

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

WALEED HAMED, as the Executor of the Estate of MOHAMMAD HAMED,

Plaintiff/Counterclaim Defendant,

vs.

FATHI YUSUF and **UNITED CORPORATION**

Defendants and Counterclaimants.

vs.

WALEED HAMED, WAHEED HAMED, MUFEEED HAMED, HISHAM HAMED, and PLESSEN ENTERPRISES, INC.,

Counterclaim Defendants,

WALEED HAMED, as the Executor of the Estate of MOHAMMAD HAMED, *Plaintiff,*

vs.

UNITED CORPORATION, *Defendant.*

WALEED HAMED, as the Executor of the Estate of MOHAMMAD HAMED, *Plaintiff*

vs.

FATHI YUSUF, *Defendant.*

FATHI YUSUF, *Plaintiff,*

vs.

MOHAMMAD A. HAMED TRUST, *et al,*
Defendants.

KAC357 Inc., *Plaintiff,*

vs.

HAMED/YUSUF PARTNERSHIP,
Defendant.

Case No.: SX-2012-CV-370

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

JURY TRIAL DEMANDED

Consolidated with

Case No.: SX-2014-CV-287

Consolidated with

Case No.: SX-2014-CV-278

Consolidated with

Case No.: ST-17-CV-384

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**

I. 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.

II. 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.

III. Facts

A. Yusuf's Unanswered Interrogatory

1. 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: "Yusuf 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**)

IV. Argument

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

A. 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.

B. 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.

(a) 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.

V. 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



Carl J. Hartmann III, Esq.

Co-Counsel for Plaintiff

5000 Estate Coakley Bay, L6

Christiansted, VI 00820

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Tele: (340) 719-8941

Joel H. Holt, Esq.

Counsel for Plaintiff

Law Offices of Joel H. Holt

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Christiansted, VI 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

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

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

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

Exhibit 1

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

WALEED HAMED, as the Executor of the
Estate of MOHAMMAD HAMED,

Plaintiff/Counterclaim Defendant,

vs.

FATHI YUSUF and **UNITED CORPORATION**

Defendants and Counterclaimants.

vs.

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

Counterclaim Defendants,

WALEED HAMED, as the Executor of the
Estate of MOHAMMAD HAMED,

Plaintiff,

vs.

UNITED CORPORATION,

Defendant.

WALEED HAMED, as the Executor of the
Estate of MOHAMMAD HAMED,

Plaintiff,

vs.

FATHI YUSUF,

Defendant.

Case No.: SX-2012-CV-370

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

JURY TRIAL DEMANDED

Consolidated with

Case No.: SX-2014-CV-287

**ACTION FOR DECLARATORY
JUDGMENT**

JURY TRIAL DEMANDED

Consolidated with

Case No.: SX-2014-CV-278

**ACTION FOR DEBT AND
CONVERSION**

JURY TRIAL DEMANDED

EXHIBIT

1

**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**

HAMD656473

Pursuant to the stipulated Joint Discovery Plan, as ordered by the Special Master on January 29, 2018, Hamed propounds the following relating to the attached claims.

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.

Dated: February 4, 2018



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Fax: (340) 773-867

CERTIFICATE OF SERVICE

I hereby certify that on this 4th day of February, 2018, 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
Stefan Herpel
Charlotte Perrell
Law House, 10000 Frederiksberg Gade
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Jeffrey B. C. Moorhead
CRT Brow Building
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CERTIFICATE OF COMPLIANCE WITH RULE 6-1(e)

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



Exhibit 2

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

WALEED HAMED, as Executor of the)
Estate of MOHAMMAD HAMED,)
)
Plaintiff/Counterclaim Defendant,)

v.)

FATHI YUSUF and UNITED CORPORATION,)
)
Defendants/Counterclaimants,)
v.)

CIVIL NO. SX-12-CV-370

ACTION FOR INJUNCTIVE
RELIEF, DECLARATORY
JUDGMENT, AND
PARTNERSHIP DISSOLUTION,
WIND UP, AND ACCOUNTING

WALEED HAMED, WAHEED HAMED,)
MUFEED HAMED, HISHAM HAMED, and)
PLESSEN ENTERPRISES, INC.,)
Additional Counterclaim Defendants.)

Consolidated With

WALEED HAMED, as Executor of the)
Estate of MOHAMMAD HAMED,)
)
Plaintiff,)

CIVIL NO. SX-14-CV-287

ACTION FOR DAMAGES AND
DECLARATORY JUDGMENT

v.)

UNITED CORPORATION,)
)
Defendant.)

WALEED HAMED, as Executor of the)
Estate of MOHAMMAD HAMED,)
)
Plaintiff,)

CIVIL NO. SX-14-CV-278

ACTION FOR DEBT AND
CONVERSION

v.)

FATHI YUSUF,)
Defendant.)

FATHI YUSUF and)
UNITED CORPORATION,)
)
Plaintiffs,)

CIVIL NO. ST-17-CV-384

ACTION TO SET ASIDE
FRAUDULENT TRANSFERS

v.)

THE ESTATE OF MOHAMMAD HAMED,)
Waleed Hamed as Executor of the Estate of)
Mohammad Hamed, and)
THE MOHAMMAD A. HAMED LIVING TRUST,)
)
Defendants.)

EXHIBIT
2

Claim Y-8

DUDLEY, TOPPER
AND FEUERZEIG, LLP
1000 Frederiksberg Gade
P.O. Box 756
St. Thomas, U.S. V.I. 00804-0756
(340) 774-4422

**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**

~~Defendant/Counterclaimants Fathi Yusuf ("Yusuf") and United Corporation~~

("United")(collectively, the "Defendants") through their attorneys, Dudley, Topper and Feuerzeig, LLP, hereby provide their Responses to Interrogatory 2 through 13 of 50 as to 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.

