

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,
MUFEED HAMED, HISHAM HAMED,
AND PLESSEN ENTERPRISES, INC.,**

COUNTERCLAIM DEFENDANTS.

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

PLAINTIFF,

v.

UNITED CORPORATION,

DEFENDANT.

MOHAMMAD HAMED,

PLAINTIFF,

v.

FATHI YUSUF,

DEFENDANT.

Civil No. SX-12-CV-370

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

CONSOLIDATED WITH

Civil No. SX-14-CV-287

**ACTION FOR DAMAGES and
DECLARATORY JUDGMENT**

CONSOLIDATED WITH

Civil No. SX-14-CV-378

**ACTION FOR DEBT and
CONVERSION**

ORDER

THIS MATTER came before the Special Master (hereinafter “Master”) on Hamed’s motion to compel responses to discovery served in connection with Yusuf Claim No. Y-12: foreign accounts and Jordanian properties, filed on July 14, 2021.¹ In response, Yusuf filed an opposition and Hamed filed a reply thereafter.

BACKGROUND

Hamed filed his complaint on September 17, 2012, followed by his first amended complaint on October 19, 2012, seeking, among other relief, “A full and complete accounting ... with Declaratory Relief against both defendants to establish Hamed's rights under his Yusuf/Hamed Partnership with Yusuf ...” (Compl. p. 15, ¶1.)

In 2016, per the Master’s order, the parties filed their respective accounting claims. Yusuf’s accounting claims, filed on September 30, 2016 (hereinafter “Yusuf’s Accounting Claims”), included, inter alia, Yusuf Claim No. Y-12:

VI. Foreign Accounts and Jordanian Properties

As part of the profit sharing arrangement between the Partners, at various points in time, profits of the Partnership were sent to Jordan to be held in bank accounts or invested in real property to the mutual benefit of the Partners. In addition, Partnership profits were also sent to Jordan to be used as charitable donations of the Partners. Based upon Yusuf’s review of bank documentation available to date and information discovered following the FBI raid, Yusuf claims that Hamed (either individually or through his sons or agents) failed to properly invest all Partnership funds with which he had been entrusted and failed to properly account for such funds. As a result, Hamed either breached his fiduciary duties to the Partnership by failing to properly safeguard, account for, and invest these funds as agreed between the Partners or he converted them for his own personal use or the personal use of his family members.

Yusuf has repeatedly raised these claims with Hamed and his agent, Waleed Hamed, but has received either unsatisfactory or no responses to questions as to how the funds were spent. The misappropriations or failures to account by Hamed and his agents of which Yusuf is presently aware include:

¹ The Master was appointed by the Court to “direct and oversee the winding up of the Hamed-Yusuf Partnership” (Sept. 18, 2015 order: Order Appointing Master) and “make a report and recommendation for distribution [of Partnership Assets] to the Court for its final determination.” (Jan. 7, 2015 order: Final Wind Up Plan.) The Master finds that that Hamed’s instant motion to compel falls within the scope of the Master’s report and recommendation given that Yusuf Claim No. Y-12 is an alleged debt owed by Hamed to the Partnership.

- a. Hamed and his sons have failed to account for the Partnership funds held in various foreign bank accounts from 1996 to date including, but not limited to, the accounts identified in Exhibit K;
- b. Because Hamed converted \$150,000 previously delivered as a charitable donation for a batch plant in West Bank, his interest in the Partnership should be charged for the transfer of \$150,000.00 to the Bank of Palestine to make good on the original donation; *see* Exhibit L, Wire Transfer Information Supporting Claim.¹⁵
- c. Waleed Hamed's unauthorized check of \$536,405 to Hamed on April 29, 1998 and additional checks for \$10,000 and \$15,276; *see* Exhibit M.
- d. Waleed Hamed's failure to account for funds that were removed from the Commercial Francaise Bank in Saint Maarten with four (4) checks totaling \$550,373.14 to close out the account in January and February of 1997; and
- e. Waleed Hamed's conversion of \$ 1.4 million received in 1996 as reflected in a St. Maarten police report.

Approximately forty (40) parcels of real property were purchased in Jordan using funds from the Plaza Extra Stores. All but two of those properties were jointly titled in the names of Hamed and Yusuf. The Court's assistance in administering or liquidating the jointly titled parcels is not sought at this time. Yusuf does seek the Court's assistance, however, with respect to two (2) parcels that were incorrectly titled in Hamed's name alone. These two parcels are identified in the "Land Value Estimation" attached as Exhibit N. Yusuf respectfully requests an Order requiring the Executor/Administrator of Hamed's estate to take such action as may be necessary to properly reflect Yusuf's joint ownership of these parcels.

Hamed's interest in another parcel that was purchased in Jordan using funds from Plaza Extra Stores has already been conveyed to Yusuf as part of Hamed's efforts to appease Yusuf following his discovery of the misappropriation of \$2,000,000 sent to Hamed from St. Maarten in or around 1997. A copy of the agreement in Arabic conveying Hamed's interest in such parcel is attached as Exhibit O.¹⁶ Yusuf had agreed to resolve this misappropriation, but not any others that Yusuf might later discover, by the conveyance of Hamed's interest in two parcels, one in Jordan that is the subject of Exhibit N, and one half acre parcel in St. Thomas, previously titled in the name of Plessen Enterprises, Inc., which is addressed in a number of the Liquidating Partner's Bi-Monthly Reports. *See* Ninth Bi-Monthly Report at p. 5-6. Yusuf insisted that if Hamed wanted a resolution addressing all Hamed misappropriations, whether known or unknown, Hamed would have to arrange for the conveyance to Yusuf or United of another approximately 9.3 acre parcel located on St. Thomas also titled in the name of Plessen Enterprises, Inc. Hamed, through his son, Waleed, refused to convey this third parcel.

Although Yusuf is not pursuing his claims regarding the misappropriated 2,000,000 [sic], Hamed's sons are still seeking to somehow rescind Hamed's conveyance of his interest in the Jordanian parcel that is the subject of Exhibit N in their second amended complaint in *Hamed v. Yusuf*, Civil No. SX-12-CV-377. Yusuf asks this Court to bind Hamed's estate by the agreement signed by Hamed.

¹⁵ This payment was made on behalf of the purchaser of the Y&S and R&F stock and represented a portion of the proceeds of the sale of that stock. Accordingly, the amount should either be offset against the \$802,966 allocated to Hamed in § V, above, or it should be charged against Hamed's interest in the Partnership. Given Hamed's apparent negative balance in his Partnership account, Yusuf submits the \$ 150,000 should be offset against the \$802,966.

¹⁶ Yusuf is arranging for this document to be translated. An English version will be provided to the Master and counsel upon receipt.

(Yusuf's Accounting Claims, pp. 11-14.)

Subsequently, on July 25, 2017, the Court entered a memorandum opinion and order limiting the scope of accounting in this matter (hereinafter "Limitations Order"). In the Limitations Order, the Court "exercise[d] the significant discretion it possesses in fashioning equitable remedies to restrict the scope of the accounting in this matter" and 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." (Limitations Order, pp. 32, 34.)

