

IN THE SUPERIOR COURT OF THE VIRGIN ISLANDS

DIVISION OF ST. CROIX

<b>WALEED HAMED and KAC357, INC.,</b>	)	
	)	<b>CIVIL NO. SX-16-CV-429</b>
<i>Plaintiffs,</i>	)	
<b>v.</b>	)	
	)	<b>ACTION FOR DAMAGES</b>
<b>BANK OF NOVA SCOTIA,</b>	)	
<b>d/b/a SCOTIABANK, FATHI YUSUF,</b>	)	
<b>MAHER YUSUF, YUSUF YUSUF,</b>	)	
<b>and UNITED CORPORATION,</b>	)	
	)	
<i>Defendants.</i>	)	<b>JURY TRIAL DEMANDED</b>
_____	)	

**VERIFIED FIRST AMENDED COMPLAINT**

**Come now** the Plaintiffs, Waleed Hamed and KAC357, INC., and hereby file this First Amended Complaint (“FAC”) against the Defendants, alleging Malicious Prosecution and civil CICO violations as to the Yusuf and United Defendants and negligence as to BNS -- as follows:

1. This Court has jurisdiction over this matter pursuant to 4 V.I.C. § 76.
2. Plaintiff Waleed Hamed is an adult resident of St. Croix, USVI.
3. Plaintiff KAC357, INC. is a closely held USVI corporation owned by members of the Hamed family that owns grocery stores, two of which are located where stores previously owned by the Hamed/Yusuf “Plaza Extra Supermarkets Partnership” (“Partnership”) were located – known both then and now as “Plaza Extra West” and “Plaza Extra Tutu Park.”
4. Defendant Bank of Nova Scotia d/b/a Scotiabank (“BNS”) is a foreign corporation chartered in Canada that operates bank branch offices on St. Croix, United States Virgin Islands.

5. Defendant United Corporation is a closely held USVI corporation owned by members of the Yusuf family, which owns grocery stores, one of which is located where the Plaza Extra East store owned by the Hamed/Yusuf *Plaza Extra Supermarkets Partnership* (the “Partnership”) was located – known both then and now as “Plaza Extra East.” United Corporation is, therefore, a direct competitor with regard to KAC357, INC. because it obtains inventory from many of the same off-island suppliers and has a competing business on St. Croix. Further, the Superior Court determined that United and the Yusufs tried to steal the Hamed half of the assets of the Partnership from the Hameds in 2012.
6. Defendant Maher Yusuf is an adult resident of St. Croix. He is and at all times relevant to this Complaint has been the President, a director and a shareholder of United Corporation. The Superior Court determined Maher Yusuf lied under oath in live testimony before the Court about what he had done with \$2.7 million of the funds he took out of the joint Partnership account.
7. Defendant Yusuf Yusuf is an adult resident of St. Croix, USVI. Now and at all times relevant to this Complaint he has been a director and shareholder of United Corporation.
8. Defendant Fathi Yusuf is an adult resident of St. Croix, USVI. Now and at all times relevant to this Complaint he has been a director and shareholder of United Corporation. The Superior Court determined that he tried to steal the Hamed half of the Partnership assets from Hamed in 2012

9. The acts referenced herein occurred in the United States Virgin Islands, primarily on the island of St. Croix, so venue is proper in this division.
10. Plessen Enterprises, Inc. ("Plessen") is a USVI Corporation, the stock of which is owned 50% by members of the Yusuf family, including the Yusuf Defendants, and 50% by members of the Hamed family, including the Plaintiff Hamed.
11. In addition to being a shareholder, Plaintiff Hamed is now the Vice-President of Plessen, and has been at all times relevant to this case.
12. In 2013 and at all times relevant to the claims herein, Plaintiff Hamed's father, Mohammad Hamed, who passed away in 2016, was a shareholder, director and the President of Plessen.
13. In addition to being a shareholder, Fathi Yusuf is now and always has been the Secretary-Treasurer of Plessen.
14. No Yusuf is now or ever has been the President or Vice-President of Plessen.
15. The original three directors of Plessen, as they are listed in the formative corporate documents, were: Fathi Yusuf, Mohammad Hamed and Waleed Hamed.
16. Fathi Yusuf has correctly asserted under oath in sworn, court-filed documents that until April of 2014 there had never been a meeting of the shareholders or directors of Plessen after the original formation meeting.
17. Thus, there was no such meeting altering the maximum number of directors (3) or the makeup of that Board.

18. There are no meeting minutes from any Plessen Board meeting altering the maximum number of directors (3) or the makeup of that Board.
19. There has never been a written consent of the directors of Plessen altering the maximum number of directors, which is three.
20. There has never been a written consent of the directors of Plessen altering the makeup of the Board of Directors.
21. Plessen opened a bank account with BNS in 1997.
22. At that time, in 1997, the only officers and directors of Plessen were Fathi Yusuf (Secretary-Treasurer), Mohammad Hamed (President) and Waleed Hamed (Vice-President).
23. In the contractual documents establishing the banking relationship between Plessen and BNS in 1997, there was no waiver of the right to a jury trial with regard to dealings between Plessen and BNS.
24. In the contractual documents establishing the banking relationship in 1997, there was no waiver of any right of Plessen to make claims against BNS for tort or negligence.
25. In the contractual documents establishing the banking relationship in 1997, there was no provision that BNS could unilaterally alter the contractual relationship between the parties by simply typing new contractual provisions onto the face of routine banking forms it supplied for use by customers such as Plessen.

