

02/13/2015

VERONICA HANDY, ESQUIRE
CLERK OF THE COURT

IN THE SUPREME COURT OF THE VIRGIN ISLANDS

FATHI YUSUF,)	
)	S. CT. CIV. NO. 2015-0009
Appellant,)	
)	
v.)	Re: Super. Ct. Civ. No. SX-12-CV-370
)	
MOHAMMAD HAMED, WALEED)	
HAMED, WAHEED HAMED, MUFEED)	
HAMED, HISHAM HAMED, and)	
PLESSEN ENTERPRISES, INC.,)	
)	
Appellees.)	

**EMERGENCY MOTION FOR STAY PENDING APPEAL OF PORTIONS OF
SUPERIOR COURT ORDER ADOPTING FINAL WIND UP PLAN**

Defendant/counterclaimant/appellant Fathi Yusuf ("Yusuf"), through his undersigned attorneys, respectfully submits this Emergency Motion For Stay Pending Appeal Of Portions Of Superior Court Order Adopting Final Wind Up Plan, pursuant to V.I.S.CT.R 8(b). In support of this motion, Yusuf relies upon his accompanying brief.

Respectfully Submitted,

DUDLEY, TOPPER AND FEUERZEIG, LLP

DATED: February 13, 2015

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Attorneys for Fathi Yusuf

CERTIFICATE OF SERVICE

I hereby certify that on February 13, 2015, I caused the foregoing **Emergency Motion For Stay Pending Appeal Of Portions Of Superior Court Order Adopting Final Wind Up Plan** to be electronically filed with the Clerk of the Court using the V.I. Supreme Court e-filing system and that the attorneys listed below, who are Filing Users, will be e-served by the Notice of Electronic Filing:

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ORDER

The Court having considered the Emergency Motion for Stay Pending Appeal of Portions of Superior Court Order Adopting Final Wind Up Plan filed by appellant Fathi Yusuf ("Yusuf"), and being otherwise advised in the premises:

IT IS HEREBY ORDERED that the Motion is **GRANTED**; and it is further

ORDERED that during the pendency of Yusuf's appeal all provisions of the Superior Court's "Order Adopting Final Wind Up Plan" and attached "Final Wind Up Plan" (the "Wind Up Order" and "Plan"), entered January 9, 2015, concerning the disposition of the Plaza Extra-West supermarket (§ 8(3) of the Plan) shall be stayed and that store will continue to be operated by the Partnership¹, pursuant to the terms of a preliminary injunction entered by the Superior Court on April 25, 2013; and it is further

ORDERED that the provisions of Section 6 of the Plan requiring the continued payment of certain salaries for 120 days following the Effective Date of the Plan shall be stayed in part and modified during the pendency of Yusuf's appeal in the following respects:

¹ Capitalized terms not otherwise defined in this Order shall have the meaning provided in the Plan.

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a) Up to the day that the right to operate any of the three Plaza Extra stores is transferred from the Partnership to one of the Partners, salaries shall be paid to any members of the Partners' families that are actually working in that Plaza Extra store;

b) Upon transfer of the right to operate any of the Plaza Extra stores from the Partnership to one of the Partners, the Partnership shall cease to have any obligation to continue paying salaries to any member of the Partners' families for whom it had been paying salaries for work done in that store; and

c) Nothing in the preceding subparagraphs prevents the Liquidating Partner, with the approval of the Master, to terminate the employment of any employee of the Partnership whose services are no longer necessary or beneficial in the wind up of the Partnership; and it is further

ORDERED that Section 8(2) of the Plan regarding the disposition of Plaza Extra-Tutu Park is stayed pending the disposition of Yusuf's appeal, but only insofar as the partner acquiring that store by closed auction shall not be required to reimburse the other partner for one half of the legal fees incurred to date in the Tutu Park Litigation; and it is further

ORDERED that the foregoing stay is conditioned upon the posting of a bond countersigned by a qualified surety or secured by cash or unencumbered property equal to or greater than the amount of Twenty Five Thousand Dollars (\$25,000) by 4 p.m., AST, two business days after the entry of this Order; and it is further

ORDERED that in all other respects the Order and Plan, as modified by the Superior Court's Order entered on January 27, 2015, shall be implemented and their provisions carried out during the pendency of Yusuf's appeal.

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Entered this _____ day of February, 2015.

Rhys S. Hodge
Chief Judge of the Supreme Court

cc: Nizar A. DeWood, Esq.
Mark W. Eckard, Esq.
Carl J. Hartman, III, Esq.
Gregory H. Hodges, Esq.
Joel H. Holt, Esq.
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BRIEF IN SUPPORT OF EMERGENCY MOTION FOR STAY PENDING APPEAL OF PORTIONS OF SUPERIOR COURT ORDER ADOPTING FINAL WIND UP PLAN

On January 9, 2015, the Superior Court entered an Order dated January 7, 2015 entitled “Order Adopting Final Wind Up Plan” (the “Order”) with a “Final Wind Up Plan” attached to the Order (the “Plan”) concerning the Partnership¹ that operates three Plaza Extra Stores. A copy of the Order is attached as **Exhibit 1** and a copy of the Plan is attached as **Exhibit 2**. Pursuant to an Order approving a Stipulation between the Partners entered on January 27, 2015, certain provisions of the Order and Plan, not relevant to this appeal, were modified. Defendant/counterclaimant/appellant Fathi Yusuf (“Yusuf”), a 50% partner with plaintiff/counterclaim defendant/appellee Mohammad Hamed (“Hamed”) in the Partnership, appealed the Order to this Court, pursuant to his Notice of Appeal filed on January 28, 2015 commencing this appeal.² On January 29, 2015, Yusuf filed his Motion for Stay Pending Appeal in the Superior Court, which was fully briefed by the parties on February 10, 2015. On that date, Yusuf filed a Notice, attached as **Exhibit 3**, advising the Superior Court that if his

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¹ Capitalized terms not otherwise defined in this Brief shall be defined as provided in the Plan.

² Yusuf has filed a motion to consolidate this appeal with the appeal docketed at S. Ct. Civ. No. 2015-0001. The earlier appeal relates to a Superior Court Order refusing to nullify a lease that is central to the portions of the Order and Plan that are the subject of the instant appeal. The way in which these portions of the Order and Plan depend critically on the validity of the disputed lease is discussed later in this Brief.

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pending Motion For Stay was not decided by noon, February 13, 2015, he would be constrained to seek emergency relief from this Court given the prospect that the disputed provisions of the Plan concerning Plaza Extra-West could be fully implemented by February 18, 2015, thereby impairing this Court's ability to effectively review those provisions on appeal. As of the filing of Yusuf's Motion For Stay in this Court, the Superior Court has not ruled on Yusuf's Motion for Stay filed in that Court.

Yusuf requests this Court, as he did the Superior Court, to stay three elements of the Order and Plan, namely:

1) The provisions of the Plan relating to Plaza Extra-West³, at pages 5-6 of the Order and pages 6-7 of the Plan, which give Hamed the exclusive right to purchase the inventory and equipment of Plaza Extra-West and then "assume full ownership and control and . . . continue to operate Plaza Extra-West without any further involvement of Yusuf, Yusuf's sons or United, and free and clear of any interests of Yusuf or United." The "lynchpin" of this transfer of ownership and right to operate Plaza Extra-West, as described by the Superior Court in its July 22, 2014 Opinion, *see Hamed v. Yusuf*, 2014 V.I. LEXIS 52, *12-13 (V.I. Super. Ct. July 22 2014) ("More importantly, the Court must examine the 'lynchpin' of Plaintiff's plan for winding-up the Hamed-Yusuf partnership, the Lease between Plessen and KAC357, Inc."), is a 30-year lease between additional counterclaim defendant/appellee Plessen Enterprises, Inc. ("Plessen") and a company created on April 22, 2014 and owned by three of Hamed's sons,

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³ Yusuf does not seek a stay pending appeal of the provisions of the Order and Plan requiring the liquidation of the Partnership assets associated with the Plaza Extra-East and Plaza Extra-Tutu Park stores.

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KAC357, Inc. (the "Lease"). The Lease was approved by the Hamed-controlled⁴ Board of Directors of Plessen in a resolution adopted at a special meeting held on April 30, 2014, over the objections of Yusuf, whose family members own 50% of the stock of Plessen. The Superior Court declined to nullify the Plessen resolution, which approved the Lease, in its July 22 Opinion, over the argument that it is inherently unfair to the Yusuf family shareholder interests in Plessen. The Superior Court later denied Yusuf's motion for reconsideration of its July 22 Opinion and Order⁵, and in the Order giving Hamed the exclusive right to own and operate Plaza Extra-West, the trial court has implicitly approved the Lease once again, over the objections of Yusuf.⁶

⁴ The composition of the Plessen Board of Directors was a hotly disputed issue that was outcome determinative, since the Lease clearly would not have been approved if Yusuf's son, Maher, was a Director as claimed by Yusuf. Nevertheless, the Superior Court found, without conducting any evidentiary hearing, that "for the limited purpose of this Motion . . . Plessen has three directors: Mohammad Hamed, Waleed Hamed, and Fathi Yusuf." *Hamed v. Yusuf*, 2014 V.I. LEXIS 52, *2-3 n. 2. As recently as January 20, 2015, Hamed, through his son and "authorized agent," Waleed, caused a 2015 License Renewal Application to be filed with the Virgin Islands Department of Licensing and Consumer Affairs ("DLCA"), confirming Yusuf's position that both he and his son, Maher, serve on the Plessen Board along with Hamed and Waleed. See DLCA Application for 2015 attached as Exhibit 4 at page 3 (identifying Maher Yusuf as a Director). A similar DLCA Application for 2013 identifying Maher Yusuf as a Plessen director was attached as Exhibit D to Yusuf's Brief in support of Motion to Nullify Plessen's Board Resolutions, To Avoid Acts Taken Pursuant to those Resolutions and to Appoint Receiver (the "Motion to Nullify").

⁵ The Superior Court's July 22 Order denying the Motion to Nullify the Lease and its December 5, 2014 Order denying Yusuf's motion for reconsideration are the subject of the related appeal docketed at S.Ct. Civ. No. 2015-0001.

