

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

TRICT OF ST. CROIX

2017 MAY 25 P 2:41

IN THE MATTER OF
THE ESTATE OF MOHAMMAD A. HAMED,

Deceased.

File No. SX-016-PB-76

NOTICE OF FILING

Waleed M. Hamed, the Executor herein by undersigned Counsel, hereby provides notice of the filing of his determination of the Creditor's Claims filed by Fathi Yusuf.

Groner Law, PC

Dated: *May 25, 2017*



Gerald T. Groner, Esq.
Counsel for Executor
1114 King Street
Christiansted, VI 00820
Telephone: (340) 773-3660
Email:gtg@gronerlaw.com/VI Bar No. 107

2017 MAY 25 P 2:41
DISTRICT OF ST. CROIX

CREDITOR'S CLAIM


SUPERIOR COURT OF THE VIRGIN ISLANDS
DIVISION OF ST. CROIX

In re Estate of Mohammad A. Hamed
Deceased

Probate No. SX-016-PB-76, 2016

The undersigned, YUSUF YUSUF ("Yusuf"), presents this claim against the Estate of MOHAMMAD A. HAMED, Deceased ("Hamed"), for approval, viz: ESTATE OF MOHAMMAD A. HAMED, Deceased.
To MOHAMMAD A. HAMED, DEBTOR.

The undersigned, Yusuf and his family members jointly own Plessen Enterprises, Inc. ("Plessen") with Hamed and his family members. Hamed was an officer and director of Plessen Enterprises from its inception through the date of his death. Plessen is primarily engaged in the business of commercial real estate owning various commercial properties on St. Croix. Yusuf and his family members, individually and derivatively on behalf of Plessen have brought claims against Hamed, four of his sons and two entities owned by Hamed and his family, Five H Holdings, Inc. and KAC357, Inc. These claims are currently being litigated in the Superior Court, St. Croix Division, *Yusuf et al v. Hamed et al*, SX-13-CV-120. Yusuf's claims against Hamed are set forth in greater detail in the First Amended Complaint attached hereto as Exhibit A. The matter is in the discovery phase of litigation. Yusuf has other claims against Hamed which are the subject of separate filings.



Signature

Division Of St. Croix SS.

I, Yusuf Yusuf being duly sworn according to the law, say: I have personal knowledge of the matters alleged in this Claim; the amount claimed is justly due; no payments have been made thereon, except as stated, to the best of my knowledge, information and belief.

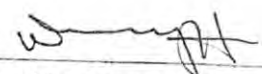
Sworn to and subscribed before me
this 11th day of April 2017
Rupertha A. Andrews
Notary

Rupertha A. Andrews
Notary Public
District of St. Croix, USVI
Commission # NP-115-15
Commission Expires October 21, 2019

EXAMINED and **Rejected**

(State whether Approved or Rejected.)

Date 5/23/17

By: 

Waleed M. Hamed, Executor

(Official signature See III Chap. 75, Sec. 40.)

CREDITOR'S CLAIM

OFFICE OF THE CLERK
DISTRICT OF ST. CROIX
2017 MAY 25 P 2:41

SUPERIOR COURT OF THE VIRGIN ISLANDS

DIVISION OF ST. CROIX

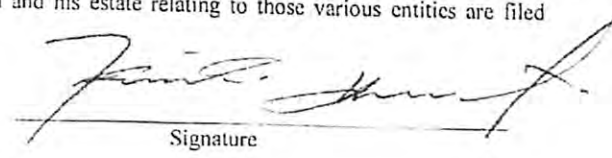
In re Estate of Mohammad A. Hamed
Deceased

Probate No. SX-016-PB-76, 2016

The undersigned, FATHI YUSUF ("Yusuf"), presents this claim against the Estate of MOHAMMAD A. HAMED, Deceased ("Hamed"), for approval, viz: ESTATE OF MOHAMMAD A. HAMED, Deceased.

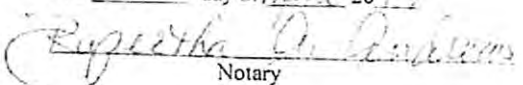
To MOHAMMAD A. HAMED, DEBTOR.

The undersigned, Yusuf was a partner with Hamed engaged primarily in the business of operating grocery stores known as the "Plaza Extra" stores on St. Croix and St. Thomas. Yusuf has various claims against Hamed arising out of this partnership. Yusuf's partnership claims are currently being litigated in the Superior Court, St. Croix Division, *Hamed v. Yusuf et al.*, SX-12-CV-370. Pursuant to the Final Wind Up Plan dated January 7, 2015, Yusuf's claim has been submitted to a Master for report and recommendation to the Court for the ultimate resolution by Judge Douglas A. Brady. The nature of Yusuf's claim is more specifically described in Yusuf's Accounting Claims and Proposed Distribution Plan submitted to the Master on September 30, 2016, attached as Exhibit 1. At present and subject to additional discovery, the amount of Yusuf's claim against Hamed is set forth in the Claim Distribution Summary attached as Exhibit 1A. The supporting documentation for Yusuf's claim is extensive and, therefore, has not been included with this submission. It can be provided upon request as various personal data identifiers will need to be redacted. In addition to Yusuf's claims against Hamed as a result of the partnership, Yusuf and Hamed jointly owned various entities of which Hamed was an officer and director. Claims against Hamed and his estate relating to those various entities are filed separately.


Signature

Division Of St. Croix SS.

I, Fathi Yusuf being duly sworn according to the law, say: I have personal knowledge of the matters alleged in this Claim; the amount claimed is justly due; no payments have been made thereon, except as stated, to the best of my knowledge, information and belief.

Sworn to and subscribed before me
this 11 day of April 2017

Notary

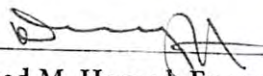
Rupertha A. Andrews
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SUPERIOR COURT OF THE VI
OFFICE OF THE CLERK
DISTRICT OF ST. CROIX

2017 MAY 25 P 2:41

EXAMINED and Rejected
(State whether Approved or Rejected.)

Date 5/23/17

By: 
Waleed M. Hamed, Executor

(Official signature See III Chap. 75, Sec. 40.)

IN THE SUPERIOR COURT OF THE VIRGIN ISLANDS
DIVISION OF ST. THOMAS

NOTICE OF FILING DOCUMENT IN THE OTHER DIVISION

I. Caption of case including proper division:


**In re Estate of Mohammad A. Hamed
Deceased
Probate No. SX-016-PB-76-, 2016**

II. Description of Document(s):	No. of Pages	Document No.
Creditor's Claim Fathi Yusuf	27	(Clerk's Office Only)

III. Certification of mailing or delivery to each of the following:

<u>Name of Attorney</u>	<u>Type of Service</u>	<u>Dated Emailed</u>
Gerald T. Groner, Esq.	U.S. Mail	April 12, 2017

Dated: April 12, 2017


Signature of Counsel

CREDITOR'S CLAIM

SUPERIOR COURT OF THE VIRGIN ISLANDS

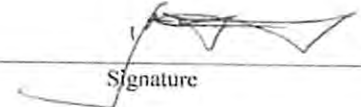
DIVISION OF ST. CROIX

In re Estate of Mohammad A. Hamed
Deceased

Probate No. SX-016-PB-76, 2016

The undersigned, YUSUF YUSUF ("Yusuf"), presents this claim against the Estate of MOHAMMAD A. HAMED, Deceased ("Hamed"), for approval, viz: ESTATE OF MOHAMMAD A. HAMED, Deceased,
To MOHAMMAD A. HAMED, DEBTOR.

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Signature

Division Of St. Croix SS.

I, Yusuf Yusuf being duly sworn according to the law, say: I have personal knowledge of the matters alleged in this Claim; the amount claimed is justly due; no payments have been made thereon, except as stated, to the best of my knowledge, information and belief.

Sworn to and subscribed before me)
this 11th day of April 2017)
Rupertha A. Andrews)
Notary)

Rupertha A. Andrews
Notary Public
District of St. Croix, USVI
Commission # NP-115-15
Commission Expires October 21, 2019

EXAMINED and _____
(State whether Approved or Rejected.)

Date _____

(Official signature See III Chap. 75, Sec. 40.)

