

**FILED**

September 17, 2024 12:28 PM  
SX-2016-CV-00650  
TAMARA CHARLES  
CLERK OF THE COURT

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

**HISHAM HAMED, INDIVIDUALLY, AND  
DERIVATIVELY ON BEHALF OF SIXTEEN  
PLUS CORPORATION,**

PLAINTIFF,

v.

**FATHI YUSUF, ISAM YOUSUF, AND  
JAMIL YOUSUF,**

DEFENDANTS,

v.

**SIXTEEN PLUS CORPORATION,**

NOMINAL DEFENDANT.

**Civil Case No. SX-2016-CV-650**

DERIVATIVE SHAREHOLDER SUIT,  
ACTION FOR DAMAGES AND CICO  
RELIEF

**JURY TRIAL DEMANDED**

**CONSOLIDATED CASES: Civil Case No. SX-2017-CV-342; Civil Case No. SX-2016-CV-065; Civil Case No. SX-2016-CV-650**

**ORDER OF THE SPECIAL MASTER**<sup>1</sup>

**THIS MATTER** came before the Special Master (hereinafter “Master”) on Hisham Hamed’s (hereinafter “HH”) final notice to the Master regarding his November 23, 2022 second motion to compel: as to Bank Account Documents in the Control of Isam Yousuf (hereinafter “IY”), filed on August 26, 2024.<sup>2</sup>

**BACKGROUND**

On June 14, 2024, the Master entered an order whereby he ordered, *inter alia*, that IY’s February 3, 2023 opposition to HH’s November 23, 2022 motion stricken from the record<sup>3</sup> and that HH and IY shall meet and confer in good faith in compliance with Rule 37 and Rule 37-1 of the Virgin Islands Rules of Civil Procedure (hereinafter “Rule 37” and Rule 37-1,” respectively)

<sup>1</sup> On August 10, 2023, the Court entered an order in the three consolidated cases—*Sixteen Plus Corp. v. Yousef*, Civil Case Number SX-2016-CV-065 (hereinafter “065 Case”), *Hamed v. Yusuf, et al.*, Civil Case Number SX-2016-CV-650 (hereinafter “650 Case”), and *Yousef v. Sixteen Plus Corp.*, Civil Case Number SX-2017-CV-342 (hereinafter “342 Case”)—whereby the Court appointed the undersigned as the special master in these consolidated cases to address all pretrial matters and any other matters agreed upon by the parties. (Aug. 10, 2023 Order.)

<sup>2</sup> As the caption above indicates, this Order is specific to the 650 Case, and thus, unless specified otherwise, all the filings and orders referenced herein pertain only to the 650 Case.

<sup>3</sup> In the June 14, 2024 order, the Master pointed out: (i) IY filed two separate opposition to HH’s November 23, 2022 motion: the first opposition was filed on December 22, 2022, and the second opposition was filed—after HH filed his December 26, 2022 reply to IY’s first opposition—on February 3, 2023; and (ii) IY’s second opposition was filed without leave of the Court and thus improper. See V.I. R. CIV. P. 6-1(c) (“Only a motion, a response in opposition, and a reply may be served on other parties and filed with the court; further response or reply may be made only by leave of court obtained before filing. Parties may be sanctioned for violation of this limitation.”). Thus, the Master struck from the record IY’s second opposition and only consider IY’s first opposition.

as to the issues raised in HH's November 23, 2022 second motion to compel.<sup>4</sup> (June 14, 2024 Order.)

On August 26, 2024, HH filed a final notice whereby he advised that HH and IY have met and conferred regarding the issues raised in HH's November 23, 2022 second motion to compel but have been unable to resolve their differences. (Notice 1.) Thus, HH requested the Master to order IY to send "the requested letter with the two attachments (the subpoena and response) to the authorities in St. Martin." (Id., at 1-2.) The following documents were attached to the notice: (i) proposed letter for IY to execute and send to "SRPJ Antilles-Guyane" and "Banque Francaise Commerciale";<sup>5</sup> (ii) St. Martin Judicial Subpoena, dated June 7, 2004; and (iii) Letter from "Banque Francaise Commerciale" and "SRPJ Antilles-Guyane," dated July 3, 2002.

