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| **WALEED HAMED**,as the Executor of the Estate of MOHAMMAD HAMED, | **Case No.: SX-2012-CV-370** |
| *Plaintiff/Counterclaim Defendant*, |  |
| vs.  **FATHI YUSUF** and **UNITED CORPORATION** | **ACTION FOR DAMAGES, INJUNCTIVE RELIEF AND DECLARATORY RELIEF** |
|  |  |
| *Defendants and Counterclaimants*.  vs.  **WALEED HAMED, WAHEED** **HAMED, MUFEED HAMED, HISHAM HAMED,** **and PLESSEN ENTERPRISES, INC.**,  *Counterclaim Defendants*, | JURY TRIAL DEMANDED |
|  | Consolidated with |
| **WALEED HAMED**,as the Executor of the Estate of MOHAMMAD HAMED, *Plaintiff,*  vs. | **Case No.: SX-2014-CV-287** |
| **UNITED CORPORATION,** *Defendant.* |  |
| *­­­­­­*­­  **WALEED HAMED**,as the Executor of the Estate of MOHAMMAD HAMED, *Plaintiff*    vs.    **FATHI YUSUF**, *Defendant.* | Consolidated with  **Case No.: SX-2014-CV-278** |
| *­­­­­*­­  **FATHI YUSUF**, *Plaintiff*,  vs.  **MOHAMMAD A. HAMED TRUST***, et al,*  *Defendants.* | Consolidated with  **Case No.: ST-17-CV-384** |
| *­­­­­*­­  **KAC357 Inc.**, *Plaintiff*,  vs.  **HAMED/YUSUF PARTNERSHIP,**  *Defendant.* | Consolidated with  **Case No.: ST-18-CV-219** |
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**HAMED’S *EXPEDITED* MOTION TO COMPEL RE CLAIMS Y-2 & Y-4 --**

**RENT AND INTEREST ON BAYS 5 & 8**

1. **INTRODUCTION**

Fathi Yusuf’s deposition is scheduled for January 21, 2019 as to this specific issue and the Special Master has ordered that dispositive motions be filed by February 20, 2019. It is impossible for Hamed to proceed without getting the responses described herein, at a minimum, from Fathi Yusuf. Thus, Hamed requests expedited processing of this motion by the Special Master on his receipt of the reply herein. The parties and the Special Master have agreed to the following schedule with regard to motions to compel:

Motions December 20, 2018

Oppositions 10 Days Later

Replies 5 Days Later

Court Disposition By Friday, January 18, 2019

This is either the fourth or fifth attempt by Yusuf to claim additional rents due – despite having been paid a $5 million rent settlement by Hamed and being awarded another $4.5 million for past rent by the Court (Brady, J.). This time, Yusuf alleges that there was an agreement for use and payment was due for Bays 5 and 8 at the Sion Farm location. This is despite the fact that a settlement check expressly for “Sion Farm” was cashed by Yusuf in settlement and the fact that the historical records show:

1. There is no such written agreement.
2. There were no such payments or invoices at the time.
3. There has been no acknowledgment as was the case with Bay 1.

Despite this, Yusuf has refused to answer 1 interrogatory and 2 RFPDs.

1. **The Most Basic Possible Questions and Yusuf’s Refusals to Answer**

Hamed propounded the following interrogatory to Yusuf as #29 of the 50 allowed.

Interrogatory 29 of 50, relates to Claim Y-2: "Rents for Bays 5 & 8."

Please describe all facts related to this claim with reference to dates, documents, witnesses and **what facts, conversations, writings, communications or other information or documents that leads United to believe and assert that it had an agreement with Hamed to pay rent for Bays 5 and 8**. Include in your description the dates of the conversations, writings, communication or other documents, the place where these discussions or meetings took place and identify the participants to the discussions or meetings. Include in your response, but not limit to what facts, conversations, writings, communications or other information or documents that leads Yusuf to believe and assert that any consent for such an arrangement survived the bringing of a suit in September of 2012. (Emphasis added.)