GENERAL OBJECTIONS

Defendants make the following general objections to the Interrogatories. These general objections apply to all or many of the Interrogatories, thus, for convenience, they are set forth herein and are not necessarily repeated after each objectionable Request to Admit. The assertion of the same, similar, or additional objections in the individual responses to the Interrogatories, or the failure to assert any additional objections to a discovery request does not waive any of Defendants' objections as set forth below:

(1) Defendants object to these Interrogatories to the extent they may impose obligations different from or in addition to those required under the Virgin Islands Rules of Civil Procedure.

(2) Defendants object to these Interrogatories to the extent that they use the words "any" and "all" as being overly broad, unduly burdensome, immaterial, irrelevant, and not reasonably calculated to lead to the discovery of admissible evidence.

(3) Defendants object to these Interrogatories to the extent they seek information ~~which is protected by the attorney-client privilege or work-product doctrine, including~~

**DUDLEY, TOPPER
AND FEUERZEIG, LLP**

1000 Frederiksberg Gade

P.O. Box 756

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HAMD660260

~~privileged, responsive information is discovered, these Interrogatories will be supplemented to the extent that supplementation may be required by the Virgin Islands Rules of Civil Procedure.~~

(8) Defendants object to these Interrogatories to the extent that they are compound and not a single Request. Hence, these Interrogatories should be counted as more than a single Request such that when all of the subparts are included together with other Interrogatories they exceed the 50 Interrogatories allowed in the Joint Discovery and Scheduling Plan ("JDSP").

RESPONSES TO INTERROGATORIES

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:

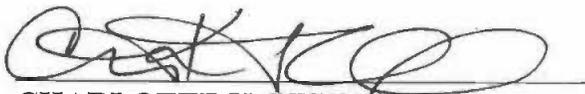
Defendants first object that this Interrogatory is unclear as it requests information about water sold "to the Partnership." United's claim against the Partnership is that the Partnership sold United's water from the Plaza Extra-East location. After May 5, 2004, the proceeds from the sale of United's 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.

~~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.~~

DUDLEY, TOPPER AND FEUERZEIG, LLP

DATED: May 15th, 2018

By: 
CHARLOTTE K. PERRELL

(V.I. Bar #1281)
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1000 Frederiksberg Gade - P.O. Box 756
St. Thomas, VI 00804-0756
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Facsimile: (340) 715-4400
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*Attorneys for Fathi Yusuf and United
Corporation*

Exhibit 3

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CARL@CARLHARTMANN.COM

ADMITTED: USVI, NM & DC

June 7, 2018

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

By Email Only

RE: Request for Rule 37 Conference re Interrogatory 2 of 50 - Water

Dear Attorney Perrell

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."

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

EXHIBIT
3

HAMD661559

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 RESPONSES TO INTERROGATORIES Response To Hamed's Request For Interrogatories 2 through 13 of 50 Waleed Hamed et al vs. Fathi Yitsuf et al. Page 4 DUDLEY, TOPPER AND FEUERZEIG, LLP 1000 Frederiksberg Gade P.O. Box 756 St. Thomas, U.S. V.I. 00804-0756 (340) 774-4422 Response To Hamed's Request For Interrogatories 2 through 13 of 50 Waleed Hamed et al vs. Fathi Yusuf et al. Page 5 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.

If you do not wish to so amend, please give us a time and date.

Sincerely,

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

Carl J. Hartmann

Exhibit 4

CARL J. HARTMANN III
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TELEPHONE
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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

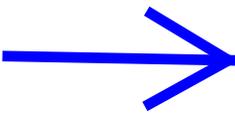
RE: Request for Rule 37 Conference re Claims Discovery Responses, Letter 1 of 2

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.~~

EXHIBIT
4



**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)

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,



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

Exhibit 5

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

November 20, 2018

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

Via Email Only

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

Dear Attorney Perrell:

This letter summarizes our agreements regarding each of the outstanding discovery items from our Rule 37 conference on November 9, 2018.

1. KAC357, Inc. Claims

Interrogatory 17 of 50 - Relates to Claims H-7 and H-8 - KAC357, Inc. payments to David Jackson.

Withdrawn due to stipulation regarding attorneys' fees filed on November 9, 2018.

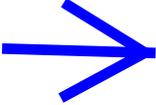
2. Requires John Gaffney's Assistance

Interrogatory 8 of 50 - Relates to Claim H-37 - \$186,819.33 due to/from Fathi Yusuf.

Withdrawn because this claim was moved to the Part A claims that John Gaffney is answering.

EXHIBIT
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HAMD663591

 Interrogatory 2 of 50 – Relates to Claim Y-8 – Water Revenue

Attorney Perrell agreed to answer this interrogatory by December 15, 2018.

~~Interrogatory 21 of 50 – Relates to Claim H-142 – Half Acre in Estate Tutu~~

~~Attorney Perrell agreed to answer this interrogatory by December 15, 2018.~~

~~RFPD 21 of 50 – Relates to Claim Y-2 – Unpaid rent for Plaza Extra-East Bays 5 & 8~~

~~Attorney Perrell agreed to answer this request for production of documents by December 15, 2018.~~

~~RFPD 27 of 50 – Relates to Claim Y-14 – Half the value of the six containers~~

~~Attorney Perrell agreed to answer this request for production of documents before December 15, 2018.~~

Sincerely,



Carl J. Hartmann

Cc: Joel Holt, Esq., Greg Hodges, Esq., and Kim Japinga

Exhibit 6

**SUPPLEMENTAL RESPONSES
TO HAMED'S DISCOVERY**

Defendant/Counterclaimants Fathi Yusuf ("Yusuf") and United Corporation ("United")(collectively, the "Defendants") through their attorneys, Dudley, Topper and Feuerzeig, LLP, hereby provide their Supplemental Responses¹ to Hamed's Discovery pursuant to discussion and various letters alleging deficiencies, as follows:

1. ~~Yusuf Claim Y-2 (for Rent for Bay 5&8), Hamed RTP 21, 34, Interrog. 29:~~

~~There are no additional documents responsive to this request beyond the Declaration of Fathi Yusuf dated August 12, 2014 attached as Exhibit 3 to the Defendant's Motion for Partial Summary Judgment on Counts IV, IX and XII Regarding Rent.~~

2. ~~Yusuf Claim Y-14 (Half of the value of the containers at Plaza Extra-Tutu Park), Hamed RFPD 27:~~

~~Yusuf has prepared a detailed analysis of the value of the containers attached hereto as Exhibit 1. To support the calculations as to the value of the items stored in the containers, Yusuf submits various invoices for the types of items stored therein at Bate Numbers FY 015045 – 015134 attached hereto.~~

3. ~~Hamed Claim H-1 (Reimbursement for sale of Dortehea Condo), Hamed Interrog. 3:~~

~~Yusuf supplements his earlier response and confirms that proceeds from the sale were paid and completed before 2006. Yusuf has no records of the payments. Interest was paid directly to a charity as part of the agreement to donate any interest.~~

¹ Yusuf 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.

~~Consequently, Yusuf reaffirms that this claim is barred by the Limitations Order of Judge Brady.~~

DUDLEY, TOPPER AND FEUERZEIG, LLP

DATED: December 18, 2018

By:



CHARLOTTE K. PERRELL

(V.I. Bar #1281)

Law House

1000 Frederiksberg Gade - P.O. Box 756

St. Thomas, VI 00804-0756

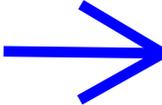
Telephone: (340) 715-4422

Facsimile: (340) 715-4400

E-Mail: cperrell@dtflaw.com

Attorneys for Fathi Yusuf and United Corporation

Exhibit 7



From: [Carl Hartmann](#)
To: "[Charlotte Perrell](#)"; "[Japinga, KiM \(kim@japinga.com\)](#)"
Cc: "[Gregory Hodges](#)"; "[Joel Holt](#)"
Subject: Confirming Thursday at 11 am AST conf - Items for Thursday Discussion with Kim/Carl/Charlotte
Date: Tuesday, December 18, 2018 5:55:00 PM

Charlotte & Kim:

The issues that will be capable of deposition and briefing (Charlotte's "Red" claims) are listed below.

I would like to discuss the discovery re:

H-1 Dorothea (we would still like Fathi's narrative i.e. interrogatory response to what he recalls about when, how and how much he received – as well as what banks records would reflect that.

Also H-152 and H-153.

Also, all of Yusuf's claims. I want to be clear that no other "factual" assertions or allegations will be made in motions or at trial that have not been set forth – with bu counsel or by affidavit/declarations.

Also need to discuss stips about additional docs/evid. – drafts of which have been circulated.

Carl

New Claim Number	Item No. in Original 8/30/16 Claim Filing	Description	Total Amount of Claim
H-001	201	Reimbursement for sale of the Dorthea condo	\$802,966.00
H-002	355	\$2.7 million unilateral withdrawal from the Partnership account	\$2,784,706.25
H-014	221	Unsubstantiated checks to NejeH Yusuf	\$14,756.00
H-015	242	NejeH Yusuf's cash withdrawals from safe	\$53,384.67
H-016	253	NejeH Yusuf's use of Partnership resources for his Private Businesses on STT	0 Discovery Needed
H-032	335	No credit for expired (spoiled) inventory discovered at Plaza Extra	\$54,592.08

EXHIBIT
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H-034	340	West Rents collected from Triumphant church	\$3,900.00
H-152	3008a	United's corporate franchise taxes and annual franchise fees	\$2,300.52
H-153	3009a	Partnership funds used to pay United Shopping Center's property insurance	\$59,360.84
Y-002	Y's Claims - III.B.2	Unpaid rent for Plaza Extra-East Bays 5 & 8	\$793,984.34
Y-004	Exhibit E	9% interest on rent claims for East Bays 5 & 8	\$241,005.18
Y-012	Y's Claims - VI, Exhibits K-O	Foreign Accts and Jordanian Properties	\$434,921.37
Y-014	Y's Claims - VIII	Half of the value of the six containers	\$210,000.00

CARL J. HARTMANN III
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 EMAIL: CARL@HARTMANN.ATTORNEY
 ALL FAXES: (202) 403-3750
 D.C. TELEPHONE: (202) 518-2970
 USVI TELEPHONE: (340) 642-4422

Exhibit 8

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

WALEED HAMED, as Executor of the)
Estate of MOHAMMAD HAMED,)

Plaintiff/Counterclaim Defendant,)

v.)

FATHI YUSUF and UNITED CORPORATION,)

Defendants/Counterclaimants,)

v.)

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

Additional Counterclaim Defendants.)

WALEED HAMED, as Executor of the)
Estate of MOHAMMAD HAMED,)

Plaintiff,)

v.)

UNITED CORPORATION,)

Defendant.)

WALEED HAMED, as Executor of the)
Estate of MOHAMMAD HAMED,)

Plaintiff,)

v.)

FATHI YUSUF,)

Defendant.)

FATHI YUSUF and)
UNITED CORPORATION,)

Plaintiffs,)

v.)

THE ESTATE OF MOHAMMAD HAMED,)
Waleed Hamed as Executor of the Estate of)
Mohammad Hamed, and)

THE MOHAMMAD A. HAMED LIVING)
TRUST,)

Defendants.)

