



matter of law. Thus, no such Rule 56.1 Statement is needed, since the Plaintiff need only show that the applicable law bars these damage claims before the burden switches to the Defendants to show otherwise. See, e.g., *Abramsen v. Bedminster*, 45 V.I. 3, No. 700/200, 2002 WL 1974065, at \*6 (Terr. V.I. Aug. 13, 2002) (Swan, J.) (Once it is established that the limitations period has run, "the burden of proof to show that the statute of limitations should not be invoked rests with plaintiff).<sup>1</sup>

Second, as Defendants correctly point out, Plaintiff's motion does not attempt to bar any of the non-monetary Counts: Counts I and II (declaratory judgment), Count VIII (partnership dissolution), Count IX (dissolution of Plessen) and Count X (appointment of a receiver). This motion addresses only the pre-2006 counterclaim "damage/accounting" averments, such as United's rent claims from 1994 to 2004 and reconciliations of alleged partnership claims that supposedly occurred in the late 1990's.<sup>2</sup>

Finally, Defendants' *Opposition* lists the counts in the First Amended Counterclaim on page 3. This listing is helpful, as it clarifies a point Plaintiff overlooked,

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<sup>1</sup> As noted in *Desir v. Hovensa*, L.L.C., No. 2007/97, 2012 WL 762122 \*1 (D.V.I. Mar. 7, 2012), once a party submits sufficient information to support entry of summary judgment on an issue, the opposing party then must produce competent evidence to defeat summary judgment:

Once the moving party satisfies its burden, the burden shifts to the nonmoving party, who must go beyond its pleadings, and designate specific facts by the use of affidavits, depositions, admissions, or answers to interrogatories showing that there is a genuine issue for trial. *Id.* at 324. Summary judgment must therefore be granted "against a party who fails to make a showing sufficient to establish the existence of an element essential to that party's case, and on which that party will bear the burden of proof at trial." (citation omitted).

<sup>2</sup> Plaintiff believes all of these alleged pre-2006 claims are frivolous. For example, in ¶¶104-105 of the Amended Counterclaim, Defendants allege that Waleed (Wally) Hamed must have taken money from the stores simply because his 1992 and 1993 tax returns reflect *assets* above his salary.

there is no fraud claim alleged in the First Amended Counterclaim. Thus, this Court need not consider the statute of limitations regarding fraud or the application of 5 V.I.C. §32(c) to such claims.

With these comments in mind, Plaintiff will now address the three separate legal issues that remain—accounting, rent and tolling. For the reasons set forth herein, it is respectfully submitted that the relief sought should be granted, barring pre-2006 monetary damage claims being asserted in this case.

**I. Count IV-The “Accounting” Claims**

The issue presented as to the accounting claims is whether the *Revised Uniform Partnership Act* (“RUPA”, as codified in Title 26) bars “claims” based on matters that occurred prior to 2006--a pure question of law. While there is one unpublished post-RUPA case that *appears* on its face to have been decided the other way (cited by Defendants), this turns out not to be the case, and it is respectfully submitted that the proper view is the one stated by the drafters of Section 405 of RUPA (now codified in 26 V.I.C. §75(c)), that the statute of limitations on monetary damage claims begins to run when they occur, and are not "revived" by an accounting when the partnership is dissolved.

Defendants cite an A.L.R. 4<sup>th</sup> article that provides the correct formulation of the *prior* law -- the *UPA* as it was before the RUPA was enacted. Then, matters between the partners could only be litigated at the time of accounting, and so that is when the statute of limitations began to run. However, the old UPA was *expressly and*

*intentionally changed* when it was revised to become the RUPA.<sup>3</sup> Thus, when this provision was revised, the authors specifically noted that the entire point of the revision was to compel partners to litigate their claims during the life of the partnership or risk losing them. The official NCCUSL *Commentary* to Section 405(c) [now codified in the VI at 26 V.I.C. §75] states:

4. Section 405(c) replaces UPA Section 43 and provides that other (i.e., non-partnership) law *governs the accrual of a cause of action for which subsection (b) provides a remedy*. The statute of limitations on such claims is also governed by other law, and *claims barred by a statute of limitations are not revived by reason of the partner's right to an accounting upon dissolution, as they were under the UPA. **The effect of those rules is to compel partners to litigate their claims during the life of the partnership** or risk losing them. . . .(Emphasis added).*

See **Exhibit 1 attached**. In short, under that older version, a cause of action between partners *could not be brought sounding in partnership* until there was an accounting. Under the new law, partners can sue each other at any time regardless of requesting an accounting, and any claims not timely filed are barred by the statute of limitations. The Legislature enacted 26 V.I.C. §75(c) 1998 – which expressly states in relevant part:

(c) . . . . A right to an accounting upon a dissolution and winding up **does not revive** a claim barred by law. (Emphasis added).

If the old UPA and new RUPA are not confused, there is no dispute. The new statutory language (as explained by the official commentary) is clear: Claims not asserted before the applicable statute of limitations are not revived by the post-dissolution accounting.

The language of the V.I. statute was adopted verbatim from §405 of RUPA, which other states have also adopted. Since RUPA was enacted, several states have

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<sup>3</sup> The *National Conference of Commissioners on Uniform State Laws* ("NCCUSL") maintains a copy of the uniform version of the RUPA with the Official Commentary at [www.uniformlaws.org/shared/docs/partnership/upa\\_final\\_97.pdf](http://www.uniformlaws.org/shared/docs/partnership/upa_final_97.pdf). The specific sections referenced herein are attached as **Exhibit 1**.

addressed this exact issue. In *Fike v. Ruger*, 754 A.2d 254, 264 (Del.Ch.1999), *aff'd* 752 A.2d 112 (Del. 2000) the Delaware Chancery Court held:

**Thus, it is clear under RUPA that a right of action arising during the life of a partnership is not revived merely because a dissolution occurs and a separate right to an accounting on dissolution arises.** (Emphasis added).

While Defendants argue that the Delaware Chancery Court (in *Fike*) "got it wrong"--- and that *Fike* is *not the law in Delaware*---they are incorrect.<sup>4</sup> *Fike* is still good law, and is still controlling in Delaware long after the appeal discussed by Defendants. In fact, *Fike* was followed in Delaware by the Chancery Court several years later, in 2005, on this identical issue -- in *Ruggerio v. Estate of Poppiti*, No. Civ.A. 18961-NC, 2005 WL 517967, at \*4 (Del. Ch. Feb. 23, 2005) (money damages raised in post-RUPA accounting are subject to the statute of limitations which begins to run when the damage occurred). *Ruggerio* held:

**Where the relief sought from an accounting is merely the recovery of money, the case is analogous to an action for monetary damages. In such cases, the court applies the equivalent statute of limitations by analogy.** The statute of limitations for a breach of fiduciary duty is three years. In addition, "[a] right to an accounting ... does not revive a claim barred by law. (footnotes omitted)(citing *Fike v. Ruger*, 754 A.2d 254, 264 (Del. Ch.1999) (quoting the *Revised Uniform Partnership Act* § 405(c) (1996) to interpret 6 *Del. C.* §§ 1521-22).

*Id.* (emphasis added). In *Fike*, the court went through a full and careful analysis of the revision of RUPA Section 405(c) (called "DUPL" in Delaware) and at 754 A.2d 254 held:

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<sup>4</sup> With all due deference to Defendants' wisdom as to Delaware law, the Delaware Chancery Court -- and particularly then Vice-Chancellor Lamb -- do not get Delaware Corporation Law that wrong. The Delaware Supreme Court *absolutely did not reverse the Fike court on this issue*, as Defendants attempt to suggest.

**[P]laintiffs seek to avoid the statute of limitations or laches defense by characterizing their claims as ones for a settlement of partnership accounts upon dissolution. . . .** At common law, the general rule was that actions for accounting should be brought post-dissolution.

*Id.* at 262-63 (footnotes and citations omitted)(emphasis added). The court then explained why this old rule was changed by RUPA:

Because the common law rule placed partners in the predicament of either causing a dissolution to resolve disputes or continuing the partnership despite a cloud of conflict and uncertainty hanging over it, the drafters of the Uniform Partnership Act ("UPA") included Section 22, specifically authorizing accounting actions **prior to dissolution**.

*Id.* at 262-63. Once this concept changed, allowing suits between partners, the court then noted:

It would seem a natural development that, **once such actions were permitted, they should be regarded as "accruing" for purposes of statutes of limitations at the time of their occurrence, even in the context of partnerships subject to dissolution by a partner's withdrawal. That position was not universally adopted by courts interpreting the UPA, but it has now been codified in § 405(c) of the Revised Uniform Partnership Act ("RUPA"), which states that "[t]he 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."**

*Id.* at 263-64 (first emphasis added). As the court concluded:

*Thus, it is clear under RUPA that a right of action arising during the life of a partnership is not revived merely because a dissolution occurs and a separate right to an accounting on dissolution arises.*

*Id.* at 264 (emphasis added). As noted in Plaintiff's moving papers, the same result was reached in *Baghdady v. Baghdady*, 2008 WL 4630487 (D. Conn. Oct. 17, 2008).

