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

VFI KR SPE I LLC and VARILEASE FINANCE, INC. Plaintiffs,	)	
v.	)	Case No. 1:26-mc-00027
VIRGIN ISLANDS GOVERNMENT HOSPITALS AND HEALTH FACILITIES CORPORATION and GOVERNOR JUAN F. LUIS HOSPITAL AND MEDICAL CENTER, Defendants.	)	

MOTION TO SET ASIDE DEFAULT JUDGMENT AS VOID

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COMES NOW Virgin Islands Government Hospitals and Health Facilities Corporation [hereinafter "VIGHHFC"], by and through its undersigned counsel, and moves, pursuant to Rule 60(b)(4) of the Federal Rules of Civil Procedure, to set aside the default judgment entered on September 22, 2026, by the U.S. District Court of the Eastern District of Michigan in *VFI KR SPE I LLC v. Virgin Islands Government Hospitals & Health Facilities Corp.*, No. 2:26-cv-11053, ECF No. 24, and registered in this Court on October 27, 2026. ECF No. 1. VIGHHFC also respectfully requests that, upon setting aside the default judgment, the Court deny the pending request for a writ of execution, ECF No. 2.

Two independent jurisdictional defects require this relief. First, VIGHHFC was never served with the summons and complaint as Rule 4(j)(2) requires, so the rendering court, the Eastern District of Michigan, never acquired personal jurisdiction. Second, VIGHHFC is an arm of the Government of the Virgin Islands and, therefore, is not a citizen for purposes of diversity jurisdiction under 28 U.S.C. § 1332(a), the only jurisdictional basis Plaintiffs alleged.

BACKGROUND

On March 31, 2026, Plaintiffs VFI KR SPE I LLC and Varilease Finance, Inc. sued VIGHHFC and the Governor Juan F. Luis Hospital and Medical Center [hereinafter "JFL"] in the U.S. District Court of the Eastern District of Michigan.[1] Exhibit 1, Complaint. They brought four common law claims: breach of contract, claim and delivery, foreclosure of security interest, and specific performance. They brought no federal statutory claims and no constitutional claims. The sole alleged basis for jurisdiction was 28 U.S.C. § 1332(a) on the theory that "there is complete

[1] The Supreme Court of the Virgin Islands has held that the Governor Juan F. Luis Hospital and Medical Center (JFL) "is not a separate legal entity empowered to sue and be sued." *Juan F. Luis Hosp. & Med. Ctr., & Gov't of the V.I. ex rel. Governor Juan F. Luis Hosp. & Med. Ctr. v. Titan Med. Grp., LLC*, 69 V.I. 873, 886 (V.I. 2018). The jurisdictional defects apply equally to the judgment insofar as it names JFL, and JFL is not discussed further.

diversity of citizenship between Plaintiffs and Defendants." Compl. ¶ 10. Plaintiffs alleged that "[n]one of the members or sub-members of VFI KR are citizens of the U.S. Virgin Islands," *id.* ¶ 1, and that VIGHHFC is a public benefit corporation with its principal place of business in Christiansted, St. Croix, U.S. Virgin Islands, *id.* ¶ 3. They did not allege that VIGHHFC is a citizen of the Virgin Islands.

On April 13, 2026, a process server signed a return stating that he "served the summons on Stephanie-Anne Oriol, who is designated by law to accept service on behalf of Virgin Islands Government Hospitals and Health Facilities." Exhibit 2. Ms. Oriol, a Legal and Administrative Coordinator, was neither VIGHHFC's designated registered agent nor authorized by law to accept service of process on behalf of VIGHHFC or its chief executive officer. Exhibit 3, Oriol Decl. The chief executive officer was not served with the summons and complaint.

Plaintiffs obtained a clerk's entry of default on May 6, 2026. Exhibit 4. On May 29, 2026, Plaintiffs moved for a default judgment and provided such motion and notice of the motion hearing date to Governor Albert Bryan, Jr., Attorney General Gordon Rhea, VIGHHFC, JFL, and JFL CEO D. Baptiste. The Eastern District of Michigan granted the motion for a default judgment on September 22, 2026, Exhibit 5, and the Clerk of Court entered the default judgment, Exhibit 6.

