

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.

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

PLAINTIFF,

v.

**UNITED CORPORATION,**

DEFENDANT.

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**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-7: Additional ledger balances due to United in the total amount of \$199,760.00 and Yusuf Claim No. Y-9: Unreimbursed transfers to Plaza Extra from United’s tenant account in the total amount of \$188,132.00.<sup>1</sup> Yusuf filed an opposition and Hamed filed a reply thereafter.

### **BACKGROUND**

In 2015, the Court adopted the final wind up plan of the Partnership (hereinafter “the Plan”). (Jan. 7, 2015 order: Final Wind Up Plan) The Plan provided, *inter alia*, that “Yusuf shall be the Liquidating Partner with the exclusive right and obligation to wind up the Partnership pursuant to this Plan and the provisions of the V.I. Code Ann. tit. 26, § 173(c), under the supervision of the Master” and that “[p]ursuant to the [Uniform Partnership] Act, the Liquidating Partner shall have authority to wind up the Partnership business, including full power and authority to sell and transfer Partnership Assets, engage legal, accounting and other professional services, sign and submit tax matters, execute and record a statement of dissolution of Partnership, pay and settle Debts...” (Id.)

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. Additional Ledger Balances Due to United**

In addition to the Black Book balance owed to United, at various points in time, United made other payments on behalf of the Plaza Extra Stores. In 1994, 1995 and in 1998, United paid \$199,760.00 for various expenses of the Partnership. See Exhibit H, Ledger Sheets Reflecting United’s Payments for Plaza Extra. In the same ledger book, records of withdrawals by Yusuf are also noted for certain personal expenses in 1995

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<sup>1</sup> 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 Nos. Y-7 and Y-9 involves alleged debts/liabilities of the Partnership.

and 1996. The amounts relating to Yusuf’s personal expenses are included in the BDO Report discussed below in §IV, accounting for the withdrawals as between the Partners and their families. However, the total amount of \$199,760.00 paid by United has not otherwise been captured in other reconciliations and remains due and owing to United.  
...

G. Unreimbursed Transfers to Plaza Extra from United's Tenant Account

At various points throughout the Partnership, United would transfer funds from its tenant account, which the parties have already conceded was separate and independent from the Partnership, to the Plaza Extra Stores to cover expenses and to maintain cash-flow. The Partnership has not reimbursed United for certain transfers. The Partnership owes United \$188,132 for its unreimbursed transfers. See Exhibit I, Summary and Supporting Documentation of Unreimbursed Transfers from United. (Yusuf’s accounting claims, pp. 8-9)

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 his claims for “Additional Ledger Balances Due to United” in the total amount of \$199,760.00<sup>2</sup> and “Unreimbursed Transfers to Plaza Extra from United's Tenant Account” in the total amount of \$188,132<sup>3</sup>, and noted that they “will likely require additional discovery.” (Yusuf’s amended accounting claims, pp. 11-12)

On February 9, 2018, Hamed propounded discovery in connection with Yusuf Claim No. Y-7 and Yusuf Claim No. Y-9—interrogatory 15 of 50 (hereinafter “Interrogatory 15”),

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<sup>2</sup> Yusuf’s amended accounting claims included the same paragraph previously included Yusuf’s accounting claims.

<sup>3</sup> Yusuf’s amended accounting claims included the same paragraph previously included Yusuf’s accounting claims.

interrogatory 44 of 50 (hereinafter “Interrogatory 44”), interrogatory 45 of 50 (hereinafter “Interrogatory 45”), interrogatory 47 of 50 (hereinafter “Interrogatory 47”), request 6 of 50 of request for production of documents (hereinafter “Request 6”), and request 7 of 50 of request for production of documents (hereinafter “Request 7”). Subsequently, Yusuf filed his initial responses and supplemental responses thereto. Thereafter, Parties met and conferred. On October 2, 2019, Hamed filed this instant motion to compel.