CIVIL NO. SX-12-CV-370

ACTION FOR INJUNCTIVE
RELIEF, DECLARATORY
JUDGMENT, AND
PARTNERSHIP DISSOLUTION,
WIND UP, AND ACCOUNTING

Consolidated With

CIVIL NO. SX-14-CV-287

ACTION FOR DAMAGES AND
DECLARATORY JUDGMENT

CIVIL NO. SX-14-CV-278

ACTION FOR DEBT AND
CONVERSION

CIVIL NO. ST-17-CV-384

ACTION TO SET ASIDE
FRAUDULENT TRANSFERS

EXHIBIT
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AND FEUERZEIG, LLP
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**UNITED'S OPPOSITION TO HAMED'S
MOTION TO STRIKE UNITED CLAIM Y-8 ON PROCEDURAL GROUNDS**

Claim Y-8 relates to water that is collected from the roof of the United Shopping Center and from several wells at the shopping center and stored in a nearly 500,000 gallon cistern and a much smaller cistern. In addition to being used for store operations, much of this water was sold to water delivery services in St. Croix who would send their trucks to the United Shopping Center and have them filled there and leave payment with Plaza Extra-East personnel.

Hamed's motion to strike the claim acknowledges in its opening paragraph that there is a factual dispute regarding whether the partnership or United Corporation owned the water whose sales revenues are at issue. But he also asserts that his motion does not depend on resolution of that disputed issue and that it should be granted as a matter of law. For context, however, Yusuf would like to advise the Master that he will testify that the water collection infrastructure, including the wells that were dug, the pumps, piping and the cisterns themselves, were built exclusively with Yusuf's own money, just as all of the improvements to the United Shopping Center property were built with his money (supplemented in part with insurance proceeds paid to United as the result of a fire¹). United Corporation owns the real estate and all of its improvements, not the partnership. Mr. Yusuf will testify that Hamed was aware of and agreed that because the water was collected and stored by equipment that was part of the real estate owned by United, any revenues of sales of water belonged exclusively to United, just as revenues from any rent payments by tenants² at the United Shopping Center, belonged exclusively to United.

¹ See **Exhibit A**, August 12, 2014 Declaration of Fathi Yusuf, ¶5.

²Hamed has throughout this litigation recognized that all income from rent paid by tenants of the United Shopping Center belonged exclusively to United, and Hamed has never asserted a claim for any portion of those revenues. The partnership's multi-million dollar rent obligation to United, which Judge Brady recognized in his April 27, 2015 Order granting summary judgment to United of course depends on the fact that United Corporation owns the real estate and improvements at the United Shopping Center.

Prior to the indictment in the criminal case that was filed in September 2003, United donated most revenues from water sales to charitable causes. But soon after the indictment, any proceeds from the sale of water were placed into the Plaza Extra accounts or safes at the store, along with grocery sales revenues. While the water sales were for reasons of convenience collected by Plaza Extra-East employees and then deposited into the store accounts that were overseen by a federal monitor, that did not change the fact that the water belonged to United and that any revenues from its sale therefore belonged to United. United's Claim Y-8 seeks the return of (or a credit for) all revenues from sales of its water from the period April 1, 2004 to February 28, 2015, just before the Plaza Extra-East store (which is located at the United Shopping Center) ceased being operated by the partnership under the Court's Wind Up Plan and Order.

Hamed argues in his Motion that the portion of the claim covered by the period April 1, 2004 to September 17, 2006 is barred by the statute of limitations. His second argument is that the entire claim should be dismissed because it is based on an oral agreement that was incapable of being performed in one year.

The statute of frauds argument can be readily disposed of. Hamed characterizes claim Y-8 as being "based on an alleged vendor contract pursuant to which United would supply water for sale at a Plaza Extra Supermarket, for which United would be paid." Hamed's Motion at p. 1. Analogizing this claim to a claim that a wholesaler would make for food items sold to a Plaza Extra supermarket, but not paid for, is strained, to say the least. Since United's position is that title to the water never passed from it to the Plaza Extra partnership, this claim is best characterized as one for unjust enrichment, restitution, or conversion. The statute of frauds plainly does not apply to claims for unjust enrichment, restitution or conversion.

But even if Claim Y-8 were solely in the nature of a claim for breach of an oral contract by United against the partnership, the statute of frauds would still not apply. One need only read the

Virgin Islands Supreme Court's 2013 decision in the instant case to understand why that is so. In *Yusuf v. Hamed*, 59 V.I. 841 (2013), the Supreme Court rejected Yusuf's and United's argument that an oral partnership agreement was void under the statute of frauds, which is codified at 28 V.I.C. § 244, because the alleged agreement was for an indefinite term that exceeded one year. The Supreme Court held that "the statute of frauds has no application to oral contracts that, while intended to last more than a year, have no stated durational terms and *could* conclude within a year." *Id.* at 852. The Court stated that "it is well settled that the oral contracts invalidated by the statute of frauds because they are not to be performed within a year include only those which cannot be performed within that period." *Id.* at 852 (citation and internal marks omitted; emphasis in original). It is therefore "immaterial that the performance of the contract *actually* exceeds one year" *Id.* at 852-853 (citation and internal marks omitted; emphasis in original).

To the extent that there was a contract between United and the partnership under which any sales of United's water would be consummated at the Plaza Extra-East store, and proceeds held by the store for the benefit of United, that contract was of indefinite duration, and could have been terminated in less than a year. United could have stopped selling water entirely within one year after beginning those sales, or it could have stopped using Plaza Extra-East employees to process those sales and collect the proceeds of sale. Under the Supreme Court's decision in the instant case, the statute of frauds is not implicated here, because this is an alleged oral agreement of indefinite duration. *See id.* at 853. The fact that United's water sales continued in this fashion well beyond one year does not undercut that conclusion in the least.³ If the oral partnership

³ Even if the statute of frauds were implicated here, and it is not, it is well accepted that a party to a contract that is void by reason of the statute of frauds may seek restitution for any goods or services provided under the unenforceable contract. *See In the Matter of the Estate of McConnell*, 42 V.I. 43, 50 (V.I. Terr. 2000) (rejecting argument that a party to a contract that is unenforceable under the statute of frauds may not seek restitution). *See also* Restatement (Second) of Contracts § 375; Restatement (Second) of Contracts § 141 and Comment a; Restatement (Third) of Restitution and Unjust Enrichment § 31(1), all of which recognize the general rule that the

agreement between Hamed and Yusuf itself did not violate the statute of frauds, then how could a subsidiary oral agreement between the two of them regarding whether water was a partnership asset or a United asset violate the statute?

