

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

MANAL MOHAMMAD YOUSEF,
Plaintiff

v.

SIXTEEN PLUS CORPORATION,
Defendant.

and

SIXTEEN PLUS CORPORATION,
Counter-Plaintiff

v.

MANAL MOHAMMAD YOUSEF,
Counter-Defendant,

and

SIXTEEN PLUS CORPORATION,
Third-Party Plaintiff

v.

FATHI YUSUF,
Third-Party Defendant,

CIVIL NO. SX-2017-CV- 00342

**ACTION FOR DEBT AND
FORECLOSURE**

**COUNTERCLAIM FOR
DAMAGES**

THIRD PARTY ACTION

JURY TRIAL DEMANDED

Consolidated With

CIVIL NO. SX-2016-CV-00065

**ACTION FOR
DECLARATORY JUDGMENT,
CICO and FIDUCIARY DUTY**

COUNTERCLAIM

JURY TRIAL DEMANDED

SIXTEEN PLUS CORPORATION,
Plaintiff,

v.

MANAL MOHAMMAD YOUSEF,
Defendant.,

and

MANAL MOHAMMAD YOUSEF,
Counter-Plaintiff.,

v.

SIXTEEN PLUS CORPORATION,
Counter-Defendant.

**SIXTEEN PLUS CORPORATION'S FIRST MOTION TO COMPEL:
AS TO FATHI YUSUF'S 'FIFTH AMENDMENT' ASSERTIONS IN DISCOVERY
OR, IN THE ALTERNATIVE, TO PRECLUDE FURTHER TESTIMONY
(FILED SIMULTANEOUSLY IN SX-2016-CV-00650¹)**

¹ The identical facts, issues and Rule 37 notices are presented by Fathi Yusuf's assertions of the Fifth Amendment in both cases. Thus, the instant motion is filed in the other action by attachment there to the simultaneously-filed *Hisham Hamed's Third Motion to Compel*.

Plaintiff Sixteen Plus Corporation moves the Court to compel discovery responses from Third-Party Defendant Fathi Yusuf pursuant to Rules 26, 33 and 37, or in the alternative, to preclude further testimony regarding the subject of those interrogatories and related facts. Fathi Yusuf asserted his U.S. Constitutional Fifth Amendment right against self-incrimination many times regarding Hamed's central interrogatories—both in this case and the com, or, in the alternative to preclude his testimony companion 650 CICO action.

Attached hereto, as **Exhibit A**, is Plaintiff Hisham Hamed's *Third Motion to Compel/Preclude* in that companion CICO action, SX-2016-CV-00650. Plaintiff incorporates that motion, in full, herein.

A proposed order is attached.

Counsel for Sixteen Plus Corporation

Dated: December 2, 2022

/s/ Carl J. Hartmann III

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CERTIFICATE OF SERVICE

I hereby certify that this document complies with the page and word limitations set forth in Rule 6-1(e) and that on **December 2, 2022**, I served a copy of the foregoing by email and the Court's E-File system, as agreed by the parties to:

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/s/ Carl J. Hartmann III

CERTIFICATE OF COMPLIANCE WITH RULE A 37(a)(1)

I hereby certify that I made the required efforts in good faith to confer with opposing counsel to obtain the foregoing requested information, and did so confer.

Dated: December 2, 2022

/s/ Carl J. Hartmann III

Proposed Order

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

MANAL MOHAMMAD YOUSEF,
Plaintiff

v.

SIXTEEN PLUS CORPORATION,
Defendant.

and

SIXTEEN PLUS CORPORATION,
Counter-Plaintiff

v.

MANAL MOHAMMAD YOUSEF,
Counter-Defendant,

and

SIXTEEN PLUS CORPORATION,
Third-Party Plaintiff

v.

FATHI YUSUF,
Third-Party Defendant,

SIXTEEN PLUS CORPORATION,
Plaintiff,

v.

MANAL MOHAMMAD YOUSEF,
Defendant.,

and

MANAL MOHAMMAD YOUSEF,
Counter-Plaintiff.,

v.

SIXTEEN PLUS CORPORATION,
Counter-Defendant.

CIVIL NO. SX-2017-CV- 00342

**ACTION FOR DEBT AND
FORECLOSURE**

**COUNTERCLAIM FOR
DAMAGES**

THIRD PARTY ACTION

JURY TRIAL DEMANDED

Consolidated With

CIVIL NO. SX-2016-CV-00065

**ACTION FOR
DECLARATORY JUDGMENT,
CICO and FIDUCIARY DUTY**

COUNTERCLAIM

JURY TRIAL DEMANDED

ORDER

THIS MATTER having come before the Court on Sixteen Plus Corporation's motion to compel discovery responses from Third-Party Defendant Fathi Yusuf pursuant to Rules 26, 33 and 37, or to preclude testimony, and the Court being fully informed,

IT IS ORDERED that Fathi Yusuf, having asserted his Fifth Amendment right against self-incrimination, is not compelled to further answer the subject interrogatories. Yusuf has demonstrated the factual predicate pursuant to the standard for the inquiry which derives from *Hoffman v. United States*, 341 U.S. 479, 486 (1951). A witness is generally entitled to invoke the Fifth Amendment privilege against self-incrimination where there is (1) a *realistic possibility* that his answer to a question can be used in any way to convict him of a crime. It need not be probable that a criminal prosecution will be brought or that the witness's answer will be introduced in a later prosecution; the witness need only show a realistic possibility that his answer will be used against him. Moreover, (2) the Fifth Amendment forbids not only the compulsion of testimony that would itself be admissible in a criminal prosecution, but also the compulsion of testimony, whether or not itself admissible, that may aid in the development of other incriminating evidence that can be used at trial.

Yusuf has shown that testimony as to his acts from 1996 to the present meet these standards because the acts have not been fully immunized by a criminal Plea Agreement.

However, he is precluded from testimony as to the interrogatories and related facts

SO ORDERED.

Dated: _____, 2022

ATTEST: TAMARA CHARLES,
Clerk of the Court

By: Court Clerk Supervisor

Douglas A. Brady
Judge of the Superior 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,

and

SIXTEEN PLUS CORPORATION,

a nominal Defendant.

Case No.: SX-2016-CV-00650

**DERIVATIVE SHAREHOLDER
SUIT, ACTION FOR DAMAGES
AND CICO RELIEF**

JURY TRIAL DEMANDED

**HISHAM HAMED'S THIRD MOTION TO COMPEL:
AS TO FATHI YUSUF'S 'FIFTH AMENDMENT' ASSERTIONS IN DISCOVERY
OR, IN THE ALTERNATIVE TO PRECLUDE TESTIMONY
(FILED SIMULTANEOUSLY IN SX-2016-00065/SX-2017-CV-00342)¹**

I. Introduction

This motion is not truly hostile to Yusuf or his primary Fifth Amendment position. As the Rule 37 conference revealed, with the exception of the responses to *Interrogatory 24*, this motion is largely *pro forma*, as there is a small possibility of compelling Mr. Yusuf's testimony. However, procedurally, it has to be filed—to prevent his reversing course and attempting to testify in the future as to the issues in these interrogatories.² Thus, Hamed seemingly must make this motion to have the Court require specificity and then define the contours of the resultant preclusive effects.³

¹ The identical facts, issues and Rule 37 notices are presented by Fathi Yusuf's assertions of the Fifth Amendment in both cases. Thus, the instant motion is also being filed in the other action, by attachment.

² Yusuf can obviate the necessity of the Court's consideration of this motion by filing a similarly *pro forma* stipulation stating that he will not, in the future, testify as to any of the subjects set forth in the eighteen (18) interrogatories at issue, or related facts.

³ It certainly would seem that it would have been preferable for Yusuf's counsel to proactively address this through a motion for a protective order. But the hesitancy is

Therefore, Plaintiff Hisham Hamed ("Hamed") moves the Court to compel discovery responses from Defendant Fathi Yusuf ("Fathi")⁴ pursuant to Rules 26, 33, and 37—as to Interrogatories 1, 2, 3 and 24 here; and as to 6-19 in the companion 65/342 action; or, in the alternative to preclude Fathi from further testimony as to the subjects of those interrogatories, and related facts

Fathi asserted his U.S. Constitutional Fifth Amendment right against self-incrimination eighteen times in response to most of Hamed's central interrogatories—both in this case and the companion 65/342 foreclosure action. **Exhibit 1** (November 7, 2022 Rule 37 letter from Atty. Hartmann to Atty. Perrell raising this Fifth Amendment issue); **Exhibit 2** (Yusuf's September 9, 2022 *Responses to Interrogatories 1-3* (650)); **Exhibit 3**, Yusuf's November 7, 2022 *Responses to Interrogatories 6-19* (65/342)) and **Exhibit 4**, Yusuf's November 7, 2022 *Response to Interrogatory 24*⁵ (650). In the resulting Rule 37 conference, counsel expressed Hamed's initial view that Fathi's assertion (that he would not testify further as to 1996-2004 events, the period for which he has transactional immunity) was inappropriate for four reasons related to the standard for claiming such protection. On its face, that standard seems clear: A witness is generally entitled to invoke the Fifth Amendment privilege against self-incrimination (1) when there is a *realistic possibility*⁶ that his answers to questions

understandable because, as noted below in the reference to *Bank of Am., N.A. v. Roberts*, No. 4:12-CV-609 AGF, 2014 U.S. Dist. LEXIS 39988, at *8-9 (E.D. Mo. Mar. 26, 2014), sometimes even "an explanation of why it cannot be answered might be dangerous because injurious disclosure could result."

⁴ Plaintiff employs this defendant's first name rather than "Yusuf" because of the various spellings of Yusuf, Yousuf and Yousef among the four, related defendants.

⁵ Interrogatory 24 was served after the Fifth Amendment had been asserted, and asks *voir dire* questions as to elements courts view in deciding about a potential request for a stay. Non-responses to these inquiries are different than all of the others—which go to substantive, not procedural issues.

⁶ *But see Bank of Am., N.A. v. Roberts*, No. 4:12CV609 AGF, 2014 U.S. Dist. LEXIS 39988, at *8-9 (E.D. Mo. Mar. 26, 2014)(as to limits on seeking explanations.)

In civil cases, the Fifth Amendment does not provide an all-encompassing right of refusal to respond to discovery requests. *Gen.*

can be used in any way to convict him of a crime. While it need not be probable that a criminal prosecution will be brought or that the witness's answer will be introduced in a later prosecution; the witness still must demonstrate *a realistic possibility* that his answer might be used against him. Moreover, (2) the Fifth Amendment forbids not only the compulsion of testimony that would itself be admissible in a criminal prosecution, but also the compulsion of testimony, whether or not itself admissible, that may aid in the development of other incriminating evidence that can be used at trial. See *Hoffman v. US*, 341 U.S. 479, 486, 71 S. Ct. 814, 95 L. Ed. 1118 (1951) explained in *Callwood v. Island Block, Inc.*, 1983 V.I. LEXIS 76, at *5 (Feb. 11, 1983).