### **STANDARD OF REVIEW**

Rule 37 governs the scope and procedure of motion for an order compelling disclosure or discovery. Rule 37 provides that "[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). Rule 37 also provides that "[f]or 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).

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<sup>4</sup> In the June 14, 2024 order, the Master pointed out: (i) There was no indication that HH and IY met and conferred in person, telephonically, or by video conferencing; (ii) Rule 37-1 clearly states that "[m]ail or e-mail exchanges are not sufficient" to satisfy the good faith negotiation requirement and mandates that, "[t]o the extent practicable, counsel are encouraged to meet in person at a mutually convenient location" and "[i]f, in the consideration of time and/or resources, counsel agree that meeting in person is not practicable, the conference may take place telephonically or by video conferencing." V.I. R. CIV. P. 37-1(c)(2). Thus, in the interest of conserving judicial resources, the Master ordered HH and IY to meet and confer in compliance with Rule 37 and Rule 37-1.

<sup>5</sup> The proposed letter stated in relevant part:

Dear Sir or Madam:

This letter requests, and authorizes you to send to the following address, all documents relating to accounts in the name of a past customer of BFC, Isam Yousuf and/or Island Appliances for the years 1996 through 2000. I am attaching two documents that describe an official, governmental request for such documents to BFC, and the transmission of those documents to the police and prosecutor.

We will, of course, pay any expenses such as search time, copying, packing and mail.

(Notice, Attachment-Proposed Letter.)

## DISCUSSION

The Master finds that HH and IY have met and conferred in good faith in compliance with Rule 37 and Rule 37-1. Given that the issues remain unresolved, the Master will address HH's November 23, 2022 second motion to compel.

In his second motion to compel, HH moved to compel IY to “identify his bank accounts and provide his 1990-1997 statements—or, alternatively, to provide a letter allowing opposing counsel to obtain them, and to bear all expenses.” (Motion 1.) HH made, *inter alia*, the following assertions in support of his motion: (i) IY's attorney's November 7, 2022 letter stated that “the funds in these accounts [were] the source of the alleged loan from [IY's] sister, Manal...” (Motion 1-2); (ii) IY's July 19, 2017 responses to HH's First Request for Interrogatories stated that “those allegedly loaned funds were deposited into [IY's] account by his (and Manal's) father, Mohammad, slowly over a period of more than seven years.” (Id., at 2); (iii) “[IY] repeatedly references these accounts and relies on assertions about the source of funds in his bank accounts as his defense...the account descriptions and the statements should have been provided...” (Id., at 2-3); (iv) “There is no countervailing cost or burden on Isam as (1) Hamed has retained local counsel on St. Martin and will bear the costs of locating, obtaining and duplicating the documents from the bank, the police and/or the prosecutor, and (2) has agreed herein to limit the requests other than those to [Banque Francaise Commerciale] to ‘gift’ deposits.” (Id., at 19.) Thus, HH moved for “an order directing Isam to answer Hamed's Interrogatories 2, 3 and 4, and RFPD 1, 14 and 17; and to provide a letter informing [Banque Francaise Commerciale], the [St. Martin prosecutor's office] and [the St. Martin Judicial Police] of his permission for opposing counsel to obtain the records [of the accounts of IY and Island Appliances for the period from 1990 through the end of 1997].” (Id.; Proposed Order.)

In his opposition, IY asserted: (i) “[He] has already responded to a written request for this information by indicating that he does not have these records in his possession, custody, or control.” (Opp. 1); (ii) “The business in question is no longer in operation, and has not been for more than twenty (20) years, which explains why production of the records is not possible by him, and not required by Rule 34(a)(1) of the Virgin Islands Rules of Civil Procedure.” (Id., at 1-2); (iii) “The unbelievable request in this case is not just to look at bank records in St. Maarten, but to permit the police and prosecutors in St. Maarten to conduct this undertaking or to in any way be involved in a document production in a civil lawsuit.” (Id., at 3); and (iv) “[F]ive years ago Isam

Yousuf made his own requests to the bank for copies of records relevant to the issues in this litigation [and] [h]e was eventually notified that the bank has no such records in its possession, and as a consequence he is unwilling, and should not be compelled, to execute an authorization for others to search for records which do not exist.” (Id., at 3-4.)