Hamed also argues that the statute of limitations bars the portion of this claim covering water sales during the period April 1, 2004 to September 17, 2006. What Hamed is really arguing is that United should have commenced a lawsuit against the partnership by April 1, 2010 to preserve all of his claims for water sales revenues. But the partnership had not even been recognized by the Court at that time, so the idea of United suing the partnership is fanciful, to put it mildly. United had no reason to sue anybody or any entity regarding funds that were being held by United.

In addition, the Master has already recognized in a prior order involving claims for which the statute of limitations ran after the indictment came down that “genuine issues of material fact exist as to whether the statute of limitations should be equitable tolled” for such claims. *See* Master’s February 8, 2018 Order, at p. 5. In United’s Opposition to the motion to strike that was the subject of that Order, it cited *Podobnik v. U.S. Postal Serv.*, 409 F.3d 584, 591 (3d Cir. 2005) for the proposition that equitable tolling of the statute of limitations is appropriate where, *inter alia*, “the plaintiff in some extraordinary way has been prevented from asserting his rights.” In support of its contention that there were, at the very least genuine issues of material fact regarding the applicability of equitable tolling to delay the accrual of claims, United pointed out that in the August 12, 2014 declaration attached to his motion for partial summary judgment on the rent issue, all of the Plaza Extra accounts were frozen by an injunction entered contemporaneously with the filing of the criminal case in September 2003, and recovery of any water sales revenues would

equitable remedies of restitution and unjust enrichment are available to a party who performed under a contract that was later declared unenforceable under the statute of frauds.

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HAMD661650

have been impossible then. *See* Exhibit A, Declaration of Fathi Yusuf, ¶ 8. In addition, the criminal defense lawyers had instructed Yusuf and the other defendants not to take any action that would support the existence of a partnership, and thereby draw Mohammad Hamed (who was not named in the indictment) into the criminal case. *See id.* at ¶ 8. *See* United's January 11 Opposition at pp. 4-5. Likewise, if Yusuf had gone against the advice of his and Hamed's criminal lawyers and brought a lawsuit against Mohammed Hamed regarding reimbursement for water revenues in 2010, he would have compromised the defense of the criminal case and exposed Hamed to criminal prosecution. Consistent with its February 8 ruling, the Master should rule at a minimum that there are genuine issues of material fact regarding the availability of equitable tolling that compel a denial of the partial summary judgment that Hamed is seeking on claim Y-8.

CONCLUSION

For all of the foregoing reasons, and for the reasons already articulated in the Master's February 8, 2018 Order, Hamed's Motion to Strike Claim Y-8 on Procedural Grounds should be denied.

Respectfully submitted,

DUDLEY, TOPPER AND FEUERZEIG, LLP

DATED: June 15, 2018

By: 

GREGORY H. HODGES (V.I. Bar No. 174)
STEFAN B. HERPEL (V.I. Bar No. 1019)
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HAMD661651

CERTIFICATE OF SERVICE

I hereby certify that on this 15th day of June, 2018, I caused the foregoing **UNITED'S OPPOSITION TO MOTION TO STRIKE UNITED CLAIM Y-8 ON PROCEDURAL GROUNDS**, which complies with the page and word limitations of Rule 6-1(e), to be served upon the following via the Case Anywhere docketing system:

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The Honorable Edgar D. Ross
E-Mail: edgarrossjudge@hotmail.com

Carl J. Hartmann, III, Esq.
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Jeffrey B.C. Moorhead, Esq.
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and via U.S. Mail to:

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Master
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Alice Kuo
5000 Estate Southgate
Christiansted, St. Croix
U.S. Virgin Islands 00820



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EXHIBIT A

responsible for making all decisions regarding when the reconciliation would take place and hence when the rent would be paid. Hamed and I agreed at the outset that the rent would be calculated at a rate of \$5.55 per square foot for what is referred to as Bay 1, the primary space comprising the Plaza Extra-East store, which originally covered 33,750 square feet

2. Our decision to allow rent to accrue for some number of years before paying it was intended to enable the business to retain capital needed to grow the business.

3. This method of allowing rent to accrue for a number of years before being paid was important for the growth of the supermarket business for a number of reasons. First, at the time of the formation of the business agreement, the initial store, Plaza Extra-East, in St. Croix, was still in development. We thereafter made plans to open a second supermarket in St. Thomas (the store now known as Plaza Extra-Tutu Park), and it opened in October 1993. Later, we made plans to open a third grocery store in St. Croix (the store now known as Plaza Extra-West), and it opened in 2000. Construction began in 1998 and finished in 2000. Keeping money in the business for multi-year periods, rather than paying rent to United in monthly or even annual rent payments, ensured that the business would have the capital to establish and grow the stores in very challenging economic conditions.

4. For reasons discussed in more detail below, there has been only one reconciliation of accounts since our business agreement was formed, and it occurred at the end of 1993. The rent payment due from 1986 through December 31, 1993 was paid by means of a setoff on an account that reflected credits and debits made between Hamed and me. Specifically, Hamed's one-half portion of the rent was paid by means of a setoff against amounts I owed him by virtue of some large withdrawals I had made in preceding years.

5. In 1992, the Plaza Extra-East store burned down. As with all tenants in the United Shopping Plaza, the insurance policy on Bay 1 was paid to the property-owner, United. United decided to expand Bay 1 by purchasing an adjacent acre of land for \$250,000. I used \$100,000 of my personal funds and the balance was paid with insurance proceeds United received as the insured under a policy of insurance, which is required of all tenants of United Shopping Plaza. At that time, I agreed with Hamed, through his son, Waleed, to continue operating the Plaza Extra – East supermarket in Bay 1 of United Shopping Plaza. I further agreed to keep the rent at the much lower-than market rate of \$5.55 per square foot for a ten-year period. Specifically, I told Hamed that we would keep that rate in place for the ten years following the date the rebuilt store opened for business.

