

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

**HISHAM HAMED, individually, and
derivatively, on behalf of SIXTEEN PLUS
CORPORATION,**

Plaintiff,

v.

**FATHI YUSUF, ISAM YOUSUF and
JAMIL YOUSEF**

Defendants,

and

SIXTEEN PLUS CORPORATION,

a nominal Defendant.

Case No.: 2016-SX-CV-650

**DERIVATIVE SHAREHOLDER
SUIT, ACTION FOR DAMAGES
AND CICO RELIEF**

JURY TRIAL DEMANDED

**MOTION AND MEMORANDUM IN SUPPORT OF
MOTION TO AMEND THE FIRST AMENDED COMPLAINT**

The Plaintiff, by counsel, hereby moves to amend the First Amended Complaint pursuant to Rule 15 of the Rules of Civil Procedure. As required by the practice in this Court, attached is a redlined version of the proposed Second Amended Complaint (**Exhibit A**) along with a clean copy as well. See **Exhibit B**.

The proposed Second Amended Complaint eliminates two counts, Count II (Conversion) and Count V (Civil Conspiracy), against each Defendant. It also corrects the caption to correct the spelling of the name of the Jamil Yousef to Jamil Yousuf.

Rule 15 has a liberal standard for allowing complaints to be amended. In *Lorenz v. CSX Corp*, 1 F.3d 1406 (3rd Cir. 1993), the Third Circuit quoted from the Supreme Court holding in *Forman v. Davis*, 371 U.S. 178 (1962) regarding the allowance of

amendments to the pleadings and then stated as follows:

We have interpreted these factors to mean that “prejudice to the non-moving party is the touchstone for the denial of an amendment.” In the absence of substantial or undue prejudice, denial instead must be based on bad faith or dilatory motives, truly undue or unexplained delay, repeated failures to cure the deficiency by amendments previously allowed, or futility of amendment. *Id.* at 1413-1414 (Citations omitted).

Thus, under this clear standard for determining whether to grant a motion to amend, it is clear that such relief is appropriate here.

In this regard, there is no prejudice to the Defendants, as the proposed amendments simplify by deleting two counts and correcting a misspelling. Moreover, while some written discovery has been exchanged, no depositions have yet been taken in this case.

As such, for the reasons set forth herein, as well as because of the applicable Rule 15 standard, it is respectfully requested that the Plaintiff be permitted to file the Second Amended Complaint as submitted.

Dated: July 25, 2017



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

Counsel for Plaintiffs

Law Offices of Joel H. Holt

2132 Company Street,

Christiansted, VI 00820

Email: holtvi@aol.com

Tele: (340) 773-8709

Fax: (340) 773-8677

Carl J. Hartmann III, Esq.

Co-Counsel for Plaintiffs

5000 Estate Coakley Bay, L-6

Christiansted, VI 00820

Email: carl@carlhartmann.com

CERTIFICATE OF SERVICE

I hereby certify that this document complies with the page or word limitation set forth in Rule 6-1(e) and that on this July 25 2017, I served a copy of the foregoing by email, as agreed by the parties, as well as a copy mailed to James Hymes at the address below, on:

Greg Hodges, Esq.

Stefan Herpel, Esq.

Lisa Komives, Esq.

Law House, 10000 Frederiksberg Gade

P.O. Box 756

St. Thomas, VI 00804-0756

Tel: (340) 774-4422

ghodges@dtflaw.com

sherpel@dtflaw.com

lkomives@dtflaw.com

James L. Hymes, III, Esq.

P.O. Box 990

St. Thomas, VI 00804-0990

Tel: (340) 776-3470

jim@hymeslawvi.com

Kevin A. Rames, Esq.

2111 Company Street, Suite 3

Christiansted, VI 00820

Tel: (340) 773-7284

kevin.rames@rameslaw.com

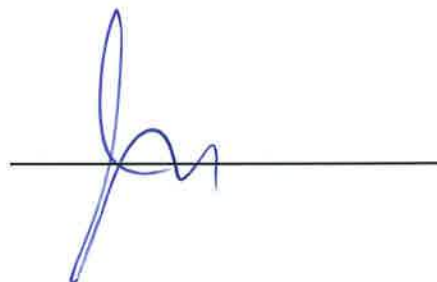
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EXHIBIT A

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

HISHAM HAMED, on behalf of himself
and derivatively, on behalf of SIXTEEN
PLUS CORPORATION,

Plaintiffs,

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FATHI YUSUF, ISAM YOUSUF,
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Case No.: 2016-SX-CV-650

DERIVATIVE SHAREHOLDER
SUIT, ACTION FOR DAMAGES,
CICO RELIEF, EQUITABLE
RELIEF AND INJUNCTION

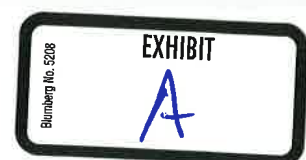
JURY TRIAL DEMANDED

SECOND ~~FIRST~~ AMENDED VERIFIED COMPLAINT

The Plaintiffs, by counsel, hereby allege as the basis of their Second First
Amended Verified Complaint against the Defendants as follows:

JURISDICTION AND PARTIES

1. This Court has jurisdiction pursuant to 4 V.I.C. §76 and 14 V.I.C. §607.
2. Individual Plaintiff Hisham Hamed, ("Hamed") is an adult resident of St. Croix and is now and at all times relevant to this Complaint has been an owner of stock in nominal defendant Sixteen Plus Corporation ("Sixteen Plus").
3. Defendant Fathi Yusuf is an adult resident of St. Croix who was at all times relevant to this Complaint (and still is) a shareholder, officer and director of Sixteen Plus.



4. The Defendant Isam Yousuf is an adult resident of St. Martin and has been at all times relative hereto.
5. The Defendant Jamil Yousuf is an adult resident of St. Martin and has been at all times relative hereto.
6. The Individual Plaintiff also brings a shareholder's derivative action on behalf of Sixteen Plus Corporation ("Sixteen Plus"), a Virgin Islands corporation that was formed in February of 1997, which is joined as a nominal defendant, as the cause of action belongs to the corporation, but its Board of Directors is such that the Board cannot be reasonably expected to bring suit in the name of the corporation.
7. Individual Plaintiff Hamed was at all times relevant to this Complaint (and still is) a shareholder of Sixteen Plus at all times relative hereto, as he was an initial shareholder when the corporation was formed and has continuously remained a shareholder during all times relevant.
8. The Plaintiff can bring the derivative claim on behalf of the corporation pursuant to Rule 23.1 of the Federal Rules of Civil Procedure, which is applicable to this cause of action.
9. The Board of Directors of Sixteen Plus currently consists of two directors, Fathi Yusuf, a named defendant, and Waleed Hamed. An original third director voluntarily withdrew from the Board before the acts complained of here when he sold all of his stock in the corporation to the Hameds and Yusufs.
10. Fathi Yusuf and Waleed Hamed and their families are in intractable litigation in several other matters. Both have acknowledged this to be the case, and have

filed papers in other proceedings before the Superior Court attesting to this. Moreover, the Superior Court (Willocks, J.) has entered an Order stating that the Hamed and Yusuf families could file a derivative action as to another jointly controlled corporation for the same reason.

11. Thus, Plaintiff Hamed has not made a demand on the Board of Directors, as it would be futile to make a demand on them to bring this suit on behalf of Sixteen Plus. As was true in the same situation before Judge Willocks, there would be no reasonable expectation that Fathi Yusuf would agree to have Sixteen Plus sue him for embezzlement, fraud and a violation of Section 605 of Title 14 of the Virgin Islands Code

FACTS

a. Background History – 1997-1999: Prior to the Alleged Conspiracy and Alleged Predicate Criminal Acts

12. On February 10, 1997, Sixteen Plus was formed as a corporation to purchase a 300 plus acre parcel of land on the South shore of St. Croix, often referred to as Diamond Keturah (hereinafter referred to as the "Land") from the Bank of Nova Scotia ("BNS") -- which had obtained its ownership interest subject to rights of redemption through a foreclosure sale conducted on February 13, 1996.
13. A contract to buy the Land subject to the rights of redemption was then entered into between Sixteen Plus and BNS on February 14, 1997.
14. At the time it was formed and at all times up to the present, all of the stock of Sixteen Plus has been owned 50% by family members of Fathi Yusuf and 50% by family members of Mohammad Hamed.

