

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

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

vs.

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

*Defendants and Counterclaimants.*

vs.

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

*Counterclaim Defendants,*

---

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

vs.

**UNITED CORPORATION**, *Defendant.*

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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.*

---

**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**

**HAMED'S RULE 6.1(d) NOTICE OF SUPPLEMENTATION  
OF HIS MOTION FOR PARTIAL SUMMARY JUDGMENT  
AS TO HAMED CLAIM H-163 - DAMAGES FOR WRONGFUL DISSOCIATION**

Hamed provides, pursuant to *V.I. Rule of Civil Procedure* 6.1(d)(2),<sup>1</sup> a declaration (**Exhibit A**) and appended evidentiary documents (**Group Exhibits 1 & 2**) material to one of the central issues in Hamed Claim H-163, “Damages for Wrongful Dissociation.” He asks the Master to consider these in relation to his *Motion for Partial Summary Judgment*.

Hamed contends in that *Motion of Partial Summary Judgment*, filed November 18, 2019, at pages 11-12, that:

Failing to get a proper settlement that would have correctly ended the Partnership as required by RUPA, or to make the requisite judicial filing under the judicial dissolution provisions of RUPA, Yusuf began a series of acts of breach and repudiation in September 2012. He undertook by force what he could not do by negotiation and did not want to do by a RUPA dissolution filing because it would be too generous to his Partner. . . .He denied its existence in Superior Court filings, in Federal Court filings, and police reports. **Judge Brady noted that Yusuf first tried to negotiate an end to the Partnership but did not do so. Failing that, Yusuf decided to steal Hamed’s half by saying there was no Partnership.** The sole purpose of Yusuf’s actions, and what he would have achieved if successful, was to steal Hamed’s half of the Partnership, the future profits, Hamed’s past contributions, the goodwill and \$43 million dollars sitting in Partnership bank accounts. He would also have gotten the funds that the Partnership put into the construction of the East store. Hamed MIGHT have gotten an annuity—if Yusuf was feeling generous. (Emphasis added.)

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<sup>1</sup> Rule 6-1. Motion Requirements; Form; Support; Timing

\* \* \* \*

d) Supporting Affidavits or Documents. When allegations of fact not appearing of record are relied upon in support of a party's motion, response, or reply, unless the court grants permission for a different schedule for the filing of supporting materials: (1) all then-available affidavits and other documents supporting the party's position shall be filed simultaneously with the motion, response or reply; **(2) any supplemental affidavits or other documents in support of the party's position on the motion must be filed 10 days prior to hearing of the motion;** and (3) if supplemental affidavits or other documents are filed by any party under subpart (d)(2), any other party may submit additional affidavits or documents at least 5 days prior to hearing of the motion. (Emphasis added.)

In so doing, Hamed made reference to two of Judge Brady's findings: (1) That Yusuf denied the existence of the Partnership, and (2) that before beginning the wrongful dissociation, Yusuf "sent a Proposed Partnership Dissolution Agreement to Hamed, which described the history and context of the parties' relationship, including the formation of an oral partnership agreement to operate the supermarkets"—and initially informed Yusuf of his intent to dissolve the Partnership, but abandoned a proper dissolution when Hamed would not agree to a forced, low buyout.

Hamed's undersigned counsel failed to reference and attach **Group Exhibit 1** (Pre-Denial 2012 Statements About Partnership's Existence & History) and **Group Exhibit 2** (2012-2013 Denials of the Partnership)—at the end of that bolded sentence to support that contention. The documents are already of record in this action. See Attached Declaration.

1. **Group Exhibit 1** consists of three documents:

**Exhibit 1-a** (originally PI Hearing Exhibit 10) is an email dated February 10, 2012, from Yusuf's counsel (DeWood) which states "I will be sending a formal notice of partnership dissolution notice. . . ."

**Exhibit 1-b** (originally PI Hearing Exhibit 11) is a following letter from Yusuf's counsel (DeWood) which states:

This letter is to confirm the parties' desire to dissolve the above referenced partnership. Partnership dissolution will involve appropriate planning to properly account for each of the partner's interest in the partnership, and a well -executed agreement memorializing the understanding of the parties.

As it stands, the partnership has three major assets: Plaza Extra- West (Grove Place, including the real property), Plaza Extra -- East (Sion Farm) and Plaza Extra (Tutu Park, St. Thomas). I have been advised that there are ongoing discussions between you, as your father's fully authorized agent, and Mr. Yusuf regarding which of the stores each partner will retain upon dissolution.

**Exhibit 1-c** (originally PI Hearing Exhibit 12) is an email dated March 13, 2012, from Yusuf's counsel (DeWood) which encloses a proposed draft of

a “Partnership Dissolution Agreement.” That agreement from DeWood had provisions in it such as “the Partners have operated the Partnership under an oral partnership Agreement since 1986” and “the Partnership was formed for the purposes of operating Super Markets in the District of St Croix, and St. Thomas.” However, it also contained such bizarre, Yusuf-controlled provisions as:

- a. Yusuf would acquire all of Plaza East—the assets, fixtures, goodwill and going concern value—for just \$250,000, plus inventory at 50% of value. (Page 1) It also threaten that if Hamed does not take this, the rent will increase to \$250,000 per month.
- b. Same for Plaza Extra West, except the amount would be \$375,000 and Yusuf would “Acquire Lease for the premises for a term of 20 years, with an option to terminate lease subject to a SIX (6) months written notice. Rent is hereby offered for \$24,000 a month.
- c. There is an equally unbalanced, complex provision for Tutu.
- d. Yusuf’s bogus \$2 million claim resurfaces, there is an implicit assumption that United owns all IP as it explicitly claims all leases, and there are no assurances what share of the \$42 million in cash Hamed might be allowed.

