

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

HISHAM HAMED. Individually, and derivatively on behalf of SIXTEEN PLUS CORPORATION,)	
)	Civil Case No. SX-2016-CV-650
<i>Plaintiff,</i>)	DERIVATIVE SHAREHOLDER SUIT
)	ACTION FOR DAMAGES AND CICO
v.)	RELIEF
)	
FATHI YUSUF, ISAM YOUSUF JAMIL YOUSUF, AND MANAL MOHAMMAD YOUSEF,)	JURY TRIAL DEMANDED
)	
<i>Defendants,</i>)	
)	
v.)	
)	
SIXTEEN PLUS CORPORATION,)	
)	
<i>Nominal Defendant.</i>)	
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CONSOLIDATED CASES: Civil Case No. SX-2017-CV-342; Civil Case NO. 2016-CV-065; Civil Case No. SX-2016-650

**PLAINTIFF’S MOTION FOR RECONSIDERATION PURSUANT TO
V.I.R. CIV. 6.4(B)(2)
OR, IN THE ALTERNATIVE,
FOR AN ORDER GIVING PLAINTIFF AN ENLARGEMENT OF TIME
TO RE-FILE RFA RESPONSES PURSUANT TO V.I.R. CIV. P. 36 (A)(3)**

Pursuant to V.I.R. Civ. 6-4(b)(2), plaintiff hereby respectfully moves for reconsideration of the Special Master’s Order dated June 14, 2024. Alternatively, plaintiff seeks leave to re-file the responses to the September 15, 2002 Requests for Admissions (“RFA”) served by Isam Yousef and Jamil Yousef on them pursuant to V.I.R. Civ. 36(a)(3).

In this regard, Hamed requests that the Special Master reconsider its Order and find that the full answers to all 123 RFA’s were provided to counsel for Isam Yousef and Jamil Yousef within

the agreed time to which the Parties stipulated, so that they should be considered timely—or, in the alternative, that Hamed be allowed to file the exact same responses provided to Attorney Hymens on October 26, 2022, out of time to correct this error. For the reasons set forth herein, it is respectfully submitted that the relief sought be granted.

On June 14, 2024, an order of the Special Master was filed in *Hisham Hamed v. Fathi Yusuf, Isam Yousuf, Jamil Yousuf and Manal Mohammad Manal*, SX-2016-CV-650. In that Order, the Special Master correctly noted that Jamil and Isam filed RFA to Hisham Hamed in 650 on September 15, 2022—and that when no response was received in 30 days, a Notice was filed on October 25, 2022, to deem these RFA's admitted.

What the record did not reveal, so it would be unknown to the Special Master, was that the parties had addressed and stipulated to correct the problems by different counsel which had arisen from both the efforts to serve the RFA's on September 15th and Hamed's September 18th service of these RFA responses. Attached as **Exhibit 1** is a lengthy declaration of Attorney Carl Hartmann, with supporting exhibits from the record, which explains why the responses to the 123 requests to admit were answered within the initial time period (on September 18th), but were apparently not received then or properly captioned when re-served by stipulation 11 days later on October 26, 2022--leading to the current confusion. In this regard, the salient points in that declaration are as follows. See Exhibit 1:

- Because of email issues, initially Attorney Hymes did not properly serve the RFA's, which problem the Parties resolved within one day, on September 16, 2022.
- Responses to various discovery, including the RFA's at issue were completed by September 18th, but due to another apparent emailing problem discussed by the parties, a total oversight, they were again not received.

- It was discovered that these discovery responses, including the RFA responses had not been received when the October 25, 2022, Notice was filed by Attorney Hymes.
- The Parties *immediately* discussed the matter and understood that they had resolved this service issue, with the RFA responses re-served on October 26, 2022, by agreement, along with stipulations to allow these responses to be filed out of time.
- While the Parties all considered this matter resolved, a related problem, leading to this Court's recent June 14th Order, several errors in that October 26th re-service by Hamed—in the captioning, service and filing of the documents, all of which is again carefully explained Hartmann's attached declaration.
- However, as noted in the attached declaration, the critical point is that all 123 of these IY and JY RFA's sent by Hymes to Hamed in 650, were answered in full in a similarly miscaptioned response by Hamed 65/342 rather than 650. In short, all responses were provided in in Attorney Hymes' hands by October 26, 2022—only 11 days late.. There was absolutely no delay caused in the action. There was no prejudice as the complete answers were already in Attorney Hymes' hands.
- Moreover, the agreed upon motion for the enlargement was also filed with that caption (65/342) as part of the same confusion.—again, improperly captioned.¹
- At no time after these 2022 filings did Attorney Hymes (or anyone else) ever suggest he did not receive the full substantive Hamed responses from Hamed within the time as subsequently agreed by the Parties, as per their stipulation, like he did when he first filed such a notice filed on October 25, 2022.
- Moreover, the parties have had *numerous* Rule 37 letters and meet and confer conferences on the discovery in these cases, including various RFA's, and this issue has never been mentioned as a problem or referenced as being an outstanding item.

In summary, Attorney Hymes had received **Hamed's responses to the 123 RFA's by October 26th**. But they were served with the wrong caption in the wrong case (a case where Hamed was not even a party) – captioned as responses to Manal's RFA's rather than IY and JY's--in 65/342

¹ Indeed, this confusion has been the subject of various court orders and filings, as noted in the attached declaration.

instead of 650. As such, no prejudice, delay or other ill effect has occurred, or will occur if the responses are either deemed served or an enlargement to serve now is allowed.

Moreover, because the Parties were unaware of these issues revealed by the Special Master's review of the Court record, the parties never submitted the facts set forth in the attached declaration, nor did they raise any motions or arguments as to any prejudice or delay in proceeding.

As such, pursuant to V.I.R. Civ. 6-4(b)(2), plaintiffs hereby respectfully move for reconsideration of the Special Master's Order dated June 14, 2024. Alternatively, plaintiffs seek leave to re-file the responses to the Requests for Admissions ("RFA") served by Isam Yousef and Jamil Yousef on them pursuant to V.I.R. Civ. 36(a)(3). A proposed Order can be submitted upon request.

Dated: June 18, 2024

/s/ Joel H. Holt

Joel H. Holt, Esq. (Bar # 6)

Counsel for Plaintiff

Law Offices of Joel H. Holt

2132 Company Street,

Christiansted, VI 00820

Email: holtvi@aol.com

Tele: (340) 773-8709

Fax: (340) 773-8677

Carl J. Hartmann III, Esq.

Co-Counsel for Plaintiff

2940 Brookwind Dr,

Holland, MI 49424

Email: carl@carlhartmann.com

CERTIFICATE OF SERVICE

I hereby certify that on this 18th day of June 2024, I served a copy of the foregoing by the Court's E-File System and email, as agreed by the parties, on:

Counsel for Defendant Fathi Yusuf:

Charlotte Perrell
Stephen Herpel

Counsel for Isam Yousef and Jamil Yousef:

Christopher Allan Kroblin.
Marjorie Whalen
Kellerhals, Ferguson Kroblin PLLC

Counsel for Nominal Defendant, Sixteen Plus Corporation:

:

Kevin Rames

/s/ Joel H. Holt _____