

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

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

**UNITED’S REPLY IN SUPPORT OF ITS MOTION FOR SUMMARY JUDGMENT RE:
CLAIMS Y-7 AND Y-9**

INTRODUCTION

Hamed’s Opposition to United’s Motion for Summary Judgment regarding claims Y-7 and Y-9 makes three principal arguments in opposition to the Motion. First, Hamed argues that these claims should be denied altogether because United did not timely assert them. That argument can be easily disposed of. Next, Hamed argues that there are genuine issues of material fact precluding summary judgment on these claims. Those factual issues, he says, concern the credibility of Ben Irvin’s accounting records, and whether United’s claims are barred by the statute of limitations. But these arguments, too, miss the mark, for the reasons explained below.

One other point deserves to be mentioned. Hamed has chosen to respond with separate oppositions to United’s single motion for summary judgment regarding Claims Y-7 and Y-9. Hamed claims that his approach is for sake of clarity, but in reality it just lead to repetition and more pages for the Master to wade through. Claims Y-7 and Y-9 both relate to the open account between United Corporation (“United”) and the partnership. The Y-9 payments from the tenant account to Plaza Extra are for the most part just a subset of the Y-7 payments that happened to have been made by checks signed by Mike Yusuf and recorded by him on a handwritten ledger (Exhibit 11 to United’s Motion). Accordingly, United will continue to address both of these claims in a single reply brief in support of its request for summary judgment. Because Hamed’s two oppositions are largely duplicative of one another, United’s citations will be to Hamed’s Opposition regarding claim Y-7 unless otherwise indicated.

ARGUMENT

I. United Timely Asserted its Y-7 and Y-9 Claims.

Hamed first argues that United should be barred from seeking recovery for transfers made from United's tenant accounts because Yusuf's September 30, 2016 Accounting Claims and Proposed Distribution Plan described this as a claim belonging to Yusuf personally, rather than United. *See* Hamed's Opposition at pp. 19. Hamed's assertion is frivolous. Yusuf's Accounting Claims and Proposed Distribution Plan of September 30, 2016 (the "Claim") stated that "all debts of the Partnership must be paid prior to any distributions to the Partners," and noted that "the remaining debts include the unpaid rent obligations, with interest, due to United . . . as well as other obligations to United discussed in more detail below." *See Exhibit 1*-Yusuf's Accounting Claims and Proposed Distribution Plan Excerpts. Section III, entitled "Outstanding Debts of the Partnership" lists debts A-G of the Partnership owed to United, *i.e.* these are United's claims and United is a party to this suit. *See id.* at 6-10. The Claim document was styled as "Yusuf's Accounting Claims and Proposed Distribution Plan" because of Judge Brady's directive that each partner submit a proposed accounting and distribution plan. *See* Judge Brady's January 9, 2015 Order Adopting Final Wind Up Plan, p. 8 ("Hamed and Yusuf shall each submit to the Master a proposed accounting and distribution plan..."). The fact that Yusuf did what he was asked to do by preparing and submitting a plan identifying all known claims against the partnership, including third party claims, obviously does not transform that which he clearly identified as a United claim into his own claim. Nor can it possibly mean that United's Y-7 and Y-9 claims were not timely presented to the Master. Further, the "Y-_" designations were imposed by Hamed in an effort to distinguish and number the individual issues to be addressed. This designation did not transform the United claims into Yusuf claims. For ease of reference, the parties have conformed to that

procedural convention but it does not substantively change that the claim is a United claim against the partnership.

II. Hamed Has Created No Fact Issues Regarding the Accuracy of Ben Irvin's Accounting Records Showing Payments from the Tenant Account to Plaza Extra accounts.

A. The FBI Notes of a 2003 Interview with Ben Irvin are Inadmissible Hearsay.

Hamed argues Ben Irvin's accounting records showing by check number, month, year and amount payments made from United's tenant account, including payments made to or on behalf of Plaza Extra are "untrustworthy," and hence that they cannot be used as a basis for documenting those payments. Hamed's Opposition, p. 23. Hamed argues that, according to notes of an FBI interview of Irvin, he told the FBI that he calculated store sales on the basis of bank deposits of checks and cash, that he did not always accurately report inventory, and that he made sure that his numbers matched those of another accountant, Pablo O'Neill, employed by United. *See* Hamed's Opposition at p. 23. The FBI interview notes are plainly inadmissible hearsay, and thus Hamed may not use them to support any factual assertions made in opposition to United's motion. *See United States v. Sampson*, 898 F.3d 287, 308-309 (2d Cir. 2018) (FBI agent's notes of interview with defendant were hearsay not subject to any exception, and lower court properly excluded them from evidence). But even if they somehow were admissible as evidence, nothing in the interview suggests that Irvin did not accurately report what were then United's intra-company transactions. Until 2013, both United's landlord/tenant business at the United Shopping Center and the supermarket business were treated for tax and accounting purposes as a corporate business run by United, not a partnership. Neither Irvin nor any other accountant would have had an incentive to misreport the amount of a disbursement made from United's tenant account to its supermarket account because, no matter what its size, an intra-company transaction of that kind would have zero effect on United's net income.

Hamed relies on other inadmissible hearsay when he contends that the United States estimated that United had \$60,000,000 in unreported income for the 1996 to 2001 tax years. Hamed's contention is based on a document entitled "Draft Summary Schedules" (marked as Exhibit 7 to Hamed's Opposition) that is also stamped "Draft" throughout. In addition to the obvious hearsay problem, Hamed offers absolutely no foundation for its admissibility into evidence. There is no indication of who authored it, the purpose for which the document was created, the means by which the dollar figures in the document were arrived at, whether a document like this was ever placed into final form, and, if so, whether the draft numbers were replaced with different numbers in the final document. Since the "Draft Summary Schedules" document is inadmissible, Hamed may not rely on it as evidence to support any factual assertions in opposition to United's dispositive motion.¹

Although the Government's draft document is inadmissible, it is worth noting Wally Hamed's willingness now to accept at face value the Government's "draft" contentions about amounts that United failed to report as income stands in marked contrast to the positions he took in the criminal case, in disputing his own alleged liability and his liability as an alleged successor to United. There, he repeatedly challenged the Government's allegations about the dollar amount

¹Hamed also cites to the indictment in the criminal case (Exhibit 6 to his Opposition), and its allegation in paragraph 9 that United failed to report at least \$60,000,000 in sales on gross receipts returns and income tax returns. It goes without saying that allegations in a civil or criminal complaint are not evidence of facts, and therefore may not be used to create a fact issue for summary judgment. *See Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 249-52 (1986) (mere allegations are not evidence of facts and may not defeat properly made summary judgment motion). It is noteworthy that the allegations of the indictment relate only to the Plaza Extra stores and the under-reporting of income from "Plaza Extra sales" on tax returns. *See* Exhibit 6 to Hamed's Opposition, ¶¶ 1, 9. The indictment makes no reference to United's landlord/tenant business at the United shopping center, and makes no allegations of under-reporting of United's income from that business.

of United's under-reporting of store sales and underpayment of gross receipts and income taxes, and the dollar amount of his own personal under-reporting of income and underpayment of income taxes. The restitution schedules attached to the plea agreement are illustrative. These show the Government's position on underpayment of taxes and the Defendants', for each of the tax years in question. The Defendants there dispute most of the Government's contentions regarding what amounts are owed by United and the individual defendants for the 1996 to 2001 tax years, and indeed contend that nothing is owed for most of the taxes and tax years at issue. *See* Exhibit 9 to Hamed's Opposition, and Restitution Schedules attached thereto. In other words, Waleed Hamed and the other Defendants in the criminal case contested most of the Government's claims of under-reporting of income, and even took the position that United had not under-reported any of its 1996 income, and therefore owed nothing in additional taxes for that tax year. *See id.*

B. The September 2016 Schoenbach Opinion Letter Does not Address Ben Irvin's Record of Deposits to and Disbursements from United's Tenant Account.

Hamed's heavy reliance on a September 2016 opinion letter prepared by a lawyer, Lawrence Schoenbach, which opines that United's under-reporting of income makes it impossible to prepare a partnership accounting, is misplaced. Mr. Schoenbach's opinion letter was offered in support of Hamed's October 3, 2016 motion to strike a report summarizing distributions and withdrawals by the partners prepared for Yusuf by BDO Puerto Rico, PSC, the Puerto Rico office of the well-known national accounting firm. Judge Brady conducted an evidentiary hearing for this motion in March 2017 at which Mr. Schoenbach testified and his opinion letter was introduced into evidence. *See generally* **Exhibit 2**, July 27, 2017 Order Denying Without Prejudice Hamed's Motion to Strike Accounting Report (BDO). Mr. Schoenbach was not asked to, and did not offer any opinions whatsoever regarding United's intra-company transactions in the 1995 to 1998 time period, or the accuracy of Ben Irvin's accounting entries showing payments from United's tenant

accounts to its supermarket accounts that are the subject of United's motion. Neither Mr. Schoenbach's testimony at the hearing nor his opinion letter even mentioned Ben Irvin or any accounting work he performed for United. Further, the criminal complaint against United, Mr. Yusuf and the Hamed and Yusuf sons alleged that supermarket sales – not rents from shopping center tenants – were under-reported on tax returns. *See* page 5, footnote 1, *infra*.

Hamed's arguments from the Schoenbach opinion prove too much in any event. If it were really the case that the methods used by the Yusufs and Hameds to under-report supermarket sales give rise to the possibility that there are undocumented offsetting amounts owed by Yusuf and United to the partnership – and that these potential offsets make it inequitable to award United any recovery on its claims against the partnership – then Judge Brady could not have awarded rent to United in an amount exceeding \$6,000,000 for the periods 1994 to 2004 and 2011 to 2015.

C. Hamed's Speculations Are Not Sufficient to Preclude Summary Judgment.

The evidence adduced by United, including Mr. Yusuf's declaration, establishes all of the facts United must establish in order for it to be granted summary judgment on claims Y-7 and Y-9. Mr. Yusuf's declaration asserts that United used the Virgin Islands Community Bank for the purpose of depositing rent payments from United Shopping Center tenants, and that monthly statements for that account attached to United's motion as Exhibits 9A and 10 show those deposits for various months in 1996, 1997 and 1998. *See* Exhibit 6 to United's Motion, April 15, 2010 Declaration of Fathi Yusuf, ¶3. Hamed tries to create an issue of fact by suggesting that the source of some of the deposits to the account may have come from Plaza Extra cash. As Hamed asserts, "It is impossible to tell whether funds deposited in the Yusuf family-owned United bank account ("tenant account") were solely generated from the United Shopping Center rents or were Partnership funds moved in and out of United's bank account." Hamed's Opposition to United's

Motion for Summary Judgment as to Y-9, p. 15; see *also* Hamed's Opposition at p. 22. But Hamed's speculation about possibilities is not evidence, and is insufficient to create an issue of fact regarding the truth of Mr. Yusuf's testimony about the source of the funds in the VI Community Bank account.² In fact, the deposits amounts are shown on each of the monthly bank statements that make up Exhibits 9A and 10, and reflect the names of the various tenants and their rent amounts on the deposit slips. *See* Exh. 9A-Bates Numbers 0021659 – 21668 (deposit slips to Community Bank Tenant Account reflecting rent payments from tenants such as "Western Union," "Plaza Laundromat," and "Natty's Cafeteria," etc.).

Mr. Yusuf also stated in his declaration that he "did not direct the repayment of these advances or payments by the partnership and to the best of my knowledge and belief they were not repaid."³ Exhibit 6 to United's Motion, ¶4. Hamed suggests in his opposition that the partnership could have "repaid the amounts sometime in the past," *see* Hamed's Opposition at p. 22. But again his speculation about what might have happened is insufficient to overcome Mr. Yusuf's testimony that there was no repayment. Likewise, Mr. Schoenbach's opinion letter, which was prepared some 4 years ago for a purpose having nothing to do with United's landlord/tenant business or its intra-company transfers from its tenant account to Plaza Extra supermarket accounts, does not offer any opinions about these transfers, let alone an opinion that they were repaid.

² Further, Hamed does not and cannot assert that any of these deposit amounts are too large to represent monthly rent collections from tenants at the approximately 30 bays and 15 offices at the shopping center that United offers for rent.

³Hamed cites Mike Yusuf's testimony that it is "possible" that amounts were repaid. *See* Opposition at p. 4. Mike Yusuf's testimony about a possibility does not raise a triable issue of material fact as to Mr. Yusuf's assertion that none of the advances were repaid. This is especially the case here, because Mr. Yusuf kept Mike out of the loop generally about partnership matters. *See* **Exhibit 3**, January 21, 2020 Deposition, pp. 12, 32-33 (testimony of Fathi Yusuf).

Hamed claims that it “is also impossible to tell whether the Partnership owed United money or whether United was reimbursing the Partnership for expenses the Partnership paid on United’s behalf.” Hamed’s Opposition to United’s Motion for Summary Judgment as to Y-9, at p. 15; see also Opposition at p. 22 (stating that it is “conceivable” that “United was reimbursing the Partnership for expenses the Partnership paid on its behalf”). Again, speculation about what might have happened or assertions about what is “conceivable” cannot create an issue of fact regarding the truth of Mr. Yusuf’s declaration, and therefore cannot preclude the granting of summary judgment for United on its Y-7 and Y-9 claims.

III. Hamed’s Specific Challenges to Items in the Open Account are Meritless.

United claims that the ledger prepared by Mike Yusuf (United’s Exhibit 11) to reflect transfers he made are insufficient to “substantiate two of the larger claims from 1994,” which are the \$40,010 transfer from the tenant account to the partnership’s Prudential Bache investment account on May 24, 1994 and the \$30,000 transfer to the Core States account on September 23, 1994. Hamed’s Opposition, p. 2. Hamed asserts that United must also produce investment and bank records to show that the money was actually moved from the tenant account. *Id.* at 2. But he does not explain why this additional corroboration is needed to establish that these transfers were made, and United is aware of no reason it would be.

Hamed also points out that two Core States cashier’s checks made out to Fathi Yusuf in 1994 in the total amount of \$145,000, and if the source of those funds was partnership money, then the debt to United for the \$30,000 transfer “would have been wiped out by that Yusuf draw.” Hamed’s Opposition at 2. But this argument assumes that Yusuf and United are the same “person” in legal terms, when they plainly are not. A debt owed by Yusuf to the partnership cannot be used to offset a debt owed by the partnership to United, a corporation.

As for United's payment of \$60,000 to Peter's Farm Investment Corporation from its tenant account, Hamed does not deny that the payment was made but instead argues that because a jointly held corporation like Peter's Farm is a distinct entity from the partnership, United's claim must be addressed to Peter's Farm. Hamed's argument misses the point. The payment was to have been from the Partnership, so the Partnership should reimburse United (as paid from the Tenant Account) for the payment made on its behalf.

Finally, Hamed complains that United has not provided any bank records "to independently substantiate the smaller claims for 1994 and 1998 either." Hamed's Opposition at p. 2. It is true that United has not provided additional corroboration of Mike Yusuf's handwritten entry on United's Exhibit 11 reflecting a payment from the tenant account in the amount of \$400 on May 23, 1994. United submits that Mike Yusuf's testimony that he prepared the ledger and recorded payments that he knew about in that ledger is sufficient for summary judgment. The other small items were not paid by check. The \$1,000 entry for September 23, 1994 for two refrigerators means that a tenant named Best Furniture sold refrigerators to the Hameds and Yusufs for \$1,000, with payment taking the form of a reduction in rent paid by Best Furniture. *See Exhibit 3, January 21, 2020 Deposition, pp. 253-254 (testimony of Mike Yusuf).* The \$350 entry for "Bed and Bench" for September 23, 1994 was handled the same way. *See Exhibit 11 to United's Motion; See Exhibit 3 p. 254 (testimony of Mike Yusuf).* The "bedroom set for Allaah" entry in May 1998 for \$3,000 represents a wedding gift to a cousin of both families that at Wally Hamed's request was also paid for in the form of reduced rent to Best Furniture. *See Exhibit 11 to United's Motion; See Exhibit 3, p. 257-258. (testimony of Mike Yusuf).* United has satisfied its burden for obtaining summary judgment for these entries.

As for the payments United made for its property taxes, pursuant to an agreement made by Hamed and Yusuf as part of their original agreements regarding the partnership and rent, Hamed maintains that United cannot produce a writing regarding this agreement. Mr. Yusuf testified in his 2014 deposition that as part of his agreement with Hamed reached in 1986, the partnership would be responsible for paying various expenses of the United Shopping Center such as the insurance and taxes for the store. See **Exhibit 4**, April 2 Deposition, pp. 52-54 (testimony of Fathi Yusuf). See also Hamed Exh. 3 to Opposition, Depo. of Fathi Yusuf, p. 269:14-22: (“Q. Was the supermarket operations supposed to be paying that, those amounts [property taxes for the Shopping Center]? A. Yes.”). The agreement is unwritten, but so is the partnership agreement itself and United’s rent agreement with the partnership, and that fact has obviously not been a bar to their enforcement in these proceedings.

IV. Hamed Has Created No Genuine Issues of Fact regarding His Statute of Limitations Defense

A. Judge Brady’s Laches-Based Limitations Ruling Does Not Apply to United.

Hamed argues without much conviction that United’s claims are barred by Judge Brady’s laches-based order providing that “the accounting...to which each partner is entitled [under RUPA⁴] §177(b)...shall be limited in scope...to those claimed credits and charges to partner accounts, within the meaning of [RUPA] §71(a)...occur[ing] on or after September 17, 2006.” Hamed’s Opposition at p. 19 (quoting from Judge Brady’s July 25, 2017 Order). The order by its plain terms refers only to accounting claims by a partner brought pursuant to RUPA, and thus does not apply to United’s claims. If United’s Y-7 and Y-9 claims are time-barred, that result would flow from the statute of limitations, not laches or Judge Brady’s laches-based order limiting partner

⁴Revised Uniform Partnership Act.

claims. The statute of limitations, and not laches, was what Judge Brady considered in determining whether United's claims for rent owed for the 1994 to 2004 time period were time-barred (he concluded they were not), and the Master should likewise look to the statute of limitations, not laches, in determining whether the instant claims are time-barred.

V. The Statute of Limitations Does not Preclude United's Y-7 and Y-9 Claims.

A. The Accrual Date for the Claims was the Last Charge on the Open Account.

In its Motion, United argued that because it has an open account with the partnership, as described in *In re: Estate of Vanderpool*, 2010 WL 11414826 (V.I. Super. Dec. 30, 2010), the statute of limitations accrued on the date of the last item in that account, which was the May 1, 1998 advance to the partnership of \$3,000.⁵ See Exhibit 11 to United's Motion.

Hamed argues that *Vanderpool* is distinguishable, and that United cannot avail itself of the rule applied in that case, and instead that the statute of limitations would run separately on each item that comprises claims Y-7 and Y-9, from the date each payment or advance was made. See Hamed's Opposition at p. 21, n. 2 and at p. 31. According to Hamed, in *Vanderpool*, in contrast to the instant case, there was "routine back of forth of payments between the two parties..." *Id.* at 21, n. 2. But the Court in *Vanderpool* did not say that there had to be regular repayments or account reconciliations in order for an economic arrangement between two parties to constitute an open account. Indeed, the facts in *Vanderpool* are inconsistent with any such requirement. In that case, the Court focused on the period "between February and August 2001," when assisted living

⁵United's Motion for Summary Judgment mistakenly suggested that the last item in the open account was the \$10,000 Plaza Transfer shown in Ben Irvin's accounting records for April 1998, and shown as check number 1278, dated April 16, 1998, in the Community Bank monthly statement dated April 30, 1998. See United's Motion at p. 9. Whether the April or May payment date is used as the accrual date for statute of limitations purposes is immaterial to United's argument and conclusion.

services were provided and billed for in a total amount of approximately \$17,000. *See Vanderpool*, supra, at *1. While there were bills issued for payment for services during that period, no actual payments were made for them. Nevertheless, the Superior Court had no trouble concluding that there was less than one year between each service provided and charged for, and therefore that the accrual date – the date the statute of limitations would start to run – was August 3, 2001, the last date a service was provided. *See Vanderpool*, supra, at *1, *2.

Hamed’s attempt to distinguish *Vanderpool* is not persuasive, and the Y-7 and Y-9 claims should be deemed to have accrued on May 1, 1998. Under the 10-year statute of limitations that United believes is applicable, the limitations period would have ended on May 1, 2008; under the six-year statute, May 1, 2004. *See* United’s Motion at p. 10. Both of these dates fall after the FBI raid and seizure of documents on October 3, 2001, and after United was indicted on September 19, 2003. Because the limitations period was tolled or suspended upon the occurrence of these and other extraordinary circumstances until 2012 at the earliest, United’s Y-7 and Y-9 claims were timely brought on September 12, 2012 (the date United’s counterclaim is deemed to have been filed).

B. Hamed Has Failed to Create Any Issues of Fact Regarding the Availability of Equitable Tolling.

Hamed argues that the FBI’s seizure of documents, including Ben Irvin’s accounting records showing the transfers from tenant accounts to supermarket accounts and monthly bank statements, did not cause the statute of limitations to be tolled beginning in October 2001, because the affidavit of FBI agent Petri asserts that United and all other defendants had “unfettered access” to these documents once the criminal case began.⁶ Hamed’s Opposition at p. 24.

⁶Of course, there was a nearly 2-year lag between the October 2001 FBI raid and the September 2003 indictment. Thus, even if Hamed could show that United had access to these documents

There are two problems with Hamed’s “unfettered access” argument. First, FBI agent Petri’s affidavit, like Petri’s notes of the Ben Irvin interview and the Government’s “draft” schedules, is hearsay that does not fall under any exception, and the affidavit is therefore inadmissible evidence that Hamed may not rely upon in opposing this motion for summary judgment. Hamed is attempting to use an out-of-court statement made by an FBI agent to prove the truth of the matter asserted (i.e., that there was “unfettered access.”), and this he is foreclosed from doing by the Rule of Evidence.⁷ The Master need not undertake any additional analysis to reject Hamed’s reliance on the Petri affidavit to oppose summary judgment.

But even if the Petri affidavit were somehow admissible, Waleed Hamed is once again relying in the instant case on assertions made by the United States in the criminal case that he unequivocally opposed at that time. Hamed fails to disclose that in the criminal case he and the other defendants contravened Agent Petri’s assertion in his declaration that the FBI provided “unfettered access to documents,” and argued that the deprivation of access was severe enough to warrant dismissal of the case. The inconsistency between the position he took then

from the time the criminal case was brought, or shortly thereafter, there would still be equitable tolling of the statute of limitations for that period.

⁷As noted below, the Petri affidavit was filed by the United States in the criminal case as an attachment to a brief addressing the deprivation of access issue. While courts can generally take judicial notice of pleadings and other documents filed in court cases, “[c]aution must also be taken to avoid admitting evidence, through the use of judicial notice, in contravention of the relevancy, foundation, and hearsay rules.” *Am. Prairie Const. Co. v. Hoich*, 560 F.3d 780, 797 (8th Cir.2009); see also Wright and Miller, *Federal Practice and Procedure* §5104 (stating that courts should not use their power to take “judicial notice of court records [as a means] to evade the hearsay rule”). Thus, even if the Master were to take judicial notice of the Petri affidavit, he should not do so for the purposes of establishing the truth of the matters asserted in the affidavit. See also *Werner v. Werner*, 267 F.3d 288, 295 (3d Cir. 2001) (declining to judicially notice the truth of corporate director meeting minutes that were filed in a related judicial proceeding); *United States v. CVS Caremark Corporation*, 913 F. Supp. 2d 125, 142 (E.D. Pa. 2012) (the court’s taking of judicial notice of certain documents for purposes of a motion to dismiss was not equivalent to a finding that alleged hearsay statements contained in them were truthful).

and the position he took now is so complete that it deserves being discussed in some detail.

Agent Petri's declaration was submitted by the Government in response to a motion filed by Hamed and the other defendants in the Criminal Case on February 5, 2009. *See Exhibit 5*, February 5, 2009 Motion in Criminal Case. In that motion, Waleed Hamed and all the other defendants in the Criminal Case described the myriad of ways in which the Government had deprived them of access to documents needed to defend the charges against them, and sought dismissal of the case on that basis. First, rather than copying what it needed and returning original documents to the rightful owners, as it should have done so under its own internal policies, "the Government deliberately held [Defendants'] property for more than seven years." *See Exhibit 5*, at JA180, ¶70. This meant that the defendants and their counsel in the criminal case had to go to the FBI offices and request the right to review seized documents in order to get access to them. But for a period of approximately two years beginning in 2006, the Government denied access completely by refusing to permit any visits by defense counsel to the office where hundreds of thousands of pages documents were kept. *See Exhibit 5*, at JA165-166. "The defense team's last permitted visit to the FBI offices was in 2006," the Motion asserted, and from then "until November of 2008, the Government denied the Defendants access to their documents despite numerous requests." *See Exhibit 5*, at JA166-168.

And even before and after that period of complete deprivation of access, the Government deprived defendants of any meaningful access at the FBI offices in a myriad of other ways described in the motion. First, the Government "never compiled an inventory of the specific items and documents seized in the October 2001 raid," which made it next to impossible to even know what documents existed and were relevant to their defense. *See Exhibit 5*, at JA180, ¶69. Second, "Government agents - not defense counsel - would decide which boxes the team would be permitted to review." *See Exhibit 5*, at JA167. The Government also impaired

access to documents by "reorganiz[ing] and rearrang[ing] the Defendants' documents by removing some documents from their original boxes and placing them in different boxes because the revised organization better suited her needs." *See* Exhibit 5, at JA168. The defense team "relied on the box numbers" to identify what was contained in them, and could not find documents if they had been moved from one box to another. *See* Exhibit 5, at JA169. Worse yet, Hamed and the other defendants asserted that the defense team's limited review of the boxes of documents maintained by the FBI revealed that "some boxes were entirely missing," and that "numerous documents" were "now missing from the boxes" the Government still had. *See* Exhibit 5, at JA174, ¶48. Complaints about the FBI's mishandling of documents were met with Agent Petri's admonition to members of the defense team "that they were misinformed if they believed the documents seized and maintained by the government belonged to the defendants," because in fact they "belonged to the Government, and that he would do with them as he pleased." *See* Exhibit 5, at JA173, ¶45.

Hamed and the other defendants argued that the denial of access had been so thorough and had so compromised their ability to defend the charges against them that the Court should dismiss the case and order the immediate return of the voluminous United (and other defendants') documents that had been seized in the October 2001 raid. The Government responded to the motion filed by Hamed and the other defendants on February 24, 2009, and Defendants filed their reply to the Government's response on March 17, 2009.⁸ Then, on July 8, 2009, the day before Judge Finch's hearing on the motion, the Government filed another

⁸For the sake of brevity, these two pleadings have not been attached to this Motion. They are, however, available for review on the ECF docket for the criminal case in the event the Master wishes to review them.

brief, which attached as an exhibit Agent Petri's "unfettered access" declaration that Hamed now relies on in his opposition to United's motion for summary judgment.⁹ *See, Exhibit 6*, U.S. Government's July 8, 2009 Response to Motion, specifically at JA238-241.

On July 9, 2009, a hearing on the motion was held before the Honorable Raymond L. Finch, and on July 16, Judge Finch entered an order which specifically found the Government had improperly limited the defendants' access to their documents, thereby rejecting the "unfettered access" assertions in the Petri declaration. *See Exhibit 7*, Judge Finch's July 16, 2009 Order, specifically at JA265. Judge Finch agreed with Hamed and the other defendants that the Government had failed to provide an inventory of the documents seized, had rearranged documents while they were in its custody and had unreasonably limited the defendants' review of documents. Judge Finch did not dismiss the case, but he did grant the significant relief of ordering the Government to copy each and every page of the hundreds of thousands of pages of documents in its possession, at their cost, and then furnish them to the Defendants:

The Government never provided the Defendants with a detailed inventory of the specific documents seized. **The Government has only permitted the Defendants limited review of the evidence under supervision, which often involved oversight by government agents involved in investigating this case.**

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Without a complete set of documents for unlimited review, the defense team cannot determine the extent of harm, if any, that the Government's rearrangement of the documents has caused.

⁹Hamed does not and cannot contend (let alone offer evidence) that the defendants ever defended the criminal case by disputing the Government's theory that United owned and operated the Plaza Extra stores, and by arguing that United could not be guilty of any offense regarding underreporting and underpayment of taxes because a partnership actually owned and operated the stores.

Accordingly, it is hereby

ORDERED that the Government serve upon the defense team one duplicate set of documents seized from the Defendants, as well as all discoverable documents seized from third parties; that the duplicate set correspond to the present documents arrangement; and that Defendants have 60 days from the receipt of such documents to supplement their Motion for Specific Relief due to the Government's Destruction of the Integrity, Organization and Sourcing of Material Evidence. (Emphasis supplied in part).

See Exhibit 7, at JA264-265. (emphasis added).

On August. 14, 2009, the Government filed a Motion to Reconsider Judge Finch's Order (JA266), claiming that the Order was clearly erroneous or manifestly unjust and that, among other things, it imposed a burden of production on the Government that would cost "no less than \$125,000" and require 3 to 4 months to complete. *See* **Exhibit 8**, Government's August 14, 2009 Motion for Reconsideration, specifically at JA267. A month later, on September 14, 2009, Judge Finch entered an Order denying the Government's Motion to Reconsider. Judge Finch's ruling on the access issue were the impetus to the Government's entry of plea negotiations with the defendants, which resulted in the February 26, 2010 plea agreement that effectively mooted the order requiring immediate production of copies of all documents. *See* **Exhibit 9**—Criminal Case Filings including Restitution Schedules (same as Exhibit 9 to the Opposition). Copies of the documents were eventually returned, in 2011, via the FBI hard drive.

The doctrine of judicial estoppel prevents Hamed from arguing in these proceedings that the U.S. Government gave defendants unfettered access to documents that were seized in the raid, when he took precisely the opposite position in the criminal case. The Virgin

Islands Supreme Court has recognized that “the judicial estoppel doctrine will preclude a party from asserting a position on a question of fact or a mixed question of law and fact that is inconsistent with a position taken by that party in a previous judicial proceeding if the totality of the circumstances compels such a result.” *Serauw v. Fawkes*, 66 V.I. 253, 264-265 (V.I. 2017). The circumstances to be considered in determining whether judicial estoppel applies are “the impact that allowing the inconsistent claims would have on the judicial process, which may include considering the extent of the inconsistency (including any reasonable explanations that would harmonize both positions), whether the party has received an unfair advantage or benefit from asserting the inconsistent claims, and whether another court has already relied on the claim made in the first proceeding.” *Id.* at 265.

Here, all three factors support the applicability of judicial estoppel. The positions taken by Hamed in the criminal case and in this proceeding are completely irreconcilable, and Hamed benefitted from his prior inconsistent position because Judge Finch relied on his arguments in issuing a ruling favorable to Hamed. Accordingly, Hamed may not rely on Agent Petri’s “unfettered access” assertions as a means of creating an issue of fact regarding the availability of equitable tolling. To the contrary, Judge Finch’s finding that there was a deprivation of access should be treated as conclusive on this issue. Hamed therefore has not raised any issues of fact regarding United’s assertion that, by depriving United of the Irvin accounting records, Community Bank statements and other materials needed to bring and maintain a suit, the raid and criminal case are extraordinary circumstances or impediments beyond United’s control that prevented it from bringing suit earlier than late 2011 at the earliest.

Hamed also has no good answer to the other respects in which the pendency of the criminal case was an extraordinary circumstance or an impediment to bringing suit before late 2011 at the earliest. The press release issued by the U.S. Attorney for the Virgin Islands on the filing of the 76-count indictment in September 2003 includes charts for each defendant showing, for each count asserted against that defendant, which criminal provisions of the U.S. Code and the Virgin Islands Code the defendant is charged with violating, and the maximum prison sentence and fine that could be imposed for a conviction under that count (or counts). *See Exhibit 10*-September 19, 2003 Press Release. Thus for example, the charts show that that Fathi Yusuf and Waleed Hamed are each charged mail fraud in Counts 3-43, and that a conviction for any one of those 44 counts would carry a maximum prison sentence of 5 years. The charts show that Fathi Yusuf and Waleed Hamed were each facing hundreds of years in prison time if convicted on these and the multitude of other counts asserted against them in the indictment. *See Exhibit 10*.

Hamed does not and cannot dispute that “[t]he theory of the prosecution was that United Corporation, a corporation owned by Fathi Yusuf and his family members – and not an undocumented, oral Hamed/Yusuf partnership – owned and operated the Plaza Extra supermarkets and was responsible for paying income and gross receipts taxes on store revenues.” *See Opposition* at p. 29. Instead, he responds with the irrelevant and misleading assertion that this “was one of many alternate theories of the *defense*.” *Opposition* at p. 29 (emphasis added). Nor does Hamed dispute the assertion in Mr. Yusuf’s declaration that “the defense lawyers for me and the other defendants in the criminal [case] advised us not to do or say nothing that would suggest the existence of a partnership between me and

Mohammad Hamed, because that would hurt our defense and cause Mohammad Hamed to be added to the case.” *See*, Exhibit 6 to United’s Motion, ¶ 4. Hamed’s response to United’s SUMF No. 9 is silent regarding Mr. Yusuf’s account of the defense lawyers’ instructions to the defendants.¹⁰ *See* Opposition, p. 29.

