

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

MOHAMMAD HAMED,)	CIVIL NO. 1:12-CV-099
)	
Plaintiff)	MEMORANDUM OF LAW IN SUPPORT OF DEFENDANTS' <u>RENEWED</u> MOTION TO DISMISS, AND IN THE ALTERNATIVE FOR A MORE DEFINITE STATEMENT, AND TO STRIKE EXHIBITS "B" through "D" OF THE AMENDED COMPLAINT PURSUANT TO RULES 12(b)(6), 12(e), and 12(f) OF THE FEDERAL RULES OF CIVIL PROCEDURE
Vs.)	
)	
)	
FATHI YUSUF and UNITED CORPORATION)	
)	
Defendants.)	
<hr style="width: 30%; margin-left: 0;"/>)	

**MEMORANDUM OF LAW IN SUPPORT OF DEFENDANTS' RENEWED MOTION TO
DISMISS, MOTION FOR A MORE DEFINITE STATEMENT, AND MOTION TO
STRIKE EXHIBITS "B" THROUGH "D" OF THE AMENDED COMPLAINT**

I. INTRODUCTION

On September 18th, 2012, Plaintiff Mohammed Hamed ("Hamed") filed a complaint ("Original Complaint") against Defendants United Corporation ("United") and Fathi Yusuf ("Yusuf") alleging for the first time in 26 years the existence of a "partnership" with Defendant Yusuf, referring to it as the "Hamed & Yusuf" partnership. *Complaint* ¶3 [DOCKET ENTRY #1, attachment 3]. On October 19th, 2012, Plaintiff Mohammed Hamed filed an Amended Complaint in this action alleging that a "50/50 Partnership was created to create, fund, and operate this new grocery supermarket business, which they named Plaza Extra Supermarket." *Amended Complaint* ¶9 [DOCKET ENTRY #15].

With the Amended Complaint still failing to plead sufficient facts alleging the scope, nature, and extent of the partnership Plaintiff Hamed alleges to have with Defendant Yusuf,

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Defendants now respectfully again move to dismiss the Amended Complaint for failure to state a cause of action upon which relief can be granted pursuant to Rule 12(b)(6) of the Federal Rules of Civil Procedure. In the alternative, Defendants also move for a more definite statement under Fed. R. Civ. Proc. 12(e) as the Amended Complaint impermissibly and vaguely defines the existence of a "50/50 partnership." *Amended Complaint* ¶9 [DOCKET ENTRY #15]. The Amended Complaint fails to specify the nature, ownership, and scope of this alleged partnership, and why Defendant United is named as a party to this suit. Further, as Plaintiff Hamed through his agent and son Waleed Hamed have already conceded before the District Court of the Virgin Islands and the U.S. Attorney's Office for the last seven (7) years that the business arrangement between Plaintiff Hamed and Defendant Yusuf is a contractual joint venture, Plaintiff Hamed is estopped from now asserting a partnership under the equitable doctrines of Judicial and Quasi Estoppel, Issue Preclusion, and laches. As such, dismissal of the Amended Complaint is warranted. In the alternative Plaintiff should be ordered to provide Defendants with a more definite statement as to the formation, scope and nature of the alleged partnership to enable Defendants to properly respond to allegations of the Amended Complaint.

Last but not least, Defendants move to strike Exhibits "B", "C" and "D" under Fed. R. Civ. Proc. Rule 12(f). The Amended Complaint incorporates unsigned documents that were produced during private settlement discussions. An Order striking these exhibits is warranted in light of Plaintiff's intentional failure to attach numerous other proposed confidential unsigned settlement agreements where none mention the word "partnership." Plaintiff simply cannot cherry pick two emails and an unsigned proposed settlement agreement when Plaintiff has for 26 years denied the existence of a partnership, and when his Plaintiff's son and agent Waleed Hamed

represented to the District Court of the Virgin Islands, and the U.S. Attorney's Office that no partnership ever existed between his father Plaintiff Hamed and Defendant Yusuf, but instead only a joint venture agreement granting Plaintiff Hamed fifty percent (50%) of the profits of the operations of the Plaza Extra Supermarkets.

II. FACTS

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

In 1986, due to financial constraints, Defendant Yusuf and Plaintiff Hamed entered into an oral joint venture agreement. The agreement called for Plaintiff Hamed to receive fifty percent (50%) of the net profits of the operations of the Plaza Extra supermarkets in exchange for a loan of \$225,000 and \$175,000 cash payment. The loan was repaid in full, and Plaintiff Hamed received 50% of the net profits thereafter. At no point did Plaintiff Hamed ever acquire a

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shareholder interest in Defendant United. Nothing in the Amended Complaint or any of the exhibits attached thereto demonstrate any shareholder interest by Plaintiff Hamed in Defendant United. Since its inception, Defendant United has always maintained separate bank accounts to collect rents and other incomes unrelated to its supermarket operations. At no point did Plaintiff Hamed ever receive any rental proceeds or other profits from United's other operations. **Exhibit A: Yusuf Affidavit** ¶ 7. *Original Complaint* ¶14 [DOCKET ENTRY # 15]. Nothing in the Amended Complaint alleges that Plaintiff Hamed is entitled to any proceeds other than from the operations of the Plaza Extra supermarkets. As such, the parties contemplated only a 50/50 split of the profits of the Plaza Extra Supermarket stores.

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

In October 1993, Defendant United expanded its supermarket operations by opening another Plaza Extra Store in Tutu Park Mall, St. Thomas. **Exhibit A: Affidavit of Yusuf**, ¶8. United's treasurer Defendant Yusuf negotiated and signed the leased premises for the Plaza Extra – St. Thomas store and was the **only** party to guarantee its lease. **Exhibit A: Affidavit of Yusuf**, ¶8. Nothing in the Amended Complaint alleges that Plaintiff Hamed ever shared in the risk of losses or obligations under the Plaza Extra St. Thomas store lease, nor that Plaintiff Hamed ever co-signed, or was a surety regarding any obligations of Defendant United. In sum, both the original complaint and the Amended Complaint fail to allege any facts concerning Plaintiff's risk of loss in any “partnership” Plaintiff Hamed alleges to have with Defendant Yusuf.

B. The Alleged “Hamed & Yusuf Partnership”

Plaintiff, in his original Complaint, and for the first time in 26 years, alleges that he is a partner in a partnership called the “Yusuf & Hamed partnership.” *Original Complaint* ¶3 [DOCKET ENTRY #1, attachment 3]. The original Complaint, without specificity, alleges that the parties created the “Hamed & Yusuf partnership” and “used a corporate form in mid-1986 for tax purposes.” This allegation has now changed in the Amended Complaint, which completely removes any reference to Defendant United being used “for tax reporting purposes” but instead alleges that Defendant Yusuf offered Defendant United to report the tax obligations of the alleged partnership through Defendant United. *Amended Complaint* ¶8 [DOCKET ENTRY # 15].