15. At the time Sixteen Plus was formed in the late 1990's, Fathi Yusuf and Mohammad Hamed were 50/50 partners in a grocery business known as Plaza Extra Supermarkets.
16. Fathi Yusuf and Mohammad Hamed decided to buy the Land in question by providing the necessary funds to Sixteen Plus -- using only proceeds from the grocery stores they owned -- which they did as described below.
17. Yusuf, acting for the Plaza Extra partners, then directed the business arrangements regarding the purchase of the Land.
18. Yusuf directed these business arrangements for the partnership as to the purchase of the Land using partnership funds rather than involving his partner Mohammad Hamed because, as both the Court in *Hamed v. Yusuf* and Fathi Yusuf himself have stated -- Fathi Yusuf was "in charge" of the business transactions for the partnership and they were under his "exclusive ultimate control". (See, *Hamed v. Yusuf*, 2013 WL 1846506 (V.I. Super. April 25, 2013)(para. 19 at page *6, "Yusuf's management and control of the "office" was such that Hamed was completely removed from the financial aspects of the business. . . ." and Yusuf's May 9, 2013, *Motion to Stay the Preliminary Injunction* in that same action -- where Yusuf admitted "[Hamed] never worked in any management capacity at any of the Plaza Extra Stores, which role was under *the exclusive ultimate control of Fathi Yusuf.*")
19. All funds used to buy the Land came from the Plaza Extra Supermarkets partnership -- and thus from Yusuf and Hamed as the only two partners.

20. However, Fathi Yusuf decided he did not want either the Government of the Virgin Islands or BNS to know the partnership source of the funds he was using to buy the Land, as he did not want them to know he was secretly diverting unreported cash from the Plaza Extra Supermarket to Sixteen Plus as part of a money laundering effort. The following details of that effort are presented here as background information to the later predicate criminal acts and are not the subject of this Complaint.
21. Fathi Yusuf acted with Isam Yousuf, his nephew who lived on St. Martin, to launder in excess of \$4,000,000 in unreported, untaxed partnership funds to St. Martin from the Plaza Extra Supermarket operations -- so that they could then wire these funds back to a Sixteen Plus account at BNS in order for Sixteen Plus to use these 'laundered' funds to purchase the Land.
22. To accomplish this, Fathi Yusuf had large sums of cash delivered to Isam Yousuf in St. Martin, who thereafter deposited those funds into various accounts in St. Martin. Fathi Yusuf and Isam Yousuf then transferred the partnership's funds by wire to an account in the name of Sixteen Plus at BNS on St. Croix. The transfers (which exceeded \$4,000,000) to Sixteen Plus' account at BNS took place between February 13th and September 4th of 1997.
23. To further cover up the partnership source of these funds, as well as to try to shelter Isam Yousuf from exposure to criminal consequences from the effort to launder and use the cash from the partnership's supermarkets, Fathi Yusuf and Isam Yousuf agreed to create a sham note and mortgage for the transaction,

naming Fathi Yusuf's young niece who lived in St. Martin, Manal Mohammad Yousef ("Manal Yousef"), as the sham mortgagee.

24. Fathi Yusuf explained the note and mortgage to his partner, Mohammad Hamed, as well as the various Hamed shareholders of Sixteen Plus as being a legitimate business transaction to protect the property, that Manal Yousef could and would never actually enforce the mortgage, and that Yusuf could get the note and mortgage discharged at any time.

25. To demonstrate the legitimacy of this arrangement to his partner, Fathi Yusuf stated to Mohamad Hamed and his son Waleed Hamed that all of the financials of the corporation, USVI tax filings and annual USVI corporate filings would **accurately reflect that the funds came from Hamed and Yusuf as the shareholders – and would not reflect the note and mortgage as a valid corporate debt – as further described below.** Thus, he explained, no USVI laws would be broken by making it appear that Manal Yousef had provided funds or was the holder of an enforceable claim.

26. Fathi Yusuf then caused a corporate resolution, sham note and mortgage in the amount of \$4,500,000 to be drafted by Sixteen Plus' counsel in favor of Manal Yousef, dated September 15, 1997, even though she had no such funds, and had never advanced any funds to Sixteen Plus -- as those funds came solely from the partnership and belonged 50/50 to the Hameds and Yusufs.

27. The note and mortgage exceeded the amount laundered through St. Martin by \$500,000. The additional \$500,000 came from partnership funds that Fathi Yusuf caused the supermarkets to deposit directly as currency into the St. Croix

bank account. Thus, \$500,000 of the \$4.5 million used to buy the land was directly provided by the Partnership as cash deposits.

28. At Fathi Yusuf's direction, that sham note and mortgage in the amount of \$4,500,000 were then executed by Sixteen Plus in favor of Manal Yousef on September 15, 1997, even though the Land in question had actually not been purchased yet – and the amount transferred through St. Martin was only \$4 million.

29. On December 24, 1997, BNS finally was entitled to a conveyance of the Land from the Marshal of the Territorial (now Superior) Court of the Virgin Islands, as the rights of redemption in the foreclosure sale had expired.

30. As per the contract between them, instead of taking title, BNS assigned its right to this conveyance from the Marshal to Sixteen Plus. Sixteen Plus paid for this assignment with the funds from the partnership.

31. On February 22, 1999, Sixteen Plus finally received and recorded the deed to the Land. On that same day, Sixteen Plus also recorded the sham mortgage (as originally dated September 15, 1997) in favor of Manal Yousef.

a. *The Money Laundering Charges-2003*

32. In 2003, the Federal Government filed felony money laundering and tax evasion criminal charges against Fathi Yusuf and Isam Yousuf, among others.

33. The felony case included criminal charges related to the aforementioned laundering of funds by diversion from the partnership's Plaza Extra supermarkets to St. Martin to buy the Sixteen Plus Land. *That case and those criminal charges are not the subject of the CICO case here – or claimed as predicate acts.*

34. Pursuant to those charges, the Federal Government placed a lien against various real property owned by Fathi Yusuf's United Corporation as well as corporations also owned jointly by the Yusuf and Hamed families -- including the Land owned by Sixteen Plus.

35. The Government also identified the money laundering through St. Martin and the fact that \$500,000 in currency was deposited with funds from the supermarkets to make up the difference.

36. As part of its investigation and the charges, the FBI retrieved and documented the bank records from St. Martin showing the diversion of the \$4 million in funds from the partnership's Plaza Extra Supermarkets to St. Martin -- and subsequent transfer of those laundered funds back to the bank account of Sixteen Plus in order to purchase this Land. It also documented the deposits of \$500,000 directly into the St. Croix account by the partnership.

b. The Value of the Sixteen Plus Property Dramatically Increases-2005

37. While the criminal case continued over the next years, various third parties attempted to buy the Land from Sixteen Plus at substantially higher prices than was paid for the property, with the highest offer exceeding \$22 million.

38. Recognizing this substantial increase of 500% in value in less than 10 years, Fathi Yusuf began to try to figure out how to pocket these funds for himself.

39. In this regard, the Federal Government agreed that it would remove its lien and the Land could be sold -- but ***only*** if the proceeds of any such sale were escrowed pending the outcome of the criminal case and not paid to Manal Yousef.

40. Contrary to the best interests of Sixteen Plus and its shareholders, Fathi Yusuf began to formulate a plan to embezzle from and defraud Sixteen Plus of the value of the Land, and thus rejected offers for the Land unless the sham Manal Yousef note and mortgage were paid -- so he could then get sole control of these funds.

41. The Federal Government refused to agree to the request that the Manal Yousef mortgage be paid first, asserting its own doubts about the validity of the sham mortgage.

42. Fathi Yusuf could also have had Manal Yousef agree to an escrow of the sales proceeds while preserving her alleged mortgage rights, which would have allowed the sale to take place and fully protect the debt allegedly owed to her, but this would have necessarily involved her in the on-going criminal prosecution since the Land was actually purchased with laundered funds, so such a request was never made. Indeed, once the funds were escrowed, Fathi Yusuf would lose his opportunity to keep the funds for himself pursuant to his Plan.

43. As such, Sixteen Plus lost then, and is continues to lose the benefit of such sales at the highest and best amount because of Fathi Yusuf's insistence that the sham mortgage be paid upon the sale of the property -- which payment the Federal Government refused to allow.

c. The Hidden Plan to Convert the Increased Value and Usurp Corporate Opportunity by Criminal Acts and Conspiracy

44. By May of 2010 it was clear that a settlement and plea would eventually be reached in the criminal action.

45. In May of 2010, without the knowledge of the Hameds or disclosure of either their acts or the related documents, Defendants began to implement the *Hidden Plan to Convert the Increased Value and Usurp Corporate Opportunity by Criminal Acts and Conspiracy* (the "Hidden Plan") by first obtaining a "Real Estate Power of Attorney" from "Manal Mohammad Yousef Mohammad" **that gave Fathi Yusuf, personally, the power to do whatever he wished with the mortgage, including releasing the mortgage or foreclosing on the Land for his own benefit, even though the Hamed family had actually paid 50% of the purchase price to buy the Land. See Exhibit 1.** The St. Martin Defendants were central to this effort to embezzle the Sixteen Plus funds.

46. This power of attorney Fathi Yusuf supplied and they had Manal Yousef sign, gave no rights or benefits to Sixteen Plus or the Hameds and thus usurped the corporate opportunity, despite the fact that Fathi Yusuf was an officer and director of the corporation, owing it fiduciary and statutory duties, as well as a shareholder.

