

CARL J. HARTMANN III
ATTORNEY-AT-LAW
5000 ESTATE COAKLEY BAY, L-6
CHRISTIANSTED, VI 00820

TELEPHONE
(340) 719-8941

ADMITTED: USVI, NM & DC

KIMBERLY L. JAPINGA, (ADMITTED MI, DC)

EMAIL
CARL@CARLHARTMANN.COM

Charlotte Perrell, Esq.
DTF
Law House
St. Thomas, VI 00820

Via Email Only

RE: Request for Rule 37 Conference re Claims Discovery Responses, Letter 1 of 2

Dear Attorney Perrell:

As discussed in the telephone conference last week, this is the first of two letters requesting a Rule 37 telephone conference regarding the Yusuf/United responses to the referenced discovery. The deficient discovery requests are separated into five categories. This letter covers items 1-4 and should require a relatively short conference. A second letter will be forthcoming outlining discovery responses that are just generally deficient.

- 1) KAC357, Inc. claims (Previously denied because of relevance – the case has since been filed separately and then consolidated),
- 2) Clams requiring John Gaffney's assistance (previously denied because Yusuf filed a motion seeking to have these transferred to Part-A, Gaffney Analysis, but that having since been denied),
- 3) Claims response pending determination of Yusuf's Motion to Strike (which has since been denied),
- 4) Claims responses where Yusuf indicated further information or supplementation would be forthcoming – but nothing has been received yet, and
- 5) Claim discovery responses that are generally deficient.

**Deficient Claims Discovery Responses re KAC357, Inc.,
John Gaffney, Motion to Strike and Supplemental Information**

1. KAC357, Inc. Claims

Interrogatory 17 of 50:

Interrogatory 17 of 50 relates to Claim H-7 (old Claim No. 248): "KAC357 Inc. payment of invoices from J. David Jackson, PC and H-8 (Old Claim No. 256): "David Jackson, CPA, bill owed for tax work done related to the Partnership's. 2013 taxes," as described in Hamed's November 16, 2017 Motion for a Hearing Before Special Master Exhibit 3 and the September 28, 2016 JVZ Engagement Report and Exhibits.

With regard to Claims H-7 and H-8, state in detail why these invoices for work done for the Partnership were not paid by the Partnership. If you assert these are not Partnership expenses, state in detail why that is, with reference to all applicable documents, communications and witnesses.

Yusuf Response:

* * *

Defendants further object to this Interrogatory because KAC357, Inc. is not a party to this consolidated case and its "claims" are not part of the accounting claims referred to the Master for his report and recommendation.

(May 15, 2018, *Responses to Hamed's Fourth Interrogatories per the Claim Discovery Plan of 1/29/2018 Nos. 16-28 of 50*, pp. 7-8)

Deficiency for Interrogatory 17: Defendant Fathi Yusuf objected to KAC357, Inc. including its claims in *Hamed v Yusuf, et. al.*, SX-12-CV-370 because it was not a party to the consolidated 370 case and KAC357, Inc.'s claims were not part of the accounting claims referred to the Master.

On June 13, 2018, KAC357, Inc. filed a complaint against Fathi Yusuf and the Hamed-Yusuf Partnership seeking reimbursements for unpaid expenses, *KAC357, Inc. v Yusuf and the Hamed-Yusuf Partnership*, SX-18-CV-219. On July 12, 2018, KAC357, Inc. filed a First Amended Complaint.

On August 2, 2018, the parties filed a joint motion for consolidation and a stipulation requesting that

KAC357's claims previously included in Hamed's Revised Claims are deemed re-presented against the partnership to Master Ross for

resolution by him in a manner identical with all other Hamed Revised Claims.

On August 16, 2018, Judge Jomo Meade entered an Order consolidating SX-18-CV-219 with the *Hamed v Yusuf, et.al.* consolidated case, SX-12-CV-370.

Now that the KAC357, Inc. claims are a part of the claims process, Hamed requests that Yusuf respond to Interrogatory 17.

