

ST. CROIX, VI  
THE VIRGIN ISLANDS  
SUPERIOR COURT

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

'13 MAR -4 P4 57

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

CIVIL NO. SX-12-CV-370

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

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

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

**Relevant Procedural History**

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

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

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Corporation (collectively, "Defendants") regarding the existence of an alleged partnership between Fathi Yusuf and Mohammad Hamed dating back to the "1980's." (Complaint at ¶ 5).

2. The Hameds also filed a Motion for a Temporary Restraining Order and/or a Preliminary Injunction, and an accompanying Memorandum of Law, both dated September 18, 2012 (the "Original TRO Application").

3. Defendants timely removed the action on October 4, 2012. (D.V.I. Doc. # 1).<sup>2</sup>

4. On October 10, 2012, Defendants moved to dismiss the Complaint or, alternatively, to strike certain portions therein and for a more definite statement. (D.V.I. Doc. # 11).

5. That same date, Defendants also filed their Response in Opposition to the Original TRO Application. (D.V.I. Doc. # 12).

6. The Hameds moved to remand on October 11, 2012. (D.V.I. Doc. # 13).

7. On October 19, 2012, prior to a resolution of Defendants' motion to dismiss, the Hameds filed their First Amended Complaint (D.V.I. Doc. # 15), which added a third count to the First Amended Complaint, and is the only pleading presently before this Court; and the Hameds filed a Comparison Document (D.V.I. Doc. # 17) comparing the original Complaint with the First Amended Complaint.

8. The First Amended Complaint did not allege that United Corporation is anything but a *de jure* corporation

9. The First Amended Complaint did not seek to pierce the corporate veil of United Corporation.

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<sup>2</sup> Citation herein to "D.V.I." docket entries refers to entries in the District Court of the Virgin Islands, Division of St. Croix, in the removed action, Case No. 1:12-cv-00099-WAL-GWC. Citation to D.V.I. docket entries in the Criminal Action refer to Case No. 1:05-cr-00015 and will be referenced as "in the Criminal Action" to avoid any confusion between the two cases.

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10. On October 22, 2012, the Hameds filed their Reply (D.V.I. Doc. # 22) to Defendants' Response in Opposition to the Original TRO Application. In this Reply the Plaintiff concedes that "United *is* a valid corporation. The Plaintiff claims *no ownership* of the corporation, *nor is he a shareholder* in United" (emphasis in original).

11. On November 5, 2012, Plaintiff filed a "Supplementation" (D.V.I. Doc. # 25) to the Original TRO Motion.

12. Defendants moved to dismiss (D.V.I. Doc. # 28) the First Amended Complaint on November 5, 2012, which motion is pending; and filed an accompanying Memorandum of Law (D.V.I. Doc. # 29) the same date.

13. On November 12, 2012, prior to any discovery in this action, any scheduling order or any resolution of various pending substantive motions, the Hameds moved for partial summary judgment regarding Count I of the First Amended Complaint. (D.V.I. Doc. # 36).

14. Count I is the primary relief requested in this action, as the Hameds seek summary judgment therein as to:

- i. a judicial declaration regarding the existence of an alleged partnership between Mohammad Hamed and Fathi Yusuf;
- ii. Mohammad Hamed's supposed entitlement, under 26 V.I.C. § 71(a), to 50% of the alleged partnership's profits, assets and receivables; and
- iii. Mohammad Hamed's supposed entitlement, under 26 V.I.C. § 71(f), to "fully and equally participate" in the alleged partnership's operations.

(Nov. 12, 2012 Motion for Partial Summary Judgment at 12).

15. None of the relief requested by the Plaintiff in Count I of the First Amended Complaint is directed at United Corporation. Surprisingly, all of the relief sought in the pending

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Preliminary Injunction Motion *is* directed against the financial operations and management of United Corporation. The Plaintiff has offered no evidence to support any relief against United Corporation.

16. The District Court remanded the action on November 16, 2012. (D.V.I. Doc. # 39).

17. On November 21, 2012, Defendants filed their Motion to Strike Self-Appointed Representative, requesting that, prior to resolving any other substantive motions, this Court strike Waleed Hamed as Mohammad Hamed's self-appointed representative or "authorized agent."

18. Defendants' motion to strike is pending.

19. On December 20, 2012, in response to the Hameds' premature summary judgment motion, Defendants filed their Rule 56(d) Motion and Alternative Motion for Enlargement of Time to Respond to Motion for Partial Summary Judgment.

20. Defendants' Rule 56(d) motion is pending.

21. On December 24, 2012, notwithstanding Defendants' Rule 56(d) motion, and rather than limiting any objections thereto to a response brief, the Hameds asked this Court to "deem conceded" their premature summary judgment motion.

22. Defendants filed their Response in Opposition to the Hameds' motion to deem conceded on January 8, 2013.

23. The following day, on January 9, 2013, the Hameds filed their "Emergency Motion and Memorandum to Renew Application for TRO" (the "Renewed TRO Application").

24. By its Order dated January 10, 2013, this Court scheduled a hearing on the Hameds' Renewed TRO Application for January 25, 2013.

25. Defendants filed their Response in Opposition to the Renewed TRO Application on January 24, 2013.

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26. That same date, on January 24, 2013, the majority shareholders of United Corporation filed a Motion for Leave, and an accompanying Petition, to intervene in this action and for a declaratory judgment regarding the Hameds' underlying attempt in this action – by alleging the existence of a *de jure* partnership in the Plaza Extra Stores' operations – to dilute the majority shareholders' interest in United Corporation d/b/a Plaza Extra.

27. A hearing was held on the Hameds' Renewed TRO Application on January 25 and 31, 2013.<sup>3</sup>

28. On January 30, 2013, prior to the January 31, 2013 hearing, the Hameds filed their Reply to Defendants' opposition brief to the Renewed TRO Application.

**United Corporation d/b/a Plaza Extra**

29. United Corporation was duly organized and incorporated as a corporation in the USVI in January 1979, approximately 34 years ago, by Fathi Yusuf and other members of the Yusuf family. (Articles of Incorporation (DX 7) at 8).

30. Maher Yusuf is the current President of United Corporation. (Jan. 25, 2013 Hr'g Tr. at 211:25-212:1-2).

31. United Corporation alone owns the land located at 4C, 4D and 4H Estate Sion Farm, St. Croix, at which it finished building a shopping center, known as the "United Shopping Plaza," in 1983. (Jan. 25, 2013 Hr'g Tr. at 68:2-10, 220:8-11).

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<sup>3</sup> Citation herein to the subject hearing transcripts is abbreviated as "Jan. 25, 2013 Hr'g Tr." for the January 25, 2013 hearing, and as "Jan. 31, 2013 Hr'g Tr." for the January 31, 2013 hearing. Citation to the Plaintiff's and Defendants' respective exhibits entered into evidence during the January 25 and 31, 2013 hearings are abbreviated as "PX \_\_\_" and "DX \_\_\_".

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32. United Corporation leases retail spaces at its shopping center to commercial tenants, and operates a "grocery supermarket business" that does business under the trademark name "Plaza Extra." (Jan. 25, 2013 Hr'g Tr. at 220:12-18).

33. United Corporation has been organized, maintained and owned by the Yusuf family alone. (Jan. 25, 2013 Hr'g Tr. at 112:14-22; Jan. 31, 2013 Hr'g Tr. at 102:1-3).

34. United Corporation likewise is the sole owner of the "Plaza Extra" tradename/trademark, under which it does business. (Jan. 25, 2013 Hr'g Tr. at 110:22 (reflecting Waleed Hamed's acknowledgement of United Corporation's "d/b/a Plaza Extra" designation and liability for same), 112:4-7 (same); Jan. 25, 2013 Hr'g Tr. at 112:17-22 (reflecting the Hameds' counsel's stipulation in this action to same)).

35. The allegations in this action relate to three supermarket locations that United Corporation operates under United Corporation's "Plaza Extra" trademark/tradename: Plaza Extra East in Sion Farm, St. Croix (occasionally referred to herein as "Plaza Extra East"); Plaza Extra West in Plesson/Grove, St. Croix (occasionally referred to herein as "Plaza Extra West"); and Plaza Extra St. Thomas in Tutu Park, St. Thomas (occasionally referred to herein as "Plaza Extra St. Thomas"). (First Amended Complaint at ¶ 12).

36. In 1990, the Plaza Extra East store was destroyed in a fire. (Jan. 25, 2013 Hr'g Tr. at 221:13-17).

37. The store was insured by United Corporation, which was the sole beneficiary of the subject insurance policy. (Jan. 25, 2013 Hr'g Tr. at 221:18-22).

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38. Mohammad Hamed, the alleged “partner,” testified in the January 25, 2013 hearing. No other testimony from any other person with knowledge of the alleged partnership was offered by the Plaintiff.<sup>4</sup>

39. As he conceded, Mohammad Hamed previously worked, and various of Mohammad Hamed’s sons currently work, at United Corporation d/b/a Plaza Extra’s three supermarkets (collectively, the “Plaza Extra Stores”), or at any one or combination of them, but only each as an *employee* of United Corporation. (Jan. 25, 2013 Hr’g Tr. at 201:21-24 (reflecting Mohammad Hamed’s own testimony that he (“I”) would agree with “[w]hatever” management decisions Fathi Yusuf ever made, including the decision that Mohammad Hamed and Mohammad Hamed’s sons were mere “employees” “like any [other] employees”), 202:1 (reflecting Mohammad Hamed’s own testimony that, excluding Fathi Yusuf, “[e]ven [a Hamed] son or anybody” was a mere employee of the supermarkets)).

40. Mohammad Hamed also readily admitted that he never worked in any management capacity at any of the Plaza Extra Stores, which role was under the exclusive ultimate control of Fathi Yusuf, as Fathi Yusuf “is in charge for everybody” and everything. (Jan. 25, 2013 Hr’g Tr. at 201:4 (reflecting Mohammad Hamed’s concession, even during his direct testimony, that “Mr. Yusuf he is in charge for everybody”), 201:23-24, 210:21-23 (acknowledging again that Fathi Yusuf is in “charge” of “all the three store[s]”)).

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<sup>4</sup> Plaintiff Mohammad Hamed, who carries the heavy burden of proof in seeking the extraordinary remedy of preliminary injunctive relief, failed to request the testimony of Fathi Yusuf at the subject hearings, as they failed to issue a subpoena for Fathi Yusuf’s appearance thereto. (*Cf.* Jan. 23, 2013 Subpoena to Maher Yusuf; Jan. 30, 2013 Hr’g Tr. at 114:8-10 (electing to call Maher Yusuf “instead”). Plaintiff also opposed Defendants’ desire to conduct limited discovery prior to the hearings. (Jan. 14, 2013 Motion for Protective Order).

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41. Moreover, since its inception in 1979, United Corporation d/b/a Plaza Extra has reported all of its tax obligations – and has filed all of its tax returns – as a *corporation* under either Subchapters “C” or “S” of the Internal Revenue Code (“IRC”) – and never as a *partnership* under any partnership designation of the IRC or otherwise. (Jan. 25, 2013 Hr’g Tr. at 227:20-22).

42. Perhaps most importantly, Mohammad Hamed has not provided the Court with any record evidence that he filed a single tax reporting document with either the U.S. Government or the Virgin Islands Government reporting his status as an alleged partner. Mohammad Hamed likewise failed to provide any evidence that he paid a single tax dollar to any governmental taxing authority on the income attributable to him as an alleged partner.

43. Nor has Mohammad Hamed provided any written evidence or documentation establishing that he received a share of the supermarket profits at any time over the past 26 years.

44. Similarly, no income tax filing of United Corporation d/b/a Plaza Extra has ever reflected Mohammad Hamed as an asset owner, partner or shareholder of United Corporation. (Jan. 25, 2013 Hr’g Tr. at 227:23-25-228:1).

45. The Plaintiff has offered no evidence that Fathi Yusuf holds any funds of the alleged partnership with Mohammad Hamed in either his personal name or in trust for Mohammad Hamed.

**The Criminal Action**

46. In or around 2003, United Corporation d/b/a Plaza Extra, along with certain of its shareholders and non-shareholders, including two of Mohammad Hamed’s sons (Waleed Hamed and Waheed Hamed), were indicted in a criminal action styled, *UNITED STATES OF AMERICA and GOVERNMENT OF THE VIRGIN ISLANDS v. FATHI YUSUF, WALEED MOHAMMAD HAMED, WAHEED MOHAMMED, MAHER FATHI YUSUF, NEJEH*

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FATHI YUSUF, ISAM YOUSUF and UNITED CORPORATION, Case No. 2005-15F/B, pending in the District Court of the Virgin Islands, Division of St. Croix (the "Criminal Action").<sup>5</sup>

47. The United States of America and the Government of the Virgin Islands (collectively, the "Government") alleged in the Criminal Action the violation of various criminal statutes and internal revenue tax regulations, including the unpaid corporate income taxes of United Corporation d/b/a Plaza Extra and the unpaid individual income taxes earned from the Plaza Extra operations owing to the Government and the Virgin Islands Bureau of Internal Revenue ("VIBIR") for the indictment years 1996 through 2001. (*See generally* Sept. 8, 2004 Third Superseding Indictment (hereinafter, the "Criminal Indictment")).

48. Certain matters in the Criminal Action were appealed to the Court of Appeals for the Third Circuit and the United States Supreme Court. *See United States v. Yusuf*, 461 F.3d 374 (3d Cir. 2006) (reversing suppression order and remanding action); *United States v. Yusuf*, 199 Fed. Appx. 127 (3d Cir. 2006) (vacating order releasing restrained assets and remanding action); *United States v. Yusuf*, 536 F.3d 178 (3d Cir. 2008) (vacating order dismissing money laundering counts and remanding action), *cert. denied*, 129 S. Ct. 2764 (2009).