Hamed's four reasons for disputing Fathi's position, discussed with opposing counsel in both that Rule 37 conference and in additional emails, were:

1. Fathi has full transactional immunity regarding the facts relevant here due to the *2010 Plea Agreement* in the criminal action; the pre-indictment (1996-2004) skimming, movement of funds, money laundering and transfer of funds from Isam Yousuf back to Sixteen Plus to fund the note and mortgage at issue.
2. Fathi is further protected by the federal and USVI statutes of limitations for those pre-indictment (1996-2003) acts,⁷

Dynamics Corp. v. Selb Mfg. Co., 481 F.2d 1204, 1212 (8th Cir. 1973) (holding that there is no blanket Fifth Amendment right to refuse to answer questions in noncriminal proceedings). "The privilege must be specifically claimed on a particular question **and the matter submitted to the court for its determination as to the validity of the claim.**" *Capitol Prod. Corp v. Herson*, 457 F.2d 541, 542-543 (8th Cir. 1972) (quotations and citations omitted) (applying Missouri law). In addition, the assertion of the privilege must be more than speculative and imaginary. A party's basis for assertion of the privilege must be a "substantial and real" expression of the "hazards of incrimination." *Id.* at 543 (internal quotations omitted). And the court must determine "from the implications of the question, in the setting in which it is asked, that a responsive answer to the question **or [even] an explanation of why it cannot be answered** might be dangerous because injurious disclosure could result." *Id.* (Emphasis added.)

⁷ Fathi would also seem to be protected by the Statute of Limitations for 1996-2004 crimes committed in the U.S. Virgin by V.I. Code Title 5 § 3541 (2019) which provides:

- (a) A criminal action shall be commenced within the following periods
 - (1) For murder, felony child abuse, felony child neglect, any felony sexual offense perpetrated against a victim, human trafficking, embezzlement of public moneys, and the falsification of public records,

3. Fathi is not under any indictment. He is not the subject of a target letter; nor has he yet shown any "reasonable" apprehension of criminal prosecution in this matter. He has been informed that Hamed does not know of, nor will he seek any such prosecution against Fathi for these matters. Thus, there seems to be no "realistic possibility that his answers can be used to convict him of a crime."
4. Fathi has already partially answered discovery here, and a party cannot pick and choose when he will answer and then partially deny responses as to the balance of inquiries.

Thus, Hamed initially took the position that Fathi must answer the interrogatories as to his actions between 1996 and the 2004 *Third Superseding Indictment*. However, after discussions with opposing counsel, Hamed has come to understand that the Court may well determine that criminal jeopardy could reasonably be found to exist as these pre-2004 acts⁸ because they are so completely intertwined with the alleged post-2004 CICO and fraud, that they are inseparable. Testimony as to one "may aid in the development of other incriminating evidence that can be used at trial" as to the other. Hamed is also aware that the U.S. Supreme Court takes limiting this protection very seriously.

a party may invoke the Fifth Amendment privilege during the discovery process to avoid answering questions at a deposition, responding to interrogatories or requests for admissions, or to produce documents. **The Supreme Court has cautioned that the Constitution limits "the imposition of any sanction which makes assertion of the Fifth Amendment privilege 'costly.'" (Emphasis added.)**

-
- there is no limitation of the time within which a prosecution shall be commenced.
- (2) For any felony other than specified above, action shall be commenced within *three (3) years* after its commission.
 - (3) For any misdemeanor, action shall be commenced within one year after its commission. . . .

He seems to be similarly protected by the federal statute of limitations, Title 18 § 3282, which provides, generally, a five (5) year statute of limitations for violations of the federal criminal laws. There are crimes in the federal criminal code for which there is no Statute of Limitations (*i.e.*, terrorism crimes that result in death or serious bodily injury (Title 18 § 3286), but they are not relevant here. There are also some crimes potentially applicable here for which the statute exceeds five years such as tax evasion (U.S. Code 26 § 7201) – 6 years,

⁸ As will be seen below, the *Third Superseding Indictment* was dated September 13, 2004, and the scope of the *2010 Plea Agreement* immunity is keyed to that indictment.

Davis-Lynch, Inc. v. Moreno, 667 F.3d 539, 547 (5th Cir. 2012). Finally, Hamed also recognizes that it is possible that Fathi may (in his opposition here) be able to demonstrate that he will be at sufficient criminal risk regarding his 1996-2004 acts that his post-2004 acts implicate those otherwise immunized or stale matters. However, this motion is necessary because Yusuf has not yet adequately articulated those specifics. Neither Fathi nor his co-defendants are persons of interest or targets, and criminal liability is not obvious or even apparent--so he must state how the risk arises.

As Fathi is the objector, he bears the burden to show the applicability of this protection. Hamed seeks to force such an articulation.⁹ See, e.g., *Bayview Loan Servicing, LLC v. McNaughton*, No. 2:05-cv-254, 2008 U.S. Dist. LEXIS 31446, at *7 (W.D. Mich. Apr. 15, 2008).

in the court's. . .order granting in part and denying in part Defendants' motion for a protective order. . .the court did not hold that Defendants' assertion of Fifth Amendment privilege was frivolous or done in bad faith. . . .*The court denied the motion because the court concluded that **Defendants had not met their burden** of proving that the production of documents would be incriminating. . . .*(Emphasis added.)

II. Facts

In 2003, a federal grand jury sitting in St. Thomas voted a 76-count indictment against United Corporation (“United”) and various related individuals, including Isam Yousuf (“Isam”), Fathi Yusuf, Waleed Hamed (“Wally”) and members of their families. The indictment charged, *inter alia*, numerous counts of mail fraud, money laundering, enterprise corruption (pursuant to Virgin Islands law) and USVI tax evasion. The gravamen of the charges was not that the defendants had stolen money from others

⁹ Hamed also notes, but does not address here, the issue of discovery or depositions directed to Fathi as the Director of Hamdan Diamond Corporation Ltd., and as an officer of both Sixteen Plus Corporation and United Corporation—all involved in these transactions. Fathi Yusuf was the Director of Hamdan Diamond and the secretary of the other two corporations at the times relevant to this action. The right against self-incrimination is a personal privilege that does not extend to a corporation or its records. *Bellis v. United States*, 417 U.S. 85, 89 (1974).

or committed any criminal acts against third parties—but rather that they had hidden *their own families' income to avoid taxes*—injuring the people of the USVI by laundering funds in St. Martin and Jordan before returning some for use in the USVI.¹⁰

Although all individual defendants were charged in the criminal indictment, only the corporate defendant, United Corporation (“United”), was convicted of a crime (Count 60: tax evasion.) By agreement between the defendants and the U.S. and USVI Governments, United was allowed to plead guilty to one count of tax evasion in full satisfaction of the indictment. The case against the remaining defendants was dismissed *with prejudice* and they were given *non-prosecution agreements*. Specifically, Paragraph B of that Plea Agreement, dated February 26, 2010, states:

At the time that United enters its plea to the above-referenced count, the Government will dismiss all counts in the Indictment *with prejudice* against FATHI YUSUF MOHAMAD YUSUF, aka Fathi Yusuf, WALEED MOHAMMAD HAMED, aka Wally Hamed, WAHEED MOHAMMAD HAMED, aka Willie Hamed, MAHER FATHI YUSUF, aka Mike Yusuf, ISAM MOHAMAD YOUSUF, aka Sam Yousuf, and NEJEH FATHI YUSUF (all collectively referred to as “individual defendants), including the temporary restraining order and forfeiture allegations. **The Government agrees not to file any additional criminal charges against United or any of the individual defendants for conduct arising out of the facts alleged in the indictment.** In accordance with Paragraph VI, below, **the Department of Justice of the Virgin Islands also agrees that it will file no criminal charges against United or any of the individual defendants** for any conduct arising out of the facts alleged in the indictment. (Emphasis added.)

The Effect of Such Non-Prosecution Agreements and Grants of Immunity

Transactional immunity, sometimes referred to as blanket immunity, provides individuals with more protection than the Fifth Amendment or derivative-use immunity,

¹⁰ It seems clear from the immediate post-9/11/2001 timing and the DOJ's requests to other governments, that the FBI and the French Banking Commission were afraid the funds were being obtained by drug or alien smuggling and funneled to terrorist groups—which turned out to be an absurdity. Thus, once it was admitted that this was a diversion of the defendants' families' own funds to avoid local taxes, the case ended without individual convictions or incarceration—when United paid a lump sum \$10 million in taxes to the USVI for previously unreported income—this was a 7.3% gross receipts tax (to include interest) on the diverted \$63,450,096 alleged by the government. In addition there was a punitive fine in excess of \$1,000,000.

the latter two providing protection only against statements made by an accused. The invocation of an accused's Fifth Amendment rights and/or derivative-use immunity by a prosecutor does not, in and of itself, preclude a criminal prosecution; it merely precludes the use of the statements made by a defendant in the prosecution's case-in-chief. Title 18 U.S.C. § 6002 provides only for derivative use immunity.

However, the agreement by the Government here "not to file any additional criminal charges against United or any of the individual defendants *for conduct arising out of the facts alleged in the indictment*" is, in essence, transactional immunity for the individual defendants for any and all activities alleged in the indictment—not limited to the scope of the ultimate plea. Transactional immunity provides *complete* or *blanket* immunity for any transactions or other criminal conduct revealed, even if the government finds independent evidence that the witness committed the crime. Because of its powerful protection, transactional immunity is often granted, as in this case, as a part of a plea agreement following a successful investigation and prosecution. Such plea agreements are not taken lightly and are virtually sacrosanct.¹¹

Thus, acts before the *Third Superseding Indictment* of September 13, 2004, would appear to be immunized at first blush; this would include the skimming of gross receipts, sending the funds to Isam Yousuf on St. Martin for deposit and transfer—and (by the use of the 1997 sham note and mortgage at issue) returning those funds to the USVI to purchase the Diamond Keturah land for \$4.5 million. The USVI and federal statutes of limitations would also seem to preclude protection for those acts, as above.

¹¹ A guilty plea "is a grave and solemn act to be accepted only with care and discernment. *Brady v. United States*, 397 U.S. 742, 748 (1970). Pleading guilty "differs in purpose and effect from a mere admission or an extra-judicial confession; *it is itself a conviction. Like the verdict of a jury, it is conclusive.*" *Kercheval v. United States*, 274 U.S. 220, 223 (1927). *See also United States v. Hsu*, 669 F3d 112, 118 (2d Cir. 2012)(plea of guilty waives statute of limitations defense) and *Santobello v. New York*, 404 U.S. 257 (1971). (Emphasis added.)

