

CLAIM Y-2
Exhibits 1-14

Index of Exhibits
Plaintiff Hamed's Opposition to United's Motion for Summary Judgment
as to Revised Claim Y-2—Rent Claimed by United for Bays 5 and 8

Exhibit A	Hamed Counterstatement of Facts Re Yusuf Revised Claim Y-2—Unpaid Rent for Bays 5 and 8
Y-2 Exhibit 1	August 27, 2001 Letter to Fathi Yusuf from Thomas Luff re United Shopping Center Reports, including Accounts Receivable Current Month
Y-2 Exhibit 2	Bay 1 settlement calculations for May 5, 2004 through December 31, 2011 rent paid by the Partnership for Plaza Extra-East
Y-2 Exhibit 3	February 7, 2012 Partnership rent check to the United Shopping Center for "PLAZA EXTRA (SION FARM) RENT"
Y-2 Exhibit 4	May 17, 2013 Letter from Attorney DeWood to Attorney Holt Re Bays 5 and 8 rent
Y-2 Exhibit 5	May 22, 2013 Letter from Attorney Holt to Attorney DeWood denying rent is owed by the Partnership for Bays 5 and 7 rent
Y-2 Exhibit 6	December 23, 2013 Answer and Counterclaim in <i>Hamed v Yusuf</i> , SX-12-CV-370
Y-2 Exhibit 7	September 30, 2016 Yusuf Accounting Claims
Y-2 Exhibit 8	August 12, 2014 Declaration of Fathi Yusuf regarding rent owed for Bays 5 and 8
Y-2 Exhibit 9	Judge Brady's July 21, 2016 Order Re Limitations on Accounting
Y-2 Exhibit 10	October 30, 2017 Revised Yusuf Accounting Claims
Y-2 Exhibit 11	May 15, 2018 Yusuf Response to Request to Admit No. 9
Y-2 Exhibit 12	January 15, 2019 Yusuf Response to Request for Interrogatory No. 29
Y-2 Exhibit 13	January 21, 2019 Fathi Yusuf Deposition
Y-2 Exhibit 14	September 3, 2001 Diamond Girl (Zahriyeh-Awadallah) lease for Bay 5
Y-2 Exhibit 15	October 1, 2002 Riverdale (Idheilah-Zgheir) lease for Bay 8
Y-2 Exhibit 16	December 1, 2011 Diamond Girl (Awadallah) lease for Bays 4 & 5
Y-2 Exhibit 17	September 17, 2012 Complaint in <i>Hamed v Yusuf</i> , SX-12-CV-370

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Y-2 Exhibit 18	October 4, 2012 Defendant's Notice of Removal
Y-2 Exhibit 19	November 16, 2012 Opinion re ordering remand to VI Superior Court
Y-2 Exhibit 20	April 1, 2014 Mohammad Hamed Deposition, Vol. 2
Y-2 Exhibit 21	April 2, 2014 Fathi Yusuf Deposition
Y-2 Exhibit 22	June 6, 2014 Defendant's Opposition to Plaintiff's Motion for Partial Summary Judgment re Statute of Limitations in <i>Hamed v Yusuf</i> , SX-12-CV-370
Y-2 Exhibit 23	April 27, 2014 Judge Brady Order regarding Rent for Bay 1
Y-2 Exhibit 24	May 15, 2018 Yusuf response to RFPD No. 21 of 50
Y-2 Exhibit 25	December 18, 2018 Yusuf supplemental response to Interrogatory No. 29
Y-2 Exhibit 26	January 21, 2019 Wally Hamed Deposition
Y-2 Exhibit 27	January 22, 2019 Willie Hamed Deposition
Y-2 Exhibit 28	March 31, 2019 Declaration of Kim Japinga

Exhibit 1

United Corporation

United Shopping Plaza

P.O. Box 763, 4C & D Sion Farm, Christiansted, VI 00821 Phone (340) 778-6240, Fax (340) 778-1200

August 27, 2001

Fahti Yusuf
Plaza Extra, St. Thomas
Fax #775-5766

Subject: United Shopping Plaza Reports

Dear Mr. Yusuf,

Here is a brief summary of the enclosed reports:

#1. YTD summary of checkbook income- YTD \$118,540 and balance \$215.055 before tax payments shown on first sheet. "Unrelated" items are family expenses.

2 & 3 are monthly worksheets of rent paid balanced against my Database and accounts receivable sheets. Gross receipts and tax are calculated, amount billed vs. paid, sum of taxes paid shown. The graph shows the payment pattern.

#4. A check register with every check shown and deposits by date. The month's income and YTD is calculated, plus the balance at the end of the month.

#5 The check amounts are distributed among expense categories and the checkbook balanced against the bank statement.

#6. Lists the tenants, rents, areas and rent / sq. ft. plus calculated account receivables to date. Vacancies and vacancy % are shown at the bottom.

#7 List of tenants by lease status: date signed, term and expiration date.

#8 Tax Invoice List- shows total amount billed in February and amounts paid by month to date. Totals show amounts paid and those remaining to be paid.

Y-2


EXHIBIT

1

There are several other reports that I keep for my use in collecting rent and the accounts receivable sheet sent to Ben every month. Many of them mimic the paper records we have, but allow easy manipulation of the data by sorting, graphing and electronic searching. These records are backed up frequently so any data lost would be minimal and easily restored.

Please let me know if you would like any of these reports sent monthly or any other period. I send Ben #3,4 & 5 with the bank statement mid-month.

Thomas W. Luff, Property Manager


United Shopping Plaza

Cc: Mike Yusuf

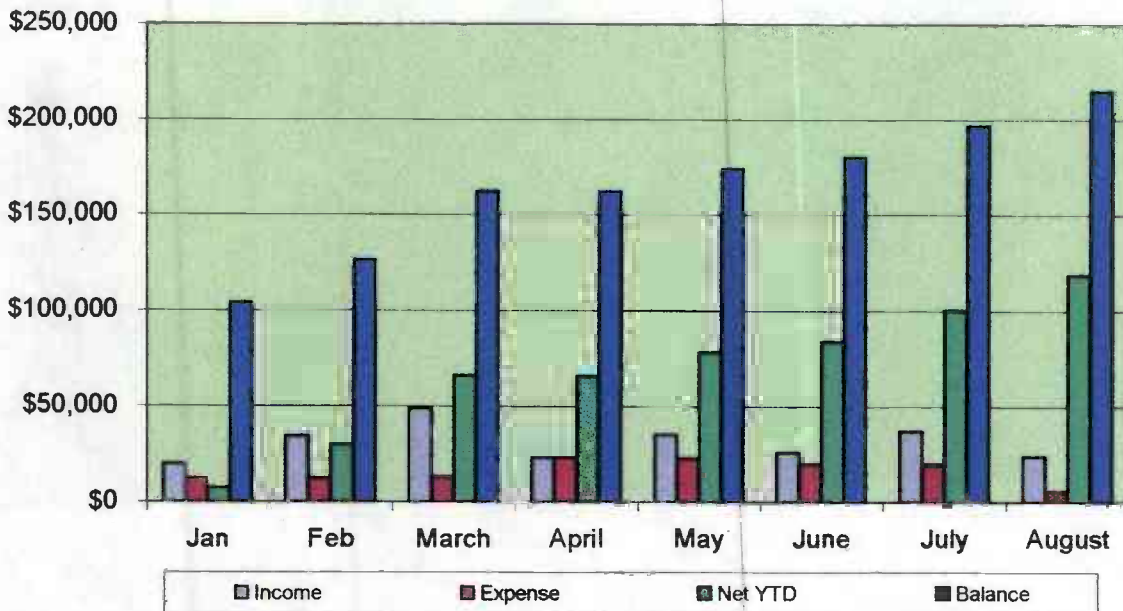
Enclosures:

1. List of Real Estate taxes to be paid 8/31/01.
2. Year to Date Summary of income & expenses with graph
3. Monthly Reconciliation of Rent and list of deposits-July & August (to date)
4. Check Register
5. Expense Distribution/ and balancing against bank statement
6. Accts Receivable list 8/22/01
7. Lease Data and Tenant List
8. Tax Payment record

YEAR TO DATE SUMMARY

Month	Beginning Balance		Net YTD	\$96,515.36		% of Inc
	Income	Expense		Balance	Unrelated Exp	
Jan	19,720.42	12,368.70	7,351.72	103,867.08	\$ 2,932.02	15%
Feb	34,272.17	11,925.31	29,698.58	126,213.94	639.53	2%
March	49,116.27	13,191.99	65,622.86	162,138.22	4,133.11	8%
April	23,146.21	23,293.05	65,476.02	161,991.38	6,718.51	29%
May	35,186.79	22,868.53	77,794.28	174,309.64	4,493.41	13%
June	25,716.93	19,863.14	83,648.07	180,163.43	8,730.43	34%
July	36,789.25	19,950.98	100,486.34	197,001.70	6,534.61	18%
August	23,768.18	5,714.13	118,540.39	215,055.75	574.30	2%
September			0.00			#DIV/0!
October			0.00			#DIV/0!
November			0.00			#DIV/0!
December			0.00			#DIV/0!
Totals YTD	\$247,716.22	\$129,175.83	\$118,540.39	\$215,055.75	\$34,755.92	14%

USP Performance 2001



United Shopping Plaza
2001 Rents

JULY

DEPOSITS

05-Jul-01		Payment ID
Sports Plus	1100.00	2512
Ranger AM Taxes	246.04	1684
USW Reg	1500.00	82685
Beet	3500.00	12956
Low a chee	400.00	1117
Alonso	1250.00	1276
47th St	781.25	2936
	8777.29	

06-Jul-01		Payment ID
Miller re Gill	400.00	1691
USW 8526	1,195.00	5558
Beet	3,500.00	12957
	5,095.00	

11-Jul-01		Payment ID
Sion Farm Cnrs	1,490.43	2421
Island finance	2,406.25	46581
VI Nails	575.00	Mos 285-286
	4,471.68	

16-Jul-01		Payment ID
Ranger Am	700.00	2432
Zenon	782.50	1016
LEI Tech	725.00	1336
King Cah rent	900.00	372
King Cah taxes	48.32	373
Roper	250.00	1323
Laundromat	2,300.00	2100
American Beeper	835.00	27512
	6,540.82	

20-Jul-01		Payment ID
UIWA balance	150.00	5133049
Menswear	1,170.00	2087
Gill-Kings Alley	188.96	4436
Gill- DEDC	363.00	24616
Gill- DEDC	20.00	22657
Phillip	450.00	3147
Ultimate rental & sale	497.50	610
	2,839.46	

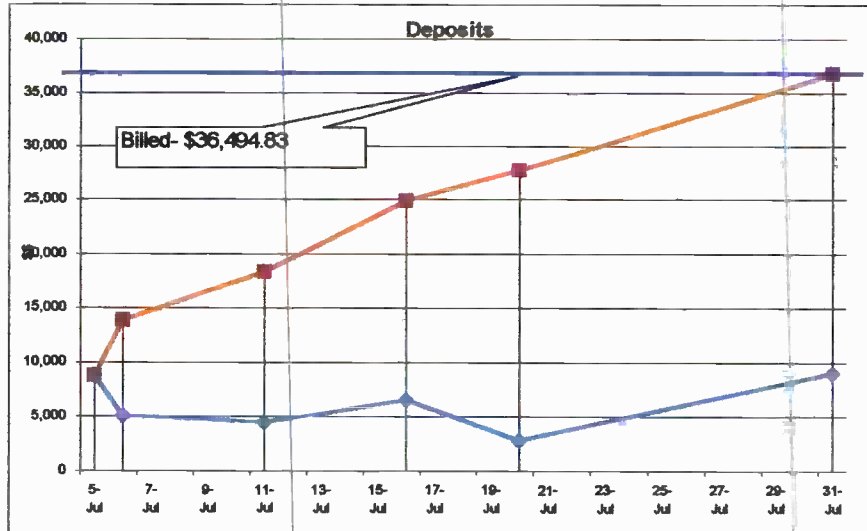
31-Jul-01		Payment ID
JP Sales	2340	5436
Roper (Lost)	284.87	1327
Van Derbeck-Gill	165.00	1876
Oliver-Gill	35.00	3141
Cromwell-Gill	25.00	446
Beet	3,500.00	12998
Sunstroke (lost)	729.00	1447
UIAW	1,500.00	5133454
USW Reg	1500	83563
	10,078.87	

Balance Reports						
Other	Total	Deposits	Database	Difference	A/R sheet	DW
		36,789.25	\$38,290.83	1,501.58	\$38,290.83	1,501.58
7/2 JP Cash		200.00				
7/5 Naty cash		325.00				
7/5 Naty cash		300.00				
7/23 Garcia Cash		300.00				
7/24 Bee Cash		1,000.00				
7/27 Gill Cash		3.04				
Cash Total		2,128.04				
Tax Ranger + Boyd+king		(626.46)				
		36,290.83	38,290.83	0.00	38,290.83	0.00

Gross Receipts Tax 1,471.57
Real Estate Taxes 0.00
2,128.04 DIFF (626.46) Check=0

Deposit Dates	5-Jul-01	6-Jul-01	11-Jul-01	16-Jul	20-Jul	31-Jul
Amounts	8,777.29	5,095.00	4,471.68	6,540.82	2,839.46	9,065.00
Cummulative	8,777.29	13,872.29	18,343.97	24,884.79	27,724.25	36,789.25
% of Billed	24%	38%	50%	68%	76%	101%

Billed \$ 36,494.83



United Shopping Plaza
2001 Rents

AUGUST

DEPOSITS

03-Aug-01		Payment ID
Peoples	2650.00	2112
Zenon	782.50	1032
Sports Plus	1100.00	2555
USW 8526	1195.00	5591
	<u>5727.50</u>	

07-Aug-01		Payment ID
Island Finance	2,406.25	47180
VI Nails	75.00	..7594
VI Nails	500.00	..7593
Ranger American	700.00	2454
Sunstroke replacemer	729.00	1449
Am Beeper	835.00	27578
Dr Alosno	1,250.00	1293
	<u>6,495.25</u>	

13-Aug-01		Payment ID
Sion Farm Cleaners	1,490.43	2443
DEDC re Gill	320.00	24963
King Cash	900.00	395
King Cash tax	200.00	396
Roper Rent	250.00	1329
U rent	497.50	636
U rent	497.50	1935
	<u>4,155.43</u>	

16-Jul-01		Payment ID
Beat	3,500.00	13017
	<u>3,500.00</u>	

20-Aug-01		Payment ID
Mid-Island Menswear	1,165.00	2101
Nw Plaza Café	2,000.00	1985
LEI Technology	725.00	1360
	<u>3,890.00</u>	

20-Jul-01

0.00

Balance Reports						
Other	Total	Deposits	Database	Difference	A/R sheet	Diff
		23,768.18	29,841.08	(6,072.90)	29,841.08	(6,072.90)
8/3 Naty's cash		325.00				
8/6/2001-Pinieros cash		200.00				
8/8 Elsie's cash		780.00				
8/17 Fabiana cash #12		2,000.00				
8/17 Edwin Cash #12		2,000.00				
8/21 Bee cash		1,000.00				
Cash Total	6,305.00					
King Cash Tax+ Sion Cl		(232.10)				
	<u>6,305.00</u>	<u>29,841.08</u>	<u>29,841.08</u>	<u>0.00</u>	<u>29,841.08</u>	<u>0.00</u>

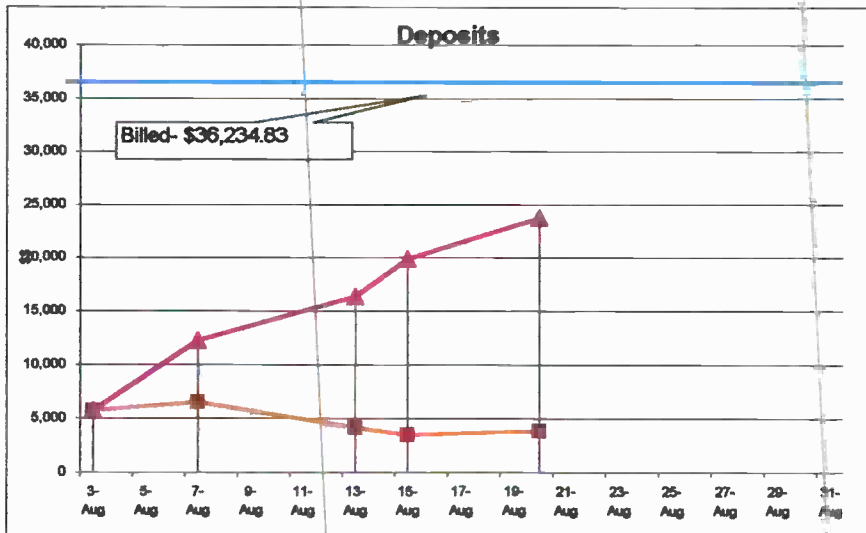
Gross Receipts Tax
950.73

Real Estate Taxes
(232.10)

Deposit Dates	3-Aug-01	7-Aug-01	13-Aug-01	15-Aug	20-Aug
Amounts	5,727.50	6,495.25	4,155.43	3,500.00	3,890.00
Cummulative	5,727.50	12,222.75	16,378.18	19,878.18	23,768.18
% of Billed	16%	34%	45%	55%	68%

Billed

\$ 36,234.83



Checkbook 2001

JULY

Beginning Balance		199,163.43		Income (See Attached Reconciliation Sheet)		
Date	Check #	Expenses Payee/Item	Amount	CL	Date	Amount
2-Jul-01	2362	Kath Wilkins- Sidewalk cleaning	66.00	CL	06-Jul-01	8,777.39
2-Jul-01	2363	Kath Wilkins- Sidewalk cleaning	66.00	CL	06-Jul-01	8,095.00
6-Jul-01	2364	Thomas W. Luff-management	460.00	CL	11-Jul-01	8,471.89
6-Jul-01	2365	Void	0.00	CL	18-Jul-01	8,640.82
6-Jul-01	2366	Eliaser Quiñones	220.00	CL	20-Jul-01	3,838.46
6-Jul-01	2367	Rudy Calnes-May	1,600.00	CL	31-Jul-01	18,078.87
6-Jul-01	2368	Combined Services-Phillip lights in elev	50.00	CL	debt-2 missing checks	(7,015.87)
6-Jul-01	2369	Steve Prosser Roof repairs no. bldg	378.00			
6-Jul-01	2370	Garfield Strango - Roof repairs N. Bldg	420.00			
12-Jul-01	2371	Thomas W. Luff-management	460.00	CL		
12-Jul-01	2372	Eliaser Quiñones	88.00	CL		
13-Jul-01	2373	Void	0.00	CL		
13-Jul-01	2374	Kath Wilkins- Sidewalk cleaning	66.00			
13-Jul-01	2375	Innovative Telephone- 713-8328	27.05	CL		
13-Jul-01	2376	Paradise Waste-quarterly bill -Mike	75.00	CL		
13-Jul-01	2377	Terminix -La Grande princess	35.00	CL		
13-Jul-01	2378	Paradise Waste-container for roof job	180.00	CL		
13-Jul-01	2379	Garfield Strango - Roof repairs N. Bldg	480.00			
13-Jul-01	2380	Steve Prosser Roof repairs no. bldg	662.50			
13-Jul-01	2381	Juan Rosario-Supplies repairs	480.00			
17-Jul-01	2382	Innovative Telephone-778-8788 -Fahd	52.45	CL		
20-Jul-01	2383	Thomas W. Luff-management	460.00	CL		
20-Jul-01	2384	Eliaser Quiñones -Maintenance	220.00	CL		
20-Jul-01	2385	Rudy Calnes-June	2,000.00			
20-Jul-01	2386	Metro Elevator-Quarterly Maint & Check + Repairs	286.50	CL		
Spread 7/2	2387	Terminix -Offices 7/2	60.00	CL		
21-Jul-01	2388	Steve Prosser Roof repairs no. bldg	351.00			
22-Jul-01	2389	Garfield Strango - Roof repairs N. Bldg	390.00			
28-Jul-01	2390	VI Govt- IRB- Gross Receipts Tax-June	1,108.97			
27-Jul-01	2391	Thomas W. Luff-management	460.00			
27-Jul-01	2392	Eliaser Quiñones	178.00	CL		
27-Jul-01	2393	WAPA-Limited Shopping Plaza	1,254.80			
27-Jul-01	2394	Steve Prosser Roof repairs no. bldg	285.50			
27-Jul-01	2395	Garfield Strango - Roof repairs N. Bldg	275.00			
27-Jul-01	2396	Juan Rosario-Supplies repairs	637.50			
31-Jul-01	2397	American Express-Fahd	6,818.33			
31-Jul-01	2398	WAPA-62cLa Granga	626.78			
		bank charges	7.50			
Total Expense			16,886.88		Income (See Attached)	36,788.26
Net Income MTD					19,899.27	Dff from billed 284.42
Net Income YTD					100,495.34	101%
7/31/01 Ending Balance			197,891.79		187,801.70	check

Checkbook 2001

AUGUST

Beginning Balance		197,891.79		Income (See Attached Reconciliation Sheet)		
Date	Check #	Expenses Payee/Item	Amount	CL	Date	Amount
3-Aug-01	2400	Thomas W. Luff-management fee	460.00		03-Aug-01	6,727.60
3-Aug-01	2400	Eliaser Quiñones -Maintenance	220.00		07-Aug-01	6,498.95
2-Aug-01	2401	Hector Maldonado-Process serving-lost	0.00		13-Aug-01	4,156.43
2-Aug-01	2402	Thomas W. Luff-maintenance supplies	142.08		18-Aug-01	3,600.00
6-Aug-01	2403	Phillip- install deep well pump-fix inside pump leak	247.50		20-Aug-01	3,880.00
7-Aug-01	2404	St. Croix Aids	30.00			
7-Aug-01	2405	Void	0.00			
7-Aug-01	2406	Hector Maldonado-Process serving-replace 2401-lost	100.00			
7-Aug-01	2407	Void	0.00			
7-Aug-01	2408	Dr Raymond Lou-e-Chae	791.00			
8-Aug-01	2408	Ocean Systems Lab -normal testing	200.00			
10-Aug-01	2410	Hector Maldonado-Process serving-Link Edwin	48.00			
10-Aug-01	2411	Thomas W. Luff- Management fee	460.00			
10-Aug-01	2412	Eliaser Quiñones -Maintenance	178.00			
13-Aug-01	2413	Welsh Metal Works-handicapped sign bases	40.00			
17-Aug-01	2414	Thomas W. Luff Management Fee	460.00			
17-Aug-01	2415	Eliaser Quiñones -Maintenance	220.00			
13-Aug-01	2416	Innovative telephone 713-8328	25.39			
13-Aug-01	2417	Terminix - la Grande Princess	35.00			
13-Aug-01	2418	Kath Wilkins-three attempts to work Equipment fails	66.00			
16-Aug-01	2419	Void	0.00			
16-Aug-01	2420	Void	0.00			
17-Aug-01	2421	Steve Prosser-Roof work	133.00			
17-Aug-01	2422	Garfield Str Anco	140.00			
20-Aug-01	2423	VI Bureau of Internal Revenue short payment Mar & Jan	223.51			
20-Aug-01	2424	Sonny's A/C suite B6 10- add gas & clean	85.00			
20-Aug-01	2425	St. Croix Aids office & store ads a6467160	15.00			
20-Aug-01	2426	WAPA-La Grande Princess	428.00			
20-Aug-01	2427	WAPA-Limited Shopping Plaza	744.28			
20-Aug-01	2428	Kath Wilkins - sidemnts for 2 weeks	130.00			
21-Aug-01	2429	Innovative Telephone 778-8788-Fahd Yusuf	62.94			
21-Aug-01	2430	Innovative Cable TV-Fahd Yusuf	87.87			
entered to	2431					
	2432					
	2433					
	2434					
	2436					
	2436					
	2437					
	2438					
	2439					
	2440					
	2441					
	2442					
	2443					
	2444					
	2445					
	2446					
	2447					
	2448					
	2450					
Total Expense			8,714.13		Income (see attached)	23,788.18
Net Income MTD					15,074.05	Dff from billed (12,498.85)
Net Income YTD					118,569.39	89%
8/31/01 Ending Balance			215,866.79		215,866.75	check

