

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-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-10: reconciliation of past Partnership withdrawals and distributions (hereinafter “Yusuf Claim No. Y-10”), filed on August 2, 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 2017.³ 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 (Yusuf Claim No. Y-10). In support of Yusuf Claim No. Y-10, Yusuf attached, *inter alia*, the following documents to Yusuf’s Amended Accounting 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

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 Yusuf Claim No. Y-10 falls within the scope of the Master’s report and recommendation given that Yusuf Claim No. Y-10 is related to the distribution of Partnership assets.

² The relevant factual background of Yusuf Claim No. Y-10 was recounted in more depth in the February 21, 2022 order denying Hamed’s July 31, 2021 ministerial motion for Yusuf Claim No. Y-10.

³ On July 25, 2017, the Court entered a memorandum opinion and order limiting accounting (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.

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

On August 2, 2021, Hamed filed this instant motion.

On July 12, 2022, the Master entered an order whereby the Master ordered that : (i) “the account closure proceeds—\$88,711.00 and \$89,392.00—**SHALL PROCEED** as part of

⁴ The BDO Summary of Withdrawals included the following items, which were calculated separately for the Hameds and the Yusufs:

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

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

A simplified version of the BDO Summary of Withdrawals is reproduced here—to wit, (i) the “Lifestyle Analysis” portion of the summary is not included since it is not included in Yusuf Claim No. Y-10, (ii) 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) in the summary are not included and instead, only the columns with the total for the Hameds, the total for the Yusufs, and the differences are included.

Yusuf Claim No. Y-12”; (ii) the weddings gifts—\$3,000,000—**SHALL PROCEED** as part of Hamed Claim No. Y-151”; (iii) “Hamed’s claim for reimbursement from the Partnership for the attorney’s fees and accounting fees that Waleed Hamed and Waheed Hamed personally paid in *United States of America v. United, et al.*, Case No. 1:05-cr-00015—\$332,900.42—**SHALL CONTINUE TO PROCEED** as Hamed Claim No. H-17”; and (iv) Yusuf shall file an amended summary of withdrawals prepared by Yusuf’s accounting expert Fernando Scherrer of BDO Puerto Rico, P.S.C reflecting [certain] changes.”⁵

On July 28, 2022, Yusuf filed an amended BDO Summary of Withdrawals.

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.

⁵ The following changes were ordered:

- (i) **DEDUCT** \$88,711.00 from \$1,778,103.00 currently listed under Waleed Hamed for the item “amount owed by Hamed family to Yusuf as per agreement before raid Sept 2001...”;
- (ii) **DEDUCT** \$89,392.00 from \$1,778,103.00 currently listed under Waleed Hamed for the item “amount owed by Hamed family to Yusuf as per agreement before raid Sept 2001...”;
- (iii) **REMOVE** \$1,500,000.00 listed under Mohammad Hamed for the item “funds received from partnership through checks” and **REPLACE** with \$0 so that the total for the Hameds for the item “funds received from partnership through checks” equals \$0;
- (iv) **DEDUCT** \$1,500,000.00 from \$4,284,706.25 listed under Fathi Yusuf for the item “funds received from partnership through checks”;
- (v) **REMOVE** the amounts listed under Waleed Hamed and Waheed Hamed for the item “payments to attorneys with partnership’s funds” and **REPLACE** with \$332,900.42 under Waleed Hamed and Waheed Hamed jointly for the said item so that the total for the Hameds for the item “payments to attorneys with partnership’s funds” equals \$332,900.42;
- (vi) **REMOVE** the amounts listed under Fathi Yusuf, NejeH Yusuf, and Maher Yusuf for the item “payments to attorneys with partnership’s funds” and **REPLACE** with \$0 under Fathi Yusuf, NejeH Yusuf, and Maher Yusuf for the said item so that the total for the Yusufs for the item “payments to attorneys with partnership’s funds” equals \$0; and
- (vii) **RECALCULATE** the totals for the Hameds and the Yusufs, and the differences between them based on the amendments.

(July 12, 2022 Order.)

R. CIV. P. 37(a) and 37.1(a).⁶ 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).”⁷ V.I. R. CIV. P. 37(d)(2).

⁶ 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).

⁷ Rule 37(d)(1)(A) describes the following failures:

(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).

