

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.*

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 REPLY TO YUSUF'S OPPOSITION TO HAMED'S MOTION TO COMPEL
NO. 1 OF 5 WITH REGARD TO THE "B(1)" CLAIMS—AS TO: REVISED YUSUF
CLAIMS Y-7 LEDGER BALANCE OWED UNITED AND Y-9 – UNREIMBURSED
TRANSFERS FROM UNITED**

I. Introduction

On November 4, 2019, Yusuf filed an *Opposition to Hamed's Motion to Compel as to Yusuf's Opposition to Hamed's Motion to Compel as to Yusuf Claim Y-7 – Ledger Balance Owed to United and Yusuf Claim Y-9 Unreimbursed Transfers from United*. (“Opposition”) Hamed respectfully requests the Master grant the relief requested in the motion and further detailed in this reply—by ordering a response to this outstanding discovery.

II. Brief Summary of the 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. Consequently, on October 2, 2019, Hamed filed a Motion to Compel No. 1 of 5 with Regard to the “B(1)” Claims as to: Revised Yusuf Claim Y-7 Ledger Balance Owed United and Yusuf Claim Y-9 – Unreimbursed Transfers from United. On November 4, 2019, Yusuf filed an Opposition to Hamed's Motion to Compel as to Yusuf Claim Y-7 – Ledger Balance Owed to United and Yusuf Claim Y-9 Unreimbursed Transfers from United.

III. Facts

A. Yusuf's Unanswered Interrogatories

1. *Yusuf refuses to answer Interrogatory 15 of 50 – Claim No. Y-7 – Ledger Balances Owed United*

On February 9, 2018, Hamed propounded the following interrogatory:

Interrogatory 15 of 50: Interrogatory 15 of 50 relates to Claim Y-7 [Y-07] as described in Hamed's November 16, 2017 Motion for a Hearing Before Special Master as "Ledger Balances Owed United" and Exhibit H to Yusuf's

Original Claims, Ledger Sheet Reflecting United's Payments for Plaza Extra.

Please fully describe Exhibit H "Ledger Sheets Reflecting United's Payments for Plaza Extra," including, but not limited to, the physical location where this ledger sheet was found, who first found this ledger sheet, how this ledger sheet made it to its physical location, when the ledger sheet was placed in the location where it was found, whether the FBI ever had possession of this ledger sheet and if so, the dates of that possession, whether the ledger sheet is part of a larger document, and if so, the total number of pages in the larger document, an explanation of each entry on the ledger sheet, including, but not limited to, the date of each transaction reflected in each entry (including the year), a description of each entry (*e.g.*, what is the name of the person the bedroom set in 1998 was purchased for), an explanation of why each entry is a business expense of the Partnership, and a description of the documents supporting each expenditure description (*e.g.*, an invoice). Also, for each such entry, state the length of time that passed between each entry and the date the FBI seized the document - with a description of all bank, investment and other documents referenced in the exhibit or your explanation. **(Exhibit 1)**

On May 15, 2018, Yusuf's response was a complete refusal to answer:

Yusuf Response to Interrogatory 15 of 50:

Defendants object to this Interrogatory because it is vague, ambiguous and compound such that the total number of Interrogatories together with their sub parts and other discovery exceeds the maximum allowable number of Interrogatories under the JDSP and violates both the spirit and the terms of the JDSP limiting the number of Interrogatory questions. **(Exhibit 2)**

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

We do not understand how we can defend a claim on these ledger entries if your client will not answer as to the specifics of the claim. Thus, we propose one of three solutions: (1) Yusuf agrees to allow Hamed one each discovery request (interrogatory, RFA and RFPD) to be propounded and answered after you file the motion on this claim. Hamed's opposition would be due 14 days after your responses, (2) you tell us what detail you WILL provide on this interrogatory, and we negotiate to see if we can find a solution, or (3) we file another motion to compel and attach this email. **(Exhibit 3)**

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

2. *Yusuf refuses to answer Interrogatory 44 of 50 – Claims No. Y-7 – Ledger Balances Owed United and Y-9 – Unreimbursed Transfers*