**Yusuf Response**:

Defendants object to this Interrogatory because it is compound such that the total number of interrogatories together with their sub parts and other discovery exceeds the maximum allowable number of interrogatories under the JDSP and violates both the spirit and the terms of the JDSP limiting the number of interrogatory questions. Without waiving any objection to this Interrogatory, Defendants incorporate the Declaration of Fathi Yusuf dated August 12, 2014 attached as Exhibit 3 to the Defendants' Motion for Partial Summary Judgment on Counts IV, IX, and XII Regarding Rent, particularly paragraphs 21-25 thereof, as their response to this Interrogatory.

Similarly, Hamed propounded two RFPD’s of 50 allowed – number 21 and 34. The first of these was a basic as imaginable:

Request for the Production of Documents, 21 of 50, relates to Y-2: "Rent for Bays 5 & 8"

With respect to Y-2, please provide all documents demonstrating a written agreement that Hamed or the Partnership agreed to pay rent for Bays 5 & 8, including any documents establishing the amount of rent, a signed lease agreement and any prior payments of rent on Bays 5 & 8, include but do not limit this to any writings after Hamed brought suit in September of 2012, that would show any such consent or agreement continued after that suit.

**Yusuf’s Response**:

Defendants submit that information responsive to this Request for Production is set forth in Fathi Yusuf’s earlier declaration he explained that "[u]nder the business agreement between Hamed and me that I now describe as a partnership, profits would be divided 50-50 after deduction for rent owed to United, among other expenses" and that "[u]nder our agreement, I was the person responsible for making all decisions regarding when the reconciliation would take place" and that Yusuf had the discretion to determine when the reconciliation would take place. See August 12, 2014 Yusuf Declaration, p. 2.

[Need to find out from Mr. Yusuf whether any prior payments were made as to Bays 5 and 8.]

The second RFPD on this subject was #34 – which is any evidence that suggests that such a rent was ever in existence, contemplated, discussed or otherwise mentioned:

RFPDs 34 of 50:

**SUBSTANTIALLY THE SAME AS YUSUF RFPD 9.** Please produce all documents relating to your claim that rent is due from the Partnership to occupying Bay 5 and Bay 8.

**Yusuf’s Response**:

See Exhibit D - Declaration of Fathi Yusuf, attached to Yusuf’s original Accounting Claims and Proposed Distribution previously served upon counsel for Hamed on September 30, 2016

Because none of these responses provided any information or documents, two Rule 37 letters were sent, **Exhibit 1 and Exhibit 2**. ***Yusuf agreed to supplement the responses***. After two requests for extensions of time in which to answer, on December 18, 2018 (two days before this motion to compel was due) Yusuf responded only with this:

**1. Yusuf Claim Y-2 (for Rent for Bay 5&8), Hamed RTP 21, 34, Interrog. 29:** There are no additional documents responsive to this request beyond the Declaration of Fathi Yusuf dated August 12, 2014 attached as Exhibit 3 to the Defendant's Motion for Partial Summary Judgment on Counts IV, IX and XII Regarding Rent.

Finally, another Rule 37 conference was set for 11 a.m. on Thursday, December 20, 2018. Yusuf’s counsel did not appear and did not provide any prior written or other notice of non-appearance (but did send an email more than an hour later requesting a change of date. However, the lack of time remaining until the deposition of Fathi Yusuf and the fact that Hamed had already given two extensions before receiving no additional responses, made this filing necessary.)

1. **FACTS**

This is a critical set of questions and involves MANY millions of dollars with interest as to which there has never been a single document or mention. The facts are critical.