In light of the Limitations Order, the Master ordered the parties to file their amended accounting claims. Yusuf Claim No. Y-12 was again included in Yusuf's amended accounting claims, filed on filed on October 30, 2017 (hereinafter "Yusuf's Amended Accounting Claims").²

² Yusuf's Amended Accounting Claims provided:

VI. Foreign Accounts and Jordanian Properties

As part of the profit sharing arrangement between the Partners, at various points in time, profits of the Partnership were sent to Jordan to be held in bank accounts or invested in real property to the mutual benefit of the Partners. In addition, Partnership profits were also sent to Jordan to be used as charitable donations of the Partners. Based upon Yusuf's review of bank documentation available to date and information discovered following the FBI raid, Yusuf claims that Hamed (either individually or through his sons or agents) failed to properly invest all Partnership funds with which he had been entrusted and failed to properly account for such funds. As a result, Hamed either breached his fiduciary duties to the Partnership by failing to properly safeguard, account for, and invest these funds as agreed

between the Partners or he converted them for his own personal use or the personal use of his family members.

Yusuf has repeatedly raised these claims with Hamed and his agent, Waleed Hamed, but has received either unsatisfactory or no responses to questions as to how the funds were spent. The misappropriations or failures to account by Hamed and his agents of which Yusuf is presently aware include:

- a. Hamed and his sons have failed to account for the Partnership funds held in various foreign bank accounts from 1996 to date including, but not limited to, the accounts identified in Exhibit K to the Original Claims. The parties will need to engage in discovery to determine what transactions occurred with respect to those accounts on or after September 17, 2006.
- b. Because Hamed converted \$150,000 previously delivered as a charitable donation for a batch plant in West Bank, his interest in the Partnership should be charged for the transfer of \$150,000.00 to the Bank of Palestine to make good on the original donation. *See* Exhibit L to the Original Claims, Wire Transfer Information Supporting Claim.¹⁷
- c. Waleed Hamed's unauthorized check of \$536,405 to Hamed on April 29, 1998 and additional checks for \$10,000 and \$15,216. *See* Exhibit M to the Original Claims.
- d. Waleed Hamed's failure to account for funds that were removed from the Commercial Francaise Bank in Saint Maarten with four (4) checks totaling \$550,373.14 to close out the account in January and February of 1997.
- e. Waleed Hamed's conversion of \$1.4 million received in 1996 as reflected in a St. Maarten police report. Items (c) - (e) would appear to be barred by the Accounting Order.

Approximately forty (40) parcels of real property were purchased in Jordan using funds from the Plaza Extra Stores. All but two of those properties were jointly titled in the names of Hamed and Yusuf. The Court's assistance in administering or liquidating the jointly titled parcels is not sought at this time. Yusuf does seek the Court's assistance, however, with respect to two (2) parcels that were incorrectly titled in Hamed's name alone. These two parcels are identified in the "Land Value Estimation" attached as Exhibit N to the Original Claims. Yusuf respectfully requests an Order requiring the Executor/Administrator of Hamed's estate to take such action as may be necessary to properly reflect Yusuf's joint ownership of these parcels and to recover the \$434,921.37 reflected in Exhibit R to Yusuf's Amended Supplementation Of Accounting Claims submitted to the Master and counsel on December 12, 2016, (the "Amended Supplementation").

Hamed's interest in another parcel that was purchased in Jordan using funds from the Plaza Extra Stores has already been conveyed to Yusuf as part of Hamed's efforts to appease Yusuf following his discovery of the misappropriation of \$2,000,000 sent to Hamed from St. Maarten in or around 1997. A copy of the agreement in Arabic conveying Hamed's interest in such parcel is attached as Exhibit O to the Original Claims.¹⁸ Yusuf had agreed to resolve this misappropriation, but not any others that Yusuf might later discover, by the conveyance of Hamed's interest in two parcels, one in Jordan that is the subject of Exhibit N, and one half acre parcel in St. Thomas, previously titled in the name of Plessen Enterprises, Inc., which is addressed in a number of the Liquidating Partner's Bi-Monthly Reports. *See* Ninth Bi-Monthly Report at p. 5-6. Yusuf insisted that if Hamed wanted a resolution addressing all Hamed misappropriations, whether known or unknown, Hamed would have to arrange for the conveyance to Yusuf or United of another approximately 9.3 acre parcel located on St. Thomas also titled in the name of Plessen Enterprises, Inc. Hamed, through his son, Waleed, refused to convey this third parcel.

Although Yusuf is not pursuing his claims regarding the misappropriated 2,000,000 [sic], Hamed's sons are still seeking to somehow rescind Hamed's conveyance of his interest in the Jordanian parcel that is the subject of Exhibit N of the Original Claims in their second amended complaint in *Hamed v. Yusuf*, Civil No. SX-12-CV-377. Yusuf asks this Court to bind Hamed's estate by the agreement signed by Hamed.

Disputed/Undisputed, Ripe for Determination or Discovery Needed: It is Yusuf's position that these items are disputed and additional discovery is necessary. Furthermore, some of these claims relate to post - September 17, 2006 transactions or agreements between the Partners and therefore have not been eliminated by the Accounting Order.

Subsequently, the parties proceeded with discovery. On January 12, 2018, the parties filed a joint discovery and scheduling plan (hereinafter “JDSP”) whereby the parties agreed, inter alia, that for claims other than Hamed Claim Nos. H-41 through H-141, “no party shall propound more than 50 interrogatories, 50 requests for production of documents, and 50 request for admissions, including all discrete subparts thereof, unless otherwise stipulated by the parties or ordered by the Master. (JDSP, p. 4.)

On February 25, 2018, Hamed propounded interrogatory 30 in connection with Yusuf Claim No. Y-12 (hereinafter “Interrogatory 30”). On March 24, 2018, Hamed propounded interrogatory 33 in connection with the foreign and domestic assets owned Fathi Yusuf, Mike Yusuf, Nejah Yusuf, and Yusuf Yusuf from September 17, 2006 to the date of the response (hereinafter “Interrogatory 33”) and interrogatory 34 in connection with the foreign and domestic assets owned by Fathi Yusuf or any corporation more than 49% owned by Fathi Yusuf from September 1, 2021 to the date of the response (hereinafter “Interrogatory 34”). On March 25, 2018, Hamed propounded request for production of documents 30 in connection with the tax returns filed by United, Fathi Yusuf, Mike Yusuf, Nejah Yusuf, and Yusuf Yusuf from 1986 to date (hereinafter “RFPD 30”), request for production of documents 31 in connection with operating/savings/credit/investment/trust/escrow/other accounts in which United, Fathi Yusuf, Mike Yusuf, Nejah Yusuf, and Yusuf Yusuf or any company which they have more than 49% control from 1986 to date (hereinafter “RFPD 31”), and request for production of documents 36 in connection with bank or investment account statements of Fathi Yusuf, Mike

¹⁷ This payment was made on behalf of the purchaser of the Y &S and R&F stock and represented a portion of the proceeds of the sale of that stock. Accordingly, the amount should be charged against Hamed's interest in the Partnership.

¹⁸ An English translation was provided to the Master and counsel as Exhibit S to the Amended Supplementation on December 12, 2016.

(Yusuf's Amended Accounting Claims, pp. 15-18.)

Yusuf, Nekeh Yusuf, and Yusuf Yusuf from September 17, 2006 to date (hereinafter “RFPD 36”). On May 15, 2018, Yusuf provided his responses to Interrogatory 30, Interrogatory 33, Interrogatory 34, RFPD 30, RFPD 31, RFPD 36. Subsequently, Hamed and Yusuf met and conferred, or attempted to meet and confer, regarding the aforementioned interrogatories and requests for production of documents.