Hamed interrogatories 44-47 related to the following Yusuf claims: *Y-7 Ledger Balance Owed United and Y-9 Unreimbursed Transfers*. More particularly, they relate to an excerpt of the videotaped Deposition of Maher Yusuf (with referenced exhibits) taken under oath in this action on April 3, 2014. On March 31, 2018, Hamed propounded the following interrogatory:

Interrogatory 44 of 50

Keeping in mind that Maher Yusuf was testifying for United (as its President) in this deposition (it is captioned "30(B)(6) OF UNITED CORP. - MAHER "MIKE" YUSUF) and that Maher Yusuf's testimony, most clearly at pages 73-75, is that the receipts that were added to "calculate" \$1.6 million figure and in the Black Books and ledgers were **not** between Hamed and United, but **rather** between the Hameds and the Yusufs – correcting amounts in the supermarket partnership, not with United.

Q. (Mr. Hartmann) Okay. And I now am going to show you an Exhibit numbered 149, which is Bates numbered at the upper right-hand corner, HAMD200105, and is a letter addressed on United Corporation stationery to Mr. Mohammad Hamed on August 22nd, 2012 from Fathi Yusuf. Did -- did Fathi Yusuf draw up this letter, or did you?

A. I don't recall if it was me, or me and him, or me alone. I -- I -- I don't -- I don't remember.

Q. Okay. But both of these letters were sent from Fathi Yusuf, right?

A. Yes.

Q. Okay. As a matter of fact, let's look at -- at 144. That's the one with the math on it, or 146, whichever you want.

A. Okay.

Q. Yeah, it's the same one. What does the signature on 144 or 146 say? Whose signature is that?

A. That's my signa --

Q. You recognize it?

A. -- my signature.

Q. Your signature. But it says, For the Fathi Yusuf, right?

A. Right.

Q. Why would Fathi Yusuf -- you were the president, right, of United?

A. Yes.

Q. And -- and these were not adjustments for United Corporation,

these were adjustments for Plaza Extra Supermarkets, is that correct?

A. Yes.

Q. Is that why Fathi Yusuf's name appears on all three of these, because these are partnership reconciliations?

A. Yes. It's for -- it's withdrawals from the store. . . . (Emphasis added).

explain in detail, including reference to the phrases "these were **not** adjustments for United Corporation" but were "partnership reconciliations", any applicable documents, dates, conversations, to whom (or what entity) the amounts are owed, witnesses, to what person or entity United and Mike Yusuf as its President understood the claims against Hamed were owed on April 3, 2014 and if, how and why that has since changed. **(Exhibit 8)**

This is an entirely legitimate, normal and regular form of interrogatory to inquire into testimony. As with Yusuf's prior responses, he completely refused to answer the interrogatory on May 15, 2018:

Yusuf's Response to Interrogatory 44 of 50:

Defendants object to this interrogatory as vague, ambiguous, and compound such that the total number of interrogatories together with their sub parts and other discovery exceeds the maximum allowable number of interrogatories under the JDSP and violates both the spirit and the terms of the JDSP limiting the number of interrogatory questions. . . . **(Exhibit 9)**

3. *Yusuf refuses to Interrogatory 45 of 50 – Claims No. Y-7 – Ledger Balances Owed United and Y-7 – Unreimbursed Transfers*

On March 31, 2018, Hamed propounded the following interrogatory:

Interrogatory 45 of 50

Similarly, Maher Yusuf testified that the ledger excerpts sent in regard to this case were not the full set of all such ledgers, most clearly at pages 57-58:

A. I mean, Mr. Mohammad was pulling, you know, he was pulling some good money.

Q. Right. And if your father wanted to, you called it "pulling some good money"?

A. Yeah, he was pulling some good money, from the numbers you see here.

Q. I see. And was your father pulling some good money?

A. From where?

Q. From you.

A. He was not here. He was in St. Thomas.

Q. No, no. I'm just asking the question. Was he -- first, let's start with, was he pulling it from you?

A. No.

Q. No. Where was your father pulling it?

A. I'm not sure where he was pulling it from. I was not there where he was.

Q. Okay. He was in St. Thomas, right?

A. He was in St. Thomas. I'm in St. Croix.

Q. Okay. So if money was coming out by your father in St. Thomas, you wouldn't have been the one keeping the records, right?

