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

MOHAMMAD HAMED, by his authorized agent WALEED HAMED, Plaintiff/Counterclaim Defendant, vs. **FATHI YUSUF and UNITED CORPORATION,** Defendants/Counterclaimants, vs. **WALEED HAMED, WAHEED HAMED, MUFEED HAMED, HISHAM HAMED, and PLESSEN ENTERPRISES,** Additional Counterclaim Defendants.	CIVIL NO. SX-12-CV-370 ACTION FOR DAMAGES, INJUNCTIVE RELIEF AND DECLARATORY RELIEF **JURY TRIAL DEMANDED**

DEFENDANT'S BRIEF IN OPPOSITION TO MOTION FOR PARTIAL SUMMARY JUDGMENT REGARDING STATUTE OF LIMITATIONS DEFENSE

INTRODUCTION

Plaintiff has filed a four-page motion for partial summary judgment on its affirmative defense that Defendants' claims are barred by the statute of limitations. His motion essentially seeks a ruling that Defendants cannot seek redress for any claims that arose before September 16, 2006. The arguments in this motion are conclusory and barely developed. Plaintiff has not even bothered to file any affidavits, a statement of undisputed facts, or any other documents in support of his motion. The motion does not withstand analysis and should be denied.

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ARGUMENT

Plaintiff's motion seeks a ruling that all of the claims asserted in Defendants' counterclaim are "barred to the extent they arose prior to 6 years before the complaint was filed . . .." Plaintiff's Brief at 3. In other words, Plaintiff says, he is asking for a ruling "barring all damages . . .that arose before September 16, 2006" on the theories of "debt, breach of contract, conversion, breach of fiduciary duty, recoupment/constructive trust and accounting . . .." Id. at 3.

As a threshold matter, it is important to point out that the Motion fails to follow the mandatory procedures set forth in LRCi 56.1, made applicable to proceedings in this Court by Super. Ct. Rule 7. In particular, LRCi 56.1(a)(1) provides:

> Each summary judgment motion shall be accompanied by a brief, affidavits and/or other supporting documents, including a separate statement of the material facts about which the movant contends there is no genuine issue. Each fact paragraph shall be serially numbered and shall be supported by a specific citation to the record. The movant shall affix to the statement copies of the precise portions of the record relied upon as evidence of each material fact.

Contrary to the clear requirements of LRCi 56.1(a)(1), the Motion was not accompanied by affidavits, a statement of material facts about which Plaintiff contends there is no genuine issue, or any supporting documents. Accordingly, the Motion should be summarily denied for its failure to comply with the applicable procedures regarding summary judgment motions.

Even if this Court were to overlook Plaintiff's failure to comply with LRCi 56.1 and were to evaluate the Motion on its merits, the Court should deny it because the evidence shows that the various claims asserted in the counterclaim accrued long after September 16, 2006, and hence

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that all of the counterclaims that could be subject to a limitations defense were timely asserted.[1] At the very least, there are genuine issues of material fact that the statute did not begin running on these claims until well after that date, and hence that they were brought within the statute of limitations applicable to each claim.

Plaintiff's enumeration of the counts in Defendants' counterclaim as to which a limitations period would apply, and his lumping of those counts into two categories ("accounting" and "fraud" claims) is not accurate. Plaintiff says that Defendants have asserted claims for debt, breach of contract, conversion, accounting, and recoupment/constructive trust, and refers to these collectively as Defendants' "accounting" claims. Plaintiff's Brief at 2. Plaintiff states that these claims are subject to a 6-year statute of limitations. Id. at 2. Plaintiff then refers to the other claims asserted by Defendants collectively as "fraud" claims, and argues that these are subject to a 2-year statute. Id. at 2. Even on its own terms, that argument makes very little sense, because fraud claims are quintessentially the kinds of claims to which the discovery rule applies in determining when the claim accrued. Indeed, the Virgin Islands Code mandates the application of the discovery rule for fraud claims. V.I. Code Ann. tit. 5, § 32(c)(2014) ("[i]n an action upon a ...fraud...,the [statute of] limitation shall be deemed to commence only from ... the discovery of the fraud..."). Here, there are at the very least genuine issues of material fact regarding when Defendants discovered that they had been victimized by alleged fraudulent acts committed by Plaintiff or his agents.

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[1]Plaintiff concedes that the counterclaims relate back (under Fed.R.Civ.P. 15(c)) to the date that he filed the complaint – September 17, 2012. Plaintiff's Brief at 3.

As they are actually styled in Defendants' First Amended Counterclaim ("FAC"), the counts that are subject to a statute of limitations period are as follows:

Count III-Conversion

Count IV-Accounting

Count V-Restitution

Count VI-Unjust Enrichment and Imposition of a Constructive Trust

Count VII-Breach of Fiduciary Duty

Count XI-Rent for Retail Space Bay 1

Count XII-Rent for Retail Space Bays 5 and 8

Count XIV-Indemnity and Contribution[2]

Defendants will discuss the allegations underlying these claims only as needed to show why Plaintiff's partial summary judgment motion should be denied.

I. The Statute of Limitations on Count IV, the Claim for an Accounting, Did not Start Running Until 2014.

The common law rule that has been followed by virtually every jurisdiction for more than a hundred years is that a claim for an accounting in the partnership context does not accrue, at the earliest, until a partnership has been dissolved. See, e.g., Annot., When Statute of Limitations Commenced to Run on Right of Partnership Accounting, 44 A.L.R.4th 678 (1986 and Supp. 2014) (collecting cases in more than 20 jurisdictions, dating from 1854 to 2009, holding that "as a general matter, a statute of limitations will not commence to run on a cause of

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[2]Plaintiff does not contend and cannot contend that Counts I and II, which seek declaratory relief, are subject to any statute of limitations. Nor does he suggest that Count VIII, which seeks dissolution of the partnership, and Count IX, which seeks dissolution of Plessen Enterprises, Inc., are subject to this defense. Finally, Plaintiff does not and cannot contend that Count X, which seeks an appointment of a receiver, and Count XIII, civil conspiracy, are subject to any statute of limitations defense.

action for an accounting of partnership affairs before the dissolution of the partnership in question"). Accordingly, as long as a claim for an accounting is brought within six years of the date of dissolution of the partnership, the claim will be timely. As a result of this longstanding rule regarding when an accounting claim accrues, "an action for an accounting examines the entire period of the partnership," from its inception to dissolution. See Sriraman v. Shashikant Patel, 761 F.Supp. 2d 7, 41 (E.D. N.Y. 2011) (citation and internal quotation marks omitted).[3]

Here, of course, while dissolution of the partnership was sought in Count VIII of Defendants' FAC, the Court has never formally ordered dissolution. Although Defendants have argued that the dissolution may have occurred in 1996 or in March of 2012 or at the latest on April 7, 2014 when Defendants filed their Motion To Appoint Master For Judicial Supervision Of Partnership Winding Up Or, In The Alternative, To Appoint Receiver To Wind Up Partnership ("Defendants' Memorandum"), see Defendants' Memorandum at 4, Plaintiff is now judicially estopped from asserting that the dissolution occurred any earlier than April 30, 2014. In his Response to Defendants' Memorandum at p. 2, Plaintiff declares that "the infirmities of

