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| **WALEED HAMED**,as the Executor of the Estate of MOHAMMAD HAMED, | **Case No.: SX-2012-CV-370** |
| *Plaintiff/Counterclaim Defendant*, |  |
| vs.  **FATHI YUSUF** and **UNITED CORPORATION** | **ACTION FOR DAMAGES, INJUNCTIVE RELIEF AND DECLARATORY RELIEF** |
|  |  |
| *Defendants and Counterclaimants*.  vs.  **WALEED HAMED, WAHEED** **HAMED, MUFEED HAMED, HISHAM HAMED,** **and PLESSEN ENTERPRISES, INC.**,  *Counterclaim Defendants*, | JURY TRIAL DEMANDED |
|  | Consolidated with |
| **WALEED HAMED**,as the Executor of the Estate of MOHAMMAD HAMED, *Plaintiff,*  vs. | **Case No.: SX-2014-CV-287** |
| **UNITED CORPORATION,** *Defendant.* |  |
| *­­­­­­*­­  **WALEED HAMED**,as the Executor of the Estate of MOHAMMAD HAMED, *Plaintiff*    vs.    **FATHI YUSUF**, *Defendant.* | Consolidated with  **Case No.: SX-2014-CV-278** |
| *­­­­­*­­  **FATHI YUSUF**, *Plaintiff*,  vs.  **MOHAMMAD A. HAMED TRUST***, et al,*  *Defendants.* | Consolidated with  **Case No.: ST-17-CV-384** |
| *­­­­­*­­  **KAC357 Inc.**, *Plaintiff*,  vs.  **HAMED/YUSUF PARTNERSHIP,**  *Defendant.* | Consolidated with  **Case No.: ST-18-CV-219** |
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**HAMED MOTION TO COMPEL NO. 1 OF 5 WITH REGARD TO THE “B(1)” CLAIMS**

**AS TO: REVISED YUSUF CLAIM Y-7 LEDGER BALANCE OWED UNITED**

**AND YUSUF CLAIM Y-9 – UNREIMBURSED TRANSFERS FROM UNITED**

1. **Introduction**

The parties must file a motions to compel related to the B(1) group of claims. Hamed is filing the first of those motions to compel defendants to respond to interrogatories and requests for the production of documents as they relate to 2 claims: (1) Yusuf revised claims Y-7 – Ledger Balance Owed United, and (2) Y-9 – Unreimbursed Transfers from United. It should be noted, however, that Hamed has been attempting to procure responses to this specific discovery **since May 15, 2018 without success**. Hamed respectfully requests the Master to order responses to this outstanding discovery now, as the time for filing dispositive briefs is fast approaching.

1. **Procedural Process**

The Parties exchanged discovery pursuant to the August 4, 2018 Scheduling Order. After the majority of the discovery was produced on May 15, 2018, the parties entered into a series of letters and Rule 37 conferences to resolve their differences. Some issues were resolved, but a number of *critical* issues remain outstanding. These inquiries go to the very heart of the two claims. Thus, the following motion pertains to these two Yusuf revised claims only: Y-7 – Ledger Balances Owed United and Y-9 – Unreimbursed Transfers from United.

1. **Facts**
2. **Yusuf’s Unanswered Interrogatories**
3. *Hamed’s Unanswered Interrogatory 15 of 50 – Claim No. Y-7 – Ledger Balances Owed United*

On February 9, 2018, Hamed propounded the following interrogatory numbered 15 of the 50 allowed to him:

Interrogatory 15 of 50 relates to Claim Y-7 [Y-07] as described in Hamed's November 16, 2017 Motion for a Hearing Before Special Master as "Ledger Balances Owed United" and Exhibit H to Yusuf’s Original Claims, Ledger Sheet Reflecting United's Payments for Plaza Extra.

