

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

|  |   |                          |
|--|---|--------------------------|
| WALEED HAMED, as Executor of the<br>Estate of MOHAMMAD HAMED,                                | ) |                          |
|  | ) |                          |
| Plaintiff/Counterclaim Defendant,  | ) | CIVIL NO. SX-12-CV-370   |
| v.   | ) |                          |
|  | ) | ACTION FOR INJUNCTIVE    |
| FATHI YUSUF and UNITED CORPORATION,  | ) | RELIEF, DECLARATORY      |
|  | ) | JUDGMENT, AND            |
| Defendants/Counterclaimants,   | ) | PARTNERSHIP DISSOLUTION, |
| v.   | ) | WIND UP, AND ACCOUNTING  |
|  | ) |                          |
| WALEED HAMED, WAHEED HAMED,<br>MUFEED HAMED, HISHAM HAMED, and<br>PLESSEN ENTERPRISES, INC., | ) |                          |
|  | ) |                          |
| <u>Additional Counterclaim Defendants.</u>   | ) | Consolidated With        |
|  | ) |                          |
| WALEED HAMED, as Executor of the<br>Estate of MOHAMMAD HAMED,                                | ) |                          |
|  | ) | CIVIL NO. SX-14-CV-287   |
| Plaintiff,   | ) |                          |
| v.   | ) | ACTION FOR DAMAGES AND   |
|  | ) | DECLARATORY JUDGMENT     |
| UNITED CORPORATION,  | ) |                          |
|  | ) |                          |
| <u>Defendant.</u>  | ) |                          |
|  | ) |                          |
| WALEED HAMED, as Executor of the<br>Estate of MOHAMMAD HAMED,                                | ) | CIVIL NO. SX-14-CV-278   |
|  | ) |                          |
| Plaintiff,   | ) | ACTION FOR DEBT AND      |
| v.   | ) | CONVERSION               |
|  | ) |                          |
| FATHI YUSUF,   | ) |                          |
|  | ) |                          |
| <u>Defendant.</u>  | ) |                          |

**YUSUF'S OPPOSITION TO HAMED'S MOTION TO COMPEL  
RESPONSE TO  
REQUEST TO ADMIT NO. 45**

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Defendant/counterclaimant Fathi Yusuf ("Yusuf"), through his undersigned counsel, respectfully submits this Opposition to Hamed's Motion to Compel Response to Request to Admit No. 45 ("RTA 45").

**I. Yusuf's Response to RTA 45 is Proper and In Compliance with Applicable Rules.**

Plaintiff's motion lacks merit and should be denied because Yusuf's response to Hamed's RFA 45 was proper and justified. Hamed's RTA 45 seeks an admission as to what the contents of two documents referenced as Exhibits 1 and 2 "state" or do not "state" "on the face of either document" and whether the documents "have any language excluding any other Bays at the Sion Farm location." Specifically, Hamed's RFA 45 provides:

**Request for Admission 45 of 50:**

Admit or Deny that Exhibit 2 is February 7, 2012 check numbered 64866, bearing the memo "PLAZA EXTRA (SION FARM) RENT" – conveying back rent payment funds to United Corporation for the benefit of the Partnership – and that neither that check nor the calculations set forth on Exhibit 1 state anywhere on the face of either document that the back rent for the Store in Sion Farm being paid, was restricted to "BAY 1", or have any language excluding any other Bays at the Sion Farm location.

In response, Yusuf admitted that the language of the documents speak for themselves and therefore, provide the best evidence as to the contents of the documents. Further responding, Yusuf denied that the language reflects anything regarding rent for Bays 5 and 8, but rather confirms that the rent calculations for Bay 1 were based upon a percentage-of-sales formula, whereas the rent for Bays 5 and 8 were a straight per-square foot rate multiplied by the square footage for the specific times. This response accurately admitted that which could be admitted and then specifically qualified that which could not be admitted and therefore, was denied. Specifically, Yusuf's response was as follows:

**Response:** Admitted that the language of the documents in Exhibits 1 and 2 speak for themselves. Deny that the language reflects anything with regard to rent for Bays 5 and 8, but rather confirms that the rent calculations for Bay 1 were based upon a percentage-of-sales formula, whereas the rent for Bays 5 and 8 were a straight per-square foot rates multiplied by the square footage for the specific times.

See Exhibit 3 to Hamed's Brief.

Pursuant to V.I. R. Civ. P. 36(a)(4), when answering a request for admission:

If a matter is not admitted, the answer must specifically deny it or state in detail why the answering party cannot truthfully admit or deny it. A denial must fairly respond to the substance of the matter; and when good faith requires that a party qualify an answer or deny only a part of a matter, the answer must specify the part admitted and qualify or deny the rest....

