

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

YUSUF YUSUF, derivatively on behalf of)		
Plessen Enterprises, Inc.,)		Case No. SX-13-CV-120
)		
Plaintiff,)		Civil Action for Damages
)		and Injunctive Relief
v.)		
)		JURY TRIAL DEMANDED
WALEED HAMED, WAHEED HAMED,)		
MUFEEED HAMED, HISHAM HAMED,)		
and FIVE-H HOLDINGS, INC.,)		
)		
Defendants,)		
)		
and)		
)		
PLESSEN ENTERPRISES, INC.,)		
)		
_____)		
Nominal Defendant.)		

**MUFEEED HAMED’S FIRST REQUEST FOR PRODUCTION
OF DOCUMENTS TO PLAINTIFF**

PLEASE TAKE NOTICE THAT Mufeed Hamed, by and through his undersigned counsel and pursuant to Fed.R.Civ.P. 34 and 26, as made applicable by Super. Ct. R. 7 and/or 39, requests that the above-captioned plaintiff, Yusuf Yusuf (“Plaintiff”) respond to the following requests on or before the thirtieth (30th) day after the date hereof and produce the following documents to Mark W. Eckard, Esquire, at Hamm Eckard, LLP, 5030 Anchor Way, Suite 13, Christiansted, VI, 00820, for the purposes of inspection, identification, and photocopying.

PLEASE TAKE FURTHER NOTICE THAT Plaintiff is required to supplement his responses in accordance with Fed.R.Civ.P. 26, as made applicable by Super. Ct. R. 7 and/or 39.

INSTRUCTIONS

In responding to these Requests for Production of Documents, the following instructions shall apply:

1. The obligations imposed by Fed. R. Civ. P. 26 and 34 are hereby incorporated, including but not limited to, the duty to supplement imposed by Fed. R. Civ. P. 26(e).

2. These requests for production concern all information within your possession, custody or control.

3. If you lack information to respond to a particular request for production, in whole or in part, you shall state or identify: a) the currently available information; b) any currently unavailable information; c) the efforts you have taken, or will take, to obtain the currently unavailable information; and d) when you expect to obtain this information. Further, if you believe that any other individual or entity may have information that responds to a specific request, in whole or in part, the you shall provide the individual or entity' s: a) name, address and telephone number and b) a brief description of the information the you believe the entity or individual possesses.

4. Whenever in these requests for production you are directed to produce or "identify" a "document," you shall, besides providing the document itself (if asked to produce), state or identify the following: a) the date the document was prepared; b) the name, address and telephone number of each author or signatory; c) the name, address and telephone number of each recipient (both addressee and recipients of copies); d) the document type (*e.g.*, letter, memorandum, report, etc.); e) the document title; f) the document's control number or Bates number; and g) the name, address and telephone number of the document's custodian.

5. If you no longer possess any document you shall state or identify: a) the date the document was prepared; b) the name, address and telephone number of each author or signatory; c) the name, address and telephone number of each recipient; d) the document type (*e.g.*, letter, memorandum, report, etc.); e) what was done with the document; f) the name, address and telephone number of each individual responsible for, or otherwise involved with, transferring or disposing of the document; and g) reason(s) the document was disposed of or transferred; and h) the name, address and telephone of the document's custodian, if known.

6. If you believe any information is privileged and/or protected, in whole or in part, the you shall provide the following: a) the document's title; b) the document type (*e.g.*, memorandum, letter, report, email etc.), c) the name, address and telephone number of each author or signatory; d) the name, address and telephone number of each recipient; e) the date the document was prepared; f) the privilege(s) and/or protection(s) the you are asserting; g) the factual bases for the you asserting the privilege(s) and /or protection(s); and h) a summary of the information you are not producing to enable a court of competent jurisdiction to rule whether the information is privileged and/or protected.

7. If you redact anything from a document it produces in response to these requests for production, you shall state or provide the following: a) a summary of the deleted information; b) the reason(s) for deleting the information; and c) the name, address and telephone number of each person responsible for, or otherwise involved with, deleting the information.

8. You shall respond to each of these requests for production to the fullest extent possible, and in good faith, preserving any valid objections you may have. You may further ask counsel to clarify or limit any request for production you believe is vague or unduly burdensome.

