

IN THE SUPERIOR COURT OF THE VIRGIN ISLANDS

DIVISION OF ST. CROIX

YUSUF YUSUF, FATHI YUSUF, FAWZIA YUSUF,)
NEJEH YUSUF, and ZAYED YUSUF, in their)
individual capacities and derivatively on behalf of)
PLESSEN ENTERPRISES, INC.,)

Plaintiffs,)

vs.)

MOHAMMAD HAMED, WALEED HAMED,)
WAHEED HAMED, MUFEED HAMED,)
HISHAM HAMED, FIVE-H HOLDINGS, INC., and)
KAC357, INC.,)

Defendants,)

-and-)

PLESSEN ENTERPRISES, INC.,)

Nominal Defendant.)

CASE NO. SX-13-CV-120

ACTION FOR DAMAGES,
DECLARATORY AND
INJUNCTIVE RELIEF

JURY TRIAL DEMANDED

**PLAINTIFF YUSUF YUSUF'S RULE 34
RESPONSE TO MUFEED HAMED'S FIRST
REQUEST FOR PRODUCTION OF DOCUMENTS**

Plaintiff, Yusuf Yusuf, through its attorneys, Dudley, Topper and Feuerzeig, LLP, hereby submits its Rule 34 Response to Defendant Mufeed Hamed's First Request for Production of Documents. This Response is being submitted pursuant to Fed. R. Civ. P. 34, as applied to this Court by Superior Court Rule 7.

DUDLEY, TOPPER

AND FEUERZEIG, LLP

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GENERAL OBJECTIONS

1. Yusuf Yusuf objects to each demand that uses the words "any" and "all" as being overbroad, unduly burdensome, immaterial, irrelevant, and not reasonably calculated to lead to the discovery of admissible evidence.

2. Yusuf Yusuf objects to each demand that uses terms like "any," "all," "relate to," "regarding," and "pertaining to," with respect to general categories of documents on the grounds that the use of such terms makes the demand vague and overbroad.

3. Yusuf Yusuf objects to each demand to the extent it seeks the production of documents or information protected by the attorney-client, work product or other privileges. Only non-privileged documents, or portions thereof, will be produced.

4. Yusuf Yusuf objects to each demand to the extent that it uses terms or phrases that are vague, ambiguous, or undefined. Yusuf Yusuf's response to each such demand is based upon its understanding of the demand.

5. Yusuf Yusuf objects to each demand that asks for documents that fall outside the scope of this litigation. To the extent the demands seek production of such documents, the demands impose an undue burden and expense. Further, such documents are irrelevant, immaterial, and not reasonably calculated to lead to the discovery of admissible evidence.

6. Yusuf Yusuf objects to each demand to the extent it requires the production of documents outside of its possession, custody or control.

7. Yusuf Yusuf is continuing its efforts to identify non-privileged documents that are responsive to plaintiff's demand for production. Consequently, the documents produced may be supplemented.

8. Yusuf Yusuf objects to the production of any documents prior to the entry of a confidentiality agreement and order.

9. Each document Yusuf Yusuf produces is subject to all of the above general objections and all specific objections listed below. Inadvertent production of privileged documents shall not be deemed a waiver.

10. Yusuf Yusuf incorporates by reference its general and specific objections made to these document requests in its August 13, 2013 Objections to Plaintiff's Demand for Production of Documents.

**RESPONSE TO REQUESTS
FOR PRODUCTION OF DOCUMENTS**

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.*"

RESPONSE:

See documents produced in *Hamed v. Yusuf* (SX-12-CV-370) bate-stamped FY 10263 – 10402, and specifically FY 010328 - 010342. If additional copies need to be provided please advise and they will be produced.

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. . ."

RESPONSE:

See 120-YY-00011 – 00028, 00218 – 00220, 00221 – 00224, 00235 – 00238, 00240 – 00272.

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."

RESPONSE:

See 120-YY-00004 – 000217, 00218 – 00224, 00240 – 00272.

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."

RESPONSE:

See 120-YY-00004 – 00024, 00029 – 00217, 00267 – 00272.

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. . .”.

RESPONSE:

See 120-YY-00025 – 00028.

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].”

RESPONSE:

See 120-YY-00025 – 00028.

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.”

RESPONSE:

See 120-YY-00025 – 00028.

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.”

RESPONSE:

See 120-YY-00004 – 00024, 00029 – 00217.

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."*

RESPONSE:

See 120-YY-00004 – 00024, 00029 – 00217.

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."*

RESPONSE:

To be supplemented.

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."*

RESPONSE:

See 120-YY-00025 – 00028, 00225 – 00234, 000273 – 00284.

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."*

RESPONSE:

See 120-YY-00004 – 00024, 00025 – 00217, 00225 – 00234, 000273 – 00284.