47. Additionally, this undisclosed power of attorney specifically stated that Fathi Yusuf was given total power over what to do with the Land and foreclosure proceeds -- as he was also released and indemnified as to all actions he might take in regard to his broad, personal power of attorney—which further demonstrated that the mortgage and note were a sham, as no bona fide lender gives a principal of the borrower a full power of attorney to discharge the debt without requiring payment.

48. Upon information and belief, the power of attorney was drawn up by a Virgin Islands lawyer retained by Fathi Yusuf and executed at the request and direction of the St. Martin Defendants by Manal Yousef on St. Martin..
49. The existence and purpose of this power of attorney were not disclosed to the Hameds – and they did not learn of it or the Hidden Plan until after Yusuf attempted to steal all of the assets of Sixteen Plus, like he did with the Plaza Extra Supermarkets partnership in 2012 – all of which occurred well within the period of the statute of limitations applicable here.
50. That execution of the undisclosed, exclusive power of attorney in favor of Fathi Yusuf personally was orchestrated by Isam Yousuf in furtherance of the Plan with Fathi Yusuf to steal half of the value of the Land, then in excess of \$25 million, from Sixteen Plus and the Hamed shareholders.
51. The Defendants planned to use the sham mortgage to allow Fathi Yusuf to foreclose of the Land *for his own personal benefit*, and to thus deny Sixteen Plus the value of the Land.
52. In 2013, the Federal Government reached a settlement in the criminal case, which included *inter alia* a lump sum \$10 million payment of taxes to the Government of the Virgin Islands for previously unreported income from the Plaza Extra Supermarkets.
53. In addition to this large payment for back taxes, a fine in excess of \$1,000,000 was also paid to the Government, along with a plea of guilty to the pending felony charge of tax evasion by the corporate defendant, United Corporation, which subsequently was determined to be Yusuf's agent for the partnership.

54. As a result of the plea and settlement, the Federal Government removed its lien on the Land. Also, Fathi Yusuf, Waleed Hamed and several of the other defendants were given personal immunity from criminal prosecution for the acts of tax evasion and money laundering described above.

d. The Predicate Criminal Acts to Consummate the Hidden Plan

55. After the criminal case was dismissed, the Fathi Yusuf and the St. Martin Defendants, in furtherance of the Hidden Plan, arranged for counsel on St. Martin to send a demand to Sixteen Plus – for payment of the sham note and mortgage Sixteen Plus allegedly owed to Manal Yousef. See **Exhibit 2**.

56. That St. Martin counsel did not disclose to Sixteen Plus or the Hameds that Fathi Yusuf was the person personally directing the demand.

57. A response was made to that demand by Hamed's counsel on behalf of Sixteen Plus, which was reduced to writing -- pointing out that the mortgage was not valid for the reasons stated herein. That writing also specifically stated that St. Martin counsel was acting improperly in asserting he was representing Manal Yousef's interests rather than Fathi Yusuf's. See **Exhibit 3**.

58. While counsel on St. Martin promised to get a response to that letter after discussing the matter with his real "client" (see **Exhibit 4**), he never did so, strongly indicating to the Hameds that he had never really been retained by Manal Yousef.

59. In furtherance of the Hidden Plan, Fathi Yusuf, in conjunction with the other Defendants, committed multiple criminal acts including conversion, attempted conversion, perjury, attempted perjury, wire and mail fraud, and others.

60. In 2016, Fathi Yusuf filed a civil lawsuit in the Superior Court as part of the Hidden Plan; seeking to dissolve Sixteen Plus in an attempt to, *inter alia*, dispose of the Land and trigger payment of the sham mortgage.

61. In the course of that litigation, Fathi Yusuf was required to produce all documents he had exchanged with Manal Yousef, including any powers of attorney.

62. When Fathi Yusuf did supply what he represented to be all such documents on July 26, 2016, the power of attorney was not disclosed.

63. Hamed's counsel wrote to Yusuf's counsel pursuant to Fed. R. Civ. P. 34 and 37 (**Exhibit 5**), specifically asking for verification under the Rules that there was no such "power of attorney":

Stefan - I reviewed these new responses and there are still several deficiencies:

* * *

Supplemental Document Response #13-The documents you referenced as documents exchanged with Manal Yousef only include the deed, mortgage, mortgage note and certain wire transfers from someone else—**please confirm** there are no letters, faxes, emails, documents showing any interest payments to her (as alleged were made), **powers of attorney**, pre-mortgage negotiations or any other documents exchanges with your client and her or her agent. (Emphasis added.)

64. On August 5, 2016, Fathi Yusuf's counsel responded that he had initiated a "reasonable search" as to his client and his client's documents, and falsely represented – on behalf of Fathi Yusuf -- there was no such power of attorney.

See **Exhibit 5**.

Joel, . . . Here are my responses to your numbered paragraphs:

* * *

I stand by my statement in the supplemental Rule 34 response that **based on a reasonable search there are no other documents**

responsive to your request. I believe that supplemental response to your request is sufficient under the Rules (and I thought from our meet and confer that is what you wanted), and that I am not under any duty to go into more detail. (Emphasis added.)

65. During the same Superior Court litigation, Fathi Yusuf was also required to answer an interrogatory about the note and mortgage on the Land. To falsely make it appear that Manal Yousef was a *bona fide* mortgagee, hide the undisclosed personal power of attorney and protect the Hidden Plan – Fathi Yusuf stated under oath as follows (See **Exhibit 6**):

- a. That Manal Yousef loaned the full \$4.5 million on September 15, 1997, for the purchase of the Land;
- b. That Manal Yousef was paid three interest only payments on the mortgage between 1998 and 2000;
- c. That Manal's last known address is 25 Gold Finch Road, Point Blanche, St. Martin, N.A.;
- d. That he did not recall the last time he spoke with her;
- e. That Manal Yousef had retained counsel in the Virgin Islands;
- f. That he would not provide a phone number for Manal Yousef because she had counsel in the Virgin Islands.

66. All of the foregoing statements made by Fathi Yusuf in his interrogatory response are false, and were made in furtherance of the Hidden Plan to steal half of the value of the Land from Sixteen Plus and its shareholders, the Hameds, by a foreclosure -- as Fathi Yusuf committed perjury under oath before the Court in furtherance of the Plan when he made these statements.

67. Yusuf then filed a motion for a protective order to avoid providing Manal Yusuf's phone number, as a Sixteen Plus or Hamed discussion with Manal would disclose the power of attorney and the Plan to steal half of the value of the Land in a sham foreclosure.

68. After the Court denied Yusuf's motion and ordered Fathi Yusuf to provide the phone number of Manal Yousef, he then repeated the false statements above -- and *now* stated that he did not have her phone number despite his motion to protect that exact information -- but that she could be reached through her nephew, Jamil Yousef, although to date he has repeatedly refused to verify that response. See **Exhibit 7**.

69. However, the location given by Fathi Yusuf as Manal Yousef's address is actually in the possession of and used by Isam Yousef, which is where he and his son, Jamil Yousef, reside.

70. Yusuf knew, when he falsely certified to the contrary, that this was not the location where Manal Yousef resided.

71. The purpose of this false representation in response to the Court's Order being that the St. Martin Defendants had agreed to intercept any mail, service or other communications to Manal before she could receive them.

72. Indeed, when service of process in another pending Superior Court action was left at that address for Manal Yousef, Isam and Jamil Yousef intercepted the summons and contacted Fathi Yusuf to further the conspiracy to steal the land from Sixteen Plus, telling him about the suit instead.

73. Upon information and belief, Jamil Yousuef then agreed to further participate in this fraudulent Plan by allowing Fathi Yusuf to provide his name to the Court as the alleged contact for Manal Yousef, to hide the truth -- promising to call Fathi Yusuf if he was contacted by anyone, so that her whereabouts would remain secret and she would not learn that "she" alone was allegedly going to get millions of dollars -- money which Fathi Yusuf was seeking.

74. Fathi Yusuf thereafter represented to the Superior Court, without the necessary identification of the true party in interest, that he had been contacted by Manal Yousef's "agent", when he knew in fact that it was he, Fathi Yusuf, who was directing the case and attempting to foreclose the sham mortgage under the undisclosed power of attorney -- for his own benefit.

75. During this time period, including in 2012, Fathi Yusuf personally arranged for **and signed, under the penalty of perjury -- tax and other governmental filings showing that no outstanding obligations were due to Manal Yousef, and, to the contrary, that the \$4.5 million had been advanced by -- and was due to -- the shareholders, Hamed and Yusuf**, as follows:

- a. To conceal the Hidden Plan and deceive the other shareholders and officers of the corporation, Fathi Yusuf filed tax returns for Sixteen Plus during this time period, including 2012. See **Exhibits 8 and 9**.
- b. In those filings he, personally signed and swore under oath and penalty of perjury that the \$4.5 million held by Sixteen Plus was received from shareholders and due to them -- and there was no loan or mortgage to a third person. *Id.*

- c. This comported with his repeated representations to the Hameds intended to keep the Hidden Plan hidden.
- d. To hide the Hidden Plan and deceive the other shareholders and officers of the corporation, Fathi Yusuf also prepared and filed annual corporate filings for Sixteen Plus during this time period, including 2012.
- e. In those filings he stated that the \$4.5 million held by Sixteen Plus was received from shareholders and due to them – and was not a loan or mortgage to a third person. See **Exhibit 10**.
- f. This comported with representations to the Hameds.