⁶ There is enough evidence in the record of shareholder deadlock and outright misappropriation of corporate monies by Waleed Hamed, a director and shareholder, and his shareholder brother, Mufeed, to warrant appointment of a receiver for Plessen, so as to facilitate the closed auction sale of the 16 acres of land (store and parking lot) occupied by Plaza Extra-West that has been proposed by Yusuf. But even assuming arguendo that the evidence was insufficient to warrant this relief, it is undisputed that there have been no Plessen shareholder meetings to elect directors since Plessen was incorporated on January 31, 1989. Section 193 of the Virgin Islands Corporate Code provides that where there has been any failure to conduct an election of directors, the court "may summarily order an election to be held upon the petition of any stockholder . . ." V.I. Code Ann. tit. 13, §193. If a court-ordered meeting is held and results in no election of directors by virtue of an equally divided shareholder vote, that failure would constitute an additional ground under § 195 of the VI Corporate Code for appointment of a receiver for Plessen. On September 11, 2014, Yusuf filed a motion to compel the holding of a meeting of Plessen's shareholders to elect directors. The Superior Court has never ruled on that motion. Prior to ordering the windup of the Partnership, the Superior Court should have first resolved Yusuf's motion by ordering a prompt

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2) Section 6 of the Plan (page 5), which provides that “[f]or at least one hundred twenty (120) days following the Effective Date, the Hamed Sons and Yusuf Sons shall continue to receive their current salaries in return for assisting the Liquidation Partner in the wind up of the Partnership.” The Partners never agreed to this provision and the Superior Court never provided any rationale for the forced payment of inflated monthly salaries (\$23,815 per son) regardless of the value, if any, of their services in the wind up of the Partnership or how long the wind up takes. Yusuf’s position is that the Liquidating Partner should not be bound to continue paying any of the inflated salaries of Hamed’s sons or his own sons, particularly if these managers are not providing commensurate value in the wind-up of the Partnership. In any event, after either Hamed or Yusuf acquires the right to begin sole operation of any of the three stores, sons of the family excluded from operation of that store should receive no further compensation. Instead, the right to compensation should be cut off to any person who is no longer employed by a store after either Yusuf or Hamed assume the sole right to operate that store.⁷

3) Section 8(2) of the Plan regarding the disposition of the Plaza Extra-Tutu Park store, only to the extent it requires that the partner acquiring the store by closed auction reimburse the other partner for one half of all legal fees incurred to date in the Tutu Park

meeting of the Plessen shareholders, and then should have awaited the inevitable result of that meeting (a failure to elect directors because of an equally divided vote), which would have provided an additional ground for appointing a receiver for Plessen. The need to resolve Yusuf’s motion prior to winding up the Partnership affords an additional reason for this Court to grant a partial stay of the Order during the pendency of Yusuf’s appeal.

⁷The provisions in Section 6 of the Plan are also inconsistent with the provisions in Section 9, Step 3, which provide that “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.” (Emphasis added).

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Litigation commenced against the landlord in 1997 and 2001.⁸ The Partners never agreed to this reimbursement provision and the Superior Court never explained why it was being imposed. Neither Hamed's nor Yusuf's most recently filed competing plans contained similar reimbursement provisions since both plans contemplated a closed auction bidding process that rendered any such reimbursement superfluous. This reimbursement requirement is an improper, perhaps unintended, carryover of the provisions of the Superior Court's "Proposed Wind Up Plan" set forth in its Order dated October 7, 2014, which proposed that Yusuf purchase the Plaza Extra-Tutu Park assets from the Partnership and reimburse the Partnership for 50% of the reasonable costs and attorneys' fees incurred to date in the Tutu Park litigation. See page 3 of Order dated October 7, 2014. Since the Plan effectively adopts the closed auction bidding process proposed by both Hamed and Yusuf, cost reimbursement provisions carried over from the Court's October 7, 2014 Proposed Plan should be stricken, since the bids made by the Partners will factor in the cost of that litigation.

In opposing Yusuf's Motion For Stay in the Superior Court, Hamed stated that the latter "two items (the manager salaries and St. Thomas legal fees) [will be] discussed in section VIII [sic] (the Conclusion)." See Hamed Opposition at p. 2. The only "discussion" contained in Hamed's "conclusion" consisted of one sentence at p. 11, where Hamed merely argues that these "issues only involve monetary issues that are easily quantifiable." Because Hamed completely ignored the arguments in Yusuf's brief that these "two items" were never agreed to by the Partners, that they make no practical sense, and were imposed by the Court without

⁸ Neither the Order (p. 5) nor the Plan (p. 6) included an older case, Civ. No. ST-97-CV-997, in the definition of "Tutu Park Litigation," even though the Partners agreed that such case should be included. Pursuant to the Order approving a Stipulation between the Partners entered on January 27, 2015, the "Tutu Park Litigation" now includes the older case.

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explanation, Hamed has conceded those arguments. Moreover, he has conceded that if Yusuf is required to pay these salaries and legal costs⁹, he may never be able to recover the amounts paid if he is successful on appeal. Accordingly, Yusuf submits that Hamed has effectively conceded that the Plan provisions regarding continued payment of salaries and the reimbursement of the Tutu Park Litigation expenses should be stayed pending appeal. Yusuf will therefore focus the balance of this Brief on the propriety of a stay pending appeal of the provisions of the Plan relating to Plaza Extra-West as well as the propriety of a nominal bond.

Standards For Stay Orders

The test for determining whether to grant a stay (or partial stay) pending appeal of an order or judgment of a court is “identical to that which applies to a request for a preliminary – as opposed to a permanent – injunction.” *Tip Top Construction Corporation v. Government of the Virgin Islands*, 2014 V.I. Supreme LEXIS 15, *4 (V.I. 2014) (citing to *Yusuf v. Hamed*, 2013 V.I. Supreme LEXIS 87, *12, n.3 (V.I. 2013)). The test for a preliminary injunction is

- (1) whether the movant has shown a reasonable probability of success on the merits;
- (2) whether the movant will be irreparably injured by denial of the relief;
- (3) whether granting preliminary relief will result in even greater harm to the nonmoving party;
- and (4) whether granting the preliminary relief will be in the public interest.

Yusuf v. Hamed, supra, at *9. This Court has not yet decided whether all four of these factors must be met (which would make it a “sequential test”) or whether it is enough if some but not all of these factors are satisfied (a “sliding-scale test”). *Id.* at *11. As discussed below, Yusuf

⁹ The Tutu Park Litigation is comprised of two cases dating back to 1997 and 2001. To date, Yusuf has received a statement from one of the attorneys involved in the Tutu Park Litigation regarding some (\$162,898.23), but not all, of the legal costs incurred to date in that case (the one commenced in 2001). Today, Yusuf received a statement from the attorney involved in the older case setting forth fees and expenses to date (\$184,216.23). If the purchasing partner is required to reimburse these costs as a part of his purchase of the assets associated with the Tutu Park store, obviously, he needs information regarding all of the legal costs incurred in order to intelligently bid on those assets.

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can show his entitlement to a stay pending appeal even under a sequential test and, a fortiori, under a sliding scale test.

A. Reasonable Probability of Success on the Merits

To show a reasonable probability of success on appeal, Yusuf need not show that he will “actually prevail on the merits” of his appeal, or that reversal is “more likely than not...” *Id.* at *15 (internal quotation marks omitted). Instead, Yusuf need only show that he has “a reasonable chance, or probability, of winning.” *Id.*

Yusuf has a reasonable chance of persuading this Court to reverse the portions of the Order that he is challenging on appeal. At a minimum, Yusuf has presented “serious legal question[s]” whether the trial court impermissibly ignored Yusuf’s request to dissolve and appoint a Receiver for Plessen, as sought in Counts IX and X of his Amended Counterclaim and in the Motion to Nullify, in light of the undisputed record evidence that there has never been a shareholder meeting in the 26 year history of Plessen, that the only meeting of directors was the disputed one on April 30, 2014 when the Lease was approved over Yusuf’s objection, and the Superior Court’s own recognition of the “persistent deadlock between the parties...” *See Hamed v. Yusuf*, 2014 V.I. LEXIS 52, *22. There is also a “serious legal question” under the Virgin Islands Uniform Partnership Act, V.I. Code Ann. tit. 26, §§1-274 (1996), regarding the propriety of giving one partner the exclusive right to purchase partnership property, as the Superior Court gave Hamed with respect to Plaza Extra-West. *See In re Najawicz*, 2009 V.I. Supreme LEXIS 2, *6-7 (V.I. Jan. 8 2009) (unpublished) (noting that even if a litigant cannot fully satisfy the first factor, it may succeed if it can demonstrate a “serious legal question,” and the other factors favor a stay).

