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BY: EMAIL ONLY

April 30, 2014

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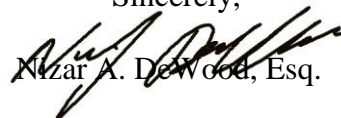
Re: Hamed v. Yusuf, et al 12-CV-370
April 30th, 2014 Special Meeting of Plessen's Board of Directors

Dear Counselors,

Attached is Defendant Fathi Yusuf's Emergency Motion to Enjoin the April 30th, 2014 Special Meeting of the Board. Please advise your clients to cancel this unparalleled one-day noticed Special Meeting.

Further, without recognizing the authority of Mohammed Hamed and Waleed Hamed to schedule, hold, and conduct this first time ever Special Meeting, please note that Mr. Yusuf will appear with his undersigned counsel at the meeting, which will be recorded by video. Take notice that the undersigned intends to question the Hamed directors regarding each of the five itemized items on the agenda. In addition, my co-counsel, Gregory Hodges, will appear telephonically with a court reporter to transcribe the meeting.

Sincerely,


Nizar A. DeWood, Esq.

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

| | | |
|---|---|----------------------------|
| MOHAMMAD HAMED , by his |) | CIVIL NO. SX-12-CV-370 |
| authorized agent WALEED HAMED , |) | |
| |) | |
| Plaintiff/Counterclaim Defendant, |) | ACTION FOR DAMAGES, |
| |) | INJUNCTIVE RELIEF |
| v. |) | AND DECLARATORY RELIEF |
| |) | |
| FATHI YUSUF and UNITED CORPORATION , |) | JURY TRIAL DEMANDED |
| |) | |
| Defendants/Counterclaimants, |) | |
| |) | |
| v. |) | |
| |) | |
| WALEED HAMED, WAHEED HAMED, |) | |
| MUFEED HAMED, HISHAM HAMED, and |) | |
| PLESSEN ENTERPRISES, INC., |) | |
| |) | |
| Additional Counterclaim Defendants. |) | |
| _____ |) | |

**DEFENDANT FATHI YUSUF’S EMERGENCY MOTION TO ENJOIN 4/30/14
SPECIAL MEETING OF BOARD OF DIRECTORS OF COUNTERCLAIM
DEFENDANT PLESSEN ENTERPRISES, INC.**

Defendant Fathi Yusuf (“Yusuf”), through its undersigned attorneys, hereby files his Emergency Motion to Enjoin 4/30/14 Special Meeting of Board of Directors of Counterclaim Defendant Plessen Enterprises, Inc. In support of his motion, Yusuf states as follows:

1. On Monday, April 28, 2014, at approximately 4 p.m., a document entitled Notice of Special Meeting of Board of Directors of Plessen Enterprises, Inc. (“Plessen”), was hand-delivered to Yusuf, announcing an intent to hold such a meeting on April 30, at 10:00 a.m. at the Plaza Extra East store in St. Croix. (**Exhibit A**, Notice of Special Meeting of Board of Directors of Plessen).

2. Plessen is a VI corporation formed in 1988 and owned 50/50 between the two families (the Hamed and Yusuf families) at the center of this litigation. (See Plaintiff's First Amended Complaint, p. 7, ¶ 20(c)). Plessen owns, inter alia, the land in St. Croix on which the Plaza Extra West store is situated. (Id.).

3. The Notice of Special Meeting of Board of Directors of Plessen (the "Notice") is in violation of the Plessen Bylaws, which requires the Secretary of the Board of Directors, who is Yusuf, to issue notices of all meetings. (**Exhibit B**, Plessen Bylaws, ¶ 7.2.B). Moreover, the fact that the Notice was served on Yusuf on one business day's notice is an obvious attempt to try to avoid judicial scrutiny of an action that, as discussed below, is unlawful and an attempted end-run around this litigation. Yusuf, as Secretary, has issued a Response to Request for Special Meeting of Board of Directors, which points out the deficiencies with the Notice, and explains why a Special Meeting of the Board is inappropriate and should not take place. (**Exhibit C**).

4. Upon information and belief, the Board of Directors of Plessen is comprised of Fathi Yusuf, Maher Yusuf, Mohammed Hamed, and Waleed Hamed. Maher Yusuf and Fathi Yusuf both have a recollection that Maher is a director, and a document issued by the VI Department of Licensing and Consumer Affairs shows him to be a director. Because the Notice was not provided to Maher Yusuf, it is legally deficient and ineffective.

