



all other items relevant to the items listed above under your control not previously produced by you.

Said deposition will be taken and recorded by **VIDEOTAPE** before a Notary Public commissioned by the Territory of the Virgin Islands or other person qualified to administer the oath and take depositions. Said deposition is being taken for use as evidence and for purposes of discovery of evidence and may be continued from day to day until completed.

Dated: March 4, 2014



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**CERTIFICATE OF SERVICE**

I hereby certify that on this 4<sup>th</sup> day of March, 2014, I served a copy of the foregoing in compliance with the parties consent, pursuant to Fed. R. Civ. P. 5(b)(2)(E), to electronic service of all documents in this action on the following persons:

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A handwritten signature in blue ink, appearing to be "John J. DeWood", written over a horizontal line.

## ATTACHMENT A TOPICS FOR DEPOSITION

1. Facts related to statements United made in a complaint recently filed in this Court -- *United v. Waleed Hamed*, STX Civ. No. 2013/3, alleging (PEX 4, ¶¶ 11, 14):

Sometime in 1986, **Plaintiff United, through its shareholder and then President, Fathi Yusuf, entered into an oral agreement**, whereby Plaintiff United and Defendant Hamed's father, Mohammed Hamed, agreed to operate a grocery store business. . . . In 1986, the joint venture resulted in the first supermarket store being opened. United began using the trade name "Plaza Extra" and the first supermarket in this joint venture was named Plaza Extra Supermarket. Since 1986, two additional stores opened in the U.S. Virgin Islands; the second in Tutu Park, St. Thomas; the third in Grove Place, St. Croix. (Emphasis added.)

2. Facts related to Defendants filing in this case that Hamed and Yusuf entered into an oral agreement in 1986 to split the net profits of the Plaza Extra supermarkets 50/50. (Preliminary Injunction Hearing, PEX 2, p 3):

In 1986, due to financial constraints, **Defendant Yusuf and Plaintiff Hamed entered into an oral joint venture agreement**. The agreement called for Plaintiff Hamed to receive fifty percent (50%) of the net profits of the operations of the Plaza Extra supermarkets....Plaintiff Hamed received 50% of the net profits thereafter. (Emphasis added).

3. Facts related to Defendants filing in this case that (*id.* at PEX 3, p 11):

There is no disagreement that Mr. Hamed is entitled to fifty percent (50%) of the profits of the operation of Plaza Extra Store.

4. The Feb. 2, 2000, deposition in *Idheileh v United and Yusuf*, STT Superior Court No. 156/1997 ("Idheileh Case"), which is of record in this case.

5. Statements made by defendants in documents filed by them in *Idheileh v United and Yusuf*, STT Superior Court No. 156/1997, which are of record in this case.

6. Methods and actions in the recordation and accounting of amounts taken by members of the Hamed and Yusuf families from Plaza Extra Supermarket funds in 1986 to 2003.

7. The 1999 actions by Maher "Mike" Yusuf and Mafi Hamed to reconcile recordation and accounting of amounts taken by members of the Hamed and Yusuf families from Plaza Extra supermarket funds in 1986 to 1999.

8. The present financials of United, including but not limited to, Funds removed from Plaza Extra Supermarket Operating Accounts by Fahti or Mike Yusuf without agreement

of Hamed in 2012 and 2013, such as the \$2.7 million identified by the Court in its PI decision, funds paid to lawyers, other funds removed -- as well as the ultimate items, entities or interests purchased with those funds.

9. The present financials of Plaza Extra Supermarkets kept on Sage50 or otherwise, including, but not limited to, Funds removed from Plaza Extra Supermarket Operating Accounts by defendants without agreement of Hamed after April 25, 2013 that do not appear on the Sage50 backups provided to plaintiff by Mr. Gaffney.

10. The means and transactions for the removal of funds from Plaza Extra Supermarkets and subsequent purchase of real property presently held in corporations or other entities owned or controlled by members of the Hamed and Yusuf families.

