

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

**MOHAMMAD HAMED, BY HIS
AUTHORIZED AGENT WALEED HAMED,**

PLAINTIFF/COUNTERCLAIM DEFENDANT,

v.

**FATHI YUSUF AND UNITED
CORPORATION,**

DEFENDANTS/COUNTERCLAIMANTS,

v.

**WALEED HAMED, WAHEED HAMED,
MUFEEED HAMED, HISHAM HAMED,
AND PLESSEN ENTERPRISES, INC.,**

COUNTERCLAIM DEFENDANTS.

**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-278

**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-11: reconciliation of past Partnership withdrawals and distributions based on the lifestyle analysis prepared by Yusuf’s accounting expert Fernando Scherrer of BDO Puerto Rico, P.S.C. (hereinafter “Yusuf Claim No. Y-11”), filed on August 1, 2021.¹ In response, Yusuf filed an opposition and Hamed filed a reply thereto.

BACKGROUND²

Per the Master’s order, the parties filed their respective accounting claims in 2016 and their respective amended accounting claims in 2017 after the Court entered a memorandum opinion and order limiting accounting (hereinafter “Limitations Order”).³ On September 30, 2016, Yusuf filed his accounting claims and thereafter, on October 30, 2017, Yusuf filed his amended accounting claims (hereinafter “Yusuf’s Amended Accounting Claims”), whereby both filings included Yusuf’s claim for the reconciliation of past Partnership withdrawals and distributions based on the lifestyle analysis prepared by Yusuf’s accounting expert Fernando Scherrer of BDO Puerto Rico, P.S.C. (Yusuf Claim No. Y-11). In support of Yusuf Claim No. Y-11, Yusuf attached, inter alia, the following documents to Yusuf’s Amended Accounting

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 motion for summary judgment for Yusuf Claim No. Y-11 falls within the scope of the Master’s report and recommendation given that Yusuf Claim No. Y-11 involves an alleged debt the Partnership owes Yusuf.

² The relevant factual background of Yusuf Claim No. Y-11 was recounted in more depth in the March 7, 2022 order denying Hamed’s motion for summary judgment for Yusuf Claim No. Y-11.

³ 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.)

Claims: (i) an accounting report of the Partnership prepared by Yusuf’s accounting expert Fernando Scherrer of BDO Puerto Rico, P.S.C. (hereinafter “BDO Report) and (ii) a summary of withdrawals prepared by Yusuf’s accounting expert Fernando Scherrer of BDO Puerto Rico, P.S.C. (hereinafter “BDO Summary of Withdrawals”).⁴

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

⁴ A simplified version of the BDO Summary of Withdrawals is reproduced here—to wit, the columns for the individual Hameds (Mohammad Hamed, Waleed Hamed, Waheed Hamed, Mufeed Hamed, and Hisham Hamed) and individual Yusufs (Fathi Yusuf, Nejah Yusuf, Maher Yusuf, Yusuf Yusuf, Najat Yusuf, Zayed Yusuf, Syaid Yusuf, Amal Yusuf, Hoda Yusuf, and Yacer Yusuf) were not included and instead, only the columns with the total for the Hameds, the total for the Yusufs, and the differences are included. The six rows preceding the row “Total Partnership” account for Yusuf Claim No. Y-10 and the three rows preceding the row “Subtotal Lifestyle Analysis” account for Yusuf Claim No. Y-11.

Description	Hameds Total	Yusufs Total	Difference
Funds received from partnership through checks	\$1,500,000.00	\$4,284,706.25	(\$2,784,706.25)
Withdrawals from the partnership with a signed ticket/receipt	\$237,352.75	\$2,000.00	\$235,352.75
Amount owed by Hamed family to Yusuf as per agreement before raid Sept 2001. As per Mike’s testimony these tickets were burned	\$1,778.103.00	-	\$1,778.103.00
Payments to third parties on behalf of Hamed/Yusuf with partnership funds either with tickets or checks	\$20,311.00	-	\$20,311.00
Payments to Attorneys with partnership’s funds	\$4,121,651.43	\$237,691.05	\$3,883,960.38
Funds received by cashier’s check	-	-	-
Total Partnership	\$7,657,418.18	\$4,524,397.30	\$3,133,020.88
Deposits to bank and brokerage accounts	\$1,364,006.06	-	\$1,364,006.06
Payments to credit cards	\$602,611.50	-	\$602,611.50
Investments (cost) sold as per tax returns	-	-	
Subtotal Lifestyle Analysis	\$1,966,617.56	-	\$1,966,617.56
Net Withdrawals	\$9,624,035.74	\$4,524,397.30	\$5,099,638.44

(Yusuf’s Amended Accounting Claims, Exhibit J-2.)

request for admissions, including all discrete subparts thereof, unless otherwise stipulated by the parties or ordered by the Master.” (JDSP, p. 4.)

On July 31, 2021, Hamed filed a motion for summary judgment for Yusuf Claim No. Y-11. On August 1, 2021, Hamed filed this instant motion to compel responses to discovery served in connection with Yusuf Claim No. Y-11.

On March 7, 2022, the Master entered an order whereby the Master denied Hamed’s motion for summary judgment for Yusuf Claim No. Y-11. In the March 7, 2022 order, the Master noted:

