

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

WALEED HAMED,)	
WAHEED HAMED,	)	Case No. SX-17-CV-15
MUFEED HAMED, and)	
HISHAM HAMED,	)	ACTION FOR DAMAGES
)	
Plaintiffs,	)	JURY TRIAL DEMANDED
)	
v.)	
)	
MAHER ("MIKE") YUSUF,)	
)	
Defendant.)	

NOTICE OF FILING OF CORRECTED COMPLAINT

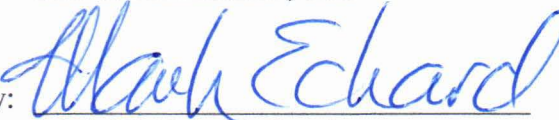
PLEASE TAKE NOTICE that the above-captioned plaintiffs (collectively, "Plaintiffs") have, on the date hereof, filed their *Corrected Original Complaint* to include Exhibit 1 and Exhibit 2, which was inadvertently omitted from the original filing of the Original Complaint. There have been no edits, changes or amendments of any kind whatsoever to the Original Complaint as filed together herewith and, indeed, the Original Complaint filed herewith is a copy of the Original Complaint initially filed on January 20, 2017. This Notice of Filing is done solely to attach Exhibit 1 and Exhibit 2, which are both plainly referenced in the Original Complaint and which both consist of public documents, specifically, rulings of the Court of which Defendant has actual knowledge and with which Defendant is undoubtedly familiar.

PLEASE TAKE FURTHER NOTICE that, in an abundance of caution, Plaintiff has requested a new summons in connection herewith and will serve the Corrected Complaint (together with Exhibit 1) on Plaintiff together with the new summons.

Respectfully submitted,

HAMMECKARD, LLP

Dated: January 31, 2017

By: 

Mark W. Eckard, Esquire
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Counsel to Waleed Hamed, Waheed Hamed,
Mufeed Hamed and Hisham Hamed

SUMMONS

(Civil Action)

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

WALEED HAMED,
WAHEED HAMED,
MUFEED HAMED, and
HISHAM HAMED,
Plaintiffs,
v.
MAHER ("MIKE") YUSUF,
Defendant.

Case No. SX-17-CV- 15
ACTION FOR DAMAGES
JURY TRIAL DEMANDED

TO: Maher ("Mike") Yusuf
ADDRESS: Seaside Market & Deli, 2001 Mt. Welcome Road, Christiansted, VI 00820

Within the time limited by law (see note below) you are hereby required to appear before this Court and file an answer to a complaint filed against you in this action. In the event that you fail to appear or answer, judgment by default will be taken against you as demanded in the Plaintiff's Complaint, a copy of which has been served upon you together herewith.

Witness my hand and Seal of this Court this ___ day of ___, 2017.

Handwritten signature of Mark W. Eckard

Attorney for the Plaintiff
Mark W. Eckard (VI Bar No. 1051)
5030 Anchor Way
Christiansted, VI 00820

CLERK OF THE SUPERIOR COURT

By: _____
(Deputy Clerk)

NOTE: The defendant, if served personally, is required to file his answer or other defense with the Clerk of this Court, and to serve a copy thereof upon the plaintiff's attorney within twenty (20) days after service of this Summons, excluding the date of service. The defendant, if served by publication or by personal service outside of the jurisdiction, is required to file his answer or other defense with the Clerk of this Court, and to serve a copy thereof upon the attorney for the plaintiff within thirty (30) days after the completion of the period of publication or personal service outside of the jurisdiction.

RETURN OF SERVICE

I, hereby certify that I received this summons on the ___ day of ___, 2017, and that thereafter, on the ___ day of ___, 2017, I did serve the same on the above-named defendant, _____ by showing _____ this original and be then delivering to _____ a copy of the complaint and summons which were forwarded to me attached thereto.

Marshal

Deputy



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

WALEED HAMED,)	
WAHEED HAMED,	)	Case No. SX-17-CV- <u>15</u>
MUFEED HAMED, and)	
HISHAM HAMED,	)	Action for Damages and Civil
	)	Stalking Protective Order
Plaintiffs,)	
	)	JURY TRIAL DEMANDED
v.)	
)	
MAHER ("MIKE") YUSUF,)	
)	
Defendant.)	

VERIFIED ORIGINAL COMPLAINT

Waleed Hamed, Waheed Hamed, Mufeed Hamed and Hisham Hamed (collectively, the "Hameds") file this Verified Original Complaint against Defendant Maher ("Mike") Yusuf and state as follows:

PRELIMINARY STATEMENT

1. The Hameds seek an award of compensatory and punitive damages against Mike Yusuf for (i) civil assault involving a deadly weapon or, in the alternative, for negligence as to those same acts and (ii) emotional distress. Also, pursuant to 5 V.I.C. Part VI, Ch. 101, the Hameds seek a temporary and permanent order restraining Mike Yusuf from (i) harassing, stalking or threatening any of the Hameds; (ii) being within five hundred feet (500') of any of the Hameds; and (iii) entering into or upon any of the Hameds' places of business, places of employment or residences.

2. Mike Yusuf and the Hameds, and their respective families, are involved in multi-case civil litigation involving tens of millions of dollars -- the essence of which is that Mike Yusuf and his father attempted to steal the Hamed family's half of the Plaza Extra Partnership

and lost – and now the stores and all assets are being divided 50/50 between the two families.

See EXHIBIT 1 attached hereto (April 25, 2013 Preliminary Injunction in Hamed v. Yusuf).

3. In April 2013, Mike Yusuf was publicly humiliated after being examined before Judge Douglas Brady in an evidentiary hearing. When questioned about stealing more than \$2.7 million from the partnership account in that litigation, he was caught in cross-examination, lying in open court regarding the locations and use of the funds he stole. The Judge described the perjury in his Opinion. See Exhibit 1. Over the period from that April 2013 decision until February 27, 2015, the Yusuf family suffered further humiliating losses as that Court progressively awarded the Hameds half of the control and assets of the partnership -- while noting the Yusufs' lies and theft.

4. As there were more unfavorable decisions for the Yusufs, Mike Yusuf began committing gratuitous, irrational and increasingly violent acts -- threatening battery against the Hameds or in the Hameds' presence -- all intended to intimidate and retaliate against the Hameds for the litigation. On February 27, 2015, the Hameds won a significant, final legal victory in the Supreme Court of the Virgin Islands which was the "last straw" in effectively ending the Yusuf family's attempt to steal the partnership's assets from the Hamed family.

5. On February 27, 2015, a drunken Mike Yusuf repeatedly stalked and tried to engage with the Hameds at several locations. Each time the Hameds disengaged and left. At the third such location, Mike Yusuf confronted the Hameds yelling about the court's decision, tried to start a physical altercation and then -- with this captured on video by a bystander -- pointed a loaded, semi-automatic Glock 40 caliber handgun at Waheed ("Willie") Hamed. Mike Yusuf (1) drunkenly pulled out his handgun, (2) chambered a round, (3) pointed the loaded handgun at the Hameds, (4) activated the gun's laser targeting system, (5) put his finger on the trigger, and (5)

placed the "red dot" of the gun's laser squarely in the middle of Plaintiff Willie Hamed's torso – despite the fact that a female acquaintance of both the Hameds and Yusufs was videotaping the scene and *repeatedly* screaming: "Mike put the gun down!" Mike Yusuf refused to holster his gun, waved it around drunkenly at the Hameds, loudly making the sound "pow, pow" repeatedly -- and further threatening the Hameds until the police arrived.

6. The Hameds have been interviewed by the Virgin Islands Police Department about Mike Yusuf's behavior on February 27, 2015. While the Hameds have continued to be terrified by the continuing threat of Mike Yusuf's next drunken (or sober) irrational, violent episode, they have held off filing a civil action so as to avoid interfering with VIPD's investigation. However with more heated litigation about to reach its climax because of the recent final claims submissions and the impending running of the two year period of limitations, the Hameds must now seek civil protective relief pursuant to 5 V.I.C. § 1471, *et seq.*

JURISDICTION and VENUE

7. This Court has jurisdiction over this matter pursuant to 4 V.I.C. § 76(a).

8. Venue is appropriate in the Division of St. Croix pursuant to 4 V.I.C. § 78(a) because the acts, events and occurrences described herein occurred on the island of St. Croix and because Mike Yusuf and three of the Hameds reside on St. Croix.

PARTIES

9. Plaintiff Waleed ("Wally") Hamed is an adult individual and resident of the island of St. Croix.

10. Plaintiff Waheed ("Willie") Hamed is an adult individual and resident of the island of St. Thomas.

11. Plaintiff Mufeed (“Mafi”) Hamed is an adult individual and resident of the island of St. Croix.

12. Plaintiff Hisham (“Shawn”) Hamed is an adult individual and resident of the island of St. Croix.

13. Defendant Maher (“Mike”) Yusuf is an adult individual and resident of the island of St. Croix.

FACTUAL BACKGROUND

14. The Superior Court of the Virgin Islands (Brady, J.) has found that in 1986, the Hameds’ father, Mohammad Hamed, entered into a partnership with Mike Yusuf’s father, Fathi Yusuf, for the ownership and operation of the Plaza Extra Supermarkets, consisting of (i) “Plaza West,” in Estate Plessen, St. Croix; (ii) “Plaza East” in Estate Sion Farm, St. Croix; and (iii) “Plaza Tutu” in Estate Tutu, St. Thomas (collectively, the “Plaza Extra Partnership”).

15. In that opinion, the Court also found that in late 2012, after 25 years of successful operations of the Plaza Extra Partnership, Mike Yusuf and his father, Fathi Yusuf, attempted to steal Mohammad Hamed’s 50% of the partnership – worth millions of dollars. The Court found that in furtherance of that theft:

15.1. Mike Yusuf and his father, Fathi Yusuf, created a fiction that the Plaza Extra Partnership was owned by a Yusuf family corporation (“United Corp.”) and that, therefore, neither the Hameds nor their father, Mohammad Hamed, had any interest in the Plaza Extra Partnership.

15.2. In legal papers in the Superior Court and argument before the V.I. Supreme Court, Mike Yusuf and his father, Fathi Yusuf, described the Hameds’ father,

Mohammad Hamed, as an illiterate back room employee who, at best, had an “annuity” arising out of the partnership;

15.3. In late 2012, Mike Yusuf and his father, Fathi Yusuf, stole \$2.7 million in cash from the Partnership account (see Exhibit 1 at ¶ 35);

15.4. In early 2013, Mike Yusuf and his father, Fathi Yusuf tried to have the police physically remove the Hameds from the Plaza East store and have the Hameds falsely arrested as “trespassers” on store property after the Hameds’ father, Mohammad Hamed, filed civil lawsuit to assert his half of the Plaza Extra Partnership and recover the stolen \$2.7 million (see Exhibit 1 at ¶ 40);

15.5. In early 2013, Mike Yusuf and his father, Fathi Yusuf, then stole another half million dollars from the partnership account -- to pay the Yusuf Family’s attorneys in the inter-family litigation against the Hamed family -- while locking the Hameds and their father out of those accounts (see Exhibit 1 at ¶ 38) and;

15.6. Mike Yusuf and his father, Fathi Yusuf, attempted to wrongfully discharge a long-time integral administrative employee at Plaza Extra East, merely because she was a witness to certain of the Yusufs’ wrongful acts (see Exhibit 1 at ¶ 38).

