

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

**WALEED HAMED**, as the Executor of the  
Estate of MOHAMMAD HAMED,

*Plaintiff/Counterclaim Defendant,*

vs.

**FATHI YUSUF** and **UNITED CORPORATION**

*Defendants and Counterclaimants.*

vs.

**WALEED HAMED, WAHEED HAMED,  
MUFEED HAMED, HISHAM HAMED, and  
PLESSEN ENTERPRISES, INC.,**

*Counterclaim Defendants,*

**Case No.: SX-2012-CV-370**

**ACTION FOR DAMAGES,  
INJUNCTIVE RELIEF AND  
DECLARATORY RELIEF**

**JURY TRIAL DEMANDED**

Consolidated with

**Case No.: SX-2014-CV-287**

Consolidated with

**Case No.: SX-2014-CV-278**

Consolidated with

**Case No.: ST-17-CV-384**

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**WALEED HAMED**, as the Executor of the  
Estate of MOHAMMAD HAMED, *Plaintiff,*

vs.

**UNITED CORPORATION**, *Defendant.*

---

**WALEED HAMED**, as the Executor of the  
Estate of MOHAMMAD HAMED, *Plaintiff*

vs.

**FATHI YUSUF**, *Defendant.*

---

**FATHI YUSUF**, *Plaintiff,*

vs.

**MOHAMMAD A. HAMED TRUST**, *et al,*  
*Defendants.*

**HAMED'S MOTION TO COMPEL RE HAMED RFA 45**

**I. Facts**

On March 26, 2018, Hamed served a single RFA on Yusuf. He attached two documents to it and asked a question as to "what appears on the face of the documents."

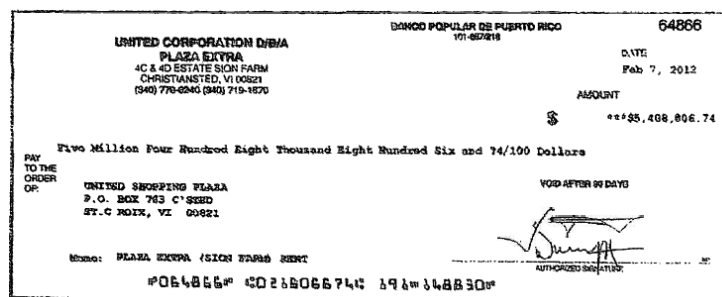
**Request For Admission 45** relates to Yusuf claims for rent as to Bays other than Bay 1 at the Sion Farm (plaza East Store) location. Defendants are directed to review attached Exhibits 1 and 2. Exhibits 1 and 2 were provided as copies of original documents and authenticated by Fathi Yusuf -- as an attachment to his Affidavit in support of his 8/12/2015 motion for Summary judgment.

45. **Admit** or **Deny** that Exhibit 2 is a 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.

**Exhibit 1.** This relates to United Revised Claim Y-2, rent for Plaza Extra-East Bays 5 & 8 in the amount of \$793,984.34 and Y-4, interest of \$241,005.18.

Hamed provided United/Yusuf with the \$5.4 million check which states on its face that it is for "PLAZA EXTRA (SION FARM) RENT." **Exhibit 2.** It does not say "rent for just Bay 1." It does not say "but you are going to have to pay more for Bays 5 & 8 later." It says PLAZA EXTRA (SION FARM) RENT."

UNITED CORPORATION DE/BA PLAZA EXTRA UNITED SHOPPING PLAZA	Check Number: 64866 Check Date: Feb 7, 2012	64866
	Check Amount: \$5,408,806.74	
Item to be Paid - Description	Discount Taken	Amount Paid
Rent - Sion Farm		\$ 5,408,806.74



Thus, Hamed wishes to file a motion that disposes of that claim for accord and satisfaction and/or Yusuf's breach of the settlement agreement. To do so, Hamed intends to write the following:

When Yusuf raised the issue that Hamed owed "back rent" for "Sion Farm" in early 2012, just before he tried to steal the entire Partnership, he and Yusuf reached a settlement for \$5.4 million. **Yusuf has admitted in RFA 45 of 50** that the check, which states that it is for the "PLAZA EXTRA (SION FARM) RENT" does not bear any limitation to Bay 1 on its face. See United/Yusuf response to RFA 45 of 50, attached as Exhibit 8 here.

