

SUPERIOR COURT OF THE VIRGIN ISLANDS  
DIVISION OF ST. CROIX

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

*Plaintiff/Counterclaim Defendant,*

vs.

**FATHI YUSUF** and **UNITED CORPORATION**

*Defendants and Counterclaimants.*

vs.

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

*Counterclaim Defendants,*

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

vs.

**UNITED CORPORATION**, *Defendant.*

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

vs.

**FATHI YUSUF**, *Defendant.*

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**FATHI YUSUF**, *Plaintiff,*

vs.

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

*Defendants.*

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**KAC357 Inc.**, *Plaintiff,*

vs.

**HAMED/YUSUF PARTNERSHIP**,

*Defendant.*

**Case No.: SX-2012-CV-370**

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

JURY TRIAL DEMANDED

Consolidated with

**Case No.: SX-2014-CV-287**

Consolidated with

**Case No.: SX-2014-CV-278**

Consolidated with

**Case No.: ST-17-CV-384**

Consolidated with

**Case No.: ST-18-CV-219**

**PLAINTIFF HAMED'S OPPOSITION TO  
YUSUF'S MOTION FOR SUMMARY JUDGMENT AS TO  
REVISED CLAIM Y-2—RENT CLAIMED BY UNITED FOR BAYS 5 AND 8**

## A. Introduction

United claims rents beginning in 1994 for two store areas called “Bays” adjacent to the Plaza Extra store in Sion Farm. See *Motion for Summary Judgment as to Y-2 through 4, Rent Due to United for Bays 5 and 8 Together with Interest for Rent and Memorandum of Law in Support, Hamed v Yusuf, SX-12-CV-370* (Feb 25, 2019) (“SJ Motion”), at p. 2. As is discussed in detail below, United attempts to blur several different rental periods into one big, long imaginary oral lease that lasted almost 20 years. In fact, the re-revised United claim is for three separate leases which lasted from five to eight years each. Yusuf's argument can be outlined as follows:

- (1) Even though there was no written contact, no writing ever mentioned such a contract, and no financial document ever shows any such rent collected or accruing,
- (2) “Hamed acknowledges space utilized and benefitted the partnership;” (SJ Motion at p.15); and
- (3) “There is no statute of limitations issue” because there was an admission<sup>1</sup> and partial performance by the store. (SJ Motion at p. 17)

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<sup>1</sup> At page 4, and footnote 2 of the SJ Motion, United tries to fabricate an “admission” to the existence of a contract for rent by Waleed “Wally” Hamed. It is useful to examine exactly what United states the record shows and what the record clearly does not show. United states “In a conversation with Waleed Hamed, 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.**” *Id.* (Emphasis added.) But, Hamed directs the Special Master's attention to the footnote in support of this contention. He admitted only to a conversation about what happened to the wall. There is absolutely no admission as to a discussion about rent or rent being due. This is the allegedly supporting and probative footnote presented by United in its entirety:

There are two key points here:

First, the statute of frauds (“SOF”), is dispositive, so the Special Master need not reach the statute of limitations (“SOL”) issue.

Second, if the Master *does* reach the SOL issue, United is wrong: There was no admission—United confuses the affirmation of use of the premises with an affirmation of a contractual obligation, and no partial performance, as the store never paid a cent for the “alleged rent obligations” under a lease contract for Bays 5 and 8.

**B. Counter-statement of uncontested facts<sup>2</sup>**

United alleges that the United Shopping Plaza rented Bays 5 and 8 to the Partnership at various times, starting in 1994. SJ Motion at p. 2. Hamed states that Plaza Extra-East did use Bays 5 and 8 at various times as a convenience, but either (1) any rent claim was included in the payments and settlement already made to United or, more to the point, (2) he never agreed to pay (nor did he pay) additional rent for those spaces. (COSF ¶¶ 26 and 29)

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Waleed Hamed testified that he does not recall conversations with Yusuf about Bay 5 after breaking through the wall but that it is possible and could not dispute it, if Yusuf so testified. Specifically, Waleed Hamed testified:

Q. And you never had a discussion with Mr. Yusuf about breaking the wall, isn't that correct?

A. I'm not too sure if that's quite clear, but maybe at one time or another. I mean, it's been so long, I don't really recall if we did or we didn't.

Q. Do you recall Mr. Yusuf being upset that the wall had been broken through?

A. Don't recall that.

Q. But you wouldn't dispute it if Mr. Yusuf said that he was upset and discussed it with you?

A. Well, if he said so. I don't really recall that.

<sup>2</sup> Pursuant to the Court's new rule, promulgated on March 1, 2019, the counter-statement of uncontested facts are numbered and incorporated as **Exhibit A**. They will be referred to as “CSOF ¶.”

For an 'agreed upon' contract to have existed for such additional rent, the parties would have had to reach a meeting of the minds on the terms, such as the amount of rent. (COSF¶¶ 26 and 31) Hamed notes that United, even now, discusses at least three different amounts per square foot for Bays 5 and 8 (the United Corporation *Accounts Receivable Current Month* report adds a fourth rental amount), and is asking the Master to "calculate" a fair rent in retrospect. (COSF¶¶ 1, 3-6, 11, 13, 17, 25 and 30)

In addition, United has alleged, at various times, that the Bay 5 lease ended either on October 31, 2001 or July 31, 2001. (COSF¶ 11 and 17) Yusuf initially stated that Bay 8 was used only from April 1, 2008 to May 30, 2013. (COSF¶ 11) He then stated that Bay 8 was *also* used from May 1, 1994 to July 31, 2001.<sup>3</sup> (COSF¶ 17)

Finally, even ignoring the *statute of frauds*, two of the time periods United alleges Plaza Extra-East used for Bays 5 and 8 are clearly outside of the statute of *limitations* time period set by Judge Brady in his July 21, 2017 Order, *Hamed v Yusuf*, SX-12-CV-370. (COSF¶ 20)

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<sup>3</sup> As the Master will recall, Yusuf is somewhat obsessed with getting more than the almost \$10 million he has gotten from the Partnership for the Plaza Extra-East rent. Despite the settlement of \$5 million and Judge Brady's \$4.5 million for additional back rent, Yusuf filed, and on March 15, 2018 the Special Master denied, his attempt to get another "5 times" market value in additional rent – stating:

Here, Yusuf dealt with the Partnership on behalf of a party—namely, United—having an interest adverse to the Partnership, in violation of Title 26 V.I.C. § 74(b)(2). Additionally, Yusuf did not act consistently with the obligation of good faith and fair dealing, in violation of Title 26 V.I.C. § 74(d). Thus, the evidence and facts surrounding Yusuf's action through United—terminating the lease with the Partnership at Bay 1, treating the Partnership as a holdover tenant, and raising United's rent significantly higher than the agreed upon rent—demonstrates a transaction prohibited by law and tainted by a conflict of interest and self-dealing.

### C. Argument

As noted, there are two equally strong reasons for denying this claim.

#### A. The Statute of Frauds is Dispositive Here

##### 1. Definition of Statute of Frauds regarding Real Property in the USVI

The Virgin Islands *Statute of Frauds*, V.I. Code Ann tit. 28, § 241(a), requires real estate contracts of more than a year to be in writing:

Every contract for the leasing for a longer period than one year from the making thereof, or for the sale of any lands, or any interest in lands, shall be void unless the contract or some note or memorandum is in writing, and signed by the party to be charged, or by his lawful agent under written authority.

28 V.I.C. § 242. As Judge Brady noted in *Stanley v. Browne*, 62 V.I. 384, 391–92, 2015 WL 5121406, at \*3 (V.I. Super. Apr. 30, 2015), *aff'd*, 66 V.I. 328, 2017 WL 449955 (V.I. Feb. 2, 2017):

The Statute of Frauds, codified in the Virgin Islands at V.I. Code Ann tit. 28, § 241(a), requires that the conveyance of any interest in real property, outside of a lease for no more than one year, must be in writing.

Yusuf admits, and there is no dispute, that there is no writing here.

##### 2. There is no “Admission” exception here to the V.I. Statute of Frauds

Although United does not address the statute of frauds, it discusses the concept of an “admission” of the existence of a lease contract by Hamed in his SOL argument. United tacitly asserts an exception to the statute of frauds—that even though there was no writing, a contract should be “implied” because Hamed has somehow “admitted” such a contract was formed *in 1994*. But what United really contends is that it can claim an exception if Wally Hamed admits the store “used the property” or discussed “use of” the

property with Mr. Yusuf.<sup>4</sup> SJ Motion at pp. 15-16. This is simply confusion as to what constitutes an exception to the SOF—the admission of the use of a premises is not an admission of the existence of a contract for such use – or its terms. Otherwise, the SOF would not exist, as such an exception would always eat the rule.

