

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

WALEED HAMED, as Executor of the)
Estate of MOHAMMAD HAMED,)

Plaintiff/Counterclaim Defendant,)

v.)

FATHI YUSUF and UNITED CORPORATION,)

Defendants/Counterclaimants,)

v.)

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

Additional Counterclaim Defendants.)

WALEED HAMED, as Executor of the)
Estate of MOHAMMAD HAMED,)

Plaintiff,)

v.)

UNITED CORPORATION,)

Defendant.)

WALEED HAMED, as Executor of the)
Estate of MOHAMMAD HAMED,)

Plaintiff,)

v.)

FATHI YUSUF,)

Defendant.)

FATHI YUSUF and)
UNITED CORPORATION,)

Plaintiffs,)

v.)

THE ESTATE OF MOHAMMAD HAMED,)
Waleed Hamed as Executor of the Estate of)
Mohammad Hamed, and)
THE MOHAMMAD A. HAMED LIVING TRUST,))

Defendants.)

CIVIL NO. SX-12-CV-370

ACTION FOR INJUNCTIVE
RELIEF, DECLARATORY
JUDGMENT, AND
PARTNERSHIP DISSOLUTION,
WIND UP, AND ACCOUNTING

Consolidated With

CIVIL NO. SX-14-CV-287

ACTION FOR DAMAGES AND
DECLARATORY JUDGMENT

CIVIL NO. SX-14-CV-278

ACTION FOR DEBT AND
CONVERSION

CIVIL NO. ST-17-CV-384

ACTION TO SET ASIDE
FRAUDULENT TRANSFERS

YUSUF'S OPPOSITION TO HAMED'S MOTION RE: CLAIM H-13

Hamed's Motion as to Hamed Claim H-13 seeks summary judgment as to the "non-reimbursement of \$133,128" in payments made by Waleed and Waheed Hamed¹ to the Virgin Islands Bureau of Internal Revenue (the "IRB") in 2013 and 2014, to cover income taxes still owed for the tax years 2002 through 2012. Hamed does not attach the tax returns for those years to his Motion, and it is not clear what undisputed facts and law Hamed argues that the Master should apply as a matter of law to require the partnership to reimburse these two non-partners for those tax payments. Hamed's argument for summary disposition relies heavily on hyperbole and conclusory assertions, and offers virtually nothing in the way of competent evidence, let alone applicable legal authority.

As a threshold matter, it is important to note Hamed's failure to attach Waleed's and Waheed's tax returns for the 2002 to 2012 time period showing the unpaid tax liabilities for each of those years. This makes it impossible to determine which parts of his claim are plainly barred by Judge Brady's July 21, 2017 Order limiting the scope of the accounting in this matter "to consider only those claimed credits and charges to partner accounts . . . based upon transactions that occurred on or after September 17, 2006." Under that ruling, Hamed cannot seek reimbursement for any portion of the \$133,128 that covers tax liabilities for income earned before September 17, 2006. The failure to provide copies of the tax returns, so as to determine the dollar

¹ The payments were \$129,546.00 made by Waleed Hamed by check dated March 30, 2014 and \$3,582.00 made by Waheed Hamed by check dated December 9, 2013. See Exhibits 7 and 8 to Hamed's Motion. The tax liability for each of them was initially determined to be \$315,747 at a mediation conducted by Judge Barnard in the criminal case in June 2013, but was later negotiated down to \$133,128. See Hamed's Motion at p. 3; see also **Exhibit A**, Transcript of Proceedings before Judge Lewis in the criminal case, p. 20, and **Exhibit B**, Mediation Report of Judge Barnard.

amount of his claim that is barred, by itself precludes summary judgment on this claim, even assuming it had any legal merit.

An analysis of the factual assertions made in the Motion show that the claim is without merit in its entirety. Hamed claims on the basis Yusuf's April 20, 2018 Motion to Amend Order to Compel as to Request to Admit No. 1 that "there is now no dispute that in 2013, the Partnership paid the identical taxes for the identical periods for Yusuf and his children." Hamed's Motion at 2 (italics and underlining in original). That assertion is plainly incorrect. Yusuf made it clear in his Motion to Amend that "[c]onsistent with longstanding practice going back decades, United, a subchapter S 'flow through' corporation, assigned all of the grocery store income for the 2002 to 2012 tax years to Mr. Yusuf and the other shareholders of United to be taxed at that level." Yusuf's April 20, 2018 Motion at p. 4. The shareholders of United are Yusuf and his wife, and their sons, Maher, Neje, Yusuf, Zayed, and Syaid. As Yusuf explained in his Motion, "United made annual and quarterly estimated income tax payments to the IRB for those tax years on behalf of Mr. Yusuf and the other Yusuf shareholders for the grocery store income that had been allocated to them." *Id.* at 4. In June 2013, United agreed to pay \$6,586,132 for income taxes still owed for the 2002 to 2012 tax years for all of these Yusuf shareholders based primarily on shortfalls in estimated taxes paid for United income that was allocated to all of the Yusuf shareholders for each of those years.

Because Waleed and Waheed failed to attach any tax returns to their Motion, it is unclear whether their \$133,128 tax liability for the 2002 to 2012 tax years arose from under-withholding of income taxes from their United paychecks, or from a failure to pay estimated tax from income

earned from other sources, or some combination.² In any event, Hamed's claim that the failure of United to pay their tax liability was wrongful because United paid "identical taxes for identical time periods for his sons" is clearly untenable. Waleed and Waheed were employees of United, while Yusuf's sons were shareholders liable for their *pro rata* share of grocery store income taxes by virtue of United's subchapter S status. And because United's business income was exponentially greater than the income of Waleed and Waheed, the tax liability for grocery store income allocated to the Yusuf sons and paid for by United was exponentially greater than Waleed and Waheed's \$133,128 tax liability.

Hamed then shifts gears and asserts that Yusuf "refus[ed] to have the Partnership accounts pay [the taxes owed by Waheed and Waleed Hamed] because of his position that all of the Partnership funds were his" Hamed's Motion at 3. That contention is also untenable.³ There had been no determination by Judge Brady as of June 2013 that there was a partnership between Mohammad Hamed and Yusuf; the April 25, 2013 preliminary injunction that had been entered by Judge Brady only found a reasonable likelihood that Hamed would be able to establish the existence of a partnership after a full trial on the merits. *See* April 25, 2013 Memorandum Opinion and Order, p. 18. But even if Judge Brady had determined that a partnership existed in his April order, Waheed and Waleed Hamed were merely employees of the Plaza Extra business, not

² Like Fathi Yusuf, and Maher, Neje, and Yusuf Yusuf, Waleed and Waheed Hamed were subject to income tax withholding by United from their paychecks in the 2002 to 2012 time period, for most of which period the criminal case was pending.

³ Hamed cannot cite the Master to a single scrap of record evidence showing that Yusuf ever adopted this "position."

partners in it, and had no claim *qua* partners for payment of back income taxes owed for the ten preceding years.⁴

Next, Hamed claims, falsely and without any factual support, that the Government would have “settle[d] all tax claims of both sides for the same amount” -- i.e., for the \$6,586,132. Motion at 2. He then launches into unfounded invective, by claiming that Yusuf engaged in “**pure, unadulterated spite—ugliness solely designed to cause additional cost to the Hameds, and ultimately the Partnership, for not one additional cent of gain to Yusuf.**” Motion at 4 (bold and italics in original). At a July 16, 2016 hearing before Judge Lewis in the criminal case, the attorney for the U.S. Government, Attorney Hendrickson, stated unequivocally that “there is no agreement that United was to pay [the \$315,000 owed by Waleed and Waheed Hamed]” and “[t]hat was not an agreement out of the mediation.” Exhibit A, p. 100. When Judge Lewis asked her to confirm that the IRB appeared in the mediation and recognized that they owed the money, but that United was not responsible for the payments, Attorney Hendrickson answered, “Yes,” and added that “during the mediation, the government said it would not oppose the Hameds asking United to pay,” but “recogniz[ed] that was United’s decision.”⁵ *Id.* at 100-101. Attorney Andreozzi, who represented Waleed Hamed in the criminal case, acknowledged that the \$6,586,132 was the

⁴ As the U.S. Government’s Attorney, Attorney Hendrickson, said at the July 16, 2013 hearing before Judge Lewis, “[Waleed Hamed’s attorney] said Waleed Hamed or Waheed Hamed are not partners or owners, they’re employees, not managers. So United is not obligated to pay taxes of all of its employees and managers individually.” Exhibit A, p. 46.

⁵ Hamed’s intimation that the U.S. Government attorney in the criminal case, Attorney Hendrickson, was “stunned” by the “astounding” position taken by United that it would not pay Waheed’s and Waleed’s tax liability finds not a scintilla of support in the July 16, 2013 transcript, and is complete fantasy. The same is true of Hamed’s suggestion that Attorney Hendrickson was “forced” to capitulate to something she knew to be improper when she acknowledged in her July 1 letter that the agreement was that United would pay the tax liabilities of the Yusuf shareholders only. *See* Motion, p. 5.

“precise amount to pay the tax liabilities for the Yusuf taxpayers,” and that the Marshall’s Service had authorized release of that check on June 14. Exhibit A, p. 129. Attorney Colon, who represented Waheed Hamed, indicated that the Marshall’s Service had approved the request for issuance of the \$315,747 check to pay for his and Waleed’s tax liability on the day after the mediation, but that United would not agree to pay for that. *Id.* at 20. The facts, as revealed by the lawyers in the criminal case, flatly contradict Hamed’s claim that the IRB or the U.S. Government was willing to accept the \$6,586,132 to cover both the income tax liabilities of the United shareholders and the income tax liabilities of Waleed and Waheed Hamed.

Hamed also makes much of Attorney DiRuzzo’s June 29, 2013 letter to the IRB in his motion. But that letter simply reaffirmed the positions taken at mediation ten days earlier that the \$6.5 million dollar payment would only cover United shareholder tax liabilities. DiRuzzo’s letter was prompted by a declaration of Waleed Hamed that was filed in the Supreme Court of the Virgin Islands on June 29. That declaration, which is attached as **Exhibit C**, addresses not the individual tax liabilities of Waleed and Waheed Hamed, which United had already made clear it would not pay, but instead the tax returns of Mohammad Hamed for 2002 to 2010 that had been submitted to the IRB. In that declaration, Waleed Hamed states that on June 19, 2013, “a check for approximately \$6.5 million was submitted to the IRB for taxes owed primarily on the profits of the Plaza Extra Supermarkets.” Exhibit C, p. 4, ¶ 28. Waleed further asserts that the “IRB accepted these funds as payment of taxes due from the profits of the Plaza Extra Supermarkets, including taxes owed by Yusuf and his family members – and my father on these profits.” *Id.* at p. 5, ¶ 33. The declaration goes on to say that “The IRB has now confirmed that all income taxes owed by my father for this time period have been paid in full, as per the attached letter.” *Id.* at p. 5, ¶ 34; *see also* June 20, 2013 Letter from IRB to Mohammad and Khierieh Hamed, attached to Exhibit

C. Attorney DiRuzzo contended that the June 20 letter was inconsistent with agreements specifically reached at the mediation that the \$6.5 million dollar payment was not for the benefit of Mohammad Hamed (or any of the Hameds). The letter was consistent with the positions taken by all Defendants during almost the entirety of the criminal case that the Plaza Extra stores were operated solely by the corporate entity, United Corporation, and not by a partnership.⁶ As the U.S. Government attorney said at the July 16, 2013 hearing, “[T]his Court can’t go back and reinvent history to say, well, what if it was a partnership when nobody contemplated that when the plea agreement was entered [in 2010], or when the first addendum was signed.” Exhibit A, p. 147.

Hamed finally suggests that the \$6.5 million payment covered tax liabilities for income other than flow-through business income of the Plaza Extra supermarkets, and to that extent was improper. As discussed above, Hamed has already acknowledged in his Declaration that the \$6.5 million dollar primarily covered unpaid taxes on the income of the Plaza Extra Supermarkets.” Exhibit C, p. 4, ¶ 28. But he has not quantified the small portion of the \$6.5 million dollar payment that covered liabilities arising from wage income or other non-wage income, let alone determined what portion of that sum would not be recoverable under Judge Brady’s limitation order. If Hamed had done so, then perhaps he could have attempted to file a partnership claim seeking to have that amount returned to the partnership. But he has failed to make such a claim. And he has cited no legal authority for the proposition that, if such payments were made to the United shareholders for income tax liabilities arising from income other than grocery store income, then Waleed and

⁶ To date, no one has ever contradicted the statement contained in Yusuf’s August 12, 2014 Declaration (at p. 5) that “our criminal defense lawyers did not want us to take any actions that supported the existence of a partnership as the owner of the Plaza Extra Stores.” That declaration was attached as Exhibit 3 to Defendants’ August 12, 2014 Motion for Partial Summary Judgment On Counts IV, XI, and XII Regarding Rent.

Hamed v. Yusuf, et al.
Case Nos. SX-12-CV-370, SX-14-CV-287,
SX-14-CV-278 and ST-17-CV-384
Yusuf's Opposition to Hamed's Motion Re: Claim H-13
Page 8 of 9

Waheed Hamed are entitled to reimbursement of an equal portion of the tax liability of \$133,128 that they paid.

For all of the foregoing reasons, Hamed's claim for reimbursement of the tax payment of \$133,128 should be rejected in its entirety and dismissed on the grounds that it is without factual or legal support. At the very least, there are genuine issues of material fact that preclude summary judgment as to this claim.

Respectfully submitted,

DUDLEY, TOPPER AND FEUERZEIG, LLP

DATED: May 17, 2018

By:



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Attorneys for Fathi Yusuf and United Corporation

CERTIFICATE OF SERVICE

I hereby certify that on this 17th day of May, 2018, I caused the foregoing **YUSUF'S OPPOSITION TO MOTION RE: HAMED CLAIM H-13**, which complies with the page and word limitations of Rule 6-1(e), to be served upon the following via the Case Anywhere docketing system:

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EXHIBIT A

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IN THE DISTRICT COURT OF THE VIRGIN ISLANDS

DIVISION OF ST. CROIX

UNITED STATES OF AMERICA, and
GOVERNMENT OF THE VIRGIN ISLANDS,

Plaintiffs,

v.

FATHI YUSUF MOHAMAD YUSUF,

aka Fahti Yusuf

WALEED MOHAMMAD HAMED,

aka Wally Hamed

WAHEED MOHOMMAD HAMED,

aka Willie Hamed

MAHER FATHI YUSUF,

aka Mike Yusuf

NEJEH FATHI YUSUF, ISAM YUSUF, and

UNITED CORPORATION,

dba Plaza Extra,

Defendants.

Criminal No. 2005-15

July 16, 2013

3:20 p.m.

TRANSCRIPT OF SENTENCING

BEFORE THE HONORABLE DISTRICT JUDGE

WILMA A. LEWIS

EXHIBIT A

1 APPEARANCES:

2 LORI A. HENDRICKSON, ESQ.,

3 FOR THE GOVERNMENT

4 RANDALL P. ANDREOZZI, ESQ.,

5
6 FOR DEFENDANT WALEED HAMED

7 PAMELA COLON, ESQ.,

8
9 FOR DEFENDANT WAHEED HAMED

10 JOSEPH DIRUZZO, ESQ.,

11 FOR UNITED CORPORATION

12 NIZAR DEWOOD, ESQ.,

13 FOR FAHTI YUSUF

14 VALERIE LAWRENCE, RPR
15 OFFICIAL COURT REPORTER

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1 THE CLERK: Criminal No. 2005/0015,
2 sentencing. United States of America versus
3 United Corporation, dba Plaza Extra.

4 THE COURT: Good afternoon, everyone. May
5 I have your appearances, counsel, please. We
6 will start with appearances from the United
7 States.

8 MS. HENDRICKSON: Good afternoon, Lori
9 Hendrickson.

10 THE COURT: Good afternoon, Attorney
11 Hendrickson.

12 MR. DiRUZZO: And good afternoon, Your
13 Honor. Joseph DiRuzzo on behalf of United
14 Corporation. And seated directly to my left,
15 Maher Yusuf, as the corporate representative
16 today.

17 THE COURT: Good afternoon, Attorney
18 DiRuzzo. And the corporate representative is
19 Mr. Yusuf?

20 MR. DiRUZZO: Maher Yusuf, yes.

21 MS. COLON: Good afternoon. Pamela Colon
22 on behalf of Waheed Hamed, not in the
23 courtroom.

24 MR. DEWOOD: Nizar Dewood for Mr. Fathi
25 Yusuf, and he's present today.

1 THE COURT: Good afternoon, Attorney
2 Dewood.

3 THE COURT: On the telephone.

4 MR. ANDREOZZI: Good afternoon, Your
5 Honor. Randall Andreozzi on behalf of Waleed
6 Hamed.

7 THE COURT: Good afternoon, Attorney
8 Andreozzi.

9 MS. COLON: And Your Honor, if I may note,
10 Waleed Hamed is present in the courtroom. I'm
11 not sure if Randall Andreozzi recognizes that.

12 THE COURT: Okay.

13 MS. COLON: Thank you.

14 THE COURT: Counsel, as you're aware, the
15 Court scheduled this sentencing hearing at the
16 request of the government and counsel for
17 United Corporation. The request is that the
18 sentencing be held today; that request was made
19 the early part of July, and was granted. The
20 request was granted by the Court on the 11th of
21 July.

22 As we're all aware, the parties are
23 requesting that the Court enter a plea,
24 sentence, actually, the defendant in accordance
25 with Rule 11(c)1(C) of the Federal Rules of

1 Criminal Procedure, that is to adopt the
2 agreement, the plea agreement that was entered
3 into by the parties, and negotiated over the
4 course of a few years now as the original plea
5 agreement was entered back in 2010.

6 At the time that the Court granted the
7 motion to proceed with the sentencing today,
8 Court, of course, was under the impression, and
9 hopefully will continue to be under the
10 impression, that everything that needed to be
11 accomplished precedent to the sentencing of the
12 defendant in this case has, in fact, been
13 accomplished in accordance with the plea
14 agreement that the parties are requesting that
15 the Court accept, and sentence the defendant in
16 accordance therewith.

17 Yesterday the Court received a motion that
18 was filed by counsel for Waleed Hamed, and
19 counsel for Waheed Hamed, seeking to either
20 extend the temporary restraining order that the
21 Court entered many years ago, or postpone the
22 sentencing hearing.

23 This afternoon, a couple of hours or so
24 ago, the Court received the response to that
25 motion filed by the government and defendant

1 United Corporation. I think before we proceed
2 with the sentencing in this matter, we need to
3 address the issues that have been raised, and
4 ensure that we are at a point today where we
5 can proceed with the sentencing of the
6 defendant, United Corporation.

7 So with that, by way of background, I will
8 hear first from Attorney Andreozzi. Am I
9 pronouncing your name correctly?

10 MR. ANDREOZZI: Andreozzi. Thank you,
11 Your Honor.

12 THE COURT: Thank, Attorney Andreozzi.

13 MR. ANDREOZZI: I appreciate you allowing
14 me to participate telephonically. We received
15 the objection from the government and the
16 United Corporation this afternoon. And I think
17 briefly I'd like to address each of the points
18 raised. And I think we can clarify our
19 concern, and I believe that at the end of this,
20 we're going to be in a position where we can
21 move forward with sentencing and address most,
22 if not all, of these issues by way of order
23 under the, you know, under the probation.

24 But on the first issue with regard to
25 payment of taxes, the plea agreement executed

1 by the parties provides as follows. This is at
2 page eleven of the plea agreement. It says:
3 Prior to sentencing -- in this matter -- United
4 shareholders and the individual defendants
5 shall file the outstanding returns and
6 reporting documents and shall make all payments
7 of the amounts due thereupon. United
8 acknowledges that a special condition of
9 probation will require that all corporate
10 returns be filed, and all amounts due and owing
11 under this agreement and all taxes due and
12 owing for tax years 2002 through 2008 must be
13 paid prior to the termination of the period of
14 probation.

15 United -- and the, the agreement also
16 requires payment of family income taxes for
17 indictment years to cover the liability of all
18 the defendants. That was determined under the
19 plea, of the plea agreement under the years of
20 indictment. That was paid. It was paid for
21 Yusuf family members and for Waleed and Waheed
22 Hamed.

23 Now, the United paid directly another
24 \$6.5 million, I guess, covers the taxes for
25 Yusuf family. And the only thing that remained

1 outstanding is the payment for out years, owed
2 current for Waleed Hamed and Waheed Hamed. We
3 are recommending that the TRO stay in effect
4 until United complies with this special
5 condition to its probation, but really this
6 extension, it really is up to the government.
7 All we want to see is that amounts, 300, 320
8 something thousand dollars or so for all the
9 years, that that amount get paid prior to
10 termination of the probation, and we would
11 certainly be willing to work with the Court and
12 the government and everybody to facilitate
13 that. That's the first point.

14 The second point is --

15 THE COURT: Before -- Attorney Andreozzi,
16 before you go to the second point, let me make
17 sure I understand. I see that you're relying
18 on, as you indicated, on page eleven of the
19 plea agreement for the proposition that the
20 amounts that are due and owing by the Hameds
21 can be paid during the term of probation, is
22 that correct?

23 MR. ANDREOZZI: Yes. It does not need to
24 hold up sentencing today.

25 THE COURT: Now, the earlier part of that

1 paragraph starts with, "Prior to sentencing,
2 United agrees to cooperate with the government
3 and the VIBIR in filing corporate income tax
4 returns and gross receipts returns for the
5 years in effect 2002 through 2008, and in
6 paying in full the amounts due thereupon."

7 And then it says, "United agrees to comply
8 with all current tax reporting and payment
9 obligations between the execution of this
10 agreement and sentencing." And then it says,
11 "In addition, prior to the sentencing hearing
12 in this matter, United's shareholders -- and it
13 identifies the shareholders by initials, and
14 the percentage held -- and the individual
15 defendants shall file the outstanding returns
16 and reporting documents and shall make full
17 payments of the amounts due thereupon."

18 How does that sentence which starts with
19 in addition, prior to the sentencing hearing,
20 these amounts shall be reported and paid by the
21 individual defendants? How does that comport
22 with the proposition that those can be paid
23 during the course of the probationary period?

24 MR. ANDREOZZI: I think with regard to
25 coordinating those payments, and the submission

1 of the returns, we just got this matter in the
2 mediation session before Judge Barnard, at this
3 point in time, because of the disputes between
4 the parties and the civil disputes between the
5 parties, the forensic accountants in this case
6 were required to stand down and could not
7 continue their meetings with the VIBIR
8 representatives, and with Miss Hendrickson. I
9 know we wanted to push and move forward with
10 sentencing to move the case forward. And we
11 stand ready and the accountants stand ready to
12 pick up and meet with the VIBIR
13 representatives, and were planning on doing
14 that. But for purposes of filing the remaining
15 returns here, we think we could get that
16 accomplished, work through those, and then
17 facilitate the payments within the scope of the
18 probation period. But I think the agreement
19 was rather than hold up the probation, because
20 the accountants were ordered to stand down, we
21 should be able to continue with that but not
22 hold up the sentencing to do that. And we're
23 in agreement, we're okay, on behalf of Waleed
24 Hamed, and Attorney Colon can speak on behalf
25 of Waheed Hamed, we're fine with doing that,

1 just so we don't, we could expedite the
2 sentencing. But we just want to make sure that
3 we're not, you know, the defendants aren't
4 losing any of their rights to benefits under
5 this plea agreement as we move forward.

6 THE COURT: So, if I understand you
7 correctly, what you're saying is that you would
8 agree to change the plea agreement that's
9 before me, but my question is, the suggestion
10 that you're making is not consistent with the
11 plea agreement, is it? As it stands before the
12 Court right now?