...that Yusuf did not directly address Yusuf Claim No. Y-11 in Yusuf’s Amended Accounting Claims. Instead, Yusuf Claim No. Y-11 was lumped together with Yusuf’s claim for the reconciliation of past Partnership withdrawals and distributions (Yusuf Claim No. Y-10)—to wit, Yusuf claimed that “Hamed received \$5,099,638.44 more than Yusuf for the defined period” and “[a]s a result, \$2,549,819.22 should be awarded to Yusuf to equalize the distributions between the Partners for the disparity in distributions from September 17, 2006 forward so that both Partners have equal distributions.” (Yusuf’s Amended Accounting Claims, pp. 13-14.) Yusuf failed to include any specific information in Yusuf’s Amended Accounting Claims to explain how he arrived at these dollar amounts. However, Yusuf referenced both the BDO Report and the BDO Summary of Withdrawals in section “IV. Past Partnership Withdrawals and Distribution Reconciliation,” the section that indirectly addressed Yusuf Claim No. Y-11 when it addressed Yusuf Claim No. Y-10. Both the BDO Report and the BDO Summary of Withdrawals provided additional information on Yusuf Claim No. Y-11—to wit, the BDO Report explained the methodology and process used in preparing the lifestyle analysis that formed the basis of Yusuf Claim No. Y-11 and the BDO Summary of Withdrawals assigned dollar amounts to various items that account for Yusuf Claim No. Y-11. A review of the BDO Summary of Withdrawals revealed that the amount “\$5,099,638.44” is derived from adding together the alleged differences between Hameds’ total withdrawals and Yusufs’ total withdrawals for Yusuf Claim No. Y-10 (\$3,133,020.88) and Yusuf Claim No. Y-11 (\$1,966,617.56) in the BDO Summary of Withdrawals. Based on the foregoing, the Master finds that the BDO Report and the BDO Summary of Withdrawals, which were attached as exhibits to Yusuf’s Amended Accounting Claims, were both incorporated by reference into Yusuf Claim No. Y-11...

(March 7, 2022 Order, pp. 10-13) (footnotes omitted.)

STANDARD OF REVIEW

Motions related to discovery pursuant to Rules 26 through 37 of the Virgin Islands Rules of Civil Procedure are governed by Rule 37 and Rule 37.1 of the Virgin Islands Rules of 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).⁵ Under Rule 37, “[a] party seeking discovery may move for an order compelling an answer, designation, production, or inspection...if: ... (iii) a party fails to answer an interrogatory submitted under Rule 33; or (iv) a party fails to produce documents or fails to respond that inspection will be permitted -- or fails to permit inspection -- as requested under Rule 34.” V.I. R. CIV. P. 37(a)(3)(B)(iii)-(iv). “For purposes of this subpart (a), an evasive or incomplete disclosure, answer, or response must be treated as a failure to disclose, answer, or respond.” V.I. R. CIV. P. 37(a)(4). Rule 37 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).”⁶ V.I. R. CIV. P. 37(d)(2).

⁵ 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).

⁶ Rule 37(d)(1)(A) describes the following failures:

DISCUSSION

In his motion, Hamed moved the Master to compel Yusuf to provide responses to the interrogatories and the requests for production of documents (hereinafter “RFPDs” and each, a “RFPD”) served in connection with Yusuf Claim No. Y-11—to wit, Interrogatory 33, Interrogatory 35, Interrogatory 37, RFPD 26, RFPD 30, and RFPD 31. (Motion.) Hamed indicated that “[i]n 2018, the Parties exchanged discovery pursuant to the August 4, 2018 Scheduling Order,” that “[a]fter responses were produced on May 15, 2018, the parties entered into a series of letters and Rule 37 conferences to resolve their differences,” and that “[s]ome issues were resolved, but Yusuf has adamantly refused to provide any real responses to this claim.” (Id., at p. 3; Id-Exhibit 4-Letter from Carl J. Hartmann III, Esq. to Charlotte Perrell, Esq., dated November 28, 2018, summarizing their discussions and agreements from their November 12, 2018 Rule 37 conference.)

As a preliminary matter, Master finds that Hamed has in good faith conferred or attempted to confer with Yusuf as required under Rule 37 and Rule 37.1. The Master will address each interrogatory and RFPD in turn.

I. Rules Governing Interrogatories and RFPDs

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

(d) Party’s Failure to Attend Its Own Deposition, Serve Answers to Interrogatories, or Respond to a Request for Inspection.

(1) In general

(A) *Motion; Grounds for Sanctions.* The court may, on motion, order sanctions if:

(i) a party or a party's officer, director, or managing agent -- or a person designated under Rule 30(b)(6) or 31(a)(4) -- fails, after being served with proper notice, to appear for that person's deposition; or

(ii) a party, after being properly served with interrogatories under Rule 33 or a request for inspection under Rule 34, fails to serve its answers, objections, or written response.

V.I. R. Civ. P. 37(d)(1)(A).

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). Untimely objections to requests for production are deemed waived. *See Klotzbach v. V.I. Water & Power Auth.*, 74 V.I. 381, 390 (V.I. Super. Ct. June 14, 2021) (“The Court agrees if WAPA did not make a timely objection stating the requested customer information was ‘private or confidential,’ then WAPA waives that objection.”). 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).

A. Interrogatory 33, Interrogatory 35, Interrogatory 37, RFPD 26, RFPD 30, and RFPD 31

In his motion, Hamed made the following assertions in support of his request to compel responses to his interrogatories and RFPDs: (1) As to interrogatories-(i) Interrogatory 33, Interrogatory 35, Interrogatory 37 “directly relate to information needed by Hamed to defend against [Yusuf Claim No. Y-11]—to wit, “[t]he BDO ‘lifestyle analysis’ included three components: 1) deposits to bank and brokerage accounts, 2) payments to credit cards and 3) investments (cost) sold as per tax return.” (Motion, p. 12); (ii) “[T]he BDO report shows that Yusuf, Mike, Negeh, and Yusuf Yusuf did not make any credit card charges from 2006-2015”

and “Hamed knows that the Yusufs have personal credit cards, as there are charges for Partnership merchandise and gross receipt tax payments on Yusuf personal credit cards, which were recorded on the Partnership’s general ledgers in 2013-2015.” (Id., at pp. 12-13); (iii) “To complete a fair comparable analysis, Hamed needs this information to calculate this claim.” (Id., at p. 13); (iv) “Because Yusuf has stated that he has other sources of income not related to the Partnership, Hamed has asked for that information in order to exclude it from the comparison lifestyle analysis that Yusuf uses to make his calculations, as was done with the Hameds’ personal and business information” and “[t]his information is directly relevant to both Hamed’s defense and his calculation of the offset.” (Id.); and (v) “Hamed needs to understand the total amounts of deposits the Yusuf family attributes to income outside of the Partnership so that a true comparison of withdrawal of Partnership funds between the families can be made.” (Id.); and (2) As to RFPDs-(i) “Hamed is asking for fundamental, primary information in these RFPDs to prepare his defense: bank records, credit card statements, evidence of income and business income from outside of the Partnership – and tax returns.” (Id., at p. 14); (ii) “Yusuf opened up this inquiry with his ‘lifestyle claim’” and “[h]e can’t now say that all of his family’s financial information is off limits and force Hamed to defend this claim without either a comparison or any contrary factual proof.” (Id.); and (iii) “The discovery rules allow parties to ask for ‘any nonprivileged matter that is relevant to any party’s claim or defense.’” (Id.)

