

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

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

Plaintiffs Hamed and KAC357, Inc. filed a *First Amended Complaint* (hereinafter referred to as the "FAC") on January 30, 2017. On March 9, 2017, defendants United/Yusuf ("Yusuf") and BNS each filed its own, separate *Motion to Dismiss Plaintiffs Amended Complaint* based on Rule 56(b)(6). In their motion, United/Yusuf argued:

1. Failure to state a claim as to Malicious Prosecution
2. Failure to state a claim as to Defamation
3. Failure to state a claim as to Trade Disparagement
4. Failure to state a claim as to the Prima Facie Tort/Outrage
5. Failure to state a claim as to CICO / CICO Conspiracy
6. Failure to state a claim as to United Corporation

On March 22, 2017, Hamed opposed those two motions. After the defendants filed replies and dilatory motions to stay, this Court issued its October 31, 2017 Order, in which it converted those two motions to dismiss to motions for summary judgment, allowed Plaintiffs additional discovery and permitted Hamed and KAC357 to file an opposition to the summary judgments 21 days after all supplemental discovery answers were received.

However, although BNS requested additional time for responding to the discovery, it has not submitted a proffered stipulation or motion to stay. This has further delayed the process. Thus, the Plaintiff has decided to not delay further in responding to the

Yusuf/United motion -- even though the time to do so has not yet been triggered due to the lack of discovery responses from the co-defendant, BNS.

For the reasons set forth herein, it is respectfully submitted the Yusuf/United Rule 56 motion should be denied on the merits. In addition, because the Yusufs and United have attempted to insert a large number of completely unsupported facts in direct violation of Rule 56, Plaintiffs request the judgment also be denied as being procedurally deficient. Moreover, Yusuf/United misstated many of the facts underlying the FAC without documentary or testimonial support. Thus, except for facts averred AND SUPPORTED in the original Yusuf/United motion, all other Yusuf/United alleged facts **must**, for the purpose of this matter, be ignored -- and Defendants cannot supplement the record in reply, as that would deny Plaintiffs the opportunity to address such new information.

As such, the SOLE support for the Yusuf/United motion is the *Affidavit of Mark A. Carneiro* -- which does not provide support for 99% of the "facts" in the motion: There are no other supporting documents. Nor are there any supporting party affidavits.¹

I. FACTS

The following facts are uncontested by documents or affidavits of record, and must be accepted as true for the purpose of this motion.

1. In 2013, the Yusufs do not dispute that they approached the police with a formal complaint and signed a charging affidavit as to criminal acts. See the *Affidavit of Mark A. Carneiro* at ¶ 2 (the sole exhibit to the Yusuf/United motion) and **Exhibit 1**, *Affidavit of Waleed Hamed*, at ¶ 1.
2. Prior to any existing police investigation or involvement, Yusuf told the police his sole basis for filing a criminal complaint for Plessen was that "Mike Yusuf is a director of Plessen." See *Affidavit of Mark A. Carneiro* at ¶ 2. Mike Yusuf

¹ Although it would be improper to allow Yusuf and United to rely on the supporting documents submitted by BNS, Hamed notes that the BNS motion is **not supported by a party affidavit either** -- only unattested, undescribed, unverified bank records and other records such as a police report and affidavit of a Hamed. Plaintiffs note that these do not support the Yusuf/United facts. Rather United states that the document Yusuf allegedly received from the Bank did not come from the bank -- creating additional disputed facts.

also stated that such funds could not be withdrawn without Yusuf agreement. *Id.*, also see Exhibit 1, at ¶ 2.

3. It is undisputed, and Defendants admit in their discovery responses, that Mike Yusuf has never been **and was certainly not elected before the check at issue was written and the criminal complaint filed**, a director of Plessen. Thus, Mike Yusuf made a false statement to the police as the basis of the criminal complaint. See *Plaintiff Yusuf Yusuf's May 19, 2014, Response to Defendant Mufeed Hamed's Third Set Of Requests for Admissions in action SX-13-CV-120, Exhibit 2*,² see also Exhibit 1, at ¶ 3.

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. . . .

4. Prior to the start of any police investigation or involvement, the Yusufs and their counsel gave, or described to the police, documents that they represented to the police meant that the three signors on the account could not transact as per the signature cards. *Affidavit of Mark A. Carneiro* at ¶ 3, see also Exhibit 1, at ¶ 4.
5. Thus, prior to any other existing police investigation or involvement, the Yusufs made one or more false statements to the police to initiate the prosecution. *Affidavit of Mark A. Carneiro*, see also Exhibit 1, at ¶ 5.
6. The Yusufs also withheld salient contrary information from the police. See Exhibit 1, at ¶ 6. This includes the fact that the BNS expressly reviewed the salient signature card in May 10, 2013 *at the time of the criminal affidavit*, and the document showed three signatories and no limitations on the signatures in the bank's retail signature database. **Exhibit 4**.
7. Thus, solely as the result of this criminal complaint, Waleed and Mufeed Hamed were investigated by the police, and solely regarding that check. See Exhibit 1, at ¶ 7.
8. The Yusufs altered documents and provided them to the prosecution to keep the prosecution going when the police questioned their stories. See **Exhibit 5**, the altered BNS document with extra page added with false date. See also Exhibit 1, at ¶ 8. BNS has represented to Plaintiff, through counsel, that this was not a BNS document.

² Pursuant to the Court's order, Hamed propounded discovery on Yusuf/United here. They refused to answer all three of the discovery requests, but instead made **blanket, general reference** to their responses to a different set of discovery in another case. See, e.g., **Exhibit 3**, *Yusuf/United responses to Requests to Admit, SX-16-CV-429* ("429"). This violated the Court's order. However, Hamed is forced to use those "120" responses as though given here, or risk even *more* delay that chasing correct responses would require.

9. Those charges were dropped in their entirety by the prosecutor, who did so while acknowledging that the statutory time period had passed and the State lacked a sufficient factual basis for proceeding. See Exhibit 1, at ¶ 9.
10. In the contractual documents establishing the banking relationship between Plessen and BNS in 1997, there was (1) no waiver of the right to a jury trial with regard to dealings between Plessen and BNS, (2) no waiver of any right of Plessen to make claims against BNS for tort or negligence, (3) no provision that BNS could unilaterally alter the contractual relationship between the parties by simply typing new contractual provisions onto the face of routine banking forms it supplied for use by customers such as Plessen and (5) no provision that "signors" on the account could, without Board approval or approval of the President of Plessen, agree to changes in the contractual relationship between the parties. See Exhibit 1, at ¶ 10.
11. It is undisputed by the parties that at some time prior to 2009, the 1997 Signature Card was placed into BNS' retail signature computer system as the true and correct reflection of the Plessen Board approved account signor status. See Exhibit 1, at ¶ 11.
12. On August 17, 2009, that signature card entry in the computer system was accessed and reviewed, and updated in the computer system to show that review. See **Exhibit 6**, signature card provided by BNS, see also Exhibit 1, at ¶ 12.
13. As of August 17, 2009, **that computer based signature information did not require in any way that "two signatures where one of the signatures had to be from the Hamed family and one had to be from the Yusuf family."** See **Exhibit 6**, and see also Exhibit 1, at ¶ 13.
14. Thus, it is uncontested that at no time prior to March 27, 2013, did the BNS computer based retail signature information system contain any signature card reflecting a requirement that to withdraw from the account there had to be "two signatures where one of the signatures had to be from the Hamed family and one had to be from the Yusuf family." See Exhibit 1, at ¶ 14.
15. Yusuf Yusuf has admitted in filings in the Superior Court that he met with one or more BNS employees between March 27, 2013 and May 17, 2013 (just prior to his false criminal complaint) to discuss the signatures required for the March 27, 2013 withdrawal. See Exhibit 1, at ¶ 15.
16. Two Superior Court judges have determined that at the time of the false criminal complaint, Plessen's corporate documents showed that the Hameds had two directors and Yusufs had one. FAC ¶ 83-84. Two Superior Court judges have determined that at that time, Mike Yusuf was not a director of Plessen. See Exhibit 1, at ¶ 16. Judge Willocks did so on April 21, 2016, in *Yusuf v. Hamed*, SX-13-CV-120 at 5-6, "The Articles of Incorporation list Mohammad, Waleed, and Fathi as the only three directors. . . . According to both Waleed and Fathi, no such resolution was ever adopted and no

meetings were called to elect successors." See **Exhibit 7**. Judge Brady did so in the main 370 case on July 25, 2014, at footnote 2, page 2, (**Exhibit 8**) stating:

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 declares: "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 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.

Thus, it is not in dispute that Mohammad, Waleed, and Fathi were the **only** three directors of Plessen when the check was issued and BNS documents were submitted to the bank.

17. After obtaining the criminal charges, the Yusufs and United repeatedly used this information to harm Plaintiffs both in the USVI and off-island. As a result, the Plaintiffs incurred costs and were otherwise injured. Exhibit 1, at ¶ 17.

II. SUMMARY JUDGMENT STANDARD

The Rule 56 standard is well known:

Summary judgment is only appropriate when the movant establishes both "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." Once the moving party meets its initial burden, "the non-moving party [then] has the duty to set forth specific facts showing that a genuine issue of material fact exists and that a reasonable factfinder could rule in its favor." All inferences are drawn in favor of the non-moving party; but, in order to survive summary judgment, the non-moving party must present evidence that amounts to "more than a scintilla, but may amount to less than a preponderance." Summary judgment "cannot be entered unless the movant has established [both] its right [] to a judgment with such clarity as to leave no room for controversy and [that] the other party is not entitled to recover under any discernable circumstances."

Edwards v. Marriott Hotel Management Company (V.I.), Inc., Case No. ST-14-CV-222, 2015 WL 476216, at *7 (V.I. Super. Ct. Jan. 29, 2015)(citations omitted). With this standard in mind, it is now appropriate to address this Rule 56 motion.

III. ARGUMENT

1. *There are material facts in dispute re the Malicious Prosecution Count*

Defendants *completely* confuse the elements of the tort of malicious prosecution. In virtually all jurisdictions, “assisting” the police or prosecutor with an ongoing investigation is completely different than *intentionally* providing ‘*false information*’ to attempt to initiate a criminal investigation -- because “a person who provides false information cannot complain if a prosecutor acts on it.”

Merely aiding or cooperating with the authorities cannot “cause” a criminal prosecution. *Id.* Nor does a person “procure a criminal prosecution when the decision whether to prosecute is left to the discretion of another person” such as law enforcement or a grand jury. *Id.* But even if the decision is ultimately left to law enforcement, when a person knowingly provides false information which causes a criminal prosecution, they have effectively procured the prosecution and may be liable. *Id.* at 292, 294 (“What is true is that a person who provides false information cannot complain if a prosecutor acts on it.”).

See, e.g., *Pettit v. Maxwell*, No. 08-14-00241-CV, 2016 WL 4538535, at *6 (Tex. App. Aug. 31, 2016).

