SUPERIOR COURT OF THE VIRGIN ISLANDS

DIVISION OF ST. THOMAS AND ST. JOHN

ST. THOMAS & ST. JOHN POLICE BENEVOLENT ASSOCIATION, SHANI SMITH, DERRICK CALLWOOD, DERRICK BOUGANEOU, VERNON WILLIAMS, and TERRANCE CELESTINE,	)
Plaintiffs,	)
vs.	) CASE NO. ST-15-CV-115
VIRGIN ISLANDS POLICE DEPARTMENT DELROY RICHARDS, THOMAS HANNAH, DAREN FOY, and GOVERNMENT OF THE THE VIRGIN ISLANDS,	)
Defendants.	)

MEMORANDUM OPINION

Pending before the Court are Plaintiffs' Motion for Relief from the Court's January 5, 2016, Final Dismissal Order and Motion to Extend Time for Filing of Amended Complaint. Both motions will be held in abeyance because an evidentiary hearing must be held to resolve factual disputes raised in connection with Plaintiffs' Motion for Relief.

RELEVANT FACTUAL & PROCEDURAL HISTORY

This matter arises out of a Complaint filed on March 16, 2015, by Plaintiffs St. Thomas & St. John Police Benevolent Association ("PBA")[1] and individual police officer union members[2]

[1] Compl. ¶ 19 ("PBA is recognized by Defendants as the duly certified exclusive bargaining representative of police officers for the St. Thomas/St. John District. As a result, Plaintiff PBA is authorized under Virgin Islands law to negotiate with Defendants over terms and conditions of employment for its respective union members.").

[2] The Complaint names the following as individual Plaintiffs: Shani Smith, Derrick Callwood, Derrick Bouganeou, Vernon Williams, and Terrance Celestine. The claims of Plaintiff Vernon Williams were dismissed following Williams' August 7, 2015, Notice of Dismissal of Plaintiff Vernon Williams' Claims Against All Defendants.

against Defendants Virgin Islands Police Department ("VIPD") and the Government of the Virgin Islands ("Government"), Delroy Richards (Police Commissioner), Thomas Hannah (Assistant Commissioner of Police), and Daren Foy (St. Thomas Chief of Police) with respect to Defendants' purported violation of the parties' Collective Bargaining Agreement ("CBA"). The Complaint alleges three (3) cause of action: (1) breach of collective bargaining agreement; (2) breach of duty of good faith and fair dealing; and (3) violations of constitutional and civil rights under 42 U.S.C. § 1983,[3] for which Plaintiffs seek injunctive relief, a restraining order, compensatory damages, and declaratory relief.[4]

Specifically, the first cause of action, breach of the collective bargaining agreement, alleges Defendants maliciously prevented Plaintiffs from arbitrating their matters within sixty (60) days of their timely demand for arbitration in violation of the CBA, which resulted in the termination and/or suspension of the individual Plaintiffs from their positions with VIPD.[5] The second cause of action, breach of the duty of good faith and fair dealing, alleges, *inter alia*, that Defendants have violated "each individual Plaintiff's right to arbitration within 60 day[s]" and have construed the CBA, in bad faith, to only allow PBA "shop stewards" to serve as the members' "duly designated representative" at disciplinary administrative hearings to the exclusion of the members' counsel, thereby undermining the PBA members' rights under the CBA.[6] The third cause of action, violation of constitutional and civil rights under 42 U.S.C. § 1983, alleges Defendants have knowingly violated PBA members' rights to substantive and procedural due process under the Fourteenth Amendment, specifically, their rights to "effective representation to counsel in hearings

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[3] *See* Compl. ¶¶ 45-58.
[4] Compl. at 14.
[5] Compl. ¶ 45-47.
[6] Compl. ¶¶ 48-54.

concerning their employment termination and suspension" and "to obtain all exculpatory evidence, both document and favorable witness testimony," thereby violating 42 U.S.C. § 1983.[7]

On May 11, 2015, through the Office of Collective Bargaining, Defendants filed a Motion to Dismiss the Complaint under Fed. R. Civ. P. 12(b)(6),[8] which the Court granted in a Memorandum Opinion entered on November 12, 2015.[9] In so doing, the Court found that Plaintiffs' causes of action for breach of the collective bargaining agreement and breach of the duty of good faith and fair dealing were premature because, in seeking injunctive relief and a restraining order in the Complaint, Plaintiffs were statutorily required under 24 V.I.C. § 346 to exhaust all administrative remedies before instituting this action, but that the Complaint failed to contain adequate factual allegations to plausibly suggest that Plaintiffs had exhausted the administrative remedies available under the Public Employees Labor Relations Act ("PELRA").[10] For this same reason, the Court found that the Complaint failed to contain adequate factual allegations to plausibly suggest a violation of procedural due process occurred, as required to state a claim under Section 1983, because "[a] procedural due process violation cannot have occurred when the governmental actor provides apparently adequate procedural remedies and the plaintiff has not availed himself of those remedies."[11] As a result, the Court dismissed the Section 1983

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[7] Compl. ¶ 55-58.
[8] Plaintiffs filed an Opposition to Defendants' Motion to Dismiss on August 14, 2015. Defendants did not file a Reply.
[9] The Court notes that in its Opposition to Defendants' Motion to Dismiss, PBA informed the Court that "[t]he individual plaintiffs herein will be dismissing their claims without prejudice" because progress has been made toward arbitrating the individual claims and that "the only parties left here will be Plaintiff [PBA] and Defendants [VIPD] and [the] Government of the Virgin Islands." Pl.'s Opp'n to Defs.' Mot. to Dismiss, p. 1, n. 1. However, the record reflects that the only claims that have voluntarily been dismissed are those of Vernon Williams. *See* August 7, 2015, Notice of Dismissal of Plaintiff Vernon Williams' Claims Against All Defendants. Because PBA had yet to file the appropriate pleadings to substantiate the dismissal of the individual Plaintiffs' claims in the record, in deciding Defendants' Motion to Dismiss, the Court construed the Complaint as containing the claims of the individual Plaintiffs as well as PBA. November 12, 2015, Mem. Op., p. 4.
[10] *See* November 12, 2015, Mem. Op., pp. 7-20.
[11] November 12, 2015, Mem. Op., pp. 28-31 (citations omitted).

claim against Defendants Richards, Hannah, and Foy without prejudice.[12] The Section 1983 claim against Defendants Government of the Virgin Islands and VIPD was dismissed with prejudice, since those Defendants were not "persons" subject to suit under Section 1983.[13] Apart from the Section 1983 claim against Defendants Government of the Virgin Islands and VIPD, Plaintiffs were granted leave to amend the Complaint by November 30, 2015, to cure the aforementioned deficiencies.[14]

