

IN THE SUPREME COURT OF THE VIRGIN ISLANDS

FAHTI YUSUF.)	
)	
<i>Appellant/Defendant,</i>)	
)	
vs.	)	S. Ct. Civ. NO. 2015-0009
)	
MOHAMMED HAMED, et al,)	
)	
<i>Appellees.</i>)	
)	

APPELLEE’S OPPOSITION TO APPELLANT’S MOTION TO STAY PART OF THE SUPERIOR COURT’S JANUARY 7TH LIQUIDATION ORDER PENDING APPEAL

Appellee, Mohammad Hamed (“Hamed”), opposes the Appellant’s (“Yusuf”) *Motion To Stay* (“Stay Motion”) part of the Superior Court’s *Order Adopting Final Wind Up Plan* (“Liquidation Order”). Several brief preliminary comments are in order.

First, as will be seen, the urgency asserted in Yusuf’s motion is deflated once it is understood that (1) no real property is being transferred (as Yusuf suggests) and (2) even if the Plaza West lease were voided, the only result would be to close the Plaza West store (as opposed to Yusuf being able to bid on it based upon some inexplicable legal theory), as the parties all agree that the partnership has no lease for this location.

Second, Hamed believes there is no appellate jurisdiction to hear this appeal, which will be addressed in the briefs, unless this Court requests it to be briefed earlier as part of addressing the Stay Motion.

Third, while Yusuf claims the Superior Court had sufficient time to address this issue under V.I.S.Ct. Rule 8(b), that point is debatable. Yusuf filed his reply in that court two days before filing this motion, initially telling that court on page 1 of the Notice (Exhibit 3 to his Stay Motion) that he would not file this motion until February 20th.

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Finally, the Stay Motion attempts to 'carve out' certain portions of the Liquidation Order. While Hamed does not believe a stay is warranted, if a stay is issued, it should stay the entire Liquidation Order, which has been extensively crafted as a whole -- rather than just randomly staying it piecemeal--for the reasons noted herein.

With these comments in mind, Hamed will first briefly revisit the proceedings below leading up to the Liquidation Order before addressing the stay issues.

I. The proceeding below leading to the Liquidation Order

This Court previously addressed several issues here, affirming the trial court's determination that Hamed was likely to succeed on his claim that the three Plaza Extra Supermarkets were owned by a partnership between Hamed and Yusuf. See *Hamed v. Yusuf et al.*, 2013 WL 5429498 (V.I. 2013). Following remand, Yusuf continued to deny the existence of the partnership, successfully defeating summary judgment on the issue. See **Exhibit 1**. Thereafter, Yusuf filed *extensive* counterclaims in December of 2013 -- both against Hamed and the other parties, which were amended once. See **Exhibit 1**. Protracted discovery on the claims and counterclaims has taken place and is not completed, with the scheduling order being amended several times. See **Exhibit 1**.

After denying the existence of the partnership for 18 months, Yusuf abruptly changed his tactics in April of 2014, agreeing that there *was* a partnership. However, he used that admission to immediately move to dissolve the partnership, *actively seeking the appointment of a Master or Receiver to do so*. See **Exhibit 2**. Yusuf argued that dissolution was required, arguing in part that once one partner in a two-partner partnership seeks dissolution, such dissolution is mandatory. See **Exhibit 2**.

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As part of his new strategy, Yusuf *requested the Court to enter an order to dispose of the partnership's property*, attaching a proposed dissolution plan to his motion. See **Exhibit 2**. Yusuf noted in Section 8 of his plan that neither the Plaza East store nor the Plaza West store on St. Croix had a lease, so *neither could be sold as a going concern*,¹ with the remaining lease on the St. Thomas Plaza Extra store too short to keep that store open. See **Exhibit 2** at p. 6 of Yusuf's Plan. Thus, his plan would close and liquidate all three Plaza Extra stores, resulting in the lay-off of over 600 employees and the loss of substantial tax revenues to the Government. See **Exhibit 2**.

Of course, since Yusuf and his immediate family owned United Corporation, which owns United Shopping Center where the Plaza East store is located, it is clear that Yusuf intended to reopen this store after the partnership dissolution. He could then have a virtual monopoly on St. Croix as the Plaza West would be closed. Moreover, the Plaza West store is located on property owned by Plessen Enterprises, Inc. ("Plessen"), owned 50/50 by members of the Yusuf and Hamed families. See **Exhibit 1**. Thus, Yusuf's plan would be catastrophic for Plessen, as it would leave an empty building on its property, without a tenant to maintain it as Plaza had done. See **Exhibit 1**.

Hamed was horrified by this motion and proposed plan. It would close a business he helped start from scratch in 1986, now grossing in excess of \$100 million annually, with his long term plans to take care of his family for generations in jeopardy. As a

¹ The Plaza East and the Plaza West stores were both built with partnership funds, with the partnership spending millions of dollars to build each store. Hamed agrees that neither store has a lease, nor does the partnership own these leasehold improvements. See **Exhibit 1**.

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result, Hamed was forced to come up with an alternate plan that would at least keep the three Plaza Extra stores open, even though the partnership would be dissolved.

Hamed recognized that the Plessen Board was controlled by the Hamed's, with himself as the President. Thus, he had a lease drafted for the Plaza West store, with Plessen leasing the store to a newly created corporation, KAC357, Inc. ("KAC") owned by his family, with all standard industry terms that were intrinsically fair to Plessen as the landlord as well as a high rent. Once the lease was drafted, he then called a Board meeting for Plessen and had the Board approve the lease. The two Hamed directors voted for the lease, while Fathi Yusuf voted against it. See **Exhibit 1**. Plessen now had a tenant once the partnership dissolved at favorable commercial terms, including rent.²

Then, while having to concede Yusuf's dissolution motion, Hamed filed his own plan with two alternate proposals to liquidate the partnership, either of which would keep all three stores and provide *greater value* to the partners as follows (See **Exhibit 3**):

- **Option 1**-Now that two of the three stores had a lease, Hamed first proposed that all three stores would be put up for sale to a third party, which proposal was contingent on Yusuf having United give the partnership a lease on the Plaza East store identical to the lease Plessen had entered into for the Plaza West store. Thus, under this proposal the partnership could realize the substantial value of the good will of the stores (which are extremely profitable) by selling them as a going concern.
- **Option 2**- Alternatively, Hamed proposed to have KAC take over the St. Thomas leasehold obligations, keeping all employees, allowing that store to remain open. As Yusuf would have the Plaza East location and KAC would have the Plaza West store, all three stores could remain open after the partnership dissolution.

² The fairness of the lease will be discussed in the "Success on the Merits" section of this response, but once its terms are understood, it will be clear why the court below found it to be intrinsically fair to Plessen.

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Yusuf responded by rejecting both options. First, he emphatically stated he would not have United consider a lease for the Plaza East store. Second, recognizing that Plaza West would now be able to compete with Plaza East after he reopened it under Hamed's plan, Yusuf moved to have the Plessen/KAC lease deemed invalid, as noted in his Stay Motion.³ The trial court denied this motion as well as a motion to reconsider.

The trial court subsequently stayed discovery on the Complaint and Counterclaims while addressing dissolution, circulating a proposed plan with portions taken from the respective plans by each party. See **Exhibit 1**. The court also circulated a list of proposed Masters, with the parties selecting former Superior Court Judge Edgar Ross, whom the court then appointed as the Master. See **Exhibit 1**. The court then revised its proposed plan based on the extensive comments of the parties. After another round of comments on this revised plan, the court modified it further. The court then entered the Liquidation Order, dissolving the partnership (attached to Stay Motion).

Yusuf was made the liquidating partner. The partnership has now begun closing its business activities (See **Exhibit 1**), which will allow all claims to then be resolved by the Master once this process is completed. However, the Liquidation Order ensured that the three stores would all remain open (with all employees being retained) by (1) allowing Yusuf to purchase the inventory and equipment for the Plaza East store since his company United, owns that property, (2) allowing Hamed to purchase the inventory and equipment at the Plaza West store on the same terms since KAC has a lease for

³ Otherwise, why would Yusuf care if a store he proposed to close remained open, employing its 200 plus employees, paying the Government substantial taxes and paying Plessen, in which he has a 50% interest, a substantial rent?

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this property and (3) allowing the partners to bid for the St. Thomas partnership assets, which includes the inventory, equipment, lease and leasehold improvements. The parties have agreed as to the sale of the St. Thomas store. See **Exhibit 1**.

Yusuf's appeal of the Liquidation Order centers around the sale of the inventory and equipment at the Plaza Extra West location because he does not believe the lease to KAC is valid.⁴ However, if that lease is set aside on appeal, the store will simply be closed, as the partnership has no lease for this location. In short, as Yusuf noted in his initial plan, neither Plaza East nor Plaza West has a lease for its respective location, so they also have no interest in those leasehold improvements once they vacate the premises. Indeed, the Liquidation Order (attached to Stay Motion) *expressly* states on page 5 that Hamed is not purchasing any leasehold improvements for that store, just like it says on page 3 that Yusuf is not purchasing any leasehold improvements for the Plaza East location. With that point in mind, Hamed will now address the Stay Motion.

II. The Standard For Granting or Denying a Motion For Stay

Hamed agrees with Yusuf's statement of the legal standard applicable to this motion, as the case law in this jurisdiction holds that a court should address a stay motion based upon the same four factors that apply to a preliminary injunction request.

As noted in an unpublished opinion cited by Yusuf, *In Re Najawicz*, 2009 WL 321342 at *2 (V.I. 2009), the first factor—success on the merits-- may be less important

⁴ In addition to the Plaza West issue, Yusuf also argues that there are two other matters that need to be stayed, one dealing with the employment of the other partner's respective family members and one dealing with the payment of legal fees related to the St. Thomas store. The parties have now agreed to a stipulation that moots the first point. See **Exhibit 1**. As to the second point, which has not been conceded, it will be briefly addressed at the end of this opposition memorandum.

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if the other three factors favor a stay. However, while Yusuf's rambling motion may initially give the appearance that "a serious legal question" is presented, once analyzed *not one of the four factors favors a stay here.*

III. There is no irreparable harm to Yusuf if this motion to stay is denied.

Hamed will address the issue of irreparable harm first, as it helps clarify the why the *appearance* of urgency created by Yusuf's motion is misleading. While Yusuf argues that he will be irreparably harmed if his "property interest" in the Plaza West store is "allowed to be transferred," *there is no such transfer of any real property taking place.* Indeed, the Liquidation Order specifically deleted the transfer of "leasehold improvements" for the Plaza East and the Plaza West stores, as the partnership did not have a lease for either location.

Once understood, this point should end any discussion about how urgent this matter supposedly is, as no irreparable harm can possibly occur. Under the Liquidation Order, **all that is being sold is *entirely fungible personal property.*** The parties have already agreed on the value of the equipment, so that valuation is a non-issue for this motion or this appeal. See **Exhibit 1.** As for the inventory, the purchase value is based on its landed cost, **just like the valuation of the inventory at Plaza-East is being purchased by Yusuf, which he has not objected to paying.** This inventory is already in the process of being done by a company agreed to by the parties. See **Exhibit 1.** Thus, the transfer of this personal property (inventory and equipment) does not constitute "irreparable harm," as the value of these entirely fungible items is easy to ascertain.

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Moreover, if the Plessen lease had been found to be invalid by the court below, the inventory/equipment at Plaza West would simply have been liquidated, as initially proposed by Yusuf. The same result will happen if this Court finds the lease invalid.

In short, what Yusuf is objecting to---the *alleged* transfer or sale of real property---is not taking place. As Yusuf conceded, there is no lease in the partnership's name for the court to transfer---and hence, no leasehold improvements owned by the partnership either. This is just as true at this location as it is at the Plaza-East location. Thus, once understood, there is no "irreparable harm" to Yusuf if a stay is not granted, as the only remaining issue---the value of the inventory---is a monetary damage issue at best.

IV. Success on the Merits

Based on the Liquidation Plan, the "success on the merits" factor is probably the least significant factor. If this Court finds the Plessen lease invalid at the conclusion of the litigation, the *only* result would be to *then* close the Plaza West store since the partnership has no leasehold interest there to do anything else. Thus, proceeding with the full implementation of the entire Plan now without imposing a stay would not change the final liquidation of the partnership assets, even if the lease is declared invalid.

With this preliminary comment in mind, Yusuf raises several different points here, which will be discussed separately as its arguments are almost incoherent as submitted.

A. The appointment of a receiver for Plessen

Rather than address the merits of the lease issue, Yusuf first argues that the court below erred in not appointing a receiver for Plessen, which would have

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presumably then allowed the Plaza Extra premises to be sold at a private sale to the highest bidder between Hamed and Yusuf. This issue is not mentioned in Yusuf's Notice of Appeal, nor is the denial of a request to appoint a receiver an appealable order under 4 V.I.C. § 33(b)(2).

In this regard, Yusuf submitted a proposed modification to the court's Liquidation Plan that stated, in part, that after this bidding between the partners takes place, Plessen should be paid \$10.00 for the transfer of this property to the successful bidder. See **Exhibit 1**. While Yusuf vehemently argues that Plessen was hopelessly gridlocked, he failed to address the factual evidence submitted below that Plessen is a successful company, owning multiple properties on both St. Croix and St. Thomas, with a very positive cash flow, well in excess of its debts. See **Exhibit 1**.

Yusuf also fails to explain why a receiver for Plessen would somehow prefer to allow the partners to privately bid on this property, with the proceeds of the sale going to the partnership, not Plessen. Indeed, a Receiver would certainly prefer to receive rent from KAC for the use of the Plaza Extra store rather than receiving only \$10.00 for transferring it to one of the two partners.

Thus, the denial of the appointment of a receiver is not properly before this Court, but even if it were, it is total speculation as to what a Receiver would decide to do. As such, it is respectfully submitted that there is no likelihood of success on this issue.

B. The Plessen/KAC lease

Yusuf argues next that he is likely to succeed on his claim that the Plessen/KAC lease is not valid, which is really the crux of the "likelihood of success on the merits"

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issue. As he did below, Yusuf argues that (1) the April 30th Plessen Board meeting was improper and (2) the lease was not "fair" to the Yusuf shareholders in Plessen. The court below issued two opinions on these points, which analyzed both the governing documents for Plessen, as well as the intrinsic fairness of the lease, before denying Yusuf's motions. Each point will be addressed separately, as neither warrants a stay.

(1) The Plessen Board Meeting

Yusuf first argues that Plessen had four directors, not three. The Articles of Incorporation named the same three directors that voted at the April 30th meeting as its directors, which Yusuf conceded. See **Exhibit 1**. While Yusuf argued there were subsequent documents that "referenced" a fourth Yusuf director, the court found this evidence unconvincing, as the By-Laws required Board approval of any new director and Yusuf acknowledged that no such Board meeting had taken place prior to the April 30th meeting.⁵ *Hamed v Yusuf*, Civil No. SX-12-CV-370, 2014 WL 3697817 at *1, n.2 (V.I. Super. July 22, 2014) ("*Lease Case I*").

Yusuf also argues that the meeting was improper. However, the court found that the meeting was held in full compliance with the corporate documents, including the notice of the meeting. *Lease Case I* at *4. Thus, the court's reliance on the clear language of Plessen's governing documents in rejecting Yusuf's arguments is consistent with this Court's holding in *Weary v. Long Reef Condominium Association*,

⁵ Yusuf's new submission of a computer-generated form with his Stay Motion does not change anything—indeed, it has Mohammad Hamed's birthdate as 2011. It is not signed and is nothing other than a hearsay, computer-generated filing by an employee. See **Exhibit 5**.

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57 V.I. 163, 169-170 (V.I. 2012), that such governing documents control such issues if they are clear.

Recognizing he is unlikely to succeed on the merits of this issue, Yusuf argues on appeal that these By-Laws are suspect. However, **Yusuf expressly waived this argument below**, never raising it in either his initial motion or his motion for reconsideration: instead, Yusuf relied upon these By-Laws to attack the propriety of the meeting. See **Exhibit 1**. Moreover, the court found that since Yusuf attended the meeting, the purpose of the notice provisions in the By-Laws were satisfied and/or waived, making the By-Laws essentially irrelevant. *Lease Case I* at *4.

Thus, Yusuf is unlikely to succeed on the merits in contesting this meeting.

(2) The fairness of the lease

While Yusuf argues that the Plessen/KAC lease was unfair to him, his argument is undermined by his own assertion that this same lease should be imposed on Plessen so that he and Hamed can bid on it. In any event, there was ample evidence for the Court to find that the lease was intrinsically fair to Plessen and its shareholders.

At the outset, it should be noted that Yusuf did not argue below that the rent being paid by KAC (\$55,000 per month) is "unfair." *Lease Case I* at *6. Indeed, the amount is based on the rent Plaza East pays United, as the court noted. *Id.* Instead, Yusuf argued below, as he does here, that the lease is "unfair" for a litany of other issues, such as the fact that it is not guaranteed by the KAC's principals (although it is guaranteed by Mohammad Hamed). Yusuf also argues that the lease is unfair as (1)

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neither he nor any other third party was given a chance to 'bid' for this property and (2) it forces him to deal with Hamed for another 30 years.

The court below discussed each of these issues at length. It first noted that the burden was on Hamed to demonstrate that the lease was intrinsically fair since there was self-dealing here with a director, which was a high burden. *Lease Case I* at **4-6. The court noted that *intent* was not the focus of the court's inquiry, as self-dealing is permitted.⁶ Instead, the court held that adequacy of consideration and fairness, *objectively viewed*, was the proper test to apply. *Id.*

The court then applied this test to the specific objections raised by Yusuf, finding each one was insufficient to find the lease was intrinsically unfair to Plessen. Indeed, the court took specific note of the long stream of rent being paid to Plessen, which was far preferable to having an unused building on its property. *Lease Case I* at *6.

The court again addressed these same factual objections to the lease in denying the motion for reconsideration. See **Exhibit 4** ("*Lease Case II*") at pp. 3-7. In addition to addressing the specific objections such as personal guarantees, insurance, etc., the court also noted that Yusuf's assertion that either he or some third party *might* bid more for the property was nothing more than unsupported speculation. In short, there was no evidence to show that there was a better deal for Plessen than the KAC lease. See *Lease Case II* at p. 6.

Thus, while Hamed could probably not draft a lease that Yusuf would have accepted, there is little likelihood Yusuf will prevail in this Court in addressing these

⁶ Indeed, Plessen's articles of incorporation expressly permitted such self-dealing. See **Exhibit 1**.