16. On April 25, 2013, in response to the Hameds’ father’s request for an injunction to protect his half of the Plaza Extra Partnership and two days of evidentiary hearings, Judge Douglas Brady issued a preliminary injunction (Exhibit 1) against Mike Yusuf’s father, Fathi Yusuf and the Yusuf Family’s company, United Corp. (the “Preliminary Injunction”) finding, among other things, the following:

16.1. Finding of Fact No. 36, stated that Mike Yusuf lied on the witness stand at one of the hearings as to what had been done with the approximately \$2.7 million he and his

father had stolen from the partnership account, and on cross-examination on a later date, he was caught committing perjury as to where those funds were and what had been done with them. The court, referencing the hearing transcript, found, at paragraph 36:

On the first hearing day, Mahar Yusuf, President of United Corporation testified under oath that he used the \$2,784,706.25 withdrawn from the Plaza Extra operating account to buy three properties on St. Croix in the name of United. On the second hearing day, Mahar Yusuf contradicted his prior testimony and admitted that those withdrawn funds had actually been used to invest in businesses not owned by United, including a mattress business. . . . *Tr. 250:2–251:15, Jan. 25, 2013; Tr. 118:12–120:2, Jan. 31, 2013.* (Emphasis added.)

See Exhibit 1 at ¶ 36.

16.2. Finding of Fact No. 38, stated that Mike Yusuf's father, Fathi Yusuf, had stolen \$145,000 (which eventually increased to \$500,000) from the partnership account to pay their lawyers *in the litigation against the Hameds*:

Funds from supermarket accounts have also been utilized unilaterally by Yusuf, without agreement of Hamed, to pay legal fees of [Fathi Yusuf and the Yusuf Family's company, United Corp.] relative to this action and the Criminal Action, in excess of \$145,000 to the dates of the evidentiary hearing. *Tr. 76:5–82:9, Jan. 25, 2013; Pl. Exhibit 15, 16*

See Exhibit 1 at ¶ 38.

16.3. Findings of Fact Nos. 39 and 40, stated that (i) Mike Yusuf and his father, Fathi Yusuf, threatened the Hameds and a witness (a long-time integral administrative employee in the evidentiary hearing against Fathi Yusuf and the Yusuf Family's company, United Corp.); (ii) called the police in an attempt to have the Hameds falsely arrested and removed from Plaza East; and (iii) threatened to close Plaza East:

Since at least late 2012, Yusuf has threatened to fire Hamed family managers and to close the supermarkets. *Tr. 149:20–150:22; 158:18–159:12; 253:25–254:19, Jan. 25, 2013.*

On January 8, 2013, Yusuf confronted and unilaterally terminated 15 year accounting employee Wadda Charriez for perceived irregularities relative to her timekeeping records of her hours of employment, threatening to report her stealing if she challenged the firing or sought unemployment benefits at Department of Labor, *Tr. 181:20–185:16, Jan. 25, 2013*. . . . On Charriez' January 9, 2013 return to work, Yusuf started screaming at her, and told her to leave or he would call the police. *Tr. 186:9–187:1, Jan. 25, 2013*. Yusuf did call police and demanded on their arrival that Charriez, and Mufeed Hamed and Waleed Hamed be removed from the store, and threatened to close the store. *Tr. 93:5–94:15; 164:19–165:18; 187:5–188:8, Jan. 25, 2013*.

See Exhibit 1 at ¶ 39 and 40.

16.4. Conclusion of Law No. 22, stated that Mike Yusuf's father, Fathi Yusuf, had "deprived [the Hameds' father, Mohammad Hamed] of his rights to equal participation in the management and conduct of the business" See Exhibit 1 at Conclusion of Law No. 22.

16.5. Conclusion of Law No. 22 also stated that Plaintiffs' father, Mohammad Hamed, "ha[d] met his burden of establishing irreparable injury if injunctive relief [was] not granted." See Exhibit 1 at Conclusion of Law No. 22.

17. As the result of its *Findings of Fact and Conclusions of Law*, the Court ordered as follows:

17.1. that "[t]he operations of the three Plaza Extra Supermarket stores shall continue. . . without unilateral action by either party, or representative(s), affecting the management, employees, methods, procedures and operations." See Exhibit 1 at ¶ 38. at Conclutory Order No. 1.

17.2. that "[n]o funds will be disbursed from supermarket operating accounts without the mutual consent of Hamed and Yusuf (or designated representative(s))." See Exhibit 1 at ¶ 38. at Conclutory Order No. 2.

17.3. that “[a]ll checks from all Plaza Extra Supermarket operating accounts will require two signatures, one of a designated representative of Hamed and the other of Yusuf or a designated representative of Yusuf.” See Exhibit 1 at ¶ 38. at Conclusory Order No. 3.

18. Fathi Yusuf and the Yusuf Family’s corporation, United Corp., appealed the Preliminary Injunction to the Supreme Court of the Virgin Islands. On September 30, 2013, the Supreme Court found against the Yusufs and upheld the Preliminary Injunction, stating as follows:

on August 15, 2012, [Fathi Yusuf] wrote a check for \$2,784,706.25 to himself and his son Mahar Yusuf from one of Plaza Extra's operating accounts over the written objections of Waleed Hamed. Mahar Yusuf, who is also the president of United Corporation, later provided conflicting testimony as to what United did with these funds.

Yusuf v. Hamed, 59 V.I. 841, 845 (V.I. September 30, 2013).

19. Thus, by September 2013, Mike Yusuf had been found by both the Superior Court of the Virgin Islands *and* the Supreme Court of the Virgin Islands, to be a thief and a liar. More specifically, he had been found to have acted in concert with his father, Fathi Yusuf, to steal \$2,784,706.25 and another \$500,000 of the cash from the Plaza Extra Partnership’s accounts – and lie under oath on the witness stand about it.

20. Even in the face of the Court’s findings as set forth in the Preliminary Injunction and the Supreme Court’s affirmance of the Preliminary Injunction and of the Superior Court’s findings, Fathi Yusuf and the Yusuf Family’s company, United Corp., continued to deny the existence of the Plaza Extra Partnership, stating that the partnership was owned solely by United Corp. (which is owned entirely by one or more members of the Yusuf Family.)

21. However, after being confronted with increasingly negative legal decisions, on April 7, 2014, Fathi Yusuf finally – despite years of shamefully creative arguments to the

contrary – *admitted* in a filing with this Court, that the business of the Plaza Extra Supermarkets had always been owned and operated by the Plaza Extra Partnership, finally conceding as follows: “[Fathi 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.” *See 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*, filed by Fathi Yusuf and United Corp., April 7, 2014.

22. With Fathi Yusuf and the Yusuf family’s company, United Corp. now having admitted Mohammad Hamed’s half ownership and control of the Plaza Extra Partnership, the Court entered summary judgment against Fathi Yusuf and the Yusuf family’s corporation, United Corp. on November 7, 2014, as follows:

the Court finds and declares that a partnership was formed in 1986 by the oral agreement between Plaintiff and Yusuf for the ownership and operation of the three Plaza Extra Stores, with each partner having a 50% ownership interest in all partnership assets and profits, and 50% obligation as to all losses and liabilities; and it is further

ORDERED that Plaintiff may properly maintain this action against Yusuf for legal and equitable relief to enforce his rights under the parties’ partnership agreement and the Uniform Partnership Act.

See **Exhibit 2**, Order (granting the Hamed’s *Motion for Partial Summary Judgment*) (the “November 7, 2014 Judgment”).

23. As a consequence of the Court’s November 7, 2014 Judgment, the Court began the process of splitting up the stores and property on a 50/50 basis. The Hameds’ father, Mohammad Hamed, would ultimately take sole ownership of two stores, Plaza West and Plaza Tutu and Fathi Yusuf took ownership of one store, Plaza East. The combined value of the cash

and businesses at that time exceeded \$100 million – so this was an attempted theft of more than \$50 million.

24. Soon after entry of the Court’s November 7, 2014 Judgment, Mike Yusuf entered the “Security Room” room at the Plaza East Supermarket and repeatedly – violently – kicked a refrigerator, breaking the front glass. Mike Yusuf was visibly drunk when he entered and destroyed the refrigerator.

25. Soon after entry of the Court’s November 7, 2014 Judgment, Mike Yusuf attempted to kill or, at the very least, terrorize Plaintiff Hisham (“Shawn”) Hamed by driving a forklift at full speed into a truck container – aiming at Plaintiff Shawn Hamed, who had just entered.

26. Soon after entry of the Court’s November 7, 2014 Judgment, Mike Yusuf, smelling of alcohol, stuck out his foot to trip Plaintiff Shawn Hamed as Hamed began to walk down the steep stairs between the upstairs office and the ground floor at Plaza West.

27. In 2015, the Yusuf family’s legal losses in the litigation continued. In furtherance the transfer of Plaza West to the Hameds father, the company that owns the ground underlying the Plaza West store (Plessen Enterprises, Inc.) had entered into a lease (the “Plaza West Lease”) with a company created by the Hameds for the operation of Plaza West. Plessen Enterprises, Inc. was and continues to be half-owned (“50/50”) by the Hameds and members of the Yusuf Family.

28. Fathi Yusuf vehemently challenged the validity of the Hamed’s Plaza West Lease. This lease was upheld by Judge Brady.

29. Thus, the Yusuf's "last ditch effort" to stop the transfer of the stores was an appeal of that Plaza West Lease decision to the V.I. Supreme Court. The Supreme Court could have stopped the entire dissolution process.

30. While that appeal was pending, on January 9, 2015, Judge Brady entered a final "*Winding Up Order*," which directed the division of the Plaza Extra Partnership's stores and other partnership property 50/50 to the Hameds and Yusufs and actually began the process of assigning stores to the parties.

31. When that Winding Up Order was entered, on or about January 9, 2015, Mike Yusuf threatened the Hameds and stated that they would "never get away with the stores *just because the Court said so.*"

32. A month and a half later, on February 27, 2015, the final straw came – the Yusufs' last ditch effort to stop the process failed when the Virgin Islands Supreme Court upheld the lower court's approval of the Plaza West Lease – clearing the way for the final breakup and actual transfer of the stores.

33. The result of the Supreme Court's February 27, 2015 decision was that Mike Yusuf and his father, Fathi Yusuf, would no longer be able to stop the turnover of one-half of the Plaza Extra Partnership and the West Store to the Hameds' father, Mohammad Hamed. That division was scheduled to proceed immediately.

