

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,	)	CIVIL NO. SX-12-CV-370
v.)	
)	
FATHI YUSUF and UNITED CORPORATION,	)	ACTION FOR INJUNCTIVE
	)	RELIEF, DECLARATORY
	)	JUDGMENT, AND
Defendants/Counterclaimants,	)	PARTNERSHIP DISSOLUTION,
v.	)	WIND UP, AND ACCOUNTING
)	
WALEED HAMED, WAHEED HAMED,)	
MUFEED HAMED, HISHAM HAMED, and)	
PLESSEN ENTERPRISES, INC.,)	
)	
Additional Counterclaim Defendants.	)	Consolidated With
WALEED HAMED, as Executor of the)	
Estate of MOHAMMAD HAMED,)	
	)	CIVIL NO. SX-14-CV-287
Plaintiff,)	
v.	)	ACTION FOR DAMAGES AND
	)	DECLARATORY JUDGMENT
UNITED CORPORATION,)	
)	
Defendant.)	
WALEED HAMED, as Executor of the)	
Estate of MOHAMMAD HAMED,)	
	)	CIVIL NO. SX-14-CV-278
Plaintiff,)	
v.	)	ACTION FOR DEBT AND
	)	CONVERSION
FATHI YUSUF,)	
)	
Defendant.)	
FATHI YUSUF and)	
UNITED CORPORATION,)	
	)	CIVIL NO. ST-17-CV-384
Plaintiffs,)	
v.	)	ACTION TO SET ASIDE
	)	FRAUDULENT TRANSFERS
THE ESTATE OF MOHAMMAD HAMED,)	
Waleed Hamed as Executor of the Estate of)	
Mohammad Hamed, and)	
THE MOHAMMAD A. HAMED LIVING)	
TRUST,)	
)	
Defendants.)	

**YUSUF'S MOTION FOR LEAVE TO FILE SURRESPONSE TO HAMED'S
REPLY REGARDING CLAIM H-13**

Fathi Yusuf ("Yusuf"), through his attorneys, Dudley, Topper and Feuerzeig, LLP, respectfully submits this Motion for Leave to File Surrespnse to Hamed's Reply Regarding Claim H-13. In support of his Motion, Yusuf states as follows:

1. On June 27, 2018, Hamed filed his reply ("Hamed's Reply") in support of what he styled as his Motion as to Hamed Claim H-13: 2013 Refusal to Pay 2002-2012 Taxes for Waleed and Waheed Hamed – Despite Having Paid the Identical Taxes for Yusuf Family Members (the "Motion Regarding Claim H-13"), which was filed on April 27, 2018. That motion requested the Master to order the partnership to reimburse payments made by Waleed and Waheed Hamed in 2013 and 2014 to the IRB to cover deficiencies in income taxes owed for the 2002 through 2012 time period.

2. Hamed's Reply raises a new argument supported by new evidence (the grand jury testimony of Pablo O'Neill attached as Exhibit 1 to Hamed's Reply) regarding United Corporation's election of subchapter S status for tax purposes, which allegedly created "special benefits" for the Yusufs that were not extended to the Hameds. In making that argument, Hamed elides the distinction between income that is imputed to Yusuf's shareholder sons, even though not actually distributed to them, and income actually earned by them from other sources, including salaries paid to the Yusuf sons who were employed at the Plaza Extra stores during the period in which the indictment was pending.

3. Yusuf believes that Hamed's new arguments muddy, rather than clarify the issues regarding Claim H-13, and that the Master would benefit from having a brief from Yusuf, which addresses why Hamed's new argument is without merit, and why it serves only to divert attention from the fatal problem with Claim H-13 that compels its dismissal.

For these reasons, Yusuf respectfully requests the Master to grant his Motion for Leave to File Surreponse Regarding Claim H-13. A proposed Order and a proposed Surreponse Regarding Claim H-13 is attached.

Respectfully submitted,

DUDLEY, TOPPER AND FEUERZEIG, LLP

DATED: July 13, 2018

By: 

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CERTIFICATE OF SERVICE

I hereby certify that on this 13th day of July, 2018, I caused the foregoing **YUSUF'S MOTION FOR LEAVE TO FILE SURRESPONSE TO HAMED'S REPLY REGARDING 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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)	
Plaintiffs,)	CIVIL NO. ST-17-CV-384
v.)	
)	
THE ESTATE OF MOHAMMAD HAMED, Waleed Hamed as Executor of the Estate of Mohammad Hamed, and THE MOHAMMAD A. HAMED LIVING TRUST,)	
)	
Defendants.)	ACTION TO SET ASIDE FRAUDULENT TRANSFERS

ORDER

THIS MATTER having come before the Master on Fathi Yusuf's Motion for Leave to File a Surreponse to Hamed's Reply Regarding Claim H-13 (the "Motion"), and the Master being otherwise fully advised in the premises, it is hereby

ORDERED that the Motion is **GRANTED**; and it is further

ORDERED that the proposed Surreponse to Hamed's Reply as to Hamed Claim H-13, which is attached to the Motion, is hereby deemed filed.

ENTERED this _____ day of _____, 2018.

Edgar D. Ross
Master

A T T E S T:

Estrella George
Clerk of Court

By: _____
Deputy Clerk

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**YUSUF'S SURRESPONSE TO HAMED'S
REPLY AS TO HAMED CLAIM H-13**

INTRODUCTION

Hamed's Reply as to Hamed Claim H-13 obfuscates the real nature of Hamed Claim H-13 by his repeated incorrect contention that Yusuf caused United Corporation ("United") to pay "all of his kids' income taxes"¹ during the 2002 to 2012 tax period, and his lengthy digression on United's election to subchapter S tax treatment, which he insists, also incorrectly, conferred "special benefits" on the Yusufs at the expense of the Hameds. To demonstrate why these assertions are false and how they muddy, rather than clarify the issues to be resolved regarding Claim H-13, requires some understanding of the theory on which the criminal case was prosecuted, and the events in the criminal case that led to the \$6.5 million payment by United.

What is essential to understand for purposes of this discussion is that the tax evasion criminal case brought by the United States against United and the individual defendants in 2003 for under-reporting and underpayment of income taxes and gross receipts taxes on Plaza Extra supermarket profits for certain tax years in the 1990's was predicated on the view of the United States that United (and not a Mohammad Hamed/Fathi Yusuf partnership) owned and operated the Plaza Extra supermarkets. Mohammad Hamed was not named in the indictment,² and the Superior Court's determination that the Plaza Extra stores were operated by a Hamed/Yusuf partnership came more than a year after the \$6.5 million dollar payment for income taxes still owed for (primarily) Plaza Extra profits was approved by the U.S. Attorney and the IRB.

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¹ See Hamed's Reply at p. 9. There are numerous similar characterizations throughout the Reply.

² Indeed, the criminal defense attorneys counseled against taking any actions in the criminal case that supported the existence of a partnership as the owner of the Plaza Extra supermarkets. See note 4, *supra*. The individual defendants named in the criminal case were Mohammad Hamed's sons, Waleed and Waheed Hamed, Fathi Yusuf and his sons, Maher and Nejeah Yusuf. Waleed and Waheed Hamed were never shareholders of United and were treated in the indictment as employees of United.

As part of a 2011 addendum to the plea agreement entered in the criminal case in 2010, United paid \$10,000,000 in restitution for underpayment of taxes in the years covered by the indictment, and the charges against all individual defendants were immediately dismissed. *See Exhibit 1*, February 7, 2011 Addendum to Plea Agreement, p. 1. While the indictment was pending, the Plaza Extra supermarkets continued to operate, albeit under the supervision of a federal monitor put in place by the U.S. Attorney. The U.S. Attorney agreed to the setting of (relatively high) salaries for the Yusuf and Hamed sons that worked at the stores, and income taxes were paid by them by withholding from their paychecks. In addition, for most of the period of the indictment, United paid quarterly estimated taxes for income taxes incurred on supermarket profits for the three stores. *See Exhibit 2*, February 26, 2010 Plea Agreement, pp. 10-11, ¶ XI. As discussed in more detail below, because United had elected subchapter S treatment under the tax code, this meant that supermarket profits were imputed *pro rata* to the shareholders of United, regardless of whether they received an actual distribution of those profits. United's shareholders were Fathi Yusuf and his wife, Fawza, and their sons, Maher, Negeh, Yusuf, Zayad, and Zeyed. The latter two sons did not work in the Plaza Extra stores.³ The estimated tax payments were made by United from Plaza Extra accounts on behalf of all shareholders of United.

Although United and the individual defendants were not required to file tax returns each year during most of the period of the indictment, the 2010 Plea Agreement obligated United, its shareholders and the individual defendants to file annual tax returns for preceding tax years commencing in 2002. *See Exhibit 2*, p. 11. The tax returns through 2010 revealed that an additional amount of approximately \$6.5 million was owed, primarily because of underpayments of estimated taxes on Plaza Extra profits for the tax years going back to 2002. The U.S. Attorney

³ Zayed Yusuf was born in 1989, and hence was a minor for much of the period at issue. Zeyad Yusuf was born in 1986 and hence was a minor for some years of the relevant tax period.

and the IRB agreed that a payment of approximately \$6.5 million would cover the income tax liabilities of the shareholders of United, the lion's share of which were liabilities arising out of Plaza Extra profits that were imputed to them *pro rata* (in accordance with their percentage shareholdings in United). United made that payment in June 2013.

Judge Brady found in the instant case that the Plaza Extra supermarkets were operated as a 50-50 partnership by Fathi Yusuf and Mohammad Hamed in an order dated November 7, 2014, which is well over a year after the \$6.5 million tax payment was made and the tax returns giving rise to that payment were filed for United and its shareholders. In his April 25, 2013 preliminary injunction, Judge Brady had found only that there was a reasonable likelihood of success on Hamed's claim that the stores were operated by a partnership, which Mohammad Hamed and Fathi Yusuf owned 50-50. Judge Brady's determination in late 2014 that there was a partnership is contrary to the ownership structure that informed and governed the resolution of the criminal case by the United States. Given the difference in the ownership structure, with the partnership later overlaid upon United, it is virtually impossible to true up the taxes with any exactitude after the fact. Nor is there any equitable reason to do that. Mohammad Hamed benefitted from the U.S. Government's theory that United operated the Plaza Extra stores, because otherwise, as a partner, he would have necessarily been named as a defendant in the criminal case.⁴ Mohammad Hamed also benefitted from the payment of income taxes on the 50% of Plaza Extra store profits that would have been his tax liability as a partner if the United States had prosecuted the criminal case against the Hamed/Yusuf partnership.

