

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

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

v.)

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

v.)

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

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

v.)

UNITED CORPORATION,)
)
Defendant.)

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

v.)

FATHI YUSUF,)
)
Defendant.)

CIVIL NO. SX-12-CV-370

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

Consolidated With

CIVIL NO. SX-14-CV-287

**ACTION FOR DAMAGES AND
DECLARATORY JUDGMENT**

CIVIL NO. SX-14-CV-278

**ACTION FOR DEBT AND
CONVERSION**

**FATHI YUSUF and
UNITED CORPORATION,**

Plaintiffs,

v.

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

Defendants.

CIVIL NO. ST-17-CV-384

**ACTION TO SET ASIDE
FRAUDULENT TRANSFERS**

KAC357, INC., a USVI Corporation,

Plaintiff,

v.

**FATHI YUSUF, a partner, and
THE HAMED-YUSUF PARTNERSHIP
a/k/a THE PLAZA EXTRA SUPERMARKET
PARTNERSHIP,**

Defendants.

CASE NO.: SX-18-CV-219

**ACTION FOR DEBT AND
UNJUST ENRICHMENT**

**FATHI YUSUF’S OPPOSITION TO HAMED’S MOTION FOR PARTIAL
SUMMARY JUDGMENT AS TO CLAIM H-163: LOSS OF ASSETS
DUE TO WRONGFUL DISSOCIATION**

INTRODUCTION

Waleed Hamed’s (“Hamed”) Motion for Partial Summary Judgment as to Claim H-163: Loss of Assets due to Wrongful Dissociation (the “Motion”) is a thinly disguised end-run around the two memorandum opinions and orders issued by Judge Brady on July 21, 2017. Those orders struck Hamed’s jury demand and imposed a laches-based limitation barring the assertion by either partner of claims that arose before September 17, 2006. *See generally Hamed v. Yusuf*, 69 V.I.

168, 189 (V.I. Super. 2017). Hamed maintains that he pled a claim seeking damages for “wrongful dissociation” of the partnership in his First Amended Complaint (the “Complaint”). Hamed argues that, while the alleged wrongful dissociation occurred “[f]rom 2012 through 2014,” (Motion at 13), he is entitled to recovery of contributions he made as a partner decades ago. Specifically, Hamed says he will seek damages under this contrived theory for “construction funds contributed by Hamed” for the Plaza Extra East store, which was completed in 1986. *See* Motion at 5; *see also* Motion at 8 (quoting Judge Brady’ finding no. 11). He also wants to use the theory to recover his portion of partnership monies allegedly used to pay down a 1994 Scotia Bank mortgage loan on Plaza Extra East during the period preceding its final payoff in May 2000. In addition to attempting to circumvent Judge Brady’s order striking jury demand and barring all partnership claims that pre-date September 17, 2006, Hamed also seeks partial summary judgment for wrongful dissociation in the vain hope that it will enable him to recover all professional fees incurred to reconcile the partnership accounts from 2006 through the end of the partnership and ascertain what is owed to or by Hamed. *See* Motion, p. 16, items (2) and (3). Even more remarkable, despite having unequivocally agreed by stipulated order dated January 10, 2018 to pay for John Gaffney’s time in answering his questions about a large number of partnership accounting items, Hamed now wants to use wrongful dissociation as a mechanism for effectively rescinding that stipulation and foisting all of those costs on Yusuf. *See id.* at p. 16, item (3). Finally, Hamed seeks to use a finding of wrongful dissociation as a hook for recovering an as-yet undetermined amount for “diminution of income [and] profits” and harm to “trade reputation” that Hamed claims he would have earned in the absence of the dissociation, along with expert witness fees he will incur to support that dollar amount. *See id.* at p. 16, items 1 and 5.

Hamed's Motion suffers from a number of fatal infirmities, including at least three that flow directly from prior rulings of Judge Brady in this case. First, Judge Brady's ruling striking the jury demand makes it clear that no claim for damages for "wrongful dissociation" was ever pled. Indeed, the words "wrongful dissociation" do not appear anywhere in the Complaint. While Count II of the Complaint asserts that Yusuf should be dissociated from the partnership, Judge Brady specifically held that Count II seeks equitable relief only, and not damages. Second, even assuming *arguendo* that Hamed had pled a claim for damages for wrongful dissociation, because Judge Brady specifically held (in a ruling affirmed by the Supreme Court) that the partnership was in the nature of an "at will" partnership, Yusuf's efforts to dissolve the partnership could not have been "wrongful" under the Revised Uniform Partnership Act ("RUPA"). Third, even if Hamed had pled such a claim, and it were legally cognizable, the claim would be subsumed within Hamed's equitable claim for an accounting, and would be subject to Judge Brady's laches-based limitation on claims that pre-date September 17, 2006. And, finally, there is nothing in RUPA or any other applicable Virgin Islands statute that alters the American Rule that expert witness fees of the kind Hamed intends to seek are unrecoverable.

Yusuf's factual contentions and specific responses to Hamed's Statement of Facts are set forth in Section IV.

ARGUMENT

I. Judge Brady's Ruling that Hamed's Complaint Seeks Only Equitable Relief Establishes that Hamed did Not Plead a Claim for Damages for Wrongful Dissociation.

The Revised Uniform Partnership Act has been codified in Virgin Islands Law as 26 V.I. §§ 1-274 (1998) (the "Act"). Section 122 of the Act, 26 V.I.C. § 122, was adopted verbatim from section 602 of the official version of RUPA. That section elaborates on the concept of

“dissociation,” which is a term introduced by RUPA in place of “dissolution” to “denote the change in the relationship caused by a partner’s ceasing to be associated in the carrying on of the business.”¹ Dissociations may be either “rightful” or “wrongful” under RUPA depending on whether the partnership agreement is “at will” or instead is one for a “definite term or particular undertaking.” While a partner has the absolute right to dissociate from the former,² he or she may not dissociate from the latter if the Court makes certain findings. Specifically, section 122 of the Act (RUPA § 602) provides in pertinent part that “[a] partner’s dissociation is wrongful only if . . . in the case of a partnership *for a definite term* or particular undertaking, before the expiration of the term or the completion of the undertaking . . . the partner is expelled by judicial determination under section 121, subsection (5) of this chapter.” (emphasis added). Section 121(5) in turn states that one of the grounds for such an expulsion by the Court is a finding that “another partner has engaged in conduct relating to the partnership business which makes it not reasonably practicable to carry on the partnership business . . .” *See also Exhibit 1*, Comment 2 to RUPA, § 602 (stating that a partner’s dissociation “is wrongful only if it results from one of the enumerated events” under that section).

A partner who sues another partner alleging a wrongful disassociation may seek either of two equitable remedies -- namely, the equitable relief of dissolution and wind up of the partnership business or a buyout of the wrongful dissociating partner and continuation of the business. *See* 26 V.I.C. §§ 123 (a). Damages under section 122(c) are recoverable in limited situations, but as discussed below a partner may not recover damages that arise from the dissolution itself.

¹Quoted from Comment 1 to section 601 of RUPA.

² As set forth in greater detail in Section II, Judge Brady has determined that the relationship between Yusuf and Hamed’s father for the operations of the grocery store business was an “at will” partnership, wherein either partner has the absolute right to dissociate.

In his ruling denying Hamed a trial by jury on any of his claims, Judge Brady analyzed the three Counts in Hamed’s Complaint and found that each of them sought exclusively equitable relief, not damages. *See Hamed v. Yusuf, supra*, 69 V.I. at 178. While none of the three Counts pled by Hamed includes a reference to “wrongful dissociation,” Count II comes closest to asserting a claim that Yusuf “wrongfully dissociated,” and that Hamed is entitled to equitable relief as a result. Specifically, Count II requests a declaration that under 26 V.I.C. § 121(5) “it is not practicable to continue the Partnership with Yusuf such that Yusuf’s interests should be disassociated from the business, allowing Hamed to continue the partnership’s business without him . . .” **Exhibit 2**, Hamed’s First Amended Complaint, p. 14. As Judge Brady ruled, Count II (and Count III) “*explicitly* contemplate only declaratory and injunctive relief and therefore present only equitable claims carrying no right to trial by jury.” *Hamed v. Yusuf, supra*, 69 V.I. at 173-174. (emphasis added). Indeed, the request in Count II that Yusuf be dissociated from the business, Judge Brady found, is “properly construed not as a separate cause of action, but as a prayer for relief in the form of the dissolution and wind up of the partnership . . .” *Id.* at 174, n. 2.³ This is the very relief that Judge Brady provided when he dissolved the partnership and adopted the Final Wind Up Plan on January 7, 2015. *See id.* at 174, n. 2. What Hamed is seeking in the instant Motion is, therefore, at complete loggerheads with Judge Brady’s prior ruling.

Because Judge Brady has ruled that Hamed has not pled a claim for damages for wrongful dissociation against Yusuf and, indeed, has already provided all the relief sought in that Count by

³Judge Brady went on to hold that despite what he termed a “nominal, unsupported request for compensatory damages . . .” in Count I of Hamed’s Complaint and in Yusuf’s counterclaim counts for breach of fiduciary duty, conversion and civil conspiracy, *see* 69 V.I. at 178 and 183, both parties had functionally pled “a single, tripartite action for the equitable dissolution, wind up, and accounting of the partnership pursuant to 26 V.I.C. § 75(b)(2)(iii).” *See also* 69 V.I. at 196 (same).

ordering dissolution, Hamed is asking for partial summary judgment on a non-existent claim. The Master should summarily deny his Motion for that reason alone.

Hamed also advances a brand new theory of liability in his Motion by claiming that Yusuf engaged in an “anticipatory repudiation” of the partnership agreement by denying its existence, and that this is tantamount to a wrongful dissociation. Motion at 2. This argument is, if anything, even more defective from a pleadings perspective. Anticipatory repudiation is a separate theory from breach of contract, and the facts supporting it must be pled specifically in a complaint. *See, e.g., Kelly v. Orrico*, 8 N.E.3d 1055, 1061 (Ill. App. 2014). Far from alleging in his Complaint that Yusuf anticipatorily breached the partnership agreement by denying that it existed, Hamed averred precisely the opposite. The Complaint alleges that “Yusuf has repeatedly confirmed the existence of this Partnership between himself and Hamed to third parties. . .,” and alleges further that “[o]n February 10, 2012, Yusuf’s attorney, Nizar DeWood gave notice to Hamed (through his agent Wally Hamed) that Yusuf was dissolving the Partnership.”⁴ Exhibit 2, Complaint, ¶¶ 22, 28; *see also* exhibit B attached to Complaint. Since Hamed pled neither anticipatory repudiation nor facts supporting that theory in his Complaint, he may not rely on this new theory in pressing his motion for partial summary judgment.

⁴To be sure, the issues of whether a partnership existed within the meaning of RUPA and, if it did exist, whether it was unenforceable under the statute of frauds, were disputed during the preliminary injunction phase of this litigation. But Yusuf formally conceded those issues some six years ago, and the multitude of other issues that have been litigated in this case since then far eclipses them in importance and expenditures of judicial and attorney time. *See Yusuf’s April 4, 2014 Motion to Appoint Master for Judicial Supervision of Partnership Winding Up Or, in the Alternative, to Appoint Receiver to Wind Up Partnership*, at p. 3, ¶ 7. While the Master need not reach the merits of an unpled anticipatory repudiation claim that is contravened by his own pleadings, Yusuf is aware of no authority that would permit such a claim to be predicated on positions taken in litigation regarding the existence and enforceability of a partnership agreement, let alone positions taken only during one early phase of it. In any event, Hamed never sought leave to amend his Complaint to assert this novel claim and is entitled to no relief now.

II. Even if Hamed had Pled a Claim for Damages for Wrongful Dissociation, Judge Brady’s Rulings in this Case Render the Claim Defective as a Matter of Law.

A. Hamed-Yusuf partnership was “at will” partnership – either partner had absolute right to dissociate.

Even assuming *arguendo* that Judge Brady has not ruled that Hamed’s Complaint presented only equitable claims, any claim for damages for wrongful dissociation would fail as a matter of law, because Judge Brady also found that this partnership was an “at will” partnership. The Act defines an “at will” partnership as “a partnership in which the partners have not agreed to remain partners until the expiration of a definite term or the completion of a particular undertaking.” 26 V.I.C. § 2. RUPA continues the longstanding rule in partnership law that “any member of an at-will partnership has the right to force a liquidation” of his or her interest, either by buyout or by dissolution and wind up of the partnership. *See Exhibit 3*, RUPA § 801, comment 3 and 26 V.I.C. § 171 (codifying RUPA § 801); *see also Ruben v. Makarem*, 2008 WL 4726264, *5 (Ct. App. Ca. 2008) (citing California counterpart to section 171(1) of the Act for the rule that where a partnership is “at will,” a partner has “the right to dissolve the partnership”); *Corp. Exp. Office Prod., Inc. v. Phillips*, 847 So. 2d 406, 410 (Fla. 2003) (citing Florida RUPA for the proposition that “the dissolution of a partnership at will is caused by a partner giving notice of express will to withdraw as a partner”). Hence, under RUPA, a partner’s dissociation is only wrongful when the partnership is not “at will” -- i.e., when it is “for a definite term or particular undertaking” -- and certain other conditions are met. *See* 26 V.I.C. § 122(b)(2). *See also Robertson v. Mauro*, 2013 WL 3293069, *5 (D. Idaho 2013) (stating that, “by definition,” the elements of wrongful dissociation set forth in Idaho’s counterpart to 26 V.I.C. § 122 do “not apply to an at will partnership”).

1. *Hamed argued partnership was “at will” and Judge Brady agreed.*

Hamed argued in his preliminary injunction briefing that because the partnership agreement had no “fixed term,” it must be “deemed to be ‘at will’ subject to dissolution by either partner at any time.”⁵ **Exhibit 4**, Hamed’s October 22, 2012 Reply to Opposition to Motion for Preliminary Injunction, p. 9. Judge Brady agreed, because RUPA “does not require that [partnership] agreements be memorialized by a writing, and further sanctions ‘at will’ agreements that have no definite term or duration, and are subject to dissolution by either partner at any time.” *Hamed v. Yusuf*, 58 V.I. 117, 131 (Super. Ct. 2013). In seeking affirmance of Judge Brady’s ruling on appeal, Hamed acknowledged that “at will partnerships are subject to dissolution by either partner at any time--they can be terminated within one year by either party...” **Exhibit 5**, Hamed’s Opposition Brief on Appeal, p. 25.

2. *Supreme Court affirmed finding that partnership was “at will.”*

The Virgin Islands Supreme Court agreed with the Superior Court’s finding “that the partnership is an indefinite at will agreement . . .” *Yusuf v. Hamed*, 59 V.I. 841, 853 (V.I. 2013). As an “at will agreement of indefinite duration,” 59 V.I. at 852, the agreement “could conclude within a year”, *id.* at 852, because either partner had an absolute right to end the partnership at any time. The Supreme Court, therefore, affirmed the Superior Court’s holding that the oral partnership agreement “did not violate the statute of frauds.” *See id.* at 852, 853.

⁵Hamed’s arguments during the preliminary injunction proceedings that the partnership agreement was “at will” and of indefinite duration were critical to avoiding Yusuf’s statute of frauds defense. Had Hamed argued successfully then that the partnership was not an “at will” agreement, the result might well have been a ruling that it violated the statute of frauds and could not be enforced. A ruling that the partnership agreement was unenforceable would negate nearly every ruling Judge Brady has made since the Supreme Court decision, including the Order Adopting Final Wind Up Plan entered on January 7, 2015, along with the ensuing rulings of the Master.

In his Motion, Hamed argues for the first time in this case that the partnership agreement was not terminable by either partner at any time, but instead could only be terminated by the parties “mutually agree[ing]” to do so, or upon the partnership incurring losses of “\$800,000.” Motion at 4. Hamed’s new argument contradicts not only his prior positions in this Court and the Supreme Court, but also the holdings of Judge Brady and the Supreme Court that the partnership was “at will.” *Id.* at 4. For that reason, even if Judge Brady’s ruling that Hamed’s Complaint presented only equitable claims could somehow be ignored, any claim for damages for wrongful dissociation would be subject to dismissal as a matter of law.

B. Hamed dissociated formally in 2014.

There is a second reason why any such claim could not be maintained as a matter of law even if it had been pled. And that is that Hamed conceded in a filing nearly six years ago that whether Yusuf engaged in a rightful or wrongful dissociation when he attempted to dissolve the partnership in February 2012 is “now moot, as Mohammad Hamed likewise has given notice that *he* is dissolving the partnership.” **Exhibit 6**, Hamed’s April 30, 2014 Response to Defendant’s Motion to Appoint Master for Judicial Supervision of Partnership Wind Up, p. 2 (emphasis added). *See also* Hamed’s Notice of Dissolution of Partnership, appended to **Exhibit 6** as Exhibit 1. Hamed acknowledged that because “dissolution is the stated preference of both partners,” the “legal arguments raised in [Yusuf’s and United’s] memorandum as to Yusuf’s alleged ‘right’ to dissolve the partnership need no response” and “all of these arguments are now moot.”⁶ *Id.* at p.

⁶As already mentioned, 26 V.I.C. § 122(2)(ii) provides that a partner who is expelled by “judicial determination under section 121, subsection (5)” will be deemed to have wrongfully dissociated. Under section 121(5)(iii), a partner may seek a judicial determination that a partner should be expelled for conduct that makes “it is not reasonably practicable to carry on the business in partnership with the [other] partner.” This is the language Hamed quoted in Count II of his Complaint. By stipulating on April 30, 2014 to terminating the partnership by judicial dissolution,

2. Hamed is plainly not entitled to partial summary judgment on an issue he conceded to be moot years ago. Nor, in light of that concession, can Hamed now claim that Judge Brady erred by construing Count II of his Complaint as a request for the dissolution and wind up of the partnership, and then granting precisely that equitable relief. *See Hamed v. Yusuf, supra*, 69 V.I. at 168, n.2 (“the Court has already effectively entered judgment on Count II of Plaintiff’s Complaint, by dissolving the partnership and adopting the Final Wind Up Plan on January 7, 2015”).⁷

C. Final Wind Up Order is a Rejection of any contention of wrongful dissociation.

Finally, when Judge Brady ordered the Final Wind Up Plan on January 7, 2015, he tacitly rejected Hamed’s contention that Yusuf engaged in a wrongful dissociation. In an October 7, 2014 Order, Judge Brady proposed a Wind Up Plan and asked the parties to comment on it. His Proposed Wind Up Plan provided that “Yusuf shall be the liquidating partner with the exclusive right and obligation to wind up the partnership pursuant to this Plan under the supervision of the Master.” *See Exhibit 8*, excerpts from October 7, 2014 Order Soliciting Comments, Objections and Recommendations, p. 2. Hamed objected to making Yusuf the liquidating partner under the Wind Up Plan on the grounds that under 26 V.I.C. § 173(a), a wrongfully dissociating partner

Hamed did indeed render moot any request that the Court or Master order Yusuf expelled from the partnership.

⁷Going well beyond anything asserted in his Complaint, or anything even remotely supportable, Hamed asserts in his Motion that Yusuf “threw the Partnership out” of the Plaza Extra East store, “took back” the store, and “simply stole” it. Motion at 6. Hamed’s placement of quotation marks around those words is itself misleading, because Yusuf never made those statements, and to the best of his knowledge, they can be found nowhere in the factual record of this case. And Hamed’s suggestion that Yusuf “stole” the East store, when, in fact, he was given sole ownership and right to operate it under the Court’s Final Wind Up Plan, is obviously baseless. *See Exhibit 7*, Judge Brady’s January 7, 2015 Final Wind Up Plan, p. 3 (“Yusuf will assume full ownership and may continue to operate the business Plaza Extra-East without any further involvement of Hamed or the Hamed sons . . .”).

could not serve as liquidating partner. *See Exhibit 9*, excerpts from Hamed’s October 21, 2014 Comments re: Proposed Winding Up Order, pp. 6-7. Judge Brady necessarily rejected the argument that Yusuf had wrongfully dissociated when he appointed Yusuf the liquidating partner in his Final Wind Up Plan, pursuant to section 173. *See Exhibit 7*, p. 2.

Hamed’s Motion repeats the tired claim, which he has made in many briefs filed with the Master, that when Yusuf withdrew \$2.7 million from a Plaza Extra account, he was stealing from Hamed’s father’s 50% ownership of monies in that account. Motion at 12. In fact, as explained in Yusuf’s response to Hamed’s Statement of Material Fact No. 35, Yusuf’s correspondence regarding that withdrawal explained that it corresponded to and offset matching withdrawals that Hamed had taken from store accounts. *See infra*, pages 22-23 of this Opposition. The letter identified those offsetting Hamed withdrawals, including a \$1,600,000 item that Hamed had previously acknowledged to be a valid offset. *See id.* at p. 23. Further, the Master in his September 18, 2019 Order notes at footnote 9:

The Master must note that the Limitations Order only applies to “claimed credits and charges to partner account within the meaning of 26 V.I.C. § 71(a).” As such, Master’s prior finding that Yusuf’s claim for \$1,600,000.00 was barred by the Limitation Order does not automatically bar \$1,600,000.00 as a set off.

See September 18, 2019 Order, at p. 16, fn. 9. At all events, since Hamed’s ostensible claim for “wrongful dissociation” is barred procedurally and substantively, the entire discussion of the \$2.7 million dollar claim is immaterial to any issues necessary to resolution of the Motion.

For the same reasons, Hamed’s discussion of the \$504,591.03 paid to United’s former lawyers at the Fuerst, Ittleman firm (“Fuerst”) out of partnership funds for criminal defense and civil work is also immaterial to resolution of the nonexistent “wrongful dissociation” claim for which Hamed seeks partial summary judgment. In addition, Yusuf’s May 30, 2018 stipulation

providing that the \$504,000 should be credited back to the partnership and made part of the accounting being supervised by the Master was a settlement with no admission of liability for any breach,⁸ let alone an admission of “wrongful dissociation.” See **Exhibit 10**, May 30, 2018 Stipulation re: Hamed’s Claim re: Payments to Fuerst firm.

Even if none of the preceding arguments disposed of the “wrongful dissociation” claim, Hamed has cited no case supporting his claim that any attorney fees United paid to the Fuerst firm from supermarket accounts to defend this case in its initial stages establishes liability for wrongful dissociation. Until Judge Brady made his preliminary finding that the partnership agreement was enforceable, Hamed’s claim that half of the United accounts belonged to his father, despite owning no shares in United, had no judicial support of any kind, was inconsistent with the U.S. Attorney’s theory of prosecution in the criminal case,⁹ and was very much in dispute. Moreover, United paid

⁸Although Hamed suggests that \$504,000 was paid to Fuerst solely for “the early 2013 litigation regarding the existence of the partnership,” Motion at 7; see also *id.* at p. 12, the law firm’s work for the civil case involved numerous other issues, and the firm also performed services for the criminal case. See Yusuf’s Response to Hamed SUMF No. 38, *infra* at pp.24-25. There is no *per se* rule against use of partnership monies to pay Fuerst for its defense of United and Yusuf in the criminal case. If there were, then the approximately \$4.1 million paid to Hameds’ criminal defense lawyers from partnership accounts after September 17, 2006 would have had to be returned to the partnership. The propriety of payments to both the Yusuf and Hamed criminal defense lawyers with partnership funds instead turns on whether the work for which they were paid was for issues common to the defense of both sets of defendants. Rather than litigate whether each time entry on the Fuerst invoices met that test, Yusuf and United settled that issue because of the difficulty and expense of litigating five year old time entries with lawyer-witnesses no longer in its employ, and because of privilege-waiver considerations. See Exhibit 10, p. 2, ¶ 1 (“Yusuf and United agree that, in exchange for the withdrawal of what Yusuf and United regard as expensive discovery over disputed issues regarding what legal services in the criminal case benefitted the partnership, Yusuf and United will concede the amount claimed by Hamed in H-3 (\$504,591.03)”). As to the amounts paid by the partnership to the Hamed defendants’ lawyers in the criminal case, Yusuf has a pending partnership claim for amounts paid to the Hameds’ criminal defense lawyers for certain work performed after Yusuf sent Hamed his February 10, 2012 Notice of Dissolution, because from that point on the interests of the partners became hopelessly conflicted.

⁹The criminal case was prosecuted on the theory that the Plaza Extra supermarkets were in fact owned by a corporation (United) whose shareholders were members of the Yusuf family; Mohammad Hamed was not even named in the indictment.

Fuerst not just for litigating the existence of the partnership agreement, but also for litigating a myriad of other issues. These included: whether, even if a partnership was formed, it was enforceable under the statute of frauds; whether the Hameds had wrongfully interfered with Yusuf's authority to discharge an employee, Wadda Charriez, for theft, especially when the evidence of theft was overwhelming; whether the Hameds stole from the supermarket business, as revealed by the release of the FBI hard drive documents; and whether Hamed wrongfully denied the \$2.7 in withdrawals from the business that Yusuf matched with his own withdrawal of \$2.7 million.

Hamed offers no authority supporting his conclusory assertion that when a party concedes that a partnership is enforceable, after a preliminary finding to that effect has been affirmed on appeal, that concession should be applied retroactively to mean that attorney fee payments to defend contested issues give rise to a wrongful dissociation. The cases suggest instead that the appropriate relief for Hamed's challenge to the expenditure of partnership monies for legal fees is to put them on the Yusuf side of the ledger for purposes of completing the final accounting of this partnership. *See Zirinsky v. Tomai*, 2001 WL 11073, *2 (S.D. N.Y. 2001) (defendant partner's argument that "plaintiff used partnership assets to defend" an action on a note by a bank when he should have used personal funds to defend it was an argument "that appear[s] to be more relevant to the eventual accounting of partnership assets"). That is precisely what the May 30, 2018 Stipulation accomplishes.

III. Even if Hamed had Pled a Claim for Damages for Wrongful Disassociation, and it was Legally Cognizable, the Claim would be Barred by Judge Brady's Laches-Based Limitation Order.

In *Hamed v. Yusuf*, 69 V.I. 189, 219 (V.I. Super. 2017), Judge Brady relied on the doctrine of laches to "restrict the scope of the accounting in this matter to consider only those §71(a) claims

that are based upon transactions occurring no more than six years prior to the September 17, 2012 filing of Hamed's Complaint." Central to the Court's limitation was its conclusion that despite how their claims and counterclaims had been pled (Yusuf asserted, among other things, counterclaim counts against Hamed for damages for conversion and breach of fiduciary duty), the parties' claims and counterclaims in their pleadings would be treated as "a single, tripartite cause of action, or claim, for an equitable partnership dissolution, wind up, and accounting under 26 V.I.C. § 75(b)(2)(iii)." *Id.* at 196. In the context of this litigation, Judge Brady ruled, the "claims" asserted by each party, were the "numerous alleged individual debits and withdrawals from partnership funds made by the partners or their family members over the lifetime of the partnership that have been, and . . . will continue to be, presented to the Master for reconciliation in the accounting and distribution phase of the Final Wind Up Plan." *Id.* at 200. In other words, "under the RUPA framework, the 'claims' to which the parties refer are, in fact, nothing more than the parties respective assertions of credits and charges to be applied in ascertaining the balance of each partner's individual partnership account." *Id.* at 200-201. The Court's laches-based limitation bars consideration in the parties' respective accounting claims of any credits or debits to their partnership accounts that arose prior to September 17, 2006.

Hamed's Motion states that, if he can establish liability for Yusuf's wrongful dissociation, he will seek to include in his accounting claim alleged credits that long pre-date September 17, 2006. Among these are alleged credits for Hamed's and partnership funds made available "to provide United/Yusuf with a means of completing and re-building the East store." Motion at 5. The Plaza Extra East store was originally completed in 1986, as indicated in the preliminary

injunction findings quoted by Hamed in his brief at p. 8, item 11.¹⁰ The East store was destroyed by fire in 1992 and re-opened in May 1994. *See Exhibit 11*, June 6, 2014 Declaration of Fathi Yusuf, ¶ 2. Because Hamed is seeking to include in his accounting alleged contributions that precede the September 17, 2006 bar by many years, those credits or “claims” must be excluded from his accounting claim.

