

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

**MOHAMMAD HAMED, BY HIS
AUTHORIZED AGENT WALEED HAMED,**

PLAINTIFF/COUNTERCLAIM DEFENDANT,

v.

**FATHI YUSUF AND UNITED
CORPORATION,**

DEFENDANTS/COUNTERCLAIMANTS,

v.

**WALEED HAMED, WAHEED HAMED,
MUFEEED HAMED, HISHAM HAMED,
AND PLESSEN ENTERPRISES, INC.,**

COUNTERCLAIM DEFENDANTS.

**WALEED HAMED, AS EXECUTOR OF THE
ESTATE OF MOHAMMAD HAMED,**

PLAINTIFF,

v.

UNITED CORPORATION,

DEFENDANT.

MOHAMMAD HAMED,

PLAINTIFF,

v.

FATHI YUSUF,

DEFENDANT.

Civil No. SX-12-CV-370

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

CONSOLIDATED WITH

Civil No. SX-14-CV-287

**ACTION FOR DAMAGES and
DECLARATORY JUDGMENT**

CONSOLIDATED WITH

Civil No. SX-14-CV-378

**ACTION FOR DEBT and
CONVERSION**

ORDER

THIS MATTER came before the Special Master (hereinafter “Master”) on Hamed’s motion to compel responses to discovery served in connection with Yusuf Claim No. Y-8: water revenue owed United.¹ On November 4, 2019, Yusuf filed an opposition and additional supplemental responses. On November 7, 2019, Hamed filed a reply.

BACKGROUND

In 2016, per the Master’s orders, Parties filed their respective accounting claims. Yusuf, in his accounting claims filed on September 30, 2016, included the following entry under “Section III. Outstanding Debts of the Partnership”:

E. Water Revenue Re Plaza Extra-East

Beginning in 1994, Plaza Extra-East began selling United’s water. The proceeds for the first 10 years were used primarily for charitable purposes. From April 1, 2004, however, all revenue from the sale of United’s water that was collected by Plaza Extra-East was to be paid to United. United has calculated the average water sales per month based upon two years of sales in 1997 (\$52,000) and 1998 (\$75,000) as \$5,291.66 per month. Multiplying the average monthly sales revenue by 131 months, United is owed \$693,207.46 from the Partnership for the water sales revenue from April 1, 2004 through February 28, 2015. (Yusuf’s accounting claims, p. 9)

Subsequently, the Court entered a memorandum opinion and order dated July 21, 2017 whereby the Court ordered, *inter alia*, that “the accounting in this matter, to which each partner is entitled under 26 V.I.C. § 177(b), conducted pursuant to the Final Wind Up Plan adopted by the Court, shall be limited in scope to consider only those claimed credits and charges to partner accounts, within the meaning of 26 V.I.C. § 71(a), based upon transactions that occurred on or after September 17, 2006” (hereinafter “Limitations Order”). (Limitations Order, pp. 33-34)

In light of the Limitations Order, the Master ordered Parties to file their amended accounting claims. Yusuf, in his amended accounting claims filed on October 30, 2017, again included

¹ The Master was appointed by the Court to “direct and oversee the winding up of the Hamed-Yusuf Partnership” (Sept. 18, 2015 order: Order Appointing Master) and “make a report and recommendation for distribution [of Partnership Assets] to the Court for its final determination.” (Jan. 7, 2015 order: Final Wind Up Plan) The Master finds that that Hamed’s instant motion to compel falls within the scope of the Master’s report and recommendation given that Yusuf Claim No. Y-8 involves alleged debts/liabilities of the Partnership.