Hamed has therefore raised no issue of material fact concerning United’s assertion that the criminal case created a serious impediment to suing the partnership because doing so would compromise the defense of the criminal case and expose his partner, Mohammad Hamed to a prosecution that, if successful, would lead to the equivalent of a sentence of imprisonment for life. If the Government had learned that the supermarkets were run by a Yusuf/United partnership, and not by United, then the Government would undoubtedly have added Mohammed Hamed as a defendant (and also, presumably, the partnership), and charged him with the same multitude of offenses Mr. Yusuf was accused of committing. Indeed, Mohammad Hamed would likely be in an even worse position than Yusuf, because the Government would contend that, by the expedient of having United rather than a partnership file tax returns, Mohammad Hamed had entirely evaded responsibility for his 50% share of the gross receipts and income taxes owed on supermarket revenues.

The upshot is that the statute of limitations should also be equitably tolled because United could not sue the partnership without compromising the ability of the defendants to oppose the criminal charges and avoid fines and incarceration that could destroy the supermarket business and

¹⁰For this reason, Yusuf could not have told the federal monitors that the supermarkets were run by a partnership, which owed money to United, and requested the monitors to make an exception to the injunction by authorizing a repayment to United. Hamed is therefore mistaken in suggesting that “there was no reason why United couldn’t have requested authorization for repayment,” Opposition at p. 30, or even that they would have granted such a request. *See also* Opposition at p. 24. The federal monitors worked under and reported to the U.S. Attorney, and making that request would plainly contravene the defense lawyers’ instructions.

put the defendants in prison for many years, and without putting Yusuf's partner, Mohammad Hamed, in serious personal jeopardy for fines and a lengthy incarceration. To put it another way, by not causing United to bring suit to recover the transfers made from the tenant account to supermarket accounts, Yusuf was plainly benefitting both the partnership and Mohammad Hamed.

Hamed also disputes that Yusuf was the partner who determined when reconciliations were made and had no reason to request a reconciliation or repayment of the advances made from the tenant account before 2012. He had no reason before then to believe that his partner would invoke a legal technicality to avoid a debt, and there was no other reason to ask for a reconciliation. Hamed says he is disputing United's SUMF no. 12, but he has produced no evidence to dispute Mr. Yusuf's testimony that he had discretion to determine when a reconciliation was made, and his attempt to evade Judge Brady's finding on this point is unpersuasive. *See* Hamed's Opposition at p. 31.

Hamed also relies on the Government's inadmissible "draft schedules" exhibit to argue that Mr. Yusuf had no reason to delay repayment to help the partnership with cash flow is untrue. Hamed relies on the inadmissible "draft schedules" prepared by the Government to assert that in 1996 "over \$8 million in sales went unreported to the Virgin Islands Bureau of Internal Revenue." *See* Opposition at p. 27; *see also id.* at 31. He also ignores the fact, discussed above at p. 5-6, *supra*, that the defendants in the criminal case disagreed with the Government's allegations and took the position there was no underpayment of taxes by United in 1996. Hamed fails to raise a triable issue of fact concerning this additional reason for deferring repayment.

Finally, Hamed offers no cogent response to United's contention that there was no recognized partnership entity to sue before Judge Brady's issued his April 2013 preliminary ruling that there was an enforceable partnership agreement. It is noteworthy that even Hamed did not

name a partnership as a defendant when he brought this suit in September 2012. He plainly did not do so because formal partnership had yet been recognized by a court, and the purpose of his lawsuit was to obtain that judicial recognition. To accomplish that in legal terms, Hamed not only had to, in effect, pierce the corporate veil, but also had had to show that the oral agreement for a partnership was enforceable under the statute of frauds.

At the time of Judge Brady's April 2013 preliminary ruling, no property of the supermarket business was titled in partnership name, no transactions with third parties were in partnership name, and no tax returns for the supermarket business were filed by a partnership. Instead, United was the record owner of all assets of the supermarket business, including bank and investment accounts, and it, and not a partnership, was the entity that entered all contracts relating to that business. Hamed argues that notwithstanding these facts, the partnership was a recognized entity from 1999, because Yusuf had then described Mohammad Hamed as a partner in testimony he gave then and again in 2000. *See* Opposition at pp. 15, 24. But on those two occasions Mr. Yusuf was hardly expressing the legal conclusion that he and Hamed had formed a partnership within the meaning of RUPA that could sue and be sued, buy and sell property and enter contracts. In short, even if the previously described impediments to filing suit had never existed, the fact that the partnership was not (preliminarily) recognized by a court until April 2013 would, by itself, constitute such an impediment that warrants tolling of the statute of limitations. Hamed has raised no genuine issue of fact indicating otherwise.

VI. United's Responses to Hamed's Counter Statement of Undisputed Material Facts.

Hamed has created submitted statements of undisputed material facts ("SUMF") in each of his Y-7 and Y-9 oppositions that have substantial overlap. 21 of the 23 SUMFs for the Y-9

opposition appear in the Y-7 opposition, albeit with different numbers. The Y-7 SUMFs include those 21 and 12 additional SUMF's.

The table attached hereto as **Exhibit A** shows the SUMFs in the two oppositions, and United's response to each. For the 21 SUMFs that appear in both oppositions, the first column in the table gives the SUMF number from the Y-7 opposition and the next column provides the corresponding SUMF number from the Y-9 opposition.

CONCLUSION AND RELIEF REQUESTED

For all of the foregoing reasons, and for those articulated in its Motion, United respectfully requests the Master to grant it summary judgment on Claims Y-7 and Y-9.

Respectfully submitted,

DUDLEY NEWMAN FEUERZEIG LLP

DATED: July 7, 2020

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CERTIFICATE OF SERVICE

I hereby certify that on this 7th day of July, 2020, I caused the foregoing **United's Reply in Support of its Motion for Summary Judgment Re: Claims Y-7 And Y-9**, which complies with the page or word limitation set forth in Rule 6-1(e), to be served upon the following via the Case Anywhere docketing system:

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Exhibit A

Response to Hamed's Counterstatement of Material Facts regarding Y-7 and Y-9

SUMF No.s for Hamed's Y-7 SUMFs	SUMF No.s for Hamed's Y-9 SUMFs	HAMED'S SUMF	UNITED RESPONSES
1.	N/A	<p>United has not provided any documentation to independently substantiate two of the larger claims from 1994: 5/24/94 Partnership's Prudential Bache Investment Account, \$30,000 and 9/23/94 Core States Property St. Thomas \$40,010. No investment or bank statements were provided to show that the money was actually moved from United's bank account ("tenant account"). No bank records were provided to show that the money was deposited into the Partnership's Prudential and Core States accounts. It is impossible to discern what the records from 1994 really mean. For example, there are records in 1994 of two Core States cashier's checks made out to Fathi Yusuf for a total of \$145,000. (Exhibit 1) It is most probable that those cashier checks were funded with Partnership money. If so, any alleged debt owed by the Partnership would have been wiped out by that Yusuf draw. Completely unclear recordkeeping is one of the reasons why Judge Brady limited claims to those occurring on September 17, 2006 or later. (See also HCSOF ¶ 9)</p>	<p>Undisputed that no Virgin Island Community Bank statements have been located for these months, and hence that none have been offered to back up Mike Yusuf's handwritten entries on United's Exhibit 11 and Mike Yusuf's testimony that he made those entries to document the two checks drawn from the Community Bank account on May 24, 1994 and September 23, 1994 and paid to the Partnership's Prudential Bache and Corestates accounts in the respective amounts of \$30,000 and \$40,010. <i>See</i> Exhibit 11 to United's Motion; Exhibit 3, pp. 250-253 (testimony of Mike Yusuf). United does, however, dispute any implication that the absence of this backup creates a genuine issue of material fact regarding whether the two transfers were made from United's Community Bank tenant account. Because United Corporation and Mr. Yusuf are not one and the same, United disputes the allegation that if the \$145,000 in checks written to Fathi Yusuf from the Corestates accounts were distributions of partnership money, then the transfers made by United from its</p>

			tenant account would be wiped out by the Yusuf draw.
2	N/A	United has not provided any records to independently substantiate the smaller claims for 1994 and 1998 either. Thus, there is no proof or record.	Undisputed that United has been unable to locate Community Bank monthly statements for any month in 1994, and therefore has not offered any statements to back up Mike Yusuf's handwritten entries on United's Exhibit 11 reflecting the payment in the amount of \$400 on May 23, 1994. The other small items were not paid by check. The \$1,000 entry for September 23, 1994 for two refrigerators represents that went to the Hamed and Yusuf families and were "sold" by a tenant named Best Furniture for \$1,000, with payment taking the form of a reduction in rent paid by Best Furniture. Exhibit 3, pp. 253-254 (testimony of Mike Yusuf). The \$350 entry for "Bed and Bench" for September 23, 1994 was handled the same way. See Exhibit 11 to United's Motion; Exhibit 3, p. 254 (testimony of Mike Yusuf). The "bedroom set for Allaah" entry in May 1998 for \$3,000 represents a wedding gift to a cousin of both families that at Wally Hamed's request was also paid for in the form of reduced rent to Best Furniture. See Exhibit 11 to United's Motion; Exhibit 3, p. 256-257. (testimony of Mike Yusuf). United has satisfied its burden for summary judgment regarding these entries.

3.	N/A	Similarly, a May 5, 1995 Peter's Farm Investment Corporation alleged expense of \$60,000 claimed here does not belong in this Partnership claims process. As United described in its summary judgment motion, Peter's Farm is a totally separate and independent corporation. (United Exhibits 2-4) Any funds that United allegedly pledged to Peter's Farm must be addressed to Peter's Farm, not the Partnership. Therefore, this is an illegitimate claim against the Partnership.	United does not dispute that Peter's Farm is a separate corporation, but the payment was to have been on behalf of the Partnership. Therefore, as United paid out of the Tenant Account and not with Partnership funds, United seeks reimbursement from the Partnership.
4.	N/A	Similarly, United alleges that the Partnership was required to pay the property tax of the Yusuf-family owned Shopping Center as Sion Farm (2/17/95 1993 Property Tax for United \$20,000 and 8/31/95 1994 Property Tax for United \$40,000). Again, United has not provided any documentation of an agreement between Fathi Yusuf and Mr. Mohammad Hamed to pay United's property tax. Also, Mike Yusuf, as President of United, and Fathi Yusuf do not agree on what these entries mean either: Mike Yusuf testified that the eighth ledger entry for \$40,000 was for the United property tax, but then stated "It's not clear." Fathi Yusuf said it could have been a tax on the improvements to the supermarket, not the whole United Shopping Center. (Exhibit 2)	Yusuf does not dispute that this agreement, like the partnership agreement itself, is not in writing. Consistent with many commercial leases, including Plaza Extra Tutu Park's lease, Mr. Yusuf testified that property taxes for the Plaza Extra East store are an expense that was to be borne by the partnership. <i>See</i> Exhibit 3, p. 269 (testimony of Fathi Yusuf). Hence, Fathi Yusuf's testimony is sufficient to establish that the payment was for property taxes owed under his agreement with Hamed.
5.	N/A	United states that three of the 1995 entries on the ledger sheet were backed up by accounting records prepared by John Benson "Ben" Irvin. As demonstrated in HCSOF ¶¶ 17-19, Ben Irvin's financial accounting was a fiction and is inherently unreliable and untrustworthy. As set forth there, he has specifically testified that he wrote down whatever made up story Fathi told him to write and there is no truth in these records at all.	Disputed. There is nothing in the FBI agent's interview notes for Ben Irvin that relates to the accounting records showing what was then a United intra-company transaction, and nothing in his interview relating to how he accounted for income from supermarket sales that casts any doubt of the truthfulness of the accounting records attached to United's

			Motion in Exhibits 9A, 11 and 13.
6.	N/A	<p>United has not provided the complete “black book” or ledger book. It is impossible to know whether these alleged debts are still outstanding or were offset by other entries. It is half an accounting. As Mike Yusuf, author of the ledger page or black book admitted, it is possible that other pages in the ledger book could show amounts that United owed to the Partnership.</p> <p>Q.[Ms. Perrell]. . . .So what I've handed you has been marked as Exhibit 11. Can you identify it? A. [MIKE YUSUF] Yes.</p> <p>Q. What is it? A. It's a -- what I paid from United. What tenant account for Plaza. I used to write it down on this ledger.</p> <p style="text-align: center;">* * * *</p> <p>Q. [Mr. Hartmann] So -- so there could have been like the next page of this thing. I don't have it, but obviously somebody did, because they put all these tabs on it. So let's say I flipped up this tab and read the heading at the next page, could the next page say -- this one says -- what Does it say at the top? Can you just read that out for me where it says A? (1/21/2020 Mike Yusuf depo, 264:19-25) A. [MIKE YUSUF] I think that says United paid out for Plaza.</p> <p>Q. For Plaza. Okay. So if I flipped it over, could the next page have said, Plaza paid out for United? A. Possibly. (Exhibit 3)</p>	<p>United acknowledges that it has been unable to locate other pages of the ledger, and therefore has not produced them. While Mike Yusuf testified that it was possible that there might be repayments from Plaza Extra to United, Mr. Yusuf has stated in a sworn declaration that he did not direct any such repayments and knows of none. See Exhibit 6 to United’s Motion, ¶ 4.</p>
7.	N/A	Not only did Mike Yusuf destroy Partnership financial	Undisputed.

records (see HCSOF ¶ 14), he also stated that he kept the ledger or black book in the safe, but does not know what ultimately happened to it. He also did not know what happened to it after the one page of the Partnership's alleged debts was photocopied. Thus, it is impossible to know if these alleged debts are outstanding.

Q. [Ms. Perrell]. . . So what I've handed you has been marked as Exhibit 11. Can you identify it?

A. [MIKE YUSUF] Yes.

Q. What is it?

A. It's a -- what I paid from United. What tenant account for Plaza. I used to write it down on this ledger.

* * * *

A. [MIKE YUSUF] And I used to keep -- it was in a black book that I used to keep in the safe.

* * * *

A. [MIKE YUSUF] Because I had a black book, and it's the same page just like this. And I know there's more, but it's just to put my hands on it.

Q. [Ms. Perrell] This is the only one that you have?

A. It's the only one I have, yes.

* * * *

Q. [Mr. Hartmann]. . . And -- and you see over on the right side here, there are a bunch of -- of tab stickers? They look like things that were copied when this page was copied?

A. [MIKE YUSUF] Right.

Q. Do you -- do you know what was underneath

		<p>this page? A. No. That's what I'm telling you. That's the black book. I don't know where it is. Q. Do you know when this copy was made? A. When it was made? * * * *</p> <p>A. [MIKE YUSUF] Not sure, no. (Exhibit 4)</p>	
8.	N/A	<p>In a supplemental response to Hamed's document request for the entire ledger or black book, United responded: "United shows that it has undertaken a diligent search of all records to determine if the book from which the copy was derived is available <i>and has been unable to locate same.</i>" (Exhibit 5) (Emphasis added.)</p>	Undisputed.
9.	N/A	<p>Judge Brady, in his Order re Limitations on Accounting, <i>Hamed v Yusuf</i>, SX-12-CV-370 (July 25, 2017) at 11 observed in footnote 10:</p> <p>Here however, as a result of the questionable and highly informal financial accounting practices of the partnership, by which both partners and their respective family members unilaterally withdrew funds from partnership accounts as needed to cover various business and personal expenses, there exists no authoritative ledger or series of financial statements recording the distribution of funds between partners upon which the Master or the Court could reasonably rely in conducting an accounting. Instead the Court finds</p>	<p>United objects to this statement of undisputed facts on the grounds that it is not material to the issues raised by United's Motion for Summary Judgment on Claims Y-7 and Y-9. Subject to that objection, United does not dispute that these passages appear in Judge Brady's opinion.</p>

itself in the predicament of having to account for multiple decades' worth of distributions of partnership funds among the partners and their family members based upon little more than a patchwork of cancelled checks, hand-written receipts for cash withdrawn from Plaza Extra safes, and the personal recollections of the partners and their agents.

Judge Brady also stated,

As the last and only true-up of the partnership business occurred in 1993, the parties, by their respective actions for accounting, effectively impose upon the Court the onerous burden of reconstructing, out of whole cloth, twenty-five years' worth of these partner account transactions, based upon nothing more than scant documentary evidence and the ever-fading recollections of the partners and their representatives. For the reasons

discussed below, the Court concludes, upon considerations of laches and a weighing of the interests of both the parties and the Court in the just and efficient resolution of their disputes, that the equities of this particular case

		necessitate the imposition of a six-year equitable limitation period for §71 (a) claims submitted to the Master in the accounting and distribution phase of the Wind Up Plan. <i>Id.</i> at 15-16 (footnotes omitted)	
10.	1.	<p>From 1996-2002, the US federal government alleged a vast money laundering scheme operated by United Corporation, Fathi and Mike Yusuf, Wally and Willy Hamed and others. On September 19, 2003, in <i>United States of America v. Fathi Yusuf, et. al.</i>, 1:03- cr-00147, the group was indicted on, among other things, money laundering, tax evasion and filing false corporate income tax returns. The Government described the extensive and high-value money laundering scheme as follows:</p> <p style="padding-left: 40px;">9. Beginning at least as early as in or about January 1996 and continuing through at least in or about September, 2002, defendants FATHI YUSUF, WALEED HAMED, WAHEED HAMED and UNITED defrauded the Virgin Islands of money in the form of tax revenue, specifically territorial gross receipts taxes as well as corporate income taxes, by failing to report at least \$60 million in Plaza Extra sales on gross receipts tax returns and corporate income tax returns.</p> <p style="text-align: center;">* * * *</p> <p>11. Defendants FATHI YUSUF, WALEED HAMED, WAHEED HAMED and UNITED directed and caused Plaza Extra employees to withhold from</p>	Undisputed that these allegations appear in the initial indictment. Dispute any implication that the indictment referred to an “extensive and high value money-laundering scheme.”

deposit substantial amounts of cash received from sales, typically bills in denominations of \$100, \$50 and \$20. Instead of being deposited into the bank accounts with other sales receipts, this cash was delivered to one of the defendants or placed in a designated safe in the cash room. From 1996 through 2001, tens of millions of dollars in cash was withheld from deposit in this manner and as such, was not reported as gross receipts on tax returns filed by UNITED.

12. In this way, defendants FATHI YUSUF, WALEED HAMED, WAHEED HAMED and UNITED caused the filing of dozens of false monthly gross receipts tax returns, which failed to report the cash withheld from deposit as gross receipts, thereby depriving the Virgin Islands of substantial tax revenue. Defendant UNITED's controller prepared and signed Plaza Extra's monthly gross receipts tax returns, declaring under oath that the returns were true and complete, knowing full well that the returns were false in that they failed to report substantial sales receipts.

* * * *

17. Defendants FATHI YUSUF and WALEED HAMED caused the checks and money orders described above to

		<p>be deposited into foreign bank accounts they controlled. For example, defendants FATHI YUSUF and WALEED HAMED compiled the various checks and money orders obtained with unreported cash and caused them to be transported from the Virgin Islands to the Kingdom of Jordan ("Jordan"), where the funds were deposited into accounts they controlled at Cairo Amman Bank, in Amman, Jordan.</p> <p style="text-align: center;">* * * *</p> <p>19. Defendants FATHI YUSUF and WALEED HAMED smuggled and caused to be smuggled millions of dollars of unreported cash from the Virgin Islands to the island of St. Martin, in the French West Indies, where it was deposited into accounts at Banque Francaise Commerciale that they and defendant ISAM YOUSUF controlled. (Exhibit 6)</p>	
11.	2.	<p>Thus, in 1996, the Plaza Extra stores had plenty of funds to meet any obligations. Wally Hamed testified under oath on January 21, 2020 that the volume of sales in St. Thomas after Hurricane Marilyn went up by maybe three, four or five times because of the hurricane. Wally Hamed noted that Plaza Extra was only one or two of the surviving grocery stores on St. Thomas after the hurricane. (Exhibit 20) It would not be an exaggeration to say that federal agents described money pouring into the Partnership at unprecedented levels.</p>	<p>United disputes that in 1996 the stores had “plenty of funds to meet any obligations,” and disputes Wally Hamed’s testimony that stores sales increased by a magnitude of 3, 4 or 5 times after Hurricane Marilyn struck the islands in September 1995. <i>See</i> United’s Statement of Undisputed Material Facts, ¶4, and testimony of Fathi Yusuf cited therein. United disputes the statements that Hamed, without any citation to evidence,</p>

			attributes to federal agents and further objects on the ground that any such statements are inadmissible hearsay.
12.	3.	For example, the US federal government’s January 4, 2005 draft analysis in the criminal case against United, the Yusufs and the Hameds demonstrates that there were no cash flow problems for the Partnership in 1996 or 1998. <i>Unreported</i> sales for the stores in 1996 were \$8 million and in 1998 were \$13.9 million. (Exhibit 7)	United objects to this statement of fact on the grounds that the document relied on for this statement of fact is inadmissible hearsay, and on the further grounds that the document is being offered without any foundation (e.g., regarding authorship, purpose of creation, method of tabulation, the extent to which this “draft” document was superseded by a final version). United also points out that in the restitution schedules marked as exhibit 1 to the plea agreement entered in the criminal case (Exhibit 9 to Hamed’s Opposition), the Defendants take the position that no gross receipts taxes or income taxes are owed for 1996 – which means that Defendants deny that there was any under-reporting of income for that tax year.
13.	5.	The US federal government’s January 4, 2005 draft analysis concluded that the Partnership had over \$60 million in <i>unreported</i> gross sales from 1996 through 2001. (Exhibit 7)	Disputed for the reasons given in response to SUMF 12, and objected to on the same grounds.
14.	6.	Mike Yusuf, as President of United, testified as the 30(b)(6) deposition witness for United. In his testimony, Mike Yusuf confirmed that he destroyed financial records of the Partnership. Destroyed records make it impossible to do an accurate reconciliation of all accounts to determine debts owed and debts paid.	United does not dispute that the testimony of Mike Yusuf is quoted correctly, but disputes that the safe receipts destroyed make it impossible to know the net reconciliation of these receipts from the safe.

A. [MIKE YUSUF] 2001, that's the -- the year that we had the raid.

Q. [Mr. Hartmann]. . . What -- Approximately what date?

A. October 23rd of 2001.

A. Okay. Sometime I would say a month and a half to two months before that, Waleed got a call from Waheed saying that something is going on. Some kind of agency is coming to spot check us, look at us. I -- I don't know the details of that. So among us, at that time, it was me, Mufeed and Waleed in the Plaza Extra East. . . the store in West was open at that time. So I left my store, and I came to East to --

We just heard through the grapevine, something is happening. We didn't know.

So between among us, we decided to destroy some of the receipts, because they were all in cash. We pulled out a good bit of receipts from the safes in Plaza East. Mufeed was present with me. He had a whole, a heap of receipts for the Hameds only. It could be from either one of the Hameds, once it's the Hamed. And receipts from the

		<p>Yusuf, which basically was just me, not, you know, nobody else.</p> <p>Mufeed, I guess you call it, tallied, and, you know, put a tape on what they withdraw, and I put a tally, a tape, on what I withdraw.</p> <p>***</p> <p>Once everything dropped to the penny, we were fine, I said, Listen. I'm destroying my receipts. (Exhibit 8)</p>	
15.	7.	<p>By agreement between the parties and the Government on February 26, 2010, United admitted this when it pled guilty to one count of tax evasion. The case against the remaining defendants was dismissed with prejudice. (Exhibit 9)</p>	<p>United objects to this statement of undisputed material fact on the grounds that the key phrase, "admitted this," is ambiguous, leaving United unable to either dispute or not dispute what is being asserted. The restitution schedules attached to the plea agreement showed that the Defendants rejected as false the United State' contentions about what income was unreported, and hence what gross receipts and income taxes were still owing by United. United does not dispute that it pled guilty to one count of filing a false return for one tax year (2001), and that the charges against the individual defendants were dismissed.</p>
16.	8.	<p>In an opinion letter dated September 19, 2016, Lawrence Schoenbach, Esq., stated that it would be impossible to accurately reconstruct the financial records of United and the Plaza Extra stores from 1996 to September 2002 due to the vast money laundering scheme.</p> <p>According to the indictment, from "at least as</p>	<p>United does not dispute that Hamed has accurately quoted portions of Mr. Schoenbach's September 19, 2016 opinion letter (attached as Exhibit 10 to Hamed's Opposition). United also objects to the Schoenbach Opinion</p>

		<p>early as in or about January 1996 and continuing through at least in or about September 2002, defendant[] . . . UNITED defrauded the Virgin Islands of money in the form of tax revenue, specifically territorial gross receipts taxes by failing to report at least \$60 million in Plaza Extra sales on gross receipts tax returns and corporate income tax returns.</p> <p style="text-align: center;">* * * *</p> <p>The scheme to skim funds from the stores (i.e. removal of funds from sales receipts before those funds are accounted for and taxes paid on them) is a classic white collar/business crime in which the purpose is to hide those funds from the governmental taxing authorities to avoid taxation, both regarding the receipt and disbursement. Most of such tax avoidance schemes require the removal of funds before accounting and/or the alteration of accounting records to reflect less cash received by the company than ultimately reported. The method used here, removal of funds prior to their being reported as sales, can be accomplished by several means, some of which were used here, to wit: those acting on behalf of the Company took cash out of sales before the Company could properly account for them. Another example of the fraudulent scheme involved cashing checks for third parties and then keeping and transacting the checks elsewhere. Cash was distributed without records</p>	<p>Letter as being relevant or material to any issues raised by United’s Motion for Summary Judgment on Claims Y-7 or Y-9. Mr. Schoenbach’s Opinion Letter offers no opinion as to the validity of the dollar amount of transfers from United’s tenant account to Plaza Extra accounts shown in Ben Irvin’s accounting and in Exhibit 11. His Opinion Letter does not indicate that he reviewed Ben Irvin’s accounting records that are attached to United’s Motion for Summary Judgment in Exhibits 9A, 11 and 13.</p>
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		<p>or controls or those records were destroyed.</p> <p>The most fundamental feature of such a scheme is that the actual accounting records of the entity do not, and in fact <u>cannot</u>, accurately reflect the amount of cash taken in. No proper accounting can be determined from the Company's financial records because the gross receipts have been intentionally misapplied and documented. The very purpose of this sort of scheme is to render any accounting inaccurate. Moreover, any remaining records would have to be suspect because a criminal—with criminal intent and a criminal purpose -- would have created them. Further, because of the admitted lack of internal controls at United during the pre-2001 time period, there could be no legal or properly accurate way by which one could ascertain the correct amount of cash actually received or disbursed by the company.</p> <p>It is critical that the parties have both admitted that many records of transaction that should have gone into any accurate accounting were not kept or mutually and intentionally destroyed. For example, in his deposition, Mike Yusuf, President of United Corporation (and Fathi Yusuf's oldest son) testified that he and some of the Hamed brothers, upon hearing that the FBI was about to raid them in 2001, intentionally destroyed “a whole heap of” records (including those that would show where millions in cash partnership funds really went -- two months before the FBI raid and subsequent criminal charges). As such, there could be no way</p>	
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		to verify the completeness of such records. Because the very nature of the crime, particularly money laundering/tax evasion, is to hide such incoming and outgoing funds from legitimate accounting it is impossible to determine and account for any portion of that amount each partner has or owes to the other. Since many such transactions were not recorded or destroyed, any remaining "records" can never be legitimately credited or debited against the unknown amounts. (Exhibit 10) (footnotes omitted)	
17.	14.	<p>On August 1, 2003, John Benson “Ben” Irvin was interviewed by FBI Special Agent Thomas L. Petri. Irvin was the financial controller for Plaza Extra, despite not having a formal education in tax accounting. (Exhibit 11) During the interview, subject to 18 USC 1001, Irvin described the process for determining Plaza Extra store sales. Irvin stated that Fathi Yusuf told him that store sales were to be based on deposits. Irvin noted that Yusuf was very emphatic on this point and Irvin didn’t inquire further on the subject of sales. Irvin also knew the store had a point of sales system that would give accurate store sales figures, <i>but he was not allowed access to that system.</i> Finally, Yusuf told</p> <p style="padding-left: 40px;">Irvin that he did not need to conduct internal financial audits.</p> <p style="padding-left: 40px;">IRVIN was told by FATHI YUSUF that store sales would be based on deposits. IRVIN said that normal accounting procedures allow accountants to conduct internal audits. IRVIN advised that YUSUF told him that internal audits were being</p>	<p>United disputes some of the paraphrasing of the interview notes, but does not dispute that the quotation from the notes was accurately reproduced in the SUMF. United disputes that anything in the Irvin interview notes about how he accounted for gross supermarket sales is material to whether his accounting for transfers made from United’s tenant accounts to Plaza Extra in United’s exhibits 9A, 11 and 13 is accurate.</p>

		<p>handled and to simply continue to use deposits to calculate sales. IRVIN said that YUSUF told him this early on and that YUSUF was very emphatic. IRVIN never revisited the subject of sales with YUSUF and continued to base sales on daily deposits. (Exhibit 11)</p>	
18.	15.	<p>In that same August 1, 2003 FBI interview, Ben Irvin also stated he was instructed at times to make the inventory for a particular year come out to a set number. For instance, in February and March 1999, he was told by Fathi Yusuf to make the inventory number come out to \$3 million. Yusuf wanted to do this in order to show a lower net income. In other words, it was a way for Yusuf to artificially lower the amount of taxes owed by the Plaza Extra stores. Thus, any financial records from this time were total fiction.</p> <p>IRVIN was shown copies of February and March of 1999 gross receipts sales tax figures. IRVIN stated that he had a discussion with FATHI YUSUF concerning cost of goods sold. YUSUF told IRVIN that it was not possible to determine actual numbers for cost of goods sold. Per YUSUF'S instructions, IRVIN was told to determine cost of goods sold in whatever manner would reflect approximately \$3 million in year</p>	<p>United does not dispute that the quoted material from the interview notes in this SUMF was accurately transcribed, but does dispute the inference that Hamed draws from these quotations that “any financial records” created by Ben Irvin were “total fiction.” United disputes that anything in the Irvin interview notes about how he accounted for inventory and gross supermarket sales is material to whether his accounting for intra-company transfers made from United’s tenant accounts to Plaza Extra in United’s exhibits 9A, 11 and 13 is accurate.</p>

		<p>ending inventory for each store. IRVIN also had conversations with WILLIE HAMED concerning cost of goods sold and what the average markup on merchandise was. IRVIN said that HAMED was not specific but understood that YUSUF wanted ending inventory to be around \$3 million. IRVIN advised that to determine cost of goods sold he would use a formula reflecting a 42% markup, or more often than not, simply plug in numbers so the \$3 million number would be met.</p> <p>IRVIN stated that the reason YUSUF wanted the number for inventory to be around \$3 million for each store was to show a lower net income. If taxable income was too high, YUSUF would tell IRVIN to adjust cost of goods sold to show a decrease in the companies profit. IRVIN stated YUSUF normally had him adjust the numbers presented to him which reflected cost of goods sold. (Exhibit 11)</p>	
19.	16.	Finally, during the August 1, 2003 FBI interview, Ben Irvin noted that he looked at the United corporate tax returns to make sure Irvin's numbers matched the numbers the CPA, Pablo O'Neill, recorded on United's tax returns. If O'Neill made any adjustments, Irvin requested that the adjustments	United does not dispute that the quoted material from the interview notes in this SUMF was accurately transcribed, but does dispute the inference that Hamed draws from these quotations that "any

		<p>be sent to him so his entries would match O'Neill's.</p> <p>IRVIN advised that he looked at the corporate tax returns to insure that PABLO O'NEILL'S numbers matched his. If O'NEILL made any adjustments, IRVIN requested that they be sent to him so that he could make corrected entries to match PABLO O'NEILL'S numbers. IRVIN said that he could think of no reason why the 4% Gross Sales Tax figures and the numbers on the general ledgers would differ from the corporate returns. (Exhibit 11)</p>	<p>financial records" created by Ben Irvin were "total fiction." United disputes that anything in the Irvin interview notes about how he made sure that store income figures on the tax returns matched the general ledger is material to whether his accounting for intra-company transfers made from United's tenant accounts to Plaza Extra in United's exhibits 9A, 11 and 13 is accurate.</p>
20.	17.	<p>Mike Yusuf, President of United, testified at his deposition that he did not know why the Yusuf family-owned United tenant bank account was transferring money to the Partnership. He did not dispute the fact that this was just a normal part of the movement of funds in such a laundering scheme. He could not identify the reason for the transfer - he did not know whether the Partnership owed money to United or whether United was reimbursing the Partnership for an expense the Partnership paid on its behalf.</p> <p>Q. [Ms. Perrell]. . . For the amounts that were transferred over, the -- let's say -- let's go about the first one, the 15,900, do you have any particular recollection as to why there was a transfer for 15,900 to Plaza partnership</p>	<p>United does not dispute that the testimony of Mike Yusuf excerpted here was accurately transcribed. United does, however, disputed Hamed's paraphrasing of that testimony in this SMFU in his purported summary of Mike's testimony. Hamed is putting words into Mike Yusuf's mouth when he claims that Mike testified that the payments made from United's tenant account to the Plaza Extra accounts were "just a normal part of the movement of funds in such a laundering scheme." Mike gave no such testimony. Hamed does the same when contends that Mike testified that did not know whether the the purpose of the transfers know was to pay money owed by</p>

		<p>account?</p> <p style="text-align: center;">* * * *</p> <p>Q. [Ms. Perrell]. . .So this one is a specific amount, 15,900. Do you have -- let me ask you, what would have -- first of all, do you have any recollection of this particular entry?</p> <p>A. [MIKE YUSUF] No. I don't have recollection of the amounts, no.</p> <p style="text-align: center;">* * * *</p> <p>Q. [Ms. Perrell]. . . .Other than 1996, do you recall any other times where there were amounts going. . . from the United tenant account into the Plaza Extra partnership account? When you were doing these transfers back and forth, do you recall that?</p> <p>A. [MIKE YUSUF] No, no, these are all the checks going into -- directly to the -- the operating account for Plaza.</p> <p>Q. . . .Other than in 1996 -- these are just 1996.</p> <p>A. Right.</p> <p>Q. Other than 1996, there seem to be quite -- it happened regularly.</p>	<p>United to the partnership or to reimburse the Partnership for an expense the Partnership paid on its behalf. To the contrary, Mike Yusuf testified that he wrote the checks that comprise the payments on Exhibit 11, and handwrote the dates, amounts and purpose of the payment on that Exhibit. <i>See</i> Exhibit 3, p. 250 (testimony of Mike Yusuf); Exhibit 11 to United's Motion for Summary Judgment. Exhibit 11 shows 9 payments made in 1994, 1995, and 1998, the purposes of which are described in Mike Yusuf's deposition testimony. <i>See</i> Exhibit 11; Exhibit 3, pp. 250-257.</p>
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		<p>Other than 1996, was that something that was occurring? A. I don't remember. * * * *</p> <p>A. I don't remember. I mean, I was dependent on Ben Irvin to keep the record with the -- with the tenant account. (Exhibit 12)</p>	
21.	N/A	<p>Mike Yusuf, President of United, stated that it is possible that the FBI did not seize the ledger or black book because the black book was in the large safe at Plaza Extra East and the FBI did not take all documents that were in that safe.</p> <p>Q. [Ms. Perrell]. . . So what I've handed you has been marked as Exhibit 11. Can you identify it? A. [MIKE YUSUF] Yes. Q. What is it? A. It's a -- what I paid from United. What tenant account for Plaza. I used to write it down on this ledger. * * * *</p> <p>Q. [Mr. Hartmann] You said it was in a safe at the business, right? A. [MIKE YUSUF] Yes. Q. . . . What safe was that? A. Plaza East.</p>	Undisputed.

