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By Email Only

**RE: Simplification of the three "meet & confer" conference SM Ross has ordered**

Chris:

To try to simplify the three “meet and confers” that Judge Ross has ordered you and I to do, I have (1) collected and attached the motions, oppositions and replies as (bookmarked) exhibits here, and (2) for each, I have done (below) a short analysis of where I believe we are. These are the three documents:

1. Hamed asks that counsel for **Isam** Yousuf meet and confer before July 12, 2024, as to the issues raised in **HH’s November 23, 2022 motion to compel**. (Attached
2. Hamed asks that counsel **for Manal** Yousef meet and confer before July 12, 2024, as to the issues raised in **MY’s July 11, 2017 motion for protective order**.
3. Hamed asks that counsel **for Manal** Yousef meet and confer before July 12, 2024, as to the issues raised in in **SPC’s January 3, 2023 first motion to compel** discovery responses from MY as to address, agent's information, accounting and tax information...

Since we have to “report” back to him *in some detail*, below is a form that shows each side’s positions on the issue, the positions on law and our proposed resolution or remaining dispute.

As you will note, *the second item has already been resolved*—though it will require you to confirm this with Manal Yousef. As for the other two, I’m sure we can resolve the issues involved *in well under a half hour*. I hope this is helpful, and am copying it to Charlotte and Stephan as an example—as we have to do the same type of conference as to one document.

- I. **HH’s November 23, 2022 (second) motion to compel to Isam (the first motion to compel was withdrawn (See attached Exhibit A))**
  - a. **The Issue:** Isam’s Bank Records from St. Martin for the relevant time period from 1996-2000; believed (based on numerous governmental documents) to (perhaps be ) in the possession of the bank, the prosecutor and the police.
  - b. **Hamed’s Request:** A jointly drafted letter to all three entities seeking the well-defined] document set. Hymes’ position: Isam doesn’t have them, Isam SAYS he asked the bank and the bank says they don’t have them—and “No” to the prosecutor and police.
  - c. **Hamed legal position:** Cases say a person’s document in possession of third-party are “in their control” and must be sought. The letter would be vanilla and jointly drafted. There seems to be no issue—and it is VERY likely none of the three entities

would still have them—but Hamed HAS to ask. The documents would show the movement of the funds for the \$4 million at issue. They are referenced and quoted in several sets of documents.

**c. Isam Position for Not Agreeing to the Letter:** Isam’s Opposition, See attached **Exhibit B**

**d. Isam Legal position:** Same.

**e. Hamed’s Reply:** See attached **Exhibit C**

**f. The Parties’ Position after Meet and Confer** \_\_\_\_\_

**II. MY's July 11, 2017 motion see attached Exhibit C (in 65) for protective order to Hamed (Already SOLVED)**

- a. **The Issue:** Manal did not want to come to USVI for her depo.
- b. **Hamed legal position:** She is the plaintiff in a \$25 million foreclosure.
- c. **Isam Legal position:** She can't get there.....and now there is a war.
- d. **The Resolution:**

Manal's deposition has ALREADY been taken based on this stipulation:

--Hamed can take another video/zoom depo of her after all discovery is in but before trial.

--Both parties can argue with Court whether she has to attend the trial at that time. If she does not have to attend, a trial testimony will be taken just before the trial and used as her testimony. If she does have to attend, Hamed will pay the witness fee and costs related to her attendance (Travel, lodging, meals).

**III. Sixteen Plus' January 3, 2023 first motion to compel to Manal. See attached Exhibit D.**

**a. The Issue:**

Sixteen Plus understands that it cannot compel what she says she does not know or have. Thus, this motion is limited to five topics:

1. She has steadfastly refused to provide her address;
2. If Isam did everything for her as her agent (as she states) she has a duty to interview him, obtain documents from him, and to the extent that he has documents or information or is "in control" of it—so is she, and she must get the documents and information--and supply the results to Sixteen Plus;
3. She has refused to provide, or even approximate numbers with regard to assets, income, and expenditures—this is critical—she may not know exact amounts, but she can respond with ranges or approximations;
4. She has refused to provide tax returns for the relevant periods.
5. She has refused to describe the funding of her suit, and its direction by conspirators. Someone is providing the fees for her—and it is apparent to Hamed that it is one of the other co-conspirators in the COCO—Isam or Fathi.

- b. **Hamed legal position:** Basic discovery rules
- c. **Isam Legal position:** See attached **Exhibit E**

**d. Sixteen Plus Reply: See attached Exhibit F.**

**e. Resolution of the parties at M&C\_\_\_\_\_**

I hope this has been helpful. Please let me know your thoughts.

Thank you,



Carl J. Hartmann

cc; All counsel in 65, 342 and 650

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 YOUSEF**,

*Defendants*,

and

**SIXTEEN PLUS CORPORATION**,

*a nominal Defendant.*

Case No.: **SX-2016-CV-00650**

**DERIVATIVE SHAREHOLDER  
SUIT, ACTION FOR DAMAGES  
AND CICO RELIEF**

**JURY TRIAL DEMANDED**

**PLAINTIFF HISHAM HAMED'S  
SECOND MOTION TO COMPEL:  
AS TO BANK ACCOUNT DOCUMENTS IN THE CONTROL OF ISAM YOUSUF**

**COMES NOW** the Plaintiff, Hisham Hamed, through undersigned counsel, and moves the Court, pursuant to Rules 26, 34 and 37, to compel Defendant, Isam Yousuf, to identify his bank accounts and provide his 1990-1997 statements—or, alternatively, to provide a letter allowing opposing counsel to obtain them, and to bear all expenses.<sup>1</sup>

Mr. Isam Yousuf (“Isam”) is an American citizen, and the records at issue are his own banking statements for accounts titled in his name, including those located at the *Banque Francaise Commerciale* (“BFC”) on the island of St. Martin (French). Hamed will assert at trial that these accounts are central to this action. Not only were the funds in

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<sup>1</sup> Hamed has retained local counsel on St. Martin, Avocat Ioana André, and will bear all costs of locating, obtaining and duplicating the documents from the bank, the police and the prosecutor.

these accounts the source of the alleged loan from Isam's sister, Manal, but as is described in the Hymes Letter of November 7, 2022 (**Exhibit 1** at page 2) Isam contends that those allegedly loaned funds were deposited into Isam's accounts<sup>2</sup> by his (and Manal's) father, Mohammad, slowly over a period of more than seven years.<sup>3</sup> Hamed will contend at trial that the funds in Isam's accounts were deposited by the Hameds and Yusufs starting in 1995. Therefore, Hamed will argue that the ownership of funds in those accounts, and thus the source of the loan at issue, are the dispositive facts in this dispute.

Moreover, because Isam repeatedly references these accounts and relies on assertions about the source of funds in his bank accounts<sup>4</sup> as his defense in his

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<sup>2</sup> Hamed believes there are four such accounts at BFC but cannot be certain. Thus, he asks for an order for all of Isam's accounts without specifying account numbers. This uncertainty arises because Isam stated in his interrogatory responses that there only two BFC accounts—and that they were opened in the 1980's. (Interrogatory 4: "BFC Bank - I had a personal bank account. Island Appliances had a business account at the same bank," and Interrogatory 3: "The previous owner had an account with BFC Bank. I opened an account with the same bank for Island Appliances sometime near the end of 1986, or the beginning of 1987." **Exhibit 2**) However, as will be seen in detail below, the French government and the St. Martin Judicial Police identified at least two additional BFC accounts opened at the onset of the laundering operation in 1995—accounts through which they identified millions of dollars flowing. Moreover, as will also be detailed below, Isam, through counsel, has expressly refused to identify all his accounts—even after that counsel was informed of the French investigation providing specific account numbers in Isam's name. ("Access to the financial records of Island Appliances and my clients will not be granted," and "[y]ou have asked for a description of all foreign bank accounts in his [Isam's] name during the period 1995 to 2000. Once again, this is irrelevant to any issue related to this case and will not be provided.") **Exhibit 1**. These 1995 accounts were the source of the loan at issue.

<sup>3</sup> See, e.g., Isam Yousuf's *Response to Plaintiff Hisham Hamed's First Request for Interrogatories*, dated July 19, 2017, at Interrogatory Response #2, where he stated, "Manal Mohammad Yousef's father had made deposits for her benefit into my account since 1990, or before, on many different dates." **Exhibit 2**.

<sup>4</sup> Isam Yousuf has stated that he was the shareholder and manager of a small furniture and appliance seller on Sint Maarten (Dutch) named Island Appliances. He appears to be a sole proprietor. **Exhibit 2** at response #2. He has not alleged or provided documentation that it was a true corporation—and he has refused to provide information about ownership

responsive papers and discovery responses, the account descriptions and statements should have been provided pursuant to his initial Rule 26 disclosure responsibilities. When the account statements were not so provided, they were requested in the most routine of requests for production of documents—these were standard, vanilla requests for standard, vanilla bank statements of a defendant whose accounts are involved in a dispute. The first of these inquires (Document Request No. 1) requested:

All monthly account statements for any checking, savings, investment, brokerage account titled to you in your name from 1990 through 1997.<sup>5]</sup>

This initial RFPD was fully denied in Isam Yousuf's initial *Responses to RFPD* provided by Attorney Hymes on August 16, 2017. **Exhibit 3.**

Document Request No. 1:

All monthly account statements for any checking, savings, investment, brokerage account titled to you in your name from 1990 through 1997.

**Response: None.**

Hamed's two other document requests and his related interrogatory were similarly denied or answered patently erroneously.

Document Request No. 14:

Please provide documents reflecting the source of all funds used to make the wire transfer that was sent on or about February 19, 1997, as noted on page 6 of Exhibit 4 as well as Exhibit 5 that are attached.

**Response: None.**

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or structure. See p. 2 of the November 7, 2022 Hymes letter discussed herein. **Exhibit 1.** (“A description of the rate of pay of Isam, *and his percentage of stock ownership in Island Appliances will not be provided* as this information is totally irrelevant to any litigation.”) As will be shown below in the French Police's factual recitation (**Exhibit 8**), these were not entity accounts or business accounts of Island Appliances. They were opened by Isam using his own personal information, are titled in his name only and merely show “Island Appliances” as a trade name he was using on the personal account. No corporate information, resolutions or documents are referenced.

<sup>5</sup> Hamed will limit this and the following requests if the Court determines the requests are overly burdensome or onerous, and suggests: “For accounts other than those at BFC, you need only supply the statements for accounts into which you allege your father, Mohammad, deposited part or all of the \$4.5 million in gifts to your sister, Manal.”



Document Request No. 17:

Please provide documents showing the transfer of any funds by Manal Mohammad Yusef to you or BFC Island Appliance that were included in either of the wire transfers that were sent on or about February 19, 1997 and September 4, 1997, noted on page 6 of Exhibit 4 as well as Exhibits 5 and 6 that are attached .

**Response: None.**

**Interrogatory 4:**

Please list all financial accounts you have that are fully or partially in your name in any corporation, partnership, or business association in which you own more than 5% interest, or as to which you are a beneficiary from January 11 1995 through December 31, 2000, including but not be limited to all: bank accounts, stock brokerage accounts, negotiable instrument accounts, retirement accounts, trading or options accounts, and funds transfer accounts. For each, identify the name and address of the institution, the title holder(s), the beneficiaries or trust beneficiaries as well as the last four digits of the account number(s),

**Response: BFC Bank - I had a personal bank account. Island Appliances had a business account at the same bank. Windward Island Bank - Island Appliances had a business account with the bank at its Phillipsburg St. Maarten branch. Windward Island Bank - Dyson Island Furniture had a business account at the bank's Phillipsburg St. Maarten branch.**

The last response is blatantly erroneous. Other documents<sup>6</sup> (all provided to Attorney Hymes as part of the negotiations to identify the accounts and obtain statements) show Isam Yousuf had many more accounts which he did not disclose. He had the two 1995 BFC accounts mentioned. It is also clear from those documents that he had a major account in Amman, Jordan through which he transferred millions. **Exhibit 7**, p.11.

Therefore, Hamed's counsel met with Attorney Hymes in a Rule 37 conference to try to (1) locate and identify Isam's bank accounts, and (2) obtain the production of the related statements regarding the identical period Isam stated his father was making these

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<sup>6</sup> These documents are described below in detail and are exhibits hereto.

alleged gift deposits. That conference was followed with a confirming letter to Attorney Hymes—addressing these issues on pages 3 and 4. **Exhibit 4.**

e. Interrog 4: I noted that he [Isam] did not list all accounts in his name and [I] gave you the reference to several. I also asked for all foreign bank accounts during the period 1995- 2000. I also noted that there was inadequate detail for those already described. You said you would check with your client. Again, I expect an amendment.

and

h. Doc Req 1 (and Doc Req 14):

**Document Request No. 1:**

All monthly account statements for any checking, savings, investment, brokerage account titled to you in your name from 1990 through 1997.

**Response:**

**None.**

\* \* \* \*

You stated that he had none. I stated that he has an obligation to obtain documents within his control, or in the alternative to provide access. Thus, I asked for two letters: (1) to BFC releasing his banking records related to this case, i.e., for the time period 1995-2000, and (2) to the STM prosecutor for records related to the Criminal Procedure numbered—which I had previously described to you in my letter of 10/16/22 as follows: . . . You said, finally, that you would check with Isam and get back to me as to whether he would assist by supplying access. I noted that it was his duty to obtain records in accounts under his control, not mine, but that if he gave me the letters I would undertake to do so—which I will at our cost.

In addition, Hamed’s counsel also identified some of the missing account numbers he had been able to informally locate—and provided other salient information to work out Isam supplying locations and descriptions, as well as providing disclosure/access. *Id.*

On November 7, 2022, Attorney Hymes responded by refusing either identification or statements. **Exhibit 1.** Attorney Hymes stated, at 2-3: “Access to the financial records of Island Appliances and my clients will not be granted.” In addition, he refused to even identify any foreign accounts held by Isam during that period: “You have asked for a

description of all foreign bank accounts in his name during the period 1995 to 2000. Once again, this is irrelevant to any issue related to this case and will not be provided.”

**I. Introduction:  
What Hamed Believes the Account Statements Will Show**

Hamed will seek to argue that the central factual issue in this series of cases is starkly black and white: Whose funds were really provided to Sixteen Plus? Did Manal Yousef’s father deposit \$4.5 million into Isam Yousuf’s BFC accounts over a seven-year period as he alleges, or was the money in those accounts simply skimmed funds put there by Wally and Fathi over a very short period from April 1996, onwards? In other words, were Manal’s funds loaned to Sixteen Plus to buy the subject land, or were only Hamed’s and Yusuf’s funds being deposited and transferred to Sixteen Plus to buy the land? If these were not Manal’s funds, there was “fraud, coercion *or other nefarious inducement into the [mortgage] contract.*” *Celestin v. LLP Mortg., Ltd.*, No. 2007-014, 2007 VI Supreme LEXIS 6, at \*5 (Nov. 9, 2007)(*citing* Restatement (Third) of Property (Mortgages) §§ 1.1 and 1.2.)<sup>7</sup> The V.I. Supreme Court having adopted it, Hamed will contend that *Restatement 3d of Property: Mortgages*, § 1.2, is clear—that where sham notes and the associated mortgages arise without any real value having been provided by the putative loaning party (i.e., undertaken without actual funding for some other

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<sup>7</sup> Hamed contends in this action that Fathi’s family members, including his niece, Manal Yousef, planned these documents to eventually take the Hamed half. Manal was always just a straw man provided by Fathi and his nephew Isam. Despite the various spellings, Mohammad Yusuf, who also goes by the last name Hamdan, is Fathi **Yusuf’s** brother. Isam **Yousuf** and Manal **Yousef** are Mohammad’s children. Thus, Fathi is their uncle. Defendant Jamil Yousuf is the brother of Manal, the son of Mohammad and the nephew of Fathi.

purpose than a real loan) they are, obviously, unenforceable. *See, e.g., Comments & Illustrations, comment c:*

c. Failure of consideration distinguished. It is important to distinguish an absence of consideration from "failure of consideration." While the courts are not always consistent in terminology, the latter phrase is often used to describe cases in which the mortgagor executes a note or contract, secured by a mortgage, but does not receive some or all the value for which she or he bargained. This is simply a material breach of contract, partially or wholly discharging the mortgagor's duty of performance under the note or contract. The mortgage will be unenforceable to the same extent.

and, Illustration 4, which is remarkably similar to the facts here:

4. A and B are partners in a partnership to develop land. They acquire title to the land, transfer it to a trust, and cause the trustee to execute a note and mortgage to A and B as mortgagees for no consideration. **The sole purpose of the mortgage** is to establish a lien priority superior to the claims of possible future creditors or mechanics lienors, and there is no intention that any payments be made on the note. Subsequently the partnership is dissolved and A seeks to foreclose his interest in the mortgage. Because the mortgage was created to insulate the partnership's assets from its creditors, and not with the intention of making a gift, it is unenforceable and no foreclosure should be ordered. (Emphasis added.)

At trial, Hamed will seek to prove that the two \$2 million tranches of funds transmitted by Isam Yousuf to Sixteen Plus were solely monies belonging to the Hamed and Yusuf families: "The sole purpose of the mortgage [from Manal was] to . . ." change the *apparent* owner of the funds and to "establish a lien priority superior to the claims of possible future creditors." *Id.* But Isam Yousuf will counter that this was a real loan—that these were separate, unrelated funds coincidentally in his same 1995 Isam BFC accounts—funds his father (Mohammad) had deposited into Isam's accounts slowly, in smaller deposits over a long period—as a gift to Manal Yousef. These are two radically different stories. The truth would have been instantly discernable and already apparent *if these bank statements had been produced by Isam.*

As described herein, Hamed already has extensive investigative proof to support his belief that the Isam accounts will identically track the other three STM BFC laundering accounts—as described in two separate French investigations. (The parties not only have the details of the French investigations, but also some of the corresponding bank statements of those other three laundering accounts opened in 1996 “c/o Isam Yousuf” with the address at Island Appliances. (Referred to here as the “Wally, Fathi and Hamdan Diamond BFC accounts, respectively.”) **Exhibit 5**. Prior to April 1995, the Isam accounts will show no total of funds anywhere even near \$1 million, much less \$4.5 million.<sup>8</sup> There will certainly be no pre-1995 large amounts in the two 1995 Isam accounts from which the subject loan was actually made. Then sudden, unattributed cash deposits will be seen. These will be in the tens and hundreds of thousands and flow

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<sup>8</sup> It is also noteworthy that, as Wally Hamed and others will testify, at that time in 1995 through 1997, Isam ran and managed that small furniture/appliance store—Island Appliances. Hamed will show it was a small operation and would certainly not generate millions of dollars in profit in a year. Hamed will also show that Isam’s father, Mohammad Yusuf (aka Mohammad Hamden) never had any significant funds. Back ‘in the day’ in Jordan, Mohammad was caught in a low-level smuggling operation and was put in jail. As a result, he stopped using his real name—Mohammad **Yusuf**—which is his actual family name as he is Fathi’s brother. He started calling himself Mohammad Hamdan. In any case, he didn’t own the Island Appliance store and never really had any real trade or way to earn a significant living. He was essentially a small-time hustler—and he occasionally did things or acted as a straw man for his brother, Fathi—where he would appear to own an asset or to loan or borrow money—to avoid taxes. One of the ways it is clear that he had no real money—and certainly no funds more than \$100,000—is that throughout the 1990’s Fathi always had to send him some money to get by—a few hundred or a few thousand at a time. Fathi and Wally would record these *many* “donations” in a ledger book they used. Wally will testify that he was involved in this because these support payments for Mohammad would be recorded against Fathi’s share of store profits. See **Exhibit 6**. This exhibit is from the inter-family “black book”—a ledger where transactions were tracked between the Yusufs and Hameds. This one is January 1992-May-1994. That was not too long before Mohammad passed away in early 1997—six months *before* Isam transmitted the second half of the \$4.5 million from Manal. On page 3 of the exhibit there is one of these ‘donation’ checks to Mohammad for \$12,000. Similarly, on page 4 is the notation partly in Arabic for “cash” going to Abu Isam—or Isam’s father—in the amount of \$13,800.

beginning in April of 1996, in the large, frequent, consecutive amounts indicative of laundering—exactly matching the pattern and amounts deposited into the other three accounts. Similarly, just before the first, February 1997, \$2 million ‘loan’ was needed to purchase the Diamond Keturah land on St. Croix, the French Banking Commission was able to track the same 1995 Isam account transferring the loan funds as receiving \$1.5 million of large,<sup>9</sup> unattributed cash deposits in “10 consecutive deposits” by Isam to Isam. **Exhibit 7**, chart on page 11. This was just days before the first \$2 million transfer to Sixteen Plus *out of that same 1995 Isam account*. Nor was this amount unusual or overly large for these Isam accounts. The St. Martin Judicial Police were able to obtain the Isam BFC account statements, and found that on just one day, more than \$8 million flowed into and then out of one of these two accounts. **Exhibit 8**.

Thus, Hamed believes that the testimony, account statements and these new documents, when adduced at trial, will show the following facts:

1. At the beginning of 1995, there was no money in any pre-1995, Isam or Island Appliance accounts, including original Isam BFC accounts opened in 1987.
2. There were little (or no) funds in the two Isam accounts opened in 1995—until deposits flowed in from Fathi and Wally.
3. At the time the FBI states the skimming began in earnest, in 1996, deposits started into the two 1995 Isam transfer accounts—as well as the Wally, Fathi and Hamdan Diamond BFC accounts also identified by these investigations.
4. Thus, there were no historical deposits from prior to 1996 by Manal’s father as alleged, no balances in any Isam accounts of anywhere near 4 million dollars,

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<sup>9</sup> By January 31, 1997, in preparation for the transfer of \$2 million from Isam’s Island Appliance account, in just that one month of January 1997, he had “deposited, in 10 consecutive transfers” \$1.5 million in cash. This fact was later described by the French Banking Commission in its official report—which stated that this should have set off alarms about money laundering and that BFC had failed to properly report this: “At this point, at least a monitoring file should have been set up.” **Exhibit 7** chart at page 11.

and no gift valued at \$4.5 million Manal used to fund the loan. If there are other, undisclosed accounts held by Isam where he did have \$4.5 million, he will have to disclose them in response to Interrogatory 1, and he will certainly have that opportunity to show the \$4.5 million in gifts had been deposited elsewhere. But he has stated in discovery that in addition to his BFC accounts he has only a couple of accounts on the Dutch side of the island; that must also be disclosed.

5. The deposits into these accounts, from April 1996 to the \$2 million transfer to Sixteen Plus in February 1997, were large and quick, and were in the identical “in-and-out” pattern as the other laundering accounts Isam oversaw<sup>10</sup>—the Wally, Fathi and Hamdan Diamond accounts at the same BFC bank.
6. Isam was the central actor on STM. He was the sole addressee and received all the statements for all these laundering accounts—both his own and the three June 1996 BFC accounts belonging to Wally, Fathi and Hamdan Diamond.
7. The amounts used for the \$2 million February 1997 transfer to Sixteen Plus were deposited in January 1997, immediately before the transfer, by Isam. They weren't deposited by Isam's father Mohammad, and not over many years.
8. In the discovery on this, Mr Yusuf has asserted his Fifth Amendment right. However, in further discovery and at trial Wally Hamed will testify fully as to the mechanisms by which these funds were placed in these accounts—and that no funds were ever transferred to Sixteen Plus from Manal Yousef or her father, Mohammad. These documents will strongly support that testimony.

Thus, absent Fathi Yusuf's testimony, were it not for these documents, it would simply be the word of Isam versus Wally—Manal having asserted in discovery that she knows nothing, and that everything was managed by Isam. However, with these documents before the Court, Hamed believes the facts will be clear.

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<sup>10</sup> According to the St. Martin Judicial Police which subpoenaed the Isam BFC account records, on just one day one of these accounts was credited \$8,782,962 and was then debited a slightly different amount, \$8,859,094, later in the very same day. This changed the amount being shifted about and would defeat numerical tracking. **Exhibit 8** at page 3 (handwritten notation by Fathi Yusuf as page “D-3”).)

**II. Applicable Court Rules –  
V.I. R. CIV. P. 26(a)(1)(A)(ii), 34(a) and 37(a)(1)**

**Rule 26**

**(a) Required Disclosures.**

**(1) Initial Disclosure.**

**(A) In General.** Except as exempted by Rule 26(a)(1)(B) or as otherwise stipulated or ordered by the court, a party must, without awaiting a discovery request, provide to the other parties:

**(i)** the name and, if known, the address and telephone number of each individual likely to have discoverable information— along with the subjects of that information— that the disclosing party may use to support its claims or defenses, unless the use would be solely for impeachment.

**(ii)** a copy of all documents, electronically stored information, and tangible things that **the disclosing party has in its possession, custody, or control and may use to support its claims or defenses**, unless the use would be solely for impeachment, unless it would be unduly burdensome to produce a copy of an item, in which case each item must be clearly identified, along with a statement as to why each cannot readily be copied, and including a description of the location where each can be reviewed. (Emphasis added.)

**Rule 34**

Producing Documents, Electronically Stored Information, and Tangible Things, or Entering onto Land, for Inspection and Other Purposes

**(a) In General.** A party may serve on any other party a request within the scope of Rule 26(b):

(1) to produce and permit the requesting party or its representative to inspect, copy, test, or sample the following items in **the responding party's possession, custody, or control**: (Emphasis added.)

**Rule 37**

**(a) Motion for an Order Compelling Disclosure or Discovery.**

**(1) In General.** On notice to other parties and all affected persons, a party may move for an order compelling disclosure or discovery. The motion must include a certification that the movant has in good faith conferred or attempted to confer with the person or party failing to make disclosure or discovery to obtain it without court action.

\* \* \* \*



(3) Specific Motions

(A) *To Compel Disclosure*. If a party fails to make **a disclosure required by Rule 26(a), any other party may move to compel disclosure** and for appropriate sanctions.

(B) *To Compel a Discovery Response*. A party seeking discovery may move for an **order compelling an answer, designation, production, or inspection**. This motion may be made if:

\* \* \* \*

(iii) a party fails to answer an **interrogatory submitted under Rule 33**; or

(iv) a **party fails to produce documents** or fails to respond that inspection will be permitted — or fails to permit inspection — as requested under Rule 34.

\* \* \* \*

(4) *Evasive or Incomplete Disclosure, Answer, or Response*. For purposes of this subpart (a), **an evasive or incomplete disclosure, answer, or response must be treated as a failure to disclose, answer, or respond**. (Emphasis added.)

**III. Argument:  
Isam “Controls” His Own Account Statements**

**A. Facts**

A great deal is already known about Isam’s BFC accounts—from official, contemporary documents—governmental, regulatory and police investigations into their use for money laundering. This is definitely not a fishing expedition. As discussed below, the parties have received, from the US FBI and DOJ, documents that show:

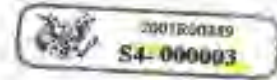
1. Immediately after 9/11, the French Government began reviewing potential money laundering accounts for documents regarding the movement of large amounts to the Middle East. **Exhibit 8** at page 2.
2. In January 2002, the French Banking Commission issued, in both draft and final, official reports on STM money laundering through BFC—which prominently addressed the 1995 Isam Yousuf accounts, as well as the June 1996 BFC Wally, Fathi and Hamdan Diamond accounts. (The final report was issued on January 11, 2002. The parties have both the draft report in English (Exhibit 7) and the final of this report (Exhibit 7-A) in French—which contains virtually identical text. Hamed refers here to the translation as that was supplied to Wally Hamed by Fathi Yusuf and contains Fathi’s handwritten notes thereon.) **Exhibits 7 and 7-A.**

3. Immediately thereafter, on January 23, 2002, Mary Ellen Warlow, Director, Office of International Affairs, US Department of Justice, sent the French government a request for assistance in connection with a parallel US investigation conducted into Fathi, Isam, Wally, Island Appliances, and Hamdan Diamond. **Exhibit 9** at page 2 (handwritten notation by Fathi Yusuf as page "D-2".) She stated that the DOJ was investigating to determine "whether Fathi YUSUF and his accomplices" were trafficking US currency, [and] laundering profits...." *Id.* She stated that those individuals and companies "had opened several bank accounts with the Saint Martin branch of the *Banque Francaise Commerciale*." The American authorities asked for many documents. *Id.*
4. As a result, the St, Martin Judicial Police opened an investigation into Isam, Wally, Fathi and Hamdan Diamond. *Id.*
5. As part of their investigation, the St, Martin Judicial Police issued a subpoena to BFC for the suspected laundering accounts of Wally, Fathi, Isam, Island Appliances and Hamdan Diamond, and more particularly, for the two 1995 Isam accounts at issue here, **Exhibit 9**, and,
6. In response, BFC collected, copied and provided copies of many statements and documents regarding these accounts, **Exhibit 10**.

This last fact is quite important to this motion. After the police issued that subpoena ("Requisition") to BFC for these accounts, the bank sent the following letter confirming that all of them, and particularly the Isam Yousuf (trade named Island Appliances) account statements and accounting documents had been collected, copied and transmitted. It states (**Exhibit 10**) 'In response to your request of March 13 and at our first delivery on May 02, we send you copies of the documents collected on the following files: . . . .YOUSUF ISSA-ISLAND APPLIANCE: accounts n° 60.63541 & 60.20186 Account statements, accounting documents.'" It is those documents for which Hamed is moving the Court for a letter of permission from Isam to allow his counsel to obtain those bank records from the STM bank or the collecting officials to which the bank supplied them.

Banque Française Commerciale  
Antilles Guyane

Groupe Crédit Agricole Indosuez  
Direction Générale



SRM ANTILLES-GUYANE  
ANTENNE DE SAINT-MARTIN  
BP 681 - MARIGOT  
97057 SAINT-MARTIN CEDEX

Service Inspection  
TÉL : 05 90 21 56 87  
Fax : 05 90 21 60 08

Réf : INS 1078/14/02/61

Aff : PV n° 2007/078/02

Atymes, le 03 Juillet 2007

Messieurs,

Pour faire suite à votre demande du 13 mars et à notre première remise du 02 mai dernier, nous vous faisons venir les copies des documents réunis sur les dossiers suivants :

- **YOUSUF ISSA-ISLAND APPLIANCE** : comptes n° 60.63541 & 60.20186  
Relevés de compte, pièces comptables
- **YUSUF FATHI** : compte n° 60.63877  
Relevés de compte, pièces comptables
- **Handam Diamond Corporation** : compte n° 60.63887  
*Ce compte dans nos livres était géré par Monsieur YUSUF FATHI*
  - **Hamed Waleed** : compte n° 60.63878  
Relevés de compte, pièces comptables
- **TEJ DOOR SPECIALITY NV** : comptes n° 60.20967 – 60.63830  
Relevés de compte, pièces comptables

Notre service des archives poursuit ses investigations dans ces différents dossiers. Tout complément d'information vous sera de nouveau adressé dès réception.

Vous souhaitant bonne réception,

Veillez agréer, Messieurs, l'expression de nos salutations distinguées.

A. WILMARD

C. BRINDAMOUR

Groupe Crédit Agricole Indosuez

Direction générale - Group 4, Centre la Roca - BP 13 - 97151 PÉRENE - 171115 - Tél : 05 90 21 56 00 - Fax : 05 90 21 56 00  
E.A. exceptionnel de € 10 000 000 - Siège social : 00 Quai du Président Paul Doumer - 97300 GUYANNE-FRANCE - PARIS B. 310 176 260 0000

HAMD692936

In reporting on the matter, the officer investigating stated that, **Exhibit 8**: "Our Investigations and hearings allowed us to determine that: 1/ WITH RESPECT TO THE BANK ACCOUNTS OPENED: The different bank requisitions [subpoenas] sent to the Saint Martin Branch of Banque Francaise Commerciale (BFC) allowed us to determine:

- **Euro account No. 60201869000** was opened in the name of YOUSUF Isam (trade name: Island Appliances) on February 13, 1995.  
The attached documents were:
  - the signature card for accounts No. 63541(dollars) and 20186 (francs) opened on February 13, 1995.
  - a copy of the passport of ISAM MOHAMAD YOUSUF born on February 20, 1952 in Jordan.
  - a copy of a portfolio transfer sheet (accounts No. 60201869000: YOUSUF ISAM and No. 6063541 9040: "Island Appliances").
  - a copy of a transfer order dated February 13, 1997 for an amount of \$2,000,000 from account No. 406063541/90 from ISAM YOUSUF in favor of Sixteen Plus Corporation, St. Thomas, Tel.: 809 775 5646 (account No. 058 00039411, drawn on the Bank of Nova Scotia, Sunny Isle Branch, P.O. Box 773, St. Croix, US).
  - a copy of a transfer order dated March 11, 2002 in an amount of \$25,000 (USD) from account No. 40606354190 from Island Appliances in favor of ISAM YOUSUF residing on Garden Street, Amman, Jordan (account No. 0250317114200 drawn on the Cairo Amman Bank (Jordan), swift code: CAAB JO AM).
  - a copy of a cancelled transfer order dated 10/07/1998 from ISAM Yousuf in favor of AYED YOUSEF (amount: \$300,000 (USD)).
  - various documents (statement of account information, information about accounts No. 6020186, 0107026 and 6021266 and various correspondence).
  - handwritten correspondence from Alexandre GUMBS dated July 22, 1996 regarding accounts No. 60 63877, 60 63541, 63878 and 60 63830.

Note that this account was not used very extensively and was closed on March 22, 2002.
- **Dollar account No. 60635419040** was opened in the name of YOUSUF Isam (trade name: Island Appliances) on February 13, 1995:  
The attached documents were:
  - ID card No. 31570 issued by Sint Maarten on September 27, 1999 in the name of YOUSUF Isam Mohamad.
  - a U.S. passport issued on September 11, 1986 in the name of YOUSUF Isam Mohamad.
  - Account statements mentioning several large cash transfers:
    - \*this account was credited \$8,782,962 (USD) on 04/19/2002.
    - \*this account was debited \$8,859,094 (USD) on 04/19/2002.
  - Various documents relating to term account No. 40 60 63541 91 held by YOUSUF ISSA ISLAND APPLIANCE,

12 Canegeter Road Pondfill, Philipsburg, 99 000 Sint Maarten drawn on the Banque Française Commerciale.

This account was closed on March 27, 2002.

- **Dollar account No. 60638779040** was opened in the name of YUSUF Fathi on June 10, 1996.

The account agents were YOUSUF Fathi and HAMED Waleed.

This account was closed on September 4, 2000.

- **Dollar account No. 60638789040** was opened in the name of HAMED Waleed on June 10, 1996.

The attached documents were:

-a copy of passport No. 043576417 issued on September 8, 1992 in the name of HAMED Waleed Mohammad born on January 22, 1962 in Jordan, an American national.

-a copy of the signature card indicating that the agents for this account were HAMED Waleed and YOUSUF Fathi.

- statements (Exhibit 9) for account No. 40606387890 held by HAMED Waleed.

This account was credited with several cash deposits.

- **Dollar account No. 60638879040** was opened in the name of Hamdam Diamond Corporation on June 26, 1996. (Exhibit 8).

The attached documents were:

-a copy of the signature card indicating that the agents for this account were YOUSUF Fathi, HAMED Waleed and ISAM Mohamad, Yousuf. The manager of Hamdam Diamond Corporation was Fathi Yusuf MOHAMAD YUSUF.

-a copy of U.S. passport No. 043377662 issued on February 10, 1992 in Miami in the name of Fathi Yusuf MOHAMAD YUSUF.

-five documents relating to contracts between the BFC bank and YUSUF FATHI, the off-shore company HAMDAM DIAMOND CORPORATION, HAMED WALEED (manager of the Plaza Extra Supermarket) and the Dutch company TED DOOR SPECIALITY.

-a copy of the U.S. passports for MOHAMAD YUSUF Fathi Yusuf born on April 15, 1941 in Jordan, HAMED WALEED MOHAMMAD born on January 22, 1962 in Jordan, and ISAM MOHAMAD YOUSUF born on February 20, 1952 in Jordan.

-various correspondence (correspondence from HWANG Antoine addressed to Mr. FAURE (BFC General Inspection Department) dated August 24, 2000 stating that he had been asked by client Walled HAMED personally (40606387890) and on behalf of Hamdam Diamond Corporation (40 606388790) to transfer respectively US\$1,100.00 (*sic*) and US\$1,173,000 to Cairo Amman Bank in Amman, Jordan (a copy of three cheques payable to Walled Hamed drawn on the Banque Française Commerciale, held by Hamdam Diamond Corporation, YUSUF FATHI

and Hamed Waleed. These cheques dated August 11, 1996 are for amounts of US\$2,000,000, US\$400,000 and US\$400,000 respectively).

-a handwritten note by Mr. GUMBS commenting on the opening of the account.

-a copy of the statements for account No. 40 60 63887 90 with the Banque Française Commerciale held by Hamdam Diamond Corporation, 12 Cannegieter Road, Sint Maarten c/o ISAM YOUSUF for the period from June 26, 1996 to April 19, 2002.

Several cash deposits were credited to this account.

This account was closed on February 5, 2002.

Hamed also contends that when Fathi Yusuf received these reports on the French activities that had been translated into English, he drew up a 4-page, handwritten analysis keyed to those reports individually. He then attached the five documents of the two French investigations as exhibits “A” through “E” to his handwritten notes and presented them all to Wally Hamed as (1) being an accurate accounting of what they had done, and (2) demanding that the French reports somehow showed that the Hamed had received more than the Yusufs over the years—and thus, the Hameds owed him money. (This is a very lengthy exhibit already provided to opposing counsel but will be supplied to the Court or counsel on request.)

#### **B. The Applicable Law as to “Control” of Documents for Discovery**

The predicates for such a Rule 34 document request are met: It has been shown that the subject documents existed as described, that they were collected pursuant to a lawful subpoena, and that a set of the copies was transmitted by a bank to the police and prosecutor. Thus, three entities had the sets of Isam’s account statements. The only question remaining is whether these documents are in

Isam's control. Case law on this is uniform. See, e.g., *Shorter v. Baca*, No. CV 12-7337-JVS (AGR), 2013 US Dist. LEXIS 199847, at \*7-8 (C.D. Cal. Nov. 1, 2013):

Shorter objects that at least some documents are not within her possession but are in the possession of St. Francis Medical Center, LA-USC County Medical Center, Centinela Hospital or Cedars Sinai Medical Center. Rule 34 allows a party to request documents that are "in the responding party's possession, custody, or control." Fed. R. Civ. P. 34(a)(1). **"Control is defined as the legal right to obtain documents upon demand."** *United States v. Int'l Union of Petroleum and Indus. Workers*, 870 F.2d 1450, 1452 (9th Cir. 1989); *Hill v. Eddie Bauer*, 242 F.R.D. 556, 560 (C.D. Cal. 2007). Shorter does not deny that she has the legal right to obtain her medical records from her providers upon demand. Shorter must obtain the responsive documents from her health providers **or provide Defendants' counsel with written consent to disclosure** of her medical records to Defendants by her health providers in the form required by Defendants and her health care providers. (Emphasis supplied.)

This is black letter rules law, and thus requires no *Banks* analysis. See also *Holczer v. A.O. Smith Corp.* (In re Asbestos Prods. Liab. Litig.), No. 875, 2021 US Dist. LEXIS 202879, at \*20-21 (ED Pa. Oct. 21, 2021) ("Documents are deemed to be within the party's 'possession, custody or control' if the party has actual possession, custody or control, or has the legal right to obtain the documents on demand. . . . Specifically, **control is defined as 'the legal right, authority, or ability to obtain upon demand documents in the possession of another.'**" *Dixon v. Williams*, 2016 US Dist. LEXIS 18829, 2016 WL 631356, at \*3 (MD Pa. Feb 17, 2016)(quoting *In re Bankers Trust Co.*, 61 F.3d 465, 469 (6th Cir. 1995); *Florentia Contracting Corp. v. Resolution Trust Corp.*, No. 92 CV 1188, 1993 US Dist. LEXIS 5275, 1993 WL 127187, at \*3 (SDNY Apr. 22, 1993)(Emphasis added).

Medical and bank records are the quintessential documents within the control of an individual. They are foremost of all personal records subject to one's "ability to obtain upon demand documents in the possession of another." This most frequently

arises in a motion to compel where the court invariably orders either disclosure or, as above, that the party “provide [opposing] counsel with written consent to disclosure.” See also *Hicks v. Bahadori*, No. 2:19-cv-05360-MWF (SK), 2020 U.S. Dist. LEXIS 135909, at \*3 (C.D. Cal. Mar. 23, 2020).