6. The Plaza Extra-East store was reopened in May 1994. The Plaza Extra-Tutu Park store had just opened in October 1993. Around the time that the Plaza Extra-East store reopened, I was arranging a Scotiabank loan to United for approximately \$5,000,000 for the benefit of the partnership. The loan was guaranteed by my wife and me, and it was secured by our home on St. Croix and by United's shopping center in St. Croix. Because money was short, Hamed and I agreed not to have the rent withdrawn, and to simply continue to accrue rent until such time as I made a demand.

7. Some time in 2002 or 2003, I began discussions with Waleed Hamed regarding how the rent would be calculated for Plaza Extra-East after the expiration of the ten-year period during which the \$5.55/square foot rent formula was in place. During those discussions, we recognized, as before, that the prior rent was far below fair market value, and the decision was made to set the rent based on a percentage of sales formula using the yearly sales of Plaza Extra-Tutu Park. Total payments made to that store's landlord, Tutu Park, Ltd., for a given year were to

be divided by sales for the same year at that store to determine a percentage, and that percentage was then applied to the sales at Plaza Extra-East to determine the rent to be paid by Plaza Extra-East to United for that year. There is no dispute concerning the formula for calculating the rent for Plaza Extra-East from May 2004 forward, since rent based upon that agreed formula was paid via a check signed by Waleed Hamed on February 7, 2012 in the amount of \$5,408,806.74, covering the period from May 5, 2004 to December 31, 2011. A calculation of the rent based on this formula and a copy of the check in the amount of \$5,408,806.74 is attached as **Exhibit A**.

8. Between 1994 and 2004, we discussed the rent issues on several occasions. We both agreed to continue accruing the rent because of the need for more capital for the then new St. Thomas store, and for the construction of the Plaza Extra – West store between 1998 and 2000. Between 2002 and 2003, I discussed with Hamed the new rental rate for the Plaza Extra – East store beginning May 5th, 2004. Also, in 2004, at about the time the new agreed-upon rent formula became effective, Waleed Hamed, acting on behalf of his father, and I discussed payment of the rent that had accrued since May 1994 at the \$5.55 per square foot rate. At the time, we were then embroiled in the criminal case, and all of the Plaza Extra accounts were frozen by an injunction. As a result, I made a decision and Waleed Hamed, on behalf of Hamed, agreed, that there was no prospect for the payment of the rent owed for the period since the last payment of rent and that payment of that rent would continue to be deferred. In addition, even if the ability to collect the rent had not been not blocked by the injunction, I was unable to calculate the rent for the second rental period and to do a full reconciliation of the partnership accounts, as I did not have the book of accounting entries called the “black book,” and also did not have the comprehensive, larger ledger showing advances against the partnership that Hamed and I had taken by means of withdrawals from store safes. The FBI had seized substantially all of the financial and accounting

records of the Plaza Extra Stores, including these items, when it conducted its raid on the stores in October 2001. Among other things, the black book reflected the exact date of the last rent payment, information I needed to accurately determine when the rent for the second period had begun accruing. And the larger ledger reflected the debits and credits between the two partners (for the funds taken by them and members of their families from the store safes in the form of advances against partners' accounts). I had no recollection (and neither did Hamed) of exactly what dates the rent for the preceding period had covered, and indeed was not sure whether it ended in 1992, 1993 or 1994. We therefore needed to consult the black book to determine the start date for the subsequent rental period, which in turn would affect the amount of rent that had accrued since the last payment. Waleed Hamed and I agreed that rent would be allowed to continue to accrue until it was possible to calculate the amount of rent due and make the payment. Another consideration that counseled in favor of letting the rent continue to accrue, rather than paying it, is that our criminal defense lawyers did not want us to take any actions that supported the existence of a partnership as the owner of the Plaza Extra Stores.

9. In the latter part of 2011 and early 2012, the injunction in the District Court criminal proceeding had been relaxed sufficiently to permit a payment for rent that had accrued to that date from the date of the last payment. However, the original problem regarding the absence of the records to accurately calculate the rent for the period ending in 2004, and to conduct a full reconciliation of the rents from the date of the last reconciliation, remained unresolved because of the absence of the black book and the ledger. Neither of these items had been returned. I did not want to either understate or overstate the rent amount, but wanted the dollar amount of rent to be exactly correct. By contrast, we did not need the black book to pay the rent covering the period

from May 5, 2004 to December 31, 2011, as we knew that the new rent rate was in effect for that time period.

10. In early 2012, I discussed with Waleed Hamed the payment of accrued rent, and we agreed that the May 5, 2004 to December 31, 2011 portion of the accrued rent should be paid, while the portion preceding that would be deferred. Waleed acknowledged that we could not pay all of the rent that had accrued from the date of last payment in 1993 to May 5, 2004, as we still had not recovered the black book to determine the exact starting point for that period, and there also were insufficient funds in the operating account to pay the rent due for the ten year period of January 1, 1994 to May 5, 2004. During that conversation in 2012, Waleed Hamed agreed that rent was owed for that period, and agreed that it would be paid once the black book was recovered and a proper calculation could be made, and when sufficient funds are available. Shortly after that discussion, the rent for the period May 5, 2004 to December 31, 2011 in the amount of \$5,408,806.74 was paid by a check signed by Waleed. See Exhibit A. The reason why the rent for the May 5, 2004 to December 31st, 2011 paid was paid before the rent for the January 1994 to May 5, 2004 period was that information regarding the exact starting date for that prior period was not available, while the period of May 5, 2004 to December 31, 2011 was certain as to start and end dates.