⁴As Yusuf has repeatedly pointed out in this case, Hamed has never disputed the statement contained in paragraph 8 of Yusuf's August 12, 2014 declaration in support of Defendants' Motion for Partial Summary Judgment on Counts IV, XI and XII Regarding Rent, 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." See **Exhibit 3**, Declaration of Fathi Yusuf dated August 12, 2014, without exhibits.

Nevertheless, a few things can be said about Hamed's reply brief to clear up the confusion created by it and to narrow the issue presented for resolution by H-13. First, as discussed in more detail below, Hamed's repeated conclusory assertions that United's change to subchapter S treatment benefitted the Yusufs financially, at the expense of the Hameds, are easily shown to be false. Waleed Hamed's June 27, 2013 declaration and Hamed's May 15, 2018 response to a request to admit confirm this to be the case. Once the claim that the subchapter S election was a "special benefit" to the Yusuf shareholders is recognized as incorrect, a much narrower "benefits" issue raised by Claim H-13 regarding the \$6.5 million payment becomes clear. And for reasons discussed below, Claim H-13 is not the proper means of addressing that narrower issue, and it should be dismissed.

I. Hamed's Arguments that United's Subchapter S Election Benefitted the Yusufs at the Expense of the Hameds is Demonstrably False.

Hamed's discussion of United's election to be taxed as a subchapter S election is not only wrong, but is simply a way of diverting attention from the fundamental problem with Claim H-13, as discussed more fully below. When United elected to be treated as a subchapter S corporation for tax purposes, that election meant that regardless of whether any grocery store income is actually distributed to a corporation's shareholders,⁵ the income would be allocated *pro rata* to the shareholders and must be reported on their 1040 individual returns. *See* Internal Revenue Code,

⁵The Yusuf sons who were working at the Plaza Extra stores during the period of the indictment received fixed salaries from United's pre-tax revenues, and the Yusuf sons not employed at the stores were paid nothing at all from store income. The net income from grocery store operations – i.e., the income that remained after payment of wages, including withholding taxes for the Hamed and Yusuf sons employed by the stores and all other employees, quarterly estimated income taxes for store profits, and other business expenses – was retained by United, and not distributed to its shareholders. Hamed is at a minimum being very imprecise, and at worse misleading, when he characterizes the \$6.5 million dollar payment as covering in part "Yusuf's sons' taxes for their income from the partnership." Hamed's Reply at p. 3 (emphasis in original). It would be more accurate to say that the payment covered in part income taxes on grocery store income that was imputed under the tax code to the Yusuf shareholders, even though not actually distributed to them.

26 U.S.C. § 1366(c) (stating that “the gross income of a shareholder for purposes of this title . . . shall include the shareholder’s pro rata share of the gross income of the corporation”); *see also* *Rissman v. Rissman*, 1999 WL 495481 *1, n.1 (N.D. Ill. 1999) (“[a]s a subchapter ‘S’ corporation, [its] profits were considered income to its shareholders . . . regardless of whether those profits were actually distributed”); *U.S. v. Coney*, 689 F.3d 365, 367 (5th Cir. 2012) (shareholder of subchapter S corporation was required to report corporation’s income on his and his wife’s joint tax return “regardless of whether that income was actually distributed to them during the tax year”).

When United was a C corporation, its income was required to be reported on Form 1120, the corporate income tax return; as an S corporation, its 1120 would show no income tax, and instead its income would be taxed at the shareholder level. The fact that United continued to write the checks to cover income tax liability for Plaza Extra income after United elected S status plainly does not mean that the Yusuf family got a benefit from United’s (allegedly secret) conversion to S status. United’s payment for income taxes owed from grocery store profits in both scenarios was entirely consistent with what was later determined to be a partnership under which the partners were to split the grocery store profits 50-50, after payment of taxes.

Hamed’s repeated and disingenuous assertions that the conversion of United to subchapter S for tax purposes created a benefit for the Yusuf family because it meant that United “suddenly, unilaterally started paying just his son’s taxes, not Hamed’s sons’ taxes” are false. Hamed’s Reply at 6; *see also* Hamed’s Reply at p. 9 (this change “allow[ed] his sons’ income taxes to be paid starting in 1999”), and at p.10 (indicating that this change meant that “starting in 1999 Yusuf’s kids’ taxes would be paid but not Hamed’s”). It is true that once United assumed subchapter S status, then grocery store income would be imputed *pro rata* to each Yusuf shareholder, even though not actually distributed to that shareholder. If the individual shareholders had been asked to pay that tax liability out of their own funds, that would have imposed on them not a special

benefit, but instead a special burden that was not also placed on the Hamed sons. To avoid imposing that burden, United continued to be responsible for paying income taxes on Plaza Extra income. United covered that tax liability with annual and quarterly estimated tax payments, and then paid the shortfall for income taxes on grocery store income that was determined by the IRB to be owed in 2013 (i.e., the lion's share of the \$6.5 million dollar payment). Hamed acknowledges in response to request to admit number 15, which he filed on May 15, 2018, that United's payment of income taxes on any Plaza Extra profits imputed to United's shareholders was proper:

The Partners agreed when the Partnership was formed that all income taxes of the United shareholders *ascribable to partnership operation, but not those of unrelated United businesses*, were to be paid from the grocery store operations.

Exhibit 4, Hamed's May 15, 2018 Response to Request to Admit No. 15.

Hamed's admission, read in conjunction with the aforementioned summary of the legal effect of a subchapter S election, means that the election had a completely neutral effect on what is now regarded as partnership income from Plaza Extra earnings, and Hamed's lengthy digression in his Reply on that election is wholly irrelevant to his H-13 Claim.

II. Hamed Cannot use an Accounting Claim to Remedy an Alleged Wrongful Payment of Tax Deficiencies of the Yusuf Sons by Asking the Master to Direct a Similar Wrongful Payment to the Hamed Sons.

Once the Master properly disregards Hamed's assertions that the subchapter S election conferred a special benefit on the Yusufs, Hamed's real complaint becomes clear. What he is objecting to is not the portion of the \$6.5 million that covered income taxes still owed on Plaza Extra store profits, but instead the undetermined portion of that \$6.5 million dollar payment that covered income tax liabilities for the Yusuf sons other than those relating to store profits that are imputed to them under the subchapter S rules.

A review of the declaration of Waleed Hamed that is discussed in Yusuf's May 17, 2018 Opposition regarding Claim H-13 at page 6, and in his June 19, 2018 Response to Hamed's Motion

for Court Assistance⁶ at page 3 confirms beyond a shadow of a doubt what is really at issue regarding the \$6.5 million payment to the IRB, and why H-13 is not the proper vehicle for challenging any part of that payment. *See Exhibit 5*, June 27, 2013 Waleed Hamed Declaration. Waleed Hamed has conceded in his sworn declaration that “approximately \$6.5 million was submitted to the IRB for taxes owed primarily on the profits of the Plaza Extra Supermarkets” (in other words, taxes owed because of insufficient quarterly tax payments made by United from 2002 onward). *See Exhibit 4*, ¶ 29. Moreover, he acknowledged in that declaration that “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.” *Id.* at ¶ 31. The declaration goes on to say that “[t]he 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 ¶ 33.

What this declaration unequivocally establishes is that Hamed has not asserted (and is judicially estopped from asserting) any claim for reimbursement of the “primary” portion of the \$6.5 million dollar payment, which was to cover income taxes still owed “from profits of the Plaza Extra Supermarkets.” The only portion of the \$6.5 million paid by United in 2013 that he is complaining about is the far lesser portion that covered tax liabilities of Yusuf shareholders flowing from under-withholding of income taxes on their Plaza Extra salaries,⁷ or shortfalls in

⁶ Yusufs’ May 17, 2018 Opposition to Hamed’s Motion re: Claim H-13 was filed with the Master. His June 19, 2018 Response to Hamed’s Motion for Court Assistance was a Superior Court filing, but a copy was also posted to the Case Anywhere electronic docket on June 19, and can be found there.

⁷Hamed further obfuscates the narrow issue raised by H-13 when he falsely asserts that Yusuf paid “all his kids’ personal income taxes” during the period after 2002. Hamed’s Reply Brief at p. 9. As discussed above, during the period of indictment, salaries of the Yusuf sons (as well as the Hamed sons) who worked at the store were fixed, and withholding taxes were paid by them out of their gross salaries.

taxes owed for income from other sources. If, as Hamed contends, it was improper for the partnership to use any part of the \$6.5 million to cover income tax deficiencies of Yusuf's sons flowing from under-withholding or failure to pay estimated taxes on income from other sources, then it would be equally improper for the Master to direct the partnership to pay Hamed's sons for their under-withholding of income taxes for Plaza Extra salaries or shortfalls in income taxes owed for non-Plaza Extra related income.⁸ H-13 is simply not a viable claim for redressing an improper partnership payment of income tax deficiencies of the Yusuf sons.

Hamed asserts that he has already asserted a proper accounting claim in Claims H-144 and H-151 for income tax liabilities of the Yusuf sons not relating to Plaza Extra profits imputed to them (Hamed's Reply at p. 3, n.2), something Yusuf disputes.⁹ But whether or not he has done so, Claim H-13, which is based on the theory that "two wrongs make a right," is not a proper legal basis for an accounting claim, and should therefore be dismissed. This type of relief does not fall within the scope of the two accounting claims that Judge Brady has distilled from the Complaint and Counterclaim in this case.¹⁰

⁸Because Hamed has failed to produce the tax returns of Waleed and Waheed Hamed for the 2002-2012 time period to support his claim, Yusuf cannot say with certainty what amount of their tax deficiency for that period was for under-withholding of income taxes on Plaza Extra wages paid to them, and what amount flowed from the failure to pay estimated taxes on income from other sources.