The V.I. Supreme Court set out the very clear elements of malicious prosecution in this jurisdiction in *Palisoc v. Poblete*, 60 V.I. 607, 615-16, 2014 WL 714254, at *4 (V.I. Feb. 25, 2014):

[W]e find that the soundest rule for the Virgin Islands is to adopt the following elements for a malicious prosecution cause of action: (1) the initiating of or procuring of a criminal proceeding against the plaintiff by the defendant; (2) the absence of probable cause for the proceeding; (3) malicious intent on the part of the defendant; and (4) termination of the proceeding in favor of the plaintiff. We also adopt Restatement (Second) of Torts § 653 for its commentary analysis in applying these elements. This rule we now adopt protects an important public interest, specifically, the interest in citizens making good faith reports of criminal conduct to the authorities. **This interest is balanced by the elements requiring the absence of probable cause and the presence of malice, which prevent an individual from using the legal system in a vindictive or harmful way.** Furthermore, while jurisdictions vary in the language and number of elements used in their respective descriptions of the prosecution cause of action, most of them essentially incorporate all the elements we have adopted. (Emphasis added.)

The first element is binary – it can be satisfied in one of two ways: “initiating of” or “procuring” a criminal proceeding. There is no question that the Yusufs “initiated” the criminal proceeding when they made a criminal complaint by filing a sworn charging criminal affidavit. To better understand the “initiated v. procured” distinction, see, e.g., *Browning-Ferris Indus., Inc. v. Lieck*, 881 S.W.2d 288, 292, 1994 WL 236455 (Tex. 1994).

The Restatement formulates the causation element as “initiates or procures”. Restatement § 653.2 A person **initiates** a criminal prosecution if he makes a formal charge to law enforcement authorities. *Id.* cmt. c. **A person procures a criminal prosecution if his actions are enough to cause the prosecution, and but for his actions the prosecution would not have occurred.** *Id.* cmts. d, f–h.

Thus, Yusuf/United *clearly initiated the criminal case*. Moreover, even if they didn’t, they “procured” it.

Defendants try to ignore the “initiated” element, and then go on to “interpret” the definition of “procure” so that no initiating statements to the police or prosecution could ever be seen as “procuring” a malicious prosecution. They are wrong -- while the mere giving of information might not be procuring, if there are false statements, forged documents and withholding – it is certainly a tort. Even if this were not the case, **the word “procure” does not mean that all cases where a prosecutor goes on to act of false statements interdicts the necessary causation.** Many jurisdictions recognize that such a position would do away with the tort. For an excellent analysis of this point see *Moore v. United States*, 213 F.3d 705, 710–12, 2000 WL 674773 (D.C. Cir. 2000):

As the first element indicates, in theory not only the prosecutor who initiates criminal proceedings, **but also a person who “procures” a criminal proceeding may be liable for malicious prosecution.** See also Restatement (Second) of Torts § 653. **In fact, those who procure malicious prosecutions are usually the only potential defendants because, as here, prosecutors enjoy absolute immunity.** See W. Page Keeton et al., *Prosser and Keeton on Torts* § 119, at 873 (5th ed.1984). . . .In order to find that a defendant procured a prosecution, **the plaintiff must establish “a chain of causation” linking the defendant’s actions with the initiation of criminal proceedings.** *Dellums v. Powell*, 566 F.2d 167, 192 (D.C.Cir.1977) (“Dellums I”).

* * * *

If this were enough to break the chain of causation, if the “discretionary function” of presenting evidence to the grand jury or prosecuting the plaintiff shielded prior misconduct from liability, **a plaintiff would never be able to make out a malicious prosecution claim.** . . .(Emphasis added.)

But even in states where generally the term “procure” **IS** *usually* interrupted by a decision by the prosecutor, an **exception** exists when a person provides information which he knows is false to another *to cause* that criminal prosecution.

A defendant “procures” a criminal prosecution if her actions were enough to cause the prosecution and if the prosecution would not have occurred but for her actions. See *Browning–Ferris Indus., Inc. v. Lieck*, 881 S.W.2d 288, 292 (Tex.1994). Generally, “a person cannot procure a criminal prosecution when the decision whether to prosecute is left to the discretion of another person, a law enforcement official or the grand jury.” *Id.* **However, “[a]n exception ... occurs when a person provides information which he knows is false to another to cause a criminal prosecution.”** *Id.* (citation omitted). (Emphasis added.)

Duffie v. Wichita Cty., 990 F. Supp. 2d 695, 718–19, 2013 WL 6869374 (N.D. Tex. 2013).

In other words, knowing provision of false information to the police or prosecutor is the key. And, critically here, where that is alleged, **factual issues as to the exception are presented that cannot be dealt with under Rule 56.**

Defendants also allege that they had probable cause to make the criminal complaint. That too is a wholly factual, not legal issue – and therefore, cannot be resolved in a Rule 56 motion. Moreover, it is an issue of fact and is not the case.

Finally, Yusuf/United alleges that a required element of malicious prosecution is that the underlying criminal case had to be dismissed because of the criminal defendants’ “innocence.” That is not what the cause of action requires – and, again, would obviate 95% of malicious prosecution cases that arise because of pre-trial dismissals as only a jury trial would do this. The V.I. Supreme Court stated the fourth element clearly: “(4) termination of the proceeding ***in favor*** of the plaintiff.”

Here, the prosecutor filed a motion to dismiss attesting that: “In support of this Motion, the People submit that, at this time, the *People will be unable to sustain its burden* of proving the charges against the Defendants beyond a reasonable doubt.” **The court then pointed out to the prosecutor that because the limitations period had run, this ended the case.** *Affidavit of Waleed Hamed, Exhibit 1.* In fact, Yusufs admit at page 8 of their motion, that the formal abandonment of the proceedings by a prosecutor *is* sufficient under this tort. Dismissal of a criminal charge after the date of the statute of limitations is, as the court pointed out, a formal, final abandonment of the case.

Thus, construing all facts in a light most favorable to the Plaintiff at this juncture, summary judgment as to the malicious prosecution count should be denied.

2. There are material facts in dispute re the Defamation Count

The gravamen of Defendants’ argument as to defamation is that their statements to the police and prosecutor, even if false, were absolutely privileged. The Supreme Court of the Virgin Islands has not addressed the issue of whether there is an absolute rather than a qualified privilege for unsolicited false statements made to the police prior to the institution of a judicial proceeding. Because this Court has not resolved this issue of common law, a *Banks* analysis is required. *Banks v. Int’l Rental & Leasing Corp.*, 55 V.I. 967, 976–80 (V.I. 2011).

In addressing issues of Virgin Islands common law, this Court—and courts addressing issues of Virgin Islands common law that this Court has yet to address—must engage in a three-factor analysis: first examining which common law rule Virgin Islands courts have applied in the past; next identifying the rule adopted by a majority of courts of other jurisdictions; and then finally—but most importantly—determining which common law rule is soundest for the Virgin Islands. *Connor*, 2014 WL 702639, at *3; see also *Palisoc v. Poblete*, S. Ct. Civ. No. 2013–0041, — V.I. —, 2014 WL 714254, at *3 (V.I. Feb. 25, 2014); *Thomas v. V.I. Bd. of Land Use Appeals*, S. Ct. Civ. No. 2013–0001, — V.I. —, 2014 WL 691657, at *5–6 (V.I. Feb. 24, 2014); *Simon v. Joseph*, 59 V.I. 611, 623 (V.I. 2013); *Matthew v. Herman*, 56 V.I. 674, 680–81 (V.I. 2012); *Faulknor v. Gov’t of the V.I.*, Super.

Ct. Civ. No. 137/2013 (STT), — V.I. —, 2014 WL 787217, at * 10 (V.I. Super. Ct. Feb. 19, 2014).

Better Bldg. Maint. of the Virgin Islands, Inc. v. Lee, 60 V.I. 740, 757, 2014 WL 1491559, at *7 (V.I. Apr. 15, 2014).

A. Majority Rule

In *Gallo v. Barile*, 284 Conn. 459, 935 A.2d 103, 2007 WL 4099056 (2007), the Supreme Court of Connecticut concluded that statements made to the police prior to the institution of a judicial proceeding are covered by a qualified privilege.

The Court's rationale for choosing a qualified privilege over an absolute privilege for statements made to the police prior to the start of judicial proceedings included (1) finding no benefit in protecting those who make intentionally false and malicious defamatory statements, (2) the importance of protecting against the irreparable consequences of destroying a person's reputation by false accusations, (3) qualified immunity affords sufficient protection for those who cooperate with the police, and (4) qualified immunity does not serve as a deterrent to those whose help is needed by the police.

We agree with the Supreme Court of Florida that "a qualified privilege is sufficiently protective of [those] wishing to report events concerning crime.... There is no benefit to society or the administration of justice in protecting those who make intentionally false and malicious defamatory statements to the police. The countervailing harm caused by the malicious destruction of another's reputation by false accusation can have irreparable consequences.... [T]he law should provide a remedy in [such] situations...." (Citation omitted; internal quotation marks omitted.) *Fridovich v. Fridovich*, 598 So.2d 65, 69 (Fla.1992); accord *Caldor, Inc. v. Bowden*, 330 Md. 632, 653, 625 A.2d 959 (1993); see also *Pope v. Motel 6*, 121 Nev. 307, 114 P.3d 277, 283 (2005) ("[t]he competing public policies of safeguarding reputations and full disclosure are best served by a qualified privilege"); *DeLong v. Yu Enterprises, Inc.*, supra, 334 Or. at 173, 47 P.3d 8 ("a citizen making an informal statement to police should not enjoy blanket immunity from action; instead, such statements should receive protection only if they were made in good faith, to discourage an abuse of the privilege"). In view of the potentially disastrous consequences that may befall the victim of a false accusation of criminal wrongdoing, we are unwilling to afford absolute immunity to such statements. We also are persuaded that qualified immunity affords sufficient protection for those who cooperate with the police. Indeed, as we have

explained, statements to police investigators long have been afforded qualified immunity; e.g., *Petyan v. Ellis*, supra, 200 Conn. at 252, 510 A.2d 1337; *Flanagan v. McLane*, supra, 87 Conn. at 223–24, 87 A. 727; and there is nothing to suggest that that level of protection has operated as a deterrent to those whose assistance is needed by law enforcement.

Gallo v. Barile, 284 Conn. at 471–72.

The Supreme Court of Connecticut stated that the majority of courts agreed with its decision to provide a qualified privilege to statements made to the police prior to the institution of a judicial proceeding, and provided a survey.