34. **On the night of that crushing defeat for the Yusufs, February 27, 2015, Mike Yusuf repeatedly stalked, harassed and eventually violently confronted and threatened the Hameds in a drunken rage.** He pulled out his Glock 40 pistol and pointed it at Plaintiff Waheed ("Willie") Hamed. Mike Yusuf then methodically turned on the red "laser dot" of the pistol's targeting system – "painting" the dot on Willie Hamed's chest – with a round

chambered and his finger on the trigger. The events of the night of February 27, 2015 make clear that Mike Yusuf followed, stalked and actively sought out the Hameds for the purpose of instigating a deadly confrontation, as follows:

34.1. At approximately 10:00 p.m., as Plaintiffs Willie Hamed and Mufeed (“Mafi”) Hamed were parking their car on Company Street in Christiansted Town, Mike Yusuf pulled up in his car, accompanied by a man known to function as some sort of “body guard” for Mike Yusuf.

34.2. Mike Yusuf jumped out of his car and called out to Willie Hamed, who has lived on St. Thomas for at least a decade and spends almost no time on St. Croix.

34.3. Having not seen Mike Yusuf for a long time, Willie Hamed offered his hand to Mike Yusuf and asked how Mike Yusuf was doing.

34.4. In response, Mike Yusuf angrily said, “What are you doing – are you over here to celebrate? You think you got it?”

34.5. Mike Yusuf began to say that the court decision that day “would not get them the stores” and threatened Willie and Mafi Hamed. It was obvious to both Willie Hamed and Mafi Hamed that Mike Yusuf had been drinking, both from his demeanor and his breath. Therefore the two Hameds immediately disengaged and left.

34.6. Soon thereafter, Willie and Mafi Hamed met up with Plaintiffs Waleed (“Wally”) Hamed and Shawn Hamed as well as two other people inside Martini’s, a night club on Company Street in Christiansted Town.

34.7. They were there to celebrate the legal victory that day.

34.8. Moments after everyone arrived inside Martini's, a clearly drunk Mike Yusuf entered Martini's and made a spectacle of himself as he acted out an exaggerated production of videotaping the Hameds with his cellphone.

34.9. Sensing trouble and not wanting to get into a confrontation with Mike Yusuf, the Hameds and the others with them immediately left Martini's.

34.10. The Hameds then went to Morena Bar in the Water Gut section of Christiansted.

34.11. When the Hameds walked outside of the Morena Bar, having decided to all go home early because they all had work the next morning, they briefly stood in the parking lot saying their goodbyes.

34.12. As the Hameds and those with them were standing in the parking lot outside of Morena Bar, they noticed Mike Yusuf's car first driving by at high speed up Water Gut Road, then stop and turn around -- and finally drive at high speed into the parking lot of Morena Bar -- slamming to a halt near where the Hamed party was standing.

34.13. Mike Yusuf jumped out of his car and, again, made a spectacle of himself holding up his smart phone as if video recording them.

34.14. When the Hameds refused to react, Mike Yusuf then walked over to Wally Hamed, putting his face within inches of Wally Hamed's face.

34.15. Mike Yusuf launched into a drunken, abusive verbal tirade against Wally Hamed and the Hamed family regarding the fact that regardless of what the court said, they would not get the stores and that he would stop them, still with his face within inches of Wally Hamed's face. His spittle was landing on Wally Hamed's face.

34.16. When Wally Hamed didn't react, Mike Yusuf then used his hands to push Wally Hamed back

34.17. Plaintiff Wally Hamed recovered and in straightening up, his chest bumped Mike Yusuf back from Wally Hamed's face.

34.18. Plaintiff Willie Hamed then rushed over to where Mike Yusuf was standing and attempted to get between them – and began telling Mike Yusuf to leave his brother alone.

34.19. When Mike Yusuf again moved toward Wally Hamed, Willie Hamed attempted to wrap his arms around Mike Yusuf from behind in a brief bear hug to stop his advance.

34.20. As Plaintiff Willie Hamed was releasing Mike Yusuf from his grasp, Mike Yusuf fell to the ground.

34.21. The Hameds and the others backed away from Mike Yusuf, all the while asking Mike Yusuf repeatedly to please stop.

34.22. As the Hameds were backing away, Mike Yusuf slowly and methodically made a show of pulling out his gun. He then turned on the gun's laser targeting system, held up his gun and pointed the gun at Willie Hamed's chest, with the red "laser dot" squarely in the middle of Plaintiff Willie Hamed's chest.

34.23. Mike Yusuf said repeatedly: "I'm gonna kill you...I'm gonna blow off your head."

34.24. Upon seeing Mike Yusuf with his gun out, with a "laser dot" trained on Plaintiff Willie Hamed's chest, a mutual acquaintance of the Hameds and Yusufs began repeatedly screaming for Mike Yusuf to, "Mike, please, put the gun away."

34.25. When this did not work, to try to discourage Mike Yusuf from shooting a man with nothing in his hands, she began to videotape the scene -- and on that tape can be heard repeatedly screaming: "Mike, put the gun away.....Mike, please put the gun away."

34.26. With the assault now being filmed, eventually, Mike Yusuf stopped aiming the gun at Willie Hamed.

34.27. However, despite repeated requests to "put away" his gun, Mike Yusuf refused to holster his gun.

34.28. Instead, he then continued to hold it in his hand, occasionally drunkenly waving it around.

34.29. The VI Police Depart was called by a bystander, and arrived on the scene. A witness there said repeatedly to the police [about Mike Yusuf]: "That man pulled a gun – he pulled a gun and was gonna kill them.....and you gotta arrest him...."

COUNT I: ASSAULT

35. Each of the foregoing allegations is incorporated as though fully set forth herein.

36. Mike Yusuf's acts were intended to cause the Hameds to apprehend imminent harmful contact, including fear of imminent death.

37. Mike Yusuf had the clear, immediate and highly apparent ability to carry out that imminent harmful contact.

38. Mike Yusuf's acts did, in fact, cause the Hameds to apprehend imminent harmful contact, including fear of imminent death.

39. As the result of Plaintiff's acts described herein, the Hameds suffered severe emotional distress at the time of the incident.

COUNT II: NEGLIGENCE

40. Each of the foregoing allegations is incorporated as though fully set forth herein.

41. In the alternative, Mike Yusuf's acts even if not intended to cause the Hameds to apprehend imminent harmful contact or death because his drunken state left him unable to form legal intent, did so.

42. Mike Yusuf, like all persons, owes a duty to other members of the public not to become so drunk that he is unable to avoid causing imminent apprehension of battery by those members of the public.

43. As members of the public, the Hameds were owed that duty by Mike Yusuf.

44. Mike Yusuf failed in that duty and did cause the above described to happen to the Plaintiffs.

45. As the result of Mike Yusuf's negligent acts described herein, the Hameds suffered the apprehension of a battery and distress at the time of the incident.

COUNT III: INFLECTION OF EXTREME EMOTIONAL DISTRESS

46. Each of the foregoing allegations is incorporated as though fully set forth herein.

47. Mike Yusuf's acts described herein were extreme and outrageous.

48. Mike Yusuf's acts described herein were calculated to cause the most severe possible emotional distress -- beyond any acceptable norms of behavior.

49. Mike Yusuf's acts described herein recklessly caused the most severe possible emotional distress -- beyond any acceptable norms of behavior.

50. Mike Yusuf's acts did cause the most severe possible emotional distress -- beyond any acceptable norms of behavior.

51. No claim is made for ongoing physical or psychological injuries.

**COUNT IV: TEMPORARY AND PERMANENT RELIEF
PURSUANT TO 5 V.I.C. §§ 1474(a) and 1475**

52. Each of the foregoing allegations is incorporated as though fully set forth herein.
53. Mike Yusuf has purposely followed each of the Hameds.
54. Mike Yusuf has engaged in a course of conduct with the intent of annoying or placing each of the Hameds in fear of death or bodily harm or injury and causing each of the Hameds emotional distress.
55. Mike Yusuf has made explicit threats against each of the Hameds with the intent and apparent ability to carry out such threats, so as to cause the Hameds to reasonably fear for their personal safety and the safety of each other.
56. Mike Yusuf has engaged in a knowing and intentional course of conduct directed at each of the Hameds which alarms, annoys, torments and terrorizes each of the Hameds and would cause a reasonable person to suffer emotional distress.
57. After stealing from the Hameds and then lying to the court on the witness stand about it, Mike Yusuf repeatedly has stated that he would not accept the results of the Court's decisions and threatened retaliation against the Hameds in the future. More such negative court decisions for the Yusufs may be upcoming in litigation between the parties -- as recently as the past months, the Yusufs have been forced to dismiss litigation brought against the Hameds.
58. A sober Mike Yusuf is patently a clear and deadly threat to the Hameds', their customers, their businesses, their families and their property as long as the Hamed/Yusuf litigation continues -- and Mike Yusuf must be enjoined from further stalking, harassing or threatening any of the Hameds. Moreover, given Mike Yusuf's obvious penchant for gun play, Mike Yusuf must be enjoined from coming within, at least, a 500' radius of any of the Hameds or any of the Hameds' families.

WHEREFORE, the Hameds, and each of them, respectfully request that the Court:

- (i) enter a temporary order pursuant to 5 V.I.C. § 1474(a) and a permanent order pursuant to 5 V.I.C. § 1475:
- restraining Mike Yusuf or anyone acting on behalf of Mike Yusuf from following, harassing by personal, telephonic, or computerized contact, or by any other form of communication any of the Hameds;
 - restraining Mike Yusuf or anyone acting on behalf of Mike Yusuf from abusing, molesting, or interfering with the privacy rights of any of the Hameds;
 - restraining Mike Yusuf or anyone acting on behalf of Mike Yusuf from entering in or upon any of the Hameds' places of business, places of employment and/or residences or property;
 - restraining Mike Yusuf from being within FIVE HUNDRED (500') from any of the Hameds; and
- (ii) award to the Hameds compensatory and punitive damages as they may appear at trial; and
- (iii) grant to each of the Hameds such other and further relief as is just and proper.

PLAINTIFFS DEMAND TRIAL BY JURY AS TO COUNTS I, II and III.

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Respectfully submitted,

HAMM ECKARD, LLP

Dated: January ~~19~~²⁰, 2017

By: 

Mark W. Eckard (VI Bar No. 1051)
5030 Anchor Way, Suite 13
Christiansted, VI 00820-4692
Telephone: (340) 773-6955
Facsimile: (855) 456-8784
Email: meckard@hammeckard.com

Counsel to for Waleed Hamed, Waheed Hamed,
Mufeed Hamed and Hisham Hamed

VERIFICATION

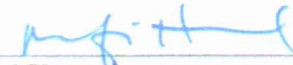
We, the undersigned, do hereby affirm and verify that we have carefully read the Complaint and that based upon reasonable inquiry, the allegations set forth above are true and correct to the best of each of our information, knowledge and belief.

Dated: January ~~20~~²⁰ 2017.



Waleed Hamed

Waheed Hamed



Mufeed Hamed



Hisham Hamed

The foregoing verification was sworn to and subscribed before me this 20 day of January, 2017 by Waleed Hamed, Mufeed Hamed and Hisham Hamed.



NOTARY PUBLIC

The foregoing verification was sworn to and subscribed before me this 20 day of January 2017 by Waheed Hamed.

