

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

Waleed Hamed and KAC357, Inc.)	
	)	CIVIL NO. SX-16-CV-429
Plaintiff,	)	ACTION FOR DAMAGES
vs.)	
)	
Bank of Nova Scotia, d/b/a	)	<u>JURY TRIAL DEMANDED</u>
Scotiabank, Fathi Yusuf, Maher Yusuf,)	
Yusuf Yusuf and United Corporation)	
)	
Defendants,)	
)	

**YUSUF DEFENDANTS AND UNITED CORP.'S
REPLY TO CONVERTED MOTION FOR SUMMARY JUDGMENT**

Defendants, Fathi Yusuf (“Mr. Yusuf”), Maher Yusuf (“Mike Yusuf”), Yusuf Yusuf (“Yusuf”)(collectively “Yusuf Defendants”) and United Corporation (“United”), through undersigned counsel, file this Reply to Converted Motion for Summary Judgment.

I. PROCEDURAL POSTURE AS TO CONVERTED MOTION FOR SUMMARY JUDGMENT

The Yusuf Defendants and United filed a Motion to Dismiss on March 9, 2017, for failure to state a claim as to any of the alleged causes of action and made reference to documents attached as exhibits to Plaintiffs’ First Amended Complaint (“FAC”). The Court determined that such references required consideration of matters outside the pleadings and, therefore, converted the Motion to Dismiss into one for summary judgment (the “Converted Motion”). However, the Court did not allow the Yusuf Defendants and United the opportunity to re-file their arguments in a formal motion for summary judgment to comply with the filing requirements of a Rule 56 motion or to attach any necessary evidence in support. Instead, it afforded Plaintiffs the opportunity to conduct discovery and then directed Plaintiffs to file an Opposition to the Converted Motion (“Opposition”). In their Opposition, Plaintiffs criticize the Converted Motion because it does not comply with the procedural requirements of Rule 56. To the extent that this is so, it is because the Yusuf Defendants and United were never provided the opportunity to file an actual motion for summary judgment adhering to the procedural requirements.

Pursuant to V.I. R. Civ. P. 12(d):

[i]f, on motion under Rule 12(b)(6) or 12(c), matters outside the pleadings are presented to and not excluded by the court, the motion must be treated as one for summary judgment under Rule 56. *All parties* must be given a reasonable opportunity to present all the material that is pertinent to the motion.

(emphasis added). As the Yusuf Defendants and United were not provided the opportunity to file a formal motion for summary judgment with supporting documentation before the Opposition to the converted motion was filed, they do so now.¹

II. FACTS

A. Undisputed Material Facts

1. Plessen Enterprises (“Plessen”) is jointly owned 50/50 by the Hamed and Yusuf families. FAC ¶10.²

2. With regard to Plessen’s banking functions and check writing authority, Article V of its By-Laws required that checks be signed by either the President or Vice President (positions held by the Hameds) and then countersigned by the Secretary or Treasurer (positions always held by Fathi Yusuf); *i.e.*, the Bylaws required one Hamed and one Yusuf signature on checks. *See Exhibit 1* – Inter. Resp. #8 and 10, including Bates 12-YY-00489-501; FAC ¶ 27. Waleed Hamed has always been a director and the Vice President of Plessen and Fathi Yusuf has always been the Secretary/Treasurer as well as a director of Plessen. FAC ¶¶ 11-13.

¹ While the Yusuf Defendants and United are loath to encourage additional briefing on this matter, they recognize that Plaintiffs may feel compelled to respond to this filing, in which case the Yusuf Defendants and United would request the ability to file a Sur-reply because, as the movants, they are afforded the right to the last word.

² References made to the FAC as evidentiary support for the undisputed fact extends only so far as to the statement set forth herein. Many of the allegations in the FAC to which reference is made contain additional contentions which are contested. The Yusuf Defendants’ and United’s references to the FAC is not a blanket admission as to any other allegations beyond the limited facts to which it is being cited and they object to any attempt by Plaintiffs to deem such references as tacit admissions.

3. Beginning in mid-to-late 2011, all checks on the Plessen account were signed by one Hamed and one Yusuf. *See* Exhibit 1 – Inter. Resp. #8 and 10, including Bates 12-YY-00489-501.

4. The funds in Plessen’s account were used for Plessen expenses and investments and not available to be removed by either the Hameds or Yusufs for private investments or purposes. *See* Exhibit 1 – Inter. Resp. #10.

5. Waleed Hamed and Mufeed Hamed removed \$460,000 from Plessen’s bank account with Bank of Nova Scotia via a check signed by them and deposited it into their personal accounts without the knowledge or consent of the Yusuf family. FAC ¶¶ 52, 54 and 56.

6. There was no signature of a Yusuf family member on the \$460,000 check. FAC ¶ 54.

7. In April 2013, Yusuf Yusuf filed a derivative action against the Hameds for this improper removal of funds.³ FAC ¶ 60.

8. After having been sued, Hamed turned over half of the funds taken from Plessen to the registry of the Court in the Plessen Derivative Suit. FAC ¶ 61.

9. In May 2013, Mike Yusuf, Fathi Yusuf, Yusuf Yusuf and attorney Nizar DeWood met with Sargent Mark Carneiro of the Virgin Islands Police Department (VIPD) to provide information as to the improper and unauthorized removal of the \$460,000.00 by Waleed Hamed and Mufeed Hamed. *See* Exhibit 2 – Resp. to Req. to 3rd Set of Req. for Admissions #160-177 including February 27, 2017 correspondence which was incorporated to that Response.

³ Hence, claims relating to the improper removal of the \$460,000.00 by Wally and Mufeed Hamed are already the subject of an earlier filed pending litigation to wit: *Yusuf Yusuf et al v. Mohammed Hamed et al*, SX-13-CV-120. (the “Derivative Suit”). The law of the Virgin Islands adheres to the “first to file” rule that “[t]he party who first brings a controversy into a court of competent jurisdiction for adjudication should, so far as our dual system permits, be free from the vexation of subsequent litigation over the same subject matter.” *Cenni v. Estate Chocolate Hole Landowners Association, Inc.*, 2016 WL 3981434, at *27 (V.I. Super., 2016), *citing* *Crosley Corp. v. Hazelline Corp.*, 122 F.2d 925, 930 (3d Cir. Del. 1941) and *Bell v. Lee J. Rohn & Assocs., LLC*, 2015 WL 4148315, at *2 (V.I. Super. Ct. July 8, 2015).

10. The information the Yusuf Defendants provided is set forth by Sargent Corneiro in his Affidavit as well as the Police Report. The Yusuf Defendants reported that they had an oral agreement as to the requirements for two signatures one Hamed and one Yusuf. *See Exhibit 2 and Exhibit 3* – Affidavit of Officer Corneiro with attachments.

11. Following this meeting, Sargent Corneiro conducted his own, independent investigation soliciting documents directly from the Bank of Nova Scotia as well as Banco Popular. *See Exhibit 3.*

12. Sargent Corneiro submitted the results of his investigation to the Virgin Islands Attorney General's office, who then determined there was a sufficient basis to proceed with the indictment. *See Exhibit 3.*

13. The Attorney General issued a Criminal Information against Waleed Hamed and Mufeed Hamed for various embezzlement charges. *See Exhibit 3 – Criminal Information attached to Affidavit of Officer Corneiro which was also attached to the FAC.*

14. Waleed Hamed and Waheed Hamed were arrested on charges of embezzlement by fiduciaries. FAC ¶100 and Exhibit 3.

15. The fact of his arrest and the basis therefore were published in the local paper. FAC ¶123.

16. The criminal charges against Hamed were not pursued because the Attorney General's office explained that "the people will be unable to sustain its burden of proving the charges against the Defendants beyond a reasonable doubt." FAC ¶138.

17. There is no evidence forensic or otherwise that the alleged documents which Plaintiffs claimed are "forged".

B. Alleged Facts that Are Immaterial and Not Dispositive of the Claims

Throughout this litigation and the Plessen Derivative Suit, Hamed ruminates on facts that are immaterial to his claims (the “Alleged Immaterial Facts”). Although the Alleged Immaterial Facts are clearly disputed because they are not determinative of whether the Yusuf Defendants and United are entitled to summary judgment, it is not necessary to refute them. Nonetheless, it is important to identify the Alleged Immaterial Facts as a result of Hamed’s misguided fixation on them so as distinguish those facts which are dispositive versus those that are not.

1. Alleged Immaterial Fact #1

The fact that there are various versions of Bank of Nova Scotia’s Intake Gathering Form over the years for Plessen, some of which are dated and some not, is not a material fact as to whether Waleed Hamed and Mufeed Hamed could remove funds from Plessen without the knowledge or consent of the Yusuf’s who are 50% owners of Plessen and deposit same into their personal accounts.

The embezzlement charges against the Hameds was not based upon whether the Hameds could write a check on Plessen’s account or were signatories. The charges provided:

On or about March 27, 2013, Waleed Hamed...being a person entrusted with or having in his control property for the use of any other person, and while aided and abetted by Mufeed Hamed, did fraudulently appropriate said property a use or purpose not in the due and lawful execution of his trust or secreted it with a fraudulent intent to appropriate it to such use or purpose,... while being signatories on the Scotia Bank Account ending in 5012 belonging to Plessen Enterprises, Inc. for the use of Plessen Enterprises, Inc., signed check number 0376 in the amount of four hundred sixty thousand dollars (\$460,000.00) and deposited said check into the personal bank account of Mufeed H. Hamed and Wally Hamed, in violation of Title 14 V.I.C. §1091 and §1094(a)(2) and §11(a). Embezzlement by Fiduciaries/Principals.

Information, p. 1-2. Hence, one’s authority to sign a check for a business does not equate to authority to misappropriate business assets for one’s personal use. Comptrollers and other

company fiduciaries with signatory authority on bank accounts can be accused of embezzlement—using their legitimate access to business accounts to misappropriate funds. The embezzlement claim does not depend upon whether Hamed was a signatory to the Plessen account or whether an Intake Gathering Form is dated. Likewise, Hamed’s authority to access Plessen accounts in the capacity as an officer, director or a manager, simply meant that he was entrusted with control of Plessen’s property to effectuate a business purpose of Plessen, not to misappropriate funds for his own personal use.

The Yusuf Defendants reported to Officer Corneiro the agreement not to remove funds without notice to the other 50% owners and even indicated that it was an “oral agreement” and that they were not sure what the bank records reflected. *See* Exhibit 3. The Bylaws reflect this agreement. *See* Exhibit 1. Records from BNS of the cancelled checks bearing the dual Hamed/Yusuf signatures reflects that this agreement was the established practice utilized by the parties. *Id.* Who had what BNS form and when, whether it was dated or undated is not determinative of whether Hamed could remove funds from Plessen for his personal use. For the record, the Yusuf Defendants vehemently deny that any forgery, tampering or foul play was involved relating to any of the documents submitted to BNS. In fact, as the Yusuf Defendants have further investigated the dated Intake Gathering Form, it appears that Wadda Charriez may have dated the Intake Gathering Form at the request of BNS. *See Exhibit 4* – Email to Wadda Charriez from BNS requesting additional information to be supplied as to the Intake Gathering Form two days prior to the dated Intake Gathering Form. Again, despite the fiction and intrigue that Hamed seeks to weave, the form is not dispositive of whether the Yusuf Defendants properly reported the taking by the Hameds. Moreover, Hamed’s logic breaks down quickly—if the Yusuf Defendants had, altered the Intake Gathering Form, inserted a random date thereon and then sent it to BNS to create this paper trail to support their contention that dual signatures were

required, why would they report to Officer Corneiro that this agreement was “oral” and that they were not sure what the Bank records showed? Furthermore, the hundreds of cancelled checks reflecting this practice clearly established this was the agreement as well as its requirement by the Bylaws. *See* Exhibit 1.

2. Alleged Immaterial Fact #2

Mike Yusuf’s status as a director is not a material fact as to whether it was proper to report that Hamed had removed funds from Plessen without the knowledge of the Yusufs as 50% owners. As a part owner of Plessen, Mike Yusuf has an interest in reporting a misappropriation of Plessen’s assets. Whether he was an actual director, a *de facto* director, or mistakenly believed he was a director is immaterial. He was a part owner of Plessen and could have reported the misappropriation on that status alone. Furthermore, he reported the misappropriation of Plessen’s funds to Officer Corneiro with Fathi Yusuf, who was a director and officer. *See* Exhibit 3 and Police Report. Moreover, Mike Yusuf was not alone in his belief that he was a director of Plessen at the time he made the report as it both Mohammad Hamed and Waleed Hamed were also under that impression. *See* Exhibit 1 – Resp. to Inter. #10 and **Exhibit 5** - Waleed Hamed document SCOT501890. Even if it was a mistaken belief as to his status as a director, Mike Yusuf was clearly involved in the operations of Plessen and as an owner he can report a misappropriation as can Officer, Director and owner Fathi Yusuf. Mike Yusuf was not mistaken in stating that funds were removed without the knowledge of the Yusufs and that this was improper.

3. Alleged Immaterial Fact #3

Hamed asserts without any forensic basis that three (3) documents are “forgeries” created by the Yusufs and then somehow inserted into the business records of BNS. Two are versions of the Intake Gathering Form addressed above, and the other is a set of signature cards. Yusuf

Defendants vehemently deny any wrongdoing with regard to any documents and notes that Waleed Hamed's signature is on all of these documents. Likewise, the dual signature practice (which Hamed contests) is manifest in other non-disputed documents including the Bylaws as well as the established practice demonstrated by the hundreds of checks signed by the Hameds with dual signatures from the Yusufs. *See* Exhibit 1. Hence, because the agreement for dual signatures is required by the Bylaws and manifest by the parties' practices, the alleged "forged" documents are cumulative and not dispositive as to whether Hamed was prohibited from removing funds from Plessen and placing them into his personal account without the knowledge of the Yusuf's as 50% owners.

II. MEMORANDUM OF LAW

A. Motion to For Summary Judgment Standard

Pursuant to Rule 56 of the Virgin Islands Rules of Civil Procedure, summary judgment is appropriate if all the probative materials of record show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law. V.I. R. Civ. P. 56(c).⁴ *See also, Hershey v. Allen Prods. Co.*, 789 F.2d 230, 232 (3d Cir. 1986); *Lang v. New York Life Ins. Co.*, 721 F.2d 118, 119 (3d Cir. 1983); *Sharpe v. West Indian Co.*, 118 F. Supp. 2d 646, 648 (D.V.I. 2000); *Benjamin v. General Accident Ins. Co.*, 2004 U.S. App. LEXIS 243 (3d Cir. Jan. 9, 2004).

Under the standards announced by the Supreme Court's trilogy in *Celotex Corp. v. Catrett*, 477 U.S. 317 (1986), *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242 (1986), and *Matsushita*, 475 U.S. 574 (1986), the mere existence of some alleged factual dispute between the parties will not defeat an otherwise properly supported motion for summary judgment. *Anderson*, 477 U.S. at 247-48. Indeed, where the moving party has made a properly supported

⁴ As the newly enacted V.I. R. Civ. P. 56 closely tracks the corresponding Fed. R. Civ. P. 56, case law interpreting same is applicable.

motion for summary judgment, it is incumbent upon the nonmoving party to come forward with specific facts to show that there is a genuine issue of material fact for trial. *See Id.* at 248. A dispute involving a material fact is “genuine” only if the evidence is such that a reasonable jury would return a verdict for the nonmoving party. *Anderson*, 477 U.S. at 248. Whether a fact is “material” is determined by the substantive law defining the claims. *Id.* at 248; *United States v. 225 Cartons*, 871 F.2d 409, 419 (3d Cir. 1989). As the Supreme Court has observed, “[o]nly disputes over facts that might affect the outcome of the suit under governing law will properly preclude an entry of summary judgment.” *Anderson*, 477 U.S. at 248-49.

B. Count I – Yusuf Defendants and United are Entitled to Summary Judgment as to Plaintiffs Claim for Malicious Prosecution

The elements of malicious prosecution are set forth in *Palisoc v. Poblete*, 60 V.I. 607, 615-16 (V.I. 2014). The Supreme Court of the Virgin Islands has also adopted the Restatement (Second) of Torts § 653 for its commentary analysis in applying these elements. *Id.*

1. The Yusuf Defendants Did Not “Procure” Criminal Proceedings

The Yusuf Defendants did not “procure” a criminal proceeding within the meaning of the applicable law as they simply gave information and made an accusation. Under the circumstances at issue, where the choice to prosecute was left to the unfettered discretion of both the VIPD and the Virgin Islands Attorney General (“Attorney General”), the Yusufs did not procure the criminal proceeding.⁵ To wit, Comment d, Section 653 of the Restatement of Torts, adopted by the VISC in *Palisoc*, explains that:

* * *

The giving of the information or the making of the accusation, however, does not constitute a procurement of the proceedings that the third person initiates if it is left to the uncontrolled choice of the third person to bring the proceedings or not as he may see fit.

⁵ Importantly, no criminal proceeding was ever brought against Plaintiff, KAC357, Inc., so it has no claim for malicious prosecution.

See Section 653 of the Restatement of Torts at Comment d.⁶ In the instant case, the Yusuf Defendants reported to the VIPD that Wally Hamed and Mufeed Hamed had removed the Monies from the Plessen business account without their knowledge and put them in his private account. Subsequently, the VIPD did a thorough and independent investigation of the allegations, including procuring bank records from both the Bank of Nova Scotia and Banco Popular, and made the independent decision to refer them to the Attorney General for prosecution. See *Exhibit 3*. Accordingly, as it was left to the VIPD's—and presumably the Attorney General's—complete discretion as to whether charges would be brought against Wally Hamed, the Yusuf Defendants did not “procure” them as a matter of law and, therefore, the Yusuf Defendants are entitled to summary judgment in their favor as to the claim for malicious prosecution on this basis.

In its Opposition, Plaintiffs simply contend that providing the information was sufficient to state a claim because it set off a chain of events which ultimately led to the arrest. However, at various points, the intervening independent judgment of individuals over which the Yusuf Defendants have no control, elected to proceed or could have elected to not proceed. Hence, providing the information that funds were improperly removed does not equate to “procuring” proceedings and thus, summary judgment is warranted.

2. Defendants Had Probable Cause to Report Wally Hamed to the VIPD

Wally Hamed also failed to plead much less demonstrate facts which would show there was no probable cause for the Yusuf Defendants to report to the VIPD his unauthorized removal

⁶ See also Comment f, Section 653 of the Restatement of Torts:

A private person who gives to a public official information of another's supposed criminal misconduct, of which the official is ignorant, obviously causes the institution of such subsequent proceedings as the official may begin on his own initiative, but giving the information or even making an accusation of criminal misconduct does not constitute a procurement of the proceedings initiated by the officer if it is left entirely to his discretion to initiate the proceedings or not.

of \$460,000.00 from Plessen's bank account which money he deposited in his personal account. Wally Hamed did not have the legal authority to place those funds in his personal account, or put them to use solely for the benefit of the Hamed family. Moreover, he admits there was—at the very least—probable cause for the Yusuf Defendants to report his unauthorized taking of \$460,000.00 given that he disgorged the Yusufs' half of the Monies after being confronted about their removal. To wit, “[o]n April 19, 2013, [a few days after Yusuf Yusuf had brought a civil action against him for wrongful withdrawal of the Monies] Waleed Hamed deposited the **Yusuf half of the funds** with the Court.” FAC, ¶ 61. Sargent Corneiro also addressed this fact in his affidavit as well noting that, “Waleed Hamed with the assistance of Mufeed Hamed took the funds from Plessen Enterprise without authorization and when they were confronted about the matter and after the Yusufs sued them, they deposited \$230,000.00 on April 19, 2013 with the Clerk of the Superior Court[.]” Plainly, if the unilateral taking of the Monies and depositing them in his personal account did not amount to “probable cause” to report the taking, there was no need for him to return the “Yusuf half of the funds” by depositing it in the registry of the Court. Thus, the Yusuf Defendants are entitled to judgment as a matter of law as to the claim for malicious prosecution on this basis as well. *See Illaraza v. HOVENSA LLC*, 73 F.Supp.3d 588, 612 (D.V.I. 2014) (holding that even if defendant had initiated proceedings against plaintiffs, that dismissal was proper where there is no evidence that defendant did so without probable cause “the sine qua non of malicious prosecution.”). Plaintiffs do not respond to this in their Opposition except to note that it is a “factual” issue and, therefore, cannot be susceptible to summary judgement. Plaintiffs’ mere reliance on pleadings will not insulate them from the defects with this claim.

3. The VIPD's Prosecution of Wally Hamed Did Not Terminate with a Finding of His Innocence of the Crimes Charged

A claim for malicious prosecution cannot be sustained in the absence of a termination of the prosecution which was favorable to the plaintiff. *See Palisoc*, 60 V.I. at 615-16. To meet that requirement, “a prior criminal case must have been disposed of in a way that indicates the innocence of the accused.” *Weaver v. Beveridge*, 577 Fed. App. 103, 105 (3d Cir. 2014) (citing *Kossler v. Crisanti*, 564 F.3d 181, 187 (3d Cir. 2009) (*en banc*)). A grant of *nolle prosequi* can be sufficient to satisfy the favorable termination requirement, but “not all cases where the prosecutor abandons criminal charges are considered to have terminated favorably.” *Donahue v. Gavin*, 280 F.3d 371, 383 (3d Cir. 2002) (internal quotation marks omitted). Thus, a *nolle prosequi* indicates termination of the charges in favor of the accused “only when their final disposition is such as to indicate the innocence of the accused.” *Id.* (internal quotation marks omitted).

In the instant case, Wally Hamed has failed to show that the Attorney General requested the dismissal of the criminal charges against him because he was innocent. Rather, the motion to dismiss stated “the people will be unable to sustain its burden of proving the charges against the Defendants beyond a reasonable doubt.” FAC ¶138. (As a point of fact, the Attorney General dismissed the case without prejudice.) The statement that the People do not believe that they will be able to prove guilt beyond a reasonable doubt is a far cry from the necessary final disposition which indicates the innocence of the accused. *See Woodyard v. County of Essex*, 514 Fed.Appx. 177, 184 n.2 (3d Cir. 2013)(stating “[h]ere, the prosecution sought to dismiss the charges against Woodyard because it believed it could not meet its burden of proof after two witness identifications of Woodyard were suppressed by the trial court. . . . Therefore, it appears that the decision to dismiss did not reflect Woodyard’s innocence, but rather was a result of the

suppression of evidence.”); *see also Weaver*, 577 Fed. App. at 105-6 (“ADA Moore chose not to retry Weaver because he felt it was unlikely that Weaver would serve additional time and Moore did not want to make Nispel go through another trial. There is no evidence suggesting that the decision not to retry Weaver was taken because Weaver was believed to be innocent....Weaver may not rely on his conclusory allegation . . . that the grant of *nolle prosequi* was because of his innocence.”). Accordingly, the Yusuf Defendants are entitled to summary judgment in their favor as to the malicious prosecution claim on this third independent ground as well. Failure of any one of the elements is sufficient to grant summary judgment to the Yusuf Defendants as to this claim. Nothing in Plaintiff’s Opposition merits a different outcome.

C. Count II – Yusuf Defendants are Entitled to Summary Judgment as to Plaintiffs’ Claim for Defamation

The elements of a defamation claim—as set forth in the Second Restatement of Torts and adopted by the Virgin Islands Supreme Court in *Joseph v. Daily News Publishing Co.*, 57 V.I. 566, 586 (V.I. 2012). The term “unprivileged” refers to the alleged defamer’s inability to demonstrate that he was in some way “privileged” to make the defamatory communication. *Id.* The types of privilege defenses available fall into two categories, absolute privileges and conditional privileges. *Id.* (citing the Restatement (Second) of Torts at §§ 583-592A and §§ 593-598, respectively).