### **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,<sup>4</sup> 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

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

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. 15) (Emphasis omitted) As to the interrogatories propounded in connection with Yusuf Claim Nos. Y-7 and Y-9, Hamed pointed out that: (1) Yusuf “did not state with specificity his objection” (Id.); and (2) “[t]hese interrogatories directly relate to Hamed's defense...and are relevant in scope under Rule 26” (Id.) As to the requests for production of documents propounded in connection with Yusuf Claim Nos. Y-7 and Y-9, Hamed pointed out that: (1) “[b]ecause these two Yusuf claims date back to 1994, [he] needs to request documentation from the United tenant account to discern whether the amounts are actually owed by the Partnership” (Id., at p. 18); (2) “[w]hile Yusuf complains that these requests are burdensome, Hamed notes that Yusuf has left him no choice by bringing claims from 1994-1996” (Id.); and (3) “[a]ccording to Fathi Yusuf, the last time the reconciling of the accounts occurred was at the end of 1993.” (Id.; Motion, Exhibit 13-Declaration of Fathi Yusuf, dated August 12, 2014) Thus, Hamed requested the Master to grant his motion and compel Yusuf to respond to a specific list of questions included in his motion for Interrogatory 15, Interrogatory 44, Interrogatory 45, and Interrogatory 47, and produce the documents requested in a specific list of documents included in his motion for Request 6 and Request 7. (Id., at pp. 19-20)

In his opposition, Yusuf argued that his responses and objections to Hamed's Interrogatories 15, 44, 45, and 47 and Hamed's Requests 6 and 7 are proper. (Opp., p. 11) As to the interrogatories, Yusuf pointed out that: (1) Hamed's Interrogatory 15 was “vague, ambiguous and compound and operated as an end run as to the agreed upon limited number of interrogatories that could be propounded” (Id., at p. 2) and (2) Hamed's Interrogatories 44, 45, and 47 contained “extensive quotations from testimony and references to exhibits not included and thus, are vague, ambiguous and compound” but nevertheless, Yusuf “incorporated their response to Interrogatory No. 42 as their response to [Hamed's] Interrogatories 44, 45 and 47”

which shows 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.” (Id., at pp. 3-6). As such, Yusuf concluded that “there is no basis for the motion to compel as [Hamed’s Interrogatories 15, 44, 45, and 47] requests are unclear and compound and thus, Defendants cannot comply.” (Id., at p. 7) As to the requests for production, Yusuf pointed out that: (1) as to Hamed’s Request 6, “Defendants deem [their] response and the objections thereto proper and in conformance with the rules” (Id., at p. 9) and (2) as to Hamed’s Request 7, “Defendants provided the complete Black Book as requested” and “[t]here is no deficiency or further response required.” (Id.) Thus, Yusuf requested the Master to deny Hamed’s motion.

In his reply, Hamed reiterated the arguments made in his motion. Hamed emphasized that “[t]hese responses, particularly about the details for the United Tenant Account are a central item of evidence, and critical to many of the issues here” and “[w]ithout detail from that account, Hamed is litigating with a hand tied behind his back...” (Reply, p. 11) (Emphasis omitted) Thus, Hamed argued that “[e]ither this material gets produced or Yusuf cannot use anything not produced up to this point.” (Id.) (Emphasis omitted) Hamed pointed out the following in response to Yusuf’s opposition: (1) “[a]ll 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,” “[i]t is true in Hamed’s Motion to Compel, the 86 pages of attachments to Exhibit 46 were not included for brevity’s sake,” and “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.” (Id., at p. 13) (Emphasis omitted); (2) “the response to Interrogatory 42 has nothing to do with the question Hamed is asking in [Interrogatories 44, 45, and 47]” (Id., at pp. 14-16); (3) Yusuf’s complaint that the unreimbursed transfers from United were confined to 1996 and therefore nothing else has to be produced is also unresponsive” because “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” (Id., at p. 17); (4) “Yusuf has not requested a Motion for a Protective Order, which would have been the proper way to address this request” (Id.); and (5) “Yusuf has not provided the complete ledger book for claim Y-7 [...] he has only provided one page of the ledger book.” (Id.) Thus, Hamed requested the Master to grant his motion. (Reply, p. 11)

#### **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 Yusuf did not dispute the scope of Hamed’s Interrogatories 15, 44, 45, and 47 and Hamed’s Requests 6 and 7. Rather, Yusuf objected on other grounds and/or argued that his responses thereto are sufficient and proper. The Master will discuss Yusuf’s responses to Hamed’s Interrogatories 15, 44, 45, and 47 and Hamed’s Requests 6 and 7 in turn.

### **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 15:

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.

