

**IN THE SUPERIOR COURT OF THE VIRGIN ISLANDS  
DIVISION OF ST. THOMAS/ST. JOHN**

**UNITED CORPORATION,**

*Plaintiff,*

**v.**

**WAHEED HAMED,**  
*(a/k/a Willy or Willie Hamed),*

*Defendant.*

**Case No.: 2013-CV-101**

**ACTION FOR DAMAGES**

**JURY TRIAL DEMANDED**

**DEFENDANT WAHEED HAMED'S  
[CORRECTED] FIRST REQUESTS FOR ADMISSIONS TO PLAINTIFF UNITED**

**COMES NOW** defendant, Waheed Hamed, by counsel, and propounds on the plaintiff, United Corporation, the following *Requests to Admit* to be timely answered or deemed admitted pursuant to Rule 36 of the *Federal Rules of Civil Procedure*.

**DEFINITIONS**

Unless otherwise specified, or the context of the Request requires otherwise, answers to these Requests shall be governed by the following definitions:

"United" or "United Corp" shall mean the plaintiff United Corporation.

"Yusuf" shall mean Fathi Yusuf.

"Hamed" shall mean the plaintiff herein Waheed Hamed.

"Relevant time period" means 1991 to and including all of 1993. (As Plaintiff's complaint fails, at paragraph 12<sup>1</sup> to specify what years are involved, this period should be expanded by Plaintiff to include other years included in this sentence.)

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<sup>1</sup> 30. Note "the years" are not stated in paragraph 12.

**REQUESTS**

1. ADMIT or DENY that United Corporation filed the attached Amended Complaint (**Exhibit A**) in the Superior Court of the U.S. Virgin Islands in 2013-CV-101.

2. ADMIT or DENY that United averred in that Complaint, within paragraph 1, that:

Further, this civil action names John Doe 1-10 [hereinafter referred to as the "Does"] as persons who have worked knowingly, and jointly with Waheed Hamed in the commission of each of the causes of action alleged herein.

3. ADMIT or DENY that with regard to the named "Does" numbered 1-10, described in Paragraph 1 of the Amended Complaint United does not presently have certain knowledge of all of their identities.

4. ADMIT or DENY that with regard to the named "Does" numbered 1-10, described in Paragraph 1 of the Amended Complaint United has not obtained or served a copy of the Complaint or Amended Complaint on any of such "Does."

5. ADMIT or DENY that, on January 8, 2013, United Corporation filed a complaint in the V.I. Superior Court, St. Croix Division, against Waleed Hamed and John Does 1-10,

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12. During a review and inventory of the documents and files delivered and returned by the U.S. Government to Plaintiff United, Plaintiff United reviewed documents comprising tax returns for Waheed Hamed, **including but not limited to Defendant's tax returns for the years**

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*United Corporation v Waleed Hamed, et. al.*, Civil No. SX-13-CV-3 averring as facts in paragraph 11-14 (attached as **Exhibit B**):

11. Sometime in 1986, Plaintiff United, through its shareholder and then President, Fathi Yusuf, entered into an oral agreement, whereby Plaintiff United and Defendant Hamed's father, Mohammed Hamed, agreed to operate a grocery store business.

12. As a result of this oral agreement, Plaintiff United agreed to rent a portion of its real property, United Shopping Plaza, to this supermarket joint venture.

13. United Shopping Plaza is located on the Island of St. Croix, U.S. Virgin Islands.

14. In 1986, the joint venture resulted in the first supermarket store being opened, United began using the trade name "Plaza Extra" and the first supermarket in this joint venture was named Plaza Extra Supermarket. Since 1986, two additional stores opened in the U.S. Virgin Islands; the second in Tutu Park, St. Thomas; the third in Grove Place, St. Croix.

6. ADMIT or DENY that the representative of United who agreed to United entering into the partnership with Mohammad Hamed in 1986, was United's President Fathi Yusuf.

7. ADMIT or DENY that United, along with Fathi Yusuf submitted a document to the V.I. Superior Court, Division of St. Croix in 2012, in which it was stated:

There is no disagreement that Mr. Hamed is entitled to fifty percent (50%) of the profits of the operations of Plaza Extra Store

8. ADMIT or DENY that United, along with Fathi Yusuf submitted a document to the V.I. Superior Court in 2012, in which it was stated:

The issue here again is not whether Plaintiff Hamed is entitled to 50% of the profits. He is.

9. ADMIT or DENY that the deposition of Fathi Yusuf was taken on the 2nd day of February 2000, in a case before the Territorial Court of the Virgin Islands, at the Offices of

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Caribbean Scribes, 2132 Company St., Ste. 3, Christiansted, U.S. Virgin Islands, between 1:05 p.m. and 4:05 p.m.

10. ADMIT or DENY that at the deposition of Fathi Yusuf of February 2, 2000, Attorney Bethaney J. Vazzana appeared for the Defendants.

11. ADMIT or DENY that at the deposition of Fathi Yusuf of February 2, 2000, United was a defendant in the case for which the examination was taken, SX-13-CV-3.

12. ADMIT or DENY that on February 2, 2000, Fathi Yusuf was the President of United Corporation.

13. ADMIT or DENY that at the deposition of Fathi Yusuf of February 2, 2000, Fathi Yusuf was also a defendant in the case for which the examination was taken, SX-13-CV-3.

14. ADMIT or DENY that at the deposition of Fathi Yusuf of February 2, 2000, Fathi Yusuf was "first duly sworn" and thereupon agreed to testify on his oath.

15. ADMIT or DENY that Fathi Yusuf did testify at a deposition of Fathi Yusuf of February 2, 2000, that:

(p. 10:1-21)

- 1 So I left Nova Scotia, struggling, left them
- 2 not to get a loan, but did not close my account. I struggle

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3 all over looking to get a loan. I went to all local banks at  
4 that, time, and everybody says, I'm sorry, we can't help you.  
5 So I find it is a golden opportunity for me to go to Banco  
6 Popular.

7 So I went to the manager there, I explained to  
8 him my story what Scotia did to me and so he say, I will come  
9 to the site.

10 When he come to the site where I'm building,  
11 he says, How you going to put this building together?  
12 Where's your plan? I show it to him. It's almost zero, the  
13 specification. Just numbers for me, columns, but the column  
14 doesn't say what thick, what wide. It just give me the  
15 height.

16 So the bank, he says, Mr. Yusuf, I'm sorry.  
17 We don't do business that, way. We have to have somebody  
18 professional plan with full specification. I could see your  
19 plan approved, I could see the steel here, but it's -- you  
20 don't have the proper material or record to take to my board  
21 of director to approve a loan in the millions.

16. ADMIT or DENY that Fathi Yusuf did testify at a deposition of Fathi Yusuf of  
February 2, 2000, that:

(p. 14:4-25)

4 But before I continue, I'm going to – I would  
5 like to go back a little bit more to clear something. When I  
6 was in the financial difficulty, when I was in financial  
7 difficulty, my brother-in-law, he knew. I shouldn't – he  
8 started to bring me money. Okay? He own a grocery, Mohammed  
9 Hamed, while I was building, and he have some cash. He knew  
10 I'm tight.

11 He started bring me money. Bring me I think  
12 5,000, 10,000. I took it. After that I say, Look we

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13 Family, we want to stay family. I can't take no money from  
14 you because I don't see how I could pay you back. So he  
15 insisted, Take the money. If you can afford to, maybe pay  
16 me. And if you can't, forget about it. Okay. He kept  
17 giving me. I tell him, Under this condition I will take it.  
18 I will take it.

19 He kept giving me until \$200,000. Every  
20 dollar he make profit, he give it to me. He win the lottery  
21 twice, he gave it to me. All right? That time the man have  
22 a little grocery, they call Estate Carlton Grocery. Very  
23 small, less than 1,000 square foot, but he was a very hard  
24 worker with his children. And it was, you know, just like a  
25 convenience mom-and-pop stores. He was covering expenses and  
(p. 15:1-14)  
I saving money.

2 I say, Brother-in-law, you want to be a  
3 partner too? He said, Why not? You know, as a family, we  
4 sit down. Says, How much more can you raise. Say, I could  
5 raise 200,000 more. I said, Okay. Sell your grocery. I'll  
6 take the two hundred, four hundred. You will become  
7 25 percent partner.

8 So we end up I'm 25 percent, my two nephew 25  
9 each, and my brother-in-law, Mohammad Hamed, 25 percent. I  
10 don't recall the year, could be '83 or '84, but at least  
11 thanks God in the year that Sunshine Supermarket opened,  
12 because his supermarket is the one who carries these two  
13 young men and my brother to go into supermarket with me.  
14 So I have their money, I finish the building.

17. ADMIT or DENY that Fathi Yusuf did testify at a deposition of Fathi Yusuf of  
February 2, 2000, that:

(p. 17:6-20, 22-25)  
6 Then, but when I been denied, I have to tell  
7 my partner what's going on. I been entrusted to handle the  
8 job perfect, and I am obligated to report to my partner to

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9 anything that happened. I told my nephews and I told my  
10 partner, Hey, I can't get a loan, but I'm not giving up.

11 So two, three days later my two nephews split,  
12 say, We don't want to be with you no more, and we want our  
13 money. I say I don't have no money to pay you. The money's  
14 there, but if you want to leave because I default, you free  
15 to leave.

16 How we going to get paid?

17 I says, Shopping center is 50 percent owned by  
18 you uncle and 50 percent by me. I have to feed my children  
19 first, and whatever left over, I'll be more than happy to  
20 give it to you.

18. ADMIT or DENY that Fathi Yusuf did testify at a deposition of Fathi Yusuf of  
February 2, 2000, that:

22 We come to an agreement, I pay them 12 percent  
23 on their money, and 150,000 default because I don't fulfill  
24 my commitment. I accepted that. We wait until my partner,  
25 which is my brother, came. He's an older man. And we came  
(p. 18:1-14, 16-25)

1 up to Mr. Mohammed Hamed, I say, You want to follow them? He  
2 say, Yeah, I will follow them, but do you have any money to  
3 give? I say, Look, Mr. Hamed, you know I don't have no  
4 money. It's in the building, and I put down payment in the  
5 refrigeration. But if you want to follow them, if you don't  
6 feel I'm doing the best I can, if you want to follow them,  
7 you're free to follow them. I'll pay you the same penalty,  
8 75,000. I will give you 12 percent on your 400,000.

9 He says, Hey. If you don't have no money,  
10 it's no use for me to split. I'm going to stay with you.  
11 All right. I say, Okay. You want to stay with me, fine. I  
12 am with you, I am willing to mortgage whatever the  
13 corporation own. Corporation owned by me and my wife at that  
14 time.

19. ADMIT or DENY that on February 2, 2000, United Corporation was owned entirely by Fathi Yusuf and his wife.

20. ADMIT or DENY that Fathi Yusuf did testify at a deposition of Fathi Yusuf of February 2, 2000, that:

16 And my partner only put in \$400,000. That's all  
17 he put in, and he will own the supermarket. I have no  
18 problem. I told my partner, Look, I'll take you under one  
19 condition. We will work on this, and I'm obligated to be  
20 your partner as long as you want me to be your partner until  
21 we lose \$800,000. If I lose 400,000 to match your 400,000, I  
22 have all the right to tell you, Hey, we split, and I don't  
23 owe you nothing.

24 They say, Mr. Yusuf, we knows each other. I  
25 trust you. I keep going. Okay. Now, I told him about the  
(p. 19:1-10)

1 two partner left, Mr. Hamed. You know, these two guys, they  
2 left, my two nephew, they was your partner and my partner. I  
3 give you a choice. If you pay penalty with me and pay the  
4 interest with me, whatever they left is for me and you. But  
5 if I must pay them the one-fifty penalty and pay them  
6 12 percent, then Plaza Extra Supermarket will stay  
7 three-quarter for Yusuf and only one-quarter for you.

8 He says, Do whatever you think is right. I  
9 tell him, You want my advice? I be honest with you. You  
10 better off take 50 percent. So he took the 50 percent.

21. ADMIT or DENY that on the advice of Fathi Yusuf, in 1986 Hamed did take 50 percent ownership of Plaza Extra Supermarket.