HAMD664272

Checkbook Transactions by category 2001

Month	January	February	March	April	May	June	July
Begin Bank Bal.	102,630.96	108,434.83	129,781.71	168,152.49	172,041.84	187,702.99	208,013.28
Begin Bal. per books	98,515.36	103,867.08	126,213.94	162,136.22	161,991.39	174,309.85	180,163.44
difference (checks out)	6,115.62	4,567.75	3,567.77	6,016.27	10,050.55	13,393.34	25,849.82
Disbursements							
Payroll	2,700.00	2,070.00	1,710.00	1,800.00	2,250.00	360.00	1,800.00
Utilities	970.03	965.83	0.00	1,984.80	1,677.98	1,011.07	1,254.90
Pest Control		35.00		50.00	100.00	0.00	50.00
Lot & sidewalk & frills	2,000.00	1,800.00	1,600.00	2,285.00	1,880.00	195.00	3,795.00
Water Testing	200.00	200.00	200.00	425.00	200.00	450.00	
Repairs & Maint	1,814.56	883.50	1,425.00	7,814.10	6,435.16	5,885.50	5,400.00
Maint Supplies	236.26	326.57	228.64	209.88	79.87	241.83	
Yusef	2,932.02	639.53	4,133.11	6,718.51	4,483.41	8,730.43	6,534.81
Advertising	175.00	95.00	160.00	40.00	80.00	45.00	
VI Gross Receipts Tax	1,333.33	815.09	1,370.88	1,988.45	925.85	1,407.45	1,108.97
Real Estate Taxes							
Insurance		4,342.19					
Acc. & Legal		130.00	2,348.85		5,359.26	1,529.36	
Donation							
Transfer & Sec Dep. Pd.							
Total Disbursements	12,361.28	11,917.81	13,176.48	23,285.54	22,981.83	19,855.84	18,943.48
checklist	12,368.70	11,925.31	13,191.98	23,283.04	22,888.53	19,863.14	18,950.98
Diff	(7.50)	(7.50)	(15.50)	(7.50)	(7.50)	(7.50)	(7.50)

Checkbook Balancing 2001

Income							
Income from Tenants	\$19,720.42	\$34,272.17	49,118.27	23,148.21	35,186.79	25,716.93	36,789.25
Other income							0.00
Telephone							0.00
Bank Charges	(7.50)	(7.50)	(15.50)	(7.50)	(7.50)	(7.50)	(7.50)
Dep. Slips & Checks	0.00						
Gross Income	19,712.92	34,264.67	49,102.77	23,140.71	35,179.29	25,709.43	36,781.75
Net Income	7,351.72	22,348.86	35,924.28	(146.83)	12,318.28	5,853.79	18,838.27
checklist	7,351.72	22,348.86	35,924.28	(146.83)	12,317.79	5,853.79	18,838.27
New Balance (per Books)	103,867.08	128,213.94	182,138.22	181,991.39	174,309.85	180,163.44	187,001.71
checklist						180,163.43	187,001.70
						0.01	
Bank Balance	108,434.83	129,781.71	168,152.49	172,041.84	187,702.99	208,013.28	213,373.88
checks outstanding	(4,567.72)	(3,567.94)	(8,015.89)	(10,051.37)	(13,394.17)	(25,851.15)	(18,373.48)
Adjusted bank bal.	103,867.11	128,213.77	182,138.60	181,990.57	174,308.82	180,162.11	187,000.38
Book Balance	103,867.08	128,213.94	182,138.22	181,991.39	174,309.85	180,163.44	187,001.71
Difference	0.03	(0.17)	(1.62)	(0.82)	(0.83)	(1.33)	(1.33)
Checklist Balance	\$103,867.08	\$128,213.94	182,138.22	181,991.39	174,309.84	180,163.43	187,001.71
Diff	0.00	0.00	0.00	0.00	(0.01)	(0.01)	0.00

Jan Checks outstdg	Feb Cks Outstdg	Cks Outstd	April Checks Outstdg	May Checks Outstdg	Jun Checks Out	July Cks out
2161 891.06	2169 void	2162 1,600.00	2255 715.50	2255 715.50	2255 715.50	2297 27.50
2164 2343.33	2173 95.00	2202 125.00	2256 795.00	2256 795.00	2256 795.00	2360 472.50
2185 Void	2180 95.00	2208 180.00	2257 1,192.50	2257 1,192.50	2257 1,192.50	2361 440.00
2188 1333.33	2182 1,800.00	2210 120.00	2258 2,000.00	2278 297.00	2278 297.00	2365 0.00
4567.72	2183 80.38	2211 lot-WAPA	2259 463.30	2279 330.00	2279 330.00	2369 378.00
	2187 815.09	2212 35.00	2280 85.00	2280 495.00	2280 495.00	2370 420.00
	2188 Void	2216 void	2281 220.00	2288 324.00	2288 324.00	2373 void
	2189 456.47	2217 void	2282 void	2289 270.00	2289 270.00	2374 85.00
	2190 35.00	2220 450.00	2284 1,988.45	2290 570.00	2290 570.00	2379 450.00
	2191 121.00	2221 void	2285 387.93	2294 200.00	2297 27.50	2380 562.50
	2192 270.00	2222 1,600.00	2286 958.89	2297 27.50	2301 502.50	2381 480.00
	3,567.94	2223 220.00	2287 337.50	2301 502.50	2302 301.50	2385 2,000.00
		2224 315.00	2288 375.00	2302 301.50	2303 336.00	2388 351.00
		2225 1,370.89	2289 562.50	2303 336.00	2312 400.00	2389 390.00
		8,015.89	10,051.37	2307 87.97	2313 385.00	2390 1,108.97
				2308 3,824.80	2314 687.50	2391 450.00
				2309 52.45	2321 247.50	1383 1,254.90
				2312 400.00	2322 305.00	1384 285.50
				2313 385.00	2323 420.00	1395 275.00
				2314 887.50	2327 85.00	1398 837.50
				2317 220.00	2328 220.00	1397 5,818.33
				2318 450.00	2329 216.00	1398 526.78
				2319 45.00	2330 240.00	18,373.48
				2320 925.85	2331 232.50	
				13,394.17	2332 85.00	
					2333 220.00	
					2334 382.50	

Tenant List
Accts Receivable Current Month

Accounts Receivable

7/27/01

Type	#	Business	last name	First Name	Rent	A/R 2001	Comments
Bay	2	U-Rental & Sales	Ecock & DeLaMot	Claude & Hilda	\$ 995.00	497.50	Late
Bay	3	American Beeper	Leonardis	Robert	\$ 835.00	0.00	
Bay	4	Vacant	Vacant	Vacant	\$ 995.00	V	
Bay	5	plaza extra-Vacant	plaza extra-Vacant	plaza extra-Vaca	\$ 1,825.00	V	
Bay	6	JP Sales	Pifiero	Juan	\$ 2,340.00	202.24	Int
Bay	7	plaza extra-Vacant	plaza extra-Vacant	plaza extra-Vaca	\$ 1,560.00	V	
Bay	8	plaza extra-Vacant	plaza extra-Vacant	plaza extra-Vaca	\$ 2,800.00	V	
Bay	9	Naty's Cafeteria	Ruiz	Cesar	\$ 625.00	625.00	Late
Bay	10	Kay Travels	Zenon	Alidia	\$ 782.50	0.00	
Bay	11	Augustin Nolosco Torres	Nolosco-Torres	Augustin	\$ 600.00	150.00	Late
Bay	12	Vacant	Vacant	Vacant	\$ 1,150.00	4,770.50	Court August 21
Bay	13	Plaza Cafe	Martin	Horatio	\$ 1,355.00	15,730.16	PMT Plan
Bay	14	Vacant	Vacant	Vacant	\$ 780.00	7,449.48	Court August 21
Bay	15	VI Nails	Nguyen	Kent	\$ 575.00	0.00	
Bay	16	Bee's records	Bramble	Joseph	\$ 781.25	5,798.44	PMT Plan
Bay	17	Gill Electronics	Gill	Michael	\$ 781.25	3,459.98	PMT Plan
Bay	18	Elsa Beauty Salon	Elsa	Rodriguez	\$ 780.00		
Bay	19	47Th St. Jewelers	Perez	Emillio	\$ 781.25	0.00	
Bay	20	Peoples Laundry	Ballantine	Judith A.	\$ 2,650.00	3,000.00	Late
Bay	21	Dimension Video	Roper	Eustace	\$ 250.00	0.00	
Bay	22	Vacant	Vacant	Vacant	\$ 900.00	V	
Bay	23	Mid Island Mensware	Idheileh	Mahmud	\$ 4,166.65 ¹¹⁶⁵	5.00	
Bay	24	UIWU	Peters	Amos	\$ 1,500.00	(1,350.00)	
Bay	25	Island Finance	Island finance	Wells Fargo	\$ 2,406.25	0.00	
Bay	26	Sports Plus	Alecia	Luis	\$ 1,100.00	(1,386.59)	
Bay	27	Boyd Cleaners ^{SUD FROM CHANGES}	Boyd	John & Dolores	1,458.00	(0.10)	
Bay	29	Sunstroke-	Clenance	Rashidi	\$ 729.00	0.00	
Bay	30	King Cash	Barry, Jr	Arthur	\$ 900.00	0.00	
Bay	32	Best Furniture	Hussein	Bakr & Akeil	\$ 7,000.00	14,442.77	PMT Plan

Suite	1	Vacant	Vacant	Vacant	Vacant	Vacant	
Suite	2	Vacant	Vacant	Vacant	Vacant	Vacant	
Suite	3	Vacant	Vacant	Vacant	\$ 400.00	(391.00)	
Suite	3a	Mutual of Omaha	Phillip	Solomon	\$ 475.00	(25.00)	
Suite	4	Vacant	Vacant	Vacant	\$ 925.00	V	
Suite	5	Dr F. Alonso	Alonso	Dr. Francisco.	\$ 1,250.00	0.00	
Suite	7	Vacant	Vacant	Vacant	\$ 595.00	0.00	
Suite	8	LEI Technology	Lindsey	Ronald	\$ 675.00	0.00	
Suite	9	USW Regional Off.	Joseph	Fred	\$ 1,500.00	0.00	
Suite	11	Ranger Security	Richards	Delroy	\$ 700.00	0.00	
Suite	12	vacant	vacant	vacant	\$ 675.00	V	
Suite	13	vacant-Storeroom	vacant-Storeroom	vacant-Storeroom	\$ 275.00	V	
Suite	14	USW 8526- Set	Jackson	Gerry	\$ 1,195.00	0.00	

		Vacancy Rate			
stores	30	27%	22 Occupied	\$ 48,866.15	60,369.77
Offices	13	54%	6 Occupied	Rent	A/R 2001

Installment loans
 Payments YTD
 (\$840.00)
 (\$1,400.00)
 \$0.00
 (\$125.00)
(\$2,365.00)

Accts Receivable Current Month

Accounts Receivable

7/27/01

Type	#	Business	last name	First Name	Rent	A/R 2001	Comments
Bay	2	U-Rental & Sales	Elcock & DeLaMo	Claude & Hilda	\$ 995.00	497.50	Late
Bay	3	American Beeper	Leonardis	Robert	\$ 835.00	0.00	
Bay	4	Vacant	Vacant	Vacant	\$ 995.00	V	
Bay	5	plaza extra-Vacant	plaza extra-Vacant	plaza extra-Vaca	\$ 1,825.00	V	
Bay	6	JP Sales	Pifierno	Juan	\$ 2,340.00	202.24	Int
Bay	7	plaza extra-Vacant	plaza extra-Vacant	plaza extra-Vaca	\$ 1,560.00	V	
Bay	8	plaza extra-Vacant	plaza extra-Vacant	plaza extra-Vaca	\$ 2,600.00	V	
Bay	9	Naty's Cafeteria	Ruiz	Cesar	\$ 625.00	625.00	Late
Bay	10	Kay Travels	Zenon	Alidia	\$ 782.50	0.00	
Bay	11	Augustin Nolosco Torres	Nolosco-Torres	Augustin	\$ 600.00	150.00	Late
Bay	12	Vacant	Vacant	Vacant	\$ 1,150.00	4,770.50	Court August 21
Bay	13	Plaza Cafe	Martin	Horatio	\$ 1,355.00	15,730.16	PMT Plan
Bay	14	Vacant	Vacant	Vacant	\$ 780.00	7,449.48	Court August 21
Bay	15	VI Nails	Nguyen	Kent	\$ 575.00	0.00	
Bay	16	Bee's records	Bramble	Joseph	\$ 781.25	5,798.44	PMT Plan
Bay	17	Gill Electronics	Gill	Michael	\$ 781.25	3,459.98	PMT Plan
Bay	18	Elsa Beauty Salon	Elsa	Rodriguez	\$ 780.00		
Bay	19	47Th St. Jewelers	Perez	Emillio	\$ 781.25	0.00	
Bay	20	Peoples Laundry	Ballantine	Judith A.	\$ 2,650.00	2,658.00	Late
Bay	21	Dimension Video	Roper	Eustace	\$ 250.00	0.00	
Bay	22	Vacant	Vacant	Vacant	\$ 550.00	V	
Bay	23	Mid Island Mensware	Idheileh	Mahmud	\$ 1,166.65	5.00	
Bay	24	UIWU	Peters	Amos	\$ 1,500.00	(1,350.00)	
Bay	25	Island Finance	Island finance	Wells Fargo	\$ 2,406.25	0.00	
Bay	26	Sports Plus	Alecia	Luis	\$ 1,100.00	(1,386.59)	
Bay	27	Boyd Cleaners	Boyd	John & Dolores	1,458.00	(0.10)	
Bay	29	Sunstroke-	Clenance	Rashidi	\$ 729.00	0.00	
Bay	30	King Cash	Barry, Jr	Arthur	\$ 900.00	0.00	
Bay	36	Best Furniture	Hussein	Bakr & Akeil	\$ 7,000.00	14,442.77	PMT Plan
Suite	1	Vacant	Vacant	Vacant	Vacant	Vacant	
Suite	2	Vacant	Vacant	Vacant	Vacant	Vacant	
Suite	3	Vacant	Vacant	Vacant	\$ 400.00	(391.00)	
Suite	3a	Mutual of Omaha	Phillip	Solomon	\$ 475.00	(25.00)	
Suite	4	Vacant	Vacant	Vacant	\$ 925.00	V	
Suite	5	Dr F. Alonso	Alonso	Dr. Francisco	\$ 1,250.00	0.00	
Suite	7	Vacant	Vacant	Vacant	\$ 595.00	0.00	
Suite	8	LEI Technology	Lindsey	Ronald	\$ 675.00	0.00	
Suite	9	USW Regional Off.	Joseph	Fred	\$ 1,500.00	0.00	
Suite	11	Ranger Security	Richards	Delroy	\$ 700.00	0.00	
Suite	12	vacant	vacant	vacant	\$ 675.00	V	
Suite	13	vacant-Storeroom	vacant-Storeroom	vacant-Storeroom	\$ 275.00	V	
Suite	14	USW #526-Oct	Jackson	Gerry	\$ 1,195.00	0.00	
stores	32			32 Occupied	\$48,516.15	60,369.77	
Offices	12			13 Occupied			
					Rent	A/R 2001	
						Payments YTD	
						(\$840.00)	
						(\$1,400.00)	
						\$0.00	
						(\$125.00)	
						(\$2,365.00)	

Accts Receivable Current Month

Accounts Recievable

8/22/01

Type	#	Business	last name	First Name	Rent	Sq Ft	\$/Sq. Ft.	A/R 2001	Comments
Bay	2	U-Rental & Sales	Elicock & DeLaMot	Claude & Hilda	\$ 995.00	1,250	\$ 9.55	995.00	Late
Bay	3	American Beeper	Leonardis	Robert	\$ 835.00	1,250	\$ 8.02	0.00	
Bay	4	Vacant	Vacant	Vacant	\$ 1,150.00	1,250	\$ 11.04	V	
Bay	5	plaza extra-Vacant	plaza extra-Vacant	plaza extra-Vaca	\$ 1,825.00	3,125	\$ 7.01	V	
Bay	6	JP Sales	Pifiero	Juan	\$ 2,340.00	3,125	\$ 8.99	2,594.99	int
Bay	7	plaza extra-Vacant	plaza extra-Vacant	plaza extra-Vaca	\$ 1,692.71	3,125	\$ 6.50	V	
Bay	8	plaza extra-Vacant	plaza extra-Vacant	plaza extra-Vaca	\$ 2,864.58	6,250	\$ 5.50	V	
Bay	9	Naty's Cafeteria	Ruiz	Cesar	\$ 825.00	500	\$ 15.00	925.00	Late
Bay	10	Kay Travels	Zenon	Alidia	\$ 782.50	625	\$ 15.02	0.00	
Bay	11	Augustin Nolosco Torres	Nolosco-Torres	Augustin	\$ 600.00	625	\$ 11.52	1,350.00	Late
Bay	12	Vacant	Vacant	Vacant	\$ 1,150.00	1,250	\$ 11.04	0.00	settled \$4000 cash
Bay	13	Plaza Cafe	Martin	Horatio	\$ 1,355.00	1,250	\$ 13.01	16,700.84	PMT Plan \$1500/month
Bay	14	Vacant	Vacant	Vacant	\$ 780.00	625	\$ 14.98	V	settled \$4000 @100/mo
Bay	15	VI Nails	Nguyen	Kent	\$ 575.00	625	\$ 11.04	0.00	
Bay	16	Bee's records	Bramble	Joseph	\$ 781.25	625	\$ 15.00	5,360.94	PMT Plan\$1000/mo
Bay	17	Gill Electronics	Gill	Michael	\$ 781.25	625	\$ 15.00	3,502.48	PMT Plan \$1200/month
Bay	18	Elsa Beauty Salon	Elsa	Rodriguez	\$ 780.00	625	\$ 14.98	0.00	
Bay	19	47Th St. Jewelers	Perez	Emillio	\$ 781.25	625	\$ 15.00	781.25	
Bay	20	Peoples Laundry	Balfantine	Judith A.	\$ 2,650.00	1,250	\$ 25.44	3,008.00	Late
Bay	21	Dimension Video	Roper.	Eustace	\$ 250.00	1,250	\$ 2.40	0.00	
Bay	22	Vacant	Vacant	Vacant	\$ 900.00	1,250	\$ 8.64	V	
Bay	23	Mid Island Mensware	Idheileh	Mahmud	\$ 1,165.00	1,750	\$ 7.99	0.00	
Bay	24	UWU	Peters	Amos	\$ 1,500.00	1,750	\$ 10.29	0.00	
Bay	25	Island Finance	Island finance	Wells Fargo	\$ 2,408.25	1,750	\$ 16.50	0.00	
Bay	26	Sports Plus	Alecia	Luis	\$ 1,100.00	1,750	\$ 7.54	0.00	
Bay	27	Boyd Cleaners	Boyd	John & Dolores	\$ 1,458.00	3,500.00	\$ 5.00	0.00	
Bay	29	Sunstroke-	Clenance	Rashidi	\$ 729.00	1,750	\$ 5.00	729.00	
Bay	30	King Cash	Barry, Jr	Arthur	\$ 900.00	1,750	\$ 6.17	0.00	
Bay	32	Best Furniture	Hussein	Bakr & Akeil	\$ 7,000.00	10,500	\$ 8.00	11,053.88	PMT Plan
							Average	\$ 10.73	
Suite	1	Vacant	Vacant	Vacant	\$ 525.00	520	\$ 12.12	V	
Suite	2	Vacant	Vacant	Vacant	\$ 900.00	888	\$ 12.16	V	
Suite	3	Vacant	Vacant	Vacant	\$ 450.00	468	\$ 11.58	V	
Suite	3a	Mutual of Omaha	Phillip	Solomon	\$ 475.00	450	\$ 12.87	(25.00)	
Suite	4	Vacant	Vacant	Vacant	\$ 925.00	925	\$ 12.00	V	
Suite	5	Dr F. Alonso	Alonso	Dr. Francisco.	\$ 1,250.00	1,250	\$ 12.00	0.00	
Suite	7	Vacant	Vacant	Vacant	\$ 595.00	578	\$ 12.40	V	
Suite	8	LEI Technology	Lindsey	Ronald	\$ 725.00	720	\$ 12.08	0.00	
Suite	9	USW Regional Off.	Joseph	Fred	\$ 1,500.00	1,128	\$ 15.99	0.00	
Suite	11	Ranger Security	Richards	Delroy	\$ 700.00	575	\$ 14.61	0.00	
Suite	12	vacant	vacant	vacant	\$ 675.00	578	\$ 14.06	V	
Suite	13	vacant-Storeroom	vacant-Storeroom	vacant-Storeroor	\$ 275.00	220	\$ 15.00	V	
Suite	14	USW 8526-Oct	Jackson	Gerry	\$ 1,185.00	1,056	\$ 13.58	0.00	
Vacancy Rate						64,973.00	\$ 11.08	Average \$/Sq. Ft.	
stores	30	27%	22 Occupied	\$50,941.79				46,976.37	
Offices	13	84%	6 Occupied	Rent	Sq Ft	\$/Sq. Ft.	A/R 2001		

	Installment to Installment loans	
	Payments YTD	
Felix	Felix	(\$840.00)
JP	JP	(\$1,400.00)
Liger	Liger	\$0.00 Ct 8/21
Maynard	Maynard	(\$125.00) Ct 8/22
	Grand Total	(\$2,365.00)
	% of Billed	