The same reasoning applies to Hamed’s attempt to include in his accounting payments allegedly made by the partnership to pay down the Scotia Bank mortgage loan on the property that was executed in 1994 and discharged in a release recorded on February 11, 2000. *See Motion at 5; see also Exhibit 12*, February 11, 2000 Release of May 4, 1994 Scotia Bank Mortgage. Because these alleged partnership payments necessarily were made before 2006, they may not be included in Hamed’s accounting claim.¹¹

Hamed also states that if the Court were to grant partial summary judgment for his non-pled and legally defective wrongful dissociation claim, he would seek recovery for the professional fees of accounting experts he has paid (or will pay) in attempting to prove his damages arising from that claim. *Motion at 16 (items 2 and 3)*. Any attempt to recover those fees would run up against the longstanding “American rule” that requires all parties to bear their own expert witness costs, absent a rule or statute that shifts those costs. *See Kansas v. Colorado*, 556 U.S. 98, 102-

¹⁰*See Hamed v. Yusuf, supra*, 58 V.I. at 122 (stating in finding 11 that Plaza Extra-East store opened for business in 1986).

¹¹Hamed also asserts that he intends to use wrongful dissociation as a means for recovering damage to “trade reputation and good will occasioned by Yusuf’s acts and statements.” *Motion at 16, item (5)*. Even if Hamed had pled a claim for damages for wrongful dissociation, and even if that claim was not legally defective for all of the reasons previously discussed, he cites no authority that these kinds of damages are awardable for wrongful dissociation. While a properly pled and meritorious cause of action for trade disparagement might give rise to such damages, Hamed never pled such a claim.

103 (2009) (the American Rule “applies not only to attorney’s fees but also other costs of litigation, including expert witness fees.”). While 5 V.I.C. § 541(b) modifies the American Rule as to recovery of attorney fees in the Virgin Islands, it leaves the Rule unchanged here as to expert witness fees. Particularly untenable is Hamed’s attempt to rescind his agreement to pay for John Gaffney’s accountant fees in answering a large number of his questions about various partnership accounting entries, and to instead hold Yusuf responsible for those fees. See **Exhibit 13**, January 10, 2018 Stipulation and Order re: Payment of Gaffney Fees; Motion at 16, item 4. That stipulation was the product of extensive negotiations by counsel for each party, and Hamed’s attempted bait and switch regarding responsibility for Gaffney’s fees hardly merits consideration by the Master.

Hamed also suggests that if he can obtain partial summary judgment that Yusuf wrongfully dissociated, he will seek damages in the form of “lost profits.” What Hamed appears to be saying is that he can simultaneously agree with Yusuf to dissolve the partnership *and* pursue a claim for the future lost profits he allegedly would have earned if the requested dissolution had not taken place. Hamed’s attempt to have his cake and eat it too makes no sense, and Yusuf is aware of no authority, here or elsewhere, that supports it. Even in the situation where a court orders dissolution under 26 V.I.C. § 171(5)(iii) because it “is not reasonably practicable to carry on the partnership business,” a partner’s “claim for future lost profits is without merit.” *Horizon/CMS Health Care Corp. v. Southern Oaks Health Care, Inc.*, 732 So.2d 1156, 1161 (Fl. App. 1999). It follows *a fortiori* that when both partners stipulate to the judicial remedy of dissolution under section 171(2)(ii), neither of them may bring a claim for future lost profits that either would have allegedly earned if the dissolution they sought had not occurred. See also *Myrick v. Gladish*, 690 So.2d 435, 437 (Ct. App. Ala. 1997) (“a partner cannot recover from another partner damages resulting from the dissolution itself”).

For these additional alternative reasons, the Master should deny Hamed's Motion.

IV. Yusuf's Response to Hamed's Statement of Undisputed Material Facts.

For his mandatory Rule 56.1 Statement in support of his Motion for Partial Summary Judgment (the "Statement"), Hamed merely parrots certain findings from Judge Brady's April 25, 2013 opinion granting Hamed's father a preliminary injunction. *See* Motion at 8-11. Hamed describes the preliminary findings included in his Rule 56.1 Statement as "the facts as found by the Court," and says he is "adopt[ing] these facts . . . as his requisite 'statement of undisputed facts.'" *Id.* at 8. Hamed's Statement betrays a fundamental misunderstanding of the non-binding nature of preliminary findings, and the bar against using them to decide a summary judgment motion. It is well-settled that "a trial court, in deciding whether to grant permanent relief, is not bound by its decision ... about preliminary relief" and that "a decision on a preliminary injunction is, in effect, only a prediction about the merits of the case." *United States v. Local 560 (I.B.T.)*, 974 F.2d 315, 330 (3d Cir.1992). *See also Goodheart Clothing, Inc. v. Laura Goodman Enterprises, Inc.*, 962 F.2d 268 (2d Cir.1992) (stating that "it would ... be anomalous ... to regard the [court's] initial ruling as foreclosing the subsequent, more thorough consideration of the merits that the preliminary injunction expressly envisions"). Moreover, because findings at the preliminary injunction stage are based on credibility assessments, a court may not rely on "evidence produced at the preliminary injunction hearing and the factual findings developed at the hearing" in resolving a motion for summary judgment. *Country Floors, Inc. v. Partnership Composed of Gepner and Ford*, 930 F.2d 1056, 1063 (3d Cir. 1991). *See also Resorts International, Inc. v. Greate Bay Hotel and Casino, Inc.*, 830 F. Supp. 826, 833 (D. N.J. 1992) ("the factual findings which [a court] made in granting the preliminary injunction cannot serve as the basis, in any way, for [its] consideration of [a] summary judgment motion").

Yusuf believes that the arguments and case law cited previously demonstrate that any claim for damages for “wrongful dissociation” should be denied outright, with prejudice. But even if the Master somehow concludes that Hamed has pled such a claim, that it is legally cognizable, and that any of the damages he is seeking are recoverable as a matter of law, under Superior Court Rule 56, Hamed would still not be entitled to partial summary judgment unless he could show that there are no genuine issues of material fact. Hamed’s Rule 56.1 statement impermissibly tries to make that showing by asking the Master to adopt Judge Brady’s preliminary findings and use them to resolve issues of fact and grant partial summary judgment. Although the Master need not even determine whether there are genuine issues in order to deny this claim outright, and despite the legal infirmities of Hamed’s Rule 56.1 Statement, Yusuf will respond to it out of an abundance of caution. His Rule 56(c)(2)(B) response follows:

| | HAMED’S SUMF | YUSUF’S RESPONSE TO SUMF |
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| 1. | Plaintiff and Defendant Yusuf have a longstanding friendship and familial history which preceded their business relationship. <i>January 25, 2013 Evidentiary Hearing Transcript, at 196–198, hereinafter Tr. 196–198, Jan. 25, 2013.</i> | Defendant Fathi Yusuf (“Yusuf”) does not dispute that he and Mohammad Hamed (“Hamed”) were related by marriage (Hamed was Yusuf’s wife’s brother) before they went into business together. Yusuf also does not dispute that while he regarded Hamed as a friend for many years, that had long since ceased to be the case when Judge Brady made this preliminary finding in his April 2013 opinion and order. Yusuf had well before that date learned that Hamed and his sons, including Waleed Hamed, were stealing from the supermarket business. <i>See Exhibit 11, June 6, 2014 Declaration of Fathi Yusuf, p. 4, § 8.</i> |
| 2. | In 1979, Fathi Yusuf incorporated United Corporation (“United”) in the U.S. Virgin | Undisputed. |

| | HAMED'S SUMF | YUSUF'S RESPONSE TO SUMF |
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| | Islands. <i>Defendants' Evidentiary Hearing Exhibit, no. 7</i> , hereinafter <i>Def. Ex. 7</i> . | |
| 3. | United subsequently began construction on a shopping center located at Estate Sion Farm, St. Croix. Thereafter, Defendant Yusuf desired and made plans to build a supermarket within the shopping center. <i>Plaintiff's Evidentiary Hearing Exhibit, no. 1 (Transcript, February 2, 2000 Oral Deposition of Fathi Yusuf: Idheileh v. United Corp. and Yusuf, Case No. 156/1997, Territorial Court of the Virgin Islands, Div. St. Thomas and St. John)</i> , at 8, lines 1–14; hereinafter <i>Pl.Ex. 1, p. 8.1–14</i> . The footnote to this preliminary finding reads: The Court has taken judicial notice of the certified copy of the deposition transcript in the noted Territorial Court action, submitted as PI. Ex. 1. See discussion at <i>Tr. 6–9, Jan. 25, 2013</i> . | Undisputed. |
| 4. | Subsequently, Yusuf encountered financial difficulty in completing construction of the shopping center and opening the supermarket, was unable to procure sufficient bank loans, and told Plaintiff Mohammad Hamed ("Hamed") that he was unable to finance the completion of the project. At Yusuf's request, Hamed provided funding to Yusuf's project from proceeds of Hamed's grocery business. <i>Pl.Ex. 1, p. 14:4–15:14</i> . | Undisputed. |
| 5. | Hamed provided Yusuf with monies to facilitate completion of construction on the shopping center and to facilitate opening the Plaza Extra supermarket in Estate Sion Farm, St. Croix. <i>Tr. 197:5–199:13, Jan. 25, 2013</i> . | Undisputed. |
| 11. | Yusuf and Hamed were the only partners in Plaza Extra by the time in 1986 when the supermarket opened for business and Hamed has remained a partner since that time. <i>Pl.Ex. 28</i> . The footnote to this finding reads: | Yusuf does not dispute that the Plaza Extra East store opened in 1986, and Yusuf and Hamed were the only partners in the Plaza Extra supermarket business at that time. Inasmuch as Judge Brady ordered the |

| | HAMED’S SUMF | YUSUF’S RESPONSE TO SUMF |
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| | Subsequent to the evidentiary hearing but before the parties submitted their post-hearing briefs, Plaintiff on February 19, 2013 filed his Second Request to Take Judicial Notice and Supplement the Hearing Record, presenting proposed Plaintiff’s Exhibits 28, 29 and 30. By separate Order of this date, Plaintiff’s Request was granted. Exhibit 28 is comprised of selected Defendants’ Responses to Plaintiff’s Second Set of Interrogatories to Defendants in that matter known as <i>Idheileh v. United Corp. and Yusuf, Case No. 156/1997, Territorial Court of the Virgin Islands, Div. St. Thomas and St. John.</i> | partnership dissolved and wound up in his order of January 7, 2015, and that order gave Yusuf the sole right to operate the Plaza Extra stores, Yusuf disputes that Hamed has been a partner in the stores after January 7, 2015. Yusuf does not dispute that the statements regarding procedural motions and rulings in the footnote are accurate. |
| 12. | As a partner in the Plaza Extra Supermarket business, Hamed was entitled to fifty (50%) percent of the profit and liable for fifty (50%) of the “payable” as well as loss of his contribution to the initial start-up funds. <i>Tr. 44:12–21; 200:16–23; 206:23–25, Jan. 25, 2013; Pl. Ex. 1, p. 18:16–23; p.23:18–25.</i> | Disputed, because this an imprecise statement of a partner’s account and what it consists of. Under RUPA, each partner has an account which includes, <i>inter alia</i> , contributions and the partner’s 50% share of profits and losses (see 26 V.I.C. §71) and each partner is entitled to have those accounts reconciled during the wind-up of the partnership (see 26 V.I.C. § 177). |
| 13. | Yusuf and Hamed have both acknowledged their business relationship as a partnership of an indefinite term. <i>Pl.Ex. 1, p. 18:18–23 (“I’m obligated to be your partner as long as you want me to be your partner until we lose \$800,000.”); Tr. 210:4–8, Jan. 25, 2013 (Q: “How long is your partnership with Mr. Yusuf supposed to last? When does it end?” A: “Forever. We start with Mr. Yusuf with the supermarket and we make money. He make money and I make money, we stay together forever.”)</i> | Yusuf does not dispute that Judge Brady held (and the Supreme Court agreed, in its ruling affirming the preliminary injunction) that the partnership had an indefinite term. Yusuf further does not dispute that the quoted excerpts from Hamed’s preliminary injunction testimony and Yusuf’s deposition testimony were accurately transcribed, and that they support Judge Brady’s finding. |
| 30. | Thereafter, discussions commenced initiated by Yusuf’s counsel regarding the “Dissociation of Partnership.” <i>Pl.Ex. 10, 11, 12.</i> On March 13, 2012, through counsel, Yusuf sent a Proposed Partnership Dissociation Agreement to Hamed, which | Yusuf disputes that Exhibit 12 from the preliminary injunction is entitled “Proposed Partnership <i>Dissociation Agreement</i> ”; its actual title is “Proposed |

| | HAMED’S SUMF | YUSUF’S RESPONSE TO SUMF |
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| | <p>described the history and context of the parties’ relationship, including the formation of an oral partnership agreement to operate the supermarkets, by which they shared profits and losses. <i>Pl.Ex. 12</i>. Settlement discussions followed those communications, but have not to date resulted in an agreement. <i>Tr. 58:15–20, Jan. 25, 2013. Footnote to this finding:</i> These exhibits were undisputed at hearing over Defendants’ objection premised on Fed.R.Evid. 408. The evidence was not offered to prove the validity or amount of Plaintiffs claims, but rather to put into context the history of the parties’ relationship which may be accepted as evidence for another purpose under R. 408(b). Further, the exhibits offer nothing beyond evidence presented wherein Yusuf has similarly characterized the history of his relationship with Plaintiff.</p> | <p>Partnership Dissolution Agreement.”¹² Even assuming the correct title of Exhibit 12 had been used in this statement of fact, Yusuf cannot meaningfully either dispute or not dispute the accuracy of this preliminary finding without providing context for the word “thereafter,” which denotes a time frame for when discussions commenced. Judge Brady’s preliminary finding number 29 provides that context by stating, <i>inter alia</i>, that “[i]n late 2011 United had its newly retained accountant review a hard drive containing voluminous financial records related to the Criminal Action, following which Yusuf accused members of the Hamed family of stealing money from the supermarket business. . .” <i>Hamed v. Yusuf</i>, 58 V.I. 117, 126 (Super. Ct. 2013). Yusuf does not dispute that after discovering that Mohammad Hamed and his sons had stolen money from the supermarket business, his counsel, Nizar DeWood, Esq. sent email correspondence marked in the preliminary injunction hearing as preliminary injunction Exhibits 10, 11, and 12, and further does not dispute that Attorney DeWood emailed the correspondence marked as Exhibit 10 on February 10, 2012, and that he emailed correspondence marked as Exhibit 11 on March 13, 2012. Yusuf also does not dispute that Attorney DeWood attached to the email marked as Exhibit 11 the document marked as Exhibit 12 and entitled “Proposed Partnership Dissolution Agreement.” Yusuf does not dispute that he and Hamed, and their respective lawyers, engaged in settlement discussions which did not culminate in an agreement,</p> |

¹²Judge Brady’s Finding Number 30, which Hamed purports to quote for this statement of fact, correctly describes the title of the document marked as Exhibit 12 in the preliminary injunction hearing as “Proposed Partnership Dissolution Agreement.” *Hamed v. Yusuf*, 58 V.I. 117, 126 (Super. Ct. 2013). Yusuf’s Proposed Partnership Dissolution Agreement is attached to this Opposition as part of Exhibit C, Hamed’s Amended Complaint in this case.

| | HAMED'S SUMF | YUSUF'S RESPONSE TO SUMF |
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| | | and that the Court admitted Exhibits 10, 11, and 12 at the preliminary injunction hearing over an objection based on FRE 408. |
| 35. | On or about August 15, 2012, Yusuf wrote a check signed by himself and his son Mahar Yusuf and made payment to United in the amount of \$2,784,706.25 from a segregated Plaza Extra Supermarket operating account, despite written objection of Waleed Hamed on behalf of Plaintiff and the Hamed family, who claimed that, among other objections, the unilateral withdrawal violated the terms of the District Court's restraining order in the Criminal Action. <i>Tr. 246:1-250:14, Jan. 25, 2013; Pl. Group Ex. 13.</i> | Yusuf does not dispute that he and his son Maher ("Mike") Yusuf signed the check for \$2,784,706.25, but disputes any implication that he had no authority as the partner who managed the finances of the company to make that withdrawal, and also disputes any implication that the withdrawal was unfair to Hamed, because, as shown in Preliminary Injunction Exhibit 13 (attached hereto as Group Exhibit 14), it matched amounts taken by Hamed from partnership funds or otherwise owed to the partnership, including one Hamed charge of \$1,600,000. <i>See Yusuf's August 15, 2012 Letter to Mohammad Hamed, in Preliminary Injunction Exhibit 13, attached hereto in Group Exhibit 14.</i> Yusuf also does not dispute that in his August 16, 2012 letter responding to Yusuf's letter of the prior day, Waleed Hamed objected to the withdrawal, on the erroneous grounds, <i>inter alia</i> , that it violated the TRO entered in the criminal case. ¹³ By way of further answer, Yusuf states that Hamed's August 16 letter did not dispute the accuracy of the matching sums shown in Yusuf's August 15 letter, a fact noted in Yusuf's August 22, 2012 letter to Waleed Hamed. <i>See Group Exhibit 14</i> , which includes the August 15 and 22 letters. Moreover, three individuals who attended the mediation have confirmed in sworn affidavits that Mohammad Hamed acknowledged in mediation that he owed the \$1,600,000 to the partnership. <i>See Group Exhibit 15</i> , affidavits of Mohammad Hannun, Suleiman Khaled and Khaled Ali. The Hamed testimony at the |

¹³ Yusuf's response to statement of fact 37, below, explains why that allegation was erroneous.

| | HAMED'S SUMF | YUSUF'S RESPONSE TO SUMF |
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| | | <p>preliminary injunction hearing disputing the accuracy of the items that comprised the matching sum, including the \$1,600,000, is not credible. Judge Brady has found that “[a]s managing partner..., [i]t was Yusuf’s responsibility to oversee, account for, and periodically reconcile the distributions of funds between the partners....” See <i>Hamed v. Yusuf</i>, supra, 69 V.I. at 215. It was well within Mr. Yusuf’s scope of his authority as managing partner to make a partial reconciliation of the partners’ accounts by withdrawing the \$2.7 million that was matched by corresponding amounts owed to the partnership by Hamed.</p> |
| 36. | <p>On the first hearing day, Mahar Yusuf, President of United Corporation testified under oath that he used the \$2,784,706.25 withdrawn from the Plaza Extra operating account to buy three properties on St. Croix in the name of United. On the second hearing day, Mahar Yusuf contradicted his prior testimony and admitted that those withdrawn funds had actually been used to invest in businesses not owned by United, including a mattress business, but that none of the funds were used to purchase properties overseas. <i>Tr. 250:2–251:15, Jan. 25, 2013; Tr. 118:12–120:2, Jan. 31, 2013.</i></p> | <p>Undisputed that those withdrawn funds had actually been used to invest in businesses not owned by United, including a mattress business, but that none of the funds were used to purchase properties overseas. <i>Tr. 250:2–251:15, Jan. 25, 2013; Tr. 118:12–120:2, Jan. 31, 2013.</i> Disputed to the extent that it overstates the differences between Maher Yusuf’s testimony on this subject given on the two days. Maher Yusuf initially testified that the \$2,784,706.25 was used to buy three properties in St. Croix, and later corrected that testimony to indicate that some of it was used to buy one property in St. Croix (not three), and some of it was used to invest in businesses, including a mattress business not owned by United. His testimony on January 31 that none of the funds were used to purchase properties overseas is consistent with his testimony on January 25, and his testimony on the 31st that some of the funds were used to buy the West Airport property is consistent with his testimony on the 25th. See Exhibit 16, <i>Tr. 250:25, 251:5-7, Jan. 25, 2013; Exhibit</i></p> |

| | HAMED'S SUMF | YUSUF'S RESPONSE TO SUMF |
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| | | <p>17, <i>Tr. 117:8-11; 118:25, 119:1-4, Jan. 31, 2013</i>. Yusuf also states any implication that the correction to his testimony was somehow adverse to Yusuf's interests in this case is false. Since how the withdrawn monies were spent is immaterial to any issues before the Master, Yusuf's correction of those portions of his prior testimony that were mistaken does not constitute impeachment, and it has no significance to Hamed's Motion.</p> |
| 37. | <p>A restraining order was entered by the District Court in the Criminal Action which remains in place and restricts withdrawal of funds representing profits from the supermarkets that have been set aside in the Banco Popular Securities brokerage account pending the conclusion of the Criminal Action or further order of that Court. <i>Tr. 41:15-42:18; 119:4-12, Jan. 25, 2013</i>. The Criminal Action will remain pending until past tax returns are filed. <i>Tr. 134:15-136:22; 242:16-245:5, Jan. 25, 2013</i>. As of January 18, 2013, the brokerage account had a balance of \$43,914,260.04. <i>Def. Ex. 9</i>. This Court cannot enforce the restraining order or otherwise control any aspect of the Criminal Action or its disposition.</p> | <p>Yusuf does not dispute that the District Court in the criminal case (District Court case no. 2005-015) entered a restraining order relating to United's Banco Popular account, but does dispute any implication that Yusuf violated that order when he wrote the check for \$2,784,706.25. The TRO did not cover withdrawals from the Scotia Bank account on which the check was drawn. <i>See Exhibit 16, Tr., 250:5-10, Jan. 25, 2013</i> (testimony of Maher Yusuf); copy of check in Group Exhibit 14). By way of further answer, at no time did the United States or any of the Hamed defendants in the Criminal Action request that the District Court find that Yusuf had violated that order by writing that check, and at no time did the District Court make any such finding,¹⁴ which further confirms that it did not violate the TRO. <i>See Exhibit 17, Tr. 126:5-8, Jan. 31, 2013</i>. Waleed Hamed's testimony that he could not have raised this claimed TRO violation with the District Court because his prior dismissal from the case prevented him from doing so is not credible. <i>See Exhibit 17, Tr., 126:5-</i></p> |

¹⁴ The Master can take judicial notice of the electronic docket in the criminal case, as shown in Pacer, and therefore can take judicial notice that there is no entry on the criminal docket reflecting that such an order was entered by the Court, or sought by the United States. *See Pacer Docket Report for U.S. v. Yusuf, et al., V.I. District Court case no. 2005-015*.

| | HAMED’S SUMF | YUSUF’S RESPONSE TO SUMF |
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| | | <p>8, Jan. 31, 2013. The docket for the criminal case reveals that Waleed Hamed filed pleadings on other matters in the criminal case long after the March 19, 2010 dismissal of the claims against him and the other Hamed and Yusuf defendants. Indeed, Waleed Hamed filed a brief in the criminal case only a few weeks after his preliminary injunction testimony. See <i>Docket Entry 1334 in U.S. v. Yusuf, et al., Virgin Islands District Court case no. 2005-015, Waleed Hamed’s February 27, 2013 Response to Court’s Notice of Items to be Resolved in Mediation</i>, for which the Court may take judicial notice.</p> |
| <p>38.</p> | <p>Funds from supermarket accounts have also been utilized unilaterally by Yusuf, without agreement of Hamed, to pay legal fees of defendants relative to this action and the Criminal Action, in excess of \$145,000 to the dates of the evidentiary hearing. <i>Tr. 76:5–82:9, Jan. 25, 2013; Pl. Ex. 15, 16.</i> Footnote to this finding: Plaintiff has submitted Exhibit 30 with his February 19, 2013 Second Request to Take Judicial Notice and Request to Supplement the Hearing Record, granted by separate Order. Defendants’ opposition to Plaintiffs’ Motion did not address Exhibit 30, consisting of two checks in the total sum of more than \$220,000 in payment to defense counsel in this action, dated January 21, 2013 and February 13, 2013, drawn on a supermarket account by Defendants without Plaintiffs’ consent. Although the evidence is cumulative and not essential to the Court’s decision herein, it reflects an ongoing practice of unilateral withdrawals and the possibility of continuing unilateral action in the future.</p> | <p>Yusuf does not dispute that funds from supermarket accounts were used to pay attorney fees to the Fuerst, Ittleman law firm (“Fuerst”) that were incurred in the preliminary injunction phase of this case and in the defense of the criminal case. As to the fees paid to Fuerst for defense of the criminal case, Yusuf’s position is that this payment was permissible, so long as the work performed was for issues that were common to the Yusuf and Hamed defendants. The costs and difficulty of making that determination, by having United’s former Fuerst lawyers examine hundreds of time entries and associated pleadings and correspondence from five years before in great detail, and then submit to deposition, were prohibitively expensive. Yusuf therefore made the decision almost two years ago to stipulate that all fees paid to Fuerst for the civil and criminal case would be credited back to the partnership as part of the Wind Up. See Exhibit 10, May 30, 2018, Stipulation filed in CaseAnywhere System, <i>p. 2</i> (“Yusuf and United agree that, in exchange for the withdrawal of what Yusuf and United regard as expensive discovery over disputed issues regarding what legal</p> |

| | HAMED'S SUMF | YUSUF'S RESPONSE TO SUMF |
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| | | services in the criminal case benefitted the partnership, Yusuf and United will concede the amount claimed by Hamed in H-3 (\$504,591.03)". Any issues about the fees paid to Fuerst have been mooted by this stipulation. It is important to note that similar issues on Hamed's side are not moot. Contemporaneously with the filing of this Opposition, Yusuf is filing a motion seeking repayment to the partnership of certain payments that were made to Hamed lawyers in the criminal case. |
| 39. | Since at least late 2012, Yusuf has threatened to fire Hamed family managers and to close the supermarkets. <i>Tr. 149:20–150:22; 158:18–159:12; 253:25–254:19.</i> | Yusuf does not dispute that he threatened to fire Hamed's sons after learning that they had stolen from the supermarket business and also threatened for that reason to close the supermarkets. He never did, however, actually fire any of the Hamed sons or close any of the supermarkets. The threats are immaterial to any issues before the Master. |
| 40. | On January 8, 2013, Yusuf confronted and unilaterally terminated 15 year accounting employee Wadda Charriez for perceived irregularities relative to her timekeeping records of her hours of employment, threatening to report her stealing if she challenged the firing or sought unemployment benefits at Department of Labor, <i>Tr. 181:20–185:16, Jan. 25, 2013.</i> Charriez had a "very critical job" with Plaza Extra (<i>Tr 179:17–19, Jan. 25, 2013</i>), and the independent accountant retained by Yusuf agreed that she was "a very good worker" and that her work was "excellent." <i>Tr. 94:2–6, Jan. 31, 2013.</i> Because the Hamed co-managers had not been consulted concerning the termination or shown any proof of the employee's improper activity, Mafeed Hamed instructed Charriez to return to work the following day. <i>Tr. 179:4–24; 185:17–</i> | Yusuf does not dispute that he attempted to unilaterally terminate Wadda Charriez ("Charriez"), an office manager at the Plaza Extra East store (<i>see Exhibit 16, Tr. 180:20-21, Jan. 25, 2013</i>), but disputes that that she was in fact terminated. Yusuf also disputes that he screamed at Charriez. <i>See Exhibits 18 and 19, August 16, 2013 Affidavits of Eric Berry and Dale Thomas, ¶¶ 8, 12.</i> Yusuf disputes Mufeed Hamed's exaggerated description of Ms. Charriez's job as "very critical" to the partnership and his implication that it is hard to fill that position with other Virgin Islanders who can capably perform her duties. <i>See Exhibit 17, Tr. 91:8-25; 92:1-1 (testimony of John Gaffney); Tr. 30:21-25; 31:1-6 (testimony of Yusuf Yusuf), January 31, 2013.</i> Yusuf also disputes that that there is any credible evidence to support the |

| | HAMED’S SUMF | YUSUF’S RESPONSE TO SUMF |
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| | <p>186:8, Jan. 25, 2013. On Charriez’ January 9, 2013 return to work, Yusuf started screaming at her, and told her to leave or he would call the police. <i>Tr. 186:9–187:1, Jan. 25, 2013.</i> Yusuf did call police and demanded on their arrival that Charriez, and Mufeed Hamed and Waleed Hamed be removed from the store, and threatened to close the store. <i>Tr. 9.</i></p> | <p>implication that he lacked the unilateral authority to fire a dishonest employee at the time of his attempted discharge of Charriez, and disputes any implication that the attempted firing was unjustified. Judge Brady found in a 2017 opinion that Yusuf was the managing partner in charge of the finances of the partnership. <i>See Hamed v. Yusuf, supra, 69 V.I. at 215.</i> Yusuf attempted to fire Charriez after learning that she abused the trust reposed in her by causing the payroll system to pay her for many hundreds of hours for which she did not work. <i>See Exhibit 17, Tr., 10:1-25 – 30:1-20, January 3, 2013.</i> Firing an employee who is embezzling money from the business is well within the scope of Yusuf’s authority as managing partner. Her attempted firing is immaterial to any issues before the Master, and the issue of whether she owes restitution to United Corporation or the partnership for wages paid for time she did not work is the subject of another case in the Superior Court, which is styled <i>United Corporation v. Wadda Charriez, Superior Court Case No. SC-13-CV-152.</i> Yusuf will produce discovery responses in that case if the Master concludes that the issues regarding her employment are material to this case, and that additional evidence is needed for him to decide the instant motion.</p> |

CONCLUSION AND RELIEF REQUESTED

For all of the foregoing reasons, Yusuf respectfully requests the Master to deny Hamed’s Motion for Partial Summary Judgment as to Claim H-163 regarding wrongful dissociation, and to dismiss his wrongful dissociation claim with prejudice.