United's claim for "Water Revenue Re Plaza Extra-East" in the total amount of \$693,207.46² and noted that "this debt will be disputed and will likely require additional discovery." (Yusuf's amended accounting claims, p. 12)

On February 4, 2018, Hamed propounded discovery in connection with Yusuf Claim No. Y-8—interrogatory 2 of 50 (hereinafter "Interrogatory 2"). On May 15, 2018, United and Yusuf filed their initial response to Interrogatory 2. On May 25, 2018, Hamed filed a motion to strike Yusuf Claim No. Y-8 on procedural grounds—violation of the statute of limitation and the statute of frauds (hereinafter "Motion to Strike"). More specifically, Hamed argued in his Motion to Strike that Yusuf Claim No. Y-8 should be struck "as a matter of law, on two distinct procedural grounds: (1) pursuant to the applicable VI statute of limitations ("SOL"), Yusuf provided dispositive facts in its responses on May 15, 2018 that preclude the first portion of the claim, up to September 17, 2006, and (2) he admitted facts as to the entire claim relating to the statute of frauds—as there is no writing as to the agreement for water." (Motion to Strike, p. 2) On June 15, 2018, United filed an opposition to Hamed's Motion to Strike. On June 16, 2018, Hamed filed a notice of withdrawal of his Motion to Strike without prejudice and continue discovery in connection with Yusuf Claim No. Y-8. On December 18, 2018, United and Yusuf filed their supplemental response to Interrogatory 2. Parties met and conferred. On October 2, 2019, Hamed filed this instant motion to compel. On November 4, 2019, Yusuf filed an opposition thereto and United and Yusuf's additional supplemental response to Interrogatory 2.³

² Yusuf's amended accounting claims included the same paragraph previously included in Yusuf's accounting claims.

³ The Master must note at the outset that Parties seem to treat United and Yusuf as the same entity in connection with Yusuf Claim No. Y-8 and thus, "United" and "Yusuf" are often used interchangeably. For example, while United filed the opposition to Hamed's Motion to Strike, Yusuf filed the opposition to Hamed's instant motion to compel. As such, whenever Yusuf or United is referred to by himself or itself, and where the context so permits, he or it will be deemed to include the other.

STANDARD OF REVIEW

Rule 37 of the Virgin Islands Rules of Civil Procedure (hereinafter “Rule 37”) governs the scope and procedure of motion for an order compelling disclosure or discovery. Rule 37 provides that “[a] party seeking discovery may move for an order compelling an answer, designation, production, or inspection...if (iii) a party fails to answer an interrogatory submitted under Rule 33; or (iv) a party fails to produce documents or fails to respond that inspection will be permitted – or fails to permit inspection – as requested under Rule 34. V.I. R. CIV. P. 37(a)(3)(B)(iii)-(iv). Rule 37 also provides that “[f]or purposes of this subpart (a), an evasive or incomplete disclosure, answer, or response must be treated as a failure to disclose, answer, or respond.” V.I. R. CIV. P. 37(a)(4). Rule 37 further provides that “[i]f a party fails to provide information or identify a witness as required by Rule 26(a) or (e), the party is not allowed to use that information or witness to supply evidence on a motion, at a hearing, or at a trial, unless the failure was substantially justified or is harmless. In addition to or instead of this sanction, the court, on motion and after giving an opportunity to be heard: (A) may order payment of the reasonable expenses, including attorney's fees, caused by the failure; (B) may inform the jury of the party's failure; and (C) may impose other appropriate sanctions, including any of the orders listed in Rule 37(b)(2)(A)(i)-(vi).” V.I. R. CIV. P. 37(c). Rule 37 requires the motion to “include a certification that the movant has in good faith conferred or attempted to confer with the person or party failing to make disclosure or discovery in an effort to obtain it without court action.” V.I. R. CIV. P. 37(a)(1); *see also* V.I. R. CIV. P. 37-1(a) (“Prior to filing any motion relating to discovery pursuant to Rules 26 through 37, other than a motion relating to depositions under Rule 30, counsel for the parties and any self-represented parties shall confer in a good faith effort to eliminate the necessity for the motion – or to eliminate as many of the disputes as possible.”). If the motion to compel is granted, “the court must, after giving an opportunity to be heard, require the party or deponent whose conduct necessitated the

