

**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,)	
MUFEED HAMED, HISHAM HAMED,)	
and FIVE-H HOLDINGS, INC.,)	
)	
Defendants,)	
)	
and)	
)	
PLESSEN ENTERPRISES, INC.,)	
)	
<u>Nominal Defendant.</u>)	

**HAMED DEFENDANTS' ANSWER TO
PLAINTIFF'S FIRST AMENDED COMPLAINT**

Waleed Hamed, Waheed Hamed, Mufeed Hamed, Hisham Hamed and Five-H Holdings, Inc. (collectively, the "Hamed Defendants") file this Answer (this "Answer") to the First Amended Complaint ("FAC") deemed filed by the above-captioned plaintiff ("Plaintiff") effective December 7, 2016¹ and, in response to Plaintiff's First Amended Complaint, collectively state as follows:

I. BACKGROUND ALLEGATIONS

1. Admitted that Waleed Hamed is a director of Plessen. Denied that Mohammad Hamed is a director. The remaining allegations set forth in Paragraph 1 of the FAC are denied.
2. Denied.

¹ See Order of Honorable Harold W.L. Willocks dated December 4 and attested December 7, 2016.

3. The Order referred to in Paragraph 3 of the Complaint is a document which, in and of itself provides the best evidence of its contents. To the extent a response is required, the Hamed Defendants deny Plaintiff's characterization of that document.

II. ALLEGATIONS RE JURISDICTION, VENUE & DEMAND FOR JURY TRIAL

4. Admitted.

5. Admitted.

6. Paragraph 6 of the FAC is a demand for jury trial to which no response is required.

III. THE PARTIES

7. Admitted.

8. Admitted.

9. Admitted.

10. Admitted.

11. Admitted.

IV. FACTS ALLEGED AS COMMON TO ALL COUNTS

12. Admitted.

13. Admitted.

14. Denied.

15. Denied.

16. Denied.

17. Denied.

18. Denied.

19. Plaintiff's allegation concerning the term "beneficial owner" constitutes a legal conclusion to which no response is required.

20. Admitted that Five-H Holdings, Inc. is a Virgin Islands corporation that conducts business in the U.S. Virgin Islands through its duly authorized corporate agents.

21. Admitted that KAC357, Inc. is a Virgin Islands corporation that conducts business in the U.S. Virgin Islands through its duly authorized corporate agents.

22. Denied.

23. Denied.

24. The Hamed Defendants lack sufficient knowledge or information to form a belief as to the truth or falsity of the allegations set forth in Paragraph 24 of the Complaint.

25. The Hamed Defendants lack sufficient knowledge or information to form a belief as to the truth or falsity of the allegations set forth in Paragraph 25 of the Complaint.

26. The Hamed Defendants lack sufficient knowledge or information to form a belief as to the truth or falsity of the allegations set forth in Paragraph 26 of the Complaint.

27. The Hamed Defendants lack sufficient knowledge or information to form a belief as to the truth or falsity of the allegations set forth in Paragraph 27 of the Complaint

28. Admitted that Waleed endorsed check number 0376 "for deposit only" and deposited the \$460,000, but deny the remainder of the allegations set forth in Paragraph 28 of the FAC.

29. Admitted that \$230,000 was deposited into the Registry of the Court on or about April 18, 2013. Admitted that that Plaintiff commenced this Action. Deny the remaining allegations of Paragraph 29 of the FAC.

30. Admitted that on or about April 1, 2015, an additional \$230,000 was deposited into the Registry of this Court and that a notice regarding the deposit was served on Plaintiff, through counsel. By way of further response, the Hamed Defendants note that all parties to this Action

have now stipulated and agreed in writing that the total amount on deposit with the Court in connection with this Action, \$460,000, shall be released to Plessen and the parties have further agreed that the \$460,000 shall thereafter be divided between the parties for distribution.

31. The allegations set forth in Paragraph 31 of the FAC constitute legal conclusions to which no response is required.

32. The allegations set forth in Paragraph 32 of the FAC constitute legal conclusions to which no response is required.

33. Denied.

34. Admitted that on or about September 12, 2012, Mohammad Hamed commenced a civil proceeding against Fathi Yusuf captioned Hamed v. Yusuf, Civ. No. SX-CV-370 (the "370 Case") seeking damages, injunctive relief, and declaratory relief in connection with Mohammad Hamed's and Fathi Yusuf's many years-long 50/50 partnership that owned and operated the Plaza Extra supermarkets (the "Plaza Extra Partnership"). Denied that Fathi Yusuf "*never disputed that Mohammad was entitled to fifty percent (50%) of the net profits from the Plaza Extra stores.*" Admitted that Fathi Yusuf – for a period of years – denied the existence of the Plaza Extra Partnership thereby attempting to steal Mohammad Hamed's rightful half (50%) of the Plaza Extra Partnership. Admitted that Fathi Yusuf eventually, after denying the existence of the Plaza Extra Partnership for years, admitted the existence of the 50/50 Plaza Extra Partnership. Admitted that Mohammad Hamed requested and obtained an extension of time until April 30, 2014.

35. Admitted that on Monday, April 28, 2014 at approximately 4:00 p.m., a "Notice of Special Meeting of Board of Directors of Plessen" (the "Notice") was hand-delivered to Fathi Yusuf announcing a meeting of directors scheduled for Wednesday, April 30, 2014 at 10 a.m. It is denied that the Notice was deficient.

36. Admitted that on April 29, 2014, Fathi Yusuf sent a communication in response to the Notice, a copy of which is attached to the Complaint as Exhibit "G."