76. In furtherance of this scheme, in 2013 Fathi Yusuf also created and requested Waleed Hamed sign an annual corporate filing that showed \$4.5 million due as a mortgage and loan and not money due to the Shareholders as had been reported for the prior 13 years. He also inserted his family members as the directors on the document, which he signed and proffered to Hamed. See **Exhibit 11**.

77. Indeed, the Fathi Yusuf and the other Defendants were wrongfully attempting to hide the fact that Fathi Yusuf was the real plaintiff in interest – and that Manal Yousef had not personally contacted counsel in the USVI to represent her alleged interests.

78. To further this Plan, Fathi Yusuf retained USVI counsel to represent him “acting” as Manal Yousef -- and then represented to the USVI Court that Manal Yousef had retained USVI counsel, when she had not in fact done so. He did not disclose that the suit was actually being brought by him, that he was the true party in interest, or the existence of the wrongfully undisclosed power of attorney.

79. Notwithstanding all of these facts being disclosed to Yusuf, he has not recanted any of his false statements or filings -- and continues to pursue his Plan to steal the real property at Diamond Keturah from Sixteen Plus without any payment to the company or its shareholders, as he continues to try to divert all such funds through Manal Yousef, which funds he will then take back for himself with a share to Defendants for their assistance.

COUNT I - CICO

80. Plaintiffs repeat and reallege all preceding paragraphs, which are incorporated herein by reference.

81. Section 605 of Title 14 of the Virgin Islands Code provides in part as follows:

- a. It is unlawful for any person employed by, or associated with, any enterprise, as that term is defined herein, to conduct or participate in, directly or indirectly, the affairs of the enterprise through a pattern of criminal activity.
- b. It is unlawful for any person, through a pattern of criminal activity, to acquire or maintain, directly or indirectly, any interest in, or control of, any enterprise or real property.
- c. It is unlawful for any person who has received any proceeds derived, directly or indirectly, from a pattern of criminal activity in which he participated as a principal, to use or invest, directly or indirectly, any part of the proceeds thereof, or any proceeds derived from the investment or use of any of those proceeds, in the acquisition of any title to, or any right, interest, or equity in, real property, or in the establishment or operation of any enterprise. . . .

82. Pursuant to 14 V.I.C. §607(a), any aggrieved party may institute civil proceedings against any persons to obtain relief from a violation of §605.

83. Sixteen Plus and its shareholders are such aggrieved parties under subsection in that:

- a. All Defendants are "person[s]" who through a pattern of criminal activity set forth in paragraphs 55 through 79, have "acquire[d]. . . directly or indirectly" an "interest in" the Land which is "real property" within the meaning of the statute.
- b. All Defendants are "person[s] who have received. . .proceeds derived, directly or indirectly, from a pattern of criminal activity in which [they] participated as. . .principal[s], to use or invest, directly or indirectly,. . .part of the proceeds thereof. . .in the acquisition of. . .[a] right, interest, or equity in" the Land, which is real property as set forth above.

84. Defendants acted in concert with one another in conspiring together in a pattern of activities to embezzle funds from and criminally defraud Sixteen Plus and its shareholders, which is expressly prohibited by 14 V.I.C. §834, causing damages to Sixteen Plus and its shareholders.

85. Defendants conspired together within the statutory limitations period to accomplish this goal by using unlawful means, including the use of knowingly false court filings in two different cases, tax and corporate filings, use of the mail and wires -- and by perjured testimony in violation of 14 V.I.C. §1541 and §1548.

86. This was criminal activity as defined by Title 14, Chapter 41 (giving false statements), Chapter 75 (obstruction of justice) and Chapter 77 (perjury) as well as various reporting, wire fraud and other crimes.

87. Such criminal conduct by the Defendants was undertaken in a years long pattern as set forth in Chapter 30 of Title 14 of the Virgin Islands Code, as the Defendants acted in concert as a group in association with one another in carrying out their goal of embezzling funds from and otherwise defrauding Sixteen Plus and its shareholders, with each of the named Defendants being a

Principal in this enterprise within the statutory limitations period. Indeed, the criminal enterprise is still on-going.

88. These were not isolated acts, and were all done with the intent to embezzle from, defraud and otherwise injure Sixteen Plus, file tax and corporate information with the USVI government and give perjured documents and testimony to the Courts of the Virgin Islands.

89. Pursuant to 14 V.I.C. §605, it is unlawful for the Defendants to engage in such a criminal activity, as was done here.

90. Sixteen Plus has been injured by this criminal activity targeting the enterprise, already subjecting its real property to a sham mortgage in a present value in the millions of dollars and by loss of value from the time the Land could have been sold or could now be sold for peak value.

91. As such, Sixteen Plus is entitled to all civil remedies permitted an aggrieved party by 14 V.I.C. § 607, **including statutory treble damages**, for all damages caused by Defendants' unlawful criminal enterprise.

COUNT II - **CONVERSION**

~~92.— Plaintiffs repeat and reallege all preceding paragraphs, which are incorporated herein by reference.~~

~~93.— The acts alleged herein constitute conversion of the corporate assets and corporate opportunities of the corporation, in that:~~

~~a.— Defendants 'intentionally or wrongfully exercise[d] acts of ownership, control or dominion by the acts set forth in paragraphs 44 through 79,~~

~~b.— over property, being the \$4.5 million in funds of Sixteen Plus,~~

~~e. — to which they have no right of possession.~~

~~94. Plaintiff and the Corporation are injured thereby in loss of value.~~

COUNT IIII (Yusuf Only) – BREACH OF FIDUCIARY DUTIES

~~95-92.~~ Plaintiffs repeat and reallege all preceding paragraphs, which are incorporated herein by reference.

~~96-93.~~ The acts alleged herein constitutes breach of fiduciary duty and self-dealing by Fathi Yusuf, an officer and director of the corporation, in that:

- a. Fathi Yusuf is and has been a director of Sixteen Plus,
- b. In that capacity, he negotiated the note and mortgage with Manal Yousef for the purpose of protecting the corporation's principal asset, the Land, for the benefit of Sixteen Plus.
- c. He later obtained a power of attorney from Manal Yousef giving himself control of and all rights in those assets, and denying them to the corporation.
- d. He did this without (1) offering the power of attorney or (2) disclosing it to Sixteen Plus,
- e. In violation of his duty as an officer and the negotiating official to do so,
- f. And has taken those benefits as his own

~~97-94.~~ The corporation has been injured thereby.

~~98-95.~~ The corporation will be further injured if equitable relief in the form of a disgorgement order and injunction are not entered to stop the corporation's officer from further acting against the interest of the corporation by use of information, documents and position so obtained.

COUNT ~~IIII~~IV (Yusuf Only) – USURPING OF CORPORATE OPPORTUNITY

~~99-96.~~ Plaintiffs repeat and reallege all preceding paragraphs, which are incorporated herein by reference.

~~100-97.~~ The acts alleged herein in paragraph 96 constitutes usurping of a corporate opportunity by Fathi Yusuf, an officer of the corporation acting in that capacity in dealing with Manal Yousef.

~~101-98.~~ The corporation has been injured thereby.

~~102-99.~~ The corporation will be further injured if equitable relief in the form of a disgorgement order and injunction are not entered to stop the corporation's officer from further acting against the interest of the corporation by use of information, documents and position so obtained.

~~COUNT V – CIVIL CONSPIRACY~~

~~103.~~ Plaintiffs repeat and reallege all preceding paragraphs, which are incorporated herein by reference.

~~104.~~ Defendants entered into a civil conspiracy as follows:

- ~~a.~~ They entered into an agreement and combination
- ~~b.~~ to perform a wrongful act, the tort of conversion, as set forth in Count II above;
- ~~c.~~ that resulted in damage to the plaintiff.

~~105.~~ In the alternative, Defendants'

- ~~a.~~ entered into an agreement
- ~~b.~~ to do a lawful act, obtaining and prosecuting a power of attorney to control a mortgage

~~6. by unlawful means: perjury and the other criminal acts set forth above.~~

~~106. Both the individual plaintiff and the corporation have been injured thereby~~

COUNT ~~IV~~ – TORT OF OUTRAGE

~~107-100.~~ Plaintiffs repeat and reallege all preceding paragraphs, which are incorporated herein by reference.

~~108-101.~~ The actions of the Defendants were intentional, wanton, extreme and outrageous.

~~109-102.~~ The actions of the Defendants were culpable and not justifiable under the circumstances.

~~110-103.~~ The actions of the Defendants caused injury to Sixteen Plus.

~~111-104.~~ As such, the Defendants are liable for said injuries suffered by Sixteen Plus as a result of their intentional and unjustifiable misconduct.