LEASE DATA

Type #	Business	last name	First Name	Position	work phone	home Phone	Lease Dt.	Trm	Expires	status	#	Rent	Sq Ft	\$/Sq. Ft.	
Bay 2	U-Rental & Sales	Eloock & DeLaMotta	Claude & Hilda	Owners	778-7222	772-3591	2/1/00	5	1/31/05			\$ 995.00	1,260	\$ 9.55	
Bay 3	American Deep	Leonard	Robert	Owner	778-8558	778-8558	2/1/99	10	1/31/09			\$ 835.00	1,250	\$ 8.02	
Bay 4	Vacant	Vacant										\$ 1,150.00	1,250	\$ 11.04	
Bay 5	plaza extra-Vacant						V	V	Vacant	Vacant		\$ 1,825.00	3,125	\$ 7.01	
Bay 6	J & P Sales	Piriero	Juan	Owner	778-6962	773-5349	8/1/01	5	7/31/06			\$ 2,340.00	3,125	\$ 8.99	
Bay 7	plaza extra-Vacant						V	V	Vacant	Vacant		\$ 1,892.71	3,125	\$ 6.50	
Bay 8	plaza extra-Vacant						V	V	Vacant	Vacant		\$ 2,864.58	6,250	\$ 5.50	
Bay 9	Naty's Cafeteria	Ruiz	Cesar	Owner	778-7020	778-3588	1/5/00	5	10/1/05	Renewed		\$ 625.00	500	\$ 15.00	
Bay 10	Key's Travels	Zenon	Alidia	Owner	773-3236	773-7572	none		12/31/99	Expired-TAW		\$ 782.50	625	\$ 15.02	
Bay 11	Augustin Nolasco Perez	Torres	Augustin	Owner	none		1/1/01	2	1/1/03	Incr on renewal		\$ 600.00	625	\$ 11.52	
Bay 12	Vacant	Vacant					V	V	V			\$ 1,150.00	1,250	\$ 11.04	
Bay 13	Plaza Cafe	Martin	Horatio	Owner	778-4447	778-6038	NO Lease					\$ 1,355.00	1,250	\$ 13.01	
Bay 14	Vacant	Vacant					V	V	V			\$ 780.00	625	\$ 14.98	
Bay 15	VI Nails	Nguyen	Kent	Owner	692-2597	STT775-8660	2/1/00	5	1/31/05			\$ 575.00	625	\$ 11.04	
Bay 16	Bee's records	Bramble	Joseph	Owner	778-6146	778-5302	10/1/99	5	9/30/04	Renewal agmt		\$ 781.25	625	\$ 15.00	
Bay 17	Gill Electronics	Gill	Michael	Owner	778-5840	773-8945	4/1/01	5	3/31/06	Expired-TOW		\$ 781.25	625	\$ 15.00	
Bay 18	Elea's Beauty Parlor	Elea	Rodriguez	Owner	773-7212	778-6781	4/1/01	5	3/31/06			\$ 780.00	625	\$ 14.98	
Bay 19	47Th St. Jewelers	Perez	Emilio	Owner	778-7815	778-7756	Leaving 9/1/	V	V			\$ 781.25	625	\$ 15.00	
Bay 20	Peoples Laundry	Baillantine	Judith A.	Owner	773-2303/77	713-1066/772-	11/8/92	10	12/31/02	New Owner 12/99		\$ 2,650.00	1,250	\$ 25.44	
Bay 21	Dimension Video	Roper	Eustace	Owner	none	773-6140	4/1/01	5	3/31/06			\$ 250.00	1,250	\$ 2.40	
Bay 22	Vacant	Vacant					V	V	V			\$ 900.00	1,250	\$ 8.64	
Bay 23	Mid Island Mensware	Idhelleh	Mahmud	Owner	778-5736	773-5049	4/1/01	5	3/31/06			\$ 1,165.00	1,750	\$ 7.99	
Bay 24	UNWU	Peters	Amos	Vice Pres	773-6955	778-2571/778-	6/30/99	10	5/31/09	Rent Incr 6/30/01		\$ 1,500.00	1,750	\$ 10.29	
Bay 25	Island Finance	Island-finance	Norwest Fin. Corp	Owner	778-6292	773-2214	9/30/04	10	8/31/04	Rent Incr 10/1/01		\$ 2,406.25	1,750	\$ 16.50	
Bay 26	Sports Plus	Alicea	Luis	Owner	778-6446	778-2281	5/1/01	3	5/31/04			\$ 1,100.00	1,750	\$ 7.54	
Bay 27	Boyd Cleaners	Boyd	Dolores	Owner	778-1152	773-0664	7/1/99	10	7/31/09	Rent Incr 8/31/03		\$ 1,458.00	3,500	\$ 5.00	
Bay 28	Boyd Cleaners				same	same	same	same	same	same	same		Incl above	Incl above	
Bay 29	Sunstroke-	Clenance	Rashidi	Owner	773-8393	771-1213	11/1/99	5	1/31/04	Rent Incr 11/1/01		\$ 729.00	1,750	\$ 5.00	
Bay 30	King Cash	Berry, Jr	Arthur & Deshawn	Owner	719-9564	713-9856	2/1/99	5	1/31/04			\$ 900.00	1,750	\$ 6.17	
Bay 36	Best Furniture	Hussain	Bakr & Akell	Owner	778-6440	773-4161	7/1/99	3	6/30/02	Rent Incr pending		\$ 7,000.00	10,500	\$ 8.00	
													Average		\$ 10.67
Suite 1	Vacant	Vacant	Vacant	Vacant	Vacant	Vacant	Vacant	Vacant	Vacant	Vacant		\$ 525.00	520	\$ 20.77	
Suite 2	Vacant	Vacant	Vacant	Vacant	Vacant	Vacant	Vacant	Vacant	Vacant	Vacant		\$ 900.00	888	\$ 6.08	
Suite 3	Vacant	Vacant	Vacant	Vacant	Vacant	Vacant	Vacant	Vacant	Vacant	Vacant		\$ 450.00	468	\$ 12.23	
Suite 3a	Mutual of Omaha	Phillip	Solomon	Owner	778-9655	773-5771	4/1/01	5	3/31/06			\$ 475.00	425	\$ 26.12	
Suite 4	Vacant						Vacant	Vacant	Vacant	Vacant		\$ 925.00	925	\$ 16.22	
Suite 5	Dr F. Alonso	Alonso	Dr. Francisca	Dr	778-6165	773-9216	4/1/01	5	3/31/06			\$ 1,250.00	1,250	\$ 5.71	
Suite 7	Vacant						Vacant	Vacant	Vacant	Vacant		\$ 595.00	576	\$ 15.10	
Suite 8	LEI Technology	Lindsay	Ronald	President	713-9336		2/1/00	5	1/31/05			\$ 725.00	720	\$ 25.00	
Suite 9	USW Regional Off.	Joseph	Frederick	Director	778-5834	772-3184	8/1/01	3	7/31/04			\$ 1,500.00	1,126	\$ 7.46	
Suite 11	Ranger Security	Richards	Delroy	Mgr	719-9698	778-8277/776-	5/1/99	3	4/30/02	can extend at 5%/yr		\$ 700.00	575	\$ 14.09	
Suite 12	vacant						V	V	V	V		\$ 675.00	576	\$ 5.73	
Suite 13	vacant-Storeroom						V	V	V	V		\$ 275.00	220	\$ 65.18	
Suite 14	USW 8526-Oct	Jackson	Gery	Pres.	778-5906	692-5875	10/1/99	5	9/30/04			\$ 1,195.00	1,056	\$ 578.88	
store 30												\$ 80,941.79	84,948.00	\$ 57.68 Average	
office 12															

35

No Leases
10 Key Travels
13 Plaza Cafe

Tax Invoice List 1992 - 1999

Business	Unit	TOTAL	Billing Date	Date Due	March	Ammt	April	May	June	July	August	Sept	Balance	% Balance
Kay's Travels	10	0.00	9-Feb-01	15-Mar-01									0.00	0%
Gill Electronics	17	0.00	9-Feb-01	15-Mar-01									0.00	0%
47Th St. Jewelers	19	0.00	9-Feb-01	15-Mar-01									0.00	0%
Dr Low-a-chee	3	0.00	9-Feb-01	15-Mar-01	06-Mar-01	"-195.5 pd	Credit rent						0.00	0%
Mutual of Omaha	3a	0.00	9-Feb-01	15-Mar-01	06-Mar-01	"-500 Pd	Credit rent						0.00	0%
Dr F. Alonso	5	0.00	9-Feb-01	15-Mar-01									0.00	0%
USW Regional Off.	9	0.00	9-Feb-01	15-Mar-01									0.00	0%
J P Sales	8	0.00	9-Feb-01	15-Mar-01									0.00	0%
USW 8526-	14,2,7	99.50	9-Feb-01	15-Mar-01	29-Mar-01	(99.50)							0.00	0%
Ranger Security	11	246.04	9-Feb-01	15-Mar-01						(246.04)			0.00	0%
UIWU	24	374.41	9-Feb-01	15-Mar-01			(374.41)						0.00	0%
Boyd Cleaners	27	374.41	9-Feb-01	15-Mar-01		(32.10)	(32.00)	(32.30)	(32.10)	(32.10)	(32.10)		181.71	49%
American Beeper	3	534.87	9-Feb-01	15-Mar-01	16-Mar-01	(534.87)							0.00	0%
Dimension Video	21	534.87	9-Feb-01	15-Mar-01			(250.00)			0.00			284.87	53%
Crucian Fashions	12	534.87	9-Feb-01	15-Mar-01	gone								534.87	100% GONE
Island Finance	25	748.82	9-Feb-01	15-Mar-01				(748.35)					0.00	0%
King Cash	30	748.82	9-Feb-01	15-Mar-01				(200.00)		(48.32)	(200.00)		300.50	40%
Dina's	14	1,046.81	9-Feb-01	15-Mar-01	gone								1,046.81	100% GONE
Naty's Cafeteria	9	1,330.72	9-Feb-01	15-Mar-01									1,330.72	100%
Irfel & figar	26	1,483.67	9-Feb-01	15-Mar-01	06-Mar-01					(300.00)			1,183.67	80% Paying gone
Bee's records	16	1,760.90	9-Feb-01	15-Mar-01									1,760.90	100%
Plaza Cafe	13	2,093.63	9-Feb-01	15-Mar-01									2,093.63	100%
Mid Island Mensware	23	3,772.53	9-Feb-01	15-Mar-01			(500.00)						3,272.53	87%
Best Furniture	36	33,930.20	9-Feb-01	15-Mar-01									33,930.20	100%
Paid Bills		49,815.09		Pd to date		(666.47)	(1,156.41)	(980.65)	(32.10)	(626.46)	(232.10)	0.00	(3,694.19)	Total Paid
Bills	#	425,332.79											45,920.43	Total still Due
Business	Unit	TOTAL	Billing Date	Date Due	March	Ammt	April	May	June	July	August	Sept	Balance	% Balance

Exhibit 2

United Corporation dba Plaza Extra

Tutu Park Store Sales:

1-1-2004 to 12-31-2004	32,323,902.88
Less: 1-1-2004 to 5-4-2004	-10,849,029.02
Sales 5-5-2004 to 12-31-2004	<u>21,474,873.86</u>

Tutu Park Store:

Paid Rent, Water, & Property Tax	263,577.53
Paid 1.5% Overage	<u>71,914.23</u>
5-5-2004 to 12-31-2004	335,491.76

1-1-2005 to 12-31-2005	515,361.54
1-1-2006 to 12-31-2006	590,533.60
1-1-2007 to 4-1-2007	255,699.33
4-2-2007 to 12-3-2007	468,689.55
1-3-2008 to 12-5-2008	540,180.12
1-5-2009 to 12-10-2009	529,799.66
1-6-2010 to 12-3-2010	527,565.40
1-1-2011 to 12-31-2011	<u>541,175.61</u>

Rent, etc. 5-5-2004 to 12-31-2011	4,304,496.57
Parking Lot Cleaning	<u>126,000.00</u>
Total Amount Paid	4,430,496.57 a

Tutu Park Store Sales:

5-5-2004 to 12-31-2011	261,474,323.91
Portion of Sales - Rented building	<u>217,895,269.93</u> b
Portion of Sales - Area built by Plaza	43,579,053.98

Total Paid as a % of Sales (Rented Bldg.) = a/b 2.0333147073%

Sion Farm Sales:

Sion Farm Sales 5-5-2004 to 12-31-2011	273,884,222.70
Less: R/X	<u>-7,874,897.13</u>
	266,009,325.57

Calculated Rent as a % of Sales Sion Farm \$ 5,408,806.74

Y-2

**EXHIBIT
2**

Exhibit 3

UNITED CORPORATION D/B/A PLAZA EXTRA
UNITED SHOPPING PLAZA

Check Number: 64866
Check Date: Feb 7, 2012

Check Amount: \$5,408,806.74
Discount Taken
Amount Paid
5,408,806.74

Item to be Paid - Description
Rent - Sion farm

UNITED CORPORATION D/B/A
PLAZA EXTRA
4C & 4D ESTATE SION FARM
CHRISTIANSTED, VI 00821
(340) 778-6240 (340) 719-1870

BANCO POPULAR DE PUERTO RICO
101-667/216

64866

DATE
Feb 7, 2012

AMOUNT
\$ ***\$5,408,806.74

Five Million Four Hundred Eight Thousand Eight Hundred Six and 74/100 Dollars

PAY
TO THE
ORDER
OF:

UNITED SHOPPING PLAZA
P.O. BOX 763 C' STED
ST.C ROIX, VI 00821

VOID AFTER 90 DAYS

Memo: PLAZA EXTRA (SION FARM) RENT


AUTHORIZED SIGNATURE

⑈064866⑈ ⑆021606674⑆ 191⑈148830⑈

UNITED CORPORATION D/B/A PLAZA EXTRA

64866

Y-2

EXHIBIT
3

EXHIBIT
9

Exhibit 4

DEWOOD LAW FIRM

2006 Eastern Suburb Suite 101
Christiansted, V.I. 00820
Admitted: NY, NJ, MD, & VI
T. 340.773.3444
F. 888.398.8428
info@dewood-law.com

BY: FIRST CLASS MAIL & EMAIL ONLY

May 17, 2013

Joel Holt, Esq.
2132 Company Street
Christiansted, VI 00820

Re: Rent Due – Plaza Extra – East Operations

Dear Attorney Holt,

On behalf of United Corporation, the following is a notice of the value of rents due as follows:

Rent due for Plaza Extra – East
Bay No. 1 January 1, 1994 through April 4, 2004
69,680 SQ. FT. at \$5.55 10 years and 95 days Balance Due \$3,967,894.19


Bay No. 5 May 1, 1994 through October 31, 2001
3,125 SQ. FT. at \$12.00 6 years and 184 days Balance Due \$243,904.00

Bay No. 8 April 1, 2008 through May 30, 2013
6,250 SQ. FT. at \$12.00 5 years and one month Balance Due \$381,250.00

Total Amount Due **\$4,593,048.19**

These amounts are undisputed, and have been outstanding for a very long time - before 2012. This amount does not reflect the rent increase requested and noticed to Mohammed Hamed since January 1, 2012. We reserve our client’s right for the additional rents due and owing based on the rent increase after January 1, 2012. Kindly review the amount with your client, and advise when a check can be issued. Thank you.

Sincerely,


Nizar A. DeWood, Esq.

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EXHIBIT

4

Confidential

Exhibit 5

JOEL H. HOLT, ESQ. P.C.

2132 Company Street, Suite 2
Christiansted, St. Croix
U.S. Virgin Islands 00820

Tele. (340) 773-8709
Fax (340) 773-8677
E-mail: holtvi@aol.com

May 22, 2013

Nizar A. DeWood
The Dewood Law Firm
2006 Eastern Suburb, Suite 101
Christiansted, VI 00820

By Email and Mail

Re: Plaza Extra

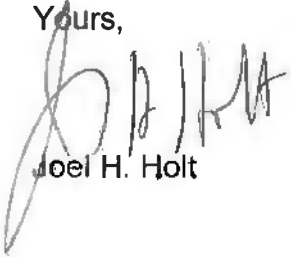
Dear Attorney DeWood:

In response to your letter dated May 17, 2013, regarding "Rent Due" for Bay Nos. 1, 5 and 8, my clients have authorized me to respond as follows:

1. **Bay No. 1**-The rent claimed is for the time period between 1994 and 2004. There was never any understanding that rent would be paid for this time period, much less at that rate. In any event, this inflated claim is clearly barred by the statute of limitations.
2. **Bay No. 5**-The rent claimed for the time period between 1994 and 2001 is for vacant space was used without charge until a tenant could be located. Thus, there was never any agreement to pay rent for this space either. In fact, the rate your client is attempting to charge is grossly inflated as well. In any event, this claim is also barred by the statute of limitations.
3. **Bay No. 8**-The rent claimed for this Bay was never agreed to, as the items stored there were removed from a space in a trailer where everything was just fine. Moreover, no one would agree to pay the amount you claim is due for warehouse storage, The fact that this amount is even being sought confirms that Fathi Yusuf should no longer be a partner in the Plaza Extra supermarkets, as it is a breach of the duty of good faith and fair dealing (that every partner owes the partnership) when you try to extort money from your own business. In any event, these items will be removed from Bay 8 to the second floor of the store since your client now wants to charge rent for this space.

Ever since your clients lost the preliminary injunction hearing, they have done everything they can to undermine the partnership. Your clients' belated claim for inflated amounts of back rent (that were never agreed to) is just another example of your clients' continued efforts to try to undermine the Court's Order.

Yours,

A handwritten signature in black ink, appearing to read "J. Holt", written over the typed name "Joel H. Holt".

Joel H. Holt

Exhibit 6

since Yusuf desires to immediately terminate any and all business relations Hamed may have with either of the Defendants.

COUNT XI
RENT FOR RETAIL SPACE BAY 1

172. Paragraphs 1 through 171 of this Counterclaim are realleged.

173. United has historically deducted rent for Plaza Extra – East as an internal expense and is entitled to deduct same so as to arrive at a proper calculation of the net profits from Plaza Extra – East.

174. In the alternative, in the event that the Alleged Partnership is determined to exist, then United is entitled to deduct all rent currently due and owing to arrive at the proper calculation of the net profits from Plaza Extra – East.

175. Whether an internal expense or a debt of the Alleged Partnership, for the period of January 1, 1994 through May 4, 2004, United is entitled to rent in the amount of \$3,999,679.73 for Bay No. 1 (69,680 sq. ft. of retail space at \$5.55 sq. ft.) for the operations of the Plaza Extra – East.

176. Whether an internal expense or a debt of the Alleged Partnership, for the period of January 1, 2012 to date, United is entitled to rent for Bay No. 1 (69,680 sq. ft. of retail space at the current monthly rate of \$58,791.38).

177. In the event that the Alleged Partnership is determined to exist, then Hamed is in violation of the agreement to pay rent to United in an amount exceeding \$5,293,090.09.

178. United, as the fee simple owner, is entitled to all unpaid rent for the use of Bay 1, and to recover possession of its premises currently occupied by Plaza Extra – East.

COUNT XII
PAST RENT FOR RETAIL SPACES BAYS 5 & 8

179. Paragraphs 1 through 178 of this Counterclaim are realleged.

180. United provided Plaza Extra – East with retail spaces Bay 5 & 8 for various time periods to increase the storage and capacity of Bay 1 (the main retail space where Plaza Extra – East is located).

181. Bay No. 5 (3,125 sq. ft. of retail space) was utilized for storage and quick access to various inventories used in the operations of Plaza Extra – East. Whether an internal expense or a debt of the Alleged Partnership, United is entitled to rent from May 1, 1994 through October 31, 2001 at rate of \$12.00 per sq. ft.

182. Bay No. 8 (6,250 sq ft. of retail space) was utilized for the operations of Plaza Extra – East. Whether an internal expense or a debt of the Alleged Partnership, United is entitled to rent from April 1, 2008 through May 30, 2013 at a rate of \$16.15 per sq. ft.

183. In the event that the Alleged Partnership is determined to exist, Hamed has refused to acknowledge his obligation to pay United the outstanding rent for Bays 5 and 8.

184. United, as the fee simple owner, is entitled to all unpaid rent for the use of Bays 5 and 8 in the amount of \$793,984.38.

COUNT XIII
CIVIL CONSPIRACY

185. Paragraphs 1 through 184 of this Counterclaim are realleged.

186. Hamed and the Hamed Sons agreed to perform the wrongful acts and accomplish the wrongful ends alleged in this Counterclaim, and they aided and abetted each other and acted on that agreement.

187. As a result of such conspiracy, the Defendants have been damaged.

Accordingly, Defendants respectfully request entry of judgment in their favor providing the following relief:

- i. a declaratory judgment declaring the parties' rights and obligations with respect to the Plaza Extra Stores;

- ~~ii. a full accounting of all funds taken by Hamed or his agents from the Plaza Extra Stores without Defendants' authorization;~~
- iii. a judgment declaring that Hamed and the Hamed Sons hold any assets purchased with funds improperly taken from the Plaza Extra Stores as constructive trustees for Defendants and imposing a constructive trust or equitable lien in favor of Defendants over all funds taken without authorization by Hamed or his agents or assets purchased with such funds;
- iv. awarding compensatory, consequential, and punitive damages in an amount according to proof at trial;
- v. appointing a Receiver to dissolve and wind down the affairs of any joint venture/partnership determined to exist between Hamed and Yusuf and to dissolve and liquidate Plessen;
- vi. a judgment for all rent found due and owing for the premises occupied by Plaza Extra-East and ordering immediate restitution of such premises to United;
- vii. awarding Defendants their reasonable attorneys' fees and costs in defending against the Complaint and prosecuting this Counterclaim; and
- viii. providing such other and further relief as the Court deems just and proper.

Pursuant to Fed. R. Civ. P. 38(b), Defendants demand a trial by jury of all issues triable

~~by right to a jury.~~

DUDLEY, TOPPER and FEUERZEIG, LLP

Dated: December 23, 2013

By: /s/Gregory H. Hodges
Gregory H. Hodges (V.I. Bar No. 174)
1000 Frederiksberg Gade - P.O. Box 756
St. Thomas, VI 00804
Telephone: (340) 715-4405
Telefax: (340) 715-4400
E-mail: ghodges@dtflaw.com

and

Nizar A. DeWood, Esq. (V.I. Bar No. 1177)
The DeWood Law Firm
2006 Eastern Suburbs, Suite 101
Christiansted, VI 00830
Telephone: (340) 773-3444
Telefax: (888) 398-8428
Email: info@dewood-law.com

Attorneys for Fathi Yusuf and United Corporation

CERTIFICATE OF SERVICE

I hereby certify that on this 23rd day of December, 2013, I caused the foregoing **ANSWER AND COUNTERCLAIM** to be served upon the following via e-mail:

Joel H. Holt, Esq.
LAW OFFICES OF JOEL H. HOLT
2132 Company Street
Christiansted, V.I. 00820
Email: holtvi@aol.com

Carl Hartmann, III, Esq.
5000 Estate Coakley Bay, #L-6
Christiansted, VI 00820
Email: carl@carlhartmann.com



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Exhibit 7

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

MOHAMMAD HAMED, by his
authorized agent **WALEED HAMED**,

Plaintiff/Counterclaim Defendant,

vs.

FATHI YUSUF and UNITED CORPORATION,

Defendants/Counterclaimants,

vs.

**WALEED HAMED, WAHEED HAMED,
MUFEEED HAMED, HISHAM HAMED, and
PLESSEN ENTERPRISES, INC.**,

Additional Counterclaim Defendants.

CIVIL NO. SX-12-CV-370

ACTION FOR DAMAGES,
INJUNCTIVE RELIEF
AND DECLARATORY RELIEF

Consolidated With

MOHAMMAD HAMED,

Plaintiff,

v.

UNITED CORPORATION,

Defendant.

CIVIL NO. SX-14-CV-287

ACTION FOR DAMAGES
AND DECLARATORY RELIEF

YUSUF'S ACCOUNTING CLAIMS AND PROPOSED DISTRIBUTION PLAN

~~Pursuant to the "Final Wind Up Plan Of The Plaza Extra Partnership," entered on January 9, 2015 (the "Plan"),¹ §9, Step 6, and the August 31, 2016 directive² of the Master, as clarified~~

Y-2

EXHIBIT

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~~¹ Unless otherwise defined, all capitalized terms have the same meaning as provided in the Plan.
² That directive required the Partners to submit any objection to the previously submitted Partnership Accounting and any claims against the Partnership or a Partner by September 30, 2016. It is undisputed that since the inception of the Partnership, the only Partners were Yusuf and Hamed, who died on June 16, 2016. On September 20, 2016, a Motion And Memorandum For Substitution Of Named Plaintiff was filed seeking an Order substituting Waleed M. Hamed, as Executor of the estate of Hamed, as Plaintiff.~~

**DUDLEY, TOPPER
AND FEUERZEIG, LLP**

1000 Frederiksberg Gade
P.O. Box 756

St. Thomas, U.S. V.I. 00604-0756
(340) 774-4422

YUSF237698

1. Bay 1 – Increased Rent Due Net of Rent Paid

United provided formal notice of increased rent of \$200,000 per month to the Partnership, which was to begin on January 1, 2012 through March 31, 2012, if the premises were not vacated before then. Thereafter, beginning on April 1, 2012 through March 8, 2015, United provided formal notice of increased rent of \$250,000 per month. See Exhibit D to Yusuf's Declaration dated August 12, 2014 (the "Yusuf Declaration") in support of Defendants' Motion for Partial Summary Judgment on Counts IV, XI and XII Regarding Rent. Although the Rent Order awarded certain amounts of rent to United during this period, the award did not address the increased rent claimed by United. The outstanding balance of the increased rent claimed as to Bay 1, net of the rent recovered pursuant to the Rent Order, is \$6,974,063.10. See calculation of additional rents attached as **Exhibit C**.

2. Bays 5 and 8

Likewise, outstanding rent is due to United for Bays 5 and 8 of the United Shopping Plaza. These amounts were not adjudicated in the Rent Order and they remain an outstanding rent claim against the Partnership. The total amount due to United for unpaid rent for Bays 5 and 8 is \$793,984.34. See the Yusuf Declaration at ¶¶ 21-25.

3. Interest on Rent Claims

The interest that accrued at 9% per annum on the rent actually awarded by the Rent Order (\$6,248,924.14) is \$881,955.08 as of May 11, 2015, when that rent was paid to United. See calculation of interest on Bay 1 rent attached as **Exhibit D**.¹¹

The interest due for the unpaid rent on Bays 5 and 8 is also claimed by United. The total interest calculated at 9% per annum for the period from May 17, 2013 through September 30,

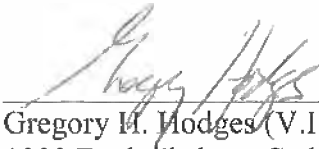
¹¹ This amount does not include any interest accruing at the 9% rate on each month's unpaid rent from June 1, 2013 through March 8, 2015.