A. No.

explain in detail, including (but not limited to) reference to any applicable documents, dates, conversations, to whom (or what entity) the amounts are owed, witnesses, how many total ledger books existed at different times in the Partnership at each location, more particularly in 2001 prior to the FBI-raid, on September 17, 2006 and presently --where they are and how it can be determined that they are complete with regard to the amounts that Fathi Yusuf "pulled" as that term is used here by Maher Yusuf? **(Exhibit 8)**

On May 15, 2018, again, Yusuf's response was another complete refusal to answer:

Yusuf's Response to Interrogatory 45

Defendants object to this interrogatory as vague, ambiguous, and compound such that the total number of interrogatories together with their sub parts and other discovery exceeds the maximum allowable number of interrogatories under the JDSP and violates both the spirit and the terms of the JDSP limiting the number of interrogatory questions. . . . **(Exhibit 9)**

4. *Yusuf refuses to answer Interrogatory 47 of 50 – Claims No. Y-7 – Ledger Balances Owed United and Y-7 – Unreimbursed Transfers*

On March 31, 2018, Hamed propounded the following interrogatory:

Interrogatory 47 of 50:

Similarly, Maher Yusuf testified that the ledger entries referenced in regard to this case were sometimes made in ledgers, but also sometimes made in "receipts" and that many of those receipts were destroyed prior to the FBI raid in 2001, most clearly at pages 58-63:

Q. Okay. So -- so for every time money was withdrawn from the safe, one of two things -- when you were in control of it, one or two things happened, is that

correct? Either you wrote a line in the ledger for Mohammad Hamed, or you filled out one of these receipts.

A. Right.

Q. What did -- was there a generic name for these receipts that everybody called them?

A. Receipts.

Q. Were they called chits ever?

A. You guys came up with that word.

Q. Oh, okay.

A. I never heard that word before.

Q. Okay. So these were all receipts.

A. Right.

Q. Okay. And -- and so for every transaction where cash was removed from any of the safes, -- There were three safe rooms, one in each store, is that correct?

A. Yes.

Q. -- there would have either been an entry in a ledger, or a receipt, is that correct?

A. Entry in a ledger, or a receipt?

Yes, yes.

Q. Okay. And -- and so just let's take a year, for example, 1998. I know nothing about it. This is a hypothetical question. If in 1998 I went to all three stores and I added up all the ledger entries, and all the chit -- all the receipt entries, I could find out to the penny how much money the Hameds had withdrawn, and how much money the Yusufs had withdrawn, is that correct?

A. That's, yeah, **if we could find the records, yes.**

Q. Yes. And you say that like you are not sure you can find the records.

A. Well, the FBI came in and took a lot of our records. It's still held by the District Court.

Q. I see. But if you could get those all together and add them up, you could get a number, is that correct?

A. Should be able to, yes.

Q. Okay. And to the best of your knowledge, all of those receipts still exist today from 1986 on?

A. No.

* * * *

Q. . . . I asked you if I could go around and collect all these receipts, add them up and find out how much the Hameds took out, and how much the Yusufs. You said yes. And I said, So I should be able to do that from the -- from back till now, and you said, no, there's a problem. You said some might be in the possession of

a third party.

A. Right.

Q. When I have those from the third party, will I then be able to get that number?

A. To physically check every receipt by receipt?

Q. Through all the --

A. **There's -- there's some receipt was destroyed by Waleed Hamed, and some receipts were destroyed by me.**

Q. **Okay. Tell me about that.**

explain in detail, including (but not limited to) reference to any applicable documents, dates, conversations, to whom (or what entity) the amounts are owed, witnesses, how it is possible to have a complete accounting of the ledgers when some transactions were included in ledgers, but others in receipts ("there would have **either** been an entry in a ledger, **or** a receipt ") and some of those ledgers or receipts were intentionally destroyed? **(Exhibit 8)**

Predictably, on May 15, 2018, Yusuf's response was a yet another complete refusal to answer:

Yusuf's Response to Interrogatory 47 Defendants object to this interrogatory as vague, ambiguous, and compound such that the total number of interrogatories together with their sub parts and other discovery exceeds the maximum allowable number of interrogatories under the JDSP and violates both the spirit and the terms of the JDSP limiting the number of interrogatory questions. . . .

