

IN THE SUPERIOR COURT OF THE VIRGIN ISLANDS

DIVISION OF ST. CROIX

| | | |
|---|---|--------------------------|
| HISHAM HAMED , individually, and |) | |
| Derivatively, on behalf of SIXTEEN |) | |
| PLUS CORPORATION , |) | CIVIL NO. SX-16-CV-650 |
| |) | |
| Plaintiff, |) | DERIVATIVE SHAREHOLDER |
| |) | SUIT, ACTION FOR DAMAGES |
| vs. |) | AND CICO RELIEF |
| |) | _____ |
| FATHI YUSUF, ISAM YOUSUF and |) | JURY TRIAL DEMANDED |
| JAMIL YOUSEF , |) | |
| |) | |
| Defendants. |) | |
| |) | |
| and |) | |
| |) | |
| SIXTEEN PLUS CORPORATION , |) | |
| |) | |
| a nominal Defendant, |) | |
| _____ |) | |

MOTION OF DEFENDANTS ISAM YOUSUF AND JAMIL YOUSUF
FOR LEAVE TO FILE BRIEF IN EXCESS OF PAGE LIMIT

COMES NOW, Defendants Isam Yousuf (“Isam”) and Jamil Yousuf, incorrectly identified as Jamil Yousef (“Jamil”), by and through their undersigned counsel, and, pursuant to V.I. R. Civ. P. 6-1(e)(2), move this Court to allow the filing of Defendants’ Motion to Dismiss Plaintiff’s First Amended Complaint, which exceeds twenty (20) pages, and states in support thereof:

The V.I. Rules of Civil Procedure provide that briefs supporting motions shall not exceed twenty (20) pages without leave of court. *See* V.I. R. Civ. P. 6-1(e)(2). The Court has discretion to permit a party to file an oversized paper. Isam and Jamil submit the Court should exercise its discretion to permit them to file a brief in excess of the 20-page limit set forth in V.I. R. Civ. P. 6-1(e)(2). Plaintiff prosecutes a 23-page First Amended Complaint asserting six (6) counts (4 counts against Isam and Jamil including claims for criminally influenced and corrupt organizations (CICO), conversion, civil conspiracy, and the tort of outrage) in 111 paragraphs. The Motion to Dismiss provides an overview of the law governing plaintiff's claims, addresses the arguments that are anticipated from the plaintiff and explains why each claim fails as a matter of law in addition to requesting dismissal based upon a lack of personal jurisdiction and insufficient service of process particularly as to Isam. [A copy of the Motion of Defendants Isam Yousuf and Jamil Yousuf to Dismiss Plaintiff's First Amended Complaint is attached as **Exhibit "A."**] Given the scope of the claims, the Motion of Isam and Jamil has exceeded the page limit by twenty-two (22) pages, for a total of forty-two (42) pages. The Motion for leave to file oversized brief demonstrates the complexity of and multitude of issues to justify the request.

Isam and Jamil respectfully submit that, in the interest of justice, their Motion to Dismiss should be allowed as filed. *See, e.g., United States v. Merck-Medco Managed Care, L.L.C.*, 336 F.Supp.2d 430, 452 (E.D. Pa. 2004) (granting motion to exceed page limitation for brief in support of motion to dismiss); and *Student Public Interest Research Group of N.J., Inc. v. Tenneco Polymers, Inc.*, 602 F.Supp. 1394, 1401 (D.N.J. 1985) (granting defendant's motion to exceed page limitation).

WHEREFORE, based upon the foregoing, Defendants Isam Yousuf and Jamil Yousuf respectfully request the Court grant their motion and allow the filing of their Motion to Dismiss in excess of twenty (20) pages. Defendants further pray that the order contain such other relief as this Court deems just and proper.

Respectfully Submitted,

DATED: June 14, 2017.

LAW OFFICES OF JAMES L. HYMES, III, P.C.
Counsel for Defendants –
Isam Yousuf, and Jamil Yousuf

By: 

JAMES L. HYMES, III

VI Bar No. 264

P.O. Box 990

St. Thomas, Virgin Islands 00804-0990

Telephone: (340) 776-3470

Facsimile: (340) 775-3300

E-Mail: jim@hymeslawvi.com;

rauna@hymeslawvi.com

CERTIFICATE OF SERVICE

I hereby certify this document complies with the page or word limitation set forth in V.I. R. Civ. P. 6-1(e) and that on this the 14th day of June, 2017, I caused an exact copy of the foregoing "*Motion of Defendants Isam Yousuf And Jamil Yousuf for Leave to File Brief in Excess of Page Limit*" together with the Exhibits submitted in support thereof, and proposed Order, to be served electronically by e-mail, and by mailing same, postage pre-paid, to the following counsel of record:

JOEL H. HOLT, ESQ.

LAW OFFICES OF JOEL H. HOLT
2132 Company Street
Christiansted, USVI, 00820
Telephone: (340) 773-8709
Facsimile: (340) 773-8677
holtvi@aol.com

Counsel for Plaintiff

CARL J. HARTMANN, III, ESQ.

5000 Estate Coakley Bay, L-6
Christiansted, VI 00820
carl@carlhartmann.com

Co-Counsel for Plaintiff

GREGORY H. HODGES, ESQ.

STEPHEN HERPEL, ESQ.

LISA MICHELLE KÖMIVES, ESQ.

DUDLEY, TOPPER AND FEUERZEIG, LLP
Law House, 10000 Frederriksberg Gade
P.O. Box 756
St. Thomas, VI 00804-0756
ghodges@dtflaw.com
sherpel@dtflaw.com
lkomives@dtflaw.com

Attorneys for Defendant Fathi Yusuf



ORDERED that the Motion of Isam Yousuf and Jamil Yousuf to Dismiss Plaintiff's First Amended Complaint, which exceeds twenty (20) pages, is deemed filed as of today's date; and it is hereby further

ORDERED that a copy of this Order be directed to Joel H. Holt, Esq., Carl J. Hartmann, III, Esq., Gregory H. Hodges, Esq., Stephen Herpel, Esq., Lisa Michelle Kömives, Esq., and James L. Hymes, III, Esq.

ENTERED this _____ day of _____, 2017.

Judge, Superior Court of the Virgin Islands

A T T E S T:

THE HON. ESTRELLA H. GEORGE
Clerk of the Court

By: _____
Deputy Clerk

DISTRIBUTION LIST:

| | |
|------------------------------------|---|
| JOEL H. HOLT, ESQ. | [E-MAIL: holtvi@aol.com] |
| CARL J. HARTMANN, III, ESQ. | [E-MAIL: carl@carlhartmann.com] |
| GREGORY H. HODGES, ESQ. | [E-MAIL: ghodges@dtflaw.com] |
| STEPHEN HERPEL, ESQ. | [E-MAIL: sherpel@dtflaw.com] |
| LISA MICHELLE KÖMIVES, ESQ. | [E-MAIL: lkomives@dtflaw.com] |
| JAMES L. HYMES, III, ESQ. | [E-MAIL: jim@hymeslawvi.com] |
| CLERK OF THE COURT | |

EXHIBIT “A”

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

HISHAM HAMED, derivatively, on behalf)
of **SIXTEEN PLUS CORPORATION**,)

Plaintiff,)

vs.)

FATHI YUSUF, ISAM YOUSUF and)
JAMIL YOUSEF,)

Defendants,)

and)

SIXTEEN PLUS CORPORATION,)

a nominal defendant.)
_____)

Case No.: 2016-SX-CV-650

DERIVATIVE SHAREHOLDER
SUIT, ACTION FOR DAMAGES,
CICO RELIEF, EQUITABLE RELIEF
AND INJUNCTION

JURY TRIAL DEMANDED

**MOTION OF DEFENDANTS ISAM YOUSUF AND JAMIL YOUSUF
TO DISMISS PLAINTIFF'S FIRST AMENDED COMPLAINT**

Defendants, Isam Yousuf (“Isam”) and Jamil Yousuf, incorrectly identified as Jamil Yousef (“Jamil”), by and through their undersigned counsel, pursuant to V.I. Code Ann. tit. 14, §§ 604(j)(2)(B) and 607(h) and Virgin Islands Rules of Civil Procedure 12(b)(2), 12(b)(5), 12(b)(6), 12(b)(7) and 19, hereby move the Court to dismiss plaintiff, Hisham Hamed’s First Amended Complaint (“FAC”) against them, in its entirety, given that Isam and Jamil are not subject to personal jurisdiction in this Court because they did not act within this territory, the first amended complaint roundly fails to state a single claim upon which relief can be granted, and it fails to join an indispensable party, namely, Manal Yousef. Isam and Jamil leave plaintiff to his proof that service upon them in Sint Maarten is sufficient for this Court to exercise personal jurisdiction over them and in compliance with V.I. R. Civ. P. 4 especially as to Isam. In

contesting the jurisdiction of this Court, Isam and Jamil do not submit to the jurisdiction of the Court, do not waive their jurisdictional defense and defenses to service of process, and do not voluntarily appear in this action. In support, Isam and Jamil state as follows.

I. STATEMENT OF REASONS

This is a case regarding an allegedly “sham” loan made and mortgage recorded against the property of Sixteen Plus Corporation (“Sixteen Plus”), a corporation owned in equal shares by the Hamed and Yusuf families. The mortgage was signed by plaintiff’s brother, Waleed Hamed, and by defendant Fathi Yusuf (“Fathi”) and states on its face that it is securing a loan made to Sixteen Plus by Manal Yousef, a relative of Fathi Yusuf, Isam, and Jamil. Whether that loan and mortgage is valid is the subject of another case pending in the Superior Court, Division of St. Croix, styled as *Sixteen Plus Corporation v. Manal Mohammad Yousef*, Case No. SX-15-CV-65 and assigned to the Honorable Harold W.L. Willocks. Isam and Jamil submit the instant case represents a superfluous, tortured and ill-conceived attempt to litigate those same issues by the Hamed shareholders in the context of a derivative action against one of the Yusuf shareholders.

Isam and Jamil submit the Court should grant their motion to dismiss for lack of personal jurisdiction. Isam and Jamil are nonresidents of the U.S. Virgin Islands. Isam and Jamil did not perform or conduct activities within the U.S. Virgin Islands. Isam and Jamil do not transact any business in this territory; do not contract to supply services or things in this territory; did not cause tortious injury by an act or omission within this territory; did not cause tortious injury within this territory by an act or omission outside this territory and do not regularly do or solicit business or engage in any other persistent course of conduct and do not derive substantial revenue from goods used or consumed or services rendered in this territory; do not have an

interest in, use, or possess real property known as Diamond Keturah located on St. Croix, U.S. Virgin Islands; and do not contract to insure any person, property, or risk located within this territory. The claims of plaintiff simply do not arise from any forum related activities of Isam and Jamil. The Court should decline to exercise personal jurisdiction over them.

Isam and Jamil challenge the sufficiency of service of process in this matter by leaving plaintiff to his burden of proof that service was made in accordance with V.I. R. Civ. P. 4 in general and V.I. R. Civ. P. 4(f) in particular. This is particularly so when Isam was not personally served with process and was not served at his dwelling or usual place of abode with someone of suitable age or discretion that resides therein.

With respect to the substance of the pleading, giving the lengthy and convoluted First Amended Complaint the most charitable reading possible, plaintiff attempts to allege a criminally influenced and corrupt organizations (“CICO”) conspiracy to “embezzle” the “value of the Land.” (First Amended Complaint at ¶ 40) from a jointly owned business, Sixteen Plus, by virtue of a “sham mortgage” on real property owned by Sixteen Plus and refusing to sell the Land unless the “sham mortgage” was paid. [See First Amended Complaint at ¶ 40.] Notably, the CICO claim must be for a **conspiracy** to embezzle money, since plaintiff does not, and cannot, claim that any money been received by Isam or Jamil, or the other defendant Fathi Yusuf, as a result of the mortgage. However, plaintiff has failed to plead a viable CICO conspiracy claim given that the alleged conspiracy was complete in 1997 when the alleged “sham mortgage” was given by Sixteen Plus. Thus, even if plaintiff’s CICO conspiracy claim

was properly pled, which it is not, plaintiff's claim is barred by the five (5) year statute of limitations.¹

Additionally, plaintiff has failed to meet the burden to plead facts that, if true, show that Defendants objectively manifested an agreement to participate, directly or indirectly, in the affairs of a CICO enterprise through the commission of two or more predicate criminal acts. Isam and Jamil submit such facts are necessary to properly plead a CICO conspiracy. Plaintiff also fails to allege the necessary criminal enterprise, which enterprise must have an existence separate and apart from the "pattern of criminal activity," and further fails to allege facts which, if true, would establish the "pattern of criminal activity" needed to properly plead a CICO conspiracy. For all these reasons, plaintiff's CICO conspiracy claim fails and is properly dismissed on each of these bases.

No doubt recognizing the fatal flaws in his CICO claim - which flaws were set forth in defendant Fathi Yusuf's Motion to Dismiss the original Complaint and, unfortunately for plaintiff, still remain in the First Amended Complaint - plaintiff now attempts to allege additional and equally flawed claims for conversion, breach of fiduciary duty (Fathi Yusuf only), usurpation of corporate opportunity (Fathi Yusuf only), civil conspiracy, and the tort of outrage. Taking those counts *in seriatim*, plaintiff's new claim for conversion is properly dismissed as none of Sixteen Plus's assets has been converted, conversion cannot be asserted with respect to real property, and the claim is barred by the six (6) year statute of limitations. Since plaintiff's new claims for breach of fiduciary duty and usurpation of corporate opportunity are not asserted against Isam or Jamil, they will not address those counts. The civil conspiracy claim is also

¹ The mortgage was recorded in 1999 and the power of attorney concerning the mortgage about which Plaintiff complains was received in 2010. Thus, these occurrences also both fall far outside the five (5) year statute of limitations.

properly dismissed for failure to state a claim upon which relief may be granted. The tort of outrage is properly dismissed as it is a claim for intentional infliction of emotional distress by another name. Sixteen Plus as a corporate entity cannot suffer or make a claim for emotional distress, and there are no allegations that plaintiff Hisham Hamed suffered any emotional distress. Finally, plaintiff's Complaint should also be dismissed, in its entirety, due to plaintiff's failure to join Manal Yousef, the holder of the First Priority Mortgage at issue herein, who is both a necessary and indispensable party to this action.

II. CITATION TO AUTHORITIES

Cases:

Ashcroft v. Iqbal, 56 U.S. 662, 678-79, 129 S.Ct. 1937, 1949-50, 173 L.Ed.2d 868 (2009)

Ayres v. Jacobs & Crumplar, P.A., 99 F.3d 565, 569 (3rd Cir. 1996)

Bell Atlantic Corp. v. Twombly, 550 U.S. 544, 555, 570, 127 S. Ct. 1955, 167 L. Ed. 2d 929 (U.S., 2007)

Benjamin v. Esso Virgin Islands, Inc., 2010 V.I. LEXIS 12, *6 (V.I. Super. Ct. March 16, 2010)

Bodley v. Foster Wheeler Energy Corp., 2011 U.S. Dist. LEXIS 45006, *3-5 (D.V.I. April 26, 2011)

Boyle v. United States, 556 U.S. 938, 946, 950, 129 S.Ct. 2237, 2244, 2246, 173 L.Ed.2d 1265, 1276, 1278 (2009)

Buck v. Hampton Twp. Sch. Dist., 452 F.3d 256, 260 (3d Cir. 2006)

Burger King Corp. v. Rudzewicz, 471 U.S. 462, 472, 105 S.Ct. 2174, 2182 (1985)

Charleswell v. Chase Manhattan Bank, N.A., 45 V.I., 495, 513, 308 F. Supp. 2d 545, 562 (D.V.I. 2004)

Chiang v. U.S. Small Business Association, 331 Fed. Appx. 113, 115 (3d Cir. May 4, 2009)

Crest Constr. II, Inc. v. Doe, 660 F.3d 346, 356 (8th Cir. 2011)

Diaz v. Ramsden, Case No. SX-12-CV-369, 2016 V.I. LEXIS 151, *9 fn13, 2016 WL 5475994, at *3 fn. 23 (V.I. Super. Ct. September 22, 2016)

Dickson v. Murphy, 202 Fed.Appx. 578, 580-82 (3d Cir. 2006)

Efron v. Embassy Suites (P. R.), Inc., 223 F.3d 12, 21 (1st Cir. 2000)

Ferri v. Berkowitz, 678 F. Supp. 2d 66, 74-75 (E.D.N.Y. 2009)

Flemming v. CULUSVI, Inc., 2017 V.I. LEXIS 41, *2 (V.I. Super. Ct. March 7, 2017)

Forbes v. Eagleson, 228 F.3d 471, 485 (3d Cir. 2000)

Four Winds Plaza Corp. v. Caribbean Fire and Associates, Inc., 48 V.I. 899, 904-05, 906, 910, 911 (D.V.I. 2007)

Francis v. Bridgestone Corporation, 2011 U.S. Dist. LEXIS 72804, *7 (D.V.I. July 6, 2011)

Friedberg v. Barefoot Architect, Inc., 2014 U.S. List. LEXIS 178087, *4 (D.V.I. December 30, 2014)

Gen. Refractories Co. v. First State Ins. Co., 500 F.3d 306, 312 (3d Cir. 2007)

George v. George, 59 V.I. 1092, 1099 (D.V.I. 2013) (citing Fed.R.Civ.P. 19(a) and 19(a)(2))

Grand Entertainment Group, Ltd. v. Star Media Sales, Inc., 988 F.2d 476 (3d Cir. 1993)

Gumbs v. People of the Virgin Islands, 59 V.I. 784, n.2 (V.I. 2013)

HB General Corp. v. Manchester Partners, L.P., 95 F.3d 1185, 1190 (3d Cir.1996) (references Fed.R.Civ.P. 19)

Helicopteros Naciondes de Colombia, S.A. v. Hall, 466 U.S. 408, 414-16, 104 S.Ct. 1868, 1872-73, 80 L.Ed.2d 404 (1984)

Hill v. McHenry, 211 F.Supp.2d 1267, 1284 (D. Kan. 2002)

H.J. Inc. v. Northwestern Bell Telephone Co., 492 U.S. 229, 237, 239, 109 S.Ct. 2893, 2900, 106 L.Ed.2d 195, 207-08 (1989)

Hoheb v. Muriel, 753 F.2d 24, 26-27 (3d Cir. 1985)

International Shoe v. Washington, 326 U.S. 310, 66 S.Ct. 154, 90 L.Ed. 95 (1945)

Isaac v. Crichlow, 63 V.I. 38, 64-65, 66 (V.I. Super. Ct. 2015)

Jackson v. BellSouth, 372 F.3d 1250, 1267 (11th Cir. 2004)

Janney Montgomery Scott, Inc. v. Shepard Niles, Inc., 11 F.3d 399, 405 (3d Cir. 1993)

Kressen v. Federal Insurance Co., 122 F.Supp.2d 582, 584, 586 (D.V.I. 2000)

Marsh-Monsanto v. Clarenbach, 2017 V.I. Supreme LEXIS 10, *31 (V.I. February 10, 2017)

Mayfair Jewelers, Inc. v. SAI Investment, LLC, Case No. 2015-cv-12, 2016 U.S. Dist. LEXIS 34531, *4, *5, 2016 WL 1069652, at * 2 (D.V.I. March, 17, 2016) (citing the Restatement (Second) of Torts § 237)

McQuay v. Guntharp, 963 S.W.2d 583, 585 (Ark. 1998)

Menasco v. Wasserman, 886 F.2d 681, 684 (4th Cir. 1989)

Molly v. Independence Blue Cross, 56 V.I. 155, 172, 173, 174, 175, 181-84 (V.I. 2012)

O'Brien v. R.J. O'Brien & Associates, Inc., 998 F.2d 1394, 1400 (7th Cir. 1993)

Ortiz v. Gov. Juan F. Luis Hospital and Medical Center, 2015 V.I. LEXIS 99, *4-*5 (V.I. Super. Ct. August 31, 2015)

Pemberton Sales & Serv. v. Banco Popular de P.R., 877 F.Supp. 961, 970 (D.V.I. 1994)

Petruska v. Gannon University, 462 F.3d 294, 302 (3d Cir. 2006)

Pierson v. GFH Financial Services Corp., 829 S.W.2d 311, 314 (Tex. App. 1992)

People v. McKenzie, 2017 V.I. LEXIS 40, *20 (V.I. Super. Ct. January 30, 2017)

Remick v. Manfredy, 238 F.3d 248, 255 (3d Cir. 2001)

Ritter v. Klisivitch, 2008 U.S. Dist. LEXIS 58818, *32 (E.D.N.Y. July 30, 2008)

Roemer and Featherstonhaugh P.C. v. Featherstonhaugh, 267 A.D.2d 697, 699 N.Y.S.2d 603, 604 (N.Y. App. Div. 1999)

Rose v. Bartle, 871 F.2d 331, 366 (3d Cir.1989)

Ross v. Hodge, 58 V.I. 292, 308, 309 fn. 20 (V.I. 2013) (citing Restatement (Second) of Torts § 222A(1) (1965)) (citing *Strawberry Water Co. v. Paulsen*, 207 P.3d 654, 659 (Ariz. Ct. App. 2008))

Shearin v. E.F. Hutton Group, Inc., 885 F.2d 1162, 1166 (3d Cir. 1989), *abrogated on other grounds by Beck v. Prupis*, 529 U.S. 494 (2000))

Simmons v. Ocean, 19 V.I. 232, 235, 544 F.Supp. 841, 843 (D.V.I. 1982)

Smith v. Jones, Gregg, Creehan & Gerace, LLP, 2008 U.S. Dist. LEXIS 98530, *23-*24, 2008 WL 5129916, at *7 (W.D.Pa. Dec. 5, 2008)

Spool v. World Child Int'l Adoption Agency, 520 F.3d 178, 184 (2d Cir. 2008)

Tal v. Hogan, 453 F.3d 1244, 1268 (10th Cir. 2006)

The Mandarin Group LLC v. Mandarin Oriental Services B.V., 49 V.I. 814, 817, 818, 818 n. 4 (D.V.I. 2008)

Thomas v. BSE Indus. Contractors, 624 So.2d 1041, 1044 (Ala. 1993)

Time Share Vacation Club v. Atlantic Resorts, Ltd., 735 F.2d 61, 66 n. 9 (3d Cir. 1984)

United States v. Bergrin, 650 F.3d 257, 269 (3d Cir. 2011)

United States v. Henley, 766 F.3d 893, 906 (8th Cir. 2014) (quoting *United States v. Leisure*, 844 F.2d 1347, 1363-64 (8th Cir. 1988))

United States v. Leisure, 844 F.2d 1347, 1363-64 (8th Cir. 1988)

United States v. Massimino, 641 Fed.Appx. 153, 160 (3d Cir. 2016) (unpublished) (citing *Salinas v. United States*, 522 U.S. 52, 63, 118 S.Ct. 469, 139 L.Ed.2d 352 (1997))

United States v. Turkette, 452 U.S. 576, 583, 101 S.Ct. 2524, 2528-29, 69 L.Ed.2d 246, 254-55 (1981)