13 MR. ANDREOZZI: Well, I think it is. I
14 think that's what they said, United
15 acknowledges that a special condition of
16 probation will require that all corporate
17 returns be filed, and all amounts due and owing
18 under this agreement and all taxes due and
19 owing for tax years '02 to '08 must be paid
20 prior to the termination of the period of
21 probation.

22 THE COURT: Is there a difference between
23 United and the individual defendants?

24 MR. ANDREOZZI: There --

25 THE COURT: And the shareholder?

1 MR. ANDREOZZI: Well, United would owe
2 income taxes, United is a tax corporation, so
3 it wouldn't owe income tax, but we believe this
4 provision means that all of the individuals'
5 income taxes would be paid prior to the
6 termination of the period of probation, and
7 that is special condition of United
8 Corporation's probation.

9 THE COURT: Let me make sure I understand.
10 I am reading it to say all corporate returns be
11 filed. Where are you referring to income
12 taxes?

13 MR. ANDREOZZI: All corporate returns
14 filed, and all amounts due and owing under this
15 agreement and all taxes due and owing for years
16 '02 through '08 must be paid prior. And the
17 corporation, if you're referring to income tax,
18 wouldn't file income tax for those years.

19 THE COURT: And if you're referring to
20 corporate taxes, that would refer to United?

21 MR. ANDREOZZI: United Corporation,
22 correct.

23 THE COURT: So your understanding of the
24 agreement is that that last sentence,
25 basically, nullifies the preceding sentence,

1 which says, "In addition, prior to the
2 sentencing hearing in this matter, United's
3 shareholders and the individual defendants
4 shall file the outstanding returns and
5 reporting documents and shall make full
6 payments of the amounts due thereupon." You're
7 saying that the last sentence which speaks to
8 United acknowledging that as a special
9 condition of probation, all of these various
10 taxes will be paid, essentially negates the
11 preceding sentence, is that your reading of the
12 agreement?

13 MR. ANDREOZZI: I believe it modifies it,
14 yes.

15 THE COURT: It modifies it, or negates it?

16 MR. ANDREOZZI: Well, we're --

17 THE COURT: Negates it in a sense of the
18 phrase, prior to the sentencing hearing?

19 MR. ANDREOZZI: Yes.

20 THE COURT: Okay. All right. That was my
21 one question on your first point. Okay, so you
22 can proceed to the second point.

23 MR. ANDREOZZI: The second point, that
24 relates to the probation period, and the
25 accountants that are to be hired, et cetera, et

1 cetera, or that point we're alerting the Court
2 that Attorney Holt had indicated that in the
3 civil case, the Plaintiff in the civil case,
4 Mr. Hamed, stands ready, if required or needed,
5 to assist in any of that work that needs to be
6 done under the terms of the probation, and the
7 internal controls that are put in place, the
8 evidence required et cetera, but that does not
9 affect Waleed or Waheed Hamed. We just wanted
10 to make that point for the Court.

11 On the third --

12 THE COURT: Sorry, hold on. One second.
13 Attorney Andreozzi, I'm not sure I understand
14 the second point.

15 The second point is not a point that
16 applies to Waleed and Waheed Hamed?

17 MR. ANDREOZZI: Correct.

18 THE COURT: And it doesn't apply to them,
19 because?

20 MR. ANDREOZZI: Because they're not owners
21 of United Corporation, or -- and they're not
22 part of the partnership in the civil, or at
23 least it is determined the injunction to be
24 operating Plaza Extra stores, it would be, it
25 would be Mr. Hamed, Mohammad Hamed.

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THE COURT: Okay. So, Waleed and Waheed Hamed are just bringing this to the attention of the Court because another individual might be interested in this particular point, is that correct?

MR. ANDREOZZI: Yes.

THE COURT: Okay. Thank you. Go ahead.

MR. ANDREOZZI: And then, the third point, this is with respect to the return of property, the return of documents in this case. During the mediation, the government and the defendants agreed to develop a protocol for returning the volumes of documents that are gathered in this case from the inception until now, and those documents are currently held by counsel, by the government, and by the forensic experts in the case. And our goal is to develop a protocol for the return and access for these documents by all defendants that would be approved by the Court.

The government counsel had asked to hold off on some discussions for a while. We began those discussions, I believe, Miss Hendrickson can correct me, I think Friday of last week,

1 but we never locked down a firm process for
2 this. I think we're going to be able to
3 achieve that, but it may take a little bit of
4 doing with the agreement of all parties. If
5 the Court wishes to address the parties as it
6 pertains to jurisdiction of the case post
7 sentencing, that's fine with us. We just need
8 to have some guidance on this process to avoid
9 disputes among the parties. We asked for the
10 documents and things like that.

11 As a corollary provision, Judge Barnard in
12 the process of issuing orders, or will issue
13 orders that will address in the mediation,
14 including this one, agreements to parties.

15 Again, we don't have any objection to
16 address these items post sentencing during the
17 probation, probation jurisdictions of the
18 Court.

19 THE COURT: So, in other words, with
20 respect to the return of the documents, you are
21 in agreement with the government's position
22 that we handle that, that clearly is not part
23 of the plea agreement that the Court would have
24 to deal with prior to sentencing, or at
25 sentencing, is that your position?

1 MR. ANDREOZZI: Exactly. Has nothing to
2 do with the plea agreement at all. The
3 government can talk to that.

4 THE COURT: With respect to the orders
5 that you've referenced Judge Barnard will be
6 issuing, other than the order that you have
7 just mentioned regarding the documents, the
8 return of the documents, what other orders are
9 you anticipating from Judge Barnard?

10 MR. ANDREOZZI: Those were -- my only
11 comment would be those were addressed in the
12 confidential mediation, and I know we're on the
13 record in this matter, so long as there is no
14 objection --

15 THE COURT: Hold on for one second then.
16 Let me ask you this: Are there any orders that
17 bear on the sentencing that is presently before
18 the Court right now?

19 MR. ANDREOZZI: I do not -- no, there are
20 not.

21 THE COURT: So that issue --

22 MR. ANDREOZZI: They would all be issues
23 similar to this, just more housekeeping issues
24 with regard to documents and things like this
25 in the case.

1 THE COURT: It really has nothing to do
2 with what we're here for today?

3 MR. ANDREOZZI: Correct. Correct. Right.

4 THE COURT: Okay. You may proceed.

5 MR. ANDREOZZI: And then the fourth issue
6 with regard to the signatures of Waleed Hamed
7 and Waheed Hamed, the second addendum to the
8 plea agreement, the government counsel, I
9 believe, indicated that in their, in the reply,
10 that Waleed Hamed's and Waheed Hamed's
11 signatures were required in the first addendum
12 to the plea agreement, back in 2011, because it
13 affected them in the payment of their taxes to
14 be -- to the VIBIR, something we were talking
15 about earlier. It's unclear from the new
16 addendum filed, I think, on June 24th and
17 signed by United Corporation and government,
18 whether that affects Waleed and Waheed Hamed at
19 all.

20 We just want to be sure that it does not
21 adversely affect them in any way. It is a
22 little bit vague as to what it actually
23 purports to mean, but if it doesn't affect
24 them, if that's what the government's saying,
25 then, then or after, doesn't affect them, on

1 that there was a request to the marshal under
2 the monitoring order that's in place by this
3 Court to release \$315,747 to pay the estimated
4 income tax liability for both Waheed and Waleed
5 Hamed, and that request was submitted on June
6 19th, 2013, in conjunction with the mediation.

7 On June 20th, 2013, the next day, an
8 e-mail was received from Maggie Doherty on
9 behalf of the U.S. Marshal service approving
10 that release, and you can see that e-mail as
11 Exhibit 2 to the motion that was filed on
12 behalf of Waheed and Waleed.

13 So to the extent that Waheed and Waleed
14 have attempted to pay their estimated income
15 taxes prior to the sentencing, that was done.
16 However, the attempt was made. And it was
17 approved by the Marshals, but our understanding
18 is the bank has not yet released the funds.
19 And my further understanding, although I do not
20 have that information directly, is the refusal
21 of the bank to release the funds to IRB is
22 because United has refused to release those
23 funds.

24 From my point of view, that's why the plea
25 agreement at section eleven comes in, and the

1 portion that was read -- excuse me, I believe
2 it's page eleven, section, also section eleven.
3 It was contemplated when the original plea
4 agreement was entered, of course, that the
5 individual defendants would have been dismissed
6 from this case with prejudice long before
7 sentencing was to occur. And that, in fact,
8 is what happened. And that last sentence in
9 the paragraph that we've been reading, United
10 acknowledges that a special condition of
11 probation will require that all corporate
12 returns be filed, and all amounts due and owing
13 under this agreement and all taxes due and
14 owing for tax years 2002, 2008 must be paid
15 prior to the termination of the period of
16 probation.

17 It is my understanding and my recollection
18 that the reason that that was put in, and the
19 reason it says all taxes due and owing, and not
20 just United taxes due and owing, is it was a
21 safety measure for the government to ensure
22 that if any of the individual taxes weren't
23 paid before United's probation could be
24 terminated, United had to do it. And that was
25 the purpose for that last sentence. Otherwise

1 there is really no reason for that sentence to
2 be there, because as Your Honor pointed out,
3 the previous sentence indicates that all of it
4 is supposed to be done prior to sentencing.
5 That was a safety measure for the government.
6 It still is a safety measure for government,
7 and that's how I read this. And that's how I
8 recall that portion of the plea agreement
9 coming into existence in the first place.

10 And lo and behold, here we do need that
11 safety provision, because United is not
12 permitting the individual taxes, estimated
13 taxes for Waheed and Waleed to be paid. If
14 they release those funds, this is no longer an
15 issue. The clients, Waheed and Waleed Hamed,
16 both stand ready to make those estimated
17 payments and then file their returns. They've
18 requested permission, it's been granted, I
19 presume, although I don't know that for a fact
20 that the government has also granted
21 permission, because I don't think the U.S.
22 Marshals would have issued that e-mail without
23 the government also agreeing to it, and
24 obviously, it's in the government's interest
25 that it gets the money and the taxes gets paid.

1 So that's what I have to say about point one.

2 The next concern I have is that -- and it
3 does get complicated, and really do appreciate
4 that, but Your Honor as part of this sentencing
5 is presumably going to be entering some orders
6 with regard to independent monitoring of United
7 Corporation as well as a corporate compliance
8 and ethics program that was required by the
9 plea agreement, that's always been required by
10 the plea agreement. It's required by the
11 guidelines, something that is put -- to be put
12 in place whenever a corporation is sentenced.

13 What has complicated this is in the
14 interim Judge Brady, Judge Douglas Brady of the
15 Superior Court, has entered a restraining order
16 compelling the management and operation of the
17 Plaza Extra stores to be maintained between
18 both the Yusuf family or United Corporation,
19 and Mohammad Hamed, by and through his
20 designated and appointed person, which, at this
21 time, is Waleed Hamed.

22 So the concern I have is that this Court,
23 certainly, it's -- you're within your
24 jurisdiction to enter these requirements, but
25 they're going to enter it as to United

1 Corporation without the portion of United
2 Corporation doing business as Plaza Extra that
3 is required by Judge Brady's order, and that is
4 input by Mr. Mohammad Hamed by and through his
5 designated agent.

6 So when a monitor is chosen, this
7 independent monitor is chosen, it will not be
8 chosen with Mr. Mohammad Hamed's input, because
9 he's not been brought a part of these
10 proceedings, or the decision-making process by
11 government nor by United. That will, in
12 effect, then violate Judge Brady's order, that
13 they must be joint, and must continue as joint.

14 Now, it was, this matter was appealed,
15 there was oral argument last week before the
16 Supreme Court. My understanding is that the
17 United Corporation and the Yusuf family filed
18 a, excuse me, a motion to stay the temporary
19 restraining order while the case was being
20 heard in the Supreme Court. The Virgin Islands
21 Supreme Court, to date, has refused to act on
22 that request. So as we stand here today for
23 sentencing, Judge Brady's restraining order is
24 in place, and it does require that Mohammad
25 Hamed participate in the management of the

1 stores, which is my point what we're trying to
2 express to Your Honor is that would include the
3 selection of any monitor and input certainly,
4 and development of any compliance program.

5 So that goes to my second concern. With
6 regard to access to the documents and the
7 protocol to be used, I think I'm pretty much in
8 agreement with Attorney Andreozzi. The only
9 thing I would add is that in addition to all of
10 that, we need to make sure that the cost borne
11 for that is appropriately decided, because it's
12 one thing to decide how you're going to do it,
13 but we're talking about six hundred banker
14 boxes of documents plus. That's what the
15 government has. And so there is hundreds of
16 thousands of pages involved. And there is
17 obviously going to be significant cost
18 associated with that. And I don't think you
19 can do this in a vacuum and say this is how
20 you're going to do it without determining who
21 is going to pay for it as well. And I think
22 it's appropriate to keep in place the TRO to
23 the extent we need to find out how this is
24 going to be paid for, and who is going to pay
25 for the expense of the access to documents.

1 THE COURT: Let me ask you this, Attorney
2 Colon.

3 MS. COLON: Yes.

4 THE COURT: Is Waleed Hamed, your client,
5 part of the negotiations and discussions with
6 Judge Barnard regarding these ancillary issues?

7 MS. COLON: First of all, Waheed is my
8 client.

9 THE COURT: I'm sorry, Waheed.

10 MS. COLON: No problem, ma'am. But I was
11 not present at the mediation, because of a
12 prior commitment to the Third Circuit, so I
13 could not be physically there. Waheed, my
14 client, was represented temporarily by Joel
15 Holt in that mediation, but he certainly was
16 there. I believe my client himself was present
17 at the mediation, but I know Attorney Holt was
18 there representing him. Attorney Andreozzi and
19 Attorney Gordon Rhea were there representing
20 Waleed, and I believe Waleed Hamed was also
21 present.

22 So, yes, there's been active negotiations,
23 and we are certainly part of the ongoing
24 mediation of the open issues that just occurred
25 last month with Judge Barnard.

1 THE COURT: Okay. So, to the extent that
2 you believe that the cost issue is an issue, a
3 legitimate issue that needs to be discussed and
4 resolved --

5 MS. COLON: Yes.

6 THE COURT: -- you have the opportunity,
7 in the context of those discussions, to raise
8 that with Judge Barnard, is that --

9 MS. COLON: I agree. Absolutely. My
10 concern is not the opportunity. My concern is
11 access to funds to pay for it once it's decided
12 who is going to pay for it.

13 THE COURT: So the issue from your
14 perspective is making sure that the TRO is
15 maintained, or extended, beyond the period of
16 the sentencing?

17 MS. COLON: Correct.

18 THE COURT: Which according to the plea
19 agreement, the government can basically move
20 to end the TRO, your concern is to make sure
21 that that stays beyond that period so that
22 these types of issues can be addressed
23 appropriately?

24 MS. COLON: Exactly. Exactly. And it is
25 my position that that could be done through

1 terms of probation. Because my overarching
2 concern is that whatever happens to finish up
3 the issues that were addressed in mediation but
4 not yet resolved, that the Court, however,
5 maintains jurisdiction over all of that, or all
6 of Judge Barnard's hard work and mediation will
7 be for nought, because there won't be
8 jurisdictions and/or funds to accomplish what
9 is ultimately decided.

10 THE COURT: Is this an issue, separate and
11 apart from mediation, is this an issue that
12 counsel for government and you discussed prior
13 to coming here today?

14 MS. COLON: We did. And it was my
15 suggestion, at that time, that we request Your
16 Honor maintain jurisdiction over those portions
17 of the mediation that have not yet been
18 completed for another sixty days. But as I
19 look at what has developed since then, it seems
20 to me that first of all, I think it's going to
21 take more than sixty days, and although it may
22 get put in place in terms of the protocol being
23 decided upon within the sixty-day period, I
24 certainly would hope so, I'm not sure that the
25 actual dissemination of the documents and

1 payment for that dissemination will all get
2 done within sixty days. That's not likely,
3 because this will be a lot of work. And
4 therefore, beyond the sixty days contemplated,
5 continuation of the Court's jurisdiction, I
6 think the more appropriate, the more
7 appropriate time to approach this is to
8 request, as we are, that it be put in a term of
9 probation, condition of probation, so that it
10 will be completed within the term of probation,
11 or probation will not have been satisfactory
12 completed.

13 THE COURT: So, your suggestion is really
14 to add this term, that is, the issue regarding
15 the documents, to the existing plea agreement?

16 MS. COLON: Not to the plea agreement.

17 THE COURT: As a term -- well, doesn't it
18 have to be added to the plea agreement if it is
19 11(c)1(C) plea that you're asking the Court to
20 adopt? Can the Court add terms, terms to the
21 probation without that having come from the
22 parties if it's an 11(c)1(C)plea?

23 MS. COLON: I think, I think the Court can
24 add conditions to probation as Court sees fit.
25 I don't think the 11(c) (1) (C) plea binds the

1 terms of probation. It binds the Court to
2 issue probation, but I do not believe it binds
3 the Court to terms of probation. I think
4 that's always going to be within the discretion
5 of the Court.

6 THE COURT: Do you have authority for
7 that?

8 MS. COLON: No, but I'll get it to you by
9 tomorrow.

10 THE COURT: All right. You may proceed.

11 MS. COLON: Okay. With regard to Judge
12 Barnard's pending order, I pretty much have
13 addressed that. And, again, while I don't
14 think it prevents any sentencing going forward,
15 to the extent that Judge Barnard's orders
16 involve payment of any funds, I again think the
17 TRO needs to be kept in place or extended into
18 the probation period so that compliance with
19 his orders with regard to payment of anything,
20 if he so orders, I can't read his mind, I don't
21 know what he's going to order, so that is
22 preserved and status quo is maintained, with
23 regard to the ability to have those things paid
24 for should the judge issue orders requiring
25 payment.

1 Finally, I disagree with Attorney
2 Andreozzi with regard to the issue of the
3 signatures. The plea agreement absolutely
4 requires the signatures of all individual
5 defendants to any addendum. And my client -- I
6 didn't even know about this second addendum,
7 let alone have an opportunity to discuss with
8 my client whether he wished to or did not wish
9 to sign off on this addendum. And I don't
10 think it's valid without my client's signature.

11 Now, the government's response is telling
12 in many ways. The counsel for government
13 asserts that it was not required to have Hamed
14 or -- excuse me, either of the Hameds, or any
15 of the other individual defendants sign off on
16 the first addendum, but she cites no authority
17 for that. The plea agreement itself is pretty
18 clear on that. And it's the stand alone
19 section, and I don't know how you get around
20 that. And for that very reason, that is why
21 everybody signed off on that first addendum.

22 Moreover, she's asserting the reason the
23 individual defendants had to sign that is
24 because there were promises that were made to
25 the individual defendants by representatives of

1 the VIBIR regarding the years that were at
2 issue. Well, there are promises in this second
3 addendum that are made also that enure to the
4 benefit of the United and the Yusuf individual
5 defendants as shareholders of United. So I
6 don't understand the distinction. It is a
7 distinction without a difference, as far as I'm
8 concerned. And I firmly believe that it is not
9 valid unless my client signs on it.

10 THE COURT: And the promises that you are
11 referring to that you say creates a distinction
12 without a difference, point me to the language
13 that you're referring to.

14 MS. COLON: Oh, sure. As I understand it,
15 the second agreement, sorry, the second
16 addendum, indicates that "the parties entered
17 into closing agreements with the VIBIR for the
18 years 2002 through 2010. The VIBIR agreed to
19 enter into a similar agreement for 2011/2012
20 after the individual tax returns -- individual
21 income tax returns have been filed and the tax
22 due has been paid." That refers to
23 individuals. And presumably this isn't just
24 going to enure to the benefit of certain
25 individuals and not my client, as an individual

1 defendant here, or former defendant here.

2 Unless you have any further questions of
3 me, I don't have anything further, Your Honor.

4 THE COURT: Okay. Just one moment.

5 MS. COLON: Sure.

6 THE COURT: The sentence you're referring
7 to is the part that speaks to the VIBIR
8 agreement?

9 MS. COLON: Yes.

10 THE COURT: VIBIR has agreed to do?

11 MS. COLON: Correct. The parties -- well,
12 on the second page of the addendum, where it
13 starts after the comma for mediation, it says,
14 "the parties --

15 THE COURT: I see that.

16 MS. COLON: -- entered into closing
17 agreements with VIBIR for the years 2002
18 through 2010. Well, my client was a party to
19 the mediation, and the VIBIR agreed to enter
20 into a similar agreement for 2011 and 2012
21 after the individual income tax returns have
22 been filed and the tax due has been paid. And
23 that, you know, why is this enuring to the
24 benefit of only certain individuals, certain
25 individual income tax returns?

1 THE COURT: Did the parties enter into
2 closing agreements with the VIBIR?

3 MS. COLON: Your Honor, I will defer to
4 Attorney Andreozzi on that, because I was not
5 directly involved with the mediation, because I
6 was not there. And I do not want to speak
7 without direct knowledge of that, but it is my
8 understanding that they have.

9 THE COURT: And is the second part of that
10 sentence, or the second sentence, the first
11 full sentence on that page two, is that true,
12 to your understanding, as well?

13 MS. COLON: That is true to my
14 understanding, but what is not here is that the
15 additional \$315,000 was also to be remitted to
16 the VIBIR, it was an attempt, we certainly
17 attempted to remit it, but it's, according to
18 my understanding, again, I don't have personal
19 knowledge, that has been blocked by United.

20 THE COURT: Okay. Thank, counsel.

21 MS. COLON: Thank you, Your Honor.

22 THE COURT: Attorney Andreozzi, are you
23 there? Just following up on the question that
24 I just asked Attorney Colon. The second
25 addendum, where it says that the parties

1 entered into closing agreements with the VIBIR
2 for the years 2002 through 2010. Do you see
3 that?

4 MR. ANDREOZZI: Yes, I see that.

5 THE COURT: Do you know that to be true?

6 MR. ANDREOZZI: Yes. Well, we entered
7 into, it wasn't a closing agreement, it was a
8 closing agreement in a VIBIR format 906, Miss
9 Hendrickson may have a copy of it, I don't have
10 one before me, but the one executed for Waleed
11 Hamed, my client, was a very short, I think
12 one-sentence thing saying, you know, agreeing
13 that once the returns were filed and taxes were
14 paid to the BIR for the subject years, that
15 extended through 2010, as Your Honor indicated,
16 rather than 2008, as indicated in the
17 agreement.

18 THE COURT: Yes.

19 MR. ANDREOZZI: It extended, if you can
20 get the returns in for 2012, you know, the same
21 will be true. It would, those returns would be
22 paid in full and finalized per the terms of the
23 plea agreement.

24 THE COURT: So it's individual agreements
25 between the VIBIR and individual defendants,

1 correct?

2 MR. ANDREOZZI: Correct. Correct.

3 THE COURT: Attorney Colon --

4 MR. ANDREOZZI: That's why I'm a little
5 bit unsure as to what this paragraph says. As
6 I indicated in our earlier discussions.
7 Because I don't think it goes, it does anything
8 beyond what is said in the plea agreement,
9 other than to extend the benefits through
10 current, through 2012.

11 THE COURT: So in your mind does it modify
12 the plea agreement in that regard?

13 MR. ANDREOZZI: Only to extend it.

14 THE COURT: Do you consider that a
15 modification?

16 MR. ANDREOZZI: No. No, I don't. Because
17 the plea agreement was executed back in 2000 --
18 I don't know what, 2010, and the only returns
19 that were due in, I think it was February of
20 2010, the only returns that would have been due
21 and owing, because the Plaintiff, or the
22 defendant did not file well, during the
23 pendency of the criminal case, would have been
24 2008. So the facts we could agree to there
25 were 2008. Now that we're at 2013, you know,

1 we're able to extend it out further.

2 THE COURT: So, in other words, the
3 contemplation of the agreement was that you
4 would extend it out to the time period that the
5 sentencing would be taking place, or as far as
6 possible?