Plaintiffs VFI KR SPE I LLC and Varilease Finance, Inc. registered the default judgment in this Court pursuant to 28 U.S.C. § 1963 on October 27, 2026, ECF No. 1, and requested a writ of execution, ECF No. 2.

The Court ordered Plaintiffs to brief the legal basis for executing on VIGHHFC's assets and questioned whether the rendering court had diversity jurisdiction. ECF No. 4 at 2 n.1, 3.

Because the judgment is void, the Court need not reach the execution question. VIGHHFC reserves all defenses to execution, including the exemption of its property from judicial process under 19 V.I.C. § 245b(a).

ARGUMENT

I. The registering court can set aside a rendering court's default judgment for lack of personal or subject matter jurisdiction.

Rule 60(b)(4) of the Federal Rules of Civil Procedure permits a court to "relieve a party . . . from a final judgment" when "the judgment is void." When a court lacks jurisdiction its judgment is void. *See Budget Blinds, Inc. v. White*, 536 F.3d 244, 252 (3d Cir. 2008). A judgment that is void must be set aside. *See Boughner v. Sec'y of Health, Educ., & Welfare*, 572 F.2d 976, 977 (3d Cir. 1978).

The court where the default judgment is registered under § 1963, i.e., the registering court, has the power "to inquire into the jurisdiction of the rendering court before enforcing the rendering court's judgment." *Harper Macleod Solicitors v. Keaty & Keaty*, 260 F.3d 389, 397 (5th Cir. 2001). A registering court can set aside a rendering court's judgment when the rendering court lacked personal jurisdiction due to lack of service of process. *Budget Blinds, Inc.*, 536 F.3d at 254. The majority of circuits has held that registering courts may rely on Rule 60(b)(4) to void a default judgment if the rendering court was without jurisdiction over the defendant. *Harper Macleod Solicitors*, 260 F.3d at 394-95 (collecting cases). When the defendant never appeared and the issues were never litigated, the defendant may raise them collaterally. *Ins. Corp. of Ir. v. Compagnie des Bauxites de Guinee*, 456 U.S. 694, 706 (1982).

In *On Track Transp., Inc. v. Lakeside Warehouse & Trucking, Inc.*, 245 F.R.D. 213, 222 (E.D. Pa. 2007), the court reasoned that "the power of the registering court to entertain Rule 60(b)(4) challenges should be the same, whether the rendering court's judgment is allegedly void because of a lack of subject matter or personal jurisdiction." No heightened burden applies to a litigant who does not appear, believing that the court lacks jurisdiction, and then challenges the judgment on jurisdictional grounds in a collateral proceeding. *Jakks Pac., Inc. v. Accasvek, LLC*, 270 F. Supp. 3d

191, 199-200 (D.D.C. 2017)(following *On Track Transp.*); *see* Restatement (Second) of Judgments § 65 cmt. b (1982).

Plaintiffs, as the parties invoking federal jurisdiction, ordinarily bear the burden of establishing it. The Third Circuit has noted, but not resolved, a division of authority over which party bears the burden in the context of a Rule 60(b)(4) motion after a default judgment has been entered. *Arpaio v. Dupre*, 527 F. App'x 108, 113 n.4 (3d Cir. 2013). District courts within the Circuit place the burden on plaintiff in the context of a Rule 60(b)(4) motion. *E.g., Crespo v. Masorti & Sullivan, P.C.*, 2021 LX 38551, at *5 (W.D. Pa. June 22, 2021).

II. The Eastern District of Michigan lacked personal jurisdiction because VIGHHFC was not served in accordance with Rule 4.

Proper service is a prerequisite to personal jurisdiction, and notice of the suit cannot substitute for it. *Grand Entm't Grp. v. Star Media Sales*, 988 F.2d 476, 492-93 (3d Cir. 1993). "It is an elementary requirement that personal jurisdiction must be established in every case before a court has power to render any judgment." *Lampe v. Xouth, Inc*., 952 F.2d 697, 701 (3d Cir. 1991).

A. Rule 4(j)(2) prescribes how VIGHHFC must be served.

"[A] state, a municipal corporation, or any other state-created governmental organization" must be served by "delivering a copy of the summons and of the complaint to its chief executive officer" or "in the manner prescribed by that state's law for serving a summons or like process on such a defendant." Fed. R. Civ. P. 4(j)(2)(A)-(B). VIGHHFC, a legislatively-created "public benefit corporation of the Government of the Virgin Islands," 19 V.I.C. § 243(a), is such an organization.