2.Requires John Gaffney's Assistance

Interrogatory 8 of 50 - New Claim Number H-037-- Old Claim #: 353 **Due to/from Fathi Yusuf**

Please provide a detailed explanation for each entry on Exhibit 353-a, including, but not limited to, the business purpose for each transaction, what each entry represents, who received what payouts from this entry and the amounts, where each entry is recorded on the general ledger (both current and historical, if applicable), and a description of the documents that support your response. Make sure your response includes the following general ledger entries:

-West, 9130115, JE30-03, GENJ, CLEAR MISC YUSUF/PSHIP DUE TO /FR
ACCOUNTS, \$120,167.33
-STT, 9/30/15, JE30-01, GENJ, CLEAR YUSUF/PSHIP MISC DUE TO /FR
ACCOUNTS ON 9130, \$186,819.33
-West, 9/30/15, JE03-30, GENJ, CLEAR MISC YUSUF/PSHIP DUE TO/FR
ACCOUNTS, \$900,000
(See Exhibits 353-a, Exhibits to JVZ Engagement Report, September 28, 2016, bates number JVZ-001543.)

Response:

* * *

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. . . . (May 15, 2018, *Response to Hamed's Interrogatories 2 Through 13 Of 50 - New Claim Numbers: Y-8, H-1, H-23, H-19, H-33, H-34, H-37, H-144, H-145, H-155, H-156, H-158 & H-160*, pp. 14-15)

Deficiency for Interrogatory 8: On August 10, 2018, the Special Master denied Yusuf's motion to strike Hamed claims 41-141 and the additional 14 claims Yusuf questioned. The Judge ordered that the "Parties shall proceed forward with discovery as to Hamed Claim Nos. H-41 to H-141 as set forth in the Discovery Plan." (p. 6, footnote 10 omitted)

Now that Yusuf's motion to strike has been denied, Hamed requests that Yusuf respond to Interrogatory 8.

Interrogatory 9 of 50 - New Claim Number H-144-- Old Claim #: 492
\$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 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. . . . (May 15, 2018, *Response to Hamed's Interrogatories 2 Through 13 Of 50 - New Claim Numbers: Y-8, H-1, H-23, H-19, H-33, H-34, H-37, H-144, H-145, H-155, H-156, H-158 & H-160*, pp. 16-17)

Deficiency for Interrogatory 9: On August 10, 2018, the Special Master denied Yusuf's motion to strike Hamed claims 41-141 and the additional 14 claims Yusuf questioned. The Judge ordered that the "Parties shall proceed forward with discovery as to Hamed Claim Nos. H-41 to H-141 as set forth in the Discovery Plan." (p. 6, footnote 10 omitted)

Now that Yusuf's motion to strike has been denied, Hamed requests that Yusuf respond to Interrogatory 9.

Interrogatory 10 of 50 - New Claim Number H-145-- Old Claim #: 3003
WAPA deposits paid with Partnership funds

Explain the allocation of the returned WAPA deposit and interest, including, but not limited to, why the return of Partnership funds was allocated to the United Corporation, limited to, why the distribution to United was called a capital distribution, a description of all documents, testimony or affidavits showing that United funds were used for the initial deposit, why the WAPA deposit and interest for PE-West was allocated to Plessen, even though the funds are Partnership funds and how much of the PE-Tutu deposit and interest was allocated to expenses that occurred after May 1, 2015, a description of exactly where deposit and interest ended up for each of the three stores and a detailed description of all the documents that support your answer.

Response:

* * *

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. (May 15, 2018, *Response to Hamed's Interrogatories 2 Through 13 Of 50 - New Claim Numbers: Y-8, H-1, H-23, H-19, H-33, H-34, H-37, H-144, H-145, H-155, H-156, H-158 & H-160*, pp. 18-19)

Deficiency for Interrogatory 10: On August 10, 2018, the Special Master denied Yusuf's motion to strike Hamed claims 41-141 and the additional 14 claims Yusuf questioned. The Judge ordered that the "Parties shall proceed forward with discovery as to Hamed Claim Nos. H-41 to H-141 as set forth in the Discovery Plan." (p. 6, footnote 10 omitted)

Now that Yusuf's motion to strike has been denied, Hamed requests that Yusuf respond to Interrogatory 10.

RFPDs 20 of 50:

Request for the Production of Documents, 20 of 50 relates to H-144 (old Claim No. 492):

"\$900,000 Estimated tax payment for United Corporation shareholders."

With respect to H-144, an estimated tax payment in April 2013 using Partnership funds was made for United Corporation shareholders. Please provide all documents related to this expenditure, including but not limited to: any written agreements that Partnership funds would be used in this manner, tax returns for each United shareholder documenting any such

payments, as well as any documentation showing that the Hamed's tax for the same time period were paid by the Partnership.

