

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

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

**FATHI YUSUF'S MOTION FOR STAY OF  
PORTIONS OF JANUARY 7, 2015 ORDER PENDING APPEAL**

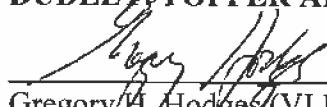
Defendant/counterclaimant Fathi Yusuf ("Yusuf"), through his undersigned attorneys, respectfully submits this Motion For Stay Of Portions Of January 7, 2015 Order Pending Appeal, pursuant to V.I.S.CT.R 8(b) and Fed. R. Civ. P. 62, as applied to this Court by Super. Ct. R. 7. In support of this motion, Yusuf relies upon his accompanying brief.

Respectfully Submitted,

**DUDLEY TOPPER AND FEUERZEIG, LLP**

DATED: January 29, 2015

By:

  
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Attorneys for Fathi Yusuf

**CERTIFICATE OF SERVICE**

I hereby certify that on this 29<sup>th</sup> day of January, 2014, I caused the foregoing **Fathi Yusuf's Motion For Stay Of Portions Of January 7, 2015 Order Pending Appeal** to be served upon the following via e-mail:

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**BRIEF IN SUPPORT OF MOTION FOR STAY OF  
PORTIONS OF JANUARY 7, 2015 ORDER PENDING APPEAL**

On January 9, 2015, this Court entered an Order dated January 7, 2015 entitled “Order Adopting Final Wind Up Plan” (the “Order” and “Plan”) concerning the Partnership<sup>1</sup> that operates three Plaza Extra Stores. Defendant/counterclaimant Fathi Yusuf (“Yusuf”), a 50% partner with plaintiff/counterclaim defendant Mohammad Hamed (“Hamed”) in the Partnership, appealed the Order to the Supreme Court, pursuant to his Notice of Appeal filed on January 28, 2015. A date stamped copy of the Notice of Appeal is attached as **Exhibit 1**. Although Yusuf will challenge all of the provisions of the Order and Plan addressed in the appeal commenced by the attached Notice of Appeal, he only seeks a stay pending appeal of the following:

<sup>1</sup> Capitalized terms not otherwise defined in this Brief shall be defined as provided in the Plan.

1) The provisions of the Plan relating to Plaza Extra-West<sup>2</sup>, at pages 5-6 of the Order and pages 6-7 of the Plan, which give Hamed the exclusive right to purchase the inventory and equipment of Plaza Extra-West and then “assume full ownership and control and . . . continue to operate Plaza Extra-West without any further involvement of Yusuf, Yusuf’s sons or United, and free and clear of any interests of Yusuf or United.” The “lynchpin” of this transfer of ownership and right to operate Plaza Extra-West, as described by this Court in its July 22, 2014 Opinion, is a 30-year lease between additional counterclaim defendant Plessen Enterprises, Inc. (“Plessen”) and a company created on April 22, 2014 and owned by Hamed’s sons, KAC357, Inc., (the “Lease”).<sup>3</sup> The Lease was approved by the Hamed-controlled<sup>4</sup> Board of Directors of Plessen in a resolution adopted at a special meeting held on April 30, 2014, over the objections of Yusuf, whose family members own 50% of the stock of Plessen. This Court

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<sup>2</sup> Yusuf does not seek a stay pending appeal of the provisions of the Order and Plan requiring the liquidation of the Partnership assets associated with the Plaza Extra-East and Plaza Extra-Tutu Park stores.

<sup>3</sup>Yusuf’s final wind-up plan, which was submitted on October 28, 2014, proposed a closed auction of the inventory and equipment of Plaza Extra-West, as well as the sale of the land and building on which the store is situated, after vacating and discharging the Lease pursuant to a dissolution of and appointment of a Receiver for Plessen, which the evidence shows is in an incorrigible state of shareholder deadlock. This disposition is the only fair way to dispose of these assets, and it maximizes partnership value on wind-up of that store, which the cases describe as the main objective of any liquidation plan. Yusuf’s wind-up plan also avoids two infirmities of the Court’s disposition of Plaza-Extra-West – i.e., it avoids the continuing, long-term forced business relationship between the Hamed and Yusuf families (as landlords of the Plaza Extra-West store) that is the necessary result of the Court’s order, and it avoids simply handing to Hamed and his family the building and improvements that were created with millions of dollars of Partnership funds.

<sup>4</sup> The composition of the Plessen Board of Directors was a hotly disputed issue that was outcome determinative, since the Lease clearly would not have been approved if Maher Yusuf was a Director as claimed by Yusuf. Nevertheless, this Court found, without conducting any evidentiary hearing, that “for the limited purpose of this Motion . . . Plessen has three directors: Mohammad Hamed, Waleed Hamed, and Fathi Yusuf.” *Hamed v. Yusuf*, 2014 V.I. LEXIS 52, \*2-3 n. 2 (V.I. Super. Ct. July 22, 2014). As recently as January 20, 2015, Hamed, through his son and “authorized agent,” Waleed, filed a business license renewal application with the Virgin Islands Department of Licensing and Consumer Affairs (“DLCA”), confirming Yusuf’s position that both he and his son, Maher, serve on the Plessen Board along with Hamed and Waleed. See DLCA Application attached as **Exhibit 2** at page3 (identifying Maher Yusuf as a Director).

declined to nullify the Plessen resolution, which approved the Lease, in its July 22 Opinion, over the argument that it is inherently unfair to the Yusuf family shareholder interests in Plessen.<sup>5</sup> The Court later denied Yusuf's motion for reconsideration of its July 22 Opinion and Order, and in the Order giving Hamed the exclusive right to own and operate Plaza Extra-West, the Court has implicitly approved the Lease once again, over the objections of Yusuf.<sup>6</sup>