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multiple factual objections to the lease, as these are factual findings for which the standard of review is whether the trial court abused its discretion in rejecting them. See, e.g., *Rodriguez v. Bureau of Corr.*, 58 V.I. 367, 371 (V.I. 2013). A review of the trial court's rulings in *Lease I* and *Lease II* regarding these specific objections does not support a finding that Yusuf is *likely* to prevail on his argument that the lease is unfair.

As for Yusuf's argument that he will have to deal with Hamed for the next 30 years, Yusuf and Hamed own many other properties and companies together, both here and abroad, so they will still be in business together after this case no matter what this Court does. See **Exhibit 1**. Indeed, as previously noted, Plessen also owns multiple other commercial properties on St. Croix and St. Thomas that are leased for long terms. See **Exhibit 1**. Thus, the argument that Yusuf is being forced to continue dealing with Hamed is irrelevant to any "success on the merits" inquiry. Indeed, it would certainly not justify a stay if it were relevant.

C. The imposition of a lease on the partnership

Finally, Yusuf argues that while the Plaza Extra Partnership did not have a lease on the Plaza-West location, the trial court could have somehow imposed a lease on Plessen for that location, which the partners could then bid for, because the court had jurisdiction over the partners who also owned Plessen.

It is respectfully submitted that Yusuf will not prevail in this argument on appeal. First, the shareholders of Plessen included the sons of both Hamed and Yusuf (See **Exhibit 1**), who were not part of the Plaza Extra partnership, so the court had no such "power" over them. Second, as the partnership had no lease for this location, it had no

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rights in Plessen's property to impose such a lease.⁷ By analogy, could the trial court have imposed a similar lease on United for the Plaza East location (as suggested by Option 1 of Hamed's plan) just because it had jurisdiction over Yusuf? Of course not.

Hence, whether a lease could have or should have been imposed on Plessen certainly fails to meet the "likelihood of success" standard required for a stay.

D. Summary

While Yusuf argues a myriad of claims as to why he has a likelihood of success on the merits, it is respectfully submitted that none of these arguments meet that bar. Indeed, as noted at the outset, this issue is really irrelevant, as the dissolution of the partnership will not change if the lease is declared invalid, other than the Plaza West store closing, with Hamed having a lot of inventory to remove.

V. Harm To Hamed

Hamed will be harmed by a stay of the portion of the Liquidation Order limited to the Plaza West location. At the outset, it must be repeated that it was Yusuf who initiated this belated partnership dissolution, while it was Hamed who figured out how to keep all three stores open. It would be quite ironic if Yusuf now got what he wanted (possession of the Plaza East location) while Hamed is left dealing with the partnership.

⁷ Indeed, while Yusuf argues that the court's plan would deprive it of "millions of dollars" of value in Plaza West buildings and its improvements, the court deleted these items (leasehold improvements) from the Liquidation Order for the same reason it did so regarding the "millions of dollars" the partnership used to build the Plaza Extra East location—the partnership had no lease, so it did not own these leasehold improvements (which belong to the fee owners, United and Plessen).

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The most obvious harm to Hamed if a partial stay as requested were issued would be the fact that Yusuf would have sole control over the Plaza East location while Yusuf would still have a manager in the Plaza West store. Indeed, under a partial stay, **Yusuf would be in charge of the day-to-day operations of the Plaza West store as the Liquidating Partner.**

As Plaza East and Plaza West are about to become competitors, this scenario would *significantly* impede Plaza West's ability to compete with Yusuf's Plaza East store. A conflict of interest exists in Yusuf having any involvement in the management of the Plaza West store, as the stores would now be competitors Yusuf's solely owned Plaza East store. Clearly Hamed would be severely harmed by this arrangement.

Yusuf anticipated this argument by suggesting that the terms of the Liquidation Order would be suspended during a stay, allowing Hamed to allegedly have the same management rights as Yusuf in the Plaza West store. That proposal does not resolve the issue. First, it involves a stay of the Liquidating Partner's rights in Plaza West, which was not requested. Second, it still does not resolve the problem of Plaza East, now solely under Yusuf's control, being a competitor with Plaza West, in which Yusuf would still have a key management role. In that regard, as there is no result on appeal other than the Plaza West store possibly closing, Yusuf has no incentive in trying to make Plaza West successful.

Additionally, the Liquidation Order is designed to wind up the entire partnership business as contemplated by 26 V.I.C. §173(c). If a partial stay were entered then a final accounting could not take place, since part of the partnership would still be

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operating, requiring the partnership to continue purchasing inventory, maintaining equipment, employing employees, being exposed to new lawsuits (e.g., slip and falls, etc.) and related items. While these activities would be limited to the Plaza West store under Yusuf's Stay Motion, the point is the same---the partnership will not be able to do a final accounting and dissolve so long as Plaza West is kept open by a stay.

Other similar issues will arise if only Plaza West remains open, such as Plaza West having to operate without the purchasing power of all three stores, Plaza West having to find a new accountant (since it would not want to use the accountant doing the books for its new competitor—Plaza East) and Plaza West's inability to hire key employees that Yusuf discharges (like Wadda Charriez) from the Plaza East location, as Hamed would be unable to hire them in Plaza West with joint management there.

Indeed, a partial dissolution will create confusion among the employees and destroy morale. These few examples explain the problems created by a partial stay in the operations of the Plaza West store if the rest of the Liquidation Order goes forward.

Most importantly, however, is the fact that a stay would severely jeopardize Hamed's efforts to make this store successful in light of the obvious competition that will result once the Plaza East store is turned over to Yusuf. Thus, contrary to Yusuf's assertions, **Hamed will be severely harmed** if a stay is issued as requested.

VI. Public Interest

The public is better served if there is real competition between the Plaza East and the Plaza West stores, which a stay would delay. Likewise, employee morale will

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be far better if there is clarity in what is transpiring, as opposed to a partial dissolution. Thus, this factor warrants a denial of the motion to stay as well.

VII. A Partial Stay would defeat the purpose of the Liquidation Order

Yusuf seeks a partial stay so he can receive the full benefits of the Plan for himself without any of the burdens. Indeed, as noted, it would give him an unfair advantage in being able to compete with Plaza West, as he will have sole control over the Plaza East store while, as the liquidating partner, he will have full control over his new competitor, the Plaza West store. Moreover, 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 as Partial Stay is entered.

While Hamed does not believe a stay is warranted, for the reasons set forth herein, if a stay is issued, it should stay the entire Liquidation Order and not just part of it. Consequently, either the entire plan should proceed or the entire plan should be held in abeyance since the purpose of a Liquidation Order is to completely dissolve the partnership at one time.

VIII. The Bond

Finally, if a stay is entered, a bond is needed that fully protects Hamed on appeal. While Yusuf suggests a nominal bond, he bases this argument on the assertion that Hamed will still get his 50% of the profits while the stay is in place. However, without a stay, Hamed and his family would get 100% of those profits. Moreover, they would get to operate the store without the interference from the Yusuf's that currently

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exists, as Hamed now has a Yusuf co-manager in that store. Without a Yusuf co-manager, Hamed would be able to restore its now dwindling net profit. See **Exhibit 5**.

When that store was fully functional without the current management issues, it made a profit of \$250,000 to \$350,000 a month (before income taxes) based on its tax returns, attached to **Exhibit 5**. A bond equal to the time this appeal will take is needed to protect the Hamed interests. While Hamed does not believe a stay is needed, if the Court does issue one, the bond should be set at an appropriate figure in order to protect Hamed's interests.

IX. Conclusion

Once the issues related to the Plaza West store are understood, it is clear that a stay is not warranted. Moreover, the same analysis applies to the other remaining issue for which a stay is also sought--the St. Thomas litigation legal fees. Those fees have been incurred to prosecute a claim against the landlord in St. Thomas in order to recover alleged damages. Since that issue only involves a monetary claim (now quantified as payment due the unsuccessful bidder of approximately \$165,000), that sum is easily quantifiable, not warranting a stay. Indeed, if that aspect of the Stay Motion is granted, this amount should be put up as a bond.

In summary, for the reasons set forth herein, it is respectfully submitted that the Motion To Stay should be denied in all respects. Alternatively, if a stay is to be issued, it is respectfully submitted that the stay should be to the entire Liquidation Order and not just the parts that Yusuf does not like.

02/17/2015

VERONICA HANDY, ESQUIRE
CLERK OF THE COURT

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Dated: February 17, 2015

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CERTIFICATE OF SERVICE

I hereby certify that on this 17th day of February, 2015, I served a copy of the foregoing pleading by this Court's ECF system on:

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/s/ Joel H. Holt

IN THE SUPREME COURT OF THE VIRGIN ISLANDS

FAHTI YUSUF,

Appellant/Defendant,

vs.

MOHAMMED HAMED, et al,

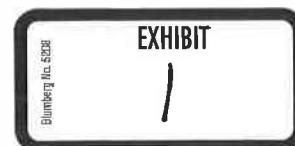
Appellees.

S. Ct. Civ. NO. 2015-0009

DECLARATION OF JOEL H. HOLT

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

1. I am counsel of record in this case and am personally familiar with the facts set forth in this declaration.
2. Following remand of this Court's decision affirming the preliminary injunction, Yusuf continued to deny the existence of the partnership, successfully defeating summary judgment on the issue. That Order can be supplied if requested.
3. Thereafter, Yusuf filed extensive counterclaims in December of 2013 -- both against Hamed and the other parties, which were amended once. A copy of those pleadings can be provided if requested.
4. Protracted discovery on the Plaintiff's claims and the Defendants' counterclaims has taken place, which discovery is not completed. The scheduling order has been amended several times to extend these deadlines.
5. Discovery has confirmed that the Plaza East and the Plaza West stores were both built with partnership funds, with the partnership spending millions of dollars to build each store. However, Yusuf and Hamed have both agreed that neither store has a lease.
6. The Plaza West store is located on property owned by Plessen Enterprises, Inc. ("Plessen"), a Virgin Islands corporation. It is owned 50/50 by Yusuf and his sons and 50% by Hamed and his sons. Plaza West maintains the building where its store is located.
7. Mohammad Hamed had a lease drafted for the Plaza West store, with Plessen leasing the store to a newly created, closely held corporation, KAC357, Inc., owned by his family. Once the lease was drafted, Hamed then noticed a Board meeting for Plessen. With all directors present, the Board approved the lease--with the two Hamed directors voting for the lease, while Yusuf voted against it.



8. The trial court subsequently stayed discovery on the claims and counterclaims while it addressed dissolution. It then circulated a proposed plan with portions taken from the respective plans submitted by each party. Copies of what the court circulated can be provided if requested.
9. The court also circulated a list of proposed masters, with the parties both selecting former Superior Court Judge Edgar Ross. The court appointed him as the Master. The court then revised its proposed plan based on the extensive comments of the parties and permitted another round of comments on this revised plan, which both parties filed. These pleadings can be provided if requested.
10. After the January 7, 2015, *Order Adopting Final Wind Up Plan* ("Liquidation Order") was entered, the partnership began taking the steps to close its business activities, under the supervision of the Master, with Yusuf as the Liquidating Partner. The value of the equipment in the three stores was agreed upon and a company was hired by agreement to start the final inventory calculation, which is on-going now and about half done. The parties then agreed on how the St. Thomas store will be sold to one of them by a closed sale by bidding, although the precise bidding process is still being worked out.
11. The parties then resolved the issue about the sons of a partner being no longer employed once a store is in the possession of the other partner, which stipulation is being circulated for signature now. Thus, this point is moot as far as this Stay Motion is concerned.
12. Yusuf submitted a proposed modification to the court's Liquidation Plan that stated, in part, that after this bidding between the partners takes place, Plessen should be paid \$10.00 for the transfer of this property to the successful bidder. The relevant excerpt is attached as **Exhibit A**, although the full pleading can be provided if requested.
13. Hamed attached a declaration to its opposition to the motion to reconsider the validity of the lease demonstrating that Plessen is a successful company, owning multiple properties on both St. Croix and St. Thomas, with a very positive cash flow, well in excess of its debts. See **Exhibit B**. The pleading this declaration was attached to can be provided if requested.
14. The Articles of Incorporation lists the same three directors that voted at the April 30th meeting as its directors, which Yusuf conceded. Plessen's articles of incorporation also expressly permit disclosed self-dealing by the directors. Copies of the relevant pages are attached as **Exhibit C**. The full document can be provided if requested.

02/17/2015

VERONICA HANDY, ESQUIRE
CLERK OF THE COURT

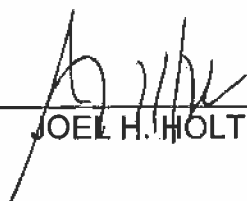
Declaration of Joel H. Holt
Page 3

15. Yusuf filed a pleading challenging this election: "For the purposes of this motion, however, this Court can assume the By-Laws were promulgated by a valid resolution of the directors." Yusuf then relied upon these By-Laws in attacking the propriety of the meeting. The relevant excerpts are attached as **Exhibit D**. The entire pleading can be produced if requested.

16. As revealed in discovery, Yusuf and Hamed own many other properties and companies together, both here and abroad, so they will still be in business together after this case no matter what this Court does. This information can be provided in detail if requested by the Court.

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

Dated: February 17, 2015



JOEL H. HOLT

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

MOHAMMAD HAMED, by his)
authorized agent **WALEED HAMED**,)
))
Plaintiff/Counterclaim Defendant,)
))
vs.)
))
FATHI YUSUF and UNITED CORPORATION,)
))
Defendants/Counterclaimants,)
))
vs.)
))
WALEED HAMED, WAHEED HAMED,)
MUFEEED HAMED, HISHAM HAMED, and)
PLESSEN ENTERPRISES, INC.,)
))
Additional Counterclaim Defendants.)
))

CIVIL NO. SX-12-CV-370

ACTION FOR DAMAGES,
INJUNCTIVE RELIEF
AND DECLARATORY RELIEF

JURY TRIAL DEMANDED

**FATHI YUSUF'S COMMENTS, OBJECTIONS AND RECOMMENDATIONS
CONCERNING THE COURT'S PROPOSED PLAN**

Defendant/counterclaimant Fathi Yusuf ("Yusuf"), through his undersigned counsel, respectfully submits the following comments, objections, and recommendations concerning the Court's proposed plan, as set forth in its order dated October 7, 2014 (the "Order"), for liquidating and winding up the partnership between Yusuf and plaintiff/counterclaim defendant Mohammad Hamed ("Hamed"), which owns and operates three supermarket stores known as Plaza Extra – East, Plaza Extra – Tutu Park, and Plaza Extra – West (collectively, the "Plaza Extra Stores").

The Court effectively adopted and tentatively approved "[a]ll components and terms of the competing plans where the parties do agree" See Order at p. 1. The competing plans referenced by the Court consist of the initial plan filed by Yusuf on April 7, 2014 (the "Yusuf Plan"), attached as Exhibit A to his Memorandum in Support of Motion to Appoint Master for Judicial Supervision of Partnership Winding Up or, in the Alternative, to Appoint Receiver to

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CLERK OF THE COURT

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mutually owned company, Plessen, with a long term lease that effectively condemns these warring families to continue dealing with each other for another 30 years. As contemplated in § 8(B)(1)(c) of the United/Yusuf Plan, the Court should provide for Yusuf or United to purchase an approximately 16 acre tract of land subdivided from a larger tract owned by Plessen on which Plaza Extra – West is located, along with the associated inventory, equipment, and leasehold improvements. The parties had previously contemplated this subdivision as shown on the July 13, 2012 preliminary surveys of this subdivided parcel (the “Plaza West Parcel”), attached as **Exhibit A.** The market value and purchase price of the Plaza West Parcel should be established by the average appraised value determined by appraisers selected by each partner, and a third appraiser selected by the appraisers selected by the partners. Hamed should receive the purchase price, except that Plessen should receive \$10.00 from the purchase price as consideration for such conveyance. Hamed and Yusuf should split the stamp taxes and other costs of transfer. In the event Yusuf becomes the purchaser of Plaza Extra – West, either through the process described in this paragraph or in the bidding process described below, Hamed should be required to take such action as necessary to cancel and discharge of record any leases or other agreements affecting the Plaza West Parcel.

If for any reason Hamed or this Court are unwilling to approve Yusuf’s suggested disposition of Plaza Extra – Tutu Park and Plaza Extra – West, the only fair and simple solution for each partner to have an equal opportunity to acquire these stores and simultaneously maximize the value of these important partnership assets is to implement an open bidding process to be supervised by the Master. In order to make this bidding process fair and truly competitive, the Court must squarely address the validity of the lease from Plessen to the New Hamed Company in light of Yusuf’s Motion for Reconsideration. Obviously, unless the Motion

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CLERK OF THE COURT

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Purchase Partnership Assets.” Yusuf suggest the following language:

This Plan is conditioned upon the ability of Hamed and Yusuf to use their 50% interest in Available Cash and Encumbered Cash to purchase the non-liquid Partnership Assets. Any such use shall be subject to the approval of the Court and, to the extent necessary, the District Court.

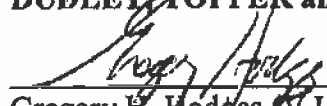
Yusuf respectfully requests this Court to take into consideration his foregoing comments, objections, and recommendations and to modify the Court’s proposed plan accordingly.

Respectfully submitted,

DUDLEY TOPPER and FEUERZEIG, LLP

Dated: October 21, 2014

By:



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and

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Attorneys for Fathi Yusuf and United Corporation

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

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

Plaintiff/Counterclaim Defendant,

vs.

**FATHI YUSUF and
UNITED CORPORATION,**

Defendants/Counterclaimants,

vs.

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

Counterclaim Defendants.

CIVIL NO. SX-12-CV-370

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

JURY TRIAL DEMANDED

DECLARATION OF 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. I am an officer, director and shareholder in Plessen Enterprises, Inc. ("Plessen").
3. Plessen owns two properties on St. Thomas located at Ft. Milner and Mandela Circle as well as two properties on St. Croix at Estate Diamond and Estate Plessen.
4. Plessen is a real estate holding and leasing entity whose day-to-day



operations remain unaffected by the partnership dispute between my father, Mohammad Hamed, and Fathi Yusuf regarding the Plaza Extra Supermarkets.