When Plaintiffs failed to amend the Complaint within the Court imposed time limit, the Court entered an Order on December 8, 2015, directing Plaintiffs to file an amended Complaint by December 30, 2015, failing which the Court would close the case.[15] When Plaintiffs still did not amend the Complaint, the Court, having dismissed all the claims, closed the case by Order signed on January 5, 2016, and entered on January 7, 2016.[16]

By letter dated January 27, 2016, Plaintiffs' counsel informed the Court that Plaintiffs did not amend the Complaint within the Court imposed deadlines because the office of the Clerk of the Superior Court failed to timely serve Plaintiffs' counsel with copies of the November 21, 2015, Memorandum Opinion and Order and December 8, 2015, Order, which, according to Plaintiffs' counsel, were not forwarded to Plaintiffs' counsel's court box in the Division of St. Croix until

[12] November 12, 2015, Mem. Op., pp. 20-31; November 12, 2015, Order.
[13] November 12, 2015, Mem. Op., pp. 21-23; November 12, 2015, Order.
[14] November 12, 2015, Mem. Op., p. 31; *See* November 12, 2015, Order.
[15] *See* December 8, 2015, Order.
[16] *See* January 5, 2016, Order. Generally, "the dates of all other orders and opinions issued by the Superior Court in the underlying matter refer to the date of entry on the docket." *Island Tile & Marble, LLC v. Bertrand*, 57 V.I. 596, 604, n. 4 (V.I. 2012) (citations omitted); *See* SUPER. CT. R. 49. However, in their June 24, 2016, Motion for Relief, Plaintiffs refer to the complained of Order as the "January 5, 2016, Order[,]" though the Order was entered on January 7, 2016, and merely signed on January 5, 2016. *See* Pls.' June 24, 2016, Mot. for Relief from the Court's January 5, 2016, Final Dismissal Order ("Pls.' June 24, 2016, Mot. for Relief"). To avoid unnecessary confusion, the Court will, for the sake of clarity, refer to the challenged Order, entered on January 7, 2016, but signed on January 5, 2016, as the "January 5, 2016, Order."

January 21, 2016. With this letter, Plaintiffs' counsel attached Plaintiffs' Motion to Extend Time for Filing of Amended Complaint, which was filed on January 29, 2016.

Plaintiffs' counsel then informed the Court in a second letter dated February 3, 2016, that the Clerk's office also failed to serve the January 5, 2016, Order dismissing the action, stating that "[a]ttached is Plaintiffs' Motion for Relief from the Court's January 5, 2016, [D]ismissal [O]rder." Plaintiffs contend this Motion for Relief was mailed on February 3, 2016, but it does not appear on the Court's docket.[17]

On May 2, 2016, Plaintiffs filed a Notice of Pending Motion and Request for Immediate Adjudication, wherein Plaintiff references a motion "filed on January 28, 2016, seeking relief from th[e] Court's January 6, 2016, [sic] Order dismissing this matter."[18] On June 24, 2016, Plaintiffs filed a Motion for Relief from the Court's January 5, 2016, Final Dismissal Order ("Motion for Relief") under Fed. R. Civ. P. 60(b)(6). Defendants were directed to respond to this motion, as well as Plaintiffs' January 29, 2016, Motion to Extend Time for Filing Amended Complaint, by July 15, 2016, and Plaintiffs were directed to reply by July 25, 2016.[19] On July 15, 2016, Defendants filed a timely Opposition, and on August 1, 2016, one (1) week after the Court imposed deadline, Plaintiffs filed a Reply.

STANDARD

"Superior Court Rule 50 provides that a motion to set aside a judgment is governed by Rules 59 to 61 of the Federal Rules of Civil Procedure."[20] Fed. R. Civ. P. 60(b) provides, in

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[17] *See* Pls.' June 24, 2016, Mot. for Relief ¶ 8 ("The court should note that the undersigned has mailed this Motion as far back as February 3, 2016 to the Court. However, a check of the docket reveals that the Motion was not received, and is not pending before this Court").
[18] Pl.'s Notice of Pending Mot. & Request for Immediate Adjudication, p. 1.
[19] July 1, 2016, Order.
[20] *Chavayez v. Buhler*, 2009 V.I. Supreme LEXIS 26, *4 (V.I. 2009) (unpublished). Superior Court Rule 50 provides:

pertinent part, that "[o]n motion and just terms, the court may relieve a party or its legal representative from final judgment, order, or proceeding for the following reasons: (1) mistake, inadvertence, surprise, or excusable neglect . . . or (6) any other reason that justifies relief." In resolving most motions under Rule 60(b), the Court applies "a standard of 'liberality,' rather than 'strictness[,]' . . . [where] any doubt should be resolved in favor of the petition to set aside the judgment so that cases may be decided on their merits."[21] Moreover, through the precedent of the Supreme Court of the Virgin Islands, this jurisdiction has a particularly strong policy against the dismissal of actions prior to a trial on the merits.[22] Nevertheless, a stricter standard is applied to motions under Rule 60(b)(6), which, according to the Supreme Court of the Virgin Islands, requires "extraordinary circumstances" to justify relief.[23]

> For good cause shown, the court, upon application and notice to the adverse party, may set aside an entry of default, judgment by default or judgment after trial or hearing. Rules 59 to 61, inclusive, of the Federal Rules of Civil Procedure shall govern such application.

[21] *Bazzar v. Salem*, 2015 V.I. LEXIS 125, *8-9 (V.I. Super. Ct. Oct. 8, 2015) (citing *Medunic v. Lederer*, 533 F.2d 891, 893-94 (3d Cir. 1976)); *See Spencer v. Navarro*, 2009 V.I. Supreme LEXIS 25, *4 (V.I. 2009) (unpublished) ("In assessing a trial court's decision, we are cognizant that default judgments are not the favored means of resolving civil actions, that doubtful cases should be decided on their merits") (citing *United States v. $55,518.05 in U.S. Currency*, 728 F.2d 192, 194-195 (3d. Cir. 1983)); *Cohen v. Gabriel Enterprises, Inc.*, 2013 U.S. Dist. LEXIS 39407, *21 (D.V.I. Mar. 21, 2013) ("The Court is nevertheless cognizant of the Third Circuit's 'policy disfavoring default judgments and encouraging decisions on the merits'") (citing *Harad v. Aetna Casualty & Surety Co.*, 839 F.2d 979, 982 (3d Cir. Pa. 1988)).