Unlimited Holdings, Inc. v. Bertram Yacht, Inc., 49 V.I. 1002, 1006, 1007 (D.V.I. 2008)

Urgent v. Amazon Hospitality, Inc., 2004 U.S. Dist. LEXIS 12836, *3-4, *5 (D.V.I. July 9, 2004)

Vemco, Inc. v. Camardella, 23 F.3d 129, 134 (6th Cir. 1994)

W. Assocs. Ltd. P'ship v. Mkt. Square Assocs., 235 F.3d 629, 633-37 (D.C. Cir. 2001)

Watts v. Blake-Coleman, 2012 U.S. Dist. LEXIS 43454, *5-*6, 2012 WL 1080323, at *2 (D.V.I. March 29, 2012)

Whitaker v. Merrill Lynch, 36 V.I. 75, 84 (Terr. Ct. V.I. 1997) (citing *Chase Manhattan Bank v. Power Prod., Inc.*, 27 V.I. 126 (Terr.Ct.1992) and 5 V.I.C. § 31(3)(D)) (citing the Restatement (Second) of Torts § 899 cmt c (1979))

Worldwide Volkswagen Corp. v. Woodson, 444 U.S. 286, 291, 297, 100 S.Ct. 559, 567, 62 L.Ed.2d 490 (1980)

Statutes:

5 V.I.C. § 31(3)(D)

5 V.I.C. § 4903(a) and (b)

5 V.I.C. § 4911

14 V.I.C. § 601

14 V.I.C. § 603(e)

14 V.I.C. § 604(e), (h), (j)(1) and (j)(2)(B)

14 V.I.C. § 605(a) and (d)

14 V.I.C. § 607(h)

18 U.S.C. § 1962(c) and (d)

Fed.R.Civ.P. 8(a)(2), 9(b), 12(b)(5), 12(b)(6), 12(b)(7) and 19

Fed.R.Crim.P. 12(b)(3)(B)

V.I. R. Civ. P. 4, 4(f), 8(a)(2), 9(b), 12(b)(2), 12(b)(5), 12(b)(6), 12(b)(7) and 19

Miscellaneous:

Affidavit of Jamil Yousuf

Commitment Letter from Bank of Nova Scotia, dated July 9, 1997

Complaint in matter styled as *Fathi Yusuf v. Peter's Farm Investment*, Civ. No. ST-15-CV-344

Complaint in matter styled as *Sixteen Plus Corporation v. Manal Mohammad Yousef*, Case No. SX-15-CV-65

Corporate resolution of Sixteen Plus dated September 15, 1997

First Amended Complaint

Letter from C. Beckstedt to Waleed Hamed and Certified Mail receipt dated August 27, 1999

Letter from "Wally Hamed," dated February 4, 1997, on behalf of Plessen, to the Bank of Nova Scotia

Notice of Filing Proof of Service of plaintiff dated January 26, 2017

Order of Dismissal dated December 2016 in matter styled as *Fathi Yusuf v. Peter's Farm Investment*, Civ. No. ST-15-CV-344

Promissory Note and First Priority Mortgage related documents executed by Sixteen Plus Corporation

III. BACKGROUND FACTS

As the Court is likely aware, the Yusuf and Hamed families are engaged in protracted and acrimonious litigation related to the families' long-term joint business interests. The ongoing litigation encompasses multiple civil cases pending in the courts of the Virgin Islands, including the main case between the parties, which is styled *Hamed v. Yusuf, et al.*, Case No. SX-12-CV-370 and assigned to the Honorable Douglas A. Brady ("Main Case").²

It is undisputed Defendants Isam Yousuf and Jamil Yousuf are nonresidents of the U.S. Virgin Islands. [See First Amended Complaint at ¶¶ 4 and 5.] Plaintiff's claim for relief does not arise from Isam's and Jamil's activities in the forum. Plaintiff complains about activities of Isam and Jamil that allegedly occurred on Sint Maarten, not within the U.S. Virgin Islands. A review of the allegations of the First Amended Complaint reveals Isam and Jamil did not act within the U.S. Virgin Islands. [See First Amended Complaint at ¶¶ 21 (Isam Yousuf only), 22 (Isam Yousuf only), 23 (Isam Yousuf only), 48, 50 (Isam Yousuf only), 55 (see ¶ 56: according to plaintiff, Fathi Yusuf - not Defendant Isam Yousuf or Defendant Jamil Yousuf - directed the St. Martin counsel to forward a demand for payment of the note and mortgage to Sixteen Plus), 71, 72, and 73 (Jamil Yousuf only).] Isam and Jamil are not licensed to and do not do business, do not solicit business, and do not have any offices or places of business in the U.S. Virgin Islands. [A copy of Affidavit of Jamil Yousuf, attached as **Exhibit 1**, at ¶ 3.] Isam and Jamil do

² The Main Case, which has been to the Virgin Islands Supreme Court and back, is now in the partnership windup stage.

not contract to supply services or things in the U.S. Virgin Islands. [**Exhibit 1** (Affidavit of Jamil Yousuf) at ¶ 4.] Isam and Jamil have not caused tortious injury by an act or omission in the U.S. Virgin Islands. [**Exhibit 1** (Affidavit of Jamil Yousuf) at ¶ 5.] Isam and Jamil have not caused tortious injury in the U.S. Virgin islands by an act or omission outside the U.S. Virgin Islands and have not sought to participate in any business activity in the U.S. Virgin Islands and do not receive substantial revenue from any such activity. [**Exhibit 1** (Affidavit of Jamil Yousuf) at ¶ 6.] The claims of plaintiff do not arise from any U.S. Virgin Islands forum related activities of Isam or Jamil. [**Exhibit 1** (Affidavit of Jamil Yousuf).] Isam and Jamil do not have an interest in, own, use, lease, or possess real property known as Diamond Keturah, located on St. Croix, U.S. Virgin Islands, mentioned in the First Amended Complaint. [**Exhibit 1** (Affidavit of Jamil Yousuf) at ¶ 7.] Isam and Jamil do not write insurance policies in the U.S. Virgin Islands. [**Exhibit 1** (Affidavit of Jamil Yousuf) at ¶ 8.] Jamil has no agents, offices, bank accounts, or post offices boxes in the U.S. Virgin Islands. [**Exhibit 1** (Affidavit of Jamil Yousuf) at ¶ 9.] Isam has no agents or offices and, upon information and belief, maintains no active bank accounts or post offices boxes in the U.S. Virgin Islands. [**Exhibit 1** (Affidavit of Jamil Yousuf) at ¶ 9.] Neither Isam nor Jamil has an agent authorized by appointment or by law to receive service of process in the U.S. Virgin Islands. [**Exhibit 1** (Affidavit of Jamil Yousuf) at ¶ 10.] Isam and Jamil do not have continuous and systematic contacts with this forum. Isam and Jamil do not have forum-related activities - neither Isam nor Jamil purposefully directed any activities at plaintiff within the U.S. Virgin Islands. [**Exhibit 1** (Affidavit of Jamil Yousuf at ¶¶ 3-10.)

Service of process was attempted on January 23, 2017. [See plaintiff's Notice of Filing Proof of Service dated January 26, 2017.] However, service of process may be insufficient if it

is made upon an improper person. On its face, this service is not in compliance with Rule 4(f) as it was not personally made upon Isam, it was not left at his dwelling house or usual place of abode with a person of suitable age and discretion residing therein, and it was not delivered to an agent appointed by Isam to receive service or to an agent authorized by law to receive service. [Exhibit 1 (Affidavit of Jamil Yousuf at ¶¶ 11-13.) There is no evidence in the record that Isam was properly served with process. Isam does not have his personal residence at Travel Lodge Inn, Airport Road, Simpson Bay, Sint Maarten or at 25 Gold Finch Road, Pointe Blanche, Sint Maarten. [Exhibit 1 (Affidavit of Jamil Yousuf at ¶§ 11 and 12.) Process was not delivered to an agent appointed by Isam to receive service or was not delivered to an agent authorized by law to receive service. Jamil is neither an agent appointed by Isam nor appointed by law to receive service on behalf of Isam. [Exhibit 1 (Affidavit of Jamil Yousuf at ¶ 13.)

The Hameds seem to be grasping at straws with the filing of this latest lawsuit brought, primarily, pursuant to CICO. In enacting CICO, the Virgin Islands Legislature made clear in its legislative findings that the statute was intended to target “sophisticated criminal activity” and that the purpose of this act was “to curtail criminal activity and lessen its economic and political power in the Territory of the Virgin Islands” See 14 V.I.C. § 603(e) and § 601 respectively. Plainly, the Virgin Islands Legislature did not intend CICO to be used as a cudgel by parties seeking leverage in business disputes. However, that is the exact, and impermissible, purpose for which this lawsuit was filed. There is simply no other reason for plaintiff to file this suit given that Sixteen Plus—notably without the approval of any of the Yusufs and undermining plaintiff’s claim of Mr. Fathi Yusuf’s exclusive control over Sixteen Plus—has already brought a declaratory judgment action against Manal Yousef to have the “sham mortgage” at issue

declared invalid. A copy of that Complaint is attached as **Exhibit 2**.³ That action is the appropriate way to address the validity of the mortgage at issue, in contrast to the instant quasi-criminal action that attempts to gin up a CICO conspiracy related to the mortgage.

In the course of plaintiff's strained attempt to create a CICO conspiracy where none exists, plaintiff has misrepresented, "cherry picked," and omitted highly relevant facts, which will be helpful to the Court in understanding the fatal legal flaws in the First Amended Complaint and why it should be dismissed for failure to state a claim and failure to join an indispensable party in addition to lack of personal jurisdiction, and possibly insufficient service of process. First, and crucially, Sixteen Plus borrowed money from Manal Yousef to purchase the Diamond Keturah property ("Property"). It is clear that the Yusuf/Hamed partnership wanted to borrow money to purchase the Property because a preexisting entity owned by the Yusufs and Hameds - Plessen Enterprises, Inc. ("Plessen") - made a request to the Bank of Nova Scotia for funds to purchase the same. *See* Commitment Letter from Bank of Nova Scotia, dated July 9, 1997, accepted by Waleed Hamed, approving a loan of two million two hundred thousand dollars to be used toward the purchase of the Property, to be secured by a mortgage on the same, attached as **Exhibit 3**. Second, it is abundantly clear that plaintiff's oldest brother, Waleed "Wally" Hamed⁴, was fully engaged in the purchase of the Property. *See e.g.*, Letter from

³ The exhibits attached to this motion are part of the public record, such as Exhibit 2, or produced in other cases between the parties, primarily by the Hameds, as evidenced by the Bates stamps located on the bottom of the documents. The Court can take judicial notice of—and consider for purposes of this motion to dismiss—the exhibits hereto. *See, e.g., Buck v. Hampton Twp. Sch. Dist.*, 452 F.3d 256, 260 (3d Cir. 2006) ("In evaluating a motion to dismiss, we may consider documents that are attached to or submitted with the complaint [] and any 'matters incorporated by reference or integral to the claim, items subject to judicial notice, matters of public record, orders, [and] items appearing in the record of the case.'") (citing 5B Charles A. Wright & Arthur R. Miller, *Federal Practice & Procedure* § 1357 (3d ed. 2004)); and *Benjamin v. Esso Virgin Islands, Inc.*, 2010 V.I. LEXIS 12, *6 (V.I. Super. Ct. March 16, 2010).

⁴ Since the inception of the 2012 Main Case assigned to Judge Brady, Waleed Hamed has served as his father's, Mohammad Hamed, agent and attorney-in-fact. He has recently been substituted as a

“Wally Hamed,” dated February 4, 1997, on behalf of Plessen, to the Bank of Nova Scotia making an offer to purchase the Property attached as **Exhibit 4**. Moreover, speaking both to Waleed Hamed’s involvement and Sixteen Plus’s desire to borrow money to purchase the Property, Sixteen Plus subsequently passed a corporate resolution, executed by Waleed Hamed as President of Sixteen Plus, dated September 15, 1997, titled “Unanimous Consent of Directors in Lieu of a Meeting,” which resolved to borrow four million five hundred thousand dollars from Manal Yousef to purchase the Property and approving the Promissory Note and First Priority Mortgage between Sixteen Plus and Manal Yousef. A copy of that Corporate Resolution is attached as **Exhibit 5**. Additionally, Waleed Hamed, as President of Sixteen Plus, executed the Promissory Note and the First Priority Mortgage in the amount of four million five hundred thousand dollars. Copies of the Promissory Note and First Priority Mortgage are attached as **Composite Exhibit 6**. Further, after the First Priority Mortgage was recorded, Waleed Hamed, “per his request,” was provided with a recorded copy of the same, via Certified Mail, by attorney Carl A. Beckstedt III. *See* Letter from C. Beckstedt and Certified Mail receipt attached as **Exhibit 7**. The fact that this derivative action is based on a transaction approved in writing by the Hamed son most engaged in the running of the Hamed/Yusuf businesses only underscores the lack of any legal basis for this derivative action.

IV. MEMORANDUM OF LAW

1. The Court Lacks Personal Jurisdiction Over Isam and Jamil

A court may exercise personal jurisdiction over a non-resident defendant if it comports with the long-arm statute of the forum and with the Due Process Clause of the United States Constitution. *Molly v. Independence Blue Cross*, 56 V.I. 155, 173 (V.I. 2012) (Virgin Islands

plaintiff in that case. It is no exaggeration to say he has been the main spokesman for the Hamed faction, and has filed numerous declarations in the Main Case.

has a two-part test for the court to exercise personal jurisdiction: 1) long-arm statute analysis (plaintiff must demonstrate there is a prima facie case for personal jurisdiction over defendant in accordance with the long-arm statute as codified at 5 V.I.C. § 4903), and 2) constitutional analysis (plaintiff must establish a prima facie case the defendant's due process rights will not be violated by being haled into court in the U.S. Virgin Islands)); *Four Winds Plaza Corp. v. Caribbean Fire and Associates, Inc.*, 48 V.I. 899, 904-05, 910 (D.V.I. 2007); *Urgent v. Amazon Hospitality, Inc.*, 2004 U.S. Dist. LEXIS 12836, *3-4 (D.V.I. July 9, 2004); and *Kressen v. Federal Insurance Co.*, 122 F.Supp.2d 582, 584 (D.V.I. 2000). *In personam* jurisdiction is the power of a court to enter judgment against a person. *Molly v. Independence Blue Cross*, 56 V.I. 155, 172 (V.I. 2012). A statute, such as a state's long arm statute, must authorize the court's coercive authority. The requirement that a court have personal jurisdiction is a restriction on judicial power as a matter of individual liberty. If the court finds that a defendant is not subject to the court's jurisdiction under the state's long-arm statute, the court need not conduct a due process analysis because a valid assertion of personal jurisdiction must satisfy both the state long-arm statute and constitutional due process requiring minimum contacts. *Molly v. Independence Blue Cross*, 56 V.I. 155, 173 (V.I. 2012); *The Mandarin Group LLC v. Mandarin Oriental Services B.V.*, 49 V.I. 814, 817, 818 (D.V.I. 2008); and *Kressen v. Federal Insurance Co.*, 122 F.Supp.2d 582, 586 (D.V.I. 2000).

The plaintiff has the burden of establishing personal jurisdiction. *Molly v. Independence Blue Cross*, 56 V.I. 155, 172 (V.I. 2012); *Time Share Vacation Club v. Atlantic Resorts, Ltd.*, 735 F.2d 61, 66 n. 9 (3d Cir. 1984); *Francis v. Bridgestone Corporation*, 2011 U.S. Dist. LEXIS 72804, *7 (D.V.I. July 6, 2011); and *Unlimited Holdings, Inc. v. Bertram Yacht, Inc.*, 49 V.I. 1002, 1006 (D.V.I. 2008). Plaintiff must ultimately prove by a preponderance of the evidence

that jurisdiction is proper. However, if the Court does not hold an evidentiary hearing, plaintiff need only establish a prima facie case of jurisdiction, and the court will accept all of the factual allegations as true and resolve all factual disputes in favor of the plaintiff. *Molly v. Independence Blue Cross*, 56 V.I. 155, 172-73 (V.I. 2012); *Francis v. Bridgestone Corporation*, 2011 U.S. Dist. LEXIS 72804, *7 (D.V.I. July 6, 2011); and *Unlimited Holdings, Inc. v. Bertram Yacht, Inc.*, 49 V.I. 1002, 1007 (D.V.I. 2008). Once defendant has properly raised a jurisdictional defense, plaintiff cannot rely on allegations in the complaint alone but instead must establish that the Court has jurisdiction through affidavits and other competent evidence. *Molly v. Independence Blue Cross*, 56 V.I. 155, 173 (V.I. 2012); *Time Share Vacation Club v. Atlantic Resorts, Ltd.*, 735 F.2d 61, 66 n. 9 (3d Cir. 1984); and *Unlimited Holdings, Inc. v. Bertram Yacht, Inc.*, 49 V.I. 1002, 1007 (D.V.I. 2008). It is essential that the plaintiff proves the existence of a sufficient nexus between the defendant, the forum, and the litigation.

Pursuant to the personal jurisdiction test, this Court may not exercise personal jurisdiction over Isam and Jamil unless jurisdiction is permitted under the U.S. Virgin Islands' long arm statute, 5 V.I.C. § 4903, and comports with the Due Process Clause of the Fourteenth Amendment. The Due Process Clause permits the exercise of *in personam* jurisdiction provided the defendant in a lawsuit has sufficient contact with the forum jurisdiction such that maintaining the lawsuit does not offend "traditional notions of fair play" and "substantial justice." *International Shoe v. Washington*, 326 U.S. 310, 66 S.Ct. 154, 90 L.Ed. 95 (1945); *The Mandarin Group LLC v. Mandarin Oriental Services B.V.*, 49 V.I. 814, 818 n. 4 (D.V.I. 2008); *Four Winds Plaza Corp. v. Caribbean Fire and Associates, Inc.*, 48 V.I. 899, 906, 911 (D.V.I. 2007); *Urgent v. Amazon Hospitality, Inc.*, 2004 U.S. Dist. LEXIS 12836, *5 (D.V.I. July 9, 2004); and *Kressen v. Federal Insurance Co.*, 122 F.Supp.2d 582, 586 (D.V.I. 2000).

The Due Process Clause shields a person from the judgments of a forum with which he has established no substantial ties or relationship. Accordingly, to be subject to jurisdiction, a defendant's conduct in connection with the forum must be such that he may "reasonably anticipate" being haled into such forum's courts. *Worldwide Volkswagen Corp. v. Woodson*, 444 U.S. 286, 297, 100 S.Ct. 559, 567, 62 L.Ed.2d 490 (1980).

The court may exercise personal jurisdiction over a defendant only if there is specific jurisdiction or general jurisdiction. *Remick v. Manfredy*, 238 F.3d 248, 255 (3d Cir. 2001). To establish specific jurisdiction, the plaintiff must prove not only that a non-resident defendant has purposefully directed his activities at a resident of the forum, but also that the plaintiff's injury arises from such activities. *Burger King Corp. v. Rudzewicz*, 471 U.S. 462, 472, 105 S.Ct. 2174, 2182 (1985); *Molly v. Independence Blue Cross*, 56 V.I. 155, 181 (V.I. 2012) (court may exercise specific jurisdiction over a defendant if the defendant has the requisite minimum contacts with the territory and the claim arises out of those contacts with the forum); and *Remick v. Manfredy*, 238 F.3d 248, 255 (3d Cir. 2001). General jurisdiction requires a plaintiff to prove that the defendant has "continuous and systematic" contacts with the forum state even irrespective of where or how they arise. *Helicopteros Nacionales de Colombia, S.A. v. Hall*, 466 U.S. 408, 414-16, 104 S.Ct. 1868, 1872-73, 80 L.Ed.2d 404 (1984); and *Molly v. Independence Blue Cross*, 56 V.I. 155, 181, 182-83 (V.I. 2012). The due process analysis, in addition to requiring sufficient contacts with the forum under either general or specific jurisdiction, must still determine that exercising jurisdiction comports with fair play and substantial justice. *Molly v. Independence Blue Cross*, 56 V.I. 155, 181-82 (V.I. 2012).

Because Isam and Jamil are non-residents that do not transact business in the U.S. Virgin Islands, do not contract to supply services or things in the U.S. Virgin Islands, did not cause

tortious injury by an act or omission inside the U.S. Virgin Islands, did not cause tortious injury in the U.S. Virgin Islands by an act or omission outside of the U.S. Virgin Islands and do not engage in any persistent course of conduct or derive substantial revenue from goods used or consumed or services rendered in the U.S. Virgin Islands, and do not have an interest in, use, or possess real property known as Diamond Keturah on St. Croix, U.S. Virgin Islands, plaintiff cannot make the requisite showing. Just as plaintiff cannot satisfy the statutory requirements for personal jurisdiction, neither can he meet the constitutional grounds for jurisdiction. Isam and Jamil do not have continuous and systematic contact with the forum. Nor did they purposefully direct their activities at this forum and the claims do not arise out of those purported contacts with the forum. Moreover an exercise of personal jurisdiction would not comport with fair play and substantial justice.

A. Personal Jurisdiction Is Inappropriate Under Virgin Islands Long-Arm Statute

The Virgin Islands long-arm statute, codified at 5 V.I.C. § 4903, provides:

- (a) A court may exercise personal jurisdiction over a person, who acts directly or by an agent, as to a claim for relief arising from the person's
- (1) transacting any business in this territory;
 - (2) contracting to supply services or things in this territory;
 - (3) causing tortious injury by an act or omission in this territory;
 - (4) causing tortious injury in this territory by an act or omission outside this territory if he regularly does or solicits business, or engages in any other persistent course of conduct, or derives substantial revenue from goods used or consumed or services rendered, in this territory;
 - (5) having an interest in, using, or possessing real property in this territory; or
 - (6) contracting to insure any person, property, or risk located within this territory at the time of contracting.
 - (7) causing a woman to conceive a child, or conceiving or giving birth to a child; or

(8) abandoning a minor in this Territory.

(b) When jurisdiction over a person is based solely upon this section, only a claim for relief arising from acts enumerated in this section may be asserted against him.

5 V.I.C. § 4903. Under the first prong of the personal jurisdiction test, the long-arm statute analysis, the court determines: a) whether defendant's contacts satisfies one of the categories under § 4903(a), and b) whether the plaintiff's claim arises from that contact as per § 4903(b). *Molly v. Independence Blue Cross*, 56 V.I. 155, 174 (V.I. 2012). The standard under § 4903(b) for determining whether a claim arises from a contact (one of the enumerated acts in § 4903(a)) is a two-step process in which plaintiff must make a prima facie showing for each claim that: 1) one of defendant's contacts with the U.S. Virgin Islands is a but-for cause of that claim, and 2) that the substantive obligations and privileges that accompany that contact with the U.S. Virgin Islands are closely related to that cause of action. *Molly v. Independence Blue Cross*, 56 V.I. 155, 175 (V.I. 2012) (sets forth "arising from" test as required in § 4903(b)).