5. Plessen collects substantial rent from its tenant in St. Thomas (\$36,000 monthly) and pays its bills without any problem. It has no need for excess cash and currently has over \$300,000 in excess cash in its account now.
6. The only other business opportunity currently being considered by the Board is a lease for Tibbar Energy USVI, LLC on the 140 acre Estate Diamond property on St. Croix, which the Hamed's have repeatedly told the Yusuf's is something they will agree to (or not) as the Yusuf's decide. See Group Exhibit A attached. In fact, the Yusuf's (through United Corporation) have already leased a large tract of land adjacent to Plessen's property in Estate Diamond to Tibbar.
7. Likewise, the Hamed and Yusuf shareholders in Plessen continue to agree that the Plaza West Supermarket located on Plessen's property need not pay rent.
8. The Hamed's and Yusuf's also continue to agree that the funds generated by Plessen's St. Thomas tenant can be used to pay the real property taxes for two other jointly owned corporations (Peter's Farm, Inc. and Sixteen Plus, Inc.) which do not have tenants on their own unimproved real property.

9. In fact, the Hameds have now agreed to having all checks signed by one member of each family and have executed signature cards at the bank reflecting this agreed upon requirement even though there is no court order directing such a change,
10. The Plaza West store is located on less than 5 acres of a 115 acre parcel owned by Plessen in Estate Plessen on St. Croix.
11. I promptly tendered \$230,000 of the \$460,000 removed from Plessen's account to the Court. Pursuant to the April 30th Board Resolution ratifying this withdrawal as a dividend, I have made sure the Yusuf shareholders received a stipulation so they can withdraw these funds from the Court at any time. See Exhibit B attached. Thus, 50% of all funds withdrawn to date are equally available to the Yusufs.
12. Despite the withdrawal of the \$460,000, Plessen still currently has \$300,000 in its bank account, well in excess of the amount it needs to operate.
13. While Defendants argue that my father's guarantee is no good, he owns 50% of the Plaza Extra Supermarket partnership that has almost \$40,000,000 in after tax dollars in escrow. He owns one-half of the millions of dollars in the partnership operations accounts. He also has multiple other assets, including stock in Plessen as well as several other corporations jointly owned with the Yusufs. My father lives here in Estate Carlton, St. Croix, not in Jordan, as Defendants claim.

02/17/2015

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CLERK OF THE COURT

Waleed Hamed Declaration
Page 4

Dated: August 12, 2014



Waleed Hamed a/k/a Wally Hamed

02/17/2015

VERONICA HANDY, ESQUIRE
CLERK OF THE COURT

CERTIFICATION
Certified to be a true and correct copy
[Signature]
Kanneline Mapp
Lieutenant Governor

ARTICLES OF INCORPORATION

OF

PLESSEN ENTERPRISES, INC.

(A Virgin Islands Corporation)

We, the undersigned, being natural persons of lawful age, do hereby unite together by these articles of incorporation to form a stock corporation for the purposes hereinafter mentioned, under the laws of the Virgin Islands of the United States and by virtue of Chapter One of Title 13 of the Virgin Islands Code, and to that end we do, by this our certificate, set forth:

FIRST: The name of the corporation is

PLESSEN ENTERPRISES, INC.

SECOND: The purposes for which the corporation is formed are:

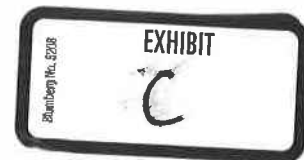
(a) To acquire by purchase or lease, or otherwise, lands and interests in lands, and to own, hold, improve, develop, and manage any real estate so acquired and to erect or cause to be erected on any lands owned, held, or occupied by the Corporation, buildings, or other structures with their appurtenances, to rebuild, enlarge, alter, or improve any buildings or other structures now or hereafter erected on any lands so owned, held, or occupied, and to mortgage, sell, lease or otherwise dispose of any lands or interests in lands and in buildings or other structures and any stores, shops, suites, rooms or parts of any buildings, or other structures at any time owned or held by the corporation;

(b) To build, erect, construct, lease, or otherwise acquire, manage, occupy, maintain, and operate buildings for hotel purposes, dwelling houses, apartment houses, office buildings, and business structures of all kinds for the accommodation of the public and of individuals, including shopping centers.

(c) To buy, sell, trade, manufacture, deal in and deal with goods, wares, utilities, including water, and merchandise of every kind and nature, and to carry on such business as manufacturers, wholesalers, retailers, importers, exporters, and as representatives of manufacturers and producers of such goods, wares and merchandise or of any agency of such manufacturers.

(d) To purchase or otherwise acquire, and to hold, mortgage, pledge, sell exchange or otherwise dispose of securities (which term for the purpose of this Article SECOND includes, without limitation of the generality thereof, any shares of stock, bonds, debentures, notes, mortgages or other obligations and any certificates, receipts or other instruments representing rights to receive, purchase or subscribe for the same, or representing any other rights or interests therein or in any property or assets) created or issued by any one or more persons, firms, associations, corporations or governments; to make payment therefor in any lawful manner; and to exercise as the owner or holder of any securities any and all rights, powers and privileges in respect thereof; and to make, enter into, perform and carry out contracts of every kind and description with any person, firm, association, corporation or government.

(e) To acquire by purchase, exchange or otherwise, all or any part of, or any interest in, the properties, assets, business and good will of any one or more persons, firms, associations, corporations or governments heretofore or hereafter engaged in any business for which a corporation may now or hereafter be organized under the laws of the Virgin Islands of the United States; to pay for the same in cash, property or its own or other securities; to hold, operate, reorganize, liquidate, sell or in any manner dispose of the whole or any part thereof; and in connection therewith, to assume or guarantee performance of any liabilities, obligation, or contracts of such persons, firms, associations, corporations, or governments, and to conduct the whole or any part of any business thus required.



02/17/2015

VERONICA HANDY, ESQUIRE
CLERK OF THE COURT

ARTICLES OF INCORPORATION
(Plesson Enterprises, Inc.)

- 3 -

The foregoing provisions of this Article SECOND shall be construed both as purposes and powers and each as independent purposes and powers. The foregoing enumeration of specific purposes and powers shall not be held to limit or restrict in any manner the purposes and powers of the corporation, and the purposes and powers herein specified shall, except when otherwise provided in this Article SECOND, be in no wise limited or restricted by reference to, or inference from, the terms of any provision of this or any other Article of these Articles of Incorporation; provided that nothing herein contained shall be construed as authorizing the corporation to carry on any business or exercise any power in the Virgin Islands, of the United States or in any country, state, territory, dependency, colony, or possession which under the laws thereof the corporation may not lawfully carry on or exercise.

THIRD: The total number of shares of capital stock which the corporation shall have authority to issue is ONE THOUSAND (1,000), having no par value, and all of a single class to be designated Common Stock.

FOURTH: The minimum amount of capital with which the corporation will commence business is ONE THOUSAND (\$1,000.00) DOLLARS.

FIFTH: The town and street address of the principal office or place of business of the corporation is: United Shopping Plaza, 4 C & D Estate Sion Farm, Christiansted, St. Croix, V.I.

SIXTH: The period for which the corporation shall exist is unlimited.

The Resident Agent of the corporation is: FATHI YUSUF, 92 A & B La Grande Princessa, Christiansted, St. Croix, V.I.

SEVENTH: The By-Laws of the corporation shall set the number of directors thereof, which shall not be less than three.

EIGHTH: The names and addresses of the first Board of Directors of this corporation who shall hold office until their successors are elected and qualified shall be:

<u>NAME</u>	<u>ADDRESS</u>
MOHAMAD HAMED	6-H Carlton Garden P.O. Box 2926 F'sted, St. Croix U.S. Virgin Islands
WALBED HAMED	6-H Carlton Garden P.O. Box 2926 F'sted, St. Croix U.S. Virgin Islands
FATHI YUSUF	92 A & B La Grande Princessa C'sted St. Croix U.S. Virgin Islands

NINTH: The names of each of the officers of this corporation who shall hold office until their successors are elected shall be:

<u>NAME</u>	<u>OFFICE</u>
MOHAMAD HAMED	President
WALBED HAMED	Vice-President
FATHI YUSUF	Secretary - Treasurer



02/17/2015

VERONICA HANDY, ESQUIRE
CLERK OF THE COURTARTICLES OF INCORPORATION
(Plesson Enterprises, Inc.)

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(v) To set apart out of the funds of the corporation available for dividends a reserve or reserves for any proper purpose and to abolish or reduce the amount of any such reserve in the manner in which it was created.

(vi) To fix from time to time the amount of earnings of the corporation to be reserved as working capital or for any other lawful purpose.

(vii) To establish and amend pension, bonus, profit-sharing or other types of incentive or compensation plans for the employees (including officers and directors) of the corporation and to fix the amount of funds legally available therefor and to determine, or establish procedures for determining, the persons to participate in any such plans and the amounts of their respective participations.

(o) In addition to the powers and authorities hereinbefore or by statute expressly conferred upon it, the Board of Directors may exercise all such powers and do all such acts and things as may be exercised or done by the corporation, subject, nevertheless, to the provisions of the laws of the Virgin Islands of the United States, of the Articles of Incorporation, and of the By-Laws of the corporation.

(d) Any director or any officer elected or appointed by the stockholders or by the Board of Directors may be removed at any time in such manner as shall be provided in the By-Laws of the corporation.

(e) No contract or other transaction between the corporation and any other corporation and no other act of the corporation shall, in the absence of fraud, in any way be affected or invalidated by the fact that any of the directors of the corporation are pecuniarily or otherwise interested in, or are director or officers of, such other corporation. Any directors of the corporation individually or any firm or association of which any director may be member, may be a party to, or may be pecuniarily or otherwise interested in, any contract or transaction of the corporation, provided that the fact that he individually or such firm or association is so interested shall be disclosed or shall have been known to the Board of Directors or a majority of such members thereof as shall be present at any meeting of the Board of Directors at which action upon such contract or transaction shall be taken. Any director of the corporation who is also a director or officer of such other corporation or who is so interested may be counted in determining the existence of a quorum at any meeting of the Board of Directors which shall authorize any such contract or transaction, and may vote thereat to authorize any such contract or transaction, with like force and effect as if he were not such director or officer of such other corporation or not so interested. Any director of the corporation may vote upon any contract or other transaction between the corporation and any parent, subsidiary or affiliated corporation without regard to the fact that he is also a director of such parent, subsidiary or affiliated corporation.

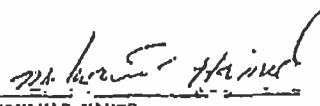
(f) Any contract, transaction or act of the corporation or of the directors which shall be ratified by a majority of a quorum of the stockholders of the corporation at any annual meeting or at any special meeting called for such purpose, shall, insofar as permitted by law, be as valid and as binding as though ratified by every stockholder of the corporation, provided, however, that any failure of the stockholders to approve or ratify any such contract, transaction or act, when and if submitted, shall not be deemed in any way to invalidate the same or deprive the corporation, its directors officers or employees, of its or their right to proceed with such contract, transaction or act.

(g) Subject to any limitation in the By-Laws, the members of the Board of Directors shall be entitled to reasonable fees, salaries or other compensation for their services and to reimbursement for their expenses as such members. Nothing contained herein shall preclude any director from serving the corporation, or any subsidiary or affiliated corporation, in any other capacity and receiving proper compensation therefor.

ARTICLES OF INCORPORATION
(Plessen Enterprises, Inc.)

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IN WITNESS WHEREOF, we, the undersigned, being all of the incorporators hereinbefore named, for the purposes aforesaid, have signed, sealed and acknowledged these Articles of Incorporation in triplicate, hereby declaring, and certifying that the facts therein stated are true, this 26 day of December, 1988.


MOHAMAD HAMED


HAMEED HAMED

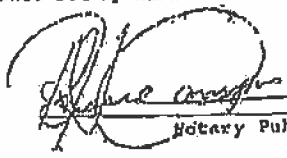

FATHI YUSUF

ACKNOWLEDGEMENT

TERRITORY OF THE VIRGIN ISLANDS)
DIVISION OF ST. CROIX) SS:

On this 26th day of December, 1988 before me personally came and appeared MOHAMAD HAMED, HAMEED HAMED, AND FATHI YUSUF, to me known and known to me to be the persons whose names are subscribed to the foregoing Articles of Incorporation, and they did severally acknowledge that they signed, sealed and delivered the same as their voluntary act and deed, for the purposes therein stated, and that the fact therein are truly set forth.

IN WITNESS WHEREOF, I hereunto set my hand and official seal.


Notary Public

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

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

Plaintiff/Counterclaim Defendant,)

vs.)

FATHI YUSUF and UNITED CORPORATION,)

Defendants/Counterclaimants,)

vs.)

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

Additional Counterclaim Defendants.)

CIVIL NO. SX-12-CV-370

ACTION FOR DAMAGES,
INJUNCTIVE RELIEF
AND DECLARATORY RELIEF

JURY TRIAL DEMANDED

**FATHI YUSUF'S BRIEF IN SUPPORT OF MOTION TO NULLIFY PLESSEN
ENTERPRISES, INC.'S BOARD RESOLUTIONS, TO VOID ACTS TAKEN PURSUANT
TO THOSE RESOLUTIONS, AND TO APPOINT RECEIVER**

INTRODUCTION

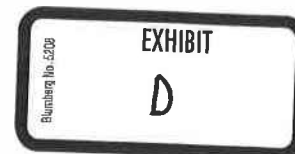
Additional counterclaim defendant Plessen Enterprises, Inc. ("Plessen") is a VI corporation formed in 1988 and is owned 50/50 between the families of Mohammed Hamed ("Hamed") and Fathi Yusuf ("Yusuf") that are at the center of this litigation. (See Hamed's First Amended Complaint, ¶ 20(c); Yusuf's First Amended Counterclaim, ¶ 11, 115-117). Plessen owns, inter alia, the land on which the Plaza Extra - West¹ store is situated, and has other significant real estate holdings in St. Croix and St. Thomas. (Id.). Yusuf alleged in his counterclaim that "[b]ecause the equity of Plessen is owed equally by the Hamed and Yusuf

¹As the Court knows from prior briefs in this case, there are three Plaza Extra stores in the Virgin Islands. The two located in St. Croix are known, respectively, as Plaza Extra - East and Plaza Extra - West.

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AND FEUERZEIG, LLP**
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VERONICA HANDY, ESQUIRE
CLERK OF THE COURT

Hamed v. Yusuf, et al.
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among other things, ratify a past misappropriation of \$460,000 of Plessen monies by Waleed, and to approve a lease of the Plaza Extra - West store, which is located on Plessen land, to a company owned in part by Waleed, both instances of self-dealing. The lessee company, KAC357, Inc. (the "New Hamed Company") was incorporated on April 22, 2014 and is wholly owned by Hamed family members – Waleed and two of his brothers. As discussed in more detail below, under the law applicable to this case, these interested director approvals cannot stand, and the approvals and any actions taken pursuant to them must be nullified and voided. Moreover, the very fact that Hamed and Waleed attempted such brazen acts of self-dealing establishes the hopeless deadlock amongst the shareholders of Plessen and evidences the need for the appointment of a Receiver to dissolve Plessen, liquidate its assets, and divide the net proceeds between the Hameds and Yusufs.

STATEMENT OF FACTS

A. Unauthorized Board Meeting Called by Hamed to Ratify His and his Son's Misdeeds.

On Monday, April 28, 2014, at approximately 4 p.m., a document entitled Notice of Special Meeting of Board of Directors of Plessen Enterprises, Inc. (the "Notice") was hand delivered to Yusuf, a director, shareholder and secretary of the Board of Directors, announcing an intent to hold such a meeting on April 30, at 10:00 a.m. at the Plaza Extra - East store in St. Croix. (See Exhibit A, Notice of Special Meeting of Board of Directors of Plessen (without the unsigned lease that was attached to the Notice)). The Notice was issued by Hamed, who is one of the directors of Plessen, instead of by Yusuf in his capacity as Secretary of the Board, as the Bylaws require (in sections 3.4 and 7.2 thereof). The fact that the Notice was served on Yusuf on one business day's notice was an obvious attempt to avoid judicial scrutiny of an action that,

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B. Yusuf's Formal Response to the Notice Pointing Out its Procedural and Substantive Infirmities.

The very next day, on April 29, 2014, Yusuf, as Secretary of Plessen, issued a Response to Request for Special Meeting of Board of Directors, which pointed out the deficiencies with the Notice, and explained why a Special Meeting of the Board was improper and should not take place. (See Exhibit B –Response to Notice of Board Meeting.) Yusuf's Response explained that the Notice was procedurally defective as it was not issued by him as the Secretary, the only party authorized to provide notice of such meetings. (See Exhibit C, Plessen Bylaws, ¶¶ 3.4 and 7.2.B). Further, the Notice was not served upon Maher ("Mike") Yusuf,³ who also was a director of Plessen.⁴ The Response also explained that the five items on the agenda were "prejudicial to the [Yusuf family] shareholders and a subterfuge to accomplish through invalid Board of Directors action approval of items . . . that should more properly be submitted to a Special Meeting of the Shareholders of the Corporation, if at all." (Exhibit B).

³See Kings Wharf Island Enterprises, Inc. v. Rehlaender, 34 V.I. 23, 30-31 (V.I. Terr. Ct. 1996) (failure to notify minority shareholder of shareholder meeting was fatally defective to actions taken at meeting, and because resolutions did not germinate from a properly notified meeting, they are null and void).

⁴The parties agree that Hamed, Waleed, and Yusuf are directors of Plessen. Although Waleed and Hamed dispute Mike's position as a director, there is ample evidence to the contrary. Mike is reflected as a director of Plessen by the Department of Licensing and Consumer Affairs. See Exhibit D – Printout from February 14, 2013 List of Corporate Officers for Plessen, also attached as Exhibit C to the Complaint in the Derivative Action. Further, the records from Scotiabank, which demonstrate who is authorized to sign on Plessen's account, show Mike as a "Director/Authorized Signatory" and his signature is listed next to Waleed's, who is likewise listed as a "Director/Authorized Signatory". See Exhibit E – Scotiabank Records Regarding Authorized Signatory. The Court need not, however, resolve the issue of whether Mike is a director in order to grant the relief sought by Yusuf in this motion. Even assuming arguendo that the only directors of Plessen are the two Hameds and Yusuf, the transactions the Hamed family sought to have ratified at the Board meeting should be rendered null and void for the reasons discussed below.

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C. The Board's Retention of Jeffrey Moorhead Violates the Bylaws and Should be Rescinded.

As noted above at footnote 5, Attorney Moorhead was given and negotiated a \$20,000 retainer check drawn on Plessen's bank account before he was even purportedly authorized to be engaged by Plessen at the April 30 Board Meeting. This shows a complete disregard for even the appearance of compliance with the norms and requirements of corporate governance by both Attorney Moorhead and the Hameds. Moreover, since there was absolutely no discussion at the sham meeting regarding any of the proposed resolutions, Yusuf has no clue what qualifications Moorhead has to serve as counsel for Plessen, what the terms of his proposed engagement are, whether other candidates were considered, and what conflicts, if any, Moorhead may have. The Bylaws of Plessen provide that the Board of Directors may appoint a General Counsel who is "to have dominion over all matters of legal import concerning the Corporation." Exhibit C, Plessen Bylaws, ¶ 7.3. The retention of Attorney Moorhead flies in the face of that Bylaw.