26. In the contractual documents establishing the banking relationship in 1997, there was no provision that “signors” on the account could, without Board approval or approval of the President of Plessen, agree to changes in the contractual relationship between the parties.
27. At the time the banking relationship was established in 1997, BNS required the submission of the Plessen corporate Articles and Bylaws which listed the officers of the corporation – and required updated copies thereafter. Plessen supplied those to BNS originally and as requested later.
28. In the contractual documents establishing the banking relationship in 1997, there was no provision that BNS could unilaterally alter the contractual relationship between the parties by documents not signed by both parties, without consideration and without notice that the contractual relationship was being modified.
29. At no time after the initial contractual documents establishing the banking relationship, did Plessen ever negotiate for any contractual modification of the right to a jury trial or waiver of any claims for tort or negligence as to dealings between Plessen and BNS which modification was: (1) identified as a modification of the contractual relationship, (2) signed by both Plessen and BNS and (3) altered the parties’ positions for consideration.
30. At no time after the initial contractual documents establishing the banking relationship, did Plessen ever enter into any contractual modification of the right

to a jury trial or waiver of any claims for tort or negligence as to dealings between Plessen and BNS which modification was: (1) identified as a modification of the contractual relationship, (2) was signed by both Plessen and BNS and (3) altered the parties' positions for consideration.

31. At the time of the initial contractual documents establishing the banking relationship in 1997, there was a signature card created on April 23, 1997 (the "1997 Signature Card").

32. Three signors appeared on that 1997 Signature Card – one of whom was Waleed Hamed.

33. To transact on the Plessen account, the 1997 Signature Card required only one authorized signor's signature on a check, which could be any of the three authorized signatories. See **Exhibit 1**.

34. Thus, Waleed Hamed was identified as an authorized signor on the 1997 Signature Card – and could negotiate a check on the account with his signature alone.

35. Prior to 2009, BNS installed a retail signature card computer system that allowed its employees to view authorized account signatures on a computer screen prior to allowing a withdrawal or check cashing.

36. At some time prior to 2009, the 1997 Signature Card described above was placed into BNS' retail signature computer system as the true and correct reflection of the Plessen Board approved account signor status.

37. On August 17, 2009, that signature card entry in the computer system was accessed and reviewed, and updated in the computer system to show that review.
38. As of August 17, 2009, that computer based signature information did not provide that “two signatures where one of the signatures had to be from the Hamed family and one had to be from the Yusuf family.”
39. At no time prior to March 27, 2013, did the BNS computer based retail signature information system contain any document or notation reflecting a requirement that to withdraw from the account there had to be “two signatures where one of the signatures had to be from the Hamed family and one had to be from the Yusuf family.”
40. At some time after August 17, 2009, three forgeries were created by members of the Yusuf family.
41. The three forgeries were as follows: 1) an obviously altered, undated paper signature card bearing the titles and signatures **of United’s officers, not Plessen’s** -- with a phrase requiring two family signatures clearly typed in at another time, with another font, 2) an undated information gathering form requiring two family signatures **without a date** on the final page that bears information related to United, not Plessen, and 3) the **ONLY dated document related to the signature requirements**, an *allegedly* dated information gathering form requiring two family signatures **with a date** on the final page

which the Yusuf have stated in Superior Court filings was in the bank's Plessen records as well. (These three items are referred to herein as the "Forged Plessen Banking Documents.")

42. The creation of these forgeries was part of the Yusuf/United Corporation attempt to steal the Hamed half of the Plaza Extra Supermarket Partnership assets, then valued in excess of \$50 million, and to run the Hameds out of competition in the grocery business.
43. The creation or alteration of the first two of these forgeries somehow and their insertion into BNS' Plessen business file was done on specific dates known to the Yusufs but intentionally hidden from Plaintiff, and with specific intent and malice -- for the specific purpose of maliciously prosecuting Plaintiff Hamed and causing his criminal arrest.
44. The creation of these and other forgeries by the Hameds and United were criminal acts in the USVI pursuant to 14 V.I.C. §§ 791 et seq.
45. The transmission of these forged documents for criminal purposes, and to cause their eventual use in civil and criminal proceedings to obtain something of value, were criminal acts in the USVI pursuant to 14 V.I.C. §§ 793-795.
46. The submission known forged documents from the Yusufs to the USVI police was a criminal act in the USVI pursuant to 14 V.I.C. §§ 1503 and 1504.



47. The perjurious statements about the validity of forged documents to a police officer by the Yusufs and their prior counsel was a crime in the USVI pursuant to 14 V.I.C. §§ 1541 et. seq.
48. Yusuf and United Defendants' acts also violated 14 V.I.C. §§ 551 and 552, as they were a conspiracy to commit the above overt acts between Fathi Yusuf, Mike Yusuf, Yusuf Yusuf and United Corporation.
49. At no time prior to March 27, 2013, did the computer-based retail signature card, or any other computer representation of the account signature card in the BNS computer system ever require "two signatures where one of the signatures had to be from the Hamed family and one had to be from the Yusuf family" with regard to the Plessen accounts.
50. On March 27, 2013, only forged or altered documents contained the requirement that required "two signatures where one of the signatures had to be from the Hamed family and one had to be from the Yusuf family" with regard to the Plessen accounts.
51. On March 27, 2013, Plaintiff Hamed had recently discovered, in another civil case before the Superior Court, that Mike and Fathi Yusuf had unilaterally moved \$2.7 million of Partnership funds a jointly accessible account.
52. To protect the Plessen funds from such a unilateral removal, on March 27, 2013, Waleed Hamed, acting on the instructions of the President and in his undisputed

capacity as the Vice-President of Plessen, and Mufeed Hamed signed a check removing \$460,000 from the Plessen account.