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22. ADMIT or DENY that Fathi Yusuf did testify at a deposition of Fathi Yusuf of February 2, 2000, that:

(p. 19)

20 . . . I want to show  
21 to you and the court that Mohammed Hamed is way before  
22 Plaza Extra was opened with me, he was my partner.

23. ADMIT or DENY that Fathi Yusuf did testify at a deposition of Fathi Yusuf of February 2, 2000, that:

(p. 20:4-12)

4 When I open up Plaza Extra Supermarket, who  
5 was in charge of the money at that time is Wally Hamed. When  
6 this gentleman, Mr. Idheileh, lend me his money as a friend,  
7 I have never signed for him. Who paid him? I never pay him  
8 back. My partner's son is the one who pay him back. And he  
9 knew, because he come to my office once or twice a week. And  
10 he's not the only one knew. Every single Arab in the Virgin  
11 Islands knew that Mr. Mohammed Hamed is my partner, way  
12 before Plaza Extra was opened.

24. ADMIT or DENY that Fathi Yusuf did testify at a deposition of Fathi Yusuf of February 2, 2000, that:

(p. 21)

24 . . . You know, I don't  
25 have the final word. I will check with my partner,

(p. 22)

1 Mr. Hamed.

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25. ADMIT or DENY that Fathi Yusuf did testify at a deposition of Fathi Yusuf of February 2, 2000, that:

(p. 23)

18 A. But I want you please to be aware that my  
19 partner's with me since 1984, and up to now his name is not  
20 in my corporation. And that -- excuse me -- and that prove  
21 my honesty. Because if I was not honest, my brother -in -law  
22 will not let me control his 50 percent. And I know very  
23 well, my wife knows, my children knows, that whatever  
24 Plaza Extra owns in assets, in receivable or payable, we have  
25 a 50 percent partner.

(p. 24)

1 But due to my honesty—

...

4 --my partner, he never have it in  
5 writing from me.

27. ADMIT or DENY that Fathi Yusuf did testify at a deposition of Fathi Yusuf of February 2, 2000, that:

(p. 69)

13. Q. Okay. You were asked by Attorney  
14 when it says United Corporation in this Joint Venture  
15 Agreement, in talking about Plaza Extra, talking about the  
16 supermarket on St. Thomas, who owned or who was partners in  
17 United Corporation Plaza Extra at the time before you entered  
18 into that Joint Venture Agreement?  
19 A. It's always, since 1984, Mohammed Hamed.  
20 Q. Okay. So when it says United Corporation --  
21 A. It's really meant me and Mr. Mohammed Hamed.

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28. ADMIT or DENY that on September 25, 1999, Fathi Yusuf signed an affidavit under oath in *Idheileh v. United et. al.*, Civ. No. 156/1997 in the Territorial Court of the Virgin Islands, Division of St. Thomas and St. John, stating:

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.

29. ADMIT or DENY that on September 25, 1999, United's President Fathi Yusuf signed an affidavit under oath in *Idheileh v. United et. al.*, Civ. No. 156/1997 in the Territorial Court of the Virgin Islands, Division of St. Thomas and St. John, stating:

3. Mohamed Hamed and I decided to open a St. Thomas Plaza Extra store and used our own capital and later obtained financing to make the store ready for opening.

30. ADMIT or DENY that on September 25, 1999, United's President Fathi Yusuf signed an affidavit under oath in *Idheileh v. United et. al.*, Civ. No. 156/1997 in the Territorial Court of the Virgin Islands, Division of St. Thomas and St. John, stating:

4. Mohamed Hamed gave his eldest son, Walleed (a/k/a Wally), power of attorney to manage his interests for the family.

31. ADMIT or DENY that on September 25, 1999, United's President Fathi Yusuf signed an affidavit under oath in *Idheileh v. United et. al.*, Civ. No. 156/1997 in the Territorial Court of the Virgin Islands, Division of St. Thomas and St. John, stating:

7. Hamed did not want a third partner, but I convinced him that Ahmad could run the store and would protect all of our investments.

32. ADMIT or DENY that on September 25, 1999, United's President Fathi Yusuf signed an affidavit under oath in *Idheileh v. United et. al.*, Civ. No. 156/1997 in the Territorial Court of the Virgin Islands, Division of St. Thomas and St. John, stating:

41. The Hameds and I were able to turn the store around by the last part of 1994.

33. ADMIT or DENY that on September 27, 1999, Defendants United Corporation and Fathi Yusuf filed a Motion for Summary Judgment in *Idheileh v. United et. al.*, Civ. No. 156/97, V.I. Territorial Court, St. Thomas and stated:

Fathi Yusuf's brother in law, along with United have been the owners of the Plaza Extra Supermarket since its inception<sup>1</sup>.

[Footnote 1] Defendants have asked for leave of court to amend their answer to ¶ 13 of plaintiff's complaint to deny that paragraph. Wally Hamed is not a third partner to the joint venture but rather is a co -owner of Plaza Extra since the mid- 1980's even before the store on St. Croix opened. Wally Hamed was brought to the St. Thomas store as a key person of United, under the Joint Venture Agreement with plaintiff, and provided his services for free

34. ADMIT or DENY that on September 27, 1999, Defendants United Corporation and Fathi Yusuf filed a Motion for Summary Judgment in *Idheileh v. United et. al.*, Civ. No. 156/97, V.I. Territorial Court, St. Thomas and stated:

The Hameds and Fathi Yusuf worked at the St. Thomas store for free, working 18 - 20 hours a day.

35. ADMIT or DENY that on October 6, 1999, United Corporation and Fathi Yusuf filed Responses to Plaintiff's Second Set of Interrogatories to Defendants. In those responses, Yusuf and United stated:

2. State herein the length of employment, job description and duties, rate of pay and other emoluments of Mr. Mohammed Hammad.

**Response to Interrogatory No. 2:**

. . . Mohamed Hamed is a partner in Plaza Extra Supermarkets and has been since the mid-1980's

36. ADMIT or DENY that on October 6, 1999, United Corporation and Fathi Yusuf filed Responses to Plaintiff's Second Set of Interrogatories to Defendants. In those responses, Yusuf and United stated:

3. State herein the length of employment, job description and duties, rate of pay and other emoluments of Mr. Waled Hammad.

**Response to Interrogatory No. 3:**

. . . Walleed Hamed has been working for Plaza Extra on and off since 1986. At the time he worked at the St. Thomas Plaza Extra, during the period of Plaintiff's Joint Venture with United, which is the only relevant issue, he was a partner with general management duties. He received no salary.

37. ADMIT or DENY that on October 6, 1999, United Corporation and Fathi Yusuf filed Responses to Plaintiff's Second Set of Interrogatories to Defendants. In those responses, Yusuf and United stated:

6. Please provide the names and addresses of any and all individuals who have entered into joint venture or partnership agreements with defendant Yusuf.

**Response to Interrogatory No. 6:**

Objection. Irrelevant and not reasonably calculated to lead to the discovery of admissible evidence. Without limiting or waiving said objection, with respect to Plaza Extra, the original partners were Khalid Ali, Isam Yousuf, Mohamed Hamed, and Defendant Yusuf. By the time Plaza Extra opened in 1986, Mohamed Hamed and Defendant Yusuf were the only partners. These partners operated Plaza Extra under the corporate name of United Corp., and joined Ahmad Idheileh in a joint venture for the St. Thomas Plaza Extra in 1992.

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38. ADMIT or DENY that United averred as a fact in the Amended Complaint, within paragraph 6 is, that:

6. Plaintiff is owned completely in various shares by Fathi Yusuf, Fawzia Yusuf, Maher Yusuf, Nejah Yusuf, Zayed Yusuf, and Yusuf, hereinafter collectively referred to as the "Yusuf Family".

39. ADMIT or DENY that in 1987 more than 50% of the shares of United were owned by Fathi Yusuf and his wife.

40. ADMIT or DENY that in 1996 more than 50% of the shares of United were owned by Fathi Yusuf and his wife.

41. ADMIT or DENY that in 2002 more than 50% of the shares of United were owned by Fathi Yusuf and his wife.

42. ADMIT or DENY that in 2011 more than 50% of the shares of United were owned by Fathi Yusuf and his wife.

43. ADMIT or DENY that as of the date of the filing of the responses to these Requests to Admit that more than 50% of the shares of United are owned by Fathi Yusuf and his wife.

44. ADMIT or DENY that United averred as a fact in the Amended Complaint, within paragraph 7, that:

7. Defendant Waheed Hamed is a natural person and is a resident of St. Thomas,

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U.S. Virgin Islands. At all times relevant to this action, Defendant Hamed has been an employee of Plaintiff United.

45. ADMIT or DENY that United owns and collects rents from real properties.

46. ADMIT or DENY that United alleges Defendant Hamed works only in regard to those operations of United that United refers to as its United Corporations d/b/a Plaza Extra Supermarkets."

47. ADMIT or DENY that the Superior Court of the Virgin Islands (Brady, J.) issued a preliminary injunction dated April 25, 2013 ("April 25th PI"), with regard to Plaza Extra Supermarkets (attached hereto as **Exhibit C.**)

48. ADMIT or DENY that the April 25th PI ORDERED:

**ORDERED** that the operations of the three Plaza Extra Supermarket stores shall continue as they have throughout the years prior to this commencement of this litigation, with Hamed, or his designated representative(s), and Yusuf, or his designated representative(s), jointly managing each store, **without unilateral action by either party**, or representative(s), **affecting the management, employees**, methods, procedures and operations. (Emphasis added.)

49. ADMIT or DENY that United filed this instant action without the consent or agreement of Mohammad Hamed or his family.

50. ADMIT or DENY that United averred as a fact in the Amended Complaint, within paragraph 16, that:

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16. Defendant Waheed Hamed was never permitted to acquire, engage, or manage any business that may compete with the operations of the Plaza Extra Stores. Defendant Hamed never disclosed to his employer that he was operating a separate wholesale grocery business called "5 Corner's Mini Mart."

51. ADMIT or DENY that there exists no written legal agreements, contracts, writings or other documentation wherein either United or (United d/b/a Plaza Extra Supermarkets) is a party and defendant Hamed is a party.

52. ADMIT or DENY that there exists no written agreement not to compete wherein either United or (United d/b/a Plaza Extra Supermarkets) is a party and defendant Hamed is a party.

52. ADMIT or DENY that there exists no written agreement to disclose other business ventures wherein either United or (United d/b/a Plaza Extra Supermarkets) is a party and defendant Hamed is a party.

53. ADMIT or DENY that United has no contract, writing, license, articles of incorporation or other document stating on its face that defendant Hamed was operating a separate wholesale grocery business called "5 Corner's Mini Mart."

54. ADMIT or DENY that United has no document whatsoever stating on its face defendant Hamed's name and "5 Corner's Mini Mart" or "5 Corners."

55. ADMIT or DENY that United averred as a fact in the Amended Complaint, that:

11. During nine years of criminal proceedings, the U.S. Department of Justice and federal law enforcement (collectively the "U.S. Government"), gathered *significant financial documents*, including but not limited to tax returns, financial ledgers, accounting records, and various other documents concerning the parties herein. Prior to the release of the documents in October of 2010 to Plaintiff United, none of the officers of Plaintiff United had any actual or constructive knowledge of Defendant Hamed's conduct, financial affairs, or tax returns.

12. During a review and inventory of the documents and files delivered and returned by the U.S. Government to Plaintiff United, Plaintiff United reviewed documents comprising tax returns for Waheed Hamed, including but not limited to Defendant's tax returns for the years. (Referred to as "These Documents" hereinafter.)

56. ADMIT or DENY that United's counsel have had access to These Documents with the ability to review them for multiple days and to copy and scan them -- between 2003 and the present.

57. ADMIT or DENY that United's legal counsel had access to These Documents in 2003. (See attached **Exhibit D**), to wit,

In 2003, according to a declaration of Special Agent Thomas L. Petri stated in the criminal case, *United States of America v. Fathi Yusuf Mohammed Yusuf et. al.*, Criminal No. 2005-015 (DE 1148-1), that

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. (See, HAMD247566-HAMD247567.pdf at p. HAMD247566)

58. ADMIT or DENY that United's legal counsel had access to These Documents in 2004. *Id.*, to wit,

In a Declaration Special Agent Thomas L. Petri avers in a document filed in *United States of America v. Fathi Yusuf Mohammed Yusuf et. al.*, Criminal No.