The Amended Complaint fails to attach a single legal document, resolution, decision, memorandum of minutes, tax returns or schedules, or other communications showing the existence of a partnership of the magnitude that Plaintiff Hamed alleges - despite Plaintiff’s contention that he has been a partner for over 26 years. Indeed, during seven (7) years of court proceedings in the criminal matter of *U.S. v. United, 05-cr15*, Plaintiff’s agent Waleed Hamed, as well as his brother Waheed Hamed through his attorneys have always declared to the District Court of the Virgin Islands, and the U.S. Attorney’s Office that the relationship between their father Plaintiff Hamed and Defendant Yusuf is a “joint venture” entitling Plaintiff Hamed to fifty percent (50%) of the net profits of United’s operations of the Plaza Extra Supermarket stores.

C. Exhibits B & C of the Amended Complaint: The Confidential Proposed Settlement Letters

The Amended Complaint annexes five exhibits - “A” through “D” - in support of whatever alleged partnership that may exist between Plaintiff Hamed and Defendant Yusuf:

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- 1) **Exhibit A:** a 10 page transcript of a 1997 Oral Deposition of Defendant Yusuf in the case of *Idheileh v. United Corporation*, STT-156-CV-1997,
- 2) **Exhibit B:** an Email from DeWood Law Firm to Waleed Hamed;
- 3) **Exhibit C:** an unsigned Proposed Dissolution Agreement from DeWood Law Firm to Waleed Hamed.
- 4) **Exhibit D:** Letter from Fathi Yusuf to Mohammed Hamed concerning increased rent.
- 5) **Exhibit E:** Warranty Deed to Plot No. 9 Estate Grange and Plot No. 70 Estate Grange

The Amended Complaint fails to advise the court that Exhibits “B” through ”D” were communications regarding attempts to privately settle a serious and costly dispute between the parties. Additionally, none of the foregoing exhibits show that either party has ever adopted the position that a partnership called the “Hamed & Yusuf partnership” ever existed. That position was rejected by both Defendants and Plaintiff, and as such neither party ever signed the proposed dissolution agreement attached as Exhibit “C” to the Amended Complaint. [DOCKET ENTRY # 15, attachment 3]. Further, the Amended Complaint fails to point to a single communication where Plaintiff Hamed accepted any terms of the unsigned dissolution agreement. The Amended Complaint fails to attach copies of numerous other Proposed Settlement Agreements circulated between the parties in June and August of 2012. These unsigned proposed agreements, as with the single proposed dissolution agreement, were designed to resolve the parties’ substantial differences, and to address Plaintiff’s agent Waleed Hamed’s threat to prevent Defendant United from filing its tax returns in the criminal matter. **Exhibit A:** *Affidavit of Fathi Yusuf*.

Defendants again renew their Motion pursuant to Fed. R. Civ. Proc. 12(b)(6) to dismiss Plaintiff's Amended Complaint. In the alternative, the Court should grant Defendants' Motion for a More Definite Statement pursuant to Rule 12(e) as the Amended Complaint fails to specify the facts necessary to establish the scope, intent, and nature of the partnership it alleges. Finally, Plaintiff's attempt to use an **unsigned** and rejected proposal to settle the parties' differences short of litigation should be stricken as an exhibit pursuant to Fed. R. Civ. Pro. 12(f). Based on the arguments stated below, this Motion should be granted.

III. ARGUMENT

A. Plaintiff's Amended Complaint Fails to State a Claim Entitling Plaintiff To Relief Pursuant to 26 VIC § 75 because no "Partnership" Exists Between Plaintiff Hamed and Defendant Yusuf.

i. The Standard of Review for Rule 12(b)(6) Motions.

When considering a Rule 12(b)(6) motion to dismiss for failure to state a claim upon which relief can be granted, a court must accept all well-pleaded allegations as true and view them in the light most favorable to the plaintiff. *Evancho v. Fisher*, 423 F.3d 347, 350 (3d Cir. 2005). To survive a motion to dismiss based on Rule 12(b)(6), Plaintiff's complaint must set forth "enough facts to state a claim to relief that is plausible on its face." *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 570 (2007). A claim is plausible if it "pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged." *Ashcroft v. Iqbal*, 556 U.S. 662 (2009) (citing *Twombly*, 550 U.S. at 556). "The plausibility standard is not akin to a 'probability requirement,' but it asks for more than a sheer possibility that a defendant has acted unlawfully." *Id.* (citing *Twombly*, 550 U.S. at 556). "A pleading that

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offers '**labels and conclusions**' or 'a formulaic recitation of the elements of a cause of action will not do.' Nor does a complaint suffice if it tenders 'naked assertion[s]' devoid of 'further factual enhancement.' ” *Id.* (quoting *Twombly*, 550 U.S. at 555, 557) (Emphasis Supplied).

In deciding a motion to dismiss, the Court **should consider** the allegations in the complaint, exhibits attached to the complaint and **matters of public record**. *See Pension Benefit Guar. Corp. v. White Consol. Indus., Inc.*, 998 F.2d 1192, 1196 (3d Cir.1993) (Emphasis Supplied). The Court may also consider “undisputedly authentic” documents where the plaintiff’s claims are based on the documents and the defendant has attached a copy of the document to the motion to dismiss. *Id.* The court need **not** assume that the plaintiff can prove facts that were not alleged in the complaint, *see City of Pittsburgh v. West Penn Power Co.*, 147 F.3d 256, 263 (3d Cir.1998), nor credit a complaint’s “bald assertions” or “legal conclusions.” *Morse v. Lower Merion Sch. Dist.*, 132 F.3d 902, 906 (3d Cir.1997).

As will be demonstrated, Plaintiff’s Amended Complaint makes only a bald assertion of a “50/50 partnership” and fails to define the requisite elements of an alleged oral or implied “partnership.”

i. Background: The V.I. Uniform Partnership Act (VIUPA)

Under the VIUPA a partnership is defined as “an association of two or more persons to carry on as co-owners a business for profit formed under **section 22** of this chapter, predecessor law, or comparable law of another jurisdiction.” 26 VIC § 2 (Emphasis Supplied). The Uniform Partnership Act (“UPA”) has been adopted by numerous states, and interpreted amply by those jurisdictions’ state and federal courts. To determine if a partnership exists, there must be “**clear, mutual assent** on the part of two or more persons” to form a partnership. *In Re Jackson*, 28 B.R.

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559, 562-63 (Bankr. E.D.Pa.1983) (Emphasis Supplied). There is no requirement that the partnership agreement be in writing, and may be made orally, or it may be found to exist from all of the attending circumstances. *See Ruth v. Crane*, 392 F.Supp. 724, 733 (E.D.Pa.1975). An established pattern of profit and loss sharing may support a finding of a partnership, but is **not conclusive**. *See Canfield v. Canfield*, 4 Pa. D. & C.3d 110, 113 (Pa.Com.Pl.1977) (Emphasis supplied). Further, intent to form a partnership may also be found through a partnership tax return. *Leprino Foods Co. v. Gress Poultry, Inc.*, 379 F.Supp.2d 650 (2005).