NOTARY PUBLIC

Respectfully submitted,

HAMM ECKARD, LLP

By:



Mark W. Eckard (VI Bar No. 1051)
5030 Anchor Way, Suite 13
Christiansted, VI 00820-4692
Telephone: (340) 773-6955
Facsimile: (855) 456-8784
Email: meckard@hammeckard.com

Dated: January 19, 2017

Counsel to for Waleed Hamed, Waheed Hamed,
Mufeed Hamed and Hisham Hamed

VERIFICATION

We, the undersigned, do hereby affirm and verify that we have carefully read the Complaint and that based upon reasonable inquiry, the allegations set forth above are true and correct to the best of each of our information, knowledge and belief.

Dated: January, __ 2017.

Waleed Hamed



Waheed Hamed

Mufeed Hamed

Hisham Hamed

The foregoing verification was sworn to and subscribed before me this 19TH day of January, 2017 by Waleed Hamed, Mufeed Hamed and Hisham Hamed.


NOTARY PUBLIC

The foregoing verification was sworn to and subscribed before me this 19TH day of January 2017 by Waheed Hamed


NOTARY PUBLIC

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

WALEED HAMED, WAHEED
HAMED, MUFEED HAMED, and
HISHAM HAMED

Petitioner,

v.

MAHER ("MIKE") YUSUF

Respondent.

Civil No. _____

14 V.I.C. CH.I, Subchapter VIII

5 V.I.C. Part VI, Ch.101

14 V.I.C. Section 2071

VERIFIED PETITION FOR PROTECTION ORDER
AGAINST HARASSMENT and/or STALKING

I, Waleed Hamed, Waheed Hamed, Mufeed Hamed and Hisham Hamed (collectively, the "Hameds")
(Petitioner or Parent/Guardian on behalf of Minor)

file this Complaint against Maher ("Mike") Yusuf ("Mike") who
(Respondent)

resides at _____, St. Croix, VI
(Respondent's Home Address)

and works at Seaside Market & Deli, whose physical
(Respondent's Work Address)

description is 2001 Mt. Welcome Road, Christiansted, VI 00820.

** Petitioner must give their address and contact information to the Clerk of the Court at the time the Petition is filed.*

2. Pursuant to 14 V.I.C. Chapter 1; Subchapter VIII (Act Number 7799), and/or 5 V.I.C. Part VI, Ch.101; 14 V.I.C. Section 2071 (Act Number 7744)

I request the following temporary relief: *(Check one or more)*

- An Order restraining Respondent, or others acting on Respondent's behalf, from harassing and/or stalking me.
- An Order directing Respondent, or others acting on Respondent's behalf, from following me, harassing me by personal, telephonic or computerized contact or from having any other form of communication or contact with me.
- An Order restraining the Respondent or others acting on Respondent's behalf, from abusing, sexually abusing, stalking, molesting or threatening me.
- An Order restraining Respondent, or anyone acting on Respondent's behalf, from entering upon my property, residence or place of employment or within fifty (50) feet thereof.
- An Order directing the Respondent to pay me for losses suffered as a result of the harassment or abuse.

3. Within the past year, I have been a victim of harassment as defined in 14 V.I.C. Chapter 1, Subchapter VIII, and/or stalking as defined in 14 V.I.C. Section 2071; including one or more of the following acts by the Respondent or others acting on Respondent's behalf: *(Check all that apply)*

- | | |
|--|--|
| <input checked="" type="checkbox"/> Repeatedly following me | <input type="checkbox"/> Repeatedly called my home telephone |
| <input checked="" type="checkbox"/> Made verbal threats | <input type="checkbox"/> Repeatedly called my work telephone |
| <input type="checkbox"/> Made written threats | <input type="checkbox"/> Repeatedly called or texted my cellphone |
| <input type="checkbox"/> Contacted or threatened me via social media | <input type="checkbox"/> Entered my property or residence uninvited |
| <input checked="" type="checkbox"/> Loitered around my workplace | <input type="checkbox"/> Loitered around my property |
| <input checked="" type="checkbox"/> Caused me loss of earnings | <input checked="" type="checkbox"/> Caused property damage |
| <input checked="" type="checkbox"/> Caused me emotional distress | <input type="checkbox"/> Caused me to incur medical expenses due to the harassment |
| <input type="checkbox"/> Damaged locks | <input checked="" type="checkbox"/> Caused me to incur legal fees |
| <input type="checkbox"/> Caused me to obtain an unlisted phone number | <input checked="" type="checkbox"/> Caused me fear or to be intimidated |
| <input type="checkbox"/> Sexually harassed by verbal or physical abuse | |

4. My reason(s) for filing this Petition is/are: (State all reasons and specify the DATES and ACTIONS of the Respondent which cause you to file this Petition.)

On or around November 7, 2014, Mike drove a forklift at full speed into a truck container in which Shawn Hamed was inside.

On or around November 7, 2014, Mike stuck out his foot to trip Shawn Hamed down a steep flight of stairs.

On or around January 9, 2015 Mike threatened the Hameds saying they would never get away with the stores just because the court said so.

February 27, 2015 Mike confronted and threatened Willie Hamed and Mufeed Hamed in Christiansted while they were parking their car, later that night he followed the Hameds into Martini's and again threatened the Hameds and began video taping them. The Hameds eventually left to get away from Mike and went to Morena Bar.

Mike later went to Morena Bar, driving by the parking lot at high speeds where the Hameds and friends were standing. He then stopped, got out of the car and started to again videotape and confront Wally Hamed and began to push him, Willie Hamed went over to restrain Mike and told him to leave his brother alone and released Mike to the ground. As Mike got up he pulled out a gun and pointed it at Waheed Hamed and threatened to kill him. He only relented to put the gun down, but refused to holster it, when someone started filming the incident. He continued to hold the gun in his hand and occasionally, drunkenly wave it around until the police arrived.

Mike was believed to have been drunk during all of these incidents.

5. I understand that at a hearing I must prove what I have said in this Petition by a preponderance of the evidence in order to receive the relief I request. On the day set for Hearing, I will bring all documents, photographs, witnesses and other

evidence necessary to prove any claims. I understand, I have a right to be represented by an attorney at the hearing on this Petition.

WHEREFORE, Plaintiff prays that this Honorable Court:

- (a) Set this matter for hearing within the time fixed by law;
- (b) Serve a summons together with a copy of this Petition on the Respondent and any other persons the Court believes advisable;
- (c) Grant the relief requested above; and
- (d) Grant any additional or alternate relief the Court feels appropriate.

VERIFICATION

I declare under penalty of perjury that the foregoing information is true and correct to the best of my knowledge and belief.

SEE ATTACHED VERIFICATION

DATED: _____

(Petition's SIGNATURE)

Subscribed and sworn to before me this
____ day of _____, 20__

NOTARY PUBLIC

EXHIBIT 1

FOR PUBLICATION

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

MOHAMMED HAMED, by his authorized
agent WALEED HAMED,

Plaintiff,

vs.

FATHI YUSUF and UNITED CORPORATON,

Defendants.

CIVIL NO. SX-12-CV-370

ACTION FOR DAMAGES; PRELIMINARY
AND PERMANENT INJUNCTION;
DECLARATORY RELIEF

JURY TRIAL DEMANDED

MEMORANDUM OPINION

THIS MATTER is before the Court on Plaintiff's Emergency Motion and Memorandum to Renew Application for TRO ("Renewed Motion"), filed January 9, 2013, renewing his September 18, 2012 Motion for a Temporary Restraining Order and/or a Preliminary Injunction. Hearing on the Renewed Motion was held on January 25, 2013 and continued on January 31, 2013. Having reviewed the Renewed Motion, evidence and argument of counsel presented at the hearing, along with the voluminous filings of the parties in support of and in opposition to the Renewed Motion, this matter has been converted to that of a Preliminary Injunction pursuant to Fed. R. Civ. P. 65(a). Upon review of the record, the Court herein makes findings of fact and conclusions of law, pursuant to Fed. R. Civ. P. 52(a)(2), and GRANTS Plaintiff's Renewed Motion.

JURISDICTION

This Court has jurisdiction over this matter pursuant to 4 V.I. Code § 76(a), which grants the Superior Court "original jurisdiction in all civil actions regardless of the amount in controversy." Likewise, under 5 V.I. Code § 1261, courts of record are empowered to "declare rights, status, and other legal relations whether or not further relief is or could be claimed

The declaration may be either affirmative or negative in form and effect; and such declarations shall have the force and effect of a final judgment or decree.” A request for injunctive relief is addressed to the sound discretion of the Court. *Shire US Inc. v. Barr Laboratories, Inc.*, 329 F.3d 348, 352 (3d Cir. 2003). This Court may grant equitable (i.e. injunctive) relief as Plaintiff seeks in his Renewed Motion to enforce a partner’s rights regarding partnership profits and management and conduct of the partnership business pursuant to 26 V.I. Code §75(b).

STANDARD

The Court must consider four factors when reviewing a motion for preliminary injunction: (1) whether the movant has shown a reasonable probability of success on the merits; (2) whether the movant will be irreparably injured by the denial of the relief; (3) whether granting preliminary relief will result in even greater harm to the nonmoving party; and (4) whether granting the preliminary relief will be in the public interest. *Petrus v. Queen Charlotte Hotel Corp.*, 56 V.I. 548, 554 (2012), citing *Iles v. de Jongh*, 55 V.I. 1251, 1256 (3d Cir. 2011), (quoting *McTernan v. City of New York*, 577 F. 3d 521, 526 (3d Cir. 2009).

STATEMENT OF ISSUES

By his Verified Complaint, Plaintiff alleges that Defendants, acting personally and through authorized agents, committed several unilateral acts in contravention of the partnership relationship between Plaintiff and Defendant Fathi Yusuf (“Yusuf”) and established understandings and agreements among the parties. Plaintiff avers that those acts threaten the businesses and his interests in the businesses established by the partnership as a result of those agreements. Accordingly, Plaintiff demands injunctive and declaratory relief to determine the status of the parties’ relationships and the framework under which they must conduct their

business operations in light of those relationships. Upon review of the parties' case and controversy, submissions and presented evidence, the Court makes the following findings of fact.

