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ADMITTED: USVI & DC

September 10, 2022

Via Email

Stefan Herpel and Charlotte Perrell, Esqs.
DNF
Law House
St. Thomas, USVI

RE: Rule 37 – Conference Requested in 650 re Three 9/9/2022 responses

Counsel:

Please provide dates for a Rule 37 conference as soon as possible (due to the short scheduling order in 650) with regard to the following deficiencies in the three Fathi Yusuf responses of 9/9/2022.

I. Interrogatories

A. Partial Response under 5th Amendment – Interrogatories 1-3

- i. As you know, a respondent cannot partially answer a civil interrogatory and then claim 5th Amendment protection with regard to the balance he does not want to answer. Thus, pursuant to Rule 37, Hamed will seek an order compelling Yusuf to provide a response that details the skimming of funds, his direction of the transport of the skimmed funds out of the US, his actual transport of some of those skimmed funds – as well as the movement of those funds to St. Maarten, Jordan, the USVI and otherwise.
- ii. Moreover, a party cannot use the 5th Amendment as both sword and shield to pick and choose favorable testimony as to part of an response and then refuse to provide the negative information that would reflect badly on him. Thus, pursuant to Rule 37, Hamed will seek an order compelling Yusuf to provide a response that details the skimming of funds, his direction of the transport of the skimmed funds out of the US, his actual transport of some of those skimmed funds, and the movement of those funds to St. Maarten, Jordan, the USVI and otherwise.

- iii. Finally, your client is in no criminal jeopardy as to acts skimming, moving funds, laundering and avoiding taxes on funds prior to the plea agreement. He cannot claim 5th Amendment protection for these acts in the period from 1997-2001. While he may be at risk with regard to his participation in the fraud and CICO violations after 2012, even if the predicate acts in 1997-2001 WERE brought forward on a limitations basis by the post-2012 conspiracy, he STILL cannot be in jeopardy for the pre-2021 acts—as the pleas deal provides him with absolute immunity as to those acts of skimming, moving funds, laundering and avoiding taxes on funds. Thus, the 5th Amendment is not implicated.

B. Interrogatory #4

Please review the draft report of the US DOJ/FBI with regard to the accounting of the money laundering activities of, among others, yourself and Sixteen Plus--particularly the two pages Bates stamped YUSF113690-YUSF113691. After doing so, **describe in detail how, when and where Isam Yousuf acquired** the two \$2 million amounts that he transferred to the Sixteen Plus account at the Bank of Nova Scotia on or about February 19, 1997 and September 4, 1997, as well as any conversations, correspondence, instructions or communications between any members of the Yusuf or Hamed families and Isam Yousuf about those funds or transfers. (Emphasis added.)

Response:

[Bolded interlineations here and below are Hamed's comments as to insufficiency]

I became aware that the Diamond Kuturah Property was owned by the Bank of Nova Scotia and I considered it to be a good investment. However, at the time, Plaza Extra did not have sufficient funds to purchase the property at the \$4.5 million price and would need to borrow funds to make the purchase. I spoke to my brother Mohammed Yousef, who is Manal Yousef's and Isam Yousef's father about providing a loan for this property. **[When, where and by what means was this initial communication?]** Prior to reaching out to my brother, I had previously spoken to him, about 3 to 4 years earlier, about his daughter Manal's investments and a concern, at the time, about whether she would have children to help provide for her.

I spoke with my brother on the telephone and then I travelled to St. Maarten in early 1997 **[supply date or at least month]** to further discuss the loan. During that trip I spoke with my brother, and his son (my nephew) Isam Yousef. My brother and his son manage any investments for his daughter (Isam's sister) Manal. I understand from Isam's answers

to interrogatories that he stated that Waleed Hamed was also present on that trip. I do not recall that Waleed was present but he may have been.