WHEREFORE, the Plaintiffs seek:

- A. an award of compensatory damages of multiple loses of the sale of the Land at the highest and best sales value, including treble damages where permitted by law,
- B. equitable orders with regard to the acts.
- C. consequential damages against the Defendants, jointly and severally, in an amount as determined by the trier of fact, along with any other relief the Court deems appropriate,
- D. Punitive damages if warranted by the facts and applicable law.
- E. Any and all other damages, fees, costs or other relief the Court may deem appropriate.

A TRIAL BY JURY IS DEMANDED AS TO ALL ISSUES

~~Dated: July~~, 2017~~December 23, 2016~~

Joel H. Holt, Esq. (Bar # 6)
Counsel for Plaintiff
Law Offices of Joel H. Holt
2132 Company Street,
Christiansted, VI 00820
Email: holtvi@aol.com
Tele: (340) 773-8709
Fax: (340) 773-8677

Carl J. Hartmann III, Esq.
Co-Counsel for Plaintiff
5000 Estate Coakley Bay, L-6
Christiansted, VI 00820
Email: carl@carlhartmann.com

CERTIFICATION

Counsel hereby certifies that he has affixed his signature hereto pursuant to the requirements of 14 V.I.C. §607(d) and has sent a true copy to the Attorney General as required by § 607(f). See Exhibit 1.

~~Dated: July~~, 2017~~December 23, 2016~~

Joel H. Holt, Esq.
V.I. Bar No. 6
Law Office of Joel H. Holt, P.C.
Counsel for Plaintiff
2132 Company Street
Christiansted, VI 00820
Email: holtvi@aol.com
Tele: (340) 773-8709

VERIFICATION

I, Hisham Hamed, do hereby verify that I have carefully read the Second Amended Complaint and that based upon reasonable inquiry, I believe that the Complaint comports with the requirements set forth in items (1) through (3) of 14 V.I.C. §607(d), which I have read.

Dated: ~~July~~, 2017December 23, 2016

Hisham Hamed

SWORN TO AND SUBSCRIBED
BEFORE ME THIS 31st DAY
OF OCTOBER, 20176

NOTARY PUBLIC

CERTIFICATE OF SERVICE

I hereby certify that on this 23rd day of ~~July~~December, 20176, I served a copy of the foregoing by mail and email, as agreed by the parties, on:

Gregory H. Hodges, Esq.
Stephen Herpel, Esq.
Lisa Komives, Esq.

Law House, 10000 Frederiksberg Gade
P.O. Box 756
St. Thomas, VI 00802
ghodges@dtflaw.com
sherpel@dtflaw.com
lkomives@dtflaw.com

James L. Hymes, III, Esq.
V.I. Bar No. 264
1131 King Street, Suite 309
St. Croix, VI 00820
Tel: (340) 776-3470
Fax: (340) 775-3300

jim@hymeslawvi.com

Kevin A. Rames, Esq.
2111 Company Street, Suite 3
Christiansted, VI 00820
Tel: (340) 773-7284
kevin.rames@rameslaw.com

EXHIBIT B

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

**HISHAM HAMED, on behalf of himself
and derivatively, on behalf of SIXTEEN
PLUS CORPORATION,**

Plaintiffs,

v.

**FATHI YUSUF, ISAM YOUSUF,
JAMIL YOUSUF,**

Defendants,

and

SIXTEEN PLUS CORPORATION,

a nominal defendant.

Case No.: 2016-SX-CV-650

**DERIVATIVE SHAREHOLDER
SUIT, ACTION FOR DAMAGES,
CICO RELIEF, EQUITABLE
RELIEF AND INJUNCTION**

JURY TRIAL DEMANDED

SECOND AMENDED VERIFIED COMPLAINT

The Plaintiffs, by counsel, hereby allege as the basis of their Second Amended Verified Complaint against the Defendants as follows:

JURISDICTION AND PARTIES

1. This Court has jurisdiction pursuant to 4 V.I.C. §76 and 14 V.I.C. §607.
2. Individual Plaintiff Hisham Hamed, ("Hamed") is an adult resident of St. Croix and is now and at all times relevant to this Complaint has been an owner of stock in nominal defendant Sixteen Plus Corporation ("Sixteen Plus").
3. Defendant Fathi Yusuf is an adult resident of St. Croix who was at all times relevant to this Complaint (and still is) a shareholder, officer and director of Sixteen Plus.



4. The Defendant Isam Yousuf is an adult resident of St. Martin and has been at all times relative hereto.
5. The Defendant Jamil Yousuf is an adult resident of St. Martin and has been at all times relative hereto.
6. The Individual Plaintiff also brings a shareholder's derivative action on behalf of Sixteen Plus Corporation ("Sixteen Plus"), a Virgin Islands corporation that was formed in February of 1997, which is joined as a nominal defendant, as the cause of action belongs to the corporation, but its Board of Directors is such that the Board cannot be reasonably expected to bring suit in the name of the corporation.
7. Individual Plaintiff Hamed was at all times relevant to this Complaint (and still is) a shareholder of Sixteen Plus at all times relative hereto, as he was an initial shareholder when the corporation was formed and has continuously remained a shareholder during all times relevant.
8. The Plaintiff can bring the derivative claim on behalf of the corporation pursuant to Rule 23.1 of the Federal Rules of Civil Procedure, which is applicable to this cause of action.
9. The Board of Directors of Sixteen Plus currently consists of two directors, Fathi Yusuf, a named defendant, and Waleed Hamed. An original third director voluntarily withdrew from the Board before the acts complained of here when he sold all of his stock in the corporation to the Hameds and Yusufs.
10. Fathi Yusuf and Waleed Hamed and their families are in intractable litigation in several other matters. Both have acknowledged this to be the case, and have

filed papers in other proceedings before the Superior Court attesting to this. Moreover, the Superior Court (Willocks, J.) has entered an Order stating that the Hamed and Yusuf families could file a derivative action as to another jointly controlled corporation for the same reason.

11. Thus, Plaintiff Hamed has not made a demand on the Board of Directors, as it would be futile to make a demand on them to bring this suit on behalf of Sixteen Plus. As was true in the same situation before Judge Willocks, there would be no reasonable expectation that Fathi Yusuf would agree to have Sixteen Plus sue him for embezzlement, fraud and a violation of Section 605 of Title 14 of the Virgin Islands Code

FACTS

a. Background History – 1997-1999: Prior to the Alleged Conspiracy and Alleged Predicate Criminal Acts

12. On February 10, 1997, Sixteen Plus was formed as a corporation to purchase a 300 plus acre parcel of land on the South shore of St. Croix, often referred to as Diamond Keturah (hereinafter referred to as the “Land”) from the Bank of Nova Scotia (“BNS”) -- which had obtained its ownership interest subject to rights of redemption through a foreclosure sale conducted on February 13, 1996.
13. A contract to buy the Land subject to the rights of redemption was then entered into between Sixteen Plus and BNS on February 14, 1997.
14. At the time it was formed and at all times up to the present, all of the stock of Sixteen Plus has been owned 50% by family members of Fathi Yusuf and 50% by family members of Mohammad Hamed.

15. At the time Sixteen Plus was formed in the late 1990's, Fathi Yusuf and Mohammad Hamed were 50/50 partners in a grocery business known as Plaza Extra Supermarkets.
16. Fathi Yusuf and Mohammad Hamed decided to buy the Land in question by providing the necessary funds to Sixteen Plus -- using only proceeds from the grocery stores they owned -- which they did as described below.
17. Yusuf, acting for the Plaza Extra partners, then directed the business arrangements regarding the purchase of the Land.
18. Yusuf directed these business arrangements for the partnership as to the purchase of the Land using partnership funds rather than involving his partner Mohammad Hamed because, as both the Court in *Hamed v. Yusuf* and Fathi Yusuf himself have stated -- Fathi Yusuf was "in charge" of the business transactions for the partnership and they were under his "exclusive ultimate control". (See, *Hamed v. Yusuf*, 2013 WL 1846506 (V.I. Super. April 25, 2013)(para. 19 at page *6, "Yusuf's management and control of the "office" was such that Hamed was completely removed from the financial aspects of the business. . . ." and Yusuf's May 9, 2013, *Motion to Stay the Preliminary Injunction* in that same action -- where Yusuf admitted "[Hamed] never worked in any management capacity at any of the Plaza Extra Stores, which role was under *the exclusive ultimate control of Fathi Yusuf.*")
19. All funds used to buy the Land came from the Plaza Extra Supermarkets partnership -- and thus from Yusuf and Hamed as the only two partners.