Isam and Jamil engaged in no activity in this jurisdiction giving rise to plaintiff's claim. Isam and Jamil did not transact, regularly do, solicit, or engage in business, did not derive substantial revenue from goods or services consumed, did not contract to supply goods or services, did not act or fail to act, or did not commit a tort that caused injury in the U.S. Virgin Islands thereby eliminating subsections (1)-(4). Isam and Jamil do not have an interest in, own, use, lease, or possess real property known as Diamond Keturah in St. Croix, U.S. Virgin Islands thereby disposing of subsection (5). Subsections (6), (7) and (8) are not at issue. Isam and Jamil provide the affidavit of Jamil Yousuf in support of their contention that the provisions of § 4903 do not apply to them. Isam and Jamil submit plaintiff's first amended complaint makes no allegation that any of Isam's and Jamil's conduct, about which plaintiff complains, took place in the territory or had any territorial connection to comply with the requirements of the long-arm

statute. [See **Exhibit 1** (Affidavit of Jamil Yousuf).] The Court must dismiss the first amended complaint for lack of personal jurisdiction over Isam and Jamil because the provisions of the long-arm statute have not been satisfied.

B. Isam and Jamil’s “Minimum Contacts” In The Virgin Islands Does Not Meet The Constitution’s Due Process Requirements

The due process clause permits the exercise of *in personam* jurisdiction provided the defendant in a lawsuit has sufficient contact with the forum jurisdiction such that maintaining the lawsuit does not offend “traditional notions of fair play” and “substantial justice.” *International Shoe v. Washington*, 326 U.S. 310, 66 S.Ct. 154, 90 L.Ed. 95 (1945); *Molly v. Independence Blue Cross*, 56 V.I. 155, 181-82 (V.I. 2012); *The Mandarin Group LLC v. Mandarin Oriental Services B.V.*, 49 V.I. 814, 818 n. 4 (D.V.I. 2008); *Four Winds Plaza Corp. v. Caribbean Fire and Associates, Inc.*, 48 V.I. 899, 906, 911 (D.V.I. 2007); *Urgent v. Amazon Hospitality, Inc.*, 2004 U.S.Dist.LEXIS 12836, *5 (D.V.I. July 9, 2004); and *Kressen v. Federal Insurance Co.*, 122 F.Supp.2d 582, 586 (D.V.I. 2000). The court determines whether a defendant has had the "minimum contacts" with the forum necessary for the defendant to have reasonably anticipated being haled into court there. *Four Winds Plaza Corp. v. Caribbean Fire and Associates, Inc.*, 48 V.I. 899, 906 (D.V.I. 2007). Here, Isam and Jamil have no such contact with the U.S. Virgin Islands. A court may not render a valid judgment in the absence of personal jurisdiction. *World-Wide Volkswagen Corp. v. Woodson*, 444 U.S. 286, 100 S.Ct. 559, 62 L.Ed.2d 490 (1980). There are two requirement of due process that must be satisfied: (1) the defendant must have notice of the lawsuit, and (2) the defendant must be subject to the jurisdiction of the court. *World-Wide Volkswagen*, 444 U.S. at 291.

A court may exercise personal jurisdiction over a defendant consistent with due process only if it has certain minimum contacts with the relevant forum such that the maintenance of the

suit does not offend traditional notions fair play and substantial justice. General jurisdiction is established when the out-of-state defendant's contacts with the forum are continuous and substantial or systematic. *Molly v. Independence Blue Cross*, 56 V.I. 155, 182-83 (V.I. 2012). Specific jurisdiction is assessed pursuant to a three-part test: 1) defendant must have purposefully directed his activities toward the forum, 2) litigation must arise out of or relate to at least one of those activities, and 3) a court may consider whether the exercise of jurisdiction would comport with fair play and substantial justice. *Molly v. Independence Blue Cross*, 56 V.I. 155, 183 (V.I. 2012). The point of the specific jurisdiction test is to guarantee that the defendant has the requisite minimum contacts with a forum to receive "fair warning" that the defendant may be haled into court in that forum to answer for his actions in relation to those contacts. *Molly v. Independence Blue Cross*, 56 V.I. 155, 183-84 (V.I. 2012). In other words, a finding of minimum contacts requires the demonstration of some act by which the defendant purposely availed himself of the privilege of conducting business within the forum State, thereby invoking the protection and benefits of its laws. *Four Winds Plaza Corp. v. Caribbean Fire and Associates, Inc.*, 48 V.I. 899, 906 (D.V.I. 2007); and *Urgent v. Amazon Hospitality, Inc.*, 2004 U.S. Dist. LEXIS 12836, *5 (D.V.I. July 9, 2004).

The Court should decline personal jurisdiction over Isam and Jamil. Isam and Jamil have no sufficient contacts with the U.S. Virgin Islands to support a finding of personal jurisdiction. **[Exhibit 1 (Affidavit of Jamil Yousuf).]** The CICO, conversion, civil conspiracy, and tort of outrage causes of action sued upon do not relate to Isam's and Jamil's non-existent activities in the U.S. Virgin Islands. Isam and Jamil submit specific jurisdiction is not present because Isam and Jamil have no purposeful contact with this jurisdiction, plaintiff's causes of action do not arise out of their purported forum-related activities ("arising out of" test and "arising from" test

of § 4903(b) are synonymous), and the exercise of jurisdiction does not comport with traditional notions of fair play and substantial justice. The attention of the court is directed to plaintiff's failure to allege that any activities on the part of Isam and Jamil took place in the U.S. Virgin Islands. A perusal of the First Amended Complaint reveals Isam and Jamil did not act within the territory. [See First Amended Complaint at ¶¶ 21 (Isam Yousuf only), 22 (Isam Yousuf only), 23 (Isam Yousuf only), 48, 50 (Isam Yousuf only), 55 (see ¶ 56: according to plaintiff, Fathi Yusuf - not Defendant Isam Yousuf or Defendant Jamil Yousuf - directed the St. Martin counsel to forward a demand for payment of the note and mortgage to Sixteen Plus), 71, 72, and 73 (Jamil Yousuf only).] All of Isam's and Jamil's alleged activities occurred in Sint Maarten. Incidental contacts with a forum do not constitute substantial connection with the forum. Isam and Jamil did not purposefully avail themselves to the benefits and protections of the U.S. Virgin Islands by any attenuate contacts. Isam and Jamil had no reason to expect direct consequences in the U.S. Virgin Islands or that they could be haled into court here. It would be burdensome on the out-of-territory, foreign-residing Isam and Jamil to litigate in this jurisdiction. Moreover the U.S. Virgin Islands does not have a strong interest in adjudicating the actions of Sint Maarten residents occurring in Sint Maarten, not this territory. The Court should grant Isam's and Jamil's motion to dismiss because specific personal jurisdiction over them cannot be established due to a lack of minimum contacts with the U.S. Virgin Islands.

Even if plaintiff's claims arise from defendants' non-forum related activities, which Isam and Jamil deny, plaintiff's First Amended Complaint similarly is lacking of any allegations that Isam and Jamil have had the "continuous and systematic" contacts with the U.S. Virgin Islands that are necessary to establish general jurisdiction over Isam and Jamil - and for good reason. Isam and Jamil simply do not conduct activities within the U.S. Virgin Islands. [**Exhibit 1**

(Affidavit of Jamil Yousuf) at ¶¶ 3-10.] Isam and Jamil do not own, lease, or rent real property known as Diamond Keturah in St. Croix, U.S. Virgin Islands. Jamil does not maintain any bank accounts, offices, places of business, or post office boxes in the U.S. Virgin Islands. Isam does not maintain any offices or places of business, or maintain any active bank accounts or post office boxes in the U.S. Virgin Islands. Isam and Jamil do not have any agents in the U.S. Virgin Islands. Isam and Jamil have no registered agent upon whom process can be served in the U.S. Virgin Islands. Isam and Jamil do not transact any business or contract to supply services or things in or to the U.S. Virgin Islands. Moreover Isam and Jamil do not solicit business, engage in any persistent course of conduct, or derive substantial revenue from goods used or consumed, or services rendered, in the U.S. Virgin Islands. [**Exhibit 1** (Affidavit of Jamil Yousuf) at ¶¶ 3-10.] In other words, neither Isam nor Jamil transacted business in nor derived business revenue from the U.S. Virgin Islands. Isam and Jamil are not engaged in any activities in the U.S. Virgin Islands that might qualify them as acting in this territory or having continuous and systematic contact with the forum. Isam and Jamil are not at home in this territory. Isam and Jamil have had no substantial contacts with the U.S. Virgin Islands that would subject them to the general personal jurisdiction of the U.S. Virgin Islands courts.

Accordingly there being no sufficient contacts in connection with the case at hand between Isam and Jamil and the U.S. Virgin Islands, there is no basis for the exercise of personal jurisdiction in this action by the courts of the U.S. Virgin Islands.

2. Service of Process May Be Insufficient

Plaintiff has burden to prove service of process is proper once a defense of insufficient service is raised. *Flemming v. CULUSVI, Inc.*, 2017 V.I. LEXIS 41, *2 (V.I. Super. Ct. March 7, 2017) (analyzing service of process under similarly worded Fed.R.Civ.P. 12(b)(5)). Pursuant to

V.I. R. Civ. P. 12(b)(5) and V.I. R. Civ. P. 4(f), Defendant Isam and Jamil, out of an abundance of caution, challenge service of process and leave plaintiff to his proof that process served upon them in Sint Maarten was proper.

A. Standard for Dismissal Pursuant to V.I. R. Civ. P. 12(b)(5)

Proper service is necessary to establish a Court's personal jurisdiction over a defendant. *Chiang v. U.S. Small Business Association*, 331 Fed. Appx. 113, 115 (3d Cir. May 4, 2009). Under Rules 12(b)(4) and 12(b)(5) of the V.I. Rules of Civil Procedure service of process may be quashed or, and in certain cases, the action dismissed if the process or the service thereof is improper. The process is insufficient if the forms are technically deficient (e.g., wrong name) or not sealed by the clerk. See, *Ayres v. Jacobs & Crumplar, P.A.*, 99 F.3d 565, 569 (3rd Cir. 1996). Service of process under V.I. R. Civ. P. 12(b)(5) may be insufficient if the mode of delivery is invalid, if service is made on an improper person, or if delivery is either never accomplished or not accomplished within 120 days after commencement.

The burden of proof lies with the plaintiff to demonstrate sufficient service. When process or service is challenged, the plaintiff must make a prima facie showing that the court's personal jurisdiction is properly exercised. *Grand Entertainment Group, Ltd. v. Star Media Sales, Inc.*, 988 F.2d 476 (3d Cir. 1993); and *Friedberg v. Barefoot Architect, Inc.*, 2014 U.S. List. LEXIS 178087, *4 (D.V.I. December 30, 2014). The moving party, however, must set forth with specificity the alleged failure of process or service. See, *O'Brien v. R.J. O'Brien & Associates, Inc.*, 998 F.2d 1394, 1400 (7th Cir. 1993) (holding that objections to the sufficiency of process must be specific and must identify how plaintiff failed to satisfy service). The courts may consider extrinsic materials produced by the parties (affidavits and other materials) when reaching determinations on sufficiency of service and process.

Service of process upon an individual located outside the U.S. Virgin Islands is available under certain circumstances pursuant to Rule 4(f): “Where 5 V.I.C. § 4903 or other applicable law provides for the assertion of personal jurisdiction over a person located outside the Virgin Islands, the provisions and procedures of Title 5 V.I.C. Chapter 503 shall be followed including, but not limited to, the procedures for service and the filing of proof of service set forth in 5 V.I.C. § 4911.” V.I. R. Civ. P. 4(f). In accordance with 5 V.I.C. § 4911(a), service outside the U.S. Virgin Islands may be made under certain conditions when the service is reasonably calculated to give actual notice. 5 V.I.C. § 4911(a). The form of the process must contain certain information. Isam and Jamil leave plaintiff to his proof that service of process is made in compliance with applicable internationally agreed service requirements including those of Convention on the Service Abroad of Judicial and Extrajudicial Documents in Civil or Commercial Matters (Hague Convention).

B. The Action Should Be Dismissed, or in the Alternative Process Quashed, for Insufficient Service of Process under V.I. R. Civ. P. 4(f)

Isam submits that the Court should grant his Motion to Dismiss because of insufficient service of process due to plaintiff’s failure to comply with the procedural requirements set forth in V.I. R. Civ. P. 4. Plaintiff failed to deliver process to Isam as prescribed by V.I. R. Civ. P. 4(f) after filing the complaint. Service of the summons and complaint upon Isam was not made in accordance to V.I. R. Civ. P. 4 and is insufficient to provide adequate notice that his rights are in controversy and that a court is properly exercising jurisdiction over him.

Isam moves to dismiss the matter because he was not served with process in accordance with Rule 4(f) and, therefore, the Court lacks personal jurisdiction over him. Rule 4(f) requires service be made under circumstances enumerated in 5 V.I.C. § 4911 under conditions wherein the service is reasonably calculated to give actual notice. Service pursuant to Rule 4(f) is

necessarily grounded on defendant being personally served, or possibly by a defendant residing at a place where service of process is made, to be in compliance with the reasonably calculated to give actual notice requirement. V.I. R. Civ. P. 4(f); and 5 V.I.C. § 4911(a). Service by leaving a copy of the summons and complaint at an address wherein defendant does not dwell or is not his usual place of abode is insufficient under Rule 4(f).

The requirements of Rule 4(f) were not complied with herein. A review of the record reveals service of process was not personally made upon Isam. The process server notations reveal process was served on an individual other than Isam, namely Jamil. [See plaintiff's Notice of Filing Proof of Service dated January 26, 2017, at plaintiff's Exhibit A.] There is nothing in the record to indicate Jamil was authorized by appointment or by law to accept service. Nor can it be said that process was served at Isam's usual place of abode because a business/office is not his personal residence. [Exhibit 1 (Affidavit of Jamil Yousuf) at ¶¶ 11, 12 and 13.] Service upon Isam was improper, and the Motion to Dismiss under V.I. R. Civ. 12(b)(5) should be granted.

3. Dismissal Pursuant to Rule 12(b)(6) is Appropriate
A. Standard for Dismissal Pursuant to V.I. R. Civ. P. 12(b)(6)

Defendants Isam and Jamil request dismissal based upon plaintiff's failure to state a claim upon which relief can be granted. A Rule 12(b)(6) motion challenges the legal sufficiency of a pleading. V.I. R. Civ. P. 12(b) (contains language similar to that of Fed.R.Civ.P. 12(b)(6)); and *Petruska v. Gannon University*, 462 F.3d 294, 302 (3d Cir. 2006). Under the rule a claim may be dismissed either because it asserts a legal theory that is not cognizable as a matter of law or because it fails to allege sufficient facts to support an otherwise cognizable legal claim. Fed.R.Civ.P. 12(b)(6). The motion tests whether the plaintiff is entitled to offer evidence to support the claim. The court accepts well-pleaded allegations as true, resolves all reasonable

doubts and inferences in the pleader's favor, and views the pleading in the light most favorable to the non-moving party. No claim will be dismissed because the trial judge disbelieves the allegations or feels that recovery is remote or unlikely.

A plaintiff's complaint must state sufficient facts to make the plaintiff's claim plausible, as opposed to merely state a claim and demanding damages. *Ashcroft v. Iqbal*, 56 U.S. 662, 678-79, 129 S.Ct. 1937, 1949-50, 173 L.Ed.2d 868 (2009). Rule 8 requires a pleading that contains "a short and plain statement of the claim showing that the pleader is entitled to relief" V.I. R. Civ. P. 8(a)(2); and FED. R. CIV. P. 8 (a)(2). The Court accepts all material allegations in the complaint as true and construes all facts in a light most favorable to the non-moving party. *Bodley v. Foster Wheeler Energy Corp.*, 2011 U.S. Dist. LEXIS 45006, *3-4 (D.V.I. April 26, 2011). But a plaintiff is obliged to provide "more than labels and conclusions." *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 555, 127 S. Ct. 1955, 167 L. Ed. 2d 929 (U.S., 2007). To withstand a Rule 12(b)(6) motion to dismiss, "a complaint must contain sufficient factual matter, accepted as true, 'to state a claim to relief that is plausible on its face.'" *Ashcroft v. Iqbal*, 56 U.S. 662, 678, 129 S.Ct. 1937, 1949, 173 L. Ed. 2d 868 (2009) (quoting *Twombly*, 550 U.S. at 570). In other words, to survive a motion to dismiss for failure to state a claim upon which relief can be granted, a complaint must demonstrate that the plaintiff's claims are more than just "conceivable," but are in fact "plausible on [their] face." *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 555 (2007); *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (quoting *Twombly*, 550 U.S. at 570). In applying this plausibility standard, the Court should disregard all conclusory statements, even when "couched as a factual allegation." *Twombly*, 550 U.S. at 555 (internal quotation marks and citation omitted). Rather, the question is whether the facts pled demonstrate that the claims cross the threshold from "conceivable" to "plausible," and therefore adequately state a

claim for relief. "Determining whether a complaint states a plausible claim for relief" is "a context-specific task that requires the reviewing court to draw on its judicial experience and common sense." *Ashcroft v. Iqbal*, 56 U.S. at 679, 129 S.Ct. at 1950.

In making the plausibility determination, the Court conducts a three-part analysis. First, the court must take note of the elements a plaintiff must plead to state a claim so that the court is aware of each item the plaintiff must sufficiently plead. Second, the court should identify allegations that, because they are no more than conclusions, are not entitled to the assumption of truth. These conclusions can take the form of either legal conclusions couched as factual allegations or naked factual assertions devoid of further factual enhancement. Finally, where there are well-pleaded factual allegations, a court should assume their veracity and then determine whether they plausibly give rise to an entitlement of relief. If there are sufficient remaining facts that the court can draw a reasonable inference that the defendant is liable based on the elements noted in the first step, then the claim is plausible.

Ortiz v. Gov. Juan F. Luis Hospital and Medical Center, 2015 V.I. LEXIS 99, *4-*5 (V.I. Super. Ct. August 31, 2015); *Watts v. Blake-Coleman*, 2012 U.S. Dist. LEXIS 43454, *5-*6, 2012 WL 1080323, at *2 (D.V.I. March 29, 2012); and *Bodley v. Foster Wheeler Energy Corp.*, 2011 U.S. Dist. LEXIS 45006, *4-5 (D.V.I. April 26, 2011). Where the well-pleaded facts do not permit the court to infer more than the mere possibility of misconduct, the complaint has alleged - but it has not shown - that the plaintiff is entitled to relief. *Ashcroft v. Iqbal*, 56 U.S. at 679, 129 S.Ct. at 1950 (citing FED.R.CIV.P. 8(a)(2)); and *Bodley v. Foster Wheeler Energy Corp.*, 2011 U.S. Dist. LEXIS 45006, *5 (D.V.I. April 26, 2011). The pleading requirements are more demanding - compels a higher degree of notice - where claims asserting fraud and necessarily corruption are involved. V.I. R. Civ. P. 9(b) ("In alleging fraud or mistake, a party must state with particularity the circumstances constituting fraud or mistake."). V.I. R. Civ. P. 9(b) and Fed.R.Civ.P. 9(b) contain identical language.

B. First Amended Complaint is Barred by the Applicable Statute of Limitations

A CICO claim “may be commenced within five years after the conduct made unlawful under section 605.” 14 V.I.C. § 607(h). Normally, under Virgin Islands law, the “statute of limitations begins to run upon the occurrence of the essential facts which constitute the cause of action.” *Simmons v. Ocean*, 19 V.I. 232, 235, 544 F.Supp. 841, 843 (D.V.I. 1982). The Virgin Islands CICO statute is modeled after the federal RICO statute. *Gumbs v. People of the Virgin Islands*, 59 V.I. 784, n.2 (V.I. 2013); and *Pemberton Sales & Serv. v. Banco Popular de P.R.*, 877 F.Supp. 961, 970 (D.V.I. 1994). The limitations period for RICO claims begins to run once a plaintiff discovers his injury. *See Forbes v. Eagleson*, 228 F.3d 471, 485 (3d Cir. 2000). Because “CICO is cast in the mold of the federal RICO statute,” the discovery rule applies to RICO claims in determining when plaintiff’s CICO claims accrued. *Pemberton*, 877 F.Supp. 961 at 970.

Importantly, this is a CICO **conspiracy** claim—a claim for a plan to embezzle, not a claim for actually embezzling—money from Sixteen Plus.⁵ Assuming, *arguendo*, plaintiff properly alleged a CICO conspiracy to embezzle funds by getting a “sham mortgage” on the Property, that entire conspiracy was completed in September 15, 1997 when Sixteen Plus passed its Corporate Resolution to borrow four and a half million dollars from Manal Yousef to purchase the Property, and executed the Promissory Note and First Priority Mortgage in favor of Manal Yousef (all three having been executed by Waleed Hamed as President of Sixteen Plus).

⁵ To that end, there are no allegations in the First Amended Complaint that Isam and Jamil—or their alleged co-conspirator, defendant Fathi Yusuf—have received any funds as a result of the “sham mortgage.”

At the very latest, the conspiracy was complete on February 22, 1999, some eighteen years ago, when the First Priority Mortgage was recorded against the Property.^{6 7}

Moreover, and dispositively, even if plaintiff could plausibly allege that the Hameds were not aware that Sixteen Plus's interest in the Property was affected by the First Priority Mortgage given to Manal Yousef—and they cannot in light of Waleed Hamed's direct involvement in the transaction—the First Amended Complaint plainly alleges the mid-2000s as the time when defendant Fathi Yusuf first refused to sell the Property unless the “sham mortgage” was paid. To wit, plaintiff specifically alleges that Sixteen Plus “lost [] [in 2005] . . . the benefit of such sales at the highest and best amount because of Fathi Yusuf's insistence the sham mortgage be paid upon the sale of the property.” First Amended Complaint, ¶ 43; *see also id.* at p. 8, Section b (“The Value of the Sixteen Plus Property Dramatically Increases—2005). Thus, at the very latest, plaintiff became aware of the alleged injury to Sixteen Plus *vis-à-vis* the “sham mortgage,” in the mid-2000s, over ten (10) years ago. Therefore, plaintiff's CICO claim is barred by the five (5) year statute of limitations. *See Forbes v. Eagleson*, 228 F.3d 471, 485 (3d Cir. 2000) (explaining that the limitations period for RICO claims begins to run once a plaintiff discovers his injury). Accordingly, plaintiff's CICO claim is properly dismissed on this basis.

⁶ As noted above, even if plaintiff attempts to rely on receipt of a power of attorney as a predicate criminal act in the “conspiracy,” plaintiff alleges it was received in 2010, not within the last five (5) years.

