

B. Contested items: Pursuant to LCRi 56.1(b)(iii), plaintiff does not agree that the following facts and conclusions of law contained in the Defendants' Counterstatement of Facts should be treated as undisputed for the limited purpose of ruling on the motion for summary judgment for the following reasons:

CSOF 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."

Response: It is agreed that "United Corporation leases retail spaces at its shopping center to commercial tenants." The statement that it "operates a 'grocery supermarket business' that does business under the trademark name 'Plaza Extra' is an *ultimate conclusion of law* -- to be determined by this Court. It is uncontradicted in this record that United filed a complaint in an action earlier this year (*United v. Wally Hamed*, SX-13-CV-3, Complaint, January 8, 2013) in which United made the following judicial admission:

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.** (Emphasis added).

CSOF 5. United Corporation likewise is the sole owner of the "Plaza Extra" trade name/trademark, under which it does business.

Response: Agreed that it is undisputed that Fathi Yusuf, when acting for Plaza Extra Supermarkets and filing for the "Plaza Extra" tradename/mark, did place it into the name of United. However, the law of the case in this proceeding, as set forth in the preliminary injunction dated April 25, 2013, is as follows with regard to a partner who takes a partnership opportunity for his own benefit in this manner (p 17, ¶ 12):

12. Where, as here, the parties agree that one partner is designated to take charge of "the office" and assumes the responsibility for obtaining or filing the relevant documents as a part of his share of the partnership responsibilities, his failure to file that documentation in the name of the partnership does not mean that no partnership exists.

Moreover, the assertion that United does business as ("d/b/a") 'Plaza Extra' is a conclusion of law -- ultimately to be determined by this Court. This comment is applicable to United's repeated references to "d/b/a Plaza Extra" throughout its SOF, which will not be repeated each time this phrase is used.

CSOF 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. . . .

Response: Plaintiff is the partner in Plaza Extra Supermarket, which is a legal question for this Court to resolve. The status of his sons as his legal representatives is also a legal question for this Court to resolve. The statement that United "operates the business under the name 'Plaza Extra'" is a conclusion of law that is ultimately to be determined by this Court.

CSOF 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.

Response: Mohammed Hamed testified that he was in charge of the warehouse and produce. Moreover, stating that Mr. Yusuf he is in charge "for everybody" does not mean he was in charge "of" everybody.

CSOF 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, or that he paid a single tax dollar to any governmental taxing authority on income attributable to him.

Response 11: Hamed has filed his taxes and his taxes have been deemed paid in full through 2010. This evidence was provided to the V.I. Supreme Court in this case as well. **See Wally Hamed's affidavit attached to Plaintiff's reply memorandum as Exhibit E.**

CSOF 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.

Response: This CSOF misstates the record. As the Court noted, there has been significant evidence placed in the record of the receipt by Hamed of supermarket profits over the past 26 years -- both written and oral testimony. Indeed, 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 2¹, 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 that Hamed also filed with the Court. (PEx 3, p 11):

There is no disagreement that Mr. Hamed is entitled to fifty percent (50 %) of the profits of the operations of Plaza Extra Store. This is what Plaintiff Hamed, through his agent, has represented to everyone for the last 26 years, including representations in prior proceedings before the District Court of the Virgin Islands and the U.S. Attorney's Office. The issue here again is not whether Plaintiff Hamed is entitled to 50% of the profits. He is.

Moreover, there was unrebutted testimony at the PI hearing that Hamed received 50% of real estate that was distributed as profits from Plaza Extra. *See, e.g., 1/25 Tr, pp 39-42.*

Finally, United conceded this fact in its interrogatory responses attached to the Plaintiff's reply memorandum.

CSOF 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.

Response: Agreed that Fathi Yusuf holds no United funds at issue in this action personally. However, it is an uncontested fact that Fathi Yusuf has removed millions of dollars from the operating accounts of Plaza Extra Supermarkets. The President of United testified to this and there are checks of record. Yusuf does not dispute that this was done without the approval or consent of Hamed. \$2.7 million and payments to defendants' counsel were so made.

CSOF 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

¹ Plaintiff's Exhibits to the preliminary injunction hearing are designated "PEX."