20. However, Fathi Yusuf decided he did not want either the Government of the Virgin Islands or BNS to know the partnership source of the funds he was using to buy the Land, as he did not want them to know he was secretly diverting unreported cash from the Plaza Extra Supermarket to Sixteen Plus as part of a money laundering effort. The following details of that effort are presented here as background information to the later predicate criminal acts and are not the subject of this Complaint.
21. Fathi Yusuf acted with Isam Yousuf, his nephew who lived on St. Martin, to launder in excess of \$4,000,000 in unreported, untaxed partnership funds to St. Martin from the Plaza Extra Supermarket operations -- so that they could then wire these funds back to a Sixteen Plus account at BNS in order for Sixteen Plus to use these 'laundered' funds to purchase the Land.
22. To accomplish this, Fathi Yusuf had large sums of cash delivered to Isam Yousuf in St. Martin, who thereafter deposited those funds into various accounts in St. Martin. Fathi Yusuf and Isam Yousuf then transferred the partnership's funds by wire to an account in the name of Sixteen Plus at BNS on St. Croix. The transfers (which exceeded \$4,000,000) to Sixteen Plus' account at BNS took place between February 13th and September 4th of 1997.
23. To further cover up the partnership source of these funds, as well as to try to shelter Isam Yousuf from exposure to criminal consequences from the effort to launder and use the cash from the partnership's supermarkets, Fathi Yusuf and Isam Yousuf agreed to create a sham note and mortgage for the transaction,

naming Fathi Yusuf's young niece who lived in St. Martin, Manal Mohammad Yousef ("Manal Yousef"), as the sham mortgagee.

24. Fathi Yusuf explained the note and mortgage to his partner, Mohammad Hamed, as well as the various Hamed shareholders of Sixteen Plus as being a legitimate business transaction to protect the property, that Manal Yousef could and would never actually enforce the mortgage, and that Yusuf could get the note and mortgage discharged at any time.

25. To demonstrate the legitimacy of this arrangement to his partner, Fathi Yusuf stated to Mohamad Hamed and his son Waleed Hamed that all of the financials of the corporation, USVI tax filings and annual USVI corporate filings would **accurately reflect that the funds came from Hamed and Yusuf as the shareholders – and would not reflect the note and mortgage as a valid corporate debt – as further described below.** Thus, he explained, no USVI laws would be broken by making it appear that Manal Yousef had provided funds or was the holder of an enforceable claim.

26. Fathi Yusuf then caused a corporate resolution, sham note and mortgage in the amount of \$4,500,000 to be drafted by Sixteen Plus' counsel in favor of Manal Yousef, dated September 15, 1997, even though she had no such funds, and had never advanced any funds to Sixteen Plus -- as those funds came solely from the partnership and belonged 50/50 to the Hameds and Yusufs.

27. The note and mortgage exceeded the amount laundered through St. Martin by \$500,000. The additional \$500,000 came from partnership funds that Fathi Yusuf caused the supermarkets to deposit directly as currency into the St. Croix

bank account. Thus, \$500,000 of the \$4.5 million used to buy the land was directly provided by the Partnership as cash deposits.

28. At Fathi Yusuf's direction, that sham note and mortgage in the amount of \$4,500,000 were then executed by Sixteen Plus in favor of Manal Yousef on September 15, 1997, even though the Land in question had actually not been purchased yet – and the amount transferred through St. Martin was only \$4 million.

29. On December 24, 1997, BNS finally was entitled to a conveyance of the Land from the Marshal of the Territorial (now Superior) Court of the Virgin Islands, as the rights of redemption in the foreclosure sale had expired.

30. As per the contract between them, instead of taking title, BNS assigned its right to this conveyance from the Marshal to Sixteen Plus. Sixteen Plus paid for this assignment with the funds from the partnership.

31. On February 22, 1999, Sixteen Plus finally received and recorded the deed to the Land. On that same day, Sixteen Plus also recorded the sham mortgage (as originally dated September 15, 1997) in favor of Manal Yousef.

a. The Money Laundering Charges-2003

32. In 2003, the Federal Government filed felony money laundering and tax evasion criminal charges against Fathi Yusuf and Isam Yousuf, among others.

33. The felony case included criminal charges related to the aforementioned laundering of funds by diversion from the partnership's Plaza Extra supermarkets to St. Martin to buy the Sixteen Plus Land. *That case and those criminal charges are not the subject of the CICO case here – or claimed as predicate acts.*

34. Pursuant to those charges, the Federal Government placed a lien against various real property owned by Fathi Yusuf's United Corporation as well as corporations also owned jointly by the Yusuf and Hamed families -- including the Land owned by Sixteen Plus.

35. The Government also identified the money laundering through St. Martin and the fact that \$500,000 in currency was deposited with funds from the supermarkets to make up the difference.

36. As part of its investigation and the charges, the FBI retrieved and documented the bank records from St. Martin showing the diversion of the \$4 million in funds from the partnership's Plaza Extra Supermarkets to St. Martin -- and subsequent transfer of those laundered funds back to the bank account of Sixteen Plus in order to purchase this Land. It also documented the deposits of \$500,000 directly into the St. Croix account by the partnership.

b. The Value of the Sixteen Plus Property Dramatically Increases-2005

37. While the criminal case continued over the next years, various third parties attempted to buy the Land from Sixteen Plus at substantially higher prices than was paid for the property, with the highest offer exceeding \$22 million.

38. Recognizing this substantial increase of 500% in value in less than 10 years, Fathi Yusuf began to try to figure out how to pocket these funds for himself.

39. In this regard, the Federal Government agreed that it would remove its lien and the Land could be sold -- but ***only*** if the proceeds of any such sale were escrowed pending the outcome of the criminal case and not paid to Manal Yousef.

40. Contrary to the best interests of Sixteen Plus and its shareholders, Fathi Yusuf began to formulate a plan to embezzle from and defraud Sixteen Plus of the value of the Land, and thus rejected offers for the Land unless the sham Manal Yousef note and mortgage were paid -- so he could then get sole control of these funds.
41. The Federal Government refused to agree to the request that the Manal Yousef mortgage be paid first, asserting its own doubts about the validity of the sham mortgage.
42. Fathi Yusuf could also have had Manal Yousef agree to an escrow of the sales proceeds while preserving her alleged mortgage rights, which would have allowed the sale to take place and fully protect the debt allegedly owed to her, but this would have necessarily involved her in the on-going criminal prosecution since the Land was actually purchased with laundered funds, so such a request was never made. Indeed, once the funds were escrowed, Fathi Yusuf would lose his opportunity to keep the funds for himself pursuant to his Plan.
43. As such, Sixteen Plus lost then, and is continues to lose the benefit of such sales at the highest and best amount because of Fathi Yusuf's insistence that the sham mortgage be paid upon the sale of the property -- which payment the Federal Government refused to allow.

c. The Hidden Plan to Convert the Increased Value and Usurp Corporate Opportunity by Criminal Acts and Conspiracy

44. By May of 2010 it was clear that a settlement and plea would eventually be reached in the criminal action.

45. In May of 2010, without the knowledge of the Hameds or disclosure of either their acts or the related documents, Defendants began to implement the *Hidden Plan to Convert the Increased Value and Usurp Corporate Opportunity by Criminal Acts and Conspiracy* (the “Hidden Plan”) by first obtaining a “Real Estate Power of Attorney” from “Manal Mohammad Yousef Mohammad” **that gave Fathi Yusuf, personally, the power to do whatever he wished with the mortgage,** including releasing the mortgage or foreclosing on the Land for his own benefit, even though the Hamed family had actually paid 50% of the purchase price to buy the Land. See **Exhibit 1**. The St. Martin Defendants were central to this effort to embezzle the Sixteen Plus funds.
46. This power of attorney Fathi Yusuf supplied and they had Manal Yousef sign, gave no rights or benefits to Sixteen Plus or the Hameds and thus usurped the corporate opportunity, despite the fact that Fathi Yusuf was an officer and director of the corporation, owing it fiduciary and statutory duties, as well as a shareholder.
47. Additionally, this undisclosed power of attorney specifically stated that Fathi Yusuf was given total power over what to do with the Land and foreclosure proceeds -- as he was also released and indemnified as to all actions he might take in regard to his broad, personal power of attorney—which further demonstrated that the mortgage and note were a sham, as no bona fide lender gives a principal of the borrower a full power of attorney to discharge the debt without requiring payment.

48. Upon information and belief, the power of attorney was drawn up by a Virgin Islands lawyer retained by Fathi Yusuf and executed at the request and direction of the St. Martin Defendants by Manal Yousef on St. Martin..
49. The existence and purpose of this power of attorney were not disclosed to the Hameds – and they did not learn of it or the Hidden Plan until after Yusuf attempted to steal all of the assets of Sixteen Plus, like he did with the Plaza Extra Supermarkets partnership in 2012 – all of which occurred well within the period of the statute of limitations applicable here.
50. That execution of the undisclosed, exclusive power of attorney in favor of Fathi Yusuf personally was orchestrated by Isam Yousuf in furtherance of the Plan with Fathi Yusuf to steal half of the value of the Land, then in excess of \$25 million, from Sixteen Plus and the Hamed shareholders.
51. The Defendants planned to use the sham mortgage to allow Fathi Yusuf to foreclose of the Land *for his own personal benefit*, and to thus deny Sixteen Plus the value of the Land.
52. In 2013, the Federal Government reached a settlement in the criminal case, which included *inter alia* a lump sum \$10 million payment of taxes to the Government of the Virgin Islands for previously unreported income from the Plaza Extra Supermarkets.
53. In addition to this large payment for back taxes, a fine in excess of \$1,000,000 was also paid to the Government, along with a plea of guilty to the pending felony charge of tax evasion by the corporate defendant, United Corporation, which subsequently was determined to be Yusuf's agent for the partnership.