[3]As the Court in Sriraman noted, under the "equity practice in [New York and] most other common law jurisdictions, an action for an accounting is a two-step process." Sriraman, supra, 761 F.Supp. 2d at 22. The first step is to "establish the right to an accounting," id. at 22, and it is "axiomatic" that such a right exists in the case of a partnership that has been dissolved. See id. at 22. "Once a plaintiff establishes that he has a right to an accounting, the second step is for the Court to 'true-up' the partners' individual accounts to make sure that each has been allocated his fair share of partnership distributions, 'fair share' referring to the allocation agreed between the partners or required by law." Id. at 23. Further, "[i]n making this determination, the Court can consider clerical errors in allocations to the individual accounts; breach of any partnership agreement or of fiduciary duty or fraud committed by one partner against another; diversion or non-contribution of assets that should be within the partnership; or any other matters necessary to restore the individual accounts to the levels established by the partners' agreement or the law." Id. at 23-24. The Court in Sriraman also made it clear that "[t]he mere fact that a plaintiff-partner might have brought an action at law for breach of contract, or an action at law or in equity for breach of fiduciary duty, at some point prior to the dissolution of the partnership, does not 'accelerate' the accrual date for bringing his cause of action for an accounting claim that arose when the partnership went into dissolution." Id. at 39.

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Yusuf's attempted notice of dissolution are now moot, as Mohammed Hamed, likewise has given notice that *he* is dissolving the partnership. See, **Exhibit 1.**" (Emphasis in original). Of course, Exhibit 1 was Plaintiff's "Notice of Dissolution of Partnership" dated April 30, 2014. As such, far from the statute of limitations having expired on any claim for an accounting in Count VIII of the Counterclaim, it has only just begun.

Plaintiff argues that section 75(c) of the Revised Uniform Partnership Act, V.I. Code Ann. tit. 26, § 1 et seq. ("RUPA") alters the longstanding common law rule, but that argument is based on a misreading of that section. Section 75(b) provides that "[a] partner may maintain an action against the partnership or another partner for legal or equitable relief, with or without [also seeking] an accounting as to partnership business. . .." Section 75(c) then makes clear that RUPA itself does not provide a statute of limitations or an accrual rule for any of the various causes of action that a partner may bring, including an accounting, and that one must look outside RUPA to other law within the jurisdiction to resolve those issues:

> The accrual of, and any time limitation on, a right of action for a remedy under this section is governed by other law. A right to an accounting upon a dissolution and winding up does not revive a claim barred by law.

Plaintiff's construction of section 75(c) is that it abrogates the common law rule that an action for an accounting accrues upon dissolution. But that construction has been expressly or implicitly rejected by the courts of at least two jurisdictions which have adopted RUPA. In Smith v. Graner, 2010 Minn. App. Unp. LEXIS 717 (Minn. App. 2010), Smith and Graner formed a partnership to buy, pursuant to an executory land contract, an apartment complex to lease to tenants who qualified for Section 8 housing. When a $50,000 balloon payment on the purchase came due some years later in 1993, and partnership assets appeared inadequate to fund it, Graner proposed to Smith that each make equal capital contributions in an amount sufficient

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to make up the shortfall. When Smith did not respond, Graner made the payment himself and then adjusted the capital accounts to show that he owned 56.4% of the partnership, and Smith, 43.6%. See id. at p. *2-*3. Smith later died, and in 2003 the Estate of Smith brought a suit against Graner alleging claims for breach of fiduciary duty, breach of contract and dissolution and winding up of the partnership. See id. at p. *5-*6. The lower court, inter alia, determined that each party was entitled to a 50% split of the partnership assets, thus nullifying the 56.4% - 43.6% adjustment to the capital account made by Graner. See id. at pp. *6, *13.

On appeal, Graner argued that Smith's claim for nullification of his change in the percentage of the capital accounts in 1993 was time-barred under a six-year catch-all statute of limitations. The Minnesota Court of Appeals quoted (in its entirety) section 323A.0405(c) of their Uniform Partnership Act, which is identical to section 75(c) of the Virgin Islands Act set forth above. See id. at p. *14. On the basis of that statutory language, the Court stated, "Thus, to determine when [Smith's] claim regarding the 1993 adjustment of partnership capital accounts accrued and what statute of limitations applied to the claim, we must look beyond the Act." Id. at p. *14. The Court of Appeals agreed with Graner that the catch-all statute 6-year statute applied, but noted that that that limitations statute did not "address when an action accrues." Id. at p. *14.

The Minnesota Court of Appeals, citing to the ALR article cited earlier in this brief, then stated, "[A]s a general matter, a statute of limitations will not commence to run on a cause of action for an accounting of partnership affairs before the dissolution of the partnership in question." It then cited an 1889 Minnesota Supreme Court case which applied this rule in a case in which a partner sought to recover a deficiency in annual profits owed to him for the years 1881 to 1887, and the defendant partner argued that the claim as to 1881 was time-barred under

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the six-year statute of limitations, because suit was not brought until 1888. In that case, Broderick v. Beaupre, 42 N.W. 83, 83-84 (1889), the Minnesota Supreme Court rejected the statute of limitations argument as "utterly untenable," because the statute of limitations on the claim "did not begin to run . . . before the dissolution of the firm by [the suing partner's] retirement in November, 1887." Relying on the very section of RUPA that Plaintiff cites in his motion, along with the common law rule that an action for an accounting accrues upon dissolution, the Minnesota Court of Appeals rejected Graner's argument that Smith's 1993 capital account adjustment claim was time-barred, and it affirmed the lower court's ruling in favor of Smith on that claim.[4]

A 2001 case from the state of Washington, which adopted RUPA in 1998,[5] also continues to apply the common law rule that an action for an accounting accrues upon dissolution of a partnership. See Laue v. Estate of Elder, 25 P.3d 1032 (Wash. App. 2001) (holding, without referring to the corresponding subsection c provision in its RUPA, that "a cause of action for an accounting accrues at dissolution" and that "the statutory period does not begin to run until dissolution...").[6]

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[4]The Minnesota Court of Appeals also noted that this result was "consistent with Minn. Stat. § 323A.0807(b)(2008), which states that "[e]ach partner is entitled to a settlement of all partnership accounts *upon winding up the partnership business*." (emphasis in original). That RUPA provision in the Minnesota Act is codified in Section 177 of the Virgin Islands Act.

[5]See http://partnerships.uslegal.com/partnership/state-laws-governing-partnerships/ showing which states have adopted RUPA and when they have done so.

