|  |  |
| --- | --- |
| **WALEED HAMED**,as the Executor of the Estate of MOHAMMAD HAMED, | **Case No.: SX-2012-CV-370** |
| *Plaintiff/Counterclaim Defendant*, |  |
|   vs.**FATHI YUSUF** and **UNITED CORPORATION** | **ACTION FOR DAMAGES, INJUNCTIVE RELIEF AND DECLARATORY RELIEF** |
|  |  |
|  *Defendants and Counterclaimants*. vs. **WALEED HAMED, WAHEED** **HAMED, MUFEED HAMED, HISHAM HAMED,** **and PLESSEN ENTERPRISES, INC.**,  *Counterclaim Defendants*, | JURY TRIAL DEMANDED |
|  | Consolidated with |
| **WALEED HAMED**,as the Executor of the Estate of MOHAMMAD HAMED, *Plaintiff,* vs.  | **Case No.: SX-2014-CV-287** |
| **UNITED CORPORATION,** *Defendant.* |  |
| *­­­­­­*­­**WALEED HAMED**,as the Executor of the Estate of MOHAMMAD HAMED, *Plaintiff*  vs.  **FATHI YUSUF**, *Defendant.* | Consolidated with**Case No.: SX-2014-CV-278** |
| *­­­­­*­­**FATHI YUSUF**, *Plaintiff*, vs. **MOHAMMAD A. HAMED TRUST***, et al,* *Defendants.* | Consolidated with**Case No.: ST-17-CV-384** |
| *­­­­­*­­**KAC357 Inc.**, *Plaintiff*, vs. **HAMED/YUSUF PARTNERSHIP,** *Defendant.* | Consolidated with**Case No.: ST-18-CV-219** |
|  |  |

**HAMED MOTION TO COMPEL NO. 2 OF 5 WITH REGARD TO THE “B(1)” CLAIMS**

**AS TO: REVISED YUSUF CLAIM Y-8 – WATER REVENUE OWED UNITED**

1. **Introduction**

The parties must file a motions to compel related to the B(1) group of claims. Hamed is filing the first of those motions to compel defendants to respond to an interrogatory related to Yusuf’s revised claim Y-8 – Water Revenue Owed United.

It should be noted, however, that Hamed has been attempting to procure responses to this interrogatory **since May 15, 2018 without success**. Hamed respectfully requests that the Master order a response to this outstanding discovery.

1. **Procedural Process**

The Parties exchanged discovery pursuant to the August 4, 2018 Scheduling Order. After the majority of the discovery was produced on May 15, 2018, the parties entered into a series of letters and Rule 37 conferences to resolve their differences. Some issues were resolved, but a number of issues remain outstanding. The following motion pertains to Yusuf revised claim Y-8 – Water Revenue Owed United.

1. **Facts**
2. **Yusuf’s Unanswered Interrogatory**
3. *Hamed’s Unanswered Interrogatory 2 of 50 – Claim No. Y-8 – Water Revenue Owed United*

On February 4, 2018, Hamed propounded the following interrogatory:

**Interrogatory 2 of 50 - New Claim Number Y-8**

**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. (**Exhibit 1**)

On May 15, 2018, Yusuf’s initial response was incomplete:

**Yusuf Response to Interrogatory 2 of 50:**

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. (**Exhibit 2**)

On June 7, 2018, Hamed’s attorney tried to elicit a response:

I write regarding the Yusuf/United 'claims discovery responses' served on May 15, 2018. It is Hamed's intention to file a motion to the Special Master regarding Interrogatory 2 of 50. Pursuant to Rule 37.1, we request that you provide a time and date when you are available to discuss the bases of the proposed motion, and seek amendment to the Yusuf response.

It is our hope that you will bypass this process and simply amend your "we will supplement response" with the same stipulation we entered into for the "half container". You amend to state that you have no information or documents responsive to the interrogatory that have not been supplied to date, and we agree that you can supplement any time up to our motion. Identical. The water being discussed is the water that you described thusly: "After May 5, 2004, the proceeds from the sale of United's water were to be paid to United, not the Partnership."

\* \* \* \*

If you do not wish to so amend, please give us a time and date. (**Exhibit 3**)

Yusuf did not provide a written response to Hamed’s June 7, 2018 letter.

Hamed’s counsel sent another letter requesting a meet and confer on October 15, 2018, outlining in detail the deficiencies with Yusuf’s response. (**Exhibit 4**) When the parties held the Rule 37 conference on November 9, 2018, Yusuf’s counsel stated the response to interrogatory no. 2 would be supplemented on December 18, 2018. (**Exhibit 5**) Instead in Yusuf’s December 18, 2018 discovery response dropped the following footnote: “1Yusuf provides these supplemental responses relating to the claims, which remain in the Part B claim schedule. Yusuf will further supplement any other responses as to claims, which were shifted to the Part A schedule.” (**Exhibit 6**) In other words, Yusuf *unilaterally* decided not to respond because this claim was going to be addressed after August 30, 2019. This is not what the Rule states and was not what the parties had agreed to.