motion, the party or attorney advising that conduct, or both to pay the movant's reasonable expenses incurred in making the motion, including attorney's fees. But the court must not order this payment if: (i) the movant filed the motion before attempting in good faith to obtain the disclosure or discovery without court action; (ii) the opposing party's nondisclosure, response, or objection was substantially justified; or (iii) other circumstances make an award of expenses unjust.” V.I. R. CIV. P. 37(a)(5)(A). If the motion to compel is denied, “the court may issue any protective order authorized under Rule 26(c) and must, after giving an opportunity to be heard, require the movant, the attorney filing the motion, or both to pay the party or deponent who opposed the motion its reasonable expenses incurred in opposing the motion, including attorney's fees. But the court must not order this payment if the motion was substantially justified or other circumstances make an award of expenses unjust. V.I. R. CIV. P. 37(a)(5)(B). And if the motion to compel is granted in part and denied in part, “the court may issue any protective order authorized under Rule 26(c) and may, after giving an opportunity to be heard, apportion the reasonable expenses for the motion.” V.I. R. CIV. P. 37(a)(5)(C).

DISCUSSION

In his motion,⁴ Hamed pointed out that Rule 26(b)(1) of the Virgin Islands Rules of Civil Procedure “broadly allows discovery regarding ‘any nonprivileged mater that is relevant to any party’s claim or defense’” and “[i]nformation within this scope of discovery need not be admissible in evidence to be discoverable.” (Motion, p. 5) (Emphasis omitted) Hamed also pointed out that: (1) “Yusuf refused to fully respond to the interrogatory”—to wit, Yusuf stated in his response that “discovery is ongoing” but Interrogatory 2 “has not been supplemented” (Id.); (2) in United’s opposition to Hamed’s Motion to Strike, “Yusuf provided additional facts that were neither previously submitted in a signed declaration nor supplemented in a signed

⁴ Hamed’s motion to compel included a certificate of compliance with Rule 37(a)(1).

verification to [Interrogatory 2]” (Id., at pp. 5-6); (3) “Hamed subsequently withdrew his motion to strike...due to the new, verified facts offered by Yusuf’s counsel” (Id., at p. 6); and (4) Hamed’s Interrogatory 2 “clearly fall within Rule 26’s scope allowing discovery regarding “any nonprivileged matter that is relevant to any party’s claim or defense.” (Id.) (Emphasis omitted) As such, Hamed concluded that “[i]n order for Hamed to assess whether this amount allegedly owed is accurate or even owed by the Partnership,” and requested the Master to grant his motion and compel Yusuf to respond to a specific list of questions included in his motion.⁵

In his opposition, Yusuf argued that his objections and responses to Hamed’s Interrogatory 2 were proper. (Opp., p. 2) More specifically, Yusuf pointed out that: (1) Hamed’s Interrogatory 2 sought “information on a month by month basis from September 17, 2006 to 2014 for ‘the amount of water sold to the Partnership’” and United “objected on the grounds that no water was sold ‘to the Partnership’” (Id.); (2) “Nonetheless, United provided the detail as to the calculation set forth above and noted that Waleed Hamed may have information as he was operating the Plaza Extra-East store during the time period described in [Hamed’s Interrogatory 2]” (Id.); (3) “Yusuf advised that he would supplement following discovery from Waleed” (Id., at p. 3); and (4) “Although United maintains that its prior responses and objections were proper, nonetheless, in an effort to bring this matter to a close,

⁵ In his motion, Hamed requested the Master to compel Yusuf to respond to 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 [Hamed’s Interrogatory 2].” (Motion, pp. 6-7)

United submits this further clarification as to “Water Revenue” and filed additional supplemental responses, dated November 4, 2019 (hereinafter “November 4, 2019 Supplemental Responses”). (Id.) As such, Yusuf requested the Master to deny Hamed’s motion.