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With respect to the disposition of Plaza Extra-West, Yusuf submits that this part of the Order suffers from a number of infirmities, any one of which would warrant reversal. Both the Order and Plan provisions concerning the Plaza Extra-West depend on the validity of the April 30, 2014 Plessen Board Resolution approving the Lease. The law is clear that what must be considered by the Court is not only whether a self-dealing Lease of this kind is intrinsically fair to Plessen, but also whether it is intrinsically fair to the Yusuf shareholders of Plessen – i.e., whether it benefits the Hamed shareholders at the expense of the Yusuf shareholders. See *Sinclair Oil Corporation v. Levien*, 280 A.2d 717, 723 (Del. 1971) (the party engaged in the self-dealing transaction “must prove that [it] was intrinsically fair to the minority shareholders”); *Cascella v. GDV, Inc.*, 1979 Del. Ch. LEXIS 486, p. *3 (Del. Ch. 1979) (where one shareholder “stands on both sides of a transaction,” that shareholder “has the burden of demonstrating the ‘intrinsic fairness’ of the transaction insofar as it affects the rights and interests of the minority shareholders”). Yusuf submits that the Superior Court erred when it found that the Lease was intrinsically fair to Plessen and the Yusuf shareholders because, among other things, no opportunity whatsoever was given to the Yusufs or any one else to compete for better lease terms. These terms include rent, the fact that the Lease does not require the principals of KAC357, Inc. to guarantee the Lease, the absence of any requirement for hurricane insurance, the fact that the Lease is freely assignable and Plessen has no right to reject a proposed assignee because it is not sufficiently creditworthy, as well as other infirmities addressed in the Motion to Nullify and Yusuf’s supporting declaration attached to that motion as Exhibit K. Although the Superior Court acknowledged that Hamed has the burden of establishing that the Lease is intrinsically fair to both Plessen and the Yusuf

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shareholders, it specifically found that any consideration of advantage to the Hamed shareholders at the expense of the Yusuf shareholder was irrelevant. *See Hamed v. Yusuf*, 2014 V.I. LEXIS 52, *13-15. Had the Superior Court considered the harm to the Yusuf shareholders, it would have had to conclude that the Lease was intrinsically unfair to them. Indeed, Hamed never even attempted to argue that the Lease was intrinsically fair to the Yusuf shareholders, i.e., that it did not benefit the Hamed shareholders at the expense of the Yusuf shareholders. He simply could not muster an argument that a lease acknowledged to be the lynchpin of his plan and that effectively gives him control of Plaza Extra-West does not unfairly disadvantage Yusuf. It must be not be forgotten that it is undisputed that the meeting of directors held on April 30, 2014 was the first and only meeting of directors in the history of Plessen, and it was called on two days notice to approve resolutions, all of which favored the Hameds and disadvantaged the Yusufs. Although Hamed claims that this meeting was held "in full compliance with all of Plessen's governing corporate documents," as Yusuf has previously pointed out to the Superior Court, the Plessen Bylaws relied upon to establish the propriety of that meeting are almost certainly invalid, if not fraudulent, since they were purportedly adopted on April 30, 1997, even though it is undisputed that no meetings of directors or shareholders took place after the incorporation of Plessen other than the disputed meeting of directors hastily convened on April 30, 2014.

In response to the DLCA License Renewal Application for 2015 attached as Exhibit 2 to Yusuf's Brief in Support of Motion for Stay Pending Appeal in the Superior Court (Exhibit 4 to this Brief), Hamed attached a declaration from his son, Waleed, stating that the application "was not created or filed by my father, Mohammad Hamed, or any of his sons listed in the

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above caption who are Counterclaim Defendants herein." See Declaration of Waleed Hamed attached as Exhibit 5. Conveniently, this carefully worded statement does not include Hamed's other family members or agents. Further, the declaration does not bother to state who filed this allegedly "inaccurate" document that clearly states Maher Yusuf is a director of Plessen nor does it dispute that Waleed Hamed signed the check for \$130 to reimburse his credit card for the application filing fee. See last page of Exhibit 2.

In opposing Yusuf's Motion For Stay in the trial court, Hamed claimed that simply because the Partnership does not have a lease covering the Plaza Extra-West premises, "there is no legal basis for arguing that this Court could have held a "closed auction" for the sale of this business." See Opposition at p. 5. Hamed's brief in opposition to the stay simply sidesteps the trial court's authority to dissolve and appoint a Receiver for Plessen, relief clearly sought by Yusuf in Counts IX and X of his Amended Counterclaim -- and the arguments supporting that relief made in his Motion to Nullify.

Given the undisputed failure to conduct any meeting of shareholders since Plessen was incorporated and the Superior Court's acknowledgement of "the persistent deadlock between the parties," it is respectfully submitted that the trial court could and should have appointed a Receiver who then could have sold the property on which Plaza Extra-West is situated at a closed auction between the Partners as a part of the dissolution of Plessen. This option not only avoids the impropriety of providing Hamed with the exclusive opportunity to purchase significant partnership assets, it also avoids the gloom and doom predicted by Hamed if this Court invalidates the Lease (i.e. closure of the store and layoff of employees), since the store will remain open and operating pending completion of the Partnership wind up. In this regard,

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Hamed's claim that "the Plan would really be unchanged even if the lease were declared invalid," *see* Opposition at p. 4, simply makes no sense. Hamed has already candidly acknowledged what the Superior Court's Plan effectively glossed over, namely, that the trial court's approval of the disputed Lease with KAC357, Inc. provided Hamed not only with the "lynchpin" to his own plan for Plaza Extra-West, which the Superior Court effectively adopted in the Order, but with full "control" of Plaza Extra-West. *See* "Hamed's Comments Regarding Proposed Winding-Up Order" filed October 21, 2014 at p. 7 ("the Court's proposed liquidation order [with respect to Plaza Extra-East and Plaza Extra-West] fully complies with RUPA [Revised Uniform Partnership Act] by liquidating their contents by having each partner buy the equipment and inventory in the physical stores that *they each control* through other corporate interests.") (emphasis added). If the Lease is declared invalid by this Court, then, the Superior Court's Plan would necessarily have to be changed so that both Partners have an equal opportunity to purchase the inventory and equipment of Plaza Extra-West, the right to operate the store, and to own the building and land associated with it.

The Lease is also unfair to the Yusuf shareholders because: 1) it forces Yusuf and Hamed to continue to do business together (as the Plessen landlord of KAC357, Inc.) for up to 30 years, thereby contravening the primary purpose of the liquidation and windup of the Partnership; and 2) it encumbers the Plaza Extra-West land and improvements in such a way as to make it impossible for Hamed and Yusuf to conduct a closed auction for the Plaza Extra-West business. A closed auction for the business and land is the only equitable means to transfer ownership of that store, and it is the method which maximizes Partnership value on liquidation, which the case law makes clear is the principal objective of any liquidation plan

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under the Uniform Partnership Act. The Superior Court's disposition of Plaza Extra-West in its Plan is also inequitable insofar as it simply hands to the Hameds a building, improvements, and an operating business developed over a period of 15 years with millions of dollars of Partnership funds with no payment of any consideration to the Partnership. As such, it is a prohibited in-kind distribution of partnership property under the Uniform Partnership Act.

Based on the foregoing, Yusuf has established a reasonable probability of success on the merits of this appeal. At a minimum, he has raised a "serious legal question" whether the Superior Court erred in giving Hamed the exclusive right to purchase, own, and operate the Partnership assets associated with Plaza Extra-West.

B. Irreparable Harm to Yusuf

It is well-settled that a party who can show that, without a stay, his appeal would be rendered moot – or the issue would become unreviewable upon appeal – has demonstrated irreparable harm. *See, e.g., In re Norwich Historic Pres. Trust, LLC*, 2005 U.S. Dist. LEXIS 7171, 2005 WL 977067, at *3 (D. Conn. 2005) (acknowledging "persuasive" arguments that although foreclosure sale would not injure appellant, appellant's concern that his appeal would be mooted satisfied the irreparable harm requirement); *In re Country Squire*, 203 B.R. 182, 183 (B.A.P. 2d Cir. 1996)(staying a foreclosure sale where it was "apparent that absent a stay pending appeal . . . the appeal will be rendered moot," resulting in a "quintessential form of prejudice" to appellant (quotation omitted)); *In re Advanced Mining Sys., Inc.*, 173 B.R. 467, 468-69 (S.D.N.Y. 1994) (finding irreparable injury prong met where, absent a stay of the bankruptcy court's order, the distribution of assets to creditors would moot any appeal and thus

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quintessentially prejudice appellants).¹⁰ The risk of losing a property interest is the kind of irreparable harm that will warrant imposition of a stay of an order during the pendency of an appeal. See *Martin v. Banco Popular de Puerto Rico*, 2009 U.S. Dist. LEXIS 73672, *7-8 (D. V.I. 2009) (imposing stay pending appeal of an order directing conveyance of property, on the grounds that the property interest could be conveyed to another during the appeal, which would "mak[e] it impossible for Banco Popular to get [it] back in the event Banco Popular succeeds on appeal").

Here, if the disposition of Plaza Extra-West under the Plan is allowed to proceed, the Lease will become effective, Hamed will be given the exclusive right to acquire the inventory and equipment of the Plaza Extra-West store, and the Hameds will begin operating that store exclusively, without any participation by Yusuf or his sons. From that time forward, KAC357, Inc., which is not a party to this case, will be the entity which enters contracts with grocery wholesalers and other vendors, takes out a policy of insurance on the store, becomes entitled to 100% of the revenues and responsible for 100% of the costs of operating the store (including payroll), and becomes liable for payment of VI gross receipts and income taxes. Once KAC357, Inc. begins operating the store, it will become next to impossible for this Court to reverse this transfer of ownership of the business and grant meaningful relief to Yusuf, even if it agrees with Yusuf that the Superior Court's refusal to nullify the Lease and its disposition of

¹⁰See also *In re Grandview Estates Assocs., Ltd.*, 89 B.R. 42, 42-43 (Bankr. W.D. Mo. 1988) (declining to stay the foreclosure sale of an asbestos-ridden apartment complex, but holding that irreparable injury is clearly shown where such sales moot any appeal, and concluding that to hold otherwise would preclude appellate review, thus running "contrary to the spirit of the bankruptcy system [and also] subvert[ing] the entire legal process"). Cf. *In re "Agent Orange" Prod. Liab. Litig.*, 804 F.2d 19, 20 (2d Cir. 1986) (declining to lift the court's own stay of the implementation of a district court's scheme for the distribution of a settlement award because the pending appeals "involve[d] numerous complex issues arising out of [] extraordinary litigation," the objecting parties had "a right to appellate review," and "[d]istribution of the challenged settlement award before its validity [could be] tested would deprive those parties of that right").

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Plaza Extra-West was improper. In opposing a stay pending appeal in the Superior Court, Hamed never even suggested how, absent a stay, the sale and distribution of the inventory and equipment to Hamed and the implementation of the Lease and Plan could be effectively unwound.

For these reasons, Yusuf has shown that he will be irreparably harmed unless this Court enters an order staying the provisions of the Order and Plan identified above.

C. Irreparable Harm to Hamed

A stay of the portion of the Plan that disposes of Plaza Extra-West will not cause any harm, much less irreparable harm, to Hamed. The Lease with Plessen, by its terms, does not become effective until the Partnership ceases to operate and occupy the Plaza Extra-West store.¹¹ Until that happens, Hamed, as a 50% partner in the Partnership, will be entitled to 50% of the net profits of the Plaza Extra-West store. As such, staying the portion of the Order that winds up that store during the appeal will cause no irreparable harm to Hamed.

