

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'S REPLY TO YUSUF OPPOSITION TO HAMED'S MOTION TO COMPEL
RE REVISED CLAIM H-146 – IMBALANCE IN CREDIT CARD POINTS**

I. Introduction

Hamed filed his Motion to Compel regarding his revised claim H-146 – Imbalance in Credit Card Points on August 1, 2021. Yusuf filed his Opposition on February 3, 2022. This reply follows the order of the Yusuf Opposition.

It is important to remember amid Yusuf's claims that none of this was accounted or tracked that as early as 2014, as noted in the motion, the Hameds had raised this as an issue to be addressed in this claims process—before the “official” claims were even submitted.

From: Hisham (Shawn) Hamed <shawnhamed@yahoo.com>
Sent: Thursday, November 6, 2014 2:26 PM
To: Mike Yusuf; edgarrossjudge@hotmail.com
Reply To: Hisham (Shawn) Hamed
Subject: Credit Card Usage

Dear Mike and Judge Ross,

I am writing to both of you to see if we can work out how the division of credit card miles can be done in a practical manner based on what was agreed to. From the date of the meeting with Judge Ross I have calculated Mike's usage at \$276,930.98 while my card usage was \$33,723.94. I have attached the summary.

1. The total is 310,654.92.
2. One half of that is 155327.46
3. Thus, I need, and Mike needs to transfer 121603.52

Does this seem correct? If so, how will we proceed from here?

Hisham (Shawn) Hamed

II. Interrogatory 22—Imbalance in Credit Card Points

A. Tracking Credit Card Points

Yusuf makes three arguments as to why he cannot respond to Interrogatory (“ROG”) 22: 1) credit card points were not tracked and reconciled historically 2) credit card points are not tracked in the general ledger and 3) it would be onerous to go back and discern the credit card points after the fact.

1. Tracking and reconciling credit card points

Yusuf is engaging in semantics when he states that credit card points were not a big deal and were not tracked and reconciled. As **Exhibit 1** to the motion to compel shows, credit card points, miles and/or dollar points were tracked and reconciled. Indeed, as the imbalance became greater from the filing of the complaint in late 2012 into 3013 and 2014, Shawn Hamed was concerned enough to bring the issue to Special Master Ross by the email above. This was hundreds of thousands of dollars worth of points each year.

2. Incorrect statement that credit card points are not tracked in the general ledger

Again, Yusuf is shading the truth. As **Exhibit 1** clearly shows, expenditures to individual family members credit cards were being tracked. As credit points are derived from the amount of the expenditures, it would be simple for Yusuf to determine the number of points, as the critical piece of information needed to determine credit card points, the dollar amount charged, is tracked in the general ledger.

As **Exhibit 6** demonstrates, reports can be generated out of the accounting system to show whose credit card was reimbursed for the Partnership expenditure, the date and the dollar amount paid. It is as simple as entering the search parameters into the system and pushing a button to generate a report. (Hamed needs these amounts from Yusuf, not his own calculations from his own CPA or the database, as those will only be contested when Yusuf shows up with his own, different numbers. This is discovery, Hamed gets to see Yusuf's position now, not as a surprise at a hearing.) As for those instances where the accountant failed to capture whose credit card was paid, he should be able to look at the physical back up detail underlying the credit card statement to determine the card owner.

As this lawsuit was brought in September 2012, the Partnership accountant and the Liquidating Partner were on notice to retain all Partnership records.

Finally, how can Yusuf allege it is not possible when, in his next section, he described assembling this information as being “onerous”?

3. *The “red herring” that determining credit card points is onerous*

This statement is patently false. **Exhibit 2** demonstrates that Hamed's accounting expert was able to discern from the general ledgers the dollar amount each Yusuf and Hamed family member charged to his credit card. The dollar amount is the basis for determining the number of points. Further, Hamed has limited this inquiry to the years 2012 to 2015. (Hamed Motion to Compel, p. 2, footnote 1), not an unreasonable time period. What Hamed needs is Yusuf's position NOW....not the day before a hearing. Either Yusuf must produce this, or be barred from bringing his own number then.

