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ADMITTED: USVI, NM & DC

September 18, 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 65/342

Dear Charlotte and Stefan:

I write regarding Mr. Yusuf's discovery responses of September 16, 2022 in 65/342. It is Hamed's intention to file a motion 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. Interrogatories

In response to interrogatory #1, Mr. Yusuf responds "Yusuf had communications with a wealthy gentlemen, whose name he does not recall at the moment. . . ." This is insufficient in that (1) he does not identify the individual(s), and (2) he does not describe the communications—approximate date(s), means (letter, email, phone, in-person) location(s), content and number/frequency.

In response to interrogatory #2, Mr. Yusuf details a variety of events but does not answer the interrogatory—which is about his communications *with Isam*. Again, he does not describe the communications WITH ISAM—approximate date, means (letter, email, phone, in-person) location, content and number/frequency. This should include:

1. Setting up the note and mortgage deal. Were there communications between Fathi and Isam—or where they were together and it was being jointly discussed with Manal's father and Isam? For each such discussion, approximate date, means (letter, email, phone, in-person) location, content and number/frequency.

2. Handing cash to Isam and Fathi's eldest daughter (Isam's brother's wife) for the purpose of making rounds of banks to deposit it.
3. What amounts should go in which accounts.
4. And most importantly, the directions send or otherwise given to Isam to transfer the two \$2 million amounts from the Island Appliance account to the Sixteen Plus account. There had to be some way or manner that Isam was given the information as to how much and what account numbers were involved. In Isam's discovery responses he says there was no communications of this information at all—which makes hi either psychic or a liar.

In response to interrogatory #3, Mr. Yusuf responds as follows:

Interrogatory #3: Describe in detail all correspondence or other communications you have had with any bank or bank officials in the USVI, St. Martin, St. Maarten, Jordan, the West Bank or elsewhere regarding: 1. the funds used for the note and mortgage herein. 2. the funds used by Sixteen Plus for the purchase of the property subject to the note and mortgage herein. Response: Yusuf incorporates his

Response to Interrogatory No. 2 as his response to Interrogatory No. 3 as if fully set forth herein verbatim.

This does not respond to the inquiry. First, did he have any correspondence or communication with bank officials. This is yes or no...Yes in USVI, yes in St. Maarten/St. Martin and no as to the West Bank. Then, for each such communication, approximate date(s), means (letter, email, phone, in-person) location, content and number/frequency. For example, we believe that in the USVI he had communications with a bank about getting an interim \$2.2 million loan in summer of 1997. Similarly, in your most recent interrogatory, you hint at making an application for a Plessen loan...date, particulars....etc. We know that he was involved in funds in St. Maarten – he had an account at BCF into which sums were being deposited during 1996—were any of those funds used?

TAB J

Deposit Analysis, Banque Française Commerciale,
 Fathi Yusuf Account 40606387790

TAB K

Déposit Analysis, Banque Francaise Commerciale,
 Hamdan Diamond Corporation, Account
 40606388790