⁷ Plaintiff claims that in 2016 defendant Fathi Yusuf filed a civil lawsuit seeking to dissolve Sixteen Plus in an attempt to trigger payment of the “sham mortgage.” First Amended Complaint, ¶ 60. In fact, due to the total collapse of the relationships, business and otherwise, between the Yusufs and the Hameds, in 2016 defendant Fathi Yusuf did file a lawsuit to dissolve two jointly owned corporations, Sixteen Plus and Peter's Farm Investment, Corporation. A copy of the Complaint in that action is attached as **Exhibit 8**. To the extent that plaintiff attempts to cast this a “foreclosure” brought using a power of attorney for Manal Yusuf (First Amended Complaint, ¶ 74), it appears plaintiff is not being candid with the Court. *See id.* Moreover, the case was dismissed by stipulation of the parties in December of 2016. A copy of the order of dismissal is attached as **Exhibit 9**.

C. Plaintiff Does Not, and Cannot, Properly Plead a CICO Conspiracy Claim

It appears plaintiff is attempting to allege a violation of 14 V.I.C. § 605(a) and (d) (*see* Complaint, ¶ 84) which provide, respectively:

It is unlawful for any person ... associated with, any enterprise, as that term is defined herein, to conduct or participate in, directly or indirectly, the affairs of the enterprise through a pattern of criminal activity.

14 V.I.C. § 605(a).

It is unlawful for any person to conspire or attempt to violate, either directly or through another or others, the provisions of section 605 subsections (a), (b), and (c).

14 V.I.C. § 605(d).⁸

⁸ Plainly, the First Amended Complaint is not a model of clarity. However, plaintiff appears to be “throwing in the kitchen sink” and, bizarrely, is alleging that by conspiring to embezzle money from Sixteen Plus by obtaining a “sham mortgage” on property owned by Sixteen Plus, Defendants violated also 14 V.I.C. § 605(b) and (c). *See* First Amended Complaint, ¶ 83(a) and (b).

14 V.I.C. § 605(b) provides:

It is unlawful for any person, through a pattern of criminal activity, to acquire or maintain, directly or indirectly, any interest in, or control of, any enterprise or real property.

Plaintiff alleges that:

All Defendants are “person[s]” who through a pattern of criminal activity set forth in paragraphs 55 through 79 have “acquire[d]. . .directly or indirectly an “interest in” the Land which is “real property” within the meaning of the statute.

See Complaint, ¶ 83(a). This is patently absurd. Defendants Yusuf, Isam Yousuf and Jamil Yousuf have not engaged in any pattern of criminal activity, but even if they had, they have not conspired to, or acquired, any interest in the Land. According to the allegations in the Complaint, only Sixteen Plus has an interest in the Property.

14 V.I.C. § 605(c) provides:

It is unlawful for any person who has received any proceeds derived, directly or indirectly, from a pattern of criminal activity in which he participated as a principal, to use or invest, directly or indirectly, any part of the proceeds thereof, or any proceeds derived from the investment or use of any of those proceeds, in the acquisition of any title to, or any right, interest, or equity in, real property, or in the establishment or operation of any enterprise.

As noted above, the Virgin Islands CICO statute is modeled after the federal RICO statute. *Gumbs v. People of the Virgin Islands*, 59 V.I. 784, n.2 (V.I. 2013); and *Pemberton Sales & Serv. v. Banco Popular de P.R.*, 877 F.Supp. 961, 970 (D.V.I. 1994). “CICO is cast in the mold of the federal RICO statute,” thus, Virgin Islands courts should apply RICO analysis to CICO claims. *Charleswell v. Chase Manhattan Bank, N.A.*, 45 V.I., 495, 513, 308 F. Supp. 2d 545, 562 (D.V.I. 2004). The corollary subsection of the federal RICO statute, 18 U.S.C. § 1962(c), is virtually identical (with the exception of an effect on interstate commerce requirement), and a substantial body of federal case law has evolved to bring rationality and clarity to a statute that has proved difficult to interpret on its face.

i. **Plaintiff Fails to Properly Plead the Elements of a CICO Conspiracy**

The essential elements of both a RICO and CICO conspiracy are: (1) two or more persons agreed to conduct or participate, directly or indirectly, in the conduct of an enterprise’s affairs through a pattern of racketeering activity or collection of an unlawful debt (pattern of criminal activity under CICO); (2) the defendant was a party to or a member of the agreement;

Plaintiff further claims that:

All Defendants are “person[s] who have received. . .proceeds derived directly or indirectly, from a pattern of criminal activity in which [they] participated as. . .principal[s], to use or invest, directly or indirectly, . . . part of the proceeds thereof. . .in the acquisition of. . .[a] right, interest, or equity in” the Land, which is real property as set forth above.

See First Amended Complaint, ¶ 83(b). Again, this boilerplate allegation is patently absurd and unsupported by the allegations in the First Amended Complaint. Plaintiff has clearly stated that the alleged “predicate acts” for CICO are set forth in paragraphs 55 through 79. *See* First Amended Complaint, p. 12, Section d. Of course, Defendants have not engaged in a pattern of criminal activity at all, as will be discussed. However, plaintiff does not even allege that Defendants attempted to, or generated proceeds, as a result of a pattern of criminal activity, or that proceeds born of such criminal activity were invested in the acquisition of an interest in the Land. In fact, it is clear from the First Amended Complaint that Sixteen Plus is the sole owner of the Property. Accordingly, any claim under 14 V.I.C. § 605(b) or (c), is properly dismissed for, *inter alia*, failure to state a claim upon which relief can be granted.

and (3) the defendant joined the agreement, knowing of its objective to conduct or participate in the conduct of the affairs of an enterprise through a pattern of racketeering activity or collection of unlawful debt, and intending to join with at least one other co-conspirator to achieve that objective. *United States v. Massimino*, 641 Fed.Appx. 153, 160 (3d Cir. 2016) (unpublished) (citing *Salinas v. United States*, 522 U.S. 52, 63, 118 S.Ct. 469, 139 L.Ed.2d 352 (1997)). Thus, to properly plead a § 1962(d) conspiracy a plaintiff is required to “set forth allegations that address the period of the conspiracy, the object of the conspiracy, and the certain actions of the alleged conspirators taken to achieve that purpose.” *Shearin v. E.F. Hutton Group, Inc.*, 885 F.2d 1162, 1166 (3d Cir. 1989), *abrogated on other grounds by Beck v. Prupis*, 529 U.S. 494 (2000)).

The supporting factual allegations “must be sufficient to describe the general composition of the conspiracy, some or all of its broad objectives, and the defendant’s general role in that conspiracy.” *Rose v. Bartle*, 871 F.2d 331, 366 (3d Cir.1989) (citation and quotation marks omitted). Moreover, “mere inferences from the complaint are inadequate to establish the necessary factual basis” *Id.* Plaintiff must allege facts to show that each Defendant objectively manifested an agreement to participate, directly or indirectly, in the affairs of a RICO enterprise through the commission of two or more predicate acts. *Smith v. Jones, Gregg, Creehan & Gerace, LLP*, 2008 U.S. Dist. LEXIS 98530, *23, 2008 WL 5129916, at *7 (W.D.Pa. Dec. 5, 2008). Bare allegations of conspiracy described in general terms may be dismissed. *Smith*, at 2008 U.S. Dist. LEXIS at *23-*24, 2008 WL at *7.

Among other things, plaintiff has failed to meet its burden to plead facts which show that each Defendant: 1) objectively manifested an agreement to participate, directly or indirectly, in the affairs of a CICO enterprise; 2) through the commission of two or more predicate acts.

Rather than properly pleading the necessary facts, plaintiff merely makes insufficient boilerplate allegations that a CICO conspiracy existed. Accordingly, plaintiff's First Amended Complaint is properly dismissed on this basis as well.

ii. **Plaintiff Also Fails to Properly Plead the Existence of a Criminal Enterprise**

The CICO conspiracy to embezzle money from Sixteen Plus is deficient on another basis as well: its failure to allege the requisite criminal "enterprise" with which Defendants are associated. An "enterprise" is defined in the CICO statute as including "any individual, sole proprietorship, partnership, corporation, trust, or other legal entity, or any union, association, or group of persons, associated in fact although not a legal entity, and includes illicit as well as licit enterprises and governmental as well as other entities." 14 V.I.C. § 604(h). Notably, Sixteen Plus is not a "criminal enterprise" as contemplated in the statute but rather, as pled by plaintiff, the alleged victim of the "criminal enterprise."

Where the criminal enterprise is not coincident in structure with an existing legal entity and is, instead, an "association-in-fact" enterprise—as in this case—the U.S. Supreme Court has made clear that such enterprise must have "at least three structural features: a purpose, relationships among those associated with the enterprise, and longevity sufficient to permit these associates to pursue the enterprise's purpose." *Boyle v. United States*, 556 U.S. 938, 946, 129 S.Ct. 2237, 2244, 173 L.Ed.2d 1265, 1276 (2009). Moreover, the "enterprise" is not the "pattern of racketeering activity" it is an entity separate and apart from the pattern of activity in which it engages. "The existence of an enterprise at all times remains a separate element which must be proved" *United States v. Turkette*, 452 U.S. 576, 583, 101 S.Ct. 2524, 2529, 69 L.Ed.2d 246, 255 (1981). The Supreme Court in *Boyle* explained it thusly:

Under § 371, a conspiracy is an inchoate crime that may be completed in the brief period needed for the formation of the agreement and the commission of a single overt act in furtherance of the conspiracy. Section 1962(c) **demands much more:** the creation of an “enterprise”—a group with a common purpose and course of conduct—and the actual commission of a pattern of predicate offenses.

Boyle v. United States, 556 U.S. 938, 946, 950, 129 S.Ct. 2237, 2246, 173 L.Ed.2d 1265, 1278 (2009) (emphasis added) (internal citation omitted).

Unlike a well-pled CICO conspiracy claim, the First Amended Complaint fails to provide any facts establishing the existence of a criminal enterprise between Defendants Fathi Yusuf, Isam Yousuf and Jamil Yousuf. Rather, in a vastly generous reading, the First Amended Complaint alleges that Messrs. Fathi Yusuf and Isam Yousuf agreed to create a “sham mortgage,” in 1997 (First Amended Complaint at ¶ 23) **which was signed by, and recorded on the property owned by Sixteen Plus, by Waleed Hamed.** There is not even any specific allegation against Jamil Yousuf. This is far from sufficient to properly allege the necessary “criminal enterprise” a shortcoming illustrated by cases which have found an association of individuals sufficient to satisfy the criminal enterprise requirement. For example, in *United States v. Bergrin*, 650 F.3d 257 (3d Cir. 2011), the indictment alleged an “association-in-fact” enterprise composed of an attorney and four other defendants who, over a six-year period, held various alleged roles in multiple criminal schemes, all of which were intended to further the enterprise’s seven common purposes. The Third Circuit found that the indictment withstood defendants’ motion to dismiss under Federal Rule of Criminal Procedure 12(b)(3)(B) because it “alleged facts that satisfy the *Boyle* requirements: purpose, relationships among the members [], and longevity sufficient to enable the BLE to pursue its goals” *Id.* at 269.

In contrast, the First Amended Complaint provides no facts sufficient to establish the criminal enterprise’s structure, relationship amongst or roles of the members, or, most

significantly, any purpose that required the formation of a CICO enterprise to carry out its scheme. Moreover, even under the most liberal reading of the First Amended Complaint, plaintiff has not alleged an enterprise “separate and apart from the pattern of activity in which it engages” and where its “various associates function as a continuing unit.” *Turkette*, 452 U.S. at 583, 101 S.Ct. at 2528-29, 69 L.Ed.2d at 254-55. At best, plaintiff has alleged “mere ‘sporadic’ or ‘temporary’ criminal alliance[s]” which is not sufficient to allege a CICO enterprise. *United States v. Henley*, 766 F.3d 893, 906 (8th Cir. 2014) (quoting *United States v. Leisure*, 844 F.2d 1347, 1363-64 (8th Cir. 1988)). The CICO statute is not intended to penalize sporadic or temporary criminal alliances such as this one, which do not demonstrate “a sustained and continuous effort” to accomplish the enterprise’s objectives, *Henley*, 766 F.3d at 906, or a sustained time period during which “the structure and personnel of the [enterprise] was continuous and consistent...”. *Leisure*, 844 F.2d at 1363.

There is, in short, nothing in the mishmash of boilerplate allegations and legal conclusions that a “criminal enterprise” existed sufficient to withstand the application of *Twombly* and *Iqbal*. See *Crest Constr. II, Inc. v. Doe*, 660 F.3d 346, 356 (8th Cir. 2011) (“While the complaint is awash in phrases such as ‘ongoing scheme,’ ‘pattern of racketeering,’ and ‘participation in a fraudulent scheme,’ without more, such phrases are insufficient to form the basis of a RICO claim.”). Therefore, as plaintiff has wholly failed to plead the necessary CICO “criminal enterprise” this failure alone also requires dismissal of Plaintiff’s CICO claim.

iii. **The First Amended Complaint Fails to Properly Plead a “Pattern of Criminal Activity”**

Also crucial to properly pleading a CICO conspiracy is properly pleading the statute’s “pattern” element—*i.e.*, that each defendant participated in the affairs of the enterprise “through a pattern of criminal activity.” 14 V.I.C. § 605(a). A pattern is defined as “two or more

occasions of conduct” that: “(A) constitute criminal activity; (B) are related to the affairs of the enterprise; and (C) are not isolated.” 14 V.I.C. § 604(j)(1). In turn, “criminal activity” is defined as engaging in one of a litany of offenses found in the Virgin Islands Code and enumerated in the statute, as well as federal criminal offenses constituting felonies. 14 V.I.C. § 604(e).

From the inception of the RICO statute, RICO’s “pattern of racketeering” element (“pattern of criminal activity” under CICO) has led to varying interpretations among the Circuits and increasing inconsistency in RICO jurisprudence. The U.S. Supreme Court sought to clarify the disarray in its opinion in *H.J. Inc. v. Northwestern Bell Telephone Co.*, 492 U.S. 229, 109 S.Ct. 2893, 106 L.Ed.2d 195 (1989). The U.S. Supreme Court first observed that the statutory requirement that a pattern include “at least two acts of racketeering activity,” means that “while two acts are necessary, they may not be sufficient.” *Id.* 492 U.S. at 237, 109 S.Ct. at 2900, 106 L.Ed.2d at 207. A pattern is not formed by “sporadic activity,” and a person cannot be subjected to RICO penalties simply for committing two “isolated criminal offenses.” *Id.* 492 U.S. at 239, 109 S.Ct. at 2900, 106 L.Ed.2d at 207-08. Rather, a pattern requires acts that are (1) related; and (2) amount to or pose a threat of continued criminal activity. *Id.* 492 U.S. at 239, 109 S.Ct. at 2900, 106 L.Ed.2d at 208. *But see People v. McKenzie*, 2017 V.I. LEXIS 40, *20 (V.I. Super. Ct. January 30, 2017) (analyzing continuity under CICO).

In addition to the length of time during which the predicate acts occurred, courts have factored into their analyses the complexity of the scheme, careful to ensure that the RICO statute is not used to penalize acts that are sporadic, isolated or, as here, in furtherance of “**only a single scheme with a discrete goal.**” *Jackson v. BellSouth*, 372 F.3d 1250, 1267 (11th Cir. 2004) (emphasis supplied). The court in *Jackson* affirmed dismissal of a RICO indictment where the

alleged pattern took place over a nine-month period, holding that: “[i]n view of the narrow scope of the alleged racketeering activity and the limited time frame in which it is said to have taken place,” the district court correctly held that the plaintiffs did not meet the continuity requirement necessary to sustain a RICO violation.” *Id.* The Second Circuit, in *Spool v. World Child Int’l Adoption Agency*, 520 F.3d 178 (2d Cir. 2008), noted that “although we have not viewed two years as a bright-line requirement, it will be rare that conduct persisting for a shorter period of time establishes [] continuity, particularly where ... ‘[t]he activities alleged involved only a handful of participants’ and do not involve a ‘complex, multi-faceted conspiracy.’” *Id.* at 184. In *Efron v. Embassy Suites (P. R.), Inc.*, 223 F.3d 12 (1st Cir. 2000), the First Circuit found no closed-ended continuity in an alleged scheme occurring over a 21-month period: “Taken together, the acts as alleged comprise a single effort, over a finite period of time, to wrest control of a particular partnership from a limited number of its partners. This cannot be a RICO violation.” *Id.* at 21; *see also Tal v. Hogan*, 453 F.3d 1244, 1268 (10th Cir. 2006) (“To determine continuity we examine both the duration of the related predicate acts and the extensiveness of the RICO enterprise’s scheme.”); *W. Assocs. Ltd. P’ship v. Mkt. Square Assocs.*, 235 F.3d 629, 633–37 (D.C. Cir. 2001) (affirming dismissal of an eight-year-long scheme of racketeering activity because the plaintiff alleged only “a single scheme, a single injury, and few victims”); *Menasco v. Wasserman*, 886 F.2d 681, 684 (4th Cir. 1989) (finding no continuity when predicate acts with a single goal occurred over a one-year period); *Vemco, Inc. v. Camardella*, 23 F.3d 129, 134 (6th Cir. 1994) (finding seventeen-month period insufficient to show continuity); *Ferri v. Berkowitz*, 678 F. Supp. 2d 66, 74-75 (E.D.N.Y. 2009) (“While closed-ended continuity is primarily concerned with the time period of the activities, the court also considers factors such as the ‘number and variety of predicate acts, the number of both

participants and victims, and the presence of separate schemes’ as relevant when determining whether closed-ended continuity exists.”); *Ritter v. Klisivitch*, 2008 U.S. Dist. LEXIS 58818, *32 (E.D.N.Y. July 30, 2008) (stating where plaintiff alleges nothing more than a “single scheme of narrow scope ... including one victim and a limited number of participants” closed-ended continuity does not exist).

As noted above, a pattern is defined as “two or more occasions of conduct” that: “(A) constitute criminal activity; (B) are related to the affairs of the enterprise; and (C) are not isolated.” 14 V.I.C. § 604(j)(1). In the case at hand, plaintiff has wholly failed to allege a pattern of criminal activity. Instead, plaintiff has merely made insufficient boilerplate recitations that Defendants allegedly “committed multiple criminal acts including conversion, attempted conversion, perjury, attempted perjury, wire and mail fraud, and others” in furtherance of the conspiracy. *See e.g.*, First Amended Complaint at ¶ 59. Plaintiff has not alleged, other than by boilerplate recitations, that Defendants Isam Yousuf and Jamil Yousuf engaged in any criminal activity at all with respect to obtaining the allegedly “sham” Promissory Note and First Priority Mortgage (or power of attorney).

Perhaps, in a very generous reading of plaintiff’s allegations, plaintiff has alleged that defendant Fathi Yusuf made false statements to the Hameds in order to get Sixteen Plus to execute the “sham mortgage.” This type of false statement is not a “criminal activity” as defined by 14 V.I.C. § 604(e), but, even if it were, it is exactly the type of “isolated activity” that does not constitute the “pattern of criminal activity” necessary to properly support a CICO claim. Plaintiff also makes additional allegations with respect to defendant Fathi Yusuf—for example, in the mid 2000s defendant Fathi Yusuf would not agree to a sale of the Property unless the mortgage was paid, and in 2010 defendant Fathi Yusuf obtained a power of attorney for Manal

Yousef—however, these **are not crimes** and, thus, cannot be part of a pattern of criminal activity. *See* First Amended Complaint at ¶¶ 40 and 45, respectively.

Plaintiff has also made allegations that, in 2016, defendant Fathi Yusuf engaged in “perjury.” *See* First Amended Complaint, ¶¶ 66 and 75. However, as discussed above, the alleged **conspiracy** to embezzle was complete upon getting the “sham mortgage” in 1997. Moreover, plaintiff’s claim that defendant Fathi Yusuf “perjured” himself in answering discovery responses in another civil matter in 2016, and signed incorrect tax returns prepared by Sixteen Plus’s accountant, are at most allegations of isolated crimes, years after the “sham mortgage” was obtained and, thus, wholly insufficient to properly plead the pattern of criminal activity necessary under CICO. *See H.J. Inc. v. Northwestern Bell Telephone Co.*, 492 U.S. 229, 239, 109 S.Ct. 2893, 2900, 106 L.Ed.2d 195, 207-08 (1989) (holding that a pattern is not formed by “sporadic activity,” and a person cannot be subjected to RICO penalties simply for committing two “isolated criminal offenses.”). Accordingly, plaintiff’s Complaint should also be dismissed for failing to properly plead the necessary pattern of criminal activity by any of the three defendants.⁹

D. Plaintiff has Failed to Plead a Viable Claim for Conversion

Conversion is an intentional exercise of dominion or control over a chattel which so seriously interferes with the right of another to control it that the actor may justly be required to pay the other the full value of the chattel. *Ross v. Hodge*, 58 V.I. 292, 308 (V.I. 2013) (citing Restatement (Second) of Torts § 222A(1) (1965)). In particular, the plaintiff must establish that: (1) it had an ownership interest in the property; (2) that it is entitled to immediate possession of

⁹ Of course, the case law requires at least two parties participation to have a conspiracy. Thus, since plaintiff fails to specifically allege any criminal activity on the part of Isam and Jamil, defendant Fathi Yusuf’s alleged co-conspirators, plaintiff has not properly alleged a CICO conspiracy and plaintiff’s CICO claim is properly dismissed on this basis as well.

the property; and (3) that the defendant unlawfully or without authorization retained the property. *Mayfair Jewelers, Inc. v. SAI Investment, LLC*, Case No. 2015-cv-12, 2016 U.S. Dist. LEXIS 34531, *4, 2016 WL 1069652, at * 2 (D.V.I. March, 17, 2016). As such, “[o]ne in possession of a chattel as bailee or otherwise who, on demand, refuses without proper qualification to surrender it to another entitled to its immediate possession, is subject to liability for its conversion.” *See id.* 2016 U.S. Dist. LEXIS at *5, 2016 WL at * 2 (citing the Restatement (Second) of Torts § 237).

As a prefatory matter, Sixteen Plus only has two assets: the money in its bank account, if any, and the Diamond Keturah property. In the First Amended Complaint, plaintiff does not, and cannot, allege that Isam and Jamil: 1) have taken and retained either money from Sixteen Plus’s account to which Sixteen Plus has the right to immediate possession; or 2) taken and retained the Property to which Sixteen Plus has the right of immediate possession. Accordingly, plaintiff’s claim for conversion is properly dismissed on this basis.

Second, even if plaintiff alleged that Isam and Jamil have taken and retained Sixteen Plus’s real property—which plaintiff has not, and cannot—real property cannot be the subject of a conversion claim. *See Ross v. Hodge*, 58 V.I. 292, 309 fn. 20 (V.I. 2013) (noting “the well-established rule that real property is not subject to conversion.” (citing *Strawberry Water Co. v. Paulsen*, 207 P.3d 654, 659 (Ariz. Ct. App. 2008) (explaining that interests in real property cannot be converted, because they are not chattels); *Roemer and Featherstonhaugh P.C. v. Featherstonhaugh*, 267 A.D.2d 697, 699 N.Y.S.2d 603, 604 (N.Y. App. Div. 1999) (explaining that real property cannot be converted); and *Pierson v. GFH Financial Services Corp.*, 829 S.W.2d 311, 314 (Tex. App. 1992) (same)). Accordingly, plaintiff’s conversion claim is properly dismissed on this basis as well.