5. The agenda for the Special Meeting, as disclosed in the Notice, includes the following items:

1) Approval of a lease of the Plaza Extra West premises for a company called KAC357, Inc. (the "Hamed Lease") that Waleed Hamed, a board member, admits will be one third owed by him (See Exhibits A and D); and

2) Ratification of past withdrawals of funds in May 2013 by Waleed Hamed in the amount of \$460,000 as purported "dividends" of Plessen, and approval of the issuance of additional dividends in an amount up to \$200,000. (**See Exhibit A**).

6. In his Amended Counterclaim, Yusuf alleges that "[b]ecause the equity of Plessen is owed equally by the Hamed and Yusuf families who have an irreconcilable disagreement on how to continue the business operations of this company, it should be dissolved and its assets liquidated according to law." (Yusuf's First Amended Counterclaim, p. 28, Count IV, ¶ 168). Yusuf also seeks appointment of a receiver to liquidate the assets of the Plaza Extra Stores and Plessen and to divide the net proceeds amongst Hamed and Yusuf according to their respective interests as determined by this Court. (*Id.*, Count X, par. 171).

7. The proposal to ratify the Hamed Lease is an obvious attempt to end-run the relief sought by Yusuf in Counts IX and X of his counterclaim, and to ensure that the liquidation sale sought by Yusuf results in an inside, "sweetheart" deal with Hamed, rather than a bona fide sale to disinterested parties designed to maximize sales revenues of the assets being sold.

8. The attempt to ratify the \$460,000 withdrawn from Plessen and to authorize future withdrawals, under the guise of dividends, is also an attempt to circumvent the processes of this Court, as the \$460,000 withdrawal has been challenged by Yusuf and is also a subject of this litigation or related litigation before Judge Willocks.

9. The planned action by the Plessen Board also violates at least the spirit, and probably the letter, of this Court's April 25, 2013 preliminary injunction, which was intended to preserve the status quo during the pendency of this litigation by enjoining "either party" from

taking “unilateral action . . . affecting the management, employees, methods, procedures and operations” of the three Plaza Extra stores.

10. This Court should enter an Emergency Order enjoining the Special Meeting of Plessen's Board from being held under its equitable powers and its inherent powers to enforce its own prior orders.

11. In addition, Yusuf meets the 4-prong test previously articulated in the Supreme Court's decision on appeal in this matter for a TRO or preliminary injunction, assuming it is even necessary to meet that test for this relief. Yusuf can show a reasonable likelihood of success on the merits that this action violates the preliminary injunction entered by this Court and that it is an improper attempt to end-run the processes of this Court in resolving this litigation. He can show a clear violation of the Plessen bylaws, insofar as Yusuf, the Secretary of the Corporation, did not issue the Notice of Special Board Meeting. In addition, Yusuf can show that, in the circumstances of this litigation, it would be inequitable and unlawful to permit Hamed to engage in self-dealing as a Board member of Plessen by ratifying a lease in which he has an interest. Yusuf will suffer irreparable harm if the meeting is permitted to go forward because he may then be in the position of asking this Court to unwind action already taken, and will have to expand this litigation by joining the lessee to the Hamed Lease as a party defendant. The balance of hardships favors Yusuf, because Waleed Hamed is a party to this litigation and he will have a full and fair opportunity to litigate the lease issues and the dividend issues in a judicial forum. And, finally, the public interest will be served by issuance of injunctive relief because the public needs to know that parties to litigation cannot defeat judicial oversight of their

actions by manipulating the rules and procedures of corporate governance. A proposed Order is attached.