[22] *See Adams v. North West Co., Inc.*, 2015 V.I. LEXIS 123, *18-19 (V.I. Super. Ct. Oct. 6, 2015) (citing *Joseph*, 54 V.I. at 650) ("Both this Court and the United States Supreme Court have recognized that there is a strong preference for trial courts to decide doubtful cases on their merits rather than dismiss them for a failure to strictly follow purely procedural rules"); *Spencer*, 2009 V.I. Supreme LEXIS 25, at *8-9 ("[I]t is preferred that cases be decided on the merits and any doubts should be resolved in favor of this preference") (citations omitted).

[23] *Gould v. Salem*, 2012 V.I. Supreme LEXIS 47, *10 (V.I. 2012) ("[W]e cannot review an order based on Federal Rule of Civil Procedure 60(b)(6), without an explanation as to what extraordinary circumstances justified granting this relief") (citations omitted); *Hodge v. McGowan*, 50 V.I. 296, 309 n. 8 (V.I. 2008) ("Rule 60(b)(6)'s "catch-all" category is reserved for extraordinary circumstances") (citing *Gonzalez v. Crosby*, 545 U.S. 524, 535, 125 S. Ct. 2641, 2649, 162 L. Ed. 2d 480 (2005)); *See also Brin v. Dessout*, 2016 V.I. LEXIS 52, *15 (V.I. Super. Ct. Jan. 7, 2016) ("Rule 60(b)(6) is a 'reservoir of equitable power,' but does not confer a standardless residual discretionary power and is available only in cases evidencing extraordinary circumstances") (citing *Martinez-McBean v. Government of Virgin Islands*, 562 F.2d 908, 911, 14 V.I. 79 (3d Cir. 1977)); *In re Catalyst Litig.*, 2015 V.I. LEXIS 140, at *2 (citing *Gould*, 2012 V.I. Supreme LEXIS 47, at *10); *See* 11 CHARLES ALAN WRIGHT, ARTHUR R. MILLER, & MARY KAY KANE, FEDERAL PRACTICE & PROCEDURE § 2857, 326 (3d ed. 2012) (noting that Fed. R. Civ. P. 60(b)(6) requires a showing of "extraordinary or exceptional circumstances" to justify relief, while the "less demanding standard" applies to the other provisions of the rule").

The Supreme Court of the Virgin Islands has recognized that "Rule 60(b)(1) and Rule 60(b)(6) are mutually exclusive, such that any conduct which generally falls under the former cannot stand as a ground for relief under the latter."[24] In so ruling, other courts have explained that this restriction ameliorates the "potentially sweeping reach" of Rule 60(b)(6) and the "concern . . . that parties may attempt to use Rule 60(b)(6) to circumvent the one-year time limitation in other subsections of Rule 60(b)."[25] Indeed, motions under Rule 60(b)(1)-(3) must be brought "no more than a year of the entry of the judgment or order[,]" while all other Rule 60(b) motions "must be made within a reasonable time."[26]

ANALYSIS

A. Plaintiffs' Untimely Reply to Defendants' Opposition.

Plaintiffs filed their Reply one (1) week late, but did not move to file it out of time as required under Super. Ct. R. 10(a)(2).[27] However, if the opposing party does not move to strike the response as untimely, "it waive[s] any objection to its timeliness[,]" and the Superior Court has discretion to consider the untimely response.[28] Though Defendants have not moved to strike

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[24] *Appleton v. Harrigan*, 61 V.I. 262, 269 n. 7 (V.I. 2014) (citing *Stevens v. Miller*, 676 F.3d 62, 67 (2d Cir. 2012) (internal quotation marks omitted); *See Newland Moran Real Estate v. Green Cay Props., Inc.*, 41 F. Supp. 2d 576, 580 (D.V.I. App. Div. 1999) ("[I]t is only necessary to fall back on Rule 60(b)(6) where the reason for relief is not covered by any of the other provisions of 60(b) and the movant can establish exceptional circumstances which warrant extraordinary relief") (citing *Stradley v. Cortez*, 518 F.2d 488, 494 (3d Cir. 1975)).
[25] *Stevens*, 676 F.3d at 67 (citing *First Fidelity Bank, N.A. v. Gov't of Antigua & Barbuda-Permanent Mission*, 877 F.2d 189, 196 (2d Cir. 1989)).
[26] FED. R. CIV. P. 60(c)(1). "What constitutes a 'reasonable time' under Rule 60(b) is to be decided under the circumstances of each case." *Lucan Corp. v. Robert L. Merwin & Co.*, 2008 V.I. Supreme LEXIS 19, *8 (V.I. 2008) (unpublished) (citing *Delzona Corp. v. Sacks*, 265 F.2d 157, 159 (3d Cir. 1959) (quotation marks omitted).
[27] SUPER. CT. R. 10(a)(2) ("When an act is required or allowed to be done at or within a specified time . . . [t]he court for cause shown may at any time in its discretion . . . [o]n motion, permit the act to be done after the expiration of the specified period if the failure to act was the result of excusable neglect").
[28] *See Destin v. People of the Virgin Islands*, 2016 V.I. Supreme LEXIS 10, *3 n. 1 (V.I. 2016) ("Although the Superior Court failed to provide an explanation for considering the defendant's untimely motion, the record reflects that the People did not move to strike Destin's motion as being untimely, and therefore it waived any objection to its timeliness") (citing *Joseph v. People*, 60 V.I. 338, 347 n.7 (V.I. 2013) (other citation omitted); *but see In re Refinery Dust Claims*, 2016 V.I. LEXIS 48, *12 (V.I. Super. Ct. May 3, 2016) ("[T]he oppositions herein were filed after the due date and without leave from the Court. Thus, the Court will not consider the untimely oppositions,

Plaintiffs' Reply or objected to its untimeliness, the Court will not consider Plaintiffs' untimely Reply.

A close review of the record reveals that Plaintiffs also filed their Opposition to Defendants' Motion to Dismiss out of time, without moving to extend the deadline.[29] Since it is not the first time that Plaintiffs have deviated from the tenets of standard motion practice and the Superior Court Rules by failing to move for an extension of time, the Court will not further indulge Plaintiffs by accepting their untimely Reply. Moreover, it does not escape the Court's attention that these untimely filings by Plaintiffs evince a blatant disregard for Court imposed time limits, while in their Motion for Relief, Plaintiffs contend that the Clerk's office is to blame for their failure to comply with the Court imposed limits for amending their Complaint. The Court reminds Plaintiffs' counsel of his duty to "act with reasonable diligence and promptness in representing [his] . . . client[s]"[30] and that "evidence on the record that . . . [a party] has repeatedly ignored the Court's orders or flouted the Court's authority" can, in certain contexts, contribute to a "finding of willfulness or bad faith."[31]

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and further is also not prohibited from ruling on a motion without a response in opposition or reply when deemed appropriate") (citations omitted).