		<p>* * * *</p> <p>Q. [Mr. Hartmann]. . . .And was it the big safe or the little safe?</p> <p>A. [MIKE YUSUF] The big safe.</p> <p>* * * *</p> <p>Q.And when the FBI raided the place, they emptied the safes, right?</p> <p>A. Not really. Not really.</p> <p>A. They left some stuff in there, yes.</p> <p>Q. They did?</p> <p>A. Yes, they did.</p> <p>* * * *</p> <p>Q. So all the documents from the store don't have Bates Stamps, is what you're saying? Some of the FBI didn't get some of the documents?</p> <p>A. I don't believe so. I think some stuff was still in -- in the safe. (Exhibit 12A)</p>	
22.	17.	<p>In 2003, according to a declaration (dated July 8, 2009) in the criminal case, <i>United States of America v. Fathi Yusuf Mohammed Yusuf et. al.</i>, Criminal No. 2005-015 (DE 1148-1), FBI Special Agent Thomas L. Petri stated that counsel for the defendants, including United, were allowed complete access to review the seized Plaza Extra documents.</p> <p>In 2003, subsequent to the return of the indictment, counsel for defendants was afforded complete access to seized evidence. Attorney Robert King, the attorney then representing defendants, reviewed the discovery at the FBI office on St. Thomas. He and a team of approximately four or five</p>	<p>United objects to this SUMF on the grounds that the declaration of Agent Petri is inadmissible hearsay, and on the additional ground, described in more detail at pages 18-19, <i>supra</i>, that Hamed is judicially estopped from relying on this declaration.</p>

		individuals reviewed evidence for several weeks. They brought with them a copier and made many copies of documents. (Exhibit 13)	
23.	12.	<p>In 2004, according to a declaration (dated July 8, 2009) in the criminal case, <i>United States of America v. Fathi Yusuf Mohammed Yusuf et. al.</i>, Criminal No. 2005-015 (DE 1148-1), FBI Special Agent Thomas L. Petri stated that up to ten people for the defense, including the United Corporation, reviewed the seized Plaza Extra and United documents. Special Agent Petri noted that the defense team spent several weeks reviewing the evidence and had one copier and one scanner with them to make images of the evidence. Petri confirmed that the defense team had “unfettered access” to the documents and were permitted to review any box of documents at any time.</p> <p>8. In 2004, a different set of attorneys presently representing the defendants reviewed the evidence seized in the course of the execution of the search warrants. By my estimation, document review team included up to ten people at any one time. The defense team spent several weeks reviewing the evidence. They had with them at least one copier and one scanner with which they made numerous copies and images of the evidence.</p> <p>9. During the 2004 review, the defense team was afforded unfettered access to discovery. They were permitted to review any box of</p>	United objects to this SUMF on the grounds that the declaration of Agent Petri is inadmissible hearsay, and on the additional ground, described in more detail at pages 18-19, <i>supra</i> , that Hamed is judicially estopped from relying on this declaration.

		documents at any time, including evidence seized during the searches, foreign bank records, documents obtained either consensually or by grand jury subpoena, and FBI Forms 302. The defense team pulled numerous boxes at one time with many different people reviewing different documents from different boxes. (Exhibit 13)	
24.	13.	<p>On March 22, 2017, Gordon Rhea, Esq. signed a declaration. He stated that there was a Joint Defense Agreement between all of the defendants, except Isam Yousef, in the criminal case, <i>United States of America v. Fathi Yusuf Mohammed Yusuf et. al.</i>, Criminal No. 2005-015.</p> <p>3. I was one of the defense lawyers in the criminal action filed by the United States of America in the District Court of the Virgin Islands (St. Thomas Division), Docket No,1:05-cr-00015, against the following defendants:</p> <p>FATHI YUSUF MOHAMAD YUSUF, aka Fathi Yusuf WALEED MOHAMMAD HAMED, aka Wally Hamed WAHEED MOHAMMAD HAMED, aka Willie Hamed MAHER FATHI YUSUF, aka Mike Yusuf NEJEH FATHI YUSUF, ISAM YUSUF, and UNITED CORPORATION</p> <p>4. All of the defendants in that</p>	Undisputed.

		<p>criminal case, except for Isam Yousef who was never apprehended, were represented jointly by multiple counsel, including myself, under a Joint Defense Agreement.</p> <p>Pursuant to the Joint Defense Agreement, all defense counsel worked together on behalf of all of the represented defendants in a joint effort to defend the case. (Exhibit 14)</p>	
25.	9.	<p>On September 25, 1999, Fathi Yusuf declared in an affidavit that his brother-in-law, Mohammad Hamed, has been his Partner in the Plaza Extra stores since 1984. Thus, United's argument that there was no entity to sue from 2004-2008 is untrue.</p> <p>2. My brother in law, Mohamed Hamed, and I have been full partners in the Plaza Extra Supermarket since 1984 while we were obtaining financing and constructing the store, which finally opened in 1986. (Exhibit 15)</p>	<p>United does not dispute that the quoted statement was accurately transcribed from Mr. Yusuf's September 25, 1999 declaration. He does dispute, however, that this statement means that there existed a formal partnership entity within the meaning of the Revised Uniform Partnership Act. No such partnership was record owner of any property or bank accounts, or filed tax returns. And no court had ever even preliminarily established that a partnership existed within the meaning of RUPA, and that this oral partnership was enforceable under the statute of frauds, until Judge Brady's order granting a preliminary injunction was issued in April 2013.</p>
26.	10.	<p>On February 2, 2000, Fathi Yusuf was deposed in <i>Idheileh v. United Corp. and Fathi Yusuf</i>, Territorial Court of the Virgin Islands, Division of St. Thomas and St. John, case no. 156/1997. In his deposition, Yusuf asserted that both he and Mr. Mohammad Hamed have been Partners in the Plaza Extra grocery stores since 1984.</p>	<p>United does not dispute that the testimony quoted in this SUMF was accurately reproduced, but does dispute that it establishes the existence in a legal sense of a partnership. Rather, the testimony emphasizes that the legal</p>

		<p>A. [FATHI YUSUF] But I want you please to be aware that my partner’s with me since 1984, and up to now his name is not in my corporation. And that -- excuse me and that prove my honesty. Because if I was not honest, my brother-in-law will not let me control his 50 percent. And I know very well, my wife knows, my children knows, that whatever Plaza Extra owns in assets, in receivable or payable, we have a 50 percent partner.</p> <p style="text-align: center;">* * * *</p> <p>Q. [FATHI YUSUF]. . . . You were asked by Attorney Adams when it says United Corporation in this Joint Venture Agreement, in talking about Plaza Extra, talking about the supermarket on St. Thomas, who owned or who was partners in United Corporation Plaza Extra at the time before you entered into that Joint Venture Agreement?</p> <p>A. [Fathi Yusuf] It's always, since 1984, Mohammed Hamed.</p> <p>Q. . . . So when it says United Corporation –</p> <p>A. It's really meant me and Mr. Mohammed Hamed. (Exhibit 16)</p>	<p>structure of the owner and operator of the Plaza Extra supermarkets is a corporation, even if informally Yusuf regarded Mohammad Hamed as partner.</p>
27.	N/A	<p>The statute of limitations for the 1994 and 1995 claims expired in 2000 and 2001, before the 2003 criminal indictment, so United’s purported reason for tolling the SOL with respect to these claims does not apply. (Exhibit</p>	<p>United objects to this purported statement of undisputed fact on the grounds that it is actually in the nature of a legal conclusion. Subject to that</p>

		6).	objection, United states that because the transfers are part of an open account, the statute of limitations on the 1994 and 1995 claims did not begin running until the last payment on the open account was made, on May 1, 1998. <i>See</i> Exhibit 1, p. 250 (testimony of Mike Yusuf); Exhibit 11. Depending on whether the 6-year or 10-year statute of limitations applies, the limitations period extends to either May 1, 2004 or May 1, 2008, both of which dates are after the FBI raid in October 2001 and after the filing of the criminal indictment in September 2003. Those two events tolled or suspended the running of the statute of limitations until late 2011 at the earliest.
28.	19.	The federal monitors, brought in to provide oversight on United’s financials during the pendency of the criminal case, allowed expenditures to be made out of the Yusuf family-owned tenant account and the Partnership bank accounts, despite those accounts being under a court imposed injunction. For example, United was allowed to use the tenant bank account to fund the building of a home on St. Thomas for Fathi Yusuf’s son, Nejeh Yusuf and to fund and open a laundromat in United’s name. Plaza Extra also was allowed to make capital expenditures at the Plaza Extra East store for new shelves. (Exhibit 17) If the alleged 1998 debt was for a legitimate purpose, there was no reason why United couldn’t have requested authorization for repayment from the monitors prior to the expiration of the statute of limitations on those claims	Undisputed that the federal monitors allowed a few expenditures to be made as exceptions to the injunction. Dispute that “there was no reason why United couldn’t have requested authorization for repayment from the monitors.” The defense attorneys in the criminal case had instructed all defendants not to do or say anything that would suggest the existence of a partnership, because that would hurt their defense and bring Mohammad Hamed into the case. <i>See</i> Exhibit 6, ¶4. The federal monitors worked for the U.S. Attorney, and making that request would have contravened that instruction.

29.	N/A	<p>Contrary to Fathi Yusuf’s assertion that he delayed requesting payment from the Partnership in order to provide it working capital, by 1996, the Partnership had plenty of funds to pay any current or past debts. Indeed, the federal government established that the Partnership had \$8 million in unreported sales in 1996. From 1996-2001, the federal government stated that the Partnership had \$60 million in <i>unreported</i> income.</p>	<p>This purported statement of fact is unsupported by any record evidence, and is thus ineffective to create a genuine issue of material fact that would preclude summary judgment. Moreover, in the restitution schedules attached to the Plea Agreement (Exhibit 9 to United’s Opposition), the Defendants in the criminal case challenged the allegation that there was any tax liability for under-reporting of income in 1996, and maintained that there was “0” dollars in under-reported income for that tax year</p>
30.	20.	<p>On May 29, 2018, Hamed requested the Court’s guidance regarding United’s claim of “special” treatment, Hamed Motion for Court Assistance and Directions re Special Master Ross’s May 21st Order, <i>Hamed v Yusuf</i>, SX-12-CV-370 (May 29, 2018) at 2:</p> <p style="padding-left: 40px;">The thrust of this inquiry arises from the fact that each time Yusuf or United is found to have taken Partnership funds for their own uses, they argue that there was a "special arrangement" or an unwritten provision of the "Partnership Agreement" that allows this inequality.</p> <p style="text-align: center;">Hamed argued in his motion that 26 V.I.C. § 44 requires that the partnership agreement dictates the</p>	<p>United objects to this SUMF as immaterial to issues to be decided by United’s motion for summary judgment as to Y-9 and Y-7. United also objects that it has ever sought “special” treatment in this case. Subject to that objection, United states that Hamed’s excerpts from its motion are accurately quoted.</p>

		<p>terms of the partnership. When there is no written partnership agreement, 26 V.I.C. § 44 controls.</p> <p>But, absent a written agreement, what are the "terms" of the partnership? Missing or unclear terms are supplied by the Act. <i>See</i> 26 V.I.C. § 44 (Effect of partnership agreement; nonwaivable provisions.)</p> <p>(a) Except as otherwise provided in subsection (b) of this section, relations among the partners and between the partners and the partnership are governed by the partnership agreement. To the extent the partnership agreement does not otherwise provide, this chapter governs relations among the partners and between the partners and the partnership. (Emphasis added)(footnote omitted).</p> <p><i>See, e.g., Bunnell v. Lewis</i>, No. 05-92-02558-CV, 1993 WL 290781, at *5 (Tex. App. July 27, 1993), <i>writ denied</i> (Mar. 9, 1994) ("A partnership is an association of two or more persons to carry on a business for profit as co-owners. . . . In the absence of agreement</p>	
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		<p>on other terms, the Texas Uniform Partnership Act supplies the missing terms. <i>See Park Cities Corp. v. Byrd</i>, 534 S.W.2d 668, 672 (Tex. 1976).")</p> <p>Fortunately, once a partnership is determined to exist, one partner cannot make up, "explain" or dictate the rights, relative authority and power of the partners -- as these are set by statute in the Virgin Islands:</p> <p>26 V.I.C. § 71 Partner's rights and duties</p> <p style="text-align: center;">* * * *</p> <p>(f) Each partner has equal rights in the management and conduct of the partnership business. <i>Id.</i> at 4.</p>	
31.	21.	<p>In a June 26, 2018 Order, <i>Hamed v Yusuf</i>, SX-12-CV-370, Judge Brady noted that thus far in the case, "no findings have been made detailing with specificity the duties, responsibilities, benefits and obligations of each partner, including whether any benefits are due United and its shareholders during the period relevant to the issues and claims being addressed by the Master." <i>Id.</i> at 2 To determine whether any benefits are due United and its shareholders, Judge Brady ordered that the following factors be considered: 1) the partners' agreements, 2) history and 3) course of dealing.</p>	<p>United objects to this SUMF as immaterial to issues to be decided by United's motion for summary judgment as to Y-9 and Y-7. Subject to that objection, United states that Hamed's excerpts from Judge Brady's rulings are accurately quoted.</p>

		<p>ORDERED that the Master is directed to proceed to conduct such evidentiary proceedings as are deemed appropriate to make factual findings necessary to permit full consideration of the claims of the partners, including the determination of the duties, responsibilities, benefits and obligations of each partner, including whether any benefits are due United and its shareholders, in light of the partners' agreements, history and course of dealing; and to report and make recommendations regarding the claims and the distribution of partnership assets in light of such findings. . . <i>Id.</i> at 3.</p>	
32.	22.	<p>Fathi Yusuf testified in his deposition on April 2, 2014, that the only time the Partners reconciled the Partnership accounts between them was on December 31, 1993.</p> <p>A. [FATHI YUSUF] After we go and sees who and who takes who, if I take ten dollars more than them, and I take ten, they have the right to take it. That's when we go to the book and reconcile our account between each other.</p> <p>But up to now, unfortunate, we have never done that since the past 25 years. Only, I'm sorry, up to December 31st, 1993. That books was closed by that day. We was even on that day, on whatever left Plaza Extra. (Exhibit 18)</p>	<p>Undisputed. As Mr. Yusuf has explained in prior declarations in support of his motions for payment of rent, the seizure and retention of financial documents made a second reconciliation impossible until those documents were returned. In addition, Mike Yusuf has testified that there was another, partial reconciliation of cash withdrawn from store safes conducted by him and some of the Hamed sons.</p>
33.	23.	<p>Fathi Yusuf has not provided any evidence of a written or oral agreement between him and Mohammad Hamed to have</p>	<p>United objects because this SUMF assumes facts not in evidence. Yusuf</p>

		the Partnership’s books reconciled in United’s favor at Fathi Yusuf’s discretion.	has never testified that he had any rights to any particular (favorable) outcome of a reconciliation. Subject to that objection, disputed. Judge Brady has already found that Mr. Yusuf was the managing partner who controlled the timing of reconciliations. <i>See Hamed v. Yusuf</i> , 69 V.I. 168, 175, n.4 (V.I. Super. 2017) (finding that “Yusuf acted as the managing partner” and that Hamed was “completely removed from the financial aspects of the business”) and 69 V.I. 189, 215 (V.I. Super. 2017) (“As managing partner,...[i]t was Yusuf’s responsibility to oversee, account for, and periodically reconcile the distributions of funds between the partners ”) (emphasis added). In addition, the rent agreement is evidence of Mr. Yusuf’s exercise of this authority, because he controlled the term of the rent agreement, and hence the due date of the rent for the entire rental period.
N/A	4.	With respect to the 1996 summary gross income for Plaza Extra, the US federal government’s January 4, 2005 draft analysis also showed that Fathi Yusuf deposited \$2.8 million of these “missing” funds in two bank accounts	United objects to this SUMF on the grounds that it is irrelevant to the issues raised by United’s Motion for Summary Judgment as to Claims Y-7 and Y-9,

		<p>associated with the Partnership in Banque Francaise Commerciale in 1996. (Exhibit 3) Wally Hamed also deposited over \$1.1 million in a Banque Francaise Commerciale account associated with the Partnership in 1996. (Exhibit 3) Wally Hamed deposited approximately \$3.7 million in the Cairo Amman Bank in 1996 too, an account also associated with the Partnership. (Exhibit 3) Both Yusuf and Hamed deposited large sums of money in Virgin Islands and foreign bank accounts in 1997 and 1998 as well. (Exhibit 3)</p>	<p>and on the grounds that the document it relies on (Exhibit 13) is inadmissible hearsay and also lacks foundation (e.g. authorship, method of determining dollar amounts, whether this “draft” document was superseded by a “final” version with different dollar amounts.</p>
N/A	18.	<p>Money flowed like water between these entities, directed by Fathi Yusuf, who routinely used Partnership funds to pay for expenses for the Yusuf family-owned United Shopping Center expenses and personal matters. (Group Exhibit 13)</p>	<p>Disputed. There is no evidence of “routine” use of Plaza Extra funds to pay for United Shopping Center expenses. The three documents used to support this SUMF are de minimus in amount, and one of these relates to a warehouse door repair for the store, which is properly a Plaza Extra expense.</p>

EXHIBIT 1

on September 22, 2016, defendant/counterclaimant Fathi Yusuf (“Yusuf”) respectfully submits his Accounting Claims and Proposed Distribution Plan (the “Claim”) as follows:

I. Current Status of Partnership Wind Up and Overview of Proposed Distribution

The current status of the wind up of the Partnership is set forth in the Tenth Bi-Monthly Report of the Liquidating Partner filed on September 30, 2016 and the supporting financial information concurrently submitted to the Master and counsel. At present, the total remaining assets of the Partnership are \$8,957,168.54³.

A summary of the Claim’s proposed distributions is set forth in **Exhibit A**. It contemplates that a portion of the remaining Partnership Assets will be held in reserve for potential expenses including taxes and litigation costs for personal injury claims made or

potentially to be made against the various Plaza Extra Stores prior to the dissolution. In addition, all Debts of the Partnership must be paid prior to any distributions to Partners. At this stage, the

remaining Debts include the unpaid rent obligations, plus interest, due to United for occupying the Plaza Extra-East store and Bays 5 and 8 in the United Shopping Plaza, which have not been adjudicated⁴, as well as other obligations owed to United discussed in more detail below. As reflected in Exhibit A, there will be a shortfall of approximately \$4 million in Partnership Assets, if all listed Debts are paid and all proposed reserves are established. Any actual shortfall must be made up by the Partners or a deceased Partner’s estate.

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³ These total assets are reflected in the Partnership balance sheet provided, along with income statement, on September 30, 2016 to the Master and counsel for the Partners by John Gaffney (“Gaffney”), who has served as the accountant for the Partnership.

⁴ See Memorandum Opinion and Order dated April 27, 2015 (the “Rent Order”), which provides that although back rent for Bays 5 and 8 are set forth in United’s Counterclaim, “this Order addresses only Bay No. 1.” (Rent Order, p. 2, n. 1)

Once reserves are established and the outstanding Debts are allowed and paid, distributions to the Partners can be made only if there are remaining Partnership Assets. The Claim provides:

- a) reconciliation of the historical withdrawals and distributions between the Partners and their agents from the profits of the Plaza Extra Stores, reflecting a net balance of \$9,670,675.36 due to Yusuf;
- b) an accounting of funds received by Yusuf for the sale of Y&S Corporation (“Y&S”) and R&F Condominium, Inc. (“R&F”) stock resulting in a balance of \$802,966.00 due to Hamed;
- c) a description of Partnership funds entrusted to Hamed to be held in foreign accounts, invested in real estate or used as charitable donations of the Partners, reflecting a balance due to Yusuf; and
- d) quantification of the loss of the going concern value of Plaza Extra-West as a result of Hamed’s actions resulting in a balance of \$4,385,000.00 due to Yusuf.

II. Funds to Be Held in Reserve

Prior to distribution of the remaining Partnership Assets, certain funds must be held in reserve to satisfy contingent obligations and risks of the Partnership.

A. Reserves Needed for Plaza Extra-Tutu Park Rent

Given Hamed’s conceded failure to obtain releases of the Partnership, United and Yusuf, as required by the “Order Adopting Final Wind Up Plan” dated January 7, 2015 and entered on January 9, 2015 (the “Wind Up Order”) (p. 5), § 8(2) of the Plan, and the April 30, 2015 Master’s Order (p. 2), a reserve must be created for all rents to be paid to Tutu Park Limited over the remaining term of the lease in the amount of \$887,203.26 (\$30,359.38 per mo. in rent plus an

average of \$2,500 per mo. in water charges x 27 months), not including charges for real estate taxes and percentage rents.

B. Reserves Needed for Plaza Extra-Tutu Park Property Taxes and United Matching Payment

As described in the Tenth Bi-Monthly Report, *see* p. 4, n. 6, property taxes for 2015 have not yet been billed, but reserves should be set aside to pay these taxes which are estimated to be \$14,356.44, along with a matching payment to United of \$9,812.14.

C. Reserves Needed for FUTA Taxes

At present, there is a dispute as to the amount of Federal Unemployment Taxes ("FUTA") due from the Plaza Extra Stores. The Internal Revenue Bureau contends that approximately \$350,000.00 is due for 2014 and 2015. Gaffney, however, has determined that no additional FUTA taxes are due. While the amount remains in dispute, Yusuf proposes to hold these funds in reserve until the dispute is resolved. Once the dispute is resolved, the funds can be distributed according to the Plan or as otherwise ordered by the Court.

D. Master's Fees

The fees of the Master for supervising the final liquidation and wind up of the Partnership will need to be reserved. It is estimated that \$150,000 should be set aside for such expenses.

E. Accounting Fees

Accounting fees for coordination and payment of various Debts and wind up of the Partnership will need to be reserved. It is estimated that \$30,000.00 should be set aside for such expenses.

F. Funds to Be Held in Reserve for Litigation Risks

Reserves must be set aside for pending and possible litigation relating to claims for injuries allegedly suffered at the various Plaza Extra Stores prior to the dissolution of the

Partnership and transfer of ownership of the stores. *See* Exhibit C-2 to the Seventh Bi-Monthly Report filed on April 1, 2016. Yusuf submits that the amount required to satisfy the potential risk to the Partnership as well as costs and expenses not otherwise covered by insurance for those claims is approximately \$1,320,777.00. This amount is comprised of two primary components: 1) pending claims and 2) estimated future claims.⁵

As to the pending claims, they are further divided into two categories: a) those claims with insurance coverage and a self-insured retention and b) uncovered claims. For those claims with insurance coverage, reserves are calculated by considering the total amount claimed or last demanded in settlement by the plaintiffs, multiplied by the probability of plaintiffs' success in each case, added to the costs for the litigation not covered by insurance.⁶

As to the estimated future claims, the average value of claims in a given year is calculated by review of historical claims. Then this value is multiplied by the average number of claims per year and by the number of years in the statute of limitation period to determine the total risk. That figure is in turn multiplied by the percentage of time remaining in the applicable statute of limitations. The statute of limitations is calculated for each store from the last date it was controlled by the Partnership; i.e. March 9, 2015 for Plaza Extra-East and West, and April 30, 2015 for Plaza Extra-Tutu Park. Such formulas are commonly utilized to evaluate risk exposure by insurers in setting insurance loss reserves.⁷

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⁵ At present, Yusuf is unaware of any unfiled claims within the statute of limitations.

⁶ *See Exhibit B, Litigation Reserves Calculations.*

⁷ *A User-Friendly Introduction to Property and Casualty Claims Reserves*, Joseph Calandro, Jr. and Thomas J. O'Brien, 2004, describing accounting methodologies as to assessment of litigation risks and costs for setting reserves.

These reserves include the claims of Wadda Charriez⁸ since her counterclaims are effectively against the Partnership and, therefore, constitute a potential obligation of the Partnership.

III. Outstanding Debts of the Partnership

Although nearly all of the undisputed Debts of the Partnership have been paid or resolved, the following Debts remain:

A. Miscellaneous Debts

There are Debts totaling \$176,267.97, which must be paid prior to any distribution of the remaining Partnership Assets to the Partners⁹. This amount relates primarily to accounts payable for open tax issues from 2013.

B. Unpaid Rent for Plaza Extra-East and Adjacent Bays

While the Court determined that certain past due rent obligations for Plaza Extra-East must be paid pursuant to the Rent Order, there remain additional rent claims for Plaza Extra-East. These claims have not yet been resolved¹⁰ and, if found to be due and owing, then these are Debts of the Partnership that should be paid prior to any distribution of the remaining Partnership Assets to the Partners.

United makes the following claims against the Partnership as set forth in its Amended Counterclaim and Motion For Partial Summary Judgment Regarding Rent:

⁸ These claims are the subject of a separate suit, United Corporation v. Wadda Charriez, SX-13-CV-152, which Yusuf has moved to consolidate into this action for resolution. *See* Motion to Consolidate filed on March 17, 2016.

⁹ The total liabilities are reflected in the Partnership balance sheet provided to the Master and counsel for the Partners by Gaffney on September 30, 2016.

¹⁰ *See* Rent Order, p. 2, n. 1; p. 11, n. 4.

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

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

2. Bays 5 and 8

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

3. Interest on Rent Claims

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

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

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

2016 is \$241,005.18. Such interest continues to accrue at the daily rate of \$195.78 until paid. *See* calculation of interest on Bays 5 and 8 rent attached as **Exhibit E**.

C. Reimbursement For Gross Receipts Taxes Paid by United

As Yusuf has testified without contradiction (*see* transcript of Yusuf's deposition of April 2, 2014 at pages 53-4), the Partners originally agreed that the Plaza Extra Stores would pay all gross receipts taxes and insurance relating to United's Shopping Center. The Partners acted on this agreement for the life of the Partnership, as reflected in the actual payment of these expenses with funds from the Plaza Extra Stores for more than 28 years. The Partnership owes United for certain gross receipts taxes United paid on behalf of the Partnership totaling \$60,586.96, which were never reimbursed. *See* **Exhibit F**, Summary and Evidence of United Payment of Gross Receipts Taxes.

D. Black Book Balance Owed to United

A black ledger book (the "Black Book") was used by the Partners to track spending and withdrawals as between the Partners and their families as well as by United on behalf of the Plaza Extra Stores. Certain entries from the Black Book are accounted for in the BDO Report discussed in §IV below, to the extent they represent historical withdrawals as between the Partners and their families. However, as to funds which United paid on behalf of the Plaza Extra Stores, the Black Book entries reveal that the Partnership owes United \$49,997.00 for various expenses it paid on behalf of the Partnership. *See* **Exhibit G**, Relevant Black Book Entries.

E. Additional Ledger Balances Due to United

In addition to the Black Book balance owed to United, at various points in time, United made other payments on behalf of the Plaza Extra Stores. In 1994, 1995 and in 1998, United paid \$199,760.00 for various expenses of the Partnership. *See* **Exhibit H**, Ledger Sheets

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Reflecting United's Payments for Plaza Extra. In the same ledger book, records of withdrawals by Yusuf are also noted for certain personal expenses in 1995 and 1996. The amounts relating to Yusuf's personal expenses are included in the BDO Report discussed below in § IV, accounting for the withdrawals as between the Partners and their families. However, the total amount of \$199,760.00 paid by United has not otherwise been captured in other reconciliations and remains due and owing to United.

F. Water Revenue Re Plaza Extra-East

Beginning in 1994, Plaza Extra-East began selling United's water. The proceeds for the first 10 years were used primarily for charitable purposes. From April 1, 2004, however, all revenue from the sale of United's water that was collected by Plaza Extra-East was to be paid to United. United has calculated the average water sales per month based upon two years of sales in 1997 (\$52,000) and 1998 (\$75,000) as \$5,291.66 per month. Multiplying the average monthly sales revenue by 131 months, United is owed \$693,207.46 from the Partnership for the water sales revenue from April 1, 2004 through February 28, 2015.

G. Unreimbursed Transfers to Plaza Extra from United's Tenant Account

At various points throughout the Partnership, United would transfer funds from its tenant account, which the parties have already conceded was separate and independent from the Partnership, to the Plaza Extra Stores to cover expenses and to maintain cash-flow. The Partnership has not reimbursed United for certain transfers. The Partnership owes United \$188,132 for its unreimbursed transfers. *See Exhibit I, Summary and Supporting Documentation of Unreimbursed Transfers from United.*

Y-9

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IV. Past Partnership Withdrawals and Distribution Reconciliation

Throughout the Partnership, the Partners and their agents (*i.e.*, their sons) would withdraw cash from safes at the Plaza Extra Stores. Evidence of these withdrawals came in multiple forms including, *inter alia*, receipts, checks or ledger entries. In addition, the Partners and their agents used funds generated by the Plaza Extra Stores for personal expenses. These payments for personal expenses were to be counted against each Partner as a distribution. The withdrawals and payments for personal expenses were supposed to be done on the “honor system,” which relied upon each Partner and their agents to disclose to the other Partner, via “tickets” or receipts left in the store safes, when withdrawals were made or personal expenses were paid from Partnership funds. Occasionally, the Partners would reconcile the various withdrawals and expenses between them. Upon review of the various accounting records as well as information regarding personal accounts and assets of the Partners and their agents, Yusuf submits that Hamed and his agents failed to fully disclose all of the funds they withdrew from the Partnership or personal expenses they paid with Partnership funds. Consequently, these previously undisclosed withdrawals and expenses are treated as distributions in the Claim. A full accounting of the Partnership withdrawals is set forth in the Expert Report of Fernando Scherrer of BDO Puerto Rico, P.S.C. (“BDO”) attached as **Exhibit J**¹². Based on that report, Hamed’s withdrawals/distributions exceed Yusuf’s withdrawals/distributions by \$19,341,350.72. *See* Exhibit J at p. 62-3. As a result, \$9,670,675.36 should be awarded to Yusuf to equalize the distributions between the Partners so that both Partners have equal distributions of \$18,820,989.98.

¹² The tables, schedules and supporting documentation for this report are voluminous and will be submitted to the Master and counsel for Hamed via a flash drive or CD identified as **Exhibit J-1**.