Fortunately, Judge Francoise recently considered this exact issue—of such admissions as potential exceptions to the Statute of Frauds—and provided a full *Banks* analysis. *Urh v. Buffo*, No. ST-2015-CV-0000315, 2017 WL 476837, at \*5 (V.I. Super. Feb. 3, 2017)(emphasis added)(footnotes omitted):

The Court recognizes that courts in other jurisdictions adopted a common law principle providing that a party waives application of a statute of frauds if it admits that a contract exists. **However, the Supreme Court of the Virgin Islands has not adopted this common law rule.** Therefore, the Court must conduct the three-factor analysis provided in *Banks v. International Rental and Leasing Corp.* to determine Virgin Islands common law. . . .

The Superior Court addressed whether party admissions take a contract out of the application of the Statute of Frauds in *Mountaintop v. Colombian Emeralds International*. The court held that “[t]he statute of frauds is waived if the defendant admits **to the existence of a contract** in the pleadings or testimony.”

Most other courts hold that a party cannot simultaneously admit that it orally arrived at an agreement with another party while asserting a defense afforded by a statute of frauds. A review of court opinions from other jurisdictions reveals that the majority determines that such admissions take the contract outside the application of a statute of frauds. The majority of courts holds that the main purpose of a statute of frauds is evidentiary. The U.S. Court of Appeals for the Seventh Circuit provides the following explanation:

The principal purpose of the statute of frauds is evidentiary. It is to protect contracting or negotiating parties from the vagaries of the trial

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<sup>4</sup> Yusuf never claims, nor was there any contemporaneous discussion of terms, such as what any rent amount would be. (CSOF ¶ 31) To the contrary, Yusuf admits that there was absolutely no writing on the terms – and no discussion of the amount of rent (or any other specific terms such as the duration of the lease) at any time. (CSOF ¶¶ 22-24 and 31) Yusuf asks the Court to “determine” these terms now, retroactively, by comparison to other leases.

process. A trier of fact may easily be fooled by plausible but false testimony to the existence of an oral contract. This is not because judges or jurors are particularly gullible but because it is extremely difficult to determine whether a witness is testifying truthfully.<sup>50</sup>

**Therefore, if a party accused of violating a contract admits to the contract's existence and its terms, the evidentiary function of a statute of frauds is unnecessary.**

Here, United absolutely does not argue that Hamed “admits to the contract's existence and its terms.” To the contrary, what United argues is that Wally Hamed has admitted *use* of the premises. SJ Motion 15-16. But that is circular logic. What is absent is even a suggestion, no matter how slight, that either Mohammad or Wally Hamed ever “admit[ed] to [a Bay 5 & 8 lease] contract's existence and its terms.” Indeed, United repeatedly agrees both in testimony and discovery that there was no written agreement and no agreement as to other terms:

**Request to Admit 9 of 50:**

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. (CSOF ¶ 22)

On December 18, 2018, Yusuf also stated that there were no pre-litigation documents related to the alleged Bays 5 and 8 rent.

**Yusuf Claim Y-2 (Rent for Bay 5&8), Hamed RTP 21, 34, Interrog. 29:**

There are no additional documents responsive to this request beyond the Declaration of Fathi Yusuf dated August 12, 2014 attached as Exhibit 3 to the Defendant's Motion for Partial Summary Judgment on Counts IV, IX and XII Regarding Rent. (CSOF ¶ 24)

During his testimony on January 21, 2019, Fathi Yusuf testified that Plaza Extra East did not have a lease when it was using Bay 5, but the following tenant, Diamond Girl, did have a lease for Bay 5:

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

A. [FATHI YUSUF] I—I had before, I think it was the pharmacy. And we catch fire. After the fire, it was vacant. And we build the store in 1994. . . .

This is adjacent to Plaza Extra. (p. 85, lines 2-8)

\* \* \* \*

A. [FATHI YUSUF] After the fire, sir. After Plaza Extra fire, the first tenant called me, myself, a tenant. The first tenant was Plaza Extra East. The second tenant was Diamond Girl. (p. 86, lines 4-6)

\* \* \* \*

Q. [Mr. Hartmann] Now, when you had Diamond in there, did Diamond have a lease?

A. [FATHI YUSUF] Yes.

Q. . . . **And when Plaza was in there, did Plaza have a lease?**

A. **No.** (p. 86, lines 9-14) (CSOF ¶ 32) (Emphasis added.)

Moreover, United repeatedly admits, through its multiple arguments about what the lease terms "should be" that there never was any contemporaneous agreement, no meeting of the minds when the alleged contract was being formed (or subsequent admission) on the terms—even the most essential terms which are amount of rent and the ability not to get thrown out at Yusuf's whim.<sup>5</sup>

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<sup>5</sup> As for there being an actual, real lease, in his January 21, 2019 testimony, Fathi Yusuf testified that tenants other than Plaza Extra East had leases for Bays 5 and 8 and that that United could not move out tenants with a lease, such as Diamond Girl, during their lease period.

Q. . . . **And when Plaza was in there, did Plaza have a lease?**

A. **No.**

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

A. **Yes.**

Q. And you couldn't move them out just one day because you felt like it, could you? A. I don't want to move them out.

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

\* \* \* \*

Q. Could you move Plaza Extra out any time?

A. Yes.



For instance, on August 27, 2001, Thomas Luff, property manager for the United Shopping Plaza, faxed a letter to Fathi Yusuf regarding a series of reports related to the United Shopping Plaza's tenants.<sup>6</sup> One report in particular, *Accounts Receivable Current Month*, dated July 27, 2001, states that Bays 5 and 8 are "plaza extra-Vacant." (CSOF ¶ 2, p. FBIX237825)<sup>7</sup> It also shows that while the rent per month for Bay 5 would be \$7.01 and Bay 8 would be \$5.50 if occupied by a tenant, no such rent was being charged,

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\* \* \* \*

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

A. Who?

Q. Didn't you tell him Hamed?

A. Yeah, yeah.

Q. You did?

A. Yeah.

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

A. Yeah, because I give it to them and they used it. I really feel bad to have that bays always close. It does not look good for the building. But no tenant come in. When the tenant come, the right one, we negotiate, and he have it for \$12. (COSF ¶ 32)

<sup>6</sup> Yusuf testified that he had never seen the Luff document before. (CSOF ¶ 33) However, there is no dispute that the document was seized by the FBI during the raid on the Plaza Extra stores in 2001 in which business records were collected. (CSOF ¶ 40) Thus, this is a contemporaneous business record – of a type which Waheed "Willie" Hamed testified that he had seen come in to Yusuf via the communal office fax at Plaza Extra-Tutu on a monthly basis. (CSOF ¶ 38) Fathi Yusuf worked at Plaza Extra-Tutu at the time Willie Hamed saw the reports. (CSOF ¶ 35) But in the end, the fact the FBI seized them as business records from the office of the business is probative.

<sup>7</sup> Yusuf argues that the designation "Plaza Extra-Vacant" for Bays 5 and 8 somehow shows that Plaza Extra was using those bays because the other empty bays were designated "Vacant." SJ Motion at 10, fn. 3. Unfortunately for Yusuf, he did not notice that Bay 7 also has the designation "Plaza Extra-Vacant" and Yusuf has not made any assertion that Plaza Extra used Bay 7 in 2001. (CSOF ¶ 2, p. FBIX237825) Thus, Yusuf's supposition regarding the meaning of this designation that it "proves" Plaza Extra used Bays 5 and 8 in July and August of 2001 is erroneous. This is exactly why the SOF exists!

collected or accrued. (CSOF ¶ 2-3) Thus, contemporaneously, no rent was contemplated or shown as accruing as due in the financial records.

United, however, does not even follow that written *Accounts Receivable Current Month* price per square foot. Rather, it now suggests that the Court use \$12 per square foot for Bay 5. *But it is clear that at least three other amounts were discussed by Yusuf and another of United's employees, Thomas Luff, making that most essential term of the contract – the amount of rent charged – unknowable:*

1. July 27, 2001: \$7.01 per square foot, *Accounts Receivable Current Month*
2. September 3, 2001: \$10 per square foot, Diamond Girl lease for Bay 5
3. December 1, 2011: \$12 per square foot, Diamond Girl lease for Bays 4 & 5 (an additional 1,250 square feet over Bay 5)
4. May 17, 2013 and August 12, 2014: \$12.00 per square foot, Fathi Yusuf Declaration<sup>8</sup> (CSOF ¶¶ 3-4, 6, 11 and 17)

How could there be a meeting of the minds on a contract where there was no meeting of the minds on the rent amount—an amount that United even now asks this Court to make up retroactively from other lease agreements.<sup>9</sup> In his deposition of January 21, 2019, Fathi Yusuf conceded that he never told Hamed nor established

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<sup>8</sup> Bay 8 had a similar issue with the amount of rent per square foot: 1987-1992 Ali Hardware lease, according to Yusuf, charged "\$5 a square foot, plus maintenance and property tax;" July 27, 2001 *Accounts Receivable Current Month* report stated \$5.50; the 2002-2007 Idheilah-Zgheir "Riverdale" lease provided no rent for the first three months, \$5.00 for the first year and \$6.00 for years 2-5 of the lease; May 17, 2013 letter from Yusuf's lawyer stated \$12.00 per square foot; and Fathi Yusuf's August 12, 2014 declaration required \$6.15 for both Bay 8 time periods (1994 to 2002 and 2008 to 2013). (CSOF ¶¶ 1, 3, 5, 11 and 17)

<sup>9</sup> Compare this with Yusuf's admission as to revised Hamed claim H-1 regarding Dorothea. In the H-1 claim, there WAS a writing, there WAS a specific amount agreed to. *Hamed Motion and Memorandum for Summary Judgement Re Hamed Revised Claim H-1 -- Fathi Yusuf's Failure to Pay Funds Re Sale of the Y&S Stock Resulting in the Sale of the Dorothea Condos and Land, Hamed v Yusuf, SX-12-CV-370* (Feb 25, 2019) at p. 5.

what the price per square foot would be charged at the time Plaza Extra-East used  
Bays 5 and 8.

