

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

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

Plaintiff/Counterclaim Defendant,

vs.

FATHI YUSUF and **UNITED CORPORATION**

Defendants and Counterclaimants.

vs.

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

Counterclaim Defendants,

Case No.: SX-2012-CV-370

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

JURY TRIAL DEMANDED

Consolidated with

Case No.: SX-2014-CV-287

Consolidated with

Case No.: SX-2014-CV-278

Consolidated with

Case No.: ST-17-CV-384

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

vs.

UNITED CORPORATION, *Defendant.*

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

vs.

FATHI YUSUF, *Defendant.*

FATHI YUSUF, *Plaintiff,*

vs.

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

**HAMED'S RESPONSE IN OPPOSITION
TO THE DTF 'OBJECTION' TO DEPOSITION SUBPOENA**

The DTF Law Firm has filed an objection to Hamed's subpoena *duces tecum*. It should be denied for three independent reasons:¹

1. The objection incorrectly states that DTF does not have the documents subpoenaed because it incorrectly asserts that the subpoena is mooted by a "partial" concession in counsel's argument as to the civil fees claim.

2. The objection makes inaccurate factual statements to the Special Master in the form of unsupported statements "in argument"—without a supporting Declaration or stipulation.

3. The objection incorrectly states that DTF has no "document custodian".

1. It incorrectly states that DTF does not have the documents subpoenaed.

Either in error or by intent, the objection states that DTF does not have the documents requested because:

DTF states that **Fuerst Ittleman did not turn over its files relating to its work on the criminal case or work billed for in the Criminal Case Invoices**, and that DTF has no correspondence written by or to the firm, and no "notes, drafts, attorney work product or other writings created by Fuerst Ittleman" in its possession **relating to any time entries in the Criminal Case Invoices** other than some pleadings filed in the criminal case that may have been created by Fuerst, Ittleman. (Emphasis added.)

First, this is unclear as to whether such documents were supplied to DTF by its clients rather than the Fuerts Firm. Obviously DTF has some such criminal case documents because it agrees to supply the rest of the missing invoices. Second, the concession that Yusuf/United no longer dispute the civil case fees is obviated by the denial of "interest" for those same fees—meaning that the documents must still be produced because they are relevant to that half of the issue. Third, Hamed's subpoena specified the following: "all other

¹ A possible fourth reason is that DTF contends that the subpoena is improperly returnable at Holt's office. The cited rule states only that the locus not be overly burdensome, the more specific rule states that it must be taken within 100 miles. But, notwithstanding, Hamed has offered to travel to take these depositions, and makes that clear again here.

physical evidence in the possession of DTF as to the nature and production of that work" which is not addressed in the objection.

2. Inaccurate factual statements and no supporting Declaration or Stipulation

Once again DTF testifies in its argument with no declaration or stipulation attached in support. Two important and unclear assertions are made:

Because United Corporation and Fathi Yusuf will agree that any amounts from the \$504,590.50 that paid for legal work on the civil case and other matters unrelated to the criminal case was not for the benefit of the partnership, that amount is not in dispute. . . .(Emphasis added.)

There is no stipulation or declaration attached to support or memorialize this. Also, DTF states:

Subject to all of these objections, **and upon reaching an agreement with Plaintiff that the production of invoices will not waive the attorney client privilege as to any documents whose preparation or existence is disclosed in any time entry**, DTF will provide to counsel for Plaintiff copies of the Criminal Case Invoices, redacted as necessary. (Emphasis added.)

Thus, it appears that much of the "lack of dispute" that DTF discusses is actually conditional.

3. It incorrectly states that it has no "document custodian"

This is a 30(b)(6) deposition notice. It seeks the designation of a person to speak for the entity. A documents custodian is not an official title. It merely means the person who can speak for the entity about the records of the entity. If it not a named person—it is whomever the entity "designates". It is not Hamed's burden to parse through the firm directory and guess at this. This is dilatory nonsense.

Conclusion

In the absence of a protective order, DTF must appear and provide documents. There is no basis for such an order.

Dated: May 30, 2018



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CERTIFICATE OF SERVICE

I hereby certify that on this 30th day of May, 2018, I served a copy of the foregoing by email (via CaseAnywhere), as agreed by the parties, on:

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

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