#### **IV. Conclusion**

There is no doubt that the request for these documents is highly relevant, extremely focused and proportional—based on what is already known—and that the documents lie within the control of Isam Yousuf. This case is only at the early discovery stage and Isam may attempt, when questioned in deposition, to deny the facts as to these accounts set forth in the two French investigations. There is no countervailing cost or burden on Isam as (1) Hamed has retained local counsel on St. Martin and will bear the costs of locating, obtaining and duplicating the documents from the bank, the police and/or the prosecutor, and (2) has agreed herein to limit the requests other than those to BFC to “gift” deposits. Hamed seeks an order directing Isam to answer Hamed’s Interrogatories 2, 3 and 4, and RFPD 1, 14 and 17; and to provide a letter informing BFC, the STM prosecutor and STM police of his permission for opposing counsel to obtain the records due to the need for these documents to be placed before this Court. In the alternative he suggests a similar order with the suggested changes.

A proposed order is attached.



**Dated:** November 23, 2022



**Carl J. Hartmann III, Esq.**  
USVI Bar Number 48  
*Co-Counsel for Hamed*  
2940 Brookwind Dr,  
Holland, MI 49424  
Telephone: (340) 642-4422  
Carl@carlhartmann.com

**Joel H. Holt, Esq.** (Bar # 6)  
*Counsel for Hamed*  
Law Offices of Joel H. Holt  
2132 Company Street,  
Christiansted, VI 00820  
Email: holtvi@aol.com  
Phone: (340) 773-8709/  
Fax: (340) 773-8677

### CERTIFICATE OF SERVICE

I hereby certify that this document complies with the page and word limitations set forth in Rule 6-1(e) and that on this 23rd day of November, 2022, I served a copy of the foregoing by email, and via the Court's E-Filing process, on:

**Charlotte Perrell, Esq.**  
**Stefan Herpel, Esq.**  
Law House, 10000 Frederiksberg Gade  
P.O. Box 756  
St. Thomas, VI 00804-0756  
Tel: (340) 774-4422  
sherpel@dtflaw.com

**James L. Hymes, III, Esq.**  
P.O. Box 990  
St. Thomas, VI 00804-0990  
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jim@hymeslawvi.com

**Kevin A. Rames, Esq.**  
2111 Company Street, Suite 3  
Christiansted, VI 00820  
Tel: (340) 773-7284  
kevin.rames@rameslaw.com



### CERTIFICATE OF COMPLIANCE WITH RULE 37(a)(1)

I hereby certify that I made the required efforts in good faith to confer with counsel for United and Yusuf to obtain the foregoing requested information.

**Dated:** November 23, 2022



# Proposed Order

**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 YOUSEF**

*Defendants,*

and

**SIXTEEN PLUS CORPORATION,**

*a nominal Defendant.*

**Case No.: 2016-SX-CV-650**

**DERIVATIVE SHAREHOLDER  
SUIT, ACTION FOR DAMAGES  
AND CICO RELIEF**

**JURY TRIAL DEMANDED**

**ORDER**

**THIS MATTER** having come before the Court on the motion of Plaintiff pursuant to Rules 26, 34 and 37, and the Court being informed in its premises, it is hereby:

**ORDERED**, that Isam Yousuf shall fully respond to Hamed's Interrogatories 2, 3 and 4, and RFPD 1, 14 and 17. He shall also provide a letter addressed to the St. Martin Judicial Police, the St. Martin prosecutor's office and to the *Banque Francaise Commerciale* that will state his permission for Attorneys Hartmann and Andre to view and copy all records of the accounts of Isam Yousuf and Island Appliances for the period from 1990 through the end of 1997 and will attach this order thereto. Hamed will bear the costs.

**Dated:** \_\_\_\_\_, 2022

**ATTEST:** TAMARA CHARLES,  
Clerk of the Court

\_\_\_\_\_  
**Douglas A. Brady**  
Judge of the Superior Court

\_\_\_\_\_  
**By:** Court Clerk Supervisor

# LIST OF EXHIBITS

<b>Exhibit No.</b>	<b>Description</b>
<b>EXHIBIT 1</b>	Hymes Letter to Hartmann dated November 7, 2022
<b>EXHIBIT 2</b>	Isam Yousuf Responses to Interrogatories
<b>EXHIBIT 3</b>	Isam Yousuf Responses to RFPD
<b>EXHIBIT 4</b>	Hartmann Letter to Hymes dated October 20, 2022
<b>EXHIBIT 5</b>	Declaration of Counsel – Carl J. Hartmann III
<b>EXHIBIT 6</b>	Hamed-Yusuf “Black Book”
<b>EXHIBIT 7</b>	French Banking Commission Report – English (Draft)
<b>EXHIBIT 7-A</b>	French Banking Commission Report – French (Final)
<b>EXHIBIT 8</b>	St. Martin Judicial Police Report dated May 14, 2003
<b>EXHIBIT 9</b>	St. Martin Judicial Subpoena dated June 7, 2004
<b>EXHIBIT 10</b>	Letter from BFC to SRPJ dated July 3, 2002

LAW OFFICES  
OF  
**JAMES L. HYMES, III, P.C.**

P.O. BOX 990  
ST. THOMAS, VIRGIN ISLANDS 00804-0990  
E-MAIL: [jim@hymeslawvi.com](mailto:jim@hymeslawvi.com)  
TELEPHONE: (340) 776-3470 CELLULAR: (340) 998-3059

EXHIBIT

1

REPLY TO:  
 ST. THOMAS OFFICE

REPLY TO:  
 CHRISTIANSTED OFFICE

November 7, 2022

**PRIVILEGED & CONFIDENTIAL**  
**ATTORNEY WORK PRODUCT**

Carl J. Hartmann, III, Esq.  
[carl@carlhartmann.com](mailto:carl@carlhartmann.com)  
[carl@hartmann.attorney](mailto:carl@hartmann.attorney)

Re: **Sixteen Plus v. Manal Yousuf**  
**SCVI/STX Civil No. SX-16-CV-65**  
**MMY v. Sixteen Plus**  
**SCVI/STX Civil No. SX-17-CV-342**

Dear Attorney Hartmann:

This letter will respond to your letter to me of October 20, 2022, which sets forth your understanding of our discussion, and those items which you believe are deliverable.

With respect to paragraph (2) of the August 1, 2017 letter to me from Joel Holt, I have been reminded by Jamil Yousuf that I requested that he establish a telephone conference call with Manal at the time I was retained to allow her to confirm my retention, and to avoid any question of same if it was only done by Jamil through his power of attorney.

I have agreed to obtain copies of all pages of the passports requested to be produced with the understanding that a request will be made to the Superior Court for them to be filed with the Court under seal, to avoid them being made a matter of public record.

You indicated to me that you required a description of the present address for my client so that you may serve her with process. I will not provide you with that address. If you need to serve her with process, it may be done through me.

CHRISTIANSTED OFFICE:  
1138 KING STREET (THE PENTHENY BUILDING), CHRISTIANSTED, ST. CROIX, U.S. VIRGIN ISLANDS 00820-4943  
E-MAIL: [rauna@hymeslawvi.com](mailto:rauna@hymeslawvi.com)  
TELEPHONE: (340) 773-1700

My client has indicated that she has not paid taxes on any interest payments paid to her by your clients. Therefore, I see no need for you to obtain copies of her tax returns for the years 1990 - 2000.

I will acknowledge your statement to me that you confused the name of the BFC Island Appliance with Island Appliances. In my opinion the answers to your discovery correctly responded to the question and gave information as if the question properly assumed the name of the company was Island Appliances. If you do not agree with this and wish to send a separate document with the correct name, please feel free to do so.

**Points Raised in Isam's Responses:**

Isam managed money for Manal in two ways. First, he gave her cash as she needed it from the interest payments paid to her by your clients. Second, he assisted with the agreement for her to lend \$4.5 Million to Sixteen Plus by agreeing on her behalf to do so, and by transferring money given to her for her benefit by her father to Sixteen Plus in accordance with the terms and conditions of the Note and First Priority Mortgage executed by Sixteen Plus. There was no account specifically titled in her name, or for her benefit. Her father deposited \$2 Million into the Island Appliances account, and Isam transferred it to Sixteen Plus as part of the \$4.5 million loan.

Isam has fully described and provided the addresses at which he has resided on the island of St. Maarten. No further supplementation will be forthcoming as such is unnecessary.

A description of the rate of pay of Isam, and his percentage of stock ownership in Island Appliances will not be provided as this information is totally irrelevant to any litigation.

You have asked for a description of all foreign bank accounts in his name during the period 1995 2000. Once again, this is irrelevant to any issue related to this case and will not be provided.


Interrogatory 9(b) asked how you and/or Island Appliances obtained the \$2 Million to transfer to Sixteen Plus on or about February 19, 1997. My clients have repeatedly explained to you that these funds came from Manal's father. No further explanation is required.

Document Request No. 1 asked for copies of all monthly account statements for any checking, savings, investment, brokerage account titled to you in your name from 1990 through 1997. The response was none. This response cannot change since there are no documents in his possession, custody, or control.

You have requested factual answers to Interrogatory No. 22, and its subsections E, F and G. Information will not be provided because the funds for the loan to Sixteen Plus did not come from Island Appliances, but rather from Manal's father.

I have been advised that what you thought was a bank card is in fact an insurance card, and therefore there will be no further supplementation to Document Request No. 9.

Finally, you have demanded information as to how the \$1,080,000 of interest which your client denied paying was spent by Manal. She and her husband purchased a supermarket from Isam with the first payment of interest, and spent the second payment supporting the operation of the supermarket and for their own personal use. They purchased a car and a van with a portion of the money. Between 1999 and 2003, a second store was opened and supported with the third payment of interest. Any remaining cash was received and used as needed for personal consumption.



Access to the financial records of Island Appliances and my clients will not be granted. Your clients have denied making any payments of interest. Therefore, they have no reason to look in bank accounts for those funds. If your clients used the money which they skimmed from Plaza Extra to fund the Note and Mortgage, they should have the documents by which those funds were deposited in a bank in St. Maarten for transfer back to them in the Virgin Islands. Indeed, those documents should have been produced as part of your rule 26 initial disclosures, but, unless I am mistaken, I have not seen them to date.

Respectfully submitted

  
James L. Hymes, III

JLH:rs

cc: Joel H. Holt, Esq.  
[holtvi@aol.com](mailto:holtvi@aol.com)



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

---

**HISHAM HAMED**, individually, and  
Derivatively, on behalf of **SIXTEEN  
PLUS CORPORATION**,

Plaintiff,

vs.

**FATHI YUSUF, ISAM YOUSUF and  
JAMIL YOUSEF**,

Defendants.

and

**SIXTEEN PLUS CORPORATION**,

a nominal Defendant,

---

CIVIL NO. SX-16-CV-650

DERIVATIVE SHAREHOLDER  
SUIT, ACTION FOR DAMAGES  
AND CICO RELIEF

---

JURY TRIAL DEMANDED

**ISAM YOUSUF'S RESPONSE TO PLAINTIFF HISHAM HAMED'S  
FIRST REQUEST FOR INTERROGATORIES TO DEFENDANT ISAM YOUSUF**

The Defendant, **ISAM YOUSUF** (incorrectly referred to in the caption as Jamil Yousef"), by and through his undersigned attorney, James L. Hymes, III, does not voluntarily appear in this matter, does not submit to the jurisdiction of the Court, and does not waive any objections to subject matter jurisdiction, personal jurisdiction, improper venue, insufficiency of process, insufficiency of service of process, or failure to state a claim upon which relief can be granted, or any other defense or objection which may be presented whether by pleading or motion in this action, hereby responds to Plaintiff's First Request For Interrogatories to Defendant Isam Yousuf, as follows:

**Interrogatory 2:**

Please state the name and address of each place you have worked or been self-employed between 1986 and 2017 and for each such place, please state:

- a) All of your job title(s) or position(s)
- b) Your rate(s) of pay
- c) The time you started and the time you left each such job

**Response:**

**Between 1986 and 1989, I was the self-employed owner of Sosamag Supermarket, Rue de General DeGaulle, French St. Maarten.**

**Between 1986 and 2001, I was the manager/shareholder of Island Appliances, Canigater Street, Dutch St. Maarten.**

**Between 1996 and 2001, I was the manager/ shareholder of Dyson's Island Furniture, St. Maarten.**

**Between 2001 to the present, I have been the manager/shareholder of Travel Inn Hotel, St. Maarten**

**between 2010 – 2017 I have been the manager/shareholder of Simpson Bay suites, St. Maarten**

**Interrogatory 3:**

Please describe in detail all that you know about BFC Island Appliance, including but not limited to its location, years of operation, ownership, location of its bank accounts, your relationship to it and its one of its owners/operators as well as the name and address of all of its other owners/operators.

**Response:**

**In 1986, I acquired Sosamag Supermarket in the French side of St. Maarten. The previous owner had an account with BFC Bank. I opened an account with the same bank for Island Appliances sometime near the end of 1986, or the beginning of 1987.**

**Interrogatory 4:**

Please list all financial accounts you have, that are fully or partially in your name, in any corporation, partnership or business association in which you own more than 5% interest, or as to which you are a beneficiary from January 1, 1995 through December 31, 2000, including but not be limited to all: bank accounts, stock brokerage accounts, negotiable instrument accounts, retirement accounts, trading or options accounts, and funds transfer accounts. For each, identify the name and address of the institution, the title holder(s), the beneficiaries or trust beneficiaries as well as the last four digits of the account number(s).

**Response:**

**BFC Bank – I had a personal bank account. Island Appliances had a business account at the same bank.**

**Windward Island Bank - Island Appliances had a business account with the bank at its Phillipsburg St. Maarten branch.**

**Windward Island Bank - Dyson Island Furniture had a business account at the bank's Phillipsburg St. Maarten branch.**

**Interrogatory 9:**

Regarding the information listed on page 6 of Exhibit 2 as well as Exhibit 3 that are attached, please explain:

- a) Why you had BFC Island Appliance transfer \$2,000,000 to Sixteen Plus on or about February 19, 1997;
- b) How you and/or BFC Island Appliance obtained the \$2,000,000 to transfer to Sixteen Plus on or about February 19, 1997; and
- c) Who instructed you to send the funds.

**Response:**

**The Two Million Dollars (\$2,000,000) which was transferred by Island Appliance to Sixteen Plus Corporation on or about February 19, 1997, was money belonging to Manal Mohammad Yousef which I was handling for her. This transfer was part of the loan by her to the corporation. Manal Mohammad Yousef's father had made deposits for her benefit into my account since 1990, or before, on many different dates. I was always under instructions to look for investments for her, and the order to transfer the money came from her father.**

**Interrogatory 10:**

Regarding the information listed on page 6 of Exhibit 2 and Exhibit 4 that are attached, please explain:

- a) Why you had BFC Island Appliance transfer \$2,000,000 to Sixteen Plus on September 4, 1997;
- b) How you and/or BFC Island Appliance obtain the \$2,000,000 to transfer to Sixteen Plus on September 4, 1997;
- c) Who instructed you to send the funds to Sixteen Plus; and
- d) List what Bank Officers were involved in handling this transaction.

**Response:**

**See Responses to Interrogatories 7, 8, and 9, above. The transfer of Two Million Dollars (\$2,000,000) from the Island Appliance account to Sixteen Plus Corporation on September 4, 1997, was a transfer of money belonging to Manal Mohammad Yousef which had been given to her by her father for investment purposes. I handled the necessary instructions to send the funds to Sixteen Plus Corporation. I have no present recollection of the names of any bank officers involved in this transaction since it occurred so many years ago.**

**Interrogatory 14:**

Did Manal Mohammad Yousef ever give you any funds, which shall include but not be limited to, funds to transfer to Sixteen Plus? If so, please state:


- a) All dates when this occurred;
- b) The amount given to you on each date;
- c) The amount given to you on each date by wire transfer, identifying the transferring bank;
- d) The amount given to you on each date by check, identifying the bank or brokerage account on which the check was written; and
- e) The source of her funds that she transferred to you.

**Response:**

The money which was given to Manal Yousef by her father was deposited by him into the bank account over a period of years.

**VERIFICATION**

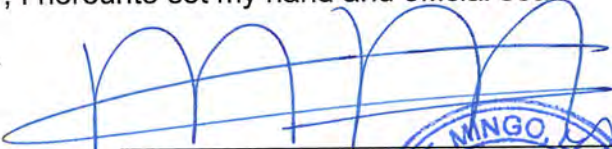
I hereby certify under penalty of perjury that the facts contained in each of the foregoing responses to interrogatories are true and correct to the best of my knowledge, information and belief.


Dated: 7/19/2017   
Isam Yousuf

)  
) ss.  
)

On this, the 19<sup>th</sup> day of <sup>July</sup> ~~day~~ of 2017, before me, the undersigned officer, personally appeared Isam Yousuf, known to me (or satisfactorily proven) to be the person whose name is subscribed to the within document and acknowledged that he executed the same for the purpose therein contained.

**IN WITNESS WHEREOF**, I hereunto set my hand and official seal.

  
Notary Public  
(a civil law notary)  
Marlene Françoise Mingo



Seen for legalization of the signature of ISAM MOHAMAD YOUSUF, who identified himself with a passport, issued by the United States of America, under number 482522158, by me, Marlene Françoise Mingo, LL.M., a civil law notary, established on Sint Maarten, on this 19<sup>th</sup> day of July, 2017. This declaration for the legalization of the signature, by the civil law notary, contains no opinion as to the contents of this document.





**Document Request No. 12:**

All documents showing residential addresses you physically resided at for more than 1 month from 1996 to present.

**Response:**

Until 2010 I lived at Gold Finch Road in St. Martin. I have no documents relating to my occupancy at that address. Since then I have lived at number 3D Billy Fully Road in St. Maarten. This response will be supplemented if any documents relating to my occupancy at that address can be located.

**Document Request No. 13:**

Please provide all documents detailing how the Note and Mortgage between Manal Yousef and Sixteen Plus was arranged for, negotiated, drafted, executed, delivered, and recorded. Include, but do not limit this, to documents reflecting the dates when actions were taken, the amounts discussed or transacted, the documents drafted or executed, the communications, any lawyers involved, all persons involved and all banks/entities where funds originated, were transferred or arrived.

**Response:**

None.

**Document Request No. 14:**

Please provide documents reflecting the source of all funds used to make the wire transfer that was sent on or about February 19, 1997, as noted on page 6 of **Exhibit 4** as well as **Exhibit 5** that are attached.

**Response:**

None.

**Document Request No. 15:**

Documents providing the directions from anyone to authorize the wire transfers that were sent on or about February 19, 1997 and September 4, 1997, on noted on page 6 of **Exhibit 4** as well as **Exhibits 5** and **6** that are attached.

**Response:**

**None.**

**Document Request No. 16:**

Please provide documents reflecting the source of all funds used to make the wire transfer that was sent on or about September 4, 1997, on noted on page 6 of **Exhibit 4** as well as **Exhibit 6** that are attached.

**Response:**

**None.**

**Document Request No. 17:**

Please provide documents showing the transfer of any funds by Manal Mohammad Yousef to you or BFC Island Appliance that were included in either of the wire transfers that were sent on or about February 19, 1997 and September 4, 1997, on noted on page 6 of **Exhibit 4** as well as **Exhibits 5** and **6** that are attached.

**Response:**

**None.**



**CARL J. HARTMANN III**  
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ADMITTED: USVI & DC

October 20, 2022

Email Only

James Hymes, Esq.  
cc: Charlotte Perrell, Esq.  
Stefan Herpel, Esq.  
Joel Holt, Esq.  
Ioana André, Avocat

RE: Confirmation re Rule 37 Conference in 650/65/342 as to Isam

Jim:

This will confirm my understanding of the discussion and the deliverables from the Rule 37 conference between 10 a.m. and 11:15 a.m. on Thursday, October 20, 2022. The two of us were present, and I had supplied you with the two documents appended: (1) an annotated letter to you with items for discussion numbered starting with 1 (Exhibit 1), and (2) a set of all of the Isam discovery responses with specific items for discussion highlighted (Exhibit 2). As the second document caused some confusion, I did not send you the third document—a similar collection of all of Manal's discovery responses with items for discussion highlighted. I did, however, go through it with you—with you using your copies. Finally, I agreed to send you my prior letter of 10/16/22 in which I listed bank accounts and addresses that Isam both failed to disclose and describe. (I did so today at 11:30 a.m.)

**A. Points raised in letter (by large, red numbers)**

Item 1: You agreed to check your records and supply us with a written confirmation that you had no communications with Manal prior to your filing the Foreclosure action for her.

Item 2. You agreed to file sealed copies of the full contents and covers of Isam and Manal's current and former passports with the Court.

Item 3: Referring to items we would cover in specific discovery responses, I stated that we wanted to understand the nature of Isam's retention of funds for Manal leading up to the two \$2 million transfers from Isam's (tradename Island Appliance) account. I noted that in responses it was said that it was in a "fund", being "managed" by Isam, and that it was all "in the Island Appliances account." You agreed (see below) that you would consult with your clients and get the correct information: i.e., was there ever a separate "fund" or "account" or was it in the Island Appliances account?

Item 4: I raised the issue of Manal having other accounts from 1995-present into which funds may have gone. You stated there were none. Later in the discussion (below) I showed you a bank card for another account. You said you would talk with your client and determine if she had other accounts in Ramallah or STM and respond accordingly.

Item 5: Contained in 4.

Item 6: I discussed the fact that we did not receive responses as to the cash transactions “in” to her from Isam, or “out” from her in spending or obtaining assets. This was discussed below in detail.

Item 7: We asked for certification that she had used reasonable steps to get her agent, Isam, to obtain and supply the bank records and any other records related to his acting as her agent. You stated you would get back to me on this.

Item 8: We asked for her present address, and if it was not a place with valid physical addresses, that it be described by route and physical appearance. You asked why I would want that. I responded that (1) it is a standard discovery inquiry of a party, and (2) I intend to have or may have process served on her locally. You said you would provide this.

Item 9: I asked whether she had paid and would produce tax filings in her home jurisdiction for 1998, 1999 and 2000. You said you would speak to your client and respond.

Item 10: Discussed under item 6.

Item 11: I asked that you agree to my pro forma amendment of all pending discovery to correct any confusion between “BFC Island Appliance” and “Island Appliance” and then re-answer questions where I believe the confusion may have altered answers. You asked for clarification as to which questions those were, and I agreed to send you a separate letter listing them. You stated you would let me know after seeing that letter. I noted that this was a simple matter and that if you would not, I would seek assistance from the Court.

## **B. Points raised in Isam’s Responses (highlighted)**

a. Req. to Admit 5: I noted again that Isam refers to the fact that Manal’s funds used to transfer \$4 million to Sixteen Plus were “entrusted to [him] to manage” but that it was unclear when, how and where this management happened—what account(s) were the funds in, how much and when, and was there ever a separate account or fund. We dealt with it below.

b. Req. to Admit 15: Isam denied that “that the funds documented on page 6 of Exhibit 2, as well as Exhibits 3 and 4 attached, transferred to the Sixteen Plus account at the Bank of Nova Scotia had never been in any account titled for the benefit or trust of Manal Yousef.” I pointed out that he stated elsewhere that *they were always in his account trade named Island Appliance, and thus, had never been in any accounted titled to her or as to which she was a beneficiary*. You stated I was correct and that after checking this, you would amend,

c. Interrog 1: Relates to all of his addresses. I noted that the letter I have supplied to you listed other addresses he has given and stated that we want all addresses, real or false that he has had/used—and that this includes address given to foreign banks. You said you would check with your client. Again, I expect an amendment of the response.

d. Interrog 2: I noted that he had not given his amount of pay or percentage of stock holdings for Island Appliance. Your response was unclear, but I expect an amendment.

e. Interrog 4: I noted that he did not list all accounts in his name and gave you the reference to several. I also asked for all foreign bank accounts during the period 1995-2000. I also noted that there was inadequate detail for those already described. You said you would check with your client. Again, I expect an amendment.

f. Interrog 6. Manal's address. I was unclear as to your response. But I again stated that we wanted it produced.

g. Interrog 9b. Isam was asked "How you and/or BFC Island Appliance obtained the \$2,000,000 to transfer to Sixteen Plus on or about February 19, 1997." I noted that the French Banking Commission listed 10 consecutive deposits totaling \$1.5 million in January 1997—just before the transfer of \$2 million. We want to know where those deposits came from, and (covered in another request below) what the average monthly balances were from April 1996 through September 1997—whether or not he has documents or exact recollection. Again, your response was unclear, so I clarified that I want to know approximate amounts if not exact amounts. For example, was there more than \$1 million in that account prior to January of 1996? And approximately how did that amount vary from April 1996 through September 1997? Again, the response was unclear.

h. Doc Req 1 (and Doc Req 14): Isam was asked and responded as follows:

**Document Request No. 1:**

All monthly account statements for any checking, savings, investment, brokerage account titled to you in your name from 1990 through 1997.

**Response:**

None.

You stated that he had none. I stated that he has an obligation to obtain documents within his control, or in the alternative to provide access. Thus, I asked for two letters: (1) to BFC releasing his banking records related to this case, i.e., for the time period 1995-2000, and (2) to the STM prosecutor for records related to the Criminal Procedure numbered—which I had previously described to you in my letter of 10/16/22 as follows:

Second, we also want a separate, similar letter to the STM Judicial Police Branch, regarding the file in case number 2002/078 which your client knows fully well contains a significant amount of the relevant banking information; and should have been disclosed in the absence of his ability

to remember or personally produce. Again, we will pay for the services and add them to the costs in this matter.

You said that this was close to my threatening your clients with criminal matters “again.” I noted that: (1) this was a criminal procedure, long over, in STM where documents were subpoenaed from BFC for Isam’s accounts, and as such I was not referring to any present criminal action, (2) your client had obtained full transactional immunity for all act prior to 2010 in the criminal Plea Agreement, and (3) in any case, it was my understanding that all applicable STM limitations period had run for pre-2010 acts. We further discussed my inquiry into present Fathi’s 5<sup>th</sup> Amendment assertion and my right to inquire into your client’s factual position on the underlying facts regarding any beliefs or knowledge she has regarding her intent to asset the same defense. I noted (again) that we will not seek and would strongly resist any present prosecutions because of the delay and further obfuscation it would engender. You said, finally, that you would check with Isam and get back to me as to whether he would assist by supplying access. I noted that it was his duty to obtain records in accounts under his control, not mine, but that if he gave me the letters I would undertake to do so—which I will at our cost.

i Doc Req 11: Passports. (Covered above.)

j. Doc Req 14: Covered in “h” as to Doc Req 1, above,

k. Interrog 22 e, f, & g): Isam was asked for a factual answer—not documents, as to the following:

E. What was the average monthly balance in this account from 1995 through 2001?

F. Describe in detail whether this was a normal operating account for Island Appliance, or whether it was segregated from the normal operations for the benefit of Manal or otherwise.

G. Describe in detail any writings, documents or other evidence that shows or infers

that the \$2 million being transferred was related in any way to Manal.

H. Describe taxation documents that show the local tax payments on the gift or income that was the source of this \$2 million?

I told you that we wanted E – that it is the crux of this action. As I said above, whether he has documents or exact memories, he will know within orders of magnitude what the average monthly balances were in the Islands Appliance tradename account and his personal accounts and accounts at foreign banks from 1995 through 2000. I asked: Did he have over \$1 million in any account prior to 1996? Did he have over \$1 million in any month in that account in 1996 and 1997? If so, approximately how much? The French Banking Commission notes 10 consecutive deposits in January 1997, days before the \$2 million transfer. Did he have \$ 4 million in that account on January 1, 1997 – as that is the amount transferred in the next 9 months. He must “approximate, give ranges, or otherwise respond within orders of magnitude.” The same is true of F. I

noted he can also respond to this, Also, as to “A”, I asked that Isam detail his father’s “access” to the account—particularly whether he was a signatory or beneficiary or have any legal right or claim in it. I believe, but my notes aren’t clear, that you said you would check with Isam and get back to me. I expect detailed, monthly supplementation.

l. Doc Req 23: Taxes filed for Manal. You said his answer was and is “none.”

m. Req Admit 27: I requested a statement of where and how the cash was kept. You said this request does not elicit that.

### **C. Points raised in Manal’s Responses (highlighted)**

n. Req to Admit 6: You agreed this should be “Admit” as it was never in her name.

6. ADMIT that over the course of your lifetime that you personally, never had more than one million dollars in assets in any personal savings account, checking account, investment account or brokerage account that was in your name as of February 13, 1997.

**RESPONSE:**

Deny. Assets given to Manal Yousef by her father were maintained in a fund managed by Manal’s brother.

o. Doc Req 9: You agreed to supplement this, as I had shown you the bank card for at least one personal card (discussed above.)

**Document Request No. 9:** All monthly account statements for any checking, savings, investment, brokerage account titled to you in your name from 1990 through 1997.

**Response:**

None.

p. Doc Req 24: Passports. Covered above.

q. Interrog 1: Her address. Covered above.

r. Interrog 3 and 4: “funds managed” by Isam. Covered above.

s. Interrog 9: All of her bank records. Covered above.

t. Interrog 19: Her taxes. Covered above.

u. Interrog 20. She must, as discussed above, provide as much information and transaction timing, amounts, uses, etc. for both funds given to her in cash by Isam, and for amounts spent (including assets) for outgoing funds. Again, “perfect recollection or documentary proof is not [necessary]” she can supply best recollections,



approximations, routine activities (i.e., how Isam got funds to her and in what general amounts) and where and how she spent it in general amounts.) I note these must both add up to approximation for \$1,080,000 (3 x \$360k).

Your response was unclear. At one point I thought we had reached an understanding that this was proper discovery and there would be a response. But that was unclear as we went on. I thought you said you would inquire and get back, but again—it became a bit garbled. In any case, we will expect substantial amendments on this from both Manal and Isam. The best they can do with transactions in and out adding up to \$1,08 million.

A. In what form the payments were made

**RESPONSE:**  
Cash.

B. Where those funds were initially deposited.

**RESPONSE:**  
They were not deposited.

C. If you have by the date of your response here, received some or all of those funds, where they are or if spent or otherwise devised, what you spent them on or where they went.

**RESPONSE:**  
My brother gave me cash from time to time as I needed it.

D. If you have not yet received those funds, where they are now.

**RESPONSE:**  
All funds received by my brother have been disbursed to me over time, and there are none left to be distributed.

If your recollection varies from mine, please inform me with specificity—provide your recollections as opposed to a blanket “this was a misstatement.” Please don’t let misunderstanding build up until motions practice—as you know, now is the time to work these items out. I expect that this letter and your response to it will be part of the motion(s) to compel we will be filing. The extent of the motion(s) will depend to a large extent to your “talking with your client(s),” “getting back to me,” and supplementations.

Thank you for your time with regard to the conference.

Thank you,

A handwritten signature in blue ink, reading "Carl J. Hartmann III". The signature is fluid and cursive, with a long horizontal flourish extending to the right.

Carl J. Hartmann III

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

TELEPHONE  
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EMAIL  
CARL@CARLHARTMANN.COM

ADMITTED: USVI & DC

October 12, 2022

Email Only

James Hymes, Esq.  
cc: Charlotte Perrell, Esq.  
Stefan Herpel, Esq.  
Joel Holt, Esq.

RE: Request for Rule 37 Conference in 650/65/342 (3rd letter)

Attorney Hymes:

There seems to be some issue with discovery practice. Hamed has requested Rule 37 conferences several times, but we have not been able to obtain a date and time from you. This has now gone on for over one month. Therefore I will recap my requests that we have such a conference and ask that it occur *before Manal's deposition*. To assist, I have noted deliverables (a)-(h) below, in bold, with highlighting, and in a summary exhibit.

A. Your agreement with Joel Holt per his prior confirming letter

On August 1, 2017, Joel Holt wrote to you confirming the results of the Rule 37 conference between the parties. Exhibit A. In that conference you agreed to produce a number of items. On August 10, 2022, I sent you an email in which I enquired: "Attached is a letter confirming the results of the Rule 37 conference. Have the listed items been completed? Please advise." Exhibit B. On August 16, 2022, I sent you a second, follow-up email--again requesting your compliance with that agreement. Exhibit C ("Per the email below and the attached, please supply the following – particularly items 1, 3, 4 and 5.")

~~(1) the power of attorney from Manal Yousef to Jamil Yousuf as well as  
(2) the notarized signature page of the interrogatory answers.~~

1 (3) confirm in writing that your only communications have been with Jamil Yousuf, not Manal Yousef.

2 (4) Regarding Manal's passports, you are obtaining copies as promptly as you can, which you will then file under seal with the Court, notifying me when you do.

(5) As for interrogatory 9, you will amend to say that Manal has no documents that have any of the requested information.

Thus, we need a Rule 37 conference as to the following topics: **(a)** You have not filed the passport(s).<sup>1</sup> **(b)** If you have provided the written confirmation described in Item 3, I cannot locate it. Please, either direct my attention to the response, or provide that confirmation. Also, you have stated that you have previously provided Item 1, the POA from Manal to Jamil—but, **(c)** I would ask that you direct me to the response or re-send it, as I have clearly misplaced it.

#### B. Prior Requests for Rule 37 conference as to Manal

On September 20, 2022, I sent you a request for a Rule 37 conference regarding Manal. Exhibit D. You have twice asked whether your subsequent discovery responses clarified or obviated all of this request. In each case I have responded in the negative and asked for your availability. In that request I asked for the following:

Interrogatory 17:

Describe in detail the full response to Interrogatory #9, unless you had no such accounts, none were in your name or no such accounts existed where you were a beneficiary -- for the stated period. If there were no such accounts, state, as agreed “I had, had in my name *or was the beneficiary of no such accounts* for that time period.” (Emphasis added.)

RESPONSE: A copy of my Power of Attorney to Jamal has been produced, as have copies of my passports. I have no documents relating to my receipt of funds from Sixteen Plus. My brother gave me cash from time to time as I needed it.

Hamed Position: This is unresponsive. It seeks any accounts in her name or as to which she is/was a beneficiary. I want to know where and on what account numbers I need to get local subpoenae for. Account name, institution and account number – and years open. If her response is “from 1995 to the present I have had no bank or other accounts and was the beneficiary of none—that is false...as she was a beneficiary on those of at least Isam or Island Appliances. If her response is “I was a

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<sup>1</sup> She has stated that passports have been produced—but while it is true that Hamed has some copies of parts of her prior passports attached to other documents, these are NOT full copies of her passports. All passports that she presently possesses should be *fully* copied including covers and endorsements, and full copies of any prior passports should also be fully copied. Those copies should be filed with the Court as you previously agreed, or they should be provided to Hamed with a statement that no others exist. This request seeks both information and to effect estoppel. Hamed wishes to be certain that she has no passport from other jurisdictions such as Sint Maarten, France, Jordan, Israel, or other countries. He also wishes to see any stamps that would reflect when and where she has traveled. She is seeking the equivalent of at least \$30 million dollars. She must fully comply with such basic discovery at that level of seriousness.

beneficiary of accounts held by ISAM and had none of my own, then she must make reasonable inquiry of Isam to get them.

Thus, in the Rule 37 conference we expect her to answer as to any accounts that are/were in her name or as to which she is/was a beneficiary. We have been around this on several occasions with Isam and her in different requests. At times the two of them state that all of the money involved here was in *Isam's accounts*. That does not appear to be accurate, they seem to have been in Island Appliances account at some time as to the \$4 million transferred—were they ever in any other accounts or funds held by Isam or others?. At other times, they state Isam *managed a fund for her* but there is no description or evidence of a separate “fund.” Again, were they ever in any other account or fund other than the Island Appliances account—both she and Isam should respond on this. In either case, both answers are simultaneously inaccurate and unresponsive because what are alleged to be Manal’s assets were clearly in *Island Appliances’ account*--and Hamed has asked about (d) all of her accounts or accounts where she was a beneficiary. She has also stated that she has received and spent all the cash from three interest payments of \$360k each (doled out as she needed it by Isam). This is a fantastic claim—but is also unresponsive. We assume that she had (and has) or been the beneficiary of regular banking accounts or other types of accounts into which she has deposited and withdrawn funds then and now—whether they are in her name, her partner’s name or some other name—and whether they were on STM or where she resides now.<sup>2</sup> What we wish to have described are the transactions that reflect her getting, storing, moving and using over \$1 million in interest.

We want her (e) to provide certification that she has used all reasonable steps to get both information about the accounts/funds and the account documents from Isam—as he was either her agent or her fiduciary for both the \$4 million and the \$1 million. She should have him interviewed in detail by counsel and collect any information, recollections he has and documents. She and Isam have described these amounts as being in a “fund” he managed for her, or in “accounts” managed by him.

Interrogatory 19:

**Interrogatory 19:**

Please describe all the following with a full description of the documents, dates and persons involved:  
\* \* \* \*

C. All taxes paid to the governments of your residence and citizenship for the three payments of \$360.000 from the Virgin Islands Corporation, Sixteen Plus.  
RESPONSE:

<sup>2</sup> We have also asked for her present address. Please provide that street address--the actual residential address where she sleeps at night--where a process server could serve her. If there is not a number and street, then a set of physical directions and a description of the physical residence.

As a non-US Resident, and non-US Citizen, I did not think I have to pay taxes. If I do, I do not mind paying them when the case is over.

and

D. All transfers of funds to you or for your benefit for those three payments.

RESPONSE: I receive cash from my brother from time to time, as needed.

Hamed Position: What times? Approximate years and amounts. Small or large amounts.

Also:

RESPONSE: All funds received by my brother have been disbursed to me over time, and there are none left to be distributed.

Hamed Position: What were they spent on? When—does she have any assets worth \$350k?

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(f) We now understand that neither she nor Isam paid USVI or FIRPTA taxes on VI source income. Did either pay income tax on interest income for the over \$1 million in such income in their home taxing jurisdiction(s)? If Manal and/or Isam received \$360k in 1998, did either file tax returns in STM and/or Ramallah in that year, and did either declare this as interest income? Same for 1999 and 2000. They have both been asked for both the tax filings themselves and for a response to these questions. Saying that she did not know she owed taxes here, that Isam never personally “received income”, or that Manal will pay taxes here *if she loses this case* is unresponsive as to whether anyone ever paid any taxes on this money anywhere. There is an alleged \$1 million dollars in interest income for which there is no trace and for which it is unclear if anyone ever paid any tax anywhere.

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(g) Moreover, as to the \$1 million dollars in alleged income since 1998. She has now said that she has spent it all. She needs to give a detailed recounting on the when, where, how and what of this—and any assets she purchased. This means that she must write out the various amounts, dates and uses for a million dollars. If she cannot recall the exact dates and amounts, she must give her best approximations. Moreover, if she never deposited a cent, she still received, held, and used these smaller payments. How was it done, what was the mechanism or mechanisms. Of particular interest is the fact that she returned to the West Bank. Was all \$1 million provided in parts before she left STM? If not, how did Isam get it to her over there?

C, Prior Requests for Rule 37 conference as to Isam/Jamil

On September 18, 2022, I first requested a Rule 37 conference as to the responses regarding BFC Appliance. Exhibit E. Based in the September 30, 2022 responses from Isam, I realized that you were limiting the responses based on the fact that I had

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referred to Island Appliance as BFC Island Appliance—and suggested that we could avoid the Rule 37 issues if you agreed to a pro forma amendment/correction to remove BFC from all references to Island Appliances. See September 30, 2022 email, Exhibit F. I noted that Isam clearly understood what Island Appliance was being referred to—but that we still needed the Rule 37 conference if you did not agree.

On October 3, 2022, you responded to say that you would discuss this issue with your client: “I will need to confer with my client to determine if a rule 37 conference is necessary as outlined in your September 30, 2022 email. I will get back to you as soon as practical.” Exhibit G. As I did not hear back from you, I sent a third request—a more formal letter of October 8, 2022:

I believe all responses from your clients to date have been about the correct entity—but need to confirm that you have (and will) treat the discovery requests as being about the identified “Island Appliances”—or, alternatively, will require me to seek relief from the Court to amend/correct.

Since then, I have heard from [you], on October 3<sup>rd</sup>:

I will need to confer with my client to determine if a rule 37 conference is necessary as outlined in your September 30, 2022 email. I will get back to you as soon as practical.

Because of the short scheduling order and the upcoming deposition, I would appreciate receiving your responses so that I can approach the Court if you do not concur. To that end I provide the following information that I would put before the Court to assist in your reflection on the matter.

