

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

**MOHAMMAD HAMED**, by his )  
authorized agent **WALEED HAMED**, )  
)  
*Plaintiff/Counterclaim Defendant*, )

vs. )

**CIVIL NO. SX-12-CV-370**

**FATHI YUSUF** and )  
**UNITED CORPORATION**, )  
)  
*Defendants/Counterclaimants*, )

vs. )

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

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

**JURY TRIAL DEMANDED**

*Counterclaim Defendants.* )  
\_\_\_\_\_ )

**SUPPLEMENTAL AUTHORITY RE MOTION TO DISQUALIFY  
DUDLEY, TOPPER AND FUEERZEIG**

The Plaintiffs have moved to disqualify law firm of Dudley, Topper and Feuerzeig LLP (“DTF”) from representing the Liquidating Partner, Fathi Yusuf, which motion has now been fully briefed and is now awaiting a ruling from this Court. However, the Yusuf’s have now filed a motion to disqualify Jeffrey Moorhead in another case due to his alleged representation of two different parties whose interests are diverse. See **Exhibit 1**. While the issues in that case are different, the case law cited to this Court regarding the standard whereby a lawyer needs to be disqualified are directly on point to the issues raised in the DTF disqualification motion. Thus, the motion in the other case is hereby submitted to this Court to supplement the record in this case as to the

Yusuf's admission of the applicable standard that should be applied when this issue is raised. See **Exhibit 1** at pp. 3-4. 5-6.

**Dated:** July 20, 2016



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

**Carl J. Hartmann III, Esq.**  
*Co-Counsel for Plaintiff*  
5000 Estate Coakley Bay, L6  
Christiansted, VI 00820  
Email: carl@carlhartmann.com  
Tele: (340) 719-8941

### **CERTIFICATE OF SERVICE**

I hereby certify that on this 20<sup>th</sup> day of July, 2016, I served a copy of the foregoing by email, as agreed by the parties, on:


**Hon. Edgar Ross**  
Special Master  
% edgarrossjudge@hotmail.com

**Nizar A. DeWood**  
The DeWood Law Firm  
2006 Eastern Suburb, Suite 101  
Christiansted, VI 00820  
dewoodlaw@gmail.com

**Gregory H. Hodges**  
Law House, 10000 Frederiksberg Gade  
P.O. Box 756  
St. Thomas, VI 00802  
ghodges@dtflaw.com

**Mark W. Eckard**  
HAMM Eckard, LLP  
5030 Anchor Way  
Christiansted, VI 00820  
mark@markeckard.com

**Jeffrey B. C. Moorhead**  
CRT Brow Building  
1132 King Street, Suite 3  
Christiansted, VI 00820  
jeffreymlaw@yahoo.com



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

YUSUF YUSUF, in his individual capacity  
And derivatively on behalf of  
PLESSEN ENTERPRISES, INC.

Plaintiff,

vs.

MOHAMMED HAMED, WALEED HAMED,  
WAHEED HAMED, MUFEED HAMED,  
HISHAM HAMED, FIVE-H HOLDINGS, LLC  
And KAC357, INC.

Defendants,

-and-

PLESSEN ENTERPRISES, INC.,

Nominal Defendant.

CASE # SX-13-CV-120

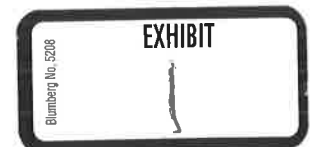
CIVIL ACTION FOR  
AND INJUNCTIVE RELIEF

**MEMORANDUM IN SUPPORT OF PLAINTIFF'S MOTION TO DISQUALIFY JEFFREY  
MOOREHEAD AS COUNSEL & RESIDENT AGENT FOR PLESSEN ENTERPRISES, INC.**

I. INTRODUCTION

COMES NOW, Plaintiff Yusuf Yusuf ("Yusuf"), through counsel, and respectfully files this Memorandum in support of his Motion to disqualify Jeffrey Moorehead ("Moorehead") as counsel and resident agent for Plessen Enterprises, Inc. ("Plessen") because of Moorhead's impermissible simultaneous representation of Plessen in this litigation and Waleed Hamed ("Waleed") and Mufeed Hamed ("Mufeed") in the criminal proceedings captioned *People v. Waleed Hamed and Mufeed Hamed* ("People v. Hamed, et al.").

