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

WALEED HAMED, as the Executor of the Estate of MOHAMMAD HAMED, *Plaintiff/Counterclaim Defendant*, vs. **FATHI YUSUF** and **UNITED CORPORATION** *Defendants and Counterclaimants*. vs. **WALEED HAMED, WAHEED HAMED, MUFEED HAMED, HISHAM HAMED, and PLESSEN ENTERPRISES, INC.**, *Counterclaim Defendants*,	**Case No.: SX-2012-cv-370** **ACTION FOR DAMAGES, INJUNCTIVE RELIEF AND DECLARATORY RELIEF** JURY TRIAL DEMANDED Consolidated with
WALEED HAMED, as the Executor of the Estate of MOHAMMAD HAMED, *Plaintiff*, vs. **UNITED CORPORATION,** *Defendant.*	**Case No.: SX-2014-CV-287** **ACTION FOR DECLARATORY JUDGMENT** JURY TRIAL DEMANDED Consolidated with
WALEED HAMED, as the Executor of the Estate of MOHAMMAD HAMED, *Plaintiff,* vs. **FATHI YUSUF**, *Defendant.*	**Case No.: SX-2014-CV-278** **ACTION FOR DEBT AND CONVERSION** JURY TRIAL DEMANDED

MOTION AS TO HAMED CLAIM NO. H-3:
$504,591.03 OF PARTNERSHIP FUNDS TAKEN BY YUSUF - PAID TO HIS LAWYER

Hamed has raised as one of his claims, designated as H-3, the $504,591.03 unilaterally taken from the Partnership in 2012-2013 by Fathi Yusuf and used to pay to his counsel for defending this case.

This litigation began in 2012 when Fathi and Mike Yusuf unilaterally took $2,784,706.25 from a partnership account and transferred it to an account to which the Hameds did not have access. A copy of the check is attached as **Exhibit 1**. This was the main issue in Hamed's complaint -- and a central issue during the early portion of this case. Because Yusuf was claiming that Hamed had no interest in the Plaza Extra Stores, unilaterally withdrawing $2.7 million from the partnership account and **trying to have the police remove the Hameds from the stores**, Judge Brady granted a full evidentiary TRO hearing which stretched to two days -- on January 25th and 31st, 2013.

During this period, when Yusuf had seized control of the Plaza Extra accounts, he used Partnership funds to pay his own civil lawyer for his Answer, his attempt to remove this to Federal Court (which the federal court denied and remanded) and the TRO proceedings here. This was pure theft, about which Hamed objected to judge Brady in the TRO proceeding, and on which Judge Brady ruled.

Three months later, the Court ruled for Hamed on the matter. **Exhibit 2**. *Hamed v. Yusuf*, 58 V.I. 117, 2013 WL 1846506 (V.I. Super. April 25, 2013). As Judge Brady stated, in factual finding 38 of that Order, Fathi Yusuf paid his personal, civil legal fees in this lawsuit out of partnership funds. *Id***.** at 11, para. 38 ("Funds from supermarket accounts have also been utilized unilaterally by Yusuf, without agreement of Harmed, to pay legal fees of defendants relative to this action. . . .") This was after the hearing where this issue and the attached checks were argued before the Court.

In short, a total of $504,591.03 was paid for Yusuf's personal defense of this case *afte*r the complaint here was filed. **These were fees paid to Attorney DiRuzzo's firm for work in <u>this</u> case,** which have been submitted to the Court on several occasions and are attached here as **Group Exhibit 3** for the ease of the Master's reference. The brutal irony of taking your partner's money to use to defend yourself in the case for stealing his other money earlier is overwhelming !

The claim is for $504,591.03 in checks to Fuerst Ittleman David & Joseph, PL in the following amounts plus $216,991 interest accruing from the date of each check.

$15,067.26 plus $ 6,824 in interest from October 19, 2012
$ 29,011.50 plus $ 13,141 in interest from October 19, 2012
$ 99,254.45 plus $ 44,272 in interest from November 16, 2012
$111,660.24 plus $ 47,989 in interest from January 21, 2013
$112,383.32 plus $ 47,662 in interest from February 13, 2013
$ 82,274.84 plus $ 34,467 in interest from March 6, 2013
$ 54,938.89 plus $ 22,636 in interest from April 3, 2013

There is no way that Yusuf can alter the Court's decision on this matter -- having since conceded that there *<u>is</u>* a partnership that owned the Plaza Extra Stores, with Judge Brady then entering summary judgment on this issue. **Exhibit 4**. Simply put, Yusuf tried to steal the Plaza Extra Stores, claim that Hamed was just an illiterate employee, throw the Hameds out by calling the police and then stealing the $500 thousand from the Partnership to pay for this ridiculous paroxysm of theft and litigation.

