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

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

PLAINTIFF'S REPLY TO
DEFENDANTS' OPPOSITION TO MOTION TO REDUCE BOND

Defendants opposed Plaintiff's motion to reduce the bond -- and used that opposition memorandum to argue that the bond should in fact be increased based on the same four factors they had previously asserted in their post-trial motion addressing the bond. Of course, Defendants fail to present any competent evidence or point to any evidence already in the record to support their arguments.

For the reasons set forth herein, it is respectfully submitted that the evidence before this Court warrants a reduction in the bond.[1] Alternatively, it is respectfully submitted that the evidence before this Court does not support any increase in the $25,000 currently posted as a cash bond in this case.

[1] Contrary to Defendants' assertion, a court can reduce a bond when appropriate. *See, e.g., Bardfield v. Chisholm Properties Circuit Events, LLC*, 2010 WL 1688467 (N.D. Fla. Mar. 25, 2010) *report and recommendation adopted*, 2010 WL 1688436 (N.D. Fla. Apr. 26, 2010) (Court can reduce bond if evidence supports reduced bond); *N. Star Indus., Inc. v. Douglas Dynamics, LLC*, CIV.A. 11-C-1103, 2012 WL 507827, at *2 (E.D. Wis. Feb. 15, 2012). The V.I. Supreme Court did not hold that the bond could not be reduced, it simply held that this Court needed to determine **whether any additional** security was needed, without addressing the issue of whether the bond could be reduced, which the law permits when warranted by *subsequent* evidence.

Indeed, the V.I. Supreme Court's unequivocal statement in its recent opinion (*Yusuf v. Hamed*, 2013 WL 5429498 (V.I. Sept. 30, 2013)), makes it clear the Supreme Court itself had doubts about the need to increase the bond, stating in part in its opinion:

> But despite this conflicting evidence, **there is evidentiary support for the Superior Court's finding that Yusuf and United would not be harmed by the injunction *because it merely maintained the status quo*,** requiring two signatures from a member of each family to distribute funds and preserving the co-management of the stores between the families. *Id.* at *7. (Emphasis added).

That statement by itself, for which there is evidentiary support in the record, would support both a finding that the bond should be reduced as well as a finding that no further increase is warranted. It also explains why the Supreme Court limited its remand to the issue of "**whether** additional bond is required in light of this holding" as opposed to "what" additional bond is needed.

Defendants offer no new arguments to support their claim that the bond should be increased, as they simply reargue the same four items previously raised by them. Plaintiff will again address those four arguments in the order raised by the Defendants, none of which justify any increase in the bond and all of which support a reduction in the current bond of $25,000.[2]

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[2] Defendants argue that the burden is on Plaintiff to show what bond would be reasonable, citing *The Bank of Nova Scotia v Pemberton,* 964 F. Supp. 189 (D.V.I. 1987). That case deals with the burden of proving that posting a specific bond amount would be impractical, which is not the issue addressed in this motion. This motion deals with what amount of a bond is appropriate, for which the defendant does carry the burden. *See, e.g., AB Electrolux v. Bermil Indus. Corp.*, 481 F. Supp. 2d 325, 336-37 (S.D.N.Y. 2007) (defendant has burden to demonstrate rational basis for the amount required for a bond and it **cannot be speculative**). However, it is respectfully suggested that this Court need not be too concerned with who carries what burden, as this Court can weigh the evidence submitted by the parties regarding this motion and decide the issue, as "the amount of the bond is left to the discretion of the court." *Hoxworth v. Blinder, Robinson & Co.,* 903 F. 2d 186, 210 (3d Cir. 1990).

1. "Employee" Wages

It is interesting that United begins its response to this section by pointing out what an executive in another supermarket chain earns—suggesting the Hamed managers are overpaid---when in fact the salaries paid to all of the Yusuf managers **are exactly the same** as those paid to the Hamed managers. See **Exhibit 1** attached. Indeed, these identical salaries paid to the Yusuf and Hamed managers were all approved by the monitor appointed by the U. S. Department of Justice while overseeing the operations of the three Plaza Extra Supermarkets during the criminal case. See Exhibit 1. Clearly the monitor thought these salaries were warranted.