9. Whenever these requests for production use any word in the plural, you shall understand the word to include the singular as necessary to make the request for production inclusive rather than exclusive. Further, whenever these requests for production use any word in the singular, you shall understand the word to include the plural as necessary to make the request for production inclusive rather than exclusive.

10. Whenever these requests for production use any word in the masculine, you shall understand the word to include the feminine as necessary to make the request for production inclusive rather than exclusive. Further, whenever these requests for production use any word in the feminine, you shall understand the word to include the masculine as necessary to make the request for production inclusive rather than exclusive.

11. Verbs written in the present tense shall also be taken to mean and include the past. Verbs written in the past tense shall also be taken to mean and include the present.

12. Whenever these requests for production use the word "and" or the word "or," you shall understand the word conjunctively or disjunctively as necessary to make the request for production inclusive rather than exclusive.

DEFINITIONS

1. "Action" means the above-captioned civil action.
2. "Complaint" means the complaint, including any subsequent amendments, which commenced this Action.
3. "Communication" means any correspondence, contact, discussion, exchange, contract, or agreement between any two or more persons. Without limiting the foregoing, "communication" includes all documents, as defined above, telephone conversations, internet

communications, e-mail, facsimile transmissions, voice mail, face-to-face conversations, meetings, and conferences.

4. “Date” means the exact day, month and year, if ascertainable, or the best available approximation, including relationship to other events (designate whether exact or approximate).

5. “Describe” means to state with particularity, including but not limited to, each date, fact, event, occurrence, to identify each document, and to identify each individual who can testify as to such stated dates, facts, events, occurrences and documents.

6. “Document” means any written, recorded or graphic matter however produced or reproduced that is or has been in your possession, control or custody or of which you have knowledge, including but not limited to all electronically stored information, emails, letters, legal documents, business records, interoffice communications, notes of telephone conferences, minutes, operating statements, profit and loss statements, balance sheets, financial statements, listing and itemizing of inventories, correspondence, tapes, stenographic or handwritten notes, studies, publications, books, pamphlets, prospectuses, certificates, receipts, presentations, billing summaries, invoices, pictures, films, voice recordings, maps, graphs, reports, surveys, electronic data processing films, statistical compilations, and every copy of such document where the original is not in your possession, custody or control or where such copy is not an identical copy of an original or where such copy contains any commentary or notation whatsoever which does not appear on the original.

7. “First Hearing Day” when used in relation to Civil No. SX-12-CV-370, and whether capitalized or not, means the first day of the hearing on the Motion for Preliminary Injunction filed by the plaintiff in Civil No. SX-12-CV-370, which hearing was held on January 25, 2013, before Honorable Douglas Brady, Superior Court Judge, on the island of St. Croix.

8. “Identify” or “identification” when used in reference to an individual person means to state his full name, residence address and telephone number (designate whether present or last known), and position and business affiliation, address and telephone number (designate whether present or last known).

9. “Identify” or “identification” when used in reference to a firm, organization, proprietorship, association, or other organization or entity, means to state its full name, address and telephone number (designate present or last known), the legal form of such organization or entity, and the identification of its chief executive officer.

10. “Identify” or “identification” when used in reference to a document means to state the type of document (e.g., letter, memorandum, telegram, contract, invoice, etc.) or some other means of identifying it, its date, author, addressee or other intended recipient, or audience, its present location, and custodian. If any such document was but is no longer in your possession or subject to your control, state its disposition.

11. “Identify” or “identification” when used in reference to a conversation, conference or meeting means to identify all persons participating or in attendance, to identify all documents prepared for or assembled in preparation for or in connection with such conversation, conference or meeting, to identify all documents recording, summarizing or otherwise arising out of such conversation, conference or meeting, and to describe the purpose of such conversation, conference or meeting, the means of communication, and all actions taken as a result of such conversation, conference or meeting.

12. “Plessen” means the above-captioned “nominal defendant,” Plessen Enterprises, Inc.

13. “Plessen Account” means Plessen’s Scotiabank account No. 05800045012.

14. “You” or “Your” means the above-captioned plaintiff, Yusuf Yusuf.
15. “Yusuf Family” or “Yusuf Family Member” means any of Fathi Yusuf, his wife or any of his sons.