EXHIBIT 1

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

MOHAMMAD HAMED , by his authorized agent WALEED HAMED ,)	CIVIL NO. SX-12-CV-370
)	
Plaintiff/Counterclaim Defendant,)	ACTION FOR DAMAGES, INJUNCTIVE RELIEF AND DECLARATORY RELIEF
vs.)	
)	
FATHI YUSUF and UNITED CORPORATION ,)	
)	
Defendants/Counterclaimants,)	
vs.)	
)	
WALEED HAMED, WAHEED HAMED, MUFEED HAMED, HISHAM HAMED, and PLESSEN ENTERPRISES, INC.,)	
)	
Additional Counterclaim Defendants.)	
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MOHAMMAD HAMED ,)	Consolidated With
)	
Plaintiff,)	CIVIL NO. SX-14-CV-287
v.)	
)	ACTION FOR DAMAGES AND DECLARATORY RELIEF
UNITED CORPORATION ,)	
)	
Defendant.)	
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YUSUF'S ACCOUNTING CLAIMS AND PROPOSED DISTRIBUTION PLAN

Pursuant to the "Final Wind Up Plan Of The Plaza Extra Partnership," entered on January 9, 2015 (the "Plan"),¹ §9, Step 6, and the August 31, 2016 directive² of the Master, as clarified

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¹ Unless otherwise defined, all capitalized terms have the same meaning as provided in the Plan.
² That directive required the Partners to submit any objection to the previously submitted Partnership Accounting and any claims against the Partnership or a Partner by September 30, 2016. It is undisputed that since the inception of the Partnership, the only Partners were Yusuf and Hamed, who died on June 16, 2016. On September 20, 2016, a Motion And Memorandum For Substitution Of Named Plaintiff was filed seeking an Order substituting Waleed M. Hamed, as Executor of the estate of Hamed, as Plaintiff.

on September 22, 2016, defendant/counterclaimant Fathi Yusuf ("Yusuf") respectfully submits his Accounting Claims and Proposed Distribution Plan (the "Claim") as follows:

I. Current Status of Partnership Wind Up and Overview of Proposed Distribution

The current status of the wind up of the Partnership is set forth in the Tenth Bi-Monthly Report of the Liquidating Partner filed on September 30, 2016 and the supporting financial information concurrently submitted to the Master and counsel. At present, the total remaining assets of the Partnership are \$8,957,168.54³.

A summary of the Claim's proposed distributions is set forth in **Exhibit A**. It contemplates that a portion of the remaining Partnership Assets will be held in reserve for potential expenses including taxes and litigation costs for personal injury claims made or potentially to be made against the various Plaza Extra Stores prior to the dissolution. In addition, all Debts of the Partnership must be paid prior to any distributions to Partners. At this stage, the remaining Debts include the unpaid rent obligations, plus interest, due to United for occupying the Plaza Extra-East store and Bays 5 and 8 in the United Shopping Plaza, which have not been adjudicated⁴, as well as other obligations owed to United discussed in more detail below. As reflected in Exhibit A, there will be a shortfall of approximately \$4 million in Partnership Assets, if all listed Debts are paid and all proposed reserves are established. Any actual shortfall must be made up by the Partners or a deceased Partner's estate.

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³ These total assets are reflected in the Partnership balance sheet provided, along with income statement, on September 30, 2016 to the Master and counsel for the Partners by John Gaffney ("Gaffney"), who has served as the accountant for the Partnership.

⁴ See Memorandum Opinion and Order dated April 27, 2015 (the "Rent Order"), which provides that although back rent for Bays 5 and 8 are set forth in United's Counterclaim, "this Order addresses only Bay No. 1." (Rent Order, p. 2, n. 1)

Once reserves are established and the outstanding Debts are allowed and paid, distributions to the Partners can be made only if there are remaining Partnership Assets. The Claim provides:

- a) reconciliation of the historical withdrawals and distributions between the Partners and their agents from the profits of the Plaza Extra Stores, reflecting a net balance of \$9,670,675.36 due to Yusuf;
- b) an accounting of funds received by Yusuf for the sale of Y&S Corporation ("Y&S") and R&F Condominium, Inc. ("R&F") stock resulting in a balance of \$802,966.00 due to Hamed;
- c) a description of Partnership funds entrusted to Hamed to be held in foreign accounts, invested in real estate or used as charitable donations of the Partners, reflecting a balance due to Yusuf; and
- d) quantification of the loss of the going concern value of Plaza Extra-West as a result of Hamed's actions resulting in a balance of \$4,385,000.00 due to Yusuf.

II. Funds to Be Held in Reserve

Prior to distribution of the remaining Partnership Assets, certain funds must be held in reserve to satisfy contingent obligations and risks of the Partnership.

A. Reserves Needed for Plaza Extra-Tutu Park Rent

Given Hamed's conceded failure to obtain releases of the Partnership, United and Yusuf, as required by the "Order Adopting Final Wind Up Plan" dated January 7, 2015 and entered on January 9, 2015 (the "Wind Up Order") (p. 5), § 8(2) of the Plan, and the April 30, 2015 Master's Order (p. 2), a reserve must be created for all rents to be paid to Tutu Park Limited over the remaining term of the lease in the amount of \$887,203.26 (\$30,359.38 per mo. in rent plus an

average of \$2,500 per mo. in water charges x 27 months), not including charges for real estate taxes and percentage rents.

B. Reserves Needed for Plaza Extra-Tutu Park Property Taxes and United Matching Payment

As described in the Tenth Bi-Monthly Report, *see* p. 4, n. 6, property taxes for 2015 have not yet been billed, but reserves should be set aside to pay these taxes which are estimated to be \$14,356.44, along with a matching payment to United of \$9,812.14.

C. Reserves Needed for FUTA Taxes

At present, there is a dispute as to the amount of Federal Unemployment Taxes ("FUTA") due from the Plaza Extra Stores. The Internal Revenue Bureau contends that approximately \$350,000.00 is due for 2014 and 2015. Gaffney, however, has determined that no additional FUTA taxes are due. While the amount remains in dispute, Yusuf proposes to hold these funds in reserve until the dispute is resolved. Once the dispute is resolved, the funds can be distributed according to the Plan or as otherwise ordered by the Court.

D. Master's Fees

The fees of the Master for supervising the final liquidation and wind up of the Partnership will need to be reserved. It is estimated that \$150,000 should be set aside for such expenses.

E. Accounting Fees

Accounting fees for coordination and payment of various Debts and wind up of the Partnership will need to be reserved. It is estimated that \$30,000.00 should be set aside for such expenses.

F. Funds to Be Held in Reserve for Litigation Risks

Reserves must be set aside for pending and possible litigation relating to claims for injuries allegedly suffered at the various Plaza Extra Stores prior to the dissolution of the

Partnership and transfer of ownership of the stores. *See* Exhibit C-2 to the Seventh Bi-Monthly Report filed on April 1, 2016. Yusuf submits that the amount required to satisfy the potential risk to the Partnership as well as costs and expenses not otherwise covered by insurance for those claims is approximately \$1,320,777.00. This amount is comprised of two primary components: 1) pending claims and 2) estimated future claims.⁵

As to the pending claims, they are further divided into two categories: a) those claims with insurance coverage and a self-insured retention and b) uncovered claims. For those claims with insurance coverage, reserves are calculated by considering the total amount claimed or last demanded in settlement by the plaintiffs, multiplied by the probability of plaintiffs' success in each case, added to the costs for the litigation not covered by insurance.⁶

As to the estimated future claims, the average value of claims in a given year is calculated by review of historical claims. Then this value is multiplied by the average number of claims per year and by the number of years in the statute of limitation period to determine the total risk. That figure is in turn multiplied by the percentage of time remaining in the applicable statute of limitations. The statute of limitations is calculated for each store from the last date it was controlled by the Partnership; i.e. March 9, 2015 for Plaza Extra-East and West, and April 30, 2015 for Plaza Extra-Tutu Park. Such formulas are commonly utilized to evaluate risk exposure by insurers in setting insurance loss reserves.⁷

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⁵ At present, Yusuf is unaware of any unfiled claims within the statute of limitations.

⁶ *See Exhibit B*, Litigation Reserves Calculations.

⁷ *A User-Friendly Introduction to Property and Casualty Claims Reserves*, Joseph Calandro, Jr. and Thomas J. O'Brien, 2004, describing accounting methodologies as to assessment of litigation risks and costs for setting reserves.

These reserves include the claims of Wadda Charriez⁸ since her counterclaims are effectively against the Partnership and, therefore, constitute a potential obligation of the Partnership.

III. Outstanding Debts of the Partnership

Although nearly all of the undisputed Debts of the Partnership have been paid or resolved, the following Debts remain:

A. Miscellaneous Debts

There are Debts totaling \$176,267.97, which must be paid prior to any distribution of the remaining Partnership Assets to the Partners⁹. This amount relates primarily to accounts payable for open tax issues from 2013.

B. Unpaid Rent for Plaza Extra-East and Adjacent Bays

While the Court determined that certain past due rent obligations for Plaza Extra-East must be paid pursuant to the Rent Order, there remain additional rent claims for Plaza Extra-East. These claims have not yet been resolved¹⁰ and, if found to be due and owing, then these are Debts of the Partnership that should be paid prior to any distribution of the remaining Partnership Assets to the Partners.

United makes the following claims against the Partnership as set forth in its Amended Counterclaim and Motion For Partial Summary Judgment Regarding Rent:

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⁸ These claims are the subject of a separate suit, United Corporation v. Wadda Charriez, SX-13-CV-152, which Yusuf has moved to consolidate into this action for resolution. See Motion to Consolidate filed on March 17, 2016.

⁹ The total liabilities are reflected in the Partnership balance sheet provided to the Master and counsel for the Partners by Gaffney on September 30, 2016.

¹⁰ See Rent Order, p. 2, n. 1; p. 11, n. 4.