Suffice it to say that Attorney Moorhead has never bothered to contact Yusuf or any member of his family to discuss his engagement or proposed course of action, which causes Yusuf to seriously doubt that Attorney Moorhead will be evenhanded in his representation of the corporation, or instead will act only to advance the interests of the Hamed shareholders, at the expense of the Yusuf shareholders. See Exhibit K, ¶ 17. Since the Hameds selected Attorney Moorhead in the face of the General Counsel Bylaw and without any input from Yusuf, and caused a retainer to be paid to him even before they voted to approve his retention, the resolution approving his retention, besides running afoul of the Bylaws, is an interested director act that is presumptively voidable. The Hameds did not even attempt to show at the board meeting – and cannot show – that the Moorhead resolution is intrinsically fair to Plessen, and Attorney

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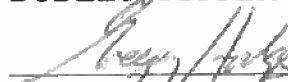
VERONICA HANDY, ESQUIRE
CLERK OF THE COURT

Hamed v. Yusuf, et al.
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Page 20

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Dated: May 19, 2014

By:


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CERTIFICATE OF SERVICE

I hereby certify that on this 19th day of May, 2014, I caused the foregoing **Fathi Yusuf's Brief In Support Of Motion To Nullify Plessen Enterprises, Inc.'s Board Resolutions, To Void Acts Taken Pursuant To Those Resolutions, And To Appoint Receiver** of to be served upon the following via e-mail:

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

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

FATHI YUSUF'S MOTION FOR RECONSIDERATION

INTRODUCTION

This Court denied Fathi Yusuf's ("Yusuf") Motion to Nullify Plessen Enterprises, Inc.'s Board Resolutions, to Void Acts Taken Pursuant to those Resolutions, and to Appoint Receiver (the "Motion") in its July 22, 2014 Opinion and Order (the "July 22 Opinion" or "Opinion"). A review of the Opinion reveals that the Court overlooked Yusuf's Reply Brief in Support of the Motion (the "Reply"), which was filed on June 16, 2014.¹ The Opinion begins by reciting the briefs that were presented to the Court in support of, or in opposition to, the Motion.² See July 22 Opinion at 1. That recitation mentions Yusuf's motion and supporting brief, and Mohammed

¹For the Court's convenience, a time-stamped copy of the Reply is attached as Exhibit A.

²Plessen Enterprises, Inc. will be referred to by the shorthand "Plessen" in this Motion for Reconsideration.

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CLERK OF THE COURT

The Plessen resolution retroactively approving as a dividend the uncontroverted \$460,000 misappropriation by Waleed Hamed is an absurd reach. How can a Board which approves an act of this kind possibly show itself to be acting legitimately and fulfilling its fiduciary duties to Plessen and the Yusuf shareholders? As for this Court's reluctance to face this straightforward issue, that would only be warranted if it would invade Judge Willocks's exclusive province for this Court to declare the obvious, which is that the resolution approving the \$460,000 taking of corporate monies by a director cannot be valid. But that is not the case. The instant lawsuit was filed well before the derivative action.⁷ Because of the indefensible nature of this resolution, the Board in Yusuf's view has forfeited its right to declare genuine dividends, and this Court should disable it from doing so. And Waleed by this malfeasance ought not to remain a director of Plessen.

With regard to the appointment of Jeffrey Moorhead as attorney in this litigation, the Court accepted Hamed's argument in his Opposition that the power in the bylaws to appoint a general counsel are irrelevant because Attorney Moorhead will not be serving as general counsel. Yusuf made it clear in his Reply that Hamed's argument misconstrued Yusuf's reliance on Plessen bylaw §7.3. What that bylaw means is that, if Plessen needs legal counsel in order to address legal matters that have arisen, its board shall appoint a General Counsel who would either represent the corporation in litigation himself or herself, or select another attorney to do so. Yusuf argued that the Board, by selecting a litigation counsel on its own, contravened that bylaw.

⁷Thus, if anything, because this case is the older of the two cases, the issue of whether the Board resolution should be nullified (which is hardly a close question) is one that should properly be decided by this Court. See, e.g., Pfizer, Inc. v. Mylan, Inc., 2009 U.S. Dist. LEXIS 124954, p. *4-5 (N.D. W. Va. 2009) (discussing fist to file rule in the context of two coordinate courts where same or similar issue is presented).

02/17/2015

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and

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CERTIFICATE OF SERVICE

I hereby certify that on this 5th day of August, 2014, I caused the foregoing **Motion for Reconsideration** to be served upon the following via e-mail:

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

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

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**MOTION TO APPOINT MASTER FOR JUDICIAL SUPERVISION OF PARTNERSHIP
WINDING UP OR, IN THE ALTERNATIVE, TO APPOINT RECEIVER TO WIND UP
PARTNERSHIP**

Defendants/counterclaimants Fathi Yusuf ("Yusuf") and United Corporation ("United") (collectively, the "Defendants"), respectfully move this Court to appoint a Master to supervise the winding up of the partnership at issue by Yusuf pursuant to the Plan submitted with the motion or appointing a Receiver to effect the wind up and provide such further relief as is just and proper under the circumstances. In support of this motion, the Court is respectfully referred to the accompanying memorandum and proposed order.

DUDLEY, TOPPER and FEUERZEIG, LLP

Dated: April 4, 2014


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EXHIBIT
2

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and

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Attorneys for Fathi Yusuf and United Corporation

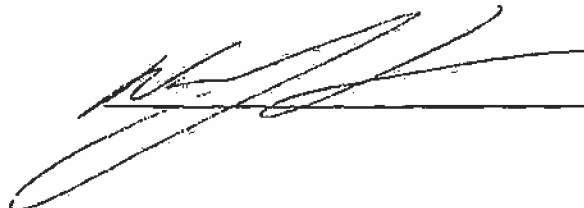
CERTIFICATE OF SERVICE

I hereby certify that on this 7th day of April, 2014, I caused the foregoing **MOTION TO APPOINT MASTER FOR JUDICIAL SUPERVISION OF PARTNERSHIP WINDING UP OR, IN THE ALTERNATIVE, TO APPOINT RECEIVER TO WIND UP PARTNERSHIP** to be served upon the following via e-mail:

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Mark W. Eckard, Esq.
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P.O. Box 24849
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**IN THE SUPERIOR COURT OF THE VIRGIN ISLANDS
DIVISION OF ST. CROIX**

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

Plaintiff/Counterclaim Defendant,

vs.

FATHI YUSUF and UNITED CORPORATION,

Defendants/Counterclaimants,

vs.

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

Additional Counterclaim Defendants.

CIVIL NO. SX-12-CV-370

ACTION FOR DAMAGES,
INJUNCTIVE RELIEF
AND DECLARATORY RELIEF

JURY TRIAL DEMANDED

ORDER

Upon consideration of the motion of defendants/counterclaimants Fathi Yusuf ("Yusuf") and United Corporation (collectively, the "Defendants") to appoint a Master for judicial supervision of partnership winding up or, alternatively, to appoint a Receiver to wind up the partnership, any oppositions thereto, and based on the record in this case, it is accordingly,

ORDERED that the Plan for the wind up of the Partnership submitted as Exhibit A to the memorandum in support of Yusuf's motion for the winding up of the partnership hereby is approved and the parties shall have thirty (30) days from the date of this Order to submit the name of the person to be appointed Master or, failing agreement, the person(s) each side proposes be appointed Master in this case to provide judicial supervision of the winding up of the partnership by Yusuf as Liquidating Partner.

Entered this _____ day of April, 2014.

Douglas A. Brady
Judge of the Superior Court

02/17/2015

VERONICA HANDY, ESQUIRE
CLERK OF THE COURT

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Page 2

ATTEST:

Estrella George
Acting Clerk of the Court

By: _____
Deputy Clerk

cc: **Nizar A. DeWood, Esq.**
Mark W. Eckard, Esq.
Carl J. Hartmann III, Esq.
Gregory H. Hodges, Esq.
Joel H. Holt, Esq.

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

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

**MEMORANDUM IN SUPPORT OF
MOTION TO APPOINT MASTER FOR JUDICIAL SUPERVISION
OF PARTNERSHIP WINDING UP OR,
IN THE ALTERNATIVE, TO APPOINT RECEIVER TO WIND UP PARTNERSHIP**

Defendants/counterclaimants Fathi Yusuf ("Yusuf") and United Corporation ("United") (collectively, the "Defendants"), respectfully submit this Memorandum in Support of their Motion To Appoint Master For Judicial Supervision Of Partnership Winding Up Or, In the Alternative, To Appoint Receiver To Wind Up Partnership (the "Motion").

FACTUAL AND PROCEDURAL BACKGROUND

1. On September 17, 2012, plaintiff/counterclaim defendant Mohammed Hamed ("Hamed" or "Plaintiff") filed his complaint in this matter. Hamed filed his first amended complaint ("FAC") on October 19, 2012. The FAC alleges, among other things, that Hamed and Yusuf formed a partnership to own and operate a supermarket business comprised of three supermarket stores located in Sion Farm, St. Croix, Estate Plessen, St. Croix, and Tutu Park, St.

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Thomas (collectively, the "Plaza Extra Stores"). See FAC at ¶¶ 9 and 12. The Plaza Extra Stores also maintained various operating and brokerage banking accounts. See FAC at ¶¶ 16 and 18.

2. On April 25, 2013, this Court issued its Memorandum Opinion and Order granting Plaintiff's Motion for a Preliminary Injunction. See Hamed v. Yusuf, 58 V.I. 117 (Super. Ct. 2013). The Virgin Islands Supreme Court affirmed the portion of this Court's Order granting Hamed's Motion for a Preliminary Injunction but vacated the portion of the Order allowing the use of funds held by the District Court to serve as security for an injunction bond and remanded the matter for reconsideration of the injunction bond. See Yusuf v. Hamed, 2013 V.I. Supreme LEXIS 67, * 43 (V.I. Sept. 30, 2013).

3. This Court has preliminarily found, among other things, that "[a]lthough Plaintiff retired from the day-to-day operation of the supermarket business in about 1996, Waleed Hamed has acted on his behalf pursuant to two powers of attorney from Plaintiff." See Hamed v. Yusuf, 58 V.I. at 126; see also Yusuf v. Hamed, 2013 V.I. Supreme LEXIS 67, * 2-3 ("In 1996, Hamed retired from his role in the operations from the business due to illness, giving a power of attorney and delegating his management responsibilities to one of his sons, Waleed Hamed."). However, this Court also found there to be questions of fact as to whether Waleed Hamed's authority was as a result of his acting as an agent for Hamed or simply as a result of his managerial position as an employee of United (e.g. whether Waleed's ability to sign checks "originate[d] from [Hamed's] 50% interest in the Partnership business or is...simply a feature of the managerial positions of [Hamed's] sons" and "did [Hamed's] sons become Plaza Extra Store managers, as agents of their father, pursuant to his assertion of his partnership rights of joint control, or were

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they hired as managerial employees because they were nephews of ...Yusuf's wife") See December 5, 2013 Order Denying Motion for Partial Summary Judgment, p. 6.

4. This Court also preliminarily found that "[o]n March 13, 2012, through counsel, Yusuf sent a Proposed Partnership Dissolution Agreement to Hamed, which described the history and context of the parties' relationship, including the formation of an oral partnership agreement to operate the supermarkets, by which they shared profits and losses." Hamed v. Yusuf, 58 V.I. at 126; see also Yusuf v. Hamed, 2013 V.I. Supreme LEXIS 67, * 4 ("A few months later, Yusuf informed Mohammad Hamed of his intention to end their business relationship, sending a proposed "Dissolution of Partnership" agreement to Hamed on March 12, 2012.").

5. In its April 25, 2013 Memorandum Opinion, this Court noted the following:

Neither party has sought and the Court has not considered the prospect of appointing a receiver or bringing in any other outsider to insure that the joint management and control of the partnership is maintained. Rather, notwithstanding the animosity that exists between the parties, they are left to work out issues of equal management and control themselves as they have done successfully over the years.

Hamed v. Yusuf, 58 V.I. at 136-137.

6. On December 23, 2013, Defendants filed their Answer and Counterclaim, which, among other things, denied the existence of the partnership as alleged in the FAC. Defendants filed a First Amended Counterclaim on January 13, 2014. Although Defendants denied the existence of any partnership as alleged in the FAC, they pled in the alternative in the event a partnership is nevertheless found to exist. See, e.g., First Amended Counterclaim at ¶ 12.

7. Given the animosity between the parties noted by this Court, Yusuf's complete lack of trust in Hamed, and Yusuf's unwillingness to continue to carry on any business

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relationship whatsoever with Hamed, Yusuf now concedes for the purposes of this case that he and Hamed entered into a partnership to carry on the business of the Plaza Extra Stores and to share equally the net profits from the operation of the Plaza Extra Stores.

ARGUMENT

I. THE PARTNERSHIP HAS BEEN DISSOLVED AND ITS BUSINESS MUST BE WOUND UP.

As provided in the Uniform Partnership Act, V.I. Code Ann. tit. 26, §§ 1-274

("UPA"):

A partnership is dissolved, and its business must be wound up, only upon the occurrence of the following events:

- (1) in a partnership at will, the partnership's having notice from a partner other than a partner who is dissociated under Section 121, subsections (2) through (10) of this chapter, of that partner's express will to withdraw as a partner, or on a later date specified by the partner[.]

UPA § 171(1).

Here, the partnership has either already been dissolved or is dissolved by virtue of this filing. Therefore, assuming *arguendo* that Hamed's retirement from the partnership in 1996 or counsel for Yusuf's March 12, 2012 notice of intent to end the partnership did not dissolve the partnership by operation of law, then clearly paragraph 7, above, sets forth Yusuf's "express will to withdraw as a partner," thus dissolving the partnership, if it had not already been dissolved.

Pursuant to UPA § 172(a):

Subject to subsection (b) of this section, a partnership continues after dissolution *only* for the purpose of winding up its business. The partnership is terminated when the winding up of its business is completed.

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(Emphasis added). Section 173 of the UPA provides, in pertinent part:

(a) After dissolution, a partner who has not wrongfully¹ dissociated may participate in winding up the partnership's business, but *on application of any partner*, the partner's legal representative, or transferee, the Superior Court, for good cause shown, *may order judicial supervision of the winding up*.

* * *

(c) A person winding up a partnership's business may preserve the partnership business or property as a going concern for a reasonable time, prosecute and defend actions and proceedings, whether civil, criminal, or administrative, settle and close the partnership's business, dispose of and transfer the partnership's property, discharge the partnership's liabilities, distribute the assets of the partnership pursuant to section 177 of this chapter, settle disputes by mediation or arbitration, and perform other necessary acts.

(Emphasis added).

A. Hamed Dissociated in 1996 and Could Not Transfer Management Rights.

Yusuf submits that Hamed effectively dissociated from and dissolved the partnership when he "retired from the day-to-day operations of the supermarket business in . . . 1996" and returned to his homeland of Jordan. While this Court and the Supreme Court have referenced the powers of attorney from Hamed to his son, Waleed Hamed, neither Hamed, this Court nor the Supreme Court have cited a single authority that allows a "retiring" partner to effectively assign or delegate his role as partner to his son or any other person.²

Section 2(9) of the UPA provides: "partner's interest in the partnership" means all of a partner's interests in the partnership, including the partner's transferable interest and all

¹ A partner's dissociation is wrongful only if one of the conditions set forth in UPA § 122(b) applies. Defendants submit that these provisions are inapplicable to the circumstances of this case.

² This Court has noted previously that Waleed Hamed has taken a contradictory position in the Plea Agreement in the pending criminal action claiming to be merely an employee of United as opposed to one able to exercise concurrent control. See December 5, 2013 Order Denying Motion for Partial Summary Judgment, p. 6.

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management and other rights.” Section 92 of the UPA makes it clear that a partner’s management rights are not transferable: “The only transferable interest of a partner in a partnership is the partner’s share of the profits and losses of the partnership and the partner’s right to receive distributions. The interest is personal property.”³

If Hamed’s retirement in 1996 or Yusuf’s notice of his intention to end their business relationship in March of 2012 did not effect a dissolution, clearly, Yusuf’s position set forth in paragraph 7, above, qualifies as notice of his “express will to withdraw as a partner.” See UPA § 121(1).

B. Partnerships Require At Least Two Partners.

Hamed appears to be laboring under the mistaken belief that “Yusuf’s partnership interest should be disassociated [sic] from the business, allowing Hamed to continue the Partnership’s business without him pursuant to the provisions of 26 V.I.C. including §§ 122-123, 130 and what is now Subchapter VII of Title 26.” See FAC at ¶ 42. Under the UPA, the term “partnership” means an association of *two or more* persons to carry on as co-owners a business for profit formed under section 22 of this chapter, predecessor law, or comparable law of another jurisdiction.” UPA, § 2(6)(emphasis supplied). See also UPA § 22(a). As this Court has noted, “[i]n the mid-1980s when the Hamad-Yusuf business relationship began, a Virgin Islands partnership was defined as ‘an association of two or more persons to carry on as co-owners a business for profit.’ V.I. Code Ann. tit. 26, § 21(a) (predecessor statute). Hamed v. Yusuf, 58 V.I. at 130.

³ Section 92 of the UPA is identical to § 502 of the Uniform Partnership Act (1997). One of the comments to § 502 states: “A partner has other interests in the partnership that may not be transferred, such as the right to participate in the management of the business. Those rights are included in the broader concept of a “partner’s interest in the partnership.”

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Hamed, like the parties in Corrales v. Corrales, 198 Cal. App. 4th 221, 129 Cal. Rptr. 3d 428, 2011 Cal. App. LEXIS 1043 (August 10, 2011), incorrectly assumes the business of a two person partnership can be continued by one partner. As the Court in Corrales cogently concluded after considering California's partnership statutes, which are analogous to the Virgin Islands' UPA, when it comes to a one-partner partnership:

[N]o such animal exists. If a partnership consists of only two persons, the partnership dissolves by operation of law when one of them departs.

Id. at 224.

The Corrales court went on to explain that:

When Richard withdrew from RCE, the partnership dissolved by operation of law; by definition, a partnership must consist of at least two persons. A person cannot dissociate from a dissolved partnership, and the buyout rule of section 16701 does not apply to a two-person partnership when one partner leaves. When that happens, the dissolution procedures take over. The partnership is wound up, its business is completed, and the partners make whatever adjustments are necessary to their own accounts after paying the creditors.