The applicable Virgin Islands rule provides that a public corporation subject to suit under 5 V.I.C. § 1142(b) must be served through "the designated registered agent, the chief executive officer, or any other person authorized by law to accept service of process, unless otherwise provided by

law."[2] V.I. R. Civ. P. 4(i)(2)(B); *see VIWAPA Prof'l & Tech. Emples. Union v. V.I. Water & Power Auth.*, 2019 V.I. LEXIS 47, at *4 (V.I. Super. Mar. 29, 2019)(finding that WAPA may be served pursuant to Rule 4(i)(2)(B)).

B. Plaintiffs did not serve any of the persons Rule 4(j)(2) specifies.

Plaintiffs did not serve the chief executive officer.[3] Plaintiffs served only Ms. Oriol with the summons and complaint. She is not the designated registered agent and is not authorized by law to accept service on behalf of VIGHHFC. That the process server checked a box stating Ms. Oriol was "designated by law to accept service" does not make it so without a law conferring that authority, and the process server cites no such law, because there is none. Ms. Oriol's declaration rebuts the process server's affidavit. Delivery to an employee who is not an agent authorized by law to receive process is ineffective. *Hill Int'l, Inc. v. V.I. Pub. Fin. Auth.*, No. 3:24-cv-00049, 2024 LX 80352, at *27 n.17 (D.V.I. Dec. 18, 2024)(report and recommendation), *adopted*, 2025 LX 237490, *1 (D.V.I. Jan. 8, 2025).

In *Worldwide Travel Staffing, Ltd. v. Governor Juan F. Luis Hosp. & Med. Ctr.*, 75 V.I. 77, 84 (V.I. Super. 2021), process was served on the executive assistant to VIGHHFC's president. The court denied entry of default because "the 'executive assistant to the president of a corporation' is not a person authorized under Rule 4(i)(2)(B) to accept service of process for a public corporation, and Plaintiff failed to provide any evidence that [the executive assistant] [was] the designated registered agent of Defendant VIGHHFC or that she is a person authorized by law to accept service of process

[2] Title 5 V.I.C. § 1142(b) provides that "[a]n action may be maintained against any public corporation in the Virgin Islands within the scope of its authority." VIGHHFC is such "a 'public corporation.'" *Titan Med. Grp., LLC*, 69 V.I. at 885.

[3] Whether the term "chief executive officer" refers to the Governor or to the Chief Executive Officer appointed by VIGHHFC is of no moment here, because neither was served.

for Defendant VIGHHFC." Service of Plaintiffs' Eastern District of Michigan summons and complaint was insufficient for these same reasons.

Later service of the motion for default judgment and notice of hearing date did not cure the defective service of process. Rule 4(j)(2) of the Federal Rules of Civil Procedure requires that a copy of the summons and complaint be served. *See also* Fed. R. Civ. P. 4(c)("A summons must be served with a copy of the complaint."). And, of course, the default should not have been entered without proof of proper service.

The Eastern District of Michigan did not obtain personal jurisdiction over VIGHHFC because VIGHHFC was not properly served with the summons and complaint in conformance with Rule 4(j)(2). The rendering court had no power to render any judgment because it lacked personal jurisdiction over VIGHHFC. Therefore, this Court must set aside the default judgment, pursuant to Rule 60(b)(4) of the Federal Rules of Civil Procedure. *See Boughner*, 572 F.2d at 977.

III. The Eastern District of Michigan lacked subject matter jurisdiction because VIGHHFC is an arm of the Government of the Virgin Islands.

Diversity jurisdiction exists only when no plaintiff is a citizen of the same state or territory as any defendant. *GBForefront, L.P. v. Forefront Mgmt. Grp., LLC*, 888 F.3d 29, 34 (3d Cir. 2018) (opposing parties must be citizens of "diverse states"). States and territories are not considered citizens for the purpose of diversity jurisdiction, *Brown v. Francis*, 75 F.3d 860, 865 (3d Cir. 1996), which means that a state or territory cannot be sued in federal court based on diversity. An entity that is "the arm or alter ego of the State" also is not subject to suit in federal court based on diversity. *Moor v. County of Alameda*, 411 U.S. 693, 717 (1973)(quotation omitted). "It is immaterial whether the state engages in activities in its own name or through an 'arm' or 'alter ego.' For the purpose of diversity jurisdiction, the determinative factor is whether the state is the real party in interest." *Daley v. Dowdye*, 571 F. App'x 128, 129 (3d Cir. 2014).