Our conclusion comports with the rule adopted by a majority of the states that have addressed this issue. See, e.g., *Fridovich v. Fridovich*, supra, 598 So.2d at 67–68 & n. 4 (surveying case law of various jurisdictions); *Caldor, Inc. v. Bowden*, supra, 330 Md. at 653–54, 625 A.2d 959 (same); *Toker v. Pollak*, 44 N.Y.2d 211, 220, 376 N.E.2d 163, 405 N.Y.S.2d 1 (1978) (“Far removed from a judicial proceeding, however, is a communication made by an individual to a law enforcement officer such as a policeman. *The majority of [s]tates afford a communication of this nature a qualified privilege, rather than absolute immunity.”); see also annot., 140 A.L.R. 1466, 1471 (1942) (“[although] in a few cases the view has been expressed that a communication to an officer respecting the commission of a crime is absolutely privileged, at least [when] made to a prosecuting attorney ... the majority of the cases expressly dealing with this question hold that the privilege is qualified or conditional, not absolute” [citation omitted]); 50 Am.Jur.2d 631, Libel and Slander § 275 (2006) (“[f]or defamation purposes, only a qualified privilege attaches to reports made to law enforcement authorities for investigation”); 2 R. Smolla, *Defamation* (2d Ed. 2007) § 8:58, p. 8–40 (“[t]he majority position appears to embrace only a qualified privilege [for reports made to the police]”). Although some states have concluded that the statements of complaining witnesses are subject to absolute immunity; e.g., *Starnes v. International Harvester Co.*, 184 Ill.App.3d 199, 203–205, 132 Ill.Dec. 566, 539 N.E.2d 1372, appeal denied, 127 Ill.2d 642, 136 Ill.Dec. 607, 545 N.E.2d 131 (1989); *Correllas v. Viveiros*, 410 Mass. 314, 323–24, 572 N.E.2d 7 (1991); *McGranahan v. Dahar*, 119 N.H. 758, 769, 408 A.2d 121 (1979); we disagree that an absolute privilege for such statements is warranted.

Gallo v. Barile, 284 Conn. at 472–73. Gallo gets to this majority conclusion solely on public policy and apparently in disregard of the Restatement. Although Gallo does discuss Restatement section 587, it does not discuss comment e to Restatement section 587,

which is analyzed below. That comment provides that there is no absolute privilege where the false statement was not “contemplated in good faith.”

B. Minority Rule

A minority of states provide absolute privilege for statements made to law enforcement prior to the institution of judicial proceedings. In Texas, the Supreme Court in *Shell Oil Co. v. Writt*, 464 S.W.3d 650, 659, 165 Lab. Cas. P 61592, 40 IER Cases 43, 58 Tex. Sup. Ct. J. 956, 2015 WL 2328678, at *8 (Tex. 2015), held that

[W]hen Shell provided its internal investigation report to the DOJ, Shell was a target of the DOJ's investigation and the information in the report related to the DOJ's inquiry. The evidence is also conclusive that when it provided the report, Shell acted with serious contemplation of the possibility that it might be prosecuted. . . . Shell's providing its report to the DOJ was an absolutely privileged communication.

Although relying on a 1900 case, *Shinglemeyer v. Wright*, 124 Mich. 230, 82 N.W. 887 (1900), the Michigan Court of Appeals also affirmed that reports of crimes to the police are absolutely privileged. The court noted:

Shinglemeyer, however, has never been overruled. Furthermore, our Supreme Court has repeatedly cited it for this exact proposition: that reports of crimes or of information about crimes to the police are absolutely privileged. *People v. Pratt*, 133 Mich. 125, 133–135, 94 N.W. 752 (1903) (Grant, J., dissenting); *Flynn v. Boglarsky*, 164 Mich. 513, 517, 129 N.W. 674 (1911); *Wells v. Toogood*, 165 Mich. 677, 679–680, 131 N.W. 124 (1911); *Powers v. Vaughan*, 312 Mich. 297, 305–306, 20 N.W.2d 196 (1945); *Simpson v. Burton*, 328 Mich. 557, 562–563, 44 N.W.2d 178 (1950). In the latter case, our Supreme Court additionally emphasized that the privilege attached even if the reporting party made the report maliciously. *Simpson*, 328 Mich. at 562, 44 N.W.2d 178.

Eddington v. Torrez, 311 Mich. App. 198, 202, 874 N.W.2d 394, 397, 2015 WL 3874813, *appeal denied*, 498 Mich. 951, 872 N.W.2d 474, 2015 WL 9449526 (2015).

C. Restatement

The *Second Restatement of Torts* seemingly provides for an absolute privilege for statements made to law enforcement prior to the start of the judicial proceeding:

A party to a private litigation or a private prosecutor or defendant in a criminal prosecution is absolutely privileged to publish defamatory matter concerning another in communications preliminary to a proposed judicial proceeding, or in the institution of or during the course and as a part of, a judicial proceeding in which he participates, if the matter has some relation to the proceeding.

Restatement (Second) of Torts § 587 (1977). However, as discussed below, that is not really the case if all of the subsections are read.

The District Court of the Virgin Islands adopted a variation of this incorrect view. See e.g., (“[T]he Court Finds that the Virgin Islands, through its recognition of the Restatements as its rules of decision, embraces an absolute privilege for statements made to law enforcement for the purposes of reporting a violation of criminal law.” *Sprauve v. CBI Acquisitions, LLC*, No. CIV.A 09-165, 2010 WL 3463308, at *9 (D.V.I. Sept. 2, 2010))(Statements to VIPD and the prosecutor about a theft protected by “absolute privilege accorded to parties who make statements to law enforcement in order to report purported violations of criminal law.” *Illaraza v. HOVENSA LLC*, 73 F. Supp. 3d 588, 604–05, 2014 WL 5859168 (D.V.I. 2014)).

However, almost every court which has addressed this and noted **comment e** to the Restatement, find that that the issue of “good faith” **should** be taken into consideration -- which provides a significant qualification to the basic rule:

e. As to communications preliminary to a proposed judicial proceeding, the rule stated in this Section applies only when the communication has some relation to a proceeding **that is contemplated in good faith** and under serious consideration. The bare possibility that the proceeding might be instituted is not to be used as a cloak to provide immunity for defamation when the possibility is not seriously considered.

RESTATEMENT (SECOND OF TORTS) § 587(e) (1977) (emphasis added).

Unfortunately, neither *Sprauve* nor *Illaraza* discusses comment e or its possible meaning.

In analyzing comment e, courts have likened this requirement that the proceeding be contemplated in good faith to part of a two-step process:

First, the occasion of the communication must be examined to determine if the statement was made “preliminary to a proposed judicial proceeding, or in the institution of, or during the course and as a part of a judicial proceeding.” Restatement § 587, at 248. Second, a court must evaluate the content of the statement to determine if it “has some relation to a proceeding that is contemplated in good faith and under serious consideration.” Restatement § 587 comments c and e, at 249-50.

Sanford E. Levy, LLC v. Five Star Roofing Sys., Inc., No. 14-CV-253-JMH, 2015 WL 6964274, at *7 (E.D. Ky. Nov. 10, 2015). Thus, while this Restatement section **appears** and was interpreted by *Sprauve* as creating an absolute privilege, **it is clear from comment e that there is a good faith component.** See e.g., *First W. Bank, N.A. v. Hotz Corp.*, No. CIV. N-84-619 WWE, 1990 WL 150450, at *1 (D. Conn. Sept. 28, 1990)

Here, the jury clearly concluded that **the letters circulated by the Bank's attorneys were not related to a proceeding brought in *good faith* and under serious consideration** and therefore not absolutely privileged. In light of the existence of ample evidence to support the jury's conclusion. . . . (Emphasis added, but emphasis on “good faith” in the original)

Courts have also interpreted comment e to mean that the privilege applies only when the judicial proceeding itself is contemplated “in good faith” and “under serious consideration”:

[T]he privilege applies *only* when there is a reasonable nexus between the publication in question and the litigation under consideration. Further, the comments provide that “[a]s to communications preliminary to a proposed judicial proceeding the rule stated in this Section applies **only** when the communication has some relation to a proceeding that is contemplated in good faith and under serious consideration.” [Restatement (Second) of Torts § 586 cmt. e.] Accordingly, the “bare possibility that the proceeding might be instituted is not to be used as a cloak to provide immunity for defamation when the possibility is not seriously considered.” [Restatement (Second) of Torts § 586 cmt. e.] *These requirements accurately reflect the parameters of the privilege as we have adopted it.*

Unarco Material Handling, Inc. v. Liberato, 317 S.W.3d 227, 237, 2010 WL 744394 (Tenn. Ct. App. 2010)(emphasis in the original, citing *Simpson Strong-Tie Co. v. Stewart, Estes & Donnell*, 232 S.W.3d 18, 2007 WL 2350244 (Tenn. 2007)); compare *Shafizadeh v. Naumann*, No. 2006-CA-002605-MR, 2009 WL 413753, at *2 (Ky. Ct. App. Feb. 20, 2009)("There is no indication that the appellees acted in bad faith by entering the information via the contract into the proceedings.")

In summary, under the applicable Rule 56 standard it is respectfully submitted that summary judgment is not warranted as to the Defamation claim, as there are clearly facts in dispute regarding Defendants' conduct.

3. *There are material facts in dispute re the Trade Disparagement*

Defendants neglected to address the recent USVI district court case on trade disparagement which held that unlike cases of regular defamation, specific damages need not be proved when there is trade disparagement. *Kantz v. Univ. of the Virgin Islands*, No. CV 2008-0047, 2016 WL 2997115, at *21 (D.V.I. May 19, 2016). While the civil tort of trade disparagement might be considered very similar to defamation – it *is* essentially "commercial defamation" -- the big advantage to a plaintiff being that it does not require specific proof of direct damages.

"A disparaging remark that tends to harm someone in his business or profession is actionable **irrespective of harm as such a remark falls within the definition of slander or defamation per se.**" *Illaraza v. Hovensa, LLC*, 2010 U.S. Dist. LEXIS 77402, at *13, 2010 WL 3069482 (D.V.I. July 30, 2010) (citing *VECC, Inc. v. Bank of Nova Scotia*, 296 F. Supp. 2d 617, 623 (D.V.I. 2003)). Statements that are deemed to harm an individual's business or professional reputation either "impugn the integrity of the individual with respect to their job performance" or "attack the competence or skill of the employee in carrying out his or her duties." *Wilson v. V.I. Water & Power Auth.*, 2010 U.S. Dist. LEXIS 129229, at * 19, 2010 WL 5088138 (D.V.I. Dec. 7, 2010) (citing *VECC, Inc.*, 296 F. Supp. 2d at 623).

Thus, both the tort and its special twist on damages have been addressed here.

4. *Plaintiffs stated a claim as to the Prima Facie Tort/Outrage*

The *Tort of Outrage* is also referred to as the *Prima Facie Tort*. Yusuf argues that this is just a tort that gets used when nothing else fits. However, the *Prima Facie Tort* is well recognized in its own right. As noted by Judge Dunston in *Edwards v. Marriott Management Corp. (Virgin Islands), Inc.*, No. ST-14-CV-222, 2015 WL 476216, at *6 (V.I. Super. Ct. Jan. 29, 2015), a “prima facie tort is a general tort.” Judge Dunston recently reiterated this point again in *Bank of Nova Scotia v. Boynes*, No. ST-16-CV-29, 2016 WL 6268827, at *3 (V.I. Super. Ct. 2016)(“[i]n the Virgin Islands, prima facie tort is recognized as a cause of action”).