7 MR. ANDREOZZI: I don't think anybody
8 anticipated that it would be this long, so I
9 don't know that it was contemplated then. I'm
10 sure everybody thought that we would get this
11 done fairly quickly, because we've all had this
12 interim, extended far beyond I assume what
13 anybody thought would happen. But I can't say
14 that we intended that it would extend. But the
15 parties agreed that, you know, that, you know,
16 mediation, the Court would extend the period
17 through 2012, as it sat here. And if I'm
18 saying anything incorrect, Miss Hendrickson is
19 there, she may want to speak to that.

20 THE COURT: She'll have an opportunity in
21 a moment. Attorney Colon.

22 MS. COLON: Yes, Your Honor.

23 THE COURT: Attorney Andreozzi spoke,
24 addressed his, his response to, obviously, his
25 client Waleed.

1 MS. COLON: Yes.

2 THE COURT: Your client is?

3 MS. COLON: Waheed.

4 THE COURT: Waheed Hamed. And I believe
5 you indicated that somebody else was there in
6 your stead.

7 MS. COLON: That's correct.

8 THE COURT: On behalf of your client?

9 MS. COLON: Correct.

10 THE COURT: And who was that?

11 MS. COLON: That was Attorney Joel Holt.

12 THE COURT: Now, given the fact that your
13 client was present, were you informed as to
14 whether that statement, or the statements that
15 you're referring to on page two of the
16 addendum, were true as to your client?

17 MS. COLON: My understanding, it was to
18 apply to everybody. And that's why I don't
19 understand -- let me put it this way, Judge, if
20 this addendum includes an additional \$315,000
21 being remitted, my client will sign on it or
22 won't have a problem not signing on it, because
23 that's my understanding was contemplated at the
24 mediation, this was applying to everybody.

25 THE COURT: And your position is that,

1 your underlying position is that it is
2 something that as it applies to your client,
3 your client should have been signing?

4 MS. COLON: Absolutely.

5 THE COURT: Okay. Thank you.

6 MS. COLON: And we wouldn't sign it as
7 this.

8 THE COURT: Understood.

9 MS. COLON: Thank you, Your Honor.

10 THE COURT: Thank you. Okay. Attorney
11 Hendrickson.

12 MS. HENDRICKSON: Your Honor, going
13 through them point by point again, as
14 Mr. Andreozzi and Miss Colon just did, I think
15 that everyone is in agreement on point one.
16 And Court's questions regarding some of the
17 language on page eleven I think could just be
18 attributed to my, perhaps, inartful drafting.
19 That it was the intent of the parties that if
20 we took out that sentence, we'll require all
21 corporate returns be filed, that the last
22 sentence, the really most important part is
23 that the condition of probation was going to
24 make sure that all the individuals paid taxes
25 so the government did have some leverage if

1 that did not occur, even though the corporate
2 plea was only with United. Because as Mr.
3 Andreozzi said, as corporation reports its
4 profits through the individual shareholders, so
5 the individual would have to file returns or
6 otherwise make some agreement with the VIBIR
7 for the taxes to be paid that were based on an
8 operations of United.

9 So the intent of that paragraph was to
10 make sure that all the payments were paid
11 through 2008. And, of course, when this was
12 written in February 2010, it was prior to the
13 parties agreeing on any restitution. If the
14 Court has read through this, we had two
15 proposals that was attached, Exhibit 1 to the
16 plea agreement, that the defendants' position
17 was about \$2.9 million, and the government's
18 position was \$24 million.

19 We filed briefings, an evidentiary hearing
20 conducted by Judge Barnard, more mediation.
21 Judge Barnard was very skilled and able to get
22 us to come to an agreement that resulted in the
23 first addendum where the parties agreed that
24 there would be a \$10 million payment for all
25 taxes due for the years at issue in the

1 indictment, 1996 through 2001.

2 And the difference between the first
3 addendum and the second one is that the first
4 one there was just one document, which was
5 filed with the court. And then everyone
6 signed, because it was addressing the criminal
7 years and also was addressing the clause in the
8 plea agreement. There were no closing
9 agreements, nothing was written, at that time,
10 when the first addendum was signed.

11 The government filed a motion later, a
12 notice with the Court, that there was a closing
13 agreement reached in July of 2011, and then
14 that's when there was actually the \$10 million
15 was tendered to the VIBIR. So that was part of
16 the reason there was a difference. At the time
17 of that mediation, the defendants, or the
18 individual defendants knew that we had agreed
19 to \$10 million, and that no one would have to
20 worry about paying any other taxes for those
21 tax years, as far as United States or the VIBIR
22 was concerned.

23 In the second addendum, and I would
24 submit, Your Honor, perhaps I should have just
25 submitted this as notice of progress of

1 mediation that the point was just to document
2 the fact that the mediation had taken place and
3 contrary to the first addendum and the first
4 mediation, the VIBIR was there, and through the
5 course of mediation, entered into agreements
6 with every individual. So there was no reason
7 to file something separately with the Court.

8 Now, I agree with Mr. Andreozzi's point
9 that a closing agreement is a term of art, and
10 that's not what was signed during mediation.
11 But the point was that all the individual
12 defendants had negotiated with the VIBIR
13 individually and that part of the plea
14 agreement that the Court would need to be
15 concerned with is that be done prior to
16 sentencing has been met. So that was the
17 purpose of filing the second addendum, to say
18 that that clause on page eleven regarding the
19 filing of the 2002 through 2008 tax returns has
20 been met by the mediation process, by the
21 agreements with the VIBIR. And since all the
22 money has been paid, the \$6.5 million was paid
23 by Mr. -- by United Corporation, so there is no
24 other funds that need to be paid prior to the
25 termination of probation as far as United is

1 concerned.

2 THE COURT: Let me back up for a minute.
3 And go back first to the interpretation of the
4 paragraph that I discussed with both Attorney
5 Andreozzi and Attorney Colon on this issue
6 regarding the timing of the payment.

7 Am I understanding you correctly that you
8 are in agreement with Attorney Colon regarding
9 the interpretation of that paragraph? That is
10 to say that the understanding was that the
11 payments were to be made prior to the time of
12 sentencing, that is, including the individual
13 defendants' payments, and that the last
14 sentence there that we were discussing about
15 payments being made prior to the termination of
16 the period of probation, was, in fact, sort of
17 the guarantee that the government would have
18 that all these payments were, in fact, paid?

19 MS. HENDRICKSON: Yes. Although I think
20 the critical distinction is that there was no
21 agreement that United would pay. I think
22 February of 2010 that was certainly the
23 anticipation, if things would have been
24 resolved a few months later, that that may have
25 happened. But we never actually agreed to

1 that, because, again, we couldn't even agree to
2 the restitution amount. So we were trying to
3 nail down as many terms as we could. We had
4 less to resolve at sentencing. But I think the
5 key distinction there is that that paragraph
6 does not mean United has to pay all of the
7 money. The paragraph meant that there would be
8 a special condition of probation during
9 United's probation, because United was the only
10 entity that pleaded guilty. So the government
11 had some leverage regarding making sure that
12 individual filed returns, which would include
13 United's profits. So that was kind of the,
14 without trying to get too wordy in the plea
15 agreement, that was our thinking, at the time,
16 because the corporation was an S corporation.
17 If individual tax returns weren't filed, the
18 VIBIR would not receive profits made based on
19 United and Plaza Extra's operations.

20 THE COURT: So, in other words, the idea
21 would be it would be a condition of United
22 probation to ensure that they were paying, but
23 not necessarily that United would have to pay,
24 in the event that the individual did not pay?

25 MS. HENDRICKSON: Yes. And as we're

1 standing here today, the \$16.5 million does pay
2 for the taxes of the operations of Plaza Extra
3 through 2010.

4 THE COURT: Okay. So, so your position is
5 that that particular provision has, in fact,
6 been satisfied, because the \$16.5 million would
7 include the amounts from years 2002 --
8 1996/2001, as well as 2002 through 2008?

9 MS. HENDRICKSON: Yes. The first plea
10 agreement addendum covered 1996 through 2001.
11 The second mediation session, and the second
12 addendum covered 2002 through 2010, which we
13 agreed to extend, rather than 2008, which was
14 in the plea agreement just because more returns
15 were due.

16 THE COURT: Okay. Now, what about this
17 issue that has been raised regarding the taxes,
18 the individual, the taxes of the individual
19 defendants, Waleed and Waheed Hamed, 300 and I
20 believe 20 some odd thousand -- \$315,000,
21 around there, what is the issue with respect to
22 that?

23 MS. HENDRICKSON: Well, Your Honor, I
24 think the only issue remaining is whether
25 United is going to pay that or not. And I'll

1 let Mr. DiRuzzo speak to that at more length,
2 but as far as the government's concerned is,
3 the plea agreement was for the VIBIR to get the
4 money owed to it based on the operations of
5 United, and it has. This other issue now with
6 the Hameds and whether United pays for their
7 individual income taxes, it's a separate issue
8 and should not delay sentencing, because as
9 Mr. Andreozzi said Waleed Hamed or Waheed Hamed
10 are not partners or owners, they're employees,
11 not managers. So United is not obligated to
12 pay taxes of all of its employees and managers
13 individually.

14 THE COURT: Now, Waleed and Waheed Hamed
15 were among the individual defendants --

16 MS. HENDRICKSON: Yes, they were.

17 THE COURT: -- in this matter. So, is it
18 correct that they were among the individual
19 defendants for whom all outstanding returns and
20 reporting documents had to have been filed and
21 full payments of the amounts due --

22 MS. HENDRICKSON: Yes, Your Honor.

23 THE COURT: -- were included?

24 MS. HENDRICKSON: Yes. But if I may?

25 THE COURT: Sure.

1 MS. HENDRICKSON: In February of 2010, our
2 anticipation was we would have a sentencing
3 hearing perhaps in the summer or fall of 2010,
4 United probation would extend for a year,
5 everything would get filed, probably in 2011 or
6 early 2012. But since that all got moved,
7 then, and at this time, we didn't anticipate
8 even having any mediation, or having the
9 involvement of VIBIR in this process. They
10 were involved in helping get to the first plea
11 agreement, because the individual defendants
12 wanted to make sure that in the event of a
13 corporate plea, the VIBIR could not come after
14 them for some other taxes on some stock sales
15 or something from 1998, completely unrelated to
16 the allegations in the criminal case. So, at
17 that point, that was the only role of VIBIR.

18 Now, once the closing agreement was done
19 in 2011, for the years at issue in the
20 indictment, and then just last month, now the
21 VIBIR participated in all of that, and as we
22 left the mediation on June 10th, they were
23 happy with everything and had made arrangements
24 with individual defendants. So there is
25 nothing else this Court needs to do regarding

1 that term of the plea agreement.

2 THE COURT: So from the government's
3 perspective, all of the monies due and owing
4 under the paragraph eleven that we have been
5 speaking about for taxes due from 2002 through
6 2008 have been paid?

7 MS. HENDRICKSON: Yes. Again, because the
8 main point of this was that taxes were paid on
9 the profit of United, which would have been
10 reported by individual shareholders. So that's
11 why it has the individual income tax aspect in
12 there, but the intent was really that the BIR
13 got all the taxes due for United and Plaza
14 Extra's operations, and they have received that
15 money.

16 THE COURT: Okay. So, this \$315,000 that
17 the U.S. Marshal service agreed to have
18 released deals with something completely
19 separate from your perspective than the terms
20 of this agreement?

21 MS. HENDRICKSON: Yes. Because it's not
22 income directly related to the profits of
23 United. Now, it may be some salary paid for
24 working for United, but was not the actual
25 profits that could have been reported and

1 flowed through to the individual income tax
2 returns.

3 THE COURT: So the answer to my question
4 is that it does not have anything to do, at
5 least additional monies, do not have anything
6 to do with monies due and owing under this plea
7 agreement?

8 MS. HENDRICKSON: Correct. Correct.

9 The second issue regarding, I think I just
10 touched on that, that the Hameds are not owners
11 or partners. And that in the civil litigation,
12 at least Mohammad Hamed is the one who has an
13 interest in the procedures that are set up
14 through the independent monitoring or the
15 ethics compliance report.

16 And, Your Honor, I mean, we, of course,
17 from the criminal perspective, from the United
18 States perspective, we have tried to not be
19 involved in a civil litigation at all, and only
20 dealt with the things that impact us here
21 today. But my interpretation of Judge Brady's
22 order, if I may be so polled to try to
23 interpret it, it's regarding the management of
24 United, day-to-day, what expenses are paid for
25 the operation of the supermarkets. It's not

1 addressing complying with the terms of the plea
2 agreement in the criminal case.

3 And from our mediation session with Judge
4 Barnard, I thought we were all in agreement
5 that Judge Brady's order also recognized that
6 this case was still pending, and it was not
7 through and through.

8 So I would ask the Court to reject the
9 position of Mr. Andreozzi and Miss Colon to say
10 that we will submit a compliance program to the
11 Court, based on generally, on accounting
12 principles, not going to be a full audit or a
13 full review, but it's just going to have very
14 standard language. There is not something
15 that's going to be, I think, that's going to be
16 a potential burden or impact for the Hameds.
17 While United is on probation, of course, if we
18 file something with the Court, and the Court
19 wants to invite counsel for Hameds to weigh in
20 on it, the Court can certainly do that, but
21 it's not something that should hold up the
22 sentencing of United.

23 Mr. DiRuzzo and I have exchanged
24 agreements and have sent out proposals for the
25 monitors, and language is taken from other

1 similar agreements we've done similar to the
2 language that's in the temporary restraining
3 order. So not something that the Court can't
4 supervise individually.

5 THE COURT: So from your perspective,
6 specifically, from a substantive point of view,
7 your view is that, say, the appointment of a
8 monitor, the responsibilities of a monitor,
9 regarding the overseeing of sort of the
10 financial aspects, ensuring the taxes are paid
11 and that kind of thing, setting up of a
12 compliance program, that will obviously bind
13 the Plaza Extra stores, that should not be
14 considered to be part and parcel of the
15 day-to-day operations, even assuming the Court
16 were to take into account what's going on in
17 the civil matter?

18 MS. HENDRICKSON: Yes. Yes. That's
19 government's position.

20 THE COURT: Okay. So, is it also your
21 position that the Court should essentially
22 ignore that ruling as it pertains to the, the
23 sentencing here, and the terms and conditions
24 that are imposed pursuant to the plea
25 agreement?

1 MS. HENDRICKSON: I think two points:

2 One, in Judge Brady's order, or in other
3 pleadings in the case, and it's in that
4 particular document, Judge Brady acknowledged
5 that the criminal case was still pending, was
6 not intending to intrude on that.

7 And second, I think what the parties are
8 envisioning regarding the monitoring and the
9 compliance program was just kind of some basic
10 overall review, periodically, of United's
11 day-to-day operations and make sure that
12 they're complying with the law that have been
13 under monitoring since 2003. I mean, it's not
14 that we have a grave concern that we're worried
15 about anything, at this point.

16 Another point I would make for the Court
17 is that at the time, since we were talking
18 about millions of dollars potentially being
19 paid as part of the terms of plea agreement, we
20 expected that it probably would not be paid
21 until near the end of probation. So that was
22 also part of the government's concern. I can
23 tell you that was my concern at the time it was
24 being drafted. And now that issue doesn't
25 exist, because all the money has been paid up

1 through, already, before sentencing. So that
2 doesn't even need to be a special condition,
3 the actual payments of the fines.

4 So the monitoring can be done in
5 conjunction with the controllers, the other
6 accounting employees at United, by just the
7 monitor getting periodic financial statements,
8 bank statements, whatever type of information
9 the monitors wants. And it may be something
10 that unless the monitor has any questions, they
11 just file reports with the Court quarterly and
12 say I reviewed these statements, and I've
13 talked to employees, and they're complying with
14 the terms, and they're filing their tax
15 returns, and they're paying their taxes.

16 That's really what we anticipate. Not a
17 thorough audit. Not somebody going in and
18 looking at all of the books in the record and
19 trying to trace every dollar that comes into
20 the store. So I think it's much more cursory
21 procedure, if I could use that word. And
22 again, I think because the money has already
23 been paid, less of an issue.

24 Of course, the whole facts of this case
25 was that money was skimmed, so if the

1 government wasn't getting paid, we wanted to
2 make sure that money wasn't getting diverted
3 that could have been used to pay the
4 government. That's not an issue now.

5 THE COURT: Let me ask you while you're on
6 the topic of monitor. This issue regarding the
7 timing of the appointment of the monitor as it
8 relates to the terms of the agreement, it was,
9 as I read the plea agreement, it was my
10 understanding that the monitor would be in
11 place at the time of sentencing, such that the
12 period, the monitors overseeing of the
13 financial aspects and issues related to the
14 taxes and so forth would coincide with the
15 one-year term of probation that's being
16 proposed in the plea agreement.

17 MS. HENDRICKSON: Yes. And, Your Honor,
18 if I may direct the Court's attention, on page
19 eight, at the top.

20 THE COURT: Page eight of the plea
21 agreement?

22 MS. HENDRICKSON: Page eight of the plea
23 agreement, yes, Your Honor, right before
24 paragraph two, it does say that it would be
25 "expressly approved by the government prior to

1 the beginning of the term of probation." The
2 next sentence, "If the parties cannot reach
3 agreement on a third party, the independent
4 third party will be selected by the Court."

5 At this point, we couldn't agree on
6 anything, so that was a caveat basically for
7 all the important terms. Now, Mr. DiRuzzo and
8 I have agreed on the people who have been sent
9 proposals, and we have agreed that, and he can
10 speak to this too, but we've agreed that the
11 United will be subject to one year of probation
12 from the time the monitors starts. So instead
13 of one-year of probation, if the monitor is not
14 in place until September 1st, probation could
15 be 13 and a half months or fourteen months,
16 whatever would extend it to the next year.

17 At the time we drafted this, again, that
18 would be the best way to go if we could, but
19 there was a lot of moving parts. At this
20 point, I think we're in a much better position
21 than I anticipated we would be in February,
22 2010. We've at least agreed on people that
23 we've sent proposals to the language of the
24 proposal, and in one of them agreed to it that
25 will be then submitted to the Court.

1 Mr. DiRuzzo has a copy of the one of the
2 proposals we sent out, if the Court wants a
3 copy of it. But I think that's something that
4 doesn't need hold up the sentencing today. It
5 is a condition of probation. And so long as
6 United agreeing to extend the term of probation
7 to one year from the day the monitor's in
8 place, then the term of the plea agreement has
9 been satisfied, as far as government is
10 concerned.

11 THE COURT: So your proposal would be to
12 impose a sentence in which probation would
13 commence, obviously, at the time that the
14 judgment is entered, J&C is entered, and
15 continue until a year after the monitor has
16 been appointed?

17 MS. HENDRICKSON: Yes. And I would defer
18 to the Court as to whether it's called a
19 condition of probation, or we say the
20 monitoring is certainly a condition of
21 probation, but we could also have the
22 monitoring agreement, by agreement of the
23 parties, extend passed the one year of
24 probation.

25 THE COURT: Is that something that would

1 have to be agreed to by the individual
2 defendants as well, under the terms of the plea
3 agreement?

4 MS. HENDRICKSON: I don't think so,
5 because it's regarding the process of
6 monitoring the operations of United, which in
7 February of 2010, there was no dispute about.
8 Now with intervening sole litigation, I think
9 there is some issue, but when we wrote this in
10 the agreement, there was no contemplation that
11 we would be discussing this with all of the
12 individual defendants. That it would be
13 clients of the corporation and the business
14 itself, and make sure it was run properly and
15 taxes were filed and taxes were paid. Most of
16 the individual defendants had nothing to do
17 with those aspects of running the supermarket.

18 THE COURT: Okay. But the agreement says
19 that if there are any modifications to the plea
20 agreement, it has to be agreed to by -- has to
21 be in writing and signed by the government,
22 United, the individual defendants, and United
23 shareholders. How do you get around that?

24 MS. HENDRICKSON: I agree. I think that I
25 just read before, we anticipated if we couldn't

1 agree, that the Court could appoint a third
2 party. So, information was just provided to
3 the Court, and the Court would select.

4 THE COURT: Are you proposing that the
5 Court is going to select --

6 MS. HENDRICKSON: No. I'm say -- what we
7 anticipated that we couldn't -- government and
8 counsel for United could not agree on who would
9 be the third party, then we would ask the Court
10 to facilitate that, or we would present the
11 Court with a list of five people and say here's
12 all the people, and the government wants this
13 person, and counsel for United wants this
14 person. So if the Court can pick this one, so
15 long as they're all capable and competent.

16 THE COURT: I understand that part. But
17 what I'm asking is, if, for example, you're
18 proposing, as I understand it, for the Court to
19 extend the term of probation right now, right
20 now there is a plea agreement that says
21 probation is one year. If, in fact, the
22 probation is extended beyond one year, which
23 would be the case if given the fact there is no
24 monitor in place now, if we have sentencing
25 today, the idea, the proposal that's been

1 suggested is that the Court would extend the
2 term of probation such that, if you intend to
3 appoint somebody for the six months, for
4 example, what you would end up with is a term
5 of probation of 18 months instead of one year,
6 which is different from what the plea agreement
7 says right now. Because it provides for a
8 one-year period of probation.

9 My question was, whether or not if that
10 were to be proposed, whether that change in the
11 agreement pursuant to section thirteen on page
12 twelve of the agreement, whether that would
13 have to be in writing and signed by the
14 government, United, the individual defendants,
15 and United shareholders, as a modification to
16 the one-year probation period that now exists
17 in the plea agreement?

18 MS. HENDRICKSON: Your Honor, we would
19 respond no for two reasons. One, it's United's
20 probation. All the individual defendants were
21 dismissed from this case in February --
22 March of 2010, when Judge Finch, that order
23 which was mentioned in the response we filed
24 today. So only interest the government was
25 worried about in February 2010, when this was

1 being written, was that the individuals would
2 file their income taxes and pay their taxes.

3 THE COURT: That's not what section
4 thirteen says, is it?

5 MS. HENDRICKSON: No. I agree with you,
6 it's broader than that.

7 THE COURT: And at the time that you
8 entered the plea agreement, there was a
9 provision at the beginning that contemplated
10 that, in fact, the individual defendants would
11 be dismissed from the action. At the time the
12 United States -- at the time that United, I'm
13 sorry, enters its plea to the above-referenced
14 count, the government will dismiss all counts
15 of the indictment with prejudice against -- and
16 it names the individual defendants.

17 MS. HENDRICKSON: Yes.

18 THE COURT: By the time you entered the
19 plea agreement, there was an agreement that the
20 individual defendants would be dismissed. They
21 would be out of the matter.

22 MS. HENDRICKSON: I agree.

23 THE COURT: But there still was a section,
24 or part thirteen that nonetheless said that no
25 modification of the plea agreement shall be

1 effective unless it is in writing and signed by
2 the individual defendants.

3 MS. HENDRICKSON: Yes, I agree with that,
4 Your Honor. I would say that, again, it could
5 have been drafted better, but at the time what
6 we were thinking about, Miss Colon and
7 Mr. Andreozzi can weigh in on this, to the
8 extent that any agreement was made, it impacted
9 any of the individual defendants, that was the
10 purpose, because they had allegations under
11 this plea agreement even though they were being
12 dismissed.

13 But, again, government's focus is on the
14 recording of income by Plaza Extra and the
15 payment of taxes, which could only happen
16 through the individual shareholders. And since
17 the individual defendants were dismissed from
18 the case, the government also wanted to make
19 sure that they filed their tax returns and paid
20 their taxes. So that's really, at the time
21 when this was negotiated, the only part that
22 was impacting now. It was not anticipated that
23 anything that in general that was particular to
24 United and its conditions of probation would be
25 something that they would need to agree to.

1 As I said before, the only reason that we
2 put in there a condition of probation would
3 include the payment of individual income taxes,
4 was because that's the only way corporate
5 profits were reported.

