

WHEREFORE, for the reasons set forth herein, in the Memorandum and in any reply filed in further support hereof and/or any arguments advanced at any oral argument in connection with this motion or otherwise, the Hamed Defendants respectfully request that the Court enter an order granting judgment in favor of the Hamed Defendants and against Plaintiff on Counts IV, VI and VII of the First Amended Complaint and grant to the Hamed Defendants such other and further relief as is just and proper.

Respectfully submitted,

HAMMECKARD, LLP

Dated: January 10, 2017

By: 

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Counsel to for Waleed Hamed, Waheed Hamed,
Mufeed Hamed, Hisham Hamed and Five-H
Holdings, Inc.

CERTIFICATE OF SERVICE

I hereby certify that on January 10, 2017, I served a copy of the foregoing by email, as agreed by the parties, on:

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**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.,))	
)	
Nominal Defendant.))	

**HAMED DEFENDANTS' MEMORANDUM IN SUPPORT OF THEIR
SECOND MOTION FOR PARTIAL SUMMARY JUDGMENT
(AS TO COUNTS IV, VI AND VII OF PLAINTIFF'S COMPLAINT)**

Waleed Hamed, Waheed Hamed, Mufeed Hamed, Hisham Hamed and Five-H Holdings, Inc. (collectively, the "Hamed Defendants") file this Memorandum of Law in Support of their Second Motion for Partial Summary Judgment (As to Counts IV, VI and VII of Plaintiff's First Amended Complaint) (this "Second PSJ Motion") and, in support of the Motion, state as follows:

I. INTRODUCTION

On December 7, 2016, the Court allowed the above-captioned plaintiff, Yusuf Yusuf ("Plaintiff") to amend his complaint after Defendants withdrew their objections to amendment. This Second PSJ Motion revises Defendants' previous motion for partial summary judgment as necessary to conform the Hamed Defendants' request for partial summary judgment to the First Amended Complaint.

This is a (purported) derivative action alleging ten counts:

- Count I** – Conversion
- Count II** - Breach Of Fiduciary Duties
- Count III** - Waste Of Corporate Assets/Usurpation Of Corporate Opportunity
- Count IV** - **Unjust Enrichment**
- Count V** - Civil Conspiracy
- Count VI** – **Accounting**
- Count VII** – **Injunction**
- Count VIII** - Order Compelling Shareholders Meeting To Elect Directors
- Count IX**- Dissolution Of Plessen
- Count X** - Appointment Of A Receiver For Plessen

This Second PSJ Motion seeks summary judgment as to Count IV (“Unjust Enrichment”), Count VI (“Accounting”) and Count VII (“Injunction”). As set forth in Plaintiff’s prayer for relief, Plaintiff’s corresponding requests for relief are:

- F. Ordering the disgorgement to Plessen of all funds and assets that were unlawfully misappropriated from its possession;
- G. Enjoining, preliminarily and permanently, the Defendants’ benefit, use or enjoyment of Plessen’s misappropriated funds; [and]
- H. Awarding a full accounting of all monies, funds and assets that the Defendants received from Plessen

See First Amended Complaint at pp. 19-20.

II. UNCONTESTED FACTS

The Hamed Defendants respectfully submit that there is no need for a separate statement of uncontested facts or supporting affidavits as the only fact relevant to this motion is a matter of record on the Court’s docket: Defendants placed the entire amount allegedly removed from Plessen, \$460,000, into the treasury of the Court. The parties jointly moved to have those funds disbursed back to Plessen. The Court has entered that stipulated order.

III. LEGAL ARGUMENT

Summary judgment must be granted “where there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law.” Fed.R.Civ.P. 56(a). “Because unjust enrichment is an equitable remedy, it – like all equitable remedies – is inappropriate where a legal remedy is available.” Cacciamani & Rover Corp. v. Banco Popular De Puerto Rico, 2014 WL 4262098, at *2 (V.I. Aug. 29, 2014) (citing Mitsubishi Int'l Com. v. Cardinal Textile Sales, 14 F.3d 1507, 1518 (11th Cir.1994) (“It is axiomatic that equitable relief is only available where there is no adequate remedy at law.”) and 1 DAN DOBBS, REMEDIES 750-52, 807- 11 (2d ed. 1993)).

The Complaint alleges that on March 27, 2013, Wally Hamed improperly removed \$460,000 from Plessen’s bank account, allegedly allowing legal and equitable relief. As is shown by the Court’s docket, the Hamed Defendants placed the entire amount allegedly removed, \$460,000, into the registry of the Court. Thus, 100% of whatever damages Plaintiff could ever seek (to the extent such damages may be proven) are available at law, and in fact after the parties jointly moved to have all such monies released from the Court’s registry back to Plessen – the Court has now ordered that to occur.

Thus, Defendants respectfully request partial summary judgment as to the equitable relief sought in Counts IV, VI and VII of the First Amended Complaint because there is a complete and adequate remedy at law for whatever damages Plaintiff could ever seek (to the extent such damages may be proven) – the full amount of which were on deposit with the Court – and all of which the

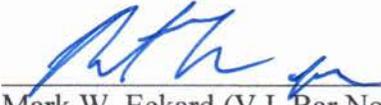
parties have now jointly requested be released from the Court's registry back to Plessen. Summary judgment must enter as to Counts IV, VI and VII of the First Amended Complaint.

WHEREFORE, for the reasons set forth herein and in the Motion, the Hamed Defendants respectfully request that the Court enter an order granting judgment in favor of the Hamed Defendants and against Plaintiff on Counts IV, VI and VII of the First Amended Complaint and grant to the Hamed Defendants such other and further relief as is just and proper.

Respectfully submitted,

HAMMECKARD, LLP

Dated: January 10, 2017

By: 

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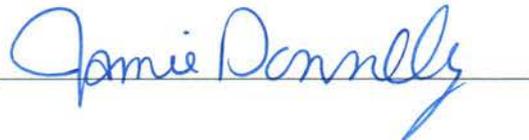
Counsel for Waleed Hamed, Waheed Hamed,
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YUSUF YUSUF, derivatively on behalf of)		
Plessen Enterprises, Inc.,)		Case No. SX-13-CV-120
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Plaintiff,)		Civil Action for Damages
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v.)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

ORDER

This matter comes before the Court on Defendants’ Second Motion and Memorandum for Partial Summary Judgment (As To Counts IV, VI and VII of Plaintiff’s Complaint)(the “Motion”). The Court being advised in the premises and finding good and just cause for the relief requested in the Motion, it is hereby

ORDERED that Defendants Second Motion and Memorandum for Partial Summary Judgment (As To Counts IV, VI and VII of Plaintiff’s Complaint) is **GRANTED**.

Dated: _____

HAROLD W.L.WILLOCKS
JUDGE OF THE SUPERIOR COURT

ATTEST:

Estrella George

Acting Clerk of the Court

By: _____
Court Clerk Supervisor

Dated: _____