Id. at 227 (citations and footnotes omitted).

Finally, the Corrales court pointed out that "[t]he purpose of dissociation is to allow the partnership to continue with the remaining partners. When a partner withdraws from a two-person partnership, however, the business cannot continue as before. One person cannot carry on a business as a partnership." Id.

Accordingly, the partnership that once existed between Hamed and Yusuf has clearly been dissolved (whether in 1996, 2012 or now) and the only thing that remains to be done is to wind up the partnership business.

II. A MASTER SHOULD BE APPOINTED TO SUPERVISE THE WINDING UP.

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Yusuf requests the appointment of a Master in this case to provide judicial supervision to the wind up efforts. Pursuant to Fed. R. Civ. Pro. 53(a), made applicable to proceedings in this Court by Super. Ct. R. 7, a court may appoint a Master⁴ to assist with certain matters including situations where there is a “need to perform an accounting or resolve a difficult computation of damages” or to “address pretrial...matters that cannot be effectively and timely addressed by an available...judge.” As set forth above, §173 of the UPA provides, that a partner “may participate in winding up the partnership’s business” and “on application...for good cause shown” seek “judicial supervision of the winding up.”

By admission of Hamed, Yusuf has made all of the business decisions relating to the Plaza Extra Stores from their inception. Hamed testified at the preliminary injunction hearing that “Mr. Yusuf be in charge of everybody...[in] all the three stores.” See Jan. 25, 2013 Hrg. Tr. 201:4; 210:22-23. Hamed confirmed that Yusuf was the partner who possessed the ultimate decision making authority with respect to the Plaza Extra Stores at his deposition on April 1, 2014. Further, Hamed has not been in the Plaza Extra Stores in his capacity as a partner since his retirement in 1996 and has not been involved in the daily operations in over eighteen (18) years. Although Hamed may be incapable of meaningful participation in the winding up due to, among other things, his lack of working knowledge of the operations of the Plaza Extra Stores and perhaps his poor health, Yusuf has no objection to Hamed’s personal participation in the winding up. Yusuf does, however, object to Hamed’s delegation of his rights and obligations as a partner in the winding up of the partnership to his son or any other person. Given the

⁴ Hamed should not be heard to complain about the appointment of a Master since he requested this relief in the first sentence of his prayer for relief. See FAC at p. 15 (“Wherefore, the Plaintiff seeks the following relief from this Court as follows: 1) A full and complete accounting to be conducted by a court-appointed Master . . .”).

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animosity between the parties and the concern that any proposals or decisions made by Yusuf in winding up the partnership will be constantly challenged, Yusuf seeks judicial supervision by a Court appointed master of the winding up to insure an orderly process.

To that end, Yusuf submits a proposed plan for winding up of the partnership (the "Plan"). See Exhibit A. Consistent with the powers set forth in §173(c) of the UPA for "a person winding up a partnership's business," the Plan seeks to:

preserve the partnership business or property as a going concern for a reasonable time, prosecute and defend actions and proceedings, whether civil, criminal, or administrative, settle and close the partnership's business, dispose of and transfer the partnership's property, discharge the partnership's liabilities, distribute the assets of the partnership pursuant to section 177 of this chapter, settle disputes by mediation or arbitration, and perform other necessary acts.

The Plan sets forth the partnership assets and liabilities, how the assets will be disposed and the liabilities satisfied, and the anticipated time-frame for winding up the partnership. Further, the Plan provides that all monies recovered shall be placed in an escrow account to be utilized for the payment of any partnership debts and, thereafter, for distribution following presentation to the Master of an accounting and proposed distribution by the partners.

If the Court concurs that a Master should be appointed and the parties are unable to agree on the person(s) to be appointed Master, Defendants request an opportunity to submit proposed candidates for the Court's consideration, along with a brief addressing the Master's proposed duties and compensation.

III. AS AN ALTERNATIVE TO JUDICIAL SUPERVISION OF WINDING UP, YUSUF REQUESTS THE COURT TO APPOINT A DISINTERESTED, THIRD-PARTY AS RECEIVER TO WIND UP THE PARTNERSHIP'S BUSINESS.

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In the event that this Court is not inclined to appoint a Master to supervise the winding up of the partnership pursuant to the Plan, then Yusuf respectfully requests the Court to appoint a disinterested, third-party receiver to undertake the winding up. Although the UPA does not specifically provide for the appointment of a receiver, §173(a) clearly contemplates that the “Superior Court, for good cause shown, may order judicial supervision of the winding up.” While Yusuf is prepared to participate in the winding up as contemplated under UPA §173, given the animosity between the parties and the constant conflicts arising from that animosity, Yusuf submits that a disinterested, third-party receiver serving as an officer of this Court should be appointed to effectuate the winding up.

Pursuant to Fed. R. Civ. P. 66 and local case law, receivership is generally considered to be a drastic remedy resorted to only in extreme circumstances. See, e.g., Busenburg v. Dowd, 1980 U.S. Dist. LEXIS 15244, * 2-3 (D.V.I. Dec. 9, 1980). In this case, however, UPA § 173(a) only requires “good cause” to be shown for judicial supervision of the winding up. Yusuf respectfully submits that he has established good cause for the appointment of a receiver and that a receiver, rather than the Court itself, can more practically provide the judicial supervision contemplated by §173(a). If the Court is inclined to appoint a third-party receiver, Yusuf respectfully submits that the Plan provides an appropriate “road map” for the receiver to wind up the partnership as contemplated by §173(c). If the Court is so inclined to appoint a third-party receiver, Defendants request the opportunity to submit proposed candidates for the Court’s consideration along with a brief addressing the receiver’s proposed powers and compensation.

CONCLUSION

For all of the foregoing reasons, Defendants respectfully request this Court to enter an order granting Defendants’ Motion by either appointing a Master to supervise the winding up of

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the partnership pursuant to the Plan or appointing a Receiver to effect the wind up and requiring the parties to promptly submit proposed Receiver candidates for the Court to consider along with a brief addressing the Receiver's proposed powers and compensation, and providing such further relief as is just and proper under the circumstances.

DUDLEY, TOPPER and FEUERZEIG, LLP

Dated: April 7, 2014

By: 

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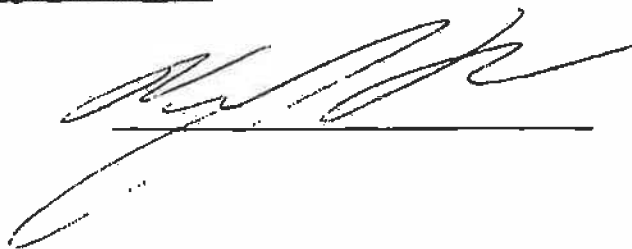
CERTIFICATE OF SERVICE

I hereby certify that on this 7th day of April, 2014, I caused the foregoing **MEMORANDUM IN SUPPORT OF MOTION TO APPOINT MASTER FOR JUDICIAL SUPERVISION OF PARTNERSHIP WINDING UP OR, IN THE ALTERNATIVE, TO APPOINT RECEIVER TO WIND UP PARTNERSHIP** to be served upon the following via e-mail:

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A handwritten signature in black ink, appearing to read 'Mark W. Eckard', is written over a horizontal line. The signature is fluid and cursive.

FILED

02/17/2015

VERONICA HANDY, ESQUIRE
CLERK OF THE COURT

14 APR -7 P5 01

SUPERIOR COURT
OF THE VIRGIN ISLANDS

EXHIBIT A

**PLAZA EXTRA SUPERMARKETS
PLAN FOR
WINDING UP PARTNERSHIP**

This Plan provides for the winding up of the Partnership, as defined below. This is a liquidating 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 Civil No. SX-12-CV-370 pending in the Court.

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

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

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 business days following entry of an Order by the Court approving this Plan.

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 accounts 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 "Liquidation 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 of action that have been or may be commenced by the Partnership or the Liquidating Partner including, without limitation, any action:

- (i) to avoid and recover any transfers of property determined to be avoidable pursuant to VI. 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 the person or firm 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 Plan For Winding Up 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 Zion 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 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 Sons" means Maher Yusuf, Nejah Yusuf, and Yusuf Yusuf.

Section 2. APPOINTMENT OF MASTER

A Master shall be appointed 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 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.

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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 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 Liquidation 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.

Section 8. PLAN OF LIQUIDATION AND WINDING UP

A. Sale of Plaza Extra Stores as Going Concern vs. Liquidation.

The Plaza Extra Stores cannot be sold as a going concern because of the absence of commercial leases for Plaza Extra – East and Plaza Extra – West and the existence of only a short term (less than 5 years) remaining on the lease between United and Tutu Park Mall, Ltd. for Plaza Extra – Tutu Park. Hence, liquidation of the Plaza Extra Stores is warranted.

B. Liquidation Process

The liquidation process will include the sale of all non-liquid Partnership Assets, payment of outstanding Debts, and deposit of all net Liquidation Proceeds into the Claims Reserve Account under the control of the Master.

1. Current Financial Profile of Partnership.

The Partnership Assets and Debts are reflected on the balance sheet for the Plaza Extra Stores attached as Exhibit B.

2. Estimated Time for Liquidation

The liquidation process is estimated to take six months to complete.

3. Steps to Be Taken for the Orderly Liquidation of the Partnership

STEP 1: Budget for Wind Up Efforts

The Liquidating Partner proposes the Wind Up Budget, attached as Exhibit A for the Wind Up Expenses. Such expenses include, but are not limited to, those incurred in the liquidation process, costs for continued operations of the Plaza Extra Stores during the wind up, costs for the professional services of the Master, costs relating to pending litigation in which United d/b/a Plaza Extra Store is named as a party, and the rent to be paid to the landlord 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) - 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 - shall be deposited in the Liquidating Expenses Account to be held in trust by the Liquidating Partner under the supervision of the Master. The Liquidating Partner shall

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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 Liquidating Expenses Account.

STEP 3: Termination of Employees

The Liquidating Partner shall comply with the provisions of the Virgin Islands Plant Closing Act, Title 24, V.I. Code §§471-478 (the "PCA") for all affected employees of the Plaza Extra Stores as a result of the winding up and closure of the Partnership business. The 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: Sale of Inventory and Equipment

The Liquidating Partner shall promptly sell the inventory and equipment located at the Plaza Extra Stores as follows:

1. **Current Inventory on the Shelves:** The current inventory on the shelves will be sold in the ordinary course.
2. **Inventory Orders Already Placed but Not Received:** To the extent that the Partnership has already committed to certain orders for inventory, which have not been received, the Liquidating Partner will undertake efforts to cancel said orders, if possible, and/or assign or sell the orders to other local businesses in a manner which is the most cost effective.
3. **Sale of Equipment (non-fixtures):** Upon conclusion of the sale of inventory, the Liquidating Partner shall promptly sell any movable equipment included in Partnership Assets in a commercially reasonable manner.
4. **Time Estimated for Sale of Inventory and Equipment:** It is anticipated that the sale of the inventory and equipment can be accomplished within 120 days.

STEP 5: Lease Termination of Plaza Extra – Tutu Park

At present, Plaza Extra – Tutu Park is subject to a commercial lease between United and Tutu Park Mall, Ltd. with a remaining term of 30 months (the "Tutu Park Lease"). Under the Tutu Park Lease, the rent obligations through the remaining term of the lease equal \$900,000.00 plus taxes and pro rata common area expenses. The Liquidating Partner will negotiate with the landlord for appropriate termination of the Tutu Park Lease with the Claims Reserve Account to be charged to satisfy any Debt arising out of such termination, if any.

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CLERK OF THE COURT**STEP 6: Litigation Against Tutu Park Mall, Ltd.**

At present, Plaza Extra-Tutu Park has claims against Tutu Park Mall, Ltd. pending in the Superior Court of St. Thomas/St. John, to wit:

United Corporation d/b/a/ Plaza Extra v. Tutu Park Limited and P.I.D. Inc.,
Superior Court of the Virgin Islands, Division of St. Thomas and St. John,
Civil No. 361/2001 (hereinafter the "Tutu Park Litigation").

Upon approval of the Plan by the Court, the Liquidating Partner will seek to negotiate the termination of the Tutu Park Lease in exchange (in whole or in part) for dismissal of the Tutu Park Litigation. Any liability occurring to United or the Partnership arising from the dismissal of the Tutu Park Litigation or the Tutu Park Lease shall be charged against the Claims Reserve Account.

STEP 7: Other Pending Litigation

The pending litigation against United set forth in Exhibit C arises out of the operation of the Plaza Extra Stores. As a 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 insurance shall be charged against the Claims Reserve Account.

STEP 8: Distribution Plans

Upon conclusion of the Liquidation Process, the funds remaining in the Liquidating 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 Claims Reserve Account. Thereafter, the Master shall make a report and recommendation of distribution to the Court for its final determination.

STEP 9: Additional Measures to Be Taken

The Liquidating Partner anticipates the following additional measures to finalize the winding up of the Partnership and liquidation efforts.

1. Should the funds deposited into the Liquidating Expense 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 sole discretion.
2. All funds realized from the sale of the Inventory and non-cash Partnership Assets shall be deposited into the Claims Reserve Account under the exclusive control of the Master.

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3. **All bank accounts utilized in the operation of the Partnership business shall be consolidated into the Claims Reserve Account.**
4. **All brokerage and investment accounts set forth in Exhibit D attached hereto shall be turned over to the Master as a part of the Claims Reserve Account.**
5. **Any Partnership Asset remaining after completion of the Liquidation Process shall be donated to charity or otherwise lawfully discarded.**

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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, INC.,)
)
Counterclaim Defendants.)

CIVIL NO. SX-12-CV-370

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

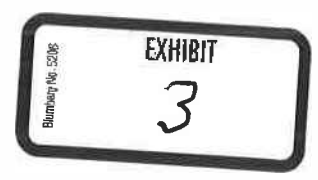
JURY TRIAL DEMANDED

**PLAINTIFF'S RESPONSE TO DEFENDANTS' MOTION TO APPOINT MASTER
FOR JUDICIAL SUPERVISION OF PARTNERSHIP WINDING UP OR, IN THE
ALTERNATIVE TO APPOINT RECEIVER TO WIND UP PARTNERSHIP**

On April 7th Defendants moved for the appointment of a Master to supervise the winding up of the Plaza Extra Supermarket Partnership¹—a Partnership that Fathi Yusuf and United now both concede does exist despite 20 months of protracted litigation contesting this precise point. This concession confirms, among other things, that the three Plaza Extra Supermarkets are Partnership assets as are the funds in all bank accounts, including the Popular Securities account.² This concession, however, was

¹ Defendants' motion concedes almost all of Plaintiff's First Amended Complaint, including the request for a Master at p.15.

² Indeed, Yusuf concedes that other assets in United's name (like the St. Thomas lease, the Plaza Extra name and claims against third parties) as well as certain liabilities (like the lawsuits against it arising out of the supermarket operations) are actually Partnership assets and liabilities.



not done out of altruism, but for spite, as discussed herein.

I. Dissolution of the Partnership is a non-issue.

Having finally conceded that a Partnership exists, Defendants then have Fathi Yusuf attempt to give notice that he is dissolving the partnership pursuant to 26 V.I.C. § 173(a). This attempt overlooks one critical issue raised in the First Amended Complaint—that Fathi Yusuf should be dissociated from the Partnership pursuant to 26 V.I.C. § 121(5). Clearly an election by a partner under § 173(a) to dissolve a partnership is only available to a partner who is not wrongfully disassociated from the partnership.³ Recognizing the weakness of their "new" position, Defendants argue in the alternative that the Partnership was dissolved in 1996 or in March of 2012, which points were both rejected in this Court's April 25th Preliminary Injunction Memorandum as well as by the Supreme Court.

However, the infirmities of Yusuf's attempted notice of dissolution are now moot, as Mohammad Hamed likewise has given notice that he is dissolving the partnership. See **Exhibit 1**. Thus, the lengthy legal argument raised in Defendants' memorandum as to Yusuf's alleged "right" to dissolve the partnership needs no response. As dissolution is the stated preference of both partners all of these arguments are now moot.

³ While Defendants may argue that Yusuf has not yet been dissociated from the Partnership yet, that is only because this issue has not been determined. Thus, any such motion by him would be premature. Clearly the intent of the statute allowing dissociation would be thwarted if a partner who engages in wrongful acts warranting dissociation could simply avoid liability by giving a belated notice of dissolution at the eleventh hour. Indeed, 26 V.I.C. § 175(a) prohibits such a partner from even proposing a dissolution plan.

II. Yusuf's dissolution Plan is fatally flawed.

Having lost this case by conceding Plaintiff's Partnership claim, Yusuf now proposes a dissolution plan which is both deeply flawed and strongly contested—it should be summarily rejected by this Court for the reasons noted herein. It would result in (1) the lay-offs of 600 employees on St. Croix and St. Thomas, (2) the closure of three major supermarkets needed in the Virgin Islands to insure fair competition to protect the public and (3) the entirely *inexplicable* wasting of valuable partnership assets that need not occur. It would also hurt the economy of the Virgin Islands (such as suppliers, service vendors and advertisers) and deprive the Government of much needed tax revenues (from almost \$100 million in sales that the Partnership currently generates) -- in excess of \$3 million annually in income taxes and \$5 million in gross receipts taxes.

Moreover, Yusuf's plan is even more flawed in attempting to make him the "Liquidating Partner" – for two reasons. First, pursuant to 26 V.I.C. § 74(b)(2), a partner cannot participate in the winding up of the partnership if the partner "has an interest adverse to the partnership." In this regard, Yusuf has a significant interest in United Corporation that has asserted a highly inflated claim for rent (in excess of \$6 million) from the Partnership for the Plaza East store in Sion Farm where United is the landlord. Thus, pursuant to §74(b)(2), he cannot participate in the winding up of the business, as he has an interest that is adverse to the Partnership.⁴

⁴ Indeed, the plan submitted by Yusuf notes that United has a claim for rent that is excess of what the Partnership has agreed to pay and *will* be pursued. Clearly it is a conflict for Yusuf to be the Liquidating Partner in light of this inflated, multi-million dollar claim that the Liquidating Partner and Master must resolve under Title 26.

Second, while § 74 (b)(2) is dispositive, a partner who is subject to dissociation is also prohibited from being involved in the winding up of the partnership pursuant to 26 V.I.C. § 173(a).⁵

In short, Yusuf's punitive plan, which is really nothing more than a return to his Pre-Preliminary Injunction threat to punitively "shut down all of the stores" out of sheer spite if he does not get his way--regardless of the loss of partnership value—is flawed and must be rejected.

