

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

<b>UNITED CORPORATION,</b>	)	
	)	
<i>Plaintiff,</i>	)	
	)	
vs.	)	<b>CIVIL NO. SX-15-CV-10</b>
	)	
<b>PLAZA EXTRA PARTNERSHIP and</b>	)	
<b>MOHAMMAD HAMED,</b>	)	<b>ACTION FOR EVICTION AND</b>
	)	<b>UNLAWFUL DETAINER</b>
	)	
<i>Defendants.</i>	)	
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**MOTION TO DISMISS FOR LACK OF SUBJECT MATTER JURISDICTION  
AND MEMORANDUM IN SUPPORT THEREOF**

The defendant, Mohammad Hamed (“Hamed”), hereby moves to dismiss the complaint filed by United Corporation (“United”) for eviction and unlawful detainer, commonly referred to as a forcible entry and detainer (“FED”) action. The complaint seeks to remove the Plaza Extra Partnership from its Sion Farm location on St. Croix at the United Plaza Shopping Center. The complaint was served on Hamed on January 26<sup>th</sup> and the hearing is set for February 3<sup>rd</sup> at 9:30 AM.

Before addressing the merits of the FED claim, one issue needs to be addressed to determine whether this Court can even proceed because of other litigation now pending in this Court.

**I. The Partnership Case**

**A. The Eviction and Rent Issues are already pending before Judge Brady.**

In paragraph #1 of the Complaint, United points out that there already is pending litigation in this Court related to this matter (SX-12-CV-370), which United refers to as

the “Partnership Case.” That case is a suit filed by Mohammad Hamed against United, the Plaintiff in this case, and Fathi Yusuf (“Yusuf”) after Yusuf unilaterally removed \$2.7 million from the Plaza Extra partnership account to United’s bank account. Yusuf and his family own United, which is the landlord for the Plaza Extra East Supermarket owned by a partnership between Hamed and Yusuf. See **Exhibit 1**.

That litigation has been extensive, as Yusuf and United initially both denied there was a partnership. See **Exhibit 2**. Of course, the fact that Plaza Extra had paid rent to United in the past was one of the strong factors in support of Hamed’s claim that the partnership entity was separate from United, but both United and Yusuf contested this point as well, arguing that the payment of rent was just an internal accounting entry on its books. See **Exhibit 2**.

After a two day hearing and extensive briefing, Judge Douglas A. Brady issued a preliminary injunction to ensure Hamed’s rights as a partner in the three Plaza Extra Supermarket stores. *Hamed v Yusuf et. al.*, 2013 WL 1846506 (V.I. Super. 2013). That opinion went into depth as to the history of the parties as well as the wrongful conduct of both United and Yusuf in attempting to ignore Hamed’s partnership rights, finding that a preliminary injunction was needed to preserve Hamed’s partnership rights pending a final determination on this issue. *Id.* As such, Judge Brady enjoined Hamed and United from engaging in any action that disturbed the status quo pending a final ruling. *Id.*

Yusuf challenged the finding that there was a partnership on appeal, but the Supreme Court affirmed this ruling. See *Hamed v. Yusuf et al.*, 2013 WL 5429498 (V.I. Sup. 2013). However, the Supreme Court required a higher bond for the preliminary

injunction pending a final determination that there was a partnership. *Id.* Hamed posted the increased bond and this preliminary injunction, which still remains in effect, has continued to restrain both United and Yusuf from taking unilateral action to disturb the status quo. See **Exhibit 2**.

After the case was remanded, United filed a counterclaim, seeking *inter alia* the same relief being sought here—an *eviction of Plaza Extra at Sion Farm from its location at the United Plaza Shopping Center, which claim remains pending*. See **Exhibit 2**.

178. United, as the fee simple owner, is entitled to all unpaid rent for the use of Bay 1, **and to recover possession of its premises currently occupied by Plaza Extra - East**. (Emphasis added.)

Thus, there is already an *identical* claim for both the past rent and for eviction pending before Judge Brady in that action.

#### **B. The Other Plaza Liquidation Issues**

After remand, Yusuf subsequently switched tactics, now conceding that there was a partnership and then seeking its liquidation. Hamed agreed to that relief, resulting in the liquidation of the partnership pursuant to an *Order Adopting Final Wind Up Plan* entered by Judge Brady on January 7, 2015 (hereinafter referred to as the “Liquidation Order”). See **Exhibit 2**. That Liquidation Order provides that Yusuf is to receive sole possession of the Plaza Extra East Supermarket, the location at issue in this eviction action, once he pays for the inventory and equipment in that store. See **Exhibit 2**.

The value of the equipment has already been established and agreed to, while the inventory of the merchandise is scheduled to be completed by mid-February. See

**Exhibit 1.** Thus, Yusuf should soon be receiving possession of the Sion Farm premises as part of the final Liquidation Order in the Partnership Case. As such, it is unknown why this eviction action was commenced by United, which Yusuf owns with his family.<sup>1</sup> Indeed, an eviction order now would require the inventory and equipment to be moved out of the store, as it has not yet been purchased by Yusuf from the partnership as required by the Liquidation Order in the Partnership Case. See **Exhibit 1.**

Finally, as will be discussed herein, the critical issues related to the United/Plaza tenancy are also currently being litigated in the Partnership Case. For example, United has moved for summary judgment as to the amount of rent, if any, which remains unpaid. See **Exhibit 2.** Likewise, Hamed has filed a motion for partial summary judgment based on the statute of limitations, which affects part of United's rent claim. See **Exhibit 2.**

### **C. Issues Presented By The Case Before Judge Brady**

With the foregoing history of the related litigation in mind, this Court will need to make two initial determinations before addressing the merits of this FED claim:

- 1) Is this action barred by the preliminary injunction issued by Judge Brady, as set forth in *Hamed v Yusuf et. al.*, 2013 WL 1846506 (V.I. Super. 2013)?
- 2) Is this action barred since there is already a claim for restitution of the premises in the Partnership Case?

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<sup>1</sup> It should also be noted that Yusuf's counsel in the partnership case is Nizar DeWood, the lawyer who filed this Complaint. The fact that Attorney DeWood represents one of the partners (Yusuf) being evicted by United raises a conflict of interest issue, as he in fact represents the landlord and the tenant in the same case! A separate motion to disqualify DeWood will be filed to address this issue.

If this Court determines that it can proceed after reviewing these two questions, then Hamed respectfully submits that the applicable law as it relates to this FED action still bars this FED action under the facts now before the Court.

## **II. Applicable FED Law**

This Court is, of course, completely familiar with the applicable law as it relates to a FED action, so this analysis will be brief. As noted in *Estate of Thomas Mall, Inc. v. Territorial Court of the Virgin Islands*, 923 F.2d 258 (3d Cir.1991):

FED complaints are summary actions to determine rights of peaceable possession of real property.... But speedy adjudication of the issue of peaceable possession comes at a price. The price is that the scope of an FED proceeding is very limited. Unless the statute is to the contrary, the jurisdiction of the Court in FED cases is confined to determining the issue of peaceable possession and does not extend to (a) an adjudication of title or (b) the right to possession; nor can the justice adjudicate a right of possession that depends on an equitable interest in the premises [ ] or inquire into equitable rights and give relief to which the party might be entitled in equity....

As soon as a defendant in possession in an FED action raises a colorable defense requiring construction of an agreement between the property owner and the party in possession, an FED action will not lie. *Id.* at 264 (citations omitted).

Moreover, to terminate a lease, the landlord must give a notice to terminate the lease as well as a notice to quit, with the timing of those notices limited to the type of tenancy as well as the facts before the Court. See 28 V.I.C. § 752 and § 789.

With this applicable law in mind, it is now appropriate to review the facts establishing why this is not a proper FED action.

### **A. FED relief is not appropriately before this Court.**

The complaint is vague regarding whether it is based on a claim of termination of tenancy or failure to pay rent, the two basis for seeking FED relief under 28 V.I.C. §

789. Under either theory, there are several reasons why FED relief is not appropriate in this case, warranting dismissal for lack of FED jurisdiction. Each will be addressed separately for the sake of clarity, any one of which supports dismissal.

As there is no written lease, this Court must first determine what type of lease exists between the parties.

The complaint alleges as follows:

- ¶ 5-Rent is to be paid based upon an agreed upon per square foot price.
- ¶ 6-Rent from 1986 to 1993 was paid based upon a reconciliation of accounts
- ¶ 7-Rent from 1994 to 2004 was never paid
- ¶ 8-Rent for the time period 2004 to 2011 was paid in one lump sum “using a percentage of sales” formula.
- ¶ 11-United sent a written notice termination of lease on January 1, 2012, unless Hamed agreed to pay an increased rate of rent.

Thus, the complaint clearly suggests that there is a tenancy by sufferance for the following reasons:

- The complaint concedes that rent was not paid on any regular basis, alleging it was paid once in 1993 and then again in 2012, both times in lump sums. That method of payment suggests a tenancy by sufferance, as rent has not been paid in any regular periodic manner; and
- The complaint concedes that Plaza Extra partnership has continued to occupy the premises for over three years after the written notice of termination was sent. *See, Black’s Law Dictionary, Sixth Ed.*, which states “Such tenancy arises when one comes into the possession of property by lawful title, but wrongfully holds over after the termination of his interest.” *See also White v. Mississippi Power & Light Co.*, 196 So.2d. 343 (Miss. 1967) (“The relationship of tenant-at-sufferance arises only when a person comes into possession of land lawfully but holds over wrongfully as a result of neglect on the part of the landowner to assert his right of possession.”); *Mathison v. Griffin*, 67 A.2d 833, 834 (R.I. 1949) (“The general rule

is that a tenancy at sufferance arises where a person, coming into possession rightfully, holds over without right.”).

One further allegation in the complaint is also critical in determining whether this Court has FED jurisdiction. In ¶ 10, United concedes that “whether and to what extent” it is owed rent is to be “adjudicated in the Partnership Case.”

With these allegations in the complaint in mind, Hamed will address the alternate grounds for seeking FED relief, as none are appropriately before the Court here.

#### **B. There is no unlawful holding over**

In paragraph #11 of the complaint, United avers that it sent a written notice to terminate the lease **over three years ago**, on January 1, 2012, if Hamed did not agree to pay an increased rent. However, no such notice to terminate the lease was sent on January 1, 2012. See **Exhibit 1**.<sup>2</sup> Indeed, no such “January 1, 2012” letter was attached to the complaint.

In any event, the fact that United has allowed the partnership to continue occupying the demised premises for over three more years now requires a 90-day notice to terminate the lease pursuant to 28 V.I.C. § 752.<sup>3</sup> Thus, until such notice to

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<sup>2</sup> It should be noted that United did send a letter on January 19, 2012, stating that the rent was unilaterally being increased (dramatically) and that the lease would end on June 30, 2012. See **Exhibit 1**. However, even if this is the letter United is referring to in paragraph #11 of the Complaint, it is not a proper notice to terminate a lease as required by law, as it simply states that United wants the premises back in six months.

<sup>3</sup> Even if the partnership’s possession of the premises was deemed to be a month to month lease, a 30-day notice to terminate would still be required under § 752. See, e.g., *Virgin Islands Housing Auth. v. Edwards*, 30 V.I. 3 (1994) (The law of the Virgin Islands establishes that a month to month lease can only be terminated upon the presentment of a thirty day notice to terminate).

terminate is given, the Plaza Extra Partnership cannot be a holdover tenant, as its tenancy has never been properly terminated as required by § 752. Indeed, United still has to wait for 90 days after the termination notice is sent before it can properly assert that the partnership is a holdover tenant.

Equally important, **even if United were an unlawful holdover tenant, United still has to give a 3-day notice to quit under § 789 before it can seek eviction.** United fails to allege in its complaint that it sent this required 3-day notice to quit, nor did it do so.<sup>4</sup> See **Exhibit 1**.

In short, this Complaint can be summarily dismissed due to United's failure to provide a written notice to terminate as required by 28 V.I.C. §752, so that the partnership is not unlawfully holding the premises. Moreover, even if the partnership were an unlawful holdover tenant, which it is not, United never sent the required 3-day notice to quit as required by § 789.

**C. The landlord admits that the tenant may not owe any rent.**

Under § 789, an FED action may lie if a party in possession fails or refuses to pay rent. However, to make this determination, this Court would first have to find if any rent was due. In ¶ 10 of the complaint, United **admits** that "whether and to what extent" it is owed rent is to be "adjudicated in the Partnership Case." Thus, United has conceded in the complaint that it cannot yet prove whether any rent is due to it, which is

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<sup>4</sup> Indeed, the eviction complaint served this week (on January 26<sup>th</sup>) was a complete surprise to Hamed since the Liquidation Order contemplates a transfer of this Plaza Extra location to Yusuf as part of the Liquidation Order. See **Exhibit 1**.



yet to be determined in the Partnership Complaint.<sup>5</sup> In fact, it is disputed that any rent is due United, as noted in Hamed's Answer to ¶ 9 of the Complaint.<sup>6</sup>

Moreover, the partnership has never refused to pay any rent that may be due. In fact, in ¶ 9 of his answer, Hamed affirmatively states that the partnership will promptly pay any rent due that may be adjudicated to be due in the Partnership Case. Moreover, there is in excess of \$10 million set aside in the Liquidation Plan to pay any partnership debts, including any rent that may be due. See **Exhibit 1**.