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

A. [FATHI YUSUF] I said, I will charge you rent.

Q. You did?

A. Yes.

Q. And how much did you say?

A. I have no idea.

Q. You have no idea.

A. I have no idea.

(CSOF ¶ 31) It is critical to note that the other lease agreements United now  
proposes should be used to retroactively “create terms” here, contain provisions any  
normal lease for Bays 5 and 8 would have – such as the fact that the landlord couldn't  
throw the lessee when it got a real cash paying customer.

Q. [Mr. Hartmann] If you wanted to move Diamond in—when you moved  
Diamond in, **didn't you just go to them and say you have to  
take the Plaza Extra stuff out?**

\* \* \* \*

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

**A. [FATHI YUSUF] Yeah, yeah.**

\* \* \* \*

Q. And you could tell them [Hamed-Plaza Extra] to leave any time?

A. Yeah, because **I give it to them** and they used it.

I really feel bad to have that bays always close. It does  
not look good for the building. But no tenant come in.

When the tenant come, the right one, we negotiate, and he  
have it for \$12. (p. 88, lines 3-5, 7-8, 11-16) (CSOF ¶ 32) (Emphasis added.)

Yusuf said “I give it to them.” (CSOF ¶ 32)

The Diamond Girl leases, first for Bay 5 and then for Bays 4 and 5, as well as the  
lease for Bay 8, had the following written term regarding the duration of the lease:

6. TERM OF LEASE: [Bay 5]

The Term of this lease shall be for a period of Ten (10) calendar years commencing  
on September 1, 2001. (CSOF ¶ 4);

6. TERM OF LEASE: [Bays 4 and 5]

The Term of this lease shall be for a period of Five (5) calendar years commencing on 1 December 2011. (CSOF ¶ 6) and

6. TERM OF LEASE: [Bay 8]

The Term of this lease shall be for a period of Sixty-Three (63) calendar months commencing on October 1, 2002. Tenant shall have first option on Bay 8 for a further term of five years. (CSOF ¶ 5)

United suggests now, retroactively, that the Special Master use those other leases here to “divine” the terms for Bays 5 and 8. He wants the Court to supply terms that did not exist in 1994.

Finally, there was not then and is not now even a meeting of the minds as to when Plaza Extra-East actually used Bays 5 and 8. How will the Special Master “decide” that issue in the absence of a writing? United's witness, Fathi Yusuf, isn't even sure of the timeframes the Bays were used:

- May 17, 2013 – Yusuf demands rent for Bay 5 for May 1, 1994-October 31, 2001 and for Bay 8, April 1, 2008 through May 30, 2013 and (COSF¶ 11)
- August 12, 2014 – Yusuf now changes the time period for the rent for Bay 5 to May 1, 1994-July 31, 2001 and added a new time period for Bay 8 for May 1, 1994-September 30, 2002, in addition to the April 1, 2008 through May 30, 2013 time period (COSF¶ 17).

Add to that the fact that Wally Hamed disputes that Plaza Extra-East used the Bays in 1994 or 1995:

Q.[Ms. Perrell]. . . .All right. Let's say from 1995. From 1995 to 2001, when Plaza Extra East was utilizing Bay 5, you can't say that there was any point in which it was not being (p. 87, lines 23-25) fully utilized?

A. I believe we had the containers, the eight containers in the back after we opened, we reopened after the fire. I don't think we were using Bay 5 at that time. I mean, if my recollection serves me right, we had the containers in the back, so, therefore, we didn't need to use Bay 5 –

\* \* \* \*

A. [WALLY HAMED]—but we had containers in the back. We were utilizing eight containers in the back for storage. So why would I need that additional space when I had space in the back? (COSF¶ 27)

The minute the court involves itself in constructing the terms such as the “amount of rent” or the start of the lease it demonstrates that these terms were never really agreed to. If there were no such terms, there is no exception and thus the Statute of Fraud applies.

**B. Statute of Limitations: Judge Brady's “July 21, 2017” Order bars this claim**

United attempts to blur several different rental periods into one big, long imaginary oral lease that lasted more than 20 years. In fact, the re-revised United claim is actually for three separate oral leases which lasted from five to eight years each:

- 1) Bay 5–May 1, 1994 through July 31, 2001 (“Bay 5 Rent” for 7 years)
- 2) Bay 8–May 1, 1994 through September 30, 2002 (“First Bay 8 Rent” for 8 years)
- 3) Bay 8–April 1, 2008 through May 30, 2013 (“Second Bay 8 Rent” for 5 years). (CSOF ¶¶ 17 and 21)

On July 21, 2017, Judge Brady issued an order limiting claims to transactions that occurred on or after September 17, 2006 (hereinafter called the “SOL Order.” (CSOF ¶ 20) While the third time period is within the statute of limitations, the other two clearly are not. Thus, the first two leases must be denied pursuant to that SOL Order.

1. The first lease—Bay 5 Rent – May 1, 1994 through July 31, 2001

United alleges that, beginning in 1994 when Mohammad Hamed was still running the operation<sup>10</sup>, Mr. Yusuf entered into an oral agreement for a lease of Bays 5 and 8 with (oddly) Wally Hamed.<sup>11</sup> SJ Motion at pp. 4, 7. As stated above, it is undisputed that there is no writing from that time or any period thereafter showing that either Hamed entered into such an agreement. (CSOF ¶¶ 22, 24-25, 32) There is no subsequent writing, from

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<sup>10</sup> Mohammad Hamed was working in 1994 and 1995. (CSOF ¶ 14)

<sup>11</sup> Yusuf alleges that, despite the fact that Mohammad Hamed was still active, this oral agreement was with Wally Hamed. SJ Motion at pp. 4, 7.

1994 to the time of the legal action in 2012 ever mentioning such an agreement existed. More to the point there is not a single financial record that shows or even suggests that such rent was accruing or claimed.

It is clear that this 1994-2001 time period is clearly outside of the limitation period created by Judge Brady's order. As noted above, the only writing regarding the rental of Bays 5 and 8 did not occur until 2001 and no rent was due or collected. (CSOF ¶¶ 2-3) Thus, this is outside of the limitations period.

2. The second lease—May 1, 1994 through September 30, 2002

Again, there is no writing, mention, financial record or other support for the existence of such a lease or rent due and it is clearly outside of Judge Brady's limitation period. (CSOF ¶¶ 22, 24-25, and 32)

3. These "leases" are distinguishable from the Bay 1 rent in Judge Brady's April 27, 2015 decision

On April 27, 2015, Judge Brady issued an order regarding rent for Bay 1, the Plaza Extra East store premises, *Hamed v Yusuf*, SX-12-CV-370 ("rent decision"). In that rent decision, Judge Brady ordered rent to be paid to the United Corporation for the time periods of 1994-2004 and January 1, 2012-September 30, 2013.