1. Bay 1 – Increased Rent Due Net of Rent Paid

United provided formal notice of increased rent of \$200,000 per month to the Partnership, which was to begin on January 1, 2012 through March 31, 2012, if the premises were not vacated before then. Thereafter, beginning on April 1, 2012 through March 8, 2015, United provided formal notice of increased rent of \$250,000 per month. See Exhibit D to Yusuf's Declaration dated August 12, 2014 (the "Yusuf Declaration") in support of Defendants' Motion for Partial Summary Judgment on Counts IV, XI and XII Regarding Rent. Although the Rent Order awarded certain amounts of rent to United during this period, the award did not address the increased rent claimed by United. The outstanding balance of the increased rent claimed as to Bay 1, net of the rent recovered pursuant to the Rent Order, is \$6,974,063.10. See calculation of additional rents attached as Exhibit C.

2. Bays 5 and 8

Likewise, outstanding rent is due to United for Bays 5 and 8 of the United Shopping Plaza. These amounts were not adjudicated in the Rent Order and they remain an outstanding rent claim against the Partnership. The total amount due to United for unpaid rent for Bays 5 and 8 is \$793,984.34. See the Yusuf Declaration at ¶¶ 21-25.

3. Interest on Rent Claims

The interest that accrued at 9% per annum on the rent actually awarded by the Rent Order (\$6,248,924.14) is \$881,955.08 as of May 11, 2015, when that rent was paid to United. See calculation of interest on Bay 1 rent attached as Exhibit D.¹¹

The interest due for the unpaid rent on Bays 5 and 8 is also claimed by United. The total interest calculated at 9% per annum for the period from May 17, 2013 through September 30,

¹¹ This amount does not include any interest accruing at the 9% rate on each month's unpaid rent from June 1, 2013 through March 8, 2015.

2016 is \$241,005.18. Such interest continues to accrue at the daily rate of \$195.78 until paid. See calculation of interest on Bays 5 and 8 rent attached as **Exhibit E**.

C. Reimbursement For Gross Receipts Taxes Paid by United

As Yusuf has testified without contradiction (*see* transcript of Yusuf's deposition of April 2, 2014 at pages 53-4), the Partners originally agreed that the Plaza Extra Stores would pay all gross receipts taxes and insurance relating to United's Shopping Center. The Partners acted on this agreement for the life of the Partnership, as reflected in the actual payment of these expenses with funds from the Plaza Extra Stores for more than 28 years. The Partnership owes United for certain gross receipts taxes United paid on behalf of the Partnership totaling \$60,586.96, which were never reimbursed. See **Exhibit F**, Summary and Evidence of United Payment of Gross Receipts Taxes.

D. Black Book Balance Owed to United

A black ledger book (the "Black Book") was used by the Partners to track spending and withdrawals as between the Partners and their families as well as by United on behalf of the Plaza Extra Stores. Certain entries from the Black Book are accounted for in the BDO Report discussed in §IV below, to the extent they represent historical withdrawals as between the Partners and their families. However, as to funds which United paid on behalf of the Plaza Extra Stores, the Black Book entries reveal that the Partnership owes United \$49,997.00 for various expenses it paid on behalf of the Partnership. See **Exhibit G**, Relevant Black Book Entries.

E. Additional Ledger Balances Due to United

In addition to the Black Book balance owed to United, at various points in time, United made other payments on behalf of the Plaza Extra Stores. In 1994, 1995 and in 1998, United paid \$199,760.00 for various expenses of the Partnership. See **Exhibit H**, Ledger Sheets

Reflecting United's Payments for Plaza Extra. In the same ledger book, records of withdrawals by Yusuf are also noted for certain personal expenses in 1995 and 1996. The amounts relating to Yusuf's personal expenses are included in the BDO Report discussed below in § IV, accounting for the withdrawals as between the Partners and their families. However, the total amount of \$199,760.00 paid by United has not otherwise been captured in other reconciliations and remains due and owing to United.

F. Water Revenue Re Plaza Extra-East

Beginning in 1994, Plaza Extra-East began selling United's water. The proceeds for the first 10 years were used primarily for charitable purposes. From April 1, 2004, however, all revenue from the sale of United's water that was collected by Plaza Extra-East was to be paid to United. United has calculated the average water sales per month based upon two years of sales in 1997 (\$52,000) and 1998 (\$75,000) as \$5,291.66 per month. Multiplying the average monthly sales revenue by 131 months, United is owed \$693,207.46 from the Partnership for the water sales revenue from April 1, 2004 through February 28, 2015.

G. Unreimbursed Transfers to Plaza Extra from United's Tenant Account

At various points throughout the Partnership, United would transfer funds from its tenant account, which the parties have already conceded was separate and independent from the Partnership, to the Plaza Extra Stores to cover expenses and to maintain cash-flow. The Partnership has not reimbursed United for certain transfers. The Partnership owes United \$188,132 for its unreimbursed transfers. *See Exhibit I, Summary and Supporting Documentation of Unreimbursed Transfers from United.*

IV. Past Partnership Withdrawals and Distribution Reconciliation

Throughout the Partnership, the Partners and their agents (*i.e.*, their sons) would withdraw cash from safes at the Plaza Extra Stores. Evidence of these withdrawals came in multiple forms including, *inter alia*, receipts, checks or ledger entries. In addition, the Partners and their agents used funds generated by the Plaza Extra Stores for personal expenses. These payments for personal expenses were to be counted against each Partner as a distribution. The withdrawals and payments for personal expenses were supposed to be done on the "honor system," which relied upon each Partner and their agents to disclose to the other Partner, via "tickets" or receipts left in the store safes, when withdrawals were made or personal expenses were paid from Partnership funds. Occasionally, the Partners would reconcile the various withdrawals and expenses between them. Upon review of the various accounting records as well as information regarding personal accounts and assets of the Partners and their agents, Yusuf submits that Hamed and his agents failed to fully disclose all of the funds they withdrew from the Partnership or personal expenses they paid with Partnership funds. Consequently, these previously undisclosed withdrawals and expenses are treated as distributions in the Claim. A full accounting of the Partnership withdrawals is set forth in the Expert Report of Fernando Scherrer of BDO Puerto Rico, P.S.C. ("BDO") attached as **Exhibit J**¹². Based on that report, Hamed's withdrawals/distributions exceed Yusuf's withdrawals/distributions by \$19,341,350.72. *See* Exhibit J at p. 62-3. As a result, \$9,670,675.36 should be awarded to Yusuf to equalize the distributions between the Partners so that both Partners have equal distributions of \$18,820,989.98.

¹² The tables, schedules and supporting documentation for this report are voluminous and will be submitted to the Master and counsel for Hamed via a flash drive or CD identified as **Exhibit J-1**.

V. Y&S and R&F Stock Sale Proceeds Distribution

The Partnership invested in various entities used to purchase either stock or real estate. One such entity was Y&S. The Partners invested Partnership funds through two of their sons, Hisham Hamed and NejeH Yusuf. The two sons sold their stock for \$900,000, pursuant to an agreement dated January 15, 2000 with Hakima Salem. Rather than receiving the proceeds, the two sons directed that the funds be paid to Yusuf, who was to be the nominee of the sales proceeds and, thus, custodian of the funds. The funds were not paid in a lump sum, but rather periodically and often late. Yusuf has received all of the proceeds from the sale of the stock. Although claims to these funds were the subject of a separate suit (Hamed v. Yusuf, Superior Court of St. Croix, SX-2014–CV-278), the parties stipulated to have these claims¹³ consolidated into this case and incorporated into the Partnership accounting and distribution. As a result of various adjustments reflected on Exhibit 1 to the complaint in SX-2014-CV-278, \$802,966¹⁴ should be allocated to Hamed to equalize the Partnership distribution between the Partners resulting from the sale of the stock of Y&S and R&F.

VI. Foreign Accounts and Jordanian Properties

As part of the profit sharing arrangement between the Partners, at various points in time, profits of the Partnership were sent to Jordan to be held in bank accounts or invested in real property to the mutual benefit of the Partners. In addition, Partnership profits were also sent to

¹³ Although no claims have ever been pled in this case or SX-2014-CV-278 concerning the \$600,000 in proceeds from Yusuf's sale of his 1,000 shares of stock in R&F pursuant to an agreement dated January 15, 2001 with Hakima Salem, Yusuf is prepared to include these proceeds in his accounting.

¹⁴ Interest was not included on this claim because, among other things, United did not include all the interest it could claim on the rent actually awarded by the Rent Order. *See* n. 11, above. There are additional reasons for not paying interest on the claim as reflected in Yusuf's First Amended Answer And Counterclaim filed in SX-2014-CV-278. *See also* n. 15, below, regarding \$150,000 offset.

Jordan to be used as charitable donations of the Partners. Based upon Yusuf's review of bank documentation available to date and information discovered following the FBI raid, Yusuf claims that Hamed (either individually or through his sons or agents) failed to properly invest all Partnership funds with which he had been entrusted and failed to properly account for such funds. As a result, Hamed either breached his fiduciary duties to the Partnership by failing to properly safeguard, account for, and invest these funds as agreed between the Partners or he converted them for his own personal use or the personal use of his family members.