⁹Yusuf disagrees that either H-144 or H-151 has anything to do with the \$6.5 million payment. Even a cursory review of these two claims, which reference a "\$900,000 estimated tax payment for United Corporation shareholders" (H-144) and "checks written to Fathi Yusuf for personal use" (H-151) shows this contention to be mistaken.

¹⁰ In his July 21, 2017 Opinion and Order Striking Jury Demand, Judge Brady found that despite the assertion of various nominal counts for damages in the Complaint and Counterclaim in this case, both parties had in reality each asserted a single equitable accounting claim. *See id.* at pp. 11-12, 14-17; *see also* Court's July 21, 2017 Opinion and Order Limiting Accounting Claim, p. 10, n. 9. And this single accounting claim, Judge Brady stated, is made up of "numerous alleged individual debits and withdrawals from partnership funds made by the partners or their family members over the lifetime of the partnership that have been, and, following further discovery will continue to be, presented to the Master for reconciliation in the accounting and distribution phase

The upshot is that regardless of what Hamed has or has not asserted in Claims H-144 and H-151, Claim H-13 is not the proper means to seek relief in an accounting claim that the partnership improperly paid income tax deficiencies of the Yusuf sons not related to Plaza Extra profits. H-13 should therefore be dismissed.

CONCLUSION

The Master should deny Hamed's Motion as to Hamed Claim H-13: 2013 Refusal to Pay 2002-2012 Taxes for Waleed and Waheed Hamed – Despite Having Paid the Identical Taxes for Yusuf Family Members. H-13 should be dismissed, and the Master should defer any rulings relating to allegedly wrongful payments to Yusuf's sons for income tax not related to Plaza Extra profits until H-144 and H-151 are presented to the Master for resolution.

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of the Final Wind Up Plan.” *See id.* at p. 11. On the basis of Judge Brady’s explanation of the nature of an accounting claim, it is clear that two non-partners asking for a “me too” payment does not fall within the rubric of such a claim.

Respectfully submitted,

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DATED: July 13, 2018

By: 

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CERTIFICATE OF SERVICE

I hereby certify that on this 13th day of July, 2018, I caused the foregoing **YUSUF'S SURRESPONSE TO HAMED'S REPLY AS TO 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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Mark W. Eckard, Esq.
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U.S. Virgin Islands 00824
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Jeffrey B.C. Moorhead, Esq.
JEFFREY B.C. MOORHEAD, P.C.
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1132 King Street
Christiansted, St. Croix
U.S. Virgin Islands 00820
E-Mail: jeffreymlaw@yahoo.com

The Honorable Edgar D. Ross
E-Mail: edgarrossjudge@hotmail.com

**DUDLEY, TOPPER
AND FEUERZEIG, LLP**

1000 Frederiksberg Gade
P.O. Box 756

St. Thomas, U.S. V.I. 00804-0756
(340) 774-4422

Hamed v. Yusuf, et al.
Civil No. SX-12-CV-370
Page 12

and via U.S. Mail to:

The Honorable Edgar D. Ross
Master
P.O. Box 5119
Kingshill, St. Croix
U.S. Virgin Islands 00851

Alice Kuo
5000 Estate Southgate
Christiansted, St. Croix
U.S. Virgin Islands 00820

Michele Barker

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**DUDLEY, TOPPER
AND FEUERZEIG, LLP**

1000 Frederiksberg Gade

P.O. Box 756

St. Thomas, U.S. V.I. 00804-0756

(340) 774-4422

EXHIBIT 1

**IN THE DISTRICT OF THE VIRGIN ISLANDS
DIVISION OF ST. CROIX**

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

vs.

**FATHI YUSUF MOHAMAD YUSUF,
aka Fathi 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. 2005-15F/B

PLEA AGREEMENT- ADDENDUM

The parties agree to the following:

- 1) United will pay a \$5,000 fine, as set forth in Paragraphs III.A.1 and VIII.A;**
- 2) United will pay \$10 million to the VIBIR for restitution, as set forth in Paragraphs III.A.3 and VIII.D;**
- 3) United will pay \$1 million as a substantial monetary penalty, as set forth in Paragraphs III.A.2, III.B, VIII.B, and VIII.C.**

In consideration of the settlement herein, United, the individual defendants, and United's shareholders, and their heirs, executors, administrators, or assigns do hereby stipulate and agree to pay the agreed upon

sums, and to waive and release any and all claims, demands, rights, and causes of action of whatsoever kind and nature, whether sounding in tort, contract, or any other theory of legal liability, including any claims for fees, interest, costs, and expenses, arising from, and by reason of, any and all known and unknown, foreseen and unforeseen, bodily and personal injuries, death, or damage to property, and the consequences thereof, which United, the individual defendants, and United's shareholders, or their heirs, executors, administrators, or assigns may have or hereafter acquire against the United States, its agents, servants, and employees on account of the same subject matter that gave rise to the above-captioned action. United, the individual defendants, and United's shareholders, and their heirs, executors, administrators, and assigns do hereby further agree to reimburse, indemnify, and hold harmless the United States and its agents, servants, and employees from and against any and all such claims, causes of action, liens, rights, or subrogated or contribution interests incident to, or resulting or arising from, the acts or omissions that gave rise to the above-captioned action. Provided, however, that the duties to reimburse, indemnify and hold harmless the United States and its agents as set forth in the preceding sentence shall be strictly limited to claims made by United, the individual defendants, United's shareholders, or their executors, administrators, assigns, or their family members.

**UNITED AND COUNSEL FULLY UNDERSTAND PLEA AGREEMENT-
ADDENDUM**

By signing this Plea Agreement-Addendum, United's representative certifies that he has been given lawful authority to enter into this Plea Agreement-


Addendum. United further certifies that its counsel has discussed the terms of this Plea Agreement- Addendum with appropriate officers, directors, and shareholders of United and that United fully understands its meanings and effect.

The Government agrees to the terms set forth in this Plea Agreement- Addendum.

RONALD SHARPE
UNITED STATES ATTORNEY

JOHN A. DICICCO
ACTING ASSISTANT ATTORNEY GENERAL
DEPARTMENT OF JUSTICE, TAX DIVISION


Dated: 2/2/2011



Mark F. Daly
Lori A. Hendrickson
Kevin C. Lombardi
Trial Attorneys

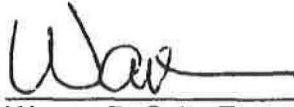
The defendant United Corporation agrees to the terms set forth in this Plea Agreement-Addendum.

Dated: 1/20/11



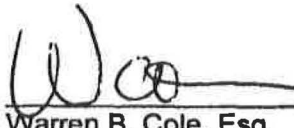
Thomas Alkon, Esq.
Attorney for Defendant United Corporation

Dated: 1/20/11

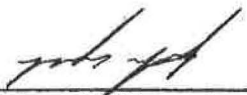


Warren B. Cole, Esq.
Attorney for Defendant United Corporation

Dated: 1/20/11



Warren B. Cole, Esq.
Attorney for Defendant's unindicted shareholders

Dated: _____ 
Maher Fathi Yusuf
President, Defendant United Corporation

Dated: _____
Gordon C. Rhea, Esq.
Attorney for Defendant Waleed Mohammed Hamed

Dated: _____
Randall P. Andreozzi, Esq.
Attorney for Defendant Waleed Mohammed Hamed

Dated: _____
Derek M. Hodge, Esq.
Attorney for Defendant Nejeh Fathi Yusuf

Dated: _____
Pamela Colon, Esq.
Attorney for Defendant Waheed Mohammed Hamed

Dated: _____
Henry C. Smock, Esq.
Attorney for Defendant Fathi Yusuf Mohamad Yusuf

Dated: _____
John K. Dema, Esq.
Attorney for Defendant Maher Fathi Yusuf

Dated: _____

Maher Fathi Yusuf
President, Defendant United Corporation

Dated: 1/20/2011

Gordon C. Rhea
Gordon C. Rhea, Esq.
Attorney for Defendant Waleed Mohammed Hamed

Dated: _____

Randall P. Andreozzi, Esq.
Attorney for Defendant Waleed Mohammed Hamed

Dated: 2/2/11

Derek M. Hodge
by WABA with authorization
Derek M. Hodge, Esq.
Attorney for Defendant Neje Fathi Yusuf

Dated: _____

Pamela Colon, Esq.
Attorney for Defendant Waheed Mohammed Hamed

Dated: _____

Henry C. Smock, Esq.
Attorney for Defendant Fathi Yusuf Mohamad Yusuf

Dated: _____

[Signature]
John K. Dema, Esq.
Attorney for Defendant Maher Fathi Yusuf

Dated: _____

Maher Fathi Yusuf
President, Defendant United Corporation

Dated: _____

Gordon C. Rhea, Esq.
Attorney for Defendant Waleed Mohammed Hamed

Dated: 1/24/11



Randall P. Andreozzi, Esq.
Attorney for Defendant Waleed Mohammed Hamed

Dated: _____

Derek M. Hodge, Esq.
Attorney for Defendant Nejeh Fathi Yusuf

Dated: _____

Pamela Colon, Esq.
Attorney for Defendant Waheed Mohammed Hamed

Dated: _____

Henry C. Smock, Esq.
Attorney for Defendant Fathi Yusuf Mohamad Yusuf

Dated: _____

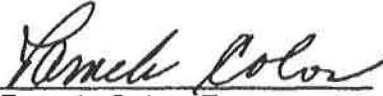
John K. Dema, Esq.
Attorney for Defendant Maher Fathi Yusuf

Dated: _____
Maheer Fathi Yusuf
President, Defendant United Corporation

Dated: _____
Gordon C. Rhea, Esq.
Attorney for Defendant Waleed Mohammed Hamed

Dated: _____
Randall P. Andreozzi, Esq.
Attorney for Defendant Waleed Mohammed Hamed

Dated: _____
Derek M. Hodge, Esq.
Attorney for Defendant Nejeah Fathi Yusuf

Dated: 2/1/11 _____

Pamela Colon, Esq.
Attorney for Defendant Waheed Mohammed Hamed

Dated: _____
Henry C. Smock, Esq.
Attorney for Defendant Fathi Yusuf Mohamad Yusuf

Dated: _____
John K. Dema, Esq.
Attorney for Defendant Maheer Fathi Yusuf


Dated: _____
Maher Fathi Yusuf
President, Defendant United Corporation

Dated: _____
Gordon C. Rhea, Esq.
Attorney for Defendant Waleed Mohammed Hamed

Dated: _____
Randall P. Andreozzi, Esq.
Attorney for Defendant Waleed Mohammed Hamed

Dated: _____
Derek M. Hodge, Esq.
Attorney for Defendant Nejeih Fathi Yusuf

Dated: _____
Pamela Colon, Esq.
Attorney for Defendant Waheed Mohammed Hamed

Dated: 1-25-11

Henry C. Smock, Esq.
Attorney for Defendant Fathi Yusuf Mohamad Yusuf

Dated: _____
John K. Dema, Esq.
Attorney for Defendant Maher Fathi Yusuf

EXHIBIT 2

**IN THE DISTRICT OF THE VIRGIN ISLANDS
DIVISION OF ST. CROIX**

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

vs.