Response:

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. . . . (May 15, 2018, *Response to Hamed's Fourth Request for Production of Documents Nos. 19-27 of 50 Pursuant to the Claims Discovery Plan*, pp. 5-6)

Deficiency for Interrogatory 20: On August 10, 2018, the Special Master denied Yusuf's motion to strike Hamed claims 41-141 and the additional 14 claims Yusuf questioned. The Judge ordered that the "Parties shall proceed forward with discovery as to Hamed Claim Nos. H-41 to H-141 as set forth in the Discovery Plan." (p. 6, footnote 10 omitted)

Now that Yusuf's motion to strike has been denied, Hamed requests that Yusuf respond to Interrogatory 20.

Interrogatory 22 of 50:

Interrogatory 22 of 50 relates to Claim No. H-146 (old Claim No. 3007): "imbalance in credit card points," as described in Hamed's November 16, 2017 Motion for a Hearing Before Special Master, Exhibit 3 and the September 28, 2016 JVZ Engagement Report and Exhibits.

With respect to H-146, state the approximate value of these credit card points, by describing: the approximate number of points in each of the years 2008 -the date of the splitting of the East and West stores; the present value of that many points if negotiated on the date of these answers at the point-to-dollar value now - and show all of your calculations, sources of information and support for this approximation.

Response:

* * *

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. . . .

(May 15, 2018, *Responses to Hamed's Fourth Interrogatories per the Claim Discovery Plan of 1/29/2018 Nos. 16-28 of 50*, pp. 14-15)

Deficiency for Interrogatory 22: On August 10, 2018, the Special Master denied Yusuf's motion to strike Hamed claims 41-141 and the additional 14 claims Yusuf questioned. The Judge ordered that the "Parties shall proceed forward with discovery as to Hamed Claim Nos. H-41 to H-141 as set forth in the Discovery Plan." (p. 6, footnote 10 omitted)

Now that Yusuf's motion to strike has been denied, Hamed requests that Yusuf respond to Interrogatory 22.

Interrogatory 26 of 50:

Interrogatory 26 of 50 relates to Claim No. H-164: "Inventory adjusted downward by \$1,660,000 due to unrecorded inventory transfers to other stores," as described in Hamed's November 16, 2017 Motion for a Hearing Before Special Master, Exhibit 3.

With respect to Claim No. H-164, describe all transactions in detail that relate to the inventory adjusted downward by \$1,660,000 due to unrecorded inventory transfers to other stores, with references, for each such transaction, to all related and underlying documents.

Response:

* * *

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. . .

(May 15, 2018, *Responses to Hamed's Fourth Interrogatories per the Claim Discovery Plan of 1/29/2018 Nos. 16-28 of 50*, pp. 20-21)

Deficiency for Interrogatory 26: On August 10, 2018, the Special Master denied Yusuf's motion to strike Hamed claims 41-141 and the additional 14 claims Yusuf questioned. The Judge ordered that the "Parties shall proceed forward with discovery as to Hamed Claim Nos. H-41 to H-141 as set forth in the Discovery Plan." (p. 6, footnote 10 omitted)

Now that Yusuf's motion to strike has been denied, Hamed requests that Yusuf respond to Interrogatory 26.

Interrogatory 27 of 50:

Interrogatory 27 of 50 relates to Claim No. H-165: "Debts totaling \$176,267.97, which must be paid prior to any distribution of the remaining Partnership Assets to the Partners," as of September 30, 2016, as described in Hamed's November 16, 2017 Motion for a Hearing Before Special Master, Exhibit 3.

With respect to H-165, described in detail, with reference to all related and underlying documents, each of the "debts totaling \$176,267.97, which must be paid prior to any distribution of the remaining Partnership Assets to the Partners,"

Response:

* * *

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. . . . (May 15, 2018, *Responses to Hamed's Fourth Interrogatories per the Claim Discovery Plan of 1/29/2018 Nos. 16-28 of 50*, pp. 22-23)

Deficiency for Interrogatory 27: On August 10, 2018, the Special Master denied Yusuf's motion to strike Hamed claims 41-141 and the additional 14 claims Yusuf questioned. The Judge ordered that the "Parties shall proceed forward with discovery as to Hamed Claim Nos. H-41 to H-141 as set forth in the Discovery Plan." (p. 6, footnote 10 omitted)

Now that Yusuf's motion to strike has been denied, Hamed requests that Yusuf respond to Interrogatory 27.