2) Section 6 of the Plan (page 5), which provides that “[f]or at least one hundred twenty (120) days following the Effective Date, the Hamed Sons and Yusuf Sons shall continue to receive their current salaries in return for assisting the Liquidation Partner in the wind up of the Partnership.” Yusuf's position is that the Liquidating Partner should not be bound to continue paying any of the inflated salaries of Hamed's sons or his own sons, particularly if these managers are not providing commensurate value in the wind-up of the Partnership. In any event, after either Hamed or Yusuf acquires the right to begin sole operation of any of the

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<sup>5</sup>The Court's July 22 Order refusing to nullify the Lease and its December 5, 2014 Order denying Yusuf's motion for reconsideration are already the subject of a pending appeal in the Supreme Court of the Virgin Islands. *See* S.Ct. Civ. No. 2015-0001.

<sup>6</sup> There is enough evidence in the record of shareholder deadlock and outright misappropriation of corporate monies by Waleed Hamed, a director and shareholder, and his shareholder brother, Mufeed, to warrant appointment of a receiver for Plessen, so as to facilitate the closed auction sale of the 16 acres of land (store and parking lot) occupied by Plaza Extra-West that has been proposed by Yusuf. But even assuming *arguendo* that the evidence was insufficient to warrant this relief, it is undisputed that there have been no Plessen shareholder meetings to elect directors since Plessen was incorporated on January 31, 1989. Section 193 of the Virgin Islands Corporate Code provides that where there has been any failure to conduct an election of directors, the court “may summarily order an election to be held upon the petition of any stockholder . . .” V.I. Code Ann. tit. 13, §193. If a court-ordered meeting is held and results in no election of directors by virtue of an equally divided shareholder vote, that failure would constitute an additional ground under § 195 of the VI Corporate Code for appointment of a receiver for Plessen. On September 11, 2014, Yusuf filed a motion to compel the holding of a meeting of Plessen's shareholders to elect directors. The Court has never ruled on that motion. Prior to ordering the windup of the Partnership, the Court should have first resolved Yusuf's motion by ordering a prompt meeting of the Plessen shareholders, and then should have awaited the inevitable result of that meeting (a failure to elect directors because of an equally divided vote), which would have provided an additional ground for appointing a receiver for Plessen. The need to resolve Yusuf's motion prior to winding up the Partnership affords an additional reason for this Court to grant a partial stay of the Order during the pendency of Yusuf's appeal.

three stores, sons of the family excluded from operation of that store should receive no further compensation. Instead, the right to compensation should be cut off to any person who is no longer employed by a store after either Yusuf or Hamed assume the sole right to operate that store.<sup>7</sup>

3) Section 8 of the Plan regarding the disposition of the Plaza Extra-Tutu Park store, only to the extent it requires that the partner acquiring the store by closed auction reimburse the other partner for one half of all legal fees incurred to date in the “Tutu Park Litigation” commenced against the landlord in 1997 and 2001.<sup>8</sup> Neither Hamed’s nor Yusuf’s most recently filed competing plans contained similar reimbursement provisions since both plans contemplated a closed auction bidding process that rendered any such reimbursement superfluous. This reimbursement requirement is an improper, perhaps unintended, carryover of the provisions of this Court’s “Proposed Wind Up Plan” set forth in its Order dated October 7, 2014, which proposed that Yusuf purchase the Plaza Extra-Tutu Park assets from the Partnership and reimburse the Partnership for 50% of the reasonable costs and attorneys’ fees incurred to date in the Tutu Park litigation. *See* page 3 of Order dated October 7, 2014. Since the Plan effectively adopts the closed auction bidding process proposed by both Hamed and Yusuf, cost reimbursement provisions carried over from the Court’s October 7, 2014 Proposed Plan should be stricken, since the bids made by the Partners will factor in the cost of that litigation.

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<sup>7</sup>The provisions in section 6 of the Plan are also inconsistent with the provisions in section 9, Step 3, which provide that “Yusuf and Hamed, and their respective successors, shall attempt to keep all employees of the Plaza Extra Stores fully employed, *not including* members of the Hamed and Yusuf families.” (Emphasis added).

<sup>8</sup> Neither the Order (p. 5) nor the Plan (p. 6) included an older case, Civ. No. ST-97-CV-997, in the definition of “Tutu Park Litigation,” even though the Partners agreed that such case should be included. Pursuant to an Order approving a Stipulation between the Partners entered on January 27, 2015 (the “Order Modifying Plan”), the “Tutu Park Litigation” now includes the older case.

## Standards For Stay Orders

The test for determining whether the trial court should grant a stay (or partial stay) pending appeal of an order or judgment of a court is “identical to that which applies to a request for a preliminary – as opposed to a permanent – injunction.” *Tip Top Construction Corporation v. Government of the Virgin Islands*, 2014 V.I. Supreme LEXIS 15, \*4 (V.I. 2014) (citing to *Yusuf v. Hamed*, 2013 V.I. Supreme LEXIS 87, \*12, n.3 (V.I. 2013)). The test for a preliminary injunction is

- (1) whether the movant has shown a reasonable probability of success on the merits;
- (2) whether the movant will be irreparably injured by denial of the relief;
- (3) whether granting preliminary relief will result in even greater harm to the nonmoving party;
- and (4) whether granting the preliminary relief will be in the public interest.

*Yusuf v. Hamed*, supra, at \*9. The Virgin Islands Supreme Court has not yet decided whether all four of these factors must be met (which would make it a “sequential test”) or whether it is enough if some but not all of these factors are satisfied (a “sliding-scale test”). *Id.* at \*11. As discussed below, Yusuf can show his entitlement to a stay pending appeal even under a sequential test and, a fortiori, under a sliding scale test.