**FATHI YUSUF MOHAMAD YUSUF,
aka Fathi 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. 2005-15F/B

**RECEIVED
2010 FEB 26 PM 4:00
DISTRICT OF THE VIRGIN ISLANDS
ST. THOMAS, VI**

PLEA AGREEMENT

I.

INTRODUCTION

This agreement is entered into by and between defendant United Corporation, d/b/a Plaza Extra (hereinafter "United"), Thomas Alkon, Esquire, and Warren B. Cole, Esquire, Attorneys for United; Fathi Yusuf Mohamad Yusuf, Waleed Mohammad Hamed, Waheed Mohammad Hamed, Maher Fathi Yusuf, NejeH Fathi Yusuf, and the Department of Justice, Tax Division, and the United States Attorney for the District of the Virgin Islands (collectively referred to as the "Government").

The parties agree to the following terms:

A. United will plead guilty to Count Sixty of the Third Superseding Indictment, which charges willfully making and subscribing a 2001 U.S. Corporation Income Tax Return (Form 1120S), in violation of Title 33, Virgin Islands Code, Section 1525(2).

B. At the time that United enters its plea to the above-referenced count, the Government will dismiss all counts of the Indictment with prejudice against FATHI YUSUF MOHAMAD YUSUF, aka Fathi Yusuf, WALEED MOHAMMAD HAMED, aka Wally Hamed, WAHEED MOHAMMED HAMED, aka Willie Hamed, MAHER FATHI YUSUF, aka Mike Yusuf, ISAM MOHAMAD YOUSUF, aka Sam Yousuf, and NEJEH FATHI YUSUF (all collectively referred to as "individual defendants"), including the temporary restraining order and forfeiture allegations. The Government agrees not to file any additional criminal charges against United or any of the individual defendants for conduct arising out of the facts alleged in the Indictment. In accordance with paragraph VI. below, the Department of Justice of the Virgin Islands also agrees that it will file no criminal charges against United or any of the individual defendants for any conduct arising out of the facts alleged in the Indictment.

The Government agrees to dismiss with prejudice all remaining counts of the Indictment against United, including the temporary restraining order and forfeiture allegations, at the time of sentencing.

II.

NATURE OF THE OFFENSE

United agrees to plead guilty to Count Sixty of the Indictment, which charges a violation of Title 33, Virgin Islands Code, Section 1525(2). United acknowledges that the offense to which it is pleading has the following elements:

A. Elements

1. United aided, assisted, procured, counseled, advised, or caused the preparation and presentation of a return;
 2. The return was fraudulent or false as to a material matter;
- and
3. United acted willfully.

B. Elements Understood and Admitted.

United, through a representative empowered to accept this plea by virtue of a duly enacted resolution of its Board of Directors, has fully discussed the facts of this case with defense counsel. United committed each of the elements of the crime charged in Count Sixty of the Indictment and admits that there is a factual basis for a plea of guilty to the charge.

C. Factual Basis.

The parties agree that the following facts are true and undisputed:

On or about September 18, 2002, United willfully aided, assisted, procured, counseled, advised, or caused the preparation and presentation of a materially false corporate income tax return on Form 1120S for the year 2001 and filed such return with the Virgin Islands Bureau of Internal Revenue (VIBIR).

Specifically, United reported gross receipts or sales on line 1c as \$69,579,412, knowing that the true amount was approximately \$79,305,980.

III.

PENALTIES

A. United acknowledges that the maximum penalties for violation of Count Sixty are the following:

1. A maximum fine of \$5,000;
2. The Government may seek costs of prosecution, including but not limited to 1) costs incurred to produce discovery in the investigation and prosecution of this matter; 2) costs incurred by the United States Marshal's Service to monitor the operations of Defendant United pursuant to the Temporary Restraining Order, currently estimated at approximately \$1.5 million; and 3) costs related to witness appearance and travel fees in the investigation and prosecution of this matter. United reserves the right to object to the imposition of the aforementioned costs and to contest the amounts claimed by the Government.

3. Restitution in an amount that represents any and all unpaid gross receipts taxes, corporate income taxes, and individual income taxes owing to the VIBIR for the Indictment years 1996, 1997, 1998, 1999, 2000, and 2001. Said restitution is to be determined by the Court in accordance with the figures and ranges set forth in Exhibit 1, accepting as proven those figures stipulated by the parties. For those numbers still in dispute, the Court will determine the appropriate amount within the ranges proposed by the parties in Exhibit 1, following briefing, evidentiary presentation, and argument. In making its

determination, the Court may consider all relevant and material evidence presented by the parties without regard to the Federal Rules of Evidence, so long as such evidence is disclosed in advance to the opposing party. Prior to submitting restitution amounts for the Court's consideration in preparation for sentencing, the parties agree to negotiate in good-faith to arrive at a mutually acceptable amount.

4. A term of probation of one year, with conditions as set forth in paragraph VIII.E. United understands that failure to comply with any of the conditions of probation may result in the imposition of further penalties.

B. In addition to the statutory penalties for violation of Title 33, Virgin Islands Code, Section 1525(2), United shall pay a substantial monetary penalty within the range set forth in paragraph VIII.B., as determined by the Court following briefing and argument by the parties.

IV.

WAIVER OF TRIAL RIGHTS

United understands that this guilty plea waives all of the following rights:

- A. To plead not guilty and to require the Government to prove the elements of the crimes beyond a reasonable doubt;
- B. To a speedy and public trial by jury;
- C. To assistance of counsel at all stages of trial;
- D. To confront and cross-examine witnesses against United; and
- E. To present evidence and to have witnesses testify on United's behalf.

V.

UNITED'S REPRESENTATION THAT GUILTY PLEA IS KNOWING
AND VOLUNTARY

United represents that:

- A. United has had a full opportunity to discuss all the facts and circumstances of this case with its counsel and has a clear understanding of the charges and the consequences of pleading guilty;
- B. No one has made any promises or offered any rewards in return for United's guilty plea, other than those contained in this Plea Agreement, in Exhibit 2, which contains the letter of understanding dated February 12, 2010 (this plea agreement controls in the event of any conflicts), or otherwise disclosed to the Court;
- C. No one has threatened United to induce this guilty plea; and
- D. United is pleading guilty because in truth and in fact United *is* guilty and for no other reason.

VI.

AGREEMENT LIMITED TO UNITED STATES ATTORNEY'S OFFICE FOR THE
DISTRICT OF THE VIRGIN ISLANDS AND TAX DIVISION

This Plea Agreement is between United Corporation, the Individual Defendants, and the Government. This Agreement is not intended to bind any other federal, state, or local prosecuting, administrative, or regulatory authorities except to the extent specifically expressed herein. The Government will bring this Plea Agreement to the attention of other authorities if requested by United.

VII.

PLEA AGREEMENT SUBJECT TO COURT APPROVAL

Pursuant to Rule 11(c)(1)(C) of the Federal Rules of Criminal Procedure, the parties acknowledge and agree that United should be ordered to pay the fine, restitution, and monetary penalties contained within this Plea Agreement and should be sentenced to a term of probation of one year:

If the Court does not adopt the agreement of the parties pursuant to Rule 11(c)(1)(C), both United and the Government reserve the right to withdraw from this Plea Agreement.

VIII.

PARTIES' SENTENCING RECOMMENDATIONS

A. **Fine.** The parties agree that the maximum statutory fine of \$5,000 should be imposed.

B. **Monetary Penalty:** The parties propose that the monetary penalty to be imposed pursuant to paragraph III.B. above be imposed in an amount between \$250,000 to \$5,715,748.

C. **Costs of Prosecution:** The Government proposes that costs of prosecution be imposed as discussed above in paragraph III.A.2. United contests said number and the categories of costs to be awarded.

D. **Restitution.** The parties propose the restitution amounts and ranges as set forth in Exhibit 1, as referenced in paragraph III.A.3. above.

E. **Terms of Probation**

1. United agrees to a term of probation of one year and agrees to be monitored by an independent third party certified public accounting firm to

assure its compliance with the tax laws of the VIBIR. United agrees to cooperate with the independent third party in carrying out such party's obligations under this agreement. The selection of a certified public accounting firm as the independent third party will be expressly approved by the Government prior to the beginning of the term of probation. If the parties cannot reach agreement on a third party, the independent third party will be selected by the Court.

2. The independent third party shall make quarterly reports to the Government, the Court, and United of United's financial condition, results of business operations, tax filings, tax payments, and accounting for the disposition of all funds received.

3. United shall submit to:

(a) a reasonable number of regular or unannounced examinations of its books and records at appropriate business premises by the independent third party; and

(b) a periodic review of financial statements and tax returns of United.

4. United shall be required to notify the court or independent third party immediately upon learning of (a) any material adverse change in its business or financial condition or prospects, or (b) the commencement of any bankruptcy proceeding, major civil litigation, criminal prosecution, or administrative proceeding against United, or any investigation or formal inquiry by governmental authorities regarding United's financial operations.