[6]Plaintiff cites a federal district court case in Connecticut, Baghdady v. Baghdady, 2008 U.S. Dist. LEXIS 83505, p. *14 (D. Conn. 2008), which held that the RUPA provision that appears in the VI Code as section 75(c) "abolish[es] the common law rule that all claims during a partnership could be brought only on an action for an accounting during the dissolution and winding-up process." Baghdady is incorrect in suggesting that the common law rule barred the assertion of any claims by one partner against another (or against the partnership) prior to dissolution; in fact, it only barred a claim for an accounting prior to dissolution. See footnote 3, supra. Baghdady is not well-reasoned for another reason, which is that it never discusses the old

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Defendants have been unable to find any Virgin Islands cases that address when an action for an accounting of a partnership accrues for statute of limitations purposes.[7] But under the Virgin Island Supreme Court's recent decision in Connor, the Superior Court is empowered to decide what the common law of the Virgin Islands is, based on what the majority rule is and what the sounder rule is. See, Gov't of the V.I. v. Connor, 2014 V.I. Supreme LEXIS 17 (V.I. Fe 24, 2014). The majority rule at common law was clearly that a claim for an accounting accrues upon dissolution of a partnership. It is a sound rule because it enables a court to "true-up" each partner's individual accounts in accordance with their agreements and avoids the injustice that would result from not respecting those agreements. The doctrine of laches may still be available to a partner who is sued for an accounting if he can show that he will be prejudiced by a delay by another partner in bringing a claim. Here, although Plaintiff has pled laches as an affirmative defense, the subject motion is not premised on this defense and he has made no effort to show that he will be prejudiced by any alleged late assertion of Defendants' claims for rent or any fraud claims. Indeed, the claim for rent is a straightforward claim that until very recently was never in dispute.

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common law accrual rule for accounting actions, and never explains how that rule can be displaced by a RUPA provision that requires parties to look to the common law or statutory law of their state . Baghdady also cites the lower court decision in in Fike v. Ruger, 754 A.2d 254, 264 (Del. Ch. 1999), and misleadingly indicates that it was affirmed by the Delaware Supreme Court, without pointing out that the affirmance was on other grounds. The Supreme Court of Delaware specifically stated that it would not "address the Court of Chancery's determination that Plaintiff's claim is barred by the statute of limitations," and instead affirmed that Court's decision on an alternative ground – laches – that the lower court never addressed. Fike v. Ruger, 752 A.2d 112, 114 (Del. 2000). The limitations issue in Delaware is thus still an open one.

[7] There is ample support in the Virgin Islands Act for the proposition that partners can seek an accounting. See Smith v. Robson, 44 V.I. 56, 2001 V.I. LEXIS 21 (holding "any partner has a right to a formal accounting" under V.I. Code Ann. tit. 26, § 71-75, which right derives from a partners right to be fully informed under V.I. Code Ann. tit. 26, § 73) and upon dissolution pursuant to V.I. Code Ann. tit. 26, § 177.

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The rent claim in Count XI is based on the historical practice by which the partnership paid rent to United for leasing the Plaza Extra - East store in St. Croix, usually in multi-year blocks. Thus, rent was collected for the period 1986-1993, and for the period from May 5, 2004 to December 31, 2011. There was a gap in collecting rent payments for the period 1994 to 2004, which Mr. Yusuf explained in his deposition and for which he provides some additional detail in the attached declaration. See **Exhibit A**, Fathi Yusuf Declaration. As the parties had agreed, rent was calculated at $5.55 per sq. ft. for the ten year period of 1994 through 2004. See **Exhibit B** – portions of the transcript of the deposition of Fathi Yusuf, p.86, l.8-11, 16-18 and p. 87, l. 11 – p. 88, l.15, and **Exhibit C** – prior Declaration of Fathi Yusuf, ¶¶7-8. The explanation for not collecting rent for the 1994–2004 period is that the federal authorities had seized the partnership "black book," kept in the Plaza Extra – East store safe which showed the last date the payment for rent covered. See **Exhibit A**, ¶6, and **C**, ¶8. Significantly, Mr. Yusuf discussed this with Waleed Hamed in early 2012 when he asked for payment of $5,408,806.74 in rent for the period from May 5, 2004 to December 31, 2011. See **Exhibit A**, ¶6. Waleed Hamed agreed that rent was owed for the 1994 – 2004 period and agreed that it would be paid once the black book was produced by the federal authorities. Id., ¶6.

In other words, Mr. Yusuf and Mr. Hamed reached an agreement in 2012 that the rent amounts for 1994–2004 would be paid once the black book was returned and the exact amount of the rents could be determined. That 2012 agreement was breached on May 22, 2013, when Hamed (through his counsel) announced that there was "never any understanding that rent would be paid for this time period, much less at that rate." See, **Exhibit D** – Letter from Attorney Holt, dated May 22, 2013. Thus, even if the Court were to conclude that the common law rule on accounting claim accruals did not apply here, and that Defendants' accounting claim could only

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cover claims arising after September 16, 2006, Mr. Hamed's position that he will not pay the rent for that period is a breach of the oral agreement that was reached in early 2012. Since the limitations period for a contract claim is six years after breach, Count XI is clearly not time-barred.

Although there was an agreement between Plaintiff and Mr. Yusuf regarding the rent rate to be paid during the 1994-2004 period as well as the agreement that collection of the 1994 - 2004 rent would be held in abeyance until the recovery of the black book, Plaintiff labors under the mistaken belief that *Plaintiff* had to so agree to support the claim for rent. This is not the case. Mr. Yusuf, as the partner admittedly in charge of all operations of the partnership, had the authority to speak for the partnership and to so commit. Specifically, when asked about the rent from 1994-2004, Plaintiff testified that "he says he's not denying the rent, and Mr. Yusuf is the one who used to, in other words, determine the – rental rate, and he's the one who would collect the rent." See, **Exhibit E**, portions of the transcript of the deposition of Plaintiff, Mohammed Hamed, Vol. II, p.107, l. 5-17 and p. 117, l.21 – P. 119, l. 11; Vol. I, p. 86, l. 5 – p. 87.l.10. See also Exhibit A at ¶ 1-2. Hence, Yusuf bound the partnership to pay the rent for the 1994-2004 period to United at the rate earlier described. See, **Exhibit B** –p.86, l.8-18.

II. The Claims Based on Fraud and Misappropriation are Subject to a Discovery Accrual Rule, and Are not Time-Barred.

As set forth in the FAC, claims against Plaintiff and Counterclaim Defendants (the "Hamed Sons") alleged conversion of funds from the Plaza Extra Stores without the knowledge or consent of Yusuf. In particular, Yusuf contends that "[i]n September of 2010, Yusuf received a partial copy of the FBI file, records, and documents electronically produced and stored on a hard drive" and that it contained "thousands of documents...organized under the names of various individuals in the Hamed and Yusuf families." See, FAC, ¶101-02. Upon review of

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these documents, which took a significant period of time, Yusuf "discovered defalcation and conversion of substantial assets including cash from [the Plaza Extra Stores] by Hamed and Waleed." See, FAC, ¶103. When the documents were initially returned, Yusuf had no reason to suspect any wrongdoing by Plaintiff, Waleed Hamed or any other members of the Hamed family. See, **Exhibit A**, ¶8. In 2011, as Yusuf reviewed these documents, he discovered certain documents which led him to believe that Plaintiff and Waleed Hamed may have taken monies without his knowledge. In 2012, Yusuf discovered the tax returns for Waleed Hamed for various years, which reflected more than $7,500,000 in stocks and securities owned by Waleed. See, FAC, ¶104 and **Exhibit A**, ¶8. Yusuf has alleged that the stock acquisitions reflected in the tax returns "could only have been acquired by Waleed through either a) his unlawful access to monies and other properties belonging to United...or, b) his misappropriation of monies which were 'partnership' funds..." See, FAC, ¶105. As Waleed acted as Hamed's authorized agent, Yusuf has alleged that Hamed "knew or directed Waleed's misconduct." See, FAC, ¶106. In addition to the records relating to Waleed, the FBI records revealed information reflecting other expenditures and funds taken by Plaintiff's sons previously unknown to Yusuf and without his consent. The misappropriations by Waleed and his brothers give rise to the various claims made by Yusuf for conversion, restitution, unjust enrichment and imposition of a constructive trust, breach of fiduciary duty, civil conspiracy, indemnity and contribution as well as the claims for dissolution, an accounting and the appointment of a receiver.