1. The error occurred because of the pick-up of the name from FBI/DOJ documents

At the early stage of the case, and in our understanding, we referred to Island Appliances as it appeared in the central document we were using: DOJ/FBI Draft Report dated December 28, 2004, where the transactions are described as follows:

SIXTEEN PLUS CORPORATION						
Bank of Nova Scotia						
Acct. 39411						
BANK DATE	DEPOSIT AMOUNT	DEPOSIT SOURCE	DEBIT AMOUNT	PAYEE	CHECK NUMBER	REMARKS
2/10/97	3,000.00	Currency				acct. opened - 60/\$50
2/19/97	2,000,000.00	Isam Yousef		<i>B-2 St. Martin</i>		wire trans // BFC Island Appliance acct
8/15/97			1,800,000.00	The Bank of Nova Scotia	101	Diamond Keturah Closing
8/27/97			7,500.00	M.P. Walker & Assoc.		land survey
9/4/97	18,000.00	Currency				180/\$100
9/4/97	2,000,000.00	Isam Yousef				wire trans // BFC Island Appliance acct
9/4/97			2,211,000.00	The Bank of Nova Scotia		Re payout on loan #58001377
	4,021,000.00		4,018,500.00			

The two transfers of \$2 million were shown as being to “BFC Island Appliances.” Of course counsel has by now determined that this refers to the “Island Appliances” account at BFC. While the error is entirely mine, I believe it was understandable to read this as the formal corporate name being “BFC Island Appliances”.

2. Isam clearly knew what entity was being referred to and identified himself as both the manager and a shareholder—even when misidentified as “BFC Island Appliances”

In the existing discovery, Isam clearly understood the reference and answered. There are several examples of his responding as to the correct “Island Appliances”. In response to Interrogatory #2, he states:

Between 1986 and 2001 , I was the manager/shareholder of Island Appliances, Canigater Street, Dutch St. Maarten.

At interrogatory #3 he states:

I opened an account with the same bank for Island Appliances sometime near the end of 1986, or the beginning of 1987.

At interrogatory #4:

BFC Bank - I had a personal bank account. Island Appliances had a business account at the same bank. . . .

There are other discovery requests which should have elicited the documents and answers sought that did not have the naming error

Similarly, several of the discovery requests were such that the correct responses should have identified the correct “island Appliances” and provided the documents and answers sought. There are several examples of this. At page 8 of Isam’s responses to *Plaintiff Hisham Hamed's First Request For The Production Of Documents I* he is asked for:

Document Request No. 16:

Please provide documents reflecting the source of all funds used to make the wire transfer that was sent on or about September 4, 1997, as noted on page 6 of Exhibit 4 as well as Exhibit 6 that are attached.

This calls for all Island appliance account records that reflect the build-up and disbursement of the two \$2 million transfers to Sixteen Plus—the monthly statements of June 1996 through December 1997, the deposit slips sourcing the funds for that period and canceled checks. Isam states

“none” but it is now unclear as to whether he does not have them, or limits his response to “BFC Island Appliances”—which would be an improper answer as the request is not so limited. Likewise, in interrogatories, he answered as to island Appliances, but did not provide the requisite detail:

Interrogatory 4:

Please list all financial accounts you have, that are fully or partially in your name, in any corporation, partnership or business association in which you own more than 5% interest, or as to which you are a beneficiary from January 1, 1995 through December 31, 2000, including but not be limited to all: bank accounts, stock brokerage accounts, negotiable instrument accounts, retirement accounts, trading or options accounts, and funds transfer accounts. For each, identify the name and address of the institution, the title holder(s), the beneficiaries or trust beneficiaries as well as the last four digits of the account number(s),

Response:

BFC Bank - I had a personal bank account. *Island Appliances had a business account at the same bank. . . . (Emphasis added.)*

This is simply a case of not fully responding once the Island Appliances account was correctly identified as being responsive. He is required to “identify the name and address of the institution, the title holder(s), the beneficiaries or trust beneficiaries as well as the last four digits of the account number(s).

Conclusion

I would appreciate a response at your earliest convenience, and if the answer is in the negative, I will append it as an exhibit to explain to Judge Brady why an unnecessary motion is being forced given the facts above. In addition, if I could get a Rule 37 response from Isam as to whether he actually has the banking records for himself and Island appliances for that period, we could avoid at least part of the issue,

I note that I stressed “the short scheduling order and the *upcoming deposition.*” That deposition is now just a few days away and we still have not had a Rule 37 conference. Thus, I again **(h)** request a conference—before Manal’s deposition. If the deposition goes forward without such a conference and adequate responses, I will ask the Court for relief. I look forward to getting dates for all requested Rule 37 topics as requested several times. For clarity, I have abstracted the requests (a) – (h) and attached them as Exhibit I.



Thank you,

A handwritten signature in blue ink, reading "Carl J. Hartmann III". The signature is written in a cursive style with a long horizontal flourish extending to the right.

Carl J. Hartmann III

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 YOUSEF,**

*Defendants,*

and

**SIXTEEN PLUS CORPORATION,**

*a nominal Defendant.*

**Case No.: SX-2016-CV-00650**

**DERIVATIVE SHAREHOLDER  
SUIT, ACTION FOR DAMAGES  
AND CICO RELIEF**

**JURY TRIAL DEMANDED**

**DECLARATION OF COUNSEL  
CARL J. HARTMANN III**

I, Carl J. Hartmann III, am an attorney admitted to the practice of law before this Court (USVI Bar No. 48). As part of my representation of Hisham Hamed I have reviewed the following, described governmental and banking documents regarding the period from 1995 to 1997. These documents are related to several relevant accounts at Bank Francaise Commerciale ("BFC") on (French) St. Martin that were the subject of investigations by the French Banking Commission and the St. Martin Judicial Police:

1. Two accounts titled in the name of Isam Yousuf (dba trade name "Island Appliances")
2. One account titled in the name of Fathi Yusuf.
3. One account titled in the name of Waleed Yusuf, and
4. One account titled in the name of Hamdan Diamond Corp. (Antiguan)

I believe the documents referenced to be true and accurate copies of the bank and governmental originals, and provide them to the Court in support of *Hisham Hamed's Second Motion to Compel*. It is a proffer of facts about documentary evidence that is part of the discovery process, as to which Hamed believes there will be further testimony at deposition and in trial.<sup>1</sup>

#### **A. Two New Isam Yousuf BFC Accounts**

1. St. Martin Judicial Police investigators who subpoenaed Bank Francaise Commerciale ("BFC") bank records stated the following as facts taken directly from the banking records of the accounts. That report is Exhibit 8 to the *Motion to Compel*. They reported the following:
2. On February 13, 1995, Isam Yousuf ("Isam") opened BFC Euro account No. 60201869000 in the name of "YOUSUF, Isam" (it was not opened by Island Appliances as a corporate account, it was Isam's--with a notation of a trade name: "Island Appliances".) This was an additional, new account, as he already had, from 1986 or 1987, other accounts at BFC.<sup>2</sup> *Id.* at 3-5.
3. On that same day Isam also opened the BFC dollar account from which funds were wired to Sixteen Plus--No. 60635419040, also in the name of "YOUSUF Isam" (again, merely trade named Island Appliances.)<sup>3</sup> The application documents were his local ID card No. 31570, in the name of YOUSUF, Isam Mohamad, and a U.S. passport issued on September 11, 1986 in the name of YOUSUF Isam Mohamad.

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<sup>1</sup> Because of the size of this document set, the exhibit numbers in this Declaration are hyperlinked. The documents are not appended. Clicking on any bolded exhibit number while on an internet-connected computer will allow the referenced document to be viewed, downloaded or printed. On request by the Court or a party they will be supplied.

<sup>2</sup> Isam already had regular personal and business accounts at BFC. The "real," pre-1995 Isam/Island Appliances business account (406063 544) had been in place from 1986, or the beginning of 1987. **H-Ex-011-a** . (As Isam had a personal bank account and Island Appliances had a business account at the same bank, he would have been known by the bank before the "1995" accounts were opened. **H-Ex-011-b** )

<sup>3</sup> This account would see *many* millions of dollars pass through, bound for both the USVI and the Middle East—and would be the source of the two \$2 million transfers to Sixteen Plus for Diamond Keturah, For example, according to the French Police who subpoenaed the BFC account records, on one day, this account was credited \$8,782,962 and was then debited \$8,859,094 later in the very same day. **H-Ex-011-c**

4. Isam's father, Mohammad Yusuf (aka Mohammad Hamden) is not listed or mentioned regarding the accounts. *Id.* at 3-5.

**B. The Three June 1996 BFC Accounts: Hamdan Diamond, Fathi & Wally**

5. In June of 1996, Fathi and Wally created three accounts at BFC: a Fathi Yusuf BFC account (406063 7790), a Wally Hamed BFC account (406063 7890), and the new Hamden Diamond BFC account (406063 8870)<sup>4</sup>—with all statements sent to Island Appliances' address and specifically "c/o Isam Yousuf." **H-Ex-017**

**i. Fathi**

6. On June 10, 1996, the BFC dollar account in the name of Fathi Yusuf was opened.
7. The account agents were Wally and Fathi.

**ii. Wally**

8. Also on June 10, 1996, the BFC dollar account in the name of Waleed Hamed was opened.
9. The account agents were Fathi and Wally.

**iii. Hamdan Diamond**

10. On June 26, 1996, the BFC account was opened for the Antigua company Hamdan Diamond.
11. When the Hamdan Diamond account was opened, a copy of the signature card stated the sole agents for the account were Fathi, Wally and Isam—and copies of Fathi's US Passport (No. 043377662, issued February 10, 1992), Isam's US Passport and Wally's US Passport were provided for the official identification of the account owners.
12. The referenced documents, primarily supplied by the US DOJ and FBI to the parties, provide the following with regard to that entity:
13. In 1996, Fathi Yusuf ("Fathi") and Wally Hamed ("Wally") began creating that company in Anguilla using a local lawyer there to do the papers and filings. Fathi was the primary Director and Wally was the other director. They were the also the only authorized signatories and agents.<sup>5</sup> For example, when Fathi Yusuf signed

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<sup>4</sup> At times referenced under the number 60638879040.

<sup>5</sup> On November 12, 1996, the Anguillan Attorney George C. J. Moore sent a letter to Mercedes Spatz at Merrill Lynch, regarding Hamdan Diamond Corporation. Attorney Moore asserted the following:

I am pleased to advise that the Hamdan Diamond Corporation is a duly organized company incorporated in Anguilla on May 16, 1996. The company is in good standing. According to the documentation submitted for

paperwork for an option agreement with Merrill Lynch for Hamdan Diamond Corporation, LTD. The paperwork went to Fathi and gave Plaza Extra as the address on the account. **H-Ex-012**

14. By May 16, 1996, Hamdan Diamond Corporation's *Articles of Incorporation* were filed with the Anguilla Registrar of Companies. **H-Ex-014**
15. Also on May 16, 1996, *By-Laws* for the Hamdan Diamond Corporation were signed by Fathi Yusuf. **H-Ex-015**
16. Just over one month later, as stated above, Wally and Fathi opened the referenced BFC account—with Isam as an additional signatory.

**C. Transactions on the Accounts in 1996**

1. Fathi states that in spring of 1996, he became aware that the Diamond Keturah property was soon going to be owned by the Bank of Nova Scotia [due to a foreclosure and Marshal's Sale.] **H-Ex-024**
2. During its criminal investigation, the US government audited the Plaza Extra stores and the STM accounts and stated in a filing (**H-Ex-023**) that "Defendant has conceded it is true" that "[t]here is no dispute that United failed to report at least \$60 million in sales on its gross receipts tax returns and corporate income tax returns for the years 1996, 1997, 1998, 1999, 2000, and 2001, as set forth in the table below":

<b>Year</b>	<b>Reported</b>	<b>GR Corrected</b>	<b>Unreported GR</b>
1996	\$36,771,260	\$44,959,700	\$ 8,188,440
1997	\$36,823,771	\$44,008,813	\$ 7,185,042
1998	\$40,706,669	\$54,607,514	\$13,900,845
1999	\$47,004,399	\$57,937,943	\$10,933,544
2000	\$51,746,933	\$65,262,591	\$13,515,658
2001	\$69,579,413	\$79,305,980	\$ 9,726,567
TOTAL	\$282,632,445	\$346,082,541	\$63,450,096

3. Thus, in 1996, more than \$8 million in cash was diverted to avoid payment of USVI Gross Receipts tax.
4. In June 1996, the BFC statement for the Fathi BFC account shows 3 deposits totaling \$95,000. The third page shows one of the deposit slips indicating 500 \$100 bills (\$50k) in what is believed to be Isam's handwriting. The address on the account is Island Appliances - 12 Cannegieter Road Philip c/o Isam Yousuf, Sint Maarten. **H-Ex-022**

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my review, Hamdan Diamond Corporation is authorized to buy and sell securities on both a WCMA cash and margin basis. According to the documentation submitted, *Fathi Yusuf and Wally Hamed are authorized individually to give written or oral instructions on behalf of Hamdan Diamond Corporation to Merrill Lynch in relation to the subject account.* **H-Ex-012-a**

5. The July 1996 BFC statement for the Hamden Diamond account shows several deposits of \$50,000 and two for \$200,000. The address on the account is Island Appliances - 12 Cannegieter Road Philip c/o Isam Yousuf, Sint Maarten. **H-Ex-025**
6. The July 1996 statement for my "Wally" BFC account, shows there were 7 large deposits and the balance went from \$95,000 to \$415,000. These statements were also sent to the Island Appliance address, c/o Isam. **H-Ex-026**
7. In the August 1996 BFC statement for the Hamden Diamond account, Isam is again the addressee at the Island Appliances address. The amount was, by then, going up rapidly. The balance was over \$2.3 million. **H-Ex-027**
8. On August 6, 1996 there are handwritten notes on Island Appliances' letterhead "Attn: Mr. Yusuf" listing the name and fax number for Mr. Gumbs at BFC and the account numbers for "Fathi Yusuf" (406063877.90), "Wally" (406063878.90), and "Diamond" (406063687.90) that says "To Isam Yousuf: and "Ayed Yousef" It also states "to Isam Yousuf" **H-Ex-029**
9. In a September 12, 1996, letter from Fathi to Mr. Gumbs at BFC, Fathi directed the bank to pay a check on the Hamdan Diamond account for \$2 million "issued and signed" by Wally. Fathi stated: "please pay check no. 3633491 in the amount of two million dollars *drawn on Hamdan Diamond Corporation*, account no. 040606388790. **H-Ex-030** Fathi Yusuf and Wally Hamed were in control of the account and funds—as can be seen on an attached account holder's (Fathi's) authorization to pay these two withdrawals.
10. As set forth and documented in detail in the Motion, while Hamed lacks the Isam BFC bank statements, investigations which did have those documents stated:
  - a. in January of 1997, Isam deposited 10 consecutive large amounts into his Island Appliances account in cash. Jew a few weeks later, \$2 million was wired to Sixteen Plus from the same account.
  - b. Similarly, on July 4, 1997, Isam made a \$1.6 million cash deposit into his Island Appliance trade named account, and,
  - c. On September 4, 1997, \$2,000,000 was transferred to Sixteen Plus Corporation's Scotiabank account from the Island Appliances account, c/o Isam Yousuf.
11. In 2013, the criminal case ended when United paid a lump sum \$10 million payment of taxes to the Government of the Virgin Islands for previously unreported income from the Plaza Extra Supermarkets—this was a 7.3% gross receipts tax (to include interest) on the diverted \$63,450,096 alleged by the government. In addition there was a punitive fine in excess of \$1,000,000. **H-Ex-088**

So sayeth the Declarant.

/s/ 11/22/2022  
**Carl J Hartmann III** **Date**

FY 004411

Exhibit 6

1 of 4

ms-across®

4 Column  
COLUMNAR  
BOOKS

JAN. '92 - MAY '94

YUSF106891

January 1992

out standing checks.

Ks

01	1	22	American Express	32,100.27	✓	1	2 of 4
02	2	25	Larry Motta	150.00	✓	2	2
03	3	27	tropical supply	235.65	✓	3	3
04	4		VOID	800.00		4	4
05	5	-	Quality Electric	268.21	✓	5	5
06	6	28	V.I. Telephone Corp.	282.97	✓	6	6
07	7	31	Ferst office supply	187.80		7	7
08						8	8
09				32,224.90		9	9
10						10	10
11						11	11
12						12	12
13						13	13
14			Deposit January 1992			14	14
15						15	15
16	2			4,202.32	✓	16	16
17	8			2,316.00	✓	17	17
18	10			1,093.75	✓	18	18
19	21			950.00	✓	19	19
20	21			1,250.00	✓	20	20
21	28			1,500.00	✓	21	21
22						22	22
23				11,312.07		23	23
24						24	24
25						25	25
26						26	26
27						27	27
28						28	28
29						29	29
30						30	30
31						31	31
32						32	32



April with draw

1	1		Out standing ck		39,535.07 ✓	1
2	140	2 4	Larry Motta		300.00 ✓	2
3	141	3 4	Void		—	3
4	142	4 4	Waheed Hamed		165.00 ✓	4
5	—	5 2	Returned ck OM ✓		517.83 ✓	5
6	143	6 6	Theo Dependable Security		1,034.00 ✓	6
7	144	7 6	Cesar Ruiz		100.00 ✓	7
8	145	8 10	Rudy Carnes		4,085.71 ✓	8
9	146	9 11	Larry Motta		300.00 ✓	9
10	147	10 13	Mohamad Yusuf		12,000.00 ✓	10
11	148	11 16	Sheldon Rudloff		699. — ✓	11
12	149	12 17	Ocean System Research, INC-		45. — ✓	12
13	150	13 18	<del>Larry Motta</del> Void		—	13
14	151	14 20	V.I. Telephone corp.		220.45 ✓	14
15	152	15 20	VOID		—	15
16	154	16 21	Theophila Etizee		1,034. — ✓	16
17	155	17 21	Cesar Ruiz		100. — ✓	17
18	156	18 21	Bryan, White and Ass. P.C.		364.86 ✓	18
19	157	19 24	V.I. Water and Power Auth.		1,325.21 ✓	19
20	158	20 24	Larry Motta		300.00 ✓	20
21	159	21 25	Larry Motta		300.00 ✓	21
22	160	22 25	Fathi Yusuf		300.00 ✓	22
23	161	23 27	Ideal Elevator, Co.		772.00 ✓	23
24	163	24			63,489.13	24
25	163	25 29	Maher Yusuf		3,000. — ✓	25
26		26			66,489.13	26
27	165	27 29	St. Mary's School		999. — ✓	27
28		28	Service charge		7.50	28
29		29			67,486.63	29
30		30				30
31		31				31
32		32				32

united paid out

(3)

4 of 4

1	1					
2	2			137,591.37		
3	10 3	17	Paint to st. Thomas	2,243.26	# 577	
4	10 4	17	monarch Heavy Equipmat	752. -	579	
5	5		transferred money	20,000.00		
6	12 6	21	Frank Medlin	5,000.00	# 618	
7	12 7	30	Caribe Do-it Center	36.64	# 623	
8	12 8	27	Tropical shipping	1,836.22	# 629	
9	12 9	27	V.I. Bureau of Internal Revenue	731.82	# 630	
10	12/20	28	Anthony Tavernier floor tile	2,000.00	# 631	
11	11		Tropical shipping	1,927.75	# 625	
12	12		V.I. Bureau of Internal Revenue	281.45	# 626	
13	1 13	4	Anthony Tavernier floor tile	1,000.00	# 628	
14	2 14	4	American Express	1,836.26	# 656	
15	15					
16	16			175,234.75		
17	17		Less for Gross R. tax	1,032.87	# 2071	
18	18					
19	19			174,201.88		
20	3 20	5	Mark 21 Industries	24,000.00	668	
21	3 21	5	ROLO - win	2,200.00	669	
22	3 22	5	Bryant, White and Associates	318.75	673	
23	3 23	7	Cruzan Environmental	381.73	674	
24	3 24	7	Superior Block	832.30	675	
25	25			197,834.66		
26	26		motta checks	600.00	2147 & 2148	
27	2 27	22		197,234.66		
28	3 28	17	Abu Isam or Isam's Father	10,000.00	# 676	
29	29			207,234.66		
30	3 30	20		860.99	# 678	
31	31			208,095.65		
32	32		Less Cash (fuel)	13,800.00		
				194,295.65		



Less Cash (fuel)

# BANKING COMMISSION

## INSPECTION REPORT

**FRENCH COMMERCIAL BANK  
WEST INDIES-GUYANA  
Saint Martin branch**

Investigation into the application of the provisions respecting the blocking of funds and other financial resources taken against the Afghanistan Taliban as well as other financial relationships with certain persons or entities

Examination of local action to prevent the use of proceeds of crime (money laundering)

THIS REPORT IS STRICTLY CONFIDENTIAL  
It must not be even partially disclosed under any circumstances.

Head of Investigation

P.L. CHATAIN

Date signed: January 11, 2002

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E

**FRENCH COMMERCIAL BANK  
WEST INDIES-GUYANA  
Saint Martin**

Investigation into the application of the provisions respecting the blocking of funds and other financial resources taken against the Afghanistan Taliban as well as other financial relationships with certain persons or entities

Examination of local action to prevent the use of proceeds of crime (money laundering)

Address

PO Box 672 – Bellevue  
97057 SAINT-MARTIN CEDEX

Head Office

9 Quai du Président Paul Doumer  
92400 COURBEVOIE

CIB: 18729 – CRB: 130

Investigation conducted by:

Pierre-Laurent CHATAIN  
*Banque de France inspector*

Investigation dates:

- start: November 5, 2001
- end: November 16, 2001
- signed: January 11, 2002

Investigation No.: 2001-116AV

## OVERVIEW

The investigation reported herein took place at the branch of the *Banque Française Commerciale Antilles-Guyane* on the Island of Saint Martin (Guadeloupe) from November 5 to 8 and 13 to 16, 2001.

The purpose of the investigation was twofold:

- ensure the proper application of the provisions respecting the blocking of funds and other financial resources taken against the Afghanistan Taliban, and in particular with respect to European Union Council Regulations No. 467/2001 and 1354/2001 and the Order-in-Council of the French Government No. 2001/875 of September 25, 2001, completed by the Order-in-Council dated October 13, 2001;
- examine local action taken to prevent the use of proceeds of crime (money laundering).

For the first portion of the investigation, our work consisted of checking whether the lists of natural or legal persons which might be associated with terrorist activities published in the above-mentioned texts were used extensively by the BFC-AG. A computer file created by the oversight team on location was also given to the establishment for processing in order to complete the research already begun by the Group<sup>1</sup>. Upon our return to Paris we also looked at additional computer controls on the Saint Martin customer file. The results of the various tests were negative with respect to the natural persons.

However, there is still some doubt surrounding the possible association between a legal person which holds an account, called MIDDLE EAST GROUP, headed by Messrs. El-Yousef Ahmad and Al-Yousef Ghassan, the name of which is almost identical to that mentioned in Report No. 2311 by the joint parliamentary task force on obstacles to the control and repression of financial crime and money laundering in Europe dated October 10, 2001: "Middle East International Group" (M.E.I.G.). According to the parliamentary task force, M.E.I.G. is part of the SAUDI BIN LADEN GROUP, although a connection with Oussama BEN LADEN was not established. Note that MIDDLE EAST GROUP was reported to Tracfin on October 3, 2001.

With respect to local anti-moneylaundering actions more specifically, investigations were conducted in areas considered sensitive - non-resident clients and especially off-shore companies, of which there are many among the customers of the BFC-AG. Other work was also performed on location by us (analysis of head office instructions regarding money laundering, examination of currency transactions carried out by third parties, monitoring of cash deposits, etc.). The results of this work led to a

<sup>1</sup> A file listing persons whose accounts should be blocked pursuant to European Regulations dated March 6, July 5 and October 11, 2001 as well as French Orders-in-Council dated September 26 and October 12, 2001.

very negative opinion of the quality of the money laundering actions, which seemed insufficient and poorly adapted to the nature of the risks incurred.

As these companies are domiciled in off-shore centres, the lack of information on parties involved in them, such as the directors, the lack of up-to-date legal and financial documentation in most files, and the shortfalls in overseeing certain transactions involving large sums of money, and in particular large cash transfers, constitute an offence under section L.563-1 and ff. of the *Code monétaire et financier* (COMEFI) respecting the supervisory obligations of financial organizations.

The same lack of care was observed in the files of customers other than off-shore companies. The mediocre documentation as well as insufficient oversight of transactions carried out by customers are particularly striking. Transactions involving large sums of money which do not seem to have any economic justification and which were particularly complex did not cause the bank to undertake any particular examination (cf. s. L. 563-3 of COMEFI). Furthermore, certain very suspicious transactions in terms of their origin or purpose were not brought to the attention of the authorities, or this was done late or the information reported was incomplete.

In all, the facts described in this report could constitute offences under sections L. 562-2, L. 563-1 and L. 563-3 of the above-mentioned *Code monétaire et financier* as well as sections 2, 5 and 6 of Regulation No. 97-02 of February 21, 1997 of the *Comité de la réglementation bancaire et financière*. These shortcomings demonstrate the need to reinstate operating and oversight rules adapted to the activity in question as soon as possible.

(signed)

Pierre-Laurent CHATAIN

Inspector with the *Banque de France*

R

D

SUMMARY

~~DRAFT~~

## 1. Presentation of economic context and position of Saint Martin

The BFC-AG carries on business in a very risky environment. According to local authorities, the Island of St. Martin constitutes a potential destination for the laundering of money from drug trafficking or proceeds of crime given the many cash transactions which occur and the Island's location. The following are some of the characteristics of Saint Martin:

- transactions – even ones involving significant amounts - are often carried out in cash by well-off, transient customers, essentially North Americans who are in the habit of paying cash. Also, cheques drawn on Paris banks are very rarely accepted because it takes too long to cash them. The use of flat money is also very well-established with many merchants who do not trust other forms of payment. As a result, multiple cash payments are made daily at the branch's bank machines<sup>2</sup>;
- the simultaneous circulation of the dollar and the franc means that many customers open two accounts in the branch's books—one in U.S. dollars and the other in French francs, which makes the transactions of their holders less transparent;
- the Island's tax system is ambiguous and Saint Martin constitutes a tax haven, especially for its non-resident clientele; in this regard, the tax authorities tolerate the payment of local taxes in dollars for French residents of Saint Martin;
- finally, a large number of the branch's customers who are domiciled in the Dutch part of the Island come from foreign, often far-away countries (China, India, South America) or carry on business through off-shore structures.

In all, in the opinion of the bank itself, money-laundering through the BFC-AG is a very real possibility<sup>3</sup>.

In terms of market share, the Saint Martin BFC-AG has the biggest share, followed by the Banque des Antilles Françaises, Crédit Mutuel and Inchauspé et Cie (cf. table below). The branch has two establishments—one south of Marigot which employs around fifty people (Bellevue) and the other to the north, which employs 3 agents (Howell Center).

Banks	DEPOSITS				JOBS			
	Non-res.	Residents	Total	Mkt. Share	Residents	Total	Total	Mkt. Share

<sup>2</sup> The group of northern islands - Saint Martin and Saint Barthélemy - is the place within the BFC-AG with the most activity in terms of transactions, and in particular currency transactions (Schedule 1 of the internal inspection report dated June 30, 2001, p. 3).

<sup>3</sup> Internal inspection report dated June 30, 2001, p. 3.



<b>BFC-AG</b>	25,035	60,485	85,520	46.7%	11,905	49,804	61,709	54.8%
<b>BDAF</b>	2,053	38,061	40,114	22%	13	29,449	29,462	26%
<b>Crédit Mutuel</b>	598	35,295	35,893	19.6%	25	13,125	13,150	11.6%
<b>Inchauspé</b>	3,544	17,836	21,380	11.7%	156	8,103	8,259	7.3%

Source: statistics from the Pointe-à-Pitre IEDOM as at December 31, 2000, in thousands of Euros

## 2. Handling of lists of accounts to be blocked or monitored

### Steps taken by the BFC-AG

Several initiatives were taken by the CAI Group following the events which took place in the United States on September 11, 2001. The chronology of its work may be summarized as follows (cf. Schedules 1 and 2).

On September 27<sup>th</sup>, the BFC-AG received from Crédit Agricole Indosuez five lists of names for which research was to be carried out to compare them to the bank's client base and discover any similarities. The five lists correspond to those published by French Republic Order-in-Council No. 2001-875 of September 25, 2001 and European Union Commission Regulation No. 1354 of July 4, 2001 (amending Regulation No. 467/2001). The lists drawn up by SICFIN and the FBI were also sent.

On September 28, 2001, the five above-mentioned lists were sent by mail and fax to the Group managers along with instructions from CAI.

On October 3<sup>rd</sup>, a general computer search was begun at the head office on the client base of the BFC-AG for similarities with three of the five files received (EU and SICFIN list in particular). **At this stage, no complete similarity was discovered.** On October 8<sup>th</sup>, the two files left to be checked were sent to the Computer Department for examination.

On October 11<sup>th</sup> the CAI's instructions (asking the subsidiaries to extend the research to the originators and beneficiaries of transactions executed by the bank) were sent to the Banking Services Department (head office Operations Department) along with the 5 above-mentioned lists. **None of the said tests revealed any anomaly.**

On Friday, October 19<sup>th</sup>, new research was begun on the client base following the publication of a new list of names by French Order-in-Council No. 2001-934 of October 12, 2001. **The results of this research were also negative.** However, we note that the official lists and the financial beneficiaries of the off-shore companies were not cross-checked.

In conjunction with these investigations, in October 2001 the CAI Group set up an "oversight committee" to discover possible relationships with customers who might belong to terrorist networks (cf. Schedule 3). That committee, which was chaired by the Vice-Chairman of the Board and included 7 qualified people, decided on the

conservatory or final measures involving customers who were potentially involved or for whom relevant necessary information was missing.

## 2.2 Complementary work

### 2.2.1 Identification of suspicious entities

We conducted a series of complementary computer tests using the Saint Martin BFC-AG's client base.

This work confirmed the presence, among the legal persons who were clients of the bank, of a company called "Middle East Group NV", which appeared suspicious.

That entity does not appear on the official lists published by the French government and the local authorities; the above-mentioned Oversight Committee limited itself to mentioning the name of Middle East in a summary document, referring to a Tracfin report on the entity submitted in October 2001 (Schedule 3 bis), without commenting further. However, Parliamentary Report No. 2311 dated October 10, 2001<sup>4</sup> mentions a company called "Middle East International Group" domiciled in Switzerland (52 Bahnhof-strasse, Zurich), the officer of which is a certain **Hassan BIN LADEN, the brother of Oussama Ben Laden** (cf. Schedule 4)<sup>5</sup>.

Our reading of the file opened at the BFC-AG branch on behalf of "Middle East Group NV" does not allow us to determine specifically whether it is the same body. However, the local bank manager indicated to the Inspector that, according to verbal information given to him, the Middle East Group company set up in Sint Maarten (the Dutch part of the island) has ties to organizations carrying on illegal activities.

In summary, the bank has in its portfolio customers who should be carefully monitored.

<sup>4</sup> Report by Messrs. Peillon and Montebourt, T. 1, Vol. 4, A.N.

<sup>5</sup> cf. Parliamentary Report, Schedule 4.

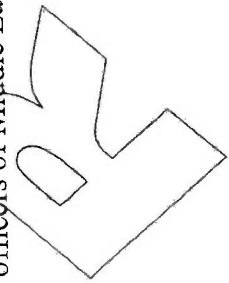
Identification of legal and natural persons referred to in this report and description of financial relationships (1)

YOUSUF ISAM GROUP		MIDDLE EAST GROUP	
Isam Mohamad Yousuf	American born in Jordan. Has run a furniture business, "Island Appliances", in Sint Maarten since 1986. Has two accounts at the bank (USD and FRF) which were opened in February 1995.	Middle East Group NV	Company set up in Sint Maarten under the business name "Ace Home Center" specialized in the import-export of various items (electrical appliances, building and chemical products, etc.). It is run by El-Yousef Yousef Ahmad and Al-Yousef Ghassan. A customer since 1997, the company has 4 USD and FRF accounts.
Mohamad Yusuf Fathi*	American born in Jordan. Owner of 2 supermarkets in the Virgin Islands, on St. Croix and St. Thomas, "Plaza Extra Supermarket". One of the stores is managed by his brother-in-law, Hamed Waleed. Yusuf Fathi has had a USD account since June 1996 (the mailing address is that of Yousuf Isam).	El-Yousef Yousef Ahmad	American born in Jordan. Officer of Ace Home Center and manager of "Liteline Electrical NV", another company which has also been a customer of the bank since 1994. El-Yousef held two personal accounts at the BFC-AG which were closed in 1996.
Hamdan (sic) Diamond Corp.	Off-shore company set up in Anguilla, holder of a USD account since June 1996. Mohamad Yusuf Fathi is its President. The mailing address is that of Yousuf Isam. Hamed Waleed is its agent.	Al-Yousef Ghassan	Runs Ace Home Center with El-Yousef Ahmad. He is the brother of Al-Yousef Sami (cf. infra). Does not have a personal account at the BFC-AG.
Hamed Waleed*	American born in Jordan. Manager of the supermarket belonging to his brother-in-law—Mohamad Yusuf Fathi—in St. Croix. Holder of a non-resident USD account since 1996 (the	Pinguin Air Conditional	Subsidiary of Middle East Group set up in Sint Maarten. Run by El-Yousef Yousef with Ghassan Al-Yousef as agent. The company has 2 FRF and USD accounts.

<p>Al-Yousef Sami Hamed</p>	<p>mailing address is that of Yousuf Isam). Received two large transfers in 1996 (US\$2.4M) in his account opened in Jordan (Cairo Amman Bank) from Yusuf Fathi and Hamdam Diamond.</p>	<p>Al-Yousef/Sami Hamed</p>	<p>This is the same person related to the Yusuf Isam group (see left column). He is allegedly the connection between this group and Middle East. Sami Al-Yousef is the brother of Ghassan Al-Yousef (above), who runs Middle East's commercial business (Ace Home Center). His USD and FRF accounts were closed in March 2001 after being very active. The person in question was the subject of a second report to Tracfin in October 2001.</p>
<p>Saleh Yacoub*</p>	<p>Jordanian born in Kuwait. An accountant for a Sint Maarten company (ALDI's Properties) related to the Yousuf Isam group. Holder of a USD account since June 1997. The account shows large movements of cash (over US\$7M between January 1999 and March 2001) in favour of parties with relations to Middle East: ACE Hardware Corp. and Ahmad Yousef Mohamad Yousef.</p>		
	<p>Owner of a hardware store in the Dutch zone (Ted Door Speciality NV). Opened an account in 1996.</p>		

\*cousins of Yousuf Isam

(1) A review of the file and the financial transactions does not allow us to establish the existence of direct financial relationships between the Yousuf Isam and Middle East groups; however, several transfers made by the two entities over the past few years involve common beneficiaries (Ace Hardware Corp. and Ahmad Yousef Mohamad Yousef, residing in Jordan). Also, another point in common between the two groups seems to be Sami Hamed Al-Yousef, former accountant for the Yousuf Isam group and the brother of one of the officers of Middle East.



## 2.2.2 History of the most significant transactions and steps taken by BFC-AG

At this point, it seems useful to describe how the various accounts of the suspect entities have been operated over the past few years, what their situation is today, and how the bank reacted to them.

### YOUSUF Isam Group

#### Island Appliance

Yousuf Isam is the owner in the Dutch zone of a business specialized in the sale of furniture called "Island Appliances". Two franc and dollar accounts were opened in February 1995 with the BFC-AG. Beginning in July 1996, the bank was intrigued by the very large cash transfers in the account of the party in question. However, the explanations provided by Mr. Isam were enough to appease the bank's concerns even though it does not have any accounting document allowing it to justify the fluctuations observed in the account given the stated business activity<sup>6</sup>. However, transactions which should have raised concerns are still taking place in the account without triggering the slightest reaction (cf. table infra). It was not until May 1998 that the bank made a suspicious transaction report to Tracfin (Schedule 5).

Account Nos.	Date	Transaction	Amount	Beneficiary	Inspector's comments
60.635419040 USD	04-07/96	Cash deposit	US\$1.6M	Himself	<b>Amman</b> <b>Information only brought to the attention of Tracfin in May 1998</b>
	1996	Transfer	US\$1.4M	Himself (Cairo Ammam Bank in Jordan)	
	01/97	Cash deposits	US\$1.5M	Himself	<b>These amounts were deposited in 10 consecutive transfers. At this point, at least a monitoring file should have been set up (s.</b>

<sup>6</sup> The file only contains one sheet dated December 1992 which merely mentions the total assets; it was only by letter dated July 16, 2001 that the BFC-AG asked for the usual accounting and financial documents for the first time.

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					L. 563-3 of the CMF).
	02/97	Transfer	US\$2M	Sixteen Plus Corp. (Nova Scotia Bank AWI)	<b>Information only brought to the attention of Tracfin in May 1998</b>
	09/97	Transfer	US\$2M	Ibid	<b>Ibid</b>
	04/98	Transfer	US\$220K	Mohamad Abdel Qader (at West Bank-Israel)	
	10/07/98	Transfer	US\$300K	Ayed Yousef (Winward Island Bank/Sint Maarten)	<b>Transaction not brought to the attention of Tracfin (s. L. 562-3 of the CMF)</b>
	15/07/99	Transfer	US\$200K	Adnan Rahal	<b>Ibid</b>
	9/08/99	Transfer	US\$400K	Himself	<b>Ibid</b>
60.20186.90.00 FRF					This account is not very active.

Hamed Waleed

Hamed Waleed is the manager of a supermarket in St. Croix (U.S. Virgin Islands) belonging to his brother-in-law, Mohamad Yusuf Fathi (see infra). The party in question opened a dollar account at the BFC-AG in June 1996 in order to, according to him, avoid a certain tax on bank accounts in the Virgin Islands. His brother-in-law has a power of attorney over the said account. Mr. Waleed was the subject of a suspicious transaction report on May 28, 1998. Nonetheless, beginning in 1996, large sums of cash which seemed inconsistent with his status as the mere manager of this customer should legitimately have given rise to an information file under s. L. 563-3 of the *Code monétaire et financier*.

Notable transactions observed in account No. 60-63878.90 of Hamed Waleed				
Date	Transactions	Amount	Beneficiary	Inspector's comments
06 to 12/96	Cash deposits	US\$1.1M	Himself	<b>These large cash transfers were not mentioned in the May 1996 report to</b>

				Tracfin <sup>7</sup>
08/96	Transfer	US\$400K	Himself (Cairo Amman Bank/Jordan)	This transaction did not lead to a request for additional information from the party in question (s. L. 563-3 of the CMF).
04-05/98	Cash trans.	US\$865K	Himself	

Mohamad Yusuf Fathi

This customer owns two supermarkets in the U.S. Virgin Islands (St. Croix and St. Thomas), one of which is run by his brother-in-law, Hamed Waleed. He is also President of Hamdam Diamond Corp. (cf. infra). The party in question opened a non-resident dollar account in June 1996 also for the tax reasons mentioned above. As for the customers mentioned above, significant cash transactions were observed in his account during the first few months after it was opened (US\$420K from June to December 1996). Questioned by the bank, Mr. Yusuf merely said that his business was in good health<sup>8</sup> and that its annual sales were US\$55M with a net profit of US\$9M, which is inconsistent with the 1995 balance sheet<sup>9</sup>. In 1996, the bank nonetheless concluded that the prosperous economic activity *seemed to justify* the transactions recorded in its books<sup>10</sup>.

The BFC-AG never obtained the slightest recent accounting information about this relationship<sup>11</sup>. No analysis of the correlation between the movements, especially those in cash, observed in the account and the business affairs was therefore conducted. Here again, it was not until May 1998 that the transactions carried out by this customer which should have raised flags were brought to the attention of Tracfin.

#### Hamdam Diamond

The account of this off-shore company registered in Anguilla (BWI), which was set up for tax reasons according to the statements of its President (Mohamad Yusuf Fathi), was opened in June 1996. The dollar account was to have been increased monthly through transfers of US\$5 to 10K to begin with. Very early on, the transfers began to be far greater than what was initially stated. In the absence of any accounting data as well as

<sup>7</sup> The report in question indicates that the party deposits US cash exclusively and only mentions the sum of US\$865K deposited between April 22 and May 12, 1998.

<sup>8</sup> Report on an interview written by one of the bank's agents (Mr. Gumbs) dated July 22, 1996.

<sup>9</sup> The Dec. 31, 1995 balance sheet of United Corporation (Plaza Supermarket) indicates sales of US\$36M and a profit of only US\$638K.