In his reply, HH responded to IY’s assertions. More specifically, HH stated that “[his] counsel...sent an extensive response reassuring him that [HH] wanted no police records or investigative reports—only access to the police copy of those identical BFC bank records being sought from BFC—in the event BFC did not retain them” and that “criminal issues on St. Martin related to Isam’s own 1996-2004 bank statements would be long stale—and reaffirmed Hamed’s written representations to this Court, confirming a total lack of interest in a criminal prosecution.” (Reply 5). HH reiterated that his motion should be granted.

#### **A. Standard of Review**

Rule 33 of the Virgin Islands Rules of Civil Procedure (hereinafter “Rule 33”) provides that “[u]nless otherwise stipulated or ordered by the court, a party may serve on any other party no more than 25 written interrogatories, including all discrete subparts” and “[l]eave to serve additional interrogatories may be granted to the extent consistent with Rule 26(b)(1) and (2).” V.I. R. CIV. P. 33(a)(1). Rule 33 further provides that “[a]n interrogatory may relate to any matter that may be inquired into under Rule 26(b)” and that “[a]n interrogatory is not objectionable merely because it asks for an opinion or contention that relates to fact or the application of law to fact, but the court may order that the interrogatory need not be answered until designated discovery is complete, or until a pretrial conference or some other time.” V.I. R. CIV. P. 33(a)(2). Rule 33 requires that “[e]ach interrogatory must, to the extent it is not objected to, be answered separately and fully in writing under oath.” V.I. R. CIV. P. 33(b)(3). Rule 33 also requires that “[t]he grounds for objecting to an interrogatory must be stated with specificity” and “[a]ny ground not stated in a timely objection is waived unless the court, for good cause, excuses the failure.” V.I. R. CIV. P. 33(b)(4). Rule 33 further requires that “[t]he person who makes the answers must sign them, and the attorney or self-represented party who objects must sign any objections.” V.I. R. CIV. P. 33(b)(5).

Rule 34 of the Virgin Islands Rules of Civil Procedure (hereinafter “Rule 34”) permits a party to serve on any other party requests for production of documents or tangible things to inspect and requests for entry within the scope of Rule 26(b). V.I. R. CIV. P. 34(a). Rule 34 requires that

“[t]he request: (A) must describe with reasonable particularity each item or category of items to be inspected; (B) must specify a reasonable time, place, and manner for the inspection and for performing the related acts; and (C) may specify the form or forms in which electronically stored information is to be produced.” V.I. R. CIV. P. 34(b)(1). Rule 34 also requires that “[f]or each item or category, the response must either state that inspection and related activities will be permitted as requested or state with specificity the grounds for objecting to the request, including the reasons” and “the responding party may state that it will produce copies of documents or of electronically stored information instead of permitting inspection [with] [t]he production must then be completed no later than the time for inspection specified in the request or another reasonable time specified in the response.” V.I. R. CIV. P. 34(b)(2)(B). Rule 34 further requires that “[a]n objection must state whether any responsive materials are being withheld on the basis of that objection with sufficient particularity to identify what has been withheld” and “[a]n objection to part of a request must specify the part and permit inspection of the rest.” V.I. R. CIV. P. 34(b)(2)(C).

### **B. Analysis**

The Master notes at the outset that while HH moved for “an order directing Isam to answer Hamed’s Interrogatories 2, 3 and 4, and RFPD 1, 14 and 17,” his motion only directly addressed Interrogatory 4 in the body, which included Interrogatory 4 and IY’s response thereto in the entirety. In contrast, HH Interrogatory 2 and Interrogatory 3 were not addressed in the body and both interrogatories and IY’s responses thereto were not included in its entirety. Thus, the Mater will only address HH’s RFPD 1, RFPD 14, RFPD 17, and Interrogatory 4.<sup>6</sup>

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<sup>6</sup> In his motion, HH provided:

RFPD 1. All monthly account statements for any checking, savings, investment, brokerage account titled to you in your name from 1990 through 1997.