Indeed, as previously discussed, United is a party to the Partnership Case. Recognizing that the amount of rent is disputed, United has filed a motion for summary judgment in that case seeking a determination as to what, if any, rent is owed to it. See **Exhibit 2**. That motion remains pending. See **Exhibit 2**. Indeed, Hamed has filed a motion to strike part of United's rent claim in that case based upon the statute of limitations, which is also still pending. See **Exhibit 2**. Thus, whether any rent is even

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<sup>5</sup> Even if United was proceeding in this FED action on the basis that rent was not being paid, 28 V.I.C. §752 still requires 14 days written notice to terminate the partnership's leasehold interest and then a 3-day notice to quit before filing a FED complaint.

<sup>6</sup> While not mentioned in the complaint, United sent a notice in January of 2012 that the rent would be increased to \$250,000 per month. See **Exhibit 1**. However, Hamed and the partnership have never agreed to this grossly inflated amount. See **Exhibit 1**. United has alternatively sought rent since 2012 based on a square footage calculation, but the amount of the square footage of the leasehold premises is in dispute. See **Exhibit 1**. Thus, if United had not conceded that this determination is being adjudicated in the Partnership Case, this Court would have to first determine this disputed lease term (how rent was to be computed and then the amount of that calculation), which is beyond the scope of a FED action, as noted. Further, Yusuf unilaterally removed in excess of \$2,700,000 from the bank accounts of Plaza Extra in August of 2012 and placed the funds in United's bank account. See **Exhibit 1**. Thus, if anything, rent has now been overpaid to the landlord in this case.

due is a matter that has not yet been established, though it has been fully briefed and is pending resolution in the Partnership Case.

In summary, United cannot prove there is any unpaid rent, as it concedes that issue is being adjudicated in the Partnership Case. Thus, there is no claim here that the rent has not been paid, as that issue is being adjudicated elsewhere.

**D. There are other equitable and legal defenses to United's claim.**

In addition to the foregoing arguments, there are several other legal and equitable defenses to this eviction action arising out of the pending Partnership Case. For example, in that case, Yusuf sought dissolution of the partnership, which the Court granted. As part of those proceedings, Yusuf is to take sole possession of the Plaza Extra East location at Sion Farm, as noted. Further, as part of those proceedings, the partnership has set aside \$10,000,000 to cover any contingent claims, which would include United's rent claim (if any rent is found to be due). See **Exhibit 1**. Thus, the parties, including United, have already entered into a process to address (1) possession of the Sion Farm store and (2) how to determine what rent, if any, is due.

By way of another example, the Plaza Extra Supermarket at Sion Farm is also partially situated on Plot 4-H, Sion Farm, as the store was expanded in the 1990's after a fire. See **Exhibit 1**. However, as United admits, the leasehold premises is only on Plots 4-C and 4-D of Sion Farm, an eviction order would not even address the full store as it exists today.

Thus, the fact that this process is now underway also raises both legal and

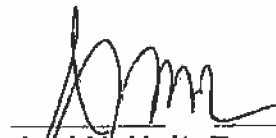
equitable issues dealing with the Plaza East Sion Farm location.<sup>7</sup> In fact, as noted, if an order of eviction were granted on February 3<sup>rd</sup>, the equipment and inventory would have to be removed as Yusuf has not yet paid to purchase these partnership assets as required by the Liquidation Order.

Thus, these legal and equitable issues also warrant a dismissal of this FED action, as otherwise this Court will also have to address these issues that arise as a result of the Liquidation Order in the Partnership case.

### **III. Conclusion**

For the reasons set forth herein, it is respectfully submitted that this case should be dismissed for lack of FED jurisdiction. The dismissal Order should also include a directive that Hamed is also entitled to an award of fees and costs, the amount of which is to be determined upon receipt of an affidavit of counsel as to the time and expenses incurred in defending this matter.

**Dated:** February 2, 2015



**Joel H. Holt, Esq.**  
*Counsel for Defendant Hamed*  
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Christiansted, VI 00820  
Email: holtvi@aol.com  
Tele: (340) 773-8709

**Carl J. Hartmann III, Esq.**  
*Counsel for Defendant Hamed*  
5000 Estate Coakley Bay, L-6  
Christiansted, VI 00820  
Email: carl@carlhartmann.com

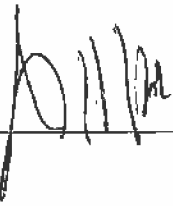
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<sup>7</sup> Indeed, at the very least, Fathi Yusuf should be a party to this litigation since it is now his interest that is being threatened as established under the Liquidation Order.

**CERTIFICATE OF SERVICE**

I hereby certify that on this 2nd day of February, 2015, I served a copy of the foregoing by mail on:

**Nizar A. DeWood**  
*Counsel for Plaintiff*  
The DeWood Law Firm  
2006 Eastern Suburb, Suite 101  
Christiansted, VI 00820  
dewoodlaw@gmail.com



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

**UNITED CORPORATION,**

*Plaintiff,*

vs.

**PLAZA EXTRA PARTNERSHIP and  
MOHAMMAD HAMED,**

*Defendant.*

**CIVIL NO. SX-15-CV-10**

**ACTION FOR EVICTION**

**DECLARATION OF WALEED HAMED**

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

1. I have personal knowledge of the facts set forth herein.
2. My father is Mohammad Hamed, the named defendant herein.
3. I have acted as my father's agent pursuant to a power of attorney on all matters related to the Plaza Extra partnership since 1996, which POA both United Corporation and Fathi Yusuf have recognized since that time.
4. United Corporation is a party to the pending litigation, which United refers to as the "Partnership Case." That case is a suit filed by my father, for whom I have a power of attorney, against both United Corporation and Yusuf. I am the designated agent for my father in that action.
5. Fathi Yusuf ("Yusuf") and his immediate family own United Corporation.
6. United is the landlord for the Plaza Extra store at Sion Farm.
7. Fathi Yusuf and United have now admitted that the Plaza Extra East



Supermarket business at Sion Farm is owned 50-50 by my father, Mohammad Hamed and Fathi Yusuf as partners.

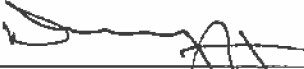
8. Pursuant to the *Order Adopting Final Wind Up Plan* entered by Judge Douglas A. Brady on January 7, 2015 ("Liquidation Order"), Yusuf is to receive sole possession of the Plaza Extra East Supermarket business at Sion Farm once he pays for the inventory and equipment in that store. The value of the equipment has already been agreed to, while the valuation of the inventory is scheduled to be completed by mid-February.
9. Thus, Yusuf will be receiving sole possession of the business at the Sion Farm premises under Liquidation Order in the Partnership Case shortly.
10. However, an eviction order before that transition takes place would require the inventory and equipment to be moved out of the store, as it has not yet been purchased by Yusuf from the partnership as required by the Liquidation Order in the Partnership Case.
11. In paragraph #11 of the Complaint for eviction, United Corporation states that it sent a notice to terminate the lease on January 1, 2012. However, no such notice to terminate was ever received by my father or by me acting as his power of attorney.
12. United did send a letter on January 19, 2012, stating United wanted possession of the premises on June 30, 2012. See **Exhibit A**.
13. United never sent a 3-day notice to quit either. Indeed, the eviction Complaint served this week (on January 26<sup>th</sup>) was a complete surprise, particularly since the Liquidation Order already contemplates a peaceful

transition of this Plaza Extra Sion Farm store to Yusuf shortly.

14. While United sent a notice in January of 2012 that the rent would be increased to \$200,000 per month (up from \$60,000 per month) for three months and then up to \$250,000 after that time (See **Exhibit A**), both my father and I have told United and Yusuf that the partnership would never agree to pay this excessive and absurd amount.
15. United has alternatively sought rent since 2012 based on a square footage calculation, but the amount of the square footage of the leasehold premises is in dispute, as United asserts in the complaint that this square footage is 70,000 square feet when the size of the store premises located on Plots 4-C and 4-D Sion Farm is only 54,000 square feet as noted in the attached drawing. See **Exhibit B**.
16. The Plaza Extra Supermarket at Sion Farm is also partially situated on Plot 4-H, Sion Farm, as the store was expanded in the 1990's after a fire.
17. Yusuf improperly removed over \$2,700,000 from the bank accounts of Plaza Extra in August of 2012, and deposited it into United's bank account. Thus, if anything, rent has been overpaid to United Corporation.
18. Notwithstanding the foregoing issues, if it is ever determined in the Partnership Case that rent is due United, it will be paid. As part of the liquidation process, pursuant to Court Order, the partnership has set aside \$10,000,000 to cover any contingent claims, which would include United's rent claim (if any rent is found to be due).

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

**Dated:** January 31, 2015

  
\_\_\_\_\_  
**Waleed Hamed a/k/a Wally Hamed**



United Corporation  
4-C & 4-D Estate Sion Farm  
P.O. Box 763  
Christiansted, VI 00820

Date: January 19, 2012

**\*\*VIA CERTIFIED MAIL -- RETURN RECEIPT REQUESTED\*\***

Mohammad Abdul Qader Hamed  
Plaza Extra Supermarket  
4-C & 4-D Estate Sion Farm  
Christiansted, V.I. 00820

Re: - NOTICE & CONFIRMATION OF INCREASED RENT FOR PLAZA EXTRA - SION FARM - FOR THE PERIOD OF JANUARY 1, 2012 THROUGH JUNE 30, 2012.  
- NOTICE OF LEASE TERMINATION FOR PLAZA EXTRA - SION FARM AS OF JUNE 30<sup>TH</sup>, 2012.

Dear Mr. Hamed,

This notice is to confirm the increased rent for the above referenced premises. As you will know, I have given both you and your son Waleed Hamed oral notice in September 2010 to vacate the premises. At that time, I have advised you that the rent will increase to Two Hundred Thousand Dollars (\$200,000.00) per month for each of the first three months of January, February, and March, 2012. Thereafter, the rent shall increase to Two Hundred & Fifty Thousand Dollars (\$250,000.00) each month commencing April 1, 2012 through June 30<sup>th</sup>, 2012. The last date for this lease is June 30<sup>th</sup>, 2012. There will be no additional extensions of tenancy to Plaza Extra - Sion Farm.

An orderly inspection will be done to evaluate the condition of the premises. Kindly, advise as to when you are available to conduct an inspection, and to inventory all fixtures and improvements that will remain on the premises. Should you have any concerns regarding this notice, or any other matters concerning this lease, please ensure that same be made in writing,

Page | 1

HAMD200060

Confidential

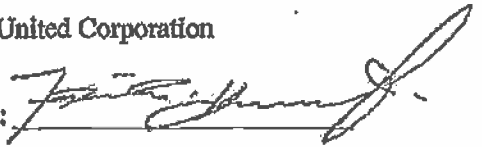


and delivered by way of certified mail, return receipt requested to the address above. Thank you  
for your prompt attention in this matter.

Sincerely,

United Corporation

By:



Fathi Yusuf, CEO




EXHIBIT  
B

United Plaza Shopping Center Store Square Footage's  
 Plot Nos. 4-C, 4-D & 4-H, Estate Sion Farm, Queen's Qtr  
 Island of St. Croix, United States Virgin Islands  
 made at the request of Joel H. Holt, Esq.

Date: September 25, 2014  
 Scale: 1" = 30'  
 Reference: PFD No 2348  
 Hc Datum: NAD 83 Grid North  
 Vert Datum: N/A  
 Field: CR BT, DACJ  
 Note: Field Verified Correct

Surveyed and Mapped by the office of:  
**St. Croix Survey & Engineering, LLC**  
 72 Flag Drive, Gallows Bay Station  
 Christiansburg, St. Croix, USVI 00820  
 Tel/Fax: 340-770-6877  
 Email: stxsurvey@gmail.com Website: www.stxsurvey.com

APPROVED AND CERTIFIED BY  
  
 M.P. Kaiser II, P.E.

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

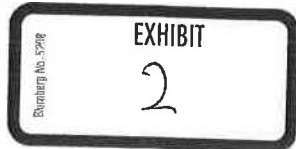
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<i>Plaintiff,</i>	)	
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PLAZA EXTRA PARTNERSHIP and	)	
MOHAMMAD HAMED,	)	ACTION FOR EVICTION
<i>Defendant</i>	)	
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**DECLARATION OF JOEL H. HOLT**

I, Joel H. Holt, 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 for Mohammad Hamed in this case as well as in the case referenced by the Plaintiff, United Corporation, as the "Partnership Case."
3. The Partnership Case has been extensively litigated, as Yusuf and United both initially denied there was a partnership, filing declarations under oath to support their denial that there was a partnership between Hamed and Yusuf. See **Exhibits A and B**.
4. The fact that Plaza Extra had paid rent to United in the past was one of the strong factors in support of Hamed's claim that the partnership entity was separate from United, but both United and Yusuf contested this point as well, arguing that the payment of rent was just an internal accounting entry on its books.