Respectfully submitted,

DUDLEY NEWMAN FEUERZEIG LLP

DATED: April 9, 2020

By: /s/Charlotte K. Perrell

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CERTIFICATE OF SERVICE

It is hereby certified that on this 9th day of April, 2020, I served a true and correct copy of the foregoing **FATHI YUSUF’S OPPOSITION TO HAMED’S MOTION FOR PARTIAL SUMMARY JUDGMENT AS TO CLAIM H-163: LOSS OF ASSETS DUE TO WRONGFUL DISSOCIATION**, which complies with the page and word limitations set forth in Rule 6-1(e), via email addressed to:

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/s/Charlotte K. Perrell

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EXHIBIT 1

Rev. Uniform Partnership Act Section 602 (2019-2020 ed.)

The Revised Uniform Partnership Act | October 2019 Update
Allan Donn, Robert W. Hillman and Donald J. Weidner

Part I. Revised Uniform Partnership Act

Chapter 6.

Article 6. Partner's Dissociation

§ 602. Partner's Power to Dissociate; Wrongful Dissociation

- (a) A partner has the power to dissociate at any time, rightfully or wrongfully, by express will pursuant to [Section 601\(1\)](#).
- (b) A partner's dissociation is wrongful only if:
 - (1) it is in breach of an express provision of the partnership agreement; or
 - (2) in the case of a partnership for a definite term or particular undertaking, before the expiration of the term or the completion of the undertaking:
 - (i) the partner withdraws by express will, unless the withdrawal follows within 90 days after another partner's dissociation by death or otherwise under [Section 601\(6\)](#) through (10) or wrongful dissociation under this subsection;
 - (ii) the partner is expelled by judicial determination under [Section 601\(5\)](#);
 - (iii) the partner is dissociated by becoming a debtor in bankruptcy; or
 - (iv) in the case of a partner who is not an individual, trust other than a business trust, or estate, the partner is expelled or otherwise dissociated because it willfully dissolved or terminated.
- (c) A partner who wrongfully dissociates is liable to the partnership and to the other partners for damages caused by the dissociation. The liability is in addition to any other obligation of the partner to the partnership or to the other partners.

Official Comments

1. Subsection (a) states explicitly what is implicit in UPA Section 31(2) and RUPA Section 601(1)—that a partner has the power to dissociate at any time by expressing a will to withdraw, even in contravention of the partnership agreement. The phrase “rightfully or wrongfully” reflects the distinction between a partner's power to withdraw in contravention of the partnership agreement and a partner's right to do so. In this context, although a partner can not be enjoined from exercising the power to dissociate, the dissociation may be wrongful under subsection (b).

2. Subsection (b) provides that a partner's dissociation is wrongful only if it results from one of the enumerated events. The significance of a wrongful dissociation is that it may give rise to damages under subsection (c) and, if it results in the dissolution of the partnership, the wrongfully dissociating partner is not entitled to participate in winding up the business under Section 804.

Under subsection (b), a partner's dissociation is wrongful if (1) it breaches an express provision of the partnership agreement or (2), in a term partnership, before the expiration of the term or the completion of the undertaking (i) the partner voluntarily withdraws by express will, except a withdrawal following another partner's wrongful dissociation or dissociation by death or otherwise under Sections 601(6) through (10); (ii) the partner is expelled for misconduct under Section 601(5); (iii) the partner becomes a debtor in bankruptcy (see Section 101(2)); or (iv) a partner that is an entity (other than a trust or estate) is expelled or otherwise dissociated because its dissolution or termination was willful. Since subsection (b) is merely a default rule, the partnership agreement may eliminate or expand the dissociations that are wrongful or modify the effects of wrongful dissociation.

The exception in subsection (b)(2)(i) is intended to protect a partner's reactive withdrawal from a term partnership after the premature departure of another partner, such as the partnership's rainmaker or main supplier of capital, under the same circumstances that may result in the dissolution of the partnership under Section 801(2)(i). Under that section, a term partnership is dissolved 90 days after the bankruptcy, incapacity, death (or similar dissociation of a partner that is an entity), or wrongful dissociation of any partner, unless a majority in interest (see Comment 5(i) to Section 801 for a discussion of the term "majority in interest") of the remaining partners agree to continue the partnership. Under Section 602(b)(2)(i), a partner's exercise of the right of withdrawal by express will under those circumstances is rendered "rightful," even if the partnership is continued by others, and does not expose the withdrawing partner to damages for wrongful dissociation under Section 602(c).

A partner wishing to withdraw prematurely from a term partnership for any other reason, such as another partner's misconduct, can avoid being treated as a wrongfully dissociating partner by applying to a court under Section 601(5)(iii) to have the offending partner expelled. Then, the partnership could be dissolved under Section 801(2)(i) or the remaining partners could, by unanimous vote, dissolve the partnership under Section 801(2)(ii).

3. Subsection (c) provides that a wrongfully dissociating partner is liable to the partnership and to the other partners for any damages caused by the wrongful nature of the dissociation. That liability is in addition to any other obligation of the partner to the partnership or to the other partners. For example, the partner would be liable for any damage caused by breach of the partnership agreement or other misconduct. The partnership might also incur substantial expenses resulting from a partner's premature withdrawal from a term partnership, such as replacing the partner's expertise or obtaining new financing. The wrongfully dissociating partner would be liable to the partnership for those and all other expenses and damages that are causally related to the wrongful dissociation.

Section 701(c) provides that any damages for wrongful dissociation may be offset against the amount of the buyout price due to the partner under Section 701(a), and Section 701(h) provides that a partner who wrongfully dissociates from a term partnership is not entitled to payment of the buyout price until the term expires.

Under UPA Section 38(2)(c)(II), in addition to an offset for damages, the goodwill value of the partnership is excluded in determining the value of a wrongfully dissociating partner's partnership interest. Under RUPA, however, unless the partnership's goodwill is damaged by the wrongful dissociation, the value of the wrongfully dissociating partner's interest will include any goodwill value of the partnership. If the firm's goodwill is damaged, the amount of the damages suffered by the partnership and the remaining partners will be offset against the buyout price. See Section 701 and Comments.

EXHIBIT 2

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

| | | |
|--|---|--|
| MOHAMMAD HAMED, by his authorized agent WALEED HAMED, |) | |
| |) | |
| Plaintiff, |) | CIVIL NO. SX-12-CV-99 |
| v. |) | |
| |) | |
| FATHI YUSUF and UNITED CORPORATION, |) | ACTION FOR DAMAGES, INJUNCTIVE AND DECLARATORY RELIEF |
| |) | |
| Defendants. |) | JURY TRIAL DEMANDED |
| |) | |

FIRST AMENDED COMPLAINT

Comes now the Plaintiff, Mohammad Hamed, by his authorized agent, Waleed Hamed, and hereby files this First Amended Complaint against Fathi Yusuf and the United Corporation,¹ alleging as follows:

1. This Court has jurisdiction over this matter pursuant to Title 4 V.I.C. §76(a) and Title 5 V.I.C. §1261.
2. Plaintiff, Mohammad Hamed ("Hamed") and his authorized agent Waleed Hamed (a/k/a Wally Hamed) are both adult residents of St. Croix, United States Virgin Islands. The acts referenced herein attributable to Mohammad Hamed are acts done either directly by Mohammad Hamed or for him by his authorized agents, all of whom are family members acting as his authorized agent from time to time.
3. Defendant Fathi Yusuf ("Yusuf") is a resident of the St. Croix, United States Virgin Islands.

¹ This original Complaint (DE 1-3) was a pleading "to which a responsive pleading is required." The plaintiffs are entitled to file an amended complaint as a matter of right pursuant to Fed.R.Civ.P. 15(a)(1)(B) "within 21 days after service of. . .a motion under Rule 12(b)." Defendants filed such a motion on October 9, 2012. (DE 9 and 10)

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4. Defendant United Corporation ("United") is a Virgin Islands Corporation.
5. In the 1970's, Mohammad Hamed opened and operated a successful grocery business on St. Croix.
6. In the early 1980's, Yusuf began to build a shopping center at Sion Farm, St. Croix, which he hoped would include a supermarket, even though he had never operated a grocery business before.
7. During the construction of that shopping center, Yusuf continually ran out of money and was unable to get any loans from any banks. As such, he sought help from Mohammed Hamed, which Mohammed Hamed agreed to provide.
8. Mohammad Hamed provided funds to complete the construction of the shopping center. In addition, when more funds were needed to create and open the supermarket, Mohammad Hamed sold his grocery store and contributed all of his life savings to the supermarket project in addition to the funds previously provided for the shopping center construction, devoting his full time and energy to getting the supermarket open as well.
9. During this time period, Mohammad Hamed and Yusuf agreed to enter into a 50/50 partnership (hereinafter referred to as the "Partnership") to create, fund and operate this new grocery supermarket business, which they named Plaza Extra Supermarket. It was located in the shopping center.
10. As both Mohammed Hamed and Yusuf agreed to contribute their time and their personal funds to create this Partnership, both risked the loss of their significant initial investments. Moreover, they both agreed that going forward each partner

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was responsible for 50% of all losses, and was entitled to 50% of all profits from the supermarket business' operations. Indeed, defendants have admitted that the profits of the grocery business were shared with plaintiff -- in pleadings filed in this case.

11. When the supermarket at Sion Farm opened in 1986, Mohammad Hamed used his experience and contacts in the grocery business to get the store stocked and open successfully.

12. The Partnership between Hamed and Yusuf subsequently expanded to two other supermarket locations, one in the west end of St. Croix (both built and initially stocked from the profits of the Partnership) and one in St. Thomas (also both built and initially stocked from the profits of the Partnership). Both of these supermarkets were also operated under the name Plaza Extra. The Partners generally refer to these three stores as Plaza Extra East (Sion Farm, St. Croix), Plaza Extra West (Plesson/Grove, St. Croix) and Plaza Extra St. Thomas (Tutu Park, St. Thomas). These supermarkets have grown in size, currently employing in excess of 600 employees in the three stores.

13. At all times relative hereto, the three Plaza Extra supermarkets have been managed jointly by the Partnership, with each Partner having an active role in the operations of the three stores either through their direct actions or through the actions of their authorized agents. In this regard, each Partner always has had a designated family member in a top managerial position in each store, acting as

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each Partner's representative and agent. The designated managers from each Partner's family jointly manage the respective stores together.

14. The Partnership has always had separate, segregated books and accounts for each of the three Plaza Extra Supermarkets, and kept a detailed accounting open to both partners for the expenses and profits of the Partnership wholly separate from the unrelated business operations of United in its operation of the United shopping center located at Sion Farm St. Croix.

15. As part of his Partnership activities Yusuf made the decision that the reporting of all accounting and other filings for these Partnership operations to the Government would be done by United, such as all tax filings and similar matters - - he provided the services of United as part of his partnership contribution, to which Mohammad Hamed did not object.

16. The bank accounts for the three Plaza Extra supermarkets were created for the benefit of, and have always been accessible to (and transacted on) equally by the partners, Mohammad Hamed and Yusuf, with the Partners agreeing that -- to maintain management control -- Yusuf and Hamed (or one family member from each of the Hamed and Yusuf families as their agents) would sign each check written on these supermarket bank accounts. The current, segregated "supermarket" bank accounts kept by United for the Partnership for each of the three Plaza stores are:

St. Thomas Plaza Extra Store:

| | | |
|-----------------|--------------|---------------------------|
| Operating Acct: | 04xxxxxxxxxx | Bank of Nova Scotia (BNS) |
| Payroll Acct: | 04xxxxxxxxxx | Bank of Nova Scotia (BNS) |

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| | | |
|-------------------|-----------|---------------------------|
| Telecheck Acct: | 04xxxxxxx | Bank of Nova Scotia (BNS) |
| Credit Card Acct: | 1xxxxxxx | Banco Popular |

St. Croix Plaza Extra – WEST

| | | |
|-------------------|--------------|---------------------------|
| Operating Acct: | 19xxxxxx | Banco Popular |
| Credit Card Acct: | 19xxxxxx | Banco Popular |
| TeleCheck Acct: | 05xxxxxxxxxx | Bank of Nova Scotia (BNS) |

St. Croix Plaza Extra – EAST

| | | |
|-------------------|--------------|---------------------------|
| Operating Acct: | 19xxxxxx | Banco Popular |
| Credit Card Acct: | 19xxxxxx | Banco Popular |
| Telecheck Acct: | 58xxxxxxxxxx | Bank of Nova Scotia (BNS) |

17. United has always had completely separate accounting records and separate bank accounts for its operations of the 'non-supermarket' shopping center and business operations that were unrelated to the three Plaza Extra supermarket stores. Neither Mohammad Hamed nor his agents have access to these separate "non-supermarket" United bank accounts used by United for its shopping center and other businesses unrelated to the three Plaza Extra supermarkets.

18. At all times relative hereto, the Partnership profits from the Plaza Extra stores have always been held in the identified "supermarket" banking and brokerage accounts completely separate from the profits of United's other unrelated businesses, even though the banking and brokerage accounts holding the profits from the Partnership are in accounts solely used by the Partnership and kept for the Partnership by United in segregated United accounts. The current brokerage accounts holding these profits are:

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Popular Securities

PSx-xxxx22
PSx-xxxx63
PSx-xxxx60
PSx-xxxx79
PSx-xxxx01
PSx-xxxx10
PSx-xxxx28
PSx-xxxx36

At all times relative hereto, for more than 25 years, Mohammad Hamed and Yusuf have equally shared all the profits distributed by United to the Partnership - from the operation of the three Plaza supermarkets -- and been responsible for all losses. Except for the recent unauthorized removal of funds described herein, for 25 years, all such distributions from the supermarket accounts have been split 50/50 between the Partners.

19. The partners also agreed that all stores would employ and would rely on joint decisions of themselves (or their respective family members from each family assigned to each store), so that management would be by a working consensus of the two Partners directly or through their designated agents, all of whom are family members.
20. From time to time, Mohammad Hamed and Yusuf have used these profits, distributed solely from these "supermarket accounts" to buy other businesses and real property -- always then owning these jointly held assets, regardless of the form of ownership, on a 50/50 basis. The following assets, now owned 50/50 between the Hamed and Yusuf (or their families through them) were purchased

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using 50/50 distributions Partnership profits from the three Plaza Extra supermarkets -- from the "supermarket" accounts:

- a) **Peter's Farm Investment Corporation** - This Virgin Islands corporation, owned 50/50 between the two families, owns hundreds acres of unimproved land on St. Croix and St. Thomas, some near Christiansted, some out east on St. Croix, some out west on St. Croix and some on the west end of St. Thomas, all of which was purchased over the years at different times from the Partnership's profits.
- b) **Sixteen Plus Corporation** - This Virgin Islands corporation, owned 50/50 between the two families, owns over 300 acres of unimproved beachfront land on the South shore of St. Croix;
- c) **Plessen Enterprises, Inc.** - This Virgin Islands corporation, owned 50/50 between the two families, owns over 100 acres on the west end of St. Croix where the Plaza Extra West store is located (and does not charge any rent to Plaza Extra West, which store was constructed at a cost of millions of dollars, also from the profits made from the Partnership in the supermarket accounts) as well as another 150 acres on St. Croix in Estate Diamond and land in St. Thomas, including 2 acres of improved property known as Mandela Circle and 9 acres of unimproved land known as Fort Milner.
- d) **Y and S Corporation** - ("Dorthea Property") - Land and condos located in St. Thomas, owned 50/50 between the two families, which was recently sold for

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\$1,600,000, even though Faith Yusuf has refused to turn over the funds to the Partnership.

21. In this regard, Hamed and Yusuf have also scrupulously maintained records of withdrawals from the United-held "supermarket" Partnership profit account to each of them (and their respective family members), to make certain there would always be an equal (50/50) amount of these withdrawals for each partner directly or to designated family members.

22. Yusuf has repeatedly confirmed the existence of this Partnership between himself and Hamed to third parties intending them to rely on the representations, including in transcribed statements made under oath. See **Exhibit A**.

23. On February 10, 2012, Yusuf's attorney, Nizar DeWood ("DeWood"), gave notice to Hamed (through his agent Wally Hamed) that Yusuf was dissolving the Partnership. See **Exhibit B**.

24. DeWood attached a letter to this email (Exhibit B), sent on Yusuf's behalf to Hamed, confirming that Yusuf was proceeding with dissolving the Partnership and describing the Partnership assets to be divided as follows:

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).

No mention was ever made in the Notice of United being the sole entity, of the non-existence of the Partnership or of the claims Yusuf now makes to United's ownership of the profits and assets of the Partnership.

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25. DeWood then sent a partnership dissolution agreement on behalf of Yusuf on March 13, 2012, to Wally Hamed, regarding the dissolution of the Partnership. That document (see **Exhibit C**) stated in part as follows (use of the capitalized "P" to refer to both the Partners and the Partnership in the original):

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

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;

That document then described the Partnership assets as follows:

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

26. The parties thereafter met on numerous occasions to try to address the division of the Partnership assets, including the three Plaza Extra Stores and the Partnership profits held in the various bank and brokerage accounts. No mention was ever made of United being the sole entity for grocery operations, of the non-existence of the Partnership or of the claims Yusuf now makes to United's ownership of the profits and assets of the Partnership.

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27. In the interim time period during 2012, Yusuf has continued (as recently as October 1, 2012) to address letters to the Partnership regarding its obligations of rent to "Mohammad Hamed" as "Plaza Extra Supermarket" at the store address - - and demanded that plaintiff cause Plaza Extra to make rent payments to United from Plaza Extra Supermarket. See **Group Exhibit D**.

28. Notwithstanding this fact, Yusuf has engaged in and continues to engage in numerous acts in breach of his obligations and duties as a partner in his partnership with Hamed, all of which are designed to undermine the Partnership's operations and success, including but not limited to the following acts:

- a) Threatening to terminate the Hamed family employees in the three Plaza Extra stores;
- b) Threatening immediate eviction of the Partnership and the Plaza Extra supermarket from the United shopping center on the east side of St. Croix (see **Group Exhibit D**), which would close the stores -- including the threat of using illegal self-help to immediately remove the Partnership's supermarket from the premises in violation of the law prohibiting a landlord from using self help to try to remove a tenant;
- c) Attempting to have United impose excessive rent obligations on this store inconsistent with all other leases (see **Group Exhibit D**) to try to close down the Sion store;

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- d) Failing to recognize the Partnership's rights in the premises where its Plaza Extra store in the United Shopping Center is located, as the store was damaged by fire in 1992 and was rebuilt entirely with insurance funds from the Plaza Extra supermarket and not from United, including using said Partnership funds for the purchase of additional adjacent land for use by the supermarket (which is, unlike the rest of the shopping plaza, a Partnership asset);
- e) Attempting to verbally discredit the operations of the Partnership;
- f) Attempting to unilaterally change how the stores have operated by threatening to impose new and unilateral restrictions on the operations of these three stores, all of which are aimed at undermining Hamed's partnership interest in the three stores.
- g) Refusing to pay valid obligations owed by the Partnership in an effort to undermine the Partnership's operations;
- h) Threatening to close down the Plaza Supermarkets;
- i) Threatening the Hamed family members working in the Plaza supermarkets with physical harm, trying to intimidate them into leaving the stores;
- j) Giving false information to third parties, including suppliers of the three Plaza Supermarkets, regarding its future operations -- jeopardizing the good will of the Three Plaza supermarkets;
- k) Unilaterally canceling orders placed with vendors and not ordering new inventory for the three Plaza supermarkets; and

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l) Spending funds from the bank accounts of the three Plaza supermarkets to support his other personal business interests unrelated to the three Plaza supermarkets.

29. On or about August 20, 2012, Yusuf unilaterally and wrongfully converted \$2.7 million from Plaza Extra "supermarket accounts" used to operate the Partnership's three stores, placing the funds in a separate "non-supermarket" United account controlled only by him. Said conversion was a willful and wanton breach of the Partnership agreement between Hamed and Yusuf.

30. Despite repeated demands, he has not returned these funds to the Plaza Extra "supermarket accounts" from which they were withdrawn, which not only violates the Partnership agreement, but also threatens the financial viability of these three Plaza supermarkets and the employment of its 600 employees.

31. Upon information and belief, Yusuf has used additional Partnership funds to purchase other assets in United's name, such as real property on St. Croix recently purchased for \$1.7 million. See Exhibit E.

32. Upon information and belief, Yusuf has also now diverted more than \$1.6 million in partnership funds from the Partnership interest the Dorthea Property and, upon information and belief based on a statement he made to Waleed Hamed, removed those funds to a place out of the jurisdiction of the Court

33. The acts in question were designed in part to take advantage of Mohammad Hamed's health to force him out of the Partnership and deny him his rightful partnership assets and profits.

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COUNT I

34. All preceding allegations are realleged and incorporated herein by reference.

35. A partnership was formed between the two parties. The Partnership has as its terms, by oral agreement: 50/50 sharing of profits, 50/50 sharing of losses, joint management of the three Plaza Extra supermarkets, joint control of all Partnership funds, authority of the partners to act for the Partnership as its agents, joint ownership of the property and assets of the Partnership, and the joint control of the accounting operations of the Partnership as a distinct entity. The foregoing acts by Yusuf all violate the Partnership rights of Mohammed Hamed as well as the terms of the partnership agreement between Yusuf and Mohammad Hamed.

36. As such, pursuant to 26 V.I.C., including § 75, Mohammad Hamed is entitled to legal and equitable relief as deemed appropriate to protect and preserve his partnership rights.

37. In this regard Mohammad Hamed is entitled to declaratory and equitable relief as to his rights as well as injunctive relief to protect those rights, including the return of funds or creation of a trust as to the Partnership funds improperly taken or spent by Yusuf and/or United to date in violation of the agreement between the parties.

38. Mohammed Hamed is also entitled to compensatory damages for all financial losses inflicted by Yusuf on the Partnership and/or his partnership interest as well as punitive damages against Yusuf for his willful and wanton misconduct.

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COUNT II

39. All preceding allegations are realleged and incorporated herein by reference.
40. The foregoing acts by Yusuf also constitute intentional misconduct, or reckless and grossly negligent conduct, which has adversely and materially affected the Partnership between Mohammed Hamed and Yusuf regarding the three Plaza supermarkets.
41. United was at the time of the formation of the Partnership, controlled by Yusuf, who, as the partner making such financial arrangements for the Partnership, committed it to do acts and hold funds and property for the Partnership either as an agent, or, alternatively under an agreement or under a trust. United, which is also an alter ego of Yusuf, now refuses to pay over said funds -- which breaches the agreement and the duties due to the Partnership and his Partner.
42. As such, Mohammad Hamed is also entitled to a judicial determination under 26 V.I.C. including § 121(5) that it is not practicable to continue the Partnership with Yusuf so that Yusuf's partnership interests should be disassociated from the business, allowing Hamed to continue the Partnership's business without him pursuant to the provisions of 26 V.I.C. including §§ 122-123, 130 and what is now Subchapter VII of Title 26.

COUNT III

43. All preceding allegations are realleged and incorporated herein by reference.
44. United was at the time of the formation of the Partnership, controlled by Yusuf who, as the partner making such financial arrangements for the Partnership,

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committed it to do acts and hold funds and property for the Partnership either as an agent, or, alternatively under contract or under a trust. United, which is also an alter ego of Yusuf, now refuses to pay over said funds -- which breaches the agreement and the duties due to the Partnership and his Partner.

45. The defendant United Corporation would violate its agency, violate Mohammad Hamed's contribution of its services to the Partnership, and be unjustly enriched if it did not distribute the 50% of the Partnership funds and 50% of the Partnership property belonging to the plaintiff, Mohammed Hamed.

46. Mohammad Hamed is entitled to declaratory relief finding that all funds belonging to the plaintiff held by United Corporation are held in either in the course of business as an agent, as Yusuf's alter ego or as a constructive trust for the plaintiff, which must be returned forthwith. United should also be equitably estopped from denying the obligation to provide such funds and property to plaintiff. In the alternative Mohammad Hamed is entitled to declaratory relief finding that an amount equal to 50% of the Partnership profits and property held in United for distribution to or for the benefit of Yusuf are owed to Hamed under the Partnership Agreement or pursuant to a constructive trust for Hamed.

WHEREFORE, the Plaintiff seeks the following relief from this Court as follows:

- 1) A full and complete accounting to be conducted by a court-appointed Master, with Declaratory Relief against both defendants to establish Hamed's rights under his Yusuf/Hamed Partnership with Yusuf, including his rights regarding the operation of the three Plaza Extra supermarkets and the withdrawal of funds from the Partnership accounts associated with these three Plaza supermarkets;

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- 2) Injunctive Relief enjoining the defendants from interfering with Hamed's partnership rights, including enjoining Yusuf from interfering with the operations of the three Plaza Extra supermarkets and enjoining Yusuf from withdrawing any funds from any partnership bank accounts or brokerage accounts without the consent of Hamed;
- 3) Declaratory Relief and Injunctive Relief against both defendants requiring the immediate return of all funds improperly withdrawn from the bank accounts of the three Plaza supermarket accounts by Yusuf, including but not limited to the \$2.7 million recently removed by Yusuf to an account to which Hamed does not have access;
- 4) Declaratory Relief requiring Yusuf to account for and return all funds of the Partnership related to the Dorthea Beach investment and any other funds or property recently removed without a 50% distribution to Hamed;
- 5) Declaratory Relief and Injunctive Relief against both defendants regarding the property rights of the Plaza Extra store located at the United Shopping Center on the east side of St. Croix;
- 6) Declaratory Relief as to the Partnership's rights in any businesses and/or assets purchased by United using partnership assets or obtained without providing the Partnership the opportunity to participate in the ownership of these newly acquired businesses and/or assets;
- 7) An award of compensatory damages against the defendants, jointly and severally, as determined by the trier of fact;
- 8) A judicial determination under 26 V.I.C. including § 121(5) that it is not practicable to continue the Partnership with Yusuf so that Yusuf's partnership interests should be disassociated from the business, allowing Hamed to continue the Partnership business without him pursuant to the provisions of 26 V.I.C. including §§ 122-123, 130 and what is now Subchapter VII of Title 26;
- 9) A judicial determination that the defendant United Corporation would be unjustly enriched if it does not disburse the Partnership funds and property belonging to the plaintiff forthwith;
- 10) A judicial determination that the Partnership funds and property held by United Corporation which belong to the plaintiff are subject to a constructive trust in favor of the plaintiff, which must be distributed to the plaintiff forthwith;
- 11) An award of prejudgment interest at the statutory rate of 9%;

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- 12) An award of punitive damages against Yusuf as determined by the trier of fact;
- 13) An award of attorney's fees and costs against both defendants; and
- 14) Any other relief the Court deems appropriate as warranted by the facts and the applicable law.

