

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

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

Plaintiff/Counterclaim Defendant,

vs.

FATHI YUSUF and
UNITED CORPORATION,

Defendants/Counterclaimants,

vs.

**WALEED HAMED, WAHEED
HAMED, MUFEED HAMED,
HISHAM HAMED,**
and **PLESSEN ENTERPRISES, INC.**,

Counterclaim Defendants.

CIVIL NO. SX-12-CV-370

**ACTION FOR DAMAGES,
INJUNCTIVE RELIEF AND
DECLARATORY RELIEF**

JURY TRIAL DEMANDED

**PLAINTIFF'S MOTION TO DISMISS
COUNTERCLAIM DEFENDANT PLESSEN ENTERPRISES, INC.**

Pursuant to Rule 13 and Rule 20 of the Rules of Civil Procedure, Mohammed Hamed moves to dismiss Plessen Enterprises, Inc. as a counterclaim defendant in the First Amended Counterclaim filed in this case. The basis for the motion is more fully set forth in the memorandum being submitted in support of said motion, which is incorporated herein by reference. For the reasons set forth therein, it is respectfully submitted that the relief sought be granted. A proposed order is also being submitted with this motion.

Dated: March 3, 2014



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CERTIFICATE OF SERVICE

I hereby certify that on this 3rd day of March, 2014, I served a copy of the foregoing Memorandum by email, as agreed by the parties, on:

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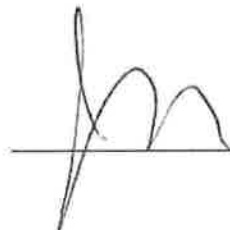
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Counterclaim Defendants.

CIVIL NO. SX-12-CV-370

ACTION FOR DAMAGES,
INJUNCTIVE RELIEF AND
DECLARATORY RELIEF

JURY TRIAL DEMANDED

**MEMORANDUM IN SUPPORT OF PLAINTIFF'S MOTION TO DISMISS
COUNTERCLAIM DEFENDANT PLESSEN ENTERPRISES, INC.**

Pursuant Federal Rules of Civil Procedure 13 and 20, Mohammed Hamed moves to dismiss Plessen Enterprises, Inc. ("Plessen") as a counterclaim defendant in the First Amended Counterclaim filed in this case. To date, Plessen has not entered an appearance in this case, but it is respectfully submitted that this Court need not wait for it to appear, as Plessen is not a proper counterclaim defendant under the applicable rules. In addition, Hamed also notes that a parallel case has already been filed in this Court with regard to Plessen (**See Exhibit 1**), which constitutes a separate reason to dismiss Plessen from this suit. Each point will be addressed separately.

I. Rules 13 and 20

As this Court knows, the Amended Complaint involves a dispute as to whether there is a partnership between Mohammad Hamed and Fathi Yusuf (“Defendants”). Defendants answered and filed a First Amended Counterclaim asserting various claims against Hamad involving the partnership issues.

In addition to these claims, Defendants named Plessen as a counterclaim defendant in the First Amended Counterclaim, which alleges in ¶ 11 that Plessen is a Virgin Islands Corporation owned 50% by the Hamed family members and 50% by the Yusuf family members. Plessen is then not mentioned again as a counterclaim defendant until ¶ 91, which states in part as follows:

91.Hence, Hamed and Yusuf have always demonstrated clean separation of businesses by forming separate corporations to invest in other business activities. Hamed and Yusuf formed the following corporations, owned in equal shares, as follows:

- i. **Sixteen Plus Corporation**, a corporation with 1600 shares issues, owned equally between the Yusuf and Hamed families;
- ii. **Y&H Investments, Inc.**, a corporation with 100 shares issues, owned equally by the Yusuf and Hamed families;
- iii. **Plessen Enterprises, Inc.**, a corporation with 1600 shares issued, owned equally between the Yusuf and Hamed families; and
- iv. **Peter’s Farm Investment Corporation**, a corporation with 1000 shares issues, owned equally between Hamed and Yusuf.

The next (and last mention) of Plessen is in Count IX, where the Defendants (Fathi Yusuf and United Corporation) seek an order from this Court dissolving Plessen as a corporation.