**2. Group Exhibit 2** consists of 3 documents<sup>2</sup> where, after the Partnership Dissolution document was not signed by Hamed, Yusuf explicitly stated, under oath or in filings to a Court, that: **there never had been a partnership**, that Hamed had never (in 26 years) even mentioned or thought of this as a Partnership, that Hamed was just an illiterate employee and there was never any Partnership. (In chronological order.)

- a. **Exhibit 2-a** is Yusuf’s October 10, 2012 averment to the federal court that:

The Plaintiff in his Complaint, and **for the first time in 26 years, alleges that he is a partner with Yusuf**. Hamed refers to it as the “Yusuf & Hamed partnership... Without specificity, the Complaint alleges that the parties created the “Hamed & Yusuf partnership” and

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<sup>2</sup> There are many, many, many examples of Yusuf denying the existence of the partnership. But three examples seems to be a favorite illustrative number, and will suffice to make the point.

"used a corporate form in mid -1986 for tax purposes." This assertion is belied by clear public records showing that United was already in operations back in 1979. See Exhibit C: United Corporation's Articles of Incorporation. **With no evidence that the co called "Hamed & Yusuf partnership" ever existed.**

- b. **Exhibit 2-b** is the March 4, 2013, *Defendants' Proposed Findings of Fact and Conclusions of Law Relating to Plaintiffs' TRO/Preliminary Injunction Application* in *Hamed v Yusuf et. al.* in the Superior Court of the Virgin Islands, Division of St. Croix, Civ. No. SX-12-CV-370. In it, Yusuf states:

110. Mohammad Hamed simply worked in the Plaza Extra East supermarket's warehouse, from which position he "retired" a "[l]ong time" ago.

- c. **Exhibit 2-c** is Yusuf's counsel's (DiRuzzo) statements to the VI Supreme Court in oral argument on July 9, 2013, at 6-7. (Emphasis added.)

20 MR. DIRUZZO: Well, I -- I will put it this  
21 way: First of all, the statements from Fathi Yusuf that it  
22 was a quote, unquote, partnership, that is a statement of a  
23 layperson not versed in the laws.  
24 Second, and directly answering your question,  
25 the nature of the relationship, the best way I could phrase  
26 You, or Mr. Yusuf, concedes that there was an  
27 oral agreement at the inception. **How -- how does he term**  
28 **this oral agreement? What does he call it?**  
29 **He denies that its a partnership -**

Page 7

1 this, a very difficult way to characterize it, is at best  
2 Mohammad Hamed made a capital contribution, and in turn  
3 received an income stream similar to an annuity. But that  
4 does not make him a de jure or de facto partner.  
5 You want -- **if the Court wants to look at it**  
6 **as a financing arrangement, that's fine. If you want to**  
7 **look at it as an annuity, that's fine too.** But all the  
8 hallmarks of a partnership are not there. The mutual  
9 control, all the things that you think of when you're a  
10 typical partner between two attorneys in a law firm, that is  
11 not here. And that's why, **at the bottom of this case**, the  
12 allegations that Fathi Yusuf and Mohammad Hamed had an oral,  
13 well, **partnership agreement, are highly, highly disputed.**

**Dated:** November 29, 2019



**Carl J. Hartmann III, Esq.**  
*Co-Counsel for Plaintiff*  
5000 Estate Coakley Bay, L6  
Christiansted, VI 00820  
Email: [carl@carlhartmann.com](mailto:carl@carlhartmann.com)  
Tele: (340) 719-8941

## CERTIFICATE OF SERVICE

I hereby certify that on this 29th day of November, 2019, I served a copy of the foregoing by email, as agreed by the parties, on:

**Hon. Edgar Ross**

Special Master  
edgarrossjudge@hotmail.com

**Gregory H. Hodges**

**Charlotte Perrell**

Law House, 10000 Frederiksberg Gade  
P.O. Box 756  
St. Thomas, VI 00802  
ghodges@dnflaw.com

**Mark W. Eckard**

Hamm, Eckard, LLP  
5030 Anchor Way  
Christiansted, VI 00820  
mark@markeckard.com

**Jeffrey B. C. Moorhead**

CRT Brow Building  
1132 King Street, Suite 3  
Christiansted, VI 00820  
jeffreymlaw@yahoo.com



## CERTIFICATE OF WORD/PAGE COUNT

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



IN THE SUPERIOR COURT OF THE VIRGIN ISLANDS  
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EXHIBIT  
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**EXHIBIT A -- DECLARATION  
AS TO HAMED'S NOTICE OF SUPPLEMENTATION –  
AS TO HAMED CLAIM H-163 - DAMAGES FOR WRONGFUL DISSOCIATION**



1. The undersigned is an attorney admitted to the Practice of law in the USVI, Bar No. 48.
2. This Declaration is true and accurate to the best of my knowledge, and is made under oath.
3. The statements herein are provided in support of a supplementation pursuant to *V.I. Rule of Civil Procedure* 6.1(d), a document material to the central issue with regard to Hamed Claim H-163 – Damages for wrongful dissociation.
4. Hamed contends in his Motion of Partial Summary Judgment, filed November 18, 2019, at pages 11-12, that:

Failing to get a proper settlement that would have correctly ended the Partnership as required by RUPA, or to make the requisite judicial filing under the judicial dissolution provisions of RUPA, Yusuf began a series of acts of breach and repudiation in September 2012. He undertook by force what he could not do by negotiation and did not want to do by a RUPA dissolution filing because it would be too generous to his Partner. . . .He denied its existence in Superior Court filings, in Federal Court filings, and police reports. **Judge Brady noted that Yusuf first tried to negotiate an end to the Partnership but did not do so. Failing that, Yusuf decided to steal Hamed’s half by saying there was no Partnership.** The sole purpose of Yusuf’s actions, and what he would have achieved if successful, was to steal Hamed’s half of the Partnership, the future profits, Hamed’s past contributions, the goodwill and \$43 million dollars sitting in Partnership bank accounts. He would also have gotten the funds that the Partnership put into the construction of the East store. Hamed MIGHT have gotten an annuity—if Yusuf was feeling generous.