DEPOSIT ANALYSIS

FATHI YUSUF
 Banque Francaise Commerciale
 Acct. 40606387790

DEPOSIT DATE	GROSS DEPOSIT	CASH WH	NET DEPOSIT	ITEM SOURCE	AMOUNT	CURRENCY
06/10/1996	5,000.00		5,000.00	Currency	5,000.00	5,000.00
06/21/1996	40,000.00		40,000.00	Currency	40,000.00	40,000.00
06/26/1996	50,000.00		50,000.00	Currency	50,000.00	50,000.00
07/01/1996	40,000.00		40,000.00	Currency	40,000.00	40,000.00
07/04/1996	50,000.00		50,000.00	Currency	50,000.00	50,000.00
07/05/1996	30,000.00		30,000.00	Currency	30,000.00	30,000.00
07/10/1996	50,000.00		50,000.00	Currency	50,000.00	50,000.00
07/11/1996	50,000.00		50,000.00	Currency	50,000.00	50,000.00
07/15/1996	50,000.00		50,000.00	Currency	50,000.00	50,000.00
07/16/1996	50,000.00		50,000.00	Currency	50,000.00	50,000.00
08/08/1996	10,000.00		10,000.00	Currency	10,000.00	10,000.00
	<u>425,000.00</u>		<u>425,000.00</u>		<u>425,000.00</u>	<u>425,000.00</u>
03/20/1998	70,000.00		70,000.00	Currency	70,000.00	70,000.00
04/23/1998	100,000.00		100,000.00	Currency	100,000.00	100,000.00
04/24/1998	100,000.00		100,000.00	Currency	100,000.00	100,000.00
04/28/1998	100,000.00		100,000.00	Currency	100,000.00	100,000.00
04/29/1998	100,000.00		100,000.00	Currency	100,000.00	100,000.00
04/30/1998	129,900.00		129,900.00	Currency	129,900.00	129,900.00
05/04/1998	100,000.00		100,000.00	Currency	100,000.00	100,000.00
05/05/1998	100,000.00		100,000.00	Currency	100,000.00	100,000.00
05/07/1998	100,000.00		100,000.00	Currency	100,000.00	100,000.00
05/12/1998	70,000.00		70,000.00	Currency	70,000.00	70,000.00
05/15/1998	50,000.00		50,000.00	Isam Yusuf	50,000.00	
08/17/1998	- 35,000.00		35,000.00	Currency	35,000.00	35,000.00
11/18/1998	500,000.00		500,000.00	Banque Francaise Commerciale	500,000.00	
11/18/1998	5,860.27		5,860.27	Banque Francaise Commerciale	5,860.27	
	<u>1,560,760.27</u>		<u>1,560,760.27</u>		<u>1,560,760.27</u>	<u>1,004,900.00</u>
08/24/2000	8.75		8.75	Currency	8.75	
	<u>8.75</u>		<u>8.75</u>		<u>8.75</u>	<u>0.00</u>

EXHIBIT

YUSF113602

In response to Interrogatory #4, we know from correspondence that he had communications with his CPA and his attorney with regard to documents for the transaction, as well as other. Again, he does not describe the communications WITH them—approximate date(s), means (letter, email, phone, in-person) location(s), content and number/frequency.

2. Requests to Admit

In response to RFA #6, Mr. Yusuf stated the following:

Request #6: ADMIT or DENY that you have had communications or correspondence with any bank or bank officials in the USVI, St. Martin, St. Maarten, Jordan, the West Bank or elsewhere regarding: 1. the funds used for the note and mortgage herein. 2. the funds used by Sixteen Plus for the purchase of the property subject to the note and mortgage herein. 3. Inquiries or offers to purchase part or all of the subject property.

Response:

Deny as to paragraph No. 1 – Yusuf does not recall communicating with Bank of Nova Scotia when the funds were transferred to Sixteen Plus's account but has seen the documents relating to the February and September 1997 transfers into Bank of Nova Scotia.

Admit as to paragraph No. 2 coordinating with officials from the Bank of Nova Scotia for the purchase of the Diamond Keturah Property.

Deny as to paragraph 3.

We know of the discussion with bank officials about the \$2.2 million interim loan to Plessen the was somehow *provided* to Sixteen Plus for its purchase and then repaid somehow--in summer of 1997. So #1 is at least partially wrong and must be amended. Is he stating that he never had any communications with the bank regarding the sale, note or mortgage? This does not appear to be true from documents, and perhaps he need to re-think this and amend.

In response to RFA #8, he admits that the 370 and related cases exist. Does he dispute that this is intractable litigation? If not, please amend. Also, what the heck does the qualifier even mean? Is there other litigation that is not intractable? Please amend.

Request #8: ADMIT OR DENY that Fathi Yusuf and Hisham Hamed and their families are in intractable litigation in several other matters.

Response: Admit insofar as Fathi Yusuf is in litigation with members of the Hamed family on various matters. Otherwise, the statement is denied.

In response to RFA #10, Mr. Yusuf gives an answer unacceptable in RFA's. The issue is not whether an answer can be gleaned elsewhere—it is whether he or his agents have the knowledge subject to reasonable inquiry or not. He clearly knew this, and knew that it was true. If he can't remember, he can certainly do reasonable inquiry within his own records to ascertain what he knew. Please amend.

Request #10: ADMIT OR DENY that the Bank of Nova Scotia (“BNS”) -- obtained its ownership interest subject to rights of redemption through a foreclosure sale conducted on February 13, 1996.

Response: Yusuf is unable to admit or deny as stated and shows that the documents relating to the rights of BNS speak for themselves as to the truth or inaccuracy of this statement in this request.