### A. Reasonable Probability of Success on the Merits

To show a reasonable probability of success on appeal, Yusuf need not show that he will “actually prevail on the merits” of his appeal, or that reversal is “more likely than not. . .” *Id.* at \*15 (internal quotation marks omitted). Instead, Yusuf need only show that he has “a reasonable chance, or probability, of winning.” *Id.*

Yusuf has, at the very least, a reasonable chance of persuading the Supreme Court to reverse the portions of the Court’s Order that he is challenging on appeal. With respect to the disposition of Plaza Extra-West, Yusuf submits that this part of the Order suffers from a number of infirmities, any one of which would warrant reversal. Both the Order and Plan

provisions concerning the Plaza Extra-West depend on the validity of the April 30, 2014 Plessen Board Resolution approving the Lease. The law is clear that what must be considered by the Court is not only whether a self-dealing Lease of this kind is intrinsically fair to Plessen, but also whether it is intrinsically fair to the Yusuf shareholders of Plessen – i.e., whether it benefits the Hamed shareholders at the expense of the Yusuf shareholders. *See Sinclair Oil Corporation v. Levien*, 280 A.2d 717, 723 (Del. 1971) (the party engaged in the self-dealing transaction “must prove that [it] was intrinsically fair to the minority shareholders”); *Cascella v. GDV, Inc.*, 1979 Del. Ch. LEXIS 486, p. \*3 (Del. Ch. 1979) (where one shareholder “stands on both sides of a transaction,” that shareholder “has the burden of demonstrating the ‘intrinsic fairness’ of the transaction insofar as it affects the rights and interests of the minority shareholders”). The Lease is unfair to the Yusuf shareholders because: 1) it forces Yusuf and Hamed to continue to do business together (as the Plessen landlord of KAC357, Inc.) for up to 30 years, thereby contravening the primary purpose of the liquidation and windup of the Partnership; and 2) it encumbers the Plaza Extra-West land and improvements in such a way as to make it impossible for Hamed and Yusuf to conduct a closed auction for the Plaza Extra-West business. A closed auction for the business and land is the only equitable means to transfer ownership of that store, and it is the method which maximizes partnership value on liquidation, which the case law makes clear is the principal objective of any liquidation plan under the Revised Uniform Partnership Act. The Court’s disposition of Plaza Extra-West in its Plan is also inequitable insofar as it simply hands to the Hameds an asset created with millions of dollars of Partnership funds (the Plaza Extra-West building and improvements) with no payment of any consideration to the Partnership. As such, it is a prohibited in-kind distribution of partnership property under the Virgin Islands Revised Uniform Partnership Act.

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Yusuf also has a reasonable chance of persuading the Supreme Court that this Court erred when it required the continued payment of Hamed's and Yusuf's sons' salaries for at least 120 days following the Effective Date of the Plan (now January 30, 2015 pursuant to the Order Modifying Plan) because the Partners never agreed to any such payment and the Court never provided any rationale for the forced payment of inflated monthly salaries (\$23,815 per son) regardless of the value, if any, of their services in the wind up of the Partnership or how long the wind up takes. It is certainly possible that the wind up could only take 60 days. In that event, the Plan nevertheless requires the Liquidating Partner to pay salaries to people who are providing absolutely no beneficial services.

Finally, Yusuf has a reasonable chance of persuading the Supreme Court that it was error to require the purchaser of the Plaza Extra-Tutu Park store to pay the non-purchasing partner 50% of the legal costs incurred in the "Tutu Park Litigation" because the Partners never agreed to any such reimbursement and the Court provides no explanation why such reimbursement is required when the costs of such litigation can easily be factored into the bidding process for that store. Moreover, such litigation goes back in one case to 1997 and the other to 2001, making it potentially very difficult to accurately account for such costs.

#### **B. Irreparable Harm to Yusuf**

It is well-settled that a party who can show that, without a stay, its appeal would be rendered moot – or the issue would become unreviewable upon appeal – has demonstrated irreparable harm. *See, e.g., In re Norwich Historic Pres. Trust, LLC*, 2005 U.S. Dist. LEXIS 7171, 2005 WL 977067, at \*3 (D. Conn. 2005) (acknowledging "persuasive" arguments that although foreclosure sale would not injure appellant, appellant's concern that his appeal would be mooted satisfied the irreparable harm requirement); *In re Country Squire*, 203 B.R. 182, 183

(B.A.P. 2d Cir. 1996)(staying a foreclosure sale where it was "apparent that absent a stay pending appeal . . . the appeal will be rendered moot," resulting in a "quintessential form of prejudice" to appellant (quotation omitted)); *In re Advanced Mining Sys., Inc.*, 173 B.R. 467, 468-69 (S.D.N.Y. 1994) (finding irreparable injury prong met where, absent a stay of the bankruptcy court's order, the distribution of assets to creditors would moot any appeal and thus quintessentially prejudice appellants).<sup>9</sup> The risk of losing a property interest is the kind of irreparable harm that will warrant imposition of a stay of an order during the pendency of an appeal. *See Martin v. Banco Popular de Puerto Rico*, 2009 U.S. Dist. LEXIS 73672, \*7-\*8 (D. V.I. 2009) (imposing stay pending appeal of an order directing conveyance of property, on the grounds that the property interest could be conveyed to another during the appeal, which would "mak[e] it impossible for Banco Popular to get [it] back in the event Banco Popular succeeds on appeal").