Put another way, RFAs have a specific purpose -- to get an admission. Hamed does not want to "know", does not want to "discover" what the check says. He obviously knows. He wants a useable admission that it does not contain any limitation on its face to Bay 1. Why does he want this? "Strictly speaking Rule 36 is not a discovery procedure at all, since it presupposes that the party proceeding under it knows the facts or has the document and merely wishes its opponent to concede their genuineness." 8A Charles A. Wright, Arthur R. Miller, and Richard L. Marcus, *Federal Practice and Procedure* § 2253 (2d ed. 1994); see also *EEO v. Baby Products Co.*, 89 F.R.D. 129, 130 (E.D. Mich. 1981) and *Kendrick v. Sullivan*, Civ. A. No. 83-3175, 1992 WL 119125, at \*3 (D.D.C. May 15, 1992).

What Hamed wants to point out in briefs is that Yusuf acknowledges he took \$5.4 million for the "**(SION FARM) RENT**" and that the check and associated writing do not bear any limitation to Bay 1 on its face. That admission is important to the combined \$1 million claims (Y-2 and Y-4) here because those claims already were settled with the \$5.4 million check for the *Sion Farm Rent*. That is why Yusuf is trying to avoid the admission.

Thus, the question being asked is: "After reviewing the two documents," both of which were written by Fathi Yusuf, is it true that on the "face of the documents"

Neither. . .state anywhere. . .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.[<sup>1</sup>]

The Yusuf Response was not "Admit" or "Deny." Instead, Yusuf gave the improper response that "the documents speak for themselves" and then added extra, improper verbiage denying something that was not asked. **Exhibit 3.**

This is the United/Yusuf answer:

**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.

It is wholly improper response under the Rule. Therefore, on June 3, 2018, Hamed sent the Rule 37.1 letter requesting that Yusuf either admit or deny -- detailing both the rule and the Special Master's prior statement that such RFAs must be answered according to the rule. **Exhibit 4.** On June 5, 2018, the parties met in a Rule 37.1 conference and discussed the issue. Hamed offered to reduce the RFA to overcome the Yusuf objections.

Thereafter, Hamed made that offer in writing (**Exhibit 5**), stating:

I am writing to confirm that in the Rule 37.1 Conference this morning, Hamed offered to amend RFA 45 of 50 re Rent on Bays 5 & 8 if that would change your client's response to "admit". As you know, we feel that you must either admit or deny. If that was not absolutely clear, to avoid a dilatory sequence of motions, Hamed is making that offer again now, in writing, so that I don't accidentally misrepresent our or your position on this RFA, and will include the offer and your response (or lack thereof) in the motion

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<sup>1</sup> As discussed below, Hamed agreed to revise this to: "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 limited to "BAY 1."

Old version:

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.

New 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."

Despite Hamed's attempts to discuss and modify the RFA, Yusuf did not agree to either amend its original answer or accept the proffered compromise solution. Thus, this motion.

## II. Applicable Law

### A. The USVI Rule

Virgin Islands Rule of Civil Procedure 36 applies and controls. It is taken directly from the Federal Rule of the same number. It has been uniformly held that where an RFA "requests admission of a matter about which" the opposing party is "likely to have information and which forms a crucial part of one of his claims. . .[he] must **admit or deny the request**, or explain in detail why he cannot do so." See e.g., *Subramani v. Wells Fargo Bank, N.A.*, No. 13-CV01605-SC, 2014 WL 7206888, at \*2 (N.D. Cal. Dec. 18, 2014)("This RFA therefore requests admission of a matter about which Mr. Subramani is eminently likely to have information and which forms a crucial part of one of his claims against Defendants. Mr. Subramani **must admit or deny the request**, or explain in detail why he cannot do so.")