Finally, a conversion claim is subject to a six (6) year statute of limitations. *See* 5 V.I.C. § 31(3)(D) (“[A]ction for taking, detaining or injuring personal property, including an action for the specific recovery thereof” is subject to a six (6) year statute of limitations); *see also Whitaker v. Merrill Lynch*, 36 V.I. 75, 84 (Terr. Ct. V.I. 1997) (“An action for conversion is subject to a six year statute of limitations.”) (citing *Chase Manhattan Bank v. Power Prod., Inc.*, 27 V.I. 126 (Terr.Ct.1992) and 5 V.I.C. § 31(3)(D)). An action for conversion of property is considered complete when the property is first tortuously taken or retained by the defendant. *Id.* (citing the Restatement (Second) of Torts § 899 cmt c (1979)). As noted above, there is no allegation that Isam and Jamil took or retained any property belonging to Sixteen Plus. The only allegation made by plaintiff which arguably impacts Sixteen Plus’s real property—which Property, as discussed above, cannot be the subject of a conversion claim—is the “sham mortgage.” The sham mortgage was obtained in 1997, with the Hameds’ participation, and recorded in 1999, with the Hameds’ knowledge. As such, plaintiff’s claim for conversion is properly dismissed on statute of limitations grounds as well.

E. Plaintiff has Failed to State a Claim for Civil Conspiracy

A civil conspiracy is made up of an agreement or combination to perform a wrongful act, or lawful act by unlawful means, that results in damage to the plaintiff. *Isaac v. Crichlow*, 63 V.I. 38, 64-65 (V.I. Super. Ct. 2015). Allegations of a conspiracy must provide a factual basis to support the existence of the elements of a conspiracy: agreement and concerted action. *Id.* at 66.

First, plaintiff attempts to allege a civil conspiracy to commit the tort of conversion. First Amended Complaint at ¶ 104. However, plaintiff’s claim for civil conspiracy to commit the tort of conversion is properly dismissed given that there is no liability for conversion on the bases set

forth in Section III(D), *supra*. *See id.* at 65-66 (“There is no liability for civil conspiracy where there is no liability for the act or acts underlying the conspiracy.”) (citation omitted).

Second, plaintiff attempts to “alternatively” allege that Defendants “entered into an agreement to obtain and prosecute a power of attorney to control a mortgage.” First Amended Complaint at ¶ 105. Plaintiff’s second civil conspiracy claim has three fatal flaws. One, plaintiff has failed to set forth any allegations that Defendants conspired, *i.e.*, agreed to and took concerned action to, “prosecute” the power of attorney. *See generally*, First Amended Complaint. Two, as discussed in defendant Fathi Yusuf’s Motion to Dismiss Plaintiff’s First Amended Complaint, Section III(E), the power of attorney has never been used and the case for corporate dissolution brought by defendant Fathi Yusuf was brought by him, individually. *See Exhibit 8*. Moreover, that case has been dismissed by stipulation of the parties. *See Exhibit 9*. Third, since the power of attorney has never been used, plaintiff has not, and cannot, allege that it has suffered the requisite harm as a result of the “conspiracy” to “prosecute” the power of attorney. Thus, plaintiff’s claim for civil conspiracy should be dismissed on the basis of each one of these failures.

F. Plaintiff has Failed to Plead a Viable Claim for the Tort of Outrage

The tort of outrage is another name for a claim for intentional infliction of emotional distress. *See Diaz v. Ramsden*, Case No. SX-12-CV-369, 2016 V.I. LEXIS 151, *9 fn13, 2016 WL 5475994, at *3 fn. 23 (V.I. Super. Ct. September 22, 2016) (unpublished) (analyzing plaintiffs’ claims for the intentional infliction of emotion distress, citing to, *inter alia*, *Hill v. McHenry*, 211 F.Supp.2d 1267, 1284 (D. Kan. 2002) (“The tort of outrage ... ‘is not a favored cause of action under Kansas law.’”); *Thomas v. BSE Indus. Contractors*, 624 So.2d 1041, 1044 (Ala. 1993) (“[Under Alabama law,] the tort of outrage is a very limited cause of action that is

available only in the most egregious circumstances.”); *McQuay v. Guntharp*, 963 S.W.2d 583, 585 (Ark. 1998) (“[The Supreme Court of Arkansas] gives a narrow view to the tort of outrage ...”). A cursory review of the cited cases confirms that the tort of outrage and intentional infliction of emotional distress are the same cause of action. *See e.g., Hill v. McHenry*, 211 F. Supp. 2d at 1284 (“The tort of outrage, also called intentional infliction of emotional distress ...”).

This matter is a derivative action brought by plaintiff on behalf of Sixteen Plus, a corporation. A corporation does not have emotions, thus, it cannot experience emotional distress. Moreover, the First Amended Complaint does not contain any allegations that plaintiff Hisham Hamed suffered emotional distress. Accordingly, plaintiff’s claim for the tort of outrage is properly dismissed as well.

4. Plaintiff has Failed to Join Manal Yousef Who is Both a Necessary and Indispensable Party

Virgin Islands Rule of Civil Procedure 12(b)(7) permits the dismissal of a complaint for “failure to join a party under Rule 19.” V.I. R. Civ. P. 12(b)(7). The language of V.I. R. Civ. P. 12(b)(7) is similar to that of Fed.R.Civ.P. 12(b)(7). Both Virgin Islands Rule of Civil Procedure 19 and Fed.R.Civ.P. 19 contain similar wording. Federal Rule of Civil Procedure 19 (“Rule 19”) requires the joinder of certain parties under certain enumerated circumstances. *Gen. Refractories Co. v. First State Ins. Co.*, 500 F.3d 306, 312 (3d Cir. 2007). In pertinent part, Rule 19(a)(1) provides:

A person who is subject to service of process and whose joinder will not deprive the court of subject-matter jurisdiction must be joined as a party if:

- (A) in that person’s absence, the court cannot accord complete relief among existing parties; or

(B) that person claims an interest relating to the subject of the action and is so situated that disposing of the action in the person's absence may:

(i) as a practical matter impair or impede the person's ability to protect the interest; or

(ii) leave an existing party subject to a substantial risk of incurring double, multiple, or otherwise inconsistent obligations because of the interest.

V.I. R. Civ. P. 19(a)(1); and Fed. R. Civ. P. 19(a)(1). The party seeking joinder need only establish that one of the grounds under Rule 19(a)(1) exists. *Marsh-Monsanto v. Clarenbach*, 2017 V.I. Supreme LEXIS 10, *31 (V.I. February 10, 2017); and *George v. George*, 59 V.I. 1092, 1099 (D.V.I. 2013) (citing Fed.R.Civ.P. 19(a)). In the event that a plaintiff has not originally joined a necessary party, ordinarily the proper remedy is to order joinder. *Marsh-Monsanto v. Clarenbach*, 2017 V.I. Supreme LEXIS 10, *31 (V.I. February 10, 2017); and *George*, 59 V.I. at 1099 (citing Fed.R.Civ.P. 19(a)(2)). If, however, a necessary party cannot be feasibly joined, a court may, in its discretion, order that the case be dismissed. *Marsh-Monsanto v. Clarenbach*, 2017 V.I. Supreme LEXIS 10, *31 (V.I. February 10, 2017); and *Janney Montgomery Scott, Inc. v. Shepard Niles, Inc.*, 11 F.3d 399, 405 (3d Cir. 1993).

In the instant case, Manal Yousef is a necessary party given that she holds a four and a half million dollar (\$4,500,000.00) First Priority Mortgage on the Property the validity of which is the crux of this action. Plaintiff alleges that the First Priority Mortgage is invalid and that alleged invalidity is central to plaintiff's claims against Defendants. Therefore, the Court will necessarily have to adjudicate the validity of the mortgage in the instant case if this case is permitted to go forward. Accordingly, it is clear Manal Yousef has an interest relating to the subject of the action—her First Priority Mortgage on the Property which plaintiff seeks to have invalidated—and, plainly, disposing of the action in her absence may, as a practical matter,

impairs or impedes her ability to protect the interest. Therefore, Manal Yousef is a necessary party and should be joined. *See Hoheb v. Muriel*, 753 F.2d 24, 26-27 (3d Cir. 1985) (holding mortgagees were necessary parties as their security interest in the property could be affected by the litigation); *see also Dickson v. Murphy*, 202 Fed.Appx. 578, 580-82 (3d Cir. 2006) (unpublished) (holding that co-obligees on agreements at issue were both necessary, and indispensable, parties to the action).¹⁰

V. CONCLUSION

Dismissal pursuant to V.I. R. Civ. P. 12(b)(2) is appropriate because there is no statutory basis pursuant to the long-arm statute, 5 V.I.C. § 4903, for jurisdiction over Isam and Jamil. Moreover Isam and Jamil are not at home in and have no sufficient contacts with the U.S. Virgin Islands. An exercise of jurisdiction here does not comport with traditional notices of fair play and substantial justice. The Court should not exercise personal jurisdiction over Isam and Jamil.

Service of process upon Isam and Jamil in Sint Maarten may be insufficient pursuant to V.I. R. Civ. P. 12(b)(5) and V.I. R. Civ. P. 4(f) and Isam and Jamil, out of an abundance of caution, leave plaintiff to his proof that process served upon them in Sint Maarten was proper.

Plaintiff has failed to properly plead a CICO conspiracy given that the alleged conspiracy; 1) was complete in 1997 when the alleged “sham mortgage” was obtained and; 2) plaintiff knew that Sixteen Plus’s interests in the Property were impacted by the “sham

¹⁰ If joinder cannot be accomplished, the case is properly dismissed as Manal Yousef is an indispensable party to the action. When a court determines that joinder is necessary under Rule 19(a) and that joinder is not feasible, the court must then determine whether the non-joined party is indispensable under Rule 19(b). *See Marsh-Monsanto v. Clarenbach*, 2017 V.I. Supreme LEXIS 10, *31 (V.I. February 10, 2017); and *HB General Corp. v. Manchester Partners, L.P.*, 95 F.3d 1185, 1190 (3d Cir.1996) (references Fed.R.Civ.P. 19). The question under Rule 19(b) is whether “in equity and good conscience” the court should proceed without the non-joined parties. V.I. R. Civ. P. 19(b); and Fed. R. Civ. P. 19(b). Accordingly, Isam and Jamil respectfully reserve their right to submit further briefing establishing Manal Yousef as an indispensable party should the Court find her to be a necessary party and determine that she cannot be joined.

mortgage” in 2005 when defendant Fathi Yusuf allegedly insisted that the mortgage be paid if the Property were to be sold. Thus, even if plaintiff’s CICO conspiracy claim was properly pled—which it is not—plaintiff’s claim is barred by the five (5) year statute of limitations. Additionally, plaintiff has failed to meet the burden to plead facts which, if true, show that Defendants objectively manifested an agreement to participate, directly or indirectly, in the affairs of a CICO enterprise through the commission of two or more predicate criminal acts, which facts are necessary to properly plead a CICO conspiracy. Plaintiff also fails to allege the necessary criminal enterprise—which enterprise must have an existence separate and apart from the “pattern of criminal activity”—and further fails to allege facts which, if true, would establish the “pattern of criminal activity” needed to properly plead a CICO conspiracy. For all these reasons, plaintiff’s CICO conspiracy claim fails and is properly dismissed on each of these bases.

Further, plaintiff has failed to state causes of action for conversion, civil conspiracy, and the tort of outrage and each and every one is properly dismissed on that basis. Moreover, plaintiff’s First Amended Complaint is also properly dismissed, in its entirety, due to the failure to join Manal Yousef, the holder of the First Priority Mortgage at issue herein, who is both a necessary and indispensable party to this action. Finally, even upon dismissal of this case in its entirety, the Hameds and Sixteen Plus will have their day in court with respect to the validly First Priority Mortgage on the Property as the issues regarding the validity of the loan and mortgage are currently pending before, and properly left for resolution by Judge Willocks in *Sixteen Plus Corporation v. Manal Mohammad Yousef*, Case No. SX-15-CV-65. It makes no sense to try to re-litigate those same issues in this convoluted derivative case.

VI. RELIEF REQUESTED

Isam Yousuf and Jamil Yousuf respectfully requests that this Court: 1) dismiss plaintiff Hisham Hamed's First Amended Complaint in its entirety as to them; 2) award Defendants Isam Yousuf and Jamil Yousuf attorneys' fees and costs incurred in connection with defending this case; and 3) award Defendants Isam Yousuf and Jamil Yousuf such other and further relief as the Court deems just and proper.

Respectfully Submitted,

DATED: June 14, 2017.

LAW OFFICES OF JAMES L. HYMES, III, P.C.
Counsel for Defendants –
Isam Yousuf, and Jamil Yousuf

By: 

JAMES L. HYMES, III
VI Bar No. 264
P.O. Box 990
St. Thomas, Virgin Islands 00804-0990
Telephone: (340) 776-3470
Facsimile: (340) 775-3300
E-Mail: jim@hymeslawvi.com;
rauna@hymeslawvi.com

CERTIFICATE OF SERVICE

Defendants Isam Yousuf and Jamil Yousuf, having filed a Motion for Leave to File Brief in Excess of Page Limit, and the Court having granted said motion, I hereby certify this document complies with the page or word limitation set forth in V.I. R. Civ. P. 6-1(e) and that on this the 14th day of June, 2017, I caused an exact copy of the foregoing **“Motion of Defendants Isam Yousuf And Jamil Yousuf To Dismiss Plaintiff’s First Amended Complaint”** to be served electronically by e-mail, and by mailing same, postage pre-paid, to the following counsel of record:

JOEL H. HOLT, ESQ.

LAW OFFICES OF JOEL H. HOLT
2132 Company Street
Christiansted, USVI, 00820
Telephone: (340) 773-8709
Facsimile: (340) 773-8677
holtvi@aol.com

Counsel for Plaintiff

CARL J. HARTMANN, III, ESQ.

5000 Estate Coakley Bay, L-6
Christiansted, VI 00820
carl@carlhartmann.com

Co-Counsel for Plaintiff

GREGORY H. HODGES, ESQ.

STEPHEN HERPEL, ESQ.

LISA MICHELLE KÖMIVES, ESQ.

DUDLEY, TOPPER AND FEUERZEIG, LLP
Law House, 10000 Frederriksberg Gade
P.O. Box 756
St. Thomas, VI 00804-0756
ghodges@dtflaw.com
sherpel@dtflaw.com
lkomives@dtflaw.com

Attorneys for Defendant Fathi Yusuf



EXHIBIT 1

HAMED vs. YUSUF et al.
SCVI/STX Civil No. SX-16-CV-650
AFFIDAVIT OF JAMIL YOUSUF

solicit business, do not engage in a persistent course of conduct in the U.S. Virgin Islands, and do not receive substantial revenue from any such activity or any goods or services in the U.S. Virgin Islands.

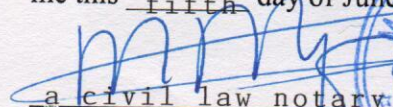
7. Neither Isam nor I have an interest in, own, use, or lease real property known as Diamond Keturah, located on St. Croix, U.S. Virgin Islands, referenced in this matter.
 8. Neither Isam nor I write insurance policies in the U.S. Virgin Islands.
 9. I have no agents, offices, post office boxes, and bank accounts in the U.S. Virgin Islands. Isam does not have agents or offices, and, upon information and belief, does not maintain active post office boxes or bank accounts in the U.S. Virgin Islands.
 10. Neither Isam nor I have a registered agent upon whom process can be served in the U.S. Virgin Islands.
 11. Neither Isam nor I currently, and did not in 2017, reside at 25 Gold Finch Road, Pointe Blanche, Sint Maarten.
 12. Travel Inn Hotel, Airport Road #15, Simpson Bay, Sint Maarten is not my residence, place of abode, or dwelling nor is it Isam's.
 13. I am not authorized by appointment or by law to receive service of behalf of Isam.
- FURTHER AFFIANT SAYETH NOT.

DATED: June 5th, 2017



JAMIL YOUSUF

SUBSCRIBED and SWORN TO before
me this fifth day of June, 2017.



a civil law notary

[NOTARY PUBLIC]

Commission Expires is for life.
Commission No.: N/A

C:\hamed\2017-06-02..affidavit...

Seen for legalization of the signature JAMIL ISAM YOUSUF, who identified himself with a passport, issued by the United States of America, under number 499229108, by me, Marlene Françoise Mingo, LL.M., a civil law notary, established on Sint Maarten, on this 5th day of June, 2017. This declaration for the legalization of the signature, by the civil law notary, contains no opinion as to the contents of this document.

EXHIBIT 2

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

SIXTEEN PLUS CORPORATION,

Plaintiff

v.

MANAL MOHAMMAD YOUSEF,

Defendant.

Civil No. SX-15-CV- 65

16

ACTION FOR
DECLARATORY JUDGMENT

COPY

COMPLAINT

Sixteen Plus Corporation ("Plaintiff"), by and through its undersigned counsel, files this Complaint against Defendant Manal Mohammad Yousef ("Defendant") and states as follows:

PRELIMINARY STATEMENT

1 Plaintiff seeks judgment declaring a mortgage to be null, void and unenforceable for lack of consideration.

PARTIES

2 Plaintiff is a Virgin Islands corporation in good standing.

3 Defendant is an adult individual who, upon information and belief, is a citizen of St. Maarten.

JURISDICTION; VENUE; STATUTORY PREDICATE FOR RELIEF

4 The Court has *in personam* jurisdiction over Defendant pursuant to 5 V.I.C. § 4903(5) because Defendant purports to have an interest (specifically, a security interest pursuant to a purported mortgage) in real property located within the Territory of the United States Virgin Islands.

5 Venue of this Action is appropriate in the Division of St. Croix because the real property against which the invalid mortgage is recorded is located on the island of St. Croix.

6. Plaintiff seeks relief herein pursuant to Chapter 89 of Title 5 of the Virgin Islands Code.

FACTUAL BACKGROUND

7. Plaintiff is the fee simple owner of the following described real property (collectively, the "Property")

Parcel No. 8, Estate Cane Garden, consisting of approximately 2.6171 U.S. Acres

Remainder no. 46A, Estate Cane Garden, consisting of approximately 7.6460 U.S. Acres.

Parcel No. 10, Estate Cane Garden, consisting of approximately 2.0867 U.S. Acres;

Road Plot No. 11, Estate Cane Garden, consisting of approximately 0.868 U.S. Acres;

Parcel No. 11, Estate Retreat, Matr. No. 37B of Company Quarter and Peter's Munde, Matr. No. 37A and 37BA, Company Quarter, and No. 54 Queen's Quarter all consisting of approximately 42.3095 U.S. Acres,

Remainder Matr. 32B, Estate Cane Garden of approximately 48.5175 U.S. Acres;

Parcel No. 9 Estate Cane Garden, consisting of approximately 11.9965 U.S. Acres,

Remainder Matr. 32A, Estate Granard, consisting of approximately 41.0736 U.S. Acres,

Parcel No. 40, Estate Granard, consisting of approximately 14.9507 U.S. Acres;

Remainder Matr. No. 31, Estate Diamond, consisting of approximately 74.4220 U.S. Acres ;

Parcel No. 4, Estate Diamond, consisting of approximately 5.8662 U.S. Acres;

Parcel No. 1, Estate Diamond, consisting of approximately 61.2358 U.S. Acres.

Parcel No. 3, Estate Diamond, consisting of approximately 6.9368 U.S. Acres.

Parcel No. 2, Estate Diamond, consisting of approximately 6.5484 U.S. Acres.

Road Plot No. 12, Estate Cane Garden, consisting of approximately 0.4252 U.S. Acres.

Road Plot No. 41, Estate Granard, consisting of approximately 0.4255 U.S. Acres, and

Road Plot No. 6, Estate Diamond, of approximately 0.8510 U.S. Acres.

8. On September 15, 1997, Plaintiff executed a mortgage on the Property to Defendant in the amount of \$4,500,000 (the "Mortgage").
9. Defendant did not have any funds to advance for the Mortgage.
10. Defendant simply agreed for her name to be used as a "straw" mortgagee, without any consideration given by her in exchange for the Mortgage.
11. The Mortgage was signed well over a year before the Property was purchased.
12. Defendant did not advance any funds or other consideration of any kind whatsoever to Plaintiff as consideration for the mortgage.
13. The Mortgage is unenforceable because Defendant did not give any consideration to Plaintiff in exchange for the Mortgage.

COUNT FOR RELIEF

14. Plaintiff incorporates each and every of the foregoing allegations as though fully set forth herein.
15. Plaintiff is a person interested under the Mortgage, which constitutes a contract, as contemplated in 5 V.T.C. § 1262.

16. Plaintiff is entitled to declaratory judgment declaring the Mortgage to be null, void and unenforceable.

WHEREFORE, Plaintiff respectfully requests that the Court enter judgment in favor of Plaintiff and against Defendant: (i) declaring the Mortgage to be null, void and unenforceable; (ii) granting to Plaintiff such other and further legal and/or equitable relief as is just and proper; and (iii) granting to Plaintiff its attorneys' fees and costs incurred in connection with this Action.

PLAINTIFF DEMANDS TRIAL BY JURY

Respectfully submitted,

HAMM ECKARD, LLP

By: 

Mark W. Eckard (VI Bar No. 1051)
5030 Anchor Way, Suite 13
Christiansted, VI 00820-4692
Telephone: (340) 514-2690
Facsimile: (855) 456-8784
Email: mekard@hammeckard.com

Counsel to Sixteen Plus Corporation

Dated: February 9, 2016

EXHIBIT 3



THE BANK OF NOVA SCOTIA

Sunny Isle Branch

P.O. Box 773, Christiansted, St. Croix, U.S. Virgin Islands 00821-0773

Tel: (809) 778-5350 / Fax: (809) 778-5898

July 9, 1997

Mr. Mohamad Hamed, President
Plessen Enterprises, Inc.
P.O. Box 763
Christiansted, VI 00821-0763

Dear Mr. Hamed:

We are pleased to confirm that subject to acceptance by you, The Bank of Nova Scotia (the "Bank") will make available to Plessen Enterprises, Inc. (the "Borrower"), credit facilities on the terms and conditions set out in the attached Terms and Conditions Sheet and Schedule "A".

If the arrangements set out in this letter, and in the attached Terms and Conditions Sheet and Schedule "A" (collectively the "Commitment Letter") are acceptable to you, please sign the enclosed copy of this letter in the space indicated below, initial all pages and return the letter to us by the close of business on July 11, 1997 after which date this offer will lapse.

Your acceptance hereof shall constitute your agreement to pay or cause to be paid upon demand of the Bank, fees and expenses of the Bank in connection with the loan such as title searches and title insurance costs, including survey expenses, fees of our appraiser, credit reporting charges, recording fees, taxes and all such other out of pocket expenses which the Bank may incur in connection with the loan transaction, whether or not the loan transaction described herein is consummated.

This Commitment Letter is in addition to all previous commitments issued by the Bank to the Borrower.