Here, if the disposition of Plaza Extra-West under the Court's Plan is allowed to proceed, the Lease will become effective, Hamed will be given the exclusive right to acquire the inventory and equipment of the Plaza Extra-West store, and the Hameds will begin operating that store exclusively, without any participation by Yusuf or his sons. From that time forward, KAC357, Inc., which is not a party to this case, will be the entity which enters

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<sup>9</sup>*See also In re Grandview Estates Assocs., Ltd.*, 89 B.R. 42, 42-43 (Bankr. W.D. Mo. 1988) (declining to stay the foreclosure sale of an asbestos-ridden apartment complex, but holding that irreparable injury is clearly shown where such sales moot any appeal, and concluding that to hold otherwise would preclude appellate review, thus running "contrary to the spirit of the bankruptcy system [and also] subvert[ing] the entire legal process"). *Cf. In re "Agent Orange" Prod. Liab. Litig.*, 804 F.2d 19, 20 (2d Cir. 1986) (declining to lift the court's own stay of the implementation of a district court's scheme for the distribution of a settlement award because the pending appeals "involve[d] numerous complex issues arising out of [] extraordinary litigation," the objecting parties had "a right to appellate review," and "[d]istribution of the challenged settlement award before its validity [could be] tested would deprive those parties of that right").

contracts with grocery wholesalers and other vendors, takes out a policy of insurance on the store, becomes entitled to 100% of the revenues and responsible for 100% of the costs of operating the store (including payroll), and becomes liable for payment of VI gross receipts and income taxes. Once KAC357, Inc. begins operating the store, it will become next to impossible for the Supreme Court to reverse this transfer of ownership of the business and grant meaningful relief to Yusuf, even if it agrees with Yusuf that the Court's refusal to nullify the Lease and its disposition of Plaza Extra-West was improper.

Likewise, if the provision in the Plan that requires both the Hamed and Yusuf sons to be paid for 120 days at their full salaries following the Effective Date of the Plan is implemented, Yusuf will be required to pay the Hamed sons for work they are not doing with respect to Plaza Extra-East and Plaza Extra-Tutu Park, should Yusuf become the purchaser of that store under the Plan. The salaries of each of the Hamed and Yusuf sons who work at the three Plaza Extra Stores are \$23,815 per month. There is nothing to prevent any of the Hamed sons from spending sums paid to them under this provision, or from transferring those sums to others, during the pendency of an appeal. If Yusuf prevails on appeal on this issue, there is a risk that he would never be able to recover the amounts paid to the Hamed sons from them.

The same reasoning applies to the requirement that the partner who prevails in the bidding for Plaza Extra-Tutu Park reimburse the other partner for one half of the costs and attorneys' fees incurred in the Tutu Park Litigation. If Yusuf is the winning bidder and is required to reimburse Hamed hundreds of thousands in legal fees for that litigation, Yusuf may never be able to recover that money if he is successful on appeal.

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### **C. Irreparable Harm to Hamed**

A stay of the portion of the Court's Plan that disposes of Plaza Extra-West will not cause irreparable harm to Hamed. The Lease with Plessen by its terms does not become effective until the Partnership ceases to operate and occupy the Plaza Extra-West store.<sup>10</sup> Until that happens, Hamed, as a 50% partner in the Partnership, will be entitled to 50% of the net profits of the Plaza Extra-West store. As such, staying the portion of the Order that winds up that store during the appeal will cause no irreparable harm to Hamed. The balance of the harms clearly favors Yusuf.

Staying the portion of the Court's Order that requires payment of salaries to the Hamed and Yusuf sons for 120 days, even for periods after one or the other family has acquired sole operation of a store, will likewise cause Hamed no harm. If this Court's Order on that point is upheld by the Supreme Court, those salaries can be paid out of the funds to be held in the Claims Reserve Account, as defined in the Plan. The funds that will be held in that account are more than adequate to pay such salaries. The same applies to any Tutu Park Litigation costs to be reimbursed by the partner purchasing that store's assets, if the Supreme Court upholds the provisions of the Plan requiring such reimbursement.

### **D. The Public Interest**

The public has an interest in proper enforcement of the rules against self-dealing by directors of a corporation, and the rules requiring dissolution of a corporation that is in a

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<sup>10</sup> The Lease provides that:

“[t]he 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.”

See § 2.3.4 of Exhibit I to Yusuf's Brief filed on May 19, 2014.

perpetual state of shareholder deadlock, and it likewise has an interest in the proper administration of the Revised Uniform Partnership Act, and the provisions requiring the Court to maximize partnership value and avoid in-kind distributions of property on windup of a partnership. *See United States v. Any and All Assets of that Certain Business Known as Shane Company*, 816 F. Supp. 389, 399 (M.D. N.C. 1991) (holding that the public interest prong of the preliminary injunction test was satisfied because “the public interest is most strongly served by the enforcement of the law”); *Union Steel v. United States*, 617 F. Supp. 2d 1373, 1381 (C.I.T. 2009) (“the public interest is served by the accurate and effective, uniform and fair enforcement of trade laws”). Moreover, a stay will not harm the public interest, because the persons who are employed at the store now will remain employed by the Partnership for the duration of the stay. *See Yusuf v. Hamed*, 2014 V.I. Supreme LEXIS at \*36 (identifying “continued employment” of Plaza Extra employees at the three stores as a “significant public interest”).

From the above discussion, it is clear that all four prongs of the test for a stay of portions of the Court’s Order are readily satisfied, and this Court should therefore issue a stay pending appeal.