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).

Response: There were no such express representations made, nor do the referenced materials contain any such representations.

CSOF 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.

Response: Agreed there is a criminal TRO in place. There is also a preliminary injunction in place issued by this Court regarding those same funds.

CSOF 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**"; 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".

Response: Defendants *misquote* the indictment which entirely changes the meaning. The original text (at paragraph 2 made part of this record in Defendants' March 4, 2013, filing of the Notice of Criminal Indictment) states:

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 responsibilities included management of the business and conduct of the affairs of the corporation. FATHI YUSUF acted with the **intent of benefitting both himself and UNITED** in executing his duties and responsibilities. (Emphasis added).

This discusses him as an owner, director and officer of United, but a "participant" in the operation of Plaza Extra." It also discusses his criminal acts as benefitting United as distinguished from Plaza Extra.

CSOF 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.

Response: The plea does not contain any such representation.

CSOF 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.

Response: No such representations were made in the PI hearing testimony submitted in support of this contention, which is typical of the misleading characterizations contained throughout the Defendants' CSOF.

CSOF 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.

Response: There were no representations made as suggested even though it is admitted a hearing was held on July 9, 2009 before the District Court in the criminal case, the transcript of which speaks for itself.

CSOF 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.

Response: Though immaterial, **this misstates the record in the Criminal Action as it has been discussed here.** Documents recited by Defendants here show plainly that the deposition of Fathi Yusuf -- upon which plaintiff centrally relies herein, as it discusses the formation, structure, operations and distribution of profits of the partnership -- had been provided to the AUSA (See CSOF averment 40) and the parties and were discussed in detail at those hearings. See also averments made by defendants in CSOF 39.

CSOF 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.*).

Response: Though immaterial, this simply misstates the clear record. Mohammad Hamed did not "allow" United Corporation to "plead guilty to a

federal criminal violation and pay significant penalties and fines." To the contrary, he was not a party. As to his sons, that has been responded to elsewhere, but the full deposition of Fathi Yusuf as to Hamed's rights were (as set forth in CSOF 38-40) clearly part of that proceeding.

CSOF 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.

Response: Plaintiff denies any implicit inference that no partnership existed based on the entry of the dismissal order. The papers speak for themselves.

CSOF 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.

Response: Agreed only that Hamed testified about a loan for the partnership which he was obligated to repay at 1/25 Tr. p 204-209.

CSOF 65. Mohammad Hamed simply worked in the Plaza Extra East supermarket's warehouse and from which position he "retired" a "long time" ago.

Response: No witness ever testified that "Mohammad Hamed simply worked in the Plaza Extra East supermarket's warehouse" - that is a statement from defendants' briefs. Hamed testified that he is a partner with Yusuf, which Yusuf acknowledged multiple times under oath. Further, Hamed did not testify that he retired from the partnership, only from the day to day activities at the store.

CSOF 66. However, Mohammad Hamed did not enter 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.

Response: This is contradicted by judicial admissions of defendants. Hamed did enter into the record "evidence of personal liability for any partnership obligation" in the form of a deposition of Fathi Yusuf that stated, among other admissions:

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.**" (*Reply re Opposition to Motion to Remand, Dist. Ct. Docket during Remand, DE19-14.*)

Also entered into evidence was the testimony of Hamed in the hearing transcript cited above that he had agreed to be liable for half of the loans. 1/25 Tr. p 204-209. Similarly, Yusuf filed documents describing the business as a partnership to third parties, including his statement in the *Idheileh* case as follows (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.

CSOF 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].*"

Response: Defendants have misquoted this so often they seem to believe it is true. As was pointed out in two different V.I. Supreme Court filings—the Appellee's brief and Appellee's opposition to Motion to Stay--- that what was said was that Yusuf was "in charge FOR everyone" not "OF everyone". These pleadings can be submitted if requested, but the point is that the testimony cited by Defendants is misquoted as noted in the cite to the record by the Defendants. Moreover, it is uncontradicted in this record that United filed a lawsuit earlier this year (*United v. Wally Hamed, SX-13-CV-3, Complaint, January 8, 2013*) in which it made the following admission:

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.**

Rent notices for the store are still sent monthly to Mohammad Hamed as the person in charge of Plaza Extra Supermarkets.