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-10—to wit, Interrogatory 49, RFPD 23, RFPD 24. (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. 2; Id-Exhibit 3-Letter from Carl J. Hartmann III, Esq. to Charlotte Perrell, Esq., dated October 31, 2018; Exhibit 4-Letter from Carl J. Hartmann III, Esq. to Charlotte Perrell, Esq., dated November 28, 2018.)

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 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 49, RFPD 23, and RFPD 24

In his motion, Hamed made the following assertions in support of his request to compel responses to interrogatory and RFPDs: (1) As to Interrogatory 49—“Interrogatory 49 directly relates to information needed by Hamed to defend against this claim”—to wit, “[t]he first part of the interrogatory questions why, on the Yusuf side of the ledger, there is only one withdrawal in the amount of \$2,000 for the entire Yusuf family for an eight-year period from 2006-2014” and “[t]he second part of the interrogatory references ‘why is the amount listed as owed by Waleed Hamed \$1,778,103 rather than the \$1,600,000 that has always been discussed and is listed in the August 15, 2012 letter referenced on Exhibit J-2.’”⁸ (Motion, pp. 7-8); (2) As to

⁸ In his motion, Hamed indicated that:

In a September 24, 2018 Order, the Special Master struck the \$1.6 million in withdrawals subsequent to the time the BDO J-2 chart was prepared. Removing the \$1.6 million leaves a remaining total of either \$178,103.00 (the BDO amount) or \$89,051.50, the total amount of the two foreign bank accounts. Whichever is correct, Hamed needs to know for his defense which number Yusuf believes is correct and an explanation and support for how that number was derived.

(Motion, p. 8.)

However, that is not a complete description of the ruling as to \$1,600,000. As the Master explained in the February 21, 2022 order:

...as to the amount of \$1,600,000.00, while Hamed correctly noted that the Master “dismissed a \$1.6 million claim by Yusuf [on] 9/24/2018,” Hamed failed to acknowledge the September 18, 2019 Order, which specifically stated that the Limitations Order only applies to “claimed credits and charges to partner accounts, within the meaning of 26 V.I.C. § 71(a),” and “[a]s such, the Master’s prior finding that Yusuf’s claim for \$1,600,000.00 was barred by the Limitations Order does not automatically bar \$1,600,000.00 as a set off.” (Id., at p. 16, n. 9.)

(Feb. 21, 2022 Order, pp. 8-9) (footnote omitted.)

RFPD 23-(i) “The previously provided tables absolutely did not explain and document the amount.” (Id., at p. 4); (ii) “BDO does not provide documentation for [\$237,352.75] in the charts or flash drive it produced at the time of the original report on September 30, 2016” and all the support documents for [\$237,352.75] “predates the September 17, 2006 cutoff date described in [the Limitations Order].” (Id., at p. 9); and (3) RFPD 24-(i) “Yusuf’s answer was clearly and demonstrably false” because “[t]he BDO reports absolutely did not show any supporting data for the \$20,311.00 in “[p]ayments to third parties on behalf of Hamed/Yusuf with partnership funds either with tickets or checks.” (Id., at p. 5); and (ii) “BDO does not provide documentation for [\$20,311.00] in the charts or flash drive it produced at the time of the original report on September 30, 2016” and all the support documents for [\$20,311.00] “predates the September 17, 2006 cutoff date described in [the Limitations Order].” (Id., at p. 9.)

In his opposition, Yusuf made the following assertions in support of his argument for the Master to deny Hamed’s motion: (i) Every table and every single supporting document [for the BDO Summary of Withdrawals] was saved, all of the information was produced to Hamed in September and October of 2016.” (Opp., at p. 2); and (ii) In the Supplementation Provided, Yusuf shows that he simply directed Hamed to information that he had already provided to him years before” and “there is no basis for an Order to Compel.” (Id., at pp. 2-3)

In his reply, Hamed made the following assertions in response to Yusuf’s opposition:⁹
(1) As to Interrogatory 49-“Yusuf has again failed to sign off on this interrogatory response as required by Rule 33(b)(5) of the Virgin Islands Rules of Civil Procedure.” (Reply, p. 6)

⁹ As to Interrogatory 49 and RFPD 23, Hamed argued in the reply that the BDO Summary of Withdrawals did not comply with the Limitations Order and requested that the Master order the BDO Summary of Withdrawals to be updated to comply with the Limitations Order and to reflect the actual amount being claimed for Y-10 so Hamed knows what he is defending. (Opp., pp. 5, 7.) However, this request goes beyond the scope of Hamed’s motion to compel discovery responses and is therefore, improperly included in his reply without giving Yusuf an opportunity to respond. As such, the Master will deny without prejudice Hamed’s request, but Hamed may raise this request in a separate motion.