49. The various pleadings and motions in the Criminal Action merely identify Mohammad Hamed as an individual or entity related to United Corporation d/b/a Plaza Extra, United Corporation's shareholders and the individual defendants in that action. (*See, e.g.*, Supplement to Government's Motion for Reconsideration (D.V.I. Doc. # 1151 in the Criminal Action at 3)).

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<sup>5</sup> Defendants have respectfully requested that this Court take judicial notice of the adjudicative facts and filings in the Criminal Action, including the operative indictment therein. (*See* Jan. 18, 2013 Motion for Judicial Notice of Adjudicative Facts; March 4, 2013 Notice of Filing Criminal Indictment (filed concurrently herewith)).

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50. Throughout the Criminal Action, Waleed Hamed and Waheed Hamed represented to the District Court, the Third Circuit, the U.S. Supreme Court, the Government, the VIBIR, and the public in general that: United Corporation d/b/a Plaza Extra alone owned and operated the three Plaza Extra supermarket stores; and that the tax obligations of United Corporation, United Corporation's shareholders, the individual defendants in the Criminal Action and any related entities and individuals for supermarket profits and other such taxable monies were properly calculated based on United Corporation's status as a "C" or "S" corporation, as opposed to as a partnership. (*See, e.g.*, Jan. 25, 2013 Hr'g Tr. at 116:6-19, 126:10-15).

51. Mohammad Hamed never appeared in the Criminal Action as a claimed "partner" of Fathi Yusuf nor did he come forward to identify himself as holding any interest in the supermarket profits at issue in that action. (Jan. 25, 2013 Hr'g Tr. at 116:20-25).

52. Nor do the Hameds dispute that, absent the government's approval, the parties in this action are currently prohibited from removing the significant funds that are currently in United Corporation d/b/a Plaza Extra's "banking and brokerage" accounts for the Plaza Extra Stores, apart for the normal operational issues, because of a restraining "Order" entered by the District Court in the Criminal Action. (Oct. 19, 2012 Comparison Document (D.V.I. Doc. # 17) at 7-8; Jan. 25, 2013 Hr'g Tr. at 119:4-12).

**The Plea Agreement, Letter Agreement, and Plea Agreement Addendum**

53. On February 26, 2010, the Government, United Corporation d/b/a Plaza Extra, Waleed Hamed, Waheed Hamed and the other defendants in the Criminal Action entered into a Plea Agreement (the "Plea Agreement"). (DX 2; D.V.I. Doc. # 1-11).

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54. As memorialized in the Plea Agreement, the parties thereto acknowledged their agreement to the factual and legal elements of the charges pled as alleged in the Criminal Indictment. (DX 2; Plea Agreement at 3).

55. Those elements include the representations that, at all times relevant, United Corporation “did business as Plaza Extra” (Criminal Indictment at ¶ 1); that the proceeding stems from the sales and profits of Plaza Extra’s “grocer[y]” businesses (*id.*); that Fathi Yusuf “was an owner, director and officer of [United Corporation d/b/a Plaza Extra] and participated in the operation of Plaza Extra” (*id.* at ¶ 2); and that the Hamed co-defendants (Waleed Hamed and Waheed Hamed) were merely “employed” by United Corporation d/b/a Plaza as respective co-“manager[s] of a Plaza Extra supermarket” (*id.* at ¶¶ 3 and 4).

56. The plea also embodies the representation that United Corporation’s operations of the supermarkets was as a corporation and not as a partnership as is now being claimed in this action. (DX 2; Plea Agreement at 2-4; Criminal Indictment at ¶ 8 (discussing the Virgin Islands Code as applied to “corporations”)).

57. Via a Letter Agreement dated February 12, 2010 (the “Letter Agreement”), which is attached as Exhibit 2 to the Plea Agreement (DX 2 at p. 17-20), the parties memorialized their agreement regarding the “parameters” of the formal plea. (DX 2 at p. 1).

58. Based on those representations, United Corporation d/b/a Plaza Extra agreed to plead guilty to filing a false 2001 U.S. Corporation Income Tax Return (Form 1120S), in violation of Title 33, Virgin Islands Code, Section 1525(2). (DX 2 at p. 2; DX 2 at p. 17).

59. Upon the entry of such plea, the Government agreed to dismiss with prejudice all counts of the indictment in the Criminal Action against Waleed Hamed, Waheed Hamed and the other individual defendants in that action, and all remaining counts against United Corporation

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d/b/a Plaza Extra; and “agree[d] not to prosecute United Corporation or *any other individual or entity* for any other crimes arising out of the conduct alleged in the Third Superseding Indictment.” (DX 2 at p. 2; DX 2 at p. 17 (emphasis added)).

60. The Hamed defendants and the other parties in the Criminal Action further agreed that, in preparing and filing with the VIBIR a corporate income tax return on Form 1120S as an “S” corporation for the years 1996 - 2001, United Corporation d/b/a Plaza Extra under-reported its gross receipts or sales at the Plaza Extra Stores by approximately \$10 million dollars. (DX 2 at p. 3-4).

61. In addition, prior to sentencing in the Criminal Action, which has not occurred yet, United Corporation d/b/a Plaza Extra, Waleed Hamed, Waheed Hamed and the other defendants in that action agreed to cooperate with the Government and the VIBIR in filing complete and accurate tax returns for the years 2002 through 2008. (DX 2 at p. 11; DX 2 p. 18-19).

62. The Plea Agreement also contains various additional standard contract provisions, including a merger clause and a “modification must be in writing” clause. (DX 2 at p. 12).

63. Significantly, during the criminal proceedings, Waleed Hamed and Waheed Hamed, as co-defendants in the Criminal Action and co-signatories of the Plea Agreement, never expressed the claim that their father, Mohammad Hamed (the plaintiff here), held any interest in the Plaza Extra supermarket operations as an alleged “partner” with Fathi Yusuf or otherwise. (Jan. 25, 2013 Hr’g Tr. at 116:6-10, 116:20-25, 222:14-18 *see also* DX 5, *passim* (transcript of July 9, 2009, hearing)).

64. To the contrary, as noted above, the Hameds actively represented to the Government and others that United Corporation d/b/a Plaza Extra was a de jure Virgin Islands corporation and that no Hamed possessed any interest in United Corporation’s operation of the

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Plaza Extra supermarkets as a partnership or otherwise. (*See, e.g.*, Jan. 25, 2013 Hr'g Tr. at 116:6-19, 126:10-15).

65. An especially telling example occurred on July 9, 2009, when a hearing was held before the District Court (the Hon. Judge Raymond L. Finch) to address United Corporation d/b/a Plaza Extra's shareholder distributions. (*See* DX 5 (D.V.I. Doc. # 1213 in the Criminal Action)).

66. Defense counsel, including Waleed Hamed's counsel, advised Judge Finch during the July 9, 2009 hearing that "the Government's motion for reconsideration raises the issue . . . as to whether or not the unindicted shareholders to whom these distributions were to be made are, in fact, the shareholders." (*Id.* at 7:12-17).

67. The Government's counsel then remarked that:

One of the issues that has arisen is who, in fact, owns the shares of United [Corporation]. On paper, it is entirely owned by the Yusuf Family, and it is distributed amongst various family members. However, *I believe in civil litigation there was deposition testimony in which it indicated that setting aside the formalities of share certificates, that, in fact, the shares were owned fifty percent by the Yusuf Family and fifty percent by the Hamed Family, and no indication as to how it broke down or even if it broke down between individual family members.*

(*Id.* at 9:15-25) (emphasis added)).

68. On rebuttal, defense counsel advised Judge Finch that:

The Virgin Islands Government has insisted throughout this litigation that, in fact, the unindicted shareholders make tax deposits on the estimated flow-through income from this *corporation*, has received that without complaint, that money without complaint, and I believe they're estopped from suggesting that those individuals are not, *in fact, the proper shareholders of the corporation.*

(*Id.* at 12:6-13 (emphasis added)).

69. During these and other exchanges in the Criminal Action, the Hameds' attorneys (Gordon Rhea, Randall Andreozzi and Pamela Colon) never disputed the foregoing representations

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regarding the “proper shareholders of the corporation”; and never otherwise credited the Government’s stated concern as to whether the shares and assets of the Plaza Extra Stores’ operations “were owned fifty percent by the Yusuf family and fifty percent by the Hamed family.” (*See generally id.*).

70. The Hameds likewise never raised to Judge Finch or anyone else the claim that the Plaza Extra supermarkets were actually owned by a partnership between Mohammad Hamed and Fathi Yusuf. (Jan. 25, 2013 Hr’g Tr. at 117:1-12).

71. Once again, on July 13, 2009, the Government filed a supplement to its motion for reconsideration in the Criminal Action regarding the shareholder distributions then at issue, wherein the Government asserted that Mohammad Hamed might own 50% of the Plaza Extra supermarket assets and, therefore, “that that the individuals identified as shareholders on United Corporation may not actually own any part of the company.” (D.V.I. Doc. # 1151 in the Criminal Action).

72. The Government also attached to their supplement the deposition transcript of Fathi Yusuf from a 1997 civil proceeding in support of its foregoing assertion. (*Id.*)<sup>6</sup>

73. United Corporation’s response on September 8, 2009, disavowed that Mohammad Hamed was a shareholder in United Corporation d/b/a Plaza Extra and, thus, that Mohammad Hamed owned any interest in or assets of the Plaza Extra Stores. (D.V.I. Doc. # 1209 in the Criminal Action at 5-6).

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<sup>6</sup> The 1997 proceeding is styled, *AHMAD IDHEILEH v. UNITED CORPORATION and FATHI YUSUF*, Civil No. 156/1997, Territorial Court of the Virgin Islands, Division of St. Thomas and St. John (the “1997 Joint Venture Agreement Action”), and involved claims for recession, breach of contract and accounting based on a Joint Venture Agreement entered into between United Corporation and Ahmad Idheileh relating to the Plaza Extra St. Thomas store. The Government’s stated concern in the Criminal Action as to whether the Plaza Extra Stores’ “shares were owned fifty percent by the Yusuf Family and fifty percent by the Hamed Family” was based on the *same deposition transcript* in the 1997 Joint Venture Agreement Action on which the Hameds rely heavily in this action. *See* PX 1.

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74. On December 29, 2009, the Government filed an emergency motion for mediation (D.V.I. Doc. # 1233 in the Criminal Action); and, as a result of the mediation, the Plea Agreement (DX 2; D.V.I. Doc. # 1248 in the Criminal Action), as noted above, was entered into on February 26, 2010, by the parties in the Criminal Action, including the Hamed defendants therein.

75. On October 1, 2010, the District Court accepted the guilty plea of United Corporation d/b/a Plaza Extra under the Plea Agreement. (D.V.I. Doc. # 1289 in the Criminal Action)).

76. On February 7, 2011, the parties in the Criminal Action entered into a Plea Agreement Addendum (the "Plea Agreement Addendum"). (DX 3; D.V.I. Doc. # 1304-1 in the Criminal Action).

77. In relevant part, Waleed Hamed, Waheed Hamed and the other defendants in the Criminal Action agreed in the Plea Agreement Addendum that United Corporation d/b/a Plaza Extra would pay, pursuant to various provisions of the Plea Agreement: \$5,000 in fines; \$10,000,000 (ten million dollars) to the VIBIR for restitution; and \$1,000,000 (one million dollars) as a substantial monetary penalty. (DX 3 at p. 1).

**The Closing Agreement**

78. On or about July 19, 2011, pursuant to Section 7121 of the IRC, United Corporation d/b/a Plaza Extra and the VIBIR entered into a Closing Agreement on Final Determination Covering Specific Matters (the "Closing Agreement"). (DX 4; D.V.I. Doc. # 19-18).

79. The Closing Agreement expressly provides that "all the governing principles for this civil tax liability closing agreement are set forth in the Plea Agreement . . . and the Plea Agreement Addendum, . . . the terms of which are incorporated by reference." (DX 4 at p. 1).

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80. Specifically, on behalf of “all the individual defendants and related individuals and entities in the various pleadings and motions in [the Criminal Action],” United Corporation d/b/a Plaza Extra and the VIBIR

agreed upon the amounts of taxes to be assessed and paid by United Corporation in full satisfaction of its civil tax and reporting liabilities and the civil tax and reporting liabilities of United Corporation, United’s shareholders and all of the individual defendants and related individuals and entities identified in the various pleadings and motions in [the Criminal Action] for each of the years 1996 through 2001 as addressed with particularity in the Plea Agreement.

(DX 4 at p. 2).

81. The Closing Agreement further provided that it “establish[ed] with *finality* the civil tax liabilities for the years 1996 through 2001,” and that

[p]erformance of the assessment and payment obligations of [the agreement] fully satisf[ied] all civil tax liabilities of [United Corporation], its individual shareholders, and all of the individual defendants *and related individuals* and entities identified in the various pleadings and motions in [the Criminal Action] for the 1996 through 2001 taxable years.

(DX 4 at p. 1 (emphasis added), 3 (emphasis added)).

82. Such “finality” and “full[] satisf[action] of all civil tax liabilities” for the taxable years 1996 through 2001 benefited not just United Corporation d/b/a Plaza Extra, “its individual shareholders, and all of the individual defendants” in the Criminal Action, but also “all . . . related individuals and entities identified in the various pleadings and motions” in that action, including *Mohammad Hamed* (a “related individual” who was indentified “in the various pleadings and motions”), *Waleed Hamed* (an “individual defendant”), and *Wabeed Hamed* (an “individual defendant”). (*Id.*).

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83. The VIBIR ultimately assessed United Corporation d/b/a Plaza Extra a total tax assessment of \$10 million dollars, which, pursuant to the Closing Agreement, United Corporation was obligated to pay “within 10 days of the execution of” the agreement. (DX 4 at p. 2).