In opposing the stay relief sought by Yusuf in the Superior Court, Hamed argued that “if a partial stay were entered then a final accounting could not take place, since part of the partnership would still be operating until the appeal is completed.” See Opposition at p. 7 (emphasis in original). While it is true that entry of the requested stay will result in the continued operation of Plaza Extra-West during the appeal and that a final accounting must

¹¹ Section 2.3.4 of the Lease provides that:

The Parties recognize that there is currently a partnership between Fathi Yusuf and Mohammed Hamed operating a grocery business in the Demised Premises. The Tenant shall not be granted possession of the Premises so long as this partnership is in possession of the Premises. Likewise, rent shall not be due until the Tenant has possession of the Premises.

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await disposition of Yusuf's appeal, that is simply part and parcel of Yusuf's right to seek judicial review of the Superior Court's Orders. As Hamed would have it, no Court should stay implementation of the Plan provisions regarding Plaza Extra-West so that the Plan is fully implemented and unreviewable on appeal. As the cases cited at p. 12 – 13 reflect, that would be the quintessential form of prejudice to Yusuf.

Hamed claimed that "a partial stay as requested would *significantly* impede Hamed's ability to compete with Yusuf in their respective new stores, as Yusuf would have sole control over the Plaza East location while being the sole Liquidating Partner in the Plaza West store." See Opposition at p. 7 (emphasis in original). First of all, if the requested partial stay is entered, Plaza Extra-West would not become Hamed's "new" store, which would compete with Plaza Extra-East. Plaza Extra-West would remain a Partnership store pending appeal. To alleviate any concern Hamed might have with respect to Yusuf serving as Liquidating Partner for Plaza Extra-West, it is respectfully submitted that since the liquidation of Plaza Extra-West would be held in abeyance pending appeal, there is no need for a Liquidating Partner for that store during the appeal and the Partners would simply operate that store pending appeal pursuant to the terms of the preliminary injunction entered on April 25, 2013. Since Yusuf would have a fifty percent interest in the profits of Plaza Extra-West during the pendency of the appeal and the ultimate disposition of that store, Yusuf would have every incentive to maximize the profits of that store to his and Hamed's benefit. Accordingly, Hamed cannot establish that he would be harmed by the stay sought by Yusuf.

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D. The Public Interest

The public has an interest in proper enforcement of the rules against self-dealing by directors of a corporation, and the rules requiring dissolution of a corporation that is in a perpetual state of shareholder deadlock, and it likewise has an interest in the proper administration of the Uniform Partnership Act, and the provisions requiring Courts to maximize partnership value and avoid in-kind distributions of property on windup of a partnership. *See United States v. Any and All Assets of that Certain Business Known as Shane Company*, 816 F. Supp. 389, 399 (M.D. N.C. 1991) (holding that the public interest prong of the preliminary injunction test was satisfied because “the public interest is most strongly served by the enforcement of the law”); *Union Steel v. United States*, 617 F. Supp. 2d 1373, 1381 (C.I.T. 2009) (“the public interest is served by the accurate and effective, uniform and fair enforcement of trade laws”). Furthermore, the public interest is better served by maintaining the status quo, which “ensures that each party has the opportunity to fully and fairly have its case decided on appeal.” *First American Development Group/Carib, LLC v. WestLB AG*, 2012 V.I. Supreme LEXIS 39, *14 (V.I. April 30, 2012)(unpublished)(conditionally granting emergency motion for stay pending appeal). Certainly, a stay will not harm the public interest, because the persons who are employed at the store now will remain employed by the Partnership for the duration of the stay. *See Yusuf v. Hamed*, 2014 V.I. Supreme LEXIS at *36 (identifying “continued employment” of Plaza Extra employees at the three stores as a “significant public interest”).

Hamed did not argue below that a stay pending appeal will result in closure of Plaza Extra-West. Rather, he claimed that the invalidation of the Lease will result in closure. This is

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an issue that will be addressed by this Court, whether or not a stay pending appeal is issued. In any event, as explained above, Hamed's unexplained claim that invalidation of the Lease will result in closure of the supermarket at West has no basis in fact or law. There is absolutely nothing that prevents the continued operation of Plaza Extra-West under the provisions of the Superior Court's preliminary injunction during the pendency of Yusuf's appeal, and thereafter, as may be ordered by this Court and the Superior Court, upon remand.

From the above discussion, it is clear that all four prongs of the test for a stay of portions of the Order and Plan are readily satisfied, and this Court should therefore issue a stay pending appeal.

E. A Stay Will Not Defeat the Purpose of the Order.

Hamed argued below that "if a Partial Stay is entered, the purpose of the Plan would be defeated, as the Liquidation Plan is designed to dissolve the partnership, which in fact could not take place until all appeals are resolved if a partial stay is entered." See Opposition at p. 9. In point of fact, the Partnership is already dissolved. The purpose of the Plan is to wind up the Partnership pursuant to the Uniform Partnership Act, V.I. Code Ann. tit. 26, § 1-274. While it may be true that the Partnership wind up cannot be concluded until Yusuf's appeal is resolved, that would be the case whether or not a stay pending appeal is entered. The stay sought by Yusuf simply will allow the effective appellate review of the few provisions of the Order and Plan that Yusuf disagrees with, primarily the provisions relating to Plaza Extra-West. What Hamed is really arguing is that Yusuf should not be able to appeal from the Order. While the parties may disagree regarding whether this Court has appellate jurisdiction with respect to the Orders from which Yusuf has appealed, it is simply beyond cavil that if Yusuf does have a right

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to appeal, that right should not be diminished or rendered moot by the implementation of provisions of the Order and Plan that might be reversed on appeal. Accordingly, a stay pending appeal does not defeat the purpose of the Order; rather, it preserves this Court's ability to effectively review the disputed provisions.

At page 10 of his Opposition below, Hamed made a passing argument that if the stay sought by Yusuf is granted, the entire Plan should be stayed or at least the provisions for the transfer of Plaza Extra-East. Hamed provided absolutely no explanation why the Court should stay execution of the provisions of the Plan to which both Partners agree. This simply makes no sense. The Partnership should be wound up to the fullest extent practicable during the pendency of the appeal. This would include the disposition of Plaza Extra-East and Plaza Extra-Tutu Park, except the provisions relating to those stores concerning continued payment of manager's salaries and reimbursement of legal expenses of the Tutu Park Litigation. Such partial wind up of the Partnership involving these two stores will substantially simplify the issues involved in this case, reduce the Partnership's continued exposure to liability and expenses, and focus the remaining issues on the disposition of partnership assets associated with Plaza Extra-West. There is simply no good reason to stay the provisions of the Order from which no party has appealed. Certainly, Hamed has utterly failed to establish the four traditional factors for stays with respect to the provisions of the Order that are not affected by an appeal.

E. Any Bond Amount Should Be Nominal.

Under Supreme Court Rule 8(c), the Court may condition a stay pending appeal "upon the filing of a bond or other appropriate security" Here, because the Lease does not become

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effective by its own terms until the Partnership ceases operating the Plaza Extra-West store, Hamed will not suffer any damages during the pendency of the appeal, if the Order is affirmed by this Court. Hamed will continue to be entitled to a 50% share of the Partnership's net profits, and his sons who currently work at that store will continue to receive their salaries until the appeal is resolved. As such, Yusuf submits that any bond imposed by this Court should not exceed \$25,000.

Hamed's Opposition to the Motion For Stay filed in the Superior Court claimed that absent a stay, "Hamed and his family would get 100% of . . . [the Plaza Extra-West store] profits." See Opposition at p. 10. If no stay is entered, presumably the disputed Lease between Plessen and KAC357, Inc. becomes effective after Hamed pays for the inventory and equipment as provided in the Plan. Obviously, the Lease did not contemplate any specific period of time that the Partnership would remain in possession. Under these circumstances, since the Lease leaves the time the Partnership may remain in possession of the premises open ended, the profits that might be generated by KAC357, Inc. after payment of rent should not be considered. In any event, Hamed and his family would not be getting 100% of these profits, KAC357, Inc. would. KAC357, Inc. is not a party to this case and the speculative profits of this start up company should have no bearing on the amount of any bond.

The Opposition filed below relied upon the Declaration of Waleed Hamed (Exhibit 5) which states: "When the Plaza West store was fully functional, without the current management issues, it regularly made a profit of \$250,000 a month (before income taxes)." This naked assertion is made without any background or supporting information whatsoever. As reflected in the Declaration of John Gaffney, Senior Controller of United Corporation d/b/a Plaza Extra,

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attached as Exhibit 6, there were no separate financial statements for Plaza Extra-West before 2013. Based on Mr. Gaffney's review of the accounting data and financial information concerning Plaza Extra-West, the average monthly net operating income for Plaza Extra-West in 2013 was \$120,654 and in 2014, it was \$94,372, without deducting any rent expense (since the Partnership has never paid rent to Plessen for occupying the Plaza Extra-West premises). See Exhibit 6 at ¶ 3. Because Waleed Hamed provided the Court and Yusuf with no clue how he arrived at a profit figure of \$250,000 per month for a start up entity, KAC357, Inc., that has no operational history whatsoever, and because that figure is entirely unsupported by any existing financial information concerning Plaza Extra-West, it is entitled to no deference by this Court, particularly since it does not factor in the monthly rent of \$55,000 KAC357, Inc. would be obligated to pay.

Plessen opposed Yusuf's Motion For Stay in the Superior Court by adopting and joining Hamed's Opposition. In addition, Plessen claimed that if Yusuf's appeal takes one year to resolve,¹² "Plessen will be out of pocket a total of Seven Hundred and Twenty Thousand Dollars (\$720,000) (\$60,000 per month as per the KAC357 lease) in rent it may have otherwise received based on its lease with KAC357, Inc. . . ." First of all, Plessen misstates the monthly rent, which is \$55,000 pursuant to § 2.3.1 of the Lease. See also, *Hamed v. Yusuf*, 2014 V.I. LEXIS 52, *15 (indicating rent under the Lease is \$55,000 per month). More importantly, however, Plessen expressly agreed in the Lease at § 2.3.4 that KAC357, Inc. "shall not be granted possession of the Premises so long as the partnership [between Fathi Yusuf and Mohammad Hamed] is in possession of the Premises. Likewise, rent shall not be due until the

¹² In determining the amount of a bond to be posted as a condition for a stay of execution pending appeal, this Court stated that it was "expecting an appeal of at least six months . . ." *WestLB*, 2012 V.I. Supreme LEXIS 39, *15-16 n. 7.