(emphasis omitted); and (2) As to RFPD 24-(i) “No documents on November 19, 2021 were produced by Yusuf to substantiate the remaining \$9,161.00 (or if they were, Hamed is at a loss to discern which documents they are).” (Id., at p. 7); (ii) “Yusuf says that the documents were provided as a part of the original BDO production, but Hamed can’t identify them [and] Hamed has no way of telling from the BDO chart which documents relate to the \$9,161.00.” (Id.); (iii) “BDO and Yusuf have not provided any information about the receipts/tickets that might help Hamed identify the documents corresponding to the remaining \$9,161.00: e.g., the amount of each individual ticket, the ticket number or to whom the payment was made.” (Id., at pp. 7-8); and (iv) “Yusuf references Table 9B as a clue to the remaining undated entries [bu]t [t]his is spectacularly unhelpful as Table 9B does not contain any undated entries.” (Id., at p. 8.)

1. Interrogatory 49

Hamed’s Interrogatory 49 of 50:

With regard to the post September 17, 2006 claims in Y-10, and more specifically your "J-2" Exhibit to Yusuf’s Amended Accounting Claims Limited to Transactions Occurring on or after September 17, 2006, dated October 30, 2017, explain in detail with reference to witnesses, documents, dates and amounts, why the claim and referenced exhibit reflect the following: there appears to be only one \$2,000 amount (Maher) for withdrawals from the Partnership with a signed ticket/receipt and payments to third parties on behalf of Hamed/Yusuf with partnership funds for the Yusufs during the entire eight year period between 2006 and 2014 – where are all of those amounts; also, with regard to the attorney’s fees in BDO Table 38A you list five attorney’s fees checks as credits to Hamed—explain in detail why did you not include the four checks in BDO Table 38B as similar credits; also, why is the amount listed as owed by Waleed Hamed \$1,778,103 rather than the \$1,600,000 that has always been discussed and is listed in the August 15, 2012 letter referenced on Exhibit J-2?¹⁰

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.

Without waiving any objections as to this Interrogatory, after the ruling from Judge Brady limiting the partnership accounting from September 17, 2006 through the present

¹⁰ In his motion, Hamed indicated that he withdrew “his request regarding the attorney’s fees checks here but may request further, limited discovery, as that matter will be handled, by joint agreement of the parties, in a separate summary judgment motion by the parties.” (Motion, p. 3, note 1.)

(the "Limitation Order"), BDO revised the Summary Table filed with Yusuf's Amended Claims as Exhibit J-2 to eliminate those allocations prior to this time limitation, except for those relating to the acknowledged debt and receipts as of the time of the raid as set forth in the August 15, 2012 letter. All of the originally produced corresponding tables were not updated to reflect the removal of the allocations following the issuance of the Limitation Order. All of the supporting documentation is set forth in the J-1 flashdrive that was provided to Hamed on October 4, 2016. (Exhibit 2)

Yusuf's Supplemental Response:

Yusuf provides this supplemental responses but shows that the original documentation was provided to Hamed on October 4, 2016, when Yusuf's Amended Accounting Claims and exhibits were filed and as explained in Yusuf's original responses to this discovery filed on May 15, 2018.

To eliminate any confusion, the information is again reproduced here:

1. Maher \$2,000:

As to the \$2,000 listed in the BDO Revised Summary (J-2) under Maher Yusuf, a review of Tables accompanying the BDO Report reflect, as to funds received by the partners pursuant to a receipt or ticket, each was chronicled in a Table and a copy of the Supporting Documentation included in a series of folders, per family member. As to Maher, Table 50B – reflects a list of any funds received by Maher from the Partnership from October 2001 to 2012. (BDO had originally divided the tables into two timeframes according to years: Time Period 1 - 1994 -2001 (inception of the partnership to time of the FBI raid), and Time Period 2 - 2001 to 2012 (FBI Raid and period of the Federal Monitors until 2012 when the partnership ended). After 2012, the partnership accounting information was taken over by John Gaffney and provided to both partners.

Table 50B – reflect that there was only one receipt in 2012 for Maher. The actual receipt was included in the folders for Maher. The actual receipt from that folder (also provided back in October of 2016) is attached hereto.