84. The assessment was based on three components: United Corporation d/b/a Plaza Extra’s (a) corporate income tax for the taxable years 1996-1998 based on its status as a “C” corporation, as opposed to a partnership or any other such corporate designation; (b) individual income tax for the taxable years 1999-2001 based on its status as an “S” corporation, as opposed to a partnership or any other such corporate designation; and (c) gross receipts tax for the taxable years 1996-2001. (DX 4 at p. 2).

85. United Corporation d/b/a Plaza Extra timely paid the \$10 million dollar assessment. (Closing Agreement at 7 (July 19, 2011 Letter from Henry Smock, Esq. to Tamarah Parson-Small, Esq.)).

86. By allowing United Corporation d/b/a Plaza Extra to plead guilty to a federal criminal violation and pay significant penalties and fines, including a \$10 million dollar assessment, Mohammad Hamed, Waleed Hamed and Waheed Hamed – a “related individual,” an “individual defendant,” and an “individual defendant,” respectively – each obtained the following substantial rights and benefits, among others:

- a. full satisfaction of their all civil tax liabilities for the tax years 1996 through 2001 (DX 4 at p. 3 (¶¶ 4, 8));
- b. release from any requirement or obligation to file their tax returns for the periods 1996 through 2001 (*id.* at 3 (¶ 5));
- c. release from any requirement or obligation to file their amended tax returns for the periods 1996 through 2001 (*id.*);
- d. final determination of their income tax liabilities (*id.* at 3 (¶ 7)); and

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e. final determination of their gross receipts tax liabilities (*id.*).

87. United Corporation d/b/a Plaza Extra, as the designated "Taxpayer" in the Closing Agreement, likewise received the foregoing rights and benefits, among others. (DX 4 at p. 2-3).

88. As recently as August 12, 2011, Waleed Hamed's counsel in the Criminal Action moved for the release of funds from United Corporation d/b/a Plaza Extra for the benefit of United Corporation's shareholders, without any mention of Mohammad Hamed. (D.V.I. Doc. # 1314 in the Criminal Action).

89. The District Court (the Hon. Magistrate Judge Geoffrey W. Barnard) granted the subject release on August 19, 2011. (D.V.I. Doc. # 1316 in the Criminal Action).

90. On March 3, 2010, based on the plea agreement and plea of guilty by United Corporation d/b/a Plaza Extra, the Government moved (D.V.I. Doc. # 1246 in the Criminal Action) to dismiss all counts of the indictment against the remaining defendants, including Waleed Hamed and Waheed Hamed, which motion the District Court granted on March 19, 2010 (D.V.I. Doc. # 1262 in the Criminal Action).

91. In granting the dismissal motion, the District Court – like the Government and parties who entered into the Plea Agreement – accepted and affirmed the representations embodied in the plea, including expressly that United Corporation d/b/a Plaza Extra is a *de jure corporation* and implicitly that no partnership of any kind exists.

92. United Corporation d/b/a Plaza Extra's dismissal with prejudice will occur "at the time of sentencing," which, as noted, has not been held yet. (DX 2 at p. 2).

**The Hameds' Defalcation From United Corporation d/b/a Plaza Extra**

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93. In or around late 2011, United Corporation d/b/a Plaza Extra received a hard drive with scanned copies of voluminous records concerning the Criminal Action, and started to review those records. (Jan. 31, 2013 Hr'g Tr. at 52:5-10, 54:21-25, 55:7-10, 62:20-21).

94. This review revealed substantial evidence of financial irregularities, including defalcation by Waleed Hamed of United Corporation d/b/a Plaza Extra monies, about which irregularities Fathi Yusuf confronted Waleed Hamed. (Jan. 25, 2013 Hr'g Tr. at 51:18-25, 52:1).

**The Families' Settlement Discussions**

95. The Yusuf and Hamed families, directly and through their respective attorneys, thereafter engaged in private settlement "discussions" regarding the suspected defalcation of United Corporation d/b/a Plaza Extra's monies, and the desire to dissolve the families' business relations. (Jan. 25, 2013 Hr'g Tr. at 51:18-25, 52:1, 58:16-20).

96. The parties' settlement discussions were unsuccessful; and, on or about September 17, 2012, *after* United Corporation d/b/a Plaza Extra's payment of the \$10 million dollar assessment, *after* Mohammad Hamed's and Waleed Hamed's receipt of the benefits afforded in the Criminal Action, but *before* United Corporation d/b/a Plaza Extra's sentencing in the Criminal Action, Mohammad Hamed, by his son and self-appointed "authorized agent" Waleed Hamed, filed the instant commercial dispute (the "Civil Action").<sup>7</sup>

**Testimony of Mohammad Hamed**

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<sup>7</sup> The Hameds' apparent strategy in requesting an injunction in this action, and in filing an alleged defamation action against Fathi Yusuf on or about September 19, 2012, styled *Mohammad Hamed, Waleed "Wally" Hamed, Waheed "Wily" Hamed, Mufeed "Mafi" Hamed, and Hisham "Shawn" Hamed v. Fathi Yusuf*, Case No. SX-12-cv-377 (V.I. Superior Court), which action is pending, is to bring the supermarket operations to a grinding halt and thus somehow extort a private resolution of the Yusufs' claims regarding the Hameds' defalcation prior to the sentencing of United Corporation d/b/a Plaza Extra in the Criminal Action.

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97. Mohammad Hamed testified that he and Fathi Yusuf are from the same "village" in the West Bank in Isreal; they knew each other's families in the West Bank; and are brothers-in-law, as Mohammad Hamed's cousin is married to Fathi Yusuf's sister. (Jan. 25, 2013 Hr'g Tr. at 197:18-22, 199:5).

98. Mohammad Hamed stayed at Fathi Yusuf's residence in St. Croix when Mohammad Hamed first arrived to St. Croix in 1973. (Jan. 25, 2013 Hr'g Tr. at 195:16-17, 196:1-2, 196:18, 196:21-23).

99. Mohammad Hamed's initial employment in St. Croix was as a clothing salesman, which he did for three years. (Jan. 25, 2013 Hr'g Tr. at 197:3-4, 197:7).

100. Fathi Yusuf "was busy building the business," *i.e.*, the "shopping center" business, when Mohammad Hamed first approached Fathi Yusuf about potentially going into business with Fathi Yusuf. (Jan. 25, 2013 Hr'g Tr. at 197:13-16, 204:2-4).

101. Fathi Yusuf "need[ed] money" to re-pay loans to "people" and Fathi Yusuf "d[id]n't have" the money himself. (Jan. 25, 2013 Hr'g Tr. at 198:2-6, 204:14-15).

102. Mohammad Hamed gave Fathi Yusuf money to help re-pay the other loans. (Jan. 25, 2013 Hr'g Tr. at 198:2-6).

103. Mohammad Hamed, who had stayed at Fathi Yusuf's residence upon arriving to St. Croix, offered to give some money to Fathi Yusuf. (Jan. 25, 2013 Hr'g Tr. at 198:2-10).

104. Specifically, Mohammad Hamed gave Fathi Yusuf \$14,000, \$12,000 of which Fathi Yusuf used to re-pay the loan amounts owed to others, and the remainder of which (\$2,000) Fathi Yusuf used "for the family to buy grocery thing." (Jan. 25, 2013 Hr'g Tr. at 198:16-19, 203:15-19, 204:22).

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105. According to his testimony, Mohammad Hamed subsequently loaned to Fathi Yusuf an additional \$250,000, as follows:

- a. a \$20,000 certificate of deposit (Jan. 25, 2013 Hr'g Tr. at 198:22, 205:6-8);
- b. \$20,000 from Mohammad Hamed's lottery winnings (Jan. 25, 2013 Hr'g Tr. at 198:24-25);
- c. \$10,000 from Mohammad's Hamed's independent grocery operations (Jan. 25, 2013 Hr'g Tr. at 199:1-2, 205:11-13); and,
- d. \$200,000 of the proceeds from Mohammad Hamed's eventual sale of his independent grocery operations (Jan. 25, 2013 Hr'g Tr. at 200:4-15, 205:17-22).

106. Because the monies were loans, Fathi Yusuf offered to pay "interest" to Mohammad Hamed, which offer Mohammad Hamed declined as the two were brothers-in-law. (Jan. 25, 2013 Hr'g Tr. at 199:3-6).

107. According to Mohammad Hamed's testimony, Fathi Yusuf indicated that, because Mohammad Hamed had tried to "help" Fathi Yusuf with the various loans, and as repayment thereof, Mohammad Hamed was going to be Mr. Yusuf's "partner" in an existing business arrangement that Mr. Yusuf had with a separate individual, "to open a supermarket." (Jan. 25, 2013 Hr'g Tr. at 199:8-13).

108. Mohammad Hamed agreed to "start with Mr. Yusuf." (Jan. 25, 2013 Hr'g Tr. at 199:14-16).

109. However, Mohammad Hamed concedes that Fathi Yusuf – in Mr. Yusuf's name alone – obtained separate \$1 million and \$2.5 million dollar loans from Banco Popular and Nova

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

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

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

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

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

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

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

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supermarket operation. (Jan. 25, 2013 Hr'g Tr. at 207:16-17 (Mohammad Hamed indicating that "I'm [sic] not sign nothing")).

115. Moreover, with respect to the control and management of the supermarket, Mohammad Hamed confirmed that there is no right of joint control or management; instead, "*Mr. [Fathi] Yusuf, he is in charge of everybody*" and in charge of "*all the three store[s]*." (Jan. 25, 2013 Hr'g Tr. at 201:4 (emphasis added), 210:22-23 (emphasis added)).

116. Mohammad Hamed also confirmed that all of his sons, including Waleed Hamed, are mere "employees" of the supermarkets – and thus are *not* in any self-labeled "partner" relationship with Fathi Yusuf. (Jan. 25, 2013 Hr'g Tr. at 201:21-24 (noting Mohammad Hamed's "agree[ment] with "[w]hatever" management decision Fathi Yusuf makes), 209:16-25, 210:1).

117. Indeed, the Hameds – including Mohammad Hamed – have not introduced into the record any evidence of a single filed partnership tax return, statement of partnership, or other regulated declaration or document containing the words "partner" or "partnership" in the approximately 30-year period during which they now claim a supposed partnership existed.

118. Mohammad Hamed has not introduced into the record any evidence of a single document establishing that (a) he ever received a share of the supermarket profits at any time over the past 26 years, as opposed to a salary as a regular employee; or (b) United Corporation d/b/a Plaza Extra or Fahti Yusuf ever shared with or distributed to the plaintiff any profits.

119. Mohammad Hamed likewise did not personally attest to a single reason supporting the requested TRO/Preliminary Injunction, because, as he concedes, he retired a long time ago from the alleged partnership at issue in this action. (Jan. 25, 2013 Hr'g Tr. at 202:20, 206:22, 207:4-5).

120. Although Mohammad Hamed signed an affidavit in this action, he subsequently conceded that he does not know the contents of his affidavit or the contents of Waleed Hamed's

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affidavit because Mohammad Hamed does not read or understand written English. (Jan. 25, 2013 Hr'g Tr. at 201:5-7, 202:16-22, 208:2, 208:7, 208:10-14, 209:7-8). Rather, he "sign [sic] the paper" because his son "want[ed]" it signed. (Jan. 25, 2013 Hr'g Tr. at 208:8-9, 209:3-4).<sup>9</sup>

**Testimony of Waleed ("Wally") Hamed**

121. Waleed Hamed is an employee of United Corporation d/b/a Plaza Extra and started such employment in 1986 at United Corporation's Plaza Extra East Sion Farm location as a "bagger" and other such duties. (Jan. 25, 2013 Hr'g Tr. at 23:2-7; Criminal Indictment at ¶ 3).

122. Mohammad Hamed was an employee at Plaza Extra East when Waleed Hamed started working there. (Jan. 25, 2013 Hr'g Tr. at 23:19-20).

123. Specifically, when Waleed Hamed started his employment there in 1986, Mohammad Hamed worked in the produce department and warehouse. (Jan. 25, 2013 Hr'g Tr. at 23:22-23).

124. Waleed Hamed eventually became a co-manager at Plaza Extra East. (Jan. 25, 2013 Hr'g Tr. at 24:12-14).

125. Waleed Hamed does not dispute that Fathi Yusuf is and always has been ultimately responsible for the entire office operations of United Corporation d/b/a Plaza Extra. (Jan. 25, 2013 Hr'g Tr. at 26:14-15, 100:2-3).

126. Fathi Yusuf in fact is the only individual who has the "ultimate call" relating to the operations of United Corporation d/b/a Plaza Extra, including to ultimately resolve any disagreements between the respective co-manager employees at the Plaza Extra Stores. (Jan. 25, 2013 Hr'g Tr. at 105:12-15).

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<sup>9</sup> The unresolved agency issues in this action are even further complicated by Hisham Hamed's separate claim that he his "also an agent for [his] father." (Jan. 25, 2013 Hr'g Tr. at 255:13-14). For these reasons, and others, Defendants have moved for an inquiry under Federal Rule of Civil Procedure 17 prior to the resolution of any other substantive motions in this action. (*See generally* Nov. 21, 2012 Motion to Strike Self-Appointed Representative).

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127. Nor does Waleed Hamed dispute that Mohammad Hamed retired from Plaza Extra East in 1996. (Jan. 25, 2013 Hr'g Tr. at 99:14-18).

128. Indeed, during the period when the alleged partnership started until it ended, *i.e.*, “the middle ‘80s until 1996,” when Mohammad Hamed retired, Waleed Hamed attests that Mohammad Hamed never had signatory authority over any Plaza Extra bank account whatsoever. (Jan. 25, 2013 Hr'g Tr. at 99:19-23).