In his reply, Hamed argued that, even with the November 4, 2019 Supplemental Responses, Yusuf’s response to Hamed’s Interrogatory 2 is still deficient. (Reply, p. 2) More specifically, Hamed pointed out that: (1) “United has not answered the basic question posed by Hamed: a request for the number of gallons per month sold, to whom it was sold, the cost per gallon for each month and the total value of gallons sold per month” (Id., at p. 6); (2) “Also, as there are various sources for the water, some rented by Hamed and others owned by United, the relative apportionment of the source of the water for the various periods” and “Hamed does not believe that such an answer can be given or supported, as these amounts were never intended to be recovered between the entities” (Id.); (3) “Yusuf and United must not only give records, but must also state that such records were or were not kept by the “office”, that Fathi Yusuf ran, in anticipation of the resolution of such a debt” (Id.); (4) “Yusuf ‘advised that he would supplement following discovery from Waleed’ and on “May 15, 2018, Waleed Hamed did answer Yusuf’s interrogatory regarding United’s water claim” but “Yusuf and United have not provided documentation regarding the processes and actual sales of water” (Id., at p. 7) (Emphasis omitted); (5) “Yusuf Yusuf is still a manager and employee of United and clearly within its control” and “[t]he statement in the Opposition that “Yusuf might know something” is insufficient” (Id., at p. 8); (6) “With respect to the rest of Hamed’s description regarding the water sales process, Yusuf Yusuf and United did not address in the supplemental response why United claims the water proceeds belong to it when 1) according to the Master, “the Partnership rented Plot 4-H from United and paid rent to United;” 2) the cistern sits on Plot 4-H that the Partnership rented; 3) the water coming from the roof of the Plaza Extra-East store was a

Partnership resource; and 5) the Partners agreed to donate the proceeds from 1994-2004 to the charity of their choice, so why would United think it could control the proceeds from 2004 to the present?” (Id.); (7) “There is absolutely no exception to the rule that requires Hamed to wait until depositions to get responses to his interrogatory requests that comport with the applicable discovery rules” (Id., at p. 9) (Emphasis omitted); (8) the November 4, 2018 Supplemental Responses failed to respond to the following: (i) the amount of water sold; (ii) the water collection infrastructure; (iii) the ownership of the water; (iv) witnesses with knowledge of the water claim; (v) deriving the value of the water sales from 2004 to 2015; and (vi) Yusuf’s knowledge of the water sales amounts (Id., at pp. 10-13) As such, Hamed requested the Master to grant his motion and compel Yusuf and United to respond to a specific list of questions included in his reply.⁶

⁶ In his reply, Hamed requested the Master to compel Yusuf to respond to the following:

- Provide a detailed description for each month between September 17, 2006 through February 28, 2015 of the following:
The number of gallons per month sold;
The source(s);
To whom it was sold;
The cost per gallon for each month;
The total value of the gallons sold per month;
- Produce the handwritten receipts of water sales or definitely state that no such receipts exist;
- Provide a description of the capabilities of the key on the register at the service desk for recording water sales, such as what information the key captures, what information can be generated as a result of using this key, what was the typical process the vendors went through when they purchased the water, etc.;
- Produce documents that are generated from the register key or definitively state those documents don’t exist;
- Provide an explanation of why United claims it owns the water sales when 1) the Partnership rented Plot 4-H, the land where the cisterns sit; 2) the Partnership rented the roof of Plaza Extra-East where the water was collected; 3) the proceeds from the water from 1994-2004 were split 50/50 between the Partners and donated to the charity of each Partner’s choice, so why would United think it controls the proceeds from 2004 to the present;
- Provide a description of documents which support the water infrastructure claims as well as any witnesses who would have knowledge and what knowledge you believe they have;
- Provide a description of all the knowledge Yusuf Yusuf has regarding the water claim;
- Produce the document allegedly written by Waleed Hamed containing water sales calculations, as described in the United-Yusuf supplemental response or definitively state that Yusuf and United do not have the document; and [9] Explain why Yusuf wouldn’t have known about the decrease in water sales in the 2000s to present since Yusuf dealt with the financials for the Partnership through the 2000s and certainly had firm control over the financials from 2013-2015.” (Id., at pp. 13-14)