The determination of whether a partnership exists is a question of fact concerning the intent of the parties. The burden of proof to show a partnership is on the one **alleging** the partnership. *Falkner v. Falkner*, 24 Mich. App. 633 (1970); *Fletcher v. Fletcher*, 197 Mich. 68 (1917). However, the burden is stricter **when relatives¹ are the alleged partners**. *Falkner, supra*; *Lobato v. Paulino*, 304 Mich. 668 (1943). The UPA provides some guidelines for determining the existence of a partnership. In *Barnes v. Barnes*, 355 Mich. 458, 461 (1959), the court held “at the present time no test is conclusive, though in modern law the factor of the intent of the parties, gauged by the legal effect of their agreement, bulks large.” *Id.*

Further, the elements of a partnership include a voluntary association of two or more people with legal capacity in order to carry on, via co-ownership, a business for profit. Co-ownership of the business requires more than merely joint ownership of the property and is usually evidenced by **joint control** and the **sharing of profits and losses**; another indicia of co-ownership is **mutual agency**. *Id.*

¹ The Hamed family and the Yusuf family are related by marriage.

ii. Hamed's Amended Complaint Alleges an Oral/Implied "Partnership" that Even if it Exists, Cannot Provide Plaintiff with the Relief Requested.

Plaintiff allege in his original Complaint that in 1986 an oral partnership called "Hamed and Yusuf partnership" was formed. *Original Complaint*, ¶3 [DOCKET ENTRY #1, attachment 3]. This bare allegation, repeated in different words in the Amended Complaint, still fails to specifically plead how that alleged partnership was formed. Further, it erroneously alleges that the "Hamed & Yusuf partnership" was formed to operate the Plaza Extra supermarket store in Estate Sion Farm only. This is factually impossible. This alleged "partnership" could not have existed in mid-1986 to operate the Plaza Extra Supermarket stores because United has been the owner of the United Shopping Plaza since 1983. Defendant Yusuf is only a minority shareholder of United, and does not directly own any of the Plaza Extra supermarkets. Only Defendant United owns and operates the Plaza Extra Supermarkets. The Amended Complaint fails to allege that crucial legal and factual distinction, and fails to allege if this alleged "partnership" ever acquired any shares of Defendant United. To this date, Plaintiff seems incapable of asserting any claim against Defendant United. As such, nothing in the Amended Complaint establishes any claim for relief against Defendant United.

The Amended Complaint further fails to allege the ownership interest of Defendant United in the operations of the Plaza Extra Supermarkets. The Amended Complaint, suddenly drops any mention of Defendant United as being formed "as a tax reporting entity" as it did in ¶5 of the original complaint, and now alleges that Defendant Yusuf used United Corporation as a tax reporting service for the partnership between Plaintiff Hamed and Defendant Yusuf. This absurd representation that a partnership needs a corporation to report taxes is a novel one, and unheard of. Plaintiff's Amended Complaint conveniently omits when Defendant United was incorporated,

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who the shareholders are, and the fact that Defendant United existed seven (7) years before Yusuf and Hamed met in mid-1986 to discuss any business agreements. Intentionally omitted from Plaintiff's complaints is the fact that Plaintiff Hamed is not even entitled to any of the rent proceeds United collects exclusively for the benefit of its shareholders. Clearly, Plaintiff Hamed cannot be a "50/50" partner when he has never been entitled to any rent profits of Defendant United, and where Defendant United had always exclusive right to all rents from its management and operations of the United Shopping Plaza.

Even if the Amended Complaint sufficiently alleges that a "Hamed & Yusuf partnership" exists, the only relief Mohammed Hamed would be entitled to is a fifty percent (50%) share of Defendant Yusuf's 7.5% ownership of Defendant United's outstanding stocks. However, this is not what Plaintiff Hamed contemplates in his Amended Complaint. Instead, Plaintiff Hamed ambiguously alleges a massive legal partnership with dubious and unspecific claims to properties and assets that are unsupported by specific facts. Simply stated, and as a matter of public record, Defendant Yusuf never did business as (d/b/a) Plaza Extra Supermarket, and never owned outright all of the shares of Defendant United Corporation. The Amended Complaint, like the original complaint, fails to annex a single legal document, tax return, informational return, etc., to demonstrate the existence of the alleged "Hamed & Yusuf" partnership.

iii. No Joint Control and Joint Management

Hamed's sole job at the Plaza Extra Supermarket in Sion Farm was that of a warehouse supervisor. Plaintiff ceased working for United in 1996, and moved overseas. **Exhibit B: Affidavit of Maher Yusuf** at ¶ 13. Hamed has never participated in a single management decision, nor ever

risked any losses in the so called alleged “partnership” that Hamed now alleges to exist. **Exhibit**

A: Affidavit of Yusuf at ¶ 6.

In sum, United Shopping Plaza, which is situated on approximately 6 acres in Estate Sion Farm, has always been owned in fee simple absolute, operated, and managed by Defendant United as far back as 1983: more than three (3) years before Plaintiff’s alleged “Partnership” existed. **Exhibit B: Affidavit of Maher Yusuf** at ¶ 6.

Paragraph 12 of the Amended Complaint alleges that “the partnership between Hamed and Yusuf subsequently expanded to two other supermarket locations, one in the west end to St. Croix, and one in St. Thomas.” This again is incorrect for the following reasons:

- a. Only Defendant United has ever operated and carried the trademark name “Plaza Extra.” The Complaint does **not** allege there is a partnership between Hamed and United. It only refers to Hamed and Yusuf.
- b. Yusuf is only a minority shareholder of United. United is owned in various shares by numerous members of the Yusuf family.² The Complaint fails to allege that United ever transferred any of its shares to this newly alleged “Hamed & Yusuf Partnership.”
- c. The Complaint fails to allege that Plaza Extra Supermarket in Tutu Park was leased by United, with Yusuf personally guaranteeing all lease obligations.
- d. The Complaint fails to allege that Hamed ever signed a single lease or guaranteed a single contractual or monetary obligation for Defendant United, including the lease agreement with the landlord/owners of the Tutu Park Mall location.

¶13 of the Amended Complaint

Paragraph 13 alleges “that the three Plaza Extra supermarkets have been managed jointly by the Partnership” – however, there is no mention of what duties and decisions Hamed undertook, or what obligations Plaintiff guaranteed jointly with either United or Yusuf as a

² See *supra* at footnote 5.

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purported partner. Without more ¶13 fails to describe what central management duties Hamed engaged in, executed, and implemented. Without joint management and risk of loss to a partner the complaint fails to properly allege the requisites of a “partnership.”

¶16 of the Amended Complaint

In ¶16 of the Amended Complaint, Plaintiff asserts that “the bank accounts for the three Plaza Extra supermarkets have always been accessible equally to Hamed and Yusuf, with the parties agreeing that one family member from each of the Hamed and Yusuf families will sign each check written on these bank accounts.” This representation is ambiguous as to lead the court to believe that a partnership existed requiring the parties to equally access the accounts. **Equal access to accounts does not translate to equal ownership of the accounts.** The Amended Complaint fails to allege that anyone else but United is the owner of these bank accounts.