Yusuf has repeatedly raised these claims with Hamed and his agent, Waleed Hamed, but has received either unsatisfactory or no responses to questions as to how the funds were spent. The misappropriations or failures to account by Hamed and his agents of which Yusuf is presently aware include:

- a. Hamed and his sons have failed to account for the Partnership funds held in various foreign bank accounts from 1996 to date including, but not limited to, the accounts identified in **Exhibit K**;
- b. Because Hamed converted \$150,000 previously delivered as a charitable donation for a batch plant in West Bank, his interest in the Partnership should be charged for the transfer of \$150,000.00 to the Bank of Palestine to make good on the original donation; *see Exhibit L, Wire Transfer Information Supporting Claim.*¹⁵

¹⁵ This payment was made on behalf of the purchaser of the Y&S and R&F stock and represented a portion of the proceeds of the sale of that stock. Accordingly, the amount should either be offset against the \$802,966 allocated to Hamed in § V, above, or it should be charged against Hamed's interest in the Partnership. Given Hamed's apparent negative balance in his Partnership account, Yusuf submits the \$150,000 should be offset against the \$802,966.

- c. Waleed Hamed's unauthorized check of \$536,405 to Hamed on April 29, 1998 and additional checks for \$10,000 and \$15,216; *see Exhibit M.*
- d. Waleed Hamed's failure to account for funds that were removed from the Commercial Francaise Bank in Saint Maarten with four (4) checks totaling \$550,373.14 to close out the account in January and February of 1997; and
- e. Waleed Hamed's conversion of \$1.4 million received in 1996 as reflected in a St. Maarten police report.

Approximately forty (40) parcels of real property were purchased in Jordan using funds from the Plaza Extra Stores. All but two of those properties were jointly titled in the names of Hamed and Yusuf. The Court's assistance in administering or liquidating the jointly titled parcels is not sought at this time. Yusuf does seek the Court's assistance, however, with respect to two (2) parcels that were incorrectly titled in Hamed's name alone. These two parcels are identified in the "Land Value Estimation" attached as **Exhibit N**. Yusuf respectfully requests an Order requiring the Executor/Administrator of Hamed's estate to take such action as may be necessary to properly reflect Yusuf's joint ownership of these parcels.

Hamed's interest in another parcel that was purchased in Jordan using funds from the Plaza Extra Stores has already been conveyed to Yusuf as part of Hamed's efforts to appease Yusuf following his discovery of the misappropriation of \$2,000,000 sent to Hamed from St. Maarten in or around 1997. A copy of the agreement in Arabic conveying Hamed's interest in such parcel is attached as **Exhibit O**¹⁶. Yusuf had agreed to resolve this misappropriation, but not any others that Yusuf might later discover, by the conveyance of Hamed's interest in two parcels,

¹⁶ Yusuf is arranging for this document to be translated. An English version will be provided to the Master and counsel upon receipt.

one in Jordan that is the subject of Exhibit N, and one half acre parcel in St. Thomas, previously titled in the name of Plessen Enterprises, Inc., which is addressed in a number of the Liquidating Partner's Bi-Monthly Reports. See Ninth Bi-Monthly Report at p. 5-6. Yusuf insisted that if Hamed wanted a resolution addressing all Hamed misappropriations, whether known or unknown, Hamed would have to arrange for the conveyance to Yusuf or United of another approximately 9.3 acre parcel located on St. Thomas also titled in the name of Plessen Enterprises, Inc. Hamed, through his son, Waleed, refused to convey this third parcel.

Although Yusuf is not pursuing his claims regarding the misappropriated 2,000,000, Hamed's sons are still seeking to somehow rescind Hamed's conveyance of his interest in the Jordanian parcel that is the subject of Exhibit N in their second amended complaint in *Hamed v. Yusuf*, Civil No. SX-12-CV-377. Yusuf asks this Court to bind Hamed's estate by the agreement signed by Hamed.

VII. Loss of Going Concern Value of Plaza Extra-West

During the period that the Partnership operated Plaza Extra-West, it generated income, supported its expenses and ultimately generated profits. Plaza Extra-West's net profits were expected to continue indefinitely or, upon the dissolution of the Partnership, they were to continue until an orderly liquidation process could be concluded involving purchase of the business by one of the Partners or a third party. In either case, Plaza Extra-West's value as a "going concern" would have been quantified and realized equally by the Partners.

As equal Partners, both Hamed and Yusuf had ownership interests in the "going concern" value of Plaza Extra-West. A "going concern" value recognizes the many advantages that an existing business has over a new business, such as avoidance of start-up costs and improved operating efficiency. In this sense, the "going concern" value of a business represents the

difference between the value of an established business and the value of a start-up one. "Going concern" value also indicates the value of a business as an operating, active whole, rather than merely as distinct items of property.¹⁷

Both Hamed and Yusuf had fiduciary obligations to each other to maintain the "going concern" value of Plaza Extra-West and to behave in such a way as to promote and not diminish its value as an on-going business. An essential component to Plaza Extra-West's on-going business operations was its ability to continue to operate out of its existing location in Estate Plessen. By orchestrating an April 30, 2014 lease of the premises occupied by Plaza Extra-West to a competing business (wholly owned by Hamed's sons), KAC357, Inc., which then took over the operation of the Plaza Extra-West supermarket formerly owned by the Partnership, Hamed effectively appropriated for the benefit and use of him and his sons the "going concern" value to the Partnership of the supermarket. Hence, Hamed's actions operated to substantially decrease the value of Partnership Assets. Plaza Extra-West's value as a "going concern" at the time that Hamed took such actions was \$8,770,000. *See* Valuation Report of Plaza Extra-West, prepared by Integra Realty Resources, attached as **Exhibit P**, at page 55.¹⁸ Hamed's actions thus

¹⁷ Preservation of the going concern value is recognized in many contexts including bankruptcy proceedings, which seek to preserve such value when reorganizing businesses in order to maximize recoveries for creditors and shareholders (11 U.S.C. § 1101 et seq.).

¹⁸In addition to the business valuation report for Plaza Extra-West, Integra Realty Resources also prepared an appraisal of the real property occupied by Plaza Extra-West, which is attached as **Exhibit Q**. Exhibit Q in turn contains an analysis of the market rent for use of the land and improvements occupied by Plaza Extra-West. In Exhibit Q, Integra Realty Resources concludes that the market rent for the property is \$7.50 per square foot per year, rather than the \$4.04 per square foot per year rate in the KAC357, Inc. lease. *See* Exhibit Q, pp. 63-64. The annual market rent is \$1,224,848 at the \$7.50/sq. ft./year rate. *See id.* at p. 63. That annual market rent of \$1,224,848 in Exhibit Q was in turn used in the income approach calculations of Exhibit P to determine the business value of Plaza Extra-West as of April 30, 2014. *See* Exhibit P, p. 39, item 4; pp. 40, 53-54. The \$7.50/sq. ft./year market rent for Plaza Extra-West is a conservative number because, as noted in Exhibit Q (at page 61), the actual annual rent paid at one of the

diminished the value of the Partnership Assets at the time of dissolution by \$8,770,000. As half owner of the Partnership, such actions decreased the value of Yusuf's Partnership interests by \$4,385,000. As a result, \$4,385,000 should be awarded to Yusuf to compensate him for such loss of value.

VIII. Half of Value of Six Containers

As reflected in the Liquidating Partner's Sixth Bi-Monthly Report, n. 4, at the closed auction for the Tutu Park store, the Partners agreed before the Master that the inventory to be included in the auction consisted of the inventory located under the roof of the store facilities. After the auction, Yusuf learned that Hamed or his designee, KAC357, Inc., took possession of six (6) trailers of inventory located outside of the covered premises. Since the inventory contained in these 6 containers was indisputably Partnership property, Yusuf claims entitlement to half of the total value of such inventory, which is estimated to be approximately \$360,000 to \$420,000. Subject to further discovery, Yusuf submits he should be entitled to recover between \$180,000 and \$210,000. Since the Master has already rejected this claim, Yusuf reasserts it here merely to preserve the claim for review.

IX. Disposition of this Case and Related Litigation

The Claim addresses or resolves many but not all of the open claims between the Partners and related entities. To fully and finally complete the dissolution of the Partnership and accomplish a final distribution to the Partners, further discovery will be required in this case and related litigation.

other stores – Plaza Extra-Tutu Park – was \$8.91 (as a result of overage or percentage rent clauses in that lease).

A. The Main Case and Consolidated Cases

Yusuf's proposed distribution in this matter (Hamed v. Yusuf, SX-12-CV-370, the "Main Case") is based upon the discovery that had been conducted prior to the imposition of the discovery stay in October of 2014. Additional information which has been or will be sought from Hamed's estate and his agents or representatives reflecting their personal finances is expected to reveal additional undisclosed withdrawals or personal expenses paid with Partnership funds. Hence, additional discovery is needed to determine if such additional undisclosed withdrawals occurred which would result in a revised proposed distribution as to the historical withdrawals.

The matter dealing with Y&S (Hamed v. Yusuf, SX-14-CV-278, the "278 Case"), is the subject of a stipulation to consolidate that case into the Main Case. Therefore, any disputed issues relating to the claims for the sale and distribution of the proceeds of the sale of the Y&S (and R&F) stock can be resolved in the Main Case.

In addition, Hamed filed suit against United and Yusuf (Hamed v. United, SX-14-CV-287, the "287 Case") for the withdrawal of \$2.7 million in Partnership funds on August 20, 2012. Yusuf submits that payment of these funds was made as a matching withdrawal to address the disparity of the prior Partnership distributions to Hamed and his agents. The Partners stipulated for consolidation of these cases and on April 15, 2016 an Order was entered consolidating the 287 Case into the Main Case. The withdrawal at issue in the 287 Case is fully addressed in the accounting and reconciliation of past Partner withdrawals in the BDO Report. *See Exhibit J at p. 14.* Hence, these claims are now consolidated into the Main Case.