EXHIBIT A

Claim Distribution Summary

I. Total Assets Remaining After Liquidation: ¹		\$8,957,168.54
II. Less Reserves:		
A. Tutu Park Rent:	\$ 887,203.26	
B. Tutu Park Property Taxes: ²	\$ 14,356.44	
C. Matching Payment to United: ³	\$ 9,812.14	
D. FUTA Taxes:	\$ 350,000.00	
E. Master's Fees ⁴ :	\$ 150,000.00	
F. Accounting Fees:	\$ 30,000.00	
G. Litigation Risks:	<u>\$1,320,777.00</u>	
Subtotal:	\$2,762,148.84	

Balance Less Reserves: \$6,195,019.70

III. Less Debts of the Partnership:

A. Balance Sheet Liabilities ⁵	\$ 176,267.97	
B. Add'l Rent for Bay 1:	\$ 6,974,063.10	
C. Interest on Bay 1 Rent Awarded:	\$ 881,955.08	
D. Rent for Bays 5 & 8:	\$ 793,984.34	
E. Interest on Unpaid Rent, Bays 5 & 8:	\$ 241,005.18	
F. Reimb. United for Gross Receipts Taxes	\$ 60,586.96	
G. Black Book Balance owed to United	\$ 49,997.00	
H. Ledger Balances owed to United	\$ 199,760.00	Y-7
I. Water Revenue Re: Plaza Extra-East	\$ 693,207.46	
J. Unreimbursed Transfers from United	<u>\$ 188,132.00</u>	Y-9
Subtotal:	\$10,258,959.09	

IV. Net Partnership Assets Available for Distribution After Debts and Reserves: .(\$4,063,939.39)

V. Past Partnership Withdrawals and Distribution Reconciliation:

A. Net funds withdrawn or deemed to be a distribution between the Partners per BDO Report - Net Due to Yusuf: ⁶	\$ 9,670,675.36	
--	-----------------	--

¹ See Partnership Balance Sheet as of August 31, 2016 provided by John Gaffney to the Master and counsel for the Partners on September 30, 2016.

² See ftn. 6 to Tenth Bi-Monthly Report filed on September 30, 2016.

³ See ftn. 6 to Tenth Bi-Monthly Report filed on September 30, 2016.

⁴ This is an estimated amount.

⁵ See Total Liabilities shown on Balance Sheet provided by John Gaffney on September 30, 2016.

⁶ See BDO Report at p. 63.

VI. Y&S Corporation and R&F Condominium, Inc. Stock Sale Proceeds Distribution:

A. Net Due to Hamed: \$802,966.00

VII. Foreign Accounts:

A. Net Due to Yusuf: \$TBD – Following add'l discovery

VIII. Loss of Going Concern Value of Plaza Extra-West

A. Net Due to Yusuf: \$4,385,000.00

IX. Half of Value of Six Containers

A. Approx. \$180,000 - \$210,000.00
(Not included based on Master's initial determination)

Total Due to Yusuf: \$13,402,709.36*

*This amount represents the sum of \$9,670,675.36 from § V and \$4,385,000.00 from § VIII less \$652,966.00 (\$802,966.00 from § VI - \$150,000.00 from Claim n. 15). It represents the amount known as of September 30, 2016 based upon the information available, not including any punitive damages to which Yusuf may be entitled. It is subject to further revision following the reopening of discovery.

EXHIBIT 2

School, Inc. v. Lembach, 64 V.I. 400 (V.I. 2016) and *Daubert v. Merrell Dow Pharmaceuticals, Inc.*, 509 U.S. 579 (1993). As such, Plaintiff asserts that the report must be stricken.² Defendants respond that the Motions are premature in that the reports were submitted to the Master only as part of Defendants' proposed accounting and distribution plan, and are not a part of the record. Further, Defendants state that the BDO report represents only a preliminary accounting based on information available at the time, and will be supplemented upon completion of additional discovery. Both parties agree that more discovery is required to adequately present their respective claims.

While Plaintiff took the opportunity at the recent hearing to present evidence in the nature of a pretrial motion in limine, a determination of trial admissibility of the testimony of the author(s) of the reports in issue, and of the reports themselves, is premature. The primary purpose of conducting a *Daubert* hearing pursuant to V.I. R. Evid. 104 is to permit the trial court to act as gatekeeper to prevent a jury from hearing inadmissible testimony. Because the Court, by Memorandum Opinion and Order entered contemporaneously herewith, strikes both Plaintiff's and Defendants' demands for trial by jury, that concern is not present. Further, the ability of the Master and the Court to evaluate the reports and ascribe to them only such weight as they deserve, militates against striking the reports at this stage of the litigation.³ Accordingly, it is hereby

ORDERED that Hamed's Motion to Strike Accounting Expert (BDO) is DENIED without prejudice. It is further

ORDERED that Hamed's Plaintiff's Motion to Strike Business Valuation Expert (Integra) is DENIED without prejudice.

DATED: July 21, 2017.

ATTEST: ESTRELLA GEORGE
Clerk of the Court

By: _____

Court Clerk Supervisor


DOUGLAS A. BRADY
Judge of the Superior Court

CERTIFIED A TRUE COPY

DATE: July 24, 2017

ESTRELLA H. GEORGE

ACTING CLERK OF THE COURT

BY: _____

COURT CLERK

² No evidence was presented at the hearing regarding the Integra report, which Plaintiff challenges as failing the last two of the three-prong test for admissibility: qualifications, reliability and fit. Because the same issues are involved, both Motions are treated together for purposes of this Order.

³ See, e.g., "The Court also deferred ruling on some of the motions involving expert testimony, as the judge need not serve as gatekeeper for himself." *Eames v. Bedor*, 2012 N.H. Super. LEXIS 15, *7 (N.H. Super. Ct. 2012) (citing *Traxys N. Am., LLC v. Concept Mining, Inc.*, 808 F. Supp. 2d 851, 853 (W.D. Va. 2011)).

EXHIBIT 3

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

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

vs.)

Case No. SX-2012-CV-370

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

vs.)

**DEPOSITIONS TAKEN:
JANUARY 21, 2020**

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

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

vs.)

Consolidated with
Case No. SX-2014-CV-287

UNITED CORPORATION, Defendant.)

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

vs.)

Consolidated with
Case No. SX-2014-CV-278

FATHI YUSUF, Defendant.)

FATHI YUSUF, Plaintiff,)

vs.)

Consolidated with
Case No. ST-17-CV-384

MOHAMMAD A. HAMD TRUST, et al.,)
Defendants.)

KAC357 Inc., Plaintiff,)

vs.)

Consolidated with
Case No. ST-18-CV-219

HAMED/YUSUF PARTNERSHIP,)

Defendant.)

FATHI YUSUF -- DIRECT

1 knows.

2 **Q.** Okay.

3 **A.** Wally knew more often he sign the check for the
4 gross receipt.

5 **Q.** Okay.

6 **A.** He knew all consultation, 99 percent of my
7 discussion, is always with Wally. I have -- I have not
8 discussed anything with my son, not even 1 percent for
9 the -- for respect of the partnership rule. My son,
10 whatever I do, he have to accept, whether it's good or bad.
11 But I been very honest and fair with my partner. Anything I
12 do, either he or his son is aware of it and approve it.

13 **Q.** Okay. So after 1992, or whenever you moved to
14 St. Thomas --

15 **A.** Yes.

16 **Q.** -- in the '90s, were you following up or dealing
17 with the shopping center gross receipt taxes while you were
18 in St. Thomas?

19 **A.** I have never dealt with the gross receipt. I
20 dealt with the gross receipt out of St. Thomas store
21 covering the three store.

22 **Q.** Okay.

23 **A.** The grocery stores. But the -- the -- the
24 supermarket, I mean, the tenant, I -- I never -- it never
25 came in my mind that my son will go ahead and pay it. I

FATHI YUSUF -- CROSS

1 **A.** Um-hum.

2 **Q.** Written on the tenants' account, and it's signed
3 by your son, Mike?

4 **A.** Right.

5 **Q.** Not by Wally?

6 **A.** Sir, I told you, my son never been advised
7 whatsoever about the partnership. I was never discussed it,
8 anything with my son. And I was always fighting with his
9 mother, Let your son knows everything. I said, Listen,
10 honey, my son have to respect my opinion. I have to have my
11 partner at -- at peace. I dealing with a partner. I'm
12 obligated to my partner. I am not obligated to one of my
13 ten children. They have to go with whatever I say.

14 **Q.** Okay. I guess the question I'm asking, though, is
15 that you weren't there?

16 **A.** And my son didn't know.

17 **Q.** And your son didn't know, but your son was still
18 signing the stuff?

19 **A.** Yes, his signature is on the account.

20 **Q.** And if you'll turn over to the next page.

21 **A.** Um-hum.

22 **Q.** You'll see a check. It's Bates Number FY 015000,
23 and it's dated -- a check on the United Corporation Tenants
24 Account dated 9-30-99. Says it's for the payments of August
25 of '99. And -- do you see that one?

FATHI YUSUF -- CROSS

1 **A.** Yes, I seen it.

2 **Q.** 1714 -- Check Number 1714?

3 **A.** Yeah.

4 **Q.** And whose signature is at the bottom of that?

5 **A.** Maher Yusuf. You -- we come up through this
6 already.

7 **Q.** That's the --

8 **A.** And many time, I tell you, my son didn't know
9 anything about the deal.

10 **Q.** No, I -- I don't know -- I'm not asking about
11 whether he knew anything about the deal. I'm asking --

12 **A.** I know, but you are getting to the same similar
13 result. Hey, I'm a human being. Don't put words in my
14 mouth.

15 **MS. PERRELL:** I think we'll stipulate.

16 **A.** I think he took it. That's it. One evidence is
17 enough, it shows. If I start this road, I keep continuing
18 until it's finished.

19 **MR. HARTMANN:** Okay.

20 **MS. PERRELL:** We would stipulate Mike signed
21 these. These are Mike's signatures. We knew that. That's
22 why I said Mike is going to need to testify at some point
23 relating to this. Happy to stipulate that those -- I
24 believe most of these are Mike's signatures.

25 **MR. HARTMANN:** Will you stipulate that Mike

MAHER "MIKE" YUSUF -- DIRECT

1 **A.** Because Plaza owes this back to United.

2 **Q.** Okay.

3 **A.** I kept it. I used to -- I kept it in the safe
4 because it's things that I did, you know, I was told to do
5 certain things and I -- I wrote the check and took it to
6 wherever and I used to keep a ledger --

7 **Q.** Okay.

8 **A.** -- of what I paid out of the tenant account.

9 **Q.** Okay. And at the top, can you read -- I know the
10 copy of it is not that great.

11 **A.** Yeah.

12 **Q.** Can you read basically what you understood it to
13 say?

14 **A.** What I understand, this is Plaza paid out for -- I
15 mean, United paid out for Plaza.

16 **Q.** Okay.

17 **A.** When I say, "United," I mean tenant account.

18 **Q.** Okay. And when you say Plaza, you mean the
19 partnership?

20 **A.** The supermarket.

21 **Q.** Okay. And at the time -- at the time when you
22 would say "Plaza, you meant the partnership, correct?"

23 **A.** Yeah.

24 **Q.** Okay. All right. So let me go down these various
25 items.

MAHER "MIKE" YUSUF -- DIRECT

1 The first one is on May 23rd, 1994. It says,
2 Steve -- well, let me ask you this: Can you read the first
3 item and just state what it is and if you recall what it was
4 for?

5 **A.** Yeah. I -- I looked -- I looked at this paper
6 earlier and a lot of stuff came back to me. Steve Nesky was
7 a guy that used to do the chlorination for us and I used to
8 pay him out of the tenant account for the tenant and the
9 supermarket. So I -- I used to break it out and charge, you
10 know, Plaza their portion out of it.

11 **Q.** Okay. So is the 400 the portion that should be
12 paid by the Plaza? And I'm going to say Plaza, the --

13 **A.** The stores. The store.

14 **Q.** The operation?

15 **A.** Right.

16 **Q.** Okay. All right. And can you please read the
17 next one?

18 **A.** That's Prudential. I think that was like
19 Prudential Securities. We used to have, or we had stocks
20 between the -- both families.

21 **Q.** Um-hum.

22 **A.** And I think if they had margin calls or something
23 that they needed to put money, I guess, I -- I used to do it
24 and take down the check.

25 **Q.** Okay.

MAHER "MIKE" YUSUF -- DIRECT

1 **A.** Something pertaining to stocks or bonds or
2 whatever that they were involved in.

3 **Q.** Okay.

4 **A.** You know.

5 **Q.** And the amount was how much?

6 **A.** 30,000.

7 **Q.** Okay. And it's your understanding that normally
8 that might have come out of the operating account, but
9 instead, for whatever reason, you paid it out of the tenant
10 account, but it should have been for both families, correct?

11 **A.** Yeah, I don't know what the reason that I took it
12 out of the tenant account. This is in '94. I'm not sure if
13 I could not -- at the time, I couldn't sign on the operating
14 account for Plaza or not. I wasn't sure.

15 **Q.** Okay.

16 **A.** Or Plaza didn't have the money, you know, at that
17 time, so it was quicker to do it this way.

18 **Q.** Okay.

19 **A.** I wasn't -- not certain of the details why it came
20 out.

21 **Q.** Okay. All right. The next one is, if you could
22 read the third one down.

23 **A.** If I'm not mistaken, this is Core State Properties
24 in St. Thomas.

25 **Q.** Um-hum. What was the amount?

MAHER "MIKE" YUSUF -- DIRECT

1 **A.** \$40,010. So looking at this with the \$10, it
2 looks like I transferred money to Core State for something
3 to do with Plaza.

4 **Q.** Okay. And do you know -- this year was what year?

5 **A.** It's the same. If you go down -- how I usually
6 used to write stuff down. I would start -- I put the first
7 5-23-94 and I'll just keep going just the day. I mean, the
8 month and day. And then if it changes to another year, I
9 would start. If you notice, it says 2-17-95, and then all
10 that is 2-17 -- I mean, year '95.

11 **Q.** Okay. So this was in 9-23, would be 1994?

12 **A.** '94, correct.

13 **Q.** Okay. And it's your belief that because it was
14 40,000, because there was a \$10 on it, that it must have
15 been some kind of a transfer?

16 **A.** Yeah, and it says in St. Thomas. Something.
17 Something Core -- I don't know if it's Core State
18 Properties, but it says in St. Thomas. So it's something.
19 Had to be a transfer, something like that.

20 **Q.** All right. Can you read the fourth one down?

21 **A.** Refrigerator times two. I think that's -- it
22 should be 500. It's a thousand.

23 **Q.** Um-hum.

24 **A.** I'm not -- I'm not sure if both families agreed to
25 give it, our refrigerator to whoever. Or the families took

MAHER "MIKE" YUSUF -- DIRECT

1 one here and one there. But we had a tenant -- we have a
2 tenant that's Best Furniture, which is Ashley. And if the
3 families or somebody wanted to -- I think in this instant, I
4 don't know if it was -- went to the two families, one for
5 each here, one for each there. And it came out of our
6 tenant, so I deducted it from our tenant's rent. So Plaza
7 owes the tenant -- not the tenant, but the tenant account
8 back that money, 'cause I deducted it from the rents for --
9 it was Best Furniture at that time.

10 **Q.** So Best Furniture paid less in rent --

11 **A.** For that, yeah.

12 **Q.** -- for that? And then it should have been paid
13 for by the partnership, so the partnership would owe United
14 the money back?

15 **A.** Correct.

16 **Q.** Okay. The next one, can you read that? Starts --
17 says bed, but I'll let you read it.

18 **A.** Oh, bed and bench. I'm not sure if that's what it
19 is, bed and bench, 350. Same thing. I don't know.

20 **Q.** And then the next one is? What is the next one?

21 **A.** I think that's property -- property for United.

22 **Q.** Um-hum. And then there's --

23 **A.** And it says something '90. 1993.

24 **Q.** Um-hum.

25 **A.** So I'm not sure. It's not clear.

MAHER "MIKE" YUSUF -- DIRECT

1 Q. Okay.

2 A. So I'm not -- I can't pinpoint what this is for.

3 Q. And the 20,000, --

4 A. Yeah.

5 Q. -- do you recall what that is for?

6 A. No.

7 Q. All right. And then the next one, 5-5?

8 A. That's Peter's Farm investment.

9 Q. Um-hum.

10 A. Corp.

11 Q. Um-hum.

12 A. 60,000. Well, Peter's Farm is owned by the --
13 both families.

14 Q. Um-hum.

15 A. So this came out of the tenant account to, I
16 guess, to Peter's Farm Investment Corp.

17 Q. Okay. And that's something that should have been
18 a joint payment, is that what you --

19 A. Right. It should come out of the store, but I
20 guess for some reason, I don't know who, told me to pay it
21 out of the tenant account.

22 Q. Okay. And the next one is 8-31?

23 A. It's another property. Oh, this is property tax
24 for United.

25 Q. Um-hum.

MAHER "MIKE" YUSUF -- DIRECT

1 **A.** '94. 40,000. I'm not sure. It's not clear.

2 **Q.** All right. And then the last one says something
3 5, a date.

4 **A.** Oh, five something '98.

5 **Q.** What is that?

6 **A.** Bedroom.

7 **Q.** What does it mean?

8 **A.** Bedroom set. If I'm not mistaken, that's a cousin
9 of ours. Both families.

10 **Q.** What is his name?

11 **A.** Allaah.

12 **Q.** Um-hum.

13 **A.** He's my -- he's my first cousin and their first
14 cousin. I guess he got married that year.

15 **Q.** Um-hum.

16 **A.** And I did ask somebody yesterday if he did, and
17 they said yes. So that was a gift from the -- both families
18 to him.

19 **Q.** Like a wedding gift?

20 **A.** Right.

21 **Q.** Okay.

22 **A.** And that came out of the same issue like the
23 refrigerator.

24 **Q.** Um-hum.

25 **A.** Best Furniture. We got it from Best Furniture for

MAHER "MIKE" YUSUF -- DIRECT

1 him, and I deducted it from the rent for Best Furniture.

2 Q. Okay. So it would have been a gift from both
3 families?

4 A. Correct.

5 Q. All right. Other than this ledger with these
6 however many, 3, 4, 5, 6, 7, 8, 9, other than these 9.

7 A. Um-hum.

8 Q. And not talking about the transfer issues that we
9 dealt with earlier, these are the only amounts that you
10 recall came out of the tenant account that somehow should
11 have been reimbursed by the partnership, or you're
12 contending that, correct?

13 A. Correct, this -- yes. And I know there's more.

14 Q. Okay.

15 A. Because I had a black book, and it's the same page
16 just like this. And I know there's more, but it's just to
17 put my hands on it.

18 Q. This is the only one that you have?

19 A. It's the only one I have, yes.

20 Q. Okay. All right. All right. Do you recall
21 whether you had conversations with Wally or any -- well, let
22 me just ask you, any of the Hameds related to this, or do
23 you recall?

24 A. I -- I took his instructions from Wally. In -- in
25 '94, I, you know, my dad wasn't there. Most of my

MAHER "MIKE" YUSUF -- CROSS

1 instructions were from Wally.

2 **MS. PERRELL:** Okay. All right. Okay. I
3 have no further questions on this.

4 **CROSS-EXAMINATION**

5 **BY MR. HARTMANN:**

6 **Q.** Okay. So I have a couple.

7 First of all, two of these things say that
8 they're property tax for the United, right? The one on
9 2-17-95 and the one on 8-30-96. One says it's the property
10 tax for United for 1993, and I think the other one says it's
11 the property tax for United for 1996, right?

12 **A.** No.

13 **Q.** No?

14 **A.** '96.

15 **Q.** 20,000 --

16 **A.** The 20,000 -- if I'm not mistaken, it seems like
17 it says property tax for United. And the --

18 **Q.** The one, two down from that.

19 **A.** And the other one --

20 **Q.** Says property tax for United 1990 -- one says '93,
21 one says '96.

22 **A.** '94.

23 **Q.** Or '94.

24 **A.** '94.

25 **Q.** Okay. I'm sorry, I'm old.

FATHI YUSUF - DIRECT

1 **Q.** Okay.

2 **A.** -- my son, anything else.

3 **Q.** All right.

4 **A.** And he was taking my instruction to listen to
5 Wally and their cousins, and we believe in Wally and father
6 and mother. And unfortunately, everybody do the best he can
7 to hurt us.

8 **Q.** Okay. But Mr. Yusuf, let me ask you this: So
9 this is for the United -- I'm asking, do you know whether
10 this property taxes is for the United property taxes at Sion
11 Farm?

12 **A.** No. It could be the improvements of the
13 supermarket.

14 **Q.** Okay. And why is that amount an amount that
15 should be paid by the partnership?

16 **A.** Well, what you mean? If they have no money, we
17 explain already.

18 **Q.** No, but --

19 **A.** Supermarket was dry with cash.

20 **Q.** Was the supermarket operations supposed to be
21 paying that, those amounts?

22 **A.** Yes.

23 **Q.** Okay. So that was supposed to be paid --

24 **A.** But if they don't have no money, he could tell
25 you -- my son, Go ahead and pay it.

EXHIBIT 4



The Oral Deposition of Fathi Yusuf

Mohammad Hamed v. Fathi Yusuf, et al

April 2, 2014

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1 A. Yes.

2 Q. Okay. And that would include 50-percent interest
3 in the net profits of any bank accounts, payables,
4 receivables?

5 A. Whatever is belong to Plaza is for me and him.

6 Q. Okay. Now, you mentioned some conditions. What
7 conditions are there?

8 Are there some other conditions to this
9 partnership agreement?

10 A. No. The condition is, I have the final word.
11 It's I am obligated to consult with him, if I see it's
12 important for me to consult. I was suppose to be, after
13 1993, I was supposed to have an office within the
14 supermarket free of charge. I was -- he was supposed to,
15 the Plaza Extra was supposed to pay all the gross receipt
16 from January 1st, 1994 up to present, and it was covering in
17 the building, the entire building of United Shopping Plaza.

18 My duty was, is to go and commit the same
19 thing we ensure, to bring money to Mr. Hamed an extent,
20 which cost him nothing. It cost me personal guarantee, and
21 it costing me everything I own except my children and my
22 wife.

23 Q. Okay. And so I'm going to go back in reverse
24 order a little bit.

25 A. Yes.

1 for our shopping center manager, within the supermarket.
2 It's on the second floor. And by the way, I'm not charging
3 for the second floor.

4 Q. Okay. And then you also said that one of the
5 conditions was that you would have the final word, but that
6 you --

7 A. Excuse me.

8 Q. You said that one of the conditions was that you
9 would have the final word, --

10 A. Oh, yes.

11 Q. -- but that you did have an obligation to consult
12 with him?

13 A. An absolute obligation, yes.

14 Q. Okay. All right.

15 Now, I want to go back to this -- to this
16 deposition, because this ties a little bit into it.

17 A. Yeah, okay.

18 Q. Okay. It says, I see Mr. Idheileh come knock on
19 my door, come on in, shake hand, I offer him coffee. I -- I
20 don't remember whether he took it or not.

21 MR. HODGES: Pardon me. What page are you
22 reading from?

23 THE WITNESS: This is --

24 MR. HOLT: Page 21, the top, about halfway
25 down, which says, I see Mr. Idheileh come knock on my door.

1 Q. When you say one of the conditions was -- was he
2 agreed to cover United, you're talking about insurance
3 coverage, is that what you're talking about?

4 A. No, including the insurance.

5 Q. Okay. So the Plaza Extra stores would pay for
6 insurance on the whole shopping center?

7 A. Yes.

8 Q. And the Plaza Extra Supermarket would pay the
9 gross receipts, not just on the grocery store profits, but
10 on the rent?

11 A. Yes.

12 Q. Okay.

13 A. Excuse me. One more item. The United Shopping
14 Plaza was using the entire shopping center value
15 depreciation to offset any income tax, which that, in
16 return, it will give you greater saving than the insurance
17 and the gross receipt.

18 Q. So there's a tradeoff you're giving them --

19 A. It's a tradeoff, yes.

20 Q. You're giving them depreciation; they're paying
21 gross receipts and insurance?

22 A. Yes. Yes, sir.

23 Q. Okay. And then you said that something about an
24 office that --

25 A. No, I have -- you see, I have an office in the --

1 A. Who?

2 Q. (Mr. Holt) Mr. Idheileh? How do you pronounce
3 his name?

4 A. Yeah, yeah, Ahmed Idheileh, yes.

5 Q. Okay. I see Mr. Idheileh come knock on my door.
6 Come in, --

7 A. Uh-huh.

8 Q. -- shake hand. I offer him coffee. I don't
9 remember whether he took it or not.

10 A. Uh-huh.

11 Q. I say, I tell him, What can I do for you? How
12 come you're back? I understand that you sold Sea-Mart not
13 to come back to the Virgin Islands. Your intention was to
14 sell Sea-Mart and go home. I can see you here now.

15 He say, Yes, things is tough back home, and I
16 decided to come back. I say, Well, what are you planning to
17 do? It's a friendly discussion. He say, I would like to be
18 your partner in St. Thomas, too. I says, You know, I don't
19 have the final word. I will check with my partner,
20 Mr. Hamed.

21 Is that correct?

22 A. That's exactly what I tell you.

23 Q. Okay.

24 A. I normally consult with them. This is an
25 important step.

EXHIBIT 5

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

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

Plaintiffs,

vs.

**FATHI YUSUF MOHAMAD YUSUF,
aka Fathi Yusuf**

**WALBED MOHAMMAD HAMED,
aka Wally Hamed**

**WAHRED MOHOMMAD HAMED,
aka Willie Hamed**

**MAHER FATHI YUSUF,
aka Mike Yusuf**

NEJBH FATHI YUSUF and

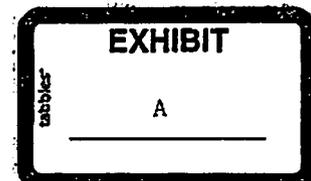
**UNITED CORPORATION,
dba Plaza Extra**

Defendants.

CRIMINAL NO. 2005-15F/B

**DEFENDANTS' MOTION FOR SPECIFIC RELIEF DUE TO THE GOVERNMENT'S
DESTRUCTION OF THE INTEGRITY, ORGANIZATION AND SOURCING OF
MATERIAL EVIDENCE**

THE DEFENDANTS, by and through their respective counsel, respectfully request that the Court enter an Order granting relief to the Defendants for harm caused by the government's willful and knowing destruction and alteration of the integrity, organization and sourcing of selected impeachment and exculpatory evidence. As a direct consequence of the Government's actions, the organization and control of certain material documents has been severely



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CLERK OF THE COURT

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compromised such that (1) Defendants can no longer establish the source and authenticity of the documents; (2) Defendants can no longer determine whether and to what extent any exculpatory or impeaching documents have been removed or destroyed; and (3) Defendants cannot trace or identify individuals who created such documents, had access to the documents, used the documents, or relied or should have relied on such documents. In short, the Government, through its knowing and deliberate actions of its Agents, has created a cloud of credibility on certain documents in this case, while those same Agents took deliberate actions to preserve and maintain the highest level of integrity and organization for documents it intended to use at trial.

THE DEFENDANTS request that the Court, in its discretion, (1) dismiss the Third Superseding Indictment in its entirety; (2) suppress all evidence seized and currently retained by the Government; (3) adopt appropriate evidentiary rulings as to the authenticity, sources, and weight of the subject documents; (4) adopt appropriate jury instructions explaining the Government's actions and detailing the appropriate factual and evidentiary inferences the jurors should make as a result of the government's actions; (5) order that the Government compensate the Defendants for all attorneys' and expert fees incurred as a result of the Government's actions; (6) order the Government to return the Defendants' documents and/or (7) grant any additional or alternative relief that the Court, in its discretion, deems appropriate.

IN SUPPORT THEREOF, the Defendants show unto the Court as follows:

I. Case Background and Chronology of the Government's Seizure and Retention of the Defendants' Property.

1. This matter is before the Court on a 78-count Third Superseding Indictment under which the Government charges Defendants with various tax-related offenses. Many of those offenses involve allegations of conspiracy and money laundering which require the Government to proffer evidence in the negative (for example, the Government seeks to

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establish that the Defendants concealed information from other individuals and entities).

The initial Indictment in this matter was handed down in September of 2003.

2. In coordinated raids on the six Defendants' various businesses and homes in October of 2001, the Government seized substantially all of the Defendants' business, financial and personal records. Since that date, the Government has retained hundreds of boxes of Defendants' property for use in this case.
3. In the course of its subsequent investigation and case development, the Government solicited and procured Defendants' documents from a variety of other third-party sources. Among the third parties from whom the Government solicited Defendants' documents are the Defendants' financial institutions, outside accounting firms, family members, and various foreign governments. All told, the Government procured more than five hundred banker boxes of the Defendants' documents from these and other sources. Many of the documents procured by the Government are originals.
4. The Government organized the voluminous documents and recorded their various sources by boxes numbered and bar coded to correspond with the various locations from which the Agents removed the documents. The specificity of the source description would vary, as the Government would describe sources as specific rooms or offices, file cabinets or desk drawers. The corresponding box numbers and bar codes were accompanied by a very general description of the documents contained therein. *The Government did not identify or log each specific documents seized.*
5. Since the raids of October 2001, the Government has returned some of the boxes of seized property to the Defendants, but the remaining *relevant* documents have been retained in the FBI offices in St. Thomas, USVI.

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6. Upon information and belief, the Government began the process of bates numbering only certain documents within the boxes -- documents it intended to use in its case in chief at trial. The bates numbering contained prefixes that were indexed to the numbers and bar codes on the boxes. However, the Government continued this project sporadically and eventually abandoned the effort due to lack of funding. Consequently, some of the Defendants' documents held by the Government are bates numbered, but a significant number are not.
7. To summarize, all of the documents the government intends to use at trial are bates numbered using the bar coded system and the vast number of remaining documents, likely having significant relevance to the defense, are not bates numbered.
8. The Government never provided the Defendants with a detailed inventory of the specific documents seized. Upon information and belief, such inventory does not exist. Consequently, given the large volume of records the Defendants maintained, the Defendants cannot identify the specific documents the Government seized in October of 2001.
9. The Government continues to hold Defendants' documentary evidence at the FBI offices on St. Thomas, permitting the Defendants only limited supervised review of the evidence.
10. During their initial review of the documents at the FBI offices in St. Thomas, the defense team prepared a general inventory of the groupings of documents held in the boxes, and scanned as many of the pertinent documents as possible.
11. In the seven years since the October 2001 raids, the Government has periodically returned boxes of documents to their owners that it deemed not pertinent to the subject

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case. The Government identified and logged the boxes returned, and required the owners to sign a document acknowledging receipt of the documents. .

12. This protocol implies that the Government deemed the documents it chose to retain to be pertinent to the issues in the case. It also illustrates that the Government continually preserved and identified the documents by reference to the box numbers. It is in the context of such awareness that the Government Agents rearranged the documents among the boxes.

13. The defense team's last permitted visit to the FBI offices was in 2006. From that time until November of 2008, the Government denied the Defendants access to their documents despite numerous requests. In November of 2008, Government counsel agreed to allow the defense team to view the documents. The document review was scheduled for November 10, 12, 13 and 14, 2008.

II. Defense Team's Discovery of Spoliation

14. On the defense team's November 10, 2008 discovery visit to the St. Thomas FBI offices, FBI Special Agent Christine Zieba initially denied the team access to the records. According to Ms. Zieba, the defense must now submit a detailed list of specific documents they wished to view, and she would produce the specific documents for review. As the defense team would soon learn, case FBI Agent Thomas Petri and testifying IRS Agent Javier Bell traveled to the Virgin Islands from their United States Places of Duty to monitor the documents requested and observe the defense team's review of the documents.

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15. Defense counsel Randall Andreozzi asked Ms. Zieba to explain why the defense team was suddenly being denied the access and ability to review and examine the Defendants' own documents in a manner that was inconsistent with the prior discovery visits.
16. Without explanation, Ms. Zieba advised that prior protocol would no longer be possible. She directed the defense team to leave and return on Wednesday, November 12, 2008, to discuss the matter with Department of Justice attorney Lori Hendrickson.
17. On November 12, 2008, the defense team returned to the FBI offices and was greeted by several Government representatives, including FBI case Agent Thomas Petri, IRS case Agent Javier Bell, and newly-assigned case Agent Christine Zieba. Department of Justice Counsel Lori Hendrickson was also in attendance. As the Court is aware, Agents Bell and Petri were involved in this case at the search warrant stage. They advised that they will also be working on the trial of the case.
18. Ms. Hendrickson explained that Agents Petri and Bell were detailed from their United States Places of Duty so that they could monitor the defense team's document review. She outlined new procedures that she would enforce for the Defendants' review of their own documents. As part of that procedure, the defense team would only be permitted to review one box at a time; only one person would be allowed to touch the documents; and the Government agents -- not defense counsel -- would decide which boxes the team would be permitted to review.
19. When the defense team demanded an explanation, Ms. Hendrickson stated that she implemented these new procedures to ensure the integrity of the documents as the Government maintained them.

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20. With little alternative, the defense team agreed to proceed under this protocol so long as it proved feasible to an effective and efficient review of the documents. Defense counsel Randall Andreozzi stated, however, that the defense could not agree to allow Agents Petri and Bell, and Attorney Hendrickson, to monitor the team's review of the defendants' documents. As a compromise, the team agreed to limit the number of individuals who would review the documents at any one time. Ms. Hendrickson agreed to this stipulation.
21. The first box the Government provided for the defense team's review was FBI box number 131. Upon review of the contents of Box 131, the defense team immediately recognized that the current contents of the box did not match the general summary inventory the defense had prepared during its previous document reviews. Box 131 now contained groups of documents that were not identified in the defense's inventory of Box 131, including, *inter alia*, documents with the bates prefix 295. By reference to its summary index, the defense team confirmed that these documents were originally stored in Box 295.
22. Defense counsel Andreozzi asked Ms. Zieba why documents with bates prefixes 295 were contained in box 131.
23. It was then that Ms. Zieba informed the defense team that she had reorganized and rearranged the Defendants' documents by removing some documents from their original boxes and placing them in different boxes because the revised organization better suited her needs. She refused to explain the revised organizational method.
24. Mr. Andreozzi explained to Ms. Zieba that the FBI represented to the defense team during the initial document review sessions that the box numbers corresponded to the various sources from which the documents were seized or otherwise procured. Because

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the FBI chose to bates number only some of the documents, the only way for the defense team to track the sources of the non-bates stamped documents even generally was by box number.