IY’s Response. None.

RFPD 14. Please provide documents reflecting the source of all funds used to make the wire transfer that was sent on or about February 19, 1997, as noted on page 6 of Exhibit 4 as well as Exhibit 5 that are attached.

IY’s Response. None.

RFPD 17. Please provide documents showing the transfer of any funds by Manal Mohammad Yousef to you or BFC Island Appliance [sic] that were included in either of the wire transfers that were sent on or about February 19, 1997 and September 4, 1997, noted on page 6 of Exhibit 4 as well as Exhibits 5 and 6 that are attached.

IY’s Response. None.

Interrogatory 4. Please list all financial accounts you have that are fully or partially in your name in any corporation, partnership, or business association in which you own more than 5% interest, or as to which you

The Master further notes that IY—in his response to HH’s RFPD 1, RFPD 14, RFPD 17, and Interrogatory 4—did not list any objections to the documents requested. Since IY did not find the documents and information sought in HH’s RFPD 1, RFPD 14, RFPD 17, and Interrogatory 4 objectionable, the propriety of the discovery sought therein is not before the Master.<sup>7</sup> *See* V.I. R. CIV. P. 33(b)(2) (“The responding party must serve its answers and any objections within 30 days after being served with the interrogatories.”); *see also*, V.I. R. CIV. P. 34(b)(2)(A)-(B) (“The party to whom the request is directed must respond in writing within 30 days after being served...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.”).

**1. HH’s RFPD 1, RFPD 14, and RFPD 17**

As to RFPD 1, RFPD 14, and RFPD 17, IY did provide a response—“None”—which indicated that he does not have the documents requested therein. This is supported by his opposition to HH’s motion whereby IY stated that “he does not have these records in his possession, custody, or control.” HH did not dispute IY’s contention that IY is not in possession of these documents since HH alternatively moved for an order to compel—not for IY to produce these documents—for IY to execute and send a letter to Banque Francaise Commerciale, the St. Martin prosecutor’s office and the St. Martin Judicial Police, to “inform[...][them] of his permission for opposing counsel to obtain the records [of the accounts of IY and Island Appliances for the period from 1990 through the end of 1997].” HH did not cite to any authority that a motion to compel under Rule 37 could be utilized in such a manner. *See* V.I. R. CIV. P. 11(b)(5) (“By

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are a beneficiary from January 11, 1995 through December 31, 2000, including but not be limited to all: bank accounts, stock brokerage accounts, negotiable instrument accounts, retirement accounts, trading or options accounts, and funds transfer accounts. For each, identify the name and address of the institution, the title holder(s), the beneficiaries or trust beneficiaries as well as the last four digits of the account number(s).

IY’s Response.

BFC Bank - I had a personal bank account. Island Appliances had a business account at the same bank.  
Windward Island Bank - Island Appliances had a business account with the bank at its Phillipsburg St. Maarten branch.

Windward Island Bank - Dyson Island Furniture had a business account at the bank's Phillipsburg St. Maarten branch.

(Motion 3-4.)

<sup>7</sup> In his opposition, IY indicated that the documents sought in HH’s RFPD 1, RFPD 14, and RFPD 17 are “not required by Rule 34(a)(1) of the Virgin Islands Rules of Civil Procedure.” (Opp. 2.) However, under the Rule 34, IY was required to include any objection to HH’s RFPD 1, RFPD 14, and RFPD 17 in his responses thereto. *See* V.I. R. CIV. P. 34(b)(2)(A)-(B).

presenting to the court a pleading, written motion, or other paper -- whether by signing, filing, submitting, or later advocating it -- an attorney or self-represented party certifies that to the best of the person's knowledge, information, and belief, formed after an inquiry reasonable under the circumstances:...(5) that the applicable Virgin Islands law has been cited, including authority for and against the positions being advocated by the party.”); *see also, In re Catalyst Litig.*, 67 V.I. 16, n. 12 (V.I. Super. Ct. 2015) (“The Supreme Court of the Virgin Islands has established that in order for a motion to be properly before the court, parties must support their arguments by citing the proper legal authority, statute or rule.”). Rule 37 permits “[a] party seeking discovery [to] move for an order compelling... production...if: 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)(iv). Here, IY does not have the requested documents in his possession, so he did not fail to produce as requested in RFPD 1, RFPD 14, and RFPD 17. Thus, the Master will deny HH’s second motion to compel as to RFPD 1, RFPD 14, and RFPD 17.