<sup>10</sup> Above referred-to report.

<sup>11</sup> The only balance sheet is that of December 31, 1995 mentioned above.

close monitoring, the bank was unable to understand the relevance of the movements of cash through the account beginning in 1996. Here again, it was not until May 1998 that this company was the subject of a suspicious activity report (see Schedule 5 supra), which report does not mention all the suspicious transactions observed in the customer's account, and in particular during fiscal year 1996. In addition, the bank very recently closed the account of Hamdan Corp. (a prior notice of closure was sent last September 28<sup>th</sup>) due to [Translation] "suspicious transfers to Jordan", [Translation] "unjustified cash deposits" and, more generally, on the grounds that the movements [Translation] "did not correspond to what was stated when the account was opened"<sup>12</sup>.

**Notable transactions observed in the account of HAMDAM DIAMOND CORP.**

Account No.	Date	Transactions	Amount	Beneficiary	Inspector's comments
60.63887.90.40 USD	22/07/96 to 31/07/96	Cash transfers	US\$600K	Hamdam Diamond	There were 6 transfers, including two of US\$200K each which were not reported to Tracfin <sup>13</sup>
	01/08/96 to 21/08/96	Ibid	US\$1.7M	Hamdam Diamond	10 cash transfers made in 10 days which were not mentioned in the Tracfin report
	09/96	Transfer	US\$2M	Hamed Waleed (Cairo Amman Bank/Jordan)	Transaction only reported to Tracfin in May 1998
	04-05/1998	Cash transfer	US\$560K	Itself	

<sup>12</sup> BFC-AG internal memo.

<sup>13</sup> Report No. 98-1 only indicates that the account only shows cash in USD and only mentions transfers involving fiscal year 1998 (US\$560K).



As the above table shows, we can see that transactions of significant amounts could have triggered a suspicious activity report well before the May 28, 1998 report, which was clearly late, or at least the setting up of an information file based on s. L. 563-3 of the COMEFI.

#### Al-Yousef Sami

An accountant in his country for ALDI's Property NV (set up in the Dutch zone)<sup>14</sup>, Al-Yousef Sami opened a non-resident dollar account in May 1997. This person, who is involved with the Yousuf Isam group as an accountant, has a close relationship with the Middle East company. He seems to be the brother of Al-Yousef Ghassan, officer of Ace Home Center (trade name of Middle East) and the agent of El-Yousef Yousef Hamad, second officer of Ace Home Center. Al-Yousef Sami therefore constitutes one of the connections between the Yousuf Isam group and Middle East.

An examination of the account indicates several transfers in favour of Ace Hardware Corp., a company set up in the United States, which is related to Ace Home Center (Middle East)<sup>15</sup>; over US\$3M was transferred to this company between January 1999 and March 2001 at the initiative of Sami Al-Yousef. During the same period, this same company, Ace Hardware, received transfers from Middle East (although in smaller amounts).

Note especially that very large cash movements which went through the account of Al-Yousef Sami after the first suspicious activity report on him (Report No. 98-1 dated May 28, 1998, Schedule 5, supra) should have caused the bank to react once again. **The cash transfers observed in his account recently (US\$7M between January 1999 and March 2001) were not brought to the attention of Tracfin, contrary to s. L. 562-3 of the Code monétaire et financier even though they were, in frequency and amount, much more significant than the amounts which led to the 1998 report<sup>16</sup> and were unrelated to his known activity given the lack of financial or accounting records;** it is true that suspicious activity report No. 01-02 dated October 3, 2001 on the Middle East group mentions Al-Yousef Sami a second time but very briefly (Schedule 5 bis)<sup>17</sup>. Furthermore, although the bank claims to regularly inform local authorities about the various transactions, these precautions do not exempt it from its legal obligations regarding Tracfin.

The same lack of an additional report was observed with respect to transfers made from 1999 to 2001 by Sami Al-Yousef in favour of Ahmad Yousef Mohamad Yousef,

<sup>14</sup> The BFC-AG never obtained the slightest justification of revenues for this customer.

<sup>15</sup> It is impossible, given the state of the files, to know whether Ace Hardware is a mere supplier of Ace Home Center or whether that company is part of the Middle East group: however, this second possibility is likely.

<sup>16</sup> In its suspicious activity report, the BFC-AG limited itself to indicating, without further details, that the party in question [Translation] "*deposits exclusively in US cash. The frequency and size appear suspicious given the stated business.*"

<sup>17</sup> In particular, it mentions that he is the agent of Middle East, his ties to Yusuf Isam and the fact that he has a history with the bank. Here again, no information was given about the movements of cash.

domiciled in Jordan<sup>18</sup>. In the first Tracfin report, only 3 transfers for a total of US\$665K were mentioned (cf. Schedule 5 bis, supra). For the period in question, there were in fact more than 10 transfers for a total of over US\$3M (cf. table below setting out the most significant transactions).

Note that the account of Sami Al-Yousef was closed in March 2001 at the initiative of the bank.

Account of Al-Yousef Sami Hamed					
Account Nos.	Date	Transactions	Amount	Beneficiary	Inspector's comments
60.64137.90.40 USD	01/99- 03/01	Transfers	US\$7M	Himself	<b>None of these cash transfers were reported to Tracfin. We sometimes see several partial transfers the same day. Also, most of these transactions should not have been carried out by the party in question, but by a third party, Yousef Hamad.</b>
	03/99	Transfer	US\$200K	Ahmad Yousef Mohamad	
	07/99	Transfer	US\$300K	Ibid	
	08/99	Transfer	US\$270K	Ibid	
	11/99	Transfer	US\$275K	Ibid	
	12/99	Transfer	US\$650K	Ibid	
	05/00	Transfer	US\$400K	Ibid	
	09/00	Transfer	US\$500K	Ibid	
	01/01	Transfer	US\$675K	Ibid	

Middle East NV Group

Ace Home Center

<sup>18</sup> He is the beneficiary of transfers made at the initiative of Middle East and its affiliates.

A company registered in Sint Maarten (Dutch part) since 1994. It is the trade name for Middle East Group NV. The purpose of this company includes the import/export of hardware and constructions materials as well as the petroleum product and industrial chemical business. This company is run by El-Yousef Yousef Hamad and Al-Yousef Ghassan, born respectively in Jordan and Kuwait but both American nationals. The agent is Al-Yousef Sami Ahmed (mentioned above).

In 1997 Ace opened two accounts in dollars and francs which were closed in September 2000<sup>19</sup>. We have no comments to make on their past operations.

Pinguin Air Cond.

This is a subsidiary of Middle East which was set up in 1997 to separate, within the group, activities involving the installation and repair of refrigerators and air conditioners. Presided by El-Yousef Yousef Ahmad and managed by Al-Yousef Ghassan, this company, which is registered in Sint Maarten, has had two demand accounts in dollars and francs since March 1998. Their operation led to a suspicious activity report on October 3, 2001 by the BFC-AG (cf. Schedule 5 bis, supra). The report deals with a transfer of US\$450K on June 13, 2001 in favour of Ahmad Yousef Mohamad Yousef, domiciled in Jordan (Cairo Amman Bank).

El-Yousef Yousef

El-Yousef Yousef Ahmad, who runs Liteline Electrical in Sint Maarten, opened two accounts in dollars and francs in April 1994 which he closed two years later<sup>20</sup>. He is one of the two officers of Ace Home Center. An examination of his account shows significant cash transfers for a total of over US\$1.1M beginning in 1995. The account also only had cash transfers credited to it. However, there were few transactions in the account for fiscal year 1996. Note also three significant transfers of US\$152K, US\$100K and US\$200K which took place in July and November 1995 and which did not lead to any request for information. Although El-Yousef Yousef is mentioned in the October 3, 2001 report to Tracfin, the details of the above-mentioned transactions, and especially the cash transfers, were not reported to the authorities.

Ahmad Yousef Mohamad Yousef

In July 2001, the BFC-AG was approached by an off-shore company set up in Anguilla since 1994, "The Nablus Commercial Corporation", to open a current account. As the bank was unable to obtain sufficient information about this company (corporate purpose, accounting data, how the account would operate), it rightly did not want to grant its request. However, it is unfortunate that the connection between this company and the Middle East group was not noticed and brought to the attention of the authorities. The

<sup>19</sup> Account Nos. 60.64352.90.40 and 60.22486.90.00.

<sup>20</sup> Account No. 60.63364.90 and 60.35079.90.

officer of this company is none other than Ahmad Yousef Mohamad Yousef and its manager is, Al-Yousef Sami, well known to the bank.

As we saw above, Ahmad Yousef Mohamad seems to be the point in common for several transfers made to him by various parties (Ace Home Center, Penguin Air Cond., Al-Yousef Sami). It would have been advisable to inform Tracfin of the attempt by Nablus to set up a business relationship<sup>21</sup>.

In conclusion, these findings cause us concern with respect to the reaction of BFC-AG of St. Martin over the past few years regarding the entities described above. Late and incomplete suspicious activity reports, the lack of additional suspicious activity reports about questionable transactions and the lack of close monitoring of accounts which had been reported for suspicious activity all are the more serious in that they occurred in a highly sensitive context.

### 3. Anti-money laundering action

Our work brought to light other problems with the actions taken to prevent money-laundering, which appear to be very insufficient and inappropriate to the nature of the risks incurred by the BFC-AG.

The main shortfalls were observed in the management of accounts opened for off-shore companies, the local monitoring of suspicious transactions and the oversight of sensitive customers other than companies set up in an off-shore centre, as well as the overall supervisory activity set up by the Group.

#### 3.1 Shortfalls in the management and monitoring of accounts opened for off-shore companies

At the time the investigation was carried out, the Saint Martin branch had a portfolio of 75 accounts opened for off-shore companies (113 if we include 38 accounts closed more recently), the assets of which are broken down as follows:

Sight accounts	Total deposits	Securities	Total deposits and securities	Total commitment
19,971	52,267	1,974	54,241	8,409

*In kF: assets held as at October 29, 2001*

In this regard, our examinations highlight serious shortfalls in the management and monitoring of the above-mentioned accounts which may be summarized as follows:

- legal documentation which was incomplete or had been out-of-date for a long time;

<sup>21</sup> Nablus Commercial Corp. was not mentioned in any suspicious activity report. Also, although the name Ahmad Yousef Mohamad was given to Tracfin as the recipient of suspicious transfers, the copy of his identification papers, which are in the Nablus file, was not given to it.

- a frequent lack of information regarding the economic activity of several companies;
- very insufficient identification of the beneficial owners;
- non-existent monitoring rules.

All these points are discussed in detail below.

### 3.1.1 Failure to oversee portfolio development

Beginning in the 1990s, the Saint Martin BFC-AG set up a policy to actively develop business relationships with off-shore companies set up in the many Caribbean islands. At first, this job was given to a single agent who, over many years, opened accounts for more than thirty companies (approximately one-third of the portfolio) without apparently using any judgement or care with respect to a type of clientele which by definition is very questionable. This situation then spread to all other "commercial" [agents] who were in turn in charge of opening accounts for off-shore companies.

This active policy to solicit "sensitive" companies was implemented without any oversight by local authorities or internally, which aggravated the situation. From the beginning, no file monitoring system was set up to ensure the relevance and completeness of the information collected and the updating of files, and in particular from a legal point of view (renewal of the agents' authority, in particular<sup>22</sup>). Lastly and especially, the transactions carried out by the off-shore companies—which, as we will see below, were often unusual if not suspicious—were not monitored. A certain number of reports have been made to Tracfin over the past few years based on s. L. 562-2 of the *Code monétaire et financier* (Schedule 5 ter) but they are few and far between compared to the transactions which appear to us to be suspicious and which could rightly have triggered other suspicious activity reports.

### 3.1.2 Late recognition of risks incurred and not followed by tangible effects to date

It was not until 1998/1999 that the branch began to express concern about the quality of the information gathered about its off-shore customers and the nature of the transactions appearing in its books. The first file reviews conducted locally highlighted various shortfalls. As a result, a memo dated December 29, 1999 addressed to the Pointe-à-Pitre head office mentions, for the first time, the underlying risks incurred by the BFC-AG regarding a dozen companies which [Translation] "should be monitored given their movements of cash". Several entities stood out – and still stand out – due to their transfers of significant amounts of cash in their accounts, done only once in some cases, which were not explained in terms of their business activities (cf. Schedule 6).

<sup>22</sup> This precaution was all the more necessary as, in most off-shore companies, the agents' authority expires after one year.

Faced with this, the branch's reaction essentially consisted of asking for additional information from the most active companies in the form of a circulated letter which was identical for everyone<sup>23</sup>. Around twenty accounts which had been inactive for six months were also closed by the branch without notice. An action plan was also drawn up [Translation] "for companies which had been credited large amounts, and in particular cash" to visit the company's offices with the normal contact person [Translation] "in order to compare the consistency between the recorded movements and the company's actual activities (...)".

**However, these initiatives, which show the state of many files at the time, did not lead to their being updated in any notable manner, as the CAI Group's inspection found.**

A new internal report, more in-depth this time, was drawn up in November 2000 during an internal inspection<sup>24</sup>. One specific point was developed in particular with respect to off-shore companies and major shortfalls were noted at that time. Several recommendations were made, including to:

- pursue the closure begun in 1999 of accounts for which there was insufficient information regarding the business and shareholders;
- ensure the economic reality of the cash transactions in accounts showing cumulative movements greater than 500 KF in a quarter;
- begin specific monitoring of companies registered in the Dutch West Indies as off-shore companies.

Nonetheless, here again, we note that the work on the files has not shown significant progress over the past few months, seemingly for two reasons:

- firstly, as surprising as it may seem, the detailed results of CAI's inspection mentioned above were only given to the Saint Martin branch very late (the report dates back to November 2000) and in two successive parts<sup>25</sup>: first, on April 17, 2001 with respect to recommendations No. 124, 125, 130, 131 and 133<sup>26</sup> and then on August 24, 2001 with respect to recommendation No. 134<sup>27</sup> (cf. Schedule 7);

<sup>23</sup> One batch of letters was sent during February 2000 to 57 companies. Other than "administrative" information, each company was asked to declare its beneficial owners and its purpose in order to determine the correlation between the activity and the transfers in question.

<sup>24</sup> We note that this is the only internal money-laundering investigation which the agency has conducted since the Act of 1990.

<sup>25</sup> Verbal information was merely give to the branch manager by telephone, after the CAI's audit.

<sup>26</sup> Dealing respectively with 43 accounts which could constitute tax fraud, 6 accounts of individuals carrying on a business activity, cash transactions for which the origin of the funds is unknown, the lack of specific monitoring of 29 accounts of Dutch companies, and the fact that the documentation regarding the off-shore companies was incomplete.

<sup>27</sup> The FRAP in question reports that the list of off-shore company accounts is incomplete.

- the branch also did not have tailored methods for correcting the situation, despite its repeated requests to head office. Several recent documents demonstrate the impossible situation in which the Saint Martin branch was and still is to [Translation] “raise the bar” given a level of staff considered very inadequate<sup>28</sup>. The internal oversight report as at June 30, 2001 also noted in this regard that [Translation] “... the recommendation of FRAP 133 could not be implemented specifically following the departure of the person in charge of this area due to a lack of staff”<sup>29</sup>.

This discovery of a lack of staff caused the head office to react strenuously at the last Board meeting which was held at Pointe-à-Pitre on October 30, 2001. Regardless, the above explanations constitute a reason for the lack of visibility as to the specific identity of the beneficial owners in over 70% of the files of off-shore companies, the lack of understanding of the actual business activity of several customers as well as the lack of up-to-date legal documentation.

### 3.1.3 A situation involving major, unresolved risks

We conducted an in-depth examination of the current situation, based on the latest data provided by the Saint Martin branch. It appears from this work that the management of the files of companies set up in off-shore centres – as of November 2001 – contained serious flaws:

#### 3.1.3.1 Very incomplete knowledge of customers

Using an up-to-date list of the off-shore companies provided by the BFC-AG at our request, we worked on drawing up a list of files for which the bank did not have a trust declaration, a document which gives the declared identity of the beneficial owners of the off-shore company. As can be seen in Table 1 below, **the document in question is missing in approximately 74% of the files.**

Section L. 563-1 of the *Code monétaire et financier* does not require that establishments obtain formal proof of the identification of the beneficiaries or beneficial owners of legal entities domiciled in off-shore centres. However, unless the files contain either proof establishing the identity of the parties in question or information corroborating the knowledge of those persons (reports on visits, for example, confirming inquiries made and information gathered), we conclude that the bank did not fulfil its obligation to find out the true identity of customers who asked to do business with it.

<sup>28</sup> The monthly memo dated April 2001 written by the Saint Martin branch manager and sent to head office mentions [Translation] “serious staffing problems”. The May 2001 memo is even more explicit: [Translation] “the recommendations and actions suggested by the CAI inspection which were brought to our attention at the end of April 2001 through the inspection of the BFC cannot all be carried out by the end of June 2001 due to a lack of staff”. Lastly, the June 2001 memo notes the fact that the remarks and needs expressed above were not taken into account.

<sup>29</sup> FRAP 133 is one of the most important as it involves the updating of the files of off-shore companies (Schedule 1 of the internal oversight report as at June 30, 2001, p. 3).

Table No. 1

Portfolio of Off-Shore Companies of the Saint Martin BFC-AG

*Situation as at November 13, 2001 according to the lists provided by the Saint Martin BFC-AG (active files only)*

*The names in grey correspond to particularly sensitive companies (reports made to Tracfin, significant or suspicious movements of cash observed in the accounts by the bank or this investigation, etc.)*

Name of Off-Shore Company	Place Registered	Beneficial Owner	Directors	Shareholders	BFC-AG's Comments
ADVANCED CONSULTECH	Panama	Ronald Maasdam	-	Ronald Maasdam (Unknown)	
AIRA CORP. Limited	Tortola (AWI)	Unknown	-	-	Trust declaration to be obtained
AVV TAMARINDO	Aruba	Ricardi Dinarees (Unknown)	-	Unknown	Trust declaration to be obtained
BE Limited	Anguilla (BWI)	Unknown	Unknown	Unknown	Legal review to be done immediately
BEST HOTELS CARIBBEAN Ltd.	Anguilla (BWI)	Unknown	Unknown	-	Trust declaration to be obtained
CARIBBEAN CONSULTANCY CORP. Ltd.	Nevis	Ronald Maasdam (Unknown)	-	Ronald Maasdam (Unknown)	
CARIBBEAN SAILMAKERS Ltd.	Tortola (AWI)	Unknown			Incomplete legal file
CELTIC Limited	Anguilla (BWI)	Unknown	Unknown		Account being closed
CHASE MARKETING Ltd.	Anguilla (BWI)	Unknown	Unknown	Unknown	Account being closed

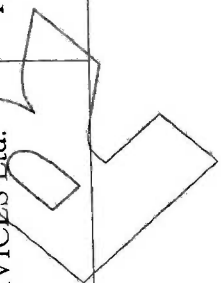


CHASSID INVESTMENT Inc.	Panama	Unknown	Unknown	Unknown	Account being closed
COLNE COMPANY Ltd.	Anguilla (BWI)	Unknown	Unknown	Unknown	Trust declaration to be obtained
COMBI PHARM INT'L AVV	Aruba	Unknown	Unknown	Unknown	Ask for complete legal file
COMM SYSTEMS Ltd.	Anguilla (BWI)	-	Unknown	Unknown	Trust declaration to be obtained
DHIG Ltd.	Sint Maarten	Unknown	Unknown	Unknown	File reported to TRACFIN
DOLPHIN INTERNATIONAL Ltd.	Anguilla (BWI)	Unknown	Unknown	-	Account blocked. Review complete legal file
EC GENERAL ENGINEERING CONSULTANT Ltd.	Anguilla (BWI)	Ronak Maasdam (Unknown)	-	-	Trust declaration to be obtained
EMERALD COMMUNICATION Ltd.	Not indicated	Unknown	Unknown	Unknown	Complete file update to be done
FUN CARAIBES Inc.	Anguilla (BWI)	Unknown	-	-	Trust declaration to be obtained
GALFETO Ltd.	Anguilla (BWI)	Unknown	-	-	Trust declaration to be obtained
GEOMETRIC Ltd.	Tortola (AWI)	Unknown	-	-	File reported to TRACFIN
HAMDAM DIAMOND Corp.	Anguilla (BWI)	Unknown	-	-	File reported to TRACFIN. Account to be closed.
HANMAN INTERNATIONAL Ltd.	Bahamas	Unknown	-	-	Very incomplete file. Closure

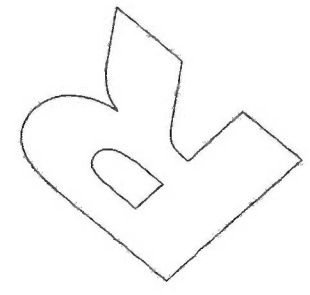
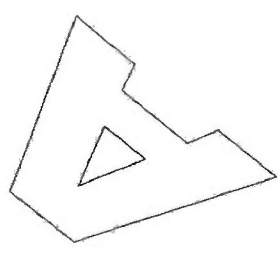


HARTWOOD TRADING Ltd.	Nevis	Harry Blondin (Unknown)	-	-	Trust declaration to be obtained
INTERMOTORBIKES AVV	Aruba	Unknown	Unknown	-	Ask for complete legal file
INTERNATIONAL DEVELOPMENT (...)	Anguilla (BWI)	Unknown	Unknown	-	Documents requested
ISLAND DISTRIBUTORS Comp. Ltd.	Anguilla (BWI)	Unknown	-	-	Trust declaration to be obtained
ISLAND HARBOR MANAGEMENT Comp.	Delaware (USA)	Unknown	Unknown	Unknown	Update to be done. Does not appear to be an off-shore company
ISLAND PROPERTIES Ltd.	Anguilla (BWI)	Unknown	-	-	Trust declaration to be obtained
LIONS HOLDING Ltd.	Anguilla (BWI)	Unknown	-	-	Trust declaration to be obtained
MAIDSTONE Comp. Ltd.	Anguilla (BWI)	Unknown	-	-	Account being closed
MELMIK AVIATION Ltd.	Unknown	Unknown	Unknown	Unknown	This is not an off-shore company.
METROPOLE HOLDING Ltd.	Anguilla (BWI)	Unknown	-	Unknown	Impossible to obtain legal documents. Account being closed
NACO Ltd.	Anguilla (BWI)	Unknown	-	-	Trust declaration to be obtained
NORTHERN INDUSTRIES	Anguilla	Unknown	-	-	Legal documents

Ltd. OVERSEAS PROJ. MANAG. SERVICES Ltd.	Saint-Vincent	Unknown	-	-	requested
PANDAROSA HOLDING Ltd.	Unknown	Unknown	Unknown	Unknown	Incomplete legal file. Expected to be closed Update to be done. Likely to be closed.
PEARLGEMS INTERNATIONAL Co	Unknown	Unknown	Unknown	Unknown	Impossible to update. The company has large deposits. The account is blocked.
PORT DE PLAISANCE HOTEL	Sint Maarten	Unknown	-	-	Incomplete file. Report sent to TRACFIN
RENÉE INTERNATIONAL Ltd.	Tortola (AWI)	Unknown	-	-	Legal documents requested
SMB BOATPHONE HOLDINGS Ltd.	Tortola (AWI)	Unknown	-	-	Incomplete legal file. Account blocked
STANTON Ltd.	Anguilla (BWI)	-	-	-	Status of beneficial owner unknown
SUNNY SAND Ltd. THE MONEY GAME	Tortola (AWI) Sint Maarten	Unknown Unknown	Unknown	Unknown	Account blocked, being closed
TIMOR SERVICES Ltd.	Tortola (AWI)	Unknown	-	-	Trust declaration requested. Incomplete file



<del>TRANSCARIB IMPEX Ltd.</del>	Tortola (AWI)	Barker (Unknown)	-	-	Trust declaration requested
<del>TRISPORTS INTERNATIONAL Ltd.</del>	Tortola (AWI)	Unknown	-	-	Trust declaration to be requested
<del>TROPICAL FASHIONS Ltd.</del>	Anguilla (BWI)	Unknown	-	-	
<del>TROPICAL SUNRISE HEALTH FOOD Co.</del>	Aruba	Unknown	Unknown	Unknown	File cannot be found. Requires immediate attention
<del>UNITED ENTERPRISES Ltd.</del>	Anguilla (BWI)	Unknown	-	-	Update in progress
<del>VINCHI Limited</del>	Unknown	Unknown	Unknown	Unknown	File to be reconstituted
<del>WEST INDIES FOOD SERVICES Ltd.</del>	Nevis	Unknown	Unknown	-	Trust declaration requested
<del>WOODSTONE HOLDING Ltd.</del>	Anguilla (BWI)	Unknown	Unknown	-	Account to be closed



AWI: American West Indies  
 BWI: British West Indies

This oversight is doubly serious given the lack of information about the shareholders and directors in approximately 29% of the files (respectively 33 and 32 files out of 115)<sup>30</sup>.

**The customer's activity is also unknown in over 50% of the files, as shown in Table 2 below.**

### 3.1.3.2 Questionable file management

A review of the off-shore files – whether active or recently closed – showed serious insufficiencies as a result of very careless management in the files over several years along with a lack of oversight. According to our calculations, **over 90% of the files were incomplete as of mid-November 2001** (cf. Table No. 3 below and Schedules 8 and 8 bis).

Among the legal documents most often missing, we note:

- signature anomalies (signature cards missing, copies of articles unsigned);
- authority of agents expired a long time ago or non-existent;
- no copy of ID cards of several agents.

Often there is more than one such legal document missing for the same file. Several files did not even have very minimal documentation<sup>31</sup>. One file of an off-shore company cannot be found<sup>32</sup>.

Incidentally, we noticed that the BFC-AG carries out several transactions without legal foundation, i.e. without knowing in fact whether the persons performing such transactions are authorized to do so.

### 3.1.3.3 Lack of financial data for almost all companies

Our investigations showed a **lack of accounting and financial data in most off-shore company files** while the few balance sheets we examined were often old and had not been used.

Accordingly, the bank could not have conducted a coherent monitoring of the cash deposits and the business activities or financial situation of its clients.

<sup>30</sup> This figure takes into account the recently closed files.

<sup>31</sup> Note in particular: Inter Motorbikes AVV; Métropole Holding Ltd.; B.E. Limited; Dolphin International Ltd.; Emerald Communication Ltd.; Vinchi Ltd.

<sup>32</sup> Tropical Sunrise Health Food Co.

Table No. 2

List of Off-Shore Companies of which the Business is unknown by the Saint Martin BFC-AG

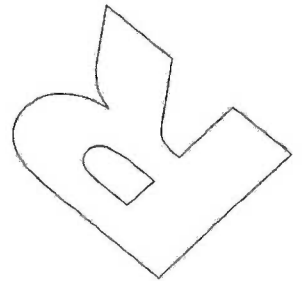
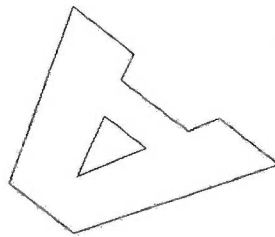
Selection based on statements provided by the Bank as at November 13, 2001 (see Schedule...). This list takes into account the files of off-shore companies which were closed in 2000 and 2001.

Companies whose head office is in a country considered to be uncooperative by the FATF are shown in grey

Name of Off-shore Company	Business Activity	Comments	Date Account Closed
AMERY COMPANY Ltd. (Anguilla)	Unknown		June 26, 2000
AMPARA AVV	Unknown		December 5, 2000
ASW CORPORATION (Anguilla)	Unknown		October 16, 2000
BE LIMITED (Anguilla)	Unknown		
BEST HOTELS CARIBBEAN Ltd. (Anguilla)	Unknown		
BLIXEN Ltd.	Unknown		May 15, 2001
BOSTAR INSURANCE	Unknown		
BROKERAGE NV	Unknown		
BRAVO CARAIBES INVESTMENTS Ltd.	Unknown		March 24, 2000
CARIBBEAN ISLAND TRADING CY Ltd.	Unknown		November 27, 2000
CARIBBEAN SAILMAKERS Ltd.	Unknown	Very incomplete file (closure notice expected to be sent)	
CELTIC LIMITED (Anguilla)	Unknown	Account being closed	
CHASE MARKETING Ltd. (Anguilla)	Unknown	Account being closed	
CHASSID INVESTMENT INC.	Unknown	Account being closed	

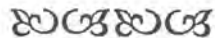
	Unknown	Incomplete legal file	Closed in 2000
(Panama)	Unknown	Incomplete legal file	Closed in 2000
CHESTNUT OVERSEAS Ltd.	Unknown		
(Nevis)	Unknown		
COLNE COMPANY Ltd.	Unknown	Complete legal file requested by the bank	September 26, 2001
(Anguilla)	Unknown	File sent to Tracfin in 1999	September 4, 2000
COMBI PHARM INT'L AVV	Unknown		
DEFEREX CORPORATION Ltd.	Unknown		
DEFIS IMPORT EXPERT Ltd.	Unknown		
(Anguilla)	Unknown		September 4, 2000
DEVELOPMENT	Unknown		
CONSULTANT Ltd.	Unknown	File sent to Tracfin in 1999	
DHIG Ltd.	Unknown		
DIAMOND HOLDING Ltd.	Unknown		
(Anguilla)	Unknown	Complete file to be reviewed from a legal perspective	Account closed
DOLPHIN INTERNATIONAL	Unknown		
Ltd. (Anguilla)	Unknown		
ELLESMERE HOLDING Ltd.	Unknown		
(Anguilla)	Unknown	Complete update of file expected to be done by the bank	
EMERALD COMMUNICATION	Unknown	Report to Tracfin in 2001	March 23, 2001
ERIE Ltd. (Anguilla)	Unknown		
EUROCROWN INSURANCE	Unknown		
BROKERAGE	Unknown		
HANMAN INTERNATIONAL	Unknown	Very incomplete legal file	September 4, 2000
Ltd. (Bahamas)	Unknown		
INTERAMERICANA SALES and	Unknown		
TRADING CO Ltd. (Cayman)	Unknown		June 26, 2000
INTERIORS LIMITED (Anguilla)	Unknown		
LIONS HOLDINGS Ltd.	Unknown		
(Anguilla)	Unknown		

TREBIZONDA HOLDING (Anguilla)	Unknown		January 29, 2001
TROGON TRADING Ltd. (Gibraltar)	Unknown		
TROPICAL SUNRISE HEALTH FOOD CO.	Unknown	File cannot be found.	August 2, 2000
TYSON ASSETS INC. (Bahamas)	Unknown		
VINCHI LIMITED	Unknown	Empty file. According to the bank, to be reconstituted	November 27, 2000
VISTA MARE Ltd. (Anguilla)	Unknown		
WEST INDIES FOOD SERVICE Ltd. (Nevis)	Unknown		
WOOSTONE HOLDING Ltd. (Anguilla)	Unknown	Expected to be closed	December 14, 2000
WORLD ENTERTAINMENT HOLDING Ltd.	Unknown		September 26, 2001
YNT ENTERPRISES Ltd. (Anguilla)	Unknown		





METROPOLE HOLDING Ltd. (Anguilla)	Unknown	Expected to be closed.	File closed
MISSION HOLDING Ltd. (Nevis)	Unknown		Account closed
MULET Ltd. (Anguilla)	Unknown		
OVERSEAS PROJEMANAG SERVICES Ltd. (Saint-Vincent)	Unknown	Legal file incomplete. Expected to be closed by the bank. St. Vincent is a territory considered uncooperative by the FATF.	
PANDAROSA HOLDING Ltd.	Unknown	Expected to be closed by the bank	
PEARLGEMS	Unknown	Over 3MF of deposits made on behalf of this company	
INTERNATIONAL CO.	Unknown	Tracfin report in 1999	
PORT DE PLAISANCE HOTEL NV	Unknown		September 4, 2000
RIO BLANCO HOLDING Ltd. (Anguilla)	Unknown		
SAXTON INTERNATIONAL Ltd. (Anguilla)	Unknown		
SEA BREEZE INVESTMENTS Ltd. (Saint-Vincent)	Unknown	St. Vincent is a territory considered uncooperative by the FATF.	November 24, 2000
SEIL COMPANY Ltd. (Anguilla)	Unknown		
SHANKARS NV Ltd. (Anguilla)	Unknown	Incomplete file. Account blocked pending requested documents	May 23, 2001
SKYPAK Ltd.	Unknown		
SMB BOATPHONE HOLDINGS Ltd.	Unknown	Incomplete file. Account blocked pending requested documents	Account closed April 6, 2000
SNOWDOWN COMPANY Ltd.	Unknown		
SOLEIL LIMITED (Turks and Caicos)	Unknown		
SUNGOLD OVERSEAS Ltd.	Unknown		
SUPERIOR MARKETING (Anguilla)	Unknown		September 4, 2000



RAPPORT D'INSPECTION

**BANQUE FRANCAISE COMMERCIALE  
ANTILLES-GUYANE  
Agence de Saint-Martin**

**Enquête sur l'application des dispositions relatives au gel des fonds et autres ressources financières décidé à l'encontre des Taliban d'Afghanistan ainsi qu'aux autres relations financières avec certaines personnes ou entités**

**Examen du dispositif local de prévention du blanchiment des capitaux d'origine criminelle**

**LE PRESENT RAPPORT EST STRICTEMENT CONFIDENTIEL.  
En aucun cas il ne doit être divulgué, même partiellement**

Chef de mission

P.-L. CHATAIN

Date de signature : 11 janvier 2002

**BANQUE FRANCAISE COMMERCIALE  
ANTILLES-GUYANE  
Agence de Saint-Martin**

**Enquête sur l'application des dispositions relatives au gel des fonds et autres ressources financières décidé à l'encontre des Taliban d'Afghanistan ainsi qu'aux autres relations financières avec certaines personnes ou entités**

**Examen du dispositif local de prévention du blanchiment des capitaux d'origine criminelle**

Adresse

**BP 672 - Bellevue  
97057 SAINT-MARTIN CEDEX**

Siège Social

**9 Quai du Président Paul Doumer  
92400 COURBEVOIE**

**CIB : 18729 - CRB : 130**

Composition de la mission :

**Pierre-Laurent CHATAIN**  
*Inspecteur de la Banque de France*

**Etienne GAUDIN**

Dates de mission :

- début : 5 novembre 2001
- fin : 16 novembre 2001
- signature : 11 janvier 2002

N° d'enquête : 2001-116AV

## VUE D'ENSEMBLE

La mission dont il est rendu compte dans le présent rapport s'est déroulée à l'agence de la Banque Française Commerciale Antilles-Guyane de l'île de Saint-Martin (Département de la Guadeloupe) du 5 au 8 puis du 13 au 16 novembre 2001.

L'enquête visait un double objectif :

⇒ s'assurer de la bonne application des dispositions relatives au gel des fonds et autres ressources financières décidé à l'encontre des Taliban d'Afghanistan, notamment au regard des règlements du Conseil de l'Union Européenne n° 467/2001 et 1354/2001 et du décret du Gouvernement français n° 2001/875 du 25 septembre dernier -complété par le décret du 13 octobre 2001- ;

⇒ examiner la qualité du dispositif local de prévention du blanchiment de capitaux d'origine criminelle.

S'agissant du premier volet de la mission, les travaux de l'Inspection ont consisté à vérifier que les listes de personnes physiques ou morales pouvant être liées à des activités terroristes publiées dans les textes susvisés ont été exploitées de façon exhaustive par la BFC-AG. Un fichier informatique élaboré par la Délégation au contrôle sur place a également été remis à l'établissement pour traitement à l'effet de compléter les recherches déjà entreprises par le Groupe<sup>1</sup>. L'Inspection s'est par ailleurs livrée à des contrôles informatiques complémentaires dès son retour en métropole sur le fichier clientèle de l'agence de Saint-Martin. Les résultats des différents tests se sont révélés négatifs en ce qui concerne les personnes physiques.

En revanche, un doute existe quant aux liens éventuels entre une personne morale titulaire d'un compte, dénommée *MIDDLE EAST GROUP*, dirigée par MM. El-Yousef Ahmad et Al-Yousef Ghassan, dont le nom est quasiment identique à celui cité dans le rapport n° 2311 établi par la mission parlementaire d'information commune sur les obstacles au contrôle et à la répression de la délinquance financière et du blanchiment des capitaux en Europe du 10 octobre 2001 : « *Middle East International Group* » (M.E.I.G.). Selon la mission d'information parlementaire, M.E.I.G. fait partie du SAUDI BIN LADEN GROUP sans toutefois qu'un lien avec Oussama BEN LADEN soit établi. Notons que *MIDDLE EAST GROUP* a fait l'objet d'une déclaration à Tracfin le 3 octobre 2001.

En ce qui concerne plus spécifiquement le dispositif local anti-blanchiment, des investigations ont été conduites dans les domaines jugés sensibles, les clients non résidents et surtout les sociétés off-shores, particulièrement nombreuses parmi la clientèle de la BFC-AG. D'autres travaux ont également été effectués sur place par la mission (analyse des instructions du siège en matière de prévention du blanchiment, examen des opérations de change réalisées par des tiers, contrôle des dépôts d'espèces...). Les résultats de ces travaux conduisent à formuler un jugement très négatif sur la qualité du dispositif de prévention du blanchiment lequel est apparu insuffisant et inadapté à la nature des risques encourus.

<sup>1</sup> Fichier recensant les personnes dont les comptes sont à bloquer en application des règlements européens des 6 mars, 5 juillet et 11 octobre 2001 ainsi que des décrets français des 26 septembre et 12 octobre derniers.

En effet, s'agissant de sociétés domiciliées dans des centres off-shores, le manque d'information sur les ayants droits économiques comme sur les administrateurs, l'absence de documentation juridique et financière à jour dans la grande majorité des dossiers, enfin les négligences commises dans la surveillance de certaines opérations de gros montants, notamment en espèces, sont des faits de nature à constituer une infraction aux dispositions de l'article L.563-1 et suiv. du Code monétaire et financier (COMEFI) relatives aux obligations de vigilance des organismes financiers.

Les mêmes négligences ont été observées dans les dossiers de la clientèle autres que les sociétés off-shores. La qualité médiocre de la documentation ainsi qu'un contrôle insuffisant des opérations réalisées par la clientèle retiennent plus particulièrement l'attention. Des opérations de montant élevé, ne paraissant pas avoir de justification économique et se présentant dans des conditions particulières de complexité n'ont pas donné lieu à un examen particulier (cf. art. L. 563-3 du COMEFI). Par ailleurs, certaines transactions sur lesquelles pèsent de lourdes suspicions quant à leur origine ou leur objet soit n'ont pas été portées à la connaissance des autorités compétentes, soit l'ont été de manière tardive et/ou incomplète.

Au total, les faits décrits dans le présent rapport seraient susceptibles de constituer des infractions aux dispositions des articles L.562-2, L.563-1 et L.563-3 du code et monétaire et financier précité ainsi qu'aux articles 2, 5 et 6 du règlement n°97-02 du 21 février 1997 du Comité de la réglementation bancaire et financière. Ces insuffisances montrent la nécessité de restaurer dans les meilleurs délais des règles de fonctionnement et de surveillance adaptées à l'activité exercée.



Pierre-Laurent CHATAIN

Inspecteur de la Banque de France

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## 1. Présentation du contexte économique et positionnement de l'agence de Saint-Martin

La BFC-AG évolue dans un environnement risqué. L'île de Saint-Martin constituerait en effet, selon les autorités locales, une destination potentielle pour le recyclage de fonds issus du trafic de stupéfiants ou d'activités criminelles, compte tenu notamment de l'importance prise par les opérations en espèces et de la situation de l'île. Parmi les caractéristiques de Saint-Martin, on observe que :

- le règlement des transactions -même de montants élevés- se fait très souvent en espèces par une clientèle de passage souvent aisée, essentiellement nord-américaine et habituée au paiement en liquide. De même, les chèques tirés sur la métropole ne sont que très rarement acceptés en raison de délais d'encaissement trop longs. L'usage de la monnaie fiduciaire est également fortement ancré chez de nombreux commerçants traditionnellement méfiants à l'égard d'autres moyens de paiement. Il en résulte que de multiples versements en liquide sont effectués quotidiennement aux guichets de l'agence<sup>1</sup> ;
- la circulation simultanée du dollar et du franc conduit de nombreux clients à ouvrir deux comptes sur les livres de l'agence, un en devise américaine, l'autre en francs français, ce qui est de nature à rendre les opérations de leurs titulaires plus opaques ;
- le système fiscal de l'île précisément est ambigu et Saint-Martin constitue un refuge à l'évasion fiscale, surtout pour une clientèle non-résidente ; on indiquera à ce propos que l'administration fiscale tolère le règlement des impôts locaux en dollars pour les résidents français de Saint-Martin ;
- enfin, de très nombreux clients de l'agence, domiciliés dans la partie hollandaise de l'île, sont originaires de pays étrangers, souvent lointains (Chine, Inde, Amérique du sud) ou évoluent derrière des structures de type off-shore.