A TRIAL BY JURY IS DEMANDED AS TO ALL ISSUES TRIABLE BY A JURY

Dated: October 19, 2012

/s/Joel H. Holt, Esq.
Joel H. Holt, Esq.
Counsel for Plaintiff
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Dated: October 19, 2012

/s/Carl J. Hartmann, III, Esq.
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CERTIFICATE OF SERVICE

I hereby certify that on this 19th day of October, 2012, I filed the foregoing with the Clerk of the Court, and delivered by ECF to the following:

Joseph A. DiRuzzo, III
Fuerst Ittleman David & Joseph, PL
1001 Brickell Bay Drive, 32nd. Fl.
Miami, FL 33131
jdiruzzo@fuerstlaw.com

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/s/Joel H. Holt, Esq.

EXHIBIT B

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.

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3070 Kronprindsens Gade, Suite 208
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T. (340) 774-0405
F. (888) 398-8428

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EXHIBIT

B

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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,

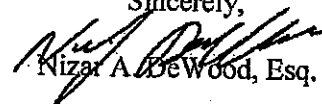
This letter is to confirm the parties' desire to dissolve the above referenced partnership. Partnership dissolution will involve appropriate planning to properly account for each of the partner's interest in the partnership, and a well-executed agreement memorializing the understanding of the parties.

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 30th, 2012 on that property.

I look forward to hearing from you. Thank you.

Sincerely,


Nizar A. DeWood, Esq.

cc: Fathi Yusuf

EXHIBIT C

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

Blumberg No. 6205

EXHIBIT

C

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premises turned over to Partner Yusuf immediately. Partner Yusuf, by virtue of his ownership of the premises, will hereby enforce the new rental rate of \$200,000 per month commencing January 31, 2012 until March 31st, 2012. Thereafter, the monthly rental rate shall increase to \$250,000 per month until June 30th, 2012. After such date, the tenancy shall terminate forthwith without further notice. Failure to vacate the premises by June 30th, 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 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. 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 27th, 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 27th, 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. | Rent (for the period of May 5 th , 2004 to Dec. 31 st , 2011). Partnership Yusuf & 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. | The parties agree that said amount was paid on February 13 th , 2012 by way of check drawn on the account of United Corporation. Accordingly, the rental arrears for the period of (May 5 th , 2004 to Dec. 31 st , 2011) are now satisfied. |
| 2. | 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 th , 2004. | 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"> 1. Arab Bank, Ltd (Worldwide branches) 2. Banque Francaise Commerciale in St. Maarten. 3. Cairo-Amman Bank (worldwide branches) 4. Bank of Nova Scotia (worldwide branches) 5. Merrill Lynch Investments 6. First Bank (formerly known as VI Community Bank) 7. Any other Bank either party determines to be relevant for purpose of inquiry, investigation, and full accounting. |

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.

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IN WITNESS WHEREOF, the parties have executed this Agreement on the day and year first written above.

Fathi Yusuf, Partner

Mohammad Hamed, Partner

EXHIBIT 3

Rev. Uniform Partnership Act Section 801 (2019-2020 ed.)

The Revised Uniform Partnership Act | October 2019 Update
Allan Donn, Robert W. Hillman and Donald J. Weidner

Part I. Revised Uniform Partnership Act

Chapter 8.

Article 8. Winding up Partnership Business

§ 801. Events Causing Dissolution and Winding Up of Partnership Business

A partnership is dissolved, and its business must be wound up, only upon the occurrence of any of the following events:

- (1) in a partnership at will, the partnership's having notice from a partner, other than a partner who is dissociated under [Section 601\(2\)](#) to (10), of that partner's express will to withdraw as a partner, or on a later date specified by the partner;
- (2) in a partnership for a definite term or particular undertaking:
 - (i) within 90 days after a partner's dissociation by death or otherwise under [Section 601\(6\)](#) through (10) or wrongful dissociation under [Section 602\(b\)](#), the express will of at least half the remaining partners to winding up the partnership business, for which purpose a partner's rightful dissociation under [Section 602\(b\)\(2\)\(i\)](#) is an expression of that partner's will to wind up the partnership business;
 - (ii) the express will of all of the partners to wind up the partnership business; or
 - (iii) the expiration of the term or the completion of the undertaking;
- (3) an event agreed to in the partnership agreement resulting in the winding up of the partnership business;
- (4) an event that makes it unlawful for all or substantially all of the business of the partnership to be continued, but a cure of illegality within 90 days after notice to the partnership of the event is effective retroactively to the date of the event for purposes of this section;
- (5) on application by a partner, a judicial determination that:
 - (i) the economic purpose of the partnership is likely to be unreasonably frustrated;
 - (ii) another partner has engaged in conduct relating to the partnership business which makes it not reasonably practicable to carry on the business in partnership with that partner; or
 - (iii) it is not otherwise reasonably practicable to carry on the partnership business in conformity with the partnership agreement; or
- (6) on application by a transferee of a partner's transferable interest, a judicial determination that it is equitable to wind up the partnership business:
 - (i) after the expiration of the term or completion of the undertaking, if the partnership was for a definite term or particular undertaking at the time of the transfer or entry of the charging order that gave rise to the transfer; or
 - (ii) at any time, if the partnership was a partnership at will at the time of the transfer or entry of the charging order that gave rise to the transfer.

Official Comments

1. Under UPA Section 29, a partnership is dissolved every time a partner leaves. That reflects the aggregate nature of the partnership under the UPA. Even if the business of the partnership is continued by some of the partners, it is technically a new partnership. The dissolution of the old partnership and creation of a new partnership causes many unnecessary problems.

Under RULPA, limited partnerships dissolve far less readily than do general partnerships under the UPA. A limited partnership does not dissolve on the withdrawal of a limited partner, nor does it necessarily dissolve on the withdrawal of a general partner. See RULPA § 801(4).

RUPA's move to the entity theory is driven in part by the need to prevent a technical dissolution or its consequences. Under RUPA, not every partner dissociation causes a dissolution of the partnership. Only certain departures trigger a dissolution. The basic rule is that a partnership is dissolved, and its business must be wound up, only upon the occurrence of one of the events listed in [Section 801](#). All other dissociations result in a buyout of the partner's interest under Article 7 and a continuation of the partnership entity and business by the remaining partners. See [Section 603\(a\)](#).

With only three exceptions, the provisions of [Section 801](#) are merely default rules and may by agreement be varied or eliminated as grounds for dissolution. The first exception is dissolution under [Section 801\(4\)](#) resulting from carrying on an illegal business. The other two exceptions cover the power of a court to dissolve a partnership under [Section 801\(5\)](#) on application of a partner and under [Section 801\(6\)](#) on application of a transferee. See Comments 6–8 for further explanation of these provisions.

2. Under RUPA, “dissolution” is merely the commencement of the winding up process. The partnership continues for the limited purpose of winding up the business. In effect, that means the scope of the partnership business contracts to completing work in process and taking such other actions as may be necessary to wind up the business. Winding up the partnership business entails selling its assets, paying its debts, and distributing the net balance, if any, to the partners in cash according to their interests. The partnership entity continues, and the partners are associated in the winding up of the business until winding up is completed. When the winding up is completed, the partnership entity terminates.

3. [Section 801](#) continues two basic rules from the UPA. First, it continues the rule that any member of an at-will partnership has the right to force a liquidation. Second, by negative implication, it continues the rule that the partners who wish to continue the business of a term partnership can not be forced to liquidate the business by a partner who withdraws prematurely in violation of the partnership agreement.

Those rules are gleaned from the separate UPA provisions governing dissolution and its consequences. Under UPA [Section 31\(1\)\(b\)](#), dissolution is caused by the express will of any partner when no definite term or particular undertaking is specified. UPA [Section 38\(1\)](#) provides that upon dissolution any partner has the right to have the business wound up. That is a default rule and applies only in the absence of an agreement affording the other partners a right to continue the business.

UPA [Section 31\(2\)](#) provides that a term partnership may be dissolved at any time, in contravention of the partnership agreement, by the express will of any partner. In that case, however, UPA [Section 38\(2\)\(b\)](#) provides that the nonbreaching partners may by unanimous consent continue the business. If the business is continued, they must buy out the breaching partner.

4. [Section 801\(1\)](#) provides that a partnership at will is dissolved and its business must be wound up upon the partnership's having notice of a partner's express will to withdraw as a partner, unless a later effective date is specified by the partner. A partner at will who has already been dissociated in some other manner, such as a partner who has been expelled, does not thereafter have a right to cause the partnership to be dissolved and its business wound up.

If, after dissolution, none of the partners wants the partnership wound up, [Section 802\(b\)](#) provides that, with the consent of all the partners, including the withdrawing partner, the remaining partners may continue the business. In that event, although there is a technical dissolution of the partnership and, at least in theory, a temporary contraction of the scope of the business, the partnership entity continues and the scope of its business is restored. See [Section 802\(b\)](#) and Comment 2.

5. [Section 801\(2\)](#) provides three ways in which a term partnership may be dissolved before the expiration of the term:

(i) *Subsection (2)(i) provides for dissolution after a partner's dissociation by death or otherwise under Section 601(6) to (10) or wrongful dissociation under Section 602(b), if within 90 days after the dissociation at least half of the remaining partners express their will to dissolve the partnership. Thus, if a term partnership had six partners and one of the partners dies or wrongfully dissociates before the end of the term, the partnership will, as a result of the dissociation, be dissolved only if three of the remaining five partners affirmatively vote in favor of dissolution within 90 days after the dissociation.* This reactive dissolution of a term partnership protects the remaining partners, where the dissociating partner is crucial to the successful continuation of the business. The corresponding UPA Section 38(2)(b) rule requires unanimous consent of the remaining partners to continue the business, thus giving each partner an absolute right to a reactive liquidation. Under UPA 1994, if the partnership is continued by the majority, any dissenting partner who wants to withdraw may do so rightfully under the exception to Section 602(b)(2)(i), in which case his interest in the partnership will be bought out under Article 7. By itself, however, a partner's vote not to continue the business is not necessarily an expression of the partner's will to withdraw, and a dissenting partner may still elect to remain a partner and continue in the business.*

The Section 601 dissociations giving rise to a reactive dissolution are: (6) a partner's bankruptcy or similar financial impairment; (7) a partner's death or incapacity; (8) the distribution by a trust-partner of its entire partnership interest; (9) the distribution by an estate-partner of its entire partnership interest; and (10) the termination of an entity-partner. Any dissociation during the term of the partnership that is wrongful under Section 602(b), including a partner's voluntary withdrawal, expulsion or bankruptcy, also gives rise to a reactive dissolution. Those statutory grounds may be varied by agreement or the reactive dissolution may be abolished entirely.

Under Section 601(6)(i), a partner is dissociated upon becoming a debtor in bankruptcy. The bankruptcy of a partner or of the partnership is not, however, an event of dissolution under Section 801. That is a change from UPA Section 31(5). A partner's bankruptcy does, however, cause dissolution of a term partnership under Section 801(2)(i), unless a majority in interest of the remaining partners thereafter agree to continue the partnership. Affording the other partners the option of buying out the bankrupt partner's interest avoids the necessity of winding up a term partnership every time a partner becomes a debtor in bankruptcy.

Similarly, under Section 801(2)(i), the death of any partner will result in the dissolution of a term partnership, only if at least half of the remaining partners express their will to wind up the partnership's business. If dissolution does occur, the deceased partner's transferable interest in the partnership passes to his estate and must be bought out under Article 7. See Comment 8 to Section 601.

(ii) *Section 801(2)(ii) provides that a term partnership may be dissolved and wound up at any time by the express will of all the partners. That is merely an expression of the general rule that the partnership agreement may override the statutory default rules and that the partnership agreement, like any contract, can be amended at any time by unanimous consent.*

UPA Section 31(1)(c) provides that a term partnership may be wound up by the express will of all the partners whose transferable interests have not been assigned or charged for a partner's separate debts. That rule reflects the belief that the remaining partners may find transferees very intrusive. This provision has been deleted, however, because the liquidation is easily accomplished under Section 801(2)(ii) by first expelling the transferor partner under Section 601(4)(ii).

(iii) *Section 801(2)(iii) is based on UPA Section 31(1)(a) and provides for winding up a term partnership upon the expiration of the term or the completion of the undertaking.*

Subsection (2)(iii) must be read in conjunction with Section 406. Under Section 406(a), if the partners continue the business after the expiration of the term or the completion of the undertaking, the partnership will be treated as a partnership at will. Moreover, if the partners continue the business without any settlement or liquidation of the partnership, under Section 406(b) they are presumed to have agreed that the partnership will continue, despite the lack of a formal agreement. The partners may also agree to ratify all acts taken since the end of the partnership's term.

6. [Section 801\(3\)](#) provides for dissolution upon the occurrence of an event specified in the partnership agreement as resulting in the winding up of the partnership business. The partners may, however, agree to continue the business and to ratify all acts taken since dissolution.

7. [Section 801\(4\)](#) continues the basic rule in UPA [Section 31\(3\)](#) and provides for dissolution if it is unlawful to continue the business of the partnership, unless cured. The “all or substantially all” proviso is intended to avoid dissolution for insubstantial or innocent regulatory violations. If the illegality is cured within 90 days after notice to the partnership, it is effective retroactively for purposes of this section. The requirement that an uncured illegal business be wound up cannot be varied in the partnership agreement. See [Section 103\(b\)\(8\)](#).

8. [Section 801\(5\)](#) provides for judicial dissolution on application by a partner. It is based in part on UPA [Section 32\(1\)](#), and the language comes in part from RULPA [Section 802](#). A court may order a partnership dissolved upon a judicial determination that: (i) the economic purpose of the partnership is likely to be unreasonably frustrated; (ii) another partner has engaged in conduct relating to the partnership business which makes it not reasonably practicable to carry on the business in partnership with that partner; or (iii) it is not otherwise reasonably practicable to carry on the partnership business in conformity with the partnership agreement. The court's power to wind up the partnership under [Section 801\(5\)](#) cannot be varied in the partnership agreement. See [Section 103\(b\)\(8\)](#).

RUPA deletes UPA [Section 32\(1\)\(e\)](#) which provides for dissolution when the business can only be carried on at a loss. That provision might result in a dissolution contrary to the partners' expectations in a start-up or tax shelter situation, in which case “book” or “tax” losses do not signify business failure. Truly poor financial performance may justify dissolution under subsection (5)(i) as a frustration of the partnership's economic purpose.

RUPA also deletes UPA [Section 32\(1\)\(f\)](#) which authorizes a court to order dissolution of a partnership when “other circumstances render a dissolution equitable.” That provision was regarded as too open-ended and, given RUPA's expanded remedies for partners, unnecessary. No significant change in result is intended, however, since the interpretation of UPA [Section 32\(1\)\(f\)](#) is comparable to the specific grounds expressed in subsection (5). See, e.g., [Karber v. Karber](#), 145 Ariz. 293, 701 P.2d 1 (Ct. App. Div. 2 1984) (partnership dissolved on basis of suspicion and ill will, citing UPA § 32(1)(d) and (f)); [Fuller v. Brough](#), 159 Colo. 147, 411 P.2d 18 (1966) (not equitable to dissolve partnership for trifling causes or temporary grievances that do not render it impracticable to carry on partnership business); [Lau v. Wong](#), 1 Haw. App. 217, 616 P.2d 1031 (1980) (partnership dissolved where business operated solely for benefit of managing partner).

9. [Section 801\(6\)](#) provides for judicial dissolution on application by a transferee of a partner's transferable interest in the partnership, including the purchaser of a partner's interest upon foreclosure of a charging order. It is based on UPA [Section 32\(2\)](#) and authorizes dissolution upon a judicial determination that it is equitable to wind up the partnership business (i) after the expiration of the partnership term or completion of the undertaking or (ii) at any time, if the partnership were a partnership at will at the time of the transfer or when the charging order was issued. The requirement that the court determine that it is equitable to wind up the business is new. The rights of a transferee under this section cannot be varied in the partnership agreement. See [Section 103\(b\)\(8\)](#).

* Prior to August 1997, [Section 801\(2\)\(i\)](#) provided that upon dissociation of a partner in a term partnership by death or otherwise under [Section 601\(6\)](#) through (10) or wrongful dissociation under [602\(b\)](#) the partnership would dissolve unless “a majority in interest of the remaining partners (including partners who have rightfully dissociated pursuant to [Section 602\(b\)\(2\)\(i\)](#)) agree to continue the partnership.” This language was thought to be necessary for a term partnership to lack continuity of life under the Internal Revenue Act tax classification regulations. These regulations were repealed effective January 1, 1997.

The current language, approved at the 1997 annual meeting of the National Conference of Commissioners on Uniform State Laws, allows greater continuity in a term partnership than the prior version of this subsection and UPA Section 38(2)(b).

EXHIBIT 4

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

| | | |
|---|---|-----------------------|
| MOHAMMAD HAMED <i>by his authorized</i> |) | |
| <i>agent</i> WALEED HAMED, |) | |
| |) | |
| Plaintiff, |) | CIVIL NO. SX-12-CV-99 |
| v. |) | |
| |) | ACTION FOR DAMAGES |
| FATHI YUSUF and UNITED CORPORATION, |) | INJUNCTIVE AND |
| |) | DECLARATORY RELIEF |
| |) | |
| Defendants. |) | JURY TRIAL DEMANDED |
| |) | |

PLAINTIFF’S REPLY TO DEFENDANTS’ OPPOSITION TO
PLAINTIFF’S MOTION FOR A TEMPORARY RESTRAINING ORDER
AND/OR A PRELIMINARY INJUNCTION

The plaintiff, Mohammed Hamed (“Hamed”), hereby replies to the defendants’ opposition memorandum to the plaintiff’s motion for Rule 65 relief.¹ Several preliminary comments are in order.

First, while the defendants vehemently deny there is a partnership, they admit that the plaintiff has an interest in the profits -- in their motion to dismiss (DE 11 at p.16):

In the criminal case, the Criminal Defendants have always ***truthfully*** represented to the Government that United has always been owned completely by the Yusuf family, **and has only granted Mohammed Hamed a limited interest in the profits of the operations of United.** (Emphasis added).

The “Criminal Defendants” include both defendants in this case, Yusuf and United. Thus, despite the defendants’ rhetoric, they concede profit sharing with Hamed exists.

Second, the defendants assert that the entry of an injunction as requested would bring the operations of the Plaza Extra supermarkets to a halt -- to the contrary, this is a

¹ While the defendant argues that this motion should be treated as a preliminary injunction since it has notice of this request, the plaintiff still seeks a TRO, as relief is needed now without any attendant delays that may be associated with a preliminary injunction hearing. However, the plaintiff is glad to proceed now on the request for a preliminary injunction as well if such a hearing can be promptly held.

Plaintiff's Reply to Opposition to Motion for TRO and/or Preliminary Injunction
Page 9

Third, the defendants' argument that the statute of frauds bars this claim is without merit, as that defense does not apply to formation of a partnership under the UPA (as per 26 V.I.C. § 22). See Defendants Rule 12 motion at page 6 (DE 11) stating "[t]here is no requirement that the partnership agreement be in writing, and may be made orally, or it may be found to exist from all of the attending circumstances." Moreover, "[p]artnerships and joint ventures without fixed terms are deemed to be 'at will' subject to dissolution by either partner at any time. Therefore, such agreements are not within the Statute of Frauds." *Smith v. Robson*, 2001 WL 1464773 at *3 (Terr.Ct. 2001).¹⁰

Finally, the defendants' argument that the plaintiff, Mohammad Hamed, is equitably estopped from raising the partnership issue due to representations made in a criminal case or for unclean hands or defalcation is meritless for two reasons. First, Mohammad Hamed was not a party to any criminal case, so he cannot be bound by statements made in such a case. Second, as already discussed at length, United and Yusuf have asserted to this Court that the exact opposite factual assertion is true -- that Mohammed Hamed **does have**, at the very least, a joint venture agreement to share the profits from the Plaza Extra supermarkets. Thus, even according to their view of what

some proof, and not conclusive, on the issue of whether a person is an employee or a partner. Indeed, one bankruptcy court has even ruled that company and individual tax returns both listing the debtor as a partner of the company, although relevant, were administrative in nature and "not highly probative in regard to proving the intent of the parties" as to whether a partnership existed. See, *In re Ashline*, 37 BR 136, 140 (Bk. N.D. N.Y.1984) See also, *Mardanlou v. Ghaffarian*, 135 P.3d 904 (Utah App. 2006)(*questioned on other grounds*)(Even though all tax and other filings as well as title in one partners name, the court found "Ghaffarian had appropriated the partnership's real property by placing it solely in his name.")

¹⁰ Also, as noted in *Smith*, this defense is unavailable in the USVI where one party has fully performed under a contract. *Id. citing Birnbaum v. Zenda*, 15 V.I. 329 (Terr.Ct. 1978). Even partial performance takes a case out of the Statue of Frauds where it would be inequitable to allow a party to invest time and labor upon the faith of a contract that did not exist. *Smith, supra, citing Henderson v. Resevic*, 6 V.I. 196 (D.V.I.1967).

Plaintiff's Reply to Opposition to Motion for TRO and/or Preliminary Injunction
Page 21

Dated: October 22, 2012

/s/Joel H. Holt, Esq.
Joel H. Holt, Esq.
Counsel for Plaintiff
Law Offices of Joel H. Holt
2132 Company Street,
Christiansted, St. Croix
U.S. Virgin Islands 00820
(340) 773-8709
holtvi@aol.com

Dated: October 22, 2012

/s/Carl J. Hartmann, III, Esq.
Carl J. Hartmann III, Esq.
Co-Counsel for Plaintiff
5000 Estate Coakley Bay,
Unit L-6
Christiansted, St. Croix
U.S. Virgin Islands 00820
(340) 719-8941
carl@carlhartmann.com

CERTIFICATE OF SERVICE

I hereby certify that on this 22nd day of October, 2012, I filed the foregoing with the Clerk of the Court, and delivered by ECF to the following:

Joseph A. DiRuzzo, III
Fuerst Ittleman David & Joseph, PL
1001 Brickell Bay Drive, 32nd. Fl.
Miami, FL 33131
jdiruzzo@fuerstlaw.com

NIZAR A. DEWOOD
The Dewood Law Firm
2006 Eastern Suburb, Suite 101
Christiansted, VI 00820
340-773-3444
Fax: 973-842-0755
Email: dewoodlaw@gmail.com

/s/Joel H. Holt, Esq.

EXHIBIT 5

No. 2013-40

IN THE
Supreme Court of the Virgin Islands

**FATHI YUSUF and
UNITED CORPORATION,**

Appellants,

v.

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

Appellee.

**ON APPEAL FROM
THE SUPERIOR COURT OF THE VIRGIN ISLANDS**
Civ. No. 370/2012 (STX)
(Hon. Douglas A. Brady, Presiding)

OPPOSITION BRIEF

Joel H. Holt, Esq.
Counsel for Appellee

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June 27, 2013

order, these cases are fully distinguishable—as that standard is inapplicable.

Finally, Appellants argue that no employees have been fired and business is proceeding as usual (Brief at p. 26), so that injunctive relief was not warranted. The court found that there were events taking place that warranted the PI, as noted by Findings ¶¶ 33-41. JA 014-016. It is respectfully submitted that the Court did not abuse its discretion in making those findings and entering the PI after considering all of the evidence (including the items in the chart on p. 26).²²

Thus, it is respectfully submitted that the court properly concluded that Hamed would suffer irreparable harm if the PI was not entered.

C. The court properly rejected the other “Success on the Merits” arguments

Appellants raised several other arguments in an attempt to try anything to counter the overwhelming evidence that a partnership existed. These are essentially affirmative defenses or evidentiary matters and are addressed in the order raised.

1. Statute of Frauds

The statute of frauds issue was addressed by the court in Conclusion ¶¶ 5-8. JA 019. Appellants argue that there is no written partnership agreement. However both the pre-1998 Uniform Partnership Act and post-1998 revision allow oral agreements and preclude the statute of frauds. 26 V.I.C. §§ 21-22 (main volume, now repealed) and 26 V.I.C. § 2(7) (pocket parts). Even if this were not the case, "at will" partnerships are subject to dissolution by either partner at any time--they can be terminated within one year by either party, even if the partnership actually continues over a longer period of

²² Appellants' assertion that employees will only be fired for cause, coupled with the request to modify the PI to terminate Hamed's sons and the key financial manager who testified against Appellants, is precisely the type of "bullying tactics" the court below determined needed to be enjoined to protect Hamed's management rights. JA 1961.

time. Thus, at-will partnership agreements are not within the Statute of Frauds and need not be in writing. *Smith v. Robeson*, 44 V.I. 56, 61 (Terr. Ct. 2001.)²³ In addressing this issue, the Appellants did not even discuss or try to distinguish *Smith*, even though the court relied upon it in rejecting this argument.

Moreover, as the court noted in ¶ 7 (JA 019): "if a party can show that part of an oral agreement was performed, the oral contract is taken out of the statute of frauds and becomes binding. *Sylvester v. Frydenhoj Estates Corp.*, 47 V.I. 720, 724 (D.V.I. 2006)." Clearly such part performance has occurred here (since at least 1986) which would take this matter out of the Statute of Frauds if it were applicable.

2. Statute of Limitations

Hamed's claims are not barred by the statute of limitations, as the partnership is still operational. Indeed, Maher Yusuf (testifying as United's president) said that Yusuf and Hamed have a *presently effective* agreement to jointly operate Plaza Extra, which is why United is still sending notices to Plaza Extra.²⁴ JA 546:2-15.

Q Why are you sending the notices to Mohammed Hamed?

A Because Mohammad Hamed has a business agreement. . . .

Q To operate the store?

A To operate the store. . . .

Q And you're still sending these letters to Mr. Hamed in 2012 and 2013, so take it that business agreement is still in place?

A As far as I know. (Emphasis added.)

Moreover, the alleged violations of Hamed's partnership rights all occurred in 2012 and 2013, as noted in the hearing testimony and the court's findings.

²³ Also, as noted in *Smith*, although an exception to this may exist with regard to certain partnerships to own real property, citing *Fountain Valley Corp. v. Wells*, 98 F.R.D. 679 (D.V.I. 1983), plaintiff makes no claims with regard to real property here.

²⁴ Fathi and Maher Yusuf have both signed many of United's rent notices sent to Hamed as head of "Plaza Extra." JA 992-1005.

Dated: June 27, 2013

/s/ Joel H. Holt

Joel H. Holt, Esq. (Bar # 6)

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CERTIFICATE OF GOOD STANDING

We certify that we are members in good standing of the Virgin Islands Bar.

Dated: June 27, 2013

/s/ Joel H. Holt

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EXHIBIT 6

not done out of altruism, but for spite, as discussed herein.

I. Dissolution of the Partnership is a non-issue.

Having finally conceded that a Partnership exists, Defendants then have Fathi Yusuf attempt to give notice that he is dissolving the partnership pursuant to 26 V.I.C. § 173(a). This attempt overlooks one critical issue raised in the First Amended Complaint—that Fathi Yusuf should be dissociated from the Partnership pursuant to 26 V.I.C. § 121(5). Clearly an election by a partner under § 173(a) to dissolve a partnership is only available to a partner who is not wrongfully disassociated from the partnership.³ Recognizing the weakness of their "new" position, Defendants argue in the alternative that the Partnership was dissolved in 1996 or in March of 2012, which points were both rejected in this Court's April 25th Preliminary Injunction Memorandum as well as by the Supreme Court.

However, the infirmities of Yusuf's attempted notice of dissolution are now moot, as Mohammad Hamed likewise has given notice that he is dissolving the partnership. See **Exhibit 1**. Thus, the lengthy legal argument raised in Defendants' memorandum as to Yusuf's alleged "right" to dissolve the partnership needs no response. As dissolution is the stated preference of both partners all of these arguments are now moot.