With that said, the Master again notes that IY—in his response to HH’s RFPD 1, RFPD 14, RFPD 17, and Interrogatory 4—did not list any objections to the documents requested. Furthermore, to date, IY has not filed any objection to HH’s request in his August 26, 2024 notice to the Court. *Cf. V.I. R. CIV. P. 6-1(f)(1)* (“Unless otherwise ordered by the court, a party shall file a response within 14 days after service upon the party of any motion -- except a motion filed pursuant to Rule 12 or Rule 56.”). As such, the Master will construe HH’s August 26, 2022 notice as a request for an order directing IY to execute and send letter to the relevant authorities to obtain the documents requested in RFPD 1, RFPD 14, and RFPD 17. *See Rodriguez v. Bureau of Corr.*, 70 V.I. 924, 928 n.1 (V.I. 2019) (citing *Joseph v. Bureau of Corrections*, 54 V.I. 644, 648 n.2 (V.I. 2011) (“[T]he substance of a motion, and not its caption, shall determine under which rule the motion is construed.”). This matter has been pending for approximately 8 years and the documents requested in RFPD 1, RFPD 14, and RFPD 17 are dated 27 to 34 years ago. In the interest of justice, the Master will grant HH’s request. *Gerace v. Mosler*, 76 V.I. 195, 199 (V.I. Super. Ct. April 26, 2022) (“Virgin Islands courts have the inherent authority to economically manage their dockets to best promote the fair and efficient resolution of the dispute between the parties.”) (collecting cases). Additionally, also in the interest of justice, the Master will set the following

limitations to HH's request:<sup>8</sup> (i) prepare three separate letters—one for Banque Francaise Commerciale, one for the St. Martin prosecutor's office, and one for the St. Martin Judicial Police;<sup>9</sup> (ii) in the letters to the St. Martin prosecutor's office and the St. Martin Judicial Police, HH's request should be limited to documents related to "gift" deposits<sup>10</sup> from 1990 through 1997;<sup>11</sup> (iii) in the letter to Banque Francaise Commerciale, HH's requests should be limited to "[a]ll monthly account statements for any checking, savings, investment, brokerage account titled to [IY] in [IY's] name from 1990 through 1997," "documents reflecting the source of all funds used to make the wire transfer that was sent on or about February 19, 1997" and "documents showing the transfer of any funds by Manal Mohammad Yousef to you or BFC Island Appliance [sic] that were included in either of the wire transfers that were sent on or about February 19, 1997 and September 4, 1997";<sup>12</sup> (iv) in all three letters, HH should eliminate reference to, and attachment of, the June 7, 2004 St. Martin Judicial Subpoena;<sup>13</sup> and (v) in all three letters, HH should limit the reference to, and attachment of, the July 3, 2002 Letter from "Banque Francaise Commerciale" and "SRPJ Antilles-Guyane" to documents concerning IY and/or Island Appliances.<sup>14</sup>

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<sup>8</sup> While the Master is treating HH's August 26, 2024 notice as a separate request from his November 23, 2022 second motion to compel, such a request ultimately stemmed from HH's RFPD 1, RFPD 14, RFPD 17, and his November 23, 2022 second motion to compel. Thus, in the interest of justice, the Master will use HH's RFPD 1, RFPD 14, RFPD 17, and his November 23, 2022 second motion to compel to set the discovery parameter of his request.

<sup>9</sup> There is no reason for HH to address all three entities in one letter. In his reply, he confirmed "a total lack of interest in a criminal prosecution [of IY]." (Reply 5.)

<sup>10</sup> In his motion, HH "agreed herein to limit the requests other than those to [Banque Francaise Commerciale] to 'gift' deposits." (Motion 19.)