Plaintiffs contend that two sets of statements give rise to their defamation claims: 1) statements made by the Yusuf Defendants to the VIPD; and 2) statements to off-island commercial entities regarding the fact that Wally Hamed was arrested. Neither is sufficient to state a claim. The first set of statements is deemed to be “privileged” as they were made to law enforcement and, therefore, are not actionable. The second set is true – Wally Hamed was arrested.

As to the first set, Wally Hamed contends that the allegedly false statements made by the Yusuf Defendants to the VIPD when making their report were that: 1) Mike Yusuf was a director of Plessen; and 2) Wally Hamed lacked the authority to withdraw funds on the Plessen account with his signature (FAC ¶142). These statements cannot form the basis of a claim for defamation, even if false, because they are alleged to have been published to the police (FAC ¶ 143), which is a privileged publication. *See Sprauve v. CBI Acquisitions, LLC*, Civ. Case No. 09-165, 2010 WL 3463308, at *12 (D.V.I. Sept. 2, 2010) (“There is a dearth of Virgin Islands cases addressing the absolute privilege for statements to law enforcement concerning violations of criminal law, and thus the Court relies heavily on the pertinent sections of the Restatement to resolve this issue...the Court finds that Defendant’s report to the Coast Guard that Plaintiff was operating a boat while intoxicated is protected by an absolute privilege.”); *see also Illaraza v. HOVENSA LLC*, 73 F.Supp.3d 588, 604 (D.V.I. 2014) (“The Virgin Islands recognizes an absolute privilege for statements made to law enforcement personnel for the purposes of reporting a crime or initiating a criminal investigation.”). Accordingly, any statements made to the police cannot form the basis of a defamation claim. As an owner, Mike Yusuf could report that Hamed was not allowed to remove Plessen funds without notice to the Yusufs and to deposit it into his personal account. Officer Corneiro and the Attorney General understood that Waleed Hamed was an officer and director of Plessen and, therefore, by virtue thereof had been entrusted with Plessen’s property. Mike Yusuf’s status whether as a *de facto* director, actual director or mistaken belief as to his status does not change the wrongdoing that was being reported.

With respect to the second set of statements that the Yusuf Defendants “used the arrest in notifications to several off-island commercial entities” (FAC ¶117) or otherwise notified third parties of Wally Hamed’s arrest (FAC ¶123), those statements cannot form the basis of a defamation claim as they were objectively true, not false. There is no dispute that Wally Hamed

was arrested. Stating to others the true fact that Waleed Hamed was arrested is not actionable. Therefore, the statements relating to the fact of Waleed Hamed's arrest cannot create a basis for a defamation claim and the Yusuf Defendants are entitled to summary judgment thereon.

Moreover, a complaint of defamation "must, on its face, specifically identify what allegedly defamatory statements were made by whom and to whom." *Manns v. The Leather Shop*, 960 F. Supp. 925, 928-9 (D.V.I. 1997) (citing *Ersek v. Township of Springfield*, 822 F.Supp. 218, 223 (E.D.Pa.1993) aff'd mem., 102 F.3d 79 (3rd Cir.1996)); *see also VECC, Inc. v. Bank of Nova Scotia*, 296 F.Supp.2d 617, 621-22 (D.V.I. 2003). Plaintiffs' defamation claim also fails on this independent ground given that Plaintiffs have failed to specify which of the defendants made the allegedly defamatory statements, or to specify to whom the statements were made, merely alleging that "the Yusufs" made statements to "off-island commercial entities." *See e.g.*, FAC, ¶117. Accordingly, summary judgment in favor of the Yusuf Defendants is merited on this basis as well.

D. Count III – The Yusuf Defendants and United are Entitled to Summary Judgment as to Plaintiffs Claim for Trade Disparagement

Virgin Islands common law does not contain a cause of action for "trade disparagement."⁷ The case of *Kantz v. Univ. of the Virgin Islands*, 2016 WL 2997115 (D.V.I. May 19, 2016) cited by Plaintiffs is not a "trade disparagement" case but rather an employment discrimination case with a personal defamation claim. As noted previously, a statutory claim for "trade disparagement," which Plaintiffs do not appear to be making, is also available in jurisdictions that have adopted the Uniform Deceptive Trade Practices Act, including the Virgin Islands. *See* 12A V.I.C. § 101, *et seq.* Further, a claim for "trade disparagement" is also available under federal law pursuant to the Lanham Act, 15 U.S.C. § 1125(a). Given the

⁷ There is a cause of action for trade disparagement under the Virgin Islands Deceptive Trade Practices Act ("DTPA") 12A V.I.C. § 101, *et seq.* However, Plaintiffs do not give any indication that they are bringing their "trade disparagement" claim under DTPA.

substantial similarities between the common law cause of action for trade disparagement and a claim for defamation, and the availability of a trade disparagement cause of action under the Virgin Islands Deceptive Trade Practices Act as well as the Lanham Act, the soundest rule for the Virgin Islands is to not recognize a common law “trade disparagement” claim. Accordingly, the Yusuf Defendants and United are entitled to summary judgment on Plaintiffs’ claim for trade disparagement.

E. Count IV – The Yusuf Defendants and United are entitled to Summary Judgment as to Plaintiffs’ Claim for the “Prima Facie Tort of Outrage”

A *prima facie* tort is a general tort. *Edwards v. Marriott Hotel Management Co. (Virgin Islands), Inc.*, Case No. St-14-CV-222, 2015 WL 476216, at * 6 (Super. Ct. Jan. 29, 2015) (citing *Moore v. A.H. Riise Gift Shops*, 659 F. Supp. 1417, 1426 (D.V.I. 1987)). *Prima facie* tort claims typically provide relief only where the defendant’s conduct does not come within the requirements of one of the well-established and named intentional torts. Here, the issue is not that the claims Plaintiffs make do not fit within any other torts, its simply that Plaintiffs cannot support his claims with the facts and therefore, summary judgment should be granted to the Yusuf Defendants and United. Failure to plead or demonstrate facts as to the various alleged claims does not mean that a tort has, nonetheless, been committed and, therefore, a claim for *prima facie* tort should remain. Rather, Plaintiffs “must show that the action does not fit within the category of any other tort.” *Garnett v. Legislature of the V.I.*, Civil Case No. 2013-21, 2014 WL 902502, at *7 (D.V.I. March 7, 2014) (dismissing Plaintiff’s claim for *prima facie* tort stating “no claim for prima facie tort lies if the action complained of fits within another category of tort . . . “[a]s the allegations in this case fit within defined tort categories, Garnett’s claim of prima facie tort must be dismissed.”); *Bank of Nova Scotia v. Boynes*, Case No. ST-16-CV-29, 2016 WL 6268827, at *4 (Super. Ct. Oct. 18, 2016) (dismissing Plaintiff’s claim for *prima facie*

tort stating “[h]ere it is evident that Boynes relies on the same set of factual allegations to support his prima facie tort claims as he does to support his fraud, IIED, and NIED counterclaims.”). Plaintiff’s claim for “*prima facie* tort” does not add any additional factual allegations, rather merely incorporates the preceding paragraphs of the FAC and recites that the actions of Defendants were “intentional, wanton, extreme and outrageous ... culpable and not justifiable under the circumstances.” FAC ¶¶ 168-69. Accordingly, as the Yusuf Defendants’ alleged actions fit into existing and defined torts—evidenced by the fact Plaintiffs have brought three other tort claims: malicious prosecution, defamation and trade disparagement—and have not alleged any facts in the claim for *prima facie* tort which are distinct from prior allegations, the Yusuf Defendants and United are entitled to summary judgment as to Plaintiffs’ claim for *prima facie* tort as well. In response, Plaintiffs simply argue that it should be a fail-safe tort that survives when all their other claims fail. However, Plaintiffs offer no basis upon which it should survive or why the facts of this case are unique and fall outside the defined claims. Hence, summary judgment should be rendered as to this claim.

F. Count V – The Yusuf Defendants and United are entitled to Summary Judgment as to Plaintiffs Claim for “Direct Acts” Under CICO or a Claim for a CICO Conspiracy

1. Plaintiffs Fail to Allege What Allegedly Predicate Criminal Acts Were Done by Each Defendant

All Plaintiffs’ CICO claims against each defendant have a deep and fatal flaw: Plaintiffs fail to allege what each of the defendants did that was an alleged violation of CICO or part of a CICO conspiracy, *i.e.*, which of the defendants committed the alleged predicate crimes. Rather, Plaintiffs make the boilerplate allegation that “the creation, transmission and placement into the bank records and provision of the forged documents” was the “pattern of criminal activity by which Defendants worked together to ‘acquire or maintain, directly or indirectly, any interest in

or control of Plessen.” FAC ¶175. However, there are no allegations as to which alleged criminal act was perpetrated by which defendant, merely recitations that “Defendants” forged documents and provided them to police. See FAC ¶181. The sole act—which is notably not a predicate criminal act—attributed to a specific defendant is the allegation that Mike Yusuf “represented to the police that he was a director of Plessen and made a criminal complaint in that capacity.” FAC ¶177. However, it is plain that Mike Yusuf could have brought the criminal complaint as a shareholder of Plessen, which he was, or as a private citizen.

These boilerplate recitations—and specifically the failure to plead facts specific to each defendant in support of the claimed CICO violations—wholly fail to meet the pleading standards set forth in *Twombly* and *Iqbal*. See e.g., *Crest Constr. II, Inc. v. Doe*, 660 F.3d 346, 356 (8th Cir. 2011) (“While the complaint is awash in phrases such as ‘ongoing scheme,’ ‘pattern of racketeering,’ and ‘participation in a fraudulent scheme,’ without more, such phrases are insufficient to form the basis of a RICO claim.”).

In response, Plaintiffs merely rest on the pleadings. See Opposition p. 19. There is no evidence that any documents were in fact “forged” or that the alleged “forged” documents precipitated the arrest when other documents and statements supported the arrest. Merely resting on their pleadings is insufficient to survive a summary judgment challenge.

2. Plaintiffs Fail to Properly Plead the Elements of a CICO Conspiracy

With respect to Plaintiffs’ purported CICO conspiracy claim, Plaintiffs wholly fail to allege facts which, if taken as true, could support a CICO conspiracy.

To properly plead a § 1962(d) conspiracy a plaintiff is required to “set forth allegations that address the period of the conspiracy, the object of the conspiracy, and the certain actions of the alleged conspirators taken to achieve that purpose.” *Shearin v. E.F. Hutton Group, Inc.*, 885

F.2d 1162, 1166 (3d Cir. 1989) (abrogated on other grounds by *Beck v. Prupis*, 529 U.S. 494 (2000)).

The supporting factual allegations “must be sufficient to describe the general composition of the conspiracy, some or all of its broad objectives, and the defendant’s general role in that conspiracy.” *Rose v. Bartle*, 871 F.2d 331, 366 (3d Cir.1989) (citation and quotation marks omitted). Moreover, “mere inferences from the complaint are inadequate to establish the necessary factual basis.” *Id.* Plaintiff must allege facts to show that each Defendant objectively manifested an agreement to participate, directly or indirectly, in the affairs of a RICO enterprise through the commission of two or more predicate acts. *Smith v. Jones, Gregg, Creehan & Gerace, LLP*, 2008 WL 5129916, at *7 (W.D.Pa. Dec. 5, 2008). Bare allegations of conspiracy described in general terms may be dismissed. *Id.*

As noted above, with the failure to allege what any individual defendant did—instead, generically lumping all defendants together—Plaintiffs have failed to meet their burden to plead facts which show that each Defendant: 1) objectively manifested an agreement to participate, directly or indirectly, in the affairs of a RICO enterprise; 2) through the commission of two or more predicate acts. Rather than properly pleading the necessary facts with respect to each defendant, Plaintiff merely makes insufficient boilerplate allegations that a RICO conspiracy existed. To wit, “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). See FAC ¶181. In response, again Plaintiffs do not refute but rather simply rely upon their ill-fated pleadings. Such reliance is misplaced and summary judgment is merited.

3. Plaintiffs Fail to Properly Plead a “Pattern of Criminal Activity”

Likewise, Plaintiffs failure to plead facts which if true can establish the statute’s “pattern” element—*i.e.*, that each defendant participated in the affairs of the enterprise “through a pattern

of criminal activity” also warrants summary judgment to the Yusuf Defendants and United. *See* 14 V.I.C. § 605(a) and (b). Again, rather than respond, Plaintiffs merely rely on their pleadings to their detriment.

G. Plaintiffs Fail to Properly State Any Claim Against United Corporation

Under agency principles, an employer may be held vicariously liable for its employees’ negligent conduct occurring during the scope of employment. *Defoe v. Phillip*, 56 V.I. 109, 130 (V.I. 2012) (citing *Williams v. Rene*, 72 F.3d 1096, 1099 (3d Cir. 1995)). Employee conduct is “within the scope of employment if it is the kind he is employed to perform and it occurs substantially within the authorized time and space limits.” *See Williams*, 72 F.3d at 1100 (citing Restatement (Second) of Agency § 228(1)(a)-(b)); *see also Nicholas v. Damian-Rojas*, 62 V.I. 123, 129-30 (Super. Ct. 2015) (Brady J.) (applying the Restatement (Second) of Agency after doing a Banks analysis)). Conversely, an employee’s conduct falls outside the scope of his employment if it is different than the kind that is authorized, far beyond the authorized time or space limits, or too little actuated by as purpose to serve the master. *Illaraza v. HOVENSA LLC*, 73 F.Supp.3d 588, 607 (D.V.I. 2014).

In the instant case, Plaintiff has not even made the boilerplate allegation that the Yusuf Defendants were acting within the scope of their employment with United when they undertook the acts alleged in the FAC. Nor have Plaintiffs pled a single fact which, if true, could support a finding that any of the Yusuf Defendants were acting within the scope of their employment with United when they undertook the actions alleged in the FAC. The District Court’s analysis in *Illaraza v. HOVENSA LLC*, 73 F.Supp.3d 588, 604 (D.V.I. 2014) is both applicable and instructive. To wit:

Plaintiffs argue that HOVENSA is vicariously liable for defamation because the HOVENSA employees who made allegedly defamatory statements did so within the scope of their employment . . . We are unpersuaded. There is no evidence in

the record that the statements we may properly consider here . . . were made by employees acting in the scope of their employment. Plaintiffs have produced no evidence that the HOVENSA employees who made unprivileged and allegedly untrue statements about them were engaging in conduct “of the kind [they were] employed to perform” or that such conduct was “actuated, at least in part, by a purpose to serve [HOVENSA].” As a result, any HOVENSA employees who made the allegedly defamatory statements before us did not do so within the scope of their employment.

Id. Rather, the actions and statements which Plaintiffs contend give rise to their causes of action relate to the Yusuf Defendants’ roles *vis-à-vis* Plessen, the entity from whom the funds were removed. Accordingly, United Corporation is entitled to summary judgment as to all causes of action brought against. Nothing in Plaintiffs’ Opposition requires otherwise.

WHEREFORE, on the basis of the foregoing, Defendants, Fathi Yusuf, Maher Yusuf, Yusuf Yusuf and United Corporation respectfully request that this Court enter summary judgment in their favor as to: 1) Plaintiffs’ First Amended FAC in its entirety; 2) award the Defendants the attorneys’ fees and costs incurred in connection with defending this case; and 3) award Defendants such other and further relief as the Court deems just and proper.

Respectfully Submitted,

DUDLEY, TOPPER and FEUERZEIG, LLP

Dated: February 9, 2018

By: 

Charlotte K. Perrell (V.I. Bar No. 1281)
Lisa Michelle Kömives (V.I. Bar No. 1171)
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Attorneys for Defendants, Fathi Yusuf, Maher Yusuf, Yusuf Yusuf and United Corporation

CERTIFICATE OF SERVICE

I hereby certify that on the 9th day of February, 2018, I served the foregoing **DEFENDANTS, FATHI YUSUF, MAHER YUSEF, YUSUF YUSUF AND UNITED CORP.'S REPLY TO CONVERTED MOTION FOR SUMMARY JUDGMENT** via e-mail addressed to:

Joel H. Holt, Esq.
Law Office of Joel H. Holt
2132 Company Street
Christiansted, USVI 00820
Email: holtvi@aol.com

Charles Lockwood, Esq.
Nichols Newman Logan & Grey, P.C.
Attorneys for Bank of Nova Scotia
1131 King Street, Ste. 204
Christiansted, VI 00820
Email: clockwood@nnldlaw.com

A handwritten signature in cursive script, appearing to read "Amance Thomas", written over a horizontal line.

EXHIBIT 1

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

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

Plaintiffs,)

vs.)

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

Defendants,)

-and-)

PLESSEN ENTERPRISES, INC.,)

Nominal Defendant.)

CASE NO. SX-13-CV-120

ACTION FOR DAMAGES,
DECLARATORY AND
INJUNCTIVE RELIEF

JURY TRIAL DEMANDED

**PLAINTIFF YUSUF YUSUF'S RESPONSES TO
MUFEED HAMED'S SECOND SET INTERROGATORIES**

Plaintiff, Yusuf Yusuf, through his attorneys, Dudley, Topper and Feuerzeig, LLP, hereby provides his Responses to Defendant Mufeed Hamed's Second Set of Interrogatories:

GENERAL OBJECTIONS

Yusuf Yusuf makes the following general objections to the Interrogatories. These general objections apply to all or so many of the Interrogatories that, for convenience, they are set forth herein and are not necessarily repeated after each objectionable Interrogatory. The assertion of the same, similar, or additional objections in the individual responses to the

Interrogatories, or the failure to assert any additional objections to a discovery request does not waive any of Yusuf Yusuf's objections as set forth below:

(1) Yusuf Yusuf objects to the Interrogatories to the extent they may impose obligations different from or in addition to those required under the Federal Rules of Civil Procedure.

(2) Yusuf Yusuf objects to each interrogatory that uses the words "any" and "all" as being overly broad, unduly burdensome, immaterial, irrelevant, and not reasonably calculated to lead to the discovery of admissible evidence.

(3) Yusuf Yusuf objects to the Interrogatories to the extent they seek information which is protected by the attorney-client privilege or work-product doctrine, including information prepared in anticipation of litigation, or for trial, by or on behalf of Yusuf Yusuf or relating to mental impressions, conclusions, opinions, or legal theories of its attorneys or representatives, or any other applicable privilege or doctrine under federal or state statutory, constitutional or common law. Yusuf Yusuf's answers shall not include any information protected by such privileges or doctrine, and documents or information inadvertently produced which includes such privileged information shall not be deemed a waiver by Yusuf Yusuf of such privilege or doctrine.

(4) Yusuf Yusuf objects to the Interrogatories to the extent that they seek information and documents concerning any matter that is irrelevant to the claims or defenses of any party to this action, and not reasonably calculated to lead to the discovery of admissible evidence.

(5) Yusuf Yusuf objects to the Interrogatories to the extent that they use terms or phrases that are vague, ambiguous, or undefined. Yusuf Yusuf's response to each such request will be based upon its understanding of the request.

(6) Yusuf Yusuf objects to the Interrogatories to the extent they seek documents or information not in the possession, custody or control of Yusuf Yusuf, on the ground that it would subject him to undue burden, oppression and expense, and impose obligations not required by the Federal Rules of Civil Procedure.

(7) Yusuf Yusuf has not completed either its discovery or its preparation for trial of this matter. Accordingly, Yusuf Yusuf's responses to the Interrogatories are made without prejudice to Yusuf Yusuf's right to make any use of, or proffer at any hearing or at trial, and are based only upon information presently available. If and as additional, non-privileged, responsive documents are discovered, these Interrogatories will be supplemented to the extent that supplementation may be required by the Federal Rules of Civil Procedure.

(8) Yusuf Yusuf objects to the Interrogatories to the extent that when all of the subparts are included they are in excess of the number permitted by Rule 33.

INTERROGATORIES AND RESPONSES

Numbering continued from First Set

INTERROGATORY NO. 8

Describe, with particularity as to dates and persons or documents present, all meetings, conferences or communications between any attorney for Plaintiff or for any member of the Yusuf Family and: Scotiabank, the VI Daily News, the VIPD, Attorney General's Office or any other VI Government official, regarding the alleged embezzlement from the Plessen Account.

RESPONSE:

Subject to the above-stated objections and without waiving any objections, shortly after March 27, 2013, when the \$460,000.00 check was cashed by Waleed Hamed and Mufeed Hamed, Yusuf Yusuf went to the Sunny Isle Branch of Scotia Bank in person and asked to speak with someone regarding information on a commercial account. Ms. Yvette Clendenen from Scotia Bank was called to speak with Yusuf Yusuf. During that conversation, Yusuf Yusuf inquired about Plessen account and the monies that had been removed. Ms. Clendenen showed Yusuf Yusuf the balance in the Plessen account, the monies which had been taken out and provided him a photocopy of the \$460,000.00 check front and back. The next day, Yusuf Yusuf returned to the Sunny Isle Branch of Scotia Bank and asked for Ms. Clendenen. During this conversation, Yusuf Yusuf asked her for a copy documents in the bank's files as to the persons authorized to sign checks on behalf of Plessen. Ms. Clendenen provided a copy of the Intake Gathering Form from Scotia Bank's physical file. A true and correct copy of the documents received are attached hereto as Bates Stamped – 12-YY-0001-2;000273-281.

It is Mike Yusuf's recollection that in mid-to-late 2011 or early 2012, that it was determined that two signatures would be required, one Hamed and one Yusuf and that the Mike Yusuf and Waleed Hamed separately went into Scotia Bank and executed the documents with this requirement.

This change is also reflected in the signatures on the checks from the Plessen account. From September, 2011, all checks written bear one Hamed and on Yusuf signature. The exception to this is the \$460,000.00 check which bears two Hamed signatures. See Bates Stamped documents, 12-YY-00489-501, which are the checks written on the Plessen account each containing two signatures, one Hamed and one Yusuf after September of 2011.

On May 17, 2013, Attorney Nizar DeWood and Maher Yusuf met with VIPD Officer Mark Corneiro. During that meeting they conveyed to him orally the events which Officer Corneiro chronicles in his Affidavit. At that time, the documents provided were those listed in Officer Corneiro's Affidavit at page 3. Based upon Officer Mark Corneiro's Affidavit, it appears that he conducted his own independent investigation into the matter and he appears to have secured additional information directly from Scotia Bank, including the signature cards, reflecting "One Hamed and One Yusuf". Mike Yusuf recalls that there were a few calls between himself and Sergeant Corneiro but does not recall the dates. Sergeant Corneiro inquired about the name "Galleria" in Smith Bay which had arisen as part of his investigation into the funds that were deposited into Wally's account. Mike Yusuf explained that he understood that this related to the real property upon which a supermarket was being constructed in Red Hook, St. Thomas formerly known as Marina Market.

The V.I.P.D. investigation was later turned over to Attorney Kippy Roberson of the Attorney General's office. Attorney Roberson contacted Attorney Nizar DeWood and requested any information available. The exact date of this communication is unknown but on March 30, 2016, in response to Attorney Roberson's request, Yusuf Yusuf provided to Attorney DeWood a copy of the Intake Gathering Form with signatures and requirement for one Hamed and one Yusuf. See Bates Stamps 12-YY-000273-281. Attorney DeWood forwarded the information to Attorney Roberson as requested the same day. No further communication occurred between Attorney DeWood or any of the Yusuf's regarding this matter and Attorney Roberson.

With regard to the V.I. Daily News, Mike Yusuf received a call from them and answered no questions and referred them to the V.I.P.D. The date of the contact is uncertain.

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INTERROGATORY NO. 9

Describe any privilege(s) asserted with regard to conversations and communications between any attorney for Plaintiff or for any member of the Yusuf Family and: Scotiabank, the VI Daily News, the VIPD, Attorney General's Office or any other VI Government official, regarding the alleged embezzlement from the Plessen Account. (If no such privilege(s) are asserted, state "None asserted.")