B. Understanding Yusuf's Methodology for Credit Card Points

Therefore, the interrogatory also asks, in part, how Yusuf calculates the present value the credit card points if negotiated on the date of his answers at the point-to-dollar value now, as well as asking him to show all of his calculations, sources of information and support for his approximation. *Yusuf completely failed to respond to this part of the interrogatory.*

There is no reason why he could not answer this question—what is the dollar value of one point, what were his calculations to determine that amount and what sources of information and support did he use to determine that dollar amount. Again, if it can't be answered now, he cannot present any such evidence at the time of a hearing.

Hamed needs to understand whether Yusuf's number matches Hamed's number, how Yusuf determined the point-to-dollar value -- and what calculations, sources of information and support he used for his approximation so Hamed can formulate a response and prosecute his claim. Discovery is not only for gathering information—it is also to provide estoppel as to new or changed information at the hearing.

III. Request for Production of Documents (RFPDs) 26—Credit Card Statements

Yusuf did not respond to RFPD 26 in his Opposition. This request asks for credit card statements from January 1, 2012-March 9, 2015 for the Yusuf family. First, there is no question that the Partnership's business credit cards issued in a Yusuf family member's name should be produced. These are not personal property of any Yusuf, they are records of the Partnership, not the individual. For example, Negeh Yusuf had a Bank of America business credit card issued in his name. *It is the Partnership's business credit card*, not Negeh Yusuf's personal credit card. **(Exhibit 12)** All such credit card records for the use of business credit cards by members of the Yusuf family should be produced.

Second, credit card statements where the Partnership paid or reimbursed the Yusuf personal credit cards for Partnership expenses also should be produced. These credit card statements were given to the business to seek reimbursement. The list of expenditures on the Yusuf personal credit cards were submitted and paid as Partnership expenses. **The Partnership paid the personal Yusuf credit card company directly or reimbursed the Yusuf family member.** The Partnership received these records in order to know how much to pay or reimburse the Yusuf family member's personal credit card. Those records should have been retained by the Partnership and not destroyed.

The information requested in RFPD 26 is directly related to Hamed's claim and therefore is discoverable. Hamed can use this information to determine the number of points each person received during the relevant time period and then calculate any differential in points between the Partners.

IV. Spoliation

Yusuf must be able to produce all of the information requested by Hamed's ROG 22 and RFPD 26. When Hamed filed this lawsuit in September 2012, Yusuf was put on notice to retain all Partnership records. He was informed specifically about these documents. He should not be able to claim that records were not retained or are difficult to access.

If Yusuf does not have the records, then Hamed should get the inference at hearing that the missing information was not favorable to Yusuf. In *Powell v. People of the V.I.*, the court stated:

Spoliation is “[t]he intentional destruction ... of evidence”; explaining that “[i]f proved, spoliation may be used to establish that the evidence was unfavorable to the party responsible”). See BLACK'S LAW DICTIONARY 1531 (9th ed. 2009).

70 V.I. 745, 778 (2019). The practical effect is that the trier of fact, whether jury or judge, must assume the evidentiary inference that:

party's failure to preserve an item that may be used as evidence in a pending or reasonably foreseeable litigation. [Evidence] from the date of the incident was not preserved by the Defendant. Therefore, you may infer that all or portions of the videotape would have shown evidence that was not favorable [that party].

Henry v. World Fresh Mkts., LLC, No. SX-10-CV-557, 2018 V.I. LEXIS 82, at *10 (Super. Ct. Aug. 20, 2018). Furthermore, Yusuf and United Corporation know the necessary procedure and obligations well, as **this** Court ordered a spoliation inference against United Corporation for the same conduct in *Bright v. United Corp.*, 50 V.I. 215, 221 (V.I. 2008); see also *Samuel v. United Corp.*, 64 V.I. 512, 517 (2016). Yusuf's habit of not retaining records and then claiming that he can't comply with discovery should not be rewarded. If Yusuf does not have the credit card records requested in RFPDs 26, Hamed requests that the Special Master order a spoliation inference against Yusuf.

V. Conclusion

Hamed respectfully requests that the Special Master Order Yusuf to answer interrogatory 22 and RFPDs 26. Hamed has patiently been waiting for a response to its discovery since May 15, 2018.