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

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

**Yusuf Response to Interrogatory 15 of 50:**

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

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

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

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

On October 31, 2018, Hamed’s counsel sent a request for a Rule 37 conference and outlined the specific deficiencies in Yusuf’s response to interrogatory no. 15. (**Exhibit 4**)

A meet and confer was held on November 9, 2018. When the parties held a further Rule 37 conference on November 12, 2018 to allow Yusuf’s counsel to locate information, Yusuf’s counsel stated the response would be supplemented on December 18, 2018. (**Exhibit 5**)

Instead, Yusuf’s December 18, 2018 discovery response dropped the following footnote: “1Yusuf 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.” **(Exhibit 6)** In other words, Yusuf *unilaterally* decided not to respond because this claim was going to be addressed after August 30, 2019. This is not what the Rule states and was not what was agreed to.

Yet another, third, Rule 37 conference was set for 11 a.m. on Thursday, December 20, 2018. (**Exhibit 7**) Yusuf’s counsel did not appear and did not provide any written or other notice of non-appearance.

1. *Hamed’s Unanswered Interrogatory 44 of 50 – Claims No. Y-7 – Ledger Balances Owed United and Y-7 – Unreimbursed Transfers*

Hamed interrogatories 44-47 relate to the following Yusuf claims: Y-07 Ledger Balance Owed United and Y-09 Unreimbursed Transfers. More particularly, they relate to an excerpt of the videotaped Deposition of Maher Yusuf (with referenced exhibits) taken under oath in this action on April 3, 2014.

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

**Interrogatory 44 of 50**

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

Q. (Mr. Hartmann) Okay. And I now am going to show you an Exhibit

numbered 149, which is Bates numbered at the upper right-hand corner,

HAMD200105, and is a letter addressed on United Corporation stationery

to Mr. Mohammad Hamed on August 22nd, 2012 from Fathi Yusuf. Did --

did Fathi Yusuf draw up this letter, or did you?

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

don't remember.

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

A. Yes.

Q. Okay. As a matter of fact, let's look at -- at 144. That's the one with the

math on it, or 146, whichever you want.

A. Okay.

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

Whose signature is that?

A. That's my signa --

Q. You recognize it?

A. -- my signature.

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

A. Right.

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

A. Yes.

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

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

**A. Yes.**

**Q. Is that why Fathi Yusuf's name appears on all three of these,**

**because these are partnership reconciliations?**

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

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

As with Yusuf’s prior responses, he completely refused to answer the interrogatory on May 15, 2018:

**Yusuf’s Response to Interrogatory 44 of 50:**

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

On October 31, 2018, Hamed sent Yusuf a Rule 37 letter requesting a conference and specifically identified the deficiencies in Yusuf’s response to Interrogatory 44. (**Exhibit 4**) A meet and confer was held on November 9, 2018. Another meet and confer was held on November 12, 2018. In a November 28, 2018 letter summarizing the agreements that came out of the November 12, 2018 Rule 37 conference, Yusuf’s counsel agreed “[b]y December 15, 2018 to supplement this interrogatory by explaining why Mike Yusuf’s testimony was incorrect and the black book and ledger entries really are between Hamed and United.” (**Exhibit 5**)

Continuing to delay responding to the interrogatory despite stating her client would respond, on December 18, 2018, Yusuf did not respond at all to Interrogatory 44, unilaterally deciding that responding to the interrogatory was not required as the claim was to be considered after August 30, 2019. **(Exhibit 6)** A third Rule 37 conference was set for 11 a.m. on Thursday, December 20, 2018 to discuss this matter. (**Exhibit 7**) Yusuf’s counsel did not appear and did not provide any written or other notice of non-appearance.

1. *Hamed’s Unanswered* *Interrogatory 45 of 50 – Claims No. Y-7 – Ledger Balances Owed United and Y-7 – Unreimbursed Transfers*

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

**Interrogatory 45 of 50**

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

**A.** I mean, Mr. Mohammad was pulling, you know, he was

pulling some good money.

**Q.** Right. And if your father wanted to, you called it

"pulling some good money"?

**A.** Yeah, he was pulling some good money, from the numbers

you see here.