Both *Edwards* and *Boynes* cited *Glenn v. Dunlop*, 423 Fed. Appx. 249, 255 (3d Cir. 2011), which analyzed Virgin Islands law in recognizing this tort in the Virgin Islands. Judge Dunston noted that the Third Circuit did not do a real *Banks* analysis, so he did so in *Boynes*, *supra* at *3 (referring to it in n.15 and then doing it in n.16):

While the Supreme Court of the Virgin Islands has not yet weighed in on the issue, the Third Circuit, the District Court of the Virgin Islands, and the Superior Court have all recognized prima facie tort as a viable cause of action. In addition, many other jurisdictions also recognize prima facie tort as actionable. See, e.g., *The Modern Prima Facie Tort Doctrine*, 79 Ky. L.J. 519, 525–27 (1990/1991) (“twenty-one states, including New Jersey, plus the Virgin Islands and District of Columbia recognize prima facie tort”). Given that prima facie tort fills in gaps in the law and grants relief where there may not be any available, the Court finds that recognition of prima facie tort as a cause of action represents the soundest rule for the Virgin Islands and is in accord with local public policy.

In short, this tort **has** been recognized within the Virgin Islands.³ It has also been recognized by most other jurisdictions as well. Moreover, the Prima Facie Tort serves the two goals of tort law—“deterrence and compensation”—which is the guiding principle in

³ See, e.g., *Government Guarantee Fund of Finland v Hyatt Corporation*, 955 F. Supp. 441, 463 (D.V.I. 1997) (Prima Facie tort is recognized in the Virgin Islands).

establishing the soundest rule for the Virgin Islands under the Supreme Court holding in *Walters v Walters*, 2014 WL 1681319, at *5.

The cases citing this tort generally all reference § 870 of the Restatement (Second) of Torts, which provides:

One who intentionally causes injury to another is subject to liability to the other for that injury, if his conduct is generally culpable and not justifiable under the circumstances. This liability may be imposed although the actor's conduct does not come within a traditional category of tort liability.

Indeed, the United States Supreme Court cited § 870 with approval in *Bridge v. Phoenix Bond & Indem. Co.*, 553 U.S. 639, 657, 128 S.Ct. 2131, 2143, 170 L.Ed.2d 1012 (2008) (“the Restatement (Second) of Torts sets forth as a “[g]eneral [p]rinciple” that “[o]ne who intentionally causes injury to another is subject to liability to the other for that injury, if his conduct is generally culpable and not justifiable under the circumstances”).

Applying the elements of this tort here, the Plaintiff certainly has described conduct alleging that Yusuf has engaged in intentional conduct that is both “generally culpable and not justifiable under the circumstances” that caused injury. It is the Defendants who argue that the other torts raised are not on point --- making this a perfect fit. While it is certainly too early in the proceeding to state that this tort is redundant here, the cited Virgin Islands cases have generally held that the “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.’” *Edwards*, 2015 WL 476216, at *6. *Edwards* then cites three cases from the Virgin Islands, in footnote 43, supporting this qualification, adding an additional comment as follows:

This is also in line with our jurisdiction's recognition of the gist of the action doctrine, which “is designed to maintain the conceptual distinction between breach of contract claims and tort claims” and that, “[a]s a practical matter, the doctrine precludes plaintiffs from re-casting ordinary breach of contract claims into tort claims.” *Pediatric Screening, Inc. v. TeleChem Intern., Inc.*, 602 F.3d 541, 548 (3d Cir. 2010) (quoting *eToll, Inc v. Elias/Savion Adver., Inc.*, 811 A.2d 10, 14 (2002)). The doctrine

prevents parties from unfairly seeking a second bite at the same apple.

However, (1) it is simply too early to say this is the case at this early stage, and (2) this Court need not decide whether this qualification is required in adopting the *Prima Facie Tort* here, as it is clear that Count VI as alleged is distinctly different from the other remaining Counts in the FAC.

In summary, under the applicable Rule 56 standard it is respectfully submitted that summary judgment is not warranted as to the tort of outrage, as there are clearly facts in dispute regarding Defendants' conduct.

5. There are material facts in dispute re the CICO Conspiracy Count

Plaintiffs have averred a statutory claim based on the CICO statute permitting civil CICO claims, 14 V.I.C. § 607, so that no *Banks* analysis is required. To plead a claim under § 607, one needs only to allege facts sufficient to support a finding that the Defendants have violated one of the subsections under 14 V.I.C. § 605, which provide, in relevant part:

(a) It is unlawful for any person employed by, or associated with, any enterprise, as that term is defined herein, to conduct or participate in, directly or indirectly, the affairs of the enterprise through a pattern of criminal activity.

(b) It is unlawful for any person, through a pattern of criminal activity, to acquire or maintain, directly or indirectly, *any* interest in, or *control* of, any enterprise or real property. (Emphasis added.)

Specific, detailed violations of all sections are pled as part of the Plaintiff's claim.

Yusuf challenges three specific aspects of the sufficiency of the pleadings as to the Plaintiff's § 605(a) CICO claim:

1. Plaintiffs fail to allege what allegedly predicate criminal acts were done by each defendant.
2. Plaintiffs fail to properly plead the elements of a CICO conspiracy
3. Plaintiffs fail to properly plead a "pattern of criminal activity."

After one wades through all of the general rhetoric and unsupported factual "additions" in Yusuf's motion, their positions are all revealed to be allegations of *Iqbal* or *Twombly* "inadequacy" of pleadings issues – not a failure of notice. A plain reading of the referenced paragraphs in the FAC confirms that these CICO elements were properly pled.

First, despite many, many efforts in discovery in other cases, Defendants have failed to properly describe their own criminal acts. Second, all of the elements are clearly pled – they do not have to be named correctly or formally described. That requirement no longer exists in this jurisdiction following the adoption of the new Rules. Third, if this is not a "pattern" of criminal activity, nothing ever will be. It is alleged that the Yusufs and United started forging documents years in advance to make it appear that Mike was a director of Plessen – and inculcating them into the Department of Consumer Affairs and BNS. They then used those forged documents to try to change the signature status at BNS. And then relied on those forged documents to try to take over the Plessen Board. They then used all of that to try to get the Hameds arrested. This was a long, organized criminal effort.

Thus, once the specific factual allegations are reviewed, Yusuf's Rule 56 objections to the § 605(a) claim fails, as sufficient contested material facts in dispute, **deemed to be true at this juncture**, have been discussed. The Plaintiff has alleged numerous predicate criminal acts. The FAC also alleges that each act within this criminal activity is specifically related to the enterprise and were done with a common purpose. Finally, the FAC alleges that these acts were not isolated.

In summary, under the applicable Rule 56 standard it is respectfully submitted the none of Yusuf's objections to the CICO count warrant dismissal, as the material facts in dispute meet each of the required CICO criteria under § 605 (a) and (b).

6. There are material facts in dispute re the claim against United Corporation

The individual defendants do not dispute that they are officers, directors or employees of United. They do not dispute that United is the entity in direct competition with the Hameds – not them as individuals. They do not dispute the allegations that when they acted to injure the Plaintiffs it was their closely-held, family-controlled competing business – United – that would benefit.

In summary, under the applicable Rule 56 standard it is respectfully submitted that summary judgment is not warranted as to the claims against United, as there are clearly facts in dispute regarding United conduct.

D. Conclusion

For the reasons set forth herein, it is respectfully submitted that the Rule 56 motion should be denied.

Dated: January 12, 2018



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CERTIFICATE OF SERVICE

I certify that this filing complies with the page or word limitation set forth in Rule 6-1(e). I also hereby certify that on this 12th day of January, 2018, I served a copy of the foregoing by email, as agreed by the parties, on:

Gregory H. Hodges
Stephen Herpel
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Charles E. Lockwood
NICHOLS NEWMAN LOGAN GREY &
LOCKWOOD, P.C.
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A handwritten signature in blue ink, appearing to read "Charles E. Lockwood", is written over a horizontal line.

Exhibit 1

Declaration of Waleed Hamed

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, MUFEED HAMED,
HISHAM HAMED,
and PLESSEN ENTERPRISES, INC.,**

Counterclaim Defendants.

MOHAMMAD HAMED,

Plaintiff,

vs.

UNITED CORPORATION,

Defendant.

MOHAMMAD HAMED,

Plaintiff,

vs.

FATHI YUSUF,

Defendant.

CIVIL NO. SX-12-CV-370

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

JURY TRIAL DEMANDED

Consolidated With

CIVIL NO. SX-14-CY-287

**ACTION FOR DAMAGES
AND DECLARATORY
RELIEF**

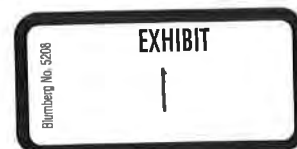
CIVIL NO. SX-14-CY-278

**ACTION FOR DEBT
AND CONVERSION**

JURY TRIAL DEMANDED

DECLARATION OF WALEED HAMED UNDER 28 U.S.C. §1746

I, Waleed Hamed, being an adult resident of St. Croix, USVI, and having personal knowledge of the facts set forth herein, declare under penalty of perjury pursuant to 28 U.S.C. Section 1746, as follows:



1. In 2013, the Yusufs approached the police with a formal complaint and signed a charging affidavit as to criminal acts. I have reviewed the *Affidavit of Mark A. Carneiro* at ¶ 2 as to this fact.
2. Prior to any existing police investigation or involvement, Yusuf told the police his sole basis for filing a criminal complaint for Plessen was that "Mike Yusuf is a director of Plessen." I have reviewed the *Affidavit of Mark A. Carneiro* at ¶ 2. He also stated that such funds could not be withdrawn without Yusuf agreement.
3. Defendants admit in their discovery responses provided to me, that *Mike Yusuf has never been and was not elected before the time of these matters, a director of Plessen*. Thus, Mike Yusuf made a false statement to the police as the basis of the criminal complaint. I have reviewed the following Yusuf discovery response :

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. . . .

4. Prior to the start of any police investigation or involvement, the Yusufs and their counsel gave or described to the police documents that they represented to the police meant that the three signors on the account could not transact as per the signature cards. I have reviewed the *Affidavit of Mark A. Carneiro* at ¶ 3.
5. Thus, prior to any other existing police investigation or involvement, the Yusufs made one or more false statements to the police to initiate the prosecution. I have reviewed the *Affidavit of Mark A. Carneiro* as to this fact.
6. The Yusufs also withheld salient contrary information from the police. This includes the fact that the BNS expressly reviewed the salient signature card in May of 2015 *at the time of the criminal affidavit*, and the document showed three signatories and no limitations on the signatures in the bank's retail signature database. I have been supplied with the documents in Group Exhibit 4.
7. Thus, solely as the result of this criminal complaint, Waleed and Mufeed Hamed were investigated by the police.
8. The Yusufs altered documents and provided them to the prosecution to keep the prosecution going when the police questioned their stories. I have been supplied with the documents in Exhibit 5, altered BNS document with

extra page added with false date. BNS has represented to me, through counsel, that this was not a BNS document.