These salaries reflect the skill, experience and hard work needed to successfully operate these three supermarkets, which have averaged over $100,000,000 in gross sales annually for the past years (one shopper at a time). See Exhibit 1. The amazing success of the three Plaza Extra Supermarkets speaks volumes for the appropriateness of these managerial salaries. As noted at the PI hearing, the three Plaza Extra Supermarkets generated over $43,000,000 in after tax profits between 2002 and 2012, employing over 600 employees, despite the on-going criminal proceedings. Thus, it has been proven that this formula at these salaries works even under adverse circumstances.

In short, these expenses were determined to be reasonable (and were being incurred) **prior to** the preliminary injunction ("PI") being issued. As such they are not new, additional expenses being incurred as a result of the injunction. Moreover, since the first Plaza Extra store opened, time has demonstrated that the management system

in place has been successful, **which is why the PI was issued—to preserve the status quo that created this success.**

Furthermore, while the Yusuf family wants to terminate the Hamed managers, they have not provided any factual basis justifying such action, as they have only submitted the conclusory declaration of Maher Yusuf without providing any detailed evidence of misfeasance or malfeasance in their capacity as Plaza Extra store managers.[3] Moreover, even if the Hamed managers were discharged, the partnership would still have to hire individuals to work these key management positions. Despite the self-serving declaration of Maher Yusuf that the Yusufs can run the stores without the Hameds, the value of these managerial services has been established by the salaries paid to the Yusuf and Hamed managers for years.

Thus, while the Yusufs **argue** that they can do without the Hameds, it can reasonably be assumed from the record established in this case that the **same costs** would need to be incurred to replace these managers.[4] Thus, there is no additional expense being incurred under the PI order that warrants an increase in the bond, as there is no evidence to support the claim that discharging the Hameds (or Charriez) would result in any savings as argued by Yusuf. On the other hand, there is ample evidence that the Hamed managers are needed to sustain the success of these three Plaza Extra Supermarkets.

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[3] As this Court already noted, Maher Yusuf perjured himself at the hearing, so his self-serving declaration that only offers conclusory opinions without any independent factual support can be summarily rejected by this Court.

[4] The same argument applies to Wadda Charriez, whose accounting job would still need to be done by someone (at $11.00 per hour!).

Clearly the evidence this Court heard at the preliminary injunction hearing supports a finding that the unique management structure in place has proven its effectiveness based upon its success, so that these expenses **are not new and do not constitute an "added" expense** because of the PI. Indeed, would this Court want to set a bond the Hameds could not meet so that they had to abandon management of the stores in order to keep the PI in place?

One final comment is in order. Defendants argue that it has filed four lawsuits alleging malfeasance on the part of the Hamed managers and Charriez, suggesting that a bond is needed to guard against "further malfeasance." These suits, which are only **allegations** (which the Hameds have denied), are being litigated in those proceedings. However, the Defendants have not asserted that any "malfeasance" has taken place in **the seven months since the PI was issued,** nor is there any evidence to support such an allegation. Thus, this argument is nothing more than the proverbial "red herring" about something that has not taken place in the seven months since the PI was issued.

In short, the "wages" argument is not supported by any credible evidence that warrants a bond being posted, much less an increase in the current bond. The same wages were being incurred for years prior to the injunction in order to make the business successful and are not a new expense for which a bond needs to be posted to "protect" the Defendants.

2. Rent

Defendants do not dispute the fact that the PI does not bar United from suing Plaza Extra for rent.[5] That ends the discussion. Since the injunction does not interfere in any way with United's rights as a landlord, no bond is warranted to provide security against a claim that is not subject to the PI.

Notwithstanding this fact, Defendants argue that the PI "provides a shield" for Plaza Extra not to pay rent. This argument is without any merit, as United can evict Plaza Extra if it does not pay rent -- a point which Plaintiff has *repeatedly* conceded. In fact, United has filed a motion in this case to try to collect that rent. In response, Mohammad Hamed admitted rent is due and affirmatively stated Plaza Extra would pay this rent if the amount could be agreed upon.[6] See **Exhibit 2** (without attachments). Thus, aside from the fact that there is no legal basis for Plaintiff to use the PI as a "shield" against the payment of rent, there is no factual basis for this assertion either.