On December 20, 2018, Hamed filed an expedited motion to compel responses to Interrogatory 30. In response, Yusuf filed an opposition and Hamed filed a reply thereafter. On January 8, 2019, the Master entered an order whereby the Court granted Hamed’s expedited motion to compel, ordered Yusuf to file supplemental responses to Hamed’s Interrogatory 30 within seven days from the date of entry of said order, and ordered Yusuf’s supplemental responses to be in compliance with Rules 33 and 34 of the Virgin Islands Rule of Civil Procedure.³ Thereafter, Yusuf supplemented his responses to Interrogatory 30. However, Hamed still found Yusuf’s supplemental responses to Interrogatory 30 to be incomplete.

On July 14, 2021, Hamed filed this instant motion to compel.

STANDARD OF REVIEW

Motions related to discovery pursuant to Rules 26 through 37 of the Virgin Islands Rules of Civil Procedure are governed by Rules 37 and 37.1 of the Virgin Islands Rules of

³ In the January 8, 2019 order, the Master explained:

Upon review of the documents referenced in Yusuf’s response, the Master finds that Yusuf’s response to Interrogatory 30 is deficient.⁶ 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). Thus, the Master will grant Hamed’s motion to compel as to Interrogatory 30.

⁶ Yusuf’s Accounting Claims, Yusuf’s Supplementation, Yusuf’s Amended Supplementation, Yusuf’s Amended Accounting Claims, and the relevant exhibits attached thereto did not provided a sufficient response to Hamed’s Interrogatory 30. For example, none of the aforementioned documents included “the name of the account, ...the name of the institution and its location, the date it was opened, how money generated by the Plaza Extra supermarkets got into the foreign account, the dates deposits and withdrawals were made from each account and the amounts, the date the last transaction on the account occurred, whether the account is active or closed” as requested in Hamed’s Interrogatory 30.

Civil Procedure (hereinafter “Rule 37” and “Rule 37.1,” respectively). Rule 37 and Rule 37.1 mandates that the moving party submit a certification with its motion certifying that both parties engaged in substantive, good faith negotiations before filing a discovery motion. V.I. R. CIV. P. 37(a) and 37.1(a).⁴

Rule 37 permits a party seeking discovery to move for an order compelling disclosure, answer, designation, production, inspection, and for appropriate sanctions. *See* V.I. R. CIV. P. 37(a)(3)(B)(iii)-(iv) (“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.”); *see also* V.I. R. CIV. P. 37(d)(1)(A)(ii) (“The court may, on motion, order sanctions” for such Rule 33 and Rule 34 violations.). “For purposes of [Rule 37](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 provides that “[a] failure described in Rule 37(d)(1)(A) is not excused on the ground that the discovery sought was objectionable, unless the party failing to act has a pending motion for a protective order under Rule 26(c).” V.I. R. CIV. P. 37(d)(2).

⁴ Rule 37 provides:

(a) Motion for an Order Compelling Disclosure or Discovery.

(1) *In General*. On notice to other parties and all affected persons, a party may move for an order compelling disclosure or discovery. The motion must 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).

Rule 37.1 provides:

(a) Good Faith Negotiation Requirement.

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.

V.I. R. CIV. P. 37.1(a).

Under Rule 37, “[i]f the motion is granted -- or if the disclosure or requested discovery is provided after the motion was filed -- 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). On the other hand “[i]f the motion 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 [b]ut 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 “[i]f the motion 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)(B). Under Rule 37, “[s]anctions may include any of the orders listed in Rule 37(b)(2)(A)(i)-(vi)”⁵ and “[i]nstead of or in addition to these sanctions, the court must require the party failing to act, the attorney advising that party, or

⁵ Rule 37(b)(2)(A)(i)-(vi) provides:

- (i) directing that the matters embraced in the order or other designated facts be taken as established for purposes of the action, as the prevailing party claims;
- (ii) prohibiting the disobedient party from supporting or opposing designated claims or defenses, or from introducing designated matters in evidence;
- (iii) striking pleadings in whole or in part;
- (iv) staying further proceedings until the order is obeyed;
- (v) dismissing the action or proceeding in whole or in part;
- (vi) rendering a default judgment against the disobedient party; or

V.I. R. CIV. P. 37(b)(2)(A)(i)-(vi).

both to pay the reasonable expenses, including attorney's fees, caused by the failure, unless the failure was substantially justified or other circumstances make an award of expenses unjust.” V.I. R. Civ. P. 37(d)(3). The “imposition of sanctions for abuse of discovery under Rule 37 is a matter within the discretion of the trial court.”⁶ *Davis v. Varlack Ventures, Inc.*, 59 V.I. 229, 236 (V.I. 2013); *see also, Pedro v. Ranger Am. of the V.I., Inc.*, 70 V.I. 251, 294 (Super. Ct. 2019); *see also, Molloy v. Independence Blue Cross*, 56 V.I. 155, 168 (V.I. 2012) (noting the trial court’s broad discretion to control discovery).

DISCUSSION

I. Interrogatory 30

In his motion, Hamed requested the Master to compel Yusuf to respond to Interrogatory 30. (Motion, pp. 2, 19.) Hamed made the following assertions in support of his request: (i) “Contrary to [the January 8, 2018 order], Yusuf has failed to adequately responded to Interrogatory 30.” (Id., at p. 2); (ii) “Yusuf supplemented his response to Interrogatory 30, replying in part (but not fully) to the questions relating to foreign properties.” (Id., at p. 4); (iii) “Yusuf did not answer any of the questions related to foreign accounts in his name or his family members’ names, as well as the Hamed foreign accounts he listed in Exhibit K to [Yusuf’s Amended Accounting Claims].” (Id., at p. 4) (emphasis omitted); (iv) “The following information still is missing from Interrogatory 30: the date the account was opened (except for account 02501171878 00, Cairo Aman Bank, Waleed Hamed), how money generated by the Plaza Extra supermarkets got into each foreign account, the dates deposits and withdrawals were made from each account and the amounts, the date the last transaction on the account occurred, and whether the account is active or closed. If open, the present balance and if closed,

⁶ The *Davis* court was addressing Rule 37 of Federal Rules of Civil Procedure (hereinafter “Federal Rule 37”). Rule 37 was modeled after Federal Rule 37. Thus, the Master finds the discussion in *Davis* applicable in this instance.

the date the account closed and who closed it.” (Id.); (v) “Additionally, Yusuf’s Exhibit K listed 10 accounts” and “Yusuf provided partial information regarding four accounts” but “[n]othing was said in the interrogatory response about the other six accounts—whether they are being dropped or Yusuf simply failed to respond to the interrogatory.” (Id.); (vi) “[T]he interrogatory response was not verified by Fathi Yusuf.” (Id.); (vii) “No further information was provided regarding foreign accounts, despite a promise to do so.” (Id., at p. 6); (viii) “The interrogatory goes to the heart of Yusuf’s claim and therefore is directly relevant to Hamed’s defense, per Rule 26.” (Id., at p. 14); (ix) “In order to successfully defend this claim, Hamed needs to know about all accounts in order to discern whether there was an equal distribution of supermarket funds between the two partners.” (Id., at p. 15) (emphasis omitted); (x) Although “Yusuf provided a spreadsheet that covered foreign properties...the spreadsheet failed to answer the interrogatory.” (Id., at p. 16); and (xi) “[A]ll 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.’” (Id., at pp. 18-19.)