Defendants attempt to support their alternative interpretation with cases from other RUPA jurisdictions that are inapposite such as *Laue v. Estate of Elder*, 25 P.3d

1032, 1038, 2001 WL 647833 (2001).<sup>5</sup> Their discussion of that case is almost exactly backwards from what the decision actually held. The Court banned the claim because it was barred by the statute of limitations where the accounting itself (not a money damages claim within the accounting) was not sought until more than three years after dissolution -- a totally different matter. *Id.* at 1038, stating in part:

Laue's final cause of action, added in his amended complaint, alleges that he is entitled to a partnership distribution by virtue of his partnership with Elder. . . .But even if his amended complaint was not properly dismissed on procedural grounds, **we nevertheless conclude Laue's claim for a partnership distribution fails because it is barred by the statute of limitations. . . .**

The statutory period does not begin to run until dissolution or the exclusion of the complaining partner from participating in the affairs of the partnership. In this case the evidence establishes that Elder excluded Laue from Top Kat Auto Sales no later than March, 1994. Thus, **Laue's right to an action for accounting and distribution of partnership assets is barred unless commenced by March, 1997.** (citations omitted) (emphasis added).

In their analysis, Defendants cite a 1980's-era (pre-RUPA) A.L.R. 4<sup>th</sup> article and argue that a *Banks/Conner* analysis supports their view -- asserting that the article cites over 20 jurisdictions that have adopted Defendants' view. That claim falls apart once the article is digested, as all of the cases cited predate the enactment of RUPA except for 8 cases listed in an updated *Supplement*.<sup>6</sup>

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<sup>5</sup> Similarly, Defendants rely on *Smith v. Graner*, 2010 Minn. App. Unpublished. LEXIS 717 (Minn. App. 2010). It is an unreported Minnesota case which has never been cited, followed or even discussed subsequently. It is based on a decidedly non-uniform 1889 Minnesota common law case that relies completely on the pre-RUPA formulation.

<sup>6</sup> The A.L.R. 4<sup>th</sup> article lists these cases in Section 3 as well as in the *Supplement* to that section. It can be provided if requested.

Of those eight post-RUPA dated cases listed in the *Supplement*, six of the cited decisions were from non-RUPA jurisdictions (New York and Massachusetts), and relied on provisions of the old UPA that have been explicitly changed in the RUPA.<sup>7</sup> Of the two remaining cases, *La Canada Hills Ltd. P'ship v. Kite*, 217 Ariz. 126, 171 P.3d 195, 512 Ariz. Adv. Rep. 8, 2007 WL 2584777 (Ct. App. 2007) was not decided based on RUPA, as Arizona has an unique limitations statute that specifies the partnership limitations do not run until "cessation of dealings." In *Boulle v. Boulle*, 160 S.W.3d 167, 174, 2005 WL 435102 (Tex. App. 2005) the court ruled on an entirely different basis -- noting that although the statute of limitations is a question of law for determination by the court, the matters were not sufficiently before the court to allow it to decide the issue. Thus, all eight post-RUPA cases cited in the A.L.R. 4<sup>th</sup> article are easily distinguishable.

More importantly, the language in 25 V.I.C. §75(c) is clear, in full harmony with the drafter's comments and all supporting decisions that specifically address this new RUPA language. Thus, common law based on the old, expressly changed law would mean nothing in any case. As such, summary judgment is warranted as to this legal question, barring monetary accounting and third-party claims that pre-date 2006 in this case.<sup>8</sup>

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<sup>7</sup> **Exhibit 2** contains the index of jurisdictions that have adopted RUPA. The fact that New York has not adopted RUPA (See **Exhibit 1**) **also** distinguishes the holding in *Sriraman v. Shashikant Patel*, 761 F.Supp. 2d 7 (E.D.N.Y. 2011) cited by Defendants on p. 5 of their *Opposition*, as it is not based on the RUPA either.

<sup>8</sup> This result works both ways, as eliminating these claims also benefits Yusuf, does not deny that he lost in excess of \$18 million in 'options trading' using Plaza Extra funds after being told to stop trading by Plaintiff in the 1990's. See **Exhibit 2** at pp. 217-218. Under the old UPA, this claim was not ripe until dissolution, but is now barred by RUPA.



## II. Count XI and Count XII-The 1994-2004 Rent Claim

Defendants do not dispute the fact that United's third-party claim for rent prior to September 16, 2006, asserted in Counts XI and XII, would normally be time barred. Those counts seek rent *inter alia* for the time period between 1994 and 2004.

Instead, Defendants now argue these pre-2006 claims survive this statute of limitations cut-off because (1) Plaintiff's son entered into a previously unmentioned oral agreement in 2012 to pay this pre-2006 rent and (2) Plaintiff somehow "waived" this statute of limitations defense in his deposition testimony by supposedly agreeing that Yusuf always determined the amount of rent (as Counts XI and XII are claims asserted against him). Each argument will be addressed separately.

### A. The Alleged 2012 Oral Agreement Re The 1994-2004 Rent

As for the alleged, new 2012 oral agreement, this Court can summarily reject this argument, as neither Count XI nor Count XII contains any allegations of such an oral agreement or contract. Since no such allegation exists in the Amended Counterclaim, this argument does not revive these time-barred claims for pre-2006 rent.<sup>9</sup>

Moreover, even if Defendants try to add this new claim by again amending the Amended Counterclaim, such an oral agreement would still be barred under 5 V.I.C. § 39 (Acknowledgment or promise), which expressly requires that such new promises MUST be in writing and signed:

No acknowledgment or promise shall be sufficient evidence of a new or continuing contract, whereby to take the case out of the operation of this chapter,

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<sup>9</sup> Aside from not being alleged in the complaint, this new "oral agreement" has never been mentioned anywhere. It was not mentioned in Defendants' specific "Rent Motion" filed in this case that set forth all such claims. Nor has it ever appeared in any prior discovery response, pleading or testimony. It is created now out of whole cloth.

unless the same is contained in some writing, signed by the party to be charged thereby....

In any event, the new claim that there was an oral agreement was not pled, so this new argument attempting to circumvent the statute of limitations is without merit.

### **B. Plaintiff's Deposition Testimony**

Defendants then argue that the statute of limitations defense has somehow been waived by Plaintiff's deposition testimony, suggesting that Plaintiff cannot even raise this defense because Yusuf was in charge of rent payments.<sup>10</sup> However, the law again does not help the Defendants. In *Abramsen* at \*7, while sitting as a Superior Court Judge, Justice Swan held:

The law requires knowledge of the right to be waived and a clear intent to waive that right. (Emphasis added).

In reaching this conclusion, Judge Swan cited *United States on Behalf of Small Business Administration v. Richardson*, 889 F.2d 37 at 40 (3rd Cir.1989) for the proposition that:

Statutes of limitation are a vital and integral component of the legal system. *To establish a waiver of a statute of limitations requires clear and specific language.*

*Id.* at \*5 (emphasis added). In following other cases, *Abramsen* held:

Crucially, the defense of the statute of limitations may be waived if there is a clear, unequivocal and decisive act of the party showing such purpose.

*Id.* at \*3 (emphasis added).

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<sup>10</sup> Defendants appear to be arguing that they can sue Plaintiff for rent and then admit he owes it without him being able to defend the claim! If correct, why stop at the new rent assessment of \$250,000 per month and just set the rent at \$1,000,000 per month? It is consistent with Yusuf suing Plessen and serving himself without telling anyone else, then arguing that Plessen is in default and strenuously objecting when Plessen retains a lawyer to defend the claim. Thankfully, the Plaintiff can himself defend against these claims, including raising the statute of limitations defense.

With this standard in mind, the argument that Mohammad Hamed somehow "waived" the statute of limitations defense is not supported by the deposition excerpts submitted to this Court. In this regard, those excerpts show that Hamed first stated that he had no personal knowledge about any such 1994-2004 rent being owed. Hamed was then asked a series of hypothetical questions premised on the proposition that "if" such a rent obligation existed, what he thought should happen. A review of those excerpts reveals that he states no personal knowledge of any such amounts owed (because Yusuf handled those payments), much less that there is a "clear, unequivocal and decisive act" to waive the statute of limitations rights on any amounts due that were time-barred. See Defendants' Exhibit E at pp. 86:5-87:22, 107:4-17, 117:15-119:11.<sup>11</sup>

In short, Defendants have failed to meet their burden of showing that there was "clear and specific language" of any waiver, nor did they show that there was an "unequivocal and decisive act" to do so, as required under *Abramsen*.

### **C. Summary Re 1994-2004 Rent Claim**

While Defendants have submitted two creative arguments to try to get around the fact that United's pre-2006 rent claim is not time-barred, both arguments fail. One relies on a newly created "oral agreement" that was not pled or ever mentioned, which would be barred by 5 V.I.C. §39 in any event. The other one fails because Defendants did not produce any waiver to justify their assertion that the statute of limitations bar on the pre-2006 rent was waived.

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<sup>11</sup> Indeed, Defendants failed to attach the critical testimony where Hamed clearly stated that he did not know whether the rent for this time period was owed, nor was he even aware that this issue was a dispute now. See **Exhibit 3** attached at p. 106.