2005-015 (DE 1148-1), that:

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 boxes. (See, HAMD247566-HAMD247567.pdf)

59. ADMIT or DENY that United's legal counsel had access to These Documents in after 2004.

60. ADMIT or DENY that United's legal counsel had access to These Documents in 2010.

61. ADMIT or DENY that United's legal counsel had access to These Documents in 2011.

62. ADMIT or DENY that United's legal counsel had access to These Documents in 2012.

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63. ADMIT or DENY that until October 1992, there was only one Plaza Extra Supermarket (or United Corporation d/b/a Plaza Extra Supermarket) which was located on St. Croix. (Hereinafter "Plaza Extra East Store.")

64. ADMIT or DENY that on January 4, 1992 the Plaza Extra East Store was burned down in a fire.

65. ADMIT or DENY that after January 4, 1992 when the Plaza Extra East Store was burned down in a fire, it did not re-open until May of 1993.

66. ADMIT or DENY that the Plaza Extra Store on St. Thomas did not open until after September of 1993.

67. ADMIT or DENY that United averred as a fact in the Amended Complaint, within paragraph 31, that:

31. [Defendant was at the times relevant to this action] "an at-will employee of Plaintiff United."

68. ADMIT or DENY that Defendant was at the times relevant to this action an at-will employee."

**Dated:** August 26, 2013

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**Carl J. Hartmann III, Esq.**  
(V.I. Bar No. 48)  
*Counsel for Defendant Hamed*  
5000 Estate Coakley Bay, Unit L-6  
Christiansted, VI 00820  
Telephone: (340) 719-8941  
Email: carl@carlhartmann.com

**CERTIFICATE OF SERVICE**

I hereby certify that on August 26, 2013, a true and accurate copy of the foregoing was served by email and U.S. Mail on:

**Nizar A. DeWood, Esq.**  
The Dewood Law Firm  
2006 Eastern Suburb, Suite 101  
Christiansted, VI 00820

and by email as a courtesy on:

**Joseph A. DiRuzzo, III, Esq.**  
Christopher David, Esq.  
Fuerst Ittleman David & Joseph, PL  
1001 Brickell Bay Drive, 32nd. Fl.  
Miami, FL 33131

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**Carl J. Hartmann III, Esq.**  
*Counsel for Defendant*

# **Exhibit A**



IN THE SUPERIOR COURT OF THE VIRGIN ISLANDS  
DIVISION OF ST. THOMAS & ST. JOHN

<b>UNITED CORPORATION</b>	)	CIV. NO. SX-13-CV-
	)	
Plaintiff	)	ACTION FOR DAMAGES
	)	<b>CIVIL ACTION</b>
VS.	)	
	)	<b>AMENDED COMPLAINT</b>
	)	
<b>WAHEED HAMED</b>	)	
<i>(a/k/a Willy, Willy Hamed)</i>	)	<b>JURY TRIAL DEMANDED</b>
	)	
Defendant	)	
_____	)	

**AMENDED COMPLAINT**

Plaintiff United Corporation, hereinafter (“United”), and by and through its undersigned counsel complains of Defendant Waheed Hamed, hereinafter (“Hamed”) as follows:

**I. BACKGROUND**

1. This is a civil action for damages (both compensatory and punitive) recoupment, conversion, accounting, constructive trust, breach of contract, and breach of various fiduciary duties against Defendant Waheed Hamed, an employee of Plaintiff United. This complaint includes causes of action against Defendant Waheed Hamed for defalcating, and misappropriating significant funds belonging to Plaintiff United, arising out of Defendant Hamed’s tenure as manager of the operations of the Plaza Extra Supermarket store in St. Thomas, V.I. as well as other locations. Further, this civil action names John Doe 1-10 as persons who have worked knowingly, and jointly with Waheed Hamed in the commission of each of the causes of action alleged herein.

## II. JURISDICTION, VENUE, & DEMAND FOR JURY TRIAL

2. This Court has personal jurisdiction, subject matter jurisdiction, and the amount in controversy is satisfied, pursuant to 4 VIC §76.

3. Venue is proper in the District of St. Thomas because the defendant is a resident of St. Thomas, Virgin Islands, and the facts underlying the causes of action arose in said District, pursuant to 4 VIC § 78.

4. A trial by jury is demanded pursuant to 4 VIC § 80.

## III. THE PARTIES

5. Plaintiff United Corporation is a duly organized Virgin Islands Corporation since January of 1979, and is authorized to conduct business in the Virgin Islands. Plaintiff is *sui juris*.

6. Plaintiff is owned completely in various shares by Fathi Yusuf, Fawzia Yusuf, Maher Yusuf, Nejeah Yusuf, Zayed Yusuf, and Yusuf, hereinafter collectively referred to as the “Yusuf Family”.

7. Defendant Waheed Hamed is a natural person and is a resident of St. Thomas, U.S. Virgin Islands. At all times relevant to this action, Defendant Hamed has been an employee of Plaintiff United.

8. Defendants John Doe 1 to 10, upon information, are employees, family, friends, and agents of Defendant Hamed who have participated and/or assisted defendant Waheed Hamed with the defalcation, conversion, and concealment of substantial assets that are the sole property of Plaintiff United. John Doe 1 to 10 may be both natural persons and/or incorporated or unincorporated associations/entities. Each is *sui juris*.

#### IV. FACTS

9. In 1992, Plaintiff United hired Waheed Hamed as an employee, and assigned him managerial duties at the Plaza Extra supermarket located in Tutu Park, St. Thomas, U.S. Virgin Islands. Defendant Hamed managed and collected significant cash and other assets on behalf of Plaintiff United during the course of his employment.

10. In 2003, Plaintiff United, Fathi Yusuf, Maher Yusuf, and Defendant Waheed Hamed, and the Defendant's brother Waleed Hamed, among others, were indicted in the case of *U.S. v United Corporation*, case no. 15-cr-2005 (D.V.I.).

11. During nine years of criminal proceedings, the U.S. Department of Justice and federal law enforcement (collectively the "U.S. Government"), gathered *significant financial documents*, including but not limited to tax returns, financial ledgers, accounting records, and various other documents concerning the parties herein. Prior to the release of the documents in October of 2010 to Plaintiff United, none of the officers of Plaintiff United had any actual or constructive knowledge of Defendant Hamed's conduct, financial affairs, or tax returns.

12. During a review and inventory of the documents and files delivered and returned by the U.S. Government to Plaintiff United, Plaintiff United reviewed documents comprising tax returns for Waheed Hamed, including but not limited to Defendant's tax returns for the years

13. With the exception of his salaried position with United Corporation, Defendant Waheed Hamed never had any other significant source of income from business operations, investments, etc., prior to or during his employment tenure with Plaintiff United.

14. Defendant Waheed Hamed owed an absolute duty of loyalty and care to United Corporation to act in its best interest and not to usurp any of Plaintiff's assets and business opportunity that would otherwise inure to Plaintiff's benefit.
15. A further review of Defendant Waheed Hamed's tax returns, including Defendant's 1992 Tax Return, obtained from the United States Government also revealed that Defendant Hamed had engaged in a separate and secretive wholesale grocery business called 5 Corner's Mini Mart.
16. Defendant Waheed Hamed was never permitted to acquire, engage, or manage any business that may compete with the operations of the Plaza Extra Stores. Defendant Hamed never disclosed to his employer that he was operating a separate wholesale grocery business called "5 Corner's Mini Mart."
17. Defendant Hamed's sole income in 1992 did not exceed \$35,000, and Defendant Hamed never had any other businesses or employment to produce additional revenue to purchase and sell grocery inventory to other retailers.
18. The scale and scope of the wholesale business as indicated in Defendant Hamed's tax returns demonstrates substantial inventory, upon information, belonging to Plaintiff United were misappropriated by Defendant Hamed to operate his wholesale business.
19. To date, Defendant Waheed Hamed refuses to explain and account to Plaintiff United for any of the aforementioned funds, inventory, and the business opportunities Defendant Hamed diverted to his personal benefit.

## **V. CAUSES OF ACTION**

### **FIRST CAUSE OF ACTION BREACH OF FIDUCIARY DUTIES**

20. Plaintiff incorporates paragraphs 1 through 20 inclusive as if fully set forth verbatim herein.

21. As an agent and employee of Plaintiff United, a corporate entity, Defendant Waheed Hamed owes fiduciary duties to the entity. Included in the fiduciary duty is the duty of loyalty. Not only is it Defendant Waheed Hamed's duty to properly manage the business affairs of the Plaza Extra Supermarket stores for the benefit of Plaintiff United, he is not permitted to place himself in a position where it would be for his own benefit to violate the duty.

22. Defendant Waheed Hamed has breached the following duties (the list of duties violated by Defendant Hamed, below is not intended to be an exhaustive or exclusive list):

- a. Duty of Loyalty
- b. Duty of good faith and candor;
- c. Duty to manage the day-to-day operations of Plaintiff United's Plaza Extra supermarket for the benefit of United;
- d. Duty of full disclosure of all matters affecting his employer Plaintiff United;
- e. Duty to refrain from self-dealing, and/or general prohibition against the fiduciary using his relationship to benefit his personal interest; and
- f. Duty to manage any funds, assets, and/or property belonging to Plaintiff United by virtue of its operation of the Plaza Extra Supermarket stores in accordance with applicable laws.

### **SECOND CAUSE OF ACTION**

### **CONSTRUCTIVE TRUST/RECOUPMENT**

23. Plaintiff incorporates paragraphs 1 through 23 as if fully set forth verbatim herein.

24. As an agent and employee of Plaintiff United, Defendant Hamed owes numerous fiduciary duties to Plaintiff United and its shareholders. Not only is it Defendant Hamed's duty to properly manage the business affairs of the Plaza Extra Supermarket stores for the benefit of Plaintiff United, but Defendant Hamed also is not permitted to place himself in a position where it would be for his own benefit to violate the duty.

25. Defendant Hamed has engaged in misappropriation of substantial and valuable assets of Plaintiff United causing substantial injury to Plaintiff United. As a result, Plaintiff United has sustained significant financial injury.

26. As such, a constructive trust should be imposed to gather and account for all assets misappropriated by Defendant Hamed that belongs to Plaintiff United.

### **THIRD CAUSE OF ACTION CONVERSION**

27. Plaintiff re-incorporates paragraphs 1 through inclusive as if fully set forth verbatim herein.

28. Defendant Waheed Hamed has knowingly converted substantial funds and assets belonging to Plaintiff United. Plaintiff never consented or agreed to Defendant Hamed's unauthorized use of its funds and assets. As such, Defendant Hamed is liable for conversion.

### **FOURTH CAUSE OF ACTION BREACH OF CONTRACT**

29. Plaintiff incorporates paragraphs 1 through 37 inclusive as if fully set forth verbatim herein.

30. Defendant was an at-will employee of Plaintiff United.

31. As an at-will employee of Plaintiff United, Defendant Hamed had a contractual duty to act in good faith, and to properly manage the business affairs of the Plaza Extra Supermarket stores for the benefit of Plaintiff United.

32. Defendant Hamed has breached his contractual duties to Plaintiff United, causing Plaintiff substantial economic and financial harm. As a result, Defendant Hamed is liable to Plaintiff for breach of contract.

### **SIXTH CAUSE OF ACTION ACCOUNTING**

33. Plaintiff incorporates paragraphs 1 through 33 inclusive as if fully set forth verbatim herein.

34. As agent and employee of Plaintiff United, Defendant Hamed was under full contractual obligation and other fiduciary duties to perform his functions as a manager with competence, integrity, and honesty to Plaintiff United Corporation and its shareholders. Defendant Hamed was not permitted to place himself in a position where it would be for his own benefit to violate the duty.