**E. Any Bond Amount Should be Nominal**

Under Supreme Court Rule 8(c), this Court may condition a stay pending appeal “upon the filing of a bond or other appropriate security ... .” Here, because the Lease does not become effective until the Partnership ceases operating the Plaza Extra-West store, Hamed will not suffer any damages during the pendency of the appeal, if the Court’s windup Order is affirmed by the Virgin Islands Supreme Court. Hamed will continue to be entitled to a 50% share of the Partnership’s net profits, and his sons who currently work at that store will continue to receive

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their salaries until the appeal is resolved. As such, Defendants submit that any bond imposed by this Court should not exceed \$25,000.

### CONCLUSION AND RELIEF REQUESTED

For all of the foregoing reasons, Yusuf respectfully requests this Court to grant his Motion for Stay of Portions of January 7, 2015 Order Pending Appeal. A proposed order is attached.

Respectfully Submitted,

**DUDLEY, TOPPER AND FEUERZEIG, LLP**

**DATED:** January 29, 2015

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**CERTIFICATE OF SERVICE**

I hereby certify that on this 29<sup>th</sup> day of January, 2014, I caused the foregoing **Brief In Support Of Motion For Stay Of Portions Of January 7, 2015 Order Pending Appeal** to be served upon the following via e-mail:

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The Honorable Edgar A. Ross  
Email: [edgarrossjudge@hotmail.com](mailto:edgarrossjudge@hotmail.com)

Michelle Bark

R:\DOCS\6254\ADRFTPLDG\15K9527.DOCX

**DUDLEY, TOPPER  
AND FEUERZEIG, LLP**  
1000 Frederiksberg Gade  
P.O. Box 756  
St. Thomas, U.S. V.I. 00804-0756  
(340) 774-4422

01/28/2015

VERONICA HANDY, ESQUIRE  
CLERK OF THE COURT

**IN THE SUPREME COURT OF THE VIRGIN ISLANDS**

FATHI YUSUF,	)	
	)	<b>S. CT. CIV. NO. 2015-0009</b>
Appellant,	)	
	)	
v.	)	Re: Super. Ct. Civ. No. SX-12-CV-370
	)	
MOHAMMAD HAMED, WALEED	)	
HAMED, WAHEED HAMED, MUFEED	)	
HAMED, HISHAM HAMED, and	)	
PLESSEN ENTERPRISES, INC.,	)	
	)	
Appellees.	)	

**NOTICE OF APPEAL**

Notice is hereby given that Fathi Yusuf (“Yusuf”),<sup>1</sup> defendant in the above-referenced Superior Court action, pursuant to V.I. Code Ann. tit. 4, § 33(b)(1) and (2), and the collateral order doctrine recognized in *Cohen v. Beneficial Indus. Loan Corp.*, 337 U.S. 541 (1949) and explained in *Hard Rock Café v. Lee*, 54 V.I. 622, 628-30 (V.I. 2011), appeals the “Order Adopting Final Wind Up Plan” (the “Order”) entered by the Superior Court on January 9, 2015 for the liquidation and winding up of the partnership between Yusuf and Mohammad Hamed (“Hamed”) (collectively, the “Partners”) to the extent the Order (1) provides Hamed with the exclusive right to purchase significant assets of the partnership, namely, the building, improvements, inventory, and equipment of the Plaza Extra-West store; (2) requires the purchaser of the Plaza Extra-Tutu Park store to pay the non-purchasing partner 50% of the legal costs incurred in the “Tutu Park Litigation,” as defined at page 5 of the Order; and (3) requires Yusuf, as the Liquidating Partner under the Superior Court’s “Final Wind Up Plan” (the “Plan”) to continue paying the inflated salaries of Hamed’s four sons for 120 days following the Effective Date of the Plan.

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<sup>1</sup> Pursuant to VISCR 4(c), the physical address and telephone number of Yusuf is care of the undersigned.



01/28/2015

VERONICA HANDY, ESQUIRE  
CLERK OF THE COURT

The issues to be presented on appeal include the following:

- (1) Whether the Court erred in applying the law and/or evaluating the record evidence when it developed and approved the Plan by cobbling together provisions from the Partners' competing plans with provisions of its own instead of simply approving one of the Partners' plans or not approving any;
- (2) Whether the Superior Court erred in applying the law and/or evaluating the record evidence when it approved the Plan, which provides Hamed with the exclusive right to purchase the partnership assets associated with the Plaza Extra-West store;
- (3) Whether the Superior Court erred in applying the law and/or evaluating the record evidence when it approved the Plan, which unfairly provided Hamed with what the Superior Court referred to as the "lynchpin" to Hamed's competing liquidation plan, namely, the disputed lease between Plessen Enterprises, Inc. and KAC357, Inc., a company wholly owned by Hamed's sons, covering the Plaza Extra-West building and improvements constructed with millions of dollars in partnership funds;<sup>2</sup>
- (4) Whether the Superior Court erred in applying the law and/or evaluating the record evidence when it approved the Plan, which requires the purchaser of the Plaza Extra-Tutu Park store to pay the non-purchasing partner 50% of the legal costs incurred in the "Tutu Park Litigation," as defined at page 6 of the Plan;<sup>3</sup> and

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<sup>2</sup> This is also an issue identified in Yusuf's Notice of Appeal filed on January 5, 2015 commencing S. Ct. Civ. No. 2015-0001.

<sup>3</sup> Pursuant to an Order approving a Stipulation between the Partners entered on January 27, 2015 (the "Order Modifying Plan"), the "Tutu Park Litigation" now includes another case entitled *United Corporation v. Tutu Park, Ltd.*, Civ. No. ST-97-CV-997.

01/28/2015

VERONICA HANDY, ESQUIRE  
CLERK OF THE COURT

(5) Whether the Superior Court erred in applying the law and/or evaluating the record evidence when it approved the Plan, which requires Yusuf, as the Liquidating Partner under the Plan, to continue paying the inflated monthly salaries of Hamed's sons ( $\$23,815 \times 4 = \$95,260$  combined) for 120 days following the Effective Date<sup>4</sup> of the Plan regardless of the value, if any, of their services in the winding up of the partnership.