But Hamed acknowledges that the instant situation is not so simple, as he alleges that Fathi, his nephew (Isam) and his niece (Manal) are presently asserting what they know (from their acts in 1996-2004) to intentionally use a sham note and mortgage to fraudulently obtain the Hamed's half of land worth as much as \$30 million. Hamed seeks to show that the prior criminal, but now immunized, acts are evidence that Fathi's family now know that the funds used to purchase the land were skimmed in the USVI and deposited by Wally and Fathi into a STM laundering account managed by Isam—and thus, that their story about a \$4.5 million gift from Manal's deceased father—Fathi's brother, Mohammad, is a fraud.¹² The old acts and statements may, therefore, be used to prove the falsity of present, fraudulent statements and acts.

¹² In the companion *Second Motion to Compel*, regarding Isam's banking records, Hamed notes, at footnote 7,

Hamed contends in this action that Fathi's family members, including his niece, Manal Yousef, planned these documents to eventually take the Hamed half. Manal was always just a straw man provided by Fathi and his nephew Isam. Despite the various spellings, Mohammad Yusuf, who also goes by the last name Hamdan, is Fathi Yusuf's brother. Isam Yousuf and Manal Yousef are Mohammad's children. Thus, Fathi is their uncle. Defendant Jamil Yousuf is the brother of Manal, the son of Mohammad and the nephew of Fathi.

And, at footnote 8 of that same motion:

It is also noteworthy that, as Wally Hamed and others will testify, at that time in 1995 through 1997, Isam ran and managed that small furniture/appliance store—Island Appliances. Hamed will show it was a small operation and would certainly not generate millions of dollars in profit in a year. Hamed will also show that Isam's father, Mohammad Yusuf (aka Mohammad Hamden) never had any significant funds. Back 'in the day' in Jordan, Mohammad was caught in a low-level smuggling operation and was put in jail. As a result, he stopped using his real name—Mohammad Yusuf—which is his actual family name as he is Fathi's brother. He started calling himself Mohammad Hamdan. In any case, he didn't own the Island Appliance store and never really had any real trade or way to earn a significant living. He was essentially a small-time hustler—and he occasionally did things or acted as a straw man for his brother, Fathi—where he would appear to own an asset or to loan or borrow money—to avoid taxes. One of the ways it is clear that he had no real money—and certainly no funds more than \$100,000—is that throughout the 1990's Fathi always had to send him some money to get by—a few hundred or a few thousand at a time. Fathi and Wally would record these many "donations" in a ledger book they used. Wally will

III. The Law Regarding Hamed's Motion to Compel—and Preclusion

The U.S. Supreme Court has been clear—this protection not only extends to answers that would in themselves support a conviction under a federal criminal statute but likewise those which could furnish a *link in the chain of evidence* needed to prosecute the claimant for a crime. *Hoffman v. United States*, 341 U.S. 479, 486-487 (1951). Similar language contained in the Fifth Amendment to the Constitution is extended, by virtue of the 14th Amendment, to action by the states; and federal standards as to this right therefore govern non-federal proceedings. *Application of Gault*, 387 U.S. 1 (1967); *Malloy v. Hogan*, 378 U.S. 1 (1964).

Because the privilege doesn't prevent prosecutors (or adversaries in civil litigation) from finding the same evidence elsewhere: "A party is privileged from producing the evidence, but not from its production." *Johnson v. United States*, 228 U.S. 457 (1913). Given this fact, civil defendants often assert the privilege as broadly as possible in order to eliminate any avenue to discover the incriminating information from another source. Thus, the invocation of the 5th Amendment prior to 2004 is certainly arguable here—*if Yusuf can make the appropriate showings in opposition*.

But this is not a plenary right and it cannot simply be invoked on a plenary basis without explanation. As noted above, the burden is on the *objector* to show that the answers or testimony could tend to incriminate him--and the standard for the inquiry derives from *Hoffman*, as discussed in *Callwood*. Thus, as a *sine qua non*, in his

testify that he was involved in this because these support payments for Mohammad would be recorded against Fathi's share of store profits. See [original] Exhibit 6. This exhibit is from the inter-family "black book"—a ledger where transactions were tracked between the Yusufs and Hameds. This one is January 1992-May-1994. That was not too long before Mohammad passed away in early 1997—six months before Isam transmitted the second half of the \$4.5 million from Manal. On page 3 of the exhibit there is one of these 'donation' checks to Mohammad for \$12,000. Similarly, on page 4 is the notation partly in Arabic for "cash" going to Abu Isam—or Isam's father—in the amount of \$13,800.

opposition Fathi must provide a coherent explanation of the “realistic probability” of criminal jeopardy reaching back to 1996 in light of the immunity and SOL factors applicable to those past actions. This is particularly true here as this is not a situation where a criminal “case is open” and the risk is therefore immediately apparent as in *Najawicz v. V.I. Governmental Hosps. & Health Facilities Corp.*, No. ST-09-CV-149, 2014 V.I. LEXIS 160, at *9 (Super. Ct. Aug. 8, 2014); *see also Rohn v. Daily News Publ'g Co.*, No. SX-04-CV-158, 2015 V.I. LEXIS 126, at *3 (Super. Ct. Oct. 21, 2015)(Civil case stayed pending outcome of criminal action.) For these reasons, the Court is asked to make particularized inquiry as to whether the claimant has met that “realistic probability” burden with respect to the 1996-2004 time period—and to note the scope of the resultant preclusive and inferential implications.

Inference to be drawn

In a criminal trial this Court would instruct the jury that it cannot draw an inference of guilt from a defendant's failure to testify about facts relevant to his case. *Griffin v. California*, 80 U.S. 609 (1975). However, in civil cases, “the Fifth Amendment does not forbid adverse inferences against parties to civil actions when they refuse to testify in response to probative evidence offered against them.” *Baxter v. Palmigiano*, 425 U.S. 308, 318 (1976); *but see Sound Sols., LLC v. V.I. Water & Power Auth.*, No. ST-12-CV-88, 2014 V.I. LEXIS 74, at *9 (Super. Ct. Sep. 19, 2014)(“Even if the Court draws an adverse inference based on [objector's] refusal to testify, Irish's testimony [independently] establishes that there is a genuine issue of material of fact concerning the ownership of the generators.”) The problem for Hamed arises from the fact that while a party claiming the Fifth Amendment to avoid disclosing facts essential to a claim or defense may be precluded from testifying regarding those issues,¹³ even

¹³ *See United States v. \$99,500 in U.S. Currency*, 339 F. Supp. 3d 690, 697 (N.D. Ohio 2018)(Circuit courts agree that “a district court may strike conclusory testimony if the witness asserts the Fifth Amendment privilege to avoid answering relevant questions, yet freely responds to questions that are advantageous to his cause.” \$148,840.00 in

under *Baxter*, Hamed can't simply point to Fathi's silence and claim victory. While a jury may be allowed to draw adverse *inferences* against the party invoking the 5th Amendment and a party may be barred from asserting his claim or defense at trial, this is not automatic. This motion asks the Court to compel Yusuf to explain the contours of his assertion, and thus define the preclusion as to further testimony.

So, to be specific, Hamed asks the Court to order Fathi to either fully answer the individual discovery inquiries below or make him describe what is being refused and why. This requires that Hamed address each refusal to respond individually.

A Description of Each of Fathi's Individual Refusals to Respond

Hamed submits that the refusal to further answer Interrogatories 1, 2 and 3, (Exhibit 2) is so broad that it, alone, is sufficient to prevent Fathi from testifying about most of the issues in this matter—which should result in a preclusion as to his testimony regarding all of the acts by him, Wally, Isam, Sixteen Plus, Manal and others as to (1) the skimming of funds, (2) the movement of skimmed funds, (3) the transfer of skimmed funds to St. Martin, (4) the roles of Wally and Isam in Isam's receiving, depositing and transferring such funds, (5) the formation of Sixteen Plus for these purposes, (6) the creation and use of the note and mortgage and Sixteen Plus' corporate documents regarding the same, (7) the 2010 power of attorney and (8) the validity or invalidity of the note and mortgage. These are his responses in 650:

Interrogatory 1:

Describe in detail the actions of persons and the movement, laundering, deposit and use of Plaza Extra funds **TO and IN** St. Martin/St. Maarten for the period from 1996 through 2001. Be specific as to dates and amounts. Include the roles of Sixteen Plus, yourself, Waleed Hamed, Isam Yousuf, Manal Yousef and Jamil Yousef.

Response: Yusuf objects to this interrogatory on the grounds that this discovery request is not proportional to the needs of the case considering that the burden and expense of the requested discovery outweighs its likely benefit, and as such, Yusuf has limited his search to

the period prior to Sixteen Plus' receipts of the loan installments. The loan installments were made in February and September of 1997.

Sixteen Plus did not receive Plaza Extra funds relating to the loan installments and thus, did not have a role in the movement of any Plaza Extra funds. Plaza Extra did not have sufficient funds to purchase the Diamond Kutura[h] property at the purchase price of \$4.5 million and thus, would need to borrow funds for the purchase.

Further responding, to the extent that any further information is requested of Yusuf, he objects to responding on the basis of his Fifth Amendment rights. (Emphasis added.)

Interrogatory 2:

Describe in detail the actions of persons and the movement, laundering, deposit and use of Plaza Extra funds **FROM** St. Martin/St. Maarten **TO and IN** the U.S. Virgin Islands for the period from 1996 through 2001. Be specific as to dates and amounts. Include the roles of Sixteen Plus, yourself, Waleed Hamed, Isam Yousuf, Manal Yousef and Jamil Yousef.

Response: Yusuf objects to this interrogatory on the grounds that this discovery request is not proportional to the needs of the case considering that the burden and expense of the requested discovery outweighs it's likely benefit, and as such, Yusuf has limited his search to the period prior to Sixteen Plus' receipts of the loan installments. The loan installments were made in February and September of 1997. Sixteen Plus did not receive Plaza Extra funds relating to the loan installments and +thus, did not have a role in the movement of any Plaza Extra funds. Plaza Extra did not have sufficient funds to purchase the Diamond Kutura property at the purchase price of \$4.5 million and thus, would need to borrow funds for the purchase.

Further responding, to the extent that any further information is requested of Yusuf, he objects to responding on the basis of his Fifth Amendment rights. (Emphasis added.)

Interrogatory 3:

Describe in detail the actions of persons and the movement, laundering, deposit and use of Plaza Extra funds **FROM** St. Martin/St. Maarten **TO and IN** Jordan for the period from 1996 through 2001. Be specific as to dates and amounts. Include the roles of Sixteen Plus, yourself, Waleed Hamed, Isam Yousuf, Manal Yousef and Jamil Yousef.

Response: Yusuf objects to this interrogatory on the grounds that this discovery request is not proportional to the needs of the case considering that the burden and expense of the requested discovery outweighs it's likely benefit, and as such, Yusuf has limited his search to the period prior to Sixteen Plus' receipts of the loan installments. The loan installments were made in February and September of 1997. Sixteen Plus did not receive Plaza Extra funds relating to the loan installments and thus, did not have a role in the movement of any Plaza Extra funds. Plaza Extra did not have sufficient funds to purchase the Diamond Kutura property at the purchase price of \$4.5 million and thus, would need to borrow funds for the purchase.