B. Yusuf's unanswered requests for the production of documents

1. *Hamed's RFPDs 6 of 50 – Claims No. Y-7 – Ledger Balances Owed United and Y-9 – Unreimbursed Transfers*

On February 9, 2018, Hamed sent the following request:

RFPDs 6 of 50:

Request for the production of documents, number 6 of 50, relates to Claims . . . Y-7 and Y-9 - as described in Hamed's November 16, 2017 Motion for a Hearing Before Special Master as . . . "Y-7 - Ledger Balances Owed United," and "Y-9 - Unreimbursed Transfers from United."

Please provide all United Tenant Account bank statements from 1992 to the present, including all deposit slips and canceled checks; all Plaza Extra adjusted journal entries related to United transfers and general ledger

statements from 1992 to the present (excluding those provided to the Hamed accountants on the Sage 50 system); as well as all invoices, receipts or other documentation substantiating each entry on Yusuf Exhibits to the Original Claims, G - Relevant Black Book Entries, H - Ledger Sheets Reflecting United's Payments for Plaza Extra, and I - Summary and Supporting Documentation of Unreimbursed Transfers from United. **(Exhibit 10)**

On May 15, 2018, Defendants refused to respond to this **critical, central** request for the United Tenant bank account documents.

Yusuf's Initial Response to RFPDs No. 6

Defendants object to this interrogatory as vague, ambiguous, and compound such that the total number of requests for production together with their sub parts and other discovery exceeds the maximum allowable number of requests for production under the JDSP and violates both the spirit and the terms of the JDSP limiting the number of requests for production.

Defendants further object to the production of the United Tenant Account bank statements from 1992 to the present as overly broad and unduly burdensome. Yusuf Claim Y-9 relates to payments made by United in 1996 and attached to Yusuf's Accounting Claim was the supporting documentation for said claims for that limited period. Production of United's Tenant Account bank statements for four years prior to the claims at issue and for decades thereafter is unduly burdensome and unreasonably cumulative and duplicative, particularly as the information reflecting the substantive basis of the claim has been previously produced in the case and is reproduced as Exhibit I to Yusuf's Accounting Claims. V.I. R. Civ. P. 26(b)(2)(C)(i) and 26(b)(2)(D).

Defendants further object to the production of the ledger statements for 1992 through the present (with the exception of what has previously been produced) as unduly burdensome and unreasonably cumulative and duplicative given that the claims for Y-9 are limited to a single year 1996 and same was produced. V.I. R. Civ. P. 26(b)(2)(C)(i) and 26(b)(2)(D). . . . **(Exhibit 11)**

2. Hamed's RFPDs 7 of 50 – Claim No. Y-7 – Ledger Balances Owed United

On February 9, 2018, Hamed sent the following request:

RFPDs 7 of 50:

Request for the production of documents, number 7 of 50, relates to Claims Y-6 and Y-7 - as described in Hamed's November 16, 2017 Motion for a Hearing Before Special Master as "Y-6 - Black Book Balances Owed United" and "Y-7- Ledger Balances Owed United."

Please provide the complete Black Book referenced in Yusuf Exhibits to the Original Claims, G - Relevant Black Book Entries and the complete ledger document referenced in Exhibit H - Ledger Sheets Reflecting United's Payments for Plaza Extra. (**Exhibit 10**)

On May 15, 2018, Defendants refused to respond to the request for complete ledger book from which the ledger sheets for Exhibit H were excerpted.

Yusuf's Initial Response to RFPDs No. 7

* * * *

See also attached Bates FY 014955 which was previously produced as Exhibit H to Yusuf's Accounting Claims. (**Exhibit 11**)

IV. Argument

Yusuf filed an Opposition to this Motion to Compel.¹ **These responses, particularly about the details for the United Tenant Account² are a central item of evidence, and critical to many of the issues here. Without detail from that account, Hamed is litigating with a hand tied behind his back—a hand that Yusuf can dip into these records at any time and cherry-pick useful counter-arguments. Either this material gets produced or Yusuf cannot use anything not produced up to this point. Hamed does not care which.** Hamed is used to this now, but will not be forced to respond to positions and arguments from these documents unless he sees them now.