Yusuf's response is proper and in compliance with the rules. Hamed argues that the response is deficient contending that Yusuf must either admit or deny RFA 45 unequivocally. See Hamed's Brief, p. 5 and Exhibit 5 stating "[a]s you know, we feel that you must either admit or deny." This position is contrary to the plain language of the rule. See *Harris v. Koenig*, 271 F.R.D. 356, 373–74 (D.D.C., 2010) (finding that "[t]here is therefore nothing in the rule [Fed. R. Civ. P. 36<sup>1</sup>] that divides the legitimate responses to a Request for Admissions into watertight compartments of utter admissions and utter denials" and determining that a party's qualified responses to requests for admissions were "perfectly legitimate"). "To the contrary, given that it is unreasonable to expect that one party can always accept the other party's characterization of an event, the rule permits a party to qualify its answer," which is exactly what Yusuf has done. *Id.* Indeed, "[q]ualifying a response may be particularly appropriate if the request is sweeping, multi-part, involves sharply contested issues, or goes to the heart of a defendant's liability." *Cynthia McDaniel, et al. v. Ford Motor Company*, 2013 WL 1336060 (N.D. Ga.). Therefore, Hamed's attempt to characterize

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<sup>1</sup> The V.I. R. Civ. P. 36 is modeled after the Federal Rules of Civil Procedure.

Yusuf's response to RFA 45 as anything other than Yusuf's good faith effort to fully respond should be rejected as an inappropriate attempt to compel Yusuf into conceding matters in dispute. See *Tri-State Hosp. Supply Corp. v. United States*, 226 F.R.D. 118, 138 (D.D.C. 2005) (a party "should be able to explain its position and not be bullied into an admission").

## II. Hamed's Proposed Revision Does Not Change the Response

Hamed attempted to revise RTA 45 eliminating certain phrases and proposing that if Yusuf confirmed he would admit to the proposed Revised RFA 45, then Hamed would revise it.

### **Original Request for Admission 45 of 50 (with Redline to show changes):**

Admit or Deny that Exhibit 2 is February 7, 2012 check numbered 64866, bearing the memo "PLAZA EXTRA (SION FARM) RENT" —conveying back rent payment funds to United Corporation for the benefit of the Partnership— and that neither that check [Exhibit 2] nor the calculations set forth on Exhibit 1 state anywhere on the face of either document that the back rent for the Store in Sion Farm being paid, was they are restricted to "BAY 1"; or have any language excluding any other Bays at the Sion Farm location.

### **Proposed New Request for Admission 45 of 50 (clean version):**

Admit or Deny that Exhibit 2 is February 7, 2012 check numbered 64866, bearing the memo "PLAZA EXTRA (SION FARM) RENT" and that neither that check [Exhibit 2] nor the calculations set forth on Exhibit 1 state anywhere on the face of either document that they are restricted to "BAY 1".

However, these proposed changes do not eliminate the need to qualify the response (as allowed by the rules). The fact that the calculations, on the face of the documents, reflect a percentage calculation and that the check matches the calculation which is consistent with the percentage rate for rent as to Bay 1, but inconsistent with the calculations for Bays 5 and 8 as set forth in the

original response, requires the same qualifications as to this revised RFA 45 as with that of the original RFA 45. Hence, it is Hamed's unjustified desire for an unqualified admission or denial that is the true source of the dispute. As set forth above, such an unqualified response is not required. In fact, a proper qualification is specifically allowed and even contemplated as it is "unreasonable to expect that one party can always accept the other party's characterization of an event". *Harris v. Koenig*, 271 F.R.D. 356, 373–74 (D.D.C., 2010). The revision does not eliminate the need to provide the qualifications set forth in the original response. Those qualifications are proper and allowed by the rules.

Finally, Hamed contends that Yusuf is flouting the Master's prior rulings and seeks an advisory opinion as to the possibility of sanctions. Hamed's statements are unfounded. The plaintiff in *Harris v. Koenig* touted similar transgressions. There, the Court determined that it was the movant-plaintiff, who was engaged in "pettifoggery" by protesting properly qualified admissions which were "perfectly legitimate" but for which plaintiff deemed "worthy of bothering a court" and that it was "hardly surprising that [the] case [wa]s entering its eighth year of litigation" as a result of such tactics. *Id.* Yusuf is mindful of the Master's prior rulings and seeks to fully comply with the applicable rules. Exercising Yusuf's right to respond, including providing qualifications as to a request for admission where one is necessary is proper and in compliance with the rules.

### CONCLUSION

Yusuf's Response to RFA 45 was a proper response—it was specifically qualified and offered in good faith. Hamed contends that he seeks compliance with the rules, but rather he seeks a full capitulation and to shoehorn responses into watertight compartments of utter admissions and


unqualified denials. Yusuf's response is perfectly legitimate and compliant with the applicable rules having parsed what can be admitted and what specifically must be denied. Hence, Yusuf respectfully requests that Hamed's Motion be denied.

Respectfully submitted,

**DUDLEY, TOPPER and FEUERZEIG, LLP**

DATED: July 23, 2018

By:



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**CERTIFICATE OF SERVICE**

I hereby certify that on this 23<sup>rd</sup> day of July, 2018, I caused the foregoing **Yusuf's Opposition to Hamed's Motion to Compel Responses to Request to Admit No. 45** which complies with the page and word limitations of Rule 6-1(e), to be served upon the following via the Case Anywhere docketing system:

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