11. My son, Yusuf, found the black book in early 2013, among a large number of documents that were returned to us by the FBI. After receipt of the black book, at my instruction, the attorney for United and me sent a letter dated May 17, 2013 to Hamed's attorney requesting payment of the past due rent, as we then were able to properly calculate the dollar amount. See letter attached as **Exhibit B**. This letter contained errors in the amount of the outstanding unpaid rent that are corrected by the calculations set forth in this declaration. On May 22, 2013, counsel

for Hamed wrote a letter to my and United's counsel in which he advised that his client was now taking the position that because of the statute of limitations, profits did not have to be determined by deducting the unpaid rent for the 1994 to 2004 period. See letter attached as **Exhibit C**. Until receipt of this letter, nobody on the Hamed side had ever challenged or otherwise disputed this rental obligation or the terms of our partnership agreement that required rent to be deducted in order to determine profits.

12. I received a partial copy of the FBI file, records, and documents electronically produced and stored on a hard drive in approximately mid-2010. When these documents were initially returned, I had no reason to suspect any wrongdoing by Hamed, Waleed Hamed or any other members of the Hamed family. Later in 2010, as I reviewed these documents, I discovered certain documents that led me to believe that Hamed and his son, Waleed, may have taken monies without my knowledge. In 2012, I discovered the tax returns for Waleed Hamed for various years, which reflected more than \$7,500,000 in stocks and securities owned by Waleed Hamed. I knew Waleed's salary as a Plaza Extra store manager, and knew that he had no other employment or source of income. I believed there was no way he could have legitimately accumulated that much wealth, but for having taken money from the partnership without telling me or making a record of it.

13. As to the primary space occupied by the Plaza Extra-East store, Bay 1, rent is due for two basic periods: a) 1994 – 2004, and b) 2012 through the present. Additional rent is due for limited periods when Plaza Extra-East used additional space for extra storage and staging of inventory.

14. The rent as to Bay 1 can be divided into four periods, two of which have been paid and two of which remain unpaid: 1) 1986 through December 1993 was paid as of December 31, 1993;

2) January 1, 1994 through May 4, 2004 has *not* been paid; 3) May 5, 2004 through December 31, 2011 was paid as of February 7, 2012; and 4) January 1, 2012 to date has *not* been paid.

15. The rent for Bay 1 from January 1, 1994 to May 4, 2004 (“Past Due Rent”) is due and owing. The Past Due Rent is \$3,999,679.73.

16. The rent for Bay 1 from January 1, 2012 to the present is due and owing. Although beginning in 2004 rent for Bay 1 was calculated on the basis of percentage of sales formula discussed above, once the disputes between the parties intensified, United sent a termination notice and requested the premises to be vacated. When Hamed refused to vacate despite receiving more than 1 year’s notice to vacate, United provided written notice of rent increases. Beginning on January 1, 2012 through March 31, 2012, rent was increased to \$200,000.00 per month plus 1% per month interest on the unpaid balance. Copies of the three Notice Letters from United are attached as **Exhibit D**. Beginning on April 1, 2012, rent was further increased to \$250,000.00 per month plus 1% per month interest on the unpaid balance. See Exhibit D. The total amount of the increased rent from January 1, 2012 through August 30, 2014 is \$9,155,371.52, as set forth in the latest notice letter. See Exhibit E.

17. While United claims the authority to require payment of the increased rent as set forth in the preceding paragraph, there is no dispute that rent is due from January 1, 2012 to date at least in the amount based on the same percentage of sales formula used to calculate the rent payment covering the period May 5, 2004 to December 31, 2011 that was made on February 7, 2012. Although United reserves its right to pursue its claims for the increased rent as to Bay 1 at trial, it is seeking summary judgment only for the undisputed rent calculated according to the same formula used for the previous payment of rent on February 7, 2012 of \$5,408,806.74, which is the

formula used at Plaza Extra – Tutu Park. See Exhibit F, which are the rent calculations that I prepared. See Exhibit F.

18. For 2012, the undisputed rent due is \$702,908. See Exhibit F, p.1.

19. For 2013, the undisputed rent due is \$654,190.09. See Exhibit F, p. 2.

20. For the period from January 1, 2014 through August 30, 2014, the undisputed rent due is \$452,366.03. This amount was calculated by adding the rent for 2012 and 2013 and dividing that sum by 24 months in order to determine an average monthly rent, which is then multiplied by 8, representing the eight months from January through August 30, 2014 ($\$702,908 + 654,190.09 = \$1,357,098.09 \div 24 = \$56,545.75 \times 8 = \$452,366.03$). The total undisputed Current Rent is the sum of \$702,908, \$654,190.09 and \$452,366.03, which is \$1,809,464.12.

21. At periodic points in time, additional space was used by Plaza Extra-East for extra storage and staging of inventory. United has made demand for the rent covering the additional space actually occupied by Plaza Extra-East, but no payment has been received to date.

22. For the period from May 1, 1994 through July 31, 2001, Plaza Extra-East has occupied and owes rent for Bay 5 (“Bay 5 Rent”). The Bay 5 Rent is calculated by multiplying the square feet actually occupied (3,125) by \$12.00 for 7.25 years. The total due for Bay 5 Rent is \$271,875.00.

23. For the period from May 1, 1994 through September 30, 2002, Plaza Extra-East has occupied and owes rent for Bay 8 (“First Bay 8 Rent”). The First Bay 8 Rent is calculated by multiplying the square feet actually occupied (6,250) by \$6.15 for 8 years, 5 months. The total due for First Bay 8 Rent is \$323,515.63.

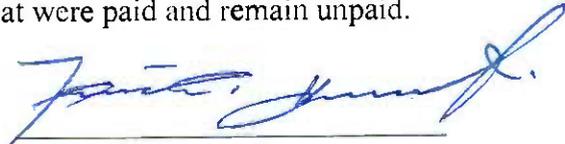
24. For the period from April 1, 2008 through May 30, 2013, Plaza Extra-East has occupied and owes rent for Bay 8 (“Second Bay 8 Rent”). The Second Bay 8 Rent is calculated by

multiplying the square feet actually occupied (6,250) by \$6.15 for 5 years, 2 months. The total due for Second Bay 8 Rent is \$198,593.75.