³ While Defendants may argue that Yusuf has not yet been dissociated from the Partnership *yet*, that is only because this issue has not been determined. Thus, any such motion by him would be premature. Clearly the intent of the statute allowing dissociation would be thwarted if a partner who engages in wrongful acts warranting dissociation could simply avoid liability by giving a belated notice of dissolution at the eleventh hour. Indeed, 26 V.I.C. § 175(a) prohibits such a partner from even proposing a dissolution plan.

II. Yusuf's dissolution Plan is fatally flawed.

Having lost this case by conceding Plaintiff's Partnership claim, Yusuf now proposes a dissolution plan which is both deeply flawed and strongly contested—it should be summarily rejected by this Court for the reasons noted herein. It would result in (1) the lay-offs of 600 employees on St. Croix and St. Thomas, (2) the closure of three major supermarkets needed in the Virgin Islands to insure fair competition to protect the public and (3) the entirely inexplicable wasting of valuable partnership assets that need not occur. It would also hurt the economy of the Virgin Islands (such as suppliers, service vendors and advertisers) and deprive the Government of much needed tax revenues (from almost \$100 million in sales that the Partnership currently generates) -- in excess of \$3 million annually in income taxes and \$5 million in gross receipts taxes.

Moreover, Yusuf's plan is even more flawed in attempting to make him the "Liquidating Partner" -- for two reasons. First, pursuant to 26 V.I.C. § 74(b)(2), a partner cannot participate in the winding up of the partnership if the partner "has an interest adverse to the partnership." In this regard, Yusuf has a significant interest in United Corporation that has asserted a highly inflated claim for rent (in excess of \$6 million) from the Partnership for the Plaza East store in Sion Farm where United is the landlord. Thus, pursuant to §74(b)(2), he cannot participate in the winding up of the business, as he has an interest that is adverse to the Partnership.⁴

⁴ Indeed, the plan submitted by Yusuf notes that United has a claim for rent that is excess of what the Partnership has agreed to pay and will be pursued. Clearly it is a conflict for Yusuf to be the Liquidating Partner in light of this inflated, multi-million dollar claim that the Liquidating Partner and Master must resolve under Title 26.

Second, while § 74 (b)(2) is dispositive, a partner who is subject to dissociation is also prohibited from being involved in the winding up of the partnership pursuant to 26 V.I.C. § 173(a).⁵

In short, Yusuf's punitive plan, which is really nothing more than a return to his Pre-Preliminary Injunction threat to punitively "shut down all of the stores" out of sheer spite if he does not get his way--regardless of the loss of partnership value—is flawed and must be rejected.

I. Hamed's Dissolution Plan

Hamed's dissolution plan, attached as **Exhibit 2**, is far more commercially reasonable and practical. It will result in (1) the continued employment of most if not all of the 600 employees of the three Plaza Extra Stores (avoiding possible legal actions and costs), (2) the continued operation of at least two if not three of the stores and (3) the *maximizing of the value of the partnership assets*. Hamed's plan also resolves the problem of Yusuf trying to be the "Liquidating Partner."

Indeed, except for these three highly desirable changes, Hamad's plan is consistent with the plan proffered by Yusuf, as noted in the redlined comparison of the two plans attached as **Exhibit 3**. That comparison further demonstrates that Yusuf's

⁵ Aside from unilaterally withdrawing \$2.7 million from the partnership, Yusuf has denied the existence of the partnership and tried to convert all of its assets throughout this litigation. Consistent with this denial, he filed improper tax returns in 2013 claiming the partnership income as the income of his corporation (United Corporation), he wrongfully paid his attorneys out of partnership funds and he attempted to extort exorbitant rent from the partnership at the Sion Farm location with the threat of closing everything down, among other things. Indeed, he clearly does not have the public, partnership employees or maximizing Partnership value on dissolution in mind in seeking to shut all three stores, which is unnecessary to achieve his goals. Such an obsessively controlling and spiteful person should not be allowed to assume the role of being the Liquidating Partner.

reckless mindset need not be followed while still giving him exactly what he wants—
dissolution. **In fact, Yusuf will receive more far more under Hamed's plan than
under his proposed plan.**

IV. Conclusion

To accomplish dissolution using the most practical method, this Court need only
appoint a Master to oversee the dissolution plan submitted by Hamed to implement the
sections entrusted to the Master, with the Liquidating Partner (Hamed) doing all other
acts required by Title 26. Everyone will do much better *financially*, including Yusuf.

In short, Such an order adopting Hamed's plan will insure the orderly dissolution
of the Partnership, including the payment of all debts and the liquidation of all assets,
with each Partner to receive maximum value for their respective interests, while allowing
the employees to retain employment, allowing the public to continue to have competitive
shopping for groceries, allowing the economy of the islands to still prosper from these
businesses and allow the Government to continue receiving much needed tax
revenues. A proposed Order is being submitted with this response.

Dated: April 30, 2014



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CERTIFICATE OF SERVICE

I hereby certify that on this 30th day of April, 2014, I served a copy of the foregoing in compliance with the parties consent, pursuant to Fed. R. Civ. P. 5(b)(2)(E), to electronic service of all documents in this action on the following persons:

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The DeWood Law Firm
2006 Eastern Suburb, Suite 101
Christiansted, VI 00820
dewoodlaw@gmail.com

Gregory H. Hodges
VI Bar No. 174
Law House, 10000 Frederiksberg Gade
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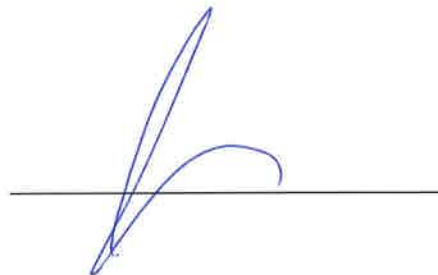
A handwritten signature in blue ink is written over a horizontal line. The signature is stylized and appears to be the name of the person who served the documents.

EXHIBIT 1

NOTICE OF DISSOLUTION OF PARTNERHIP

To: Fathi Yusuf, Partner

Please be advised that I hereby give notice of the dissolution of our Partnership regarding the three Plaza Extra Supermarkets that the partnership operates, which notice is given as authorized by 26 V.I.C. § 171(1). Further, please be advised that I will be submitting the attached Plan of Dissolution to the Superior Court of the Virgin Islands, asking for judicial supervision of this plan pursuant to 26 V.I.C. § 173(a).

Dated: April 30, 2014



Mohammad Hamed, Partner



EXHIBIT 7

IN THE SUPERIOR COURT OF THE VIRGIN ISLANDS

DIVISION OF ST. CROIX

MOHAMMED HAMED by his authorized agent WALEED HAMED
Plaintiff)
Vs.)
FATHI YUSUF and UNITED)
CORPORATION, ET AL)
Defendant)

CASE NO. SX-12-CV-370
ACTION FOR: DAMAGES; ET AL

NOTICE
OF
ENTRY OF JUDGMENT/ORDER

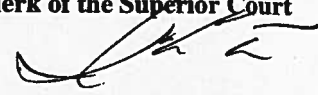
TO: JOEL HOLT, ESQ.; CARL HARTMANN III, Esquire HON. EDGAR ROSS (edgarrossjudge@hotmail.com)
NIZAR DEWOOD, ESQ.; GREGORY HODGES, Esquire
MARK ECKARD, ESQ.; JEFFREY MOORHEAD, Esquire

Please take notice that on JANUARY 7, 2015 Orders were
entered by this Court in the above-entitled matter.

Dated: January 9, 2015

ESTRELLA H. GEORGE (ACTING)

Clerk of the Superior Court



By: IRIS D. CINTRON

COURT CLERK II

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

MOHAMMED HAMED by his authorized agent)
WALEED HAMED,)
Plaintiff/Counterclaim Defendant,)

v.)

FATHI YUSUF and UNITED CORPORATON,)
Defendants/Counterclaimants)

v.)

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

CIVIL NO. SX-12-CV-370
ACTION FOR DAMAGES, etc.

ORDER ADOPTING FINAL WIND UP PLAN

By Order Soliciting Comments, Objections and Recommendations, entered October 7, 2014, the Court ordered the parties to review the Proposed Wind Up Plan ("Proposed Plan") presented therewith relative to the Hamed-Yusuf (Plaza Extra) Partnership and to present comments, objections and recommendations. Plaintiff Mohammed Hamed submitted his Comments re Proposed Winding Up Order (filed October 21, 2014); Defendant Fathi Yusuf submitted his Comments, Objections and Recommendations Concerning the Court's Proposed Plan (filed October 21, 2014). The Parties each then responded to the filing of the other: Plaintiff filed his Response to Defendant's Comments re Proposed Winding Up Order on October 28, 2014; and Defendant Yusuf filed his Response to Hamed's Comments Concerning the Court's Proposed Wind-Up Plan on October 29, 2014.

Upon consideration of the Parties' submissions, the Court enters this Order Adopting Final Wind Up Plan of the Plaza Extra Partnership ("Order"). A complete copy of the Final Wind Up Plan of the Plaza Extra Partnership ("Final Plan") adopted by this Order is submitted with and constitutes a part of this Order. The Final Plan incorporates certain modifications to the Proposed Plan, as noted below, with revised provisions in italics, and excluded provisions stricken. These modifications, together with the provisions to which the Parties have jointly agreed, which are accepted and incorporated, are adopted by the Court and shall constitute the Final Plan. For the Parties' ease of reference, provisions of the Proposed Plan are modified by the terms of this Order and incorporated into the Final Plan, as follows:

~~PROPOSED-FINAL~~ WIND UP PLAN

Section 1: Definitions

1.18 "Liquidating Partner" means Yusuf.

Section 3: Liquidating Partner

Yusuf shall be the Liquidating Partner with the exclusive right and obligation to wind up the partnership pursuant to this Plan *and the provisions of the V.I. Code Ann. tit. 26, § 173(c)*, under the supervision of the Master. No person other than the Liquidating Partner may act on behalf of the Partnership, represent the Partnership in any official capacity or participate in management or control of the Partnership, for purposes of winding up its business or otherwise. The Liquidation Partner's rights and obligations relative to the winding up, subject to the review and supervision of the Master, shall be deemed to have commenced as of April 25, 2013, the date of the issuance of the Preliminary

Injunction. All acts of the Liquidating Partner, except those customarily undertaken in the ordinary course of the ongoing business operations of the Partnership, are subject to prior notification to and approval of the Master.

Section 8: Plan of Liquidation and Winding Up

1) Plaza Extra-East

Yusuf will purchase from the Partnership the following elements of the existing business operation known as Plaza Extra-East: the inventory at *one half of the* landed cost and the equipment ~~and leasehold improvements~~ at their its depreciated value, as mutually determined by the Partners. In the event the Partners cannot agree, such value shall be determined by a qualified appraiser selected by the Master. *In the event that Yusuf is unwilling to pay the appraised depreciated value of the equipment, the same shall be sold at public auction under the direction and supervision of the Master, with net proceeds equally divided and disbursed by the Master.* Upon payment for such inventory, *and upon payment (or auction and distribution of proceeds) for the equipment,* Yusuf will assume full ownership and control and may continue to operate the business Plaza Extra-East without any further involvement of Hamed or the Hamed sons, and free and clear of any claims or interest of Hamed.

For purposes of winding up the Partnership, Plot 4-H Estate Sion Farm shall not be considered partnership property and is not subject to division under this plan, but without prejudice to any accounting claim that may be presented by Hamed.

- b) All funds realized from the sale of the non-cash Partnership Assets shall be deposited into the Claims Reserve Account under the exclusive control of the Master.
- c) All bank accounts utilized in the operation of the Partnership business shall be consolidated into the Claims Reserve Account.
- d) All brokerage and investment accounts set forth in Exhibit D shall be turned over to the Master as part of the Claims Reserve Account.
- e) Any Partnership Assets remaining after the completion of the liquidation process shall be divided equally between Hamed and Yusuf under the supervision of the Master.

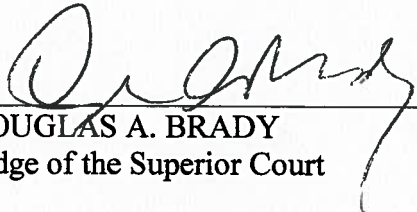
On the basis of the foregoing, it is hereby

ORDERED that the foregoing modifications of the Proposed Plan shall be incorporated into and form a part of the Final Wind Up Plan of the Plaza Extra Partnership, submitted herewith, which Final Plan is ADOPTED by this Order. It is further

ORDERED that the Parties shall meet and confer with the Master FORTHWITH relative to the implementation of the Final Plan, which will be deemed final and effective ten (10) business days following the date of the entry of this Order.

Dated:

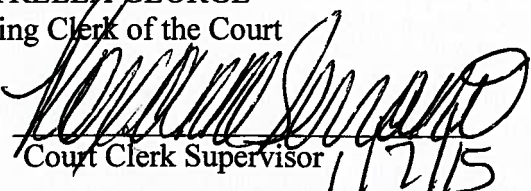
January 7, 2015


DOUGLAS A. BRADY
Judge of the Superior Court

ATTEST:

ESTRELLA GEORGE
Acting Clerk of the Court

By:


Court Clerk Supervisor 1/7/15

CERTIFIED TO BE A TRUE COPY

This 7th day of Jan 20 15

CLERK OF THE COURT

By  Court Clerk II

EXHIBIT 8

Proposed Wind Up Plan

Section 1: Definitions

1.18 “Liquidating Partner” means Yusuf.

Section 3: Liquidating Partner

Yusuf shall be the Liquidating Partner with the exclusive right and obligation to wind up the partnership pursuant to this Plan under the supervision of the Master. No person other than the Liquidating Partner may act on behalf of the Partnership, represent the Partnership in any official capacity or participate in management or control of the Partnership, for purposes of winding up its business or otherwise. The Liquidation Partner’s rights and obligations relative to the winding up, subject to the review and supervision of the Master, shall be deemed to have commenced as of April 25, 2013, the date of the issuance of the Preliminary Injunction.

Section 8: Plan of Liquidation and Winding Up

1) Plaza Extra-East

Yusuf will purchase from the Partnership the following elements of the existing business operation known as Plaza Extra-East: the inventory at landed cost and the equipment and leasehold improvements at their depreciated value, as mutually determined by the Partners. In the event the Partners cannot agree, such value shall be determined by a qualified appraiser selected by the Master. Upon payment for such inventory, equipment and leasehold improvements, Yusuf will assume full ownership and control and may continue to operate the business Plaza Extra-East without any further involvement of Hamed or the Hamed sons, and free and clear of any claims or interest of Hamed.

- c) All bank accounts utilized in the operation of the Partnership business shall be consolidated into the Claims Reserve Account.
- d) All brokerage and investment accounts set forth in Exhibit D shall be turned over to the Master as part of the Claims Reserve Account.
- e) Any Partnership Assets remaining after the completion of the liquidation process shall be divided equally between Hamed and Yusuf under the supervision of the Master.

The Court submits the foregoing to the Parties and solicits comments, objections and recommendations revisions and additions regarding the proposed wind up plan.

Therefore, it is

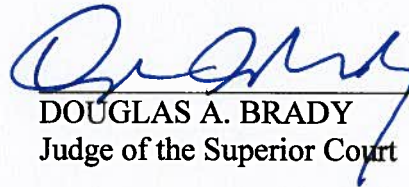
ORDERED that the Parties will meet and confer with the Master FORTHWITH relative to the foregoing proposed plan. It is further

ORDERED that each Party shall have fourteen (14) days from the entry of this Order within which to submit his comments, objections and recommendations. It is further

ORDERED that each Party may file a response to the filing of the other Party within seven (7) days from receipt of the other Party's filing.

Dated:

October 7, 2014


DOUGLAS A. BRADY
Judge of the Superior Court

ATTEST:

ESTRELLA GEORGE
Acting Clerk of the Court

By:


Court Clerk Supervisor

10/7/14

EXHIBIT 9

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

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

Plaintiff/Counterclaim Defendant,

vs.

FATHI YUSUF and
UNITED CORPORATION,

Defendants/Counterclaimants,

vs.

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

Counterclaim Defendants.

CIVIL NO. SX-12-CV-370

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

JURY TRIAL DEMANDED

PLAINTIFF HAMED'S COMMENTS RE PROPOSED WINDING UP ORDER

At the outset, it should be noted that the Plaintiff, Mohammad Hamed, appreciates this Court's efforts to resolve the issues related to this litigation by submitting its October 7th "*Proposed Order*" for comments. An agreement between the parties on the terms suggested in that proposal would probably be in the best interests of all parties, but based on preliminary discussions with the Master, that seems unlikely. Thus, as directed by the Court, Hamed hereby submits his comments regarding the Court's "*Proposed Order*." Before doing so, one preliminary observation is necessary.

In this regard, there is one important point that explains why Hamed believes the "Proposed Order" must be changed. Section 402 of the *Revised Uniform Partnership Act (RUPA)* and its *Official Comments* make it clear that a Court simply cannot force an

a liquidating partner has conflicts that are *inherently* antithetical to the partnership if he also represents a hostile claimant and makes it clear he sides with that claimant. Yusuf represents a VERY hostile claimant. Moreover, his lawyers *represent* him AND that claimant. The only way to alleviate this is to either (1) make Hamed the liquidating partner or (2) order the Master to exercise the full authority under 26 V.I.C. § 173(a) which allows judicial supervision as one alternative to having a liquidating partner:

- (a) After dissolution, a partner who has not wrongfully dissociated may participate in winding up the partnership's business, ***but on application of any partner, partner's legal representative, or transferee, the Superior Court, for good cause shown, may order judicial supervision of the winding up.*** (Emphasis added.)

In short, the Master, not Yusuf, should oversee the liquidation of the partnership.

Alternatively, Hamed has moved for a determination that Fathi Yusuf was a wrongfully dissociating partner, relying on 26 V.I.C. § 171. This issue is still pending. It is clear that the absolute denial of the other partner's interest in the partnership is not only a wrongful act, but one that dissociates him from the partnership. See *Essay v. Essay*, 175 Neb. 689, 693 (Neb. 1963). The Court cannot overlook this. By statute, a dissociated partner cannot serve as the dissolution partner. In this case, Yusuf tried to convert all of Hamed's partnership interest by seizing all of its assets--including Hamed's approximately \$20 million of \$40 million held in cash by the U.S. Marshal, by unilaterally removing \$2.7 million from partnership accounts leading to this litigation,⁹ calling the police to have the Hameds thrown out of the stores while this litigation was pending and *then denying the existence of the partnership at length*, only acquiescing to

⁹ Indeed, it is undisputed that Yusuf used partnership funds to pay his kids' unrelated income taxes.

the partnership's existence after losing his appeal of this Court's Order finding that it was likely a partnership existed. Yusuf should not now be rewarded for this conduct by being made the liquidating partner.

In line with this objection, this Court proposes the Master's review and supervision. Thus, the Master has been given power of "supervision" of the Plan. At the very least, if this Court still determines that Yusuf can be the Liquidating Partner despite Hamed's objections, it must be made very clear that supervision means that ***all acts of the liquidating partner are subject to prior notification and approval of the Master—not just "after the fact" review.***¹⁰

2. The Division of the Three Stores

The East and West stores have no leases with the owners of the properties where the stores are located, making them month-to-month tenancies that cannot be assigned. Thus, the Court's proposed liquidation order fully complies with *RUPA* by liquidating their contents by having each partner buy the equipment and inventory in the physical stores that they each control through other corporate interests.¹¹

However, now that Yusuf has changed his mind from his initial plan and has expressed an interest in operating the St. Thomas/Tutu store, this asset has to be

¹⁰ It is critically important that Yusuf not obtain unilateral signatory power on any account. If Hamed is to be removed from such authority—the Master must be the sole signor on any checks. Otherwise, Yusuf could loot all of the funds if not restrained, as he has attempted in the past.

¹¹ The Court's proposed liquidation order fully complies with *RUPA* by liquidating the contents by having each partner buy the equipment and inventory at a *mutually agreed fair value* in the physical stores where each has a lease through other corporate interests.

revised Order is then redlined and attached as **Exhibit 4**. Either order can be submitted in word if requested by the Court. For the reasons set forth herein, it is respectfully submitted that the order attached as **Exhibit 4** be approved.

Dated: October 21, 2014



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CERTIFICATE OF SERVICE

I hereby certify that on this 21st day of October, 2014, I served a copy of the foregoing by email, as agreed by the parties, on:

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EXHIBIT 10

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

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

Plaintiff/Counterclaim Defendant,

vs.

FATHI YUSUF and **UNITED CORPORATION**

Defendants and Counterclaimants.

vs.

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

Counterclaim Defendants,

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

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.

STIPULATION

The parties to the Plaza Extra Supermarket Partnership (aka the Yusuf-Hamed Partnership) at issue in this captioned litigation, as well as the United Corporation, being in agreement and represented by undersigned counsel, do stipulate to the following:

1. As to Hamed's Claim H-3, Yusuf and United agree that, in exchange for the withdrawal of what Yusuf and United regard as expensive discovery over disputed issues regarding what legal services in the criminal case benefitted the partnership, Yusuf and United will concede the amount claimed by Hamed in H-3 (\$504,591.03). The parties expect that the Master will appropriately address the effect of this conceded claim in his Report and Recommendation for Distribution to be provided to the Court pursuant to section 9, step 6 of the Final Wind Up Plan. The issue of whether Hamed is entitled to attorneys' fees and interest thereon is not addressed in this stipulation.

2. In light of the foregoing, Hamed agrees to: (1) withdraw the four (4) notices of deposition presently outstanding as to H-3, (2) not take further depositions of DTF, Attorney DiRuzzo, the Fuerst Firm, Attorney David or any other person or entity with regard to the issues presented in H-3 or the interest or attorneys' fees related thereto, and (3) withdraw the written discovery (including subpoenas) identified as relating to H-3. The parties also agree that Hamed's Motions of March 23, 2018¹ and March 24, 2018² are mooted by this agreement.

3. Counsel for Fathi Yusuf and United and counsel for Hamed have executed this agreement with the full knowledge, agreement and consent of their respective clients,

¹See "Hamed's Motion for a Determination of 'No-Privilege' or to Compel Waiver or Presumption as to Hamed's Second Motion Regarding Claim H-3: Yusuf's Payments to the Fuerst Law Firm from Partnership Funds."

²See "Hamed's Motion for Limited, 60-Day Enlargement of Time as [t]o Just the Depositions of Three Out-of-State Counsel: Regarding Claim H-3 – Attorney Fees."

and have agreed that this stipulation may be filed with the CaseAnywhere electronic docket by counsel for Hamed.

4. The terms of this Stipulation shall remain confidential and shall not be filed with the Superior Court unless and until such time as any party seeks the Superior Court's final determination of the Master's Report and Recommendation for Distribution, under section 9, step 6 of the Final Wind Up Plan.

Dated: May 30, 2018



Joel H. Holt, Esq.
Counsel for Plaintiff
Law Offices of Joel H. Holt
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Christiansted, VI 00820
Email: holtvi@aol.com
Tele: (340) 773-8709
Fax: (340) 773-867

/s/ Carl Hartmann
for Joel H. Holt

Dated: May 30, 2018



Stefan Herpel
Counsel for Fathi Yusuf and United Corp.
DTF Law Firm
Law House, 10000 Frederiksberg Gade
P.O. Box 756
St. Thomas, VI 00802
ghodges@dtflaw.com

CERTIFICATE OF SERVICE

I hereby certify that on this 30 th day of May, 2018, I served a copy of the foregoing by email and (CaseAnywhere), as agreed by the parties, on:

Hon. Edgar Ross (w/ 2 Mailed Copies)
Special Master
edgarrossjudge@hotmail.com

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Stefan Herpel
Charlotte Perrell
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CERTIFICATE OF COMPLIANCE WITH RULE 6-1(e)

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



EXHIBIT 11

Corporation for approximately \$5,000,000 for the benefit of the partnership. The loan was guaranteed by my wife and I and it was secured by our home on St. Croix and by United's shopping center in St. Croix. In light of these circumstances, I determined that because United did not need the rent revenue, the rent would accrue and the monies that otherwise would be used to pay rent could serve as working capital for the partnership.

3. Some time in 2002 or 2003, I began discussions with Waleed Hamed regarding the rent that would be due for Plaza Extra-East after the expiration of the prior ten-year term in 2004. During those discussions, we recognized that the prior rent was far below fair market value, and the decision was made to base the rent on the same formula utilized at the Tutu Park store in St. Thomas. There is no dispute concerning the formula for calculating the rent for Plaza Extra-East from May 2004 forward, since rent based upon that agreed formula was paid on February 7, 2012 in the amount of \$5,408,806.74.

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.

5. In the latter part of 2011 and early 2012, United was in a position to request – and the partnership was in a position to pay – rent for the 1994–2004 period, as the criminal matter had progressed to a point where there was a relaxing of the injunction. However, the original problem regarding the absence of the records to accurately calculate the rent for the 1994-2004 period remained unresolved because of the absence of the “black book.” I did not want to either understate or overstate the rent amount, but wanted the dollar amount of rent to be exactly correct.

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.

7. My son found the “black book” in early 2013, among a large number of documents that were returned to us by the FBI. After receipt of the “black book,” we asked Waleed Hamed for the rent for 1994–2004, as we then were able to properly calculate the dollar amount. On May 22, 2013, counsel for Mohammed Hamed wrote a letter to my counsel in which he advised that his client disputed there was any obligation to pay the 1994–2004 rent.

Until the litigation in this matter, nobody had ever disputed United's entitlement to rent for the 1994–2004 period.

8. I received a partial copy of the FBI file, records, and documents electronically produced and stored on a hard drive in approximately mid-2011. When these documents were initially returned, I had no reason to suspect any wrongdoing by Plaintiff, Waleed Hamed or any other members of the Hamed family. In 2011, as I reviewed these documents, I discovered certain documents which led me to believe that Plaintiff and Waleed Hamed may have taken monies without my knowledge. In 2012, I discovered the tax returns for Waleed Hamed for various years which reflected more than \$7,500,000 in stocks and securities owned by Waleed Hamed. I knew what Waleed's salary as a Plaza Extra store manager was, and knew that he had no other employment or source of income. My belief was that there was no way he could have legitimately accumulated that much wealth.

Dated: June 6, 2014



Fathi Yusuf

EXHIBIT 12

February 11, 2000

RELEASE OF MORTGAGE

No. 537/2000

KNOW ALL MEN BY THESE PRESENTS, that The Bank of Nova Scotia, the mortgagee of the First Priority Mortgage from United Corporation d/b/a Plaza Extra dated May 2, 1994, in the original principal amount of \$6,100,000.00, and recorded in the Office of the Recorder of Deeds for St. Croix on May 4, 1994, in PC 506, Page 303, No. 2550, on the following realty:

Plot No. 4-C (consisting of 2.5 U.S. Acres), Plot No. 4-D (consisting of 3.0 U.S. Acres) and Plot No. 4-H (consisting of 1.0 U.S. Acres) of Estate Sion Farm, Queen Quarter, St. Croix, U.S. Virgin Islands, as more fully shown and described on Public Works Drawing No. 2348 dated April 19, 1968, revised August 24, 1992,

as modified by Mortgage Consolidation Certificate by The Bank of Nova Scotia dated May 3, 1994 and recorded May 4, 1994 in PC 506, Page 301, No. 2549, does hereby acknowledge that said Mortgage, as modified, has been satisfied, and in consideration thereof, does hereby cancel, release and discharge said lien.

00 FEB 11 AM 11:53


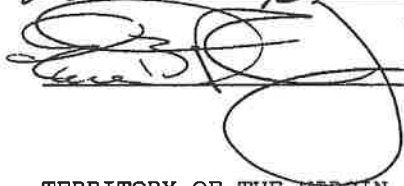
RECORDED IN OFFICE OF THE RECORDER OF DEEDS ST. CROIX

1527

IN WITNESS WHEREOF, this Release has been executed this
7th day of February, 2000.

