



**COMES NOW**, Fathi Yusuf (“Yusuf”) and pursuant to Judge Molloy’s Order dated August 23, 2019 (“August 23, 2019 Order”), files this Opposition to Transfer to the Complex Litigation Division and shows for his reasons as follows:

**I. Summary**

As the Court is likely aware, the Yusuf and Hamed families are engaged in protracted and acrimonious litigation related to the families’ long-term joint business interests. The ongoing litigation encompasses multiple civil cases pending in the courts of the Virgin Islands, including the main case between the parties, which is styled *Hamed v. Yusuf, et al.*, Case No. SX-12-CV-370 and assigned to the Honorable Douglas A. Brady (“Main Case”).<sup>1</sup>

The above-styled actions involve three (3) cases pending before the Honorable Jomo Meade—two of which are consolidated and one which is not. The two consolidated cases involve declaratory judgment and mortgage foreclosure actions, neither of which is complex. The third case—a derivative suit—which has not been consolidated, involves CICO claims, allegedly filed by Sixteen Plus Corporation (the authority for which remains in question<sup>2</sup>), and is subject to pending motions to dismiss on numerous grounds including failure to state a claim and statute of limitations, all of which have been fully briefed and

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<sup>1</sup> The Main Case, which has been consolidated with a number of other matters, is now in the partnership windup stage under the direction and supervision of Special Master Edgar D. Ross, who is presiding over the claims resolution between the partners, United Corporation and other related entities.

<sup>2</sup>As Sixteen Plus Corporation is jointly owned 50/50 by the Yusuf and Hamed families, there remain issues as to what authority Hisham Hamed has to initiate the derivative suit on behalf of Sixteen Plus and whether counsel purportedly representing Sixteen Plus has authority for that representation as it was not authorized by the Yusuf family.

were argued before Judge Meade<sup>3</sup> on August 23, 2017 (the “August 23, 2017 Hearing”). On January 9, 2019, almost a year and a half after the August 23, 2017 Hearing, Hamed moved to consolidate the derivative suit with the other two, but the motion is contested and remains pending.

It is Yusuf’s position that: 1) the three (3) actions cannot be viewed collectively in determining whether to transfer the cases to the Complex Division as they are not consolidated actions; 2) there is no basis for transferring any of the three (3) cases to the Complex Litigation Division as they are neither “complex,” nor do they meet any of the enumerated criteria for transfer to the Complex Litigation Division and, 3) significant time and effort has already been expended in the three (3) cases thus far, including attendance at hearings for pending motions ripe for adjudication,<sup>4</sup> such that transferring to the Complex Litigation Division, at this stage, would waste those efforts and require duplication of work. Hence, for these reasons, the cases should not be transferred. As an alternative, whether transferred to the Complex Litigation Division or not, if the Court or Complex Litigation Judge believes it would be beneficial to appoint a Master, just as Judge Brady has done in the Main Case, then Special Master Ross, who is already familiar with the extent of the litigation between the parties could be appointed as a Master in these cases, pursuant to V.I.R. Civ. P. 95.

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<sup>3</sup> For the sake of thoroughness, Yusuf calls to Judge Molloy’s attention his earlier Recusal Order in the derivative case issued on March 17, 2017 on the grounds that Attorney Kye Walker was representing Defendants Isam Yousef and Jamil Yousef (the “Yousefs”). Subsequent to that Recusal Order, Attorney Jim Hymes was substituted as counsel for the Yousefs. Hence, it would appear that the reasons for the earlier Recusal Order are no longer present.

<sup>4</sup> See **Exhibit A**—List of pending motions that were argued before Judge Meade at the August 23, 2017 Hearing.

**II. The Three Cases Enumerated in the Caption Have *Not* Been Consolidated into a Single Case and Cannot be Viewed Collectively When Determining Whether to Transfer to the Complex Litigation Division.**

In both Judge Meade's Notice regarding a possible transfer to the Complex Litigation Division and the August 23, 2019 Order setting a briefing and hearing schedule as to whether a transfer should proceed, three (3) actions are listed:

- i) 2016-SX-CV-65 (the "Declaratory Judgment Suit"),
- ii) 2017- SX-CV-342 (the "Foreclosure Action"), and
- iii) 2016-SX-CV-650 (the "Derivative Suit").