### III. Tolling and the Discovery Rule

Defendants do not disagree that the remaining monetary damage accounting claims are all governed by a six-year statute of limitations. However, after identifying these counts on page 12 of their memorandum,<sup>12</sup> Defendants argue on the next page that the “discovery rule” extends the time to file these claims, asserting that their recent *physical receipt* of records the FBI seized in 2002 tolled the running of the statute of limitations as to these damage claims.<sup>13</sup> However, this argument also fails once the applicable law and facts are analyzed.

Regarding the tolling of a statute of limitations in the Virgin Islands, the VI Supreme Court held in *Santiago v. Virgin Islands Housing Authority, et al.*, 57 V.I. 256, 2012 WL 3191360, at \*7 (V.I. 2012) (citations omitted) as follows:

The discovery rule tolls the statute of limitations when, despite the exercise of due diligence, the injury or its cause is not immediately evident to the victim. Under the discovery rule, the focus is not on “the plaintiff’s actual knowledge, but rather ‘whether the knowledge was known, or through the exercise of diligence, knowable to [the] plaintiff.’” “To demonstrate reasonable diligence, a plaintiff must establish[ ] that he pursued the cause of his injury with those qualities of attention, knowledge, intelligence and judgment which society requires of its members for the protection of their own interests and the interests of others.”

The Virgin Islands Appellate Division reached the same conclusion in *Bluebeard’s Castle, Inc., v. Hodge*, 51 V.I. 672, 2009 WL 891896 at \*5 (D.V.I. App. Div. 2009):

The discovery rule “operates to prevent the relevant statute of limitations, here the two year statute of limitations, from beginning to run.” *Id. at 985.*

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<sup>12</sup> These include Count III (Conversion), Count V (Restitution), Count VI (Unjust Enrichment and Imposition of a Constructive Trust), Count VII (Breach of Fiduciary Duty), Count XIII (Civil Conspiracy) and Count XIV (Indemnity and Contribution), which Defendants concede are governed by the six-year statute of limitations.

<sup>13</sup> Even if true, the wrongful acts alleged against Waleed Hamed that occurred in 1992 and 1993 in ¶¶104-105 of the Amended Complaint would still be time barred.

“Under the rule, the statute of limitations will start to run at the time that two conditions are satisfied: (1) when the plaintiff knew or should have known that he had suffered a harm and (2) when the plaintiff knew or should have known the cause of his injury....” *Id.* “[B]oth of these determinations are made using an, objective, reasonable person standard.” (Emphasis added).

With this law in mind regarding the “discovery rule,” it is respectfully submitted the Defendants have failed to make any *threshold* showing to defeat summary judgment as to the statute of limitations bar.

To make this inquiry somewhat easier, the precise facts argued by Defendants here regarding these same documents seized by the FBI in 2002 have already been addressed by Judge Dunston in *United Corp. v. Hamed*, No. ST-13-CV-101, 2013 WL 3724921 (V.I.Super. June 24, 2013). In that case, in response to a motion for partial summary judgment on this limitations issue, Judge Dunston precluded any claims which were known of or could have been reasonably foreseen based on the criminal charges and indictments, first noting:

The original indictment, issued and unsealed on September 18, 2003, in *U.S. v. United Corporation, et al.*, Crim. No. 2003–147, and any subsequent superseding indictments may be considered by the Court in its analysis to determine whether Plaintiff exercised reasonable diligence under either the discovery rule or doctrine of equitable tolling because Plaintiff explicitly refers to that case on the face of the Complaint, and further, these indictments are indisputable public records. The third superseding indictment, issued on September 9, 2004, charged Defendant Waheed Hamed, among others, with

purchas[ing] and direct[ing] and caus[ing] Plaza Extra employees and others to purchase cashier's checks, traveler's checks, and money orders with unreported cash, typically from different bank branches and made payable to individuals and entities other than the defendants, in order to disguise the case as legitimate-appearing financial instruments.

*Id.* at \*4. Judge Dunston then found that the third superseding indictment should

have put a reasonable person on notice of any such problems:

While the third superseding indictment largely alleges that Defendant Waheed Hamed, among others, used cashier's checks and other methods to conceal illegal money transfers abroad, **the third superseding indictment, although only containing allegations, would have at least put a reasonable person in Plaintiff's position, as Defendant's employer, on notice that Defendant may have engaged in some wrongful activity regarding the use of cashier's checks to transfer money to unknown third parties, as alleged in Plaintiff's Complaint at Paragraph 15. Plaintiff does not contend any efforts were made after this point to review United's business and accounting records to investigate the government's allegations against Defendant. Instead, the Complaint clearly states on its face that the discovery was only made in October 2011 upon a review of the government's records and documents.**

*Id.* (emphasis added). After making this observation, Judge Dunston then held:

Thus, here, "the facts are so clear that reasonable minds cannot differ," on the face of the Complaint that the commencement period for the statute of limitations began *at least* by September 9, 2004. As such, all claims relying on facts alleging Defendant converted Seventy thousand dollars (\$70,000.00) via a certified check to a third party on October 7, 1995, are barred on statute of limitations grounds. **All of Plaintiff's claims carry a six (6) year statute of limitation or less, meaning the statutory period expired by at least September 9, 2010.**

*Id.* (emphasis added). This analysis applies to the multiple claims in ¶¶106-114 of the Amended Counterclaim, that somehow Plaintiff improperly converted funds sent by check or wire transfer, as those claims are clearly time barred for the same reasons set forth in Judge Dunston's analysis of a \$70,000 check allegedly misappropriated in 1995.<sup>14</sup>

Judge Dunston did allow United to proceed with discovery on one other claim—a claim that Waheed (Willie) Hamed had violated some duty to United in 1992. However,

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<sup>14</sup> While no longer relevant, it should be noted that the third party (a school in Florida) which received this \$70,000 check said they received it from Yusuf Yusuf, Fathi's son, not Waheed Hamed. See **Exhibit 4**.

the motion for partial summary judgment was subsequently renewed after some discovery took place. As is the case here, United argued it still needed more time to do more discovery, making the exact *same argument it is making in this case regarding the exact same FBI documents identified by Defendants here*—the so-called 'newly' produced FBI documents. In addressing this issue, the Court took into account two explicit 2009 FBI affidavits stating that all such documents had been fully available to Defendants for many years, beginning in 2003 and had been thoroughly reviewed by them on multiple occasions. **Exhibit 4**. The Court then ordered United to produce a counter-affidavit by May 12th to refute these two FBI affidavits, ordering as follows (**Exhibit 4**):

it is ORDERED that Plaintiff SUPPLEMENT, by May 12, 2014, its Response in Opposition with **proof by affidavit from the United States Attorney's Office that it no longer has access to review documents held by the federal government, as opposed to the facts set forth in Special Agent Thomas L. Petri's July 08, 2009, Declaration.** . . . (emphasis added).

United failed to produce any such affidavit. See **Exhibit 5**.

Just like Judge Dunston, this Court need only look at the 2004 third superseding indictment (**Exhibit 4**) to immediately understand why any reasonable person involved with the operations of three Plaza Extra Supermarkets would make further inquiry into the propriety of money allegedly taken from business operations upon its issuance. Certainly this 2004 indictment puts the "objective, reasonable" Fathi Yusuf on notice by 2004 that he should have exercised due diligence then to ascertain what conversion of funds had occurred. Since both United and Yusuf received this indictment as criminal defendants, they were on notice by this date that they should investigate for conversion of assets as alleged in the indictment involving financial improprieties in the

supermarket operations. Moreover, as Yusuf has asserted throughout this litigation, he was in charge of the office and the accounting, so he was aware of everything.

Defendants have the identical burden here as they did before Judge Dunston. A review of the two FBI affidavits executed on July 8, 2009 (Special Agents Christine Ziemba and Thomas Petri) confirms that United and the individual criminal defendants, including Fathi Yusuf, had "complete" and "unfettered" access to all of the records from all sources -- and repeatedly and extensively exercised that access. See **Exhibit 4**.

Petrie swore that:

7. In **2003**, subsequent to the return of the indictment, counsel for defendants was afforded **complete access** to seized evidence. Attorney Robert King, the attorney then representing defendants, reviewed the discovery at the FBI office on St. Thomas. **He and a team of approximately four or five individuals reviewed evidence for several weeks. They brought with them a copier and made many copies of documents.**

and

8. In **2004**, a different set of attorneys presently representing the defendants reviewed the evidence seized in the course of the execution of the search warrants. **By my estimation, document review team included up to ten people at any one time. The defense team spent several weeks reviewing the evidence. They had with them at least one copier and one scanner with which they made numerous copies and images of the evidence.**

9. **During the 2004 review, the defense team was afforded unfettered access to discovery. They were permitted to review any box of documents at any time, including evidence seized during the searches,** foreign bank records, documents obtained either consensually or by grand jury subpoena, and FBI Forms 302. The defense team pulled numerous boxes at one time with many different people reviewing different documents from different boxes.

See **Exhibit 4** (emphasis added). This unfettered access for United continued after that, as noted by FBI Special Agent Christine Zieba. She personally



watched Plaintiff's counsel access and review these documents over many weeks on subsequent occasions. See **Exhibit 4** (emphasis added).

**3. I have been present at the review of documents conducted by counsel for defendants in the Yusuf matter.**

4. The FBI office is comprised of two buildings, an upper building and a lower building. The two buildings are secured facilities. As part of their duties, the agents and support staff housed in the lower building possess classified and secret national security information.