However, Yusuf (as the Liquidating Partner) has held off having this declared a valid claim by repeatedly saying discovery <u>may</u> be necessary. There is NOTHING known to the Hameds that can be discovered. **There is no doubt that the Yusufs took the money and paid it to Attorney DiRuzzo to pursue his "brilliant" idea of stealing the stores -- and if there is any evidence, it is in the hands of Yusuf or his attorney.**

As Judge Brady's memorandum makes clear, those fees plus interest constitute a valid claim and must be returned to the Partnership. As such, Hamed asks the court to make that determination as we have now arrived at that stage of the proceedings.

Dated: January 20, 2017

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CERTIFICATE OF SERVICE

I hereby certify tha this document complies with the page or word limitation set forth in Rule 6-1(e), and that on this 20th day of December, 2017, I served a copy of the foregoing by email, as agreed by the parties, on:

Hon. Edgar Ross
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CERTIFICATE OF COMPLIANCE WITH RULE 6-1(e)

This document complies with the page or word limitation set forth in Rule 6-1(e).

EXHIBIT 1

TO HAMED'S MOTION AS TO HAMED CLAIM NO. H-3:

$504,591.03 OF PARTNERSHIP FUNDS TAKEN BY YUSUF - PAID TO HIS LAWYER

HAMD2000102

UNITED CORPORATION D/B/A
PLAZA EXTRA
340-778-8240
PO BOX 783
CHRISTIANSTED, USVI 00821-0783

1154

101-506/216

Date 8/15th/2012.

Pay To The Order Of United Corporation. $ 2,784,700.25

Two Million Seven Hundred Eighty-Four Thousand Seven Hundred Six dollars & 25/100 Dollars

Scotiabank
THE BANK OF NOVA SCOTIA
ST. CROIX, U.S. VIRGIN ISLANDS

For

⑈001154⑈ ⑆021506069⑆ 058⑈500854⑈

EXHIBIT
1

EXHIBIT 2

TO HAMED'S MOTION AS TO HAMED CLAIM NO. H-3:

$504,591.03 OF PARTNERSHIP FUNDS TAKEN BY YUSUF - PAID TO HIS LAWYER

FOR PUBLICATION

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

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

MEMORANDUM OPINION

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

JURISDICTION

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

EXHIBIT 2

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

STANDARD

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

STATEMENT OF ISSUES

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

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

FINDINGS OF FACT

1. Plaintiff and Defendant Yusuf have a longstanding friendship and familial history which preceded their business relationship. *January 25, 2013 Evidentiary Hearing Transcript, at 196-198,* hereinafter *Tr. 196-198, Jan. 25, 2013.*

2. In 1979, Fathi Yusuf incorporated United Corporation ("United") in the U.S. Virgin Islands. *Defendants' Evidentiary Hearing Exhibit, no. 7,* hereinafter *Def. Ex. 7.*

3. United subsequently began construction on a shopping center located at Estate Sion Farm, St. Croix. Thereafter, Defendant Yusuf desired and made plans to build a supermarket within the shopping center. *Plaintiff's Evidentiary Hearing Exhibit, no. 1 (Transcript, February 2, 2000 Oral Deposition of Fathi Yusuf: Idheileh v. United Corp. and Yusuf, Case No. 156/1997, Territorial Court of the Virgin Islands, Div. St. Thomas and St. John), at 8, lines 1-14;* hereinafter *Pl. Ex. 1, p. 8:1-14.*[1]

4. Subsequently, Yusuf encountered financial difficulty in completing construction of the shopping center and opening the supermarket, was unable to procure sufficient bank loans, and told Plaintiff Mohammad Hamed ("Hamed") that he was unable to finance the completion of the project. At Yusuf's request, Hamed provided funding to Yusuf's project from proceeds of Hamed's grocery business. *Pl. Ex. 1, p. 14:4-15:14.*