Further responding, to the extent that any further information is requested of Yusuf, he objects to responding on the basis of his Fifth Amendment rights. (Emphasis added.)

His refusal to answer the *voir dire* inquires in Interrogatory 24 is more problematic. These are questions which inform the Court as to the specifics of the assertion of the Fifth Amendment—and should also be answered in the event Yusuf later considers seeking a stay.¹⁴

Interrogatory 24:

In your response to the first interrogatories provided on September 9, 2022, in response to interrogatories 1-3 you responded by partially answering--then asserting the 5th Amendment. With regard to that response: A. Describe in detail all facts which support your assertion of the 5th Amendment with specificity as to dates, persons, places, times, acts and documents.

B. Describe in detail any and all pending criminal actions, or the potential criminal actions against you. **[How could this be protected?]**

C. Describe in detail all facts which tend to prove or disprove the extent to which the issues in the actual or potential criminal and civil cases overlap; **[How could this be protected?]**

D. Describe in detail all facts which tend to prove or disprove the present status of the actual or potential criminal case, including whether you have been warned, targeted, made a POI, indicted, been given immunity or are otherwise immunized from prosecution or criminal jeopardy.

E. Describe in detail all facts which tend to prove or disprove your interest in proceeding expeditiously weighed against the prejudice to you or other party caused by a delay; **[How could this be protected?]**

F. Describe the private interests of and burden on the parties;

G. Describe the facts which prove or disprove the interests of the court; **[How could this be protected?]**, and

¹⁴ *SEC v. Mueller*, No. 21-CV-00785-XR, 2022 U.S. Dist. LEXIS 47743, at *4-5 (W.D. Tex. Mar. 17, 2022) is just one example of the many decisions which list the factors set out in Hamed's Interrogatory 24 as being the proper *voir dire* inquiry:

Only in special circumstances should a district court stay a proceeding to prevent a party from suffering "substantial and irreparable prejudice" resulting from simultaneous civil and criminal prosecution. *Alcala*, 625 F. Supp. 2d at 397-98. **"[T]here is a strong presumption in favor of discovery, and it is the party who moves for a stay that bears the burden of overcoming that presumption."** *Id.* To assess whether special circumstances are present to justify a stay, courts within the Fifth Circuit consider six factors: (1) the extent to which the issues in the criminal case overlap with those presented in the civil case; (2) the status of the criminal case, including whether the defendants have been indicted; (3) the private interests of the plaintiffs in proceeding expeditiously, weighed against the prejudice to plaintiffs caused by the delay; (4) the private interests of and burden on the defendants; (5) the interests of the courts; and (6) the public interest. *[Citations omitted.]*

See also *Dennis v. City of Phila.*, No. 18-2689, 2022 U.S. Dist. LEXIS 90874, at *5 (E.D. Pa. May 20, 2022) ("To determine whether a stay will be appropriate, courts will consider six factors. . . .")

H. the public interest **[How could this be protected?]**

I. Do you fully understand that partial disclosures in tandem with this assertion may void some or all of the alleged protections of the 5th Amendment? If the answer is other than a simple "yes", what is your understanding?

J. Do you fully understand that this assertion may create a negative inference? If the answer is other than a simple "yes", what is your understanding?

RESPONSE:

Yusuf objects to Interrogatory No. 24 on the grounds that it is an improper and compound inquiry. Further, Yusuf objects to the extent that it is an improper inquiry seeking information which is subject to attorney client and work product privilege. Yusuf objects to this inquiry on the grounds that it calls for Yusuf to provide a legal opinion or conclusions. **Further, responding Yusuf reasserts his Fifth Amendment privilege as to this Interrogatory.** (Emphasis added.)

Moreover, Fathi's parallel responses of November 7, 2022, in the 65/342 case (*Third-Party Defendant Fathi Yusuf's Responses to Third-Party Plaintiff's Second Interrogatories*, Exhibit 3) must certainly prevent any further testimony--as the inquiries are very granular, very particular and cover all of the minute transactions involved. These were written in such fine detail to avoid the earlier objection by Fathi that the questions were overly general. The questions will also be asked in deposition here.

Interrogatory 6:

In the companion CICO action, 650, you [Fathi] asserted the 5th Amendment in response to one or more interrogatories. Describe in detail all acts for which you have received immunity in which you or your agents or employees committed any of the following acts:

- A. Removed funds from Plaza Extra cash registers in the form of cash.
- B. Failed to add such cash removed from Plaza Extra on income tax filings
- C. Failed to pay taxes on such cash removed from Plaza Extra.
- D. Caused such cash removed from Plaza Extra to be converted to the use of you, your family members, the Hamed or the Hamed family members—or entities owned or controlled by any of them.
- E. Caused such cash removed from Plaza Extra to be transported by a living person traveling to St. Maarten.
- F. Caused such cash removed from Plaza Extra to be transported by a living person traveling to Jordan.
- G. Caused such cash removed from Plaza Extra to be transported by a living person traveling to the West Bank.
- H. Caused such cash removed from Plaza Extra to be transported wire, telex, money order or other non-human means traveling to St. Maarten.
- I. Caused such cash removed from Plaza Extra to be transported by wire, telex, money order or other non-human means to Jordan.
- J. Caused such cash removed from Plaza Extra to be transported by wire, telex, money order or other non-human means to the West Bank.

K. Caused such cash removed from Plaza Extra to be deposited or used to purchase land in St. Maarten.

L. Caused such cash removed from Plaza Extra to be deposited or used to purchase land in St. Jordan.

M. Caused such cash removed from Plaza Extra to be deposited or used to purchase land in the West Bank.

Response: The Plea Agreement sets forth the immunity received by Fathi Yusuf. See attached Plea Agreement bate-stamped FY342CASE- 000001 – 000020.

Interrogatory 7:

In the companion CICO action, 650, you asserted the 5th Amendment in response to one or more interrogatories. Describe in detail all acts **for which you have received immunity** in which you or your agents or employees committed any of the following acts:

N. Removed pre-tax funds from Plaza Extra by means other than by taking cash from cash registers, .

O. Failed to add such other removed amounts removed from Plaza Extra on income tax filings

P. Failed to pay taxes on such other removed amounts from Plaza Extra.

Q. Caused such other removed amounts removed from Plaza Extra.

R. Caused such other removed amounts removed from Plaza Extra to be transported by a living person traveling to St. Maarten.

S. Caused such other removed amounts removed from Plaza Extra to be transported by a living person traveling to Jordan.

T. Caused such other removed amounts removed from Plaza Extra to be transported by a living person traveling to the West Bank.

U. Caused such other removed amounts removed from Plaza Extra to be transported wire, telex, money order or other non-human means traveling to St. Maarten.

V. Caused such other removed amounts removed from Plaza Extra to be transported by wire, telex, money order or other non-human means to Jordan.

W. Caused such other removed amounts removed from Plaza Extra to be transported by wire, telex, money order or other non-human means to the West Bank.

X. Caused such other removed amounts removed from Plaza Extra to be deposited or used to purchase land in St. Maarten.

Y. Caused such other removed amounts removed from Plaza Extra to be deposited or used to purchase land in St. Jordan.

Z. Caused such other removed amounts removed from Plaza Extra to be deposited or used to purchase land in the West Bank.

Response: The Plea Agreement sets forth the immunity received by Fathi Yusuf. See attached Plea Agreement bate-stamped FY342CASE- 000001 – 000020.

Interrogatory 8:

For any of the cash or other removed amounts described in response to interrogatory #6 or 7, state whether some or all of that cash was repatriated to the USVI, Puerto Rico or the mainland US. For each such amount state:

A. What amount was repatriated

- B. When that occurred
- C. What means was used to repatriate the amount.
- D. What that amount was used for

Response: Yusuf asserts his Fifth Amendment Privilege in response to this Interrogatory No. 8.

Interrogatory 9:

For any of the cash or other removed amounts described in response to interrogatory #6, state whether some or all of that cash was NOT repatriated to the USVI, Puerto Rico or the mainland

US. For each such amount state:

- A. What amount was not repatriated
- B. What that amount was used for
- C. What amount or asset presently exists, where and its value.

Response: Yusuf asserts his Fifth Amendment Privilege in response to this Interrogatory No. 9.

Interrogatory 10

For any of the cash or other removed amounts described in response to interrogatory #6 or 7 that was sent to St. Maarten, for which you HAVE received immunity, state whether some amounts went to Isam or Jamil Yousef – or Island Appliances.

Response: Yusuf asserts his Fifth Amendment Privilege in response to this Interrogatory No. 9.

Interrogatory 11

For any of the cash or other removed amounts described in response to interrogatory #6 or 7 that was sent to St. Maarten, for which you HAVE received immunity, state the approximate amount in each of the years 1995, 1996, 1997, 1998, 1999, and 2000. If you are not able to approximate the amount, state a range. If you are not able to approximate or state a range, state a minimum amount.

Response: Yusuf objects to this interrogatory as overbroad and unduly burdensome to the extent that it seeks information beyond 1996 which is the time period relating to the events are the subject of this action. Further responding, Yusuf asserts his Fifth Amendment Privilege in response to this Interrogatory No. 11.

Interrogatory 12

For any of the cash or other removed amounts described in response to interrogatory #6 or 7 that was sent to St. Maarten, for which you HAVE received immunity, detail all of the methods you know of which were used, these shall include but not be limited to:

- A. Wally carried cash
- B. Wally carried checks
- C. Wally carried money orders
- D. Wally carried some other thing
- E. Fathi carried cash
- F. Fathi carried checks
- G. Fathi carried money orders
- H. Fathi carried some other thing
- I. A third person other than Wally or Fathi (please identify) carried cash
- J. A third person other than Wally or Fathi (please identify) carried checks
- K. A third person other than Wally or Fathi (please identify) carried M.O.s

L. A third person other than Wally or Fathi (please identify) carried some other thing

M. Investments were used to transfer funds

N. Wire transfers were used to transfer funds

O. Assets of value were used to transfer funds

P. Other means not listed were used to transfer funds, assets or anything of value.

Response: Yusuf objects to this interrogatory as overbroad and unduly burdensome to the extent that it seeks information beyond 1996 which is the time period relating to the events are the subject of this action. Further responding, Yusuf asserts his Fifth Amendment Privilege in response to this Interrogatory No. 12.

Interrogatory 13

For any of the cash or other removed amounts described in response to interrogatory #6 or 7 that was sent to St. Maarten, for which you HAVE received immunity, detail all taxes you paid in St. Maarten with regard to those funds

Response: Yusuf objects to this Interrogatories to the extent that they seek information and documents concerning any matter that is irrelevant to the claims or defenses of any party to this action, and not reasonably calculated to lead to the discovery of admissible evidence. Further responding, Yusuf asserts his Fifth Amendment Privilege in response to this Interrog No. 13.