Judge Brady found the following facts in his Bay 1 rent decision:

- Mohammad Hamed admitted in 2014 deposition testimony that that rent was due for the Plaza Extra operation at Sion Farm;
- Yusuf charged the Partnership a pre-negotiated rate of \$5.55 per square foot for 1994-2004, the same square footage charge as the 1986-1993 rate;
- Yusuf couldn't determine the time frame to charge rent because the FBI retained the financial records documenting what month the Partnership should begin paying rent in 1994;
- Waleed Hamed entered into an agreement to pay United past due rent for the 1994-2004 time period once the black book was recovered in early 2013; and
- Yusuf and Hamed jointly negotiated and the Partnership paid a new monthly amount for the 1994-2004 time period for Plaza Extra-East. (CSOF ¶ 18)

None of those factual bases are present here. The Bays 5 and 8 rent claims differ greatly from the overall Sion Farm store operation rent. First, there is no evidence of a negotiated rental rate for either Bay 5 or 8. (CSOF ¶ 31) Indeed, a possible range of \$7.01-\$12.00 per square foot for Bay 5 and a range of \$5.00 to \$6.15 for Bay 8 has been discussed above. (CSOF ¶¶ 1, 3-6, 11 and 17) Both Wally and Willie Hamed testified that there was no agreement to pay this rent, nor did Fathi Yusuf make any request to pay rent at the time Bays 5 and 8 were in use. (CSOF ¶¶ 26, 31 and 36-37) Critically, **Mohammad Hamed was never deposed regarding these Bays.** (CSOF ¶ 14) Finally, there was no impediment to determining the price per square foot for Bays 5 and 8 because there is no allegation that United's financial records relating to Bays 5 and 8 were unavailable during the Statute of Limitations time period.<sup>12</sup>

Most important though, is that in Judge Brady's situation, Mohammad Hamed had agreed to the existence of such rent for Bay 1 in deposition, but he never agreed to anything about Bays 5 and 8. Nor did the store ever partially perform this alleged obligation – it never paid a cent under such a contract. Accordingly, the facts regarding Bays 5 and 8 are completely different from the facts in Judge Brady's rent decision. Rents for Bays 5 and 8 for the 1994-2002 time period should be denied due to being outside of the SOL Order.

#### *B. Settlement Check*

It is undisputed that on February 7, 2012, the Partnership paid the United Shopping Center \$5,408,806.74. The memo on the check stated "Plaza Extra (Sion Farm) Rent."

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<sup>12</sup> Yusuf argues that the pending criminal case made it impossible to request rent during that time period. SJ Motion, pp. 7-8. However, that argument fails as Yusuf never made any request for rent or determined of the amount of rent per square foot during Plaza Extra-East's usage prior to the FBI raid in 2001, despite his testimony that he knew Plaza was utilizing Bays 5 and 8. (CSOF ¶ 31) and SJ Motion at pp. 4-5.

(CSOF ¶ 7). Nothing in the writing limits this to Bay 1, and there are no other signed writings. However, on May 17, 2013, Attorney Nizar DeWood, representing United Corporation, then sent a letter to Attorney Holt stating that

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

\* \* \* \*

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

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. . . . (CSOF ¶ 11)

On May 22, 2013, Attorney Holt sent a letter to Attorney DeWood, responding on behalf of the Hameds that there never was an agreement to pay rent for Plaza Extra-East's use of Bays 5 and 8.

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. (CSOF ¶ 12)

Attorney DeWood never contradicted this or sent contrary facts in response. There is nothing in writing which proves United's view. Critically (as this is what Judge Brady's



“Bay 1” decision was predicated on) on April 1, 2014, Mohammad Hamed testified in his deposition that rent was due for Bay 1 only. He was never questioned about, nor did he make any admissions as to the other bays.

### **C. Conclusion**

In conclusion, United's motion for summary judgment should fail for the following reasons:

1. The rent requested for Bays 5 and 8 violates the Statute of Frauds because there is no written agreement and each “lease” period exceeds one year;
2. The Statute of Frauds exception for an admission of a contract and its terms is not applicable because there was no agreement as to the critical terms – the amount of rent, the length of lease or even the start of lease time period;
3. In addition to the Statute of Frauds, Judge Brady's limitation order knocks out rent for Bays 5 and 8 for the 1994 through 2002 time period, as those transactions occurred before September 17, 2006; and
4. There was settlement by the payment of \$5,408,806.74.

**Dated:** April 1, 2019



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### CERTIFICATE OF SERVICE

I hereby certify that on this 1st day of April, 2019, I served a copy of the foregoing by email (via CaseAnywhere), as agreed by the parties, on:

**Hon. Edgar Ross**  
Special Master  
% edgarrossjudge@hotmail.com

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Carl J. Haddad

### CERTIFICATE OF COMPLIANCE WITH RULE 6-1(e)

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



Carl J. Haddad

**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**

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

**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**

- |                       |                                                                                                                                                         |
|-----------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------|
| <b>Y-2 Exhibit 18</b> | October 4, 2012 Defendant's Notice of Removal                                                                                                           |
| <b>Y-2 Exhibit 19</b> | November 16, 2012 Opinion re ordering remand to VI Superior Court                                                                                       |
| <b>Y-2 Exhibit 20</b> | April 1, 2014 Mohammad Hamed Deposition, Vol. 2                                                                                                         |
| <b>Y-2 Exhibit 21</b> | April 2, 2014 Fathi Yusuf Deposition                                                                                                                    |
| <b>Y-2 Exhibit 22</b> | 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 |
| <b>Y-2 Exhibit 23</b> | April 27, 2014 Judge Brady Order regarding Rent for Bay 1                                                                                               |
| <b>Y-2 Exhibit 24</b> | May 15, 2018 Yusuf response to RFPD No. 21 of 50                                                                                                        |
| <b>Y-2 Exhibit 25</b> | December 18, 2018 Yusuf supplemental response to Interrogatory No. 29                                                                                   |
| <b>Y-2 Exhibit 26</b> | January 21, 2019 Wally Hamed Deposition                                                                                                                 |
| <b>Y-2 Exhibit 27</b> | January 22, 2019 Willie Hamed Deposition                                                                                                                |
| <b>Y-2 Exhibit 28</b> | March 31, 2019 Declaration of Kim Japinga                                                                                                               |

# EXHIBIT A

## Counter-Statement of Facts

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

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

*Plaintiff/Counterclaim Defendant,*

vs.

**FATHI YUSUF** and **UNITED CORPORATION**

*Defendants and Counterclaimants.*

vs.

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

*Counterclaim Defendants,*

**Case No.: SX-2012-CV-370**

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

**JURY TRIAL DEMANDED**

Consolidated with

**Case No.: SX-2014-CV-287**

Consolidated with

**Case No.: SX-2014-CV-278**

Consolidated with

**Case No.: ST-17-CV-384**

Consolidated with

**Case No.: ST-18-CV-219**

---

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

vs.

**UNITED CORPORATION**, *Defendant.*

---

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

vs.

**FATHI YUSUF**, *Defendant.*

---

**FATHI YUSUF**, *Plaintiff,*

vs.

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

---

**KAC357 Inc.**, *Plaintiff,*

vs.

**HAMED/YUSUF PARTNERSHIP**,  
*Defendant.*

## COUNTER-STATEMENT OF FACTS

1. "From 1987 to the time of the fire in 1992, Bay 8 [of the United Plaza Shopping Center] was rented to Ali's Hardware," according to Fathi Yusuf's January 19, 2019 Supplemental Responses to Hamed's Discovery, *Hamed v Yusuf*, SX-12-CV-370. (Y-2 Exhibit 12, p. 4) Yusuf testified that the United Plaza Shopping Center rented Bay 8 to Ali Hardware for "\$5 a square foot, plus maintenance and property tax." (Y-2 Exhibit 13, p. 78:1-2)
2. On August 27, 2001, Thomas W. Luff, Property Manager for the United Shopping Plaza, sent a letter to Fathi Yusuf regarding the rental details for the businesses in the United Shopping Plaza. Two of the reports ("*Accounts Receivable Current Month*") showed that Bays 5, 7 and 8 were "plaza-extra Vacant" for the months of July and August 2001, there was no rent due for the covered period and there was no "balance forward." (Y-2 Exhibit 1, pp. FBIX237825 and FBIX237823)
3. On August 27, 2001, the *Accounts Receivable Current Month* sent to Fathi Yusuf by Thomas Luff showed the price per square foot for Bay 5 was \$7.01 and the price per square foot for Bay 8 was \$5.50. (Y-2 Exhibit 1, pp. FBIX237825, FBIX237823 and HAMD664274) In Yusuf's August 12, 2014 declaration, he claimed that the price per square foot for Bay 5 was \$12.00 and Bay 8 was \$6.15. (Y-2 Exhibit 8)
4. On September 3, 2001, the United Shopping Plaza signed a lease for Bay 5 with David Zahriyeh and Mazen Awadallah for their business "Diamond Girl." (Y-2 Exhibit 14 and Y-2 Exhibit 12, p. 4) The lease specified the terms of the lease as "this lease shall be for a period of Ten (10) calendar years commencing on September 1, 2001." (Y-2 Exhibit 14, p. 5) The lease specified the square footage



of Bay 5 as “approximately 3,125.” (Y-2 Exhibit 14, p. 4) It also specified the rental amount: “[t]he Annual Rent for the Leased Premises shall be \$ 31,250.00 [per year], payable in equal monthly installments of \$ 2604.00 per calendar month. . .” or \$10 per square foot. (Y-2 Exhibit 14, p. 6) (Exhibit 8 of Defendants Motion for Summary Judgment as to Y-2 through Y-4, Rent Due to United for Bays 5 and 8, pp. 4-6)

