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ADMITTED: USVI, NM & DC

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Charlotte Perrell, Esq.
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By Email Only

RE: Request for Rule 37 Conference re Interrogatory 9 of 50

Dear Attorney Perrell

I write regarding one of the Yusuf/United 'claims discovery responses' served on May 15, 2018. It is Hamed's intention to file a motion to compel directed to the Special Master. Pursuant to Rule 37.1, I request a conference to discuss the bases of the proposed motion, and seek amendment to the Yusuf response. I would appreciate a date and time convenient for you within a week. The item at issue is: Interrogatory 9 of 50 - New Claim Number H-144, \$900,000—a tax payment for United Corporation Shareholders in April 2013.

This is yet another attempt to avoid answering by arguing that no discovery can be responded to "as only Mr. Gaffney knows anything about financial matters"—already rejected by Judge Ross. However, this interrogatory has NOTHING to do with Partnership's accounting or Mr. Gaffney's "special knowledge" as the Partnership's accountant. It is directed solely to actions by Defendant United Corporation ("United") and Fathi Yusuf outside his role as a partner. It involves money taken by Yusuf for his own family members from Partnership accounts; solely for their own personal use. Thus, it requires no specialized "Partnership" accounting knowledge.

In fact, it requires no knowledge about the Partnership, its books or its actions—other than that it was Partnership money that was taken. To the contrary, not a single Partnership record is involved as we already have the accounting entry taking the \$900,000—this is a purely-United-records-Yusuf-personally issue—United computed the taxes and issued the tax forms, and Yusuf and his kin were the theft beneficiaries.

As to the view that this was for *other taxes that the individual shareholders owed on top of the flow through based on United's operations*, I direct your attention to the testimony of the DOJ's attorney before Judge Lewis when she describes the theft of Partnership funds to pay non-Partnership, non-United-Pass-Through taxes for Yusuf Family Members who not only didn't work for the Partnership--to pay for totally unrelated tax on totally unrelated income. It is uncontested that on July 16, 2013, Lori Hendrickson, DOJ, *revealed* that not only had the Partnership funds been used to pay the taxes for Yusuf family members who did not work in the Plaza Extra stores—but that the Yusufs had, for the entire historical period,¹ been stealing Partnership funds to pay their taxes even on totally *unrelated* outside (i.e., non-Plaza Extra, non-United, unconnected) stateside earnings and income.

[p. 67] MS. HENDRICKSON: And there was other income on some of their [the Yusuf Family members'] returns. So, if they had other investments and things like that. So I think that is a fair representation to say United **[Partnership funds] paid for other taxes that the individual shareholders owed on top of the flow through based on United's operations**. * * *So to the extent there was additional money paid, and I reviewed the tax returns, I agree with Mr. Andreozzi's point. (Emphasis added.)

I suggest you review the transcript for what Atty. Henderson refers to as "Mr. Andreozzi's point." Moreover, not to put too fine a point on this, but this also means that the Partnership was paying for their US taxes on Non-USVI income earned/stolen in another taxing jurisdiction.

Finally, as to why Mr. Gaffney is neither involved nor his specialized knowledge even arguably relevant—I note that this was paid when (1) the Hamed's were being excluded from being able to see the accounts and know what was going on, (2) after the law suit was brought to stop this sort of thing and thus any consent withdrawn, (3) over Hamed's written objections and (4) (vastly ironically) in the same month that Judge Brady wrote the TRO decision blasting Yusuf for exactly this sort of activity.

Hamed urges you to simply respond regarding this matter rather than endlessly fight for the right to wrongly avoid all financial discovery by asserting "only Mr. Gaffney can do this." We also believe Yusuf's capitulation on this will provide *insight* to Judge Ross.

¹ That period is not limited to the September 17, 2006 date.