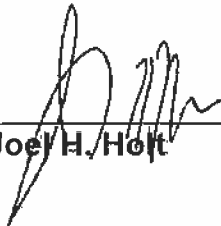
5. After a two day hearing and extensive briefing, Judge Douglas A. Brady issued a preliminary injunction to insure Hamed's rights as a partner in the three Plaza Extra Supermarket stores. *Hamed v Yusuf et. al.*, 2013 WL 1846506 (V.I. Super. 2013).
6. Yusuf challenged the finding that there was a partnership on appeal, but the Supreme Court affirmed this ruling. See *Hamed v. Yusuf et al.*, 2013 WL 5429498 (V.I. Sup. 2013).
7. The Supreme Court did require a higher bond for the preliminary injunction pending a final determination that there was a partnership, which Hamed posted. This preliminary injunction, which still remains in effect, has continued to restrain both United and Yusuf from taking unilateral action to disturb the status quo.
8. After the case was remanded, United filed an Amended Counterclaim, seeking *inter alia* the identical relief being sought here—seeking the eviction of Plaza Extra at Sion Farm from its location at the United Plaza Shopping Center (called Bay 1 in the Amended Counterclaim), which claim remains pending. See Count XI and request for relief *vi* in the prayer for relief seeking **immediate** return of the premises. **Exhibit C.**
9. After the Partnership Case was remanded, Yusuf subsequently switched tactics, now conceding that there was a partnership and then seeking its liquidation, to which Hamed agreed, resulting in in the liquidation of the partnership pursuant to an order entered by

Judge Douglas A. Brady on January 7, 2015 ("Liquidation Order"), a copy of which is attached as **Exhibit D**.

10. Under that Liquidation Order, Fathi Yusuf will receive possession of the Plaza Extra East Supermarket once he pays for the inventory and equipment in that store. See **Exhibit D**.
11. United is a party to the Partnership Case. Recognizing that the amount of rent is disputed, United has filed a motion for summary judgment in that case seeking a determination as to what, if any, rent is owed to it. That motion remains pending. Indeed, Hamed has filed a motion to strike part of United's rent claim in that case based upon the statute of limitations, which is also still pending. Thus, whether any rent is even due is a matter that has not yet been established, though it has been fully briefed and is pending resolution in the Partnership Case. These pleadings, which are extensive, can be produced in this case if requested.

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

**Dated:** February 2, 2015

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

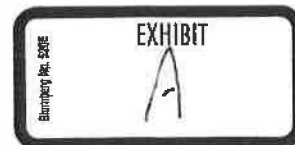
IN THE SUPERIOR COURT OF THE VIRGIN ISLANDS  
DIVISION OF ST. CROIX

MOHAMMAD HAMED By His Authorized :  
Agent WALEED HAMED :  
Plaintiff, : CASE # SX-12-CV-370  
:  
vs. :  
:  
FATHI YUSUF & UNITED CORPORATION, :  
:  
Defendants. :  
:  
\_\_\_\_\_ :  
:

AFFIDAVIT OF FATHI YUSUF

Fathi Yusuf, duly sworn, hereby states as follows:

1. My name is Fathi Yusuf.
2. I am a resident of St. Croix, U.S.V.I., and I am the Registered Agent the treasurer and secretary of United Corporation d/b/a Plaza Extra, as such I have personal knowledge of the facts set forth in this affidavit.
3. United Corporation d/b/a Plaza Extra is a corporation formed on January 15<sup>th</sup>, 1979 under the laws of the United States Virgin Islands by filing the Articles of Incorporation with the Office of the Lt. Governor on St. Croix. United Corporation d/b/a Plaza Extra belongs to the various member of the Yusuf Family, which has never transferred a single share of stock to anyone outside the Yusuf family.
4. At no point has Mohammad Hamed, or any individuals (collectively or individually) of the Hamed family been shareholders of United Corporation d/b/a Plaza Extra.
5. In 1984 I entered into an oral agreement with Mohammad Hamed.
6. I am not a lawyer, have never studied law, and I did not (before the commencement of this litigation) know the legal definition of the terms "partner" or "partnership."
7. I did not intend for the 1984 oral agreement with Mohammad Hamed to be a partnership agreement.
8. When I have used the term "partner" I have done so as the term is casually used in the USVI and not as a legal term. I used that term during the case of Ahmad Idheileh, who sued me in 1999 alleging that he [Mr. Idheileh] was a "partner." That case was dismissed, and Mr. Idheileh was never found to be a partner. I have the same relationship with Mohammed Hamed. That is what I stated in throughout that case.



9. The 1984 oral agreement provided that Mohammad Hamed would NOT have any management rights, interests, and duties in United Corporation d/b/a Plaza Extra. As a matter of fact, I have personally guaranteed all loans that were taken out from time to time. Mohammed Hamed never ever completed a single loan application in his name, and/or personally guaranteed any obligations of the Plaza Extra Stores.

10. In 2003, when the United States government indicted me and United Corporation and others, Mohammed Hamed was never indicted, nor did he ever come to court to state that he was a "partner" of any entity. As a matter of fact, Mohammed Hamed was living in Jordan, and was not subject to any criminal and civil liability in the criminal court. For the last nine years in open court, Mohammed Hamed, his sons Waleed Hamed and Waheed Hamed have never declared this to be partnership.

11. Mohammad Hamed has never had, nor exercised, management rights in respect to any of the Plaza Extra grocery stores. Mohammed Hamed has confirmed that during his testimony before this court at the January 25<sup>th</sup>, 2013 Preliminary Injunction Hearing.

12. Mohammed Hamed has worked at the Plaza Extra grocery stores in the sole capacity as an employee until his retirement in 1996, when Mohammed Hamed moved to the country of Jordan. Mohammed Hamed has never worked in any management capacity at the Plaza Extra stores.

13. Mohammed Hamed's sons (Waheed Hamed, Waleed Hamed, Mufeed Hamed, and Hisham Hamed) have worked at the Plaza Extra grocery store locations and were hired as employees only.

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

15. The purported "Fathi Yusuf & Mohammad Hamed partnership" has never filed partnership statement(s) with the Office of the Lt. Governor.

16. United Corporation d/b/a Plaza Extra has never filed a Statement of Partnership Authority with the Office of the Lt. Governor.

17. The purported "Fathi Yusuf & Mohammad Hamed partnership" has never filed a Statement of Partnership Authority with the Office of the Lt. Governor.

18. United Corporation d/b/a Plaza Extra has never acquired property in the name of "United Corporation Partnership."

19. The purported "Fathi Yusuf & Mohammad Hamed partnership" has never acquired property in the name of the "Fathi Yusuf & Mohammad Hamed partnership."

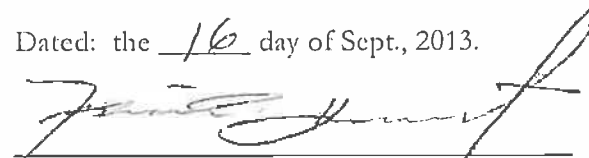
20. I have never acquired property on behalf of the purported "Fathi Yusuf & Mohammad Hamed partnership" by way of "Fathi Yusuf, as a partner with Mohammad Hamed, a partnership formed under the law of the U.S. Virgin Islands."



21. I have never acquired property on behalf of the purported "Fathi Yusuf & Mohammad Hamed partnership" by way of "Fathi Yusuf, as a partner with Mohammad Hamed, a *de facto* and/or oral partnership."
22. No property has ever been conveyed to "Fathi Yusuf, as a partner" in "Fathi Yusuf & Mohammad Hamed partnership."
23. No income tax return of United Corporation d/b/a Plaza Extra has ever indicated that it is a partnership.
24. The purported "Fathi Yusuf & Mohammad Hamed partnership" has never filed a partnership income tax return.
25. Waleed Hamed, purportedly acting for his father Mohammed Hamed, said that he (Waleed Hamed) wanted the word "partnership" in any proposed agreements. I refused to sign any such agreement because it would not have reflected the nature of the 1984 agreement.
26. During private settlement talks numerous draft proposed settlement agreements were revised. None of them contained the word "partnership." None of them were signed because I am not a partner with Mohammed Hamed.
27. Mohammed Hamed never received a Schedule K-1 (Partner's Share of Income, Deductions, Credits, etc.) from United Corporation d/b/a Plaza Extra nor from the purported "Fathi Yusuf & Mohammad Hamed partnership."
28. Mohammed Hamed retired as an employee of United Corporation d/b/a Plaza Extra in 1996.
29. Every accountant that United Corporation d/b/a Plaza Extra has ever hired has always filed U.S. Corporate Tax Returns (either IRS Form 1120 or IRS Form 1120S).
30. Mohammed Hamed has never received profits from the purported "Fathi Yusuf & Mohammad Hamed partnership."
31. Until the commencement of this litigation Mohammed Hamed had never held himself out as a partner in the purported "Fathi Yusuf & Mohammad Hamed partnership."

Further affiant sayeth naught.

Dated: the 16 day of Sept., 2013.

  
\_\_\_\_\_  
FATHI YUSUF

ACKNOWLEDGMENT

TERRITORY OF THE U.S. VIRGIN ISLANDS )  
 )  
DIVISION OF ST. CROIX )  
 )  
\_\_\_\_\_ )

Sworn and subscribed to before me this 16<sup>th</sup> day of Sept., 2013.



Notary Public

My commission expires: 07/14/15



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

MOHAMMAD HAMED, by his  
authorized agent, WALEED HAMED,

Plaintiff,

v.

FATHI YUSUF and UNITED CORPORATION,

Defendants.

CIVIL NO. SX-12-CV-370

**AFFIDAVIT OF MAHER YUSUF**

I, Maher Yusuf, an adult of sound mind and body, pursuant to 28 U.S.C. §1746, under penalty of perjury, attest that:

1. I am a resident of St. Croix, the U.S. Virgin Islands.
2. I am the President of United Corporation d/b/a Plaza Extra, a duly organized Virgin Islands Corporation, in good standing and is authorized to conduct business in the Virgin Islands.
3. United Corporation d/b/a Plaza Extra was incorporated in 1979 by my father Fathi Yusuf. United Corporation d/b/a Plaza Extra is now owned in various shares among the various members of the Yusuf Family.
4. United Corporation d/b/a Plaza Extra has always been organized, maintained, and owned by the Yusuf Family.
5. As President of United Corporation d/b/a Plaza Extra, and after inspecting all of the records of United Corporation d/b/a Plaza Extra, including a review of all filings with United Corporation d/b/a Plaza Extra's counsel, I attest that there has never been a transfer of a single share of United Corporation d/b/a Plaza Extra outside the Yusuf family, nor has anyone ever invested in the equity of United Corporation d/b/a Plaza Extra.
6. In addition to its Plaza Extra supermarket operations, United Corporation d/b/a Plaza Extra has owned in fee simple absolute all of United Shopping Plaza since 1979. It has always owned the property, having never transferred any interest in the property (directly or indirectly) to anyone.
7. United Corporation d/b/a Plaza Extra never distributed any profits to Mohammed Hamed.




8. In 2003, United Corporation d/b/a Plaza Extra was indicted in the case of *United States, et al., v. United Corporation, et al.*, docket no. 1:05-cr-15 (D.V.I.) (“the criminal case”).
9. In all proceedings concerning the criminal case, I have always appeared for United Corporation d/b/a Plaza Extra as its President during all court proceedings. At no time did Waleed Hamed and Waheed Hamed ever declare that their father Mohammed Hamed is a partner with Fathi Yusuf or have an interest in the Plaza Extra grocery stores.
10. The U.S. Justice Department has always received representations from each criminal defense attorney for the Hameds that the business arrangement is one of a business agreement.
11. As United Corporation d/b/a Plaza Extra’s president, I can attest that Mohammed Hamed has never requested a K-1 Partnership schedule, or ever declared to have a partnership with Fathi Yusuf or have an interest in the Plaza Extra grocery stores to a single governmental or taxing agency.
12. Mohammad Hamed has never had, nor exercised, management rights in respect to any of the Plaza Extra grocery stores.
13. Mohammed Hamed has occasionally worked at the Plaza Extra grocery stores in the sole capacity as an employee, and has never worked in any management capacity at the Plaza Extra stores.
14. Mohammed Hamed’s sons (Waheed Hamed, Waleed Hamed, Mufeed Hamed, and Hisham Hamed) have worked at the Plaza Extra grocery store locations and were hired because they are Fathi Yusuf’s wife’s nephews.
15. Mohammed Hamed’s sons (Waheed Hamed, Waleed Hamed, Mufeed Hamed, and Hisham Hamed) have not acted as their father’s “authorized agent” during the course of their employment with United Corporation d/b/a Plaza Extra.
16. United Corporation d/b/a Plaza Extra has never filed partnership statement(s) with the Office of the Lt. Governor.
17. To my knowledge there has never been a partnership statement(s) filed with the Office of the Lt. Governor indicating that Plaza Extra was a partnership between Fathi Yusuf and Mohammad Hamed.
18. United Corporation d/b/a Plaza Extra has never filed a Statement of Partnership Authority with the Office of the Lt. Governor.
19. To my knowledge there has never been a Statement of Partnership Authority filed with the Office of the Lt. Governor indicating that Plaza Extra was a partnership between Fathi Yusuf and Mohammad Hamed.