RESPONSE:

None asserted.

INTERROGATORY NO. 10

In the Amended Complaint, at page 5, paragraph 27. Plaintiff alleges:

27. Yusuf then reviewed Plessen's bank statements and learned that on March 27, 2013, Waleed and Mufeed, without authorization, issued check number 03 76 in the amount of \$460,000.00 from Plessen's Scotiabank account, made payable to Waleed in his personal capacity, with no business purpose.

For the date, March 27, 2017, [sic]

- a. state the officers and directors of Plessen, and when and how each had become a director.
- b. state what articles of incorporation and bylaws were in effect.
- c. state what you understand and contend were the powers and duties of the President and Vice-President.

RESPONSE:

Subject to the above-stated objections and without waiving any objections, Yusuf Yusuf shows that date of "March 27, 2017" is obviously incorrect. To the extent that the date is assumed to mean "March 27, 2013," Yusuf Yusuf shows that Mohammed Hamed, who previously served as President and was a director is now deceased. Fathi Yusuf has always served as the Secretary and Treasurer and has been a director. The Yusuf's were under the belief that Mike Yusuf was a director of Plessen as a result of documents provided to the V.I. Government Department of Licensing and Consumer Affairs and because he originally was provided signature authority as to the Plessen account at Scotia Bank and reflected in the August 17, 2009 bank records. He was also listed on the Intake Gathering Form for Scotia as a "director." Furthermore, Mohammed Hamed in response to interrogatories in the *Hamed v. Yusuf et al*, sx-12-370 case, swore that "I [Mohammed] am one of the four directors of Plessen. To the best of my recollection, I have always been a director. The other three directors and shareholders of the complaint, including Fathi Yusuf and his sons were all aware of this fact, as is the Office of the Lieutenant Governor, Division of Corporations." See Bates Stamped documents 12-YY-00509-511.

Yusuf Yusuf shows that the corporate records for Plessen were outside any of the parties' control for years following the FBI raid in which the corporate records were seized. In April, 2014, Carl Beckstedt prepared corporate documents to reflect Mike's position as a director.

Attorney Holt advised Carl Beckstedt to the contrary. However, Attorney Beckstedt did not comply but rather advised that he would need to confirm with the parties. Nonetheless, there is not an executed document in the official corporate record book reflecting Mike Yusuf's position as a director.

The powers and the duties of the President and the Vice President were limited by the Bylaws, including Article V, Section 5.1(c) which requires checks to be signed by either the President or Vice President and then countersigned by the Secretary or Treasurer. This would require that one Hamed and one Yusuf would ultimately be signing all checks. In addition, in mid-to-late 2011, all checks thereafter were signed by one Hamed and one Yusuf, with the exception of the \$460,000.00 check. No officer was allowed to remove funds from the account without the dual family signatures and this was the accepted restriction agreed to by the two families in addition to the other restrictions already imposed by Article V of the Bylaws.

INTERROGATORY NO. 11

Describe any privilege(s) asserted with regard to conversations and communications between any attorney for Plaintiff or for any member of the Yusuf Family and: Scotiabank, the VI Daily News, the VIPD, Attorney General's Office or any other VI Government official, regarding the alleged embezzlement from the Plessen Account. (If no such privilege(s) are asserted, state "none asserted.")

RESPONSE:

This Interrogatory is duplicative of Interrogatory No. 9.

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DATED: February 15th, 2017

By:

DUDLEY, TOPPER AND FEUERZEIG, LLP


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Attorneys for Plaintiffs

CERTIFICATE OF SERVICE

It is hereby certified that on this 15th day of February, 2017, I caused a true and exact copy of the foregoing **PLAINTIFF YUSUF YUSUF'S RESPONSES TO DEFENDANT MUFEEED HAMED'S SECOND SET OF INTERROGATORIES** to be served upon the following via e-mail:

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EXHIBIT 2

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

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

Plaintiffs,

vs.

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

Defendants,

-and-

PLESSEN ENTERPRISES, INC.,

Nominal Defendant.

CASE NO. SX-13-CV-120

**ACTION FOR DAMAGES,
DECLARATORY AND
INJUNCTIVE RELIEF**

JURY TRIAL DEMANDED

**PLAINTIFF YUSUF YUSUF'S RESPONSE TO DEFENDANT
MUFEED HAMED'S THIRD SET OF REQUESTS FOR ADMISSIONS**

Plaintiff, Yusuf Yusuf, through his attorneys, Dudley, Topper and Feuerzeig, LLP, hereby provides its Responses to Defendant Mufeed Hamed's Third Set of Requests for Admissions:

GENERAL OBJECTIONS

Yusuf Yusuf makes the following general objections to the Second Set of Requests for Admissions. These general objections apply to all or so many of the Requests for Admissions that, for convenience, they are set forth herein and are not necessarily repeated after each objectionable Requests for Admissions. The assertion of the same, similar, or additional objections in the individual responses to the Requests for Admissions, or the failure to assert any additional objections to a discovery request does not waive any of Yusuf Yusuf's objections as set forth below:

(1) Yusuf Yusuf objects to the Requests for Admissions to the extent they may impose obligations different from or in addition to those required under the Federal Rules of Civil Procedure.

(2) Yusuf Yusuf objects to each request for admission that uses the words "any" and "all" as being overly broad, unduly burdensome, immaterial, irrelevant, and not reasonably calculated to lead to the discovery of admissible evidence.

(3) Yusuf Yusuf objects to the Requests for Admissions to the extent they seek information which is protected by the attorney-client privilege or work-product doctrine, including information prepared in anticipation of litigation, or for trial, by or on behalf of Yusuf Yusuf or relating to mental impressions, conclusions, opinions, or legal theories of its attorneys or representatives, or any other applicable privilege or doctrine under federal or state statutory, constitutional or common law. Yusuf Yusuf's answers shall not include any information protected by such privileges or doctrine, and documents or information inadvertently produced which includes such privileged information shall not be deemed a waiver by Yusuf Yusuf of such privilege or doctrine.

(4) Yusuf Yusuf objects to the Requests for Admissions to the extent that they seek information and documents concerning any matter that is irrelevant to the claims or defenses of any party to this action, and not reasonably calculated to lead to the discovery of admissible evidence.

(5) Yusuf Yusuf objects to the Requests for Admissions to the extent that they use terms or phrases that are vague, ambiguous, or undefined. Yusuf Yusuf's response to each such request will be based upon its understanding of the request.

(6) Yusuf Yusuf objects to the Requests for Admissions to the extent they seek documents or information not in the possession, custody or control of Yusuf Yusuf, on the ground that it would subject it to undue burden, oppression and expense, and impose obligations not required by the Federal Rules of Civil Procedure.

(7) Yusuf Yusuf has not completed either its discovery or its preparation for trial of this matter. Accordingly, Yusuf Yusuf's responses to the Requests for Admissions are made without prejudice to Yusuf Yusuf's right to make any use of, or proffer at any hearing or at trial, and are based only upon information presently available. If and as additional, non-privileged, responsive documents are discovered, these Requests for Admissions will be supplemented to the extent that supplementation may be required by the Federal Rules of Civil Procedure.

(8) Yusuf Yusuf objects to the Requests for Admissions to the extent that when all of the subparts are included they are in excess of the number permitted by Rule 33.

RESPONSES TO THIRD REQUESTS FOR ADMISSIONS

138. Defendant Mufeed Hamed's Second Set of Requests to admit Yusuf asked the following question numbered 107, and Yusuf provided the following response:

107. After reviewing 13 V.I.C. § 195 Equally divided vote; receivership, which states in relevant part:

Whenever, by reason of an equally divided vote of the stockholders, there shall be a failure to elect directors, and such failure for such reason shall exist at two successive annual elections

ADMIT or DENY there has never been "an equally divided vote of the stockholders" of Plessen.

RESPONSE: Without prejudice to Yusuf's position in this litigation as well as the *Hamed v. Yusuf*, SX-12-cv 370 (the "370 Case"), Yusuf admits that there has never been a meeting of the shareholders of Plessen. Yusuf has maintained in the 370 Case that the meeting which occurred on April 30, 2014 without sufficient notice was a meeting that should have involved all of the shareholders and that it was improper for a meeting of the shareholders not to have occurred. Hence, the Hameds cannot create a circumstance that prevented a vote of the stockholders, who are clearly divided as between the Yusuf and Hamed families, for the purpose of later seeking an admission that there has never been an "equally divided vote of the stockholders." In further support of Yusuf's position, Yusuf incorporates by reference as if fully set forth herein verbatim, the positions and arguments set forth in the attached briefs relating to Plessen and the improper actions of the Hameds. *See Exhibit A.*

139. **ADMIT or DENY** that there never has been a vote, by meeting or written consent, of the shareholders of Plessen where the issue was the election of new directors.

RESPONSE: Admit. Further responding, without prejudice to Yusuf's position in this litigation as well as the 370 Case, Yusuf admits that there has never been a meeting of the shareholders of Plessen. Yusuf has maintained in the 370 Case that the meeting which occurred on April 30, 2014 without sufficient notice was a meeting that should have involved all of the shareholders and that it was improper for a meeting of the shareholders not to have occurred. Hence, the Hameds cannot create a circumstance that prevented a vote of the stockholders, who are clearly divided as between the Yusuf and Hamed families, for the purpose of later seeking an admission that there has never been an "equally divided vote of the stockholders." In further support of Yusuf's position, Yusuf incorporates by reference as if fully set forth herein verbatim, the positions and arguments set forth in the attached briefs relating to Plessen and the improper actions of the Hameds. *See Exhibit A.*

140. **ADMIT or DENY** that there never has been a vote, by meeting or written consent, of the shareholders of Plessen for directors where the number of share voted was equally divided.

RESPONSE: Admit. Further responding, without prejudice to Yusuf's position in this litigation as well as the 370 Case, Yusuf admits that there has never been a meeting of the shareholders of Plessen. Yusuf has maintained in the 370 Case that the meeting which occurred on April 30, 2014 without sufficient notice was a meeting that should have involved all of the shareholders and that it was improper for a meeting of the shareholders not to have occurred. Hence, the Hameds cannot create a circumstance that prevented a vote of the stockholders, who are clearly divided as between the Yusuf and Hamed families, for the purpose of later seeking an admission that there has never been an "equally divided vote of the stockholders." In further support of Yusuf's position, Yusuf incorporates by reference as if fully set forth herein verbatim, the positions and arguments set forth in the attached briefs relating to Plessen and the improper actions of the Hameds. *See Exhibit A.*

141. **ADMIT or DENY** that with regard to Request for Admission numbered 107, Yusuf or his counsel intentionally evaded a proper response, and therefore refused to answer the RFA.

RESPONSE: Denied. Further responding, Yusuf objects to this requests as it is an improper Request for Admission.

142. Defendant Mufeed Hamed's Second set of Request to Admit Yusuf was asked the following question numbered 108, and Yusuf provided the following response:

108. **ADMIT or DENY** that "by reason of an equal divided vote of the stockholders" there has never been "a failure to elect directors" at a shareholder meeting.

RESPONSE:

The above statement is a partial recitation of 13 V.I.C. §195, there is nothing to either admit or deny. Clearly, the stockholders are equally divided.

ADMIT or DENY that Plaintiff Yusuf knows of no vote, by meeting or written consent, or the shareholders of Plessen in which the number of shares voted was equally divided.

RESPONSE: Admit. Further responding, without prejudice to Yusuf's position in this litigation as well as the 370 Case, Yusuf admits that there has never been a meeting of the shareholders of Plessen. Yusuf has maintained in the 370 Case that the meeting which occurred on April 30, 2014 without sufficient notice was a meeting that should have involved all of the shareholders and that it was improper for a meeting of the shareholders not to have occurred. Hence, the Hameds cannot create a circumstance that prevented a vote of the stockholders, who

are clearly divided as between the Yusuf and Hamed families, for the purpose of later seeking an admission that there has never been an “equally divided vote of the stockholders.” In further support of Yusuf’s position, Yusuf incorporates by reference as if fully set forth herein verbatim, the positions and arguments set forth in the attached briefs relating to Plessen and the improper actions of the Hameds. *See Exhibit A.*

143. **ADMIT or DENY** that Plaintiff Yusuf knows of no vote, by meeting or written consent, or the shareholders of Plessen where the issue was the election of new directors.

RESPONSE: Admit. Further responding, without prejudice to Yusuf’s position in this litigation as well as the 370 Case, Yusuf admits that there has never been a meeting of the shareholders of Plessen. Yusuf has maintained in the 370 Case that the meeting which occurred on April 30, 2014 without sufficient notice was a meeting that should have involved all of the shareholders and that it was improper for a meeting of the shareholders not to have occurred. Hence, the Hameds cannot create a circumstance that prevented a vote of the stockholders, who are clearly divided as between the Yusuf and Hamed families, for the purpose of later seeking an admission that there has never been an “equally divided vote of the stockholders.” In further support of Yusuf’s position, Yusuf incorporates by reference as if fully set forth herein verbatim, the positions and arguments set forth in the attached briefs relating to Plessen and the improper actions of the Hameds. *See Exhibit A.* Further responding, Yusuf incorporates by reference his earlier responses to discovery in this case which address the fact that even Mohammad Hamed believed that there were four (4) directors including Maher Yusuf. As the parties were all under the belief that Maher Yusuf was a director and as he was provided with the authority to act as a director making him a “de facto” director, there would have been no need to meet to elect new directors or to increase the number as the Hameds and Yusufs were under the belief that there were four (4) directors, two Hameds and two Yusufs.

144. **ADMIT or DENY** that Plaintiff Yusuf knows of no vote, by meeting or written consent, of the shareholders of Plessen for directors where the number of shares voted was equally divided.

RESPONSE: Admit. Further responding, without prejudice to Yusuf’s position in this litigation as well as the 370 Case, Yusuf admits that there has never been a meeting of the shareholders of Plessen. Yusuf has maintained in the 370 Case that the meeting which occurred on April 30, 2014 without sufficient notice was a meeting that should have involved all of the shareholders and that it was improper for a meeting of the shareholders not to have occurred. Hence, the Hameds cannot create a circumstance that prevented a vote of the stockholders, who are clearly divided as between the Yusuf and Hamed families, for the purpose of later seeking an admission that there has never been an “equally divided vote of the stockholders.” In further support of Yusuf’s position, Yusuf incorporates by reference as if fully set forth herein verbatim, the positions and arguments set forth in the attached briefs relating to Plessen and the improper actions of the Hameds. *See Exhibit A.*

145. **ADMIT or DENY** that with regard to Request for Admission number 108, Yusuf or his counsel intentionally evaded a proper response, and therefore refused to answer the RFA.

RESPONSE: Denied. Further responding, Yusuf objects to this requests as it is an improper Request for Admission.

146. Defendant Mufeed Hamed's Second Set of Request to Admit, Yusuf was asked the following questions numbered 109, and Yusuf provided the following response:

109. **ADMIT or DENY** that "a failure to elect directors" at "two successive annual Election[s]" at Plessen shareholder meeting has never occurred.

RESPONSE:

The above statement is a partial recitation of 13 V.I.C. §195, there is nothing to either admit or deny. Clearly, the stockholders are equally divided.

ADMIT or DENY that there have never been "two successive annual elections" of directors by the shareholders of Plessen – regardless of the outcome.

RESPONSE: Admit. Further responding, without prejudice to Yusuf's position in this litigation as well as the 370 Case, Yusuf admits that there has never been a meeting of the shareholders of Plessen. Yusuf has maintained in the 370 Case that the meeting which occurred on April 30, 2014 without sufficient notice was a meeting that should have involved all of the shareholders and that it was improper for a meeting of the shareholders not to have occurred. Hence, the Hameds cannot create a circumstance that prevented a vote of the stockholders, who are clearly divided as between the Yusuf and Hamed families, for the purpose of later seeking an admission that there has never been an "equally divided vote of the stockholders." In further support of Yusuf's position, Yusuf incorporates by reference as if fully set forth herein verbatim, the positions and arguments set forth in the attached briefs relating to Plessen and the improper actions of the Hamed's. *See Exhibit A.* Further responding, Yusuf incorporates by reference his earlier responses to discovery in this case which address the fact that even Mohammad Hamed believed that there were four (4) directors including Maher Yusuf. As the parties were all under the belief that Maher Yusuf was a director and as he was provided with the authority to act as a director making him a "de facto" director, there would have been no need to meet to elect new directors or to increase the number as the Hameds and Yusufs were under the belief that there were four (4) directors, two Hameds and two Yusufs.

147. **ADMIT or DENY** that Plaintiff Yusuf knows of no two successive votes of any sort at meetings by the shareholders of Plessen.

RESPONSE: Admit. Further responding, without prejudice to Yusuf's position in this litigation as well as the 370 Case, Yusuf admits that there has never been a meeting of the

shareholders of Plessen. Yusuf has maintained in the 370 Case that the meeting which occurred on April 30, 2014 without sufficient notice was a meeting that should have involved all of the shareholders and that it was improper for a meeting of the shareholders not to have occurred. Hence, the Hameds cannot create a circumstance that prevented a vote of the stockholders, who are clearly divided as between the Yusuf and Hamed families, for the purpose of later seeking an admission that there has never been an "equally divided vote of the stockholders." In further support of Yusuf's position, Yusuf incorporates by reference as if fully set forth herein verbatim, the positions and arguments set forth in the attached briefs relating to Plessen and the improper actions of the Hamed's. *See Exhibit A.*

148. **ADMIT or DENY** that Plaintiff Yusuf knows of no two successive votes of any sort at meetings by the shareholders of Plessen for directors where number of share voted was equally divided.

RESPONSE: Admit. Further responding, without prejudice to Yusuf's position in this litigation as well as the 370 Case, Yusuf admits that there has never been a meeting of the shareholders of Plessen. Yusuf has maintained in the 370 Case that the meeting which occurred on April 30, 2014 without sufficient notice was a meeting that should have involved all of the shareholders and that it was improper for a meeting of the shareholders not to have occurred. Hence, the Hameds cannot create a circumstance that prevented a vote of the stockholders, who are clearly divided as between the Yusuf and Hamed families, for the purpose of later seeking an admission that there has never been an "equally divided vote of the stockholders." In further support of Yusuf's position, Yusuf incorporates by reference as if fully set forth herein verbatim, the positions and arguments set forth in the attached briefs relating to Plessen and the improper actions of the Hamed's. *See Exhibit A.*

149. **ADMIT or DENY** that with regard to Request for Admission numbered 109, Yusuf or his counsel intentionally evaded a proper response, and therefore refuse to answer the RFA.

RESPONSE: Denied. Further responding, Yusuf objects to this requests as it is an improper Request for Admission.

150. **ADMIT or DENY** that Yusuf is unable to specify all of the dates on which he or Mike Yusuf met with VIPD police officers with regard to the alleged embezzlement of \$460,000 by Waleed Hamed at issue here.

RESPONSE: Deny. Further responding, Yusuf shows that the approximate timeframe and sequence has been provided in earlier responses to discovery. Yusuf incorporates by reference his responses to earlier discovery outline the timing and sequence of events as to these meetings.

151. **ADMIT or DENY** that Yusuf is unable to specify all of the dates on which he or Mike Yusuf had telephone conversations with VIPD police officers with regard to the alleged embezzlement of \$460,000 by Waleed Hamed at issue here.

RESPONSE: Deny. Further responding, Yusuf shows that the approximate timeframes and sequence has been provided in earlier responses to discovery. Yusuf incorporates by reference his responses to earlier discovery outline the timing and sequence of events as to these meetings.

152. **ADMIT or DENY** that Yusuf is unable to specify all of the dates on which he or Mike Yusuf met with employees of the Attorney General's Office with regard to the alleged embezzlement of \$460,000 by Waleed Hamed at issue here.

RESPONSE: Deny. Further responding, Yusuf shows that the approximate timeframes and sequence has been provided in earlier responses to discovery. Yusuf incorporates by reference his responses to earlier discovery outline the timing and sequence of events as to these meetings.

153. **ADMIT or DENY** that Yusuf is unable to specify all of the dates on which he or Mike Yusuf had telephone conversations, met with employees of the Attorney General's Office with regard to the alleged embezzlement of \$460,000 by Waleed Hamed at issue here.

RESPONSE: Deny. Further responding, Yusuf shows that the approximate timeframes and sequence has been provided in earlier responses to discovery. Yusuf incorporates by reference his responses to earlier discovery outline the timing and sequence of events as to these meetings.

154. **ADMIT or DENY** that Yusuf Yusuf did not keep written notes of meetings or conversations with, or what documents were provided VIPD police officers with regard to the alleged embezzlement of \$460,000 by Waleed Hamed at issue here.

RESPONSE: Admit because Yusuf Yusuf did not meet with the VIPD regarding the \$460,000 improperly removed by Waleed Hamed.

156. **ADMIT or DENY** that Nizar De Wood did not keep written notes of meetings or conversations with, or what document were provided VIPD police officers with regard to the alleged embezzlement of \$460,000 by Waleed Hamed at issue here.

RESPONSE: Admit. Further responding, the documents provided to the VIPD are set forth in the Affidavit of Sergeant Corneiro as well as in the Police Report.

157. **ADMIT or DENY** that Nizar DeWood did bill the Yusufs for meetings, correspondence or conversations with, or what documents were provided VIPD police officers or the Attorney General's Office with regard to the alleged embezzlement of \$460,000 by Walled Hamed at issue here.

RESPONSE: Deny.

158. **ADMIT or DENY** that Yusuf Yusuf or his present counsel have requested from Nizar DeWood all notes of meetings, correspondence or conversations with, or what documents were provided VIPD police officers or the Attorney General's Office with regard to the alleged embezzlement of \$460,000 by Walled Hamed at issue here.

RESPONSE: Admit.

159. **ADMIT or DENY** that Yusuf Yusuf or his present counsel have provided to Defendants Nizar DeWood's notes of meetings, correspondence or notes/calendars of his conversations with, or what documents were provided VIPD police officers or the Attorney General's Office with regard to the alleged embezzlement of \$460,000 by Waleed Hamed at issue here.

RESPONSE: Admit. All documents provided are those referenced in the Affidavit of Sargent Mark Cornirio. As to present Counsel, no such meetings took place and, therefore, no notes exist.

160. **ADMIT or DENY** that Yusuf Yusuf, Mike Yusuf or their prior or present counsel had meetings with VIPD police officers with regard to the alleged embezzlement of \$460,000 by Waleed Hamed at issue here between January 1, 2015 and November 19, 2015.

RESPONSE: Yusuf incorporates by reference his prior discovery responses including by not limited to Response to Interrogatory No. 8 and supplementary responses to Interrogatory No. 3 and Request to Produce No. 5 as set forth in Counsel's letter dated February 27, 2017, which set forth all of the timeframes and dates of meetings which occurred. Specifically denied as to present Counsel.

161. **ADMIT or DENY** that Yusuf Yusuf, Mike Yusuf or their prior or present counsel had correspondence with VIPD police officers with regard to the alleged embezzlement of \$460,000 by Waleed Hamed at issue here between January 1, 2015 and November 19, 2015.

RESPONSE: Yusuf incorporates by reference his prior discovery responses including by not limited to Response to Interrogatory No. 8 and supplementary responses to Interrogatory No. 3 and Request to Produce No. 5 as set forth in Counsel's letter dated February 27, 2017, which set forth all of the timeframes and dates of meetings which occurred. Specifically denied as to present Counsel.

162. **ADMIT or DENY** that Yusuf Yusuf, Mike Yusuf or their prior or present counsel had telephone conversations with VIPD police officers with regard to the alleged embezzlement of \$460,000 by Waleed Hamed at issue here between January 1, 2015 and November 19, 2015.