129. Mohammad Hamed likewise has never even written a single check on behalf of any Plaza Extra entity, including when he worked at Plaza Extra East from 1986 to 1996. (Jan. 25, 2013 Hr'g Tr. at 99:24-25, 100:1-3).

130. The Plaza Extra location in St. Thomas opened in late 1992 or early 1993. (Jan. 25, 2013 Hr'g Tr. at 27:4-5).

131. Around that time, as to Plaza Extra St. Thomas only, Waleed Hamed maintains that Fathi Yusuf and Mohammad Hamed “took on another *partner* in St. Thomas,” named Ahmad Idheileh. (Jan. 25, 2013 Hr'g Tr. at 27:21-24 (emphasis added), 28:5-7).

132. Again referring to Ahmad Idheileh as a “partner,” Waleed Hamed maintains that Mr. Idheileh was eventually “bought [] out” as an alleged “partner” in the alleged “partnership,” which, according to Waleed Hamed, was between Fathi Yusuf, Mohammad Hamed and Ahmad Idheileh. (Jan. 25, 2013 Hr'g Tr. at 34:1-5, 106:5-15).

133. In fact, there was no such “partnership,” as Ahmad Idheileh and United Corporation d/b/a Plaza Extra entered into a written *Joint Venture Agreement* relating to the Plaza Extra store and,

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therefore, the parties' rights under that written agreement were subject to *joint venture* law. (Jan. 25, 2013 Hr'g Tr. at 107:20-25; PX 1 at Depo. exhibit 7).<sup>10</sup>

134. Waleed Hamed concedes that, in his opinion, there is no difference between a joint venture and a partnership – *i.e.*, according to Waleed Hamed, they are the “same.” (Jan. 25, 2013 Hr'g Tr. at 108:3-6).

135. However, it is undisputed that no Hamed family member, including Mohammad Hamed or Waleed Hamed, signed the agreement guaranteeing the lease of the Plaza Extra store in Tutu Park. (Jan. 25, 2013 Hr'g Tr. at 108:11-16; *see also* DX 8 at p. 56-58 (bates #FY126971-FY126973 (showing Fathi Yusuf alone signed a personal guarantee)).

136. It is also undisputed that Mohammad Hamed has never executed any document guaranteeing personally any debt, liability or loss of United Corporation d/b/a Plaza Extra or any Plaza Extra store. (Jan. 25, 2013 Hr'g Tr. at 109:8-11).

137. The various Plaza Extra Stores, *i.e.*, Plaza Extra East, Plaza Extra West, and Plaza Extra St. Thomas, are managed by various members of the Hamed and Yusuf families, who currently work at the stores as employees. (Jan. 25, 2013 Hr'g Tr. at 31:8-9, 34:19-20).

138. Likewise, Waleed Hamed does not dispute that the managers at each store, including the Hamed managers, currently all have access to the collective monies from all of the Plaza Extra Stores. (Jan. 25, 2013 Hr'g Tr. at 35:15-16).

139. The collective monies are maintained in accounts owned by United Corporation d/b/a Plaza Extra, although each store has several of its own bank accounts for store-specific expenditures and store-specific operational issues. (Jan. 25, 2013 Hr'g Tr. at 36:9-10, 36:22-23).

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<sup>10</sup> On February 19, 2013, the Plaintiff filed a Notice of Filing Supplemental Deposition Exhibits, which included the referenced Joint Venture Agreement.

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140. Those store-specific bank accounts include a tele-check account, operating account, payroll account, and credit card account. (Jan. 25, 2013 Hr'g Tr. at 37:4-8).

141. Although Waleed Hamed claims that the Yusuf and Hamed "families" formed corporations to purchase real property from the supermarket "profits" of United Corporation d/b/a Plaza Extra, he did not attest to any documented support for the claim. (Jan. 25, 2013 Hr'g Tr. at 40:20-25, 41:1).

142. Nor did Waleed Hamed attest to any documented actual distribution to the Hameds of any alleged "profits" on a "50/50" basis or otherwise. (Jan. 25, 2013 Hr'g Tr. at 41:2-4).

143. However, since 2000, after the federal "raid" that preceded the filing of the Criminal Action, Waleed Hamed does not dispute that those same "profits" are the subject of the Criminal Action; and that the profits are being held in various securities accounts, which are governed by the orders entered in the Criminal Action. (Jan. 25, 2013 Hr'g Tr. at 41:22-25, 42:1-13).

144. One such account, which is maintained at Banco Popular, has a current balance in excess of \$40 million dollars. (Jan. 25, 2013 Hr'g Tr. at 118:22-24; DX 9).

145. Those funds are currently in this jurisdiction and are currently subject to a restraining order in the ongoing federal Criminal Action. (Jan. 25, 2013 Hr'g Tr. at 119:4-12).

146. Plaza Extra East was destroyed in a fire in 1992, after which it eventually was rebuilt from insurance "funds" of an insurance policy protecting the store. (Jan. 25, 2013 Hr'g Tr. at 27:2-3, 42:22-25).<sup>11</sup>

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<sup>11</sup> In fact, the policy owner and beneficiary of the insurance policy at issue was United Corporation d/b/a Plaza Extra. (Jan. 25, 2013 Hr'g Tr. at 221:18-25).

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147. Although Waleed Hamed testified that Fathi Yusuf and Mohammad Hamed “shared the profits” of United Corporation d/b/a Plaza Extra, Waleed Hamed did not attest to any documented support for the claim. (Jan. 25, 2013 Hr’g Tr. at 44:12-15).

148. Similarly, although Waleed Hamed testified that Fathi Yusuf and Mohammad Hamed “shared the loss” of United Corporation d/b/a Plaza Extra, Waleed Hamed did not attest to any documented support for the claim. (Jan. 25, 2013 Hr’g Tr. at 44:16-18).

149. Waleed Hamed maintains that the “problems” between the Yusufs and Hameds that gave rise to this action developed no later than February 7, 2012. (Jan. 25, 2013 Hr’g Tr. at 51:18-20).

150. The Yusufs and Hameds thereafter commenced settlement “discussions” with attorneys. (Jan. 25, 2013 Hr’g Tr. at 58:16-20). These discussions were not successful.

151. Waleed Hamed concedes that the current dispute is over monies claimed to be owed to the Hamed family and that this lawsuit was filed to recover those monies. (Jan. 25, 2013 Hr’g Tr. at 66:13-25).

152. The Plaintiff also complains about monies of United Corporation d/b/a Plaza Extra being used, according to Waleed Hamed, to pay Fathi Yusuf’s attorneys. (Jan. 25, 2013 Hr’g Tr. at 67:23-24).

153. Similarly, Plaintiff complains about the receipt of a share of monies from the sale of certain real property. (Jan. 25, 2013 Hr’g Tr. at 87:3-4, 90:1-15).

154. Waleed Hamed concedes that there is no current operational policy requiring that checks of United Corporation d/b/a Plaza Extra be signed by a member of the Yusuf family and the Hamed family, as the checks simply require two different signatures (from any authorized signatories, regardless of the family designation). (Jan. 25, 2013 Hr’g Tr. at 81:1-3, 82:6-9).

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155. With respect to the Plaintiff's TRO application in this action, Waleed Hamed claims that it is based on the following nine acts:

- a. alleged threats by undisclosed members of the Yusuf family to "fire" undisclosed Hamed "partners" (plural), which alleged firings he does not attest actually have happened (Jan. 25, 2013 Hr'g Tr. at 91:7);
- b. alleged threats by undisclosed members of the Yusuf family to "physically remove" undisclosed Hamed members "from the store," and other ambiguous alleged threats of "physical harm" and "[i]ntimidat[ion]," which alleged threats he does not attest actually have happened (Jan. 25, 2013 Hr'g Tr. at 91:8, 91:17-18);
- c. alleged "bad mouthing" or "talking . . . in bad terms" by undisclosed members of the Yusuf family about undisclosed Hamed members to "suppliers, to employees and certain customers," absent any corroborating evidence from the alleged "suppliers, [] employees and certain customers" (Jan. 25, 2013 Hr'g Tr. at 91:8-10);
- d. alleged "ranting and raving in the office" by, presumably, Fathi Yusuf, "in front of employees, in front of suppliers," absent any corroborating evidence from the alleged "employees" and "suppliers" (Jan. 25, 2013 Hr'g Tr. at 91:11-12);
- e. alleged "cancel[ing]" of "orders" by, presumably, Fathi Yusuf, and "limit[ing]" how undisclosed Hamed members "conduct business as far as the ordering, pricing or whatever," absent any corroborating evidence establishing that orders were actually cancelled or business was actually limited (Jan. 25, 2013 Hr'g Tr. at 91:13-15);
- f. Fathi Yusuf requiring that operational issues be "approved by him," notwithstanding that Fathi Yusuf always has been responsible for United Corporation d/b/a Plaza, where Waleed Hamed was working at the flagship store as a "bagger," and Fathi Yusuf always has had the ultimate authority over the operations of United Corporation d/b/a Plaza Extra (Jan. 25, 2013 Hr'g Tr. at 91:15-16);
- g. alleged threats to "take [the Hameds] off of the authorization to sign checks," which directly conflicts with Waleed Hamed's prior concession that the Hameds are currently authorized to sign checks (*compare* Jan. 25, 2013 Hr'g Tr. at 91:18-19 *with* Jan. 25, 2013 Hr'g Tr. at 81:1-3, 82:6-9);

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- h. alleged threats to “close down” each of the Plaza Extra Stores and all of them, which alleged closings he does not – and cannot – attest actually have happened, as the stores are currently operating in the normal course of business (Jan. 25, 2013 Hr’g Tr. at 91:20-22); and
- i. “most recently, the firing of” an alleged “key” employee, Wadda Charriez, a non-essential payroll clerk who intentionally submitted false and fraudulent manual timesheets over a long period of time in clear violation of the stores’ written rules and regulations and was over-paid significant sums by United Corporation d/b/a Plaza Extra for those false and fraudulent representations (Jan. 25, 2013 Hr’g Tr. at 91:22-23).

156. The Plaintiff did not offer any substantive testimony regarding these issues.

157. Notwithstanding the foregoing, Waleed Hamed subsequently conceded that recent actual photographs of Plaza Extra East (DX 6), including of the warehouse and inventory areas therein, “depict a grocery store full of inventory that [] is not about to close any time soon.” (Jan. 25, 2013 Hr’g Tr. at 121:14-17).

158. Waleed Hamed provides ambiguous and conflicting testimony regarding his supposed objection to the removal of \$2.7 million dollars from the accounts of United Corporation d/b/a Plaza Extra, claiming the objection to be, on the one hand, that the withdrawal was “excessive” and, on the other hand, that an undefined “we” “didn’t have an opportunity to” agree to the withdrawal. (Jan. 31, 2013 Hr’g Tr. at 123:1-4).

159. Waleed Hamed testified that after the receiver was in place nobody could write checks without the receiver’s approval. (Jan. 25, 2013 Hr’g Tr. at 138:17-19).

160. With respect to the Criminal Action, in which Waleed Hamed and Waheed Hamed were co-defendants, Waleed Hamed does not dispute that they never advised the District Court in that action, the Government or anyone else about the alleged partnership claims that the Plaintiff alleges for the first time in this action. (Jan. 25, 2013 Hr’g Tr. at 116:6-19, 125:8-13, 126:10-15).

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161. According to Waleed Hamed, who claims to be Mohammad Hamed's self-appointed "representat[ive]," and "agent" the Hamed co-defendants "never had [a] reason to" advise anyone in the Criminal Action about the alleged partnership. (Jan. 25, 2013 Hr'g Tr. at 45:24-25, 116:15).

162. "And when it became an issue [in the Criminal Action] as to who actually owns Plaza Extra, . . . neither [Waleed Hamed or Waheed Hamed] nor [their] attorneys stood up and said [']wait a minute, my father Mohammad Hamed he actually owns 50 percent of Plaza Extra.[']" (Jan. 25, 2013 Hr'g Tr. at 116:20-25, 125:8-13, 126:10-15).

163. With respect to the payroll employee Wadda Charriez, Waleed Hamed does not dispute that "having employees file false time records to reflect hours that they worked when they didn't actually work [is] against company policy." (Jan. 25, 2013 Hr'g Tr. at 122:14-19).

164. Waleed Hamed also agrees that United Corporation d/b/a "Plaza Extra doesn't pay people for hours that they did not work." (Jan. 25, 2013 Hr'g Tr. at 122:14-25).

165. Thus, as Waleed Hamed concedes, a manager of the Plaza Extra Stores would have good cause to fire an employee who steals from and is paid by United Corporation d/b/a Plaza Extra. (Jan. 25, 2013 Hr'g Tr. at 123:21-24).

166. Moreover, Waleed Hamed does not dispute that, because Fathi Yusuf is above management, and Fathi Yusuf has the "ultimate call" relating to the operations of United Corporation d/b/a Plaza Extra, Fathi Yusuf obviously would have unilateral good cause to fire such an employee too. (Jan. 25, 2013 Hr'g Tr. at 105:12-15).

167. Waleed Hamed also concedes that the Hamed family has been exploring other business opportunities to compete with the business of United Corporation d/b/a Plaza Extra, including the purchase of the Marina Market property in the Red Hook area of St. Thomas via a company owned by the Hameds, *i.e.*, 5H Holdings. (Jan. 25, 2013 Hr'g Tr. at 128:14-23, 132:13-16).

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168. In 1999 or early 2000, with respect to the tax status of United Corporation d/b/a Plaza Extra, Waleed Hamed was aware of – and did not oppose – United Corporation's conversion from a "C" corporation to an "S" corporation, and transfer of its shares from Fathi Yusuf and Fathi Yusuf's wife to various Yusuf children. (Jan. 25, 2013 Hr'g Tr. at 133:22-25, 134:1-8).