Respectfully submitted,

DUDLEY, TOPPER and FEUERZEIG, LLP

DATED: September 30, 2016

By:


Gregory H. Hodges (V.I. Bar No. 174)
1000 Frederiksberg Gade
P.O. Box 756
St. Thomas, VI 00804
Telephone: (340) 715-4405
Telefax: (340) 715-4400
E-mail: ghodges@dtflaw.com

Attorneys for Fathi Yusuf and United Corporation

CERTIFICATE OF SERVICE

I hereby certify that on this 30th day of September, 2016, I caused the foregoing **Yusuf's Accounting Claims and Proposed Distribution Plan** to be served upon the following via e-mail:

Joel H. Holt, Esq.
LAW OFFICES OF JOEL H. HOLT
2132 Company Street
Christiansted, V.I. 00820
Email: holtvi@aol.com

Carl Hartmann, III, Esq.
5000 Estate Coakley Bay, #L-6
Christiansted, VI 00820
Email: carl@carlhartmann.com

Mark W. Eckard, Esq.
Eckard, P.C.
P.O. Box 24849
Christiansted, VI-00824
Email: mark@markeckard.com

Jeffrey B.C. Moorhead, Esq.
C.R.T. Building
1132 King Street
Christiansted, VI-00820
Email: jeffreymlaw@yahoo.com

The Honorable Edgar A. Ross
Email: 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

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YUSF237717

Exhibit 8

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

MOHAMMAD HAMED , by his authorized agent WALEED HAMED ,)	
)	
Plaintiff/Counterclaim Defendant,	)	CIVIL NO. SX-12-CV-370
)	
vs.	)	ACTION FOR DAMAGES, INJUNCTIVE RELIEF AND DECLARATORY RELIEF
)	
FATHI YUSUF and UNITED CORPORATION ,)	
)	
Defendants/Counterclaimants,)	
)	
vs.	)	JURY TRIAL DEMANDED
)	
WALEED HAMED, WAHEED HAMED, MUFEED HAMED, HISHAM HAMED, and PLESSEN ENTERPRISES ,)	
)	
Additional Counterclaim Defendants.))	
)	
)	

**DEFENDANTS' BRIEF IN SUPPORT OF MOTION FOR PARTIAL SUMMARY
JUDGMENT ON COUNTS IV, XI, AND XII REGARDING RENT**

INTRODUCTION

Defendants/Counterclaimants Fathi Yusuf ("Yusuf") and United Corporation ("United") (collectively, the "Defendants") bring this motion for partial summary judgment on the claims for undisputed past due rent of certain premises at its shopping center known as United Shopping Plaza. These claims include rent for the primary space occupied by the Plaza Extra supermarket (Plaza Extra-East) at the United Shopping Plaza in St. Croix, which is known as "Bay 1," and two other smaller spaces (Bays 5 and 8) at the shopping center being used to warehouse Plaza Extra-East inventory. Since its opening in April 1986, and in an effort to support the development of the business, Plaza Extra-East has paid rent to United in multi-year blocks in amounts totaling several million dollars per payment. Mohammad Hamed ("Hamed") agreed with Yusuf at the formation

Y-2

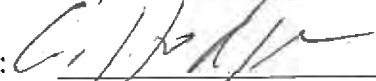
EXHIBIT

8

Respectfully submitted,

DUDLEY, TOPPER AND FEUERZEIG, LLP

Dated: August 12, 2014

By: 

Gregory H. Hodges (V.I. Bar No. 174)
1000 Frederiksberg Gade - P.O. Box 756
St. Thomas, VI 00804
Telephone: (340) 715-4405
Telefax: (340) 715-4400
E-mail: ghodges@dtflaw.com

and

Nizar A. DeWood, Esq. (V.I. Bar No. 1177)
The DeWood Law Firm
2006 Eastern Suburbs, Suite 101
Christiansted, VI 00830
Telephone: (340) 773-3444
Telefax: (888) 398-8428
Email: info@dewood-law.com

Attorneys for Fathi Yusuf and United Corporation

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

MOHAMMAD HAMED, by his)
authorized agent **WALEED HAMED**,)

Plaintiff/Counterclaim Defendant,)

vs.)

FATHI YUSUF and UNITED CORPORATION,)

Defendants/Counterclaimants,)

vs.)

**WALEED HAMED, WAHEED HAMED,
MUFEED HAMED, HISHAM HAMED, and
PLESSEN ENTERPRISES**,)

Additional Counterclaim Defendants.)

CIVIL NO. SX-12-CV-370

ACTION FOR DAMAGES,
INJUNCTIVE RELIEF
AND DECLARATORY RELIEF

JURY TRIAL DEMANDED

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~~

~~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.

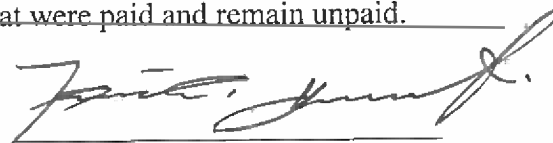
24. For the period from April 1, 2008 through May 30, 2013, Plaza Extra-East has occupied and owes rent for Bay 8 ("Second Bay 8 Rent"). The Second Bay 8 Rent is calculated by

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 9

any legal claims for damages, but has rather presented a single, equitable action for a partnership accounting,² and because the parties do not assert that the action for accounting is itself barred by the statute of limitations, Plaintiff's Motion will be denied as to Yusuf's claim for accounting. Additionally, as to Defendant United's claim for rent presented in Count XII of the Counterclaim, the Court finds that there exist genuinely disputed issues of material fact such that summary judgment is inappropriate.

Nonetheless, in light of the arguments presented by the parties, as well as the general complexities and difficulties inherent in addressing the peculiar questions of fact necessary for the resolution of this matter, the Court finds that the interests of the parties in the just and fair disposition of their claims, as well as the overarching interest of the judiciary in the efficient resolution of disputes before it, are best served by utilizing the broad powers conferred upon the Court sitting in equity to fashion remedies specifically tailored to the circumstances presented in order to establish an equitable limitation upon claimed credits and charges submitted to the Master in the context of the Wind Up process.

Background

Hamed's Complaint was filed September 17, 2012, followed by his First Amended Complaint (Complaint), filed in the District Court following removal and prior to remand, on October 19, 2012, seeking, among other relief, "A full and complete accounting... with Declaratory Relief against both defendants to establish Hamed's rights under his Yusuf/Hamed Partnership with Yusuf..." Complaint, at 15, ¶1. ~~Defendants filed their First Amended~~

² ~~Count IX of the First Amended Counterclaim, seeking the dissolution of Plessen Enterprises, Inc., constitutes the sole claim presented by Yusuf that is unrelated to, and therefore not incorporated into, his equitable claim for accounting. However, Plaintiff's Motion, by its own terms, concerns only "monetary damage claims," and therefore Yusuf's Count IX is excluded from consideration in this Opinion.~~

Counterclaim (Counterclaim) on January 13, 2014, seeking relief as follows: Count: I— Declaratory Relief that No Partnership Exists; Count II— Declaratory Relief, in the event that a partnership is determined to exist to determine, among other relief, “their respective rights, interests, and obligations concerning the Plaza Extra Stores and the disposition of the assets and liabilities of these stores;” Count III— Conversion; Count IV— Accounting, alleging that “Yusuf is entitled to a full accounting...;” Count V— Restitution; Count VI— Unjust Enrichment and Imposition of a Constructive Trust; Count VII— Breach of Fiduciary Duty; Count VIII— Dissolution of Alleged Partnership, stating: “Although Defendants deny the existence of any partnership with Hamed, in the event the Alleged Partnership is determined to exist, then Yusuf is entitled to dissolution of the Alleged Partnership and to wind up its affairs, in that such partnership would be an oral at-will partnership and Yusuf provided notice of his intent to terminate any business relationship (including any partnership) with Hamed in March of 2012;” Count IX— Dissolution of Plessen; Count X— Appointment of Receiver; Count XI—Rent for Retail Space Bay I;³ Count XII— Past Rent for Retail Spaces Bay 5 & 8; Count XIII— Civil Conspiracy; Count XIV—Indemnity and Contribution. Counterclaim ¶¶ 141-191.

Legal Standard

By his Motion, Plaintiff is entitled to entry of summary judgment barring certain relief sought by Defendants’ Counterclaim pursuant to the applicable statute of limitations if he “shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law.” V.I. R. Civ. P. 56(a).

³ This Count was the subject of Memorandum Opinion and Order entered April 27, 2015, denying, in part, Plaintiff’s present Motion and granting United’s Motion to Withdraw Rent. United’s claim in Count XII and other monetary claims of United were unaffected by that Order.

“A party is entitled to judgment as a matter of law when, in considering all of the evidence, accepting the nonmoving party’s evidence as true, and drawing all reasonable inferences in favor of the nonmoving party, the court concludes that a reasonable jury could only enter judgment in favor of the moving party.” *Antilles School, Inc. v. Lembach*, 2016 V.I. Supreme LEXIS 7, at *6-7 (V.I. 2016). The nonmoving party in responding to a motion for summary judgment has the burden to “set out specific facts showing a genuine issue for trial.” *Williams v. United Corp.*, 50 V.I. 191, 194-95 (V.I. 2008). A dispute is genuine if the evidence is such that a reasonable trier of fact could return a verdict for the nonmoving party. *Machado v. Yacht Haven U.S.V.I., LLC*, 61 V.I. 373, 391-92 (V.I. 2014).

Discussion

There can be no more appropriate introduction to this matter than the lucid observations of Judge Herman E. Moore of the District Court of the Virgin Islands who remarked of another matter involving a dispute between business partners more than half a century ago:

This case illustrates the pitfalls open to friends going into business. When two strangers go into business, you usually have each one requiring formal contracts, formal statements, formal deposits, and everything of the kind; but usually when two friends go into business, and where it becomes one happy family, so many of these things are omitted; and when they do fall out, as happened in this case, there arises bitterness and difficulties which make it the most difficult type of case to try.

Stoner v. Bellows, et al., 2 V.I. 172, 174-75 (D.V.I. 1951).

Hamed’s Motion seeks to bar Defendants’ unresolved monetary claims, as alleged in their Counterclaim, for “debt, breach of contract, conversion, breach of fiduciary duty, recoupment/constructive trust and accounting” that accrued more than six years prior to the September 17, 2012 commencement of this action, citing *James v. Antilles Gas Corp.*, 43 V.I. 37 (V.I. Terr. Ct.

2000).⁴ Defendants respond to Hamed’s assertion that Defendants’ monetary claims are governed by the six-year limitation period set out in 5 V.I.C. § 31(3) (Motion, at 3) by asserting that Yusuf’s monetary claims constitute a cause of action for an accounting which, consistent with longstanding common law precedent, accrues upon dissolution of the partnership, and examines the entire period of the partnership, or the period from the last accounting. Opposition, at 9; Supplemental Brief, at 1. Defendant United has not denied the applicability of a six-year limitation period to its third-party claims against Hamed and/or the partnership, but rather argues that the limitation period should be equitably tolled.

“Each partner is entitled to a settlement of all partnership accounts upon winding up the partnership business.” 26 V.I.C. § 177(b). “A partnership is dissolved, and its business must be wound up... upon... in a partnership at will, the partnership’s having notice from a partner... of that partner’s express will to withdraw as a partner.” 26 V.I.C. § 171(1).

By their pleadings in this litigation, Hamed alleged and Yusuf denied the existence of a partnership at will. Although Yusuf had previously acknowledged the existence of a partnership during pre-litigation negotiations in February and March 2012, and his intention that the partnership be dissolved, by the time litigation ensued, Defendants sought “declaratory relief that no partnership exists.” Counterclaim, Count I. By his Motion to Appoint Master, filed April 7, 2014, Yusuf “now concedes for the purposes of this case that he and Hamed entered into a partnership to carry on the business of the Plaza Extra Stores and to share equally the net profits

⁴ While acknowledging a split of authority, the Territorial Court in *James* found “compelling” the majority view, as described by Professors Wright and Miller: “although there is some conflict on the subject, the majority view appears to be that the institution of *plaintiff’s suit tolls or suspends the running of the statute of limitations governing a compulsory counterclaim.*” *James v. Antilles Gas Corp.*, 43 V.I. at 44, 46, citing 6 Charles Alan Wright & Arthur R. Miller, *Federal Practice and Procedure*, § 1419, at 151 (2d ed. 1990) (emphasis in original).

from the operation of the Plaza Extra Stores.” The Court granted in part Plaintiff’s May 9, 2014 Renewed Motion for Partial Summary Judgment as to the Existence of a Partnership by Order entered November 7, 2014, finding and declaring the existence of a 50/50 partnership between Yusuf and Hamed based upon their 1986 oral agreement for the ownership and operation of the Plaza Extra Stores.

Yusuf has argued that, to the extent a partnership existed, it was dissolved by Hamed’s retirement in 1996 which constituted his withdrawal from the partnership. However, the Court has already found that Hamed’s participation in the operation and management of the three Plaza Extra Stores continued after his withdrawal from day-to-day operations through his son Waleed Hamed, acting pursuant to powers of attorney. *Hamed v. Yusuf*, 58 V.I. 117, 126 (V.I. Super. Ct. 2013). As noted, Yusuf’s pre-litigation negotiations seeking an agreement to dissolve his business relationship with Hamed never resulted in an agreement, such that the partnership was not dissolved by the time the litigation commenced. Within his April 7, 2014 Motion to Appoint Master, Yusuf states his “‘express will to withdraw as a partner,’ thus dissolving the partnership,” quoting 26 V.I.C. § 171(1). In his Response to that Motion, Hamed submitted his April 30, 2014 “Notice of Dissolution of Partnership.” Hamed and Yusuf concur that the partnership is dissolved, and both concur that the right of each partner to an accounting has accrued upon dissolution. Both also concur that the monetary claims set forth in Hamed’s Complaint and the monetary claims of Yusuf set forth in Defendants’ Counterclaim relate back to September 17, 2012, the date Hamed filed his original Complaint.

MOTION FOR PARTIAL SUMMARY JUDGMENT RE: STATUTE OF LIMITATIONS

As discussed in detail in the Memorandum Opinion and Order Striking Jury Demand entered contemporaneously herewith, despite the misleading form of both Hamed’s Complaint and

Yusuf's Counterclaim, each partner has presented in this matter only a single, tripartite cause of action for the dissolution, wind up, and accounting of the partnership pursuant to 26 V.I.C. § 75(b)(2)(iii). However, Count XII of Defendants' Counterclaim also presents a separate cause of action on behalf of United for debt in the form of rent. The Court first considers Hamed's Motion for Partial Summary Judgment Re: Statute of Limitations as it applies to United's action for rent, and then as it applies to the partners' competing claims for dissolution, wind up, and accounting.

United's Cause of Action for Debt (Rent)

By Memorandum Opinion and Order entered April 27, 2015, the Court denied Plaintiff's Motion for Partial Summary Judgment Re: Statute of Limitations as to United's Count XI for debt in the form of rent owed with respect to "Bay 1" and granted United's Motion to Withdraw Rent, filed September 9, 2013; authorizing the Liquidating Partner, under the supervision of the Master, to pay to United from partnership funds the total amount of \$5,234,298.71 plus additional rents that have come due from October 1, 2013 at the rate of \$58,791.38 per month. That Memorandum Opinion and Order also effectively, though not explicitly, granted in part Defendants' Motion for Partial Summary Judgment on Counts IV, XI, and XII Regarding Rent, filed August 12, 2014, as to Count XI, and entered judgment thereon in favor of United.

In Count XII of Defendants' Counterclaim, United seeks an award of \$793,984.38 for rent owed with respect to "Bay 5" and "Bay 8," which the partnership allegedly used for storage space in connection with the Plaza Extra-East store during various periods between 1994 and 2013. Counterclaim ¶¶ 179-84. **United's arguments against the applying the statute of limitations to bar its claims for rent generally fail to distinguish between the rent owed for Bay I (Count XI) and the rent owed for Bays 5 and 8 (Count XII). Thus, the Court must infer that United opposes Hamed's statute of limitations argument as to Count XII on the same grounds as it opposed the argument**

with respect to Count XI. In denying Hamed's Motion for Partial Summary Judgment Re Statute of Limitations as to Count XI, the Court found that the limitations period had been tolled on the basis of Hamed's undisputed acknowledgement and partial payment of the debt.

However, in his August 24, 2014 Declaration, attached as Exhibit 1 to Plaintiff's Response to Defendants' Rule 56.1 Statement of Facts and Counterstatement of Facts, Waleed Hamed expressly states that "there was no agreement to use [Bays 5 and 8] other than on a temporary and periodic basis, nor was there any agreement to pay rent for this space, as United made it available at no cost." Declaration of Waleed Hamed ¶¶ 19-20. Mohammed Hamed's comments acknowledging the debt, which formed the basis of the Court's judgment as to Count XI, do not explicitly distinguish between the rent owed for Bay 1 and the rent owed for Bays 5 and 8. Yet, considered in light of the declaration of his son, the Court is compelled to conclude that a genuine dispute of material fact exists as to whether Hamed ever acknowledged any debt as to rent owed for Bays 5 and 8, and more basically, whether the partnership ever agreed to pay any rent for the use of Bays 5 and 8 in the first place. Accordingly, both Hamed's Motion for Partial Summary Judgment Re: Statute of Limitations and Defendants' Motion for Partial Summary Judgment on Counts IV, XI, and XII Regarding Rent must be denied as to Count XII of Defendants' Counterclaim.⁵

⁵ Defendants' Motion for Partial Summary Judgment on Counts IV, XI, and XII Regarding Rent must also be denied as to Count IV (Accounting). While Hamed and Yusuf are each entitled to an accounting of the partnership pursuant to 26 V.I.C. § 177, United's cause of action for rent is entirely unrelated to the partners' respective actions for accounting except insofar as each partner will ultimately be liable in the final accounting for 50% of whatever debt is found to be owing from the partnership to United.

Partners' Causes of Action for Partnership Dissolution, Wind Up, and Accounting

26 V.I.C. § 75(b) and (c) provide:

(b) A partner may maintain an action against the partnership or another partner for legal or equitable relief, with or without an accounting as to partnership business, to:

- (1) enforce the partner's rights under the partnership agreement;
- (2) enforce the partner's rights under this chapter... or
- (3) enforce the rights and otherwise protect the interests of the partner, including rights and interests arising independently of the partnership relationship.

(c) The accrual of, and any time limitation on, a right of action for a remedy under this section is governed by other law. A right to an accounting upon a dissolution and winding up does not revive a claim barred by law.

By Act No. 6205, the Revised Uniform Partnership Act (RUPA) was adopted in the Virgin Islands, effective May 1, 1998.⁶ The amended statute changed the common law and predecessor statute by, among other things, linking the accrual and limitations of actions brought by a partner against another partner or the partnership to the periods provided “by other law,” such that claims accruing during the life of the partnership are not revived upon dissolution.⁷

“The first step when interpreting a statute is to determine whether the language at issue has a plain and unambiguous meaning. If the statutory language is unambiguous and the statutory scheme is coherent and consistent, no further inquiry is needed.” *Brady v. Gov't of the V.I.*, 57 V.I. 433, 441 (V.I. 2012) (citations omitted). By its plain language, Section 75 unambiguously provides

⁶ Yusuf argues that the RUPA savings clause (26 V.I.C. § 274) preserves his claims against Hamed that predate May 1, 1998, the effective date of RUPA in the Virgin Islands. That is, Yusuf contends that RUPA does not apply to claims that accrued before that date, which are instead governed by the limitations period then in effect. His argument fails in that claims in the nature of an accounting of one partner against another could only be presented upon dissolution of the partnership. Here, since the partnership had not been dissolved by the date of the enactment of RUPA in the Virgin Islands, and since all his monetary claims against Hamed could only be brought on dissolution, no claims of Yusuf had accrued by May 1, 1998.

⁷ See National Conference of Commissioners on Uniform State Laws; Uniform Partnership Act (1997); Section 405(c) [26 V.I.C. § 75(c)], comment 4: “The statute of limitations on such claims is also governed by other law, and claims barred by a statute of limitations are not revived by reason of the partner's right to an accounting upon dissolution, as they were under the UPA.” http://www.uniformlaws.org/shared/docs/partnership/upa_final_97.

that during the life of the partnership, a “partner may maintain an action against the partnership or another partner for legal or equitable relief, with or without an accounting as to the partnership business;” and that “accrual of, and any time limitation on, a right of action for a remedy under this section is governed by other law. A right to an accounting upon a dissolution and winding up does not revive a claim barred by law.” “The effect of those rules is to compel partners to litigate their claims during the life of the partnership or risk losing them.” National Conference of Commissioners on Uniform State Laws; Uniform Partnership Act; Section 405(c) comment 4.

Though the parties have submitted lengthy briefs presenting their respective positions on how the limited case law interpreting this section of RUPA affects the “claims” purportedly presented by Yusuf and United, there is significant confusion surrounding precisely what is meant by the term “claims.”⁸ As it is often used in legal parlance, the term “claim” is essentially synonymous with “cause of action.” Used in this sense, Hamed and Yusuf have each, in their respective pleadings, presented only a single, tripartite cause of action, or claim, for an equitable partnership dissolution, wind up, and accounting under 26 V.I.C. § 75(b)(2)(iii).⁹ However, as

⁸ Much of this confusion stems from the imprecision of the Complaint and Counterclaim. Both pleadings are presented in essentially the same fashion, consisting of a litany of alleged instances in which the opposing party partner, or his relatives, withdrew or otherwise utilized monies from partnership funds, followed by a “kitchen sink” style presentation of “counts” in which the parties purport to characterize these allegedly improper transactions variously as giving rise to causes of action for conversion, breach of fiduciary duty, unjust enrichment, constructive trust, etc., with no attempt to distinguish between them or to explain which transactions give rise to which cause of action. As a result, Plaintiff’s Motion for Partial Summary Judgment is peculiar in that it does not, and indeed cannot, seek entry of judgment as to any one count presented in the Counterclaim, but rather seeks to bar from consideration as to all counts any alleged financial transaction occurring more than six years prior to the commencement of this litigation. In this respect, Plaintiff’s Motion seems more akin to a motion *in limine* than a motion for summary judgment, as Plaintiff seeks only to limit the scope of the accounting process by excluding from consideration any transaction pre-dating September 2006.

⁹ For a detailed analysis of the nature of the claims presented by the parties in this action, see the Memorandum Opinion and Order Striking Jury Demand entered contemporaneously herewith; explaining that despite the misleading form of the Complaint and Counterclaim, Hamed presents only a single action for dissolution, wind up, and accounting, while Yusuf presents an action for accounting, and an action for corporate dissolution, and United presents an action for debt/breach of contract for failure to pay rent.

used by both the Court and the parties in the context of this litigation, the term “claims” has also taken on an entirely different, and more specific meaning, by which the term “claims” refers not to the parties’ respective causes of action for accounting, but rather to the 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 of the Final Wind Up Plan.¹⁰

Pursuant to 26 V.I.C. § 71(a), “[e]ach partner is deemed to have an account that is: (1) credited with an amount equal to the money plus the value of any other property, net of the amount of any liabilities, the partner contributes to the partnership and the partner’s share of the partnership profits; and (2) charged with an amount equal to the money plus the value of any other property, net of the amount of any liabilities, distributed by the partnership to the partner and the partner’s share of the partnership losses.” Thus, under the RUPA framework, the “claims” to which the parties refer are, in fact, nothing more than the parties’ respective assertions of credits and charges to be applied in ascertaining the balance of each partner’s individual partnership account.¹¹

¹⁰ It is worth noting that this type of claims resolution process would appear to be unnecessary, or at least far less complicated, in the context of many, if not most, actions for partnership accounting, as the need for such a claims resolution process is generally obviated by the existence of the type of comprehensive ledger and periodic accounting statements typically maintained by modern businesses. Here however, as a result of the questionable and highly informal financial accounting practices of the partnership, by which both partners and their respective family members unilaterally withdrew funds from partnership accounts as needed to cover various business and personal expenses, there exists no authoritative ledger or series of financial statements recording the distribution of funds between partners upon which the Master or the Court could reasonably rely in conducting an accounting. Instead the Court finds itself in the predicament of having to account for multiple decades’ worth of distributions of partnership funds among the partners and their family members based upon little more than a patchwork of cancelled checks, hand-written receipts for cash withdrawn from Plaza Extra safes, and the personal recollections of the partners and their agents.