RESPONSE: Yusuf incorporates by reference his prior discovery responses including by not limited to Response to Interrogatory No. 8 and supplementary responses to Interrogatory No. 3 and Request to Produce No. 5 as set forth in Counsel's letter dated February 27, 2017, which set forth all of the timeframes and dates of meetings which occurred. Specifically denied as to present Counsel.

163. **ADMIT or DENY** that Yusuf Yusuf, Mike Yusuf or their prior or present counsel supplied documents to VIPD police officers with regard to the alleged embezzlement of \$460,000 by Waleed Hamed at issue here between January 1, 2015 and November 19, 2015.

RESPONSE: Yusuf incorporates by reference his prior discovery responses including by not limited to Response to Interrogatory No. 8 and supplementary responses to Interrogatory No. 3 and Request to Produce No. 5 as set forth in Counsel's letter dated February 27, 2017, which set forth all of the timeframes and dates of meetings which occurred. Specifically denied as to present Counsel.

164. **ADMIT or DENY** that Yusuf Yusuf, Mike Yusuf or their prior to present counsel had meetings with employees of the Attorney General's Office with regard to the alleged embezzlement of \$460,000 by Waleed Hamed at issue here between January 1, 2015 and November 19, 2015.

RESPONSE: Yusuf incorporates by reference his prior discovery responses including by not limited to Response to Interrogatory No. 8 and supplementary responses to Interrogatory No. 3 and Request to Produce No. 5 as set forth in Counsel's letter dated February 27, 2017, which set forth all of the timeframes and dates of meetings which occurred. Specifically denied as to present Counsel.

165. **ADMIT or DENY** that Yusuf Yusuf, Mike Yusuf of their prior or present counsel had correspondence with the employees of the Attorney General's Office with regard to the alleged embezzlement of \$460,000 by Waleed Hamed at issue here between January 1, 2015 and November 19, 2015.

RESPONSE: Yusuf incorporates by reference his prior discovery responses including by not limited to Response to Interrogatory No. 8 and supplementary responses to Interrogatory No. 3 and Request to Produce No. 5 as set forth in Counsel's letter dated February 27, 2017, which set forth all of the timeframes and dates of meetings which occurred. Specifically denied as to present Counsel.

166. **ADMIT or DENY** that Yusuf Yusuf, Mike Yusuf or their prior or present counsel had telephone conversations with employees of the Attorney General's office with regard to the alleged embezzlement of \$460,000.

RESPONSE: Yusuf incorporates by reference his prior discovery responses including by not limited to Response to Interrogatory No. 8 and supplementary responses to Interrogatory No. 3 and Request to Produce No. 5 as set forth in Counsel's letter dated February 27, 2017, which set forth all of the timeframes and dates of meetings which occurred. Specifically denied as to present Counsel.

167. **ADMIT or DENY** that Yusuf Yusuf, Mike Yusuf or their prior or present counsel supplied documents to employees of the Attorney General's Office with regard to the alleged embezzlement of \$460,000 by Waleed Hamed at issue here between January 1, 2015 and November 19, 2015.

RESPONSE: Yusuf incorporates by reference his prior discovery responses including by not limited to Response to Interrogatory No. 8 and supplementary responses to Interrogatory No. 3 and Request to Produce No. 5 as set forth in Counsel's letter dated February 27, 2017, which set forth all of the timeframes and dates of meetings which occurred. Specifically denied as to present Counsel.

168. **ADMIT or DENY** that Nizar DeWood did bill the Yusufs for meetings, correspondence or conversations with, or what documents were provided VIPD police officers or the Attorney General's Office with regard to the alleged embezzlement of \$460,000 by Waleed Hamed at issue here between January 1, 2015 and November 19, 2015.

RESPONSE: Denied.

169. **ADMIT or DENY** that any of the Yusufs' present counsel did bill the Yusufs for meetings, correspondence or conversations with, or what documents were provided VIPD police officers or the Attorney General's Office with regard to the alleged embezzlement of \$460,000 by Waleed Hamed at issue here between January 1, 2015 and November 19, 2015.

RESPONSE: Denied and further objection on the grounds that billing records as between counsel and client are subject to the attorney-client privilege as to the information contained therein.

170. **ADMIT or DENY** that Yusuf Yusuf, Mike Yusuf or their prior or present counsel had meetings with VIPD police officers with regard to the alleged embezzlement of \$460,000 by Waleed Hamed at issue here between January 1, 2016 and December 31, 2016.

RESPONSE: Yusuf incorporates by reference his prior discovery responses including by not limited to Response to Interrogatory No. 8 and supplementary responses to Interrogatory No. 3 and Request to Produce No. 5 as set forth in Counsel's letter dated February 27, 2017, which set forth all of the timeframes and dates of meetings which occurred. Specifically denied as to present Counsel.

171. **ADMIT or DENY** that Yusuf Yusuf, Mike Yusuf or their prior or present counsel had correspondence with VIPD police officers with regard to the alleged embezzlement of \$460,000 by Walled Hamed at issue here between January 1, 2016 and December 31, 2016.

RESPONSE: Yusuf incorporates by reference his prior discovery responses including by not limited to Response to Interrogatory No. 8 and supplementary responses to Interrogatory No. 3 and Request to Produce No. 5 as set forth in Counsel's letter dated February 27, 2017, which set forth all of the timeframes and dates of meetings which occurred. Specifically denied as to present Counsel.

172. **ADMIT or DENY** that Yusuf Yusuf, Mike Yusuf or their prior or present counsel had telephone conversations with VIPD police officers with regard to the alleged embezzlement of \$460,000 by Waleed Hamed at issue here between January 1, 2016 and December 31, 2016.

RESPONSE: Yusuf incorporates by reference his prior discovery responses including by not limited to Response to Interrogatory No. 8 and supplementary responses to Interrogatory No. 3 and Request to Produce No. 5 as set forth in Counsel's letter dated February 27, 2017, which set forth all of the timeframes and dates of meetings which occurred. Specifically denied as to present Counsel.

173. **ADMIT or DENY** that Yusuf Yusuf, Mike Yusuf or their prior or present counsel supplied documents to VIPD police officers with regard to the alleged embezzlement of \$460,000 by Waleed Hamed at issue here between January 1, 2016 and December 31, 2016.

RESPONSE: Yusuf incorporates by reference his prior discovery responses including by not limited to Response to Interrogatory No. 8 and supplementary responses to Interrogatory No. 3 and Request to Produce No. 5 as set forth in Counsel's letter dated February 27, 2017, which set forth all of the timeframes and dates of meetings which occurred. Specifically denied as to present Counsel.

174. **ADMIT or DENY** that Yusuf Yusuf, Mike Yusuf or their prior or present counsel had meetings with employees of the Attorney General's Office with regard to the alleged

embezzlement of \$460,000 by Waleed Hamed at issue here between January 1, 2016 and December 31, 2016.

RESPONSE: Yusuf incorporates by reference his prior discovery responses including by not limited to Response to Interrogatory No. 8 and supplementary responses to Interrogatory No. 3 and Request to Produce No. 5 as set forth in Counsel's letter dated February 27, 2017, which set forth all of the timeframes and dates of meetings which occurred. Specifically denied as to present Counsel.

175. **ADMIT or DENY** that Yusuf Yusuf, Mike Yusuf or their prior or present counsel had correspondence with employees of the Attorney General's Office with regard to the alleged embezzlement of \$460,000 by Waleed Hamed at issue here between January 1, 2016 and December 31, 2016.

RESPONSE: Yusuf incorporates by reference his prior discovery responses including by not limited to Response to Interrogatory No. 8 and supplementary responses to Interrogatory No. 3 and Request to Produce No. 5 as set forth in Counsel's letter dated February 27, 2017, which set forth all of the timeframes and dates of meetings which occurred. Specifically denied as to present Counsel.

176. **ADMIT or DENY** that Yusuf Yusuf, Mike Yusuf or their prior or present counsel had telephone conversation with employees of the Attorney General's Office with regard to the alleged embezzlement of \$460,000 by Waleed Hamed at issue here between January 1, 2016 and December 31, 2016.

RESPONSE: Yusuf incorporates by reference his prior discovery responses including by not limited to Response to Interrogatory No. 8 and supplementary responses to Interrogatory No. 3 and Request to Produce No. 5 as set forth in Counsel's letter dated February 27, 2017, which set forth all of the timeframes and dates of meetings which occurred. Specifically denied as to present Counsel.

177. **ADMIT or DENY** that Yusuf Yusuf, Mike Yusuf or their prior or present counsel supplied documents to employees of the Attorney General's Office with regard to the alleged embezzlement of \$460,000 Waleed Hamed at issue here between January 1, 2016 and December 31, 2016.

RESPONSE: Yusuf incorporates by reference his prior discovery responses including by not limited to Response to Interrogatory No. 8 and supplementary responses to Interrogatory No. 3 and Request to Produce No. 5 as set forth in Counsel's letter dated February 27, 2017,

which set forth all of the timeframes and dates of meetings which occurred. Specifically denied as to present Counsel.

178. **ADMIT or DENY** that Nizar DeWood did bill the Yusufs for meetings, correspondence or conversations with, or what documents were provided VIPD police officers or the Attorney General's Office with regard to the alleged embezzlement of \$460,000 by Waleed Hamed at issue here between January 1, 2016 and December 31, 2016.

RESPONSE: Denied.

179. **ADMIT or DENY** that any of the Yusuf's present counsel did bill the Yusufs for meetings, correspondence or conversations with, or what document were provided VIPD police officers or the Attorney General's Office with regard to the alleged embezzlement of \$460,000 by Waleed Hamed at issue here between January 1, 2016 and December 31, 2016.

RESPONSE: Denied.

180. **ADMIT or DENY** that Nizare DeWood's billings with regard to the alleged embezzlement of \$460,000 by Waleed Hamed at issue here are in the possession of Yusuf or his present counsel.

RESPONSE: Denied. No such billing exist.

181. **ADMIT or DENY** that in bills provided to the Yusufs by any of the Yusuf's present or past counsel there is information that relates to meetings, correspondence or conversations with, or what documents were provided VIPD police officers or the Attorney General's Office with regard to the alleged embezzlement of \$460,000 by Waleed Hamed at issue here between January 1, 2015 and December 31, 2016.

RESPONSE: Denied and further objection on the grounds that billing records as between counsel and client are subject to the attorney-client privilege as to the information contained therein.

182. **ADMIT or DENY** that Yusuf has not provided Defendants with information in discovery -- from counsels' billings -- that relates to meetings, correspondence or conversations with, or what documents were provided VIPD police officers or the Attorney General's Office with regard to the alleged embezzlement of \$460,000 by Waleed Hamed at issue here between January 1, 2015 and December 31, 2016.

RESPONSE: Admit and further objection on the grounds that billing records as between counsel and client are subject to the attorney-client privilege as to the information contained therein.

183. **ADMIT or DENY** that on or about June 19th of 2014, the Hamed's served a corrected interrogatory response on the Yusufs in the SX-12-CV-370 action (Hamed v. Yusuf) which Mohammad Hamed verified:

Corrected response:

Object to as irrelevant and not likely to lead to relevant testimony, as Plessen should not be a party to this litigation. Subject to that objection, I am the President of Plessen and one of the three directors of Plessen. I have always been President and a director. The other two directors are Fathi Yusuf and Waleed (Wally) Hamed, who have always been the other two directors. The shareholders of the company, including Fathi Yusuf and his sons, are all aware of this fact as is the Office of the Lieutenant Governor, Division of Corporations.

I make this correction after reviewing the Articles of Incorporation and By-Laws, as well as the annual filing made with the Lieutenant Governor, which make it clear that there were three original directors and support this corrected response. There have been no changes to these three directors since that time.

RESPONSE: Admit that Hamed attempted to make the foregoing change to his interrogatory responses. However, the "correction" was only made after the original interrogatory response was used against Hamed. Hence, the original response and his attempted correction are evidence which impeaches his credibility on the issue of who was on the Board of Directors for Plessen and who Hamed believed the Board of Directors of Plessen to be. It is further evidence of Maher Yusuf being a "*de facto*" member of the Board of Directors of Plessen.

184. **ADMIT or DENY** that at page 2, in footnote 2, of his July 25, 2014 decision in the SX-12-CV-370 action (Hamed v. Yusuf), Judge Douglas Brady wrote the following:

Defendant Yusuf claims that his son Maher ("Mike") is a director of Plessen, and that failure to notify him of the special meeting renders all actions therein null and void. Motion, at 6, n.3. As proof that Mike is a director, Yusuf cites a February 14, 2013 "List

of Corporate Officers for Plessen” from the electronic records of the Department of Licensing and Consumer Affairs. Motion, at 6, n.4 Exhibit D; and presents a Scotiabank account application information form wherein Mike is designated “Director/Authorized Signatory” on Plessen’s account. Plaintiff denies that Mike is a director, relying upon Plessen’s Articles of Incorporation which name Mohammad Hamed, Waleed Hamed, and Fathi Yusuf as the only three directors. Opposition, Exhibit A. Plessen’s By-Laws state that the number of directors can be changed only by majority vote of current directors. Opposition, Exhibit B. Section 2.2 Plessen director Waleed Hamed declared: “There have been no resolutions of the Board or votes by the shareholders of Plessen Enterprises, Inc. that have ever changed these three Directors as provided for in the articles of incorporation over the las 26 years.” Opposition, Exhibit 1, Declaration of Waleed Hamed, Defendant Yusuf concurs: “Until the Special Meeting of the Board of Directors of Plessen was held on April 30, 2014, there had no meeting of the directors or shareholders of Plessen since its formation in 1988.” Motion , Exhibit K¶15.

As such, and for the limited purpose of addressing this Motion, the Court finds that Plessen has three directors: Mohamman Hamed, Waleed Hamed, and Fathi Yusuf.

RESPONSE: Admit that this is an accurate quotation from Judge Brady’s Order.

185. **ADMIT or DENY** that the following statement in Judge Brady’s July 25, 2014 decision is a true statement of fact: “Plessen’s By-Laws state that the number of directors can be changed only by majority vote of current directors.”

RESPONSE: Admit that the By-Laws provide a mechanism for changing the number of directors. However, further responding, Yusuf shows that all relevant parties believed Maher Yusuf to have been a member of the Board of Directors and he as a “de factor” member of the Board of Directors of Plessen.

186. **ADMIT or DENY** that the following statement in Judge Brady’s July 25, 2014 decision is a true statement of fact: “There have been no resolutions of the Board or votes by the shareholders of Plessen Enterprises, Inc. that have ever changed these three Directors as provided for in the articles of incorporation over the last 26 years.” Opposition, Exhibit 1, Declaration of Waled Hamed. Defendant Yusuf concurs: “Until the Special Meeting of the

Board of Directors of Plessen was held on April 30, 2014, there had no meeting of the directors shareholders of Plessen since its formation of 1988.”

RESPONSE: Admit that this is the finding of Judge Brady but without prejudice to the right to appeal that decision. Further responding, Yusuf objects to this Request to Admit as improper discovery.

187. **ADMIT or DENY** that on July 25, 2014, Yusuf Yusuf and Mike Yusuf were on notice that under the bylaws of the corporation, Mike Yusuf could not be a fourth director of Plessen.

RESPONSE: Denied.

188. **ADMIT or DENY** that after July 25, 2014, but before November 19, 2015, Mike or Yusuf Yusuf or their counsel supplied documents to or had conversation with employees of the VIPD or Attorney General's Office with regard to the alleged embezzlement of \$460,000 by Waleed Hamed at issue here.

RESPONSE: Yusuf incorporates by reference his prior discovery responses including by not limited to Response to Interrogatory No. 8 and supplementary responses to Interrogatory No. 3 and Request to Produce No. 5 as set forth in Counsel's letter dated February 27, 2017, which set forth all of the timeframes and dates of meetings which occurred. Specifically denied as to present Counsel.

189. **ADMIT or DENY** that after July 25, 2014, but before November 19, 2015, Mike or Yusuf Yusuf or their counsel did not inform or supply the VIPD or Attorney General's Office with what Judge Brady had found with regard to Mike Yusuf's claims that he was a director of Plessen.

RESPONSE: Yusuf incorporates by reference his prior discovery responses including by not limited to Response to Interrogatory No. 8 and supplementary responses to Interrogatory No. 3 and Request to Produce No. 5 as set forth in Counsel's letter dated February 27, 2017, which set forth all of the timeframes and dates of meetings which occurred.

190. **ADMIT or DENY** that after July 25, 2014, but before November 19, 2015, Mike or Yusuf Yusuf or their counsel did not inform or supply VIPD or Attorney General's Office with what Judge Brady had found with regard to Mike Yusuf's claims that he was director of Plessen.

RESPONSE: Yusuf incorporates by reference his prior discovery responses including by not limited to Response to Interrogatory No. 8 and supplementary responses to Interrogatory No. 3 and Request to Produce No. 5 as set forth in Counsel's letter dated February 27, 2017, which set forth all of the timeframes and dates of meetings which occurred.

191. **ADMIT or DENY** that after July 25, 2014, but before November 19, 2015, Mike or Yusuf Yusuf or their counsel did not inform the VIPD or Attorney General's Office that the information gathering forms and other documents previously supplied by them had been before Judge Brady and that he had discussed them in his findings about the assertion there was a fourth Plessen director.

RESPONSE: Yusuf incorporates by reference his prior discovery responses including by not limited to Response to Interrogatory No. 8 and supplementary responses to Interrogatory No. 3 and Request to Produce No. 5 as set forth in Counsel's letter dated February 27, 2017, which set forth all of the timeframes and dates of meetings which occurred.

192. **ADMIT or DENY** that after July 25, 2014, but before November 19, 2015, Mike or Yusuf Yusuf or their counsel continued to assert that Mike Yusuf was a Director of Plessen to the VIPD or Attorney General's Office with regard to the alleged embezzlement of \$460,000 by Waleed Hamed at issue here.

RESPONSE: Yusuf incorporates by reference his prior discovery responses including by not limited to Response to Interrogatory No. 8 and supplementary responses to Interrogatory No. 3 and Request to Produce No. 5 as set forth in Counsel's letter dated February 27, 2017, which set forth all of the timeframes and dates of meetings which occurred.

193. **ADMIT or DENY** that at page 5-6 of his April 21, 2015 decision in the instant action, Judge Harold Willocks wrote the following:

The Articles of Incorporation list Mohammad, Waleed and Fathi as the only three directors. It is not in dispute that Mohammad, Waleed, and Fathi are Directors of the Plessen; but rather, it is Plaintiff Yusuf's contention that Maher is a fourth director of Plessen. Section 2.2 of the By-Laws provides that the number of directors can be changed only by "resolution of a majority of the entire board of Directors" and that "each Director shall serve until his or her successor is duly elected and qualifies." According to both Waleed and Fathi, no such resolution was ever adopted and no meetings were called to elect successors. Thus for the limited purpose of addressing this Motion, the Court finds that Plessen has only three directors- Mohammad, Waleed and Fathi. Accordingly, the purpose of the notice provision of the By-Laws was indeed satisfied.

RESPONSE: Admit that the foregoing is an accurate quotation from Judge Willocks Order dated April 21, 2015.

194. **ADMIT or DENY** that the following statement in Judge Willock's April 21, 2015 decision is a true statement of fact: "Section 2.2 of the By-Laws provides that the number of directors can be changed only by "resolution of a majority of the entire Board of Directors" and that "each Director shall serve until his or her successor is duly elected and qualifies." According to both Waleed and Fathi, no such resolution was ever adopted and no meetings were called to elect successors."

RESPONSE: Admit that this is the finding of Judge Willocks but without prejudice to the right to appeal that decision. Further responding, Yusuf objects to this Request to Admit as improper discovery.

195. **ADMIT or DENY** that on April 21, 2015, Yusuf Yusuf and Mike Yusuf were on notice that under the bylaws of the corporation, Mike Yusuf could not be a fourth director of Plessen.

RESPONSE: Denied.

196. **ADMIT or DENY** that on April 21, 2015, but before November 19, 2015, Mike Yusuf Yusuf or their counsel supplied documents to or had conversation with employees of the VIPD or Attorney General's Office with regard to the alleged embezzlement of \$460,000 by Waleed Hamed at issue here.

RESPONSE: Yusuf incorporates by reference his prior discovery responses including by not limited to Response to Interrogatory No. 8 and supplementary responses to Interrogatory No. 3 and Request to Produce No. 5 as set forth in Counsel's letter dated February 27, 2017, which set forth all of the timeframes and dates of meetings which occurred.

197. **ADMIT or DENY** that after April 21, 2015, but before November 19, 2015, Mike or Yusuf Yusuf or their counsel supplied documents to or had conversations with employees of the VIPD or Attorney General's Office with regard to the alleged embezzlement of \$460,000 by Waleed Hamed at issue here.

RESPONSE: Yusuf incorporates by reference his prior discovery responses including by not limited to Response to Interrogatory No. 8 and supplementary responses to Interrogatory No. 3 and Request to Produce No. 5 as set forth in Counsel's letter dated February 27, 2017, which set forth all of the timeframes and dates of meetings which occurred.

198. **ADMIT or DENY** that after April 21, 2015, but before November 19, 2015, Mike Yusuf Yusuf or their counsel did not inform or supply the VIPD or Attorney General's Office with what Judge Brady had found with regard to Make Yusuf's claims that he was a director of Plessen.

RESPONSE: Yusuf incorporates by reference his prior discovery responses including by not limited to Response to Interrogatory No. 8 and supplementary responses to Interrogatory No. 3 and Request to Produce No. 5 as set forth in Counsel's letter dated February 27, 2017, which set forth all of the timeframes and dates of meetings which occurred.

199. **ADMIT or DENY** that after April 21, 2015, but before November 19, 2015 Mike or Yusuf Yusuf or their counsel did not inform or supply the VIPD or Attorney General's Office with what Judge Brady had found with regard to Mike Yusuf's claims that he was a director of Plessen.

RESPONSE: Yusuf incorporates by reference his prior discovery responses including by not limited to Response to Interrogatory No. 8 and supplementary responses to Interrogatory No. 3 and Request to Produce No. 5 as set forth in Counsel's letter dated February 27, 2017, which set forth all of the timeframes and dates of meetings which occurred.

200. **ADMIT or DENY** that after April 21, 2015, but before November 19, 2015 Mike or Yusuf Yusuf or their counsel did not inform the VIPD or Attorney General's Office that the Information gathering forms and other documents previously supplied by them had been before Judge Brady and that he had discussed them in his findings about the assertion there was a fourth Plessen director.

RESPONSE: Yusuf incorporates by reference his prior discovery responses including by not limited to Response to Interrogatory No. 8 and supplementary responses to Interrogatory No. 3 and Request to Produce No. 5 as set forth in Counsel's letter dated February 27, 2017, which set forth all of the timeframes and dates of meetings which occurred.

201. **ADMIT or DENY** that after April 21, 2015, but before November 19, 2015, Mike or Yusuf Yusuf or their counsel continued to assert that Mike Yusuf was a Director of Plessen to the VIPD or Attorney General's Office with regard to the alleged embezzlement of \$460,000 by Waleed Hamed at issue here.

RESPONSE: Yusuf incorporates by reference his prior discovery responses including by not limited to Response to Interrogatory No. 8 and supplementary responses to Interrogatory No. 3 and Request to Produce No. 5 as set forth in Counsel's letter dated February 27, 2017, which set forth all of the timeframes and dates of meetings which occurred.

202. **ADMIT or DENY** that after the Criminal Information against Waleed Hamed of November 19, 2015 but prior to the dismissal of the criminal charges on May 31, 2016, Mike and Yusuf Yusuf or their counsel had further communication with members of the VIPD with regard to the alleged embezzlement.

RESPONSE: Yusuf incorporates by reference his prior discovery responses including by not limited to Response to Interrogatory No. 8 and supplementary responses to Interrogatory No. 3 and Request to Produce No. 5 as set forth in Counsel's letter dated February 27, 2017, which set forth all of the timeframes and dates of meetings which occurred.