5. On October 1, 2002, the United Shopping Plaza signed a lease for Bay 8 with Mahmud Idheilah and Majdi Zgheir for their business “Riverdale.” (Y-2 Exhibit 15 and Y-2 Exhibit B-4, p. 5) The lease specified the terms of the lease as “this lease shall be for a period of Sixty-Three (63) calendar months commencing on October 1, 2002.” (Y-2 Exhibit 15, p. 5) The lease specified the square footage of Bay 8 as “approximately 6,250.” (Y-2 Exhibit 15, p. 4) The rental amount was \$0 for the first three months, \$5.00 per square foot for the first full year and \$6.00 for the remaining term of the lease:

The rent for the Lease Premises shall initially be waived until January 1, 2003. Thereafter, the annual rent shall be \$31,260.00 for the first year payable in equal monthly installments of \$2,605.00 per calendar month beginning with January 1, 2003. The Annual Rent for the remaining four years of the lease, beginning January 1, 2004, shall be \$37,500 payable in equal monthly installments of \$3,125 . . . (Y-2 Exhibit 15, p. 6)

6. On December 1, 2011, the United Shopping Plaza signed a lease for Bays 4 and 5 with Mazen Awadallah for his business “Diamond Girl.” The lease specified the terms of the lease as “this lease shall be for a period of Five (5) calendar years commencing on 1 December 2011.” (Y-2 Exhibit 16, p. 5) The square footage was a combined total of approximately 4,375 square feet. (Y-2 Exhibit 16, p. 4) It also

specified the rental amount: "Tenant agrees to pay Rent to Landlord. . . \$4500.00 per month" or approximately \$12.34 per square foot. (Y-2 Exhibit 16, p. 6).

7. On February 7, 2012, the Partnership paid the United Shopping Center \$5,408,806.74. The memo on the check stated "Plaza Extra (Sion Farm) Rent." (Y-2 Exhibit 3)
8. On September 17, 2012, this action was filed. (Y-2 Exhibit 17)
9. On October 4, 2012, Yusuf removed the action to the Federal District Court. (Y-2 Exhibit 18)
10. On November 16, 2012, the District Court remanded this action to this Court, stating, at 11, "Defendants have failed to establish that removal to the District Court of this partnership dispute between Virgin Islands residents is proper." (Y-2 Exhibit 19, p. 11)
11. On May 17, 2013, Attorney Nizar DeWood, representing United Corporation, sent a letter to Attorney Holt stating that

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

\* \* \*

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

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. . . (Y-2 Exhibit 4)

12. On May 22, 2013, Attorney Holt sent a letter to Attorney DeWood, responding on behalf of the Hameds that there never was an agreement to pay rent for Plaza Extra-East's use of Bays 5 and 8.

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. (Y-2 Exhibit 5)

13. On December 23, 2013, defendants Fathi Yusuf and the United Corporation filed their answer and counterclaim in *Hamed v Yusuf*, SX-12-CV-370. Regarding the rents owed for Bays 5 and 8, the defendants alleged:

**COUNT XII**  
**PAST RENT FOR RETAIL SPACES BAYS 5 & 8**

\* \* \* \*

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. (Y-2 Exhibit 6)

14. On April 1, 2014, Mohammad Hamed testified in his deposition that rent was due for Bay 1 only. He was not asked whether rent was due for Bays 5 or 8. He further noted that he was working in 1994 and 1995.

Q. (Mr. Hodges) Okay. Would you agree with me, Mr. Hamed, that Plaza Extra paid rent to United Corporation for occupying the Plaza East premises from the beginning (p. 105, lines 23-25) until December 1993? (105:23-25-106:1)

\* \* \* \*

MR. HODGES: '86, 1986. (p. 106:3)

\* \* \* \*

Yes. (106:5)

\* \* \* \*

Q. (Mr. Hodges) So you're saying to me, sir, that you did not retire in 1996?

A. No. (20:6-8)

(Y-2 Exhibit 20, 105:23-25-106:1, 3, 5 and 20:6-8)

15. On April 2, 2014, Fathi Yusuf testified in his deposition regarding the rent for Plaza Extra Sion Farm, Bay 1. He stated that there was an agreement to pay \$5.55 per square foot for the 1994-2004 time period (the same amount charged for the 1986-1993 time period), which was based on St. Thomas sales.

. . . Now, I say, What is fair? St. Croix store, St. Thomas store is much smaller, and is doing better business. Selling more. If I want to charge 7.25 a square foot, that's not fair. I have a much larger store, and the store, even though it's larger, it sells less. I say, Wally, to be fair with you and myself, I want to charge in, when the -- when my commitment finish with you guys, I will charge you according for percentage on sale, according to St. Thomas percentage. He said, That's fair. (89:14-23)

\* \* \* \*

A. He says, Okay. That's is fair. Then when it's

the -- when the lease, in '93, okay? When -- when that period finished, then I know we have to go based on St. Thomas sale. Now, St. Thomas is doing less -- I mean, St. Thomas doing much higher, so otherwise, if St. Thomas pays a half a million dollars a year, I was expecting time and a half the store, maybe getting 400,000. Because they're -- the deal is based on sale.

By the time my new agreement become effective, sale turn around. Sion Farm start to do a lot better than St. Thomas. (90:15-25)

\* \* \* \*

1994 to 2000 --

MR. HODGES: 2004.

A. -- to 2004, that was -- that was my commitment for the 5.55. (91:9-12)

\* \* \* \*

Q. (Mr. Holt) . . . And then showing you Exhibit No. 10, is this the check that was then paid for the rent?

A. Yeah, this is the -- that's the check to cover this.

Q. Okay. And so the check was from Plaza Extra Supermarkets to United Corporation to pay for the rent --

A. Yeah.

Q. -- based upon the calculation you gave them.

A. Yes.

Q. Okay. And that rent covered from 2004 through 2011?

A. Yes. (94:6-18)

\* \* \* \*

A. Yes. When we was talking about Plaza Extra, the location, East, which is Sion Farm, which myself, my wife and our children owns it 100 percent? When we was talking about the rent, I was looking up to December 31st, 1993, and all of a sudden from -- we get busy when you handing me these sheets, we start to talk about this sheet. I have skipped 1994 to 2004.

I know I'm okay, because Mr. Mohammad admit and acknowledge he owes the rent, but I should have just have it for the record, too, just to confirm it, that Plaza Extra still owe the rent for that from that period for United Corporation.

Q. And that was the rent that you calculated at 5.55 per square foot?

A. 5.55. I get the approval from Wally. I -- he

have 69,580 square feet. (Y-2 Exhibit 21, 89:14-23; 90:15-25; 91:9-12; 94:6-18; and 127:18-25-128:1-8)

16. On June 6, 2014, Fathi Yusuf stated in his affidavit that although he felt he couldn't ask for rent from 2004 going forward due to the criminal case, he was unable to calculate the amount of rent due for Bay 1 for the 1994-2004 time period because the FBI had seized financial records that would allow him to make that calculation. He also stated that in 2012, Wally Hamed "agreed that rent was owed for the 1994-2004 period, and agreed that it would be paid once the "black book" was recovered and a proper calculation could be made."

4. At the time we made the agreement regarding Plaza Extra-East rent for 2004 going forward, we were embroiled in the criminal case and all of the Plaza Extra accounts were frozen by an injunction. As a result, I made a decision and Waleed Hamed, on behalf of Mohammed Hamed, agreed, that there was no prospect for the payment of the rents owed for the 1994-2004 period. However, even if the ability to collect the rent was not blocked by the injunction, I was unable to calculate the rent for 1994 -2004, as I did not have the "black book," a black ledger book containing accounting information concerning the Hamed and Yusuf families, as well as other information relating to the Plaza Extra Stores, including the payment of rent to United. The FBI had seized that book when it conducted its raid in October 2001. Among other things, the "black book" reflected the date of the last rent payment in 1994, information I needed to accurately determine the rent for Plaza Extra-East from 1994-2004.