5. Hamed provided Yusuf with monies to facilitate completion of construction on the shopping center and to facilitate opening the Plaza Extra supermarket in Estate Sion Farm, St Croix. *Tr.197:5—199:13, Jan. 25, 2013.*

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

6. Upon Yusuf's request, Hamed sold his two grocery stores to work exclusively as a part of Plaza Extra. *Tr. 200:4-15, Jan. 25, 2013.*

7. Hamed contributed to Yusuf's project funds as they were available to him, including the entire proceeds from the sale of his two grocery stores, with the agreement that he and Yusuf would each be a 50% partner in the Plaza Extra Supermarket, "in the winning or loss." *Tr.200:16-23, Jan. 25, 2013.*

8. Hamed initially became a 25% partner of Yusuf, along with Yusuf's two nephews who each also had a 25% interest in the Plaza Extra Supermarket business. *Pl. Ex. 1, p.15:2-14.*

9. Yusuf sought additional bank financing to complete the construction of the building for the Plaza Extra business, which loan application was eventually denied, as a result of which Yusuf's two nephews requested to have their funds returned and to leave the partnership. *Pl. Ex. 1, p. 17:6-24.*

10. With the withdrawal of Yusuf's nephews, the two remaining partners of the Plaza Extra Supermarket business were Hamed and Yusuf. Notwithstanding the financing problems, Hamed determined to remain with the business, having contributed a total of $400,000 in exchange for a 50% ownership interest in the business. *Pl. Ex. 1, p.17:24-19:10.*

11. Yusuf and Hamed were the only partners in Plaza Extra by the time in 1986 when the supermarket opened for business and Hamed has remained a partner since that time. *Pl. Ex. 28.*[2]

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

12. As a partner in the Plaza Extra Supermarket business, Hamed was entitled to fifty (50%) percent of the profit and liable for fifty (50%) of the "payable" as well as loss of his contribution to the initial start-up funds. *Tr. 44:12-21; 200:16-23; 206:23-25, Jan. 25, 2013; Pl. Ex. 1, p 18:16-23; p.23:18-25.*

13. Yusuf and Hamed have both acknowledged their business relationship as a partnership of an indefinite term. *Pl. Ex. 1, p.18:18-23* ("I'm obligated to be your partner as long as you want me to be your partner until we lose $800,000."); *Tr. 210:4-8, Jan. 25, 2013* (Q: "How long is your partnership with Mr. Yusuf supposed to last? When does it end?" A: "Forever. We start with Mr. Yusuf with the supermarket and we make money. He make money and I make money, we stay together forever.")

14. Yusuf testified in the *Idheileh* case that it was general public knowledge that Yusuf was a business partner with Hamed even before the Plaza Extra supermarket opened. *Pl. Ex.1, p. 20:10-12.*

15. Yusuf has admitted in this case that he and Hamed "entered into an oral joint venture agreement" in 1986 by which Hamed provided a "loan" of $225,000 and a cash payment of $175,000 in exchange for which "Hamed [was] to receive fifty percent (50%) of the net profits of the operations of the Plaza Extra supermarkets" in addition to the "loan" repayment. Yusuf states that the parties' agreement provided for "a 50/50 split of the profits of the Plaza Extra Supermarket stores." *Pl. Ex. 2, p.3,4.* Indeed, Yusuf confirms that "[t]here is no disagreement that Mr. Hamed is entitled to fifty percent (50%) of the profits of the operations of Plaza Extra Store....The issue here again is not whether Plaintiff Hamed is entitled to 50% of the profits. He is." *Pl. Ex. 3, p.11.*

16. In 1992-1993, a second Plaza Extra supermarket was opened on the island of St. Thomas, USVI, initially with a third "partner," Ahmad Idheileh, who later withdrew leaving a "50/50" ownership interest in the St. Thomas Plaza Extra between Yusuf and Hamed. *Tr.27:1-28:14, Jan. 25, 2013.*

17. At present, there are three Plaza Extra Supermarkets which employ approximately six hundred people on St. Croix and St. Thomas. *Tr. 238:4-6, Jan 25, 2013.*

18. In the *Idheileh* litigation, Yusuf provided an affidavit wherein he stated that "[m]y brother in law, Mohamed Hamed, and I have been full partners in the Plaza Extra Supermarket since 1984 while we were obtaining financing and constructing the store, which finally opened in 1986." *Pl. Ex. 1, Affidavit of Fathi Yusuf, Deposition Ex. 6*[3].