1. On February 7, 2012, the Partnership paid the United Shopping Center $5,408,806.74. The memo on the check stated “Plaza Extra (Sion Farm) Rent.” (**Exhibit 3**)
2. On May 17, 2013, Attorney Nizar DeWood, representing United Corporation, sent a letter to Attorney Holt stating that

On behalf of United Corporation, the following is a notice of the value of rents due as follows:

\* \* \*

Bay No. 5 May 1, 1994 through October 31, 2001

3,125 SQ. FT. at $12.00 6 years and 184 days Balance Due $243,904.00

Bay No. 8 April 1, 2008 through May 30, 2013

6,250 SQ. FT. at $12.00 5 years and one month Balance Due $381,250.00

These amounts are undisputed, and have been outstanding for a very long time - before 2012. This amount does not reflect the rent increase requested and noticed to Mohammed Hamed since January 1, 2012. We reserve our client’s right for the additional rents due and owing based on the rent increase after January 1, 2012. (**Exhibit 4**)

1. On May 22, 2012, Attorney Holt sent a letter to Attorney DeWood, responding on behalf of the Hameds that:

2. Bay No. 5 -The rent claimed for the time period between 1994 and 2001 is for vacant space was used without charge until a tenant could be located. Thus, there was never any agreement to pay rent for this space either. In fact, the rate your client is attempting to charge is grossly inflated as well. In any event, this claim is also barred by the statute of limitations.

3. Bay No. 8 -The rent claimed for this Bay was never agreed to, as the items stored there were removed from a space in a trailer where everything was just fine. Moreover, no one would agree to pay the amount you claim is due for warehouse storage, the fact that this amount is even being sought confirms that Fathi Yusuf should no longer be a partner in the Plaza Extra supermarkets, as it is a breach of the duty of good faith and fair dealing (that every partner owes the partnership) when you try to extort money from your own business. In any event, these items will be removed from Bay 8 to the second floor of the store since your client now wants to charge rent for this space. (**Exhibit 5**)

1. On December 23, 2013, defendants Fathi Yusuf and the United Corporation filed their answer and counterclaim in *Hamed v Yusuf*, SX-12-CV-370. Regarding the rents owed for Bays 5 and 8, the defendants alleged:

**COUNT XII**

**PAST RENT FOR RETAIL SPACES BAYS 5 & 8**

\* \* \*

180. United provided Plaza Extra - East with retail spaces Bay 5 & 8 for various time periods to increase the storage and capacity of Bay 1 (the main retail space where Plaza Extra-East is located).

181. Bay No. 5 (3,125 sq. ft. of retail space) was utilized for storage and quick access to various inventories used in the operations of Plaza Extra - East. Whether an internal expense or a debt of the Alleged Partnership, United is entitled to rent from May 1, 1994 through October 31, 2001 at rate of $12.00 per sq. ft.

182. Bay No. 8 (6,250 sq ft. of retail space) was utilized for the operations of Plaza Extra - East. Whether an internal expense or a debt of the Alleged Partnership, United is entitled to rent from April 1, 2008 through May 30, 2013 at a rate of $16.15 per sq. ft.

183. In the event that the Alleged Partnership is determined to exist, Hamed has refused to acknowledge his obligation to pay United the outstanding rent for Bays 5 and 8.

184. United, as the fee simple owner, is entitled to all unpaid rent for the use of Bays 5 and 8 in the amount of $793,984.38. (**Exhibit 6**)

1. On September 30, 2016, Yusuf filed his Accounting Claims and Proposed Distribution Plan in *Hamed v. Yusuf*, SX-12-CV-370. In it, he claimed that

**2. Bays 5 and 8**

Likewise, outstanding rent is due to United for Bays 5 and 8 of the United Shopping Plaza. These amounts were not adjudicated in the Rent Order and they remain an outstanding rent claim against the Partnership. The total amount due to United for unpaid rent for Bays 5 and 8 is $793,984.34. See the Yusuf Declaration at ¶¶ 21-25. (**Exhibit 7**)

1. The Yusuf declaration, ¶¶ 21-25, referenced in Yusuf’s September 30, 2016 Accounting Claims and Proposed Distribution Plan, was signed on August 12, 2014. Paragraphs 21-25 of the declaration allege:

21. At periodic points in time, additional space was used by Plaza Extra-East for extra storage and staging of inventory. United has made demand for the rent covering the additional space actually occupied by Plaza Extra -East, but no payment has been received to date.

