibit B at ¶15.

144. United Corporation d/b/a Plaza Extra has never filed partnership statement(s) with the Office of the Lt. Governor. Exhibit B at ¶16.

145. To the best of Maher Yusuf's knowledge there has never been a partnership statement(s) filed with the Office of the Lt. Governor indicating that Plaza Extra was a partnership between Fathi Yusuf and Mohammad Hamed. Exhibit B at ¶17.

146. United Corporation d/b/a Plaza Extra has never filed a Statement of Partnership Authority with the Office of the Lt. Governor. Exhibit B at ¶18.

147. To the best of Maher Yusuf's knowledge there has never been a Statement of Partnership Authority filed with the Office of the Lt. Governor indicating that Plaza Extra was a partnership between Fathi Yusuf and Mohammad Hamed. Exhibit B at ¶19.

148. United Corporation d/b/a Plaza Extra has never acquired property in the name of "United Corporation Partnership." Exhibit B at ¶20.

149. At no time has property of the Plaza Extra grocery stores been acquired property in the name of the "Fathi Yusuf & Mohammad Hamed partnership." Exhibit B at ¶21.

150. At no time has property of the Plaza Extra grocery stores been acquired on behalf of the purported "Fathi Yusuf & Mohammad Hamed partnership" by way of "Fathi Yusuf, as a partner with Mohammad Hamed, a partnership formed under the law of the U.S. Virgin Islands." Exhibit B at ¶22.

151. At no time has property of the Plaza Extra grocery stores been acquired by the purported "Fathi Yusuf & Mohammad Hamed partnership" by way of "Fathi Yusuf, as a partner with Mohammad Hamed, a *de facto* and/or oral partnership." Exhibit B at ¶23.

152. At no time has property of the Plaza Extra grocery stores been conveyed to "Fathi Yusuf, as a partner" in "Fathi Yusuf & Mohammad Hamed partnership." Exhibit B at ¶24.

153. No income tax return of United Corporation d/b/a Plaza Extra has ever indicated that it is a partnership. Exhibit B at ¶25.

154. To my knowledge, the purported "Fathi Yusuf & Mohammad Hamed partnership" has never filed a partnership income tax return. Exhibit B at ¶26.

155. Mohammed Hamed never received a Schedule K-1 (Partner's Share of Income, Deductions, Credits, etc.) from United Corporation d/b/a Plaza Extra nor from the purported "Fathi Yusuf & Mohammad Hamed partnership," nor from the operations of the Plaza Extra grocery stores. Exhibit B at ¶27.

156. Mohammed Hamed retired as an employee of United Corporation d/b/a Plaza Extra in 1996. Exhibit B at ¶28.

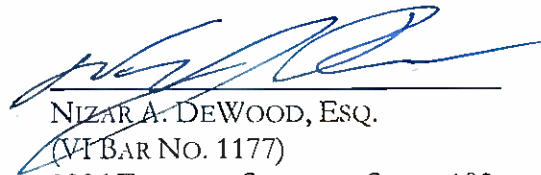
157. Every accountant that United Corporation d/b/a Plaza Extra has ever hired has always filed U.S. Corporate Tax Returns (either IRS Form 1120 or IRS Form 1120S). Exhibit B at ¶29.

158. Until the commencement of this litigation Mohammed Hamed had never held himself out as a partner in the purported "Fathi Yusuf & Mohammad Hamed partnership." Exhibit B at ¶30.

Dated Sept. 16, 2013

**DEWOOD LAW FIRM**  
ATTORNEYS FOR DEFENDANTS

By:



NIZAR A. DEWOOD, ESQ.

(VI BAR NO. 1177)

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By:

/s/ Joseph A. DiRuzzo, III

Joseph A. DiRuzzo, III, Esq.

USVI Bar #1114

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*Attorneys for Defendants*

CERTIFICATE OF SERVICE

I hereby certify that, on Sept. 16, 2013, a true and accurate copy of the foregoing document was served via USPS and email to the following: Joel H. Holt, Esq., 2132 Company St., St. Croix, VI 00820, holtvi@aol.com.

By:

  
Nizar A. DeWood, Esq.