19. Hamed and Yusuf have jointly managed the stores by having one member of the Hamed family and one member of the Yusuf family co-manage each of the three Plaza Extra Supermarkets. Originally, Hamed and Yusuf personally managed the first Plaza Extra store, with Hamed in charge of receiving, the warehouse and produce, and Yusuf taking care of the office. *Tr. 26:11-19; 206:20-22, Jan 25, 2013.* Yusuf's management and control of the "office" was such that Hamed was completely removed from the financial aspects of the business, concerning which Hamed testified "I'm not sign nothing.....Fathi is the one, he sign. Mr. Yusuf the one he sign the loan, the first one and the second one." *Tr. 207:16-21, Jan. 25, 2013.*

20. During recent years, in every store there is, at least, one Yusuf and one Hamed who co-manage all aspects of the operations af each store. Mafeed Hamed and Yusuf Yusuf have

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

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

21. In operating the "office," Yusuf did not clearly delineate the separation between United "who owns United Shopping Plaza" and Plaza Extra, despite the fact that from the beginning Yusuf intended to and did "hold the supermarket for my personal use." *Pl. Ex. 1, p. 8:1-7.* Despite the facts that the supermarket used the trade name "Plaza Extra" registered to United (*Pl. Ex. 4, ¶14*) and that the supermarket bank accounts are in the name of United (*Pl. Ex's. 15, 16*), "in talking about Plaza Extra...when it says United Corporation...[i]t's really meant me [Yusuf] and Mr. Mohammed Hamed." *Pl. Ex. 1, p. 69:13-21.*

22. Yusuf admitted in the *Idheileh* action that Plaza Extra was a distinct entity from United, although the "partners operated Plaza Extra under the corporate name of United Corp." *Pl. Ex. 28, Response to Interrogatory 6.*

23. The distinction between United and the Plaza Extra Supermarkets is also apparent from the fact that United, as owner of United Shopping Center, has sent rent notices to Hamed on behalf of the Sion Farm Plaza Extra Supermarket, and the supermarket has paid to United the rents charged. *Pl. Ex's. 7, 8, 9; Tr. 48:24-51:9; 212:18-214:15, Jan. 25, 2013.*

24. In 2003, United was indicted for tax evasion in federal court, along with Yusuf and several other members of the Hamed and Yusuf families in that matter in the District Court of the Virgin Islands, Division of St. Croix, known as *United States and Government of the Virgin Islands v. Fathi Yusuf, et al., Crim. No. 2005-15* ("the Criminal

Action") . However, Plaintiff Mohammed Hamed was not indicted. *Tr. 222:11-223:6; 134:15-23, Jan. 25, 2013.*

25. In connection with the Criminal Action, the federal government appointed a receiver in 2003 to oversee the Plaza Extra Supermarkets, who deposits all profits into investment accounts at Banco Popular Securities and, originally, at Merrill-Lynch. Those "profits" accounts remain at Banco Popular Securities to the present. *Tr. 41:15-42:18; 137:13-138:19, Jan. 25, 2013.*

26. In 2011, United pled guilty to tax evasion in the Criminal Action. Charges were dismissed against the other Defendants, by Plea Agreement filed February 26, 2011. *Def. Ex. 2, p.2.*

27. The Criminal Action against United remains pending, as the terms of the Plea Agreement require "complete and accurate" tax filings. United has filed no tax returns since 2002, although estimated taxes have been paid from the grocery store accounts, and mandatory accounting procedures for Plaza Extra have been adopted. *Tr. 241:23-245:12, Jan 25, 2013; Tr. 90:4-16, Jan 31, 2013; Def. Ex. 2.*

28. At some point between late 2009 and 2011, at Yusuf's suggestion, the Hamed and Yusuf families agreed that all checks drawn on Plaza Extra Supermarket accounts had to be signed by one member of the Hamed family and one member of the Yusuf family. *Tr. 100:11-16, 228:2-11, Jan. 25, 2013.*

29. In late 2011, United had its newly retained accountant review a hard drive containing voluminous financial records related to the Criminal Action, following which Yusuf accused members of the Hamed family of stealing money from the supermarket business