FINDINGS OF FACT

1. Plaintiff and Defendant Yusuf have a longstanding friendship and familial history which preceded their business relationship. *January 25, 2013 Evidentiary Hearing Transcript, at 196-198, hereinafter Tr. 196-198, Jan. 25, 2013.*
2. In 1979, Fathi Yusuf incorporated United Corporation ("United") in the U.S. Virgin Islands. *Defendants' Evidentiary Hearing Exhibit, no. 7, hereinafter Def. Ex. 7.*
3. United subsequently began construction on a shopping center located at Estate Sion Farm, St. Croix. Thereafter, Defendant Yusuf desired and made plans to build a supermarket within the shopping center. *Plaintiff's Evidentiary Hearing Exhibit, no. 1 (Transcript, February 2, 2000 Oral Deposition of Fathi Yusuf: Idheileh v. United Corp. and Yusuf, Case No. 156/1997, Territorial Court of the Virgin Islands, Div. St. Thomas and St. John), at 8, lines 1-14; hereinafter Pl. Ex. 1, p. 8:1-14.⁴*
4. Subsequently, Yusuf encountered financial difficulty in completing construction of the shopping center and opening the supermarket, was unable to procure sufficient bank loans, and told Plaintiff Mohammad Hamed ("Hamed") that he was unable to finance the completion of the project. At Yusuf's request, Hamed provided funding to Yusuf's project from proceeds of Hamed's grocery business. *Pl. Ex. 1, p. 14:4-15:14.*
5. Hamed provided Yusuf with monies to facilitate completion of construction on the shopping center and to facilitate opening the Plaza Extra supermarket in Estate Sion Farm, St Croix. *Tr.197:5—199:13, Jan. 25, 2013.*

⁴ The Court has taken judicial notice of the certified copy of the deposition transcript in the noted Territorial Court action, submitted as Pl. Ex. 1. See discussion at *Tr. 6-9, Jan. 25, 2013.*

6. Upon Yusuf's request, Hamed sold his two grocery stores to work exclusively as a part of Plaza Extra. *Tr. 200:4-15, Jan. 25, 2013.*
7. Hamed contributed to Yusuf's project funds as they were available to him, including the entire proceeds from the sale of his two grocery stores, with the agreement that he and Yusuf would each be a 50% partner in the Plaza Extra Supermarket, "in the winning or loss." *Tr.200:16-23, Jan. 25, 2013.*
8. Hamed initially became a 25% partner of Yusuf, along with Yusuf's two nephews who each also had a 25% interest in the Plaza Extra Supermarket business. *Pl. Ex. 1, p.15:2-14.*
9. Yusuf sought additional bank financing to complete the construction of the building for the Plaza Extra business, which loan application was eventually denied, as a result of which Yusuf's two nephews requested to have their funds returned and to leave the partnership. *Pl. Ex. 1, p. 17:6-24.*
10. With the withdrawal of Yusuf's nephews, the two remaining partners of the Plaza Extra Supermarket business were Hamed and Yusuf. Notwithstanding the financing problems, Hamed determined to remain with the business, having contributed a total of \$400,000 in exchange for a 50% ownership interest in the business. *Pl. Ex. 1, p.17:24-19:10.*
11. Yusuf and Hamed were the only partners in Plaza Extra by the time in 1986 when the supermarket opened for business and Hamed has remained a partner since that time. *Pl. Ex. 28.*²

² Subsequent to the evidentiary hearing but before the parties submitted their post-hearing briefs, Plaintiff on February 19, 2013 filed his Second Request to Take Judicial Notice and Request to Supplement the Hearing Record, presenting proposed Plaintiff's Exhibits 28, 29 and 30. By separate Order of this date, Plaintiff's Request was granted. Exhibit 28 is comprised of selected Defendants' Responses to Plaintiff's Second Set of Interrogatories to Defendants in that matter known as *Idheileh v. United Corp. and Yusuf, Case No. 156/1997, Territorial Court of the Virgin Islands, Div. St. Thomas and St. John*

12. As a partner in the Plaza Extra Supermarket business, Hamed was entitled to fifty (50%) percent of the profit and liable for fifty (50%) of the “payable” as well as loss of his contribution to the initial start-up funds. *Tr. 44:12-21; 200:16-23; 206:23-25, Jan. 25, 2013; Pl. Ex. 1, p 18:16-23; p.23:18-25.*
13. Yusuf and Hamed have both acknowledged their business relationship as a partnership of an indefinite term. *Pl. Ex. 1, p.18:18-23* (“I’m obligated to be your partner as long as you want me to be your partner until we lose \$800,000.”); *Tr. 210:4-8, Jan. 25, 2013* (Q: “How long is your partnership with Mr. Yusuf supposed to last? When does it end?” A: “Forever. We start with Mr. Yusuf with the supermarket and we make money. He make money and I make money, we stay together forever.”)
14. Yusuf testified in the *Idheileh* case that it was general public knowledge that Yusuf was a business partner with Hamed even before the Plaza Extra supermarket opened. *Pl. Ex. 1, p. 20:10-12.*
15. Yusuf has admitted in this case that he and Hamed “entered into an oral joint venture agreement” in 1986 by which Hamed provided a “loan” of \$225,000 and a cash payment of \$175,000 in exchange for which “Hamed [was] to receive fifty percent (50%) of the net profits of the operations of the Plaza Extra supermarkets” in addition to the “loan” repayment. Yusuf states that the parties’ agreement provided for “a 50/50 split of the profits of the Plaza Extra Supermarket stores.” *Pl. Ex. 2, p.3,4.* Indeed, Yusuf confirms that “[t]here is no disagreement that Mr. Hamed is entitled to fifty percent (50%) of the profits of the operations of Plaza Extra Store....The issue here again is not whether Plaintiff Hamed is entitled to 50% of the profits. He is.” *Pl. Ex. 3, p.11.*

16. In 1992-1993, a second Plaza Extra supermarket was opened on the island of St. Thomas, USVI, initially with a third “partner,” Ahmad Idheileh, who later withdrew leaving a “50/50” ownership interest in the St. Thomas Plaza Extra between Yusuf and Hamed. *Tr. 27:1-28:14, Jan. 25, 2013.*
17. At present, there are three Plaza Extra Supermarkets which employ approximately six hundred people on St. Croix and St. Thomas. *Tr. 238:4-6, Jan 25, 2013.*
18. In the *Idheileh* litigation, Yusuf provided an affidavit wherein he stated that “[m]y brother in law, Mohamed Hamed, and I have been full partners in the Plaza Extra Supermarket since 1984 while we were obtaining financing and constructing the store, which finally opened in 1986.” *Pl. Ex. 1, Affidavit of Fathi Yusuf, Deposition Ex. 6³.*
19. Hamed and Yusuf have jointly managed the stores by having one member of the Hamed family and one member of the Yusuf family co-manage each of the three Plaza Extra Supermarkets. Originally, Hamed and Yusuf personally managed the first Plaza Extra store, with Hamed in charge of receiving, the warehouse and produce, and Yusuf taking care of the office. *Tr. 26:11-19; 206:20-22, Jan 25, 2013.* Yusuf’s management and control of the “office” was such that Hamed was completely removed from the financial aspects of the business, concerning which Hamed testified “I’m not sign nothing...Fathi is the one, he sign. Mr. Yusuf the one he sign the loan, the first one and the second one.” *Tr. 207:16-21, Jan. 25, 2013.*
20. During recent years, in every store there is, at least, one Yusuf and one Hamed who co-manage all aspects of the operations of each store. Mafeed Hamed and Yusuf Yusuf have

³ At the conclusion of the second day of the hearing, counsel agreed to supplement the record to include exhibits to Plaintiff’s Exhibit 1, the February 2, 2000 deposition of Fathi Yusuf. *Tr. 129-130, Jan. 31, 2013.* Deposition Exhibits 6 and 7 were provided with Plaintiff’s Notice of Filing Supplemental Deposition Exhibits, filed February 19, 2013.

managed the Estate Sion Farm store along with Waleed Hamed. Waheed Hamed, Fathi Yusuf and Nejah Yusuf operate the St. Thomas store, and Hisham Hamed and Mahar Yusuf manage the Plaza West store on St. Croix. *Tr. 31:6-35:11; 147:11-20; 160:10-22, Jan. 25, 2013, and Tr. 33:6-17, Jan. 31, 2013.*

21. In operating the “office,” Yusuf did not clearly delineate the separation between United “who owns United Shopping Plaza” and Plaza Extra, despite the fact that from the beginning Yusuf intended to and did “hold the supermarket for my personal use.” *Pl. Ex. 1, p. 8:1-7.* Despite the facts that the supermarket used the trade name “Plaza Extra” registered to United (*Pl. Ex. 4, ¶14*) and that the supermarket bank accounts are in the name of United (*Pl. Ex’s. 15, 16*), “in talking about Plaza Extra...when it says United Corporation...[i]t’s really meant me [Yusuf] and Mr. Mohammed Hamed.” *Pl. Ex. 1, p. 69:13-21.*
22. Yusuf admitted in the *Idheileh* action that Plaza Extra was a distinct entity from United, although the “partners operated Plaza Extra under the corporate name of United Corp.” *Pl. Ex. 28, Response to Interrogatory 6.*
23. The distinction between United and the Plaza Extra Supermarkets is also apparent from the fact that United, as owner of United Shopping Center, has sent rent notices to Hamed on behalf of the Sion Farm Plaza Extra Supermarket, and the supermarket has paid to United the rents charged. *Pl. Ex’s. 7, 8, 9; Tr. 48:24-51:9; 212:18-214:15, Jan. 25, 2013.*
24. In 2003, United was indicted for tax evasion in federal court, along with Yusuf and several other members of the Hamed and Yusuf families in that matter in the District Court of the Virgin Islands, Division of St. Croix, known as *United States and Government of the Virgin Islands v. Fathi Yusuf, et al., Crim. No. 2005-15* (“the Criminal

- Action”) . However, Plaintiff Mohammed Hamed was not indicted. *Tr. 222:11-223:6; 134:15-23, Jan. 25, 2013.*
25. In connection with the Criminal Action, the federal government appointed a receiver in 2003 to oversee the Plaza Extra Supermarkets, who deposits all profits into investment accounts at Banco Popular Securities and, originally, at Merrill-Lynch. Those “profits” accounts remain at Banco Popular Securities to the present. *Tr. 41:15-42:18; 137:13-138:19, Jan. 25, 2013.*
26. In 2011, United pled guilty to tax evasion in the Criminal Action. Charges were dismissed against the other Defendants, by Plea Agreement filed February 26, 2011. *Def. Ex. 2, p.2.*
27. The Criminal Action against United remains pending, as the terms of the Plea Agreement require “complete and accurate” tax filings. United has filed no tax returns since 2002, although estimated taxes have been paid from the grocery store accounts, and mandatory accounting procedures for Plaza Extra have been adopted. *Tr. 241:23-245:12, Jan 25, 2013; Tr. 90:4-16, Jan 31, 2013; Def. Ex. 2.*
28. At some point between late 2009 and 2011, at Yusuf’s suggestion, the Hamed and Yusuf families agreed that all checks drawn on Plaza Extra Supermarket accounts had to be signed by one member of the Hamed family and one member of the Yusuf family. *Tr. 100:11-16, 228:2-11, Jan. 25, 2013.*
29. In late 2011, United had its newly retained accountant review a hard drive containing voluminous financial records related to the Criminal Action, following which Yusuf accused members of the Hamed family of stealing money from the supermarket business

and threatening to close the store and to terminate the United Shopping Plaza lease. *Tr. 52:5-10, Jan. 31, 2013; Tr. 51:18-52:8, Jan. 25, 2013.*

30. Thereafter, discussions commenced initiated by Yusuf's counsel regarding the "Dissolution of Partnership." *Pl. Ex. 10, 11, 12.* On 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. *Pl. Ex. 12.*⁴ Settlement discussions followed those communications but have not to date resulted in an agreement. *Tr. 58:15-20, Jan. 25, 2013.*
31. Although 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. *Tr. 45:24-48:2; 172:6-173:8; 202:18-25, Jan. 25, 2013; Pl. Ex. 1, Affidavit of Fathi Yusuf, Depos. Exh .6, ¶4.* Both Plaintiff and Yusuf have designated their respective sons to represent their interests in the operation and management of the three Plaza Extra stores. *Tr. 31:6-35:11, Jan. 25, 2013.*
32. It had been the custom and practice of the Yusuf and Hamed families to withdraw funds from the supermarket accounts for their own purposes and use (see *Def. Ex. 1; Pl. Ex. 27*), however such withdrawals were always made with the knowledge and consent of the other partner. *Tr. 138:20-139:8, Jan. 25, 2013; Tr. 121:3-123:9, Jan. 31, 2013.*

⁴ These exhibits were admitted at hearing over Defendants' objection premised on Fed. R. Evid. 408. The evidence was not offered to prove the validity or amount of Plaintiff's claims, but rather to put into context the history of the parties' relationship which may be accepted as evidence for another purpose under R. 408(b). Further, the exhibits offer nothing beyond evidence presented wherein Yusuf has similarly characterized the history of his relationship with Plaintiff.