5. In so doing, Hamed made reference to two of Judge Brady’s findings: (1) That Yusuf repeatedly denied the existence of the Partnership, and (2) that before beginning the wrongful dissociation, Yusuf “sent a Proposed Partnership Dissociation Agreement to Hamed, which described the history and context of the parties’ relationship, including the formation of an oral partnership agreement to

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6. Hamed failed to reference and attach **Group Exhibit 1** (Pre-Denial 2012 Statements About Partnership’s Existence and History) and **Group Exhibit 2** (2012-2013 Denials of the Partnership)—in support of that contention. These are all documents of record, admitted into evidence at the PI hearing, day one.

7. **Group Exhibit 1** consists of three documents:

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b. **Exhibit 2-b** is the March 4, 2013, *Defendants' Proposed Findings of Fact and Conclusions of Law Relating to Plaintiffs' TRO/Preliminary Injunction*

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<sup>1</sup> There are many, many, many examples of Yusuf denying the existence of the partnership. But three examples seems to be a favorite illustrative number, and will suffice to make the point.

*Application* in *Hamed v Yusuf et. al.* in the Superior Court of the Virgin Islands, Division of St. Croix, Civ. No. SX-12-CV-370. In it, Yusuf states:

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13 **well, partnership agreement, are highly, highly disputed.**

**Dated:** November 29, 2019



**Carl J. Hartmann III, Esq.**

*Co-Counsel for Plaintiff*

5000 Estate Coakley Bay, L6

Christiansted, VI 00820

Email: carl@carlhartmann.com

Tele: (340) 719-8941

**From:** Nizar DeWood <dewoodlaw@gmail.com>  
**To:** Wally Hamed <wallyhstx@yahoo.com>  
**Sent:** Friday, February 10, 2012 10:58 AM  
**Subject:** Powers of Attorney - Dissolution of Partnership

Hello Wally,

I wish to confirm our discussions in the following two matters: 1) Power of Attorneys to verify and audit financial information currently in dispute, 2) Partnership Dissolution.

**I. Power of Attorney**

As agreed between you and Mr. Yusuf, the Power of Attorney will be required for each of you, your father, brothers, wife, and adult children. This power of attorney will be limited to obtaining any and all information regarding bank and investment accounts that may have been opened, closed, used for wire transfers, and opened on behalf of other third parties. The banks that will be covered will include the Virgin Islands, St. Maarten, New York, and the Middle East. Any and all information obtained will be held in confidence by my office, and will be used for the sole purpose of financial verification.

**II. Dissolution of Partnership (Yusuf & Hamed)**

I will be sending a formal notice of partnership dissolution notice, with a list of to-dos that will be required to complete an orderly dissolution. See attached email. I understand that you and Mr. Yusuf are still discussing various terms and aspects of the dissolution. I will await the final decision made.

Your mailing address to address all originals will be:

**Mohammad Hamed**  
**Walid Hamed**  
**PO 763**  
**Christiansted, VI 00821**

Thank you.

Nizar A. DeWood, Esq.  
The DeWood Law Firm  
3070 Kronprindsens Gade, Suite 208  
St. Thomas, V.I. 00802  
T. (340) 774-0405  
F. (888) 398-8428



THE DEWOOD LAW FIRM

3070 Kronprindsens Gade, Suite 208  
St. Thomas, V.I. 00802  
T. (340) 774-0405  
F. (888) 398-8428  
Info@dewood-law.com

Mohammad Hamed  
c/o Walid Hamed  
PO Box 763  
Christiansted, V.I. 00821

VIA EMAIL ONLY

Re: Dissolution of Partnership  
Yusuf & Hamed

Dear Mr. Hamed,

This letter is to confirm the parties' desire to dissolve the above referenced partnership. Partnership dissolution will involve appropriate planning to properly account for each of the partner's interest in the partnership, and a well-executed agreement memorializing the understanding of the parties.

As it stands, the partnership has three major assets: Plaza Extra – West (Grove Place, including the real property), Plaza Extra – East (Sion Farm) and Plaza Extra (Tutu Park, St. Thomas). I have been advised that there are ongoing discussions between you, as your father's fully authorized agent, and Mr. Yusuf regarding which of the stores each partner will retain upon dissolution. Accordingly, I will await the final decision that you and Mr. Yusuf may reach.

Additionally, as Mr. Yusuf has indicated, he remains resolute about the rental terms of the Plaza Extra – East. Unless the parties arrive at a different understanding, I will assume that Mr. Yusuf will not agree to continue the lease beyond June 30<sup>th</sup>, 2012 on that property.

I look forward to hearing from you. Thank you.