20. United Corporation d/b/a Plaza Extra has never acquired property in the name of "United Corporation Partnership."
21. At no time has property of the Plaza Extra grocery stores been acquired property in the name of the "Fathi Yusuf & Mohammad Hamed partnership."
22. At no time has property of the Plaza Extra grocery stores been acquired on behalf of the purported "Fathi Yusuf & Mohammad Hamed partnership" by way of "Fathi Yusuf, as a partner with Mohammad Hamed, a partnership formed under the law of the U.S. Virgin Islands."
23. At no time has property of the Plaza Extra grocery stores been acquired by the purported "Fathi Yusuf & Mohammad Hamed partnership" by way of "Fathi Yusuf, as a partner with Mohammad Hamed, a *de facto* and/or oral partnership."
24. At no time has property of the Plaza Extra grocery stores been conveyed to "Fathi Yusuf, as a partner" in "Fathi Yusuf & Mohammad Hamed partnership."
25. No income tax return of United Corporation d/b/a Plaza Extra has ever indicated that it is a partnership.
26. To my knowledge, the purported "Fathi Yusuf & Mohammad Hamed partnership" has never filed a partnership income tax return.
27. Mohammed Hamed never received a Schedule K-1 (Partner's Share of Income, Deductions, Credits, etc.) from United Corporation d/b/a Plaza Extra nor from the purported "Fathi Yusuf & Mohammad Hamed partnership," nor from the operations of the Plaza Extra grocery stores.
28. Mohammed Hamed retired as an employee of United Corporation d/b/a Plaza Extra in 1996.
29. Every accountant that United Corporation d/b/a Plaza Extra has ever hired has always filed U.S. Corporate Tax Returns (either IRS Form 1120 or IRS Form 1120S).
30. Until the commencement of this litigation Mohammed Hamed had never held himself out as a partner in the purported "Fathi Yusuf & Mohammad Hamed partnership."

I attest that the above is true to the best of my knowledge.

Date: 9-16-13

  
\_\_\_\_\_  
UNITED CORPORATION  
By: Maher Yusuf, President

**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,** )  
**MUFEEED HAMED, HISHAM HAMED, and** )  
**PLESSEN ENTERPRISES, INC.,** )  
 )  
 Additional Counterclaim Defendants. )

CIVIL NO. SX-12-CV-370  
 ACTION FOR DAMAGES,  
 INJUNCTIVE RELIEF  
 AND DECLARATORY RELIEF  
 JURY TRIAL DEMANDED

SUPERIOR COURT  
 THE VIRGIN ISLANDS  
 ST. CROIX

14 JAN 13 P 3:07

**FIRST AMENDED  
COUNTERCLAIM**

Pursuant to Fed. R. Civ. P. 13 and Super. Ct. R. 34, for their First Amended Counterclaim (“Counterclaim”) against Plaintiff Mohammad Hamed (“Plaintiff” or “Hamed”) and the Additional Counterclaim Defendants named below, Defendants United Corporation d/b/a Plaza Extra (“United”) and Fathi Yusuf (“Yusuf”) (collectively, the “Defendants”) allege as follows:

**JURISDICTION**

1. This Court has subject matter jurisdiction pursuant to V.I. Code Ann. tit. 4, § 76(a). Venue is proper pursuant to V.I. Code Ann. tit. 4, §78(a).

**PARTIES**

2. Yusuf, a citizen and resident of St. Croix, U.S. Virgin Islands, owns 36% of the outstanding stock of United and is the registered agent, treasurer and secretary of United.

3. United is a U.S. Virgin Islands corporation, which was organized on January 15, 1979 and is currently in good standing. The owners and officers of United are and always have been Yusuf and his direct family members.



4. United is the fee simple owner of certain improved real property known as 4C and 4D Estate Sion Farm, St. Croix, U.S. Virgin Islands, which is improved with buildings that comprise the United Shopping Plaza (the "Shopping Center"). This land was purchased prior to the events at issue in this case.

5. United leases retail space at its Shopping Center to commercial tenants and is the sole owner of the "Plaza Extra" trade name/trademark, under which it does business.

6. Hamed is citizen of Jordan, who resides periodically on St. Croix. Hamed, upon information and belief, has resided in Jordan for approximately the last 15 years, having retired sometime in 1996.

7. Additional Counterclaim Defendant Waleed Hamed ("Waleed") is a son of Hamed and a citizen and resident of St. Croix, U.S. Virgin Islands.

8. Additional Counterclaim Defendant Waheed Hamed ("Waheed") is a son of Hamed and a citizen and resident of St. Thomas, U.S. Virgin Islands.

9. Additional Counterclaim Defendant Mufeed Hamed ("Mufeed") is a son of Hamed and a citizen and resident of St. Croix, U.S. Virgin Islands.

10. Additional Counterclaim Defendant Hisham Hamed ("Hisham") is a son of Hamed and a citizen and resident of St. Croix, U.S. Virgin Islands.

11. Additional Counterclaim Defendant Plessen Enterprises, Inc. ("Plessen") is a U.S. Virgin Islands corporation, the outstanding stock of which is owned 50% by Hamed or his family members and 50% by Yusuf or his family members.

#### **FACTS COMMON TO ALL COUNTS**

##### **I. The Nature Of The Relationship Between Hamed And Yusuf**

12. In this Counterclaim, Defendants will plead in the alternative. Defendants deny the existence of any partnership between Hamed and Yusuf as alleged in the Complaint. In the event a partnership between Yusuf and Hamed is nevertheless found to exist, then such

partnership gives rise to various duties and claims. Likewise, in the absence of a partnership, other claims exist. Hence, Defendants have set forth alternative pleadings to allege those claims which exist in the event there is or is not a partnership between Hamed and Yusuf.

13. Three supermarket stores were opened that are the subject of this suit. In or around 1986, United opened the first Plaza Extra supermarket in Sion Farm, St. Croix (“Plaza Extra – East”).

14. In 1993, United opened the Plaza Extra supermarket in Tutu Park Mall, St. Thomas (“Plaza Extra – Tutu Park”).

15. In 2000, United opened the Plaza Extra supermarket in Grove Place, St. Croix (“Plaza Extra – West”) (collectively, the “Plaza Extra Stores”). This Counterclaim relates to the ownership, operation and net profits of the three Plaza Extra Stores.

**A. Scores Of Documents Contradict The Existence Of Any Partnership.**

16. Hamed has sought, *inter alia*, a declaratory judgment as to the existence of a partnership between himself and Yusuf for the operation of the Plaza Extra Stores.

17. Specifically, Hamed contends he “is entitled to declaratory relief finding that all funds belonging to...[Hamed] held by United Corporation are held in (sic) either in the course of business as an agent, as Yusuf’s alter ego or as a constructive trust for...[Hamed], which must be returned forthwith.” (Complaint, ¶ 46).

18. Hamed further contends, “[i]n the alternative, Mohammad Hamed is entitled to declaratory relief finding that an amount equal to 50% of the Partnership profits and property held in United for distribution to or for the benefit of Yusuf are owed to Hamed under the Partnership Agreement or pursuant to a constructive trust for Hamed.” (Complaint, ¶ 46).

19. Hamed also seeks “a judicial determination that the defendant United Corporation would be unjustly enriched if it does not disburse the Partnership funds and property belonging to the plaintiff forthwith.” (Complaint, Prayer for Relief ¶ 9).



20. Despite Hamed's new-found contentions in his Complaint, the relationship between Hamed and Yusuf cannot be defined in traditional "western" legal terms as an "oral" partnership for the operation of the Plaza Extra Stores.

21. Every official document filed relating to the Plaza Extra Stores, representation made to a government agency, tax filing signed under penalty of perjury, and all taxes paid, unequivocally prove that a partnership never existed between Hamed and Yusuf.

22. In fact, these official filings demonstrate that the Plaza Extra Stores are, in fact, operated under United's corporate umbrella.

23. United has corporate officers and stockholders, none of whom are Hamed or members of his family. United owns assets and engages in businesses other than the Plaza Extra Stores.

24. United has corporate debts utilized to fund and operate the Plaza Extra Stores.

25. United has paid all the taxes on the income derived from the operation of the Plaza Extra Stores.

26. United was incorporated and operating for years before any business dealings or relationship between Hamed and Yusuf occurred.

27. Further, over the last ten years, a federal criminal investigation was conducted into the inner workings of the Plaza Extra Stores with knowledge of all allegedly involved. The conclusion of the U.S. Department of Justice was that United, which existed as represented on all official filings, was the owner of the Plaza Extra Stores as well as other assets, and that the ownership of United is as defined by its business records of stock ownership. Therefore, it has already been determined that the Plaza Extra Stores are not owned by any alleged "partnership" between Hamed and Yusuf.

28. As a result of this federal criminal investigation and case (V.I. Dist. Ct. Case No. 1:05-cr-00015-RLF-GWB) (the "criminal case"), serious criminal repercussions were looming

against United, its owners, officers and certain management employees, including two of Hamed's sons, Waleed and Waheed.

29. Not once during the decade long criminal case, did Hamed ever assert that he was a 50/50 partner in the business or enterprise under investigation for criminal conduct for failing to report taxable income from the Plaza Extra Stores. Rather, Hamed stood by quietly, out of the country, while it was determined that the corporate entity, United, would bear the entire weight of the criminal responsibility for under-reporting income from the Plaza Extra Stores.

30. United's assets were frozen pending resolution of the criminal case. For more than ten years, Hamed made no claim to the frozen assets including millions of dollars in cash.

31. Ultimately, United entered into a plea agreement with the government, filed amended tax returns for multiple years, and paid millions of dollars in taxes to true-up the under-reporting issues. Hamed did not contribute or offer to contribute anything in this entire process.

32. Now that the criminal case is coming to conclusion, the taxes and penalties have been paid, and despite the volumes of official documentation to the contrary, Hamed, through his son and purported agent, Waleed, emerges from the shadows to contend that for more than 25 years, he had an "oral" partnership with Yusuf for the operation of the Plaza Extra Stores and with it, rights as a 50/50 partner.

**B. Oral Statements Are Not Sufficient To Constitute Legal Admissions Or Contradict Documentary Evidence.**

33. To support his position, Hamed relies upon oral representations which, for the most part, directly contradict the wealth of documentary evidence.

34. Further, Hamed, attempts to import a "western" legal meaning to the oral statements of both himself and Yusuf.

35. This effort is problematic for a number of reasons: 1) both Hamed and Yusuf use English as a second language and, therefore, at best, their English cannot be said to reflect a

reliable level of fluency so as to constitute admissions and/or intent to attribute a “western” meaning to terms; and 2) the American legal terms that they sometimes use are understood differently in Islamic/Middle Eastern cultural and legal frameworks.

36. Both Hamed and Yusuf immigrated to the United States as adults. They were raised in a non-“western” legal system in which Islamic legal principles applied. Islamic law traditionally denotes *all* forms of associations between individuals as “partnerships.” However, “partnerships” under Islamic law have no direct corollary in “western” legal terms. Rather, some aspects or elements of a traditional “western”- defined partnership may exist but certain key elements required for a partnership with enforceable legal rights do not. Hence, the comparison breaks down rather quickly.

37. Further, there are many different types of “partnerships” under Islamic law, none of which are a mirror image of a “partnership” as defined in “western” legal terms<sup>1</sup>. In particular, a form of partnership exists in Islamic law, which allows for receipt of profits in some proportion to the investment made but without managerial control or liability for debt. While this arrangement may be deemed a “partnership” in Islamic law, such an arrangement is not a partnership in the traditional “western” sense as it is missing essential hallmarks of a true partnership.

38. Yusuf is not a lawyer, has not studied law and has testified that he does not know the “legal definition” of the term “partner” or “partnership.”

39. Yusuf has testified that to the extent he has made references to someone as his “partner” it was done casually as opposed to denoting legal significance.

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<sup>1</sup> Many scholarly articles in comparative law explain this phenomenon and the difficulty in translating legal relationships where no legal counterpart exists. Much has also been written as to the inability to correlate certain business relationships, duties and associations into “western” legal forms and the adverse financial impact this has had upon Islamic business relationships. Stewart, Glenn “Examining The Islamic Concepts of Ownership, Partnership and Equity Holdings from a Western Perspective.” *Glenn Stewart Observer*, 7 December, 2011. Web. 7 December, 2011; Bilal, Gohar “Business Organizations under Islamic Law – A Brief Overview, Proceeding of the Third Harvard University Forum on Islamic Finance: Local Challenges, Global Opportunities.” *Center for Middle Eastern Studies, Harvard University*, pp. 83-89. Web. (2011).