WITNESSES:

THE BANK OF NOVA SCOTIA

By: 

Title: Senior Manager General
Manager

TERRITORY OF THE VIRGIN ISLANDS)

) SS:

DIVISION OF ST. THOMAS/ST. JOHN)

The foregoing Release of Mortgage was acknowledged before
me this 7th day of February, 2000 by Robert Edwards as
Sr. Manager/General of The Bank of Nova Scotia, on behalf
Bank of the Bank.


Notary Public

My commission expires:

Linda M. Berry
Notary Public No. 6298
St. Thomas/St. John, U.S. Virgin Islands
My Commission expires 7/18/2002

Received for recording on the 11th day of Feb.
2000 at 11:58 o'clock A. M. and
Recorded and Entered in Recorder's Book for the
District of St. Croix, Virgin Islands of the U.S.A. at
Photo-copy 114 Page
No. 537/200 and noted in Real Property Register
Page

FEE: \$ 1,525.50 Althea L Pedro
Recorder

2

THE BANK OF NOVA SCOTIA

May 4, 1994

FIRST PRIORITY MORTGAGE

No. 2550/1994

THIS MORTGAGE is made on May 2, 1994, between UNITED CORPORATION d/b/a/ PLAZA EXTRA, a corporation incorporated under the laws of the U.S. Virgin Islands and having its principal place of business at United Shopping Plaza, Parcels 4c, 4D and 4H Estate Sion Farm, Christiansted, St. Croix, hereinafter referred to as "Mortgagor", and THE BANK OF NOVA SCOTIA, a banking corporation organized under the laws of the Dominion of Canada with its principal place of business located at 44 King Street West, Toronto, Ontario, Canada, acting through its branch office in Charlotte Amalie, St. Thomas, United States Virgin Islands, hereinafter referred as "Mortgagee".

MORTGAGOR acknowledges being indebted to Mortgagee in the sum of Six Million One Hundred Thousand (\$6,100,000.00) United States dollars or so much thereof as shall have been advanced and remains unpaid, which indebtedness is evidenced by Mortgagor's promissory note(s) in the amount of \$5,500,000 executed by Mortgagor on even date herewith; the Standby Letter of Credit for \$500,000 given by Mortgagee to Mortgagor on even date herewith; and, the Overdraft Agreement in the amount of \$100,000 executed by Mortgagor on even date herewith, as the said promissory note(s), standby letter of credit arrangement and overdraft agreement may be extended, renewed, modified or varied by mutual agreement of the parties thereto (hereinafter collectively referred to as the "Note").

This Mortgage secures the payment of all moneys due under the Note together with any and all sums which Mortgagor at any time and for any reason may be indebted to Mortgagee under the terms of the loan agreement between Mortgagor and Mortgagee dated this date (the "Loan Agreement"), or otherwise, and for any claims or demands whatsoever that Mortgagee at any time and for any reason may have or obtain against Mortgagor, solely or jointly, whether created directly or acquired by assignment, whether absolute or contingent and whether due or not.

Dudley
Clark &
Chan
Havensight
Executive
Towers, St.
Thomas, VI
776-7474

303

74

110.80

For the purposes set forth above, Mortgagor hereby mortgages to Mortgagee and the successors and assigns of Mortgagee the following described real property located in the Territory of the Virgin Islands, United States of America:

United Shopping Plaza
Parcel Nos. 4C, 4D and 4H Estate Sion Farm
Christiansted, St. Croix, U.S. Virgin Islands

TOGETHER WITH all appurtenances of land, all present and future buildings, all improvements now or hereafter erected on the property and all fixtures and equipment now or hereafter a part of the property, (hereinafter referred to as the "Improvements"), which real property and the Improvements are hereinafter referred to as the "Property". All replacements and additions to the Property shall also be covered by the lien of this Mortgage. In case the Property is or becomes under lease or sublease, Mortgagor mortgages and assigns to Mortgagee all of its possessory interest in the Property so leased or subleased. Mortgagor further mortgages all house, building and land rents together with all awards heretofore and hereafter made for the taking by eminent domain of the whole or any part of the Property or any easement therein, all of which are assigned to Mortgagee.

This is a First Priority Mortgage.

Mortgagor warrants to and covenants with Mortgagee that:

- 1 Payment of Secured Amounts
Mortgagor shall promptly pay when due the principal of and interest on the debt evidenced by the Note, any prepayment or late charges due under the Note and all other amounts under the Note or otherwise secured by this Mortgage.
- 2 Good Title
Mortgagor warrants title to the Property. Mortgagor warrants it has the right to mortgage the Property and that the Property is unencumbered, except as provided herein. Mortgagor will defend generally the title to the Property against all claims and demands.

3 Taxes

Mortgagor shall pay all taxes, assessments, charges, fines and impositions attributable to the Property which shall become due from time, and shall promptly furnish to Mortgagee during all times that this Mortgage remains in effect all tax bills and other amounts to be paid under this paragraph and receipts evidencing such payments. Should Mortgagor fail at any time to pay any such taxes, assessments, charges, fines and impositions, Mortgagee may, but shall not be required to, make the required payment together with any interest and penalties then owing.

4 No Further Mortgages; Liens

Mortgagor expressly agrees not to grant any further mortgages, easements or leases over, or in any way encumber, the Property without the prior written consent of Mortgagee. Mortgagor shall promptly discharge any lien which may attach to the Property at any time during which this Mortgage remains in effect. Should Mortgagor fail at any time to discharge such lien, Mortgagee may, but shall not be required to, make the required payment together with any interest and penalties then owing.

5 Sale of the Property or of a Beneficial Interest In Mortgagor

Should the Property or any portion thereof be sold, encumbered or conveyed, or in the case of a change in ownership in any way, or if a beneficial interest of Mortgagor (if Mortgagor is not a natural person) is sold or transferred, Mortgagee at its sole option may declare the outstanding balance unpaid which is secured by this Mortgage to become immediately due and payable.

6 Property and Hazard Insurance

6.1 Mortgagor shall insure the Improvements, and all property which is mortgaged to or which secures Mortgagee under the terms of this Mortgage or any security document, at all times with responsible, reputable and financially sound insurance companies or associations acceptable to Mortgagee covering loss or damage to the Improvements and any secured property on a comprehensive basis from all risks (including fire, earthquake and windstorm, casualty, hurricane, flood and other risks), and consequential loss insurance and insurance against liability to

persons for such risks and hazards and business interruption insurance in such amounts and with such deductibles as are reasonably acceptable to Mortgagee.

- 6.2 All such insurance policies shall name Mortgagee as an additional insured party and provide for payment of the proceeds thereof to Mortgagee as loss payee, and shall contain an endorsement providing that the insurance shall not be cancelable except upon at least fifteen (15) days prior written notice to Mortgagee.
- 6.3 Should Mortgagor fail at any time to maintain such insurance coverage, Mortgagee may, but shall not be required, to obtain such coverage with insurance companies of its choosing and make the required premium payment together with any interest and penalties then owing.
- 6.4 Duplicate originals of all insurance policies insuring the Property and any other property which is mortgaged to or which secures Mortgagee under the terms of a security document shall be provided to Mortgagee by Mortgagor on a regular basis not later than 10 days prior to the expiration of the current policy, and without separate request from Mortgagee together with confirmation from the relevant insurer or insurers that the annual premiums in respect of such insurance has been paid and that such insurance is in full force and effect.
- 6.5 From time to time at the request of Mortgagee, Mortgagor shall deliver to Mortgagee a detailed schedule indicating all insurance policies then in force over the Property.
- 6.6 If all or any part of the Property and any other property which is mortgaged to or which secures Mortgagee under the terms of a security document is destroyed or damaged at any time by any cause whatsoever while the loan is outstanding, Mortgagee, in its absolute discretion, may apply the proceeds of any insurance policy or any part thereof, either to the reduction or satisfaction of the amounts secured by this mortgage, or to the construction, restoration or repair of the Property, in such manner as Mortgagee may elect in its complete discretion.

- 6.7 In the case of loss, Mortgagor shall give prompt notice to the insurance company and Mortgagee. Mortgagee may make proof of loss if not made promptly by Mortgagor.
- 6.8 Unless otherwise agreed in writing, any damage to the Property covered by insurance and/or any application of insurance proceeds to any amount secured by this Mortgage shall not extend or postpone the payment of amounts due under the Note, Standby Letter of Credit, Overdraft Agreement and Loan Agreement.
- 7 Removal or Destruction of Improvements
No Improvements shall be removed or demolished, without the prior written consent of Mortgagor.
- 8 Application of Payments and Proceeds of Sale & Management Income
Any payment made by Mortgagor, and the proceeds of any sale of the Property or any part thereof or any interest therein pursuant to foreclosure or otherwise hereunder, and all amounts received by Mortgagee by reason of any operation or management of the Property may be appropriated towards the reduction of Mortgagor's indebtedness to Mortgagee in such manner as Mortgagee may elect in its complete discretion.
- 9 Maintenance and Repair
Mortgagor shall not destroy, damage or impair the Property, allow the Property to deteriorate, or commit waste on the Property, and will maintain the Property in as good a condition and repair as it is at the time of execution of this Mortgage.
- 10 Appraisals
Mortgagee shall have the right to obtain a written appraisal of the Property not more than once in any one year period. The reasonable cost of such appraisal shall be paid by Mortgagor upon demand.
- 11 Right Of The Holder Of The Note To Perform Mortgagor's Covenants, Etc.
If Mortgagor fails to make any payment or perform any act required to be made or performed hereunder, Mortgagee, after such notice to Mortgagor as may be

reasonable under the circumstances, and without waiving or releasing any obligation or default, may (but shall be under no obligation to) at any time thereafter make such payment or perform such act for the account and at the expense of Mortgagor, and may enter upon the Property or any part thereof for such purpose and take all such action thereon as, in the opinion of Mortgagee, may be necessary or appropriate therefor.

12 Environmental Regulations

- 12.1 Mortgagor shall not cause or permit the presence, use, disposal, storage or release of any toxic or hazardous substance, including but not limited to any pollutant, contaminant, waste or hazardous waste, and any substance that when released to the natural environment is likely to cause at some immediate or future time, substantial harm to the natural environment or risk to human health or any other substances defined as toxic or hazardous under any Federal or Virgin Islands law or regulation relating to health safety or environmental protection (collectively "environmental laws"), (such substances collectively being described as "Hazardous Substances") on or in the Property without the prior written consent of Mortgagee.
- 12.2 Mortgagor shall not make any use, nor allow anyone else to make any use, of the Property that is in violation of environmental laws or which violate the terms of any Coastal Zone Management permit or other permit obtained by Mortgagor from the Federal or Virgin Islands government.
- 12.3 Mortgagor shall promptly give Mortgagee notice of any investigation, claim, demand, lawsuit or any action by any governmental or regulatory agency or private party involving the Property and any Hazardous Substances and/or environmental laws.
- 12.4 If Mortgagor learns, or is notified by any governmental or regulatory authority, that any removal or other remedial action of or concerning any Hazardous Substances affecting the Property is necessary, Mortgagor shall promptly take all necessary remedial actions in accordance with the relevant environmental law and shall keep Mortgagee fully notified of the efforts.

12.5 Mortgagor shall permit Mortgagee at its discretion to conduct tests, inspections and appraisals of all or any of its records, business and assets insofar as they relate to the Property (including, without limitation, the right to conduct soil tests and to remove samples from the Property and any parts of the Property) at any time and from time to time to ensure compliance with the representation made by Mortgagor as to Hazardous Substances.

12.6 If Mortgagee is required, or deems it necessary or advisable to take any action as a result of any investigation, claim, demand, lawsuit or any action by any governmental or regulatory agency or private party involving the Property and any Hazardous Substances and/or environmental laws, Mortgagee shall be entitled to recover all costs incurred or sums paid by Mortgagee as a result thereof and thereby, including reasonable attorney's fees.

13 Right of Entry & Inspection

Mortgagee or its duly authorized agents may make reasonable entry upon and inspection of the Property whenever Mortgagor deems necessary.

14 Right to Complete or Repair

Upon default of payment of any moneys due under the Note or hereunder or upon breach of any of the covenants or warranties of Mortgagor contained in this Mortgage, the Note or any other document evidencing the transaction in which this Mortgage was made, or should Mortgagor in good faith deem itself to be insecure after all or part of the moneys hereby secured have been advanced, Mortgagee or its duly authorized agents may, without notice, enter and remain upon the Property and make arrangements for the protection, construction, repair, put in order or completion of any Improvements as it sees fit, all without discharging Mortgagor in any way from its obligations hereunder.

15 Condemnation; Eminent Domain

In the event of any award or claim for damages, direct or consequential, in condemnation or other taking of all or any part of the Property, or for conveyance in lieu of condemnation, or for taking by eminent domain, Mortgagee is authorized to collect and receive the proceeds of such award and to give proper receipts and

acquittances therefor and to apply any amounts received towards payment of the indebtedness secured by this Mortgage, notwithstanding that the indebtedness may not then be due and payable.

16 Appointment of Receiver

Should Mortgagee bring an action to foreclose this Mortgage, Mortgagee shall be entitled (without notice and without regard to adequacy of the security for the debt) to the appointment of a receiver for all or any part of the Property.

17 Assignment of Rents & Profits

Mortgagor hereby assigns to Mortgagee the rents, issues and profits of the Property as further security for the payment of said indebtedness, and Mortgagor grants to Mortgagee the right to enter upon the Property for the purpose of collecting the same and to let the Property or any part thereof, and to apply the rents, issues and profits, after payment of all necessary charges and expenses, on account of said indebtedness. This assignment and grant shall continue in effect until this Mortgage is paid. Mortgagee hereby waives the right to enter upon said Property for the purpose of collecting said rents, issues, and profits, and Mortgagor shall be entitled to collect and receive said rents, issues and profits until default under any of the covenants, conditions or agreements contained in this Mortgage, and agrees to use such rents, issues and profits in payment of principal and interest becoming due on this Mortgage and in payment of taxes, assessments, sewer rents, water rates and carrying charges becoming due against said Property, but such right of Mortgagor may be revoked by Mortgagee upon any default, on five (5) days' written notice. Mortgagor will not, without the written consent of Mortgagee, receive or collect rent from any tenant of said Property or any part thereof for a period of more than one (1) month in advance, and in the event of any default under this Mortgage will pay monthly in advance to Mortgagee, or to any receiver appointed to collect said rents, issues and profits, the fair and reasonable rental value for the use and occupation of said Property or such part thereof as may be in the possession of Mortgagor, and

upon default in any such payment will vacate and surrender the possession of said Property to Mortgagee or such receiver, and in default thereof may be evicted by summary proceedings.

18 Default, Acceleration and Foreclosure

If one or more of the following events shall occur:

- 18.1 if Mortgagor defaults in the observance or performance of any of the covenants, provisions, agreements, or conditions contained in this Mortgage, the Note or the Loan Agreement as the same may be amended or varied from time to time,
- 18.2 if Mortgagor has given materially false or inaccurate information or statements to Mortgagee (or failed to provide Mortgagee with any material information) in connection with the transaction in which this Mortgage is made or in connection with the Note,
- 18.3 if Mortgagor shall make an assignment for the benefit of creditors, or shall admit in writing its inability to pay its debts as they become due, or shall file a petition in bankruptcy, or shall be adjudicated a bankrupt or insolvent, or shall file a petition seeking any arrangement, composition, readjustment or similar relief under any present or future statute, law or regulation, or shall file an answer admitting or not contesting the material allegations of a petition filed against it in any such proceeding, or shall seek or consent to or acquiesce in the appointment of any trustee or receiver;
- 18.4 if, within sixty (60) days after the commencement of any proceeding against Mortgagor which seeks any arrangement, composition or similar relief under any present or future statute, law or regulation, such proceeding shall not have been dismissed, or if, within sixty (60) days after the appointment of any trustee or receiver of Mortgagor, without the consent or acquiescence of Mortgagor, such appointment shall not have been vacated; or,

18.5 if Mortgagee in good faith deems itself insecure;

then Mortgagee shall have the right, without notice to Mortgagor, to accelerate payment of the amounts secured by this Mortgage, to declare the full amount secured by this Mortgage immediately due and payable and to commence legal foreclosure of this Mortgage and to proceed with the sale of the Property in the manner and form prescribed by law. If the proceeds of such sale are not sufficient to satisfy the indebtedness secured by this Mortgage, a deficiency judgment for such amounts remaining unpaid may be entered against Mortgagor.

19 Balloon Payment

A balloon payment applies to the loan for which this mortgage is taken as security and the final principal payment or the principal balance due upon maturity may be as much as \$1,960,000. In addition, accrued interest, if any, and all other advances made by Mortgagee under the terms of this mortgage will be due and payable upon maturity.

20 Other Indebtedness And Future Advances

This Mortgage secures and shall secure any and all indebtedness of Mortgagor to Mortgagee. For the purpose of this paragraph, "indebtedness" means all loans, advances and Future Advances (as described below), now or hereafter made by Mortgagee to Mortgagor, together with any and all interest accrued thereon, and all other obligations and liabilities of Mortgagor, whether now existing or hereafter incurred or created, whether voluntarily or involuntarily, or whether incurred directly or acquired by Mortgagee by assignment or otherwise. The term "indebtedness" as used herein specifically includes those obligations of Mortgagor arising under any agreement delivered by Mortgagor to Mortgagee whereby Mortgagor guarantees repayment to Mortgagee of the debts and/or liabilities of any individual, corporation, association, partnership or other entity. Mortgagor expressly waives notice of any discontinuation, reduction, increase or other variation in the indebtedness as that term is used herein. Mortgagor shall promptly pay to Mortgagee when due the indebtedness in the manner provided in the Mortgage and the Note(s), Overdraft Agreement(s), Guarantee(s), the Loan Agreement and other written agreements and instruments evidencing and

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Executive
Towers, St.
Thomas, VI
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securing the indebtedness. Notwithstanding anything to the contrary set forth herein, all indebtedness secured by this Mortgage shall bear interest at the maximum rate permissible by law, not to exceed, however, the rate(s) set forth in the above-mentioned documents creating the indebtedness.

Without limiting the foregoing, this Mortgage secures any and all Future Advances made by Mortgagee to Mortgagor, jointly or individually, as provided for by 28 V.I.C. 1032. "Future Advances" means any and all indebtedness, as defined above and of the nature described in 28 V.I.C. 1032, arising after the date hereof. At no time shall the principal amount of indebtedness secured by this Mortgage, including Future Advances, but not including sums advanced to protect the security of this Mortgage, exceed the sum of \$6,100,000. Mortgagor acknowledges that Mortgagee has no obligation to Mortgagor to make Future Advances.

21 Costs of Legal Proceedings

- 21.1 If any action or proceeding is commenced involving, connected with or relating to the Property which Mortgagee is made a party, or in which it becomes necessary for Mortgagee to defend or uphold the lien of this Mortgage, or if Mortgagee is required or deems it necessary to appear before any court or administrative tribunal in connection with the Property or the transaction evidenced in part by this Mortgage, all sums paid by Mortgagee in regard hereto, including reasonable attorney's fees.
- 21.2 If Mortgagee is required to legally foreclose upon the Property and to sell the Property in the manner and form prescribed by law, and to recover amounts secured by this Mortgage, all costs incurred or sums paid by Mortgagee as a result thereof and thereby, including reasonable attorney's fees, shall be promptly paid by Mortgagor upon request, together with interest thereon at the same rate applicable to the principal amount shown on the Note, and until paid shall be a lien on the Property secured by this Mortgage.

Notwithstanding any other provision herein to the contrary, the terms "attorney's fees" as used herein shall mean the fees charged to Mortgagor by Mortgagor's attorneys for the time expended by any attorney, paralegal, legal assistant, or law

clerk employed by Mortgagor's attorneys, plus disbursements incurred by the said attorneys on behalf of Mortgagor. In determining the reasonableness of attorney's fees, the rates charged by Mortgagor's attorneys to Mortgagor shall be presumed to be reasonable except upon a showing that the rates charged Mortgagor are in excess of the standard and customary hourly rates charged by the said attorneys. It is the express intention of Mortgagor and Mortgagee that indemnification for attorney's fees be governed by contract rather than by statute or judicial discretion.

22 Amounts Paid By Mortgagee

All the amounts paid by Mortgagee under the provisions of paragraphs 3, 4, 6.3, 10, 11, 12.6, and 14 above, shall: i) be added to the then unpaid principal amount secured by this Mortgage; ii) bear interest at the highest rate accruing on such principal amount; iii) be a lien on the Property attaching or accruing subsequent to the lien of this Mortgage; iv) be deemed to be secured by this Mortgage; and, v) be paid by Mortgagor to Mortgagee on demand.

23 Not A Waiver

From time to time, Mortgagee may, without notice and at its sole discretion:

- a) release this Mortgage as to all or any part of the Property; or
- b) accept any sum on account of this Mortgage after the date when such sum is due or after foreclosure proceedings have begun; or
- c) release or extend the time or alter the terms of payment of this Mortgage or any promissory Note of Mortgagor; or
- d) take or release other security for all or part of this Mortgage, all without:
 - i) Prejudicing or affecting the liability of any person for the payment and performance of any part of this Mortgage or the lien thereof; and
 - ii) Waiving any of Mortgagee's rights hereunder as to any unpaid balance of this Mortgage.

Notwithstanding any of the foregoing, Mortgagee shall have the right thereafter to insist upon strict performance by Mortgagor of all terms and conditions of this Mortgage to be performed by Mortgagor.

24 Loan Charges

If the loan secured by this Mortgage is subject to a law which sets maximum loan charges or interest rates, and the interest rates or other loan charges collected or to be collected in connection with the loan exceed the permitted limits, then Mortgagor and Mortgagee agree that as Mortgagor's sole remedies:

- (a) any such loan charge or interest rate shall be reduced by the amount necessary to reduce the charge to the permitted limit; and
- (b) any sums already collected from Mortgagor which exceeded permitted limits will be refunded to Mortgagor.

Mortgagor and Mortgagee agree that Mortgagee may choose to make this refund by reducing the principal owed under the Note or by making a direct payment to Mortgagor. If a refund reduces principal, the reduction will be treated as a partial prepayment without any prepayment charge under the Note.

25 Severability

In the event that any provision or clause of this Mortgage is declared invalid, such provision or clause shall be deemed deleted from this Mortgage and the remainder given full effect as if the offending provision or clause had not appeared.

26 Further Instruments

Mortgagor will execute and deliver to Mortgagee any further and additional instruments which may be necessary or proper to confirm this Mortgage in accordance with its true intent.

27 Release

Upon payment of all sums secured by this Mortgage, Mortgagee shall execute a written document releasing this Mortgage. Mortgagor shall be responsible for recording any such release and pay any recordation costs to satisfy and remove the Mortgage of record.

28 Assignment

This Mortgage, and the Note, may at any time be assigned, in whole or in part, by Mortgagee, and the benefits, advantages, rights and obligations of Mortgagee hereunder shall inure to the successors and assigns of Mortgagee.

29 Successors and Assigns: Joint and Several Liability; Interpretation

29.1 Subject to the provisions of clause 5, "Mortgagor" shall include heirs, administrators, executors, successors and assigns of Mortgagor and "Mortgagee" shall include the successors and assigns of Mortgagee.

29.2 All covenants, liabilities and other obligations entered into or imposed herein upon Mortgagor shall be joint and several if there be more than one Mortgagor.

29.3 Any Mortgagor who co-signs this Mortgage but does not execute any guarantee or Note: (a) is co-signing this Mortgage only to mortgage, grant and convey that Mortgagor's interest in the premises under the terms of this Mortgage; (b) is not personally obligated to pay the sums secured by this Mortgage; (c) has executed this Mortgage for the purpose of complying with 5 V.I.C. 478(c); (d) by execution of this Mortgage hereby expressly waives the benefits of the homestead exemption; and (e) agrees that Mortgagee and any other Mortgagor may agree to extend, modify, forbear or make any accommodations with regard to the terms of this Mortgage or the Note without that Mortgagor's consent.

29.4 Words in the singular shall include the plural and vice-versa, and words importing the masculine gender shall include the feminine gender unless the context states to the contrary.

Captions used in this Mortgage are for reference only and shall not be considered in the interpretation and construction of this Mortgage.

30 Proceedings Before Magistrate

Should Mortgagee so elect, Mortgagor consents to dispositive legal proceedings before a United States Magistrate in any litigation concerning or involving this

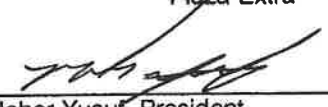
Mortgage or the transaction in connection with which this Mortgage was made to the fullest extent permitted by 28 U.S.C. 636(c) or such other provision of law which shall replace, modify or supersede it.


31 Jury Waiver

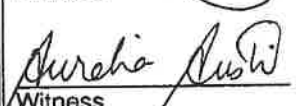
Mortgagor and Mortgagee each hereby irrevocably waive all right to trial by jury in any action, proceeding, or counterclaim, including, but not limited to, actions sounding in tort, "bad-faith," fraud or otherwise, arising because of or in any way relating to this Mortgage, any guaranty or other security document executed in connection herewith or the transactions contemplated thereby.

IN WITNESS WHEREOF, Mortgagor has hereunto set its hand and seal on the date first above written.


United Corporation d/b/a/
Plaza Extra


Maher Yusuf, President


Witness

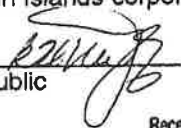

Witness

ATTEST:


Fathi Yusuf, Secretary/Treasurer

TERRITORY OF THE VIRGIN ISLANDS)
(SS:
DISTRICT OF ST. THOMAS AND ST. JOHN)

The foregoing Mortgage Instrument was acknowledged before me this 2nd day of
May, 1994, by MAHER YUSUF, president of United Corporation d/b/a/ Plaza Extra, a
U.S. Virgin Islands corporation, on behalf of the corporation.


Notary Public

Received for recording on the 4th day of May
1994 at 11:45 o'clock A.M. and
Recorded and Entered in Recorder's Book for the
District of St. Croix, Virgin Islands of the U.S.A. at
Photo-copy 506 Page _____
No. 2550/1994 and noted in Real Property Register
Page _____

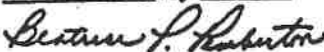

FEE \$ 6,110.00

EXHIBIT 13

(the "Master") at a scheduling conference on December 15, 2017, agree and stipulate to the following Plan for incorporation into a Case Management Order.

A. Discovery as to Hamed Claims H-41 through H-141

Defendants Fathi Yusuf ("Yusuf") and United Corporation ("United") will be filing a Motion to Strike Claims H-41 to H-141, which, if granted, will obviate the need for any discovery relating to any claim that is stricken. Plaintiff will be opposing that Motion.

In the event the Motion is denied in part or in full, the parties agree to the following discovery regarding any of the Claims H-41 to H-141, which survive that Motion:

1. Mr. Gaffney will be paid by Hamed at the rate of \$150.00 per hour for the time he works, set forth in a contemporaneous kept timesheet for answering the items in this "Section A". Mr. Gaffney will submit daily emails to counsel for Hamed informing them of the hours worked and what was done. Unless counsel for Hamed disapproves the work by the end of the following day, Mr. Gaffney will continue the work. If it is disapproved, the Master will be consulted for a decision before work resumes. These emails will then form the basis of weekly billings that shall be paid within one month of receipt of same.

2. For each of the Hamed Claims numbered H-41 through H-141¹, which survive the Motion, John Gaffney will provide a written response, in his fiduciary capacity as the Partnership Accountant, to the following two items:

a. Interrogatory: Provide a written statement describing this transaction, with reference to when the actual activity or delivery occurred, who the

¹. Gaffney will be allowed to identify, collect and transport sales journals for Plaza Extra-Tutu Park and Plaza Extra-West from January 2013 through April 2015 as needed. Hamed will arrange or pay for the transport.

persons/entities are, what amounts were involved, and what it was for (with reference to why the funds are allegedly properly charged to the Partnership) and making reference to any checks, invoices or other relevant documents.

b. Production of Documents: Attach to the above Interrogatory response, the documents referenced in your response.

3. Mr. Gaffney's responses to interrogatories and document requests will be provided in the bi-weekly period in which they are completed and not in groups or all at once, by July 31, 2018. The parties may also subpoena third parties related to the transactions at issue.