203. **ADMIT or DENY** that after the Criminal Information against Waleed Hamed of November 19, 2015 but prior to the dismissal of the criminal charges on May 31, 2016, Mike and Yusuf Yusuf or their counsel had further communications with employees of the Attorney General's Office with regard to the alleged embezzlement of \$460,00 by Waleed Hamed at issue here.

RESPONSE: Yusuf incorporates by reference his prior discovery responses including by not limited to Response to Interrogatory No. 8 and supplementary responses to Interrogatory No. 3 and Request to Produce No. 5 as set forth in Counsel's letter dated February 27, 2017, which set forth all of the timeframes and dates of meetings which occurred.

204. **ADMIT or DENY** that after the Criminal Information against Waleed Hamed November 19, 2015 but prior to the dismissal of the criminal charges on May 31, 2016, Mike and Yusuf Yusuf or their counsel in their further communications with employees of the VIPD or Attorney General's Office with regard to the alleged embezzlement of \$460,000 by Waleed Hamed at issue here continued to represent that Mike Yusuf a Plessen Director.

RESPONSE: Yusuf incorporates by reference his prior discovery responses including by not limited to Response to Interrogatory No. 8 and supplementary responses to Interrogatory No. 3 and Request to Produce No. 5 as set forth in Counsel's letter dated February 27, 2017, which set forth all of the timeframes and dates of meetings which occurred.

205. **ADMIT or DENY** that after the Criminal Information against Waleed Hamed of November 19, 2015 but prior to the dismissal of the criminal charges on May 31, 2016, Mike and Yusuf Yusuf or their counsel in their further communications with employees of the VIPD or Attorney General's Office with regard to the alleged embezzlement of \$460,000 by Waleed Hamed at issue here did not inform the VIPD or AG's Office of the decisions by Judge Willocks and Brady regarding the assertion of a fourth Plessen director.

RESPONSE: Yusuf incorporates by reference his prior discovery responses including by not limited to Response to Interrogatory No. 8 and supplementary responses to Interrogatory No. 3 and Request to Produce No. 5 as set forth in Counsel's letter dated February 27, 2017, which set forth all of the timeframes and dates of meetings which occurred.

206. **ADMIT or DENY** that after the Criminal Information against Waleed Hamed of November 19, 2015 but prior to the dismissal of the criminal charges on May 31, 2016, Mike and Yusuf Yusuf or their counsel in their further communications with employees of the VIPD or Attorney General's Office with regard to the alleged embezzlement of \$460,000 by Waleed

Hamed at issue here did not inform the VIPD or AG's Office of the decisions by Judges Willocks and Brady regarding the assertion of a fourth Plessen director.

RESPONSE: Yusuf incorporates by reference his prior discovery responses including by not limited to Response to Interrogatory No. 8 and supplementary responses to Interrogatory No. 3 and Request to Produce No. 5 as set forth in Counsel's letter dated February 27, 2017, which set forth all of the timeframes and dates of meetings which occurred.

207. **ADMIT or DENY** that in their communications with VIPD or AG after the Criminal Information against Waleed Hamed on November 19, 2015 but prior to the dismissal of the criminal charges on May 31, 2016, Mike and Yusuf Yusuf attempted to convince the AG that the criminal charges against Waleed Hamed should not be dismissed.

RESPONSE: Yusuf incorporates by reference his prior discovery responses including by not limited to Response to Interrogatory No. 8 and supplementary responses to Interrogatory No. 3 and Request to Produce No. 5 as set forth in Counsel's letter dated February 27, 2017, which set forth all of the timeframes and dates of meetings which occurred.

208. **ADMIT or DENY** that in their communications with VIPD or AG after the Criminal Information against Waleed Hamed on November 19, 2015 but prior to the dismissal of the criminal charges on May 31, 2016, Mike and Yusuf Yusuf supplied additional documents to attempt to convince the AG that the criminal charges against Waleed Hamed should not be dismissed.

RESPONSE: Yusuf incorporates by reference his prior discovery responses including by not limited to Response to Interrogatory No. 8 and supplementary responses to Interrogatory No. 3 and Request to Produce No. 5 as set forth in Counsel's letter dated February 27, 2017, which set forth all of the timeframes and dates of meetings which occurred.


209. **ADMIT or DENY** that before the Criminal Information against Waleed Hamed on November 19, 2015, Mike and Yusuf Yusuf or their counsel had communications with an Assistant Attorney General (AAG) in which a "dated" BNS information gathering document was supplied.

RESPONSE: Yusuf incorporates by reference his prior discovery responses including by not limited to Response to Interrogatory No. 8 and supplementary responses to Interrogatory No. 3 and Request to Produce No. 5 as set forth in Counsel's letter dated February 27, 2017, which set forth all of the timeframes and dates of meetings which occurred.

210. **ADMIT or DENY** that after the Criminal Information against Waleed Hamed of November 19, 2015, Mike and Yusuf Yusuf or their counsel had communications with an Assistant Attorney General (AAG) in which they represented to the AAG that the "dated" BNS information gathering document had been supplied by BNS from Plessen bank records.

RESPONSE: Yusuf incorporates by reference his prior discovery responses including by not limited to Response to Interrogatory No. 8 and supplementary responses to Interrogatory No. 3 and Request to Produce No. 5 as set forth in Counsel's letter dated February 27, 2017, which set forth all of the timeframes and dates of meetings which occurred.

DATED: March th 27, 2017

DUDLEY, TOPPER AND FEUERZEIG, LLP

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Attorneys for Plaintiffs

CERTIFICATE OF SERVICE

It is hereby certified that on this ^{27th} day of March, 2017, I caused a true and exact copy of the foregoing **PLAINTIFF YUSUF YUSUF'S RESPONSE TO DEFENDANT MUFEEED HAMED'S THIRD SET OF REQUESTS FOR ADMISSIONS** to be served upon the following via e-mail:

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EXHIBIT A

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

MOHAMMAD HAMED, by his
authorized agent **WALEED HAMED**,)
)
)
Plaintiff/Counterclaim Defendant,)
)
vs.)
)
FATHI YUSUF and UNITED CORPORATION,)
)
)
Defendants/Counterclaimants,)
)
vs.)
)
WALEED HAMED, WAHEED HAMED,
MUFEEH HAMED, HISHAM HAMED, and
PLESSEN ENTERPRISES,)
)
)
Additional Counterclaim Defendants.)
)
)

CIVIL NO. SX-12-CV-370

ACTION FOR DAMAGES,
INJUNCTIVE RELIEF
AND DECLARATORY RELIEF

JURY TRIAL DEMANDED

FATHI YUSUF'S BRIEF IN SUPPORT OF MOTION TO NULLIFY PLESSEN ENTERPRISES, INC.'S BOARD RESOLUTIONS, TO VOID ACTS TAKEN PURSUANT TO THOSE RESOLUTIONS, AND TO APPOINT RECEIVER

INTRODUCTION

Additional counterclaim defendant Plessen Enterprises, Inc. ("Plessen") is a VI corporation formed in 1988 and is owned 50/50 between the families of Mohammed Hamed ("Hamed") and Fathi Yusuf ("Yusuf") that are at the center of this litigation. (See Hamed's First Amended Complaint, ¶ 20(c); Yusuf's First Amended Counterclaim, ¶ 11, 115-117). Plessen owns, inter alia, the land on which the Plaza Extra - West¹ store is situated, and has other significant real estate holdings in St. Croix and St. Thomas. (Id.). Yusuf alleged in his counterclaim that "[b]ecause the equity of Plessen is owed equally by the Hamed and Yusuf

¹As the Court knows from prior briefs in this case, there are three Plaza Extra stores in the Virgin Islands. The two located in St. Croix are known, respectively, as Plaza Extra - East and Plaza Extra - West.

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families who have an irreconcilable disagreement on how to continue the business operations of this company, it should be dissolved and its assets liquidated according to law.” (See Yusuf’s First Amended Counterclaim, p. 28, Count IV, ¶ 168). Yusuf also sought appointment of a Receiver to liquidate the assets of the Plaza Extra Stores and Plessen and, after satisfying creditors, to divide the net proceeds between Hamed and Yusuf according to their respective interests as determined by this Court. (Id., Count X, ¶ 171).

Moreover, at the behest of Hamed, a preliminary injunction has been entered, which was intended to preserve the status quo during the pendency of this litigation and to prevent either the Hamed or Yusuf family from taking “unilateral action . . . affecting the management, employees, methods, procedures and operations” of the three Plaza Extra stores. See Hamed v. Yusuf, 58 V.I. 117, 138 (Super. Ct. 2013).

The deadlock between these two families was well summed up in an early Virgin Islands case involving a close corporation and shareholder families that found themselves in *impasse*, Moran v. Edson, 493 F.2d 400 (3d Cir. 1974):

Thus, as can be seen, the two factions were in hopeless deadlock. The only matter upon which they did agree was that each would like to be released from the relationship, but they obviously could not agree upon the procedure or the price whereby it could be accomplished.

Id. at 404. In light of the hopeless deadlock between the Hamed and Yusuf families and the existence of the preliminary injunction, the attempt by Hamed and his son, Waleed Hamed (“Waleed”), to flout the injunction by unilaterally bringing on a putative Special Meeting of the Board of Directors of Plessen and approving actions for the exclusive benefit of the Hamed

family interests is not only violative of the preliminary injunction, but is also invalid as the kind of self-dealing by interested directors that is not permitted under recognized authorities.

In Moran, the Third Circuit quoted the lower court's opinion in summarizing the applicable principles as to when a transaction involving self-dealing by a director is voidable:

Directors and officers are not free to appropriate corporate assets in fraud of the stockholders, and any such asset taken for the exclusive benefit of favored principals are recoverable by the corporation, . . . Nothing less than a unanimous ratification by the shareholders can validate such personal use of the corporation's funds and property.

Id. at 406 (emphasis added). See also Model Business Corporation Act Sections 8.30 and 8.31 as to Standards of Conduct and Standards of Liability for Directors, including reference to challenging conduct of a director which was the result of an action not taken in good faith or "a lack of objectivity due to the director's familial, financial or business relationship with, or a lack of independence due to the director's domination or control by, another person having a material interest in the challenged conduct . . . which relationship . . . could reasonably be expected to have affected the director's judgment respecting the challenged conduct in a manner adverse to the corporation."

In light of these principles, the preliminary injunction restrained the parties in such a way as to ensure that all managerial decisions would require the approval of a member from both families. While only a temporary fix, it was intended to prevent either family from making unilateral decisions that might dissipate or squander assets while their disputes were being litigated.

The Hameds have tried to circumvent orderly judicial resolution of the dispute with the Yusufs by holding a meeting of the Board of Directors on one business day's notice to Yusuf to,

among other things, ratify a past misappropriation of \$460,000 of Plessen monies by Waleed, and to approve a lease of the Plaza Extra - West store, which is located on Plessen land, to a company owned in part by Waleed, both instances of self-dealing. The lessee company, KAC357, Inc. (the "New Hamed Company") was incorporated on April 22, 2014 and is wholly owned by Hamed family members – Waleed and two of his brothers. As discussed in more detail below, under the law applicable to this case, these interested director approvals cannot stand, and the approvals and any actions taken pursuant to them must be nullified and voided. Moreover, the very fact that Hamed and Waleed attempted such brazen acts of self-dealing establishes the hopeless deadlock amongst the shareholders of Plessen and evidences the need for the appointment of a Receiver to dissolve Plessen, liquidate its assets, and divide the net proceeds between the Hameds and Yusufs.

STATEMENT OF FACTS

A. Unauthorized Board Meeting Called by Hamed to Ratify His and his Son's Misdeeds.

On Monday, April 28, 2014, at approximately 4 p.m., a document entitled Notice of Special Meeting of Board of Directors of Plessen Enterprises, Inc. (the "Notice") was hand delivered to Yusuf, a director, shareholder and secretary of the Board of Directors, announcing an intent to hold such a meeting on April 30, at 10:00 a.m. at the Plaza Extra - East store in St. Croix. (See Exhibit A, Notice of Special Meeting of Board of Directors of Plessen (without the unsigned lease that was attached to the Notice)). The Notice was issued by Hamed, who is one of the directors of Plessen, instead of by Yusuf in his capacity as Secretary of the Board, as the Bylaws require (in sections 3.4 and 7.2 thereof). The fact that the Notice was served on Yusuf on one business day's notice was an obvious attempt to avoid judicial scrutiny of an action t.

as discussed below, was unlawful and an end-run around pending litigation between the Hamed and Yusuf families. It also was, at the very least, a violation of the spirit of the preliminary injunction entered in this case.

The stated purpose of the Special Meeting was to approve or ratify five actions of Plessen, namely:

(1) a lease of the Plaza Extra - West premises, owned by Plessen, to the New Hamed Company² (the "Hamed Lease"), a blatant conflict of interest;

(2) to ratify Waleed's unilateral, unauthorized, surreptitious and unlawful withdrawal of \$460,000.00 from a Plessen bank account on March 27, 2013 as the payment of a corporate "dividend";

(3) to authorize the payment of up to another \$200,000 in corporate dividends;

(4) to approve the retention of Attorney Jeffrey Moorehead to represent the corporation and to pay him a retainer of \$20,000; and

(5) to remove Yusuf as registered agent for Plessen and replace him with Jeffrey Moorhead. (Exhibit A).

Waleed's unlawful withdrawal of \$460,000 in corporate monies is the subject of a related derivative action pending in this Court before the Honorable Harold W. L. Willocks. (See generally Complaint in Yusuf v. Hamed, et al., Case No. SX-13-CV-129 (the "Derivative Action")). The fortuitous circumstances of the discovery of this misappropriation of corporate funds is described in paragraphs 25-28 of the Verified Complaint in the Derivative Action.

²In the "Hamed Plan For Winding Up Partnership" (the "Hamed Plan"), attached as Exhibit 2 to Hamed's "Response To Defendants' Motion to Appoint Master For Judicial Supervision Of Partnership Winding Up Or, In The Alternative, To Appoint Receiver To Wind Up Partnership" filed on April 30, 2014 (the "Response"), it is stated that the New Hamed Company is owned by Waleed and his brothers, Waheed and Mufeed. See Hamed Plan at § 1.31.

B. Yusuf's Formal Response to the Notice Pointing Out its Procedural and Substantive Infirmities.

The very next day, on April 29, 2014, Yusuf, as Secretary of Plessen, issued a Response to Request for Special Meeting of Board of Directors, which pointed out the deficiencies with the Notice, and explained why a Special Meeting of the Board was improper and should not take place. (See **Exhibit B** –Response to Notice of Board Meeting.) Yusuf's Response explained that the Notice was procedurally defective as it was not issued by him as the Secretary, the only party authorized to provide notice of such meetings. (See **Exhibit C**, Plessen Bylaws, ¶¶ 3.4 and 7.2.B). Further, the Notice was not served upon Maher ("Mike") Yusuf,³ who also was a director of Plessen.⁴ The Response also explained that the five items on the agenda were "prejudicial to the [Yusuf family] shareholders and a subterfuge to accomplish through invalid Board of Directors action approval of items . . . that should more properly be submitted to Special Meeting of the Shareholders of the Corporation, if at all." (Exhibit B).

³See Kings Wharf Island Enterprises, Inc. v. Rehlaender, 34 V.I. 23, 30-31 (V.I. Terr. Ct. 1996) (failure to notify minority shareholder of shareholder meeting was fatally defective to actions taken at meeting, and because resolutions did not germinate from a properly notified meeting, they are null and void).

⁴The parties agree that Hamed, Waleed, and Yusuf are directors of Plessen. Although Waleed and Hamed dispute Mike's position as a director, there is ample evidence to the contrary. Mike is reflected as a director of Plessen by the Department of Licensing and Consumer Affairs. See **Exhibit D** – Printout from February 14, 2013 List of Corporate Officers for Plessen, also attached as Exhibit C to the Complaint in the Derivative Action. Further, the records from Scotiabank, which demonstrate who is authorized to sign on Plessen's account, show Mike as a "Director/Authorized Signatory" and his signature is listed next to Waleed's, who is likewise listed as a "Director/Authorized Signatory". See **Exhibit E** – Scotiabank Records Regarding Authorized Signatory. The Court need not, however, resolve the issue of whether Mike is a director in order to grant the relief sought by Yusuf in this motion. Even assuming arguendo that the only directors of Plessen are the two Hameds and Yusuf, the transactions the Hamed family sought to have ratified at the Board meeting should be rendered null and void for the reasons discussed below.

C. Yusuf Filed in Court to Enjoin the Meeting But the Hamed Directors Acted Without Waiting for a Court Ruling.

On April 30, 2014, at 9:08 a.m., in advance of the Special Meeting, counsel for Yusuf filed his Emergency Motion to Enjoin 4/30/14 Special Meeting of Board of Directors of Counterclaim Defendant Plessen ("Yusuf's Emergency Motion") in this litigation. Notwithstanding Yusuf's Emergency Motion, the Hamed directors elected to go forward with the meeting without first obtaining direction from the Court. Yusuf's motion set forth all of the grounds for enjoining the Special Meeting and why it was improper. However, given the timing, and this Court's schedule, a review or ruling could not be secured in advance of the meeting. Clearly, the Notice was intended to create an artificially compressed timeframe for the very purpose of evading judicial scrutiny.

D. The Meeting Results In A Shouting Match.

At 10:00 a.m. the same day, Yusuf and his counsel appeared at the Special Meeting and voiced objections on the grounds set forth in Exhibit C. Unfortunately, the decorum of the meeting deteriorated quickly, further demonstrating the deadlock between the parties. The meeting was to be transcribed, but as the parties began speaking (and then shouting) over each other at the same time, creating a transcript proved to be impossible. However, an audio visual recording is attached to provide the Court with the benefit of what actually transpired during the meeting as well as the tone, tenor and demeanor of the events as they occurred. See Exhibit F - DVD of the audio visual recording of the April 30, 2014 meeting.

E. Waleed Ratifies His Misdeeds and Engages In Blatant Self-Dealing.

At the Special Meeting, Waleed, over the objection of Yusuf, simply moved to ratify his earlier unauthorized withdrawal of \$460,000 in funds from Plessen as a "dividend," to approve

an additional withdrawal of \$200,000 as a further dividend to shareholders, and then to approve a lease between Plessen and his own company. No discussion was had, as the meeting was a sham. Further, Hamed and Waleed failed to recognize Mike as a director or allow him to vote on the proposals. This insured that the two Hamed directors, Waleed and Hamed, were able to out-vote Yusuf, thereby allowing the Hameds to “approve” their own misdeeds by majority vote.

See Exhibit F.

F. The Actions Taken By Hamed and Waleed Were Calculated and Deliberate Efforts To Further Their Scheme and Were Unbeknownst to Yusuf.

By 10:55 a.m., Waleed and Hamed had not only ratified their misdeeds and engaged in self-dealing but they had already attempted to complete the sham to make it “official” by signing the purported Resolutions of the Board of Directors (“Purported Resolutions”), again a function of the Secretary of the Board of Directors. See Exhibit G – Email from Joel H. Holt attach April 30, 2014 Resolutions of the Board of Directors as Exhibit A to his Response to Yusuf’s Emergency Motion. Such Response argued that the motion was now “moot as the meeting took place” albeit less than an hour earlier.

The Purported Resolutions provide as follows:

RESOLVED, that any and all actions of Waleed Hamed to remove and distribute funds in May of 2013 in the amount of \$460,000.00 as dividends is ratified and approved,

RESOLVED, that the President of the Corporation is hereby authorized to take any and all action necessary, proper and desirable to enter into a lease agreement with KAC357, Inc. [Waleed’s company]...where the current Plaza Extra Supermarket is located...

RESOLVED, that Jeffrey Moorehead, be retained by the President to represent the corporation in ... [this case and the Derivative Action].⁵

RESOLVED, that the President of the Corporation is hereby authorized to take any and all action necessary, proper and desirable to issue additional dividends up to \$200,000.00 from the company's bank account to the shareholders.

RESOLVED, That Fathi Yusuf is removed as the Registered Agent of the Corporation...

See Exhibit G.

It further appears that the approval of the Hamed Lease and thus, the Special Meeting, was calculated to coincide with Hamed's Response, see footnote 2, supra, to Yusuf's Motion To Appoint Master For Judicial Supervision Of Partnership Winding Up, Or In The Alternative, To Appoint Receiver To Wind Up Partnership ("Motion to Appoint Master/Receiver"), which was also served at the same time, 10:55 a.m. on April 30, 2014. The Hamed Plan, attached as Exhibit 2 to the Response, made the Hamed Lease, which had been "approved" less than an hour earlier, a linchpin to the success of Hamed's Plan for the winding up of his now dissolved partnership with Yusuf. The Hamed Lease was executed on April 25, 2014 by the New Hamed Company and on April 30, 2014 by Plessen. See Exhibit I - Hamed Lease at p. 20. A memorandum of the Hamed Lease was recorded against Plessen's property by Hamed's attorney, Joel H. Holt, on April 30, 2014. See Exhibit J - Memorandum of Commercial Lease.

Hence, it is clear that the Special Meeting and approval of the Hamed Lease were all part of a concerted, and synchronized plan to respond, outside the confines of this litigation, to

⁵To further underscore that the meeting was a sham, it is revealing that Attorney Moorhead was purportedly authorized to be retained on April 30, 2014, but he was given a check dated April 25, 2014 in the amount of \$20,000 signed by Waleed and his brother, Mufeed. See copy of check attached as **Exhibit H**, which reflects that it was presented for payment on April 29, 2014, but ultimately not honored.

Motion To Appoint Master/Receiver and the Plan For Winding Up Partnership attached as Exhibit A to that motion (the "Yusuf Plan").

ARGUMENT

It is a longstanding principle of the common law of corporations "that the fiduciary relationship between directors and the corporation imposes fundamental limitations on the extent to which a director may benefit from dealings with the corporation he serves." Marciano v. Nakash, 535 A.2d 400, 403 (Del. 1987). The early common law rule was that interested director transactions – i.e., transactions between a corporation and a director or an entity in which the director has an interest – were *per se* voidable, and subject to rescission in a lawsuit by any shareholder, regardless of their fairness. See 3 William M. Fletcher, Cyclopedia of the Law of Private Corporations §917 (perm. ed. rev. vol. 1994); Potter v. Sanitary Co., 194 A. 87, 91 (Del. Ch. 1937). The modern common law rule has replaced the rule of *per se* voidability of interested director transactions with a rebuttable presumption of voidability. That presumption of voidability can only be rebutted by the interested director showing that the transaction was intrinsically fair to the corporation. See In re Cox Communications, Inc. Shareholders Litigation, 879 A.2d 604, 615 (Del. Ch. 2005).

The modern common law also provides two other ways in which the interested party could be relieved of the "burden to show that the transaction was entirely fair to the corporation" – namely, approval of the transaction by a majority of disinterested directors, or approval by a majority of disinterested shareholders. See id. at 615. In the event of disinterested director or shareholder approval of that kind of transaction, the interested party would only be required to show that the transaction satisfied the business judgment rule. See id. at 615. See also Sterling

v. Mayflower Hotel Corporation, 89 A.2d 862, 866 (Del. Ch. 1952) (where interested directors voted to approve a transaction, and a majority of shareholders, interested and disinterested, also voted to approve it, the interested parties had the burden of showing “their good faith and the fairness of the transaction” in order for court to permit it to go forward); Fliegler v. Lawrence, 361 A.2d 218, 222 (Del. 1976) (shareholder ratification of an “interested transaction” only relieves the interested parties of their burden of proof if a majority of “disinterested” shareholders vote to approve it).⁶ Where, as here, an interested director transaction is not approved by a majority of disinterested directors, and “shareholder deadlock prevents ratification,” the law is clear that the interested directors must meet the “intrinsic fairness test” in order to avoid rescission of the transaction. See Marciano, supra, 535 A.2d at 404 and at 405, n.3.