¹¹ Alternatively, such “claims” may be referred to as § 71(a) claims, and the accounts to which they apply may be referred to as § 71(a) accounts.

As discussed above, pursuant to 26 V.I.C. § 75(c), “any time limitation on a right of action for a remedy under this section is governed by other law.” In the Virgin Islands, limitations on the time for the commencement of various actions are codified at 5 V.I.C. § 31. In his Motion, Hamed argues that Yusuf’s “claims” should be subject to the six year limitations period under § 31(3); presumably on the theory that they are essentially claims to enforce the Yusuf’s rights under the partnership agreement as described in 26 V.I.C. § 75(b)(1), effectively rendering them claims upon a contract.

However, by its own terms, 5 V.I.C. § 31 applies to bar, in their entirety, *causes of action* that are commenced outside of the relevant limitations period: “Civil actions shall only be commenced within the period prescribed below after the cause of action shall have accrued.” Here, Hamed does not contend that Yusuf’s cause of action for accounting was commenced outside the relevant limitations period,¹² but only that Yusuf should be barred from asserting claims—meaning credits to and charges against the partners’ accounts—based upon any transaction that took place more than six years prior to the filing of Hamed’s initial Complaint. And while Yusuf’s action for accounting, as a whole, is undoubtedly subject to a statutory limitations period, the statute of limitations, by its plain language, has no direct applicability to individual, claimed credits and charges presented within the accounting process. Accordingly, Plaintiff’s Motion for Partial Summary Judgment will be denied.

¹² The Court need not determine the relevant limitations period for the commencement of a cause of action for accounting, as Hamed has not challenged the timeliness of Yusuf’s action for accounting as such, but only the timeliness of the individual § 71(a) claims presented within the accounting.

EQUITABLE LIMITATION OF SCOPE OF PARTNERSHIP ACCOUNTING

Despite concluding that Plaintiff is not entitled to partial summary judgment based upon the statute of limitations as such, the Court is nonetheless moved to consider whether the various issues raised and arguments presented in Plaintiff's Motion, among other concerns, justify the imposition of some equitable limitation on the presentation of claimed credits and charges in the accounting process.

The Supreme Court of the Virgin Islands has explained that “[d]espite the fact that the Superior Court of the Virgin Islands—like almost all modern American courts—exercises both equitable and legal authority, the division between law and equity remains meaningful to defining the remedies available in a particular action.” *JRC & Co. v. Boynes Trucking Sys.*, 63 V.I. 544, 553 (V.I. 2015) (quoting *Cacciamani & Rover Corp. v. Banco Popular*, 61 V.I. 247, 252 n.3 (V.I. 2014)). Furthermore, “because ‘[a] court of equity has traditionally had the power to fashion any remedy deemed necessary and appropriate to do justice in [a] particular case,’ a court has a great deal more flexibility in considering equitable remedies than it does in considering legal remedies.” *Id.* (quoting *Kaloo v. Estate of Small*, 62 V.I. 571, 584 (V.I. 2015)).

As explained in detail in the Memorandum Opinion and Order Striking Jury Demand entered contemporaneously herewith, both Hamed and Yusuf have presented in this matter competing equitable actions to compel the dissolution, winding up, and accounting of their partnership pursuant to 26 V.I.C. § 75(b)(2)(iii).¹³ As an accounting in this context is both an

¹³ 26 V.I.C. § 75(b)(2)(iii) codifies the right of one partner to maintain an action against the partnership or another partner to enforce the partner's “right to compel a dissolution and winding up of the partnership business under section 171 of this chapter or enforce any other right under subchapter VIII of this chapter.” In turn, subchapter VIII, §177 explicitly provides that “[e]ach partner is entitled to a settlement of all partnership accounts upon winding up the partnership business.”

equitable cause of action and an equitable remedy in itself, the Court is granted considerable flexibility in fashioning the specific contours of the accounting process. *See, e.g., Isaac v. Crichlow*, 2015 V.I. LEXIS 15, at *39 (V.I. Super. 2015) (“An equitable accounting is a *remedy* of restitution where a fiduciary defendant is forced to disgorge gains received from the improper use of the plaintiffs [sic] property or entitlements.”) (quoting *Gov't Guarantee Fund of Republic of Finland v. Hyatt Corp.*, 5 F. Supp. 2d, 324, 327 (D.V.I. 1998)) (emphasis added).

Partnership Accounting Under RUPA

The general framework for conducting a partnership accounting in the Virgin Islands is outlined at 26 V.I.C. § 177(b):

Each partner is entitled to a settlement of all partnership accounts upon winding up the partnership business. In settling accounts among the partners, profits and losses that result from the liquidation of the partnership assets must be credited and charged to the partners accounts. The partnership shall make a distribution to a partner in an amount equal to any excess of the credits over the charges in the partner's account. A partner shall contribute to the partnership an amount equal to any excess of the charges over the credits in the partner's account but excluding from the calculation charges attributable to an obligation for which the partner is not personally liable under section 46 of this chapter.

In turn, the “partners’ accounts” referenced in § 177(b) are described at 26 V.I.C. § 71(a):

Each partner is deemed to have an account that is: (1) credited with an amount equal to the money plus the value of any other property, net of the amount of any liabilities, the partner contributes to the partnership and the partner's share of the partnership profits; and (2) charged with an amount equal to the money plus the value of any other property, net of the amount of any liabilities, distributed by the partnership to the partner and the partner's share of the partnership losses.

By the plain language of the statute,¹⁴ these individual partner accounts, are deemed to exist, regardless of whether any such accounts are in fact maintained, and irrespective of the actual accounting practices of the partners. In this case, these § 71(a) accounts exist purely as a creation of equity, as Hamed and Yusuf, and their sons, withdrew partnership funds at will over the lifetime of the partnership with no formal system of accounting either for distributions made to partners from partnership funds, or contributions made by partners to partnership funds. Thus, because these implied partner accounts, particularly in this case, exist solely to facilitate the efficient settlement of accounts between partners under 26 V.I.C. § 177, which is itself an equitable remedy, the Court, operating within the parameters established by RUPA, possesses significant discretion and flexibility in determining the manner and scope of the partner account reconstruction process. *See 3RC & Co.*, 63 V.I. at 553.

As the last and only true-up of the partnership business occurred in 1993,¹⁵ the parties, by their respective actions for accounting, effectively impose upon the Court the onerous burden of reconstructing, out of whole cloth, twenty-five years' worth of these partner account transactions, based upon nothing more than scant documentary evidence and the ever-fading recollections of the partners and their representatives.¹⁶ For the reasons discussed below, the Court concludes, upon considerations of laches and a weighing of the interests of both the parties and the Court in the just and efficient resolution of their disputes, that the equities of this particular case necessitate

¹⁴ Subject to certain specified exceptions, "relations among the partners and between the partners and the partnership are governed by the partnership agreement." 26 V.I.C § 4. However, "[t]o the extent the partnership agreement does not otherwise provide, [Title 26, Chapter 1] governs relations among the partners and between the partners and the partnership." Here, the terms of the oral partnership agreement are limited, and establish only that Hamed and Yusuf agreed to jointly operate the three Plaza Extra Stores, and to each share 50% in the profits and losses thereof. See Order entered November 7, 2014, granting Renewed Motion for Partial Summary Judgment as to the Existence of a Partnership.

¹⁵ See Counterclaim in SX-14-CV-287 (Counterclaim 287) ¶ 10.

¹⁶ See *supra*, note 10 and accompanying text.

the imposition of a six-year equitable limitation period for §71(a) claims submitted to the Master in the accounting and distribution phase of the Wind Up Plan.

Doctrines of Laches and Statute of Limitations by Analogy

In other similar situations, some courts have imposed equitable limitation periods by applying the “statute of limitations by analogy.” In the days of the divided bench, when statutes of limitations were largely inapplicable to suits in equity, courts of equity regularly invoked the statute of limitations by analogy to bar stale claims. Thus, Justice Strong remarked:

The statute of limitations bars actions for fraud... after six years, and equity acts or refuses to act in analogy to the statute. Can a party evade the statute or escape in equity from the rule that the analogy of the statute will be followed by changing the form of his bill? We think not. We think a court of equity will not be moved to set aside a fraudulent transaction at the suit of one who has been quiescent during a period longer than that fixed by the statute of limitations, after he had knowledge of the fraud, or after he was put upon inquiry with the means of knowledge accessible to him.

Burke v. Smith, 83 U.S. 390, 401 (1872).

Modern courts of equity, such as the Court of Chancery of Delaware, also apply the statute of limitations by analogy as a component of the equitable defense of laches. *See, e.g., Whittington v. Dragon Group, L.L.C.*, 991 A.2d 1, 9 (Del. 2009) (“Where the Plaintiff seeks equitable relief... failure to file within the analogous period of limitations will be given great weight in deciding in deciding whether the claims are barred by laches”); *see also Williams v. Williams*, 2010 Conn. Super. LEXIS 2344, at *15 (Conn. Super. Ct. Sep. 15, 2010) (noting that court may consider an analogous statute of limitation when considering laches defense). Under this approach, “[w]here the statute bars the legal remedy, it shall bar the equitable remedy in analogous cases, or in reference to the same subject matter, and where the legal and equitable claim so far correspond, that the only difference is, that the one remedy may be enforced in a court of law, and the other in

a court of equity.” *Whittington*, 991 A.2d at 9.¹⁷ Different jurisdictions disagree, however, as to how much force an analogous statute of limitations should have. *See Dobbs, Law of Remedies* § 2.4(4), at 78 (2d ed. 1993) (“When courts look to an analogous statute of limitations for guidance, and that statute has run, they may (1) presume unreasonable delay and prejudice, but permit the plaintiff to rebut the presumption; (2) treat the statute as one element ‘in the congeries of factors to be considered.’ Some authority has gone beyond either of these rules by holding that equity will follow the law and (3) give the statute conclusive effect”).¹⁸

The Supreme Court of the Virgin Islands has recognized the availability of the equitable defense of laches in territorial courts. In one of its earliest cases, *St. Thomas-St. John Board of Elections v. Daniel*, the Court explained:

Laches is an affirmative defense under Rule 8(c) of the Federal Rules of Civil Procedure that bars a plaintiff’s claim where there has been an inexcusable delay in prosecuting the claim in light of the equities of the case and prejudice to the defendant from the delay. *See Cook v. Wikler*, 320 F.3d 431, 438 (3d Cir. 2003); *Churma*, 514 F.2d at 593. “Laches requires proof of (1) lack of diligence by the party against whom the defense is asserted, and (2) prejudice to the party asserting the defense.” *Costello v. United States*, 365 U.S. 265, 282, 81 S. Ct. 534, 543, 5 L. Ed. 2d 551 (1961).

¹⁷ The Delaware Supreme Court agreed with the Chancery Court’s analysis that “[a]s a practical matter, there is not likely to be much difference between the prosecution of [the party’s] claim here for an accounting and a claim for damages at law,” and that, in turn, the “claims for declaratory relief and an accounting are analogous to a legal claim for the same relief” for the purposes of the laches analysis. *Whittington*, 991 A.2d at 9. The higher court disagreed with the lower court’s conclusion that the three-year limitations period for contract actions applied, and instead found applicable the twenty-year limitations period for actions upon contracts under seal. *Id.* Nonetheless, the general approach of considering analogous statutes of limitations in the context of the laches analysis was upheld.

¹⁸ It appears that the Virgin Islands has effectively codified the doctrine of statute of limitations by analogy to conclusive effect in equitable actions. “An action of an equitable nature shall only be commenced within the time limited to commence an action as provide by this chapter.” 5 V.I.C. § 32(a). This suggests, in the event that a particular equitable cause of action is not explicitly included in any particular limitation period outlined in 5 V.I.C. § 31, that the Court must apply the most analogous statute of limitations, or fall back on the residual limitations period of ten years for “any cause not otherwise provided for,” under § 31(2).

49 V.I. 322, 330 (V.I. 2007).¹⁹

It must be noted that, just as with the statute of limitations defense, the equitable defense of laches is also typically invoked as a bar to causes of action, in their entirety. Thus, in a case such as this, the defense of laches, if proven, would typically be applied as a complete bar to the party's cause of action for accounting under 26 V.I.C. § 75(b)(2)(iii), rather than as a limitation on the partners' § 71(a) claims presented within the § 177(b) accounting process.²⁰ However, the equitable defense of laches differs from any defense based upon the statute of limitations—a creature of law—in critical respects. Whereas direct application of a statute of limitations defense must fail because 5 V.I.C. § 31, by its own terms, applies only to causes of action, laches, as an equitable defense, is inherently flexible by nature, and may therefore be molded to suit the particular equities of a given case.²¹

¹⁹ The Supreme Court has since adopted the Virgin Islands Rules of Civil Procedure to govern civil practice in the territory, however Virgin Islands Rule of Civil Procedure 8(c) is identical to the formerly applicable Federal Rule, and thus the Supreme Court's reasoning regarding the affirmative defense of laches, insofar as it relates to this rule, remains equally applicable under the new rules.

²⁰ In addition to pleading the affirmative defense of the statute of limitations, both Plaintiff and Defendants pled in their respective Answers the affirmative defense of laches.

²¹ The Supreme Court of the Virgin Islands has recognized at least one application of the defense of laches outside the confines of its traditional use as a bar to causes of action brought before the Court, further supporting the Court's conclusion herein that laches, as a creature of equity, is inherently broader and more flexible in its application than the statute of limitations. *See In the Matter of the Suspension of Joseph*, 60 V.I. 540, 558-59 (V.I. 2014) (noting that "laches, an equitable defense, is distinct from the statute of limitations, a creature of law," and finding that "the laches defense may apply to attorney discipline proceedings in certain very narrowly defined circumstances, such as when the delay in instituting the disciplinary proceedings results in prejudice to the respondent"). Particularly appropriate here, the Court also noted that "there may be factual situations in which the expiration of time destroys the fundamental fairness of the entire proceeding." *Id.* (citing *Anne Arundel County Bar Ass'n, Inc. v. Collins*, 272 Md. 578 (1974)).

Doctrine of Laches as Limit on Scope of Accounting

A most instructive case on this issue, bearing notable factual similarity to the case at bar, is the Connecticut Superior Court case of *Williams v. Williams*, 2010 Conn. Super. LEXIS 2344.²² As described by the court, *Williams* involved a “battle between two brothers over how the assets of [their partnership] had been handled,” in which each partner presented his own action for dissolution and accounting of the partnership. In response, each brother also presented affirmative defenses including, *inter alia*, statute of limitations and laches. *Id.* at *2-3. In explaining the law governing each partner’s right to an accounting, the court noted that while a final accounting is generally “the one great occasion for a comprehensive and effective settlement of all partnership affairs” in which “all the claims and demands arising between the partners should be settled,” the partners’ “right to an accounting is not absolute.” *Id.* at *7. Consistent with the principle that “actions for accounting generally invoke the equitable powers of the court,” courts are granted wide latitude in setting the terms and principles upon which any accounting shall be based.²³ *Id.* “Consequently, a party’s right to an accounting may be limited by other equitable considerations, for example a claim of laches.” *Id.* at *8 (citations omitted).

²² Although the Connecticut Superior Court did not explicitly frame its opinion in the language of RUPA, Connecticut is a RUPA jurisdiction, and therefore the court’s decision in *Williams* necessarily concerns principles applicable to actions for dissolution and accounting under RUPA. *See* Conn. Gen. Stat. § 34-300 et seq. (Revised Partnership Act). As the complaint in *Williams* was filed in 2006 there can be no doubt that the *Williams* partnership was governed by RUPA. *See* Conn. Gen. Stat. § 34-398(b) (“After January 1, 2002, sections 34-300 to 34-399, inclusive, govern all partnerships”).

²³ In articulating this rule, the Connecticut Superior Court referred to a Connecticut statute explicitly providing that “in any judgment or decree for an accounting, the court shall determine the terms and principles upon which such accounting shall be had.” *Williams*, 2010 Conn. Super. LEXIS 2344, at *7 (citing Conn. Gen. Stat. § 52-401). Although the Virgin Islands lacks such a specific statute, the Court nonetheless concludes that the relevant provisions of RUPA such as 26 V.I.C. §§ 71, 75, and 177, coupled with the considerable discretion granted to the Court in tailoring equitable remedies to suit the needs of any given case, confer upon the Court wide latitude and discretion in establishing the terms and principles, including the scope, of this kind of judicially ordered and supervised accounting. *See supra*, discussion of Equitable Limitation of Scope of Partnership Accounting.

After noting that the statute of limitations had no direct applicability in the context of an accounting, the court explained that “to establish the defense [of laches], [a defendant] must prove both that there was an inexcusable delay by [the plaintiff] in seeking the accounting, and that [the defendant] has been prejudiced by the delay.” *Id.* at *15. Under Connecticut law, the court was permitted to consider analogous statutes of limitation when evaluating the laches claim, but was not obligated to apply any such statute.²⁴ *Id.* Lastly, the court noted that the laches analysis “is an inherently fact specific question that can only be resolved by a close examination of the circumstances of the particular case.” *Id.* at *16.

After examining nine separate claimed credits and charges to partner accounts presented by the defendant partner in his counterclaim, the court concluded that “the doctrine of laches precludes [defendant] from seeking an accounting on any of the issues he claims.” *Id.* at *37. The court found that there had been “inexcusable delay” as plaintiff did not file his claims until 2007; even the most recent of which was related to events that transpired in 1999. *Id.* The court further noted that, while not dispositive of the issue, the most analogous statutory limitations period—three years for breach of fiduciary duty—had long expired. *Id.* This delay was inexcusable, as the defendant partner was, for most of the relevant period, “in charge of the day-to-day operations” of the partnership and therefore possessed either “actual or constructive knowledge of every transaction of which he now complains,” and accordingly tolling was inappropriate. *Id.* at *38.

Additionally, it was “clear to the court that [defendant’s] delay in asserting his claims [had] prejudiced [plaintiff].” The court explained: “the passage of time puts [plaintiff] at an unfair

²⁴ As discussed above, different jurisdictions afford different weight to the consideration of analogous statutes of limitations in the laches analysis. Connecticut appears to treat analogous statutes of limitations merely as one factor among many to be considered in **evaluating a laches defense**.

disadvantage in responding to the merits of [defendant's] claims. Because many of [defendant's] claims involve how transactions were or were not recorded by [the partnership's] accountants an analysis of those claims would likely involve testimony from the accountants. Yet, how much [the accountant] might remember of a schedule he prepared for a client a decade before the claim relating to that schedule was made is questionable, at best." *Id.* at *39-40. Lastly, the court noted that while the parties had presented a "substantial amount" of accounting records, "they are by no means complete," and as such, "[plaintiff] would be at a distinct disadvantage if he were required to recreate or find decades of accounting records prepared by a variety of accountants." *Id.* at *40.

In summation, the court remarked: "While an accounting upon a dissolution of a partnership may be the final opportunity for the partners to square up, where one partner ignores issues year after year and allows the other partner to proceed along thinking everything is fine, the first partner cannot be heard to cry upon dissolution a decade or more later, 'I'd like a do over.'" *Id.* at *40-41. Accordingly, the court found that the plaintiff had met his burden in proving his laches defense to the defendant's counterclaim, entered judgment dissolving the partnership pursuant to stipulation of the parties, and ordered a final accounting to be conducted by an appointed third party, limited in scope to the reconciliation of the partners' respective interests in the partnership from January 1, 2009 to the September 15, 2010 dissolution of the partnership. *Id.* at *42.

Hamed/Yusuf Partnership Accounting

Turning to the case at bar, there are both striking similarities and critical differences between the factual scenario presented in this matter and that before the court in *Williams*. Just as in *Williams*, this matter is best described as a battle between two partners, here former friends and brothers-in-law, over how the assets of the partnership were handled. Additionally, despite having,

at all times, either actual or constructive knowledge of the alleged ongoing, repeated withdrawals of partnership funds, both Hamed and Yusuf ignored these issues year after year and allowed one another to continue conducting partnership business, each implying to the other that all was well.

Procedurally, however, the *Williams* court considered the limitation of only one partner's accounting claims, as only that partner sought an accounting reaching back to the formation of the partnership while the other sought an accounting only as to how to divide the current assets of the partnership, as they stood at the time of dissolution. Additionally, whereas the defendant in *Williams* had identified in his counterclaim, by subject matter and date, nine specific challenged transactions, the description of the challenged transactions in the pleadings in this matter are largely devoid of specificity and generally fail to include the precise date, or even year of their occurrence. And while the parties in *Williams* had conducted significant discovery at the time of the court's ruling, here Hamed filed his present Motion with the clear aim of limiting not only the scope of Yusuf's § 71(a) claims, but also the cost and burden of the discovery process itself. *See* Plaintiff's Reply re Statute of Limitations, filed June 20, 2014, at 19. As a result of the partnership's notably informal and unreliable accounting, as well as each partner's general lack of concern or attention toward each other's financial practices over the lifetime of the partnership, neither partner truly knows what he might uncover upon investigation.

State of Partnership Accounting Records

Here, the pleadings alone demonstrate the imprecision and inadequacy of the partners' accounting practices. Hamed's Complaint explains the partners' practice of unilaterally withdrawing partnership funds as needed for various business and personal expenses on the understanding that "there would always be an equal (50/50) amount of these withdrawals for each partner directly or to designated family members." *See* Complaint ¶ 21. Though Hamed alleges

that the partners “scrupulously maintained” records of these withdrawals, the other pleadings and evidence of record in this matter fatally belie this unsupported assertion. For example, Yusuf’s First Amended Counterclaim in SX-14-CV-278 (FAC 278) speaks of the need for reconciliation of both “documented withdrawals” of cash from store safes, and “undocumented withdrawals from safes (i.e., all misappropriations),” in the § 177 accounting process. *See* FAC 278 ¶¶ 37-38.

Yusuf has pled that, aside from the sole “full reconciliation of accounts” at the end of 1993, the partners only sporadically attempted to account for, and reconcile their respective §71(a) charges and credits when Yusuf, for unspecified reasons, “decided their business accounts should be reconciled.” *See* Counterclaim 287 ¶¶ 9-10. Alternatively, Yusuf has also alleged that such reconciliations sometimes occurred when Hamed specifically “sought to recover funds from his investment,” at which point “funds would be given in cash and a notation would be made as to the amount given so as to insure an equal amount was paid to Yusuf from these net profits.” *See* FAC 278 ¶ 55.

As part of the accounting and distribution phase of the Wind Up, Yusuf submitted to the Master the report of accountant Fernando Scherrer of the accounting firm BDO, Puerto Rico, P.S.C. (BDO Report). Yusuf contends that this report constitutes “a comprehensive accounting of the historical partner withdrawals and reconciliation for the time period 1994-2012.” *See* Opposition to Motion to Strike BDO Report, filed October 20, 2016. However, the BDO report, by its own terms, appears to be anything but comprehensive. Most tellingly, the body of the BDO Report itself contains a section detailing its own substantial “limitations,” resulting from the absence or inadequacy of records for each of the grocery stores covering various periods during

the life of the partnership.²⁵ *See* Plaintiff's Motion to Strike BDO Report, Exhibit 1, at 22. Additionally, the analysis presented in the report rests on the unsupported assumption that any monies identified in excess of "known sources of income" constitute distributions from partnership funds to the partners' § 71(a) accounts. Thus, even Yusuf's own "expert report" acknowledges the insurmountable difficulties inherent in any attempt to accurately reconstruct the partnership accounts; a project which necessarily becomes proportionately more difficult and less reliable the farther back in time one goes.