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

**A.** From where?

**Q.** From you.

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

**Q.** No, no. I'm just asking the question. Was he -- first,

let's start with, was he pulling it from you?

**A.** No.

**Q.** No. Where was your father pulling it?

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

there where he was.

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

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

**Q. Okay. So if money was coming out by your father in St.**

**Thomas, you wouldn't have been the one keeping the records,**

**right?**

**A. No.**

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

On May 15, 2018, again, Yusuf’s initial response was a complete refusal to answer:

**Yusuf’s Response to Interrogatory 45**

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

On October 31, 2018, Hamed sent Yusuf a Rule 37 letter requesting a conference and specifically identified the deficiencies in his response to Interrogatory 45. (**Exhibit 4**)

A meet and confer was held on November 9, 2018. Another meet and confer was held on November 12, 2018. In a November 28, 2018 letter summarizing the agreements that came out of the November 12, 2018 Rule 37 conference, Yusuf’s counsel agreed “[t]o review whether any additional ledgers exist and produce them by December 15, 2018.” (**Exhibit 5**)

Disappointingly, on December 18, 2018, Yusuf did not respond at all to Interrogatory 45, unilaterally deciding that a response to the interrogatory was not required as the claim was going to be briefed after August 30, 2019. (**Exhibit 6**) Another Rule 37 conference was set for 11 a.m. on Thursday, December 20, 2018. (**Exhibit 7**) Yusuf’s counsel did not appear and did not provide any written or other notice of non-appearance.

1. *Unanswered Hamed Interrogatory 47 of 50 50 – Claims No. Y-7 – Ledger Balances Owed United and Y-7 – Unreimbursed Transfers*

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

**Interrogatory 47 of 50:**

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

**Q. Okay. So -- so for every time money was withdrawn**

**from the safe, one of two things -- when you were in**

**control of it, one or two things happened, is that**

**correct? Either you wrote a line in the ledger for**

**Mohammad Hamed, or you filled out one of these receipts.**

**A. Right.**

**Q.** What did -- was there a generic name for these

receipts that everybody called them?

**A.** Receipts.

**Q.** Were they called chits ever?

**A.** You guys came up with that word.

**Q.** Oh, okay.

**A.** I never heard that word before.

**Q.** Okay. So these were all receipts.

**A.** Right.

**Q.** Okay. And -- and so for every transaction where cash

was removed from any of the safes, -- There were three

safe rooms, one in each store, is that correct?

**A.** Yes.

**Q. -- there would have either been an entry in a ledger,**

**or a receipt, is that correct?**

**A. Entry in a ledger, or a receipt?**

**Yes, yes.**

**Q.** Okay. And -- and so just let's take a year, for

example, 1998. I know nothing about it. This is a

hypothetical question. If in 1998 I went to all three

stores and I added up all the ledger entries, and all

the chit -- all the receipt entries, I could find out to

the penny how much money the Hameds had withdrawn, and

how much money the Yusufs had withdrawn, is that correct?

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

**Q.** Yes. And you say that like you are not sure you can

find the records.

**A.** Well, the FBI came in and took a lot of our records.

It's still held by the District Court.

**Q. I see. But if you could get those all together and**

**add them up, you could get a number, is that correct?**

**A. Should be able to, yes.**

**Q. Okay. And to the best of your knowledge, all of those**

**receipts still exist today from 1986 on?**

**A. No.**

**\* \* \* \***

**Q.** . . . I asked you if I could go around

and collect all these receipts, add them up and find out

how much the Hameds took out, and how much the Yusufs.

You said yes. And I said, So I should be able to do that

from the -- from back till now, and you said, no, there's

a problem. You said some might be in the possession of

a third party.

**A.** Right.

**Q.** When I have those from the third party, will I then

be able to get that number?