I. Hamed's Dissolution Plan

Hamed's dissolution plan, attached as **Exhibit 2**, is far more commercially reasonable and practical. It will result in (1) the continued employment of most if not all of the 600 employees of the three Plaza Extra Stores (avoiding possible legal actions and costs), (2) the continued operation of at least two if not three of the stores and (3) the *maximizing of the value of the partnership assets*. Hamed's plan also resolves the problem of Yusuf trying to be the "Liquidating Partner."

Indeed, except for these three highly desirable changes, Hamad's plan is consistent with the plan proffered by Yusuf, as noted in the redlined comparison of the two plans attached as **Exhibit 3**. That comparison further demonstrates that Yusuf's

⁵ Aside from unilaterally withdrawing \$2.7 million from the partnership, Yusuf has denied the existence of the partnership and tried to convert all of its assets throughout this litigation. Consistent with this denial, he filed improper tax returns in 2013 claiming the partnership income as the income of his corporation (United Corporation), he wrongfully paid his attorneys out of partnership funds and he attempted to extort exorbitant rent from the partnership at the Sion Farm location with the threat of closing everything down, among other things. Indeed, he clearly does not have the public, partnership employees or maximizing Partnership value on dissolution in mind in seeking to shut all three stores, which is unnecessary to achieve his goals. Such an obsessively controlling and spiteful person should not be allowed to assume the role of being the Liquidating Partner.

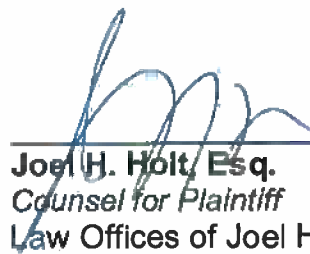
reckless mindset need not be followed while still giving him exactly what he wants—
dissolution. **In fact, Yusuf will receive more far more under Hamed's plan than
under his proposed plan.**

IV. Conclusion

To accomplish dissolution using the most practical method, this Court need only
appoint a Master to oversee the dissolution plan submitted by Hamed to implement the
sections entrusted to the Master, with the Liquidating Partner (Hamed) doing all other
acts required by Title 26. Everyone will do much better *financially*, including Yusuf.

In short, Such an order adopting Hamed's plan will insure the orderly dissolution
of the Partnership, including the payment of all debts and the liquidation of all assets,
with each Partner to receive maximum value for their respective interests, while allowing
the employees to retain employment, allowing the public to continue to have competitive
shopping for groceries, allowing the economy of the islands to still prosper from these
businesses and allow the Government to continue receiving much needed tax
revenues. A proposed Order is being submitted with this response.

Dated: April 30, 2014



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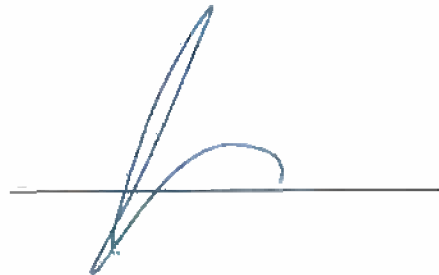
CERTIFICATE OF SERVICE

I hereby certify that on this 30th day of April, 2014, I served a copy of the foregoing in compliance with the parties consent, pursuant to Fed. R. Civ. P. 5(b)(2)(E), to electronic service of all documents in this action on the following persons:

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The DeWood Law Firm
2006 Eastern Suburb, Suite 101
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EXHIBIT 1

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NOTICE OF DISSOLUTION OF PARTNERHIP

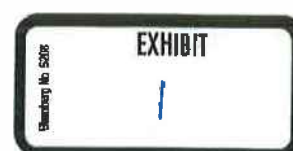
To: Fathi Yusuf, Partner

Please be advised that I hereby give notice of the dissolution of our Partnership regarding the three Plaza Extra Supermarkets that the partnership operates, which notice is given as authorized by 26 V.I.C. § 171(1). Further, please be advised that I will be submitting the attached Plan of Dissolution to the Superior Court of the Virgin Islands, asking for judicial supervision of this plan pursuant to 26 V.I.C. § 173(a).

Dated: April 30, 2014



Mohammad Hamed, Partner



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EXHIBIT 2

02/17/2015

VERONICA HANDY, ESQUIRE
CLERK OF THE COURT**PLAZA EXTRA SUPERMARKETS****HAMED PLAN FOR
WINDING UP PARTNERSHIP**

This Plan provides for the winding up of the Partnership, as defined below. This Plan provides two alternatives -- one of which results in a continuation of all of the three stores' operations by a new entity, and another of which would keep at least two stores open and maintain the employment of the employees therein. This is a liquidating plan and does not contemplate the continuation of the Partnership's business by the Partnership, 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 Civil No. SX-12-CV-370 pending in the Court.

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 use 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 the Superior Court of the Virgin Islands in which the Case is pending.

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

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 business days following entry of an Order by the Court approving this Plan.

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 accounts 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 Hamed.

1.19 "Liquidation 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 of action that have been or may be commenced by the Partnership or the Liquidating Partner including, without limitation, any action:

(i) to avoid and recover any transfers of property determined to be avoidable pursuant to VI. 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 the person or firm 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 three Plaza Extra Stores from 1986 to date.

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 Hamed Plan For Winding Up 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" and "Plaza Extra-Tutu Park Lease" means the

supermarket located at Tutu Park, St. Thomas and the Lease for the premises where the store is located with Tutu Park Mall, Ltd.

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 "Replacement Lease" refers to the lease negotiated by KAC357, Inc., a Virgin Islands Corporation owned by Waleed Hamed, Waheed Hamed and Mufeed Hamed for the lease of the store location where the current Plaza Extra-West store is located at 14 Estate Plessen.

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

1.33 "United" means United Corporation.

1.34 "Wind Up Budget" means the budget established to satisfy the anticipated Wind Up Expenses and to satisfy the Debts set forth in Exhibit A hereto.

1.35 "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.

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

1.37 "Yusuf" means Fathi Yusuf.

Section 2. APPOINTMENT OF MASTER

A Master shall be appointed to oversee and act as the judicial supervision of the wind up efforts of the Liquidating Partner. To expedite this process, it is suggested Alan Bronstein or Charles Fisher be appointed as the Master. The Plan anticipates payment of \$25,000 per month for these services.

Section 3. LIQUIDATING PARTNER

Hamed shall be the Liquidating Partner with the exclusive right and obligation to wind up the Partnership pursuant to this Plan 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.

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 equal distribution to the Partners following payment of all Debts and a full accounting by the Partners, **but expressly subject to the following two alternatives in the order they appear** pursuant to an agreement of the Partners or by Order of the Court if no agreement can be reached:

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First Option ("Option 1.") - The Liquidating Partner will first attempt to negotiate (1) with United Corporation for an agreement to lease the Plaza Extra-East Store for ten years with two 10 year renewal options on the East Store, and (2) with the holder of the Replacement Lease for the Plaza Extra-West Store for the right to assign those leasehold interests (which the holder is agreeable to doing if United Corporation agrees to a lease for the Sion Farm Store). If said negotiations are successful within 30 days of the Court's approval of this Plan, the Master will then attempt to sell the three Plaza Extra Supermarkets with these two leases and the current lease for the Plaza Extra-Tutu Park store as a single going concern to a third party buyer not affiliated with the interests of either current partner at the best price obtainable, with the Liquidating Partner using the current management to operate all three stores for a period of 24 months to see if a buyer can be found.

This Option will be undertaken so as to maximize the recovery of funds for the Partnership, guarantee the continued operation of the three stores and the continued employment of the employees.

Failing to be able to accomplish any of the foregoing within the time limits set forth therein, the Liquidating Partner (if no lease agreed to within 30 days) or the Master (if no sale within two years) shall notify the Court of this fact and the following Option will then be implemented.

Second Option ("Option 2.") - The Master will (1) assign the lease and any liabilities thereunder for the Plaza Extra-Tutu Park store to KAC357, Inc., (2) will transfer possession of the Plaza Extra-West store to KAC357, Inc. and (3)

will transfer the name of "Plaza Extra Supermarkets" to KAC357, Inc. and its membership in Associated Grocers in return for (1) payment of the 100% of full present market value of all inventory and partnership personal property therein within 60 days of the value being established and (2) an agreement by KAC357, Inc. to keep both of those two stores running and all current employees fully employed (other than the Yusufs). This Option provides more value to the Partnership than the plan submitted by Fathi Yusuf and guarantees the employees of these two stores jobs and the public with a grocery store on each island, which will help to keep grocery prices down.

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 will not charge or be paid personally for these efforts.

The Liquidating Partner shall be required to report on a bi-monthly basis to Yusuf 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 an agreement of the Partners or an order of the Court following a full accounting and reconciliation of the Partners' capital accounts and earlier distributions.

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Section 6. SALARIES, WITHDRAWALS

The Hamed Sons and Yusuf Sons shall continue to be employed and to receive their current salaries in return for assisting the Liquidation Partner in the wind up of the Partnership should ~~they so~~ desire to continue to be employed. Each Partner shall receive \$2,000,000 from the existing Plaza Extra bank accounts for the stores upon approval of this plan.

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 and the legal representative for Hamed 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. Plaza Extra Supermarkets and KAC357, Inc. will agree to any monitoring efforts in aid of the Plea Agreement.

The Encumbered Cash is subject to a Preliminary Injunction and clarifying order of this Court, once it is released in the Criminal matter. Once released, \$30,000,000 will be distributed equally to the Partners with the balance 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.

Section 8. PLAN OF LIQUIDATION AND WINDING UP

A. Sale of Plaza Extra Stores as Going Concern

The sale of two or more Plaza Extra Supermarkets shall be pursued as set forth in either Option 1 or ~~Option 2 in Section 4~~, above.

B. Liquidation Process

The Master will sell any and all non-liquid Partnership Assets not transferred pursuant to Option 1 or Option 2 in Section 4 above on bid for all in four single lots (one for each store and one for assets not ascribable to a particular store) at the best price that can be obtained. Either Partner can bid in his 50% share of funds presently held by the Partnership as set forth in the attached schedule. The liquidation process will also include payment of outstanding Debts, and deposit of all net Liquidation Proceeds into the Claims Reserve Account under the control of the Master, but expressly subject to the terms set forth to Section 4 above.

1. Current Financial Profile of Partnership.

The Partnership Assets and Debts are currently subject to a review of the accounting system. However, to the extent currently known, these figures are reflected to the best of Hamed's knowledge on the balance sheet for the Plaza Extra Stores attached as Exhibit B, which information is being submitted without prejudice to Hamed's further review of this information.

2. Estimated Time for Liquidation

The liquidation process is estimated to take between six to thirty months to complete, depending on whether the Master is able to negotiate the leases as contemplated in Option 1 of Section 4. However, whether the Master can do so will be

known within 45 days. If the Master cannot do so, the liquidation should be completed within 6 months.

3. Steps to Be Taken for the Orderly Liquidation of the Partnership

STEP 1: Budget for Wind Up Efforts

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

STEP 2: Payment of Expenses Anticipated in the Wind-Up Budget

The sum of Six Million Dollars (\$6,000,000) is budgeted 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. This Budget can be primarily funded out of the continued operations of the three stores pursuant to Options 1 or Option 2 set forth in Section 4 above. The sum of \$1,000,000 shall be deposited in the Liquidating Expenses Account to be held in trust by the Liquidating Partner under the supervision of the Master to cover any expenses not covered by on-going operations. The Liquidating Partner shall submit to Yusuf 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 Liquidating Expenses Account.

STEP 3: Continued Employment and/or Termination of Employees

The Liquidating Partner shall attempt to keep all employees fully employed to the maximum extent possible by pursuing Option 1 or Option 2 in Section 4 above. To the extent necessary, ~~which depends~~ on the success the Liquidating Partner has pursuing Option 1 and Option 2 of Section 4 above, the Liquidating Partner shall comply with the provisions of the Virgin Islands Plant Closing Act, Title 24, V.I. Code § §471-478 (the "PCA") for all affected employees of the Plaza Extra Stores as a result of the winding up and closure of the Partnership business. The severance payments due, if any, to the employees determined in accordance with the PCA shall be paid by out of the Claims Reserve Account.

STEP 4: Sale of Inventory and Equipment

The Liquidating Partner shall promptly sell the inventory and equipment located at the Plaza Extra Stores as set forth in Section 4, which shall result in the maximum recoverable payment under Option 1 or Option 2, set forth in Section 4. Anything not sold by the Master pursuant to Option 1 or Option 2 shall be sold pursuant to Section 8 (B).

STEP 5: Lease for Plaza Extra - Tutu Park

At present, Plaza Extra - Tutu Park is subject to a commercial lease between United and Tutu Park Mall, Ltd. with a remaining term of 30 months (the "Tutu Park Lease"), plus options. The Partnership is the beneficial holder of this lease. Under the Tutu Park Lease, the rent obligations through the remaining term of the lease equal \$900,000.00 plus taxes and pro rata common area expenses. This lease shall be

assumed by KAC357, Inc., (including the full assumption of all obligations thereunder) as part of the Second Option in section 4 above.

At present, Plaza Extra-Tutu Park has claims against Tutu Park Mall, Ltd. pending in the Superior Court of St. Thomas/St. John, to wit (hereinafter referred as "Tutu Park Litigation"):

1. United Corporation d/b/a/ Plaza Extra v. Tartu Park Limited and P.I.D. Inc., Superior Court of the Virgin Islands, Division of St. Thomas and St. John, Civil No. 361 /2001.
2. United Corporation v Tutu Park, Ltd. Superior Court STT Civ. No. 997/1997 (roofing claim).

The rights and obligations of United Corporation arising from this litigation are also partnership rights and obligations and shall be assigned to KAC357, Inc., along with the assignment of the lease as part of the Second Option in section 4 above. The assignment of the lease and the litigation is consistent with the liquidation plan proposed by Fathi Yusuf, which plan contemplated using the termination of the litigation as consideration for terminating the lease obligations with the Landlord.

STEP 6: Partner Litigation

The Liquidating Partner shall pursue the current litigation against Fathi Yusuf on behalf of the Partnership to recover all funds improperly expended or removed, including causing the Partnership to incur losses due to Yusuf's misfeasance, malfeasance and nonfeasance. Such sums shall include, but not be limited to the \$2,700,000 removed in August of 2013 (or the pursuit of the recovery of real and personal property purchased by those funds), the approximately \$22,000,000 in stock losses incurred after and despite Yusuf agreeing to stop using the partnership funds in speculative stock trading, the approximately \$12,000,000 in expenses incurred in

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defending the Criminal Case due to Yusuf's failure to properly account for the partnership funds to the IRB and IRS, the \$800,000 related to the Dorethea investment, the \$2.5 million paid to buy out Yusuf's brother's 50% interests in the Shopping Center, and all funds paid to Attorney DiRuzzo and his law firm for legal services paid out of the partnership bank accounts for non-partnership work.

The Liquidating Partner shall also pursue litigation against United Corporation on behalf of the Partnership to recover all funds improperly expended or removed, including causing the Partnership to incur losses. Such recovery shall include, but not be limited to, the property located adjacent to the Plaza Extra Store-East purchased with Plaza Extra insurance proceeds (Plat 4-F) and a parcel incorrectly titled in United's name at Fort Milner.

The Liquidating Partner shall also pursue litigation against any other individual or entity on behalf of the Partnership to recovery all funds improperly expended or removed, including causing the Partnership to incur losses. In the case of such claims against any Hamed family member, the Master shall supervise and direct all such litigation to assure that no conflict of interest arises.

STEP 7: Other Pending Litigation

The pending litigation against United set forth in Exhibit C arises out of the operation of the Plaza Extra Stores. As a 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.

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Any litigation expenses not covered by insurance shall be charged against the Claims Reserve Account.

STEP 8: Distribution Plans

Upon dissolution of the TRO in the Criminal Case, a total of \$30,000,000 shall be disbursed from the Encumbered Cash with \$15,000,000 being disbursed to each of the Partners, Fathi Yusuf and Mohammad Hamed, pursuant to Section 7 above with the balance deposited in the Claims Reserve Account. Upon conclusion of the Liquidation Process, the funds remaining in the Liquidating 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, the Master shall present a proposed accounting and distribution plan for the funds remaining in the Claims Reserve Account. Thereafter, the Master shall make a report and recommendation of distribution to the Court for its final determination.

STEP 9: Additional Measures to Be Taken

The Liquidating Partner anticipates the following additional measures to finalize the winding up of the Partnership and liquidation efforts.

1. Should the funds deposited into the Liquidating Expense 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 sole discretion.
2. All funds realized from the sale of the Inventory and non-cash Partnership Assets shall be deposited into the Claims Reserve Account under the exclusive control of the Master.
3. All bank accounts utilized in the operation of the Partnership business shall be consolidated into the Claims Reserve Account.
4. Except as otherwise provided herein, all brokerage and investment accounts set forth in Exhibit D attached hereto shall be turned over to the

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

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

MEMORANDUM OPINION AND ORDER

THIS MATTER is before the Court on Defendant/Counterclaimant Fathi Yusuf’s Motion for Reconsideration (“Motion for Reconsideration”), filed August 6, 2014; Plaintiff’s Opposition to Defendant’s Motion for Reconsideration of this Court’s July 22nd Opinion and Order re the Plessen April 30, 2014 Resolutions (“Opposition”), filed August 14, 2014; and Fathi Yusuf’s Reply Brief in Support of Motion for Reconsideration (“Reply to Opposition”), filed August 29, 2014. Yusuf asks the Court to reconsider its July 22, 2014 Memorandum Opinion and Order (“July 22 Order”) denying Yusuf’s May 20, 2014 Motion to Nullify Plessen Enterprises, Inc.’s Board Resolutions, to Avoid Acts Taken Pursuant to those Resolutions and to Appoint Receiver (“Motion to Nullify”). For the reasons that follow, Defendant’s Motion for Reconsideration will be denied.¹

¹ For reasons unknown, Defendant’s Joint Reply Brief in Support of Motion to Nullify (“Initial Reply”), filed June 16, 2014, was not entered into the Court’s file and was not considered by the Court in issuing its July 22 Order. That brief is now a part of the Court’s file and its substance has been considered together with his Motion for Reconsideration and Reply to Opposition in the Court’s determination of whether to amend its July 22 Order.