CSOF 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.

Response: As stated above in CSOF 11, Hamed's tax filings do show his partnership interest.

CSOF 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.

Response: This is a repeat of CSOF 12, and Hamed re-states his response thereto.

CSOF 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.

Response: Agreed that Waleed Hamed is an employee of Plaza Extra Supermarkets. The statement that United "operates the business under the name 'Plaza Extra'" is a conclusion of law -- ultimately to be determined by this Court.

CSOF 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.

Response: This is a conclusion of law. The person(s) "ultimately responsible" for disputes in a partnership are the partners. Moreover, as the Court (PI, Findings of Fact p 6-7, ¶¶ 19-21) has found:

19. Hamed and Yusuf have jointly managed the stores by having one member of the Hamed family and one member of the Yusuf family co-manage each of the three Plaza Extra Supermarkets. Originally, Hamed and Yusuf personally managed the first Plaza Extra store, with Hamed in charge of receiving, the warehouse and produce, and Yusuf taking care of the office. *Tr. 26:11–19; 206:20–22, Jan. 25, 2013.* Yusuf's management and control of the "office" was such that Hamed was completely removed from the financial aspects of the business, concerning which Hamed testified "I'm not sign no thing.... Fathi is the one, he sign. Mr. Yusuf the one he sign

the loan, the first one and the second one." *Tr. 207:16–21, Jan. 25, 2013.*

20. During recent years, in every store there is, at least, one Yusuf and one Hamed who co-manage all aspects of the operations of each store. Mafeed Hamed and Yusuf Yusuf have managed the Estate Sion Farm store along with Waleed Hamed. Waleed Hamed, Fathi Yusuf and Nejah Yusuf operate the St. Thomas store, and Hisham Hamed and Mahar Yusuf manage the Plaza West store on St. Croix. *Tr. 31:6–35:11; 147:11–20; 160:10–22, Jan. 25, 2013, and Tr. 33:6–17, Jan. 31, 2013.*

21. In operating the "office," Yusuf did not clearly delineate the separation between United "who owns United Shopping Plaza" and Plaza Extra, despite the fact that from the beginning Yusuf intended to and did "hold the supermarket for my personal use." *Pl.Ex. 1, p. 8:1–7.* Despite the facts that the supermarket used the trade name "Plaza Extra" registered to United (*Pl.Ex. 4, ¶ 14*) and that the supermarket bank accounts are in the name of United (*Pl. Ex's. 15, 16*), "in talking about Plaza Extra ... when it says United Corporation ... [i]t's really meant me [Yusuf] and Mr. Mohammed Hamed." *Pl.Ex. 1, p. 69:13–21.*

Moreover, as to Plaza Extra Supermarkets, at the request of United and Fathi Yusuf, Hamed did, through his representative, approve the calculations in documents computing an obligation for Plaza Extra Supermarkets to pay United some \$5 million in 2010, and did authorize that representative to sign the check for that amount to be paid from the operating accounts of Plaza Extra Supermarkets.

CSOF 74. Nor does Waleed Hamed dispute that Mohammad Hamed retired from Plaza Extra East in 1996.

Response: Pursuant to LCRi 56.1(b)(1), plaintiff agrees that the testimony "that Mohammad Hamed retired from active work at the Plaza Extra East Store in 1996" should be treated undisputed for the purpose of ruling on the motion for summary judgment only. As to his not withdrawing from the partnership, see above -- and the rent notices to Mohammad Hamed dated 2013. Moreover, at the request of United and Fathi Yusuf, Hamed, through his representative, did approve the calculations in documents computing an obligation for Plaza Extra Supermarkets to pay United some \$5 million in 2010, and did authorize that representative to sign the check for that amount to be paid from the operating accounts of Plaza Extra Supermarkets.

CSOF 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.

Response: This mischaracterizes the testimony about the partnership ending in 1996, as noted in response to CSOF 74. Moreover, it is undisputed that a Hamed has had signatory authority on each Plaza Extra operating account.