With these bare-bones pleadings in mind, Rule 13 of the Rules of Civil Procedure govern the naming of new parties as counterclaim parties, providing in subsection 13(h)

as follows:

(h) Joining Additional Parties. Rules 19 and 20 govern the addition of a person as a party to a counterclaim or crossclaim.

Rule 19 deals with joinder of "Required Parties" which is not applicable here. Rule 20, however, is pertinent here, providing in part as follows:

Rule 20. Permissive Joinder of Parties

(a) Persons Who May Join or Be Joined.

(2) Defendants. Persons--as well as a vessel, cargo, or other property subject to admiralty process in rem--may be joined in one action as defendants if:

(A) any right to relief is asserted against them jointly, severally, or in the alternative with respect to or arising out of the same transaction, occurrence, or series of transactions or occurrences; and

(B) any question of law or fact common to all defendants will arise in the action.

As can be seen, neither subsection (a)(2)(A) or (B) are met here.

First, seeking dissolution of corporation which just happens to be jointly owned in part by the parties does not seek a right of relief against Hamed and Plessen "jointly" or "severally." Likewise, it does not seek relief "arising out of the same transaction, occurrence, or series of transactions or occurrences." Thus, the requirement of Rule 20(a)(2)(A) cannot be met.

Second, even if subsection (A) could be satisfied, the requirements of Rule 20(a)(2)(B) cannot be met as Count IX is a claim for corporate dissolution governed by 13 V.I.C. § 283, which is clearly not a "question of law or fact common to all defendants" named in the First Amended Counterclaim. In *Glasser v. Government of the Virgin Islands*, 853 F. Supp. 852 (DVI 1994), the District Court addressed a similar issue of

whether the facts raised in the counterclaim arose out of the same facts as the basic controversy between the parties. In that case, the plaintiff sued the Government for allegedly violating the federal Veteran's Reemployment Rights Act. The Government filed a counterclaim against the plaintiff for allegedly incurring unauthorized expenses on a government issued credit-card. In striking the counterclaim, the Court held in part:

Because we cannot find that the two claims either involve the same factual issues or are offshoots of the same basic controversy, and because the legal issues are clearly dissimilar, we must grant plaintiff's motion to dismiss the counterclaim. *Id.* at 859.

The Rule 20(a)(2)(B) analysis here requires the same result as that reached in *Glasser*, as there are no common facts or issues of law related to the other claims between the parties and the corporate dissolution of Plessen.

II. Pending shareholder action filed regarding Plessen

A parallel case has already been filed (SX-13-CV-120, April 16, 2013) in this Court with regard to Plessen -- for the Yusuf shareholders against all of the same Hamed shareholders as set forth in this action. It too alleges fraud and conversion as well as seeks an accounting. Thus, this counterclaim should be dismissed pursuant to the inherent powers of this Court to administer its docket for the two following reasons:

1. This action has already been brought and is *sub judice* in another action, or
2. Splitting of Causes of Action Prohibited: To the extent that there is any claim here that was not included in the prior action, it should have been -- and failure to bring it there obviates taking a second bite of the apple here.

"[A]s part of its general power to administer its docket" a court "may stay or dismiss a suit that is duplicative of another [] court suit [in the same court]." *Curtis v. Citibank, N.A.*, 226 F.3d 133, 138 (2d Cir. 2000). It is, therefore, black letter law that plaintiffs

have no right to maintain two actions arising out of similar actions "in the same court, against the same defendant at the same time." *Id.* at 139.

Moreover, "claim-splitting" is prohibited, and is analyzed like *res judicata*. See, e.g., *Stone v. Dep't of Aviation*, 453 F.3d 1271, 1278 (10th Cir. 2006) ("A plaintiff's obligation to bring all related claims together in the same action arises under the common law rule of claim preclusion prohibiting the splitting of actions."). Like *res judicata*, the rule against splitting causes of action rests upon the principle that cases should not be tried piecemeal and that litigation should end once the rights of the parties have been heard by one court. However, a determination of improper claim-splitting *does not require final judgment*, unlike *res judicata*. *Katz v. Gerardi*, 655 F.3d 1212 (10th Cir. 2011).

Thus, all related claims that accrued together must be brought together, in the same action, or be lost. *Murphy v. Bancroft Constr. Co.*, 135 F. App'x 515, 519 2005 WL 1059249 (3d Cir. 2005).