B. Additional Suits Which Should Be Consolidated with the Main Case

The case captioned United v. Waheed Hamed, ST-13-CV-101 relates to actions of Waheed for improper removal of funds of the Partnership prior to recognition of the Plaza Extra Stores' operations as a "partnership."¹⁹ These claims relate to specific withdrawals of funds or use of Partnership funds that are included in the accounting and reconciliation in Section IV of Exhibit J. To the extent that any additional discovery is necessary concerning these claims or defenses, they can be addressed in the Main Case. As a result, Yusuf also seeks to have this case consolidated into the Main Case, if it is not dismissed.

The suit captioned United Corporation v. Wadda Charriez, SX-13-CV-152, relates to claims by United that Ms. Charriez falsified her work hours and therefore received compensation to which she was not entitled. Ms. Charriez counterclaimed against United and filed a third party complaint against Yusuf for intentional infliction of emotional distress, tortious interference with contract, civil extortion, civil conspiracy, and defamation, all of which are essentially claims against the Partnership. Yusuf contends that the claim is a potential asset of the Partnership and that the counterclaim/third party complaint is a potential liability of the Partnership, which requires the establishment of appropriate reserves. Further, Yusuf proposes that, as the Liquidating Partner, he be allowed to pursue efforts to resolve the claims and counterclaims involving the Partnership.

C. Conclusion

Yusuf submits that the remaining assets of the Partnership are insufficient to satisfy the outstanding Debts and reserves for anticipated or contingent obligations and litigation risks of

¹⁹ A similar suit was filed by United against Waleed Hamed (ST-13-CV-3). On motion of United, it was dismissed by Order dated August 5, 2016. United filed a similar motion to dismiss its case against Waheed Hamed on September 13, 2016.

the Partnership. Assuming the allowance of all the identified Debts and proposed reserves, there will be a shortfall of approximately \$4 million in Partnership Assets to pay or establish these Debts and reserves. *See Exhibit A.* Any actual shortfall must be made up by the Partners or a deceased Partner's estate. An accounting of the historical withdrawals and distributions between the Partners, both disclosed and undisclosed, reveals a large discrepancy in Yusuf's favor. Again, these calculations were prepared without the benefit of deposition testimony and additional written discovery following the stay. It is anticipated that additional discovery will yield information necessitating revisions to these calculations. Likewise, Partnership funds entrusted to Hamed and his sons in various foreign accounts also requires additional discovery. The loss of the going-concern value of Plaza Extra-West further reflects a significant amount due to Yusuf. On balance, there exists a substantial amount due to Yusuf to reconcile the Partner's withdrawals and distributions. Solvency of Hamed (or his estate)²⁰ is in doubt given the discrepancy in the amounts due to Yusuf. For this reason, Hamed's (or his estate's or his trust's) interests in the jointly owned entities (Plessen Enterprises, Inc., Peter's Farm Investment Corporation, and Sixteen Plus Corporation) may need to be quantified as a means of payment to equalize the Partnership withdrawals.

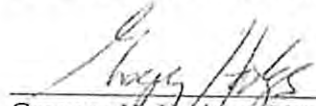
²⁰ A Petition for Probate of Will and for Letters Testamentary was filed on August 26, 2016 as Case No. SX-2016-PB-76. That petition reflects no available assets to satisfy Yusuf's claims other than Hamed's interest in the Partnership, since all of Hamed's interests in real and personal property had previously been conveyed to the Mohammad A. Hamed Living Trust dated September 12, 2012. Yusuf reserves all rights to challenge such conveyance as fraudulent.

Respectfully submitted,

DUDLEY, TOPPER and FEUERZEIG, LLP

DATED: September 30, 2016

By:


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Attorneys for Fathi Yusuf and United Corporation

CERTIFICATE OF SERVICE

I hereby certify that on this 30th day of September, 2016, I caused the foregoing Yusuf's Accounting Claims and Proposed Distribution Plan to be served upon the following via e-mail:

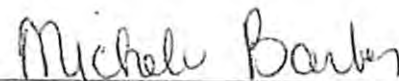
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**INDEX OF EXHIBITS TO YUSUF ACCOUNTING CLAIMS AND PROPOSED
DISTRIBUTION PLAN**

- Exhibit A - Summary of Yusuf Plan Distributions
- Exhibit B - Litigation Reserves Calculations
- Exhibit C - Calculation of Additional Rent Net of Rent Paid
- Exhibit D - Calculation of Interest on Bay 1 Rent
- Exhibit E - Calculation of Interest on Bay 5 & 8 Rent
- Exhibit F - Summary and Evidence of United Payment of Gross Receipts Taxes
- Exhibit G - Relevant Black Book Entries
- Exhibit H - Relevant Ledger Entries
- Exhibit I - Summary and Supporting Documentation of Unreimbursed Transfers from United
- Exhibit J - Past Partner Withdrawals and Distribution Reconciliation, BDO Report
- Exhibit J-1 - Tables, Schedules and Supporting Documents for BDO Report
- Exhibit K - List of Foreign Accounts
- Exhibit L - Wire Transfer Information Supporting Claim
- Exhibit M - Cairo Amman Checks to Waleed Hamed
- Exhibit N - Land Value Estimation
- Exhibit O - Agreement in Arabic Conveying Hamed's Interest in Jordanian Parcel
- Exhibit P - Integra Realty Resources Valuation Report
- Exhibit Q - Integra Realty Resources Appraisal Report

EXHIBIT 1-A

EXHIBIT 1-A

Claim Distribution Summary

I. Total Assets Remaining After Liquidation: ¹		\$8,957,168.54
II. Less Reserves:		
A. Tutu Park Property Taxes: ²	\$ 14,356.44	
B. Matching Payment to United: ³	\$ 9,812.14	
C. FUTA Taxes:	\$ 350,000.00	
D. Master's Fees ⁴ :	\$ 150,000.00	
E. Accounting Fees:	\$ 30,000.00	
F. Litigation Risks:	\$ <u>1,320,777.00</u>	
	Subtotal:	\$1,874,945.58
		Balance Less Reserves: \$7,082,222.96
III. Less Debts of the Partnership:		
A. Balance Sheet Liabilities ⁵	\$ 176,267.97	
B. Add'l Rent for Bay 1:	\$ 6,974,063.10	
C. Interest on Bay 1 Rent Awarded:	\$ 881,955.08	
D. Rent for Bays 5 & 8:	\$ 793,984.34	
E. Interest on Unpaid Rent, Bays 5 & 8:	\$ 241,005.18	
F. Reimb. United for Gross Receipts Taxes	\$ 60,586.96	
G. Black Book Balance owed to United	\$ 49,997.00	
H. Ledger Balances owed to United	\$ 199,760.00	
I. Water Revenue Re: Plaza Extra-East	\$ 693,207.46	
J. Unreimbursed Transfers from United	\$ <u>188,132.00</u>	
	Subtotal:	\$10,258,959.09
IV. Net Partnership Assets Available for Distribution After Debts and Reserves:		(\$3,176,736.04)
V. Past Partnership Withdrawals and Distribution Reconciliation:		
A. Net funds withdrawn or deemed to be a distribution between the Partners per BDO Report - Net Due to Yusuf: ⁶	\$ 9,670,675.36	

¹ See Partnership Balance Sheet as of August 31, 2016 provided by John Gaffney to the Master and counsel for the Partners on September 30, 2016.

² See fn. 6 to Tenth Bi-Monthly Report filed on September 30, 2016.

³ See fn. 6 to Tenth Bi-Monthly Report filed on September 30, 2016.

⁴ This is an estimated amount.

⁵ See Total Liabilities shown on Balance Sheet provided by John Gaffney on September 30, 2016.

⁶ See BDO Report at p. 63.

VI. Y&S Corporation and R&F Condominium, Inc. Stock Sale Proceeds Distribution:

A. Net Due to Hamed: \$802,966.00

VII. Foreign Accounts:

A. Net Due to Yusuf: \$TBD – Following add'l discovery

VIII. Loss of Going Concern Value of Plaza Extra-West

A. Net Due to Yusuf: \$4,385,000.00

IX. Half of Value of Five Containers

A. Approx. \$180,000 - \$210,000.00
(Not included based on Master's initial determination)

Total Due to Yusuf: \$13,402,709.36*

*This amount represents the sum of \$9,670,675.36 from § V and \$4,385,000.00 from § VIII less \$652,966.00 (\$802,966.00 from § VI - \$150,000.00 from Claim n. 15). It represents the amount known as of September 30, 2016 based upon the information available, not including any punitive damages to which Yusuf may be entitled. It is subject to further revision following the reopening of discovery.