Hence, this is the only information that BDO had as to any funds received from Maher after September 17, 2006 – the period designated by Judge Brady as the cut off point. The fact that there were minimal receipts after the 2001 FBI raid is not surprising because of the existence of the Federal Monitors at the Stores.

As to other members of the Yusuf families, a review of the Tables provided indicates that after the FBI Raid there were no additional funds received via a "receipt."

The same is true for the Hamed families, no one has "receipts" after 2006. A review of their Tables indicates a few receipts in the year or so shortly after the raid (i.e. before the Monitors were in place), but almost none in 2003 and certainly none after 2006.

2. Waleed \$237,352.75

As to the \$237,352.75 which remains in the Waleed column for receipts, that amount was left in the table because it relates to the overall accounting relating to Mr. Yusuf's removal of the \$2,784,706. The amount reflects certain receipts which accompanied the August 15, 2012 letter. While these amounts were prior to the September 17, 2006

timeframe, they were kept in the chart as the withdrawal by Yusuf straddled the cut off date. The Table 8B and receipts relating thereto are again reproduced here (although previously produced in October 2016). These documents satisfy RTP 23.

First, Yusuf objected to this interrogatory as vague and ambiguous. However, Yusuf did not expressly identify the language in Interrogatory 48 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 49 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 49 to be compounded questions—to wit, Interrogatory 49 sought information for “witnesses, documents, dates and amounts” in connection with the BDO Summary of Withdrawals, 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.”). Lastly, Yusuf referenced the BDO Report and the BDO Summary of Withdrawals and indicated that they were previously produced. However, the BDO Report and the BDO Summary of Withdrawals were prepared by Yusuf’s accounting expert Fernando Scherrer of BDO Puerto Rico, P.S.C., and thus, they do not qualify as responses prepared by Yusuf. Under Rule 33, “[t]he interrogatories must be answered: by the party to whom they are directed.” V.I.

R. CIV. P. 33(b)(1)(A). Here, since Interrogatory 49 was directed at Yusuf, Interrogatory 49 must be answered by Yusuf. Accordingly, based on the foregoing, the Master will rule on Hamed's motion to compel as to Interrogatory 49 as follows: (i) grant in the entirety and (ii) order Yusuf to respond to Interrogatory 49 "separately and fully in writing under oath" and sign the answers as required under Rule 33. *See* V.I. R. CIV. P. 33(b)(3) and (5).

2. RFPD 23 and RFPD 24

Hamed's RFPD 23 of 50:

Request for the Production of Documents, 23 of 50, relates to Y-10, "Past Pship Withdrawals – Receipts."

With respect to Y-10, please provide all documents substantiating the alleged \$237,352.75 in "[w]ithdrawals from the partnership with a signed ticket/receipt" by Waleed Hamed, as referenced on the revised BDO Exhibit J-2, titled "Summary calculation of Additional Income as a result of withdrawals from Supermarkets' accounts (or partnership's accounts) - January 1994 to August 2014. (Including adjustments for withdrawals before 9/17/2006 as instructed by the Court)," attached to Yusuf's Amended Accounting Claims Limited to Transactions Occurring On or After September 17, 2001, filed on October 30, 2017.

Yusuf's Response:

All documents supporting has been previously provided in the Tables to the BDO Reports and supporting documentation provided to Hamed on October 4, 2016.

Hamed's RFPD 24 of 50:

Request for the Production of Documents, 24 of 50, relates to Y-10, "Past Pship Withdrawals – Receipts."

With respect to Y-10, please provide all documents substantiating the alleged \$20,311.00 in "[p]ayments to third parties on behalf of Hamed/Yusuf with partnership funds either with tickets or checks" by Waleed Hamed, as referenced on the revised BDO Exhibit J-2, titled "Summary calculation of Additional Income as a result of withdrawals from Supermarkets' accounts (or partnership's accounts) - January 1994 to August 2014. (Including adjustments for withdrawals before 9/17/2006 as instructed by the Court)," attached to Yusuf's Amended Accounting Claims Limited to Transactions Occurring On or After September 17, 2001, filed on October 30, 2017. (Exhibit 5)

Yusuf's Response:

All documents supporting has been previously provided in the Tables to the BDO Reports and supporting documentation provided to Hamed on October 4, 2016.

Yusuf's Supplemental Response:

Yusuf provides this supplemental response but shows that the original documentation was provided to Hamed on October 4, 2016 when Yusuf's Amended Accounting

Claims and exhibits were filed and as explained in Yusuf's original responses to this discovery filed on May 15, 2018.