In RFA #13, Mr. Yusuf is not asked *when* the partnership was determined to have existed in the target years—only if it did. A court has ruled, and he has admitted (and in fact pled) in subsequent pleadings that **it did exist as a partnership in the target year**. Please amend to read “yes”.

Request #13: ADMIT OR DENY that at the time Sixteen Plus was formed in the late 1990’s, Fathi Yusuf and Mohammad Hamed were 50/50 partners in a grocery business known as Plaza Extra Supermarkets.

Response: Admit insofar as the determination of this oral partnership was only determined after 2012 and that the grocery store business was operated through United Corporation.

In RFA’s # 14-16 and 19, Yusuf is not asked who pled guilty to the acts described. He is asked the factual questions about HIS own involvement in the acts. The term “the partners” refers to him and Mr. Hamed. It does not ask about the partnership or United—it refers only to funds from the Plaza Extra stores. Regardless of what legal entity they did the acts within, did they evade gross receipt taxes to the USVI.

Request #14: ADMIT OR DENY that in the two years prior to the purchase of the target land the partners did evade gross receipt taxes due to the USVI government on sales from the Plaza Extra stores.

Response: Deny insofar as United Corporation was liable for an underreporting of taxable income. There was no recognized partnership at the time of the purchase of the target land. Request #15

If it will make you feel better, I will amend this #14 to: Did Mr. Yusuf and other individuals participate in evading gross receipt taxes due to the USVI government on sales from the Plaza Extra stores? Similarly in #15, #16 and #19 did he do the acts? Did he generally act to evade taxes and, more specifically, did he do so by removing funds prior to accounting. Yes or no? Again, I will amend it as in #14 if you will answer that.

Request #15: ADMIT OR DENY that in the two years prior to the purchase of the target land Fathi Yusuf did participate in the actions to evade gross

receipt taxes due to the USVI government on sales from the Plaza Extra stores.

Response: Deny insofar as United Corporation was liable for an underreporting of taxable income.

Request #19: ADMIT OR DENY that after removing cash before gross receipt accounting, the partners or their agents then caused those funds to be deposited in financial institutions outside of the USVI and the US.

Response: Deny insofar as United Corporation was liable for an underreporting of taxable income.

Mr. Yusuf's response to RFA #20 is similar to the items above, but even far less responsive. Each of the sub-parts must be answered with an Admit or Deny at the acts he did without regard to the entity—it does not ask about liability or discuss any entity. It is about money from named stores and what happened to the money.

Request #20: ADMIT OR DENY that after removing cash before gross receipt accounting, when the partners or their agents caused those funds to be deposited in financial institutions outside of the USVI and the US, the names of the account holders included:

- A. Fathi Yusuf
 - B. Waleed Yusuf
 - C. Jamil Yousef or a business owned by him
 - D. Isam Yousef or a business owned by him
- Response:

Deny insofar as United Corporation was liable for an underreporting of taxable income. A. As to Fathi Yusuf, Yusuf admits funds were deposited into accounts with his name. B. As to Waleed Hamed, Yusuf admits funds were deposited into accounts with Waleed Hamed's name. C. As to Jamil Yousef or a business owned by him, denied. D. As to Isam Yousef or a business owned by him, denied.

Again, I will revise to make this clear as in \$16 et al., but it must be answered. And if he is not going to admit the funds were deposited into the bank on St. Martin (BFC) as shown above, there will be a serious problem in this discovery. If not there, where did the millions go? And if those millions were not the skimmed funds, where did they go. He is going to have to do this. He will have to explain the skimmed amounts and the process.

	<u>Total Actual Sales</u>	<u>Unreported Income</u>
1996	\$ 44,990,133.37	\$ 6,103,738.77
1997	\$ 43,764,732.07	\$ 5,862,673.46
1998	\$ 54,607,513.98	\$ 15,487,422.37
1999	\$ 59,058,004.46	\$ 15,090,633.26

2000	\$ 65,262,591.41	\$ 16,051,432.05
2001	\$ 79,311,977.63	\$ 11,976,805.69
Total	\$ 346,994,952.92	\$ 70,572,705.60¹

RFA #23 is a fact question, it deals with fixed dates. It does not ask when contractual rights were established, it does not ask who might have had beneficial rights. There are two dates involved—the date on which the note and mortgage were executed, and the date the purchase had actually occurred—not the date that it was contracted to occur. To avoid a senseless delay whilst Mr. Yusuf plays with words, I will revise this if you will suggest another phrasing.

