

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

MOHAMMAD HAMED, by his
authorized agent **WALEED HAMED**,

Plaintiff/Counterclaim Defendant,

vs.

FATHI YUSUF and
UNITED CORPORATION,

Defendants/Counterclaimants,

vs.

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

Counterclaim Defendants.

CIVIL NO. SX-12-CV-370

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

JURY TRIAL DEMANDED

**JOINT OPPOSITION
OF PLAINTIFF AND THE HAMED COUNTERCLAIM DEFENDANTS
TO DEFENDANTS' MOTIONS TO COMPEL**

Defendants produced virtually no documents, responses or privilege logs and now complain about three major points in their opponents' responses:

1. That general, so-called "boilerplate" objections are raised,
2. That to many, many of the requests, the responses are "we do not know" or "we do not have any such documents," and
3. For responses such as "we do not have any" such documents, banks and other institutions should have been contacted.

1. So-Called "Boilerplate"

If the Court will read any objection by the Hameds, it will find that general objections were made FIRST -- but that these were almost always supplemented with specific responses. Obviously, there is nothing inappropriate about raising legitimate general objections. The difference between the Hameds and the Yusufs is that the Hameds also went on to supply hundreds of pages of documents and most of the answers (except where the Yusufs also refused to answer based on relevance or another general objection -- to the same inquiry). The Yusufs did not. The Hameds provided privilege logs. The Yusufs did not.

2. Hamed Responses of "we do not know" or "we don't have any such documents."

Fathi Yusuf makes the following statements in one running section, at 5-6 of the motion to compel with regard to Mohammad and Wally. However, this is really the argument throughout their motions:

Mostly, Hamed or Waleed simply stated that they are not in possession of the responsive documents or that they were part of the records seized by the FBI.

Further, rather than producing any new financial information responsive to the Requests for Production, Hamed and Waleed simply refer to documents previously produced. See Responses to RTP 6,7,8,9, 10, 12.

In response to other Requests for Documents, no documents are referenced at all as responsive. See Responses RTP 32, 33 and 34.

Even if Hamed or Waheed no longer have possession of additional documents and have stored the documents or otherwise transferred them to third parties, they must still produce those responsive documents. Indeed, "[i]t is well established that 'control' under Fed. R. Civ. P. 34 is to be broadly construed so that a party may be obligated to produce documents requested even though it may not actually possess the

documents. Thus, as long as the party has the legal right or ability to obtain the documents from another source on demand, that party is deemed to have 'control.'"

If Hamed or Waheed claim that no responsive documents exist, then they must submit a sworn statement to that effect.

It is important the Court examine these alleged deficiencies.

A. Mostly, Hamed or Waleed simply stated that they are not in possession of the responsive documents or that they were part of the records seized by the FBI.

This is the true and correct answer. If you don't have it -- you don't have it. No remedy for that. Every document in their possession has been reviewed. They DO NOT HAVE ANY MORE.

B. Further, rather than producing any new financial information responsive to the Requests for Production, Hamed and Waleed simply refer to documents previously produced. See Responses to RTP 6, 7, 8, 9, 10, 12.

This is the true and correct answer. If you don't have it -- you don't have it. No remedy for that. Every document in their possession has been reviewed. They DO NOT HAVE ANY MORE.

C. In response to other Requests for Documents, no documents are referenced at all as responsive. See Responses RTP 32, 33 and 34.

This is the true and correct answer. If you don't have it -- you don't have it. No remedy for that. Every document in their possession has been reviewed. They DO NOT HAVE ANY MORE.

*D. Even if Hamed or Waheed no longer have possession of additional documents and **have stored the documents or otherwise transferred them to third parties**, they must still produce those responsive documents. Indeed, "[i]t is well established that 'control' under Fed. R. Civ. P. 34 is to be broadly construed so that a party may be obligated to produce documents requested even though it may not actually possess the documents. Thus, as long as the party has the legal right or ability to*

obtain the documents from another source on demand, that party is deemed to have 'control.'" (Emphasis added.)

This presupposes that the Hameds have stored or otherwise transferred documents not supplied. This is not the case. These are largely 25 year-old documents -- and even for more current ones, this is the answer. If you don't have it -- you don't have it. There is no remedy for that. Every document in their possession has been reviewed. They DO NOT HAVE ANY MORE.

E. If Hamed or Waheed claim that no responsive documents exist, they he must submit a sworn statement to that effect.

They will supply that if the Court directs.

What the Yusufs fail to mention is that Fathi Yusuf has controlled the vast spread of "United's" (including Plaza Extra's) documents and accounting records and that the Yusufs have most of them (and have supplied almost none). What they also fail to mention is that wherever the Yusufs thought such documents existed, they have already subpoenaed institutions such as the Hameds' banks and even casino records. So the legal idea that the Hameds have a duty to go dig up old bank records is wrong, and notwithstanding, **if any such records did exist they have been subpoenaed.**

The Court is invited to compare (or have the Master compare) the responses. If any deficiencies are noted, Hamed will certainly respond -- although the Hameds believe that all of the questions have been answered, re-answered and re-answered. Without access to accounting records (which United and Yusuf have still not supplied), without access to the records of what was taken from the stores by United and Yusuf

(which Yusuf has still not supplied) -- indeed, without virtually any records, it is impossible for the Hameds to answer further.

Counsel for the Hamed Counterclaim defendants have allowed undersigned counsel to file this Opposition for them here.

Dated: October 23, 2014



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CERTIFICATE OF SERVICE

I hereby certify that on this 23rd day of October, 2014, I served a copy of the foregoing by email, as agreed by the parties, on: _____

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