11. Efforts by United to claim full ownership of Plaza Extra Supermarkets.

12. Access provided to Hamed and his agents under the PI order and subsequent clarifying orders of the Court in this case: including, but not limited to, joint access to passwords for the accounting system, joint instruction of financial employees, access to bank and other accounts and amount of rewards and rebates from credit card purchases.

13. Capitalization of the Plaza Extra Supermarkets by United.

14. Loans obtained by United for the benefit of Plaza Extra Supermarkets.

15. Losses or additional contributions after 1986 by United to Plaza Extra Supermarkets. Losses or additional contributions occasioned by Fathi Yusuf or any other person from 1987 to the present as a result of the operation of the Plaza Extra Supermarkets.

16. United's tax returns.

17. United's shareholders, including consideration paid by those shareholders or means of transfer of that stock to those shareholders, as well as distributions by United to shareholders.

18. The history and present status of ownership of United stock. This shall include, but not be limited to, the representation made to the Court that Yusuf recently diluted his ownership in United down to just 7.5%, on page 11 of the defendants Rule 12 opposition memorandum (PEX 2, p 11) as follows:

Even if the Amended Complaint sufficiently alleges that a "Hamed & Yusuf partnership" exists, the only relief Mohammad Hamed would be entitled to is a fifty percent (50%) share of **Defendant Yusuf's 7.5% ownership of Defendant United's outstanding stocks.** (Emphasis added.)

19. The conversion of United to an "S" corporation.

20. Source of funds and status of "profits" account at Banco Popular Securities.

21. Letters to Hamed regarding rent due from Plaza Extra Supermarkets to United in 2012-2013.

22. Defendants' statement in its Reply to the Opposition regarding the motion to dismiss (at p. 8) that "Plaintiff Hamed has always been employed as a warehouse clerk, and never had any supervisory managerial responsibilities."

23. Defendants' statement in its Reply to the Opposition regarding the motion to dismiss (at p. 11) that: "There is no disagreement that Mr. Hamed is entitled to percent (50%) of the profits of the operations of Plaza Extra Store. This what Plaintiff Hamed, through his agent, has represented to everyone for the last 26 years."

24. The notice regarding termination of partnership sent to Hamed.

25. Attempts to terminate Hamed, Wally Hamed, Mafi Hamed, Shawn Hamed, Willie Hamed and others from Plaza Extra Supermarket operations.

26. Representations to third persons or entities regarding the termination of partnership.

27. Transfer of Remainder Plot No. 51 Estate Hannah's Rest, United Corporation, Inc. by General Warranty Deed from Fredrik Side, Inc. dated June 21, 2012, recorded July 6, 2012 at PC 1311, page 128, Doc. No. 2012002549. Certificate of Value: \$500,000.00

28. Transfer of Remainder Matr. Plot No. 9 Estate Grange Road Plot No. 70 Estate Grange, United Corporation by Warranty Deed from Robert L. Merwin, Co- Trustee of the M.K. Armstrong Trust u/d/t dated May 12, 1969 as amended by First Amendment dated December 30, 1972; dated May 18, 2012, recorded May 25, 2012 at PC 1308, page 87, Doc. No. 2012002041.

29. The running of the business operations and office of the grocery store business, including but not limited to:

- a. How and by whom accountants were hired.
- b. How and by whom tax preparation was done.
- c. How and by whom the securing of licenses and trade names was done.

30. Prior statements by Maher Yusuf made under oath at the Preliminary Injunction hearing in this matter.

31. Claims, counterclaims and third party claims you assert or may assert with regard to this action.

32. Defenses or offsets you assert or may assert with regard to this action.

33. Financial transactions and contacts with Manal Mohamad Yousef.

34. Payments to Ahmad Yusef or other persons to purchase their interests in United or other financial ventures from the proceeds of the Plaza Extra supermarkets.