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. **[What was the source of that \$500,000 deposit ? Account?]** Upon my return to the Virgin Islands, the first installment on the loan was received **[From what account? Was he aware of the advice of credit Yusuf supplied that lists Island Appliances as the funding account?]** . We created Sixteen Plus, LLC to purchase the Diamond Katurah property. **[Who is “we” in this sentence?]**

The funds transferred were funds originally belonging to Manal Yousef. It is my understanding **[from whom and how, when?]** that these were Manal Yousef’s funds that had been provided to her by her father. I am not specifically familiar with the accounts of my nephew Isam but I understand that the funds from my brother were deposited into the account identified as Banque Francaise Commerciale Account No. 4060663541 (Bates Numbers HAMD203062), from which they were withdrawn and transferred to Sixteen Plus. **[Is he now, or was he then aware of the advice of Credit that lists this as an Island Appliance account—not a Manal Tousef account? That document was supplied by Yusuf in Rule 26 Supplementation, where and when did he receive it?]**

We did explore the possibility of securing a bank loan for the purchase but were not amendable to the terms and therefore, we received the balance of the purchase price and second installment on the loan in September, 1997.

[Re-draft this paragraph, replacing “we” with names.] We contacted our attorney Carl Beckstedt to draft the documents to evidence the loan from Manal Yousef. The Note and Mortgage have already been identified in this case. Carl Beckstedt recorded the Note and Mortgage. We made three payments of interest on the note. **[Dates, names of persons making these three payments, means they were made, taxes withheld, means of transmission – as well as sources of funds, accounting records demonstrating them, and any documents involved.]** The note remains outstanding. I did not request a Power of Attorney from Manal Yusuf. When I was advised that one had been secured, I rejected it. **[Details of how, when and by what means it was rejected, who was informed and how--as well as description of any documents related to that rejection.]** It is my understanding from reading the answers of Isam in this case, that Waleed Hamed requested the Power of Attorney from Manal Yusuf but that she or her brother, instead provided the Power of Attorney to me. Again, when I was made

aware of it, I rejected it and have taken no action based upon any authority granted therein.

I do not recall ever having seen such a Power of Attorney until it was presented to me by Attorney Carl Hartmann in or around a deposition in one of these cases. I was unaware that the suit was filed by Hisham Hamed at the time that it was filed and do not believe that he has the authority to make such a filing.

C. Interrogatory #6

Describe in detail all residential addresses you know or believe Manal Yousef physically resided at for more than 1 month from 1990 to present, . .

[What is her present address?] .

D. Interrogatory #16

Describe any and all communications you have had with any members of your family or any third person or entity from September 4, 1997 to present regarding proposed or actual transfers of any interest, releases of any interest, sale of any interest, and offers or discussions about doing the same with respect to the property known as Diamond Keturah.

Response:

I have had discussions with Waleed Hamed regarding potential offers to sell the property. . . **[Describe each offer, the party(s), the dates, the amounts, and the reason for rejecting – as well as communications with federal or state officials regarding the lifting of the lien.]** Ultimately, it was not approved by federal marshal. . **[Describe each refusal or denial: the party(s), the dates, the amounts, and the reason for rejecting – as well as communications with federal or state officials regarding the lifting of the lien.]**

II. Requests to Admit

A. Request to Admit #2

2. ADMIT or DENY that the two \$2 million amounts transferred to the Sixteen Plus account at the Bank of Nova Scotia on or about February 19, 1997 and September 4, 1997 were sent from the BFC Island Appliance account on St. Martin.

Response:

Yusuf shows that it appears that the February 1997 transfer was from account Banque Francaise Commerciale Account No. 4060663541 from the documents produced in the various cases Bates Numbers HAMD203062, it is Yusuf's understanding that these funds were Manal Yousef's funds. Yusuf does not know the name on the Banque Francaise Commerciale Account No. 4060663541 beyond what appears to be reflected at Bates Numbers HAMD203062. As to the September, 1997 deposit, Yusuf also believes that the deposit were Manal Yousef's funds.

Hamed Position:

This is unresponsive. You must ADMIT or DENY. Since you have supplied the draft advice from your own bank showing that it is a transfer from INLAND APPLIANCE, the correct response is ADDMIT. The inquiry is not as to the ultimate payor, or anything else—just your awareness that it was from Island Appliances' account. Moreover, in RTA #5 you admit that you know that the funds did not come from an account in Manal's name.

