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ADMITTED: USVI & DC

November 21, 2023

Via Email

Charlotte Perrell
Stefan Herpel
James Hymes

RE: Ross Order re Diamond Keturah Cases

Counsel:

Judge Ross has ordered that the parties meet and confer about issues in the Diamond Keturah cases – one within 30 days and others within 60 days. We request such meetings at your earliest convenience. In addition, he raises certain other points. We address all of these below in the order in which they appear. (See attached.)

Issue 1 – Location of Manal's Depositions

ORDERED that within sixty (60) days from the date of entry of this Order the parties in 065 Case shall MEET AND CONFER in compliance with rule 26(0) and Rule 37 1 as to the issues raised in MY's July 11 2017 motion for protective order including but not limited to whether the parties are agreeable to taking MY 3 deposition by telephone or other remote means, and MY shall FILE a supplemental certification to her July 11, 2017 motion that explicitly states her compliance with the procedural and substantive aspects of the good faith negotiation requirement of Rule 26(c) and Rule 37 1 with the following details (i) whether the parties met and conferred in person telephonically, or by videoconferencing, or that the opposing party refused to meet and confer; and (ii) whether the parties are agreeable to taking MY's deposition by telephone or other remote means

The issue here is whether a plaintiff can litigate a case at a distance. My understanding is that the parties have agreed that all of *this round* of depositions of Manal may be taken by video (as has been done partially) so long as she agreed to a subsequent deposition prior to trial (which she has agreed to) — at which time the issues of local depositions and personal attendance may be raised. If this is acceptable, we can submit a notice to the Court that Rule 26(c) and Rule 37 1 requirements have been met, and the parties have resolved the issue. If not, Joel can discuss this with you in the meeting.

Issue 2 – SPC to File Clean Copies of First Amended Answers in 065 and 342

ORDERED SPC 5 January 1 2023 motion for leave to amend its answer in the original pre consolidation 065 Case and 342 Case is GRANTED, and that within thirty (30) days from the date of entry of this Order, SPC shall FILE a clean copy of its first amended answer to the counterclaim in the 065 Case and a clean copy of its first amended answer to the complaint in the 342 Case.

SPC will do so within a week.

Issue 3 – Motion for Manal's Address, Agent's Information, Tax, Accounting, etc.

ORDERED that, **within sixty (60) days from the date of entry of this Order**, the parties in the 065 Case and the 342 Case shall **MEET AND CONFER** in good faith in compliance with the procedural and substantive aspects of the good faith negotiation requirement of Rule 37 and Rule 37-1 as to the discovery issues raised in SPC's January 3, 2023 first motion to compel discovery responses from MY as to address, agent's information, accounting and tax information, and SPC shall **FILE** a supplemental certification to its January 3, 2023 motion that explicitly state its compliance with the procedural and substantive aspects of the good faith negotiation requirement of Rule 37 and Rule 37-1 with the following details: (i) whether the parties met and conferred in person, telephonically, or by videoconferencing, or that the opposing party refused to meet and confer; and (ii) what specific issues were discussed during the conference, how each party believed legal authority applied to the facts before them, and how one or both parties attempted to resolve their impasse on each issue.

We can discuss this with Manal's counsel in conference. We assume we will be referring to the existing motions papers as the bases of the parties' positions.

Issue 4 – More Detailed Certification (i.e. Reporting) re Future Rule 37 Conferences

ORDERED that all future motions to compel **SHALL** include a certification that **explicitly state** the movant's compliance with the procedural and substantive aspects of the good faith negotiation requirement of Rule 37 and Rule 37-1 with the following details: (i) whether the parties met and conferred in person, telephonically, or by videoconferencing, or that the opposing party refused to meet and confer; **and (ii) what specific issues were discussed during the conference, how each party believed legal authority applied to the facts before them, and how one or both parties attempted to resolve their impasse on each issue**

We suggest that the matter of what issues were discussed, the parties' positions on law and facts might better be either jointly agreed to—or if agreement is not possible, filed with a section of the certification stating that “the opposing party takes the following positions with regard to the matters certified herein _____.” It is clear that he wants MUCH more in the way of pre-motion communication and framing of the discussion of the factual and legal issues. We are prepared to have more detailed conferences and to try to produce certifications as described.

Issue 5 – Three JOINT Proposed Scheduling Orders (30 days)

ORDERED that, **within thirty (30) days from the date of entry of this Order**, the parties in all three cases **SHALL** jointly file a proposed amended scheduling order and the proffered amended scheduling order **MUST NOTE** prominently on the first page the numbered amendment it represents- e.g., FIRST AMENDED SCHEDULING ORDER, SECOND AMENDED SCHEDULING ORDER, etc.

Joel will send you our proposed drafts (3) within a week. If you feel so inclined, feel free to send yours sooner—we should then have a conference call if there are any major issues. It would not seem wise to seek any enlargement of this 30 day requirement.

If you believe there are more or different issues, please let us know—otherwise, please first confer amongst yourselves and then provide suggested dates for the 30 and 60-day conferences, although we might try to do them all at once.

Sincerely,



Carl J. Hartmann III

FILED

November 20, 2023 03:09 PM
SX-2016-CV-00650
TAMARA CHARLES
CLERK OF THE 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,

v.

SIXTEEN PLUS CORPORATION,
NOMINAL DEFENDANT.

SIXTEEN PLUS CORPORATION,
PLAINTIFF/COUNTER-DEFENDANT,

v.

MANAL MOHAMMAD YOUSEF,
DEFENDANT/COUNTER-PLAINTIFF.

MANAL MOHAMMAD YOUSEF,
PLAINTIFF/COUNTER-DEFENDANT,

v.

SIXTEEN PLUS CORPORATION,
DEFENDANT/COUNTER-PLAINTIFF.