6 THE COURT: Okay.

7 MS. HENDRICKSON: Regarding the return of
8 property, I think the parties are in agreement
9 that it can be done afterwards. And I'll let
10 Mr. DiRuzzo speak to the issue of the cost, and
11 whether there is anything that the Court need
12 even address with respect to that.

13 The last issue with the signatures, I
14 think we've touched on that with some of the
15 other points that we discussed. That the
16 intent in February 2010, was that the
17 individual obligation was to file income taxes
18 and to pay taxes. To the extent that hasn't
19 been completed by the Hameds, the VIBIR
20 participated in the mediation. They have a
21 process set up. There is nothing left that the
22 Court need supervise, in the opinion of the
23 government.

24 THE COURT: Let me ask you about the
25 additional \$6.5 million. Is that intended to

1 be part of the restitution? In the second
2 addendum, the last \$6.5 million, that's added
3 to the \$10 million, is that intended to be part
4 of the restitution?

5 MS. HENDRICKSON: Yes. It was part of the
6 resolution contemplated by the original plea
7 agreement, yes.

8 THE COURT: Do you have a sense of how
9 long, how much longer it will take to appoint
10 the monitor?

11 MS. HENDRICKSON: Approximately two weeks,
12 Your Honor.

13 Were there any points I didn't address
14 that Court wanted to hear from?

15 THE COURT: I'm just checking on that.

16 MR. ANDREOZZI: May I weigh in?

17 THE COURT: Yes. Just a moment.

18 MR. ANDREOZZI: Okay.

19 THE COURT: The issue with respect to the
20 documents. I think in your, in your initial
21 filing you had asked for the Court to retain
22 jurisdiction until September --

23 MS. HENDRICKSON: For sixty days, yes,
24 September 16th.

25 THE COURT: Sixteen. Is that -- does that

1 remain your position on that?

2 MS. HENDRICKSON: Well, here was our
3 thinking, Your Honor: The main issue is both
4 Mr. Andreozzi and Miss Colon alluded to, part
5 of it is the cost of doing it. And we agree
6 with that. But I think so long as we have a
7 procedure in place, and there is an agreement
8 that United is going to pay for it, then there
9 is no reason for the Court to retain
10 jurisdiction until the documents actually get
11 returned. If there is some kind of issue with
12 that, then the parties can bring it to the
13 Court's attention, but I think our anticipation
14 was that we would file a procedure with the
15 Court, counsel for the Hameds could weigh in on
16 that procedure. We talked about it a little
17 bit. We just didn't fine tune it during the
18 mediation, but the general tint was for the
19 records to be put with an independent
20 third-party custodian, and then, a separate
21 location would be picked, whether it is a
22 storage location or something like that, where
23 all the records would be put, and then in that
24 way, because of the pending civil litigation,
25 all parties would have access to all records

1 related to the criminal investigation.

2 So I think the Court supervision isn't
3 necessary in just approving the procedure, or
4 after approving the procedure and the payment.
5 If we can, I think we can do that easily within
6 sixty days. And if there is some issue
7 regarding how it transpires, that could be
8 brought to the Court's attention.

9 THE COURT: And your contemplation, and
10 I'm assuming this would address Attorney
11 Colon's concern, but I'm not sure, is that
12 United would be responsible for the payment?

13 MS. HENDRICKSON: Yes.

14 THE COURT: Does that address your
15 concern?

16 MS. COLON: Partially.

17 THE COURT: Partially. Okay. Thank you,
18 Attorney Hendrickson.

19 MS. HENDRICKSON: Thank you.

20 THE COURT: Before you start, Attorney
21 DiRuzzo, Attorney Andreozzi.

22 MR. ANDREOZZI: Yes, Your Honor. Thank
23 you. Just briefly to clarify. Attorney
24 Hendrickson indicated just now that the \$6.5
25 million that was paid recently out of United

1 Corporation went to restitution amounts. I
2 think she mentioned earlier that the payments
3 of the sixteen some million dollars that were
4 made went only to income for United. I don't
5 believe that that's accurate. There were many
6 other payments and deposits made by United
7 Corporation to go to the income tax liability
8 as the case was progressing. And as I
9 understand it, all of that money plus the 6.5
10 was to pay to cover the total tax liability of
11 the individual shareholders, the people, and
12 that --

13 THE COURT: Please repeat.

14 MR. ANDREOZZI: The payments that were
15 made in total, the \$6.5 million, and the other
16 payments, it's my understanding that those
17 satisfy the income tax liability of the
18 individual shareholders, who are referenced by
19 initials on page eleven, and that includes,
20 that liability includes income above and beyond
21 income just from United Corporation, other
22 investments, income, et cetera. We have no
23 problem with the application of ones who pays
24 those.

25 However, they should also be used to pay

1 for the agreement the same income, same type of
2 outside income of the other individuals, Waleed
3 and Waheed Hamed. And so to suggest that that
4 money only went to pay those incomes, I don't
5 believe is accurate.

6 Miss Hendrickson, if she can confirm that
7 with the tax returns with VIBIR. But my
8 understanding, that that went to pay the other
9 individuals' total liability, and should also
10 go to pay the total liability of the individual
11 defendants, Waleed and Waheed Hamed.

12 THE COURT: Meaning the additional
13 \$315,000?

14 MR. ANDREOZZI: Yes. Yes. If the others
15 got their taxes paid with these deposits,
16 payments, et cetera, then, so too should the
17 other individual defendants.

18 THE COURT: Attorney Hendrickson, do you
19 want to respond?

20 MS. HENDRICKSON: Yes, to clarify. I
21 agree with Mr. Andreozzi that during those
22 years the payments were made, based on copies
23 of the requests for payment government sought
24 and approved, and let the money be released,
25 that it was money to pay the tax obligations of

1 the Yusuf family members who were listed as
2 shareholders in the record of the VIBIR. And
3 there was other income on some of their
4 returns. So, if they had other investments and
5 things like that. So I think that is a fair
6 representation to say United paid for other
7 taxes that the individual shareholders owed on
8 top of the flow through based on United's
9 operations.

10 The government's point is, the whole
11 purpose of the plea agreement was to make sure
12 the VIBIR got a hundred percent of the money
13 paid or owed based on the operations of Plaza
14 Extra. That has occurred.

15 Now, to the extent whether they would have
16 been paid before, and not now, because of the
17 civil lawsuit, that's not a term of the plea
18 agreement. An understanding about who was
19 going to pay back then.

20 Now, I think in light of the civil
21 litigation, that Mr. DiRuzzo can address that,
22 but that's not a part of the plea agreement.
23 So to the extent there was additional money
24 paid, and I reviewed the tax returns, I agree
25 with Mr. Andreozzi's point, but I think it has

1 no impact on the plea agreement itself, since
2 the government's purpose was to get all the
3 income reported and the taxes paid for the
4 income of Plaza Extra. And with the payment of
5 \$6.5 million, that has occurred.

6 THE COURT: If that included other than
7 the flow through, so be it?

8 MS. HENDRICKSON: Yes.

9 THE COURT: And the question of whether or
10 not the Hameds are entitled to similar
11 treatment from United, that is, paying
12 additional taxes that don't represent the flow
13 through, is an issue for the Hameds and United
14 to resolve, but is not an issue that bears on
15 the plea agreement here before the Court?

16 MS. HENDRICKSON: Yes, Your Honor.

17 THE COURT: Attorney DiRuzzo.

18 MR. DiRUZZO: Thank you, Your Honor. Let
19 me start with the \$315,000. I think we all can
20 agree that every tax payer, like every
21 individual, has a personal responsibility to
22 pay their own taxes, responsible to the
23 government. They have to do what they're
24 obliged to do with the Internal Revenue Code.
25 I think we all can agree, when you're an

1 employee, you have to ensure that your
2 withholding is appropriate. At the end of the
3 year, go do your taxes, if he invested in
4 Google, had a great year, you have a profit.

5 Likewise, you might have had a bad year.
6 You might have taken a loss on AIG, and that
7 would effect your tax. So as an employer goes,
8 the employer is not responsible for the
9 employee's individual liability to the
10 government. The employer withholds taxes, as
11 appropriate, as they have to and as directed,
12 in part, by the employee themselves, based upon
13 what they estimate their tax to be at the end
14 of the year, what kind of deductions they have,
15 how many children they have, for example, and
16 all these things are, in part, based upon the
17 employees' representation to the employer.

18 And why I bring this to your attention,
19 when Waleed and Waheed, known as Wally and
20 Willie, when they owe additional taxes, I don't
21 know why they owe additional taxes, they might
22 have had a great year investing in Google.
23 It's not their employer's obligation to
24 backstop the employees' tax liabilities and
25 then when the employee doesn't have enough

1 withholding and the employee owes additional
2 money to the government, come in and save the
3 day.

4 Another point for the Court to consider is
5 if that were to happen, effectively, when an
6 obligation, a liability of a tax payer, paid by
7 a third party, that obligation, that liability,
8 that's been satisfied, that represents
9 additional income to that taxpayer. You'll see
10 often cancellation of indebtedness income, a
11 person will get a 1099 from, you know, someone
12 that said hey, we have canceled out this debt.
13 When you cancel out a debt, you get an economic
14 benefit. As a result, you have to report that
15 as income on your individual tax return.

16 THE COURT: Okay. So, let me stop you for
17 a moment. It seems as though that's sort of
18 going to the merit of the question as to
19 whether or not United should be paying this
20 \$315,000. To the extent that that doesn't bear
21 on this case, I'm going to stop you and stay
22 away from that.

23 MR. DiRUZZO: Okay.

24 THE COURT: I guess the pertinent question
25 here is whether or not, is the \$16.5 million is

1 in full and complete satisfaction of the monies
2 due and owing under the terms of the plea
3 agreement entered into by the parties?

4 MR. DiRUZZO: I would say yes. I want to
5 make a fine distinction. That additional 6.5
6 that was just recently paid, that was, for the
7 lack of a better term, the balance due on the
8 years 2002 through 2010. The individual
9 shareholders of United, like all tax payers,
10 have been making estimated tax payments along
11 the way. So for each tax year, you have your
12 income, you have your estimated tax payments,
13 maybe you have an additional amount owing,
14 maybe you have an additional amount that you
15 normally get returned, it's payments made along
16 the way.

17 So the amount that has been paid to the
18 Virgin Islands Government far exceeds 16.5
19 million. But the point being, the tax
20 obligations have been paid in full. And that,
21 as a result, there is nothing that would
22 preclude this Court from proceeding with
23 sentencing.

24 As to the return of the documents issue,
25 the Court's well aware of the ongoing civil

1 litigation. There are a bunch of cases that
2 are transpiring. What I have done is I've
3 reached out to and sent requests for proposals
4 to three CPA's located on the island of
5 St. Thomas. We got back a proposal that I
6 have, that counsel for the government has an
7 opportunity to see, and basically, what's going
8 to happen, these documents are going to go from
9 the F.B.I. office, go into a storage space,
10 United is going to pay for the storage space,
11 the independent CPA, going to pay for all these
12 documents to be scanned, because, as the
13 Court's well aware, United is a litigant, civil
14 litigation; has an obligation to maintain and
15 protect these documents during the course of
16 all civil litigation. And that has been based
17 on the mass of the documents.

18 These documents are going to be scanned.
19 That way we don't have to make, you know,
20 hundreds of boxes of copies. Scanned, burned
21 to a C.D., and everyone's going to get a copy.
22 So that way, there can be no allegation that
23 any of the documents have been misplaced,
24 destroyed. Going to be maintained under the
25 watchful eye of the third party, unrelated to

1 any party of the civil litigation. And
2 everyone is going to have multiple disks, hard
3 drive, of all the documents in an electronic
4 format for the period to what they will.

5 So I think that should alleviate
6 everyone's fear. The documents aren't going to
7 go missing, or not available, because I can
8 tell you right now, I need these documents. I
9 have to look at them myself. I have to come to
10 the conclusion, what documents are responses or
11 requests for production. These documents,
12 they're going to be maintained and going to be
13 preserved.

14 The point being, though, that the Court
15 need not get into that in this point of time
16 and preclude that, or use that as a way to
17 postpone the sentencing.

18 THE COURT: As I understand from Attorney
19 Hendrickson, the bottom line here is that you,
20 with respect to costs, there will be a
21 procedure put in place, that's being discussed
22 and resolved, at this time, I believe, with the
23 help of Magistrate Barnard?

24 MR. DiRUZZO: Correct.

25 THE COURT: And that the cost issue is one

1 that's going to be borne by United?

2 MR. DiRUZZO: As a matter of fact, as a
3 litigant, United has to bear the cost of
4 litigation, which includes, among other things,
5 protecting documents, preserving documents,
6 producing documents to opposing counsel in
7 ongoing litigation, at least costs. Whatever
8 angle you look at it, these are costs that are
9 going to have to be incurred by United as a
10 litigant in ongoing litigation. So, I think
11 that should alleviate everyone's concern about
12 these documents.

13 As far as the monitor goes, I have been
14 working, like I say, as diligently and
15 expeditiously as possible with counsel for the
16 government, drafting not only the cost for
17 proposal, which I do have a copy if the Court
18 would like to peruse, request for proposal of a
19 bunch of CPA firms in Miami that have, for lack
20 of a better term, grocery store experience.
21 And I sent out a request for proposal this
22 morning, after counsel for government reviewed
23 the list of potential CPA firms and did not
24 object to any of those firms that we mentioned.
25 I sent out via e-mail this morning request for

1 proposal. Miss Henderson was copied on those
2 e-mails. And I am awaiting, you know, the
3 responses from the respective CPA firms. What
4 I'm anticipating, not very long for the CPA
5 firms to get back to me, for them to draft
6 their respective requests for the response for
7 those request for proposals, and specifically
8 told to copy Miss Hendrickson on that
9 correspondence, the communication. So she will
10 be made aware of what's going on.

11 And then the monitor, of course, obviously
12 price is going to be in consideration, among
13 other things, but based on the prospective
14 proposals that we receive in return, a monitor
15 is going to be selected, and they will come
16 down and do what CPA firms need to do in the
17 terms of the engagement.

18 THE COURT: Are you in agreement with
19 Attorney Hendrickson that it will be, probably
20 be a couple of weeks?

21 MR. DiRUZZO: No later than a couple of
22 weeks. But I'm going to do my best to make
23 sure that this thing moves along. If I had put
24 on the government's shoes, I know what they
25 want. They don't want me dragging my feet,

1 getting CPA firm six months from now, trying to
2 sandbag the government. Probation only a year,
3 and the CPA only been around a couple of
4 months, I can appreciate that. She doesn't
5 want that to happen. I don't have a problem
6 with that. So that's why I'm taking the
7 impetus, who I know is my client, to make sure
8 the monitor is selected as expeditiously and
9 diligently as possible.

10 THE COURT: Are you in agreement, as well,
11 that the probation period would extend from the
12 time of the J&C to a year after the monitor is
13 applied?

14 MR. DiRUZZO: I don't have a problem with
15 that, because at this point, United has nothing
16 to hide. United has been monitored by the
17 Marshal Service close to a decade now. So
18 what's an additional two weeks, Your Honor?
19 Not a big deal.

20 THE COURT: Or whatever.

21 MR. DiRUZZO: Or whatever period it is.
22 You know, and it's not going to, in the grand
23 scheme of things, based on the amount of time
24 that this case has been transpiring, I would
25 say to use an accounting term, it's not going

1 to be material. So, United will agree to that.

2 Now, if the Court, you know, the one thing
3 I did hear from the Court, whether that would
4 require, for lack of a better term, an
5 amendment to the plea agreement. I don't think
6 it needs to be. If the Court has discomfort
7 that that change in the probationary period,
8 the additional two weeks, what have you, I
9 don't think that that, as a matter of course,
10 that perspective actually needs to carry a
11 date. But if the Court does have that
12 perspective, we could, as in me, government,
13 could agree that the term of the monitoring
14 could extend passed the term of probation.

15 So, in effect, if the Court were to start
16 probation today, and the monitoring would begin
17 on August 1st, then, the term of probation
18 would terminate at 365 days from today, but the
19 term of the monitoring would then extend an
20 additional two weeks, or whatever time. But
21 that's only if the Court comes to the
22 conclusion that the plea agreement would need
23 to be modified. I don't think the Court even
24 needs to address, as Miss Hendrickson stated,
25 you don't have to, you don't have to do that,

1 Your Honor.

2 THE COURT: Okay. And I take it that your
3 position is the same as Attorney Hendrickson's
4 with regard to the individual defendants and
5 their involvement in this issue regarding an
6 extension of the probation period?

7 MR. DiRUZZO: Exactly. I can appreciate,
8 because United Corporation is an 1120
9 subchapter S corporation, it doesn't, per se,
10 pay income tax. It does pay gross receipt tax,
11 so I can understand why the government
12 fashioned the plea agreement in the way it did.
13 So that there was a way to hold United's feet
14 to the fire. And I would anticipate back to
15 the contemplation was that United Corporation
16 would file 1120s, issue K 1 to shareholders,
17 and to shareholders take the K 1 to tax
18 returns. Those tax returns filed under BIR,
19 and taxes would be paid accordingly to the tax
20 profile of each individual shareholder who
21 received a K 1. That was my understanding. It
22 makes perfect sense when you look at it, just
23 the mechanics as 1120 K 1 as individual
24 taxpayer.

25 So, as far as where we stand today,

1 though, all the taxes have been paid. All the
2 tax returns have been filed up to and including
3 calendar year 2012. So, at this point, going
4 forward, the only outstanding year for the
5 individual shareholder defendants and for
6 United Corporation is calendar year 2013, which
7 obviously, we're still in. Tax filing
8 obligation has not yet come to pass. So as
9 we're standing here, all the individual
10 shareholders of United and United have complied
11 with all the obligations not only under the
12 plea agreement, but under the Internal Revenue
13 Code.

14 THE COURT: You said that's through 2012?

15 MR. DiRUZZO: Yes. United and
16 shareholders filed tax returns up through
17 calendar year 2012, my understanding.

18 THE COURT: And is that filed and paid?

19 MR. DiRUZZO: Yes. Filed, paid. They --
20 we are expecting that the Virgin Islands Bureau
21 of Internal Revenue will give us some
22 documentation to that effect shortly. But,
23 notwithstanding that, that has yet to come to
24 pass. The fact of the matter is, United and
25 its shareholders is current. And all the tax

1 reporting obligations and tax payment
2 obligations as well.

3 And with that, I don't believe I have
4 anything else that I need to add. And I just
5 would sum up that I believe that the Court can
6 proceed to the 11(c)(1)(C) sentencing today.
7 There is nothing that would preclude. And Your
8 Honor, this case has gone on for a long time.
9 At some point it needs to close. And I submit
10 today is the day it needs to close.

11 MS. COLON: If I may be heard?

12 THE COURT: Attorney Colon.

13 MS. COLON: It seems that there is some
14 rewriting of the plea agreement being done with
15 the Court in its discussion today. The plea
16 agreement does not address the individual
17 defendants who are shareholders, which the
18 language I'm hearing today, that those, both
19 parties, government and United, would like this
20 plea agreement applied. It did not refer, for
21 example, on page eleven, section eleven, to
22 individual shareholder defendants. It applied
23 to all individual defendants, whether they were
24 shareholders or not. And to say that this
25 catchall phrase at the very bottom of the

1 paragraph was only to make sure that individual
2 shareholder defendants paid their taxes is not
3 what it says either. And if that's what the
4 government had intended, if that's what all of
5 the parties had intended, that's what it would
6 have said.

7 What it says that it is -- United
8 acknowledges that it is a special condition of
9 probation, that all taxes due and owing for the
10 years of 2008 -- 2008 must be paid prior to the
11 period of probation. So, to now handpick which
12 defendants this applies to and which it
13 doesn't, well, the plea agreement doesn't do
14 that. It applies to all individual defendants.
15 All of them.

16 However, I think I heard the government
17 say, and I would certainly love to have
18 confirmation of that, that it is the
19 government's position, which necessarily
20 includes VIBIR, that all individual defendants,
21 and all individual shareholders, and United
22 Corp. has paid all taxes through 2002 through
23 2008. And I would really like confirmation of
24 that, because that would certainly alleviate my
25 client's obligation for those years, if that is

1 the agreement that the government has reached.
2 And if that's what VIBIR is saying, which I
3 think that's what I heard, and I just want to
4 make sure that that was accurate.

5 Now, with regard to the 6.5 million that
6 was recently paid, I guess we first need to
7 actually look at the TRO that was entered by
8 Judge Brady. And if you give me just a minute,
9 Your Honor, I believe that that's as Exhibit 3
10 to our submission from yesterday. And if you
11 look at the very last page of it, excuse me,
12 page seventeen, and at page eighteen, seventeen
13 is the conclusion, and page eighteen is the
14 actual order, the Court through -- well, Judge
15 Brady's order does not say day-to-day
16 management. Doesn't say anything remotely like
17 that.

18 What it says is that there will be, the
19 stores will be jointly managed, they will be
20 jointly managing each store without unilateral
21 action by either party. That's key. What
22 United is trying to do here is unilaterally act
23 on behalf of Plaza Extra stores in violation of
24 this TRO in picking with the government,
25 without Mr. Hamed, Mr. Mohammad Hamed's

1 involvement through his agent, a monitor, and
2 putting in place a compliance program. This
3 order prevents them from doing that, because
4 this order requires that there be no unilateral
5 action with regard to managing each store.
6 This says nothing about day-to-day, total
7 management.

8 And if you need further confirmation what
9 Judge Brady meant, go to the next order. No
10 funds will be disbursed from the supermarket
11 operating accounts without the mutual consent
12 of Hamed and Yusuf or their designated
13 representatives. Again, it couldn't be
14 clearer. This is not a simple day-to-day
15 matter. There are no funds, whether it's to
16 pay for capital improvement, land purchases, or
17 inventory, or payroll, nothing can be done
18 without joint approval. And, again --

19 THE COURT: Direct me to the page.

20 MS. COLON: At page eighteen of eighteen
21 of the opinion and order. And it's under the
22 order section of Judge Brady's order. There
23 are 1, 2, 3, 4, 5, 6 separate things that Judge
24 Brady ordered. Starting, and I'm speaking now
25 of the third order, which is at the top of the

1 second column, with regard to the "no funds
2 will be disbursed."

3 THE COURT: And the prior point?

4 MS. COLON: The one right below that, the
5 order at the bottom of the first column, where
6 it says, "that the operations of the three
7 Plaza Extra Supermarket stores shall continue
8 as they have throughout the years prior to this
9 commencement of this litigation, with Hamed, or
10 his designated representative, and Yusuf, or
11 his designated representative, jointly managing
12 each store, without unilateral action by either
13 party, or representatives affecting the
14 management, employees, methods, procedures and
15 operations."

16 So it includes management, not just a
17 matter of operations, and a monitor, and a
18 compliance program goes to the heart of
19 management. That's exactly what compliance and
20 monitoring is about. It's about monitoring the
21 management.

22 Then, the final order that's appropriate
23 here, or that's relevant here, is the third,
24 excuse me, the fourth order, again, on the
25 second column. "All checks from Plaza Extra

1 Supermarket operating accounts will require two
2 signatures, one of the designated
3 representative of Hamed and the other of Yusuf
4 or a designated representative."

5 So, this very narrow view that they would
6 like you to adopt of Judge Brady's order simply
7 is not what he ordered. And be sure to
8 understand that Mr. Mohammad Hamed is not
9 saying that he's standing in the way with
10 whatever this Court has to have done. What
11 he's saying, he needs to be a part of it
12 because Judge Brady's order requires it.

13 THE COURT: Is there someplace in the
14 order, as I believe counsel for the government
15 indicated, where there is a reference to not
16 interfering with the matter that's going on
17 here in District Court?

18 MS. COLON: The Court acknowledged, I do
19 not believe it's in this -- it certainly is not
20 within the orders section, nor is it within the
21 conclusions section, but the Court did
22 acknowledge that it is aware of this ongoing
23 criminal litigation. Beyond that, I do not
24 agree. But it is -- and it certainly was not
25 anything that the Court ordered.