[29] *See* May 12, 2015, Order (directing Plaintiffs to respond to Defendants' Motion to Dismiss by June 1, 2015); June 25, 2015, Order (granting the parties' Joint Stipulation to Respond to Defendants' Motion to Dismiss and extending the deadline to June 10, 2015); July 13, 2015, Order (granting the parties' Joint Stipulation to Stay Proceedings for 30 days, but noting that "because Plaintiffs' Response to Defendants' Motion to Dismiss is already overdue, further stays will not be granted").

[30] V.I.S.CT.R. 211.1.3. Supreme Court Rule 211 established the Virgin Islands Rules of Professional Conduct by order dated December 23, 2013, and effective on February 1, 2014. Additionally, "to the extent applicable, the accompanying or related ABA Interpretive Guidelines, Comments and Committee Comments… govern the conduct of members of the Bar of this Territory." V.I.S.CT.R. 203.

[31] *See Caravelle Land I, LLC v. USVI Mgmt. Corp.*, 2014 V.I. LEXIS 55, *12 (V.I. Super. Ct. July 29, 2014) (analyzing whether an attorney "engaged in willful or flagrantly bad faith behavior" in relation to a motion to dismiss for failure to prosecute under Fed. R. Civ. P. 41(b) (citations omitted).

B. MOTION FOR RELIEF FROM THE COURT'S JANUARY 5, 2016, FINAL DISMISSAL ORDER.

Plaintiffs contend that "when the Clerk's office utterly fails to serve three Court orders back to back on a party of record, such failure is a 'reason that justifies relief' as contemplated by Rule 60(b)(6)."[32] In contrast, Defendants argue Plaintiffs have failed to show "extraordinary circumstances" to justify relief under Rule 60(b)(6) because Plaintiffs have not submitted sufficient proof to substantiate their claims that the Clerk's office failed to serve Plaintiffs' counsel, and, "[e]ven if sufficient proof were given, an amended [C]omplaint would warrant a dismissal of the counts that were dismissed without prejudice."[33]

At the outset, the Court must address that, while Plaintiffs' bring their Motion for Relief under Rule 60(b)(6), Plaintiffs' motion must be considered under Rule 60(b)(1) because, as discussed at length below, the circumstances at issue here arise under Rule 60(b)(1) for excusable neglect.[34] Despite arising under Rule 60(b)(1), timeliness is not an issue since the challenged Order was not entered until January 7, 2016, and it is undisputed that Plaintiffs' Motion for Relief was filed on June 24, 2016, well within the one year time limitation for brining Rule 60(b)(1) motions.[35] As a result, Plaintiffs' Motion for Relief under Rule 60(b)(1) is timely and ripe for adjudication.

"Under Rule 60(b)(1), the Court may relieve a party from a judgment or order because of mistake, inadvertence, surprise, or excusable neglect. This category has been held to permit relief where the order or judgment results from, among other things, a failure to receive service[,]" including circumstances where the Clerk's office purportedly failed to notify counsel of the entry

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[32] Pls.' June 24, 2016, Mot. for Relief ¶ 7.
[33] Defs.' Opp'n to Pls.' Mot. for Relief, pp. 1-3.
[34] *Lucan Corp.*, 2008 V.I. Supreme LEXIS 19, at *6 ("[T]he function of the motion, not the caption, dictates which rule applies") (citing *Smith v. Evans,* 853 F.2d 155, 158 (3d Cir.1988)).
[35] *See* FED. R. CIV. P. 60(c)(1).

of a judgment or order.[36] In that instance, courts have generally considered lack of notice of an order or judgment in relation to "excusable neglect" under Rule 60(b)(1).[37] The Supreme Court of the Virgin Islands has held that:

> "the determination of excusable neglect 'is at bottom an equitable one,'" where the court "should take into account 'all relevant circumstances surrounding [the] omission . . . includ[ing] . . . the danger of prejudice [to the opposing party], the length of the delay and its potential impact on judicial proceedings, the reason for the delay, including whether it was within the reasonable control of the movant, and whether the movant acted in good faith.'"[38]

In determining whether a moving party has demonstrated excusable neglect under Rule 60(b)(1), these considerations are taken into account by the Court evaluating, "in the totality of the circumstances, '(1) whether the default was willful; (2) whether the opposing party has a meritorious defense; and (3) the level of prejudice that may occur to the non-defaulting party.'"[39] Though Virgin Islands courts have typically applied these factors when evaluating motions to set aside *default* judgments,[40] these considerations are equally relevant to requests to vacate final judgments that are not the result of default.[41]

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[36] *Griffith v. Carpenter*, 2012 V.I. LEXIS 84, *4-5 (V.I. Super. Ct. June 7, 2012) (citing *Blois v. Friday*, 612 F.2d 938 (5th Cir. 1980)); *See Newland*, 41 F. Supp. 2d 576.
[37] *supra* n. 48.
[38] *Fuller v. Browne*, 59 V.I. 948, 953-954 (V.I. 2013) (citing *Brown v. People of the V.I.*, 49 V.I. 378, 383 (V.I. 2008) (quoting *Pioneer Inv. Serv. Co. v. Brunswick Assoc.*, 507 U.S. 380, 395, 113 S. Ct. 1489, 123 L. Ed. 2d 74 (1993))).
[39] *Newman v. Nachwalter*, 2014 V.I. LEXIS 32, *8-12 (V.I. Super. Ct. June 3, 2014).
[40] *Spencer*, 2009 V.I. Supreme LEXIS 25, at *4-5 (applying factors with respect to vacating a default judgment for excusable neglect) (citing *Harad*, 839 F.2d at 982); *See also Bazzar*, 2015 V.I. LEXIS 125, at *5 (citing *Cohen*, 2013 U.S. Dist. LEXIS 39407, at *6).
[41] *See Vessup v. Cochran*, 1997 V.I. LEXIS 18, *10 (V.I. Terr. Ct. 1997) ("Even though this case does not involve a default judgment, the Court will borrow the Second Circuit's definition . . . of 'excusable neglect' concerning vacating default judgments") (citations omitted).

a. PLAINTIFFS' CULPABILITY OR WILLFULNESS.