Dated: February 8, 2022



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CERTIFICATE OF SERVICE

I hereby certify that on this 8th day of February 2022, 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

Charlotte Perrell
Stefan Herpel
Law House, 10000 Frederiksberg Gade
P.O. Box 756
St. Thomas, VI 00802
Cperrell@dnfvi.com
Sherpel@dnfvi.com

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

CERTIFICATE OF COMPLIANCE WITH RULE 6-1(e)

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

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

Dated: February 8, 2022

Exhibit 12



PLAZA EXTRA SUPERMARKET
5474 1500 8271 1556
April 20, 2015 - May 19, 2015

WorldPoints

Company Activity Statement

Account Information	
Web Address: www.bankofamerica.com	Customer Service: 1.800.673.1044, 24 Hours
Mail Billing Inquiries to: BANK OF AMERICA PO BOX 982238 EL PASO, TX 79998-2238	TTY Hearing Impaired: 1.888.500.6267, 24 Hours
Mail Payments to: BUSINESS CARD PO BOX 15796 WILMINGTON, DE 19886-5796	Outside the U.S.: 1.509.353.6656, 24 Hours
	For Lost or Stolen Card: 1.800.673.1044, 24 Hours
	Business Offers: www.bankofamerica.com/mybusinesscenter

Account Summary	
Previous Balance	\$50,240.77
Payments and Other Credits	-\$900.00
Balance Transfer Activity	\$0.00
Cash Advance Activity	\$0.00
Purchases and Other Charges	\$47.70
Fees Charged	\$0.00
Finance Charge	\$326.58
Total Activity	\$49,715.05
Credit Limit	\$50,000
Credit Available	\$284.95
Statement Closing Date	05/19/15
Days in Billing Cycle	30
Payment Due Date	06/15/15

Cardholder Activity Summary						
Account Number	Payments and Other	Balance Transfer	Cash Advance	Purchases and	Fees Charged	Finance Charge
Credit Limit	Credits	Activity	Activity	Other Charges		
YUSUF, NEJEH						
5474 1500 1116 5064						
50,000	-900.00	0.00	0.00	47.70	0.00	326.58
Previous Balance: \$50,240.77						New Balance: \$49,715.05

Important Messages
Your credit card now has an added security feature. To learn more about EMV chip card technology, visit bankofamerica.com/businesschipcard.

A **Detailed Remittance Document** is included with this statement for your convenience. Please return the entire **Detailed Remittance Document** with your payment.

Account Number: 5474 1500 8271 1556
April 20, 2015 - May 19, 2015


 PLAZA EXTRA SUPERMARKET
 PLAZA EXTRA SUPERMARKET
 4605 TUTU PARK MALL STE 200
 ST THOMAS, VI 00802-173650
 **N0014749

Total Activity \$49,715.05
Payment Due Date 06/15/15

EXHIBIT
12

Detailed Remittance Document

This is the **DETAILED REMITTANCE DOCUMENT** that must be included with your payment.
Please do not include individual Remittance slips.

<u>Cardholder Name</u>	<u>Account Number</u>	<u>New Balance</u>	<u>Minimum Payment Due</u>	<u>Payment Amount</u>
YUSUF, NEJEH	5474 1500 1116 5064	\$49,715.05	\$820.46	\$

New Balance Total **\$49,715.05**

AMOUNT ENCLOSED:

Total Minimum Payment Due **\$820.46**

\$

THE AMOUNT OF YOUR CHECK SHOULD EQUAL THE AMOUNT INDICATED IN THE "AMOUNT ENCLOSED" BOX.

FOLD...FOLD...FOLD...FOLD...FOLD...FOLD...FOLD...FOLD...FOLD...FOLD...FOLD...FOLD...FOLD...FOLD...FOLD...FOLD...FOLD

Ensure address shows in the window.



BUSINESS CARD
PO BOX 15796
WILMINGTON, DE 19886-5796

Check here for a change of mailing address or phone numbers.
Please provide all corrections on the reverse side.

PLAZA EXTRA SUPERMARKET
PLAZA EXTRA SUPERMARKET
4605 TUTU PARK MALL STE 200
ST THOMAS, VI 00802-173650