The PI does not prohibit United Corporation from pursuing its rights as a Landlord. Thus, as the PI does not impair any of United's rights as a Landlord, this argument also does not support the need for any bond to be posted, much less increased.

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[5] If there is any question about whether United is prohibited from pursuing such a claim now, it can be clarified by stipulation, just as the matter of the shopping center bank account was clarified by mutual action.

[6] Even United could not state the amount of rent due with any clarity, as Yusuf claimed under oath that the rent owed was one amount, while United claimed an amount over four times higher than the amount Yusuf averred was due. Plaza Extra is certainly not expected to pay such grossly inflated amounts, nor is it accurate to say they are using the PI as a shield just because they do not give in to such absurd demands.

3. Legal Fees

Defendants concede on pages 11-12 of their opposition memorandum that the amount of legal fees projected by Nizar Dewood (under oath) in his initial affidavit regarding the 17 pending civil cases has been proven wrong by the subsequent evidence submitted by Plaintiff.[7] Equally significant, Defendants concede that **no legal fees have been incurred to date** on the other items for which DeWood opined would be incurred by now (such as amending the plea in the criminal case, which never happened), even though the injunction has been in place for seven months.

Notwithstanding the fact that time has demonstrated that these "estimates" were nothing but unfounded speculation, Defendants still insist additional legal fees *might* be incurred in the future because of the PI. In this regard, United argues that it may need to file litigation to pursue certain "indemnity" claims against Mohammad Hamed because of the liabilities incurred (or to be incurred) in both the 17 civil cases (such as the payment of any judgments) and the criminal case (such as the payment of taxes).

Aside from the fact that such pleadings would be further admissions by United that the partnership exists, there is no reasonable basis for incurring legal fees to pursue any "indemnity" claims for one simple reason -- if Hamed is a partner, then the funds expended to pay civil judgments, taxes or fines were from funds that belonged 50% to him (and not United). Thus, since United is simply using partnership funds to

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[7] DeWood projected these expenses to be $15,000 to $25,000 for each of the 17 cases (with a total fee cost ranging from $225,000 to $245,000), when in fact these actual expenses were only $1,990.00, as noted in the declaration of Wally Hamed submitted as Exhibit 1 in support of the motion to reduce the bond. Defendants have not contested this calculation.

pay these items, as opposed to its own funds, there is no basis for seeking indemnity from Mohammad Hamed for the use of his own funds.

To put it another way, since 50% of the funds being used to pay these obligations already belong to Mohammed Hamed (his share of the partnership funds) and not United, United has no viable claim for indemnity, nor any reasonable basis for incurring legal fees in pursing such meaningless claim. In short, United's use of partnership funds to pay a partnership obligation does not give it a cause of action against the partnership or its partners.[8] Thus, if such indemnity suits were filed, they would frivolous and would not support a finding that a bond should be posted to cover fees for such absurd claims.

Thus, the estimated figures for anticipated "legal fees" that might be incurred to deal with the PI have no reasonable basis, other than the amount of $1,990.00 that was in fact incurred. These assertions are nothing more than lawyer created arguments based on "estimates" already proven to be vastly inflated. Thus, this "exposure" is more than amply covered by the existing bond and supports a reduction in the bond to $5,000, as requested by Plaintiff.

4. Net Equity

The Defendants attached a declaration to their motion from United's in-house accountant, John Gaffney, which simply states as follows:

> 10. As of December 31, 2011, the net equity of United Corporation d /b /a Plaza Extra exceeds $68 million.

[8] If I pay your debts (taxes) with my money, I may have a claim for indemnity, but if I pay our partnership debts (taxes) with our partnership funds, I have no such claim

Contrary to their original arguments, the Defendants now concede in their opposition memorandum that this net equity will **NOT** be "lost" to United if the PI is found to have been entered improperly.[9] Thus, this argument is moot.