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."

RESPONSE:

To be supplemented.

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.*"

RESPONSE:

To be supplemented.

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.*"

RESPONSE:

See documents produced in *Hamed v. Yusuf* (SX-12-CV-370) bate-stamped FY 10263 – 10402, and specifically FY 010328 – 010342.

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

RESPONSE:

See Response to Request No. 15 above.

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.*"

RESPONSE:

To be supplemented.

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.*"

RESPONSE:

Defendants are already in possession of the documents responsive to this request.

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.*"

RESPONSE:

See Response to Request No. 18 above.

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.*"

RESPONSE:

To be supplemented.

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."*

RESPONSE:

See. 120-YY-00218 – 00224, 00235 – 00272.

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. . ."*

RESPONSE:

See Response to Request No. 21 above.

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."*

RESPONSE:

See 120-YY-00004 – 00024, 00029 – 00217.

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.*"

RESPONSE:

See 120-YY-00011 – 00024, 00218 – 00224, 00235 – 00238, 00240 – 00272.

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.*"

RESPONSE:

See 120-YY-00001 – 00238, 00240 – 00272.

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.*"

RESPONSE:

See Response to Request No. 25 above.

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.*"

RESPONSE:

See Response to Request No. 25 above.

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.

RESPONSE:

See Response to Request No. 25 above.

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."

RESPONSE:

See Response to Request No. 25 above.

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. . ."*

RESPONSE:

See 120-YY-00294 – 00375.

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. . ."*

RESPONSE:

See 120-YY-00294 – 00375.

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 . . ."*

RESPONSE:

See 120-YY-00001 – 00003. See also documents produced in *Hamed v. Yusuf* (SX-12-CV-370) bate-stamped FY 10263 – 10402, and specifically FY 010328 – 010342.

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."*

RESPONSE:

See 120-YY-00294 – 00375.

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."*

RESPONSE:

See 120-YY-00294 – 00481.

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."*

RESPONSE:

See 120-YY-00001 – 00003, 00294 – 00481.

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."*

RESPONSE:

See Response to Request No. 25 above.

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."*

RESPONSE:

See Response to Request No. 25 above.

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 foregoing civil conspiracy, Plessen has sustained damages including, but not limited to, damage to its reputation, loss of the funds unlawfully obtained from its Scotiabank account, and loss of the fair market value of Plessen's improved property."*

RESPONSE:

See 120-YY-00001 – 00003, 00294 – 00481. See documents produced in *Hamed v. Yusuf* (SX-12-CV-370) bate-stamped FY 10263 – 10402, and specifically FY 010328 - 010342.

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."*

RESPONSE:

See Response to Request No. 25 above.

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."

RESPONSE:

See Response to Request No. 25 above.

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.*"

RESPONSE:

See 120-YY-00004 – 00024, 00029 – 00217.

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.*"

RESPONSE:

See 120-YY-00235.

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.*"

RESPONSE:

See 120-YY-00235.

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.

RESPONSE:

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See 120-YY-00285 – 00293, specifically 00290.

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

RESPONSE:

See 120-YY-00225 – 00234, 000273 – 00284.

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.

RESPONSE:

See Response to Request No. 45 above.

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.

RESPONSE:

See Response to Request No. 45 above.

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.

RESPONSE:

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Yusuf Yusuf, et al. (v. Mohammad Hamed, et al.)
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See Response to Request No. 44 above.

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.

RESPONSE:

None.

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.

RESPONSE:

See Response to Request No. 44 and 45 above. See also Plaintiff Yusuf Yusuf's Responses to Mufeed Hamed's First Interrogatories Nos. 3,4,5 and 7.

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.

RESPONSE:

None.

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.

RESPONSE:

See Response to Request No. 44 above.

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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.

RESPONSE:

Upon information and belief, there are no documents responsive to this request.

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.

RESPONSE:

See Response to Request No. 44 and 45 above.

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.

RESPONSE:

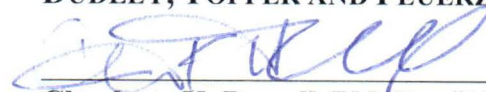
See Response to Request No. 44 and 45 above. There were no meetings between any member of the Yusuf Family and the VI Daily News.

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DUDLEY, TOPPER AND FEUERZEIG, LLP

DATED: December 19, 2016

By:



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Attorneys for Plaintiffs

CERTIFICATE OF SERVICE

It is hereby certified that on this 19th day of December, 2016, I caused a true and exact copy of the foregoing **PLAINTIFF YUSUF YUSUF'S RULE 34 RESPONSE TO MUFEED HAMED'S FIRST REQUEST FOR PRODUCTION OF DOCUMENTS** to be served upon the following via e-mail:

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