40. Oral statements (even if not complicated by language and cultural differences) are not dispositive of the nature of an arrangement, rather it is the actual transaction or interaction between the parties which defines the nature of their relationship.

41. Because the oral representations of Yusuf and Hamed do not constitute admissions of a traditional “western” partnership arrangement, Hamed cannot bear his burden of demonstrating he is Yusuf’s “50/50 partner.”

42. At best, Hamed has enjoyed an incredibly lucrative oral arrangement with Yusuf, his brother-in-law, whereby his relatively small loan/investment (\$225,000) and even less significant advances (approximately \$175,000) have been repaid more than a hundred fold, simply because Hamed provided funds when United needed them to complete its Shopping Center and because Hamed was “family.” 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. Unfortunately for Hamed, this agreement does not provide him with an ownership interest in the Plaza Extra Stores. Nor does it afford Hamed the ability to exert any authority over the operations of the Plaza Extra Stores, to negotiate for their leases, or to determine whether to continue or liquidate their operations.

43. While Hamed may have loaned Yusuf money so that United could open Plaza Extra - East, that loan was repaid and the investment has provided significant returns. In any event, a loan from a family member does not entitle him to an ownership interest in the business that benefited from the loan.

44. Nor can Hamed’s services provide any consideration for payment of the 50% net profits, since he received payment for his labor as a salaried employee of United.

45. Thus, if United decides to end operations of the Plaza Extra Stores such that no further net profits exist or to charge a rental expense for internal accounting purposes for the

retail space occupied by Plaza Extra - East, Hamed may not protest, object or exert any influence over such decisions.

46. Other than the oral representations, which Hamed would like to serve as the linchpin for his alleged “partnership,” both Hamed and Yusuf have conducted their business dealings consistent with the written documentation, owning various assets in corporate forms with properly defined stock ownership. Hence, Hamed has never had any ownership interests in the Plaza Extra Stores and, therefore, can exert no control over the operations and decisions of the business.

## **II. History Of The Plaza Extra Stores – The Financing and the Investors**

47. Before any of the Plaza Extra Stores ever opened, Yusuf wanted to “put something together for my children to secure their future.”<sup>2</sup>

48. United bought the real estate located at Sion Farm, St. Croix, in fee simple. In addition, United needed capital to finance the construction of the Shopping Center, which Yusuf envisioned would house a supermarket and other businesses.

49. Initially, Yusuf approached traditional bank lenders. These lenders advised that they were unwilling to provide construction loans but assured Yusuf that once the building was in place, they would provide a loan for the operations of the supermarket business.

50. However, United needed additional capital to fund the construction. At various points in time, when United needed additional resources that could not be secured fully through traditional lending, Yusuf would turn to family members and others to provide him loans or investments.

51. All of these loan/investments were handled in the same manner, to wit: a) monies were given to Yusuf as a loan or investment; b) Yusuf agreed to repay or provide a return on the

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<sup>2</sup> Transcript utilized by Hamed during Preliminary Injunction hearing to allegedly demonstrate his “partnership” with Hamed. (Feb. 2, 2000, Yusuf Depo, p. 11, l. 14-15, taken in Ahmed Idheileh v. United Corporation and Fathi Yusuf, Territorial Court of the Virgin Islands, Division of St. Thomas and St. John, Civil No. 156/1997).

investment, equal to a percentage of the net profit from the Plaza Extra Stores or the Shopping Center; c) the creditors/investors did not receive ownership interests in the businesses; d) the creditors/investors did not exercise control over the businesses and had no authority to make management decisions concerning the businesses; e) the creditors/investors were not liable for the debts of the Plaza Extra Stores or any mortgages or other encumbrances upon the Shopping Center; f) the creditors/investors were not obligated to make any further contributions beyond their initial investment; g) the creditors/investors were not liable for losses even though the return on their investment may vary depending upon the profitability of the business, and h) while Yusuf may discuss matters relating to the business with his creditors/investors, he retained full and complete authority to make management decisions on behalf of United as to its business operations and was not required to secure his creditor/investor's approval or permission.

52. At best, the creditors/investors had an oral agreement for repayment of their investment, which is subject to various defenses including, *inter alia*, the statute of frauds and statute of limitations.

**A. Various Investors All Had Similar Investment Structures.**

53. In the early 1980's, United needed additional capital to fund the construction of its Shopping Center, so Yusuf approached his brother, Ahmad Yusuf, in Kuwait, who loaned Yusuf the \$1.5 million dollars needed for the construction. Yusuf originally agreed to repay his brother for the loan by giving him 40% of the net profits of the Shopping Center. As additional funds were still needed, Yusuf's brother provided more funds, in consideration of which, Yusuf agreed to repay his brother by providing him 50% of the net profits of the Shopping Center. At each point, Yusuf characterized his arrangement with his brother as his "partner."<sup>3</sup>

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<sup>3</sup> Feb. 2, 2000, Yusuf Depo, p. 11, l. 14; p.12, l. 13-17; Ahmed Idheileh v. United Corporation and Fathi Yusuf, Territorial Court of the Virgin Islands, Division of St. Thomas and St. John, Civil Action File No. 156/1997.

54. 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.

55. 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.

56. Hamed received no ownership interest in Plaza Extra – East. Hamed, also had no managerial control over the operations of Plaza Extra – East.

57. Hamed's risk was limited to only the amount he loaned/invested. He was not liable for debts and was not a signatory or guarantor to the loans taken by United, which Yusuf guaranteed. Hence, as Hamed had very limited resources, he was never liable for losses nor obligated to make any contributions to cover losses, even though Hamed's return fluctuated with the profitability of the business.

58. After the Shopping Center was fully built (except for the supermarket) and was approximately 80% occupied by tenants, Yusuf, on behalf of United, pursued another traditional loan. Although United applied for a \$2.5 million dollar loan, it was only able to secure a \$1.1

million dollar loan from Banco Popular. Yusuf personally guaranteed United's loan and collateralized it with his personal property. Neither Yusuf's brother nor Hamed were obligated under United's loan as guarantors or otherwise.

59. As additional monies were still required to open the supermarket at Plaza Extra - East, Yusuf next turned to his nephews and, likewise, offered a repayment plan that was based upon a percentage of profits. Similarly, at this point Hamed provided additional funds (the \$175,000.00) and was to receive a return on that loan/investment based upon a percentage of the net profits from Plaza Extra – East.

60. While certain funds were provided by the nephews, they were unable to continue their support and requested a return of their investment. Unable to return their loan/investment immediately, Yusuf agreed to pay his nephews a set amount for both a return of their investment and his use of their investment funds calculated at 12% interest on their investment funds plus a penalty of \$75,000.00 each. Yusuf offered the same option to Hamed as well. Hamed agreed to let his investment remain rather than demanding immediate repayment in exchange for a greater repayment/return arrangement. It was at this point, that it was agreed that Hamed would be entitled to 50% of the net profits of Plaza Extra – East as his return on his investment/loan.

61. In or about February 1986, Yusuf secured a loan on behalf of United from First Pennsylvania Bank for \$2.5 million. From these loan proceeds, United paid the \$1.1 million loan from Banco Popular. The remaining funds were used to purchase inventory and additional equipment needed to open Plaza Extra – East. Just as with the prior loan, Yusuf was the guarantor and pledged his personal assets as collateral. Neither Hamed nor Yusuf's brother were signatories to the loan or acted as guarantors.

62. Hamed did not own any real property, investments or other assets to use as security for the loan obtained by United, nor did any of his family members.



63. Other loans were guaranteed by Yusuf as well to insure the opening of the Plaza Extra – East store.

64. The business took time to develop and there were set backs. Yusuf worked around the clock to keep the business going and it eventually became profitable.

65. However, in 1992, Plaza Extra - East was destroyed in a fire.

66. As the owner, United insured Plaza Extra - East and was the sole beneficiary of the subject insurance policy, the proceeds of which were used to rebuild Plaza Extra - East.

67. Neither Hamed nor Yusuf's brother were obligated to contribute to the rebuilding efforts of Plaza Extra – East nor liable for any losses it sustained.

#### **B. The Idheileh - \$750,000 Investment**

68. As Plaza Extra – East was being rebuilt, a Mr. Ahmad Idheileh approached Yusuf regarding a store in St. Thomas.

69. United entered into a Joint Venture agreement with Mr. Idheileh. Just as with Plaza Extra – East, Mr. Idheileh loaned certain monies for the opening of the store. His risk was limited to the amount he loaned/invested. He was to receive, as his return on the investment, a percentage of the net profits of Plaza Extra –Tutu Park. However, Plaza Extra –Tutu Park needed much more capital than the Idheileh loan/investment to open and operate. Hence, Yusuf secured and guaranteed the loan given to United for Plaza Extra-Tutu Park, collateralizing the loan with his own real property. Just as with Plaza Extra – East, neither Hamed nor Idheileh bore any liability for these bank loans or risks.

70. Plaza Extra – Tutu Park took time before it was profitable and faced significant competition with the opening of the Cost-U-Less store. As a result, there was financial pressure on the business and strained relations with Idheileh. While Idheileh and United attempted to resolve their differences, on January 16, 1994, they ultimately agreed to part ways. They

formalized their agreement in a written Termination Agreement, whereby Idheileh was paid a sum certain as agreed by the parties.

71. Three years later, in 1997, once Plaza Extra – Tutu Park was operating and successful, Idheileh sued both United and Yusuf. Idheileh contended he “owned” 33% of Plaza Extra –Tutu Park and that the Termination Agreement was signed under duress. Idheileh lost as the Court found that the Termination Agreement was enforceable. Further, the Joint Venture document reflected that no ownership interest was ever given. Rather, it set out the terms of the investment, which mirror the earlier investor arrangements, to wit: a) “*United* plans to open and operate a supermarket...at Tutu Park,” b), “*United* wishes to secure further *investment* in the supermarket,” c) “*Idheileh* agrees to *invest* \$750,000 in the supermarket,” d) “*Idheileh* will receive *33% of the net profit* of the supermarket,” e) “payments are made pursuant to...*agreement*...and not made unless both parties ...agree,” f) “*United* shall *retain complete control* over all decisions relating to the supermarket except to the extent it may delegate...”.

72. Despite efforts by Hamed to use testimony of Yusuf from the Idheileh case, the issue of a partnership between Hamed and Yusuf was not an issue for adjudication in that case and there was no such judicial finding. Lastly, Idheileh testified that he had never seen Hamed once in any of his dealings with Yusuf and did not believe him to have any interest whatsoever in Plaza Extra – Tutu Park.

### **III. None of the Hallmarks of a Partnership Exist.**

#### **A. Hamed Was A United Employee Without Managerial Control.**

73. Hamed was employed by United as a warehouse receiving supervisor. He received a salary for his labor and services until 1996, when he retired and returned to Jordan.

74. Hamed’s job was to make sure that the inventory was properly accounted for and not subject to theft. Hamed had no direct access to the safe and no signatory authority on any of the bank accounts of the Plaza Extra Stores. Hamed had no authority in the management and

operations of Plaza Extra – East. As he was not fluent in English, Hamed had no role in the management or supervision of the roughly 100 to 150 employees. He also did not place inventory orders because, as Hamed has previously testified, he cannot read English.

75. Hamed received weekly checks for his wages and, upon information and belief, has always filed his tax returns as an employee of United. Further, United employed each of Hamed's four sons, Waleed, Waheed, Mufeed, and Hisham (collectively, the "Hamed Sons") as managers. Each of the Hamed Sons was assigned to one of the three Plaza Extra Stores operated by United. Hamed has acknowledged under oath that the Hamed Sons are employees of United.

76. The Hamed Sons worked for United at the same time as Hamed. Their roles did not change following Hamed's retirement. Rather, Waleed, for example, was a manager during the period that his father worked at United and remained a manager thereafter. His duties, responsibilities and obligations did not change or increase after his father's retirement.

77. Hamed never received any ownership interest in the Plaza Extra Stores, ownership control, or stock in United, which is the actual owner of the Plaza Extra Stores. Hamed did not participate in the management and decision making of the Plaza Extra Stores. Hence, upon his retirement, Hamed had no ownership authority to provide to Waleed to act as his "authorized agent." Indeed, the September 12, 2012, power of attorney given by Hamed to Waleed makes no mention of any partnership or Hamed's authority as a partner.

78. Rather, it was Yusuf's business acumen, management, and leadership that enabled the Plaza Extra Stores to become a successful grocery business growing to three locations with over 600 employees.

79. As Hamed has admitted under oath, Yusuf was always in charge of all operations of the Plaza Extra Stores. Hamed has readily admitted that he has not worked in a management capacity but instead that "Mr. Yusuf, he is in charge for everybody" and in charge of all the Plaza Extra Stores.