\* \* \* \*

6. In early 2012, I discussed the 1994 -2004 rent with Waleed Hamed when the payment of \$5,408,806.74 in rent for the period from May 5, 2004 to December 31, 2011 was coordinated. I again explained to Waleed Hamed that I could not request the 1994 -2004 rent, as we still had not received the "black book" to determine the exact starting point for that period. During that conversation in 2012, Waleed Hamed agreed that rent was owed for the 1994-2004 period, and agreed that it would be paid once the "black book" was recovered and a proper calculation could be made. . . . (Y-2 Exhibit 22, pp. 2-3 of the Yusuf affidavit)

17. On August 12, 2014, the Yusuf declaration, ¶¶ 21-25, referenced in Yusuf's *Accounting Claims and Proposed Distribution Plan*, was signed. The declaration

requested rent for Bay 5 from May 1, 1994-July 31, 2001 at an amount of \$12.00 per square foot. There also was a request for rent for Bay 8 for the time periods of May 1, 1994-September 30, 2002 and April 1, 2008-September 30, 2013 at \$6.15 per square foot. The total amount due for Bays 5 and 8, according to Yusuf, was \$793,984.38. **(Y-2 Exhibit 8)**

18. On April 27, 2015, Judge Brady issued a Memorandum Opinion and Order in *Hamed v Yusuf*, SX-12-CV-370, regarding the payment of rent to the United Corporation by the Hamed-Yusuf Partnership. He made the following factual findings:

- Mohammad Hamed admitted in 2014 deposition testimony that rent was due for the Sion Farm store operations;
- Yusuf charged the Partnership a pre-negotiated rate of \$5.55 per square foot for 1994-2004, the same square footage charge as the 1986-1993 rate;
- Yusuf couldn't determine the time frame to charge rent because the FBI retained the financial records documenting what month the Partnership should begin paying rent in 1994;
- Waleed Hamed entered into an agreement to pay United past due rent for the 1994-2004 time period once the black book was recovered in early 2013; and
- Yusuf and Hamed jointly negotiated and the Partnership paid a new monthly amount for the 1994-2004 time period for Plaza Extra-East. **(Y-2 Exhibit 23, pp. 2-5)**

19. On September 30, 2016, Yusuf filed his *Accounting Claims and Proposed Distribution Plan* in *Hamed v. Yusuf*, SX-12-CV-370. In it, he claimed that "[t]he total amount due to United for unpaid rent for Bays 5 and 8 is \$793,984.34." **(Y-2 Exhibit 7)**

20. On July 21, 2017, Judge Brady issued a Memorandum Opinion and Order Re Limitations on Accounting in *Hamed v Yusuf*, SX-12-CV-370. **(Y-2 Exhibit 9)**

21. On October 30, 2017, Yusuf filed his *Amended Accounting Claims Limited to Transactions Occurring on or After September 17, 2006* in *Hamed v. Yusuf*, SX-

12-CV-370. In it, he did not revise his request for payment of rents for Bay 5 and Bay 8, even though both alleged rent obligations occurred prior to September 17, 2006. **(Y-2 Exhibit 10)**

22. On May 15, 2018, Fathi Yusuf admitted 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 and 8.

**Request to Admit 9 of 50:**

\* \* \* \*

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. **(Y-2 Exhibit 11)**

23. In response to written discovery, on May 15, 2018 Yusuf did not produce any documents related to his claim that the Partnership would pay rent on Bays 5 & 8. Therefore, there is not a lease, a written agreement indicating that the Partnership would pay rent on Bays 5 & 8 or any record of rent payments made by the Partnership. **(Y-2 Exhibit 24).**

24. On December 18, 2018, Yusuf stated that there were no documents related to this claim other than Mr. Yusuf's August 12, 2014 declaration.

**1. Yusuf Claim Y-2 (for Rent for Bay 5&8), Hamed RTP 21, 34, Interrog. 29:**

There are no additional documents responsive to this request beyond the Declaration of Fathi Yusuf dated August 12, 2014 attached as Exhibit 3 to the Defendant's Motion for Partial Summary Judgment on Counts IV, IX and XII Regarding Rent. **(Y-2 Exhibit 25)**

25. On January 15, 2019, Yusuf further elaborated on his recollections regarding the reasons why Plaza Extra East used Bays 5 and 8, as well as the price per square foot and the desirability of each Bay to tenants. He reiterated that there were no



leases between the United Shopping Plaza and the Partnership for Bays 5 and 8.

**(Y-2 Exhibit 12)**

26. On January 21, 2019, Wally Hamed testified in his deposition that Bays 5 and 8 were provided to the Partnership rent-free and he had no conversation with Fathi Yusuf where he agreed or Fathi Yusuf asked that the Partnership would pay rent for the Bays.

[Ms. Perrell]. . .you indicated that it was your understanding that Bays 5 and 8 were to be provided by United to the partnership rent-free; is that correct?

A. [WALEED HAMED] That's correct.

Q. . . .And you had no communications with Mr. Yusuf in this regard; is that correct?

A. That's correct.

Q. . . .So it is your belief that it was rent-free, despite not having any conversations with Mr. Yusuf about that?

A. That is correct. (9:3-13)

Q. . . .But yet there was, in your opinion, no agreement to pay rent for Bays 5 and 8?

A. None whatsoever. (Y-2 Exhibit 26, 9:3-13; 15:25-16:1-2)

27. Wally Hamed testified at his January 21, 2019 deposition that he doesn't recall Plaza Extra-East utilizing Bay 5 and 8 in 1994. He also did not believe Bay 5 was used in 1995. In fact, he stated that the eight containers were still behind the Plaza Extra-East store during those years, so it would be unlikely that the store would need or use Bays 5 and 8.

Q. [Ms. Perrell] So you're telling me that over the course of the period between 1994 and . . . and July 31st of 2001, for Bay 5, that there were certain periods that you did not utilize Bay 5?

A. [WALLY HAMED] It's possible. I -- I really don't recall exactly any time period. I -- I really don't. It could be, could be not. I don't recall.

Q. . . .So it's possible that, in fact, Plaza Extra utilized that space the entire time between May of 1994 through July 31st of 2001 for Bay 5?

A. It could be, but I'm not too sure if it's in 1994 that we actually started using it or not.

Q.. . . All right. Let's say from 1995. From 1995 to 2001, when Plaza Extra East was utilizing Bay 5, you can't say that there was any point in which it was not being (87:11-2 fully utilized?

A. I believe we had the containers, the eight containers in the back after we opened, we reopened after the fire. I don't think we were using Bay 5 at that time. I mean, if my recollection serves me right, we had the containers in the back, so, therefore, we didn't need to use Bay 5 – (88:1-7)

\* \* \* \*

A. -- in that time period.

Q.. . . Then why would you break through the concrete wall?

A. But it depends on what year we broke through the concrete. I really don't recall exactly when it was, but we had containers in the back that I had no use . . . for the Bay 5.

Q.. . . But if Mr. Yusuf testifies, or if Mr. Mike Yusuf testifies that, in fact, you broke through the wall in spring of 1994, you testified earlier that you could not dispute that, correct?

A. It's possible, because I don't recall exactly – (88:9-20)

\* \* \* \*

A. -- but we had containers in the back. We were utilizing eight containers in the back for storage. So why would I need that additional space when I had space in the back? (88:1-7, 9-20, 22-25)

\* \* \* \*

Q. But you broke through the wall because you were using the space, correct?

A. Yes, but what year. . . I don't recall exactly, but I don't think it was early on like you stated. (89:9-12)

\* \* \* \*

Q.. . . And the same would be true for Bay 8, correct? You do not know exactly when. . . Plaza Extra East started using Bay 8?

A. I don't exactly know the year, but we've used it on and off. (89:21-25)

\* \* \* \*

Q.[Ms. Perrell]. . . .And isn't it also true that Plaza Extra utilized Bay 8 since 1994 on an as-needed basis?

A. [WALLY HAMED] I'm not too sure if it's from 1994 or not, but we did use it, yes.

Q.. . . .And the same question before, if Mike Yusuf or Fathi Yusuf testifies that it -- that Plaza Extra began using it sometime in May or the spring of 1994, you can't dispute that, correct?

A. I can't agree to it, because I really don't recall exactly what those were, those days were.

Q.. . . .I'm not asking you to agree; I'm asking if you can dispute it. You cannot dispute that?

A. We used it on and off, and I'm not too sure what the years are or the months are. (Y-2 Exhibit 26, 87:11-25; 88:1-7, 9-20, 22-25; 89:9-12, 21-25; 14:5-18)

28. On January 21, 2019, in his deposition testimony, Wally Hamed testified that Yusuf was renting Bays 5 or 8, so the Plaza Extra store vacated the premises and moved the inventory back into the Plaza Extra-East Bay 1 space.

MR. HARTMANN: Bay 5. (51:17)

\* \* \* \*

Q. (Mr. Hartmann) [W]hat happened to the -- the Plaza Extra materials that were stored in there when other tenants took over that property?

A. [WALLY HAMED] Fits right in the store. In the warehouse.

Q.. . . .Did. . . .United need that space? (51:20-24)

\* \* \* \*

A. Any time they needed any space, they take it. They take it back, or they utilize it, they rent it out, whatever they do.

Q. And did they come to you and discuss that arrangement with you, as though you were a tenant?

A. [T]hey didn't come to me to arrange it or anything like that. So if it's rented, we get our stuff out . . . and put it in the warehouse.

Q.. . . .And how many times did that happen, approximately?

A. Several times.

Q. . . . .whenever there wasn't a tenant in the premises,

did you always use it every day otherwise?