In his opposition, Yusuf made the following assertions in support of his argument for the Master to deny Hamed’s motion: (1) As to Interrogatory 33, RFPD 30, and RFPD 31-(i) They were “already the subject of a previous [September 5, 2021] Order denying in part an earlier motion to compel and limiting the scope of the inquiry, for which Supplemental Responses in accordance with such Order have already been served – hence, the instant Motion to Compel is moot as the issues have already been decided.” (Opp., p. 2); (2) As to Interrogatory

35-(i) “[T]he scope of inquiry should be limited consistent with the Master’s earlier [September 5, 2021] Order regarding scope and because the prior served response is sufficient, no further order compelling is needed.” (Id.), (ii) “[T]he Master has previously determined [in the September 5, 2021 order] that discovery is to be limited to only the parties to the case.” (Id., at p. 3), (iii) “[T]he Master also has limited discovery to information in which the Partnership fund was the source of the income for the acquisition of assets.” (Id., at p. 4), (iv) Interrogatory 35 “seeks information relating to income sources that are unrelated to the Partnership fund and thus, are also irrelevant” and “Yusuf objected on these grounds.” (Id.), (v) This motion as to Interrogatory 35 “should be denied as to non-Partnership sources of income” and “[a]ll partnership distributions to Fathi Yusuf (i.e. income from the Partnership) have been identified and thus, there is no need to further compel any discovery as to this Interrogatory [35].” (Id.); (3) As to Interrogatory 37-(i) “[T]he prior served response is sufficient such that no further order compelling is needed” and “Interrogatory 37 should be limited to only the parties to the case.” (Id., at pp. 2, 4), (ii) “Contrary to Hamed’s assertions, these tables and the supporting documentation, produced years ago is detailed and organized.” (Id., at p. 5), and (iii) “To the extent that there are limited distributions after September 17, 2006, that is consistent as to all of the parties.” (Id.); and (4) As to RFPD 26-(i) “[F]or the same reasons previously articulated by the Msater in the September 5, 2021 Order, because Mike Yusuf, NejeH Yusuf and Yusuf Yusuf are not parties, discovery as to them should be denied.” (Id., at p. 5), (ii) “This request seeks information relating to income and asset sources that are unrelated to the Partnership fund and thus, are also irrelevant” and “Yusuf objected on these grounds.” (Id., at p. 6), and (iii) “As to Fathi Yusuf, information responsive to this Request (i.e. income from the Partnership) have been identified in the Tables and supporting documentation to the

preliminary BDO Report as part of the original response and thus, there is no need to further compel any discovery as to this [Request].” (Id.)

In his reply, Hamed made the following assertions in response to Yusuf’s opposition:

(1) As to Interrogatory 33-(i) “Given Special Master Ross’s September 5, 2021 Order, Hamed withdraws Interrogatory 33 with respect to domestic accounts and non-parties.” (Reply, p. 2);

(2) As to RFPD 30-(i) “Yusuf has not complied with [the September 5, 2021 order]”—to wit, Fathi Yusuf was ordered to provided tax returns from 1986 to date but “Yusuf produced by email his personal tax returns for 2020-2013 only.” (Id., at pp. 2-3);

(3) As to RFPD 31-(i) “Given Special Master Ross’s September 5, 2021 Order, Hamed withdraws RFPD 31 with respect to domestic accounts and non-parties.” (Reply, p. 3);

(4) As for Interrogatory 35-(i) “Contrary to Yusuf’s blanket statement, Interrogatory 35 has not identified ‘all sources of income for 1) Fathi. . .from September 17, 2006 to the date of your response and identify the source of all funds for the acquisition of such assets.’” (Id., at p. 3), (ii) “The BDO report did not provide any information regarding Partnership withdrawals for Fathi Yusuf for the time period of September 17, 2006 to the date of Yusuf’s response” and “[i]t is difficult to believe that Yusuf received no funds from the Partnership from 2006 forward.” (Id.) (emphasis omitted), (iii) “Hamed does not believe that the Special Master’s September 5, 2021 Order relieves Yusuf of the responsibility to identify sources of Partnership income for Mike, NejeH and Yusuf Yusuf as employees of the Partnership” because “[t]hat is not discovery of a third person, but, rather, of the Partnership.” (Id., at p. 3) (emphasis omitted), and (iv) “[I]f Yusuf is claiming that the Special Master’s Order requires that only Partnership funds should be considered, then Yusuf’s Lifestyle Analysis should withdraw all of the many deposits, payments to credit cards and investments not purchased or paid for by Partnership funds from the Hamed side of the ‘lifestyle’ analysis prepared by BDO” because “[e]ither what is good for

the goose is good for the gander or it is not—Yusuf cannot have it both ways; using Hamed’s and refusing his own.” (Id., at pp. 3-4); (5) As to Interrogatory 37-(i) “From September 17, 2006 to the date of the BDO report, no distributions from the Partnership are listed for Yusuf, Yusuf’s family or the United Corporation.” (Id., at p. 4), (iii) “At a bare minimum, the payroll checks for Yusuf and his family members should have been listed” and “[d]uring this time frame, additional Yusuf family members not working for the Partnership received Partnership distributions to pay taxes.” (Id.), (iv) “This is goose and gander again—Yusuf (and BDO use these amounts from Hamed but refuse them for Yusuf.” (Id.), and (v) “Yusuf’s assertion that ‘the responses originally provided are more than adequate...’ is not true.” (Id., at p. 5); and (6) As to RFPD 26-(i) “Even with this limitation [of limiting this request to the parties], Yusuf has not responded to this request.” (Id., at p. 5), (ii) “[T]he BDO report did not cover any Yusuf documents from September 17, 2006-September 30, 2016 for Fathi Yusuf or other Yusuf family members” and “[n]o documents for that time period were produced in response to this document request.” (Id.), and (iii) “If Yusuf is using this data for the Hameds, this does not exempt Yusuf from producing any statements showing funds sitting in his bank, brokerage and retirement accounts that were a result in whole or in part of deposits from Partnership funds and any statements showing withdrawals derived from funds originating from the Partnership.” (Id., at p. 6) Hamed also requested “sanctions with respect to Interrogatory [sic] 30.” (Id., at p. 7.)