The facts in *People v. Hamed, et al.* (dismissed by the People on Friday May 27, 2016) are identical to the facts in this matter. Simply put, Moorehead cannot represent Plessen, while at the same time represent a director (Waleed) and a shareholder (Mufeed), charged with embezzling funds from Plessen. As the facts



and discussion below will reveal, Moorehead violated the Virgin Islands Rules of Professional Conduct prohibiting conflicts of interest scenarios similar to the one in this matter.

## II. FACTS

On March 19, 2013, Defendants Waleed and Mufeed, without authorization, took \$460,000 from Plessen to personally enrich themselves. Waleed and Mufeed's unlawful conduct compelled Plaintiff Yusuf to file this suit seeking a full accounting of the embezzled funds, and to remove Waleed and his father Mohammed Hamed as officers and directors of Plessen for abusing their corporate office and various duties.

Defendants Waleed and Mufeed tried many ways to absolve themselves of the looming liabilities attached to their unlawful conduct. First, Waleed offered to return half the money. When that was rejected, Waleed issued a check for \$230,000 and placed it with the Court's registry, claiming division of profits. When that didn't work, Waleed and Mufeed changed their story and claimed that they were "worried" about the \$460,000 being kept at Plessen because of Fathi Yusuf's withdrawal of funds in the partnership litigation in *Hamed v. Yusuf*.<sup>1</sup> When that strategy also did not work, Waleed deposited all of the funds back with the court. Waleed and his late father Mohammed Hamed then held an unprecedented Board of Directors meeting (subject to only a two-day notice) to declare the stolen Plessen money as "dividends." At the meeting, the late Mohammed and Waleed voted to declare as "dividends" Waleed and Mufeed's embezzlement to avoid serious civil and criminal liability.

On November 25, 2015, Waleed and Mufeed were arrested on an arrest warrant and criminal complaint charging Waleed and Mufeed with felony embezzlement and grand larceny. On May 27, 2016, that matter was dismissed for unknown reasons by the People. However, Plaintiff Yusuf became aware that Defendant Mufeed Hamed and/or Waleed Hamed were being represented in the criminal case by none

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<sup>1</sup> Waleed never bothers to explain that the partnership matter is unrelated to Plessen, and that Fathi Yusuf withdrew an amount matching what the Hamed's withdrew from the partnership in previous years.

other than attorney Jeffrey Moorehead (and attorney Gordon Rhea). It is worth reminding the court that Moorehead was handpicked by Walced as Plessen's counsel and its resident agent at the unprecedented April 30, 2014 board meeting without any input and consent of the Yusuf family. Moreover, since Moorehead's appointment as counsel for Plessen, Moorehead has never contacted any Yusuf director or shareholder to advise them of any work Moorehead has done for Plessen. Thus, in representing Mufeed and Mufeed in the criminal proceedings, while representing Plessen in this matter, Moorehead has violated the Rules of Professional Conduct governing conflict of interest, and therefore must be disqualified from representing Plessen forthwith in all matters.

### III. DISCUSSION

#### A. Background

The underlying principle in considering motions to disqualify counsel is safeguarding the integrity of the court proceedings and the purpose of granting such motions is to eliminate the threat that the litigation will be tainted." *McKenzie Constr. v. St. Croix Storage Corp.*, 961 F. Supp. 857, 859 (D.V.I. 1997). A court's "power to disqualify an attorney derives from its inherent **authority** to supervise the professional conduct of attorneys appearing before it." *De La Cruz v. V.I. Water & Power Auth.*, 2014 U.S.App. LEXIS 24561, \*9, 2014 WL 7398889 (3d Cir. Dec. 30, 2014) (emphasis added) (quoting *United States v. Miller*, 624 F.2d 1198, 1201 (3d Cir. 1980)). "Courts are required to preserve a balance, delicate though it may be, between an individual's right to his own freely chosen counsel and the need to maintain the highest ethical standards of professional responsibility." *Gordon v. Bechtel Int'l*, 2001 U.S. Dist. LEXIS 22432, at \*15, 2001 WL 1727251 (D.V.I. Dec. 28, 2001). Thus, in granting a motion to disqualify counsel "only when it determines, on the facts of the particular case, that disqualification is an appropriate means of enforcing the applicable disciplinary rule." *Miller*, 624 F.2d at 1201. In making this determination, a court should balance the following factors:

- (1) the moving litigant's interest in "the continued loyalty of his attorney;"

(2) “the opposing litigant’s interest in retaining his chosen counsel;”

(3) prejudice to the opposing litigant in terms of “time and expense required to familiarize a new attorney with the matter;” and

(4) the “policy that attorneys be free to practice without excessive restrictions.” *Brice*, 769 F.Supp. at 195; *see also Pepper v. Little Switz Holdings, Inc.*, 2005 U.S. Dist. LEXIS 14453, \*5–6, 2005 WL 1668916 (D.V.I. Jul. 6, 2005).

In the Virgin Islands, conflict of interest is governed by Rule 211.1.7(a) which states:

Except as provided in paragraph (b), a lawyer shall not represent a client if the representation involves a concurrent conflict of interest. A concurrent conflict of interest exists if:

(1) the representation of one client will be directly adverse to another client; or

(2) there is a significant risk that the representation of one or more clients will be materially limited by the lawyer’s responsibilities to another client, a former client or a third person or by a personal interest of the lawyer..<sup>2</sup>

**B. Moorehead’s Concurrent Representation of Waleed and Mufeed in the Criminal Case and Plessen in this litigation is an Impermissible Conflict of Interest.**

Here, Moorhead seeks to represent Plessen in this litigation, while defending shareholder (Mufeed) and director/vice-president (Waleed) against charges of stealing from Plessen, the same corporation Moorehead owes a duty of loyalty. The conflict inherent in this type of representation is incurable, and warrants immediate disqualification. Moorhead has an obligation to not only safeguard the assets of Plessen but certainly not to act in a manner that would undermine Plessen’s claims against Waleed and Mufeed. In the current scenario, Moorehead has defended Waleed and Mufeed at the expense of Plessen.

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<sup>2</sup> Rule 211.1.7 provides the following exceptions:

(b) Notwithstanding the existence of a concurrent conflict of interest under paragraph (a), a lawyer may represent a client if:

- (1) the lawyer reasonably believes that the lawyer will be able to provide competent and diligent representation to each affected client;
- (2) the representation is not prohibited by law;
- (3) the representation does not involve the assertion of a claim by one client against another client represented by the lawyer in the same litigation or other proceeding before a tribunal; and
- (4) each affected client gives informed consent, confirmed in writing.

None of these exceptions apply here.

It should be noted again that it was Waleed who selected Moorehead as counsel for Moorehead a retainer of \$20,000 before the Hamed unilateral April 30, 2014 board meeting. To date, Moorehead has not met with any of the Yusuf directors and shareholders. Moorehead however owes a duty of loyalty and confidentiality to Plessen in all matters relating to this case, including to the interests of the Yusuf shareholders. But Moorehead has been anything but loyal to Plessen when he appeared to have worked to defend Waleed and Mufeed in the *People v. Hamed, et al.* criminal proceedings. In this case, neither Plessen nor the Yusuf directors/shareholders ever gave Moorehead consent to represent Plessen in this matter and Waleed and Mufeed in the criminal matter. Therefore, the “informed consent” of Rule 211.1.7 exception is not applicable, and Moorehead must be disqualified as counsel.

### **C. Other Jurisdictions Reach the Same Result**

Cases in other jurisdictions have dealt with this same issue, and are therefore instructive. Several courts held that “attorneys have a duty to maintain undivided loyalty to their clients to avoid undermining public confidence in the legal profession and the judicial process.” (See *Santa Clara County Counsel Attys. Assn. v. Woodside*, 869 P.2d 1142 1994.) “The effective functioning of the fiduciary relationship between attorney and client depends on the client’s trust and confidence in counsel.” (*Flatt*, supra, 9 Cal. 4th at pp. 282, 285). Therefore, if an attorney simultaneously represents clients who have conflicting interests, a more stringent *per se* rule of disqualification applies. With few exceptions, disqualification follows automatically, regardless of whether the simultaneous representations have anything in common or present any risk that confidences obtained in one matter would be used in the other. (*Id.* at p. 284.)