Au total, de l'avis même de l'établissement, la BFC-AG est exposée au risque de blanchiment<sup>2</sup>.

En termes de part de marché, la BFC-AG de Saint-Martin occupe la première place, devant la Banque des Antilles Françaises, le Crédit Mutuel et Inchauspé et Cie (cf. tableau infra). L'agence compte deux implantations, l'une au sud de Marigot, employant une cinquantaine de personnes (agence de Bellevue) l'autre au nord, employant 3 agents (Howell Center).

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<sup>1</sup> Le groupe des îles du Nord -Saint-Martin et Saint-Barthélemy- est celui qui, au sein de la BFC-AG, connaît l'activité la plus importante en termes d'opérations, notamment de change (annexe 1 au rapport de contrôle interne du 30 juin 2001, p. 3).

<sup>2</sup> Rapport du contrôle interne au 30 juin 2001 , p. 3.

Banques	DEPOTS				EMPLOIS			
	Non Rés.	Résidents	Total	PDM	Non Rés.	Résidents	Total	PDM
BFC-AG	25 035	60 485	85 520	46,7 %	11 905	49 804	61 709	54,8%
BDAF	2 053	38 061	40 114	22 %	13	29 449	29 462	26 %
Crédit Mutuel	598	35 295	35 893	19,6 %	25	13 125	13 150	11,6%
Inchauspé	3 544	17 836	21 380	11,7 %	156	8 103	8 259	7,3%

Source : statistiques de l'IEDOM de Pointe-à-Pitre, situation au 31 décembre 2000, en milliers d'Euros

## 2. Traitement des listes des comptes à bloquer ou à surveiller

### 2.1. Mesures prises par la BFC-AG

Plusieurs initiatives ont été prises par le Groupe CAI à l'issue des événements survenus aux Etats-Unis le 11 septembre 2001. La chronologie des travaux peut être retracée de la manière suivante (cf. annexes 1 et 2),

Le 27 septembre, la BFC-AG reçoit de la part du Crédit Agricole Indosuez cinq listes de noms sur lesquelles des recherches de similitude doivent être entreprises par rapport à la base client de la banque. Ces cinq listes correspondent notamment à celles publiées par le décret de la République française n° 2001-875 du 25 septembre 2001 et le Règlement de la Commission des Communautés Européennes n° 1354 du 4 juillet 2001 (modifiant le règlement n° 467/2001). Les listes établies par le SICFIN et le FBI ont également été transmises.

Le 28 septembre suivant, les cinq listes précitées sont dirigées par mail et par fax vers les directeurs de Groupes accompagnées des instructions de CAI.

Le 3 octobre, une requête informatique générale est lancée au siège sur la base clients de la BFC-AG pour recherche de similitudes avec trois des cinq fichiers reçus (liste UE et SICFIN notamment). A ce stade, aucune similitude complète n'est détectée. Le 8 octobre, les deux fichiers restant à vérifier sont transmis au Service Informatique pour vérification.

C'est le 11 octobre que les instructions de CAI (demandant aux filiales d'étendre les recherches aux donneurs d'ordre et aux bénéficiaires d'opérations traitées par la banque) sont transmises à la Direction des Services Bancaires (Direction des opérations du siège) accompagnées des 5 listes susvisées. L'ensemble des ces tests ne fait ressortir aucune anomalie.

Enfin, le vendredi 19 octobre, de nouvelles recherches sont entreprises sur la base clients à l'issue de la publication d'une nouvelle liste de noms par le décret français n°2001-934 du 12 octobre 2001. Le résultat de ces recherches est là aussi négatif. Toutefois, force est de constater qu'aucun croisement n'a été établi entre les listes officielles et les ayant droits économiques des sociétés off-shore.



En complément de ces diligences, le groupe CAI a mis en place en octobre 2001 un « comité de vigilance » des relations éventuelles avec des clients susceptibles d'appartenir à des réseaux terroristes (cf. annexe 3). Ce comité, présidé par le Vice-président du Directoire et comprenant 7 personnes qualifiées décide des mesures conservatoires ou définitives concernant les clients potentiellement concernés ou pour lesquels des informations pertinentes nécessaires font défaut.

## 2.2. Travaux complémentaires de l'Inspection

### 2.2.1. Identification des entités suspectes

L'Inspection a procédé à une série de tests informatiques complémentaires à partir de la base clientèle de la BFC-AG de Saint-Martin.

Ces travaux permettent de confirmer la présence, parmi les personnes morales clientes de la banque, d'une société dénommée « Middle East Group NV » sur lequel il est permis de nourrir de soupçons.

Cette entité ne figure pas sur les listes officielles publiées par le Gouvernement français et les autorités communautaires ; quant au Comité de vigilance précité, il se borne à citer le nom de Middle East dans un document de synthèse en référence à une déclaration Tracfin faite sur l'entité en octobre 2001 (annexe 3 bis), sans plus de commentaires. En revanche, le rapport parlementaire n° 2311 du 10 octobre 2001<sup>3</sup> fait état d'une société dénommée « Middle East International Group » domiciliée en Suisse (52 Bahnhof-strasse, Zürich) et dont le dirigeant serait un certain **Hassan BIN LADEN, frère de Oussama Ben Laden** (cf. annexe 4)<sup>4</sup>.

La lecture du dossier ouvert à l'agence de la BFC-AG au nom de « Middle East Group NV » ne permet pas d'établir formellement qu'il s'agit du même ensemble. Cependant, le directeur local de l'agence a indiqué à l'Inspection que selon des informations verbales qui lui sont parvenues, la société Middle East Group implantée à Sint-Maarten (partie hollandaise de l'île) entretiendrait des liens avec des organisations aux activités illicites.

En résumé, la banque détient dans son portefeuille des clients méritant un suivi particulier.

<sup>3</sup> Rapport de MM. Peillon et Montebourg, T. I, Vol. 4, A.N.

<sup>4</sup> Cf. rapport parlementaire, annexe 4.

**Identification des personnes morales et physiques citées dans le présent rapport et description des liens financiers (1)**

GROUPE YOUSUF ISAM		MIDDLE EAST GROUP	
Isam Mohamad Yousuf	Américain né en Jordanie. Dirige un commerce d'ameublement « Island Appliances » à St.Maarten depuis 1986. Possède deux comptes à la banque (USD et FRF) ouverts en février 1995.	Middle East Group NV	Société implantée à Sint-Maarten sous l'enseigne commerciale « Ace Home Center » et spécialisée dans l'import/export d'articles divers (électro-ménager, bâtiment, produits chimiques...). Elle est dirigée par M. El-Yousef Yousef Ahmad et M. Al-Yousef Ghassan. Cliente depuis 1997, la société possède 4 comptes en USD et FRF..
Mohamad Yusuf Fathi*	Américain né en Jordanie. Propriétaire de 2 supermarchés dans les îles vierges, à Sainte Croix et à Saint-Thomas « Plaza Extra Supermarket ». Un des magasins est géré par son beau-frère, M. Hamed Waleed. M. Yusuf Fathi est titulaire d'un compte en USD depuis juin 1996 (l'adresse courrier est celle de M. Yousuf Isam).	El-Yousef Yousef Ahmad	Américain né en Jordanie. Dirigeant de Ace Home Center et gérant de « Liteline Electrical NV », autre société également cliente de la banque depuis 1994. M. El-Yousef détenait deux comptes personnels à la BFC-AG clôturés en 1996.
Hamdan Diamond Corp.	Société off-shore implantée à Anguilla, titulaire d'un compte en USD depuis juin 1996. Son président est M. Mohamad Yusuf Fathi. L'adresse courrier est celle de Yousuf Isam. M. Hamed Waleed en est le mandataire.	Al-Yousef Ghassan	Dirige avec El-Yousef Ahmad la société Ace Home Center. Il est le frère de AL-Yousef Sami (cf. infra). Ne possède pas de compte à titre personnel à la BFC-AG.
Hamed Waleed*	Américain né en Jordanie. Directeur du supermarché de son beau-frère -Mohamad Yusuf Fathi- à Sainte-Croix. Titulaire d'un compte de non résident en USD depuis 1996 (l'adresse courrier est celle de M. Yousuf Isam). A reçu deux importants virements en 1996 (2,4 MUSD) sur son compte ouvert en Jordanie (Cairo Amman Bank) en provenance de Yusuf Fathi et de Hamdan Diamond.	Pinguin Air Conditional	Société filiale de Middle East Group implantée à Sint-Maarten et dirigée par M. El-Yousef Yousef et ayant comme mandataire M. Ghassan Al-Yousef. La société détient 2 comptes en FRF et en USD.
Al-Yousef Sami Hamed	Jordanien né au Koweït. Comptable dans une société de St-Maarten (ALDI'S Property) lié au groupe Yousuf Isam. Titulaire d'un compte en USD depuis juin 1997. Le compte enregistre d'importants mouvements en espèces (plus de 7MUSD entre janvier 1999 et mars 2001 en faveur de contreparties elles-mêmes en relation avec Middle East : ACE Hardware Corp. et M. Ahmad Yousef Mohamad Yousef.	Al-Yousef Sami Hamed	Il s'agit de la même personne liée au groupe Yusuf Isam (V. colonne de gauche). Il serait le lien entre ce groupe et Middle East. M. Sami Al-Yousef est le frère de Ghassan Al-Yousef (préc.), dirigeant de l'enseigne commerciale de Middle East (Ace home center). Ses comptes en USD et FRF, après avoir été très actifs, ont été clôturés en mars 2001. L'intéressé a fait l'objet d'une seconde déclaration à Tracfin en octobre 2001.
Saleh Yacoub*	Propriétaire d'une quincaillerie en zone hollandaise (Ted Door Speciality NV). A ouvert un compte en 1996.		

\* cousins de M. Yousuf Isam

(1) L'examen du dossier et des opérations financières ne permet pas d'établir l'existence de relations financières directes entre les groupes Yousuf Isam et Middle East ; en revanche, plusieurs opérations de virements réalisées par les deux entités durant ces dernières années concernent des bénéficiaires communs (Ace Hardware Corp. et M. Ahmad Yousef Mohamad Yousef, résidant en Jordanie). Par ailleurs, un autre point commun entre les deux groupes semble établi en la personne de M. Sami Hamed Al-Yousef, ancien comptable du groupe Yousuf Isam et frère d'un des dirigeants de Middle East.

## 2.2.2. Historique des opérations les plus significatives et dispositions prises par la BFC-AG

Il apparaît nécessaire, à ce stade, de préciser comment les différents comptes des entités suspectes ont fonctionné durant ces dernières années, quelle est à ce jour leur situation, enfin quel a été le niveau de réactivité de la banque en la matière.

### Groupe YOUSUF Isam

#### Island Appliance

M. Yousuf Isam est propriétaire en zone hollandaise d'une affaire spécialisée dans la vente de meubles dénommée « Island Appliances ». Deux comptes francs et dollars ont été ouverts en février 1995 à la BFC-AG. Dès le mois de juillet 1996, la banque est intriguée par des mouvements d'espèces très importants sur le compte de l'intéressé. Les explications fournies par M. Isam suffisent pourtant à apaiser les inquiétudes de la banque alors que par ailleurs celle-ci ne dispose d'aucun document comptable lui permettant de mettre en cohérence les flux observés sur le compte et les courants d'affaires annoncés<sup>5</sup>. Pourtant, des opérations devant susciter la vigilance continuent à transiter par le compte sans que cela ne déclenche la moindre réaction (cf. tableau infra). Il faut attendre le mois de mai 1998 pour que la banque procède à une déclaration de soupçon auprès de Tracfin (annexe 5).

Opérations remarquables observées au compte de YOUSUF Isam (Island Appliances)					
Numéros de compte	Date	Opération	Montant	Bénéficiaire	Commentaires de l'Inspection
60.63541.90.40 USD	04-07/96	Dépôt cash.	1,6 MUSD	Lui-même	
	1996	Virement	1,4 MUSD	Lui-même (Cairo Ammam Bank en Jordanie)	Information portée à la connaissance de Tracfin qu'en mai 1998
	01/97	Dépôts cash	1,5 MUSD	Lui-même	Ces sommes ont été déposées en 10 versements consécutifs. A ce stade, la constitution d'un dossier de surveillance eut été nécessaire à tout le moins (art. L. 563-3 du CMF)
	02/97	Virement	2 MUSD	Sixteen Plus Corp. (Nova Scotia Bank AWI)	Information portée à la connaissance de Tracfin qu'en mai 1998.
	09/97	Virement	2 MUSD	Ibid.	Ibid.
	04/98	Virement	220 kUSD	Mohamad Abdel Qader (chez West Bank-Israël)	
	10/07/98	Virement	300 kUSD	Ayed Yousef (Winward Island Bank/Sint-Maarten)	Opération n'ayant pas été portée à la connaissance de Tracfin (art. L. 562-3 du CMF)
	15/07/99	Virement	200 kUSD	Adnan Rahal	Ibid.
	9/08/99	Virement	400KUSD	Lui-même	Ibid.
60.20186.90.00 FRF					Ce compte mouvemente très peu

<sup>5</sup> Le dossier ne comporte qu'une simple feuille datée de décembre 1992 mentionnant uniquement le total des actifs ; ce n'est que par un courrier du 16 juillet 2001 que la BFC-AG réclamera pour la première fois les documents comptables et financiers habituels.

### Hamed Waleed

M. Hamed Waleed est le gérant d'un supermarché à Sainte-Croix (Iles Vierges américaines) appartenant à son beau-frère, M. Mohamad Yusuf Fathi (V. infra). L'intéressé a ouvert un compte en dollars à la BFC-AG en juin 1996 afin d'éviter, selon ses dires, certaines taxes prélevées sur les comptes bancaires aux Iles Vierges. Son beau-frère a procuration pour faire fonctionner le-dit compte. M. Hamed Waleed a fait l'objet d'une déclaration de soupçon le 28 mai 1998. Cela étant, dès 1996, d'importantes sommes déposées en espèces et ne paraissant pas avoir de lien avec le statut de simple gérant de ce client auraient dû légitimement nourrir un dossier de renseignement au titre de l'art. L. 563-3 du code monétaire et financier.

Opérations remarquables observées sur le compte n° 60.63878.90 de M. Hamed Waleed				
date	Opération	Montant	Bénéficiaire	Commentaires de l'Inspection
06 à 12/96	Dépôts cash	1,1 MUSD	Lui-même	Ces importants versements espèces n'ont pas été mentionnés dans la déclaration à Tracfin de mai 1998 <sup>6</sup>
08/96	Virement	400 kUSD	Lui-même (Cairo Amman Bank/Jordanie)	Cette opération n'a pas suscité de renseignements complémentaires auprès de l'intéressé (art. L. 563-3 du CMF).
04-05/98	Vers. Cash	865 kUSD	Lui-même	

### Mohamad Yusuf Fathi

Ce client est propriétaire de deux supermarchés dans les Iles Vierges américaines (Sainte-Croix et Saint-Thomas) dont un est dirigé par son beau-frère, M. Hamed Waleed. Il est par ailleurs président de Hamdam Diamond Corp. (cf. infra). L'intéressé a ouvert un compte de non-résident en dollars en juin 1996 également pour les raisons fiscales déjà évoquées. Comme pour les clients cités plus haut, d'importantes opérations espèces ont été observées sur son compte dans les premiers mois suivant l'ouverture (420 kUSD de juin à décembre 1996). Interrogé par la banque, M. Mohamad Yusuf s'est borné à indiquer que ses affaires étaient saines<sup>7</sup>, que le chiffre d'affaire annuel était de 55 MUSD avec un bénéfice réel de 9 MUSD ce qui ne paraît pas en phase avec le bilan de 1995<sup>8</sup>. En 1996, la banque concluait pourtant que l'activité économique prospère *semblait bien justifier* les opérations enregistrées dans ses livres<sup>9</sup>.

<sup>6</sup> La déclaration en question indique que l'intéressé verse exclusivement des espèces en USD et ne mentionne que la somme de 865 kUSD versée entre le 22 avril et le 12 mai 1998.

<sup>7</sup> Compte rendu d'entretien rédigé par un agent de la banque (M. Gumbs) en date du 22 juillet 1996.

<sup>8</sup> Le bilan du 31 déc. 1995 de la société United Corporation (Plaza Spermarket) mentionne un chiffre d'affaire de 36 MUSD et des résultats de seulement 638 kUSD.

<sup>9</sup> Compte rendu préc.

La BFC-AG n'a jamais obtenu le moindre renseignement comptable récent sur cette relation<sup>10</sup>. Aucune analyse de cohérence entre les mouvements, notamment en espèces, observés sur le compte et les courants d'affaires n'a donc pu être menée. Ici aussi, il faut attendre le mois de mai 1998 pour que les opérations réalisées par ce client et susceptibles d'attirer la vigilance soient portées à la connaissance de Tracfin.

### HAMDAM DIAMOND

Le compte de cette société off-shore immatriculée à Anguilla (BWI) et constituée pour des raisons fiscales selon les déclarations de son président (M. Mohamad Yusuf Fathi) a été ouvert en juin 1996. Le compte en dollars devait être alimenté mensuellement par des versements de 5 à 10 kUSD pour commencer. Très tôt, les versements se sont révélés largement supérieurs à ce qui avait été initialement déclaré. En l'absence de toutes données comptables et faute aussi d'un suivi rapproché, l'agence de Saint-Martin n'a pas été en mesure d'apprécier la pertinence des mouvements d'espèces ayant transité dès l'année 1996. Il faudra là encore attendre mai 1998 pour que cette société fasse l'objet d'une déclaration de soupçon (V. annexe 5 préc.), déclaration qui ne mentionne d'ailleurs pas toutes les opérations suspectes observées au compte de la cliente en particulier durant l'exercice 1996. Ajoutons que la banque a procédé tout récemment à la fermeture du compte de Hamdan Corp. (envoi d'un préavis de clôture le 28 septembre dernier) en raison de « *virements suspects vers la Jordanie* », de « *dépôts d'espèces non justifiés* » et plus généralement au motif que les mouvements « *ne correspondaient pas à ce qui avait annoncé lors de l'ouverture du compte* »<sup>11</sup>.

Numéros de compte	Date	Opération	Montant	Bénéficiaire	Commentaires de l'Inspection
60.63887.90.40 USD	22/07/96 au 31/07/96	Versements espèces	600 kUSD	Hamdam Diamond	Il s'agit de 6 versements dont deux de 200 kUSD chacun non signalés à Tracfin <sup>12</sup>
	1/08/96 au 21/08/96	Ibid	1,7 MUSD	Hamdam Diamond	10 versements espèces réalisés en 10 jours et non signalés dans la déclaration à Tracfin
	09/96	virement	2' MUSD	Hamed Waleed (Cairo Amman Bank/Jordanie)	Opération signalée à Tracfin qu'en mai 1998.
	04-05/1998	Vers. cash	560 kUSD	Elle-même	

Comme le montre le tableau ci-dessus, on constate que des opérations de montants significatifs auraient pu déclencher une déclaration de soupçon bien avant celle, manifestement tardive, du 28 mai 1998, ou, à tout le moins, la constitution d'un dossier de renseignement sur le fondement de l'art. L. 563-3 du COMEFI.

<sup>10</sup> Le seul bilan est celui du 31 décembre 1995 précité.

<sup>11</sup> Note interne à la BFC-AG.

<sup>12</sup> La déclaration n° 98-I indique seulement que le compte enregistre exclusivement des espèces en USD et ne mentionne que des versements concernant l'exercice 1998 (560 kUSD).

## Al-Yousef Sami

Comptable de son état au sein de la société ALDI'S Property NV (implantée en zone hollandaise)<sup>13</sup>, M. Al-Yousef Sami Hamed a ouvert un compte de non résident en dollar en mai 1997. L'intéressé qui intervient au sein du groupe Yousuf Isam en qualité de comptable entretient des relations étroites avec la société Middle East. Il apparaît en effet comme le frère de Al-Yousef Ghassan, dirigeant de Ace Home Center (enseigne commerciale de Middle East) et comme mandataire de M. El-Yousef Yousef Hamad, deuxième dirigeant de Ace Home Center. Ainsi, M. Al-Yousef Sami Hamed constitue un des liens pouvant être établis entre le groupe Yousuf Isam et Middle East.

L'examen du compte fait ressortir d'ailleurs plusieurs virements en faveur de Ace Hardware Corp., société implantée aux Etats-Unis, elle-même en relation avec Ace Home Center (Middle East)<sup>14</sup> ; plus de 3 MUSD ont été en effet virés à cette société entre janvier 1999 et mars 2001 à l'initiative de M. Sami Al-Yousef. Or, cette même société Ace Hardware a reçu à la même période des virements de Middle East (dans de moindres proportions toutefois).

Notons surtout que de très importants mouvements d'espèces ayant transité par le compte de M. Al-Yousef Sami postérieurement à la première déclaration de soupçon dont il a fait l'objet (déclaration n° 98-1 du 28 mai 1998, annexe 5 préc.) auraient dû conduire la banque à réagir une nouvelle fois. En effet, les versements espèces observés sur son compte durant la période récente (7 MUSD entre janvier 1999 et mars 2001) n'ont pas été portés à la connaissance de Tracfin contrairement à l'article L. 562-3 du Code monétaire et financier alors qu'ils étaient, en fréquence et en montant, bien plus significatifs que les sommes ayant motivé la déclaration de 1998<sup>15</sup> et sans relation avec son activité connue faute de disposer de documents financiers ou comptables ; il est vrai que la déclaration de soupçon n° 01-02 du 3 octobre 2001 portant sur le groupe Middle East mentionne une seconde fois M. Al-Yousef Sami mais d'une manière trop laconique (annexe 5 bis)<sup>16</sup>. Par ailleurs, même si la banque prétend informer régulièrement les autorités locales de ces différentes opérations, ces précautions ne la dispensent pas de ses obligations légales vis-à-vis de Tracfin.

La même absence de déclaration complémentaire peut-être observée à l'égard de virements opérés durant les années 1999 à 2001 par M. Sami Al-Yousef en faveur de M. Ahmad Yousef Mohamad Yousef, domicilié en Jordanie<sup>17</sup>. Lors de la première déclaration à Tracfin, seuls 3 virements pour un total de 665 kUSD ont été mentionnés (cf. annexe 5 bis préc.). Or, il s'agit pour la période sous revue de plus de 10 virements pour un total dépassant les 3 MUSD (cf. tableau ci-dessous retraçant les plus importantes opérations).

<sup>13</sup> La BFC-AG n'a jamais obtenu le moindre justificatif de revenus pour ce client.

<sup>14</sup> Il est impossible, en l'état des dossiers, de savoir si Ace Hardware est un simple fournisseur de Ace Home Center ou si cette société appartient au périmètre du groupe Middle East ; cette seconde option est toutefois vraisemblable.

<sup>15</sup> Dans sa déclaration de soupçon, la BFC-AG se borne à indiquer sans plus de détail que l'intéressé « verse exclusivement des USD en espèces. La fréquence et l'importance paraissent douteuses eu égard à la profession déclarée. »

<sup>16</sup> Il est fait mention notamment de sa qualité de mandataire de Middle East, de ses liens avec Yusuf Isam et de son antériorité dans les dossiers de la banque. Ici encore, aucune information n'est donnée sur les mouvements d'espèces.

<sup>17</sup> lui-même bénéficiaire de virements effectués par ailleurs à l'initiative de Middle East et ses entités liées.

Signalons que le compte de Sami Al-Yousef a été clôturé en mars 2001 à l'initiative de la banque.

Compte de Al-Yousef Sami Hamed					
Numéros de compte	Date	Opération	Montant	Bénéficiaire	Commentaires de l'Inspection
60.64137.90.40 USD	01/99-03/01	Versements	7 MUSD	Lui-même	Ces versements espèces cumulés n'ont pas été signalés à Tracfin. On note parfois plusieurs versements fractionnés le même jour. Au surplus, la plupart de ces versements n'auraient pas été effectués par l'intéressé mais par un tiers, M. Yousef Hamad.
	03/99	Virement	200 kUSD	Ahmad Yousef Mohamad	
	07/99	Virement	300 kUSD	Ibid.	
	08/99	Virement	270 kUSD	Ibid.	
	11/99	Virement	275 kUSD	Ibid.	
	12/99	Virement	650 kUSD	Ibid.	
	05/00	Virement	400 kUSD	Ibid.	
	09/00	Virement	500 kUSD	Ibid.	
01/01	Virement	675 kUSD	Ibid.	Ces opérations n'ont pas été signalées à Tracfin	

#### Groupe Middle East NV

#### Ace Home Center

Société immatriculée à Sint-Maarten (partie hollandaise) depuis 1994. Il s'agit de l'enseigne commerciale de Middle East Group NV. L'objet de cette société porte notamment sur l'import/export d'articles de quincaillerie, de matériaux de construction, le commerce de produits pétroliers et de chimie industrielle. Cette société est dirigée par MM. El-Yousef Yousef Hamad et Al-Yousef Ghassan, nés respectivement en Jordanie et au Koweït mais tous deux de nationalité américaine. Le mandataire est M. Al-Yousef Sami Ahmed (déjà cité plus haut).

Ace Home Center a ouvert en 1997 deux comptes en dollars et en francs qui ont été clôturés en septembre 2000<sup>18</sup>. Leur fonctionnement passé n'appelle pas de remarque.

#### Pinguin Air Cond.

Il s'agit d'une filiale de Middle East créée en 1997 afin de séparer, au sein du groupe, l'activité portant sur l'installation et la réparation de réfrigérateurs et de climatiseurs. Présidée par M. El-Yousef Yousef Ahmad et gérée par M. Al-Yousef Ghassan, cette société immatriculée à Sint-Maarten détient deux comptes à vue en dollars et en francs depuis mars 1998. Leur fonctionnement a suscité une déclaration de soupçon faite le 3 octobre 2001 par la BFC-AG (cf. annexe 5 bis préc.). La déclaration porte sur une opération de virement de

<sup>18</sup> Comptes n° 60.64352.90.40 et 60.22486.90.00

450 kUSD réalisée le 13 juin 2001 en faveur de M. Ahmad Yousef Mohamad Yousef, domicilié en Jordanie (Cairo Amman Bank).

**El-Yousef Yousef**

M. El-Yousef Yousef Ahmad gérant de la société Liteline Electrical à Sint-Maarten avait ouvert en avril 1994 deux comptes en dollars et en francs qu'il a clôturé deux ans plus tard<sup>19</sup>. Il est l'un des deux dirigeants de Ace Home Center. L'examen de son compte fait ressortir dès l'année 1995 d'importants versements en espèces pour un montant total de plus de 1,1 MUSD. Le compte n'enregistrait d'ailleurs au crédit que des versements espèces. En revanche, peu d'opérations ont été observées au compte concernant l'exercice 1996. Notons par ailleurs 3 virements importants de 152 kUSD, 100 kUSD et 200 kUSD exécutés en juillet et novembre 1995 sur lesquels il n'a pas été sollicités de renseignement. Si M. El-Yousef Yousef est bien mentionné dans la déclaration à Tracfin faite le 3 octobre 2001, le détail des opérations susvisées et spécialement les versements en espèces n'ont pas été mentionnés aux autorités compétentes.

**Ahmad Yousef Mohamad Yousef**

En juillet 2001, la BFC-AG est approchée par une société off-shore implantée à Anguilla depuis 1994, « The Nablus Commercial Corporation », en vue d'ouvrir un compte courant. La banque, faute d'avoir pu obtenir des informations suffisantes sur cette société (objet social, données comptables, modalités de fonctionnement du compte) n'a pas souhaité à juste titre donner une suite favorable. Il est toutefois regrettable que le lien entre cette société et le groupe Middle East n'ait pas été établi et porté à la connaissance des autorités compétentes. En effet, le dirigeant de cette société n'est autre que M. Ahmad Yousef Mohamad Yousef et son gérant, M. Al-Yousef Sami, bien connu de la banque.

Comme on l'a vu plus haut, M. Ahmad Yousef Mohamad apparaît comme le point de convergence de nombreuses opérations de virement faites à son profit par différents *acteurs* (Ace Home Center, Pinguin Air Cond., M. Al-Yousef Sami). Aussi bien eut-il été souhaitable d'informer Tracfin de la tentative d'entrée en relation opérée par Nablus<sup>20</sup>.

**En conclusion, ces différentes constats permettent de porter un jugement réservé sur la réactivité dont a fait preuve la BFC-AG de Saint-Martin durant ces dernières années à l'égard des entités décrites ci-dessus. Des déclarations de soupçon tardives et incomplètes, l'absence de déclarations de soupçon complémentaires sur des opérations suspectes, enfin, un défaut de suivi rapproché des comptes ayant fait l'objet de déclarations de soupçon constituent des manquements d'autant plus critiquables qu'ils interviennent dans un contexte hautement exposé.**

<sup>19</sup> compte n° 60.63364.90 et 60.35079.90

<sup>20</sup> Nablus Commercial Corp. n'a été mentionnée dans aucune déclaration de soupçon. Au surplus, si le nom de M. Ahmad Yousef Mohamad a été indiqué à Tracfin comme le destinataire de virements douteux, la copie de ses papiers d'identité, figurant au dossier de Nablus, n'a pas été communiquée.



### 3. Dispositif de lutte anti-blanchiment

Les travaux réalisés par la présente mission ont mis en lumière d'autres dysfonctionnements dans le dispositif de prévention du blanchiment, lequel est apparu très insuffisant et inapproprié à la nature des risques encourus par la BFC-AG.

Les principales lacunes ont été observées dans la gestion des comptes ouverts à des sociétés off-shores, dans le suivi local des opérations suspectes et la surveillance des clients sensibles autres que les sociétés implantées dans un centre off-shore, enfin dans le dispositif global de supervision mis en place par le Groupe.

#### 3.1. Une gestion et un suivi défaillants des comptes ouverts aux noms des sociétés off-shores

L'agence de Saint-Martin détenait au moment de l'enquête un portefeuille de 75 comptes ouverts à des sociétés off-shores (113 si l'on tient compte des 38 comptes clôturés sur la période la plus récente) dont les avoirs se répartissaient de la manière suivante :

Comptes à vue	Total dépôts	Titres	Total dépôts et titres	Total engagements
19 971	52 267	1 974	54 241	8 409

*En kF : avoirs recensés au 29 octobre 2001*

Dans ce domaine, les contrôles effectués par l'Inspection ont souligné de graves insuffisances dans la gestion et le suivi des comptes susmentionnés que l'on peut résumer de la manière suivante :

- une documentation juridique incomplète ou obsolète de longue date,
- une absence fréquente de renseignements sur l'activité économique de nombreuses sociétés,
- une identification très insuffisante des ayants droits économiques,
- un dispositif de surveillance inexistant.

L'ensemble de ces points sont repris en détail ci-dessous :

##### 3.1.1. Un développement non contrôlé du portefeuille

La BFC-AG Saint-Martin a engagé dès le début des années 1990 une politique active de développement des relations commerciales avec les sociétés off-shores implantées dans les nombreuses îles de l'arc caraïbe. Cette action a été confiée, dans un premier temps, à un seul agent qui, des années durant, a ouvert des comptes pour plus d'une trentaine de sociétés (soit environ un tiers du portefeuille) sans apparemment faire preuve de discernement et de prudence à l'égard d'une catégorie de clientèle par définition très risquée. Cette situation s'est ensuite répandue à l'ensemble des autres « commerciaux » à leur tour en charge d'ouvrir des comptes à des sociétés off-shores.

Cette politique active en direction de sociétés *sensibles* a été menée en dehors de tout contrôle tant de la hiérarchie locale que de l'inspection interne, ce qui a constitué un facteur aggravant. En effet, depuis l'origine, aucun suivi des dossiers n'a été mis en place afin de s'assurer du caractère pertinent et exhaustif des renseignements collectés et de la mise à jour des dossiers notamment sous l'angle juridique (renouvellement des pouvoirs des mandataires en particulier<sup>21</sup>). Enfin et surtout, les opérations initiées par les sociétés off-shores -dont on verra plus loin le caractère souvent inhabituel sinon suspect- n'ont pas été surveillées. Certes, un certain nombre de déclarations Tracfin a été réalisé ces dernières années sur les fondements de l'art. L. 562-2 du Code monétaire et financier (annexe 5 ter) mais elles restent numériquement faibles au regard des transactions détectées comme douteuses par la présente mission et qui auraient pu, à bon droit, déclencher d'autres déclarations de soupçon.

### 3.1.2. Une prise de conscience tardive des risques encourus et à ce jour non suivie d'effets tangibles

Il faut attendre les années 1998/1999 pour que l'agence manifeste ses premières inquiétudes quant à la qualité des renseignements recueillis sur sa clientèle off-shore et sur la nature des opérations transitant dans ses livres. Les premiers sondages effectués localement avaient alors révélé diverses lacunes. C'est ainsi que dans une note datée du 29 décembre 1999 et adressée au siège de Pointe-à-Pitre, il était fait mention, pour la première fois, des risques sous-jacents encourus par la BFC-AG sur une douzaine de sociétés qui « *méritent d'être surveillées compte tenu des mouvements au crédit en espèces* ». Plusieurs entités en effet se distinguaient -et se distinguent encore- par des mouvements espèces de montants significatifs sur leurs comptes, versés en une seule fois dans certains cas, et non expliqués au regard des courants d'affaires (cf. annexe 6).

Face à ce constat, la réaction de l'agence a essentiellement consisté à solliciter des informations complémentaires auprès des sociétés les plus actives sous la forme d'un courrier circularisé, identique pour tous les correspondants<sup>22</sup>. Par ailleurs, une vingtaine de comptes sans mouvements depuis plus de six mois ont été clôturés d'office par l'agence. Un plan d'action a également été tracé visant « *pour les sociétés présentant des mouvements créditeurs importants, notamment en espèces* » à visiter les locaux en compagnie du contact habituel « *afin de comparer la cohérence entre les mouvements dans (les) livres et l'activité réelle de la société (...)* ».

Ces initiatives qui donnent la mesure de l'état dans lequel se trouvaient de nombreux dossiers n'ont cependant pas fait progresser de manière notable leur mise à jour comme le constatera à son tour l'Inspection du Groupe CAI.

<sup>21</sup> Cette diligence était d'autant plus nécessaire que dans la grande majorité des off-shores, les pouvoirs des mandataires sont échus au bout d'un an.

<sup>22</sup> Un lot de courriers a été adressé au cours du mois de février 2000 à 57 sociétés. Outre la fourniture d'éléments « administratifs », il a été demandé à chaque société de déclarer ses actionnaires réels (beneficial owners) et son objet afin de mesurer la cohérence entre l'activité et les mouvements confiés.

En effet, un nouvel état des lieux, cette fois plus poussé, a été dressé en novembre 2000 au cours d'une mission d'inspection interne<sup>23</sup>. Un point précis a été établi en particulier dans le domaine des off-shores et des lacunes majeures ont été soulignées à cette occasion. Plusieurs recommandations ont alors été formulées visant notamment à :

- poursuivre la campagne de clôture des comptes -entamée en 1999- dont l'état des dossiers ne permet pas une maîtrise suffisante de l'activité et des actionnaires,
- s'assurer de la réalité économique des transactions espèces des comptes présentant des mouvements cumulés supérieurs à 500 kF sur un trimestre,
- mettre en place un suivi spécifique des sociétés immatriculées dans les Antilles néerlandaises comme des off-shores.

Pourtant, ici encore, force est de constater que le travail d'actualisation des dossiers n'a pas enregistré de progrès significatifs depuis ces derniers mois, semble-t-il pour deux raisons :

➤ tout d'abord, aussi surprenant que cela puisse paraître, les résultats détaillés de l'enquête CAI précitée n'ont été communiqués à l'agence de Saint-Martin que très tardivement (le rapport date de novembre 2000) et en deux vagues successives<sup>24</sup> : le 17 avril 2001 tout d'abord pour ce qui concerne les recommandations portant les numéros 124, 125, 130, 131 et 133<sup>25</sup> et le 24 août 2001 ensuite pour la recommandation n° 134<sup>26</sup> (cf. annexe 7) ;

➤ l'agence n'a pas non plus bénéficié des moyens adaptés pour redresser la situation, et ce malgré ses demandes répétées auprès du siège. Plusieurs documents récents font en effet état de l'impossibilité dans laquelle se trouvait et se trouve encore Saint-Martin de « corriger la barre » compte tenu d'un niveau d'effectif jugé très insuffisant<sup>27</sup>. Le rapport de contrôle interne au 30 juin 2001 notait d'ailleurs à ce propos que « (...) la recommandation de la FRAP 133 n'a pu être poursuivie avec précision après le départ de la personne en charge de ce chantier faute de ressources »<sup>28</sup>.

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<sup>23</sup> On observera au passage qu'il s'agit là de la seule mission interne de contrôle du blanchiment qu'ait connue l'agence depuis la loi de 1990.

<sup>24</sup> Des indications verbales avaient été simplement données au directeur de l'agence par téléphone, à l'issue de la vérification de CAI.

<sup>25</sup> Portant respectivement sur 43 comptes susceptibles de caractériser une fraude fiscale, 6 comptes de personnes physiques traduisant une activité commerciale, des transactions espèces dont l'origine des fonds est inconnue, l'absence de suivi spécifique sur l'activité de 29 comptes de sociétés néerlandaises, enfin le caractère incomplet de la documentation relative aux sociétés off-shores.

<sup>26</sup> La FRAP en question fait état du caractère non exhaustif de l'inventaire des comptes de sociétés off-shore.

<sup>27</sup> La note d'information mensuelle d'avril 2001 rédigée par le directeur de l'agence de Saint-Martin et communiquée au siège fait état d' « énormes problèmes d'effectifs ». La note de mai 2001 est encore plus explicite : « les recommandations et actions préconisées par l'inspection CAI qui ont été portées à notre connaissance fin avril 2001 par l'inspection de la BFC, ne pourront pas toutes être réalisées à fin juin 2001, faute de ressources ». Enfin, la note de juin 2001 souligne l'absence de prise en compte des remarques et des besoins exprimés précédemment.

<sup>28</sup> La frap 133 est l'une des plus importantes pourtant puisqu'elle concerne la mise-à-jour des dossiers de sociétés off-shore (Annexe 1 au rapport de contrôle interne au 30 juin 2001, p. 3).

Ce constat de carence a conduit le siège à réagir vigoureusement lors du dernier conseil d'administration qui s'est tenu à Pointe-à-Pitre le 30 octobre dernier. Quoiqu'il en soit, les explications susvisées ne peuvent constituer une excuse à l'absence de visibilité sur l'identité précise des bénéficiaires économiques dans plus de 70% des dossiers de sociétés off-shores, la méconnaissance de l'activité économique réelle de nombreux clients, enfin, l'absence de documentation à jour.

### 3.1.3. Une situation de risques majeurs non maîtrisée

La présente mission s'est livrée à une étude approfondie de la situation actuelle, sur la base des dernières extractions fournies par l'agence de Saint-Martin. Il ressort de ces travaux que la gestion des dossiers de sociétés implantées dans des centres off-shores -à novembre 2001- appelle de sérieuses critiques :

#### 3.1.3.1. Une connaissance très incomplète de la clientèle

A partir de la liste actualisée des sociétés off-shores fournie par la BFC-AG à la demande de la présente mission, l'Inspection s'est attachée à dresser la liste des dossiers pour lesquels la banque n'est pas détentrice de la « Trust déclaration », document permettant de connaître l'identité déclarée des bénéficiaires économiques de la off-shore. Comme le montre le tableau n° 1 ci-après, le document en question est absent dans environ 74% des dossiers.

Certes, l'art. L. 563-1 du code monétaire et financier n'impose pas aux établissements de détenir des preuves formelles d'identification des bénéficiaires ou ayants droit économiques des structures juridiques domiciliées dans des centres off-shores. Cela étant, faute de trouver dans les dossiers, soit d'autres éléments de preuve établissant l'identité des intéressés, soit des éléments d'informations corroborant la connaissance de ces ayants droits (compte rendus de visite, par exemple, attestant des vérifications réalisées et des informations recueillies), l'Inspection en conclut que la banque n'a pas satisfait à son obligation de se renseigner sur l'identité véritable de ses clients au bénéfice desquels l'entrée en relation a été sollicitée.