**A.** To physically check every receipt by receipt?

**Q.** Through all the --

**A. There's -- there's some receipt was destroyed by**

**Waleed Hamed, and some receipts were destroyed by me.**

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

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

Predictably, on May 15, 2018, Yusuf’s initial response was a complete refusal:

**Yusuf’s Response to Interrogatory 47** Defendants object to this interrogatory as vague, ambiguous, and compound such that the total number of interrogatories together with their sub parts and other discovery exceeds the maximum allowable number of interrogatories under the JDSP and violates both the spirit and the terms of the JDSP limiting the number of interrogatory questions. . . . (**Exhibit 9**)

On October 31, 2018, Hamed sent Yusuf a Rule 37 letter requesting a conference and specifically identified the deficiencies in his response to Interrogatory 47:

Yusuf’s answer is completely unresponsive. Please answer the interrogatory regarding the receipts and ledgers:

• Explain in detail

* + - * How it is possible to have a complete accounting of the ledgers when some transactions were included in ledgers, but others in receipts
      * How it is possible to have a complete accounting when some of those receipts and ledgers were intentionally destroyed? (**Exhibit 4**)

A meet and confer was held on November 9, 2018. Another meet and confer was held on November 12, 2018. A November 28, 2018 letter summarized the agreements that came out of the November 12, 2018 Rule 37 conference was sent. (**Exhibit 5**) On December 18, 2018, Yusuf did not respond to Interrogatory 45, unilaterally deciding that responding to the interrogatory was not required as the claim was to be considered after August 30, 2019. (**Exhibit 6**) Subsequent to the December 18, 2018 non-response by Yusuf, another Rule 37 conference was set for 11 a.m. on Thursday, December 20, 2018. (**Exhibit 7**) Yusuf’s counsel did not appear and did not provide any written or other notice of non-appearance.

**Yusuf’s unanswered request for the production of documents**

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

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

**RFPDs 6 of 50:**

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

Please provide all United Tenant Account bank statements from 1992 to the present, including all deposit slips and canceled checks; all Plaza Extra adjusted journal entries related to United transfers and general ledger statements from 1992 to the present (excluding those provided to the Hamed accountants on the Sage 50 system); as well as all invoices, receipts or other documentation substantiating each entry on Yusuf Exhibits to the Original Claims, G - Relevant Black Book Entries, H - Ledger Sheets Reflecting United's Payments for Plaza Extra, and I - Summary and Supporting Documentation of Unreimbursed Transfers from United. (**Exhibit 10**)

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

**Yusuf’s Initial Response to RFPDs No. 6**

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

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

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

On October 31, 2018, Hamed sent Yusuf a Rule 37 letter requesting a conference and specifically identified the deficiencies in Yusuf’s response to RFPDs No. 6.

Yusuf has not responded to the specific requests. Yusuf is claiming United is owed unpaid funds from the Partnership. While Hamed contends these claims are outside the Judge Brady’s Limiting Order, Yusuf persists and refuses to drop the claims. Yusuf then expects that Hamed will take him at his word that these balances are legitimate Partnership expenditures and do remain unpaid. In order to ascertain whether these balances legitimate Partnership expenses and are truly unpaid, Hamed needs to see the documentation requested in RFPDs 6. As for the burdensome nature of this request, Yusuf, not Hamed, is the one making claims from 1992. (See FY 004476, “corporate tax 92”) This is exactly why Judge Brady limited claims from September 17, 2006 forward.

Please produce the following:

• 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), and

• All invoices, receipts or other documentation substantiating each entry on Yusuf Exhibits to the Original Claims, G-Relevant Black Book Entries, H-Ledger Sheets Reflecting United's Payments for Plaza Extra, and I-Summary and Supporting Documentation of Unreimbursed Transfers from United. (**Exhibit 4**)

A meet and confer was held on November 9, 2018. Another meet and confer was held on November 12, 2018. After the Rule 37 conference, Hamed sent a letter summarizing the results of the conference on November 28, 2018. In that conference, Yusuf’s counsel committed to finding out whether her client would respond:

RFPDs 6 of 50 – Relates to United’s tenant bank account

Attorney Perrell has agreed to find out whether her client agrees to respond to this request as it relates to United’s Tenant banking account from 2006 through May 15, 2018 before December 15, 2018. If her client does not agree to respond, this request will be ready for Hamed’s Motion to Compel. (**Exhibit 5**)

On December 18, 2018, Yusuf did not respond to this document request, unilaterally deciding that the request did not need to be answered because the claim wasn’t going to be briefed until after August 30, 2019. (**Exhibit 6**) Subsequent to the December 18, 2018 non-response by Yusuf, another Rule 37 conference was set for 11 a.m. on Thursday, December 20, 2018. (**Exhibit 7**) Yusuf’s counsel did not appear and did not provide any written or other notice of non-appearance.

1. *Hamed’s RFPDs 7 of 50 – Claim No. Y-7 – Ledger Balances Owed United*

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

**RFPDs 7 of 50:**

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

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

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

**Yusuf’s Initial Response to RFPDs No. 7**

\* \* \* \*

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

On October 31, 2018, Hamed sent Yusuf a Rule 37 letter requesting a conference and specifically identified the deficiencies in Yusuf’s response to RFPDs No. 7:

Yusuf has not produced the *complete* ledger document referenced in Exhibit H - Ledger Sheets Reflecting United's Payments for Plaza Extra.

Please produce the complete ledger document or state that Yusuf does not have the complete ledger document. (**Exhibit 4**)

A meet and confer was held on November 9, 2018. Another meet and confer was held on November 12, 2018. After the Rule 37 conference, Hamed sent a letter summarizing the results of the conference on November 28, 2018. In that conference, Yusuf’s counsel agreed to provide a response to RFPDs No. 7 by December 15, 2018. (**Exhibit 5**) Instead of providing the promised documents on December 18, 2018, Yusuf unilaterally decided that the documents did not need to be produced because the claim was not going to be briefed until after August 30, 2019. (**Exhibit 6**) Subsequent to the December 18, 2018 non-response by Yusuf, another Rule 37 conference was set for 11 a.m. on Thursday, December 20, 2018. (**Exhibit 7**) Yusuf’s counsel did not appear and did not provide any written or other notice of non-appearance.

1. **Argument**

This Motion to Compel is submitted pursuant to the *Joint Discovery and Scheduling Plan* of January 29, 2018.

1. **Rule 26 Duty to Disclose; General Provisions Governing Discovery**

Rule 26 of Virgin Islands Rules of Civil Procedure (“Rule 26”) is the foundational rule governing discovery. It broadly allows discovery regarding “**any nonprivileged matter that is relevant to any party’s claim or defense**. Information within this scope of discovery need not be admissible in evidence to be discoverable.” V.I. R. CIV. P. 26(b)(1), emphasis added.

1. **Yusuf refuses to respond to Hamed’s interrogatories**

Rule 33 of the Virgin Islands Rules of Civil Procedure (“Rule 33”), among other things, identifies the duties of the party responding.

1. Answers and Objections.

\* \* \* \*

(3) Answering Each Interrogatory. Each interrogatory must, to the extent it is not objected to, be answered separately and fully in writing under oath.

(4) Objections. The grounds for objecting to an interrogatory must be stated with specificity. Any ground not stated in a timely objection is waived unless the court, for good cause, excuses the failure.

Yusuf refused to respond at all to interrogatories 15 and 44-45 and 47 and did not state with specificity his objection. Rather, he simply said the interrogatories were “vague, ambiguous and compound” in the number of requests. (**Exhibits 2 and 9**)

These interrogatories directly relate to Hamed’s defense of Yusuf’s claims Y-7 and Y-9 and are relevant in scope under Rule 26. For instance, in Yusuf revised claim Y-7, Yusuf is contending that Hamed owes United for amounts United put into the Partnership in 1995 and earlier and were never reimbursed by the Partnership. He asserts that United is not bound by Judge Brady’s limitation order and he couldn’t have brought the claim earlier because FBI seized the records in October 2001. (**Exhibit 12**)