Respectfully submitted,

DUDLEY, TOPPER and FEUERZEIG, LLP

Dated: April 30, 2014

By:



Gregory H. Hodges (V.I. Bar No. 174)
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And

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Attorneys for Fathi Yusuf and United Corporation


CERTIFICATE OF SERVICE

I hereby certify that on this 30th day of April, 2014, I caused the foregoing Motion to be served upon the following via e-mail:

Joel H. Holt, Esq.
LAW OFFICES OF JOEL H. HOLT
2132 Company Street
Christiansted, V.I. 00820
Email: holtvi@aol.com

Carl Hartmann, III, Esq.
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Email: carl@carlhartmann.com

Mark W. Eckard, Esq.
Eckard, P.C.
#1 Company Street
P.O. Box 24849
Christiansted, VI 00824
Email: mark@markeckard.com


Nizar A. DeWood

EXHIBIT

A

NOTICE OF SPECIAL MEETING OF PLESSEN BOARD OF DIRECTORS

EXHIBIT A: NOTICE OF SPECIAL MEETING OF PLESSEN BOARD OF DIRECTORS

PLESSEN ENTERPRISES, INC.

To: Fathi Yusuf

From: Mohammad Hamed

Date: April 28, 2014

Pursuant to Section 7.2 B. of the By-Laws of Plessen Enterprises, Inc., please hand-deliver the attached notice to Waleed Hamed today (and yourself) regarding the Special Meeting of the Board of Directors to be held at 10:00 AM on April 30, 2014, at the Office at Plaza Extra East located at the United Shopping Plaza, located at 4C & D Sion Farm, St. Croix, USVI. In the event you may neglect to do so or are just unable to do so, I will serve a copy of the notice on Waleed Hamed as well.

Dated: April 28, 2014



Mohammad Hamed, President

**NOTICE OF SPECIAL MEETING OF BOARD OF DIRECTORS OF
PLESSEN ENTERPRISES, INC.**

**To: Waleed Hamed, Director
Fathi Yusuf, Director
Mohammad Hamed, Director**

Notice is hereby given that the President of Plessen Enterprises, Inc., Mohammad Hamed, has called a Special Meeting of the Board of Directors of Plessen Enterprises, Inc. pursuant to Section 2.6 of the corporate By-Laws to be held at 10:00 AM on April 30, 2014, at the Office at Plaza Extra East located at the United Shopping Plaza, located at 4C & D Sion Farm, St. Croix, USVI, to discuss the following new business:

- 1) Ratification of the past withdrawal of funds in May of 2013 by Waleed Hamed in the amount of \$460,000 as dividends of the corporation;**
- 2) Approval of a lease for KAC357, Inc. (copy attached) for the rental of the building and adjoining improvements located at the corporation's property located at 14 Estate Plessen, St. Croix, where the current Plaza Extra Supermarket is located.**

SPECIAL NOTICE: Pursuant to subsection (e) of the ELEVENTH section of the Articles of Incorporation, it should be noted that Waleed Hamed, a director in Plessen Enterprises, Inc., has disclosed (and hereby further discloses to the entire Board) that he has a financial interest in KAC357, Inc. as a 33.33% shareholder in said company and may act as an officer and/or director in the company in the future;

- 3) Retention of counsel, Jeffrey Moorhead, to represent the corporation in the pending litigation filed against Plessen Enterprises, Inc. by (1) United Corporation and Fathi Yusuf, Case No. STX-12-CV-370, and (2) the lawsuit naming Plessen Enterprises, Inc. as a party defendant in *Yusuf Yusuf v. Waleed Hamed et al.*, Case No. SX-13-CV-120.**


- 4) The approval of the issuance of additional dividends up to \$200,000 from the company's bank account to the shareholders.
- 5) The removal of Fathi Yusuf as the Registered Agent of the corporation and the appointment of Jeffrey Moorhead as the new Registered Agent.

As permitted by the by-laws, any of the three Directors may attend the meeting by telephone by calling the conference call in number that has been set up as follows:

Conference Number: 1 (862) 902-0250

Access Code: 831230 #

Dated: April 28, 2014



Mohammad Hamed, President
Plessen Enterprises, Inc.

EXHIBIT

B

PLESSEN BYLAWS RE PROVISION OF NOTICE

EXHIBIT B: PLESSEN BYLAWS RE PROVISION OF NOTICE

BY-LAWS
OF
PLESSEN ENTERPRISES, INC.
Adopted on April 30, 1997

ARTICLE I
STOCKHOLDERS

Section 1.1 Annual Meeting. The annual meeting of the Stockholders of the Corporation shall be held each year during the third month after the close of the Corporation's fiscal year, on a day to be duly designated by the Board of Directors, for the purpose of electing Directors and for the transaction of any other corporate business that may come before the meeting.

