

STATE OF NORTH CAROLINA
MECKLENBURG COUNTY

IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION
20CVS012827-590

MARWAN ELHULU; KHALID
ALNABULSI; and MOHAMMED
SAQQA,

Plaintiffs,

v.

FADEL ALSHALABI; and OMNI
HOLDING GROUP, LLC,

Defendants.

**ORDER ON NONPARTY EIYAD
ISHNINEH'S BCR 10.9 SUBMISSION
AND MOTION TO QUASH**

1. In August 2024, Plaintiffs served nonparty Eiyad Ishnineh with a subpoena under North Carolina Rule of Civil Procedure 45, requesting production of a variety of documents. Ishnineh objected to each request and moved to quash the subpoena in its entirety. (ECF No. 123.) In a previous order, the Court held the motion to quash in abeyance and directed Ishnineh to comply with the prefiling requirements for discovery motions set forth in Business Court Rule (“BCR”) 10.9(b). (ECF No. 124.)

2. Following that order, Ishnineh and Plaintiffs conferred and reached a compromise as to all but requests 1C, 5, and 9 in the subpoena. Ishnineh e-mailed a summary of the remaining disputes to the Court’s law clerks and opposing counsel under BCR 10.9(b)(1). Plaintiffs timely responded. The Court then held a teleconference with counsel for Ishnineh and Plaintiffs. Having concluded that formal briefing would be inefficient and of little additional value, the Court elected to

decide the dispute based on the informal submissions and oral arguments, as permitted by BCR 10.9(b)(3), and now memorializes the results of the conference.

3. As this Court has observed, “[t]he rules governing discovery are liberal by design,” but “even liberal discovery has its limits.” *Addison Whitney, LLC v. Cashion*, 2020 NCBC LEXIS 72, at *6–7 (N.C. Super. Ct. June 10, 2020). And notably, “Rule 45 affords greater protection to nonparties than Rule 26 provides to parties.” *Arris Grp., Inc. v. CyberPower Sys. (USA), Inc.*, 2017 NCBC LEXIS 58, at *6–7 (N.C. Super. Ct. Jul. 11, 2017) (internal citation and quotations omitted). To that end, “the courts have an *obligation* to protect nonparties from burden and expense imposed without sufficient justification.” *Id.* at *7 (internal citation and quotations omitted) (emphasis in original).

4. **Request 1C.** This is one of six requests that together broadly seek Ishnineh’s bank account statements. Plaintiffs seek documentation concerning transactions with banks in Jordan, whether those transactions were for the benefit of Ishnineh personally or for the benefit of Defendant Fadel Alshalabi, Alshalabi’s family, or any entity in which Alshalabi has an interest. The Court concludes that the request is an overbroad, intrusive inquiry into the personal finances of a nonparty. To the extent Plaintiffs seek to trace funds that Ishnineh supposedly received from Alshalabi, this request is not tailored to that end. “[A] party seeking discovery is ‘not entitled to a fishing expedition to locate it.’” *Brown v. Secor*, 2017 NCBC LEXIS 65, at *29 (N.C. Super. Ct. July 28, 2017) (quoting *Dworsky v. Travelers Ins. Co.*, 49 N.C. App. 446, 448 (1980)).

5. **Request 5.** Plaintiffs seek *any* e-mail that Ishnineh sent or received that has *anything* to do with Defendant Omni Holding Group, LLC and former Defendant Crestar Labs, LLC. The Court concludes that this request is facially overbroad. It is not targeted to an identifiable event, a specific transaction, or even a general topic of concern. *See Arris Grp.*, 2017 NCBC LEXIS 58, at *15 (deeming “catch-all” request to be overbroad); *AARP v. Am. Fam. Prepaid Legal Corp.*, 2007 NCBC LEXIS 4, at *16 (N.C. Super. Ct. Feb. 23, 2007) (granting motion to quash requests that “blindly demand[ed] all paper that ever flowed between [third party] and a particular Defendant, with little regard for the relevance of that paper to the allegations of the Complaint”).

6. **Request 9.** Plaintiffs seek documentation of any ownership interest that Ishnineh holds in any entity in which Alshalabi is also an owner. This request is not tied to the allegations in the amended complaint. Plaintiffs’ claims relate to their investments in Omni Holding Group and allegations that Alshalabi defrauded them. Whether Ishnineh, a nonparty, has an interest in unnamed entities or businesses is irrelevant to those claims. It is beside the point that Plaintiffs believe that Ishnineh is in league with Alshalabi and that this request (along with the others) might produce evidence to support that belief. The purpose of a Rule 45 subpoena is not to perform a presuit investigation into nonparties; it is to secure evidence related to existing claims. *See AARP*, 2007 NCBC LEXIS 4, at *16–17 (“I remind AARP that the allegations in its Complaint are just that and, at least with respect to National

Western, are irrelevant unless AARP intends to join National Western as a party to this action.”).

7. For these reasons, the Court **QUASHES** requests 1C, 5, and 9 in connection with Ishnineh’s BCR 10.9 submission. In addition, the Court **DENIES as moot** Ishnineh’s motion to quash.

SO ORDERED, this the 14th day of October, 2024.

/s/ Adam M. Conrad
Adam M. Conrad
Special Superior Court Judge
for Complex Business Cases