35. The location and contents of United's financial and accounting records for the years prior to 2012.

36. The location and contents of Plaza Extra supermarkets' financial and accounting records for the years prior to 2012.

37. All real property and interests in entities which are owned by United, or held by any other entity for United's benefit, in the Virgin Islands.

38. All real property and interests in entities which are owned by United, or held by any other entity for United's benefit, outside of the Virgin Islands (US and all foreign countries).

39. All documents produced by you or sent to you in discovery in this case.

40. All interrogatory responses submitted by you in this case.

41. All filings served on you and/or submitted by you in response to the Plaintiff's motion for partial summary judgment.

42. In paragraph 42 of the First Amended Counterclaim, the statement that: "Hamed has enjoyed an incredibly lucrative oral arrangement with Yusuf, his brother-in-law. . . . That arrangement provided Hamed with not only repayment of the monies he loaned on a non-recourse basis, but also repaid him on a periodic basis with 50% of the net profits of the Plaza Extra Stores, which amounts varied depending upon the profitability of the business.

43. In paragraphs 54-55 of the First Amended Counterclaim, the statements that:

"After the additional funds from Yusuf's brother were exhausted, a further \$300,000 was needed to complete the construction. At this point, in mid-1983, Yusuf borrowed \$225,000.00 from his brother-in-law, Hamed. The loan was made on a non-recourse basis to assist Yusuf by providing funds to United so it could open Plaza Extra – East, just as Yusuf's brother had done earlier with the over \$1.5 million. In recognition of Hamed's loan/investment, and other advances subsequently made by Hamed of approximately \$175,000.00, Yusuf agreed that Hamed would receive a percentage of the net profits. Ultimately, it was agreed that Hamed was to receive 50% of the net profits of Plaza Extra-East as a return on this investment and repayment of the loan.

Hamed was to be repaid periodically and receive his return on his investment from the net profits of Plaza Extra – East on a set percentage basis. However, recovery of the return on the investment occurred upon a specific request. If Hamed sought to recover funds from his investment, he would coordinate with Yusuf and those funds would be given in cash and a notation would be made as to the amount given so as to insure an equal

amount was paid to Yusuf from these net profits.

44. In paragraphs 102-105 of the First Amended Counterclaim, the statements that:

[102] In September of 2010, Yusuf received a partial copy of the FBI file, records, and documents, electronically reproduced and stored on a hard drive. The hard drive contained thousands of documents including bank statements, and copies of cancelled checks. The documents were organized under the names of various individuals in the Hamed and Yusuf families. In other words, whatever the FBI found for any specific person, they would scan and organize the documents under that person's name.

[103] Upon review of these documents, Defendants discovered defalcation and conversion of substantial assets including cash from United by Hamed and Waleed.

[104] During a search of the documents and files delivered by the U.S. Government, United reviewed documents comprising tax returns for Waleed. An examination of Waleed's tax returns revealed the following significant assets:

a. Tax Year 1992 (Stocks & Investments) \$ 408,572.00

b. Tax Year 1993 (Stocks & Investments) \$7,587,483.00

[105] The detailed stock acquisitions, which were listed meticulously by date of acquisition, price and number of shares purchased, could only have been acquired by Waleed through either a) his unlawful access to monies and other properties belonging to United since Waleed never held any other employment since 1986, other than his employment with United, or, b) his misappropriation of monies which were "partnership" funds for which Waleed may be individually liable, or for which Hamed may be liable in the event that Waleed was acting as Hamed's authorized agent when removing such funds.

45. In paragraphs 106-114 of the First Amended Counterclaim, the statements that: "

Upon information and belief, Hamed knew of or directed Waleed's misconduct and personally benefited from his agent's defalcation and conversion of millions of dollars from United.

For example, Waleed and Hamed misappropriated funds, which Yusuf and Hamed had agreed to send to a charity in West Bank, Palestine. The money was designated for the building of a concrete batch plant (the "Plant") in an impoverished area to provide the poor with



employment opportunities. In 1996, Waleed, as a managerial employee of United, was an authorized co-signatory with Yusuf on various bank accounts in St. Martin and custodian of an account in Waleed's name.