Instead, Defendants now argue on page 13 of their opposition memorandum that this $68 million in "net equity" is now somehow in jeopardy because the PI "seriously imperils United by imposing a regime destined to create corporate gridlock and threatening the continued existence of the Plaza Extra Supermarkets." Again, no evidence is submitted and no record exists as to this assertion. Moreover, this Court has already found that the maintaining of the *status quo* will not harm the supermarket operations, a finding approved by the V.I. Supreme Court ("**there is evidentiary support for the Superior Court's finding that Yusuf and United would not be harmed by the injunction because it merely maintained the status quo**").

Moreover, as noted, Defendants offered *no evidence* to support its claims of "corporate gridlock" or "threatened existence" of the supermarket operations, other than the conclusory declaration to Maher Yusuf, who avers about unidentified actions by the Hameds to "block decisions" made by the Yusufs. However, he does not state with any specificity as to how the store's profits have allegedly been affected. On the other hand, Plaintiff previously produced a declaration of Wally Hamed in support of its initial opposition to stay the injunction (courtesy copy attached as **Exhibit 3**) that responded to similar general allegations, which averred as follows:

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[9] The Defendants state on page 13 of their opposition memorandum the they "have never argued that the net equity has already been lost." However, they did, which is the only way they thought they could assert that a $68 million bond was needed to protect this "net equity." In any event, the absurdity of this argument has been acknowledged and the assertion withdrawn.

2. Despite the defendants telling this Court that there are problems with secured and unsecured creditors, no such problems exist, as all creditors are being paid in the normal course of business. Indeed, no creditor has questioned anything regarding this Court's order.

3. The three Plaza Extra Supermarkets are open as usual, with all 600 employees working as scheduled, without any negative feedback from the employees or the public.

The same is true today. See **Exhibit 1**. The Defendants did not submit any specific evidence to refute the fact that the three Plaza Extra Supermarkets are all open and operating. Equally significant, this Court has never received any requests or complaints from anyone about the day-to-day operations of the three stores in the seven months since the preliminary injunction was issued.

Thus, this "revised" net equity argument is not supported by the record in this case—indeed, it is refuted by the record before this Court-- so it does not support a finding that any bond need be posted in this case.

5. Conclusion

While Rule 65(c) requires a bond to be posted, "the amount of the bond is left to the discretion of the court." *Hoxworth v. Blinder, Robinson & Co.,* 903 F. 2d 186, 210 (3d Cir. 1990). The Defendants offered no evidence at the preliminary injunction hearing to support a finding that it would incur any extra expenses if a preliminary injunction were issued. While the Defendants did submit several such alleged "expenses" in their May 9th motion for reconsideration, these items are unsupported by any credible evidence, relying instead on the creative arguments of its counsel. Thus, it is respectfully requested that the current bond should be either be reduced to $5,000 or at the very least be left at $25,000.

Dated: November 21, 2013

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CERTIFICATE OF SERVICE

I hereby certify that on this 21st day of November, 2013, I served a copy of the foregoing in compliance with the parties consent, pursuant to Fed. R. Civ. P. 5(b)(2)(E), to electronic service of all documents in this action on the following persons:

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EXHIBIT 1

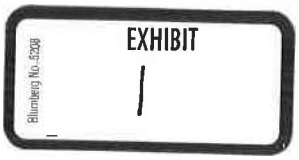
IN THE SUPERIOR COURT OF THE VIRGIN ISLANDS
DIVISION OF ST. CROIX

MOHAMMAD HAMED, by his authorized agent WALEED HAMED, Plaintiff, **v.** **FATHI YUSUF** and **UNITED CORPORATION**, Defendants.	)	**CIVIL NO. SX-12-CV-370** **ACTION FOR DAMAGES, INJUNCTIVE AND DECLARATORY RELIEF** **JURY TRIAL DEMANDED**

DECLARATION OF WALEED HAMED

I, Waleed Hamed, declare, pursuant to 28 U.S.C. Section 1746, as follows:

1. I am an adult resident of St. Croix and am personally familiar with the facts set forth herein.
2. The managers who are members of the Yusuf family who manage each store with a member of the Hamed family are paid the same amount as the Hamed managers. These salaries reflect the skill, experience and hard work needed to successfully operate these three high volume supermarkets, which have averaged over $100,000,000 in gross annual sales for the past 10 years.
3. The managerial salaries for the Hamed and Yusuf family members were approved by the monitor who was appointed by the U.S. Department of Justice overseeing the three Plaza Extra Supermarkets during the pendency of the criminal case.
4. In the seven months since the Preliminary Injunction has been issued, the three Plaza Extra Supermarkets have operated essentially the same as they usually have been operated, without any negative impact on the employees, suppliers,



creditors or customers. Managerial disagreements have arisen in the day-to-day operations of the three stores, but each time they have been addressed and resolved, much as they were prior to the Preliminary Injunction.

5. While Maher Yusuf claims the Hameds are not working as hard as they have always done, that is untrue, as it is in everyone's best interest to keep the stores as profitable as possible, which is on on-going effort despite an economic downturn on St. Croix and increased competition on St. Thomas.
6. The management structure that has been so successful depends on the day-to-day involvement of the Hameds, who are determined to continue making Plaza Extra the best supermarket in the Virgin Islands. While the Yusufs may not admit to this fact, the record speaks for itself.

I declare under penalty of perjury that the foregoing is true and correct.

Dated: November 21, 2013

Waleed Hamed

EXHIBIT 2

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

MOHAMMAD HAMED, by his authorized agent WALEED HAMED, Plaintiff, **v.** **FATHI YUSUF** and **UNITED CORPORATION**, Defendants.	**CIVIL NO. SX-12-CV-370** **ACTION FOR DAMAGES, INJUNCTIVE AND DECLARATORY RELIEF** **JURY TRIAL DEMANDED**

PLAINTIFF'S RESPONSE TO UNITED'S MOTION TO WITHDRAW RENT

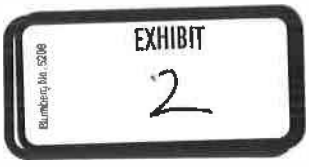
United Corporation ("United") has moved for an order authorizing it to withdraw rent allegedly due from the Plaza Extra Supermarket at Sion Farm where United is the landlord. Before responding, several comments are in order.

First, in seeking the payment of rent, United **again** concedes that Plaza Extra Supermarket is separate legal entity from United.

Second, United cites no procedural basis that would allow this Court to grant the extraordinary relief of allowing United, the landlord, to withdraw funds from the bank account of its tenant, Plaza Extra Supermarket.

Third, it is undisputed that United is the landlord and Plaza Extra is the tenant at the Sion Farm location, for which rent is due since January of 2012. However, the rent issue, like most issues between these parties, is a disputed one that needs clarity so it can be resolved. Hamed would *welcome assistance* from this Court in resolving this issue if there is a procedural basis for doing so.

Finally, United's suggestion that this Court has treated the Defendants any different than the Plaintiff is untrue (and insulting). Indeed, this Court has granted



several of United's motions, such as a motion to clarify the injunction and a motion to do discovery on the Plaintiff's motion for partial summary judgment.

With these comments in order, Hamed will address United's "rent motion."

I. United's Current Rent Claims

As this Court will recall, one of the exhibits at the preliminary injunction hearing (Plaintiff's Hearing Exhibit 8) was the payment of rent by Plaza Extra to United in February of 2012 for the time period from 2004 through 2011, which United attached to its current motion as Exhibit B. This rent was calculated using the terms of the lease for the St. Thomas Plaza Extra store (whose landlord is Tutu Park, Inc.), which calculation was a hearing exhibit as well (Plaintiff's Hearing Exhibit 6) and which United attached to its rent motion as Exhibit C.

As the Court will also recall, a group of monthly rent notices were also sent **by United to Hamed at the Plaza Extra Supermarket** after the February, 2012 payment, which were submitted as Plaintiff's Hearing Exhibit 7.