In circumstances where the moving party seeks relief from a judgment under Rule 60(b)(1) for lack of notice of the Court's order or judgment, the first factor, "whether the default was willful," requires "the moving party [to] . . . demonstrate that the error made did not result from his or her own culpable conduct and instead that the party behaved with appropriate diligence."[42] In making this determination, the Supreme Court of the Virgin Islands instructs that the Court consider, *inter alia*, "whether the movant acted in good faith."[43]

"[A] lack of diligence or confusion concerning the [procedural] Rules may not qualify the movant for relief."[44] Additionally, "carelessness by a litigant or his counsel does not afford a basis of relief under Rule 60(b)(1)[,]"[45] nor does a "plaintiff's lack of information concerning the status of his [or her] lawsuit."[46] Notably, in evaluating the culpability of a party moving to set aside a judgment, many federal courts[47] have concluded that "failure to receive notice of filing d[oes] not absolve counsel of his [or her] 'affirmative duty to stay apprised of the status of the case' . . .

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[42] *Griffith*, 2012 V.I. LEXIS 84, at *6 (citing *Robinson v. Wix Filtration Corp., LLC*, 599 F.3d 403, 413 (4th Cir. 2010)).
[43] *Fuller*, 59 V.I. at 953-954 (citing *Brown*, 49 V.I. at 383).
[44] *Id.* (citing *Aguiar-Carrasquillo v. Agosto-Alicea*, 445 F.3d 19, 28 (1st Cir. 2006) (other citations omitted).
[45] *Berry v. St. Thomas Gas Co.*, 1997 V.I. LEXIS 9, *17 (V.I. Terr. Ct. 1997) (citing *Pelican Production Corp. vs. Marino*, 893 F.2d 1143 (10th. Cir. 1990)); *See Rogers v. Tonn Motor Corp.*, 1990 V.I. LEXIS 29, *7 (V.I. Terr. Ct. 1990) ("[M]ere carelessness is not sufficient to warrant disturbing a judgment") (citations omitted).
[46] *Id.* at *17-18 (citing *Smith v. Alumax Extrusions Inc.*, 868 F.2d 1469 (5th Cir. 1989)) (other citation omitted); *See Rogers*, 1990 V.I. LEXIS 29, at *7 ("Attorney's failure to read or attend to court notices does not constitute excusable neglect") (citations omitted); *See Vessup*, 1997 V.I. LEXIS 18, at *11 ("Attorneys of record have a responsibility to their clients to continuously endeavor to be fully apprised of all matters in their cases"); *Griffith*, 2012 V.I. LEXIS 84, at *8 (The moving party "had an obligation to inquire of the status of the appeal").
[47] Because SUPER. CT. R. 50 instructs the Court to apply FED. R. CIV. P. 59 through 61, the Court will consider the doctrines developed under these federal rules by federal courts in addition to the precedent delineated in this jurisdiction under SUPER. CT. R. 50. While not binding, the federal precedent is particularly persuasive on this issue given the explicit instruction of SUPER. CT. R. 50 to apply the specific provisions of the Federal Rules of Civil Procedure when addressing motions to set aside judgments. *See Santiago v. V.I. Housing Auth.*, 57 V.I. 256, 275 n.11 (V.I. 2012) (citing *Corraspe v. People*, 53 V.I. 470, 482-83 (V.I. 2010)).

[because] attorneys are 'obligated to monitor the court's docket.'"[48] Therefore, some courts have held that "absent evidence that the official docket failed to reflect entry of final judgment . . . failure to receive notice of final judgment [generally] d[oes] not warrant relief" under Rule 60(b).[49] Nevertheless, some courts have found excusable neglect under Rule 60(b)(1) when counsel's lack of notice is coupled with extenuating circumstances, such as a flood and subsequent move that left the defendant's offices in disarray[50] or the destruction of counsel's office as a result of a hurricane.[51]

Here, Plaintiffs argue that the Court's November 12, 2015, Memorandum and Order and December 8, 2015, Order, which directed Plaintiffs to amend their Complaint within certain time limits, failing which the Court would dismiss the case, "never made their way to St. Croix until January 21, 2016[,]" and that the Court's January 5, 2016, Order dismissing the action due to Plaintiffs' failure to amend their Complaint "was also never served."[52] However, Plaintiffs fail to submit any evidence to substantiate their claim that Plaintiffs' counsel was never served. Indeed, as Defendants point out, Plaintiffs provide no proof to support their statements that the "courier for [Plaintiffs'] counsel checks the [St. Croix] mailbox 'almost on a daily basis,'" nor do Plaintiffs "identify the court clerks who [Plaintiffs' counsel] contacted . . . [or] indicate the 'further investigation' conducted" by Plaintiffs' counsel[53] that resulted in Plaintiffs' conclusion that "it

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[48] *Gibson-Michaels v. Bair*, 255 F.R.D. 306, 307 (D.D.C. 2009) (citing *United States v. Baylor*, 162 Fed. Appx. 1, 2 (D.C. Cir. 2005)) (internal and other citations omitted); *See Robinson*, 599 F.3d at 413 (collecting cases).
[49] *Robinson*, 599 F.3d at 413 (citing parenthetically *Zimmer St. Louis, Inc. v. Zimmer Co.*, 32 F.3d 357, 361 (8th Cir. 1994)).
[50] *Amernational Industries, Inc. v. Action-Tungsram, Inc.*, 925 F.2d 970, 978 (6th Cir. Mich. 1991).
[51] *Newland*, 41 F. Supp. 2d 576 (finding excusable neglect so as to warrant relief under Rule 60(b)(1) from dismissal of a case for lack of prosecution in circumstances where plaintiffs' counsel failed to comply with the court's prior order, which warned that the matter would be dismissed if the case was not advanced within a proscribed number of days, because plaintiffs' counsel was unaware of the order and counsel's office was severely damaged by a hurricane).
[52] Pls.' June 24, 2016, Mot. for Relief ¶¶ 4-5.
[53] Defs.' Opp'n to Pls.' Mot. for Relief, p. 1.

appears the Clerk's office in St. Thomas failed to ever serve or otherwise notify Plaintiffs' counsel of the . . . Orders."[54]

Essentially, the parties dispute whether the factual circumstances surrounding counsel for Plaintiffs' alleged lack of notice of the Orders constitutes "excusable neglect" warranting relief from the January 5, 2016, Order. "Generally, whether to hold a hearing on a motion for relief from judgment is within the discretion of the Superior Court."[55] Considering that Plaintiffs have utterly failed to support their Motion for Relief with any evidence whatsoever, the Court is tempted to not hold a hearing on Plaintiffs' motion. However, "[s]ince the parties raise[ ] a dispute over the facts"[56] underlying the basis for setting aside the January 5, 2016, Order, the Court is bound by the Supreme Court of the Virgin Islands precedent that requires the Court to "conduct a plenary evidentiary hearing in order to resolve th[e factual] dispute."[57] However, before the Court concludes that an evidentiary hearing is required to resolve the factual dispute regarding Plaintiffs' counsel's notice, the Court must evaluate the remaining factors employed in determining whether relief under Rule 60(b)(1) is warranted to ensure that a hearing would not be futile.