Interrogatory 14

For any of the cash or other removed amounts described in response to interrogatory #6 or 7 that was sent to St. Maarten, for which you HAVE received immunity, detail all taxes Jamil or Isam or Island Appliances paid in St. Maarten with regard to those funds, and if they did not, detail how you assisted them in not paying those taxes.

Response: Yusuf objects to this Interrogatories to the extent that they seek information and documents concerning any matter that is irrelevant to the claims or defenses of any party to this action, and not reasonably calculated to lead to the discovery of admissible evidence. Further responding, Yusuf asserts his Fifth Amendment Privilege in response to this Interrog No. 13.

Interrogatory 15

For any of the cash or other removed amounts described in response to interrogatory #6 or 7 that was sent to St. Maarten, for which you HAVE received immunity, detail whether some was used to pay one or more interest payments on behalf of Sixteen Plus to Manal Yousef or her agent(s) in 1998, 1999, and/or 2000.

Response: Yusuf asserts his Fifth Amendment Privilege in response to this Interrogatory No. 15.

Interrogatory 16

In the companion CICO action, 650, you asserted the 5th Amendment in response to one or more interrogatories. Here, above, you were asked to identify the acts and activities for which you have received immunity. In the interrogatories above, you were asked to identify the removal or other diversion of funds or assets from Plaza Extra prior to their being accounted—for the purpose of avoiding taxes—for which you HAVE received immunity. Describe in detail as to all such acts, transfers and uses of the funds:

- A. The names of persons who assisted in each act, transfer or use.
- B. The manner in which each such person assisted and the dates involved.
- C. The value, compensation or other remuneration or gratuity each received.

Response: Yusuf asserts his Fifth Amendment Privilege in response to this Interrogatory No. 16.

Interrogatory 17

In the companion CICO action, 650, you asserted the 5th Amendment in response to one or more interrogatories. In the interrogatories above, you were asked to identify the removal or other diversion of funds or assets from Plaza Extra prior to their being accounted—for the purpose of avoiding taxes—for which you HAVE received immunity. Describe in detail as to all such acts, transfers and uses of the funds:

- A. The knowledge or involvement of Mike Yusuf
- B. The knowledge or involvement of Yusuf Yusuf
- C. The knowledge or involvement of NejeH Yusuf
- D. The knowledge or involvement of any other member of Fathi Yusuf's immediate family.
- E. The knowledge or involvement of any of Mohammad Hamed's sons or other members of his immediate family.
- F. The knowledge or involvement of any lawyer retained by Fathi Yusuf, Wally Hamed, Sixteen Plus, United Corporation or Plaza Extra Supermarkets
- G. The knowledge or involvement of any accountant or CPA retained by Fathi Yusuf, Wally Hamed, Sixteen Plus, United Corporation or Plaza Extra Supermarkets
- H. The knowledge or involvement of any employee or contractor of Sixteen Plus, United Corporation or Plaza Extra Supermarkets.
- I. The identity and knowledge on any other person not provided in response to the above.

Response: Yusuf asserts his Fifth Amendment Privilege in response to this Interrogatory No. 17.

Interrogatory 18

In the companion CICO action, 650, you asserted the 5th Amendment in response to one or more interrogatories. In the interrogatories above, you were asked to identify the removal or other diversion of funds or assets from Plaza Extra prior to their being accounted—for the purpose of avoiding taxes—for which you HAVE received immunity. Describe in detail as to all such acts, transfers and uses of the funds: What properties or assets in the USVI were purchased with such funds or assets, including but not limited to your personal real property, real property held by you or your family, and real property held by corporations or partnership owned jointly with members of the Hamed family

Response: Yusuf asserts his Fifth Amendment Privilege in response to this Interrogatory No. 18.

Interrogatory 19

In the companion CICO action, 650, you asserted the 5th Amendment in response to one or more interrogatories. In the interrogatories above, you were asked to identify the removal or other diversion of funds or assets from Plaza Extra prior to their being accounted—for the purpose of avoiding taxes—for which you HAVE received immunity. Describe in detail as to all

such acts, transfers and uses of the funds: What properties or assets in Jordan or the West Bank were purchased with such funds or assets, including but not limited to your personal real property, real property held by you or your family, and real property held by corporations or partnership owned jointly with members of the Hamed family.

Response: Yusuf asserts his Fifth Amendment Privilege in response to this Interrogatory No. 19.

Interrogatory 19 [number repeated in error]

In the companion CICO action, 650, you asserted the 5th Amendment in response to interrogatories. In the interrogatories above, you were asked to identify the removal or other diversion of funds or assets from Plaza Extra prior to their being accounted—for the purpose of avoiding taxes—for which you HAVE received immunity. For the purpose of interrogatories 19-21, these will be referred to as the act of “skimming” and the funds and assets will be referred to as the “skimmed assets”

A. For the years and times for which you have immunity only, state the approximate total amount of the skimmed assets.

B. For the years and times for which you have immunity only, state the approximate total amount of the skimmed assets that went to Fathi Yusuf and his family as compared to Mohammad Hamed and his family.

C. For the years and times for which you have immunity only, state the approximate total amount of the skimmed assets that have been invested in real property, and listing each property, state its present value.

D. For the years and times for which you DO NOT have immunity only, state the approximate total amount of the skimmed assets.

E. For the years and times for which you DO NOT have immunity only, state the approximate total amount of the skimmed assets that went to Fathi Yusuf and his family as compared to Mohammad Hamed and his family.

F. For the years and times for which you DO NOT have immunity only, state the approximate total amount of the skimmed assets that have been invested in real property, and listing each property, state its present value.

Response: Yusuf asserts his Fifth Amendment Privilege in response to this Interrogatory No. 19 [sic].

In his opposition Fathi must carry his burden by articulating why he has a realistic perception of potential criminal risk for each inquiry as to both the 1996-2004 and 2004 to present periods.

IV. Conclusion

In Hamed's *Second Motion to Compel* Hamed shows investigative reports, bank records and other official documentary evidence that the funds transferred to Sixteen Plus from Isam for the note and mortgage belonged to the Hamed and Yusuf families, not to Manal Yousuf—that she was a solely a willing, participatory straw man in the sham, and never provided any of her own money. Here, he further states that,

if allowed to obtain the subject discovery from Fathi, at trial he will show: (1) a plea agreement was reached that immunized Fathi up to the 2004 indictment, (2) huge amounts of back taxes and fines were paid because of the *1996-2004 actions* by Fathi, Wally and Isam, (3) which were allocuted to in the criminal plea, (4) which actions directly resulted in those Hamed and Yusuf funds appearing in Isam's accounts, (5) those being the same accounts from which Sixteen Plus received the Yusuf and Hamed funds to buy Diamond Keturah. Additionally, if he is allowed to examine Fathi as to the 1996-2004 period, Hamed will also prove that (6) all of the Defendants are Fathi's family members, (6) that Fathi conceived of and ran this operation (albeit with the participation of Wally Hamed), (7) that Fathi ordered and participated in the transfer of the land purchase funds from the Hamed and Yusuf families through Isam to Sixteen Plus, (8) that Fathi has received full immunity for all of these acts—but (8) instead of honoring that Agreement, Fathi thereafter started, and is now pursuing, a new fraud.

Manal Yousef will never receive the funds, Fathi will. Fathi will get them because these are clearly (in his mind as well as Manal's) his and Hamed's families' funds--and Manal could no more keep them than fly. Once again, *long after the Hameds and Yusufs had stated they would cease such acts and paid their debt to society via damages and punitive fines*, it is clear Fathi engineered yet another scheme to defraud, and he should not be allowed to use the Fifth Amendment to pull it off.

Finally, the inquires in Interrogatory 24 should be answered to the extent they don't impinge of substantive factual issues—as these are procedural questions. They go to the viability of the Fifth Amendment assertion rather than criminal liability.

Counsel for Hisham Hamed

Dated: December 2, 2022



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CERTIFICATE OF SERVICE

I hereby certify that this document complies with the page and word limitations set forth in Rule 6-1(e) and that on **December 2, 2022**, I served a copy of the foregoing by email and the Court's E-File system, as agreed by the parties, to:

James Hymes III, Esq.

Counsel for Defendants Isam and Jamil Yousuf

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/s/ Carl J. Hartmann

CERTIFICATE OF COMPLIANCE WITH RULE A 37(a)(1)

I hereby certify that I made the required efforts in good faith to confer with opposing counsel to obtain the foregoing requested information and did so confer.

Dated: December 2, 2022

/s/ Carl J. Hartmann

Proposed Order

**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,

and

SIXTEEN PLUS CORPORATION,

a nominal Defendant.

Case No.: SX-2016-CV-00650

**DERIVATIVE SHAREHOLDER
SUIT, ACTION FOR DAMAGES
AND CICO RELIEF**

JURY TRIAL DEMANDED

ORDER

THIS MATTER having come on before the Court on the motion of Sixteen Plus Corporation to compel discovery responses from Third-Party Defendant Fathi Yusuf pursuant to Rules 26, 33 and 37, or to preclude testimony; and the Court being informed,

IT IS ORDERED that Fathi Yusuf, having asserted his Fifth Amendment right against self-incrimination, is not compelled to further answer the subject interrogatories. Yusuf has demonstrated the factual predicate pursuant to the standard for the inquiry which derives from *Hoffman v. United States*, 341 U.S. 479, 486 (1951). A witness is generally entitled to invoke the Fifth Amendment privilege against self-incrimination where there is (1) a *realistic possibility* that his answer to a question can be used in any way to convict him of a crime. It need not be probable that a criminal prosecution will be brought or that the witness's answer will be introduced in a later prosecution; the witness need only show a realistic possibility that his answer will be used against him. Moreover, (2) the Fifth Amendment forbids not only the compulsion

of testimony that would itself be admissible in a criminal prosecution, but also the compulsion of testimony, whether or not itself admissible, that may aid in the development of other incriminating evidence that can be used at trial.

Yusuf has shown that testimony as to his acts from 1996 to the present meet these standards because the acts have not been fully immunized by a criminal Plea Agreement or protected by the applicable statutes of limitations.

However, Yusuf is precluded from testimony as to the subject matter of the refused interrogatories and related facts.

SO ORDERED.

Dated: _____, 2022

Douglas A. Brady
Judge of the Superior Court

ATTEST: TAMARA CHARLES,
Clerk of the Court

By: Court Clerk Supervisor

EXHIBITS

Exhibit 1 (November 7, 2022 Rule 37 letter from Atty. Hartmann to Atty. Perrell raising this Fifth Amendment issue);

Exhibit 2 (Yusuf's September 9, 2022 Responses to Interrogatories 1-3 (650))

Exhibit 3 Yusuf's November 7, 2022 Responses to Interrogatories 6-19 (65/342))

Exhibit 4 Yusuf's November 7, 2022 Response to Interrogatory 245 (650).