CSOF 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.

Response: This is a conclusion of law. In that proceeding Yusuf and United contended there was a partnership with Hamed, but not with Mr. Idheileh.

CSOF 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.

Response: Deny. As noted, Yusuf admitted in the *Idheileh* case, as follows (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.

CSOF 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.

Response: This CSOF is denied for the same reasons stated in response to CSOF 12 above.

CSOF 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.

Response: This is a conclusion of law which will be determined in this action.

CSOF 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.

Response: This is a conclusion of law which will be determined in this action.

CSOF 96. Mufeed Hamed is an employee of United Corporation d/b/a Plaza Extra and manages the Plaza Extra East store in Sion Farm.

Response: This is a conclusion of law which will be determined in this action.

CSOF 99. John Gaffney also confirmed that United Corporation "do[es] business as Plaza Extra."

Response: Pursuant to LCRi 56.1(b)(1), plaintiff agrees that the fact that *Gaffney so testified* ("confirmed") should be treated undisputed for the purpose of ruling on the motion for summary judgment only. However, this is testimony on the ultimate conclusion of law in the case.

CSOF 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.

Response: Deny. The rent notices sent by United to Plaza Extra are intended to collect rent from Plaza Extra as noted by the "rent motion" filed on September 9, 2013.

CSOF 101. In other words, "[t]he net effect on the United tax return is zero."

Response: Deny for the same reason as CSOF 100. Indeed, United has refused to produce its tax returns, so this point cannot be verified.

CSOF 103. Indeed, no Hamed family member receives any profits from United Corporation d/b/a Plaza Extra.

Response: This is now the third time this is asserted. This is unsupported in the record as set forth in response to SOF 12 -- the third repetition of the assertion as a "fact." Plaintiff re-asserts his response to SOF 12.

CSOF 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."

Response: This is a conclusion of law for the Court to make, not a "fact" Mr. Gaffney can establish. Indeed, as noted in Wally Hamed's affidavit attached as Exhibit E to the reply memorandum, Mohammad Hamed has fully informed the IRB of his position, which they are leaving to the Court to decide.

CSOF 108. Fathi Yusuf did not intend for the 1984 oral agreement with Mohammad Hamed to be a partnership agreement.

Response: To the extent that this relates to Yusuf's OBJECTIVE INTENT that is something to be determined from the facts and his admissions and testimony. All

of his admissions and testimony to date contradict this. As to his subjective intent, that is immaterial.

CSOF 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 [sic] the same relationship with Mohammed Hamed.

Response: It is a matter of record that Yusuf and United were parties to litigation before this Court in which this exact issue was raised -- the specific legal definition of "partnership" in the exact same context--and that he gave extensive testimony and written attestation that he had a partnership with Hamed but not with Mr. Idheileh.

CSOF 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.

Response: It is a matter of record here that he and United were parties to litigation before this Court in which this exact issue was raised -- the specific legal definition of "partnership" in the exact same context--and that he gave extensive testimony and written attestation that this was a partnership. That case was decided for United and Yusuf on this identical issue -- of Mr. Hamed being a partner in Plaza Extra Supermarkets. Moreover, Yusuf and United have made repeated judicial admissions here, in pleadings in this action that an agreement was entered into in 1986, that there was intent to share profits, that profits were shared "50/50", that risks, liabilities and management would be shared and that the agreement is still in effect today. Mr. Yusuf's subjective intent is not material -- only that intent as it can be determined objectively.

SOF 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 25th, 2013 Preliminary Injunction Hearing.

Response: This repeats the CSOF's 68, 73 and 110 -- and Plaintiff hereby incorporates those responses here.

SOF 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.

Response: This repeats the CSOF's 68, 73 and 110 -- and Plaintiff hereby incorporates those responses here.

SOF 115. United Corporation d/b/a has never filed partnership statement(s) with the Office of the Lt. Governor.