Moreover, requests for admissions are not a discovery device. *Nat'l Semiconductor Corp. v. Ramtron Int'l Corp.*, 265 F.Supp.2d 71, 74 (D.D.C. 2003). The purpose of requests for admissions is not to seek new information but rather “to narrow the scope of issues to be litigated and to thereby expedite the litigation process.” *Equal Employment Opportunity Comm'n v. Baby Products Co.*, 89 F.R.D. 129, 130 (E.D. Mich. 1981); *Kendrick v. Sullivan*, No. 83–CV–3175, 1992 WL 119125, at \*3 (D.D.C. May 15, 1992). Our USVI Rule 36 provides (emphasis added):

Rule 36. Requests for Admission

(a) Scope and Procedure. \* \* \* \*

(3) Time to Respond; Effect of Not Responding. A matter is admitted unless, within 30 days after being served, the party to whom the request is directed serves on the requesting party a written answer or objection addressed to the matter and signed by the party or its attorney. . . .

(4) Answer. **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. The answering party may assert lack of knowledge or information as a reason for failing to admit or deny only if the party states that it has made reasonable inquiry and that the information it knows or can readily obtain is insufficient to enable it to admit or deny.

(5) Objections. The grounds for objecting to a request must be stated. A party must not object solely on the ground that the request presents a genuine issue for trial.

(6) Motion Regarding the Sufficiency of an Answer or Objection. The requesting party may move to determine the sufficiency of an answer or objection. Unless the court finds an objection justified, it must order that an answer be served. **On finding that an answer does not comply with this rule, the court may order either that the matter is admitted or that an amended answer be served.** . . .

Thus the responses MUST be: 1. Admit, or 2. Deny, or 3. State "the answering party cannot truthfully admit or deny it." Moreover: "The answering party may assert lack of knowledge or information as a reason for failing to admit or deny only if the party states that it has made reasonable inquiry and that the information it knows or can readily obtain is insufficient to enable it to admit or deny" and state that as a fact. The only other variant

allowed is "when good faith requires that a party qualify an answer [state it cannot be answered] or deny only a part of a matter, the answer must specify the part admitted and qualify or deny the rest." There is no such thing as "the document says what it says."

### **B. The Order**

The Special Master's Order dated April 12, 2018 noted, at page 2, that the Court was acting based on two facts:

1. "Pursuant to Rule 36(a)(6) and
2. "the clear statements in Yusuf's response wherein **he did not deny the factual assertions. . . .**" (Emphasis added.)

In the "discussion" portion of that Order, at page 5, the court goes on to find:

Pursuant to Rule 36(a)(6) and the clear statements in Yusuf's response wherein he did not deny the factual assertions, the Master will deem Hamed's Request to Admit 1 as admitted . . . .

Thus, Yusuf has been put on notice, by the order, that failure to "admit" or "deny" direct requests for admissions violates the Court's Rules and is contrary to the April 12, 2018 Order.

### **C. The Rule**

In Hamed's Rule 37.1 letters, his prior motion and the Court's consideration of it, the point has repeatedly been made that:

requests for admissions are not a discovery device "and thus the purpose of requests for admissions is not to seek new information but rather to narrow the scope of issues to be litigated and to thereby expedite the litigation process." Citing *EEO v. Baby Products Co.*, 89 F.R.D. 129, 130 (E.D. Mich. 1981) and *Kendrick v. Sullivan*, Civ. A. No. 83-3175, 1992 WL 119125, at \*3 (D.D.C. May 15, 1992).

Yusuf apparently thinks it is clever or tactical to continue this practice. Perhaps the hope is to slow down the claims process until after the New Year. Perhaps there is some other reason. But the Special Master is asked to review the following RFA not only to

"deem it admitted" -- but rather to also comment on this as an act of contempt. It is contempt for the Special Master's Order, and for the clear rule which Yusuf flouts.

It is unfair to require Hamed to go through this process for many of Yusuf's responses one-by-one. Yusuf has had the "one bite" and now the behavior is contempt. Hamed is not seeking a distinct contempt order, he is merely asking the Special Master to note it in granting the motion to compel.