**Testimony of Waheed ("Willy") Hamed**

169. Waheed Hamed is an employee of United Corporation d/b/a Plaza Extra and a co-manager of United Corporation's Plaza Extra St. Thomas store. (Jan. 25, 2013 Hr'g Tr. at 141:19-20; Criminal Indictment at ¶ 4).

170. In describing his management duties, Waheed Hamed, as with virtually all of the parties in this action, casually uses the word "partner," indicating that the store is "run by [him] and [his] *partner* which is one Yusuf one Hamed in each store." (Jan. 25, 2013 Hr'g Tr. at 142:2-3 (emphasis added)).

171. Waheed Hamed specifically maintains that his "partner" at the St. Thomas store is Najeh Yusuf. (Jan. 25, 2013 Hr'g Tr. at 152:17-19, 153:8-11).

172. When Waheed Hamed was asked to disclose the terms of any alleged partnership agreement with Najeh Yusuf, Waheed Hamed initially claimed that "[w]e own 50 percent, they own 50 percent, that's all I know," apparently referring mistakenly to the casual use of the word "partner" used by Fathi Yusuf when referring to Mohammad Hamed. (Jan. 25, 2013 Hr'g Tr. at 153:6-15).

173. Waheed Hamed then claimed that he "d[id]n't know at this moment" the terms of any alleged partnership with Najeh Yusuf.

174. With respect to the Plaintiff's TRO application in this action, Waheed Hamed alleges that:

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- a. the litigation, which the Hameds started, allegedly “is hurting the flow of the business” at the Plaza Extra St. Thomas store, absent any evidence to corroborate the allegation (Jan. 25, 2013 Hr’g Tr. at 142:11-12);
  - b. Plaza Extra St. Thomas allegedly “cannot pay vendors because [it] ha[s] no money to pay vendors” (Jan. 25, 2013 Hr’g Tr. at 146:1-2); and
  - c. undisclosed employees of the St. Thomas store allegedly went to Waheed Hamed “[i]n the summer” of 2012, “some crying, some holding their heads,” allegedly fearful of the store’s closing, absent any evidence to corroborate the allegation, absent any meaningful details about the allegation, including the names of the employees, if any, who allegedly were “crying” or allegedly were “holding their heads,” or the exact dates on which the alleged incidents happened, if ever, as the store clearly did not close in the summer of 2012 (Jan. 25, 2013 Hr’g Tr. at 150:9-15).
175. The Plaintiff was unable to offer any substantive testimony about these issues.
176. Tellingly, Waheed Hamed subsequently confirmed that:
- a. the Plaza Extra St. Thomas store did not close in the summer of 2012 and is currently operating (Jan. 25, 2013 Hr’g Tr. at 151:8-9);
  - b. the store’s shelves are adequately stocked (Jan. 25, 2013 Hr’g Tr. at 151:10-13; *see also* DX 6 and DX 11);
  - c. the store’s inventory is adequate (Jan. 25, 2013 Hr’g Tr. at 151:14-15; *see also* DX 6 and DX 11);
  - d. the store has a full complement of employees (Jan. 25, 2013 Hr’g Tr. at 151:18-19);
  - e. all of the store’s employees are being paid (Jan. 25, 2013 Hr’g Tr. at 151:20-21); and
  - f. Fathi Yusuf has not shut down the store (Jan. 25, 2013 Hr’g Tr. at 152:4-5).
177. With respect to United Corporation d/b/a Plaza Extra’s new accountants and new accounting systems, Waheed Hamed is unaware of terms of the Plea Agreement in the Criminal

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Action pursuant to which those new employees were hired and new systems were implemented. (Jan. 25, 2013 Hr'g Tr. at 154:10-13; cf. DX 2 at p. 7-8 (probation term including monitor by independent third party certified public accounting firm)).

178. Waheed Hamed has no accounting experience whatsoever. (Jan. 25, 2013 Hr'g Tr. at 154:21-22).

179. Nor does he know about "accounting controls" or what the term "GAAP" means. (Jan. 25, 2013 Hr'g Tr. at 154:18-25).

180. Waheed Hamed likewise does not know about John Gaffney's accounting work on behalf United Corporation d/b/a Plaza Extra, apart from knowing that Mr. Gaffney "[i]s setting up some accounting [software], Peachtree, that [the St. Thomas store has] used to pay [its] vendors and do [its] accounting." (Jan. 25, 2013 Hr'g Tr. at 155:1-7).

181. However, Waheed Hamed does not dispute that John Gaffney, in response to a request to share a deliverable final product of his team's accounting work, stated: "no problem, I will give you all the [accounting] information that I'm doing up to today." (Jan. 25, 2013 Hr'g Tr. at 155:8-12).

182. Waheed Hamed does not know what Ayman Al-Khaled does on behalf of United Corporation d/b/a Plaza Extra. (Jan. 25, 2013 Hr'g Tr. at 156:7-8).

**Testimony of Hisham Hamed**

183. Hisham Hamed is an employee of United Corporation d/b/a Plaza Extra and a co-manager of United Corporation's Plaza Extra West store. (Jan. 25, 2013 Hr'g Tr. at 255:10-13).

184. As with his brother (Waleed Hamed), Hisham Hamed claims to be yet another self-appointed "agent for [his] father" (Mohammad Hamed). (Jan. 25, 2013 Hr'g Tr. at 255:13-14).

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185. Hisham Hamed does not know the terms of the alleged partnership between Fathi Yusuf and Mohammad Hamed. (Jan. 25, 2013 Hr'g Tr. at 260:19-20).

186. Rather, Hisham Hamed agrees with whatever such terms Mohammad Hamed alleges. (Jan. 25, 2013 Hr'g Tr. at 262:3-8).

187. Since the Plaintiff sued Fathi Yusuf and United Corporation d/b/a Plaza Extra, the only operational "problem[]" that allegedly has resulted at Plaza Extra West is, according to Hisham Hamed, that he and Maher Yusuf "[are] not getting along." (Jan. 25, 2013 Hr'g Tr. at 258:4).

**Testimony of Kareema Dorsette**

188. Kareema Dorsette is an employee of United Corporation d/b/a Plaza Extra and works at the Plaza Extra St. Thomas store in the accounts payable department. (Jan. 25, 2013 Hr'g Tr. at 158:2-3, 158:11).

189. Kareema Dorsette attests that Fathi Yusuf was allegedly observed on a single occasion months ago, upon his review of the St. Thomas store's spreadsheet at the time, that Mr. Yusuf stated because the store's funds were low, "the store is not making any money and it's cheaper for us to have the store closed." (Jan. 25, 2013 Hr'g Tr. at 158:20-24).

190. Based on that isolated months-old observation, Kareema Dorsette claimed to be worried, at that time, about losing her job and reported the observation to Waheed "Willy" Hamed. (Jan. 25, 2013 Hr'g Tr. at 159:1-13).

191. Months later, as of the hearing on January 25, 2013, Kareema Dorsette has not lost her job – and the St. Thomas store is still open. (Jan. 25, 2013 Hr'g Tr. at 159:16-20).

**Testimony of Mufeed Hamed**

192. Mufeed Hamed is an employee of United Corporation d/b/a Plaza Extra and manages the Plaza Extra East store in Sion Farm. (Jan. 25, 2013 Hr'g Tr. at 160:8-11).

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193. Of the three Plaza Extra Stores, according to Mufeed Hamed, Plaza Extra West is the biggest in square footage, and Plaza Extra East is the biggest in terms of sales. (Jan. 25, 2013 Hr'g Tr. at 161:11-16).

194. On January 9, 2013, Mufeed Hamed brought Wadda Charriez back to Plaza Extra East as an employee there after Fathi Yusuf had discharged her the day before. (Jan. 25, 2013 Hr'g Tr. at 162:8-10, 164:19-21).

195. According to Mufeed Hamed, "the situation got very tense" after Fathi Yusuf discovered that Wadda Charriez had returned to the store. (Jan. 25, 2013 Hr'g Tr. at 165:6-7).

196. Fathi Yusuf eventually called the police to help resolve the situation, and the police responded to the store, as did the parties' respective attorneys. (Jan. 25, 2013 Hr'g Tr. at 165:14-15, 165:22-24).

197. Mufeed Hamed claims that he asked for, but has not received yet, the "evidence" establishing Wadda Charriez's submission of false and fraudulent timesheets. (Jan. 25, 2013 Hr'g Tr. at 166:12-20).

198. Mufeed Hamed also claims that, since this litigation has begun, the sole "difficult[y] in the operations" of the Plaza Extra East store is that "Yusuf Yusuf and [Mufeed Hamed] stopped talking," which, according to Mufeed Hamed, has "created a lot of . . . uncomfortable situations . . . making decisions for the store." (Jan. 25, 2013 Hr'g Tr. at 166:21-25, 167:1-5).

199. Nevertheless, Mufeed Hamed subsequently confirmed that:

- a. the Plaza Extra East store is still open (Jan. 25, 2013 Hr'g Tr. at 167:25-168:1);
- b. the store is fully stocked (Jan. 25, 2013 Hr'g Tr. at 168:2-3);
- c. the store's warehouse is fully stocked (Jan. 25, 2013 Hr'g Tr. at 168:4-5; *see also* DX 6);

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- d. the store's vendor's are all getting paid (Jan. 25, 2013 Hr'g Tr. at 168:6-7); and
- e. the store's employees are all getting paid (Jan. 25, 2013 Hr'g Tr. at 168:8-9).

200. Mufeed Hamed, a co-manager at Plaza Extra East, incredibly testified that he *personally* "would really have to consider [] further" whether there would be grounds to fire a hypothetical store employee who stole over \$10,000 from the store by submitting false timesheets. (Jan. 25, 2013 Hr'g Tr. at 169:5-9).

201. However, Mufeed Hamed then conceded that it would be "totally reasonable" for anyone else in his position, having reviewed the facts, to say, "you know what, you stole from me for \$10,000, [and] you're out." (Jan. 25, 2013 Hr'g Tr. at 169:13-18).

202. Mufeed Hamed likewise conceded that he would not even be able to reasonably disagree (or "fight") with someone in his position who said, "I'm firing this person for stealing \$10,000 from [the store] over this year." (Jan. 25, 2013 Hr'g Tr. at 169:19-23).

203. Mufeed Hamed has never seen his father, Mohammad Hamed, contribute further funds to the operation of the grocery stores after the initial loan contributions. (Jan. 25, 2013 Hr'g Tr. at 171:24).

204. With respect to Plaza Extra East's accounting software, Peachtree, Mufeed Hamed has no understanding of how to operate the software. (Jan. 25, 2013 Hr'g Tr. at 175:10-12, 175:20-24).

205. Mufeed Hamed is aware that the Plea Agreement in the Criminal Action requires United Corporation d/b/a Plaza Extra to implement financial controls that are consistent with

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generally accepted accounting principles, though he does not know the meaning of the acronym, GAAP. (Jan. 25, 2013 Hr'g Tr. at 176:20-25, 177:7-8).

206. Mufeed Hamed does not dispute that the accounting information for the stores is available from the accountants who work at the stores. (Jan. 25, 2013 Hr'g Tr. at 177:17-19).

207. Similarly, despite his knowledge since January 9, 2013, of the serious claims regarding Wadda Charriez's fraudulent timesheets, Mufeed Hamed is still waiting to be "shown" evidence by others – and he has not bothered to proactively investigate those claims himself. (Jan. 25, 2013 Hr'g Tr. at 179:8-10).

**Testimony of Wadda Charriez**

208. Wadda Charriez is an employee of United Corporation d/b/a Plaza Extra, to which she refers as "Plaza Extra United Corporation," and works in payroll at the Plaza Extra East store. (Jan. 25, 2013 Hr'g Tr. at 180:16-19, 181:1).

209. Wadda Charriez does not have a college degree, and has never taken any accounting or similar such classes. (Jan. 25, 2013 Hr'g Tr. at 189:4-5, 189:17-20).

210. Wadda Charriez has never before heard of the term generally accepted accounting principles. (Jan. 25, 2013 Hr'g Tr. at 190:1-5).

211. Wadda Charriez is familiar with most of the options in the Peachtree accounting software, but not all of them. (Jan. 25, 2013 Hr'g Tr. at 190:23-25).

212. Wadda Charriez is paid \$12 an hour. (Jan. 25, 2013 Hr'g Tr. at 191:24-25).

213. If Wadda Charriez works more than 40 hours a week, she is paid \$18 an hour (time and a half) for overtime. (Jan. 25, 2013 Hr'g Tr. at 192:1-5).

214. Store employees, such as Wadda Charriez, do not work on Thanksgiving, which is a holiday, but they are paid eight hours that day. (Jan. 25, 2013 Hr'g Tr. at 192:21-24).

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215. Wadda Charriez in fact did not work on Thanksgiving in 2012, but she manually entered her time to falsely reflect that she worked twelve hours that day, four of which hours she was paid time and a half wages for overtime. (Jan. 25, 2013 Hr'g Tr. at 193:5-13).

216. Upon being confronted with the false timesheet, Wadda Charriez now claims that her manual time-entry that day was a "mistake." (Jan. 25, 2013 Hr'g Tr. at 192:14).

