

drops of unrelated documents have been sent with no real cross-reference to requests, very few actual responses have been forthcoming. No attempt has been made by United to provide privilege logs and Rule 37 conferences have been totally unavailing.

The Hameds (father and four sons) have *not* been as *dismayed* by this as the Court might imagine, as: (1) Yusuf and United have admitted the partnership leaving very little else at issue; (2) Yusuf and United have admitted United is simply the landlord -- and rent motions have already been filed; (3) the Hameds believe that the "accounting claims" and "counterclaims" by Yusuf against them have never (despite repeated requests) been particularized (repeated efforts to obtain an explanation of the claims, specificity as to the allegations and supporting documents have never been provided); and (4) all of the personal claims by Yusuf against the Hameds are before 2006 and are barred by the statute of limitations -- and in any case both defendants have admitted there are no coherent accounting records that would allow claims prior to that date to be determined.

However, out of an abundance of caution, Plaintiff and Counterclaim Defendants file this motion to compel -- but will fully understand if the Court defers a decision until after the determination of the pending statute of limitations motion.

FACTS

There are four Rule 37 letters to Defendants' which specify, in great detail, the omissions. They detail some 13 attempts to gain responses. Those requests, along with the responses from Defendants, the exceptions raised to the responses and Defendants replies are extensive. The full letters themselves voluminous and will be supplied to the Court on request..

1. May 3, 2014 - cumulating and streamlining all prior requests
2. September 23, 2014 - RE Willie Hamed's Request for Admissions
3. September 24, 2014 - RE Willie Hamed's Request for Documents
4. September 24, 2014 - RE Three Discovery Responses

However, here are just a few examples. The first shows the back-and-forth as Plaintiff attempted to understand the most basic question in the case: What does Fathi Yusuf say is the amount he and his family took from Plaza Extra Supermarkets as opposed to Mr. Hamed and his family? In other words: What is the "extra" amount that the Hamed's are alleged to have taken? For two years there has not been a shred of an answer. As can be seen from this response, taken directly from the Rule 37 letters and follow-ups, Defendants provided NOTHING of any use, and certainly nothing on which they can make any case.

RFPD 12: All documents showing the accounting (or partial accounting) of funds withdrawn by any member of the Yusuf or Hamed families for the relevant time period from the funds generated by the three Plaza Extra Supermarkets, other than regular payroll checks.

D- 9/19/2013 United Response to Request No. 12: As testified by Maher Yusuf in the TRO, these documents were produced to Counsel for Plaintiff during informal Mediation. Other documents relating to this Request for Production of Document are possibly in possession of the U.S. Government, except for the August 26, 2013, Production of Documents (Bates #1 through Bates #111638) from the Criminal Case already provided on CDs.¹

P- 9/27/2013 Deficiency Letter: Document Request #12 -This request seeks the accounting records your client says exist regarding the withdrawal of funds by the Yusuf and Hamed families, but which was never been provided as suggested at mediation. Indeed, even if it had been provided it would have been protected by the confidentiality

¹ This was a CD with 111,00 random criminal case documents on it in bulk. Ironically, while this inquiry was never answered, in the last week of discovery, Yusuf did produce a single document (a draft of U.S. Government calculations) which showed that from 1996-2002 he had taken some \$4.5 million more than the Hameds.

provisions governing mediation. In any event, please supply this information.

P- 10/17/2013 Deficiency Letter: This RFPD needs to be addressed.

D- 11/7/2013 United Response: Document Request #12 - See attached documents marked as Defendants' Response to RPD (Bates Nos. 0112036 to 0112123).

P- 02/10/2014 Rule 37 Letter: The documents supplied appear to start in 1997. The RFPD defines the relevant timeframe from 1986 to the present. Additionally, the documents produced pertained to withdrawals by Mohammad Hamed and Wally Hamed only, but the request is not limited to just these two individuals. Please provide the following: all of the documents for the Yusuf family withdrawals (including identifying those documents produced as part of the United's August 26, 2013 production of documents (Bates #1 through #111638)); all of the documents for the Hamed family withdrawals in your possession (including identifying those documents produced as part of the August 26, 2013 production of documents (Bates #1 through #111638)); and confirmation that you do not have access to the approximately 650 bankers boxes full of United, Yusuf and Hamed documents that were in the possession of the federal government due to the criminal case 2005-15. Please provide all documents identifying the Yusuf family withdrawals from 1986 to the present or confirm that you are not going to respond and the issue is ready for a Rule 37 motion to compel.

