

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

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

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

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

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

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

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

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

RESPONSES TO THIRD REQUESTS FOR ADMISSIONS

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

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

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

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

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

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

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

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

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

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

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

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

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

RESPONSE:

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

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

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

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

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

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

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

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

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

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

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

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

RESPONSE:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

RESPONSE: Deny.

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

RESPONSE: Admit.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

RESPONSE: Denied.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

RESPONSE: Denied.

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

RESPONSE: Denied.

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

RESPONSE: Denied. No such billing exist.

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

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

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

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

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

Corrected response:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

RESPONSE: Denied.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

RESPONSE: Denied.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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


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

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

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

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

DATED: March th 27, 2017

By: 
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CERTIFICATE OF SERVICE

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

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EXHIBIT A

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

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

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

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

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

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

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

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

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

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

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

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

STATEMENT OF FACTS

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

On Monday, April 28, 2014, at approximately 4 p.m., a document entitled Notice of Special Meeting of Board of Directors of Plessen Enterprises, Inc. (the "Notice") was hand delivered to Yusuf, a director, shareholder and secretary of the Board of Directors, announcing an intent to hold such a meeting on April 30, at 10:00 a.m. at the Plaza Extra - East store in St. Croix. (See **Exhibit A**, Notice of Special Meeting of Board of Directors of Plessen (without the unsigned lease that was attached to the Notice)). The Notice was issued by Hamed, who is one of the directors of Plessen, instead of by Yusuf in his capacity as Secretary of the Board, as the Bylaws require (in sections 3.4 and 7.2 thereof). The fact that the Notice was served on Yusuf on one business day's notice was an obvious attempt to avoid judicial scrutiny of an action that,

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

D. The Meeting Results In A Shouting Match.

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

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

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

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

See Exhibit F.

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

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

The Purported Resolutions provide as follows:

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

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

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

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

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

See Exhibit G.

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

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

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

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

ARGUMENT

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

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

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

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

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

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

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

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

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

Exhibit I, § 2.3.4.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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


Id. at 407-408 (citations omitted).

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

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Dated: May 19, 2014

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CERTIFICATE OF SERVICE

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

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