The Declaratory Judgment Suit and the Foreclosure Action have been consolidated (collectively referred to as the "Declaratory Judgment/Foreclosure Action"). However, the Derivative Suit has not been consolidated and the issue of consolidation is contested. *See Exhibit B*—Defendants Isam Yousuf and Jamil Yousuf's Opposition to Plaintiff Hisham Hamed's Motion to Consolidate. The cases have different claims asserted by different plaintiffs against different defendants alleging different legal claims such that consolidation is not proper. Therefore, the cases cannot be treated as a single case for the purpose of determining whether to transfer to the Complex Litigation Division but rather must be viewed as separate cases; to wit: a) the Declaratory Judgment/Foreclosure Action, and, b) the Derivative Suit.

**III. Neither the Declaratory Judgment/Foreclosure Action Nor the Derivative Suit Meet the Criteria for Transfer to the Complex Litigation Division.**

Pursuant to V.I. R. CIV. P. 92, a complex case is defined as:

a civil action or proceeding that requires exceptional judicial management to avoid placing unnecessary burdens on the court or the litigants and to expedite the case, keep costs

reasonable, and promote effective decision making by the court, the parties, and counsel.

Certain types of cases are presumed to be complex. Those cases include a case or proceeding that involve one or more of the following types of claims:

- (1) environmental tort claims, mass tort claims, or toxic tort claims commenced by multiple parties (whether as one action or multiple, individual actions);
- (2) the same or similar construction, design, or manufacturing defect claims stated in multiple actions or involving multiple parties, structures, or products;
- (3) contract, statutory, or tort claims commenced by multiple parties (whether as one action or multiple, individual actions) arising out of a natural disaster or other territory-wide or island-wide event;
- (4) securities claims or investment losses involving multiple parties;
- (5) class actions; and
- (6) insurance coverage claims (including indemnification and contribution claims) arising out of multi-party proceedings in any of the above categories of cases.

V.I. R. CIV. P. 92(b). In determining whether a matter should be assigned to the Complex Litigation Division, due consideration shall be given to the “type of claims involved, the law governing the action” and the following factors:

- (1) whether the action involves a large number of parties; many claims with common, recurrent issues of law or fact associated with a single product, natural disaster, or complicated environmental or toxic tort; or a high degree of commonality of injury or damages among the claimants; and
- (2) whether assignment to the Complex Litigation Division may unreasonably delay the case, increase expense, complicate the action, or unfairly prejudice a party; whether coordinated discovery would be advantageous; whether the cases require specialized expertise and case

processing by the dedicated Complex Litigation Division judge and staff; whether assignment would result in the efficient utilization of judicial resources and the facilities and personnel of the court; whether issues of insurance, limits on assets and potential bankruptcy can be best addressed in coordinated proceedings; or whether there are related matters pending in federal court or in other state or Territorial courts that require coordination by the Complex Litigation Division judge.

V.I. R. Civ. P. 92(c). Furthermore, “[b]ecause complex cases inherently present exceptional circumstances, the judge assigned to the Complex Litigation Division may appoint and assign a master to assist with any of the cases.” V.I. R. Civ. P. 95.

Here, neither the Declaratory Judgment/Foreclosure Action nor the Derivative Suit require “exceptional judicial management” and their administration does not place excessive burdens on the parties or the Court. V.I. R. Civ. P. 92. They do not involve matters delineated as “presumed complex” as they do not involve “environmental tort claims, mass tort claims, or toxic tort claims,” claims relating to a natural disaster or territory wide event, securities or investment matters, a class action or an insurance coverage claim. V.I. R. Civ. P. 92(b). Moreover, the cases do not involve large number of parties or “many claims with common, recurrent issues of law or fact associated with a single product, natural disaster, or complicated environmental or toxic tort; or a high degree of commonality of injury or damages among the claimants.” V.I. R. Civ. P. 92(c).