A second critical issue is whether it was Yusuf himself who has the funds the Hameds allegedly took -- but once again, nothing. Not even an arguable basis for the refusal was given.

RFPD 5. The filed tax returns of Defendant Yusuf and his wife for the years 1986 to present.

D- Response to RFPD No.5: Yusuf objects to Request No. 5 in that it is overly broad and burdensome, irrelevant and calls for information not reasonably calculated to the discovery of admissible evidence.

P- 02/06/2014 Deficiency Letter: This is an improper objection under Fed. R. Civ. P. 26(c)(1). If Defendant is claiming protection to "forbidding inquiry into certain matters, or limiting the scope of disclosure or discovery to certain matters," the Defendant must produce a privilege log. As has been noted, a privilege log was not included in Defendant Yusuf's responses. A log must be provided pursuant to Rule 26(b)(5)(ii) for any

document withheld under this objection. After the privilege log has been produced, the parties must confer to attempt to resolve the dispute without court action. If no resolution is achieved, the Defendant must make a motion under Fed. R. Civ. P. 26(c)(1)(D) for a protective order. Thus, any documents withheld under this objection must be produced, or noted for the privilege log.

Further, this same request was made by Defendant Yusuf in Defendant Yusuf's First Requests For Production of Documents to Plaintiff Hamed, so it is difficult to understand why Defendant would characterize Plaintiff's request as "overly broad and burdensome, irrelevant and calls for information not reasonably calculated to the discovery of admissible evidence."

Please provide the tax returns of Defendant Yusuf and his wife from 1986 to the present or confirm that you are not going to respond and the issue is ready for a Rule 37 motion to compel.

It was the same with the most fundamental Requests to Admit:

36. ADMIT or DENY that Fathi Yusuf was in charge of all tax filings of United Corporation and Plaza Extra Supermarkets during the period which included January 1, 1991 to January 1, 2012.

RESPONSE:

Denied as set forth. The tax filings for United were prepared by accountants.

EXCEPTION 1. Non-Responsive. The inquiry is not as to who "prepared" the tax filings, but rather who was, for the business, "in charge" of tax filings.

And interrogatories:

8. Describe in detail whether the amount reflected in the plea agreement in the criminal case (where tax evasion by underreporting of [2001] sales in 2002 was part of the allocation) for the actual and reported sales is correct, and for the amount that was not reported, state what Fathi understands was done with those funds.

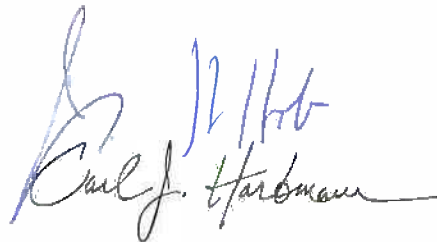
RESPONSE:

Yusuf objects to Interrogatory No. 8 on the grounds that the information sought is not relevant to any claims or defenses in this matter and, therefore, this Interrogatory is not reasonably calculated to lead to the discovery of admissible evidence.

Conclusion

Plaintiff and Counterclaimants believe that much of this could be pared down in a realistic discovery conference -- perhaps one supervised by the Special Master -- if it is determined that these issues retain relevance. However, Defendants responses demonstrate a complete *indifference* to Rule 26, privilege logs, Rule 37 and basic discovery procedures. The Court is asked to order a conference with the Master and responses.

Dated: October 6, 2014

A handwritten signature in blue ink, appearing to read 'Carl J. Hartmann III', with a date '10/6/14' written above it.

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CERTIFICATE OF SERVICE

I hereby certify that on this 6th day of October, 2014 I served a copy of the foregoing Motion by email as agreed by the parties, on:

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