In the Third Circuit, district courts previously applied the three *Fitchik* factors to determine whether a state or territorial instrumentality is an alter ego for diversity and other purposes – the funding factor, the status factor, and the autonomy/governmental control factor, *Fitchik v. New JerseyTransit Rail Operations*, 873 F.2d 655, 659 (3d Cir. 1989)(en banc), treating the factors as co-equals in the analysis, *McCauley v. University of the Virgin Islands*, 618 F.3d 232, 240-241 (3d Cir. 2010). *E.g. Hill Int'l, Inc.*, 2024 LX 80352, at *11 & n.11. The Supreme Court in *Galette v. New Jersey Transit Corp.*, 607 U.S. 509 (2026), has now directed that the analysis focus "predominately on (1) whether the entity is liable for its own judgments, which corresponds to the *Fitchik* funding factor, and (2) whether the State structured the entity as legally separate, which corresponds to the status factor. The entity's autonomy is a consideration 'of limited relevance.'" *Pennsylvania v. Thomas E. Proctor Heirs Tr.* [hereinafter "Proctor Heirs"], 185 F.4th 396, 405 (3d Cir. 2026).

Applying the *Fitchik* factors, courts have determined that the University of the Virgin Islands (UVI) is an alter ego of the Government of the Virgin Islands, *McCauley*, 618 F.3d at 240, but that the Virgin Islands Public Finance Authority (PFA), the Virgin Islands Port Authority, WAPA, the Virgin Islands Housing Authority, the Virgin Islands Housing Finance Authority, and the West Indian Company Limited are not alter egos, *Hill Int'l, Inc.*, 2024 LX 80352, at *11 n.11, *27. Applying the *Fitchik* factors, as re-balanced in *Galette,* the Court should find that, like UVI, VIGHHFC is an arm of the Government of the Virgin Islands.

A. The Funding Factor

The predominant consideration in determining whether an entity is an arm of the state or territory is whether the state or territory is liable for the entity's judgments. The three subfactors are "(1) a state's legal obligation to pay a money judgment entered against the entity; (2) whether the agency has money to satisfy the judgment; and (3) whether there are specific statutory provisions that

immunize the state from liability for money judgments." *Proctor Heirs,* 185 F.4th at 406 (quotation omitted).

(1) Legal obligations and practical realities.

By law, the Government of the Virgin Islands is required to "include in its Executive Budget Acts an appropriation for the operation of the hospitals and health facilities under the jurisdiction of the corporation." 19 V.I.C. § 245. The Government of the Virgin Islands must also compensate VIGHHFC's facilities for uncompensated care. 19 V.I.C. § 240(h). The appointment of all personnel is "subject to the V.I. Government's budget constraints and allotment process." 19 V.I.C. § 244a.

In *McCauley v. Univ. of the V.I.*, 2009 U.S. Dist. LEXIS 74661, at *24, 52 V.I. 816 (D.V.I. Aug. 21, 2009) *aff'd in part* McCauley, 618 F.3d 232, 253 (3d Cir. 2010), the district court considered the fact that the Legislature authorized annual appropriations of government funds to UVI as showing that "payment of a judgment against UVI might deplete the territory's treasury." In contrast, V.I. Port Authority is not considered to be an arm of the Territory because, unlike VIGHHFC, "its debts are its own and not that of the Government of the Virgin Islands," *V.I. Port Auth. v. Caribbean Assocs*., No. ST-2020-CV-0032, 2025 LX 18721, at *9 (V.I. Super. Apr. 9, 2025), and "it seems clear that the government of the Virgin Islands will not be required to pay any judgment entered against VIPA," *Ballentine v. V.I. Port Auth.*, 955 F. Supp. 480, 483 (D.V.I. 1997)(citing 29 V.I.C. § 541(e)). Similarly, the Virgin Islands Public Finance Authority's debts are "deemed to be those of the Authority and not those of the [Government]." *Hill Int'l, Inc.*, 2024 LX 80352, at *13 (quoting 29 V.I.C. § 918).