Civil Case No. SX-2016-CV-650

DERIVATIVE SHAREHOLDER SUIT,
ACTION FOR DAMAGES AND CICO
RELIEF

JURY TRIAL DEMANDED

CONSOLIDATED WITH
Civil Case No. SX-2016-CV-065

ACTION FOR DECLARATORY
JUDGMENT, CICO, AND FIDUCIARY
DUTY

COUNTERCLAIM
JURY TRIAL DEMANDED

CONSOLIDATED WITH
Civil Case No. SX-2017-CV-342

ACTION FOR DEBT AND
FORECLOSURE

COUNTERCLAIM FOR DAMAGES

THIRD PARTY ACTION

JURY TRIAL DEMANDED

CONCLUSION

Based on the foregoing, it is hereby:

ORDERED that SPC's January 10, 2017 motion to have MY show cause in the 065 Case is **DENIED AS MOOT**. It is further:

ORDERED that, **within sixty (60) days from the date of entry of this Order**, the parties in 065 Case shall **MEET AND CONFER** in compliance with rule 26(c) and Rule 37-1 as to the issues raised in MY's July 11, 2017 motion for protective order—including but not limited to whether the parties are agreeable to taking MY's deposition by telephone or other remote means, and MY shall **FILE** a supplemental certification to her July 11, 2017 motion that explicitly states her compliance with the procedural and substantive aspects of the good faith negotiation requirement of Rule 26(c) and Rule 37-1 with the following details: (i) whether the parties met and conferred in person, telephonically, or by videoconferencing," or that the opposing party refused to meet and confer; and (ii) whether the parties are agreeable to taking MY's deposition by telephone or other remote means. It is further:

ORDERED that Third-Party Defendant FY's December 14, 2017 motion to dismiss the third-party complaint in the 342 Case is **DENIED AS MOOT**. It is further:

ORDERED SPC's December 5, 2022 first motion to compel discovery responses from FY as to FY's "Fifth Amendment Assertions," or in the alternative, to preclude further testimony in the 065 Case and the 342 Case is **DENIED**. It is further:

ORDERED SPC's January 1, 2023 motion for leave to amend its answer in the original, pre-consolidation 065 Case and 342 Case is **GRANTED**, and that, **within thirty (30) days from the date of entry of this Order**, SPC shall **FILE** a clean copy of its first amended answer to the counterclaim in the 065 Case and a clean copy of its first amended answer to the complaint in the 342 Case. It is further:

ORDERED that, **within sixty (60) days from the date of entry of this Order**, the parties in the 065 Case and the 342 Case shall **MEET AND CONFER** in good faith in compliance with the procedural and substantive aspects of the good faith negotiation requirement of Rule 37 and Rule 37-1 as to the discovery issues raised in SPC's January 3, 2023 first motion to compel discovery responses from MY as to address, agent's information, accounting and tax information, and SPC shall **FILE** a supplemental certification to its January 3, 2023 motion that explicitly state its compliance with the procedural and substantive aspects of the good faith negotiation requirement of Rule 37 and Rule 37-1 with the following details: (i) whether the parties met and conferred in person, telephonically, or by videoconferencing, or that the opposing party refused to meet and confer; and (ii) what specific issues were discussed during the conference, how each party believed legal authority applied to the facts before them, and how one or both parties attempted to resolve their impasse on each issue. It is further:

ORDERED that all future motions to compel **SHALL** include a certification that explicitly state the movant's compliance with the procedural and substantive aspects of the good faith negotiation requirement of Rule 37 and Rule 37-1 with the following details: (i) whether the parties met and conferred in person, telephonically, or by videoconferencing, or that the opposing party refused to meet and confer; and (ii) what specific issues were discussed during the conference, how each party believed legal authority applied to the facts before them, and how one or both parties attempted to resolve their impasse on each issue. It is further:

ORDERED that SPC and MY's February 15, 2023 joint motion for enlargement of the January 24, 2023 scheduling order in the 065 Case and the 342 Case is **DENIED AS MOOT** and HH, FY IY, and JY's February 15, 2023 joint motion for enlargement of the January 24, 2023 scheduling order in the 650 is **DENIED AS MOOT**. It is further:

ORDER OF THE SPECIAL MASTER

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ORDERED that, **within thirty (30) days from the date of entry of this Order**, the parties in all three cases **SHALL** jointly file a proposed amended scheduling order and the proffered amended scheduling order **MUST NOTE** prominently on the first page the numbered amendment it represents—e.g., **FIRST AMENDED SCHEDULING ORDER, SECOND AMENDED SCHEDULING ORDER**, etc. It is further:

ORDERED that SPC's February 22, 2023 motion to file a brief in excess of page requirements and to file one exhibit included in HH's reply to FY's opposition to HH's December 2, 2022 third motion—in the 650 Case—to compel discovery responses from FY as to FY's "Fifth Amendment Assertions," or in the alternative, to preclude further testimony in the 065 Case and the 342 Case is **DENIED**. It is further:

ORDERED that MY's April 20, 2023 motion for summary judgment in the 065 Case and the 342 Case is **DENIED WITHOUT PREJUDICE**. It is further:

ORDERED that SPC's April 25, 2023 motion to defer summary judgment proceedings in the 065 Case and the 342 Case is **DENIED AS MOOT**. **And** it is further:

ORDERED that SPC's September 1, 2023 motion to the Master for a status conference in all three cases is **DENIED WITHOUT PREJUDICE**.

DONE and so **ORDERED** this 20 day of November, 2023.

ATTEST:
Tamara Charles
Clerk of the Court

By:



Court Clerk ~~Supervisor~~ ||

Dated: November 20, 2023


EDGAR D. ROSS
Special Master