Sincerely,

  
Nizat A. DeWood, Esq.

cc: Fathi Yusuf

EXHIBIT  
1-b



From: "Nizar DeWood" <dewoodlaw@gmail.com>  
Date: March 13, 2012 12:41:36 PM EDT  
To: "Wally Hamed" <wallyhstx@yahoo.com>  
Subject: Partnership dissolution agreement

Salam Wally,

Please find the attached proposed Partnership Dissolution Agreement. I look forward to hearing from you at your earliest convenience.

Thank you.

Nizar A. DeWood, Esq.

The DeWood Law Firm  
3070 Kronprindsens Gade, Suite 208  
St. Thomas, V.I. 00802  
T. (340) 774-0405  
F. (888) 398-8428




EXHIBIT  
1-c

EXHIBIT

12

Blumberg No. 5208

00

000

## PROPOSED PARTNERSHIP DISSOLUTION AGREEMENT

THIS AGREEMENT, dated this \_\_\_\_ day of March 2012, is by and between FATHI YUSUF and MOHAMMAD HAMED (collectively called "Partners"), formerly partners of a partnership known informally as *Yusuf & Hamed* (the "Partnership").

WHEREAS, the Partners have operated the Partnership under an oral partnership Agreement since 1986.

WHEREAS, the Partnership was formed for the purposes of operating Super Markets in the District of St. Croix, and St. Thomas; and

WHEREAS, serious dispute and disagreement between the partners relating to financial matters of the partnership, resulting in the partners unable to continue as partners; and

WHEREAS, Fathi Yusuf (the "Withdrawing Partner") has withdrawn from the Partnership by written notice dated February, 2012, for withdrawal as of February 10<sup>th</sup>, 2012 (the "Withdrawal Notice"); and

WHEREAS, the Partners desire to dissolve the partnership by way of liquidation and distribution of its assets, unless each partner submits in writing a buyout offer for each of the three major assets constituting the partnership, as herein shown in Section 1 of this agreement; and

WHEREAS, the Partners have shared profits, losses, deductions, credits, and cash of the Partnership; and

WHEREAS, the Partners have certain rights and responsibilities under the Virgin Islands Revised Uniform Partnership Act ("Act") governing dissolution of partnerships, and hereby desire to vary or confirm by the terms of this Agreement;

NOW, THEREFORE, in consideration of the mutual covenants, promises, and conditions contained herein, the parties agree as follows:



## SECTION 1. ASSETS SUBJECT TO LIQUIDATION

The Partners agree that the following three on-going businesses constitute the assets of the Partnership.

### Section 1.1: Assets of the Partnership

1. PLAZA EXTRA EAST- Estate Sion Farm, St. Croix
2. PLAZA EXTRA WEST- Estate Grove, St. Croix (Super Market Business ONLY)
3. PLAZA EXTRA – Tutu Park, St. Thomas

### Section 1.2. Dissolution of Partnership.

The Partnership shall be dissolved effective as of the date specified in the Withdrawal Notice, and the business of the Partnership shall cease effective February 10<sup>th</sup>, 2012. Any continuing operation shall be for the sole purpose of winding down the partnership. The parties agree that the Withdrawal Notice is effective to dissolve the Partnership and is not a breach of the partnership relationship. The parties agree to the following buyouts of the assets listed in Section 1.1.

### Section 1.3 FIRST PARTNERSHIP ASSET: Plaza Extra East – Sion Farm, St. Croix

Partner Fathi Yusuf ("Partner Yusuf") has orally terminated the lease agreement for Plaza Extra East in September 2010. A written confirmatory termination letter was mailed on January 20<sup>th</sup>, 2012. Partner Yusuf shall make the following buy-out offer:

1. Acquire the assets & fixtures - \$250,000 (50% of Partner Hamed's interest)
2. Acquire Inventory based on cost (50% of Partner Hamed's Interest).
3. The parties agree that the equipment and fixtures is in proper working condition during the first six months from the date of closing. Should any equipment experience a breakdown during the first six months of closing, both parties shall bear the cost of the repairs equally.

Should the foregoing terms of the buyout offer set forth in paragraphs 1 to 3 above is rejected, the assets, fixtures, and inventory of Plaza Extra – East shall be liquidated and the

premisses turned over to Partner Yusuf immediately. Partner Yusuf, by virtue of his ownership of the premisses, will hereby enforce the new rental rate of \$200,000 per month commencing January 31, 2012 until March 31<sup>st</sup>, 2012. Thereafter, the monthly rental rate shall increase to \$250,000 per month until June 30<sup>th</sup>, 2012. After such date, the tenancy shall terminate forthwith without further notice. Failure to vacate the premisses by June 30<sup>th</sup>, 2012 shall result in an action for unlawful detainer be filed in the Superior Court of the Virgin Islands.

#### **Section 1.4 SECOND PARTNERSHIP ASSET: Plaza Extra West – Grove Place, St. Croix**

Partner Yusuf hereby makes the following buy-out offer:

1. Acquire the assets & fixtures - \$375,000 (50% of Partner Hamed's interest).
2. Acquire Inventory based on cost (50% of Partner Hamed's Interest).
3. Acquire Lease for the premisses for a term of 20 years, with an option to terminate lease subject to a SIX (6) months written notice. Rent is hereby offered for \$24,000 a month. Property tax assessments shall be paid in half by each partner.
4. The parties agree that the equipment and fixtures is in proper working condition during the first six months from the date of closing. Should any equipment experience a breakdown during the first six months of closing, both parties shall bear the cost of the repairs equally.
5. All inventory, improvements, and fixtures will be transferred by a Bill of Sale, with the applicable UCC-4 Bulk Transfer notices according to the terms set out in Exhibit B of this Agreement at the time of closing.