Yusuf's initial response to Hamed's Interrogatory 15, dated May 15, 2018:

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.

Yusuf's supplemental response to Hamed's Interrogatory 15, 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.

**Hamed's Interrogatory 44:**

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.

Yusuf's initial response to Hamed's Interrogatory 44, dated May 15, 2018: 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.

Without waiving any objections, to the extent that this Interrogatory seeks information relating to the \$1.6 million Hamed conceded was owed to the Yusufs with regard to the Plaza Extra East store, Defendants incorporate by reference their response to Interrogatory No. 42 as if fully set forth herein verbatim.<sup>5</sup>

Yusuf's supplemental response to Hamed's Interrogatory 44, 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.

**Hamed's Interrogatory 45:**

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?

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<sup>5</sup> Hamed's interrogatory 42:

Beginning at page 54 and running through this deposition testimony there is reference to \$1.6 million ("the \$1.6 million") that Yusuf/United assert is owed to either United or Yusuf by the Hameds as set forth in Maher Yusuf Deposition Exhibit 144 (attached to Exhibit A), Bate numbered HAMD200103, dated August 15, 2012. 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, what stores or business operations that \$1.6 million relates to and, in full and similar levels of detail, which stores or business operations it does not relate to. Include but do not limit this to a discussion of all underlying documents used for the calculations and the calculations as to which amounts are ascribable to which stores.

Yusuf's initial response to Hamed's Interrogatory 42, dated May 15, 2018:

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.

Without waiving any objections, Defendants submit that the factual details and evidentiary support in response to this Interrogatory are set forth in the various transcript testimony of which Hamed is well aware as well as in Defendants' Response to Hamed's Motion as to Hamed Claim H-2: \$2,704,786.25 taken in 2012 by Yusuf filed on January 16, 2018 ("Yusuf's Brief"). Defendants incorporate herein by reference as if fully set forth herein such testimony and Yusuf's Brief with attachments as responsive to this Interrogatory.

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?

Yusuf's initial response to Hamed's Interrogatory 45, dated May 15, 2018:

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.

Without waiving any objections, to the extent that this Interrogatory seeks information relating to the \$1.6 million Hamed conceded was owed to the Yusufs with regard to the Plaza Extra East store, Defendants incorporate by reference their response to Interrogatory No. 42 as if fully set forth herein verbatim.

Yusuf's supplemental response to Hamed's Interrogatory 45, 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.

**Hamed's Interrogatory 47:**

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?

Yusuf's initial response to Hamed's Interrogatory 47, dated May 15, 2018:

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.

Without waiving any objections, to the extent that this Interrogatory seeks information relating to the \$1.6 million Hamed conceded was owed to the Yusufs with regard to the Plaza Extra East store, Defendants incorporate by reference their response to Interrogatory No. 42 as if fully set forth herein verbatim.

Yusuf's supplemental response to Hamed's Interrogatory 47, 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.

The Master will address the objections Yusuf asserted against Hamed's Interrogatories 15, 44, 45, and 47 collectively since they are identical. First, Yusuf objected to these interrogatories as vague and ambiguous.<sup>6</sup> In Hamed Interrogatory 15, Hamed asked Yusuf to "fully describe Exhibit H 'Ledger Sheets Reflecting United's Payments for Plaza Extra,' ..." and included examples of the type of information he sought. The Master finds nothing vague or ambiguous about such an inquiry. In Hamed Interrogatory 44, Hamed asked Yusuf to "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." The Master finds Interrogatory 44 vague and ambiguous. In Hamed Interrogatory 45, Hamed asked Yusuf to "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

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<sup>6</sup> Yusuf did not expressly identify the language in these interrogatories that he finds vague and ambiguous. Rule 33 provides that in objecting to an interrogatory, "[t]he grounds for objecting to an interrogatory must be stated with specificity." V.I. R. CIV. P. 33(b)(4). Parties are reminded to propound and respond to discovery in compliance with the Virgin Islands Rules of Civil Procedure.