This is the document supplied by you in the Rule 26 Supplementation – it is from your bank, and is a deposit by transfer into your account:

RECEIVED
54-001694

CREDIT VOUCHER

SCOTIABANK	THE BANK OF NOVA SCOTIA	BRANCH	DATE	AMOUNT	REMARKS
3058 B	39411	Sixteen Plus Corp.	9/4/99	2000.00	

to sixteen plus corp.
P.O. Box #3
Charlottetown PE
CIBC

PARTICULARS
to be used for the
Holland and Appleton
Charlottetown PE

Signature: [Signature]

344-FY-1233

B. Request to Admit #3
Same position as #2.

C. Request to Admit #6

Same position as #2.

III. Requests for Documents

A. Requests #1 and #2 and #5 and #17

Yusuf responds that:

Further, Plaintiff has access to any and all records regarding any movement of funds from Plaza Extra to St. Martin as Waleed Hamed was involved in same and he has access to the records.

This is an insufficient objection if the purpose of the request is to show that Yusuf was in possession of such documents. The proper response is, therefore,

Yusuf does possess some such documents, but refuses to produce them because he asserts some right or privilege. A copy of a listing of non-produced documents is supplied as Exhibit ____.

B. Requests #8 and #12

Document Request No. 8:

Please provide documents reflecting all payments received by Manal Yousef relating to the Note or Mortgage from September 4, 1997 *to the present*. These documents shall include, but not be limited, to payments with members of Fathi Yusuf's family, Waleed Hamed's family, Sixteen Plus, Jamil Yousef, Isam Yousuf, any lawyer, any bank, any accountant or other person or entity.

Response:

Yusuf shows that three payments were made of interest. Yusuf is researching documents to evidence these payments and will supplement as to same. Otherwise, Yusuf shows Bates No. FY650CASE-000034, which is the demand letter from Manal's counsel, which sets forth a calculation for an amount due as responsive to this request. Yusuf is unsure if this includes or excludes the three interest payments that were made.

Hamed Position:

There is no such interrogatory answer as “we are looking not it and will supply later.” This response is due now. Even if documents cannot be located, they can be described sufficiently to identify them. These alleged “interest payments” are a critical part of this action—and the payment of them was within the supervision and control.

D. Response #16

Please provide documents detailing any communications you have had with any members of your family or any third person or entity, including the VI government, from September 4, 1997 to present regarding proposed or actual transfers of any interest, releases of any interest, sale of any interest, and offers or discussions about doing the same with respect to the property known as Diamond Keturah.

Response:

Yusuf and Waleed have discussed the possibility of selling the property. Yusuf is unaware of any documents evidencing communications as to same. The only documents of which Yusuf is aware responsive to this Request are Bates No. 344-FY-0633-0645.

Hamed Position:

Unresponsive. This would include inquiries, communications with state and federal officials as to the offers, lifting of the liens and refusal to list the liens.

E. Response #18

Document Request No. 18:

Please provide all documents showing that Plaza Extra funds or other funds were used to purchase the property known as Diamond Keturah.

Response:

Yusuf recalls that Plaza Extra funds were used for the initial \$500,000 down payment on the property. It is Yusuf’s recollection, that after the loan was secured, that United was reimbursed for the \$500,000.00. Yusuf is endeavoring to find those records and will supplement his response as to same.

Hamed Position:

Unresponsive. As set for with regard to the three interest payment, the documents are due now. Moreover, the response states that **UNITED** made an initial down payment for which no documents are produced—AND, that it was somehow “reimbursed.” First, United’s involvement has previously been denied—so all documents regarding these two transactions are critical. In addition, United’s financials and papers are wholly within the supervision and control of Fathi Yusuf and must be produced. If Yusuf is taking the

position that “HE” will not produce because they are United’s documents, Hamed asks if United will waive a Rule 45 subpoena for the documents—and objects to such a position.

Please supply me with the earliest possible date for such a conference.

A handwritten signature in blue ink, appearing to read "Carl J. Hartmann III", with a long horizontal flourish extending to the right.

Carl J. Hartmann III