Tableau n° 1

## Portefeuille des sociétés off-shore de l'agence BFC-AG de Saint-Martin

Situation au 13 novembre 2001 établie à partir des listes fournies par la BFC-AG de Saint-Martin (dossiers vifs uniquement)

Les noms en grisés correspondent à des sociétés particulièrement sensibles (déclarations Tracfin effectuées, mouvements d'espèces importants ou suspects observés sur les comptes par la banque ou la présente enquête, ...)

Nom de la société off-shore	Lieu d'enregistrement	Bénéficiaire économique	Administrateurs	Actionnaires	Observations de la BFCAG
ADVANCED CONSULTECH	Panama	Ronald Maasdam Inconnu	-	Ronald Maasdam (inconnu)	
AIRA CORP. Limited	Tortola (AWI)	Inconnu	-	-	Trust déclaration à réclamer
AVV TAMARINDO	Aruba	Ricardi Linares (inconnu)	-	Inconnus	Trust déclaration à réclamer
BE Limited	Anguilla (BWI)	Inconnu	Inconnus	Inconnus	Revue juridique à faire en urgence
BEST HOTELS CARIBBEAN Ltd	Anguilla (BWI)	Inconnu	Inconnus	-	Trust déclaration à réclamer
CARIBBEAN CONSULTANCY CORP. Ltd	Névis	Ronald Maasdam (inconnu)	-	Ronald Maasdam (inconnu)	
CARIBBEAN SAILMAKERS Ltd	Tortola (AWI)	Inconnu			Dossier juridique incomplet
CELTIC Limited	Anguilla (BWI)	Inconnu	Inconnus		Compte en cours de clôture
CHASE MARKETING Ltd	Anguilla (BWI)	Inconnu	Inconnu	Inconnus	Compte en cours de clôture
CHASSID INVESTMENT Inc	Panama	Inconnu		Inconnu	Compte en cours de clôture
COLNE COMPANY Ltd	Anguilla (BWI)	Inconnu		Inconnu	Trust déclaration à réclamer
COMBI PHARM INT'L AVV	Aruba	Inconnu	-	Inconnu	Réclamer dossier juridique intégral
COMM SYSTEMS Ltd	Anguilla (BWI)	-	Inconnu	Inconnu	Trust déclaration à réclamer
DHIG Ltd	Sint-Maarten	Inconnu	Inconnus	Inconnus	Dossier déclaré à TRACFIN
DOLPHIN INTERNATIONAL Ltd	Anguilla (BWI)	Inconnu	Inconnu	-	Compte bloqué. Revoir dossier juridique dans son intégralité
EC GENERAL ENGINEERING CONSULTANT Ltd	Anguilla (BWI)	Ronald Maasdam (inconnu)	-	-	Trust déclaration à réclamer
EMERALD COMMUNICATION Ltd	Non précisé	Inconnu	Inconnu	Inconnu	Point complet du dossier à faire
FUN CARAIBES Inc	Anguilla (BWI)	Inconnu	-	-	Trust déclaration à réclamer
GALFETO Ltd	Anguilla (BWI)	Inconnu	-	-	Trust déclaration à réclamer
GEOMETRIC Ltd	Tortola (AWI)	Inconnu			Dossier déclaré à TRACFIN

Nom de la société off-shore	Lieu d'enregistrement	Bénéficiaire économique	Administrateurs	Actionnaires	Observations de la BFCAG
HAMDAM DIAMOND Corp.	Anguilla (BWI)	Inconnu	-	-	Dossier déclaré à TRACFIN. Compte à clôturer
HANMAN INTERNATIONAL Ltd	Bahamas	Inconnu	-	-	Dossier très incomplet. Préavis de clôture
HARTWOOD TRADING Ltd	Névis	Harry Blondin (inconnu)	-	-	Trust déclaration à réclamer
INTERMOTORBIKES AVV	Aruba	Inconnu	Inconnus	-	Réclamer dossier juridique intégral
INTERNATIONAL DEVELOPMENT (...)	Anguilla (BWI)	Inconnu	Inconnus	-	Documents réclamés
ISLAND DISTRIBUTORS Comp. Ltd	Anguilla (BWI)	Inconnu	-	-	Trust déclaration à réclamer
ISLAND HARBOR MANAGEMENT Comp.	Delaware (USA)	Inconnu	Inconnus	Inconnus	Point à faire. Il ne s'agirait pas d'une off-shore
ISLAND PROPERTIES Ltd	Anguilla (BWI)	Inconnu	-	-	Trust déclaration à réclamer
LIONS HOLDING Ltd	Anguilla (BWI)	Inconnu	-	-	Trust déclaration à réclamer
MAIDSTONE Comp. Ltd	Anguilla (BWI)	Inconnu	-	-	Compte en clôture
MELMIK AVIATION Ltd	Inconnu	Inconnu	Inconnu	Inconnus	Il ne s'agit pas d'une off-shore.
METROPOLE HOLDING Ltd	Anguilla (BWI)	Inconnu	-	Inconnus	Impossibilité d'obtenir les documents juridiques. Compte en clôture
NACO Ltd	Anguilla (BWI)	Inconnu	-	-	Trust déclaration à réclamer
NORTHERN INDUSTRIES Ltd	Anguilla	Inconnu	-	-	Pièces juridiques réclamées
OVERSEAS PROJ. MANAG. SERVICES Ltd	Saint-Vincent	Inconnu	-	-	Dossier juridique incomplet. Clôture prévue
PANDAROSA HOLDING Ltd	Inconnu	Inconnu	Inconnu	Inconnu	Point à faire. Clôture envisagée
PEARLGEMS INTERNATIONAL Co.	Inconnu	Inconnu	Inconnu	Inconnu	Impossible de faire une mise à jour. La société a de gros dépôts. Le compte est bloqué
PORT DE PLAISANCE HOTEL	Sint-Maarten	Inconnu	-	-	Dossier incomplet. Déclaration TRACFIN effectuée
RENEE INTERNATIONAL Ltd	Tortola (AWI)	Inconnu	-	-	Pièces juridiques réclamées
SMB BOATPHONE HOLDINGS Ltd	Tortola (AWI)	Inconnu	-	-	Dossier juridique incomplet. Compte bloqué
STANTON Ltd	Anguilla (BWI)	-	-	-	Statut du <i>beneficial owner</i> inconnu

Nom de la société off-shore	Lieu d'enregistrement	Bénéficiaire économique	Administrateurs	Actionnaires	Observations de la BFCAG
SUNNY SAND Ltd	Tortola (AWI)	Inconnu	-	-	
THE MONEY GAME	Sint-Maarten	Inconnu	Inconnu	Inconnu	Compte bloqué. Clôture en cours
TIMOR SERVICES Ltd	Tortola (AWI)	Inconnu	-	-	Trust déclaration réclamée. Dossier incomplet
TRANSCARIB IMPEX Ltd	Tortola (AWI)	Barker (inconnu)	-	-	Trust déclaration réclamée
TRISPORTS INTERNATIONAL Ltd	Tortola (AWI)	Inconnu	-	-	Trust déclaration à réclamer
TROPICAL FASHIONS Ltd	Anguilla (BWI)	Inconnu	-	-	
TROPICAL SUNRISE HEALTH FOOD Co.	Aruba	Inconnu	Inconnu	Inconnu	Dossier introuvable. Point à faire d'urgence
UNITED ENTERPRISES Ltd	Anguilla (BWI)	Inconnu	-	-	Mise à jour en cours
VINCHI Limited	Inconnu	Inconnu	Inconnu	Inconnu	Dossier à reconstituer
WEST INDIES FOOD SERVICES Ltd	Névis	Inconnu	Inconnu	-	Trust déclaration réclamée
WOODSTONE HOLDING Ltd	Anguilla (BWI)	Inconnu	Inconnu	-	Compte à clôturer

AWI : American West Indies

BWI : British West Indies

Cette lacune se double d'une absence d'information sur les actionnaires comme sur les administrateurs dans environ 29 % des dossiers (respectivement 33 et 32 dossiers sur 115)<sup>29</sup>.

L'activité de la clientèle est également inconnue dans plus de 50 % des dossiers comme le montre le tableau n° 2 suivant.

### 3.1.3.2. Une gestion critiquable des dossiers

L'examen des dossiers de off-shores -vifs ou récemment clôturés- a révélé de profondes insuffisances, conséquence d'une gestion très peu rigoureuse des dossiers durant de nombreuses années doublée d'une absence de contrôle. Selon les calculs de la présente mission, **plus de 90 % des dossiers étaient incomplets à la mi novembre 2001** (cf. tableau n°3 ci-après et annexes 8 et 8 bis).

Parmi les lacunes le plus souvent rencontrées sous l'angle juridique, on peut citer :

- des anomalies de signatures (cartons de signature introuvables, copies de statuts non signés),
- des pouvoirs de mandataires échus de longue date ou inexistants,
- l'absence de copie de pièces d'identité de nombreux mandataires.

Il arrive très fréquemment que ces lacunes se cumulent pour un même dossier. Plusieurs dossiers sont dépourvus de toute documentation minimale<sup>30</sup>. Un dossier de off-shore demeure même introuvable<sup>31</sup>.

On observera incidemment que la BFC-AG exécute de très nombreuses opérations sans base juridique, c'est-à-dire concrètement sans savoir si les personnes initiant de telles transactions sont bien habilitées à le faire.

### 3.1.3.3. Une absence de données financières pour quasiment toutes les sociétés

Les contrôles effectués par l'Inspection ont permis de constater l'**indigence de l'information comptable et financière dans la grande majorité des dossiers de off-shores** tandis que les quelques bilans rencontrés étaient souvent anciens et inexploités.

Dès lors, la banque n'a pas pu se livrer à un contrôle de cohérence entre les dépôts d'espèces d'une part et les courants d'affaires ou la surface financière de ses clients d'autre part.

<sup>29</sup> Chiffre qui prend en compte les dossiers clôturés récemment.

<sup>30</sup> Citons notamment : Inter Motorbikes AVV ; Métropole Holding Ltd ; B.E Limited ; Dolphin International Ltd ; Emerald Communication Ltd ; Vinchi Ltd.

<sup>31</sup> Tropical Sunrise Health Food Co.



Tableau n° 2

## Listes des sociétés off-shore dont l'activité est inconnue par l'agence BFC-AG de Saint-Martin

Sélection établie sur la base des états fournis par la banque au 13 novembre 2001 (V. annexe...). Cette liste prend en compte les dossiers de off-shore clôturés en 2000 et 2001.

*Les sociétés dont le siège est établi dans un des pays jugés non coopératifs par le GAFI sont en grisés*

Nom de la société off-shore	Activité	Observations de l'Inspection	Date de clôture du compte
AMERY COMPANY Ltd (Anguilla)	Inconnue		26 juin 2000
AMPARA AVV	Inconnue		5 décembre 2000
ASW CORPORATION (Anguilla)	Inconnue		16 octobre 2000
BE LIMITED (Anguilla)	Inconnue		
BEST HOTELS CARRIBEAN Ltd (Anguilla)	Inconnue		
BLIXEN Ltd	Inconnue		15 mai 2001
BOSTAR INSURANCE BROKERAGE NV	Inconnue		
BRAVO CARAIBES INVESTMENTS Ltd	Inconnue		24 mars 2000
CARRIBEAN ISLAND TRADING CY Ltd	Inconnue		27 novembre 2000
CARRIBEAN SAILMAKERS Ltd	Inconnue	Dossier très incomplet (préavis de clôture envisagé)	
CELTIC LIMITED (Anguilla)	Inconnue	Compte en cours de clôture	
CHASE MARKETING Ltd (Anguilla)	Inconnue	Compte en cours de clôture	
CHASSID INVESTMENT INC (Panama)	Inconnue	Compte en cours de clôture	
CHESTNUT OVERSEAS Ltd (Névis)	Inconnue	Dossier juridique incomplet	clôturé en 2000
COLNE COMPANY Ltd (Anguilla)	Inconnue		
COMBI PHARM INT'L AVV	Inconnue	Dossier juridique intégral réclamé par la banque	
DEFEREX CORPORATION Ltd	Inconnue	Dossier transmis à TRACFIN en 1999	26 septembre 2001
DEFIS IMPORT EXPORT Ltd (Anguilla)	Inconnue		4 septembre 2000
DEVELOPMENT CONSULTANT Ltd	Inconnue		4 septembre 2000
DHIG Ltd	Inconnue	Dossier transmis à TRACFIN en 2001	
DIAMOND HOLDING Ltd (Anguilla)	Inconnue		
DOLPHIN INTERNATIONAL Ltd (Anguilla)	Inconnue	Dossier à revoir juridiquement dans son intégralité	
ELLESMERE HOLDING Ltd (Anguilla)	Inconnue		Compte clôturé
EMERALD COMMUNICATION	Inconnue	Point complet du dossier prévu par la banque	
ERIE Ltd (Anguilla)	Inconnue	Déclaration à TRACFIN faite en 2001	
EUROCROWN INSURANCE BROKERAGE	Inconnue		23 mars 2001
HANMAN INTERNATIONAL Ltd (Bahamas)	Inconnue	Dossier juridique très incomplet	

INTERAMERICANA SALES and TRADING CO Ltd (Cayman)	Inconnue		4 septembre 2000
INTERIORS LIMITED (Anguilla)	Inconnue		26 juin 2000
LIONS HOLDING Ltd (Anguilla)	Inconnue		
METROPOLE HOLDING Ltd (Anguilla)	Inconnue	Clôture envisagée.	
MISSION HOLDING Ltd (Névis)	Inconnue		Dossier clôturé
MULLET Ltd (Anguilla)	Inconnue		Compte clôturé
OVERSEAS PROJ MANAG SERVICES Ltd (Saint-Vincent)	Inconnue	Dossier juridique incomplet. Fermeture envisagée par la banque. Saint-Vincent est un territoire jugé non coopératif par le Gafi	
PANDAROSA HOLDING Ltd	Inconnue	Clôture envisagée par la banque	
PEARLGEMS INTERNATIONAL CO	Inconnue	Plus de 3MF de dépôts enregistrés au nom de cette société	
PORT DE PLAISANCE HOTEL NV	Inconnue	Déclaration TRACFIN faite en 1999	
RIO BLANCO HOLDING Ltd (Anguilla)	Inconnue		4 septembre 2000
SAXTON INTERNATIONAL Ltd (Anguilla)	Inconnue		
SEA BREEZE INVESTMENTS Ltd (Saint-Vincent)	Inconnue	Saint-Vincent est un territoire jugé non coopératif par le Gafi	
SEIL COMPANY Ltd (Anguilla)	Inconnue		24 novembre 2000
SHANKARS NV Ltd (Anguilla)	Inconnue	Dossier incomplet. Compte bloqué dans l'attente des pièces réclamées	
SKYPAK Ltd	Inconnue		23 mai 2001
SMB BOATPHONE HOLDINGS Ltd	Inconnue	Dossier incomplet. Compte bloqué dans l'attente des pièces réclamées	
SNOWDOWN COMPANY Ltd	Inconnue		Compte clôturé
SOLEIL LIMITED (Turk and Caicos)	Inconnue		6 avril 2000
SUNGOLD OVERSEAS Ltd	Inconnue		
SUPERIOR MARKETING (Anguilla)	Inconnue		4 septembre 2000
TREBIZONDA HOLDING (Anguilla)	Inconnue		
TROGON TRADING Ltd (Gibraltar)	Inconnue		29 janvier 2001
TROPICAL SUNRISE HEALTH FOOD CO	Inconnue	Dossier introuvable.	
TYSON ASSETS INC (Bahamas)	Inconnue		2 août 2000
VINCHI LIMITED	Inconnue	Dossier vide. A reconstituer selon la banque	
VISTA MARE Ltd (Anguilla)	Inconnue		27 novembre 2000
WETS INDIES FOOD SERVICE Ltd (Névis)	Inconnue		
WOOSTONE HOLDING Ltd (Anguilla)	Inconnue	Clôture prévue	
WOLRD ENTERTAINMENT HOLDING Ltd	Inconnue		14 décembre 2000
YNT ENTERPRISES Ltd (Anguilla)	Inconnue		26 septembre 2001

Faute de document pouvant expliquer des transactions inhabituelles, la banque a d'ailleurs été contrainte récemment de bloquer *ex abrupto* le compte de plusieurs sociétés en attendant d'avoir les pièces juridiques. A l'évidence, cette pratique illustre la situation de désordre qui règne localement<sup>32</sup>.

Tableau n°3

Etat des dossiers de sociétés off-shores : situation résumée au 13/11/2001

Synthèse établie sur la base des documents fournis par la BFC-AG

Nature des dossiers	En nombre (par rapport au portefeuille global)	En % par rapport au nombre total de dossiers (y.c comptes clôturés)
Dossiers juridiques incomplets*	107	94,6
Dossiers ne comprenant pas la <i>Trust</i> déclaration	84 (55 pour les seuls dossiers vifs)	74
Dossiers pour lesquels l'activité est inconnue de la banque	58	51
Dossiers mal renseignés de sociétés établies dans des juridictions non-coopératives	2	n.s
Dossiers incomplets* et particulièrement sensibles**	31	27
Dossiers vides***	7	ns
Dossiers clôturés (faute de pièces à jour notamment)	38	33
Dossiers introuvables	2	ns

\* absence du bénéficial owner, pièces juridiques manquantes, pouvoirs échus...

\*\* activité inconnue, déclaration faite à Tracfin, implantation dans un pays appartenant ou ayant appartenu aux juridictions non coopératives listées par le Gafi, importantes opérations en espèces (ces différents critères pouvant ici se cumuler)

\*\*\* dossiers que la banque entend reconstituer dans leur intégralité

<sup>32</sup> L'Inspection n'a pas pu obtenir d'extraction informatique des comptes bloqués.

### 3.1.3.4. Une exposition au risque de blanchiment aggravée par l'origine géographique des centres off-shores

Le tableau n°4 ci-dessous montre que jusqu'à septembre 2001, date de parution du nouveau classement des pays et territoires non coopératifs (PTNC), la banque comptait encore 54 sociétés clientes en catégorie 2 selon la terminologie du Gafi et 19 en catégorie 3. Aujourd'hui, la BFC-AG détient encore parmi sa clientèle 2 sociétés implantées dans un territoire identifié comme non coopératif dans la lutte contre le blanchiment des capitaux et sur lesquelles elle ne détient que très peu d'informations<sup>33</sup> (Overseas Prog. Management Services Ltd et Sea Breeze Investment Ltd, toutes deux basées à Saint-Vincent).

Tableau n°4

Répartition du portefeuille des sociétés off-shores clientes de la BFC-AG par zone géographique sensible		
Localisation	Nombre d'entités concernées	Commentaires de l'Inspection
Anguilla	54	Les Iles Vierges britanniques dont fait partie Anguilla étaient encore classées jusqu'en septembre 2001 dans les pays dotés de dispositifs anti-blanchiment incomplets.
Panama, Saint-Kitts and Névis, Gibraltar, Cayman	17	Ces pays appartenaient encore jusqu'à tout récemment à la catégorie des territoires jugés non coopératifs en raison de dispositifs anti-blanchiment inexistant ou insuffisants <sup>34</sup> .
Saint-Vincent	2	Cette île fait encore partie de la liste « noire » du Gafi.

Enfin, notons que plusieurs dossiers ayant fait l'objet de déclarations de soupçon à Tracfin depuis 1998 concernent précisément des sociétés implantées dans des centres off-shores (Geometric Ltd, Erié Ltd, Defereux Corporation, DHIG Limited, Hamdam Diamond Corp.).

### 3.1.3.5. Une absence de perspectives de redressement de la situation à court terme

C'est récemment que l'agence de Saint-Martin a commencé à rationaliser la gestion des comptes de sociétés off-shores. C'est ainsi que :

<sup>33</sup> Mise à jour au 7 septembre 2001 de la liste des PTNC publiées par le Gafi

<sup>34</sup> Evaluation effectuée par le Gafi dans sa séance plénière des 20 et 22 juin 2001.

- toutes les sociétés dont le nom se termine par « limited » ont été sélectionnées et basculées dans un portefeuille spécial intitulé « Portefeuille Direction SO1 » attribué au directeur de l'agence<sup>35</sup> et à son adjointe<sup>36</sup> ;
- une redistribution des portefeuilles a été également entreprise entre les différents commerciaux pour ce qui concerne les sociétés non sensibles<sup>37</sup> ;
- toutes les nouvelles ouvertures de comptes au profit de clients off-shores doivent désormais être approuvées par l'inspecteur général de la BFC-AG.

Par ailleurs, un recensement des groupes de clients a été ébauché, pour établir les liens entre les diverses sociétés « animées » par une même personne (fréquemment une ou plusieurs SARL et NV, une ou plusieurs sociétés off-shores ainsi que les comptes personnels du client). Certaines fiches ont déjà été établies mais le travail restant à faire semble considérable compte tenu des moyens disponibles. Dans le même ordre d'idée, une base de données *access* a été créée afin de suivre le renouvellement des pouvoirs des personnes habilitées à faire fonctionner les comptes, dresser la liste d'actionnaires et d'administrateurs de toutes les sociétés off-shores. Des lettres de préavis de clôture de compte, avec un délai de 30 jours, ont été également expédiées en août 2001 à 14 sociétés.

Quoi qu'il en soit, l'assainissement de la situation ne sera possible à bref délai que si des moyens supplémentaires sont mobilisés. En effet, les deux principaux cadres de l'agence sont chargés de nombreuses responsabilités (cf. Organigramme en annexe 9) ; ils ne sont donc pas en mesure de faire face seuls à l'ampleur de la tâche, d'autant que la proximité d'échéances (mise en place de l'euro, arrêté des comptes de fin d'année, développement des portefeuilles commerciaux) seront de nature à les mobiliser pleinement. En outre, les compétences de leurs collaborateurs en matière de droit commercial des sociétés off-shores sont insuffisantes.

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<sup>35</sup> M. Lassus-Lalanne

<sup>36</sup> Mme Page

<sup>37</sup> Selon les fichiers fournis par la banque, plus de 35 comptes ont été ouverts par un même chargé d'affaires -M. Daniel ARNELL- lequel s'est montré particulièrement négligeant. Il aura fallu deux ans à l'équipe de direction pour parvenir à déposséder l'intéressé de son portefeuille ; son portefeuille lui a été retiré totalement en 2001 et l'intéressé occupe désormais un poste de chargé de communication.

Dans ces conditions, il semble difficile, compte tenu des effectifs et des compétences actuelles, de progresser rapidement dans le chantier des off-shores sans une assistance externe. L'inspection considère comme hautement souhaitable que le groupe procure à l'agence de Saint-Martin les moyens nécessaires à une mise en ordre des dossiers.

L'apport de ressources externes est également nécessaire au regard des autres dossiers. Des lacunes sont en effet à souligner au sein du portefeuille des « non-résidents » lequel représente 305 sociétés et plus de 1500 particuliers et dont la revue annuelle indispensable réclamée par l'inspection de CAI reste difficile, voire impossible à mettre en place avec la structure actuelle<sup>38</sup>. Enfin, le même constat doit être dressé pour les autres dossiers dits « normaux ». Selon le directeur de l'agence, plusieurs années seraient nécessaires pour mettre de l'ordre dans tous les autres dossiers tant de particuliers que de personnes morales, eux aussi entachés de nombreuses faiblesses (absence de mise à jour, pièces manquantes...)<sup>39</sup>.

Des constats qui précèdent, il ressort que l'agence de Saint-Martin paraît en infraction avec les dispositions de l'article 12 de la loi n°90-614 du 12 juillet 1990 codifiée sous l'article L. 563-1 du Code monétaire et financier. Par ailleurs, la situation de nombreux dossiers (très incomplets, mal renseignés, ou introuvables dans deux cas) semble contrevenir aux obligations prévues par les articles 5 et 6 notamment du règlement CRBF n° 97-02 et fait courir à la banque non seulement un risque de réputation mais également un risque opérationnel de nature à engager sa responsabilité.

## 3.2. Des manquements dans la surveillance des comptes sensibles

### 3.2.1. Des transactions douteuses qui n'ont pas déclenché les diligences nécessaires

Les travaux de la mission ont permis d'identifier quelques opérations dont la fréquence, l'ampleur ou la complexité auraient dû éveiller les soupçons de la banque et déclencher pour deux d'entre elles au moins les formalités de déclarations prescrites à l'art. L. 562-2 du Code monétaire et financier et pour d'autres, la constitution d'un dossier de renseignement sur le fondement de l'art. L. 563-3 du même code (anc. art. 14 de la loi du 12 juillet 1990). Les exemples suivants peuvent être rapportés au soutien de cette affirmation.

#### 3.2.1.1. Opérations n'ayant pas fait l'objet d'une déclaration de soupçon

Depuis 1996, la BFC-AG a transmis à Tracfin 8 déclarations de soupçon (annexe 5 ter). Cela étant, deux dossiers auraient mérité également de faire l'objet d'une telle procédure sous le visa de l'art. L. 562-2.

<sup>38</sup> Tel est du reste le constat dressé par le groupe lui-même dans son rapport annuel de juin 2001 déjà cité (annexe 1, p. 3) et que la présente mission ne peut que partager.

<sup>39</sup> Des dossiers de simples particuliers seraient introuvables.

**William Fogwell/Hobbs Melville**

En octobre 1998, M. William Fogwell Hobbs a sollicité la BFC-AG pour l'obtention d'un concours de 570 kUSD destiné à l'acquisition d'une villa sur l'île de Saint-Martin. Pour des raisons fiscales, l'intéressé souhaitait que sa compagne -Mme Natalia Desiatnitchenko<sup>40</sup>- soit seule acquéreuse du bien.

De nationalité américaine, M. Fogwell résidait à Monte-Carlo à l'époque de l'entrée en relation. Il s'était présenté comme le président de Hobbs Melville International, importante société de gestion de patrimoine basée à Curaçao (Antilles Néerlandaises) et qui regroupe une dizaine d'implantations à Genève, Monaco et New-York.

La demande de concours n'avait pas été acceptée par la banque en raison de la faible *visibilité* sur la situation patrimoniale du demandeur et ce malgré des renseignements externes jugés satisfaisants. Toutefois, avant qu'elle ne statue définitivement sur sa requête en décembre 1998<sup>41</sup>, la BFC-AG avait ouvert un compte à vue à M. Fogwell, en novembre 1998, à l'effet de recueillir son « apport personnel ».

Or précisément, cet apport d'une valeur de 400 kUSD versé en espèces, par un tiers de surcroît, apparaît particulièrement suspect. Les étapes du versement peuvent être résumées ainsi :

- le 7 août 1998, un changeur manuel de la place (Cozeg Sarl<sup>42</sup>, cf. infra) effectue -sur ordre de ABN-AMRO New-York- un dépôt en espèces de 400 kUSD sur le compte de correspondant de la BFC-AG ouvert sur les livres de ABN-AMRO<sup>43</sup> à Philipsburg (Sint-Maarten). Ces fonds sont destinés à William Fogwell lequel n'était pas encore titulaire d'un compte à la BFC-AG (cf. annexe 10);
- le 12 août, le compte général de la BFC-AG n° 40.60.96687.99 est crédité de la somme de 400 kUSD dans l'attente qu'un compte à vue soit ouvert au nom de M. Fogwell (annexe 10 a);
- le 6 novembre, l'opération est apurée par le débit du compte susvisé et le crédit du compte de M. Fogwell ouvert pour l'occasion sous le numéro 40.60.64574.90 (date de valeur : 12/08/98 ; cf. annexes 10 b et 10 c);
- les 400 kUSD seront par la suite virés en deux fois au profit de l'office notarial Mouial (97 kUSD le 6 novembre et 303 kUSD le 14 décembre 1998, soit une semaine après le rejet de la demande de prêt -cf. annexe 10 d).

<sup>40</sup> L'intéressée serait actuellement en prison, selon des informations recueillies sur place.

<sup>41</sup> Lettre de la BFC-AG en date du 7 décembre notifiant à M. Fogwell le rejet de sa demande.

<sup>42</sup> dont le gérant est M. Zegnani Ben Tahar lequel gère bien d'autres affaires, de change et autres.

<sup>43</sup> Rachetée depuis par la Royal Bank of Trinidad and Tobago.

La BFC-AG ne s'est pas interrogée à l'époque sur l'origine des fonds ainsi versées au profit de son client. L'importance des sommes en jeu déposées en espèces, l'intervention d'un tiers (un changeur manuel en l'occurrence), enfin le canal très inhabituel utilisé pour effectuer le versement sont autant d'éléments qui auraient dû motiver une déclaration de soupçon sur M. Fogwell. La BFC-AG a indiqué à l'Inspection que des renseignements sur M. Fogwell avaient été fournis aux autorités policières suite à leur passage à l'agence, courant 2000. Par ailleurs, la société Cozeg aurait été mentionnée dans une déclaration à Tracfin en date du 25 août 2000<sup>44</sup> mais dans le cadre d'affaires distinctes (affaire Jarry Change). **Au total, M. Fogwell n'a pas fait l'objet d'une déclaration de soupçon auprès des autorités compétentes.**

Il importe de préciser en dernier lieu que l'intéressé fait l'objet depuis le 13 septembre 2000 d'une commission rogatoire assortie d'un mandat d'arrêt international prise par le parquet général de Monaco dans le cadre d'une enquête relative à une vaste opération d'escroquerie, d'abus de confiance, faux et usage de faux portant sur plus de 120 MUSD (annexe 10 e). Une partie des sommes détournées auraient d'ailleurs été logées auprès de ABN-AMRO Bank à Curaçao (annexe 10 f). Le compte a été clôturé en avril 1999.

#### The Money Game NV-Robbie'S

The Money Game NV-Robbie'S est une société de droit néerlandais implantée à Philipsburg (Sint-Maarten) depuis 1989 et dont l'objet social est l'organisation de loteries et de jeux de hasard (loterie-vidéo et « sweepstakes » notamment). La société appartiendrait à une dénommée Jacqueline Margriet Zengerinck, née à Aruba et de nationalité néerlandaise, demeurant à Curaçao. La direction de cette société est partagée entre Mme Zengerick et son époux, M. Robertico Alejandro Dos Santos, « commerçant et homme d'affaires » néerlandais demeurant également à Curaçao. Une lettre de bon standing délivrée le 14 janvier 1998 par la Winward Island Bank Ltd (Sint-Maarten) atteste de la bonne renommée du gérant.

Le 11 février 1998, deux comptes en euros et en dollars ont été ouverts au nom de The Money Game (comptes n° 60.64348.90 et 60.22472.90). Le 12 février, M. Dos Santos a ouvert un compte cette fois à titre personnel sous la référence 60.64349.90. Le fonctionnement de ces comptes appellent les observations suivantes :

Le compte n° 60.64348.90 qui était destiné à recueillir le fruit des paris levés par The Money Game a fonctionné de manière normale depuis son ouverture en décembre 1998 enregistrant au crédit, à la fois des remises de chèques et surtout des dépôts d'espèces de montant relativement modestes, allant de quelques centaines de dollars à plusieurs milliers, sans toutefois dépasser les 20 kUSD pour un même dépôt. Quant au compte euro n° 60.22472.90 ouvert également au nom de la société, il n'a enregistré depuis son ouverture que les frais de tenue de compte. En revanche, le compte personnel de M. Dos Santos a reçu d'importants dépôts espèces pour un total de plus d'1 MUSD entre début 1998 et fin 1999 (cf. tableau suivant).

<sup>44</sup> Déclaration n°00-02.



Par ailleurs, un virement de plus d'1 MUSD a été exécuté le 26 juillet 2000 sans qu'aucune explication n'ait été sollicitée préalablement par la banque sur la justification et le destinataire de la transaction.

Principales opérations concernant le compte personnel de M. Dos Santos n° 60.64349.90				
Date	Nature de l'opération	Montant	Destinataire	Commentaires de l'Inspection
<b>Année 1998</b>				
24 mars	Versements cash	27 kUSD		
17 avril	Ibid.	27 kUSD		
13 mai	Ibid.	25,6 kUSD		
15 mai	Ibid.	51,5 kUSD		
18 mai	Ibid.	48,8 kUSD		
20 mai	Ibid.	44,2 kUSD		
25 août	Ibid.	83 kUSD		2 versements fractionnés le même jour
25 août	Ibid.	96 kUSD		
27 août	Ibid.	49,8 kUSD		
27 août	Ibid.	68,9 kUSD		Ibid
28 août	Ibid.	34,8 kUSD		
<b>Année 1999</b>				
19 janvier	Versements cash	47 kUSD	M. Dos Santos	Versements fractionnés
19 janvier	Ibid.	18 kUSD	Ibid.	
20 janvier	Ibid.	72 kUSD	Ibid.	
25 janvier	Ibid.	53 kUSD	Ibid.	
9 février	Virement	200 kUSD	Quapa Holding	Aucun renseignement sollicité sur cette opération
25 mai	Versement cash	116 kUSD	M. Dos Santos	
5 novembre	Ibid.	112 kUSD	Ibid.	Versements fractionnés
5 novembre	Ibid.	106 kUSD	Ibid.	
<b>Année 2000</b>				
5 juin 2000	Virement	200 kUSD	Bank One, Texas. Intercontinental Financial Services Corp (final credit : Quapa Holding)	Aucun renseignement sur l'identité du destinataire
26 juillet 2000	Virement	1.085 kUSD	Ibid.	Cette opération a soldé le compte, clôturé un mois plus tard à l'initiative de l'intéressé.

Au total, il est permis de s'interroger sur les raisons qui ont conduit M. Dos Santos à utiliser son compte personnel plutôt que les comptes de la société pour verser les sommes en espèces. On ajoutera que la banque ne détient aucune information sur Mme Zengerinck pas plus qu'elle n'a collecté de renseignements financiers pertinents sur la société The Money Game (on sait seulement que cette affaire aurait dégagé en 1996 un chiffre d'affaire de 12 MUSD et une marge de 1,2 MUSD)<sup>45</sup> et sur M. Dos Santos.

<sup>45</sup> Le seul bilan disponible au dossier couvre les exercices 1995 et 1996.

Notons que la BFC-AG a procédé de sa propre initiative à la clôture du compte de The Money game ; une lettre de préavis de clôture lui a été adressée le 24 août 2001<sup>46</sup>. Le compte de M. Dos Santos aurait été clôturé en août 2000, sans doute à son initiative, après que l'intéressé eut viré tous ses avoirs à l'étranger.

**Compte tenu de la « sensibilité » que présentent les affaires de loteries, eu égard également au caractère suspect du cheminement utilisé pour les versements espèces, enfin, face à l'absence de renseignement pertinent sur les différents protagonistes de ce dossier, l'Inspection estime que la banque paraît avoir manqué à son obligation de vigilance prévue à l'art. L. 563-1 et suiv. du code monétaire et financier.**

### 3.2.1.2. Transactions n'ayant pas donné lieu à un examen particulier (art. L 563-3 du code monétaire et financier)

La BFC-AG n'a constitué à ce jour que 3 dossiers sur la clientèle des îles du Nord (dont un seul pour l'agence de Saint-Martin) au titre de l'art. 14 de la loi du 12 juillet 1990 codifié sous l'art. L. 563-3 du CMF<sup>47</sup>. Pourtant, l'examen de plusieurs transactions aurait dû légitimement conduire la banque à recueillir des informations complémentaires et à consigner par écrit leurs caractéristiques.

#### Jonathan Aharon

M. Jonathan Aharon est né à Kaboul (Afghanistan) le 14 avril 1954. Il est titulaire d'un passeport israélien délivré en 1991. Bijoutier de son état et résidant aux Etats-Unis, l'intéressé a ouvert un compte de non résident à la BFC-AG le 11 mai 1995 afin d'orienter son activité vers les Antilles et notamment à Sint-Maarten. A l'époque, ce client avait fait savoir qu'il ouvrirait ultérieurement un compte de société mais qu'en attendant, il sollicitait la banque pour l'ouverture d'un compte personnel (compte n° 60.63610.90.)<sup>48</sup>. Le compte de société n'a jamais été ouvert et c'est finalement le compte personnel de l'intéressé qui a servi à enregistrer les opérations commerciales de son fonds de commerce.

Au-delà de cette anomalie, l'Inspection a observé que le compte a fonctionné au crédit quasi exclusivement sous la forme de dépôts espèces, souvent de montants significatifs et sur lesquels la banque n'a sollicité aucune explication sur leur justification économique ou leur provenance. En effet, depuis l'ouverture, les dépôts espèces n'ont cessé de croître sans que ce phénomène ait pu être comparé avec un courant d'affaires précis, faute pour la banque d'avoir recueilli ni d'information comptable sur l'affaire dirigée par son client (le dossier mentionne seulement un chiffre d'affaire annuel de 2 MUSD, sans plus de détail), ni de données patrimoniales sur M. Aharon.

<sup>46</sup> Suite à ce courrier, l'établissement a été contacté par une personne se présentant comme le nouvel ayant droit de la société, lequel souhaitait conserver le compte ouvert au nom de The Money Game ; la banque n'a pas donné suite à cette demande.

<sup>47</sup> Fiches de renseignements portant sur les époux Ortenberg et Mme Courtois (Saint-Barthélemy) et M. Sang Yuet Chong (Saint-Martin).

<sup>48</sup> La banque prétend avoir obtenu de bons renseignements ; rien en tout cas dans le dossier ne permet de l'affirmer. Il y figure tout au plus une lettre de bon standing datée du 4 mai 1995 délivrée par un établissement dénommé EAB (One Rockefeller Plaza, New-York).

Evolution des dépôts espèces sur le compte de M. Aharon depuis 1995	
Année	Montant des dépôts cash, en kUSD
1995	136,7
1996	375
1997	1 102
1998	1 550

Principales opérations concernant le compte personnel de M. Jonathan Aharon n° 60.63610.90				
Date	Nature de l'opération	Montant	Destinataire	Commentaires de l'inspection
<b>Année 1997</b>				
7 mars	Versements cash	108,5 kUSD		2 versements fractionnés le même jour
7 mars	Ibid.	39,6 kUSD		
4 avril	Ibid.	152 kUSD		Ibid.
4 avril	Ibid.	14,6 kUSD		
15 mai	Ibid.	122,4 kUSD		
16 mai	Ibid.	48,3 kUSD		
27 juin	Ibid.	101,7 kUSD		
<b>Année 1998</b>				
5 janvier	Versement cash	153,8 kUSD		
5 février	Ibid.	131 kUSD		
6 mars	Ibid.	204,5 kUSD		Le 11 mars, un virement de 162,7 kUSD est effectué en faveur de <i>Techni Gold</i> , vraisemblablement un fournisseur.
2 avril	Ibid.	110,5 kUSD		
3 avril	Ibid.	121 kUSD		
7 mai	Ibid.	134,9 kUSD		
3 novembre	Ibid.	110 kUSD		Versement effectué par un dénommé Moshe Hakimi sur lequel le dossier ne contient aucune information. Le surlendemain de cette opération, 109,7 kUSD sont virés en faveur de Tavuk Hakimi.
10 novembre	Ibid.	195 kUSD		Dépôts espèces également effectué par le dénommé Moshe Hakimi suivi quelques jours plus tard d'un virement de 125,6 kUSD au bénéfice de Tavuz Hakimi.
<b>Année 1999</b>				
22 février	Versement cash	110 kUSD		
31 mars	Ibid.	110 kUSD		

On ajoutera que le compte de l'intéressé -dont le solde était au 1<sup>er</sup> novembre 2001 de 113.725 USD- n'enregistre plus aucun mouvement depuis mars 1999, c'est-à-dire depuis les versements en espèces décrits supra (cf. annexe 11); seuls les frais de tenue de compte continuent à être prélevés.

**Aira Corp. Ltd**

Aira Corp. Ltd est une société patrimoniale immatriculée à Tortola (îles vierges britanniques) depuis avril 1999. Cette affaire est administrée par une autre société (Chartwell Managers Ltd) et serait la propriété d'un dénommé Serge Ubelmann.

C'est en 1999 que cette société a ouvert un compte sur les livres de la BFC-AG et dont le fonctionnement appelle de sérieuses réserves. Dès l'entrée en relation en effet, la BFC-AG a établi un chèque de banque de 585 kF au profit d'un dénommé Jean-Marie Buisson, opération qui a rendu le compte débiteur entre le 27 avril 1999 et le 1<sup>er</sup> février 2000. Mais ce sont surtout plusieurs versements espèces qui suscitent des interrogations. 4 versements cash pour un total de 2,7 MF ont été réalisés en 2000, dont un de 1,1 MF le 30 août<sup>49</sup>. Ces sommes sont conservées en compte à vue et ne font l'objet d'aucun placement. Selon la BFC-AG, il s'agirait de dividendes perçus par M. Ubelmann, actionnaire par ailleurs d'un négoce d'alimentation générale à Saint-Martin (US Import).