The most egregious conflict of interest is representation of clients whose interests are directly adverse in the same litigation. *Id.* “Such patently improper dual representation suggests to the clients - and to the public at large - that the attorney is completely indifferent to the duty of loyalty and the duty to preserve confidences.” *Id.* The attorney’s actual intention and motives are immaterial, and the rule of

automatic disqualification applies. “The rule is designed not alone to prevent the dishonest practitioner from fraudulent conduct, but also to keep honest attorneys from having to choose between conflicting duties, or being tempted to reconcile conflicting interests, rather than fully pursuing their clients’ rights.” (*Anderson v. Eaton* (1930) 211 Cal. 113, 116 [293 P. 788].) The loyalty the attorney owes one client cannot be allowed to compromise the duty owed another. (*Ismael v. Millington* (1966) 241 Cal. App. 2d 520, 526-527 [50 Cal. Rptr. 592].

Therefore, absent each client’s informed written consent, joint/dual representation of clients whose interests actually conflict is prohibited and the lawyer is automatically disqualified: “The paradigmatic instance of such prohibited dual representation one roundly condemned by courts and commentators alike, occurs where the attorney represents clients whose interest are directly adverse in the same litigation.” (*Flatt v. Superior Court*, supra, 9 Cal.4th at 285, fn.3). The prohibition against simultaneous representation of clients whose interests conflict is so strong that it even applies even where one matter is totally unrelated to the other. As stated by the California Supreme Court: “even though the simultaneous representations may have nothing in common, and there is no risk that confidences to which counsel is a party in one case has any relation to the other matter, disqualification may nevertheless be required.” (*Flatt v. Superior Court*, supra, 9 Cal.4th at 284-296; *Pour Le Bebe v. Guess? Inc.* (2003) 112 Cal.App.4th 810, 822; *Gilbert v. National Corporation for Housing Partnerships* (1999) 71 Cal.App.4th 1240, 1255-1256.

The above California holdings are applicable here. Moorehead is representing Plessen in this litigation, and at the same time Moorehead represented Plessen’s vice-president/director Waleed and shareholder Mufeed in a related embezzlement criminal matter arising out of the same facts of this litigation. This type of concurrent conflict of interest ridden representation cannot stand, and Moorehead must be disqualified as Plessen’s counsel.



### CONCLUSION


For the reasons stated above, attorney Jeffrey Moorehead must be disqualified, and his name stricken, as counsel of record and resident agent for Plessen in any matter, including this litigation.

Date: July 11, 2016

Respectfully Submitted,

The DeWood Law Firm  
Attorney for Plaintiff Yusuf Yusuf

By:

  
\_\_\_\_\_  
Nizar A. DeWood, Esq. (1177)  
2006 Eastern Suburb, Suite 102  
Christiansted, V.I. 00820  
T. 340.773.3444 F. 888.398-8428  
nizar@dewood-law.com

**CERTIFICATE OF SERVICE**

**I HEREBY CERTIFY** that on July 11, 2016 I caused the foregoing **MOTION, SUPPORTING MEMORANDUM, AND PROPOSED ORDER** to be served upon the following via e-mail as agreed to by the parties.

**Joel H. Holt, Esq.**  
Law Office of Joel Holt  
2132 Company Street  
Christiansted, V.I. 00820  
Email: [holtvi@aol.com](mailto:holtvi@aol.com)  
Tele: (340) 773-8709

**Carl Hartmann, III, Esq.**  
5000 Estate Coakley Bay, #L-6  
Christiansted, VI 00820  
Email: [carl@carlhartmann.com](mailto:carl@carlhartmann.com)

**Mark W. Eckard, Esq.**  
Eckard, P.C.  
P.O. Box 24849  
Christiansted, VI 00824  
Email: [mark@markeckard.com](mailto:mark@markeckard.com)  
Tele: (340) 642-8784

**Jeffrey B.C. Moorhead, Esq.**  
C.R.T. Building  
1132 King Street  
Christiansted, VI 00820  
Email: [jeffreymlaw@yahoo.com](mailto:jeffreymlaw@yahoo.com)  
Tele: (340) 773-2539

**COURTESY COPY:**

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



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Christina Joseph