In his opposition, Yusuf argued that “he has fully and sufficiently responded to Interrogatory 30.” (Opp., p. 2.) Yusuf attached the following documents in support of his argument: Exhibit A-Yusuf’s opposition to Hamed’s expedited motion to compel responses to Interrogatory 30, filed on December 30, 2018, with exhibits attached thereto, Exhibit B-Yusuf’s supplemental responses, filed on January 15, 2019, with exhibits attached thereto, Exhibit C-Yusuf’s supplemental responses, filed on January 17, 2019 and January 18, 2019, with exhibits attached thereto, and Exhibit D-Yusuf’s supplemental responses, filed on December 18, 2020, with exhibits attached thereto. Furthermore, Yusuf also argued that “there is no basis for Yusuf to provide any additional information beyond that which has already been produced in this case.” (Id., at p. 5.) Yusuf made the following assertions in support of his

argument: (i) “Yusuf Claim [No.] Y-12 is a claim Yusuf is making against Hamed for failing to properly account for funds placed in certain foreign accounts in his name or that of his sons.” (Id., at pp. 3-4); (ii) Yusuf Claim No. Y-12 “is one in which it is Yusuf, who is seeking an explanation as to the accounts from Hamed because he does not know what happened to the funds that were placed in these accounts.” (Id., at p. 4) (emphasis omitted); (iii) “The foreign accounts for which Yusuf was seeking an explanation from Hamed were identified at the outset of the claims in the attached ‘Exhibit K’ to [Yusuf’s Accounting Claims and Yusuf’s Amended Accounting Claims].” (Id., at p. 4); (iv) “Yusuf has provided the information that he has relating to the subject accounts (for which he is seeking explanation from Hamed).” (Id., at p. 5); (v) “[Yusuf Claim No.] Y-12 does not relate to any foreign accounts beyond those on the initial list, which has been further limited.” (Id.); (vi) “Hamed has made no allegation that Yusuf took funds and deposited them into foreign bank accounts for which he has no knowledge or information.” (Id.); and (vii) “[O]f the 164 claims made by Hamed (H-1 thru H-164), there is no claim, unclear accounting record or issue relating to any accounts by Yusuf or a Yusuf family member relating to a foreign account.” (Id.)

In his reply, Hamed argued that his request to compel Yusuf to respond to Interrogatory 30 should be granted. Hamed made the following assertions in support of his argument: (i) The Master already granted Hamed’s previous expedited motion to compel and ordered Yusuf to respond to Interrogatory 30. (Reply, p. 2); (ii) Interrogatory 30 is permitted under Rule 26(b)(1). (Id.); (iii) “[T]his is an equity action—offsets between the partners and equitable defenses are completely relevant to Hamed’s defense.” (Id.); (iv) “Yusuf did not even address, much less respond to this glaring fact [that the Master previously ordered Yusuf to respond to Interrogatory 30].” (Id., at p. 3); (v) “Yusuf did not seek reconsideration at that time—instead he merely ignored the order.” (Id.); and (vi) “Yusuf’s opposition is also an out-of-time motion

for reconsideration as to Interrogatory 30.” (Id.) Hamed also reiterated some of the assertions previously made in his motion. (Id., at pp. 4-5.)

As noted above and as Hamed pointed out, in the January 8, 2019 order, the Master granted Hamed’s previous expedited motion to compel as to Interrogatory 30 and ordered Yusuf to file supplemental responses to Interrogatory 30. Although Yusuf never filed a motion to reconsider the January 8, 2019 order previously, the arguments raised in his opposition to Hamed’s motion could be construed as a motion to reconsider. *See Rodriguez v. Bureau of Corr.*, 70 V.I. 924, 928 n.1 (V.I. 2019) (“the substance of a motion, and not its caption, shall determine under which rule that motion is construed”) (citing *Joseph v. Bureau of Corrections*, 54 V.I. 644, 648 n.2 (V.I. 2011) (“[T]he substance of a motion, and not its caption, shall determine under which rule the motion is construed.”)). Rule 6-4 of the Virgin Islands Rules of Civil Procedure (hereinafter “Rule 6-4”) provides that “a party may file a motion asking the court to reconsider its order or decision within 14 days after the entry of the ruling, unless the time is extended by the court” but “[e]xtensions will only be granted for good cause shown.” V.I. R. CIV. P. 6-4(a). Here, no good cause was shown for the Master to grant such an extension. Even *assuming arguendo* that good cause was shown for the Master to grant such an extension, the Master would deny Yusuf’s motion to reconsider the January 8, 2019 order because Yusuf’s argument that there is no basis for Yusuf to respond to Interrogatory 30 in the entirety could have—and should have—been raised before in his previous opposition to Hamed’s expedited motion to compel but was not.⁷ *See In re Infant Sherman*, 49 V.I. 452, 457-58 (V.I. 2008) (“A

⁷ In the January 8, 2019 order, the Master noted the arguments raised in Yusuf’s opposition to Hamed’s expedited motion to compel and Yusuf’s argument that there is no basis for Yusuf to respond to Interrogatory 30 in the entirety was not one of them:

In his opposition, Yusuf argued that “there are no grounds to compel” because “Yusuf’s Claim [No.] Y-12 has been set out and supporting documentation has been provided and supplemented on numerous occasions.” (Opp., p. 2) First, Yusuf pointed out that in his original accounting claims, filed on September 30, 2016 (hereinafter “Yusuf’s Accounting Claims”), he “identified certain claims relating to foreign accounts and property in Jordan” and included several exhibits—Exhibit N: “Land Value Estimation that specifically identified the properties at issue” and Exhibit O: “Written Agreement

motion for reconsideration is not a second bite of the apple... [Instead, it] is intended to focus the parties on the original pleadings as the ‘main event,’ and to prevent parties from filing a second motion with the hindsight of the court’s analysis covering issues that should have been raised in the first set of motions... It is not a vehicle for registering disagreement with the court’s initial decision, for rearguing matters already addressed by the court, or for raising arguments that could have been raised before but were not.”⁸ Accordingly, the Master will not reconsider

[between Yusuf and Hamed] in Arabic”—in support thereto. (Id.) Second, Yusuf pointed out that in his supplementation to Yusuf’s Accounting Claims, filed on December 7, 2016 (hereinafter “Yusuf’s Supplementation”), he included several exhibits relating to the Jordanian Properties—Exhibit R: “‘Payment Analysis’ setting for the values and payments as well as their exchange rates,” Exhibit S: “‘English translation of his earlier filed Exhibit O,’” and Exhibit T: “‘English and Arabic versions of the invoices described in the Payment Analysis.’” (Id., at p. 3) Third, Yusuf pointed out that in his amended supplementation to Yusuf’s Accounting Claims, filed on December 12, 2016 (hereinafter “Yusuf’s Amended Supplementation”), he “clarified certain expenses that he was seeking.” (Id.) Fourth, Yusuf pointed out that in his amended accounting claims, filed on October 30, 2017 (hereinafter “Yusuf’s Amended Accounting Claims”) per the Court’s Limitation Order,² he “again identified his claims as to the Jordanian Properties as well as certain foreign accounts but then noted that claims (c) through (e) were no longer available given the Limitation Order.” (Id.) Lastly, Yusuf pointed out that in response to Hamed’s discovery, “Yusuf objected to the compound nature of the requests but, nonetheless, incorporated by reference, the detailed information already provided to Hamed on various occasions.” (Id.) Yusuf claimed that at the Rule 37 conference held on November 12, 2018, “counsel for Yusuf maintained certain objections as to various discovery but, as to others, advised that if additional information was available, it would be provided on or before December 15, 2018.” (Id., at p. 4) Yusuf explained that “[t]he representation of counsel for Yusuf that ‘there would be supplementation’ was a representation that to the extent there was anything to supplement, Yusuf would do it on or before that mid-December timeframe” and since “there are no additional documents of which Yusuf is aware that have not otherwise already been disclosed, and hence, nothing further to compel” and “no further supplementation was provided.”³ (Id.)