1 In fact, Court ordered, in my opinion,
2 exactly the opposite. The Court wants
3 Mr. Hamed and his interests to be protected and
4 maintain the status quo. And if the United
5 Corporation is going to be allowed to do that
6 unilaterally, in terms of who is going to be
7 monitoring, who is going to be approving
8 payments and not having payment, or what will
9 and will not be paid, who is going to be put in
10 the corporate compliance program as to who
11 reports to who, that prevents Mohammad Hamed
12 from the benefits that he has attained under
13 this restraining order, and that Judge Brady
14 was very clear on.

15 Now, in regard to that, Your Honor, the
16 6.5 million, I have a couple of things to say
17 about that. I did not hear counsel for United
18 address it, but counsel for the government did.
19 And she said that it was considered
20 restitution. I do not believe it is
21 restitution. Restitution would encompass any
22 amounts due and owing to the government within
23 the indictment years, and that's been
24 established that the ten million that was paid
25 back in 2011. This has nothing to do with

1 restitution. This was ongoing tax obligations
2 that continue to accrue, and will continue to
3 be paid. So if for any reason Your Honor is
4 going to calculate restitution for the purposes
5 of payment of any additional fine or cost
6 assessed against United, I certainly do not
7 believe that the 6.5 million be included within
8 the restitution calculation. So I didn't want
9 to make -- I did want to make that point.

10 THE COURT: Your position would then be
11 consistent with paragraph three of the
12 agreement that defines restitution?

13 MS. COLON: Yes. Exactly, Your Honor.
14 Exactly. And that's relevant why? Because,
15 again, if it's considered restitution, that
16 increases it potentially. If Your Honor
17 decides that it's an appropriate thing to do
18 here, an additional fee or expense or cost that
19 United might have to pay, and that, eventually
20 enters back to Mohammed Hamed, who is not here
21 to address that issue.

22 So, again, it impacts him, because he is
23 half owner of or partners in the profits and
24 the operation of Plaza Extra stores, or United
25 doing business as Plaza Extra. And he will be

1 impacted by that. If those kind of arguments
2 are made, and Your Honor does see fit to
3 determine that that restitution goes beyond
4 that \$10 million, or even that anything should
5 be tied to restitution, any additional costs or
6 expenses should be tied to restitution.

7 THE COURT: And how are you saying that
8 that will create additional costs?

9 MS. COLON: To Mr. Hamed?

10 THE COURT: Correct.

11 MS. COLON: Okay. If United is required
12 to pay a percentage of restitution towards
13 additional costs in this case and the 6.5
14 additional payments for United and its
15 individual -- their taxes that have come
16 through to 2012, first of all, the Court right
17 now has declared that Mr. Mohammad Hamed is
18 owner of half of the Plaza Extra interests, and
19 if those funds were used to pay that, I'm going
20 to get to that in a minute, because they were,
21 then that affects Mr. Mohammad.

22 And if additional funds have to be paid
23 because this is now considered restitution, on
24 top of paying the income taxes of the
25 individual defendants for funds that didn't

1 even relate to Plaza Extra income, in addition
2 to Plaza Extra income, then he now is
3 necessarily losing half of whatever that is.

4 For example, let's say, the Court order
5 \$100,000 in additional costs related to a
6 calculation of restitution, that fifty percent
7 of that is Mr. Hamed's money, according to
8 Judge Brady's ruling, and as it stands right
9 now, okay.

10 THE COURT: That would assume that the
11 Court is going to do something other than
12 what's set forth in the 11(c)(1)(C) plea?

13 MS. COLON: That is absolutely correct.

14 THE COURT: Or that would assume that the
15 Court will, will use the V.I. Code provision
16 that speaks about the 5 percent surcharge.

17 MS. COLON: That is correct.

18 THE COURT: So those would be the
19 situations that you're thinking of?

20 MS. COLON: Absolutely. That I'm aware
21 of. And I don't know if the Court could or
22 could not, would or would not go beyond that,
23 but it does affect Mr. Hamed. And that is my
24 point. And that is why, although the
25 government has argued that it's restitution,

1 and I believe Mr. DiRuzzo was silent on the
2 issue, from my point of view, it is not
3 restitution.

4 Okay. And, I guess it doesn't matter if
5 the Court isn't going to entertain that, but it
6 does matter if the Court does wish to entertain
7 that possibility under the V.I. Code.

8 In addition to that --

9 THE COURT: Let me ask you something about
10 this partnership issue. This is a criminal
11 case that an indictment that was against United
12 as a corporation --

13 MS. COLON: Correct.

14 THE COURT: Is it your position that
15 whatever may subsequently happen with respect
16 to the structure of the entity that is now
17 obviously in litigation in another court should
18 then be incorporated into and made part and
19 parcel of this plea agreement that was entered
20 into pursuant to an indictment against the
21 corporation?

22 So let's assume that it's a partnership,
23 which is what you're arguing, and, therefore,
24 based on the current ruling, your client should
25 have some input in what your client would not

1 otherwise have had an input in if the ruling
2 were otherwise, if it were as it was when this
3 agreement was entered, and negotiated, and
4 determined, is it the case, is it your position
5 that whatever relates to sort of partnership
6 now, because this issue is now afflux in court,
7 whatever relates to partnership not only with
8 respect to what your clients, what their input
9 might be, but in terms of knowing what
10 obligations a partnership might have as opposed
11 to a corporation automatically becomes part and
12 parcel of this agreement?

13 MS. COLON: That is not my position for a
14 couple of reasons.

15 THE COURT: Okay. Tell me how would you
16 distinguish my hypothetical to where you're
17 going with your position?

18 MS. COLON: Yes, ma'am. My client is
19 Willie or Waheed Hamed, and it's not a partner
20 with anybody. It is his father who is the
21 partner, at least as determined by Judge Brady
22 to date. And I personally, on behalf of
23 Mr. Hamed, Waheed Hamed, am not presenting a
24 position to this Court regarding partnership or
25 corporation or the entity's status at all.

1 What I'm saying is Judge Brady did that and
2 there is an order in place that is prohibiting
3 the specific requirements of his restraining
4 order to be implemented if this Court does not
5 acknowledge that there's got to be, there must
6 be a role for Mohammad Hamed.

7 THE COURT: So Waheed and Waleed are not
8 partners?

9 MS. COLON: No. Waleed is in a slightly
10 different position.

11 THE COURT: Let's focus on Waheed first.

12 MS. COLON: Yes. And Waleed is not my
13 client, but I believe he's in a different
14 position. Waheed is not a partner.

15 THE COURT: Not a partner?

16 MS. COLON: No.

17 THE COURT: So the interest that he's
18 advancing now is not his?

19 MS. COLON: That's true, but as an officer
20 of this Court, it is my obligation to make sure
21 that Your Honor is aware and has considered
22 another Court's ruling that I believe directly
23 impacts what this Court will do.

24 THE COURT: Understood. And I appreciate,
25 I appreciate your bringing it to the Court's

1 attention. But, I guess, my question is that
2 the argument that you are now raising, the
3 interest that you are now advancing, you don't
4 have a standing to advance, do you?

5 MS. COLON: As to the selection of the
6 monitor, and the compliance program, Waheed
7 does not directly have an interest, no. I am
8 advising the Court, I think Waleed is in a
9 different position, because he is Mohammad's
10 designated agent, so he has an interest as
11 Mohammad's interest agent, but Waheed, my
12 client, is neither a partner nor a designated
13 agent, at this point.

14 THE COURT: All right. So that answers my
15 first question. You can go ahead now and
16 answer the hypothetical with respect to how
17 this aspect of the ruling becomes incorporated
18 into what the Court is doing in a plea
19 agreement for sentencing of a corporation that
20 existed as a corporation at the time of the
21 criminal activity, and how that, why that
22 should be incorporated at this point, and how
23 you would distinguish between incorporating
24 that and anything else?

25 MS. COLON: I believe that the Court can

1 certainly sentence the corporation, and can
2 move forward with regard to that, but where the
3 corporation has input into anything that
4 relates to the sentencing, for example, the
5 selection of the monitor, or the selection and
6 the placement of a corporate compliance
7 program, United cannot do that standing alone,
8 because it's not permitted to do so under Judge
9 Brady's order, as it relates to the Plaza Extra
10 stores.

11 THE COURT: So, are you saying that the
12 Court cannot impose a sentence, it requires
13 United undertake the particular types of
14 actions that are on the table right now, that
15 is, to appoint a monitor, that is, to come up
16 with an ethics and compliance program?

17 MS. COLON: I'm not saying --

18 THE COURT: The Court is precluded from
19 doing that?

20 MS. COLON: I'm not saying that at all. I
21 think the Court must do, under the plea
22 agreement, and just under general sentencing
23 provisions for corporation, but I believe
24 because of Judge Brady's order, the Court must
25 also say to United, and anything that you are

1 going to offer must be offered jointly between
2 United Corporation and Mohammad Hamed or his
3 agent. In other words, United Corporation is
4 not just United Corporation any more.

5 THE COURT: So this Court should enter an
6 order that requires United to consult with the
7 Hameds in satisfying the terms of this
8 agreement, that's your position?

9 MS. COLON: Yes. And that Judge Brady's
10 order compels that, requires that.

11 THE COURT: Okay.

12 MS. COLON: With regard to that \$6.5
13 million, those funds, I think we have it
14 attached as an exhibit, perhaps it's not an
15 exhibit, but those funds, Your Honor, were paid
16 by a, my understanding is, those funds that
17 were paid, were paid out of a profit account
18 for Plaza Extra, one that would have, and
19 should have been controlled by Judge Brady's
20 TRO. And that they were paid unilaterally
21 without Mr. Mohammad Hamed's approval.

22 Now, it is not Mr. Mohammad's intent to
23 slow this up at all, or to prevent IRB from
24 getting paid. And, in fact, after the fact,
25 even though it was done in violation of the

1 TRO, Mr. Mohammed validated that payment.

2 However, that was because the agreement
3 encompassed paying everybody's outstanding
4 taxes through United Corporation, and it was
5 anticipated, which is why we went through the
6 exact same procedure, that Willie Hamed and
7 Wally Hamed's outstanding taxes, which we
8 thought were \$315,000, perhaps it's less now if
9 the government is saying they're paid and
10 square with IRB through 2008, but at that point
11 we were covering all of 2002 through 2012, ten
12 years of taxes for two individuals. And it was
13 clearly anticipated through the plea agreement
14 itself, and through what actually happened that
15 United, the profits count for Plaza Extra
16 that's handling United name would be paying for
17 everybody's taxes, and Mohammad Hamed would not
18 have ratified or validated that inappropriate,
19 illegal, and in violation of the TRO payment of
20 the 6.5 but for the fact that two things: He
21 did not wish to disturb this proceeding, and he
22 did not wish to interfere with the VIBIR
23 getting paid. And, of course, there was going
24 to be a like payment on behalf of his children
25 for their taxes.

1 THE COURT: Where does it say in the
2 agreement that it was, that it was contemplated
3 that United was paying the taxes for all the
4 individuals?

5 MS. COLON: Because if United doesn't,
6 does not -- well, because United did
7 acknowledge that it was a special condition of
8 probation that all of those payments would be
9 made. And just as counsel for the
10 government --

11 THE COURT: But where does it say that
12 United would pay?

13 MS. COLON: It was the catchall. And as
14 counsel for the government said, in case the
15 individuals didn't pay, that's what her
16 catchall was so that United would be
17 responsible.

18 THE COURT: No. That's not what I
19 understood her to say. I understood her to say
20 that it was a catchall that United was
21 responsible to make sure that it was paid, but
22 I thought she specifically said that where she
23 disagreed with you was that there was no
24 contemplation that you, or nothing providing
25 that United was the entity that was going to be

1 paying.

2 MS. COLON: I think where she disagreed
3 with me was that United was going to make sure
4 that this only referred to any income derived
5 from the Plaza Extra stores or from United, but
6 that's not what this says.

7 THE COURT: Hold on for one second.
8 Attorney Hendrickson.

9 Am I mistaken in terms of what you said?

10 MS. HENDRICKSON: No, Your Honor. And I
11 think if I misspoke, let me clarify now. When
12 I was talking about the individual defendants,
13 I agree with Miss Colon, they were required to
14 pay, file their taxes, and to pay. They were
15 part of the condition of probation as the Court
16 just stated. The government wanted to make
17 sure there was leverage so United would make
18 sure everybody paid whether it was the
19 shareholders or whether it was the individual
20 defendants. We agree on that.

21 The difference is the VIBIR participated
22 in the mediation, and through the mediation,
23 made arrangements with the individual
24 defendants. And so the government's point is
25 not that they don't owe money. I think they do

1 owe the \$315,000, or whatever Mr. Andreozzi
2 said they owe. Government's point that there
3 is no agreement that United was to pay that.
4 That was not an agreement out of the mediation.

5 So, I think the only issue is whether the
6 corporate sentencing can take place today. And
7 so the government's position was, since the
8 individual defendants Waheed Hamed and Waleed
9 Hamed have had negotiations with the BIR, and
10 they are happy with the procedure, that it no
11 longer requires the Court or the United States
12 government oversight to make sure that that
13 money gets paid.

14 THE COURT: Let me ask you this, to make
15 sure I understand. You said because VIBIR
16 appeared in these mediations and there were
17 these agreements with the individual
18 defendants, that is not to say that they don't
19 owe additional monies, but it's not the case
20 that United is responsible for those payments,
21 correct?

22 MS. HENDRICKSON: Yes. And during the
23 mediation, the government said it would not
24 oppose the Hameds asking United to pay.

25 THE COURT: Right, I understand that.

1 MS. HENDRICKSON: But recognizing that was
2 United's decision.

3 THE COURT: Let me take you back before
4 the mediation to the plea agreement. What was
5 the contemplation in the plea agreement, where
6 it says, United acknowledges that a special
7 condition of probation will require that all
8 corporate returns be filed, and all amounts due
9 and owing under this agreement and all taxes
10 due and owing for tax years 2002 through 2008
11 must be paid prior to the termination of the
12 period of probation.

13 I thought you said that was not intended
14 to say that United was going to be paid for it.
15 Did I misunderstand you?

16 MS. HENDRICKSON: No, I did say -- did not
17 intend. Did not say that United was going to
18 pay for it, which was in 2010, that might have
19 been the expectation. But I think the other
20 issue is --

21 THE COURT: Sorry, hold on. You did say?

22 MS. HENDRICKSON: Sorry. That may have
23 been their expectation, but not known to the
24 government in 2010, when everybody was
25 collaborating and there was a joint defense

1 agreement. They may have had some expectation
2 about whether United would pay it or not. I
3 have no personal knowledge of that.

4 THE COURT: Okay.

5 MS. HENDRICKSON: Part of the plea
6 agreement.

7 THE COURT: What the Court is interested
8 in knowing is what the plea agreement calls
9 for. And your understanding of the plea
10 agreement was that there was nothing in it with
11 regard to United being responsible for paying
12 those?

13 MS. HENDRICKSON: Correct. And I agree
14 with Miss Colon, that in here, it was
15 contemplated that if Waleed or Waheed had not
16 payed their taxes, that would be something the
17 government would be following up with United,
18 because they were working there. So I'm not --
19 we're not disputing that part, but the
20 additional fact since this agreement was
21 negotiated in February 2010 is we've had two
22 mediation sessions, and we've had agreements
23 with the BIR that encompass the taxes. So from
24 the government's perspective, those addendum
25 and the mediation and the agreements the BIR

1 recently reached last month with the individual
2 defendants satisfies this portion of the plea
3 agreement.

4 THE COURT: Well, you know, you know, this
5 all makes it a little confusing for the Court
6 to be quite honest with you, because I'm
7 looking at the language, and I'm trying to
8 understand what it is the Court is supposed to
9 be entering into in terms of a sentence, and it
10 seems like the goalpost appeared to be moving
11 depending on whether you're looking at it from
12 the 2010 perspective, or whether you're looking
13 at it from what was mediated, or when the VIBIR
14 came in. And I'm not sure I understand what it
15 is specifically that the government and United
16 is asking the Court to, in fact, impose. And
17 what the Court's understanding should be of
18 whether everything that is supposed to happen,
19 as a precursor to the sentencing, or as part of
20 the probationary period, is being done or has
21 been done or will be done. And that's what I'm
22 trying to figure out. Where exactly are we?

23 I mean, in the position of Attorney Colon
24 is that there was this \$315,000 that has been
25 approved by the marshal for release that has

1 not been paid, and that she's contending should
2 have been paid. But I'm hearing from your
3 perspective that everything that was supposed
4 to have been paid under the agreement has, in
5 fact, been paid. I'm not sure which it is,
6 quite frankly.

7 MS. HENDRICKSON: Okay. I think -- let me
8 try to clarify. The issue regarding the
9 payment, the primary concern, not the only
10 concern, the primary concern was that all of
11 the profits from United would be reported and
12 the income tax would be paid. Okay. That's
13 the primary concern. And that issue has been
14 dealt with.

15 There also was the requirement for two
16 individual defendants, because they were
17 defendants in the case, and made a lot of money
18 in 1996 through 2001. That's why they were
19 charged individually, that they also in return
20 for getting their case dismissed, come current
21 with their taxes.

22 THE COURT: So that's the individual
23 defendants?

24 MS. HENDRICKSON: Yes. So just as we did
25 with the closing agreement in 2011, the first

1 one, the BIR didn't require the individual
2 defendants to pay or to file all their
3 individual income tax returns. The BIR and the
4 United States did not require the individual
5 defendants to pay one dollar. We all agreed
6 \$10 million would be paid in full satisfaction.

7 So the government's position today is that
8 while they are required to pay, that since they
9 have met with the BIR and there is a process in
10 place that it's not incumbent upon the Court or
11 the United States anymore to make sure that
12 gets paid.

13 THE COURT: But it's not the \$10 million,
14 \$10 million is not the total amount though,
15 because it's now sixteen and a half.

16 MS. HENDRICKSON: I'm saying for purposes
17 of procedure.

18 THE COURT: Right. Okay.

19 MS. HENDRICKSON: In 2011, when we
20 negotiated that the resolution of the years at
21 issue in the indictment 1996 through 2001.

22 THE COURT: Okay.

23 MS. HENDRICKSON: Instead of requiring, as
24 it says here, that, or I should go back to the
25 other paragraph. Okay. Going back to page

1 four of the plea agreement, the paragraph three
2 that talks about restitution -- and by the way,
3 to Miss Colon's point about restitution being
4 limited to the '96 through 2001, I was
5 answering the Court's question more generally,
6 but if the Court was asking more specifically
7 restitution versus other money to be required
8 to pay under the plea agreement, I agree
9 restitution is '96 through 2001.

10 So looking at paragraph three, though, it
11 says that restitution will be paid for all of
12 those years that we're going to argue about it,
13 brief it, the Court can decide. That didn't
14 happen. What we ended up doing was having
15 additional mediation, and then getting a
16 resolution that \$10 million would be accepted
17 by the BIR in full payment for every individual
18 including the individual defendants for all
19 individual shareholders and for United
20 shareholder corporation.

21 So the point is, we can do the same thing
22 with the later years that we did then. We
23 agreed to take a certain amount. It didn't
24 comply exactly with the terms of the plea
25 agreement. That's why we filed the addendum

1 and said for purposes of this plea agreement,
2 this section has been complied with. And the
3 government's point right now is to say that for
4 this language on page eleven, because United at
5 least the profit and the tax on United
6 operations has been paid, and because
7 individual defendants have negotiated with the
8 BIR and have a process in place that fulfills
9 that, it's agreed that taxes not paid right
10 now. But since this is a case that's been
11 complicated by the civil litigation since the
12 BIR participated in the mediation and when
13 those returns get filed, then, they have three
14 years, they can try collect the money that it
15 need not hold up this criminal case of a
16 corporate guilty plea.

17 THE COURT: So why isn't that, what you
18 have just said, a change to this agreement?

19 MS. HENDRICKSON: I don't --

20 THE COURT: Because the agreement in 2010,
21 on page eleven, in addition to the -- and I
22 understand the \$5,000 fine, the \$10 million
23 agreement that United will pay back the VIBIR
24 for restitution as set forth in specific
25 paragraphs in the agreement, and then United

1 will pay 1 million as a substantial monetary
2 penalty, correct?

3 MS. HENDRICKSON: Yes.

4 THE COURT: I understand that point. You
5 said that was the agreement that you would
6 accept that in full and complete satisfaction
7 of everything that was due in the agreement.

8 MS. HENDRICKSON: Yes.

9 THE COURT: I'm saying, what about 2002 to
10 2008, which is in section eleven of the
11 agreement, which is not referenced in the plea
12 agreement addendum, but it still seems to Court
13 as I read this, and I read this meaning the
14 original plea agreement, and I read the plea
15 agreement addendum, it seems that the plea
16 agreement addendum deals with certain portions
17 of the agreement, but it doesn't deal with
18 section eleven. So as I read the two
19 documents, it looks to me like section eleven
20 is still to be resolved. Then I read what was
21 filed more recently, the second addendum, and
22 it seemed as though the second addendum was
23 intended to resolve section eleven of the
24 original plea agreement, because it refers to
25 2002 through 2006, and, in fact, it

1 specifically says, part eleven of the plea
2 agreement of United Corporation to do X, Y, Z.

3 MS. HENDRICKSON: Right.

4 THE COURT: So seems to me in reading the
5 three documents, the first document set out the
6 entirety of what was to be done, the second
7 document, the second addendum, sorry, the first
8 addendum, plea agreement/addendum, dealt with a
9 portion of what was to be done under the
10 original agreement.

11 MS. HENDRICKSON: Yes.

12 THE COURT: And refers to those specific
13 sections of the agreement. And then plea
14 agreement second addendum deals with the rest
15 of what was to be done, which specifically
16 refers to section eleven. And as I read
17 section eleven, it speaks to taxes for the
18 years 2002 through 2008, and it speaks to
19 United taxes, and it speaks to the taxes for
20 the individual defendants that are required to
21 be due, that are required to be paid. And it
22 says all taxes due and owing to those years.

23 So I was reading this second addendum as
24 dealing with that particular provision of the
25 agreement.

1 MS. HENDRICKSON: Yes.

2 THE COURT: So I guess I don't understand
3 how we are now at the point where the argument
4 is well, the \$10 million was really intended to
5 deal with everything in the agreement, and then
6 we had this other mediation where VIBIR came
7 in, and they entered into separate agreements
8 with the individual defendants and then we got
9 \$6.5 million more. So we've now agreed that
10 that satisfies everything and the \$315,000 is
11 for Attorney Colon's clients to deal with
12 United however they choose?

13 MS. HENDRICKSON: Well, I think the
14 important distinction is the first agreement
15 dealt with 1996 through 2001. Those were the
16 years at issue in the criminal case.

17 THE COURT: Tell me, then, what does
18 section eleven of that first agreement do?
19 Because that deals with 2002 through 2008.

20 MS. HENDRICKSON: Okay. Are you asking me
21 if the first plea agreement addendum impacts
22 paragraph eleven?

23 THE COURT: No. I'm asking you, I
24 understood you to say that the first agreement
25 dealt with the years of the indictment 1996 to

1 2001, and I'm saying I see a section eleven in
2 the first agreement that speaks to other taxes
3 that are due from 2002 to 2008.

4 MS. HENDRICKSON: Yes.

5 THE COURT: So how is that separated from
6 the first plea agreement entered into by the
7 parties?

8 MS. HENDRICKSON: It's not separated. The
9 second addendum addresses paragraph eleven in
10 the agreement.

11 THE COURT: Correct. But paragraph eleven
12 was always part of the plea agreement, from the
13 outset, correct?

14 MS. HENDRICKSON: Yes.

15 THE COURT: Okay. So, there was 1996 to
16 2001, that was dealt with in the beginning
17 part, the restitution, under paragraph three of
18 section three. And there was a section eleven
19 that dealt with 2002 to 2008.