The Master must clarify at the outset that the September 5, 2021 order addressed Hamed’s July 14, 2021 motion to compel responses to discovery served in connection with Yusuf Claim No. Y-12: foreign accounts and Jordanian properties (hereinafter “Yusuf Claim No. Y-12”)—to wit, Interrogatory 30, Interrogatory 33, Interrogatory 34, RFPD 30, and RFPD 31. In Hamed’s July 14, 2021 motion to compel, Hamed specifically indicated that “[a]lthough

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” and that “[o]ther motions to compel will request responses regarding the domestic assets.” (Sept. 5, 2021 Order, p. 15, n.9.) However, there was no indication in Hamed’s July 14, 2021 motion to compel that Interrogatory 33, RFPD 30, and RFPD 31 were also served in connection with Yusuf Claim No. Y-11. Thus, the September 5, 2021 order did not contemplate Interrogatory 33, RFPD 30, and RFPD 31 in the context of Yusuf Claim No. Y-11 and therefore, the September 5, 2021 order did not moot the issues raised in this motion to compel as to Interrogatory 33, RFPD 30, and RFPD 31 as claimed by Yusuf. Given the revelation that Interrogatory 33, RFPD 30, and RFPD 31 pertain to both Yusuf Claim No. Y-11 and Yusuf Claim No. Y-12, the Master will have to revisit Interrogatory 33, RFPD 30, and RFPD 31 in the context of Yusuf Claim No. Y-11, which is a very different claim from Yusuf Claim No. Y-12.⁷ Since the relevance of discovery varies depending on the claim involved—to wit, the relevance of Interrogatory 33, RFPD 30, and RFPD 31 in the context of Yusuf Claim No. Y-11 will differ from the relevance of Interrogatory 33, RFPD 30, and RFPD 31 in the context of Yusuf Claim No. Y-12—the ruling for this instant motion to compel as to Interrogatory 33, RFPD 30, and RFPD 31 in the context of Yusuf Claim No. Y-11 may differ from the ruling for the July 14, 2021 motion to compel as to Interrogatory 33, RFPD 30, and RFPD 31 in the context of Yusuf Claim No. Y-12.⁸

⁷ Yusuf Claim No. Y-11 is Yusuf’s claim for the reconciliation of past Partnership withdrawals and distributions based on the lifestyle analysis prepared by Yusuf’s accounting expert Fernando Scherrer of BDO Puerto Rico, P.S.C. and Yusuf Claim No. Y-12 is Yusuf’s claim for foreign accounts and Jordanian properties.

⁸ Similarly, if it turns out that Interrogatory 33, RFPD 30, and RFPD 31 were served in connection with a third claim and a subsequent motion to compel is filed, then that may also result in a different ruling as to Interrogatory 33, RFPD 30, and RFPD 31 in the context of that third claim. The Master is open to suggestions from the parties as to what is the best way to move to compel responses for an interrogatory or a RFPD served in connection with multiple claims.

1. Interrogatory 33⁹

Hamed's Interrogatory 33 of 50: 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) Neje, 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 Yusuf's 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).

In the September 5, 2021 order, the Master made the following findings and rulings as to Interrogatory 33 in the context of Yusuf Claim No. Y-12:

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

⁹ Hamed noted that "[f]or the purposes of the Motion to Compel only, Hamed limits the scope of this interrogatory to domestic accounts." (Motion, p. 4, n.1.)

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 distinguished between information sought as to the domestic assets and the foreign assets, and is in fact filing separate motions to compel, 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 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.

(Sept. 5, 2021 Order, pp. 19-21) (footnotes omitted.)

For the reasons set forth in the September 5, 2021 order, Master similarly finds that: (i) Yusuf failed to demonstrate that Interrogatory 33 is vague or ambiguous, (ii) Interrogatory 33 should be deemed as two separate interrogatories—one for the domestic assets and one for the foreign assets, and (iii) Interrogatory 33 should be limited to the parties in this lawsuit. However, the Master will make a separate relevancy determination for Interrogatory 33 in the context of Yusuf Claim No. Y-11. According to the BDO Report and the BDO Summary of Withdrawals, the following items accounted for Yusuf Claim No. Y-11: (i) deposits to bank and brokerage accounts, (ii) payments to credit cards, and (iii) investments (cost) sold as per tax return.”¹⁰ More specifically, the BDO Report and the BDO Summary of Withdrawals did not differentiate between domestic or foreign accounts¹¹ and therefore, it appears that deposits into both foreign and domestic accounts were included in the calculation of Yusuf Claim No. Y-11. Thus, the Master finds the information sought in Interrogatory 33 regarding bank accounts and brokerage accounts, both foreign and domestic, relevant to Hamed’s defense

¹⁰ See *supra*, footnote 4.