3. Pending Motion to Strike

Interrogatory 7 of 50 - New Claim Number H-034-- Old Claim #: 340

Rents collected from Triumphant church

Please explain how, when and why rents from the church were collected by a Yusuf family member, and where those funds went. Describe all documents, including but not limited to, general ledger entries and cancelled checks, substantiating a credit back to the Partnership for the rents collected by NejeH Yusuf from the Triumphant church as documented in Exhibit 340, Exhibits to JVZ Engagement Report, September 28, 2016, bates numbers JVZ-001369-JVZ-001382.

Response:

Yusuf has filed a Motion to Strike Hamed's Amended Claim Nos. H-41 through H-141 and Additional "Maybe" Claims ("Motion to Strike") seeking to strike Hamed Claim 34, which is the subject of this interrogatory. Yusuf incorporates by reference his Motion to Strike as if fully set forth herein verbatim and submits that because there is a pending Motion to Strike, the

requirement for a response should be stayed pending the resolution. (May 15, 2018, *Response to Hamed's Interrogatories 2 Through 13 Of 50 - New Claim Numbers: Y-8, H-1, H-23, H-19, H-33, H-34, H-37, H-144, H-145, H-155, H-156, H-158 & H-160*, pp. 13)

Deficiency for Interrogatory 7: On August 10, 2018, the Special Master denied Yusuf's motion to strike Hamed claims 41-141 and the additional 14 claims Yusuf questioned. The Judge ordered that the "Parties shall proceed forward with discovery as to Hamed Claim Nos. H-41 to H-141 as set forth in the Discovery Plan." (p. 6, footnote 10 omitted)

Now that Yusuf's motion to strike has been denied, Hamed requests that Yusuf respond to Interrogatory 7.

RFPDs 13 of 50:

Request for the Production of Documents, 13 of 50, relates to H-142 (old Claim No. 490): "Half acre in Estate Tutu."

With respect to H-142, please provide all documents which relate to this entry - particularly (but not limited to) all underlying documents relating to the source of funds for the purchase of this property if it was other than income from the stores.

Response:

* * *

Moreover, this claim is the subject of Defendants' Motion to Strike Hamed's Amended Claim Nos. 142 and 143 ("Motion to Strike") seeking to strike Hamed Claim 142 on the grounds that the property was titled in the name of Plessen, was not an asset of the Partnership and is barred by the Limitation Order. Defendants incorporate by reference their Motion to Strike as if fully set forth herein verbatim and submit that because there is a pending Motion to Strike, the requirement for a response should be stayed pending the resolution. (May 15, 2018, *Response to Hamed's Third Request for Production of Documents Nos. 8-18 of 50 Pursuant to the Claims Discovery Plan*, pp.10-11)

Deficiency for RFPDs 13: On August 10, 2018, the Special Master denied Yusuf's motion to strike Hamed claims 41-141 and the additional 14 claims Yusuf questioned. The Judge ordered that the "Parties shall proceed forward with discovery as to Hamed Claim Nos. H-41 to H-141 as set forth in the Discovery Plan." (p. 6, footnote 10 omitted)

Now that Yusuf's motion to strike has been denied, Hamed requests that Yusuf respond to RFPDs 13.

4. Supply Additional Information or Supplement Response

**Interrogatory 2 of 50 - New Claim Number Y-08 - Old Claim #: Y's III.F
Water Revenue Owed United**

Describe in detail, by month, from Sept 17, 2006 to 2014, the amount of water sold to the Partnership, by whom it was sold, the number of gallons per month, the per gallon cost in each of those months, the total value of the gallons sold by month, year and total amount - and describe any ledgers, shipping invoices, receipts or other documents which support your claim as well as any witnesses who would have knowledge and what knowledge you believe they have.

Response:

Defendants first object that this Interrogatory is unclear as it requests information about water sold "to the Partnership." United's claim against the Partnership is that the Partnership sold United's water from the Plaza Extra-East location. After May 5, 2004, the proceeds from the sale of United's water were to be paid to United, not the Partnership. Nonetheless, in an effort to respond to what appears to be questions relating to the support and calculations for water sales due to United from the Partnership, Defendants submit that the calculations set forth Yusuf's Amended Accounting Claims Limited to Transactions Occurring On or After September 17, 2006 ("Yusuf's Claims") were based upon two years of sales in 1997 (\$52,000) and 1998 (\$75,000) for an average of \$5,291.66 per month. As Waleed Hamed was in charge of the Plaza Extra-East location where the sales took place, Yusuf will be seeking additional information from him as part of the written discovery propounded on him. The number listed in the claims was the average monthly sales multiplied by 131 months demonstrating that United is owed \$693,207.46 from the Partnership for the water sales revenue from April 1, 2004 through February 28, 2015. Yusuf submits that discovery is on-going and that he will supplement this response as and when appropriate. (May 15, 2018, *Response to Hamed's Interrogatories 2 Through 13 Of 50 - New Claim Numbers: Y-8, H-1, H-23, H-19, H-33, H-34, H-37, H-144, H-145, H-155, H-156, H-158 & H-160*, pp. 4-5)