Respectfully Submitted,

**DUDLEY, TOPPER AND FEUERZEIG, LLP**

**DATED:** January 28, 2015

By: /s/Gregory H. Hodges  
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Attorneys for Defendant/Appellant Fathi Yusuf

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<sup>4</sup> Pursuant to the Order Modifying Plan, the Effective Date of the Plan is January 30, 2015.

01/28/2015

VERONICA HANDY, ESQUIRE  
CLERK OF THE COURT

**CERTIFICATE OF SERVICE**

I hereby certify that on January 28, 2015, I caused the foregoing **NOTICE OF APPEAL** to be electronically filed with the Clerk of the Court using the V.I. Supreme Court e-filing system, and I caused a copy of same to be mailed to the following attorneys for the Plaintiff/ Appellee and Counterclaim Defendants/Appellees, via first class mail and email at the physical and email addresses shown below:

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Counsel for Counterclaim Defendant/Appellee  
Waheed Hamed

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Counsel for Counterclaim Defendants/Appellees  
Waleed Hamed, Mufeed Hamed, and Hisham  
Hamed

Counsel for Counterclaim Defendant/Appellee  
Plessen Enterprises, Inc.

I further certify that on January 28, 2015, a copy of the foregoing **NOTICE OF APPEAL** was mailed to:

The Honorable Douglas A. Brady  
Judge of the Superior Court of the Virgin Islands  
Division of St. Croix  
R. H Amphlette Leader Justice Complex  
P.O. Box 929  
Christiansted, St. Croix 00821

/s/ Gregory H. Hodges

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Department of Licensing and Consumer Affairs (DLCA)**

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**Business Information**

<b>Organization Type:</b> <input type="text" value="PLESSEN ENTERPRISES, INC."/>	<b>Contact First Name:</b> WALEED
<b>Business Name:</b> PLESSEN ENTERPRISES, INC.	<b>Last Name:</b> HAMED
<b>Business Phone:</b> 340 778-8248	<b>Phone #:</b> 340-880-8381
<b>Business EIN:</b> xxx-xx-2576	<b>Email:</b> wally@plesse.com
<b>Business Owned By:</b> <input type="text" value="Select from here"/>	<b>Fax:</b> 340 778-1200

Fields marked in red cannot be changed as there are existing licenses associated with this business. Please contact DLCA to modify this business information.

---

**Trade Name/DBA**  
PLESSEN ENTERPRISES, INC.

**Address**

I do not have a Virgin Islands address. I am applying for Board Certification License(s) only.

<b>Business Address</b> Select Address from dropdown or Enter New Address <input type="text" value="Select from here"/>	<b>Mailing Address</b> <input type="checkbox"/> Same as Business Address Select Address from dropdown or Enter new Address <input type="text" value="Select from here"/>
<b>Street1:</b> #14 EST, PLESSEN <b>Street2:</b> <b>City:</b> FREDENKSTED <b>State:</b> <input type="text" value="Virgin Islands (US)"/> <b>Zip:</b> 00840 <b>Island:</b> <input type="text" value="St. Croix"/> <input type="text" value="US Virgin Islands"/>	<b>Street1:</b> P.O. BOX 763 <b>Street2:</b> <b>City:</b> CHRISTIANSTED <b>State:</b> <input type="text" value="Virgin Islands (US)"/> <b>Zip:</b> 00821 <b>Island:</b> <input type="text" value="St. Croix"/> <input type="text" value="US Virgin Islands"/>

**Edit Business**

---

**Officer(s) Information**

Officer Name	Title		
MAHER YUSUF	Director	<input type="button" value="Edit"/>	<input type="button" value="Delete"/>
WALEED HAMED	Vice President	<input type="button" value="Edit"/>	<input type="button" value="Delete"/>
MUHAMMAD HAMED	President	<input type="button" value="Edit"/>	<input type="button" value="Delete"/>
FATHY YUSUF	Treasurer	<input type="button" value="Edit"/>	<input type="button" value="Delete"/>

**Add Officer**

---

**Location(s) Information**

Location Address	Island		
#14 EST, PLESSEN, FREDENKSTED, VI,00840	St. Croix	<input type="button" value="Edit"/>	<input type="button" value="Delete"/>
8649 EST, THOMAS, ST. THOMAS, VI,00802	St. Thomas	<input type="button" value="Edit"/>	<input type="button" value="Delete"/>

**Add Location**

---

**Existing License(s) Information**

Location Address	License Information			
#14 EST, PLESSEN, FREDENKSTED, VI,00840 St. Croix <input type="button" value="Add license to this location"/>				
8649 EST, THOMAS, ST. THOMAS, VI,00802 St. Thomas <input type="button" value="Add license to this location"/>	Rent of Real Property Other than Buildings [ PLESSEN ENTERPRISES, INC ]	01/31/2012	EXPIRED	<input type="text"/>
	Rent of Real Property Other than Buildings [ PLESSEN ENTERPRISES,	01/31/2014	EXPIRED	<input type="text"/>

[https://secure.dlca.vi.gov/license/Asps/License/review\\_application.aspx?Busseq=Y/ofbLFI...](https://secure.dlca.vi.gov/license/Asps/License/review_application.aspx?Busseq=Y/ofbLFI...) 1/20/2015

INC)				
Rent of Real Property Other than Buildings ( PLESSEN ENTERPRISES, INC) <a href="#">Update Trade Name</a>	01/31/2015	APPROVED		
Rent of Real Property Other than Buildings ( PLESSEN ENTERPRISES, INC) <a href="#">Update Trade Name</a> <a href="#">Remove from Renewal List</a>	01/31/2016	INCOMPLETE	<input type="button" value="Delete"/>	

\* Action requested is for the next year.