35. Defendant Hamed has breached his employment contractual agreement with Plaintiff United by mismanaging, misappropriating, and converting funds, monies, and other valuables to his personal use. As a result, Plaintiff United has sustained substantial financial damages.

36. As such, Plaintiff United is entitled a full accounting of all monies, funds, and assets unlawfully appropriated by Defendant Hamed.

### **VI. RELIEF REQUESTED**

Wherefore, Plaintiff United Corporation, and its shareholders, respectfully pray for the following relief:

- a. Actual and compensatory damages to be determined at trial.
- b. Punitive damages for the intentional defalcation of funds and damages caused to Plaintiff United Corporation.
- c. A complete accounting and constructive trust of all funds, assets, opportunities, and other valuables converted and or misappropriated by Defendant Hamed.
- d. Costs of all professional fees that may be required for the audit and investigation of this matter.
- e. A return of all documents, including but not limited to electronically stored information, belonging to Plaintiff United in the possession (both actual and constructive) of Defendant Hamed.
- f. A Restraining Order precluding Defendant Hamed from:
  - i. Physically returning, or attempting to return, to any of the Plaza Extra supermarket stores;
  - ii. Accessing, or attempting to access, any bank accounts belonging to United Corporation for any purpose;
  - iii. Contacting, or attempting to contact, any employee of Plaintiff United concerning the operations and management of the Plaza Extra Supermarkets;
  - iv. Preclude Defendant Waheed Hamed from contacting any business associates of Plaintiff United;
  - v. Preclude Defendant Waheed Hamed from representing to third-parties that he is an employee of Plaza Extra;

- vi. Accessing, or attempting to access, any of Plaintiff United's, including but not limited to the Plaza Extra Supermarkets, books, records, and information regarding as to location or manner of storage;
- vii. Attorney's fees, court costs, and any other relief the court deems equitable.

Date: July 15, 2013

Respectfully Submitted,

DeWood Law Firm  
Counsel for Plaintiff United

By: /s/ Nizar DeWood  
Nizar A. DeWood, Esq. (1177)  
2006 Eastern Suburb, Suite 102  
Christiansted, V.I. 00820  
t. (340) 773-3444  
f. (888) 398-8428

### CERTIFICATE OF SERVICE

I hereby certify that a true copy of the foregoing Plaintiff's Amended Complaint was served on the Defendant via his counsel at the below address and date via EMAIL AND REGULAR CLASS MAIL.

Date: July 15, 2013

**Carl J. Hartmann, III**  
**5000 Estate Coakley Bay, L-6**  
**Christiansted, V.I. 00820**

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

# **Exhibit B**



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

UNITED CORPORATION,	)	CIVIL NO. SX-13-CV- <u>3</u>
	)	
	)	
Plaintiff	)	CIVIL ACTION
	)	
Vs.	)	ACTION FOR DAMAGES, ACCOUNTING,
	)	BREACH OF CONTRACT, & EQUITABLE
WALEED HAMED	)	RELIEF
( <i>aka</i> Wally, Wally Hamed)	)	
	)	COMPLAINT
JOHN DOE (1-10)	)	
	)	
Defendants	)	JURY TRIAL DEMANDED
_____	)	

Plaintiff United Corporation, hereinafter (“United”), and by and through its undersigned counsel complains of Defendant Waheed Hamed, hereinafter (“Hamed”) as follows:

**I. BACKGROUND**

1. This is a civil action for damages (both compensatory and punitive) recoupment, conversion, accounting, constructive trust, breach of contract, and breach of various fiduciary duties against Defendant Hamed, an employee and former agent of Plaintiff United. This complaint includes causes of action against Defendant Hamed for defalcating, and misappropriating significant funds belonging to Plaintiff United, arising out of Defendant Hamed’s tenure as manager of the operations of the Plaza Extra Supermarket store in Sion Farm, St. Croix, as well as other locations. Further, this civil action names John Doe 1-10 as persons who have worked knowingly, and jointly with Waleed Hamed in the commission of each of the causes of action alleged herein.

## II. JURISDICTION, VENUE, & DEMAND FOR JURY TRIAL

2. This Court has personal jurisdiction, subject matter jurisdiction, and the amount in controversy is satisfied, pursuant to 4 VIC §76.

3. Venue is proper in the District of St. Croix because all of the parties are residents of the District of St. Croix, U.S. Virgin Islands, and the cause(s) of action arose in said District, pursuant to 4 VIC § 78.

4. A trial by jury is demanded pursuant to 4 VIC § 80.

## III. THE PARTIES

5. Plaintiff United Corporation is a duly organized Virgin Islands Corporation since January of 1979, and is authorized to conduct business in the Virgin Islands. Plaintiff is *sui juris*.

6. Plaintiff is owned completely in various shares by Fathi Yusuf, Fawzia Yusuf, Maher Yusuf, Nejeih Yusuf, Zayed Yusuf, and Yusuf Yusuf, hereinafter collectively referred to as the "Yusuf Family".

7. Defendant Waleed Hamed is a natural person and is a resident of the U.S. Virgin Islands. Defendant Hamed is *sui juris*. At all times relevant to this action, Defendant Hamed has been an employee and agent of Plaintiff United.

8. Defendants John Doe 1 to 10, upon information, are employees, family, friends, and agents of Defendant Hamed who have participated and/or assisted defendant Waleed Hamed with the defalcation, conversion, and concealment of substantial assets that are the sole property of Plaintiff United. John Does 1 to 10 are natural persons and are each *sui juris*.

#### IV. FACTS

9. Plaintiff United was organized and authorized to conduct business in the U.S. Virgin Islands on January 15<sup>th</sup>, 1979 by its then shareholders Fathi Yusuf and his family. Plaintiff United has always been owned wholly in various percentage shares by the various members of the Yusuf family.

10. The Corporate officers of Plaintiff United have always been members of the Yusuf family.

11. Sometime in 1986, Plaintiff United, through its shareholder and then President, Fathi Yusuf, entered into an oral agreement, whereby Plaintiff United and Defendant Hamed's father, Mohammed Hamed, agreed to operate a grocery store business.

12. As a result of this oral agreement, Plaintiff United agreed to rent a portion of its real property, United Shopping Plaza, to this supermarket joint venture.

13. United Shopping Plaza is located on the Island of St. Croix, U.S. Virgin Islands.

14. In 1986, the joint venture resulted in the first supermarket store being opened. United began using the trade name "Plaza Extra" and the first supermarket in this joint venture was named Plaza Extra Supermarket. Since 1986, two additional stores opened in the U.S. Virgin Islands; the second in Tutu Park, St. Thomas; the third in Groye Place, St. Croix.

15. In 1986, Plaintiff United hired Waleed Hamed as an employee, and assigned him managerial duties at the Plaza Extra supermarket located in Sion Farm, St. Croix, U.S. Virgin Islands. Defendant Hamed managed and collected significant cash and other assets on behalf of Plaintiff United during the course of his employment.

16. In 2003, Plaintiff United, its shareholders Fathi Yusuf, Maher Yusuf, and Defendant Hamed, and the Defendant's brother Waheed Hamed were indicted in the case of *U.S. v United Corporation*, case no. 15-cr-2005 (D.V.I.).

17. During nine years of criminal proceedings, the U.S. Department of Justice and federal law enforcement (collectively the "U.S. Government"), gathered significant financial documents, including but not limited to tax returns, financial ledgers, accounting records, and various other documents concerning the parties herein. Prior to the release of the documents in October of 2011 to Plaintiff United, none of the officers of Plaintiff United had any actual or constructive knowledge of Defendant Hamed's conduct.

**Defendant's Acquisition of Substantial Securities through Defalcation of Plaintiff's Assets**

18. During a search of the documents and files delivered by the U.S. Government, Plaintiff United reviewed documents comprising tax returns for Defendant Hamed. An examination of Defendant Hamed's tax returns revealed the following significant assets:

- a. Tax Year 1992 (Stocks & Investments) .....\$ 408,572.00
- b. Tax Year 1993 (Stocks & Investments) .....\$7,587,483.00

19. The detailed stock acquisitions, which were listed meticulously by date of acquisition, price and number of shares purchased, could only have been acquired by Defendant Hamed through his unlawful access to monies and other properties belonging to Plaintiff United. Defendant Hamed never held any other employment since 1986, other than through his employment with Plaintiff United.

20. Defendant Hamed also never had any other significant source of income, business operations, investments, etc., prior to or during his employment tenure with Plaintiff United.

21. The income tax returns for the years 1992 and 1993 reflect substantial assets that upon information and belief derived from the unlawful conversion and unauthorized access to funds and monies belonging to Plaintiff United. Plaintiff United never provided Defendant Hamed remuneration of more than \$35,000 for a yearly salary.

22. In 1993, Defendant Hamed's personal income tax return showed a loss of \$394,382.00. Plaintiff United, through its Treasurer, inquired of Defendant Hamed where he obtained the money in 1992 to sustain a personal loss of \$394,000 in his equity portfolio.

23. Defendant Hamed replied that the significant stocks listed in the schedules attached to his joint tax return was that of "Hamdan Diamond" – an unrelated corporation - that the Certified Public Accountant that had prepared Defendant Hamed's 1993 income tax return had made a "mistake" and that Defendant Hamed "would get to the bottom of it."

24. To date, Defendant Hamed has offered no evidence of the "mistake" he claimed was attributed to the Certified Public Accountant.

25. Further, upon information, such losses were unlikely to be a "mistake" because Defendant Hamed "carried forward" those losses on his personal income tax returns through 1999.

26. An examination of Defendant Hamed's personal tax returns revealed that Defendant Hamed's stock purchases between 1991 and 1996 totaled more than \$7 Million.

27. In October of 2011, a review of the U.S. Government records and files further revealed the following defalcation of funds:

- a. Loans totaling \$430,500.00, approved by Defendant Hamed, presumably repaid to Defendant Hamed.
- b. Payments made with respect to the construction of Defendant Hamed's home amounting to \$481,000.00.

c. Six checks totaling \$135,000, drawn on the operating account of Plaintiff United's Plaza Extra supermarket, and made payable to "Waleed Hamed" personally.

28. To this date, Defendant Hamed refuses to explain and account for any of the aforementioned funds.

## **V. CAUSES OF ACTION**

### **FIRST CAUSE OF ACTION BREACH OF FIDUCIARY DUTIES**

29. Plaintiff incorporates paragraphs 1 through 28 inclusive as if fully set forth verbatim herein.

30. As an agent and employee of Plaintiff United, a corporate entity, Defendant Hamed owes fiduciary duties to the entity. Included in the fiduciary duty is the duty of loyalty. Not only is it Defendant Waleed Hamed's duty to properly manage the business affairs of the Plaza Extra Supermarket stores for the benefit of Plaintiff United, he is not permitted to place himself in a position where it would be for his own benefit to violate the duty.

31. Defendant Waleed Hamed has breached the following duties (the list of duties violated by Defendant Hamed, below is not intended to be an exhaustive or exclusive list):

- a. Duty of Loyalty
- b. Duty of good faith and candor;
- c. Duty to manage the day-to-day operations of Plaintiff United's Plaza Extra supermarket for the benefit of United;
- d. Duty of full disclosure of all matters affecting his employer Plaintiff United;

- e. Duty to refrain from self-dealing, and/or general prohibition against the fiduciary using his relationship to benefit his personal interest; and
- f. Duty to manage any funds, assets, and/or property belonging to Plaintiff United by virtue of its operation of the Plaza Extra Supermarket stores in accordance with applicable laws.

**SECOND CAUSE OF ACTION  
CONSTRUCTIVE TRUST/RECOUPMENT**

32. Plaintiff incorporates paragraphs 1 through 31 as if fully set forth verbatim herein.
33. As an agent and employee of Plaintiff United, Defendant Hamed owes numerous fiduciary duties to Plaintiff United and its shareholders. Not only is it Defendant Hamed's duty to properly manage the business affairs of the Plaza Extra Supermarket stores for the benefit of Plaintiff United, but Defendant Hamed also is not permitted to place himself in a position where it would be for his own benefit to violate the duty.
34. Defendant Hamed has engaged in systemic misappropriation of substantial and valuable assets of Plaintiff United causing substantial injury to Plaintiff United. As a result, Plaintiff United has sustained significant financial injury.
35. As such, a constructive trust should be imposed to gather and account for all assets misappropriated by Defendant Hamed that belongs to Plaintiff United.