Paragraph 9 of the Complaint alleges that “United has always had separate accounting records and separate bank accounts for its shopping center and business operations that were unrelated to the Plaza Extra supermarkets.” This clearly demonstrates Plaintiff’s lack of any ownership interest in Defendant United since even the Amended Complaint admits that United had separate bank accounts unrelated to the Plaza Extra supermarkets that are for the sole benefit of United’s shareholders.

Paragraph 20 of the Complaint alleges that “from time to time, Mohammed Hamed and Yusuf have used these profits distributed solely from these supermarkets accounts to buy other businesses and real property, always then owning these jointly held assets, regardless of the form of ownership, on a 50/50 basis.” Incredibly, the Complaint fails to state the name of a single business that the parties purchased and operated jointly. Though the parties have formed

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corporations for various purposes, the parties never acquired nor invested in any **other** businesses jointly as partners, but rather as shareholders in specific corporations formed for specific purposes. Further, the Amended Complaint fails to state whether those alleged businesses are the assets of the so called entity called "Hamed & Yusuf partnership" or the assets of other corporate entities. Plaintiff fails to allege what business the so called "Hamed & Yusuf partnership" purchased, from whom and when these businesses were purchased. Again, the Amended Complaint fails to allege with the required specificity what joint assets and businesses were purchased under the alleged "Hamed & Yusuf partnership."

Last but not least, nothing in the Amended Complaint alleges when Plaintiff Hamed appointed Waleed Hamed as his agent. This omission is convenient for the Plaintiff because it demonstrates clearly the fact Hamed was no longer associated with United since 1996. **Exhibit A: Yusuf Affidavit.** Even assuming there is a valid Power of Attorney to Waheed Hamed, the Amended Complaint fails to allege the scope and details of that power of attorney. The Amended Complaint further fails to allege what central management duties Waleed Hamed undertook on behalf of his father Mohammed Hamed. Failure to allege these necessary facts is fatal to Plaintiff's alleged partnership.

C. Judicial Estoppel and Quasi Estoppel Precludes Hamed from Asserting the Existence of a Partnership.

Even if the facts were to support the existence of an oral partnership, the doctrine of Judicial and Quasi Estoppel precludes Hamed from now asserting the existence of a "partnership" that Plaintiff has actively denied for the last twenty six (26) years. Plaintiff cannot produce a single signed document showing he is a partner with Yusuf, other than a deposition transcript

where the term “partner” is used to refer to the joint venture agreement Plaintiff Hamed entered into with Defendant Yusuf . For the last seven (7) years, Plaintiff through his agent Waleed Hamed, represented to the Government that no “partnership” existed between Plaintiff Hamed and Defendant Yusuf in the case of *U.S. v. United*. In short, even if a “partnership” is found, Plaintiff is estopped from asserting this newly contrived entity called the “Hamed & Yusuf partnership” to ensure equity and avoid grave injustice and prejudice to defendants United and Yusuf. The doctrine of judicial estoppel and quasi-estoppel are implicitly permitted under 26 V.I.C. §2(a), which states “Unless displaced by particular provisions of this chapter, the principles of law and **equity supplement** this chapter.”

i. Judicial Estoppel: Background

The doctrine of judicial estoppel precludes a party from contradicting its previous position where there has been no change in the law, simply because its interests have changed. *See New Hampshire v. Maine*, 532 U.S. 742 (2001). The doctrine’s purpose is principally “to protect the integrity of the judicial process by prohibiting parties from deliberately changing positions according to the exigencies of the moment.” *New Hampshire*, 532 U.S. at 749. The government is no exception. *See McCarron v. FDIC*, 111 F.3d 1089 (3d Cir. 1996).

“Judicial estoppel prevents a party from ‘playing fast and loose with the courts,’” *Scarano v. Central R. Co.*, 203 F.2d 510, 513 (3d Cir. 1953) (internal citation omitted). In *New Hampshire*, the Supreme Court cited to three non-exhaustive factors indicating whether to apply judicial estoppel:

First, a party’s later position must be ‘clearly inconsistent’ with its earlier position. Second, courts regularly inquire whether the party has succeeded in persuading a court to accept that party’s earlier position, so that judicial acceptance of an inconsistent position would create ‘the perception that either the first or the second

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court was misled,' ... A third consideration is whether the party seeking to assert an inconsistent position would derive an unfair advantage or impose an unfair detriment on the opposing party if not estopped.

Id. at 750, 751. Moreover, the court noted that it cannot apply one party's inconsistent positions without "undermining the integrity of the judicial process." *Id.* at 755.

The Third Circuit has "consistently held that judicial estoppel precludes a party from assuming a position in a legal proceeding inconsistent with one previously asserted" and emphasizes that such a practice is "an evil the courts should not tolerate." *Gov't of Virgin Islands v. Paniagua*, 922 F.2d 178 (3d Cir. 1990); *Delgrosso v. Spang*, 903 F.2d 234, 241 (3d Cir. 1990). Such that, "a party should not be allowed to gain an advantage on one theory, and then seek an inconsistent advantage by pursuing an incompatible theory." *Krystal Cadillac-Oldsmobile GMC Truck, Inc. v. Gen. Motors Corp.*, 337 F.3d 314, 319-20 (3d Cir. 2003). The test is whether a party has taken "(1) irreconcilably inconsistent positions; (2) adopted . . . in bad faith; and (3) a showing that . . . estoppel . . . addresses the harm and . . . no lesser sanction [is] sufficient." *G-I Holdings, Inc. v. Reliance Ins. Co.*, 586 F.3d 247, 262 (3d Cir. 2009).

The doctrine of estoppel springs from equitable principles and the equities in the case, and the doctrine is invoked to prevent injustice, as well as promote the ends of justice. It is invoked in the interests of justice, morality, and common fairness. **The doctrine also stands for the basic precepts of common honesty, clear fairness, and good conscience.** *Omega Indus., Inc. v. Raffaele*, 894 F. Supp. 1425 (D. Nev. 1995). Estoppel is an equitable remedy that the courts may invoke to prevent a party from benefiting from **its misconduct**; it is designed to prevent one party from suffering gross wrong at the hands of another party who has brought about the

condition. The doctrine of estoppel is designed to prevent injustice by not permitting a party to repudiate a course of action on which another party has relied to his or her detriment. *Id.*

ii. Hamed's Misconduct, Individually, and by his "Authorized Agent Waleed Hamed, Precludes him from Asserting a Partnership.