Section 1.2 Special Meetings. A special meeting of the Stockholders may be called, at any time and for any purpose or purposes, by the President, by a Vice President, or by a majority of the Board of Directors. A special meeting of the Stockholders shall be called forthwith by the President, by a Vice President, by the Secretary, or by any Director of the Corporation at any time, upon the written request of the Stockholders entitled to cast at least twenty-five percent (25%) of all the votes entitled to be cast at the meeting. However, a special meeting need not be called to consider any matter that is substantially the same as a matter voted on at any special meeting of the Stockholders held during the preceding twelve (12) months, unless requested by the Stockholders entitled to cast a majority of all votes entitled to be cast at the meeting. Whenever a special meeting is called by written request of the Stockholders, the request shall state the purpose or purposes of the meeting. Business transacted at any special meeting of Stockholders shall be confined to the purpose or purposes stated in the notice of the meeting.

Section 1.3. Place of Holding Meetings. All meetings of Stockholders shall be held at the principal office of the Corporation, or elsewhere in the United States or its Territories as may be designated by the Board of Directors.

Section 1.4. Notice of Meetings. Written notice of each meeting of the Stockholders shall be given to each Stockholder in accordance with Section 7.2 of these By-Laws, at least ten (10) days and not more than ninety (90) days before the meeting. The notice shall state the place, day, and hour at which the meeting is to be held; in the case of a special meeting, the notice also shall state briefly the purpose or purposes of that special meeting.

Section 1.5. Quorum. Except as otherwise specifically provided by law, by the Charter of the Corporation, or by these By-Laws, at each meeting of the Stockholders, the presence in person or by proxy of the holders of record of a majority of the shares of the capital stock of the Corporation issued and outstanding and entitled to vote at the meeting constitutes a quorum. If less than a quorum is in attendance at the time for which the meeting has been called, the meeting may be adjourned from time to time by a majority vote of the Stockholders present in person or by proxy, without any notice other than by announcement at the meeting, until a quorum is in attendance. At any adjourned meeting

Corporation, or is or was serving at the request of the Corporation as a director, officer, employee, or agent of another corporation, partnership, joint venture, trust, or other enterprise, or is or was serving at the request of the Corporation as a trustee or administrator or in any other fiduciary capacity under any pension, profit sharing, or other deferred compensation plan, or under any employee welfare benefit plan of the Corporation, against any liability asserted against and incurred by that person in any such capacity, or arising out of that person's status as such, whether or not the Corporation would have the power or would be required to indemnify that person against that liability under the provisions of this Article or the laws of this State.

Section 6.5. Certain Persons not to be Indemnified. Notwithstanding the provisions of this Article, the Corporation may not indemnify any bank, trust company, investment adviser, or actuary against any liability which that entity or person may have by reason of acting as a "fiduciary" of any employee benefit plan (as that term is defined in the Employees Retirement Income Security Act, as amended from time to time) established for the benefit of the Corporation's employees.

ARTICLE VII **MISCELLANEOUS PROVISIONS**

Section 7.1. Fiscal Year. The fiscal year of the Corporation shall be such as has been duly designated by the Board of Directors.

Section 7.2. Notices.

A. Except as otherwise provided by law or these By-Laws, whenever notice is required by law or these By-Laws to be given to any Stockholder, Director, or Officer, it shall be construed to mean either (i) written notice personally served against written receipt at the address that appears for that person on the books of the Corporation, or (ii) written notice transmitted by mail, by depositing the notice in a post office or letter box, in a post-paid sealed wrapper, addressed to the Stockholder, Director, or Officer at the address that appears for that person on the books of the Corporation or, in default of any other address for a Stockholder, Director, or Officer, at the general post office situated in the city or county of his or her residence, which notice shall be deemed to be given at the time it is thus mailed.

B. All notices required by law or these By-Laws shall be given by the Secretary of the Corporation. If the Secretary is absent or refuses or neglects to act, the notice may be given by any person directed to do so by the President or, with respect to any meeting called pursuant to these By-Laws upon the request of any Stockholders or Directors, by any person directed to do so by the Stockholders or Directors upon whose request the meeting is called.