*A. Declaratory Judgment/Foreclosure Action*

This case concerns a loan made by Manal Yousef (“Ms. Yousef”) to Sixteen Plus Corporation (“Sixteen Plus”)—owned in equal shares by the Hamed and Yusuf families—and her mortgage recorded against the property of Sixteen Plus. Sixteen Plus borrowed money from Ms. Yousef to purchase real property known as the Diamond Keturah property (the “Property”).

Ms. Yousef brought this action to foreclose her mortgage due to non-payment of the money owed to her by Sixteen Plus. Sixteen Plus has asserted a counterclaim against Ms. Yousef, as well as a third-party claim against Yusuf for unspecified tortious actions and a claim for a declaratory judgment that Yusuf is estopped from foreclosing on the mortgage—which he is not doing. Sixteen Plus alleges that its President, Waleed Hamed, signed a Promissory Note to Ms. Yousef in the amount of four million five hundred thousand dollars, a First Priority Mortgage securing the payment of that Note, and executed a Board Resolution to borrow those funds, all with the understanding that none of these documents would be enforceable. The allegation is that in the late 1990s, Yusuf made a fraudulent misrepresentation to the Hamed shareholders of Sixteen Plus that the promissory note was not what it purported to be and, therefore, did not represent a legal obligation on the part of Sixteen Plus and that the mortgage did not really provide for a security interest in the Property because the note and mortgage could be discharged at any time at the mere request of Sixteen Plus. While Hamed attempts to complicate an otherwise straightforward debt and foreclosure action, these efforts are manufactured and do not render the matter “complex” or worthy of transfer to the Complex Litigation Division.

The third-party claim against Yusuf is the subject of a Motion to Dismiss and is ripe for adjudication. Otherwise, the debt and foreclosure action can proceed without any particular difficulty as such actions are routine litigation matters regularly dealt with in the Superior Court. Although the allegations relate to the formation of the mortgage and assent to same, at best, the allegations create factual issues to be determined by a trier of fact as opposed to a matter before the Complex Litigation Division requiring additional or specialized attention and care. The case only involves three (3) parties: Sixteen Plus, Ms.

Yousef and Yusuf. If Yusuf's Motion to Dismiss is granted, then the matter would only involve two parties—a borrower and a lender—in a dispute over payment of a debt and the documents giving rise to the debt. Hence, the Declaratory Judgment/Foreclosure Action does not provide any basis for transfer to the Complex Litigation Division.

*B. The Derivative Suit*

The Derivative Suit filed by Hisham Hamed purportedly on behalf of Sixteen Plus, has undergone revisions after Yusuf filed his initial Motion to Dismiss prompting Plaintiff to file a First Amended Complaint in an ill-fated effort to plead a viable claim. Plaintiff attempts to allege that Yusuf and the other defendants are liable under a CICO conspiracy theory to “embezzle” the “value of the Land” from Sixteen Plus, by virtue of a “sham mortgage” on real property owned by Sixteen Plus and refusing to sell unless the “sham mortgage” was paid. Notably, the CICO claim must be for a *conspiracy* to embezzle money, since Plaintiff does not—and cannot—claim that any money has been received by Yusuf, or the other Defendants as a result of the mortgage. However, Plaintiff has failed to plead a viable CICO conspiracy claim given that the alleged conspiracy was complete in 1997 when the alleged “sham mortgage” was given by Sixteen Plus. Thus, even if Plaintiff's CICO conspiracy claim was properly pled—which it is not—the claim is barred by the five (5) year statute of limitations.

Some discovery has taken place and a number of motions have been filed in the Derivative Suit, which were argued at length during the August 23, 2017 Hearing. *See* Exhibit A-List of Motions argued at August 23, 2017 Hearing. However, these claims also do not rise to the level of "complex" or fall within the enumerated categories set forth by V.I. R. Civ. P. 92(b). It does not revolve around any kind of toxic tort or construction litigation and it does not involve insurance issues. It does not involve a large number of



parties, only 4 (the Plaintiff and three defendants). Hence, it will not require any additional resources from the Court or unnecessarily burden it. At most, the Derivative Suit will require a sorting of the pending motions for which the briefing is complete and oral argument has already been heard. None of these circumstances give rise to a basis to transfer to the Complex Litigation Division pursuant to V.I. R. Civ. P. 92(b) and (c).