² In a memorandum opinion and order dated July 21, 2017, 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 “Limitation Order”). *Hamed v. Yusuf*, 2017 V.I. LEXIS 114, *44-45 (V.I. Super. Ct., July 21, 2017).

³ Yusuf noted in his opposition that that Yusuf’s counsel did not ignore the last Rule 37 conference as Hamed alleged, but had missed it due to the following reasons: (i) “[c]ounsel for Yusuf did not anticipate that the meeting would be considered a Rule 37 conference, but instead, understood it to be another weekly meeting”; and (ii) “[c]ounsel for Yusuf mis-calendared the meeting and understood it to be on the following day... and upon learning of the issue, communicated the error in scheduling and offered to meet again...” (Opp., p. 7) Thus, Yusuf clarified that “[t]he failure to attend the meeting was not an attempt to ignore opposing counsel” and “[t]he fact that no further discovery was submitted on this issue (Y-12)... is not a reflection of a failure to cooperate or a need to be compelled to otherwise further respond and the failure to attend the meeting was a function of a calendaring error, not avoidance.” (Id.)

(January 8, 2019 Order, pp. 3-4.)

⁸ The *Sherman* court discussed the motion for reconsideration therein in terms of Rule 7.4, now Rule 7.3, of the Local Rules of Civil Procedure (hereinafter “Local Rule 7.3”) promulgated by the District Court of the Virgin

the January 8, 2019 order, and will grant Hamed's motion to compel as to Interrogatory 30 and order Yusuf to respond to Interrogatory 30 in the entirety.

II. Interrogatory 33, Interrogatory 34, RFPD 30, RFPD 31, and RFPD 36.

In his motion, Hamed also requested the Master to compel Yusuf to respond to Interrogatory 33, Interrogatory 34, RFPD 30, RFPD 31, and RFPD 36 as they pertain to the foreign assets.⁹ (Motion, pp. 2, 19.) Hamed made the following assertions in support of his request: (i) "Yusuf refused to respond at all to [Interrogatory 33 and Interrogatory 34]." (Id., at p. 17); (ii) "Hamed is attempting to discern the foreign accounts and properties that the Yusuf family holds in order to 1) determine whether the assets were funded with Partnership funds and 2) determine whether there was an equal distribution of supermarket funds between the two partners." (Id.); (iii) "Each piece of information is needed to establish whether 1) it is a Partnership funded asset and 2) what happened to the asset." (Id., at p. 18); (iv) "[T]his is directly related to Hamed's ability to defend this claim and ensure an equal distribution of Partnership funds." (Id.); (v) "Yusuf refused to respond at all to [RFPD 30, RFPD 31, and RFPD 36]." (Id.); (vi) "All of the document requests are needed for Hamed's defense of the claim and are relevant to his defense." (Id.); (vii) "Hamed is attempting to discern the foreign accounts and properties that the Yusuf family holds in order to 1) determine whether the assets were funded with Partnership funds and 2) determine whether there was an equal distribution of supermarket funds between the two partners." (Id.); (viii) "The tax returns are relevant and probative because foreign accounts in aggregate over a certain

Islands. Although the Local Rules of Civil Procedure do not apply in this matter, and the grounds for reconsideration as set forth in Rule 6-4 and Local Rule 7.3 are not identical (though similar), the Master nevertheless finds the discussion in *Sherman* helpful here since that did not change "the common understanding that reconsideration is an 'extraordinary' remedy not to be sought reflexively or used as a substitute for appeal." *Sherman*, 49 V.I. at 458. Thus, the Master will follow the guidelines set forth in *Sherman*.

⁹ In his motion, Hamed indicated:

Although these interrogatories and [request for production of documents] relate to both domestic and foreign assets for the purpose of this Motion to Compel, Hamed is only seeking responses for the foreign assets. Other motions to compel will request responses regarding the domestic assets.

(Motion, p. 2, n.2.)

amount must be listed on a filer's US tax return.” (Id.); and (ix) “[A]ll 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.’” (Id., at pp. 18-19) (emphasis omitted.)

In his opposition, Yusuf argued that his objections to Interrogatory 33, Interrogatory 34, RFPD 30, RFPD 31, and RFPD 36 are proper. (Opp., p. 7.) Yusuf made the following assertions in support of his argument: (i) As Yusuf noted in his objections to Interrogatory 33, Interrogatory 34, RFPD 30, RFPD 31, and RFPD 36, “they improperly: seek personal information...” (Id., at p. 5); (ii) “At no point in this case or in the discussions between Yusuf, Hamed and Waleed relating to misappropriations prior to the suit, was there ever an allegation that Yusuf or a member of his family had misappropriated partnership funds without the knowledge or consent of the Hameds.” (Id., at p 6); (iii) Of the 164 claims made by Hamed, there is no claim relating to any misappropriation by Yusuf or Yusuf’s family. (Id.); and (iv) “[T]he attempt to secure the financial information of Yusuf is not relevant to any parties’ claim or defense and is not discoverable.” (Id.)

In his reply, Hamed argued that his request to compel responses to Interrogatory 33, Interrogatory 34, RFPD 30, RFPD 31, and RFPD 36 should be granted. Hamed made the following assertions in support of his argument: (i) These requests are permitted under Rule 26(b)(1). (Reply, p. 2); and (ii) “[T]his is an equity action—offsets between the partners and equitable defenses are completely relevant to Hamed’s defense.” (Id.) Hamed also reiterated some of the assertions previously made in his motion. (Id., at pp. 5-6.)

The Master will note at the outset that the Master finds Hamed’s good faith negotiations certification included in his motion satisfactory and in compliance with Rule 37 and Rule 37.1.

A. Interrogatories and Requests for Production of Documents

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. Information within this scope of discovery need not be admissible in evidence to be discoverable.” V.I. R. CIV. P. 26(b)(1). Rule 33 of the Virgin Islands Rules of Civil Procedure (hereinafter “Rule 33”) provides that “[u]nless otherwise stipulated or ordered by the court, a party may serve on any other party no more than 25 written interrogatories, including all discrete subparts” and “[l]eave to serve additional interrogatories may be granted to the extent consistent with Rule 26(b)(1) and (2).” V.I. R. CIV. P. 33(a)(1). Rule 33 further provides that “[a]n interrogatory may relate to any matter that may be inquired into under Rule 26(b)” and that “[a]n interrogatory is not objectionable merely because it asks for an opinion or contention that relates to fact or the application of law to fact, but the court may order that the interrogatory need not be answered until designated discovery is complete, or until a pretrial conference or some other time.” V.I. R. CIV. P. 33(a)(2). Rule 33 requires that “[e]ach interrogatory must, to the extent it is not objected to, be answered separately and fully in writing under oath.” V.I. R. CIV. P. 33(b)(3). Rule 33 also requires that “[t]he grounds for objecting to an interrogatory must be stated with specificity” and “[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 requires that “[t]he person who makes the answers must sign them, and the attorney or self-represented party who objects must sign any objections.” V.I. R. CIV. P. 33(b)(5).

Rule 34 of the Virgin Islands Rules of Civil Procedure (hereinafter “Rule 34”) permits a party to serve on any other party requests for production of documents or tangible things to inspect and requests for entry within the scope of Rule 26(b). V.I. R. CIV. P. 34(a). Rule 34 requires that “[t]he request: (A) must describe with reasonable particularity each item or category of items to be inspected; (B) must specify a reasonable time, place, and manner for

the inspection and for performing the related acts; and (C) may specify the form or forms in which electronically stored information is to be produced.” V.I. R. Civ. P. 34(b)(1). Rule 34 also requires that “[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” and “the responding party may state that it will produce copies of documents or of electronically stored information instead of permitting inspection [with] [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 requires that “[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 “[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).