53. BNS, acting on the retail signature information in its computer at that time, cleared the \$460,000 check and made payment.

54. There was no signature of a Yusuf family member on that check.

55. The check was cashed because the signature card information in the BNS retail signature card computer system on that day showed three signatures authorized and no requirement for signatures of two different families (the "Valid Computer-based Signature Card as of March 27, 2013").

56. BNS does not dispute the fact that the check was honored and the funds paid without the signature of any Yusuf.

57. BNS did not dishonor or otherwise impede the negotiation of the check because of its reference to the information on the Valid Computer-based Signature card as of March 27, 2013.

58. BNS also similarly cashed a check to Plessen's lawyer, Jeffrey Moorhead without any Yusuf family member's signature.

59. This withdrawal of March 27, 2013 and the check to Jeffrey Moorhead, were done at a time when both the retail signature information and the updated Plessen corporate articles and bylaws in BNS' possession showed three officers and directors of Plessen, as well as the Hameds as Plessen's President and Vice-President.

60. On April 16, 2013, the President of United Corporation, Mike Yusuf, filed a civil lawsuit alleging that the withdrawal of Plessen funds by Waleed Hamed was wrongful.
61. Three days later, on April 19, 2013, Waleed Hamed deposited the Yusuf half of the funds with the Court. He also provided Yusuf with a *non-conditional stipulation* allowing Yusuf to withdraw Yusuf's half of those funds as a dividend distribution. (In addition, he thereafter placed 100% of those funds in this Court's account where the funds remained until early 2017. In January 2017, by a stipulated order, all such funds were returned to Plessen, and then delivered to Yusuf's accountant as the parties agreed to their distribution back to the Hameds and Yusufs as dividend distributions.)
62. Six days later, on April 25, 2013 the Superior Court (Brady. J.) noted, as a matter of public record that there *had* been an "August 2012 diversion of more than \$2.7 million by Mahar Yusuf, president of United, to accounts inaccessible to Plaintiff..."
63. In that decision, Judge Brady also noted: "On the first hearing day, Mahar Yusuf, President of United Corporation testified **under oath** that he used the \$2,784,706.25 withdrawn from the Plaza Extra operating account to buy three properties on St. Croix in the name of United. On the second hearing day, Mahar Yusuf contradicted his prior testimony and admitted that those withdrawn funds had actually been used to invest in businesses not owned by United."

64. On Monday, May 6, 2013, Hamed answered the April 16<sup>th</sup> Yusuf complaint, admitting that the check had been issued and cashed but denying that: (1) Mike Yusuf was a director of Plessen, (2) the Yusufs controlled the Plessen Board and (3) there was anything improper about the cashing of the check.
65. Yusuf Yusuf has admitted in filings in the Superior Court that he met with one or more BNS employees between March 27, 2013 and May 17, 2013 to discuss the March 27, 2013 withdrawal.
66. On information and belief, Mike Yusuf also met with one or more bank employees between March 27, 2013 and May 17, 2013 to discuss the March 27, 2013 withdrawal.
67. At the request the Yusufs, at that time BNS reviewed the signature cards in the retail signature computer datafile, as follows:
- a. Five days after the Answer was filed, and after meeting with one or more of the Yusufs -- on Friday May 10, 2013 at 11:47 a.m., internal records of BNS demonstrate that a bank employee went into the bank's computer system to review what was the valid signature card as of that date and printed out a record of having done so.
  - b. The file designator shown on that printout shows that the BNS system was used to review its "Retail Signature Card" datafile.

- c. That the Valid Computer-based Signature Card as of March 27, 2013 reflected three signatures -- and no requirement of a signature from each of the two families.
- d. The program/viewer shown on that printout as having been used to view that datafile is "BNS IAP."
- e. The printer used to do the printout is shown as BNS's "hp deskjet 6122."
- f. Both the computer time on-screen when the printout was done, and the printout date in the lower left corner of the document are the same: 11:47 a.m.
- g. A paper copy of the screen print of the Valid Computer-based Signature Card as of March 27, 2013, was placed into the Plessen paper business file to reflect that such a search had been done on May 10<sup>th</sup>, 2016, **and that it reflected the valid signature card as of that date.**

68. A copy of that printed May 10, 2013 document was supplied by BNS to the Yusufs at that time – and the Yusufs were informed that it showed that at the time of the withdrawal the signature card in the retail signature system allowed Waleed Hamed to withdraw funds on a single signature.