The Legislature has not shielded the Government from any liability for VIGHHFC's debts or judgments. The practical reality is that the Government is required to fund VIGHHFC's operations without exception, which would encompass VIGHHFC's liabilities for any judgments.

The Government appropriates significant funds on an annual basis, in response to VIGHHFC's budget request, to broadly cover its operating expenses, including uncompensated care. The Legislature has expressly recognized VIGHHFC as a burden on the General Fund. 19 V.I.C. § 245(i). For fiscal year 2027, Act No. 9144, the Government has appropriated $66,500,000 from the General Fund for VIGHHFC's operating expenses. Exhibit 7.

Both legally and practically, the Government shoulders the burden of any judgment against VIGHHFC. Unlike in *Galette*, in which state funding of NJ Transit "oscillat[ed]" and there was "no meaningful way to decide how much funding is enough," 607 U.S. at 534, here the Treasury is structurally and continuously responsible for VIGHHFC's operations, based on the budget VIGHHFC submits annually, 19 V.I.C. § 245(b).

(2) Ability to satisfy a judgment.

VIGHHFC lacks the independent means to absorb an adverse judgment. VIGHHFC does not have the same power to raise funds as V.I. Port Authority, which may issue bonds, 29 V.I.C. § 543(9), or the Virgin Islands Public Finance Authority, which "has multiple sources of funding, including, borrowing money, issuing bonds, receiving federal grants and loans, lending mortgages, leasing and selling property, charging fees for its services, and investing," *Hill Int'l, Inc.*, 2024 LX 80352, at *13-14 (citing 29 V.I.C. § 919); *see Gov't of the V.I. ex rel. Cotto v. Toliver*, No. 3:22-cv-00052, 2022 U.S. Dist. LEXIS 207467, at *25 (D.V.I. Nov. 16, 2022)(finding V.I. Housing Finance Authority not to be an alter ego in part because it has "numerous sources of revenue")(citing 21 V.I.C. § 103); *see also Proctor Heirs*, 185 F.4th at 407–08 (finding that Pennsylvania Game Commission was not arm of the state because it could cover shortfalls by raising fees or decreasing expenses); *Christy v. Pennsylvania Turnpike Commission,* 54 F.3d 1140, 1146-47 (3d Cir. 1995)(finding that Turnpike Commission was not arm of the state because it could satisfy judgment through tolls).

VIGHHFC cannot issue its own bonds and can only borrow through the PFA. 19 V.I.C. §§ 244(r), 247(b). VIGHHFC would have to turn to the Government of the Virgin Islands to satisfy an adverse judgment. Given that the Government has had to appropriate $66.5 million for VIGHHFC's operations, the Court can readily assess that VIGHHFC does not have the independent ability to satisfy a judgment and would have no choice but to lean on the public fisc. *See Hill Int'l, Inc.*, 2024 LX 80352, at *13; *Pa. Human Relations Comm'n v. USAir, Inc.*, 615 F. Supp. 75, 77 (W.D. Pa. 1985)(finding that Human Relations Commission was arm of the state because it is "entirely dependent on [the] Commonwealth for its funding").

(3) Statutory immunization.

Finally, the Legislature has not immunized the Government from VIGHHFC's liabilities. The V.I. Port Authority's and V.I. Public Finance Authority's enabling statutes make their debts and obligations their own. *Ballentine*, 955 F. Supp. at 484 (citing 29 V.I.C. § 541(e)); *Hill Int'l, Inc*., 2024 LX 80352, at *15 (citing 29 V.I.C. § 918). If the Legislature had intended to protect the Government against VIGHHFC's liabilities, it would have included a similar statutory provision. Unlike in *Proctor Heirs*, 185 F.4th at 408, in which the absence of an express disclaimer of liability carried little weight, here there is an indication that the Government is under an affirmative obligation to pay for judgments against VIGHHFC – the Government appropriates funds for VIGHHFC's operations without excluding payment of any judgments.

The funding factor weighs in favor of finding VIGHHFC to be an arm of the Government of the Virgin Islands.

B. The Status Factor

Four subfactors that the Court should consider in determining whether VIGHHFC is an arm of the territory are "(1) how the law treats the agency generally; (2) whether the agency is separately

incorporated; (3) whether the agency can sue and be sued in its own right; (4) and whether it is immune from state taxation." *Proctor Heirs*, 185 F.4th at 409 (quotation omitted).