REQUESTS

1. Please provide all documents supporting your contention in the first paragraph of your amended complaint that “*the unauthorized withdrawal by Waleed and Mufeed of \$460,000 from Plessen's bank account, represent[s] approximately 99 percent (99%) of the monies on deposit in that account.*”
2. Please provide all documents supporting your contention in the second paragraph of your amended complaint that “*[t]he Yusufs bring this action against Mohammad and Waleed for breach of their fiduciary duties as directors and officers of Plessen for . . . (2) approving a 30-year lease of Plessen's most valuable real estate to KAC357 (the "Lease") at below market rental rates and on other terms adverse to Plessen. . .*”
3. Please provide all documents supporting your contention in the second paragraph of your amended complaint that “*[t]he Yusufs bring this action against Mohammad and Waleed for breach of their fiduciary duties as directors and officers of Plessen for. . . (3) failing to schedule or hold any meeting of shareholders for decades in order to avoid an election of directors and perpetuate control by the Hamed interests over the Board of Directors of Plessen.*”
4. Please provide all documents supporting your contention in the 12th paragraph of your amended complaint that “*[i]n the 25 years between January 31, 1989 and April 30, 2014, there were only two meetings of Plessen's Board of Directors and no meetings of its shareholders, annual or otherwise for the appointment of directors of Plessen.*”
5. Please provide all documents supporting your contention in the 14th paragraph of your amended complaint that “*[a]fter Plessen's formation, an additional seat on the Board was created. . .*”.
6. Please provide all documents supporting your contention in the 14th paragraph of your amended complaint that “*Maher was added as a director*” [to the Plessen Board].”
7. Please provide all documents supporting your contention in the 14th paragraph of your amended complaint that “*[t]he current members of Plessen's Board are Mohammad, Waleed, Fathi, and Maher.*”
8. Please provide all documents supporting your contention in the 16th paragraph of your amended complaint that “*Plessen is owned in equal shares by the Yusufs and Hameds, i.e., the Yusufs collectively own 50% of the outstanding shares of Plessen and the Hameds collectively own the other half.*”
9. Please provide all documents supporting your contention in the 17th paragraph of your amended complaint that “*The Yusufs are shareholders of Plessen, were shareholders of Plessen at the time of the wrongdoing alleged herein, have been shareholders of Plessen continuously since that time, and will continue to be shareholders of Plessen throughout the pendency of this action.*”

10. Please provide all documents supporting your contention in the 19th paragraph of your amended complaint that *“Upon information and belief, Waleed is the President of Five-H and one of its principal beneficial owners. Upon information and belief, Waheed, Mufeed, and Hisham are all officers and beneficial owners of Five-H.”*

11. Please provide all documents supporting your contention in the 22nd paragraph of your amended complaint that *“After Plessen's incorporation and despite the failure to hold a formal shareholders' meeting to elect a Board of Directors for Plessen, Mohammad, Waleed and Fathi agreed to add Maher as a fourth director of Plessen.”*

12. Please provide all documents supporting your contention in the 23rd paragraph of your amended complaint that *“This agreement was designed to allow both families to jointly manage Plessen, just as both families have done in their other jointly owned corporations.”*

13. Please provide all documents supporting your contention in the 24th paragraph of your amended complaint that *“24. On or about March 27, 2013, Yusuf paid with his personal Banco Popular Visa credit card the 2011 real property taxes of Plessen.”*

14. Please provide all documents supporting your contention in the 25th paragraph of your amended complaint that *“Yusuf was reimbursed for such payment by way of a check drawn on Plessen's bank account with Scotiabank.”*

15. Please provide all documents supporting your contention in the 26th paragraph of your amended complaint that *“However, Yusuf was subsequently informed that an employee of Scotiabank called Fathi to inform him that the check made to pay 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.”*

16. Please provide all documents supporting your contention in the 27th paragraph of your amended complaint that *“Yusuf then reviewed Plessen's bank statements. . .”*

17. Please provide all documents supporting your contention in the 28th paragraph of your amended complaint that *“Yusuf subsequently learned that Waleed used the misappropriated money to purchase commercial property on the East End of St. Thomas in the name of Five-H where a store named Moe's Fresh Market was later opened and is now operating.”*