69. A copy of that printed May 10, 2013 document was not supplied to the Hameds at that time.

70. Instead, a copy of that printed May 10, 2013 document was *first supplied* to the Hameds through their counsel by BNS', Senior Paralegal and Legal Officer, of the Legal and Compliance Department on February 2, 2016 – which copy shows that the printout from 2013 was in a BNS paper file with a two-prong, top binder. See **Exhibit 2**.
71. Seven days after the then existing and valid BNS signature card was checked by the BNS employee, printed out and given to Yusuf Yusuf – showing three signors and no requirement of two family signatures -- on May 17, 2013 -- United's President, Mike Yusuf, and his prior counsel met with and filed a criminal report with the VI Police Department alleging embezzlement of the \$460,000 by Plaintiff Waleed Hamed.
- 72. The alleged embezzlement solely concerned that March 27, 2013 Plessen BNS check in the amount of \$460,000, cleared by BNS.**
73. The bases of the alleged embezzlement were (1) Mike Yusuf was a director of Plessen and (2) thus, the Hameds did not have a majority of the Plessen Board – and that, therefore, (3) the Hameds lacked authority to withdraw the \$460,000 because the evenly divided (2-2) Plessen Board had not agreed to the withdrawal.
74. On May 17, 2013, Mike Yusuf lied to the USVI police when he represented that he was making the criminal report as a “director of Plessen.”

75. On that same date, Mike Yusuf lied to the USVI police when he reported that the Hameds did not have a majority of the Plessen Board.
76. On that same date, the police were also provided with a document from Consumer Affairs that falsely purported to reflect that Mike Yusuf was a director of Plessen. However, the information had been provided to Consumer Affairs by the Yusufs, and had been entered into the Consume Affairs USVI online website by the Yusufs – through a website for which only the Yusufs, not the Hameds had the password. Thus, the information supplied by the Yusufs and printed out on that form was also fraudulent.
77. Based solely on the false communications with the Yusufs and their prior counsel and these described, false documents, Sargent Mark A. Corneiro, began to investigate the Yusuf allegations. See **Exhibit 3** (Criminal Information with attached Affidavit of Investigating Officer, at pp. 6-7).
78. Upon information and belief, before any criminal charges were filed in this matter, BNS employees (1) had verbal communications with the investigating officer, (2) gave bank records to the investigating officer, and then, (3) later produced additional documents in a formal production. These communications and documents discussed and contained (1) the undated handwritten, non-computer, paper signature card listing the **titles and positions of the officers in United Corporation, not Plessen** and (2) the first, undated “information gathering form”.

79. At the time of the production of these documents, BNS had corporate documents showing the officers and directors of Plessen.
80. At the time of the production of these documents, BNS had corporate documents showing the directors of United Corporation.
81. At the time of the production of these documents, BNS knew that the names and positions on the undated signature card supplied to the investigating officer were those of United, not Plessen.
82. BNS had in its possession at that time, March 27, 2013 to May 17, 2013, the corporate documents of Plessen which showed that the Hameds had two directors and Yusufs had one.
83. Two Superior Court judges have determined that at that time, Plessen's corporate documents showed that the Hameds had two directors and Yusufs had one.
84. Two Superior Court judges have determined that at that time, Mike Yusuf was not a director of Plessen.
85. The Yusufs made those false statements and gave the false documents to the police with the malicious intent that they be produced to the police and courts of the USVI – and with specific malice and intent that they be used there to defraud and criminally prosecute Plaintiff Hamed.
86. The Yusufs made those false statements and gave the false documents to BNS with the malicious intent that they be produced to the police and courts of the



USVI – and with specific malice and intent that they be used there to criminally prosecute and defraud Plaintiff Hamed.

87. The creation, alteration, insertion and representation of the documents as valid bank records are distinct criminal acts in the USVI as set forth herein.

88. Yusufs also withheld from the police the May 10, 2013 printout showing BNS' account signature card review. This was done to misrepresent the active signature card -- with malice and the intent to both defraud and cause the arrest of Plaintiff Hamed.

89. In addition, the May 10, 2013 printout showing the account signature card check and the results was negligently withheld from the police investigator by BNS. This misrepresented the active signature card.

90. Instead, records produced to the police by both the Yusufs and BNS contained the forged, undated signature card with **United's, not Plessen's officers listed by title** and the UNDATED *information gathering document* with language that funds could only be withdrawn from the Plessen account if the checks were "signed by one member of the Yusuf family and one member of the Hamed family."

91. Only the active, Valid Computer-based Signature Card information as of March 27, 2013, was used by the tellers and/or bank officials who cleared the check at the time the check was cashed. Tellers relied on signors described in the

computer system not on paper cards in a business file. See **Exhibit 4**, Email from Karen Stair, dated March 1, 2016.

92. The undated, handwritten undated signature card and undated information gathering form provided to the police investigator were never in the computer retail signature system.

93. At the time statements were made and documents were provided to the police investigator, BNS and the Yusufs knew that the paper cards were not the signatures for the Plessen account contained in the BNS computer-based retail signature system when the \$460,000 was withdrawn.

94. At the time the statements were made and the documents were provided to the police investigator, BNS and the Yusufs knew that the paper documents had never been in the computer-based system.

95. Upon information and belief, to assist the Yusuf family, as favored clients, in trying to have Waleed Hamed arrested, a BNS employee failed to provide the results of its May 2013 search which showed that the updated computer signature card information in the bank's computer system was what was in use when the check was cleared, supplying the investigator instead with an undated information gathering form indicating that all checks on the Plessen account had to have one Hamed signature and one Yusuf signature.

96. At no time prior to the arrest of Wally Hamed -- had any Court stated that any accounts of **Plessen** required the signature of one Hamed and one Yusuf.