5. The evidence obtained in the course of the investigation and prosecution of the defendants is stored in the lower building. The evidence is secured either in a locked storage room or in locked file cabinets in the secured work space.

6. By necessity, the defendants' document review has taken place at a long conference table in middle of the central work space. The desks of one agent and analyst are freely accessible from that central work space. The special agent and the analyst possess and utilize classified, secret, and grand jury information in their work spaces.

7. Given that FBI special agents and employees maintain classified, secret, and grand jury information in the lower building, it is not feasible to provide the defendants unfettered access to that space.

8. I memorialized my conversations with defense counsel as well as the events that transpired during the document review from November 8, 2008 through January 29, 2009. Those memoranda are attached to this declaration and incorporated as if fully set forth herein.

9. A process was put in place in order to ensure that evidence was not lost, misplaced or destroyed during the review process by defense counsel. Defense counsel were allowed to review one box at a time, and were allowed to handle the documents.

As such, applying the "discovery rule" as set forth by the Supreme Court and the Appellate Division, it is clear that the conclusion reached by Judge Dunston should be reached here as well—Defendants were on notice at least by 2004 that widespread malfeasance was allegedly occurring. They repeatedly and extensively exercised complete, unfettered access to all of the records collected by the FBI by 2004, which it

now claims are supposedly needed to determine if such malfeasance occurred. Accordingly, their claims are barred pursuant to the six-year statute of limitations.

#### IV. Count XIII-Civil Conspiracy

One final point needs to be addressed. Defendants assert in footnote 2 of their *Opposition* that Count XIII alleging a civil conspiracy is a continuing tort so the statute of limitations is not applicable. That assertion is incorrect. As the V.I. Supreme Court held in *Anthony, V. Firstbank Virgin Islands*, 58 V.I. 224, 2013 WL 211707, at \*3 (V.I. 2013) (emphasis added):

Normally, the time frame for any statute of limitations begins when the cause of action accrues. Accrual takes place on the “occurrence of the essential facts that give rise to that cause of action.” However, under the “continuing violations” doctrine, “when a [claim] involves continuing or repeated conduct, **the limitations period does not begin to run until the date of the last injury or when the [wrongful] conduct ceased’.**”

However, the Supreme Court went on to further define what a plaintiff must show:

**The plaintiff must make a threshold showing that his claim involved “continual unlawful acts, not continual ill effects from an original violation”** before a court will consider whether the equitable doctrine is available.

*Id.* (emphasis added). In this regard, Count XIII contains an opening statement in ¶185 incorporating all prior allegations. It then (at ¶186) avers a civil conspiracy (whatever that is in this context) between Plaintiff and his sons aiding and abetting each other in performing certain “wrongful acts.” However, the only wrongful acts alleged in the entire Amended Complaint are in ¶¶102-114, **which all took place prior to 2006, as there was a federal monitor in place after that time.**

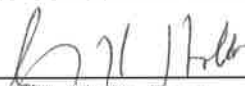
Thus, as these acts all took place before 2006, without any allegation that they continued, they are time barred by the applicable statute of limitations, requiring dismissal.

## V. Summary

Proper dismissal of the untimely claims will save countless hours and expense. These pre-2006 monetary damage accounting and third-party claims must be excluded pursuant to the applicable statute of limitations.<sup>15</sup>

For the reasons set forth herein, it is respectfully submitted that the relief sought should be granted, with an order entered barring all damage claims that pre-date September 16, 2006, as being time barred pursuant to the statute of limitations applicable to these claims. By addressing this issue now, the remaining discovery in this case can be streamlined so it can proceed to trial as scheduled without further delays.

**Dated:** June 20, 2014

  
\_\_\_\_\_  
**Joel H. Holt, Esq.**  
*Counsel for Mohammad Hamed*  
Law Offices of Joel H. Holt  
2132 Company Street,  
Christiansted, VI 00820

**Carl J. Hartmann III, Esq.**  
*Counsel for Waheed Hamed*  
5000 Estate Coakley Bay, L-6  
Christiansted, VI 00820  
Telephone: (340) 719-8941  
Email: carl@carlhartmann.com

---

<sup>15</sup> The Amended Counterclaim also fails to identify any *specific* pre-2006 “accounting” or “conversion” claims (as opposed to specificity in United's rent claim). Plaintiff has sought this information in discovery to no avail. The answer why any specific information is not forthcoming is simple—Defendants cannot detail any such claims, but are instead hoping to manufacture them in an expensive fishing expedition going through the hundreds of boxes of these same documents from the government. Of course, as Fathi Yusuf admits, he was always in control of the company's business records and accounting, so he knows he is manufacturing these offsets.

### CERTIFICATE OF SERVICE

I hereby certify that on this 20<sup>th</sup> day of June, 2014, I served a copy of the foregoing Reply by email, as agreed by the parties, on:

**Nizar A. DeWood**

The DeWood Law Firm  
2006 Eastern Suburb, Suite 101  
Christiansted, VI 00820  
dewoodlaw@gmail.com

**Gregory H. Hodges**

Law House, 10000 Frederiksberg Gade  
P.O. Box 756  
ST.Thomas, VI00802  
ghodges@dtflaw.com

**Mark W. Eckard**

Eckard, P.C.  
P.O. Box 24849  
Christiansted, VI 00824  
Email: mark@markeckard.com

**Jeffrey B. C. Moorhead**

1132 King Street  
Christiansted, VI 00820  
email : jeffreymlaw@yahoo.com

A handwritten signature in blue ink is written over a horizontal line. The signature is stylized and appears to be the initials 'JBM'.

# EXHIBIT 1



# Uniform Law Commission

The National Conference of Commissioners on Uniform State Laws

<http://www.uniformlaws.org/LegislativeFactSheet.aspx?title=Partnership Act>

Enactments Alabama, Alaska, Arizona, Arkansas, California, Colorado, Connecticut, Delaware, District of Columbia, Florida, Hawaii, Idaho, Illinois, Iowa, Kansas, Kentucky, Maine, Maryland, Minnesota, Mississippi, Montana, Nebraska, Nevada, New Jersey, New Mexico, North Dakota, Ohio, Oklahoma, Oregon, South Dakota, Tennessee, Texas, U.S. Virgin Islands, Utah, Vermont, Virginia, Washington, West Virginia, Wyoming



### Text of Act and Comments

[http://www.uniformlaws.org/shared/docs/partnership/upa\\_final\\_97.pdf](http://www.uniformlaws.org/shared/docs/partnership/upa_final_97.pdf) at § 405 (pp. 72-73)

### SECTION 405. ACTIONS BY PARTNERSHIP AND PARTNERS.



(a) A partnership may maintain an action against a partner for a breach of the partnership agreement, or for the violation of a duty to the partnership, causing harm to the partnership.

(b) A partner may maintain an action against the partnership or another partner for legal or equitable relief, with or without an accounting as to partnership business, to:

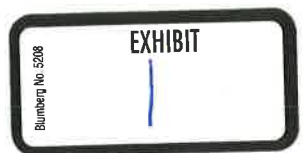
- (1) enforce the partner's rights under the partnership agreement;
- (2) enforce the partner's rights under this [Act], including:
  - (i) the partner's rights under Sections 401, 403, or 404;
  - (ii) the partner's right on dissociation to have the partner's interest in the partnership purchased pursuant to Section 701 or enforce any other right under [Article] 6 or 7; or
  - (iii) the partner's right to compel a dissolution and winding up of the partnership business under Section 801 or enforce any other right under [Article] 8; or
- (3) enforce the rights and otherwise protect the interests of the partner, including rights and interests arising independently of the partnership relationship.



(c) 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.

### Comment

1. Section 405(a) is new and reflects the entity theory of partnership. It provides that the partnership itself may maintain an action against a partner for any breach of the partnership agreement or for the violation of any duty owed to the partnership, such as a breach of fiduciary duty.




2. Section 405(b) is the successor to UPA Section 22, but with significant changes. At common law, an accounting was generally not available before dissolution. That was modified by UPA Section 22 which specifies certain circumstances in which an accounting action is available without requiring a partner to dissolve the partnership. Section 405(b) goes far beyond the UPA rule. It provides that, during the term of the partnership, partners may maintain a variety of legal or equitable actions, including an action for an accounting, as well as a final action for an accounting upon dissolution and winding up. It reflects a new policy choice that partners should have access to the courts during the term of the partnership to resolve claims against the partnership and the other partners, leaving broad judicial discretion to fashion appropriate remedies.

Under RUPA, an accounting is not a prerequisite to the availability of the other remedies a partner may have against the partnership or the other partners. That change reflects the increased willingness courts have shown to grant relief without the requirement of an accounting, in derogation of the so-called "exclusivity rule." *See, e.g., Farney v. Hauser*, 109 Kan. 75, 79, 198 Pac. 178, 180 (1921) ("[For] all practical purposes a partnership may be considered as a business entity"); *Auld v. Estridge*, 86 Misc. 2d 895, 901, 382 N.Y.S.2d 897, 901 (1976) ("No purpose of justice is served by delaying the resolution here on empty procedural grounds").