ANALYSIS OF DEFICIENCIES IN THIS INTERROGATORY

1. The discovery request and response

The original Interrogatory 9, and Yusuf's response are set forth below:

Interrogatory 9 of 50 - New Claim Number H-144

\$900,000 Estimated tax payment for United Corporation Shareholders in April 2013

Please provide a detailed explanation for the April 2013 \$900,000 estimated tax payment for United Corporation shareholders, including, but not limited to, the business reason for the payout, the names of the individuals whose taxes were being paid and the amount paid for each individual, a description of why the Partnership should pay United Corporation shareholders' taxes, an entity wholly separate from the Partnership, and a description of all documents related to this entry. If the Hameds received an equal payout, please describe the general ledger entry substantiating that payout and describe all of the documents evidencing that payout (cancelled checks, for example). If they did not, explain why.

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 terms of the JDSP limiting the number of interrogatory questions.

Defendants further object on the grounds that the responsive information cannot be readily obtained by making reasonable inquiries as these inquiries require the skilled and detailed attention and focus of John Gaffney, former Partnership accountant, to revisit his accounting and work papers. Yusuf is no longer being paid to function as the Liquidating Partner to answer questions on behalf of the Partnership and the accounting that took place during the liquidation process. Likewise, John Gaffney is no longer employed by the Partnership to function in the role as Partnership accountant. To respond to these questions, the expertise and knowledge of John Gaffney is necessary, which diverts him away from his employment with United. Rather, if Hamed seeks information from John Gaffney for questions as to the accounting efforts he undertook as the Partnership accountant, Hamed should be required to compensate John Gaffney for his time in researching and preparing those responses.

Furthermore, many of these inquiries as to the Partnership accounting are duplicative of questions Gaffney has previously addressed at or near the time that the transactions took place. Reorienting now as to transactions from years ago constitutes an undue burden and causes unnecessary time and expense. If Hamed seeks to revisit these issues, Hamed should bear the cost.

2. Parsing the "Objections"

Below, Hamed sets out each of the three Yusuf objections *verbatim*. Only emphasis and headings have been added.

a. Yusuf Objection #1 of 3 - This must be directed to Mr. Gaffney, not Yusuf

Defendants. . .object on the grounds that the responsive information cannot be readily obtained by making reasonable inquiries as **these inquiries require the skilled and detailed attention and focus of John Gaffney**, former Partnership accountant, to revisit his accounting and work papers. Yusuf is no longer being paid to function as the Liquidating Partner to answer questions on behalf of the Partnership and the accounting that took place during the liquidation process. Likewise, John Gaffney is no longer employed by the Partnership to function in the role as Partnership accountant. **To respond to these questions, the expertise and knowledge of John Gaffney is necessary**, which diverts him away from his employment with United. Rather, if Hamed seeks information from John Gaffney for questions as to the accounting efforts he undertook as the Partnership accountant, Hamed should be required to compensate John Gaffney for his time in researching and preparing those responses. (Emphasis added.)

What PARTNERSHIP (as opposed to United/Yusuf) "expertise and knowledge of John Gaffney" is involved here? None, not a single iota. The fact that Gaffney, as accountant for the Yusuf family and United's other operations, may *also* have been the partnership accountant is irrelevant. Yusuf was the actor. United was the entity. Yusuf and his family were the theft beneficiaries. Truly, Yusuf was just another partner defalcating funds. The Partnership was only the victim. Most importantly, Yusuf was "in charge" of "all financials" when this occurred. Mr. Gaffney was just an employee.

b. Yusuf Objection #2 of 3 - This was too long ago to bother with

Furthermore, many of these inquiries as to the Partnership accounting are duplicative of questions Gaffney has previously addressed at or near the time that the transactions took place. **Reorienting now as to transactions from years ago constitutes an undue burden and**

causes unnecessary time and expense. If Hamed seeks to revisit these issues, Hamed should bear the cost. (Emphasis added.)

Again, this one payment for Yusuf's own personal taxes. Reorienting is necessary up to the statutory time limit for tax violations. The records have to have been kept. This is a RUPA winding up and a partner stole money from a RUPA partnership to pay his family's personal, totally-unrelated taxes. There is no such thing as "too old" for tat in a winding up. That is good, old-fashioned, undisclosed theft from your partner by slight-of-hand with partnership funds—exactly what RUPA wind up was designed to reach.

c. Yusuf Objection #3 of 3 - It is compound

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 terms of the JDSP limiting the number of interrogatory questions

There is nothing compound about the inquiry. It is a question about a single transaction and how it compared to the identical transaction for Hamed. Moreover, as set forth below, even if the Hamed comparison is compound, the first part of the inquiry must be answered—this objection does not allow the respondent to skip the entire question.