4. Hamed shall have a total of fourteen hours to depose Mr. Gaffney with respect to any of the Claims H-41 – H-141 that survive the Motion. Yusuf and United will be allowed a similar amount of time at each examination for cross-examination, which will not be charged to Hamed's 14 hours, and Hamed re-direct, which will be charged to his 14 hours. The depositions shall be conducted on four separate, non-consecutive days of Hamed's selection based on Mr. Gaffney's reasonable availability, unless Mr. Gaffney agrees to a different schedule, and the Notice of Deposition shall specify the claims and responses to be covered in the deposition. The parties may agree to a tape or video-recorded deposition rather than a court reporter.

5. The written portion of this process will be completed by Mr. Gaffney by July 31, 2018.

6. No part of these funds paid to Mr. Gaffney by Hamed will be paid by him or shared by him with Yusuf or United or any third person or entity.

B. Remaining Claims of Both Parties

7. Written interrogatories, requests for production of documents, and requests for admissions shall be propounded no later than March 31, 2018, and all responses thereto, including objections, shall be served not later than May 31, 2018.

As to these remaining claims, no party shall propound more than 50 interrogatories, 50 requests for production of documents, and 50 requests for admissions, including all discrete subparts thereof, unless otherwise stipulated by the parties or ordered by the Master.

8. A motion regarding any claim may be filed at any time, without regard for the discovery schedule, and need not be held until the end of this process. Timing of responses and replies shall be governed by the V.I. Rules of Civil Procedure.

9. All fact witness depositions, including depositions of non-parties, taken for purposes of discovery and/or to preserve testimony for trial, shall be completed by August 31, 2018.

[It is noted that Hamed does not think it is necessary, or that it would be to the Court's advantage to continue the schedule past this point, and suggests that a status/scheduling conference be set after August 15th -- but leaves that determination to the Special Master.]

10. No party shall take more ten (10) fact and expert witness depositions, no single deposition shall exceed more than seven (7) hours in duration, and any single deposition shall be completed on the same day on which it is commenced, unless otherwise stipulated by the parties or ordered by the Master.

11. All motions to compel, for discovery, sanctions, or for protective orders with respect to fact discovery, shall be filed and served not later than September 17, 2018.

12. Plaintiff shall serve notices identifying all of his expert witnesses, and said expert witnesses' curriculum vitae and written reports, not later than September 28, 2018.

13. Defendants shall serve notices identifying all of their expert witnesses, and said expert witnesses' curriculum vitae and written reports, not later than October 31, 2018.

14. All expert witness depositions, for purposes of discovery and to preserve testimony for trial, shall be completed not later than November 30, 2018.

15. All motions to compel, for sanctions, or for protective orders with respect to expert discovery, shall be filed and served not later than December 17, 2018.

16. The parties shall jointly contact the Master to attempt an informal resolution of any discovery disputes prior to filing discovery motions.

17. All dispositive motions, except for motions challenging subject matter jurisdiction which may be filed at any time, and *Daubert/Kuhmo* motions shall be filed and served not later than January 15, 2019.

18. All motions in limine and V.I. Rule of Evidence 104 motions shall be filed and served not later than January 31, 2019.

19. This Joint Discovery and Scheduling Plan may not be amended, except as ordered by the Master for good cause shown.

Respectfully submitted,

LAW OFFICES OF JOEL H. HOLT

DATED: January 12, 2018 By: _____


Joel H. Holt
2132 Company Street
Christiansted, VI 00820
Telephone: (340) 773-8709
Facsimile: (340) 773-8677
Email: holtvi.plaza@gmail.com

Attorneys for Plaintiff/Counterclaim Defendant

DUDLEY TOPPER AND FEUERZEIG, LLP

DATED: January 12, 2018 By: _____


Gregory M. Hodges (V.I. Bar No. 174)
Dudley, Topper and Feuerzeig, LLP
1000 Frederiksberg Gade
P.O. Box 756
St. Thomas, VI 00804
Telephone: (340) 715-4405
Facsimile: (340) 715-4400
Email: ghodges@dtflaw.com

Attorneys for Defendants/Counterclaimants

The foregoing Joint Discovery and Scheduling Plan is **APPROVED** and is made the Case Management Order in this case.

Dated: January 29th, 2018


Hon. Edgar D. Ross
Master

EXHIBIT 14

UNITED CORPORATION
d/b/a PLAZA EXTRA SUPERMARKET
4C & 4D Sion Farm
Christiansted, VI 00820

BY HAND DELIVERY

*Received by
8/16/2012*

Date: August 15, 2012

Mohammed Hamed
By and through Waleed Hamed
Plaza Extra Supermarket
Sion Farm Store
Christiansted, V.I. 00820

Re: Notice of Withdrawal

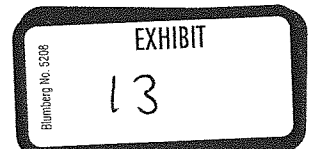
Dear Mr. Hamed,

The amount of \$2,784,706.25 will be withdrawn from United's operating account effective August 15th, 2012. This amount equals the proceeds you previously withdrew through your agent Waleed Hamed. To ensure full accuracy, attached are the receipts you requested during mediation demonstrating the \$1,095,381.75 of withdrawals. The below itemized amounts are not in dispute.

| | |
|--|----------------|
| Past Confirmed Withdrawals | \$1,600,000.00 |
| Additional Withdrawals per the attached requested receipts | \$1,095,381.75 |
| Fifty percent (50%) of St. Maarten Bank Account | \$44,355.50 |
| Fifty percent (50%) of Cairo Amman Bank | \$44,696.00 |

Should you have any concerns about these amounts, please provide the basis for your concerns in writing. Thank you.

Yours
Fathi Yusuf
Fathi Yusuf



JA-1034

**Waleed Hamed
Plaza Extra
4C 4D Estate Sion Farm
Christiansted, VI 00821**

BY HAND DELIVERY

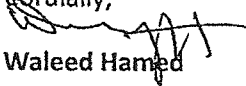
Date: Thursday, August 16, 2012

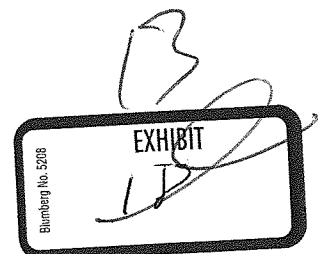
**Fathi Yusuf
Plaza Extra Supermarket
4605 TuTu Park Mall Ste 200
St.Thomas, VI 00805**

Dear Mr. Yusuf:

In response to your August 15th letter re "Notice of Withdrawal", these figures have not been agreed to. Indeed, there were no attachments as indicated and there are numerous other funds that have to be included in any such calculations before any disbursements can be made. For example, all withdrawal receipts have to be reviewed before any withdrawals are paid, no mention or indication of the amounts that the Yusuf family has previously withdrawn, By way of another example, the \$800,000 plus due the Hamed family for the sale of the condo property in St. Thomas would have to be included. In short, while these are just a few examples, no withdrawals will be issued until a full accounting is done and agreed to in writing.

Cordially,


Waleed Hamed



JA-1035

UNITED CORPORATION

4-C & 4-D Estate Sion Farm

P.O. Box 763

Christiansted, VI 00820

Date: August 22, 2012

HAND DELIVERY

Mohammed Hamed

By Waleed Hamed

Dear Mohammed Hamed,

Re: Set-Off

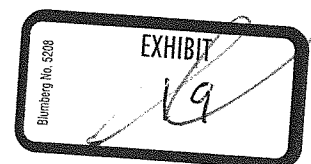
Your response letter, through your agent Waleed Hamed, does not deny the validity of any of the amounts stated as owing and outstanding to United Corporation. Your letter requests that an accounting be done for other matters, which is a separate issue. Please reduce to writing those other matters you contend are owed, and provide the supporting documentation.

Accordingly, the amount requested will be withdrawn.

Thank you.

Cordially,

For Fathi Yusuf



JA-1036

U.S. CIVIL
mikefyusuf@yahoo.com
nejeh27@earthlink.net

Fathi Yusuf
Plaza Extra Supermarket
4605 TuTu Park Mall Ste 200
St Thomas, VI 00805

Saturday, August 25, 2012

Dear Mr. Yusuf:

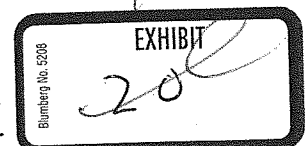
Your suggestion that the Hamed family agreed to your calculations of any sums due you is incorrect. The Hamed family disputes those calculations and insists on a full accounting.

Moreover, any unilateral withdrawal of funds by you would violate the Court's Order currently in place. It would also violate the agreement between our families. If you attempt to take any funds as threatened, we will instruct our counsel to advise the District Court Judge of this violation of its Order, as well as to take any other appropriate action he deems appropriate .

Cordially,
Waleed Hamed

W. M. Hamed

Confidentiality Notice: The information contained in and transmitted with this communication is strictly confidential, is intended only for the use of the intended recipient. If you are not the intended recipient, you are hereby notified that any use of the information contained in or transmitted with the communication or dissemination, distribution, or copying of this communication is strictly prohibited by law. If you have received this communication in error, immediately return this communication to the sender and delete the original message and any copy of it in your possession.



JA-1037

UNITED CORPORATION DEBITA
 PLAZA ESTIVA
 2000000000
 2000000000
 2000000000
 CHRISTIANSTOWN, MISSISSIPPI 39310-0001

1154

DATE 8/15/80

AMOUNT \$ 27,849.66.25

United Corporation

Five million Seven Hundred Eighty-Six Thousand Six Hundred Sixty-Five and 25/100 Dollars

Seafairbank
 FEDERAL SAVINGS BANK
 MEMPHIS, TENNESSEE

Signature: [Handwritten Signature]

Signature: [Handwritten Signature]

EXHIBIT 15

8. Fathi Yusef worked night and day to get the supermarket off the ground and was struggling to get a loan to get the supermarket loan. Fathi Yusuf mortgaged everything he owned to get the supermarket off the ground. I know that Fathi Yusuf was going to open the store without a dairy department. Just before he opened, friends of him took a tour of the store, saw that he had no dairy and offered him the money to buy the dairy. I know that they made this loan to Fathi Yusuf, just on his word alone.
9. Waleed Hamed came home from college, and started to work in the Supermarket with Mr. Yusuf, and he became Fathi's right hand person once the business got off the ground. Mike was in college at the time. Everyone knew that if you needed something from Fathi, and he wasn't around that you could ask Waleed Hamed, but that Fathi had the last word. Fathi Yusuf would treat Waleed better than his own son, and gave Waleed more authority than he gave his own son, Mike. Everyone in the whole community knew that when it come to the Supermarket, it was Fathi Yusuf, first and Waleed Hamed, second.
10. When the supermarket was being built, Mohammad Hamed was renting his house in Estate Carlton had no property to put up, he did not own any property. However, as the supermarket business became more profitable, Mohammad Hamed was able to buy the place he was renting in Estate Carlton. Mohammad Hamed now owns three (3) homes that I know about: 1) the house in Estate Carlton; 2) A house in the Westbank; and 3) a house in Irbid, Jordan, where my niece who married Mohammad Hamad's nephew lives. The house in Jordan he bought as a 2-story house then he added an additional level to make it three stories. I have been to all three homes.
11. I was surprised that Fathi Yusuf wanted to sell, when both families were doing well with the supermarket business. For example, Mohammad Hamed was later able to buy an Olive Farm in the Westbank, about 5 acres. That Olive Farm is fully planted with olive trees that were producing Olive Oil.
12. I know the supermarket was doing well for both families for the Hameds were able to open stock and operate the Five (5) Corners Mini-Mart store. I know that store was operated by Mohammad Hamed's nephews, Frankie Asad and Mike Abukais Quayyas.
13. I know the supermarket was doing well because all the Hamed sons now have their own homes. The Hameds only work at the Supermarket so the Supermarket business had to be doing well because I know that Waleed Hamed had brought a land overlooking the Estate Rattan and Estate Princess area, to build his home, but later brought a home on the East End, in Estate Southgate.
14. I know the Hameds also brought a duplex and property in Estate Carlton. The duplex was brought with two apartments and then they added three (3) other buildings with two (2) apartments each.

15. It was because I know the supermarket business was so doing well that I was really surprised to learn that Fathi wanted to sell the business. I asked Fathi Yusuf several times, "Fathi you doing well in the business, why do you want to sell" and he repeatedly told me that it was time to split up, because the families were getting too big.
16. It was not until I was asked to help settle a dispute between Waleed and, that I realized that there was a money problem between the families. At first all I knew was that Fathi was asking Waleed to explain about some money, and he was not getting an answer from Waleed.
17. I along with other family members, and close business' friends were asked to mediate a serious dispute Fathi Yusuf had with Waleed Hamed and Mohammed Hamed regarding monies taken from the business without his knowledge.
18. By the time of the first meeting to mediate, it was my understanding that the Hameds had agreed to turn-over two (2) properties to Mr. Yusuf, for what he had discovered so far: \$1.4 million, for the \$2 million transfer, including the \$700K that Mohammad Hamed agreed he received for the Batch Plant, and to cover what was spent on Waleed's gambling habit.
19. We called Waleed after Mr. Yusuf had agreed to settle the dispute for the two properties for what he had discovered, we called Waleed who came in and we told him of the agreement and we shook hands, and everyone left. Later that night, before 24 hours past, Mr. Yusuf called and asked, if I find anything else, can he ask for it, and I said no the agreement covers everything, even what he doesn't know about right now, and Mr. Yusuf said no, that the agreement was for what he knew now, not for anything else he finds. Then there was no more agreement.
20. There were other meetings to discuss splitting up the business, and there were discussions about the Yusuf family drawing \$1.3 million and the Hamed family drawing \$2.9 million. In trying to put together a settlement, Baker and Khaled Ali stated that Waleed had agreed that he owed Mr. Yusuf \$1.6, and that he was going to pay that money.
21. Finally, at one the last meetings, Mr. Yusuf said that if the Hameds transferred a third piece of property that would settle everything about the unauthorized monies, whatever he knows and he would not do any more searching for monies he did not know about.
22. Mr. Yusuf said he cannot work with the Hameds and that they still had to sell business and to divide up the business and go their separate ways

Date: 4/21/14


MOHAMMAD HANNUN

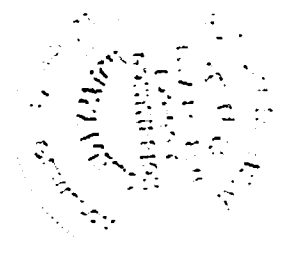
SUBSCRIBED AND SWORN TO before me
on this 21st day of April 2014.


NOTARY PUBLIC

K. Glenda Cameron
Commission Number LNP 010-09
Expiration Date: May 26, 2017

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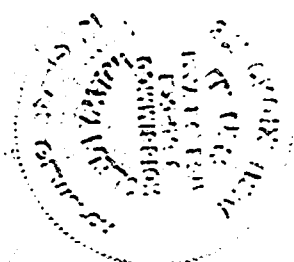
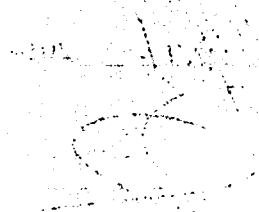
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ಕರ್ನಾಟಕ ಸರ್ಕಾರ
ಕರ್ನಾಟಕ ಸರ್ಕಾರ

[Handwritten signature]

[Handwritten signature]



Commissioner
Florida Department of Banking and Finance
Tallahassee, Florida 32399

8. In an effort to resolve their disputes privately, I along with Mohammed K. Hannun sat with Waleed Hamed in my store--Food Town. Only Waleed Hamed, from the Hamed side of the family, appeared at that meeting.
9. At that meeting, I informed Waleed Hamed of Mr. Yusuf's concerns regarding the unauthorized monies that were taken. Waleed Hamed responded that he "would pay what he owes." Waleed also said that the Bank made a mistake and Mr. Yusuf needed to prove these allegations. At the meeting in Food Town, I also learned from Waleed Hamed that Mr. Yusuf and Mohammed Hamed had already discussed the families splitting up and ending doing business together.
10. The agreement that had been reached with Mohammad Hamed was that Fathi Yusuf would accept two pieces of land as settlement for the unauthorized monies taken. However, Mr. Yusuf position was that those two pieces of land would cover only the amounts of money Mr. Yusuf found out about thus far.
11. Shortly thereafter, I was part of several discussions with Mr. Yusuf and others about settling the ongoing dispute. Mr. Yusuf described additional unauthorized monies he found out about, for example the casino gambling. Mr. Yusuf then stated that he would be willing to settle regarding the unauthorized monies taken, once and for all, in exchange for a third piece of land that he and Mohammed Hamed owned. I learned from Waleed that Mr. Yusuf had offered to accept a third piece of land to settle all claims of unauthorized money taken by Waleed Hamed and his father Mohammed Hamed, but Waleed's response was "how do I know that would be the end of it --and he won't ask for more."
12. After meeting with both sides, individually and together on a number of occasions, two issues began to stand out as the sticking points: One, Fathi Yusuf [stated] that the Hameds were not being straight with him when the Hameds refused to transfer the second property, as agreed for the transactions he had discovered so far. On the other hand, Waleed Hamed said that he did not believe that Fathi would not stop with his final request for the third property for everything.
13. Another dispute concerned the issue of the funds that were withdrawn by the Hameds for which the Yusufs did not take in matching withdrawals. In several open meetings, Mr. Yusuf said that the Hameds took \$1.6 million more than the Yusufs. Waleed Hamed did not dispute that amount even though he was sitting there when Mr. Yusuf made the request for the \$1.6 million dollars—the difference between the \$2.9 Million taken by the Hameds and the \$1.3 Million taken by the Yusufs.

14. Mr. Yusuf and Waleed Hamed and Mohammed Hamed met at other meetings, but unfortunately they could not agree regarding the transfer of the third piece of land in satisfaction of Mr. Yusuf's claims regarding the unauthorized monies taken, or how to divide up the business and go their separate ways

I attest that above is true.

Date: 4/28/14


Suleiman Khaled

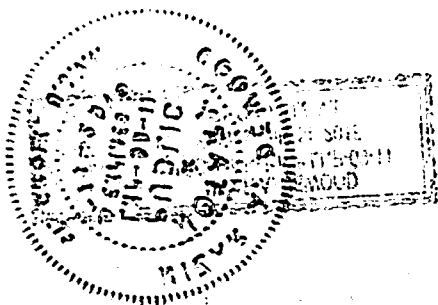
SUBSCRIBED AND SWORN TO before me

on this 28th day of Apr. 1 2014.



NOTARY PUBLIC





11/8/41

[Handwritten signature]

[Faint, illegible text]

money transfer to the West Bank, Fathi Yusuf proposed that he would accept two pieces of land as settlement for the unauthorized monies taken. Fathi Yusuf specifically said that the two pieces of land would cover only the amounts he knew about so far, which I understood that Mohammad Hamed had agreed to, and had already transferred one of the properties to Fathi.

10. Shortly thereafter, I was part of several discussions with Mr. Yusuf and others about settling the ongoing dispute. Mr. Yusuf described additional unauthorized monies he found out about, for example the casino gambling. Mr. Yusuf then stated that he would be willing to settle all issues and all unauthorized monies taken once and for all in exchange for a third piece of land that he and Mohammed Hamed owned. Mr. Yusuf had offered to accept the third piece of land to settle all claims of unauthorized money taken by Waleed Hamed and his father Mohammed Hamed. Waleed Hamed's response was that there was no deal, not even for the first property his father had already transferred.
11. At one point in one of the meetings, Mr. Yusuf asked Waleed if he agree that the Hameds had drew \$2.9 Million and that the Yusufs had taken only \$1.3 million and therefore the Hameds owed \$1.6 million. Waleed admitted and agreed that he withdrew \$1.6 more than the Yusuf in the internal accounting.
12. I was present at several other meetings to settlement the dispute, but they Hameds and Yusufs could never reach a final agreement for various reasons.

I attest that the above is true.

Date: 5/14/2014


Khaled ALI

SUBSCRIBED AND SWORN TO before me

on this _____ day of _____ 2014.

NOTARY PUBLIC

EXHIBIT 16

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

MOHAMMED HAMED By His Authorized)
Agent WALEED HAMED,)
) CIVIL No. SX-12-CV-370
Plaintiff,)
) ACTION FOR DAMAGES
vs.) INJUNCTIVE AND
) DECLARATORY RELIEF
FATHI YUSUF and UNITED) JURY TRIAL DEMANDED
CORPORATION,)
)
Defendants.)
_____)

CERTIFIED TRANSCRIPT

The Hearing in the above-entitled action was heard
before the HONORABLE DOUGLAS A. BRADY, JUDGE, in Courtroom
No. 211, Kingshill, St. Croix, on Friday, January, 25th,
2013, at approximately 10:30 a.m.

SUZANNE A. OTWAY-MILLER
REGISTERED PROFESSIONAL REPORTER
SUPERIOR COURT OF THE VIRGIN ISLANDS
KINGSHILL, ST. CROIX, U.S.V.I.
(340) 778-9750

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1 THE WITNESS: It was even in your office.

2 BY MR. HOLT:

3 Q In my office?

4 A In your office, sir.

5 Q Now, it says it would violate the agreement of
6 the court order. Isn't there a court order in place
7 saying the funds are not to be removed from the account
8 unless approved by the court?

9 A It didn't remove from the account. It was
10 removed from one United account and another United
11 account.

12 Q And it was removed to an account that the Hamed
13 family does not have access to; isn't that correct?

14 A Yes.

15 Q And the funds are still in the shopping center
16 account?

17 A No.

18 Q Where are they?

19 A I bought property with it.

20 Q So you've taken money out of the United Shopping
21 Center account and you've gone and bought property; isn't
22 that correct?

23 A Correct.

24 Q Where have you bought property?

25 A Frederiksted, West Airport Road and LaGrange.

1 Q And what were the -- what company took title to
2 these properties? Let's start with Frederiksted, what
3 company took title to that property?

4 A United Corporation.

5 Q And what company took title to the West Airport
6 Road?

7 A United Corporation.

8 Q And what company took title to the LaGrange
9 property?

10 A United Corporation.

11 Q So you purchased these parcels of land since you
12 transferred the money out?

13 A Yes.

14 Q In the name of United Corporation?

15 A Yes.

16 Q And you don't think those expenditures were in
17 violation of the TRO?

18 A No.

19 MR. DiRUZZO: Objection, strike. Calls for
20 legal conclusion.

21 THE COURT: Asked and answered.

22 BY MR. HOLT:

23 Q Didn't the TRO prohibit you from hiring family
24 members without court approval?

25 MR. DiRUZZO: Objection. The TRO is not in

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CERTIFICATE OF REPORTER

I, SUZANNE A. OTWAY-MILLER, an Official Registered Professional Reporter for the Superior Court of the Virgin Islands, Division of St. Croix, do hereby certify that I reported stenographically, in my official capacity, said proceedings, in MOHAMMAD HAMED By His Authorized Agent WALEED HAMED vs. FATHI YUSUF and UNITED CORPORATION, held on the 25th day of January, 2013.

I further certify that the foregoing excerpt, pages numbered 1 through 284, inclusive, are a true and accurate computer-aided transcription of my stenotype notes of said proceedings.

WITNESS MY HAND this 22nd day of February, 2013.

Suzanne A. Otway-Miller, RPR
Digitally signed by Suzanne A. Otway-Miller, RPR
DN: cn=Suzanne A. Otway-Miller, RPR, o=Superior Court of the Virgin Islands,
ou=Court Reporters Division, email=suzanne.miller@superiorcourt.org, c=US
Date: 2013.02.22 19:18:11 -0400

SUZANNE A. OTWAY-MILLER, RPR

EXHIBIT 17

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

| | | |
|--------------------------------|---|------------------------|
| MOHAMMED HAMED By His |) | CIVIL NO. SX-12-CV-370 |
| Authorized Agent WALEED HAMED, |) | |
| |) | ACTION FOR DAMAGES |
| Plaintiff, |) | INJUNCTIVE AND |
| |) | DECLARATORY RELIEF |
| v. |) | |
| |) | |
| FATHI YUSUF and UNITED |) | |
| CORPORATION, |) | |
| |) | JURY TRIAL DEMANDED |
| Defendants. |) | |
| |) | |

Thursday, January 31, 2013
Kingshill, VI 00850

The above-entitled action came on for Hearing on a TRO, before the Honorable DOUGLAS A. BRADY, Judge, in Courtroom Number 211, commencing at approximately 9:12 a.m.

SANDRA HALL
REGISTERED PROFESSIONAL REPORTER
OFFICIAL COURT REPORTER II
(340) 778-9750 EXT. 6701

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1 A It was on January 8th.

2 Q And do you remember the cause of that
3 incident?

4 A Yes.

5 Q And what was that cause?

6 A She was manually entering time.

7 Q And as a -- to lay a little background, when
8 an employee clocks in and clocks out of work, how does
9 that happen? How do they do that?

10 A We have a punch-clock system that uses the
11 handprint of your right hand, and you put in your
12 social security number and that's the process. You put
13 in your social security number and put your hand in;
14 two devices of security so you can identify the
15 individual that came to work.

16 Q And is every employee supposed do that?

17 A Yes.

18 Q And is there any way that that system of
19 internal control can be circumvented?

20 A Yes.

21 Q How so?

22 A If someone manually enters the time.

23 Q And how would one manually enter the time?

24 A They have to have a user name and a password
25 to enter a system called TruTime.

1 Q And is -- could you just briefly describe what
2 exactly is TruTime?

3 A TruTime gathers the data for that punch-clock
4 system that generates the employees coming in and
5 coming out.

6 Q And was there a time where you reviewed the
7 hours for Ms. Charriez?

8 A Yes.

9 Q And when was that?

10 A It was for the week of Thanksgiving.

11 Q And why was that?

12 A Because I noticed the time change -- the time
13 did not change for Wadda.

14 Q Could you be a little bit more specific? What
15 do you mean by that?

16 A Meaning her pay was not different from the
17 previous weeks.

18 Q And why would you expect that it would be
19 different?

20 A Because she didn't come in on the day of
21 Thanksgiving.

22 Q And did Ms. Charriez work on Thanksgiving?

23 A No.

24 Q Is Ms. Charriez a salaried employee?

25 A No.

1 Q Is she paid hourly?

2 A Yes.

3 Q Does she get paid time and a half for
4 overtime?

5 A Yes.

6 Q Do you have any idea what her salary or what
7 her hourly pay rate is?

8 A Twelve dollars.

9 Q Okay. Sir, I'm going to show you a composite
10 exhibit, Defense Exhibit 13?

11 MR. HOLT: Your Honor, I don't mind if
12 the witness identifies it. I mean, we've never seen
13 all this stuff, so I don't know if I can stipulate to
14 the coming in of the exhibit or not yet.

15 (The document was marked Defendant's
16 Exhibit Number 13 for identification.)

17 Q (MR. DIRUZZO) Sir, take a moment, review that
18 document, let me know when you've familiarized yourself
19 with it?

20 A Yes, I know what this is.

21 Q Okay. What is it?

22 A This is her timesheet.

23 Q Well, actually, I'm going to be specific.
24 Take a look at the first two pages in particular, then
25 page 3 going forward?

1 A The first two pages is of another employee
2 that works in the office.

3 Q And?

4 A And the third one is -- that's Wadda's punch
5 clock.

6 Q Okay. Sir, are these documents maintained in
7 normal course of business activity of Plaza Extra East?

8 A No.

9 Q These documents aren't maintained normally?

10 A The documents are, but what we normally don't
11 practice is the manual punch.

12 Q Okay. I'm going to turn your attention to the
13 first page. Could you describe for the Court what
14 you're looking at here and what information you're able
15 to obtain based on this first page?

16 A On the first page indicates one of our
17 employees that work in the office. I believe this is
18 Sabrina's time, an individual that works in our cash
19 room.