The FBI documents received in 2011 are voluminous, and although diligent efforts have been made to review and analyze them, the discovery efforts still continue. Moreover, the records returned were not *all* of the FBI records. Certain additional records have only recently been received and they are currently in the process of being scanned before they can be produced

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and analyzed by the parties. See, Defendants' Emergency Motion to Further Extend Scheduling Order Deadlines As A Result of New Information, p. 2-3. The fact that these records have not been available until recently is undisputed. In the Joint Status Report filed by Waheed and Waleed Hamed in the criminal case on April 2, 2014, the brothers admit that the entirety of the FBI records had not been returned. Specifically, they state that one of the matters remaining to be resolved in the criminal case is the "dissemination to the various party defendants of all the case documents and materials held by the United States...." See, **Exhibit F** – Joint Status Report of April 1, 2014, ¶3. Further, they request guidance from the Court as to the "appropriate manner of dissemination" given the pending civil litigation. See, **Exhibit F** – at ¶4.

As discussed above, the discovery rule applies by statute to fraud cases in the Virgin Islands. See . V.I. Code Ann. tit. 5, § 32(c)(2014). Under this rule, a claim for fraud is deemed to accrue when the plaintiff (or, as here, a counterclaimant) knew or should have known that a fraud was being perpetrated against him or her. See, Montgomery v. Estate of Griffith, 49 V.I. 255, 265 (Super. Ct. 2008). Section 32(c) has recently been construed to apply to constructive fraud claims (fraud without the element of scienter). See Carroll v. Robert F. Craig P.C., 2014 Bankr. LEXIS 1096, p. 31 (Bankr. D.V.I. 2014). In addition, the general understanding of the federal and local courts in the Territory is that the discovery rule applies to all tort claims. See, e.g., Harthman v. Texaco, Inc., 909 F.Supp. 980, 986 (D.V.I. 1995). It is therefore clear beyond peradventure that, to the extent that any of Defendants' counterclaims are predicated on alleged fraudulent acts, including misappropriations of millions in partnership monies by Waleed, the statute of limitations could not begin running on those claims until Defendants learned of these dishonest acts or reasonably should have learned about them.

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The burden of proof is on the party seeking summary judgment on a limitations defense "to demonstrate the absence of a genuine issue of material facts surrounding [the other party's] discovery of [his] alleged fraud...," and it is a "heavy burden." Montgomery, supra, 49 V.I. at 266. Defendants cannot come close to meeting that burden with respect to the allegations that Waleed Hamed misappropriated millions of dollars from the partnership.

For all the foregoing reasons, Defendants respectfully request this Court to deny the motion for partial summary judgment regarding the statute of limitations defense and provide them such further relief as is just and proper.

Respectfully submitted,

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Dated: June 6, 2014 By: _____

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CERTIFICATE OF SERVICE

I hereby certify that on this 6th day of June 2014, I caused the foregoing Defendant's Brief In Opposition To Motion For Partial Summary Judgment Regarding Statute Of Limitations Defense
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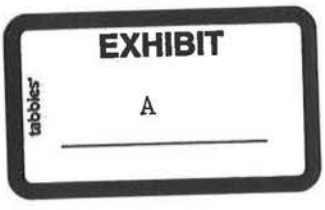
DECLARATION OF FATHI YUSUF

I, Fathi Yusuf, pursuant to 28 USC §1746 and Super. Ct. R. 18, declare under the penalties of perjury, that:

1. Since the partnership that operates the Plaza Extra Stores was formed in 1986, it has obligated itself to make rent payments to United Corporation ("United") for the Plaza Extra-East store. I was the partner responsible for making all decisions regarding the timing, amount and payment of rent. As of December 31, 1993, all rent due from the partnership to United had been paid.

2. The Plaza Extra-East store was reopened in May 1994 after it had been destroyed by fire in 1992. The Plaza Extra-Tutu Park store had just opened in October 1993. Around the time that the Plaza Extra-East store reopened, I was arranging a Scotiabank loan to United



Corporation for approximately $5,000,000 for the benefit of the partnership. The loan was guaranteed by my wife and I and it was secured by our home on St. Croix and by United's shopping center in St. Croix. In light of these circumstances, I determined that because United did not need the rent revenue, the rent would accrue and the monies that otherwise would be used to pay rent could serve as working capital for the partnership.

3. Some time in 2002 or 2003, I began discussions with Waleed Hamed regarding the rent that would be due for Plaza Extra-East after the expiration of the prior ten-year term in 2004. During those discussions, we recognized that the prior rent was far below fair market value, and the decision was made to base the rent on the same formula utilized at the Tutu Park store in St. Thomas. There is no dispute concerning the formula for calculating the rent for Plaza Extra-East from May 2004 forward, since rent based upon that agreed formula was paid on February 7, 2012 in the amount of $5,408,806.74.

4. At the time we made the agreement regarding Plaza Extra-East rent for 2004 going forward, we were embroiled in the criminal case and all of the Plaza Extra accounts were frozen by an injunction. As a result, I made a decision and Waleed Hamed, on behalf of Mohammed Hamed, agreed, that there was no prospect for the payment of the rents owed for the 1994-2004 period. However, even if the ability to collect the rent was not blocked by the injunction, I was unable to calculate the rent for 1994–2004, as I did not have the "black book," a black ledger book containing accounting information concerning the Hamed and Yusuf families, as well as other information relating to the Plaza Extra Stores, including the payment of rent to United. The FBI had seized that book when it conducted its raid in October 2001. Among other

things, the "black book" reflected the date of the last rent payment in 1994, information I needed to accurately determine the rent for Plaza Extra-East from 1994–2004.

5. In the latter part of 2011 and early 2012, United was in a position to request – and the partnership was in a position to pay – rent for the 1994–2004 period, as the criminal matter had progressed to a point where there was a relaxing of the injunction. However, the original problem regarding the absence of the records to accurately calculate the rent for the 1994-2004 period remained unresolved because of the absence of the "black book." I did not want to either understate or overstate the rent amount, but wanted the dollar amount of rent to be exactly correct.