The following factual outline sets clearly Plaintiff's misconduct and the necessity of avoiding injustice by invoking judicial and quasi-estoppel:

- a. Plaintiff worked as a warehouse supervisor at the Plaza Extra – Estate Sion Farm store only from 1986 to 1996, when Plaintiff retired and moved to live in Jordan. Plaintiff's The Amended Complaint fails to allege anything concerning Hamed's joint management duties, if any exist.
- b. Plaintiff never filed or signed a single partnership tax return, partnership information return, statement of partnership, or any other document purporting the existence of any type of partnership. Absent from the Complaint is any reference whatsoever to a single return or document Plaintiff has ever filed with any government agency showing the existence of a "partnership."
- c. Plaintiff through his agent Waleed Hamed repeatedly represented for the last seven (7) years to the Government and this Court that no partnership ever existed, thereby severely prejudicing Defendants' legal position with the Government in the criminal case. **Exhibit A: Yusuf Affidavit** ¶ 7.
- d. In the criminal case, the Criminal Defendants have always truthfully represented with the consent of each defense counsel representing agent Waleed Hamed and Waheed Hamed to the Government that United has always been owned completely by the Yusuf family, and has only granted Mohammed Hamed a limited interest in the profits of the operations of United. See **Exhibit B: Affidavit of Maher Yusuf**.
- e. Mohammed Hamed never intervened for the last seven (7) years in the case of *U.S. v United Corporation* to assert the existence of a partnership. Plaintiff is thus precluded under the doctrine of issue preclusion from asserting this issue in the current proceedings. The Amended Complaint fails to allege what measures or actions Plaintiff undertook to assert a partnership interest in the criminal case.
- f. United and Yusuf have to their great detriment during the last 26 years relied on the representations of Hamed to the public and to the IRS and VIBIR the true nature of

their agreement, mainly that their relationship is one of a contractual joint venture and not a partnership. As such, United has always operated as a *de jure* corporation, and filed its returns as a corporation. **Exhibit B: Affidavit of Maher Yusuf.**

- g. To permit Plaintiff to now declare a “partnership” would mean substantial tax consequences to United and Yusuf, for which they cannot possibly amend and correct.³

The conclusion is simple: if Plaintiff was a partner he should have said so 26 years ago. Plaintiff cannot now seek declaratory relief as a partner just because it now suits him financially. As such, Plaintiff must be estopped pursuant to the doctrines of Judicial Estoppel and Quasi-Estoppel from asserting a partnership even if the court were to conclude that an oral or implied “partnership” did exist.

iii. The Doctrine of Unclean Hands Precludes Assertion of any Partnership by Plaintiff Hamed.

Similar to its Judicial and Quasi Estoppel cousins, the doctrine of unclean hands is applicable here. This doctrine is designed to preclude a party acting in bad faith from using the judicial system to further its ends. “The unclean hands doctrine derives from the equitable maxim that ‘he who comes into equity must come with clean hands.’” *Ellenburg v. Brockway, Inc.*, 763 F.2d 1091, 1097 (9th Cir.1985). “This maxim ‘closes the doors of a court of equity to one tainted with inequity or bad faith relative to the matter in which he seeks relief, however improper may have been the behavior of the defendant.’” *Id.*, citing *Precision Inst. Mfg. Co. v. Automotive Maintenance Mach. Co.*, 324 U.S. 806, 814 (1945).

Application of the unclean hands doctrine is left to the broad discretion of the trial court. *Precision Instrument, supra; Washington Capitols Basketball Club, Inc. v. Barry*, 419 F.2d 472, 478 (9th Cir.1969). This doctrine will bar a party from receiving an equitable remedy where

³ See I.R.C. § 6511 (establishing statute of limitations to file amended income tax returns).

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that party has acted in **bad faith** (*Wells Fargo & Company v. Stagecoach Properties, Inc.*, 685 F.2d 302, 308 (9th Cir.1982)) with respect to the subject matter of its claims. *Fuddrucker, Inc. v. Doc's B.R. Others, Inc.*, 826 F.2d 837, 847 (9th Cir.1987) (Emphasis Supplied), citing, *CIBA-GEIGY Corp. v. Bolar Pharmaceutical*, 747 F.2d 844, 855 (3d Cir.1984). The party asserting this doctrine has the burden of proving its application. *See e.g. Conan Properties, Inc. v. Conans Pizza, Inc.*, 752 F.2d 145, 150 (5th Cir.1985).

Hamed through his agent Waleed Hamed has repeatedly represented to every government agency through years of tax returns and through their attorneys that Plaintiff was never a partner with either Yusuf or United. Reincorporating the facts outlined in in the Judicial and Quasi Estoppel arguments, it is submitted that Plaintiff's actions amount to bad faith as contemplated under the doctrine of "unclean hands." As such, Plaintiff's assertion that a partnership exists must be denied.

D. The Statute of Frauds Precludes Any of Plaintiff's Implied or Express Claims for Interest in Real Property Owned by Defendant United.

The Statute of Frauds clearly bars any of Plaintiff's implied claims of interest in any real property owned by Defendant United. As early as 1979, United has purchased and acquired in fee simple absolute five of the six acres of the land where the United Shopping Plaza currently situates. In 1992, United acquired an additional acre of land. Not a single allegation in the Amended Complaint shows any transfer of United's property to Mohammed Hamed, or any other entity. Moreover, a mere allegation of an oral partnership cannot circumvent the clear reach of the Statute of Frauds to real estate transactions and title to property.

E. Plaintiff is Precluded from Asserting a Partnership Under the Doctrine of Issue Preclusion.

The doctrine of issue preclusion derives from the simple principle that “later courts should honor the first actual decision of a matter that has been actually litigated.” This doctrine ensures that “once an issue is actually and necessarily determined by a court of competent jurisdiction, that determination is conclusive in subsequent suits based on a different cause of action involving a party to the prior litigation,” *Montana v. United States*, 440 U.S. 147, 153 (1979). The prerequisites for the application of issue preclusion are satisfied when: i) the issue sought to be precluded is the same as that involved in the prior action; ii) that issue was actually litigated; iii) it was determined by a final and valid judgment; and iv) the determination was essential to the prior judgment.” *See In re Graham*, 973 F.2d 1089, 1097 (3d Cir.1992) (quoting *In re Braen*, 900 F.2d 621, 628-29 n. 5 (3d Cir.1979)). Complete identity of parties in the two suits is **not** required for the application of issue preclusion.

i. The Issue Sought to be Precluded is the Same as that Involved in the Prior Action

Hamed was not a party to the criminal case. However, Hamed’s business status and relationship with Yusuf was raised repeatedly in the criminal case and affirmatively declared to be not be a “partnership” but a joint venture agreement. There, Plaintiff’s agent Waleed Hamed made binding representations that the business agreement with Defendant Yusuf is only a joint venture giving Hamed only an interest in the net profits of Defendant United’s Plaza Extra supermarket operations. As such, the parties in the criminal case were able to resolve the criminal proceedings because the business relationship between Hamed and Yusuf was declared to be a contract, and not a partnership.

ii. The Issue was Actually Litigated

The status of the parties was litigated and resolved by Plaintiff's agent Waleed Hamed in the criminal case. There, Hamed's agent specifically asserted that no partnership existed, and consented to the plea agreement entered into between United and the Government because the entity was declared to be a non-partnership. As such, Hamed is precluded under the "offensive non-mutual collateral estoppel" from now asserting a partnership his agent denied to have ever existed. *See Parklane Hosiery Co. v. Shore*, 439 U.S. 322, 326 (1979) (where the court concluded that "a litigant who was not a party to a prior judgment may nevertheless use that judgment 'offensively' to prevent a defendant from re-litigating issues resolved in the earlier proceeding" subject to an overriding fairness determination by the trial judge. Here, Yusuf is seeking to preclude Hamed from now asserting an issue that has already been adjudicated in the criminal case – by way of stipulation and admission of Hamed's agent through his attorneys, over a seven (7) year period – that no partnership existed between the parties, and that Hamed's interest is only a limited (50%) interest in the net profits of the Plaza Extra supermarket operations. As such, Plaintiff Hamed is now precluded from asserting the existence of a partnership that he denied to have ever existed. Additionally, the declaration by Plaintiff's agent Waleed Hamed that no partnership existed between Hamed and the Defendants was necessary for the resolution of the criminal case.