33. Waleed Hamed testified that Fathi Yusuf utilized Plaza Extra account funds to purchase and subsequently sell property in Estate Dorothea, St. Thomas, to which it was agreed that Hamed was entitled to 50% of net proceeds. Although Yusuf's handwritten accounting of sale proceeds confirms that Hamed is due \$802,966, representing 50% of net proceeds (*Pl. Ex. 18*), that payment has never been made to Hamed and the disposition of those sale proceeds is not known to Hamed. *Tr.88:8-90:17, Jan. 25, 2013;*
34. Each of the three Plaza Extra Supermarkets maintains and accounts for its operations separately, with separate bank accounts. In total, the stores maintain a total of approximately eleven accounts. *Tr. 35:17-20; 36:22-38:25; 229:10-13, Jan. 25, 2013.*
35. On or about August 15, 2012, Yusuf wrote a check signed by himself and his son Mahar Yusuf and made payment to United in the amount of \$2,784,706.25 from a segregated Plaza Extra Supermarket operating account, despite written objection of Waleed Hamed on behalf of Plaintiff and the Hamed family, who claimed that, among other objections, the unilateral withdrawal violated the terms of the District Court's restraining order in the Criminal Action. *Tr. 246:1-250:14, Jan. 25, 2013; Pl.Group Ex. 13.*
36. On the first hearing day, Mahar Yusuf, President of United Corporation testified under oath that he used the \$2,784,706.25 withdrawn from the Plaza Extra operating account to buy three properties on St. Croix in the name of United. On the second hearing day, Mahar Yusuf contradicted his prior testimony and admitted that those withdrawn funds had actually been used to invest in businesses not owned by United, including a mattress business, but that none of the funds were used to purchase properties overseas. *Tr. 250:2-251:15, Jan. 25, 2013; Tr. 118:12-120:2, Jan. 31, 2013.*

37. A restraining order was entered by the District Court in the Criminal Action which remains in place and restricts withdrawal of funds representing profits from the supermarkets that have been set aside in the Banco Popular Securites brokerage account pending the conclusion of the Criminal Action or further order of that Court. *Tr. 41:15-42:18; 119:4-12, Jan. 25, 2013.* The Criminal Action will remain pending until past tax returns are filed. *Tr. 134:15-136:22; 242:16-245:5, Jan. 25, 2013.* As of January 18, 2013, the brokerage account had a balance of \$43,914,260.04. *Def. Ex. 9.* This Court cannot enforce the restraining order or otherwise control any aspect of the Criminal Action or its disposition.
38. Funds from supermarket accounts have also been utilized unilaterally by Yusuf, without agreement of Hamed, to pay legal fees of defendants relative to this action and the Criminal Action, in excess of \$145,000 to the dates of the evidentiary hearing. *Tr. 76:5-82:9, Jan. 25, 2013; Pl. Ex. 15, 16.*⁵
39. Since at least late 2012, Yusuf has threatened to fire Hamed family managers and to close the supermarkets. *Tr. 149:20-150:22; 158:18-159:12; 253:25-254:19, Jan. 25, 2013.*
40. On January 8, 2013, Yusuf confronted and unilaterally terminated 15 year accounting employee Wadda Charriez for perceived irregularities relative to her timekeeping records of her hours of employment, threatening to report her stealing if she challenged the firing or sought unemployment benefits at Department of Labor. *Tr. 181:20-185:16, Jan. 25, 2013.* Charriez had a "very critical job" with Plaza Extra (*Tr 179:17-19, Jan. 25, 2013*),

⁵ Plaintiff has submitted Exhibit 30 with his February 19, 2013 Second Request to Take Judicial Notice and Request to Supplement the Hearing Record, granted by separate Order. Defendants' opposition to Plaintiffs' Motion did not address Exhibit 30, consisting of two checks in the total sum of more than \$220,000 in payment to defense counsel in this action, dated January 21, 2013 and February 13, 2013, drawn on a supermarket account by Defendants without Plaintiffs' consent. Although the evidence is cumulative and not essential to the Court's decision herein, it reflects an ongoing practice of unilateral withdrawals and the possibility of continuing unilateral action in the future.

and the independent accountant retained by Yusuf agreed that she was “a very good worker” and that her work was “excellent.” *Tr. 94:2-6, Jan. 31, 2013*. Because the Hamed co-managers had not been consulted concerning the termination or shown any proof of the employee’s improper activity, Mafeed Hamed instructed Charriez to return to work the following day. *Tr. 179:4-24; 185:17-186:8, Jan. 25, 2013*. On Charriez’ January 9, 2013 return to work, Yusuf started screaming at her, and told her to leave or he would call the police. *Tr. 186:9-187:1, Jan. 25, 2013*. Yusuf did call police and demanded on their arrival that Charriez, and Mufeed Hamed and Waleed Hamed be removed from the store, and threatened to close the store. *Tr. 93:5-94:15; 164:19-165:18; 187:5-188:8, Jan. 25, 2013*. The incident that occurred on January 9, 2013, the same day that Plaintiff’s Renewed Motion was filed, coupled with other evidence presented demonstrates that there has been a breakdown in the co-management structure of the Plaza Extra Supermarkets. *Tr. 141:25-142:18;143:17-146:19; 166:21-167:8, Jan 25, 2013*.

41. “By the time Plaza Extra opened in 1986, Mohamed Hamed and Defendant Yusuf were the only partners. These partners operated Plaza Extra under the corporate name of United Corp.” *Pl. Ex. 28, Response to Interrogatory 6*. Defendants now claim that Yusuf is the owner of only 7.5% of the shares of United (*Pl. Ex. 2, p. 11*), which could adversely affect Plaintiff’s ability to enforce his claims as to the partnership “operated [as] Plaza Extra under the corporate name of United Corp.”

DISCUSSION

Although this matter is before the Court on Plaintiff’s Renewed Motion that seeks a temporary restraining order, the parties agree that following the full evidentiary hearing

conducted, the relief Plaintiff seeks is a preliminary injunction pursuant to Fed. R. Civ. P. 65(a). The Court cannot issue a preliminary injunction unless on the basis of the evidence on the record, Plaintiff prevails as to each of the four factors recently delineated by the Virgin Islands Supreme Court in *Petrus*, namely: (1) the movant has shown a reasonable probability of success on the merits; (2) the movant will be irreparably injured by the denial of the relief; (3) granting preliminary relief will not result in even greater harm to the nonmoving party; and (4) granting the preliminary relief will be in the public interest. 56 V.I. at 554. Only if the movant produces evidence sufficient to convince the Court that all four factors favor preliminary relief should the injunction issue. *Opticians Association of America v. Independent Opticians of America*, 920 F.2d 187, 192 (3d Cir. 1990).

The evidentiary record before the Court includes the testimony of witnesses and documentary exhibits. Those exhibits include prior filings of the parties in this case by which the parties are bound by virtue of the doctrine of judicial admissions. *Berckley Inv. Group, Ltd. V. Colkitt*, 455 F.3d 195, 211 n. 20 (3d Cir. 2006); *Parilla v. IAP Worldwide Serv., VI, Inc*, 368 F.3d 269, 275 (3d Cir 2004). Those exhibits also include filings in prior unrelated cases, which are admissible as admissions of such party against its interest, pursuant to Fed. R. Evid. 801(d).⁶

The Court will consider the four factors required for the issuance of a preliminary injunction *in seriatim*, and makes the following conclusions of law.

CONCLUSIONS OF LAW

Probability of Movant's Success on the Merits.

1. Plaintiff seeks to establish that his business relationship with Yusef of more than 25 years constitutes a Virgin Islands partnership, notwithstanding the lack of any written partnership

⁶ On April 7, 2010, Act No. 7161 became law, section 15 of which established the Federal Rules of Evidence as applicable in this Court. See, *Chinnery v. People*, 55 V.I. 508, 525 (2011).

agreement and the failure of the business to file Virgin Islands partnership tax returns or to provide K-1 forms to report partners' distributive share of income, among other factors urged by Defendants. Whether the relationship will be characterized as a partnership is governed by the Uniform Partnership Act ("UPA"), adopted in 1998 as Title 26, Chapter 1 of the Virgin Islands Code.

2. Under the UPA, "the association of two or more persons to carry on as co-owners a business for profit forms a partnership, whether or not the persons intend to form a partnership." 26 V.I. Code §22(a). In the mid-1980's when the Hamed – 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." *Former* 26 V.I. Code §21(a).

3. Under the UPA, "A person who receives a share of the profits of a business is presumed to be a partner in the business..." 26 V.I. Code §22(c)(3). Under the former Code provisions, "the receipt by a person of a share of the profits of a business is prima facie evidence that he is a partner in the business..." *Former* 26 V.I. Code §22(4).⁷

4. Evidence of "a fixed profit-sharing arrangement" and "evidence of business operation" are factors to be considered in the determination of whether the parties in a business relationship had formed a partnership. *Addie v. Kjaer*, Civ. No. 2004-135, 2011 WL 797402, at 3* (D.V.I. Mar. 1, 2011).

⁷ The Court applies the test in effect at the time the business relationship between the parties was formed (see *Harrison v. Bornn, Bornn & Handy*, 200 F.R.D. 509, 514 (D.V.I. 2001)), and holds that a partnership is found to exist by the admitted sharing of profits of the business unless Defendants' evidence is sufficient to rebut that *prima facie* evidence. However, the distinction between the language in the former statute and the current is of no legal significance. Commentary of the National Conference of Commissioners of Uniform State Laws on the publication of the 1997 of the UPA notes that "no substantive change is intended. The sharing of profits is recast as a rebuttable presumption of a partnership, a more contemporary construction, rather than as prima facie evidence thereof." *Formation of Partnership, Unif. Partnership Act §202, cmt. 3 (1997)*.