25. The total amount due for Bay 5 Rent, First Bay 8 Rent, and Second Bay 8 Rent is \$793,984.38.

26. The total outstanding, unpaid rent for all the space used by Plaza Extra-East from January 1, 1994 through August 30, 2014 is \$6,603,122.23, excluding the "disputed" increased rent from January 1, 2012 through the present. **Exhibit G** is a Chronology of Rents, which accurately reflects the history of the rents that were paid and remain unpaid.

Dated: August 12, 2014



Fathi Yusuf

Exhibit 9

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

WALEED HAMED, as the Executor of the
Estate of MOHAMMAD HAMED,

Plaintiff/Counterclaim Defendant,

vs.

FATHI YUSUF and **UNITED CORPORATION**

Defendants and Counterclaimants.

vs.

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

Counterclaim Defendants,

Case No.: SX-2012-CV-370

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

JURY TRIAL DEMANDED

Consolidated with

Case No.: SX-2014-CV-287

Consolidated with

Case No.: SX-2014-CV-278

Consolidated with

Case No.: ST-17-CV-384

WALEED HAMED, as the Executor of the
Estate of MOHAMMAD HAMED, *Plaintiff,*

vs.

UNITED CORPORATION, *Defendant.*

WALEED HAMED, as the Executor of the
Estate of MOHAMMAD HAMED, *Plaintiff*

vs.

FATHI YUSUF, *Defendant.*

FATHI YUSUF, *Plaintiff,*

vs.

MOHAMMAD A. HAMED TRUST, *et al,*
Defendants.

**HAMED'S NOTICE
AS TO CLAIM Y-8 (WATER REVENUES)**

EXHIBIT

9

1. Introduction. The Special Master need not read beyond this paragraph, as Hamed hereby agrees to withdraw his procedural motion as to Y-8, *without prejudice*, and continue discovery, just as Yusuf requests. Withdrawal is based on two points:

- a. Hamed's motion was predicated on very poor responses to *explicit* discovery on Y-8, which, as shown below, Yusuf said he would supplement as to new information. Instead, (1) Yusuf tries to now (partially) answer as to what *his client* "will testify to" at some later time,¹ (2) his counsel improperly testifies to those facts (*sans* any support), (3) he adds the facts here, and (4) then files based on all of it.
- b. United also seemingly interjects murky "special benefits" on SOL, which makes it impossible for Hamed to reply to (or understand) pending Judge Brady's review.

2. The Special Master is asked to note: Yusuf failed to file adequate responses and now attempts to "sandbag" Hamed in motions practice² with *counsel's* testimony as to facts not adduced in discovery. **Defendants should be warned to refrain from this.**

Hamed asks the Special Master to review Yusuf's response below, and answer one question to determine whether this is necessary: If Fathi Yusuf will testify as to this information at deposition, as his counsel states, why was it not provided in his discovery response to this identical question so that Hamed can prepare for that deposition?³ Isn't

¹ The phrase "Yusuf will testify. . . ." appears twice on the first non-caption page. As an example, see counsel's testimony at page 2 of the Opposition (emphasis added):

Mr. Yusuf will testify that Hamed was aware of and agreed that because the *water was collected and stored by equipment that was part of the real estate owned by United*, any revenues of sales of water belonged exclusively to United, just as revenues from any rent payments by tenants at the United Shopping Center, belonged exclusively to United. (Footnote omitted.)

And even as a testifying fact witness, counsel is really poor at his job. He also "testifies" about the funds to buy the property all being provided by Yusuf—but when mentioning in passing that some came from 'insurance', neglects the fact that it was a Partnership settlement for insurance even Yusuf has admitted was paid ENTIRELY by Plaza Extra ! THAT is why such testimony must be supported by sworn declaration—so it is under oath.

² All future United/Yusuf motions which rely on such "new" facts (i.e., facts withheld in discovery which suddenly appear in motions) will be met similar protests, with motions to strike such information and for sanctions. This is more than fair warning, and Hamed does not request such results here only to save the Special Master's time and the parties' funds.

³ The inquiry was to describe "any witnesses who would have knowledge and what knowledge you believe they have." This is the simplest, most basic request possible.

that is what written discovery is for? As the Master will note reading *Interrogatory 2 of 50*, the facts that counsel testifies to in this opposition should have been in the discovery responses. Nothing Fathi Yusuf "is going to testify to" about later should be here or in deposition that wasn't in discovery, certainly not a "mine, because it's from my roof" theory.

The interrogatory response is not only evasive, but it states that it "will be supplemented 'as and when appropriate.'" First, written discovery is over—written responses are already late. Second, Yusuf's opposition is filed just a month after the responses—surely this is not "new" information that Yusuf/United lacked when responses were submitted on May 15th. Third, the discovery response WAS NOT SUPPLEMENTED before the opposition was filed. **This is classic sandbagging: Refusal to answer discovery, and then using "new" facts—positions withheld—in motions practice.**

If the Special Master will compare the 100's of pages of Hamed responses and 100's of documents produced, with the **ZERO** documents Yusuf produced and the repeatedly and aggressively evasive responses, he will understand this problem.

Interrogatory 2 of 50 - New Claim Number Y-08- 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.** [*i.e.*, who should we depose and about *what?*]

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.** (Emphasis added.)

There is nothing in there about the facts and positions that counsel "testifies" to here—no "it is my real estate's water" claim that did not appear in the interrogatory response.

Dated: June 16, 2018



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CERTIFICATE OF SERVICE

I hereby certify that on this 16th day of June, 2018, I served a copy of the foregoing by email (via CaseAnywhere), as agreed by the parties, on:

Hon. Edgar Ross (w/ 2 Mailed Copies)
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CERTIFICATE OF COMPLIANCE WITH RULE 6-1(e)

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