**EXHIBIT**

**A**

**AFFIDAVIT**

**OF**

**FATHI YUSUF**

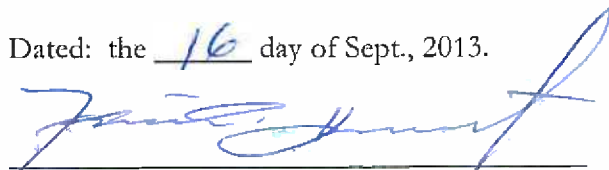


9. The 1984 oral agreement provided that Mohammad Hamed would NOT have any management rights, interests, and duties in United Corporation d/b/a Plaza Extra. As a matter of fact, I have personally guaranteed all loans that were taken out from time to time. Mohammed Hamed never ever completed a single loan application in his name, and/or personally guaranteed any obligations of the Plaza Extra Stores.
10. In 2003, when the United States government indicted me and United Corporation and others, Mohammed Hamed was never indicted, nor did he ever come to court to state that he was a “partner” of any entity. As a matter of fact, Mohammed Hamed was living in Jordan, and was not subject to any criminal and civil liability in the criminal court. For the last nine years in open court, Mohammed Hamed, his sons Waleed Hamed and Waheed Hamed have never declared this to be partnership.
11. Mohammad Hamed has never had, nor exercised, management rights in respect to any of the Plaza Extra grocery stores. Mohammed Hamed has confirmed that during his testimony before this court at the January 25<sup>th</sup>, 2013 Preliminary Injunction Hearing.
12. Mohammed Hamed has worked at the Plaza Extra grocery stores in the sole capacity as an employee until his retirement in 1996, when Mohammed Hamed moved to the country of Jordan. Mohammed Hamed has never worked in any management capacity at the Plaza Extra stores.
13. Mohammed Hamed’s sons (Waheed Hamed, Waleed Hamed, Mufeed Hamed, and Hisham Hamed) have worked at the Plaza Extra grocery store locations and were hired as employees only.
14. United Corporation d/b/a has never filed partnership statement(s) with the Office of the Lt. Governor.
15. The purported “Fathi Yusuf & Mohammad Hamed partnership” has never filed partnership statement(s) with the Office of the Lt. Governor.
16. United Corporation d/b/a Plaza Extra has never filed a Statement of Partnership Authority with the Office of the Lt. Governor.
17. The purported “Fathi Yusuf & Mohammad Hamed partnership” has never filed a Statement of Partnership Authority with the Office of the Lt. Governor.
18. United Corporation d/b/a Plaza Extra has never acquired property in the name of “United Corporation Partnership.”
19. The purported “Fathi Yusuf & Mohammad Hamed partnership” has never acquired property in the name of the “Fathi Yusuf & Mohammad Hamed partnership.”
20. I have never acquired property on behalf of the purported “Fathi Yusuf & Mohammad Hamed partnership” by way of “Fathi Yusuf, as a partner with Mohammad Hamed, a partnership formed under the law of the U.S. Virgin Islands.”

21. I have never acquired property on behalf of the purported "Fathi Yusuf & Mohammad Hamed partnership" by way of "Fathi Yusuf, as a partner with Mohammad Hamed, a *de facto* and/or oral partnership."
22. No property has ever been conveyed to "Fathi Yusuf, as a partner" in "Fathi Yusuf & Mohammad Hamed partnership."
23. No income tax return of United Corporation d/b/a Plaza Extra has ever indicated that it is a partnership.
24. The purported "Fathi Yusuf & Mohammad Hamed partnership" has never filed a partnership income tax return.
25. Waleed Hamed, purportedly acting for his father Mohammed Hamed, said that he (Waleed Hamed) wanted the word "partnership" in any proposed agreements. I refused to sign any such agreement because it would not have reflected the nature of the 1984 agreement.
26. During private settlement talks numerous draft proposed settlement agreements were revised. None of them contained the word "partnership." None of them were signed because I am not a partner with Mohammed Hamed.
27. Mohammed Hamed never received a Schedule K-1 (Partner's Share of Income, Deductions, Credits, etc.) from United Corporation d/b/a Plaza Extra nor from the purported "Fathi Yusuf & Mohammad Hamed partnership."
28. Mohammed Hamed retired as an employee of United Corporation d/b/a Plaza Extra in 1996.
29. Every accountant that United Corporation d/b/a Plaza Extra has ever hired has always filed U.S. Corporate Tax Returns (either IRS Form 1120 or IRS Form 1120S).
30. Mohammed Hamed has never received profits from the purported "Fathi Yusuf & Mohammad Hamed partnership."
31. Until the commencement of this litigation Mohammed Hamed had never held himself out as a partner in the purported "Fathi Yusuf & Mohammad Hamed partnership."

Further affiant sayeth naught.

Dated: the 16 day of Sept., 2013.



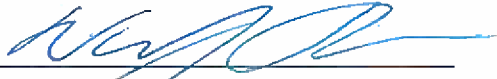
FATHI YUSUF

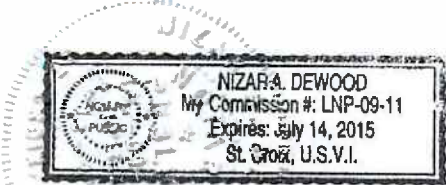


ACKNOWLEDGMENT

TERRITORY OF THE U.S. VIRGIN ISLANDS )  
 )  
DIVISION OF ST. CROIX )  
 )  
\_\_\_\_\_ )

Sworn and subscribed to before me this 16<sup>th</sup> day of Sept., 2013.