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Tenant has possession of the Premises.” Indeed, the Superior Court found: “This provision maintains the status quo, protecting Plessen from the prospect of holding vacant commercial property and preserving the right of the Hamed-Yusuf partnership to continue to operate its Plaza Extra-West store, as the partnership winds up.” *Hamed v. Yusuf*, 2014 V.I. LEXIS 52, *14-15. Accordingly, in the event a stay is entered as requested by Yusuf and the Partnership remains in possession of the Plaza Extra-West premises pending disposition of the appeal, no rent would become due and Plessen would suffer no damages, an event expressly contemplated by § 2.3.4 of the Lease. Moreover, even if Plessen was entitled to rent, which it is not, the Yusuf family would be entitled to 50% of the proceeds given the fact that they own 50% of the shares of Plessen.

CONCLUSION AND RELIEF REQUESTED

For all of the foregoing reasons, Yusuf respectfully requests this Court to grant his Emergency Motion for Stay Pending Appeal. A proposed order is attached.

Respectfully Submitted,

DUDLEY, TOPPER AND FEUERZEIG, LLP

DATED: February 13, 2015

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Attorneys for Fathi Yusuf

CERTIFICATE OF SERVICE

I hereby certify that on February 13, 2015, I caused the foregoing **Brief In Support Of Emergency Motion For Stay Pending Appeal Of Portions Of Superior Court Order Adopting Final Wind Up Plan** to be electronically filed with the Clerk of the Court using the V.I. Supreme Court e-filing system and that the attorneys listed below, who are Filing Users, will be e-served by the Notice of Electronic Filing:

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VERONICA HANDY, ESQUIRE
CLERK OF THE COURT

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

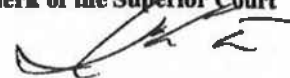
MARK ECKARD, ESQ.; JEFFREY MOORHEAD, Esquire

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

Dated: January 9, 2015

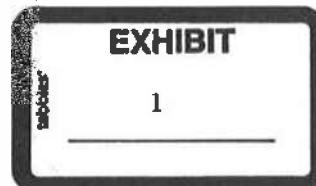
ESTRELLA H. GEORGE (ACTING)

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.)

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.

Mohammad Hamed, by Waleed Hamed v. Fathi Yusuf and United Corporation; SX-12-CV-370
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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 Ston 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 loaded 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.,

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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.

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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

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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.

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- 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 7th day of Jan 2015

CLERK OF THE COURT

By:  Court Clerk 11

**FINAL WIND UP PLAN
OF THE PLAZA EXTRA PARTNERSHIP**

This Plan provides for the winding up of the Partnership, as defined below. This is a liquidation plan and does not contemplate the continuation of the Partnership's business except as may be required for the orderly winding up of the Partnership.

Section 1. DEFINITIONS

1.1 "Act" means the Uniform Partnership Act, V.I. Code Ann. tit. 26, §§ 1-274.

1.2 "Available Cash" means the aggregate amount of all unencumbered cash and securities held by the Partnership including cash realized from any Litigation Recovery or any Liquidation Proceeds.

1.3 "Case" means *Hamed v. Yusuf, et al.*, Superior Court of the Virgin Islands (Civil No. SX-12-CV-370).

1.4 "Claim" means

- (a) any right to payment from the Partnership whether or not such right is reduced to judgment, liquidated, unliquidated, contingent, matured, unmatured, disputed, undisputed, legal, equitable, secured or unsecured; or
- (b) any right to an equitable remedy for breach of performance if such breach gives rise to a right of payment from the Partnership whether or not such right to an equitable remedy is reduced to judgment, fixed, contingent, matured, unmatured, disputed, undisputed, secured or unsecured.

1.5 "Claimant" means the holder of a Claim.

1.6 "Claims Reserve Account" means one or more interest-bearing bank account(s), money market or securities account(s) to be established and held in trust by the Master for the purpose of holding the Available Cash until distributed in accordance with the Plan and any interest, dividends or other income earned upon the investment of such Claims Reserve Account. The Claims Reserve Account will be further funded from time to time by the Liquidating Partner with:

- (i) any Liquidation Proceeds realized, plus
- (ii) any Litigation Recovery realized, minus
- (iii) any amounts necessary to pay Wind Up Expenses.

1.7 "Court" means Superior Court of the Virgin Islands in which the Case is pending.



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1.8 "Criminal Case" means Case No. 1:05-CR-00015-RLF-GWB pending in the District Court of the Virgin Islands.

1.9 "Debt" means liability on a Claim.

1.10 "Disputed Claim" means any Claim or portion of a Claim as to which an objection to the allowance thereof has been interposed, which objection has not been withdrawn or determined by Final Order.

1.11 "District Court" means the District Court of the Virgin Islands, in which the Criminal Case is pending.

1.12 "Effective Date" means ten (10) business days following the date of entry of the Order Adopting Final Wind Up Plan in the Case.

1.13 "Encumbered Cash" means all of the cash and securities encumbered by a restraining order issued by the District Court in the Criminal Case.

1.14 "Final Order" means an order or judgment of the Court or District Court:

(i) which has not been reversed, stayed, modified or amended;

(ii) as to which the time to or the right to appeal or seek reconsideration, review, rehearing or *certiorari* has expired or has been waived; and

(iii) as to which no appeal or motion for reconsideration, review, rehearing or *certiorari* is pending.

1.15 "Hamed" means Mohammad Hamed.

1.16 "Hamed Sons" means Waleed Hamed, Waheed Hamed, Mufeed Hamed, and Hisham Hamed.

1.17 "Liquidating Expenses Account" means one or more checking account(s) to be utilized by the Liquidating Partner for Wind Up Expenses based upon the Wind Up Budget and to satisfy debts of the Partnership.

1.18 "Liquidating Partner" means Yusuf.

1.19 "Liquidating Proceeds" means any cash or other consideration paid to or realized by the Partnership or the Liquidating Partner, as applicable, upon the sale, transfer, assignment or other distribution of the Partnership Assets.

1.20 "Litigation" means the interest of the Partnership or the Liquidating Partner, as applicable, in any and all claims, rights and causes or action that have been or may be commenced by the Partnership or the Liquidating Partner including, without limitation, any action:

FINAL WIND UP PLAN OF THE PLAZA EXTRA PARTNERSHIP
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- (i) to avoid and recover any transfers of property determined to be avoidable pursuant to V.I. Code Ann. tit. 28, §§ 171-212 or other applicable law;
- (ii) for the turnover of property to the Partnership or Liquidating Partner, as applicable;
- (iii) for the recovery of property or payment of money that belongs to or can be asserted by the Partnership or the Liquidating Partner, as applicable; and
- (iv) for compensation for damages incurred by the Partnership.

1.21 "Litigation Recovery" means any cash or other property received by the Partnership or the Liquidating Partner, as applicable, from all or any portion of the Litigation including, but not limited to, awards of damages, attorneys' fees and expenses, interest and punitive damages, whether recovered by way of settlement, execution on judgment or otherwise.

1.22 "Master" means Honorable Edgar D. Ross, appointed by the Court to serve as master in the Case.

1.23 "Partnership" means the association of Yusuf and Hamed carried on as co-owners of the business of the Plaza Extra Stores.

1.24 "Partners" means Yusuf and Hamed.

1.25 "Partnership Assets" means ~~any and all~~ property, assets, rights or interest of the Partnership whether tangible or intangible, and any Liquidation Proceeds realized therefrom, including without limitation, all Available Cash, Encumbered Cash, Litigation, and any Litigation Recovery.

1.26 "Plan" means ~~this Final Wind Up Plan~~ of the Plaza Extra Partnership, including exhibits, as it may be amended, ~~modified or supplemented~~ from time to time.

1.27 "Plaza Extra-East" means the supermarket located at Sion Farm, St. Croix.

1.28 "Plaza Extra-Tutu Park" means the supermarket located at Tutu Park, St. Thomas.

1.29 "Plaza Extra-West" means the supermarket located at Estate Plessen (Grove Place), St. Croix.

1.30 "Plaza Extra Stores" means Plaza Extra-East, Plaza Extra-Tutu Park, and Plaza Extra-West.

1.31 "Termination Date" means six months following the Effective Date, when the Liquidating Partner contemplates completing the winding up of the Partnership.

1.32 "United" means United Corporation.

1.33 "Wind Up Budget" means the budget established to satisfy the anticipated Wind

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Up Expenses and to satisfy the Debts set forth in Exhibit A hereto.

1.34 "Wind Up Expenses" means the costs and expenses incurred by the Liquidating Partner for the purpose of:

- (i) operating the Plaza Extra Stores during the period required to liquidate the Partnership Assets;
- (ii) prosecuting or otherwise attempting to collect or realize upon the Litigation.
- (iii) assembling and selling any of the Partnership Assets or otherwise incurred in connection with generating the Liquidation Proceeds;
- (iv) resolving Disputed Claims and effectuating distributions to Creditors under the Plan; or
- (v) otherwise implementing the Plan and winding up the Partnership.

1.35 "Yusuf" means Fahti Yusuf.

1.36 "Yusuf Sons" means Maher Yusuf, Nejah Yusuf, and Yusuf Yusuf.

Section 2. APPOINTMENT OF MASTER

The Honorable Edgar D. Ross, appointed by Order Appointing Master in the Case, entered September 18, 2015, shall serve as Master to oversee and act as the judicial supervision of the wind up efforts of the Liquidating Partner.

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 Liquidating 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 in the Case. 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 4. POWERS OF LIQUIDATING PARTNER

Pursuant to the Act, the Liquidating Partner shall have authority to wind up the Partnership business, including full power and authority to sell and transfer Partnership Assets, engage legal, accounting and other professional services, sign and submit tax matters, execute and record a statement of dissolution of Partnership, pay and settle Debts, and marshal Partnership Assets for

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equal distribution to the Partners following payment of all Debts and a full accounting by the Partners, pursuant to agreement of the Partners or by order of the Court.