The doctrine of claim preclusion is central to a court's objective of conclusive resolution of disputes and seeks to avoid the expense and vexation of multiple lawsuits while conserving judicial resources and fostering reliance on judicial action by minimizing the possibility of inconsistent decisions. *Equal Employment Opportunity Comm'n v. U.S. Steel Corp.*, 921 F.2d 489, 492 (3d Cir.1990) (quotation omitted). **More simply, its purpose is to avoid piecemeal litigation of claims arising from the same events.** *Churchill v. Star Enters.*, 183 F.3d 184, 194 (3d Cir.1999). Thus, where there is "no escaping from the fact that [a plaintiff] has relied on different legal theories to seek redress from the [same defendant] for a single course of wrongful conduct ... [by] splitting a cause of action," the doctrine of claim preclusion will prohibit the prosecution of the second lawsuit. *Id.* at 195.

See also *Benjamin v. Cleburne Truck & Body Sales, Inc.*, 424 F. Supp. 1294, 1299, fn. 15 (D.V.I. 1976) ("In accordance with the position taken by the American Law Institute in

Restatement Second, the consortium claim must, where possible, be joined with the claim for bodily injury. See, Tent. draft No. 14, supra, n.7.")

Counterclaimants knew of all of the claims here at the time the Yusuf's Plessen action was filed. They had already been sued in this action. There are no new documents received after 2012 -- no new information about acts years before. This is similar to *Coomer v. CSX Transportation, Inc.*, 319 S.W.3d 366, 371 (Ky. 2010). There plaintiff filed suit in Jefferson Circuit Court to recover for chronic wrist injuries that he claimed arose from his twenty-year employment in labor positions at CSX. Nearly two years later he brought a subsequent suit in Perry Circuit Court against CSX for additional injuries, which he also claimed arose from his years as a laborer for the company. The Kentucky Supreme Court stated that the rule against splitting causes of action "applies not only to the points upon which the court was required by the parties to form an opinion and pronounce judgment, but to every point which properly belonged to the subject of litigation, and which the parties, exercising reasonable diligence, might have brought forward at the time."

III. Conclusion

In summary, the requirements of Rule 20 cannot be met, so that Rule 13(h) does not permit Plessen to be named as an additional counterclaim defendant in this case. Likewise, there is already pending litigation filed by the Yusufs regarding the Hameds and Plessen. If Defendants want to pursue dissolution, they already have another forum pending before this Court in which to do so. In any event, for the reasons set forth herein, Plessen should be dismissed as a counterclaim defendant here.

Dated: March 3, 2014



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I hereby certify that on this 3rd day of March, 2014, I served a copy of the foregoing Memorandum by email, as agreed by the parties, on:

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YUSUF YUSUF, derivatively on behalf of
PLESSEN ENTERPRISES, INC.,

Plaintiff,

vs.

WALEED HAMED, WAHEED HAMED,
MURIED HAMED, HISHAM HAMED, and
FIVE-H HOLDINGS, INC.,

Defendants,

-and-

PLESSEN ENTERPRISES, INC.,

Nominal Defendant.

CASE # SX-13-CV-120

CIVIL ACTION FOR DAMAGES
AND INJUNCTIVE RELIEF

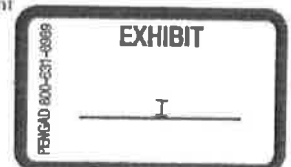
JURY TRIAL DEMANDED

VERIFIED SHAREHOLDER DERIVATIVE COMPLAINT

Plaintiff YUSUF YUSUF ("YUSUF"), by and through his undersigned counsel, derivatively on behalf of PLESSEN ENTERPRISES, INC. ("PLESSEN"), and as a shareholder of PLESSEN, hereby files this Verified Complaint against Defendants WALEED HAMED, WAHEED HAMED, MURIED HAMED, HISHAM HAMED (collectively, the "INDIVIDUAL DEFENDANTS"), and FIVE-H HOLDINGS, INC. ("FIVE-H"), and against Nominal Defendant PLESSEN, and alleges:

I. BACKGROUND

1. Plaintiff YUSUF brings this shareholder derivative action on behalf of PLESSEN against a member and officer of PLESSEN's Board of Directors (the "Board") and others, including certain shareholders of PLESSEN, to remedy, among other things, the fraudulent misappropriation of PLESSEN's assets, including the recent unauthorized transfer by WALEED HAMED of approximately \$460,000 from PLESSEN's bank accounts, representing approximately 99 percent



(99%) of the monies in those accounts, for the benefit of the INDIVIDUAL DEFENDANTS as well as FIVE-H; breach of fiduciary duties; corporate waste; conversion; unjust enrichment; civil conspiracy; and other relief, including the imposition of a constructive trust and an accounting, and other preliminary and permanent injunctive relief.

II. JURISDICTION, VENUE, & DEMAND FOR JURY TRIAL

2. This Court has jurisdiction over this action pursuant to 4 VIC § 76(a).
3. Venue is proper in this district pursuant to 4 VIC § 78(a).
4. A trial by jury is demanded pursuant to 4 VIC § 80.

III. THE PARTIES

5. Plaintiff YUSUF is a natural person, *in jure*, and a resident of the U.S. Virgin Islands.
6. Defendant WAHEED HAMED is a natural person, *in jure*, and a resident of the U.S. Virgin Islands.
7. Defendant WAHED HAMED is a natural person, *in jure*, and a resident of the U.S. Virgin Islands.
8. Defendant MUFRED HAMED is a natural person, *in jure*, and a resident of the U.S. Virgin Islands.
9. Defendant HISHAM HAMED is a natural person, *in jure*, and a resident of the U.S. Virgin Islands.
10. Defendant FIVE-H is a duly organized Virgin Islands Corporation and is authorized to conduct business in the Virgin Islands.
11. Nominal Defendant PLESSEN is a duly organized Virgin Islands Corporation and is authorized to conduct business in the Virgin Islands.

IV. FACTS COMMON TO ALL COUNTS

PLESSEN

12. PLESSEN was formed in December 1988. A copy of PLESSEN's Articles of Incorporation is attached as Exhibit "A" hereto. PLESSEN adopted By-Laws on or about April 30, 1997, a copy of which is attached as Exhibit "B" hereto.

13. PLESSEN's original Board was comprised of the following individuals: Mohammed Hamed, Defendant WALEED HAMED and Fathi Yusuf. See Exhibit "A" at p. 3.

14. After PLESSEN's formation, an additional seat on the Board was created.

15. The current members of PLESSEN's Board are: Mohammed Hamed, Defendant WALEED HAMED, Fathi Yusuf, and Maher Yusuf. Attached as Exhibit "C" hereto is a report from the Virgin Islands Department of Licensing and Consumer Affairs that lists Maher Yusuf as a Director of PLESSEN.

16. PLESSEN's current Officers are: Mohammed Hamed (President), Defendant WALEED HAMED (Vice President) and Fathi Yusuf (Treasurer and Secretary). See Exhibit "A" at p. 3.

17. PLESSEN is owned in various shares by the following individuals: Plaintiff YUSUF, Fathi Yusuf, Mohammed Hamed, Fawzia Yusuf, Maher Yusuf, Najeh Yusuf, and Defendants WALEED HAMED, MUHAMED HAMED, WAHEED HAMED, and HISHAM HAMED.

18. Plaintiff YUSUF is a shareholder of PLESSEN, was a shareholder of PLESSEN at the time of the wrongdoing alleged herein, has been a shareholder of PLESSEN continuously since that time, and will continue to be a shareholder of PLESSEN throughout the pendency of this action.

19. YUSUF, under Rule 23.1 of the Federal Rules of Civil Procedure, which applies in this action under Rule 7 of the Superior Court, has standing to bring this action and will adequately and fairly represent the interests of PLESSEN and its shareholders in enforcing and prosecuting its rights.

EXHIBIT

20. Upon information and belief, Defendant WALEED HAMED is the President of FIVE-H and one of its principal beneficial owners.

21. Upon information and belief, Defendant WAHEED HAMED is an Officer of FIVE-H and one of its principal beneficial owners.

22. Upon information and belief, Defendant MUFIED HAMED is an Officer of FIVE-H and one of its principal beneficial owners.