**IV. Transfer to the Complex Litigation Division Would Result in Additional Burden on the Parties and Wasting of Prior Efforts.**

In considering the factors relevant to referring matters to the Complex Litigation Division, the parties have already expended significant time and effort in the Declaratory Judgment/Foreclosure Action and the Derivative Suit before Judge Meade, including personal attendance at the August 23, 2017 Hearing during the course of which, Judge Meade engaged with counsel, inquired on certain issues, asked follow-up questions and discussed various issues relevant to the disposition of the various motions. Counsel for Yusuf recognizes that following the August 23, 2017 Hearing, the Territory experienced significant devastation as a result of the 2017 hurricanes which occurred shortly afterwards. However, in the absence of such disruption, all parties anticipated the Court would review those motions, take into consideration the oral arguments of counsel and would resolve the motions in due course. If the Derivative Suit is transferred to the Complex Litigation Division, then effectively, the August 23, 2017 Hearing will have been wasted and an additional hearing would be required, prejudicing the parties as it would require significant costs and additional time and expense. Such efforts would “unreasonably delay the case, increase expense, complicate the action, or unfairly prejudice” the parties. V.I. R. Civ. P. 92(c). In the Derivative Suit, Yusuf has filed two (2) motions to dismiss, defended against the Plaintiff’s efforts to file for partial summary

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judgment and maintains that the claims are properly dismissed on substantive grounds as well as on the basis of the statute of limitations. To transfer the Derivative Suit at this juncture, would prejudice him by effectively nullifying all of these efforts he has had to undertake defending a suit that should be dismissed. Moreover, there is no particular “specialized expertise” required of the Court in the administration of these two cases. Consequently, there is no basis to transfer the cases to the Complex Litigation Division.

**V. In the Alternative, Appointment of Special Master Edgar D. Ross May Be a Prudent Course.**

Although Yusuf maintains that there is no basis to transfer the Declaratory Judgment/Foreclosure Action or the Derivative Suit to the Complex Litigation Division, if the matter is transferred or if Judge Meade requires assistance with these claims, as an alternative, a special master could be appointed to address these claims, either in the context of the Complex Litigation Division or directly from Judge Meade. Pursuant to V.I. R. Civ. P. 95, if a matter has been assigned to the Complex Litigation Division, a master may be appointed and assigned to assist with the cases. Judge Brady has already appointed Special Master Edgar D. Ross to oversee various aspects of the Main Case and those consolidated with it. Special Master Ross is familiar with the parties and the various entities they jointly own, having been appointed as the Special Master by Order dated September 18, 2014. Should the Court deem it useful, appointment of Special Master Ross may be a viable alternative to the administration of these cases.

**IV. Conclusion**

The Declaratory Judgment/Foreclosure Action and the Derivative Suit are not consolidated and cannot be viewed collectively in determining whether to transfer the cases to the Complex Division either to increase the number of parties or attempt to

demonstrate complexity. Neither case is particularly complex, nor do they meet any of the enumerated criteria for transfer to the Complex Litigation Division. The parties have expended significant time and effort in the cases and there are a number of pending motions ripe for adjudication. Transfer of the cases to the Complex Litigation Division at this stage would waste those efforts and require duplication of work and, thus, unfairly prejudice Yusuf. For these reasons, the cases should not be transferred. Yusuf suggests, as an alternative, whether transferred to the Complex Litigation Division or not, if the Court or Complex Litigation Judge believes it would be beneficial, consideration should be given to the appointment of Special Master Edgar Ross to serve as Master in these cases since he is already familiar with the parties, their business operations and jointly owned entities.