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

NOTICE OF FILING DOCUMENT IN THE OTHER DIVISION

I. Caption of case including proper division:

**In re Estate of Mohammad A. Hamed
Deceased
Probate No. SX-016-PB-76-, 2016**

II. Description of Document(s):	No. of Pages	Document No.
Creditor's Claim Yusuf Yusuf	24	(Clerk's Office Only)

III. Certification of mailing or delivery to each of the following:

<u>Name of Attorney</u>	<u>Type of Service</u>	<u>Dated Emailed</u>
Gerald T. Groner, Esq.	U.S. Mail	April 12, 2017

Dated: April 12th, 2017


Signature of Counsel

CREDITOR'S CLAIM

SUPERIOR COURT OF THE VIRGIN ISLANDS

DIVISION OF ST. CROIX

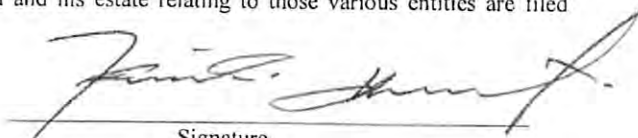
In re Estate of Mohammad A. Hamed
Deceased

Probate No. SX-016-PB-76, 2016

The undersigned, FATHI YUSUF ("Yusuf"), presents this claim against the Estate of MOHAMMAD A. HAMED, Deceased ("Hamed"), for approval, viz: ESTATE OF MOHAMMAD A. HAMED, Deceased,

To MOHAMMAD A. HAMED, DEBTOR.

The undersigned, Yusuf was a partner with Hamed engaged primarily in the business of operating grocery stores known as the "Plaza Extra" stores on St. Croix and St. Thomas. Yusuf has various claims against Hamed arising out of this partnership. Yusuf's partnership claims are currently being litigated in the Superior Court, St. Croix Division, *Hamed v. Yusuf et al.*, SX-12-CV-370. Pursuant to the Final Wind Up Plan dated January 7, 2015, Yusuf's claim has been submitted to a Master for report and recommendation to the Court for the ultimate resolution by Judge Douglas A. Brady. The nature of Yusuf's claim is more specifically described in Yusuf's Accounting Claims and Proposed Distribution Plan submitted to the Master on September 30, 2016, attached as Exhibit 1. At present and subject to additional discovery, the amount of Yusuf's claim against Hamed is set forth in the Claim Distribution Summary attached as Exhibit 1A. The supporting documentation for Yusuf's claim is extensive and, therefore, has not been included with this submission. It can be provided upon request as various personal data identifiers will need to be redacted. In addition to Yusuf's claims against Hamed as a result of the partnership, Yusuf and Hamed jointly owned various entities of which Hamed was an officer and director. Claims against Hamed and his estate relating to those various entities are filed separately.

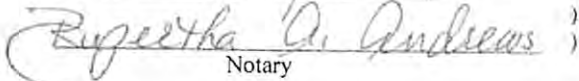


Signature

Division Of St. Croix _____ SS.

I, Fathi Yusuf being duly sworn according to the law, say: I have personal knowledge of the matters alleged in this Claim; the amount claimed is justly due; no payments have been made thereon, except as stated, to the best of my knowledge, information and belief.

Sworn to and subscribed before me)
this 11 day of April 2017)



Notary

Rupertha A. Andrews
Notary Public
District of St. Croix, USVI
Commission # NP-115-15
Commission Expires October 21, 2019

EXAMINED and _____
(State whether Approved or Rejected.)

Date _____

(Official signature See III Chap. 75, Sec. 40.)

EXHIBIT A

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	:	CASE # SX-13-CV-120
individual capacities and derivatively	:	
on behalf of PLESSEN ENTERPRISES, INC.,	:	ACTION FOR DAMAGES,
	:	DECLARATORY AND
Plaintiffs,	:	INJUNCTIVE RELIEF
	:	
vs.	:	JURY TRIAL DEMANDED
	:	
MOHAMMAD HAMED, WALEED HAMED,	:	
WAHEED HAMED, MUFEED HAMED,	:	
HISHAM HAMED, FIVE-H HOLDINGS, INC.,	:	
and KAC357, INC.,	:	
	:	
Defendants,	:	
	:	
-and-	:	
	:	
PLESSEN ENTERPRISES, INC.,	:	
	:	
Nominal Defendant.	:	

FIRST AMENDED COMPLAINT

Plaintiffs YUSUF YUSUF (“Yusuf”), FATHI YUSUF (“Fathi”), FAWZIA YUSUF (“Fawzia”), MAHER YUSUF (“Maher”), NEJEH YUSUF (“Nejeh”), and ZAYED YUSUF (“Zayed”) (collectively, the “Yusufs”), through their undersigned counsel, individually and derivatively on behalf of PLESSEN ENTERPRISES, INC. (“Plessen”), and as shareholders of Plessen, hereby file their First Amended Complaint (the “Complaint”) against Defendants MOHAMMAD HAMED (“Mohammad”), WALEED HAMED (“Waleed”), WAHEED HAMED (“Waheed”), MUFEED HAMED (“Mufeed”), HISHAM HAMED (“Hisham”) (collectively, the “Hameds”), FIVE-H HOLDINGS, INC. (“Five-H”), KAC357, Inc. (“KAC357”), and against Nominal Defendant Plessen, and allege:

I. BACKGROUND

1. The Yusufs bring this action, both in their individual capacities and, derivatively, on behalf of Plessen, against the Hameds, two of whom, Mohammad and Waleed, are directors and officers of Plessen, Five-H and KAC357, to remedy, among other things, the fraudulent misappropriation of Plessen's assets, including the unauthorized withdrawal by Waleed and Mufeed of \$460,000 from Plessen's bank account, representing approximately 99 percent (99%) of the monies on deposit in that account, for the benefit of the Hameds as well as Five-H, and the waste of one of Plessen's most significant assets, the improved land on which Plaza Extra-West has been operating for approximately fifteen (15) years, by giving a long term lease for such premises to KAC357, a company incorporated on April 22, 2001, and wholly owned by Waleed, Waheed and Mufeed, on terms that unfairly benefit KAC357 and are inconsistent with the best interests of Plessen.

2. Further, the Yusufs bring this action against Mohammad and Waleed for breach of their fiduciary duties as directors and officers of Plessen for (1) improperly ratifying the theft of \$460,000 as purportedly lawful dividends to avoid criminal and civil liability, (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, and (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.

3. The breach of fiduciary duty committed by Waleed's and Mufeed's misappropriation of Plessen's \$460,000 is an issue that has specifically been referred to this Court for resolution in this derivative action.

II. JURISDICTION, VENUE, & DEMAND FOR JURY TRIAL

4. This Court has jurisdiction over this action pursuant to V.I. Code Ann. tit. 4, § 76(a) and V.I. Code Ann. tit. 13, § 341.

5. Venue is proper in this district pursuant to V.I. Code Ann. tit. 4, § 78(a).

6. A trial by jury is demanded pursuant to V.I. Code Ann. tit. 4, § 80 and Fed. R. Civ. P. 38, made applicable to proceedings in this Court by Super. Ct. R. 7, of all issues triable by right to a jury.

III. THE PARTIES

7. The Yusufs are natural persons and residents of the U.S. Virgin Islands.

8. The Hameds are natural persons and residents of the U.S. Virgin Islands.

9. Five-H is a duly organized Virgin Islands Corporation and is authorized to conduct business in the Virgin Islands.

10. KAC357 is a duly organized Virgin Islands Corporation and is authorized to conduct business in the Virgin Islands.

11. Plessen is a duly organized Virgin Islands Corporation and is authorized to conduct business in the Virgin Islands.

IV. FACTS COMMON TO ALL COUNTS

12. Plessen was incorporated on January 31, 1989. A copy of Plessen's Articles of Incorporation is attached as **Exhibit "A"** hereto. Plessen adopted By-Laws on or about April 30, 1997, a copy of which is attached as **Exhibit "B"** hereto. In 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.

13. Plessen's original Board of Directors, as identified in the Articles of Incorporation, was comprised of Mohammad, Waleed, and Fathi. *See* Exhibit "A" at p. 3.

14. After Plessen's formation, an additional seat on the Board was created, and Maher was added as a director, so that representation on the Board of Directors paralleled the 50/50 shareholder ownership of Plessen as described below. Thus, the current members of Plessen's Board are Mohammad, Waleed, Fathi, and Maher.

15. Plessen's current officers are: Mohammad (President), Waleed (Vice President), and Fathi (Treasurer and Secretary). *See* Exhibit "A" at p. 3.

16. 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.

17. 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.

18. Pursuant to Rule 23.1 of the Federal Rules of Civil Procedure, which applies in this action under Rule 7 of the Superior Court, the Yusufs have standing to bring this action and will adequately and fairly represent the interests of Plessen and its shareholders in enforcing and prosecuting its rights.

19. 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.

20. Upon information and belief, Five-H, by and through the Hameds, conducts business in the U.S. Virgin Islands.

21. KAC357 is, upon information and belief, a corporation incorporated in the Virgin Islands on April 22, 2014, and is owned by Waleed, Waheed and Mufeed.

22. 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, as reflected in the Scotiabank account opening documents and Department of Licensing and Consumer Affairs license renewal applications attached as Exhibits "C" and "D," respectively.

23. This agreement was designed to allow both families to jointly manage Plessen, just as both families have done in their other jointly owned corporations.

WALEED'S MISAPPROPRIATION OF \$460,000

24. On or about March 27, 2013, Yusuf paid with his personal Banco Popular Visa credit card the 2011 real property taxes of Plessen.