Yours very truly,

Gloria Williams
Senior Account Manager

Ralph T. Chan
Vice President

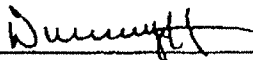
F.Y.

Plessen Enterprises, Inc.
July 9, 1997

2

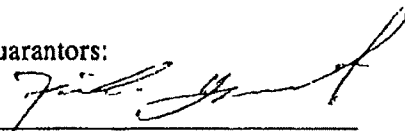
The arrangements set out above and in the attached Terms and Conditions Sheet and Schedule "A" (collectively the "Commitment Letter") are hereby acknowledged and accepted by:

Plessen Enterprises, Inc.

By: 
Mohamad Hamed, President
Waleed Hamed Vice president

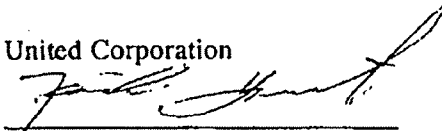
Date: 7-11-97

Guarantors:

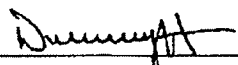

Fathi Yusuf

Date: 7-10-1997

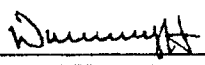
United Corporation


Fathi Yusuf, Secretary

Date: 7-10-1997


Waleed Hamed

Date: 7-11-97


Mohamad Hamed
Waleed Hamed

Date: 7-11-97

Plessen Enterprises, Inc.
July 9, 1997

Page 3

CREDIT NUMBER: 1 AUTHORIZED AMOUNT: \$2,200,000.00

TYPE

Non-revolving

PURPOSE

To be used to assist in the purchase of approximately 326 acres of undeveloped land known as the "Diamond Keturah" property.

CURRENCY

U.S. dollars

AVAILMENT

The Borrower may avail the credit by way of a direct advance evidenced by a Term Promissory Note.

INTEREST RATE

The Bank's U.S. Dollar Base Rate in New York, from time to time, plus 0.50% per annum with interest payable monthly.

"Base Rate (New York)" is a variable per annum reference rate of interest (as announced by the Bank from time to time) for United States dollar loans made by the Bank in the United States through its New York agency.

OTHER FEES

A Commitment Fee of \$15,000, which includes the Bank's legal fees (excluding title searches, title insurance and recording fees), is payable upon acceptance of this commitment.

F.Y.

DRAWDOWN

The loan is to be fully drawn down by July 25, 1997.

REPAYMENT

The advance is repayable as follows, commencing 30 days after drawdown:

Year 1: \$ 29,000 plus interest monthly
Year 2: \$ 65,000 plus interest monthly
Year 3: \$ 89,333 plus interest monthly

PREPAYMENT

Provided 10 business days prior written notice has been given to the Bank, prepayment is permitted without penalty at any time in whole or in part.

Prepayments are to be applied against installments of principal in the inverse order of their maturities.

GENERAL SECURITY

The following security, evidenced by documents in form satisfactory to the Bank and registered or recorded as required by the Bank, is to be provided prior to any advances or availment being made under the Credit(s):

1. First Priority Mortgage for \$2,200M on the following undeveloped properties:
 - Plot No. 26 Estate Diamond, consisting of approximately 75 acres of undeveloped land.
 - Matr. 39 & 5B Estate Diamond, consisting of approximately 75 acres of undeveloped land.
 - Matr. 28 & 29 Plessen, consisting of approximately 109 acres of undeveloped land.
2. Mortgagee Title insurance in the amount of \$2,200,000 issued by a title insurance company approved by the Bank, insuring the Bank as the holder of a valid First Priority mortgage lien over the properties described above, subject only to such exceptions as shall have been first approved by the Bank and its counsel. Z-Y.
3. Letter of undertaking from Borrower not to pledge nor sell the "Diamond Keturah" property while any portion of this loan remains outstanding.

GUARANTEE

Guarantees given by the following (with corporate seal and resolution as applicable) in the amounts shown:

| <u>NAME</u> | <u>AMOUNT</u> |
|---------------------|---------------|
| Hamed, Mohamad | Unlimited |
| Yusuf, Fathi | Unlimited |
| Hamed, Waleed | Unlimited |
| *United Corporation | Unlimited |

- * Together with supporting corporate documentation and authorizing resolutions in form and substance satisfactory to the Bank and its counsel and the legal opinion of counsel to the corporation covering all matters related to the execution and delivery of the guaranty by the corporation and its enforceability, said opinion to be in form and substance satisfactory to the Bank and its counsel.

GENERAL CONDITIONS

Until all debts and liabilities under the Credit has been discharged in full, the following conditions will apply in respect of the Credit:

1. All Banking business is to be conducted with the Bank, as long as the Bank's services and costs are competitive.
2. Without the Bank's prior written consent.
 - a) No change in ownership is permitted.
 - b) No mergers, acquisitions are permitted.
 - c) Assets are not to be further encumbered, guarantees or other contingent liabilities are not to be entered into.
 - d) No loans withdrawals, bonuses, advances to shareholders management or affiliates are permitted.
 - e) United Corporation cannot declare or pay any dividends or authorize or make any distribution of any shares of capital stock of the company, in excess of 50% of the company's net profit after taxes and debt servicing (to include servicing of Peter Farm Investment Corp.'s and Plessen Enterprises, Inc.'s debts).
3. A default on any loan to United Corporation is a default under this loan.
4. Sale of any portion of the collateral is subject to prior written approval of the Bank. In the event the Bank approves any such sale, the gross proceeds from such sale shall be applied to principal reduction of loan in inverse order of maturity and the Bank expressly reserves the right to impose additional conditions to the sale of any portion of the collateral at its sole discretion.

Plessen Enterprises, Inc.
July 9, 1997

Page 6

GENERAL BORROWER REPORTING CONDITIONS

Until all debts and liabilities under the Credit has been discharged in full, the Borrower will provide the Bank with the following:

1. Annual financial statements (CPA prepared) of United Corp. (Guarantor) within 120 days of fiscal year end.
3. Annual personal financial statements of the individual guarantors, duly signed.
4. Proof that all property tax payments are up to date.

EXPIRY OF OFFER

July 11, 1997

7-7.

SCHEDULE A

ADDITIONAL TERMS AND CONDITIONS APPLICABLE
TO ALL CREDITS

1. Interest on loans/advances made in U.S. dollars will be calculated on a daily basis and payable monthly on the 22nd day of each month, (unless otherwise stipulated by the Bank). Interest shall be payable not in advance on the basis of a 360 day year for the actual number of days elapsed both before and after demand of payment or default and/or judgment. The rate of interest based on a 360 day year is equivalent to a rate based on a calendar year of 365 days of 365/360 times the rate of interest that applies to the U.S. dollar loans/advances.

Waiver

2. Any waiver by either party or a breach of any part of this Agreement caused by the other party will not operate as or be interpreted as a waiver of any other breach. The failure of a party to insist on strict adherence to any term of the Agreement on one or more occasions is not to be considered to be a waiver of any of their rights under this Agreement or to deprive that party of the right to insist upon strict adherence to that term or any other term in the future. No waiver shall be of any effect unless it is in writing and authenticated by the waiving party.

Interest on Overdue Interest

3. Interest on overdue interest shall be calculated at the same rate as interest on the loans/advances in respect of which interest is overdue, but shall be compounded monthly and be payable on demand, both before and after demand and judgment.

Indemnity Provision

4. If the introduction of, or any change in, or in the interpretation of, or any change in its application to the Borrower of, any law or regulation, or compliance with any guideline from any central bank or other governmental authority (whether or not having the force of law) has the effect of increasing the cost to the Bank of performing its obligations hereunder or otherwise reducing its effective return hereunder or on its capital allocated in support of the credit(s), then upon demand from time to time the Borrower shall compensate the Bank for such cost or reduction pursuant to a certificate reasonably prepared by the Bank.

74.

(a) Prepayment without fee

In the event of the Borrower becoming liable for such costs, the Borrower shall have the right to cancel without fee all or any unutilized portion of the affected credit (other than any portion in respect of which the Borrower has requested utilization of the credit in which case cancellation may be effected upon indemnification of the Bank for any costs incurred by the Bank thereby), and to prepay, without fee the outstanding principal balance thereunder other than the face amount of any document or instrument issued or accepted by the Bank for the account of the Borrower, such as a Letter of Credit, a Guarantee or a Bankers' Acceptance.

Calculation and Payment of Standby Fee

5. Standby fees shall be calculated daily and payable monthly on the basis of a calendar year for Canadian dollar credits and on the basis of a 360 day year for U.S. dollar credits from the date of acceptance by the Borrower of this Commitment Letter.

Environment

6. The Borrower agrees:
- (a) to observe and conform to all laws and requirements of any federal, territorial, or any other governmental authority relating to the environment and the operation of the business activities of the Borrower;
 - (b) to allow the Bank access at all times to the business premises of the Borrower to monitor and inspect all property and business activities and to conduct, in the Bank's sole discretion, environmental remedial actions at the expense of the Borrower;
 - (c) to pay all the expenses of any environmental investigations or assessments that may be required by the Bank from time to time;
 - (d) to notify the Bank from time to time of any business activity conducted by the Borrower which involves the use or handling of hazardous materials or wastes or which increases the environmental liability of the Borrower in any material manner;

7/9

Environment (Cont'd)

- (e) to notify the Bank of any proposed change in the use or occupation of the real property of the Borrower prior to any change occurring; and
 - (f) to provide the Bank with immediate written notice of any environmental problem and any hazardous materials or substances which have an adverse effect on the property, equipment, or business activities of the Borrower and with any other environmental information requested by the Bank from time to time.
7. If the Borrower notifies the Bank of any specified activity or change or provides the Bank with any information pursuant to subsections (d), (e), or (f), or if the Bank receives any environmental information from other sources, the Bank, in its sole discretion, may decide that an adverse change in the environmental condition of the Borrower has occurred which decision will constitute, in the absence of manifest error, conclusive evidence of the adverse change. Following this decision being made by the Bank, the Bank shall notify the Borrower of the Bank's decision concerning the adverse change.
8. If the Bank decides or is required to incur expenses in compliance or to verify the Borrower's compliance with applicable environmental or other regulations, the Borrower shall indemnify the Bank in respect of such expenses, which will constitute further advances by the Bank to the Borrower under this Agreement.

Acceleration

9. (a) All indebtedness and liability of the Borrower to the Bank payable on demand, is repayable by the Borrower to the Bank at any time on demand;
- (b) All indebtedness and liability of the Borrower to the Bank not payable on demand, shall, at the option of the Bank, become immediately due and payable, the security held by the Bank shall immediately become enforceable, and the obligation of the Bank to make further advances or other accommodation available under the Credits shall terminate, if any one of the following Events of Default occurs:
- (i) the Borrower or any guarantor fails to make when due, whether on demand or at a fixed payment date, by acceleration or otherwise, any payment of interest, principal, fees, commissions or other amounts payable to the Bank;

F.Y.

Acceleration (Cont'd)

- (ii) there is a breach by the Borrower of any other term or condition contained in this Commitment Letter or in any other agreement to which the Borrower and the Bank are parties;
- (iii) any default occurs under any security listed in this Commitment Letter under the headings "Specific Security" or "General Security" or under any other credit, loan or security agreement to which the Borrower is a party;
- (iv) any bankruptcy, re-organization, compromise, arrangement, insolvency or liquidation proceedings or other proceedings for the relief of debtors are instituted by or against the Borrower and, if instituted against the Borrower, are allowed against or consented to by the Borrower or are not dismissed or stayed within 60 days after such institution;
- (v) a receiver is appointed over any property of the Borrower or any judgment or order or any process of any court becomes enforceable against the Borrower or any property of the Borrower or any creditor takes possession of any property of the Borrower;
- (vi) any adverse change occurs in the financial condition of the Borrower or any guarantor.
- (vii) any adverse change occurs in the environmental condition of:
 - (A) the Borrower or any guarantor of the Borrower; or
 - (B) any property, equipment, or business activities of the Borrower or any guarantor of the Borrower.

74.

EXHIBIT 4

Borrower's Responsibilities

10. Neither the Bank nor the Bank's attorneys are responsible for the preparation, compilation, production or delivery of documents that are required from either the borrower or any parties (such as a seller, a landlord, a tenant, or another lender or lienholder) with whom the borrower is dealing, whether directly or indirectly. It is the responsibility of the borrower to ensure that all such documents, in form and substance satisfactory to the Bank and the Bank's attorneys, are provided to the Bank and the Bank's attorneys not less than forty-eight (48) hours before the time scheduled for closing. Please note that forty-eight (48) hours is the bare minimum. The borrower is strongly encouraged to submit documents to the Bank and the Bank's attorneys for approval sufficiently in advance as to allow adequate opportunity for amendment, substitution or replacement by the borrower of any documents submitted that do not prove satisfactory in form and substance to the Bank and the Bank's attorneys. Due to the technicalities and complexities involved in concluding a transaction of this nature, it is recommended that the borrower retain the services of a qualified attorney to assist in fulfilling the borrower's responsibilities.

Costs

11. All costs, including legal and appraisal fees incurred by the Bank relative to security and other documentation, shall be for the account of the Borrower and may be charged to the Borrower's deposit account when submitted.

7-y.

Plessen Enterprises, Inc.

P.O. Box 763
Christiansted, St. Croix, USVI 00821
Tel: (809) 778-6240 Fax: (809) 778-1200

February 4, 1997

Mr. Ralph T. Chan
Vice President
The Bank of Nova Scotia
P.O. Box 773
Christiansted, St. Croix, USVI 00821

Dear Mr. Chan:

Please accept this letter as our serious intent to purchase the Diamond Keturah Property in St. Croix.

PURCHASE PRICE: Your judgment amount plus costs, and interest through the end of redemption period (April 28, 1997). In no event will my offer exceed \$4,550,000.00 US.

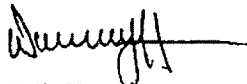
EARNEST DEPOSIT: \$100,000.00 US upon signing of the contract and an additional \$450,000.00 US within three (3) business days after the signing of the contract. The earnest money, is refundable only if the Bank cannot deliver clear title to the property.

TERMS & CONDITIONS: \$4,000,000.00 US additional cash upon closing.

CLOSING DATE: As soon as possible, after expiration of the redemption period.

Should you require any additional information, please do not hesitate to contact me at your earliest convenience. This offer expires on February 15, 1997.

Sincerely,



Wally Hamed
Vice President
Plessen Enterprises

EXHIBIT 5

SIXTEEN PLUS CORPORATION

**UNANIMOUS CONSENT OF DIRECTORS
IN LIEU OF A MEETING**

Pursuant to the provisions of Title 13, V.I.C. § 67b, the undersigned, constituting all of the Directors of Sixteen Plus Corporation (the "Company"), do hereby unanimously consent to the actions set forth below as though such actions had been taken at a meeting of the Board of Directors:


1. The Directors hereby approve the terms of a Promissory Note and First Priority Mortgage between the Company and Manal Mohamad Yousef.

2. The President or Vice President are authorized to execute any and all documents on behalf of the Corporation that they may deem necessary or appropriate to carry out the obligations of the Corporation, including, without limiting the generality of the foregoing, the execution of a Note and Mortgage substantially in the form attached as exhibits hereto.

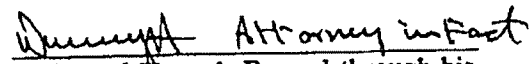
3. The Company agrees to borrow \$4,500,000 from Manal Mohamad Yousef in accordance with the terms of the aforesaid Promissory Note.

This written consent shall be filed with the minutes of the Corporation.

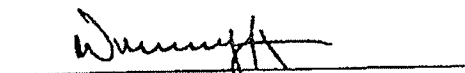
DATE: September 15, 1997.



Fathi Yusuf



Mohamad Hamed, By and through his
attorney-in-fact, Waleed M. Hamed



Waleed M. Hamed

EXHIBIT 6

\$4,500,000

September 15, 1997
St. Croix, U.S.V.I.

PROMISSORY NOTE

FOR VALUE RECEIVED, Sixteen Plus Corporation ("Maker") promises to pay to the order of Manal Mohamad Yousef ("Holder") of 25 Gold Finch Road Pointe Blanche, St. Martin, N.A.;, or such other place as Holder may designate to Maker in writing from time to time, the principal sum of Four Million, Five Hundred Thousand Dollars (\$4,500,000) together with interest at 8% per annum in lawful money of the United States of America.

Such indebtedness shall be paid as follows:

Payments of interest only (\$360,000 per year) will be made on the anniversary of the date of this note for five years, with payment of the full principal due five years from the date of this note.

This Note is secured by a first priority mortgage ("Mortgage"), dated of even date, in favor of the Holder encumbering certain real property known as:

SEE EXHIBIT A

In further consideration for this loan, Maker agrees to pay to Holder 20% of the net profit received from the sale of the property described in Exhibit A at the time of sale.

Maker shall pay to holder a late charge in the event that any installment is not received by the Holder on the date that it is due. The late charge shall be computed as follows:

| | | | | |
|---------------------|-----|----------------------------|---|-----------------|
| Principal Balance | | then applicable | | number of days |
| Outstanding on Note | x | prime rate of | x | between date |
| | | <u>interest plus 1/2 %</u> | | installment due |
| | | | | and date |
| | 365 | | | installment |
| | | | | received. |

All payments received by Holder shall be applied as follows: first, to any unpaid late fees, costs and expenses; second, to any unpaid accrued interest; and finally, the balance, if any, to principal.

This Note may be prepaid in whole or in part at any time without penalty or premium. Partial prepayments shall be applied as set forth herein and shall not cause a change in the due date or amount of the installments unless otherwise agreed by the Holder in writing.

It is hereby expressly agreed that should any default be made in the payment of principal and interest as stipulated above, and if such monetary default remains uncured for a period of fifteen (15) days, or if there is any default in any of the terms and conditions of the Mortgage, subject to the Notice provision, if any, in said instrument, then a default shall exist hereunder, and in such event the principal indebtedness evidenced hereby, and any other sums advanced or

due hereunder or under the Mortgage, at the option of the Holder without notice or demand, at once become due and payable and may be collected forthwith, and the entire unpaid principal balance of this Note shall thereafter bear interest at a per annum rate equal to eighteen percent (18.0%) per annum simple interest. A default shall be cured hereunder only upon the occurrence of the following:

- Payment of the sum and/or performance of the obligation which was the basis of the default; and
- Payment of all sums (including late fees and subsequent installments) and/or performance of all obligations which have become due hereunder as of the date of cure.

In the event this Note, or any part thereof, is collected by or through an attorney-at-law, Maker agrees to pay all costs of collection including, but not limited to, attorney's fees and court costs. Any notice sent in connection with this Note shall be sent in compliance with the notice provisions contained in the Mortgage.

Presentment for payment, demand, protest, notice of demand, protest and non-payment are hereby waived by Maker.

This Note is intended as a contract under and shall be construed, interpreted, and enforceable in accordance with the laws of the United States Virgin Islands.

As used herein, the terms "Maker" and "Holder" shall be deemed to include their respective heirs, successors, legal representatives and assigns, whether by voluntary actions of the parties or by operation of law. In the event that more than one person, firm or entity is a Maker hereunder, then all references to "Maker" shall be deemed to refer equally to each of said persons, firms, or entities, all of whom shall be jointly and severally liable for all of the obligations of Maker hereunder.

IN WITNESS WHEREOF, Maker has caused this Note to be executed by its duly authorized officer effective the date first above written.

DATED: 9/15/97

MAKER:

SIXTEEN PLUS CORPORATION

Waleed Hamed
Waleed Hamed, President

[Corporate SEAL]

A T T E S T:

Fathi Yusuf
Fathi Yusuf, Secretary

HAMD596311

EXHIBIT A

1. Parcel No. 8, Estate Cane Garden, of approximately 2.6171 U.S. Acres.
2. Remainder No. 46A, Estate Cane Garden, of approximately 7.6460 U.S. Acres.
3. Parcel No. 10, Estate Cane Garden, of approximately 2.0867 U.S. Acres.
4. Road Plot No. 11, Estate Cane Garden, of approximately 0.0868 U.S. Acres.
5. Parcel No. 11, Estate Retreat, Matr. No. 37B of Company Quarter and Peter's Munde, Matr. No. 37A and 37BA, Company Quarter, and No. 54 Queen's Quarter all of approximately 42.3095 U.S. Acres.
6. Remainder Matr. 32B, Estate Cane Garden of approximately 48.5175 U.S. Acres.
7. Parcel No. 9 Estate Cane Garden, of approximately 11.9965 U.S. Acres.
8. Remainder Matr. 32A, Estate Granard, of approximately 41.0736, U.S. Acres.
9. Parcel No. 40, Estate Granard of approximately 14.9507 U.S. Acres.
10. Remainder Matr. No. 31, Estate Diamond, of approximately 74.4220 U.S. Acres.
11. Parcel No. 4, Estate Diamond, of approximately 5.8662 U.S. Acres.
12. Parcel No. 1, Estate Diamond, of approximately 61.2358 U.S. Acres.
13. Parcel No. 3, Estate Diamond, of approximately 6.9368 U.S. Acres.
14. Parcel No. 2, Estate Diamond, of approximately 6.5484 U.S. Acres.
15. Road Plot No. 12, Estate Cane Garden, of approximately 0.4252 U.S. Acres.
16. Road Plot No. 41, Estate Granard, of approximately 0.4255 U.S. Acres.
17. Road Plot No. 6, Estate Diamond, of approximately 0.8510 U.S. Acres.

HAMD596313

02/1

February 22, 1999

FIRST PRIORITY MORTGAGE

THIS MORTGAGE ("Mortgage") is made this 15 day of September, 1997, between Sixteen Plus Corporation, whose address is 4C & D Sion Farm, Christiansted, St. Croix, 00820, ("Borrower") and Manal Mohamad Yousef ("Lender") whose address is 25 Gold Finch Road, Pointe Blanche, St. Martin, N.A.;

WITNESSETH:

A. Borrower is justly indebted to Lender in the principal sum of Four Million, Five Hundred Thousand Dollars (\$4,500,000) or so much thereof as shall have been advanced and remains unpaid, which indebtedness is evidenced by a Promissory Note in such principal amount, dated of even date herewith and hereinafter referred to as the "Note" and bears interest at the rate or rates and under the terms set forth in the Note, (said Note is incorporated herein by reference and made a part hereof); and

B. Borrower wishes to secure the full and punctual payment of the Note and the indebtedness evidenced thereby, and interest thereon, and the full performance of all the provisions, conditions, covenants and agreements herein contained or in any other document executed in connection herewith, and also to secure the reimbursement to the Lender for any and all money which may be advanced as herein provided for, and for any and all costs and expenses herein provided for or which may arise in respect of this Mortgage or the indebtedness hereby secured or the Property herein mentioned (collectively "Obligations").