A. Discovery

Rule 26 of the Virgin Islands Rules of Civil Procedure (hereinafter “Rule 26”) provides that “[u]nless otherwise limited by court order, the scope of discovery is as follows: Parties may obtain discovery regarding any nonprivileged matter that is relevant to any party's claim or defense” and that “[i]nformation within this scope of discovery need not be admissible in evidence to be discoverable.” V.I. R. CIV. P. 26(b)(1). Rule 26 also provides that “[a] party who has made a disclosure under Rule 26(a) — or who has responded to an interrogatory, request for production, or request for admission — must supplement or correct its disclosure or response: (A) in a timely manner if the party learns that in some material respect the disclosure or response is incomplete or incorrect, and if the additional or corrective information has not otherwise been made known to the other parties during the discovery process or in writing; or (B) as ordered by the court. V.I. R. CIV. P. 26(e)(1). However, under Rule 26, “[a] party need not provide discovery of electronically stored information from sources that the party identifies as not reasonably accessible because of undue burden or cost” but “[o]n motion to compel discovery or for a protective order, the party from whom discovery is sought must show that the information is not reasonably accessible because of undue burden or cost.” V.I. R. CIV. P. 26(b)(2)(B). Nevertheless, even “[i]f that showing is made, the court may nonetheless order discovery from such sources if the requesting party shows good cause, considering the limitations of Rule 26(b)(2)(C).” *Id.* Furthermore, “[d]uplicative disclosure is not required, and if all information and materials responsive to a request for disclosure has already been made available to the discovery party, the responding party may, for its response, state specifically how and in what form such prior disclosure has been made” but “[w]here only part of the information has previously been provided to the discovering party, the response may so state and must then further make available the remaining discoverable information or materials.” V.I. R. CIV. P. 26(b)(2)(D).

The Master must note that United and Yusuf did not dispute the scope of Hamed's Interrogatory 2. Rather, United and Yusuf objected on other grounds and Yusuf argued in his opposition that United and Yusuf's responses thereto are sufficient and proper.

1. Interrogatory

Rule 33 of the Virgin Islands Rules of Civil Procedure (hereinafter "Rule 33") governs interrogatories to the parties. Rule 33 provides that in answering each interrogatory, "[e]ach interrogatory must, to the extent it is not objected to, be answered separately and fully in writing under oath." V.I. R. CIV. P. 33(b)(3). Rule 33 also provides that in objecting to an interrogatory, "[t]he grounds for objecting to an interrogatory must be stated with specificity" and that "[a]ny ground not stated in a timely objection is waived unless the court, for good cause, excuses the failure." V.I. R. CIV. P. 33(b)(4). Rule 33 further provides that "[a]n answer must be given to each interrogatory as provided in subpart (b) of this Rule unless the responding party represents in good faith in its response that it cannot — in the exercise of reasonable efforts — prepare an answer from information in its possession or reasonably available to the party" and "[i]n that instance, and if the answer to an interrogatory may be determined by examining, auditing, compiling, abstracting, or summarizing a party's business records (including electronically stored information) — and if the burden of deriving or ascertaining the answer will be substantially the same for either party — the responding party may answer by: (1) specifying the records that must be reviewed, providing sufficient detail and explanation to enable the interrogating party to identify and understand the records as readily as the responding party could; and (2) producing copies of the records, compilations, abstracts, or summaries with the answer to the interrogatory, unless duplicating such materials would be unduly burdensome. V.I. R. CIV. P. 33(d).

Hamed's Interrogatory 2 – 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.

United and Yusuf's initial response to Hamed's Interrogatory 2, dated May 15, 2018:
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.

United and Yusuf's supplemental response to Hamed's Interrogatory 2, dated December 18, 2018:

...

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.

United and Yusuf's supplemental response to Hamed's Interrogatory 2, dated November 4, 2019:

Yusuf reaffirms his prior responses and objections to Interrogatory No. 2. Yusuf further supplements his responses to Interrogatory No. 2:

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.

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. 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.

Hamed 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.