The Liquidating Partner shall use his best efforts to complete the winding up of the Partnership on or before the Termination Date.

Section 5. DUTIES OF LIQUIDATING PARTNER

The Liquidating Partner shall devote such time as is reasonably necessary to wind up and liquidate the Partnership in the manner provided herein and as required by the Act.

The Liquidating Partner shall be required to report on a bi-monthly basis to Hamed and the Master as to the status of all wind up efforts. In addition, the Liquidating Partner shall prepare and file all required federal and territorial tax returns and shall pay all just Partnership Debts. The Liquidating Partner shall provide a Partnership accounting. Any Liquidation Proceeds and Litigation Recovery shall be placed into the Claim Reserve Account from which all Partnership Debts shall first be paid. Following payment of all Partnership Debts, any remaining funds shall continue to be held in the Claims Reserve Account pending distribution pursuant to agreement of the Partners or order of the Court following a full accounting and reconciliation of the Partners' capital accounts and earlier distributions.

Section 6. SALARIES, WITHDRAWALS

As compensation for serving as Liquidating Partner, Yusuf shall continue to receive the salary Yusuf is currently receiving as shown on the Wind Up Budget. This compensation will be considered an expense of winding up the Partnership's business. For at least one hundred twenty (120) days following the Effective Date, the Hamed Sons and Yusuf Sons shall continue to receive their current salaries in return for assisting the Liquidating Partner in the wind up of the Partnership. Thereafter, the Liquidating Partner shall have the right to terminate their services upon fourteen (14) days notice as the Partnership business operations decline and their services are no longer needed. The Hamed Sons and Yusuf Sons shall be terminated at the same time.

Section 7. CRIMINAL CASE AND ENCUMBERED CASH

There exists a plea agreement ("Plea Agreement") entered by United in the Criminal Case. Nothing in this Plan or the Partnership wind up efforts shall undermine or impair United's Plea Agreement. The President of United shall meet with the U.S. Department of Justice to see what impact, if any, the implementation of the Plan and wind up of the Partnership may have on United's compliance with the Plea Agreement.

The Encumbered Cash shall be deposited into the Claims Reserve Account immediately after it is no longer encumbered by the Restraining Order entered in the Criminal Case and, thereafter, held for distribution in accordance with this Plan.

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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 at 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, without prejudice to any accounting claim that may be presented by Hamed.

2) Plaza Extra-Tutu Park

The Partners 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 Partners 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 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 at 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

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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 the 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 in the name of his designee.

5) Plaza Extra Name

The Master will conduct and supervise a closed auction wherein the Partners 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 Partners may discuss and jointly or individually propose the format and procedures for the auction, subject however to the Master's sole determination.

Section 9. 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, the District Court.

Step 1: Budget for Wind Up Efforts

The Wind Up Budget for the Wind Up Expenses is attached hereto as Exhibit A. 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.

FINAL WIND UP PLAN OF THE PLAZA EXTRA PARTNERSHIP
Page 8 of 9**Step 2: Setting Aside Reserves**

The sum of Ten Million Five Hundred Thousand Dollars (\$10,500,000.00) 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 ("PCA"), 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 to 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 to 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 forty-five (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

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funds remaining in the Claim Reserve Account. Thereafter, the Master shall make a report and recommendation for distribution to the Court for its final determination. Nothing herein shall prevent the Partners from agreeing to distribution of Partnership Assets between them rather than liquidating Partnership Assets by sale and distributing proceeds of such sale(s).

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.

Section 10. INDEX OF EXHIBITS

- Exhibit A: Wind Up Budget
- Exhibit B: Plaza Extra Supermarkets Balance Sheet
- Exhibit C: Pending Litigation Against United
- Exhibit D: List of Brokerage and Investment Accounts

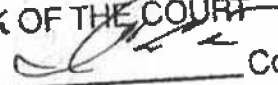
DONE AND SO ORDERED this 7 day of January, 2015.


DOUGLAS A. BRADY, JUDGE

ATTEST:
ESTRELLA GEORGE
Acting Clerk of the Court

By: 
Court Clerk Supervisor

CERTIFIED TO BE A TRUE COPY
This 9th day of Jan 2015

CLERK OF THE COURT
By:  Court Clerk

02/13/2015

VERONICA HANDY, ESQUIRE
CLERK OF THE COURT

EXHIBIT A

02/13/2015

VERONICA HANDY, ESQUIRE
CLERK OF THE COURT

EXHIBIT B

02/13/2015

VERONICA HANDY, ESQUIRE
CLERK OF THE COURT

Plaza Extra Supermarkets
Balance Sheet
As of January 31, 2014 and Last Year End

ASSETS		Current Period	Last Year End
Current Assets			
10000	Cash - Petty	\$ 31,726.00	\$ 31,726.00
10100	Cash - Registers	33,870.00	33,870.00
10200	Cash - Safe	146,520.20	168,220.20
10300	Cash in Bank - Operating	(2,212,795.52)	(970,814.23)
10350	Cash in Bank - Payroll	15,712.17	15,693.98
10400	Cash in Bank - CC Deposit	1,096,501.95	932,533.54
10500	Cash in Bank - Telecheck	7,967,789.80	7,703,852.94
10900	Cash Clearing - Transfer	0.00	106,910.23
11000	Accounts Receivable - Trade	57,923.37	43,129.55
12000	Inventory	9,353,982.37	9,353,982.57
13100	Prepaid Insurance	226,946.88	278,216.83
13300	Due from Cashiers - Shortages	0.00	(2,719.72)
13400	Due from Employees - Loans	60,638.60	73,497.47
14000	Due from (to) Yum!	(117,644.33)	(117,644.33)
14100	Due from (to) Plaza East	(458,954.70)	(550,471.77)
14300	Due from (to) Plaza West	405,635.79	476,080.46
14400	Due from (to) Plaza STT	53,298.91	53,298.91
14500	Due from (to) Shopping Ctr	67,251.71	65,688.31
15100	Marketable Securities - BPPR	37,767,429.03	37,767,429.03
15150	Unrealized (Gain) Loss - BPPR	(2,324,369.86)	(2,324,369.86)
15200	Marketable Securities - ML	336,378.45	336,378.45
Total Current Assets		52,707,061.04	53,674,488.56
Property and Equipment			
16000	Buildings	3,478,103.00	3,478,103.00
16100	Leasehold Improvements	4,214,919.00	4,214,919.00
16200	Fixtures & Store Equipment	7,377,032.21	7,377,032.21
16400	Security Equipment	304,241.60	304,241.60
16500	Vehicles & Transport Equipment	57,090.50	57,090.50
16900	Accum Depreciation	(10,695,527.03)	(10,677,827.03)
Total Property and Equipment		4,735,819.28	4,753,519.28
Other Assets			
17000	Land	330,000.00	330,000.00
19000	Deposits	57,963.40	57,963.40
19200	Due from (to) Peter's Farm	1,527,708.00	1,527,708.00
19300	Due from (to) Ploppen	5,109,018.00	5,109,018.00
19400	Due from (to) Birteen Plus	87,004.26	87,004.26
Total Other Assets		7,111,693.66	7,111,693.66
Total Assets		\$ 64,554,573.98	\$ 65,539,701.50

Unaudited - For Management Purposes Only

02/13/2015

VERONICA HANDY, ESQUIRE
CLERK OF THE COURT

Pizza Extra Supermarkets
Balance Sheet
As of January 31, 2014 and Last Year End

		<u>Current Period</u>	<u>Last Year End</u>
LIABILITIES AND CAPITAL			
Current Liabilities			
20000	Accounts Payable - Trade	\$ 3,269,786.86	\$ 5,026,839.62
21000	VI Income Tax W/H & Payable	24,521.07	47,544.73
21100	FICA / Medicare Payable	20,449.67	29,593.57
21200	Accrued FUTA Payable	2,765.34	5,244.84
21300	Accrued VI Unemp Tax Payable	7,989.20	48,429.11
21500	Remittances W/H & Payable	1,174.50	541.58
21700	AFLAC W/H & Payable	2,489.84	2,489.84
21800	CIGNA W/H & Payable	21,715.29	(13,907.68)
21900	MASA W/H & Payable	694.41	1,205.41
23000	Accrued Expenses Due Unfiled	5,442,894.19	5,383,894.19
23100	Accrued Gross Repts Tx Payable	411,786.49	303,485.32
25000	Deferred Income	0.00	(804.56)
	Total Current Liabilities	9,206,266.86	10,765,183.37
Long-Term Liabilities			
	Total Long-Term Liabilities	0.00	0.00
	Total Liabilities	9,206,266.86	10,765,183.37
Capital			
33000	Dividend Distrib's (Pr Draws)	0.00	(8,486,132.00)
39000	Retained Earnings	54,774,518.13	61,840,197.87
	Net Income	573,788.99	1,420,452.26
	Total Capital	55,348,307.12	54,774,518.13
	Total Liabilities & Capital	\$ 64,554,573.98	\$ 65,539,701.50

Unaudited - For Management Purposes Only

02/13/2015

VERONICA HANDY, ESQUIRE
CLERK OF THE COURT

EXHIBIT C

02/13/2015

VERONICA HANDY, ESQUIRE
CLERK OF THE COURT

EXHIBIT C
PENDING LITIGATION AGAINST UNITED

MATTER	STATUS/CASE NUMBER
1. Carol Daniel v. United Corporation d/b/a Plaza Extra	No suit filed
2. Edwards, Sonia v. United Corporation d/b/a Plaza Extra	No suit filed
3. Fell, Isaline v. United Corporation d/b/a Plaza Extra	
4. Harley, George v. United Corporation d/b/a Plaza Extra	No suit filed
5. Harris v. United Corporation d/b/a Plaza Extra	No suit filed
6. Hartzog, Amanda individually and as Next of Friend of Jahmil Perez, a minor v. United Corporation d/b/a Plaza Extra	Case No. 95/2004 Superior Court of the Virgin Islands Division of St. Croix
7. Isaac, Laverne v. United Corporation d/b/a Plaza Extra	Superior Court of the Virgin Islands Division of St. Thomas and St. John
8. Javois, Kyshama and Ferdinand Javois as parents of Kai Javois, a minor v. United Corporation	No suit filed
9. Melendez, Carlos, Jr. v. V.I. Asphalt Products Corporation (VIAPCO) and Mike Yusuf	
10. Philip, Nelda P. v. United Corporation d/b/a Plaza Extra	
11. Samuel, Velma v. United Corporation d/b/a Plaza Extra	Case No. ST-12-CV-457 Superior Court of the Virgin Islands Division of St. Thomas and St. John
12. Santiago, Jacqueline v. United Corporation d/b/a Plaza Extra	Superior Court of the Virgin Islands Division of St. Croix