18. Please provide all documents supporting your contention in the 29th paragraph of your amended complaint that *“On April 16, 2013, Yusuf, in response to Waleed having absconded with Plessen corporate funds, commenced this action on behalf of the corporation to recover the misappropriated sum of \$460,000 and for other relief. Three days later, after learning of the lawsuit, the individual defendants caused half of the amount misappropriated - i.e., \$230,000 – to be deposited into the registry of this Court. A notice to that effect was served on counsel for Yusuf in this case.”*

19. Please provide all documents supporting your contention in the 30th paragraph of your amended complaint that *“On April 1, 2015, almost two years later, the individual defendants caused the remainder of the misappropriated funds - i.e., \$230,000 - to be deposited into the registry of this Court. A notice to the effect was served on counsel for Yusuf in this case.”*

20. Please provide all documents supporting your contention in the 33rd paragraph of your amended complaint that *“Further, the Hameds and Five-H, among other improper acts, have individually and collectively obtained the benefit, use and enjoyment of Plessen's misappropriated funds by using these funds, upon information and belief, to purchase real estate on which the Hameds now operate a new grocery store and market called Moe's Fresh Market, with the seed money provided by Waleed's unauthorized draw on Plessen's bank account.”*

21. Please provide all documents supporting your contention in the 38th paragraph of your amended complaint that *“Given the April 30, 2014 deadline to file a competing plan and the fact that the Plessen property occupied by Plaza Extra-West was not covered by any lease, Mohammad and Waleed realized that they needed to assert a long term leasehold interest in such property if they were going to be able to effectively control the disposition of the Plaza Extra-West store. Accordingly, in April of 2014, the Hameds conspired amongst themselves to engineer this bogus Special Meeting and misuse the corporate machinery of Plessen to give a newly formed, Hamed controlled corporation - KAC357 - the Lease covering the premises occupied by Plaza Extra West.”*

22. Please provide all documents supporting your contention in the 39th paragraph of your amended complaint that *“To accomplish this improper purpose, the Hameds called what was only the second Board of Directors meeting in the 25-year history of Plessen on 2 days notice in order to approve the Lease that benefitted the personal interests of the Hamed directors, and that the Yusufs had not seen before and had absolutely no knowledge about. . .”*

23. Please provide all documents supporting your contention in the 39th paragraph of your amended complaint that *“even though Fathi was the officer of Plessen who had negotiated and signed all other Plessen leases.”*

24. Please provide all documents supporting your contention in the 40th paragraph of your amended complaint that *“Mohammad and Waleed quickly passed the resolution approving the Lease, without any discussion of any of its terms, which were extraordinarily one-sided in favor of KAC357 and detrimental to Plessen.”*

25. Please provide all documents supporting your contention in the 46th paragraph of your amended complaint that *“Because Mohammad and Waleed have already demonstrated the intent and capacity to usurp Plessen's corporate machinery for their personal benefit, having already approved the self-dealing Lease, and ratified Waleed's and Mufeed's theft of \$460,000 as purported dividends, Mohammad and Waleed have been rendered incapable of making independent, objective decisions regarding transactions they personally benefitted from, thus excusing the Yusufs' pre-suit demand on the Board to bring suit asserting the claims set forth in the Complaint.”*

26. Please provide all documents supporting your contention in the 47th paragraph of your amended complaint that *“Likewise, Waleed is incapable of making an independent and disinterested decision to institute and vigorously prosecute this action, as he 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.”*

27. Please provide all documents supporting your contention in the 51st paragraph of your amended complaint that *“Waleed and Mufeed wrongfully, and without the knowledge, consent or authorization of Plessen, misappropriated funds belonging to Plessen for their own use and/or benefit and/or for the use and/or benefit of the Hameds and Five-H.”*

28. Please provide all documents supporting your contention in the 59th paragraph of your amended complaint that

59. Specifically, as alleged in detail herein, Mohammad and Waleed breached their fiduciary duties by:

a. Approving the Lease between Plessen and KAC357 that unfairly benefits the Hameds at the expense of Plessen and the Yusufs by tying up Plessen's most significant asset with a long term lease upon terms, including the amount of rent, that are not in the best interests of Plessen.

b. Improperly ratifying the theft of approximately \$460,000 of Plessen's funds.

c. Failing to schedule or hold a meeting of the shareholders of Plessen for decades, in order to avoid an election of directors and perpetuate the purported majority control by the Hamed interests over the Board of Directors.

d. Concealing from Plessen material information related to the theft of funds and approval of Lease, and otherwise knowingly failing to adhere to Plessen's corporate formalities, policies and procedures, including the holding of annual shareholders meetings in order to elect directors.