217. Recounting her recollection of the incident's on January 9, 2013, when the police were called to Plaza Extra East, Wadda Charriez claims to have heard Fathi Yusuf allegedly say that:

- a. Fathi Yusuf allegedly would prefer to close the store "until we stay there," which ambiguous allegation she did not subsequently clarify (Jan. 25, 2013 Hr'g Tr. at 187:14-15);
- b. Fathi Yusuf allegedly "fired Mufeed too," though Mufeed Hamed still works at the store (Jan. 25, 2013 Hr'g Tr. at 187:18);
- c. Fathi Yusuf allegedly "fired [Waleed Hamed] too," though Waleed Hamed still works at the store (Jan. 25, 2013 Hr'g Tr. at 187:18-19);

**Testimony of Maher ("Mike") Fathi Yusuf**

218. Maher Yusuf, as President of United Corporation, testified that:

- a. Fathi Yusuf alone executed the guaranty for the lease relating to the Plaza Extra store in St. Thomas (Jan. 25, 2013 Hr'g Tr. at 218:23-25-219:1-3; *see also* DX 8 at p. 56);
- b. Fathi Yusuf alone exercised all of United Corporation d/b/a Plaza Extra's important management and operational decisions, such as, by way of example, controlling the check-signing policies at the Plaza Extra Stores (Jan. 25, 2013 Hr'g Tr. at 228:8-11);
- c. Mohammad Hamed never signed any loan document, written guaranty or other such paper for any documented financial loss or liability of the supermarket operations (Jan. 25, 2013 Hr'g Tr. at 219:4-10; *accord* DX 8);

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- d. Mohammad Hamed never exercised any management decision in respect to United Corporation d/b/a Plaza Extra (Jan. 25, 2013 Hr'g Tr. at 222:1-4); and
- e. Mohammad Hamed was nowhere to be found during the Criminal Action (Jan. 25, 2013 Hr'g Tr. at 222:11-25-223:1-3).

219. With respect to the Criminal Action, United Corporation took several steps to comply with the Plea Agreement (DX 2), including allowing itself to be monitored by an independent third party certified public accounting firm; hiring new financial consultants and accounts; and developing an effective compliance and ethics program. (Jan. 25, 2013 Hr'g Tr. at 226:1-12, 227:13-19).

220. With respect to the operations of the three Plaza Extra Stores, Maher Yusuf also confirmed that:

- a. the stores are not under any real threat of closing down (Jan. 25, 2013 Hr'g Tr. at 228:12-25, 233:8-11, 234:3-12);
- b. the stores are not under any real threat of reduced operations (Jan. 25, 2013 Hr'g Tr. at 228:16-18, 233:8-11, 234:3-12);
- c. he has never witnessed his father, Fathi Yusuf, threaten physical harm to any Hamed family member (Jan. 25, 2013 Hr'g Tr. at 228:19-22);
- d. he has never witnessed Fathi Yusuf block payment to any vendor (Jan. 25, 2013 Hr'g Tr. at 228:23-25, 234:17-25, 236:6-9);
- e. rather, the vendors are all being paid in the normal course of business (Jan. 25, 2013 Hr'g Tr. at 229:1-3, 234:17-25, 236:6-9; DX 12);
- f. the inventory is being ordered in the normal course of business (Jan. 25, 2013 Hr'g Tr. at 229:4-6, 233:8-11, 234:3-12; DX 12);

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- g. the stores are not in jeopardy of losing customers to competitors outside of the normal course of business (Jan. 25, 2013 Hr'g Tr. at 238:7-9);
- h. the approximately 600 employees at the stores are not in jeopardy of losing their respective jobs (Jan. 25, 2013 Hr'g Tr. at 238:4-6); and
- i. at bottom, the day-to-day operations of the three stores has not changed in any material way since the filing of this action in September 2012 (Jan. 25, 2013 Hr'g Tr. at 229:7-9, 233:8-11, 234:3-12, 234:17-25, 236:6-9, 238:25-239:1-9; DX 12)).

221. Indeed, allowing any of the Hamed family employees to now have "equal" management rights for the Plaza Extra Stores, as requested in the TRO Application, not only would change the status quo of the stores' operations since their inception but would materially harm the stores. (Jan. 25, 2013 Hr'g Tr. at 238:10-15).

222. Moreover, none of the feigned "concerns" that the Plaintiff raised in the original and renewed TRO applications have come true. (Jan. 25, 2013 Hr'g Tr. at 238:7-9).

223. With respect to its finances, United Corporation d/b/a Plaza Extra maintains an investment securities account at Popular Securities in St. Croix. (Jan. 25, 2013 Hr'g Tr. at 230:2-3; *see also* DX 9).

224. United Corporation d/b/a Plaza Extra currently has approximately \$44 million dollars in the Popular Securities account, which, among United Corporation's other accounts, is within this Court's jurisdiction and, separately, is subject to the pending restraining order in the Criminal Action. (Jan. 25, 2013 Hr'g Tr. at 230:4-10; DX 9).

225. Likewise, the respective operating accounts at the respective Plaza Extra Stores are sufficiently funded such that the stores are not facing any liquidity problems. (Jan. 25, 2013 Hr'g Tr. at 230:11-25-231:1-4).

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226. For “good cause,” the Hamed family employees – like the Yusuf family employees – are able to write a check in any amount if the check is signed by two signatures. (Jan. 25, 2013 Hr’g Tr. at 245:25-246:1-7).

227. Further, the Hamed family employees, among other employees at the Plaza Extra Stores, have “full [viewing] access” to United Corporation’s Plaza Extra bank accounts. (Jan. 25, 2013 Hr’g Tr. at 231:5-13; DX 10).

228. Maher Yusuf’s transfer of certain funds from a Plaza Extra bank account was used for the purchase of real property located within this Court’s jurisdiction and/or for other economic activities of United Corporation that are compensable in money. (Jan. 25, 2013 Hr’g Tr. at 237:22-25-238:1-3; Jan. 31, 2013 Hr’g Tr. at 119:24).

229. Further, in direct contradiction to the testimony of Waleed Hamed, Maher Yusuf testified that in respect to the \$2.7M (*see* PX 13) he gave Waleed Hamed documentation supporting the calculation of the \$2.7M and even gave Waleed Hameds, once again, the documentation in Attorney Holt’s office. (Jan. 25, 2013 Hr’g Tr. at 247:4-9, 249:13-24, 250:1-4).

230. The Hamed family employees also have full access to the work of Mr. Gaffney. (Jan. 25, 2013 Hr’g Tr. at 242:11-15).

**Testimony of Yusuf Yusuf**

231. Yusuf Yusuf has held a management position at Plaza Extra East in Sion Farm since 2000 as a store manager. (Jan. 31, 2013 Hr’g Tr. at 8:1-7, 33:11-13).

232. Mafi Hamed is also one of the store managers at Plaza Extra East. (Jan. 31, 2013 Hr’g Tr. at 33:6-7).

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233. Their respective management positions include the supervision of a non-essential employee, Wadda Charriez, who is a payroll clerk and handles the store's payroll. (Jan. 31, 2013 Hr'g Tr. at 8:17-24, 30:21-25, 31:1-9, 90:21-22).

234. Wadda Charriez has been Plaza Extra East since at least 2000. (Jan. 31, 2013 Hr'g Tr. at 9:5-8).

235. Wadda Charriez is paid on an hourly basis, and is paid time and a half for overtime. (Jan. 31, 2013 Hr'g Tr. at 12:1-5).

236. On January 8, 2013, Wadda Charriez was involved in a workplace incident based on her violation of the rules and regulations (DX 15) of the Plaza Extra East store. (Jan. 31, 2013 Hr'g Tr. at 10:1, 29:6-8).

237. Among other requirements, the rules and regulations require all employees at the Plaza Extra East store to:

- a. punch out for lunch after six hours of work (Jan. 31, 2013 Hr'g Tr. at 28:1-6; DX 15 at Rule # 16);
- b. refrain from cheating, as any employee found cheating will be immediately dismissed (Jan. 31, 2013 Hr'g Tr. at 28:7-10; DX 15 at Rule # 17);
- c. punch their time cards immediately after being relieved of the day's work duties (Jan. 31, 2013 Hr'g Tr. at 28:11-14; DX 15 at Rule # 18); and
- d. refrain from stealing, as any employee found stealing will be immediately dismissed and subject to arrest (Jan. 31, 2013 Hr'g Tr. at 28:20-24; DX 15 at Rule #23).

238. In late November 2012, after a global operational change that Fathi Yusuf had ordered to be implemented, Yusuf Yusuf noticed an irregularity on Wadda Charriez's time-keeping records, *i.e.*, that Ms. Charriez had manually altered her timesheets to reflect a full-day's work on a

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holiday (Thanksgiving) on which she did not in fact work. (Jan. 31, 2013 Hr'g Tr. at 10:5-6, 11:20-23, 44:12-25, 45:1-9; DX 13).

239. Wadda Charriez had not obtained Yusuf Yusuf's permission to manually enter her time on any given day, let alone every day; or, to Yusuf Yusuf's knowledge, any other supervisor's such permission. (Jan. 31, 2013 Hr'g Tr. at 23:1-10).

240. Specifically, Wadda Charriez manually entered her timesheet for November 22, 2012, to reflect that she worked from 7:38 a.m. in the morning to 7:20 p.m. in the evening – nearly a 12-hour shift. (Jan. 31, 2013 Hr'g Tr. at 15:10-14; DX 13 at p. 6).

241. Yusuf Yusuf knew that Wadda Charriez's such entry was false and fraudulent, as he had worked at the store the same day and thus knew firsthand that Ms. Charriez had not worked a minute that day, let alone 12 hours. (Jan. 31, 2013 Hr'g Tr. at 15:17-19).

242. Wadda Charriez's falsification of her November 22, 2012 timesheet also raised suspicions about her time-reporting practices in general. (Jan. 31, 2013 Hr'g Tr. at 15:20-23).

243. For example, Yusuf Yusuf reviewed Wadda Charriez's timesheets for the entire year 2012. (Jan. 31, 2013 Hr'g Tr. at 16:13-18; DX 13 at p. 7-112).

244. The review of those 2012 records showed that Wadda Charriez consistently (a) manually entered her time, as opposed to using the "normal" electronic punch-in system relying on the employee's social security number and handprint; and (b) reported work shifts of approximately 12 hours on a daily basis. (Jan. 31, 2013 Hr'g Tr. at 16:1-7, 16:16-25, 17:1-6).

245. Using the store's DVR system, Yusuf Yusuf then reviewed video-imaged records reflecting the times that Wadda Charriez entered the store to start her work day and the times that she left the store at the end of her work day. (Jan. 31, 2013 Hr'g Tr. at 20:21-25, 21:1-2; DX 14).

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246. The video images showed that Wadda Charriez consistently falsified her timesheets during the 2012 period in question. For example:

- a. on December 3, 2012, Wadda Charriez claimed that she started work that day at 7:36 a.m., when the video images showed that she arrived at the store at 8:37 a.m. (Jan. 31, 2013 Hr'g Tr. at 21:21-25, 22:1-7; DX 14 at p. 1 and p. 2);
- b. on December 3, 2012, Wadda Charriez claimed that she finished work that day at 7:25 p.m., when the video images showed that she left the store at 7:00 p.m. (Jan. 31, 2013 Hr'g Tr. at 22:15-25; DX 14 at p. 1 and p. 3);
- c. on December 18, 2012, Wadda Charriez claimed that she started work that day at 7:36 a.m., when the video images showed that she arrived at the store at 8:45 a.m. (Jan. 31, 2013 Hr'g Tr. at 23:18-20, 25:6-13; DX 14 at p. 33 and p. 37); and
- d. on December 18, 2012, Wadda Charriez claimed that she finished work that day at 7:20 p.m., when the video images showed that she left the store at 6:20 p.m. (Jan. 31, 2013 Hr'g Tr. at 24:8-10, 25:15-20; DX 14 at p. 33 and p. 39).

A comparison of the store's time-keeping records with its video-imaged records during nearly every other work day in 2012 shows a similar pattern of Wadda Charriez submitting false and fraudulent timesheets, for which she was paid by United Corporation d/b/a Plaza Extra, including time and a half pay for alleged overtime. (*See generally* DX 13 and 14).

247. Wadda Charriez's work duties included occasional off-site work, but only "maybe two days maximum out of a week," and, on those occasional days, only in the mornings prior to coming into the store. (Jan. 31, 2013 Hr'g Tr. at 42:11-14, 49:7-22).

248. Wadda Charriez was not authorized to do work after leaving the store; and any *occasional* off-site banking duties, for example, could not possibly have been done during the hours that Wadda Charriez falsely and fraudulently claimed to be leaving the store on a *daily* basis as the

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banks would be closed during those hours. (Jan. 31, 2013 Hr'g Tr. at 22:15-25 (Wadda Charriez claiming that she finished work on December 3, 2012, at 7:25 p.m.), 42:19-25, 43:1, 49:7-18).

249. Before employment at the Plaza Extra Stores, every employee is required to read the Plaza Extra rules and regulations referenced above, and to acknowledge in writing such review of and agreement to abide by those rules and regulations. (Jan. 31, 2013 Hr'g Tr. at 26:12-23, 27:5-7).

250. In fact, prior to her employment, Wadda Charriez read Plaza Extra's rules and regulations, and acknowledged in writing such review of and agreement to abide by those rules and regulations. (Jan. 31, 2013 Hr'g Tr. at 27:11-12, 29:13-25, 30:1-7; DX 15).

251. Based on Wadda Charriez's submission of false and fraudulent timesheets, among other acts, Ms. Charriez violated Plaza Extra's rules and regulations. (Jan. 31, 2013 Hr'g Tr. at 29:6-8; DX 15).

252. Management of Plaza Extra East thus had good cause to terminate Wadda Charriez's employment. (Jan. 31, 2013 Hr'g Tr. at 30:17-20).

253. Mafi Hamed, a co-store manager at Plaza Extra East, has had access at all times to the same information and same DVR system, *i.e.*, the same timesheets and same video-images that Yusuf Yusuf obtained. (Jan. 31, 2013 Hr'g Tr. at 40:25, 41:5-6).

254. Thus, there was and is no need for Yusuf Yusuf to share his findings with any other manager, including Mafi Hamed and Wally Hamed, as, again, these Hamed members have access to the same information as does Yusuf Yusuf. (Jan. 31, 2013 Hr'g Tr. at 40:25, 41:5-6, 46:14-20).