A. Yusuf's Responses to Interrogatories are Still Deficient

1. *Yusuf refuses to answer Interrogatory 15 of 50 – Claim No. Y-7 – Ledger Balances Owed United*

Yusuf contends that this interrogatory is

. . . vague, ambiguous and compound and operated as an end run as to the agreed upon limited number of interrogatories that could be propounded. This Interrogatory contains 14 separate questions as to each entry including a history of the chain of custody of the ledger. (Yusuf Opposition at 2)

¹ In his Opposition, Yusuf states “that there has been no lingering attempt to ignore any specific deficiency or unilateral attempt to avoid response.” (Yusuf Opposition at 10) The documents speak for themselves – responses were required on May 15, 2018 and were deficient. Yusuf has avoided supplementing his responses, so Hamed is still waiting for full and complete responses to his discovery.

² Yusuf makes claims about the half-acre at Tutu, the water used by the Partnership and many other items which have Tenant Account entries that are material to the claims, Just recently, the Master stated that “rent” claims for Bays 5 and 8 must go to a hearing. Yusuf contends that certain records are not its business records. But at the same time, has produced no such records that expressly and directly related to those its. The rent receipts for the Tutu parcel and the water payments and the incomes and rental payments on Bays 5 and 8 being just a tiny portion.

This complaint is a surprise to Hamed, as the two parties had extensive meet and confer conversations regarding each interrogatory Yusuf refused to answer fully. In the summary of this particular interrogatory, the meeting notes specified "Attorney Perrell stated that this interrogatory will be supplemented by December 15, 2018." (**Exhibit 5** at p. 2) *There was no mention that this was compound and contained 14 separate questions, therefore Yusuf was not going to respond.* Further, Yusuf did not respond to anything, despite the fact that this question is proper under V.I. R. CIV. P. 26(b)(1) scope of allowing discovery regarding "any nonprivileged matter that is relevant to any party's claim or defense."

Next, Hamed has been frustrated in getting any type of response from Yusuf that is fully responsive. Asking a broad question – tell me about Exhibit H – would not have elicited a comprehensive response. Instead, Hamed is forced to identify all the potential items that go into a response to try and head off the inevitable non-response from Yusuf. Unfortunately, that approach did not work either.

Hamed needs to have a sense of where this document came from and why Yusuf thinks that the FBI had the document in order to mount a statute of limitations ("SOL") defense. Hamed is anticipating that Yusuf will assert that this document was in the hands of the FBI and therefore Yusuf could not make a claim for the ledger balances any earlier than he did. Yusuf has made this claim before regarding expenditures allegedly due United. As this document does not have any identifying FBI bates stamps, the origins of where this document came from are unclear. Further, Hamed needs to understand the dates of the transfers and the business purpose of the transfers for a SOL defense and to understand whether these transactions relate to the Plaza Extra stores. Accordingly,

Hamed respectfully requests that Yusuf respond to the interrogatory, identifying all the facts, circumstances and documents pertaining to the claim.

2. Yusuf refuses to answer Interrogatory 44 of 50 – Claims No. Y-7 – Ledger Balances Owed United and Y-9 – Unreimbursed Transfers

Yusuf contends this interrogatory (and interrogatories 45 and 47) “[c]ontain extensive quotations from testimony and references to exhibits not included³ and thus, are vague, ambiguous and compound. . . .(Yusuf Opposition at 3) Yusuf further states “[Yusuf and United] incorporated their response to Interrogatory No. 42 as their response to these three Interrogatories 44, 45 and 47.” (Yusuf Opposition at 6) Finally, Yusuf concludes with “[D]efendants show that the discovery requests are objectionable and that the responses provided are Defendants’ efforts to attempt to respond, as best as possible, to poorly crafted discovery. There is no basis for the motion to compel as the requests are unclear and compound and thus, Defendants cannot comply.” (Yusuf Opposition at 6-7)

Yusuf’s response in his Opposition is in direct odds with his counsel’s agreement regarding this interrogatory during the meet and confer conversations. In Hamed’s counsel’s November 28, 2018 letter summarizing the results of the November 12, 2018 meet and confer, the agreement regarding Interrogatory 44 was as follows:

Interrogatory 44 of 50 – Relates to Mike Yusuf’s deposition testimony as a 30(b)(6) witness for United that the Yusuf claims related to the black book and the ledger were **not** between Hamed and United, but **rather** between the Hameds and the Yusufs.