C. Any Stockholder, Director, or Officer may waive any notice required to be

EXHIBIT

C

RESPONSE TO REQUEST FOR SPECIAL MEETING OF BOARD OF DIRECTORS

**EXHIBIT C: RESPONSE TO REQUEST FOR SPECIAL
MEETING OF BOARD OF DIRECTORS**

PLESSEN ENTEPRISES, INC.

Response To Request For Special Meeting Of Board Of Directors

TO: MOHAMMED HAMED, President
WALEED HAMED, Vice-President
Maher Yusuf, Director

FROM: FATHI YUSUF, Secretary and Treasurer of the Corporation

RE: PROPOSED APRIL 30TH, 2014 SPECIAL MEETING OF BOARD OF DIRECTORS

This note is in response to your request directed to me as of April 28, 2014, to issue a Notice of a Special Meeting of the Board of Directors of Plessen Enterprises, Inc. (the "Corporation"), to be held on April 30, 2014.

Under the Bylaws, it is up to the Secretary of the Board to issue such Notice of Meeting. Your request was made to me in my capacity as Secretary of the Corporation.

Upon information and belief, the Notice is deficient because it is only addressed to three directors when, in fact, there are four directors, including Maher Yusuf.

For the record, the Corporation is owned on a 50/50 basis by two (2) families and those families are represented by two (2) shareholders as principals representing the families: Mohammed Hamed and myself, Fathi Yusuf. It is a privately-owned close corporation where matters of significance to the Corporation are subject to decision by the Shareholders not by the Board of Directors.

As a close corporation, the Shareholders also have a fiduciary duty to one another that must be respected.

In your request for a Special Meeting of the Board of Directors, you listed a five-item agenda for the proposed Board of Directors meeting (the "Agenda"), all subjects

which go to the vitals of the Corporation – the ratification of your son Waleed Hamed’s unauthorized and unlawful withdrawal of \$460,000 as past dividends taken by Waleed Hamed, the approval of future dividends, the disposition by Lease to KAC357, Inc. (a company owned by Waleed Hamed and, upon information, your other sons) of a substantial asset of the Corporation, the retention of outside counsel, and appointment of a new Resident Agent.

One of the main items on the Agenda is a Lease which by its express terms is premature for consideration, as is reflected in Section 2.3.4 of the proposed Lease which states as follows:

“The Parties recognize that there is currently a partnership between Fathi Yusuf and Mohammed Hamed operating a grocery business in the Demised Premises. The Tenant shall not be granted possession of the Premises so long as this partnership is in possession of the Premises. Likewise, rent shall not be due until the Tenant has possession of the Premises.”

In addition, the Demised Premises are a significant component of a previously filed litigation and the Board of Directors purporting to take action on the proposed Lease is an interference with matters already pending before the courts. Indeed, any unilateral action by the Hamed Directors of the Corporation with respect to the proposed Lease constitutes a clear violation of the Preliminary Injunction entered on April 25, 2013 in Case No. SX-12-CV-370.

Moreover, the proposed Lease that is on the Agenda for approval has several terms that are not in the interests of the Corporation.

The other items on the Agenda are equally significant, including a request that a previously unauthorized withdrawal of \$460,000 to Waleed Hamed be now declared a lawful dividend. Waleed Hamed is an interested director in this matter who, along with his brothers, is the subject of a civil lawsuit for his malfeasance. Naturally, as the father of director Waleed Hamed, you are certain to approve all of the five items. No disclosure

is given as to the authority for such an unauthorized withdrawal or the reason that the funds were paid without approval of the Corporation's Shareholders; nor is there any disclosure of the use of the withdrawn funds.

Approval of a future \$200,000 dividend – another Agenda item – is similarly significant and there should be a full explanation of that dividend as to rationale and financial feasibility, not to mention approval by the Shareholders.

Finally, two items involving the hiring of outside counsel Jeffrey Moorehead appear on the Agenda. The first item is to retain Attorney Moorehead to represent the Corporation in certain matters. The Yusuf shareholders of the Corporation do not consent to such engagement. In addition, the item seems to hint of Indemnification and since the directors requesting the action are interested, any such indemnification is for the Shareholders. 13 V.I.C. §67a(d)(3).