**Dated:** June 29, 2018



**Carl J. Hartmann III, Esq.**  
*Co-Counsel for Plaintiff*  
5000 Estate Coakley Bay, L6  
Christiansted, VI 00820  
Email: carl@carlhartmann.com  
Tele: (340) 719-8941

#### **CERTIFICATE OF SERVICE**

I hereby certify that on this 29th day of June, 2018, I served a copy of the foregoing by email and (CaseAnywhere), as agreed by the parties, on:

**Hon. Edgar Ross** (w/ 2 Mailed Copies)  
Special Master  
edgarrossjudge@hotmail.com

**Gregory H. Hodges**  
**Stefan Herpel**  
**Charlotte Perrell**  
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#### **CERTIFICATE OF COMPLIANCE WITH RULE 6-1(e)**

This document complies with the page or word limitation set forth in Rule 6-1(e).





**IN THE SUPERIOR COURT OF THE VIRGIN ISLANDS  
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**ACTION FOR DAMAGES,  
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JURY TRIAL DEMANDED

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**ACTION FOR DECLARATORY  
JUDGMENT**

JURY TRIAL DEMANDED

Consolidated with

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**ACTION FOR DEBT AND  
CONVERSION**

JURY TRIAL DEMANDED

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**WALEED HAMED**, as the Executor of the  
Estate of MOHAMMAD HAMED,

*Plaintiff,*

vs.

**UNITED CORPORATION,**

*Defendant.*

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**WALEED HAMED**, as the Executor of the  
Estate of MOHAMMAD HAMED,

*Plaintiff,*

vs.

**FATHI YUSUF,**

*Defendant.*

**EXHIBIT**

**1**

**Request to Admit 45 of 50:**

*Request to admit 45 relates to Yusuf claims for rent as to Bays other than Bay 1 at the Sion Farm (plaza East Store) location. Defendants are directed to review attached Exhibits 1 and 2. Exhibits 1 and 2 were provided as copies of original documents and authenticated by Fathi Yusuf -- as an attachment to his Affidavit in support of his 8/12/2015 motion for Summary judgment.*

Admit or Deny that Exhibit 2 is a 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.

**Response:**

**Dated:** March 26, 2018



**Carl J. Hartmann III, Esq.**  
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Fax: (340) 773-867

### CERTIFICATE OF SERVICE

I hereby certify that on this 26<sup>th</sup> day of March, 2018, I served a copy of the foregoing by email (CaseAnywhere ECF), as agreed by the parties, on:

**Hon. Edgar Ross**

Special Master  
% edgarrossjudge@hotmail.com

**Gregory H. Hodges**

**Stefan Herpel**  
**Charlotte Perrell**  
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### CERTIFICATE OF COMPLIANCE WITH RULE 6-1(e)

This document complies with the page or word limitation set forth in Rule 6-1(e).



**United Corporation dba Plaza Extra**

**Tutu Park Store Sales:**

1-1-2004 to 12-31-2004	32,323,902.88
Less: 1-1-2004 to 5-4-2004	-10,849,029.02
Sales 5-5-2004 to 12-31-2004	<u>21,474,873.86</u>

**Tutu Park Store:**

Paid Rent, Water, & Property Tax	263,577.53
Paid 1.5% Overage	71,914.23
5-5-2004 to 12-31-2004	<u>335,491.76</u>

1-1-2005 to 12-31-2005	515,361.54
1-1-2006 to 12-31-2006	590,533.60
1-1-2007 to 4-1-2007	255,699.33
4-2-2007 to 12-3-2007	468,689.55
1-3-2008 to 12-5-2008	540,180.12
1-5-2009 to 12-10-2009	529,799.66
1-6-2010 to 12-3-2010	527,565.40
1-1-2011 to 12-31-2011	<u>541,175.61</u>

Rent, etc. 5-5-2004 to 12-31-2011	4,304,496.57
Parking Lot Cleaning	126,000.00
Total Amount Paid	<u>4,430,496.57</u> a

**Tutu Park Store Sales:**

5-5-2004 to 12-31-2011	261,474,323.91
Portion of Sales - Rented building	217,895,269.93
Portion of Sales - Area built by Plaza	<u>43,579,053.98</u> b

Total Paid as a % of Sales (Rented Bldg.) = a/b 2.0333147073%

**Sion Farm Sales:**

Sion Farm Sales 5-5-2004 to 12-31-2011	273,884,222.70
Less: R/X	-7,874,897.13
	<u>266,009,325.57</u>