The Master will address the objections Yusuf asserted in response to Interrogatory 33, Interrogatory 34, RFPD 30, RFPD 31, and RFPD 36 and determine whether the objections are proper. The Master notes that although Yusuf specifically argued in his opposition that his objections are proper to the aforementioned interrogatories and requests for production of documents, Hamed did not directly address Yusuf’s objections in his reply.

1. Interrogatory 33

Hamed’s Interrogatory 33:

Substantially the Same as Yusuf ROG 1. Please identify any and all assets including bank accounts (indicating account number and name of bank), brokerage accounts, real estate, interests in business ventures and other financial interests, foreign and domestic, owned by each of the following Yusuf family members: 1) Fathi, 2) Mike, 3) Negeh, and 4) Yusuf Yusuf *from September 17, 2006 to the date of your response* and identify the source of all funds for the acquisition of such assets.

Yusuf’s Response:

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.

Defendants further object to this Interrogatory because it seeks personal financial information concerning Yusufs sons, who are not parties to this case.

Defendants further object to this Interrogatory because it seeks personal information when there has been no allegation that monies were removed from the partnership by any member of the Yusuf family which were not otherwise disclosed to the Hameds. Furthermore, unlike the Hameds, the Yusufs had sources of income other than the partnership which would account for income and assets in excess of the funds acknowledged to have been withdrawn from the partnership. Hence, the discovery is irrelevant because "the proposed discovery is not relevant to any party's claim or defense." V.I. R. Civ. P. 26(b)(2)(C)(iii).

First, Yusuf objected to this interrogatory as vague and ambiguous. However, Yusuf did not expressly identify the language in Interrogatory 33 that he finds vague or ambiguous. *See Innovative Communications Corp. v. Sheraw*, 2007 V.I. LEXIS 77, *9 (V.I. Super. Ct. Feb. 5, 2007) ("The party objecting to discovery as vague or ambiguous has the burden to show such vagueness or ambiguity. Vagueness or ambiguity is when the definition of the terms or the wording of the request is unclear.") (citations omitted). Here, Yusuf failed to demonstrate that Interrogatory 33 is vague or ambiguous. Second, Yusuf objected to this interrogatory as "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." Here, the Master initially did not find Interrogatory 33 to be compounded questions—to wit, Interrogatory 33 sought information in connection with "any and all assets... and identify the source of all funds for the acquisition of such assets," which involve the same line of inquiry and did not introduce any discrete separate subjects. *See e.g., Davis v. Hovensa, L.L.C.*, 2011 V.I. LEXIS 91, *7 (V.I. 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,

Interrogatories No. 2, 3, 5, 8, 11, 13, 14, 15, 16 and 17 will each be considered as a single interrogatory.”). However, given that Hamed himself distinguished between information sought as to the domestic assets and the foreign assets, and is in fact filing separate motions to compel,¹⁰ the Master will deem Interrogatory 33 as two separate interrogatories—one for the domestic assets and one for the foreign assets. Third, Yusuf objected to this interrogatory because it was directed at non-parties. Rule 33 provides that “a party may serve on **any other party** 25 written interrogatories...” V.I. R. CIV. P. 33(a)(1) (emphasis added). Here, as noted above, Hamed failed to address any of Yusuf’s objections and thus, Hamed failed to cite to any proper legal authority, statute or rule that allows for interrogatories to be served on nonparties. As such, Interrogatory 33 will be limited to the parties in this lawsuit. Lastly, Yusuf objected to this interrogatory because the information sought therein is irrelevant. Meanwhile, Hamed argued in his motion and reply that the information sought in Interrogatory 33 is directly relevant to his ability to defend Yusuf Claim No. Y-12. Here, in light of the fact that the parties were directed to file their respective accounting claims for reconciliation in the accounting and distribution phase of the Final Wind Up Plan, the Master finds the information sought in Interrogatory 33 regarding assets where the Partnership fund was the source of all or partial funds for the acquisition of such assets relevant to Hamed’s ability to defend against Yusuf’s claims for credits and charges—such as Yusuf’s Claim No. Y-12—in the context of reconciliation, and the Master finds the information sought in Interrogatory 33 regarding assets where the Partnership fund was not the source for the acquisition of such assets irrelevant. As the Court pointed out in the Limitations Order, these accounting claims “are in fact, nothing more than the parties’ respective assertions of credits and charges to be applied in ascertaining

¹⁰ See *supra*, footnote 9.

the balance of each partner's individual partnership account.”¹¹ (Limitations Order, p. 11.) While Yusuf noted that Hamed did not make any claims relating to any misappropriation by Yusuf or Yusuf's family, Yusuf never addressed why information regarding assets where the Partnership fund was the source of all or partial funds for the acquisition of such assets would not be relevant to Hamed's defense against Yusuf Claim No. Y-12. Accordingly, based on the foregoing, the Master will deny Hamed's motion to compel as to Interrogatory 33 as to the nonparties, deny Hamed's motion to compel as to Interrogatory 33 as to information sought regarding assets where the Partnership fund was not the source for the acquisition of such assets, and grant Hamed's motion to compel as to Interrogatory 33 as to the parties and only as to the foreign assets on the condition that it is limited as follows: Interrogatory 33 (foreign assets). Please identify any and all foreign assets including bank accounts (indicating account number and name of bank), brokerage accounts, real estate, interests in business ventures and other financial interests owned by Fathi Yusuf *from September 17, 2006 to the date of your response* where the Partnership fund was the source of all or partial funds for the acquisition of such assets.

2. Interrogatory 34

Hamed's Interrogatory 34:

Substantially the Same as Yusuf ROG 2. Please identify each and every asset and interest, foreign and domestic, owned by Fathi Yusuf or any corporation more than 49% owned by him *from September 1, 2012 to the date of this response* -- and the source of

¹¹ In the Limitations Order, the Court explained:

The general framework for conducting a partnership accounting in the Virgin Islands is outlined at 26 V.I.C. § 177(b)... In turn, the “partners' accounts” referenced in § 177(b) are described at 26 V.I.C. § 71(a):

Each partner is deemed to have an account that is: (1) credited with an amount equal to the money plus the value of any other property, net of the amount of any liabilities, the partner contributes to the partnership and the partner's share of the partnership profits; and (2) charged with an amount equal to the money plus the value of any other property, net of the amount of any liabilities, distributed by the partnership to the partner and the partner's share of the partnership losses.

(Limitations Order, p. 14.)

the income (including any loan proceeds) which provided the asset as well as any disposition of the asset since that time.

Yusuf's Response:

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.

Defendants further object to this Interrogatory because it seeks personal information when there has been no allegation that monies were removed from the partnership by any member of the Yusuf family which were not otherwise disclosed to the Hameds. Furthermore, unlike the Hameds, the Yusufs had sources of income other than the partnership which would account for income and assets in excess of the funds acknowledged to have been withdrawn from the partnership. Hence, the discovery is irrelevant because "the proposed discovery is not relevant to any party's claim or defense." V.I. R. Civ. P. 26(b)(2)(C)(iii).