22. For the period from May 1, 1994 through July 31, 2001, Plaza Extra-East has occupied and owes rent for Bay 5 (“Bay 5 Rent”). The Bay 5 Rent is calculated by multiplying the square feet actually occupied (3,125) by $12.00 for 7.25 years. The total due for Bay 5 Rent is $271,875.00.

23. For the period from May 1, 1994 through September 30, 2002, Plaza Extra-East has occupied and owes rent for Bay 8 (“First Bay 8 Rent”). The First Bay 8 Rent is calculated by multiplying the square feet actually occupied (6,250) by $6.15 for 8 years, 5 months. The total due for First Bay 8 Rent is $323,515.63.

24. For the period from May 1, 1994 through September 30, 2002, Plaza Extra-East has occupied and owes rent for Bay 8 (“Second Bay 8 Rent”). The Second Bay 8 rent is calculated by multiplying the square feet actually occupied (6,250) by $.15 for 5 years, 2 months. The total due for Second Bay 8 Rent is $198,593.75.

25. The total amount due for Bay 5 Rent, First Bay 8 Rent, and Second Bay 8 Rent is $793,984.38. (**Exhibit 8**)

1. On July 21, 2017, Judge Brady issued an order, Memorandum Opinion and Order Re Limitations on Accounting in in *Hamed v. Yusuf*, SX-12-CV-370. (**Exhibit 9**)
2. On October 30, 2017, Yusuf filed his Amended Accounting Claims Limited to Transactions Occurring on or After September 17, 2006 in *Hamed v. Yusuf*, SX-12-CV-370. In it, he did not revise his request for payment of rents for Bay 5 and Bay 8, even though both alleged rent obligations occurred prior to September 17, 2006.

**2. Bays 5 and 8**

Likewise, outstanding rent is due to United for Bays 5 and 8 of the United Shopping Plaza. These amounts were not adjudicated in the Rent Order and they remain an outstanding rent claim against the Partnership. The total amount due to United for unpaid rent for Bays 5 and 8 is $793,984.34. See the Yusuf Declaration at ¶¶ 21-25.

**Disputed/Undisputed, Ripe for Determination or Discovery Needed:** Although this debt is disputed, it is fully briefed and it is ready for determination by the Master. (**Exhibit 10**)

1. On May 15, 2018, Fathi Yusuf admitted that there was no written agreement between Hamed and Yusuf after the date that Hamed sued Yusuf in 2012 that the Partnership would pay rent on Bays 5 & 8. (**Exhibit 11**). Nor has Yusuf alleged any affirmation by Hamed as existed with regard to Bay 1.
2. **Argument**

This is a motion to compel based on a Hamed Revised Claim and this Motion to Compel is submitted pursuant to the *Joint Discovery and Scheduling Plan* of January 29, 2018.

Hamed cannot defend against this claim without information. THIS IS A YUSUF CLAIM. Yusuf will not answer interrogatories. Yusuf says there are no documents.

1. **Conclusion**

Fathi Yusuf’s deposition is scheduled for January 21, 2019 in this matter and the Special Master has ordered that dispositive motions be filed by February 20, 2019. It is impossible for Hamed to proceed without getting the above answers, at a minimum, from Fathi Yusuf.

**Dated:** December 20, 2018 A

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**CERTIFICATE OF SERVICE**

I hereby certify that on this 20th day of December, 2018, I served a copy of the foregoing by email (via CaseAnywhere), as agreed by the parties, on:

**Hon. Edgar Ross**

Special Master

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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).