25. Mr. Andreozzi asked, "So if we were to look through Box 200, for example, and refer to our index, the contents of the box would not match?" Ms. Zieba confirmed that this was correct -- the documents would no longer match either the Defendants' index or the Government's original index. She explained, "I had no idea the defense relied on the order of these documents to particular boxes. I rearranged them how I was doing them and what made sense to me."
26. Mr. Andreozzi asked Ms. Zieba if, in light of this development, it would be possible to determine: (1) whether and to what extent documents were removed from the boxes; (2) whether and to what extent documents have been rearranged among the boxes; or (3) what sources the specific documents were procured from
27. Ms. Zieba refused to answer the questions. She repeated that she had no idea the defense or the FBI relied on the box numbers as the identifying factor in indexing and arranging the documents, or as a reference as to the sources of the documents. She stated that any other questions should be addressed to Attorney Hendrickson.
28. Attorney Hendrickson returned to the office with Agent Petri. Both were apprised of the issue.
29. Agent Petri at first responded by accusing the defense team of misplacing the documents in Box 131. He asserted that, during the defense team's initial review of the boxes, he and his colleagues would review the boxes after each examination to make sure that the defense team did not disturb the integrity of the FBI's organization of the documents.

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Agent Petri claimed that on some occasions he found documents misplaced and had to replace them in correct order in the boxes. He stated, "This is why we have to have an agent watch you."

30. Mr. Andreozzi then posed the question: "If there was integrity to the order of the documents in their respective boxes, and Agent Zieba just informed us that she rearranged the documents and boxes, why will the FBI not provide us with the methodology for her reorganization?" Mr. Petri then turned and confronted Ms. Zieba: "You reorganized the boxes?!" At that point, Mr. Petri stated that he would not discuss the issue any further.

31. Mr. Andreozzi advised Attorney Hendrickson that, in order to evaluate the extent of the harm caused, the defense team would need to select and review specific boxes of documents, and could no longer rely on the Government's discretion in selecting the boxes for review. Attorney Hendrickson tentatively agreed to this, but asked that the group adjourn for lunch and return in the afternoon to continue its review.

32. On the afternoon of November 12, 2008, the defense team returned to the FBI offices to continue its review of boxes. The team noted the presence of Agents Bell and Petri. Ms. Zieba stated that the Agents would not observe the team's document review but would remain in the storage room where the boxes were maintained.

33. The team provided Ms. Zieba with a list of six numbered boxes to review. Ms. Zieba produced one box and two redwell folders. One redwell was labeled "161 formerly" and contained only approximately ten documents. The other was labeled "428" and contained only a few manila folders of documents. Mr. Andreozzi advised Ms. Zieba that the numbers 161 and 428 had been associated with actual boxes. He asked why she

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now produced redwell folders and why one was labeled "161 formerly". Ms. Zieba would only repeat that the documents are no longer in their original order.

34. Ms. Zieba refused to produce three of the boxes requested. She stated that, pursuant to Attorney Hendrickson's instructions, "For today I will just keep pulling boxes randomly because I don't have them organized the way you have them organized."

35. The team requested access to the storage room to view the current manner in which the boxes were being maintained. Ms. Zieba refused access and directed all questions to Ms. Hendrickson.

36. Upon Ms. Hendrickson's return to the office, Mr. Andreozzi explained the afternoon's events and the defense team's concerns regarding the integrity of the documents. Ms. Hendrickson responded by stating, "What's done is done."

37. Mr. Andreozzi insisted that, in light of the circumstances, the team be allowed to review all of the boxes in numerical order to determine the extent of the harm. Ms. Hendrickson agreed, but asked that the defense team leave for the day to allow her to "prepare" the boxes for viewing. She stated that, if the team allowed the prosecution team to start working now, they could have the first fifty or so boxes "ready" for review by the next morning.

38. Mr. Andreozzi again expressed concern, and asked what Ms. Hendrickson meant by "prepare" the documents for review. Ms. Hendrickson refused to answer the question and asked again that the team leave for the day.

39. The next morning, November 13, 2008, Ms. Hendrickson advised Mr. Andreozzi that she had occasion to work with and review the documents until 8 p.m. the prior evening. She confirmed that the FBI Agents did in fact reorganize and remove documents from the

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boxes since the defense team's last review of the documents. Ms. Hendrickson explained that, as best she can determine, the following occurred:

- a. The Special Agents removed the documents *they intended to use at trial* and placed them in trial binders. They used the originals, and no copies were replaced in the original boxes.
- b. The Special Agents returned some documents to the Defendants at various points in time. Ms. Hendrickson claims that some items and documents returned were pulled from boxes and returned to the defendants (rather than entire boxes being returned intact), but she cannot identify the specific items or documents returned.
- c. As for the boxes of documents that the FBI retained and did not place into exhibit folders for trial, the Agents removed and reorganized the documents contained in those boxes in various ways, *without employing any method to track the original source of the documents*. For example, the Agents may have grouped all bank statements together so that they no longer maintained the statements in the original boxes based on their sources. As a result, neither the source nor the authenticity of the various documents can be determined. Nor can one determine whether or to what extent documents may have been removed from the boxes.

40. Ms. Hendrickson explained this was the best she could do under the circumstances, and repeated that: "What's done is done."

41. Thus, the Government knowingly and willfully reorganized the documents, but did so only after it meticulously identified and preserved the integrity and chain of custody of the specific documents they intend to rely on at trial.

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42. The defense team continued to review the boxes in numerical order during the time remaining on November 13, and 14, 2008, to determine the extent of the damage caused by the Government's actions. Of the boxes the team was able to review during that time, the team continued to discover misplaced and missing documents.
43. The defense team returned to the FBI offices on January 26, 2009 and continued its document review through January 29, 2009. Agents Petri and Bell returned to St. Thomas from their United States Places of Duty to monitor the review with Agent Zieba.
44. Attorney Hendrickson was not present. In a telephone conversation with Randall Andreozzi, Mr. Andreozzi advised Ms. Hendrickson that the defense planned to continue to review the boxes in numerical order from where it left off in November. He asked Ms. Hendrickson whether the Government Agents had reorganized the documents since the defense team's last review. Ms. Hendrickson informed Mr. Andreozzi that the Government had not reorganized the documents since the defense team last reviewed them in November 2008. She refused to comment on whether the Agents did anything to affect the integrity of the boxes of documents the defense team had yet to review.
45. At various points during the course of the document review, Mr. Petri informed the defense team that they were misinformed if they believed the documents seized and maintained by the government belonged to the defendants. Mr. Petri stated that the documents belonged to the Government, and that he would do with them as he pleased. He informed the team that he and other Agents rearranged and removed documents from the boxes and that the Agents were within their rights to do so.

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46. Mr. Petri also stated that he selected certain documents in the various boxes to be bates stamped based on whether the Government intended to use them at trial. This is how he determined which documents got bates stamped and which did not.

47. Mr. Andreozzi asked Mr. Petri whether he would return the documents that the Government did not intend to use at trial. Mr. Petri refused, stating that the remaining documents were nonetheless relevant to the case.

48. The team concluded its review of the integrity of the boxes on January 29, 2009, and continued to find that some boxes were entirely missing, some boxes were re-numbered, and numerous documents (most non-bates stamped) identified in the defense team's initial inventory were now missing from the boxes. The team also observed that several boxes now bore numbers that the Government previously identified as having been returned to the Defendants in 2006.

III. Consequences of the Government's Actions

49. The Government seized and then held the Defendants' documents for seven years. Before shuffling and rearranging the documents it held, the Government prepared its case for trial. The FBI Agents bates stamped the documents the Government intended to use to support its case. They carefully and meticulously removed each and every document the prosecutors identified for use at trial, encased each document in a plastic binding, organized it in an evidentiary file, and identified its source by inserting FBI evidence return documents as placeholders for the original documents in the source Exhibit boxes. Through this process, the Government endeavored to ensure the integrity, sourcing and authenticity of the documents, thereby protecting its ability to establish the admissibility and probative value of each document it intends to use at trial to support its case.

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50. With respect to the remaining documents, instead of returning them to the Defendants, the Government kept them and willfully proceeded to reorganize and shuffle them. Because most of these documents are not bates stamped, they cannot be returned to their original boxes.
51. The Government could have returned these documents to the Defendants. In fact, the Government has returned some boxes of documents to the Defendants, presumably on the presumption that such documents were not pertinent to the case. Yet, the Government has affirmatively elected to retain the remaining documents and then to shuffle and reorganize them.
52. The Defendants and the Court may never know all of the documents that may have been lost or destroyed by the Government's conduct. However, some aspects of the harm caused can be articulated and evaluated with some specificity:
- a. The defense can no longer establish or contest the authenticity of the non-bates stamped documents.
 - b. The defense can no longer establish or contest the source of the non-bates stamped documents.
 - c. The Defendants have been completely deprived of their ability to cross-examine the government's witnesses at trial with respect to any of the non-bates stamped documents, thus seriously impairing their Sixth Amendment rights.
 - d. Defendants can no longer establish or contest whether any particular individual had access to a particular non-bates stamped document, challenge a witnesses' knowledge of the contents of or existence of a particular document, or question their reliance on a particular documents. The resulting harm is infinite.

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e. The Defendants can no longer establish or contest whether all documents pertinent to this case are accounted for. Therefore, admission of any single item of evidence may violate the rule of completeness.

f. Defendants can no longer determine whether certain documents may have been procured by the Government solely through improper means (*see*, for example, Defendants' motion regarding foreign bank records) or whether such documents may have been procured from other proper sources or means. Further, now that the source of the documents is undeterminable, the Defendants may lose the ability to invoke the protection of the attorney-client privilege with respect to privileged communications seized from their offices.

53. These issues represent only some of the potential harm caused by the Government's actions:

IV. Argument and Grounds for Relief

54. The events recited above illustrate that the Government intentionally seized possession of the Defendants' property and painstakingly preserved the integrity of select portions of that property that it intended to use at trial to support its case. Instead of returning the rest of the Defendants' property to them, it kept it, and then knowingly and willfully manipulated the organization of those documents. In this manner, the Government irreparably compromised the integrity of documents it knew to be relevant to the case but not favorable to its case in chief. Since most of these documents are not bates stamped, the damage caused by the Government cannot be remedied by any reasonably available means.

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55. These actions are simply a continuation of the consistent and methodical bad faith exhibited by the Government throughout this case as illustrated to the Court in the various pending and resolved motions, all of which the Defendants incorporate herein by reference.
56. Government counsel and Agents acknowledge what has occurred, and respond only with the statement, "What's done is done."
57. As enumerated herein, the Government's actions severely impair the Defendants' ability to defend against the Indictment, thereby depriving the Defendants of their Constitutional right to due process of law.
58. In *United Medical Supply Company, Inc. v. United States*, 77 Fed. Cl. 257 (1997), the Court of Claims stressed the importance of preserving the integrity of documentary evidence:

Aside perhaps from perjury, no act serves to threaten the integrity of the judicial process more than the spoliation of evidence. Our adversarial process is designed to tolerate human failings – erring judges can be reversed, uncooperative counsel can be shepherded, and recalcitrant witnesses compelled to testify. But, when critical documents go missing, judges and litigants alike descend into a world of *ad hocery* and half measures – and our civil justice system suffers.... To guard against this, each party in litigation is solemnly bound to preserve potentially relevant evidence.

59. In criminal matters, the Government has a duty under the Due Process clause to preserve exculpatory evidence the admissibility and probative value of which cannot be replicated by other reasonably available means. *California v. Trombetta*, 467 U.S. 479 (1984)). If the Government, in bad faith, fails in this regard, it has violated the Defendant's constitutional due process rights. *Arizona v. Youngblood*, 488 U.S. 51 (1988). See also

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Griffin v. Spratt, 969 F.2d 16 (3d Cir. 1992); accord *Brady v. Maryland*, 373 U.S. 83 (1963).

60. In civil cases, an independent duty to preserve evidence arises when the party in possession of the evidence knows that litigation by the party seeking the evidence is pending or probable and the party in possession of the evidence can foresee the harm or prejudice that would be caused to the party seeking the evidence if the evidence were to be discarded. See *Joe Hand Promotions v. Sports Page Café*, 940 F. Supp. 102, 104 n13 (D.N.J. 1996); see also *Baliotis v. McNeil*, 870 F. Supp. 1285, 1290 (M.D.Pa. 1994). It is well recognized that tax evasion cases are inherently civil in nature. The prosecution must prove willful violation of the civil statute before a defendant can be held criminally liable for tax evasion. See *Sansone v. United States* 380 U.S. 343 (1965). Consequently, the Government in such a case has the duty to follow both the civil and criminal standards of evidence preservation.

61. Federal courts have recognized that a constitutional mandate against suppression of evidence imposes a duty upon prosecutors to instruct agencies to preserve evidence. See, e.g., *United States v. Henriquez*, 731 F.2d 131, 137-38 (2d Cir. 1984):

The government has long been on notice of its duty to preserve discoverable evidence and has been repeatedly warned of the jeopardy in which it places its prosecutions when it disregards this obligation.... Where, as here, destruction is deliberate, sanctions will normally follow, irrespective of the perpetrator's motivation, unless the Government "can bear the heavy burden of demonstrating that no prejudice resulted to the defendant."

(citing and quoting, *inter alia*, *United States v. Grammatikos*, 633 F.2d 1013, 1019 (2d Cir. 1980))

62. In *United States v. Yevakpor*, 419 F. Supp. 2d 242 (N.D.N.Y. 2006), the District Court for the Northern District of New York held the Government's destruction of evidence must

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be remedied by the exclusion of the evidence, and subsequently dismissed the case. The Court admonished the prosecutor for failing to meet its affirmative duty to preserve evidence.

63. The Government's duty "covers not only exculpatory material, but also information that could be used to impeach a key government witness." *United States v. Coppa*, 267 F.3d 132, 135 (2d Cir. 2001) (citing *Giglio v. United States*, 405 U.S. 150, 154, (1972)).

64. In the instant case, the Government seized the exculpatory evidence from the Defendants' possession. In doing so, the Government took on a duty to preserve the evidence in its custody. The question of whether shuffling and removing documents from the boxes would prejudice the Defendants was not within the Government's authority to evaluate. The seizure warrants merely gave the Government authority to retain temporary possession of the evidence. It surely did not shift title and did not authorize the destruction of the organization, integrity and sourcing of the evidence.

65. At a minimum the Government has a duty to follow its own procedures for preserving evidence. *Cf. California v. Trombetta*, 467 U.S. 479 (1984)) (holding no bad faith where the Government's actions were in accord with its normal practice and procedures). Such is not the case here.

66. The Internal Revenue Service's Criminal Investigation Manual sets forth the following procedure to employ in implementing search warrants:

I.R.M. 9.4.9.3.6 Post-Operation Search Warrant Procedures

1. Following the execution of the search warrant, the special agent, pursuant to Fed. R. Crim. P. R-41, will return the search warrant, with an inventory of the items seized, to the issuing magistrate. This return must be done within 10-days of executing the search warrant.
2. The special agent (team leader) will also prepare the Post Enforcement Operation Summary Form, (Exhibit 9.4.9-3), for each search warrant

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site, as soon as possible. This form is mandatory for all CI search warrants, not just tax, or tax-related search warrants.

3. Criminal Tax Counsel will be provided with a copy of the inventory to conduct a post search warrant inventory review for all search warrants obtained in Title 26 and tax-related Title 18 investigations. Criminal Tax Counsel will not conduct an inventory review for search warrants obtained in pure money laundering investigations.
4. A copy of the inventory will be given to the local AFC to ensure that required items are identified and properly inventoried on the Asset Forfeiture Tracking and Retrieval System (AFTRAK).

I.R.M. 9.4.9.3.6.1 Preserving the Chain of Custody

1. In order to preserve, in its original condition, all evidentiary material that may be offered into evidence, seized material such as records, recordings, videotapes, document, and other physical objects should be tracked so the custody and control of the evidence can be documented at all times....

67. The referenced Manual provisions admonish Special Agents to maintain the chain of custody and integrity of documents procured via search warrants. Agency policy mandates that Agents return seized items *as quickly as possible* and secure receipts for all returned items.

68. In the context of explaining the protocol for the defense team's review of the documents, the FBI Agents and prosecutor Hendrickson expressed their understanding of the importance of maintaining the organizational integrity of the documents seized.

69. The Agents never compiled an inventory of the specific items and documents seized in the October 2001 raid. Instead, they merely summarized documents they arranged in the various numbered boxes. They then destroyed the integrity of even this system by shuffling and rearranging documents.

70. Rather than promptly copying and returning the documents to the rightful owners, the Government deliberately held the property *for more than seven years*. It should have

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returned the documents to the rightful owners as mandated by its internal protocol, but chose not to. It elected to retain the documents, and then proceeded to shuffle and rearrange them so as to destroy their integrity, organization and sourcing.

71. The Government Agents and Counsel selectively followed this protocol when it suited their purpose, and ignored it when it did not. This demonstrates the government knowingly and deliberately violated its duty to preserve the subject evidence

72. During the November document review, the Government presented the boxes of documents to the defense team without revealing that the FBI Agents rearranged them. The FBI Agent did not reveal that she rearranged the documents until the team recognized the fact and confronted her with regard to the issue. Thus, had the defense team not discovered the problem, the Government would have led the defense to believe that the documents were never rearranged among the boxes. Since the box numbers tie to the source of the documents, the government would have misled the Defendants and the Court as to the sources of the rearranged documents. This is crucial since many of the government's allegations in this case involve concealment of information on the part of the Defendants.

73. Specifically, the Government charges Defendants with conspiracy, money laundering, and mail fraud based on allegations that they deliberately concealed alleged financial activity and transactions from others. Notwithstanding any other harms, the Government's conduct now prevents the Defendants from effectively establishing the source of documents, the individuals who may have had access to them, and whether any such "concealment" ever occurred.

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74. FBI Agents Zieba and Petri concede that they deliberately destroyed the organization of the seized documents because they were not ordered in a way that suited *their* needs. Regardless of the Agents' purported motivation, sanctions are appropriate since the actions prejudiced the Defendants.

75. The source and authenticity of the particular documents are critical to defense of the case. Consequently, the Defendants are prejudiced by the Agents' deliberate actions. Accordingly, sanctions are warranted. *Accord Kronish v. United States*, 150 F.3d 112, 126 (2d Cir. 1998); *West v. Goodyear Tire & Rubber Co.*, 167 F.3d 776 (2d Cir. 1999) ("It has long been the rule that spoliators should not benefit from their wrongdoing, as illustrated by that favorite maxim of the law, *omnia presumuntur contra spoliatorem*.").

76. The appropriateness and extent of sanctions depends upon a case-by-case assessment of (1) the Government's culpability for the loss, (2) a realistic appraisal of its significance when viewed in light of its nature, (3) its bearing upon critical issues in the case, and (4) the strength of the Government's untainted proof. *United States v. Grammatikos*, 633 F.2d 1013, 1019-20 (2d Cir. 1980). The Second Circuit is not alone in applying a balancing test to determine appropriate sanctions. *See United States v. Doty*, 714 F.2d 761, 764 (8th Cir. 1983); *United States v. Baca*, 687 F.2d 1356, 1359 (10th Cir. 1982); *United States v. Traylor*, 656 F.2d 1326, 1334 (9th Cir. 1981); *United States v. Picariello*, 568 F.2d 222, 227 (1st Cir. 1978); *Lovern v. United States*, 689 F. Supp. 569, 585 (E.D.Va. 1988); *United States v. Beall*, 581 F.Supp. 1457, 1467 (D.Md. 1984).

77. Sanctions can range from exclusion or suppression of the subject matter, granting a new trial, or dismissal of the indictment or the direction of a judgment or acquittal. *United States v. Miranda*, 526 F.2d 1319, 1324 n.4 (2d Cir. 1975). In *California v. Trombetta*,

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467 U.S. 479, 487 (1984), the Court wrote, "But when evidence has been destroyed in violation of the Constitution, the Court must choose between barring further prosecution or suppress[ion]."

78. In *United States v. Heath*, 147 F.Supp. 877 (D. Haw. 1957), the defendant was indicted on charges of tax evasion. Defendant filed two motions requesting that he be allowed to inspect documentary evidence he had turned over to the Internal Revenue Service. While in the hands of the Internal Revenue Service, the documentary evidence had been lost or destroyed. In light of the fact that the documents were necessary to defend the case, the court granted defendant's motion to dismiss the indictment on due process grounds.

79. Considering the nature of the instant case and the vast number of documents at issue, the materiality of those documents is obvious. The Government infringes upon Defendants' due process rights through its willful failure to preserve or return those documents. Accordingly, severe sanctions are warranted.

WHEREFORE, Defendants respectfully request that the Court in its discretion:

- (1) Dismiss the Third Superseding Indictment in its entirety;
- (2) Suppress all evidence seized and currently retained by the Government;
- (3) Adopt appropriate evidentiary rulings as to the authenticity, sources, and weight of the subject documents;
- (4) Adopt appropriate curative jury instructions explaining the government's actions and detailing the appropriate factual and evidentiary inferences the jurors should make as a result of the government's actions;

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- (5) Order that the Government compensate the Defendants for all attorneys' and expert fees incurred as a result of the Government's actions;
- (6) Order the government to return the Defendants' documents and/or
- (7) Grant any additional or alternative relief that the Court, in its discretion, deems appropriate.

DATED: February 5, 2009

Respectfully submitted,

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EXHIBIT 6

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

UNITED STATES OF AMERICA, and
GOVERNMENT OF THE VIRGIN ISLANDS,
Plaintiff,

v.

FATHI YUSUF MOHAMAD YUSUF,
aka Fathi Yusuf,
WALEED MOHAMMAD HAMED,
aka Wally Hamed,
WAHEED MOHAMMED HAMED,
aka Willie Hamed,
MAHER FATHI YUSUF,
aka Mike Yusuf,
ISAM MOHAMAD YOUSUF,
aka Sam Yousuf,
NEJEH FATHI YUSUF, and
UNITED CORPORATION
d/b/a Plaza Extra,
Defendants.

CRIMINAL NO. 2005-015

**GOVERNMENT'S RESPONSE TO DEFENDANT'S MOTION REPLY
MEMORANDUM IN SUPPORT OF THE MOTION FOR SPECIFIC RELIEF**

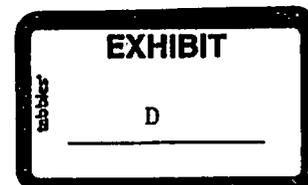
The United States of America and the Territory of the Virgin Islands, by and through its undersigned counsel, respectfully submits this response to Defendants' Reply to the Government's Response to Defendants' Motion for Specific Relief (No. 1076 – Mar. 17, 2009).

DISCUSSION

Defendants present numerous false allegations in their reply memorandum in support of their motion to dismiss. The government submits the attached declarations in support of its opposition to the motion.

The Third Circuit has adapted two Supreme Court cases to adopt a three-part test to

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analyze allegations of spoliation of evidence against the Government. See United States v. Jackman, 72 Fed. Appx. 862, 866 (3d Cir. 2003). The three threshold questions are: (1) did the government “act[] in bad faith when it destroyed the evidence,” (2) did the evidence “possess[] an apparent exculpatory value” at the time of loss or destruction, and (3) is the evidence “to some extent irreplaceable.” Id. (internal quotations omitted). The defendant has the burden to demonstrate to the court that all three questions are answered in the affirmative to successfully assert an evidence spoliation claim against the government. See Id. Defendants have not done so in their motion.

The first prong is taken from the Supreme Court’s holding in Arizona v. Youngblood, 488 U.S. 51 (1988). The Court stated that “unless a criminal defendant can show bad faith on the part of the police, failure to preserve potentially useful evidence does not constitute a denial of due process of law.” Id. at 58. The remaining two prongs were set out prior to Youngblood, in California v. Trombetta, 467 U.S. 479 (1984). The Court, in Trombetta, held that for evidence destruction to rise to the level of a constitutional deficiency, the evidence in question must have “an exculpatory value that was apparent before the evidence was destroyed, and be of such a nature that the defendant would be unable to obtain comparable evidence by other reasonably available means. Id. at 489. This inquiry turns heavily on the actual knowledge of the law enforcement officials, as to the exculpatory value of the evidence in question, prior to its loss or destruction.

Defendants have not shown that the government acted in bad faith. The government has made every effort to maintain and preserve the evidence. Indeed, any misplaced evidence may be the product of defendants’ review rather than government conduct.

DECLARATION OF SPECIAL AGENT THOMAS L. PETRI

I, Thomas L. Petri, make this declaration in support of the Government's Response to Defendants' Reply Memorandum in Support of the Motion for Specific Relief.

- 1 I am employed as a Special Agent of the Federal Bureau of Investigation. I have served in that capacity for 20 years. I am assigned to the Miami Field Office.
- 2 I was assigned to the St. Thomas office of the Federal Bureau of Investigation from 2000 through 2006. While stationed on St. Thomas, I was the lead case agent of the investigation of United Corporation, Fathi Yusuf, Maher Yusuf, NejeH Yusuf, Waleed Hamed, Waheed Hamed, and Isam Yousuf.
- 3 In the course of that investigation, the government obtained and executed search warrants. Those searches were conducted at numerous locations throughout the islands, including the Plaza Extra stores and the homes of the defendants.
- 4 Evidence seized during the course of those searches was placed in boxes. Numbers were placed on the boxes to maintain an order.
- 5 The seized evidence, as well as evidence obtained either consensually or through grand jury subpoenas, was stored at the upper building of the FBI office in St. Thomas.
- 6 During the course of the investigation, FBI agents maintained control over the evidence. It was stored in a conference room in the office. No other materials but the documents pertinent to the investigation were stored in that room.
- 7 In 2003, subsequent to the return of the indictment, counsel for defendants was afforded complete access to seized evidence. Attorney Robert King, the attorney then representing defendants, reviewed the discovery at the FBI office on St. Thomas. He and a team of approximately four or five individuals reviewed evidence for several weeks. They brought with them a copier and made many copies of documents.
- 8 In 2004, a different set of attorneys presently representing the defendants reviewed the evidence seized in the course of the execution of the search warrants. By my estimation, document review team included up to ten people at any one time. The defense team spent several weeks reviewing the evidence. They had with them at least one copier and one scanner with which they made numerous copies and images of the evidence.
- 9 During the 2004 review, the defense team was afforded unfettered access to discovery. They were permitted to review any box of documents at any time, including evidence seized during the searches, foreign bank records, documents obtained either consensually or by grand jury subpoena, and FBI Forms 302. The defense team pulled numerous boxes at one time with many different people reviewing different documents from different

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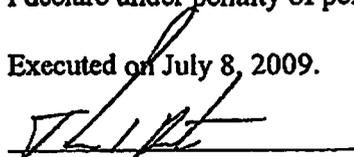
VERONICA HANDY, ESQUIRE
CLERK OF THE COURT

boxes.

- 10 Immediately following the defense team's departure from the FBI premises, I had occasion to obtain documents from boxes that had been reviewed by the defense team. I discovered that documents that originally had been placed in one box had been placed in a different box. I returned the documents to their original boxes. I cannot be certain that I was able to identify each instance where documents had been misfiled by the defense team.
- 11 During the document review in January 2009, Randall Andreozzi requested to review all documents obtained via subpoena. I explained to him that I could not produce all evidence at once. That evidence comprises approximately 40 boxes. I asked him for a specific list of documents, or category of documents that he wished to review. He declined to identify the records that he wished to review and did not pursue the matter.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on July 8, 2009.



Thomas L. Petri

Declaration of Special Agent Christine Zieba

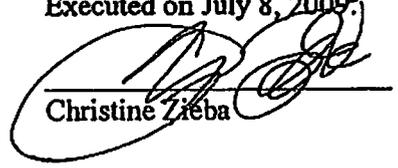
I, Christine Zieba, make this Declaration in support of the Government's Response to Defendants' Reply Memorandum in Support of the Motion for Specific Relief.

- 1 I am employed as a Special Agent of the Federal Bureau of Investigation. I have served in that capacity for approximately 5 years.
- 2 I am a case agent who is assigned to the St. Thomas office of the FBI. I have been assigned to assist the prosecution in United States v. Yusuf, 05-15 (D.V.I.).
- 3 I have been present at the review of documents conducted by counsel for defendants in the Yusuf matter.
- 4 The FBI office is comprised of two buildings, an upper building and a lower building. The two building are secured facilities. As part of their duties, the agents and support staff housed in the lower building possess classified and secret national security information.
- 5 The evidence obtained in the course of the investigation and prosecution of the defendants is stored in the lower building. The evidence is secured either in a locked storage room or in locked file cabinets in the secured work space.
- 6 By necessity, the defendants' document review has taken place at a long conference table in middle of the central work space. The desks of one agent and analyst are freely accessible from that central work space . The special agent and the analyst possess and utilize classified, secret, and grand jury information in their work spaces.
- 7 Given that FBI special agents and employees maintain classified, secret, and grand jury information in the lower building, it is not feasible to provide the defendants unfettered access to that space.
- 8 I memorialized my conversations with defense counsel as well as the events that transpired during the document review from November 8, 2008 through January 29, 2009. Those memoranda are attached to this declaration and incorporated as if fully set forth herein.
- 9 A process was put in place in order to ensure that evidence was not lost, misplaced or destroyed during the review process by defense counsel. Defense counsel were allowed to review one box at a time, and were allowed to handle the documents.
- 10 Despite this procedure, the defense team misplaced evidence. For example, the defense team reviewed a box of evidence and scanned documents contained within it. They then replaced the documents in the box and asked to review a different box of evidence.

Subsequent to the shelving of the original of the first box, it was discovered that the defense team had left a document on the scanner and had not returned it to the original box. The document was taken from one of the defense team and returned to the box from which it had been taken.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on July 8, 2009.



Christine Zieba

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RONICA HANDY, ESQUIRE
CLERK OF THE COURT

FD-302 (Rev. 10-6-95)

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FEDERAL BUREAU OF INVESTIGATION

Date of transcription 11/17/2008

SA Christine Zieba was informed by United States Department of Justice (DOJ) Tax Division Attorneys, Mark Daly and Lori Hendrickson that defense attorney's, representing defendants, in the captioned case needed to review specific items of evidence at some point during the week of November 10, 2008. Attorney Randall Andreozzi was to contact SA Zieba to set up a schedule, describe specifically what items of evidence needed to be reviewed, dates of arrival, length of time needed for review and other travel details.

By November 6, 2008, SA Zieba had not heard from the attorneys and sent an email to Randall P. Andreozzi;

[REDACTED] which asked Andreozzi to facsimile a letter describing specifically what items of evidence needed to be reviewed, dates of arrival, length of time needed for review and other travel details. On November 7, 2008, Andreozzi responded via email to SA Zieba, "We will be arriving on Monday morning around 9:00 AM. We plan on spending Monday, Wednesday, Thursday and Friday at the office. We plan to go through the exhibit boxes with attorneys and forensic accountants. We anticipate 5-6 people." At this point SA Zieba contacted Hendrickson and SA Thomas Petri (former case agent) to ask for assistance to clarify Andreozzi's request, Hendrickson and Petri left Andreozzi a message for further clarification, neither received a return telephone call. SA Zieba also left Andreozzi a message on his voicemail and provided a cellular telephone number which he could call at anytime. No facsimile, letter or further details were provided by Andreozzi.

On Saturday, November 08, 2008, at approximately 9:30 AM, attorney Andreozzi, called SA Zieba's cellular telephone. Andreozzi explained that he had planned to come to St. Thomas to review all of the evidence in the captioned case. SA Zieba explained that she had expected to hear from him to confirm details and had never received a letter specifying the items that needed to be reviewed or the exact dates requested. SA Zieba told Andreozzi that since the defense had copied all of the evidence in the case that Andreozzi needed to supply a letter specifying the items that needed to be reviewed, in order to facilitate a quick review of the evidence. At this point Andreozzi stated that the defense did not

Investigation on 11/08/2008 at St. Thomas, VI (telephonically)

File # 315S-SJ-38281 Date dictated N/A

by SA Christine Zieba

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VICTORIA HANDY, ESQUIRE
CLERK OF THE COURT

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315S-SJ-38281.