Plaintiff's Exhibits 6, 7 and 8 were introduced at the preliminary hearing to demonstrate that United considered Plaza Extra Supermarket as a separate entity and that it sent these notices **to Hamed as the partner in charge of rent for the Sion Farm store.** Even after the hearing, United continued to send these monthly rent notices that were routinely submitted to the Court to supplement the preliminary injunction record. [1]

After this Court's ruling on April 25th finding that these rent notices aided the Court in finding that Hamed was likely to succeed on the merits of his claim

[1] See, *e.g.*, March 18, 2013 "Notice Of Supplementation of the Preliminary Injunction Record."

that he has a partnership with Yusuf (Conclusions of Law ¶¶ 2-5 and 9), United continued to send monthly rental notices (from May through September) **addressed to Hamed at Plaza Extra Supermarkets**. See **Group Exhibit 1**. These notices continue to seek **$250,000 per month in rent**, with an alleged total now due in excess of $5.6 million since the payment was made in February of 2012. Not surprisingly, Hamed has repeatedly told United it does not agree with this astronomical rent assessment unilaterally made by United. See **Group Exhibit 2**. Indeed, it seems that United's excessive rent claims are designed to somehow provoke or intimidate Hamed.

Notwithstanding these notices, United's rent motion attaches a verified affidavit (Exhibit A) from Fathi Yusuf on behalf of United that states in ¶ 5 that the rent due for this time period is **$58,791.38 per month**, or a total of $1,234,618.98 due in total since that 2012 rent payment. Yusuf also admits in paragraph ¶ 5 that this rent is calculated using the St. Thomas lease terms (as he acknowledges in ¶ 6 was also used in calculating the rent payment made in February of 2012). However, there are several problems with this calculation.

First, and most importantly, while Yusuf states under oath that the rent due since January 2011 is $58,791.38 per month, United then states in its rent motion in ¶ 9 on page 5 as follows:

> **On January 1, 2012, United Corporation gave notice of increased rent for Bay 1. Any increased rents Defendant United may be entitled to will be addressed in Defendant United's counterclaims.** Defendant United does not waive none [sic} of its legal and equitable rights concerning its demand for increased rents. (Emphasis added).

Thus, while United has submitted an affidavit signed by Fathi Yusuf clearly stating that the amount of rent due is $58,791.38 per month since January 2012, United then affirmatively states that it intends to assert a claim for $250,000 per month in back rent as set forth in the rent notices it has sent each month for this same time period, supposedly to be raised in a counterclaim yet to be filed in this litigation. Thus, despite United's assertion that the amount due is not disputed, United contradicts itself by asserting that a much larger amount is really due for the same time period in this case, **thus making the amount due disputed**.[2]

Second, Hamed agrees that the terms of the St. Thomas lease govern the landlord-tenant issues for the Plaza Extra Supermarket in Sion Farm. To avoid continued misunderstandings about the landlord-tenant relationship, Hamed submitted a written agreement to United's counsel to clarify the lease terms. See **Exhibit 3** (relevant portion only). If United truly believes the rent for the Sion Farm store is the same as the rent for the St. Thomas Plaza Extra Supermarket, it need only sign that document, which would end this dispute (in writing).[3]

Third, and less important, the rent under the lease is based on the square footage of the Sion Farm store. United believes the square footage of the store

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[2] It is hard to understand why United thinks it can assert such a claim since Yusuf's affidavit attached as Exhibit A to United's rent motion unequivocally states that the rent due is $58,791.38 per month and is based upon the parties' agreement to use the terms of the St. Thomas lease to calculate the rent due.

[3] If this Court were to find that the terms of the St. Thomas lease do not govern the terms of the Sion Farm lease, as asserted by United in ¶ 9 on page 5 of its motion (contrary to Yusuf's affidavit as well as Hamed's understanding), then Hamed reserves the right to argue that rent should only be what is a reasonable amount for such a store on St. Croix, which is far less than the rent being paid in St. Thomas.

(designated by United as Bay 1) is 69,280 sq. ft. (see ¶ 3 of Exhibit A to its motion), but Hamed has calculated this figure to be 67,498 sq. ft. See Exhibit 3 attached. This discrepancy also needs to be addressed, but this measurement can easily be resolved if the general terms of the lease are resolved.