³All exhibits and their attachments **were** included in the original discovery, so Yusuf’s contention that he could not answer because those were missing is incorrect. It is true in Hamed’s Motion to Compel, the 86 pages of attachments to Exhibit 46 were not included for brevity’s sake. Hamed also notes that the 86 pages Yusuf states are missing and are needed in Hamed’s Motion to Compel were originally produced by Yusuf, so this objection is also disingenuous, in addition to being plain wrong.

Attorney Perrell agreed by December 15, 2018 to supplement this interrogatory by explaining why Mike Yusuf's testimony was incorrect and the black book and ledger entries really are between Hamed and United. (**Exhibit 5** at p. 5)

At no time during the November 12 meet and confer was there a discussion that interrogatory was "vague, ambiguous or compound. . . [or] unclear." Yusuf's counsel also did not ask Hamed to revise his interrogatory. (Yusuf Opposition at 3 and 7)

Next, Yusuf asserts in his Opposition that "[Yusuf and United] incorporated their response to Interrogatory No. 42 as their response to these three Interrogatories 44, 45 and 47." (Yusuf Opposition at 6) However, the response to Interrogatory 42 has nothing to do with the question Hamed is asking in interrogatory 44. Interrogatory 44 wants to know whether the ledger balances are between the Partnership and United, or whether the ledger balances are between Hamed and Yusuf, as was stated by United's President, Mike Yusuf, in his sworn deposition testimony. Yusuf's response to interrogatory 42 does not answer the question posed in Hamed's interrogatory 44.

Finally, Yusuf states that "the requests are unclear and compound." (Opposition at 7). Interrogatory 45 is neither complex nor compound. It is very simple: Hamed wants to know who is correct—Fathi Yusuf as Partner or Mike Yusuf as United President? Are the reconciliations between United and the Partnership, as Fathi Yusuf contends or are they between Yusuf and Hamed as Partners, as the President of United, Mike Yusuf, states? Once Yusuf has an answer, Hamed's interrogatory requests an explanation. As with all other Hamed interrogatories, Hamed provides examples of the type of information that would go into an explanation:

any applicable documents, dates, conversations, to whom (or what entity)
the amounts are owed, witnesses, to what person or entity United and Mike

Yusuf as its President understood the claims against Hamed were owed on April 3, 2014 and if, how and why that has since changed. (**Exhibit 8**)

3. *Yusuf refuses to Interrogatory 45 of 50 – Claims No. Y-7 – Ledger Balances Owed United and Y-7 – Unreimbursed Transfers*

Yusuf makes the same complaints about Interrogatory 45 as he did for Interrogatory 44. Again, in the November 12, 2018 meet and confer between the parties, no mention was made of the interrogatory being “vague, ambiguous or compound. . . .[or] unclear.” Yusuf’s counsel also did not ask Hamed to revise his interrogatory. (Yusuf Opposition at 3 and 7) Instead, Yusuf’s counsel “agreed to review whether any additional ledgers exist and produce them by December 15, 2018.” (**Exhibit 5** at p. 5)

Yusuf’s next argument, that the response to Interrogatory 42 was incorporated, is also meaningless as it does not pertain to this interrogatory.

Finally, Yusuf states that “the requests are unclear and compound.” (Opposition at 7). Again, Hamed is asking a simple question: how many ledger books existed at each store, specifically prior to the 2001 raid, on September 17, 2006 and presently, where are they located now and how can the parties determine that the ledger books contain all of the withdrawals so that a true reconciliation can be made.