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The July 22 Order determined, most significantly, that the new lease (“Lease”) between Plessen Enterprises, Inc. (“Plessen”) and KAC347, Inc. (“the New Hamed Company”) is intrinsically fair to Plessen and that the transaction serves a “valid corporate purpose.” Opinion, at 9. Defendant’s Motion for Reconsideration suggests that the Court’s lack of consideration of his Initial Reply justifies relief. (“In light of the fact that the Court did not read or consider the Reply, Yusuf requests reconsideration of the Court’s July 22, 2014 Order denying his Motion...”)(Motion for Reconsideration, at 2.)

Defendant’s Motion for Reconsideration was timely filed within fourteen (14) days from the entry of the contested order, pursuant to LRCi 7.3, applicable per Super. Ct. R. 7. A motion to reconsider shall be based on: (1) intervening change in controlling law; (2) availability of new evidence, or; (3) the need to correct clear error or prevent manifest injustice. The purpose of a motion to reconsider is to allow the court to correct its own errors, sparing parties and appellate courts the burden of unnecessary proceedings. *Charles v. Daley*, 799 F.2d 343, 348 (7th Cir.1986); *See also United States v. Dieter*, 429 U.S. 6, 8 (1976).

DISCUSSION

It is unnecessary to repeat in detail the factual background as the parties are intimately familiar with the history of their dispute, and as the history relevant to the issues in dispute in the Motion for Reconsideration was fully described in the July 22 Order.² The Court will review and

² Briefly, at approximately 4:00 p.m. on April 28, 2014, Plaintiff Hamed, as president of Plessen, served director Yusuf with a Notice of Special Meeting of Board of Directors of Plessen to be convened at 10:00 a.m. on April 30, 2014. Motion to Nullify, at 4 (Exhibit A). On April 29, 2014, Yusuf responded to the Notice in writing by pointing out the deficiencies of the Notice and demanding that the meeting not take place. *Id.* (Exhibit B). Yusuf moved to enjoin the meeting by emergency motion filed at 8:19 a.m. on April 30, 2014, which reached the Court after the meeting had concluded, rendering the motion moot. At the special meeting, Hamed and his son Waleed Hamed, a majority of Plessen’s three-member board of directors, over director Yusuf’s objection, adopted Resolutions (*Id.* Exhibit G)

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examine the analysis, reasoning and substance of its July 22 Order in light of Defendant's arguments, proffered case law and factual allegations contained in his present filings, including his previously filed Reply.

1. The Lease

The Court concluded that the newly executed Lease between Plessen and the New Hamed Company passed the "intrinsic fairness" test. The parties agree that the burden rests with Hamed, as the proponent of that transaction in which majority directors are involved, to demonstrate that the Lease is intrinsically fair to Plessen and its shareholders. Initial Reply, at 2-5; Opposition, at 7. Yusuf argues that the Lease is not intrinsically fair, a point he addressed fully in his Motion to Nullify.

As reviewed in the July 22 Order, controlling shareholders are not prohibited from engaging in self-dealing if the transaction is intrinsically fair to the corporation. *See Sinclair Oil Corp. v. Levien*, 280 A.2d 717, 719-20 (Del.1971). However, "those asserting the validity of the corporation's actions have the burden of establishing its entire fairness to the minority stockholders, sufficient to 'pass the test of careful scrutiny by the courts.'" *Matter of Reading Co.*, 711 F.2d 509, 517 (3d Cir. 1983) (citing *Singer v. Magnavox Co.*, 380 A.2d 969, 976-77 (Del.1977)).

It is well settled that "...motions for reconsideration should not be used as a vehicle for rehashing and expanding upon arguments previously presented or merely as an opportunity for

wherein the board: 1) ratified and approved as a dividend the May 2013 distribution of \$460,000 to Waleed Hamed; 2) authorized Hamed as Plessen's president to enter into the Lease with the New Hamed Company for the premises now occupied by Plaza Extra-West; 3) authorized the retention of Attorney Jeffrey Moorhead to represent Plessen in defense of the Counterclaim in this action and in defense of the separate derivative action (Yusuf v. Hamed, et al.); 4) authorized the president to issue additional dividends to shareholders, up to \$200,000, from the company bank account; and 5) removed Fathi Yusuf as Registered Agent, to be replaced by Jeffrey Moorhead.

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getting in one last shot at an issue that has been decided.” *Nichols v. Wyndham Intern, Inc.*, 2002 WL 32359953, at *1 (D.V.I. November 18, 2002). As such, this review will only examine new information and arguments presented subsequent to the Motion to Nullify that have not been previously considered regarding the intrinsic fairness of the Lease.

Defendant’s Initial Reply restates several points it made in its original Motion to Nullify—arguments the Court reviewed and considered before issuing the July 22 Order.³ In discussing the potential unfairness of the Lease’s lack of personal guarantees, Defendant argues that “[t]he absence of appropriate guarantees from each of the principals of the New Hamed Company... not only impairs Plessen’s ability to enforce its long-term rent obligations... but also impairs its ability to enforce the indemnity provision in the lease.” Initial Reply, at 7. Defendant argues that intrinsic fairness requires that the principals of the New Hamed Company (Waleed, Waheed and Mufeed Hamed) personally guarantee the Lease, rather than only Mohammed Hamed, who has no actual stake in the New Hamed Company, is aged with health problems, and who has substantial assets and a residence in Jordan where he relocated after retiring from active participation in Plaza Extra in the 1990’s.

Although the Lease only contains the personal guarantee of Hamed, as opposed to his three sons as principals of the New Hamed Company, in the absence of an intervening change in controlling law or the presentation of new evidence, Defendant fails to persuade the Court that it committed clear error in finding that the Lease is intrinsically fair to Plessen. Hamed’s personal guarantee makes him (and his heir, administrators and successors) liable in the event of a default

³ “Lease cannot become effective until some unspecified date...” Motion to Nullify, at 12; Initial Reply, at 6. “The rent structure in the Hamed Lease is also problematic.” Motion to Nullify, at 14; Initial Reply, at 7. The Court will not reconsider its Order based upon these arguments previously made and considered.

02/17/2015

VERONICA HANDY, ESQUIRE
CLERK OF THE COURT

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under the Lease by the New Hamed Company. Hamed has a 50% interest in the substantial real property and cash assets of Plessen itself, including the property that is the subject of the Lease. Together with Hamed's 50% interest in the Plaza Extra partnership and its varied and substantial assets, his personal guarantee is sufficient to protect Plessen from any potential loss in the event that the New Hamed Company defaults on its obligations. As such, the Court did not commit clear error in finding that the Lease backed by the personal guarantee of Hamed is intrinsically fair to Plessen.

Defendant also argues that the Court erred in citing case law for the proposition that "the transaction's effect on the corporation's *status quo* following the implementation of the transaction" (July 22 Order, at 9) is a consideration when assessing the fairness of a transaction. Reply to Opposition, at 9. The application of the "intrinsic fairness" test in *In re Athos Steel and Aluminum, Inc.* 71 B.R. 525 (Bankr. E.D. Pa. 1987) resulted in the approval of a more egregious example of an internal corporate takeover by majority shareholders than is present here. The *Athos* Court held, in full:

The transaction clearly had a valid corporate purpose. Because Ash and L. Wechsler were the controlling shareholders of both corporations, Athos Realty had always functionally been controlled by Athos Steel. When they determined that they wished to sell their interest in Athos Realty, it made perfect business sense for Athos Steel to seek to purchase the stock. The transaction allowed Athos Steel to acquire a valuable asset and control of a company which leased property to the corporation which is critical to its operation. It also accomplished, in effect, the maintenance of the status quo. In the absence of a showing that there was overreaching in setting the terms of the sale or that the transaction harmed Athos Steel, the transaction was perfectly fair and proper as to the Athos Steel minority shareholders. *Id.* at 542.

The Bankruptcy Court clearly implied that maintenance of the status quo is a factor to consider when analyzing whether a particular transaction is intrinsically fair to the corporate entity and minority shareholders. Defendant's suggestion that the Court "effectively created a new test, namely 'whether the transaction was objectively in the corporation's best interest,'" is without

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merit. Defendant has not provided case law or other support rebutting the Court's reasoning or setting forth examples of how other courts have addressed similar grievances.

Yusuf argues that the Lease is not intrinsically fair, speculating that it locks up the property "in a way that will make it less valuable to outside investors who wish to purchase the property." Motion for Reconsideration, at 6. No outside potential investors are identified and no explanation is provided as to why the existence of a 30 year leasehold income stream on the property represents a disincentive to an outside investor. Yusuf states that his United Corporation is willing to purchase the property, but only absent the encumbrance of the Lease, at a price to be determined by an appraisal process. *Id.* His implicit speculation that such a purchase price may provide greater value to Plessen than the Lease does not render the Lease transaction intrinsically unfair.

Defendant further argues in a cursory manner that the Lease is unfair because it fails to require windstorm property insurance coverage. *Id.* at 7. Hazard insurance is required under the Lease for all other risks in coverage limits of \$7,000,000. The Lease requires that the Tenant is obligated to restore the premises promptly in the event of casualty damage, including windstorm. Lease, ¶¶ 17.2; 17.4. By these provisions and as a whole, the Lease is not unfair to Plessen and its shareholders.

Yusuf argues that it is unfair "that a core asset of Plessen should be tied up for as many as 30 years by a sweetheart lease made with one ownership faction that is adamantly opposed by the other faction." Reply to Opposition, at 8-9. Yet, "tying up" a core asset of the corporation by means of a long-term lease with appropriate terms assuring market rents benefits all shareholders. The "sweetheart" aspect of the transaction does not relate to its terms and the benefits to Plessen and its shareholders, but rather the real crux of the adamant opposition to the transaction of the Yusuf

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shareholder faction relates to the fact that the Lease gives the tenancy to the New Hamed Company. The fact, by itself, that the transaction was designed primarily to allow the majority director shareholders to obtain the leasehold interest in Plessen's property does not make it improper as to the interests of the minority director shareholders.⁴

Here, where the terms of the Lease are shown to be intrinsically fair to Plessen and its shareholders, the Court will not reconsider and amend its July 22 Order. Nonetheless, this denial of Defendant's Motion for Reconsideration on the basis of its legal sufficiency and intrinsic fairness will be issued without prejudice to the Court's right to issue an order at some future date to nullify or otherwise alter the scope or terms of the Lease in the event that such relief appears necessary and appropriate in the process of the winding up of the Hamed-Yusuf partnership, or as otherwise may be recommended by the Master or by any receiver who may in the future be appointed to oversee the operations of Plessen.

2. The Distribution

Defendant argues that the Court did not address the case *Moran v. Edson*, 492 F.2d 400 (3d Cir. 1974), which holds that "...misappropriation of corporate money by a director for his own benefit can only be validated by 'unanimous ratification by the shareholders'" Initial Reply, at 8 (citing *Moran*, 492 F.2d at 406). Defendant objects to the Resolution adopted by the Plessen directors ratifying and approving as a dividend the May 2013 distribution of \$460,000 to Waleed Hamed. Defendant disagrees with the Court's conclusion that "[t]his distribution is part of the

⁴ See *Athos Steel*, 71 B.R. at 542: "The real crux of Athos Steel minority shareholders' objection is their assertion that the transaction was designed primarily to give D. Wechsler control of Athos Realty. However, I conclude that the intent to control Athos Realty, by itself, was not improper as to the Athos Steel minority shareholders."

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subject matter of a shareholders derivative action currently pending before Judge Harold Willocks (*Yusuf v. Hamed, et al.*, SX-13-CV-120). As such, the Court declines at this time to make any findings of fact or legal determinations regarding the propriety of this distribution...” Motion for Reconsideration, at 7-8.

Defendant provides no statutory support or binding case law for the argument that this Court should act on this issue, unless “...it would invade Judge Willock’s exclusive province...” Motion for Reconsideration, at 8.⁵ Defendant’s citation to *Moran* is of no assistance to the immediate question relating to the propriety of this Court addressing the merits of a separate action now pending before another trial court.

Judge Willocks is currently presiding over a pending derivative action filed on behalf of Plessen and its shareholders, the substance of which concerns the transfer in question. Before this Court is the Hamed-Yusuf partnership dispute and impending wind-up, wherein Plessen has been recently impleaded as a third party Counterclaim Defendant. In its July 22 Order, the Court declined to make findings of fact or legal determinations relative to the issue of the alleged misappropriation pending before another Court. Nothing Defendant has presented in his Initial Reply, Motion for Reconsideration or Reply to Opposition provides a basis for the Court to reconsider its decision.⁶ Under LRCi 7.3, in the absence of an intervening change in controlling

⁵ Defendant argues that “a director’s misappropriation of corporate monies is plainly grounds for dissolution of a solvent company.” Reply to Opposition, at 6 (citing *Zutrau v. Jansing*, 2013 Del. Ch. LEXIS 71, p. 17 (Del. Ch. 2013)). There is presently nothing before the Court seeking the dissolution of Plessen, and neither the cited case nor any other source referenced by Defendant addresses the question whether this Court is bound or permitted to take action on this issue that is the subject of the pending litigation before another trial court, an action brought by Yusuf’s son.

⁶ The derivative litigation appears most properly situated to address the issue of the purported misappropriation, especially in light of the fact that 50% of the amount in issue has been deposited with the Clerk of the Court in connection with that action, stipulating to the right of the Yusuf 50% shareholders to disburse those funds to themselves, with interest, apparently curing any monetary loss that might have otherwise resulted from the withdrawal.

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law, new evidence, demonstration of clear error or the need to prevent manifest injustice, the Court declines to amend its prior ruling on this matter. However, in the event that the winding up of the partnership requires addressing the subject of the Plessen withdrawal and the distribution of those funds, the Court reserves the right to issue an appropriate order at such time.

3. The Retainer

Defendant restates his argument that the appointment of Attorney Moorhead to act on behalf of Plessen should be nullified in that he "...attempted to negotiate a retainer check to be counsel for Plessen... before the Board had even authorized his retention." Initial Reply, at 9; Motion to Nullify, at 16. This argument has been raised and determined, and Defendant provides no new facts or law not already reviewed and considered in connection with the July 22 Order.

Defendant reargues that Hamed violated the "quite explicit" Plessen Bylaw §7.3, which states that "it shall be the duty of the Officers and Directors to consult from time to time with the general counsel (if one has been appointed) as legal matters arise." Initial Reply, at 9. Because this argument was raised in Defendant's Motion to Nullify and was decided by the Court, in the absence of any basis for reconsideration under Local Rule 7.3, the Court declines to reconsider its previous ruling.

Defendant argues that Attorney Moorhead is really only working for Hameds and not for the best interests of Plessen, citing Plessen's joinder with the opposition of Hamed to Yusuf's Motion to Nullify. Initial Reply, at 10. Attorney Moorhead was retained to defend Plessen against Defendants' Counterclaim in this action and to represent the corporation in the shareholder derivative action. As an officer of the Court, Attorney Moorhead is duty-bound to act in his

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corporate client's best interests (*see* VISCR 211.1.13 relating to representing an organization as a client). Defendant presents no basis in his filings justifying reconsideration of the July 22 Order in this respect, and the Court will not nullify the action of the Plessen board retaining Attorney Moorhead for the specific and limited purposes noted.

4. The Resident Agent

By his Initial Reply (at 8), Defendant argues that "... Plaintiff fails entirely to respond to Yusuf's argument that the statutory requirements for changing a registered agent were not satisfied." Defendant objects to the board's decision to remove Yusuf as Plessen's resident agent, arguing that the procedures set out in 13 V.I.C. §§ 52-55 have not been followed, in that the corporate secretary did not first sign off on the removal, and the board did not obtain, file and certify the resignation of the current resident agent. Motion for Reconsideration, at 18. Plaintiff responds by arguing that Yusuf sued Plessen, "served himself without telling anyone else..." and then argued to the Court that Plessen was in default. Opposition, at 4-5.

Defendant has refuted this, simply stating "Yusuf has never asked for entry of default as to Plessen." Initial Reply, at 9. However, simply initiating the litigation (through nominal plaintiff Yusuf Yusuf) against the corporation for which Defendant serves as registered agent may constitute a breach of fiduciary duty. *See In re Fedders North America, Inc.* 405 B.R. 527, 540 (Bankr. D. Del. 2009).

Without presentation of a basis for reconsideration under the provisions of LRCi 7.3, the Court will not reverse its prior determination and rescind the board's Resolution to remove Yusuf as Plessen's resident agent.

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5. The Receiver

Defendant's filings focus substantially on the argument that the Court should appoint a receiver to oversee the liquidation of Plessen. *See generally* Motion for Reconsideration, at 4-5; Initial Reply, at 12-15; Reply to Opposition, at 2-4; 12. Defendant emphasizes the importance of the *Moran* decision,⁷ which ultimately held "...that the court upon remand will have full opportunity to consider whether, in the light of the situation as it may then exist, it will be in the interest of justice to appoint a receiver." *Moran*, 400 F.2d at 407.

The July 22 Order did not foreclose the possibility of appointing a receiver. Rather, it stated:

Recognizing the persistent deadlock between the parties, it is nonetheless premature to appoint a receiver for Plessen at this time. The winding-up of the Hamed-Yusuf partnership must take priority over Plessen's (relatively modest) internal disputes. When the Hamed-Yusuf partnership winding-up process is established and in effect, the need for and the propriety of a Plessen receivership may be revisited as may then be appropriate. July 22 Order, at 15.

However, appointment of "a receiver is...an extraordinary remedy, and ought never be made except in cases of necessity, and upon a clear and satisfactory showing that the emergency exists." *Zinke-Smith, Inc. v. Marlowe* 8 V.I. 240, 242 (D.V.I. 1971). While Defendant presents nothing to convince the Court to reconsider its July 22 Order in this regard, it is reiterated that the appointment of a receiver may be deemed appropriate and necessary at some future time, and such a prospective future appointment remains within the Court's discretion, pursuant to 13 V.I.C. §195.

⁷ Defendant argues that the Court "...overlooks both controlling authorities in this jurisdiction and persuasive authorities from other jurisdictions as to dealing with shareholder deadlock." Reply to Opposition, at 2. As noted, by the July 22 Order the Court explicitly reserved (and continues to reserve) the right to appoint a receiver at a later date if the circumstances warrant and the need arises in the partnership wind-up process.

02/17/2015

VERONICA HANDY, ESQUIRE
CLERK OF THE COURT

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At this stage, the Court will not at this time revise its previous determination based upon Defendant's present filings.

CONCLUSION

Defendant does not present as the basis for his Motion for Reconsideration of the July 22 Order any intervening changes to controlling law, or the availability of new evidence, and has not demonstrated the need to correct clear error or to prevent manifest injustice. As such, Defendant's Motion for Reconsideration will be denied.

On the basis of the foregoing, it is

ORDERED that Defendant's Motion for Reconsideration is DENIED.