Under subsection (b), a partner may bring a direct suit against the partnership or another partner for almost any cause of action arising out of the conduct of the partnership business. That eliminates the present procedural barriers to suits between partners filed independently of an accounting action. In addition to a formal account, the court may grant any other appropriate legal or equitable remedy. Since general partners are not passive investors like limited partners, RUPA does not authorize derivative actions, as does RULPA Section 1001. Subsection (b)(3) makes it clear that a partner may recover against the partnership and the other partners for personal injuries or damage to the property of the partner caused by another partner. *See, e.g., Duffy v. Piazza Construction Co.*, 815 P.2d 267 (Wash. App. 1991); *Smith v. Hensley*, 354 S.W.2d 744 (Ky. App.). One partner's negligence is not imputed to bar another partner's action. *See, e.g., Reeves v. Harmon*, 475 P.2d 400 (Okla. 1970); *Eagle Star Ins. Co. v. Bean*, 134 F.2d 755 (9th Cir. 1943) (fire insurance company not subrogated to claim against partners who negligently caused fire that damaged partnership property).

3. Generally, partners may limit or contract away their Section 405 remedies. They may not, however, eliminate entirely the remedies for breach of those duties that are mandatory under Section 103(b). See Comment 1 to Section 103.

4. Section 405(c) replaces UPA Section 43 and provides that other (i.e., non-partnership) law governs the accrual of a cause of action for which subsection (b) provides a remedy. The statute of limitations on such claims is also governed by other law, and claims barred by a statute of limitations are not revived by reason



of the partner's right to an accounting upon dissolution, as they were under the UPA. The effect of those rules is to compel partners to litigate their claims during the life of the partnership or risk losing them. Because an accounting is an equitable proceeding, it may also be barred by laches where there is an undue delay in bringing the action. Under general law, the limitations periods may be tolled by a partner's fraud.



5. UPA Section 39 grants ancillary remedies to a person who rescinds his participation in a partnership because it was fraudulently induced, including the right to a lien on surplus partnership property for the amount of that person's interest in the partnership. RUPA has no counterpart provision to UPA Section 39, and leaves it to the general law of rescission to determine the rights of a person fraudulently induced to invest in a partnership. See Section 104(a).



# EXHIBIT 2

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, MUFEEED )  
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



ORIGINAL

**FATHI YUSUF -- DIRECT**

1                   **THE VIDEOGRAPHER:** Please swear the witness.

2                   **THE REPORTER:** Raise your right hand, please.

3                   **THE WITNESS:** Stand up.

4                   **THE REPORTER:** No. You're fine.

5                                   **FATHI YUSUF,**

6                   Called as a witness, having been first duly sworn,

7                   Testified on his oath as follows:

8                                   **DIRECT EXAMINATION**

9                   **BY MR. HOLT:**

10                   **Q.** Can you state your name for the record, please?

11                   **A.** My name, Fathi, F-A-T-H-I; last name, Yusuf,  
12                   Y-U-S-U-F.

13                   **Q.** And can you tell me where you reside?

14                   **A.** Where do I live?

15                   **Q.** Yep.

16                   **A.** 92C La Grande Princesse in Christiansted,  
17                   St. Croix.

18                   **Q.** Are you married?

19                   **A.** Yes.

20                   **Q.** And what's your wife's name?

21                   **A.** F-A-W-Z-I-A, same last name.

22                   **Q.** And are you involved with a company called  
23                   United Corporation?

24                   **A.** Yes, I do. I am.

25                   **Q.** And first of all, can you tell me what ownership

**FATHI YUSUF -- DIRECT**

1 made by Wally Hamed. That's mean, with his absolute  
2 approval. If I lose it, I'm sorry. That's bad luck.

3 Q. Okay. And, in fact, after you were asked by  
4 Mohammad Hamed to stop trading options, didn't you lose  
5 20 -- \$18 million in -- in --

6 A. Sir, whatever I lose, I did not make the deposit.  
7 His son is the one -- his son is the one make the deposit.  
8 His son is on the check to Merrill Lynch.

9 Q. So regardless of who made the deposit to Merrill  
10 Lynch, after Mohammad Hamed told you to stop trading, you  
11 lost 18 million trading options on the Plaza Extra account.

12 A. Sir, sir, --

13 Q. Isn't that correct?

14 A. -- when I bought property for about 25 million,  
15 and worth now over a hundred million, I did not consult with  
16 Mohammad Hamed. I'm willing to make a trade now. I'll give  
17 him back his money plus 10-percent profit. He give me back  
18 all the property I bought, and I don't need -- I mean, I'll  
19 give him 10-percent profit in his investment, and deduct it  
20 from the properties I bought.

21 Q. Okay.

22 A. There's a lot of property, you know. I bought  
23 2,000 -- two -- two -- how much? 578 acre at two-and-a-half  
24 million dollar, and now the same is worthing 25 million. I  
25 bought Mandela Circle for 2 million. I been offered by

**FATHI YUSUF -- DIRECT**

1 Walgreen, 10 million. Hey, wait a minute. I mean, if you  
2 want one for one, I will give him 10-percent profit. What  
3 else you want? But I'm not responsible, I am not playing  
4 big because I make him a fortune in the land. If I'm not  
5 getting any extra by buying him a dollar and turning it into  
6 ten dollar, then I should not be punished by losing money in  
7 the stock market, sir.

8 **Q.** Okay. Now --

9 **A.** Hey, hey. High risk. High reward, high risk.  
10 You want reward, you have to be facing the risk. If you  
11 don't want the reward, I guarantee you, there will be no  
12 risk. And the man choose to have reward and risk. I can't  
13 be responsible for the risk, and now all the reward is his.  
14 That's not fair.

15 **Q.** Okay. Now, having said all that, isn't it true,  
16 after -- after Mohammad Hamed told you to stop trading  
17 options, you lost \$18 million in a brokerage account of  
18 Plaza Extra funds?

19 **A.** I don't know. Maybe not. I don't know. I don't  
20 think we have \$18 million to lose.

21 **Q.** How much do you think --

22 **A.** Ask the one who make the deposit. His son, he  
23 have more confident in his son than me.

24 **Q.** Okay. If his son --

25 **A.** Ask his son.

# EXHIBIT 3

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

Blumberg No. 5208

EXHIBIT

3

MOHAMMAD HAMED -- DIRECT

1 until December 1993?

2 **THE INTERPRETER:** From the beginning?

3 **MR. HODGES:** '86, 1986.

4 **THE INTERPRETER:** Okay.

5 Yes.

6 **Q. (Mr. Hodges)** Okay. And that rental was based on  
7 a price per square foot that you agreed upon with Mr. Yusuf,  
8 is that correct?

9 **THE INTERPRETER:** Yes.

10 **Q. (Mr. Hodges)** Okay. And isn't it true that no  
11 rent has been paid to United since January 1, 1994 through  
12 May 4, 2004?

13 **MR. HARTMANN:** Object as to form.

14 **A.** I don't know. (Speaking in Arabic.)

15 **THE INTERPRETER:** He says, I don't know.

16 **Q. (Mr. Hodges)** You're not aware of any dispute  
17 regarding United's entitlement to rent for the ten years  
18 from January 1, 1994 to May 4, 19 -- excuse me -- 2004?

19 **THE INTERPRETER:** I am not aware, except  
20 recently I've learned that my son has told me that  
21 Mr. Fathi Yusuf is demanding rent of \$250,000 per month, and  
22 this is of recent.

23 **Q. (Mr. Hodges)** Okay. Well, I'm -- I'm talking  
24 about the price per square foot monthly rent for the period  
25 between January 1, 1994 through May 4, 2004 that was agreed



# EXHIBIT 4

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, INC.,  
  
*Counterclaim Defendants.*

CIVIL NO. SX-12-CV-370

ACTION FOR DAMAGES  
INJUNCTIVE RELIEF AND  
DECLARATORY RELIEF

JURY TRIAL DEMANDED

DECLARATION OF JOEL H. HOLT

I, Joel Holt, declare, pursuant to 28 U.S.C. Section 1746, as follows:

1. I have personal knowledge of the facts set forth herein.
2. Attached as **Exhibit A** is a copy of the email received from the school in Florida which received the \$70,000 that United accused Waheed Hamed of taking, which shows it was received from Yusuf Yusuf, Fathi Yusuf's son.
3. Attached as **Exhibits B and C** are a true copies of the FBI affidavits that were filed in the pending criminal case *Government v United et al.*, Crim. No. 2003-147.
4. Attached as **Exhibit D** is a true copy of the Third Superseding Indictment that was filed in the pending criminal case *Government v United et al.*, Crim. No. 2003-147.


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



Dated: June 20, 2014

  
\_\_\_\_\_  
Joel H. Holt

# EXHIBIT A

**Scotiabank**   
THE BANK OF NOVA SCOTIA  
TUTU PARK SHOPPING CENTRE  
ST. THOMAS, U.S. VIRGIN ISLANDS

No 1629041546

60-192  
435

October 3 1991  
DATE

PAY TO ORDER OF **\*\*Universal Academy of Florida\*\***

**\$\*\*70,000.00\*\***  
U.S. DOLLARS

**SUM OF US\$ 70,000.00**

SUM OF

TO:

PNC BANK, NATIONAL ASSOCIATION  
JEANETTE, PA.