#### **Section 1.5**

#### **THIRD PARTNERSHIP ASSET: Plaza Extra – Tutu Park, St. Thomas**

**1.5.1** Unless Partner Hamed makes a written offer for the purchase of Plaza Extra – Tutu Park, St. Thomas, said business shall be liquidated with its assets, inventory, and fixtures sold at fair market value. The lease for this asset shall expire on October 27<sup>th</sup>, 2018, and is in the name of United Corporation only. Should Partner Hamed wishes to make an offer for the purchase of Partner Yusuf's partnership interest in Plaza Extra Tutu Park, St. Thomas, Partner Hamed shall do so in writing within 14 days.

1.5.2 Should Partner Hamed refuse to offer to purchase said asset, Partner Yusuf hereby makes the following written offer of purchase:

- i) Partner Hamed's fifty (50%) interest in Inventory at actual cost plus freight and insurance to be determined at time of closing.
- ii) Equipment and fixture at \$250,000 (50% interest of Partner Hamed).
- iii) The parties agree that the equipment and fixtures is in proper working condition during the first six months from the date of closing. Should any equipment experience a breakdown during the first six months of closing, both parties shall bear the cost of the repairs equally.
- iv) Partner Yusuf agrees to pay \$1,000,000 a year to Partner Hamed until the expiration of the lease on October 27<sup>th</sup>, 2018 for a total lease amount of \$6,500,000. Partner Yusuf will also assume all obligations under the lease currently existing in the name of United Corporation, and guaranteed personally by Partner Yusuf.

**1.5.3 Rejection of Offer:** Should Partner Hamed reject the terms of the offer provided in section 1.5.2, Partner Hamed may acquire the Plaza Extra – Tutu Park, St. Thomas within 14 days of date of this agreement on the same aforementioned terms.

## SECTION 2.0

### PARTNERSHIP CONTRIBUTIONS

The parties agree to address the following outstanding partner and partnership obligations

	<u>Description of Partnership Obligation</u>	<u>Agreed Upon Course of Action to Resolve Dispute</u>
1.	<b>Rent (for the period of May 5<sup>th</sup>, 2004 to Dec. 31<sup>st</sup>, 2011). Partnership Yusuf &amp; Hamed owe rent arrears of \$5,408,806.74 to Partner Yusuf as owner and landlord of the property upon which Plaza Extra East is located.</b>	The parties agree that said amount was paid on February 13 <sup>th</sup> , 2012 by way of check drawn on the account of United Corporation. Accordingly, the rental arrears for the period of (May 5 <sup>th</sup> , 2004 to Dec. 31 <sup>st</sup> , 2011) are now satisfied.
2.	<b>Other Outstanding Rent (Pre 2004). The partners shall discuss and calculate the rent owing to Partner Yusuf for an approximate period of 10 years, for the 10 years prior to May 5<sup>th</sup>, 2004.</b>	The rental term and rent amount due will be determined upon the return of the partnership records from the U.S. Government.

## SECTION 3.0

### OTHER FINANCIAL DISPUTES

The parties acknowledge that serious financial disputes have arisen between the parties. Specifically, Partner Yusuf desires a full accounting of certain disputes with Partner Hamed and his agent Waleed Hamed and Waheed Hamed, and all of their spouses, children, assigns, and agents.

The parties agree that the following items of financial disputes will be negotiated, investigated, and resolved in good faith by the parties.

	<u>Description of Financial Dispute</u>	<u>Agreed Upon Course of Action to Resolve Dispute</u>
1.	<p>Partner Yusuf alleges that Two Million Dollars (\$2,000,000) was transferred from Banque Francaise Commerciale in St. Maarten to Arab Bank, Ltd., specifically to an Arab Bank Branch in the West Bank, Palestine. Partner Hamed disputes this allegation. Partner Yusuf's allegation arises out of facts obtained during a criminal investigation by the Federal Bureau of Investigation that concludes there was a transfer of \$2,000,000 to the benefit of Partner Hamed.</p> <p>Partner Yusuf desires full accounting and verification of all financial discrepancies, and irregularities currently existing, or that may arise during the dissolution of the partnership.</p> <p>The parties hereby agree to negotiate and resolve this matter fully and in good faith.</p>	<p>1) Partner Hamed agrees to execute a special power of attorney authorizing the DeWood Law Firm, its attorney, agents, and assigns, to obtain <u>ALL</u> bank account information for any bank account that may have been opened, including but not limited to the following banks:</p> <ol style="list-style-type: none"><li>1. Arab Bank, Ltd (Worldwide branches)</li><li>2. Banque Francaise Commerciale in St. Maarten.</li><li>3. Cairo-Amman Bank (worldwide branches)</li><li>4. Bank of Nova Scotia (worldwide branches)</li><li>5. Merrill Lynch Investments</li><li>6. First Bank (formerly known as VI Community Bank)</li><li>7. Any other Bank either party determines to be relevant for purpose of inquiry, investigation, and full accounting.</li></ol>

2. Notice to Withdraw. Partners agree to give actual notice of the dissolution of the Partnership to all creditors who have extended credit to the Partnership prior to dissolution

3. Determination and Distribution of Capital Account. The Partnership will cause to be prepared financial statements as of the date specified in the Withdrawal Notice, including a balance sheet specifying the assets, liabilities, and equity accounts, and an income statement for the portion of the year then ended. The financial statements will also detail all accounts payable and accounts receivable of the Partnership. The cost of obtaining such financial statements shall be borne by the Partnership, and the expense of preparation of such financial statements shall be reflected in income or loss as of the date specified in the Withdrawal Notice.