A. The Hamed Lease is Unfair and Should be Nullified.

Applying these common law principles to this case establishes that the Plessen board approval of the Hamed Lease (Exhibit I) should be rescinded. The approval at the director level occurred only because the votes of the Hameds, who are interested parties, were counted.

⁶In Delaware, as in other states, these common law principles have essentially been codified by a 1967 statute, the Delaware General Corporation Law, including section 144(a)(3), which requires that it be demonstrated that “[t]he contract or transaction is fair to the corporation as of the time it is authorized. . . .” 8 Del. C. § 144 (a)(3). See In re: Cox Communications, Inc., supra, 879 A.2d at 615 (noting substantial similarity between the “common law of corporations . . . and its approach to interested director transactions” and § 144). The Model Business Corporation Act, § 8.61-8.63, also substantially codifies the modern common law rule regarding interested director transactions. Section 144 appears to depart from the common law rule only insofar as it allows for shareholder ratification without regard to the interests of the shareholders. Even so, just because a majority of all shareholders, interested and disinterested, vote to approve an interested director transaction does not shield it from attack on fairness grounds under section 144. The transaction is still subject to judicial scrutiny for fairness, and may be rescinded if a court determines it to be unfair to the corporation. See Fliegler, supra, 361 A.2d at 222; Fletcher, supra, at § 917.

Plessen is, as described above, owned 50-50 by each of the two families, and shareholders. A deadlock would prevent ratification by the shareholders. Under these circumstances, the Hameds must prove that the sweetheart lease is intrinsically fair in order to overcome the presumption of voidability. This, they cannot do.

As a threshold matter, the Hamed Lease is on its face premature, and for that reason alone is not in the interests of Plessen and is unfair to Plessen. Section 2.3.4 of the Hamed Lease makes it clear that the Hamed Lease cannot become effective until some unspecified date in the future, and only if and when the Plaza Extra – West store ceases to occupy those premises:

The Parties recognize that there is currently a partnership between Fathi Yusuf and Mohammad Hamed operating a grocery business in the Demised Premises. The Tenant shall not be granted possession of the Premises so long as this partnership is in possession of the Premises. Likewise, rent shall not be due until the Tenant has possession of the Premise.

Exhibit I, § 2.3.4.

Since the Hamed Lease is only a contingent lease, the only reason it was approved and executed – and why a Memorandum of Commercial Lease⁷ was recorded against Plessen's property – is to give the Hameds an inside track on ultimate purchase of the assets of Plessen, when the corporation is dissolved and its assets sold by Receiver, something that they know is inevitable in light of the deadlock between the parties. The existence of the Hamed Lease is a kind of "poison pill," which is designed to dissuade any outside investor from bidding to acquire the Plessen property that is subject to the Hamed Lease, and to that extent devalues the assets of Plessen, which is further indicia of the unfairness of the Lease.

⁷ The recorded Memorandum of Commercial Lease states that the Hamed Lease is "effective April 29, 2014" and has an initial ten-year term. (Exhibit J). This statement to third parties is false, because it omits any mention of the contingency set forth in section 2.3.4 of the Hamed Lease. Thus, the recorded memorandum falsely communicates to any member of the public who reviews this record at the Recorders' Office or on its website, that the ten-year term commenced on April 29, 2014.

This self-dealing lease transaction is unfair to Plessen because of a number of its terms. For example, while the lease term is a ten-year initial term with two options to renew (which, if exercised, would result in a thirty-year lease period), there are no personal guaranties of the Hameds to back up the obligations of the lessee, the New Hamed Company. As discussed above, the New Hamed Company is a start-up company that was formed only eight days before the Special Meeting of the Plessen Board called by Hamed. Without a personal guaranty, the practical reality is that the Hameds can simply walk away from this lease, without any financial penalty, and at Plessen's expense. In the event of such a breach, Plessen would be left with the worthless remedy of suing an uncollectible entity for payment of rent due for the unexpired portion of the ten-year lease term. In addition, the absence of a personal guaranty renders the indemnity provisions of the Hamed Lease in section 10.3 worthless. See Exhibit I, § 10.3.

Personal guaranties are standard in long-term commercial leases. Plessen is the landlord on a thirty-year lease⁸ with Dockside Convenience, LLC ("Dockside"), which operates a convenience store and gas station on Plessen land near Mandela Circle in St. Thomas under the dba "Giant Gas." Dockside's principals have given personal guaranties to back up Dockside's rent obligation to Plessen in the lease (the "Giant Gas Lease"). See Exhibit K, Yusuf Declaration, ¶ 9. In addition, Yusuf himself has personally guaranteed the corporate rent obligations of Defendant United Corporation, which is the named lessee under the lease with Tutu Park, Ltd. covering Plaza Extra – Tutu Park. Id. at ¶ 9. The absence of a personal

⁸The fact that the Hamed Lease is structured as a ten-year lease with two ten-year options to renew, rather than a thirty-year lease, is also detrimental to Plessen. Plessen has followed a policy of not giving options to renew in long-term commercial leases, because placing the decision to either extend a term or not solely with the lessee, instead of making it a matter of mutual agreement at the end of the initial term, is not in Plessen's interests. See Exhibit K, Yusuf Declaration, ¶ 14. In contrast to the Hamed Lease, Plessen has a thirty-year term in the Dockside lease. Id.

guaranty of the Hameds to back up the New Hamed Company's long-term rent obligations under the Hamed Lease is prejudicial to Plessen.

The assignment clause in the Hamed Lease is also detrimental to Plessen's interests. The lease is freely assignable, pursuant to section 4.0, see Exhibit I, § 4, and not subject to the consent of Plessen. This means that Plessen has no right to reject a proposed assignee for creditworthiness or any other reason it deems appropriate, which is customary in commercial leases. Exhibit K, ¶ 10. Although the New Hamed Company would remain a guarantor for the rent obligations of any assignee, the free assignability of the Hamed Lease coupled with the absence of personal guarantees makes the continuing guaranty by the New Hamed Company, a start-up, worthless.

The rent structure in the Hamed Lease is also problematic. The rent in the Hamed Lease does not go up in defined, pre-established dollar amounts or percentages periodically, as do most long-term commercial leases. Instead, any increases in the Hamed Lease are tied only to the consumer price index (CPI) for future years, which means that rent amounts over the course of three ten-year terms are uncertain and unknowable, and, most alarmingly, not subject to negotiation upon exercise of any of the ten-year options to renew. See Exhibit I, § 2.3.2. In the Giant Gas lease, by contrast, there are substantial rent increases over the course of the thirty-year term, some of which are 25% or more, and there is no tie to the CPI. See Exhibit K, ¶ 11.

The insurance provisions in the Hamed Lease also favor the Hameds at Plessen's expense. The Hamed Lease requires that the lessee obtain hazard insurance at \$5,000,000, which is well below the replacement cost of the leased premises. In addition, the Hamed Lease

excludes windstorm (hurricane) coverage from the lessee's requirement to obtain insurance, while the Giant Gas lease contains no such exclusion. See Exhibit K, ¶ 13.

In short, the Hamed Lease favors the lessee in unusual and significant ways, to the clear detriment of Plessen. The Hameds, who have the burden of showing the intrinsic fairness to Plessen of the lease in order to overcome the presumption of voidability, cannot do so. The Court should accordingly nullify the Board Resolution approving the Hamed Lease and void the lease.

B. The Ratification of the \$460,000 Misappropriation Should Be Rescinded.

The Verified Complaint commencing the Derivative Action alleges that on March 27, 2013, Waleed, along with his brother, Mufeed, issued a Plessen check in the amount of \$460,000 payable to Waleed, which was deposited into Waleed's personal account. It is further alleged that this withdrawal was not in any way authorized. See Exhibit L – Verified Complaint in Derivative Action, ¶¶ 25-29. Waleed has never come forward with any evidence that he sought or obtained any authorization from the Board of Directors or shareholders of Plessen before he took \$460,000 of Plessen's money.⁹ The Board resolution which treats Waleed's theft of \$460,000 from Plessen as authorized, and characterizes it as a "dividend" is obviously an interested director transaction. The Hameds cannot show the intrinsic fairness of their attempt to whitewash this misappropriation of corporate funds, and the Resolution approving it should be nullified.

⁹Indeed, Waleed has as a practical matter admitted his wrongdoing by causing \$230,000 (half of the \$460,000) to be deposited into the registry of the Court after the filing of the Derivative Action. This *post hoc* transaction does not of course alter the illegality of his taking the \$460,000.

C. The Board's Retention of Jeffrey Moorhead Violates the Bylaws and Should be Rescinded.

As noted above at footnote 5, Attorney Moorhead was given and negotiated a \$20,000 retainer check drawn on Plessen's bank account before he was even purportedly authorized to be engaged by Plessen at the April 30 Board Meeting. This shows a complete disregard for even the appearance of compliance with the norms and requirements of corporate governance by both Attorney Moorhead and the Hameds. Moreover, since there was absolutely no discussion at the sham meeting regarding any of the proposed resolutions, Yusuf has no clue what qualifications Moorhead has to serve as counsel for Plessen, what the terms of his proposed engagement are, whether other candidates were considered, and what conflicts, if any, Moorhead may have. The Bylaws of Plessen provide that the Board of Directors may appoint a General Counsel who is "to have dominion over all matters of legal import concerning the Corporation." Exhibit C, Plessen Bylaws, ¶ 7.3. The retention of Attorney Moorhead flies in the face of that Bylaw.

Suffice it to say that Attorney Moorhead has never bothered to contact Yusuf or any member of his family to discuss his engagement or proposed course of action, which causes Yusuf to seriously doubt that Attorney Moorhead will be evenhanded in his representation of the corporation, or instead will act only to advance the interests of the Hamed shareholders, at the expense of the Yusuf shareholders. See Exhibit K, ¶ 17. Since the Hameds selected Attorney Moorhead in the face of the General Counsel Bylaw and without any input from Yusuf, and caused a retainer to be paid to him even before they voted to approve his retention, the resolution approving his retention, besides running afoul of the Bylaws, is an interested director act that is presumptively voidable. The Hameds did not even attempt to show at the board meeting – and cannot show – that the Moorhead resolution is intrinsically fair to Plessen, and Attorn

Moorhead has not even communicated with Yusuf, let alone tried to give assurances that he will not represent Plessen as if it were wholly owned by Hamed. The Court should accordingly void the resolution and Attorney Moorhead's engagement.

D. The Court Should Enjoin Payments of Future Dividends, Except by Vote of the Shareholders.

In an effort to carry out the resolution authorizing an additional dividend of up to \$200,000 that was purportedly approved at the sham meeting, Waleed and his brother, Mufeed, issued two checks of May 12, 2014 each in the amount of \$100,000, drawn on Plessen's account at Scotiabank and made payable to Hamed and Yusuf as "dividend distribution." See Exhibit M—Copies of Checks. These checks were issued even though in 2010, Waleed Hamed and Mike Yusuf signed a document at Scotiabank which required drawer signatures of both Waleed and either Yusuf or Mike on any check. See Exhibit E. Yusuf did not present his \$100,000 check for payment and Hamed's check was not honored on presentment. While the two-signature requirement offers some protection to Yusuf, it is not absolute, as Waleed's successful negotiation of the \$460,000 check with only his and his brother's signature demonstrates. For all of the same reasons that this Court has previously ordered that "no funds will be disbursed from supermarket operating accounts without the mutual consent of Hamed and Yusuf (or designated representative(s))," Hamed v. Yusuf, 58 V.I. at 138, this Court should similarly enjoin anybody from writing checks from Plessen's bank accounts without the mutual written consent of Hamed and Yusuf, or designated representatives. The Court's analysis of the need for a preliminary injunction as to disbursements from supermarket operating accounts applies equally to the Plessen bank accounts, and the unauthorized taking of \$460,000 and the recent attempts to take

out \$200,000 demonstrate the urgent necessity of extending the preliminary injunction to cover Plessen monies.

E. The Statutory Procedures for Replacing Yusuf as Resident Agent Have not Been Observed, and this Action of the Board Should also be Rescinded.

As indicated above, retention of Attorney Moorhead must be nullified as an unauthorized transaction and because it is a violation of the Bylaws. The Hamed directors also passed a resolution appointing Attorney Moorhead as "Registered Agent" (resident agent) of Plessen. Yusuf was appointed Resident Agent in the Articles of Incorporation of Plessen. The procedures under 13 V.I.C. §§ 52-55 as to change of Resident Agent have not been followed, including, inter alia, the requirement of obtaining the signoff of the Secretary of Plessen – Yusuf – and the requirement to obtain, file and certify the resignation of the current Resident Agent – also Yusuf. Because these procedural steps have not been undertaken, the resolution authorizing the char of Resident Agent should be nullified.

F. A Receiver Should Be Appointed To Dissolve Plessen And Liquidate Its Assets.

Until the hastily called Special Meeting of the Board of Directors on April 30, 2014, there have been no actual meetings of Plessen's shareholder or directors since the corporation's formation in 1988. See Exhibit K, ¶ 15. The very fact that Hamed called this meeting to purportedly approve the Hamed Lease, among other self-dealing actions, shows he understood that there was a hopeless deadlock in Plessen's business affairs. The sham meeting and the corrupted byproducts of that meeting, including the Hamed Lease that serves as a linchpin of the Hamed Plan, simply reveal the misguided lengths to which Hamed will go to circumvent the deadlock.

While it may be argued that before a Receiver can be appointed for Plessen, this Court should first summarily order an election of directors, pursuant to V.I. Code Ann. tit. 13, § 193, and then appoint a Receiver, pursuant to V.I. Code Ann. tit. 13, § 195, only if the vote is equally divided at such election, Yusuf respectfully submits that such an election would be a complete waste of time because it is forgone conclusion that the shareholder vote would be equally divided along family lines.

As pointed out at page 2 of this Brief, forty years ago, Circuit Judge Maris penned the opinion in Moran v. Edson, 493 F. 2d 400, 11 V.I. 166 (3d Cir 1974), which provides timeless lessons regarding hopelessly deadlocked corporations. As the Moran Court explained:

13 V.I.C. § 195 implements the general rule that a court of equity may appoint a receiver when there are such dissensions in the board of directors of a corporation or between two groups of its stockholders, each holding an equal number of shares, that it is impossible to carry on the business with advantage to the parties interested, even though the corporation is solvent. And in such a case the court may direct the sale of the corporate property for the protection of the creditors and benefit of the stockholders and order a dissolution of the corporation.

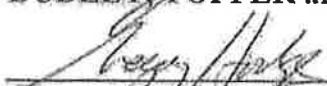
Id. at 407-408 (citations omitted).

Yusuf respectfully submits that this is just “such a case” and that the Court should, after nullifying the actions putatively taken by Plessen’s board of directors on April 30, 2014, “direct the sale of the corporate property for the protection of the creditors and benefit of the stockholders and order dissolution of” Plessen. Given that the shareholders, officers, and directors of Plessen have demonstrated that they cannot agree on how to accomplish such dissolution and liquidation, the Court should appoint a Receiver to perform these acts.

DUDLEY, TOPPER and FEUERZEIG, LLP

Dated: May 19, 2014

By:


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CERTIFICATE OF SERVICE

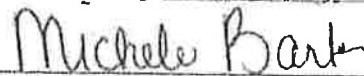
I hereby certify that on this 19th day of May, 2014, I caused the foregoing **Fathi Yusuf's Brief In Support Of Motion To Nullify Plessen Enterprises, Inc.'s Board Resolutions, To Void Acts Taken Pursuant To Those Resolutions, And To Appoint Receiver** of to be served upon the following via e-mail:

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February 27, 2017

**Via Electronic Transmission and
U.S. First Class Mail**

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**Re: Yusuf Yusuf et al. v. Mohammed Hamed et al,
SX-13-CV-120
DTF File No. 6254-4**

Dear Attorney Eckard:

This is to follow up regarding your original Rule 37.1 letter and our meet and confer on February 3, 2017.

Since the time of our meet and confer, our clients were required to respond to a second set of discovery including requests to admit, interrogatories and requests for documents (the "Second Round of Discovery"). Upon filing responses to the Second Round of Discovery and forwarding copies to you, I called to discuss the information provided. During that call, I explained that our responses to the Second Round of Discovery addressed many of the issues originally raised in the Rule 37.1 letter as additional details were provided as requested in the Rule 37.1 letter.

Subsequent thereto, we have received information which is public record in another suit brought by your clients against the Bank of Nova Scotia as well as our clients relating to the same \$460,000.00 improper removal of funds from Plessen. *See Waleed Hamed et al. v. Bank of Nova Scotia et al.*, SX-16-CV-429 (the "Scotia Suit"). Setting aside for the moment, the fact that we are yet again, running into violations of the "first to file rule," it appears that the allegations set forth in the Scotia Suit as well as information produced by the Bank of Nova Scotia in its filings provide further detail as to the events which are the subject of this suit and, in particular, the improper removal of the \$460,000.00.

I note this to emphasize that there are allegations and questions being asked by your clients in this suit which are directly belied by the evidence in the Scotia Suit. Further, this is evidence which your clients had in their possession when the allegations and inquiries were being made in this case. We will address separately whether the allegations have been made in bad faith and whether the

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discovery sought and positions taken in this matter, likewise, are in bad faith and unsupported by the evidence.

In further clarifying the responses to the initial discovery, Plaintiff provides the following responses:

1. As to Interrogatory 3, Plaintiff shows that clarification as to the documents received and provided are as set forth in the responses to the Second Round of Discovery. Specifically, Plaintiff shows that Response to Interrogatory 8 set forth below is responsive to clarify Interrogatory 3.

Subject to the above-stated objections and without waiving any objections, shortly after March 27, 2013, when the \$460,000.00 check was cashed by Waleed Hamed and Mufeed Hamed, Yusuf Yusuf went to the Sunny Isle Branch of Scotia Bank in person and asked to speak with someone regarding information on a commercial account. Ms. Yvette Clendenen from Scotia Bank was called to speak with Yusuf Yusuf. During that conversation, Yusuf Yusuf inquired about Plessen account and the monies that had been removed. Ms. Clendenen showed Yusuf Yusuf the balance in the Plessen account, the monies which had been taken out and provided him a photocopy of the \$460,000.00 check front and back. The next day, Yusuf Yusuf returned to the Sunny Isle Branch of Scotia Bank and asked for Ms. Clendenen. During this conversation, Yusuf Yusuf asked her for a copy documents in the bank's files as to the persons authorized to sign checks on behalf of Plessen. Ms. Clendenen provided a copy of the Intake Gathering Form from Scotia Bank's physical file. A true and correct copy of the documents received are attached hereto as Bates Stamped – 12-YY-0001-2;000273-281.

It is Mike Yusuf's recollection that in mid-to-late 2011 or early 2012, that it was determined that two signatures would be required, one Hamed and one Yusuf and that the Mike Yusuf and Waleed Hamed separately went into Scotia Bank and executed the documents with this requirement.

This change is also reflected in the signatures on the checks from the Plessen account. From September, 2011, all checks written bear one Hamed and on Yusuf signature. The exception to this is the \$460,000.00 check which bears two Hamed signatures. See Bates Stamped documents, 12-YY-00489-501, which are the checks written on the Plessen account each containing two signatures, one Hamed and one Yusuf after September of 2011.

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On May 17, 2013, Attorney Nizar DeWood and Maher Yusuf met with VIPD Officer Mark Corneiro. During that meeting they conveyed to him orally the events which Officer Corneiro chronicles in his Affidavit. At that time, the documents provided were those listed in Officer Corneiro's Affidavit at page 3. Based upon Officer Mark Corneiro's Affidavit, it appears that he conducted his own independent investigation into the matter and he appears to have secured additional information directly from Scotia Bank, including the signature cards, reflecting "One Hamed and One Yusuf". Mike Yusuf recalls that there were a few calls between himself and Sergeant Corneiro but does not recall the dates. Sergeant Corneiro inquired about the name "Galleria" in Smith Bay which had arisen as part of his investigation into the funds that were deposited into Wally's account. Mike Yusuf explained that he understood that this related to the real property upon which a supermarket was being constructed in Red Hook, St. Thomas formerly known as Marina Market.

The V.I.P.D. investigation was later turned over to Attorney Kippy Roberson of the Attorney General's office. Attorney Roberson contacted Attorney Nizar DeWood and requested any information available. The exact date of this communication is unknown but on March 30, 2016, in response to Attorney Roberson's request, Yusuf Yusuf provided to Attorney DeWood a copy of the Intake Gathering Form with signatures and requirement for one Hamed and one Yusuf. See Bates Stamps 12-YY-000273-281. Attorney DeWood forwarded the information to Attorney Roberson as requested the same day. No further communication occurred between Attorney DeWood or any of the Yusuf's regarding this matter and Attorney Roberson.

With regard to the V.I. Daily News, Mike Yusuf received a call from them and answered no questions and referred them to the V.I.P.D. The date of the contact is uncertain.

Further responding, Plaintiff incorporates the additional language of Response to Second Request to Produce No. 5 which provided in addition to the language above that:

It appears that the signature cards were not in possession of the Yusufs and were not provided to the VIPD or the Attorney General's office. Rather, the information provided to the VIPD is as listed in the Affidavit of Mark Affidavit at page 3. Subsequently, the Intake Gathering form was not provided until March of 2016 when requested by

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Attorney Roberson. The documents provided to Roberson were Bates Stamps 12-YY-000273-281.

Further responding, a copy of the Police Report dated May 17, 2013, which was produced with a brief filed by the Bank of Nova Scotia in its Motion to Dismiss in the Scotia Suit, demonstrates that Fathi Yusuf also may have been present during the May 17, 2013 meeting. It is Mike Yusuf's recollection after having reviewed the Police Report, that Fathi Yusuf may have been present for a short period but did not remain for the entire time. The Police Report further provides that both Fathi Yusuf and Mike Yusuf explained "that both families had a verbal agreement that any check signed against Plessen Enterprises, Inc. would need the signature of at least one member of each family." Further, according to the Police Report, Mike Yusuf explained that originally the signatures were to be one signature and that he, Fathi Yusuf and Waleed were authorized signors, that later this had been updated and he did not recall who was authorized but that they had a verbal agreement that one person from the Hamed and one person from the Yusuf would sign the check.

Further responding, Plaintiff clarifies that the signature card provided to the VIPD was as indicated in Officer Corneio's Affidavit at page 3, item #6, which is the the August 17, 2009 signature card from Bank of Nova Scotia.

2. As to Interrogatory No. 4: As a result of the additional investigation, it is Plaintiff's position that the Yusufs did not have possession of this document and believe that it was sourced directly from Bank of Nova Scotia pursuant to subpoena in the "370" case. This document appears to have been produced in the companion "370" case as it bears bates number FY004502 and was produced in that case on May 16, 2014. It also appears that the electronic signature page was provided by Bank of Nova Scotia (FY004504), the date along the side appears to indicate a screen shot on April 30, 2014 as well as an undated Intake Gathering Form (FY004494-004501) and a copy of the payment to Jeffrey Moorehead (FY004503) were all received from Bank of Nova Scotia on or about that same time in 2014 and produced in the "370" case in May, 2014.
3. As to Interrogatory No. 5: Upon further investigation, it is Plaintiff's position that the Yusufs did not have possession of this document and believe that it was sourced directly from the Bank of Nova Scotia. See Response to Interrogatory No. 3 as to the documents in Plaintiff's possession.
4. As to Interrogatory No. 7: Plaintiff incorporates by reference his response to Interrogatory No. 3 above as responsive to this request and providing further clarification as requested.

DUDLEY, TOPPER AND FEUERZEIG, LLP

Mark W. Eckard, Esq.