**B. Unlike True Partners, Hamed Was Not Responsible For Liabilities of the Plaza Extra Stores.**

80. Hamed, unlike Yusuf, is not a guarantor of any loan or lease of United used to fund or operate the Plaza Extra Stores.

81. In a true partnership, each partner is responsible for the liabilities of the partnership. Joint risk, exposure and liability are essential hallmarks of an actual partnership. Over the years, various lawsuits have been initiated against United and/or Yusuf relating to events and operations at the Plaza Extra Stores. Not once has Hamed ever been named as a party or alleged to be an owner of the Plaza Extra Stores in any lawsuit. Notably, Yusuf never sought to include Hamed as a party or otherwise join him in such suits even when facing such risk and liability. Moreover, when defending the criminal case and facing the prospect of paying millions of dollars in taxes and penalties, Yusuf did not contend that Hamed was a 50% owner and, thus, 50% responsible. If ever there was a time to confirm an alleged “partnership,” it is when facing serious exposure. This was never done because Hamed was not a true partner or owner of the Plaza Extra Stores.

**C. Hamed Had Not Filed Taxes for Over a Decade and When He Did File, He Never Claimed a Partnership Interest.**

82. Hamed has never filed (before the commencement of this litigation) a single U.S. Partnership Return (Form 1065) concerning the Plaza Extra Stores.

83. In fact, after retiring in 1996, Hamed never filed any tax returns at all. It was not until after he decided to file this suit, once the criminal case was concluding, that he decided to file a tax return.

84. For a period in excess of 25 years, Hamed never demanded a Schedule K-1 Partnership Schedule from United, Yusuf or the Plaza Extra Stores. Hamed never (before the commencement of this litigation) reported his alleged “partnership interest” in the Plaza Extra Stores to any third-party or governmental agency.

85. Additionally, since 1986, upon information and belief, Hamed never asserted in a single legal document or tax filing that he was a partner of any entity, let alone the partnership alleged in the Complaint.

86. Hamed never filed a return (before the commencement of this litigation) to show any dividends from United, nor has he ever, personally or through his purported agent, Waleed, declared any interest in United. Not a single record indicates any ownership interest by Hamed or any of his children in United.

87. Since 1986, not a single Income Tax Return, Schedule or any other tax document has identified Hamed as having any equity or shareholder interest in United or the Plaza Extra Stores.

88. In the criminal case, Hamed's sons (Waleed and Waheed) always represented to the U.S. Government that they were employees of United, with no interest in the shares of United or ownership in a partnership.

89. Since its inception in 1979, United has reported all of its tax obligations – and has filed all of its tax returns – as a *corporation* under either Subchapters “C” or “S” of the Internal Revenue Code (“IRC”) – and never as a *partnership* under any partnership designation of the IRC or otherwise.

**D. No Property Was Acquired in Partnership Name.**

90. No properties were ever acquired in a partnership name, or any entity resembling a partnership. Rather, if an investment or property was acquired, funds from United would be paid to Yusuf, who would then purchase a property and title it either in both Hamed and Yusuf's name or purchase it in the name of a corporation which they each owned jointly.

91. Hence, Hamed and Yusuf have always demonstrated clean separation of businesses by forming separate corporations to invest in other business activities. Hamed and Yusuf formed the following corporations, owned in equal shares, as follows:

- i. **Sixteen Plus Corporation**, a corporation with 1600 shares issued, owned equally between the Yusuf and Hamed families;
- ii. **Y&H Investments, Inc.**, a corporation with 100 shares issued, owned equally by the Yusuf and Hamed families;
- iii. **Plessen Enterprises, Inc.**, a corporation with 1600 shares issued, owned equally between the Yusuf and Hamed families; and
- iv. **Peter's Farm Investment Corporation**, a corporation with 1000 shares issued, owned equally between Hamed and Yusuf.

**E. Hamed Was Silent As To His Alleged Partnership in the Plaza Extra Stores When United, Yusuf And His Sons Were Facing Criminal Charges And Huge Tax Liabilities.**

92. On September 3, 2003, the U.S. Department of Justice indicted United, Yusuf, Maher Yusuf, Waleed, and Waheed in the criminal case.

93. Upon information and belief, Hamed was never indicted because his employment with United was terminated in 1996, and because Hamed had no other management or equity interest in United or the Plaza Extra Stores.

94. Each indicted defendant in the criminal case retained separate defense counsel.

95. In light of the fact that all parties to the criminal case were in agreement as to the corporate structure and operations of United, the parties executed a joint defense agreement, whereby all communications between the criminal defense attorneys could be shared simultaneously without waiver of confidentiality or privileges.

96. The defendants in the criminal case retained a team of Certified Public Accountants and a Tax Attorney to assist the parties in the preparation of the Federal Corporate Tax Returns to comply with the U.S. Justice Department's demand for tax returns, payment of past taxes, interest, and penalties. As of the date of this pleading, the criminal case will have been pending for more than ten years.

97. During this extended period of time, Hamed never sought to intervene in the criminal case to assert that he is a partner of United or Yusuf, or that he has any interest in the Plaza Extra Stores.

98. On March 19, 2010, the parties' defense attorneys, working pursuant to the joint defense agreement, negotiated a plea agreement. The terms of the plea agreement called for the dismissal of all criminal counts against the individual defendants in exchange for United pleading guilty to one count of tax evasion, and the payment of substantial taxes and penalties.

99. At no time, did Hamed's purported agent, Waleed, or his co-defendant, Waheed, raise the issue of a partnership as alleged in the Complaint.

100. In addition, the plea agreement called for the parties to file accurate U.S. Federal Tax Returns and Gross Receipt Returns with the Virgin Islands Bureau of Internal Revenue and the U.S. Internal Revenue Service. Nothing in the plea agreement required the filing of any partnership returns because no partnership existed as acknowledged by the attorneys of Waleed and Waheed.

101. Neither Waleed nor Waheed ever indicated to the U.S. Justice Department that the business arrangement between Hamed and United or Yusuf was anything other than an employment relationship. As such, until the filing of this action, no record existed of any purported "partnership" between Hamed and Yusuf.

**IV. The Criminal Case Reveals That Hamed And Waleed Converted Monies from the Plaza Extra Stores.**

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.

106. 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.

107. 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.



108. 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.

109. 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.

110. 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.

111. 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.

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

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

114. 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.

**V. The Current Controversy Has Resulted in Deadlock and Inability to Operate Plessen.**

115. The current controversy between the Hamed and Yusuf families has negatively impacted the ability of Plessen to function and operate.

116. The stalemate between the Yusuf and Hamed families has resulted in deadlock as to the operations of Plessen.

117. In order to preserve the assets of Plessen and insure that its obligations are timely met, Yusuf seeks to dissolve and liquidate Plessen.

**VI. United Owned Investments and Businesses In Which Hamed Was Never A Part.**

118. United maintains other investments and businesses separate from its operation of the Plaza Extra Stores. At no time did Hamed or any of his children ever participate, manage, or have any interest in United's other operations. Hamed has conceded under oath that he has no interest in United or any of its operations not related to the Plaza Extra Stores.

119. Other than receiving 50% of the net profits of the Plaza Extra Stores, Hamed never received any proceeds, profits, or distributions from United's other operations, which primarily consist of the rents generated by United's real estate holdings.

**VII. In the Event of a Partnership, What Were Its Terms?**

120. Although Yusuf contends he has no partnership with Hamed, to the extent that their relationship is determined to be a partnership (the "Alleged Partnership"), Yusuf alleges that the parties engaged in a course of conduct and possessed certain understandings as to how monies for the Alleged Partnership were accounted for and to be paid.

121. Further, in the event that the Alleged Partnership is found to exist, Hamed, as a partner owes certain fiduciary duties to the Alleged Partnership and to Yusuf as his partner. Those duties, among other things, include duties of loyalty and to act in the best interests of the Alleged Partnership.

122. Hamed's fiduciary duties to the Alleged Partnership and to Yusuf relate not only to his individual actions as a partner but also, to the extent he purports to act as a partner through his authorized agent, then Hamed's fiduciary duties and, thus, liability for breaches of any such duties, extends to the actions of his authorized agent.

123. Waleed's misappropriation of monies from the Plaza Extra Stores, if acting as an agent of Hamed or at his direction and with his knowledge constitutes a breach of Hamed's fiduciary duties to the Alleged Partnership and to Yusuf for which Hamed is liable.

124. In the event the Alleged Partnership is determined to exist, then Hamed would be responsible for any liabilities of the Alleged Partnership.

### **VIII. Rent**

125. United is the sole owner of the Shopping Center which contains the retail premises where Plaza Extra - East is located.

126. 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.

127. 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.

128. 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.

129. For the period of January 1, 1994 through May 4, 2004, United made demand but Hamed, on behalf of the Alleged Partnership, refused to allow United to withdraw the rent value of \$3,999,679.73 (69,680 sq. ft. at \$5.55 sq. ft.) from the gross revenues of Plaza Extra – East.

130. However, for the period of May 5, 2004 through December 31, 2011, the parties agreed that the rent due and owing United was \$5,408,806.74, which amounts to a monthly rent of \$58,791.38. The monthly rent of \$58,791.38 for Plaza Extra – East was calculated based on the yearly sales of Plaza Extra – Tutu Park. The sales were divided by the square footage to arrive at a percentage amount - 2.0333%. That percentage amount then was multiplied by the sales of Plaza Extra – East. See Exhibit 1 (percentage highlighted in yellow).

131. On or about February 7, 2012, a check in the amount of \$5,408,806.74 was issued to United from the earnings of Plaza Extra - East. See Copy of Check #64866 attached as **Exhibit 2**.

132. Consistent with the parties' understanding as to payment of rent to United, Hamed, either individually or as a partner of the Alleged Partnership, never raised any issue concerning the statute of limitations or denied that rent was owed to United because it has always been the parties' practice to settle rents when United makes a demand, regardless of when such demand takes place.

133. On or about May 17, 2013, United, utilizing the same formula previously agreed upon to calculate the rent, again made demand for rent due for the period of January 1, 2012 through May 30, 2013.

134. Hamed has made clear that it is his intention not to authorize rent payments to United for the occupancy of Plaza Extra – East. As such, in the event that the Alleged Partnership is deemed to exist, the Alleged Partnership not only owes rent to United but also is an unlawful holdover tenant of the premises occupied by Plaza Extra-East.

135. Further, because the Alleged Partnership failed to pay the rent as demanded by United, in September of 2010, United, through Yusuf, orally noticed the Alleged Partnership by informing Hamed's authorized agent, Waleed, of United's intent to terminate the occupancy agreement for Plaza Extra – East effective December 31, 2011.

136. When Hamed, on behalf of the Alleged Partnership, refused to accept the termination notice or cause the premises to be vacated, United issued a written notice to vacate on January 1, 2012.

137. United's notice called for an increase in the rent, in the event the premises were not vacated, to \$200,000 a month for the period of January 1, 2012 to March 31, 2012, and \$250,000 for any month after April 1, 2012 should Plaza Extra – East continue occupying the premises despite such notice.

138. Therefore, for the period of January 1, 2012 through September 31, 2012, United is entitled to rent from the Alleged Partnership in the amount of \$1,800,000.

139. Despite United's termination of the oral, month to month occupancy agreement for the premises occupied by Plaza Extra-East and its demand that such premises be vacated, the Alleged Partnership continues to enjoy the benefits of the operations of Plaza Extra – East store including, but not limited to, the use of valuable retail space located at the Shopping Center, without paying the outstanding rent.

140. Through December 31, 2013, the total rent due and outstanding for the premises occupied by Plaza Extra – East is \$5,410,672.85. This unpaid rent is an amount certain, liquidated, and subject to immediate collection from the Alleged Partnership.

**COUNT I**  
**DEFENDANTS' CLAIM FOR**  
**DECLARATORY RELIEF THAT NO PARTNERSHIP EXISTS**

141. Paragraphs 1 through 140 of this Counterclaim are realleged.

142. There exists an actual controversy as to whether there was ever a partnership formed between Yusuf and Hamed for the operation of the Plaza Extra Stores.

143. Defendants seek a declaratory judgment which confirms that United is the sole owner and operator of the Plaza Extra Stores, that United has full and complete authority over

decisions and actions taken in and for the Plaza Extra Stores, and that United has ownership of all assets held in United accounts or in United's name.

144. United is further entitled to a declaratory judgment that it has the power and authority to account for its net profits, taking into account any yet unpaid expenses, including past due rents. To the extent that Yusuf orally agreed to provide Hamed with a return on his investment in an amount equal to 50% of the net profits of the Plaza Extra Stores, which are owned and operated by United, then such net profits must net out all unpaid rent and all competing claims for recoupment and setoff.

**COUNT II**  
**DECLARATORY RELIEF**

145. Paragraphs 1 through 144 of this Counterclaim are realleged.

146. In the event that the Alleged Partnership is determined to exist, there exists an actual controversy between Hamed and Yusuf as to the terms of the Alleged Partnership, its duration, their respective rights, interests, and obligations concerning the Plaza Extra Stores and the disposition of the assets and liabilities of these stores. This Court should resolve the controversy by entering an appropriate declaratory judgment.