Respectfully submitted,

**DUDLEY NEWMAN FEUERZEIG LLP**

**DATED:** September 3, 2019

By: 

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**CERTIFICATE OF SERVICE**

It is hereby certified that on the 3<sup>rd</sup> day of September, 2019, the foregoing **FATHI YUSUF'S OPPOSITION TO TRANSFER TO COMPLEX LITIGATION DIVISION**, 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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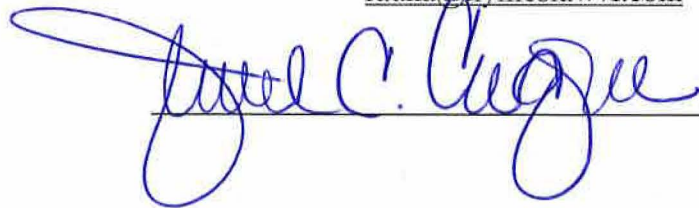
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# EXHIBIT A

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

**HISHAM HAMED**, derivatively, on behalf )  
of **SIXTEEN PLUS CORPORATION**, )

Plaintiff, )

vs. )

**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,  
CICO RELIEF, EQUITABLE RELIEF  
AND INJUNCTION

**JURY TRIAL DEMANDED**

**INDEX TO MOTIONS BINDER FOR HEARING ON AUGUST 23, 2017**

1. **First Amended Verified Complaint dated December 23, 2016**
2. **Defendant, Fathi Yusuf's Motion to Dismiss Plaintiff's First Amended Complaint dated January 9, 2017**
  - a. PLAINTIFF'S Opposition to Yusuf's Motion to Dismiss dated January 20, 2017.
  - b. Plaintiff's Motion to Strike Yusuf's Motion to Dismiss the Amended Complaint and Memorandum in Support Thereof dated January 20, 2017.
  - c. Defendant, Fathi Yusuf's Reply in Support of His Motion to Dismiss Plaintiff's First Amended Complaint February 6, 2017.
  - d. Motion of Defendants Isam Yousuf and Jamil Yousuf to Dismiss Plaintiff's First Amended Complaint dated June 14, 2017
  - e. Plaintiff Hisham Hamed's Opposition to Defendants Isam and Jamil Yousuf's Motion to Dismiss dated July 19, 2017.
  - f. Notice of Filing of Supplemental Declaration of Jamil Yousuf's Motion to Dismiss dated August 7, 2017.

- g. Defendants Isam Yousuf's and Jamil Yousuf's Reply in Support of Motion to Dismiss Plaintiff's First Amended Complaint dated August 8, 2017.
- h. Notice of Filing of Supplemental Declaration of Isam and Jamil Yousuf's Motion to Dismiss dated August 10, 2017.

**3. Plaintiff's Motion for Partial Summary Judgment and Memorandum dated January 20, 2017**

- a. Defendant, Fathi Yusuf's Rule 56(d) Opposition to Plaintiff's Motion for Partial Summary Judgment dated February 9, 2017.
- b. Plaintiff's Reply to Yusuf's Opposition to Motion for Partial Summary Judgment dated February 13, 2017.
- c. Defendant, Fathi Yusuf's Motion for Leave to File a Sur Reply to Plaintiff's Motion for Partial Summary Judgment dated March 6, 2017.
- d. Plaintiff's Response to Yusuf's Request to File a Sur Reply re Plaintiff's Motion for Partial Summary Judgment dated March 14, 2017.
- e. Defendant, Fathi Yusuf's Reply in Support of His Motion for Leave to File a Sur Reply to Plaintiff's Motion for Partial Summary Judgment dated April 3, 2017.

**4. Defendant Fathi Yusuf's Motion to Stay Discovery Pending the Disposition of his Motion to Dismiss Plaintiff's First Amended Complaint dated February 24, 2017**

- a. Plaintiff's Opposition to Motion to Stay Discovery dated March 9, 2017.
- b. Defendant, Fathi Yusuf's Reply in Support of his Motion to Stay Discovery Pending the Opposition of His Motion to Dismiss Plaintiff's First Amended Complaint and Opposition to Plaintiff's Motion for a Scheduling Order dated March 27, 2017.
- c. Motion of Defendants Isam Yousuf and Jamil Yousuf to Stay Discovery Pending the Disposition of their Motion to Dismiss Plaintiff's First Amended Complaint dated June 14, 2017