The \$20,311.00 is comprised of the funds listed in Table 9A for which there is no date. See attached bracketed portions) [sic] and Table 9B. The actual documentation is set forth in the Supporting Documentation provided on October 2016, previously provided.

The Master must point out that, while Yusuf claimed that he had previously produced all the documents related to the BDO Report and the BDO Summary of Withdrawals in September and October of 2016, the production of documents in 2016 was obviously not in response to RFPD 23 or RFPD 24, which were not propounded until February 25, 2018. RFPD 23 requested the production of specific documents "substantiating the alleged \$237,352.75" in Yusuf Claim No. Y-10 and RFPD 24 requested the production of specific documents "substantiating the alleged \$20,311.00" in Yusuf Claim No. Y-10. Even though it is likely that the responsive documents to RFPD 23 and RFPD 24 were included in the 2016 document production, but they would be commingled with other non-responsive documents. Thus, when Yusuf's responses to RFPD 23 and RFPD 24 simply stated that the documents were previously produced in the 2016 document production, the Master finds that that production did not comply with the requirements of Rule 34(b)(2)(E)(i). *See* V.I. R. CIV. P. 34(b)(2)(E)(i) ("Unless otherwise stipulated or ordered by the court, these procedures apply to producing documents or electronically stored information: (i) A party must produce documents as they are kept in the usual course of business or must organize and label them to correspond to the categories in the request...).

However, as for RFPD 23, it appears that Yusuf produced the documents requested in RFPD 23 with its supplemental response—to wit, Yusuf indicated in his supplemental response to Interrogatory 49 that "[t]he Table 8B and receipts relating thereto are again reproduced here (although previously produced in October 2016) [and] "[t]hese documents satisfy RTP 23." As such, the Master finds that Yusuf has completed production in response to RFTP 23. While

Hamed argued that “[t]he previously provided tables absolutely did not explain and document the amount,” Rule 34 does not require the respondent of a request for production to explain the contents of the documents and Hamed failed to cite to any proper legal authority, statute, or rule to support his argument. *See* V.I. R. CIV. P. 34(b)(2)(B) (“For 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. The responding party may state that it will produce copies of documents or of electronically stored information instead of permitting inspection.”). Nevertheless, in the event that Hamed can identify the specific documents responsive to RFPD 23 he believes are being withheld, Hamed may file another motion to compel. Accordingly, based on the foregoing, the Master will rule on Hamed’s motion to compel as to RFPD 23 as follows: denied without prejudice.

Meanwhile, as for RFPD 24, Yusuf did not produce the documents requested in RFPD with its supplemental responses. Instead, Yusuf’s supplemental responses again referred to the 2016 document production. Based on Hamed’s representation that he cannot identify the responsive documents to RFPD 24 from the documents produced in the 2016 document production, the Master will order Yusuf to produce documents responsive to RFPT 24 in compliance with the requirements of Rule 34(b)(2)(E)(i). While Hamed argued that “[n]o explanation was given for the remaining \$9,161.00,” Rule 34 does not require the respondent of a request for production to explain the contents of the documents and Hamed failed to cite to any proper legal authority, statute, or rule to support his argument. *See* V.I. R. CIV. P. 34(b)(2)(B). Accordingly, based on the foregoing, the Master will rule on Hamed’s motion to compel as to RFPD 24 as follows: grant in the entirety.

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-10. Accordingly, it is hereby:

ORDERED that Hamed's motion to compel as to his request for the BDO Summary of Withdrawals to be updated to comply with the Limitations Order is **DENIED WITHOUT PREJUDICE**. It is further:

ORDERED that Hamed's motion to compel as to Interrogatory 49 is **GRANTED**. It is further:


ORDERED that Hamed's motion to compel as to RFPD 23 is **DENIED WITHOUT PREJUDICE**. It is further:

ORDERED that Hamed's motion to compel as to RFPD 24 is **GRANTED**. It is further:

ORDERED that, **within thirty (30) days from the date of entry of this Order**, Fathi Yusuf and/or United shall file a supplemental response to Interrogatory 49 and produce documents responsive to RFPD 24. It is further:

ORDERED that Fathi Yusuf and United **MUST RESPOND** to Interrogatory 49 and RFPD 24 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.

DONE and so ORDERED this 1st day of August, 2022.


EDGAR D. ROSS
Special Master