6. In early 2012, I discussed the 1994-2004 rent with Waleed Hamed when the payment of $5,408,806.74 in rent for the period from May 5, 2004 to December 31, 2011 was coordinated. I again explained to Waleed Hamed that I could not request the 1994–2004 rent, as we still had not received the "black book" to determine the exact starting point for that period. During that conversation in 2012, Waleed Hamed agreed that rent was owed for the 1994–2004 period, and agreed that it would be paid once the "black book" was recovered and a proper calculation could be made.

7. My son found the "black book" in early 2013, among a large number of documents that were returned to us by the FBI. After receipt of the "black book," we asked Waleed Hamed for the rent for 1994–2004, as we then were able to properly calculate the dollar amount. On May 22, 2013, counsel for Mohammed Hamed wrote a letter to my counsel in which he advised that his client disputed there was any obligation to pay the 1994–2004 rent.

Until the litigation in this matter, nobody had ever disputed United's entitlement to rent for the 1994–2004 period.

8. I received a partial copy of the FBI file, records, and documents electronically produced and stored on a hard drive in approximately mid-2011. When these documents were initially returned, I had no reason to suspect any wrongdoing by Plaintiff, Waleed Hamed or any other members of the Hamed family. In 2011, as I reviewed these documents, I discovered certain documents which led me to believe that Plaintiff and Waleed Hamed may have taken monies without my knowledge. In 2012, I discovered the tax returns for Waleed Hamed for various years which reflected more than $7,500,000 in stocks and securities owned by Waleed Hamed. I knew what Waleed's salary as a Plaza Extra store manager was, and knew that he had no other employment or source of income. My belief was that there was no way he could have legitimately accumulated that much wealth.

Dated: June 6, 2014

Fathi Yusuf

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

MOHAMMED HAMED by His Authorized Agent WALEED HAMED,	)	
Plaintiff/Counterclaim Defendant,	)	
vs.	)	Case No. SX-12-CV-370
FATHI YUSUF and UNITED CORPORATION,	)	
Defendants/Counterclaimants,	)	
vs.	)	
WALEED HAMED, WAHEED HAMED, MUFEED HAMED, HISHAM HAMED, and PLESSEN ENTERPRISES, INC.,	)	
Additional Counterclaim Defendants.	)	

THE VIDEOTAPED ORAL DEPOSITION OF FATHI YUSUF

was taken on the 2nd day of April, 2014, at the Law Offices of Adam Hoover, 2006 Eastern Suburb, Christiansted, St. Croix, U.S. Virgin Islands, between the hours of 9:17 a.m. and 4:16 p.m., pursuant to Notice and Federal Rules of Civil Procedure.

Reported by:

Cheryl L. Haase
Registered Professional Reporter
Caribbean Scribes, Inc.
2132 Company Street, Suite 3
Christiansted, St. Croix U.S.V.I.
(340) 773-8161

in '92.

Unfortunate, we was home, and all of a sudden, our store, bam, catch fire. Everybody knows about it. And it was a, really, a big loss, because we was underinsured with the inventory, underinsured with the equipment, and so we lost it. We had the store, we can't use the store anymore. Okay?

So I know it was, I think the settlement of two million eight, I don't remember how much, of the -- proceeds from the insurance. The building and the inventory, okay? I told these gentlemen, we got two choice. Either you get your half and run, or we use the check and rebuild the store. Which is, after all, if the landlord deliver a store, the landlord -- the tenant operate it, and in case of fire, the tenant responsibility is to rebuild it and deliver it back to the owner. You cannot deliver it back by building flat. Okay.

So at that time, we wasn't new in the business, but it was about six, five, six years, it was more than enough to have a feel of the market, so as we lose, we always discussing things with Wally, I say, Wally, this store in the future is no good. It's too small. He say, No, no, no, Uncle, we have big store. I say, No, you don't.

Anyhow, we lost the store. We face a lot of loss. I tell him, Look, what do you think if we buy

additional 1 acre, we will win both ways? We will push the store a little bit to the back, not the front, just add more to the back. Leave the front intact to match the rest of the building. We'll have extra space, and we'll have extra loading/unloading area. I said, If you agree, I'm willing to dip 100,000-dollar of my money into the 1 acre of land. He says, Okay.

And I say, I'm willing to give you a new commitment of rent at 5.55 a square foot. The same as the old one. Even though the cost of living is up, everything is up, first I say it 5.55 in 1984. I was underground. I was in the dark. But I was willing to extend it when I was in the bright sun. I know how much the supermarket will make. But I wasn't too greedy to say, Let's keep it for myself. Okay?

I went ahead and give it to them an additional ten years. Well, he said, Okay. Mr. Mohammad, he was -- sometime, he come and take a look. I say, Mr. Mohammad, what do you think? I have a lot of water in here. I put a cistern in the store, behind the store, it hold about 500,000 gallons additional to the old cisterns. Why? Because we have a cliff, and I don't want the truck to go down. It's impossible to go down with a short distant, because it's about 15 feet deep. I say, the best thing is, put a cistern.

He say, How could you put a cistern and let trucks pass over it? I say, Don't worry. Cistern is nothing different than a bridge in New York, or in any one of these cities. You just make the roof like a bridge. So they accepted the idea.

I build it, I put the hundred thousand, and I give them the ten years of which they were free to account, because after we lose, but me as a landlord, I'll have -- still have to put back the building to the owner, because I receive it intact, I have to deliver it back intact.

Anyhow, the agreement was -- it's beside the point -- the agreement was is to rebuild the store versus ten years at 5.55 per square foot. And we went there, we open up, we work. Everything is perfect. That's -- before even we build, before even we get the insurance checks --

Q. When did the ten years start?

A. Excuse me?

Q. When did the ten years start?

A. From the time we open up.

Q. After the fire?

A. After the fire.

Q. Okay. And then that's 5.50 per square foot, starting at that point?

A. Yes, sir.

Q. All right. And United's the landlord and Plaza

Extra's the tenant?

A. Well, actually, it's from January 1st, 2004.

Q. So from January 1st --

A. I mean, I'm sorry. 1994.

Q. Okay. So from January 1, 1994, there's a ten-year --

A. That's -- that's when it start.

Q. There's a ten-year lease?

A. Yes.

Q. And United's the landlord and Plaza Extra's the tenant paying 5.55 --

A. Yes, sir.

Q. -- per square foot?

A. Yes, sir.

Q. Okay.

A. And we went going, we went going. Two or three years before the expirate -- oh, when we building, I tell Mr. Mohammad, what do you think if we spend about five or $10,000 and try to sell water? He said, That's a good idea. I say, We will sell the water. Whatever proceed, we'll send it back home to the poor. Your family and my family. He said, That's a good idea. I have too much water. I have, I think, three well, plus a big roof.

We open up, and then we start to sell water. We start to sell it between fifty to $70,000 a year in

water, and that water was going in for the poor, his family and my family. But my commitment only for ten years. Only for ten years.

Three -- two or three years before the expiration of my commitment, I have to find a fair price after the ten years is finished. What is the fair price? Because really, I don't want to take advantage of my partner, period. You know? I keep saying "partner," but you understand what I mean. My partnership is different to what is in the Virgin Islands Code. My partner is according to our commitment. I respect the code, but I did not enter with these people according to the Virgin Islands Code. According to our agreement.