Calculated Rent as a % of Sales Sion Farm \$ 5,408,806.74

**EXHIBIT 2**

64866

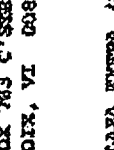
UNITED CORPORATION DEBIA PLAZA EXTRA  
UNITED SHOPPING PLAZA

Check Number: 64866

Check Date: Feb 7, 2012

Check Amount: \$5,408,806.74  
Discount Taken      Amount Paid  
5,408,806.74

Item to be Paid - Description  
Rent - Sion farm

<b>UNITED CORPORATION DEBIA</b> <b>PLAZA EXTRA</b> 4C & 4D ESTATE SION FARM CHRISTIANSTED, VI 00821 (340) 778-6240 (340) 719-1870		<b>BANCO POPULAR DE PUERTO RICO</b> 101-852818	<b>64866</b> DATE Feb 7, 2012
Five Million Four Hundred Eight Thousand Eight Hundred Six and 74/100 Dollars		<b>\$</b>	AMOUNT **\$5,408,806.74
PAY TO THE ORDER OF: <b>UNITED SHOPPING PLAZA</b> P.O. BOX 743 C'SSED ST. C ROIX, VI 00821		VOID AFTER 90 DAYS  AUTHORIZED SIGNATURE	
Banco: PLAZA EXTRA (SION FARM) BANC		#064866# 6026506674# 196m348830#	

HAMD606094

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

WALEED HAMED, as Executor of the )  
Estate of MOHAMMAD HAMED, )

Plaintiff/Counterclaim Defendant, )

v. )

FATHI YUSUF and UNITED CORPORATION, )

Defendants/Counterclaimants, )

v. )

WALEED HAMED, WAHEED HAMED, )  
MUFEED HAMED, HISHAM HAMED, and )  
PLESSEN ENTERPRISES, INC., )

Additional Counterclaim Defendants. )

WALEED HAMED, as Executor of the )  
Estate of MOHAMMAD HAMED, )

Plaintiff, )

v. )

UNITED CORPORATION, )

Defendant. )

WALEED HAMED, as Executor of the )  
Estate of MOHAMMAD HAMED, )

Plaintiff, )

v. )

FATHI YUSUF, )

Defendant. )

FATHI YUSUF and )  
UNITED CORPORATION, )

Plaintiffs, )

v. )

THE ESTATE OF MOHAMMAD HAMED, )  
Waleed Hamed as Executor of the Estate of )  
Mohammad Hamed, and )  
THE MOHAMMAD A. HAMED LIVING TRUST, )

Defendants. )

CIVIL NO. SX-12-CV-370

ACTION FOR INJUNCTIVE  
RELIEF, DECLARATORY  
JUDGMENT, AND  
PARTNERSHIP DISSOLUTION,  
WIND UP, AND ACCOUNTING

Consolidated With

CIVIL NO. SX-14-CV-287

ACTION FOR DAMAGES AND  
DECLARATORY JUDGMENT

CIVIL NO. SX-14-CV-278

ACTION FOR DEBT AND  
CONVERSION

CIVIL NO. ST-17-CV-384

ACTION TO SET ASIDE  
FRAUDULENT TRANSFERS

**EXHIBIT**

**3**


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(340) 774-4422

**RESPONSES TO REQUESTS TO ADMIT**

**Request to Admit 45 of 50:**

*Request to admit 45 relates to Yusuf claims for rent as to Bays other than Bay 1 at the Sion Farm (plaza East Store) location. Defendants are directed to review attached Exhibits 1 and 2. Exhibits 1 and 2 were provided as copies of original documents and authenticated by Fathi Yusuf – as an attachment to his Affidavit in support of his 8/22/2015 motion for Summary Judgment.*

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.