A. No, sir.

Q. . . . So how much of the -- when there were other tenants in there, how much of the time did it just stay empty?

A. Different times. I mean, I really can't put a number on it, but on and off over the years. It's just different times, different days. Any time they needed it, they wanted to rent it out, whatever, our stuff comes out. (52:4-25)

\* \* \* \*

Q. [Ms. Perrell]. . . . And the same would be true for Bay 8, correct? (89:21-22)

\* \* \* \*

A. And whenever there was a tenant or anything, we would definitely just give it up. (90:2-3)

\* \* \* \*

A. Move our merchandise out of there. (**Y-2 Exhibit 26**, 51:17, 20-24; 52:4-25; 89:21-22; 90:5)

29. On January 21, 2019, Wally Hamed stated in his deposition testimony that the rent check for \$5,408,806.74 for the Sion Farm location was pursuant to a settlement agreement that included all that was owed by the Partnership for the Plaza Extra-East operations from 2004 through 2011. This agreement was reached by using a percentage of the sales – NOT SQUARE FOOTAGE -- to determine the rent.

Q.[Mr. Hartmann]. . . . Now, you were asked some questions by counsel about Judge Brady's rent order. . .

You said that -- in response to her request, that you felt that you were paying rent on. . . anything that was being used by the supermarket; is that correct?

A. [WALLY HAMED] Yes, sir. (61:18-25)

\* \* \* \*

Q. . . . Why did you think you were paying the rent on 5 and 8, as well as anything else at Sion Farm?

A. 'Cause the agreement and the discussions and the final payment never stated whether it was by square footage or not. Everything that was occupied by Plaza Extra Sion Farm location. We agreed on the rent for everything that Plaza Extra Sion Farm used. (62:1-8)

\* \* \* \*

Q. . . .So what you're saying, if I understand you, is that rent was paid for the entire enterprise of Plaza Extra, regardless of which facilities?

A. Yes, at the Sion Farm location. (62:16-19)

\* \* \* \*

Q. [D]o you recall what the check stated in terms of what it was for?

A. It was for Plaza Extra Sion Farm location.

Q. . . .[W]as that paid at the end of . . .a negotiation with Fathi Yusuf?

A. Yes. (63:1-6)

\* \* \* \*

Q. . . .Can you identify what that document is?

A. Yes, it's a check dated February 7th, 2012 in the amount of 5,408,806.74 cents made out to United Shopping Plaza, out of the Plaza Extra operation account. "Memo: PLAZA EXTRA (SION FARM) RENT." (63:19-24)

\* \* \* \*

Q. . . .And now that you've seen that check, do you recall how that number was arrived at?

A. Yes.

Q. . . .And how was that?

A. Well, Fathi Yusuf came up with a -- a typed-out paper. Discussed what the Plaza Tutu was paying and how the rent was going. And he always said, Well, based on what was going on at the time, Plaza Tutu was really doing a lot much better business in St. Thomas than St. Croix. And now it's reversed, where Plaza Sion Farm is doing much more business than the Plaza Tutu, so, therefore, it's going to be based on percentage of sales, and we went through the calculation and came up with the number for the entire rent for Plaza Extra Sion Farm of five million four -0- eight.

Q. . . .And I'm now going to show you a document that's been cross-labeled Exhibit 6 for the purpose of this deposition, but which I'll be using this afternoon as Exhibit Claim Y-2, Exhibit 2. (64:3-20)

\* \* \* \*

Q. And could you show me where, on that document, it denotes which square footage is being charged for?

A. None.

Q. What do you mean, "none"?

A. There's no square footage here. (65:1-5)

\* \* \* \*

Q. Well, how did you know what you were paying for?

A. We based it on -- we based it on sales.

Q. Sales of what?

A. Sales of the store. Of the Plaza Extra Sion Farm store.

Q. So you were paying rent for anything that Plaza Extra Sion Farm store was using?

A. It was allocated as that, yes.

Q. How do I know that?

A. Well, that's what it says. I mean, it's right there. Percentage that we ended up with was total -- paid as a percentage of sales, okay, which comes up to 2.33 percent of sales. Over a period of -- from 2004 to 2011, you have \$273 million in sales.

Q. So what you're saying is that when you and Mr. -- who did these negotiations? Was this Mr. Yusuf and yourself or Mr. Yusuf and your father? Who did this? (65:9-25)

A. Me and Mr. Yusuf.

Q. . . . So when you negotiated for the -- this \$504,000 -- \$5,400,000, you're saying that Mr. Yusuf was charging the overall entity, the grocery store, for whatever it was using at Sion Farm based on sales, not square footage; is that correct?

A. That is correct, sir.

Q. . . . And -- and I would ask you to look at the very last line of that. (66:1-9)

\* \* \* \*

A. "Calculated Rent -- (66:14)

\* \* \* \*

A. -- as a % of Sales Sion Farm 5,408,806.74."

Q. So that says "Sion Farm."

Could you tell me what Sion Farm is?

A. Sion Farm is Plaza Extra, referred to as Plaza

Extra East, in the United Shopping Plaza. (66:16-20)

\* \* \* \*

Q. . . .But pursuant to these, you did do a check which was signed, which we already looked at, which was (66:24-25) Exhibit 5?

A. Yes, sir.

Q. . . .And that's why, at the bottom of that document, it says rent for Sion Farm, not rent for a particular square footage, or a particular bay, or a particular storage area, or anything else; is that correct?

A. That's correct. (**Y-2 Exhibit 26**, 61:18-25; 62:1-8,16-19; 63:1-6, 9-24; 64:3-20; 65:1-5, 9-25; 66:1-9, 14, 16-20, 24-25; 67:1-7 and **Y-2 Exhibit 2**)

30. On January 21, 2019, Fathi Yusuf testified in his deposition that he determined the cost per square foot for Bay 8 by looking at the amount of rent paid by the tenant (Ali Hardware) occupying the space *prior* to 1994 and prior to the Partnership's use of Bay 8. For Bay 5, Yusuf determined the cost per square foot by looking at the amount paid by a *subsequent* tenant of the space, Diamond Girl. According to the Diamond Girl's leases, Diamond Girl rented Bay 5 for \$10.00 per square foot from 2001 to 2011 and then added Bay 4 in the December 2011 lease. When Diamond Girl began renting *both* Bays 4 and 5, the price was \$12.00 per square foot. (**Y-2 Exhibit 14** and **Y-2 Exhibit 16**)

Q. [Mr. Hartmann]. . . .In your claim, your lawyers have made a claim for you in this case --

A. [FATHI YUSUF] Yes.

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

A. Yes.

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

A. Yes, sir.

Q. . . .Who -- where does that cost per square foot come from?

A. All right, sir. The number is -- it came from the (77:15-25) previous tenant, Ali Hardware. I was renting it for \$5 a square foot, plus maintenance and property tax. When I build the Plaza Extra, I billing just

dollar fifteen a square foot for maintenance and I forget to bill for the property tax. That's is for Number 8. It does not come out of my head. It come out from the previous tenants. (78:1-7)

\* \* \* \*

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

A. I -- I had before, I think it was the pharmacy. And we catch fire. After the fire, it was vacant. And we build the store in 1994. (85:2-7)

\* \* \* \*

After Plaza Extra, there is no tenant whatsoever took that place, except the people, the Diamond Girl, and they were paying \$12. That's why I base my rent based on Diamond Girl rent. (85:2-7, 13-16)  
(Y-2 Exhibit 13, 77:15-25; 78:1-7, 85:2-7, 13-16)

31. On January 21, 2019, Fathi Yusuf conceded that he never told Hamed nor established what the price per square foot would be charged at the time Plaza Extra-East used Bays 5 and 8.

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

A. [FATHI YUSUF] I said, I will charge you rent.

Q. You did?

A. Yes.

**Q. And how much did you say?**

**A. I have no idea.**

**Q. You have no idea.**

**A. I have no idea.**

Q. So it could be \$2?

A. When I have a new tenant, I establish the price. (89:1-11)

32. In his January 21, 2019 testimony, Fathi Yusuf testified that tenants other than Plaza Extra East had leases for Bays 5 and 8. He also stated that he could not move out tenants with a lease, such as Diamond Girl, during their lease period.



Yusuf conceded that Plaza Extra-East did not have leases and could be moved out of Bays 5 and 8 at any time.

Q. [Mr. Hartmann]. . . .So -- so when you had this other tenant in there, you had a lease; is that correct?

A. [FATHI YUSUF] After the fire, sir. After Plaza Extra fire, the first tenant called me, myself, a tenant. The first tenant was Plaza Extra East. The second tenant was Diamond Girl. (86:2-6)

\* \* \* \*

A. Diamond Girl is \$12.

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

A. Yes.

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

A. No.

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

A. Yes.

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

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

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

A. Yes.

Q. -- so you want them in there for the period of the lease? (86:8-25)

A. Yes.

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

A. Yeah.

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

A. Yeah, -- (87:1-6)

\* \* \* \*

A. -- that's exactly what happened.

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

A. What?

Q. Could you move Plaza Extra out any time?

A. Yes.

Q. . . .So they weren't really a tenant?

A. Who?

Q. Plaza Extra? (87:8-15)

\* \* \* \*

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

A. Who?

Q. Didn't you tell him Hamed?

A. Yeah, yeah.

Q. You did?

A. Yeah.

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

A. Yeah, because I give it to them and they used it.

I really feel bad to have that bays always close. It does not look good for the building. But no tenant come in.

