

CARL J. HARTMANN III
ATTORNEY-AT-LAW
2940 BROOKWIND DR.
HOLLAND, MI 49424

TELEPHONE
(340) 719-8941

EMAIL
CARL@CARLHARTMANN.COM

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