23. Upon information and belief, Defendant HISHAM HAMED is an Officer of FIVE-H and one of its principal beneficial owners.

24. Upon information and belief, FIVE-H, by and through the INDIVIDUAL DEFENDANTS, seeks to conduct business in the U.S. Virgin Islands.

WALEED HAMED's Misappropriation of \$460,000

25. On or about March 27th, 2013, Plaintiff YUSUF paid with his personal Banco Popular Visa credit card the 2013 property taxes of PLESSEN.

26. YUSUF was reimbursed for such payment by way of a check drawn on PLESSEN's bank account with Scotiabank.

27. However, YUSUF was subsequently informed that an employee of Scotiabank called Fathi Yusuf to inform Fathi Yusuf that the check made to pay Plaintiff YUSUF's Banco Popular Visa credit card account would not be honored, i.e., the check would bounce, because of insufficient funds in PLESSEN's Scotiabank account.

28. It was then revealed that on March 27, 2013, Defendants WALEED HAMED & MUFIED HAMED, without authorization, issued check number 0376 on a PLESSEN in the amount of \$460,000.00 from PLESSEN's Scotiabank account, made payable to Defendant WALEED HAMED. A copy of check number 0376 is attached as Exhibit "D" hereto.

29. Defendant WALEED HAMED then endorsed check number 0376 "for deposit only" and, upon information and belief, then deposited PLESSEN's \$460,000 at issue in Defendant WALEED HAMED's personal bank account.

30. Further, the INDIVIDUAL DEFENDANTS and Defendant FIVEBH, among other improper acts, have individually and collectively obtained the benefit, use and enjoyment of PLESSEN's defalcated funds.

Demand on the Board is Excused as Futile

31. Plaintiff YUSUF did not make a demand on the Board to bring suit asserting the claims set forth herein because pre-suit demand was excused as a matter of law, as set forth below.

32. As noted, as of the date of the filing of this complaint, the PLESSEN Board comprised the following directors: Mohammad Hamed; Defendant WALEED HAMED; Fathi Yusuf; and Maher Yusuf.

33. Mohammad Hamed, who is Defendant WALEED HAMED's father, is incapable of making an independent and disinterested decision to institute and vigorously prosecute this action.

34. Likewise, Defendant WALEED HAMED is incapable of making an independent and disinterested decision to institute and vigorously prosecute this action, as WALEED HAMED faces a substantial likelihood of liability for the wrongdoings alleged herein, and his acts were not, and could not have been, the product of a good faith exercise of business judgment.

35. Separately, because both the Board and shareholders of PLESSEN are comprised 50-50% by members of the Hamed and Yusuf families, and because neither the Articles of Corporation nor the By-Laws of PLESSEN provide a tie-breaker mechanism in the event of a deadlock, any demand upon PLESSEN would be useless based on the familial relationships at issue, the lack of sufficient independence of the Hamed members to institute and vigorously prosecute this action and, again, the lack of a corporate tie-breaker mechanism.

36. All conditions precedent to bringing this action have been satisfied, performed, discharged, excused and/or waived.

V. CAUSES OF ACTION

COUNT I – FRAUD/CONSTRUCTIVE TRUST (Against All Defendants)

37. Plaintiff YUSUF incorporates paragraphs 1 through 36 above as if fully set forth herein.

38. As alleged in detail herein, the INDIVIDUAL DEFENDANTS and FIVE-H conspired and fraudulently misappropriated, converted and/or received the benefits of PLESSEN'S funds of approximately \$460,000.

39. Such funds were, upon information and belief, used directly and indirectly to acquire personal and/or real property in the benefit of the INDIVIDUAL DEFENDANTS and FIVE-H individually and/or collectively.

40. Defendants' acts constitute a fraud, unconscionable conduct and/or questionable ethics resulting in unjust benefit to the wrongdoers, i.e. Defendants.