Yusuf has only provided a one-page copy of a handwritten sheet from a ledger book as substantiation for this amount owed. (**Exhibit 13, Yusuf Exhibit H**) In order for Hamed to assess whether this amount is accurate or even owed by the Partnership and is within the applicable statute of limitations timeframe, Hamed requested a description of the following in interrogatory 15 of 50:

* Physical location of where the ledger sheet was found
* Whether the ledger sheet was part of a ledger book or larger document and if so, how many pages are contained in the ledger book or larger document
* Name of the person who found the ledger sheet, when he found it, and who put it in that location where it was discovered
* Indication of whether the FBI had the ledger sheet at all since it has no government bates number stamp on it. If it was seized by the FBI, when was the ledger sheet or book(s)/document returned to the Partnership
* List the name(s) and account numbers of the United bank account(s) that paid for the listed items United is now seeking reimbursement from the Partnership.

Under Judge Brady’s July 21, 2017 Limitation Order (“Limitation Order”), credits and charges between the Partners are barred prior to September 17, 2006. In an April 3, 2014 deposition by Maher Yusuf, as a 30(b)(6) witness for the United Corporation, he stated that the withdrawals were between the Partners, not between the Partnership and the United Corporation. Credits and charges between the Partners *would* be covered by the Limitation Order, making this claim moot.

To flesh out Maher Yusuf’s testimony in interrogatory no. 44 – that this is a debt of the Partnership – Hamed needs to ascertain answers to the following questions: 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. “

Interrogatory no. 45 is another excerpt from Maher Yusuf’s April 3rd, 2014 30(b)(6) deposition testimony. In that excerpt, Maher Yusuf suggested that the ledger excerpt used to prove the amounts owed to United were not the full set of ledgers. In order to flesh out the details surrounding the ledgers referenced in Yusuf claim Y-7, Hamed needs to understand the following:

* 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 are the ledger books now;
* How can it be determined that they are complete with regards to the amounts “pulled” as that term is used by Maher Yusuf

Interrogatory no. 47 covers that fact that some of the Partnership’s recordkeeping occurred in the ledger books and other parts of it occurred in written receipts that were not included in the ledgers. Maher Yusuf testified on April 3, 2014 that many receipts were destroyed. To determine the accuracy of the ledgers and whether they can be relied on to assert amounts owed, Hamed needs to understand the following:

* How it is possible to have a complete accounting of the ledgers when some transactions were included in ledgers, but others in receipts
* How it is possible to have a complete accounting when some of those receipts and ledgers were intentionally destroyed?

1. **Yusuf refuses to produce documents relevant to Yusuf revised claims No. Y-7 – Ledger Balances Owed United and Y-9 – Unreimbursed Transfers**

Rule 34 of the Virgin Islands Rules of Civil Procedure (“Rule 34”), among other things, identifies the scope of the document production and the duties of the party responding.

(a) In General. A party may serve on any other party a request within the scope of Rule 26(b): (1) to produce and permit the requesting party or its representative to inspect, copy, test, or sample the following items in the responding party's possession, custody, or control: (A) any designated documents or electronically stored information. . .

Defendants refused to respond to Hamed document request 6 of 50. (**Exhibit 11**) Because these two Yusuf claims date back to 1994, Hamed needs to request documentation from the United tenant account to discern whether the amounts are actually owed by the Partnership. While Yusuf complains that these requests are burdensome, Hamed notes that Yusuf has left him no choice by bringing claims from 1994-1996. According to Fathi Yusuf, the last time the reconciling of the accounts occurred was at the end of 1993.[[1]](#footnote-1) In order to determine whether these amounts are actually owed United, Hamed has to perform his own reconciliation from 1994 to the time the stores split in 2015. While Yusuf has provided some 1995 and 1996 documents, Hamed has no way of knowing whether those were legitimate Partnership expenses to begin with, were actually paid by United (no cancelled checks or bank statements were produced) or were repaid sometime after 1996. Just because a full reconciliation has not occurred since the end of 1993, that does not automatically mean that United was not reimbursed sometime thereafter (assuming the debts were legitimate). To perform the reconciliation and determine the legitimacy of the expenses, Hamed requests the following production of documents:

* All United Tenant Account bank statements from 1994 to the present (2015 split of the stores), including all deposit slips and canceled checks;
* All Plaza Extra adjusted journal entries related to United transfers and general ledger statements from 1994 to the present (2015 split of the stores, excluding those provided to the Hamed accountants on the Sage 50 system);
* 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 and I - Summary and Supporting Documentation of Unreimbursed Transfers from United.