3. Applicable Law

**Rule 26. Duty to Disclose; General Provisions Governing Discovery
(b) Discovery Scope and Limits.**

(1) Scope in General. Unless otherwise limited by court order, **the scope of discovery is as follows: Parties may obtain discovery regarding any nonprivileged matter that is relevant to any party's claim or defense.** Information within this scope of discovery need not be admissible in evidence to be discoverable. (Emphasis added.)

(2) Limitations on Frequency and Extent.

* * * *

(C) When Required. On motion or on its own, the court must limit the frequency or extent of discovery otherwise allowed by these rules if it determines that:

(i) the discovery sought is unreasonably cumulative or duplicative, or can be obtained from some other source that is more convenient, less burdensome, or less expensive;

(ii) the party seeking discovery has had ample opportunity to obtain the information by discovery in the action; or

(iii) the proposed discovery is not relevant to any party's claim or defense.

(D) Duplicative discovery. Duplicative disclosure is not required, and if all information and materials responsive to a request for disclosure has already been made available to the discovery party, the responding party may, for its response, state specifically how and in what form such prior disclosure has been made. Where only part of the information has previously been provided to the discovering party, the response may so state and must then further make available the remaining discoverable information or materials.

* * * *

(c) Protective Orders.

(1) In General. **A party or any person from whom discovery is sought may move for a protective order in the court where the action is pending** — or as an alternative on matters relating to a deposition, in the court where the deposition will be taken. **The motion must include a certification that the movant has in good faith conferred or attempted to confer with other affected parties in an effort to resolve the dispute without court action.** (Emphasis added.) The court may, for good cause, issue an order to protect a party or person from annoyance, embarrassment, oppression, or undue burden or expense, including one or more of the following:

(A) forbidding the disclosure or discovery;

(B) specifying terms, including time and place or the allocation of expenses, for the disclosure or discovery;

(C) prescribing a discovery method other than the one selected by the party seeking discovery;

(D) forbidding inquiry into certain matters, or limiting the scope of disclosure or discovery to certain matters;

(E) designating the persons who may be present while the discovery is conducted;

(F) requiring that a deposition be sealed and opened only on court order;

(G) requiring that a trade secret or other confidential research, development, or commercial information not be revealed or be revealed only in a specified way; and

(H) requiring that the parties simultaneously file specified documents or information in sealed envelopes, to be opened as the court directs.

(2) Ordering Discovery. If a motion for a protective order is wholly or partly denied, the court may, on just terms, order that any party or person provide or permit discovery.

(3) Awarding Expenses. Rule 37(a)(5) applies to the award of expenses in motions relating to protective orders.

* * * *

(3) Sanction for Improper Certification. If a certification violates this rule without substantial justification, the court, on motion or on its own, must impose an appropriate sanction on the signer, the party on whose behalf the signer was acting, or both. The sanction may include an order to pay

the reasonable expenses, including attorney's fees, caused by the violation.

In addition, the revision notes provide:

NOTE. Rule 26 is the foundational provision regarding mandatory early disclosures and the scope of discoverable information throughout the action.

* * * *

Subpart (b) is the general "scope" provision governing discovery in the Virgin Islands. It defines discoverable materials as "any nonprivileged matter that is relevant to any party's claim or defense."

Rule 33 controls as to interrogatories. Emphasis added.

Rule 33. Interrogatories to Parties

(a) In General.

* * * *

(2) Scope. An interrogatory **may relate to any matter that may be inquired into under Rule 26(b). An interrogatory is not objectionable merely because it asks for an opinion or contention that relates to fact or the application of law to fact. . . .**

* * * *

(b) Answers and Objections.

(1) Responding Party. The interrogatories **must be answered:**

(A) by the party to whom they are directed; or

3. Application of the Law to Yusuf's Objections

a. Yusuf Objection #1 of 3—This must be directed to Mr. Gaffney, not Yusuf

Yusuf's first objection is *identical* to the same argument advanced (and rejected by the Special Master) with regard to the three RFAs. Thus, Hamed will re-state his counter-argument from that prior motion.