Okay. Now, I say, What is fair? St. Croix store, St. Thomas store is much smaller, and is doing better business. Selling more. If I want to charge 7.25 a square foot, that's not fair. I have a much larger store, and the store, even though it's larger, it sells less.

I say, Wally, to be fair with you and myself, I want to charge in, when the -- when my commitment finish with you guys, I will charge you according for percentage on sale, according to St. Thomas percentage.

He said, That's fair.

Q. Okay. Now, I'm going to cut you off right there because he's going to cut that tape off. Then we're going

to come right back to where you're at now, --

A. Okay, sir.

Q. -- which is the St. Thomas percentage?

A. Okay.

THE VIDEOGRAPHER: Going off record at 11:32.

(Respite.)

THE VIDEOGRAPHER: Going back on record at 11:34.

Q. **(Mr. Holt)** All right. Mr. Yusuf, we -- we -- the tape cut you off, but you were then saying that you wanted to be fair, and you were talking to Wally about the next -- the next set of rent?

A. Yes.

Q. Okay.

A. He says, Okay. That's is fair. Then when it's the -- when the lease, in '93, okay? When -- when that period finished, then I know we have to go based on St. Thomas sale. Now, St. Thomas is doing less -- I mean, St. Thomas doing much higher, so otherwise, if St. Thomas pays a half a million dollars a year, I was expecting time and a half the store, maybe getting 400,000. Because they're -- the deal is based on sale.

By the time my new agreement become effective, sale turn around. Sion Farm start to do a lot better than St. Thomas. And why? Because some --

Cost-U-Less have something to do with it. Cost-U-Less become neighbor, and then we have to go more flexible in our prices, and we become a grocery spot. Whoever want to shop for grocery, either they come in this area. What he don't find at Cost-U-Less, will go to Plaza. Whatever he don't go to Plaza, he gone to Cost-U-Less, plus the competition get heat up. This cause the sale to go up. And we have to that. So when I wanted, in 2010 -- yeah, this is 2000 -- 1994 to 2000 --

MR. HODGES: 2004.

A. -- to 2004, that was -- that was my commitment for the 5.55.

Q. (Mr. Holt) Uh-huh.

A. After 2004, this become the new commitment between each other based on St. Thomas location, and I left it at that.

Now, as they come up with the -- start to see something questionable, and I start to question Wally, and unfortunately I know he's obligated to come to an answer, but unfortunately he never come up with an answer at all, I decided to give him and his father the notice we leaving. We have to split. We can't work together.

So -- but the rent, really, it doesn't bother me, because that's the agreement between me and Mr. Hamed. I am the final word in running the show. I am the one who

sign the policies. I am the one who required the two signature after I see something wrong. I insisted, to cut losses, make sure no disbursement until two checks (sic) is on the same check. I am the one who put through rule, because I feel I'm the one in charge, I feel, you -- you talking to me, I'm a forklift operator, a buyer, a produce manager sweeping the floor. Whatever the store need, you used to find me there. Because that same store is the one bring food on my table. Okay?

Then when I -- the -- the rent, you know, it's -- I know the rent is there. I never have to request it. When I want the 2000 -- I give this my notice, as long as we are month to month, and I extend my notice to December 31st, 2011. Up to December 31st, 2011, I consider myself committed to Mr. Hamed. After that, I was expecting him to leave no later than December 31st, 2011.

Then when I see him January 1st, 2012, stays, I send him a bill for 200,000. And I tell him, Listen, in three months, if you don't leave, I will raise my rate to 250. You know why? Because this is my property. I am the landlord, not Mr. Hamed, and I have too much pressure. I have -- my question is unanswered, and they are in my property by force. I give them the proper notice. Okay?

Then this calculation, St. Thomas store is some we own, some we do not own. Okay? We needed an

additional ten feet of a space. The owner refused to give us. One of his excuses is, I don't have fund to build you 10,000 square foot. I said, that's easy. I'll give you the money, but you have to give me free rent. Okay? Say, How much you want? I say, I'll ask the contractor how much he can build it for. I don't want to charge you. Just pay the taxes, and I don't want to charge you rent.

Q. You're talking about the St. Thomas store?

A. St. Thomas, yeah.

So that store is 60,000 square foot. 50,000 is rented, and 10,000 build by our money with the full agreement of the landlord. It's in the lease. So this calculation, we have to know, 80 percent of that space, how much is sell and how much it cost us money.

So if he sells 30,000, 80 percent is 24,000. Then wherever we building, I have to calculate based on what we rented. What free is free. I can't pay rent twice. So that's where I come, everything is explained, Wally is very knowledgeable of this, and after he double-check the numbers, after he examine, he did, in fact, issue a check to over -- to cover that expense.

Q. Okay. I'm going to get to that check in one minute.

So on this particular document you have, Exhibit No. 9, I take it, then, you negotiated or you met

with -- with Wally, and you went over these figures with him, and Wally agreed that these figures are correct?

A. Yes.

(Deposition Exhibit No. 10 was marked for identification.)

Q. (Mr. Holt) Okay. And then showing you Exhibit No. 10, is this the check that was then paid for the rent?

A. Yeah, this is the -- that's the check to cover this.

Q. Okay. And so the check was from Plaza Extra Supermarkets to United Corporation to pay for the rent --

A. Yeah.

Q. -- based upon the calculation you gave them.

A. Yes.

Q. Okay. And that rent covered from 2004 through 2011?

A. Yes.

Q. Okay. Was there any agreement for there to be a ten-year lease?

A. Yes -- no. It was month to month.

Q. Okay.

A. That one was month to month.

Q. Okay. Now, you say after you gave them notice to leave, you expected them to leave. You were talking about

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

MOHAMMAD HAMED Plaintiff Vs. FATHI YUSUF UNITED CORPORATION Defendants	**CIVIL NO. SX-12-CIV-370** **CIVIL ACTION** **ACTION FOR DAMAGES** AFFIDAVIT OF FATHI YUSUF

AFFIDAVIT OF FATHI YUSUF

I, Fathi Yusuf, pursuant to 28 USC §1746, declare under oath that:

1. I am an adult of sound mind, and I am the treasurer and secretary of United Corporation, as such I am aware of the facts herein.

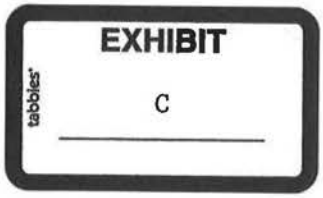
2. I have made repeated demands for rent outstanding to Plaintiff Hamed regarding the current rent obligations owed to United.

3. United Shopping Plaza is divided into various sized retail spaces. Each retail space is referred to as a "Bay." Since 1986, Bay 1, a 69,680 Sq. Ft. (approx.) retail space has been occupied by the Plaza Extra Supermarket in Sion Farm, St. Croix.

4. For the period of January 1st, 2012 through September 1, 2013 there is rent outstanding and due in the amount of $1,234,618.98.

5. The period of January 1st, 2012 through September 1, 2013 reflects a 21 month rental period at a monthly rate of $58,791.38 for a total of $1,234,618.98. The monthly rate is calculated based on the sales of the Plaza Extra Store in St. Thomas.