  
\_\_\_\_\_  
Notary Public  
My commission expires: 07/14/15

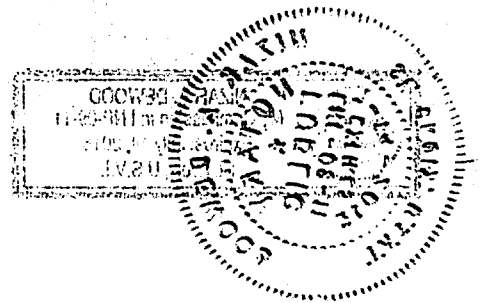


DEPARTMENT OF HEALTH

OFFICE OF THE ASSISTANT SECRETARY FOR PUBLIC HEALTH AND SAFETY

WASHINGTON, D.C. 20492

1981



**EXHIBIT**

**B**

**AFFIDAVIT  
OF  
MAHER YUSUF**



8. In 2003, United Corporation d/b/a Plaza Extra was indicted in the case of *United States, et al., v. United Corporation, et al.*, docket no. 1:05-cr-15 (D.V.I.) (“the criminal case”).
9. In all proceedings concerning the criminal case, I have always appeared for United Corporation d/b/a Plaza Extra as its President during all court proceedings. At no time did Waleed Hamed and Waheed Hamed ever declare that their father Mohammed Hamed is a partner with Fathi Yusuf or have an interest in the Plaza Extra grocery stores.
10. The U.S. Justice Department has always received representations from each criminal defense attorney for the Hameds that the business arrangement is one of a business agreement.
11. As United Corporation d/b/a Plaza Extra’s president, I can attest that Mohammed Hamed has never requested a K-1 Partnership schedule, or ever declared to have a partnership with Fathi Yusuf or have an interest in the Plaza Extra grocery stores to a single governmental or taxing agency.
12. Mohammad Hamed has never had, nor exercised, management rights in respect to any of the Plaza Extra grocery stores.
13. Mohammed Hamed has occasionally worked at the Plaza Extra grocery stores in the sole capacity as an employee, and has never worked in any management capacity at the Plaza Extra stores.
14. Mohammed Hamed’s sons (Waheed Hamed, Waleed Hamed, Mufeed Hamed, and Hisham Hamed) have worked at the Plaza Extra grocery store locations and were hired because they are Fathi Yusuf’s wife’s nephews.
15. Mohammed Hamed’s sons (Waheed Hamed, Waleed Hamed, Mufeed Hamed, and Hisham Hamed) have not acted as their father’s “authorized agent” during the course of their employment with United Corporation d/b/a Plaza Extra.
16. United Corporation d/b/a Plaza Extra has never filed partnership statement(s) with the Office of the Lt. Governor.
17. To my knowledge there has never been a partnership statement(s) filed with the Office of the Lt. Governor indicating that Plaza Extra was a partnership between Fathi Yusuf and Mohammad Hamed.
18. United Corporation d/b/a Plaza Extra has never filed a Statement of Partnership Authority with the Office of the Lt. Governor.
19. To my knowledge there has never been a Statement of Partnership Authority filed with the Office of the Lt. Governor indicating that Plaza Extra was a partnership between Fathi Yusuf and Mohammad Hamed.

20. United Corporation d/b/a Plaza Extra has never acquired property in the name of "United Corporation Partnership."
21. At no time has property of the Plaza Extra grocery stores been acquired property in the name of the "Fathi Yusuf & Mohammad Hamed partnership."
22. At no time has property of the Plaza Extra grocery stores been acquired on behalf of the purported "Fathi Yusuf & Mohammad Hamed partnership" by way of "Fathi Yusuf, as a partner with Mohammad Hamed, a partnership formed under the law of the U.S. Virgin Islands."
23. At no time has property of the Plaza Extra grocery stores been acquired by the purported "Fathi Yusuf & Mohammad Hamed partnership" by way of "Fathi Yusuf, as a partner with Mohammad Hamed, a *de facto* and/or oral partnership."
24. At no time has property of the Plaza Extra grocery stores been conveyed to "Fathi Yusuf, as a partner" in "Fathi Yusuf & Mohammad Hamed partnership."
25. No income tax return of United Corporation d/b/a Plaza Extra has ever indicated that it is a partnership.
26. To my knowledge, the purported "Fathi Yusuf & Mohammad Hamed partnership" has never filed a partnership income tax return.
27. Mohammed Hamed never received a Schedule K-1 (Partner's Share of Income, Deductions, Credits, etc.) from United Corporation d/b/a Plaza Extra nor from the purported "Fathi Yusuf & Mohammad Hamed partnership," nor from the operations of the Plaza Extra grocery stores.
28. Mohammed Hamed retired as an employee of United Corporation d/b/a Plaza Extra in 1996.
29. Every accountant that United Corporation d/b/a Plaza Extra has ever hired has always filed U.S. Corporate Tax Returns (either IRS Form 1120 or IRS Form 1120S).
30. Until the commencement of this litigation Mohammed Hamed had never held himself out as a partner in the purported "Fathi Yusuf & Mohammad Hamed partnership."

I attest that the above is true to the best of my knowledge.

Date: 9-16-13

  
UNITED CORPORATION  
By: Maher Yusuf, President