(1) General treatment under Virgin Islands law.

The Legislature enacted the Virgin Islands Government Hospitals and Health Facilities Corporation Act, Act No. 6012 (Sept. 2, 1994), to create VIGHHFC to "manage health care delivery in partnership with the Government of the Virgin Islands" "expressly limited to the powers granted by [the] act." 19 V.I.C. § 240(j), (k). VIGHHFC is a "public benefit corporation of the Government of the Virgin Islands" with the "powers and duties expressly provided by law and no others." 19 V.I.C. § 243(a).

VIGHHFC is "inextricably part of the Government of the Virgin Islands." *V.I. Gov't Hosp. & Health Facilities Corp. v. Wrensford*, 79 V.I. 1193, 1216 (V.I. 2025). Actions that it takes are "government action" such that VIGHHFC must afford due process before affecting liberty or property interests. *Id.*

VIGHHFC provides a vital public service – medical care. By law, in the Virgin Islands, no one may be denied medical care because of inability to pay. 19 V.I.C. § 277(a). The Government stands behind this commitment to the public by compensating VIGHHFC for any medical care VIGHHFC provides that would be otherwise uncompensated, "to ensure the availability of quality, comprehensive health care to the indigent as well as other residents of the Virgin Islands." 19 V.I.C. § 240(h).

VIGHHFC is a public employer. *Gardiner v. V.I. Hosps. & Health Facilities Corp.*, 2016 V.I. LEXIS 157, *10 (V.I. Super. Oct. 4, 2016). As such, it is exempt from the Wrongful Discharge Act, 24 V.I.C. § 76, because that Act's protections do not extend to "public employers," 24 V.I.C. § 62. *Id.*; *Aaron v. V.I. Gov't Hosp. & Health Facilities Corp.*, 74 V.I. 222, 227 n.2 (V.I. Super. 2021). By

law, collective bargaining is conducted by the Government's Chief Negotiator and subject to the Governor's approval. 19 V.I.C. §§ 244a(c), 245(e), 246.

VIGHHFC is "a public entity of the Government of the Virgin Islands." 19 V.I.C. § 245(a). Unlike the V.I. Port Authority and WAPA, VIGHHFC does not have a "legal existence and personality separate and apart from the Government." *Compare* 29 V.I.C. § 541(e) and 30 V.I.C. § 103(b) *with* 19 V.I.C. § 243(a); *see Galette*, 607 U.S. at 525. VIGHHFC has been found entitled to sovereign immunity as an arm of the Government, and, therefore, not subject to trial by jury. Exhibit 8, *McBean v. V.I. Gov't Hosps. & Health Facilities Corp.*, No. ST-2018-CV-00257 (V.I. Super. Aug. 25, 2023); *cf. Proctor Heirs*, 185 F.4th at 409 (weighing state-court treatment of the entity as sovereign).

The Legislature and Judiciary of the Virgin Islands have consistently treated VIGHHFC as an arm of the Government of the Virgin Islands. The Executive Branch has likewise successfully asserted that VIGHHFC is subject to its control. *Bryan v. V.I. Gov't Hosp. & Health Facilities Corp.*, No. ST-2021-CV-00045, 2021 V.I. LEXIS 31, at *11 (V.I. Super. May 20, 2021)(finding that legislation that would have completely eliminated the Governor's ability to remove VIGHHFC board members violated the Revised Organic Act).

(2) Incorporation.

VIGHHFC is a "public health corporation of the Government of the Virgin Islands," *Carty v. People of the Virgin Islands*, 76 V.I. 345, 359 (V.I. 2022)(citing 19 V.I.C. § 243(a)). It is "a body corporate and politic constituting a public benefit corporation of the Government of the Virgin Islands." 19 V.I.C. § 243(a).

VIGHHFC is not a corporation with a separate legal personality; it is a corporation "of the Government." *Id.* It is "a public entity of the Government of the Virgin Islands." 19 V.I.C. § 245(a). While some Virgin Islands government instrumentalities are "autonomous," such as V.I. Port Authority, *V.I. Port Auth.,* 2025 LX 18721, at *12 (quoting 29 V.I.C. § 541), VIGHHFC is not.