¹¹ See The BDO Report (Section 4.1.2 “Lifestyle Analysis to Identify Undisclosed Withdrawals from the Partnership” – “Our examination entailed reviewing and analyzing all known and available bank accounts, brokerage/investment accounts and credit card accounts of each of the Partners, family members and their agents. As part of our analysis, we identified and included all amounts deposited in the respective bank and brokerage accounts, credit card payments, and funds assumed to have been received as partnership distributions/withdrawals. Any excess monies identified from our examination over the known and confirmed income was assumed to be distributions from the partnership. In order to confirm the funds and sources of income of both families, we obtained from the Partnership records the salaries and wages earned by the Partners, family members and their agents.”; Section 4.4 “Documents Examined” – “As part of our analysis, we have examined documents for each of the family members of the Hamed and Yusuf families, the Supermarkets (includes Plaza Extra-East, Plaza Extra-West, and Plaza Extra-Tutu Park), United Corporation, and other related entities. All information, documents, evidence examine and used by BDO was provided by Dudley. The following is a summary of documents examined and used in our analysis... • General ledgers of the Supermarkets • Cash receipts of the Supermarkets • Monthly bank statements of the Supermarkets’ bank accounts • Monthly bank statements of each Partner’s bank accounts • Monthly bank statements of each of the Partner’s family members’ bank accounts • Monthly bank statements of each of the Partner’s agents’ bank accounts • Monthly brokerage/investment statements of each Partner’s investment accounts • Monthly brokerage/investment statements of each of the Partner’s family members’ investment accounts • Monthly brokerage/investment statements of each of the Partner’s agents’ investment accounts • Credit card statements of each Partner’s credit card accounts • Credit card statements of each Partners’ family members’ credit card accounts • Credit card statements of each Partners’ agents’ credit card accounts • Income tax return of each Partner • Income tax return of each Partner’s family members • Income tax return of each Partner’s agents • Legal documents: Court Orders, Motions and depositions • Letters, black book (cash receipts ledger) and other documents.”).

against Yusuf Claim No. Y-11, and is puzzled as to Hamed limitation to the scope of Interrogatory 33 to the domestic accounts in his motion and his subsequent withdrawal of Interrogatory 33 with respect to the domestic accounts in his reply. Furthermore, the BDO Report indicated that “[its] analysis included identifying and excluding any deposits which could be identified and/or related to a source other than from the Partnership”¹² but the source of the deposits excluded from the lifestyle analysis were never confirmed to be from a source other than the Partnership. Thus, the Master finds the information sought in Interrogatory 33 regarding “the source of all funds for the acquisition of such assets” also relevant to Hamed’s defense against Yusuf Claim No. Y-11 since this information could help confirm or refute the information used in the calculation of Yusuf Claim No. Y-11. It is not disputed by the parties that the BDO Report and the BDO Summary of Withdrawals represents a preliminary accounting, and that additional discovery is necessary. *See* July 25, 2017 Order Denying Without Prejudice Plaintiff’s Motion to Strike the BDO Report (“Defendants [Yusuf and United] state that the BDO report represents only a preliminary accounting based on information available at the time, and will be supplemented upon completion of additional discovery. Both parties agree that more discovery is required to adequately present their respective claims.”) (footnotes omitted).

Accordingly, based on the foregoing, the Master will rule on Hamed’s motion to compel as to Interrogatory 33 in the context of Yusuf Claim No. Y-11 as follows: (i) deny as to the non-parties, (ii) deny as to information sought that does not pertain to Yusuf Claim No. Y-11—“real estate, interests in business ventures and other financial interests,” and (iii) grant as to information sought from a party that pertains to Yusuf Claim No. Y-11; the Master will permit

¹² *See* The BDO Report (Section 5.2.1 “Lifestyle Analysis” – Fathi Yusuf; Section 5.2.2 “Lifestyle Analysis” – Nejeah Yusuf, Section 5.2.3 “Lifestyle Analysis” – Maher Yusuf, Section 5.2.4 “Lifestyle Analysis” – Yusuf Yusuf, and Section 5.2.5 “Lifestyle Analysis” – Najat Yusuf.).

Hamed to withdraw the limiting language in his motion and the withdrawal language in his reply that may have been made based on the mistaken assumption that the September 5, 2021 order also pertained to Yusuf Claim No. Y-11. Interrogatory 33 will be revised as follows: “Please identify any and all assets including bank accounts (indicating account number and name of bank) [and] brokerage accounts..., foreign and domestic, owned by...Fathi...*from September 17, 2006 to the date of your response* and identify the source of all funds for the acquisition of such assets.” Furthermore, if, by including Interrogatory 33 (domestic assets), Hamed’s total number of interrogatories exceeded the maximum allowable under JDSP, the Master will also grant Hamed leave to serve this additional interrogatory. *See* JDSP; *see also*, V.I. R. CIV. P. 26(b)(2)(A) (“[b]y order, the court may alter the limits in these rules on the number of...interrogatories.”); V.I. R. CIV. P. 33(a)(1) (“Unless 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. Leave to serve additional interrogatories may be granted to the extent consistent with Rule 26(b)(1) and (2).”).

2. RFPD 30 and RFPD 31

Hamed’s RFPD 30 of 50: SUBSTANTIALLY THE SAME AS YUSUF RFPD 5. Please produce copies of all original tax returns filed by United, Fathi, Mike, Negeh 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 Yusufs 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 of 50: 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, Negeh 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).

In the September 5, 2021 order, the Master made the following findings and rulings as to RFPD 30 and RFPD 31 in the context of Yusuf Claim No. Y-12:¹³

The Master will address RFPD 30, RFPD 31, 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

¹³ In the September 5, 2021 order, the Master addressed RFPD, 30, RFPD 31, and RFPD 36 together. For clarity, the Master did not omit the portion addressing RFPD 36 even though RFPD 36 was not raised in this instant motion to compel.

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, 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 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.

(Sept. 5, 2021 Order, p. 24-27) (footnote omitted.)