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[54] Pls.' June 24, 2016, Mot. for Relief ¶ 4.

[55] *Ernest v. Morris*, 2016 V.I. Supreme LEXIS 18, *23 (V.I. 2016) (citing 11 CHARLES ALAN WRIGHT, ARTHUR R. MILLER, & MARY KAY KANE, FEDERAL PRACTICE & PROCEDURE § 2865 (3d ed. 2012)) (other citation omitted).

[56] *Id.* at *27 ("Whether a basis exists for vacating a default judgment because service was improper concerns factual questions that can only be resolved by an evidentiary hearing . . . Since the parties raised a dispute over the facts, the court had to hold a hearing to resolve them") (citations omitted).

[57] *Boynes v. Transp. Servs. of St. John, Inc.*, 60 V.I. 453, 465 (V.I. 2014) ("If there is a factual dispute ... then the court must conduct a plenary evidentiary hearing in order to resolve that dispute") (internal quotation marks and citation omitted); *3RC & Co. v. Boynes Trucking Sys., Inc.*, 63 V.I. 544, 558 (V.I. 2015) (The Superior Court is "require[d] ... to hold an evidentiary hearing" before making findings of fact); *Ernest*, 2016 V.I. Supreme LEXIS 18, at *27 (citations omitted); *See also People of the Virgin Islands v. Armstrong*, 2016 V.I. Supreme LEXIS 14, *14-15 (V.I. 2016) ("[W]here the Superior Court must resolve factual issues in ruling on a motion, 'the Superior Court [is required] to hold an evidentiary hearing'") (citations omitted).

b. MERITORIOUS DEFENSE.

In general, the second factor in determining whether to set aside a final judgment for excusable neglect asks whether the opposing party has a meritorious defense. However, in circumstances such as those here, where Plaintiffs seek relief from a judgment dismissing their case, the inquiry is properly framed as whether "the movant 'can demonstrate a meritorious claim or defense' to the motion upon which the . . . [C]ourt dismissed the complaint."[58] Indeed, "[i]t has long been established that as a precondition to relief under Rule 60(b), the movant must provide the . . . [C]ourt with reason to believe that vacating the judgment will not be an empty exercise or a futile gesture."[59]

In the November 12, 2015, Memorandum Opinion, the Court concluded that, because the Complaint was devoid of sufficient factual allegations to plausibly suggest that Plaintiffs exhausted their administrative remedies under PELRA, the Complaint failed to state a claim under Section 1983 and that Plaintiffs' causes of action for breach of the collective bargaining agreement and breach of the duty of good faith and fair dealing were premature.[60] As a result, the Court dismissed these claims without prejudice, but granted Plaintiffs leave to amend the Complaint to cure the deficiencies.[61] Essentially, Plaintiffs contend that the January 5, 2016, Order should be set aside because, had Plaintiffs' counsel been notified of the Court's prior Orders directing Plaintiffs to amend the Complaint, Plaintiffs would have amended the Complaint to cure the

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[58] *Murray v. District of Columbia*, 52 F.3d 353, 355 (D.C. Cir. 1995) (citing *Lepkowski v. United States Dep't of Treasury*, 804 F.2d 1310, 1314 (D.C. Cir. 1986) ("[M]otions for relief under Rule 60(b) are not to be granted unless the movant can demonstrate a meritorious claim or defense; we cannot escape the fact that the complaint and the proposed opposition were insufficient as a matter of law to defeat the motion on the statute of limitations ground")).
[59] *Gibson-Michaels*, 255 F.R.D. at 307-308 (citing *Murray*, 52 F.3d at 355) (collecting cases)).
[60] *See* November 12, 2015, Mem. Op.
[61] *See* November 12, 2015, Mem. Op.; November 12, 2015, Order.

defects in pleading the claims that were dismissed without prejudice.[62] On the other hand, Defendants argue "an amended [C]omplaint would warrant a dismissal of the counts that were dismissed without prejudice . . . [because Plaintiffs] failed to prove that [they] ha[ve] exhausted [their] administrative remedies."[63]

Since the entry of the January 5, 2016, Order, dismissing Plaintiffs' case, Plaintiffs have submitted numerous filings and letters to the Court expressing their concern over the fact that they were unable to amend their Complaint before the case was dismissed. However, apart from the argument and exhibits referenced by Plaintiffs in connection with their original Complaint and Opposition to Defendants' Motion to Dismiss, which the Court considered in rendering the November 12, 2015, Memorandum Opinion, Plaintiffs have not submitted a proposed amended Complaint, nor have Plaintiffs made any argument or submitted any evidence, demonstrating that they exhausted their administrative remedies under PELRA. Without this information, the Court cannot determine whether setting aside the January 5, 2016, Order would be futile. As a result, at this time, this factor neither weighs in favor of nor weighs against setting aside the January 5, 2016, Order.

c. PREJUDICE TO DEFENDANTS.

The final factor to consider in evaluating whether to set aside a final judgment for excusable neglect is "the level of prejudice that may occur" to the non-moving party. This determination must be made by considering the totality of the circumstances, which includes, *inter alia*, "the length of delay [caused by the party's omission] . . . and its potential impact on judicial

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[62] *See* Pls.' June 24, 2016, Mot. for Relief; *See also* Pls.' January 29, 2016, Mot. to Extend Time for Filing of Am. Compl.
[63] Defs.' Opp'n to Pls.' Mot. for Relief, pp. 3-4.

proceedings, [and] the reason for the delay, including whether it was within the reasonable control of the movant . . ."[64]