6. This rate has been agreed upon by myself and Mohammed Hamed and was used to calculate the rent for the period of May 5th, 2004 through December 31st, 2011. The



attached Exhibit B shows how the calculations have been done, and to which everyone agreed to by issuing a check in the amount of $5,408,806.74. Therefore, the monthly rate of $58,791.38 is what the current monthly rent is.

7. For the period of January 1, 1994 through May 4th, 2004, there is rent outstanding in the amount of $3,999,679.73 (69,680 Sq. Ft. of Retail Space @ $5.55 sq. ft.). This reflects a rental period of 10 Years &125 days. The rate of $5.55 sq. ft. has always been significantly below market value.

8. United did not make a demand for the rent for the period of January 1, 1994 through May 4th, 2004 because records concerning the exact months that rental period began and ended were in the possession of the Federal government. Plaintiff knows well these records are in the possession of the federal government, and has never made any objections or denied that no agreement existed regarding the payment of rents.

9. It is respectfully requested that an Order permitting United withdraw the back rent of $5,234,298.71 the value of all rents due for Bay 1.

10. As the fee simple owner of United Shopping Plaza, Defendant United is also entitled to repossess the premises immediately as a result of Plaintiff's bad faith refusal to allow United to withdraw rents at a rate that has already been agreed on.

11. Whether the court declares this to be partnership, a business agreement, or any other legal entity, the rent due must be paid, and there can be no excuse for failure to pay any rent.

Date: 9-5-2013

Fathi Yusuf

JOEL H. HOLT, ESQ. P.C.

2132 Company Street, Suite 2
Christiansted, St. Croix
U.S. Virgin Islands 00820

Tele. *(340) 773-8709*
Fax *(340) 773-8677*
E-mail: *holtvi@aol.com*

May 22, 2013

Nizar A. DeWood
The Dewood Law Firm
2006 Eastern Suburb, Suite 101
Christiansted, VI 00820

By Email and Mail

Re: Plaza Extra

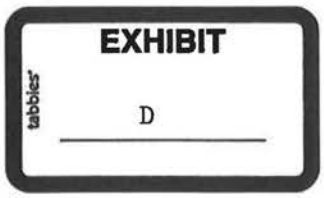
Dear Attorney DeWood:

In response to your letter dated May 17, 2013, regarding "Rent Due" for Bay Nos. 1, 5 and 8, my clients have authorized me to respond as follows:

1. **Bay No. 1**-The rent claimed is for the time period between 1994 and 2004. There was never any understanding that rent would be paid for this time period, much less at that rate. In any event, this inflated claim is clearly barred by the statute of limitations.

2. **Bay No. 5**-The rent claimed for the time period between 1994 and 2001 is for vacant space was used without charge until a tenant could be located. Thus, there was never any agreement to pay rent for this space either. In fact, the rate your client is attempting to charge is grossly inflated as well. In any event, this claim is also barred by the statute of limitations.

3. **Bay No. 8**-The rent claimed for this Bay was never agreed to, as the items stored there were removed from a space in a trailer where everything was just fine. Moreover, no one would agree to pay the amount you claim is due for warehouse storage, The fact that this amount is even being sought confirms that Fathi Yusuf should no longer be a partner in the Plaza Extra supermarkets, as it is a breach of the duty of good faith and fair dealing (that every partner owes the partnership) when you try to extort money from your own business. In any event, these items will be removed from Bay 8 to the second floor of the store since your client now wants to charge rent for this space.



Ever since your clients lost the preliminary injunction hearing, they have done everything they can to undermine the partnership. Your clients' belated claim for inflated amounts of back rent (that were never agreed to) is just another example of your clients' continued efforts to try to undermine the Court's Order.

Yours,

Joel H. Holt

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

MOHAMMED HAMED by His Authorized Agent WALEED HAMED, Plaintiff/Counterclaim Defendant, vs. FATHI YUSUF and UNITED CORPORATION, Defendants/Counterclaimants, vs. WALEED HAMED, WAHEED HAMED, MUFEED HAMED, HISHAM HAMED, and PLESSEN ENTERPRISES, INC., Additional Counterclaim Defendants.	Case No. SX-12-CV-370 Volume I

THE VIDEOTAPED ORAL DEPOSITION OF MOHAMMAD HAMED

was taken on the 31st day of March, 2014, at the Law Offices of Adam Hoover, 2006 Eastern Suburb, Christiansted, St. Croix, U.S. Virgin Islands, between the hours of 10:05 a.m. and 2:03 p.m. pursuant to Notice and Federal Rules of Civil Procedure.

Reported by:

Cheryl L. Haase
Registered Professional Reporter
Caribbean Scribes, Inc.
2132 Company Street, Suite 3
Christiansted, St. Croix U.S.V.I.
(340) 773-8161

Arabic.)

MR. HARTMANN: Is that true?

THE WITNESS: Yeah.

MR. HARTMANN: Okay. That's true. Okay.

Q. (Mr. Hodges) All right. So then you under -- you were involved in the decisions with respect to the payment of rent, is that right?

A. Rent to who?

Q. The supermarket did not pay rent?

A. We pay rent. We talk, since we open, we talk about it, and he, Mr. Yusuf the one, he put the rent. Up from that time, we don't pay no rent. Still, we owe. We owe Mr. Yusuf, the owner for the Plaza Extra, half of the -- I don't pay for half. Still we owe him some more.

Q. So I think what you're saying is you agree that the partnership owes rent to United Corporation, is that right?

A. Yeah, and to Mr. Yusuf, yes.

Q. Well, Mr. -- the United Corporation is the -- is the company that you've been paying rent to for many years, is that correct?

A. Yes, since we started.

Q. Okay. So rent would be one of the expenses that the supermarket paid in order to get net profits, is that right?

MR. HARTMANN: Yes.

A. We pay for the supermarket, rent for the supermarket for monthly. We already give him 4 million-something half couple months ago for the when he ask, we do pay him that.

Q. (Mr. Hodges) Okay. So what --

A. Yeah, we pay him that.

Q. The answer to my question --

A. We pay him that, and then still we owe him some more.

Q. Okay. You -- you paid him some money a couple months ago, you say, and you acknowledge that the partnership still owes United rent?

A. Yeah. My own don't finish --

Q. Okay.

A. -- my rent one time.

Q. How much rent do you agree that the partnership owes United?

A. I don't know. He don't agree they have a between -- and ask him St. Thomas, and we told him it's as to St. Thomas, we pay rent for St. Thomas own.

Q. Okay.

A. And we still, we don't pay, I believe.

Q. What about insurance? Was the partnership required to -- to obtain and pay for insurance for the

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

MOHAMMED HAMED by His Authorized Agent WALEED HAMED,	)	
Plaintiff/Counterclaim Defendant,	)	
vs.	)	Case No. SX-12-CV-370
	)	Volume 2
FATHI YUSUF and UNITED CORPORATION,	)	
Defendants/Counterclaimants,	)	
vs.	)	
WALEED HAMED, WAHEED HAMED, MUFEED HAMED, HISHAM HAMED, and PLESSEN ENTERPRISES, INC.,	)	
Additional Counterclaim Defendants.	)	

THE VIDEOTAPED ORAL DEPOSITION OF MOHAMMAD HAMED

was taken on the 1st day of April, 2014, at the Law Offices of Adam Hoover, 2006 Eastern Suburb, Christiansted, St. Croix, U.S. Virgin Islands, between the hours of 9:12 a.m. and 5:13 p.m. pursuant to Notice and Federal Rules of Civil Procedure.