they are complete with regard to the amounts that Fathi Yusuf ‘pulled’ as that term is used here by Maher Yusuf?” The Master finds Interrogatory 45 vague and ambiguous. In Hamed Interrogatory 47, Hamed asked Yusuf to “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?” The Master finds Interrogatory 47 vague and ambiguous. In light of the Master’s findings, the Master need not reach Yusuf’s objection that Interrogatories 44, 45, and 47 are compound questions. As to Hamed’s Interrogatory 15, the Master does not find it to be compounded questions. Hamed’s Interrogatory 15 sought information in connection with Exhibit H of Yusuf’s accounting claims—“Ledger Sheets Reflecting United’s Payments for Plaza Extra” and did not introduce any discrete separate subjects, and thus, Interrogatory 15 will be considered as a single interrogatory. *Davis v. Hovensa, L.L.C.*, No. SX-02-CV-333, 2011 V.I. LEXIS 91, at \*7 (Super. Ct. Jan. 31, 2011) (“For Interrogatories No. 2, 3, 5, 8, 11, 13, 14, 15, 16 and 17, the Court finds that the subparts of each Interrogatory involve the same line of inquiry and did not introduce any discrete separate subjects. Accordingly, Interrogatory No. 2, 3, 5, 8, 11, 13, 14, 15, 16 and 17 will each be considered as a single interrogatory.”) In summary, the Master will deny Hamed’s motion as to Hamed’s Interrogatories 44, 45, and 47, grant Hamed’s motion as to Hamed’s Interrogatory 15 and order Yusuf to provide supplemental responses thereto. To clarify, the Master is not ordering Yusuf to specifically respond to the list of questions/requests Hamed included in his motion for Hamed’s Interrogatory 15; the Master is simply ordering Yusuf to provide supplemental responses to Hamed’s Interrogatory 15 in compliance with the Virgin Islands Rules of Civil Procedure, which may require Yusuf to respond to some or all of the questions/requests on the list Hamed included in his motion.



## 2. Request for Production of Documents

Rule 34 of the Virgin Islands Rules of Civil Procedure (hereinafter “Rule 34”) governs the production of documents, electronically stored information, and tangible things, or entering onto land, for inspection and other purposes. Rule 34 provides that the request “must describe with reasonable particularity each item or category of items to be inspected.” V.I. R. CIV. P. 34(b)(1)(A). Rule 34 also provides that in responding to each request, “[f]or each item or category, the response must either state that inspection and related activities will be permitted as requested or state with specificity the grounds for objecting to the request, including the reasons,” that “[t]he responding party may state that it will produce copies of documents or of electronically stored information instead of permitting inspection,” and that “[t]he production must then be completed no later than the time for inspection specified in the request or another reasonable time specified in the response.” V.I. R. CIV. P. 34(b)(2)(B). Rule 34 further provides that in objecting to a request, “[a]n objection must state whether any responsive materials are being withheld on the basis of that objection with sufficient particularity to identify what has been withheld” and that “[a]n objection to part of a request must specify the part and permit inspection of the rest.” V.I. R. CIV. P. 34(b)(2)(C). Additionally, Rule 34 provides that when producing the documents or electronically stored information, “[u]nless otherwise stipulated or ordered by the court, these procedures apply to producing documents or electronically stored information: (i) A party must produce documents as they are kept in the usual course of business or must organize and label them to correspond to the categories in the request; (ii) If a request does not specify a form for producing electronically stored information, a party must produce it in a form or forms in which it is ordinarily maintained or in a reasonably usable form or forms; and (iii) A party need not produce the same electronically stored information in more than one form.” V.I. R. CIV. P. 34(b)(2)(E).

**Hamed's Request 6:**

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.

**Yusuf's initial response to Hamed's Request 6, dated May 15, 2018:**

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).

Further responding, Yusuf identifies and produces (where not previously produced) the following documents which are otherwise non-objectionable and responsive to this request:

The complete Black Book bate stamped FY 004411 – 004477 (previously produced). See also attached Bates FY 014955 which was previously produced as Exhibit H to Yusuf's Accounting Claims.

Yusuf's supplemental response to Hamed's Request 6, 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.