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

30. Thereafter, discussions commenced initiated by Yusuf's counsel regarding the "Dissolution of Partnership." *Pl. Ex. 10, 11. 12.* On March 13, 2012, through counsel, Yusuf sent a Proposed Partnership Dissolution Agreement to Hamed, which described the history and context of the parties' relationship, including the formation of an oral partnership agreement to operate the supermarkets, by which they shared profits and losses. *Pl. Ex. 12.*[4] Settlement discussions followed those communications but have not to date resulted in an agreement. *Tr. 58:15-20, Jan. 25, 2013.*

31. Although Plaintiff retired from the day-to-day operation of the supermarket business in about 1996, Waleed Hamed has acted on his behalf pursuant to two powers of attorney from Plaintiff. *Tr. 45:24-48:2; 172:6-173:8; 202:18-25, Jan. 25, 2013; Pl. Ex. 1,Affidavit of Fathi Yusuf, Depos. Exh .6,¶4.* Both Plaintiff and Yusuf have designated their respective sons to represent their interests in the operation and management of the three Plaza Extra stores. *Tr. 31:6-35:11, Jan. 25, 2013.*

32. It had been the custom and practice of the Yusuf and Hamed families to withdraw funds from the supermarket accounts for their own purposes and use (see *Def. Ex. 1; Pl. Ex. 27*), however such withdrawals were always made with the knowledge and consent of the other partner. *Tr. 138:20-139:8, Jan. 25, 2013; Tr.121:3-123:9, Jan. 31, 2013.*

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

33. Waleed Hamed testified that Fathi Yusuf utilized Plaza Extra account funds to purchase and subsequently sell property in Estate Dorothea, St. Thomas, to which it was agreed that Hamed was entitled to 50% of net proceeds. Although Yusuf's handwritten accounting of sale proceeds confirms that Hamed is due $802,966, representing 50% of net proceeds (*Pl. Ex. 18*), that payment has never been made to Hamed and the disposition of those sale proceeds is not known to Hamed. *Tr.88:8-90:17, Jan. 25, 2013.*

34. Each of the three Plaza Extra Supermarkets maintains and accounts for its operations separately, with separate bank accounts. In total, the stores maintain a total of approximately eleven accounts. *Tr. 35:12-20; 36:22-38:25; 229:10-13, Jan. 25, 2013.*

35. On or about August 15, 2012, Yusuf wrote a check signed by himself and his son Mahar Yusuf and made payment to United in the amount of $2,784,706.25 from a segregated Plaza Extra Supermarket operating account, despite written objection of Waleed Hamed on behalf of Plaintiff and the Hamed family, who claimed that, among other objections, the unilateral withdrawal violated the terms of the District Court's restraining order in the Criminal Action. *Tr. 246:1-250:14, Jan. 25, 2013*; *Pl.Group Ex. 13.*

36. On the first hearing day, Mahar Yusuf, President of United Corporation testified under oath that he used the $2,784,706.25 withdrawn from the Plaza Extra operating account to buy three properties on St. Croix in the name of United. On the second hearing day, Mahar Yusuf contradicted his prior testimony and admitted that those withdrawn funds had actually been used to invest in businesses not owned by United, including a mattress business, but that none of the funds were used to purchase properties overseas. *Tr. 250:2-251:15, Jan. 25, 2013*; *Tr. 118:12-120:2, Jan. 31, 2013.*

37. A restraining order was entered by the District Court in the Criminal Action which remains in place and restricts withdrawal of funds representing profits from the supermarkets that have been set aside in the Banco Popular Securites brokerage account pending the conclusion of the Criminal Action or further order of that Court. *Tr. 41:15-42:18; 119:4-12, Jan. 25, 2013.* The Criminal Action will remain pending until past tax returns are filed. *Tr. 134:15-136:22; 242:16-245:5, Jan. 25, 2013.* As of January 18, 2013, the brokerage account had a balance of $43,914,260.04. *Def. Ex. 9.* This Court cannot enforce the restraining order or otherwise control any aspect of the Criminal Action or its disposition.