**Payment**

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Control #: 53740

**Business Information**

Organization Type: CORPORATION  
 Business Name: PLESSEN ENTERPRISES, INC.  
 Business Phone: 340 778-6240  
 Business EIN: 660452578

Contact First Name: WALLEED  
 Last Name: HAMED  
 Phone #: 340-690-9395  
 Email: WALLY@PLAZAEXTRA.COM  
 Fax: 340 778-1200

**Physical Address**

Street1: #14 EST. PLESSEN  
 Street2:  
 City: FREDERIKSTED  
 State: VI ZIP: 00840  
 Island: ST. CROIX  
 Country: US VIRGIN ISLANDS

**Mailing Address**

Street1: P.O. BOX 763  
 Street2:  
 City: CHRISTIANSTED  
 State: VI ZIP: 00821  
 Island: ST. CROIX  
 Country: US VIRGIN ISLANDS

**Person Information****Person 1:**

First Name: MAHER  
 Last Name: YUSUF  
 Date of Birth: 04/28/1967

Position/Title: DIRECTOR  
 Place of Birth: JORDAN  
 SSN: XXX-XX-

**Physical Address**

Street1: #14 ESTATE PLESSEN  
 Street2:  
 City: FSTED  
 State: VI ZIP: 00851  
 Island: ST. CROIX  
 Country: UNITED STATES  
 Country of Citizenship: USA

**Mailing Address**

Street1: P.O. BOX 3649  
 Street2:  
 City: FSTED  
 State: VI ZIP: 00851  
 Island: ST. CROIX  
 Country: UNITED STATES

Have you ever been convicted of a felony or crime involving moral turpitude? N  
 If YES, explain the nature of the crime, date of conviction, and place of conviction:

**Person 2:**

First Name: WALEED  
 Last Name: HAMED  
 Date of Birth: 01/22/1962

Position/Title: VICE PRESIDENT  
 Place of Birth: JORDAN  
 SSN: XXX-XX-

**Physical Address**

Street1: 4 C & D ESTATE SION FARM  
 Street2:  
 City: CHRISTIANSTED  
 State: VI ZIP: 00821  
 Island: ST. CROIX  
 Country: US VIRGIN ISLANDS  
 Country of Citizenship: USA

**Mailing Address**

Street1: P.O. BOX 763  
 Street2:  
 City: CHRISTIANSTED  
 State: VI ZIP: 00821  
 Island: ST. CROIX  
 Country: US VIRGIN ISLANDS

Have you ever been convicted of a felony or crime involving moral turpitude? N  
 If YES, explain the nature of the crime, date of conviction, and place of conviction:

**Person 3:**

First Name: MOHAMMAD  
 Last Name: HAMED  
 Date of Birth: 02/17/2011

Position/Title: PRESIDENT  
 Place of Birth: JORDAN  
 SSN: XXX-XX-

Street1: 6F & H CARLTON  
 Street2:  
 City: CHRISTIANSTED  
 State: VI ZIP: 00821  
 Island: ST. CROIX  
 Country: US VIRGIN ISLANDS  
 Country of Citizenship: USA

Street1: P.O. BOX 763  
 Street2:  
 City: CHRISTIANSTED  
 State: VI ZIP: 00821  
 Island: ST. CROIX  
 Country: US VIRGIN ISLANDS

Have you ever been convicted of a felony or crime involving moral turpitude? N  
 If YES, explain the nature of the crime, date of conviction, and place of conviction:

**Person 4:**

First Name: FATHY  
 Last Name: YUSUF  
 Date of Birth: 04/15/1941

Position/Title: TREASURER  
 Place of Birth: JORDAN  
 SSN: XXX-XX-

**Physical Address**

Street1: #26A TUTU PARK MALL  
 Street2:  
 City: ST. THOMAS  
 State: VI ZIP: 00802  
 Island: ST. THOMAS  
 Country: UNITED STATES  
 Country of Citizenship: USA

**Mailing Address**

Street1: #26A TUTU PARK MALL  
 Street2:  
 City: ST. THOMAS  
 State: VI ZIP: 00802  
 Island: ST. THOMAS  
 Country: UNITED STATES

Have you ever been convicted of a felony or crime involving moral turpitude? N  
 If YES, explain the nature of the crime, date of conviction, and place of conviction:

**Location Information**

**Location 1:**

**Physical Address**

Street1: #14 EST. PLESSEN  
 Street2:  
 City: FREDERIKSTED  
 State: VI ZIP: 00840  
 Island: ST. CROIX  
 Country: US VIRGIN ISLANDS

**Mailing Address**

Street1: P.O. BOX 763  
 Street2:  
 City: CHRISTIANSTED  
 State: VI ZIP: 00821  
 Island: ST. CROIX  
 Country: US VIRGIN ISLANDS

Do you have employee(s) at this location? N

Trade Name/DBA: PLESSEN ENTERPRISES, INC.

Explain in detail the type of proposed business activity for which the license(s) (has/have) been requested.  
 RETAIL INVESTMENT/PROPERTY LEASE

**Location 2:**

**Physical Address**

Street1: #6&9 EST. THOMAS  
 Street2:  
 City: ST. THOMAS  
 State: VI ZIP: 00802  
 Island: ST. THOMAS  
 Country: US VIRGIN ISLANDS

**Mailing Address**

Street1: P.O. BOX 763  
 Street2:  
 City: CHRISTIANSTED  
 State: VI ZIP: 00821  
 Island: ST. CROIX  
 Country: US VIRGIN ISLANDS

Do you have employee(s) at this location? N

Trade Name/DBA: PLESSEN ENTERPRISES, INC.