Or, en l'état actuel du dossier et des informations de la banque, il n'est pas possible d'établir que ces dépôts d'espèces sont en relation directe avec l'activité de négoce susmentionnée ou à tout le moins avec celle de Aira Corp. Ce compte aurait du être placé sous surveillance rapprochée.

**Love et Milan Mahtani**

Le 9 avril 2001, la BFC-AG a reçu une réquisition judiciaire du SRPJ des Antilles-Guyane (antenne de Saint-Martin) établie en vertu d'une note délivrée le 30 novembre 2000 par le procureur de la République de Basse-Terre dans une affaire de blanchiment et d'abus de biens sociaux. Les autorités de police souhaitent obtenir notamment un ensemble de pièces concernant le compte n° 70136.90 (compte joint aux noms de Milan et Love Mahtani, bijoutiers résidant en partie hollandaise) ouvert sur les livres de la BFC-AG (coordonnées du titulaire, cartons de signatures, relevés bancaires).

Dans sa réponse en date du 27 juillet 2001, la banque indiquait aux autorités de police qu'elle n'était pas en mesure de fournir les copies des cartons de signature relatives au compte susmentionné, le dossier, archivé à Pointe-à-Pitre depuis 1997, restant introuvable. Les relevés de compte du client ont en revanche été fournis.

<sup>49</sup> 400 kF le 17 mars, 350 et 500 kF le 12 avril, 1,1 MF le 30 août, 350 kF le 1<sup>er</sup> septembre.

De l'examen de ces documents, il ressort que de très nombreux versements en espèces ont alimenté le compte entre 1991 et 1996 pour un total de plus de 1,8 MUSD ; plusieurs dépôts cash ont dépassé 150 kEUR (soit 1 MFRF)<sup>50</sup>. La banque n'a pas été en mesure de fournir à l'Inspection d'explications sur ces transactions ni sur une éventuelle déclaration à Tracfin<sup>51</sup>. Ce dossier aurait du, à tout le moins, faire l'objet à l'époque d'une surveillance rapprochée dans le cadre de l'art. L. 563-3.

**Sunita Mahtani**

Sunita Mahtani -dont le dossier reste introuvable- a réalisé de nombreux versements en espèces sur son compte en dollars ouvert à la BFC-AG. En effet, en 1999, l'intéressé a versé plus de 1,9 MUSD et en 2000 plus de 1,3 MUSD (dont plusieurs versements supérieurs à 100 kUSD ; cf. tableau ci-après). La plupart de ces sommes ont ensuite donné lieu soit à des virements -en faveur du client dans une autre banque ou au profit de tiers-, soit à des placements sous forme de dépôts à terme, soit enfin à l'établissement de chèques de banque au nom de Sunita Mahtani. En revanche, il est curieux de constater que tout au long de l'année 2001, le compte n'a enregistré que des versements espèces de montant modeste. Outre le fait que ce compte de particulier a fonctionné comme un compte commercial (M. Mahtani dirigerait un commerce d'électronique), les transactions particulièrement importantes n'ont pas fait l'objet d'une demande d'explications complémentaires, notamment sur l'origine des fonds et à la consignation, par écrit de leurs caractéristiques. Il est à ce propos impératif que la banque remette la main sur ce dossier et qu'elle se livre de manière urgente à une analyse des flux observés et du courant d'affaire de son client et en tout état de cause qu'elle procède à l'ouverture d'un dossier de surveillance.

Versements espèces les plus remarquables effectués par Sunita Mahtani		
Date	Montant	Commentaires
28 décembre 1999	212 kUSD	Versements effectués le même jour mais en 2 tranches
20 juillet 2000	93 kUSD	
25 juillet	152 kUSD	
11 septembre	152 kUSD	Plusieurs versements le même jour dont un de 149 kUSD
20 novembre	119 kUSD	
4 décembre	90 kUSD	
2 janvier 2001	130 kUSD	

Les sommes sont arrondies au millier de dollar

<sup>50</sup> 238 kUSD le 16/12/91 ; 264 kUSD le 17/12/92 ; 269 kUSD le 22/12/93 ; 185 kUSD le 19/12/94.

<sup>51</sup> Les déclarations de soupçon antérieures à 1996 ne seraient plus disponibles au siège de Pointe-à-Pitre.

### Very Oro Inc.

Le dossier de Very Oro Inc. présente des caractéristiques semblables. Il s'agit d'une société de droit américain gérée par un dénommé Moris Beraha, né en Turquie, et dont l'objet social est l'activité de grossiste en bijoux à l'intérieur des Caraïbes. Un compte en dollar n° 60.63529.90.40 a été ouvert en 1995 pour recueillir le chiffre d'affaire de la société déposé à Saint-Martin. Dans un message daté du 29 janvier 2001, la directrice des agences de la BFC-AG a interrogé le gestionnaire du dossier en vue d'obtenir des explications sur les importants dépôts en espèces observés sur le compte susmentionné et sur l'identité du « PDG », inconnue de la banque. Il était également réclamé le certificat d'immatriculation ainsi que des éléments comptables les plus récents, le dernier bilan fourni datant de 1994<sup>52</sup> (annexe 12). Faute d'avoir pu obtenir d'explications suffisantes, l'agence a décidé en octobre 2001 qu'elle n'accepterait plus aucun versement espèces sans justificatif de la provenance des fonds. Il est vrai que le compte de Very Oro ne fonctionne que comme une boîte aux lettres, les sommes portées au crédit, le plus souvent en espèces, étant ensuite immédiatement transférées aux USA.

La réaction de la banque apparaît ici tout à fait opportune, mais une fois de plus, force est de constater qu'elle intervient bien tard. Selon le gestionnaire du dossier, le compte fonctionnerait de la sorte depuis l'origine (1995), ce qui montre le peu de suivi dont il a fait l'objet de la part de la hiérarchie (annexe 12 bis). L'inspection n'a pas été en mesure d'analyser les transactions de Very Oro depuis 1995 mais un sondage effectué entre janvier 1999 et octobre 2001 permet de chiffrer à plus de 4 MUSD les dépôts effectués en espèces par cette société. En tout état de cause, aucun dossier de renseignements n'a été constitué dans cette affaire sur la base de l'art. L. 563-3 du CMF.

#### 3.2.1.3. Opérations suspectes déclarées tardivement à Tracfin et/ou de manière incomplète

Le présent rapport a déjà cité au § 2-2-2, des cas de déclarations de soupçon faites tardivement et de manière incomplète. Il est donc inutile de les rappeler ici. Deux autres exemples méritent toutefois d'être rapportés ; ils concernent cette fois un changeur manuel de la place, la sarl Cozeg, et M. Erb, ancien directeur de l'agence de la BFC-AG de Saint-Martin.

### Sarl Cozeg

Le 15 septembre 1999, la BFC-AG adresse un courrier à M. Zegnani, gérant de la sarl Cozeg, lui notifiant qu'à compter du 29 septembre, la banque cesserait toute relation au motif que les modalités de fonctionnement de ses comptes ne correspondaient pas à son activité commerciale de changeur manuel.

Il est vrai que depuis plusieurs années, le compte de la société a fonctionné de manière curieuse sans que cela suscite de la part de la banque la moindre investigation approfondie. Ainsi par exemple, la société avait coutume de changer une partie de ses francs contre dollars à Sint-Maarten (en partie hollandaise). Cette opération était réalisée en espèces aux guichets de ABN-AMRO à Philipsburg. Une fois converties en USD, les sommes étaient portées, à la demande de Cozeg, au crédit du compte de correspondant de la BFC-AG ouvert chez ABN.

<sup>52</sup> Un bilan a été fourni en février 2001 portant sur le premier semestre 2000.

De retour à Saint-Martin, Cozeg avisait la BFC-AG que son compte de correspondant en Hollande avait été crédité d'une certaine somme. Comptablement, l'opération se dénouait alors par le débit du compte de correspondant de la BFC-AG (à Sint-Maarten) et par le crédit du compte de Cozeg ouvert à Saint-Martin. Les sommes étaient ensuite très souvent retirées en liquide au guichet de la BFC-AG.

La banque n'a pas été en mesure de préciser à l'Inspection pendant combien de temps cette pratique complexe, dont la justification économique n'est pas apparente, a été tolérée. Quoi qu'il en soit, les sondages effectués par la présente mission ont permis de chiffrer à plus de 800 kUSD sur 5 mois (entre août et décembre 1998) les sommes ayant emprunté ce circuit (dans le tableau suivant, on relèvera en particulier un versement cash de 200 kUSD effectué le 24 décembre 1998).

31 août	80 kUSD
25 septembre	80 kUSD
12 octobre	50 kUSD
7 décembre	100 kUSD
10 novembre	90 kUSD
22 décembre	50 kUSD
24 décembre	200 kUSD

Un autre événement, tout aussi singulier, mérite d'être rapporté. Le 17 décembre 1996, la Sarl Cozeg a procédé à une augmentation de capital. Cette opération s'est fait sous la forme d'un versement espèces de 1 million de francs opéré non pas par Cozeg directement mais par la Sarl ISO, société gérée également par M. Zegnani et dont on ignore l'actionariat (cf. annexe 13 et 13 bis). Pour justifier la provenance des fonds, M. Zegnani avait produit à l'époque, ce qui apparaît très insuffisant aux yeux de l'Inspection :

- copie d'une convention d'un prêt de 600 kUSD signée à Genève le 31 octobre 1996 entre la société Sibolnay Investment SA (société de droit panaméen implantée en Suisse) et la Sarl Iso (spécialisée dans l'administration d'entreprises) ;
- copie d'une lettre de garantie émise le 19 novembre 1996 par la Banque Scandinave en Suisse en faveur de ABN-AMRO à Sint-Maarten, à concurrence de 600 kUSD pour le compte de la Sarl Iso.

Au total, bien que ces différentes opérations auraient dû attirer la vigilance et éveiller les soupçons notamment en raison de leur complexité inexplicée, la BFC-AG attendra le 25 août 2000 pour procéder à une déclaration de soupçon<sup>53</sup> sur plusieurs entités dirigées par M. Zegnani, diligence au surplus incomplète car elle ne mentionne pas les opérations décrites plus haut faites depuis la partie hollandaise (cf. annexe 13 ter).

On indiquera pour terminer que la BFC-AG a décidé fin 1999/début 2000 de ne plus commercer avec les changeurs manuels de la place, en raison des risques sous-jacents.

<sup>53</sup> Déclaration n° 00-02.

Philippe ERB

Philippe ERB est l'ancien directeur de Groupe des îles du Nord de la BFC-AG et de l'agence de Martinique. Certains de ses comptes seraient aujourd'hui au contentieux à la demande du Groupe de Martinique. L'intéressé est toujours titulaire de deux comptes actifs – en dollars et en francs- sur les livres de l'agence de Saint-Martin.

Selon les renseignements collectés par l'Inspection, M. Erb serait en relation d'affaires avec un dénommé Thierry Elie-Mantout, dont une des sociétés -Erié Ltd- a fait l'objet d'une déclaration de soupçon le 24 octobre 2001 à l'initiative de la BFC-AG<sup>54</sup>. L'examen du compte de M. Erb ne laisse aucun doute quant à l'existence de flux financiers entre ces deux protagonistes comme le montre le tableau suivant.

La déclaration à Tracfin concernant M. Elie-Mantout n'a pas visé M. Erb alors pourtant que leurs possibles relations communes avec des activités criminelles organisées ont été évoquées au niveau de la direction de l'agence. A tout le moins, l'importance des versements espèces opérés sur le compte de M. et Mme Erb, dont les montants ne paraissent pas en relation avec les activités connues des intéressés, auraient dû attirer l'attention<sup>55</sup>.

Flux financiers entre le groupe Elie-Mantout et M. Philippe Erb (données extraites du compte commercial joint de M. et Mme Erb, n° 18666 et du compte simple de M. Erb n° 10130)				
Date	Nature de l'opération	montant	Bénéficiaire	Commentaires de l'Inspection
15/03/00	virement	675 kF	SCCV Albatros	Cette société est en relation d'affaires avec M. Elie-Mantout.
20/06/00	virement	200 kF	M. Erb	Virement en provenance de la société Dimitri dont M. Elie-Mantout possède 50 % du capital.
20/06/00	virement	166 kF	M. Erb	Virement en provenance de Ditura Overseas Ltd, société off-shore (Névis) appartenant à M. Elie-Mantout.
27/06/00	virement	50 kF	M. Erb	Virement effectué par Erié Ltd, société off-shore appartenant à 100% à M. Elie-Mantout et qui a fait l'objet de la déclaration de soupçon n° 01-03.
18/07/00	virement	135 kF	Erié Ltd	Opération réalisée par M. Erb en faveur de la société sur laquelle porte la déclaration de soupçon n° 01-03 susmentionnée.
24/11/00	virement	400 kF	M. Erb	Virement effectué par la CSI Chandy, dont le capital appartient à 90% par M. Elie-Mantout.
4/12/00	virement	190 kF	M. Erb	Ibidem.
12/01/01	virement	18 kF	M. Erb	Virement en provenance de Erié Ltd.

<sup>54</sup> Déclaration n° 01-03

<sup>55</sup> Un compte rendu confidentiel rédigé par le directeur de l'agence de la BFC-AG le 9 août 2001 indique que ces deux personnes -et d'autres- « semblent œuvrer de manière plus ou moins directe avec/ou pour la pègre (voire le grand banditisme) de la Corse et du Sud-est de la France ».



### 3.2.2. Une politique de supervision insuffisante

Si, au sein de l'agence, les contrôles au quotidien ont été à de nombreux égards défailants, la supervision à l'échelle du groupe apparaît de son côté très largement perfectible. Les faiblesses observées concernent à la fois les outils de contrôle mis en place et l'insuffisante prise en compte du risque blanchiment au sein des missions de contrôle sur place.

#### 3.2.2.1. Des outils de contrôle inadaptés

Le groupe BFC-AG a apporté, il est vrai, un certain nombre d'amélioration à ses outils de contrôle au cours du premier semestre 2001. C'est ainsi que les seuils de détection des opérations remarquables ont été abaissés de 50 kF à 45 kF et de 1MF à 750 kF dans le suivi informatique quotidien des opérations sous surveillance. En revanche, il n'existe pas encore à ce jour d'instrument statistique permettant d'examiner *ex post et en cumul mensuel* voire trimestriel, les opérations d'un client donné. Il s'agit là d'une faiblesse importante qu'il conviendrait de combler rapidement.

#### 3.2.2.2. Le blanchiment : un risque pris en compte tardivement

Comme le montre le tableau suivant, aucune des missions de contrôle sur place diligentées à Saint-Martin et à Saint-Barthélemy depuis 1993 n'a examiné le dispositif de lutte contre le blanchiment et les risques résultant de sa non-application, en dépit des caractéristiques du contexte local. Certes, une mission d'enquête consacrée aux services administratifs et comptables avait pressenti le risque en recommandant que les contrôles soient renforcés sur « *les ouvertures de comptes de manière à mieux contrôler la connaissance du client et de ses activités* »<sup>56</sup> ; cette observation de bon sens n'a pourtant pas été suivie d'effet. Il faudra attendre la fin de l'année 2000 pour qu'enfin l'inspection interne se penche sur cette question.

#### Listes des inspections internes réalisées à Saint-Martin

Date	Thème de l'enquête
29/09 au 17/12/93	Audit Risques de crédit (Rapport de M. Imbert)
20-24/03 1995	Contrôles des risques aux Iles du Nord
27/06 au 10/07 1995	Piqûre de rappel suite à l'enquête Imbert (rapport de M. Lestang)
24-25/07 1995	Audit contentieux aux îles du Nord
17/07 au 21/11 1996	Revue du portefeuille des engagements (rapport de M. Jouannais)
7/10 au 15/11 1996	Audit des services administratifs et comptables + mise en place et suivi des engagements (Rapport de M. Jouannais)
novembre 2000	Enquête CAI sur le service des engagements et sur le blanchiment (1 <sup>ère</sup> approche du genre).

<sup>56</sup> Rapport de M. Jouannais, mission du 7 octobre au 15 novembre 1996, p. 57.

MINISTÈRE DE L'INTÉRIEUR

RÉPUBLIQUE FRANÇAISE

DIRECTION GÉNÉRALE  
DE LA POLICE NATIONALE

DIRECTION CENTRALE  
DE LA POLICE JUDICIAIRE

WEST INDIES-GUYANA  
SERVICE RÉGIONAL  
DE POLICE JUDICIAIRE

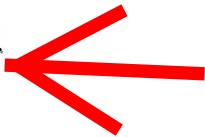
Saint Martin, May 14, 2003

Saint Martin Saint Barth Branch  
Tel 05 90 29 08 40  
Fax 05 90 29 20 24

Police Lieutenant Sylvain NICOLAS  
to  
The DIRECTOR of the West Indies-Guyana SRPJ  
Under cover of the chain of command

**RE:** Money laundering, financing of terrorist activities, offences under legislation respecting illicit drugs and foreigners.  
**MATTER:** Against YUSUF Fathi et al

**REFERENCES:** Requests for assistance from the U.S. Department of Justice, Instructions from the Crown Prosecutor for the *Tribunal de Grande Instance de Basse-Terre*.



**ATTACHMENTS:** Procedure No. 2002/078 including the original and a true copy of 48 reports and 37 exhibits.

I am pleased to send you the attached procedure, prepared according to your instructions by the Saint Martin Judicial Police Branch in connection with the above referred-to matter:

✓  
D-1

### THE FACTS

On January 23, 2002, Mary Ellen Warlow, Director, Office of International Affairs, U.S. Department of Justice, sent France a request for assistance in connection with an investigation conducted into FATHI YUSUF and consorts.

The American judicial authorities were conducting an investigation to determine whether Fathi YUSUF and his accomplices were trafficking U.S. currency, laundering profits from illegal drug trafficking and trafficking illegal immigrants.

Also, the persons committing these offences, who might be supporting terrorist activities, had opened several bank accounts with the Saint Martin branch of the Banque Française Commerciale.

The American authorities asked for the following:

- copies of all documents from the Banque Française Commerciale (B.F.C.) regarding accounts No. 40606387790, 40606387890 and 40606388790.
- copies of all accounts with the Banque Française Commerciale opened by Waheed Mohamad Hamed, Fathi Yusuf, Waleed Mohamad Hamed and the companies Hamdam Diamond Corporation and Plaza Extra Supermarkets.
- copies of all documents authorizing the opening of the aforementioned accounts.
- testimony by bank employees or any other person of interest to the ongoing investigation.
- from the French police, proof that the subsequent transfers had taken place between the U.S. Virgin Islands, Saint Martin and Jordan.

### THE INVESTIGATION

Our investigations and hearings allowed us to determine that:

#### **1/ WITH RESPECT TO THE BANK ACCOUNTS OPENED:**

The different bank requisitions sent to the Saint Martin branch of the Banque Française Commerciale (BFC) allowed us to determine that:

- **Euro account No. 60201869000** was opened in the name of YOUSUF Isam (trade name: Island Appliances) on February 13, 1995.

The attached documents were:

- the signature card for accounts No. 63541(dollars) and 20186 (francs) opened on February 13, 1995.
- a copy of the passport of ISAM MOHAMAD YOUSUF born on February 20, 1952 in Jordan.
- a copy of a portfolio transfer sheet (accounts No. 60201869000: YOUSUF ISAM and No. 6063541 9040: "Island Appliances").
- a copy of a transfer order dated February 13, 1997 for an amount of \$2,000,000 from account No. 406063541/90 from ISAM YOUSUF in favor of Sixteen Plus Corporation, St. Thomas, Tel.: 809 775 5646 (account No. 058 00039411, drawn on the Bank of Nova Scotia, Sunny Isle Branch, P.O. Box 773, St. Croix, US).
- a copy of a transfer order dated March 11, 2002 in an amount of \$25,000 (USD) from account No. 40606354190 from Island Appliances in favor of ISAM YOUSUF residing on Garden Street, Amman, Jordan (account No. 0250317114200 drawn on the Cairo Amman Bank (Jordan), swift code: CAAB JO AM).
- a copy of a cancelled transfer order dated 10/07/1998 from ISAM Yousuf in favor of AYED YOUSEF (amount: \$300,000 (USD)).
- various documents (statement of account information, information about accounts No. 6020186, 0107026 and 6021266 and various correspondence).
- handwritten correspondence from Alexandre GUMBS dated July 22, 1996 regarding accounts No. 60 63877, 60 63541, 63878 and 60 63830.

Note that this account was not used very extensively and was closed on March 22, 2002.

- **Dollar account No. 60635419040** was opened in the name of YOUSUF Isam (trade name: Island Appliances) on February 13, 1995:

The attached documents were:

- ID card No. 31570 issued by Sint Maarten on September 27, 1999 in the name of YOUSUF Isam Mohamad.
- a U.S. passport issued on September 11, 1986 in the name of YOUSUF Isam Mohamad.
- Account statements mentioning several large cash transfers:
  - \*this account was credited \$8,782,962 (USD) on 04/19/2002.
  - \*this account was debited \$8,859,094 (USD) on 04/19/2002.
- Various documents relating to term account No. 40 60 63541 91 held by YOUSUF ISSA ISLAND APPLIANCE,

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12 Canegeter Road Pondfill, Philipsburg, 99 000 Sint Maarten drawn on the Banque Française Commerciale.

This account was closed on March 27, 2002.

- **Dollar account No. 60638779040** was opened in the name of YUSUF Fathi on June 10, 1996.

The account agents were YOUSUF Fathi and HAMED Waleed.

This account was closed on September 4, 2000.

- **Dollar account No. 60638789040** was opened in the name of HAMED Waleed on June 10, 1996.

The attached documents were:

- a copy of passport No. 043576417 issued on September 8, 1992 in the name of HAMED Waleed Mohammad born on January 22, 1962 in Jordan, an American national.

- a copy of the signature card indicating that the agents for this account were HAMED Waleed and YOUSUF Fathi.

- statements (Exhibit 9) for account No. 40606387890 held by HAMED Waleed.

This account was credited with several cash deposits.

- **Dollar account No. 60638879040** was opened in the name of Hamdam Diamond Corporation on June 26, 1996. (Exhibit 8).

The attached documents were:

- a copy of the signature card indicating that the agents for this account were YOUSUF Fathi, HAMED Waleed and ISAM Mohamad, Yousuf. The manager of Hamdam Diamond Corporation was Fathi Yusuf MOHAMAD YUSUF.

- a copy of U.S. passport No. 043377662 issued on February 10, 1992 in Miami in the name of Fathi Yusuf MOHAMAD YUSUF.

- five documents relating to contracts between the BFC bank and YUSUF FATHI, the off-shore company HAMDAM DIAMOND CORPORATION, HAMED WALEED (manager of the Plaza Extra Supermarket) and the Dutch company TED DOOR SPECIALITY.

- a copy of the U.S. passports for MOHAMAD YUSUF Fathi Yusuf born on April 15, 1941 in Jordan, HAMED WALEED MOHAMMAD born on January 22, 1962 in Jordan, and ISAM MOHAMAD YOUSUF born on February 20, 1952 in Jordan.

- various correspondence (correspondence from HWANG Antoine addressed to Mr. FAURE (BFC General Inspection Department) dated August 24, 2000 stating that he had been asked by client Walled HAMED personally (40606387890) and on behalf of Hamdam Diamond Corporation (40 606388790) to transfer respectively US\$1,100.00 (*sic*) and US\$1,173,000 to Cairo Amman Bank in Amman, Jordan (a copy of three cheques payable to Walled Hamed drawn on the Banque Française Commerciale, held by Hamdam Diamond Corporation, YUSUF FATHI

and Hamed Waleed. These cheques dated August 11, 1996 are for amounts of US\$2,000,000, US\$400,000 and US\$400,000 respectively).

-a handwritten note by Mr. GUMBS commenting on the opening of the account.

-a copy of the statements for account No. 40 60 63887 90 with the Banque Française Commerciale held by Hamdam Diamond Corporation, 12 Cannegieter Road, Sint Maarten c/o ISAM YOUSUF for the period from June 26, 1996 to April 19, 2002.

Several cash deposits were credited to this account.

This account was closed on February 5, 2002.

- **Euro account No. 60193579000** opened in the name of the company "Liteline Electrical N.V." in April 1994 and having as agents EL-YOUSEL Yousef, Ahmad and AL-YOUSEF Ghassan, Almad. This account was closed on June 11, 2002
- **Dollar account No. 60633639040** opened in the name of the company Liteline Electrical N.V. on April 20, 1994. This account was closed on June 11, 2002.
- **Franc account No. 60209679000** opened in the name of the company "Ted Door Spéciality" on March 25, 1997 and having as agent SALEH Yacoub Yousef. This account was closed on December 16, 1999.
- **Dollar account No. 60638309040** opened in the name of the company "Ted Door Spéciality" on April, 16 1996 and having as agent SALEH Yacoub Yousef. This account was closed on December 16, 1999.
- **Franc account No. 60224869000** opened in the name of the company "Middle East Group N.V." (trade name: Ace Home Center) on February 16, 1998 and having as agents YOUSEF Ahmad, El Yousef and GHASSAN A AL-YOUSEF. This account was closed on October 2, 2000.
- **Dollar account No. 60643529040** opened in the name of the company "Middle East Group N.V." (trade name: Ace home Center) on February 16, 1996 and having as agents YOUSEF Ahmad El Yousef and GHASSAN A Al-Yousef. This account was closed on September 15, 2000.
- **Euro account No. 60226719000** opened in the name of the company Middle East Group N.V. (trade name: Penguin Air Condition)

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on April 29, 1998 and having as agents EL-YOUSEF Yousef Almad and GHASSAN A AL-Yousef.

This account was closed on April 18, 2002.

- **Dollar account No. 60644129040** opened in the name of company "Middle East Group N.V." (trade name: Penguin Air Condition) on April 29, 1998 and having as agents EL-YOUSEF Yousef Almad and GHASSAN A AL-Yousef.

This account was closed on April 18, 2002.

## 2/ WITH RESPECT TO OUR FINDINGS:

The examination of the account statements and attached documents made it possible to determine that:

- The holders of the above-mentioned accounts are American nationals, although they were born in Jordan and Kuwait.
- Fathi YUSUF and his friends deposited several million dollars (USD) in accounts opened at the Banque Française Commerciale (BFC).
- These deposits, essentially consisting of cash deposits, seem out of proportion with the activities of Hamdam Diamond Corporation (an off-shore company registered in Anguilla and run by Mohamad Fathi Yusuf), Middle East Group N.V. (a company set up in Sint Maarten which is run by Youssef Hamad El Youssef and Ghassan Ahmad Mohammed Al Youssef), Island Appliances N.V. (a company set up in Sint Maarten).
- Many transfers were made in favor of bank accounts located in Jordan, Kuwait and the United States:
  - Hamed Waleed Mohamed, holder of account No. 60 63878.90, transferred several million dollars to his bank account with Cairo Ammam Bank in Jordan.
  - Hamdam Diamond Corporation, the holder of account No. 60 63887 90, transferred in favor of Hamed Waleed Mohamed over three million dollars to his bank account with Cairo Ammam Bank in Jordan.
  - Isam Mohamad Youssuf, holder of account No. 6063541 90, transferred to his account with Cairo Ammam Bank in Jordan (\$1,400,000 in 1996) in favor of Sixteen Plus Corporation in the U.S. Virgin Islands which has an account with [the Bank of] Nova Scotia (\$2,000,000 dollars in 1997), in favor of Mohamad Abdel Qader Hamed, holder of a bank account with the Arab Bank in Israel (\$220,000 in 1998) and in favor of Ayed Youssef, holder of an account with Winward Island Bank in Sint Maarten.

- Al Yousef Sami Al Yousef, holder of account No. 60 64137.90, transferred over \$660,000 in favor of Ahmad Yousef Mohamad (holder of an account with Cairo Ammam Bank in Jordan).
- Middle East Group N.V., holder of account No. 606441290, transferred a large sum of money in favor of Hamad Youssef Mohammad, Atef Khalil Al Aswad, Riad Ahmad Attar and Aca Hardware Corporation, the head office of which is in Illinois (United States).
- Yusuf Fathi and members of his family run United Corporation registered on the Island of St. Croix (U.S. Virgin Islands), under the trade name "Plaza Extra".
- In September 2001, Yusuf Fathi was found guilty by U.S. courts of having employed foreigners in an irregular situation.
- The American judicial authorities were noticing significant differences between the actual activity of supermarkets run by Yusuf Fathi and the very large cash deposits made to accounts opened with the Bank of Nova Scotia. During a search and seizure carried out in the supermarkets and at the homes of Yusuf Fathi and his sons, the Federal Bureau of Investigation (FBI) seized documents mentioning the opening of several accounts with the Saint Martin branch of the Banque Française Commerciale.
- Investigations conducted by the FICOPA cell regarding YUSUF Fathi, WALEED Mohammad Hamed, Hamdam Diamond Corporation and United Corporation were remaining unsuccessful.

### 3) WITH RESPECT TO THE TESTIMONY

Several employees of the Banque Française Commerciale branch testified:

#### a) Alexandre GUMBS:

Heard at the border police offices at Saint Barthélemy, Alexandre GUMBS declared that:

- From 1994 to December 1999, he was a business adviser at the Marigot branch of the Banque Française Commerciale in Saint Martin.
- He had opened accounts No. 60201869000, 60635419040, 60638779040, 60638789040 and 60638879040 held by YOUSUF Isam (euro and dollar account), YOUSUF Fathi, HAMED Waleed and Hamdam Diamond Corporation respectively.



- He had been contacted in 1994 by YOUSUF Isam, who wanted to open an account with the BFC.
- He had prepared and sent a report to management on the potential clients and management would allow or not allow the account to be opened.
- YOUSUF Isam owned the Home Appliances store located in Sint Maarten.
- Later, YOUSUF Isam introduced his uncle, YOUSUF Fathi, who was accompanied by his son-in-law, HAMED Waleed.
- Over the years, he had prepared reports pointing out the unusual manner in which the various bank accounts were operated.
- Several suspicious activity reports were sent to T.R.A.C.F.I.N. because there was no logical explanation for these movements of money between the Virgin Islands, Jordan and Saint Martin.

**b) Liliane PAGE:**

Heard at our offices, Liliane PAGE declared that:

- She was in charge of the branches of the Banque Française Commerciale in the northern islands.
- The current manager of the Saint Martin branch of the Banque Française Commerciale is Christophe LASSUS-LALANE and his predecessor was Philippe ERB.
- She confirmed the statements made by Alexandre GUMBS.
- The Banque Française Commerciale had opened accounts No. 60201869000, 60635419040, 60638779040, 60638789040 and 60638879040, the respective holders of which were YOUSUF Isam (euro and dollar account), YOUSUF Fathi, HAMED Waleed and Hamdam Diamond Corporation.
- Several suspicious activity reports were sent to T.R.A.C.F.I.N. since there was no logical explanation for these movements of money between the Virgin Islands, Jordan and Saint Martin.
- The BFC had decided to close these accounts in 2001 and 2002 since the banking commission had warned us that the holders might have been supporting terrorists.

**c) Christophe LASSUS LALANE:**

Heard at our offices, Christophe LASSUS LALANE declared that:

- He was the current manager of the Saint Martin branch of the Banque Française Commerciale and his predecessor was Philippe ERB.
- He confirmed the statements made by Liliane PAGE.

- The Banque Française Commerciale had opened accounts No. 60201869000, 60635419040, 60638779040, 60638789040 and 60638879040, the respective holders of which were YOUSUF Isam (euro and dollar account), YOUSUF Fathi, HAMED Waleed and Hamdam Diamond Corporation.
- Several suspicious activity reports were sent to T.R.A.C.F.I.N. since there was no logical explanation for these movements of money between the Virgin Islands, Jordan and Saint Martin.
- Until 2001, the BFC sent our General Inspection Department a copy of the transactions which it considered suspicious.
- The BFC had decided to close these accounts in 2001 and 2002 since the banking commission had warned the BFC that the holders might have been supporting terrorists. Also, the BFC had noticed that the holders were not updating all their files and that there were tremendous differences between the substantial deposits and the balance sheets provided in 2002.
- In 1998 and 2001, the BFC had not received any response or request for information from T.R.A.C.F.I.N.

**d) Philippe ERB:**

Heard in our offices, Philippe ERB declared that:

- He was the manager of the Saint Martin branch of the Banque Française Commerciale from 1993 to 1997.
- He confirmed the statements by Liliane PAGE and Mr. LASSUS LALANE, the current manager of the Saint Martin branch of the BFC.
- The Banque Française Commerciale had opened accounts No. 60201869000, 60635419040, 60638779040, 60638789040 and 60638879040, the respective holders of which were YOUSUF Isam (euro and dollar account), YOUSUF Fathi, HAMED Waleed and Hamdam Diamond Corporation.
- YOUSUF Fathi had said that he owned supermarkets on the Islands of St. Croix and St. Thomas (U.S. Virgin Islands).
- There was no safe at the Saint Martin branch of the BFC.
- More specifically, the main counter looked after customers or security guards who came to deposit substantial amounts of money.
- It was also possible to deposit cash at night through the night deposit system.
- Several suspicious activity reports were sent to T.R.A.C.F.I.N. since there was no logical explanation for these movements of money between the Virgin Islands, Jordan and Saint Martin.
- Accompanied by Mr. GUMBS, he had met with two officers from these companies but he did not remember who they were and would have been unable to recognize them if they were shown to him.
- He helped the police by providing them with all the information they asked for.

Identities of individuals and companies:**YOUSUF Isam.**

YOUSUF Isam, living at Pondfill, 12 Cannegeter Road, Philipsburg, Sint Maarten, an American national.

ISAM MOHAMAD YOUSUF, born in Jordan on February 20, 1952.

YOUSUF Isam Mohamad held ID card No. 31570 issued by Sint Maarten on September 27, 1999.

YOUSUF Isam Mohamad also held an American passport issued on September 11, 1986.

**Sixteen Plus Corporation**, St. Thomas, Tel.: 809 775 5646 (account No. 058 00039411 with the Bank of Nova Scotia, Sunny Isle Branch, P.O. Box 773, St. Croix, US).

ISAM YOUSUF was also domiciled at Garden Street, Amman, Jordan (account No. 0250317114200 with the Cairo Amman Bank, Jordan, swift code CAAB JO AM).

**HAMED Waleed Mohammad**, born on January 22, 1962 in Jordan, is an American national and the holder of passport No. 043576417 issued on September 8, 1992.

**Hamdam Diamond Corporation**

The manager of Hamdam Diamond Corporation was Fathi Yusuf MOHAMAD YUSUF, the holder of American passport No. 043377662 issued on February 10, 1992 in Miami.

The head office of HAMDAM DIAMOND CORPORATION is P.O. BOX 174, Airport Road, The Valley Anguilla (off-shore company), and its officer is YUSUF FATHI MOHAMAD born on 04/15/1941.

**MOHAMAD YUSUF Fathi Yusuf**, born on April 15, 1941 in Jordan.

**HAMED WALEED MOHAMMAD**, born on January 22, 1962 in Jordan.

**AHMAD YOUSEF MOHAMMED YOUSSEF**, holder of account No. 0252017010100 at the Cairo Amman Bank, Garden Branch, Jordan.

**ATEF KHALIL AL ASWAD**, holder of account No. 0213732560301 in Kuwait.

**RIAD AHMAD ATTAR.**

**ACA HADWARE CORPORATION**, the head office of which is in the State of Illinois, USA.

Liteline Electrical N.V., the head office of which is in Sint Maarten and the agents of which are EL-YOUSEL Yousef, Ahmad and AL-YOUSEF Ghassan, Almad.

Ted Door Spéciality, the head office of which is in Sint Maarten and the agent of which is SALEH Yacoub Yousef

Middle East Group N.V. (trade name: Ace Home Center), the agents of which are YOUSEF Ahmad, El Yousef and GHASSAN A AL-YOUSEF.

Middle East Group N.V. (trade name: Penguin Air Condition), the agents of which are EL-YOUSEF Yousef Almad and GHASSAN A AL-Yousef.

Note that the report of a banking commission which conducted a control of the Saint Martin branch of the Banque Française Commerciale in 2001 said that: [Translation]  
"Parliamentary report No. 2311 dated October 10, 2001 mentions a company named "Middle East International Group" domiciled in Switzerland (52 Bahnhof-Strasse, Zurich), the officer of which was Hassan Bin Laden, the brother of Osama Ben Laden".

**Read and sent**  
**The Police Commanding Officer**  
**The Branch Chief**

MINISTÈRE DE L'INTÉRIEUR

RÉPUBLIQUE FRANÇAISE

DIRECTION GÉNÉRALE  
DE LA POLICE NATIONALE**REQUISITION**West Indies-Guyana D.I.P.J.  
Saint Martin Judicial Police BranchThe year two thousand and four  
The seventh of June

PO Box 681 97057 Saint Martin Cedex

Tel: 05 90 29 08 40

Fax: 05 90 29 20 24

We, **Sylvain NICOLAS**  
**Police Lieutenant**  
JUDICIAL POLICE OFFICER

Report No. 2004/007/ter

Serving at the  
Saint Martin Judicial Police Branch

Acting pursuant to and to carry out the instructions of the Crown Prosecutor for Basse-Terre.

With respect to the matter taken against / YUSUF Fathi et al ...

For ...money laundering, financing of terrorist activities, offences under legislation respecting  
illicit drugs and foreigners.Given article 41 of the *Code de Procédure Pénale*.Given article 132.22 of the *Code Pénal*.**WE PRAY AND, AS NEEDED, REQUEST**The Manager of the branch of the Banque Française Commerciale located in Bellevue/Marigot,  
Saint Martin.

to do the following:

Provide us with the following documents:

**\*Account No. 40606388790 opened in the name of Hamdam Diamond****Corporation**

- Cash deposit in the amount of \$250,000 dated 01/08/1996
- Cancelled cheque No. 3633491 in the amount of \$2,000,000 dated 11/08/1996
- Cancelled cheque No. 3633492 in the amount of \$100,000 dated 10/23/1996
- Certified cancelled cheque to the benefit of Waleed Hamed in the amount of \$100,000

dated 02/14/1997

- Cancelled cheque No. 3633493 in the amount of \$150,000 dated 04/21/1998

- Cash deposit in the amount of \$50,000 dated 01/11/2000
- Cash deposit in the amount of \$70,000 dated 01/11/2000
- Cash deposit in the amount of \$80,000 dated 01/13/2000
- Cash deposit in the amount of \$75,000 dated 01/14/2000
- Cash deposit in the amount of \$90,000 dated 01/17/2000
- Cash deposit in the amount of \$65,000 dated 01/18/2000
- Transfer to the benefit of Waleed Mohammad Hamed in the amount of \$1,173,000 dated 08/25/2000 (electronic transfer)
- Cancelled cheque to Hamdan Diamond Corporation dated 02/01/2002

**\*Account No. 40606387790 opened in the name of Fathi YUSUF**

- 8
- Cash deposit note in the amount of \$50,000 (deposit receipt) dated July 16, 1998
  - Copy of cheque No. 3633441 in the amount of \$400,000 dated 04/28/1998

**\*Account No. 40606387890 opened in the name of Waleed HAMED**

- 9
- Cash deposit note in the amount of \$50,000 (deposit receipt) dated July 16, 1996
  - Cheque No. 3633466 in the amount of \$400,000 dated 11/08/1996
  - Cheque No. 3633467 in the amount of \$100,000 dated 10/22/1996
  - Cheque No. 3633469 in the amount of \$75,000
  - Cheque No. 53061 in the amount of \$100,000 dated 01/24/1997
  - Cheque in the amount of \$350,000 dated 02/14/1997

To authenticate all these documents, I am sending you a *Certification of Business Records* to be filled out.

And, as a guarantee for the Manager, we give him a copy hereof containing our seal and signature.

The Police Lieutenant

Read and attached to report No. 2004/007/6

MINISTÈRE DE L'INTÉRIEUR

**DIRECTION GÉNÉRALE  
DE LA POLICE NATIONALE**

**West Indies-Guyana DIPJ  
Saint Martin Judicial Police  
Branch**

Report No. 2004/007/ter/8

**MATTER**

AGAINST YUSUF Fathi et al

Money laundering,  
financing of terrorist activities,  
O.L.I.D., O.L.F.