Deficiency for Interrogatory 2 of 50: This response fails to identify by month from Sept 17, 2006 to 2014, the amount of water sold, who sold the water, the number of gallons per month, the cost per gallon per month, total value of gallons sold per month, year and overall total. Please supplement your response with this information.

Additionally, your response did not list witnesses who would have knowledge about the water sales and what knowledge you believe they have. Please list all witnesses and the knowledge you believe they have regarding the sale of water at Plaza Extra-East.

Finally, you did not describe any documents related to this claim. Please supplement your response with a description of any ledgers, shipping invoices, receipts or other documents which support your claim, including your claim that "the Partnership sold United's water from the Plaza Extra-East location." In other words, please describe any documentation that shows the water belonged to United rather than the Partnership.

Interrogatory 21 of 50:

Interrogatory 21 of 50 relates to Claim No. H-142 (old Claim No. 490): "Half acre in Estate Tutu," as described in Hamed's November 16, 2017 Motion for a Hearing Before Special Master, Exhibit 3 and the September 28, 2016 JVZ Engagement Report and Exhibits.

With respect to Claim No. H-142, state in detail how this half acre in Estate Tutu was purchased and what funds were used, the source of those funds and any discussions or agreements about the funds or the purchase, with reference to all applicable documents, communications and witnesses.

Initial Response (1/29/18):

* * *

Moreover, this claim is the subject of Defendants' Motion to Strike Hamed's Amended Claim Nos. 142 and 143 ("Motion to Strike") seeking to strike Hamed Claim 142 on the grounds that the property was titled in the name of Plessen, was not an asset of the Partnership and is barred by the Limitation Order. Defendants incorporate by reference their Motion to Strike as if fully set forth herein verbatim and submit that because there is a pending Motion to Strike, the requirement for a response should be stayed pending the resolution.

(May 15, 2018, *Responses to Hamed's Fourth Interrogatories per the Claim Discovery Plan of 1/29/2018 Nos. 16-28 of 50*, pp. 12-13)

Supplemental Response (7/19/18):

Defendants show that all documents relating to the purchase of the half acre in Estate Tutu are those documents, which have already been provided in this case including the Warranty Deed and the First Priority Mortgage. Further responding, Defendants show that Mr. Yusuf is out of the country until August 18, 2018 and to the extent that any additional information is required of him, Defendants are unable to provide that information at this time, but will readily supplement as soon as he is available. (July 19, 2018, *Supplemental Responses to Hamed's Discovery as to Interrogatory No. 21, Request to Admit 22, and the Request for the Production of Documents No. 13*, pp. 2-3)

Deficiency for Interrogatory 21: Please supplement your response, including identifying how this half acre in Estate Tutu was purchased and what funds were used, the source of those funds and any discussions or agreements about the funds or the purchase, with reference to all applicable documents, communications and witnesses.

RFPDs 21 of 50:

**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.

Defendants.

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.] (May 15, 2018, *Response to Hamed's Fourth Request for Production of Documents Nos. 19-27 Of 50 Pursuant to the Claims Discovery Plan*, pp. 11-12)

Deficiency for RFPDs 21: Please supplement your response regarding "need to find out from Mr. Yusuf whether any prior payments were made as to Bays 5 and 8."

RFPDs 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. (May 15, 2018, *Response to Hamed's Fourth Request for Production of Documents Nos. 19-27 Of 50 Pursuant to the Claims Discovery Plan*, p. 7)

Deficiency for RFPDs 27: Please supplement your response and provide all documents substantiating your claim, including the itemized pricing and contents of the six containers.

Please let me know your availability to schedule the first Rule 37 conference by Friday, October 19, 2018.

Sincerely,

A handwritten signature in black ink, appearing to read "Carl J. Holt", with a long horizontal flourish extending to the right.

cc: Joel H. Holt, Esq., Kimberly L. Japinga, Greg Hodges, Esq. & Stephan Herpel, Esq.