25. Yusuf was reimbursed for such payment by way of a check drawn on Plessen's bank account with Scotiabank.

26. 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.

27. Yusuf then reviewed Plessen's bank statements and learned that on March 27, 2013, Waleed and Mufeed, without authorization, issued check number 0376 in the amount of \$460,000.00 from Plessen's Scotiabank account, made payable to Waleed in his personal capacity, with no business purpose. A copy of check number 0376 is attached as Exhibit "E" hereto.

28. Waleed then endorsed check number 0376 “for deposit only” and deposited the entire \$460,000 into his personal bank account. 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. This is a personal business venture of Waleed and his brothers having nothing to do with Plessen.

29. 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.

30. 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.

31. Under Virgin Islands law, the misappropriation of \$460,000 can only be ratified by unanimous vote of the shareholders of Plessen. There has never been any such vote to ratify the \$460,000 misappropriation.

32. Neither of these two \$230,000 deposits into the registry of the Court alter the fact of the \$460,000 misappropriation, or change the unlawful and illegal character of the misappropriation, or otherwise excuse the misappropriation, which diverted corporate funds of Plessen to personal ventures of the Hamed family

33. 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.

**THE HAMEDS MISUSE OF PLESSEN TO SEIZE
AND MAINTAIN CONTROL OF PLAZA EXTRA-WEST**

34. On September 12, 2012, Mohammad commenced a civil proceeding against Fathi captioned *Hamed v. Yusuf*, Civ. No. SX-CV-370 (the "370 Case") seeking damages, injunctive relief, and declaratory relief in connection with Mohammad's and Fathi's business relationship involving the three Plaza Extra supermarket stores. Although Fathi never disputed that Mohammad was entitled to fifty percent (50%) of the net profits from the Plaza Extra stores, he initially disputed the existence of a partnership, as alleged in the complaint in the 370 Case. Pursuant to a Motion To Approve Master For Judicial Supervision Of Partnership Winding Up and a proposed Wind Up Plan filed in the 370 Case on April 7, 2014, Fathi conceded the existence of a "partnership" in order to wind down his business relationship with Mohammad. In April of 2014, Mohammad requested and obtained an extension of time until April 30, 2014 to respond to this motion and submit a competing plan.

35. 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 announcing a meeting of directors scheduled for Wednesday, April 30, 2014 at 10 a.m. A copy of the Notice is attached as **Exhibit "F."** The notice was deficient and the Special Meeting was improperly called since the Bylaws require that Fathi, as the Secretary of Plessen, issue any such Notice and Fathi was not consulted as to issuance of such Notice.

36. On April 29, 2014, Fathi pointed out the deficiencies in the Notice in a response, a copy of which is attached as **Exhibit "G."**

37. At the April 30 meeting, Mohammad and Waleed refused to recognize Maher as a director and used the purported majority control of the Hamed interests over the Board to adopt, over the Yusufs' objections, five resolutions including the following:

- a. Ratify the March 27, 2013 theft of \$460,000 from Plessen and deem that amount as a supposed dividend;
- b. Approve the Lease (with an initial 10 year term with two-10 year renewal options) between Plessen and KAC357 with numerous favorable terms designed to enrich the Hameds at the expense of Plessen and the Yusufs. By way of example, the Lease did not obligate KAC357 to procure and maintain windstorm insurance and did not require the principals of KAC357 to personally guarantee its performance under the Lease. Nor did the Lease obligate KAC357 to pay market rent.

38. 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.

39. 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, even though Fathi was the officer of Plessen who had negotiated and signed all other Plessen leases.

40. The outcome of the sham meeting was a forgone conclusion – over the Yusuf’s vehement objections, 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.

41. Unsatisfied with misappropriating one of Plessen’s most valuable assets, namely, the premises covered by the Lease, Mohammad then sought to shield his son, Waleed, from any liability in this action by passing a resolution declaring Waleed’s theft of \$460,000 in March 2013 as a “lawful” dividend. In other words, Mohammad and Waleed purported to ratify the theft of Plessen’s funds one year earlier by declaring those funds to be lawful dividends, after the fact, and after the Hameds had used the cash to fund their own personal venture.

42. In the 370 Case, Fathi filed a motion to nullify the resolutions adopted on April 30, 2014, to render nugatory the illegal acts taken pursuant to those resolutions, including the Lease and the \$460,000 “dividend” declaration, and to appoint a receiver for Plessen given the abusive stewardship of the Hamed family in perpetuating its control of Plessen through its domination of the Plessen Board of Directors. In a non-final, non-appealable order, the Court in the 370 Case denied the motion. *See Hamed v. Yusuf*, 2014 V.I. LEXIS 52 (Super. Ct. July 22, 2014). The Court in the 370 Case concluded that the Lease was intrinsically fair to Plessen, even though it acknowledged the Hameds had the burden of proving its intrinsic fairness and they presented no evidence whatsoever regarding, among other things, the market rental value of the premises covered by the Lease compared to the rent to be paid under the Lease, why no personal guarantees of the principals of KAC357 were provided, why no windstorm insurance coverage was required,

and whether the amount of hazard insurance required under the Lease was commercially reasonable given the complete absence of evidence regarding the replacement value of the premises.

43. The Court in the 370 Case stopped short of addressing whether any of Mohammad's and Waleed's actions in approving the Lease or the \$460,000 "dividend" constituted breaches of fiduciary duty. Moreover, that Court declined to address the legality of the taking of \$460,000 "as the resolution of this issue is more appropriately before another judicial officer." *Id.* at * 17.

44. Accordingly, the Court in the 370 Case expressly left open whether Waleed and Mufeed were guilty of misappropriating the \$460,000 and the legal consequences of such conduct, including whether Waleed should be removed as a director and officer of Plessen retroactive to the date of the misappropriation, which would render all votes he cast as a director on April 30, 2014 of no force and effect. The Court in the 370 Case also deferred making a ruling as to appointment of a receiver for Plessen because of the corporate deadlock of the Hamed and Yusuf family shareholders.

45. The Hamed and Yusuf families are and have been in a state of irreconcilable conflict and dissension regarding the operation of Plessen. Because of the deep acrimony and distrust between Fathi and Mohammad, their partnership has been dissolved and is being wound up in the 370 Case. The strife, deep mutual distrust, and dissension between the Hamed and Yusuf families, which recently erupted into a physical altercation, makes it impossible for them to jointly manage and operate Plessen or any other business that they jointly own.

Demand on the Board is Excused as Futile

46. 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 Yusuf's' pre-suit demand on the Board to bring suit asserting the claims set forth in the Complaint.

47. 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.

48. Separately, because both the Board and shareholders of Plessen are comprised 50/50 by members of the Hamed and Yusuf families, and because neither the Articles of Corporation nor the Bylaws provide a tie-breaker mechanism in the event of a deadlock, any demand upon Plessen would be useless based on the familial relationships at issue, and the lack of sufficient independence of Mohammad and Waleed to institute and vigorously prosecute this action, all of which argues in favor of judicial intervention in this action to protect the interests of Plessen and the Yusuf family shareholders.

49. All conditions precedent to bringing this action have been satisfied, performed, discharged, excused and/or waived.

V. CAUSES OF ACTION

COUNT I – CONVERSION (Against WALEED and MUFEEED)

50. Paragraphs 12 through 49 are incorporated as if fully set forth herein.

51. 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.

52. Neither of the two deposits of \$230,000 into the registry of the Court alters the fact of the conversion, or otherwise excuses the conversion or alters the character of this fraudulent act.

53. Accordingly, Waleed and Mufeed are liable for conversion.

**COUNT II – BREACH OF FIDUCIARY DUTIES
(Against MOHAMMAD and WALEED)**

54. Paragraphs 12 through 53 are incorporated and as if fully set forth herein.

55. Waleed and Mohammad, as a directors and officers of Plessen, owe Plessen and its shareholders the utmost fiduciary duties of due care, good faith, candor and loyalty.

56. Further, Mohammad and Waleed are, and at all relevant times were, required to use their utmost ability to control and manage Plessen in a fair, just, honest and equitable manner; to act in furtherance of the best interests of Plessen and its shareholders so as to benefit all shareholders equally and not in furtherance of their personal interests or benefit to the exclusion of the remaining shareholders; and to exercise good faith and diligence in the administration of the affairs of Plessen and in the use and preservation of its property and assets.

57. By virtue of the foregoing duties, Mohammad and Waleed were required to, among other things:

- i. exercise good faith in ensuring that the affairs of Plessen were conducted in an efficient, business-like manner so as to make it possible to provide the highest quality performance of its business in accordance with applicable laws;
- ii. refrain from wasting Plessen's assets; specifically, refrain from conveying any interest in any of Plessen's assets without maximizing the return on such assets.
- iii. refrain from unduly benefiting himself and other non-shareholders at the expense of Plessen;
- iv. refrain from self-dealing;
- v. exercise the highest obligations of fair dealing; and

- vi. properly disclose to Plessen's shareholders all material information regarding the company.

58. However, by virtue of their positions as director and officer of Plessen, and their exercise of control over the business and corporate affairs of Plessen, Mohammad and Waleed have, and at all relevant times had, the power to control and influence – and did control and influence – Plessen to engage in the wrongdoings alleged herein.