41. To remedy such injustice, this Court should impose a constructive trust for the benefit of PLESSEN until the resolution of this action on all personal and/or real property acquired directly and indirectly with PLESSEN'S funds by the INDIVIDUAL DEFENDANTS and FIVE-H individually and/or collectively, which trust:

- i. existed and was formed from the time the facts giving rise to it occurred, i.e., from March 27, 2013, when Defendant WALEED HAMED, & MUFIED HAMED without authorization, issued check number 0376 in the amount of \$460,000 from PLESSEN'S Scotiabank account;
- ii. grants to PLESSEN first rights to any such property;
- iii. is superior to the rights of the Defendants, and each of them;

- iv. is superior to any creditor of the Defendants;
- v. is superior to anyone else asserting an interest in the subject personal or real property;
- vi. and otherwise trumps the rights of any purported bona fide purchaser of the subject property from March 27, 2013 until a resolution of this action, based on the notice provided herein regarding the wrongful misappropriation of PLESSEN's funds as alleged in this Complaint and otherwise.

42. As noted above, "the date upon which a constructive trust is legally deemed to arise relates back in time to when the facts giving rise to such fraud or wrong occur," *Id.*, March 27, 2013 in this action. *In re Pitchford*, 410 B.R. 416, 420 (Bankr. W.D. Pa. 2009); *see also Omond Keen, Inc. v. First Penn. Bank, N.A.*, 22 V.I. 71, 76 (Terr. Ct. 1986) ("The creditors of the constructive trustee are not bona fide purchasers." Moreover, "where a person holds property subject to a constructive trust, his creditors are not purchasers for value and are subject to the constructive trust. ... So also, a creditor who attaches the property . . . is not a bona fide purchaser, although he had no notice of the constructive trust.") (quoting Restatement of Restitution §§ 160 and 173); *Francis v. Francis*, 599 F.2d 1286 (3d Cir. 1979) (affirming trial court's "equitable power" to impose constructive trust to prevent unjust enrichment).

COUNT II – CONVERSION
(Against WALEED HAMED & MUFEED HAMED)

43. Plaintiff YUSUF incorporates paragraphs 1 through 42 above as if fully set forth herein.

44. As alleged in detail herein, Defendants WALEED HAMED & MUFEED HAMED wrongfully, and without the knowledge, consent or authorization of PLESSEN, misappropriated funds belonging to PLESSEN for his own use and/or benefit and/or for the use and/or benefit of the INDIVIDUAL DEFENDANTS and/or FIVE-H.

45. Defendant WALEED HAMED obtained and retained these funds for his own use and/or benefit and/or for the use and/or benefit of the INDIVIDUAL DEFENDANTS and/or FIVE-H with the intent to permanently deprive PLESSEN of its lawful rights to those funds.

46. Accordingly, Defendants WALEED HAMED & MUFEED HAMED are liable for conversion.

**COUNT III – BREACH OF FIDUCIARY DUTIES
(Against WALEED HAMED)**

47. Plaintiff YUSUF incorporates paragraphs 1 through 46 above as if fully set forth herein.

48. Defendant WALEED HAMED, as an agent and officer of PLESSEN, owes PLESSEN's shareholders the utmost fiduciary duties of due care, good faith, candor and loyalty.

49. Further, Defendant WALEED HAMED is, and at all relevant times was, required to use his utmost ability to control and manage PLESSEN in a fair, just, honest and equitable manner; to act in furtherance of the best interests of PLESSEN and its shareholders so as to benefit all shareholders equally and not in furtherance of his personal interests or benefit to the exclusion of the remaining shareholders; and to exercise good faith and diligence in the administration of the affairs of PLESSEN and in the use and preservation of its property and assets.

50. By virtue of the foregoing duties, Defendant WALEED HAMED was required to, among other things:

- i. exercise good faith in ensuring that the affairs of PLESSEN were conducted in an efficient, business-like manner so as to make it possible to provide the highest quality performance of its business in accordance with applicable laws;
- ii. refrain from wasting PLESSEN's assets;
- iii. refrain from unduly benefiting himself and other non-shareholders at the expense of PLESSEN;

- iv. refrain from self-dealing;
- v. exercise the highest obligations of fair dealing; and
- vi. properly disclose to PLESSEN's shareholders all material information regarding the company.

51. However, by virtue of his position as Director and Officer of PLESSEN, and his exercise of control over the business and corporate affairs of PLESSEN, Defendant WALEED HAMED has, and at all relevant times had, the power to control and influence – and did control and influence – PLESSEN to engage in the wrongdoings alleged herein.