5. "A partnership agreement is defined as the agreement, whether written, *oral*, or implied, among the partners concerning the partnership, including amendments to the partnership agreement." 26 V.I. Code §2(7), *emphasis added*. A "partnership at will" exists where the partners have not agreed to remain partners until the expiration of a definite term or the completion of a particular undertaking." 26 V.I. Code §2(8).

6. Defendants protest that there is no written partnership agreement to memorialize the understanding between Yusuf and Hamed. However, as noted, the UPA does not require that such agreements be memorialized by a writing, and further sanctions "at will" agreements that have no definite term or duration, and are subject to dissolution by either partner at any time. As such, partnerships are not within the statute of frauds and need not be in writing. *Smith v. Robinson*, 44 V.I. 56, 61 (Terr. Ct. 2001).

7. Even if the statute of frauds were applicable to the formation of a partnership, the doctrine of part performance operates to prevent an inequity where a person is induced or permitted to invest time, money and labor in reliance upon an oral agreement, which agreement would otherwise be voided by the application of the statute of frauds. Accordingly, if a party can show that part of an oral agreement was performed, the oral contract is taken out of the statute of frauds and becomes binding. *Sylvester v. Frydenhoj Estates Corp.*, 47 V.I. 720, 724 (D.V.I. 2006), citations omitted.

8. Defendants suggest that Hamed and Yusuf entered into a joint venture rather than a partnership. A joint venture has been defined as a partnership for a single transaction, recognized as a subspecies of partnership, and is analyzed under Virgin Islands law in the same manner as is a partnership. *Boudreax v. Sandstone Group*, 36 V.I. 86, 97 (Terr. Ct. 1997), citing *Fountain Valley Corp. v. Wells*, 19 V.I. 607 (D.V.I.1983).

9. Yusuf and Hamed, acting under the name "United Corporation," entered into their relationship with Ahmad Idheileh "to open and operate a supermarket on St. Thomas" by means of a Joint Venture Agreement. *Pl. Ex. 1, Dep. Ex. 7*. This "business relationship created by agreement of the parties for the purpose of profit" was formed "for a single undertaking or transaction," and was to "terminate at the conclusion of their stated purpose, by agreement, or at the will of the parties." *C&C Manhattan v. Gov't of the V.I.*, 46 V.I. 377, 384 (D.V.I. 2004), citations omitted. To the contrary, the self-described "partnership" of Hamed and Yusuf, formed for profit, with no set duration, involved the development of a business enterprise, including the three supermarkets and other business projects spanning two and a half decades.

10. The Court concludes that Defendants' recent claims that the parties have been engaged in a joint venture and not a partnership are not credible as they contradict the record before the Court and the long history prior to this litigation of admissions by Yusuf, who did not testify at the hearing, to the effect that he and Hamed are "50/50" partners. Those pre-litigation admissions of the existence of a partnership have been consistent over many years, including through his notice to Hamed of his dissolution of their partnership in the months prior to this litigation.

11. Defendants argue that Defendant United has owned and operated the businesses known as Plaza Extra, and that Hamed's claims must fail because he concedes that he has no ownership interest in United. To the contrary, the record clearly reflects that Yusuf's use of the Plaza Extra trade name registered to United, the use bank accounts in United's name to handle the finances of the three supermarkets and other participation of the corporate entity in the operation of the stores was all set up in the context of Yusuf's partnership with Hamed, as Yusuf has consistently admitted. The existence of a partnership is not negated by the use of the corporate form to

conduct various operations of the partnership: *McDonald v. McDonald*, 192 N.W. 2d 903, 908 (Wis. 1972). The fact that the partner conducting the business utilizes a corporate form does not change the essential nature of the relationship of the parties. *Granik v. Perry*, 418 F.2d 832, 836 (5th Cir. 1969).

12. Where, as here, the parties agree that one partner is designated to take charge of “the office” and assumes the responsibility for obtaining or filing the relevant documents as a part of his share of the partnership responsibilities, his failure to file that documentation in the name of the partnership does not mean that no partnership exists. Partners may apportion their duties with respect to the management and control of the partnership such that one partner is given a greater share in the management than others. Thus, the fact that one partner may be given a greater day-to-day role in the management and control of a business than another partner does not defeat the existence of the partnership itself. *Al-Yassin v. Al-Yassin*, 2004 WL 625757, *7 (Cal. Ct. App. 2004). Where one party actively pursues the partnership business, such business must be conducted in keeping with “fundamental characteristics of trust, fairness, honesty, and good faith that define the essence of the partners’ relationship.” *Alpart v. Gen. Land Partners Inc.*, 574 F.Supp. 2d 491, 500 (E.D. Pa. 2008).

13. It is undisputed that Plaintiff and Yusuf agreed from the time prior to the opening of the first store to share profits from the business on a 50/50 basis and that they did so share profits. These elements of their business relationship present a *prima facie* case for the existence of a partnership under the former 26 V.I. Code §22(4), applicable at the time of the formation of the

partnership. Defendants have not presented evidence sufficient to overcome Plaintiff's *prima facie* proof of the partnership of the parties.⁸

14. Various other indicia of the existence of the formation of a partnership are present in the record, including the fact that the parties intended to and did associate with each other carry on as co-owners a business for profit (26 V.I. Code §22(a)). The parties agreed to share the net profits of the business "50/50" (26 V.I. Code §22(c)(3)). Each of the parties contributed money and services to commence the business operation. The parties agreed that their relationship would continue without any definite term. The parties jointly shared the risks of the business and agreed to equally share any losses of the business. By dividing the initial management of the business between the warehouse, receiving and produce (Hamed) and the office (Yusuf), the parties jointly managed the business. As years passed and additional stores opened, joint management continued with the sons of each of the parties co-managing all aspects of each of the stores.

15. On the basis of the record before the Court and the foregoing, Plaintiff has demonstrated a reasonable probability that he will succeed on the merits of his claim as to the existence of a partnership between himself and Yusef with regard to the three Plaza Extra stores.

Irreparable injury to Movant by denial of relief.

16. As the Court finds that there is a reasonable probability of Plaintiff's success in proving the existence of a partnership, he is entitled to the benefits of his status as a partner, including "an equal share of the partnership profits" and "equal rights in the management and conduct of the partnership business." 26 V.I. Code §71(b) and (f).

⁸ The analysis and the result are the same if the evidence is determined to give rise to the presumption of the existence of a partnership of the parties under the current 26 V.I. Code §22(c)(3), the Virgin Islands UPA. Defendants' proofs are insufficient to rebut the presumption of the existence of a partnership.

17. Plaintiff maintains this action seeking equitable relief, and this Court may grant such equitable (i.e. injunctive) relief to enforce Plaintiff/partner's rights to an equal share of the partnership profits and equal rights in the management and conduct of the partnership, pursuant to 26 V.I. Code §75(b)(1) and (2)(i).

18. Yusuf forcefully contends that this case is solely about money damages, and any damage to Plaintiff is economic damage only, which can be remedied by an award of monetary damages. "[A] preliminary injunction should not be granted if the injury suffered by the moving party can be recouped in monetary damages." *IDT Telecom, Inc. v CVT Prepaid Solutions, Inc.*, 250 Fed. Appx. 476, 479 (3d Cir. 2007), citations omitted. Although the alleged diversion of more than \$3,000,000 constitutes a primary focus of Plaintiff's claims for relief, he also seeks to remedy what he alleges to be usurpation by Yusuf of his "equal rights in the management and conduct of the partnership."⁸

19. To establish irreparable harm, Plaintiff must show that his legal remedies (i.e. the potential award of a money judgment) are inadequate. If the plaintiff suffers a substantial injury that cannot be accurately measurable or adequately compensable by an award of money damages, irreparable harm may be found. *Ross-Simons of Warwick, Inc. v. Baçcarat*, 102 F.3d 12, 18-19 (1st Cir. 1996). An award of monetary damages may not provide an adequate remedy where the amount of monetary loss alleged is not capable of ascertainment. *Instant Air Freight Co. v. C.A. Air Freight, Inc.*, 882 F. 2d 797, 801 (3d Cir. 1989).⁹ Further, injunctive relief may be available where the movant can "demonstrate that there exists some cognizable danger of

⁹ With regard to the August 2012 diversion of more than \$2.7 million by Mahar Yusuf, president of United, to accounts inaccessible to Plaintiff, a real concern exists that continuing diversions will not be traceable as the Plaza Extra store have had no system of internal controls in existence and, to date accounting for the businesses is not completed beyond June 2012. (Testimony of accountant John Gaffney, Tr. 71:20-72:3; 75:11-21, Jan. 31, 2013.) As such, the amount of any monetary loss suffered by Plaintiff may not be capable of ascertainment.

recurrent violation of its legal rights.” *Anderson v. Davila*, 125 F.3d 148, 164 (3d Cir. 1997), quoting *United States v. W.T. Grant Co.*, 345 U.S. 629, 633 (1953), internal quotations omitted.

20. Plaintiff alleges recurring violations of his legal rights to equal participation in the management and conduct of the partnership business. In addition, Plaintiff claims that the diversion of partnership revenues to accounts inaccessible to Plaintiff without accounting or explanation constitutes a showing of irreparable harm because of the threat that similar diversions will occur in the future and diverted funds may be removed from the jurisdiction of the Court rendering a monetary judgment ineffectual. See *Health and Body Store, LLC v. InstBrand Limited*, 2012 WL 4006041, at *4-5 (E.D. Pa. Sept. 11, 2012).

21. The record reflects that Yusuf has arbitrarily addressed employee issues, including termination of a long-term high level employee and has threatened to close the stores. (See, Findings of Fact, ¶40). Evidence exists in the record to the effect that co-managers in Plaza Extra East no longer speak with each other (*Tr. 166:21-167:8, Jan. 25, 2013*), that employees are fearful for their jobs (*Tr. 158:18-159:12, Jan. 25, 2013*), and that the tensions between Yusuf and the Hamed family have created a “hard situation” for employees (*Tr. 187:5-188:8*). Plaintiff alleges that such circumstances that flow directly from his deprivation of equal participation in management and control of the supermarkets reflect his loss of control of the reputation and goodwill of the business which constitute irreparable injury, not compensable by an award of money damages. *S & R Corp. v. Jiffy Lube Intern., Inc.*, 968 F.2d 371, 378 (3d Cir. 1992).

~~22.~~ Defendant's actions have deprived Plaintiff of his rights to equal participation in the management and conduct of the business. As such, the Court finds that Plaintiff has met his burden of establishing irreparable injury if injunctive relief is not granted.¹⁰

The balance of harms favors the Movant

23. One of the goals of the preliminary injunction analysis is to maintain the status quo, defined as "the last, peaceable, noncontested status of the parties." *Opticians Association of America, supra*, 920 F.2d at 197, citations omitted. For more than 25 years, the parties have been able to equally manage and control their very successful business enterprise. For reasons delineated above, that Plaintiff's rights to equal management and control have been infringed upon by the actions of Defendant. In considering the relief sought by Plaintiff, the Court must assure that granting injunctive relief will not harm Defendants more than denying relief would harm Plaintiff.