Defendants also refused to respond to Hamed document request 7 of 50, specifically the request to produce the complete ledger book from which Exhibit H – Ledger Sheets Reflecting United’s Payments for Plaza Extra, were excerpted for Yusuf’s claim Y-7. (**Exhibit 11**) This request clearly falls within Rule 26’s scope for discovery as it directly relates to Hamed’s defense and should be produced to Hamed.

1. **Conclusion**

All of Hamed’s interrogatories and request for documents discussed above clearly fall within Rule 26’s scope allowing discovery regarding “**any nonprivileged matter that is relevant to any party’s claim or defense**.” (Emphasis added). Hamed has patiently been trying to get responses to this discovery since *May 15, 2018*, with no success. Accordingly, Hamed respectfully requests that the Master compel Yusuf to answer and produce the following:

**Interrogatory 15 of 50**

An explanation of the following:

* Physical location of where the ledger sheet was found
* Whether the ledger sheet was part of a ledger book or larger document and if so, how many pages are contained in the ledger book or larger document
* Name of the person who found the ledger sheet, when he found it, and who put it in that location where it was discovered
* Indication of whether the FBI had the ledger sheet at all since it has no government bates number stamp on it. If it was seized by the FBI, when was the ledger sheet or book(s)/document returned to the Partnership
* List the name(s) and account numbers of the United bank account(s) that paid for the listed items United is now seeking reimbursement from the Partnership.

**Interrogatory 44 of 50**

With reference to Maher Yusuf’s excerpted testimony for this interrogatory,

* 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.

**Interrogatory 45 of 50**

With reference to Maher Yusuf’s excerpted testimony for this interrogatory, explain

* 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 are the ledger books now;
* How can it be determined that they are complete with regards to the amounts “pulled” as that term is used by Maher Yusuf

**Interrogatory 47 of 50**

With reference to Maher Yusuf’s excerpted testimony for this interrogatory, explain

* How it is possible to have a complete accounting of the ledgers when some transactions were included in ledgers, but others in receipts
* How it is possible to have a complete accounting when some of those receipts and ledgers were intentionally destroyed?

**Request for the Production of Documents 6 of 50**

* All United Tenant Account bank statements from 1994 to the present (2015 split of the stores), including all deposit slips and canceled checks;
* All Plaza Extra adjusted journal entries related to United transfers and general ledger statements from 1994 to the present (2015 split of the stores, excluding those provided to the Hamed accountants on the Sage 50 system);
* 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 and I - Summary and Supporting Documentation of Unreimbursed Transfers from United.

**Request for the Production of Documents 7 of 50**

* The complete ledger book from which Exhibit H – Ledger Sheets Reflecting United’s Payments for Plaza Extra, were excerpted for Yusuf’s claim Y-7.

**Dated:** October 2, 2019 A

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**CERTIFICATE OF SERVICE**

I hereby certify that on this 2nd day of October 2019, I served a copy of the foregoing by email (via CaseAnywhere), as agreed by the parties, on:

**Hon. Edgar Ross**

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).

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**CERTIFICATE OF COMPLIANCE WITH RULE 37(a)(1)**

I hereby certify that I made the required efforts in good faith to confer with counsel for United and Yusuf in order to obtain the foregoing requested information.

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1. August 12, 2014 Declaration of Fathi Yusuf, ¶ 4. (**Exhibit 14**) [↑](#footnote-ref-1)