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ADMITTED: USVI, NM & DC

November 7, 2022

Charlotte Perrell, Esq.
Stefan Herpel, Esq.
DNF
Law House
St. Thomas, VI 00820

By Email Only

Copy to Hymes

RE: Request for Rule 37.1 Conference re Yusuf Discovery Responses in 650/65/342

Dear Charlotte and Stefan:

I write regarding Mr. Yusuf's discovery responses of November 7, 2022 in 650/65/342. It is Hamed's intention to file motions to compel directed to Judge Brady. Pursuant to Rule 37.1, I request a conference to discuss the bases of the proposed motion and, as an alternative to such a motion, seek amendments to the Yusuf responses which I've noted. I would appreciate a date and time convenient for you or your co-counsel within a week

ANALYSIS OF DEFICIENCIES

1. 342/65 - Third-Party Defendant Fathi Yusuf's Responses To Third-Party Plaintiff's Second Interrogatories

In Interrogatory #6 Fathi Yusuf was asked

Interrogatory #6:

In the companion CICO action, 650, you asserted the 5th Amendment in response to one or more interrogatories. Describe in detail all acts for which you have received immunity in which you or your agents or employees committed any of the following acts:

- A. Removed funds from Plaza Extra cash registers in the form of cash.
- B. Failed to add such cash removed from Plaza Extra on income tax filings
- C. Failed to pay taxes on such cash removed from Plaza Extra.
- D. Caused such cash removed from Plaza Extra to be converted to the use of you, your family members, the Hamed or the Hamed family members—or entities owned or controlled by any of them.

- E. Caused such cash removed from Plaza Extra to be transported by a living person traveling to St. Maarten.
- F. Caused such cash removed from Plaza Extra to be transported by a living person traveling to Jordan.
- G. Caused such cash removed from Plaza Extra to be transported by a living person traveling to the West Bank.
- H. Caused such cash removed from Plaza Extra to be transported wire, telex, money order or other non-human means traveling to St. Maarten.
- I. Caused such cash removed from Plaza Extra to be transported by wire, telex, money order or other non-human means to Jordan.
- J. Caused such cash removed from Plaza Extra to be transported by wire, telex, money order or other non-human means to the West Bank.
- k. Caused such cash removed from Plaza Extra to be deposited or used to purchase land in St. Maarten.
- L. Caused such cash removed from Plaza Extra to be deposited or used to purchase land in Jordan.
- M. Caused such cash removed from Plaza Extra to be deposited or used to purchase land in the West Bank.

Mr. Yusuf's response is totally non-responsive. It does not even make sense.

Response:

The Plea Agreement sets forth the immunity received by Fathi Yusuf. See attached Plea Agreement date-stamped FY342CASE- 000001 – 000020.

Hamed's comments:

The question asks for information about acts for which Mr. Yusuf HAS received immunity. He must answer this inquiry.

In response to interrogatory #7, a continuation of #6, the same inquiry is made and the same answer given. Thus, the same comments apply: The question asks for information about acts for which Mr. Yusuf HAS received immunity. He must answer this inquiry.

In Interrogatories #8 through #19, inquires go the responses in 6 and 7 or for which you "HAVE" immunity.. Thus, this is all information related to immunized acts. Again, they must be answered as the 5th Amendment does not attach to prior, immunized acts.

2. 650 - Defendant Fathi Yusuf's Responses To Hisham Hamed's Second Request For Interrogatories

In Interrogatory #19 you were asked the following:

Interrogatory 19:

Attached to the Amended Complaint as EXHIBIT 8, is a corporate tax filing for the 2011 tax year, by Sixteen Plus.

- A. Is the signature thereon yours?
- B. Did you sign that document "Under penalty of perjury"?
- C. You signed as Secretary/Treasurer--did you hold those positions at that time?
- D. Did you date the document 9-5-2012 ?
- E. On 'page 4' of that document is it represented that the amount of \$4,710,626 was a "Loans from Shareholders" amount.
- F. From which shareholders was that amount received by Sixteen Plus?
- G. How, when and by what means did Sixteen Plus receive an amount in excess of \$4 million from shareholders?
- H. Also on page 4, at line 8, there is an entry for "Mortgages" that lists no mortgages outstanding or due at that time. Explain in detail why the corporate tax filing did not list a mortgage due to Manal?

Your answers are non-responsive. This is a fact issue—Is that your signature? That is a yes or no. Did you sign it, and was that under penalty of perjury? Yes or No. Except for sub-items F-H, this must be answered

RESPONSE:

In response, Yusuf incorporates his response to Requests to Admit in the “342” case, wherein he explained: Yusuf executed the tax and corporate filings which were prepared by Pablo O’Neill for a number of years. Yusuf did not realize that the listing of the outstanding debt obligation was put as “shareholder” loans when executing the returns. Upon discovering this error, the tax returns were corrected in the years going forward.

Yusuf executed the tax and corporate filings in 2013 which were prepared by John Gaffney after Yusuf had discovered that the outstanding debt obligation to Manal Yusuf previously had been improperly listed that debt as “shareholder” loans. Upon discovering this error, the corporate filings and the tax returns were corrected in the years going forward.

Interrogatories 20 and 21 have the identical problem. They are specific, fact questions about what he did or what appears on the documents—they must be answered.

3.650 - Defendant Fathi Yusuf’s Responses To Hisham Hamed’s Third Request For Interrogatories

In Interrogatory #23, Mr. Yusuf is asked specific questions regarding his efforts to sell the property. He does not answer any of them. He can either state that he does not know or give an answer. He cannot simply say whatever he wants. Non-responsive.

Interrogatory 23:

In the amended complaint herein, it is alleged at paragraphs 37-42 that. . . :
A. You were asked to describe any inquiries, offers or communications with third parties about the subject property in the First Interrogatories of the companion consolidated cases 65/342). If there is and further information that you did not include there, please describe in detail here--including a description of any documents related thereto.

The response was not specific the question asked:

Response:

Yusuf incorporates his response to Interrogatory No. 1 in the "342" case as follows:

Yusuf had communications with a wealthy gentlemen, whose name he does not recall at the moment, regarding the potential purchase of the Diamond Katurah Property in for a potential purchase price of \$30,000,000. At that time, the Diamond Katurah Property was restricted from being sold as a result of the criminal matter that was pending. Yusuf discussed the potential sale with the Federal Marshal Briskman. In those discussions, the Marshal would not allow for the proceeds from the sale to be used to pay the Note and release the Mortgage. The Marshal was going to require the entire proceeds be held, and not released to anyone, if there was a sale of the Diamond Katurah Property.

Further, Yusuf incorporates his responses to certain Request to Admit in the "342" case in which he clarified that other than Marshal Briskman, Yusuf does not recall speaking with other government related persons on the matter of releasing the lien by Manal Yusuf on the Diamond Katurah Property.

4.650 DEFENDANT FATHI YUSUF'S RESPONSES TO HISHAM HAMED'S FOURTH REQUEST FOR INTERROGATORIES

In these interrogatories (#24 and #25) Mr. Yusuf was asked standard *voir dire* questions upon the assertion of the 5th Amendment in civil cases. These question and his responses will form the basis of motions practice as to the applicability and effect. They must, pursuant to applicable caselaw, be answered. Here are inquiry and his response for #24:

Interrogatory 24:

In you response to the first interrogatories provided on September 9, 2022, in response to interrogatories 1-3 you responded by partially answering--then asserting the 5th Amendment. With regard to that response:

A. Describe in detail all facts which support your assertion of the 5th Amendment with specificity as to dates, persons, places times, acts and documents.

B. Describe in detail any and all pending criminal actions, or the potential criminal actions against you.

C. Describe in detail all facts which tend to prove or disprove the extent to which the issues in the actual or potential criminal and civil cases overlap;

D. Describe in detail all facts which tend to prove or disprove the present status of the actual or potential criminal case, including whether you have been warned, targeted, made a POI, indicted, been given immunity or are otherwise immunized from prosecution or criminal jeopardy

E. Describe in detail all facts which tend to prove or disprove your interest in proceeding expeditiously weighed against the prejudice to you or other party caused by a delay;

F. Describe the private interests of and burden on the parties;

G. Describe the facts which prove or disprove the interests of the court; and

H. the public interest

I. Do you fully understand that partial disclosures in tandem with this assertion may void some or all of the alleged protections of the 5th Amendment? If the answer is other than a simple "yes", what is your understanding?

J. Do you fully understand that this assertion may create a negative inference? If the answer is other than a simple "yes", what is your understanding?

RESPONSE:

Yusuf objects to Interrogatory No. 24 on the grounds that it is an improper and compound inquiry. Further, Yusuf objects to the extent that it is an improper inquiry seeking information which is subject to attorney client and work product privilege. Yusuf objects to this inquiry on the grounds that it calls for Yusuf to provide a legal opinion or conclusions. **Further, responding Yusuf reasserts his Fifth Amendment privilege as to this Interrogatory.**

Interrogatory 25:

Please supply the factual predicates in these two responses—or be bared from asserting them in the applicable motion.

Finally, as to the two sets of RFPD, Hamed does not accept these responses as they are inadequate and unresponsive. But Hamed will move for estoppel or to bar the use of documents not provided in response.

I will await your response with dates/times.

Sincerely,



Carl J. Hartmann

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 YOUSEF**

Defendants,

and

SIXTEEN PLUS CORPORATION,

a nominal Defendant.

Case No.: 2016-SX-CV-650

**DERIVATIVE SHAREHOLDER
SUIT, ACTION FOR DAMAGES
AND CICO RELIEF**

JURY TRIAL DEMANDED

**DEFENDANT FATHI YUSUF'S OBJECTIONS AND
RESPONSES TO PLAINTIFF'S
FOR INTERROGATORIES
TO DEFENDANT FATHI YUSUF**

COMES NOW, Defendant Fathi Yusuf ("Yusuf") and files his Objections and Responses to Plaintiff's Interrogatories to Yusuf as follows:

OBJECTIONS AND RESPONSES

Interrogatory 1:

Describe in detail the actions of persons and the movement, laundering, deposit and use of Plaza Extra funds **TO and IN** St. Martin/St. Maartin for the period from 1996 through 2001. Be specific as to dates and amounts. Include the roles of Sixteen Plus, yourself, Waleed Hamed, Isam Yousuf, Manal Yousef and Jamil Yousef.

Response:

Yusuf objects to this interrogatory on the grounds that this discovery request is not proportional to the needs of the case considering that the burden and expense of the requested discovery outweighs it's likely benefit, and as such, Yusuf has limited his search to the period prior to Sixteen Plus' receipts of the loan installments. The loan installments were made in February and September of 1997.

Sixteen Plus did not receive Plaza Extra funds relating to the loan installments and thus, did not have a role in the movement of any Plaza Extra funds. Plaza Extra did not have sufficient funds to purchase the Diamond Kutura property at the purchase price of \$4.5 million and thus, would need to borrow funds for the purchase.

Further responding, to the extent that any further information is requested of Yusuf, he objects to responding on the basis of his Fifth Amendment rights.