5. United shall make periodic payments, as specified by the Court, in the following priority: (a) restitution; (b) fine; and (c) substantial monetary penalty. After sentencing, the Government agrees to release all liens, restraining orders, liens, or other encumbrances on property except to the extent necessary to assure valid security for the payments of all amounts referenced above. United shall develop and submit to the Court an effective compliance and ethics program consistent with §8B2.1 (Effective Compliance and Ethics Program) of the United States Sentencing Guidelines. United shall include in its submission a schedule for implementation of the compliance and ethics program.

6. Upon approval by the Court of the ethics program referred to above, United shall notify its owners, shareholders, directors, officers, and employees of its criminal behavior and its programs referred to above. Such notice shall be in a form prescribed by the Court.

7. United shall make periodic reports to the Government and to the Court at intervals and in a form specified by the Court, regarding the organization's progress in implementing the ethics program referred to above. Among other things, such reports shall disclose any criminal prosecution, civil litigation, or administrative proceeding commenced against United, or any investigation or formal inquiry by governmental authorities concerning United's financial operations of which United learned since its last report.

IX.

UNITED WAIVES APPEAL AND COLLATERAL ATTACK

In exchange for the Government's concessions in this Plea Agreement, United waives, to the full extent of the law, any right to appeal or collaterally attack the conviction and sentence, including any restitution order, except in the following circumstances: (i) the sentence exceeded the maximum statutory penalty; or (ii) the sentence violated the Eighth Amendment to the United States Constitution.

X.

FURTHER CRIMES OR BREACH OF THE AGREEMENT WILL PERMIT THE GOVERNMENT TO RECOMMEND A HIGHER SENTENCE OR TO SET ASIDE THE PLEA

This Plea Agreement is based on the understanding that United will commit no additional criminal conduct before sentencing. If United engages in additional criminal conduct between the time of execution of this agreement and the time of sentencing, or breaches any of the terms of any agreement with the Government, the Government will not be bound by the recommendations in this Plea Agreement and may recommend any lawful sentence.

XI.

COOPERATION WITH INTERNAL REVENUE SERVICE AND VIRGIN ISLANDS BUREAU OF INTERNAL REVENUE

During the pendency of this matter, United, its shareholders, the individual defendants in this case, and certain related entities and individuals identified in various pleadings or motions in this case, upon the specific advice of their counsel in this matter, did not file tax returns and certain other reporting

documents to the United States or the United States Virgin Islands (USVI) on Fifth Amendment grounds. During the pendency of this matter, those same individuals and entities endeavored to work cooperatively with the U.S. Marshals Service and the USVI governments to pay over as deposits their best estimate of taxes owed on those returns.

Prior to sentencing, United agrees to cooperate with the Government and the VIBIR in filing complete and accurate corporate income tax returns and gross receipts returns for years 2002, 2003, 2004, 2005, 2006, 2007, and 2008 and in paying in full the amounts due thereupon. United agrees to comply with all current tax reporting and payment obligations between the execution of this agreement and sentencing. In addition, prior to the sentencing hearing in this matter, United's shareholders (FY 32.5%, FY 32.5%, SY 7%, ZY 7%, YY 7%, MY 7%, NY 7%), and the individual defendants shall file the outstanding returns and reporting documents and shall make full payments of the amounts due thereupon. United acknowledges that a special condition of probation will require that all corporate returns be filed, and all amounts due and owing under this agreement and all taxes due and owing for tax years 2002 through 2008 must be paid prior to the termination of the period of probation.

The Government agrees that no foreign bank account-related charges or discretionary penalties shall be applied with respect to United or any of the individual defendants so long as such reporting and regulatory compliance is made for each of the years 1996 through 2008 prior to sentencing.

XII.

ENTIRE AGREEMENT

The Plea Agreement and Exhibit 2 embody the entire agreement between the parties.

Upon the acceptance of the plea of guilty to Count Sixty by United in accordance with this agreement, the Government agrees to promptly move the Court for an Order dismissing the restraining orders against the individual defendants, except to the extent necessary to assure valid security for the payments of all amounts referenced in paragraph VIII., and shall move for entry of an order removing of record all notices of lis pendens or other encumbrances filed in connection with this case against all properties owned in whole or in part by any persons other than United. The parties agree to meet and confer to determine a schedule to remove pending lis pendens, liens, and other restrictions.

XIII.

MODIFICATION OF AGREEMENT MUST BE IN WRITING

No modification of the Plea Agreement shall be effective unless in writing signed by the Government, United, the individual defendants, and United's shareholders.

XIV.

UNITED AND COUNSEL FULLY UNDERSTAND AGREEMENT

By signing this Plea Agreement, United's representative certifies that he or she has been given lawful authority to enter into this Plea Agreement. United further certifies that its counsel has discussed the terms of this Plea Agreement


with appropriate officer and directors of United and that United fully understands its meanings and effect.

The Government agrees to the terms set forth in this Plea Agreement.

RONALD SHARPE
UNITED STATES ATTORNEY


JOHN A. DICICCO
ACTING ASSISTANT ATTORNEY GENERAL
DEPARTMENT OF JUSTICE, TAX DIVISION

Dated: 2/26/10

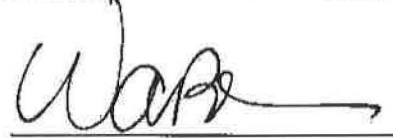


Mark F. Daly
Lori A. Hendrickson
Kevin C. Lombardi
Trial Attorneys


The defendant United Corporation agrees to the terms set forth in this Plea Agreement.

Dated: 2, 26/10 

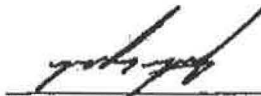
Thomas Alkon, Esq.
Attorney for Defendant United Corporation


Dated: 2/26/10 


Warren B. Cole, Esq.
Attorney for Defendant United Corporation


Dated: 2/26/10 

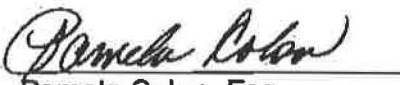
Warren B. Cole, Esq.
Attorney for Defendant's unindicted shareholders


Dated: 2-26-10 
Maher Fathi Yusuf
President, Defendant United Corporation

Dated: 2/26/10 
Gordon C. Rhea, Esq.
Attorney for Defendant Waleed Mohammed Hamed

Dated: 2/26/10 
Randall P. Andreozzi, Esq.
Attorney for Defendant Waleed Mohammed Hamed

Dated: 2/26/10 
Derek M. Hodge, Esq.
Attorney for Defendant Nejeh Fathi Yusuf

Dated: 2/26/10 
Pamela Colon, Esq.
Attorney for Defendant Waheed Mohammed Hamed

Dated: 2/26/10 
Henry C. Smock, Esq.
Attorney for Defendant Fathi Yusuf Mohamad Yusuf

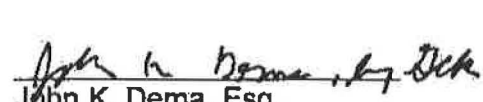
Dated: 2/26/10 
John K. Dema, Esq.
Attorney for Defendant Maher Fathi Yusuf

EXHIBIT 1 - RESTITUTION NUMBERS FOR TAX LOSS

Description	Government	Defendant
Gross Receipts Tax 1996	\$324,149.55	\$0.00
Gross Receipts Tax 1997	\$234,506.94	\$0.00
Gross Receipts Tax 1998	\$619,496.89	\$272,251.00
Gross Receipts Tax 1999	\$558,830.86	\$603,633.00
Gross Receipts Tax 2000	\$642,057.28	\$642,057.00
Gross Receipts Tax 2001	\$478,832.33	\$386,081.00
TOTAL GROSS RECEIPTS TAXES	\$2,857,873.85	\$1,904,022.00
Corporate Income Tax - 1996	\$2,214,307.41	\$0.00
Corporate Income Tax - 1997	\$2,360,868.66	\$427,011.00
Corporate Income Tax - 1998	\$3,993,535.34	\$488,323.00
TOTAL CORPORATE INCOME TAX	\$8,568,711.41	\$915,334.00
Individual Income Tax - 1999 - FY 32.5%	\$1,046,359.70	\$0.00
Individual Income Tax - 1999 - FY 32.5%	\$1,046,359.70	\$0.00
Individual Income Tax - 1999 - SY 7%	\$225,369.78	\$0.00
Individual Income Tax - 1999 - ZY 7%	\$225,369.78	\$0.00
Individual Income Tax - 1999 - YY 7%	\$225,369.78	\$0.00
Individual Income Tax - 1999 - MY 7%	\$225,369.78	\$0.00
Individual Income Tax - 1999 - NY 7%	\$225,369.78	\$0.00
TOTAL INDIVIDUAL INCOME TAX - 1999	\$3,219,568.31	\$0.00
Individual Income Tax - 2000 - FY 32.5%	\$1,458,473.19	\$0.00
Individual Income Tax - 2000 - FY 32.5%	\$1,458,473.19	\$0.00
Individual Income Tax - 2000 - SY 7%	\$314,132.69	\$0.00
Individual Income Tax - 2000 - ZY 7%	\$314,132.69	\$0.00
Individual Income Tax - 2000 - YY 7%	\$314,132.69	\$0.00
Individual Income Tax - 2000 - MY 7%	\$314,132.69	\$0.00
Individual Income Tax - 2000 - NY 7%	\$314,132.69	\$0.00
TOTAL INDIVIDUAL INCOME TAX - 2000	\$4,487,609.81	\$0.00
Individual Income Tax - 2001 - FY 32.5%	\$1,545,993.69	\$0.00
Individual Income Tax - 2001 - FY 32.5%	\$1,545,993.69	\$0.00

Individual Income Tax - 2001 - SY 7%	\$332,983.26	\$0.00
Individual Income Tax - 2001 - ZY 7%	\$332,983.26	\$0.00
Individual Income Tax - 2001 - YY 7%	\$332,983.26	\$0.00
Individual Income Tax - 2001 - MY 7%	\$332,983.26	\$0.00
Individual Income Tax - 2001 - NY 7%	\$332,983.26	\$0.00
TOTAL INDIVIDUAL INCOME TAX - 2001	\$4,756,903.67	\$0.00
TOTAL ALL TAXES	\$23,890,667.04	\$2,819,356.00