MATTER	STATUS/CASE NUMBER
13. Santiago, Jacqueline v. United Corporation d/b/a Plaza Extra (DOL Appeal Case)	Superior Court of the Virgin Islands Division of St. Croix
14. United Corporation d/b/a Plaza Extra v. Tutu Park Limited (Light Poles)	Civil No. 97/1997 District Court of the St. Thomas and St. John
15. United Corporation d/b/a Plaza Extra v. Tutu Park Limited and P.I.D. Inc.	Civil No. 361/2001 Superior Court of the Virgin Island Division of St. Thomas and St. John
16. Williams, Edith v. United Corporation d/b/a Plaza Extra	Case No. 478/2000 Territorial Court, Division of St. Croix

02/13/2015

VERONICA HANDY, ESQUIRE
CLERK OF THE COURT

EXHIBIT D

Exhibit D

LIST OF BROKERAGE AND INVESTMENT ACCOUNTS

1. Popular Securities Accounts United Corp. d/b/a Plaza Extra
(Denoted on Exhibit B - Balance Sheet as #15100)

Value as of 12/31/13: \$37,767,429.06

2. Merrill Lynch Cash Reserve Account
(Denoted on Exhibit B - Balance Sheet as #13300)

Value as of 12/31/13: \$3,637,435

02/13/2015

VERONICA HANDY, ESQUIRE
CLERK OF THE COURT

**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,)
)
Additional Counterclaim Defendants.)

CIVIL NO. SX-12-CV-370

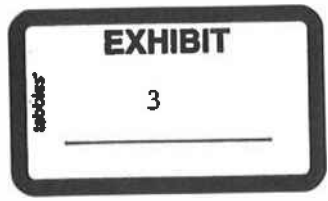
**ACTION FOR DAMAGES,
INJUNCTIVE RELIEF
AND DECLARATORY RELIEF**

15 FEB 10 P 4:32

**NOTICE OF INTENT TO SEEK A DETERMINATION FROM THE SUPREME
COURT ON MOTION FOR STAY OF PORTIONS OF JANUARY 7, 2015 ORDER
PENDING APPEAL BY DATE CERTAIN IF THE SUPERIOR COURT DOES NOT
RESOLVE SUCH MOTION**

Defendant/counterclaimant/appellant Fathi Yusuf ("Yusuf"), through his undersigned counsel, respectfully submits this notice that after noon, Friday, February 20, 2015, Yusuf intends to file in the Virgin Islands Supreme Court a Motion For Stay of Portions of this Court's "Order Adopting Final Wind Up Plan" (the "Order") and the Final Wind Up Plan attached to the Order (the "Plan") unless by that time this Court has resolved Yusuf's Motion For Stay of Portions of January 7, 2015 Order Pending Appeal (the "Motion For Stay") filed in this Court on January 29, 2015. In support of this notice, Yusuf respectfully represents the following:

DUDLEY, TOPPER
AND FEUERZEIG, LLP
1000 Frederiksborg Gade
P.O. Box 756
St. Thomas, U.S. VI 00804-0726
(340) 774-4422



Hamed v. Yusuf, et al.
Civil No. SX-12-CV-370
Page 2

1. Pursuant to VISCR 8(b), “[r]equests for a stay of the . . . order of the Superior Court pending appeal . . . must ordinarily be made in the first instance to the Superior Court A motion for such relief may be made to the Supreme Court, but the motion shall show that application to the Superior Court for the relief sought is not practicable or that the Superior Court has denied an application, or has failed to afford the relief which the applicant requested, with the reasons given by the Superior Court for its action.”

2. On January 29, 2015, Yusuf filed his Motion for Stay with supporting Brief and proposed Order in this Court. On February 4, 2015, plaintiff/counterclaim defendant/appellee Mohammad Hamed (“Hamed”) and additional counterclaim defendant/appellee Plessen Enterprises, Inc. (“Plessen”) filed their Oppositions to the Motion For Stay. On February 10, 2015, Yusuf filed his Replies to Hamed’s and Plessen’s Oppositions thereby closing the briefing cycle authorized by LRCi. 7.1, made applicable to proceedings in this Court by Super. Ct. R. 7.

3. The Order and the Plan provide the following with respect to 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 at its depreciated value, as mutually determined by the Partners Upon payment for the inventory, and upon payment . . . 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.

See Plan at § 8(3).

02/13/2015

VERONICA HANDY, ESQUIRE
CLERK OF THE COURT

Hamed v. Yusuf, et al.
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4. Pursuant to a Stipulation, which was approved and "so ordered" on January 27, 2015, Hamed and Yusuf have stipulated to the value of the equipment for Plaza Extra-West at \$350,000.

5. Hamed and Yusuf have agreed that RGIS, LLC will perform an inventory of the inventory of goods and supplies held for sale in the three Plaza Extra stores. Currently, RGIS' inventory for the Plaza Extra-West store is scheduled to be completed on February 18, 2015. Accordingly, pursuant to the terms of the Plan, the assets associated with the Plaza Extra-West store could be transferred to Hamed as early as February 18, 2015.

6. As Yusuf argues in his Motion For Stay and supporting briefs, if the provisions of the Plan concerning Plaza Extra-West are not stayed pending appeal, the Supreme Court may not be able to effectively review the provisions of this Court's Orders and Plan relating to Plaza Extra-West that Yusuf has appealed from or to unwind the transactions implementing such Orders and Plan including, but not limited to, the provisions of a disputed lease between Plessen Enterprises, Inc. and KAC357, Inc. covering the premises currently occupied by Plaza Extra-West.

7. Yusuf believes he has made a compelling case for issuance of a stay by this Court, and except in this extraordinary situation would simply await the Court's ruling. Unfortunately, there is an unavoidable urgency to these kinds of motions. Given the upcoming holiday (Presidents' Day) on Monday, February 16, 2015, unless his Motion For Stay has been resolved by this Court by noon, February 13, 2015, Yusuf feels constrained to advise this Court that he would need to file his Motion For Stay in the Supreme Court immediately thereafter in

Hamed v. Yusuf, et al.
Civil No. SX-12-CV-370
Page 4

order for the Supreme Court to have sufficient time to address the issues to be raised in that motion.

For all of the foregoing reasons, Yusuf respectfully provides this Court with notice of his intent to file a Motion For Stay Pending Appeal in the Supreme Court at 12:01 p.m. on February 13, 2015, unless his Motion For Stay filed in this Court is resolved by that time.

Respectfully Submitted,

DUDLEY, TOPPER AND FEUERZEIG, LLP

DATED: February 10, 2015

By: 

Gregory H. Hodges (VI Bar No. 174)
Stefan B. Herpel (VI Bar No. 1019)
Law House
1000 Frederiksberg Gade - P.O. Box 756
St. Thomas, VI 00804
Telephone: (340) 774-4422
Facsimile: (340) 715-4400
E-Mail: ghodges@dtlaw.com
sherpel@dtlaw.com

and

Nizar A. DeWood, Esq. (V.I. Bar No. 1177)
The DeWood Law Firm
2006 Eastern Suburbs, Suite 101
Christiansted, VI 00830
Telephone: (340) 773-3444
Telefax: (888) 398-8428
Email: info@dewood-law.com

Attorneys for Fathi Yusuf

**DUDLEY, TOPPER
AND FEUERZEIG, LLP**
1000 Frederiksberg Gade
P.O. Box 756
St. Thomas, U.S. V.I. 00804-0756
(340) 774-4422

02/13/2015

VERONICA HANDY, ESQUIRE
CLERK OF THE COURT

Hamed v. Yusuf, et al.
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Page 5

CERTIFICATE OF SERVICE

I hereby certify that on this 10th day of February, 2014, I caused the foregoing Notice Of Intent To Seek A Determination From The Supreme Court On Motion For Stay Of Portions Of January 7, 2015 Order Pending Appeal By Date Certain If The Superior Court Does Not Resolve Such Motion 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

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

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

Jeffrey B.C. Moorhead, Esq.
C.R.T. Building
1132 King Street
Christiansted, VI 00820
Email: jeffreymlaw@yahoo.com

The Honorable Edgar A. Ross
Email: edgarrossjudge@hotmail.com



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DUDLEY, TOPPER
AND FEUERZEIG, LLP
1000 Frederiksborg Gate
P.O. Box 759
St. Thomas, U.S. VI. 00804-0759
(340) 774-4422

Government of the U.S. Virgin Islands
Department of Licensing and Consumer Affairs (DLCA)

Wendee Vukobratovic
Logout
User Guide

User Name
Review
Payment

Control #: Not assigned yet

Business Information

Organization Type:

Business Name: PLESEN ENTERPRISES INC

Business Phone: 340 770 4248

Business Email:

Business Owned By:

Contact First Name: JULEZB

Last Name: WARD

Phone #: 340 666 3393

Email: info@plese.com

Fax #: 340 770 1299

Fields marked in red cannot be changed on where an existing license is applied with this business.
Please contact DLCA to modify the business information.

Business Address

I do not have a Virgin Islands address. I am applying for General Occupation License(s) only.