Interrogatory 2:

Describe in detail the actions of persons and the movement, laundering, deposit and use of Plaza Extra funds **FROM** St. Martin/St. Maarten **TO and IN** the U.S. Virgin Islands for the period from 1996 through 2001. Be specific as to dates and amounts. Include the roles of Sixteen Plus, yourself, Waleed Hamed, Isam Yousuf, Manal Yousef and Jamil Yousef.

Response:

Yusuf objects to this interrogatory on the grounds that this discovery request is not proportional to the needs of the case considering that the burden and expense of the requested discovery outweighs it's likely benefit, and as such, Yusuf has limited his search to the period prior to Sixteen Plus' receipts of the loan installments. The loan installments were made in February and September of 1997.

Sixteen Plus did not receive Plaza Extra funds relating to the loan installments and thus, did not have a role in the movement of any Plaza Extra funds. Plaza Extra did not have sufficient funds to purchase the Diamond Kutura property at the purchase price of \$4.5 million and thus, would need to borrow funds for the purchase.

Further responding, to the extent that any further information is requested of Yusuf, he objects to responding on the basis of his Fifth Amendment rights.

Interrogatory 3:

Describe in detail the actions of persons and the movement, laundering, deposit and use of Plaza Extra funds **FROM** St. Martin/St. Maarten **TO and IN** Jordan for the period from 1996 through 2001. Be specific as to dates and amounts. Include the roles of Sixteen Plus, yourself, Waleed Hamed, Isam Yousuf, Manal Yousef and Jamil Yousef.

Response:

Yusuf objects to this interrogatory on the grounds that this discovery request is not proportional to the needs of the case considering that the burden and expense of the

requested discovery outweighs it's likely benefit, and as such, Yusuf has limited his search to the period prior to Sixteen Plus' receipts of the loan installments. The loan installments were made in February and September of 1997.

Sixteen Plus did not receive Plaza Extra funds relating to the loan installments and thus, did not have a role in the movement of any Plaza Extra funds. Plaza Extra did not have sufficient funds to purchase the Diamond Kutura property at the purchase price of \$4.5 million and thus, would need to borrow funds for the purchase.

Further responding, to the extent that any further information is requested of Yusuf, he objects to responding on the basis of his Fifth Amendment rights.

VERIFICATION

I hereby certify under penalty of perjury that the facts contained in each of the foregoing responses to interrogatories are true and correct to the best of my knowledge, information and belief.

Dated: 9-9-2022

Fathi Yusuf
Fathi Yusuf

TERRITORY OF THE UNITED STATES VIRGIN ISLANDS)
DISTRICT OF ST. CROIX) ss.
_____)

On this, the 9th day of September, 2022, before me, the undersigned officer, personally appeared Fathi Yusuf, known to me (or satisfactorily proven) to be the person whose name is subscribed to the within document and acknowledged that he/she executed the same for the purpose therein contained.

IN WITNESS WHEREOF, I hereunto set my hand and official seal.

Heather Andrea Daley
Notary Public
HEATHER ANDREA DALEY
Notary Public
St. Croix, U.S. Virgin Islands
My Commission Expires May 16, 2025
NP-470-21

Interrogatory #5:

In the companion CICO action, 650, you asserted the 5th Amendment in response to one or more interrogatories. State in detail what immunity you received in return for or at the time of the plea deal by which United Corporation pled guilty of tax evasion.

NOTE: It does not make any difference that others received a similar or identical immunity—what is being sought here is YOUR statement of and understanding of the immunity you enjoy. This shall include but not be limited to the specific acts and types of acts for which you received immunity., as well as dates (or range of dates) of those acts for which you received immunity.

Response:

The Plea Agreement sets forth the immunity received by Fathi Yusuf. See attached Plea Agreement bate-stamped FY342CASE- 000001 – 000020.



Interrogatory #6:

In the companion CICO action, 650, you asserted the 5th Amendment in response to one or more interrogatories. Describe in detail all acts for which you have received immunity in which you or your agents or employees committed any of the following acts:

- A. Removed funds from Plaza Extra cash registers in the form of cash.
- B. Failed to add such cash removed from Plaza Extra on income tax filings
- C. Failed to pay taxes on such cash removed from Plaza Extra.
- D. Caused such cash removed from Plaza Extra to be converted to the use of you, your family members, the Hamed or the Hamed family members—or entities owned or controlled by any of them.
- E. Caused such cash removed from Plaza Extra to be transported by a living person traveling to St. Maarten.
- F. Caused such cash removed from Plaza Extra to be transported by a living person traveling to Jordan.
- G. Caused such cash removed from Plaza Extra to be transported by a living person traveling to the West Bank.
- H. Caused such cash removed from Plaza Extra to be transported wire, telex, money order or other non-human means traveling to St. Maarten.
- I. Caused such cash removed from Plaza Extra to be transported by wire, telex, money order or other non-human means to Jordan.
- J. Caused such cash removed from Plaza Extra to be transported by wire, telex, money order or other non-human means to the West Bank.

K. k. Caused such cash removed from Plaza Extra to be deposited or used to purchase land in St. Maarten.

L. Caused such cash removed from Plaza Extra to be deposited or used to purchase land in St. Jordan.

M. Caused such cash removed from Plaza Extra to be deposited or used to purchase land in the West Bank.



Response:

The Plea Agreement sets forth the immunity received by Fathi Yusuf. See attached Plea Agreement bate-stamped FY342CASE- 000001 – 000020.



Interrogatory #7:

In the companion CICO action, 650, you asserted the 5th Amendment in response to one or more interrogatories. Describe in detail all acts **for which you have received immunity** in which you or your agents or employees committed any of the following acts:

- N. Removed pre-tax funds from Plaza Extra by means other than by taking cash from cash registers, .
- O. Failed to add such other removed amounts removed from Plaza Extra on income tax filings
- P. Failed to pay taxes on such other removed amounts removed from Plaza Extra.
- Q. Caused such other removed amounts removed from Plaza Extra.
- R. Caused such other removed amounts removed from Plaza Extra to be transported by a living person traveling to St. Maarten.
- S. Caused such other removed amounts removed from Plaza Extra to be transported by a living person traveling to Jordan.
- T. Caused such other removed amounts removed from Plaza Extra to be transported by a living person traveling to the West Bank.
- U. Caused such other removed amounts removed from Plaza Extra to be transported wire, telex, money order or other non-human means traveling to St. Maarten.
- V. Caused such other removed amounts removed from Plaza Extra to be transported by wire, telex, money order or other non-human means to Jordan.
- W. Caused such other removed amounts removed from Plaza Extra to be transported by wire, telex, money order or other non-human means to the West Bank.

- X. k. Caused such other removed amounts removed from Plaza Extra to be deposited or used to purchase land in St. Maarten.
- Y. Caused such other removed amounts removed from Plaza Extra to be deposited or used to purchase land in St. Jordan.
- Z. Caused such other removed amounts removed from Plaza Extra to be deposited or used to purchase land in the West Bank

Response:

The Plea Agreement sets forth the immunity received by Fathi Yusuf. See attached Plea Agreement bate-stamped FY342CASE- 000001 – 000020.



Interrogatory #8:

For any of the cash or other removed amounts described in response to interrogatory #6 or 7, state whether some or all of that cash was repatriated to the USVI, Puerto Rico or the mainland US. For each such amount state:

- A. What amount was repatriated
- B. When that occurred
- C. What means was used to repatriate the amount.
- D. What that amount was used for

Response:

Yusuf asserts his Fifth Amendment Privilege in response to this Interrogatory No. 8.



Interrogatory #9:

For any of the cash or other removed amounts described in response to interrogatory #6, state whether some or all of that cash was NOT repatriated to the USVI, Puerto Rico or the mainland

US. For each such amount state:

- A. What amount was not repatriated
- B. What that amount was used for
- C. What amount or asset presently exists, where and its value.

Response:

Yusuf asserts his Fifth Amendment Privilege in response to this Interrogatory No. 9.

Interrogatory 10

For any of the cash or other removed amounts described in response to interrogatory #6 or 7 that was sent to St. Maarten, for which you HAVE received immunity, state whether some amounts went to Isam or Jamil Yousef – or Island Appliances.

Response:

Yusuf asserts his Fifth Amendment Privilege in response to this Interrogatory No. 9.

Interrogatory 11

For any of the cash or other removed amounts described in response to interrogatory #6 or 7 that was sent to St. Maarten, for which you HAVE received immunity, state the approximate amount in each of the years 1995, 1996, 1997, 1998, 1999, and 2000. If you are not able to approximate the amount, state a range. If you are not able to approximate or state a range, state a minimum amount.

Response:

Yusuf objects to this interrogatory as overbroad and unduly burdensome to the extent that it seeks information beyond 1996 which is the time period relating to the events are the subject of this action. Further responding, Yusuf asserts his Fifth Amendment Privilege in response to this Interrogatory No. 11.

Interrogatory 12

For any of the cash or other removed amounts described in response to interrogatory #6 or 7 that was sent to St. Maarten, for which you HAVE received immunity, detail all of the methods you know of which were used, these shall include but not be limited to:

- A. Wally carried cash
- B. Wally carried checks
- C. Wally carried money orders
- D. Wally carried some other thing
- E. Fathi carried cash
- F. Fathi carried checks
- G. Fathi carried money orders
- H. Fathi carried some other thing
- I. A third person other than Wally or Fathi (please identify) carried cash
- J. A third person other than Wally or Fathi (please identify) carried checks
- K. A third person other than Wally or Fathi (please identify) carried money orders
- L. A third person other than Wally or Fathi (please identify) carried some other thing
- M. Investments were used to transfer funds
- N. Wire transfers were used to transfer funds
- O. Assets of value were used to transfer funds
- P. Other means not listed were used to transfer funds, assets or anything of value.

Response: Yusuf objects to this interrogatory as overbroad and unduly burdensome to the extent that it seeks information beyond 1996 which is the time period relating to the events are the subject

□ of this action. Further responding, Yusuf asserts his Fifth Amendment Privilege in response to this Interrogatory No. 12.

Interrogatory 13

For any of the cash or other removed amounts described in response to interrogatory #6 or 7 that was sent to St. Maarten, for which you HAVE received immunity, detail all taxes you paid in St. Maarten with regard to those funds

Response:

Yusuf objects to this Interrogatories to the extent that they seek information and documents concerning any matter that is irrelevant to the claims or defenses of any party to this action, and not reasonably calculated to lead to the discovery of admissible evidence. Further responding, Yusuf asserts his Fifth Amendment Privilege in response to this Interrogatory No. 13.

Interrogatory 14

For any of the cash or other removed amounts described in response to interrogatory #6 or 7 that was sent to St. Maarten, for which you HAVE received immunity, detail all taxes Jamil or Isam or Island Appliances paid in St. Maarten with regard to those funds, and if they did not, detail how you assisted them in not paying those taxes.

Response:

Yusuf objects to this Interrogatories to the extent that they seek information and documents concerning any matter that is irrelevant to the claims or defenses of any party to this action, and not reasonably calculated to lead to the discovery of admissible evidence. Further responding, Yusuf asserts his Fifth Amendment Privilege in response to this Interrogatory No. 13.