The Master will address the objections Yusuf asserted against Hamed's Request 6. First, Yusuf objected to this request as vague and ambiguous.<sup>7</sup> Hamed's Request 6 asked Yusuf to produce "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." The Master finds nothing vague or ambiguous about such a request. Second, Yusuf objected to Request 6 as "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." The Master finds that Request 6 contained discrete subparts—to wit, Request 6 was essentially a request for production of documents on three separate subjects: (1) general ledger statements—"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)" and "all invoices, receipts or other documentation substantiating each entry on Yusuf Exhibits to the Original Claims, ... H - Ledger Sheets Reflecting United's Payments for Plaza Extra"; (2) United Tenant Account

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<sup>7</sup> Again, Yusuf did not expressly identify the language in Request 6 that he finds vague and ambiguous. *See supra*, footnote 6.

bank statements—“all United Tenant Account bank statements from 1992 to the present, including all deposit slips and canceled checks” and “all invoices, receipts or other documentation substantiating each entry on Yusuf Exhibits to the Original Claims,... I - Summary and Supporting Documentation of Unreimbursed Transfers from United”; and (3) Black Book—“all invoices, receipts or other documentation substantiating each entry on Yusuf Exhibits to the Original Claims, G - Relevant Black Book Entries.” *See e.g., Davis v. Hovensa, L.L.C.*, No. SX-02-CV-333, 2011 V.I. LEXIS 91, at \*7 (Super. Ct. Jan. 31, 2011) (“For Interrogatories No. 2, 3, 5, 8, 11, 13, 14, 15, 16 and 17, the Court finds that the subparts of each Interrogatory involve the same line of inquiry and did not introduce any discrete separate subjects. Accordingly, Interrogatory No. 2, 3, 5, 8, 11, 13, 14, 15, 16 and 17 will each be considered as a single interrogatory.”) As such, Request 6 will be considered as three separate requests. While Rule 34 does not limit the number of requests for productions, Parties had agreed to limit the requests for productions to 50 requests in their Joint Discovery and Scheduling Plan, dated January 29, 2018.<sup>8</sup> Third, Yusuf objected to Request 6 as “overly broad and unduly burdensome” and more specifically, Yusuf stated, *inter alia*, that: (1) the “[p]roduction 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”; and (2) the “production of the ledger statements for 1992 through the present (with

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<sup>8</sup> The Joint Discovery and Scheduling Plan provided:

B. Remaining Claims of Both Parties

7. Written interrogatories, requests for production of documents, and requests for admissions shall be propounded no later than March 31, 2018, and all responses thereto, including objections, shall be served not later than May 31, 2018.

8. As to these remaining claims, no party shall propound more than 50 interrogatories, 50 requests for production of documents, and 50 requests for admissions, including all discrete subparts thereof, unless otherwise stipulated by the parties or ordered by the Master

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.” Yusuf cited to V.I. R. Civ. P. 26(b)(2)(C)(i) and 26(b)(2)(D) in support of his argument. As to the over broad objection, the Master will: (1) limit Hamed’s request for United Tenant Account bank statements to the period of 1996 to the present since Yusuf’s claimed in its accounting claims and amended accounting claims that “[t]he partnership owes United \$188,132 for its unreimbursed transfers [from its tenant account]” and referenced Exhibit I, which included entries starting in January 1996; and (2) limit Hamed’s request for the ledger statements to the period of 1994 to the present since (i) Yusuf’s claimed in its accounting claims and amended accounting claims that “[i]n 1994, 1995 and in 1998, United paid \$199,760.00 for various expenses of the Partnership” which “has not otherwise been captured in other reconciliations and remains due and owing to United,”; (ii) Yusuf declared in his declaration, dated August 12, 2014, that the last time the accounts were reconciled was at the end of 1993; and (iii) Hamed himself seemed agreeable to starting the period in 1994.<sup>9</sup> As to the unduly burdensome objection, the Master finds that Yusuf did not make the showing that the information is not reasonably accessible because of undue burden or cost as required under V.I. R. CIV. P. 26(b)(2)(B). As to the duplicative objection, the Master finds that part of the requested documents—i.e., the Black Book (FY 004411 – 004477) and Exhibit H to Yusuf’s accounting claim (FY 014955)—have previously been provided to Hamed. Nevertheless, Yusuf must still make available the remaining discoverable information or materials under V.I. R. CIV. P. 26(b)(2)(D).<sup>10</sup> As such, the Master will grant Hamed’s motion to compel and order

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<sup>9</sup> Hamed stated in his reply: “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.” (Reply, p. 17)