255. Moreover, Wadda Charriez, who assisted with payroll, was not an essential store employee and could be easily replaced. (Jan. 31, 2013 Hr'g Tr. at 30:21-25, 31:1-9).

256. At bottom, Wadda Charriez was initially dismissed, as provided for in the stores' rules and regulations (DX 15), and for the good cause established by the stores' records and video-

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images (DX 13 and 14), for her submission of false and fraudulent timesheets and receipt of payment for those timesheets – and not for any reasons involving the current dispute involving the Plaintiff. (Jan. 31, 2013 Hr'g Tr. at 46:5-13).

257. Yusuf Yusuf also confirmed the following:

- a. inventory at the Plaza Extra East store is fully current (Jan. 31, 2013 Hr'g Tr. at 31:10-13; DX 6);
- b. vendors of the Plaza Extra East store are being paid in the normal course of business (Jan. 31, 2013 Hr'g Tr. at 31:14-17);
- c. there have been no unusual disruptions at the Plaza Extra East related to the order of supplies and merchandise (Jan. 31, 2013 Hr'g Tr. at 31:18-21);
- d. Yusuf Yusuf has not witnessed Fathi Yusuf block or stop any payments to vendors of the Plaza Extra East store, or attempt to do those things (Jan. 31, 2013 Hr'g Tr. at 31:22-24);
- e. the inventory area of the Plaza Extra East store is stocked in the normal course of business (Jan. 31, 2013 Hr'g Tr. at 32:1-5; DX 6);
- f. as to all of the Plaza Extra Stores, there is no credible threat that the closes will prematurely be closed (Jan. 31, 2013 Hr'g Tr. at 32:10-13);
- g. Yusuf Yusuf has not witnessed Fathi Yusuf intimidate any employees of the Plaza Extra Stores, or attempt to do that, including Wadda Charriez (Jan. 31, 2013 Hr'g Tr. at 32:9-11, 45:17-19);
- h. Yusuf Yusuf has no direct knowledge of any threats by Fathi Yusuf to fire Mafi Hamed or Wally Hamed, who are currently employed at the Plaza Extra Stores, or to close the stores (Jan. 31, 2013 Hr'g Tr. at 48:1-4, 48:17-19);
- i. none of the allegations in the Hameds' TRO application, such as the stores' threatened closing, etc., have come to pass (Jan. 31, 2013 Hr'g Tr. at 32:15-24); and

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- j. Fathi Yusuf alone owns all of the Plaza Extra Stores, which are managed and otherwise operated by employees (Jan. 31, 2013 Hr'g Tr. at 46:22-23).

**Testimony of Ayman Al-Khaled**

258. Ayman Al-Khaled earned a bachelor's degree in accounting in Jordan. (Jan. 31, 2013 Hr'g Tr. at 52:13).

259. Fathi Yusuf and Ayman Al-Khaled are distant (but, not immediate) family members, as Ayman Al-Khaled's mother is Fathi Yusuf's niece, *i.e.*, Ayman Al-Khaled is Fathi Yusuf's great nephew. (Jan. 31, 2013 Hr'g Tr. at 61:9-12).

260. Following his graduation, Ayman Al-Khaled worked in various capacities in the accounting field, including in Kuwait for the Kuwait Investment Authority and in St. Croix for an USVI Economic Development Commission approved entity known as Kazi Management. (Jan. 31, 2013 Hr'g Tr. at 52:18-25).

261. Since approximately 2012, Ayman Al-Khaled has been employed by United Corporation d/b/a Plaza Extra pursuant to a written application. (Jan. 31, 2013 Hr'g Tr. at 51:21-24, 52:2-3, 62:3-5).

262. Fathi Yusuf initially hired Ayman Al-Khaled to work at United Corporation d/b/a Plaza Extra to assist with the review of certain files and records produced in the Criminal Action. (Jan. 31, 2013 Hr'g Tr. at 52:5-10, 54:21-25, 55:7-10, 62:20-21).

263. Ayman Al-Khaled now serves in the capacity of a controller, focusing, at these initial stages of his employment, on the Plaza Extra Stores' operations. (Jan. 31, 2013 Hr'g Tr. at 52:5-10, 63:12-23).

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264. Fathi Yusuf offered the controller position at United Corporation d/b/a Plaza Extra to Ayman Al-Khaled because United's controller at the time was leaving. (Jan. 31, 2013 Hr'g Tr. at 56:5-9).

265. John Gaffney, who had worked at Kazi Management and had supervised Ayman Al-Khaled's there, also endorsed Mr. Al-Khaled for the controller position at United Corporation d/b/a Plaza Extra. (Jan. 31, 2013 Hr'g Tr. at 56:11-16).

266. Ayman Al-Khaled currently works with John Gaffney and under Mr. Gaffney's supervision. (Jan. 31, 2013 Hr'g Tr. at 58:23-25).

267. John Gaffney and Ayman Al-Khaled are in the process of enhancing the accounting procedures at United Corporation d/b/a Plaza Extra, by, among other things, working to have each Plaza Extra Store be autonomous and able to issue accurate financial statements on their respective balance sheets, corrected income statements, and corrected cash flow statements for management. (Jan. 31, 2013 Hr'g Tr. at 59:1-8).

268. The Gaffney team is also revising the record-keeping policies of United Corporation d/b/a Plaza Extra to be in compliance with generally accepted accounting principles ("GAAP"), which is a requirement of the Plea Agreement (DX 2) entered into in the Criminal Action. (Jan. 31, 2013 Hr'g Tr. at 60:21-25, 61:1-8).

269. John Gaffney and Ayman Al-Khaled report to Maher ("Mike") Fathi Yusuf, who is the President of United Corporation d/b/a Plaza Extra. (Jan. 31, 2013 Hr'g Tr. at 59:9-10).

270. John Gaffney and Ayman Al-Khaled have not finished their work yet or finished any deliverable product that can be shared with the greater management team and other employees, including the Hamed family employees at the stores. (Jan. 31, 2013 Hr'g Tr. at 59:11-13, 84:4-5).

271. Consistent with Yusuf Yusuf's testimony, Ayman Al-Khaled also confirmed that:

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- a. inventory at the Plaza Extra Stores is fully current (Jan. 31, 2013 Hr'g Tr. at 59:22-23);
- b. vendors of the Plaza Extra Stores are being paid in the normal course of business (Jan. 31, 2013 Hr'g Tr. at 59:18-19);
- c. there have been no unusual disruptions at the Plaza Extra Stores related to the order of supplies and merchandise (Jan. 31, 2013 Hr'g Tr. at 59:20-21); and
- d. Ayman Al-Khaled has not witnessed Fathi Yusuf cause any harm or make such threat to any Hamed family member (Jan. 31, 2013 Hr'g Tr. at 59:14-17).

**Testimony of John Gaffney**

272. John Gaffney earned a Bachelor of Science in Business Administration in accounting from the University of Florida in 1973. (Jan. 31, 2013 Hr'g Tr. at 65:19-20).

273. Upon his graduation, John Gaffney worked for a national accounting firm. (Jan. 31, 2013 Hr'g Tr. at 65:23-24, 66:5-7).

274. John Gaffney also was certified as a public accountant in 1975, which license he held for many years until he went inactive. (Jan. 31, 2013 Hr'g Tr. at 67:2-6).

275. John Gaffney subsequently has spent approximately 15 to 20 years in public accounting and another 15 years in private accounting. (Jan. 31, 2013 Hr'g Tr. at 66:18-24).

276. His background in private accounting includes experience in retail accounting and as the director finance for Kazi Management, where he managed an office of approximately 11 controllers who oversaw sales markets throughout the United States and overseas for hundreds of fast food restaurants. (Jan. 31, 2013 Hr'g Tr. at 67:13-15, 67:23-25, 68:2-5).

277. John Gaffney hired Ayman Al-Khaled to work for Kazi Management in or around 2011. (Jan. 31, 2013 Hr'g Tr. at 68:10-13).

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278. John Gaffney describes Ayman Al-Khaled's performance as a controller as "very good." (Jan. 31, 2013 Hr'g Tr. at 68:14-16).

279. John Gaffney is currently employed by United Corporation d/b/a Plaza Extra in a controller capacity. (Jan. 31, 2013 Hr'g Tr. at 65:14-15).

280. John Gaffney started at United Corporation d/b/a Plaza Extra as an outside consultant to evaluate the corporation's system of internal controls and GAAP compliance. (Jan. 31, 2013 Hr'g Tr. at 69:1-25).

281. John Gaffney now serves at United Corporation d/b/a Plaza Extra in a controller capacity. (Jan. 31, 2013 Hr'g Tr. at 65:14-15).

282. Upon starting his consultancy at United Corporation d/b/a Plaza Extra, John Gaffney decided to concentrate initially and primarily on the operations of the three Plaza Extra Stores, as opposed to the operations of the shopping center, as the stores' accounting systems were in far worse shape. (Jan. 31, 2013 Hr'g Tr. at 96:5-8).

283. Indeed, John Gaffney observed that there were essentially four computers among the Plaza Extra Stores that had an accounting system, none of which were integrated or fully-optimized. (Jan. 31, 2013 Hr'g Tr. at 70:18-20).

284. For example, the Plaza Extra West and East locations were under-utilizing the corporation's accounting software system (which is referred to as "Peachtree"), instead were using the software as a mere word processor to simply print checks. (Jan. 31, 2013 Hr'g Tr. at 70:20-25, 71:3-9, 72:8-23).

285. The Plaza St. Thomas Store was treating its account receivables incorrectly and there were other internal control weaknesses. (Jan. 31, 2013 Hr'g Tr. at 79:1-19).

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286. The stores likewise were not integrating their point-of-sale ("POS") systems with the Peachtree accounting software system, which failure was inconsistent with GAAP, and there were systematic credit card processing issues. (Jan. 31, 2013 Hr'g Tr. at 75:8-10, 75:22-23, 80:9-24).

287. Consequently, to rectify the foregoing problems and issues, and otherwise comply with the Plea Agreement and GAAP, John Gaffney and his team set out to establish a "very, very good" set of internal controls and audit trails at United Corporation d/b/a Plaza Extra. (Jan. 31, 2013 Hr'g Tr. at 83:7-13, 90:4-16).

288. John Gaffney also has been training certain employees on various accounting systems and charts; and establishing a system to account for the point-of-sale records. (Jan. 31, 2013 Hr'g Tr. at 86:5-15, 110:2-5).

289. John Gaffney's ultimate intention for the accounting system at United Corporation d/b/a Plaza Extra is that, when the proper accounting system has been set up for the three stores, as well as the shopping center, and is being done on a monthly basis, United will combine the accounting system for all of its operations. (Jan. 31, 2013 Hr'g Tr. at 96:18-25, 97:1).

290. John Gaffney estimates the cost savings to United Corporation d/b/a Plaza Extra of such efforts at approximately \$450,000. (Jan. 31, 2013 Hr'g Tr. at 83:14-17).

291. John Gaffney estimates further that a deliverable product, which can be shared with the greater management team and other employees, including the Hamed family employees at the stores, will be completed by the end of February 2013. (Jan. 31, 2013 Hr'g Tr. at 84:14-23, 85:1-20).

292. In addition, John Gaffney confirmed that Wadda Charriez "is not irreplaceable," *i.e.*, she is a non-essential employee (payroll clerk). (Jan. 31, 2013 Hr'g Tr. at 91:12).

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293. Similarly, other employees of United Corporation d/b/a Plaza Extra can fulfill – and actually have fulfilled – Wadda Charriez's duties when Ms. Charriez has been unavailable, for example, when she has been out sick. (Jan. 31, 2013 Hr'g Tr. at 91:14-20).

294. United Corporation d/b/a Plaza Extra thus could comfortably replace Wadda Charriez with other current employees. (Jan. 31, 2013 Hr'g Tr. at 92:10-12).

295. John Gaffney also confirmed that United Corporation “do[es] business as Plaza Extra.” (Jan. 31, 2013 Hr'g Tr. at 99:20-21, 99:25, 100:1).

296. Thus, the rent notices that United Corporation d/b/a Plaza Extra provided to the Plaza Extra East store were simply “intracompany” internal accounting transactions, *i.e.*, “an intra-company payable due to/from,” which income is “offset by an expense” and thus is “washed” in the final analysis on United's tax returns. (Jan. 31, 2013 Hr'g Tr. at 100:2-6, 101:4-7, 105:22-23, 106:1-6, 107:11-12).

297. In other words, “[t]he net effect on the United tax return is zero.” (Jan. 31, 2013 Hr'g Tr. at 106:1-6).

298. In response to the Plaintiff's counsel's (Attorney Joel Holt's) question that “[p]artnerships have to file tax returns, don't they,” John Gaffney observed that “[t]here is no evidence of partnership” as to United Corporation d/b/a Plaza Extra, which, has filed its taxes as a corporation “for a long time” and has never filed any partnership tax returns. (Jan. 31, 2013 Hr'g Tr. at 101:11-12, 101:20-25; *accord* DX 2, 3, and 4).

299. Indeed, no Hamed family member receives any profits from United Corporation d/b/a Plaza Extra. (Jan. 31, 2013 Hr'g Tr. at 102:9-10).

300. Rather, the Hamed family employees, like all of the other employees at United Corporation d/b/a Plaza Extra, receive payroll checks. (Jan. 31, 2013 Hr'g Tr. at 102:9).

301. With respect to the Banco Popular Securities account, John Gaffney states that “it’s entirely possible” such account contains profits from both the supermarket operations and rental operations of United Corporation d/b/a Plaza Extra. (Jan. 31, 2013 Hr’g Tr. at 110:17-19, 111:8-9, 111:25, 112:1-2).