20 MS. HENDRICKSON: Yes.

21 THE COURT: So the entirety of the
22 agreement dealt with 1996 to 2008?

23 MS. HENDRICKSON: Correct.

24 THE COURT: Okay. The first addendum to
25 that agreement dealt with 1996 to 2001?

1 MS. HENDRICKSON: Yes. And the point I
2 was trying to make was as a result of the plea
3 agreement addendum, the Hameds individually did
4 not have to pay anything. So if they had stock
5 sales, if they had all kinds of income, '96
6 through 2001, they didn't have to pay a dime.

7 THE COURT: Okay.

8 MS. HENDRICKSON: The government and the
9 BIR agreed to reach a resolution that \$10
10 million would be accepted for payment of all
11 corporate taxes, individual income taxes, that
12 would include taxes on the profit of United,
13 would include any other taxes for any other
14 source.

15 THE COURT: Individually?

16 MS. HENDRICKSON: Individual.

17 THE COURT: Everything.

18 MS. HENDRICKSON: Complete pass.

19 THE COURT: Okay.

20 MS. HENDRICKSON: So my point is, taking
21 that framework, that procedural framework,
22 then, that is what we are trying to do for the
23 second addendum, to say this paragraph eleven
24 required returns to be filed and tax to be
25 paid, which was in '96 to 2001 money had to be

1 paid, it was resolved with the addendum.

2 So the government's position is that the
3 mediation and the dealing of the Hameds with
4 the BIR and having that process fulfills this
5 part, even though their individual income taxes
6 are not paid, because the BIR has procedures
7 that they can go collect that money, they can
8 negotiate with the Hameds and decide whether
9 they owe any money or not. The BIR has
10 complete discretion to do that.

11 So for purposes of saying United
12 Corporation on a United Corporation guilty
13 plea, in the mediation, as you heard, and while
14 we're talking about it, United would not agree
15 to pay the Hameds' taxes, that was a deal
16 breaker. So, the best we could do is try to
17 get each party to talk to the BIR individually
18 and come up to their own arrangement.

19 So in the government's position that
20 complies with this paragraph, because the whole
21 point was for everyone to get current on their
22 taxes to file or to enter into a closing
23 agreement, so this Court should not have to
24 wait when the BIR has made arrangements with
25 the individual defendants to sentence United

1 Corporation. It's between the BIR and the
2 individual defendants whether they owe
3 \$315,000. I mean, counsel for the Hameds may
4 be able to go back and talk to them and
5 negotiate to a lower amount. The government's
6 point is that's not something that the
7 government and the Court need to be involved
8 with.

9 THE COURT: So, in other words, the first
10 agreement is different from the second one?

11 MS. HENDRICKSON: Yes. But the whole
12 point of the entire plea agreement was get
13 United Corporation individual shareholders and
14 individual defendants caught up in their taxes
15 for '96 through 2008 whether it was, it was
16 through filing and paying tax, or working
17 something out with the BIR. That has happened.
18 We should proceed.

19 THE COURT: And the language that says,
20 make full payments, the Court should ignore?
21 Where it says, the individual defendants shall
22 file the outstanding returns and reporting
23 documents and shall make full payments of the
24 amounts due thereupon, the Court should ignore
25 that?

1 MS. HENDRICKSON: To the extent any
2 payments are due, they can be a condition of
3 probation. We can follow with the BIR and find
4 out what happens with the Hameds. The
5 government's point is that should not hold up
6 the corporate sentencing hearing.

7 THE COURT: So the Court should ignore the
8 part that says prior to the sentencing hearing?

9 MS. HENDRICKSON: Well, again, I think,
10 taking the whole paragraph into context at the
11 end, it was supposed to be paid prior to the
12 termination of the probation. Now, most of it
13 has been paid prior to. So, United is still
14 going to be on probation for a year, and the
15 government can be in contact with the BIR to
16 find out, do the Hameds owe money? Are they
17 paying the money? Is there some agreement that
18 can be reached?

19 If the Hameds and BIR agree that they can
20 pay \$10,000 and the tax obligations are
21 satisfied, we don't have any role in that.
22 It's between the BIR and the Hameds. But
23 before this paragraph was written, we had no
24 idea what was going on. Now we know they're
25 talking, there are returns that have been

1 prepared, and there is a dollar amount,
2 apparently, that's owed.

3 So the only issue is how that gets paid.
4 Now, in light of the civil litigation, that's a
5 big issue. And the government's position is
6 that's one the Court should not intrude on.
7 Let me grab Judge Brady's order. If I just
8 find the paragraph that applied to that,
9 paragraph thirty seven, page eight of eighteen,
10 does the Court have that?

11 THE COURT: Yes.

12 MS. HENDRICKSON: By saying "A restraining
13 order was entered by the District Court in the
14 criminal action which remains in place." And
15 if you go to the very end of that paragraph at
16 the top of the next page, it says, "This Court
17 cannot enforce the restraining order or
18 otherwise control any aspect of the criminal
19 action or its disposition."

20 THE COURT: Okay.

21 MS. HENDRICKSON: So it's the government's
22 position that the second addendum, the
23 mediation that Judge Barnard helped us with was
24 a way to try to bring this case to a resolution
25 in light of all these other issues that were

1 occurring, and we think that was a fair
2 resolution, and the Court should proceed.

3 MS. COLON: If I may respond, Your Honor.

4 THE COURT: Yes.

5 MS. COLON: There was always an agreement
6 that United would be paying for everybody's
7 taxes. Now, it's true, as Attorney DiRuzzo
8 pointed out that, in essence, creates more
9 income to the individual whose taxes paid, and
10 I'm sure the users have acknowledged that, and
11 will acknowledge that in their 2013 taxes, and
12 I'm sure have done so all along. But why do we
13 know that that agreement was in place? Two
14 reasons. One, the probation requirement in the
15 plea agreement was there to ensure that if the
16 individual defendants didn't pay, Plaza
17 Extra -- excuse me, United Corporation would.
18 That's the whole purpose.

19 Now, initially, counsel for the government
20 agreed with that proposition, but only to the
21 extent that it applied to the individual
22 defendants who were shareholders, or
23 shareholders who were not defendants, but not
24 as to the two Hameds. That's not true. It
25 applies to everybody.

1 Then when you take a look at the first
2 addendum, the \$10 million pays everybody's
3 taxes, the individual defendants, United, and
4 United shareholders. It pays everybody's taxes
5 from 1996 through 2001. Including Willie
6 Hamed; including Wally Hamed. Willie Hamed and
7 Wally Hamed did not contribute individually to
8 that payment. The United Corporation paid the
9 entire amount, because that was always the
10 agreement. United Corporation was going to be
11 paying this. And, of course, the government
12 wanted that, because everybody else's assets
13 were restrained. Nobody else had access to
14 their assets. The only place the fund could
15 have come from was United. That's what always
16 was contemplated.

17 Now, they have a new agreement that
18 addresses part eleven, which involves my
19 clients, and they want a new addendum to the
20 agreement that addresses part eleven, but they
21 want it without his signature. And the
22 original plea agreement prohibits that. They
23 want it both ways. They don't want my client
24 to be involved or a party to the change to the
25 agreement, but they want him still to be liable

1 for any taxes under that section of the
2 agreement. And I don't think they could have
3 it both ways.

4 If VIBIR and the United States are going
5 to say that Waleed, excuse me, Waleed and
6 Waheed do not owe any taxes from 2002 to 2012,
7 and that this second addendum covers them, just
8 like it covers all the other individual
9 defendants, and all the other shareholders and
10 United, then I don't have a problem with it.
11 But I'm not hearing that. I'm hearing we still
12 owe the taxes, but we don't have any right to
13 say anything about the second addendum in the
14 agreement, because it doesn't involve us. How
15 does it not involve us? Our taxes are still
16 being considered due and owing under that same
17 section. Not under some outstanding agreement
18 that may or may not have occurred with BIR.
19 The other alternative is for them to be paid.
20 The Marshals have already approved it. The
21 agreement that was always in place for these
22 taxes was that United would pay. And that's
23 demonstrated by the fact they did pay. They
24 paid \$10 million and that covered everybody.
25 No individual contributed to that.

1 MS. HENDRICKSON: Your Honor, may I make a
2 point?

3 THE COURT: Very briefly. And then I will
4 come to you in a moment, Attorney Andreozzi.

5 MS. HENDRICKSON: In February 2011, United
6 agreed to pay for everyone. In June of 2013,
7 United did not agree. But the Hameds owe taxes
8 every year, whether or not there is a criminal
9 case involved. So, the only distinction, I
10 mean the benefit they get from that second
11 addendum is the United States government does
12 not care and is not going to follow up on what
13 you do with your taxes for 2002 through 2008.
14 So the benefit they get is, it's not part of
15 the criminal case any more. It was in the
16 original plea agreement, we would have followed
17 up to say did you pay for taxes for 2002, 2003,
18 2004, 2005? We're saying based on the
19 mediation now, the BIR is going to handle that,
20 so the benefit to the defendants is that that
21 is now not going to be overseen by the
22 government. The government can't control
23 whether United is going to pay or not.

24 THE COURT: But isn't The Government of
25 the Virgin Islands a party to this criminal

1 action?

2 MS. HENDRICKSON: Yes.

3 THE COURT: So how is it that the U.S.
4 government isn't going to follow up with
5 respect to whether these taxes are due and
6 owing, but the V.I. government can follow up
7 with respect to what is due and owing?

8 MS. HENDRICKSON: In a civil process, not
9 as part of the criminal case. So, for example,
10 in a typical criminal tax case, if we were in
11 probation six months from now, and I called
12 somebody from the VIBIR, and they told me that
13 Waheed Hamed did not file any tax returns,
14 wouldn't reply phone calls, didn't meet with
15 them, I would be filing a motion with the Court
16 saying we have to have a hearing, and have
17 United come in to explain why Mr. Hamed hasn't
18 filed his returns and won't cooperate with the
19 BIR. But that has been taken care of by the
20 process.

21 MS. COLON: Except payment.

22 MS. HENDRICKSON: Except payment. Agreed.
23 But we can't get them -- two separate issues.
24 One, is the government going to follow up on
25 whether they pay? The United States government

1 is not going to do that through part of the
2 criminal case, which it originally was in the
3 agreement.

4 THE COURT: Yeah, but the first plea
5 agreement that you had was the plea agreement
6 that was agreed by all the parties, right?

7 MS. HENDRICKSON: Yes.

8 THE COURT: The individual defendants were
9 a part of that as well?

10 MS. HENDRICKSON: But I'm saying in
11 February of 2010, it was never stated that
12 United was going to pay all taxes due under
13 this plea agreement. It was never stated.
14 Now, it may have been an understanding that
15 they had, in fact, in February of 2011, well,
16 that was negotiated, July of 2011, when the \$10
17 million payment was made, United did agree to
18 pay for everyone. But now --

19 THE COURT: So you're saying that that
20 agreement was separate and apart from the
21 original agreement? In other words, you had an
22 agreement that didn't contemplate who was going
23 to pay, and then in 2011 --

24 MS. HENDRICKSON: Yes.

25 THE COURT: -- United decided they would

1 pay. And in 2013, decided they wouldn't pay?

2 MS. HENDRICKSON: Correct. In 2010,
3 government just said, this is how much, these
4 are the years that need to be filed, and these
5 are the years that need to be paid. There was
6 no understanding in February 2010 who was going
7 to pay that.

8 Now, the fact that it happened in
9 February 2011, the government just agreed with
10 all of the parties and the BIR \$10 million
11 would be accepted as full payment. Government
12 didn't care whether 8 million came from United
13 and the other \$2 million came from the
14 individual defendants. That was not the
15 government's concern. That's the point now, it
16 should not be the Court's concern.

17 The fact that the United won't pay for the
18 Hameds, that is a separate issue. In February
19 of 2011, yes, they paid for everyone's. Now,
20 in June, July of 2013, United does not agree to
21 pay, but the Hameds, as taxpayers, are legally
22 obligated to report income and pay taxes
23 whether or not they're part of a criminal case.

24 THE COURT: But isn't there another issue
25 separate and apart from who is going to pay?

1 Aren't we ending up with a situation wherein --
2 there was an agreement clearly that all taxes
3 would be paid, correct, initially? All taxes?

4 MS. HENDRICKSON: In the agreement?

5 THE COURT: Yes. For 1996 to 2001, and
6 then pursuant to section eleven, 2002 to 2008.

7 MS. HENDRICKSON: That all taxes would be
8 paid by the end of the term of United's
9 probation, yes.

10 THE COURT: Well, actually, it was, that's
11 a failsafe.

12 MS. HENDRICKSON: Yes.

13 THE COURT: But it was supposed to be paid
14 prior to sentencing.

15 MS. HENDRICKSON: Right.

16 THE COURT: And then, as you indicated,
17 United was -- there was this provision that the
18 government had as a benefit to it to make sure
19 that, in fact, the payments were made.

20 MS. HENDRICKSON: Right.

21 THE COURT: But the understanding was, it
22 was going to be paid, all taxes were going to
23 be paid as part of the agreement.

24 MS. HENDRICKSON: Yes. And frankly,
25 because United won't pay now, because there is

1 a civil litigation, we understand that's why
2 the Hameds have not paid. So, they should not
3 be harmed in the criminal case for not paying,
4 because there's been a falling out there.

5 THE COURT: Okay. But the agreement was
6 that all taxes would be paid?

7 MS. HENDRICKSON: Yes.

8 THE COURT: The government has now decided
9 that it is agreeing to accept something short
10 of all?

11 MS. HENDRICKSON: Yes.

12 THE COURT: Right?

13 MS. HENDRICKSON: Yes.

14 THE COURT: And the remainder is left for
15 the Hameds to take care of however they can?

16 MS. HENDRICKSON: Yes. Just as it may
17 have been, there may have been two or three
18 defendants who hadn't paid, two or three United
19 shareholders hasn't paid, and we would have
20 been dealing with this over the course of the
21 one-year probation. We didn't expect it to be,
22 all be resolved today. At the time of
23 sentencing we contemplated that and hoped that
24 would be the case, but put it in that language,
25 because we knew that things happen, and that

1 may not have occurred.

2 THE COURT: So from your perspective, now,
3 whatever VIBIR does with respect to these
4 additional payments that are due, or appears is
5 due, is between VIBIR and the Hameds?

6 MS. HENDRICKSON: Yes. We're saying the
7 government's position is that they should not
8 be harmed in the criminal case because there's
9 been a falling out between the Hameds and the
10 Yusufs.

11 THE COURT: Understood. And I think
12 that's that's clear. The Court's concern,
13 though, is that at the outset there seem to be
14 an agreement between all parties when all
15 parties were on board, when all parties signed
16 onto the initial plea agreement, there seemed
17 to be an agreement that all would be paid. And
18 now we're at the --

19 MS. HENDRICKSON: By the end of probation.
20 But like I say, right now, we're saying that
21 BIR now is speaking with counsel or if
22 Mr. Andreozzi was involved with the
23 representatives of BIR and they have a process
24 in place now, there is nothing stopping the
25 BIR, Mr. Andreozzi from negotiating, going over

1 the returns that have filed, the BIR in light
2 of the circumstances could say, okay, just give
3 us 5,000 and we'll call it even. They have
4 that complete power.

5 So, the benefit that they're trying to get
6 right now is to say under the plea agreement in
7 February of 2010, United was obligated to pay
8 their taxes. That's not what the plea
9 agreement said. That's our point. That that
10 may have been an understanding, and in
11 February -- in July of 2011, that was the case,
12 but it's not the case now. And that should not
13 hold up the resolution of the corporate
14 sentencing.

15 THE COURT: Meanwhile, the government,
16 from the government's perspective, when we're
17 talking about the government, we're talking
18 about V.I. government, and the U.S.
19 government --

20 MS. HENDRICKSON: Yes.

21 THE COURT: -- has decided to take less
22 than all?

23 MS. HENDRICKSON: Yes. Because it's not
24 the Hameds' fault that there was this falling
25 out in the interim between the first addendum

1 and where we are today.

2 (A brief recess was taken.)

3 THE COURT: Attorney Andreozzi.

4 MR. ANDREOZZI: Thank you, Your Honor. To
5 address Attorney Hendrickson's point, first,
6 she indicated that the plea agreement didn't
7 contemplate for the years '96 to '01 that
8 Waleed and Waheed Hamed, their taxes, because
9 they didn't know whether there would be
10 dividends, et cetera. The returns were already
11 filed, but the indictment in the case involved
12 taxes owing by Waleed Hamed and Waheed Hamed.
13 The plea agreement absolved them of any
14 liability for those, any counts of the
15 indictment for those. It addressed, the \$10
16 million paid was, was a restitution figure that
17 it resolved for the liability for all of the
18 individual taxpayers. And so they did owe
19 under the indictment and the plea contemplates
20 that.

21 She then changed it and said that the plea
22 contemplates it, because it says all taxes
23 paid, it contemplates all individual
24 defendants, but that the mediation session on
25 July, June 19th changed that, and it, it

1 changed it to individual, some individual
2 restitutions from the individual defendants,
3 case by case.

4 The problem with that is, United
5 Corporation came into the mediation with its
6 \$6,586,132 check. That was the precise amount
7 to pay the tax liabilities for the Yusuf
8 taxpayers all the way through to whatever it
9 was, 2010. They came to the mediation with
10 that check. It was already calculated. And
11 the Marshal Service authorized release of that
12 check on June 14th, a few days before the
13 mediation. So the checks were cut per the plea
14 agreement. And if the checks are cut to pay, I
15 would assume that they're for the precise tax
16 liabilities on the returns as filed by the
17 individuals. If those checks were cut and paid
18 per the plea agreement for those individuals,
19 all we're saying is that it should also be per
20 the terms of the plea agreement paid for the
21 other two individuals that are remaining,
22 Waleed Hamed and Waheed Hamed.

23 Miss Hendrickson admits that the terms of
24 the plea agreement are there to ensure that the
25 amounts of tax owing for those out years are

1 paid before, before United is released from the
2 probation. It's a hook to make sure that
3 United makes good and pays those taxes. It
4 can't pay those taxes for some and not for all.

5 THE COURT: Okay. Thank you.

6 MS. HENDRICKSON: Your Honor, may I make
7 one brief point?

8 MS. COLON: I had not finished, Your
9 Honor.

10 THE COURT: Okay. I will allow Attorney
11 Hendrickson to go, and Attorney Colon, you can
12 go after.

13 MS. COLON: Thank you.

14 MS. HENDRICKSON: Your Honor, the hook of
15 the condition of probation was that so there
16 would be leverage United could exert over the
17 individual defendants. It was not that United
18 would pay. The government didn't care who
19 paid. The government wanted to make sure it
20 was paid.

21 Since the Hameds were working for United,
22 let's say, well, the probation starts six
23 months later, we find out the Hameds aren't
24 filing, and they haven't paid the taxes they're
25 supposed to pay, then the government, under the

1 terms of the plea agreement, could go to United
2 and say, why aren't they paying? And if you're
3 paying them a salary, you need to garner it and
4 start taking that money right now. So that
5 would be the kind of leverage that the
6 government would have expected to exert if the
7 payments weren't made by the individual
8 defendants. There was no anticipation, at the
9 time, that United would pay the tax liabilities
10 of everyone included in the plea agreement.

11 MS. COLON: If I may, Your Honor.

12 THE COURT: Yes. Attorney Colon.

13 MS. COLON: The expectation, and the
14 promise from United was that they would pay
15 everybody's tax liability, and they did, up
16 through 2001, when they paid that \$10 million
17 payment. The hook was to make sure that United
18 paid if no one else paid. And that United
19 stuck to their agreement to pay. Because
20 nobody else here is on probation, only United
21 is going to be on probation. And it is a term
22 of the condition of probation. They cannot be
23 released from probation unless all taxes are
24 paid under the agreement. That is what was
25 contemplated. That is what was put in place.

1 And that's the reason it was put in place.

2 Now, the reason that the Hameds agreed is
3 because they had reliance on that. They knew
4 that if United reneged on their agreement to
5 pay the individual tax, which they had agreed
6 to do, then, under the plea agreement, they'd
7 be stuck with it as a condition of probation.
8 And now they want to change that, where the
9 Hameds relied on their condition, relied on
10 their provision of the agreement. And they
11 want to change it without giving the Hameds
12 benefit for clearing their taxes, saying,
13 you're right, they don't want anything else,
14 and taking that protection that they had, that
15 they could rely on, United being stuck,
16 ultimately having to pay their taxes if they
17 couldn't, because United had originally agreed
18 to pay them, because it would be in United's
19 best interest if they wanted to get off
20 probation to pay everything. And that was what
21 was contemplated by everyone. And you can't
22 change that without their signatures. The plea
23 agreement says that.

24 THE COURT: But would you agree, though,
25 Attorney Colon, that there is nothing in here

1 that says that United is responsible for paying
2 the taxes, wouldn't you?

3 MS. COLON: I -- there is nothing that
4 says it explicitly like that, but ultimately
5 they were responsible, because ensuring payment
6 was going to be a condition of their probation.

7 THE COURT: They were responsible for
8 ensuring that the payments were made at the end
9 of the day?

10 MS. COLON: Right. And Waheed and Waleed
11 might not have been working for them.

12 THE COURT: Or they might have been.

13 MS. COLON: Or they might have been.

14 THE COURT: So it is not necessarily the
15 case that in order to ensure that the payments
16 were made that United actually had to make the
17 payments?

18 MS. COLON: Well, ultimately, yes, because
19 if it couldn't be made by anybody else, and I'm
20 not limiting this to the Hameds, if no one else
21 could pay, and that was the amount, because all
22 of the assets are restrained by the restraining
23 order. So how else was this going to get paid?
24 And what evidence do we have that that, in
25 fact, was what was contemplated by everybody?

1 They paid it. They paid \$10 million.

2 Now, since then, they have a fall out.

3 They want to renege on the agreement, that's on
4 United. And I agree, that's up to the civil
5 court to deal with, but in terms of change this
6 plea agreement to alter what section eleven
7 says, or to put new terms as to what will
8 satisfy section eleven by the second addendum,
9 my client hasn't signed that, and he's required
10 to sign that. I don't know how anybody gets
11 passed that, because it directly affects his
12 catchall as well, not just the government's
13 catchall.

14 With regard to the documents issue, I'm a
15 little concerned with the way Attorney DiRuzzo
16 addressed the Court on that. It sounded to me
17 very much like his anticipation is United will
18 control the documents, and give it out in
19 discovery in the civil case as it sees fit.

20 That's why we really do need judicial
21 monitoring and judicial involvement in this.
22 Because my client has equal access to those
23 documents and should have equal access to those
24 documents, at any time. Not through some sort
25 of -- my client isn't even a party to the civil

1 case.

2 If Waheed Hamed wants those documents, he
3 wants to be assured that he can walk into the
4 depository and ask to see the documents. I'm
5 not hearing that from Attorney DiRuzzo, and
6 that concerns me greatly, which is another
7 indication as to why we do need court
8 involvement in assisting us. And, of course,
9 Judge Barnard said he will assist us in setting
10 up that protocol.

11 THE COURT: So there will be an
12 opportunity to discuss the issue regarding the
13 documents, and what is a fair and appropriate
14 way to deal with the documents, correct?

15 MS. COLON: Exactly.

16 THE COURT: So that is not an issue.
17 Let's take off the table the issues that do not
18 bear on sentencing. That issue does not bear
19 on sentencing. Would you agree with that?

20 MS. COLON: I do agree. The only reason I
21 raise it, I did not want to leave the record
22 unaddressed that I agree with how Mr. DiRuzzo
23 expects these documents will be disseminated.
24 I don't agree at all.

