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ADMITTED: USVI, NM & DC

May 16, 2018

Charlotte Perrell, Esq.  
DTF  
Law House  
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By Email Only

RE: Request for Rule 37 Conf. re RFPD 27 of 50 - "Half of Value of Six Containers."

Dear Attorney Perrell:

I am writing regarding one of the Yusuf/United claims discovery responses served on May 15, 2018. It is my intention to file a motion for the Master to compel. Pursuant to Rule 37.1, I request a conference to discuss the bases of our motion, and seek amendment. I would appreciate a date and time convenient for you this week.

The time for responses to written discovery under the Plan is over. **Hamed is under no duty to force you to comply with the Rules, nor is he under any duty to allow time after that deadline has passed for you to supplement before filing a motion.**

Let me note that Yusuf's response here was particularly awful, again violates the applicable discovery rules and was (another) clear attempt to totally avoid responding. I say that because after your client's INSISTENCE that we rush to set tight discovery time limits, after Hamed having already given you extra time to respond at your request (and your, personally, stating to me, personally, at the time Hamed allowed extra time, that all Responses would be provided with no more delays or non-answers), after the dilatory filings -- your client has the temerity to file a response AFTER the original deadline for all written responses -- stating that (1) "To the extent that information has not already been provided to Hamed pursuant to briefing relating to this claim" which isn't true, and (2) Defendants will supplement their response to this Request" which is LATE. It is too late to provide a response -- not a supplementation -- but a response.

Thus, once again, I will ask the Court to review this response to provide direction and require you to re-do most of the materials your client provided.

## **RFPD 27 of 50:**

Request for the Production of Documents, 26 of 50, relates to Y-14, "Half of Value of Six Containers."

With respect to Y-14, please provide all documents substantiating your claim, including the itemized pricing and contents of the six containers.

## **Response**

To the extent that information has not already been provided to Hamed pursuant to briefing relating to this claim, Defendants will supplement their response to this Request.

This is a claim totally in your client's control. Hamed has no idea what it is about and cannot provide any testimony, documents or information.

I also note that in response to all of the Hamed requests for production, not a single document was produced. If the Court is unwilling to deal with your client's evasion en masse, unfortunately Hamed will have to file 116 motions to compel. In this vein, as we have already done deficient RFA's, I use one of RFPDs as this exemplar. We will provide another letter as to a representative interrogatory.

## ***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.

(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.** 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."

\* \* \* \*

Subpart (c) authorizes regular protective order practice. Any such 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. The full range of dispositions will be open to the court, from barring production to enforcing it, and including a variety of protective provisions in the order.

Under Subpart (d) a party may not seek discovery from any source before the parties have conferred as required by Rule 26(f), except in a proceeding exempted from initial disclosure under Rule 26(a)(1)(B), or when authorized by these rules, by stipulation, or by court order. There is a provision in this rule for so-called "early Rule 34 requests" to be made more than 21 days after the summons and complaint are served on a party, which will be deemed to have been served at the first Rule 26(f) conference.

A separate "sequencing" provision expressly addresses the effect of motions interposed by a defendant. Subpart (d)(4) expressly states that discovery is not stayed or deferred by the filing of a motion, including so-called dispositive motions such as applications under Rule 12 or Rule 56.

Rule 34 controls as to document production:

**Rule 34. Producing Documents, Electronically Stored Information, and Tangible Things, or Entering onto Land, for Inspection and Other Purposes**

(a) In General. A party may serve on any other party a request within the scope of Rule 26(b):

(1) to produce and permit the requesting party or its representative to inspect, copy, test, or sample the following items in the responding party's possession, custody, or control:

(A) any designated documents or electronically stored information — including writings, drawings, graphs, charts, photographs, sound recordings, images, and other data or data compilations — stored in any medium from which information can be obtained either directly or, if necessary, after translation by the responding party into a reasonably usable form; or

\* \* \* \*

(b) Procedure.

(1) Contents of the Request. The request:

(A) must describe with reasonable particularity each item or category of items to be inspected;

(B) must specify a reasonable time, place, and manner for the inspection and for performing the related acts; and

(C) may specify the form or forms in which electronically stored information is to be produced.

(2) Responses and Objections.

(A) Time to Respond. The party to whom the request is directed must respond in writing within 30 days after being served or — if the request was delivered under Rule 26(d)(2) — within 30 days after the parties' first Rule 26(f) conference. A shorter or longer time may be stipulated to under Rule 29 or be ordered by the court.

**(B) Responding to Each Item. For each item or category, the response must either state that inspection and related activities will be permitted as requested or state with specificity the grounds for objecting to the request, including the reasons. The responding party may state that it will produce copies of documents or of electronically stored information instead of permitting inspection. The production must then be completed no later than the time for inspection specified in the request or another reasonable time specified in the response.**

**(C) Objections. An objection must state whether any responsive materials are being withheld on the basis of that objection with sufficient particularity to identify what has been withheld. An objection to part of a request must specify the part and permit inspection of the rest.**

(D) Responding to a Request for Production of Electronically Stored Information. The response may state an objection to a requested form for producing electronically stored information. If the responding party objects to a requested form — or if no form was specified in the request — the party must state the form or forms it intends to use.

(E) Producing the Documents or Electronically Stored Information. Unless otherwise stipulated or ordered by the court, these procedures apply to producing documents or electronically stored information:

(i) A party must produce documents as they are kept in the usual course of business or must organize and label them to correspond to the categories in the request;

(ii) If a request does not specify a form for producing electronically stored information, a party must produce it in a form or forms in which it is ordinarily maintained or in a reasonably usable form or forms; and

(iii) A party need not produce the same electronically stored information in more than one form.

(c) Nonparties. As provided in Rule 45, a nonparty may be compelled to produce documents and tangible things or to permit an inspection.

The revision notes provide:

NOTE. . . Rule 34, the provision governing production of documents including electronic records and files, applies — as in prior practice — to materials "in the responding party's possession, custody, or control." . . . .For each item or category, the response must either state that inspection and related activities will be permitted as requested **or state with specificity the grounds for objecting to the request, including the reasons.** . . . The response and objection provision now states that any objection must set forth whether any responsive materials are being withheld on the basis of that objection with sufficient particularity to identify what has been withheld.

### ***Application of the Law to Yusuf's Objections***

Your client didn't respond on facts solely within his control.

What little your client did say was a disguised incorrect representation.

If you don't respond to this before the weekend, Hamed will not play any more games, but will proceed. Again, Hamed is under no duty to force you to comply with the Rules, nor is he under any duty to allow time after the deadline for supplementation. *This is identical to the response for the Daytona Market. Your client will not describe or substantiate his claims in basic discovery.*

Sincerely,

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

Carl J. Hartmann