Deficiency. First, the Discovery Plan as to the "Section B" claims absolutely does not either allow or require diversion to Mr. Gaffney—[Claim H-144] is in **Section B** of the Plan. Yusuf stipulated to that Plan—he *fully agreed* to these definitions and these procedures. The Master then Ordered the Plan based on this agreement. **Yusuf now seeks to say that other claims must go to Gaffney—despite the clear language. Yusuf cannot change it unilaterally now**—he knew when he stipulated which claims would and would not be diverted to Mr. Gaffney, and which were in "B" and would be answered by Yusuf.

Second, Mr. Gaffney is not a party here. **Interrogatories cannot [under Rule 33] be directed to non-parties.** See the applicable portion of the rule:

(b) Answers and Objections.

**(1) Responding Party. The interrogatories must be answered:
(A) by the party to whom they are directed;**

Third, Nor would Mr. Gaffney's responses be interrogatory responses that can be used like interrogatories against United and Yusuf.²

Fourth, Yusuf IS a party. Thus, pursuant to Rule 26(b)(1) any potentially relevant question can reasonably be put to him. He is both the defendant and he was the Liquidating Partner.

Fifth, the fact that it could also be put to another witness is totally irrelevant for interrogatories. Any actions of the defendants or of the Partnership that occurred while he was in those two roles, are answerable by him. It is not a proper response to an interrogatories to state that "the Plaintiff already knows this" or "someone else can also testify."

b. Yusuf Objection #2 of 3 - This was too long ago to bother with

Reorienting now **as to transactions from years ago** constitutes an undue burden and causes unnecessary time and expense. If Hamed seeks to revisit these issues, Hamed should bear the cost. (Emphasis added.)

These are tax filings and by United and Yusuf. There is no such "too long ago" for objection for such activities under either rule. The relevant time period has been defined by the tax code and Judge Brady. These are payments from Partnership accounts for a decidedly non-partnership purpose well after (1) the books were being done on a regular basis, (2) Hamed had raised objections, (3) Hamed had been precluded from seeing this transaction, and Judge Brady was deciding the TRO.

This is a RUPA winding up. There is no such thing as "too old" in the 2012-end books for Partnership funds that have been revealed to be going to non-United funds that the

² Rule 33(c) has a specific provision regarding this point: "(c) Use. An answer to an interrogatory may be used to the extent allowed by the Virgin Islands Rules of Evidence." A discovery response by a non-party witness would not have the same evidentiary effect as an interrogatory response by the party.

DOJ referred to as: "other taxes that the individual shareholders owed on top of the flow through based on United's operations."

c. Yusuf Objection #3 of 3 - Compound

First, it isn't compound. Second, even if it is allegedly compound and thus that part is objectionable, you must answer the first part—you do not get to skip the whole interrogatory. Rule 33 provides:

(b) Answers and Objections.

(1) Responding Party. The interrogatories must be answered:

(A) by the party to whom they are directed; or

(B) if that party is the Government of the Virgin Islands, a public corporation, an autonomous or semi-autonomous agency or board, a private corporation, a partnership, an association or other entity, by any officer, employee or agent, who must furnish the information available to the party.

(2) Time to Respond. The responding party must serve its answers and any objections within 30 days after being served with the interrogatories. A shorter or longer time may be agreed by the parties under Rule 29 or be ordered by the court.

(3) Answering Each Interrogatory. Each interrogatory must, **to the extent it is not objected to, be answered** separately and fully in writing under oath. (Emphasis added.)

Thus, Yusuf failed to answer the non-compound portion:

Please provide a detailed explanation for the April 2013 \$900,000 estimated tax payment for United Corporation shareholders, including, but not limited to, the business reason for the payout, the names of the individuals whose taxes were being paid and the amount paid for each individual, a description of why the Partnership should pay United Corporation shareholders' taxes, an entity wholly separate from the Partnership, and a description of all documents related to this entry.

I will await your response with dates/times.

Sincerely,



Carl J. Hartmann