25 THE COURT: The Court is under the

1 assumption, I think a good assumption, that
2 this issue will be thoroughly aired with
3 Magistrate Judge Barnard, and that the parties
4 will have the opportunity to state their
5 expected positions, and hopefully come to an
6 agreement with respect to how the documents
7 should be handled. But that issue does not
8 bear on what we're doing.

9 MS. COLON: The only other concern I have,
10 United has a habit of promising to pay for
11 things, and then when it turns out it's not
12 going to go the way they thought it was going
13 to go, they renege, and we have demonstration
14 of that.

15 THE COURT: Once again, I'm sure
16 Magistrate Judge Barnard will be happy to hear
17 all of the issues regarding the documents, and
18 you'll have opportunity to address that, but
19 for purposes of sentence, that is not an issue
20 that the Court need to worry about; isn't that
21 correct?

22 MS. COLON: That's correct.

23 THE COURT: With respect to the orders --
24 and I just want to make sure that we take the
25 things that need to be taken off of the table

1 off.

2 With respect to the orders that I think
3 both you and Attorney Andreozzi has indicated
4 Judge Barnard may be issuing in the context of
5 wrapping this matter up, again, that's not an
6 issue that bears on the sentencing; I need not
7 worry about that.

8 MS. COLON: The only concern I have -- and
9 actually, let me say this, it does go to,
10 that's why I talked about the promise to pay.
11 If there is an order that does require United
12 to pay for something, if the TRO is not kept in
13 place, or at least partially kept in place,
14 United may very well refuse to pay, and then
15 there would be no access for the Court to say,
16 yes, this needs to be paid pursuant to the
17 Court order, and the TRO has sufficient funds
18 in place to make sure it actually happens.

19 So to the extent that there is payment
20 involved in any of those orders, I do think it
21 does impact sentencing, to that extent. And
22 that's one of the reasons we asked that the TRO
23 be maintained in place as a term of -- excuse
24 me -- as a condition of the term of probation.
25 The orders themselves, I don't think,

1 procedurally, will interfere with sentencing,
2 but to the extent that any order requires the
3 payment of anything by United, I anticipate it
4 will, you know, certainly I don't know for
5 sure, but there is certainly the possibility
6 there will be no teeth to the order if the TRO
7 does not remain in place, at least to the
8 extent that those orders can be satisfied.

9 THE COURT: Okay.

10 MS. COLON: With regard to the monitor
11 appointment, I agree wholeheartedly. And I did
12 say that initially, that Judge Brady did
13 acknowledge that this case exists, and he, for
14 example, cannot do anything about the TRO that
15 this Court has in place. There is absolutely
16 nothing he could do about that. And he was
17 quite clear on that. But he's also very clear
18 in his orders that United cannot act
19 unilaterally with regard to anything regarding
20 the management, operation, and funds, or checks
21 of the Plaza Extra stores.

22 And I still feel that it would be
23 violation of Judge Brady's court order if
24 United is allowed to participate without joint
25 representation from Mohammad Hamed in the

1 decisions that are necessary for this Court to
2 proceed with sentencing, and proceed with
3 whatever's going to happen in probation.

4 THE COURT: Did you ever answer my
5 question as to why that's different from my
6 hypothetical, about basically everything that
7 happens with respect to this, the partnership,
8 that is that has been pursuant to the order
9 that has been entered by the Superior Court,
10 how that becomes merged into this particular
11 proceeding, in which United Corporation is a
12 corporation, was the defendant, and is against
13 whom the sentence is to be imposed?

14 MS. COLON: I'm not exactly clear on your
15 question, but if I, from what I understand what
16 you're asking me, does it make a difference if
17 there is a partnership as opposed to a
18 corporation?

19 THE COURT: Yeah. In other words, this
20 indictment was against the corporation.
21 Correct?

22 MS. COLON: That's true. But that's what
23 the government brought.

24 THE COURT: Correct. And so, how do you
25 distinguish between those things that are going

1 to flow into this particular matter for
2 purposes of concluding this matter with a
3 sentence, for example, these issues regarding
4 partnership, where do you draw the line between
5 what becomes integrated into this proceeding,
6 and what does not?

7 MS. COLON: I think by Judge Brady's
8 order, anything that has to do with the Plaza
9 Extra stores, which, in essence, is this case,
10 has to be, has to involve a partnership.

11 THE COURT: So anything that is resolved
12 in the context of the Superior Court proceeding
13 with respect to this partnership would then
14 become integrated into this proceeding against
15 the defendant corporation, is that your
16 position?

17 MS. COLON: I think it has to be. I don't
18 see how it can be separated, because the
19 Superior Court is not treating United
20 Corporation as solely a corporation. It's
21 treating it as a corporation that it has a
22 partnership within it, and has always operated
23 as a partnership, has always extended itself to
24 the public as a partnership to its vendors, and
25 has always presented itself as a partnership.

1 Now, it's true, they weren't, the
2 partnership was not indicted, and one of the
3 partners was not indicted, but even the
4 government knew that Fathi Yusuf in deposition
5 testimony had, previous to the indictment, had
6 asserted that this was a partnership. So the
7 government was aware of that, they have that.
8 They have that deposition testimony, that sworn
9 testimony, even before the indictment. They
10 chose to do what they chose to do. But if it's
11 truly a partnership, and I don't have a
12 position on that, because I'm not involved in
13 that litigation, my position is that's what
14 Judge Brady has found. And, therefore, it has
15 to be honored as a partnership no matter what,
16 at least until there is a change in Judge
17 Brady's ruling or the Supreme Court changes the
18 TRO. But as it stands now, this is a
19 partnership and it affects more than just
20 United Corporation and its shareholders.

21 THE COURT: Does that affect the tax
22 issues?

23 MS. COLON: I'm not a tax lawyer, Your
24 Honor. I imagine it does, Your Honor, though.

25 THE COURT: So does that mean that

1 whatever this plea agreement dealt with with
2 respect to corporate taxes and so forth, would
3 be negated by Judge Brady's ruling?

4 MS. COLON: I don't think so. Because it
5 went to United Corporation and all of the
6 individuals. And that's what it looked to.
7 And as government has said, their goal was to,
8 in addition to the individual tax returns,
9 which, of course, was always in my opinion an
10 integral part of the plea agreement, the
11 government's overriding goal or overreaching
12 goal was to make sure that the income that was
13 the profits of the Plaza Extra stores was
14 accounted for and taxes were paid on that, and
15 that happened. And they acknowledged that that
16 happened.

17 THE COURT: And that would have been the
18 same whether it was treated as a partnership or
19 a corporation, is that what you're saying?

20 MS. COLON: The returns might have been
21 different. I imagine they would have been
22 different, but payment on those profits,
23 payment of taxes on that income that represents
24 the profits was paid.

25 I would just conclude, Your Honor, unless

1 there is any other question you have of me, any
2 change to this plea agreement requires my
3 client's signature, and there are major changes
4 in terms of extent of probation, the timing of
5 probation, the timing of the monitoring, and
6 with regard to the addendum two that they are
7 trying to present, that changes or asserts that
8 section eleven is affected, that he has not
9 signed, and therefore, they are not valid. And
10 that, in my opinion, prevents this from going
11 forward from sentencing, at this time, unless
12 resolution to those issues can be made. And we
13 are prepared to deal with them, but, of course,
14 we need assurance that the \$315,000 will be
15 paid by United, and that Mohammad Hamed will
16 have equal say in the choice of the monitor,
17 and in the corporate compliance program, so
18 that he can maintain his rights as defined by
19 Judge Brady's order to jointly manage the Plaza
20 Extra stores.

21 Thank you for hearing us today. Really
22 appreciate it.

23 THE COURT: Thank you, Attorney Colon.
24 Attorney Hendrickson, let me ask you one thing
25 about this Judge Brady order. And I know you

1 indicated you pointed the Court to the one
2 place in the order where it basically says
3 that --

4 MS. HENDRICKSON: Paragraph thirty seven,
5 on page eight.

6 THE COURT: Yes. This court, meaning, the
7 Superior Court, cannot enforce a restraining
8 order or otherwise control any aspect of the
9 criminal action or its disposition. And is
10 that your complete answer with respect to the
11 question posed by, or the issue raised by
12 Attorney Colon regarding this partnership and
13 the issue regarding who has a say in the
14 operation? I mean, certainly, Attorney Colon
15 pointed out the order section which certainly
16 is broad, jointly managing each store without
17 unilateral action by either party or
18 representatives affecting the management,
19 employees, methods, procedures and operations.
20 It's relatively broad language.

21 MS. HENDRICKSON: It's very broad.

22 THE COURT: And, and is your position
23 basically Judge Brady has essentially said, you
24 know, I can't enforce the restraining order, or
25 otherwise control anything dealing with this

1 proceeding in the District Court? Is that the
2 complete reason as to why this Court should
3 basically not be concerned about the order
4 entered by the Superior Court?

5 MS. HENDRICKSON: I think that's one
6 reason. But I think there is a few.

7 THE COURT: Okay.

8 MS. HENDRICKSON: One, in February of
9 2010, there is no issue about who owned United.
10 Now, there may have been some lawsuits and some
11 other things about who owned it and whether it
12 was a partnership.

13 Now, the government's position in the
14 criminal case was that the Hameds clearly had
15 an interest in United because United was paying
16 a lot of their personal expenses, and that was
17 what led to some of the individual income tax
18 charges. So they had to have some kind of
19 relationship more than an employee, because
20 United would not have been paying hundreds of
21 thousands of dollars for them to build their
22 house and do other things. So they were
23 clearly in a separate category.

24 Now, in the government's opinion, it
25 didn't matter for purposes of the criminal case

1 whether Mohammad Hamed had partnership with
2 Fahti Yusuf or Waheed or Waleed Hamed.
3 Government's focus was on United Corporation,
4 unreported income of United Corporation and
5 unreported income of individual defendants.
6 That was our focus when the case was indicted.

7 In February of 2010, the issue again was
8 let's make sure all the income gets reported
9 and taxes get paid. Regardless of, I mean,
10 there wasn't an issue about whether there was a
11 partnership or corporation that had ever come
12 up in the criminal case.

13 Then in February of 2011, we have
14 additional mediation and we negotiate. Civil
15 litigation wasn't anticipated. The issue about
16 whether it was a partnership or a corporation
17 was not an issue, as far as the criminal case
18 went.

19 Then, of course, once the civil lawsuit
20 was filed, it became an issue. But the
21 government's position regarding how this Court
22 should interpret Judge Brady's order is that
23 from July 15, 2013, when he entered this order,
24 going forward, then, his order applies to how
25 Plaza Extra stores are run and whether checks

1 can be written. All of that, these broad
2 categories.

3 But this Court can't go back and reinvent
4 history to say, well, what if it was a
5 partnership when nobody contemplated that when
6 the plea agreement was entered, or when the
7 first addendum was signed. It didn't matter.
8 We wanted income to be reported, and we wanted
9 taxes to be paid.

10 And I think because the language of his
11 order is so broad, that this Court needs to
12 say, hey, there is a temporary restraining
13 order in place, and it addresses a lot of those
14 same issues that Judge Brady addresses.

15 So I think the only logical place to cut
16 it off, just as you were asking Miss Colon,
17 where do you stop when you're saying how you
18 have to worry about the partnership? Well, I
19 think, you can't stop anywhere. You would have
20 to say now the temporary restraining order,
21 does that require us in our federal criminal
22 case to make sure that every single check and
23 every single expense is paid for by the two of
24 them? I think that is not what the criminal
25 case should be. And I think you can't do just

1 some of it. You either have to go completely,
2 or you say it's not relevant. And for purposes
3 of the criminal case, it should not be
4 relevant. Because the plea agreement was made,
5 the addendum was made, the whole point was
6 people reported income and paid taxes,
7 regardless of what type of organizational
8 structure there was.

9 THE COURT: And the fact that part of the
10 plea agreement pertains to programs,
11 specifically monitoring and the ethics
12 compliance program, that's forward looking?

13 MS. HENDRICKSON: Yes.

14 THE COURT: Does that affect the answer?

15 MS. HENDRICKSON: Well, again, at the time
16 when the agreement was initially written, we
17 anticipated that we would have to, the
18 government would be fighting tooth and nail to
19 get every dime out of United, so we're trying
20 to give ourself every option to come to the
21 court to compel payment. And luckily, that
22 didn't happen. Through the mediation, we
23 resolved some of it. We resolved the rest of
24 it now.

25 So, I think, the purpose, the main purpose

1 of the monitor, although the language clearly
2 is much broader, but the main purpose was to
3 make sure the government and the VIBIR got the
4 money it was entitled to.

5 So to the extent the monitoring agreement,
6 the terms of it since it is applying to going
7 forward, if the Court wanted to just say, for
8 purposes of the monitoring agreement, and
9 because of Judge Brady's order, I'll have the
10 parties submit the monitoring agreement and
11 counsel for Hameds can count on it and on the
12 procedures, I mean, government would not object
13 to that. And the same thing with the
14 compliance program. But I think that's all the
15 Court should do, because that's the only thing
16 in the criminal case that impacts United today
17 in 2013.

18 MR. DiRUZZO: Judge, I think Judge Brady's
19 order is pretty clear. This court, being the
20 Superior Court, cannot be enforced a
21 restraining order or otherwise control any
22 aspect of the criminal action or its
23 disposition. And he's about as broad as you
24 can get. And we all know what rapport means.

25 So it's our position that Judge Brady has

1 effectively acquiesced, as he should, to this
2 Court's jurisdiction, the ongoing federal case.
3 And what does that mean? That means that this
4 Court has the jurisdiction, the power, and the
5 authority to go forward with sentencing today,
6 and not worry about the ongoing civil
7 litigation that's currently up on appeal before
8 the V.I. Supreme Court and is awaiting
9 disposition for the preliminary injunction, not
10 a permanent injunction, not a trial of the
11 merits by the ultimate finder of fact, but a
12 preliminary injunction under Rule 65. As the
13 Court is well aware, a very different standard
14 than the absolute conclusion that Mohammad
15 Hamed is, in fact, or is not a partner.

16 I just bring to the Court's attention
17 procedurally, when Miss Colon says Mohammad
18 Hamed is a partner, at best, Mohammad Hamed can
19 say that Judge Brady believes he's shown
20 probably a success, not a certainty of success.

21 As for Mr. Andreozzi's position that
22 United can't pay for some, and not for all, I
23 think, Your Honor, I think I can say it this
24 way: Just because someone can, doesn't mean
25 someone should, or someone has to. Often when

1 children get in trouble, their parent can pay
2 for their mistake. Whether they have to, or
3 whether they should is entirely a different
4 story.

5 So here, we have the Hamed brothers saying
6 that they want their \$315,000 paid. Could
7 United Corporation do that by giving them a
8 bonus? Sure. Does it have to? No. Is it
9 obligated to under the plea agreement? No.
10 And if it were obligated under the plea
11 agreement, the language should have been in
12 there in the event that an individual defendant
13 does not pay, then the United Corporation would
14 be liable for the outstanding tax liability.
15 If that's what it agreed to, everybody was more
16 than free to craft the plea agreement. But the
17 Court should not feed into this language.

18 Another point, Your Honor, I think this
19 would illustrate it. If Mr. -- if the Hamed
20 brothers quit their position with Plaza Extra,
21 which, as employees they can do, they don't
22 have obligation, they're not forced to work
23 there, and if they moved to the states, and if
24 they won power ball and owed \$100 million of
25 it, \$165 million power bowl, and they don't

1 want to pay the taxes, would United Corporation
2 have to backstop their taxes? I think we all
3 can agree, of course not.

4 Those individual defendants have a
5 personal obligation to pay their personal taxes
6 under the law. United Corporation wants to
7 because it desires to, because it wants to give
8 a bonus, it can, but it is not obligated to.
9 And this Court should not impose and read into
10 the plea agreement those provisions which are
11 not there.

12 Finally, to the point that the plea
13 agreement requires that the individual
14 defendants pay before they contemplate --
15 before probation is completed, that's fine.
16 But what does that allow? It allows the
17 government in its prosecutorial discretion to
18 determine whether there has been -- whether any
19 individual defendants have not paid their
20 taxes. And then the government determines that
21 somehow United is somehow responsible or
22 culpable, it can then move to revoke probation,
23 or enforce the probation as it sees fit. But
24 it is not for this Court to stand here or sit
25 here today and anticipate in the future what

1 charges or whether the government should or in
2 the first instance even bring violation
3 probation or revocation of probation, based
4 upon that event. May or may not come to pass.

5 So as you're sitting here today, Your
6 Honor, you're more than able, and I believe the
7 plea agreement and based on arguments of
8 counsel and government, you're able under
9 11(c)(1)(C) to proceed with sentencing, and
10 allow this case to go to probation, and resolve
11 this nearly decade old criminal case.

12 MR. DEWOOD: Your Honor, if I may, a few
13 moments, a few comments for Mr. Fathi Yusuf.

14 Your Honor, Judge, we're here now, I think
15 after ten years, for sentencing of United. Yet
16 we received a motion with all kind of
17 allegations twenty-four hours before
18 sentencing. And I think that really speaks for
19 itself. We have allegations now that there is
20 a partnership. And I think we've heard a lot
21 of comments about being officers of the court.
22 Where were they, Judge, when there were
23 inquiries about the status of United
24 Corporation, was it a partnership, or a
25 corporation?

1 Take a look at the presentence report. It
2 speaks for itself as to what the status, what
3 the facts are. They've never said this was a
4 partnership. They've never even brought up
5 Mohammad Hamed. They've never said, oh, by the
6 way, we have this guy, Mohammad Hamed, he's a
7 partner, really owns fifty percent of this
8 thing. When it served them, they said nothing.

9 Now, Attorney Colon can come up here and
10 say, Judge, look, we have an order from Judge
11 Brady, not that they have represented or
12 remained silent as to the status of the
13 corporation. Why would the shareholders pay
14 their taxes, Judge? Why would it be for nine
15 years, ten years, whatever these proceedings
16 have taken, why is it that there was never an
17 allegation of a partnership existing? When did
18 actually that happen?

19 Well, let's talk about, again, being
20 officers of the court. There are lawsuits
21 right now pending, Judge, by United, against
22 Waleed Hamed and Waheed Hamed for theft
23 embezzlement conversion. Did these things come
24 up today? Nope. Let's not talk about these
25 things.

1 Now, all of a sudden we have a lawsuit
2 filed when? September 18, 2012, alleging for
3 the first time ever that there is a
4 partnership.

5 Judge, we actually addressed many of these
6 issues in our motion to dismiss, which might
7 say, Your Honor, has not been decided by Judge
8 Brady yet. I don't know why. Is it because
9 we've raised the issue of equity bars? There
10 is a lot of case law, Judge, which I would love
11 to send you tomorrow, that states when you make
12 allegations before the Court, when you make
13 statements of fact before the Court as to the
14 status of a business entity, you are barred
15 from coming back and changing, even if that
16 entity is, in fact, a partnership.

17 Ten years later, Your Honor, we have the
18 Yusuf families here waiting, they've been
19 waiting to resolve this case. Twenty-four
20 hours ago we have a motion, stop everything.
21 Unless they pay \$320,000 in the Wally and
22 Waheed tax liability, we're going to disagree,
23 we're going to object to everything. We're
24 going to throw everything, you know, and the
25 kitchen sink, basically.

1 Let's start first with the first
2 allegation that we have heard. They've said
3 that the U.S. Marshal has approved the release
4 of the funds under the temporary restraining
5 order in place in this matter as per Exhibit 2.
6 They attach Exhibit 2. What is Exhibit 2? It
7 is nothing more than an e-mail between
8 Andreozzi and the U.S. Marshal without a copy
9 of the letter that he attached with his e-mail
10 advising the U.S. Marshal as to why these
11 proceeds should be released.

12 Judge, remember, Attorney Andreozzi,
13 Attorney Colon, Attorney Gordon Rhea were all
14 part of a joint defense team. I wasn't a part
15 of it. Attorney DiRuzzo wasn't. He came in
16 October 2012. I came in October of 2012.
17 After what, after basically, the lead defense
18 attorneys decided that they can no longer
19 represent Mr. Yusuf.

20 This case isn't a simple matter, Judge, as
21 they're trying to make it out. Now we have an
22 order from Judge Brady, look, Judge, a
23 partnership. Mohammad Hamed isn't even here.
24 Hasn't said anything. By the way, you really
25 need to follow Judge Brady's order. It is

1 nothing more than an order for preliminary
2 injunction. That's it. It says that there is
3 a likelihood of finding. Not that it's
4 conclusive fact establishing this once and for
5 all.

6 Haven't considered the facts equitable,
7 statute of limitation, whether or not the
8 retirement of Mr. Hamed in 1996 dissolved the
9 partnership. Perhaps that's why the government
10 never knew about Mr. Mohammad Hamed.

11 Basically, what do we have? A modified
12 corporation, paying its taxes, paying its
13 franchise tax, a bona fide entity, nobody moved
14 to pierce its corporate veil. And before you
15 for sentencing, the only issue really before
16 you today, Judge, is whether or not the plea
17 agreement states that United shall pay the
18 \$320,000 in taxes. That's why we're here. All
19 the other issues are superfluous.

20 And I will submit, Judge, that the plea
21 agreement supports what Attorney Hendrickson
22 stated, and what Attorney DiRuzzo stated it
23 said, especially the middle paragraph, Judge.
24 You can see that the language specifically
25 specifies and details the United shareholders,

1 the individual defendants. For example, the
2 middle paragraph, it says --

3 THE COURT: What page are you on?

4 MR. DEWOOD: Page eleven, Your Honor, of
5 the plea agreement.

6 THE COURT: Okay.

7 MR. DEWOOD: It says, mid paragraph, Your
8 Honor, "In addition, prior to the sentencing
9 hearing in this matter, United's
10 shareholders -- and it defines each one of them
11 by initials -- and the individual defendants
12 shall file the outstanding returns and
13 reporting documents and shall make full
14 payments." Then it proceeds to address United
15 only. It doesn't address the other parties.
16 It could have said easily, the parties shall,
17 but it didn't. It said, "United acknowledges."
18 Why would it only refer to United? And why
19 would it say that special conditions of
20 probation will require that all corporate
21 returns be filed and all amounts due? Why
22 would that part be, be right next to, or at
23 least that part of the sentence, in proximity
24 to United?

25 And if there was a contemplation that

1 Waheed and Waleed Hamed or the other
2 shareholders, whatever the case may be, they
3 would have also been -- actually, that
4 paragraph wouldn't have been required. It
5 should have just simply stated, based on the
6 previous paragraph, the previous sentence, that
7 in addition, prior to the sentencing hearing,
8 all these individuals shall pay taxes and this
9 shall be subject to the full payment by all
10 parties of taxes. That's not what this says.

11 I think it is very clear, Judge, that
12 Wally and Willie Hamed could go to the father
13 now, and ask for him to pay his taxes, since
14 now they're saying he is a partner, or whatever
15 interest he may have in United.

16 But I would submit to you, this is clear.
17 I would ask that the Court proceed to
18 sentencing today, and put basically this matter
19 to an end. I think Mr. Yusuf and his family
20 have waited way, way too long for this day.
21 And to file a motion less than 24 hours,
22 alleging such amazing and incredible things,
23 and partnership, and why Mohammad Hamed is a
24 partnership is not here, is outrageous.

25 Thank you, Your Honor.

1 THE COURT: Thank, counsel.

2 As all of the counsel, I believe, would
3 agree, and some have acknowledged, this matter
4 has been going on for quite a long time. The
5 plea agreement, the original plea agreement was
6 entered back in 2010, and that is after several
7 years have elapsed, during, in fact, which this
8 matter was pending. And then for the next
9 three years, a little over three years, the
10 parties have been engaging in mediations, in
11 discussions, for purposes of resolving
12 specifics that relate to the plea agreement.

13 The Court agrees that that matter has gone
14 on for a very long time. And the Court also
15 agrees that it is time to try and bring this
16 matter to a conclusion. At least with respect
17 to sentencing. Indeed, it is for that reason
18 that when the parties -- and the parties I
19 would be referring to would be the government
20 and United -- filed their joint motion earlier
21 this month and asked for a sentencing date of
22 the sixteenth, that the Court made every effort
23 to accommodate that date.