302. Further, as John Gaffney notes, it is a “forgone conclusion” that United Corporation d/b/a Plaza Extra is *not* a partnership, as “[t]here is a consistency of how [United’s] tax returns have been filed now for many, many years and there is no question about how they are going to continue to be filed.” (Jan. 31, 2013 Hr’g Tr. at 103:2-6).

## **II. Proposed Conclusions of Law**

### **Legal Standards**

A. This Court’s analysis is controlled by Fed. R. Civ. P. 65. *See also Crucians In Focus, Inc. v. VI 4D, LLLP*, 2012 V.I. Supreme LEXIS 76 (V.I. 2012).

B. In order for a movant to obtain a preliminary injunction the movant “must establish (1) a reasonable likelihood of eventual success on the merits of its claims, (2) irreparable harm absent the TRO, (3) harm from the denial of the TRO that would outweigh any harm to the defendants if relief is granted, and (4) that granting the relief would not adversely affect the public interest.” *Id.* at fn. 1 (internal citations omitted).

C. Further, because the Plaintiff is the party seeking a preliminary injunction, he carries the same “the burdens at the preliminary injunction stage track the burdens at trial.” *Gonzalez v. O Centro Beneficente Uniao do Vegetal*, 546 U.S. 418, 429 (2006).

D. A preliminary “injunction shall issue *only if* the plaintiff produces evidence sufficient to convince the district court that all four factors favor preliminary relief.” *N.J. Hosp. Ass’n v. Waldman*, 73 F.3d 509, 512 (3d Cir. 1995) (citation omitted, emphasis added). In other words, “[a]

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plaintiff's failure to establish any element in its favor renders a preliminary injunction inappropriate.”

*NutraSweet Co. v. Vit-Mar Enter., Inc.*, 176 F.3d 151, 153 (3d Cir. 1999).

i. **There Is No Likelihood of Success on the Merits.**

E. The Plaintiff cannot show a likelihood of success on the merits as against either United Corporation or Fathi Yusuf.

F. 26 V.I.C. § 22(c)(2) provides that “[t]he sharing of gross revenues does *not* by itself establish partnership ...” (emphasis added). Here, the fact that the Plaintiff has a profits interest does not *ipso facto* mean that he is a partner (as compared to a joint venture).

G. The Plaintiff has not provided sufficient record evidence that Fathi Yusuf and Mohammad Hamed ever intended to enter into a *bona fide* partnership with each other.

H. The Plaintiff has not provided any record evidence that he is a partner with or has any interest in United Corporation.

I. The Plaintiff has not provided sufficient record evidence that Mohammad Hamed ever has had an obligation to share losses of the Plaza Extra Supermarkets. *See, e.g.*, DX 8 (personal guarantee of Fathi Yusuf on Plaza Extra St. Thomas lease). *See also* ¶¶ 113 and 114, *supra*.

J. The Plaintiff has not provided sufficient record evidence that Mohammad Hamed ever has had the right to exercise any authority over any decisions of any of the Plaza Extra Supermarkets, let alone “major business decisions.” *See, e.g.*, *Eagan v. Gory*, 374 Fed. Appx. 335, 340 (3d Cir. 2010) (“agree[ing]” with trial court that partnership presumption under New Jersey UPA “was rebutted by evidence that,” among other trial evidence, the defendant in that case “did not intend to enter a [*bona fide*] partnership” and the plaintiff in that case “had neither an obligation to share losses nor authority over major business decisions”). *See* ¶¶ 115 and 116, *supra*.

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K. The Plaintiff has not provided sufficient record evidence as to the terms of the alleged oral partnership with Fathi Yusuf (and not with United Corporation) agreement other than the fact that it is “50%-50%” and that the duration is indefinite. *See, e.g., Southex Exhibitions, Inc. v. Rhode Island Builders Ass'n*, 279 F.3d 94, 97-98 (1st Cir. 2002) (affirming trial court’s denial of preliminary injunction based on lack of likelihood of ultimate success on the merits where, among other reasons in dispute regarding alleged partnership, the written agreement at issue, which described the contracting parties as “partners,” “[wa]s simply entitled ‘Agreement,’ rather than ‘Partnership Agreement’; the alleged partner “only” agreed to advance monies, as opposed to “shar[ing] equally or at least proportionately in partnership losses”; and the alleged partner “never filed either a federal or state partnership tax return”) (emphasis added); *Envirogas Inc. v. Walker Energy Partners*, 641 F. Supp. 1339, 1346 (W.D.N.Y. 1986) (finding, in partnership dispute, that movant seeking preliminary injunction failed to establish likelihood on the merits where, as here, there were “litigable questions as to the nature of the relationship of the parties and their intent under the [partnership] agreements” at issue in that case); *Bloomington Partners, LLC v. City of Bloomington*, 364 F. Supp. 2d 772, 780 (C.D. II. 2005) (finding that movant seeking preliminary injunction failed to establish likelihood on the merits without first “convince[ing] th[e] court that an enforceable, complete, and unambiguous agreement existed” supporting the allegations); *Hull v. Paige Temporary, Inc.*, No. 04 C 5129, 2005 U.S. Dist. LEXIS 28826, at \*44-45 (N.D. II. Nov. 16, 2005) (finding, as a matter of law, that an alleged “phantom partnership program [wa]s unenforceable for indefiniteness” where “[n]o aspect of the phantom partnership program was ever put into writing,” and the plaintiff’s “statement” supporting her “interpret[ation]” of the alleged partnership contract “constitute[d] the only terms of the contract”). *See* ¶ 111, *supra*.

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L. Plaintiff has failed to introduce into the record any contemporaneous documentation, such as income tax returns, corroborating with objective evidence that he, in fact, considered himself to be a *bona fide* partner with Fathi Yusuf and held himself out to third-parties (e.g. governmental agencies) as such. *See, e.g., Dundas v. Fuersich*, 831 N.Y.S.2d 347, \*\*\*34-35 (N.Y. Sup. Ct. 2006) (lack of any partnership tax returns is “clearly evidence” supporting lack of alleged partnership, though “not conclusive” evidence); *Zito v. Fischbein*, 11 Misc. 3d 713, 716 (N.Y. Sup. Ct. 2006) (lack of partnership tax returns, among other “indicia of partnership,” stands as an “affirmative indication” that party is “an employee ... , not a true partner, for a partner would have had to receive a K-1 to record his partnership distribution for the tax year”) (cited by Plaintiffs); *Prince v. O'Brien*, 256 A.D.2d 208, 212-13 (N.Y. App. 1998) (plaintiffs “designat[ion] and compensate[ion] as an employee of defendants’ corporation,” not as a partner, among other “traditional indicia of partnership” relevant to trial court’s finding that “no viable [partnership] claims” existed).

M. Plaintiff has not come into this Court with clean hands. Rather, having now admitted to being, at worst, a criminal tax evader or, at best, a criminal tax-non-filer for the past 26 years; having allowed a federal judge in a pending criminal action to accept a plea agreement premised upon factual representations that are directly at odds with the ones asserted in this action; and having introduced and relied upon a false affidavit, Plaintiff’s hands, and the hands of his primary witnesses, including Waleed Hamed and Waheed Hamed, as co-defendants in the subject criminal action, are plainly *unclean*. *Salomon Smith Barney Inc. v. Vockel*, 137 F. Supp. 2d 599, 604 (E.D. Pa. 2000).

N. Moreover, because the Plaintiff has stated in no uncertain terms that he “retired” a long time ago from the alleged partnership with Fathi Yusuf at issue in this action (*see* ¶ 110, *supra*)

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he is, at best, a creditor to the alleged partnership. *Estate of Matteson v. Matteson*, 2008 WI 48, P25; 749 N.W. 2d 557, 567 (Wis. 2008).

O. Because Plaintiff is, at best, a creditor to the alleged partnership with Fathi Yusuf, he cannot show a likelihood of success on the merits. *Accord Valentino McBean v. Guardian Ins. Agency*, 52 F. Supp. 2d 518, 522 (D.V.I. 1999) (affirming Territorial Court's denial of preliminary injunction where the plaintiffs therein showed only "some chance of prevailing on the merits") (emphasis added).

P. The Plaintiff has not sought to pierce the corporate veil against United Corporation and cannot, as a matter of law, obtain relief (and hence can show no probability of success on the merits) against a legal entity that he disavows any ownership in or any business relationship with, i.e., United Corporation, because a "court may only pierce the [corporate] veil in 'specific, unusual circumstances', lest it render the theory of limited liability useless." *American Bell, Inc. v. Federation of Tel. Workers*, 736 F.2d 879, 886 (3d Cir. 1984) (interal quotations omitted). See *Todi v. Stursberg*, 2001 U.S. Dist. LEXIS 11270 (E.D. Pa.) (denying request for preliminary injunction and to pierce the corporate veil because, *inter alia*, there was insufficient evidence to establish a complete failure to observe corporate formalities).

ii. **There Is No Irreparable Harm**

Q. The Plaintiff has not introduced into the record sufficient evidence to support the legal conclusion that he will suffer irreparable harm.

R. At bottom this case is about monetary damages for an alleged breach of an alleged oral partnership agreement with Fathi Yusuf (but not against United Corporation). "[A] preliminary injunction should not be granted if the injury suffered can be recouped in monetary damages." *IDT Telecom, Int. v. CVT Prepaid Solutions, Inc.*, 250 Fed. Appx. 476, 479 (3d Cir. 2007) (citing *Frank's GMC*

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*Truck Center, Inc. v. Gen. Motors Corp.*, 847 F.2d 100, 102 (3d Cir. 1988) (“[A] purely economic injury, compensable in money, cannot satisfy the irreparable injury requirement ....”). *See* ¶ 151, *supra*.

S. Here, because an adequate remedy at law exists, i.e., the partnership dissolution provisions of Title 26 of the Virgin Islands, there is no irreparable harm. *McBean v. Guardian Ins. Agency*, 52 F. Supp. 2d 518, 521 (D.V.I. 1999) (citing, among other cases, *Jaz Ltd. P'ship v. Gov't of the Virgin Islands*, 25 V.I. 364, 369 (D.V.I. 1990) (holding that “no irreparable harm if an adequate remedy at law exists”).

T. Moreover, since “[a] movant’s burden with regard to establishing irreparable harm is quite heavy” and the legal standard is “exacting”, *Banclays Bus. Credit, Inc. v. Four Winds Plaza P'ship*, 938 F. Supp. 304, 310 (D.V.I. 1996) (citation omitted), Plaintiff has not carried his heavy burden in establishing through record evidence the he will suffer irreparable harm.

U. Further, Plaintiff has not established irreparable harm if an order is not directed against United Corporation because the Plaintiff claims no ownership interest in, nor business relationship with, nor has sought to pierce the corporate veil of, United Corporation.

iii. **The Balance of Factors Support the Denial of Injunctive Relief**

V. The Plaintiff has not introduced into the record sufficient evidence supporting the legal conclusion that the balances of factors support the entry of a preliminary injunction against either United Corporation or Fathi Yusuf.

W. The record evidence introduced by the Defendant leads the Court to conclude that allowing the Plaintiff and/or the Hamed family to have “equal” management rights for the Plaza Extra Stores, as requested in the TRO/Preliminary Injunction Application, not only would change the status quo of the stores’ operations since their inception, but would materially harm the stores. *See* ¶ 221, *supra*.

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X. The record evidence leads the Court to conclude that granting the Plaintiff his requested relief would require United Corporation to continue to provide employment to (at least one) employee who has falsified her timesheets for an extended period of time, and who broke United Corporation's Rules and Regulations. *See* DX 13, 14, 15.

Y. The record evidence shows that the balance of factors weighs in favor of the Defendants as the hiring of Ayman Al-Khaled and John Gaffney were done in order to comply with the Plea Agreement (DX 2) and the Plea Agreement Addendum (DX 3). Further, the entry of a Preliminary Injunction against United Corporation would jeopardize both Mr. Al-Khaled and Mr. Gaffney's on-going attempt to comply with the Plea Agreement and ensure that United Corporation's accounting is in compliance with generally accepted accounting principles (GAAP). *See* ¶¶ 267, 268, 287, and 283, *supra*.

Z. Further, Plaintiff has not established that the balance of factors tips in his favor when the Plaintiff claims no ownership interest in, nor business relationship with, nor has sought to pierce the corporate veil of, United Corporation.

iv. **The Public Interest Also Supports the Denial of Injunctive Relief**

AA. The Plaintiff has not introduced into the record sufficient evidence supporting the legal conclusion that the public interest supports the entry of a preliminary injunction.

BB. The Plaintiff has failed to introduce into the record sufficient evidence justifying the imposition of "burdens on defendants above and beyond those necessary to protect plaintiffs' otherwise unsatisfi[ed] claims." *Hoxworth v. Blünder, Robinson & Co.*, 903 F.2d 186, 198 (3d Cir. 1990)).

CC. The public interest would not be served by (a) turning the supermarkets' operations upside down; (b) frustrating the pending federal criminal court case; and (c) permitting a litigant to wait decades after a purported partnership was made and then allowing him to bring a civil case

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against the other purported partner in derogation of the equitable doctrines of laches, unclean hands, and estoppel (judicial and/or quasi).

DD. Further, Plaintiff has not established that the public interest supports his request for a preliminary injunction against United Corporation when the Plaintiff claims no ownership interest in, nor business relationship with, nor has sought to pierce the corporate veil of, United Corporation.

**CONCLUSION**

The Plaintiff's motion for a preliminary injunction is hereby DENIED.

**DONE and ORDERED** in Chambers this \_\_\_\_ day of \_\_\_\_\_, 2013.

\_\_\_\_\_  
Hon. Douglas Brady  
Judge of the Superior Court

ATTEST: VENETIA H. VELAZQUEZ, ESQ.  
Clerk of the Court

By: \_\_\_\_\_  
Deputy Clerk

Dated: \_\_\_\_\_

cc: All counsel of record