Business Address

Select Address from dropdown or Enter new Address

Street: STREET, PLESEN

City: FREDENSTED

State:

Zip: 00000

Island:

Country:

Mailing Address

Select Address from dropdown or Enter new Address

Street: P.O. BOX 100

City: CHRISTIANSTED

State:

Zip: 00021

Island:

Country:

[Edit Business](#)

Officer(s) Information

Officer Name	Title		
MARIE YUSUP	Owner	<input type="button" value="Edit"/>	<input type="button" value="Delete"/>
WALTER HANED	Vol. President	<input type="button" value="Edit"/>	<input type="button" value="Delete"/>
MUHAMMAD HANED	President	<input type="button" value="Edit"/>	<input type="button" value="Delete"/>
PATRY YUSUP	Treasurer	<input type="button" value="Edit"/>	<input type="button" value="Delete"/>

[Add Officer](#)

Location(s) Information

Location Address	Island	Country		
101 EAST PLESEN, FREDENSTED, ST. JOHN, VI	St. John	US Virgin Islands	<input type="button" value="Edit"/>	<input type="button" value="Delete"/>
1000 EBY, THOMAS, ST. THOMAS, VI00002	St. Thomas	US Virgin Islands	<input type="button" value="Edit"/>	<input type="button" value="Delete"/>

[Add Location](#)

Existing License(s) Information

Location Address	License Information										
101 EAST PLESEN, FREDENSTED, VI00049 St. John	<input type="button" value="Add license to this location"/>										
1000 EBY, THOMAS, ST. THOMAS, VI00002 St. Thomas	<table border="1" style="width: 100%; border-collapse: collapse; font-size: x-small;"> <thead> <tr> <th>Exp Date</th> <th>Status</th> <th>Action Requested*</th> </tr> </thead> <tbody> <tr> <td>09/02/2015</td> <td>EXPIRED</td> <td></td> </tr> <tr> <td>08/17/2014</td> <td>EXPIRED</td> <td></td> </tr> </tbody> </table>	Exp Date	Status	Action Requested*	09/02/2015	EXPIRED		08/17/2014	EXPIRED		
Exp Date	Status	Action Requested*									
09/02/2015	EXPIRED										
08/17/2014	EXPIRED										

EXHIBIT

4

https://secure.dlca.vi.gov/license/Asps/License/review_application.aspx?Busseq=Y/ofbLF1... 1/20/2015

Review Application

[X] (1)				
Rent of Real Property Other than Buildings (PLESSER ENTERPRISES, INC.) License Trade Name	01/01/2011	APPROVED		
Rent of Real Property Other than Buildings (PLESSER ENTERPRISES, INC.) License Trade Name	01/01/2010	INCOMPLETE	<input type="button" value="Delete"/>	
<input type="button" value="Add New License Application"/>				

* Action requested is for the next page.

Payment

Please review the license information on this page and click **Do Next** to proceed.

[Home](#) | [DLCA Website](#) | [Public License Inquiry](#) | [Contact Us](#) | [Print](#) | [Logout](#)
 © 2015 Virgin Islands Department of Licensing and Consumer Affairs

Street1: 6F & H CARLTON
Street2:
City: CHRISTIANSTED
State: VI ZIP: 00021
Island: ST. CROIX
Country: US VIRGIN ISLANDS
Country of Citizenship: USA

Street1: P.O. BOX 763
Street2:
City: CHRISTIANSTED
State: VI ZIP: 00021
Island: ST. CROIX
Country: US VIRGIN ISLANDS

Have you ever been convicted of a felony or crime involving moral turpitude? **N**
If YES, explain the nature of the crime, date of conviction, and place of conviction:

Person 4:

First Name: FATHY
Last Name: YUSUF
Date of Birth: 04/15/1941

Position/Title: TREASURER
Place of Birth: JORDAN
SSN: XXX-XX-

Physical Address
Street1: #26A TUTU PARK MALL
Street2:
City: ST. THOMAS
State: VI ZIP: 00002
Island: ST. THOMAS
Country: UNITED STATES
Country of Citizenship: USA

Mailing Address
Street1: #26A TUTU PARK MALL
Street2:
City: ST. THOMAS
State: VI ZIP: 00002
Island: ST. THOMAS
Country: UNITED STATES

Have you ever been convicted of a felony or crime involving moral turpitude? **N**
If YES, explain the nature of the crime, date of conviction, and place of conviction:

Location Information

Location 1:

Physical Address
Street1: #14 EST. PLESSEN
Street2:
City: FREDERIKSTED
State: VI ZIP: 00040
Island: ST. CROIX
Country: US VIRGIN ISLANDS

Mailing Address
Street1: P.O. BOX 763
Street2:
City: CHRISTIANSTED
State: VI ZIP: 00021
Island: ST. CROIX
Country: US VIRGIN ISLANDS

Do you have employees at this location? **N** Trade Name/DBA: PLESSEN ENTERPRISES, INC.
Explain in detail the type of proposed business activity for which the license(s) has/have been requested.
RETAIL INVESTMENT/PROPERTY LEASE

Location 2:

Physical Address
Street1: #649 EST. THOMAS
Street2:
City: ST. THOMAS
State: VI ZIP: 00002
Island: ST. THOMAS
Country: US VIRGIN ISLANDS

Mailing Address
Street1: P.O. BOX 763
Street2:
City: CHRISTIANSTED
State: VI ZIP: 00021
Island: ST. CROIX
Country: US VIRGIN ISLANDS

Do you have employee(s) at this location? **N** Trade Name/DBA: PLESSEN ENTERPRISES, INC.
Explain in detail the type of proposed business activity for which the license(s) has/have been requested.

License Information

Location	License Type	Start Date	Expire Date	Status	Fee Amount
#14 EST. PLESSEN, FREDERIKSTED, VI, 00840 #233 EST. THOMAS, ST. THOMAS, VI, 00802	RENT OF REAL PROPERTY OTHER THAN BUILDINGS (PLESSEN ENTERPRISES, INC.)	01/01/2015	01/31/2016	PENDING	130.00
Total Amount:					130.00

Payment Information

Billing Information:

First Name: WALEED
Last Name: NAMED
Card Type: MASTER CARD
Credit Card Number: XXXX-XXXX-XXXX-NIA
Expiration Date: 07/2015
Country:

Street: P.O. BOX 24383
Street2:
City: CHRISTIANSTED
State: ZIP: 00821
Island:

BIR Information

First Name:
Last Name:
Relationship:

PLESSEN ENTERPRISES, INC. 410
P.O. BOX 758
ST. THOMAS, VI 00821 (813) 444-444

DATE: 1/20/15

PAY TO THE ORDER OF: Banco Popular (advantage) \$130.00
One Hundred Thirty Dollars and 00/100 DOLLARS

Scotiabank
THE BANK OF THE VIRGIN ISLANDS

FOR 5210-5400-0571-1341

02/13/2015

VERONICA HANDY, ESQUIRE
CLERK OF THE COURT

**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.,**)

Counterclaim Defendants.)

CIVIL NO. SX-12-CV-370.

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

JURY TRIAL DEMANDED


DECLARATION OF WALEED HAMED

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

1. I have personal knowledge of the facts set forth herein.
2. The document attached as Exhibit 2 to the Motion To Stay is a computer generated document that was not created or filed by my father, Mohammad Hamed, or any of his sons listed in the above caption who are Counterclaim Defendants herein.
3. Indeed, this unsigned document lists my father's birthdate as February 17, 2011, demonstrating that this document is an inaccurate computer generated document without any substantive review of the accuracy of the facts set forth therein.
4. When the Plaza West store was fully functional, without the current management issues, it regularly made a profit of \$250,000 a month (before income taxes).

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

Dated: February 3, 2015



Waleed Hamed a/k/a Wally Hamed



02/13/2015

VERONICA HANDY, ESQUIRE
CLERK OF THE COURT

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

MOHAMMAD HAMED, by his
authorized agent **WALEED HAMED**,

Plaintiff/Counterclaim Defendant,

vs.

FATHI YUSUF and UNITED CORPORATION,

Defendants/Counterclaimants,

vs.

**WALEED HAMED, WAHEED HAMED,
MUFEED HAMED, HISHAM HAMED, and
PLESSEN ENTERPRISES**,

Additional Counterclaim Defendants.

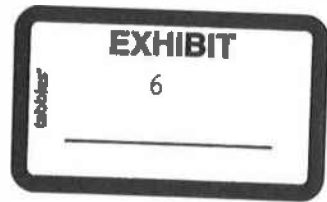
CIVIL NO. SX-12-CV-370

ACTION FOR DAMAGES,
INJUNCTIVE RELIEF
AND DECLARATORY RELIEF

DECLARATION OF JOHN GAFFNEY

I, John Gaffney, pursuant to 28 USC § 1746 and Super. Ct. R. 18, under the penalties of perjury, state and affirm that the following is true and correct:

1. I am the Senior Controller of United Corporation d/b/a Plaza Extra. As such, my duties are to collect, supervise and update accounting data and financial information concerning, among other things, the three supermarket stores known as Plaza Extra-East, Plaza Extra-Tutu Park, and Plaza Extra-West.
2. I have been shown a declaration of Waleed Hamed dated February 3, 2015 in which he states the following: "When the Plaza West store was fully functional, without the current management issues, it regularly made a profit of \$250,000 a month (before income



02/13/2015

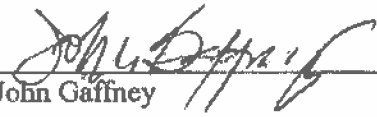
VERONICA HANDY, ESQUIRE
CLERK OF THE COURT

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taxes).” I have no idea what information was relied upon to make this statement but it is not supported by the historical accounting data and financial information for Plaza Extra-West.

3. The monthly profits of Plaza Extra-West cannot be accurately reported for 2012 and the preceding years because both St. Croix stores were grouped together as one during that time. 2013 is the first year that Plaza Extra-West was broken out. After reviewing the accounting data and financial information generated with respect to Plaza Extra-West, I can state that the average monthly net operating income for Plaza Extra-West in 2013 was \$120,654 and in 2014, it was \$94,372. Both of these average monthly figures do not take into consideration any rental obligations since, under the arrangement in place from 2000 to date, no rent was due to Plessen Enterprises, Inc. for occupying the Plaza Extra-West premises. Accordingly, I am aware of no accounting data or financial information concerning Plaza Extra-West that would support the statement of Waleed Hamed quoted above.

Dated: February 10, 2015


John Gaffney

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