**COUNT III**  
**CONVERSION**

147. Paragraphs 1 through 146 of this Counterclaim are realleged.

148. 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.

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

150. Hamed and Waleed are therefore liable to Defendants for all funds converted for their personal gain and benefit in an amount to be determined after a full accounting is completed.

#### COUNT IV ACCOUNTING

151. Paragraphs 1 through 150 of this Counterclaim are realleged.

152. In the event that the Alleged Partnership is determined to exist, then Hamed owes a fiduciary duty of loyalty and care to the Alleged Partnership and to Yusuf as his partner. These fiduciary duties obligate Hamed to, among other things, account to Yusuf for all funds generated by the Plaza Extra Stores taken for his or his families' personal use without Yusuf's knowledge or consent.

153. Despite repeated demands therefore, Hamed has failed and refused to account to Yusuf for all assets of the Plaza Extra Stores taken or converted by Hamed or his agents. Accordingly, Yusuf is entitled to a full accounting of all funds taken or converted by Hamed and his agents from the assets and revenues generated by the Plaza Extra Stores.

#### COUNT V RESTITUTION

154. Paragraphs 1 through 153 of this Counterclaim are realleged.

155. 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.

156. Defendants are, therefore, entitled to restitution in the form of a constructive trust over any assets purchased with those funds; an equitable lien over such assets; and disgorgement

of any profits made from the use of the Plaza Extra Stores' funds or assets purchased with the use of such funds.

**COUNT VI**  
**UNJUST ENRICHMENT AND**  
**IMPOSITION OF A CONSTRUCTIVE TRUST**

157. Paragraphs 1 through 156 of this Counterclaim are realleged.

158. 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 the 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.

159. Defendants are entitled to the imposition of constructive trusts, equitable liens, and disgorgement of all profits in order to prevent Hamed and the Hamed Sons from being unjustly enriched by money ill-gotten from the Plaza Extra Stores.

**COUNT VIII**  
**BREACH OF FIDUCIARY DUTY**

160. Paragraphs 1 through 159 of this Counterclaim are realleged.

161. In the event that the Alleged Partnership is determined to exist, Hamed owes Yusuf a fiduciary duty to act in a manner consistent with their mutual interests and not to deal with him in a manner that promotes only Hamed's or his families' interests to the detriment of Yusuf.

162. Hamed breached his fiduciary duty to Yusuf by, among other things, failing to disclose millions of dollars of Plaza Extra Stores' funds converted by Hamed or his agents and otherwise acting in a manner inconsistent with Yusuf's interests and welfare, and by subordinating Yusuf's interests in the Plaza Extra Stores to those of Hamed and his family.

163. As a result of these breaches of fiduciary duties, Yusuf has been damaged.



**COUNT VIII**  
**DISSOLUTION OF ALLEGED PARTNERSHIP**

164. Paragraphs 1 through 163 of this Counterclaim are realleged.

165. Although Defendants deny the existence of any partnership with Hamed, in the event the Alleged Partnership is determined to exist, then Yusuf is entitled to dissolution of the Alleged Partnership and to wind up its affairs, pursuant to the Uniform Partnership Act, in that such partnership would be an oral at-will partnership and Yusuf provided notice of his intent to terminate any business relationship (including any partnership) with Hamed in March of 2012.

166. Since Hamed has refused to consent to a dissolution of the Alleged Partnership, Defendants are entitled to a prompt and orderly dissolution of the Alleged Partnership under the Uniform Partnership Act.

**COUNT IX**  
**DISSOLUTION OF PLESSEN**

167. Paragraphs 1 through 166 of this Counterclaim are realleged.

168. Because the equity of Plessen is owned equally by the Hamed and Yusuf families who have an irreconcilable disagreement on how to continue the business operations of this company, it should be dissolved and its assets liquidated according to law.

**COUNT X**  
**APPOINTMENT OF RECEIVER**

169. Paragraphs 1 through 168 of this Counterclaim are realleged.

170. In the event that the Alleged Partnership is determined to exist, a qualified, neutral business person should be appointed as Receiver for the Alleged Partnership to operate the Plaza Extra Stores and as Receiver for Plessen.

171. The Receiver should liquidate the assets of the Plaza Extra Stores and Plessen and divide the net proceeds amongst Hamed and Yusuf according to their respective interests, as declared by this Court, after accounting for all liabilities and claims for recoupment and setoff

since Yusuf desires to immediately terminate any and all business relations Hamed may have with either of the Defendants.

**COUNT XI**  
**RENT FOR RETAIL SPACE BAY 1**

172. Paragraphs 1 through 171 of this Counterclaim are realleged.

173. United has historically deducted rent for Plaza Extra – East as an internal expense and is entitled to deduct same so as to arrive at a proper calculation of the net profits from Plaza Extra – East.

174. In the alternative, in the event that the Alleged Partnership is determined to exist, then United is entitled to deduct all rent currently due and owing to arrive at the proper calculation of the net profits from Plaza Extra – East.

175. Whether an internal expense or a debt of the Alleged Partnership, for the period of January 1, 1994 through May 4, 2004, United is entitled to rent in the amount of \$3,999,679.73 for Bay No. 1 (69,680 sq. ft. of retail space at \$5.55 sq. ft.) for the operations of the Plaza Extra – East.

176. Whether an internal expense or a debt of the Alleged Partnership, for the period of January 1, 2012 to date, United is entitled to rent for Bay No. 1 (69,680 sq. ft. of retail space at the current monthly rate of \$58,791.38).

177. In the event that the Alleged Partnership is determined to exist, then Hamed is in violation of the agreement to pay rent to United in an amount exceeding \$5,293,090.09.

178. United, as the fee simple owner, is entitled to all unpaid rent for the use of Bay 1, and to recover possession of its premises currently occupied by Plaza Extra – East.

**COUNT XII**  
**PAST RENT FOR RETAIL SPACES BAYS 5 & 8**

179. Paragraphs 1 through 178 of this Counterclaim are realleged.

180. United provided Plaza Extra – East with retail spaces Bay 5 & 8 for various time periods to increase the storage and capacity of Bay 1 (the main retail space where Plaza Extra – East is located).

181. Bay No. 5 (3,125 sq. ft. of retail space) was utilized for storage and quick access to various inventories used in the operations of Plaza Extra – East. Whether an internal expense or a debt of the Alleged Partnership, United is entitled to rent from May 1, 1994 through October 31, 2001 at rate of \$12.00 per sq. ft.

182. Bay No. 8 (6,250 sq ft. of retail space) was utilized for the operations of Plaza Extra – East. Whether an internal expense or a debt of the Alleged Partnership, United is entitled to rent from April 1, 2008 through May 30, 2013 at a rate of \$6.15 per sq. ft.

183. In the event that the Alleged Partnership is determined to exist, Hamed has refused to acknowledge his obligation to pay United the outstanding rent for Bays 5 and 8.

184. United, as the fee simple owner, is entitled to all unpaid rent for the use of Bays 5 and 8 in the amount of \$793,984.38.

**COUNT XIII**  
**CIVIL CONSPIRACY**

185. Paragraphs 1 through 184 of this Counterclaim are realleged.

186. 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.

187. As a result of such conspiracy, the Defendants have been damaged.

**COUNT XIV**  
**INDEMNITY AND CONTRIBUTION**

188. Paragraphs 1 through 187 of this Counterclaim are realleged.

189. 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.

190. 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.

191. In the event the Alleged Partnership is determined to exit, then Yusuf is entitled to contribution from Hamed for half of any liabilities of the Alleged Partnership, which Yusuf has paid or may become obligated to pay in the future..

Accordingly, Defendants respectfully request entry of judgment in their favor providing the following relief:

- i. a declaratory judgment declaring the parties' rights and obligations with respect to the Plaza Extra Stores;
- ii. a full accounting of all funds taken by Hamed or his agents from the Plaza Extra Stores without Defendants' authorization;
- iii. a judgment declaring that Hamed and the Hamed Sons hold any assets purchased with funds improperly taken from the Plaza Extra Stores as constructive trustees for Defendants and imposing a constructive trust or equitable lien in favor of Defendants over all funds taken without authorization by Hamed or his agents or assets purchased with such funds;
- iv. awarding compensatory, consequential, and punitive damages in an amount according to proof at trial;

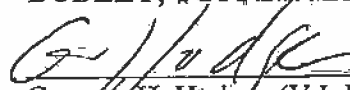
- v. appointing a Receiver to dissolve and wind down the affairs of any joint venture/partnership determined to exist between Hamed and Yusuf and to dissolve and liquidate Plessen;
- vi. a judgment for all rent found due and owing for the premises occupied by Plaza Extra-East and ordering immediate restitution of such premises to United;
- vii. a judgment for all taxes, interest and penalties paid by United that should have been paid by Hamed together with interest from the date of payment as well as all fees and costs associated with any tax returns or amendments that must be prepared and filed regarding such payment;
- viii. a judgment against Hamed in favor of Yusuf for Hamed's portion of all debts, liabilities and obligations of the Alleged Partnership, past and present;
- ix. awarding Defendants their reasonable attorneys' fees and costs in defending against the Complaint and prosecuting this Counterclaim; and
- x. providing such other and further relief as the Court deems just and proper.

Pursuant to Fed. R. Civ. P. 38(b), Defendants demand a trial by jury of all issues triable by right to a jury.

**DUDLEY, TOPPER and FEUERZEIG, LLP**

Dated: January 13<sup>th</sup>, 2014

By:

  
\_\_\_\_\_  
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Attorneys for Fathi Yusuf and United Corporation

**CERTIFICATE OF SERVICE**

I hereby certify that on this 13th day of January, 2014, I caused the foregoing FIRST AMENDED ANSWER AND COUNTERCLAIM to be served upon the following via e-mail:

Joel H. Holt, Esq.  
**LAW OFFICES OF JOEL H. HOLT**  
2132 Company Street  
Christiansted, V.I. 00820  
Email: [holtvi@aol.com](mailto:holtvi@aol.com)

Carl Hartmann, III, Esq.  
5000 Estate Coakley Bay, #L-6  
Christiansted, VI 00820  
Email: [carl@carlhartmann.com](mailto:carl@carlhartmann.com)

A black rectangular redaction box covers the signature of Nizar A. DeWood. A horizontal line is drawn through the box.

Nizar A. DeWood

IN THE SUPERIOR COURT OF THE VIRGIN ISLANDS

DIVISION OF ST. CROIX

MOHAMMED HAMED by his authorized agent WALEED HAMED  
Plaintiff )  
Vs. )  
FATHI YUSUF and UNITED  
CORPORATION, ET AL Defendant )

CASE NO. SX-12-CV-370  
ACTION FOR: DAMAGES; ET AL

NOTICE  
OF  
ENTRY OF JUDGMENT/ORDER

TO: JOEL HOLT, ESQ.; CARL HARTMANN III, Esquire HON. EDGAR ROSS (edgarrossjudge@hotmail.com)  
NIZAR DEWOOD, ESQ.; GREGORY HODGES, Esquire  
MARK ECKARD, ESQ.; JEFFREY MOORHEAD, Esquire

Please take notice that on JANUARY 7, 2015 Orders were  
entered by this Court in the above-entitled matter.

Dated: January 9, 2015

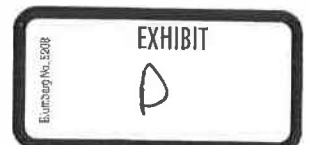
ESTRELLA H. GEORGE (ACTING)

Clerk of the Superior Court



By: IRIS D. CINTRON

COURT CLERK II





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

MOHAMMED HAMED by his authorized agent )  
WALEED HAMED, )  
Plaintiff/Counterclaim Defendant, )  
v. )  
FATHI YUSUF and UNITED CORPORATON, )  
Defendants/Counterclaimants )  
v. )  
WALEED HAMED, WAHEED HAMED, )  
MUFEED HAMED, HISHAM HAMED, and )  
PLESSEN ENTERPRISES, INC. )  
Counterclaim Defendants. )

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CIVIL NO. SX-12-CV-370  
ACTION FOR DAMAGES, etc.

**ORDER ADOPTING FINAL WIND UP PLAN**

By Order Soliciting Comments, Objections and Recommendations, entered October 7, 2014, the Court ordered the parties to review the Proposed Wind Up Plan ("Proposed Plan") presented therewith relative to the Hamed-Yusuf (Plaza Extra) Partnership and to present comments, objections and recommendations. Plaintiff Mohammed Hamed submitted his Comments re Proposed Winding Up Order (filed October 21, 2014); Defendant Fathi Yusuf submitted his Comments, Objections and Recommendations Concerning the Court's Proposed Plan (filed October 21, 2014). The Parties each then responded to the filing of the other: Plaintiff filed his Response to Defendant's Comments re Proposed Winding Up Order on October 28, 2014; and Defendant Yusuf filed his Response to Hamed's Comments Concerning the Court's Proposed Wind-Up Plan on October 29, 2014.