Re: *Yusuf Yusuf et al. v. Mohammed Hamed et al*; SX-13-CV-120

February 27, 2017

5. As to Request to Produce 10, 13, 14, 17 and 20: As to RTP 13, 14 *see* FY10344. As to RTP 10, 17 and 20, such information was learned from bank records and other publically available information.
6. As to Request to Produce No. 5, 6, 7: Other additional information responsive is the Intake Gathering Form from the Bank of Nova Scotia which was signed by both Walleed Hamed as well as Mike Yusuf which reflects that Mike was a director as well as Mohammed Hamed's sworn interrogatory responses in which he too believed that Mike Yusuf was a director. These documents are already of record in this case. Further responding, Plaintiff shows that Response to Interrogatory No. 10, is responsive to this RTP:

Subject to the above-stated objections and without waiving any objections, Yusuf Yusuf shows that date of "March 27, 2017" is obviously incorrect. To the extent that the date is assumed to mean "March 27, 2013," Yusuf Yusuf shows that Mohammed Hamed, who previously served as President and was a director is now deceased. Fathi Yusuf has always served as the Secretary and Treasurer and has been a director. The Yusuf's were under the belief that Mike Yusuf was a director of United as a result of documents provided to the V.I. Government Department of Licensing and Consumer Affairs and because he originally was provided signature authority as to the Plessen account at Scotia Bank and reflected in the August 17, 2009 bank records. He was also listed on the Intake Gathering Form for Scotia as a "director." Furthermore, Mohammed Hamed in response to interrogatories in the *Hamed v. Yusuf et al*, sx-12-370 case, swore that "I [Mohammed] am one of the four directors of Plessen. To the best of my recollection, I have always been a director. The other three directors and shareholders of the complaint, including Fathi Yusuf and his sons were all aware of this fact, as is the Office of the Lieutenant Governor, Division of Corporations." See Bates Stamped documents 12-YY-00509-511.

Yusuf Yusuf shows that the corporate records for Plessen were outside any of the parties' control for years following the FBI raid in which the corporate records were seized. In April, 2014, Carl Beckstedt prepared corporate documents to reflect Mike's position as a director. Attorney Holt advised Carl Beckstedt to the contrary. However, Attorney Beckstedt did not comply but rather advised that he would need to confirm with the parties. Nonetheless, there is not an executed document in the official corporate record book reflecting Mike Yusuf's position as a director.

DUDLEY, TOPPER AND FEUERZEIG, LLP

Mark W. Eckard, Esq.

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February 27, 2017

The powers and the duties of the President and the Vice President were limited by the Bylaws, including Article V, Section 5.1(c) which requires checks to be signed by either the President or Vice President and then countersigned by the Secretary or Treasurer. This would require that one Hamed and one Yusuf would ultimately be signing all checks. In addition, in mid-to-late 2011, all checks thereafter were signed by one Hamed and one Yusuf, with the exception of the \$460,000.00 check. No officer was allowed to remove funds from the account without the dual family signatures and this was the accepted restriction agreed to by the two families in addition to the other restrictions already imposed by Article V of the Bylaws.

7. As to Request to Produce No. 44: Plaintiff incorporates by reference his response to Interrogatory No. 3 above as if fully set forth herein verbatim. Specifically, Plaintiff shows that:

It appears that the signature cards were not in possession of the Yusufs and were not provided to the VIPD or the Attorney General's office. Rather, the information provided to the VIPD is as listed in the Affidavit of Mark Affidavit at page 3. Subsequently, the Intake Gathering form was not provided until March of 2016 when requested by Attorney Roberson. The documents provided to Roberson were Bates Stamps 12-YY-000273-281.

Further responding, a copy of the Police Report dated May 17, 2013, which was produced with a brief filed by the Bank of Nova Scotia in its Motion to Dismiss in the Scotia Suit, demonstrates that Fathi Yusuf also may have been present during the May 17, 2013 meeting. It is Mike Yusuf's recollection after having reviewed the Police Report, that Fathi Yusuf may have been present for a short period but did not remain for the entire time. The Police Report further provides that both Fathi Yusuf and Mike Yusuf explained "that both families had a verbal agreement that any check signed against Plessen Enterprises, Inc. would need the signature of at least one member of each family." Further, according to the Police Report, Mike Yusuf explained that originally the signatures were to be one signature and that he, Fathi Yusuf and Waleed were authorized signors, that later this had been updated and he did not recall who was authorized but that they had a verbal agreement that one person from the Hamed and one person from the Yusuf would sign the check.

Further responding, Plaintiff clarifies that the signature card provided to the VIPD was as indicated in Officer Corneio's Affidavit at page 3, item #6, which is the the August 17, 2009 signature card from Bank of Nova Scotia.

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8. As to Request to Produce No. 53: Plaintiff incorporates his response to the Second Set of Discovery, Request to Produce No. 9 as if fully set forth herein verbatim as his further response and clarification of Request to Product No. 53.

9. As to Requests to Admit No.'s 38-45: Each of these requests seek admission that a documented meeting of the Board of Directors did not take place to increase the size of the Board so as to include Mike Yusuf as a Director in addition to the original three members of the Board, Mohammed Hamed, Waleed Hamed and Fathi Yusuf. Plaintiff admits that apparently no such official meeting took place and that there exists no documentation evidencing such a meeting or resolution. However, further responding, Plaintiff denies that this means there is no evidence that Mike Yusuf was a director of Plessen. Rather, Plaintiff shows that his responses to the Second Set of Discovery, Request to Produce No. 10 is responsive and incorporates same herein by reference. Specifically, Plaintiff shows that:

...Yusuf Yusuf was under the belief that Mike Yusuf was a director of Plessen as a result of documents provided to the V.I. Government Department of Licensing and Consumer Affairs and because he originally was provided signature authority as to the Plessen account at Scotia Bank and reflecting in the August 17, 2009 bank records.. He was also listed on the Intake Gathering Form for Scotia as a "director." Furthermore, Mohammed Hamed in response to interrogatories in the Hamed v. Yusuf et al., sx-12-370 case, swore that "I [Mohammed] am one of the four directors of Plessen. To the best of my recollection, I have always been a director. The other three directors and shareholders of the complaint, including Fathi Yusuf and his sons were all aware of this fact, as the Office of the Lieutenant Governor, Division of Corporations." See Bates Stamped documents 12-YY-00509-511.

While Defendants attempt to contend that this information is unresponsive to the requests to admit, we respectfully disagree. This evidence demonstrates Mike Yusuf's role as a *de facto* director; i.e. a person who is in possession of an office or is exercising the functions thereof under color of authority. The legal theory of a *de facto* director or officer is widely acknowledged.

10. As to Request to Admit No. 46: Plaintiff maintained his same response of Deny. Further responding Plaintiff shows:

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Mark W. Eckard, Esq.

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Yusuf Yusuf was under the belief that Mike Yusuf was a director of Plessen as a result of documents provided to the V.I. Government Department of Licensing and Consumer Affairs and because he originally was provided signature authority as to the Plessen account at Scotia Bank and reflecting in the August 17, 2009 bank records.. He was also listed on the Intake Gathering Form for Scotia as a "director." Furthermore, Mohammed Hamed in response to interrogatories in the Hamed v. Yusuf et al., sx-12-370 case, swore that "I [Mohammed] am one of the four directors of Plessen. To the best of my recollection, I have always been a director. The other three directors and shareholders of the complaint, including Fathi Yusuf and his sons were all aware of this fact, as the Office of the Lieutenant Governor, Division of Corporations." See Bates Stamped documents 12-YY-00509-511.

While Defendants attempt to contend that this information is unresponsive to the requests to admit, we respectfully disagree. This evidence demonstrates Mike Yusuf's role as a *de facto* director; i.e. a person who is in possession of an office or is exercising the functions thereof under color of authority. The legal theory of a *de facto* director or officer is widely acknowledged.

11. As to Request to Admit No. 47: Plaintiff reasserts his original response. Further responding, Plaintiff incorporates his Response to Interrogatory No. 3 as set forth above. To be clear, Attorney DeWood provided those documents as listed in the affidavit of Mark Corneiro at p. 3 of his Affidavit.
12. As to Request to Admit No. 48 and 49: Plaintiff reasserts his original responses to these Requests to Admit and believes them to be accurate and sufficient responses.
13. As to Request to Admit No. 53: Plaintiff reasserts his original response to this Request to Admit. It was Yusuf Yusuf who requested information from Scotia Bank. Plaintiff Incorporates his Response to Interrogatory No. 3 as set forth above as providing additional detail regarding the receipt of information from Scotia Bank.
14. As to Request to Admit No. 54: Plaintiff reasserts his original response to this Request to Admit. It was Yusuf Yusuf who requested information from Scotia Bank. Plaintiff Incorporates his Response to Interrogatory No. 3 as set forth above as providing additional detail regarding the receipt of information from Scotia Bank.

DUDLEY, TOPPER AND FEUERZEIG, LLP

Mark W. Eckard, Esq.

Re: Yusuf Yusuf et al. v. Mohammed Hamed et al; SX-13-CV-120

February 27, 2017

15. As to Request to Admit No. 55: Plaintiff amends to incorporate his Response to Interrogatory No. 3 as his response to this Request to Admit as to what was provided to the VIPD. Again, Plaintiff admits that whatever documents were listed in Officer Corneio's Affidavit at page 3, were the documents provided.
16. As to Request to Admit No. 58: Plaintiff reasserts his original response to this Request to Admit.
17. As to Request to Admit No. 82: Plaintiff reasserts his original response to this Request to Admit.
18. As to Request to Admit No. 83: Plaintiff reasserts his original response to this Request to Admit.

As to Request to Admit No. 84, we continue our review of the documentation and will supplement. The same is true for Requests for Production of Documents No.s 23, 36, 37, 40 and 44.

The above responses and all other responses have been given based upon a thorough investigation and review of information in a good faith effort to properly provide the information requested. Please feel free to contact me if you have any questions.

Sincerely,



Charlotte K. Perrell

CKP:fst

R:\DOCS\6254\4LTR\1739269.DOCX

EXHIBIT 3

AFFIDAVIT

TERRITORY OF THE VIRGIN ISLANDS)
)
DIVISION OF ST. CROIX)

SS: CHRISTIANSTED

I, Mark A. Corneiro, being duly sworn and on oath depose and say;

1. That I am a Police Sergeant employed by the Virgin Islands Police Department (VIPD) and assigned to the Economic Crime Unit formerly known as the Insular Investigation Bureau.

2. That on May 17, 2013, Mr. Maher Yusuf, Director of Plessen Enterprises, Inc. filed a report with the Virgin Islands Police Department of "Embezzlement by Fiduciaries" and reported that the Yusuf and Hamed family, each has a fifty percent (50%) interest in Plessen Enterprise, Inc. That any check written from Plessen Enterprises, Inc. has to have a signature from both families. That Waleed Hamed is the Vice-President and that he cashed a check payable to himself in the amount of \$460,000.00, which was signed by himself and Muffeed Hamed. This was done without the authorization of the Yusuf family.

3. That based on interviews and documents received, the undersigned learned the following:

a. That on May 17, 2013, Mr. Maher Yusuf of 306A Judith's Fancy, Christiansted, St. Croix, United States Virgin Islands was interviewed and stated that his brother, Yusuf Yusuf paid the property tax for Plessen Enterprise, Inc. with his credit card. That his brother was going to reimburse the charges with funds from Plessen Enterprise, Inc. That his brother used a check from the company and the bank called his father, Fathi Yusuf to notify him that there were insufficient funds in the account. The bank representative

Affidavit

Re: Mufeed & Waleed Hamed

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needed money to cover the check, so that it would not be returned. Mr. Maher Yusuf stated that they had to deposit money into the account so that the check could clear. He also indicated that when they looked at a copy of the back and front of the check they noticed that the check was signed by Waleed Hamad and Mufeed Hamed. Mr. Maher Yusuf further stated that the check was deposited in Waleed Hamad's personal account.

b. That Mr. Maher Yusuf indicated that the Board of Plessen Enterprise, Inc. comprise of the following:

Mr. Maher Yusuf	-	Director;
Mohamad Hamed	-	President;
Waleed Hamed	-	Vice-President; and
Fathi Yusuf	-	Secretary and Treasurer.

c. Mr. Maher Yusuf stated that two signatures are required, one from the Yusuf family and one from the Hamad family. That the signature card has been updated and other members were added and he could not recall who were authorized to sign.

d. Mr. Maher Yusuf added that both families have 50 percent shares in Plessen Enterprise, Inc. and the funds in that account were specifically for the purpose of covering expenses for the company. That no member in the Hamed family notified him or any other member of the Yusuf family that they were going to remove \$460,000.00 from the account.

Affidavit

Re: Mufeed & Waleed Hamed

Page: 3 of 6

- e. Mr. Maher Yusuf concluded by stating that Waleed Hamed did not have any authorization to withdraw the \$460,000.00 and that he could positively identify Waleed Hamed.
- f. That Attorney Nizar Dewood, representing the Yusuf family, provided the following documents:
 - 1. Department of Consumer Affairs print-out with a list of corporate officers.
 - 2. By-Laws of Plessen Enterprises, Inc.
 - 3. Articles of Incorporation of Plessen Enterprises, Inc.
 - 4. Civil Complaint, Case #SX-13-CV-120, Civil Action for Damages and Injunctive Relief (Yusuf Yusuf, derivatively on behalf of Plessen enterprises, Inc., Plaintiff vs. Waleed Hamed, Waheed Hamed, Mufeed Hamed, Hisham Hamed, and Five-H Holdings, Inc., Defendants, -and- Plessen Enterprises, Inc., Nominal Defendant.)
 - 5. Docketing letter and notice of judge assignment.
 - 6. Copy of Signature card for Plessen Enterprises, Inc. as of August 17, 2009.
 - 7. Letter dated April 25, 2013 addressed to Joel H. Holt, Esq.
 - 8. Notice of Depositing Funds in escrow with the clerk of court, dated April 19, 2013.
 - 9. A copy of Banco Popular de Puerto Rico (BPPR) check No. 103119000007469, dated April 18, 2013, payable to Clerk of the Superior Court.
 - 10. Government of the Virgin Islands Receipt No. 049070
- g. That the Articles of Incorporation of Plessen Enterprises, Inc. clearly states that said corporation is established to take care of the business of the corporation.
- h. An inquiry was done at Bank of Nova Scotia for documents belonging to Plessen Enterprise, Inc. Account No. 05800045012. Bank documents show that the account is a business account, there are six authorized signatories on the account three with the last name Hamed (Waleed Hamed, Mufeed Hamed

and Hisham Hamed) and three with the last name Yusuf (Maher Yusuf, Yusuf Yusuf and Fathi Yusuf). The signature card specifically requires two signatures, one from Hamed and one from Yusuf. Bank documents also show that check No. 0376 was made payable to "Waleed Hamed" in the amount of \$460,000.00, dated March 27, 2013, signed by Waleed Hamed and Mufeed Hamed, and endorsed by Waleed Hamed for deposit only to account number 058-45609811.

- i. An inquiry was also done at Bank of Nova Scotia for documents belonging to Mufeed or Wally Hamed, Account No. 058-45609811. Bank documents show that the account is a checking account and the two authorized persons are Mufeed H. Hamed and Wally Hamed. Bank documents also show that \$460,000.00 was deposited on March 27, 2013 and on March 28, 2013 check No. 1893 was signed by Mufeed Hamed made payable to Waleed Hamed in the amount of \$460,000.00.
 - j. An inquiry was done at Banco Popular de Puerto Rico (BPPR) for account No. 194602753 belonging to Waleed Hamed. That bank documents show that the account is a checking account and the sole authorized person is Waleed Hamed. That on March 28, 2013, \$460,000.00 was deposited into said account. That the following checks listed below were written against said account after the deposit was made into BPPR account No. 194602753 belonging to Waleed Hamed.
-

Affidavit

Re: Mufeed & Waleed Hamed

Page: 5 of 6

Date	Check No.	Payee	Purpose	Amount
02APR13	2020	Carl Hartmann III	Legal Fees	\$48,784.00
02APR13	2021	Joel Holt, Esq.	Legal Fees	\$50,000.00
03APR13	2022	Arthur Pomerantz	Legal Fees	\$20,000.00
11APR13	2026	Gerald Groner Trust Acct.	Galleria St. Thomas	\$500,000.00
18APR13	2051	Clerk of the Superior Court	Plessen Enterprise Yusuf Share holder	\$230,000.00
19APR13	2054	PRLP 2001 Holdings LLC	Closing Proceeds- Galleria	\$620,562.98

- k. That an inquiry was made at Cadastral in St. Thomas by Sgt. Linda Raymond of VIPD, Insular Investigation Bureau and she located documents that showed on April 13, 2013 that Five-H Holdings, Inc. purchased the following properties: 1.) Parcel No. 18A-2 Estate Smith Bay for \$1,000,000.00, 2.) Parcel No. 18A-4 Estate Smith Bay for \$1,000,000.00, and 3.) Parcel No. 18A-5 Estate Smith Bay for \$500,000.00. Total cost was \$2,500,000.00.
- l. That investigation revealed that Mufeed Hamed and Waleed Hamed are signatories on Plessen Enterprise Inc. account. That two signatures are required on all checks drawn from Plessen Enterprise Inc. account and one has to be from the Yusuf family and the other from the Hamed family.
- m. That Mufeed Hamed and Waleed Hamed signed check No. 0376 dated March 27, 2013, made it payable to "Waleed Hamed" in the amount of \$460,000.00, and deposited it into a Scotiabank account belonging to Mufeed H. Hamed and Wally Hamed. Mufeed H. Hamed then wrote check No. 1893 payable to Waleed Hamed in the amount of \$460,000.00 on March 28, 2013 which was deposited into a Banco Popular Account No. 194602753 belonging

Affidavit
Re: Mufeed & Waleed Hamed
Page: 6 of 6

to Waleed M. Hamed on March 28, 2013. and the funds were used for the final purchase of the "Galleria."

n. That Waleed Hamed with the assistance of Mufeed Hamed took the funds from Plessen Enterprise without authorization and when they were confronted about the matter and after the Yusufs sued them, they deposited \$230,000.00 on April 19, 2013 with the Clerk of the Superior Court, through their Attorney Joel H. Holt, claiming that they divided the money and paid out the shares.

WHEREFORE, the Affiant has probable cause to believe and does believe that **Mufeed Hamed** has committed the following crimes of Embezzlement by Fiduciaries/Principals in violation of Title 14 V.I.C. §1091 & §1094(a)(2) & §11(a) and Grand Larceny in violation of Title 14 V. I. C. § 1083(1); and **Waleed Hamed** has committed the following crimes of Embezzlement by Fiduciaries/Principals in violation of Title 14 V.I.C. §1091 & §1094(a)(2) & §11(a) and Grand Larceny in violation of Title 14 V. I. C. § 1083(1).

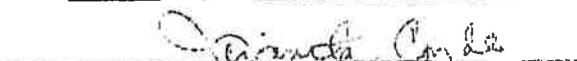
The Affiant respectfully requests that this Court issue warrants for the arrest of **Mufeed M. Hamed and Waleed Hamed, aka "Wally Hamed"**.

Respectfully Submitted by



Mark A. Corneiro, Sergeant
Police-Sergeant
Economic Crime Unit

SUBSCRIBED AND SWORN TO BEFORE ME
THIS 20 day of November 2015



Notary Public

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

PEOPLE OF THE VIRGIN ISLANDS,	)	SX-15-CR-352
	)	SX-15-CR- . 7:23
Plaintiff)	
vs.	)	CHARGE (S):
WALEED HAMED aka "WALLY HAMED,	)	EMBEZZLEMENT BY
	)	FIDUCIARIES/PRINCIPALS
and	)	14 V.I.C. §1091&§1094(a)(2)&§11(a)
MUFEED HAMED	)	GRAND LARCENY/PRINCIPALS
	)	14V.I.C. §1083(1) & §11(a)
Defendants.)	

INFORMATION

COME NOW THE PEOPLE OF THE VIRGIN ISLANDS by their Acting Attorney General, Claude Earl Walker, through the undersigned, and charge that in the Judicial District of St. Croix, Virgin Islands the following acts occurred:

COUNT ONE

On or about March 27, 2013, WALEED HAMED aka "WALLY HAMED", being a person entrusted with or having in his control property for the use of any other person, and while aided and abetted by MUFEED HAMED did fraudulently appropriate said property to a use or purpose not in the due and lawful execution of his trust or secreted it with a fraudulent intent to appropriate it to such use or purpose, said property having a value of one hundred dollars (\$100.00) or more, to wit: WALEED HAMED aka "WALLY HAMED" and MUFEED HAMED while being signatories on the Scotla Bank Account ending in 5012 belonging to Plessen Enterprises Inc. for the use of Plessen Enterprises Inc., signed check number 0376 in the amount of four hundred sixty thousand dollars (\$460,000.00) and deposited said check into the personal bank account of Mufeed H. Hamed and Wally

EXHIBIT
3

Hamed, in violation of Title 14 V.I.C. §1091 and §1094 (a)(2) and §11(a).
(EMBEZZLEMENT BY FIDUCIARIES/PRINCIPALS)

COUNT TWO

On or about March 27, 2013, **WALEED HAMED** aka "**WALLY HAMED**", while aided and abetted by **MUFEED HAMED** and with intent to permanently deprive the owner thereof, did, unlawfully take, steal, or carry away property of another, having a value of one hundred dollars (\$100) or more, to wit: by stealing four hundred sixty thousand dollars (\$460,000.00) out of the Plessen Enterprise Inc. Scotia Bank Account ending in 5012, in violation of Title 14 V.I.C. §1083(1) & §11(a). (GRAND LARCENY/PRINCIPALS)

COUNT THREE

On or about March 27, 2013, **MUFEED HAMED**, being a person entrusted with or having in his control property for the use of any other person, and while aided and abetted by **WALEED HAMED** aka "**WALLY HAMED**", did fraudulently appropriate said property to a use or purpose not in the due and lawful execution of his trust or secreted it with a fraudulent intent to appropriate it to such use or purpose, said property having a value of one hundred dollars (\$100.00) or more, to wit: **WALEED HAMED** aka "**WALLY HAMED**" and **MUFEED HAMED** while being signatories on the Scotia Bank Account ending in 5012 belonging to Plessen Enterprises Inc. for the use of Plessen Enterprises Inc., signed check number 0376 in the amount of four hundred sixty thousand dollars (\$460,000.00) and deposited said check into the personal bank account of Mufeed H. Hamed and Wally Hamed, in violation of Title 14 V.I.C. §1091 and §1094 (a)(2) and §11(a).
(EMBEZZLEMENT BY FIDUCIARIES/PRINCIPALS)

COUNT FOUR

On or about March 27, 2013, MUFEED HAMED, while aided and abetted by WALEED HAMED aka "WALLY HAMED" and with intent to permanently deprive the owner thereof, did, unlawfully take, steal, or carry away property of another, having a value of one hundred dollars (\$100) or more, to wit: by stealing four hundred sixty thousand dollars (\$460,000.00) out of the Plessen Enterprise Inc. Scotia Bank Account ending in 5012, in violation of Title 14 V.I.C. §1083(1) & §11(a). (GRAND LARCENY/PRINCIPALS)


WHEREFORE, the People request that the Defendant be summoned to appear and be dealt with according to law.