97. To the contrary, prior to that arrest of Plaintiff Hamed, two V.I. Superior Court judges had issued specific decisions that the Hameds did have 2-1 control of the Plessen Board at all times relevant hereto.
98. Prior to the arrest, both of those courts had specifically approved the removal of Fathi Yusuf from his position as Plessen's resident agent on the majority vote of the two Hamed Board Members – for wrongful corporate acts he had undertaken.
99. Prior to the arrest, both of those courts also approved the appointment of legal counsel for Plessen by the 2-1 Hamed Plessen Board – which legal counsel (1) was never contacted by BNS, and (2) never approved any amendments to or actions regarding the Plessen account.
100. As a direct result of the Yusufs communicating to and then providing such information to the investigating officer, and intentionally not providing the true information, and BNS' actions -- Waleed Hamed was arrested for embezzling the \$460,000 the day before Thanksgiving on November 25, 2015.
101. The investigating officer states that he concluded, based on that Yusuf and Yusuf-supplied BNS information, that Waleed Hamed could not have legally removed funds from the Plessen account without a second signature from the Yusuf family. **Exhibit 3.**
102. No evidence other than the statements of the Yusufs and the forged documents supplied to and then by BNS was stated with regard to that arrest as supporting the requirement for a second signature.

103. The only evidence leading to the officer's stated conclusions as to the need for a Yusuf signature in his affidavit supporting the arrest were the statements of the Yusufs, the statements of BNS employees and the falsified bank records.

104. However, when BNS had produced the account documents for this Plessen bank account in another civil case pending before the Superior Court of the Virgin Islands on September 10, 2014, only the original 1997 and updated 2009 signature cards were produced. No undated signature cards or undated information gathering documents reflecting the need for two signatures, one from the Yusuf family and one from the Hamed family, to withdraw funds from the Plessen account, were produced.

105. Similarly, on September 24, 2014, counsel for the Yusuf's also produced documents in a Superior Court civil action regarding the Plessen bank account. Those documents did not include any document with the two family signature requirement either.

106. The Yusufs have attested in court documents that the second, ***dated*** information gathering form supplied to police **was created by BNS**.

107. BNS has represented to Plaintiffs that this statement that BNS created the second, dated form is untrue. The second, dated information form, as altered with a new, dated final page was created by the Yusufs.

108. The Yusufs have attested in court documents that the second, ***dated*** information gathering form they supplied to police was supplied to them by BNS and was a valid bank record.
109. BNS has represented to Plaintiffs that this representation by the Yusufs to the police that the second, dated information gathering form was supplied by BNS is untrue.
110. BNS has represented to Plaintiffs that the dated final page on that second information gathering form is a forgery in that: (1) it was not created by BNS as represented to the police by the Yusufs, (2) it has never been in the Plessen BNS banking records as represented by the Yusufs to the police, and (3) it was not supplied to the Yusufs by BNS as represented to the police by the Yusufs.
111. The dated final page on that second information gathering form was added to the document by the Yusufs – **and created the *ONLY* dated document reflecting the need for two family signatures.**
112. That second, dated form has an additional “date” page inserted and the date on that inserted page is a clear alteration of the first such form -- typed in a completely unique type font.
113. That second, dated information gathering form was intentionally and maliciously created and supplied to the police by the Yusufs to defraud and procure the prosecution of Plaintiff Hamed. They also maliciously lied to the

police as to the existence of that document in BNS files and that BNS had supplied the document.

114. Thus, when the complete Plessen account file was produced to the Hameds by BNS on February 2, 2016, it revealed both (1) the existence of the May 10, 2013 search of the retail signature card computer system for the Yusufs showing that the valid card used by the bank at that time was the 1997 Signature Card (and August 17, 2009 update) with one signature requirement for Plessen's account -- and the printout of the screen print of that search and (2) that there was no second, dated information gathering form in the BNS files -- and that it was a forgery.

115. Moreover, on February 2, 2016, Plaintiffs first discovered that the bank and the Yusufs had not produced the correct information to the police and had incorrectly identified a paper signature card or the dated information gathering form as reflecting the valid signatures requirement at this time.

116. Waleed Hamed was arrested because the three Yusufs and United conspired to provide the Forged Plessen Banking Documents to the police.

117. The Yusufs, acting individually and as officers and directors of United Corporation also used the arrest in notifications to several off-island commercial entities in an effort to interfere with KAC357, INC.'s grocery businesses which were competing with the Yusufs.

118. These acts did interfere with KAC357, INC.'s grocery businesses which were competing with the Yusuf, cause damage to reputation in the community, and negatively affect profits.
119. As a result, the Hameds and their representatives had conversations with the off-island commercial entities where such interference by the Yusufs was described by the suppliers in detail.
120. The Yusufs had stated to such off-island suppliers that the Hameds and KAC357, INC. were using embezzled funds to buy supplies from the off-island suppliers – which is an anathema in the retail business as suppliers may be subject to seizure of proceeds of crimes by the authorities.
121. Suppliers stopped sales of supplies to KAC357, INC. and other Hamed businesses and notified them of the basis for the stoppage.
122. Customers also stated to the Hameds and KAC357, INC. that they were negatively affected by the arrests.
123. The Yusufs made copies of the newspaper article they had solicited and gave them to employees and customers as well as to others in the community while making false, disparaging statements to those persons concerning the business and professional integrity of the Hameds and KAC357, Inc.
124. As a direct and proximate result of this improper conduct by Defendants, leading to his arrest, Waleed Hamed and KAC357, INC. have suffered damages including, but not limited to, damage to reputation, loss of business, interruption

in the ability to obtain needed inventory, attorney fees, and humiliation in the public and business communities, all of which they have suffered in the past and will suffer into the future.