The capital account of the Withdrawing Partner will include the Withdrawing Partner's actual equity account plus the Withdrawing Partner's share of income or minus the Withdrawing Partner's share of loss according to the Sharing Ratio as of the date of the financial statements. The parties agree that these financial statements will conclusively reflect the accounts of the Partnership. The capital account of the Withdrawing Partner shall be distributed to the Withdrawing Partner in cash within 30 days following the date specified in the Withdrawal Notice.

5. Loans. The Partnership has no loans outstanding other than Accounts Payable with inventory suppliers.

6. Ledgers and Files. The Partnership shall, at the Partnership's expense, copy all ledgers and files of the Partnership for the Withdrawing Partner's use upon the reasonable written request by the Withdrawing Partner which specifies the ledgers and files and is delivered to the Partnership at least 10 days before the date specified in the Withdrawal Notice.

7. Full Disclosure and Access to Records. All parties agree to fully disclose all facts which relate to the operation of the Partnership and warrant and represent that all material facts concerning the financial condition and operation of the Partnership have been fully disclosed to each other. All parties shall have full access to the books and records of the Partnership, including client files, for purposes of verifying information furnished under this Agreement until this Agreement.

8. Assets and Liabilities of the Partnership. Upon payment of the amounts due to the Withdrawing Partner hereunder, all assets and liabilities of the Partnership as they exist on the financial statements dated as of the date specified in the Withdrawal Notice shall belong to the remaining Partners, and the Withdrawing Partner shall claim no right, title, or interest therein.



<p><b>EXHIBIT</b></p> <p>Group Exhibit 2</p>
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**IN THE DISTRICT COURT OF THE VIRGIN ISLANDS  
DIVISION OF ST. CROIX**

<p><b>MOHAMMAD HAMED,</b></p> <p style="padding-left: 40px;">Plaintiff</p> <p style="padding-left: 40px;">Vs.</p> <p><b>FATHI YUSUF and</b> <b>UNITED CORPORATION</b></p> <p style="padding-left: 40px;">Defendants.</p> <hr style="width: 30%; margin-left: 0;"/>	<p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p>	<p>CIVIL NO. 1:12-CV-099</p> <p>MEMORANDUM OF LAW IN SUPPORT OF DEFENDANTS’ MOTION TO DISMISS, MOTION FOR A MORE DEFINITE STATEMENT, AND MOTION TO STRIKE PURSUANT TO RULES 12(b)(6), 12(e), and 12(f) OF THE FEDERAL RULES OF CIVIL PROCEDURE</p>
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**MEMORANDUM OF LAW IN SUPPORT OF DEFENDANTS’ MOTION TO DISMISS,  
MOTION FOR A MORE DEFINITE STATEMENT, AND MOTION TO STRIKE**

**I. INTRODUCTION**

On September 18<sup>th</sup>, 2012, Plaintiff Mohammed Hamed (“Hamed”) filed a civil action against Defendants United Corporation (“United”) and Fathi Yusuf (“Yusuf”) alleging for the first time in 26 years the existence of a “partnership”<sup>1</sup>. **Exhibit F: Complaint ¶3**. This newly alleged partnership is the same one Hamed - through his purported agent Waleed Hamed - has denied its existence during the last nine years of criminal proceedings in the case of *United States v. United Corporation*, docket no. 2005-cr-15 (“the criminal case”). Hamed now seeks various legal and equitable reliefs<sup>2</sup> under the Virgin Islands Uniform Partnership Act (“VIUPA”).

Defendants respectfully move to dismiss Hamed’s Complaint for failure to state a cause of action upon which relief can be granted pursuant to Rule 12(b)(6) of the Federal Rules of Civil Procedure. Defendants also move for a more definite statement under Rule 12(e) as the Complaint impermissibly defines “Hamed” and “Yusuf” and moves to strike under Rule 12(f) as the Complaint and incorporates material that was produced during settlement discussions.

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<sup>1</sup> The Complaint refers to this partnership as the “Hamed & Yusuf partnership.”  
<sup>2</sup> See 26 VIC §75

<p><b>EXHIBIT</b></p> <p><b>2-a</b></p>
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## II. FACTS

On January 15<sup>th</sup>, 1979, United was organized and incorporated in the Virgin Islands, and since then has been wholly owned by Yusuf and his family in various shares. **Exhibit A: Yusuf Affidavit** ¶3. In 1983, United completed the construction of a shopping mall on land parcels 4-C & 4-D of Estate Sion Farm, which United has always owned in fee simple absolute. The shopping mall was named United Shopping Plaza (“Shopping Plaza”). United acquired the trademark “Plaza Extra” and has since utilized the trademark name in all of its supermarket operations. **Exhibit A: Yusuf Affidavit** ¶ 7. Since 1986, United has continually used that trademark and never transferred or otherwise permitted anyone to have any kind of interest in its trademark “Plaza Extra.” **Exhibit A: Yusuf Affidavit** ¶ 7.


### A. Plaza Extra Tutu Park St. Thomas Store (“Plaza Extra – Tutu”)

In October 1993, United expanded its supermarket operations by opening another Plaza Extra Store in Tutu Park. **Exhibit F: Complaint** ¶8. United’s Treasurer Yusuf negotiated and signed the leased premises for the Plaza Extra – Tutu. Yusuf was the only party who guaranteed the lease of the Plaza Extra - Tutu. Nothing in the Complaint alleges that Hamed ever shared in the risk of losses or obligations under the Tutu lease, nor that he co-signed, or was a surety regarding any obligations of United. In sum, the Complaint fails to allege any facts concerning Plaintiff’s risk of loss in the purported partnership.