In summary, the partnership Plaza Extra Supermarket does not dispute that it owes rent to United for the Sion Farm store for the time period since January, 2012. However, until the terms of the St. Thomas lease are deemed to be binding on the parties for the Sion Farm store, there is no basis for requiring rent to be paid using that calculation. Moreover, due to the contentious nature of the parties' relationship, the terms of that lease need to be formalized in writing. As such, aside from the fact that there is no procedural basis for granting the relief sought, United's own arguments contradicts its assertion that the amount of the rent due is "undisputed."

II. United's Claims for Past Rents

In addition to seeking rent for the time period after the last rent was paid in early 2012, United unexpectedly sent a demand for rent on May 17, 2013, for rent for other bays within the shopping center as well as for back rent going back into the 1990's. **See Exhibit 4.** In its current motion, United has dropped all claims except for back rent for Bay 1, seeking rent from January, 1994, through May, 2004 based upon an alleged agreement to pay $5.55 a square foot, with a calculation of rent being due for this time period of $3,999,679.73. However, United has failed to demonstrate that any such rent was ever agreed to. Indeed,

United does not explain why this alleged rent was not addressed when the rent for the 2004 to 2011 time period was agreed to and paid.

Moreover, the statute of limitations has run on this claim for back rent. In this regard, 5 V.I.C. §31(3) provides as follows:

> (3) *Six years* –
> (A) An action upon a contract or liability, express or implied, excepting those mentioned in paragraph (1)(C) of this article.[4]

Thus, even if United had a procedural basis for raising this issue in this case, this claim for back rent would fail as (1) there is no factual basis to support the claim that such rent was ever agreed to and (2) even if the rent had been agreed to, the statute of limitations has now run on any claims for rent that was due in the 1994 to 2004 time period.[5]

III. Conclusion

For the reasons set forth herein, it is respectfully submitted that the motion to have this Court enter an order allowing United to remove funds from Plaza Extra's bank account for past rent should be denied for two separate reasons. First, the amount is still disputed.[6] Second, it does not appear that there is a procedural basis for addressing this issue in this case, as United did not cite any

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[4] Paragraph 1(C) deals with sealed instruments, so it is not applicable here.

[5] United tries to save this claim by arguing that it could not have previously raised this claim because the Government had seized its records in 2004, making it impossible to determine the months for when rent was or was not paid. Really?

[6] Hamed has provided United with a simple, immediate solution to this problem, but United's greed in trying to get the rent to which the parties have agreed **plus** (1) increased rent from approximately $58,000 to $250,000 since 2012 and (2) back rent going back 10 to 20 yeas ago has prevented this issue from being resolved.

such authority and the Plaintiff is unaware of such a procedural rule. As noted, if the Court can assist, however, Hamed welcomes that assistance.

Dated: September 16, 2013

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CERTIFICATE OF SERVICE

I hereby certify that on September 16, 2013, a true and accurate copy of the foregoing was served by hand on:

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And by mail and email on:

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Fuerst Ittleman David & Joseph, PL
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Miami, FL 33131

EXHIBIT 3

IN THE SUPERIOR COURT OF THE VIRGIN ISLANDS
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FATHI YUSUF and UNITED CORPORATION,	)	
Defendants.	)	**JURY TRIAL DEMANDED**

DECLARATION OF WALEED HAMED

I, Waleed Hamed a/k/a Wally Hamed, declare, pursuant to 28 U.S.C. Section 1746, as follows:

1. I have personal knowledge of the facts set forth herein.

2. Despite the defendants telling this Court that there are problems with secured and unsecured creditors, no such problems exist, as all creditors are being paid in the normal course of business. Indeed, no creditor has questioned anything regarding this Court's order.

3. The three Plaza Extra Supermarkets are open as usual, with all 600 employees working as scheduled, without any negative feedback from the employees or the public.

I declare under penalty of perjury that the foregoing is true and correct.

Dated: May 16, 2013

Waleed Hamed a/k/a Wally Hamed