37. Admitted that Mohammad Hamed and Waleed Hamed refused to recognize Maher Yusuf as a director at the April 30 meeting and adopted certain resolutions at the meeting. Deny Plaintiff's characterizations of the resolutions adopted at the April 30 meeting.

38. Admitted that that the property was not then covered by a lease and that a meeting was called on two-days' notice – as provided for in Plessen's corporate papers – to provide for a lease. The remainder of the allegations set forth in Paragraph 38 of the FAC are denied.

39. Admitted that the April 30 meeting was the second board meeting in Plessen's history. The remainder of the allegations set forth in Paragraph 39 of the FAC are denied.

40. Consistent with the findings of two separate Courts, the Hamed Defendants deny that the April 30 meeting was a "sham." Denied that the outcome of any corporate meeting is foregone before a vote is taken. Admitted that the resolutions were passed by a majority of Plessen's board of directors. Admitted that Fathi Yusuf disagreed and was outvoted. Consistent with the findings of two separate Courts, the Hamed Defendants deny that the lease was or is unfair.

41. The allegations set forth in Paragraph 41 of the FAC are hopelessly compound, so as to prohibit a concise response. Admitted that the distribution of \$460,000 was ratified. Denied as to the balance of the averments to the extent they can be understood.

42. The allegations set forth in Paragraph 42 of the FAC are hopelessly compound, so as to prohibit a concise response. Admitted that Fathi Yusuf filed and lost motions in two separate courts whereby Fathi Yusuf attempted to nullify the April 30 meeting and the lease. Admitted that both courts found the Lease to be fair and denied Fathi Yusuf's motions. The remainder of the

allegations set forth in Paragraph 42 of the Complaint are denied as being either conclusory or incomprehensible.

43. The allegations set forth in Paragraph 43 of the FAC refer to a decision of the Court which, in and of itself constitutes the best evidence of its contents. The remaining allegations set forth in Paragraph 43 of the FAC are denied.

44. The allegations set forth in Paragraph 44 of the FAC refer to a decision of the Court which, in and of itself constitutes the best evidence of its contents. The remaining allegations set forth in Paragraph 44 of the FAC are denied.

45. The allegations set forth in Paragraph 45 of the FAC are hopelessly compound, so as to prohibit a concise response. Admitted that the Plaza Extra Partnership is being wound up in the 370 Case. The remainder of the allegations set forth in Paragraph 45 of the Complaint are denied as being either conclusory or incomprehensible.

ALLEGATIONS REGARDING ALLEGED FUTILITY OF DEMAND

46. Denied.

47. Denied.

48. Denied.

49. Denied.

V. CAUSES OF ACTION

50. Each of the foregoing responses is incorporated as though fully set forth herein.

51. Denied.

52. Denied.

53. Denied.

54. Each of the foregoing responses is incorporated as though fully set forth herein.

55. The allegations set forth in Paragraph 55 of the FAC constitute conclusions of law to which no response is required.

56. The allegations set forth in Paragraph 56 of the FAC constitute conclusions of law to which no response is required.

57. The allegations set forth in Paragraph 57 of the FAC constitute conclusions of law to which no response is required.

58. Denied.

59. Denied.

60. Denied.

61. Denied.

62. Denied.

63. Each of the foregoing responses is incorporated as though fully set forth herein.

64. Denied.

65. Denied.

66. Denied.

67. Denied.

68. Each of the foregoing responses is incorporated as though fully set forth herein.

69. Denied.

70. Denied.

71. Each of the foregoing responses is incorporated as though fully set forth herein.

72. Denied.

73. Denied.

74. Denied.

75. Each of the foregoing responses is incorporated as though fully set forth herein.

76. Denied.

77. The allegations set forth in Paragraph 77 of the FAC constitute conclusions of law to which no response is required.

78. Denied.

79. Denied.

80. Denied.

81. Denied.

82. Each of the foregoing responses is incorporated as though fully set forth herein.

83. Denied.

84. Denied.

85. Denied.

86. Denied.

87. Each of the foregoing responses is incorporated as though fully set forth herein.

88. The allegations set forth in Paragraph 88 of the FAC constitute legal conclusions to which no response is required.

89. The allegations set forth in Paragraph 89 of the FAC constitute legal conclusions to which no response is required.

90. Denied.

91. Denied.

92. Denied.

93. Each of the foregoing responses is incorporated as though fully set forth herein.

94. Denied.

95. Denied.
96. Each of the foregoing responses is incorporated as though fully set forth herein.
97. Denied.
98. Denied.
99. Denied.

AFFIRMATIVE DEFENSES

1. Plaintiff failed to join a party under Fed.R.Civ.P. 19, or file a proper Third Party Action under Fed.R.Civ.P. 14, each as made applicable hereto by Super. Ct. R. 7.
2. Plaintiff fails to state a claim upon which relief can be granted.
3. Plaintiff is barred from relief and/or recovery under the equitable doctrine of unclean hands.
4. Plaintiff is barred from relief and/or recovery under the equitable doctrine of laches.
5. Plaintiff is not a real party in interest.
6. Plaintiff is barred from recovery and/or relief under the equitable doctrine of estoppel.
7. Plaintiff is barred from recovery and/or relief under the equitable doctrine of waiver.
8. Defendants assert the affirmative defense of indemnity.

Respectfully submitted,

HAMM ECKARD, LLP

Dated: December 28, 2016

By: 

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Counsel for Waleed Hamed, Waheed Hamed,
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Holdings, Inc.

CERTIFICATE OF SERVICE

I hereby certify that on December 28, 2016, I served a copy of the foregoing by email and to be mailed by regular United States Mail, postage pre-paid, as agreed by the parties, on:

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