4. *Yusuf refuses to answer Interrogatory 47 of 50 – Claims No. Y-7 – Ledger Balances Owed United and Y-7 – Unreimbursed Transfers*

Yusuf’s refusal to answer Interrogatory 47 also is misplaced. At no time during November 12, 2018 meet and confer did Yusuf’s counsel state that the interrogatory was “vague, ambiguous or compound. . . .[or] unclear.” (Yusuf Opposition at 3 and 7) Yusuf’s counsel also did not ask Hamed to revise his interrogatory. (See **Exhibit 5**)

Yusuf's next argument, that the response to Interrogatory 42 was incorporated, is also meaningless as it does not answer to this interrogatory.

Finally, Yusuf states that "the requests are unclear and compound." (Opposition at 7) Interrogatory 47 is quite clear and simple: how can a complete reconciliation be made since Mike Yusuf, President of United, testified under oath that some of the receipts were destroyed? As Mike Yusuf testified, "there either would have been an entry in a ledger or a receipt."

B. Yusuf's Responses to Request for Documents are Still Deficient

1. Hamed's RFPDs 6 of 50 – Claims No. Y-7 – Ledger Balances Owed United and Y-9 Unreimbursed Transfers

Yusuf objects that providing the United Tenant Account bank records from 1992 to the present "as overly broad and unduly burdensome." (Yusuf Opposition at 8) Yusuf's claim Y-7 dates to 1994 and Y-9 dates to 1996. Yusuf has testified that the last Partnership reconciliation was December 31, 1993, so Hamed needs information from that date forward to determine whether these amounts are even due in the first place.⁴ Yusuf's claim is the reason the time period is so broad. Hamed amends this request, asking for the United Tenant Account bank records from January 1, 1994 to the present.

Yusuf's complaining about the breadth of these request underscores Judge Brady's observation in his Limitations Order:

[T]he parties, by their respective actions for accounting, effectively impose upon the Court the onerous burden of reconstructing, out of whole cloth, twenty-five years' worth of these partner account transactions, based upon nothing more than scant documentary evidence and the ever-fading recollections of the partners and their representatives." Order at 15 (July 21, 2017)(footnotes omitted).

⁴ Declaration of Fathi Yusuf, August 12, 2014, ¶ 4.

This claim really should be barred by that Order, yet Yusuf and United persist. Yusuf's claims dictate the broad time period. If Yusuf is unhappy with this request, he can always withdraw those two claims.

Yusuf's complaint that the unreimbursed transfers from United were confined to 1996 and therefore nothing else has to be produced is also unresponsive. Hamed can't determine whether those transfers are truly unreimbursed without a full reconciliation of all of the withdrawals back and forth between the Partners, starting in 1994.

Finally, Yusuf has not requested a Motion for a Protective Order, which would have been the proper way to address this request. V.I. R. CIV. P. 26(c)(1) states "[t]he court may, for good cause, issue an order to protect a party or person from annoyance, embarrassment, oppression, or undue burden or expense. . . ." Since Yusuf did not avail himself of protection and has not supplied the documents, he is unable to use his Exhibit H and I as support for his claims.

2. Hamed's RFPDs 7 of 50 – Claim No. Y-7 – Ledger Balances Owed United

Yusuf has not provided the complete ledger book for claim Y-7. Indeed, he has only provided one page of the ledger book. Hamed respectfully requests that the Master require him to turn over the complete book. Without it, a full reconciliation of all withdrawals between the Partners cannot be made.

V. Conclusion

Hamed's interrogatories and request for documents discussed above fall within V.I. R. CIV. P. 26(b)(1) scope of allowing discovery regarding "any nonprivileged matter that

is relevant to any party's claim or defense." Hamed respectfully requests that the Master compel Yusuf to answer the interrogatories fully and produce the requested documents.

Dated: November 15, 2019



Carl J. Hartmann III, Esq.

Co-Counsel for Plaintiff

5000 Estate Coakley Bay, L6

Christiansted, VI 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, VI 00820

Email: holtvi@aol.com

Tele: (340) 773-8709

Fax: (340) 773-8670

CERTIFICATE OF SERVICE

I hereby certify that on this 15th day of November 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

DNF

Law House, 10000 Frederiksberg Gade

P.O. Box 756

St. Thomas, VI 00802

ghodges@dnflaw.com

Mark W. Eckard

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



CERTIFICATE OF COMPLIANCE WITH RULE 6-1(e)

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