<sup>10</sup> The Master must note that while Yusuf did identify and produce the Black Book (FY 004411 – 004477) and Exhibit H to Yusuf’s accounting claim (FY 014955), Rule 34 provides that in objecting to a request, “[a]n objection must state whether any responsive materials are being withheld on the basis of that objection with sufficient particularity to identify what has been withheld” and that “[a]n objection to part of a request must specify

Yusuf to produce supplemental documents to Hamed's Request 6 subject to the limitations stated herein and in compliance with the Virgin Islands Rules of Civil Procedure. To clarify, the Master is not ordering Yusuf to specifically produce documents in response to the list of document requests Hamed included in his motion; the Master is simply ordering Yusuf to produce supplemental documents to Hamed's Request 6 in compliance with the Virgin Islands Rules of Civil Procedure, which may require Yusuf to produce some or all of the documents requested on the list Hamed included in his motion.

**Hamed's Request 7:**

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.

**Yusuf's initial response to Hamed's Request 7, dated May 15, 2018:**

The complete Black Book bates stamped FY 004411 – 004477 was previously produced. See also attached Bates FY 014955 which was previously produced as Exhibit H to Yusuf's Accounting Claims.

**Yusuf's supplemental response to Hamed's Request 7, 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.

The Master finds Yusuf's responses to Hamed's Request 7 deficient. Rule 34 provides that "[u]nless otherwise stipulated or ordered by the court, [a] party must produce documents as they are kept in the usual course of business or must organize and label them to correspond to the categories in the request." V.I. R. CIV. P. 34(b)(2)(E)(i). Here, Yusuf did not object to Hamed's Request 6, instead, he responded in his initial response that "[t]he complete Black

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the part and permit inspection of the rest." V.I. R. CIV. P. 34(b)(2)(C). Parties are reminded to propound and respond to discovery in compliance with the Virgin Islands Rules of Civil Procedure.

Book bate stamped FY 004411 – 004477 was previously produced” and “[s]ee also attached Bates FY 014955 which was previously produced as Exhibit H to Yusuf’s Accounting Claims.” While Yusuf produced the complete Black Book and Exhibit H to Yusuf’s accounting claims, Yusuf’s response is incomplete as to the request for “the complete ledger document referenced in Exhibit H - Ledger Sheets Reflecting United's Payments for Plaza Extra.” For example, Exhibit H to Yusuf’s accounting claims referenced an entry dated May 23, 1994 for \$400.00, yet no document was produced in connection with said entry. 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 grant Hamed’s motion to compel and order Yusuf to produce supplemental documents to Hamed’s Request 7 in compliance with the Virgin Islands Rules of Civil Procedure. To clarify, the Master is not ordering Yusuf to specifically produce documents in response to the list of document requests Hamed included in his motion; the Master is simply ordering Yusuf to produce supplemental documents to Hamed’s Request 7 in compliance with the Virgin Islands Rules of Civil Procedure, which may require Yusuf to produce some or all of the documents requested on the list Hamed included in his motion.

### **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-7 and Yusuf Claim No. Y-9. Accordingly, it is hereby:

**ORDERED** that Hamed’s motion to compel is **GRANTED** as to Interrogatory 15, Request 6, and Request 7. It is further:

**ORDERED** that Hamed’s motion to compel is **DENIED** as to Interrogatory 44, Interrogatory 45, and Interrogatory 47. It is further:

**ORDERED** that, **within thirty (30) days from the date of entry of this order**, Yusuf shall provide supplemental responses to Hamed's Interrogatory 15 in compliance with the Virgin Islands Rules of Civil Procedure. It is further:

**ORDERED** that, **within thirty (30) days from the date of entry of this order**, to the extent that Hamed did not exceed the number of requests for production of documents agreed upon in the Joint Discovery and Scheduling Plan, Yusuf shall produce supplemental documents to Hamed's Request 6 in compliance with the Virgin Islands Rules of Civil Procedure. As to United Tenant Account bank statements, Yusuf shall produce supplemental documents for the limited period of 1996 to the present. As to the ledger statements, Yusuf shall produce supplemental documents for the limited period of 1994 to the present. It is further:

**ORDERED** that, **within thirty (30) days from the date of entry of this order**, Yusuf shall produce supplemental documents to Hamed's Request 7 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 18th day of March, 2020.

  
EDGAR D. ROSS  
Special Master