Exh: 617 2

February 12, 2010

Lori A. Hendrickson, Esq.
US DOJ/Tax Division/N.Criminal Section
601 D. Street NW, Room 7814
Washington, DC 20004-2904

Re: United States v. Fathi Yusuf, Crim. No. 05-0015

Dear Ms. Hendrickson:

We write to memorialize the process and parameters that will culminate in a formal plea agreement in this case. The parties have agreed to the following terms:

- Defendant United Corporation (d.b.a. Plaza Extra) agrees to plead guilty to Count Sixty, filing a false 2001 Form 1120S, in violation of Title 33, Virgin Islands Code, Section 1525(2);
- The government agrees to dismiss the pending charges against the individual defendants immediately after defendant United Corporation's guilty plea has been entered in court by an authorized representative of defendant United Corporation, according to the terms of a signed plea agreement. The Government agrees not to prosecute United Corporation or any other individual or entity for any other crimes arising out of the conduct alleged in the Third Superseding Indictment;
- The government agrees to dismiss the remaining pending charges against United at the sentencing hearing;
- The parties agree to meet with each other and with representatives of the Virgin Islands Bureau of Internal Revenue (VIBIR) to try to reach agreement for restitution numbers for unpaid gross receipts taxes, corporate income taxes, and individual income taxes for the Indictment years 1996, 1997, 1998, 1999, 2000, and 2001. The numbers for which the parties are able to agree will be set forth in the plea agreement;
- If the parties are unable to reach agreement on any of the tax loss numbers for the Indictment years, they will set forth their own tax loss numbers for each year and for each particular tax, in a format identical to the attached chart. The parties agree that the final determination of the restitution amount for the unpaid gross receipts taxes, corporate income taxes, and individual income taxes for the Indictment years 1996, 1997, 1998, 1999, 2000, and 2001, will be made by Judge Finch after the

Letter of Agreement

February 12, 2010

Page 2 of 5

parties submit sentencing memoranda and present testimonial and documentary evidence at a hearing. The parties agree that Judge Finch will determine a liability based on the range of numbers asserted by the parties in the plea agreement.

- The determination of Judge Finch of the restitution by United Corporation shall be conclusive of all taxes due and owing to the Government of the Virgin Islands for years 1996, 1997, 1998, 1999, 2000, and 2001 with respect to all taxes of the shareholders of United Corporation, both indicted and non-indicted, and employees of United, including Waheed Hamed and Waleed Hamed, due on or for or on account of income earned by United Corporation during said years and upon payment all such tax liabilities shall be deemed satisfied in full.
- Defendant United Corporation agrees to a term of probation of one year, and agrees to be monitored by an independent third party certified public accounting firm during the term of probation to assure its compliance with the tax laws of the VIBIR. The selection of the independent third party will be expressly approved by the government prior to the beginning of the term of probation. If the parties cannot reach agreement on a third party, the independent third party will be selected by the Court;
- The government agrees not to prosecute United Corporation or individual defendants, or assert any civil or criminal accuracy related or reporting penalties, in years 2002, 2003, 2004, 2005, 2006, 2007, and 2008, provided that the individual defendants tender documentary proof that they have filed tax returns and paid tax due as set forth on those returns and as reviewed and accepted by the VIBIR;
- United, its shareholders, and the individual defendants referenced in the Indictment agree to cooperate with VIBIR to file full and complete tax returns for all post indictment years through present and to make full payment on any amounts due thereon. The Government agrees that no interest, penalties, or time and interest sensitive penalties should be imposed on the post-indictment returns so long as said returns are filed in accordance with this agreement. To the extent tax deposits already submitted exceed the amount owed on the post indictment returns as filed, such deposits should be reallocated to other tax periods or refunded to the particular tax payer. The VIBIR reserves the right to review the returns to be filed hereunder to determine whether they are accurate as filed.
- No foreign bank account-related charges or discretionary penalties shall be applied with respect to any of the individuals and entities so long as such reporting and regulatory compliance is made for the subject post-indictment years. (United States Department of Justice, and not VIBIR, has authorization over this provision).
- The parties agree that United will pay a \$5,000 fine and that the Government may seek a substantial monetary penalty. The parties will negotiate in good faith to determine the character of this penalty and will set forth a defined range from

Letter of Agreement
February 12, 2010
Page 3 of 5

which Judge Finch will make a final ruling. The parties agree that the Government may also seek reimbursement from United for the actual costs of prosecution, which will be set forth in the plea agreement. United reserves the right to contest the above mentioned penalties and prosecution costs.

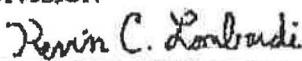
- Defendant United Corporation, the individual defendants, and the shareholders of United Corporation, all agree to file original individual income tax returns (or correcting amended returns, if appropriate) for the years 2002, 2003, 2004, 2005, 2006, 2007, and 2008, and provide any documentation or information requested by the VIBIR in order for the VIBIR to make their own independent review and assessment of the accuracy of such returns. Defendant United Corporation, the individual defendants, and the shareholders of United Corporation all agree to take these actions prior to the sentencing hearing;

The United States government and the United States Virgin Islands government agree to the terms set forth in this Letter of Agreement.

RONALD SHARPE
UNITED STATES ATTORNEY

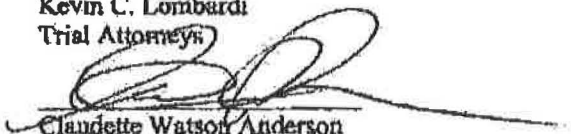
JOHN A. DICICCO
ACTING ASSISTANT ATTORNEY GENERAL
DEPARTMENT OF JUSTICE
TAX DIVISION

Dated: 2/12/2010



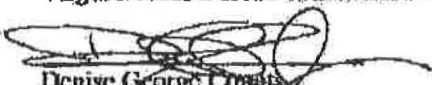
Mark F. Daly
Lori A. Hendrickson
Kevin C. Lombardi
Trial Attorneys

Dated: 2/15/10



Claudette Watson Anderson
Director
Virgin Islands Bureau of Internal Revenue

Dated: 2/18/10

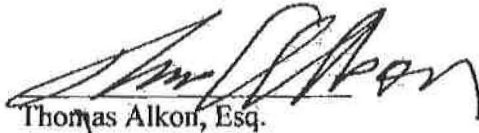


Denise George
Assistant Attorney General
Virgin Islands Department of Justice
Office of the Attorney General

The defendant United Corporation agrees to the terms set forth in this Letter of Agreement.

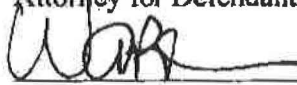
Letter of Agreement
February 12, 2010.
Page 4 of 5

Dated: 2/26/10



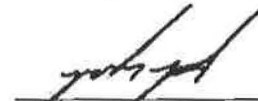
Thomas Alkon, Esq.
Attorney for Defendant United Corporation

Dated: 2/26/10



Warren B. Cole, Esq.
Attorney for Defendant United Corporation

Dated: 2/26/10



MAHER FATHI YUSUF
President, Defendant United Corporation

Dated: 2/26/10



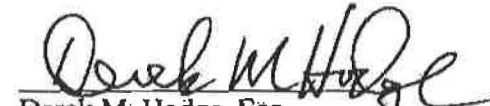
Gordon C. Rhea, Esq.
Attorney for Defendant Waleed Mohammed Hamed

Dated: 2/26/10



Randall P. Andreozzi, Esq.
Attorney for Defendant Waleed Mohammed Hamed

Dated: 2/26/10



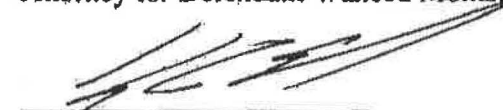
Derek M. Hodge, Esq.
Attorney for Defendant Nejeah Fathi Yusuf

Dated: 2/26/10



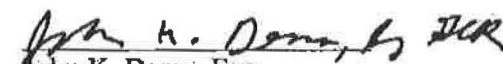
Pamela Colon, Esq.
Attorney for Defendant Waheed Mohammed Hamed

Dated: 2/26/10



Henry C. Smock, Esq.
Attorney for Defendant Fathi Yusuf Mohamad Yusuf

Dated: 2/26/10



John K. Dema, Esq.
Attorney for Defendant Maher Fathi Yusuf

EXHIBIT 3

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

<p>MOHAMMAD HAMED, by his authorized agent WALEED HAMED,</p> <p style="text-align: right; padding-right: 50px;">Plaintiff/Counterclaim Defendant,</p> <p style="text-align: center;">vs.</p> <p>FATHI YUSUF and UNITED CORPORATION,</p> <p style="text-align: right; padding-right: 50px;">Defendants/Counterclaimants,</p> <p style="text-align: center;">vs.</p> <p>WALEED HAMED, WAHEED HAMED, MUFEEED HAMED, HISHAM HAMED, and PLESSEN ENTERPRISES,</p> <p style="text-align: right; padding-right: 50px;">Additional Counterclaim Defendants.</p> <hr style="width: 100%; margin-top: 10px;"/>	<p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p>	<p>CIVIL NO. SX-12-CV-370</p> <p>ACTION FOR DAMAGES, INJUNCTIVE RELIEF AND DECLARATORY RELIEF</p> <p>JURY TRIAL DEMANDED</p>
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DECLARATION OF FATHI YUSUF

I, Fathi Yusuf, pursuant to 28 U.S.C. §1746 and Super. Ct. R. 18, declare under the penalty of perjury, that:

1. Mohammad Hamed (“Hamed”) and I agreed to carry on a supermarket business (the “Plaza Extra Stores”) that eventually grew into three locations, including the first of three stores, Plaza Extra-East, which opened in April 1986. Plaza Extra-East was and is located in United Plaza Shopping Center owned by United Corporation (“United”), of which I am the principal shareholder. Under the business agreement between Hamed and me that I now describe as a partnership, profits would be divided 50-50 after deduction for rent owed to United, among other expenses. Under our business agreement, we also agreed that rent would accrue until such time as I decided that our business accounts should be reconciled. The reconciliation of business accounts would not only involve payment of accrued rent, but also advances that each of us had taken by withdrawing money from the store safe(s). Under our agreement, I was the person

responsible for making all decisions regarding when the reconciliation would take place and hence when the rent would be paid. Hamed and I agreed at the outset that the rent would be calculated at a rate of \$5.55 per square foot for what is referred to as Bay 1, the primary space comprising the Plaza Extra-East store, which originally covered 33,750 square feet

2. Our decision to allow rent to accrue for some number of years before paying it was intended to enable the business to retain capital needed to grow the business.