Waleed Hamed would have knowledge of the water revenue for the period when Fathi Yusuf was present at Plaza Extra-Tutu. Likewise, Yusuf Yusuf may have knowledge of same. As far as receipts go, Yusuf shows that he derived the value of his calculations from a sheet bearing Waleed's handwriting which reflected the values in 1997 and 1998. At present, Yusuf is unable to locate that document but is continuing to make a diligent search for same. Yusuf does not have a price per month but only a calculated average as previously set forth. Yusuf is familiar with the value of the revenues as he coordinated for the transfer of funds from the revenue to the charities for a number of years. Yusuf disputes that the water sales dropped significantly in the 2000's as stated by Hamed in his discovery responses as Waleed never advised that there had been any significant drop or increase in sales during that period.

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

² Hamed 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.

The Master will address the objection United and Yusuf asserted against Hamed’s Interrogatory 2—to wit, “this Interrogatory [2] is unclear as it requests information about water sold ‘to the Partnership.’” United and Yusuf explained in their initial responses to Hamed’s Interrogatory 2 that “United's claim against the Partnership is that the Partnership sold United's water from the Plaza Extra-East location” and “after May 5, 2004, the proceeds from the sale of United's water were to be paid to United, not the Partnership.” Yusuf’s accounting claims and Yusuf’s amended accounting claims also made it clear that Yusuf’s Claim No. Y-2 is a claim for “revenue from the sale of United’s water that was collected by Plaza Extra-East” and not a claim for revenue for water sold to the Partnership. (Yusuf’s accounting claims, p. 9; Yusuf’s amended accounting claims, p. 12). Thus, the Master finds the former part of Hamed’s Interrogatory 2 unclear with regard to its request for information about “water sold to the Partnership”—to wit, “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.” With that said, Rule 33 requires that “[e]ach interrogatory must, to the extent it is not objected to, be answered separately and fully in writing under oath.” V.I. R. CIV. P. 33(b)(3). Here, United and Yusuf did not object to the latter part of Hamed’s Interrogatory 2 which requested information in connection with their claim—to wit, “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.” (Emphasis added) Neither United and Yusuf’s initial responses nor United and Yusuf’s supplemental responses responded to Hamed’s Interrogatory 2 fully—namely, they did not respond to the latter part of Interrogatory 2 fully. While United and Yusuf provided some information that support Yusuf Claim No. Y-2, United and Yusuf’s response is incomplete as to the request for them to “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.” Under Rule 37(a)(4), “an evasive or incomplete disclosure, answer, or response must be treated as a failure to disclose, answer, or respond.” V.I. R. Civ. P. 37(a)(4). As such, the Master will deny Hamed’s motion to compel as to the former part of Hamed’s Interrogatory 2, grant Hamed’s motion to compel as to the latter part of Hamed’s Interrogatory 2, and order United and Yusuf to provide supplemental responses to Hamed’s Interrogatory 2 in compliance with the Virgin Islands Rules of Civil Procedure. To clarify, the Master is not ordering United and Yusuf to specifically respond to the list of questions/requests Hamed included in his motion and reply; the Master is simply ordering United and Yusuf to provide supplemental responses to Hamed’s Interrogatory 2 in compliance with the Virgin Islands Rules of Civil Procedure, which may require United and Yusuf to respond to some or all of the questions/requests on the list Hamed included in his motion and reply.

CONCLUSION

Based on the foregoing, the Master will deny in part and grant in part Hamed’s motion to compel responses to discovery served in connection with Yusuf Claim No. Y-8. Accordingly, it is hereby:

ORDERED that Hamed’s motion to compel is **DENIED** as to the former part of Hamed’s Interrogatory 2—“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.” It is further:

ORDERED that Hamed’s motion to compel is **GRANTED** as to the latter part of Hamed’s Interrogatory 2—“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.” It is further:

ORDER

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ORDERED that, **within thirty (30) days from the date of entry of this order**, United and Yusuf shall provide supplemental responses to Hamed's Interrogatory 2 in compliance with the Virgin Islands Rules of Civil Procedure. **And** it is further:

ORDERED that, pursuant to Rule 37(a)(5)(A), a separate order scheduling a hearing on the reasonable expenses incurred in making the motion, including attorney's fees, shall be forthcoming.

DONE and so ORDERED this 19th day of March, 2020.



EDGAR D. ROSS
Special Master