AUTH NO.	THE BANK OF NOVA SCOTIA
AUTH NO.	AUTHORIZED OFFICER
16294	<i>B. U. Mann</i>
	AUTHORIZED OFFICER

⑈ 16 2904 1546 ⑈ ⑆ 04330 16 27 ⑆ 0009596509 ⑈

SUPERIOR COURT  
OF THE VIRGIN ISLANDS  
2013 JUN -4 AM 11:16

Blumberg No. 5208  
EXHIBIT  
A

054-0133

## Willie Hamed

---

**From:** Randy Andreozzi <rpa@abfmwb.com>  
**Sent:** Monday, July 02, 2012 12:26 PM  
**To:** NejeH Yusuf (nejeh27@earthlink.net) (nejeh27@earthlink.net); Mike Yusuf (mikefyusuf@yahoo.com); Joel Holt (Holtvi@aol.com); joel@holtvi.com; dewoodlaw@gmail.com; Gordon Rhea; Pamela Colon (pamelalcolon@msn.com); smock@islands.vi; Wally Hamed (wallyhstx@yahoo.com); Wally (wally@plazaextra.com); willie@plazaextra.com; howard.epstein@freedmaxick.com; ron.soluri@freedmaxick.com; Randy Andreozzi  
**Cc:** Tracy Marien  
**Subject:** FW: Donation inquiry

Hello Everyone;

I am forwarding an email we received today from the Universal Academy of Florida regarding the inquiry on the \$70,000 payment to that institution. Mike or NejeH, would you please forward to Mr. Yusuf? Please call if you have any questions. You may also contact Ms. Paula Nawawi, the bookkeeper for the institution who was our contact. Her contact information is below.

Thanks and best regards,

Randy

*Randall P. Andreozzi  
Partner  
Andreozzi, Bluestein, Fickess, Muhlbauer Weber, Brown LLP  
9145 Main Street  
Clarence, New York 14031  
Phone: (716) 565-1100  
Fax: (716) 565-1920*

**In accordance with IRS requirements, we inform you that any Federal tax advice contained in this communication is not intended or written to be used, and cannot be used, for the purpose of (i) avoiding penalties under the Internal Revenue Code or (ii) promoting, marketing, or recommending to another party any transaction or matter addressed herein.**

**Notice of Privacy and Confidentiality: The information contained within this electronic mail is being sent by an attorney and is intended to be received and read only by certain individuals and is attorney-client privileged, confidential information and work product. It may**

contain information that is privileged and/or protected from disclosure by law. No addressee should forward, print, copy, or otherwise reproduce this message in any manner that would allow it to be viewed by any individual not originally listed as a recipient without the consent of the author. If you have received this message in error, please notify me by replying and then delete both my message and your reply and destroy any paper copies. Thank you.

---

**From:** Tracy Marien  
**Sent:** Monday, July 02, 2012 12:15 PM  
**To:** Randy Andreozzi  
**Subject:** FW: Donation inquiry

**From:** Paula Nawawi [<mailto:paulan@uaftampa.org>]  
**Sent:** Monday, July 02, 2012 11:12 AM  
**To:** Tracy Marien  
**Subject:** Donation inquiry

Hey Tracy,

Regarding that donation, our former Principal says that she believes the donation was made by Yusuf Yusuf. We were asking for donations for trailers for the school, the cost of the project was \$270,000. and this man donated \$70,000.

Take care,

*Paula Nawawi*  
Bookkeeper  
Universal Academy of Florida  
Ph:  [\(813\)664-0695 x1511](tel:(813)664-0695)  
Fax:  [\(813\)664-4506](tel:(813)664-4506)  
Email: [paulan@uaftampa.org](mailto:paulan@uaftampa.org)

# EXHIBIT B

**DECLARATION OF SPECIAL AGENT THOMAS L. PETRI**



I, Thomas L. Petri, make this declaration in support of the Government's Response to Defendants' Reply Memorandum in Support of the Motion for Specific Relief.

- 1 I am employed as a Special Agent of the Federal Bureau of Investigation. I have served in that capacity for 20 years. I am assigned to the Miami Field Office.
- 2 I was assigned to the St. Thomas office of the Federal Bureau of Investigation from 2000 through 2006. While stationed on St. Thomas, I was the lead case agent of the investigation of United Corporation, Fathi Yusuf, Maher Yusuf, NejeH Yusuf, Waleed Hamed, Waheed Hamed, and Isam Yousuf.
- 3 In the course of that investigation, the government obtained and executed search warrants. Those searches were conducted at numerous locations throughout the islands, including the Plaza Extra stores and the homes of the defendants.
- 4 Evidence seized during he course of those searches was placed in boxes. Numbers were placed on the boxes to maintain an order.
- 5 The seized evidence, as well as evidence obtained either consensually or through grand jury subpoenas, was stored at the upper building of the FBI office in St. Thomas.
- 6 During the course of the investigation, FBI agents maintained control over the evidence. It was stored in a conference room in the office. No other materials but the documents pertinent to the investigation were stored in that room.
- 7 In 2003, subsequent to the return of the indictment, counsel for defendants was afforded complete access to seized evidence. Attorney Robert King, the attorney then representing defendants, reviewed the discovery at the FBI office on St. Thomas. He and a team of approximately four or five individuals reviewed evidence for several weeks. They brought with them a copier and made many copies of documents.
- 8 In 2004, a different set of attorneys presently representing the defendants reviewed the evidence seized in the course of the execution of the search warrants. By my estimation, document review team included up to ten people at any one time. The defense team spent several weeks reviewing the evidence. They had with them at least one copier and one scanner with which they made numerous copies and images of the evidence.
- 9 During the 2004 review, the defense team was afforded unfettered access to discovery. They were permitted to review any box of documents at any time, including evidence seized during the searches, foreign bank records, documents obtained either consensually or by grand jury subpoena, and FBI Forms 302. The defense team pulled numerous boxes at one time with many different people reviewing different documents from different

4420752.1

HAMD247566





boxes.

- 10 Immediately following the defense team's departure from the FBI premises, I had occasion to obtain documents from boxes that had been reviewed by the defense team. I discovered that documents that originally had been placed in one box had been placed in a different box. I returned the documents to their original boxes. I cannot be certain that I was able to identify each instance where documents had been misfiled by the defense team.
- 11 During the document review in January 2009, Randall Andreozzi requested to review all documents obtained via subpoena. I explained to him that I could not produce all evidence at once. That evidence comprises approximately 40 boxes. I asked him for a specific list of documents, or category of documents that he wished to review. He declined to identify the records that he wished to review and did not pursue the matter.

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

Executed on July 8, 2009.

  
Thomas L. Petri

# EXHIBIT C

**Declaration of Special Agent Christine Zieba**



I, Christine Zieba, make this Declaration in support of the Government's Response to Defendants' Reply Memorandum in Support of the Motion for Specific Relief.

- 1 I am employed as a Special Agent of the Federal Bureau of Investigation. I have served in that capacity for approximately 5 years.
- 2 I am a case agent who is assigned to the St. Thomas office of the FBI. I have been assigned to assist the prosecution in United States v. Yusuf, 05-15 (D.V.I.).
- 3 I have been present at the review of documents conducted by counsel for defendants in the Yusuf matter.
- 4 The FBI office is comprised of two buildings, an upper building and a lower building. The two building are secured facilities. As part of their duties, the agents and support staff housed in the lower building possess classified and secret national security information.
- 5 The evidence obtained in the course of the investigation and prosecution of the defendants is stored in the lower building. The evidence is secured either in a locked storage room or in locked file cabinets in the secured work space.
- 6 By necessity, the defendants' document review has taken place at a long conference table in middle of the central work space. The desks of one agent and analyst are freely accessible from that central work space. The special agent and the analyst possess and utilize classified, secret, and grand jury information in their work spaces.
- 7 Given that FBI special agents and employees maintain classified, secret, and grand jury information in the lower building, it is not feasible to provide the defendants unfettered access to that space.
- 8 I memorialized my conversations with defense counsel as well as the events that transpired during the document review from November 8, 2008 through January 29, 2009. Those memoranda are attached to this declaration and incorporated as if fully set forth herein.
- 9 A process was put in place in order to ensure that evidence was not lost, misplaced or destroyed during the review process by defense counsel. Defense counsel were allowed to review one box at a time, and were allowed to handle the documents.
- 10 Despite this procedure, the defense team misplaced evidence. For example, the defense team reviewed a box of evidence and scanned documents contained within it. They then replaced the documents in the box and asked to review a different box of evidence.

4420755.1

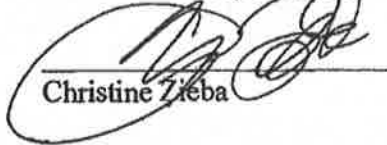
HAMD247568



Subsequent to the shelving of the original of the first box, it was discovered that the defense team had left a document on the scanner and had not returned it to the original box. The document was taken from one of the defense team and returned to the box from which it had been taken.

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

Executed on July 8, 2009:

  
Christine Zieba

# EXHIBIT D

9/18/14

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

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

v.

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

Defendants.