38. Funds from supermarket accounts have also been utilized unilaterally by Yusuf, without agreement of Hamed, to pay legal fees of defendants relative to this action and the Criminal Action, in excess of $145,000 to the dates of the evidentiary hearing. *Tr. 76:5-82:9, Jan. 25, 2013; Pl. Ex. 15, 16.*[5]

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

40. On January 8, 2013, Yusuf confronted and unilaterally terminated 15 year accounting employee Wadda Charriez for perceived irregularities relative to her timekeeping records of her hours of employment, threatening to report her stealing if she challenged the firing or sought unemployment benefits at Department of Labor. *Tr. 181:20-185:16, Jan. 25, 2013.* Charriez had a "very critical job" with Plaza Extra (*Tr 179:17-19, Jan. 25, 2013*),

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

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

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

DISCUSSION

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

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

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

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

CONCLUSIONS OF LAW

Probability of Movant's Success on the Merits.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Irreparable injury to Movant by denial of relief.

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

---

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

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

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

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

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

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

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

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

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

The balance of harms favors the Movant

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

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

25. Neither party has sought and the Court has not considered the prospect of appointing a receiver or bringing in any other outsider to insure that the joint management and control of the

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

partnership is maintained. Rather, notwithstanding the animosity that exists between the parties, they are left to work out issues of equal management and control themselves as they have done successfully over the years.

Public interest favors injunctive relief.

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

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

CONCLUSION

Injunctive relief is appropriate to preserve the status quo of the parties, their partnership and business operations, by ensuring that the parties' statutory rights are preserved and enforced. The Court's Order entering injunctive relief must state its terms specifically and describe in reasonable detail the act or acts restrained. *Caribbean Healthways, Inc. v. James*, 55 V.I. 691, 700 (2011), quoting Fed. R. Civ. P. 65(d)(1)(B) and (C).

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

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

Dated: April 25, 2013

Douglas A. Brady
Judge of the Superior Court

ATTEST:

VENETIA H. VELASQUEZ
Clerk of the Court

By: _____
Chief Deputy Clerk
4/25/13

FOR PUBLICATION

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

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

ORDER

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

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

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

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

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

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

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

Dated: April 25, 2013

Douglas A. Brady
Judge of the Superior Court

ATTEST:

VENETIA H. VELASQUEZ
Clerk of the Court

By: _____
Chief Deputy Clerk 4/25/13

EXHIBIT 3

TO HAMED'S MOTION AS TO HAMED CLAIM NO. H-3:

$504,591.03 OF PARTNERSHIP FUNDS TAKEN BY YUSUF - PAID TO HIS LAWYER

Exhibit 10 - Payments After 1/1/2012 to Fuerst Ittlemen from Plaza Account

Date	Payee	From Account	Amount	Check No.
2012-10-19	Fuerst Ittleman	Plaza Extra - Banco Popular	$ 15,067.26	3979
2012-10-19	Fuerst Ittleman	Plaza Extra - Banco Popular	$ 29,011.50	3977
2012-11-16	Fuerst Ittleman	Plaza Extra - Banco Popular	$ 99,254.45	4195
2013-01-21	Fuerst Ittleman	Plaza Extra - Banco Popular	$ 111,660.24	4642
2013-02-13	Fuerst Ittleman	Plaza Extra - Banco Popular	$ 112,383.82	4819
2013-03-06	Fuerst Ittleman	Plaza Extra - Banco Popular	$ 82,274.87	5055
2013-04-03	Fuerst Ittleman	Plaza Extra - Banco Popular	$ 54,938.89	5193
			$ 504,591.03	

EXHIBIT 3

EXHIBIT Group J

CHECK 3977

Dated: Friday, October 19, 2012

Amount: $99,254.45

Cleared: Sunday, October 28, 2012

Depository: Fuerst Ittleman PL

Account Wachovia Bank N.A.

[redacted]

BANCO POPULAR DE PUERTO RICO
101-667/216

3977

UNITED CORPORATION
DBA PLAZA EXTRA
(340) 719-1870
PO BOX 3649
ST CROIX, VI 00851

DATE
Oct 19, 2012

AMOUNT
$ $29,011.50

PAY TO THE ORDER OF:
Twenty-Nine Thousand Eleven and 50/100 Dollars
FUERST ITTLEMAN DAVID & JOSEPH, PL
1001 BRICKELL BAY DRIVE
32ND FLOOR
MIAMI, FL 33131

Memo: [redacted]