Response: Plaintiff has no idea what "United Corporation d/b/a" or the "Fathi Yusuf & Mohammad Hamed partnership" are meant to entail. He will assume "Fathi Yusuf & Mohammad Hamed partnership" refers to Plaza Extra Supermarkets. Agreed that Fathi Yusuf, when acting for Plaza Extra Supermarkets partnership and doing filings for the "Plaza Extra" did attempt to place its assets into the name of United, a corporation and did not file a partnership filing for Plaza Extra Supermarkets. However, the law of the case in this proceeding, as set forth in the preliminary injunction dated April 25, 2013, is as follows with regard to a partner who takes a partnership opportunity for his own benefit (p 17, ¶ 12)(emphasis added):

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

SOF 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."

Response: While this maybe literally true, see the response to CSOF 12. Plaintiff hereby incorporates that response here.

CSOF 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.

Response: Deny, as the agreement is a partnership. Otherwise admit.

CSOF 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.

Response: Deny, although this point is irrelevant. Exhibits of a draft proposal for settlement sent to Hamed by Yusuf clearly refer to a partnership and describe it in detail. Why Yusuf did not sign it is unknown.

CSOF 130. Mohammed Hamed retired as an employee of United Corporation d/b/a Plaza Extra in 1996.

Response: This repeats the CSOF's 74 and 75. Plaintiff hereby incorporates those responses here.

CSOF 132. Mohammed Hamed has never received profits from the purported "Fathi Yusuf & Mohammad Hamed partnership."

Response: This repeats the CSOF's 12 and 70. Plaintiff hereby incorporates those responses here.

CSOF 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."

Response: This repeats the CSOF's 8 and 12. Plaintiff hereby incorporates those responses here.²

² Hamed submitted the deposition of Fathi Yusuf -- which is evidence of the record herein. In it United and Yusuf attest under oath (PEX 1, 20:10-12) (emphasis added):

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

Similarly, Yusuf signed an affidavit, also of record here, stating in ¶¶ 2-3 as follows (Depo Exhibit 6 to PEX 1)(emphasis added):

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.

CSOF 135. United Corporation d/b/a Plaza Extra never distributed any profits to Mohammed Hamed.

Response: This repeats the CSOF's 12 and 70. Plaintiff hereby incorporates those responses here.

CSOF 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.

Response: This repeats the CSOF 38 and Plaintiff hereby incorporates those responses here.

CSOF 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.

Response: Maher Yusuf did testify to this. However, Mohammad Hamed has filed his taxes (with K-1's attached) as noted in Wally Hamed's affidavit attached as Exhibit E to the reply memorandum.

CSOF 140. Mohammad Hamed has never had, nor exercised, management rights in respect to any of the Plaza Extra grocery stores.

Response: This repeats the CSOF's, 68, 73, 110 and 113 -- and Plaintiff hereby incorporates those responses here.

CSOF 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.

Response: This repeats the CSOF's 68, 73, 110 and 113 -- and Plaintiff hereby incorporates those responses here.

CSOF 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.

Response: This repeats the CSOF's 8, 71, 88, 89 and 103 -- and Plaintiff hereby incorporates those responses here.

CSOF 143. Mohammed Hamed's sons (Waheed Hamed, Waleed Hamed, Mufeed

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.

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.

Response: This repeats the CSOF's 8, 71 and 88. Plaintiff hereby incorporates those responses here.


CSOF 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.

Response: This is untrue. Mohammad Hamed has filed his taxes (with K-1's attached) as noted in Wally Hamed's affidavit attached as Exhibit E to the reply memorandum.

CSOF 156. Mohammed Hamed retired as an employee of United Corporation d/b/a Plaza Extra in 1996.

Response: This repeats the CSOF's 65, 74 and 75. Plaintiff hereby incorporates those responses here.

Dated: September 26, 2013



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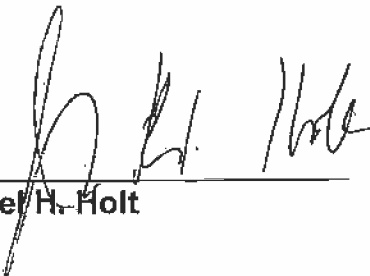
CERTIFICATE OF SERVICE

I hereby certify that on this 26th day of September, 2013, I served a copy of the foregoing motion by hand on:

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

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