THIRD SUPERSEDING INDICTMENT

CRIMINAL NO. 2003-147

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

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

18 U.S.C. § 1341  
MAIL FRAUD

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

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

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

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

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

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

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

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

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

14 V.I.C. § 606  
ASSET FORFEITURE

SENTENCING ALLEGATIONS



THE GRAND JURY CHARGES:

GENERAL ALLEGATIONS

At all times relevant to this Indictment:

A. Defendants

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

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

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

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

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

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

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

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



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

**B. Virgin Islands Tax Revenue Collection**

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

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

**C. Scheme to Defraud**

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

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

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

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

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

**D. Concealment of the Fraud Proceeds**

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

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

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

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

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

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

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

foreign countries, including Jordan and St. Martin.

**E. Filing False Personal Income Tax Returns**

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

**COUNT 1**  
**(Conspiracy)**

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

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

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

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

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

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

**A. Purpose and Object of the Conspiracy**

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

**B. Overt Acts**

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

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

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

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

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

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

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

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



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

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

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

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

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

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

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

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

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

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

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

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

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

account he controlled;

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

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

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

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

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

**COUNT 2**  
(Money Laundering Conspiracy)

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

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

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

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

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

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

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

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

**COUNTS 3 - 43**  
(Mail Fraud)

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

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

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

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

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

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

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

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



**COUNTS 44 – 52**  
**(Money Laundering)**

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

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

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

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

**COUNT 53**  
(Structuring Financial Transactions)

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

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

**WAHEED HAMED**

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

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

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

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

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

**COUNT 54**  
(Structuring Financial Transactions)

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

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

**MAHER YUSUF**

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

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

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

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

**COUNT 55**  
(Conspiracy to Evade Taxes)

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

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

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

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

**A. Purpose and Object of the Conspiracy**

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

**B. Overt Acts**

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

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

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

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

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

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



COUNTS 56 - 60  
(Causing False Tax Returns)

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

**FATHI YUSUF  
WALCED HAMED  
WAHEED HAMED  
and UNITED**

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

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

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

**COUNTS 61 - 65**  
(Causing False Tax Returns)

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

**FATHI YUSUF**

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

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

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

COUNTS 66 - 70  
(Causing False Tax Returns)

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

**WALEED HAMED**

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

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

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

COUNTS 71 - 74  
(Causing False Tax Returns)

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

**WAHEED HAMED**

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

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

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

**COUNT 75**  
(Conduct of Criminal Enterprise)

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

**COUNT 76**  
(Conspiracy to Conduct Criminal Enterprise)

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

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

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

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

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

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

**COUNT 77**  
(Structuring Financial Transactions)

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

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

**NEJEH F. YUSUF**

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

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

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



COUNT 78  
(Obstruction of Justice)

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

**NEJEH YUSUF**

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

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

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

A: Not that I can remember.

\* \* \*

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

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

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

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

Q: That's correct.

Court: Of which you have knowledge.

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

\*\*\*

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

A: As far as I can remember, no.

In violation of Title 18, Sections 1503 and 3551 *et seq.*

**CRIMINAL FORFEITURE ALLEGATION 1**  
(18 U.S.C. § 982)

59. The allegations contained in Counts 1, 2 and 27 through 52 of this Indictment are re-alleged and incorporated by reference as if fully set forth herein, for the purpose of alleging forfeitures pursuant to the provisions of Title 18, United States Code, Section 982.

60. Upon conviction of one or more of the offenses charged in Counts 1, 2 and 27 through 52 of this Indictment, the defendants FATHI YUSUF, WALEED HAMED, WAHBEED HAMED, ISAM YOUSUF and UNITED shall forfeit to the United States pursuant to Title 18, United States Code, Section 982, any property, real or personal, involved in such offenses, or any property traceable to such property, or any property constituting or derived from proceeds which the defendants obtained directly or indirectly as a result of the commission of said violations.

61. Such forfeitures shall include, but are not limited to:

**Money Judgment**

62. The sum of at least approximately \$60 million in United States currency and all interest and proceeds traceable thereto, in that such sum, in the aggregate, was involved in and is traceable to, and constitutes and is derived from proceeds which the defendants obtained directly and indirectly as a result of the commission of, the criminal offenses alleged in Counts 1, 2 and 27 through 52, for which the defendants are jointly and severally liable.

**Real Property**

63. Real property located at 14 and 28-29 Estate Plessen, St. Croix, Parcel 4-06200-0408-00, including all of its appurtenances, improvements, fixtures, attachments, and easements, which is property constituting and derived from proceeds which the defendants obtained directly and indirectly as a result of the commission of violations of Title 18, United

States Code, Sections 371 and 1341.

64. Real property located at 3AA-1 and 4AA St. Joseph and Rosendahl, St. Thomas, Parcels 1-05501-0148-00 and 1-05501-0107-00, including all of its appurtenances, improvements, fixtures, attachments, and easements, which is property constituting and derived from proceeds which the defendants obtained directly and indirectly as a result of the commission of violations of Title 18, United States Code, Sections 371 and 1341.

65. Real property located at 4-15, No. 5 and 6 Tabor and Harmony, St. Thomas, Parcels 1-03104-234-00 and 1-03104-265-00, including all of its appurtenances, improvements, fixtures, attachments, and easements, which is property constituting and derived from proceeds which the defendants obtained directly and indirectly as a result of the commission of violations of Title 18, United States Code, Sections 371 and 1341.

66. Real property located at Remainder Spring Garden, St. Croix, Parcel 4-01900-0101-00, including all of its appurtenances, improvements, fixtures, attachments, and easements, which is property constituting and derived from proceeds which the defendants obtained directly and indirectly as a result of the commission of violations of Title 18, United States Code, Sections 1956(a)(1)(B)(i) and (h).

67. Real property located at Parcel 2, Estate Longpoint and Cotton Garden, St. Croix, Parcel 2-03500-0414-00, including all of its appurtenances, improvements, fixtures, attachments, and easements, which is property constituting and derived from proceeds which the defendants obtained directly and indirectly as a result of the commission of violations of Title 18, United States Code, Sections 1956(a)(1)(B)(i) and (h).

68. Real property located at Estate Peter's Farm, St. Croix, Parcel 2-04900-0404-00, including all of its appurtenances, improvements, fixtures, attachments, and easements,

which is property constituting and derived from proceeds which the defendants obtained directly and indirectly as a result of the commission of violations of Title 18, United States Code, Sections 1956(a)(1)(B)(i) and (h).

69. Real property located at Estate Perseverance, St. Thomas, Parcel 1-02503-0101-00, including all of its appurtenances, improvements, fixtures, attachments, and easements, which is property constituting and derived from proceeds which the defendants obtained directly and indirectly as a result of the commission of violations of Title 18, United States Code, Sections 1956(a)(1)(B)(i) and (h).

70. Real property located at 6 and 9 Estate Thomas, St. Thomas, Parcel 05404-1505-00, including all of its appurtenances, improvements, fixtures, attachments, and easements, which is property constituting and derived from proceeds which the defendants obtained directly and indirectly as a result of the commission of violations of Title 18, United States Code, Sections 1956(a)(1)(B)(i) and (h).

71. Real property known as Diamond Keturah Land on St. Croix, consisting of:

- a. Estate Cane Garden, Parcel Nos. 8, 9, 10, Remainder No. 46A, Remainder Matriculate No. 32B, Road Plots 11 and 12;
- b. Estate Retreat Parcel 11, Peter's Matriculate No. 37B of Company Quarter and Peter's Matriculate No. 37A and 37BA of Company Quarter, No. 54 of Queen's Quarter;
- c. Estate Granard Remainder Matriculate 32A, Parcel No. 40, Road Plot 41;

and

- d. Estate Diamond, Remainder Matriculate 31, Parcel Nos. 1, 2, 3, 4, Road Plot No. 6; including all appurtenances, improvements, fixtures, attachments, and easements; all of which is property constituting and derived from proceeds which the defendants obtained

directly and indirectly as a result of the commission of violations of Title 18, United States Code, Sections 1956(a)(1)(B)(i), (a)(2)(B)(i) and (h).

#### **Bank Account**

72. All United States currency, funds, or other monetary instruments credited to Account No.140-21722 in the name of Fathieh Yousuf (or Yousef), held by Merrill Lynch, which is property involved in and traceable to, and constitutes and is derived from proceeds which the defendants obtained directly and indirectly as a result of the commission of violations of Title 18, United States Code, Sections 371, 1341, and 1956(a)(1)(B)(i) and (h).

#### **SUBSTITUTE ASSETS**

73. Pursuant to Title 21, United States Code, Section 853(p), as incorporated by reference by Title 18, United States Code, Section 982(b), if any of the forfeitable property, and any portion thereof, described in the forfeiture section of this Indictment, as a result of any act or omission of the defendants:

- a. cannot be located upon the exercise of due diligence;
- b. has been transferred or sold to, or deposited with, a third party;
- c. has been placed beyond the jurisdiction of the court;
- d. has been substantially diminished in value; or
- e. has been commingled with other property which cannot be divided without difficulty;

it is the intent of the United States to seek forfeiture of any other property of the defendants up to the value of the above forfeitable property, including but not limited to the following:

- f. Real property located at 92C and D, La Grande Princess, St. Croix; Parcel 2-02611-0215-00, including all appurtenances, improvements, fixtures, attachments, and

easements;

g. Real property located at 7 Southgate, St. Croix, Parcel 2-03000-0412-00, including all of its appurtenances, improvements, fixtures, attachments, and easements;

h. Real property located at 92B La Grande Princess, St. Croix, Parcel 2-02611-0214-00, including all appurtenances, improvements, fixtures, attachments, and easements; and

i. Real property located at Green Cay Plantation Subdivision, Frenchman's Bay, St. Thomas, Parcel 07404-0280-00, including all of its appurtenances, improvements, fixtures, attachments, and easements.

j. Real property located at Estate Charlotte Amalie, No. 3 New Quarter, St. Thomas, Parcel No. 2-Remainder, including all of its appurtenances, improvements, fixtures, attachments, and easements.