Attorney Moorehead also figures in the Agenda item for replacement of the Resident Agent. I am and have been the Resident Agent of the Corporation since its inception, appointed by the Shareholders and once again no rationale is given as to why Attorney Moorehead should be substituted. The Virgin Islands Code has a prescribed procedure for replacement of a Resident Agent which has not been followed here. See 13 V.I.C. §§52-55.


In short, the so-called "Notice of Special Meeting of Board of Directors of Plessen Enterprises, Inc." is prejudicial to the other Shareholders and a subterfuge to accomplish through invalid Board of Directors action approval of items on an Agenda that should more properly be submitted to a Special Meeting of the Shareholders of the Corporation, if at all.

On the basis of this note, I am prepared to prepare and distribute a Notice of Special Meeting of the Shareholders of Plessen Enterprises, Inc., following the procedures for the calling of such a meeting but submission of such items, many

involving interested directors, to a Board of Directors meeting, would be contrary to the law and foundational documents of the Corporation.

Time is of the essence; please let us know your response as soon as possible.

Date: April 29, 2014

A handwritten signature in black ink, appearing to read 'Fathi Yusuf', written over a horizontal line. The signature is stylized and cursive.

Fathi Yusuf, Secretary and Treasurer

EXHIBIT

D

HAMED'S INTEREST IN LEASE OF KAC375, INC.

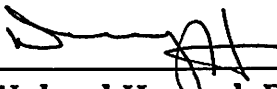
EXHIBIT D: HAMED'S INTEREST IN LEASE OF KAC375, INC.

NOTICE OF FINANCIAL INTEREST IN KAC357, Inc.

**To: Mohammad Hamed, Director
Fathi Yusuf, Director**

Regarding the proposed lease transaction between Plessen Enterprises, Inc., and KAC357, Inc., pursuant to subsection (e) of the ELEVENTH section of the Articles of Incorporation, please be advised that I have a financial interest in KAC357, Inc. as a 33.33% shareholder in said company and may act as an officer and/or director in the company in the future.

Dated: April 27, 2014



**Waleed Hamed, Director
Plessen Enterprises, Inc.**

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

| | | |
|---|---|----------------------------|
| MOHAMMAD HAMED , by his |) | |
| authorized agent WALEED HAMED , |) | |
| |) | CIVIL NO. SX-12-CV-370 |
| Plaintiff/Counterclaim Defendant, |) | |
| |) | ACTION FOR DAMAGES, |
| vs. |) | INJUNCTIVE RELIEF |
| |) | AND DECLARATORY RELIEF |
| FATHI YUSUF and UNITED CORPORATION , |) | |
| |) | |
| Defendants/Counterclaimants, |) | |
| |) | |
| vs. |) | JURY TRIAL DEMANDED |
| |) | |
| WALEED HAMED, WAHEED HAMED, |) | |
| MUFEED HAMED, HISHAM HAMED, and |) | |
| PLESSEN ENTERPRISES, |) | |
| |) | |
| Additional Counterclaim Defendants. |) | |
| |) | |
| _____ |) | |

ORDER

The Court having read Fathi Yusuf’s Emergency Motion to Enjoin April 30, 2014 Special Meeting of Board of Directors of Counterclaim Defendant Plessen Enterprises, Inc. (the “Motion”), and being otherwise fully advised in the premises,

IT IS HEREBY ORDERED that the Motion is granted, and that all parties are enjoined from conducting the Special Meeting of the Board of Directors of Plessen Enterprises, Inc. scheduled for April 30, 2014, and from rescheduling the same, until further Order of the Court; and

IT IS FURTHER ORDERED that, until further order of the Court, no leases or occupancy agreements shall be executed by or on behalf of Plessen Enterprises, Inc. for the premises occupied by the Plaza Extra store known as Plaza Extra West, and, further, that no funds shall be withdrawn or disbursed from Plessen Enterprises, Inc. without the mutual written consent of the Hamed and Yusuf shareholders of that corporation.

Hamed v. Yusuf, et al
Civil No. SX-12-CV-370
Page 2

Entered this _____ day of April, 2014.

Douglas A. Brady
Judge of the Superior Court

ATTEST:

Estrella George
Acting Clerk of the Court

By: _____
Deputy Clerk

cc: Joel H. Holt, Esq.
Nizar A. DeWood, Esq.
Gregory H. Hodges, Esq.
Carl J. Hartman III, Esq.
Mark W. Eckard, Esq.