Reported by:

Cheryl L. Haase
Registered Professional Reporter
Caribbean Scribes, Inc.
2132 Company Street, Suite 3
Christiansted, St. Croix U.S.V.I.
(340) 773-8161

upon with you.

THE INTERPRETER: In the beginning, yes, but not recent -- recently.

Q. (Mr. Hodges) I understand. But if -- if rent has not been paid on the -- the square footage basis that you agreed on with Mr. Yusuf for the period between January 1, 1994 and May 4, 2004, would you agree with me that that rent should be paid to United?

MR. HARTMANN: Object. Calls for a legal conclusion.

A. Couple months ago, they --

THE INTERPRETER: Wait. Arabic.

A. I'm sorry.

THE INTERPRETER: He says he's not denying the rent, and Mr. Yusuf is the one who used to, in other words, determine the -- the rental rate, and he's the one who would collect the rent.

Q. (Mr. Hodges) But you understand that you and your son have refused to allow United to draw the funds necessary to pay the rent from January 1, 1994 to May 4, 2004, correct?

THE INTERPRETER: What about the four-and-a-half million that was paid to him?

Q. (Mr. Hodges) That's not my question.

THE INTERPRETER: Maybe --

answered. Calls for a legal conclusion.

A. I don't know. (Speaking in Arabic.) I don't see it. I don't look at it.

Q. **(Mr. Hodges)** Your answer -- your answer is, you don't know?

A. I don't know. I don't check it. I don't see it.

Q. Okay.

A. Because I hear from my son, he say, We pay Mr. Yusuf the rent for the one that's past.

Q. Did -- did -- did your son tell you that rent had been paid for the period --

A. We pay, yeah.

Q. Wait a minute.

A. That's what he told me.

Q. Did your son tell you that rent had been paid by Plaza Extra for the period from January 1, 1994 through May 4, 2004?

MR. HARTMANN: Object. Asked and answered.

THE INTERPRETER: He did not tell me things. He told me we paid such and such.

Q. **(Mr. Hodges)** If -- if it -- if it -- if rent was not paid from January 1, 1994 through May 4, 2004, would you agree that rent should be paid?

MR. HARTMANN: Object. Asked and answered.

THE INTERPRETER: It should be paid.

Q. (Mr. Hodges) Okay. Regardless of how long it took to make a demand for payment?

MR. HARTMANN: Object. Calls for a legal conclusion.

THE INTERPRETER: He says, If it hasn't been paid, it should be paid. And he's never -- he's never objected to it being paid. Mr. Yusuf is the one who used to decide whether to collect rent or not collect rent.

Q. (Mr. Hodges) Okay. Has your son given you any reason for not paying the rent for the period from January 1, 1994 through May 4, 2004?

MR. HARTMANN: Object. Mischaracterizes prior evidence. Object to form, calls for speculation. Object. Assumes facts not in evidence.

Go ahead.

THE INTERPRETER: He did not tell me.

Q. (Mr. Hodges) But you would agree with me, sir, that it would not be fair to occupy somebody's property without paying rent?

MR. HARTMANN: Object. Asked and answered. Calls for speculation.

THE INTERPRETER: We do not have anything, any location, but the supermarket. They pay half, and we pay half.

MR. HODGES: My question is, would, in his

mind, would it be fair for the -- the supermarket to occupy the premises at Plaza Extra East for more than ten years without paying the rent that was agreed upon with Mr. Yusuf?

MR. HARTMANN: Object. Calls for speculation. Object to form. Asked and answered.

THE INTERPRETER: The first response is no. In other words, it's not fair, but this was controlled by Mr. Yusuf. I never objected to the payments of rent. I -- I -- (shrugs shoulders). In other words, he did not object and he understood that Mr. Yusuf could -- could charge for the rent and collect the rent.

MR. HODGES: Okay.

THE INTERPRETER: This is tougher than I thought.

MR. HARTMANN: Excuse me. Could we go off the record? Could we go off the record?

A. (Speaking in Arabic.)

(Discussion held off the record.)

THE VIDEOGRAPHER: Going off the record at 2:03.

(Respite.)

THE VIDEOGRAPHER: Going back on record at 2:05.

Q. (Mr. Hodges) Mr. Hamed, did there come a time that Mr. Yusuf gave notice to you that he wanted the -- the

UNITED STATES DISTRICT COURT
DISTRICT OF THE VIRGIN ISLANDS
DIVISION OF ST. CROIX

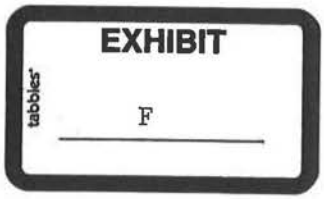
UNITED STATES OF AMERICA, and GOVERNMENT OF THE VIRGIN ISLANDS Plaintiffs, vs. UNITED CORPORATION, dba Plaza Extra Defendant.	CRIMINAL NO. 2005-00015F/B

JOINT STATUS REPORT OF FORMER DEFENDANTS WAHEED AND WALEED HAMED

Come now former defendants Waheed Mohammad Hamed and Waleed Mohammad Hamed ("Waheed and Waleed Hamed") and file this Joint Status Report.

Waheed and Waleed Hamed state as follows:

1. On November 13, 2013, the Government and United Corporation filed a Motion to schedule a sentencing hearing. Doc. No. 1385. On November 20, 2013 Waheed and Waleed Hamed filed their Response stating, *inter alia*, that the payment of taxes remains unresolved. Doc. No. 1386.
2. Waheed and Waleed Hamed represent to the Court that they have now fully paid the United States Virgin Islands income taxes for their 2002 through 2012 taxable years pursuant to the terms of the Plea Agreement in this matter.
3. Accordingly, Waheed and Waleed Hamed believe that the matter may now proceed to



sentencing and disposition of the remaining matter of dissemination to the various party defendants of all the case documents and materials held by the United States, defense counsel, and expert witnesses.

4. As the Court is aware, the subject documentation and materials are voluminous, and counsel and the expert witnesses require the Court's guidance and direction in the appropriate manner of dissemination. Such guidance is of particular importance in light of the ongoing civil litigation between and among the various defendants.
5. Given the volume and complexity of the materials to be disseminated, the parties request that the Court address, in its direction, payment of costs associated with such dissemination.
6. On the issue of payment, we remind the Court that, on October 9, 2013, defense counsel provided Magistrate Judge Barnard with copies of their unpaid invoices through September 19, 2012. The Court requested these invoices as it intended to issue an Order regarding payment of such invoices. The Order has not yet been issued.

Dated: April 2, 2014

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on April 2, 2014, a true and correct copy of the foregoing was filed on ECF and will be delivered upon the following:

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