When the tenant come, the right one, we negotiate, and he have it for \$12. (88:3-16)

\* \* \* \*

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

Q. You wanted a tenant in there?

A. I want a tenant, yes.

Q. Because the tenant will pay you full value?

A. Not only that -- this is part of it, yes, but this (89:21-25) is a shopping center; it's not a warehouse. (Y-2 Exhibit 13, 86:2-6, 8-25; 87:1-6, 8-15; 88:3-16; 89:21-25; 90:1)

33. Despite the fact that the FBI collected the document from United's offices, on January 21, 2019, Fathi Yusuf testified that he never saw year-to-date summaries on rents or monthly rental statements for the United Shopping Plaza Bays, similar to those documents that were attached to the August 27, 2001 letter to Fathi Yusuf from Thomas Luff, the United Shopping Plaza's Property Manager.

[Mr. Hartmann] I'm going to hand you a document dated August 22nd (sic), 2001 on United Corporation letterhead. Says United Corporation, United Shopping Plaza. (71:20-22)

\* \* \* \*

Q. And it's signed by Thomas W. Luff, the property manager. (71:24-25)

\* \* \* \*

Q. . . . Do you remember receiving this letter?

A. No, sir. (72:5-6)

\* \* \* \*

Q. Do you doubt that you received it?

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

Q. So you've never seen this document?

A. I never seen it before. (72:9-13)

\* \* \* \*

Q. Now, if you look at the documents that are attached to this letter, which are analyses of the rents and the vacancies for the property in 2001, did you receive those types of documents from -- or did Mike receive those documents? (73:16-20)

\* \* \* \*

Q.. . . I'm saying that the (73:25) types of documents that are in it, year-to-date summaries on rents, the monthly rental statements, did you get those normally or did Mike get those normally?

A. I never received it, not even one time. Not normally or not normally. I have never received such documents. (**Y-2 Exhibit 13**, 71:20-22, 24-25; 72:5-6, 9-13; 73:16-20; 74:1-6)

34. Fathi Yusuf claimed that he did not want Plaza Extra-East using Bays 5 and 8 because the United Shopping Plaza was a retail store, not a warehouse. However, the October 2002 lease for Bay 8 shows that it was being leased for “the operation of a Wholesale Grocery Warehouse.” (**Exhibits** \_\_, p. \_\_ and \_\_, p. \_\_)

A. [FATHI YUSUF]. . .but this (89:25) is a shopping center; it's not a warehouse. (p. 90, line 1)

\* \* \* \*

A. I prefer to have anybody but not Plaza Extra. (90:13)

\* \* \* \*

A. I tell you that is built for retail store, not for warehousing. (**Y-2 Exhibit 13**, 89:25-90:1, 13,19-20)

35. On January 21, 2019, Fathi Yusuf testified that he was working in St. Thomas in 2001.

[Mr. Hartmann] I'm going to hand you a document dated August 22nd (sic), 2001 on United Corporation letterhead. Says United Corporation, United Shopping Plaza. (71:20-22)

\* \* \* \*

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

A. Yes. The simple reason, because I was in St. Thomas working all the time. (Y-2 Exhibit 13, 71:20-22; 72:21-23)

36. On January 22, 2019, Waheed "Willie" Hamed testified in his deposition that he heard telephone conversations between Fathi and Mike Yusuf and Wally Hamed where Fathi Yusuf gave Mike Yusuf and Wally Hamed permission to use Bays 5 and 8 as a warehouse.

[Ms. Perrell]. . . .With regard to -- there's a claim that United is making for rent that they're claiming is due as to Bays 5 and 8 at the United Shopping Center relating to Plaza Extra East. (6:21-24)

\* \* \* \*

Q. . . .So you're saying that there were telephone conversations between Mr. Yusuf, Wally, and Mike saying that they could use the warehouse?

A. [WILLIE HAMED] Yes, ma'am. (Y-2 Exhibit 27, 6:21-24, 7:5-8)

37. On January 22, 2019, Willie Hamed testified that when Fathi Yusuf gave permission to Mike Yusuf and Wally Hamed's to use the United Shopping Plaza's bays as warehouse space for Plaza Extra East, Yusuf did not make a request for rent or say rent would have to be paid at some point.

Q. . . .So you're saying that there were telephone conversations between Mr. Yusuf, Wally, and Mike saying that they could use the warehouse [Bay 5 and/or 8]?

A. Yes, ma'am. (7:5-8)

\* \* \* \*

Q. . . .And in the conversation, was Mr. Yusuf indicating that they could use the warehouse [Bay 5 and/or 8] rent-free?

A. There was no mention of any money, any compensation for anything.

Q. . . .But did he say the words "free"? It sounds like you didn't -- he didn't say it one way or the other?

A. He didn't say the word "free" at all and he didn't say there was money to be paid. So all I know, that he was on the phone. We have

a small office. And he would tell him, Go ahead and use the warehouse. (Y-2 Exhibit 27, 7:5-8, 15-24)

38. On January 22, 2019, Willie Hamed testified in his deposition that he had seen the *Accounts Receivable Current Month* reports before and noted that they were faxed to the St. Thomas communal office fax on at least a monthly basis by the St. Croix accountant. Willie Hamed stated that “[w]hoever gets the fax, gives it to the respective party.”

Have you ever seen this before?

A. (Witness reviews document.) I've seen -- not these, but I've seen something like this. Like these here. (Indicating.)

Q. Okay. When you say, "these here," we've got some numbers on the bottom – (8:20-25)

\* \* \* \*

Q. -- of the pages that we need to identify. . . . (9:2)

\* \* \* \*

A. . . .FBIX237825.

Q. Okay. You've seen that one before?

A. I've seen something, yeah. I've seen something like that, yes.

Q. When did you -- when did you first --

A. I don't recall when. These -- these used to come in from their accountant in St. Croix to Yusuf. (9:8-14)

\* \* \* \*

A. To the accountant at the time. I think it was Ben Irving or whoever the accountant was. (9:16-17)

\* \* \* \*

Q. . . .**How many have you seen?**

**A. Numerous. At least once a month.**

Q. . . .Why would you have an occasion to see these, because these relate to the tenant accounts?

A. We're all in the same office. Comes on our fax.

Whoever gets the fax, gives it to the respective party. (Y-2 Exhibit 27, 8:20-25; 9:2, 8-14, 16-17, 20-25)(Emphasis added.)

39. On January 22, 2019, Willie Hamed testified that the St. Thomas fax did not always have the store's fax number and name on the header of the fax because "sometimes we've had our fax break down, whether in St. Croix or St. Thomas, so we replace fax. And sometimes when you're new and you don't program it the way to your number and your company name, then it won't print that."

Q. . . .Other than what we've just discussed with regards to Bay 5 and 8 -- well, let me ask you this: With regard to -- with regard to the fax, if a document had come across the fax machine at Plaza Extra Tutu Park, -- (10:15-18)

\* \* \* \*

Q. -- wouldn't it have some kind of an indication of a fax on the top of the page? I mean, this may be a different copy, but is that what would happen?

A. Yes and no, because sometimes we've had our fax break down, whether in St. Croix or St. Thomas, so we replace fax. And sometimes when you're new and you don't (10:20-25)

program it the way to your number and your company name, then it won't print that. Or if you e-mail it from your computer, it won't come up with that thing that you're requesting. (Y-2 Exhibit 27, 10:15-18, 20-25; 11:1-4)

40. On March 31, 2019, in a declaration by Kim Japinga, paralegal for the Hameds, related that the August 27, 2001 letter to Fathi Yusuf from Thomas Luff regarding the rent per square foot, the amount of rent collected and the amount of rent outstanding for the United Shopping Plaza Bays, was found in box 148, a box containing Plaza Extra documents that were seized during the 2001 FBI raid of the Plaza Extra stores and returned to the Partnership by the FBI Puerto Rico office in 2014. (Y-2 Exhibit 28)

**Dated:** April 1, 2019



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### CERTIFICATE OF SERVICE

I hereby certify that on this 1st day of April, 2019, I served a copy of the foregoing by email (via CaseAnywhere), as agreed by the parties, on:

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A handwritten signature in blue ink, appearing to read "Carl J. Haddad", with a long horizontal flourish extending to the right.



**CERTIFICATE OF COMPLIANCE WITH RULE 6-1(e)**

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

A handwritten signature in blue ink, appearing to read "Carl J. Hamed", with a long horizontal flourish extending to the right.