**COUNT ONE (MALICIOUS PROSECUTION – Yusuf and United)**

125. All of the factual averments above are re-stated and incorporated herein.
126. The Yusuf and United Defendants' purpose in creating, inserting and disseminating the Forged Plessen Banking Documents into the Plessen records at BNS and then to the police was to falsely and maliciously represent that: (1) Mike Yusuf was a director of Plessen and (2) Waleed Hamed lacked the authority to withdraw funds on that account with his signature.
127. Those Defendants' purpose in actively withholding documents was to falsely make it appear to the police that: (1) Mike Yusuf was a director of Plessen and (2) Waleed Hamed lacked the authority to withdraw funds on that account with his signature.
128. Those Defendants did so to procure a criminal investigation and knowing the purpose of the investigation was to determine whether to arrest Waleed Hamed due to his lack the authority to transact on that account with his signature.
129. Those Defendants also conspired to intentionally withhold the BNS May 10, 2013 review of the signature card information in its computer system at that time knowing the purpose of the investigation was to determine whether to arrest



Waleed Hamed due to his lack the authority to transact on that account with his signature.

130. Thus, the Yusufs gave forged documents to the USVI police and represented them to be true documents.

131. As a direct and sole cause of the acts of inserting falsified information into its records, proffering those non-computer records as true bank records, withholding accurate computer records -- and making false representations to the police, none of which is a privileged communication, those Defendants caused the arrest of Waleed Hamed.

132. Those Defendants knew, or should have known that their acts would result in the maliciously obtained arrest of Waleed Hamed, causing damages to him and KAC357, Inc. as alleged herein.

133. On the information supplied by those Defendants, Waleed Hamed was arrested and detained, resulting in newspaper articles being published and sent to off-island suppliers.

134. Only at the time of his arrest on November 25, 2015, and thereafter, did Hamed DISCOVER the actions of BNS and those Defendants complained of herein and the violations of the causes of action asserted.

135. Those Defendants have taken further actions up to the present, in concert, to continue and cover-up these actions.

136. As such, those Defendants are liable to Waleed Hamed for their malicious prosecution – for intentionally procuring his arrest and his resulting detainment -- and to both plaintiffs for the resulting newspaper articles and publication of such information caused by those Defendants' improper conduct.

137. As a result, Waleed Hamed was forced to retain criminal counsel and pay said counsel.

138. Ultimately the action was dismissed. The Government's May 24, 2016 motion asking for dismissal stated: "the people will be unable to sustain its burden of proving the charges against the Defendants beyond a reasonable doubt."

139. Thus, that criminal action has ended.

140. The statutory time period for re-filing the criminal action has passed – a point made by the Judge when he dismissed the charges.

**COUNT TWO (DEFAMATION – Yusufs and United)**

141. All of the factual averments above are re-stated and incorporated herein.

142. The Yusuf and United Defendants' purpose in creating and inserting the Forged Plessen Banking Documents into the banks' records was to falsely represent that: (1) Mike Yusuf was a director of Plessen and (2) Waleed Hamed lacked the authority to withdraw funds on that account with his signature.

143. These were false assertions when created, and when published to the police.

144. Upon information and belief, the those Defendants did so with malicious intent, knowing the purpose of the investigation was to determine whether to arrest Waleed Hamed due to his lack the authority to transact on that account with his signature. That information was not in BNS' computer system at that time or at any time. The true signature card information was in the bank's system at all relevant times – and was the information used to cash the check initially.
145. As part of the conspiracy those Defendants actively withheld the critical May 10, 2013 review document from the police – the document which would have demonstrated the true facts.
146. As a direct and sole cause of the acts of inserting false statements into records, proffering those non-computer records as true bank records, withholding the review of accurate computer records and making representations to the police, none of which is privileged, those Defendants' publication caused the arrest of Waleed Hamed, loss of business proceeds and damage to the reputation of Hamed and KAC357, INC. in the community.
147. Those Defendants knew, or should have known, that their acts would result in the damages as alleged herein.
148. On the false and malicious statements by those Defendants, Waleed Hamed was arrested and detained, resulting in newspaper articles being published and supplied to off-island suppliers -- resulting in damages to Waleed

Hamed for his humiliation, damage to KAC357, INC.'s business interests, and Hamed's emotional distress at the time of the arrest and up until the dismissal of the criminal case.

149. Only at the time of his arrest on November 25, 2015, and thereafter, did Plaintiffs DISCOVER the false statements to the police, newspapers and others complained of herein.

150. As such the those Defendants are liable to Plaintiffs for the damages set forth herein.

**COUNT THREE (TRADE DISPARAGEMENT – Yusufs and United)**

151. All of the factual averments above are re-stated and incorporated herein.

152. The Yusuf and United Defendants' purpose in creating and inserting the Forged Plessen Banking Documents into the banks' records was to falsely represent that: (1) Mike Yusuf was a director of Plessen and (2) Waleed Hamed lacked the authority to withdraw funds on that account with his signature.