Furthermore, in his Revised Notice of Partnership Claims (RNPC), filed October 17, 2016, Hamed expressly states that he "believes that it is clear that because of the state of the partnership records due to Yusuf's acts and failures to act, no [accounting for the period from 1986-2012] is even arguably possible." RNPC, at 6-7. Plaintiff's belief appears to be based in large part on the Opinion Letter of Lawrence Shoenbach, presenting the "expert opinion of a criminal defense attorney with experience in federal criminal practice and so-called 'white collar' business crimes involving tax evasion, money laundering, and/or compliance." *See* RNPC, Exhibit C (Op. Letter), at 1.

²⁵ These limitations include the following: 1) "Accounting records of Plaza Extra-East were destroyed by fire in 1992 and the information was incomplete and/or insufficient to permit us to reconstruct a comprehensive accounting of the partnership accounts before 1993;" 2) "Accounting records and/or documents (checks registers, bank reconciliations, deposits and disbursements of Supermarkets' accounts) provided in connection with Supermarkets were limited to covering the period from 2002 through 2004, East and West from 2006 through 2012, and Tutu Park from 2009 through 2012;" and 3) "Accounting records and/or documents provided to us for the periods prior to 2003 are incomplete and limited to bank statements, deposit slips, cancelled checks, check registers, investments and broker statements, cash withdrawal tickets/receipts and cash withdrawal receipt listings. For example, the retention policy for statements, checks, deposits, credits in Banco Popular de Puerto Rico is seven years; therefore, there is no Bank information available prior to 2007 and electronic transactions do not generate any physical evidence as to regular deposits and/or debits." Plaintiff's Motion to Strike BDO Report, Exhibit 1, at 22.

Plaintiff's expert²⁶ bases his opinion on the 2003 Third Superseding Indictment in the matter captioned *United States of America and Government of the Virgin Islands v. Fathi Yusuf Mohamad Yusuf, et al.* and United's plea of guilty to Count 60 (tax evasion) thereof.²⁷ Under the terms of the plea agreement, United pled guilty to willfully preparing and presenting a materially false corporate income tax return for the year 2001 by reporting gross receipts as \$69,579,412, knowing that the true amount was approximately \$79,305,980. Plea Agreement at 3-4, *United States v. Yusuf*, No. 2005-15F/B (D.V.I. Feb. 26, 2010). According to the indictment, United evaded reporting gross receipts by employing a cash diversion/money laundering scheme by which United, through its officers and employees,²⁸ conspired "to withhold from deposit substantial amounts of cash received from sales, typically bills in denominations of \$100, \$50, and \$20." *See* Plaintiff's Reply re Statute of Limitations, Exhibit D (Indictment) ¶ 12. Additionally, it was alleged that "instead of being deposited into the bank accounts with other sales receipts, this cash was delivered to one of the defendants or placed in a dedicated safe in a cash room." *Id.* As described by Plaintiff's expert, "those acting on behalf of the company took cash out of sales before the Company could properly account for them." Op. Letter, at 5.

The expert explains:

The most fundamental feature of such a scheme is that the actual accounting records of the entity do not, and in fact *cannot*, accurately reflect the amount of cash taken in. No proper accounting can be determined from the Company's financial records because the gross receipts have been intentionally misapplied and documented. The

²⁶ The Court refers to Lawrence Shoenbach as "Plaintiff's expert" in this Opinion for simplicity. The Court expresses no opinion, however, as to the qualifications of this expert within the meaning of Virgin Islands Rule of Evidence 702.

²⁷ "Although all of the individual defendants [Fathi Yusuf, Maher Yusuf, Isam Yusuf, Nejeah Yusuf, Waleed Hamed, and Waheed Hamed], were charged in the criminal indictment, only the corporate defendant [United] was convicted of a crime... Critical to my analysis is that United admitted at the time of entry of the corporate plea that it under-reported gross receipts by utilizing the money laundering scheme outlined in the 3rd superseding indictment." Op. Letter, at 3.

²⁸ Including Fathi Yusuf, Maher Yusuf, Isam Yusuf, Nejeah Yusuf, Waleed Hamed, and Waheed Hamed. *See* Indictment, at 1.

very purpose of this sort of scheme is to render any accounting inaccurate... It is critical that the parties have both admitted that many records of transaction that should have gone into any accurate accounting were not kept or mutually and intentionally destroyed... Because the very nature of the crime, particularly money laundering/tax evasion, is to hide such incoming and outgoing funds from legitimate accounting it is impossible to determine and account for any portion of that amount each partner has or owes to the other. Since many such transactions were not recorded or destroyed, any remaining "records" can never be legitimately credited or debited against the unknown amounts.

Op. Letter, at 6-7.²⁹

In his April 3, 2014 deposition in this matter, Maher Yusuf recounted one instance, just prior to the FBI's raid of the Plaza Extra stores in 2001, in which Waheed Hamed advised Waleed Hamed of the impending raid, and Maher Yusuf and the Hameds mutually "decided to destroy some of the receipts, because they were all in cash." *See* Op. Letter, at 7 n.5. According to his deposition testimony, Maher Yusuf, together with Mufeed Hamed, "pulled out a good bit of receipts from the safe in Plaza East," and after roughly estimating the amount of withdrawals attributable to the Hameds and the Yusufs, each family destroyed their own receipts. *Id.* At the hearing on March 6-7, 2017, witnesses including Hamed's sons corroborated this account as well as many of the allegations of the Third Superseding Indictment. Evidence presented at the hearing included testimony concerning a cash diversion scheme involving cashier's checks, conflicting testimony regarding the ledger and receipt system for keeping track of cash withdrawals at each partnership store, and testimony that records documenting the withdrawals had been destroyed.

²⁹ The Court is not called upon to express any opinion, and therefore does not express any opinion, as to the criminal nature of the conduct of the individual defendants named in the criminal matter, except to the extent that such conduct demonstrates both the impossibility of reconstructing financial records or conducting, at present, an accurate accounting, and the partners' knowledge of this state of affairs. However, United's guilty plea as to Count 60 establishes that United, which as a corporation must necessarily act through its officers and employees, intentionally schemed to obfuscate gross receipts and cash disbursements thereby rendering impossible any accurate reconstruction of accounts.

Altogether, the allegations presented in the pleadings paint a clear picture of the partners' loose, "honor system" style accounting practices by which each partner and his sons freely and unilaterally withdrew partnership funds, either by check drawn upon partnership bank accounts or, apparently more often, by directly removing cash from store safes; the only apparent control being a general understanding between the partners that such withdrawals would be documented by hand-written receipts to be placed in the safe so that the partners, at some undetermined date, could reconcile their accounts if, and when, they deemed it appropriate. Additionally, evidence of record reveals one clear instance in which the partners, through their sons, deliberately destroyed a substantial amount of records evidencing such withdrawals, and further suggests a general pattern of negligent, if not willful, failure to record such withdrawals throughout the history of the partnership. At a bare minimum, the pleadings and record evidence establish that the partners and their sons had both unfettered access to large amounts of cash, deliberately kept off company books, and ample opportunity to secretly remove that cash, secure in the knowledge that no partner, accountant, or investigator would be able, after the fact, to ascertain the amount taken, as the total amount of cash kept in store safes was intentionally omitted from any record keeping.

Knowledge, Delay, and Prejudice

Against this backdrop of decades of woefully inadequate and, in some instances, deliberately misleading accounting practices, the partners now present their competing claims for partnership accounting asking the Court to employ its already strained resources to untangle the web that they have spun and clean up the mess that they have made. Given the dismal state of the relevant records, this process necessarily entails an evaluation of each individual § 71(a) claim submitted to determine whether, in light of the frequently conflicting recollections of the partners, any given withdrawal or expenditure of partnership funds constituted a legitimate business

expenditure on behalf of the partnership, or a unilateral withdrawal chargeable to the partner's § 71(a) account. However, just as in the *Williams* case, where each partner "ignores issues year after year and allows the other partner to proceed along thinking everything is fine, [neither partner will] be heard to cry upon dissolution a decade or more later, 'I'd like a do over.'" 2010 Conn. Super. LEXIS 2344, at *40-41.

Here, both partners and their respective sons were well aware from the beginning of their involvement with the business that any record keeping and accounting of distributions to the partners was highly informal and controlled only by the "honor system." As managing partner, Yusuf was not only intimately familiar with the methods of record keeping, or lack thereof, employed by the partnership, but was the one responsible for designing and implementing those procedures in the first place. It was Yusuf's responsibility to oversee, account for, and periodically reconcile the distributions of funds between the partners. And though Yusuf was content to dispense with the standard business accounting formalities for nearly the entire life of the partnership, upon Hamed's filing his Complaint in this matter, Yusuf changed course and now seeks to vindicate his right to a thorough and methodical partnership accounting.³⁰

Hamed is no less to blame for this state of affairs and no less at fault for failing to seek any formal accounting of his interest until this late hour. Although Hamed was not the managing partner, he was undoubtedly aware of the absence of any formal record keeping from at least the date of the first and only true-up of the partnership business in 1993, if not from the very inception

³⁰ Yusuf argues that he only became aware of the extent of the Hameds' withdrawals of partnership funds upon the 2010 return of the voluminous documentation seized by the FBI in 2002. However, affidavit evidence shows that all documents seized by the FBI were not only available to the defendants in the criminal matter, including Yusuf, but were, in fact, thoroughly reviewed by them, through their lawyers, on multiple occasions. See Hamed's Reply re Statute of Limitations, Exhibit 4-B (Declaration of Special Agent Thomas L. Petri) (noting that in 2003, subsequent to the return of the indictment, counsel were given complete access to seized evidence, and that a team of four to five individuals led by the attorney for defendants reviewed evidence at the FBI office on St. Thomas for several weeks).

of the partnership.³¹ While Hamed may not have had the foresight to know that the 1993 true-up would be the last undertaken, the fact that the partners waited approximately seven years—since the founding of the partnership in 1986—to conduct the first and only complete reconciliation of the accounts between them demonstrates that Hamed was equally content with this practice of informal and sporadic accounting.

Furthermore, both partners were clearly aware, during the entire life of the partnership, of their mutual practice of making, either personally or through their sons, unilateral withdrawals of partnership funds documented by hand-written receipts and controlled only by the honor system. Additionally, by at least 2001 and likely before, Hamed and Yusuf were similarly aware that substantial monies deposited in the store safes were being deliberately kept off the partnership books, and that all involved acted without hesitation in destroying voluminous records of cash withdrawals thereby rendering any independently verifiable accounting or audit impossible. Certainly, by the time of the 2003 filing of the Third Superseding Indictment in the criminal case recounting the cash diversion scheme implemented by the officers of United, even the most trusting individual would have sufficient reason to suspect malfeasance, thereby putting both partners on inquiry notice.³²

Thus, on the basis of the pleadings and evidence of record, it is clear that both Hamed and Yusuf, personally and through their sons as agents, had actual notice of the informal and imprecise

³¹ Even the 1993 “true-up” itself was merely an informal reconciliation. As Hamed explains, “reliable books have only been attempted since an order from the District Court in the criminal case requiring such an accounting.” See Plaintiff’s Comments Re Proposed Winding-Up Order, filed October 21, 2014, at 11.

³² This notion is perhaps best, and most memorably, expressed in Martin Scorsese’s 1995 film, *Casino*, in which the gangster, Nicky Santoro, played by Joe Pesci, remarks of the men conducting the skim operation at the fictional Tangiers Casino: “You gotta know that the guy who helps you steal... even if you take care of him real well... he’s gonna steal a little extra for himself. Makes sense, don’t it?”

nature of the accounting practices of the partnership since at least 1993, as well as actual notice of the deliberate destruction of substantial accounting records in 2001. In turn, even if the partners were ignorant of any one withdrawal of partnership funds considered in isolation, they both had actual notice of the significant potential for abuse inherent in their chosen method of record keeping, and therefore constructive, if not actual, notice of the need to protect their respective partnership interests by action pursuant to 26 V.I.C. § 75(b).

Additionally, by his acquiescence to such inadequate record keeping and his inexcusable delay in seeking to enforce his rights under 26 V.I.C. §§ 71(a) and 75(b), each partner has irrevocably prejudiced the ability of the other to respond to the various allegations against him. Here, as in *Williams* “the passage of time puts [each partner] at an unfair disadvantage in responding to the merits of [the other partner’s] claims.” 2010 Conn. Super. LEXIS 2344, at *39-40. Similarly, “because many of [the] claims involve how transactions were or were not recorded... an analysis of those claims would likely involve testimony” from the partners and their sons, yet, how much they might remember concerning the details of a transaction completed a decade earlier “is questionable, at best.” *Id.* Lastly, while the court in *Williams* concluded that the defendant was prejudiced despite the production of “substantial records,” here, in the absence of complete or comprehensive records, the partners are even more so “at a distinct disadvantage” in any attempt to “recreate or find decades of accounting records.” *Id.* at *40. Thus, the Court concludes that consideration of the principles underlying the doctrine of laches strongly supports

the imposition of an equitable limitation on the submission of § 71(a) claims in the accounting and distribution phase of the Wind Up Plan.³³

Policy Considerations

Moreover, imposing such a limitation furthers the clear policy goals of the legislature as embodied by RUPA. In *Fike v. Ruger*, the Delaware Chancery Court examined statutory language identical to 26 V.I.C. § 75, and determined that “it is clear under RUPA that a right of action arising during the life of a partnership is not revived merely because dissolution occurs and a separate right to an accounting on dissolution arises.” *Id.* at 263. While the common law and prior statutory scheme “placed partners in the predicament of either causing a dissolution to resolve disputes or continuing the partnership despite a cloud of conflict and uncertainty hanging over it, the drafters of [RUPA] included Section 22 [26 V.I.C. § 75], specifically authorizing actions prior to dissolution.” *Id.* “The effect of those rules is to compel partners to litigate their claims during the life of the partnership or risk losing them.” National Conference of Commissioners on Uniform State Laws; Uniform Partnership Act; Section 405(c) comment 4.

Both partners’ claims, as presented in this matter, must be construed as actions for dissolution, wind up, and accounting under § 75(b)(2)(iii). Yet, each partner could have, and under the policy considerations undergirding RUPA, should have, brought his claims concerning individual withdrawals of partnership funds or other transactions, with or without an

³³ In addition to laches, consideration of the equitable doctrine of unclean hands also supports the impositions of an equitable limitation on the partners’ § 71(a) claims. “It is an ancient and established maxim of equity jurisprudence that he who comes into equity must come with clean hands. If a party seeks relief in equity, he must be able to show that on his part there has been honesty and fair dealing.” *SBRMCOA, LLC v. Morehouse Real Estate Invs., LLC*, 62 V.I. 168, 205-06, (V.I. Super. Ct. 2015) (quoting *Sunshine Shopping Ctr., Inc. v. KMart Corp.*, 85 F. Supp. 2d 537, 544 (D.V.I. 2000)). As explained above, both partners bear responsibility for the dismal state of partnership records, and for allowing the practice of unilateral withdrawal of partnership funds to continue unchecked, in the absence of accurate records. Additionally, as both partners, through their sons as agents, engaged in the deliberate destruction of accounting records, neither partner can be said to have come to Court in this matter with clean hands.

accompanying action for accounting, as each partner became aware or should have become aware of those transactions pursuant to § 75(b). Such a policy not only furthers the traditional goals of the statute of limitations by preventing prejudice to defendants resulting from the inevitable decay of memory and other evidence, but also prevents litigants from imposing upon the judiciary, and in turn the taxpayer, the burden of individually evaluating the validity of numerous disputed transactions decades after the fact. In this instance, the stated policy of RUPA clearly prevents both Hamed and Yusuf from imposing upon the Court the great burden of sorting through the ramshackle patchwork of evidence supporting their § 71(a) claims, to reconstruct decades' worth of partnership accounts, when the partners, who deliberately determined not to keep accurate records in the first place, were themselves content to carry on conducting partnership business despite having full knowledge of the pattern of conduct of which they now, belatedly, complain.

Conclusion

“Equity aids the vigilant, not those who slumber upon their rights.” *Kan. v. Colo.*, 514 U.S. 673, 687 (1995) (quoting Black's Law Dictionary 875 (6th ed. 1990)). And in keeping with this great maxim of jurisprudence, the Court concludes that considerations of laches, in addition to the express policy goals of the legislature as embodied by RUPA, justify the imposition of an equitable limitation on the submission of the partners' § 71(a) claims to the Master in the accounting and distribution phase of the Final Wind Up Plan. Because each of these § 71(a) claims could have, and should have, been pursued as they arose as causes of action under § 75(b)(1) to “enforce the partner's rights under the partnership agreement,” the Court finds that such actions, had they been brought individually, would be subject, either directly or by analogy, to the six year limitations

period outlined in 5 V.I.C. § 31(3)(A) as a species of an action upon contract.³⁴ Therefore, the Court exercises the significant discretion it possesses in fashioning equitable remedies to restrict the scope of the accounting in this matter to consider only those § 71(a) claims that are based upon transactions occurring no more than six years prior to the September 17, 2012 filing of Hamed's Complaint.³⁵

³⁴ Alternatively, these claims could have been pursued under 26 V.I.C. § 75(b)(2)(i) to "enforce the partner's rights under sections 71, 73, or 74 of this chapter," which, as "action upon a liability created by statute," are also subject, whether directly or by analogy, to a six year limitations period under 5 V.I.C. § 31(3)(B).

³⁵ Yusuf has argued that certain § 71(a) claims are effectively undisputed, and that "if it is undisputed that payments were made to a partner, even without authorization, then to exclude them from an accounting for that reason would be entirely arbitrary." First, it appears doubtful, based upon the record and the representations of the parties in this matter, that any claim submitted by either party would truly be undisputed. But, even if some claims were, in fact, undisputed, because of the great dearth of accurate records there exists such an element of chance in any attempt to reconstruct the partnership accounts that an accounting reaching back to the date of the last partnership true-up in 1993 would ultimately be no more complete, accurate, or fair, than an accounting reaching back only to 2006.

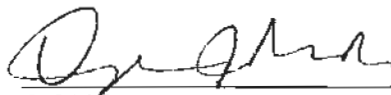
In light of the foregoing, it is hereby

ORDERED that Defendants' Motion for Partial Summary Judgment on Counts IV, XI, and XII Regarding Rent is DENIED, as to Counts IV and XII. It is further

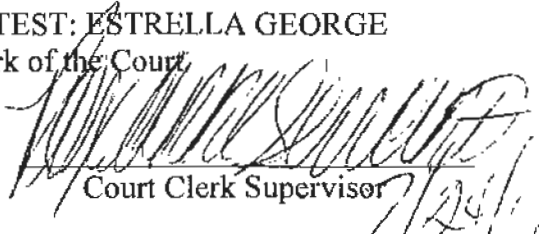
ORDERED that Hamed's Motion for Partial Summary Judgment re the Statute of Limitations Defense Barring Defendants' Counterclaim Damages Prior to September 17, 2006 is DENIED. It is further

ORDERED that the accounting in this matter, to which each partner is entitled under 26 V.I.C § 177(b), conducted pursuant to the Final Wind Up Plan adopted by the Court, shall be limited in scope to consider only those claimed credits and charges to partner accounts, within the meaning of 26 V.I.C § 71(a), based upon transactions that occurred on or after September 17, 2006.

DATED: July 21, 2017.


DOUGLAS A. BRADY
Judge of the Superior Court

ATTEST: ESTRELLA GEORGE
Clerk of the Court

By: 
Court Clerk Supervisor

CERTIFIED A TRUE COPY


DATE: July 24, 2017
ESTRELLA H. GEORGE
ACTING CLERK OF THE COURT
BY: 
COURT CLERK EG

Exhibit 10

**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
	)	PARTNERSHIP DISSOLUTION, WIND UP, AND ACCOUNTING
Defendants/Counterclaimants,)	
v.)	
)	
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
)	
)	
	)	ACTION FOR DEBT AND CONVERSION
v.)	
)	
FATHI YUSUF,)	
)	
)	
Defendant.)	

**YUSUF'S AMENDED ACCOUNTING CLAIMS
LIMITED TO TRANSACTIONS OCCURRING ON OR AFTER SEPTEMBER 17, 2006**

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

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EXHIBIT
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~~Motion for Partial Summary Judgment on Counts IV, XI and XII Regarding Rent. Although the Rent Order awarded certain amounts of rent to United during this period, the award did not address the increased rent claimed by United. The outstanding balance of the increased rent claimed as to Bay 1, net of the rent recovered pursuant to the Rent Order, is \$6,974,063.10. See calculation of additional rents attached as Exhibit C to the Original Claims.~~

~~**Disputed/Undisputed, Ripe for Determination or Discovery Needed:** Although this debt is disputed, it is fully briefed and ready for determination by the Master.~~

2. Bays 5 and 8

Likewise, outstanding rent is due to United for Bays 5 and 8 of the United Shopping Plaza. These amounts were not adjudicated in the Rent Order and they remain an outstanding rent claim against the Partnership. The total amount due to United for unpaid rent for Bays 5 and 8 is \$793,984.34. See the Yusuf Declaration at ¶¶ 21-25.

Disputed/Undisputed, Ripe for Determination or Discovery Needed: Although this debt is disputed, it is fully briefed and it is ready for determination by the Master.

3. Interest on Rent Claims

The interest that accrued at 9% per annum on the rent actually awarded by the Rent Order (\$6,248,924.14) is \$881,955.08 as of May 11, 2015, when that rent was paid to United. See calculation of interest on Bay 1 rent attached as Exhibit D to the Original Claims.¹³

Disputed/Undisputed, Ripe for Determination or Discovery Needed: Although this debt may be disputed, it is ripe for decision by the Master.

The interest due for the unpaid rent on Bays 5 and 8 is also claimed by United. The total interest calculated at 9% per annum for the period from May 17, 2013 through September 30,

¹³ This amount does not include any interest accruing at the 9% rate on each month's unpaid rent from June 1, 2013 through March 8, 2015.

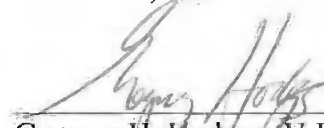
~~and distributions between the Partners adjusted to reflect the period from September 17, 2006 forward, both disclosed and undisclosed, still reveals a large discrepancy in Yusuf's favor. Again, these calculations were prepared without the benefit of deposition testimony and additional written discovery following the stay. It is anticipated that additional discovery will yield information necessitating further revisions to these calculations. On balance, there exists a substantial amount due to Yusuf to reconcile the Partner's withdrawals and distributions. Solvency of Hamed (or his estate)²¹ is in serious doubt given the significant discrepancy in the amounts due to Yusuf. For this reason, Hamed's (or his estate's or his trust's) interests in the jointly owned entities (Plessen Enterprises, Inc., Peter's Farm Investment Corporation, and Sixteen Plus Corporation) may need to be quantified as a means of payment to equalize the Partnership withdrawals.~~

Respectfully submitted,

DUDLEY, TOPPER and FEUERZEIG, LLP

DATED: October 30, 2017

By:


Gregory H. Hodges (V.I. Bar No. 174)
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St. Thomas, VI 00804
Telephone: (340) 715-4405
Telefax: (340) 715-4400
E-mail: ghodges@dtflaw.com

Attorneys for Fathi Yusuf and United Corporation

²¹ A Petition for Probate of Will and for Letters Testamentary was filed on August 26, 2016 as Case No. SX-2016-PB-76. That petition reflects no available assets to satisfy Yusuf's claims since all of Hamed's interests in real and personal property had previously been conveyed to the Mohammad A. Hamed Living Trust dated September 12, 2012. Yusuf has filed a complaint challenging such conveyance as fraudulent. A copy of that complaint is attached as **Exhibit U** since Yusuf's Amended Supplementation left off with Exhibit T.

CERTIFICATE OF SERVICE

I hereby certify that on this 30th day of October, 2017, I caused the foregoing **Yusuf's Amended Accounting Claims Limited to Those Claims Arising After September 17, 2012** to be served upon the following via e-mail:

Joel H. Holt, Esq.
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The Honorable Edgar A. Ross
Email: edgarrossjudge@hotmail.com



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Exhibit 11

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

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

Plaintiff/Counterclaim Defendant,)

v.)