Continuation of FD-302 of Conversation with Randall Andreozzi , On 11/08/2008 , Page 2

have copies of all of the evidence and that during the time that the defense had to copy all of the evidence that they chose not to copy every item. SA Zieba explained that she was not aware that this was the procedure the attorneys chose. SA Zieba had been informed that discovery in the matter was complete and that the defense had copies of all of the evidence. Both parties discussed ways to review the documents and to make sure the defense had everything that they needed. During the conversation Andreozzi stated that some of his experts were new. At this point SA Zieba suggested that Andreozzi postpone his trip until they were able to figure out which items they believed they needed to copy, in order to make the trip more productive, since new experts would not be able to resolve the issue without having already reviewed the voluminous evidence copies that the defense already had. SA Zieba also stated that if Andreozzi could not figure out what he was missing that he may need to recopy all of the evidence but Andreozzi said he did not think that was necessary, since he had copied a majority of the evidence.

SA Zieba further explained that the FBI would not be able to accommodate 5-6 people in the FBI JTTF office space in order to review evidence and that evidence would need to be reviewed item by item. Andreozzi expressed concern for such a procedure and explained that he had been able to review the evidence in a different manner prior to November 08, 2008. SA Zieba explained that based on the circumstances provided that an expert and an attorney would be allowed to review the evidence. Andreozzi again expressed concern for the protocol described and explained that he also needed someone to scan items. SA Zieba agreed that three people could come into the office space to review and copy evidence. Andreozzi explained that he would still bring the group out but he would stagger their visits at the office. SA Zieba asked Andreozzi to call Hendrickson and Petri to further discuss ideas for the most efficient protocol to finish copying the evidence on November 10, 2008. SA Zieba told Andreozzi that the procedure may be able to change on November, 12, 2008, since Petri and Hendrickson would be present. Andreozzi was reminded that, Tuesday, November 11, 2008, was a federal holiday, Andreozzi acknowledged that no review on Tuesday was expected. SA Zieba repeated that although the defense was entitled to all of the evidence if they chose not to copy it then their time reviewing items needed to be limited as FBI space was not the proper place to discuss evidence with his experts. SA Zieba reminded Andreozzi, that if he had all of the evidence copied he could consult with experts openly and in his own space. At this point, Andreozzi

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suggested that all of the evidence could be returned to the defendant and SA Zieba explained that would not be possible. Both parties ended the conversation and agreed to meet on Monday, November 10, 2008, at 9:00 AM in the FBI JTTF office in St. Thomas, United States Virgin Islands (VI).

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RONICA HANDY, ESQUIRE
CLERK OF THE COURT

FD-302 (Rev. 10-6-95)

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FEDERAL BUREAU OF INVESTIGATION

Date of transcription 11/20/2008

On Monday, November 10, 2008, at approximately 10:15 AM,
attorney, Randall P. Andreozzi

Jose Ismael Marrero,

Tracy L. Marien,

Howard B. Epstein,

Theresa Lillian Robert Mains,

Ronald Eugene Wise,

arrived at the FBI JTTF office in St. Thomas.

SA Christine Zieba allowed Andreozzi into the office and asked the other individuals to remain in the lobby area. SA Zieba reminded Andreozzi that they had agreed that only three people would be reviewing evidence and they could only review one box of evidence at a time. Andreozzi was upset with the reviewing procedure described. SA Zieba asked if Andreozzi had called SA Thomas Petri or DOJ Tax Division attorney Lori Hendrickson to discuss an alternative procedures as SA Zieba had suggested, Andreozzi said he had not. SA Zieba further explained that the schedule would be 9:00 AM until 11:00 AM and 1:00 PM until 5:00 PM. At this point Andreozzi went to the lobby area and decided since it was already 10:45AM that his group would just return after lunch at 1:00PM.

At approximately 12:30 PM, Andreozzi called and stated the he decided that he was not going to return to review evidence, he did not want to "put SA Zieba on the spot" and that he would straighten things out on Wednesday when Hendrickson arrived. SA Zieba explained that there was no problem and he could come to review the evidence as described, however, Andreozzi decided not to return. SA Zieba explained that she would accommodate Andreozzi by staying later on Wednesday, Thursday or Friday, if requested in advance, in order to account for hours missed on Monday. SA Zieba further explained that Andreozzi should contact Hendrickson or Petri to discuss alternative evidence reviewing procedures, so as

Investigation on 11/10/2008 at St. Thomas, VI

3158-SJ-38281

N/A

File # _____

Date dictated _____

by SA Christine Zieba

04/21/2015

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BERNICA HANDY, ESQUIRE
CLERK OF THE COURT

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Continuation of FD-302 of Evidence Review, 11/10/2008 , On 11/10/2008 . Page 2

to not delay his review of the evidence on November 12, 2008. SA Zieba also explained that since more people would be present on Monday, more evidence may be accessible and more people may be allowed in the FBI JTTF office to review evidence. Both parties ended the conversation and agreed to meet on Wednesday, November 12, 2008, at 9:00 AM, in the FBI JTTF office in St. Thomas, United States Virgin Islands (VI).

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MONICA HANDY, ESQUIRE
CLERK OF THE COURT

FD-302 (Rev. 10-6-95)

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FEDERAL BUREAU OF INVESTIGATION

Date of transcription 11/20/2008

On Wednesday, November 12, 2008, at approximately 9:00 AM, attorney, Randall P. Andreozzi, Attorney,

Jose Ismael Marrero,

Tracy L. Marien,

Howard B. Epstein,

Eugene Berkeley Benton,

Theresa Lillian Robert Mains,

Ronald Eugene Wise,

arrived at the FBI JTTF office in St. Thomas, VI. Andreozzi spoke with DOJ Tax Division attorney Lori Hendrickson. At approximately 10:20 AM the individuals listed above began to review evidence. Boxes of evidence were pulled in random order since the defense attorneys had never provided a specific list of which items needed to be reviewed. The scanner that Andreozzi brought was damaged on the airplane and could not scan items, Andreozzi asked to put aside certain items to scan later, this request was accommodated and certain items were put aside. At approximately 11:45 AM the individuals took a lunch break, and agreed to return at 1:15 PM.

The individuals returned at approximately 1:30PM, with a new scanner. At one point, Andreozzi specifically asked for five items to review, SA Zieba tried to accommodate but since SA Zieba was the sole person pulling and monitoring evidence. SA Zieba explained to Andreozzi that unless provided with a list ahead of time, as requested, random boxes would be pulled. SA Zieba reminded Andreozzi that he had requested to see all items in evidence and decided not to provide a list ahead of time. Andreozzi also specifically requested that SA Thomas Petri (FBI), SA Javier Bell (IRS) and Hendrickson not assist in evidence review.

Investigation on 11/12/2008 at St. Thomas, VI

File # 315N-SJ-38281

Date dictated _____

by SA Christine Zieba

04/21/2015

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CLERK OF THE COURT

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Several times during the review Andreozzi asked questions on the way evidence was being provided. SA Zieba explained that the items were being randomly pulled based on his request to review all of the evidence and agreements made with Hendrickson. At one point Andreozzi asked if items have been moved by SA Zieba, SA Zieba explained that she had moved boxes around. Andreozzi also asked if SA Zieba could provide him with specific evidence and SA Zieba explained that if he requested evidence ahead of time that it could be reviewed. SA Zieba explained that this was the procedure that was anticipated until SA Zieba was told on November 8, 2008 that the defense planned to review all of the evidence. On another occasion Andreozzi became upset that Petri and Bell were in the evidence room.

Both parties agreed to meet on Thursday, November 13, 2008, at 9:00 AM, in the FBI JTTF office in St. Thomas, United States Virgin Islands (VI).

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FEDERAL BUREAU OF INVESTIGATION

Date of transcription 11/24/2008

On Thursday, November 13, 2008, at approximately 9:25 AM,
attorney, Randall P. Andreozzi, Attorney,

[REDACTED]
[REDACTED] Jose Ismael Marrero,
[REDACTED] Howard B. Epstein,
[REDACTED] Ronald J. Soluri,

arrived at the FBI JTTF office in St. Thomas, VI
to review evidence. Andreozzi asked to break at 12:30 PM instead
of 11:00AM and wanted to come back at 2:00PM, this request was
accomodated.

At approximately 2:40.PM, Marrero, Epstein, Theresa
Lillian Robert Mains,

[REDACTED]
[REDACTED] and Ronald Eugene Wise,

returned to the office to continue reviewing evidence. The
individuals requested to return at 10:00AM, Friday, November 14,
2008.

Investigation on 11/13/2008 at St Thomas, VI

File # 315S-SJ-38281

Date dictated N/A

by SA Christine Zieba

FD-302 (Rev. 10-6-95)

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FEDERAL BUREAU OF INVESTIGATION

Date of transcription 11/24/2008

On Friday, November 14, 2008, at approximately 10:30 AM,
Jose Ismael Marrero, [REDACTED]

[REDACTED] Howard B.
Epstein, [REDACTED]

(note: Epstein arrived at 10:00 AM and waited for the others to
arrive), Theresa Lillian Robert Mains, [REDACTED]

[REDACTED] Ronald Eugene Wise, [REDACTED] arrived
at the FBI JTTF office in St. Thomas, VI, to review and copy
evidence.

At 11:30 AM the individuals took a lunch break and agreed
to inform what time they were returning since they were not sure
who would be able to come. Randall P. Andreozzi, [REDACTED]
[REDACTED] Marrero, Mains and Wise
returned at 2:30 PM, without calling. An addition person was
present to scan however, the scanner was not utilized.

Investigation on 11/14/2008 at St. Thomas, VI
File # 315S-SJ-38281 Date dictated N/A
by SA Christine Zieba

FEDERAL BUREAU OF INVESTIGATION

Date of transcription 02/02/2009

On Monday, January 26, 2009, at approximately 9:20 AM,
attorney, Randall P. Andreozzi,

[REDACTED]
Jose Ismael Marrero,
[REDACTED]
Howard B. Epstein,
[REDACTED]
and Ronald Eugene Wise,
[REDACTED]
arrived at the FBI JTTF office in St. Thomas.

FBI SA Christine Zieba, SA Thomas Petri and IRS SA Javier Bell were present at various times during the day.

Andreozzi immediately questioned why Petri and Bell were present. SA Petri responded that both were involved in the investigation and trial preparation of the case. SA Petri further stated that himself and SA Bell will likely be associated with the case through trial.

Andreozzi stated that he was going outside to call the other attorneys. Andreozzi stated that he was unable to get a hold of the other attorneys and eventually began reviewing evidence.

SA Zieba asked the individuals where they wanted to start, SA Zieba was told that they left off at box 254.

Individuals left at approximately 12:00 PM and agreed to return at 1:30 PM. At approximately 1:45 PM, the individuals returned.

SA Petri also explained that they could see any piece of evidence if they asked for it and he also asked if they started reviewing evidence where they had left off the last time.

Andreozzi left at approximately 4:00 PM and the other individuals left at approximately 5:00 PM. The individuals agreed to meet at 9:00 AM on Tuesday, January 27, 2009.

Investigation on 01/26/2009 at St. Thomas, VI

File # 315S-SJ-38281 Date dictated N/A

by SA Christine Zieba:cz

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CLERK OF THE COURT

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Agent note: The individuals were scheduled to review evidence from January 26th-January 29th. Agents had agreed to stay after normal business hours if requested in advance, the individuals never requested to stay later than 5:30 PM. Individuals did not have a scanner or copier machine.

FEDERAL BUREAU OF INVESTIGATION

Date of transcription 02/02/2009

On Tuesday, January 27, 2009, at approximately 9:15 AM, attorney, Randall P. Andreozzi,

[REDACTED]
[REDACTED] Jose Ismael Marrero,
[REDACTED] Howard B. Epstein,
[REDACTED] and Ronald Eugene Wise,
[REDACTED] arrived at the FBI JTF office in St. Thomas.

FBI SA Christine Zieba, SA Thomas Petri and IRS SA Javier Bell were present at various times during the day. The individuals continued reviewing evidence.

At one point during their review of documents, Epstein commented that "this is too much to write down," he then ignored a number of the documents and continued to another box. There were numerous occasions during the review that individuals were observed going through boxes and "red wells" at a rate they were obviously not able to identify the documents being reviewed. At one point, SA Petri commented to the individuals, specifically Epstein regarding the teams ability to actually inventory and review, Epstein simply smiled and continued.

Individuals left at approximately 11:40 PM. At approximately 1:15 PM, the individuals returned.

Individuals continued reviewing evidence. During their review SA Zieba was asked what the last box number was and about how many boxes from the number they were on until the last box number. At this point Andreozzi stated that they wanted to look at additional items after they finished. SA Zieba and Petri explained that they were told Andreozzi was only reviewing boxes of evidence collected from the search warrants. SA Zieba then asked Andreozzi to come up with a list of any additional items that they planned on reviewing.

Investigation on 01/27/2009 at St. Thomas, VI
File # 315S-SJ-38281 Date dictated N/A
by SA Christine Zieba:cz

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Continuation of FD-302 of Evidence Review , On 01/27/2009 , Page 2

The individuals list of documents that they wanted to review prior to their departure, included:

1. All documents secured from Jordan entities
2. All documents secured from St. Martin entities.
3. All documents secured from CPA or tax preparer.
4. All other documents secured through Grand Jury or government subpoena.
5. All documents secured from third parties through contacts or communications other than subpoena.
6. CTR and SAR Reports.
7. Report of analysis of seized computers.

SA Petri again asked if the defense was comfortable that they reviewed all of the search warrant evidence and reminded them that he thought they may have missed boxes.

The individuals agreed to meet at 9:00 AM on Wednesday, January 28, 2009. Individuals left at approximately 5:00 PM.

Agent note: The individuals were scheduled to review evidence from January 26th-January 29th. Agents had agreed to stay after normal business hours if requested in advance, the individuals never requested to stay later than 5:30 PM. Individuals did not have a scanner or copier machine.

SUPERIOR COURT
OF THE VIRGIN ISLANDS
JAN 28 2009

04/21/2015

VENONICA HANDY, ESQUIRE
CLERK OF THE COURT

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FEDERAL BUREAU OF INVESTIGATION

Date of transcription 02/02/2009

On Wednesday, January 28, 2009, at approximately 9:15 AM,
attorney, Randall P. Andreozzi, [REDACTED]

[REDACTED]
[REDACTED] Jose Ismael Marrero,
[REDACTED] Howard B. Epstein,
[REDACTED] Ronald Eugene Wise,
[REDACTED] arrived at the FBI JTTF office in St. Thomas.

FBI SA Christine Zieba and IRS SA Javier Bell were present at various times during the day.

After the individuals arrived they spent approximately 30 minutes reviewing lists and going through their computers before they addressed reviewing evidence and started their review.

In response to their list, CPA/tax preparer evidence was brought for the defense to review.

The individuals also asked to go back and review additional search warrant locations items that they missed, because they had trouble figuring out where they left off from their lists.

Individuals left at approximately 11:30 PM. At approximately 1:30 PM, the individuals returned.

The individuals later began reviewing foreign records, during their review Andreozzi told SA Bell that he needed to copy a document for the defense immediately and that he was not leaving without it. SA Zieba and SA Bell explained that they would not be making any copies for the individuals and reminded them that they were free to bring a scanner/printer along with them but chose not to.

At that point Andreozzi demanded that DOJ Tax Division Attorney Lori Hendrickson be called. Agents assisted Andreozzi in

Investigation on 01/28/2009 at St. Thomas, VI
File # 315S-SJ-38281 Date dictated N/A
by SA Christine Zieba:cz

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CLERK OF THE COURT

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contacting Hendrickson to resolve that issue and the other questions asked during the day.

During the review Andreozzi asked if the records had been translated, SA Zieba told Andreozzi that he should speak to DOJ Tax Attorney Lori Hendrickson if he had questions. On another occasion Andreozzi asked if certain markings on the documents were from the bank or the government, again SA Zieba asked Andreozzi to direct all questions to Hendrickson. Andreozzi wanted to get in contact with Hendrickson, who was on leave and SA Zieba asked that he get several question together before disturbing Hendrickson.

Individuals later specifically requested copies of various documents, including:

100 page Banking Commission Report
12 page document dated May 14, 2003
Bank records in the name of Sami Al-Yousef

The individuals agreed to meet at 9:00 AM on Thursday, January 29, 2009. Epstein left at approximately 4:30 PM and the other individuals left at approximately 4:45 PM.

Agent note: The individuals were scheduled to review evidence from January 26th-January 29th. Agents had agreed to stay after normal business hours if requested in advance, the individuals never requested to stay later than 5:30 PM. Individuals did not have a scanner or copier machine.

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VERONICA HANDY, ESQUIRE
CLERK OF THE COURT

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FEDERAL BUREAU OF INVESTIGATION

Date of transcription 02/02/2009

On Thursday, January 29, 2009, at approximately 10:40 AM,
attorney, Randall P. Andreozzi,

Jose Ismael Marrero,

Howard B. Epstein,

and Ronald Eugene Wise

At approximately 10:15 AM SA Bell arrived at the JTTF office and stated that he ran into the individuals at the Marriott Hotel around 9:25 AM and that they told him they would see him later at the JTTF office. SA Zieba was about to leave the office after waiting all morning, when the individuals finally arrived at approximately 10:40 AM. Andreozzi had SA Zieba's contact telephone number and cellular telephone number. SA Zieba never received any calls, messages or emails from Andreozzi.

Andreozzi explained that he was to get copies of all of the foreign bank records. SA Zieba explained that Hendrickson had said that they could review the documents but the FBI was not photocopying materials for the individuals. Andreozzi immediately demanded to speak to Lori Hendrickson, and SA Zieba said that she was still on leave and could be contacted later after Andreozzi put all of his questions together. Andreozzi again demanded that Hendrickson be called or an emergency motion needed to be filed, SA Zieba explained that since the individuals wanted to continue reviewing evidence that he could call her later when he had all of his questions together, rather than repeatedly calling Hendrickson while on her leave. At this point Andreozzi explained that someone else (not reviewing evidence) would be drafting an emergency motion, SA Zieba explained that she misunderstood Andreozzi about the urgency of his request since he was staying to review evidence and then got Andreozzi in contact with Hendrickson. Andreozzi insisted that the FBI should copy several documents for Andreozzi and that it would only take a few minutes to copy the documents. After both parties spoke to Hendrickson, SA Zieba reiterated that

Investigation on 01/29/2009 at St. Thomas, VI

File # 315S-SJ-38281

Date dictated N/A

by SA Christine Zieba:cz

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Continuation of FD-302 of Evidence Review, On 01/29/2009, Page 2

the individuals could review any of the documents but the FBI would not be copying the documents for Andreozzi at that time.

The other individuals then explained that they had given the wrong number that they wanted to start reviewing on Monday and that they now wanted to go back and review additional search warrant location evidence. At this point they asked to start with box 185 and go up to 254, SA Zieba reminded them that they should look at where they left off on November 14, 2008. The individuals went back to their lists and at 11:20 AM they asked to see evidence that was in boxes 136-142, then asked for 145, SA Zieba repeated the suggestion that they start where they left off on November 14, 2008 and go up to 254, they repeated that after 136-142 that they wanted 145-184. SA Zieba asked if they were certain that those were the numbers that they wanted to review and they confirmed that those were the numbers they wanted to review. During the time they were trying to determine a start location the individuals referred to several different lists. The individuals also brought a list which they later took back that had several additional numbers on it.

At 11:50 AM, SA Zieba asked if they wanted to see the foreign documents again and they declined.

The individuals left at approximately 12:00 PM. At approximately 1:30PM, Andreozzi, Marrero, Epstein, Wise and Alice Andreozzi, [REDACTED] arrived at the FBI JTTF office in St. Thomas. The individuals brought a scanner/copier.

SA Zieba pulled some evidence for the individuals, as they requested. The individuals continued reviewing evidence while setting up the printer. At approximately 2:15 PM, Andreozzi asked SA Zieba to get the foreign records out to copy. SA Zieba started to collect the evidence that was being reviewed, Andreozzi then insisted that the different evidence be copied and reviewed at the same time. SA Zieba explained that they could either copy one set or review the other set. Andreozzi chose to copy the foreign records, but demanded to speak to Hendrickson again (who was out of the office on leave). SA Zieba explained that he could call Hendrickson any time he wanted, but SA Zieba was not going to disturb Hendrickson again. Andreozzi also told SA Zieba that she could use SA Bell's assistance so they could pull multiple items. During this time SA Bell was in an office on a conference telephone

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FD-302a (Rev. 10-6-95)

VERONICA HANDY, ESQUIRE
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315S-SJ-38281

Continuation of FD-302 of Evidence Review, On 01/29/2009, Page 3

call. At 2:25 PM they began photocopying the foreign records. The items that the individuals were copying were the same items that Andreozzi told Hendrickson would take Agents three minutes to copy for him. The individuals copied and scanned the records until they departed.

The individuals scanned/copied the 100 page Banking Commission Report, 12 page document date May 14, 2003 (these documents were requested on January 28, 2009 to be copied) and additional documents. They did not scan/copy the bank records in the name Sami Al-Yousef.

Epstein departed at approximately 3:00 PM. The other individuals departed at approximately 5:40 PM.

Agent note: The individuals were scheduled to review evidence from January 26th-January 29th. Agents had agreed to stay after normal business hours if requested in advance, the individuals never requested in advance to stay later than 5:30 PM.

EXHIBIT 7

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in each box.

Since 2001, the Government has returned some of the boxes of seized document. The remaining documents have been retained in the FBI offices in St. Thomas, Virgin Islands.

The Government used a bates numbering system for certain documents within certain boxes. The bates numbering contained prefixes that were indexed to the numbers and bar codes on the boxes. Many of Defendants' documents were not given bates number. However, all of the documents the Government intends to use at trial do have bates numbers.

~~The Government never provided the Defendants with a detailed inventory of the specific documents seized. The Government has only permitted the Defendants limited review of the evidence under supervision which often involves oversight by Government agents involved in investigating this case.~~

Several years ago the defense team prepared a general inventory of the groupings of documents and scanned pertinent documents. During their November 2008 document review, the defense team realized that the documents were not in the same order that they had been initially. The Government had reorganized and rearranged the Defendants' documents by removing some documents from the initial original boxes and placing them in different boxes to suit the Government's needs.

The new system of organization is not apparent to the Defendants. The Government has not provided Defendants with any means of tracing the unnumbered documents to the locations from which they were seized within their businesses and homes.

Without a complete set of documents for their unlimited review, the defense team cannot determine the extent of harm, if any, that the Government's rearrangement of the documents has

EXHIBIT 8

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

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

v.

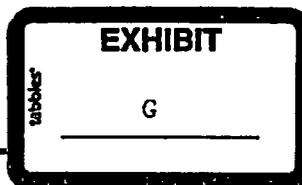
**FATHI YUSUF MOHAMAD YUSUF,
aka Fathi Yusuf,
WALEED MOHAMMAD HAMED,
aka Wally Hamed,
WAHEED MOHAMMED HAMED,
aka Willie Hamed,
MAHER FATHI YUSUF,
aka Mike Yusuf,
ISAM MOHAMAD YOUSUF,
aka Sam Yousuf,
NEJEH FATHI YUSUF, and
UNITED CORPORATION
d/b/a Plaza Extra,
Defendants.**

CRIMINAL NO. 2005-015

**GOVERNMENT’S MOTION TO RECONSIDER ORDER GRANTING
DEFENDANT’S MOTION FOR SPECIFIC RELIEF**

The Government respectfully requests that the Court reconsider its order dated July 16, 2009 (docket no. 1152, hereafter, the “July 16 Order”) granting Defendant’s motion for specific relief. Specifically, the Government asks (i) that Defendants be ordered to provide an index or other substantiation of the documents claimed to be missing and that the Government only be ordered to reproduce those documents; or (ii) in the alternative, that Defendants bear the reproduction costs to be incurred under the July 16 Order. In support of this motion, the Government states the following:

1. The Government has begun the process of complying with this Court’s order to provide a duplicate set of all seized documents and all discoverable documents



4512749.1

obtained in the investigation from third parties. After coordinating with the Government's contracting staff, who in turn have consulted outside vendors, the Government estimates that the cost to duplicate, image, and produce the documents will be no less than \$125,000. The Government has been advised that the cost could be substantially higher, depending on the number of documents that are of non-standard size. The timeframe for completion of this effort is expected to be approximately three to four months. The Government believes that the burden imposed by the July 16 Order meets the standard of clear error or manifest injustice under LRCi 7.3(3).

2. The Government respectfully submits that the July 16 Order was premised in part upon certain incorrect findings. First, the Government has not afforded Defendants only limited review of the discovery in this case. [July 16 Order, p. 2, 3rd full ¶] To the contrary, during 2003 and 2004, the Government made full discovery in this case. [*Declaration of Thomas L. Petri*, ¶¶ 7-9 (docket no. 1148-2, hereafter, "Petri Declaration")] Second, the Government has not failed to provide an index to Defendants. [July 16 Order, p. 2, 3rd full ¶] In 2004, the Government provided an index of approximately 26,000 documents, which previously had been produced to Defendants in electronic form and identified by the Government as particularly relevant to the investigation. [Exhibit A, Letter dated April 20, 2004 to Gordon C. Rhea, Esquire]

3. In late 2008 and early 2009, defense counsel requested additional review of the discovery in this case, and the Government complied with the request, as it had on certain other occasions between 2004 and late 2008. Although the Government believed that Defendants had all of the relevant documents in their possession, given that defense counsel had brought reproduction equipment with them to the initial document review

[Petri Declaration, ¶¶ 7-8], the Government made the discovery available, subject to reasonable notice in light of the logistics of providing such voluminous discovery.

During the review in late 2008 and early 2009, FBI agents specifically told defense counsel that they could review any document, as long as they made a request.

[*Declaration of Christine Zieba* (docket no. 1148-3, hereafter, “Zieba Declaration”), Attachments, pp. 9, 12 (memoranda dated November 20, 2008 and February 2, 2009)]

4. During defense counsel’s review in late 2008 and early 2009, counsel claimed to not be able to locate documents described in an index that they previously created. Defendants have not alleged the loss or destruction of any particular document. Nor have defense counsel supplied the Court or the Government with any evidence of bad faith. In fact, defense counsel themselves may be partially responsible for the reorganization of the documents, based on observations of the FBI agents during the initial review in 2003 and 2004. [Petri Declaration, ¶¶ 9-10; Zieba Declaration, ¶ 10]

5. The Government has repeatedly asked Defendants to describe what documents they are unable to locate or to provide a copy of its index (or excerpt thereof) to the Government so that any documents requested by Defendants can be retrieved. Defendants have refused to do so and have declined to cooperate in any effort to identify the documents that they claim are missing. [Government’s Response to Defendant’s Motion for Specific Relief, p. 3 (docket no. 1067)] The Government submits that it should only have to reproduce those documents that Defendants cannot identify.

6. Fed. R. Crim. P. 16 does not require the Government to perform a defendant’s copying or to incur a defendant’s copying costs. Rule 16(a)(1)(E) (Government must “permit the defendant to inspect and to copy or photograph” the

categories of documents subject to the rule). Although the Court has the authority to order copies, such authority is limited by a rule of reasonableness. *United States v Freedman*, 688 F.2d 1364, 1366-67 (11th Cir. 1982) (Rule 16 discovery “should be read and applied with a limitation of reasonableness . . . [w]here the defendant has in no way been prohibited from inspecting the particular documents and cannot demonstrate an undue hardship from this availability, he should not be permitted to transfer the cost of his discovery request to the government especially where, as in the instant case, the defendants are not indigent”; noting Fed. R. Crim. P. 2, which provides that the rules should be interpreted “to eliminate unjustifiable expense and delay”).

7. If the Court does not limit the reproduction of documents to those that Defendants claim to be missing, the Government asks that Defendants bear the reproduction costs to be incurred by the July 16 Order, particularly in light of their refusal to cooperate in identifying the documents claimed to be missing. There is no indication that Defendants are unable to bear such costs.

WHEREFORE, the Government respectfully requests that the Court reconsider the July 16 Order. Specifically, the Government asks (i) that Defendants be ordered to provide an index or other substantiation of the documents claimed to be missing and that the Government only be ordered to reproduce such documents; or (ii) in the alternative, that Defendants bear the reproduction costs to be incurred by the July 16 order.

Respectfully submitted,

PAUL A. MURPHY
UNITED STATES ATTORNEY

/s/Kevin C. Lombardi
ALPHONSO ANDREWS
Assistant U.S. Attorney
MARK F. DALY
LORI A. HENDRICKSON
KEVIN C. LOMBARDI
Trial Attorneys
U.S. Department of Justice
601 D Street, N.W.
Washington, D.C. 20004
Tel: (202) 514-5150
Fax: (202) 616-1786

Dated: August 14, 2009

CERTIFICATE OF SERVICE

I, Kevin C. Lombardi, certify that on August 14, 2009 the foregoing
GOVERNMENT'S MOTION TO RECONSIDER ORDER GRANTING
DEFENDANT'S MOTION FOR SPECIFIC RELIEF was served upon counsel of record
by filing the same through the ECF system.

/s/ Kevin C. Lombardi
Kevin C. Lombardi



U.S. Department of Justice
United States Attorney
District of the Virgin Islands

April 20, 2004

VIA FACSIMILE

Gordon C. Rhea, Esquire
Richardson, Patrick, Westbrook & Brickman, LLC
1037 Check Dawley Blvd., Suite 200
Mount Pleasant, South Carolina 29464

Re: United States v. Fathi Yusuf et al., Cr. No. 2003-147

Dear Counsel:

This letter responds to your request for an index of the materials on the CD-ROMs, labeled Discovery Discs 1-12, made available by the government on October 17, 2003 and March 24, 2004. The discs currently contain an index providing for each document (1) the bates range; (2) the date; and (3) the type of record. You have inquired whether the government has a detailed index providing a description of each document.

In connection with this case, the government prepared a description of each of the documents in the database ("the index"). In order to expedite the disposition of this case, the government will make the index available to your client under the following conditions.¹ First, your client may use neither the index nor any information from the index in any way in any proceeding in which the government is a party, such as at trial and during any pre-trial matter, including but not limited to using the index as evidence or an exhibit, or displaying or describing the index to a witness, the judge, or jury for any purpose. Second, production of the index in no way constitutes a waiver of the work product doctrine with respect to the index or any other materials, and your client may not rely on the production of this index as a basis upon which to claim that a waiver has occurred or to seek additional materials or information from the government. Third, upon request of the government, your client will return all or a portion of the index, including any copies of the index. Fourth, the index may not be shared with any other third party unless the third party agrees in writing to all terms in this letter, which writing is provided to the government before the materials are shared. Fifth, the descriptions on the index do not in any way bind the government with respect to the description of those items in any proceeding in this matter, and the index may not be used in any way to challenge the government's description of an

¹ As used in this letter, "your client" includes the individuals and entities you represent as well as counsel, investigators and any other agents of your client or counsel.

04/21/2015

04/20/04 10:02 FAX 202 514 0961 SCES

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2003
VERONICA HANDY, ESQUIRE
CLERK OF THE COURT

- 2 -

proceeding in this matter, and the index may not be used in any way to challenge the government's description of an item in any proceeding.

If these conditions are acceptable, please sign below and return a signed copy. Please call me with any questions at 202/353-7517.

Yours sincerely,

DAVID M. NISSMAN
UNITED STATES ATTORNEY

By: Michael Pauze
MICHAEL R. PAUZÉ
Trial Attorney

AGREED TO:

Gordon C. Rhea
Gordon C. Rhea, Esquire
Counsel for Waleed Hamed and
United Corporation

5/3/04
Date

04/21/2015

VERONICA HANDY, ESQUIRE
CLERK OF THE COURT

AGREED TO:

Robert King (with consent)
Robert King, Esquire
Attorney for Fathi Yusuf Mohammad Yusuf

Dated: 5/4/04

Jack Dema (with permission)
John K. Dema, Esquire
Attorney for Maher Fathi Yusuf

Dated: 5/3/04

Derek Hodge (with consent)
Derek M. Hodge, Esquire
Attorney for Nejeah Fathi Yusuf

Dated: 5/3/04

Leonard Francis (with consent)
Leonard B. Francis, Jr., Esquire
Attorney for Waheed Mohammed Hamed

Dated: 5/3/04

EXHIBIT 9

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

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

vs.

FATHI YUSUF MOHAMAD YUSUF,
aka Fathi Yusuf
WALEED MOHAMMAD HAMED,
aka Wally Hamed
WAHEED MOHOMMAD HAMED,
aka Willie Hamed
MAHER FATHI YUSUF,
aka Mike Yusuf
NEJEH FATHI YUSUF
ISAM YUSUF, and
UNITED CORPORATION,
dba Plaza Extra,
Defendants.

CRIMINAL NO. 2005-15F/B

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

PLEA AGREEMENT

I.

INTRODUCTION

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

The parties agree to the following terms:

**EXHIBIT
9**



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

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

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

II.

NATURE OF THE OFFENSE

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

A. Elements

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

B. Elements Understood and Admitted.

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

C. Factual Basis.

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

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

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

III.

PENALTIES

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

1. A maximum fine of \$5,000;
2. The Government may seek costs of prosecution, including but not limited to 1) costs incurred to produce discovery in the investigation and prosecution of this matter; 2) costs incurred by the United States Marshal's Service to monitor the operations of Defendant United pursuant to the Temporary Restraining Order, currently estimated at approximately \$1.5 million; and 3) costs related to witness appearance and travel fees in the investigation and prosecution of this matter. United reserves the right to object to the imposition of the aforementioned costs and to contest the amounts claimed by the Government.
3. Restitution in an amount that represents any and all unpaid gross receipts taxes, corporate income taxes, and individual income taxes owing to the VIBIR for the Indictment years 1996, 1997, 1998, 1999, 2000, and 2001. Said restitution is to be determined by the Court in accordance with the figures and ranges set forth in Exhibit 1, accepting as proven those figures stipulated by the parties. For those numbers still in dispute, the Court will determine the appropriate amount within the ranges proposed by the parties in Exhibit 1, following briefing, evidentiary presentation, and argument. In making its

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

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

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

IV.