3. This method of allowing rent to accrue for a number of years before being paid was important for the growth of the supermarket business for a number of reasons. First, at the time of the formation of the business agreement, the initial store, Plaza Extra-East, in St. Croix, was still in development. We thereafter made plans to open a second supermarket in St. Thomas (the store now known as Plaza Extra-Tutu Park), and it opened in October 1993. Later, we made plans to open a third grocery store in St. Croix (the store now known as Plaza Extra-West), and it opened in 2000. Construction began in 1998 and finished in 2000. Keeping money in the business for multi-year periods, rather than paying rent to United in monthly or even annual rent payments, ensured that the business would have the capital to establish and grow the stores in very challenging economic conditions.

4. For reasons discussed in more detail below, there has been only one reconciliation of accounts since our business agreement was formed, and it occurred at the end of 1993. The rent payment due from 1986 through December 31, 1993 was paid by means of a setoff on an account that reflected credits and debits made between Hamed and me. Specifically, Hamed's one-half portion of the rent was paid by means of a setoff against amounts I owed him by virtue of some large withdrawals I had made in preceding years.

5. In 1992, the Plaza Extra-East store burned down. As with all tenants in the United Shopping Plaza, the insurance policy on Bay 1 was paid to the property-owner, United. United decided to expand Bay 1 by purchasing an adjacent acre of land for \$250,000. I used \$100,000 of my personal funds and the balance was paid with insurance proceeds United received as the insured under a policy of insurance, which is required of all tenants of United Shopping Plaza. At that time, I agreed with Hamed, through his son, Waleed, to continue operating the Plaza Extra – East supermarket in Bay 1 of United Shopping Plaza. I further agreed to keep the rent at the much lower-than market rate of \$5.55 per square foot for a ten-year period. Specifically, I told Hamed that we would keep that rate in place for the ten years following the date the rebuilt store opened for business.

6. The Plaza Extra-East store was reopened in May 1994. The Plaza Extra-Tutu Park store had just opened in October 1993. Around the time that the Plaza Extra-East store reopened, I was arranging a Scotiabank loan to United for approximately \$5,000,000 for the benefit of the partnership. The loan was guaranteed by my wife and me, and it was secured by our home on St. Croix and by United's shopping center in St. Croix. Because money was short, Hamed and I agreed not to have the rent withdrawn, and to simply continue to accrue rent until such time as I made a demand.

7. Some time in 2002 or 2003, I began discussions with Waleed Hamed regarding how the rent would be calculated for Plaza Extra-East after the expiration of the ten-year period during which the \$5.55/square foot rent formula was in place. During those discussions, we recognized, as before, that the prior rent was far below fair market value, and the decision was made to set the rent based on a percentage of sales formula using the yearly sales of Plaza Extra-Tutu Park. Total payments made to that store's landlord, Tutu Park, Ltd., for a given year were to

be divided by sales for the same year at that store to determine a percentage, and that percentage was then applied to the sales at Plaza Extra-East to determine the rent to be paid by Plaza Extra-East to United for that year. There is no dispute concerning the formula for calculating the rent for Plaza Extra-East from May 2004 forward, since rent based upon that agreed formula was paid via a check signed by Waleed Hamed on February 7, 2012 in the amount of \$5,408,806.74, covering the period from May 5, 2004 to December 31, 2011. A calculation of the rent based on this formula and a copy of the check in the amount of \$5,408,806.74 is attached as **Exhibit A**.

8. Between 1994 and 2004, we discussed the rent issues on several occasions. We both agreed to continue accruing the rent because of the need for more capital for the then new St. Thomas store, and for the construction of the Plaza Extra – West store between 1998 and 2000. Between 2002 and 2003, I discussed with Hamed the new rental rate for the Plaza Extra – East store beginning May 5th, 2004. Also, in 2004, at about the time the new agreed-upon rent formula became effective, Waleed Hamed, acting on behalf of his father, and I discussed payment of the rent that had accrued since May 1994 at the \$5.55 per square foot rate. At the time, we were then embroiled in the criminal case, and all of the Plaza Extra accounts were frozen by an injunction. As a result, I made a decision and Waleed Hamed, on behalf of Hamed, agreed, that there was no prospect for the payment of the rent owed for the period since the last payment of rent and that payment of that rent would continue to be deferred. In addition, even if the ability to collect the rent had not been not blocked by the injunction, I was unable to calculate the rent for the second rental period and to do a full reconciliation of the partnership accounts, as I did not have the book of accounting entries called the “black book,” and also did not have the comprehensive, larger ledger showing advances against the partnership that Hamed and I had taken by means of withdrawals from store safes. The FBI had seized substantially all of the financial and accounting

records of the Plaza Extra Stores, including these items, when it conducted its raid on the stores in October 2001. Among other things, the black book reflected the exact date of the last rent payment, information I needed to accurately determine when the rent for the second period had begun accruing. And the larger ledger reflected the debits and credits between the two partners (for the funds taken by them and members of their families from the store safes in the form of advances against partners' accounts). I had no recollection (and neither did Hamed) of exactly what dates the rent for the preceding period had covered, and indeed was not sure whether it ended in 1992, 1993 or 1994. We therefore needed to consult the black book to determine the start date for the subsequent rental period, which in turn would affect the amount of rent that had accrued since the last payment. Waleed Hamed and I agreed that rent would be allowed to continue to accrue until it was possible to calculate the amount of rent due and make the payment. Another consideration that counseled in favor of letting the rent continue to accrue, rather than paying it, is 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.

9. In the latter part of 2011 and early 2012, the injunction in the District Court criminal proceeding had been relaxed sufficiently to permit a payment for rent that had accrued to that date from the date of the last payment. However, the original problem regarding the absence of the records to accurately calculate the rent for the period ending in 2004, and to conduct a full reconciliation of the rents from the date of the last reconciliation, remained unresolved because of the absence of the black book and the ledger. Neither of these items had been returned. I did not want to either understate or overstate the rent amount, but wanted the dollar amount of rent to be exactly correct. By contrast, we did not need the black book to pay the rent covering the period

from May 5, 2004 to December 31, 2011, as we knew that the new rent rate was in effect for that time period.

10. In early 2012, I discussed with Waleed Hamed the payment of accrued rent, and we agreed that the May 5, 2004 to December 31, 2011 portion of the accrued rent should be paid, while the portion preceding that would be deferred. Waleed acknowledged that we could not pay all of the rent that had accrued from the date of last payment in 1993 to May 5, 2004, as we still had not recovered the black book to determine the exact starting point for that period, and there also were insufficient funds in the operating account to pay the rent due for the ten year period of January 1, 1994 to May 5, 2004. During that conversation in 2012, Waleed Hamed agreed that rent was owed for that period, and agreed that it would be paid once the black book was recovered and a proper calculation could be made, and when sufficient funds are available. Shortly after that discussion, the rent for the period May 5, 2004 to December 31, 2011 in the amount of \$5,408,806.74 was paid by a check signed by Waleed. See Exhibit A. The reason why the rent for the May 5, 2004 to December 31st, 2011 paid was paid before the rent for the January 1994 to May 5, 2004 period was that information regarding the exact starting date for that prior period was not available, while the period of May 5, 2004 to December 31, 2011 was certain as to start and end dates.

11. My son, Yusuf, found the black book in early 2013, among a large number of documents that were returned to us by the FBI. After receipt of the black book, at my instruction, the attorney for United and me sent a letter dated May 17, 2013 to Hamed's attorney requesting payment of the past due rent, as we then were able to properly calculate the dollar amount. See letter attached as Exhibit B. This letter contained errors in the amount of the outstanding unpaid rent that are corrected by the calculations set forth in this declaration. On May 22, 2013, counsel

for Hamed wrote a letter to my and United's counsel in which he advised that his client was now taking the position that because of the statute of limitations, profits did not have to be determined by deducting the unpaid rent for the 1994 to 2004 period. See letter attached as **Exhibit C**. Until receipt of this letter, nobody on the Hamed side had ever challenged or otherwise disputed this rental obligation or the terms of our partnership agreement that required rent to be deducted in order to determine profits.

12. I received a partial copy of the FBI file, records, and documents electronically produced and stored on a hard drive in approximately mid-2010. When these documents were initially returned, I had no reason to suspect any wrongdoing by Hamed, Waleed Hamed or any other members of the Hamed family. Later in 2010, as I reviewed these documents, I discovered certain documents that led me to believe that Hamed and his son, Waleed, may have taken monies without my knowledge. In 2012, I discovered the tax returns for Waleed Hamed for various years, which reflected more than \$7,500,000 in stocks and securities owned by Waleed Hamed. I knew Waleed's salary as a Plaza Extra store manager, and knew that he had no other employment or source of income. I believed there was no way he could have legitimately accumulated that much wealth, but for having taken money from the partnership without telling me or making a record of it.

13. As to the primary space occupied by the Plaza Extra-East store, Bay 1, rent is due for two basic periods: a) 1994 – 2004, and b) 2012 through the present. Additional rent is due for limited periods when Plaza Extra-East used additional space for extra storage and staging of inventory.

14. The rent as to Bay 1 can be divided into four periods, two of which have been paid and two of which remain unpaid: 1) 1986 through December 1993 was paid as of December 31, 1993;

2) January 1, 1994 through May 4, 2004 has *not* been paid; 3) May 5, 2004 through December 31, 2011 was paid as of February 7, 2012; and 4) January 1, 2012 to date has *not* been paid.