### B. The Alleged “Hamed & Yusuf Partnership”

The Plaintiff in his Complaint, and for the first time in 26 years, alleges that he is a partner with Yusuf. Hamed refers to it as the “Yusuf & Hamed partnership.” **Exhibit F: Complaint** ¶3.

Hamed v. Yusuf; 1:12-cv-99  
Memorandum of Law in Support of  
Motion to Dismiss, Definite Statement, and Strike  
Page 3 of 25



Without specificity, the Complaint alleges that the parties created the “Hamed & Yusuf partnership” and “used a corporate form in mid-1986 for tax purposes.” This assertion is belied by clear public records showing that United was already in operations back in 1979. *See Exhibit C: United Corporation’s Articles of Incorporation.* With no evidence that the co called “Hamed & Yusuf partnership” ever existed, Plaintiff’s Complaint attaches **unsigned** confidential settlement proposal letters as proof of the existence of a “partnership.” **However, the Complaint fails to attach a single legal document, resolution, decision, memorandum of minutes, tax returns or schedules, or other communications despite Plaintiff’s contention that he has been a partner for over 26 years.** Essentially, to prove the existence of a partnership, the Complaint relies on the following: 1) a single-word bare allegation of partnership in ¶3 of the Complaint; and 2) an **unsigned** proposed confidential letter and proposed settlement agreement exchanged between the parties to settle Plaintiff’s agent’s constant threats to preclude United from completing the criminal case with the Government. **Exhibit A: Affidavit of Yusuf** ¶12.

Indeed, Waleed Hamed, has represented to the Government in the criminal case that no partnership existed between Hamed and Yusuf or United. **Exhibit A: Yusuf Affidavit** ¶ 11. During nine (9) years of the criminal case, Waleed Hamed through his criminal defense attorneys, has declared to the Government that the joint venture between Hamed and United only entitles Hamed to fifty percent (50%) of the net profits of United’s operations of the Plaza Extra Supermarket stores. The Complaint fails to allege a single fact regarding Waleed Hamed’s representations to this Court and Government.

### **C. Exhibits A, B, & C of the Complaint: The Proposed Settlement Letters**

Hamed v. Yusuf; 1:12-cv-99  
Memorandum of Law in Support of  
Motion to Dismiss, Definite Statement, and Strike  
Page 24 of 25

For the reasons stated above, this Court should grant the Defendant's motion to dismiss and in the alternative strike the exhibits and factual allegations produced by the parties' settlement discussions and require the Plaintiff to replead to cure the deficiencies in the Complaint.

Wherefore, it is respectfully requested that Plaintiff's Complaint be dismissed with prejudice.

Date: October 9, 2012

**RESPECTFULLY SUBMITTED,**

**THE DEWOOD LAW FIRM**  
Counsel for Defendants Fathi Yusuf  
And United Corporation

By: /s/ Nizar A. DeWood  
Nizar A. DeWood, Esq.  
(VI Bar No. 1177)  
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Christiansted, V.I. 00820  
T. 340.773.3444  
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info@dewood-law.com

**CERTIFICATE OF SERVICE**

I hereby certify that a true copy of the foregoing Defendants' Memorandum of Law in Support of Motion to Dismiss in Support thereof was served on the Plaintiff Mohammed Hamed through his counsel on the below date via ECF.

Date: October 9, 2012

Joel Holt, Esq.  
2132 Company St. Suite 2  
Christiansted VI 00820

Carl J. Hartmann III, Esq.  
5000 Estate Coakley Bay, L-6  
Christiansted, VI 00820

ST. CROIX, VI  
THE VIRGIN ISLANDS  
SUPERIOR COURT

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

'13 MAR -4 P4 57

MOHAMMAD HAMED, by his )  
authorized agent, WALEED HAMED, )  
 )  
Plaintiffs, )  
 )  
v. )  
 )  
FATHI YUSUF and UNITED CORPORATION, )  
 )  
Defendants. )

CIVIL NO. SX-12-CV-370

**EXHIBIT  
2-b**

**DEFENDANTS' PROPOSED FINDINGS OF FACT AND CONCLUSIONS OF LAW  
RELATING TO PLAINTIFFS' TRO/PRELIMINARY INJUNCTION APPLICATION**

Defendants Fathi Yusuf and United Corporation respectfully jointly submit these proposed findings of fact and conclusions of law in light of the evidence presented at the hearings held before this Court on January 25 and 31, 2013, on Plaintiffs' application for a temporary restraining order ("TRO") and/or a preliminary injunction.

**I. Proposed Findings of Fact<sup>1</sup>**

**Relevant Procedural History**

1. On or about September 17, 2012, Mohammad Hamed, by his self-appointed "authorized agent Waleed Hamed," filed this commercial dispute against Fathi Yusuf and United

<sup>1</sup> Plaintiffs Mohammad Hamed and Waleed Hamed, as the movants, bear the burden of convincing this Court that *each* of the four injunction factors favors preliminary relief. *Barclays Bus. Credit, Inc. v. Four Winds Plaza P'ship*, 35 V.I. 201, 205-06 (D.V.I. 1996) (noting also that such burden is "quite heavy" and that "[a]n injunction is an 'extraordinary remedy which should be granted only in limited circumstances'" (citation omitted). Accordingly, the proposed findings of fact herein are gleaned primarily from the live oral testimony presented during the January 25 and 31, 2013 hearings, as opposed to the prior written submissions and affidavit testimony. Indeed, Plaintiffs' prior written record has been called into serious question, as, for example, the record now reflects that Mohammad Hamed did not even read his prior affidavits because he does not understand or read written English. *See infra* Proposed Findings of Fact # 120.