Request #23: ADMIT OR DENY that the September 1997 execution of the note and mortgage occurred at a time when even though the Land in question had actually not been purchased yet.

Response: Denied as written. There existed a contract for purchase

RFA #25 also asks for a date fact. On that date did BNS become entitled to convey? Admit or deny. Again, rephrase and we will drop the objection.

Request #25: ADMIT OR DENY that on December 24, 1997, BNS finally was entitled to a conveyance of the Land from the Marshal of the Territorial (now Superior) Court of the Virgin Islands, as the rights of redemption in the foreclosure sale had expired. Response: Deny as written.

RFA's 40-43 were answered improperly. The answers are non-responsive. The questions relate to what Fathi Yusuf actually DID during the target years. Regardless of what he thought or believed or dreamed about—what did he do? He signed those documents under penalty of perjury, they did represent loans from shareholders in the subject amounts and did not reflect mortgages. Answer the Question ADMIT or DENY.

Request #40: ADMIT OR DENY that Fathi Yusuf personally arranged for and signed, under the penalty of perjury -- tax and other governmental filings showing that no outstanding obligations were due to Manal Yousef, and, to the contrary, that the \$4.5 million had been advanced by – and was due to – the shareholders, Hamed and Yusuf,

¹ It is a matter of record that the partnership ultimately DID pay the gross receipts taxes along with a fine and penalty as part of the plea deal in the criminal action. So, all of this brilliant planning and movement of funds actually ended up costing more than the tax avoided at the time. Just like Fathi's brilliant and equally catastrophic "options trading" the partners ended up losing money on this plan.

Response: Deny as written. 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.

Request #41: ADMIT OR DENY that Fathi Yusuf filed tax returns for Sixteen Plus during the relevant time period (as defined), including 2012. In those filings he personally signed \$4.5 million held by Sixteen Plus was stated as having been received from shareholders and due to them – and there was no loan or mortgage to a third person.

Response: Deny as written. 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 corporate filings and tax returns were corrected in the years going forward. 1st Requests to Admit to Fathi Yusuf in 342 Page 6 Request

#42: ADMIT OR DENY that Fathi Yusuf also prepared and filed annual corporate filings for Sixteen Plus during this time period, including 2012, and in those filings he stated that \$4.5 million held by Sixteen Plus was received from shareholders and due to them – and was not a loan or mortgage to a third person.

Response: Deny as written. 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 corporate filings and tax returns were corrected in the years going forward. Request #43: ADMIT OR DENY that in 2013 Fathi Yusuf created and requested Waleed Hamed sign, an annual corporate filing that showed \$4.5 million due as a mortgage and loan and not money due to the Shareholders as had been reported for the prior 13 years. He also inserted his family members as the directors on the document, which he signed and proffered to Hamed. Response: Deny as written. 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.

We will agree to rephrase in this form for each:

Request #40: ADMIT OR DENY that Fathi Yusuf personally

- A. arranged for the preparation of tax filings of Sixteen Plus
- B. arranged for the preparation of corporate filings of Sixteen Plus
- C. Signed those filings of Sixteen Plus
- D. Signed those filings of Sixteen Plus under penalty of perjury,
- E. And that the tax filings showed that no outstanding obligations were due to any mortgage, including that of Manal Yousef,
- F. but, to the contrary, those filings showed that approximately \$4.5 million had been advanced by – and was due to – the shareholders, then members of the Hamed and Yusuf families.

And if you like, I can attach the specific tax and corporate filings to the question as an exhibit,

This is the most critical of the insufficiencies next to his refusal to admit the acts relating to the skimming on a step-by-step basis--and there is no proper way to avoid the admission. Judge Ross was clearly sensitive to this abuse of RFA's, and perhaps Judge Brady will not be—but it is an overt and conscious violation of the rule on what is a fact demonstrable with document known to Mr. Yusuf. Thus we would seek sanctions as well.

3. Requests for Documents

As to numbers 9 and 10, the response that “Yusuf objects to the accuracy of the assertion, but nonetheless produces herewith all documents he has produced in the 650 case” is insufficient unless all documents relevant to the assertion (even those proving it to be false) are produced. Please clarify whether this is the case. Does the phrase “nonetheless produces herewith all documents he has produced in the 650 case” mean all responsive documents to the request? Documents that would reflect on or negate the subject must be produced.

I will await your response with dates/times.

Sincerely,

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

Carl J. Hartmann