9. I was present when those charges were dropped by the prosecutor who did so while acknowledging that the statutory time period had passed and the State lacked a sufficient factual basis for proceeding.
10. It is my best recollection that in the contractual documents establishing the banking relationship between Plessen and BNS in 1997, there was (1) no waiver of the right to a jury trial with regard to dealings between Plessen and BNS, (2) no waiver of any right of Plessen to make claims against BNS for tort or negligence, (3) no provision that BNS could unilaterally alter the contractual relationship between the parties by simply typing new contractual provisions onto the face of routine banking forms it supplied for use by customers such as Plessen and (5) no provision that "signors" on the account could, without Board approval or approval of the President of Plessen, agree to changes in the contractual relationship between the parties.
11. I have been told that at some time prior to 2009, the 1997 Signature Card was placed into BNS' retail signature computer system as the true and correct reflection of the Plessen Board approved account signor status.
12. I have seen a copy of the August 17, 2009, signature card entry in the computer system showing that it was accessed and reviewed, and updated in the computer system to show that review. That document is Exhibit 6, signature card provided by BNS.
13. That document shows that, as of August 17, 2009, that computer based signature information did not provide that "two signatures where one of the signatures had to be from the Hamed family and one had to be from the Yusuf family."
14. Thus, I have reviewed documents that show that at no time prior to March 27, 2013, did the BNS computer based retail signature information system contain any signature card reflecting a requirement that to withdraw from the account there had to be "two signatures where one of the signatures had to be from the Hamed family and one had to be from the Yusuf family."
15. Yusuf Yusuf has admitted in filings in the Superior Court provided to my counsel that he met with one or more BNS employees between March 27, 2013 and May 17, 2013 to discuss the March 27, 2013 withdrawal.
16. I am a party to two cases in which two Superior Court judges have determined that at that time, Plessen's corporate documents showed that

the Hameds had two directors and Yusufs had one. FAC ¶ 83-84. Two Superior Court judges have determined that at that time, Mike Yusuf was not a director of Plessen. Judge Williocks did so on April 21, 2016, in *Yusuf v. Hamed*, SX-13-CV-120 at 5-6, "The Articles of Incorporation list Mohammad, Waleed, and Fathi as the only three directors. . . . According to both Waleed and Fathi, no such resolution was ever adopted and no meetings were called to elect successors." See Exhibit 7. Judge Brady did so in the main 370 case on July 25, 2014, at footnote 2, page 2, (Exhibit 8) stating:

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 declares: "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 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.

Thus, Mohammad, Waleed, and Fathi were the only three directors of Plessen when the check was issued and BNS documents were submitted to the bank.

17. After obtaining the criminal charges, the Yusufs and United used this information to harm Plaintiffs both in the USVI and off-island. As a result, the Plaintiffs incurred costs and were otherwise injured.

Dated: January 12, 2018



Waleed Hamed

Exhibit to Declaration of Waleed Hamed

Affidavit of Mark A. Carneiro

[Original was] Exhibit 1 from *Defendants, Fathi Yusuf, Maher Yusuf, Yusuf Yusuf and United Corps' Motion to Dismiss Plaintiffs' First Amended Complaint*, March 9, 2017

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



120-YY-00288

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

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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.

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

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).

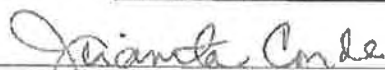
The Affiant respectfully requests that this Court issue warrants for the arrest of **Mufeed M. Hamed and Waleed Hamed, aka "Wally Hamed"**.

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

120-YY-00293

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:~~

**DUDLEY, TOPPER
AND FEUERZEIG, LLP**
1000 Frederiksberg Gade
P.O. Box 756

St Thomas, U.S. V.I. 00804-0756
(340) 774-4422

EXHIBIT

2

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.~~

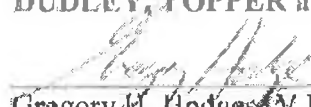
~~139. **ADMIT or DENY** that there never has been a vote, by meeting or written consent, of the shareholders of Plessen where the issue was the election of new directors.~~

~~**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.~~

DUDLEY, TOPPER and FEUERZEIG, LLP

Dated: May 19, 2014

By:


Gregory H. Hodges (V.I. Bar No. 174)
1000 Frederiksberg Gade - P.O. Box 756
St. Thomas, VI 00804
Telephone: (340) 715-4405
Telefax: (340) 715-4400
E-mail: ghodges@dtflaw.com

and

Nizar A. DeWood, Esq. (V.I. Bar No. 1177)
The DeWood Law Firm
2006 Eastern Suburbs, Suite 101
Christiansted, VI 00830
Telephone: (340) 773-3444
Telefax: (888) 398-8428
Email: info@dewood-law.com

Attorneys for Fathi Yusuf and United Corporation

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:

Joel H. Holt, Esq.
LAW OFFICES OF JOEL H. HOLT
2132 Company Street
Christiansted, V.I. 00820
Email: holtvi@aol.com

Carl Hartmann, III, Esq.
5000 Estate Coakley Bay, #L-6
Christiansted, VI 00820
Email: carl@carlhartmann.com

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

Jeffrey B.C. Moorhead, Esq.
C.R.T. Building
1132 King Street
Christiansted, VI 00820
Email: jeffreymlaw@yahoo.com



DUDLEY, TOPPER
AND FEUERZEIG, LLP
1000 Frederiksberg Gade
P.O. Box 756
Thomas, U.S. VI. 00804-0756
(340) 774-4422

X:\M\K\S\S\54\MDRFTPL.DGV\537852.DOCX

HAMD648254

Exhibit 3

IN THE SUPERIOR COURT OF THE VIRGIN ISLANDS

DIVISION OF ST. CROIX

WALEED HAMED and KAC357, INC.,)
)
Plaintiffs,)
 v.)
)
 BANK OF NOVA SCOTIA,)
 d/b/a SCOTIABANK, FATHI YUSUF,)
 MAHER YUSUF, YUSUF YUSUF,)
 and UNITED CORPORATION,)
)
Defendants.)

CIVIL NO. SX-16-CV-429

ACTION FOR DAMAGES

JURY TRIAL DEMANDED

DEFENDANT FATHI YUSUF'S RESPONSE TO PLAINTIFF HAMED'S FIRST REQUEST FOR ADMISSIONS

~~Defendant, Fathi Yusuf, through his attorneys, Dudley, Topper and Feuerzeig, LLP,~~
hereby provides his Response to Plaintiff Hamed's First Set of Requests for Admissions:

GENERAL OBJECTIONS

Fathi Yusuf makes the following general objections to the First 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 Fathi Yusuf's objections as set forth below:~~

DUDLEY, TOPPER
AND FEUERZEIG, LLP
1000 Frederiksborg Gade
P.O. Box 756
St. Thomas, U.S. V.I. 00804 0756
(340) 774-4422

EXHIBIT
3

RESPONSES REQUESTS TO ADMIT

~~1. Paragraph 6 of the Verified First Amended Complaint ("VFAC") provides and the Yusuf denied:~~

~~6. Defendant Maher Yusuf is an adult resident of St. Croix. He is and at all times relevant to this Complaint has been the President, a director and a shareholder of United Corporation. The Superior Court determined Maher Yusuf lied under oath in live testimony before the Court about what he had done with \$2.7 million of the funds he took out of the joint Partnership account.~~

Ignoring the term "lied", ADMIT or DENY that 'Maher Yusuf made an incorrect statement as to what had been done with the \$2.7 million on the first day of that hearing' while under oath

RESPONSE:

This suit was filed subsequent to *Yusuf Yusuf et al. v. Mohammad Hamed et al.*, SX-13-cv-120 ("Plessen Derivative Suit") brought as a shareholder derivative action relating to Plessen and the improper removal of \$460,000.00 by Mufeed and Waleed Hamed. In the Plessen Derivative Suit, there has been significant discovery exchanged between the parties which relates to the exact issues which give rise to this case. Although counsel for Plaintiff is also counsel in the Plessen Derivative Suit and, thus, has access to the voluminous discovery previously exchanged, Defendants herein incorporate by reference all of the discovery exchanged in the Plessen Derivative Suit as responsive to the recent discovery filed in this case.

The discovery includes:

1. Yusuf Yusuf's Responses to Mufeed Hamed's First Interrogatories, dated December 19, 2016;
2. Yusuf Yusuf's Responses to Mufeed Hamed's First Set of Requests for Admissions, dated December 19, 2016
3. Yusuf Yusuf's Response to Mufeed Hamed's first Request for Production of Documents, dated December 19, 2016 with Bates Stamped Documents
4. Yusuf Yusuf's Responses to Mufeed Hamed's Second Set of Interrogatories, dated February 15, 2017
5. Yusuf Yusuf's Responses to Mufeed Hamed's Second Set for Requests for Admissions, dated February 15, 2017

DUDLEY, TOPPER
AND FEUERZEIG, LLP

1000 Frederiksborg Gate

P.O. Box 756

St Thomas, U.S. V.I. 00804-0756

(340) 774-4422

HAMD652561

6. Yusuf Yusuf's Responses to Mufeed Hamed's Second Set of Requests for Documents, dated February 15, 2017
7. February 27, 2017 Letter from Counsel for Yusuf Yusuf supplementing discovery responses and further clarifications.
8. Yusuf Yusuf's Responses to Mufeed Hamed's Third Set of Requests for Admissions, dated March 27, 2017 with attachments
9. Yusuf Yusuf's Responses to Mufeed Hamed's Third Set of Interrogatories, dated June 5, 2017 (with chart analyzing various versions of the Intake Form).
10. Yusuf Yusuf's Responses to Mufeed Hamed's Third Set of Requests for Production of Documents, dated June 5, 2017.
11. The Bates Stamped documents include: 120-YY-00001 – [PAM TO FILL IN].
12. In addition, documents produced by the Hamed's in the Plessen Derivative Suit including those designated with the HAMD bates numbering and Bates Stamped PEO100101- PEO100686, SCOT500520-501249, FBIX210733- FBIX257241 (as produced by Hamed – it appears that the Bates numbers skip but this is the inclusive set of numbering).
13. In addition, Defendants incorporate all communication between counsel which further elaborated on discovery responses in the Plessen Derivative suit.

To the extent that this discovery must be re-produced, please advise.

~~Further responding as to the Requests to Admit, Defendants show that over 210 Requests to Admit have been propounded in the Plessen Derivative Suit. Detailed responses and follow up responses were provided therein including a chart correlating the different versions of the Intake Gathering Form. See Exhibit A. Moreover, Plaintiffs have fixated upon the BNS Intake Gathering Form which bears the date February 3, 2012. It appears from documents provided by Hamed, that it was Waleed Hamed and Wadda Charriez who created that particular document and forwarded it to BNS as part of the update and internal auditing procedures of BNS. It further appears, that the recent Requests to Admit are an attempt by Plaintiff to operate a "gotcha" effort so that a response in one case (the Plessen Derivative Suit) may be argued to contradict a response in this case. Given the volume of the information provided in the Plessen Derivative Suit and the cumulative nature of this litigation, Fathi Yusuf incorporates by reference all of the information and responses from the Plessen Derivative Suit as his responses to the Requests to Admit in this suit. Fathi Yusuf shows that doing so is not in an effort to be evasive or unresponsive, to the contrary, it is the opposite—to insure that all of the information which has already been provided to Hamed is brought to the fore as responsive to these Requests to Admit.~~

~~2. ADMIT or Deny that Plaintiff Waleed Hamed is now the Vice-President of Plessen, and has been at all times relevant to this case.~~

RESPONSE:

Fathi Yusuf hereby incorporates his Response to Request for Admission No. 1 as his Response to Request for Admission No. 7 as if fully set forth herein verbatim.