Here, the length of delay from the entry of the January 5, 2016, Order dismissing the case and the date Plaintiffs sought relief under Rule 60(b) is unclear. Plaintiffs contend they "were not aware" of the Court's Orders directing them to amend the Complaint until January 21, 2016.[65] Consequently, Plaintiffs sought leave to amend the Complaint on January 29, 2015, at which time Plaintiffs' counsel was purportedly unaware that the case had been dismissed on January 5, 2016, due to Plaintiffs' failure to amend the Complaint, because the Clerk's office allegedly failed to notify him of that Order.[66] According to Plaintiffs, they did not discover the January 5, 2016, Order until February 1, 2016.[67] Plaintiffs contend their Motion for Relief was first mailed to the Court on February 3, 2016,[68] but it is undisputed that the Motion was not listed on the Court's docket, and defense counsel contends she "was not served with a copy of the Motion dated February 3, 2016."[69]

However, the Court and defense counsel were formally informed of Plaintiffs' desire to amend the Complaint and purported lack of notice of the Court's Orders as early as January 29, 2016, when Plaintiffs filed their Motion to Extend Time for Filing of Amended Complaint. Yet, Plaintiffs' counsel waited until May 2, 2016, three (3) months after he purportedly mailed Plaintiffs' first Motion for Relief, to file anything else with respect to this issue. In their May 2,

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[64] *Fuller,* 59 V.I. at 953-954 (citing *Brown,* 49 V.I. at 383).
[65] Pls.' June 24, 2016, Mot. for Relief, ¶ 4.
[66] Pls.' June 24, 2016, Mot. for Relief, ¶ 5.
[67] Pls.' June 24, 2016, Mot. for Relief, ¶ 5.
[68] *See* Pls.' June 24, 2016, Mot. for Relief ¶ 8 ("The court should note that the undersigned has mailed this Motion as far back as February 3, 2016 to the Court. However, a check of the docket reveals that the Motion was not received, and is not pending before this Court").
[69] Defs.' Opp'n to Pls.' Mot. for Relief, p. 2.

2016, Notice, Plaintiffs submit that they first sought relief from the Court's January 5, 2016, Order in a "Motion . . . filed on January 28, 2016."[70] But, the only motion listed on the Court's docket is Plaintiffs' January, 29, 2016, Motion to Extend Time for Filing of Amended Complaint, and Plaintiffs assert in their June 24, 2016, Motion for Relief that Plaintiffs' counsel was not informed as to the existence of the January 5, 2016, Order until February 1, 2016.[71] Despite that these contradictions raise concerns with respect to the veracity of Plaintiffs' allegations, less than six (6) months passed from the date the January 5, 2016, Order was entered and the filing of Plaintiffs' Motion for Relief on June 24, 2016.

Defendants contend that setting aside the January 5, 2016, Order "would prejudice the Government because it will then be required to litigate a civil action while simultaneously working with . . . [Plaintiffs] to resolve the grievances that are the subject of the civil action, thereby also wasting the Court's resources."[72] However, the January 5, 2016, Order was rendered after the Court granted Defendants' Motion to Dismiss for failure to state a claim upon which relief can be granted under Rule 12(b)(6). Thus, having just surpassed the pleadings stage, if the Court were to set aside the January 5, 2016, Order, the case would be in the comparatively early stages of litigation, which generally diminishes the prejudice against the non-moving party.[73] Further, Defendants do not contend, nor does it appear, that "intervening rights have attached in reliance upon" the January 5, 2016, Order or that progress in resolving Plaintiffs' grievances was materially

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[70] Pl.'s Notice of Pending Mot. & Request for Immediate Adjudication, p. 1.
[71] Pls.' June 24, 2016, Mot. for Relief, ¶ 5.
[72] Defs.' Opp'n to Pls.' Mot. for Relief, p. 4.
[73] *See Cohen*, 2013 U.S. Dist. LEXIS 39407, at *19 ("Delay in realizing satisfaction on a claim rarely serves to establish the degree of prejudice sufficient to prevent the opening [of] a default judgment entered at an early stage of the proceedings") (quoting *Feliciano v. Reliant Tooling Co., Ltd.*, 691 F.2d 653, 656-657 (3d Cir. 1982)); 11 CHARLES ALAN WRIGHT, ARTHUR R. MILLER, & MARY KAY KANE, FEDERAL PRACTICE & PROCEDURE § 2857, 324 (3d ed. 2012) ("There is much more reason for liberality in reopening a judgment when the merits of the case never have been considered than there is when the judgment comes after a full trial on the merits").

affected by the January 5, 2016, Order.[74] As a result, it does not appear that Defendants are prejudiced by the delay.

However, as the Court discussed in its November 12, 2015, Memorandum Opinion, the Court is troubled by Plaintiffs' failure to allege facts or submit any argument whatsoever with respect to: (1) whether Plaintiffs filed an Unfair Labor Practice Charge with the Public Employees Relations Board ("PERB") under PELRA regarding the issues alleged in the Complaint;[75] (2) whether the exhaustion of administrative remedies under PELRA would have been futile; and (3) whether the administrative process under PELRA could not assure Plaintiffs procedural due process under the Fourteenth Amendment,[76] particularly when Plaintiffs seek injunctive relief and therefore are statutorily required to exhaust all administrative remedies prior to initiating a judicial proceeding in the Superior Court.[77] Yet, the Court is also cognizant of the fact that complaints to

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[74] *See* Defs.' Opp'n to Pls.' Mot. for Relief, p. 3; 11 CHARLES ALAN WRIGHT, ARTHUR R. MILLER, & MARY KAY KANE, FEDERAL PRACTICE & PROCEDURE § 2857, 322 (3d ed. 2012) (The Court's "discretion ordinarily should incline toward granting rather than denying relief, especially is no intervening rights have attached in reliance upon the judgment and no actual injustice will ensure") (footnotes omitted).

[75] *See Francis v. Gov't of the V.I.*, 2014 V.I. LEXIS 43, *7-8 (V.I. Super. Ct. July 10, 2014) ("Plaintiff's having filed a Charge of Unfair Labor Practice against Defendant regarding grievances . . . Plaintiff is bound by 24 V.I.C. § 374(d), that provides '[t]hat no employee may avail himself of more than one grievance procedure for the resolution of a particular grievance and/[o]r dispute.' As a result, absent additional evidence, the Court finds that it lacks subject-matter jurisdiction due to the current pending Charge before . . . [PERB] regarding the same matter as that outlined in the Complaint").

[76] *See* U.S. Const. amend. XIV, § 1; *Rivera-Moreno v. Government of the Virgin Islands*, 61 V.I. 279, 315, n. 11 (VI. 2014) ("[T]he Due Process Clause of the Fourteenth Amendment is applicable to the Virgin Islands by virtue of section 3 of the Revised Organic Act") (citing 48 U.S.C. § 1561) ("The following provisions of and amendments to the Constitution of the United States are hereby extended to the Virgin Islands to the extent that they have not been previously extended to that territory and shall have the same force and effect there as in the United States or in any State of the United States ... the first to ninth amendments inclusive [and] the second sentence of section 1 of the fourteenth amendment").