For the reasons set forth in the September 5, 2021 order, Master similarly finds that: (i) Yusuf failed to demonstrate that RFPD 30 and RFPD 31 are vague or ambiguous, (ii) RFPD 30 is a single request but RFPD 31 should be deemed as two separate requests—one for the domestic assets and one for the foreign assets, and (iii) RFPD 30 and RFPD 31 should be limited to the parties in this lawsuit. However, the Master will make a separate relevancy determination for RFPD 30 and RFPD 31 in the context of Yusuf Claim No. Y-11. As noted above, according to the BDO Report and the BDO Summary of Withdrawals, the following items accounted for Yusuf Claim No. Y-11: (i) deposits to bank and brokerage accounts, (ii) payments to credit cards, and (iii) investments (cost) sold as per tax return,”¹⁴ and that the BDO Report and the BDO Summary of Withdrawals did not differentiate between domestic or foreign accounts and therefore, it appears that statements of bank and investment accounts, both foreign and domestic, were included in the calculation of Yusuf Claim No. Y-11. Thus, the Master finds the documents requested in RFPD 30—to wit, tax returns—and RFPD 31—to wit, statements of bank accounts and brokerage accounts, both foreign and domestic—relevant to Hamed’s defense against Yusuf Claim No. Y-11 since this information could help confirm or refute the information used in the calculation of Yusuf Claim No. Y-11.¹⁵ The Master is puzzled as to Hamed’s subsequent withdrawal of RFPD 31 with respect to the domestic accounts in his reply.

¹⁴ See *supra*, footnote 4.

¹⁵ See *supra*, footnote 11.

Accordingly, based on the foregoing, the Master will rule on Hamed's motion to compel as to RFPD 30 and RFPD 31 in the context of Yusuf Claim No. Y-11 as follows: (i) deny as to the non-parties and (ii) grant as to documents requested from a party; the Master will permit Hamed to withdraw the withdrawal language in his reply regarding RFPD 31 that may have been made based on the mistaken assumption that the September 5, 2021 order also pertained to Yusuf Claim No. Y-11. RFPD 30 will be revised as follows: "Please produce copies of all original tax returns filed by United [and] Fathi...from 1986 to date." RFPD 31 will be revised as follows: "Please produce copies of all documents including statements relating to any operating, savings, credit, investment, trust, escrow or other accounts in which United [and] Fathi... 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." Furthermore, if, by including RFPD 31 (domestic assets), Hamed's total number of RFPDs exceeded the maximum allowable under JDSP, the Master will also grant Hamed leave to serve this additional request. *See* JDSP; *see also*, V.I. R. Civ. P. 26(b)(2)(A); V.I. R. Civ. P. 33(a)(1).

3. Interrogatory 35

Hamed's Interrogatory 35 of 50: Substantially the Same as Yusuf ROG 3. Please identify all sources of income for 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 Yusuf's 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 35 that he finds vague or ambiguous. *See Innovative Communications Corp.*, 2007 V.I. LEXIS 77, *9 ("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 35 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 does not find Interrogatory 35 to be compounded questions—to wit, Interrogatory 35 sought information in connection with "all sources of income...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*, 2011 V.I. LEXIS 91, *7 ("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."). 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). Hamed failed to cite to any proper legal authority, statute or rule that allows for interrogatories to be served on non-parties. While Hamed argued

in his reply that “[t]hat this is not discovery of a third person, but, rather, of the Partnership,” Interrogatory 35, as worded, sought information personally from Mike Yusuf, Nejeah Yusuf, and Yusuf Yusuf regarding their respective sources of income. As such, Interrogatory 35 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 35 is directly relevant to his ability to defend Yusuf Claim No. Y-11. Yusuf also noted in his response that “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.” However, Yusuf never addressed why information regarding all sources of incomes would not be relevant to Hamed’s defense against Yusuf Claim No. Y-11. Thus, the Master finds the information sought in Interrogatory 35 regarding “all sources of income...and...the source of all funds for the acquisition of such assets” relevant to Hamed’s defense against Yusuf Claim No. Y-11 since this information could help confirm or refute the information used in the calculation of Yusuf Claim No. Y-11.¹⁶ In his opposition, Yusuf indicated that “[a]ll partnership distributions to Fathi Yusuf (i.e. income from the Partnership) have been identified and thus, there is no need to further compel any discovery as to this Interrogatory [35].” The Master disagrees. Yusuf’s response to Interrogatory 35 only included objections and did not answer Interrogatory 35 “separately and fully in writing under oath” as required under Rule 33. *See* V.I. R. Civ. P. 33(b)(3).

Accordingly, based on the foregoing, the Master will rule on Hamed’s motion to compel as to Interrogatory 35 in the context of Yusuf Claim No. Y-11 as follows: (i) deny as to the non-parties and (ii) grant as to information sought from a party. Interrogatory 35 will be revised

¹⁶ *See supra*, footnote 11.

as follows: “Please identify all sources of income for 1) Fathi... from September 17, 2006 to the date of your response and identify the source of all funds for the acquisition of such assets.”

4. Interrogatory 37

Hamed’s Interrogatory 37 of 50: Substantially the Same as Yusuf ROG 6. Identify all distributions from the Partnership to any member of the Yusuf family or United Corporation from September 17, 2006 to present?

Yusuf’s Response:

Defendants object to this Interrogatory on the grounds that the total number of interrogatories together with their sub parts and other discovery exceeds the maximum allowable number of interrogatories under the JDSP and violates both the spirit and the terms of the JDSP limiting the number of interrogatory questions.

Without waiving any objections, all distributions and supporting documentation are reflected and categorized by each individual Yusuf family member in the BDO Report, Tables 35A through 68. Said Tables and supporting documentation are specifically incorporated by reference as if fully set forth herein as responsive to this interrogatory.

First, Yusuf objected to this interrogatory on the grounds 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.” The Court finds the information sought in Interrogatory 37 regarding “all distributions from the Partnership to any member of the Yusuf family or United Corporation from September 17, 2006 to present” relevant to Hamed’s defense against Yusuf Claim No. Y-11 since this information could help confirm or refute the information used in the calculation of Yusuf Claim No. Y-11.¹⁷ After all, Yusuf Claim No. Y-11 is Yusuf’s claim for the reconciliation of past Partnership withdrawals and distributions based on the lifestyle analysis prepared by Yusuf’s accounting expert Fernando Scherrer of BDO Puerto Rico, P.S.C. As such, if by including Interrogatory 37, Hamed’s total number of interrogatories exceeded the maximum allowable under JDSP, the Master will grant

¹⁷ See *supra*, footnote 11.