29. Please provide all documents supporting your contention in the 60th paragraph of your amended complaint that *“Similarly, Mohammad and Waleed breached their fiduciary duties to Plessen by, among other things, conspiring with each other, to ratify the conversion of Plessen's funds as a dividend, which both knew to be against the interest of Plessen.”*

30. Please provide all documents supporting your contention in the 61st paragraph of your amended complaint that *“As a direct and proximate result of the foregoing breaches, Plessen has sustained damages including, but not limited to, the loss of market value of the premises leased to KAC357. . .”*

31. Please provide all documents supporting your contention in the 61st paragraph of your amended complaint that *“As a direct and proximate result of the foregoing breaches, Plessen has sustained damages including, but not limited to. . .damage to its reputation. . .”*

32. Please provide all documents supporting your contention in the 61st paragraph of your amended complaint that *“As a direct and proximate result of the foregoing breaches, Plessen has sustained damages including, but not limited to. . .the loss of the funds unlawfully obtained from Plessen's Scotiabank account . . .”*

33. Please provide all documents supporting your contention in the 61st paragraph of your amended complaint that *“As a direct and proximate result of the foregoing breaches, Plessen has sustained damages including, but not limited to. . .the loss of other corporate opportunities.”*

34. Please provide all documents supporting your contention in the 67th paragraph of your amended complaint that *“As a direct proximate result of the foregoing waste of corporate assets and usurpation of corporate opportunity, Plessen has sustained damages including, but not limited to, loss of the market value of the premises covered by the Lease.”*

35. Please provide all documents supporting your contention in the 69th paragraph of your amended complaint that *“The Hameds, Five-H and KAC357, individually and collectively, were unjustly enriched by their receipt, benefit, use, enjoyment and/or retention of Plessen's assets.”*

36. Please provide all documents supporting your contention in the 72nd paragraph of your amended complaint that *“As alleged in detail herein, the Hameds, Five-Hand KAC357 had a unity of purpose or a common design and understanding, or a meeting of minds in an unlawful arrangement to, among other things, unlawfully misappropriate funds of Plessen and approve the Lease that unfairly benefitted KAC357 and the Hameds at the expense of Plessen and the Yusufs.”*

37. Please provide all documents supporting your contention in the 73rd paragraph of your amended complaint that *“The Hameds, Five-Hand KAC357 knowingly performed overt acts and took action to further or can-y out the unlawful purposes of the subject conspiracy, including, but not limited to, Waleed's issuing and cashing of check number 0376 and KAC357's possession of the premises covered by the Lease to the conspirators' benefit and Plessen's detriment.”*

38. Please provide all documents supporting your contention in the 74th paragraph of your amended complaint that *“As a direct and proximate result of the forego ing 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 loss of the fair market value of Plessen's improved property.”*

39. Please provide all documents supporting your contention in the 78th paragraph of your amended complaint that *“At all times relevant, the Hameds, Five-H, and/or KAC357 held the exclusive possession and/or control over documentation that would establish the funds and assets unlawfully taken from Plessen.”*

40. Please provide all documents supporting your contention in the 79th paragraph of your amended complaint that “*Absent such documentation, Plessen is without the means to determine, among other things, if funds or assets are owed to it and, if so, how much; and if its misappropriated funds and assets were used to purchase any real or personal property, in which case it has an ownership interest in such property.*”

41. Please provide all documents supporting your contention in the 90th paragraph of your amended complaint that “*In the 25-year history of Plessen, there has never been an annual meeting of the shareholders to elect directors of Plessen.*”

42. Please provide all documents supporting your contention in the 94th paragraph of your amended complaint that “*There is a state of shareholder dissension and deadlock as to Plessen such that its business can no longer be conducted to the advantage of the shareholders.*”

43. Please provide all documents supporting your contention in the 97th paragraph of your amended complaint that “*There exists a hopeless deadlock and irreconcilable animosity between the shareholders of Plessen.*”

44. Please provide all Scotiabank signature cards for the Plessen Enterprises, Inc. account, number 05800045012 that any Yusuf Family Member or Yusuf attorney submitted to the Virgin Islands Police Department personnel in connection with *People v Mufeed Hamed*, SX-15-CR-352 and *People v Waleed Hamed*, SX-15-CR-353.