**5. Plaintiff's Motion for Rule 11 Sanctions dated March 14, 2017**

- a. Defendant, Fathi Yusuf and Defense Counsel's Opposition to Plaintiff's Motion for Rule 11 Sanctions dated April 3, 2017.

b. Plaintiff's Reply to Opposition to Motion for Rule 11 Sanctions dated April 10, 2017



# **EXHIBIT B**

RECEIVED  
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6931-11

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

MANAL MOHAMMAD YOUSEF, )  
a/k/a MANAL MOHAMAD YOUSEF, )  
 )  
Plaintiff, )  
 )  
vs. )  
 )  
SIXTEEN PLUS CORPORATION, )  
 )  
Defendant. )

CIVIL NO. SX-17-CV-342

ACTION FOR DEBT AND  
FORECLOSURE OF REAL  
PROPERTY MORTGAGE

COUNTERCLAIM FOR  
DAMAGES

JURY TRIAL DEMANDED

SIXTEEN PLUS CORPORATION, )  
 )  
Counterclaim Plaintiff, )  
 )  
Vs. )  
 )  
MANAL MOHAMMAD YOUSEF a/k/a )  
MANAL MOHAMAD YOUSEF and )  
FATHI YUSUF, )  
 )  
Counterclaim Defendants. )

**RESPONSE OF DEFENDANT MANAL YOUSEF TO  
PLAINTIFF'S MOTION FOR CONSOLIDATION**

Plaintiff/Counterclaim Defendant, Manal Mohammad Yousef ("Yousef"), by and through her undersigned counsel, respectfully requests the Court postpone any filings on defendant's motion for consolidation and issue a briefing schedule pertaining thereto after rulings are rendered on pending motions. Sixteen Plus Corporation ("16 Plus") seeks to consolidate two (2) matters styled as *Manal Yousef v. 16 Plus Corporation v. Manal Yousef and Fathi Yusuf*,

MANAL MOHAMMAD YOUSEF n/k/a MANAL MOHAMAD YOUSEF vs. SIXTEEN PLUS CORPORATION;  
SIXTEEN PLUS CORPORATION v. MANAL MOHAMMAD YOUSEF, et al.  
SCVI/STX Civil No. SX-17-CV-342  
RESPONSE OF DEFENDANT MANAL YOUSEF TO PLAINTIFF'S MOTION FOR CONSOLIDATION

Civil No. ST-17-CV-342 (this action) and *Sixteen Plus Corporation v. Manal Yousef v. Sixteen Plus Corporation*, Civil No. SX-16-CV-65. This case includes third-party defendant Fathi Yusuf, who is not a named-party in the latter above-referenced matter. There are pending motions to disqualify 16 Plus' counsel Joel H. Holt, Esquire in both actions. Also pending is third-party defendant Fathi Yusuf's motion to dismiss third-party claim in this case. Yousef submits it would be a more prudent use of judicial resources and private resources if the Court first decides pending motions to disqualify and third-party defendant Fathi Yusuf's motion to dismiss especially where Fathi Yusuf is not a named party in the other action.

**WHEREFORE**, on the basis of the foregoing, Manal Yousef respectfully requests the Court issue a briefing schedule for the motion for consolidation after rulings are rendered on pending motions to disqualify Sixteen Plus Corporation's counsel and Third-Party Defendant Fathi Yusuf's pending motion to dismiss third-party claim.

Respectfully Submitted,

DATED: January 2, 2018.

**LAW OFFICES OF JAMES L. HYMES, III, P.C.**  
*Counsel for Plaintiff/Counterclaim Defendant –*  
*Manal Mohammad Yousef*

By:   
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**CERTIFICATE OF SERVICE**

I hereby certify this document complies with the page or word limitation set forth in V.I. R. Civ. P. 6-1(e) and that on this the 2<sup>nd</sup> day of January, 2018, I caused an exact copy of the foregoing "**Response of Plaintiff Manal Yousef to Plaintiff's Motion for Consolidation**" to be served electronically by e-mail, and by mailing same, postage pre-paid, to the following counsel of record:

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