Explain in detail the type of proposed business activity for which the license(s) (has/have) been requested.

Location	License Type	Start Date	Expire Date	Status	Fee Amount
#14 EST. PLESSEN, FREDERIKSTED, VI, 00840 #6&9 EST. THOMAS, ST. THOMAS, VI, 00802	RENT OF REAL PROPERTY OTHER THAN BUILDINGS [ PLESSEN ENTERPRISES, INC.]	01/01/2015	01/31/2016	PENDING	130.00
<b>Total Amount:</b>					<b>130.00</b>

**Payment Information**

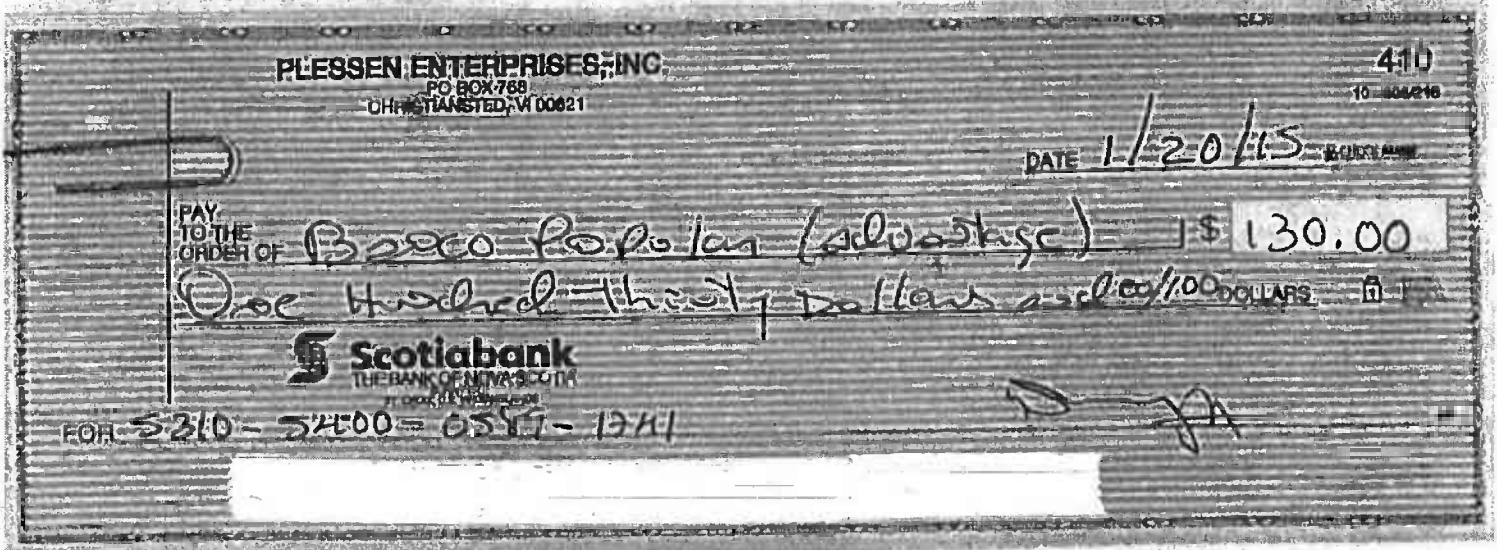
**Billing Information**

First Name: WALEED  
 Last Name: HAMED  
 Card Type: MASTER CARD  
 Credit Card Number: XXXX-XXXX-XXXX-NIA  
 Expiration Date: 07/2015  
 Country:

Street1: P.O. BOX 24363  
 Street2:  
 City: CHRISTIANSTED  
 State: ZIP: 00821  
 Island:

**BIR Information**

First Name:  
 Last Name:  
 Relationship:







shall be stayed in part and modified during the pendency of Yusuf's appeal in the following respects:

a) Up to the day that the right to operate any of the three Plaza Extra stores is transferred from the Partnership to one of the partners (Yusuf or Hamed), salaries shall be paid to any members of the Hamed and Yusuf family that are actually working in that Plaza Extra store;

b) Upon transfer of the right to operate any of the Plaza Extra stores from the Partnership to one of the partners (Yusuf or Hamed), the Partnership shall cease to have any obligation to continue paying salaries to any member of the Hamed or Yusuf family for whom it had been paying salaries for work done in that store; and

c) Nothing in the preceding subparagraphs prevents the Liquidating Partner, with the approval of the Master, to terminate the employment of any employee of the Partnership whose services are no longer necessary or beneficial in the wind up of the Partnership;

**IT IS FURTHER ORDERED THAT** section 8 of the Plan regarding the disposition of Plaza Extra-Tutu Park is stayed, until Yusuf's appeal is resolved, but only insofar as the partner acquiring that store by closed auction shall not be required to reimburse the other partner for one half of the legal fees incurred to date in litigation commenced against the landlord for that store pending in Civ. No. ST-97-CV-997 and Civ. No. ST-01-CV-361; and

**IT IS FURTHER ORDERED THAT** in all other respects the Order and Plan, as modified by this Court's Order entered on January 27, 2015, shall be implemented and its provisions carried out during the pendency of Yusuf's appeal.

Entered this \_\_\_\_\_ day of \_\_\_\_\_, 2015.

---

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.  
Charlotte K. Perrell, Esq.  
Carl J. Hartman, III, Esq.  
Mark W. Eckard, Esq.  
Jeffrey B.C. Moorhead, Esq.