**THIRD CAUSE OF ACTION  
CONVERSION**

36. Plaintiff re-incorporates paragraphs 1 through 35 inclusive as if fully set forth verbatim herein.

37. Defendant Waleed Hamed has knowingly converted substantial funds and assets belonging to Plaintiff United. Plaintiff never consented or agreed to Defendant Hamed's unauthorized use of its funds and assets. As such, Defendant Hamed is liable for conversion.

**FOURTH CAUSE OF ACTION  
BREACH OF CONTRACT**

38. Plaintiff incorporates paragraphs 1 through 37 inclusive as if fully set forth verbatim herein.

39. Defendant was an at-will employee of Plaintiff United.

40. As an at-will employee of Plaintiff United, Defendant Hamed had a contractual duty to act in good faith, and to properly manage the business affairs of the Plaza Extra Supermarket stores for the benefit of Plaintiff United.

41. Defendant Hamed has breached his contractual duties to Plaintiff United, causing Plaintiff substantial economic and financial harm. As a result, Defendant Hamed is liable to Plaintiff for breach of contract.

**SIXTH CAUSE OF ACTION  
ACCOUNTING**

42. Plaintiff incorporates paragraphs 1 through 41 inclusive as if fully set forth verbatim herein.

43. As agent and employee of Plaintiff United, Defendant Hamed was under full contractual obligation and other fiduciary duties to perform his functions as a manager with competence, integrity, and honesty to Plaintiff United Corporation and its shareholders. Defendant Hamed was not permitted to place himself in a position where it would be for his own benefit to violate the duty.

44. Defendant Hamed has breached his employment contractual agreement with Plaintiff United by mismanaging, misappropriating, and converting funds, monies, and other valuables to his personal use. As a result, Plaintiff United has sustained substantial financial damages.

45. As such, Plaintiff United is entitled a full accounting of all monies, funds, and assets unlawfully appropriated by Defendant Hamed.

## **VI. RELIEF REQUESTED**

Wherefore, Plaintiff United Corporation, and its shareholders, respectfully pray for the following relief:

- a. Actual and compensatory damages to be determined at trial.
- b. Punitive damages for the intentional defalcation of funds and damages caused to Plaintiff United Corporation.
- c. A complete accounting and constructive trust of all funds, assets, opportunities, and other valuables converted and or misappropriated by Defendant Hamed.
- d. Costs of all professional fees that may be required for the audit and investigation of this matter.
- e. A return of all documents, including but not limited to electronically stored information, belonging to Plaintiff United in the possession (both actual and constructive) of Defendant Hamed.
- f. A Restraining Order precluding Defendant Hamed from:
  - i. Physically returning, or attempting to return, to any of the Plaza Extra supermarket stores;

- ii. Accessing, or attempting to access, any bank accounts belonging to United Corporation for any purpose;
- iii. Contacting, or attempting to contact, any employee of Plaintiff United concerning the operations and management of the Plaza Extra Supermarkets;
- iv. Preclude Defendant Hamed from contacting any business associates of Plaintiff United;
- v. Preclude Defendant Hamed from representing to third-parties that he is an employee of Plaza Extra;
- vi. Accessing, or attempting to access, any of Plaintiff United's, including but not limited to the Plaza Extra Supermarkets, books, records, and information regarding as to location or manner of storage;
- vii. Attorneys fees, court costs, and any other relief the court deems equitable.

Date: January 8, 2013

1/8/13  
\$75.00  
J

Respectfully Submitted,

DeWood Law Firm  
Counsel for Plaintiff United

By:

  
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Christiansted, V.I. 00820  
t. (340) 773-3444  
f. (888) 398-8428

# **Exhibit C**

2013 WL 1846506 (V.I.Super.)

**SUPERIOR COURT  
OF THE VIRGIN ISLANDS,  
Division of St. Croix**

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

Plaintiff,

v.

**FATHI YUSUF** and  
**UNITED CORPORATON**,  
Defendants.

CIVIL NO. SX-12-CV-370

April 25, 2013

**Opinion**

**ACTION FOR DAMAGES;  
PRELIMINARY AND PERMANENT  
INJUNCTION; DECLARATORY  
RELIEF**

**JURY TRIAL DEMANDED**

**MEMORANDUM OPINION**

Douglas A. Brady, Judge of the Superior  
Court

THIS MATTER is before the Court on  
Plaintiff's Emergency Motion and  
Memorandum to Renew Application for

TRO ("Renewed Motion"), filed January 9, 2013, renewing his September 18, 2012 Motion for a Temporary Restraining Order and/or a Preliminary Injunction. Hearing on the Renewed Motion was held on January 25, 2013 and continued on January 31, 2013. Having reviewed the Renewed Motion, evidence and argument of counsel presented at the hearing, along with the voluminous filings of the parties in support of and in opposition to the Renewed Motion, this matter has been converted to that of a Preliminary Injunction pursuant to Fed.R.Civ.P. 65(a). Upon review of the record, the Court herein makes findings of fact and conclusions of law, pursuant to Fed.R.Civ.P. 52(a)(2), and GRANTS Plaintiff's Renewed Motion.

**JURISDICTION**

This Court has jurisdiction over this matter pursuant to 4 V.I.Code § 76(a), which grants the Superior Court "original jurisdiction in all civil actions regardless of the amount in controversy." Likewise, under 5 V.I.Code § 1261, courts of record are empowered to "declare rights, status, and other legal relations whether or not further relief is or could be claimed.... [\*2] The declaration may be either affirmative or negative in form and effect; and such declarations shall have the force and effect of a final judgment or decree," A request for injunctive relief is addressed to the sound discretion of the Court. *Shire U.S. Inc. v. Barr Laboratories, Inc.*, 329 F.3d 348, 352 (3d Cir.2003). This Court may

grant equitable (i.e. injunctive) relief as Plaintiff seeks in his Renewed Motion to enforce a partner's rights regarding partnership profits and management and conduct of the partnership business pursuant to 26 V.I.Code § 75(b).

### **STANDARD**

The Court must consider four factors when reviewing a motion for preliminary injunction: (1) whether the movant has shown a reasonable probability of success on the merits; (2) whether the movant will be irreparably injured by the denial of the relief; (3) whether granting preliminary relief will result in even greater harm to the nonmoving party; and (4) whether granting the preliminary relief will be in the public interest. *Petrus v. Queen Charlotte Hotel Corp.*, 56 V.I. 548, 554 (2012), citing *Iles v. de Jongh*, 55 V.I. 1251, 1256 (3d Cir.2011), (quoting *McTernan v. City of New York*, 577 F.3d 521, 526 (3d Cir.2009).

### **STATEMENT OF ISSUES**

By his Verified Complaint, Plaintiff alleges that Defendants, acting personally and through authorized agents, committed several unilateral acts in contravention of the partnership relationship between Plaintiff and Defendant Fathi Yusuf ("Yusuf) and established understandings and agreements among the parties. Plaintiff avers that those acts threaten the businesses and his interests in the

businesses established by the partnership as a result of those agreements. Accordingly, Plaintiff demands injunctive and declaratory relief to determine the status of the parties' relationships and the framework under which they must conduct their [\*3] business operations in light of those relationships. Upon review of the parties' case and controversy, submissions and presented evidence, the Court makes the following findings of fact.

### **FINDINGS OF FACT**

1. Plaintiff and Defendant Yusuf have a longstanding friendship and familial history which preceded their business relationship. *January 25, 2013 Evidentiary Hearing Transcript, at 196–198, hereinafter Tr. 196–198, Jan. 25, 2013.*
2. In 1979, Fathi Yusuf incorporated United Corporation ("United") in the U.S. Virgin Islands. *Defendants' Evidentiary Hearing Exhibit, no. 7, hereinafter Def. Ex. 7.*
3. United subsequently began construction on a shopping center located at Estate Sion Farm, St. Croix. Thereafter, Defendant Yusuf desired and made plans to build a supermarket within the shopping center. *Plaintiff's Evidentiary Hearing Exhibit, no. 1 (Transcript, February 2, 2000 Oral Deposition of Fathi Yusuf: Idheileh v. United Corp. and Yusuf, Case No. 156/1997, Territorial Court of the Virgin Islands, Div. St. Thomas and St. John), at*

8, lines 1–14; hereinafter *Pl.Ex. 1*, p. 8.1–14.<sup>1</sup>

<sup>1</sup> [Footnote 1] The Court has taken judicial notice of the certified copy of the deposition transcript in the noted Territorial Court action, submitted as *Pl. Ex. 1*. See discussion at *Tr. 6–9, Jan. 25, 2013*.

4. Subsequently, Yusuf encountered financial difficulty in completing construction of the shopping center and opening the supermarket, was unable to procure sufficient bank loans, and told Plaintiff Mohammad Hamed (“Hamed”) that he was unable to finance the completion of the project,. At Yusuf’s request, Hamed provided funding to Yusuf’s project from proceeds of Hamed’s grocery business. *Pl.Ex. 1, p. 14:4–15:14*.

5. Hamed provided Yusuf with monies to facilitate completion of construction on the shopping center and to facilitate opening the Plaza Extra supermarket in Estate Sion Farm, St Croix. *Tr. 197:5–199:13, Jan. 25, 2013. [\*4]*

6. Upon Yusuf’s request, Hamed sold his two grocery stores to work exclusively as a part of Plaza Extra. *Tr. 200:4–15. Jan. 25, 2013*.

7. Hamed contributed to Yusuf’s project funds as they were available to him, including the entire proceeds from the sale of his two grocery stores, with the agreement that he and Yusuf would each

be a 50% partner in the Plaza Extra Supermarket, “in the winning or loss.” *Tr.200:16–23, Jan. 25, 2013*.

8. Hamed initially became a 25% partner of Yusuf, along with Yusuf’s two nephews who each also had a 25% interest in the Plaza Extra Supermarket business. *Pl. Ex. 1, p. 15:2–14*.

9. Yusuf sought additional bank financing to complete the construction of the building for the Plaza Extra business, which loan application was eventually denied, as a result of which Yusuf’s two nephews requested to have their funds returned and to leave the partnership. *Pl. Ex. 1, p. 17:6–24*.

10. With the withdrawal of Yusuf’s nephews, the two remaining partners of the Plaza Extra Supermarket business were Hamed and Yusuf. Notwithstanding the financing problems, Hamed determined to remain with the business, having contributed a total of \$400,000 in exchange for a 50% ownership interest in the business. *Pl.Ex. 1, p. 17:24–19:10*.

11. Yusuf and Hamed were the only partners in Plaza Extra by the time in 1986 when the supermarket opened for business and Hamed has remained a partner since that time. *Pl.Ex. 28*.<sup>2</sup>

<sup>2</sup> [Footnote 2] Subsequent to the evidentiary hearing but before the parties submitted their post-hearing briefs, Plaintiff on February 19, 2013 filed his

Second Request to Take Judicial Notice and Request to Supplement the Hearing Record, presenting proposed Plaintiff's Exhibits 28, 29 and 30. By separate Order of this date, Plaintiff's Request was granted. Exhibit 28 is comprised of selected Defendants' Responses to Plaintiffs Second Set of Interrogatories to Defendants in that matter known as *Idheileh v. United Corp. and Yusuf, Case No. 156/1997, Territorial Court of the Virgin Islands, Div. St. Thomas and St. John.* [\*5]

12. As a partner in the Plaza Extra Supermarket business, Hamed was entitled to fifty (50%) percent of the profit and liable for fifty (50%) of the "payable" as well as loss of his contribution to the initial start-up funds. *Tr. 44:12-21; 200:16-23; 206:23-25, Jan. 25, 2013; PL Ex. 1, p. 18:16-23; p.23:18-25.*

13. Yusuf and Hamed have both acknowledged their business relationship as a partnership of an indefinite term. *Pl.Ex. 1, p. 18:18-23* ("I'm obligated to be your partner as long as you want me to be your partner until we lose \$800,000."); *Tr. 210:4-8, Jan. 25, 2013* (Q: "How long is your partnership with Mr. Yusuf supposed to last? When does it end?" A: "Forever. We start with Mr. Yusuf with the supermarket and we make money. He

make money and I make money, we stay together forever.")