24. The remedy sought and the relief to be imposed does not deprive Yusuf of his statutory partnership rights to equal management and control of the business. Rather, it simply assures that Hamed is not deprived of the same legal rights to which he is entitled. Neither party has the right to exclude the other from any part of the business. *Health and Body Store, LLC, supra*, 2012 WL 4006041, at *5. The relief sought and granted to provide equal access to all aspects of the business will not harm Defendants more than the denial of such relief harms Plaintiff.

~~25.~~ 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

¹⁰ Most troubling is the substance of Plaintiff's Motion to Supplement the Record, dated and filed April 23, 2013, after the Opinion was largely completed. Therein, Waleed Hamed states that the Hamed family has been denied access to the supermarket accounts and signature authorization to Hamed family members has been revoked by the depository banks based upon instructions from Yusuf. Deprivation of access to bank accounts and signature authorization on bank accounts clearly constitute denial of partnership management rights not compensable by an award of monetary damages.

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.

Public interest favors injunctive relief.

26. The public interest is best served by the continued success of Plaza Extra Supermarkets or, in the alternative, by the orderly dissolution or winding down of the business relationship of the parties pursuant to their own agreement. Enforcement of statutory rights of the partners is best suited to accomplish that end.

27. The public interest is served by the continued employment of 600 Virgin Islanders and the continuity of this Virgin Island institution operated according to law and their agreement. "It is not only in the interest of [Plaintiff] that this court grant a preliminary injunction against [Defendants], but it is in the public interest to ensure that the management of [Plaza Extra Supermarkets] be properly maintained and the premises remain available for public use—they being an integral part of the St. Croix economy." *Kings Wharf Island Enterprises, Inc. v. Rehlaender*, 34 V.I. 23, 29 (Terr. Ct. 1996).

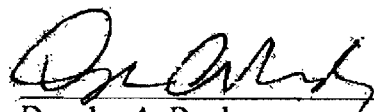
CONCLUSION

Injunctive relief is appropriate to preserve the status quo of the parties, their partnership and business operations, by ensuring that the parties' statutory rights are preserved and enforced. The Court's Order entering injunctive relief must state its terms specifically and describe in reasonable detail the act or acts restrained. *Caribbean Healthways, Inc. v. James*, 55 V.I. 69, 700 (2011), quoting Fed. R. Civ. P. 65(d)(1)(B) and (C).

Consistent with this Court's Findings of Fact and Conclusions of Law a separate Order of even date will accompany this Memorandum Opinion, directing the parties as follows:

1. The operations of the three Plaza Extra Supermarket stores shall continue as they have throughout the years prior to this commencement of this litigation, with Hamed, or his designated representative(s), and Yusuf, or his designated representative(s), jointly managing each store, without unilateral action by either party, or representative(s), affecting the management, employees, methods, procedures and operations.
2. No funds will be disbursed from supermarket operating accounts without the mutual consent of Hamed and Yusuf (or designated representative(s)).
3. All checks from all Plaza Extra Supermarket operating accounts will require two signatures, one of a designated representative of Hamed and the other of Yusuf or a designated representative of Yusuf.
4. A copy of the Order accompanying this Opinion will be provided to the depository banks where all Plaza Extra Supermarket operating accounts are held.
5. Plaintiff shall forthwith file a bond in the amount of Twenty-Five Thousand Dollars (\$25,000.00) with the Clerk of the Court, and shall provide notice of the posting to Defendants. (Plaintiff's interest in the "profits" accounts of the business now held at Banco Popular Securities shall serve as additional security to pay any costs and damages incurred by Defendants if found to have been wrongfully enjoined.)


Dated: April 25, 2013



Douglas A. Brady
Judge of the Superior Court

ATTEST:

VENETIA H. VELASQUEZ
Clerk of the Court

By: 
Chief Deputy Clerk

4/25/13

FOR PUBLICATION

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

MOHAMMED HAMED by his authorized agent)	
WALEED HAMED,)	
	)	CIVIL NO. SX-12-CV-370
Plaintiff)	
v.	)	ACTION FOR DAMAGES;
	)	PRELIMINARY AND PERMANENT
FATHI YUSUF, and UNITED CORPORATON,	)	INJUNCTION; DECLARATORY
	)	RELIEF
Defendants,)	
	)	JURY TRIAL DEMANDED
)	
)	

ORDER

The Court having issued its Memorandum Opinion of this date, it is hereby

ORDERED that Plaintiff's Emergency Motion to Renew Application for TRO, filed January 9, 2013, seeking entry of a temporary restraining order or, in the alternative, preliminary injunction is **GRANTED**, as follows:

ORDERED that the operations of the three Plaza Extra Supermarket stores shall continue as they have throughout the years prior to this commencement of this litigation, with Hamed, or his designated representative(s), and Yusuf, or his designated representative(s), jointly managing each store, without unilateral action by either party, or representative(s), affecting the management, employees, methods, procedures and operations. It is further

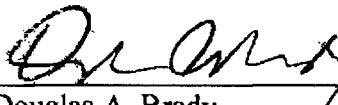
ORDERED that no funds will be disbursed from supermarket operating accounts without the mutual consent of Hamed and Yusuf (or designated representative(s)). It is further

ORDERED that all checks from all Plaza Extra Supermarket operating accounts will require two signatures, one of a designated representative of Hamed and the other of Yusuf or a designated representative of Yusuf. It is further

ORDERED that a copy of this Order shall be provided to the depository banks where all Plaza Extra Supermarket operating accounts are held. It is further

ORDERED that Plaintiff shall forthwith file a bond in the amount of Twenty-Five Thousand Dollars (\$25,000.00) with the Clerk of the Court, and shall provide notice of the posting to Defendants. (Plaintiff's interest in the "profits" accounts of the business now held at Banco Popular Securities shall serve as additional security to pay any costs and damages incurred by Defendants if found to have been wrongfully enjoined.)

Dated: *April 25, 2013*



Douglas A. Brady
Judge of the Superior Court

ATTEST;

VENETIA H. VELASQUEZ
Clerk of the Court

By: 

Chief Deputy Clerk

4/25/13

EXHIBIT 2

IN THE SUPERIOR COURT OF THE VIRGIN ISLANDS

DIVISION OF ST. CROIX

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

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

**NOTICE
OF
ENTRY OF JUDGMENT/ORDER**

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

Please take notice that on NOVEMBER 7, 2014 Order was entered by this Court in the above-entitled matter.

Dated: November 7, 2014

ESTRELLA H. GEORGE (ACTING)

Clerk of the Superior Court



By: IRIS D. CINTRON

COURT CLERK II

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

MOHAMMED HAMED by his authorized agent)
WALEED HAMED,)

Plaintiff/Counterclaim Defendant,)

v.)

FATHI YUSUF and UNITED CORPORATON,)

Defendants/Counterclaimants)

v.)

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

Counterclaim Defendants.)

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

ORDER

THIS MATTER is before the Court on Plaintiff's Motion for Partial Summary Judgment, filed November 12, 2012 in the District Court of the Virgin Islands, prior to remand to this Court; Defendants' Motion to Appoint a Master for Judicial Supervision of Partnership Winding Up, or in the alternative to Appoint Receiver to Wind Up Partnership ("Motion re Master"), filed April 7, 2014; Plaintiff's Renewed Motion for Partial Summary Judgment as to the Existence of a Partnership ("Plaintiff's Motion"), filed May 9, 2014; Defendants' Opposition, filed June 2, 2014; Plaintiff's Reply, filed June 10, 2014, and Plaintiff Mohammad Hamed's Notice of Additional Facts Regarding his Motion for Summary Judgment as to Partnership, filed September 11, 2014. This matter came on for a telephonic status conference on October 7, 2014, at which time the Court advised that based Defendants' agreement that the relationship between Plaintiff and Defendant

Yusuf constituted a partnership that it would enter summary judgment as to the existence of a partnership. As such, Plaintiff's Motion will be granted for the reasons that follow.

By Amended Complaint filed October 19, 2012, Plaintiff alleged that a partnership existed between Hamed and Yusuf pursuant to the Uniform Partnership Act adopted in the Virgin Islands, and brought this action pursuant to V.I. CODE ANN. tit. 26, § 75 seeking, among other things, entry of declaratory judgment recognizing the Hamed-Yusuf Partnership. In his Motion re Master, Defendant Yusuf conceded the existence of a partnership by operation of law between himself and Plaintiff Hamed, and requested that this Court dissolve said partnership. See Motion re Master, ¶7. In subsequent filings and in open court, Defendants have reiterated their concession as to the existence of the partnership. Accordingly, Plaintiff renewed his motion for partial summary judgment, seeking the Court's entry of judgment on Count One of Plaintiff's Amended Complaint declaring the existence of the Hamed-Yusuf Partnership.

Defendants object to Plaintiff's Motion on the following grounds: 1) Pursuant to LRCi 56.1, Plaintiff's Motion lacks a separate statement of material facts; 2) Plaintiff's Amended Complaint does not request declaratory relief based on the Uniform Partnership Act; and 3) there is no need to enter summary judgment as Defendant Yusuf already conceded the existence of a partnership. Opposition, at 2-4.

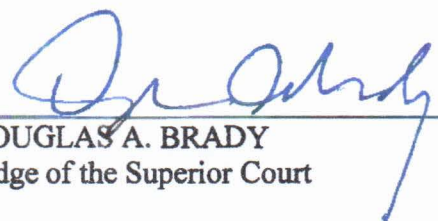
The Court is not persuaded by Defendants' arguments: First, Plaintiff's Motion before the Court is "renewed." His original Motion for Partial Summary Judgment, filed in the District Court, included an accompanying statement of undisputed material facts. As such, Plaintiff in compliance with LRCi 56.1. Second, Paragraphs 36 and 37 of Plaintiff's Amended Complaint specifically seeks declaratory relief as to the existence of a partnership pursuant to the Uniform

Partnership Act, as codified in the V.I. Code. Finally, contrary to Defendants' argument, the declaration by the Court of the legal relationship of the parties, disputed in the pleadings but undisputed in fact, brings clarity to the record and conforms the law of the case to the undisputed facts upon which the parties agree. The formal declaration of the existence of a partnership is a necessary prerequisite to the dissolution and winding-up of the partnership, the process upon which the parties have embarked. In light of the foregoing, it is hereby

ORDERED that Plaintiff's Renewed Motion for Partial Summary Judgment as to the Existence of a Partnership is GRANTED; and it is further

ORDERED that the Court finds and declares that a partnership was formed in 1986 by the oral agreement between Plaintiff and Defendant Yusuf for the ownership and operation of the three Plaza Extra Stores, with each partner having a 50% ownership interest in all partnership assets and profits, and 50% obligation as to all losses and liabilities; and it is further

ORDERED that Plaintiff may properly maintain this action against Defendant Yusuf for legal and equitable relief to enforce his rights under the parties' partnership agreement and the Uniform Partnership Act.

Dated: November 7, 2014 
DOUGLAS A. BRADY
Judge of the Superior Court

ATTEST:

ESTRELLA GEORGE
Acting Clerk of the Court

By: 
Court Clerk Supervisor

11/7/14