NOW, THEREFORE, the Borrower does hereby grant, convey and give to the Lender a first priority mortgage on the following described property (collectively "Property") to secure the full and punctual payment and performance of the Obligations:

SEE EXHIBIT A

Together with

(a) all improvements now or hereafter erected thereon, and all modifications, additions, restorations and replacements of such improvements; and all rights-of-way, uses, servitude, licenses, tenements, hereditament, appurtenances, rights, privileges, and easements now or hereafter belonging or pertaining thereto; and

(b) all the appliances, fixtures, equipment, building materials and other personal property now or hereafter owned by the Borrower and located on the premises described above, whether or not incorporated in the improvements constructed thereon, and necessary to the use and occupancy thereof; and

(c) all awards and other payments in respect of any taking (as described in Section 12 herein below) in respect of any of the foregoing, together with all amounts received by the Lender, or expended by the Lender pursuant to this Mortgage; and

(d) . all of the Borrower's rights, benefits, title and interest as lessor, in and to any agreement to lease, leases, licenses, concession agreements and other agreements granting a right or privilege to use or occupy any portion of the Property (collectively "Leases") now or hereafter in existence and pertaining to all or any portion of the Property described above, together with any and all rents, issues, profits, revenues, income, earnest money or security deposits made pursuant to such Leases from the Property or any part thereof (collectively "Rents"), and any and all guarantees of performance under any such Leases.

IT IS HEREBY COVENANTED by the parties hereto that the Property is to be held and applied subject to the further terms herein set forth; and the Borrower, for the Borrower and Borrower's successors and assigns, hereby covenants and agrees with the Lender, as follows:

1. THE NOTE.

1.1 Issuance and Payment of the Note. The Borrower has issued the Note, and will duly and punctually pay the principal of the interest (if any) on the Note in accordance with the terms thereof, and will otherwise duly comply with the terms of the Note.

1.2 Prepayment on Taking of the Property. In case of any taking (as described in Section 11.2 hereof) of the Property, the portion of awards or other payments on account thereof shall be paid to the Lender and applied to the prepayment of the Note, together with interest (if any) on the principal amount of the Note so prepaid accrued to the date of such prepayment, and to the payment of all other indebtedness which this Mortgage secures. Any balance of such awards or other payments remaining after payment in full of the principal of and interest (if any) on the Note and all other indebtedness which this Mortgage by its terms secures shall be paid to the Borrower.

1.3 Replacement of Note. Upon receipt of evidence reasonably satisfactory to the Borrower of the loss, theft, destruction or mutilation of the Note and, in the case of any loss, theft or destruction, upon delivery of an indemnity agreement reasonably satisfactory to the Borrower or, in the case of any such mutilation, upon surrender and cancellation of such Note, the Borrower will issue, in lieu thereof, a new Note, dated the date to which interest has been paid on the lost, stolen, destroyed or mutilated Note and otherwise of like tenor, with appropriate variations.

2. AUTHORITY. The Borrower represents and warrants that the Borrower has good and lawful right and authority to execute this Mortgage and to mortgage the Property, and that the Borrower is well seized and possessed of a fee simple title to the Property. The Borrower, at the Borrower's expense, will warrant and defend to the Lender and its successors and assigns, for the benefit of the Lender, such interest and the lien and interest of the Lender on and in the Property against all claims and demands and will maintain and preserve such lien as long as the Note is outstanding.

3. **RECORDATION: PRESERVATION OF LIEN.** The Borrower at its expense, will at all times cause this Mortgage and any supplements hereto, and such other instruments as may be required by applicable law, to be recorded, registered and filed and to be kept recorded, registered and filed in such manner and in such places, and will pay all such recording, registration, filing or other taxes, fees and charges, and will comply with all such statutes and regulation, as may be required by law in order to establish, preserve and protect the lien of this Mortgage on all of the Property and the rights of the Lender hereunder.

4. **COMPLIANCE WITH APPLICABLE LAWS.** Borrower shall comply with all applicable laws, ordinances, rules, regulations, and codes applicable to the Property, including the use and possession thereof and any business located thereon. Borrower has received no notice of, and neither knows of, nor suspects any facts which might constitute any violations of any federal or territorial health, safety or environmental laws, codes, ordinances, rules or regulations with respect to the Property, including the use or possession thereof and any business located thereon.

5. **HAZARDOUS WASTE.** There shall be no emission, spill, release or discharge into or upon the air, soil or any improvements located thereon, surface water or ground water, or the sewer, septic system or waste treatment storage or disposal systems servicing the property, of any hazardous or toxic substances or wastes at or from the Property or otherwise and the Property shall be kept free from all such hazardous or toxic substance or wastes.

6. **LITIGATION.** No litigation, arbitration, condemnation, re-zoning or administrative proceedings are presently pending or, to Borrower's knowledge, threatened, which if adversely determined might have a material adverse effect on the Borrower, the financial condition of Borrower or upon the respective property rights of Borrower. Notwithstanding anything to the contrary set forth herein the parties recognize that a proposed land and water use plan may adversely impact the value of the property.

7. **PAYMENT OF TAXES, ETC.** Subject to Section 9 relating to contests, the Borrower will pay or cause to be paid all taxes, assessments (including, without limitation, all assessments for public improvements or benefits, whether or not commenced or completed prior to the date hereof), water, sewer or other rents, rates and charges, excises, levies, license fees, permit fees, inspection fees and other authorization fees and other charges, in each case whether general or special, ordinary or extraordinary, foreseen or unforeseen, of any character (including all interest and penalties thereon), which at any time may be assessed, levied, confirmed or imposed on or in respect of or be a lien upon (a) the Property or any part thereof or any rent therefrom or any estate, right or interest therein, or (b) any occupancy, use or possession of or activity conducted on the Property or any part thereof. Such payments will be made before any fine, penalty, interest or cost may be added for nonpayment, and the Borrower will furnish to the Lender, upon request, official receipts or other satisfactory proof evidencing such payments.

8. **CONSTRUCTION LIENS.** Subject to Section 9 relating to contests, the

Borrower shall not, without the Lender's prior written approval, directly or indirectly create or permit or suffer to be created or to remain, and will discharge, or cause to be discharged within thirty (30) days after issuance thereof, any construction lien with respect to the Property or any part thereof, or the Lender's interest therein.

9. **PERMITTED CONTESTS.** The Borrower or a tenant under any lease, at its expense, may contest (after prior written notice to the Lender) by appropriate legal proceedings conducted in good faith and with due diligence, the amount or validity or application, in whole or in part, of any mechanics' lien, construction lien, or taxes or other charges enumerated in Section 7 or lien therefor or the application of any instrument of record referred to in Section 8 provided, that (a) in the case of unpaid mechanics' liens, construction liens, or taxes or other charges enumerated in Section 7 or liens therefor, such proceedings shall suspend the collection thereof from the Borrower, the Lender and the Property; (b) neither the Property nor any part thereof or interest therein would be in any danger of being sold, forfeited or lost; (c) neither the Borrower nor the Lender would be in any danger of any additional civil or any criminal inability for failure to comply therewith (except interest, or penalties in the nature of interest, and attorney's fees or court costs) and the Property would not be subject to the imposition of any additional lien as a result of such failure; and (d) the Borrower shall have deposited adequate monies with respect thereto with the lender, who shall have the power to pay such contested amounts in the event the Property is in danger of forfeiture or the Lender is in danger of being held civilly or criminally liable with respect thereto, or, in the event the contested matter is the subject of litigation, the Borrower shall have deposited in a fund administered by the court adequate moneys therefor (as determined by the Lender).

10. **NOTICES CONCERNING THE PROPERTY.** The Borrower will deliver to the Lender, promptly upon receipt of the same, copies of all notices, certificates, documents and instruments received by the Borrower which materially affect the Property.

11. **TAKING; APPLICATION OF AWARD.**

11.1. **Borrower to Give Notice, etc.** In case of any taking of all or any part of the Property, or any interest therein or right accruing thereto as the result of or in lien or in application of the exercise of the right of condemnation or eminent domain during the term hereof, the Borrower shall promptly give to the Lender written notice generally describing the nature of the proceedings and negotiations for such taking and the nature and extent of the taking which might result therefrom, as the case may be. The Lender may appear in any such proceedings and negotiation, and the Borrower shall promptly give to the Lender copies of all notices, pleadings, determinations and other papers in any such proceedings. The Borrower will in good faith and with due diligence file and prosecute any claim or claims for any award or payment on account of any taking of the Property, will pay all costs and expenses (including, without limitation, attorneys' fees and the expense of the Lender) in connection with any such taking and seeking and obtaining any award or payment on account thereof. Such costs and expenses shall constitute indebtedness secured by this Mortgage.

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11.2 Taking. In the case of a taking of whatever nature, total or partial, of the Property or any portion thereof, any payment or award on account of such taking shall be collected and paid over in accordance with the provisions of Section 1.2 hereof.

12. INTENTIONALLY OMITTED.

13. INTENTIONALLY OMITTED.

14. NO CREDIT FOR PAYMENT OF TAXES. The Borrower shall not be entitled to any credit against the Principal of and interest, if any, on the Note, or any other sums which may become payable under the terms thereof or hereof, by reason of the payment of any tax on the Property or any part thereof.

15. EVENTS OF DEFAULT; DECLARATION OF NOTICE DUE. If one or more of the following events (herein referred to as "Events of Default") shall occur:

(a) if the Borrower shall fail to pay any principal of or interest, if any, on the Note when the same becomes due and payable (whether at maturity or on a date fixed for any interest payment, any installment payment, any prepayment or otherwise) and such default is not cured within fifteen (15) days after the payment due date; or

(b) if the Borrower shall fail to perform or comply with any of the other terms of this Mortgage and such default is not cured within thirty (30) days after the effective date of written notice from Lender to Borrower; or

(c) if the Borrower shall make an assignment for the benefit of creditors, or shall admit in writing its inability to pay its debts as they become due, or shall file a petition in bankruptcy, or shall be adjudicated a bankrupt or insolvent, or shall file a petition seeking any arrangement, composition, readjustment or similar relief under any present or future statute, law or regulation, or shall file an answer admitting or not contesting the material allegations of a petition filed against it in any such proceeding, or shall seek or consent to or acquiesce in the appointment of any trustee or receiver; or

(d) if, within sixty (60) days after the commencement of any proceeding against the Borrower which seeks any arrangement, composition or similar relief under any present or future statute, law or regulation, such proceeding shall not have been dismissed, or if, within sixty (60) days after the appointment of any trustee or receiver of the Borrower, without the consent or acquiescence of the Borrower, such appointment shall not have been vacated; or

(e) if the Borrower assigns or sells, or further encumbers, its interest in all or any part of the Property or if the Beneficial Ownership of Borrower shall change in violation of paragraphs 30, 31 and/or 32;

Then and in any such event (regardless of the pendency of any proceeding which has or might have the effect of preventing the Borrower from complying with the terms of the Mortgage), the Lender may at any time, without notice to declare the entire unpaid principal balance and all other indebtedness evidenced by the Note and/or secured by this Mortgage to be immediately due and payable, without presentment, demand, protest or notice, all of which are hereby waived.

16. REMEDIES OF THE HOLDER OF THE NOTE.

16.1 Legal Proceedings. If an Event of Default shall have occurred, the Lender may proceed to foreclose this Mortgage and to protect and enforce its rights by any action at law, suit in equity or other appropriate proceeding, whether for the specific performance of agreement contained herein, or for an injunction against the violation of any of the terms hereof, or in aid of the exercise of any power granted hereby or by law.

16.2 Cost of Enforcement. The Borrower shall pay on demand all costs and expenses (including, without limitation, attorneys' fees and expenses) incurred by or on behalf of the Lender in enforcing this Mortgage, the Note, or any of the other documents executed in connection herewith, or occasioned by any default hereunder or thereunder. Such costs and expenses shall constitute indebtedness secured by this Mortgage.

16.3 No Waiver. Neither failure or any delay on the part of the Lender to exercise any right, remedy, power or privilege provided for herein or by statute or at law or in equity or otherwise shall operate as a waiver thereof, nor shall any single or partial exercise of any such right, remedy, power or privilege preclude any other or further exercise thereof or the exercise of any other right, remedy, power or privilege.

17. INTENTIONALLY OMITTED.

18. FORECLOSURE. If an Event of Default shall have occurred, the Lender may at any time proceed at law or in equity or otherwise to foreclose the lien of this Mortgage as against all or any part of the Property. Borrower hereby expressly waives all rights to require Lender to first resort to the sale of any portion of the Property before foreclosing upon and/or selling any other portion(s) of the Property which is subject to this Mortgage and Borrower hereby agrees that Lender, at Lender's sole discretion, may elect to sell any one or more portion of the property in one or more Marshal's sales.

19. APPOINTMENT OF RECEIVER. If an Event of Default shall have occurred, the Lender shall be entitled, as a matter of right without regard to the adequacy or inadequacy of the Lender's security, to the appointment of a receiver for all or any part of the Property, whether such receivership is incidental to a proposed sale of the Property or otherwise, and the Borrower hereby consents to the appointment of such a receiver and shall not oppose any such appointment.

20. PURCHASE OF PROPERTY BY THE HOLDER OF THE NOTE. The Lender may be a purchaser of the Property or of any part thereof or of any interest therein at any foreclosure sale thereof and may apply upon the purchase price the indebtedness secured hereby owing to the Lender. The Lender shall, upon any such purchase, acquire good title to the properties so purchased, free of the lien of this Mortgage and free of all liens and encumbrances subordinate to the Mortgage.

21. RECEIPT A SUFFICIENT DISCHARGE TO PURCHASER. Upon any sale of the Property or any part thereof or any interest therein pursuant to foreclosure, the receipt of the officer making the sale under judicial proceedings shall be sufficient discharge to the purchaser for the purchase money, and such purchaser shall not be obliged to see to the application thereof.

22. APPLICATION OF PROCEEDS OF SALE. The proceeds of any sale of the Property or any part thereof or any interest therein pursuant to foreclosure or otherwise hereunder, together with any other monies at any time held by the Lender pursuant to this Mortgage, shall be applied to pay:

FIRST: All costs and expenses of the sale of the Property or any part thereof or any interest in connection therewith, or all costs and expenses of entering upon, taking possession of, removal from, holding, operating and managing the Property or any part thereof, as the case may be, reasonable attorneys' fees, and any taxes, assessments or other charges, prior to the lien of this Mortgage, which the Lender may consider it necessary or desirable to pay;

SECOND: All amounts of principal and interest at the time due and payable on the Note (whether at maturity or on a date fixed for any installment payment or any prepayment or by declaration and acceleration or otherwise), and in case such monies shall be insufficient to pay in full the amount so due an unpaid upon the Note, then, first, to the payment of all amounts of interest at the time due and payable on the Note, without preference or priority of any installment of interest over any other installment of interest, and, second, to the payment of all amounts of principal at the time due and payable on the Note, without preference or priority of any amount of principal over any other amount of principal;

THIRD: Any other indebtedness secured by this Mortgage and at the time due and payable (whether by acceleration or otherwise);

FOURTH: Any indebtedness secured by any lien on the Property which is subordinate to the lien of this Mortgage; and

FIFTH: Any balance to the Borrower.

23. REMEDIES CUMULATIVE. Each right, power and remedy of the Lender

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provided for in this Mortgage or now or hereafter existing at law or in equity or by statute or otherwise shall be cumulative and concurrent and shall be in addition to every other right, power or remedy provided for in this Mortgage or now or hereafter existing at law or in equity or by statute or otherwise, and the exercise of any one or more of such rights, shall not preclude the simultaneous or later exercise of any or all such other rights, powers or remedies.

24. NO WAIVER, ETC. No failure by the Lender or the holder of the Note to insist upon the strict performance of any term hereof or to exercise any right, power or remedy consequent upon a breach thereof, shall constitute a waiver of any such term or any such breach. No waiver of any breach shall affect or alter this Mortgage, which shall continue in full force and effect with respect to any other then existing or subsequent breach.

25. FURTHER ASSURANCES. The Borrower at its expense will execute, acknowledge and deliver all such instruments and take all such actions as the Lender from time to time may reasonably request for the better assurance to the Lender of the Property and rights now or hereafter subjected to the lien hereof or assigned hereunder or intended so to be subjected or assigned.

26. INDEMNIFICATION BY THE BORROWER. The Borrower will protect, indemnify and save harmless the Lender from and against all liabilities, obligations, claims, damages, penalties, causes of action, costs and expenses (including, without limitation, attorneys' fees and expenses) imposed upon or incurred by or asserted against the Lender by reason of (a) its Mortgage interest in the Property, or receipt of any rent or other sum therefrom; (b) any accident, injury to or death of persons or loss of or damage to property occurring on or about the Property; (c) any use, non-use or condition of the Property; (d) any failure on the part of the Borrower to perform or comply with any of the terms of this Mortgage or the terms of any other documents executed in connection herewith; or (e) performance of any labor or services or the furnishing of any materials or other property in respect of the property or any part thereof for construction or maintenance or otherwise. Provided, however, that the foregoing indemnification provision shall not be applicable to any occurrence arising after the Lender retakes possession of the Property in connection with a default by the Borrower. Any amounts payable to the Lender under this Section which are not paid within ten (10) days after written demand therefor by the Lender shall bear interest at the rate set forth in the Note from the day of such demand and shall be secured by this Mortgage. In case any action, suit or proceeding is brought against the Lender by reason of any such occurrence, the Borrower, upon the Lender's request, will at the Borrower's expense resist and defend such action, suit or proceeding or cause the same to be resisted and defended by counsel designated by the Borrower and approved by the Lender. Such obligations of the Borrower under this Section as shall have accrued at the time of any termination or satisfaction of this Mortgage shall survive any such termination or satisfaction.

27. RIGHT OF HOLDER OF THE NOTE TO PERFORM BORROWER'S COVENANTS, ETC. If the Borrower fails to make any payment or perform any act required

to be made or performed hereunder, the Lender, after such notice to the Borrower as may be reasonable under the circumstance, and without waiving or releasing any obligation or default, may (but shall be under no obligation or default, may (but shall be under no obligation to) at any time hereafter make such payment or perform such acct for the account and at the expense of the Borrower, and may enter upon the Property or any part thereof for such purpose and take all such action thereon as, in the opinion of the Lender, may be necessary or appropriate therefor. All sums so paid by the Lender and all costs and expenses (including, without limitation, attorney's fees and expenses) so incurred, together with interest thereon at the rate set forth in the Note, from the date of payment or incurring, shall constitute indebtedness secured by this Mortgage and shall be paid by the Borrower to the Lender on demand.

28. PROVISIONS SUBJECT TO APPLICABLE LAW. All rights, power and remedies provided herein may be executed only to the extent that the exercise thereof does not violate any applicable law, and are intended to be limited to the extent necessary so that they will not render this Mortgage invalid, unenforceable or not entitled to be recorded, registered or filed under any applicable law. If any term of this Mortgage shall be held to be invalid, illegal or unenforceable, the validity of other terms of the Mortgage shall in no way be affected thereby.

29. NOTICES. All notices and other communications hereunder shall be in writing and shall be deemed to have been given when hand delivered or mailed by first class certified mail, postage prepaid, return receipt requested, to the address given at the beginning of this Mortgage or at such other address as a party may have furnished to the other party by written notice.

30. ASSIGNMENT.

30.1. Assignment by Borrower. This Mortgage shall be binding upon the Borrower and the Borrower's successors and assigns, and all persons claiming under or through the Borrower or any such successor or assign, and shall inure to the benefit of and be enforceable by the Lender and the successors and assigns thereof; provided, however that the Borrower hereby agrees that the Borrower will not sell, assign or convey the Borrower's interest in the Property until all amounts of principal and interest at the time due and payable under the Note have been paid in full, without the prior written consent and approval of the Lender, which consent may be withheld for any reason or no reason at all. If legal or equitable title to the Property or any part thereof shall hereafter change by any means or if the Property or any part thereof shall be further encumbered without Lender's consent, then the indebtedness secured hereby shall become immediately due and payable upon demand of Lender and same shall constitute an Event of Default.

30.2. ASSIGNMENT BY LENDER. The Note and this Mortgage may at any time be assigned, in whole or in part, by the Lender and the benefits, advantages, rights and obligations of the Lender hereunder shall inure to the successors and assigns of the Lender.

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31. **TRANSFER OF THE PROPERTY; ASSUMPTION.** If all or any part of the Property or an interest therein is sold or transferred by the Borrower without the Lender's prior written consent (which consent may be withheld for any reason or no reason at all), the Lender may, at the Lender's option, declare all the sums secured by this Mortgage to be immediately due and payable and same shall constitute an Event of Default.

32. **CHANGE OF OWNERSHIP.** In the event beneficial ownership of the Property shall change by any means without the Lender's consent (which consent may be withheld for any reason or no reason at all), then the indebtedness secured hereby shall become immediately due and payable upon demand of the Lender and same shall constitute an Event of Default. For the purposes of this provision, if the Borrower is a corporation, any sale or other change in the controlling or controlling beneficial interest of the corporate stock of Borrower to persons not shareholders of the Borrower as of the date hereof shall be considered a change of ownership requiring the Lender's consent.

33. **ASSIGNMENT OF RENTS.** Borrower hereby absolutely and unconditionally assigns and transfers to Lender all the Rents of the Property, including those now due, past due or to become due by virtue of any one or more of the Leases, regardless of to whom the Rents of the Property are payable. Borrower hereby authorizes Lender or Lender's agents to collect the Rents and hereby directs each tenant of the Property to pay such Rents to Lender or Lender's agents; however, prior to written notice given by Lender to Borrower of the default by Borrower of any covenant or agreement of Borrower in this Mortgage and the expiration of any period of cure therefor, Borrower shall have the right to collect and receive all Rents of the Property as trustee for the benefit of Lender and Borrower, to apply the Rents so collected to the sums secured by this Mortgage with the balance, so long as no such breach has occurred, to the account of Borrower, it being intended by Borrower and Lender that this assignment of Rents constitutes an absolute assignment and not an assignment for additional security only. Upon delivery of written notice by Lender to Borrower of the default by Borrower of any covenant or agreement of Borrower in this Mortgage and the expiration of any period of time therefor and without the necessity of Lender entering upon the taking and maintaining full control of the Property in person, by agent or by a court-appointed receiver, Lender shall be immediately entitled to possession of all Rents of the Property as specified in this paragraph as the same become due and payable, including, but not limited to Rents then due and unpaid, and all such Rents shall immediately be held by Borrower as trustee for the benefit of Lender only; however, the written notice by Lender to Borrower of the breach by Borrower shall contain a statement that Lender exercises its rights to such Rents. Borrower agrees that commencing upon delivery of such written notice of Borrower's breach by Lender to Borrower, each tenant of the Property shall make such Rents payable to and pay such Rents to Lender or Lender's agents on Lender's written demand to each tenant therefor, delivered to each tenant personally, by mail or by delivering such demand to each rental unit, without any liability on the part of the tenant to inquire further as to the existence of a default by Borrower.

33.1 Borrower hereby covenants that Borrower has not executed any prior

assignment of the Rents, that Borrower has not performed and will not perform any acts and has not executed, and will not execute, any instrument which would prevent Lender from exercising its rights under this paragraph, and that at the time of execution of this Mortgage there has been no anticipation or prepayment of any of the Rents of the Property for more than one (1) month prior to the due dates of such Rents. Borrower covenants that Borrower will not hereafter collect or accept payments of any Rents of the Property more than one (1) month prior to the due dates of such Rents. Borrower further covenants that Borrower will execute and deliver to Lender such further assignments of Rents of the Property as Lender may from time to time request.