14. Yusuf testified in the *Idheileh* case that it was general public knowledge that Yusuf was a business partner with Hamed even before the Plaza Extra supermarket opened. *PL Ex. 1, p. 20:10-12.*

15. Yusuf has admitted in this case that he and Hamed "entered into an oral joint venture agreement" in 1986 by which Hamed provided a "loan" of \$225,000 and a cash payment of \$175,000 in exchange for which "Hamed [was] to receive fifty percent (50%) of the net profits of the operations of the Plaza Extra supermarkets" in addition to the "loan" repayment. Yusuf states that the parties' agreement provided for "a 50/50 split of the profits of the Plaza Extra Supermarket stores." *Pl.Ex. 2, p.3, 4.* Indeed, Yusuf confirms that "[t]here is no disagreement that Mr. Hamed is entitled to fifty percent (50%) of the profits of the operations of Plaza Extra Store....The issue here again is not whether Plaintiff Hamed is entitled to 50% of the profits. He is." *Pl.Ex. 3, p. 11.*

16. In 1992-1993, a second Plaza Extra supermarket was opened on the island of St. Thomas, USVI, initially with a third "partner," Ahmad Idheileh, who later withdrew leaving a "50/50" ownership interest in the St. Thomas Plaza Extra between Yusuf and Hamed. *Tr.27:1-28:14, Jan. 25, 2013.*

17. At present, there are three Plaza Extra Supermarkets which employ approxi-

mately six hundred people on St. Croix and St. Thomas. *Tr.* 238:4–6, *Jan* 25, 2013.

18. In the *Idheileh* litigation, Yusuf provided an affidavit wherein he stated that “[m]y 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.” *Pl.Ex. 1, Affidavit of Fathi Yusuf Deposition Ex. 6*<sup>3</sup>.

<sup>3</sup> [Footnote 3] At the conclusion of the second day of the hearing, counsel agreed to supplement the record to include exhibits to Plaintiffs Exhibit I, the February 2, 2000 deposition of Fathi Yusuf. *Tr.* 129–130, *Jan.* 31, 2013. Deposition Exhibits 6 and 7 were provided with Plaintiff’s Notice of Filing Supplemental Deposition Exhibits, filed February 19, 2013.

19. Hamed and Yusuf have jointly managed the stores by having one member of the Hamed family and one member of the Yusuf family co-manage each of the three Plaza Extra Supermarkets. Originally, Hamed and Yusuf personally managed the first Plaza Extra store, with Hamed in charge of receiving, the warehouse and produce, and Yusuf taking care of the office. *Tr.* 26:11–19; 206:20–22, *Jan* 25, 2013. Yusuf’s

management and control of the “office” was such that Hamed was completely removed from the financial aspects of the business, concerning which Hamed testified “I’m not sign no thing.... Fathi is the one, he sign. Mr. Yusuf the one he sign the loan, the first one and the second one.” *Tr.* 207:16–21, *Jan.* 25, 2013.

20. During recent years, in every store there is, at least, one Yusuf and one Hamed who co-manage all aspects of the operations of each store. Mafeed Hamed and Yusuf Yusuf have managed the Estate Sion Farm store along with Waleed Hamed. Waheed Hamed, Fathi Yusuf and Nejah Yusuf operate the St. Thomas store, and Hisham Hamed and Mahar Yusuf manage the Plaza West store on St. Croix. *Tr.* 31:6–35:11; 147:11–20; 160:10–22, *Jan.* 25, 2013, and *Tr.* 33:6–17, *Jan.* 31, 2013. [\*7]

21. In operating the “office,” Yusuf did not clearly delineate the separation between United “who owns United Shopping Plaza” and Plaza Extra, despite the fact that from the beginning Yusuf intended to and did “hold the supermarket for my personal use.” *Pl.Ex. 1, p.* 8:1–7. Despite the facts that the supermarket used the trade name “Plaza Extra” registered to United (*Pl.Ex. 4, ¶* 14) and that the supermarket bank accounts are in the name of United (*PL Ex’s. 15, 16*), “in talking about Plaza Extra ... when it says United Corporation ... [i]t’s really meant me [Yusuf] and Mr. Mohammed Hamed.” *Pl.Ex. 1, p.* 69: 13–21.

22. Yusuf admitted in the *Idheileh* action that Plaza Extra was a distinct entity from United, although the “partners operated Plaza Extra under the corporate name of United Corp.” *Pl.Ex. 28, Response to Interrogatory 6.*

23. The distinction between United and the Plaza Extra Supermarkets is also apparent from the fact that United, as owner of United Shopping Center, has sent rent notices to Hamed on behalf of the Sion Farm Plaza Extra Supermarket, and the supermarket has paid to United the rents charged. *Pl. Ex’s. 7, 8, 9; Tr. 48:24–51:9; 212:18–214:15, Jan. 25, 2013.*

24. In 2003, United was indicted for tax evasion in federal court, along with Yusuf and several other members of the Hamed and Yusuf families in that matter in the District Court of the Virgin Islands, Division of St. Croix, known as *United States and Government of the Virgin Islands v. Fathi Yusuf, et al., Crim. No.2005–15* (“the Criminal [\*8] Action”). However, Plaintiff Mohammed Hamed was not indicted. *Tr. 222:11– 223:6; 134: 15–23, Jan. 25, 2013.*

25. In connection with the Criminal Action, the federal government appointed a receiver in 2003 to oversee the Plaza Extra Supermarkets, who deposits all profits into investment accounts at Banco Popular Securities and, originally, at Merrill–Lynch. Those “profits” accounts remain at Banco Popular Securities to the present. *Tr. 41:15–42:18; 137:13–138:19, Jan. 25, 2013.*

26. In 2011, United pled guilty to tax evasion in the Criminal Action. Charges were dismissed against the other Defendants, by Plea Agreement filed February 26, 2011. *Def. Ex. 2, p.2.*

27. The Criminal Action against United remains pending, as the terms of the Plea Agreement require “complete and accurate” tax filings. United has filed no tax returns since 2002, although estimated taxes have been paid from the grocery store accounts, and mandatory accounting procedures for Plaza Extra have been adopted. *Tr. 241:23–245:12, Jan 25, 2013; Tr. 90:4–16, Jan 31, 2013; Def. Ex. 2.*

28. At some point between late 2009 and 2011, at Yusuf’s suggestion, the Hamed and Yusuf families agreed that all checks drawn on Plaza Extra Supermarket accounts had to be signed by one member of the Hamed family and one member of the Yusuf family. *Tr. 100:11–16, 228:2–11, Jan. 25, 2013.*

29. In late 2011, United had its newly retained accountant review a hard drive containing voluminous financial records related to the Criminal Action, following which Yusuf accused members of the Hamed family of stealing money from the supermarket business [\*9] and threatening to close the store and to terminate the United Shopping Plaza lease. *Tr. 52:5–10, Jan. 31, 2013; Tr. 51:18–52:8, Jan. 25, 2013.*

30. Thereafter, discussions commenced initiated by Yusuf’s counsel regarding the

“Dissolution of Partnership.” *Pl.Ex. 10, 11, 12*. On March 13, 2012, through counsel, Yusuf sent a Proposed Partnership Dissolution Agreement to Hamed, which described the history and context of the parties’ relationship, including the formation of an oral partnership agreement to operate the supermarkets, by which they shared profits and losses. *Pl.Ex. 12*.<sup>4</sup> Settlement discussions followed those communications but have not to date resulted in an agreement. *Tr. 58:15–20, Jan. 25, 2013*.

<sup>4</sup> [Footnote 4] These exhibits were admitted at hearing over Defendants’ objection premised on Fed.R.Evid. 408. The evidence was not offered to prove the validity or amount of Plaintiffs claims, but rather to put into context the history of the parties’ relationship which may be accepted as evidence for another purpose under R. 408(b). Further, the exhibits offer nothing beyond evidence presented wherein Yusuf has similarly characterized the history of his relationship with Plaintiff.

31. Although Plaintiff retired from the day-to-day operation of the supermarket business in about 1996, Waleed Hamed has acted on his behalf pursuant to two powers of attorney from Plaintiff. *Tr. 45:24–48:2; 172:6–173:8; 202:18–25, Jan. 25, 2013; Pl.Ex. 1, Affidavit of Fathi Yusuf, Depos. Exh .6, ¶ 4*. Both Plaintiff

and Yusuf have designated their respective sons to represent their interests in the operation and management of the three Plaza Extra stores. *Tr. 31:6–35:11, Jan. 25, 2013*.

32. It had been the custom and practice of the Yusuf and Hamed families to withdraw funds from the supermarket accounts for their own purposes and use (see *Def. Ex. 1; Pl.Ex. 27* ), however such withdrawals were always made with the knowledge and consent of the other partner. *Tr. 138:20–139:8, Jan. 25, 2013; Tr. 121:3–123:9, Jan. 31, 2013. [\*10]*

33. Waleed Hamed testified that Fathi Yusuf utilized Plaza Extra account funds to purchase and subsequently sell property in Estate Dorothea, St. Thomas, to which it was agreed that Hamed was entitled to 50% of net proceeds. Although Yusuf’s handwritten accounting of sale proceeds confirms that Hamed is due \$802,966, representing 50% of net proceeds (*PL Ex. 18*), that payment has never been made to Hamed and the disposition of those sale proceeds is not known to Hamed. *Tr.88:8–90:17, Jan. 25, 2013*.

34. Each of the three Plaza Extra Supermarkets maintains and accounts for its operations separately, with separate bank accounts. In total, the stores maintain a total of approximately eleven accounts. *Tr. 35:12–20; 36:22–38:25; 229:10–13, Jan. 25, 2013*.

35. On or about August 15, 2012, Yusuf wrote a check signed by himself and his

son Mahar Yusuf and made payment to United in the amount of \$2,784,706.25 from a segregated Plaza Extra Supermarket operating account, despite written objection of Waleed Hamed on behalf of Plaintiff and the Hamed family, who claimed that, among other objections, the unilateral withdrawal violated the terms of the District Court's restraining order in the Criminal Action. *Tr.* 246:1–250:14, *Jan. 25, 2013; Pl. Group Ex. 13.*

36. On the first hearing day, Mahar Yusuf, President of United Corporation testified under oath that he used the \$2,784,706.25 withdrawn from the Plaza Extra operating account to buy three properties on St. Croix in the name of United. On the second hearing day, Mahar Yusuf contradicted his prior testimony and admitted that those withdrawn funds had actually been used to invest in businesses not owned by United, including a mattress business, but that none of the funds were used to purchase properties overseas. *Tr.* 250:2–251:15, *Jan. 25, 2013; Tr.* 118:12–120:2, *Jan. 31, 2013. [\*11]*

37. A restraining order was entered by the District Court in the Criminal Action which remains in place and restricts withdrawal of funds representing profits from the supermarkets that have been set aside in the Banco Popular Securites brokerage account pending the conclusion of the Criminal Action or further order of that Court. *Tr.* 41:15–42:18; 119:4–12, *Jan. 25, 2013.* The Criminal Action will remain pending until past tax returns are

filed. *Tr.* 134:15–136:22; 242:16–245:5, *Jan. 25, 2013.* As of January 18, 2013, the brokerage account had a balance of \$43,914,260.04. *Def. Ex. 9.* This Court cannot enforce the restraining order or otherwise control any aspect of the Criminal Action or its disposition.

38. Funds from supermarket accounts have also been utilized unilaterally by Yusuf, without agreement of Hamed, to pay legal fees of defendants relative to this action and the Criminal Action, in excess of \$145,000 to the dates of the evidentiary hearing. *Tr.* 76:5–82:9, *Jan. 25, 2013; Pl. Ex. 15, 16.*<sup>5</sup>

<sup>5</sup> [Footnote 5] Plaintiff has submitted Exhibit 30 with his February 19, 2013 Second Request to Take Judicial Notice and Request to Supplement the Hearing Record, granted by separate Order. Defendants' opposition to Plaintiffs' Motion did not address Exhibit 30, consisting of two checks in the total sum of more than \$220,000 in payment to defense counsel in this action, dated January 21, 2013 and February 13, 2013, drawn on a supermarket account by Defendants without Plaintiffs' consent. Although the evidence is cumulative and not essential to the Court's decision herein, it reflects an ongoing practice of unilateral

withdrawals and the possibility of continuing unilateral action in the future.