AUTHORIZED SIGNATURE

CHECK 3979

Dated: Friday, October 19, 2012

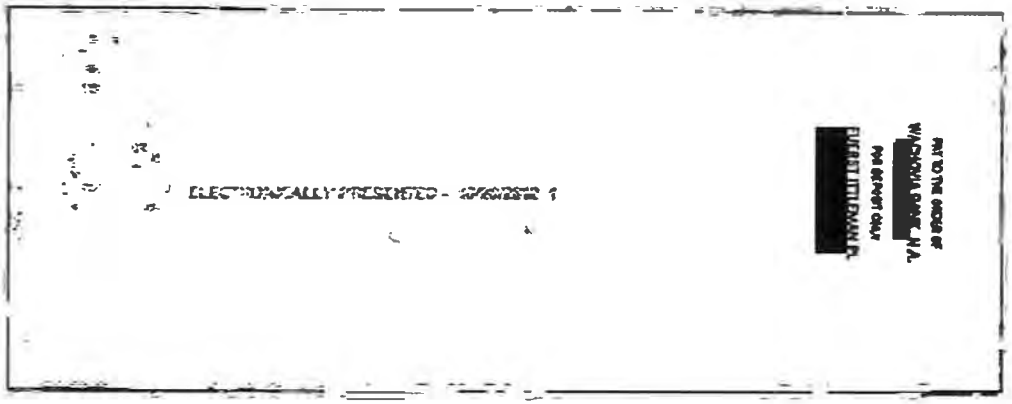
Amount: $15,067.26

Cleared: Sunday, October 28, 2012

Depository: Fuerst Ittleman PL

Account Wachovia Bank N.A.

[redacted]



BANCO POPULAR DE PUERTO RICO
[redacted]

3979

UNITED CORPORATION
DBA PLAZA EXTRA
(340) 719-1870
PO BOX 3849
ST CROIX, VI 00851

DATE
Oct 19, 2012

AMOUNT
$ $15,067.26

PAY TO THE ORDER OF:
Fifteen Thousand Sixty-Seven and 26/100 Dollars

FUERST ITTLEMAN DAVID & JOSEPH, PL
1001 BRICKELL BAY DRIVE
32ND FLOOR
MIAMI, FL 33131

Memo: [redacted]

AUTHORIZED SIGNATURE

Details on back.

UNITED CORPORATION
DBA PLAZA EXTRA
(340) 719-1870
PO BOX 3649
ST CROIX, VI 00851

BANCO POPULAR DE PUERTO RICO
101-667/216

4195
CHECK NUMBER

DATE
Nov 16, 2012

AMOUNT
$ $99,254.45

PAY TO THE ORDER OF:
Ninety-Nine Thousand Two Hundred Fifty-Four and 45/100 Dollars

FUERST ITTLEMAN DAVID & JOSEPH, PL
1001 BRICKELL BAY DRIVE
32ND FLOOR
MIAMI, FL 33131

Memo:

AUTHORIZED SIGNATURE

HAMD203422

Details on Back. Security Features Included

PAY TO THE ORDER OF

WACHOVIA BANK, N.A.

[redacted]

FOR DEPOSIT ONLY

FUERST ITTLEMAN PL

[redacted]

HAMD203423

UNITED CORPORATION
DBA PLAZA EXTRA
(340) 719-1870
PO BOX 3649
ST CROIX, VI 00851

BANCO POPULAR DE PUERTO RICO
101-667/216

4642

DATE
Jan 21, 2013

AMOUNT
$ ***$111,660.24

PAY TO THE ORDER OF: One Hundred Eleven Thousand Six Hundred Sixty and 24/100 Dollars

FUERST ITTLEMAN DAVID & JOSEPH PL
1001 BRICKELL BAY DRIVE
32ND FLOOR
MIAMI, FL 33131

Memo:

[redacted]

AUTHORIZED SIGNATURE

Details on Back.

Security Features Included

HAMD261896

PAY TO THE ORDER OF

WACHOVIA BANK, N.A.

[redacted]

FOR DEPOSIT ONLY

FUERST ITTLEMAN PL

[redacted]

AMD261897

UNITED CORPORATION
DBA PLAZA EXTRA
(340) 719-1870
PO BOX 3649
ST CROIX, VI 00851

BANCO POPULAR DE PUERTO RICO
101-66[illegible]16

4819

Pin ID
Type
Issue/Exp
Dep. Only
Hist
Open OK
AD X
Sig.
HPF OK
Memo OK

DATE
Feb 13, 2013

AMOUNT
$ ***$112,383.32

PAY TO THE ORDER OF: One Hundred Twelve Thousand Three Hundred Eighty-Three and 32/100 Dollars

FUERST ITTLEMAN DAVID & JOSEPH PL
1001 BRICKELL BAY DRIVE
32ND FLOOR
MIAMI, FL 33131

Memo: [redacted]

AUTHORIZED SIGNATURE

Details on Back.