[77] 24 V.I.C. § 346 ("No restraining order or injunctive relief shall be granted to any complainant who has failed to comply with any obligation fixed by the laws involved in the labor dispute in question, or who has failed to make every effort to settle such dispute either by negotiation or with the aid of the Department of Labor and voluntary arbitration."); *McBean v. Gov't of the V.I.*, 1995 V.I. LEXIS 21, *9 (V.I. Terr. Ct. 1995) (The statutory scheme of PELRA "provides for expeditious, consistent and expert settlement of labor disputes which must be utilized and exhausted before the jurisdiction of this court is exercised in labor disputes involving a claim for injunctive relief") (citing 24 V.I.C. § 346); *See also Pate v. Gov't of the V.I.*, 2014 V.I. LEXIS 112, *14 n. 53 (V.I. Super. Ct. Dec. 11, 2014) (noting exhaustion of remedies is statutorily required for injunctions in labor disputes under 24 V.I.C. § 346).

PERB must be submitted no more than "180 days after the alleged violation is known to the complaining party[,]"[78] and therefore, in the event Plaintiffs did not file an Unfair Labor Practice Charge, Plaintiffs are now foreclosed from seeking review from PERB. In this scenario, judicial review would potentially be appropriate on at least some of Plaintiffs' claims.

Nevertheless the Court also acknowledges Defendants' frustration in having to litigate this action while simultaneously working to resolve Plaintiffs' grievances through arbitration. Moreover, the Court is also hesitant to rule on the merits of Plaintiffs' claims when the parties clearly agreed to have their claims decided by an arbitrator rather than the Court and the potential waste of judicial resources that will ensue, should the grievances be resolved in arbitration while this action is pending.[79] However, the strain this action has on the Court's judicial resources, though relevant to the necessity of Plaintiffs exhausting administrative remedies before seeking judicial intervention, does not directly pertain to the prejudicial effect reopening the case will have on Defendants.

The Court finds a factual dispute exists as to whether Plaintiffs' exhausted their administrative remedies, which pertains to this Court's determination of whether to grant or deny Plaintiffs relief under Rule 60(b). Therefore, at this time, this factor neither weights in favor of nor against setting aside the January 5, 2016, Order.

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[78] 24 V.I.C. § 379(a).

[79] *See AT&T Techs. v. Communs. Workers of Am.*, 475 U.S. 643, 649-650 (U.S. 1986) (Under federal jurisprudence regarding labor law under federal law, the issue of whether "the union's claim that the employer has violated the collective-bargaining agreement is to be decided, not by the court . . . but as the parties have agreed, by the arbitrator") (citations omitted). Though not binding on this Court, federal labor law jurisprudence offers a coherent framework regarding the utility of arbitration in labor disputes that is helpful in addressing collective bargaining agreements and arbitration issues in this jurisdiction.

C. The Necessity of an Evidentiary Hearing and Other Conditions.

As the foregoing makes clear, the parties have raised factual issues that bear on the Court's determination of whether to grant or deny Plaintiffs' Motion for Relief under Rule 60(b)(1). The Court recognizes that it was the former practice of this Court to resolve such factual issues through the briefs and evidence submitted by counsel and that holding an evidentiary hearing on this issue will cause the Court, parties, and counsel to expend valuable time, effort, and resources. Despite that the Court theoretically has discretion to hold a hearing on a motion for relief from a judgment,[80] the Court is nevertheless bound by the Supreme Court of the Virgin Islands' requirement that the factual dispute be resolved at a full evidentiary hearing.[81] As a result, the Court will schedule an evidentiary hearing to resolve the factual disputes inherent in Plaintiffs' Motion for Relief.

Specifically, the Court will address at the evidentiary hearing the factual dispute regarding whether Plaintiffs' counsel's purported lack of notice resulted from his own culpable conduct or instead that he behaved with appropriate diligence so as to potentially warrant relief under Rule 60(b)(1). As the moving party, the burden of proof is on Plaintiffs.[82] In addition to the facets of "excusable neglect" addressed by the Court above, this determination will also involve a consideration of whether Plaintiffs' counsel's asserted lack of notice "is the result of ill will or bad faith."[83]

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[80] *supra* n. 55.
[81] *supra* n. 57.
[82] *See Griffith*, 2012 V.I. LEXIS 84, at *6 (citations omitted).
[83] *See Spencer*, 2009 V.I. Supreme LEXIS 25, at *8-9 ("[W]here the defendant's failure to appear at trial is the result of ill will or bad faith, or where vacating the default judgment would cause significant prejudice to the plaintiff, substantial justice may counsel against granting relief from a default judgment") (citations omitted).

The Court will also address at the evidentiary hearing the factual dispute regarding Plaintiffs' exhaustion of administrative remedies prior to filing this action, as specified above, as these issues are germane to the Court's determination of whether the parties have meritorious claims and defenses in this action and whether Defendants will be unduly prejudiced by the setting aside of the January 5, 2016, Order.

In the Court's view, these are the only factual disputes raised by the parties with respect to Plaintiffs' Motion for Relief under Rule 60(b), and, therefore, the evidentiary hearing will be held only on these limited issues of fact. These limitations are necessary to ensure that the parties are given adequate notice of the scope of the hearing and the evidence that should be presented therein.

CONCLUSION

In order to resolve the aforementioned factual disputes, the Court will schedule an evidentiary hearing on Plaintiffs' June 24, 2016, Motion for Relief. As a result, Plaintiffs' Motion for Relief will be held in abeyance. Because the Court cannot determine whether to grant Plaintiffs' leave to amend the Complaint without first resolving Plaintiffs' Motion for Relief, the Court will also hold Plaintiffs' January 29, 2016, Motion to Extend Time for Filing of Amended Complaint in abeyance.

An Order consistent with this Memorandum Opinion that shall follow.

Dated: August 31, 2016

HON. MICHAEL C. DUNSTON
JUDGE OF THE SUPERIOR COURT
OF THE VIRGIN ISLANDS

~~ATTEST:~~ Estrella George
Acting Clerk of Court
by:
Lori Boynes-Tyson
Court Clerk Supervisor 8/31/16

CERTIFIED A TRUE COPY
DATE: Sept. 01, 2016
ESTRELLA H. GEORGE
Acting Clerk of the Court
By:
Cameil A. Clarke
Court Clerk II