**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.

DATED: May 15<sup>th</sup>, 2018

DUDLEY, TOPPER AND FEUERZEIG, LLP

By:

  
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*Attorneys for Fathi Yusuf and United  
Corporation*

**CERTIFICATE OF SERVICE**

It is hereby certified that on this 15<sup>th</sup> day of May 2018, I caused the foregoing a true and exact copy of the foregoing **RESPONSE TO HAMED'S SIXTH REQUEST TO ADMIT PURSUANT TO THE CLAIMS DISCOVERY PLAN OF 1/29/2018 NO. 45 OF 50** to be served upon the following via Case Anywhere docketing system:

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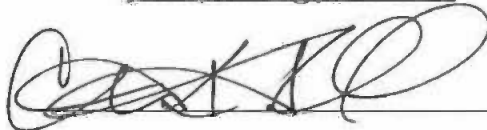
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HAMD660446



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ADMITTED: USVI, NM & DC

June 3, 2018

Charlotte Perrell, Esq.  
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St. Thomas, VI 00820

By Email Only

RE: Request for Rule 37 Conference re RFA 45 of 50 -- Rent on Bays 5 & 8

Dear Attorney Perrell

I write regarding several of the Yusuf/United 'claims discovery RFA responses' served on May 15, 2018. It is Hamed's intention to file a motion to the Special Master to **deem admitted** unacceptable non-answers. Pursuant to Rule 37.1, I request that we add this to the Tuesday conference -- to discuss the bases of the proposed motion, and seek amendment to the Yusuf response.

**RFA 45 of 50**

Request to admit 45 relates to Yusuf claims for rent as to Bays other than Bay 1 at the Sion Farm (plaza East Store) location. Defendants are directed to review attached Exhibits 1 and 2. Exhibits 1 and 2 were provided as copies of original documents and authenticated by Fathi Yusuf - as an attachment to his Affidavit in support of his 8/22/2015 motion for Summary Judgment.

**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.

**Response:**

**EXHIBIT**  
**4**

HAMD661423

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.

As discussed in prior filings regarding Admissions, they must be answered "admitted" or "denied" or "cannot answer because.....after reasonable inquiry" and anything that is not one of those three responses requires a valid objection. **Failure to answer within the time period is an automatic admission.**

Among the *very clear not-valid-objections* (absent a MPO) is: "the document says what it says". Yusuf has not admitted or denied, and has thus admitted.

ONCE AGAIN, YOU SEEM TO CONFUSE RFAS WITH DISCOVERY SEEKING INFORMATION. "REQUESTS FOR ADMISSIONS ARE NOT A DISCOVERY DEVICE" AND THUS THE PURPOSE OF REQUESTS FOR ADMISSIONS IS NOT TO SEEK NEW INFORMATION **BUT RATHER TO NARROW THE SCOPE OF ISSUES TO BE LITIGATED** AND TO THEREBY EXPEDITE THE LITIGATION PROCESS. CITING EEO V. BABY PRODUCTS CO., 89 F.R.D. 129, 130 (E.D. MICH. 1981) AND KENDRICK V. SULLIVAN, CIV. A. NO. 83-3175, 1992 WL 119125, AT \*3 (D.D.C. MAY 15, 1992).

Sincerely,

A handwritten signature in black ink, appearing to read "Carl J. Hartmann", with a long horizontal flourish extending to the right.

Carl J. Hartmann

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**From:** Carl Hartmann  
**Sent:** Tuesday, June 5, 2018 11:30 AM  
**To:** Charlotte Perrell  
**Cc:** Gregory Hodges; Stefan Herpel; Kim Japinga; Joel Holt  
**Subject:** As to RFA 45 of 50 re Rent on Bays 5 & 8

Charlotte:

I am writing to confirm that in the Rule 37.1 Conference this morning, Hamed offered to amend RFA 45 of 50 re Rent on Bays 5 & 8 if that would change your client's response to "admit". As you know, we feel that you must either admit or deny. If that was not absolutely clear, to avoid a dilatory sequence of motions, Hamed is making that offer again now, in writing, so that I don't accidentally misrepresent our or your position on this RFA, and will include the offer and your response (or lack thereof) in the motion

Old version:

**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.

New 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"

I hope this responds to your concerns and it will allow you client to respond "Admit" or "Deny".

Carl

**Carl J. Hartmann III, Attorney**  
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<b>EXHIBIT</b> <b>5</b>
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