54. As a result of the plea and settlement, the Federal Government removed its lien on the Land. Also, Fathi Yusuf, Waleed Hamed and several of the other defendants were given personal immunity from criminal prosecution for the acts of tax evasion and money laundering described above.

d. The Predicate Criminal Acts to Consummate the Hidden Plan

55. After the criminal case was dismissed, the Fathi Yusuf and the St. Martin Defendants, in furtherance of the Hidden Plan, arranged for counsel on St. Martin to send a demand to Sixteen Plus – for payment of the sham note and mortgage Sixteen Plus allegedly owed to Manal Yousef. See **Exhibit 2**.

56. That St. Martin counsel did not disclose to Sixteen Plus or the Hameds that Fathi Yusuf was the person personally directing the demand.

57. A response was made to that demand by Hamed's counsel on behalf of Sixteen Plus, which was reduced to writing -- pointing out that the mortgage was not valid for the reasons stated herein. That writing also specifically stated that St. Martin counsel was acting improperly in asserting he was representing Manal Yousef's interests rather than Fathi Yusuf's. See **Exhibit 3**.

58. While counsel on St. Martin promised to get a response to that letter after discussing the matter with his real "client" (see **Exhibit 4**), he never did so, strongly indicating to the Hameds that he had never really been retained by Manal Yousef.

59. In furtherance of the Hidden Plan, Fathi Yusuf, in conjunction with the other Defendants, committed multiple criminal acts including conversion, attempted conversion, perjury, attempted perjury, wire and mail fraud, and others.

60. In 2016, Fathi Yusuf filed a civil lawsuit in the Superior Court as part of the Hidden Plan; seeking to dissolve Sixteen Plus in an attempt to, *inter alia*, dispose of the Land and trigger payment of the sham mortgage.

61. In the course of that litigation, Fathi Yusuf was required to produce all documents he had exchanged with Manal Yousef, including any powers of attorney.

62. When Fathi Yusuf did supply what he represented to be all such documents on July 26, 2016, the power of attorney was not disclosed.

63. Hamed's counsel wrote to Yusuf's counsel pursuant to Fed. R. Civ. P. 34 and 37 (**Exhibit 5**), specifically asking for verification under the Rules that there was no such "power of attorney":

Stefan - I reviewed these new responses and there are still several deficiencies:

* * *

Supplemental Document Response #13-The documents you referenced as documents exchanged with Manal Yousef only include the deed, mortgage, mortgage note and certain wire transfers from someone else—**please confirm** there are no letters, faxes, emails, documents showing any interest payments to her (as alleged were made), **powers of attorney**, pre-mortgage negotiations or any other documents exchanges with your client and her or her agent. (Emphasis added.)

64. On August 5, 2016, Fathi Yusuf's counsel responded that he had initiated a "reasonable search" as to his client and his client's documents, and falsely represented – on behalf of Fathi Yusuf -- there was no such power of attorney. See **Exhibit 5**.

Joel, . . . Here are my responses to your numbered paragraphs:

* * *

I stand by my statement in the supplemental Rule 34 response that **based on a reasonable search there are no other documents**

responsive to your request. I believe that supplemental response to your request is sufficient under the Rules (and I thought from our meet and confer that is what you wanted), and that I am not under any duty to go into more detail. (Emphasis added.)

65. During the same Superior Court litigation, Fathi Yusuf was also required to answer an interrogatory about the note and mortgage on the Land. To falsely make it appear that Manal Yousef was a *bona fide* mortgagee, hide the undisclosed personal power of attorney and protect the Hidden Plan – Fathi Yusuf stated under oath as follows (See **Exhibit 6**):

- a. That Manal Yousef loaned the full \$4.5 million on September 15, 1997, for the purchase of the Land;
- b. That Manal Yousef was paid three interest only payments on the mortgage between 1998 and 2000;
- c. That Manal's last known address is 25 Gold Finch Road, Point Blanche, St. Martin, N.A.;
- d. That he did not recall the last time he spoke with her;
- e. That Manal Yousef had retained counsel in the Virgin Islands;
- f. That he would not provide a phone number for Manal Yousef because she had counsel in the Virgin Islands.

66. All of the foregoing statements made by Fathi Yusuf in his interrogatory response are false, and were made in furtherance of the Hidden Plan to steal half of the value of the Land from Sixteen Plus and its shareholders, the Hameds, by a foreclosure -- as Fathi Yusuf committed perjury under oath before the Court in furtherance of the Plan when he made these statements.

67. Yusuf then filed a motion for a protective order to avoid providing Manal Yusuf's phone number, as a Sixteen Plus or Hamed discussion with Manal would disclose the power of attorney and the Plan to steal half of the value of the Land in a sham foreclosure.

68. After the Court denied Yusuf's motion and ordered Fathi Yusuf to provide the phone number of Manal Yousef, he then repeated the false statements above -- and **now** stated that he did not have her phone number despite his motion to protect that exact information -- but that she could be reached through her nephew, Jamil Yousef, although to date he has repeatedly refused to verify that response. See **Exhibit 7**.

69. However, the location given by Fathi Yusuf as Manal Yousef's address is actually in the possession of and used by Isam Yousuf, which is where he and his son, Jamil Yousuf, reside.

70. Yusuf knew, when he falsely certified to the contrary, that this was not the location where Manal Yousef resided.

71. The purpose of this false representation in response to the Court's Order being that the St. Martin Defendants had agreed to intercept any mail, service or other communications to Manal before she could receive them.

72. Indeed, when service of process in another pending Superior Court action was left at that address for Manal Yousef, Isam and Jamil Yousuf intercepted the summons and contacted Fathi Yusuf to further the conspiracy to steal the land from Sixteen Plus, telling him about the suit instead.

73. Upon information and belief, Jamil Yousuf then agreed to further participate in this fraudulent Plan by allowing Fathi Yusuf to provide his name to the Court as the alleged contact for Manal Yousef, to hide the truth -- promising to call Fathi Yusuf if he was contacted by anyone, so that her whereabouts would remain secret and she would not learn that "she" alone was allegedly going to get millions of dollars – money which Fathi Yusuf was seeking.

74. Fathi Yusuf thereafter represented to the Superior Court, without the necessary identification of the true party in interest, that he had been contacted by Manal Yousef's "agent", when he knew in fact that it was he, Fathi Yusuf, who was directing the case and attempting to foreclose the sham mortgage under the undisclosed power of attorney -- for his own benefit.

75. During this time period, including in 2012, Fathi Yusuf personally arranged for **and signed, under the penalty of perjury -- tax and other governmental filings showing that no outstanding obligations were due to Manal Yousef, and, to the contrary, that the \$4.5 million had been advanced by – and was due to – the shareholders, Hamed and Yusuf**, as follows:

- a. To conceal the Hidden Plan and deceive the other shareholders and officers of the corporation, Fathi Yusuf filed tax returns for Sixteen Plus during this time period, including 2012. See **Exhibits 8 and 9**.
- b. In those filings he, personally signed and swore under oath and penalty of perjury that the \$4.5 million held by Sixteen Plus was received from shareholders and due to them – and there was no loan or mortgage to a third person. *Id.*

- c. This comported with his repeated representations to the Hameds intended to keep the Hidden Plan hidden.
- d. To hide the Hidden Plan and deceive the other shareholders and officers of the corporation, Fathi Yusuf also prepared and filed annual corporate filings for Sixteen Plus during this time period, including 2012.
- e. In those filings he stated that the \$4.5 million held by Sixteen Plus was received from shareholders and due to them – and was not a loan or mortgage to a third person. See **Exhibit 10**.
- f. This comported with representations to the Hameds.

76. In furtherance of this scheme, in 2013 Fathi Yusuf also created and requested Waleed Hamed sign an annual corporate filing that showed \$4.5 million due as a mortgage and loan and not money due to the Shareholders as had been reported for the prior 13 years. He also inserted his family members as the directors on the document, which he signed and proffered to Hamed. See **Exhibit 11**.

77. Indeed, the Fathi Yusuf and the other Defendants were wrongfully attempting to hide the fact that Fathi Yusuf was the real plaintiff in interest – and that Manal Yousef had not personally contacted counsel in the USVI to represent her alleged interests.

78. To further this Plan, Fathi Yusuf retained USVI counsel to represent him “acting” as Manal Yousef -- and then represented to the USVI Court that Manal Yousef had retained USVI counsel, when she had not in fact done so. He did not disclose that the suit was actually being brought by him, that he was the true party in interest, or the existence of the wrongfully undisclosed power of attorney.