39. Since at least late 2012, Yusuf has threatened to fire Hamed family managers and to close the supermarkets. *Tr.* 149:20–150:22; 158:18–159:12; 253:25–254:19, *Jan. 25, 2013.*

40. On January 8, 2013, Yusuf confronted and unilaterally terminated 15 year accounting employee Wadda Charriez for perceived irregularities relative to her timekeeping records of her hours of employment, threatening to report her stealing if she challenged the firing or sought unemployment benefits at Department of Labor, *Tr.* 181:20–185:16, *Jan. 25, 2013.* Charriez had a “very critical job” with Plaza Extra § *Tr.* 179:17–19, *Jan. 25, 2013*), [\*12] and the independent accountant retained by Yusuf agreed that she was “a very good worker” and that her work was “excellent.” *Tr.* 94:2–6, *Jan. 31, 2013.* Because the Hamed co-managers had not been consulted concerning the termination or shown any proof of the employee’s improper activity, Mafeed Hamed instructed Charriez to return to work the following day. *Tr.* 179:4–24; 185:17–186:8, *Jan. 25, 2013.* On Charriez’ January 9, 2013 return to work, Yusuf started screaming at her, and told her to leave or he would call the police. *Tr.* 186:9–187:1, *Jan. 25, 2013.* Yusuf did call police and demanded on their arrival that Charriez, and Mufeed Hamed and Waleed Hamed be removed from the store, and

threatened to close the store. *Tr.* 93:5–94:15; 164:19–165:18; 187:5–188:8, *Jan. 25, 2013.* The incident that occurred on January 9, 2013, the same day that Plaintiff’s Renewed Motion was filed, coupled with other evidence presented demonstrates that there has been a breakdown in the co-management structure of the Plaza Extra Supermarkets. *Tr.* 141:25–142:18; 143:17–146:19; 166:21–167:8, *Jan 25, 2013.*

41. “By the time Plaza Extra opened in 1986, Mohamed Hamed and Defendant Yusuf were the only partners. These partners operated Plaza Extra under the corporate name of United Corp.” *Pl.Ex.* 28, *Response to Interrogatory 6.* Defendants now claim that Yusuf is the owner of only 7.5% of the shares of United (*Pl.Ex.* 2, *p. 11* ), which could adversely affect Plaintiff’s ability to enforce his claims as to the partnership “operated [as] Plaza Extra under the corporate name of United Corp.”

## **DISCUSSION**

Although this matter is before the Court on Plaintiff’s Renewed Motion that seeks a temporary restraining order, the parties agree that following the full evidentiary hearing [\*13] conducted, the relief Plaintiff seeks is a preliminary injunction pursuant to Fed.R.Civ.P. 65(a). The Court cannot issue a preliminary injunction unless on the basis of the evidence on the record, Plaintiff prevails as to each of the four factors recently delineated by the

Virgin Islands Supreme Court in *Petrus*, namely: (1) the movant has shown a reasonable probability of success on the merits; (2) the movant will be irreparably injured by the denial of the relief; (3) granting preliminary relief will not result in even greater harm to the nonmoving party; and (4) granting the preliminary relief will be in the public interest. 56 V.I. at 554. Only if the movant produces evidence sufficient to convince the Court that all four factors favor preliminary relief should the injunction issue. *Opticians Association of America v. Independent Opticians of America*, 920 F.2d 187, 192 (3d Cir.1990).

The evidentiary record before the Court includes the testimony of witnesses and documentary exhibits. Those exhibits include prior filings of the parties in this case by which the parties are bound by virtue of the doctrine of judicial admissions. *Berckley Inv. Group, Ltd. V. Colkitt*, 455 F.3d 195, 211 n. 20 (3d Cir.2006); *Partita v. IAP Worldwide Serv., VI, Inc.*, 368 F.3d 269, 275 (3d Cir2004). Those exhibits also include filings in prior unrelated cases, which are admissible as admissions of such party against its interest, pursuant to Fed.R.Evid. 801(d).<sup>6</sup>

[Footnote 6] On April 7, 2011, Act No. 7161 became law, which amended section 15 of which establishes the Federal Rules of Evidence applicable in this Court. See *Chinnery v. People*, 55 V.I. 500, 525 (2011).

The Court will consider the four factors required for the issuance of a preliminary injunction *in seriatim*, and makes the following conclusions of law.

### **CONCLUSIONS OF LAW**

#### **Probability of Movant's Success on the Merits.**

1. Plaintiff seeks to establish that his business relationship with Yusef of more than 25 years constitutes a Virgin Islands partnership, notwithstanding the lack of any written partnership [\*14] agreement and the failure of the business to file Virgin Islands partnership tax returns or to provide K-1 forms to report partners' distributive share of income, among other factors urged by Defendants. Whether the relationship will be characterized as a partnership is governed by the Uniform Partnership Act ("UPA"), adopted in 1998 as Title 26, Chapter 1 of the Virgin Islands Code.

2. Under the UPA, "the association of two or more persons to carry on as co-owners a business for profit forms a partnership, whether or not the persons intend to form a partnership." 26 V.I.Code § 22(a). In the mid-1980's when the Hamed Yusuf business relationship began, a Virgin Islands partnership was defined as "an association of two or more persons to carry on as co-owners a business for profit." Former 26 V.I.Code § 21(a).

3. Under the UPA, “A person who receives a share of the profits of a business is presumed to be a partner in the business ...” 26 V.I.Code § 22(c)(3). Under the former Code provisions, “the receipt by a person of a share of the profits of a business is prima facie evidence that he is a partner in the business ...” *Former* 26 V.I.Code § 22(4).<sup>7</sup>

<sup>7</sup> [Footnote 7] The Court applies the test in effect at the time the business relationship between the parties was formed (see *Harrison v. Bornn, Borrm & Handy*, 200 F.R.D. 509, 514 (D.V.I.2001)), and holds that a partnership is found to exist by the admitted sharing of profits of the business unless Defendants’ evidence is sufficient to rebut that *prima facie* evidence. However, the distinction between the language in the former statute and the current is of no legal significance. Commentary of the National Conference of Commissioners of Uniform State Laws on the publication of the 1997 of the UPA notes that “no substantive change is intended. The sharing of profits is recast as a rebuttable presumption of a partnership, a more contemporary construction, rather than as prima facie evidence thereof.”

Formation of Partnership,  
Unif. Partnership Act § 202,  
cmt. 3 (1997).

4. Evidence of “a fixed profit-sharing arrangement” and “evidence of business operation” are factors to be considered in the determination of whether the parties in a business relationship had formed a partnership. *Ad die v. Kjaer*, Civ. No.2004–135, 2011 WL 797402, at 3\* (D.V.I. Mar. 1, 2011). [\*15]

5. “A partnership agreement is defined as the agreement, whether written, *oral*, or implied, among the partners concerning the partnership, including amendments to the partnership agreement.” 26 V.I.Code § 2(7), *emphasis added*. A “partnership at will” exists where the partners have not agreed to remain partners until the expiration of a definite term or the completion of a particular undertaking.” 26 V.I.Code § 2(8).

6. Defendants protest that there is no written partnership agreement to memorialize the understanding between Yusuf and Hamed. However, as noted, the UPA does not require that such agreements be memorialized by a writing, and further sanctions “at will” agreements that have no definite term or duration, and are subject to dissolution by either partner at any time. As such, partnerships are not within the statute of frauds and need not be in writing. *Smith v. Robinson*, 44 V.I. 56, 61 (Terr. Ct.2001).

7. Even if the statute of frauds were applicable to the formation of a partnership, the doctrine of part performance operates to prevent an inequity where a person is induced or permitted to invest time, money and labor in reliance upon an oral agreement, which agreement would otherwise be voided by the application of the statute of frauds. Accordingly, if a party can show that part of an oral agreement was performed, the oral contract is taken out of the statute of frauds and becomes binding. *Sylvester v. Frydenhoj Estates Corp.*, 47 V.I. 720, 724 (D.V.I.2006), citations omitted.

8. Defendants suggest that Hamed and Yusuf entered into a joint venture rather than a partnership. A joint venture has been defined as a partnership for a single transaction, recognized as a subspecies of partnership, and is analyzed under Virgin Islands law in the same manner as is a partnership. *Boudreax v. Sandstone Group*, 36 V.I. 86, 97 (Terr.Ct.1997), citing *Fountain Valley Corp. v. Wells*, 19 V.I. 607 (D.V.I.1983). [\*16]

9. Yusuf and Hamed, acting under the name “United Corporation,” entered into their relationship with Ahmad Idheileh “to open and operate a supermarket on St. Thomas” by means of a Joint Venture Agreement. *Pl.Ex. 1, Dep. Ex. 7*. This “business relationship created by agreement of the parties for the purpose of profit” was formed “for a single undertaking or transaction,” and was to “terminate at the conclusion of their stated

purpose, by agreement, or at the will of the parties.” *C & C Manhattan v. Gov’t of the V.I.*, 46 V.I. 377, 384 (D.V.I.2004), citations omitted. To the contrary, the self-described “partnership” of Hamed and Yusuf, formed for profit, with no set duration, involved the development of a business enterprise, including the three supermarkets and other business projects spanning two and a half decades.

10. The Court concludes that Defendants’ recent claims that the parties have been engaged in a joint venture and not a partnership are not credible as they contradict the record before the Court and the long history prior to this litigation of admissions by Yusuf, who did not testify at the hearing, to the effect that he and Hamed are “50/50” partners. Those pre-litigation admissions of the existence of a partnership have been consistent over many years, including through his notice to Hamed of his dissolution of their partnership in the months prior to this litigation.

11. Defendants argue that Defendant United has owned and operated the businesses known as Plaza Extra, and that Hamed’s claims must fail because he concedes that he has no ownership interest in United. To the contrary, the record clearly reflects that Yusuf’s use of the Plaza Extra trade name registered to United, the use bank accounts in United’s name to handle the finances of the three supermarkets and other participation of the corporate entity in the operation of the

stores was all set up in the context of Yusuf's partnership with Hamed, as Yusuf has consistently admitted. The existence of a partnership is not negated by the use of the corporate form to [\*17] conduct various operations of the partnership. *McDonald v. McDonald*, 192 N.W.2d 903, 908 (Wis.1972). The fact that the partner conducting the business utilizes a corporate form does not change the essential nature of the relationship of the parties. *Granik v. Perry*, 418 F.2d 832, 836 (5th Cir.1969).

12. Where, as here, the parties agree that one partner is designated to take charge of "the office" and assumes the responsibility for obtaining or filing the relevant documents as a part of his share of the partnership responsibilities, his failure to file that documentation in the name of the partnership does not mean that no partnership exists. Partners may apportion their duties with respect to the management and control of the partnership such that one partner is given a greater share in the management than others. Thus, the fact that one partner may be given a greater day-to-day role in the management and control of a business than another partner does not defeat the existence of the partnership itself. *Al-Yassin v. Al-Yassin*, 2004 WL 625757, \*7 (Cal.Ct.App.2004). Where one party actively pursues the partnership business, such business must be conducted in keeping with "fundamental characteristics of trust, fairness, honesty, and good faith that define the essence of the partners'

relationship." *Alpart v. Gen. Land Partners Inc.*, 574 F.Supp.2d 491, 500 (E.D.Pa.2008).

13. It is undisputed that Plaintiff and Yusuf agreed from the time prior to the opening of the first store to share profits from the business on a 50/50 basis and that they did so share profits. These elements of their business relationship present a *prima facie* case for the existence of a partnership under the former 26 V.I.Code § 22(4), applicable at the time of the formation of the [\*18] partnership. Defendants have not presented evidence sufficient to overcome Plaintiff's *prima facie* proof of the partnership of the parties.<sup>8</sup>

<sup>8</sup> [Footnote 8] The analysis and the result are the same if the evidence is determined to give rise to the presumption of the existence of a partnership of the parties under the current 26 V.I.Code § 22(c)(3), the Virgin Islands UPA. Defendants' proofs are insufficient to rebut the presumption of the existence of a partnership.