Upon consideration of the Parties' submissions, the Court enters this Order Adopting Final Wind Up Plan of the Plaza Extra Partnership ("Order"). A complete copy of the Final Wind Up Plan of the Plaza Extra Partnership ("Final Plan") adopted by this Order is submitted with and constitutes a part of this Order. The Final Plan incorporates certain modifications to the Proposed Plan, as noted below, with revised provisions in italics, and excluded provisions stricken. These modifications, together with the provisions to which the Parties have jointly agreed, which are accepted and incorporated, are adopted by the Court and shall constitute the Final Plan. For the Parties' ease of reference, provisions of the Proposed Plan are modified by the terms of this Order and incorporated into the Final Plan, as follows:

### **~~PROPOSED~~ FINAL WIND UP PLAN**

#### **Section 1: Definitions**

1.18 "Liquidating Partner" means Yusuf.

#### **Section 3: Liquidating Partner**

Yusuf shall be the Liquidating Partner with the exclusive right and obligation to wind up the partnership pursuant to this Plan *and the provisions of the V.I. Code Ann. tit. 26, § 173(c)*, under the supervision of the Master. No person other than the Liquidating Partner may act on behalf of the Partnership, represent the Partnership in any official capacity or participate in management or control of the Partnership, for purposes of winding up its business or otherwise. The Liquidation Partner's rights and obligations relative to the winding up, subject to the review and supervision of the Master, shall be deemed to have commenced as of April 25, 2013, the date of the issuance of the Preliminary

*Injunction. All acts of the Liquidating Partner, except those customarily undertaken in the ordinary course of the ongoing business operations of the Partnership, are subject to prior notification to and approval of the Master.*

## **Section 8: Plan of Liquidation and Winding Up**

### **1) Plaza Extra-East**

Yusuf will purchase from the Partnership the following elements of the existing business operation known as Plaza Extra-East: the inventory at *one half of the* landed cost and the equipment ~~and leasehold improvements~~ at their its depreciated value, as mutually determined by the Partners. In the event the Partners cannot agree, such value shall be determined by a qualified appraiser selected by the Master. *In the event that Yusuf is unwilling to pay the appraised depreciated value of the equipment, the same shall be sold at public auction under the direction and supervision of the Master, with net proceeds equally divided and disbursed by the Master.* Upon payment for such inventory, *and upon payment (or auction and distribution of proceeds) for the equipment,* Yusuf will assume full ownership and control and may continue to operate the business Plaza Extra-East without any further involvement of Hamed or the Hamed sons, and free and clear of any claims or interest of Hamed.

*For purposes of winding up the Partnership, Plot 4-H Estate Sion Farm shall not be considered partnership property and is not subject to division under this plan, but without prejudice to any accounting claim that may be presented by Hamed.*

## 2) Plaza Extra-Tutu Park

~~Yusuf will purchase from the Partnership the following elements of the existing business operation known as Plaza Extra-Tutu Park: the inventory at landed cost and the equipment and leasehold improvements at their depreciated value, as mutually determined by the Partners. In the event the Partners cannot agree, such value shall be determined by a qualified appraiser selected by the Master. Yusuf will reimburse the Partnership for 50% of the reasonable costs and attorneys' fees incurred to date in the Tutu Park litigation. Upon payment for such inventory, equipment, leasehold improvements and attorneys' fees, Yusuf will assume full ownership and control and may continue to operate the business Plaza Extra-Tutu Park without any further involvement of Hamed or the Hamed sons, and free and clear of any claims or interests of Hamed.~~

*The Parties will be allowed to bid on Plaza Extra-Tutu Park at a closed auction supervised by the Master. The auction shall take no more than one day and should not cause any delay in implementing this Plan or disrupt the business operations of any Plaza Extra store. The Parties may discuss and jointly or individually propose the format and procedures for the auction, subject however to the Master's sole determination.*

*The Partnership assets sold in connection with Plaza Extra-Tutu Park shall consist of the leasehold interests, the inventory, equipment, and all leasehold improvements not a part of the real property. The value of such assets shall be determined by a qualified appraiser selected by the Master prior to the auction. Whichever Partner submits the winning bid for Plaza Extra-Tutu Park shall receive and assume all existing rights and obligations to the pending litigation with the landlord, in the Superior Court of the Virgin*

*Islands, Division of St. Thomas and St. John, United Corporation d/b/a Plaza Extra v. Tutu Park Limited and P.I.D., Inc. (Civ. No. ST-01-CV-361) (the "Tutu Park Litigation"). The Partner who receives and assumes said rights and obligations to the Tutu Park Litigation shall be obligated to reimburse the other Partner 50% of the of the amount of costs and attorneys' fees incurred to date directly attributable to the Tutu Park Litigation. Additionally, the prevailing Partner at auction shall be responsible for obtaining releases or otherwise removing any continuing or further leasehold obligations and guarantees of the Partnership and the other Partner.*

### **3) Plaza Extra-West**

Hamed will purchase from the Partnership the following elements of the existing business operation known as Plaza Extra-West: inventory at *one half of the* landed cost and the equipment ~~and leasehold improvements~~ at their its depreciated value, as mutually determined by the Partners. In the event the Partners cannot agree, such value shall be determined by a qualified appraiser selected by the Master. *In the event that Hamed is unwilling to pay the appraised value of the equipment, the same shall be sold at public auction under the direction and supervision of the Master.* Upon payment for such inventory, *and upon payment (or auction and distribution of the proceeds) for the* equipment, Hamed will assume full ownership and control and may continue to operate Plaza Extra-West without any further involvement of Yusuf, Yusuf's sons or United and free and clear of any claims or interests of Yusuf or United.

*Hamed will be entitled to a recordable non-exclusive easement for the existing sewage line servicing Plaza Extra-West, which shall not preclude Plessen Enterprises, Inc.,*

*the owner of the servient parcel, from reserving the right to tap into and to utilize such sewage line.*

#### **4) Stock of Associated Grocers**

The stock of Associated Grocers held in the name of United shall be split 50/50 between Hamed and Yusuf, with United retaining in its name Yusuf's 50% share, and 50% of such stock being reissued in Hamed's name or his designee's name.

#### **5) Plaza Extra Name**

~~Yusuf shall own and have the right to use the trade name "Plaza Extra" in the operation of Yusuf's Plaza Extra stores. Hamed will operate Plaza Extra West under the trade name "Plaza West."~~

*The Master will conduct and supervise a closed auction wherein the Parties alone will be allowed to bid to purchase the trade name "Plaza Extra." The prevailing Partner at the auction shall receive the right to the exclusive use of the name "Plaza Extra," to the exclusion of all others, including the other Partner, who shall be forever barred from using the name "Plaza Extra" in connection with operation of any business in the U.S. Virgin Islands.*

*The auction shall take no more than one day and will be conducted in a manner that will not cause any delay in implementing this Plan or any disruption in the business operations of any Plaza Extra store. The parties may discuss and jointly or individually propose the format and procedures for the auction, subject however to the Master's sole determination.*

### **Steps to Be Taken for the Orderly Liquidation of the Partnership**

*This Plan is conditioned upon the ability of Hamed and Yusuf to use the 50% interest of each in Available Cash and Encumbered Cash to purchase the non-liquid Partnership Assets. While the bid-in process may continue, actual payment of the funds shall be subject to approval of the Master, the Court and, to the extent necessary, District Court.*

#### **Step 1: Budget for Wind Up Efforts**

The Liquidating Partner proposes the Wind Up Budget (Exhibit A) for the Wind Up Expenses. Such expenses include but are not limited to, those incurred in the liquidation process, costs for the continued operations of Plaza Extra Stores during the wind up, costs for the professional services of the Master, costs relating to pending litigation in which Plaza Extra and/or United d/b/a/ Plaza Extra Stores is named as a party, and the rent to be paid to the landlords of Plaza Extra-East and Plaza Extra-Tutu Park.

#### **Step 2: Setting Aside Reserves**

The sum of Ten Million Five Hundred Thousand Dollars (\$10,500,000) shall be set aside in a Liquidating Expenses Account to cover the Wind Up Expenses as set out in the Wind Up Budget with a small surplus to cover any miscellaneous or extraordinary Wind Up expenses that may occur at the conclusion of the liquidation process. Such Account shall be held in trust by the Liquidating Partner under the supervision of the Master. *All disbursements shall be subject to prior approval by the Master.* The Liquidating Partner shall submit to Hamed and the Master each month a reconciliation of actual expenditures against the projected expenses set forth in Exhibit A. Unless

the Partners agree or the Master orders otherwise, the Liquidating Partner shall not exceed the funds deposited in the Liquidated Expenses Account.

### **Step 3: Continued Employment of Employees**

Yusuf and Hamed, and their respective successors, shall attempt to keep all employees of the Plaza Extra Stores fully employed, *not including members of the Hamed and Yusuf families*. Although approval of this plan should avoid any need to comply with the provisions of the Virgin Islands Plant Closing Act, to the extent necessary, Yusuf and Hamed, and their respective successors, shall comply with the PCA for any affected employees of the Plaza Extra Stores as a result of the winding up and closure of the Partnership business. Any severance payments due to the employees determined in accordance with the PCA shall be paid by the Master out of the Claims Reserve Account.

### **Step 4: Liquidation of Partnership Assets**

The Liquidating Partner shall promptly confer with the Master and Hamed to inventory all non-Plaza Extra Stores Partnership assets, and to agree to and implement a plan to liquidate such assets, which shall result in the maximum recoverable payment for the Partnership. *All previous Partnership accountings are deemed preliminary. Hamed's accountant shall be allowed to view all partnership accounting information from January 2012 to present and submit his findings to the Master. The Liquidating Partner is ordered to submit an updated balance sheet to Hamed and to the Master without delay.*



### **Step 5: Other Pending Litigation**

The pending litigation against United set forth in Exhibit C arises out of the operation of the Plaza Extra Stores. As part of the wind up of the Partnership, the Liquidating Partner shall undertake to resolve those claims in Exhibit C, and to the extent any claims arise in the future relating to the operation of a Plaza Extra Store during the liquidation process, within the available insurance coverage for such claims. Any litigation expenses not covered by the insurance shall be charged against the Claims Reserve Account.

### **Step 6: Distribution Plan**

Upon conclusion of the Liquidation Process, the funds remaining in the Liquidation Expenses Account, if any, shall be deposited into the Claims Reserve Account. Within 45 days after the Liquidating Partner completes the liquidation of the Partnership Assets, Hamed and Yusuf shall each submit to the Master a proposed accounting and distribution plan for the funds remaining in the Claim Reserve Account. Thereafter, the Master shall make a report and recommendation of distribution for the Court for its final determination. Nothing herein shall prevent the Partners from agreeing to distribution of Partnership assets between themselves rather than liquidating assets by sale and distributing proceeds.

### **Step 7: Additional Measures to Be Taken**

- a) Should the funds deposited into the Liquidating Expenses Account prove to be insufficient, the Master shall transfer from the Claims Reserve Account sufficient funds required to complete the wind up and liquidation of the Partnership, determined in the Master's discretion.

- b) All funds realized from the sale of the non-cash Partnership Assets shall be deposited into the Claims Reserve Account under the exclusive control of the Master.
- c) All bank accounts utilized in the operation of the Partnership business shall be consolidated into the Claims Reserve Account.
- d) All brokerage and investment accounts set forth in Exhibit D shall be turned over to the Master as part of the Claims Reserve Account.
- e) Any Partnership Assets remaining after the completion of the liquidation process shall be divided equally between Hamed and Yusuf under the supervision of the Master.

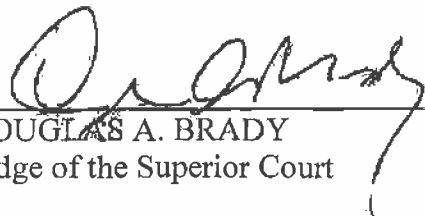
On the basis of the foregoing, it is hereby

ORDERED that the foregoing modifications of the Proposed Plan shall be incorporated into and form a part of the Final Wind Up Plan of the Plaza Extra Partnership, submitted herewith, which Final Plan is ADOPTED by this Order. It is further

ORDERED that the Parties shall meet and confer with the Master FORTHWITH relative to the implementation of the Final Plan, which will be deemed final and effective ten (10) business days following the date of the entry of this Order.

Dated:

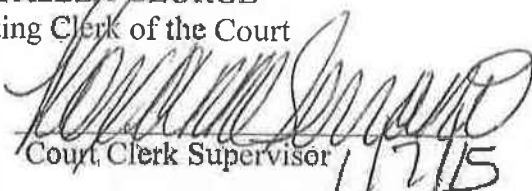
January 7, 2015

  
DOUGLAS A. BRADY  
Judge of the Superior Court

ATTEST:

ESTRELLA GEORGE  
Acting Clerk of the Court

By:

  
Court Clerk Supervisor 1/7/15

CERTIFIED TO BE A TRUE COPY  
This 9th day of Jan 20 15

CLERK OF THE COURT

By  Court Clerk 11