<sup>11</sup> In his RFPD 1, RFPD 14, and RFPD 17, HH requested documents from the period 1990 through 1997 (RFPD 1), on or about February 19, 1997 (RFPD 14), and on or about February 19, 1997 and September 4, 1997 (RFPD 17).

In the proposed letter attached to HH's August 26, 2024 notice, HH changed the period of the documents requested to 1996 through 2000. The Master finds it improper for HH to now—in 2024—belatedly change the time period, especially since HH failed to provide any explanations for the change.

<sup>12</sup> See *supra*, footnote 11.

<sup>13</sup> Neither IY nor Island Appliances is named as an account holder for the accounts listed in the June 7, 2004 St. Martin Judicial Subpoena. It is not proper for HH to request the Master to direct IY to authorize release of documents for third parties—IY is limited to authorizing release of documents related to him or his business Island Appliances. Furthermore, the June 7, 2004 St. Martin Judicial Subpoena was not issued as part of this instant 2016 derivative action.

<sup>14</sup> Again, it is not proper for HH to request the Master to direct IY to authorize release of documents for third parties—IY is limited to authorizing release of documents related to him or his business Island Appliances.



**2. Interrogatory 4**

As to Interrogatory 4, IY did not provide a complete response. For example, IY failed to “identify the name and address of the institution, the title holder(s), the beneficiaries or trust beneficiaries as well as the last four digits of the account number(s).”<sup>15</sup> The Master again notes that IY did not list any objections to the information requested in Interrogatory 4. *See* V.I. R. CIV. P. 33(b)(3) (“Each interrogatory must, to the extent it is not objected to, be answered separately and fully in writing under oath.”). For purposes of a motion to compel under Rule 37, “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). As such, the Master will grant HH’s second motion to compel as to Interrogatory 4.

**CONCLUSION**

Based on the foregoing, it is hereby:


**ORDERED** that HH’s November 23, 2022 second motion to compel is **DENIED** as to RFPD 1, RFPD 14, and RFPD 17, **DENIED** as to Interrogatory 2 and Interrogatory 3, and **GRANTED** as to Interrogatory 4. It is further:

**ORDERED** that IY shall **SERVE** a copy of his complete response to Interrogatory 4 to HH **on or before October 11, 2024**. And it is further:

**ORDERED** that HH shall **FILE** a copy of the proposed letters, drafted in compliance with this order, **on or before October 11, 2024**.

**DONE and so ORDERED this 17th day of September, 2024.**

**ATTEST:**  
Tamara Charles  
Clerk of the Court

By:   
Court Clerk ~~Supervisor~~  
Dated: September 17, 2024

  
**EDGAR D. ROSS**  
**Special Master**

<sup>15</sup> *See supra*, footnote 6.

**FILED**

September 17, 2024 12:31 PM  
SX-2016-CV-00650  
TAMARA CHARLES  
CLERK OF THE COURT

**IN THE SUPERIOR COURT OF THE VIRGIN ISLANDS**  
District of St. Croix

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**Hisham Hamed on Behalf of Sixteen  
Plus Corp.,**  
**Plaintiff**

Case Number: **SX-2016-CV-00650**  
Action: **Damages**

v.

**Fathi Yusuf et al,**  
**Defendant.**

**NOTICE of ENTRY  
of  
Order**

**To** Joel H. Holt, Esq.

Charlotte Kathleen Perrell, Esq.

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\_\_\_\_\_  
Carl Joseph Hartmann, III., Esq.

\_\_\_\_\_  
Stefan B. Herpel, Esq.

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Christopher A. Kroblin, Esq.

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Marjorie Beth Whalen, Esq.

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Kevin A. Rames, Esq.

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**Please take notice that on September 17, 2024**  
**a(n) Order of the Special Master**  
**dated September 17, 2024 was/were entered**  
**by the Clerk in the above-titled matter.**

**Dated** **September 17, 2024**

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\_\_\_\_\_

**Tamara Charles**

\_\_\_\_\_  
**Clerk of the Court**

By:



\_\_\_\_\_  
**Brianna Primus**  
**Court Clerk II**