8. ADMIT or DENY that there has never been a written consent of the directors of Plessen altering the maximum number of directors, which is three.

RESPONSE:

Fathi Yusuf hereby incorporates his Response to Request for Admission No. 1 as his Response to Request for Admission No. 8 as if fully set forth herein verbatim.

9. ADMIT or DENY that there has never been a written consent of the directors of Plessen altering the makeup of the Board of Directors.

RESPONSE:

Fathi Yusuf hereby incorporates his Response to Request for Admission No. 1 as his Response to Request for Admission No. 9 as if fully set forth herein verbatim.

10. No Yusuf is now or ever has been the President or Vice-President of Plessen.

RESPONSE:

Fathi Yusuf hereby incorporates his Response to Request for Admission No. 1 as his Response to Request for Admission No. 10 as if fully set forth herein verbatim.

11. ADMIT or DENY that Mike Yusuf has never been made a director of Plessen by original document, vote or written consent.

RESPONSE:

Fathi Yusuf hereby incorporates his Response to Request for Admission No. 1 as his Response to Request for Admission No. 11 as if fully set forth herein verbatim.

12. ADMIT or DENY that Mike Yusuf is not now, nor has he ever actually been a director of Plessen.


RESPONSE

Fathi Yusuf hereby incorporates his Response to Request for Admission No. 1 as his Response to Request for Admission No. 12 as if fully set forth herein verbatim.

RESPONSE:

Fathi Yusuf hereby incorporates his Response to Request for Admission No. 1 as his Response to Request for Admission No. 64 as if fully set forth herein verbatim.

Dated: December 6, 2017

 (LISA M. KOMIVES, V.I. BAR NO 1171)
Charlotte K. Perrell, Esq. (V.I. Bar #1281) NO 1171
DUDLEY, TOPPER AND FEUERZEIG, LLP
LAW HOUSE

1000 Frederiksberg Gade (P.O. Box 756)
St. Thomas, USVI 00804-0756
(340) 774-4422 telephone
(340) 715-4400 facsimile
cperrell@dtflaw.com

**DUDLEY, TOPPER
AND FEUERZEIG, LLP**

1000 Frederiksberg Gade

P.O. Box 756

St. Thomas, U.S. V.I. 00804-0756

(340) 774-4422

CERTIFICATE OF SERVICE

It is hereby certified that on this 6th day of December, 2017, I served a true and correct copy of the foregoing **DEFENDANT FATHI YUSUF'S RESPONSE TO PLAINTIFF HAMED'S FIRST REQUEST FOR ADMISSIONS**, which complies with the page and word limitations set forth in Rule 6-1(e), via email, addressed to:

Joel H. Holt, Esq.
Law Offices of Joel H. Holt
2132 Company Street,
Christiansted, VI 00820
holtvi.plaza@gmail.com

Charles E. Lockwood, Esq.
Nichols Newman Logan Grey &
Lockwood, P.C.
No. 1131 King Street, Suite 204
Christiansted, USVI 00820-4971
clockwood@nndlalaw.com

Carl J. Hartmann III, Esq.
Co-Counsel for Defendants
5000 Estate Coakley Bay, L-6
Christiansted, VI 00820
carl@carlhartmann.com



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**DUDLEY, TOPPER
AND FEUERZEIG, LLP**

1000 Frederiksberg Gade
P.O. Box 756

St. Thomas, U.S. V.I. 00804-0756
(340) 774-4422

HAMD652577

Exhibit 4

Internet Explorer - Web Page Preview

Document Information

Document Type: Signature Card Document Date: 01/01/2008

Image <<< >>> Zoom In Back Next

30585 45012 PLESSEENTER#00
 PLESSEN ENTERPRISES 01 1 N 1
 23APR97 AS OF: 17AUG09 S E
 PLESSEN ENTERPRISES, INC. N O
 UNITED SHOPPING PLAZA SION FARM N O 00
 PO BOX 763 N 007
 CHRISTIANSTED VI 00821- 0 2 1 0
 0 0 0 0

360 1 29FEB08

H- B- 3407786240
 66-0452578 A-000 B-000
 C-000 D-00000 010⁹ VI USD

CREDIT CARD NO.

X SIGNATURE
 X SIGNATURE
 X SIGNATURE

X SIGNATURE
 X SIGNATURE

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Exhibit 5



*Not a member bank to
Articles - By Law.
Res. 110*

Information Gathering Form - Account for a Private Corporate Entity

NOTE PLEASE PROVIDE ALL OF THE REQUESTED INFORMATION & DOCUMENTATION TO EXPEDITE THE ACCOUNT OPENING PROCESS, COMPLETE & RETURN THIS FORM TO THE ATTENTION OF _____

SECTION I - DETAILS OF THE COMPANY

1. Full legal name of the company: PLESSEN ENTERPRISES INC.
Trading Name(s) (if applicable): SAME AS ABOVE.

2. Mailing address of the company: P.O. BOX 763
CHRISTIANSTED
ST. CROIX, USVI 00821-0763
Physical address of the company: 4C&D ESTATE SION FARM
CHRISTIANSTED
ST. CROIX, USVI 00820

Telephone number: (340) 778-6240 Facsimile number: (340) 778-1200
E-mail address: _____ Website: _____

3. Number of employees: Full time _____ Part time _____

4. Number of years in business: 12/31/98

5. Number of years at above address: _____

6. Country of incorporation: USVI

7. Address of the Company's Registered Office: 4C&D ESTATE SION FARM
CHRISTIANSTED, ST. CROIX USVI 00820

Telephone number: (340) 778-6240 Facsimile number: (340) 778-1200

8. Name / address / etc. of primary company contact: WALEED HAMED
4C&D ESTATE SION FARM CHRISTIANSTED, ST. CROIX USVI 00820

Telephone number: () 778-6240 Facsimile number: () 778-1200
E-mail address: _____

9. Name and address of the company's primary banker:
BANCO POPULAR.

Name of Account Manager: Mrs. Patricia Tang Yuk
Telephone number: (340) 693-2940 Facsimile number: (340) 693-2940

10. Name and address of the Law Firm that represents the company (if applicable):
BRYANT, BARNES MOSS

Name of Attorney (if specifically assigned, within the firm): CARL A. BECKSTEDT
Telephone number: (340) 773-2785 Facsimile number: (340) 773-5427

11. Name and address of the company's Accountant (if applicable):

Telephone number: () Facsimile number: ()

EXHIBIT
5



12. Provide originals or certified true copies (if originals cannot be provided) of the following corporate documents:

- Certificate(s) of Incorporation / Registration;
- Memorandum and Articles of Incorporation / Association & By Laws;
- Notice of Address or Notice of Change of Address of Registered Office;
- Notice of Directors/Managers or Notice of Change of Directors/Managers;
- Notice of Appointment of Secretary and/or Notice of Change of Secretary;
- Register of Members / Shareholders, including the full name and address of each beneficial owner holding 25% or more of the Company's shares;
- Trade / Business Licenses and Registration documentation;
- Request for Name Search and/or Name Reservation;
- Certificate of Good Standing; or
- Any other documentation requested by the Account Officer.

Note: Wherever documents require renewal, a copy of the "updated" document is to be provided to Scotiabank upon each renewal / re-registration process.

13. If any of the following is itself a corporate entity then the items listed in section 12 are required for each such corporate entity, as well information regarding the following.

- Authorized signatory;
- Directors;
- Beneficial owner holding 25% or more of the Company's shares;
- Any person with principal control over the Company's assets; and
- Any person acting under a power of attorney or any other legal document.

14. Please provide personal information for each officer, director, and shareholder with more than 25% ownership of the company.

Name WALEED HAMED Title GENERAL MANAGER
 Physical Address A C&D ESTATE SION FARM CHRISTIANSTED ST. CROIX 00820
 Mailing Address P.O. BOX 763 CHRISTIANSTED, ST. CROIX USVI 00821-0763
 Date of Birth 01/22/1962.
 Country of Citizenship USA Telephone Number (340) 690-9395
 Email address _____ Social Security Number 580-06-4454

Name MUFEED HAMED Title MANAGER
 Physical Address SAME AS ABOVE...
 Mailing Address SAME AS ABOVE..
 Date of Birth 10/1/1971
 Country of Citizenship USA Telephone Number (340) 690-0581
 Email address _____ Social Security Number 580-19-5934

Name MAHER YUSUF Title PRESIDENT
 Physical Address #14 ESTATE PLESSEN F' STED ST. CROIX USVI 00841
 Mailing Address P.O. BOX 3649 KINGSHILL, ST. CROIX USVI 00851-3649
 Date of Birth 4/28/1967
 Country of Citizenship USA Telephone Number (340) 690-9396
 Email address _____ Social Security Number 580-17-0046

Name FATHI YUSUF Title TREASURER
 Physical Address #26 A TUTU PARK MALL (ST. THOMAS)
 Mailing Address #26 A TUTU PARK MALL ST. THOMAS USVI 00802
 Date of Birth 4/15/1941
 Country of Citizenship USA Telephone Number (340) 690-9598.
 Email address _____ Social Security Number 580-09-1013



12. Provide originals or certified true copies (if originals cannot be provided) of the following corporate documents:

- Certificate(s) of Incorporation / Registration;
- Memorandum and Articles of Incorporation / Association & By Laws;
- Notice of Address or Notice of Change of Address of Registered Office;
- Notice of Directors/Managers or Notice of Change of Directors/Managers;
- Notice of Appointment of Secretary and/or Notice of Change of Secretary;
- Register of Members / Shareholders, including the full name and address of each beneficial owner holding 25% or more of the Company's shares;
- Trade / Business Licenses and Registration documentation;
- Request for Name Search and/or Name Reservation;
- Certificate of Good Standing; or
- Any other documentation requested by the Account Officer

Note: Wherever documents require renewal, a copy of the "updated" document is to be provided to Scotiabank upon each renewal / re-registration process.

13. If any of the following is itself a corporate entity then the items listed in section 12 are required for each such corporate entity, as well information regarding the following.

- Authorized signatory;
- Directors;
- Beneficial owner holding 25% or more of the Company's shares;
- Any person with principal control over the Company's assets; and
- Any person acting under a power of attorney or any other legal document.

11. Please provide personal information for each officer, director, and shareholder with more than 25% ownership of the company.