VIGHHFC is not a corporation created to "distance the State from the burdens the corporate entity may incur," *see Galette*, 607 U.S. at 524; the Government is obligated to fund VIGHHFC and, thereby, pays its debts. Unlike V.I. Port Authority and WAPA, which are "corporation[s] having legal existence and personality separate and apart from the Government," 29 V.I.C. § 541(e); 30 V.I.C. § 103(b), VIGHHFC is interlocked with the Government.

VIGHHFC was not established as a traditional corporation. It may not "sell, mortgage, pledge or assign" its real property without legislative approval. 19 V.I.C. § 247(d). Unlike V.I. Port Authority, VIGHHFC does not have perpetual existence, but may be terminated by law. *Compare* 29 V.I.C. § 543(1) *with* 19 V.I.C. § 249; *see Ballentine,* 955 F. Supp. at 484 (finding that V.I. Port Authority's retaining "perpetual existence as a [separate] corporation" showed it is a "separate and distinct entity from the government of the Virgin Islands"). While the attribute of having the right to perpetual existence weighs against a finding that an entity is an arm of the state, *Hill Int'l, Inc.*, 2024 LX 80352, at *19 (finding that V.I. Public Finance Authority is not an arm of the territory, in part because it has perpetual existence), the contrary is also true – VIGHHFC's lack of perpetual existence weighs in favor of finding that it is an arm of the territory, particularly given that upon its termination, its assets will vest in the Government, 19 V.I.C. § 249.

(3) Ability to sue and be sued.

VIGHHFC can sue and be sued, but only to the extent that the Government can be, 19 V.I.C. § 244(a), which shows that it is an arm of the territory. *See Proctor Heirs*, 185 F.4th at 410 n.10. The governmental instrumentalities that are not arms of the territory may "sue and be sued" without that limitation. Unlike VIGHHFC, their "unrestricted power to sue and be sued" signals that they are not an arm of the territory. *See id.* at 410.

The same tort claim limits apply to VIGHHFC as to the Government. Indeed, VIGHHFC is included within the definition of Government of the Virgin Islands under the Virgin Islands Tort Claims Act (VITCA), 33 V.I.C. § 3401. This strongly favors finding that VIGHHFC is an arm of the

territory. *See Gov't of the V.I. ex rel. Cotto,* 2022 U.S. Dist. LEXIS 207467, at *30 (finding that status factor weighed in favor of treating V.I. Housing Finance Authority as an arm of the Government because it is covered under VITCA, but ultimately concluding that it was not an alter ego).

When an entity is excluded from the statutory tort claim limits and procedures applied to the government, it tends to show that the entity is not an arm of the state or territory. *Galette*, 607 U.S. at 529. In concluding that V.I. Port Authority is not an arm of the Government, the court found it compelling that V.I. Port Authority is not protected by VITCA, but rather by a separate law limiting the amount of judgment that may be entered against it. *V.I. Port Auth.*, 2025 LX 18721, at *14; *see Ballentine,* 955 F. Supp. at 484 (factoring in that the Tort Claims Act "does *not* apply to VIPA"); *see also Hill Int'l, Inc.*, 2024 LX 80352, at *17-18 (recognizing that, as an independent instrumentality, V.I. Public Finance Authority is not protected by the Tort Claims Act, which weighs against alter ego status).

Had the Legislature viewed VIGHHFC as a private entity, there would have been no need to waive its immunity by statute. The Legislature would not have needed to include a "sue and be sued clause" or to expressly allow it to be sued in tort under VITCA. *See Maliandi v. Montclair State Univ.*, 845 F.3d 77, 93 (3d Cir. 2016)(remarking that subjecting an entity to a tort claims act "counsels in favor of immunity" because it implies that the entity would be immune from tort claims absent the tort claims act); *Albrecht v. Comm. on Emple. Bens. of the Fed. Res. Emple. Bens. Sys.*, 357 F.3d 62, 67 (D.C. Cir. 2004) (noting that federal instrumentalities possess sovereign immunity, which is why waiver is required to sue them); *Jones-Hailey v. Corp. of TVA*, 660 F. Supp. 551, 553 (E.D. Tenn. 1987)("TVA does enjoy sovereign immunity, as evidenced by the fact that Congress had to waive this immunity to allow suits against TVA.").