FATHI YUSUF and UNITED CORPORATION,)

Defendants/Counterclaimants,)

v.)

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

Additional Counterclaim Defendants.)

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

Plaintiff,)

v.)

UNITED CORPORATION,)

Defendant.)

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

Plaintiff,)

v.)

FATHI YUSUF,)

Defendant.)

FATHI YUSUF and)
UNITED CORPORATION,)

Plaintiffs,)

v.)

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

Defendants,)

CIVIL NO. SX-12-CV-370

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

Consolidated With

CIVIL NO. SX-14-CV-287

ACTION FOR DAMAGES AND
DECLARATORY JUDGMENT

CIVIL NO. SX-14-CV-278

ACTION FOR DEBT AND
CONVERSION

CIVIL NO. ST-17-CV-384

ACTION TO SET ASIDE
FRAUDULENT TRANSFERS

Y-2

EXHIBIT

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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

**RESPONSE TO HAMED'S THIRD REQUEST TO
ADMIT PURSUANT TO THE CLAIMS DISCOVERY
PLAN OF 1/29/2018, NOS. 7-29 OF 50**

~~Defendant/Counterclaimants Fathi Yusuf ("Yusuf") and United Corporation~~
("United")(collectively, the "Defendants") through their attorneys, Dudley, Topper and
Feuerzeig, LLP, hereby provide their Responses to Hamed's Third Request to Admit Pursuant
to the Claims Discovery Plan of 1/29/2018, Nos. 7-29 of 50 as to:

GENERAL OBJECTIONS

Defendants make the following general objections to the Requests to Admit. These
general objections apply to all or many of the Requests to Admit, thus, for convenience, they are
set forth herein and are not necessarily repeated after each objectionable Request to Admit. The
assertion of the same, similar, or additional objections in the individual responses to the Requests
to Admit, or the failure to assert any additional objections to a discovery request does not waive
any of Defendants' objections as set forth below:

(1) Defendants object to these Requests to Admit to the extent they may impose
obligations different from or in addition to those required under the Virgin Islands Rules of Civil
Procedure.

(2) Defendants object to these Requests to Admit to the extent that they use the words
"any" and "all" as being overly broad, unduly burdensome, immaterial, irrelevant, and not
reasonably calculated to lead to the discovery of admissible evidence

Request to Admit 8 of 50:

Request to admit number 8 of 50 relates to Claim Y-3 - as described in Hamed's November 16, 2017 Motion for a Hearing Before Special Master as "Interest on Bay 1 Rent Already Awarded by the Court on 4/27/2015."

Admit or Deny that there was no written agreement between Hamed and Yusuf effective after September 17, 2012, (the date that Hamed sued Yusuf) that the Partnership would pay interest on Bay 1.

Response:

Admitted.

Request to Admit 9 of 50:

Request to admit number 9 of 50 relates to Claim Y-4 - as described in Hamed's November 16, 2017 Motion for a Hearing Before Special Master as "Interest on Bays 5 & 8."

Admit or Deny that there was no written agreement between Hamed and Yusuf after the date that Hamed sued Yusuf in 2012 that the Partnership would pay rent on Bays 5 & 8.

Response:

Admitted.

Request to Admit 10 of 50:

Request to admit number 10 of 50 as described in Hamed's November 16, 2017 Motion for a Hearing Before Special Master relates to Claim Y-5 as "Reimburse United for Gross Receipt Taxes," Claim H-150 (old Claim No. 3002a) "United Shopping Center's gross receipt taxes," H-152 (old Claim No. 3008a) "United's corporate franchise tax and annual franchise fees," H-153 (old Claim No. 3009a) "Partnership funds used to pay United Shopping Center's

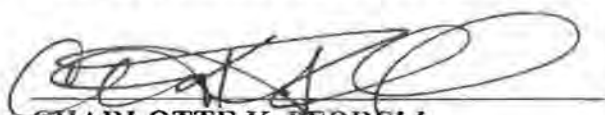
Response:

Yusuf objects to this request as vague and ambiguous since it does not identify any unilateral spending decisions made by Yusuf between January and March, 2013 with which Mohammad Hamed or his counsel disagreed in writing.

DUDLEY, TOPPER AND FEUERZEIG, LLP

DATED: May 5th, 2018

By:



CHARLOTTE K. PERRELL

(V.I. Bar #1281)

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*Attorneys for Fathi Yusuf and United
Corporation*

**DUDLEY, TOPPER
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Exhibit 12

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

WALEED HAMED, as Executor of the)
Estate of MOHAMMAD HAMED,)
)
Plaintiff/Counterclaim Defendant,)

v.)

FATHI YUSUF and UNITED CORPORATION,)
)
Defendants/Counterclaimants,)

v.)

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

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

v.)

UNITED CORPORATION,)
)
Defendant.)

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

v.)

FATHI YUSUF,)
Defendant.)

FATHI YUSUF and)
UNITED CORPORATION,)
)
Plaintiffs,)

v.)

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

CIVIL NO. SX-12-CV-370

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

Consolidated With

CIVIL NO. SX-14-CV-287

ACTION FOR DAMAGES AND
DECLARATORY JUDGMENT

CIVIL NO. SX-14-CV-278

ACTION FOR DEBT AND
CONVERSION

CIVIL NO. ST-17-CV-384

ACTION TO SET ASIDE
FRAUDULENT TRANSFERS

Y-2

EXHIBIT
12

**SUPPLEMENTAL RESPONSES
TO HAMED'S DISCOVERY**

~~Defendant/Counterclaimants Fathi Yusuf ("Yusuf") and United Corporation~~
("United")(collectively, the "Defendants") through their attorneys, Dudley, Topper and Feuerzeig, LLP, hereby provide their Supplemental Responses to Hamed's Discovery as follows:

1. Interrogatory No 3 – Relating to H-1, Dorthea Condo

Dorthea Condo transaction. Mr. Yusuf confirms the following:

1. I was to receive the proceeds under the sales contract for the sale of the Dorthea Condo.
2. The full amount of \$1.5 million for the sale was received.
3. I am currently in possession of \$1,350,000 of the total amount of those proceeds in the form of another asset. The remaining \$150,000, I directed the purchaser to pay directly to the Batch Plant to make up for what Hamed had received 10 years earlier but had failed to deliver to the Batch Plant. Attached is the document that reflects that payment (FY015136). The breakdown is: \$750,000 for Yusuf (1/2 of the \$1,500,000) and \$600,000 for Hamed (total due \$750,000 (his 1/2 of the 1,500,000) minus \$150,000 paid to the Batch Plant from Hamed's portion).
4. I believe that I provided the handwritten "Dorothia" document to Willy but I do not recall when.
5. It is my belief that the principle payments were received prior to 2006. However, I ~~cannot say this for sure.~~

**2. Interrogatory No. 29 and Requests for Production of Documents No.s 21 and 34
– Relating to Y-2 and 4 relating to rent for Bays 5 and 8**

Yusuf and United provide the following supplemental response to Interrogatory #29 and Requests for Production of Documents #21 and #34:

United has made a claim for past due rent for Bays 5 and 8 which were leased by Plaza Extra East at various points in time and utilized as extra storage. Yusuf set forth in his Declaration dated August 12, 2014 the square footage of each Bay, the period of the rental and the price per square foot. Again, Yusuf incorporates his August 12, 2014 Declaration together with the attached Chart as responsive to Interrogatory #29. In addition, attached is a floor plan of the United Shopping Center reflecting the location of Plaza Extra East and the other commercial/retail storefronts referred to as Bays (FY015135).

A. Bay 5 – Period May 1, 1994 through July 31, 2001

Bay 5 is close to the entrance of Plaza Extra East and is one of the most desirable storefronts in the United Shopping Center given its location and visibility. From 1987 to the time of the fire in 1992, Bay 5 was rented to a pharmacy. There is no copy of the lease for this period as it was destroyed in the fire. During this 1987-1992 timeframe, Plaza Extra East was utilizing a series of trailers as warehouse space to provide additional storage for inventory. There were eight trailers, four on the bottom and four on top. However, this storage system of trailers was very cumbersome and inefficient to access and effectively utilize. As Plaza Extra East was being rebuilt and then reopening, it needed additional space for storage which was easier to access.

As described more fully below, Plaza Extra East began utilizing Bay 8 for storage upon reopening in May, 1994. However, additional space was still needed. Mike Yusuf and Waleed Hamed broke through a cement block wall between Bay 4 and 5 to utilize the space in Bay 5 for sodas. They made an opening big enough for the forklift to go through. Their efforts demonstrate knowledge by Hamed that the space was being used. The space was utilized by Plaza Extra East from May 1, 1994 through July 31, 2001 for storage and primarily for the storage of sodas. Mr. Yusuf was not happy to discover that this particular Bay was needed for storage space because he would have preferred the space to be used as a retail store. In a conversation with Waleed Hamed, Mr. Yusuf explained that he would prefer to use the space to lease to retail but that if Plaza Extra East was going to use it for storage and needed the space, then it would have to pay rent, to which Waleed Hamed responded that he agreed. As Yusuf was in charge of setting the price and collecting the rent, he set the price at the same amount as other commercial tenants for that space. As with the rent for Bay 1, United allowed the rent to accrue so as to provide the partnership with greater liquidity. Waleed Hamed agreed to this arrangement.


At some point in the first half of 2001, Mr. Yusuf explained that Plaza Extra East cannot keep using Bay 5 for warehouse space as it is better utilized as retail space. It was helpful to the partnership to have other retail stores in the United Shopping Center which drives more customers to the area and then into Plaza Extra East. However, using such visible space for storage did not help increase the traffic to the center and by extension to Plaza Extra East. As ~~Bay 5 is a highly visible space, the better use of the space was for retail.~~ Beginning on September 1, 2001, United leased Bay 5 to a retail tenant operating as "Diamond Girl." ~~A copy~~ of the lease is attached to demonstrate the end of the period that Plaza Extra East was utilizing Bay 5. (Bates FY015138-75). The lease with Diamond Girl was for ten years. In December 2011, Diamond Girl entered into another lease with United and expanded their space to use Bay 4 in addition to Bay 5. A copy of that lease is also attached. (Bates FY015176-211). These leases reflect the price charged for the space and the ending time period of Plaza East's ~~occupancy of Bay 5.~~ There is no written lease for Plaza Extra East's use of the Bays 5 or 8, just as there was no written lease for the use of space to house the Plaza Extra East store. ~~Waleed~~ Hamed agreed to this arrangement. The total amount due for the period of rent for Bay 5 is as set forth in Yusuf's August 12, 2014 Declaration for \$271,875.00.

B. Bay 8 – May 1, 1994 through September 30, 2002 ("First Bay 8 Rent")

Bay 8 is located in the corner of the shopping center and is a double bay. It is a less desirable location as a retail store given the limited storefront and lack of visibility being in the corner of the center.

From 1987 to the time of the fire in 1992, Bay 8 was rented to Ali's Hardware. Ultimately, United had to evict Ali Hardware at some point prior to the fire. Mike Yusuf recalls the scenario where the renter threw the keys to Mike as they were rebuilding the store after he had been evicted. The eviction was handled by Carl Beckstedt. Attached is an unsigned "Satisfaction of Judgment" reflecting the action brought against Ali Hardware for the collection of back rent demonstrating the date the suit was filed as 1993. (Bates FY01537). As described above, the storage system of stacked trailers used by Plaza Extra East at this time was inefficient. As Plaza Extra East was being rebuilt, it needed the additional space for storage.

Following the fire, Plaza Extra East reopened in May 1994 and began utilizing Bay 8 for additional storage. Given its less desirable location as a retail store, its large size and easy access to the back of the bay with a roll-down door, it was suitable and more feasible to use as a warehouse. Bay 8 was occupied by Plaza Extra East from May 1, 1994 through September 30, 2002. As the space had previously been rented to a third party but was now being utilized by Plaza Extra East, Mr. Yusuf discussed with Waleed Hamed that Plaza Extra East would need to pay rent for the use of this additional space and he agreed. As with the rent for Bay 1, United allowed the rent to accrue so as to provide the partnership with greater liquidity. Waleed Hamed agreed to this arrangement.




From October 1, 2002 to April 1, 2008, the space was then rented to an entity called Riverdale which is a food wholesaler who was not interested in utilizing the space as retail operation. A copy of the lease for Bay 8 is attached to reflect when the First Bay 8 Rent period ended and the amount charged for this space. (Bates FY015212-247). The total amount due to United for the First Bay 8 Rent is as set forth in Yusuf's August 12, 2014 Declaration for \$323,515.63.

C. April 1, 2008 through May 30, 2013 ("Second Bay 8 Rent")

When the lease with Riverdale ended, Plaza Extra East began using the space for storage. As with the earlier period of use and the use of Bay 5, Yusuf discussed with Waleed Hamed that Plaza Extra East would pay rent on the same terms as before and Waleed Hamed Agreed. The total amount due to United for the Second Bay 8 Rent is as set forth in Yusuf's August 12, 2014 Declaration for \$198,593.44. As before, United allowed the rent for this period to accrue rather than demanding payment so as to allow the partnership greater liquidity.

After May 30, 2013, United again rented Bay 8 to Riverdale or a relative of the individual who rented as Riverdale from that point forward.



There are no written leases between Plaza Extra East and United as to renting Bay 5 and Bay 8. ~~At the time, the stores were all operating as United. However, as described above Mr.~~ Yusuf discussed the matter with Waleed Hamed and he agreed to pay rent for the space utilized. Collection of the rent was deferred for Bays 5 and 8, just as it was deferred for the Plaza Extra East Store. See Yusuf Declaration of August 12, 2014, ¶8.

As to the period after this lawsuit was filed, United shows that Plaza Extra East continued to occupy the space until it was rented to the tenant associated with Riverdale. Mr. Yusuf considered the partial rent payments made by the partnership as to Bay 1 as a partial payment of the total rent debt due which included the rent for Bays 5 and 8. When Plaza Extra East was using either Bay 5 or 8, their use and occupancy was continuous during that period of time.

DUDLEY, TOPPER AND FEUERZEIG, LLP

DATED: January 15, 2019

By: s/Charlotte K. Perrell
CHARLOTTE K. PERRELL
(V.I. Bar #1281)
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1000 Frederiksberg Gade - P.O. Box 756
St. Thomas, VI 00804-0756
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E-Mail: cperrell@dtflaw.com

*Attorneys for Fathi Yusuf and United
Corporation*

Exhibit 13

**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 Deft.,)
)
vs.) Case No. SX-2012-CV-370
)
FATHI YUSUF and UNITED)
CORPORATION,)
)
Defendants/Counterclaimants,)
)
vs.)
)
WALEED HAMED, WAHEED HAMED,)
MUFEED HAMED, HISHAM HAMED, and)
PLESSEN ENTERPRISES, INC.,)
)
Counterclaim Defendants.)
WALEED HAMED, as Executor of the)
Estate of MOHAMMAD HAMED,)
)
Plaintiff,)
)
vs.) Consolidated with
) Case No. SX-2014-CV-287
)
UNITED CORPORATION,)
)
Defendant.)
WALEED HAMED, as Executor of the)
Estate of MOHAMMAD HAMED,)
)
Plaintiff,)
)
vs.) Consolidated with
) Case No. SX-2014-CV-278
)
FATHI YUSUF,)
)
Defendant.)

**VIDEOTAPED ORAL DEPOSITION OF
FATHI YUSUF**

Y-2

**EXHIBIT
13**

THE VIDEOTAPED ORAL DEPOSITION OF FATHI YUSUF

was taken on the 21st day of January, 2019, at the Offices of Joel H. Holt, 2132 Company Street, Downstairs Conference Room, Christiansted, St. Croix, U.S. Virgin Islands, between the hours of 12:22 p.m. and 2:41 p.m., pursuant to Notice and Federal Rules of Civil Procedure.

Reported by:

Susan C. Nissman RPR-RMR
Registered Merit Reporter
Caribbean Scribes, Inc.
2132 Company Street, Suite 3
Christiansted, St. Croix
U.S. Virgin Islands 00820
(340) 773-8161

APPEARANCES**A-P-P-E-A-R-A-N-C-E-S****For the Plaintiff:**

Law Offices of
Carl Hartmann, III
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By: Carl Hartmann, III
Kimberly Japinga

and

Law Offices of Joel H. Holt
2132 Company Street, Suite 2
Christiansted, St. Croix
U.S. Virgin Islands 00820

By: Joel H. Holt

For the Defendants:

Law Offices of
Dudley, Topper & Feuerzeig
P.O. Box 756
Charlotte Amalie, St. Thomas
U.S. Virgin Islands 00804

By: Charlotte Perrell

Also Present: Maher Yusuf
Hisham, Mufeed, and Waheed Hamed
Michael Gelardi, Videographer

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E-X-A-M-I-N-A-T-I-O-N

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E-X-H-I-B-I-T-S

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72:5-6, 9-13, 21-23
73:16:20, 25
74:1-6

FATHI YUSUF -- REDIRECT

1 **Q.** You don't remember Judge Ross saying no to the
2 inventory in the containers?

3 **A.** I never submit anything to him.

4 **Q.** No, no to the materials that were in the
5 containers?

6 **A.** No, I don't.

7 **Q.** Okay.

8 **A.** Maybe he told me, maybe not.

9 **Q.** Okay.

10 **A.** I don't know.

11 **Q.** Okay. Let's move on. We're going to move on to
12 the question of --

13 **A.** If we go back to Judge Ross, he's going to tell
14 you, yes, I only bid what's underneath that roof.

15 (Deposition Exhibit No. Y-2 Exhibit 1 was
16 marked for identification.)

17 **Q.** Okay. We're going to go on to the issues
18 surrounding Yusuf Claim Y-2, which is the unpaid rent for
19 Bays 5 and 8.

20 I'm going to hand you a document dated
21 August 22nd (sic), 2001 on United Corporation letterhead.
22 Says United Corporation, United Shopping Plaza.

23 **A.** Um-hum.

24 **Q.** And it's signed by Thomas W. Luff, the property
25 manager.

FATHI YUSUF -- REDIRECT

1 **A.** Yeah.

2 **Q.** Addressed to you and it's copied to Mike, Mike
3 Yusuf.

4 **A.** Um-hum.

5 **Q.** Okay. Do you remember receiving this letter?

6 **A.** No, sir.

7 **Q.** Do you doubt that you received this letter?

8 **A.** Excuse me?

9 **Q.** Do you doubt that you received it?

10 **A.** I'm definitely sure I have never saw this paper
11 before.

12 **Q.** So you've never seen this document?

13 **A.** I never seen it before.

14 **Q.** Okay. Who was Mr. Luff?

15 **A.** I honestly don't remember him. My son remember
16 him.

17 **Q.** Which son?

18 **A.** Mike.

19 **Q.** Okay.

20 **A.** Maher.

21 **Q.** So we'd have to ask Mike about this?

22 **A.** Yes. The simple reason, because I was in
23 St. Thomas working all the time.

24 **Q.** And -- and why would Mike know about it? What --
25 what was Mike's position at the time that he would know

FATHI YUSUF -- REDIRECT

1 about it?

2 **A.** He's my son. Forget about the position. He's the
3 president.

4 **Q.** Okay.

5 **A.** But it is his father property.

6 **Q.** But he was also the president of United, wasn't
7 he?

8 **A.** Yes.

9 **Q.** Okay. So this was United property owned by United
10 and a letter was being sent to United by United's property
11 manager and he copied Mike because Mike was the president of
12 United, we think?

13 **A.** I don't know.

14 **Q.** Okay. We'll ask Mike.

15 **A.** Can't answer for anybody.

16 **Q.** Now, if you look at the documents that are
17 attached to this letter, which are analyses of the rents and
18 the vacancies for the property in 2001, did you receive
19 those types of documents from -- or did Mike receive those
20 documents?

21 **A.** As far as I'm concerned, sir, I already gave you
22 the answer. I will repeat it one more time.

23 **Q.** Okay.

24 **A.** I have never seen this document before.

25 **Q.** ~~No, I'm not asking that, sir.~~ I'm saying that the

FATHI YUSUF -- REDIRECT

1 types of documents that are in it, year-to-date summaries on
2 rents, the monthly rental statements, did you get those
3 normally or did Mike get those normally?

4 **A.** I never received it, not even one time. Not
5 normally or not normally. I have never received such
6 documents.

7 **Q.** Do you think Mike got them or do you think nobody
8 got them?

9 **A.** I don't know. Let Mike answer the question.

10 **Q.** Okay. That's fine.

11 So you know nothing about this at all?

12 **A.** I can answer about the next one.

13 **Q.** About the next?

14 **A.** Yeah. The next sheet. There's one more sheet
15 from the same gentleman.

16 **Q.** There is? Where's that?

17 **A.** Where is this? You know the other sheet?

18 **MS. PERRELL:** Yeah, it's in the back.

19 **A.** In the back? No, ma'am. It's both of them. Two
20 of them.

21 **MS. PERRELL:** No, there's only one from --
22 from Mr. Luff.

23 **A.** There is one more.

24 **Q.** **(Mr. Hartmann)** Okay. Well, wait, wait.

25 **A.** Look for the document, please. You'll find it.

Deposition Pages 77-78

77:15-25

78:1-7

FATHI YUSUF -- REDIRECT

1 the confusion.

2 **MR. HARTMANN:** Okay.

3 **MS. PERRELL:** But that's -- there is no -- no
4 document source, other than the receipt of it from you guys,
5 and I understand what you're saying it came from, but there
6 is no -- anything else.

7 **Q. (Mr. Hartmann)** Okay. Okay. What I'm really
8 trying to get at here, Mr. Yusuf --

9 **A.** Yes.

10 **Q.** -- is are you the person I should be asking
11 questions about 5 and 8, or should I be asking Mike?

12 **A.** No, 5 and 8 is very important that I being asked.

13 **Q.** That you be asked?

14 **A.** Yes.

15 **Q.** Okay. In your claim, your lawyers have made a
16 claim for you in this case --

17 **A.** Yes.

18 **Q.** -- for renting 5 and 8, right?


19 **A.** Yes.

20 **Q.** In your claim, it states that a particular square
21 footage, a cost per square foot, is being charged?

22 **A.** Yes, sir.

23 **Q.** Okay. Who -- where does that cost per square foot
24 come from?

25 **A.** All right, sir. The number is -- it came from the

FATHI YUSUF -- REDIRECT

1 previous tenant, Ali Hardware. I was renting it for \$5 a
2 square foot, plus maintenance and property tax.

3 When I build the Plaza Extra, I billing just
4 dollar fifteen a square foot for maintenance and I forget to
5 bill for the property tax. That's is for Number 8. It does
6 not come out of my head. It come out from the previous
7 tenants. And the -- then Plaza used the place for 7-8

8 years. And then we open up Frederiksted. We don't need 8
9 no more. We thought we don't need 8 anymore. So I have a
10 tenant and I will rent that to Robert Hill, some company, a
11 wholesaler in St. Croix. He took it, I think, for -- I
12 don't remember what -- how many years. And after that, he
13 left.

14 We realize that we should never rent it,
15 because even though we have Plaza West with a huge warehouse
16 capacity, still, we should never rent it to Robert Hill
17 because we need this to be close by --

18 Q. Okay. So --

19 A. -- to the store.

20 Q. -- if you look back at -- if you look back at that
21 document that you said you've never seen.

22 A. Excuse me?

23 Q. Exhibit 1. It's the one --

24 A. Oh, this one?

25 Q. Right.

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87:1-6, 8-15

88:3-17

89:1-11, 21-25

90:1, 19-20

FATHI YUSUF -- REDIRECT

1 time is 2:07.

2 Q. (Mr. Hartmann) Okay. You said that in addition to
3 Plaza Extra, you had other tenants in there, Mr. Yusuf, in
4 Bay 5?

5 A. I -- I had before, I think it was the pharmacy.
6 And we catch fire. After the fire, it was vacant. And we
7 build the store in 1994. ~~We reopen it and they tear up the~~
8 wall. This is adjacent to Plaza Extra. He tear up 25 feet
9 of that wall completely.