Name HISHAM HAMED Title MANAGER
 Physical Address #14 ESTATE PLESSENF' STED ST.CROIX, USVI 00841
 Mailing Address P.O.BOX 3649 KINGSHILL, ST.CROIX USVI 00851-3649
 Date of Birth 12/19/1975
 Country of Citizenship USA Telephone Number (340) 690-3139
 Email address _____ Social Security Number 580-19-5947

Name YUSUF YUSUF Title MANAGER
 Physical Address 4C&D ESTATE SION FARM CHRISTIANSTED ST.CROIX USVI 00820
 Mailing Address P.O.BOX 763, CHRISTIANSTED, ST.CROIX USVI 00821-0763
 Date of Birth 4/24/1977
 Country of Citizenship USA Telephone Number (340) 690-8789
 Email address _____ Social Security Number 580-21-9738

Name _____ Title _____
 Physical Address _____
 Mailing Address _____
 Date of Birth _____
 Country of Citizenship _____ Telephone Number _____
 Email address _____ Social Security Number _____

Name _____ Title _____
 Physical Address _____
 Mailing Address _____
 Date of Birth _____
 Country of Citizenship _____ Telephone Number _____
 Email address _____ Social Security Number _____



Name _____ Title _____
 Physical Address _____
 Mailing Address _____
 Date of Birth _____
 Country of Citizenship _____ Telephone Number _____
 Email address _____ Social Security Number _____

15. Are any of the signatories, officers, shareholders with more than 25% ownership, or their immediate family members; a current or former senior official in the executive, legislative, administrative, military or judiciary of a foreign government or a senior officer of a foreign Political Party, or a senior executive of any entity owned by a foreign government or do they maintain a personal or professional relationship with any such official?
 NO YES (If YES, provide further details as directed by the bank officer)

16. Scotiabank's standard operating documents are generally only provided after all of the account-opening requirements have been fully satisfied. To assist in this process, please complete the following questions regarding the authorized signatories and signing instructions

A. Provide the name and title of each individual who is authorized to sign on the company's account. Authorized signers are required to provide two pieces of ID in original form (or notarized copy only when authorized by a bank employee) - one (1) primary piece being a government-issued photo-ID (e.g., valid passport, driver's licence) and one (1) secondary piece (e.g., birth certificate, credit card, social security card, etc)

Name WALEED HAMED Title GENERAL MANAGER
 Physical Address SAME
 Mailing Address AS
 Date of Birth _____
 Country of Citizenship ABOVE Telephone Number _____
 Email address _____ Social Security Number _____

Name MUFEED HAMED Title MANAGER
 Physical Address _____
 Mailing Address SAME
 Date of Birth AS
 Country of Citizenship ABOVE Telephone Number _____
 Email address _____ Social Security Number _____

Name MAHER YUSUF Title PRESIDENT
 Physical Address _____
 Mailing Address SAME
 Date of Birth AS
 Country of Citizenship _____ Telephone Number _____
 Email address ABOVE Social Security Number _____

Name FATHI YUSUF Title TREASURER
 Physical Address _____
 Mailing Address SAME
 Date of Birth AS
 Country of Citizenship _____ Telephone Number _____
 Email address ABOVE Social Security Number _____

Name HISHAM HAMED Title MANAGER
 Physical Address _____
 Mailing Address SAME
 Date of Birth AS
 Country of Citizenship _____ Telephone Number _____
 Email address ABOVE... Social Security Number _____



Name YUSUF YUSUF Title MANAGER
 Physical Address SAME
 Mailing Address AS
 Date of Birth _____
 Country of Citizenship _____ Telephone Number _____
 Email address: ABOVE Social Security Number _____

B. Indicate the signing instructions for the above named individuals who are required to sign on the company's account (e.g., any one to sign; "A" to sign with either of "B" or "C", etc):
TWO SIGNATURES ARE REQUIRED (one Hamed with one Yusuf)..

C. Provide names and applicable instructions for persons not authorized to sign on the account, but authorized to obtain the account balance, collect account statements, mail, etc. ID documents are also required as per item # 15:

D. Provide details of any other existing accounts / relationship held with any Scotiabank Group:

E. If so requested, provide a banker's reference on the aforementioned Company, prepared on the applicable Bank's letterhead, and signed by its Manager. If the Company is newly established and does not have an existing banking relationship then the reference is to be provided on the Parent Company / Beneficial Owner(s). The bank reference should comment on the quality of the banking relationship over at least two years, provide full details of the banking arrangement including the date of establishment of the account, type of account, currency of account, present balance, average balance over the previous twelve month period, credit history, and be specifically addressed to Scotiabank, to provide meaningful support. Facsimile or email references, or references addressed "To Whom It May Concern" are not acceptable.

SECTION 2. PURPOSE FOR THE ACCOUNT AND ANTICIPATED ACCOUNT ACTIVITY

1. Reason &/or purpose for requiring accounts(s) with Scotiabank, (including referral source if applicable):

~~This Account is already existing~~

2. Detailed overview of the Company's primary business activity (e.g., business / products / services provided and how distributed to clients); type of operations; countries in which/ to which transactions are processed; etc. (attach brochures of articles with pertinent information):
RETAILED SUPERMARKET.



3. Financial year end: December 31, 2011
 Please provide a copy of the Company's latest financial statements or Annual Report. Attached
 If the Company is a subsidiary then provide a copy of the parent company's Annual Report, Attached
 & Corporate Tree detailing ownership particulars (as applicable). In-house financials are to be provided if
 Accountant-prepared statements are not available.

4. Indicate the type of each account required (e.g., *Checking Account, Certificate of Deposit, Call Deposit*) and
 services required (e.g., *wire transfers, letters of credit*):

CHECKING ACCOUNT

5. Scotiabank is required by law to satisfy itself as to the source of funds for deposits (e.g., from sales, dividends, inter-
 company loans, etc). Also indicate from where, &/or from whom, funds for deposits are received. (Scotiabank
 reserves the right to request additional documentary evidence to support the information provided):

RENT OF REAL PROPERTY

6. Provide details of the anticipated activity in # 7 below. Material change (i.e., in excess of 20%) in the activity
 projected, requires that the company immediately notify the Account Manager / Relationship Officer, and discuss
 with him/her whatever supporting information may be required to support the new statistics:

7. Normal & Expected Activity:

Number of checks expected to be issued in the average month: 1-50 51-100 101-150 151+
 Total \$ value: 1,000.00 \$ \$ \$ \$
Major Suppliers / Customers and average payments to them per month:

SMALL INVOICES AMOUNT

Largest amount of check (and its beneficiary) issued in the average month;

NONE

Large check payments at irregular intervals (e.g., *Payment to primary auto parts supplier - ABC Suppliers Ltd -
 \$xx per quarter; XYZ Corporation - oil & batteries supplier \$yy semi-annually, etc*);

PROPERTY TAX

Anticipated wire payments per month; NONE 1-5 6-9 10-15 15+
 Total \$ value; \$ \$ \$ \$
Major Suppliers / Customers and average payments to them per month:

Number of anticipated deposits in the average month; 1-10 11-20 21-40 41+
 Total \$ value; 30,000.00 \$ \$ \$ \$



7. Normal & Expected Activity (cont'd):

Composition of the above deposits

	Checks	Wires	Cash	Drafts / Money Orders
Total \$ value:	\$	\$	\$	\$
Major Clients and average payments by them per month:				

Letters of Credit &/or Collections Payments (i.e. for goods purchased from a Supplier);
Major Clients and anticipated amounts:

NONE

8. Will this account be used to conduct business on behalf of someone other than the named account holder (s) (third party)? Yes (No) If "yes" provide details and supporting documentation for further review/discussion (as advised by the Bank Officer).
 [Note for Bank: If the reply is yes, record personal information of the third party and obtain identification and two letters of reference (if the third party is a non-resident)]

9. IMPORTANT INFORMATION ABOUT UNLAWFUL INTERNET GAMBLING

The Unlawful Internet Gambling Enforcement Act of 2006 ("UIGEA" or the "Act") and its implementing Regulation GG prohibit any person from knowingly accepting payments in connection with the participation of another person in unlawful Internet gambling.

The Act generally defines "unlawful Internet gambling" as placing, receiving, or otherwise knowingly transmitting a bet or wager (as defined by the Act) by any means which involves the use, at least in part, of the Internet where such bet or wager is unlawful under any applicable Federal or State Law.

I/We hereby certify the above-named business does NOT engage in an Internet gambling business of any kind, either legal or illegal, and will notify Scotiabank if this activity occurs.

10. I/We certify that to the best of our knowledge the information provided herein is accurate. If there are any subsequent changes to any of the information/documentation, we will notify Scotiabank by a signed letter.

I/We authorize the Bank to obtain independent verification from any public &/or internal sources, with respect to this application and in accordance with anti money laundering & anti terrorist financing laws & regulations.

I/We acknowledge that this account will be open for review by Compliance Officers and Auditors and by local government Auditors and Inspectors, subject to appropriate confidential restrictions by the bank.

I/We further confirm that all credits to the account are and will be beneficially owned by the company (or as detailed in item # 8).

Disclosure of Information:

While the Bank is committed to protect the privacy and security of the information provided, it may be necessary to disclose information:

- o In response to credit enquiries from qualified legal financial institutions (usually with respect to the customer's application at said financial institution);
- o If the Bank in its discretion reasonably deems such disclosure necessary or desirable in furtherance of the customer's business;
- o Pursuant to legal process or subpoena served on the bank, and
- o If disclosure is reasonably necessary to protect the Bank's interests (the bank will usually notify the customer where permissible under the applicable legal process).



The Customer hereby consents to and authorizes such disclosure, and the Bank shall not become liable by reason of the giving of any such information or of it's being inaccurate or incomplete.

IMPORTANT INFORMATION ABOUT PROCEDURES FOR OPENING A NEW ACCOUNT

To help the government fight the funding of terrorism and money laundering activities, Federal law requires all financial institutions to obtain, verify, and record information that identifies each person who opens an account.

What this means for you: When you open an account, we will ask for your name, address, date of birth, and other information that will allow us to identify you. We will ask to see two forms of identification, one of which must have a picture. We may also request other identifying documents.

Signature: [Handwritten Signature]
Director / Authorized Signatory

Signature: [Handwritten Signature]
Director / Authorized Signatory

Date: _____

For Bank Use Only:

Country of Risk _____

SIC Code _____

Assigned Risk Rating (H, M, L) _____

Reviewed by _____
(Bank Officer)

Date: _____

Authorized by _____
(Bank Officer)

Date: _____

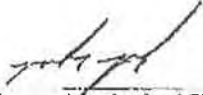


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What this means for you: When you open an account, we will ask for your name, address, date of birth, and other information that will allow us to identify you. We will ask to see two forms of identification, one of which must have a picture. We may also request other identifying documents.

Signature: 
Director / Authorized Signatory
Date: 2/3/12

Signature: 
Director / Authorized Signatory

For Bank Use Only.

Country of Risk _____

SIC Code _____

Assigned Risk Rating (H, M, L) _____

Reviewed by: _____
(Bank Officer)

Date: _____

Authorized by: _____
(Bank Officer)

Date: _____

Exhibit 6

30585 45012
PLESSEN ENTERPRISES
23APR97

AS OF: 17AUG09

PLESSEN ENTER#00
01 1 N 1
S E

N O
N O 00

PLESSEN ENTERPRISES, INC.
UNITED SHOPPING PLAZA SION FARM
PO BOX 763
CHRISTIANSTED VI 00B21-

N 007
2 1 0
0 0 0 0

360

1 29FEB08

H-
66-0452578

B- 3407786240

A-000 B-000
C-000 D-00000

010⁹ VI USD

CREDIT CARD NO.