52. Specifically, as alleged in detail herein, Defendant WALEED HAMED breached his fiduciary duties by, among other things, unlawfully obtaining approximately \$460,000 of PLESSEN's funds; knowingly failing to inform PLESSEN regarding all material information related to such taking prior to the subject withdrawals; and otherwise knowingly failing to adhere to PLESSEN's corporate formalities, policies and procedures.

53. As a direct and proximate result of the foregoing breaches, PLESSEN has sustained damages, including, but not limited to, damage to its reputation and loss of the funds unlawfully obtained from its Scotiabank account.

COUNT IV – WASTE OF CORPORATE ASSETS (Against WALEED HAMED)

54. Plaintiff YUSUF incorporates paragraphs 1 through 53 above as if fully set forth herein.

55. As alleged in detail herein, Defendant WALEED HAMED, an agent and officer of PLESSEN, knowingly withdrew approximately \$460,000 of PLESSEN's funds, which withdrawal constituted an exchange of corporate assets under circumstances which no business person of ordinary, sound judgment could conclude that PLESSEN received adequate consideration.

56. As a direct and proximate result of the foregoing waste of corporate assets, PLESSEN has sustained damages, including, but not limited to, damage to its reputation and loss of the funds unlawfully obtained from its Scotiabank account.

**COUNT V – UNJUST ENRICHMENT
(Against All Defendants)**

57. Plaintiff YUSUF incorporates paragraphs 1 through 56 above as if fully set forth herein.

58. As alleged in detail herein, the INDIVIDUAL DEFENDANTS and FIVE-H individually and collectively were unjustly enriched by their receipt, benefit, use, enjoyment and/or retention of PLESSEN's assets.

59. It would be unconscionable to allow the INDIVIDUAL DEFENDANTS and FIVE-H individually or collectively to retain the benefits thereof.

**COUNT VI – CIVIL CONSPIRACY
(Against All Defendants)**

60. Plaintiff YUSUF incorporates paragraphs 1 through 59 above as if fully set forth herein.

61. As alleged in detail herein, the INDIVIDUAL DEFENDANTS and FIVE-H had a unity of purpose or a common design and understanding, or a meeting of minds in an unlawful arrangement, *ie*, to, among other things, unlawfully defalcate or misappropriate the funds of PLESSEN.

62. The INDIVIDUAL DEFENDANTS and FIVE-H knowingly performed overt acts and took action to further or carry out the unlawful purposes of the subject conspiracy, including, but not limited to, Defendant WALEED HAMED's issuing and cashing of check number 0376 to the conspirators' benefit and PLESSEN's detriment.

63. As a direct and proximate result of the foregoing civil conspiracy, PLESSEN has sustained damages, including, but not limited to, damage to its reputation, loss of the funds unlawfully obtained from its Scotiabank account, and lack of control of PLESSEN's management and corporate affairs.

COUNT VII – ACCOUNTING
(Against All Defendants)

64. Plaintiff YUSUF incorporates paragraphs 1 through 63 above as if fully set forth herein.

65. As alleged in detail herein, the INDIVIDUAL DEFENDANTS and FIVE-H unlawfully benefited from and/or misappropriated PLESSEN's funds.

66. Further, at all times relevant, Defendant WALEED HAMED, as an agent and officer of PLESSEN, owed to PLESSEN a fiduciary duty to account to the company and its shareholders in a timely and accurate manner.

67. At all times relevant, the INDIVIDUAL DEFENDANTS and/or FIVE-H held the exclusive possession and/or control over documentation that would establish the funds unlawfully taken from PLESSEN.

68. Absent such documentation, PLESSEN is without the means to determine, among other things, if funds are owned to it and, if yes, how much; and if its misappropriated funds were used to purchase any real or personal property, in which case it has an ownership interest in such property.

69. PLESSEN is without a sufficient remedy at law to ascertain its losses and/or interests in the misappropriated funds as set forth herein.