Interrogatory 15

For any of the cash or other removed amounts described in response to interrogatory #6 or 7 that was sent to St. Maarten, for which you HAVE received immunity, detail whether some was used to ay one or more interest payments on behalf of Sixteen Plus to Manal Yousef or her agent(s) in 1998, 1999, and/or 2000.

Response:

Yusuf asserts his Fifth Amendment Privilege in response to this Interrogatory No. 15.

Interrogatory 16

In the companion CICO action, 650, you asserted the 5th Amendment in response to one or more interrogatories. Here, above, you were asked to identify the acts and activities for which you have received immunity. In the interrogatories above, you were asked to identify the removal or other diversion of funds or assets from Plaza Extra prior to their being accounted--for the purpose of avoiding taxes—for which you HAVE received immunity. Describe in detail as to all such acts, transfers and uses of the funds:

- A. The names of persons who assisted in each act, transfer or use.
- B. The manner in which each such person assisted and the dates involved.
- C. The value, compensation or other remuneration or gratuity each received.

Response:

Yusuf asserts his Fifth Amendment Privilege in response to this Interrogatory No. 16.

Interrogatory 17

In the companion CICO action, 650, you asserted the 5th Amendment in response to one or more interrogatories. In the interrogatories above, you were asked to identify the removal or other diversion of funds or assets from Plaza Extra prior to their being accounted--for the purpose of avoiding taxes—for which you HAVE received immunity. Describe in detail as to all such acts, transfers and uses of the funds:

- A. The knowledge or involvement of Mike Yusuf
- B. The knowledge or involvement of Yusuf Yusuf
- C. The knowledge or involvement of Negeh Yusuf
- D. The knowledge or involvement of any other member of Fathi Yusuf's immediate family.
- E. The knowledge or involvement of any of Mohammad Hamed's sons or other members of his immediate family.
- F. The knowledge or involvement of any lawyer retained by Fathi Yusuf, Wally Hamed, Sixteen Plus, United Corporation or Plaza Extra Supermarkets
- G. The knowledge or involvement of any accountant or CPAr retained by Fathi Yusuf, Wally Hamed, Sixteen Plus, United Corporation or Plaza Extra Supermarkets
- H. The knowledge or involvement of any employee or contractor of Sixteen Plus, United Corporation or Plaza Extra Supermarkets.
- I. The identity and knowledge on any other person not provided in response to the above.

Response: Yusuf asserts his Fifth Amendment Privilege in response to this Interrogatory No. 17.

Interrogatory 18

In the companion CICO action, 650, you asserted the 5th Amendment in response to one or more interrogatories. In the interrogatories above, you were asked to identify the removal or other diversion of funds or assets from Plaza Extra prior to their being accounted--for the purpose of avoiding taxes—for which you HAVE received immunity. Describe in detail as to all such acts, transfers and uses of the funds: What properties or assets in the USVI were purchased with such funds or assets, including but not limited to your personal real property, real property held by you or your family, and real property held by corporations or partnership owned jointly with members of the Hamed family

Response:

Yusuf asserts his Fifth Amendment Privilege in response to this Interrogatory No. 18.

Interrogatory 19

In the companion CICO action, 650, you asserted the 5th Amendment in response to one or more interrogatories. In the interrogatories above, you were asked to identify the removal or other diversion of funds or assets from Plaza Extra prior to their being accounted--for the purpose of avoiding taxes—for which you HAVE received immunity. Describe in detail as to all such acts, transfers and uses of the funds: What properties or assets in Jordan or the West Bank were purchased with such funds or assets, including but not limited to your personal real property, real property held by you or your family, and real property held by corporations or partnership owned jointly with members of the Hamed family.

Response:

Yusuf asserts his Fifth Amendment Privilege in response to this Interrogatory No. 19.



Interrogatory 19

Duplicate number

In the companion CICO action, 650, you asserted the 5th Amendment in response to interrogatories. In the interrogatories above, you were asked to identify the removal or other diversion of funds or assets from Plaza Extra prior to their being accounted--for the purpose of avoiding taxes—for which you HAVE received immunity. For the purpose of interrogatories 19-21, these will be referred to as the act of “skimming” and the funds and assets will be referred to as the “skimmed assets”

- A. For the years and times for which you have immunity only, state the approximate total amount of the skimmed assets.
- B. For the years and times for which you have immunity only, state the approximate total amount of the skimmed assets that went to Fathi Yusuf and his family as compared to Mohammad Hamed and his family.
- C. For the years and times for which you have immunity only, state the approximate total amount of the skimmed assets that have been invested in real property, and listing each property, state its present value.
- D. For the years and times for which you DO NOT have immunity only, state the approximate total amount of the skimmed assets.
- E. For the years and times for which you DO NOT have immunity only, state the approximate total amount of the skimmed assets that went to Fathi Yusuf and his family as compared to Mohammad Hamed and his family.

F. For the years and times for which you DO NOT have immunity only, state the approximate total amount of the skimmed assets that have been invested in real property, and listing each property, state its present value.

Response:

Yusuf asserts his Fifth Amendment Privilege in response to this Interrogatory No. 19
[sic].

Respectfully submitted,

DUDLEY NEWMAN FEUERZEIG LLP

DATED: November 7, 2022

By: /s/ Charlotte Perrell

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Attorneys for Fathi Yusuf

CERTIFICATE OF SERVICE

It is hereby certified that on the 7th day of November, 2022, the foregoing **THIRD-PARTY DEFENDANT FATHI YUSUF'S RESPONSES TO THIRD-PARTY PLAINTIFF'S SECOND INTERROGATORIES**, which complies with the page and word limitations set forth in Rule 6-1(e), was served via e-mail, as agreed by the parties, addressed to:

Joel H. Holt, Esq.

LAW OFFICES OF JOEL H. HOLT

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c/Charlotte Perrell

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 YOUSEF,)
)
) Defendants,)
)
)
) and)
)
)
) SIXTEEN PLUS CORPORATION,)
)
)
) a nominal defendant.)
)
_____)

CASE NO.: SX-2016-CV-00650
DERIVATIVE SHAREHOLDER
SUIT, ACTION FOR DAMAGES
AND CICO RELIEF
JURY TRIAL DEMANDED

**DEFENDANT FATHI YUSUF'S RESPONSES TO
HISHAM HAMED'S FOURTH REQUEST FOR INTERROGATORIES**

COMES NOW, Defendant FATHI YUSUF ("Yusuf") and files his Objections and Responses to Hamed's Fourth Request for Interrogatories as follows:

INTERROGATORIES

Interrogatory 24:

In you response to the first interrogatories provided on September 9, 2022, in response to interrogatories 1-3 you responded by partially answering--then asserting the 5th Amendment. With regard to that reponse:

- A. Describe in detail all facts which support your assertion of the 5th Amendment with specificity as to dates, persons, places times, acts and documents.
- B. Describe in detail any and all pending criminal actions, or the potential criminalactions against you.
- C. Describe in detail all facts which tend to prove or disprove the extent to which the issues in the actual or potential criminal and civil cases overlap;
- D. Describe in detail all facts which tend to prove or disprove the present status of the actual or potential criminal case, including whether you have been warned, targeted,made a POI, indicted,

been given immunity or are otherwise immunized from prosecution or criminal jeopardy

- E. Describe in detail all facts which tend to prove or disprove your interest in proceeding expeditiously weighed against the prejudice to you or other party caused by a delay;
- F. Describe the private interests of and burden on the parties;
- G. Describe the facts which prove or disprove the interests of the court; and
- H. the public interest
- I. Do you fully understand that partial disclosures in tandem with this assertion may void some or all of the alleged protections of the 5th Amendment? If the answer is other than a simple "yes", what is your understanding?
- J. Do you fully understand that this assertion may create a negative inference? If the answer is other than a simple "yes", what is your understanding?

RESPONSE:

Yusuf objects to Interrogatory No. 24 on the grounds that it is an improper and compound inquiry. Further, Yusuf objects to the extent that it is an improper inquiry seeking information which is subject to attorney client and work product privilege. Yusuf objects to this inquiry on the grounds that it calls for Yusuf to provide a legal opinion or conclusions. Further, responding Yusuf reasserts his Fifth Amendment privilege as to this Interrogatory.

Interrogatory 25:

In response to Interrogatory number 4 regarding the original loan of \$4.5 million you stated:

I advised Bank of Nova Scotia that we would purchase the property and would close upon the end of the right of redemption period. **United made a \$500,000 deposit** to hold the property. Upon my return to the Virgin Islands, the first installment on the loan was received. We created Sixteen Plus, LLC to purchase the Diamond Katurah property.

In response to Document request #8 as to three interest payments of \$360,000 you stated

Yusuf shows that **three payments were made of interest**. Yusuf is researching documents to evidence these payments and will supplement as to same.

Describe in detail United's and Fathi Yusuf's involvement in these transactions, include but do not limit this to:

- A. On or about what dates did United make the \$500,000 payment? The three interest payments?
- B. From what United or Sixteen Plus account was each of the 4 payments made?
- C. Who authorized and arranged each payment? In what capacity did they act?
- D. What was the source of the funds United used for the \$500,000 payment -- was it from Plaza Extra income, United tenant income or otherwise?
- E. Were there writings or documents associated with these payments and repayments and for each identify the creator, the content and the purpose -- whether or not you now have the related documents?
- F. When and how was repayment to United of the \$500,000 made--by whom, from what account and into what account. Include the names of all persons with knowledge of this and all documents?

Response:

Yusuf incorporates his prior responses in this matter to this Interrogatory as responsive thereto. Yusuf further shows that he was primarily involved with identifying the Diamond Katurah Property and negotiating with the Bank of Nova Scotia to secure the property. As to the initial payment of the \$500,000, Yusuf believes the funds were provided to the Bank of Nova Scotia in the form of a check and that the funds would have come from the United/Plaza Extra income. Yusuf has now seen certain documents from Plessen relating to a loan, which Sixteen Plus later repaid. Yusuf shows that it is possible that Plessen may have provided the initial \$500,000, to hold the property. However, his recollection is that it was from United. As to the interest payments, Yusuf has found no documents in his possession regarding same but understood that Waleed is the one who physically made the payments. Yusuf believes that the source of the funds for the interest payments were United's Plaza Extra income. Yusuf does not recall how the \$500,000 initial payment to hold the property was repaid.

Respectfully Submitted,

DUDLEY NEWMAN FEUERZEIG LLP

DATED: November 7, 2022

By: /s/ Charlotte Perrell

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CERTIFICATE OF SERVICE

It is hereby certified that on the 4th day of November, 2022, the foregoing **DEFENDANT FATHI YUSUF'S RESPONSES TO HISHAM HAMED'S FOURTH REQUEST FOR INTERROGATORIES**, which complies with the page and word limitations set forth in Rule 6-1(e), was served via e-mail addressed to:

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