45. Please provide all Scotiabank signature cards for the Plessen Enterprises, Inc. account, number 05800045012, excluding those identified in RFPDs No. 43.

46. Please provide all Information Gathering Form – Account for a Private Corporate Entity documents for the Plessen Enterprises, Inc. account, number 05800045012 that any Yusuf Family Member or Yusuf attorney submitted to the Virgin Islands Police Department personnel in connection with *People v Mufeed Hamed*, SX-15-CR-352 and *People v Waleed Hamed*, SX-15-CR-353.

47. Please provide all Information Gathering Form – Account for a Private Corporate Entity documents for the Plessen Enterprises, Inc. account, number 05800045012, excluding those identified in RFPDs No. 45.

48. Please provide all of the documents any Yusuf Family Member or Yusuf attorney submitted to the Virgin Islands Police Department personnel in connection with *People v Mufeed Hamed*, SX-15-CR-352 and *People v Waleed Hamed*, SX-15-CR-353, excluding those already provided in RFPDs Nos. 43 and 45.

49. Please provide all documents that any Yusuf Family Member or Yusuf attorney submitted to Scotiabank personnel from 2013 to the present in connection with the Plessen Enterprises, Inc. account, number 05800045012.

50. Please provide all documents that Scotiabank personnel gave to any Yusuf Family Member or Yusuf attorney from 2013 to the present in connection with the Plessen Enterprises, Inc. account, number 05800045012.

51. Please provide all documents in connection with *People v Mufeed Hamed*, SX-15-CR-352 and *People v Waleed Hamed*, SX-15-CR-353 that the Virgin Islands Police Department personnel gave to any Yusuf Family Member or Yusuf attorney from 2013 to the present.

52. Please provide all documents in connection with *People v Mufeed Hamed*, SX-15-CR-352 and *People v Waleed Hamed*, SX-15-CR-353 that the Virgin Islands Department of Justice personnel gave to any Yusuf Family Member or Yusuf attorney from 2013 to the present.

53. Please provide all documents notifying commercial entities that Waleed and/or Mufeed Hamed had been arrested in connection with *People v Mufeed Hamed*, SX-15-CR-352 and *People v Waleed Hamed*, SX-15-CR-353.

54. With regard to the Request To Admit that asks the following: “*ADMIT or DENY that a Yusuf Family Member or members has knowledge of when, by whom or under what circumstances the phrase “One Hamed and One Yusuf” to this card,*” please provide all documents that relate to when, by whom and under what circumstances the phrase “One Hamed and One Yusuf” was typed on the Signature Card that is Exhibit 2 thereto.

55. Please provide all documents or communications present at or related to, all meetings, conferences or communications between any member of the Yusuf Family and Scotiabank, the VI Daily News, the VIPD, any other VI Government official, regarding the alleged embezzlement from the Plessen Account.

Respectfully submitted,

HAMMECKARD, LLP



By:

Mark W. Eckard (VI Bar No. 1051)
5030 Anchor Way, Suite 13
Christiansted, VI 00820-4692
Telephone: (340) 773-6955
Facsimile: (855) 456-8784
Email: meckard@hammeckard.com

Dated: October 26, 2016

Counsel to Mufeed Hamed

CERTIFICATE OF SERVICE

I certify that a true and exact copy of the foregoing was served via electronic mail and U.S. Mail on this the 26th day of October, 2016 to: Gregory H. Hodges, Esquire at ghodges@dtflaw.com, Charlotte K. Perrell, Esquire, at cperrell@dtflaw.com, and Jeffrey B.C. Moorhead, Esquire, at jeffreymlaw@yahoo.com.