First, Yusuf objected to this interrogatory as vague and ambiguous. However, Yusuf did not expressly identify the language in Interrogatory 34 that he finds vague or ambiguous. *See Innovative Communications Corp.*, 2007 V.I. LEXIS 77 at *9. Here, Yusuf failed to demonstrate that Interrogatory 34 is vague or ambiguous. Second, Yusuf objected to this interrogatory as "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." Here, the Master initially did not find Interrogatory 34 to be compounded questions—to wit, Interrogatory 34 sought information in connection with "each and every asset and interest...and the source of income (including any loan proceeds) which provided the asset as well as any disposition of the asset since that time," which involve the same line of inquiry and did not introduce any discrete separate subjects. *See e.g., Davis*, 2011 V.I. LEXIS 91 at *7. However, given that Hamed himself distinguished between information sought as to the domestic assets and the foreign assets, and is in fact filing separate motions to

compel,¹² the Master will deem Interrogatory 34 as two separate interrogatories—one for the domestic assets and one for the foreign assets. Lastly, Yusuf objected to this interrogatory because the information sought therein is irrelevant. Meanwhile, Hamed argued in his motion and reply that the information sought in Interrogatory 34 is directly relevant to his ability to defend Yusuf Claim No. Y-12. Here, consistent with the reasoning stated for Interrogatory 33, the Master similarly finds the information sought in Interrogatory 34 regarding assets where the Partnership fund was the source of all or partial income which provided the asset relevant to Hamed’s ability to defend against Yusuf’s claims for credits and charges—such as Yusuf’s Claim No. Y-12—in the context of reconciliation, and the Master finds the information sought in Interrogatory 34 regarding assets where the Partnership fund was not the source of the income which provided the asset irrelevant. Again, while Yusuf noted that Hamed did not make any claims relating to any misappropriation by Yusuf or Yusuf’s family, Yusuf never addressed why information regarding assets where the Partnership fund was the source of all or partial income which provided the asset would not be relevant to Hamed’s defense against Yusuf Claim No. Y-12. Accordingly, based on the foregoing, the Master will deny Hamed’s motion to compel as to Interrogatory 34 as to information sought regarding assets where the Partnership fund was not the source of the income which provided the asset, and grant Hamed’s motion to compel as to Interrogatory 34 only as to the foreign assets on the condition that it is limited as follows: Interrogatory 34 (foreign assets). Please identify each and every foreign asset and interest owned by Fathi Yusuf or any corporation more than 49% owned by him *from September 1, 2012 to the date of this response* – where the Partnership fund was the source of all or partial income (including any loan proceeds) which provided the asset as well as any disposition of the asset since that time.

¹² See *supra*, footnote 9.

3. RFPD 30, RFPD 31, and RFPD 36

Hamed's RFPD 30:

SUBSTANTIALLY THE SAME AS YUSUF RFPD 5. Please produce copies of all original tax returns filed by United, Fathi, Mike, Nejeh and Yusuf Yusuf from 1986 to date.

Yusuf's Response:

Defendants object to this Request for Production 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 this Request for Production because it seeks personal financial information concerning Yusuf's sons, who are not parties to this case.

Defendants further object to this Request for Production because it seeks personal information when there has been no allegation that monies were removed from the partnership by any member of the Yusuf family which were not otherwise disclosed to the Hameds. Furthermore, unlike the Hameds, the Yusufs had sources of income other than the partnership which would account for income and assets in excess of the funds acknowledged to have been withdrawn from the partnership. Hence, the discovery is irrelevant because "the proposed discovery is not relevant to any party's claim or defense." V.I. R. Civ. P. 26(b)(2)(C)(iii).

Hamed's RFPD 31:

SUBSTANTIALLY THE SAME AS YUSUF RFPD 6. Please produce copies of all documents including statements relating to any operating, savings, credit, investment, trust, escrow or other accounts in which United, Fathi, Mike, Nejeh and Yusuf Yusuf or any company which they have more than 49% control, have or had any interest in the Virgin Islands or elsewhere, including, but not limited to Jordan and West Bank, Palestine, from 1986 to date.

Yusuf's Response:

Defendants object to this Request for Production 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 this Request for Production because it seeks personal financial information concerning Yusuf's sons, who are not parties to this case.

Defendants further object to this Request for Production because it seeks personal information when there has been no allegation that monies were removed from the partnership by any member of the Yusuf family which were not otherwise disclosed to the Hameds. Furthermore, unlike the Hameds, the Yusufs had sources of income other

than the partnership which would account for income and assets in excess of the funds acknowledged to have been withdrawn from the partnership. Hence, the discovery is irrelevant because "the proposed discovery is not relevant to any party's claim or defense." V.I. R. Civ. P. 26(b)(2)(C)(iii).

Hamed's RFPD 36:

SUBSTANTIALLY THE SAME AS YUSUF RFPD 11. As to the accounts of Fathi, Mike, Negeh and Yusuf Yusuf, please produce copies of any and all bank or investment account statements for the period from September 17, 2006 to date.

Yusuf's Response:

Defendants object to this Request for Production 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 this Request for Production because it seeks personal financial information concerning Yusuf s sons, who are not parties to this case.

Defendants further object to this Request for Production because it seeks personal information when there has been no allegation that monies were removed from the partnership by any member of the Yusuf family which were not otherwise disclosed to the Hameds. Furthermore, unlike the Hameds, the Yusufs had sources of income other than the partnership which would account for income and assets in excess of the funds acknowledged to have been withdrawn from the partnership. Hence, the discovery is irrelevant because "the proposed discovery is not relevant to any party's claim or defense." V.I. R. Civ. P. 26(b)(2)(C)(iii).

The Master will address RFPD 30, RFPD31, and RFPD 36 together since Yusuf's objections thereto are identical. First, Yusuf objected to these requests for production of documents as vague and ambiguous. However, Yusuf did not expressly identify the language in RFPD 30, RFPD 31, and RFPD 36 that he finds vague or ambiguous. *See Innovative Communications Corp.*, 2007 V.I. LEXIS 77 at *9. Here, Yusuf failed to demonstrate that RFTP 30, RFPD 31, and RFPD 36 are vague or ambiguous. Second, Yusuf objected to these requests for production of documents 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." Here, as to RFPD 30, the Master

does not find it to be compounded questions—to wit, RFPD 30 requested the original tax returns from 1986 to date, which involve the same line of inquiry and did not introduce any discrete separate subjects—and as to RFPD 31 and RFPD 36, the Master initially did not find RFPD 31 or RFPD 36 to be compounded questions—to wit, RFPD 31 requested “all documents...relating to any operating, savings, credit, investment, trust, escrow or other accounts...in the Virgin Islands or elsewhere, including, but not limited to Jordan and West Bank, Palestine, from 1986 to date,” which involve the same line of inquiry and did not introduce any discrete separate subjects, and RFPD 36 requested “any and all bank or investment account statements for the period from September 17, 2006 to date,” which involve the same line of inquiry and did not introduce any discrete separate subjects. *See e.g., Davis*, 2011 V.I. LEXIS 91 at *7. However, given that Hamed himself distinguished between the documents requested as to the domestic assets and the foreign assets, and is in fact filing separate motions to compel,¹³ the Master will deem RFPD 31 as two requests for production of documents—one for the domestic assets and one for the foreign assets, and RFPD 36 as two requests for production of documents—one for the domestic assets and one for the foreign assets. Third, Yusuf objected to these requests for production of documents because they were directed at non-parties. Rule 34 provides that “[a] party may serve on **any other party** a request within the scope of Rule 26(b)...,” V.I. R. CIV. P. 34(a) (emphasis added), and that “[a]s provided in Rule 45, a nonparty may be compelled to produce documents and tangible things or to permit an inspection.” V.I. R. CIV. P. 34(c). Here, there is no indication that the nonparties were compelled by subpoena under Rule 45 to produce the documents requested in RFPD 30, RFPD 31, and RFPD 36. As such, RFPD 30, RFPD 31, and RFPD 36 will be limited to the parties in this lawsuit. Lastly, Yusuf objected to these requests for production of documents