33.2 Upon Borrower's default of any covenant or agreement of Borrower in this Mortgage, and upon the notice and expiration of period to cure, if any, Lender may in person, by agent or by a court-appointed receiver, regardless of the adequacy of Lender's security, enter upon and take and maintain full control of the Property in order to perform all acts necessary and appropriate for the operation and maintenance thereof including, but not limited to, the execution, cancellation or modification of leases and subleases, the collection of all Rents of the Property, the making of repairs to the Property and the execution or termination of contracts providing for the management or maintenance of the Property, all on such terms as are deemed best to protect the security of this Mortgage. In the event Lender elects to seek the appointment of a receiver for the Property upon Borrower's breach of the covenant or agreement of Borrower in this Mortgage, Borrower hereby expressly consents to the appointment of such receiver. Lender or the receiver shall be entitled to receive a reasonable fee for so managing the Property.

33.3. All Rents collected by Lender pursuant to this Section 33 shall be applied as provided in Section 22 hereof. Lender or the receiver shall have access to the books and records used in the operation and maintenance of the Property and shall not be liable to Borrower, anyone claiming under or through Borrower or anyone having an interest in the Property by reason of anything done or left undone by Lender under this paragraph.

33.4. If the Rents of the Property are not sufficient to meet the costs, if any, of taking control of and managing the Property and collecting the Rents, any funds expended by Lender for such purposes shall become indebtedness of Borrower to Lender secured by this Mortgage. Unless Lender and Borrower agree in writing to other terms of payment, such amounts shall be payable upon notice from Lender to Borrower requesting payment thereof and shall bear interest from the date of disbursement at the rate stated in the Note unless payment of interest at such rate would be contrary to applicable law, in which event such amounts shall bear interest at the highest rate which may be collected from Borrower under applicable law.

33.5. Any entering upon and taking and maintaining of Control of the Property by Lender or the receiver and any application of Rents as provided herein shall not cure or waive any default hereunder or invalidate any other right or remedy of Lender under applicable law or as provided herein. This assignment of Rents of the Property shall terminate at such time

as this Mortgage ceases to secure indebtedness held by Lender.

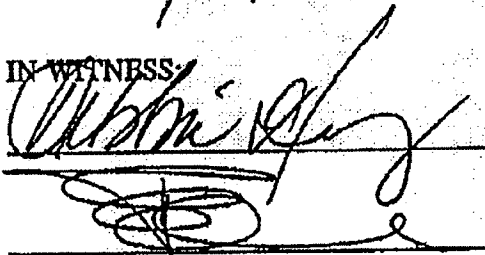
34. **MISCELLANEOUS.** This Mortgage may be changed, waived, discharged, or terminated only by an instrument in writing signed by the party against which enforcement of the change, waiver, discharge or termination is sought. The headings in this Mortgage are for convenience of reference only and shall not limit or otherwise affect the meaning hereof. This Mortgage shall be governed by and construed in accordance with the laws of the United States Virgin Islands.

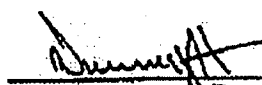
35. **INTEREST AND ADVANCES TO PROTECT COLLATERAL.** This Mortgage secures and shall secure the Obligations. Without limiting the foregoing, this Mortgage secures any and all interest on the indebtedness, costs of collection, and any advances made by the Lender reasonably necessary for protection of the collateral or otherwise authorized hereby.

IN WITNESS WHEREOF, the Borrower has caused this Mortgage to be duly executed on the date first above written:

DATED: 9/15/97

IN WITNESS:

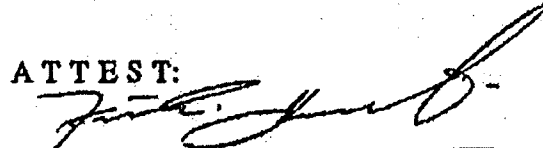




Waleed Hamad, President
Sixteen Plus Corporation

[CORPORATE SEAL]

ATTEST:



Fatih Yusuf, Secretary

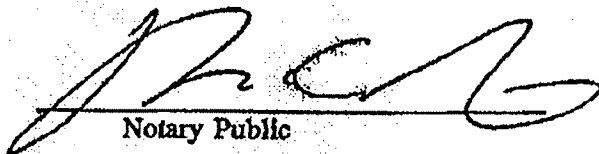
ACKNOWLEDGEMENT FOR CORPORATION

TERRITORY OF THE VIRGIN ISLANDS)
)ss:
DISTRICT OF ST. CROIX)

On this 15th day of September, 1997, before me the undersigned officer, personally appeared Fathi Yusuf, known to me (or satisfactorily proven) and this person acknowledged under oath, to my satisfaction, that:

- (a) this person is the Secretary of Sixteen Plus Corporation, the corporation named in this Contract;
- (b) this person is the attesting witness to the signing of this document by the proper corporate officer who is Walced Hamud, the President of the corporation;
- (c) this document was signed and delivered by the corporation as its voluntary act duly authorized by a proper resolution of its Board of Directors;
- (d) this person knows the proper seal of the corporation which was affixed to this document; and
- (e) this person signed this proof to attest to the truth of these facts.

SIGNED AND SWORN to before me on
this 15 day of September, 1997.


Notary Public

ACKNOWLEDGMENT of the 2nd 1997
207 52.51 at 10:00 AM
 recorded and Entered in Recorder's Book for the
 District of St. Croix, Virgin Islands of the U.S.A.
 Photo-copy 10/19/99 Page 33
12137777 and noted in Real Property Records
304,305 + 3
508.50



HAMD596326

EXHIBIT A

1. Parcel No. 8, Estate Cane Garden, of approximately 2.6171 U.S. Acres.
2. Remainder No. 46A, Estate Cane Garden, of approximately 7.6460 U.S. Acres.
3. Parcel No. 10, Estate Cane Garden, of approximately 2.0867 U.S. Acres.
4. Road Plot No. 11, Estate Cane Garden, of approximately 0.0868 U.S. Acres.
5. Parcel No. 11, Estate Retreat, Matr. No. 37B of Company Quarter and Peter's Minde, Matr. No. 37A and 37BA, Company Quarter, and No. 54 Queen's Quarter all of approximately 42.3095 U.S. Acres.
6. Remainder Matr. 32B, Estate Cane Garden of approximately 48.5175 U.S. Acres.
7. Parcel No. 9 Estate Cane Garden, of approximately 11.9965 U.S. Acres.
8. Remainder Matr. 32A, Estate Granard, of approximately 41.0736, U.S. Acres.
9. Parcel No. 40, Estate Granard of approximately 14.9507 U.S. Acres.
10. Remainder Matr. No. 31, Estate Diamond, of approximately 74.4220 U.S. Acres.
11. Parcel No. 4, Estate Diamond, of approximately 5.8662 U.S. Acres.
12. Parcel No. 1, Estate Diamond, of approximately 61.2358 U.S. Acres.
13. Parcel No. 3, Estate Diamond, of approximately 6.9368 U.S. Acres.
14. Parcel No. 2, Estate Diamond, of approximately 6.5484 U.S. Acres.
15. Road Plot No. 12, Estate Cane Garden, of approximately 0.4252 U.S. Acres.
16. Road Plot No. 41, Estate Granard, of approximately 0.4255 U.S. Acres.
17. Road Plot No. 6, Estate Diamond, of approximately 0.8510 U.S. Acres.



20th Feb
2:51 o'clock
Recorded and Entered in Recorder's Book for the
District of St. John, Virgin Islands of the U.S.A.
Page 304
No. 1081999 and noted in Real Property Records
II. 33. 126 Page 227, 186, 304, 305 & 306
Richard J. Huberton

HAMD596327

EXHIBIT 7

BRYANT, BARNES & SIMPSON, P.C.

ATTORNEYS AT LAW

BRITAIN H. BRYANT
DARYL C. BARNES
ANDREW C. SIMPSON

C. BETH MOSS
BETHANEY VAZZANA
CARL A. BECKSTEDT III

47 KING STREET, 2ND FLOOR
POST OFFICE BOX 4589
CHRISTIANSTED, ST. CROIX
U.S. VIRGIN ISLANDS 00822-4589

TEL : 340-773-2785
FAX : 340-773-5427
E-MAIL: vlegal@viaccess.net

August 27, 1999

VIA CERTIFIED MAIL

Waleed Hamed, President
Sixteen Plus Corporation
c/o Plaza Extra
United Shopping Plaza
St. Croix, VI 00820

RE: Diamond Keturah Property

Dear Waleed:

Per your request, enclosed please find the original First Priority Mortgage filed on the Diamond Keturah Property. You will see that it was recorded on February 22, 1999 as Document No. 768\1999 at pc 679, page 33. I return the original to you to keep in a safe and fireproof place.

If you have any questions, please don't hesitate to contact me. Thank you.

Very truly yours,



Carl A. Beckstedt III

CAB/alg

cc: Andrew C. Simpson, Esq.

EA\United\Diamond Keturah\waleed-ltr-8-27-99.wpd

HAMD596308

344-FY-1148

Z 364 353 413

US Postal Service
Receipt for Certified Mail
No Insurance Coverage Provided.
Do not use for International Mail (See reverse).

| | |
|---|---------|
| Sent to | |
| Waleed Hamed, President | |
| Street & Number | |
| c/o Plaza Extra United Shopping Plaza | |
| Post Office, State, & ZIP Code | |
| St. Croix, USVI 00820 | |
| Postage | \$ 2.77 |
| Certified Fee | 1.40 |
| Special Delivery Fee | |
| Restricted Delivery Fee | |
| Return Receipt Showing to Whom & Date Delivered | |
| Return Receipt Showing to Whom, Date, & Addressee's Address | 1.25 |
| TOTAL Postage & Fees | \$ 3.12 |
| Postmark or Date | |

PS Form 3800, April 1985

Fold at line over top of envelope for
the right of the return address.

CERTIFIED

Z 364 353 413

MAIL

Is your **RETURN ADDRESS** completed on the reverse side?

| | | | |
|---|--|--|--|
| SENDER: Complete items 1 and/or 2 for additional services. a Complete items 3, 4a, and 4b. b Print your name and address on the reverse of this form so that we can return this card to you. c Attach this form to the front of the package, or on the back if space does not permit. d Write "Return Receipt Requested" on the package below the article number. e The Return Receipt will show to whom the article was delivered and the date delivered. | | I also wish to receive the following services (for an extra fee): 1. <input type="checkbox"/> Addressee's Address 2. <input type="checkbox"/> Restricted Delivery Consult postmaster for fee. | |
| 3. Article Addressed to: Waleed Hamed, President Sixteen Plus Corporation c/o Plaza Extra United Shopping Plaza St. Croix, VI 00820 | | 4a. Article Number 2364353413 | |
| 4b. Service Type <input type="checkbox"/> Registered <input type="checkbox"/> Express Mail <input type="checkbox"/> Return Receipt for Merchandise <input type="checkbox"/> COD Date of Delivery | | <input checked="" type="checkbox"/> Certified <input type="checkbox"/> Insured | |
| 5. Received By: (Print Name) X | | 6. Addressee's Address (Only if requested and fee is paid) | |
| 6. Signature: (Addressee or Agent) | | 7. Date of Delivery | |

PS Form 3811, December 1984

Domestic Return Receipt

Thank you for using Return Receipt Service.

EXHIBIT 8

IN THE SUPERIOR COURT OF THE VIRGIN ISLANDS
DIVISION OF ST. THOMAS AND ST. JOHN

FATHI YUSUF,

Plaintiff,

v.

PETER'S FARM INVESTMENT CORPORATION, SIXTEEN PLUS CORPORATION, MOHAMMAD A. HAMED, WALEED M. HAMED, WAHEED M. HAMED, MUFEED M. HAMED, and HISHAM M. HAMED,

Defendants.

CASE NO. ST-15-CV- 344

ACTION FOR DISSOLUTION AND OTHER RELIEF

RECEIVED
SUPERIOR COURT
OF THE VIRGIN ISLANDS
JAN 28 2015

COMPLAINT FOR DISSOLUTION AND OTHER RELIEF

PARTIES AND JURISDICTION

1. Plaintiff Fathi Yusuf is a resident of the Virgin Islands.
2. Defendant Peter's Farm Investment Corporation ("Peter's Farm") is a U.S. Virgin Islands corporation.
3. Defendant Sixteen Plus Corporation ("Sixteen Plus") is a U.S. Virgin Islands corporation and.
4. Defendant Mohammad A. Hamed ("Mohammad Hamed") is a resident of the U.S. Virgin Islands.
5. Defendant Waleed M. Hamed ("Waleed Hamed") is a resident of the U.S. Virgin Islands.

6. Defendant Waheed M. Hamed ("Waheed Hamed") is a resident of the U.S. Virgin Islands.

7. Defendant Mufeed M. Hamed ("Mufeed Hamed") is a resident of the U.S. Virgin Islands.

8. Defendant Hisham M. Hamed ("Hisham Hamed") is a resident of the U.S. Virgin Islands.

10. This Court has subject matter jurisdiction pursuant to V.I. Code Ann. tit. 4, § 76(a).

11. Venue is proper in this district under V.I. Code Ann. tit. 4, § 78 because, inter alia, Defendant Peter's Farm and Sixteen Plus own real property in St. Thomas, and Defendant Waheed Hamed resides in St. Thomas.

COMMON ALLEGATIONS

12. Defendant Peter's Farm was incorporated as a Virgin Islands corporation on or about March 6, 1995.

13. Defendant Sixteen Plus was incorporated as a Virgin Islands corporation on or about February 10, 1997.

14. The incorporators of Peter's Farm were Fathi Yusuf, Mohammad Hamed, and Yusef I. Jaber ("Jaber"). Jaber, Fathi Yusuf and Mohammad Hamed were named as directors of the corporation at the organizational meeting of the incorporators of Peter's Farm held on or about March 4, 1995. Mohammad Hamed was named President, Jaber was named Vice President, and Fathi Yusuf was named Secretary and Treasurer of Peter's Farm in that same organizational meeting. These three individuals

were named directors of Peter's Farm in that same organizational meeting. Upon information and belief there have been no subsequent meetings of the shareholders to elect directors of Peter's Farm.

15. The original shareholders of Peter's Farm were Jaber (33 and 1/3%), Fathi Yusuf (33 and 1/3%) and Mohammad Hamed (33 and 1/3%). On or about October 30, 2002, Jaber transferred one half of his shares to Fathi Yusuf and one half to Mohammad Hamed, with the result that Mohammad Hamed and Fathi Yusuf each became 50% shareholders of Peter's Farm and remain to this day 50% shareholders of the corporation.

16. The incorporators of Sixteen Plus were Maher F. Yusuf, Waheed Hamed, and Waleed Hamed. Upon information and belief, Fathi Yusuf, Mohammad Hamed, and Waleed Hamed are directors of Sixteen Plus.

17. The shareholders of Sixteen Plus and the percentage of shares owned by each are as follows: Fathi Yusuf (11.0%); Fawzia Yusuf (11.0%); Zayed Yusuf (7%); Yusuf Yusuf (7%); Maher Yusuf (7%); NejeH Yusuf (7%); Mohammad Hamed (10%); Waleed Hamed (10%); Mufeed Hamed (10%); Waheed Hamed (10%); and Hisham Hamed (10%). Mohammad Hamed has served as President, Waleed Hamed as Vice President, and Fathi Yusuf as Secretary and Treasurer of Sixteen Plus.

18. Zayed, Maher, NejeH, and Yusuf are the sons of Fathi Yusuf and his wife, Fawzia. Waleed, Waheed, Mufeed and Hisham Hamed are Mohammad Hamed's sons.

19. Upon information and belief, there have been no annual meetings of shareholders to elect directors of Sixteen Plus.

20. The assets of Peter's Farm consist almost entirely of unimproved land in St. Croix and St. Thomas. Likewise, the assets of Sixteen Plus consist almost entirely of unimproved land in St. Croix and St. Thomas.

21. The Hamed and Yusuf families are and have been in a state of irreconcilable conflict and dissension regarding the operation of businesses jointly owned by the families (or members of the families). Fathi Yusuf and Mohammed Hamed were, until very recently, partners for many years in a partnership that owned and operated three supermarkets in St. Croix and St. Thomas. Because of the deep acrimony and distrust between the partners, the partnership is being wound up and it no longer operates any of the three supermarkets. The acrimony between the two families has become intensified in the partnership litigation such that members of the two families do not speak to one another, and a physical altercation between the Hameds and Yusufs occurred earlier this year in St. Croix.

22. The chronic strife, deep mutual distrust, and dissension between the Hamed and Yusuf families make it impossible for them to jointly manage and operate any business that they jointly own.

COUNT I

ORDER COMPELLING SHAREHOLDERS MEETING TO ELECT DIRECTORS OF PETER'S FARM AND SIXTEEN PLUS

23. Plaintiff incorporates the allegations of paragraphs 1 through 22 above.

24. V.I. Code Ann. tit. 13, §193 ("section 193") provides that where there has been any failure to conduct an election of directors, the court "may summarily order an election to be held upon the petition of any stockholder"

25. The legislative history for this section states that it was based on, inter alia, a provision of the Delaware corporate code, and "was designed to fix the consequences of failure to hold election of directors. . . ."

26. Upon information and belief, there have been no annual meetings of the shareholders to elect directors of Peter's Farm. Upon information and belief, there have been no annual meetings of the shareholders to elect directors of Sixteen Plus.

27. Under section 193, Plaintiff is entitled to a summary order directing the holding of a meeting of Peter's Farm and Sixteen Plus shareholders at which an election of directors for each corporation will be held.

**COUNT II
DISSOLUTION OF PETER'S FARM AND SIXTEEN PLUS**

28. Plaintiff incorporates the allegations of paragraphs 1 through 27, above.

29. There is a state of shareholder dissension and deadlock as to Peter's Farm and Sixteen Plus such that the business of both corporations can no longer be conducted to the advantage of the shareholders of each corporation.

30. This deadlock and dissension is grounds for dissolution of both corporations.

**COUNT III
APPOINTMENT OF A RECEIVER FOR PETER'S FARM AND SIXTEEN PLUS**

30. Plaintiff incorporates the allegations of paragraphs 1 through 30 above.

31. There exists an incorrigible deadlock and irreconcilable animosity between the shareholders of Peter's Farm and Sixteen Plus.

32. Upon information and belief, neither Peter's Farm nor Sixteen Plus has conducted any annual shareholders meetings to elect directors, resulting in a self-perpetuating control of the board of directors of each corporation by the original directors.

33. All of these factors necessitate the appointment of one or more receivers to sell the real estate assets of Peter's Farm and Sixteen Plus.

PRAYER FOR RELIEF

Wherefore, Plaintiff Fathi Yusuf requests the following relief:

1. An order compelling the holding of a Peter's Farm shareholder's meeting to elect directors of the corporation;
2. An order compelling the holding of a Sixteen Plus shareholder's meeting to elect directors of the corporation;
3. An order dissolving Peter's Farm and Sixteen Plus and directing the windup of the corporations;
4. An order appointing a receiver for Peter's Farm and for Sixteen Plus to sell the real estate holdings of both corporations; and
5. An order awarding Plaintiff such other and further relief as is just and proper under the circumstances, including but not limited to an award of attorney fees incurred by Plaintiff in the litigation of this case.


Fathi Yusuf (v. Peter's Farm Investment Corporation, et al.)
Complaint for Dissolution and Other Relief
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Respectfully submitted,

DUDLEY, TOPPER and FEUERZEIG, LLP

DATED: July 27, 2015

By:


GREGORY H. HODGES (V.I. Bar No. 174)
STEFAN B. HERPEL (V.I. Bar No. 1019)
Law House
1000 Frederiksberg Gade (P.O. Box 756)
St. Thomas, U.S.V.I. 00804-0756
Telephone: (340) 774-4422
Facsimile: (340) 715-4400
E-Mail: ghodges@dtflaw.com
sherpel@dtflaw.com

and

NIZAR A. DeWOOD, ESQ. (V.I. Bar No. 1177)
The DeWood Law Firm
2006 Eastern Suburbs, Suite 101
Christiansted, St. Croix
U.S. Virgin Islands 00820
Telephone: (340) 773-3444
Facsimile: (888) 398-8428
E-Mail: info@dewood-law.com

Attorneys for Plaintiff, Fathi Yusuf

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

EXHIBIT 9

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

| | | |
|---|---|--------------------------|
| HISHAM HAMED , individually, and |) | |
| Derivatively, on behalf of SIXTEEN |) | |
| PLUS CORPORATION , |) | CIVIL NO. SX-16-CV-650 |
| |) | |
| Plaintiff, |) | DERIVATIVE SHAREHOLDER |
| |) | SUIT, ACTION FOR DAMAGES |
| vs. |) | AND CICO RELIEF |
| |) | |
| FATHI YUSUF, ISAM YOUSUF and |) | JURY TRIAL DEMANDED |
| JAMIL YOUSEF , |) | |
| |) | |
| Defendants. |) | |
| |) | |
| and |) | |
| |) | |
| SIXTEEN PLUS CORPORATION , |) | |
| |) | |
| a nominal Defendant, |) | |
| _____ |) | |

ORDER

This matter, having come before this Court upon the Motion of Defendants Isam Yousuf and Jamil Yousuf, incorrectly identified as Jamil Yousef, to Dismiss Plaintiff's First Amended Complaint, and the Court being fully satisfied with the premises contained therein, it is hereby

ORDERED that the defendants' Motion is hereby **GRANTED**; and it is further

ORDERED that Counts I, II, V, and VI of the First Amended Complaint against defendants Isam Yousuf and Jamil Yousuf are hereby **DISMISSED WITH PREJUDICE**; and it is further

ORDERED that a copy of this Order be directed to Joel H. Holt, Esq., Carl J. Hartmann, III, Esq., Gregory H. Hodges, Esq., Stephen Herpel, Esq., Lisa Michelle Kömives, Esq., and James L. Hymes, III, Esq.

ENTERED this _____ day of _____, 2017.

Judge, Superior Court of the Virgin Islands

A T T E S T:

THE HON. ESTRELLA H. GEORGE
Acting Clerk of the Court

By: _____
Deputy Clerk

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| | |
|------------------------------------|---|
| JOEL H. HOLT, ESQ. | [E-MAIL: holtvi@aol.com] |
| CARL J. HARTMANN, III, ESQ. | [E-MAIL: carl@carlhartmann.com] |
| GREGORY H. HODGES, ESQ. | [E-MAIL: ghodges@dtflaw.com] |
| STEPHEN HERPEL, ESQ. | [E-MAIL: sherpel@dtflaw.com] |
| LISA MICHELLE KÖMIVES, ESQ. | [E-MAIL: lkomives@dtflaw.com] |
| JAMES L. HYMES, III, ESQ. | [E-MAIL: jim@hymeslawvi.com] |
| CLERK OF THE COURT | |