F. The Amended Complaint Requires a More Define Statement

"If a pleading . . . is so vague or ambiguous that the responding party cannot reasonably be required to frame a responsive pleading, the responding party may move for a more definite

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statement.” *Bacon v. Mandell*, 2012 U.S. Dist. LEXIS 132231 (D.N.J. Sept. 14, 2012). *See also Wood & Locker, Inc. v. Doran & Assocs.*, 708 F. Supp. 684, 691 (W.D. Pa. 1989) (“The basis for granting such a motion is unintelligibility, not lack of detail.”).

On its face, the Amended Complaint is fatally defective for two primary reasons: it (1) defines the allegations “attributable to” Mohammad Hamed and Fathi Yusuf as “acts done either directly by the Plaintiff or indirectly through his family members acting as [his respective] authorized agent” and (2) “collectively” refers to Mohammad Hamed as “Hamed” regardless of whether such collective reference, as defined in the Amended Complaint, relates to acts allegedly done “directly” by Mohammad Hamed or indirectly, i.e., “through his family members acting as his authorized agent.” (Amended Complaint ¶2). Such convoluted pleading leaves Defendants – and the Court – guessing about the allegations asserted in the Amended Complaint.

By way of example, pursuant to the definitions of “Hamed” employed in the Amended Complaint, it is entirely unclear whether the allegation that “Hamed and Yusuf formed a partnership” (Amended Complaint ¶ 5) alleges that Mohammad Hamed and Fathi Yusuf formed a partnership; or one of Mohammad Hamed’s undisclosed family members acting as Mohammad Hamed’s authorized agent and Fathi Yusuf formed a partnership; or whether any number of undisclosed “family members acting as [an] authorized agent” for Mohammad Hamed and Defendant Yusuf formed a partnership. Each of those interpretations is possible under the current version of the Amended Complaint. Similarly, it is entirely unclear whether the allegation that “the three Plaza Extra supermarkets have been managed jointly by Hamed and Yusuf” (Amended Complaint ¶ 7) alleges that Mohammad Hamed and Defendant Fathi Yusuf jointly managed the supermarkets; or one of Mohammad Hamed’s family members acting as Mohammad Hamed’s

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authorized agent and Fathi Yusuf jointly managed the supermarkets; or whether any number of undisclosed “family members acting as [an] authorized agent” for Mohammad Hamed and Defendant Fathi Yusuf, jointly managed the supermarkets. The vast majority, if not all, of the material allegations in the Amended Complaint are equally unintelligible and cannot reasonably serve as a basis upon which relief can be granted, and otherwise allow Defendants to reasonably frame any defensive pleadings and papers. Accordingly, requiring Plaintiff Hamed to replead is appropriate under the circumstances.

G. Striking The Factual Allegations and Exhibits

Motions to strike pleadings are governed by Federal Rule of Civil Procedure 12(f), which allows the court, “upon motion made by a party . . . or upon the court's own initiative at any time . . . [to strike] from any pleading any insufficient defense or any redundant, immaterial, impertinent, or scandalous matter.” However, “even where the challenged material is redundant, immaterial, impertinent, or scandalous, a motion to strike should not be granted unless the presence of the surplusage will prejudice the adverse party.” *Symbol Techs., Inc. v. Aruba Networks, Inc.*, 609 F. Supp. 2d 353, 359 (D. Del. 2009). But it is beyond quibble that communications in furtherance of settlement discussions are inadmissible under Fed. R. Evid. 408. Indeed, the Third Circuit has approved the 10th Circuit’s holding that even “if application of Rule 408 exclusion [is] doubtful, [the] better practice is to exclude evidence of compromise negotiations.” *Affiliated Mfrs. v. Aluminum Co. of Am.*, 56 F.3d 521, 528 (3d Cir. 1995) citing *Bradbury v. Phillips Petroleum Co.*, 815 F.2d 1356, 1364 (10th Cir. 1987).

Moreover, courts within the Third Circuit have found that motions to strike references to settlement negotiations are appropriate when they found factual allegations to be inadmissible

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under Rule 408 and thus immaterial. *See, e.g., Ciolli v. Iravani*, 625 F. Supp. 2d 276, 284-89 (E.D. Pa. 2009); *Bergman v. Jefferson-Pilot Life Ins. Co.*, 2003 U.S. Dist. LEXIS 23689, 2003 WL 23142155, at *1 (E.D. Pa. Dec. 30, 2003); *Scott v. Twp. of Bristol*, 1991 U.S. Dist. LEXIS 3303, 1991 WL 40354, at *5 (E.D. Pa. Mar. 20, 1991); *Agnew v. Aydin Corp.*, 1988 U.S. Dist. LEXIS 9911, 1988 WL 92872, at *4 (E.D. Pa. Sept. 6, 1988).

Here, Hamed has cherry-picked selective documents exchanged between Hamed and Yusuf during settlement discussions. Because Rule 408 militates in favor of excluding the contents of the settlement discussions and the documents produced in relation to the settlement discussions, the Defendants would be prejudiced if the product of the settlement discussions were used against them. To that end, because the Third Circuit's decision in *Affiliated Mfrs* dictates that Rule 408 requires the exclusion of the by-product of the parties' settlement discussion, the only way to effectuate Rule 408's intent and purpose is to utilize Rule 12(f) to strike the offending exhibits and references in the Complaint. *Accord Ciolli, supra* at 289. Accordingly, this Court should require Hamed to replead the Complaint to remove all of the offending material and, in turn, then allow the Defendants to file a responsive pleading. This is especially warranted in light of Plaintiff Hamed's agent, Waleed Hamed's representation to the District Court and the U.S. Attorney's Office concerning the true nature of the business arrangement between Plaintiff Hamed and Defendant Yusuf as one of a joint venture agreement, and not a partnership.

IV. CONCLUSION

For the reasons stated above, this Court should grant Defendant's motion to dismiss; and in the alternative order Plaintiff to replead with specificity the scope, nature, and extent of the alleged partnership between Plaintiff Hamed and Defendant Yusuf as to enable Defendants to

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respond to Plaintiff's Amended Complaint. Further, the Court should strike the exhibits and factual allegations produced by the parties' settlement discussions.

Wherefore, it is respectfully requested that the Court grant this Motion.

Date: November 5, 2012

RESPECTFULLY SUBMITTED,

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

By: /s/ Nizar A. DeWood
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CERTIFICATE OF SERVICE

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

Date: October 9, 2012

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

Carl J. Hartmann III, Esq.
5000 Estate Coakley Bay, L-6
Christiansted, VI 00820
Telephone: (340) 719-8941
Email: carl@carlhartmann.com

/s/ Nizar A. DeWood, Esq.
Nizar A. DeWood, Esq.