10 Q. I understand. The question is, are there other
11 tenants?

12 A. Excuse me. No, no, no, wait a minute.

13 After Plaza Extra, there is no tenant
14 whatsoever took that place, except the people, the Diamond
15 Girl, and they were paying \$12. That's why I base my rent
16 based on Diamond Girl rent.

17 Q. Okay. So there was another tenant, Diamond?

18 A. It was the pharmacy.

19 Q. Okay.

20 A. Part of the pharmacy, which is why -- I mean, I
21 think it burned down, the pharmacy, or -- or close down?

22 Q. That's all right.

23 A. Close down. Okay.

24 Q. She can't answer. You told her not to answer.

25 A. No, I don't remember. No, I'm talking to my son,

FATHI YUSUF -- REDIRECT

1 not to her.

2 Q. Oh, okay. So -- so when you had this other tenant
3 in there, you had a lease; is that correct?

4 A. After the fire, sir. After Plaza Extra fire, the
5 first tenant called me, myself, a tenant. The first tenant
6 was Plaza Extra East. The second tenant was Diamond Girl.

7 Q. Okay, good.

8 A. Diamond Girl is \$12.

9 Q. Now, when you had Diamond in there, did Diamond
10 have a lease?

11 A. Yes.

12 Q. Okay. And when Plaza was in there, did Plaza have
13 a lease?

14 A. No.

15 Q. Okay. And on the Diamond lease, it said they
16 could be there for a certain amount of time, right?

17 A. Yes.

18 Q. And you couldn't move them out just one day
19 because you felt like it, could you?

20 A. I don't want to move them out.

21 Q. Oh, no, of course not, 'cause they're a
22 rent-paying tenant --

23 A. Yes.

24 Q. -- so you want them in there for the period of the
25 lease?

FATHI YUSUF -- REDIRECT

1 **A.** Yes.

2 **Q.** And -- and they paid you \$12 --

3 **A.** Yeah.

4 **Q.** -- so that you couldn't move them out so they
5 could use it; is that correct?

6 **A.** Yeah, --

7 **Q.** Okay.

8 **A.** -- that's exactly what happened.

9 **Q.** But you could move Plaza Extra out any time?

10 **A.** What?

11 **Q.** Could you move Plaza Extra out any time?

12 **A.** Yes.

13 **Q.** Okay. So they weren't really a tenant?

14 **A.** Who?

15 **Q.** Plaza Extra?

16 **A.** It's not a free world.

17 **Q.** No, I'm not asking --

18 **A.** Wait.

19 **Q.** I'm asking, could you move them out?

20 **A.** Me and my sons. We the owner of the building.

21 Now, we have someone, outsider, who have not
22 a drop a blood in that building. My blood in that building.
23 I am not a tenant, but when Mohammad Hamed became my
24 partner, he is a tenant.

25 **Q.** Could he -- could he stay there even if you wanted

FATHI YUSUF -- REDIRECT

1 to move Diamond in?

2 **A.** What?

3 **Q.** If you wanted to move Diamond in -- when you moved
4 Diamond in, didn't you just go to them and say you have to
5 take the Plaza Extra stuff out?

6 **A.** Who?

7 **Q.** Didn't you tell him Hamed?

8 **A.** Yeah, yeah.

9 **Q.** You did?

10 **A.** Yeah.

11 **Q.** And you could tell them to leave any time?

12 **A.** Yeah, because I give it to them and they used it.
13 I really feel bad to have that bays always close. It does
14 not look good for the building. But no tenant come in.
15 When the tenant come, the right one, we negotiate, and he
16 have it for \$12.

17 **Q.** And did you -- but what I'm asking you is, when
18 you talked to Hameds about them using the building, at some
19 point you went to the Hameds, right, and said, Let's use
20 Bay 5, right?

21 **A.** I never tell him, Let's use Bay 5.

22 **Q.** What did you say?

23 **A.** He used it without my knowledge.

24 **Q.** Without your knowledge? Okay.

25 **A.** You know.

FATHI YUSUF -- REDIRECT

1 Q. When he used it without your knowledge, did you
2 ever say to him, You need to pay me \$12 an hour (sic)?

3 A. I said, I will charge you rent.

4 Q. You did?

5 A. Yes.

6 Q. And how much did you say?

7 A. I have no idea.

8 Q. You have no idea.

9 A. I have no idea.

10 Q. So it could be \$2?

11 A. When I have a new tenant, I establish the price.

12 Q. And one of the things you used when you
13 established the price is the fact that while they're there,
14 they own it for that period of time? They can stay there
15 for that whole year or the whole 2 years?

16 A. I don't want it, even if you pay 20. Reason why,
17 I (sic) will hurt the shopping center.

18 Q. You want him in there?

19 A. I don't want him in there.

20 Q. You don't want who in there?

21 A. From day one, I don't want Plaza Extra there.

22 Q. You wanted a tenant in there?

23 A. I want a tenant, yes.

24 Q. Because the tenant will pay you full value?

25 A. Not only that -- this is part of it, yes, but this

FATHI YUSUF -- REDIRECT

1 is a shopping center; it's not a warehouse.

2 Q. Right.

3 A. I own now warehousing and retail areas.

4 Q. So if --

5 A. It's two different name. Two different picture.
6 Two different visitors.

7 Q. So at any time, if you could have gotten, for
8 instance, another pharmacy, or if you could have gotten an
9 eyeglass store, or if you could have gotten something like
10 that, --

11 A. Uh-huh.

12 Q. -- you would have preferred to have them?

13 A. I prefer to have anybody but not Plaza Extra.

14 Q. I -- okay. And that's --

15 A. Plaza Extra --

16 Q. -- because they would pay you full rent?

17 A. Plaza Extra -- it's not that.

18 Q. It's what?

19 A. I tell you that is built for retail store, not for
20 warehousing.

21 Q. Okay.

22 A. But Wally use it for a warehouse.

23 Q. So you said that the Hameds did it without your
24 knowledge?

25 A. Without my permission.

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

I, SUSAN C. NISSMAN, a Registered Merit Reporter and Notary Public for the U.S. Virgin Islands, Christiansted, St. Croix, do hereby certify that the above and named witness, **FATHI YUSUF**, was first duly sworn to testify the truth; that said witness did thereupon testify as is set forth; that the answers of said witness to the oral interrogatories propounded by counsel were taken by me in stenotype and thereafter reduced to typewriting under my personal direction and supervision.

I further certify that the facts stated in the caption hereto are true; and that all of the proceedings in the course of the hearing of said deposition are correctly and accurately set forth herein.

I further certify that I am not counsel, attorney or relative of either party, nor financially or otherwise interested in the event of this suit.

IN WITNESS WHEREOF, I have hereunto set my hand as such Registered Merit Reporter on this the 5th day of February, 2019, at Christiansted, St. Croix, United States Virgin Islands.

My Commission Expires:
July 18, 2019

Susan C. Nissman, RPR-RMR
NP-70-15

Exhibit 14

LEASE CONTRACT

For Bay No.: Five (5)

United Shopping Plaza

4-C & D Sion Farm

PO Box #763

Christiansted, VI 00820

Tenants: David Zahriyeh

and

Mazen Awadallah

Y-2

EXHIBIT

14

Date: September 3, 2001

Exp 2011

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THIS LEASE, ENTERED INTO BY AND BETWEEN:

LANDLORD: UNITED CORPORATION hereinafter also referred to as "Landlord"), a corporation organized and existing under the laws of the Government of the Virgin Islands, with principal offices at United Shopping Plaza, Plots 4C and 4D, Estate Sion Farm, Christiansted, St. Croix, United States Virgin Islands, herein represented by its PRESIDENT, MAHER YUSUF, who represents that he is duly authorized to execute and deliver this contract in the name and behalf of Landlord by appropriate authority granted by its Board of Directors, which authority, or the ratification thereof, he shall establish and exhibit whenever and wherever necessary.

AND TENANT:

David Zahriyeh
5727 SW 117th Ave
Ft Lauderdale, FL 33330

And Mazen Awadallah
1040 SW 10th Ave Bay 4
Pompano Beach FL 33069

(Hereinafter also referred to as "Tenant")

1. UNITED SHOPPING PLAZA:

Landlord has legal title to Plots 4C and 4D, Estate Sion Farm, Christiansted, St. Croix, U.S. Virgin Islands and the improvements thereon, hereinafter defined as the "United Shopping Plaza."

2. LEASED PREMISES:

Landlord agrees to lease to Tenant the facility in the Shopping Plaza identified in Exhibit A as Bay #5 (the Leased Premises), which said Leased Premises, together with all rights, improvements, appurtenances, easements and privileges attached thereto (including but not limited to the use in common with other tenants of the Shopping Plaza of the Common Areas, to be hereinafter defined) are defined as the "Leased Premises." The Leased Premises, as shown in Exhibit A will have on the ground floor dimensions of approximately 3,125 sq. ft. The Leased Premises include the exterior unfinished walls of the Leased Premises as well as the doors and glass windows. The Leased Premises also include one-half of the width of any common walls.

3. TITLE:

Landlord covenants that

- a. it has the right to make this lease;
- b. the United Shopping Plaza is and shall continue to be, during the term of this lease, free and clear of all liens, encumbrances and restrictions that may affect Tenant's quiet enjoyment of the Leased Premises; and

- c. the United Shopping Plaza is duly zoned by the Government of the Virgin Islands for use as a shopping center.

4. LEASE :

The parties hereto state that they have agreed to enter into a lease contract with respect to the Leased Premises hereinabove described, accordingly, Landlord does hereby LEASE to Tenant, and Tenant LEASES from Landlord the Leased Premises with all rights, uses, servitudes, improvements appurtenances, easements and privileges belonging thereto, including, but not limited to, the non-exclusive right to use the Common Areas defined herein.

5. LANDLORD'S RESERVATION:

Landlord has reserved the right to place in the Leased Premises (in such manner to reduce to a minimum the interference with Tenant's use of the Demised Premises) utility lines, pipes, and the like, to serve premises other than the Leased Premises, and to replace and maintain or repair such utility lines, pipes and the like in, over and upon the Leased Premises as may have been installed in the building, including, but not limited to, those that may have been initially installed in the Leased Premises by Landlord. It is understood that upon Landlord making any maintenance work as provided by this Article Landlord will restore Leased Premises to the condition that Leased Premises were in prior to such work.



6. TERM OF LEASE:

The Term of this lease shall be for a period of Ten (10) calendar years commencing on September 1, 2001.

7. TENANT'S ACCESS PRIOR TO COMMENCEMENT OF TERM:

Tenant, prior to the commencement of the term may, at its own risk and expense and without any liability to Landlord, install fixtures and other equipment in the Leased Premises and do other work; provided, however, that such activities of Tenant shall not interfere with any work performed by Landlord and further provided that the Leased Premises is are not otherwise occupied by a tenant under a lease in existence on or before the date this lease is executed.

8. INSPECTION BY TENANT:

The Tenant acknowledges that it has inspected the Leased Premises and accepts same on an "AS IS-WHERE IS" basis. Tenant acknowledges that it has sole responsibility to obtain any permits or certificates necessary to permit it to occupy the Leased Premises or otherwise open for business. If Tenant disputes the square footage of the Leased Premises, the amount set forth in this lease shall govern, irrespective of the actual square footage.

9. OPENING FOR BUSINESS:

Tenant, at its own cost and expense, shall equip its premises with trade fixtures and all personal property necessary or proper for the operation of Tenant's business, and shall open for business not later than sixty (60) days after the date when the Leased Premises have been made available for Tenant's occupancy.

Landlord, at its expense shall replace the ceiling tiles in the store area and repair hangers as necessary, clean the tile floor, repair the party wall between the premises and Plaza extra warehouse and also provide air-conditioning in the premises. Tenant shall repay Landlord for these expenses with 1/24 added to each monthly rent for 24 months.

10. RENT:

Tenant agrees to pay Rent to Landlord, without any prior demand and without any setoff or deduction whatsoever, at the address of landlord or at such places as Landlord may direct in writing, ~~at the following rates and times:~~

~~The Annual Rent for the Leased Premises shall be \$ 31,250.00 [per year], payable in equal monthly installments of \$ 2604.00 per calendar month, and proportionately at such rate for any partial month, such monthly installments to be paid in advance on the first day of each and every calendar month during the term hereof. Landlord will allow three months of free rent starting at the signing of the Lease and paying the Security Deposit or the date the Premises is opened for business, whichever is earliest.~~

11. PAYMENTS.

Tenant is responsible for the delivery of all payments due under this lease on the date due. Failure to make such payment within 30 days shall result in Landlord charging interest due on all unpaid sums at a rate of 1-1/2% per month. If Tenant shall fail to pay in full all payments due herein within 30 days of the date due, the Tenant shall be in default under this Lease. If the interest rate set forth herein is deemed to be usurious or otherwise against public policy, the interest rate shall be the maximum amount permitted by law or public policy. Interest shall accrue at the prevailing legal interest rate from and after the due date of any and all payments required under this Lease, including but without limitation, fixed minimum rent, percentage rents, additional rents described in this Lease.

Tenant agrees that it may not set-off against payments due hereunder any disputed payments or other charges it claims are due to it from Landlord.

12. DEFAULTS:

If default should be made in any of Tenant's obligations under this Lease and such default is not cured within thirty (30) days after written notice by Landlord to Tenant thereof (or if said default cannot be cured with thirty (30) days,) then, if Tenant does not commence within said thirty day period to attempt to cure said default and thereafter proceed with due diligence with the curing of the same, Tenant shall be in default under this Lease.

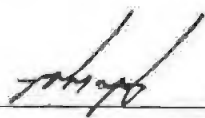
THIS IS THE LEASE that the appearing parties hereby execute in the respective capacity that each appear hereunder, and they hereby ratify this instrument in all its parts and bind themselves to stand for all the terms therein contained at all times under the legal responsibilities arising therefrom according to law, and thus the appearing parties hereby accept this instrument in all its parts, as drafter, being all well informed of its contents, and they do hereby consent to the execution of this Lease.

IN EVIDENCE THERETO, the appearing parties place their initials on every page of this instrument and sign it on the lines indicated below, at the place and on the date indicated next to their respective signature.

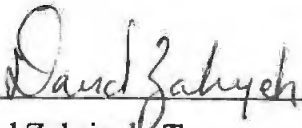
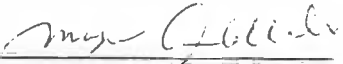
Given at Christiansted, St. Croix; U S. Virgin Islands as of this 30 day of ^{October}~~September~~, 2001.

WITNESSES(As to Landlord): UNITED CORPORATION, d/b/a
UNITED SHOPPING PLAZA,

Landlord

BY 
Maher Yusef, President

WITNESSES (As to Tenant):

BY  and 
David Zahrieh, Tenant Mazen Awadallah

TERRITORY OF THE VIRGIN' ISLANDS)
 :SS
DIVISION OF ST. CROIX)

On this ___ day of _____, 2001, before me appeared _____ who acknowledged himself to be the _____ of UNITED CORPORATION, the corporation described in the foregoing instrument, and acknowledged that as such officer, being authorized so to do, he executed the foregoing instrument on behalf of the corporation by subscribing the name of such corporation by himself as such officer, and caused the corporate seal of said corporation to be affixed thereto, as his free and voluntary act and as the free and voluntary act of the said Corporation for the uses and purposes therein set forth.

WITNESS my hand and official seal _____ Notary
Public

Notary Public

TERRITORY OF THE VIRGIN' ISLANDS)

:SS

DIVISION OF ST. CROIX)

On this ____ day of _____, 19__, before me appeared _____ who acknowledged himself to be the _____ of the corporation described in the foregoing instrument, and acknowledged that as such officer, being authorized so to do, he executed the foregoing instrument on behalf of the corporation by subscribing the name of such corporation by himself as such officer, and caused the corporate seal of said corporation to be affixed thereto, as his free and voluntary act and as the free and voluntary act of the said corporation for the uses and purposes therein set forth.

WITNESS my hand and official seal.



Rajai Suliman
Commission # CC 959200
Expires Aug. 7, 2004
Bonded Thru
Atlantic Bonding Co., Inc.

Notary Public

Rajai Suliman
Rajai Suliman

X INDIVIDUAL ACKNOWLEDGEMENT

TERRITORY OF THE VIRGIN' ISLANDS)

:SS

DIVISION OF ST. CROIX)

On this ____ day of _____, 19__, before me appeared _____ to me known and known to me to be the individual described in and who executed the foregoing instrument, and who acknowledged that he executed the foregoing instrument freely and voluntarily for the uses and purposes therein contained, WITNESS my hand and official seal.



Rajai Suliman
Commission # CC 959200
Expires Aug. 7, 2004
Bonded Thru
Atlantic Bonding Co., Inc.

Notary Public

TENANT'S SECRETARY'S CERTIFICATE

The undersigned, _____ hereby certifies:

1. That he (she) is the Secretary of _____, a corporation organized according to the laws of the Virgin Islands.

2. That at a Special Meeting of the Board of Directors of the aforementioned corporation, held at _____ on _____ at which meeting a quorum was present, the following resolution was unanimously adopted:

"Resolved:

That the Lease Contract executed on _____ by _____ as the _____ of this corporation with UNITED CORPORATION, d/b/a UNITED SHOPPING PLAZA, whereby certain space was leased by this corporation at a Shopping Plaza owned by UNITED CORPORATION, located in St. Croix, U.S. Virgin Islands, is hereby RATIFIED and made binding upon this corporation."

That _____ occupies the office of _____, and has been duly elected to and of this corporation.

IN WITNESS WHEREOF, I execute this Certificate, under my hand and the seal of the corporation at _____, on this _____ day of _____, 2001

Secretary

GUARANTY

This Guaranty is an absolute and unconditional Guaranty of payment and performance. It shall be enforceable against the Guarantor, its successors and assigns, without necessity for any suit or proceedings on the Landlord's part of any kind or nature whatsoever against the Tenant, its successors and assigns, and without the necessity of any notice of non-payment, non-performance or non-observance or of any notice of acceptance of this Guaranty or of any other notice or demand to which the guarantor might otherwise be entitled, all of which the Guarantor hereby expressly waives; and the Guarantor hereby expressly agrees that the validity of this Guaranty and the obligations of the Guarantor hereunder shall in no wise be terminated, affected, diminished or impaired by reason of the assertion, or the failure to assert, by the Landlord against the Tenant, or against the Tenant's successors and assigns, any of the rights or remedies reserved to the Landlord pursuant to the provisions of the said Lease.

This Guaranty shall be a continuing Guaranty, and the liability of the guarantor hereunder shall in no way be affected, modified or diminished by reason of any assignment, renewal, modification or extension of the lease or by reason of any modification or waiver of or change in any of the terms, covenants, conditions or provisions of said Lease, or by reason of any extension of time that may be granted by the Landlord to the Tenant, its successors or assigns, or by reason of any dealings or transactions or matter or thing occurring between the Landlord and the Tenant, its successors or assigns, whether or not notice thereof is given to the Guarantor.

All of the Landlord's Rights and Remedies under the said Lease or under this Guaranty are intended to be distinct, separate and cumulative and no such right and remedy therein or herein mentioned is intended to be in exclusion of or a waiver of any of the others.

This Guaranty shall be governed by and construed in accordance with the laws of the Government of the Virgin Islands. The Parties hereby subject themselves to the jurisdiction of the Courts of the Territory of the Virgin Islands in any action, proceeding or counterclaim brought by either of the parties hereto against the other on any matter whatsoever arising out of or in any way connected with the aforementioned Lease or this Guaranty. Any such action or proceeding against Guarantor may be commenced by the service of the process necessary to commence such action or proceeding upon the Guarantor or registered or certified mail addressed to the Guarantor at the address set forth above.

Guarantors:

Signatures:

Name: David Zahriyeh Social Security # Mazen Awadallah Social Security #

Address: 5727SW 117th Avenue,

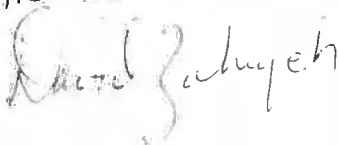
1040 SW 10th Ave, Bay 4

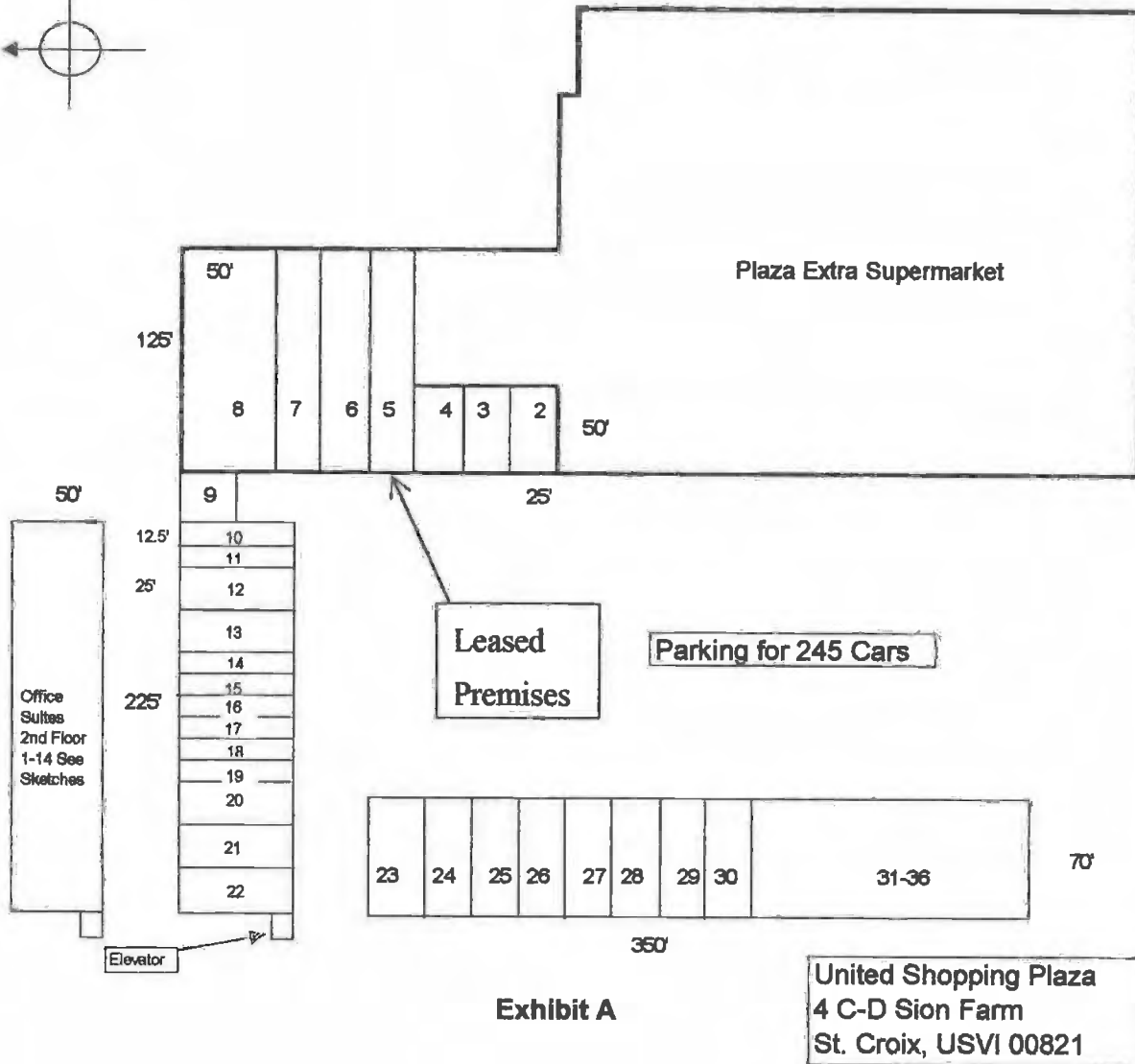
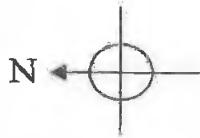
Ft. Lauderdale, FL 33330

Pompano Beach, FL 33069

110-66-1678

266-27-7817





Queen Mary Highway (Centerline Road)

Exhibit A

United Shopping Plaza
4 C-D Sion Farm
St. Croix, USVI 00821