X *[Signature]*
SIGNATURE
X *[Signature]*
SIGNATURE
X *[Signature]*
SIGNATURE

MGR. OR
ACC.

CLOSED

4033310 (2/83)

EXHIBIT
6

Exhibit 7

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

YUSUF YUSUF, derivatively on behalf of
PLESSEN ENTERPRISES, INC.,

Plaintiff,

v.

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

Defendants,

and

PLESSEN ENTERPRISES, INC.,
Nominal
Defendant.

SX-13-CV-120


MEMORANDUM OPINION

~~THIS MATTER is before the Court on Plaintiff Yusuf Yusuf's (hereinafter, "Plaintiff Yusuf") Motion to Nullify Plessen Enterprises, Inc.'s Board Resolutions, to Void Acts Taken Pursuant to Those Resolutions, and to Appoint Receiver, filed on May 20, 2014 (hereinafter "Motion"). Nominal Defendant Plessen Enterprises, Inc. (hereinafter, "Plessen") filed an Opposition on May 30, 2014 (hereinafter, "Plessen's Opp."). Defendant Waleed Hamed (hereinafter, "Waleed"), Defendant Waheed Hamed (hereinafter, "Waheed"), Defendant Mufeed Hamed (hereinafter, "Mufeed"), Defendant Hisham Hamed (hereinafter, "Hisham"), and Five-H Holdings, Inc. (hereinafter, "Five-H", and together with Waleed, Waheed, Mufeed, and Hisham, "Defendants") filed an Opposition on June 2, 2014 (hereinafter, "Defendants' Opp."). Plaintiff Yusuf filed a Joint Reply on June 19, 2014 (hereinafter, "Reply").~~

~~from imputing language or interpretations that are not in accordance with their plain meaning.” *Id.*,
at 169-70.~~

Section 2.6 of the By-Laws provides that, “[w]ritten notice of each special meeting of the Board of Directors shall be given to each Directors by...hand-delivering that notice at least one (1) day before the meeting.” Here, it is undisputed that the Notice was hand-delivered to Fathi on April 28, 2014, two days before the April 30, 2014 Special Meeting. Thus, the plain language of the notice requirement set forth in the By-Laws was satisfied. Furthermore, section 7.2(B) of the By-Laws permits the corporate president to give such notice “[i]f the Secretary is absent or refuses or neglects to act.” While nothing has been presented to suggest that Fathi, the corporate secretary, was absent or refused or neglected to act, it is clear that, based on Fathi’s reaction to the Special Meeting being called,⁵ it would have been futile to ask Fathi to provide notice of the Special Meeting. Nevertheless, regardless of whether it was proper for the corporate president to provide notice under the circumstances, the purpose of the notice provision was satisfied since all the directors were timely advised of the calling of the Special Meeting, and in fact, all attended the Special Meeting.⁶

However, this is true only if Maher is not a director.

 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 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

⁵ In response to being served the Notice, Fathi wrote a letter to Mohammad and Waleed, demanding that the Special Meeting to not go forward, and also filed an emergency motion in the 2012 Lawsuit to enjoin the Special Meeting. Motion, at 6-7. That motion did not come to the attention of the court until after the Special Meeting had concluded and thus rendered the motion moot.

⁶ Section 7.2(c) of the By-Laws provide that a director may waive notice of a meeting. Fathi’s appearance and participation in the meeting may constitute a waiver of the notice requirement.

meetings were called to elect successors.⁷ 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.

B. Whether the Resolution Should be Nullified and the Acts Taken Pursuant to the Resolutions Should be Voided

1. The Withdrawal

Plaintiff Yusuf argued that the ratification and approval of Waleed's withdrawal of \$460,000 from Plessen's bank account in May 2013 as dividends should be rescinded because it was an unfair misappropriation of corporate funds. Motion, at 15.

Plessen and Defendants countered that, at the time of the withdrawal, Plessen had sufficient funds to issue dividends, and that it was within the board's authority to issue dividends under section Eleventh (b)(iv) of the Articles of Incorporation.⁸ Plessen's Opp., at 5-6; Defendants' Opp., at 6. Furthermore, Defendants explained that, since Plessen is equally and jointly owned by the Hamed family and the Yusuf family, the dividends were split equally between them. Thus, Waleed deposited \$230,000 into the Court's registry, with a stipulation for Plaintiff Yusuf to withdraw and disburse among shareholders in the Yusuf family. Defendants' Opp., at 7 (Exhibit 2B).

In his Reply, Plaintiff Yusuf argued that the withdrawal of \$460,000 depleted Plessen's account and thus, there were insufficient funds to reimburse him for the payment of 2011 property

⁷ According to Waleed's Declaration: "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." Defendants' Opp. (Exhibit 2). Fathi's Declaration concurs: "Until the Special Meeting of the Board of Directors of Plessen was held on April 30, 2014, there had been no meeting of the directors or shareholders of Plessen since its formation in 1988." Motion (Exhibit K).

⁸ Section Eleventh, provides in pertinent part:

(b) In furtherance and not in limitation of the powers conferred by the laws of the Virgin Islands of the United States, the Board of Directors is expressly authorized and empowered:

(iv) To determine whether any, and if any, what part of the corporate funds legally available therefor shall be declared in dividends and paid to the stockholders, and to direct and determine the use and disposition of any such funds.

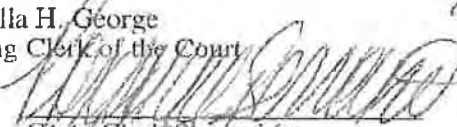
Given that it has been approximately two years since Plaintiff Yusuf moved for the appointment of a receiver for Plessen, the Court will grant parties leave to file an updated brief on the present necessity and propriety of a Plessen receivership.

CONCLUSION

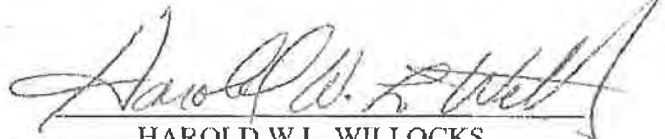
The Court finds that the Special Meeting was called in compliance with the By-Laws. The Court will deny Plaintiff Yusuf's Motion as to the board's resolution that: (1) authorized Plessen's president to enter into the Lease with KAC357, Inc; (2) authorized the retention of Attorney Jeffrey Moorhead to represent Plessen in Plessen in this instant lawsuit and the 2012 Lawsuit; (3) authorized Plessen's president to issue additional dividends to shareholders, up to \$200,000, from the company bank account; and (4) removed Fathi as registered agent, to be replaced by Jeffrey Moorhead. The Court will withhold ruling as to the board's resolution that ratified and approved Waleed's withdrawal of \$460,000 in May 2013 as dividends. The parties will be granted leave to file an updated brief on the present necessity and propriety of a Plessen receivership. An Order consistent with this Memorandum Opinion will follow.

DONE and so ORDERED this 19th day of April, 2016.

ATTEST:
Estrella H. George
Acting Clerk of the Court

By: 
Court Clerk Supervisor

Dated: 4/21/16


HAROLD W.L. WILLOCKS
Administrative Judge of the Superior Court

CERTIFIED A TRUE COPY

DATE: 4/21/16
ESTRELLA H. GEORGE
ACTING CLERK OF THE COURT

BY: 

absence of an existing agreement for arbitration appoint one or more persons to be receivers of and for such corporation..."

Exhibit 8

FOR PUBLICATION

IN THE SUPERIOR COURT OF THE VIRGIN ISLANDS

DIVISION OF ST. CROIX

MOHAMMED HAMED by his authorized agent)
WALEED HAMED,)

Plaintiff/Counterclaim Defendant,)

v.)

FATHI YUSUF and UNITED CORPORATON,)

Defendants/Counterclaimants)

v.)

WALEED HAMED, WAHEED HAMED,)
MUFEED HAMED, HISHAM HAMED, and)
PLESSEN ENTERPRISES, INC.)

Counterclaim Defendants.)

CIVIL NO. SX-12-CV-370

ACTION FOR DAMAGES, etc.

MEMORANDUM OPINION

~~THIS MATTER is before the Court on Defendant/counterclaimant Fathi Yusuf's Motion to Nullify Plessen Enterprises, Inc.'s Board Resolutions, to Avoid Acts Taken Pursuant to those Resolutions and to Appoint Receiver and Brief in Support ("Motion"), filed May 20, 2014; and Plaintiff's Opposition, filed May 27, 2014. For the reasons that follow, Defendant's Motion will be denied.~~

FACTUAL BACKGROUND

~~Plessen Enterprises, Inc. ("Plessen") is a closely held corporation jointly and equally owned by the Hamed and Yusuf families. Motion, at 1.¹ Plessen owns various assets, including~~

¹ Fathi Yusuf states that he is personally the owner of 14% of Plessen's stock. Motion, Exhibit K, ¶1.

the real property on which Plaza Extra-West is located. *Id.* Plessen is a Counterclaim Defendant in this case by virtue of the Counterclaim of Defendants Fathi Yusuf and United Corporation.

On April 28, 2014, Plaintiff served Defendant Yusuf with a Notice of Special Meeting of Board of Directors of Plessen Enterprises, Inc. ("Notice") to be convened at 10:00 a.m. on April 30, 2014. Motion, at 4 (Exhibit A).² On April 29, 2014, Yusuf responded to the Notice in writing by pointing out the deficiencies of the Notice and demanding that the meeting not take place. *Id.* (Exhibit B). Defendant Yusuf moved to enjoin the meeting by emergency motion filed at 8:19 a.m. on April 30, 2014. That motion came to the attention of the Court after the meeting had concluded and the motion had become moot.

At the special meeting, Plessen's board of directors, over director Yusuf's objection, adopted Plessen Enterprises, Inc. Resolutions of the Board of Directors ("Resolutions") (Motion, Exhibit G) wherein the board: 1) ratified and approved as a dividend the May 2013 distribution of \$460,000 to Waleed Hamed; 2) authorized Plessen's president, Mohammad Hamed, to enter into a lease agreement ("Lease") with KAC357, Inc. for the premises now occupied by Plaza Extra-West; 3) authorized the retention of Attorney Jeffrey Moorhead to represent Plessen in defense of

² 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 declares: "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 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: Mohammad Hamed, Waleed Hamed, and Fathi Yusuf.

~~Jeffrey Moorhead to defend Plessen against Defendant's Counterclaim in the instant action and in the shareholder derivative action. The dividends authorized at the April 30, 2014 meeting, shared equally between Hamed and Yusuf, will not be disturbed. Likewise, the Court will not rescind the board's Resolution to remove Hamed as Plessen's resident agent. At this stage, the Court will not appoint a receiver to oversee the liquidation of Plessen.~~

In consideration of the foregoing, an Order will enter simultaneously consistent with this Memorandum Opinion.

July 22, 2014


DOUGLAS A. BRADY
Judge of the Superior Court

ATTEST:

ESTRELLA GEORGE
Acting Clerk of the Court

By: 
Court Clerk Supervisor

7/23/14