EXHIBIT

A

6. Each of Mohammad Hamed's sons (Waheed Hamed, Waleed Hamed, Mufeed Hamed, and Hisham Hamed) has worked at United Corporation's three supermarkets ("the Plaza Extra Stores"), or at any one or combination of them, but only in the capacity of an employee. Plaintiff Mohammad Hamed likewise has occasionally worked at the Plaza Extra Stores in the sole capacity of an employee, and has never worked in any management capacity at any of the Plaza Extra Stores.

7. United Corporation is the owner of the trademark name "Plaza Extra." United Corporation has never transferred or given permission to anyone else to use that name.

8. In late 2011, I confronted employee Waleed Hamed about substantial financial irregularities that I found in documents provided by the U.S. Government in the Federal Court Criminal Action. For example, I discovered that Waleed Hamed declared more than \$7,587,483 in stock and bond purchases in 1994, when his sole salary as an employee of United Corporation has never exceeded \$75,000 during the 1990s. To my knowledge, Waleed had no other income at that time.

9. I also discovered that Waleed Hamed had reported \$408,572 in stocks and bonds on his 1993 U.S. Tax Return (Form 1040), although, again, his sole salary as an employee of United Corporation has never exceeded \$75,000 during the 1990s and, to my knowledge, Waleed had no other income at that time.

10. I now understand that, on or about December 3, 2009, the U.S. Government in the Federal Court Criminal Action took the position that Waleed Hamed and his brother, Waheed Hamed, had each "skimmed" money from United Corporation. I attach as Exhibit 1 hereto the subject communication.

11. Subsequently, Mohammed Hamed and I tried to privately settle our differences regarding the subject financial irregularities. I am not a lawyer, have never studied law, and I do not know the legal definitions of the terms "partner" or "partnership." I now understand that, until filing this action, Mohammed Hamed never declared himself to be my formal or legal partner in 26 years. Similarly, his son, Waleed Hamed, never advised the U.S. Government about any partnership in the Federal Court Criminal Action.

12. During my private settlement negotiations with Mohammed Hamed, Waleed Hamed, apparently acting for his father, for the first time sought to interject the word "partnership" in any proposed settlement agreements. The terms "partner" and "partnership" are commonly used in my native Arab culture to refer to a friend or companion. Waleed Hamed, who is a defendant in the Federal Court Criminal Action and signed the Plea Agreement in that action, also threatened United Corporation by refusing to allow United to file its tax returns as required by the Plea agreement. Therefore, to appease Waleed Hamed's request and threat, I asked my attorney to provide Mohammed Hamed during the private settlement negotiations with a proposed dissolution agreement using the word "partnership."

13. Although our private settlement negotiations lasted from approximately January 2012 to June 29 2012, no settlement agreement was reached because, once my attorneys realized the Hameds' true intent in seeking to interject the term "partnership" into the negotiations, we simply could not agree on the fact that any Hamed family member, including Mohammed Hamed, was actually ever a true partner with me or United Corporation.

14. Between June 29th, 2012 and August 2, 2012, I held three meetings with Mohammed Hamed, through his agent Waleed Hamed, and our criminal defense team in the Federal Court Criminal Action.

15. During those three days of settlement talks, we revised numerous draft proposed plea agreements. None of them contained the terms "partner" or "partnership." In contrast to Plaintiff Mohammed Hamed, I could not and cannot use the words "partner" or "partnership" as relating to Mohammed Hamed in any legal or formal document, based on my view that doing so would be a lie and a dishonest misrepresentation to the U.S. Government and the public.

16. I also advised Mohammed Hamed's defense attorneys that they have always represented to the U.S. Government that we do not have a partnership, that Mohammed Hamed never filed a single partnership return or public partnership declaration, and that he has been retired as an employee from United Corporation since 1996.

17. Every accountant that United Corporation has ever hired has always filed U.S. Corporate Tax Returns (Form 1120) – and no partnership returns. United Corporation has never filed any local, state or federal partnership statements; never filed with the Office of the Lt. Governor any Statement of Partnership Authority; never acquired any property, interest or asset in the name of "United Corporation Partnership" or any such other or similar name containing the word "Partnership"; and never filed or caused to be filed any local, state or federal tax return indicating that it is a partnership. In addition, as the Registered Agent of United Corporation, I have never acquired property on behalf of United Corporation by way of "Fathi Yusuf, as a partner of United Corporation, a partnership formed under the law of the U.S. Virgin Islands," or any such other or similar term containing the words "partner" or "partnership"; and no property has ever been conveyed to me as a "partner" in United Corporation.

18. The Plaza Extra Stores are running as usual, with no unusual operating problems. The dispute with Mohammed Hamed has not affected the operations of United's Plaza Extra Stores, and United Corporation does not have any plans to cease the stores' normal and regular operation.

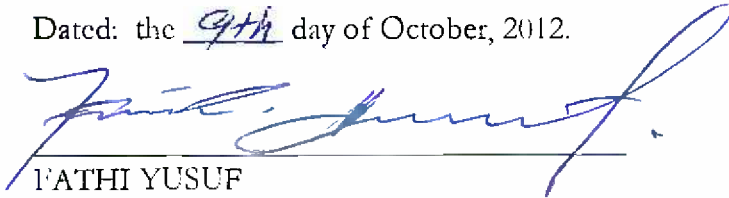
19. The central allegations in the Complaint in this action and the motion for a temporary restraining order are not true. Similarly, the alleged fear concerning "the continued operation" of the Plaza Extra Stores in the motion for a temporary restraining order is

completely unfounded, as United Corporation has not considered any operational changes, including layoffs or closures, that would impact the stores' future operations in any meaningful way.

20. I have never entered into or executed with Mohammed Hamed, or any member of the Hamed family, a written or memorialized partnership agreement.

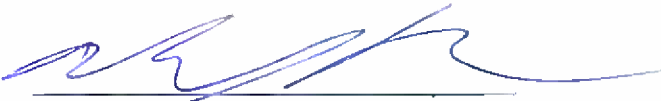
Further affiant sayeth naught.

Dated: the 9th day of October, 2012.


FATHI YUSUF

TERRITORY OF THE UNITED STATES VIRGIN ISLANDS)
DIVISION OF ST. CROIX)

Sworn and subscribed to before me this 9th day of October, 2012.


Notary Public

My commission expires: 07/14/15

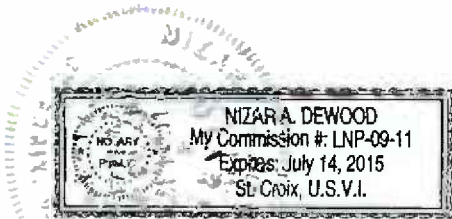


EXHIBIT 1
(Affidavit of Fathi Yusuf)

From: Daly, Mark F. (TAX) [mailto:Mark.F.Daly@usdoj.gov]
Sent: Thu 12/3/2009 4:27 PM
To: Gordon Rhea
Cc: Lombardi, Kevin C. (TAX); Hendrickson, Lori A. (TAX)
Subject: RE: Plea

Gordon

I do not think that \$7 million is an appropriate floor. Your tax calculations were not based on the evidence but on an unexplained cost of goods sold theory. Further, your proposal did not take into account the tax loss from the money skimmed by Wallie and Willie. Finally, you're asking the VIBIT to include all fines and interest in the settlement. That was not contemplated in our proposal and should raise the total tax loss. An appropriate an floor is the tax loss, which we calculated at \$22,451,190. SA your numbers lack any foundation in the evidence, we cannot accept those numbers.