14. Various other indicia of the existence of the formation of a partnership are present in the record, including the fact that the parties intended to and did associate with each other carry on as co-owners a business for profit (26 V.I.Code § 22(a)). The parties agreed to share the net profits of the business "50/50" (26 V.I.Code § 22(c)(3)). Each of

the parties contributed money and services to commence the business operation. The parties agreed that their relationship would continue without any definite term. The parties jointly shared the risks of the business and agreed to equally share any losses of the business. By dividing the initial management of the business between the warehouse, receiving and produce (Hamed) and the office (Yusuf), the parties jointly managed the business. As years passed and additional stores opened, joint management continued with the sons of each of the parties co-managing all aspects of each of the stores.

15. On the basis of the record before the Court and the foregoing, Plaintiff has demonstrated a reasonable probability that he will succeed on the merits of his claim as to the existence of a partnership between himself and Yusef with regard to the three Plaza Extra stores.

**Irreparable injury to Movant by denial of relief.**

16. As the Court finds that there is a reasonable probability of Plaintiff's success in proving the existence of a partnership, he is entitled to the benefits of his status as a partner, including "an equal share of the partnership profits" and "equal rights in the management and conduct of the partnership business." 26 V.I.Code § 71(b) and (f). [\*19]

17. Plaintiff maintains this action seeking equitable relief, and this Court may grant such equitable (i.e.injunctive) relief to enforce Plaintiff/partner's rights to an equal share of the partnership profits and equal rights in the management and conduct of the partnership, pursuant to 26 V.I.Code § 75(b)(1) and (2)(i).

18. Yusuf forcefully contends that this case is solely about money damages, and any damage to Plaintiff is economic damage only, which can be remedied by an award of monetary damages. "[A] preliminary injunction should not be granted if the injury suffered by the moving party can be recouped in monetary damages." *IDT Telecom, Inc. v CVT Prepaid Solutions, Inc.*, 250 Fed. Appx. 476, 479 (3d Cir.2007), citations omitted. Although the alleged diversion of more than \$3,000,000 constitutes a primary focus of Plaintiff's claims for relief, he also seeks to remedy what he alleges to be usurpation by Yusuf of his "equal rights in the management and conduct of the partnership."

19. To establish irreparable harm, Plaintiff must show that his legal remedies (i.e. the potential award of a money judgment) are inadequate. If the plaintiff suffers a substantial injury that cannot be accurately measurable or adequately compensable by an award of money damages, irreparable harm may be found. *Ross-Simonsof Warwick, Inc. v. Baccarat*, 102 F.3d 12, 18-19 (1<sup>st</sup> Cir.1996). An award of monetary damages may not provide an

adequate remedy where the amount of monetary loss alleged is not capable of ascertainment. *Instant Air Freight Co. v. C.F. Air Freight, Inc.*, 882 F.2d 797, 801 (3d Cir.1989).<sup>9</sup> Further, injunctive relief may be available where the movant can “demonstrate that there exists some cognizable danger of recurrent violation of its legal rights.” *Anderson v. Davila*, 125 F.3d 148, 164 (3d Cir.1997), quoting *United States v. W.T. Grant Co.*, 345 U.S. 629, 633 (1953), internal quotations omitted.

<sup>9</sup> [Footnote 9] With regard to the August 2012 diversion of more than \$2.7 million by Mahar Yusuf, president of United, to accounts inaccessible to Plaintiff, a real concern exists that continuing diversions will not be traceable as the Plaza Extra store have had no system of internal controls in existence and, to date accounting for the businesses is not completed beyond June 2012. (Testimony of accountant John Gaffney, *Tr.* 71:20–72:3; 75:11–21, *Jan. 31, 2013.*) As such, the amount of any monetary loss suffered by Plaintiff may not be capable of ascertainment.

20. Plaintiff alleges recurring violations of his legal rights to equal participation in the management and conduct of the partnership business. In addition, Plaintiff

claims that the diversion of partnership revenues to accounts inaccessible to Plaintiff without accounting or explanation constitutes a showing of irreparable harm because of the threat that similar diversions will occur in the future and diverted funds may be removed from the jurisdiction of the Court rendering a monetary judgment ineffectual. See *Health and Body Store, LLC v. JustBrand Limited*, 2012 WL 4006041, at \*4–5 (E.D.Pa. Sept. 11, 2012).

21. The record reflects that Yusuf has arbitrarily addressed employee issues, including termination of a long-term high level employee and has threatened to close the stores. (See, Findings of Fact, ¶ 40). Evidence exists in the record to the effect that co-managers in Plaza Extra East no longer speak with each other (*Tr.*166:21–167:8, *Jan. 25, 2013* ), that employees are fearful for their jobs (*Tr.* 158:18–159:12, *Jan. 25, 2013*), and that the tensions between Yusuf and the Hamed family have created a “hard situation” for employees (*Tr.* 187:5–188:8). Plaintiff alleges that such circumstances that flow directly from his deprivation of equal participation in management and control of the supermarkets reflect his loss of control of the reputation and goodwill of the business which constitute irreparable injury, not compensable by an award of money damages. *S & R Corp. v. Jiffy Lube Intern., Inc.*, 968 F.2d 371, 378 (3d Cir.1992).

[\*21] 22. Defendant's actions have deprived Plaintiff of his rights to equal participation in the management and conduct of the business. As such, the Court finds that Plaintiff has met his burden of establishing irreparable injury if injunctive relief is not granted.<sup>10</sup>

<sup>10</sup> [Footnote 10] Most troubling is the substance of Plaintiff's Motion to Supplement the Record, dated and filed April 23, 2013, after the Opinion was largely completed. Therein, Waleed Hamed states that the Hamed family has been denied access to the supermarket accounts and signature authorization to Hamed family members has been revoked by the depository banks based upon instructions from Yusuf. Deprivation of access to bank accounts and signature authorization on bank accounts clearly constitute denial of partnership management rights not compensable by an award of monetary damages.

### **The balance of harms favors the Movant**

23. One of the goals of the preliminary injunction analysis is to maintain the status quo, defined as "the last, peaceable, noncontested status of the parties." *Opticians Association of America, supra*, 920 F.2d at 197, citations omitted. For more than 25 years, the parties have been

able to equally manage and control their very successful business enterprise. For reasons delineated above, that Plaintiff's rights to equal management and control have been infringed upon by the actions of Defendant. In considering the relief sought by Plaintiff, the Court must assure that granting injunctive relief will not harm Defendants more than denying relief would harm Plaintiff.

24. The remedy sought and the relief to be imposed does not deprive Yusuf of his statutory partnership rights to equal management and control of the business. Rather, it simply assures that Hamed is not deprived of the same legal rights to which he is entitled. Neither party has the right to exclude the other from any part of the business. *Health and Body Store, LLC, supra*, 2012 WL 4006041, at \*5. The relief sought and granted to provide equal access to all aspects of the business will not harm Defendants more than the denial of such relief harms Plaintiff.

25. Neither party has sought and the Court has not considered the prospect of appointing a receiver or bringing in any other outsider to insure that the joint management and control of the [\*22] partnership is maintained. Rather, notwithstanding the animosity that exists between the parties, they are left to work out issues of equal management and control themselves as they have done successfully over the years.

**Public interest favors injunctive relief.**

26. The public interest is best served by the continued success of Plaza Extra Supermarkets or, in the alternative, by the orderly dissolution or winding down of the business relationship of the parties pursuant to their own agreement. Enforcement of statutory rights of the partners is best suited to accomplish that end.

27. The public interest is served by the continued employment of 600 Virgin Islanders and the continuity of this Virgin Island institution operated according to law and their agreement. “It is not only in the interest of [Plaintiff] that this court grant a preliminary injunction against [Defendants], but it is in the public interest to ensure that the management of [Plaza Extra Supermarkets] be properly maintained and the premises remain available for public use—they being an integral part of the St. Croix economy.” *Kings Wharf Island Enterprises, Inc. v. Rehlaender*, 34 V.I. 23, 29 (Terr.Ct.1996).

**CONCLUSION**

Injunctive relief is appropriate to preserve the status quo of the parties, their partnership and business operations, by ensuring that the parties’ statutory rights are preserved and enforced. The Court’s Order entering injunctive relief must state its terms specifically and describe in reasonable detail the act or acts restrained. *Caribbean Healthways, Inc. v. James*, 55

V.I. 691, 700 (2011), quoting Fed.R.Civ.P. 65(d)(1)(B) and (C).

Consistent with this Court’s Findings of Fact and Conclusions of Law a separate Order of even date will accompany this Memorandum Opinion, directing the parties as follows: [\*23]

1. The operations of the three Plaza Extra Supermarket stores shall continue as they have throughout the years prior to this commencement of this litigation, with Hamed, or his designated representative(s), and Yusuf, or his designated representative(s), jointly managing each store, without unilateral action by either party, or representative(s), affecting the management, employees, methods, procedures and operations.
2. No funds will be disbursed from supermarket operating accounts without the mutual consent of Hamed and Yusuf (or designated representative(s)).
3. All checks from all Plaza Extra Supermarket operating accounts will require two signatures, one of a designated representative of Hamed and the other of Yusuf or a designated representative of Yusuf.
4. A copy of the Order accompanying this Opinion will be provided to the depository banks where all Plaza Extra Supermarket operating accounts are held.
5. Plaintiff shall forthwith file a bond in the amount of Twenty-Five Thousand Dollars (\$25,000.00) with the Clerk of the

Court, and shall provide notice of the posting to Defendants. (Plaintiff's interest in the "profits" accounts of the business now held at Banco Popular Securities shall serve as additional security to pay any costs and damages incurred by Defendants if found to have been wrongfully enjoined.)

***ORDER***

The Court having issued its Memorandum Opinion of this date, it is hereby

**ORDERED** that Plaintiff's Emergency Motion to Renew Application for TRO, filed January 9, 2013, seeking entry of a temporary restraining order or, in the alternative, preliminary injunction is **GRANTED**, as follows:

**ORDERED** that the operations of the three Plaza Extra Supermarket stores shall continue as they have throughout the years prior to this commencement of this litigation, with Hamed, or his designated representative(s), and Yusuf, or his designated representative(s), jointly managing each store, without unilateral action by either party, or representative(s), affecting the management, employees, methods, procedures and operations. It is further

**ORDERED** that no funds will be disbursed from supermarket operating accounts without the mutual consent of Hamed and Yusuf (or designated representative(s)). It is further

**ORDERED** that all checks from all Plaza Extra Supermarket operating accounts will require two signatures, one of a designated representative of Hamed and the other of Yusuf or a designated representative of Yusuf. It is further

**ORDERED** that a copy of this Order shall be provided to the depository banks where all Plaza Extra Supermarket operating accounts are held. It is further

**ORDERED** that Plaintiff shall forthwith file a bond in the amount of Twenty-Five Thousand Dollars (\$25,000.00) with the Clerk of the Court, and shall provide notice of the posting to Defendants. (Plaintiff's interest in the "profits" accounts of the business now held at Banco Popular Securities shall serve as additional security to pay any costs and damages incurred by Defendants if found to have been wrongfully enjoined.)

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**End of Document**

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# **Exhibit D**



**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.

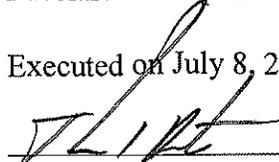
- 1 I am employed as a Special Agent of the Federal Bureau of Investigation. I have served in that capacity for 20 years. I am assigned to the Miami Field Office.
- 2 I was assigned to the St. Thomas office of the Federal Bureau of Investigation from 2000 through 2006. While stationed on St. Thomas, I was the lead case agent of the investigation of United Corporation, Fathi Yusuf, Maher Yusuf, Nejeah 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

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.

  
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Thomas L. Petri