CRIMINAL FORFEITURE ALLEGATION 2  
(14 V.I.C. § 606)

74. The allegations contained in Counts 75 and 76 of this Indictment are re-alleged and incorporated by reference as if fully set forth herein for the purpose of alleging forfeitures pursuant to Title 14, Virgin Islands Code, Section 606.

75. Through the pattern of criminal activity alleged in Counts 75 and 76, defendants FATHI YUSUF, WALBED HAMED, WAHEED HAMED, and UNITED have acquired and maintained real and personal property used in the course of, intended for use in the course of, derived from, or realized through, conduct in violation of Title 14, Virgin Islands Code, Section 605, including property constituting an interest in, or means of control or influence over, the enterprise involved in the conduct in violation of Title 14, Virgin Islands Code, Section 605, and including property constituting proceeds derived from the conduct in violation of Title 14, Virgin Islands Code, Section 605, which is subject to forfeiture to the Government of the Territory of the United States Virgin Islands pursuant to Title 14, Virgin Islands Code, Section 606(c). That forfeitable property includes, but is not limited to:

**Corporate Assets and Interests**

76. All assets, tangible and intangible, of UNITED, including, but not limited to: all United States currency, funds, or other monetary instruments credited to the following accounts in the name of defendant United Corporation:

- a. Account No. at Banco Popular;
- b. Account No. at Banco Popular;
- c. Account No. at Banco Popular;
- d. Account No. at Bank of Nova Scotia;



- e. Account No. at Bank of Nova Scotia;
- f. Account No. at Bank of Nova Scotia;
- g. Account No. at Bank of Nova Scotia;
- h. Account No. at Bank of Nova Scotia; and
- i. Account No. at Merrill Lynch.

77. The interests of individual defendants FATHI YUSUF, WALEED HAMED, and WAHBEED HAMED in the enterprise, including individual shares and rights and entitlements to profits and funds from UNITED and other corporate members of the enterprise.

78. As a result of the commission of the offenses charged in Counts 75 and 76 of this Indictment, the defendants FATHI YUSUF, WALEED HAMED, and WAHBEED HAMED shall forfeit to the Government of the Territory of the United States Virgin Islands assets, including, but not limited to, the assets described in paragraphs 62, 64 through 73.

#### SUBSTITUTE ASSETS

79. Pursuant to Title 14, Virgin Islands Code, Section 606(e), if any of the forfeitable property, and any portion thereof, described in Criminal Forfeiture Allegation One of this Indictment, as a result of any act or omission of the defendant:

- a. cannot be located upon the exercise of due diligence;
- b. has been sold to a bona fide purchaser for value;
- c. has been placed beyond the jurisdiction of the Court;
- d. has been substantially diminished in value; or
- e. has been commingled with other property which cannot be divided without difficulty or injury to third persons;

it is the intent of the United States to seek forfeiture of any other property of said defendants up

to the value of the above forfeitable property, including, but not limited to the property described in paragraphs 68(f) through 68(i).

All in accordance with Title 14, Virgin Islands Code, Section 606.

SENTENCING ALLEGATIONS

80. With respect to count 1 of the Indictment with which each defendant is charged:
- a. The loss from the mail fraud described in count 1(a) was more than \$2,500,000;
  - b. The amount of funds structured described in count 1(b) was more than \$2,500,000;
  - c. The offense otherwise involved sophisticated means; and
  - d. Defendants **FATHI YUSUF, WALEED HAMED, and WAHEED HAMED**, were organizers and leaders of a criminal activity that involved five or more participants and was otherwise extensive.
81. With respect to count 2 of the indictment with which each defendant is charged:
- a. The value of the laundered funds was more than \$1,000,000;
  - b. The offense involved sophisticated laundering; and
  - c. Defendants **FATHI YUSUF, WALEED HAMED, and WAHEED HAMED**, were organizers and leaders of a criminal activity that involved five or more participants and was otherwise extensive.
82. With respect to counts 3 through 43 of the indictment with which each defendant is charged:
- a. The loss from the mail fraud described in counts 3 through 43 more than \$2,500,000;
  - b. The offense otherwise involved sophisticated means; and
  - c. Defendants **FATHI YUSUF, WALEED HAMED, and WAHEED HAMED**, were organizers and leaders of a criminal activity that involved five or more participants and was otherwise extensive.

83. With respect to counts 44 through 52 of the indictment with which each defendant is charged:
- a. The value of the laundered funds was more than \$1,000,000; and
  - b. The offense involved sophisticated laundering.
84. With respect to count 53 of the indictment with which each defendant is charged:
- a. The value of the funds structured was more than \$70,000;
  - b. Defendant **WAHEED HAMED** knew and believed that the funds were proceeds of unlawful activity and were intended to promote unlawful activity; and
  - c. Defendant **WAHEED HAMED** committed the offense as part of a pattern of unlawful activity involving more than \$100,000 in a 12 month period.
85. With respect to count 54 of the indictment with which each defendant is charged:
- a. The value of the funds structured was more than \$30,000;
  - b. Defendant **MAHER YUSUF** knew and believed that the funds were proceeds of unlawful activity and were intended to promote unlawful activity; and
  - c. Defendant **MAHER YUSUF** committed the offense as part of a pattern of unlawful activity involving more than \$100,000 in a 12 month period.
86. With respect to counts 61 through 65 of the indictment with which each defendant is charged:
- a. The tax loss was more than \$7,000,000;
  - b. The offense involved sophisticated means and/or sophisticated concealment; and
  - c. Defendant **FATHI YUSUF** failed to report or to correctly identify the source of income exceeding \$10,000 in any year from criminal activity.

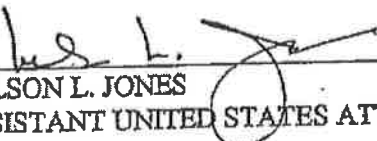
87. With respect to counts 66 through 70 of the indictment with which each defendant is charged:
- a. The tax loss was more than \$1,000,000;
  - b. The offense involved sophisticated means and/or sophisticated concealment;  
and
  - c. Defendant **WALEED HAMED** failed to report or to correctly identify the source of income exceeding \$10,000 in any year from criminal activity.
88. With respect to counts 71 through 74 of the indictment with which each defendant is charged:
- a. The tax loss was more than \$400,000;
  - b. The offense involved sophisticated means and/or sophisticated concealment;  
and
  - c. Defendant **WAHEED HAMED** failed to report or to correctly identify the source of income exceeding \$10,000 in any year from criminal activity.
89. With respect to count 77 of the indictment with which each defendant is charged:
- a. The amount of structured funds was more than \$30,000; and
  - b. The offense otherwise involved sophisticated means.
90. With respect to count 78 of the indictment with which each defendant is charged:
- a. The offense involved substantial interference with the administration of justice.

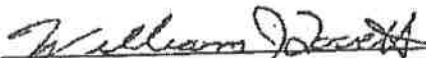
USAO NO. 2001R00382

A TRUE BILL


  
FOREPERSON

ANTHONY J. JENKINS  
ACTING UNITED STATES ATTORNEY

  
NELSON L. JONES  
ASSISTANT UNITED STATES ATTORNEY

  
WILLIAM J. LOVE  
TRIAL ATTORNEY  
UNITED STATES DEPARTMENT OF JUSTICE

SEP 10 2004  
F-9 04 23

  
THOMAS J. PINDER  
TRIAL ATTORNEY  
UNITED STATES DEPARTMENT OF JUSTICE

DISTRICT OF THE VIRGIN ISLANDS: *Sept. 8, 2004*

Returned into the District Court by Grand Jurors and filed.

  
DEPUTY CLERK

# EXHIBIT 5

**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, INC.,**

*Counterclaim Defendants.*

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

**ACTION FOR DAMAGES  
INJUNCTIVE RELIEF AND  
DECLARATORY RELIEF**

**JURY TRIAL DEMANDED**

**DECLARATION OF CARL J. HARTMANN, ESQ.**

I, Carl J. Hartmann, declare, pursuant to 28 U.S.C. Section 1746, as follows:

1. I have personal knowledge of the facts set forth herein.
2. I am counsel of record for Waheed Hamed in *United Corporation v. Waheed Hamed*, STT Civ. No. 13-101.
3. Attached is a true copy of Judge Dunston's Order directing United Corporation to file an affidavit in his case.
4. Plaintiff United did not file an affidavit in response to this Order

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

**Dated:** June 19, 2014



Carl J. Hartmann, Esq.