Security Features Included

HAMD277362

HAMD277363

PAY TO THE ORDER OF

WACHOVIA BANK, N.A.

[redacted]

FOR DEPOSIT ONLY

FUERST ITTLEMAN PL

[redacted]

UNITED CORPORATION
DBA PLAZA EXTRA
(340) 719-1870
PO BOX 3649
ST CROIX, VI 00851

BANCO POPULAR DE PUERTO RICO
101-667/216

5005

DATE
Mar 6, 2013

AMOUNT
$ ****$82,274.87

PAY TO THE ORDER OF: Eighty-Two Thousand Two Hundred Seventy-Four and 87/100 Dollars

FUERST ITTLEMAN DAVID & JOSEPH PL
1001 BRICKELL BAY DRIVE
32ND FLOOR
MIAMI, FL 33131

Memo:

[redacted]

AUTHORIZED SIGNATURE

HAMD562193

Details on Back. Security Features Included

PAY TO THE ORDER OF
WACHOVIA BANK, N.A.
[redacted]
FOR DEPOSIT ONLY
FUERST ITTLEMAN PL
[redacted]

ELECTRONICALLY PRESENTED - 3/12/2013 1

HAMD562194

UNITED CORPORATION
DBA PLAZA EXTRA
(340) 719-1870
PO BOX 3649
ST CROIX, VI 00851

BANCO POPULAR DE PUERTO RICO
101-667/216

5193
CHECK #####

DATE
Apr 3, 2013

AMOUNT
$ ****$54,938.89

PAY TO THE ORDER OF: Fifty-Four Thousand Nine Hundred Thirty-Eight and 89/100 Dollars

FUERST ITTLEMAN DAVID & JOSEPH PL
1001 BRICKELL BAY DRIVE
32ND FLOOR
MIAMI, FL 33131

Memo:
HAMD562231

[redacted]

AUTHORIZED SIGNATURE

Details on Back. Security Features Included

PAY TO THE ORDER OF

WACHOVIA BANK, N.A.

[redacted]

FOR DEPOSIT ONLY

FUERST ITTLEMAN PL

[redacted]

HAMD562232

EXHIBIT 4

TO HAMED'S MOTION AS TO HAMED CLAIM NO. H-3:

$504,591.03 OF PARTNERSHIP FUNDS TAKEN BY YUSUF - PAID TO HIS LAWYER

IN THE SUPERIOR COURT OF THE VIRGIN ISLANDS

DIVISION OF ST. CROIX

MOHAMMED HAMED by his authorized agent WALEED HAMED
Plaintiff

Vs.

FATHI YUSUF and UNITED CORPORATION, ET AL
Defendant

CASE NO. SX-12-CV-370

ACTION FOR: DAMAGES; ET AL

NOTICE
OF
ENTRY OF JUDGMENT/ORDER

TO: JOEL HOLT, ESQ.; CARL HARTMANN III, Esquire HON. EDGAR ROSS (edgarrossjudge@hotmail.com)

NIZAR DEWOOD, ESQ.; GREGORY HODGES, Esquire

MARK ECKARD, ESQ.; JEFFREY MOORHEAD, Esquire

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

Dated: November 7, 2014

ESTRELLA H. GEORGE (ACTING)

Clerk of the Superior Court

By: IRIS D. CINTRON

COURT CLERK II

EXHIBIT 4

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

MOHAMMED HAMED by his authorized agent WALEED HAMED, Plaintiff/Counterclaim Defendant, v. FATHI YUSUF and UNITED CORPORATON, Defendants/Counterclaimants v. WALEED HAMED, WAHEED HAMED, MUFEED HAMED, HISHAM HAMED, and PLESSEN ENTERPRISES, INC. Counterclaim Defendants.	CIVIL NO. SX-12-CV-370 ACTION FOR DAMAGES, etc.

ORDER

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

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

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

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

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

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

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

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

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

Dated: November 7, 2014

DOUGLAS A. BRADY
Judge of the Superior Court

ATTEST:
ESTRELLA GEORGE
Acting Clerk of the Court

By: _____
Court Clerk Supervisor
11/7/14