WAIVER OF TRIAL RIGHTS

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

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

V.

UNITED'S REPRESENTATION THAT GUILTY PLEA IS KNOWING
AND VOLUNTARY

United represents that:

A. United has had a full opportunity to discuss all the facts and circumstances of this case with its counsel and has a clear understanding of the charges and the consequences of pleading guilty;

B. No one has made any promises or offered any rewards in return for United's guilty plea, other than those contained in this Plea Agreement, in Exhibit 2, which contains the letter of understanding dated February 12, 2010 (this plea agreement controls in the event of any conflicts), or otherwise disclosed to the Court;

C. No one has threatened United to induce this guilty plea; and

D. United is pleading guilty because in truth and in fact United *is* guilty and for no other reason.

VI.

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

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

VII.

PLEA AGREEMENT SUBJECT TO COURT APPROVAL

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

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

VIII.

PARTIES' SENTENCING RECOMMENDATIONS

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

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

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

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

E. **Terms of Probation**

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

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

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

3. United shall submit to:

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

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

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

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

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

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

IX.

UNITED WAIVES APPEAL AND COLLATERAL ATTACK

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

X.

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

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

XI.

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

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

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

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

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

XII.

ENTIRE AGREEMENT

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

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

XIII.

MODIFICATION OF AGREEMENT MUST BE IN WRITING

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

XIV.

UNITED AND COUNSEL FULLY UNDERSTAND AGREEMENT

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

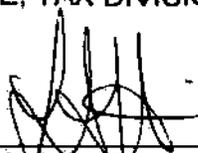
with appropriate officer and directors of United and that United fully understands its meanings and effect.

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

RONALD SHARPE
UNITED STATES ATTORNEY

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

Dated: 2/26/10



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

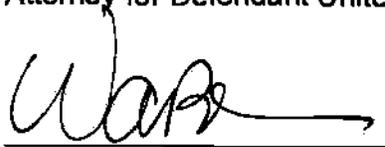
The defendant United Corporation agrees to the terms set forth in this Plea Agreement.

Dated: 2, 26/10



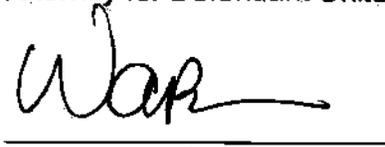
Thomas Alkon, Esq.
Attorney for Defendant United Corporation

Dated: 2/26/10

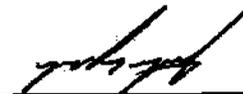


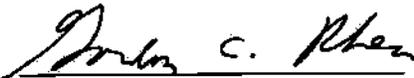
Warren B. Cole, Esq.
Attorney for Defendant United Corporation

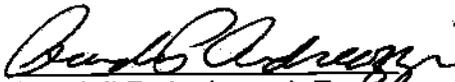
Dated: 2/26/10

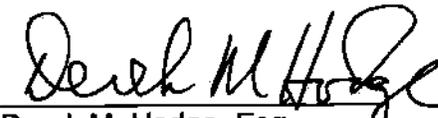


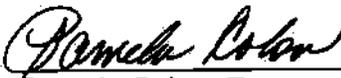
Warren B. Cole, Esq.
Attorney for Defendant's unindicted shareholders

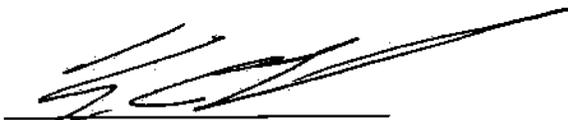
Dated: 2-26-10 
Maher Fathi Yusuf
President, Defendant United Corporation

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

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

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

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

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

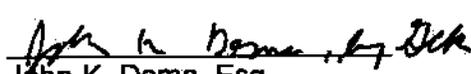
Dated: 2/26/10 
John K. Dema, Esq.
Attorney for Defendant Maher Fathi Yusuf

EXHIBIT I - RESTITUTION NUMBERS FOR TAX LOSS

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

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

Exh: 611 2

February 12, 2010

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

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

Dear Ms. Hendrickson:

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

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

HAMD247917

Letter of Agreement

February 12, 2010

Page 2 of 5

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

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

Letter of Agreement
February 12, 2010
Page 3 of 5

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

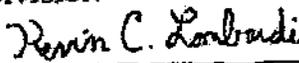
- Defendant United Corporation, the individual defendants, and the shareholders of United Corporation, all agree to file original individual income tax returns (or correcting amended returns, if appropriate) for the years 2002, 2003, 2004, 2005, 2006, 2007, and 2008, and provide any documentation or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

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

RONALD SHARPE
UNITED STATES ATTORNEY

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

Dated: 2/12/2010



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

Dated: 2/15/10



Claudette Watson Anderson
Director
Virgin Islands Bureau of Internal Revenue

Dated: 2/18/10

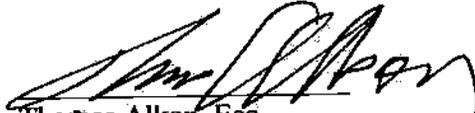


Denise George
Assistant Attorney General
Virgin Islands Department of Justice
Office of the Attorney General

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

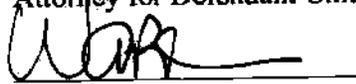
Letter of Agreement
February 12, 2010
Page 4 of 5

Dated: 2/26/10


Thomas Alkon, Esq.

Attorney for Defendant United Corporation

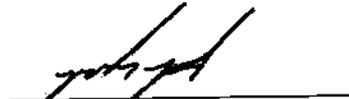
Dated: 2/26/10



Warren B. Cole, Esq.

Attorney for Defendant United Corporation

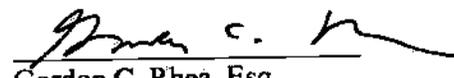
Dated: 2/26/10



MAHER FATHI YUSUF

President, Defendant United Corporation

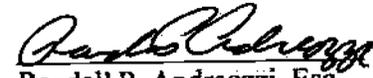
Dated: 2/26/10



Gordon C. Rhea, Esq.

Attorney for Defendant Waleed Mohammed Hamed

Dated: 2/26/10



Randall P. Andreozzi, Esq.

Attorney for Defendant Waleed Mohammed Hamed

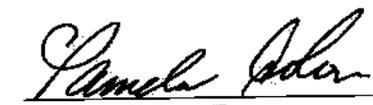
Dated: 2/26/10



Derek M. Hodge, Esq.

Attorney for Defendant Nejeah Fathi Yusuf

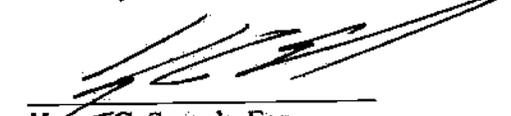
Dated: 2/26/10



Pamela Colon, Esq.

Attorney for Defendant Waheed Mohammed Hamed

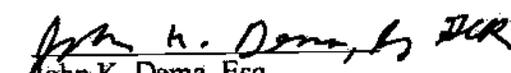
Dated: 2/26/10



Henry C. Smock, Esq.

Attorney for Defendant Fathi Yusuf Mohamad Yusuf

Dated: 2/26/10



John K. Dema, Esq.

Attorney for Defendant Maher Fathi Yusuf

EXHIBIT 10



U.S. Department of Justice

*United States Attorney
District of the Virgin Islands*

Ron de Lugo Federal Building & United States Courthouse

*5500 Veterans Drive, Suite 260
Charlotte Amalie
St. Thomas, Virgin Islands 00802-6424
Voice: (340)774-5757
Fax: (340)776-3474*

September 19, 2003

FOR IMMEDIATE RELEASE

OWNERS AND OPERATORS OF PLAZA EXTRA INDICTED ON FEDERAL CHARGES OF DEFRAUDING THE VIRGIN ISLANDS BY CONCEALING AND ILLEGALLY EXPORTING MILLIONS IN REVENUE

United States Attorney David Marshall Nissman and Special Agents in Charge, Patrick Daley of the Federal Bureau of Investigation and Brian Wimpling of the Internal Revenue Service, announced today that the federal Grand Jury returned a 76 Count Indictment naming as defendants Fathi Yusuf, 62, the owner of Plaza Extra; his son, Maher Yusuf, 38, who participated in the operation of the stores; two managers, brothers Waleed Hamed, 41, and Waheed Hamed, 38; Isam Yousuf, 51, a relative; and United Corporation, which does business as Plaza Extra supermarkets. The indictment charges federal and territorial offenses, including conspiracy, mail fraud, money laundering, structuring financial transactions, causing false individual and corporate income tax returns, tax evasion and operating a criminal enterprise. The indictment also indicates the government's intent to forfeit the contents of bank accounts, real estate, and the assets of United Corporation.

According to the indictment, between 1996 and 2001, Plaza Extra registered sales exceeding \$300 million. But the owners of the stores failed to report \$60 million in sales on tax returns filed with the Virgin Islands. According to the indictment, Fathi Yusuf, Waleed Hamed,

and Waheed Hamed directed employees to withhold cash sales from deposit into the company's bank accounts, thereby causing these cash sales to be omitted from Plaza Extra's gross receipts tax returns and corporate income tax returns which were filed with the Virgin Islands Bureau of Internal Revenue.

To disguise the unreported cash as legitimate appearing financial instruments, Fathi Yusuf, Waheed Hamed, and Maher Yusuf directed store employees to purchase bank checks with the unreported cash. The checks were purchased in names other than those of the conspirators, at different bank branches typically on the same day, and in amounts designed to evade federal record-keeping and reporting requirements. To further disguise the unreported cash, Waleed Hamed and Maher Yusuf also used the unreported currency to cash customers' checks.

According to the indictment, Fathi Yusuf and Waleed Hamed then compiled those and other checks purchased with unreported cash and transported the checks to Amman, Jordan, where they were deposited into accounts they controlled at the Cairo Amman Bank. The indictment alleges that on at least 14 different occasions between 1998 and 2000, Fathi Yusuf and Waleed Hamed transported hundreds of checks and sent wire transfers totaling millions of dollars to their accounts in Jordan. The indictment further alleges that Fathi Yusuf and Waleed Hamed smuggled millions of dollars of unreported cash from the Virgin Islands to the island of St. Martin, in the French West Indies, where the cash was deposited into bank accounts that they and Isam Yousuf controlled.

Finally, the indictment charges that Fathi Yusuf, Waleed Hamed, and Waheed Hamed filed false individual income tax returns that failed to report as income the cash and other funds that they diverted from Plaza Extra and transferred to bank accounts they controlled and used for

their personal benefit, including the construction of expensive residences in the Virgin Islands.

U.S. Attorney Nissman stated: “At a time when essential services to the people of the Virgin Islands are in jeopardy, it is critical that those who have deprived this community of millions of dollars in tax revenue be brought to justice and that their ill-gotten gains be recovered.”

Moreover, U.S. Attorney Nissman stated that this case also addresses the problem of money illegally leaving the Territory and the costs to the community associated with capital flight. “The federal law enforcement agencies are working diligently to shut down the flow of money illegally leaving the Virgin Islands and the United States. When citizens discover this type of activity, they should notify the FBI at 777-3363. An informed and involved citizenry is the best protection against criminal activity.”

This is the first indictment for violations of federal tax laws in the District of the Virgin Islands and was the result of a joint investigation by the Federal Bureau of Investigation and the Internal Revenue Service. This included the FBI’s Legal Attache Office in Bridgetown, Barbados, and elsewhere as well as the cooperation of numerous international partners to include the Netherlands Antilles and French West Indian governments. Nissman indicated that the case was also a product of close cooperation and coordination between his office and two other components of the Department of Justice, the Tax and Criminal Divisions. Lawyers from both Divisions have been instrumental in bringing this indictment to fruition. He emphasized that an indictment is merely a charging document and that, as in all criminal cases, the defendants are presumed innocent unless and until convicted in a court of law.

Penalties:

Conspiracy to commit mail fraud and to structure financial transactions carries a maximum penalty of five years imprisonment and a fine of \$250,000.

Conspiracy to launder money carries a maximum penalty of 20 years imprisonment and a fine of twice the value of the property involved in the laundering scheme.

Mail fraud, as charged, carries a maximum penalty of five years imprisonment and a fine of \$250,000.

Money laundering carries a maximum penalty of 20 years imprisonment and a fine of twice the value of the property involving in the laundering offense.

The federal charge of causing false tax returns carries a maximum penalty of three years imprisonment and a fine of \$100,000.

Structuring financial transactions as charged carries a maximum penalty of ten years imprisonment and a fine of \$500,000.

The Virgin Islands charge of conspiracy to evade taxes carries a maximum penalty of five years imprisonment and a fine of \$10,000.

The Virgin Islands charge of causing false tax returns carries a maximum penalty of three years imprisonment and a fine of \$5000.

The Virgin Islands charge of conspiracy to engage in a criminal enterprise and engaging in a criminal enterprise each carry a maximum penalty of 15 years imprisonment and a fine of three times the value of the property gained from the scheme.

Defendant and Charge Chart

Fathi Yusuf

Count	Statute	Description	Penalty
1	18 USC § 371	Conspiracy to commit wire fraud and to structure financial transactions	5 years \$250,000
2	18 USC § 1956(h)	Conspiracy to launder money	20 years 2x value of property involved in scheme
3-43	19 USC § 1341	Mail fraud	5 years \$250,000
44, 45, 49, 50	18 USC § 1956(a)(2)(B)(i)	Money laundering	20 years 2x value of property involved
55	33 VIC § 1522	Conspiracy to evade taxes	5 years \$10,000
56-60	33 VIC § 1525(2)	Causing false tax returns	3 years \$5000
61-65	26 USC § 7206(2)	Causing false tax returns	3 years \$100,000
75	14 VIC 605(a)	Conducting a criminal enterprise	15 years 3x value of property gained
76	14 VIC 605(d)	Conspiracy to conduct a criminal enterprise	15 years 3x value of property gained

Waleed Hamed

Count	Statute	Description	Penalty
1	18 USC § 371	Conspiracy to commit wire fraud and to structure financial transactions	5 years \$250,000
2	18 USC § 1956(h)	Conspiracy to launder money	20 years 2x value of property involved in scheme
3-43	19 USC § 1341	Mail fraud	5 years \$250,000
46, 47, 48, 51, 52	18 USC § 1956(a)(2)(B)(i)	Money laundering	20 years 2x value of property involved
55	33 VIC § 1522	Conspiracy to evade taxes	5 years \$10,000
56-60	33 VIC § 1525(2)	Causing false tax returns	3 years \$5000
66-70	26 USC § 7206(2)	Causing false tax returns	3 years \$100,000
75	14 VIC 605(a)	Conducting a criminal enterprise	15 years 3x value of property gained
76	14 VIC 605(d)	Conspiracy to conduct a criminal enterprise	15 years 3x value of property gained

Waheed Hamed

Count	Statute	Description	Penalty
1	18 USC § 371	Conspiracy to commit wire fraud and to structure financial transactions	5 years \$250,000
2	18 USC § 1956(h)	Conspiracy to launder money	20 years 2x value of property involved in scheme
3-43	19 USC § 1341	Mail fraud	5 years \$250,000
53	31 USC 5324(a)(3) and (d)(2)	Structuring financial transactions	10 years \$500,000
55	33 VIC § 1522	Conspiracy to evade taxes	5 years \$10,000
56-60	33 VIC § 1525(2)	Causing false tax returns	3 years \$5000
71-74	26 USC § 7206(2)	Causing false tax returns	3 years \$100,000
75	14 VIC 605(a)	Conducting a criminal enterprise	15 years 3x value of property gained
76	14 VIC 605(d)	Conspiracy to conduct a criminal enterprise	15 years 3x value of property gained

Maher Yusuf

Count	Statute	Description	Penalty
1	18 USC § 371	Conspiracy to commit wire fraud and to structure financial transactions	5 years \$250,000
2	18 USC § 1956(h)	Conspiracy to launder money	20 years 2x value of property involved in scheme
54	31 USC 5324(a)(3) and (d)(2)	Structuring financial transactions	10 years \$500,000

Isam Yousuf

Count	Statute	Description	Penalty
2	18 USC § 1956(h)	Conspiracy to launder money	20 years 2x value of property involved in scheme

United Corporation

Count	Statute	Description	Penalty
1	18 USC § 371	Conspiracy to commit wire fraud and to structure financial transactions	5 years \$250,000
2	18 USC § 1956(h)	Conspiracy to launder money	20 years 2x value of property involved in scheme
3-43	19 USC § 1341	Mail fraud	5 years \$250,000
55	33 VIC § 1522	Conspiracy to evade taxes	5 years \$10,000
56-60	33 VIC § 1525(2)	Causing false tax returns	3 years \$5000
75	14 VIC 605(a)	Conducting a criminal enterprise	15 years 3x value of property gained
76	14 VIC 605(d)	Conspiracy to conduct a criminal enterprise	15 years 3x value of property gained

List of Individuals Indicted

**Fathi Yusuf Mohamad Yusuf,
aka Fathi Yusuf**

**Waleed Mohammad Hamed,
aka Wally Hamed**

**Waheed Mohammed Hamed,
ask Willie Hamed,**

**Maher Fathi Yusuf,
aka Mike Yusuf**

**Isam Mohamad Yousuf,
aka Sam Yousuf**

**United Corporation,
dba Plaza Extra**

IN THE DISTRICT COURT OF THE VIRGIN ISLANDS
DIVISION OF ST. THOMAS AND ST. JOHN

UNITED STATES OF AMERICA, and
GOVERNMENT OF THE VIRGIN ISLANDS,
Plaintiff,

v.

FATHI YUSUF MOHAMAD YUSUF,
aka Fathi Yusuf,
WALEED MOHAMMAD HAMED,
aka Wally Hamed,
WAHEED MOHAMMED HAMED,
aka Willie Hamed,
MAHER FATHI YUSUF,
aka Mike Yusuf,
ISAM MOHAMAD YOUSUF,
aka Sam Yousuf, and
UNITED CORPORATION,
dba Plaza Extra,

Defendants.

INDICTMENT

CRIMINAL NO. 2003-147

18 U.S.C. § 371
CONSPIRACY TO COMMIT MAIL FRAUD
STRUCTURE FINANCIAL
TRANSACTIONS

18 U.S.C. § 1956(h)
CONSPIRACY TO LAUNDER MONEY

18 U.S.C. § 1341
MAIL FRAUD

18 U.S.C. § 1956(a)(2)(B)(i)
MONEY LAUNDERING

26 U.S.C. § 7206(2)
CAUSING FALSE TAX RETURNS

31 U.S.C. § 5324(a)(3)
STRUCTURING FINANCIAL
TRANSACTIONS

33 V.I.C. § 1522
CONSPIRACY TO EVADE TAXES

33 V.I.C. § 1525(2)
CAUSING FALSE TAX RETURNS

14 V.I.C. § 605(a)
ENGAGING IN A CRIMINAL ENTERPRISE

14 V.I.C. § 605(d)
CONSPIRACY TO ENGAGE IN A
CRIMINAL ENTERPRISE

18 U.S.C. § 982 & 21 U.S.C. § 853
ASSET FORFEITURE

14 V.I.C. § 606
ASSET FORFEITURE

SEP 18 10 12 AM '03

THE GRAND JURY CHARGES:

GENERAL ALLEGATIONS

At all times relevant to this Indictment:

A. Defendants

1. Defendant UNITED CORPORATION (hereinafter UNITED) was a corporation organized and existing under the laws of the United States Virgin Islands (hereinafter "Virgin Islands") that did business as Plaza Extra (hereinafter "Plaza Extra"). In the mid-1980s, Plaza Extra opened its first store, which was located in St. Croix. In 1993, Plaza Extra opened a second store, which was located in St. Thomas. In 2000, Plaza Extra opened a third store, which also was located in St. Croix. Plaza Extra sold groceries and other merchandise, which was purchased from wholesalers and other suppliers located in states, territories and countries outside of the Virgin Islands. From 1996 through 2001, Plaza Extra's sales totaled over \$300 million.

2. Defendant FATHI YUSUF MOHAMAD YUSUF (hereinafter FATHI YUSUF) is a citizen of the United States and a resident of the Virgin Islands. FATHI YUSUF was an owner, director and officer of defendant UNITED and participated in the operation of Plaza Extra. FATHI YUSUF's duties and responsibilities included management of the business and conduct of the affairs of the corporation. FATHI YUSUF acted with the intent to benefit both himself and UNITED in executing his duties and responsibilities.

3. Defendant WALEED MOHAMMAD HAMED (hereinafter WALEED HAMED) is a citizen of the United States and a resident of the Virgin Islands. WALEED HAMED was employed by UNITED as the manager of a Plaza Extra supermarket in St. Croix. WALEED HAMED's duties and responsibilities included the overall operation and financial management of the store. WALEED HAMED acted with the intent to benefit both himself and UNITED in

executing his duties and responsibilities.

4. Defendant WAHEED MOHAMMED HAMED (hereinafter WAHEED HAMED) is a citizen of the United States, a resident of the Virgin Islands, and the brother of WALEED HAMED. WAHEED HAMED was employed by UNITED as the manager of the Plaza Extra supermarket in St. Thomas. WAHEED HAMED's duties and responsibilities included the overall operation and financial management of the store. WAHEED HAMED acted with the intent to benefit both himself and UNITED in executing his duties and responsibilities.

5. Defendant MAHER FATHI YUSUF (hereinafter MAHER YUSUF) is a citizen of the United States, a resident of the Virgin Islands, and the son of defendant FATHI YUSUF. MAHER YUSUF was an owner, director and officer of UNITED and participated in the operation of Plaza Extra. MAHER YUSUF's duties and responsibilities included management of the business and conduct of the affairs of the corporation. MAHER YUSUF acted with the intent to benefit both himself and UNITED in executing his duties and responsibilities.

6. Defendant ISAM MOHAMAD YOUSUF (hereinafter ISAM YOUSUF) is a citizen of the United States, a resident of St. Maarten, Netherlands Antilles, and the nephew of defendant FATHI YUSUF. ISAM YOUSUF owns and operates Island Appliances, a company located in St. Maarten that sells appliances and furniture.

B. Virgin Islands Tax Revenue Collection

7. The Virgin Islands Code requires Virgin Islands corporations to report their gross receipts to the territorial government and pay a tax of four percent (4%) on such gross receipts. Gross receipts tax returns must be completed under oath subject to penalties for perjury and filed monthly with the Virgin Islands Bureau of Internal Revenue. Gross receipts tax revenue collected from corporations in this manner is deposited into the general fund of the treasury for use by the territory. Defendant UNITED was required to file monthly gross receipts tax returns

and to pay taxes on its monthly gross sales receipts.

8. United States law provides that the income-tax laws in force in the United States apply to the Virgin Islands, and that the proceeds of such taxes must be paid to the Virgin Islands.

C. Scheme to Defraud

9. Beginning at least as early as in or about January 1996 and continuing through at least in or about September, 2002, defendants FATHI YUSUF, WALEED HAMED, WAHEED HAMED and UNITED defrauded the Virgin Islands of money in the form of tax revenue, specifically territorial gross receipts taxes as well as corporate income taxes, by failing to report at least \$60 million in Plaza Extra sales on gross receipts tax returns and corporate income tax returns.

10. Plaza Extra customers paid for their purchases with cash, checks, credit cards, food stamps, and other forms of payment. After Plaza Extra's sales receipts were collected each day, the funds typically were transferred to a room in the store often referred to as the "cash room," to which only certain individuals, including the defendants, were permitted access. In the cash room, Plaza Extra employees counted the sales receipts and prepared bank deposit slips for the sales receipts.

11. Defendants FATHI YUSUF, WALEED HAMED, WAHEED HAMED and UNITED directed and caused Plaza Extra employees to withhold from deposit substantial amounts of cash received from sales, typically bills in denominations of \$100, \$50 and \$20. Instead of being deposited into the bank accounts with other sales receipts, this cash was delivered to one of the defendants or placed in a designated safe in the cash room. From 1996 through 2001, tens of millions of dollars in cash was withheld from deposit in this manner and as such, was not reported as gross receipts on tax returns filed by UNITED.

12. In this way, defendants FATHI YUSUF, WALEED HAMED, WAHEED HAMED and UNITED caused the filing of dozens of false monthly gross receipts tax returns, which failed to report the cash withheld from deposit as gross receipts, thereby depriving the Virgin Islands of substantial tax revenue. Defendant UNITED's controller prepared and signed Plaza Extra's monthly gross receipts tax returns, declaring under oath that the returns were true and complete, knowing full well that the returns were false in that they failed to report substantial sales receipts.

13. Defendants FATHI YUSUF, WALEED HAMED, WAHEED HAMED and UNITED also caused the filing of false annual corporate income tax returns of UNITED that failed to report the cash withheld from deposit as sales, thereby depriving the Virgin Islands of substantial tax revenue. Defendant FATHI YUSUF signed UNITED's returns, declaring under oath that the returns were true and complete, knowing full well that the returns were false in that they failed to report substantial sales receipts.

D. Concealment of the Fraud Proceeds

14. The defendants engaged in various efforts to disguise and conceal the illegal scheme and its proceeds. For example, defendants FATHI YUSUF, WAHEED HAMED and MAHER YUSUF directed and caused Plaza Extra employees and others to purchase cashier's checks, traveler's checks, and money orders with unreported cash, typically from different bank branches and made payable to individuals and entities other than the defendants, in order to disguise the cash as legitimate-appearing financial instruments.

15. Defendants FATHI YUSUF, WAHEED HAMED and MAHER YUSUF also purchased and caused others to purchase checks and money orders, and engaged in and caused others to engage in various cash transactions with banks, in amounts designed to evade the legal requirements that banks keep records and file reports regarding cash transactions with the U.S.

Treasury Department.

16. Defendants WALEED HAMED and MAHER YUSUF caused unreported currency to be used to cash the checks of Plaza Extra customers and others in order to disguise the cash as legitimate-appearing financial instruments.

17. Defendants FATHI YUSUF and WALEED HAMED caused the checks and money orders described above to be deposited into foreign bank accounts they controlled. For example, defendants FATHI YUSUF and WALEED HAMED compiled the various checks and money orders obtained with unreported cash and caused them to be transported from the Virgin Islands to the Kingdom of Jordan ("Jordan"), where the funds were deposited into accounts they controlled at Cairo Amman Bank, in Amman, Jordan.

18. Defendants WALEED HAMED and WAHEED HAMED used and caused to be used UNITED corporate checks to purchase cashiers' checks made payable to Plaza Extra suppliers and other entities to create the false appearance that the checks were payments to Plaza Extra suppliers. In fact, these cashier's checks were transported to Amman, Jordan and deposited into accounts at Cairo Amman Bank controlled by defendants FATHI YUSUF and WALEED HAMED.

19. Defendants FATHI YUSUF and WALEED HAMED smuggled and caused to be smuggled millions of dollars of unreported cash from the Virgin Islands to the island of St. Martin, in the French West Indies, where it was deposited into accounts at Banque Francaise Commerciale that they and defendant ISAM YOUSUF controlled.

20. To conceal the transfer of unreported cash to foreign bank accounts, defendants FATHI YUSUF and WALEED HAMED failed to file financial reports with the United States, as required by law. Specifically, FATHI YUSUF and WALEED HAMED failed to file required reports with the U.S. Treasury Department that would have revealed: (a) their transfer of

monetary instruments and cash in amounts greater than \$10,000 from the Virgin Islands to foreign countries, including Jordan and St. Martin; and (b) their control over bank accounts in foreign countries, including Jordan and St. Martin.

E. Filing False Personal Income Tax Returns

21. Defendants FATHI YUSUF, WALEED HAMED and WAHEED HAMED also filed and caused to be filed false personal income tax returns that failed to report and pay tax on the cash and other funds that they diverted from Plaza Extra and transferred to bank accounts they controlled and used for their own personal benefit, including for the construction of lavish and expensive personal residences in the Virgin Islands. FATHI YUSUF, WALEED HAMED and WAHEED HAMED signed their personal returns, declaring under oath that the returns were true and complete, knowing full well that the returns were false in that they failed to report substantial income from funds diverted from Plaza Extra.

COUNT 1
(Conspiracy)

22. The allegations in paragraphs 1 - 20 above are realleged as if set forth in full here.

23. Beginning at least as early as in or about January 1996 and continuing through at least in or about September 2002, in the District of the Virgin Islands and elsewhere, defendants

**FATHI YUSUF
WALEED HAMED
WAHEED HAMED
MAHER YUSUF
and UNITED**

knowingly conspired and agreed with each other and with others known and unknown to the grand jury to:

a. Knowingly and willfully devise and intend to devise a scheme and artifice to defraud and to obtain money and property, specifically money belonging to the Virgin Islands in the form of territorial gross receipts tax revenue, by means of material false and fraudulent pretenses, representations and promises, knowing that the pretenses, representations and promises were false when made, and for the purpose of executing and attempting to execute and in furtherance of the scheme and artifice to defraud and for obtaining money and property by means of material false and fraudulent pretenses, representations and promises, did knowingly cause to be sent and moved by the United States Postal Service, Gross Receipts Monthly Tax Returns, Forms 720 V.I., addressed to the Virgin Islands Bureau of Internal Revenue; in violation of Title 18, United States Code, Section 1341; and

b. Knowingly and for the purpose of evading the reporting and record-keeping requirements of Title 31, United States Code, Section 5313(a) and 5325, and the regulations promulgated thereunder, structure, cause to be structured, assist in the structuring, and attempt to structure and assist in the attempted structuring of financial transactions with one

or more domestic financial institutions involving: (i) the issuance and sale of bank checks, bank drafts, cashier's checks, and money orders for \$3,000 or more in currency; and (ii) transactions with financial institutions involving more than \$10,000 of currency; in violation of Title 31, United States Code, Section 5324(a)(3) and (d)(2).

A. Purpose and Object of the Conspiracy

24. It was the purpose and object of the conspiracy for the defendants to unlawfully enrich themselves and the corporations they controlled by engaging in a fraudulent scheme to obtain and conceal money belonging to the Virgin Islands in the form of gross receipts tax revenue.

B. Overt Acts

25. In furtherance of the conspiracy and to effect the objects thereof, in the District of the Virgin Islands and elsewhere, the defendants FATHI YUSUF, WALEED HAMED, WAHEED HAMED, MAHER YUSUF, UNITED, and others known and unknown to the grand jury committed and caused to be committed the following overt acts, among others:

a. Beginning in or about January 1996 and continuing through in or about September 2002, defendants FATHI YUSUF, WALEED HAMED and WAHEED HAMED directed and caused Plaza Extra employees to withhold from deposit substantial amounts of cash received from sales, typically bills in denominations of \$100, \$50 and \$20;

b. Beginning in or about January 1996 and continuing through in or about September 2002, defendants FATHI YUSUF, WALEED HAMED, WAHEED HAMED and UNITED's controller caused the mailing and filing of false monthly gross receipts tax returns for defendant UNITED;

c. Beginning at least as early as in or about July 1996 and continuing at least through in or about January 2000, defendants FATHI YUSUF and WALEED HAMED on numerous occasions transported and caused to be transported tens of thousands of dollars in unreported cash, typically bills in denominations of \$100, \$50 and \$20, from the Virgin Islands to St. Martin;

d. Beginning at least as early as in or about July 1996 and continuing at least through in or about January 2000, defendants FATHI YUSUF, WALEED HAMED and ISAM YOUSUF on numerous occasions deposited unreported cash into accounts they controlled at banks in St. Martin;

e. Beginning on or about July 7, 1998 and continuing through on or about October 15, 1998, on numerous occasions defendant WAHEED HAMED purchased and caused others to purchase cashier's checks and traveler's checks with unreported cash;

f. On or about July 22, 1998, defendant WALEED HAMED transported and caused to be transported approximately 23 checks totaling \$79,205.83 from the U.S. Virgin Islands to Cairo Amman Bank, in Amman, Jordan, where the funds were deposited into an account he controlled;

g. On or about August 4, 1998, defendant WALEED HAMED transported and caused to be transported approximately 60 checks totaling \$237,526.64 from the U.S. Virgin Islands to Cairo Amman Bank, in Amman, Jordan, where the funds were deposited into an account he controlled;

h. Beginning on or about August 7, 1998 and continuing through on or about October 8, 1998, on numerous occasions, defendant MAHER YUSUF purchased and caused others to purchase cashier's checks and bank checks with unreported cash;

i. On or about August 21, 1998, defendants WALEED HAMED and MAHER YUSUF transported and caused to be transported approximately 54 checks totaling \$105,225.97 from the U.S. Virgin Islands to Cairo Amman Bank, in Amman, Jordan, where the funds were deposited into an account controlled by defendant WALEED HAMED;

j. On or about September 1, 1998, defendant FATHI YUSUF transported and caused to be transported approximately 265 checks totaling \$135,880.42 from the U.S. Virgin Islands to Cairo Amman Bank in Amman, Jordan, where the proceeds were deposited into an account he controlled;

k. On or about September 11, 1998, defendant WALEED HAMED transported and caused to be transported approximately 138 checks totaling \$171,042.53 from the U.S. Virgin Islands to Cairo Amman Bank, in Amman, Jordan, where the funds were deposited into an account he controlled;

l. On or about September 25, 1998, defendant FATHI YUSUF transported and caused to be transported approximately 3 checks totaling \$179,468.50, including two bank checks totaling \$150,000 payable to a third party whose endorsement was forged, from the U.S. Virgin Islands to Cairo Amman Bank in Amman, Jordan, where the proceeds were deposited into an account he controlled;

m. On or about October 23, 1998, defendant FATHI YUSUF transported and caused to be transported approximately 42 checks totaling \$106,092.74 from the U.S. Virgin Islands to Cairo Amman Bank, in Amman, Jordan, where the funds were deposited into an account he controlled;

n. On or about December 5, 1998, defendant WALEED HAMED transported and caused to be transported approximately 85 checks totaling \$161,846.15 from the U.S. Virgin Islands to Cairo Amman Bank, in Amman, Jordan, where the funds were deposited into an

account he controlled;

o. On or about January 6, 1999, defendant WALEED HAMED transported and caused to be transported approximately 57 checks totaling \$232,788.69 from the U.S. Virgin Islands to Cairo Amman Bank, in Amman, Jordan, where the funds were deposited into an account he controlled;

p. On or about February 18, 1999, defendant WALEED HAMED transported and caused to be transported approximately 80 checks totaling \$152,425.89 from the U.S. Virgin Islands to Cairo Amman Bank, in Amman, Jordan, where the funds were deposited into an account he controlled;

q. On or about April 15, 1999, defendant FATHI YUSUF transported and caused to be transported approximately 6 checks totaling \$66,660.39 from the U.S. Virgin Islands to Cairo Amman Bank in Amman, Jordan, where the proceeds were deposited into an account he controlled;

r. On or about May 25, 1999, defendant FATHI YUSUF transported and caused to be transported approximately 8 checks totaling \$439,502.62, including a bank check in the amount of \$179,273.64 payable to and endorsed by a third party who had been deceased for over two years, from the U.S. Virgin Islands to Cairo Amman Bank in Amman, Jordan, where the proceeds were deposited into an account controlled by defendant FATHI YUSUF;

s. On or about August 5, 1999, defendant WALEED HAMED transported and caused to be transported approximately 98 checks totaling \$384,145.40 from the U.S. Virgin Islands to Cairo Amman Bank, in Amman, Jordan, where the funds were deposited into an account he controlled; and

t. On or about April 10, 2000, defendant WALEED HAMED transported and caused to be transported approximately 7 checks totaling \$164,576.54 from the U.S. Virgin Islands to Cairo Amman Bank, in Amman, Jordan, where the funds were deposited into an account he controlled.