Hamed leave to serve this additional request. *See* JDSP; *see also*, V.I. R. CIV. P. 26(b)(2)(A); V.I. R. CIV. P. 33(a)(1). Second, Yusuf noted in his response that “all distributions and supporting documentation are reflected... in the BDO Report.” The Master disagrees. Yusuf’s reference to the BDO Report did not answer Interrogatory 37 “separately and fully in writing under oath” as required under Rule 33. *See* V.I. R. CIV. P. 33(b)(3). Thus, unlike what Yusuf claimed in his opposition, his prior response to Interrogatory 37 was not sufficient and will need to be supplemented. Furthermore, in his opposition, Yusuf also raised the objection that Interrogatory 37 should be limited to the parties of this lawsuit. However, this objection is considered waived because Yusuf failed to timely raise this objection in his response to Interrogatory 37 and Yusuf failed to show good cause for the failure in his reply. *See* V.I. R. CIV. P. 33(b)(4) (“Any ground not stated in a timely objection is waived unless the court, for good cause, excuses the failure.”). Even assuming *arguendo* that this objection was not waived or cannot be waived, the Court finds that Interrogatory 37 sought information from the Partnership and not from any non-parties, and Fathi Yusuf, as the former managing partner of the Partnership and as the current liquidating partner under the Final Wind Up Plan, is qualified to answer Interrogatory 37 on behalf of the Partnership.

Accordingly, based on the foregoing, the Master will rule on Hamed’s motion to compel as to Interrogatory 37 in the context of Yusuf Claim No. Y-11 as follows: (i) grant in the entirety and (ii) order Fathi Yusuf, as the former managing partner of the Partnership and as the current liquidating partner under the Final Wind Up Plan, to answer Interrogatory 37 on behalf of the Partnership. Interrogatory 37 will remain as follows: “Identify all distributions from the Partnership to any member of the Yusuf family or United Corporation from September 17, 2006 to present?”

5. RFPD 26

Request for the Production of Documents, 26 of 50, relates to Y-11, "Lifestyle Analysis." With respect to Y-11, please provide all bank account statements documenting deposits, all brokerage and retirement accounts documenting deposits and all credit card statements in the names of Fathi, Maher, Nejeh and Yusuf Yusuf (individually and any combination of joint accounts between them and all joint accounts with their spouses), from September 17, 2006 to September 30, 2016. Include but do not limit this to:

- All bank account statements documenting deposits or withdrawals
- All brokerage and retirement account statements documenting deposits or withdrawals
- All credit card statements

Yusuf's Response:

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

Defendants further object to this Request 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).

To the extent documents already exist in the records, they may be found within the BDO Report which has been previously provided in the Tables to the BDO Reports and supporting documentation provided to Hamed on October 4, 2016.

First, Yusuf objected to these requests for production of documents because they were directed at non-parties. Here, there is no indication that the non-parties were compelled by subpoena under Rule 45 to produce the documents requested in RFPD 26. *See* V.I. R. CIV. P. 34(c) ("As provided in Rule 45, a nonparty may be compelled to produce documents and tangible things or to permit an inspection."). As such, RFPD 26 will be limited to the parties in this lawsuit. Second, Yusuf objected to this interrogatory because the information sought therein is irrelevant. Meanwhile, Hamed argued in his motion and reply that the documents sought in RFPD 26 are directly relevant to his ability to defend Yusuf Claim No. Y-11. As

noted above, according to the BDO Report and the BDO Summary of Withdrawals, the following items accounted for Yusuf Claim No. Y-11: (i) deposits to bank and brokerage accounts, (ii) payments to credit cards, and (iii) investments (cost) sold as per tax return.”¹⁸ Yusuf noted in his response that “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.” However, Yusuf never addressed why these documents would not be relevant to Hamed’s defense against Yusuf Claim No. Y-11. Thus, the Master finds the documents sought in RFPD 26 regarding “all bank account statements documenting deposits, all brokerage and retirement accounts documenting deposits and all credit card statements” relevant to Hamed’s defense against Yusuf Claim No. Y-11 since this information could help confirm or refute the information used in the calculation of Yusuf Claim No. Y-11.¹⁹ Lastly, Yusuf noted in his response that “[t]o the extent documents already exist in the records, they may be found within the BDO Report” and Yusuf noted in his opposition that “information responsive to this Request...have been identified in the Tables and supporting documentation to the preliminary BDO Report as part of the original response and thus, there is no need to further compel any discovery as to this [Request].” The Master disagrees. Such reference to the BDO Report is not a proper response under Rule 34. *See* V.I. R. Civ. P. 34(b)(2)(B)-(C).

Accordingly, based on the foregoing, the Master will rule on Hamed’s motion to compel as to RFPD 26 in the context of Yusuf Claim No. Y-11 as follows: (i) deny as to the non-parties and (ii) grant as to documents requested from a party. RFPD 26 will be revised as follows: “With respect to Y-11, please provide all bank account statements documenting deposits, all

¹⁸ *See supra*, footnote 4.

¹⁹ *See supra*, footnote 11.

brokerage and retirement accounts documenting deposits and all credit card statements in the names of Fathi... (individually and any combination of joint accounts...), from September 17, 2006 to September 30, 2016.”

II. Non-parties

Although the Master denied Hamed’s motion to compel responses as to non-parties for the following discovery served in connection with Yusuf Claim No. Y-11: Interrogatory 33, RFPD 30, RFPD 31, Interrogatory 35, and RFPD 26, the Master must nevertheless point out that the BDO Report and the BDO Summary of Withdrawals included information from the non-parties in preparing the lifestyle analysis that formed the basis of Yusuf Claim No. Y-11.²⁰ Thus, the Master finds that the non-parties’ information is relevant to Hamed’s defense against Yusuf Claim no. Y-11 since the non-parties’ information were used in the calculation of Yusuf Claim No.Y-11. Accordingly, the Master will order Fathi Yusuf and United to produce all documents either relating to the non-parties or containing the non-parties’ information that Fathi Yusuf and/or United provided to Yusuf’s accounting expert Fernando Scherrer of BDO Puerto Rico, P.S.C. in this matter.