70. Accordingly, a full accounting is warranted.

VI. RELIEF REQUESTED

WHEREFORE, Plaintiff YUSUF prays for a Final Judgment against Defendants, jointly and severally, as follows:

- A. Determining that YUSUF may maintain this action on behalf of PLESSEN and that YUSUF is an adequate representative of PLESSEN;
- B. Determining that this action is a proper derivative action that is maintainable under law and in which a pre-suit demand was excused;
- C. Awarding to PLESSEN the actual and compensatory damages that it sustained as a result of the causes of action set forth herein, which damages will be determined at trial;
- D. Awarding to PLESSEN punitive damages justified by the acts set forth herein, which damages will be determined at trial;
- E. Ordering the disgorgement to PLESSEN of all funds that were unlawfully misappropriated from its possession;
- F. Rejoining, preliminarily and permanently, the Defendants' benefit, use or enjoyment of PLESSEN's misappropriated funds;
- G. Imposing a constructive trust for the benefit of PLESSEN on all personal or real property acquired directly and indirectly with PLESSEN's funds by the INDIVIDUAL DEFENDANTS and RIVE-H individually and/or collectively, which trust
 - i. existed and was formed from the time the facts giving rise to it occurred, *i.e.*, from *March 27, 2013*;
 - ii. grants to PLESSEN first rights to any such property;
 - iii. is superior to the rights of the Defendants, and each of them;
 - iv. is superior to any creditor of the Defendants;

v. is superior to anyone else asserting an interest in the subject personal or real property;

vi. and otherwise trumps the rights of any purported bona fide purchaser of the subject property from March 27, 2013 until a resolution of this action;


H. Awarding a full accounting of all monies, funds and assets that the Defendants received from PLESSEN;

I. Awarding to PLESSEN the costs and disbursements of this action, including, but not limited to, reasonable attorneys' fees, accountants' and experts' fees, costs and expenses;


J. Awarding pre- and post-judgment interest on any monetary award at the highest rates allowed by law; and,

K. Awarding such further equitable and monetary relief as the Court deems just and appropriate.

Dated April 16, 2013



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VERIFICATION

I, Yusuf Yusuf, hereby verify that I have authorized the filing of the foregoing Verified Shareholder Derivative Complaint; that I have reviewed the Complaint; and that the facts therein are true and correct to the best of my knowledge, information and belief.

I declare under penalty of perjury pursuant to 28 U.S.C. section 1746, that the foregoing is true and correct.

DATE: 4/16/2013



Yusuf Yusuf, Shareholder
Plesken Enterprises, Inc.

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

MOHAMMAD HAMED, by his
authorized agent WALEED HAMED,

Plaintiff/Counterclaim Defendant,

vs.

FATHI YUSUF and
UNITED CORPORATION,

Defendants/Counterclaimants,

vs.

WALEED HAMED, WAHEED
HAMED, MUFEED HAMED,
HISHAM HAMED,
and PLESSEN ENTERPRISES, INC.,

Counterclaim Defendants.

CIVIL NO. SX-12-CV-370

ACTION FOR DAMAGES,
INJUNCTIVE RELIEF AND
DECLARATORY RELIEF

JURY TRIAL DEMANDED

ORDER

This matter is before the Court on the Plaintiff's Motion to Dismiss counterclaim Defendant, Plessen Enterprises, Inc. Upon consideration of the matters before the Court, it is hereby Ordered that the motion is **GRANTED**. Counterclaim defendant, Plessen Enterprises, Inc. is hereby **DISMISSED**. This action remains open as to all other counterclaim defendants.

Dated:

HON .DOUGLAS A. BRADY
Judge, Superior Court

ATTEST: ESTRELLA GEORGE, Acting
Clerk of Court

By: _____
Deputy Clerk

Dist: Joel H. Holt, Gregory Hodges, Nizar DeWood, Marc Eckard, Carl Hartmann

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

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

Plaintiff/Counterclaim Defendant,

vs.

FATHI YUSUF and
UNITED CORPORATION,

Defendants/Counterclaimants,

vs.

**WALEED HAMED, WAHEED
HAMED, MUFEED HAMED,
HISHAM HAMED,
and PLESSEN ENTERPRISES, INC.,**

Counterclaim Defendants.

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HON .DOUGLAS A. BRADY
Judge, Superior Court

ATTEST: ESTRELLA GEORGE, Acting
Clerk of Court

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Dist: Joel H. Holt, Gregory Hodges, Nizar DeWood, Marc Eckard, Carl Hartmann