24 The Court too was concerned that documents
25 came in 24 hours or so before the scheduled

1 sentencing that raised a number of issues
2 concerning the propriety of going forward
3 with the sentencing today. And it obviously
4 resulted in a sort of mad scramble at the end,
5 because then the government filed, the
6 government and United filed their response this
7 afternoon.

8 But having said that, I think it
9 nonetheless is important for the Court to make
10 sure that as it reviews and decides whether or
11 not this plea agreement should be adopted by
12 the Court, that all of the conditions precedent
13 to proceeding with the sentencing have, in fact,
14 been complied with.

15 I think the significant issue here is that
16 the Court has been presented with a plea
17 agreement pursuant to Federal Rule of Criminal
18 Procedure 11(c)(1)(C). And that is different
19 from a situation where the Court would be faced
20 with a sentencing in which the Court has
21 discretion to listen to arguments and then make
22 adjustments or changes in what the Court's
23 thinking might be based on the arguments that
24 are advanced. The Court views an 11(c)(1)(C)
25 plea as one where if the Court is going to

1 accept it, the Court is then bound by the terms
2 and the provisions that are put into the
3 agreement by the parties who have signed onto
4 that agreement. And that's where the Court's
5 concerns are today.

6 A number of issues have been raised, some
7 of which does not give the Court concern at all
8 about going forward with sentencing, because
9 the Court does not believe that those issues
10 bear on the sentencing. And I think the
11 parties have essentially agreed to that as
12 well. Namely, the issue regarding generally
13 the documents that will be addressed with Judge
14 Barnard. And I would anticipate that whatever
15 orders are entered by Judge Barnard are the
16 orders that the Court believes are orders that
17 are, indeed, enforceable. So the Court is not
18 concerned about that for purposes of today's
19 anticipating or scheduled sentencing.

20 The Court is, however, concerned about a
21 couple of matters. Let me back up for a
22 minute. The other issue that the Court is not
23 convinced of is that the order entered by Judge
24 Brady requires this Court to either amend what
25 it would otherwise be going forward with with

1 regard to the sentencing of the corporation, or
2 otherwise enter orders that requires, as the
3 Waleed and Waheed counsel have argued, some
4 sort of compliance with the partnership
5 requirements set forth in Judge Brady's order.
6 I believe that counsel for -- both counsel for
7 the government and counsel for United have
8 pointed to a specific reference in the order
9 where Judge Brady recognizes that this is,
10 indeed, a separate matter, over which that
11 court does not have control. And for the
12 reasons that have been articulated during the
13 course of the presentations today, the status
14 of the corporation at the time of the
15 indictment, the fact that it is the sentencing
16 of the corporation that we're dealing with,
17 which was the entity that pled guilty, the
18 Court is not convinced that it would have to do
19 anything differently in light of Judge Brady's
20 order.

21 But the Court is concerned about a couple
22 of things. And this, again, stems from the
23 fact that this is an 11(c)(1)(C) plea that the
24 Court looks at for purposes of assessing
25 whether the Court will accept or adopt that

1 plea agreement and sentence in accordance with
2 the terms the Court is looking for to make sure
3 that what is in that plea agreement has, in
4 fact, been complied with to the extent that
5 certain things might be, might be required
6 prior to sentencing. And there are a couple of
7 those things that give the Court concern.

8 The first is this issue about the payment
9 of all the taxes due and owing. The Court is
10 not concerned about who is paying the taxes.
11 Because the Court does not believe, based on
12 its reading of the plea agreement, and based on
13 the presentations that have been made here, the
14 Court is not convinced that there is anything
15 in this plea agreement that specifically says
16 that United is the party that has to pay the
17 parties' taxes; that's an issue to be resolved
18 elsewhere. That is not in this Court's view,
19 for this Court to resolve.

20 So the issue, from the Court's
21 perspective, is not who is paying the taxes.
22 But the Court does have an issue, given the
23 language of the plea agreement on page eleven,
24 which the Court reads as requiring that "prior
25 to the sentencing hearing in this matter, the

1 shareholders and the individual defendants
2 shall file the outstanding returns and
3 reporting documents, and shall make full
4 payments of the amounts due thereupon."

5 The Court is concerned that the second
6 amendment to the plea agreement, the second
7 addendum to the plea agreement purports to
8 state that, in fact, and based on the arguments
9 of counsel as well, that, in fact, this
10 particular provision has been satisfied. That
11 the additional \$6.5 million satisfies the full
12 payment of amounts due by the individual
13 defendants.

14 At the same time, however, it appears that
15 the government is also asserting that, well,
16 that's what we have agreed to accept as the
17 government, although there is another sum of
18 money that has been represented to be in the
19 vicinity of \$315,000 that still appears to be
20 due and owing, at least, as of this point, but
21 which the government is no longer worried
22 about.

23 The Court is concerned that it has been
24 presented with a plea agreement. The original
25 plea agreement that called for all taxes that

1 are due and owing to be paid. The individual
2 defendants shall file the outstanding returns
3 and reporting documents, and shall make full
4 payments of the amounts due thereupon. And
5 that is prior to the sentencing hearing.

6 This is an issue that the Court believes
7 needs to be resolved. And the Court, as I
8 mentioned before, is not concerned about who is
9 paying this, but it seems to the Court that
10 what has happened is that there has been a
11 change between the original agreement and the
12 second addendum where the government is now
13 saying we have agreed to accept less than what
14 is really the full payment, because there is
15 still monies out there due, we're not going to
16 worry about it, but the V.I. government can
17 still go after that individual for those sums
18 that are due.

19 Because this is an 11(c)(1)(C) plea
20 agreement that the parties are asking this
21 Court to adopt, the Court is looking to the
22 language of the agreements to ensure that what
23 is stated in the agreement have, in fact, been
24 fulfilled. At least those that are required to
25 be fulfilled prior to the time of the

1 sentencing hearing. And the payment issue is
2 one that the Court believes is not consistent
3 with the terms of the initial agreement. And
4 to the extent that there has been a change by
5 virtue of the second addendum, then the Court
6 looks to section thirteen of the original plea
7 agreement that says, "no modification of the
8 plea agreement shall be effective unless in
9 writing, signed by the government, United, the
10 individual defendants, and United
11 shareholders."

12 So to the extent that there has been a
13 change what was originally contemplated with
14 the taxes being paid in full prior to the
15 sentencing hearing, then it seems to the Court
16 that under the plain language of the plea
17 agreement, then, that modification which
18 obviously impacts the Waleed and Waheed
19 individual defendants should have been executed
20 consistent with the modification section of the
21 original agreement.

22 The Court feels similarly about the issue
23 regarding the monitor. Under the terms of the
24 agreement that the parties have proffered to
25 this Court for its adoption, it says the

1 selection of a certified public accounting firm
2 as the independent third party will be
3 expressly approved by the government prior to
4 the beginning of the term of probation.

5 When this Court sentences the defendant
6 and proceeds to enter the J&C, that is the
7 point at which the Court anticipates the
8 probation period to start. And the Court
9 generally attempts to enter the J&C promptly
10 after the sentencing hearing. The government
11 and United have indicated that they believe
12 that the monitor can be in place in two weeks.
13 And so they've come up with the suggestion that
14 they extend the probationary period to be a
15 year, which I think is really what is
16 contemplated under this agreement, that the
17 monitor would be in place during the year of
18 the probation based on the language that I've
19 just read.

20 Well, if this were not an 11(c)(1)(C)
21 plea, things might be different, because I
22 could listen to the arguments of counsel, and
23 then say, well, that makes sense to me. Well,
24 I don't impose that sentence. But that's not
25 the case. It's an 11(c)(1)(C) plea that the

1 parties are asking the Court to adopt. And the
2 terms of provisions would be binding on the
3 Court if the Court so adopts the agreement.

4 So, again, if we're going to modify the
5 one-year probationary period that is
6 specifically identified in the plea agreement,
7 the Court views that as a modification, and
8 there is a modification provision, it needs to
9 be in writing, and it needs to be signed by all
10 of the parties. Not only agreed to by United
11 and the government, but, indeed, under the
12 modification provision agreed to by the
13 government, United, the individual defendants,
14 and United shareholders.

15 Those are the issues that give the Court
16 pause. I will again reiterate that the Court
17 is as anxious, as are the parties, maybe more
18 anxious, to get this matter resolved, because
19 it has been on the docket for a very, very long
20 time. But the Court believes that in light of
21 the nature of this sentencing, the request for
22 an 11(c)(1)(C) agreement, or the entrance of an
23 11(c)(1)(C) plea agreement, which the Court
24 would be bound by its terms, that the Court's
25 hands, in effect, are tied to the specific

1 terms of the agreement.

2 Having said that, the sentencing will not
3 take place today. The Court can do one of two
4 things: The Court can set another sentencing
5 hearing, or the Court can wait to hear from the
6 parties as to when they have completed the
7 issues that are precedent to proceeding with
8 the sentencing of the defendant in this matter.
9 And attorney --

10 MS. HENDRICKSON: May we have a moment,
11 Your Honor?

12 THE COURT: Yes.

13 MS. HENDRICKSON: Your Honor, we'd like to
14 go with the Court's second suggestion. To wait
15 to hear from the parties.

16 THE COURT: Okay. The Court will, then,
17 wait to hear from the parties. Of course, the
18 Court's hope is that that will be soon that the
19 Court will hear from the parties. The Court
20 encourages the parties to get together and
21 discuss what is the best resolution so that
22 this matter can come to a conclusion.

23 Is there anything further from the
24 parties, at this time?

25 MS. HENDRICKSON: No, Your Honor.

1 MR. DiRUZZO: No, Your Honor.

2 MS. COLON: No.

3 THE COURT: Attorney Colon?

4 MS. COLON: No. Thank you.

5 THE COURT: On the telephone, anything
6 further?

7 MR. ANDREOZZI: No, Your Honor. Thank you
8 for allowing me to participate by phone.

9 THE COURT: Okay. Thank you all. The one
10 thing I will say is when the parties have
11 indicated that they're ready to proceed with
12 sentencing, the Court will do its best to try
13 and schedule it as promptly as the Court's
14 calendar permits. But I will ask the parties
15 to, one, make sure you're ready, and two, if
16 there are issues that need to be resolved, try
17 to resolve them, or bring them to the Court's
18 attention in advance of the date of sentencing.
19 Not the day before, or the day of. You have
20 lived with this case much longer than -- than I
21 have, and so you know what the issues are. You
22 know where the potential problems are. So, I
23 would ask that the parties try to identify
24 those issues, if there are issues that the
25 Court need to deal, and so that we can have

1 them resolved prior to the sentencing and not
2 have a repetition of today. Okay.

3 Thank you all very much for your
4 presentations.

5 (Thereupon, court adjourned at
6 7:40 p.m.)

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C-E-R-T-I-F-I-C-A-T-E

I, Valerie Lawrence, certify that the foregoing is a correct transcript from the record of proceedings in the above-entitled matter this 27th day of August, 2013.

Valerie Lawrence

**Valerie
Lawrence**

Digitally signed by Valerie Lawrence
DN: cn=Valerie Lawrence, o=St.
Croix Division, ou=U.S. District Court,
email=valerie_lawrence@vid.uscourts.gov, c=US
Date: 2013.08.28 11:21:02 -04'00'

EXHIBIT B

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

2013 JUN 24 PM 3:13

RECEIVED

CLERK OF THE
DISTRICT COURT
ST. THOMAS, VI

USA and GVI,)
)
 Plaintiffs,)
)
 v.)
)
 United Corporation, *et al.*,)
)
 Defendants.)
 _____)

Criminal No. 2005-15

MEDIATION REPORT

Pursuant to the Court Order for Mediation, a mediation conference was held on the 19th and 20th days of June 2013.

The following were present:

- _____ 1. All Plaintiffs.
- X 2. Governments' trial counsel.
- X 3. If Plaintiff is not an individual, the representative who appeared had total authority.
- _____ 4. All Defendants.
- X 5. Defendants' trial counsel.
- X 6. If Defendant is not an individual, the representative who appeared had total authority.

The result of the mediation conference is as follows:

X The conflict has been completely resolved. The parties are submitting a second addendum to the Plea Agreement and Sentencing Memorandum.

_____ The conflict has been partially resolved. The parties are submitting a stipulation for the Court's approval. Some issues still require Court resolution:

_____ The parties have reached a total impasse, all issue require Court action.

EXHIBIT B


Mediation Report
Page 2
Criminal No. 2005-15

The matter has been recessed for further mediation.

 X

Other: Counsel will draft and circulate the second addendum within 10 days. Sentencing will be scheduled before Judge Finch in early July, 2013, at a date and time agreed upon by the parties.

DATE: June 21, 2013



Geoffrey W. Barnard, U.S. Magistrate Judge
Mediator

EXHIBIT C

06/27/2013

VERONICA HANDY, ESQUIRE
CLERK OF THE COURT

IN THE SUPREME COURT OF THE VIRGIN ISLANDS

**FATHI YUSUF AND UNITED
CORPORATION,**

Appellants/Defendants,

v.

MOHAMMAD HAMED By His
Authorized Agent **WALEED HAMED,**

Appellee/Plaintiff.

S. Ct. Civ. No. 2013-CV-0040

Re. Super. Ct. Civ. No. 2012/370

DECLARATION OF WALEED HAMED

I, Waleed Hamed a/k/a Wally Hamed, declare, pursuant to 28 U.S.C.

Section 1746, as follows:

1. I have personal knowledge of the facts set forth herein as a manager of the Plaza Extra Supermarkets and in my capacity acting as my father's representative under a power of attorney in the Plaza Extra operations, which I deal with on a day-to-day basis.
2. Since I first began to work in the late 1980's in the Plaza Extra Supermarket at Sion Farm, St. Croix, it was always understood that Plaza Extra was a partnership between my father, Mohammad and Fathi Yusuf.
3. It was also understood that United Corporation owned the shopping center at Sion Farm, which was solely owned by Yusuf and his family, as my father had no interest in that corporation. United Corporation was the landlord for the Plaza Extra Supermarket at Sion Farm. United charges Plaza Extra rent for the space used by the supermarket.
4. When Plaza Extra expanded to St. Thomas in the early 1990's and then to the west end of St. Croix in the early 2000's, these stores were also part of the partnership.
5. The three Plaza Extra Supermarkets have always been jointly managed by Yusuf and Hamed, eventually with one member from each family acting as a co-manager for each of the three stores. This joint management has been critical to the success of these three stores

EXHIBIT C

6. This joint management has been very successful, as evidenced by the fact that the stores generated over \$43,000,000 in net profits (after estimated taxes and all expenses) between 2003 and 2010, which was escrowed with Banco Popular Securities under an order entered in the criminal proceedings pending in the District Court.
7. Indeed, the three stores now employ approximately 600 people and service both St. Croix and St. Thomas.
8. A criminal case for tax fraud was filed in the District Court of the Virgin Islands in 2003 against United Corporation and several members of the Yusuf and Hamed families, including myself and Fathi Yusuf. My father, Mohammad Hamed, was not charged (and never has been charged).
9. Prior to the filing of the criminal case, all profits from the three Plaza Extra Supermarkets had been distributed equally between my father and Fathi Yusuf. As I testified at the hearing in this matter, they had primarily used the funds to buy properties throughout the Virgin Islands, placing the properties in the names of various corporations that were owned 50/50 by the Hamed and Yusuf families.
10. As I already noted, after the criminal case was filed, the net profits of the three Plaza Extra Supermarkets have been escrowed and still have not been distributed.
11. After a plea agreement was reached in the criminal case in 2010, the charges against the individual defendants were dismissed, but United Corporation pled guilty and is still awaiting sentencing. In this regard, United Corporation was required to do several things before sentencing, including the filing of true and accurate tax returns for the time period between 2002 and 2010, as no returns were filed while the criminal charges were pending, although estimated tax payments were made quarterly.
12. After the plea, the three Plaza Extra Supermarkets continued to operate as before, with one member of each family acting as a co-manager in each store.
13. In early 2012, Fathi Yusuf had his lawyer contact me pursuant to the power of attorney I have for my father, who informed me that Fathi Yusuf wanted to break up the partnership.
14. Discussions then followed as to what to do with the three Plaza Extra Supermarkets.

15. In June of 2012, when negotiations broke down, Fathi Yusuf's lawyer sent a letter taking over the partnership -- threatening to fire all of the Hameds.
16. By that time, tensions had developed between the Hamed and Yusuf families, which began to severely affect the day-to-day management of the three Plaza Extra Supermarkets.
17. In August of 2012 Yusuf unilaterally removed \$2.7 million from the supermarket account, something that had never been done in the past, absent the mutual consent of the two partners. Yusuf was specifically told that this should not be done and a demand was made to return them after they were removed. When the funds were not returned, this litigation was filed.
18. As noted by the court in its findings, tensions continued in the day-to-day management of the Plaza Extra Supermarkets resulting in (1) the police being called by Yusuf to the store, (2) repeated threats by Yusuf to remove all Hamed family members, (3) attempts by Yusuf to fire key managerial employees and (4) repeated statements by Yusuf that he would close the stores.
19. This tension had a direct negative effect on the day-to-day management of the business
20. However, now that the preliminary injunction has been issued, the business operations of the three Plaza Extra Supermarkets have been able to operate without threats and intimidation by Fathi Yusuf, which was occurring on almost a daily basis before the preliminary injunction was issued.
21. Thus, if the preliminary injunction is stayed, chaos will return to the Plaza Extra Supermarkets which would harm my father's interest in the three Plaza Extra Supermarkets.
22. As discussed, one open issue in the criminal case involves the filing of true and accurate tax returns by United Corporation and payment of taxes not covered by the estimated taxes that were paid during this time period.
23. United Corporation has insisted on filing tax returns for this time period claiming 100% of the profits of the Plaza Extra Supermarkets, even though it has repeatedly acknowledged here that 50% of these profits belong to my father, Mohammad Hamed.
24. As the plea agreement contemplated clearing up these tax issues, I became quite concerned about this process, as my father had not filed his taxes since 1997 (although taxes on his share of the Plaza Extra profits

had been paid), which I had presumed would be cleared up as part of the tax filings still due in the criminal case.

25. In this regard, an opportunity was provided to clear up all of its tax issues from the beginning of Plaza Extra's existence as part of the plea agreement, including interest and penalties. For example, a lump sum payment of \$10,000,000 was made in 2011 to satisfy all tax obligations occurring before 2002 for the three Plaza Extra stores.
26. It was subsequently calculated that \$6.5 million in taxes was still due for the time period between 2002 and 2010, even though estimated taxes has been paid quarterly.
27. As my father had not filed tax returns since 1997 and it was becoming clear that United Corporation might not include him in satisfying the tax obligations owed on the profits from the three Plaza Extra Supermarkets, my father filed all of his tax returns for the time period from 1997 to 2011 on May 16, 2013, as part of the IRB's amnesty program known as "Operation Last Chance." He reported 50% of the profits from the Plaza Extra partnership as his income. He also reported to the IRB that the taxes due on this income had been paid in full by prior payments made by Plaza Extra from the partnership accounts held by United Corporation, including the \$10,000,000 payment for additional taxes owed on the profits of the Plaza Extra Supermarket prior to 2002. Finally, he pointed out that significant taxes were still due on the income reported for the time period between 2002 and 2010, which was in the process of being paid as part of the closure of the criminal case.
28. My father also submitted documents to the IRB demonstrating that the three Plaza Extra Supermarkets were operated by a partnership (including all of the admissions submitted to the court in this case) and not by a corporation, even though United Corporation was now claiming 100% of the profits on its tax returns for this same time period.
29. On June 19, 2013, as part of the closure of the criminal case, a check for approximately \$6.5 million was submitted to the IRB for taxes owed primarily on the profits of the Plaza Extra Supermarkets.
30. While I did not know it at the time, I have since learned that these funds were removed from the escrowed profits at Banco Popular Securities at the request of the lawyer for the defendants in this case, as per the attached letter.
31. As the escrowed profits belong equally to my father, I was upset that they would be removed without his knowledge or consent, although we had all

- agreed these funds would be used for the taxes owed on the profits made by the Plaza Extra Supermarket for the 2002 to 2010 time period.
32. As such, my father agreed to ratify the withdrawal of these funds so long as they were used to pay taxes due on the profits of the three Plaza Extra Supermarkets -- both those of Yusuf and those of Hamed.
 33. The IRB accepted these funds as payment of taxes due from the profits of the Plaza Extra Supermarkets, including taxes owed by Yusuf and his family members -- and my father on these profits.
 34. The IRB has now confirmed that all income taxes owed by my father for this time period have been paid in full, as per the attached letter.
 35. The IRB sent a similar letter for the time period between 1997 and 2002, which is also attached.
 36. Thus, the assertions that my father is a "criminal tax evader or non-filer" are untrue.
 37. As for the characterization that my father is a "criminal tax evader" and its insistence on filing tax returns claiming 100% of Plaza Extra's profits (despite its repeated admissions that 50% of these profits belong to Hamed), it is clear that United (with Yusuf's help) intends to remove all of these remaining escrowed profits (now reduced to \$37,000,000 by its unannounced withdrawal of the \$6.5 million) and claim them as its own once the District Court restraining order is lifted.
 38. Thus, if the preliminary injunction is stayed, I am also fearful that more funds will be diverted and that my father will not be able to recover these funds, as Yusuf and United have already removed funds out of the Virgin Islands.

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

Dated: June 27, 2013



Waleed Hamed a/k/a Wally Hamed



U.S. Department of Justice
United States Marshals Service
Asset Forfeiture Division

Alexandria, VA 22301-1025

June 14, 2013

Joseph DiRuzzo
Fuerst Ittleman David and Joseph PL
1001 Brickell Bay Dr
32nd Floor
Miami, FL 33131

Dear Mr. DiRuzzo:

Per your letter dated May 24, 2013, the United States Marshals Service authorizes you to request the release of \$6,586,132 from the Banco Popular Securities account so that payment of taxes due to the Virgin Islands may be remitted.

If you have any questions please feel free to contact me at Maggie.Doherty@usdoj.gov and by phone at (202).353.8333.

Sincerely,

Maggie Doherty
Case Manager
Complex Assets Unit
Asset Forfeiture Division



GOVERNMENT OF
THE VIRGIN ISLANDS OF THE UNITED STATES
— 0 —
VIRGIN ISLANDS BUREAU OF INTERNAL REVENUE



6115 Estate Smith Bay - Suite 225
St. Thomas VI 00802
Phone: (340) 715-1040
Fax: (340) 774-2672

4008 Estate Diamond Plot 7B
Christiansted VI 00820-4421
Phone: (340) 773-1040
Fax: (340) 773-1006

June 20, 2013

Mohammad & Khieraih Hamed
P. O. 2926
Frederiksted, Virgin Islands 00841-2926

Dear Mr. & Mrs. Hamed:

As Director of the Virgin Islands Bureau of Internal Revenue, I have received payment in full for income taxes for tax years 2002 through 2010.

Sincerely,

Claudette Watson-Anderson, CPA
Director



GOVERNMENT OF
THE VIRGIN ISLANDS OF THE UNITED STATES
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VIRGIN ISLANDS BUREAU OF INTERNAL REVENUE



6115 Estate Smith Bay - Suite 225
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4008 Estate Diamond Plot 7B
Christiansted VI 00820-4421
Phone: (340) 773-1040
Fax: (340) 773-1006

June 20, 2013

Mohammad & Khieraih Hamed
P. O. 2926
Frederiksted, Virgin Islands 00841-2926

Dear Mr. & Mrs. Hamed:

As Director of the Virgin Islands Bureau of Internal Revenue, I have received payment in full for income taxes for tax years 1997 through 2001.

Sincerely,

Claudette Watson-Anderson, CPA
Director