153. These were false assertions when created, and when published to the police.

154. Upon information and belief, the those Defendants did so with malicious intent, knowing the purpose of the investigation was to determine whether to arrest Waleed Hamed due to his lack the authority to transact on that account with his signature. That information was not in BNS' computer system at that time or at any time. The true signature card information was in the bank's

system at all relevant times – and was the information used to cash the check initially.

155. As part of the conspiracy those Defendants actively withheld the critical May 10, 2013 review document from the police – the document which would have demonstrated the true facts.

156. As a direct and sole cause of the acts of inserting false statements into records, proffering those non-computer records as true bank records, withholding the review of accurate computer records and making representations to the police, none of which is privileged, those Defendants' publication caused the arrest of Waleed Hamed and publication of articles and other false information, loss of business proceeds and damage to the reputation of Hamed and KAC357, INC. in the community.

157. Defendants made disparaging statements and circulated disparaging documents with the intent to harm Plaintiffs Hamed and KAC357, Inc. in their business and profession.

158. These were statements and actions intended to harm Plaintiffs' business and professional reputations by impugning their integrity with respect to their job performance and attack their competence and skill in carrying out their businesses.

159. Those Defendants knew, or should have known, that their acts would result in the damages as alleged herein.

160. Only at the time of his arrest on November 25, 2015, and thereafter, did Plaintiffs DISCOVER the false statements to the police, newspapers and others complained of herein.

161. As such the those Defendants are liable to Plaintiffs for the damages set forth herein.

**COUNT FOUR (NEGLIGENCE - BNS Only)**

162. All of the factual averments above are re-stated and incorporated herein.

163. BNS has a duty to its customers and account signatories to maintain correct banking records and to not cooperate in the alteration of, allow the alteration of those records.

164. BNS negligently violated this duty when it inserted altered documents into its records, proffered inaccurate information to the police and withheld *the May 2013 printout of the sole card actually in the bank's computer system at the time* from the police -- knowing the purpose of the investigation was to determine whether to arrest Waleed Hamed due to his lack of authority to transact on that account with his signature.

165. As a direct cause and proximate cause of BNS' negligent acts, BNS caused the arrest of Waleed Hamed, resulting in damages set forth herein to him.

166. As such, BNS is liable to Waleed Hamed for all of the resulting damages set forth in the prior count, caused by its negligent acts.

**COUNT FIVE (Prima Facie Tort of Outrage – Yusufs and United)**

167. All of the factual averments above are re-stated and incorporated herein.
168. The conduct of the Yusuf and United Defendants was wanton and outrageous, constituting the prima facie tort of outrage.
169. The actions of those Defendants were culpable and not justifiable under the circumstances.
170. As a direct and proximate cause of their outrageous tortious acts in proffering a falsified signature card and document as true and accurate bank records, they caused the arrest of Waleed Hamed, resulting in damages to him.
171. As such, those Defendants are liable to Plaintiffs for all of the resulting damages caused by its outrageous tortious acts.

**COUNT SIX (CICO – DIRECT ACTS – Yusuf and United)**

172. All of the factual averments above are re-stated and incorporated herein.
173. Pursuant to 14 V.I.C. § 605,
- a. (a) It is unlawful for any person employed by, or associated with, any enterprise, as that term is defined herein, to conduct or participate in, directly or indirectly, the affairs of the enterprise through a pattern of criminal activity.
  - b. (b) It is unlawful for any person, through a pattern of criminal activity, to acquire or maintain, directly or indirectly, any interest in, or control of, any enterprise or real property.

174. Plessen is an enterprise within the meaning of 14 V.I.C. § 605.
175. The creation, transmission, placement into the bank records and provision of the forged documents was done to alter the makeup of the Board of Directors of Plessen and file civil proceedings to take control of the company from its properly constituted Board – which the Yusufs did – and was therefore a pattern of criminal activity by which the Defendants worked together to “acquire or maintain, directly or indirectly, any interest in, or control of” Plessen.
176. Thereafter, the Yusufs did assert control of Plessen, using the forged documents to state to two USVI courts that: (1) they controlled 50% of the Plessen Board. (2) filing actions to block activities of the true Board and (3) to use that putative control to bring a criminal complaint “as a director of Plessen” to the police.
177. Mike Yusuf represented to the police that he was a “director of Plessen” and made a criminal complaint in that capacity.
178. The Yusufs have also represented to third parties that they had an equal control of Plessen of the Plessen Board at the times relevant to this action.
179. Superior Court Judges Douglas Brady and Harold Willocks both noted that there was an effort by the Yusufs to make Maher Yusuf a director of Plessen – which effort included the use of the subject forged documents.
180. Those same acts were efforts “to acquire or maintain, directly or indirectly, any interest in, or control of” Plessen.



181. There was a (1) manifest agreement to participate in the conspiracy by the Yusuf and United Defendants (2) through the commission of two or more predicate acts: The original alteration of the first UNDATED information gathering form was an act by them: The forgery of the DATED second forgery and submission to the police were each a separate criminal act. The perjury by the Yusufs in submitting the forged documents in two other civil cases were also criminal acts.

182. These many acts over several years beginning in 2013 and continuing up to the present constitute “at least three structured features: a purpose, relationships among those associated with the enterprise, and longevity sufficient to permit these associates to pursue the enterprise’s purpose.”