All in violation of Title 18, Sections 371 and 3551 *et seq.*

COUNT 2
(Money Laundering Conspiracy)

26. The allegations in paragraphs 1 through 12 and 14 through 20 above are realleged as if set forth in full here.

27. Beginning at least as early as in or about January 1996 and continuing through at least in or about October 2001, in the District of the Virgin Islands and elsewhere, defendants

**FATHI YUSUF
WALEED HAMED
WAHEED HAMED
MAHER YUSUF
ISAM YOUSUF
and UNITED**

knowingly conspired and agreed with each other and with others known and unknown to the grand jury to:

a. Conduct and attempt to conduct financial transactions, affecting interstate and foreign commerce, knowing that the property involved in the financial transactions represented the proceeds of some form of unlawful activity, which in fact involved the proceeds of specified unlawful activity, that is, mail fraud in violation of Title 18, United States Code, Section 1341, knowing that the financial transactions were designed in whole and in part to conceal and disguise the nature, location, source, ownership, and control of the proceeds of specified unlawful activity; in violation of Title 18, United States Code, Section 1956(a)(1)(B)(i); and

b. Transport and transfer, and attempt to transport and transfer, monetary instruments and funds from a place in the United States, to and through a place outside the United States, knowing that the monetary instruments and funds involved in the transportation and transfers represented the proceeds of some form of unlawful activity, and knowing that such transportation and transfers were designed in whole and in part to conceal and disguise the

nature, location, source, ownership, and control of the proceeds of a specified unlawful activity,
that is, mail fraud, in violation of Title 18, United States Code, Section 1341; in violation of Title
18, United States Code, Section 1956(a)(2)(B)(i).

All in violation of Title 18, Section 1956(h) and 3551 *et seq.*

COUNTS 3 – 43
(Mail Fraud)

28. The allegations of paragraphs 1 through 12 and 14 through 20 are realleged as if fully set forth here.

29. Beginning at least as early as in or about January 1996 and continuing through at least in or about September 2002, in the District of the Virgin Islands and elsewhere, defendants

**FATHI YUSUF
WAHEED HAMED
WALEED HAMED
and UNITED**

and others known and unknown to the grand jury, knowingly and willfully devised and intended to devise a scheme and artifice to defraud and to obtain money and property, specifically money belonging to the Virgin Islands in the form of territorial gross receipts tax revenue, by means of material false and fraudulent pretenses, representations and promises, knowing that the pretenses, representations and promises were false when made, as more particularly described in paragraphs 9 through 12 and 14 through 20 of this Indictment.

30. On or about the dates specified in each count below, the defendants, for the purpose of executing and attempting to execute and in furtherance of the aforesaid scheme and artifice to defraud and for obtaining money and property by means of material false and fraudulent pretenses, representations and promises, did knowingly cause to be sent and moved by the United States Postal Service, at the East End United States Post Office in St. Thomas, Gross Receipts Monthly Tax Returns, Forms 720 V.I., addressed to the Virgin Islands Bureau of Internal Revenue, St. Thomas, Virgin Islands, 00802:

Count	Approximate Date of Mailing	Sales Month
3	09/29/1998	August 1998
4	10/30/1998	September 1998
5	11/27/1998	October 1998
6	12/30/1998	November 1998
7	01/29/1999	December 1998
8	03/01/1999	January 1999
9	03/30/1999	February 1999
10	04/30/1999	March 1999
11	06/01/1999	April 1999
12	06/30/1999	May 1999
13	07/30/1999	June 1999
14	08/30/1999	July 1999
15	09/30/1999	August 1999
16	10/29/1999	September 1999
17	11/30/1999	October 1999
18	12/29/1999	November 1999
19	01/29/2000	December 1999
20	02/29/2000	January 2000
21	03/30/2000	February 2000
22	05/01/2000	March 2000
23	05/31/2000	April 2000
24	06/30/2000	May 2000
25	07/31/2000	June 2000
26	08/30/2000	July 2000
27	10/02/2000	August 2000
28	10/30/2000	September 2000

Count	Approximate Date of Mailing	Sales Month
29	11/30/2000	October 2000
30	01/02/2001	November 2000
31	01/30/2001	December 2000
32	02/28/2001	January 2001
33	03/28/2001	February 2001
34	04/30/2001	March 2001
35	05/30/2001	April 2001
36	07/02/2001	May 2001
37	07/30/2001	June 2001
38	08/28/2001	July 2001
39	10/01/2001	August 2001
40	11/02/2001	September 2001
41	11/30/2001	October 2001
42	01/02/2002	November 2001
43	01/30/2002	December 2001

All in violation of Title 18, United States Code, Sections 1341, 2, and 3551 *et seq.*

COUNTS 44 - 52
(Money Laundering)

31. The allegations in paragraphs 1 through 12 and 14 through 20 are realleged as if fully set forth here.

32. On or about the dates listed in each count below, in the District of the Virgin Islands and elsewhere, the defendants listed below, transported and transferred, and attempted to transport and transfer, monetary instruments and funds in amounts described below from a place in the United States, specifically the United States Virgins Islands, to and through a place outside the United States, specifically Amman, Jordan, knowing that the monetary instruments and funds involved in the transportation and transfer represented the proceeds of some form of unlawful activity and knowing that such transportation and transfer was designed in whole and in part to conceal and disguise the nature, location, source, ownership, and control of the proceeds of a specified unlawful activity, that is, mail fraud, in violation of Title 18, United States Code, Section 1341:

Count	Date	Amount	Defendant
44	09/25/98	\$179,468.50	FATHI YUSUF
45	10/23/98	\$106,092.74	FATHI YUSUF
46	12/05/98	\$161,846.15	WALEED HAMED
47	01/06/99	\$232,788.69	WALEED HAMED
48	02/18/99	\$152,425.89	WALEED HAMED
49	04/15/99	\$66,660.39	FATHI YUSUF
50	05/25/99	\$439,502.62	FATHI YUSUF
51	08/05/99	\$384,145.40	WALEED HAMED
52	04/10/00	\$164,576.54	WALEED HAMED

All in violation of Title 18, United States Code, Sections 1956(a)(2)(B)(i), 2, 3551 *et seq.*

COUNT 53
(Structuring Financial Transactions)

33. The allegations of paragraphs 1 through 21 are realleged as if fully set forth here.

34. Beginning on or about July 7, 1998 and continuing through on or about October 15, 1998, in the District of the Virgin Islands, defendant

WAHEED HAMED

knowingly structured and assisted in structuring, and attempted to structure and assist in structuring, the following transaction with the domestic financial institutions listed below for the purpose of evading the record-keeping and reporting requirements of Title 31, United States Code, Section 5325, and the regulations promulgated thereunder, for transactions involving the issuance and sale of a bank check, bank draft, and cashier's check for \$3,000 or more in currency, by purchasing the following cashier's checks and bank checks with currency; and did so as part of a pattern of illegal activity involving more than \$100,000 in a 12-month period, and while violating another law of the United States, to wit: Title 18, United States Code, Sections 1341 and 1956(h), and Title 26, United States Code, Section 7206(2):

Date	Amount	Financial Institution
07/07/98	\$2,975.00	Scotiabank
07/23/98	\$2,943.00	Scotiabank
07/23/98	\$2,900.00	Scotiabank
07/24/98	\$2,750.00	Scotiabank
07/24/98	\$2,900.00	Scotiabank
07/27/98	\$2,501.56	Scotiabank
07/27/98	\$2,891.61	Scotiabank
07/27/98	\$2,598.98	Scotiabank
07/28/98	\$2,541.01	Banco Popular

Date	Amount	Financial Institution
07/28/98	\$2,781.81	Banco Popular
07/29/98	\$2,768.68	Scotiabank
07/29/98	\$2,898.15	Scotiabank
07/29/98	\$2,819.92	Scotiabank
07/29/98	\$2,967.75	Scotiabank
07/29/98	\$2,644.38	Scotiabank
07/29/98	\$2,777.50	Scotiabank
07/29/98	\$2,998.98	Scotiabank
07/29/98	\$2,981.11	Scotiabank
08/10/98	\$2,801.98	Scotiabank
08/10/98	\$2,784.40	Scotiabank
08/10/98	\$2,998.48	Scotiabank
08/10/98	\$2,862.48	Scotiabank
08/11/98	\$2,862.48	Scotiabank
08/12/98	\$2,784.40	Scotiabank
08/20/98	\$2,950.00	Scotiabank
08/20/98	\$2,777.41	Scotiabank
08/20/98	\$2,991.70	Scotiabank
08/20/98	\$2,698.90	Scotiabank
09/11/98	\$2,858.50	First Bank
09/11/98	\$2,879.98	Scotiabank
09/11/98	\$2,990.05	Scotiabank
09/11/98	\$2,995.48	Scotiabank
10/15/98	\$2,805.00	Scotiabank
10/15/98	\$2,999.10	Scotiabank
10/15/98	\$2,899.60	Scotiabank

All in violation of Title 31, United States Code, Sections 5324(a)(3) and (d)(2), and Title 18, United States Code, Sections 2 and 3551 *et seq.*

COUNT 54
(Structuring Financial Transactions)

35. The allegations of paragraphs 1 through 21 are realleged as if fully set forth here.

36. From on or about August 6, 1998 through on or about October 8, 1998, in the District of the Virgin Islands, defendant

MAHER YUSUF

knowingly structured and assisted in structuring, and attempted to structure and assist in structuring, the following transaction with the domestic financial institutions listed below for the purpose of evading the record-keeping and reporting requirements of Title 31, United States Code, Section 5325, and the regulations promulgated thereunder, for transactions involving the issuance and sale of a bank check, bank draft, and cashier's check for \$3,000 or more in currency, by purchasing the following cashier's checks and bank checks with currency; and did so as part of a pattern of illegal activity involving more than \$100,000 in a 12-month period, and while violating another law of the United States, to wit: Title 18, United States Code, Section 1956(h):

Date	Amount	Financial Institution
08/06/98	\$2,400.00	Bank of St. Croix
08/06/98	\$2,500.00	Scotiabank
08/10/98	\$2,990.00	Bank of St. Croix
08/10/98	\$2,891.00	Scotiabank
08/10/98	\$2,794.00	Banco Popular
08/10/98	\$2,661.00	Banco Popular
08/10/98	\$2,665.00	Scotiabank
08/11/98	\$2,480.00	Scotiabank
08/12/98	\$2,123.00	Scotiabank

Date	Amount	Financial Institution
08/19/98	\$2,700.00	Scotiabank
08/27/98	\$2,500.00	Banco Popular
08/27/98	\$2,500.00	Scotiabank
09/04/98	\$2,500.00	Scotiabank
09/04/98	\$2,500.00	Banco Popular
10/05/98	\$2,847.00	Banco Popular
10/05/98	\$2,900.00	Scotiabank
10/07/98	\$2,800.00	Bank of St. Croix
10/07/98	\$2,800.00	Scotiabank
10/08/98	\$2,920.00	Scotiabank

All in violation of Title 31, United States Code, Sections 5324(a)(3) and (d)(2), and Title 18, United States Code, Sections 2 and 3551 *et seq.*

COUNT 55
(Conspiracy to Evade Taxes)

37. The allegations in paragraphs 1 - 21 above are realleged as if set forth in full here.

38. Beginning at least as early as in or about January 1996 and continuing through at least in or about September 2002, in the District of the Virgin Islands and elsewhere, defendants

**FATHI YUSUF
WALEED HAMED
WAHEED HAMED
and UNITED**

knowingly and intentionally combined, conspired, confederated and agreed with each other and with others known and unknown to the grand jury to willfully evade and defeat taxes imposed by the Virgin Islands, to wit gross receipts taxes and corporate and individual income taxes.

A. Purpose and Object of the Conspiracy

39. It was the purpose and object of the conspiracy for the defendants to unlawfully enrich themselves and the corporations they controlled by depriving the Virgin Islands of gross receipts tax revenue and corporate and individual income tax revenue.

B. Overt Acts

40. In furtherance of the conspiracy and to effect the objects thereof, in the District of the Virgin Islands and elsewhere, the defendants FATHI YUSUF, WALEED HAMED, WAHEED HAMED, UNITED, and others known and unknown to the grand jury committed and caused to be committed the overt acts described in paragraphs 25(a) through (t), which are realleged as if set forth in full here, in addition to the following overt acts, among others:

a. Between on or about March 4, 1997 and September 11, 2002, defendant WALEED HAMED caused the filing of false annual individual income tax returns, Forms 1040, in his name for the tax years 1996 through 2001;

b. Between on or about April 11, 1997 and September 30, 2002, defendant FATHI YUSUF caused the filing of false annual individual income tax returns, Forms 1040, in his name for the tax years 1996 through 2001;

c. Between on or about August 14, 1997 and September 18, 2002, defendants FATHI YUSUF, WALEED HAMED, WAHEED HAMED and UNITED caused the filing of false annual corporate income tax returns, Forms 1120 and 1120S, on behalf of defendant UNITED, for the tax years 1996 through 2001; and

d. Between on or about April 17, 1998 and April 17, 2001, defendant WAHEED HAMED caused the filing of false annual individual income tax returns, Forms 1040, in his name for the tax years 1997 through 2000.

All in violation of Title 33, Virgin Islands Code, Section 1522.

COUNTS 56 - 60
(Causing False Tax Returns)

41. On or about the dates listed below, in the District of the Virgin Islands, defendants

**FATHI YUSUF
WALEED HAMED
WAHEED HAMED
and UNITED**

the individuals all being residents of the United States Virgin Islands and the corporation, being organized under the laws of the United States Virgin Islands, did willfully cause and aid and assist in, and procure, counsel, and advise, the preparation and presentation to the Virgin Islands Bureau of Internal Revenue, of defendant UNITED's Corporate Income Tax Returns, Forms 1120 and 1120S, for the calendar years listed below, which were false and fraudulent as to a material matter, in that the returns reported sales in the amount listed below, whereas defendants then and there knew and believed that UNITED made substantial sales in addition to the amount reported.

Count	Date	Tax Year	Form	Reported Sales
56	07/11/98	1997	1120	\$36,823,771
57	04/07/99	1998	1120	\$40,706,669
58	07/05/00	1999	1120S	\$47,004,399
59	08/30/01	2000	1120S	\$51,746,933
60	09/18/02	2001	1120S	\$69,579,412

All in violation of Title 33, Virgin Islands Code, Section 1525(2).

COUNTS 61 – 65
(Causing False Tax Returns)

42. On or about the dates listed below, in the District of the Virgin Islands, defendant

FATHI YUSUF

a resident of the Virgin Islands, did willfully cause and aid and assist in, and procure, counsel, and advise, the preparation and presentation to the Virgin Islands Bureau of Internal Revenue, of Individual Income Tax Returns, Forms 1040, for the calendar years listed below, which were false and fraudulent as to a material matter, in that the returns reported total income in the amount listed below, whereas he then and there knew and believed that his true total income was substantially more than the amount reported.

Count	Date	Tax Year	Reported Total Income
61	04/15/98	1997	\$58,360
62	04/09/99	1998	\$33,341
63	10/16/00	1999	\$1,936,460
64	09/28/01	2000	\$1,607,800
65	09/30/02	2001	\$3,402,579

All in violation of Title 26, United States Code, Section 7206(2).

COUNTS 66 – 70
(Causing False Tax Returns)

43. On or about the dates listed below, in the District of the Virgin Islands, defendant

WALEED HAMED

a resident of the Virgin Islands, did willfully cause and aid and assist in, and procure, counsel, and advise, the preparation and presentation to the Virgin Islands Bureau of Internal Revenue, of Individual Income Tax Returns, Forms 1040, for the calendar years listed below, which were false and fraudulent as to a material matter, in that the returns reported total income in the amount listed below, whereas he then and there knew and believed that he received substantial income in addition to the amount reported.

Count	Date	Tax Year	Reported Total Income
66	03/31/98	1997	\$23,825
67	07/29/99	1998	\$25,598
68	08/10/00	1999	\$23,017
69	08/24/01	2000	\$28,259
70	09/11/02	2001	\$39,052

All in violation of Title 26, United States Code, Section 7206(2).

COUNTS 71 – 74
(Causing False Tax Returns)

44. On or about the date listed below, in the District of the Virgin Islands, defendant

WAHEED HAMED

a resident of the Virgin Islands, did willfully cause and aid and assist in, and procure, counsel, and advise, the preparation and presentation to the Virgin Islands Bureau of Internal Revenue, of Individual Income Tax Returns, Forms 1040, for the calendar years listed below, which were false and fraudulent as to a material matter, in that the returns reported total income in the amount listed below, whereas he then and there knew and believed that he received substantial income in addition to the amount reported.

Count	Date	Tax Year	Reported Total Income
71	04/17/98	1997	\$14,700
72	04/15/99	1998	\$16,300
73	04/14/00	1999	\$25,189
74	04/17/01	2000	\$31,293

All in violation of Title 26, United States Code, Section 7206(2).

COUNT 75
(Conduct of Criminal Enterprise)

A. The Enterprise

45. At various times relevant to this Indictment, the defendants

**FATHI YUSUF
WALEED HAMED
WAHEED HAMED
and UNITED**

being persons employed by and associated with an enterprise, as defined by 14 V.I.C. § 604(h), consisting of defendant UNITED, described in paragraph 1, unlawfully and intentionally did conduct and participate, directly and indirectly, in the conduct of the affairs of the enterprise through a pattern of criminal activity. The enterprise constituted an ongoing organization whose members functioned as a continuing unit for a common purpose of achieving the objectives of the enterprise.

46. The purposes of the enterprise included unlawfully enriching the members and associates of the enterprise by obtaining and concealing money belonging to the Virgin Islands in the form of gross receipts tax revenue and corporate and individual income tax revenue.

47. The defendants participated in the operation and management of the enterprise, as follows:

a. The defendant FATHI YUSUF, an owner and officer of UNITED, was a leader of the enterprise who directed other members of the enterprise in carrying out unlawful and other activities in furtherance of the conduct of the enterprise's affairs;

b. The defendant WAHEED HAMED, a manager of a Plaza Extra supermarket, was a leader of the enterprise who directed other members of the enterprise in carrying out unlawful and other activities in furtherance of the conduct of the enterprise's affairs;

c. The defendant WALEED HAMED, a manager of a Plaza Extra supermarket, was a leader of the enterprise who directed other members of the enterprise in carrying out unlawful and other activities in furtherance of the conduct of the enterprise's affairs; and

d. Under the direction of the leaders of the enterprise, defendant UNITED participated in unlawful and other activities in furtherance of the conduct of the enterprise's affairs.

48. Among the means and methods by which the defendants and their associates conducted and participated in the conduct of the affairs of the enterprise are the acts described in paragraphs 9-21 above, which are incorporated herein as if set forth in full.

B. The Violation

49. Beginning at least as early as in or about January 1996 and continuing through at least in or about September 2002, in the District of the Virgin Islands and elsewhere, defendants

**FATHI YUSUF
WAHEED HAMED
WALEED HAMED
and UNITED**

together and with others known and unknown to the Grand Jury, being persons employed by and associated with the enterprise described above, unlawfully, intentionally, and knowingly conducted and participated, directly and indirectly, in the conduct of the affairs of that enterprise through a pattern of criminal activity, that is, through the commission of the following acts.

50. The pattern of criminal activity as defined in Title 14, Virgin Islands Code, Section 604(e) and (j) consisted of violations described in Counts 1, 2, 3, 15, 27, 39, and 55-60. In violation of Title 14, Virgin Islands Code, Section 605(a).

COUNT 76
(Conspiracy to Conduct Criminal Enterprise)

51. Paragraphs 45 through 50 of this Indictment are hereby realleged and incorporated as if fully set forth herein.

52. Beginning at least as early as in or about January 1996 and continuing through at least in or about September 2002, in the District of the Virgin Islands and elsewhere, defendants

**FATHI YUSUF
WALEED HAMED
WAHEED HAMED
and UNITED**

together with other persons known and unknown to the Grand Jury, being persons employed by and associated with the enterprise described in paragraph 45 above, knowingly and intentionally conspired to violate Title 14, Virgin Islands Code, Section 605(a), that is, to conduct and participate, directly and indirectly, in the conduct of the affairs of that enterprise through a pattern of criminal activity, as that term is defined by Title 14, Virgin Islands Code, Section 604(e) and (j). The pattern of criminal activity through which the defendants agreed to conduct the affairs of the enterprise consisted of the acts forth in paragraph 50 of Count 75 of this Indictment, which are incorporated as if fully set forth herein.

53. It was a part of the conspiracy that the defendants agreed that a conspirator would commit at least two acts of criminal activity in the conduct of the affairs of the enterprise.

All in violation of Title 14, Virgin Islands Code, Section 605(d).

CRIMINAL FORFEITURE ALLEGATION 1
(18 U.S.C. § 982)

54. The allegations contained in Counts 1, 2 and 27 through 52 of this Indictment are re-alleged and incorporated by reference as if fully set forth herein, for the purpose of alleging forfeitures pursuant to the provisions of Title 18, United States Code, Section 982.

55. Upon conviction of one or more of the offenses charged in Counts 1, 2 and 27 through 52 of this Indictment, the defendants FATHI YUSUF, WALEED HAMED, WAHEED HAMED, ISAM YOUSUF and UNITED shall forfeit to the United States pursuant to Title 18, United States Code, Section 982, any property, real or personal, involved in such offenses, or any property traceable to such property, or any property constituting or derived from proceeds which the defendants obtained directly or indirectly as a result of the commission of said violations.

56. Such forfeitures shall include, but are not limited to:

Money Judgment

57. The sum of at least approximately \$60 million in United States currency and all interest and proceeds traceable thereto, in that such sum, in the aggregate, was involved in and is traceable to, and constitutes and is derived from proceeds which the defendants obtained directly and indirectly as a result of the commission of, the criminal offenses alleged in Counts 1, 2 and 27 through 52, for which the defendants are jointly and severally liable.

Real Property

58. Real property located at 14 and 28-29 Estate Plessen, St. Croix, Parcel 4-06200-0408-00, including all of its appurtenances, improvements, fixtures, attachments, and easements, which is property constituting and derived from proceeds which the defendants obtained directly and indirectly as a result of the commission of violations of Title 18, United

States Code, Sections 371 and 1341.

59. Real property located at 3AA-1 and 4AA St. Joseph and Rosendahl, St. Thomas, Parcels 1-05501-0148-00 and 1-05501-0107-00, including all of its appurtenances, improvements, fixtures, attachments, and easements, which is property constituting and derived from proceeds which the defendants obtained directly and indirectly as a result of the commission of violations of Title 18, United States Code, Sections 371 and 1341.

60. Real property located at 4-15, No. 5 and 6 Tabor and Harmony, St. Thomas, Parcels 1-03104-234-00 and 1-03104-265-00, including all of its appurtenances, improvements, fixtures, attachments, and easements, which is property constituting and derived from proceeds which the defendants obtained directly and indirectly as a result of the commission of violations of Title 18, United States Code, Sections 371 and 1341.

61. Real property located at Remainder Spring Garden, St. Croix, Parcel 4-01900-0101-00, including all of its appurtenances, improvements, fixtures, attachments, and easements, which is property constituting and derived from proceeds which the defendants obtained directly and indirectly as a result of the commission of violations of Title 18, United States Code, Sections 1956(a)(1)(B)(i) and (h).

62. Real property located at Parcel 2, Estate Longpoint and Cotton Garden, St. Croix, Parcel 2-03500-0414-00, including all of its appurtenances, improvements, fixtures, attachments, and easements, which is property constituting and derived from proceeds which the defendants obtained directly and indirectly as a result of the commission of violations of Title 18, United States Code, Sections 1956(a)(1)(B)(i) and (h).

63. Real property located at Estate Peter's Farm, St. Croix, Parcel 2-04900-0404-00, including all of its appurtenances, improvements, fixtures, attachments, and easements,

which is property constituting and derived from proceeds which the defendants obtained directly and indirectly as a result of the commission of violations of Title 18, United States Code, Sections 1956(a)(1)(B)(i) and (h).

64. Real property located at Estate Perseverance, St. Thomas, Parcel 1-02503-0101-00, including all of its appurtenances, improvements, fixtures, attachments, and easements, which is property constituting and derived from proceeds which the defendants obtained directly and indirectly as a result of the commission of violations of Title 18, United States Code, Sections 1956(a)(1)(B)(i) and (h).

65. Real property located at 6 and 9 Estate Thomas, St. Thomas, Parcel 05404-1505-00, including all of its appurtenances, improvements, fixtures, attachments, and easements, which is property constituting and derived from proceeds which the defendants obtained directly and indirectly as a result of the commission of violations of Title 18, United States Code, Sections 1956(a)(1)(B)(i) and (h).

66. Real property known as Diamond Keturah Land on St. Croix, consisting of:

a. Estate Cane Garden, Parcel Nos. 8, 9, 10, Remainder No. 46A, Remainder Matriculate No. 32B, Road Plots 11 and 12;

b. Estate Retreat Parcel 11, Peter's Matriculate No. 37B of Company Quarter and Peter's Matriculate No. 37A and 37BA of Company Quarter, No. 54 of Queen's Quarter;

c. Estate Granard Remainder Matriculate 32A, Parcel No. 40, Road Plot 41;
and

d. Estate Diamond, Remainder Matriculate 31, Parcel Nos. 1, 2, 3, 4, Road Plot No. 6; including all appurtenances, improvements, fixtures, attachments, and easements; all of which is property constituting and derived from proceeds which the defendants obtained

directly and indirectly as a result of the commission of violations of Title 18, United States Code, Sections 1956(a)(1)(B)(i), (a)(2)(B)(i) and (h).

Bank Account

67. All United States currency, funds, or other monetary instruments credited to Account No.140-21722 in the name of Fathieh Yousuf (or Yousef), held by Merrill Lynch, which is property involved in and traceable to, and constitutes and is derived from proceeds which the defendants obtained directly and indirectly as a result of the commission of violations of Title 18, United States Code, Sections 371, 1341, and 1956(a)(1)(B)(i) and (h).

SUBSTITUTE ASSETS

68. Pursuant to Title 21, United States Code, Section 853(p), as incorporated by reference by Title 18, United States Code, Section 982(b), if any of the forfeitable property, and any portion thereof, described in the forfeiture section of this Indictment, as a result of any act or omission of the defendants:

- a. cannot be located upon the exercise of due diligence;
- b. has been transferred or sold to, or deposited with, a third party;
- c. has been placed beyond the jurisdiction of the court;
- d. has been substantially diminished in value; or
- e. has been commingled with other property which cannot be divided without difficulty;

it is the intent of the United States to seek forfeiture of any other property of the defendants up to the value of the above forfeitable property, including but not limited to the following:

- f. Real property located at 92C and D, La Grande Princess, St. Croix, Parcel 2-02611-0215-00, including all appurtenances, improvements, fixtures, attachments, and

easements;

g. Real property located at 7 Southgate, St. Croix, Parcel 2-03000-0412-00, including all of its appurtenances, improvements, fixtures, attachments, and easements;

h. Real property located at 92B La Grande Princess, St. Croix, Parcel 2-02611-0214-00, including all appurtenances, improvements, fixtures, attachments, and easements; and

i. Real property located at Green Cay Plantation Subdivision, Frenchman's Bay, St. Thomas, Parcel 07404-0280-00, including all of its appurtenances, improvements, fixtures, attachments, and easements.

CRIMINAL FORFEITURE ALLEGATION 2
(14 V.I.C. § 606)

69. The allegations contained in Counts 75 and 76 of this Indictment are re-alleged and incorporated by reference as if fully set forth herein for the purpose of alleging forfeitures pursuant to Title 14, Virgin Islands Code, Section 606.

70. Through the pattern of criminal activity alleged in Counts 75 and 76, defendants FATHI YUSUF, WALEED HAMED, WAHEED HAMED and UNITED have acquired and maintained real and personal property used in the course of, intended for use in the course of, derived from, or realized through, conduct in violation of Title 14, Virgin Islands Code, Section 605, including property constituting an interest in, or means of control or influence over, the enterprise involved in the conduct in violation of Title 14, Virgin Islands Code, Section 605, and including property constituting proceeds derived from the conduct in violation of Title 14, Virgin Islands Code, Section 605, which is subject to forfeiture to the Government of the Territory of the United States Virgin Islands pursuant to Title 14, Virgin Islands Code, Section 606(c). That forfeitable property includes, but is not limited to:

Corporate Assets

71. All assets, tangible and intangible, of United Corporation, including, but not limited to: all United States currency, funds, or other monetary instruments credited to the following accounts in the name of defendant United Corporation:

- (1) Account No. 191-063789 at Banco Popular;
- (2) Account No. 191-013307 at Banco Popular;
- (3) Account No. 192-026143 at Banco Popular;
- (4) Account No. 65811 at Bank of Nova Scotia;

- (5) Account No. 55312010 at Bank of Nova Scotia;
- (6) Account No. 60086413 at Bank of Nova Scotia;
- (7) Account No. 60092918 at Bank of Nova Scotia;
- (8) Account No. 55356719 at Bank of Nova Scotia; and
- (9) Account No. 140-07759 at Merrill Lynch.

72. As a result of the commission of the offenses charged in Counts 75 and 76 of this Indictment, the defendants FATHI YUSUF, WALEED HAMED, WAHEED HAMED and UNITED shall forfeit to the Government of the Territory of the United States Virgin Islands assets, including, but not limited to, the assets described in paragraphs 57, and 59 through 67.

SUBSTITUTE ASSETS

73. Pursuant to Title 14, Virgin Islands Code, Section 606(e), if any of the forfeitable property, and any portion thereof, described in Criminal Forfeiture Allegation One of this Indictment, as a result of any act or omission of the defendant:

- a. cannot be located upon the exercise of due diligence;
- b. has been sold to a bona fide purchaser for value;
- c. has been placed beyond the jurisdiction of the Court;
- d. has been substantially diminished in value; or
- e. has been commingled with other property which cannot be divided without difficulty or injury to third persons;

it is the intent of the United States to seek forfeiture of any other property of said defendants up to the value of the above forfeitable property, including, but not limited to the property described in paragraphs 68(f) through 68(i).

All in accordance with Title 14, Virgin Islands Code, Section 606.

USAO NO. 2002R00389

A TRUE BILL

Casey
FOREPERSON

John Steen
ASSISTANT U. S. ATTORNEY

DISTRICT OF THE VIRGIN ISLANDS: 9/18, 2003

Returned into the District Court by Grand Jurors and filed.

Claudette A. Donwa
DEPUTY CLERK

03 SEP 18 11:21 AM

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