¹³ *See supra*, footnote 9.

because the information sought therein is irrelevant. Meanwhile, Hamed argued in his motion and reply that the information sought in RFPD 30, RFPD 31, and RFPD 36 is directly relevant to his ability to defend Yusuf Claim No. Y-12. Here, consistent with the reasoning stated for Interrogatory 33, the Master similarly finds the documents requested in RFPD 30, RFPD 31, and RFPD 36 relevant to Hamed's ability to defend against Yusuf's claims for credits and charges—such as Yusuf's Claim No. Y-12—in the context of reconciliation, but only to the extent that they pertain to the Partnership fund. Again, while Yusuf noted that Hamed did not make any claims relating to any misappropriation by Yusuf or Yusuf's family, Yusuf never addressed why the documents requested in RFPD 30, RFPD 31, and RFPD 36, to the extent that they pertain to the Partnership fund, would not be relevant to Hamed's defense against Yusuf Claim No. Y-12. Accordingly, based on the foregoing, the Master will deny Hamed's motion to compel as to RFPD 30, RFPD 31, and RFPD 36 as to the nonparties, deny Hamed's motion to compel as to RFPD 30, RFPD 31, and RFPD 36 as to the documents requested that do not pertain to the Partnership fund, grant Hamed's motion to compel as to RFPD 30 as to the parties on the condition that it is limited as follows: RFPD 30. Please produce copies of all original tax returns filed by United and Fathi Yusuf from 1986 to date; information unrelated the Partnership fund may be redacted, and grant Hamed's motion to compel as to RFPD 31 and RFPD 36 as to the parties and only as to the foreign assets on the condition that they are limited as follows: RFPD 31 (foreign assets). Please produce copies of all documents including statements relating to any foreign operating, savings, credit, investment, trust, escrow or other accounts in which United or Fathi Yusuf have or had any interest, from 1986 to date, that pertain to the Partnership fund. RFPD 36 (foreign assets). As to the accounts of Fathi Yusuf, please produce copies of any and all foreign bank or investment account statements for the period from September 17, 2006 to date, that pertain to the Partnership fund.

III. Sanctions

At this juncture, Hamed has not moved for sanctions,¹⁴ and the Master will not impose any sanctions. *See Davis*, 59 V.I. at 236 (“imposition of sanctions for abuse of discovery under Rule 37 is a matter within the discretion of the trial court”). Nevertheless, the parties are hereby notified that further abuse of discovery may result in the imposition of sanctions.

CONCLUSION

Based on the foregoing, the Master will grant in part and deny in part Hamed’s motion to compel. Accordingly, it is hereby:

ORDERED that Hamed’s motion to compel as to Interrogatory 30 is **GRANTED**. Yusuf shall respond to Interrogatory 30 in the entirety. It is further:

ORDERED that Yusuf’s motion to reconsider the January 8, 2019 order is **DENIED**. It is further:

ORDERED that Hamed’s motion to compel as to Interrogatory 34 is **DENIED** as to the nonparties, **DENIED** as to information sought therein regarding assets where the Partnership fund was not the source for the acquisition of such assets and **GRANTED** as to the parties and only as to the foreign assets on the condition that it is limited as follows:

Interrogatory 33 (foreign assets). Please identify any and all foreign assets including bank accounts (indicating account number and name of bank), brokerage accounts, real estate, interests in business ventures and other financial interests owned by Fathi Yusuf from September 17, 2006 to the date of your response where the Partnership fund was the source of all or partial funds for the acquisition of such assets.

It is further:

¹⁴ In his motion, Hamed noted that:

Previously, on another issue, the Master required the payment of costs—although waived the actual collection. Another such an admonition, even absent actual monetary sanction might be useful here.

(Motion, p. 14.)

However, Hamed never moved for sanctions in connection with this instant motion to compel.

ORDERED that Hamed's motion to compel as to Interrogatory 34 is **DENIED** as to information sought regarding assets where the Partnership fund was not the source of the income which provided the asset, and **GRANTED** only as to the foreign assets on the condition that it is limited as follows:

Interrogatory 34 (foreign assets). Please identify each and every foreign asset and interest owned by Fathi Yusuf or any corporation more than 49% owned by him *from September 1, 2012 to the date of this response* – where the Partnership fund was the source of all or partial income (including any loan proceeds) which provided the asset as well as any disposition of the asset since that time.

It is further:

ORDERED that Hamed's motion to compel as to RFPD 30 is **DENIED** as to the nonparties, **DENIED** as to the documents requested that do not pertain to the Partnership fund, and **GRANTED** as to the parties on the condition that it is limited as follows:

RFPD 30. Please produce copies of all original tax returns filed by United and Fathi Yusuf from 1986 to date; information unrelated the Partnership fund may be redacted.

It is further:

ORDERED that Hamed's motion to compel as to RFPD 31 is **DENIED** as to the nonparties, **DENIED** as to the documents requested that do not pertain to the Partnership fund, and **GRANTED** as to the parties and only as to the foreign assets on the condition that it is limited as follows:

RFPD 31 (foreign assets). Please produce copies of all documents including statements relating to any foreign operating, savings, credit, investment, trust, escrow or other accounts in which United or Fathi Yusuf have or had any interest, from 1986 to date, that pertain to the Partnership fund.

It is further:

ORDERED that Hamed's motion to compel as to RFPD 36 is **DENIED** as to the nonparties, **DENIED** as to the documents requested that do not pertain to the Partnership fund,

and **GRANTED** as to the parties and only as to the foreign assets on the condition that it is limited as follows:

RFPD 36 (foreign assets). As to the accounts of Fathi Yusuf, please produce copies of any and all foreign bank or investment account statements for the period from September 17, 2006 to date, that pertain to the Partnership fund.

It is further:

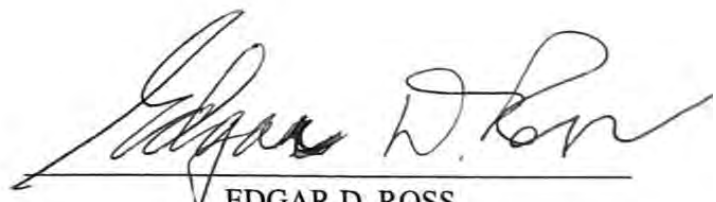
ORDERED that Interrogatory 33 and Interrogatory 34 shall each be deemed as **TWO SEPARATE** interrogatories: Interrogatory 33 (foreign assets), Interrogatory 33 (domestic assets), Interrogatory 34 (foreign assets), and Interrogatory 34 (domestic assets). It is further:

ORDERED that RFPD 31 and RFPD 36 shall each be deemed as **TWO SEPARATE** requests for production of documents: RFPD 31 (foreign assets), RFPD 31 (domestic assets), RFPD 36 (foreign assets), and RFPD 36 (domestic assets). It is further:

ORDERED that, **within thirty (30) days from the date of entry of this order**, Yusuf shall file supplemental responses to Interrogatory 30, Interrogatory 33 (foreign assets), Interrogatory 34 (foreign assets), RFPD 30, RFPD 31 (foreign assets), and RFPD 36 (foreign assets). **And** it is further:

ORDERED that Yusuf's supplemental responses shall be in compliance with the Virgin Islands Rule of Civil Procedure.

DONE and so ORDERED this 5th day of September, 2021.


EDGAR D. ROSS
Special Master