Yusuf authorized Waleed to send \$1 million to Hamed in the West Bank as a charitable donation on behalf of United. Hamed was required to disperse the money to two local managers that were hired to set up the Plant, which was eventually formed and employed about 38 of the poor in the community.

Eventually, Yusuf met in the West Bank with the two managers of the Plant, which was supposed to have been purchased with the \$1 million that was sent to Hamed through his agent, Waleed.

Yusuf inquired of the managers regarding the operations of the Plant. Yusuf was advised that they were losing sales because they had no money to buy a pump.

Yusuf was informed that they did not receive \$1 million dollars, but had received only \$662,000.00 from Hamed.

In fact, bank records revealed that Hamed had actually received \$2 million dollars, instead of the \$1 million dollars authorized by Yusuf.

Upon review of the records received from the U.S. Government, it was revealed that Hamed or Waleed had pocketed \$1,338,000 of the \$2 million dollars transferred to Hamed by his son, Waleed, and only \$662,000 was actually distributed to the charitable project.

46. In paragraphs 126-128 of the First Amended Counterclaim, the statements that:

United consistently maintained that it is entitled to rent payments as an internal accounting expense to be utilized as an offset against income from Plaza Extra- East and which thereby reduces the net profits. At present, United has a motion pending to withdraw past due rents to which it is entitled. In the event that United is unable to recover the rent it seeks for internal accounting expense purposes and/or in the event that the Alleged Partnership is deemed to exist, then United seeks to recover the past due rent from the Alleged Partnership in accordance with the manner in which rent has been collected in the past.

Since 1986, United and the Alleged Partnership have always agreed that the value of any rent due to United for any retail space used by Plaza Extra – East would be withdrawn from the gross sales proceeds from Plaza Extra – East from time to time. Since 1986, the parties have customarily settled all rents due upon demand by United.

Historically, it was determined that United was entitled to rent for the premises occupied by Plaza Extra – East. From the beginning to December 31, 1993, United was paid in full for the rent.

47. In paragraphs 148-149 of the First Amended Counterclaim, the statements that:

Hamed and Waleed, acting individually and as agent for Hamed, have unlawfully defalcated and converted to their own benefit and gain substantial funds belonging to Defendants.

Defendants never authorized these funds to be appropriated to the personal use of Hamed or Waleed.

48. In paragraph 155 of the First Amended Counterclaim, the statements that:

Hamed and his agents have obtained in excess of \$7 million of the Plaza Extra Stores' monies under such circumstances that in equity and good conscience they ought not retain and the Hamed Sons participated and aided and abetted in this conduct by accepting funds from the Plaza Extra Stores and, among other things, using them to purchase and improve properties for their own personal benefit.

49. In paragraph 186 of the First Amended Counterclaim, the statement that:

Hamed and the Hamed Sons agreed to perform the wrongful acts and accomplish the wrongful ends alleged in this Counterclaim, and they aided and abetted each other and acted on that agreement.

50. In paragraphs 189-190 of the First Amended Counterclaim, the statements that:

To the extent that United has paid any taxes, interest and penalties with respect to the income of the Plaza Extra Stores that should have been paid by Hamed, United is entitled to full indemnification from Hamed for such payment including interest at the legal rate from the date of such payment. Further, to the extent that any accounting and legal fees and other costs are incurred relating to any tax returns or amendments that must be prepared and filed for taxes paid by United that should have been paid by Hamed, United is entitled to full indemnification from Hamed for such fees and costs.

In the event the Alleged Partnership is determined to exist, then Yusuf is entitled to full indemnification from Hamed for half of any debts or obligations of the Alleged Partnership, regardless of the form of the indebtedness or whether Hamed is or was a signatory or guarantor of any such obligation.