Dated:

December 5, 2014



DOUGLAS A. BRADY
Judge of the Superior Court

ATTEST:

ESTRELLA GEORGE
Acting Clerk of the Court

By:


Court Clerk Supervisor

10/5/14

IN THE SUPREME COURT OF THE VIRGIN ISLANDS

FAHTI YUSUF.)
)
Appellant/Defendant,)
)
 vs.)
)
MOHAMMED HAMED, et al,)
)
Appellees.)
)
 _____)

S. Ct. Civ. NO. 2015-0009

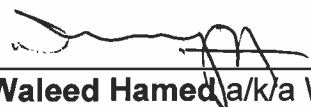
DECLARATION OF WALEED HAMED

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

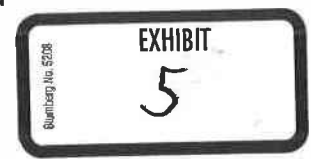
1. I have personal knowledge of the facts set forth herein.
2. The document attached as Exhibit 4 to the Motion To Stay is a computer generated document that was not created or filed by my father, Mohammad Hamed, or any of his sons listed in the above caption who are Counterclaim Defendants herein.
3. Indeed, this unsigned document lists my father's birthdate as February 17, 2011, and misspells "Fathi" as "Fathy," demonstrating that this document is an inaccurate computer generated document by an employee 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 that began in 2011 as the criminal case was ending, the three Plaza Extra stores together grossed over \$100,000,000 per year, with a net income in excess of \$10,000,000 each year. Copies of the first page of the tax returns for the 5 year period prior to 2011 are attached, and confirm these figures. The Plaza West store is the largest of the three stores, so it regularly made a profit of \$250,000 to \$350,000 a month (before payment of income taxes) prior to the current management crises.
5. Once the stores are separated, the Plaza West store will easily return to this level of profit.

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

Dated: February 17, 2015



Waleed Hamed a/k/a Wally Hamed



Form 1120S

U.S. Income Tax Return for an S Corporation

OMB No. 1545-0047

2006

Department of the Treasury
Internal Revenue Service

Do not file this form unless the corporation has filed Form 2553 to elect to be an S corporation. See separate instructions.

For calendar year 2006 or tax year beginning 2006, ending 20

A Effective date of S election 01-01-1999	Use IRS label Other-wise, print or type.	Name UNITED CORPORATION	Number, street, room/suite no. P O BOX 763, C' STED	City/town, state, & Zip code ST CROIX VI 00821	C Employer ID no. 66-0391237
B Business activity code number (see instructions) 445110					D Date incorporated 03-05-1979
					E Total assets (see instr.) \$ 50,218,668

F Check if: (1) Initial return (2) Final return (3) Name change (4) Address change (5) Amended return

G Enter the number of shareholders in the corporation at the end of the tax year ▶ 7

H Check if Schedule M-3 is required (attach Schedule M-3) ▶

Caution. Include only trade or business income and expenses on lines 1a through 21. See the instructions for more information.

INCOME	1a Gross receipts or sales	101,556,898	b Less returns and allowances		c Bal	1c	101,556,898
	2 Cost of goods sold (Schedule A, line 8)					2	68,479,588
	3 Gross profit. Subtract line 2 from line 1c					3	33,077,310
	4 Net gain (loss) from Form 4797, Part II, line 17 (attach Form 4797)					4	
	5 Other income (loss) (see instructions -- attach statement)					5	38,336 #1
	6 Total income (loss). Add lines 3 through 5					6	33,115,646
SEE FOR INSTRUCTIONS DEDUCTIONS	7 Compensation of officers					7	364,192
	8 Salaries and wages (less employment credits)					8	8,134,786
	9 Repairs and maintenance					9	672,307
	10 Bad debts					10	
	11 Rents					11	510,573
	12 Taxes and licenses					12	4,901,515 #2
	13 Interest					13	34
	14 Depreciation not claimed on Schedule A or elsewhere on return (attach Form 4562)					14	532,052
	15 Depletion (Do not deduct oil and gas depletion.)					15	
	16 Advertising					16	180,927
	17 Pension, profit-sharing, etc., plans					17	
	18 Employee benefit programs					18	149,150
	19 Other deductions (attach statement)					19	5,764,800 #3
	20 Total deductions. Add lines 7 through 19					20	21,210,336
	21 Ordinary business income (loss). Subtract line 20 from line 6					21	11,905,310
TAX AND PAYMENTS	22a Excess net passive income or LIFO recapture tax (see instructions)	22a					
	b Tax from Schedule D (Form 1120S)	22b					
	c Add lines 22a and 22b (see instructions for additional taxes)				22c		0
	23a 2006 est. tax payments and 2005 overpayment credited to 2006	23a					
	b Tax deposited with Form 7004	23b					
	c Credit for federal tax paid on fuels (attach Form 4136)	23c					
	d Credit for federal telephone excise tax paid (attach Form 8913)	23d					
	e Add lines 23a through 23d				23e		0
	24 Estimated tax penalty (see instructions). Check if Form 2220 is attached				24		
	25 Amount owed. If line 23e is smaller than the total of lines 22c and 24, enter amount owed				25		0
26 Overpayment. If line 23e is larger than the total of lines 22c and 24, enter amount overpaid				26			
27 Enter amount from line 26 Credited to 2007 estimated tax		0	Refunded	27		0	

Under penalties of perjury, I declare that I have examined this return, including accompanying schedules and statements, and to the best of my knowledge and belief, it is true, correct, and complete. Declaration of preparer (other than taxpayer) is based on all information of which preparer has any knowledge.

Sign Here

See Attachment A
Signature of officer

12-9-13
Date

preparer
Title

May the IRS discuss this return with the preparer shown below (see inst.)? Yes No

Paid Preparer's Use Only	Preparer's signature	Date	Check if self-employed <input type="checkbox"/>	Preparer's SSN or PTIN
	Firm's name (or yours if self-employed), address, and ZIP code	EIN	Phone no.	

For Privacy Act and Paperwork Reduction Act Notice, see instructions.

Form 1120S (2006)

Form 1120S

U.S. Income Tax Return for an S Corporation

OMB No. 1545-0047

2007

Department of the Treasury Internal Revenue Service

Do not file this form unless the corporation has filed or is attaching Form 2553 to elect to be an S corporation. See separate instructions.

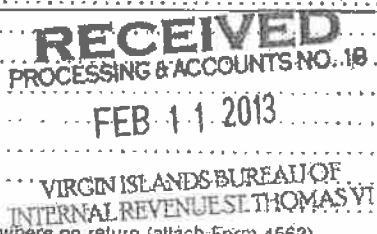
For calendar year 2007 or tax year beginning 2007, ending 20

A S election effective date 01-01-1999
B Business activity code number 445110
C Check if Sch. M-3 attached
Name UNITED CORPORATION
Number, street, room/suite no. P O BOX 763, C'STED
City/town, state, & Zip code ST CROIX VI 00821
D Employer ID no. 66-0391237
E Date incorporated 03-05-1979
F Total assets (see inst.) \$ 58,115,583

G Is the corporation electing to be an S corporation beginning with this tax year? Yes No
H Check if: (1) Final return (2) Name change (3) Address change (4) Amended return (5) S election termination or revocation
I Enter the number of shareholders in the corporation at the end of the tax year 7

Caution. Include only trade or business income and expenses on lines 1a through 21. See the instructions for more information.

Table with columns for Income, Deductions, and Tax Payments. Includes rows for Gross receipts or sales, Cost of goods sold, Compensation of officers, and Total deductions.



Sign Here See Statement A 12-9-13 President
Under penalties of perjury, I declare that I have examined this return, including accompanying schedules and statements, and to the best of my knowledge and belief, it is true, correct and complete. Declaration of preparer (other than taxpayer) is based on all information of which preparer has any knowledge.

Preparer's signature, date, title, EIN, and phone number fields.

02/17/2015

OMB No. 1545-0047

Form 1120S

U.S. Income Tax Return for an S Corporation

Department of the Treasury Internal Revenue Service

Do not file this form unless the corporation has filed or is attaching Form 2553 to elect to be an S corporation. See separate instructions.

2008

For calendar year 2008 or tax year beginning 2008, ending 20

Header section containing: A S election effective date (01-01-1999), B Business activity code number (445110), C Check if Sch. M-3 attached (checked), Name (UNITED CORPORATION), Address (P O BOX 763, C' STED ST CROIX VI 00821), D Employer ID no. (66-0391237), E Date incorporated (03-05-1979), F Total assets (see inst.) (\$ 58,919,922)

G Is the corporation electing to be an S corporation beginning with this tax year? Yes No (checked) If "Yes," attach Form 2553 if not already filed. H Check if: (1) Final return, (2) Name change, (3) Address change, (4) Amended return, (5) S election termination or revocation. I Enter the number of shareholders who were shareholders during any part of the tax year 7

Caution. Include only trade or business income and expenses on lines 1a through 21. See the instructions for more information.

Main table with columns for line numbers, descriptions, and amounts. Includes sections for INCOME (lines 1-6), SEES FOR LIMITATIONS (lines 7-21), and TAX AND PAYMENTS (lines 22-27). A 'RECEIVED' stamp is visible over lines 8-13.

Sign Here

Under penalties of perjury, I declare that I have examined this return, including accompanying schedules and statements, and in the best of my knowledge and belief, it is true, correct, and complete. Declaration of preparer (other than taxpayer) is based on all information of which preparer has any knowledge.

Signature of officer: See Attachment A, Date: 12-9-13, Title: president

May the IRS discuss this return with the preparer shown below (see inst.)? Yes No

Preparer's signature, Date, Check if self-employed, Preparer's SSN or PTIN, Firm's name (or yours if self-employed), address, and ZIP code, EIN, Phone no.

For Privacy Act and Paperwork Reduction Act Notice, see instructions.

Form 1120S (2008)

02/17/2015

Form **1120S**

U.S. Income Tax Return for an S Corporation

OMB No. 1545-0047 DEPARTMENT OF THE TREASURY
CLERK OF THE COURT

2009

Department of the Treasury
Internal Revenue Service

▶ Do not file this form unless the corporation has filed or is attaching Form 2553 to elect to be an S corporation.
▶ See separate instructions.

For calendar year 2009 or tax year beginning , 2009, ending , 20

A S election effective date
01-01-1999

B Business activity code number (see instructions)
445110

C Check if Sch M-3 attached

Name **UNITED CORPORATION**
Number, street, room/suite no. **P O BOX 763, C'STED**
City/town, state, & Zip code **ST CROIX VI 00821**

D Employer ID no. **66-0391237**

E Date incorporated **03-05-1979**

F Total assets (see inst.) **\$ 70,891,857**

G Is the corporation electing to be an S corporation beginning with this tax year? Yes No If "Yes," attach Form 2553 if not already filed

H Check if: (1) Final return (2) Name change (3) Address change
(4) Amended return (5) S election termination or revocation

I Enter the number of shareholders who were shareholders during any part of the tax year **7**

Caution. Include **only** trade or business income and expenses on lines 1a through 21. See the instructions for more information.

INCOME	1a	Gross receipts or sales	106,259,868	b Less returns and allowances		c Bal	1c	106,259,868
	2	Cost of goods sold (Schedule A, line 8)					2	72,010,611
	3	Gross profit. Subtract line 2 from line 1c					3	34,249,257
	4	Net gain (loss) from Form 4797, Part II, line 17 (attach Form 4797)					4	
	5	Other income (loss) (see instructions - attach statement)					5	
	6	Total income (loss). Add lines 3 through 5					6	34,249,257
DEEDUCTIONS	7	Compensation of officers					7	514,700
	8	Salaries and wages (less employment credits)					8	9,594,804
	9	Repairs and maintenance					9	657,357
	10	Bad debts					10	
	11	Rents					11	539,079 #1
	12	Taxes and licenses					12	5,122,009 #2
	13	Interest					13	14,633
	14	Depreciation not claimed on Schedule A or elsewhere on return (attach Form 4562)					14	257,292
	15	Depletion (Do not deduct oil and gas depletion.)					15	
	16	Advertising					16	171,742
	17	Pension, profit-sharing, etc., plans					17	
	18	Employee benefit programs					18	301,031
	19	Other deductions (attach statement)					19	6,853,049 #3
	20	Total deductions. Add lines 7 through 19					20	24,025,696
	21	Ordinary business income (loss). Subtract line 20 from line 6					21	10,223,561
TAX AND PAYMENTS	22a	Excess net passive income or LIFO recapture tax (see instructions)		22a				
	b	Tax from Schedule D (Form 1120S)		22b				
	c	Add lines 22a and 22b (see instructions for additional taxes)			22c			0
	23a	2009 estimated tax payments and 2008 overpayment credited to 2009		23a				
	b	Tax deposited with Form 7004		23b				
	c	Credit for federal tax paid on fuels (attach Form 4136)		23c				
	d	Add lines 23a through 23c			23d			0
24	Estimated tax penalty (see instructions). Check if Form 2220 is attached			24				
25	Amount owed. If line 23d is smaller than the total of lines 22c and 24, enter amount owed			25			0	
26	Overpayment. If line 23d is larger than the total of lines 22c and 24, enter amount overpaid			26			0	
27	Enter amount from line 26 Credited to 2010 estimated tax	0	Refunded	27			0	

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FEB 11 2013
VIRGIN ISLANDS BUREAU OF
INTERNAL REVENUE ST. THOMAS VI.

Sign Here

Under penalties of perjury, I declare that I have examined this return, including accompanying schedules and statements, and to the best of my knowledge and belief, this return, and all accompanying information is true, correct, and complete. Declaration of preparer (other than taxpayer) is based on all information of which preparer has any knowledge.

See Statement A

2-9-13

president

Signature of officer

Date

Title

May the IRS disclose this return with the preparer shown below (see inst.)? Yes No

Paid

Preparer's signature

Date

Check if self-employed

Preparer's SSN or PTIN

Preparer's Use Only

Firm's name (or yours if self-employed), address, and ZIP code

EIN

Phone no.

For Privacy Act and Paperwork Reduction Act Notice, see separate instructions.

Form **1120S** (2009)

02/17/2015

VERONICA HANDY, ESQUIRE
CLERK OF THE COURT

Form **1120S**
Department of the Treasury
Internal Revenue Service

U.S. Income Tax Return for an S Corporation
Do not file this form unless the corporation has filed or is attaching Form 2553 to elect to be an S corporation.
See separate instructions.

OMB No. 1545-0047
2010

For calendar year **2010** or tax year beginning **2010**, ending **20**

A S election effective date 01-01-1999	Name UNITED CORPORATION	Number, street, room/suite no. P O BOX 763, C STED	City/town, state, & Zip code ST CROIX VI 00821	D Employer ID no. 66-0391237
B Business activity code number (see instructions) 445110	TYPE OR PRINT			E Date incorporated 03-05-1979
C Check if Sch. M-3 attached <input checked="" type="checkbox"/>				F Total assets (see inst.) \$ 81,924,595

G Is the corporation electing to be an S corporation beginning with this tax year? Yes No If "Yes," attach Form 2553 if not already filed

H Check if: (1) Final return (2) Name change (3) Address change (4) Amended return (5) S election termination or revocation

I Enter the number of shareholders who were shareholders during any part of the tax year **7**

Caution. Include only trade or business income and expenses on lines 1a through 21. See the instructions for more information.

INCOME	1a	Gross receipts or sales	110,067,657	b	Less returns and allowances		c Bal	1c	110,067,657
	2	Cost of goods sold (Schedule A, line 8)		2				2	72,733,950
	3	Gross profit. Subtract line 2 from line 1c		3				3	37,333,707
	4	Net gain (loss) from Form 4797, Part II, line 17 (attach Form 4797)		4				4	
	5	Other income (loss) (see instructions -- attach statement)		5				5	
	6	Total income (loss). Add lines 3 through 5		6				6	37,333,707
SEE INSTRUCTIONS FOR DEDUCTIONS	7	Compensation of officers		7				7	575,200
	8	Salaries and wages (less employment credits)		8				8	9,967,771
	9	Repairs and maintenance		9				9	535,648
	10	Bad debts		10				10	
	11	Rents		11				11	512,653 #1
	12	Taxes and licenses		12				12	5,245,991 #2
	13	Interest		13				13	6,442
	14	Depreciation not claimed on Schedule A or else (see instructions) (attach Form 4562)		14				14	254,573
	15	Depletion (Do not deduct oil and gas depletion)		15				15	
	16	Advertising		16				16	192,115
	17	Pension, profit-sharing, etc., plans		17				17	
18	Employee benefit programs		18				18	347,252	
19	Other deductions (attach statement)		19				19	8,743,138 #3	
20	Total deductions. Add lines 7 through 19		20				20	26,380,783	
21	Ordinary business income (loss). Subtract line 20 from line 6		21				21	10,952,924	
TAX AND PAYMENTS	22a	Excess net passive income or LIFO recapture tax (see instructions)	22a				22c	0	
	b	Tax from Schedule D (Form 1120S)	22b						
	c	Add lines 22a and 22b (see instructions for additional taxes)							
	23a	2010 estimated tax payments and 2009 overpayment credited to 2010	23a						
	b	Tax deposited with Form 7004	23b						
	c	Credit for federal tax paid on fuels (attach Form 4136)	23c						
	d	Add lines 23a through 23c					23d	0	
24	Estimated tax penalty (see instructions). Check if Form 2220 is attached <input type="checkbox"/>	24				24	0		
25	Amount owed. If line 23d is smaller than the total of lines 22c and 24, enter amount owed	25				25	0		
26	Overpayment. If line 23d is larger than the total of lines 22c and 24, enter amount overpaid	26				26	0		
27	Enter amount from line 26 credited to 2011 estimated tax. <input type="checkbox"/> Refunded <input type="checkbox"/>	27	0			27	0		

RECEIVED
OFFICE OF THE CLERK OF THE COURT
FEB 11 2013

VIRGIN ISLANDS BUREAU OF
INTERNAL REVENUE ST. THOMAS VI

Sign Here

Under penalties of perjury, I declare that I have examined this return, including accompanying schedules and statements, and to the best of my knowledge and belief, it is true, correct, and complete. Declaration of preparer (other than taxpayer) is based on all information of which preparer has any knowledge.

Signature of officer: See Attachment A Date: 2-9-13 Title: president

May the IRS discuss this return with the preparer shown below (see inst.)? Yes No

Paid Preparer Use Only	Print/Type preparer's name	Preparer's signature	Date	Check <input type="checkbox"/> if self-employed	PTIN
	Firm's name			Firm's EIN	
	Firm's address			Phone no.	

For Paperwork Reduction Act Notice, see separate instructions.

Form 1120S (2010)