20 Q And does it indicate the date that -- where
21 she worked, the date that she worked?

22 A Yes, all the days that she had worked for us.

23 Q And does it show the time that she punched in
24 and punched out?

25 A Yes.

1 Q Okay. I'm turning your attention to the part
2 that's highlighted. The part that's highlighted has an
3 asterisk next to the times, specifically 8 a.m. and
4 4 p.m. Do you have any idea what that asterisk means?

5 A The asterisk means someone manually entered
6 the time.

7 Q And turning your attention to December 24th,
8 it was at 8:17 a.m. and 7:05 p.m. There is no asterisk
9 there. What does that mean?

10 A That means the individual actually went to the
11 machine, punched in her social security number and her
12 handprint.

13 Q Okay. Now, turning your attention to the
14 second page. This employee, a Bartlett, turning your
15 attention to the 25th where it shows 8 a.m. and 4 p.m.
16 with an asterisk; is that because that was manually
17 entered as well?

18 A Yes.

19 Q Okay. Now, turning your attention to the
20 third page, and the third page going forward is--1, 2,
21 3, 4--the fourth page. And on the top of the fourth
22 page it says, Charriez, W. You see that there?

23 A What's the date listed?

24 Q Starting on November 19th, a Monday, going
25 to --

1 A Yes, I see that.

2 Q Okay. Sir, turning your attention to November
3 22nd, a Thursday. Do you remember that date?

4 A Yes.

5 Q What was that date?

6 A Thanksgiving day.

7 Q Okay. Sir, you see the times there? Could
8 you read in the record the times that when Ms. Charriez
9 clocked in and clocked out?

10 A The time for November 22nd is 7:38 a.m. in the
11 morning to 7:20 p.m. in the evening.

12 Q And is there an asterisk there indicating that
13 that was manually entered into the system?

14 A Yes.

15 Q And, sir, is that accurate?

16 A No.

17 Q How do you know that?

18 A I worked there all day and she didn't come to
19 work.

20 Q Okay. Now, sir, did there come a point in
21 time where you became suspicious about the total number
22 of hours that Ms. Charriez was working?

23 A Yes.

24 Q And what happened as a result of your
25 suspicion; what, if anything, did you do?

1 A What I did is I printed out the other
2 employees' timesheet that work in the office, and I
3 could see that they came in to work and they got paid
4 for what they manually -- what they actually punched at
5 the clock, which is the social security number and
6 their handprint. And then I noticed Wadda was also
7 paid for that day.

8 Q Be specific. That day being Thanksgiving?

9 A Thanksgiving day, 11/22nd.

10 Q Okay. Turning your attention to the seventh
11 page of Exhibit 13. Starting on the seventh page going
12 forward, what is that?

13 A This is Wadda's timesheet.

14 Q For what period?

15 A For the whole year of 2012.

16 Q And, sir, for the whole year of 2012 is there
17 anything -- when you reviewed this document, was there
18 anything that you found to be unusual?

19 A Yes.

20 Q And what was that?

21 A Every time that she indicated, she did not
22 work. Every time that's listed there, she indicated
23 that she came in roughly about a half an hour before
24 eight o'clock and left a half an hour after 7 p.m. in
25 the evening, and all these times were manually punched

1 in.

2 Q Just so the record is clear, did Ms. Charriez
3 ever use the normal stick-your-hand-on-the-machine and
4 your social security number to clock in and clock out
5 in the calendar year 2012?

6 A The records here never showed that.

7 Q Okay. Sir, the time -- what's the name of
8 this computer system that keeps all the employees'
9 time?

10 A TruTime.

11 Q And is TruTime -- the entries in TruTime, are
12 those kept in the normal course of business of Plaza
13 Extra East?

14 A Yes.

15 Q And are those kept for every single employee?

16 A Every single employee.

17 Q And does Plaza Extra East rely on the data in
18 TruTime in order to generate employees' paychecks?

19 A Could you repeat that?

20 Q Does Plaza Extra East rely on the data within
21 TruTime in order to generate the paychecks for the
22 employee?

23 A Yes.

24 Q Okay. And are the -- are normally the data
25 entries within TruTime, do they accurately reflect the

1 events that took place therein?

2 A Yes.

3 Q And, sir, are you the only person that has
4 access to TruTime?

5 A No.

6 Q Who else has access to TruTime?

7 A There is a few people in management that has
8 access and office clerk.

9 Q Those few people, who are they?

10 A Wadda, for one office manager; you have
11 Ms. Bartlett also have access; and Mafi Hamed; and so
12 do I.

13 Q And did you prepare these reports?

14 A Yes.

15 Q And how did you prepare them?

16 A The --

17 Q Let me ask it this way. How did you generate
18 these reports?

19 A You enter your passcode into the system and
20 you generate as far back as the system has been
21 created.

22 Q And that's just you hit the print button?

23 A Yeah.

24 Q And do you remember when this report was
25 generated?

1 A It indicates to the top-right corner January
2 2nd, 8:18 p.m. at night.

3 Q And just so we're clear, you're talking about
4 page 7 going forward, the report for Ms. Charriez for
5 the entire year of 2012?

6 A Correct.

7 Q Now, turning to the front page though, the
8 front page when you have a comparison to another
9 employee, when was that generated?

10 A January 18th.

11 Q Of this year?

12 A Of this year. Sorry.

13 MR. DIRUZZO: Your Honor, defense moves
14 Exhibit 13 into evidence.

15 MR. HOLT: Your Honor, we have no
16 objection. I do just want to make sure it's clear that
17 you're gonna see a time of January 18th on the first
18 seven or eight pages, and then you're gonna see the
19 time of January 2nd after that.

20 THE COURT: I believe that's the
21 testimony we just heard.

22 MR. HOLT: Right. I just wanted to make
23 clear because it's really not just one document, but I
24 have no problem it being submitted. No objection.

25 THE COURT: The Defense 13 is admitted.

1 (The document, heretofore marked
2 Defendant's Exhibit Number 13 for identification, was
3 received in evidence.)

4 Q (MR. DIRUZZO) Sir, you're being shown Defense
5 Exhibit 14 marked for identification. Take a moment to
6 take a look at that document and let me know when you
7 are done perusing it?

8 (The document was marked Defendant's
9 Exhibit Number 14 for identification.)

10 A I'm ready.

11 Q Okay. Sir, could you please identify this
12 composite exhibit? What is it?

13 A For the month of December.

14 Q What year, sir?

15 A Of 2012. I generated her weekly timesheet.

16 Q And "her," are you referring to Ms. Wadda
17 Charriez?

18 A Correct.

19 Q And when you generated her weekly timesheet,
20 what happened?

21 A Along with the weekly timesheet I also
22 generated on our DVR system, it's called Intellect, the
23 times when she entered the building and the times when
24 she left.

25 Q Okay. So starting on page 2, that document is

1 a picture of the video image?

2 A Correct.

3 Q Do these video images that are contained in
4 composite Exhibit 14, do they fairly and accurately
5 represent the events that took place therein?

6 A Yes.

7 Q And are these video images maintained and kept
8 in the normal course of business of Plaza Extra East?

9 A Yes.

10 Q And do you have care, access, and custody and
11 control of these video images during the course of your
12 employment?

13 A Yes, sir.

14 Q Okay. Now, sir, let's talk about these video
15 images. What do those video images portray, let me
16 start on the second page?

17 A If you look at the second page in reference to
18 counter check the time that she manually entered into
19 the system, she indicated that she came in at 7:36 a.m.
20 in the morning.

21 Q Okay. Just so we're clear, so you're saying
22 the first page, the first line represents that
23 Ms. Charriez clocked in at 7:36 a.m. --

24 A On December 3rd.

25 Q -- on December 3rd, and that has an asterisk

1 there, that means that was manually entered?

2 A Yeah.

3 Q And then you're saying the second page shows
4 video evidence of when she actually arrived to work?

5 A Correct.

6 Q And what time was that, sir?

7 A That's at 8:37.

8 Q Okay. Now, what is the second page -- I'm
9 sorry -- the third page?

10 A Third page indicates the time that she came
11 down from the office, which is the end of her work.

12 Q So is the third page, is it also a video of --
13 it's a picture?

14 A Yes.

15 Q And it's a picture of Ms. Charriez leaving?

16 A Yes.

17 Q And what time does that reflect?

18 A Seven o'clock.

19 Q And just so we're clear, is 19:00 hours the
20 same as seven o'clock p.m.?

21 A Correct, that's military team.

22 Q And when did -- what time did Ms. Charriez's
23 time entries reflect when she clocked out?

24 A She manually entered on December 3rd that she
25 left at 7:25.

1 Q Did Ms. Charriez have, to your knowledge, any
2 permission to clock out manually, enter her time later
3 than when she actually left the building?

4 A If she had my permission?

5 Q Well, let's start, did she have your
6 permission to do that?

7 A No.

8 Q To your knowledge, did she have anyone's
9 permission?

10 A No.

11 Q Okay. Sir, I'm going to turn your attention
12 specifically to December 18, 2012. And flipping
13 through these pictures, let me know when you get to
14 December 18, 2012?

15 A I'm ready.

16 Q Okay. Sir, what does the first picture
17 indicate?

18 A The first picture indicate December 18th on
19 the Intellect's player that Wadda came in to work at
20 8:45.

21 Q Now, that picture of the person with her back
22 turned to the camera, is that Ms. Charriez?

23 A Yes.

24 Q And how do you know that that's Ms. Charriez?

25 A When I reviewed the video I saw when she came

1 in. There is couple different angles that indicate
2 that's her.

3 Q And do you have any doubt that that's actually
4 Ms. Charriez in that picture right there?

5 A I know it's her.

6 Q Okay. Turn to the next page on December 18th.
7 What does that picture indicate or reflect?

8 A It indicated the time that she came from the
9 office; meaning, that that was the end of her shift and
10 she left on December 18th at 6:20.

11 Q And is that her in the top left corner?

12 A That's her in the top-left corner.

13 Q Just behind the stack of --

14 A Baskets.

15 Q -- baskets? Okay. And flip to the next page,
16 sir. What does that image show the Court?

17 A That also indicates that at 6:20 she was at
18 the pizza parlor.

19 Q Okay. And the next page?

20 A The next page indicates on December 18th at
21 6:40 when she walked out the store.

22 Q And is that her with the -- looks like a
23 broom?

24 A She did shopping. That's a broom and some
25 shopping bags.

1 Q Okay. Now, sir, let's flip, go back a couple
2 pages and you see the time card report for Ms. Charriez
3 for the calendar week December 17, 2012 through
4 December 21, 2012?

5 A Yes.

6 Q And for December 18, 2012, what time is
7 reflected in the system?

8 A She indicated that, which she manually punched
9 in at 7:36 a.m., she came to work in the morning.

10 Q And did she actually come to work at
11 7:36 a.m.?

12 A No. The surveillance here indicates she came
13 in at 8:45.

14 Q And what about when she clocked out?

15 A When she clocked it out it indicates she left
16 at 7:20 p.m., 7:20 p.m. in the evening.

17 Q And did she actually leave at 7:20 p.m. in the
18 evening?

19 A No. It indicated that on the Intellect system
20 that she left at 6:20.

21 MR. DIRUZZO: Your Honor, defense moves
22 14 into evidence.

23 THE COURT: Any objection?

24 MR. HOLT: I have no objection.

25 THE COURT: Exhibit 14 is admitted.

1 (The document, heretofore marked
2 Defendant's Exhibit Number 14 for identification, was
3 received in evidence.)

4 Q (MR. DIRUZZO) Sir, I'm showing you what's
5 been marked as Defense Exhibit 15 for identification.
6 Take a moment and let me know when you're done perusing
7 that document?

8 (The document was marked Defendant's
9 Exhibit Number 15 for identification.)

10 A Yes, I see it.

11 Q What is this document?

12 A This is for all employees, rules and
13 regulations of Plaza Extra.

14 Q And does Plaza Extra have these rules and
15 regulations in the Plaza Extra East store?

16 A Yes.

17 Q And why don't you tell the Court about these
18 rules and regulations; in general, how do they work?

19 A Before you are employed you have to fill out
20 -- I'm sorry -- you have to read the rules and
21 regulations. And what you fill out is you print your
22 name, you sign it to indicate that you did read it, and
23 you have to submit it back to the store for filing.

24 Q And are these rules and regulations for
25 employees in general? Is this kept in a personnel or

1 an HR file?

2 A Yes.

3 Q And does each employee have an HR or personnel
4 file?

5 A Every single employee that gets hired by Plaza
6 Extra have to read, acknowledge this, sign it and
7 return it for filing.

8 Q Okay. And turning your attention to this
9 document, in particular, what does this document
10 reflect?

11 A This indicates the rules and regulations for
12 Wadda, which dated back in January 7, 1998.

13 Q And, sir, do you know where this document came
14 from?

15 A From her personnel file.

16 Q And do you know who retrieved this document?

17 A I have.

18 Q And when did you retrieve this document?

19 A Yesterday.

20 Q And where was this document -- where was her
21 personnel file located?

22 A We have a file cabinet for all our employees
23 in the Plaza East store.

24 Q Okay. Now, sir, I'm going to turn your
25 attention to Rule 16. Is this Rule 16 where it says,

1 every employee is given a half hour or full hour for
2 lunch after six hours of work must punch out for lunch.
3 Lunch hour is to be spent in designated area in the
4 store lunch room. Does this apply to all the
5 employees?

6 A Yes.

7 Q All right. What about Rule 17? Any employee
8 found cheating on her time card will be immediately
9 dismissed. Does that apply to all the employees?

10 A Yes.

11 Q Rule 18. Time cards must be punched
12 immediately after you have been relieved of your
13 duties. Does that apply to all employees?

14 A Yes.

15 Q Rule 19. All employees are expected to leave
16 the premises within 15 minutes of your punch time
17 unless you're doing personal shopping. Does that apply
18 to all employees?

19 A Yes.

20 Q Turning to the next page, sir, Rule 23. Any
21 employee found stealing would be subject to arrest and
22 will be immediately dismissed. Does that apply as well
23 to all employees?

24 A Yes.

25 Q And the next page, 35. Absolutely no shopping

1 while on work hours unless authorized by management.
2 If you are on lunch hour, any merchandise purchased
3 must be kept at service desk. Does that apply to all
4 employees?

5 A All employees.

6 Q Sir, now, did Ms. Wadda Charriez violate these
7 rules and regulations of Plaza Extra East?

8 A Yes.

9 MR. DIRUZZO: Your honor, defense moves
10 Exhibit 15 into evidence. Actually, let me lay one
11 more predicate.

12 THE COURT: Sure.

13 Q (MR. DIRUZZO) Sir, starting on page 19, do
14 you see a signature there -- I'm sorry, page 9?

15 A Page 9?

16 Q Page 9?

17 A Yes.

18 Q Whose signature is that?

19 A That's Wadda's signature.

20 Q And how are you familiar with that signature?

21 A I have seen the signature before.

22 Q Is that her signature on page 10 as well?

23 A Yes.

24 Q And the next page, page 15, is that her
25 signature as well?

1 A Yes.

2 Q And page 12, is that her signature as well?

3 A What page?

4 Q Page 12?

5 A Yes.

6 Q And page 14, is that her signature as well?

7 A Yes.

8 MR. DIRUZZO: Defense moves 15 into
9 evidence.

10 THE COURT: Any objection?

11 MR. HOLT: No objection.

12 THE COURT: Without objection

13 Defendant's 15 is admitted.

14 (The document, heretofore marked
15 Defendant's Exhibit Number 15 for identification, was
16 received in evidence.)

17 Q (MR. DIRUZZO) Sir, did management of Plaza
18 Extra have good cause to terminate Wadda Charriez's
19 employment?

20 A Yes.

21 Q Now, let's talk about her -- the job role she
22 has or had. The job role that she had, would you
23 explain what she did?

24 A She did payroll.

25 Q Okay. Sir, is she an essential employee?

1 A No.

2 Q Why not?

3 A She's not an essential employee because --

4 Q Let me ask you this way. If you wanted to,
5 could you replace her?

6 A The next day.

7 Q And how difficult would it be to find a
8 replacement for Ms. Charriez?

9 A It's not difficult.

10 Q Now, sir, I want to turn your attention to the
11 Plaza Extra East store. Is there current inventory in
12 the store?

13 A Yes.

14 Q And has any payments to vendors, have any
15 payments to vendors been stopped out of normal course
16 of business?

17 A No.

18 Q Has there been any recent disruption with
19 ordering supplies or ordering merchandise for Plaza
20 Extra East?

21 A No.

22 Q Have you ever witnesses Fathi Yusuf blocking
23 or stopping any payments to vendors?

24 A No.

25 Q As far as the back area, the receiving area of

1 always an important position because especially in --
2 we found that out this week in St. Thomas when we
3 received the resignation of the payroll clerk over
4 there. It caused me to have to go over there on
5 basically 24-hours notice, become familiar with it.
6 And I'll be over there again this Monday to make sure
7 that payroll gets done.

8 Q Okay. Now, is Wadda Charriez's employment as
9 a payroll clerk, is she critical?

10 A Um --

11 Q Let me ask it this way. Is she irreplaceable?

12 A No, she is not irreplaceable.

13 Q And how do you know that?

14 A Well, there was about--I forget how many weeks
15 ago, maybe two weeks ago--she was out sick on the day
16 payroll was to be done and she said she was going to be
17 out for a few days. And one of the other girls,
18 Lavena, she did the payroll on Monday morning. And
19 from what I recall, it was about two o'clock when she
20 finished it up on Monday.

21 Q Can you compare the time it took Lavena to
22 complete the task versus Wadda?

23 A Well, the week before it had been mentioned to
24 me that the payroll wasn't complete on Monday, and that
25 it was done sometime Tuesday morning. It was completed

1 by Tuesday morning. Now, I don't really know the
2 particulars of it, but you know, that was just a for
3 instance; but to my knowledge for the most part payroll
4 is typically completed in each of the locations on
5 Monday.

6 In St. Thomas, Sherry, I forget Sherry's last
7 name, but Sherry typically comes in early on Monday
8 mornings and has it completed. Her target for
9 completing payroll in St. Thomas is noon.

10 Q And as you're sitting here today, would you be
11 comfortable if Wadda was replaced with Lavena?

12 A I would be.

13 Q And finally, sir, when it's all said and done,
14 the financial statements that would be produced, how
15 would you characterize both the timeliness and the
16 accuracy of those financial statements when all of your
17 work at the end of the day, when your work as
18 consultant is completed?

19 A Well, I'm accustomed to and I have experience
20 having closed financial statements in three and a half
21 days after the close of a month. That was a
22 requirement when I worked for Emerson Electric, and it
23 can be done.

24 A good quality financial statement and a good
25 quality system will produce not only a good balance

1 Q 22?

2 A June 21, 2012.

3 Q You see the recorder's stamp indicating it was
4 recorded on July 6, 2012?

5 A Correct.

6 Q Okay. And the last exhibit, Exhibit 24, what
7 is the date of that document?

8 A December 17, 2012.

9 Q And that's for the Enfield Green property near
10 the airport?

11 A Correct.

12 Q Okay. And these are the three properties that
13 you say that you used 2.7 million to purchase?

14 A Yes.

15 Q Any other properties?

16 A No.

17 Q Can you explain to me how you can take a check
18 out of the United Corporation supermarket account on
19 August 15th or 20th, whatever day it was, and purchase
20 property that had closed in May of 2012 and June of
21 2012?

22 A Repeat that again.

23 Q When you testified at this court that the
24 funds that were removed from the shopping center were
25 used to purchase these three parcels of land; and my

1 question to you is, how did you use the 2.7 million
2 that you took out of the account in August of 2012 to
3 purchase property in May and June of 2012?

4 A Well, I used upon the account to pay for
5 property when the funds was available.

6 Q So when you bought the property in May of
7 2012 from the Armstrong Trust, and then you bought the
8 property in June of 2012 from the Frederick C. Company,
9 you didn't use any part of the 2.7 million you took out
10 in August 2012, did you?

11 A I used whatever funds was in United.

12 Q Okay. So let's back to the real question.
13 What happened to the 2.7 million that you removed from
14 the account in August of 2012?

15 A It should be -- I used for property and
16 whatever else.

17 Q Okay. So you testified in front of this Court
18 last week that you used it to buy three pieces of
19 property?

20 A Yes, I did.

21 Q You would agree now that that isn't true, is
22 it? You couldn't use it to purchase these three pieces
23 of property, could you?

24 A It was part of either one or two properties.

25 Q Well, we see one property that's dated in --

1 the last property dated in December 17th of 2012. So
2 you could have used it to purchase that property,
3 correct?

4 A Yeah, I could have.

5 Q But that's the only property that you could
6 have used those funds to purchase, isn't that true?

7 A I wasn't looking if it was the 2.7 to replace
8 properties. I wasn't doing that. The property was
9 available, I had funds and I paid for it.

10 Q Okay. So let's get back to the question.
11 What did you do with the 2.7 million that you removed,
12 that was removed from the Plaza Extra supermarket
13 account into the United account? What was it used for?

14 A Some properties and whatever else.

15 Q What is the whatever else?

16 A I don't know. I'm not -- I haven't used it
17 for anything.

18 Q You haven't used it to purchase properties
19 overseas?

20 A Oh, no.

21 Q Have you used it to invest in other
22 businesses, like the mattress business or things like
23 that?

24 A Yes, I did.

25 Q And were those businesses in the name of

1 enforce that TRO?

2 MR. DIRUZZO: Objection; speculation as
3 to his father.

4 THE COURT: Don't ask as to the father.

5 Q (MR. HOLT) Why didn't you move to enforce
6 that TRO?

7 A Because I'm no longer a party to the criminal
8 case. My charges have been dismissed.

9 Q And has your father ever been a part of the
10 criminal case?

11 A No, he hasn't.

12 MR. HOLT: No other questions. And I
13 will move Exhibit 27 into evidence.

14 THE COURT: Any objection to 27?

15 MR. DIRUZZO: No objection, your Honor.

16 THE COURT: 27 is admitted.

17 (The document, heretofore marked
18 Plaintiff's Exhibit Number 27 for identification, was
19 received in evidence.)

20 MR. DIRUZZO: No cross.

21 THE COURT: No cross examination. Thank
22 you very much. Any other --

23 MR. HOLT: We have no other witnesses,
24 your Honor.

25 THE COURT: Very well. That concludes

CERTIFICATE OF REPORTER

I, SANDRA HALL, RPR, Official Court Reporter II of the Superior Court of the Virgin Islands, Division of St. Croix, do hereby certify that I reported by machine shorthand, in my official capacity, the TRO Hearing in the case of *Mohammad Hamed v. Fathi Yusuf and United Corporation, SX-12-CV-370*, in said Court, on the 31st day of January, 2013.

I FURTHER CERTIFY that the foregoing 130 pages are a true and accurate computer-aided transcription of my stenotype notes of said proceedings.

I HAVE HEREUNTO subscribed my name, this 1st day of February, 2013.

Sandra Hall, RPR Digitally signed by Sandra Hall, RPR
DN: CN = Sandra Hall, RPR, C = US, O = Superior Court
of the Virgin Islands, OU = Court Reporters Division
Date: 2013.02.01 17:06:34 -04'00'

Sandra Hall, RPR
Official Court Reporter II

EXHIBIT 18

AFFIDAVIT OF ERIC A. BERRY

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

I, **ERIC A. BERRY**, being duly sworn, do hereby declare and states as follows:

1. I am an adult resident of St. Croix, Virgin Island and make this affidavit based on my personal knowledge and observations.
2. On or about the first week of January 2013, I believe on January 7 or 8th, 2013, I was working at Plaza Extra East Supermarket in St. Croix Virgin Islands.
3. I am a handyman by trade and was working with Dale Thomas, building out an office in the upstairs area of Plaza Extra Supermarket East.
4. Sometime in the early afternoon, while moving back and forth in the office, I observed the older Mr. Yusuf speaking with one of the female employees identified as Ms. Wadda Charriez-- I thought her name was Wanda.
5. She was standing some ways in front of Mr. Yusuf's desk and I heard the words "time" and "hours"
6. In response to a question from Mr. Yusuf I overheard Ms. Wadda say something to the effect that "it has been done that way for some time."
7. Mr. Yusuf had a document which he showed to Ms. Wadda. I didn't hear his question, only something about "time and hours" and Ms. Wadda's response that it was done that way for some time.
8. I heard no shouting or screaming at that time
9. After Ms. Wadda said it was like that way for some time, Mr. Yusuf called her closer and she sat down in front of his desk and a discussion between the two of them

took place, in private. That is I could no longer overhear what was being said and I was also moving back and forth in the office.

10. I believe it was the next day sometime in the morning, that there were several gentlemen in the office, one of the other owners and the other office workers, including Ms. Wadda.

11. I heard Mr. Yusuf talking to the other gentlemen in the office that "he want her out" and "he will call the police."

12. I did not observe Mr. Yusuf talking to or screaming at Ms. Wadda. From what I overheard he appeared more to be talking to the other guy, that is, the other owner.

13. Then the police came, and after they cops came I left the office.

FURTHER AFFIANT SAYETH NAUGHT.

WITNESS:

Dale Thomas

Eric A Berry
ERIC A. BERRY

SUBSCRIBED AND SWORN to before me
this 18th day of August, 2013

K. Glenda Cameron
Notary Public [SEAL]

K. Glenda Cameron
Commission Number LNP 010-09
Expiration Date: May 28, 2017

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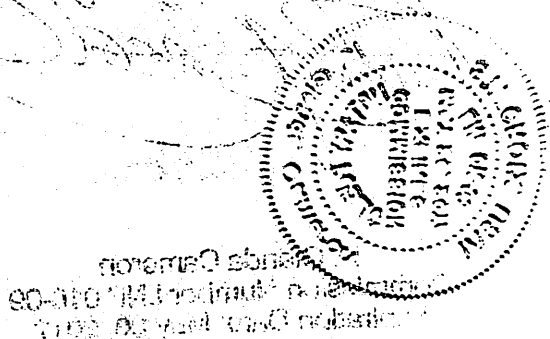


EXHIBIT 19

AFFIDAVIT OF DALE THOMAS

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

I, **DALE THOMAS**, being duly sworn, do hereby declare and states as follows:

1. I am an adult resident of St. Croix, Virgin Island and make this affidavit based on my personal knowledge and observations.
2. On or about the first week of January 2013, I believe on January 7 or 8th, 2013, I was working at Plaza Extra East Supermarket in St. Croix Virgin Islands.
3. I am a carpenter and mason by trade and was working with a helper, Eric Berry, building out an office in the upstairs area of Plaza Extra Supermarket East.
4. Sometime in the early afternoon, while moving back and forth in the office, I observed the older Mr. Yusuf speaking with one of the female employees identified as Ms. Wadda Charriez-- I thought her name was Wanda.
5. She was standing some ways in front of Mr. Yusuf's desk and I heard the words "time" and "hours"
6. In response to a question from Mr. Yusuf I overheard Ms. Wadda say something to the effect that "it has been done that way for some time."
7. Mr. Yusuf had a document which he showed to Ms. Wadda. I didn't hear his question, only something about "time and hours" and Ms. Wadda's response that it was done that way for some time.
8. I heard no shouting or screaming at that time
9. After Ms. Wadda said it was like that way for some time, Mr. Yusuf called her closer and she sat down in front of his desk and a discussion between the two of them

took place, in private. That is I could no longer overhear what was being said and I was also moving back and forth in the office.

10. I believe it was the next day sometime in the morning, that there were several gentlemen in the office, one of the other owners and the other office workers, including Ms. Wadda.

11. I heard Mr. Yusuf talking to the other gentlemen in the office that "he want her out" and "he will call the police."

12. I did not observe Mr. Yusuf talking to or screaming at Ms. Wadda. From what I overheard he appeared more to be talking to the other guy, that is, the other owner.

13. Then the police came, and after they cops came I left the office.

FURTHER AFFIANT SAYETH NAUGHT.

WITNESS:

Ewi A Berry

Dale Thomas
DALE THOMAS

SUBSCRIBED AND SWORN to before me
this 16th day of August, 2013

[Signature]
Notary Public [SEAL]

K. Glenda Cameron
Commission Number LNP 010-09
Expiration Date: May 28, 2017

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