79. Notwithstanding all of these facts being disclosed to Yusuf, he has not recanted any of his false statements or filings -- and continues to pursue his Plan to steal the real property at Diamond Keturah from Sixteen Plus without any payment to the company or its shareholders, as he continues to try to divert all such funds through Manal Yousef, which funds he will then take back for himself with a share to Defendants for their assistance.

COUNT I - CICO

80. Plaintiffs repeat and reallege all preceding paragraphs, which are incorporated herein by reference.

81. Section 605 of Title 14 of the Virgin Islands Code provides in part as follows:

- a. It is unlawful for any person employed by, or associated with, any enterprise, as that term is defined herein, to conduct or participate in, directly or indirectly, the affairs of the enterprise through a pattern of criminal activity.
- b. It is unlawful for any person, through a pattern of criminal activity, to acquire or maintain, directly or indirectly, any interest in, or control of, any enterprise or real property.
- c. It is unlawful for any person who has received any proceeds derived, directly or indirectly, from a pattern of criminal activity in which he participated as a principal, to use or invest, directly or indirectly, any part of the proceeds thereof, or any proceeds derived from the investment or use of any of those proceeds, in the acquisition of any title to, or any right, interest, or equity in, real property, or in the establishment or operation of any enterprise. . . .

82. Pursuant to 14 V.I.C. §607(a), any aggrieved party may institute civil proceedings against any persons to obtain relief from a violation of §605.

83. Sixteen Plus and its shareholders are such aggrieved parties under subsection in that:

- a. All Defendants are "person[s]" who through a pattern of criminal activity set forth in paragraphs 55 through 79, have "acquire[d]. . . directly or indirectly" an "interest in" the Land which is "real property" within the meaning of the statute.
 - b. All Defendants are "person[s] who have received. . .proceeds derived, directly or indirectly, from a pattern of criminal activity in which [they] participated as. . .principal[s], to use or invest, directly or indirectly,. . .part of the proceeds thereof. . .in the acquisition of. . .[a] right, interest, or equity in" the Land, which is real property as set forth above.
84. Defendants acted in concert with one another in conspiring together in a pattern of activities to embezzle funds from and criminally defraud Sixteen Plus and its shareholders, which is expressly prohibited by 14 V.I.C. §834, causing damages to Sixteen Plus and its shareholders.
85. Defendants conspired together within the statutory limitations period to accomplish this goal by using unlawful means, including the use of knowingly false court filings in two different cases, tax and corporate filings, use of the mail and wires -- and by perjured testimony in violation of 14 V.I.C. §1541 and §1548.
86. This was criminal activity as defined by Title 14, Chapter 41 (giving false statements), Chapter 75 (obstruction of justice) and Chapter 77 (perjury) as well as various reporting, wire fraud and other crimes.
87. Such criminal conduct by the Defendants was undertaken in a years long pattern as set forth in Chapter 30 of Title 14 of the Virgin Islands Code, as the Defendants acted in concert as a group in association with one another in carrying out their goal of embezzling funds from and otherwise defrauding Sixteen Plus and its shareholders, with each of the named Defendants being a

Principal in this enterprise within the statutory limitations period. Indeed, the criminal enterprise is still on-going.

88. These were not isolated acts, and were all done with the intent to embezzle from, defraud and otherwise injure Sixteen Plus, file tax and corporate information with the USVI government and give perjured documents and testimony to the Courts of the Virgin Islands.

89. Pursuant to 14 V.I.C. §605, it is unlawful for the Defendants to engage in such a criminal activity, as was done here.

90. Sixteen Plus has been injured by this criminal activity targeting the enterprise, already subjecting its real property to a sham mortgage in a present value in the millions of dollars and by loss of value from the time the Land could have been sold or could now be sold for peak value.

91. As such, Sixteen Plus is entitled to all civil remedies permitted an aggrieved party by 14 V.I.C. § 607, **including statutory treble damages**, for all damages caused by Defendants' unlawful criminal enterprise.

COUNT II (Yusuf Only) – BREACH OF FIDUCIARY DUTIES

92. Plaintiffs repeat and reallege all preceding paragraphs, which are incorporated herein by reference.

93. The acts alleged herein constitutes breach of fiduciary duty and self-dealing by Fathi Yusuf, an officer and director of the corporation, in that:

a. Fathi Yusuf is and has been a director of Sixteen Plus,

- b. In that capacity, he negotiated the note and mortgage with Manal Yousef for the purpose of protecting the corporation's principal asset, the Land, for the benefit of Sixteen Plus.
- c. He later obtained a power of attorney from Manal Yousef giving himself control of and all rights in those assets, and denying them to the corporation.
- d. He did this without (1) offering the power of attorney or (2) disclosing it to Sixteen Plus,
- e. In violation of his duty as an officer and the negotiating official to do so,
- f. And has taken those benefits as his own

94. The corporation has been injured thereby.

95. The corporation will be further injured if equitable relief in the form of a disgorgement order and injunction are not entered to stop the corporation's officer from further acting against the interest of the corporation by use of information, documents and position so obtained.

COUNT III (Yusuf Only) – USURPING OF CORPORATE OPPORTUNITY

96. Plaintiffs repeat and reallege all preceding paragraphs, which are incorporated herein by reference.

97. The acts alleged herein in paragraph 96 constitutes usurping of a corporate opportunity by Fathi Yusuf, an officer of the corporation acting in that capacity in dealing with Manal Yousef.

98. The corporation has been injured thereby.

99. The corporation will be further injured if equitable relief in the form of a disgorgement order and injunction are not entered to stop the corporation's officer from further acting against the interest of the corporation by use of information, documents and position so obtained.

COUNT IV – TORT OF OUTRAGE

100. Plaintiffs repeat and reallege all preceding paragraphs, which are incorporated herein by reference.

101. The actions of the Defendants were intentional, wanton, extreme and outrageous.

102. The actions of the Defendants were culpable and not justifiable under the circumstances.

103. The actions of the Defendants caused injury to Sixteen Plus.

104. As such, the Defendants are liable for said injuries suffered by Sixteen Plus as a result of their intentional and unjustifiable misconduct.

WHEREFORE, the Plaintiffs seek:

- A. an award of compensatory damages of multiple loses of the sale of the Land at the highest and best sales value, including treble damages where permitted by law,
- B. equitable orders with regard to the acts.
- C. consequential damages against the Defendants, jointly and severally, in an amount as determined by the trier of fact, along with any other relief the Court deems appropriate,
- D. Punitive damages if warranted by the facts and applicable law.

E. Any and all other damages, fees, costs or other relief the Court may deem appropriate.

A TRIAL BY JURY IS DEMANDED AS TO ALL ISSUES

Dated: July ____, 2017

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

Counsel for Plaintiff

Law Offices of Joel H. Holt

2132 Company Street,

Christiansted, VI 00820

Email: holtvi@aol.com

Tele: (340) 773-8709

Fax: (340) 773-8677

Carl J. Hartmann III, Esq.

Co-Counsel for Plaintiff

5000 Estate Coakley Bay, L-6

Christiansted, VI 00820

Email: carl@carlhartmann.com

CERTIFICATION

Counsel hereby certifies that he has affixed his signature hereto pursuant to the requirements of 14 V.I.C. §607(d) and has sent a true copy to the Attorney General as required by § 607(f). See Exhibit 1.

Dated: July ____, 2017

Joel H. Holt, Esq.

V.I. Bar No. 6

Law Office of Joel H. Holt, P.C.

Counsel for Plaintiff

2132 Company Street

Christiansted, VI 00820

Email: holtvi@aol.com

Tele: (340) 773-8709

VERIFICATION

I, Hisham Hamed, do hereby verify that I have carefully read the Second Amended Complaint and that based upon reasonable inquiry, I believe that the Complaint comports with the requirements set forth in items (1) through (3) of 14 V.I.C. §607(d), which I have read.

Dated: July ____, 2017

Hisham Hamed

SWORN TO AND SUBSCRIBED
BEFORE ME THIS ____ DAY
OF _____, 2017

NOTARY PUBLIC

CERTIFICATE OF SERVICE

I hereby certify that on this ____ day of July, 2017, I served a copy of the foregoing by mail and email, as agreed by the parties, on:

Gregory H. Hodges, Esq.
Stephen Herpel, Esq.
Lisa Komives, Esq.
Law House, 10000 Frederiksberg Gade
P.O. Box 756
St. Thomas, VI 00802
ghodges@dtflaw.com
sherpel@dtflaw.com
lkomives@dtflaw.com

James L. Hymes, III, Esq.
V.I. Bar No. 264
1131 King Street, Suite 309
St. Croix, VI 00820
Tel: (340) 776-3470
Fax: (340) 775-3300
jim@hymeslawvi.com

Kevin A. Rames, Esq.
2111 Company Street, Suite 3
Christiansted, VI 00820
Tel: (340) 773-7284
kevin.rames@rameslaw.com