PEOPLE OF THE VIRGIN ISLANDS

CLAUDE EARL WALKER
ACTING ATTORNEY GENERAL

DATED: 11.20.15

BY:


ESTHER R. WALTERS
CRIMINAL DIVISION CHIEF
DEPARTMENT OF JUSTICE
6040 ESTATE CASTLE COAKLEY
ST. CROIX, USVI 00820

15

1. OFFENSE/INCIDENT Embezzlement By Fiduciaries		2. ZONE B	3. DR# 13 A-04488
		RIA O-1	4. ARREST # N/A
		PIS III	5. UCR #

6. COMPLAINANT'S NAME - FIRM OR BUS. YUSUF, Maher F.	7. HOME ADDRESS #306A Judith's Fancy Judith's Fancy	8. HOME PHONE (340) 718-9328
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9. SEX M	10. D.O.B. 04/28/67	11. RACE UNKN	12. POB Jordan	13. GSN	14. OCCUPATION Director
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15. BUS. ADDRESS OR SCHOOL ATTENDING PLESSEN ENTERPRISE, INC.	16. BUS/SCH PHONE (340) 690-9395	17. LOCATION OF INCIDENT (Address) Banco Popular de PR, Sunny Isles
--	-------------------------------------	--

18. TIME OF OCCURRENCE M D Y DAY OF WEEK & TIME 03 27 13 Wednesday	19. TIME REPORTED M D Y DAY OF WEEK 05 17 13 Friday
--	---

20. BY WHOM YUSUF Maher F.	21. ADDRESS OF REPORTING PERSON #306A Judith's Fancy Judith's Fancy	22. PHONE # (340) 718-9328
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23. DESCRIPTION N/A	RACE	AGE	Ht.	WT.	EYES	HAIR	BUILD	COMPLEXION	SCARS, MUSTACHE, SCORCHS	HAT	COAT
24. MENTAL CONDITION	25. PHYSICAL CONDITION										

26. SCARS, MARKS, DEFORMITIES	27. GLASSES (Describe)	28. LAST SEEN WHERE	29. IN COMPANY OF	30. PROBABLE DESTINATION
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31. CAUSE OF ABSENCE	32. Vehicle DESCRIBE <input type="checkbox"/> YES <input type="checkbox"/> NO	33. MISSING PREVIOUSLY <input type="checkbox"/> YES <input type="checkbox"/> NO	34. IF YES, DATE WHERE LOCATED
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35. DESCRIPTION OF ANIMAL	36. IF ANIMAL BITE, GIVE INOCULATION NO.	37. LICENSE NO.	38. DISPOSITION
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39. RESIDENCE ADDRESS	40. RESIDENCE ADDRESS	41. RESIDENCE PHONE	42. BUSINESS PHONE
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43. <input type="checkbox"/> INJURY <input type="checkbox"/> DEATH	44. NATURE OF INJURY AND LOCATION ON BODY	45. TRANSPORTED TO	46. TRANSPORTED BY
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47. <input type="checkbox"/> RELEASED	48. PROBABLE CAUSE OF INJURY OR DEATH	49. PHYSICIAN
---------------------------------------	---------------------------------------	---------------

STATUS OF VEHICLE. USE APPLICABLE ITEMS IN THIS SECTION FOR ALL "AUTO THEFT OR VEHICLE REPORTS" OR OTHER TRANSPORTATION --

50. RECOVERED ABANDONED IMPOUNDED CONFISCATED

51. POINT OF ENTRY: LOCKED DOOR UNLOCKED DOOR WINDOW VENT TRUNK HOOD

52. METHOD OF THEFT (Crossed Wires, Etc.)	53. KEYS IN IGNITION <input type="checkbox"/> YES <input type="checkbox"/> NO	54. DESCRIBE EVIDENCE OF STRIPPING, TAMPERING, DAMAGE TO AUTO
---	---	---

55. COLOR	56. YR MAKE MODEL TYPE	57. VIN	58. YR STATE LIC. PLATE NO/STICKER FC
-----------	------------------------	---------	---------------------------------------

59. VALUE	60. TOWED BY WHERE	61. Time/Date Recovered/Location
-----------	--------------------	----------------------------------

62. IN COMPANY	63. TYPE OF PROPERTY DAMAGE	64. VALUE OF PROPERTY DAMAGE/LOSS
----------------	-----------------------------	-----------------------------------

65. Narcotics Type	66. Quantity	67. Pct. Test By
--------------------	--------------	------------------

68. TYPE PREMISE WHERE OFFENSE OCCURRED	74. TOOL	76. METHOD USED	78. GUN FEATURES
---	----------	-----------------	------------------

A. Residence
B. Non-Residence Financial Institution

69. POINT OF ENTRY
- Adjacent Premise
 - Window
 - Door - Sliding Glass
 - Roof
 - Garage
 - Halfway
 - Patio
 - Unknown
 - Other... N/A

72. PROTECTIVE DEVICE
- Dog
 - Alarm
 - Professional Security Patrol
 - Normal Locking Devices
 - Lighting Device
 - T.V. Camera
 - None
 - Other... None

74. TOOL
- Pry Bar / Crowbar
 - Screwdriver
 - Knife / Cutting Instrument
 - Hammer / Metal Device
 - Bolt Cutter
 - Key
 - Unknown
 - Other... Check

76. METHOD USED
- Break Window / Door Glass
 - Jumpy Door / Window
 - Burned
 - Punched
 - Removed
 - Cutting / Slitting
 - Strong Arm
 - Stalking / Lifting
 - Verbal Threat
 - Shooting
 - Other... Removed

78. GUN FEATURES
- 01. Automatic
 - 02. Revolver
 - 03. Double Barrel
 - 04. Single Barrel
 - 05. Long Barrel
 - 06. Short Barrel
 - 07. Sawn Barrel
 - 08. Bolt Action
 - 09. Altered Grip
 - 10. Chrome Grip
 - 11. Bore
 - 12. Small Caliber
 - 13. Large Caliber
 - Other...

70. LOCATION OF ENTRY

N	S	E	W	Unk

73. PROPERTY TYPE
- Currency
 - Jewelry
 - Clothing
 - Office Equipment
 - Television, Radios, Cameras, Etc.
 - Firearms
 - Household Goods
 - Other... Currency

75. EVIDENCE
- Latf Prints
 - Bloodstains
 - Toolmarks
 - Fingerprints
 - Footprints
 - Unknown
 - Other... Check

77. WEAPON
- Hands / Feet
 - Pocket Knife
 - Machete
 - Handgun
 - Shotgun
 - Rifle
 - Rock
 - Bolts N/A
 - Other...

79. DOCUMENT

Scrub Bank Check No. 0076...
Account No. 55012 Amount...
\$459,000.00 Date 12/11/13...

10. REPORTING OFFICER NAME & BADGE NO. M. Carneiro, SGT. #3070	11. APPROVING OFFICER SIGNATURE & TITLE M. Carneiro, SGT. #3070
---	--

12. SECOND OFFICER NAME & BADGE NO.	13. RECEIVING OFFICER SIGNATURE & TITLE
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VIRGIN ISLANDS BUREAU
MAILED JULY 2013
RECEIVING OFFICER RECORDS/INVESTIGATION
 YES NO

Blotting No. 516
Exhibit F

80. DESCRIPTION OF THE SUSPECT(S) Arrested

(1) Waleed Hamed, #7 South Gate, C'sted, DOB=22JAN62, POB=Jordan
Name, Address, Phone No.

(2) Muffed Hamed, #66 Ellza's Retreat, C'sted, DOB=01OCT71, POB=Kuwait
Name, Address, Phone No.

(3) _____
Name, Address, Phone No.

(4) _____
Name, Address, Phone No.

100. SOLVABILITY FACTORS

Yes	No	Unk	
<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	01. Can suspect vehicle be identified?
<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	02. Is stolen property traceable?
<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	03. Was physical evidence created?
<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	04. Is specific MVD present?
<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	05. Is victim willing to prosecute?
<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	06. Was an arrest made?
<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	07. Can suspect be named?
<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	08. Can suspect be identified?
<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	09. Can suspect be described?
<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	10. Can suspect be located?
<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	11. Is suspect related to victim?
<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	12. Was there a witness?

87. SEX <input checked="" type="checkbox"/> 01. Male <input type="checkbox"/> 02. Female	88. RACE <input type="checkbox"/> 01. White <input type="checkbox"/> 02. Black <input type="checkbox"/> 03. Asian <input type="checkbox"/> 04. Oriental <input type="checkbox"/> 05. Hispanic <input type="checkbox"/> 06. Unknown <input type="checkbox"/> 07. Other	89. AGE <input type="checkbox"/> 01. Under 18 <input type="checkbox"/> 02. 18-25 <input type="checkbox"/> 03. 26-35 <input type="checkbox"/> 04. 36-50 <input checked="" type="checkbox"/> 05. Over 50	90. BUILD <input type="checkbox"/> 01. Short <input checked="" type="checkbox"/> 02. Medium <input type="checkbox"/> 03. Muscular <input type="checkbox"/> 04. Large <input type="checkbox"/> 05. Slim	91. CLOTHING <input type="checkbox"/> 01. Hat <input type="checkbox"/> 02. Coat <input type="checkbox"/> 03. Shirt/Blouse <input type="checkbox"/> 04. Trousers/Skirt <input type="checkbox"/> 05. Shoes	92. HEIGHT <input type="checkbox"/> 01. Over 6'3" <input type="checkbox"/> 02. 6'0" - 6'3" <input checked="" type="checkbox"/> 03. 5'9" - 6'0" <input type="checkbox"/> 04. 5'6" - 5'9" <input type="checkbox"/> 05. 5'3" - 5'6" <input type="checkbox"/> 06. 5'0" - 5'3" <input type="checkbox"/> 07. Under 5'0"	93. EYES (Color) <input type="checkbox"/> 01. Black <input type="checkbox"/> 02. Blue <input type="checkbox"/> 03. Brown <input type="checkbox"/> 04. Gray <input checked="" type="checkbox"/> 05. Green <input type="checkbox"/> 06. Hazel <input type="checkbox"/> 07. Maroon <input type="checkbox"/> 08. Pink <input type="checkbox"/> 09. Unknown	94. FACIAL HAIR <input checked="" type="checkbox"/> 01. Mustache <input checked="" type="checkbox"/> 02. Beard <input type="checkbox"/> 03. Sideburns <input type="checkbox"/> 04. Heavy Eyebrows <input type="checkbox"/> 05. Clean Shaven	95. HAIR <input checked="" type="checkbox"/> 01. Bald Head <input type="checkbox"/> 02. Black <input type="checkbox"/> 03. Blonde or Strawberry <input type="checkbox"/> 04. Brown <input type="checkbox"/> 05. Gray or Partial Gray <input type="checkbox"/> 06. Red or Auburn <input type="checkbox"/> 07. Sandy <input type="checkbox"/> 08. White <input type="checkbox"/> 09. Locks <input type="checkbox"/> 10. Unknown	96. HAIR STYLE <input type="checkbox"/> 01. Afro <input type="checkbox"/> 02. Long, Straight <input type="checkbox"/> 03. Long, Curly <input type="checkbox"/> 04. Short, Straight <input type="checkbox"/> 05. Short, Curly <input type="checkbox"/> 06. Receding <input type="checkbox"/> 07. Toupee <input type="checkbox"/> 08. Wig <input checked="" type="checkbox"/> 09. Bald w/Frings <input type="checkbox"/> 10. Locks	97. VOCAL IDENTITY <input checked="" type="checkbox"/> 01. Foreign <input type="checkbox"/> 02. Southern <input type="checkbox"/> 03. Fast clipped <input type="checkbox"/> 04. West Indian <input type="checkbox"/> 05. Slurred <input type="checkbox"/> 06. Slutters <input type="checkbox"/> 07. Deep Pitch <input type="checkbox"/> 08. High Pitch	98. SUSPECT BEHAVIOR <input type="checkbox"/> 01. Threat of Bodily Harm <input checked="" type="checkbox"/> 02. Threat of Property Loss <input type="checkbox"/> 03. Tied or Locked Up Victim <input type="checkbox"/> 04. Did Considerable Talking <input type="checkbox"/> 05. Did Little or No Talking <input type="checkbox"/> 06. Acted Nervous or Excited <input type="checkbox"/> 07. Acted Calm or Deliberate <input type="checkbox"/> 08. Disguised or Masked <input type="checkbox"/> 09. Used Lubricant <input type="checkbox"/> 10. Malicious Destruction <input type="checkbox"/> 11. Used Tools Found at Scene <input type="checkbox"/> 12. Also Drank on Premises <input type="checkbox"/> 13. Deceased <input type="checkbox"/> 14. Panicked <input type="checkbox"/> 15. Unusual Occur <input type="checkbox"/> 16. Other Threat of Property Loss	99. MODUS OPERANDI OF SUSPECT <input type="checkbox"/> 01. Bound Comp/Victim <input type="checkbox"/> 02. Used Note <input type="checkbox"/> 03. Prostitution Involved <input type="checkbox"/> 04. Used Lockout <input type="checkbox"/> 05. Apologetic <input type="checkbox"/> 06. Made Gestures <input type="checkbox"/> 07. Sex Acts Involved <input type="checkbox"/> 08. Used Stolen Vehicle <input type="checkbox"/> 09. Shots Fired <input type="checkbox"/> 10. Used Comp/Victim Name <input type="checkbox"/> 11. Used Other Familiar Name <input checked="" type="checkbox"/> 12. Other Fraud	101. RECOMMENDED ACTION UNDER SOLVABILITY FACTORS Follow Up By: <input type="checkbox"/> 01. Investigation <input type="checkbox"/> 02. Juvenile <input type="checkbox"/> 03. I.A.U. <input checked="" type="checkbox"/> 04. I.I.U. <input type="checkbox"/> 05. Traffic <input type="checkbox"/> 06. Patrol Outside Agency <input type="checkbox"/> 07. F.B.I. <input type="checkbox"/> 08. Postal Inspector <input type="checkbox"/> 09. Mental Health <input type="checkbox"/> 10. Coast Guard <input type="checkbox"/> 11. Narcotics <input type="checkbox"/> 12. Social Welfare <input type="checkbox"/> 13. Other	102. CASE STATUS <input type="checkbox"/> 01. Unfounded <input type="checkbox"/> 02. Closed/Arrest <input type="checkbox"/> 03. Exception/Cleared <input type="checkbox"/> 04. Suspended <input checked="" type="checkbox"/> 05. Open <input type="checkbox"/> 06. Closed	103. DISPATCH TIME ARRIVAL TIME 11:00 DEPARTURE TIME 13:50
--	--	---	---	---	--	---	--	---	--	--	--	---	--	---	--

104. CODE: V - Victim O - Owner P - Parent/Guardian R - Reporting Person GP - Child Present W - Witness

NAME(S)	CODE	RESIDENCE ADDRESS	RES. PHONE	EMP/USCH/PHONE
Maher F. Yusuf	R	#306A Judith's Fancy	(340) 718-9328	(340) 690-9306
Fathi Yusuf	O	#92 A&B La Grande Princess		
Yusuf Yusuf	W	#92 CD La Grande Princess		

105. NARRATIVE:

On today's date, "R" was present at Insular Investigation Bureau with "O" (R's Father) and his Attorney, Nizar A. Dewood to make a complaint of "Embezzlement."

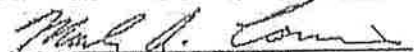
"R" was interviewed and stated that the Yusuf and Hamed family, each has 50 % interest in Plessen Enterprise, Inc. That they never have made any dividends payout. That Mohamad Hamed is the President, "S1" is the Vice-President, "O" is the Secretary/Treasurer, and "R" is the Director of Plessen Enterprises, Inc. That check No. 0376 was drawn from Scottlabank Account No. 45012, belonging to Plessen Enterprises, Inc., made payable to Waleed Hamed ("S1"), dated 27MAR13, in the amount of \$460,000.00, and was signed by "S1" and "S2." That both families had a verbal agreement that any check signed against Plessen Enterprise, Inc. would need the signature of at least one member of each family. That no one in the Yusuf family was aware of Check No. 0376, until the bank notified "O" that he needed to put cash in the account or a check written to compensate "W" would be return due to insufficient funds. That "W" used his credit card to pay the taxes for Plessen Enterprises, Inc. and Plessen Enterprises Inc. wrote a check to repay "W." That "S1" left \$7,000.00 in the account thinking that nobody would have notice the funds missing, since the account is not very active. However, "W" had failed to deposit a check from the rental of a property right away, which would have cover check No. 0376 and that was the reason the account did not have enough funds to cover the check or else the withdrawal would not have been detected.

(Cont.)

"R" further stated that "S1" returned \$230,000.00 after "W" filed a civil lawsuit against "S1," "S2," Waheed Hamed, Hisham Hamed, and Five-H Holdings, Inc. However, the money was deposited with the Clerk of the Court at the Superior Court.

"O" confirmed that the families did not have any written agreement, but they had a verbal agreement to sign the checks using one member of each family. That "S1" knew that the Yusuf Family would not have agreed to sign, so he had one of his brother ("S2") sign the check. That the monies "S1" took without any authorization was used for the closing on a property deal in St. Thomas. That the Plessen Enterprises Inc. account was strictly to cover the operational expenses of the business, not for personal ventures.

Request case open, until further development.


M. Corneiro, SGT. #3070

V.I.P.D. RECORDS BUREAU

MAY 21 2013



VIRGIN ISLANDS POLICE DEPARTMENT
INSULAR INVESTIGATION BUREAU

CR# 13A04488

STATEMENT - COVER SHEET

DATE: 17 MAY 13 TIME: 1130 PLACE: INSULAR INVESTIGATION
 FULL NAME: MAHER YUSUF D.O.B.: 4/29/67 P.O.B.: SORDAN
 HOME ADDRESS: 306A SUBITH'S ENCL. PHONE: (340) 718-9328
 MAILING ADDRESS: PO BOX 908 C'STED 00821 S.S.#:
 EMPLOYMENT: DIRECTOR OF PRESSED ENTERPRISES, INC. PHONE: (340) 690-9396
 RECORDED BY: SGT. MARK A. CORNEIRO SUBJECT: EMBEZZLEMENT BY
 FIXTURES

STATEMENT NARRATIVE

THIS IS AN INTERVIEW IN REFERENCE TO SCOTIABANK
 ACCOUNT NO. 45012, CHECK NO. 0376, BELONGING TO PRESSED
 ENTERPRISES, INC., MADE PAYABLE TO WALEED HAMED, IN THE
 AMOUNT OF \$400,000.00, DATED 3/27/13 AND SIGNED BY
 WALEED HAMED AND MUEEED HAMED. THIS STATEMENT IS GIVEN
 BY MR. MAHER YUSUF AND RECORDED BY SGT. MARK A.
 CORNEIRO.

Q) CAN YOU TELL ME WHAT OCCURRED?

A) MY BROTHER, YUSUF YUSUF PAID PROPERTY TAX FOR
 PRESSED ENTERPRISE, INC WITH HIS CREDIT CARD. HE WAS
 GOING TO REIMBURSE HIS CREDIT CARD WITH FUNDS FROM
 PRESSED ENTERPRISE, INC. HE USED A CHECK FROM THE
 COMPANY WHEN THE BANK CALLED AND NOTIFIED MY
 FATHER, FATHI YUSUF THAT THERE WAS INSUFFICIENT FUNDS
 IN THE ACCOUNT TO COVER THE CHECK. WE INQUIRED
 WHY, BECAUSE WE THOUGHT IT SHOULD HAVE ENOUGH TO
 COVER THE CHECK IN THE ACCOUNT. THE BANK
 REPRESENTATIVE TOLD US SOMEONE WITHDREW \$400,000.00
 FROM THE ACCOUNT AND THAT WE NEEDED TO BRING

SIGNATURE: [Signature] WITNESS: [Signature] SGT

ANS) MONEY TO COVER THE CHECK, SO THAT IT WOULD NOT BE RETURNED. WE BROUGHT MONEY FROM ANOTHER COMPANY AND DEPOSITED IN THE ACCOUNT, SO THAT THE CHECK COULD CLEAR. WE GOT COPY OF THE BACK AND FRONT OF THE CHECK AND NOTICED THE CHECK WAS SIGNED BY WALEED HAMED AND MURFEEB HAMED. THE CHECK WAS DEPOSITED IN WALEED HAMED PERSONAL ACCOUNT.

Q) WHO IS IN THE BOARD FOR PLEBBIEN ENTERPRISE INC.

ANS) MOHAMMED HAMED, PRESIDENT, WALEED HAMED - VICE-PRESIDENT, FATH YUSUF = SECRETARY / TREASURER AND I AM DIRECTOR

Q) HOW MANY SIGNATURES ARE REQUIRED TO SIGN THE CHECK?

ANS) TWO SIGNATURES

Q) WHO IS AUTHORIZED TO SIGN THE CHECKS?

ANS) INITIALLY WHEN ONE SIGNATURE WAS REQUIRED, WHICH WERE MYSELF, MY FATHER AND WALEED HAMED. HOWEVER, IT HAS BEEN UPDATED AND I DO NOT RECALL WHO IS AUTHORIZED. WE HAD A VERBAL AGREEMENT THAT ONE PERSON FROM THE HAMED AND ONE PERSON FROM THE YUSUF WOULD SIGN THE CHECK.

Q) THE FUNDS THAT WERE IN THE PLEBBIEN ENTERPRISE, INC. ACCOUNT HAD ANY SPECIFIC PURPOSE?

ANS) THE FUNDS WERE STRICTLY TO COVER EXPENSE.

SIGNATURE: [Signature]

WITNESS: [Signature], SOF.

INSURANCE INVESTIGATION BUFILE

STATEMENT - CLOSING SHEET

CR# 13A04488 PAGE 3 OF 3

ANS) FROM THE COMPANY.

Q) DID WALEED HAMED OR ANY MEMBER OF THE HAMED FAMILY INFORMED YOU OR ANY MEMBER OF THE YUSUF FAMILY THAT THEY WERE GOING TO REMOVE \$460,000 FROM THE ACCOUNT?

ANS) NO

Q) HOW MUCH SHARES IN THE COMPANY BOTH FAMILY HAVE?

ANS) 50% EACH

Q) WAS ANY MINUTES RECORDED OF THE PURPOSE OF THE WITHDRAWAL OF THE \$460,000?

ANS) NO

Q) DID WALEED HAMED HAD AUTHORIZATION TO WITHDRAW THE MONEY?

ANS) NO

Q) CAN YOU POSITIVELY IDENTIFY WALEED HAMED?

ANS) YES

Q) DO YOU WANT TO ADD ANYTHING ELSE?

ANS) WE NEVER DISTRIBUTE FUNDS FROM THAT COMPANY.

TIME ENDS: 1347 DATE: 17 MAY 13

I HEREBY DECLARE THAT THE FOREGOING STATEMENT, WHICH I HAVE DICTATED AND READ, IS FREELY AND VOLUNTARILY GIVEN AND IS TRUE AND CORRECT TO THE BEST OF MY KNOWLEDGE.

SIGNATURE: [Signature] DATE: 5/17/13 WITNESS: [Signature]

EXHIBIT 4

PLESSEN ENTERPRISES, INC

Hereby certifies that the following persons are the directors of the company:

Mohammad A. Hamed

President

Waleed M. Hamed

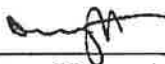
Vice-President

Fathi Yusuf

Secretary/Treasure

Maher Yusuf

Manager



Waleed M. Hamed
Vice-President

8/25/05

EXHIBIT 5

Carolyn
Cole/International/Scotiabank
Group

02/01/2012 11:48 AM

To plazaextra@yahoo.com

cc

bcc

Subject Plessen Enterprises

Dear Wadda,

Thank you for providing the business license. I have attached the information gathering form. Several of the questions have been left blank and this form is used to update the file with the requested change of signers. Please complete and return to me.

I also will need any amendments to the Articles of Incorporation and By-Laws.

Upon receipt of this Information, we can prepare some additional forms for the officers' signatures.

Thank you for choosing Scotiabank,

Carolyn Cole

Senior Account Manager,
Commercial Banking Unit
Scotiabank, USVI
P.O. Box 420
St. Thomas VI 00804-0420
Tel: (340) 774-0037 ext. 227
Dir: (340) 715-9623
Fax: (340) 777-9373



email:carolyn.cole@scotiabank.com 20120201103357437.pdf

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