III. Sanctions

In his reply, Hamed requested “sanctions with respect to Interrogatory [sic] 30” and noted that “he will not collect monetary amounts, but the point should be made.” (Reply, p. 7.) It appears that there is a typo, and it should read “RFPD 30” instead of “Interrogatory 30” since Hamed’s motion did not reference Interrogatory 30 but referenced RFPD 30. The Master finds this request problematic. First, Hamed failed to identify the type of sanctions requested. *See* V.I. R. Civ. P. 37(d)(3) (“Sanctions may include any of the orders listed in Rule 37(b)(2)(A)(i)-

²⁰ *See supra*, footnotes 4, 11; *see also*, The BDO Report (Section 5.2.2 “Lifestyle Analysis” – Nejah Yusuf, Section 5.2.3 “Lifestyle Analysis” – Maher Yusuf, Section 5.2.4 “Lifestyle Analysis” – Yusuf Yusuf, Section 5.2.5 “Lifestyle Analysis” – Najat Yusuf, and Section 5.2.6 “Lifestyle Analysis” – Zayed Yusuf.)

(vi). Instead of or in addition to these sanctions, the court must require the party failing to act, the attorney advising that party, or 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.”²¹ Second, this request for sanction was not included in Hamed’s motion, and Yusuf should not be ambushed by such a request without the opportunity to respond. As such, the Master will deny Hamed’s request for sanctions as to RFPD 30.

CONCLUSION

Based on the foregoing, the Master will grant in part and deny in part Hamed’s motion to compel responses to discovery served in connection with Yusuf Claim No. Y-11 and order Fathi Yusuf and United to file supplemental responses. Accordingly, it is hereby:

ORDERED that Hamed’s motion to compel as to Interrogatory 33 in the context of Yusuf Claim No. Y-11 is **DENIED** as to the non-parties, **DENIED** as to information sought that does not pertain to Yusuf Claim No. Y-11—“real estate, interests in business ventures and other financial interests,” and **GRANTED** as to information sought from a party that pertains to Yusuf Claim No. Y-11. Interrogatory 33 shall be revised as follows:

“Please identify any and all assets including bank accounts (indicating account number and name of bank) [and] brokerage accounts..., foreign and domestic, owned by...Fathi...*from September 17, 2006 to the date of your response* and identify the source of all funds for the acquisition of such assets.”

²¹ Sanctions under Rule 37(b)(2)(A)(i)-(vi) includes:

- (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;

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

It is further:

ORDERED that the limiting language in Hamed's motion and the withdrawal language in Hamed's reply regarding Interrogatory 33 are **DEEMED WITHDRAWN**. It is further:

ORDERED that Hamed's motion to compel as to RFPD 30 and RFPD 31 in the context of Yusuf Claim No. Y-11 is **DENIED** as to the non-parties and **GRANTED** as to documents requested from a party. RFPD 30 and RFPD 31 shall be revised as follows, respectively:

"Please produce copies of all original tax returns filed by United [and] Fathi...from 1986 to date."

"Please produce copies of all documents including statements relating to any operating, savings, credit, investment, trust, escrow or other accounts in which United [and] Fathi... 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."

It is further:

ORDERED that the withdrawal language in Hamed's reply regarding RFPD 31 is **DEEMED WITHDRAWN**. It is further:

ORDERED that Hamed's motion to compel as to Interrogatory 35 in the context of Yusuf Claim No. Y-11 is **DENIED** as to the non-parties and **GRANTED** as to information sought from a party. Interrogatory 35 shall be revised as follows:

"Please identify all sources of income for 1) Fathi... from September 17, 2006 to the date of your response and identify the source of all funds for the acquisition of such assets."

It is further:

ORDERED that Hamed's motion to compel as to Interrogatory 37 in the context of Yusuf Claim No. Y-11 is **GRANTED**. Interrogatory 37 shall remain as follows:

"Identify all distributions from the Partnership to any member of the Yusuf family or United Corporation from September 17, 2006 to present?"

It is further:

ORDERED that Fathi Yusuf, as the former managing partner of the Partnership and as the current liquidating partner under the Final Wind Up Plan, shall **ANSWER** Interrogatory 37 on behalf of the Partnership. It is further:

ORDERED that Hamed's motion to compel as to RFPD 26 in the context of Yusuf Claim No. Y-11 is **DENIED** as to the non-parties and **GRANTED** as to documents requested from a party. RFPD 26 shall be revised as follows:

“With respect to Y-11, please provide all bank account statements documenting deposits, all brokerage and retirement accounts documenting deposits and all credit card statements in the names of Fathi... (individually and any combination of joint accounts...), from September 17, 2006 to September 30, 2016.”

It is further:

ORDERED that leave is **GRANTED** for Hamed to serve the following additional interrogatories and request: Interrogatory 33 (domestic assets), Interrogatory 37, and RFPD 31 (domestic assets). It is further:

ORDERED that Hamed's request for sanctions with respect to RFPD 30 is **DENIED**.


It is further:

ORDERED that, **within sixty (60) days from the date of entry of this Order**, Fathi Yusuf and/or United shall file supplemental responses to Interrogatory 33 (foreign assets), Interrogatory 33 (domestic assets), Interrogatory 35, Interrogatory 37, RFPD 26, RFPD 30, RFPD 31 (foreign assets), and RFPD 31 (domestic assets). It is further:

ORDERED that Fathi Yusuf and United **MUST ANSWER** the aforementioned interrogatories and RFPDs in compliance with the Virgin Islands Rules of Civil Procedure; Fathi Yusuf and United **CANNOT** answer by reference. More specifically, Fathi Yusuf and United **CANNOT USE** the BDO Report in lieu of his/its answers but can use the BDO Report to support his/its answers. **And** it is further:

ORDERED that within sixty (60) days from the date of entry of this Order, Fathi Yusuf and United shall **PRODUCE** all documents either relating to the non-parties or containing the non-parties' information that Fathi Yusuf and/or United provided to Yusuf's accounting expert Fernando Scherrer of BDO Puerto Rico, P.S.C. in this matter.

DONE and so **ORDERED** this 17th day of March, 2022.


EDGARD. ROSS
Special Master