15. The rent for Bay 1 from January 1, 1994 to May 4, 2004 (“Past Due Rent”) is due and owing. The Past Due Rent is \$3,999,679.73.

16. The rent for Bay 1 from January 1, 2012 to the present is due and owing. Although beginning in 2004 rent for Bay 1 was calculated on the basis of percentage of sales formula discussed above, once the disputes between the parties intensified, United sent a termination notice and requested the premises to be vacated. When Hamed refused to vacate despite receiving more than 1 year’s notice to vacate, United provided written notice of rent increases. Beginning on January 1, 2012 through March 31, 2012, rent was increased to \$200,000.00 per month plus 1% per month interest on the unpaid balance. Copies of the three Notice Letters from United are attached as **Exhibit D**. Beginning on April 1, 2012, rent was further increased to \$250,000.00 per month plus 1% per month interest on the unpaid balance. See Exhibit D. The total amount of the increased rent from January 1, 2012 through August 30, 2014 is \$9,155,371.52, as set forth in the latest notice letter. See Exhibit E.

17. While United claims the authority to require payment of the increased rent as set forth in the preceding paragraph, there is no dispute that rent is due from January 1, 2012 to date at least in the amount based on the same percentage of sales formula used to calculate the rent payment covering the period May 5, 2004 to December 31, 2011 that was made on February 7, 2012. Although United reserves its right to pursue its claims for the increased rent as to Bay 1 at trial, it is seeking summary judgment only for the undisputed rent calculated according to the same formula used for the previous payment of rent on February 7, 2012 of \$5,408,806.74, which is the

formula used at Plaza Extra – Tutu Park. See Exhibit F, which are the rent calculations that I prepared. See Exhibit F.

18. For 2012, the undisputed rent due is \$702,908. See Exhibit F, p.1.

19. For 2013, the undisputed rent due is \$654,190.09. See Exhibit F, p. 2.

20. For the period from January 1, 2014 through August 30, 2014, the undisputed rent due is \$452,366.03. This amount was calculated by adding the rent for 2012 and 2013 and dividing that sum by 24 months in order to determine an average monthly rent, which is then multiplied by 8, representing the eight months from January through August 30, 2014 ($\$702,908 + 654,190.09 = \$1,357,098.09 \div 24 = \$56,545.75 \times 8 = \$452,366.03$). The total undisputed Current Rent is the sum of \$702,908, \$654,190.09 and \$452,366.03, which is \$1,809,464.12.

21. At periodic points in time, additional space was used by Plaza Extra-East for extra storage and staging of inventory. United has made demand for the rent covering the additional space actually occupied by Plaza Extra-East, but no payment has been received to date.

22. For the period from May 1, 1994 through July 31, 2001, Plaza Extra-East has occupied and owes rent for Bay 5 (“Bay 5 Rent”). The Bay 5 Rent is calculated by multiplying the square feet actually occupied (3,125) by \$12.00 for 7.25 years. The total due for Bay 5 Rent is \$271,875.00.

23. For the period from May 1, 1994 through September 30, 2002, Plaza Extra-East has occupied and owes rent for Bay 8 (“First Bay 8 Rent”). The First Bay 8 Rent is calculated by multiplying the square feet actually occupied (6,250) by \$6.15 for 8 years, 5 months. The total due for First Bay 8 Rent is \$323,515.63.

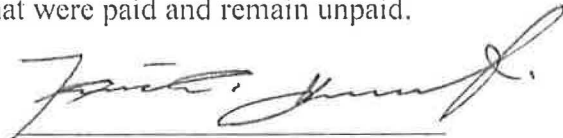
24. For the period from April 1, 2008 through May 30, 2013, Plaza Extra-East has occupied and owes rent for Bay 8 (“Second Bay 8 Rent”). The Second Bay 8 Rent is calculated by

multiplying the square feet actually occupied (6,250) by \$6.15 for 5 years, 2 months. The total due for Second Bay 8 Rent is \$198,593.75.

25. The total amount due for Bay 5 Rent, First Bay 8 Rent, and Second Bay 8 Rent is \$793,984.38.

26. The total outstanding, unpaid rent for all the space used by Plaza Extra-East from January 1, 1994 through August 30, 2014 is \$6,603,122.23, excluding the "disputed" increased rent from January 1, 2012 through the present. **Exhibit G** is a Chronology of Rents, which accurately reflects the history of the rents that were paid and remain unpaid.

Dated: August 12, 2014



Fathi Yusuf

EXHIBIT 4

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

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

Plaintiff/Counterclaim Defendant,

vs.

FATHI YUSUF and UNITED CORPORATION

Defendants and Counterclaimants.

vs.

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

Counterclaim Defendants,

WALEED HAMED, as the Executor of the
Estate of MOHAMMAD HAMED, *Plaintiff,*

vs.

UNITED CORPORATION, *Defendant.*

WALEED HAMED, as the Executor of the
Estate of MOHAMMAD HAMED, *Plaintiff*

vs.

FATHI YUSUF, *Defendant.*

FATHI YUSUF, *Plaintiff,*

vs.

MOHAMMAD A. HAMED TRUST, *et al,*
Defendants.

Case No.: SX-2012-CV-370

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

JURY TRIAL DEMANDED

Consolidated with

Case No.: SX-2014-CV-287

Consolidated with

Case No.: SX-2014-CV-278

Consolidated with

Case No.: ST-17-CV-384

**PLAINTIFF / COUNTERCLAIM DEFENDANT WALEED HAMED'S
RESPONSES TO FATHI YUSUF'S REQUESTS TO ADMIT 1-23 TO HAMED**

Yusuf Claims RFA No. 13. Admit that the total rent due from the Partnership to United for Bay 8 which remains unpaid is \$323,515.63 for the period of May 1, 1994 to September 30, 2002 and \$198,593.75 for the period of April 1, 2008 to May 30, 2013.

Hamed Response: Denied.

Yusuf Claims RFA No. 14. Admit that you have no documentary evidence to refute that the total rent due from the Partnership to United for Bay 8 which remains unpaid is \$323,515.63 for the period of May 1, 1994 to September 30, 2002 and \$198,593.75 for the period of April 1, 2008 to May 30, 2013.

Hamed Response: Denied.

It should be noted and Hamed admits that if rent had been due, it was waived when Hamed entered into a settlement agreement with regard to the Partnership's use of any of the premises used during such periods by the East Store. Said agreement references the use of whatever premises were used at the Sion Farm location -- and does not restrict its scope to just Bay 1. Moreover, Hamed knows that Yusuf is in possession of pages from the United Accounts Receivable ledger (labeled "A/R") during that period showing (i) no rent due for the covered period and, more importantly, (ii) no "balance forward". See e.g., FBIX339272-FBIX339301. Both of these documents are "documentary evidence to refute that the total rent due from the Partnership to United for Bay 5 which remains unpaid is \$271,875.00."

Yusuf Claims RFA No. 15. Admit that the Partners agreed when the Partnership was formed that income taxes of the United shareholders were to be paid from the grocery store operations.

Hamed Response: Denied.

The Partners agreed when the Partnership was formed that all income taxes of the United shareholders *ascribable to partnership operation, but not those of unrelated United businesses*, were to be paid from the grocery store operations

Yusuf Claims RFA No. 16. Admit that the Partners agreed when the Partnership was formed that United's gross receipts taxes were to be paid by the Partnership.

Hamed Response: Denied

Hamed admits that the Partners agreed when the Partnership was formed that all gross receipts of United *ascribable to partnership operation, but not those of unrelated United businesses* were to be paid from the grocery store operations.

Yusuf Claims RFA No. 17. Admit that a black book ledger was kept to record amounts due to United, the Partnership, and between the Partners.

Hamed Response: Denied.

Hamed admits that:

1. Prior to September 17, 2006, ledgers, receipts and other forms of notation were kept, differently at different locations -- for those different locations, to record amounts due from and to the Partners. Many of these were lost or intentionally destroyed.

2. No such record amounts were kept after September 17, 2006.

Yusuf Claims RFA No. 18. Admit that Mohammad Hamed, Waleed Hamed, Waheed Hamed, Hisham Hamed and Mufeed Hamed received financial benefit from the failure to report income from the grocery store operations on United's taxes.

Hamed Response: Denied with regard to all dates after September 17, 2006.

Hamed objects to inquiry into all dates prior to September 17, 2006 for the following reasons. (1) Judge Brady entered a protective order as to all PARTNERSHIP transactions prior to September 17, 2006. (2) this inquiry asks about income from "from the grocery

In.3 Q. (Mr. Hodges) Okay. If you would point out the
In.4 1.6 million on Exhibit 3? And the -- the words to the
In.5 left -- left of it, Past confirmed withdrawal?
In.6 **Okay. So, Mr. Hamed, as -- as you're sitting**
In.7 **here today, you are not aware of any of the facts**
In.8 **surrounding the, quote, Past confirmed withdrawals of**
In.9 **\$1.6 million, is that correct?**
In.10 MR. HARTMANN: Object. Asked and answered.
In.11 THE INTERPRETER: Okay.
In.12 **He says no.**
In.13 MR. HODGES: Okay. I guess that's a good
In.14 time to break, then. (Emphasis added.)

This was just one small part of the relationship between the parties was partially accounted at one time -- it was incomplete. Mike Yusuf testified at length that this was \$1.6 million number NOT all of the stores at that time, and not all of the accounts. It was just one facet of various claims between the Yusufs (not United) and the Hameds at that time. **To get what was "owed" as an effect of ALL ACCOUNTS at that time, one would have to know the similar amounts from the other operations at the same time.**

Yusuf Claims RFA No. 23. Admit that members of the Hamed family held assets for Mohammad Hamed which were part of his distributions from the Partnership?

Hamed Response: Denied.

Dated: May 15, 2018



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CERTIFICATE OF SERVICE

I hereby certify that on this 15th day of May, 2018, I served a copy of the foregoing by email (via CaseAnywhere), as agreed by the parties, on:

Hon. Edgar Ross (w/ 2 Mailed Copies)
Special Master
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CERTIFICATE OF COMPLIANCE WITH RULE 6-1(e)

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



EXHIBIT 5

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

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