Unlike the Virgin Islands' autonomous instrumentalities, when VIGHHFC sues or is sued, by law, it may request that the Attorney General represent it. 19 V.I.C. § 245(d). This further demonstrates the nexus between VIGHHFC and the Government of the Virgin Islands.

(4) Tax immunity

VIGHHFC is exempt from all taxes and special assessments because the property it acquires and holds "is declared to be public property used for essential public and governmental purposes," 19 V.I.C. § 245b(b), and because it "is a public entity of the Government of the Virgin Islands," *id.* § 245(a). Although immunity from taxation has been interpreted as pointing in either direction, *Proctor Heirs*, 185 F.4th at 410-411, because VIGHHFC is exempt from taxes on the grounds that its property is public property and that it is a public entity of the Government, taxation immunity weighs in favor of finding that VIGHHFC is an arm of the territory. *See Hill Int'l, Inc.,* 2024 LX 80352, at *20 (noting that immunity from taxation is an attribute showing alter ego status); *Gov't of the V.I. ex rel. Cotto*, 2022 U.S. Dist. LEXIS 207467, at *35 (weighing V.I. Housing Finance Authority's immunity from Virgin Islands taxation as favoring finding it an arm of the Government); *see also Proctor Heirs*, 185 F.4th at 411 (finding that Pennsylvania Game Commission's obligation to pay ordinary property tax strongly suggests that the General Assembly did not regard it as an alter ego).

On balance, the status factor favors alter-ego status. The general treatment of VIGHHFC under Virgin Islands law, that it is not autonomous, the constraints on its "sue and be sued" capacity, and its immunity from taxes as a public entity holding public property all warrant finding that VIGHHFC is an arm of the territory.

C. Autonomy/Government control

The extent of the Government's control over VIGHHFC, or lack thereof, is of "low probative value." *See Proctor Heirs*, 185 F.4th at 405. The Government's control nonetheless reinforces the conclusion that VIGHHFC is an arm of the Territory.

VIGHHFC was created as "a body corporate and politic constituting a public benefit corporation of the Government of the Virgin Islands." 19 V.I.C. § 243(a). Unlike VIGHHFC, V.I. Port Authority and WAPA, which were found not to be arms of the territory, were created as "autonomous governmental instrumentalit[ies]." 29 V.I.C. § 541; 30 V.I.C. § 103(a). Not only was VIGHHFC not created as an autonomous governmental instrumentality, but the Government also exerts significant control over it.

Unlike the Pennsylvania Game Commission, which is "not subject to the policy supervision and control of the Governor" and funds itself, *Proctor* Heirs, 185 F.4th at 411–12, VIGHHFC's budget is subject to legislative appropriation, 19 V.I.C. § 245(b); it must report annually to the Governor and the Legislature in detail on its "operations and accomplishments, receipts and expenditures, assets and liabilities, the details of its lease and sales agreements, the amount charged for services, and the improvements, if any, in its collections," as well as submit a certified audit, *id.* § 246(a), (e); and it must comply with the Government's laws, rules and regulations, and procedures, particularly as to employees, *id.* § 246(c).

Thus, the governmental control factor also weighs in favor of VIGHHFC being an arm of the Government.

The funding factor, status factor, and control factor all weigh in favor of recognizing that VIGHHFC is an arm of the territory. Therefore, VIGHHFC is not a citizen for the purposes of diversity jurisdiction. Thus, the Eastern District of Michigan lacked subject matter jurisdiction, and its default judgment must be set aside.

CONCLUSION

The jurisdictional defects warrant relief under Rule 60(b)(4). The Eastern District of Michigan lacked personal jurisdiction because VIGHHFC was not served in accordance with Rule 4(j)(2) of the Federal Rules of Civil Procedure. The Eastern District of Michigan also lacked subject matter jurisdiction because VIGHHFC is an arm of the Government of the Virgin Islands, and therefore, not a citizen for the purposes of diversity jurisdiction pursuant to 28 U.S.C. § 1332(a). Due to either one of these jurisdictional defects, the default judgment cannot stand.

For these reasons, VIGHHFC respectfully requests that, pursuant to Rule 60(b)(4) of the Federal Rules of Civil Procedure, this Court set aside the default judgment entered against it by the Eastern District of Michigan as void and unenforceable, and deny the pending request for a writ of execution, ECF No. 2.

Respectfully submitted,

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