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.

60. 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.

61. 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, damage to its reputation, the loss of the funds unlawfully obtained from Plessen's Scotiabank account, and the loss of other corporate opportunities.

62. Pursuant to V.I. Code Ann. tit. 13, § 341(2), Mohammad and Waleed should be ordered to pay Plessen all sums of money and all the value of any property which they may have acquired to themselves, or transferred to Five-H, KAC357 or others, or may have lost or wasted by any violation of their duties or abuse of their powers.

**COUNT III – WASTE OF CORPORATE ASSETS/USURPATION
OF CORPORATE OPPORTUNITY
(Against Mohammad and Waleed)**

63. Paragraphs 12 through 62 are incorporated as if fully set forth herein.

64. Waleed, a director and officer of Plessen, knowingly withdrew \$460,000 of Plessen's funds, which withdrawal constituted an exchange of corporate assets under circumstances which no business person of ordinary, sound judgment could conclude that Plessen received adequate consideration.

65. Mohammad and Waleed, as directors and officers of Plessen, knowingly engaged in self-dealing by approving the Lease with terms, including rent that improperly benefitted KAC357 at the expense of Plessen.

66. That approval and recordation of a memorandum of the Lease against Plessen's property constituted a waste of corporate assets and usurpation of corporate opportunity, which no business person of ordinary, sound judgment could conclude was in the best interests of Plessen.

67. 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.

**COUNT IV – UNJUST ENRICHMENT
(Against All Defendants)**

68. Paragraphs 12 through 67 are incorporated as if fully set forth herein.

69. 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.

70. It would be unconscionable to allow the Hameds, Five-H, and KAC 357 to retain the benefits of Plessen's assets

**COUNT V – CIVIL CONSPIRACY
(Against All Defendants)**

71. Paragraphs 12 through 70 are incorporated as if fully set forth herein.

72. As alleged in detail herein, the Hameds, Five-H and 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.

73. The Hameds, Five-H and KAC357 knowingly performed overt acts and took action to further or carry 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.

74. 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.

COUNT VI – ACCOUNTING
(Against All Defendants)

75. Paragraphs 12 through 74 are incorporated as if fully set forth herein.

76. As alleged in detail herein, the Hameds, Five-H, and KAC357 unlawfully benefitted from and/or misappropriated Plessen's funds and assets.

77. Further, at all times relevant, Mohammad and Waleed, as directors and officers of Plessen, owed to Plessen a fiduciary duty to account to the company and its shareholders in a timely and accurate manner.

78. 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.

79. 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.

80. PLESSEN is without a sufficient remedy at law to ascertain its losses and/or interests in the misappropriated funds and assets as set forth herein.

81. Accordingly, a full accounting is warranted under the common law and pursuant to the provisions of V.I. Code Ann. tit. 13, § 341(1).

**COUNT VII – INJUNCTION
(Against the Hameds)**

82. Paragraphs 12 through 81 are incorporated as if fully set forth herein.

83. Pursuant to V.I. Code Ann. tit. 13, § 341(3), Mohammad and Waleed should be enjoined from exercising their offices as directors and officers of Plessen.

84. Pursuant to V.I. Code Ann. tit 13, § 341(4), Mohammad and Waleed should be removed from any office they may have acquired by virtue of Plessen’s Articles of Incorporation, with Waleed’s removal being retroactive to March 27, 2013, and any subsequent actions or resolutions of Plessen based on his invalid vote, including but not limited to the April 30, 2014 resolutions, should be declared null and void.

85. Alternatively, Waleed’s misappropriation of \$460,000 disqualifies him from having voted to approve any of the actions or resolutions of Plessen approved on April 30, 2014, and those resolutions should accordingly be declared null and void.

86. Pursuant to V.I. Code Ann. tit. 13, § 341(6), the Hameds should be restrained from alienating any of Plessen’s property.

**COUNT VIII - ORDER COMPELLING SHAREHOLDERS MEETING TO ELECT
DIRECTORS OF PLESSEN
(Against the Hameds)**

87. Paragraphs 12 through 86 are incorporated and is fully set forth herein.

88. V.I. Code Ann. tit. 13, §193 (“section 193”) provides that where there has been any failure to conduct an election of directors, the Court “may summarily order an election to be held upon the petition of any stockholder.”

89. The legislative history for section 193 states that it was inspired by, inter alia, a provision of the Delaware corporate code, and “was designed to fix the consequences of failure to hold election of directors.”

90. In the 25-year history of Plessen, there has never been an annual meeting of the shareholders to elect directors of Plessen.

91. Under section 193, the Yusufs are entitled to a summary order directing the holding of a meeting of Plessen shareholders at which the directors of Plessen will be elected.

92. Pursuant to V.I. Code Ann. tit. 13, § 341(5), Mohammad and Waleed should be prohibited from being eligible for election.

COUNT IX - DISSOLUTION OF PLESSEN
(Against the Hameds)

93. Paragraphs 12 through 92 are incorporated as if fully set forth herein.

94. 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.

95. This deadlock and dissension is grounds for dissolution of Plessen.

COUNT X - APPOINTMENT OF A RECEIVER FOR PLESSEN

96. Paragraphs 12 through 95 are incorporated as if fully set forth herein.

97. There exists a hopeless deadlock and irreconcilable animosity between the shareholders of Plessen.

98. In addition, in the event Maher is determined not to be a director, the same three directors have been in place since the inception of Plessen in 1989, with the result that there is a self-perpetuating control of the board of directors by the Hamed family.

99. All of these facts constitute the kind of deadlock that warrants judicial intervention in the form of the appointment of a receiver to dissolve Plessen, liquidate its assets, and wind up its business affairs.

XI. RELIEF REQUESTED

WHEREFORE, The Yusufs pray for a Final Judgment against Defendants, jointly and severally, as follows:

A. Determining that the Yusufs may maintain this action on behalf of Plessen and that they are adequate representatives of Plessen;

B. Determining that this action is, in part, a proper derivative action that is maintainable under law and in which a pre-suit demand was excused;

C. Awarding to Plessen the actual and compensatory damages that it sustained as a result of the causes of action set forth herein, which damages will be determined at trial;

D. Awarding to Plessen punitive damages justified by the acts set forth herein, including, but not limited, to the misappropriation of \$460,000, which damages will be determined at trial;

E. Declaring that Waleed and Mufeed Hamed engaged in an unlawful misappropriation of \$460,000, and that their attempt to tender restitution of some (and later) all of that amount by paying it into the registry of the Court does not alter the fact of the misappropriation or otherwise excuse the misappropriation;

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;

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H. Awarding a full accounting of all monies, funds and assets that the Defendants received from Plessen;

I. Awarding to Plessen the costs and disbursements of this action including, but not limited to, reasonable attorneys' fees, accountants' and experts' fees, costs and expenses;

J. Awarding pre- and post-judgment interest on any monetary award at the highest rates allowed by law;

K. Entering Judgment declaring void the resolution passed by the Board of Directors ratifying the misappropriation of \$460,000 as a dividend;

L. Ordering a shareholder's meeting pursuant to V.I. Code Ann. tit. 13, §193 to elect a Board of Directors;

M. Compelling Mohammad and Waleed to account for their official conduct in the management and disposition of the funds, property and business committed to their charge, pursuant to V.I. Code Ann. tit. 13, §341(1);

N. Ordering and compelling Mohammad and Waleed to pay to Plessen all sums of money and all the value of any property which they may have acquired to themselves, or transferred to Five-H , KAC357 or others or may have lost or wasted by any violation of their duties or abuse of their powers, pursuant to V.I. Code Ann. tit. 13, §341(2);

O. Enjoining Mohammad and Waleed from exercising their offices, pursuant to V.I. Code Ann. tit. 13, § 341(3);

P. Removing Mohammed and Waleed from any office they may have acquired by virtue of Plessen's Articles of Incorporation, pursuant to V.I. Code Ann. tit. 13, §341(4), and making that removal in Waleed's case retroactive to March 27, 2013;

Q. Entering Judgment declaring void the resolution passed by the Board of Directors approving the Lease and all other resolutions adopted on April 30, on the grounds that by virtue of Waleed's misappropriation of \$460,000, his vote at the April 30 meeting could not properly be cast or counted, either because of his retroactive removal from the Board, or because this misappropriation otherwise disqualified him from voting to approve the Lease and all other resolutions at the April 30 meeting;

R. Ordering new elections to be held by the shareholders of Plessen to supply the vacancy created by such removal and prohibiting Mohammad and Waleed from being eligible for election, pursuant to V.I. Code Ann. tit. 13, § 341(5);

S. Restraining the Hameds from alienating any of Plessen's real and personal property, pursuant to V.I. Code Ann. tit. 13, § 341(6); and

T. Awarding such further equitable and monetary relief as the Court deems just and appropriate.

Dated: April 28th, 2015

Respectfully Submitted,



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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 28th day of April, 2015, I caused the foregoing First Amended Complaint to be served upon the following via e-mail:

Mark W. Eckard, Esquire
Eckard, P.C.
P.O. Box 24849
Christiansted, VI 00824
Email: mark@markeckard.com



Christina Joseph