*Hameds v. Yusuf, CIVIL NO. SX-12-CV-370*

*Defendants' Proposed Findings and Conclusions Relating to TRO/Preliminary Injunction*

Scotia, respectively (a portion of the \$2.5M loan was used to pay the outstanding Banco Popular loan), and Fathi Yusuf signed the loan documents and personal guaranties for such financing himself. (Jan. 25, 2013 Hr'g Tr. at 199:17-21, 205:24-25, 206:1, 207:6-21).

110. Mohammad Hamed simply worked in the Plaza Extra East supermarket's warehouse, from which position he "retired" a "[l]ong time" ago. (Jan. 25, 2013 Hr'g Tr. at 202:20, 206:22, 207:4-5).<sup>8</sup>

111. Notwithstanding, Mohammad Hamed maintains that he is Fathi Yusuf's "partner" "forever." (Jan. 25, 2013 Hr'g Tr. at 200:18, 210:4-6).

112. Mohammad Hamed never testified, nor did the Plaintiff ever introduce into the record: (a) any evidence that Mohammad Hamed is a partner with United Corporation, or (b) that he has any ownership interest in United Corporation. Indeed, the only testimony of Mohammad Hamed as to the alleged "partnership" is an alleged partnership between Fathi Yusuf and Mohammad Hamed. (Jan. 25, 2013 Hr'g Tr. at 201:21-24 ("[a]nd Mr. Yusuf tell me, you is my partner, not your son... I tell him I'm not saying nothing, you is my partner.", 209:11-17).

113. However, Mohammad Hamed has not entered into the record any evidence of personal liability for any partnership obligation such as a written guaranty or other documentation reflecting Mohammad Hamed's execution of a single loan document with any bank, financial institution, lender, insurance company, or other institution related to the Plaza Extra Stores.

114. Mohammad Hamed likewise concedes that he has never signed any loan document, written guaranty or other such paper for any documented financial loss or liability of the

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<sup>8</sup> Specifically, Waleed Hamed testified that Mohammad Hamed retired from United Corporation d/b/a Plaza Extra – and, thus, from any alleged partnership or interest therein – in 1996. (Jan. 25, 2013 Hr'g Tr. at 99:14-18).

EXHIBIT  
2-c



***Supreme Court Oral Arguments***

***Fathi Yusuf , et al.,***  
***v.***  
***Mohammad Hamed, et al.***

***July 9, 2013***

***Transcribed by:***  
***Cheryl L. Haase, RPR***

1 JUSTICE CABRET: Well, let --

2 JUSTICE SWAN: Yes. Go ahead, Justice  
3 Cabret.

4 JUSTICE CABRET: Thank you, Justice Swan.

5 You, or Mr. Yusuf, concedes that there was an  
6 oral agreement at the inception. How -- how does he term  
7 this oral agreement? What does he call it?

8 He denies that it's a partnership --

9 MR. DIRUZZO: Sure. Well, I'll phrase it to  
10 say, first of all, based on the record before us --

11 JUSTICE CABRET: But isn't he -- I'm sorry.  
12 Let me make myself clear.

13 MR. DIRUZZO: Okay.

14 JUSTICE CABRET: I think he's denying it at  
15 this stage, but he has previously indicated that there was a  
16 partnership. And in your, as you began your argument, you  
17 indicated, well, there was an agreement. I want to know,  
18 what happened to the agreement? When did they agree to  
19 disagree?

20 MR. DIRUZZO: Well, I -- I will put it this  
21 way: First of all, the statements from Fathi Yusuf that it  
22 was a quote, unquote, partnership, that is a statement of a  
23 layperson not versed in the laws.

24 Second, and directly answering your question,  
25 the nature of the relationship, the best way I could phrase

1 this, a very difficult way to characterize it, is at best  
2 Mohammad Hamed made a capital contribution, and in turn  
3 received an income stream similar to an annuity. But that  
4 does not make him a de jure or de facto partner.

5           You want -- if the Court wants to look at it  
6 as a financing arrangement, that's fine. If you want to  
7 look at it as an annuity, that's fine too. But all the  
8 hallmarks of a partnership are not there. The mutual  
9 control, all the things that you think of when you're a  
10 typical partner between two attorneys in a law firm, that is  
11 not here. And that's why, at the bottom of this case, the  
12 allegations that Fathi Yusuf and Mohammad Hamed had an oral,  
13 well, partnership agreement, are highly, highly disputed.

14           JUSTICE HODGE: Okay. You -- you call it a  
15 joint venture. Are you now backing away from that, even, --

16 ~~MR. DIRUZZO: Well, that~~

17           JUSTICE HODGE: -- and now it's an annuity?

18           MR. DIRUZZO: Well, that's -- that's my best  
19 way to -- to describe or couch, which is why we characterize  
20 it as an almost uncharacteristic or uncharacterizable  
21 agreement. It almost defies your typical definitions  
22 because it is so out of the ordinary, an agreement that by  
23 its -- Mr. Mohammad Hamed's own terms, was to last forever.  
24 a definite term of forever.

25           But taking a step back, Your Honors, going



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

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I, CHERYL L. HAASE, REGISTERED PROFESSIONAL REPORTER,  
Christiansted, St. Croix, U.S. Virgin Islands, do  
hereby certify that the foregoing transcript was transcribed  
to the best of my ability.

Dated this 13th day of December, 2013.

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Cheryl L. Haase, RPR