Mark

Mark F. Daly
Trial Attorney
Northern Criminal Enforcement Section
Tax Division
United States Department of Justice
Tel: (202) 616-2245
Fax: (202) 616-1786
mark.f.daly@usdoj.gov

EXHIBIT

B

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

MOHAMMAD HAMED,)	CIVIL NO. 1:12-CV-99
)	
Plaintiff)	
Vs.)	AFFIDAVIT OF MAHER YUSUF, as President
)	of DEFENDANT UNITED CORPORATION
FATHI YUSUF)	
UNITED CORPORATION)	
)	
Defendants)	
_____)	

I Maher Yusuf, an adult of sound mind and body, hereby under oath attest:

1. I am a resident of St. Croix , the U.S. Virgin Islands.
2. I am the President of United Corporation (“United”), a duly organized Virgin Islands Corporation, in good standing and is authorized to conduct business in the Virgin Islands.
3. United was incorporated in 1979 by my father Fathi Yusuf. United is now owned in various shares among the various members of the Yusuf Family.
4. United has always been organized, maintained, and owned by the Yusuf Family.
5. As President of United, and after inspecting all of the records of United, including a review of all filings with the United’s counsel, I attest that there has never been a transfer of a single share of United outside the Yusuf family, nor has anyone ever invested in the equity of United.
6. In addition to its Plaza Extra supermarket operations, United has owned in fee simple absolute all of United Shopping Plaza since 1979. It has always owned the property, having never transferred any interest in the property (directly or indirectly) to anyone.
7. United has always managed its tenants, collected rents, and other benefits from its rental real property operations.
8. United never shared any rental real property proceeds with Mohammed Hamed or anyone in the Hamed family. Mohammed Hamed has never attested to any interest in the United Shopping Plaza.

9. In 2003, United Corporation was indicted in the case of *United States, et al., v. United Corporation, et al.*, docket no. 1:05-cr-15 (D.V.I.) (“the criminal case”). In all proceedings concerning the criminal case, I have always appeared for United as its President during all court proceedings. At no time did Waleed Hamed and Waheed Hamed ever declare that their father Mohammed Hamed is a partner with or in United.
10. The U.S. Justice Department has always received representations from each criminal defense attorney for the Hameds that the business arrangement is one of a business agreement.
11. As United’s president, I can attest that Mohammed Hamed has never requested a K-1 Partnership schedule, or ever declared this to be a partnership to a single governmental or taxing agency. Mohammed Hamed never filed a U.S. Partnership Tax Return on behalf of United.
12. Waleed Hamed has always declared to the U.S. Government in the criminal case that the business arrangement between United and Mohammed Hamed is a business agreement, where Mohammed Hamed would receive only fifty percent (50%) of any net profits of the operations of one of Plaza Extra supermarkets. Mohammed Hamed does not have a partnership, equity, or any other interest with United.
13. Mohammed Hamed stopped working as a warehouse supervisor in the late 1990s, and has never participated in any managerial decisions at United and its Plaza Extra stores.
14. United has never filed partnership statements with the Office of the Lt. Governor of the Virgin Islands. Similarly, the Hamed family has never demanded that such a statement be filed.
15. United has never filed a Statement of Partnership Authority with the Office of the Lt. Governor. Similarly, the Hamed family has never demanded that such a statement be filed.
16. United has never acquired property in the name of “United Corporation Partnership.”
17. Most importantly, United has always charged rent for the use of part of its retail premises by the Plaza Extra Supermarket operations on Sion Farm, St. Croix. Mohammed Hamed has always understood that United would charge for the use of its retail space, and would deduct the value of such rent in arriving at the net profits of the Plaza Extra Supermarkets.

18. The Hamed family was never entitled, and never received any part of the proceeds of the real estate rental income. The Hamed family and Mohammed Hamed neither dealt with the Tenants, nor made any decisions to lease the property to anyone.
19. In late 2011, substantial evidence of financial irregularities was revealed when United received a "Hard Drive" with scanned copies of voluminous records that were in the possession of the Federal Bureau of Investigation ("FBI"). These irregularities included substantial defalcation of monies by Waleed Hamed, the son and designated agent of Mohammed Hamed. Waleed Hamed has always been an employee-manager of the Plaza Extra Supermarket in Sion Farm.
20. In late March, 2012, the Hameds began to take an aggressive and hostile position, including threatening to preclude United from filing their U.S. Corporate Tax Returns as required by plea agreement in criminal case.
21. Waleed Hamed threatened United that he would declare this to be a "partnership" and that he would not honor the relationship that had been in place for years. Additionally, Waleed Hamed threatened not to agree to the filing of the U.S. Corporate Tax Returns (1120s) that were agreed with the Justice Department as memorialized in the plea agreement in the criminal case.
22. Mohammed Hamed through Waleed Hamed decided to declare the relation a "partnership." Mohammed Hamed through Waleed Hamed demanded that settlement talks or agreement must use the word "partnership" and that they would not agree to honor the long-standing relationship.
23. In January of 2012, United instructed Attorney Nizar DeWood to prepare proposed settlement agreements with the word "partnership" as suggested by the Hameds. Those letters contained terms that Mohammed Hamed wanted in any proposed settlement agreement. Both Mohammed Hamed and the Hamed family know that Mohammed Hamed has never been partner in United, that United has never filed a single Partnership Return, and all of the criminal defendants have always represented to the U.S. Government that they are not partners.
24. From January through June 2012, United sought to resolve the dispute with the Hameds, but unfortunately could not reach a settlement agreement with Mohammed Hamed.
25. Between June 29th and August 3rd, 2012, additional settlement sessions were held between the parties. Numerous drafts of agreements were drafted and circulated. None of these proposed agreements ever mentioned the word partnership.

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Affidavit of Maher Yusuf as President of United
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26. None of the parties to the settlement discussions ever signed a single proposed settlement agreement. United would not agree to any settlement agreement that reflected that United is in any way a "partnership" because that would be inconsistent with the decades of representations made to third-parties and is factually incorrect.

27. The agreements that were circulated back and forth between Mohammed Hamed and United were intended to be part of the confidential settlement sessions.

I attest that the above is true to the best of my knowledge.

Date: Oct. 9, 2012

UNITED CORPORATION
By: Maher Yusuf, President

TERRITORY OF THE U.S. VIRGIN ISLANDS)
DIVISION OF ST. CROIX)

Sworn and subscribed to before me this 9th day of October, 2012.

Notary Public

My commission expires: 07/14/15