Yet another, third, Rule 37 conference was set for 11 a.m. on Thursday, December 20, 2018. Yusuf’s counsel did not appear and did not provide any written or other notice of non-appearance. (**Exhibit 7**)

1. **Argument**

This Motion to Compel is submitted pursuant to the *Joint Discovery and Scheduling Plan* of January 29, 2018.

1. **Rule 26 Duty to Disclose; General Provisions Governing Discovery**

Rule 26 of Virgin Islands Rules of Civil Procedure (“Rule 26”) is the foundational rule governing discovery. It broadly allows 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.” V.I. R. CIV. P. 26(b)(1), emphasis added.

1. **Yusuf refuses to fully respond to Hamed’s interrogatory**

Rule 33 of the Virgin Islands Rules of Civil Procedure (“Rule 33”), among other things, identifies the duties of the party responding.

1. Answers and Objections.

\* \* \* \*

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

(4) Objections. The grounds for objecting to an interrogatory must be stated with specificity. Any ground not stated in a timely objection is waived unless the court, for good cause, excuses the failure.

Yusuf refused to fully respond to the interrogatory and indicated that “Yusuf submits that discovery is on-going and that he will supplement this response as and when appropriate.” (**Exhibit 2**) However, this interrogatory has not been supplemented.

Further, in his *Opposition to Hamed’s Motion to Strike Claim Y-8 On Procedural Grounds: United's Separate Contract Claim for Water Sales to the Partnership Violates the Statute of Limitation and the Statute of Frauds*, filed on June 15, 2018, Yusuf provided additional facts that were neither previously submitted in a signed declaration nor supplemented in a signed verification to Hamed interrogatory no. 2 of 50. (**Exhibit 8**) Hamed subsequently withdrew his motion on June 16, 2018 due to the new, unverified facts offered by Yusuf’s counsel. (**Exhibit 9**)

In order for Hamed to assess whether this amount allegedly owed is accurate or even owed by the Partnership, Hamed requested a description of the following:

* A detailed description for *each month* between September 17, 2006 through February 28, 2015 of the following:
	+ The number of gallons per month sold
	+ To whom it was sold
	+ The cost per gallon for each month
	+ The total value of the gallons sold per month;
* The total number of gallons of water and the value of those gallons sold for each of the years from 2006 through 2014;
* Describe any ledgers, shipping invoices, receipts or other documents that would support the claim; and
* Identify any witnesses who would have knowledge and what knowledge you believe they have.

Given the new “facts” Yusuf’s counsel added to *United’s Opposition to Hamed's Motion to Strike United Claim Y-8 on Procedural Grounds* (**Exhibit 6**), Hamed also requests that Yusuf fully supplement his response to this interrogatory, as he promised in May 2018.

1. **Conclusion**

Hamed’s interrogatory discussed above clearly fall within Rule 26’s scope allowing discovery regarding “**any nonprivileged matter that is relevant to any party’s claim or defense**.” (Emphasis added). Hamed has patiently been trying to get a full response to this discovery since *May 15, 2018*, with no success. Accordingly, Hamed respectfully requests that the Master compel Yusuf to answer and produce the following:

* A detailed description for *each month* between September 17, 2006 through February 28, 2015 of the following:
	+ The number of gallons per month sold
	+ To whom it was sold
	+ The cost per gallon for each month
	+ The total value of the gallons sold per month;
* The total number of gallons of water and the value of those gallons sold for each of the years from 2006 through 2014;
* Describe any ledgers, shipping invoices, receipts or other documents that would support the claim;
* Identify any witnesses who would have knowledge and what knowledge you believe they have; and
* Fully supplement Yusuf’s May 15, 2018 response to this interrogatory.

**Dated:** October 2, 2019 A

**Carl J. Hartmann III, Esq.**

*Co-Counsel for Plaintiff*

5000 Estate Coakley Bay, L6

Christiansted, Vl 00820

Email: carl@carlhartmann.com

Tele: (340) 719-8941

 **Joel H. Holt, Esq.**

 *Counsel for Plaintiff*

 Law Offices of Joel H. Holt

 2132 Company Street,

 Christiansted, Vl 00820

 Email: holtvi@aol.com

 Tele: (340) 773-8709

**CERTIFICATE OF SERVICE**

 I hereby certify that on this 2nd day of October 2019, I served a copy of the foregoing by email (via CaseAnywhere), as agreed by the parties, on:

**Hon. Edgar Ross**

Special Master

% edgarrossjudge@hotmail.com

**Gregory H. Hodges**

**Charlotte Perrell**

Law House, 10000 Frederiksberg Gade

P.O. Box 756

St. Thomas, VI 00802

ghodges@dtflaw.com

**Mark W. Eckard**

Hamm, Eckard, LLP

5030 Anchor Way

Christiansted, VI 00820

mark@markeckard.com

**Jeffrey B. C. Moorhead**

CRT Brow Building

1132 King Street, Suite 3

Christiansted, VI 00820

jeffreymlaw@yahoo.com

A

**CERTIFICATE OF COMPLIANCE WITH RULE 6-1(e)**

This document complies with the page or word limitation set forth in Rule 6-1(e).

A

**CERTIFICATE OF COMPLIANCE WITH RULE 37(a)(1)**

I hereby certify that I made the required efforts in good faith to confer with counsel for United and Yusuf in order to obtain the foregoing requested information.

A