183. Moreover, the Yusufs continue to try to use the forged documents in legal proceedings.

184. Thus, there were “two or more occasions of conduct” – acts which “(A) constituted criminal activity, (B) were related to the affairs of the enterprise, and (C) were not isolated.”

185. Plaintiffs were injured as set forth above

**COUNT SEVEN (CICO – CONSPIRACY – Yusufs and United)**

186. All of the factual averments above are re-stated and incorporated herein.
187. Pursuant to 14 V.I.C. § 605(d), “It is unlawful for any person to conspire or attempt to violate, either directly or through another or others, the provisions of section 605, subsections (a), (b)
188. Plessen is an enterprise within the meaning of 14 V.I.C. § 605.
189. The creation, transmission, placement into the bank records and provision of the forged documents was to alter the makeup of the Board of Directors of Plessen and have Plaintiff Hamed arrested for his lawful act – which attempt the Yusufs made – and was therefore a pattern of criminal activity by which the Defendants worked together to “acquire or maintain, directly or indirectly, any interest in, or control of” Plessen.
190. Superior Court Judges Douglas Brady and Harold Willocks both determined that there was an effort to control Plessen by making Maher Yusuf a director of Plessen using the subject documents – and that Maher Yusuf was not such a director.
191. Thus, the Yusufs did conspire among themselves and with United to violate, either directly or through another or others, the provisions of section 605, subsections (a) and (b).
192. Plaintiffs were injured as set forth above.

**WHEREFORE**, the Plaintiffs seek the following relief from this Court as follows:

- 1) An award of compensatory damages against the Defendants as determined by the trier of fact;
- 2) Treble damages for violation of CICO;
- 3) An award of punitive damages against Defendants as determined by the trier of fact in an amount sufficient to deter such grievous acts in the future;
- 4) An award of attorney's fees and costs against Defendants; and
- 5) Any other relief the Court deems appropriate as warranted by the facts and the applicable law.

**A TRIAL BY JURY IS DEMANDED AS TO ALL ISSUES TRIABLE BY A JURY**

**Dated:** January 30, 2017.



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**CERTIFICATION**

Counsel hereby certifies that he has affixed his signature hereto pursuant to the requirements of 14 V.I.C. §607(d) and has sent a true copy to the Attorney General as required by § 607(f). See **Exhibit 1**.

**Dated:** January 30, 2017.



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**Joel H. Holt, Esq.** . Bar No. 6  
Law Office of Joel H. Holt, P.C.  
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**VERIFICATION**

I, Waleed Hamed, do hereby verify that I have carefully read the Complaint and that based upon reasonable inquiry, I believe that the Complaint comports with the requirements set forth in items (1) through (3) of 14 V.I.C. §607(d), which I have read.

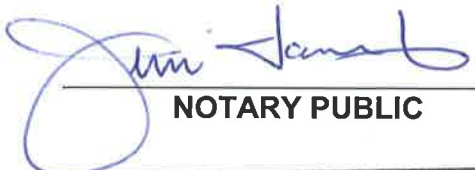
**Dated:** January 30, 2017.



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**Waleed Hamed**

SWORN TO AND SUBSCRIBED  
BEFORE ME THIS 30<sup>th</sup> DAY  
OF JANUARY, 2017.



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**NOTARY PUBLIC**

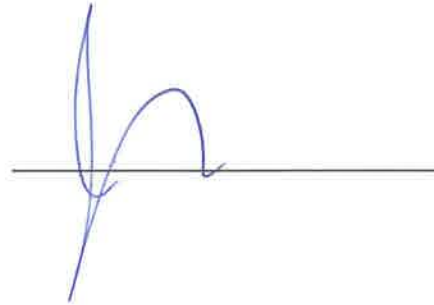
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NOTARY PUBLIC  
**JERRI FARRANTE**  
Commission Exp: September 3, 2019  
NP-93-15

**CERTIFICATE OF SERVICE**

I HEREBY certify that on January 30, 2017, I caused a true and correct copy of the foregoing document to be served on the following by hand delivery and email:

**Charles E. Lockwood, Esq**  
Nichols Newman Logan Grey & Lockwood, P.C.  
*Attorneys for Defendant BNS*  
No. 1131 King Street, Suite 204  
Christiansted, U.S. Virgin Islands 00820-497  
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A handwritten signature in blue ink is written over a horizontal line. The signature is stylized and appears to be the name of the certifier.

# JOEL H. HOLT, ESQ.P.C.

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January 30, 2017


Claude Walker, ESQ  
Attorney General  
Department of Justice  
34-38 Kronprindsens Gade  
GERS Building, 2nd Floor  
St. Thomas, Virgin Islands 00802

**Re: HAMED et. al. V. BNS et. al.  
Civil No. 2016-SX-CV-429**

Dear General Walker:

Pursuant to 14 V.I.C. § 607(d), enclosed please find a copy of the First Amended Complaint in the matter of *Hamed et. al. v. BNS et. al.*, Civil No. SX-2016-CV-429. As the initial complaint did not contain counts subject to the requirements of 14 V.I.C. 607(d) and (f), that complaint was not sent to your office, but as the First Amended Complaint adds this claim against the non-bank defendant, it is being sent to you as required by § 607(d). Please let me know if you have any questions.

Respectfully,

  
Joel H. Holt  
JHH/jf  
Enclosure