**REGARDING**

Preliminary investigation

**Report to the Crown Prosecutor**

The year two thousand and four  
The first of July at five o'clock p.m.

**WE:** Sylvain NICOLAS  
Policy Lieutenant  
Serving at the Saint Martin Judicial Police  
Branch

-- Judicial Police Officer residing in Saint Martin, \_\_\_\_\_  
-- Being at the head office of our department, \_\_\_\_\_  
-- Given articles 75 and following of the *Code de Procédure  
Pénale*, \_\_\_\_\_

-- Pursuing the preliminary investigation \_\_\_\_\_  
-- Telephone Patrick QUINCY, Crown Prosecutor for the *TGI de  
Basse-Terre*, and inform him that:

\*Mr. E SAMAR, in charge of the Operations Department  
for the northern islands of the Banque Française Commerciale,  
gave us a copy of the following:

-correspondence dated September 12, 1996 from  
Fathi YUSUF to Alexandre GUMBS, customer adviser for the  
Banque Française Commerciale regarding two cheques No.  
3633441 (US\$400,000) and 3633491 (US\$2,000,000).

-cheque No. 36 33 491 in an amount of two  
million dollars (\$2,000,000) drawn by Hamdam Diamond  
Corporation and payable to Waleed Hamed.

-cheque No. 36 33 441 in an amount of four  
hundred thousand dollars (\$400,000) drawn by YUSUF FATHI and  
payable to Waleed Hamed.

-a transfer request dated 08/24/1990 from  
Hamdam Diamond Corporation (account No. 40606388790)  
payable to Waleed Mohammed Hamed in an amount of one  
million one hundred seventy-three thousand dollars (\$1,173,000).

-a notice relating to the above-mentioned  
transfer.

-a cash deposit in the amount of fifty thousand  
dollars (\$50,000) on account No. 60638879040 opened at the BFC  
in the name of Hamdam Diamond Corporation dated 01/11/2000.

-a cash deposit in an amount of sixty-five thousand  
dollars (\$65,000) on account No. 60638879040 opened with the  
BFC in the name of Hamdam Diamond Corporation dated  
01/18/2000.

- a cash deposit in an amount of ninety thousand dollars (\$90,000) on account No. 60638879040 opened with the BFC in the name of Hamdam Diamond Corporation dated 01/17/2000.

- a cash deposit in an amount of seventy-five thousand dollars (\$75,000) on account No. 60638879040 opened at the BFC in the name of Hamdam Diamond Corporation dated 01/14/2000.

- a cash deposit in an amount of seventy thousand dollars (\$70,000) on account No. 60638879040 opened at the BFC in the name of Hamdam Diamond Corporation dated 01/11/2000.

- a cash deposit in an amount of eighty thousand dollars (\$80,000) on account No. 60638879040 opened at the BFC in the name of Hamdam Diamond Corporation dated 01/13/2000.

-a transfer request dated 05/14/1998 from ISAM YOUSUF (account No. 40606354190) to Fathi YUSUF for an amount of fifty thousand dollars (\$50,000). (Note that this document was not requested as part of this judicial requisition.)

-a debit note regarding a transfer in favour of FATHI YUSUF on 05/15/1998 in an amount of \$50,000 from account No. 40 606354190 (Yousuf Issa Island Appliance).

-a credit note for the account of YUSUF FATHI in an amount of \$50,000 from Isam Yousuf.

10 -a cheque dated August 11, 1996 in an amount of four hundred thousand dollars (\$400,000) drawn by M. Hamed Waleed and payable to Walled Hamed.

11 -a request for a bank draft by Hamdam Diamond Corporation (account No. 6388790) dated 02/13/1997 in an amount of one hundred thousand dollars (\$100,000) payable to Waleed Hamed.

-a receipt relating to the issuance of the above-mentioned bank draft.

12 -the above-mentioned bank draft  
-the request for a bank draft from Hamed Waleed (account No. 6387890) dated 02/13/1997 in an amount of three hundred fifty thousand dollars (\$350,000) payable to Waleed Hamed.

-a receipt relating to the issuance of the above-mentioned bank draft

13 -the above-mentioned bank draft.  
-a request for a bank draft from Waleed Hamed (account No. 606387890) dated 01/24/19997 (sic) in an amount of one hundred thousand dollars (\$100,000) payable to YOUSUF FATHI.

-a receipt relating to the issuance of the above-mentioned bank draft.

-the above-mentioned bank draft.

-- Mr. E. SAMAR said that the documents described below were not found by the employees of the Banque Française Commerciale despite extensive searches in the archives:

-cash deposit of \$250,000 dollars dated 01/08/1996.  
-cancelled cheque No. 3633492 in an amount of \$100,000 dated 10/23/1996.

-cancelled cheque No. 3633493 in an amount of \$150,000 dated 04/21/1998.

-cancelled cheque to Hamdam Diamond Corporation dated 02/01/2002.



-cash deposit note in an amount of \$50,000  
(deposit receipt) dated July 16, 1998.  
-cheque No. 3633441 in an amount of \$400,000  
dated 04/28/1998.  
- cash deposit note in an amount of \$50,000  
(deposit receipt) dated 07/16/1996.  
-cheque No. 3633467 in an amount of \$100,000  
dated 10/22/1996  
-cheque No. 3633469 in an amount of \$75,000.

-- Comment that this magistrate instructed us to send him this  
procedure as expeditiously as possible, \_\_\_\_\_

-- Note that Mr. SAMAR also gave us the *Certification of  
Business Records* for the documents handed over, \_\_\_\_\_

-- Recorded, \_\_\_\_\_

The Police Lieutenant

SRPJ ANTILLES-GUYANE  
ANTENNE DE SAINT-MARTIN  
BP 681 - MARIGOT  
97057 SAINT-MARTIN CEDEX

*Service Inspection*  
Tél. : 05 90 21 56 87  
Fax : 05 90 21 60 08

Réf. : INS IG/BCH/02/61

Aff. : PV n° 2002/078/02

Abymes, le 03 Juillet 2002

Messieurs,

Pour faire suite à votre demande du 13 mars et à notre première remise du 02 mai dernier, nous vous faisons tenir les copies des documents recueillis sur les dossiers suivants :

- **YOUSUF ISSA-ISLAND APPLIANCE** : comptes n° 60.63541 & 60.20186  
Relevés de compte, pièces comptables
- **YUSUF FATHI** : compte n° 60.63877  
Relevés de compte, pièces comptables
- **Hamdam Diamond Corporation** : compte n° 60.63887  
*Ce compte dans nos livres était géré par Monsieur YUSUF FATHI*
- **Hamed Waleed** : compte n° 60.63878  
Relevés de compte, pièces comptables
- **TED DOOR SPECIALITY NV** : comptes n° 60.20967 – 60.63830  
Relevés de compte, pièces comptables

Notre service des archives poursuit ses investigations dans ces différents dossiers. Tout complément d'information vous sera de nouveau adressé dès réception.

Vous souhaitant bonne réception,

Veillez agréer, Messieurs, l'expression de nos salutations distinguées.

A. HWANG

C. BRINDAMOUR

*Groupe Crédit Agricole Indosuez*

*Direction générale : Grand-Camp la Rocade - BP 13 - 97151 POINTE-A-PITRE - Tél. : 05 90 21 56 70 - Fax : 05 90 21 56 80  
S.A. au capital de € 19.008 000 - Siège social : 09 Quai du Président Paul Doumer - 94290 COURBEVOIE R.C. PARIS B 330 178 260 00015*



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

**HISHAM HAMED**, individually, and  
Derivatively, on behalf of **SIXTEEN  
PLUS CORPORATION**,  
  
Plaintiff,  
  
vs.  
  
**FATHI YUSUF, ISAM YOUSUF and  
JAMIL YOUSEF**,  
  
Defendants.  
  
and  
  
**SIXTEEN PLUS CORPORATION**,  
  
a nominal Defendant,

CIVIL NO. SX-2016-CV-00650  
  
DERIVATIVE SHAREHOLDER  
SUIT, ACTION FOR DAMAGES  
AND CICO RELIEF  
  
JURY TRIAL DEMANDED

**DEFENDANT ISAM YOUSUF’S RESPONSE TO  
PLAINTIFF HISHAM HAMED’S SECOND MOTION TO COMPEL:  
AS TO BANK ACCOUNT DOCUMENTS IN THE CONTROL OF ISAM YOUSUF**

**COMES NOW** Isam Yousuf, by his undersigned attorney, James L. Hymes, III, and respectfully opposes the motion of Hisham Hamed on behalf of the Sixteen Plus Corporation to compel Isam to produce records from business bank accounts in St. Maarten dating back to 1995. Isam has already responded to a written request for this information by indicating that he does not have these records in his possession, custody, or control. The business in question is no longer in operation, and has not been for more than twenty (20) years, which explains why production of the records is

not possible by him, and not required by Rule 34(a)(1) of the Virgin Islands Rules of Civil Procedure.

That having been said, this motion now takes a turn which will undoubtedly propels it to the top of the list of those motions in civil cases which can best be described as falling within the category of "Ripley's Believe It or Not." The Sixteen Plus Corporation in this motion boldly asserts that its principals fraudulently, criminally, and illegally skimmed money from the Plaza Extra Supermarkets in St. Croix to avoid the payment of taxes in the United States Virgin Islands, and sent it to the island of St. Maarten for some nefarious purpose. It is alleged that these same fruits of an illegal criminal enterprise were in fact used to purchase the Diamond Keturah property, and that the Note and Mortgage given to Manal Yousef by the Sixteen Plus Corporation is a sham and therefore null and void. The attorneys for Sixteen Plus profess in their Motion that this will be proven at trial. The Sixteen Plus Corporation and its representatives and attorneys are seeking to benefit from the past criminal activity of the Corporation and its principals which would make a mockery of the doctrine of unclean hands.

This statement by the attorney for the Sixteen Plus Corporation begs the question of why would it be necessary to look at the commercial bank records of the company no longer in business which, by their own statement, did not generate the money which is an issue in this case. They have the records and, therefore, they do not need an order from this Court to compel a meaningless search of bank records in St. Maarten.

The unbelievable request in this case is not just to look at bank records in St. Maarten, but to permit the police and prosecutors in St. Maarten to conduct this undertaking or to in any way be involved in a document production in a civil lawsuit. See **Exhibit A**, attached. This request continues to be made despite denials that Sixteen Plus Corporation and its representatives and attorneys are threatening criminal prosecution as a means of advancing the issues in this litigation, which is a patently unethical means of prosecuting a lawsuit.

Sixteen Plus Corporation has control of all of its business banking and related records, as well as the records of its representatives, Hisham Hamed and Wally Hamed. Therefore, it knows what money was sent to St. Maarten which was skimmed from the Plaza Extra Supermarket, where it was deposited, and how it was withdrawn. The Sixteen Plus Corporation and its representatives and attorneys have taken great pride in producing tens of thousands of records generated by the Federal Bureau of Investigation in the course of the prosecution of Waleed Hamed for tax evasion and other crimes. Indeed, the very motion filed herein cites and references searches in St. Maarten of bank records as part of the FBI investigation. Sixteen Plus Corporation, its representatives and attorneys, have copies of all of those documents, which are in effect the same documents and investigations which they now seek to discover through this production of documents making it nothing more than a threatening, harassing, and intimidating exercise for no good purpose.

Finally, five years ago Isam Yousuf made his own requests to the bank for copies of records relevant to the issues in this litigation. He was eventually notified that the

bank has no such records in its possession, and as a consequence he is unwilling, and should not be compelled, to execute an authorization for others to search for records which do not exist.

**WHEREFORE**, it is respectfully requested that the Plaintiff's Second Motion to Compel be denied.

Respectfully Submitted:

DATED: December 22, 2022.

**LAW OFFICES OF JAMES L. HYMES, III, P.C.**  
*Counsel for Defendants –  
Isam Yousuf, and Jamil Yousuf*

By:           /s/ James L. Hymes, III          

**JAMES L. HYMES, III**

VI Bar No. 264

P.O. Box 990

St. Thomas, Virgin Islands 00804-0990

Telephone: (340) 776-3470

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E-Mail: [jim@hymeslawvi.com](mailto:jim@hymeslawvi.com);

[rauna@hymeslawvi.com](mailto:rauna@hymeslawvi.com)

**CERTIFICATE OF SERVICE**

I hereby certify that on this the 22<sup>nd</sup> day of December, 2022, as an approved C-Track filer on behalf of James L. Hymes, III, I caused an exact copy of the foregoing ***“Defendant Isam Yousuf’s Response to Plaintiff Hisham Hamed’s Second Motion to Compel: As to Bank Account Documents in the Control of Isam Yousuf”*** to be served electronically through the C-Track system upon the following counsel of record.

**JOEL H. HOLT, ESQ.**

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***Co-Counsel for Plaintiff***

**CHARLOTTE PERRELL, ESQ.**

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***Attorneys for Defendant Fathi Yusuf***

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***Attorneys for Sixteen Plus Corporation***

\_\_\_\_\_  
/s/ Rauna Stevenson-Otto

## Rauna Stevenson

---

**From:** Carl Hartmann <carl@carlhartmann.com>  
**Sent:** Sunday, December 4, 2022 7:08 PM  
**To:** Jim Hymes; Rauna Stevenson  
**Cc:** Kim Japinga  
**Subject:** Proposed stip order -- Access to the BFC docs Isam?island  
**Attachments:** Proposed stipulated order for Isams bank docs.docx

**EXHIBIT**  
**A**

Jim:

Are you good with the proposed stipulation attached.....and can I ask a question? You said that you would provide access to the BFC accounts statements—I take it that this does not mean Isam can supply them, but rather that you will provide the letters of permission signed by him?

The proposed order exactly follows what I said below—the only change I made was to expand the time from 1997 to 2004 (date of the 3<sup>rd</sup> Superseding Indictment which defines his blanket immunity.) Change it back if that bothers you—I would prefer 2002, as that is when I believe the account was closed....but...

“he need only identify and supply access to statements for (1) all of the BFC accounts, and (2) to any accounts where that he says the gift deposits were put into..... And I need a stipulated order.”

If it is good, sign it and return to me and I will file. If you want changes, make them, and return the revised Word file to me—I'll let you know immediately if its ok, and if not, I will return a marked up copy to you.

If you do not wish to do so any longer—please drop me a brief email to let me know that no signed/countered file will be coming, and I will desist.

Carl

CARL J. HARTMANN III  
EMAIL: [CARL@HARTMANN.ATTORNEY](mailto:CARL@HARTMANN.ATTORNEY)  
TELEPHONE: (616) 416-0956

WEBSITE : [WWW.HARTMANN.ATTORNEY](http://WWW.HARTMANN.ATTORNEY)

**From:** Carl Hartmann <carl@carlhartmann.com>  
**Sent:** Thursday, December 1, 2022 1:43 PM



**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,*

and

**SIXTEEN PLUS CORPORATION,**

*a nominal Defendant.*

**Case No.: SX-2016-CV-00650**

**DERIVATIVE SHAREHOLDER  
SUIT, ACTION FOR DAMAGES  
AND CICO RELIEF**

**JURY TRIAL DEMANDED**

**ORDER**

**THIS MATTER** having come on before the Court on the second motion of Hisham Hamed to compel discovery responses regarding banking information from Isam Yousuf; and the Court being informed, and the parties having **STIPULATED** to the matters therein, in it hereby:

**ORDERED** that Isam Yusuf shall:

(1) within seven (7) days, provide a letter addressed to the St. Martin Judicial Police, the St. Martin prosecutor's office and to the Banque Francaise Commerciale, whose formal titles and addresses will be supplied by Hamed's French counsel on St. Martin, that will state his permission for Attorneys Hartmann and Andre to view and copy all records of the accounts of Isam Yousuf and Island Appliances for the period from 1990 through the end of 2004, and will attach this order thereto. Hamed will bear the costs. And,

(2) he will either (a) provide a statement as to what other accounts, beyond accounts at BFC, gift deposits from his father Mohammad were made--to or for the benefit of--Isam's sister Manal Yousef—but this need only be as to gifts she alleges she used for the \$4.5 million loan to Sixteen Plus, and provide a similar letter for access for those accounts for the relevant dates, or (b) a statement that that no such gifts were deposited into accounts other than Isam's/Island Appliances' BFC accounts.

**SO ORDERED.**

**Dated:** \_\_\_\_\_, 2022

\_\_\_\_\_  
**Douglas A. Brady**  
Judge of the Superior Court

**ATTEST:** TAMARA CHARLES,  
Clerk of the Court

\_\_\_\_\_  
**By:** Court Clerk Supervisor

**Approved:**

\_\_\_\_\_  
**James Hymes, Esq.**  
For Isam Yousuf

**Approved:**

\_\_\_\_\_  
**Carl Hartmann, Esq.**  
For Hisham Hamed

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

SIXTEEN PLUS CORPORATION,	)	
	)	CIVIL NO. SX-16-CV-65
Plaintiff,	)	
	)	ACTION FOR DECLARATORY
vs.	)	DECLARATORY JUDGMENT
	)	
MANAL MOHAMMAD YOUSEF,	)	JURY TRIAL DEMANDED
	)	
Defendant.	)	
<hr/>		
MANAL MOHAMMAD YOUSEF,	)	
	)	
Counter-Claimant,	)	COUNTERCLAIM
	)	
vs.	)	
	)	
SIXTEEN PLUS CORPORATION,	)	
	)	
Counter-Defendant.	)	
<hr/>		

**DEFENDANT MANAL MOHAMMAD YOUSEF'S**  
**MOTION FOR PROTECTIVE ORDER**

**COMES NOW**, Manal Mohammad Yousef (hereinafter “Manal Yousef”), by and through her undersigned counsel, and pursuant to Rule 26(c) of the V.I. Rules of Civil Procedure requests the Court grant her motion for protective order as to the place and manner of taking her deposition. The Notice of Deposition With Accompanying Rule 34 Request dated June 14, 2017, imprudently seeks to depose nonresident defendant Manal Yousef on July 14, 2017, in St. Croix, U.S. Virgin Islands. Manal Yousef seeks a protective order to prevent undue burden, oppression, and inconvenience.

## **I. Introduction**

The deposition of Manal Yousef should not proceed in St. Croix because she resides in Palestine. Presently Manal Yousef does not have permission to exit Palestine, and does not have a visa to enter the United States. There is no guarantee Manal Yousef will be able to obtain a visa for international travel and she has concerns for her safety should she be required to travel to the U.S. Embassy in Tel Aviv, Israel to participate in the U.S. visa procurement process. In addition, Manal Yousef would be unduly burdened by the St. Croix deposition due to her inability to care for her three (3) children during the time of the taking of her deposition because she is their primary caretaker. Although convenience of counsel is a factor in determining location the where depositions will take place, it does not weigh as much when compared to the inconvenience to a witness since the convenience of counsel is less compelling than any hardship to the witness. The bases provided by Manal Yousef are sufficient to constitute undue hardship, oppression, and inconvenience for the purpose of obtaining a protective order against her deposition in St. Croix.

## **II. Factual background**

Manal Yousef is a nonresident defendant who does not live and never has lived in the U.S. Virgin Islands. Manal Yousef has resided in Palestine for approximately the past seven (7) years. Manal Yousef does not often travel from Palestine. Manal Yousef has never traveled to the U.S. Virgin Islands. Manal Yousef does not currently possess a visa to travel abroad to the United States. Obtaining a visa is a difficult and dangerous process. Israeli officials would need to grant permission for Manal Yousef to travel outside the Palestinian Territory to visit the U.S. Embassy in Tel Aviv, Israel. Obtaining permission to exit Palestine to visit the U.S. Embassy

can be hard to get. Traveling to the U.S. Embassy in Israel is risky. Manal Yousef has sole responsibility for her three (3) children ranging from age twelve (12) to nineteen (19) years old.

Although plaintiff is aware Manal Yousef does not reside in the United States, it nevertheless unilaterally noticed the deposition of Manal Yousef in St. Croix, U.S. Virgin Islands on July 14, 2017. [See Notice of Deposition with Accompanying Rule 34 Request to Manal Yousef dated June 14, 2017.]

**III. Argument - The Court should Grant Manal Yousef's Motion for Protective Order**

**A. Standard for entering protective order**

A Court has authority to grant a protective order under Rule 26(c) of the V.I. Rules of Civil Procedure. Rule 26(c) states in pertinent part,

A party or any person from whom discovery is sought may move for a protective order in the court where the action is pending -- or as an alternative on matters relating to a deposition, in the court where the deposition will be taken. The motion must include a certification that the movant has in good faith conferred or attempted to confer with other affected parties in an effort to resolve the dispute without court action. The court may, for good cause, issue an order to protect a party or person from annoyance, embarrassment, oppression, or undue burden or expense

V.I. R. Civ. P. 26(c). A party seeking a protective order has the burden of demonstrating good cause pursuant to Rule 26(c). Good cause exists when justice requires protection of a person or entity from annoyance, embarrassment, oppression, or undue burden or expense. Courts consider the relative convenience and hardships to the parties when determining whether there is good cause to grant a protective order. A person seeking a protective order must show good cause and a specific and compelling need for protection. *Glenmede Trust Co. v. Thompson*, 56

F.3d 476, 483 (3d Cir. 1995) (applying Fed.R.Civ.P. 26(c), which contains language similar to V.I. R. Civ. P. 26(c)).

While an examining party is typically free to choose its method of discovery, it does not have an absolute right to do so. When a dispute arises as to a deposition, the Court retains substantial discretion in designating the method by which a deposition can be taken. Upon a showing of good cause, the court may modify the manner, time, and place of discovery as it deems appropriate. V.I. R. Civ. P. 26(c)(1).

Ordinarily, the deposition of a nonresident defendant should be taken near the defendant's residence absent plaintiff showing exceptional circumstances for conducting deposition in the forum. *O'Sullivan v. Rivera*, 229 F.R.D. 187, 189 (D.N.M. 2004); *Rapoca Energy Company, L.P. v. Amci Export Corporation*, 199 F.R.D. 191, 193 (W.D.Va. 2001) (initial presumption that defendant's deposition occurs where he resides or has his principal place of business is not rebutted by filing a permissive counterclaim); and *Buzzeo v. Board of Education, Hempstead*, 178 F.R.D. 390, 392 (E.D.N.Y. 1998) (a general presumption exists that the deposition of a defendant will be held near the locale where he resides). There is a rebuttable presumption that, absent special circumstances, the deposition of a defendant will be held where the defendant resides. Factors guiding the court's discretion in determining the site of a deposition include the cost, convenience, and litigation efficiency of the designated location.

Taking the defendant's deposition in Palestine where she is a resident is as problematic for the parties and their counsel as taking it in the Virgin Islands is to her. It is for this reason an alternative method of taking her deposition by written questions pursuant to V.I. R. Civ. P. 31, is proposed as a reasonable alternative.

**B. Nonresident Manal Yousef submits she is entitled to have her deposition taken by written questions pursuant to V.I. R. Civ. P. 31**

Travel from Palestine to St. Croix, U.S. Virgin Islands for a deposition is impossible at this time. Therefore Manal Yousef respectfully submits she is entitled to a protective order directing that her deposition be conducted in a manner which does not require her to travel to the U.S. Virgin Islands. The basis for this request is that Manal Yousef has no visa to enter the United States or U.S. Virgin Islands, she presently is ineligible to be admitted to the United States. Moreover it is commonly understood by persons with knowledge of relations between Israel and Palestinian territories that Israel controls the border and movement of persons from the Palestinian territory, where Manal Yousef resides. Manal Yousef does not have permission to and cannot exit the Palestinian territory at this time to travel to the U.S Embassy to seek a visa. Furthermore, Manal Yousef has genuine concerns for her physical safety should she be required to obtain a travel visa at the U.S. Embassy in Tel Aviv, Israel. It would be quite dangerous for Manal Yousef to travel to apply for a travel visa. Since Manal Yousef is unable to leave the Palestinian territory to travel to St. Croix due to restrictive travel policies, the Court should exercise its discretion to grant her motion for protective order from appearing for deposition in St. Croix.

Based on the foregoing it is respectfully submitted that the court should order the attorneys for the plaintiff to take the deposition of Manal Yousuf by written questions pursuant to the provisions of V.I. R. Civ. P. 31. The attorneys for the plaintiff have already propounded a set of interrogatories to Manal Yousuf together with a set of requests for admissions and a request for production of documents. The request for production of documents is identical, word for word, to the Rule 34 Request made a part of her Notice of Deposition by the attorneys for

plaintiff. With answers to this written discovery and a deposition on written questions, the attorneys for the plaintiff should have an ample opportunity to obtain all information known by her relevant to this case which they could otherwise obtained from her in an oral deposition.

There are other reasons why Manal Yousef is entitled to protection against being required to appear in St. Croix on Friday, July 14, 2017. She has never traveled to the U.S. Virgin Islands and she has sole responsibility for her three (3) children ranging from age twelve (12) to nineteen (19) years old, whose lives would be disrupted by a trip to the United States. It would be a hardship for Manal Yousef to travel several thousand miles from her home in Palestine. It would be an unnecessary hardship for Manal Yousef to travel thousands of miles for a pre-trial deposition. It would be unfair to impose a burden on a nonresident defendant to appear in St. Croix for this purpose long before trial. Manal Yousef has shown a factual basis of undue hardship.

The undersigned respectfully submits that he in good faith conferred with plaintiff's counsel to reach an amicable resolution without court action as to the examination of Manal Yousef. [A copy of letter from James L. Hymes, III, Esquire to Joel Holt, Esquire dated June 26, 2017, is attached as Exhibit "A"] V.I. R. Civ. P. 26(c)(1). Unfortunately plaintiff summarily rebuffed this effort. [A copy of letter from Joel Holt, Esquire to James L. Hymes, III, Esquire dated June 27, 2017, minus the exhibits referred to therein, is attached as Exhibit "B."]

Manal Yousef submits it appears harassment may be one of the purposes of plaintiff insisting on deposing Manal Yousef in St. Croix. This is particularly so when plaintiff's counsel refused the request of the undersigned counsel, based in part on safety concerns, to make alternate arrangements. [Exhibit A (letter from James L. Hymes, III, Esquire to Joel Holt,



Esquire dated June 26, 2017), and Exhibit B (a copy of letter from Joel Holt, Esquire to James L. Hymes, III, Esquire dated June 27, 2017)].

The convenience to plaintiff's counsel should neither override nor overcome the safety concerns of Manal Yousef. Manal Yousef should not be required to subject herself to danger by having to travel to the U.S. Embassy in Tel Aviv, Israel to seek permission to travel abroad. Furthermore plaintiff's attorney's have the resources and experience to take her deposition by written questions.

**WHEREFORE**, Defendant Manal Mohammad Yousef respectfully requests the Court issue a protective order prohibiting her deposition from proceeding in St. Croix, U.S. Virgin Islands on Friday, July 14, 2017, and barring plaintiff from noticing a deposition of Manal Mohammad Yousef in the U.S. Virgin Islands. In addition, the Court is requested to order the attorneys for the plaintiff to take the deposition of Manal Yousef by written questions pursuant to V.I. R. Civ. P. 31.

Respectfully Submitted,

DATED: July 11, 2017.

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

By: 

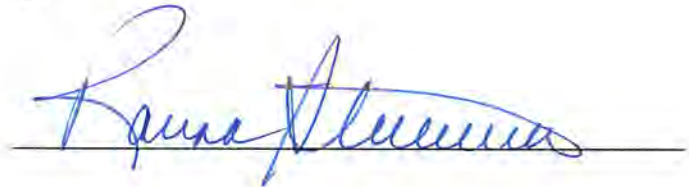
**JAMES L. HYMES, III**  
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**CERTIFICATE OF SERVICE**

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 11<sup>th</sup> day of July, 2017, I caused an exact copy of the foregoing "*Defendant Manal Mohammad Yousef's Motion For Protective Order*" to be served electronically by e-mail, and by mailing same, postage pre-paid, to the following counsel of record:

**MARK W. ECKARD, ESQ.**  
HAMM ECKARD LLP  
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Christiansted, USVI, 00820-2690  
Phone: (340) 773-6955 // Fax: (855) 456-8784  
[meckard@hammeckard.com](mailto:meckard@hammeckard.com)  
*Counsel for Sixteen Plus Corporation*

**JOEL H. HOLT, ESQ.**  
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[holtvi@aol.com](mailto:holtvi@aol.com)  
*Co-Counsel for Sixteen Plus Corporation*



# **EXHIBIT “A”**

LAW OFFICES  
OF  
**JAMES L. HYMES, III, P.C.**

MAILING ADDRESS: P.O. BOX 990  
ST. THOMAS, VIRGIN ISLANDS 00804-0990  
PHYSICAL ADDRESS: NO. 33-1 ESTATE ELIZABETH, # 7736  
ST. THOMAS, VIRGIN ISLANDS 00802  
E-MAIL: [jim@hymeslawvi.com](mailto:jim@hymeslawvi.com)  
TELEPHONE: (340) 776-3470 FACSIMILE: (340) 775-3300

REPLY TO:  
 ST. THOMAS OFFICE  
 CHRISTIANSTED OFFICE

OF COUNSEL:  
MARK HILLSMAN  
[mhillsman@hymeslawvi.com](mailto:mhillsman@hymeslawvi.com)

June 26, 2017

Joel H. Holt, Esq.  
LAW OFFICES OF JOEL H. HOLT  
2132 Company Street  
Christiansted, USVI, 00820  
[holtvi@aol.com](mailto:holtvi@aol.com)

Re: *Sixteen Plus v. Manal Mohammad Yousef*  
*SCVI/STX - Civil No. SX-16-CV-65*

Dear Attorney Holt:

I am writing to you pursuant to the provisions of Rule 26(c)(1) of the Virgin Islands Rules of Civil Procedure, to ask you to withdraw your notice of deposition of Manal Mohammad Yousef, set to take place in your office on Friday, July 14, 2017, and to withdraw portions of your written discovery to her for the reasons set forth below.

Manal Mohammad Yousef is now and has been for many years a resident of Palestine. As a non-resident of the Virgin Islands, any notice to take her deposition should have noticed it to take place where she lives. Therefore, your notice to depose her in your office is improper on its face. *Rapoca Energy Company, L.P. v. Amci Export Corporation*, 199 F.R.D. 191, 193 (W.D.Va. 2001); and *Buzzeo v. Board of Education, Hempstead*, 178 F.R.D. 390, 392 (E.D.N.Y. 1998).

In addition there are practical reasons why Manal Mohammad Yousef cannot appear in your office in the Virgin Islands on July 14, 2017. In order for her to travel to the United States she would need to obtain a United States travel visa, which she does not have at the present time. In order to get a visa from the United States to permit her to travel here, it would be necessary for her to go to the American Embassy in Israel. Travel from Palestine to Israel is very dangerous and would force her to put her personal safety in jeopardy. There is also no guarantee that the United States Embassy would issue a visa for her to travel. The uncertainty of the issuance of visas to persons in the Middle East is underscored by the Supreme Court decision today which upheld portions of President Trump's travel ban.

CHRISTIANSTED OFFICE:  
1138 KING STREET (THE PENTHIENY BUILDING), CHRISTIANSTED, ST. CROIX, U.S. VIRGIN ISLANDS 00820-4943  
E-MAIL: [rauna@hymeslawvi.com](mailto:rauna@hymeslawvi.com)  
TELEPHONE: (340) 773-1700 FACSIMILE: (340) 775-3300

Furthermore Manal Mohammad Yousef is a mother of three (3) school-aged children between the ages of twelve (12) to nineteen (19). All of them are presently in school, and because of this she cannot leave them alone to travel here even if she could obtain a visa which is problematic as set forth above.

Aside from the Notice of Deposition with Accompanying Rule 34 Request, you have recently issued written discovery to Manal Mohammad Yousef consisting of Requests for Admissions, a set of Interrogatories, and a Requests for the Production of Documents. The Rule 34 Request and the Request for the Production of Documents are identical and, in paragraphs 13, 17, 19, 20, 21, and 23, seek the production of material which is protected by the attorney/client privilege. Accordingly, I respectfully request that you withdraw these requests in both the written discovery and in Rule 34 Request accompanying the Notice of Deposition, as well as the Notice of Deposition itself, and focus on completing the written discovery already commenced. By completing the written and other discovery which you have already commenced, you may find that there is some other method to obtaining the information from others you would otherwise obtain from Manal Mohammad Yousef by taking her deposition.

In an effort to resolve this situation, I will endeavor to provide you with responses to the written discovery which you have issued. However, based on the time and distances involved I request an extension of thirty (30) days for me to provide you with answers and responses to these items. If you agree to this extension, I will agree to provide you with those responses as expeditiously as possible within the extended timeframe.

Please understand that if you do not agree to withdraw the Notice of Deposition, and paragraphs 13, 17, 19, 20, 21, and 23 of the Rule 34 Request and Request for the Production of Documents, I will have no alternative but to file a motion for protection in accordance with the terms and conditions of Rule 26(c)(1) referred to above.

Thank you for your cooperation, advice, and assistance in these regards.

Sincerely yours,



James L. Hymes, III

JLH:rs

cc: Mark W. Eckard, Esq.  
[meckard@hammeckard.com](mailto:meckard@hammeckard.com)

# **EXHIBIT “B”**

# JOEL H. HOLT, ESQ. P.C.

---

2132 Company Street, Suite 2  
Christiansted, St. Croix  
U.S. Virgin Islands 00820

Tele. (340) 773-8709  
Fax (340) 773-8677  
E-mail: [hollyh@aol.com](mailto:hollyh@aol.com)

June 27, 2017

James L. Hymes, III, Esquire  
Law Offices of James L. Hymes, III, P.C.  
P.O. Box 990  
St. Thomas, VI 00804-0990

Sent by mail and email: [jim@hymeslawvi.com](mailto:jim@hymeslawvi.com)

## Re: Sixteen Plus v Manal

Dear Jim:

In response to your letter dated June 26<sup>th</sup>, the two corporate-party cases you cite are easily distinguishable. In this case, your client is also a Plaintiff, attempting to foreclose a mortgage on USVI land, recorded in the Virgin Islands, secured by a Note, which her last lawyer who wrote me claimed was now due in excess of \$15,000,000. See **Exhibit 1**. No court would allow **any** off-island lender to avoid being deposed here where the land securing the debt is located and the foreclosure action is taking place.

Moreover, your client is either attempting to defraud a Virgin Islands corporation (based on the same facts that indicted her brother and uncle in 2004, (see **Exhibit 2**) or she is trying to liquidate a very substantial investment on St. Croix, all of which requires her to come here to explain which facts are true.

Indeed, your client had no trouble securing counsel in St. Martin as well as here when she wanted to initiate collection efforts on the debt. Her feigned excuse of it being a hardship on her simply confirms this is a bogus claim.

Finally, Palestine is not one the countries affect by the travel ban you referenced.

As for the discovery requests, they are proper and will not be withdrawn. An assertion of potential privilege does not, as you seem to imply, obviate a request in any way. Moreover, and this is quite important, if a requested item is deemed to be privileged, you *must* list it on a privilege log pursuant to Rule 26(b)(5) which requires not only the list, but also that you:

- (i) expressly make the claim; and

**Letter To Hymes**

**Page 2**

(ii) describe the nature of the documents, communications, or tangible things not produced or disclosed — and do so in a manner that, without revealing information itself privileged or protected, will enable other parties to assess the claim.

Please call if you want to discuss this any further.

Cordially,

Joel H. Holt

JHH/jf

Enclosures



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

SIXTEEN PLUS CORPORATION,	)	
	)	CIVIL NO. SX-16-CV-65
Plaintiff,	)	
	)	ACTION FOR DECLARATORY
vs.	)	DECLARATORY JUDGMENT
	)	
MANAL MOHAMMAD YOUSEF,	)	JURY TRIAL DEMANDED
	)	
Defendant.	)	
<hr/>		
MANAL MOHAMMAD YOUSEF,	)	
	)	
Counter-Claimant,	)	
	)	COUNTERCLAIM
vs.	)	
	)	
SIXTEEN PLUS CORPORATION,	)	
	)	
Counter-Defendant.	)	
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**ORDER**

This matter, having come before this Court upon the Defendant Manal Mohammad Yousef's Motion for Protective Order, and the Court being fully satisfied with the premises contained therein, it is hereby

**ORDERED** that the defendant's Motion is hereby **GRANTED**; and it is further

**ORDERED** that the Notice of Deposition with Accompanying Rule 34 Request directed to Defendant Manal Mohammad Yousef is quashed; and it is further

**ORDERED** that the deposition of Defendant Manal Mohammad Yousef shall not take place in the U.S. Virgin Islands; and it is further

**ORDERED** that the deposition of Defendant Manal Mohammad Yousef, pursuant to the notice of deposition served by plaintiff on June 14, 2017, to be taken on written questions, and not by oral examination; and it is further

**ORDERED** that the plaintiff serve on Defendant Manal Mohammad Yousef a copy of the written questions by which it proposes to examine Defendant Manal Mohammad Yousef; and it is further

**ORDERED** that a copy of this Order be directed to Joel Holt, Esq., Mark W. Eckard, Esq. and James L. Hymes, III, Esq.

**ENTERED** this \_\_\_\_\_ day of \_\_\_\_\_, 2017.

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**Judge, Superior Court of the Virgin Islands**

**A T T E S T:**

**THE HON. ESTRELLA H. GEORGE**  
Clerk of the Court

By: \_\_\_\_\_  
Deputy Clerk

**DISTRIBUTION LIST:**

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

**MANAL MOHAMMAD YOUSEF,**  
*Plaintiff*  
v.  
**SIXTEEN PLUS CORPORATION,**  
*Defendant.*

and

**SIXTEEN PLUS CORPORATION,**  
*Counter-Plaintiff*  
v.  
**MANAL MOHAMMAD YOUSEF,**  
*Counter-Defendant,*

and

**SIXTEEN PLUS CORPORATION,**  
*Third-Party Plaintiff*  
v.  
**FATHI YUSUF,**  
*Third-Party Defendant,*

**SIXTEEN PLUS CORPORATION,**  
*Plaintiff,*  
v.  
**MANAL MOHAMMAD YOUSEF,**  
*Defendant.,*

and

**MANAL MOHAMMAD YOUSEF,**  
*Counter-Plaintiff.,*  
v.  
**SIXTEEN PLUS CORPORATION,**  
*Counter-Defendant.*

**CIVIL NO. SX-2017-CV-00342**

**ACTION FOR DEBT AND  
FORECLOSURE**

**COUNTERCLAIM FOR  
DAMAGES**

**THIRD PARTY ACTION**

**JURY TRIAL DEMANDED**

*Consolidated With*

**CIVIL NO. SX-2016-CV-00065**

**ACTION FOR  
DECLARATORY JUDGMENT,  
CICO and FIDUCIARY DUTY**

**COUNTERCLAIM**

**JURY TRIAL DEMANDED**

**SIXTEEN PLUS CORPORATION'S  
FIRST MOTION TO COMPEL TO MANAL YOUSEF:  
FOR ADDRESS, AGENT'S INFORMATION, ACCOUNTING AND TAX INFORMATION**

**COMES now**, Sixteen Plus Corporation, through undersigned counsel, and moves the Court, pursuant to Rules 26, 33, 34 and 37 for an order requiring Manal Yusuf to produce discovery responses.

### **I. Introduction**

Manal's responses to discovery consist largely of three positions (1) My brother Isam was my agent for everything, he handled everything for me, so I have no knowledge or documents whatsoever, (2) I am a simple housewife and have never had any significant funds and know nothing about the funding of the note and mortgage except what my father (who passed away in 1997) and brother Isam told me, and (3) my father and brother told me that my father had given me \$4.5 million and that I had lent it to Sixteen Plus. Thus, responses from her have been mostly "I don't have it, I don't know and ask Isam."

Sixteen Plus understands that it cannot compel what she says she does not know or have.<sup>1</sup> Thus, this motion is limited to five topics:

1. She has steadfastly refused to provide her address;
2. If Isam did everything for her as her agent (as she states) she has a duty to interview him, obtain documents from him, and to the extent that he has documents or information or is "in control" of it—so is she, and she must get the documents and information--and supply the results to Sixteen Plus;
3. She has refused to provide, or even approximate numbers with regard to assets, income, and expenditures—this is critical—she may not know exact amounts, but she can respond with ranges or approximations;
4. She has refused to provide tax returns for the relevant periods.
5. She has refused to describe the funding of her suit, and its direction by conspirators. Someone is providing the fees for her—and it is apparent to Hamed that it is one of the other co-conspirators in the COCO—Isam or Fathi.

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<sup>1</sup> Oddly, however, Manal and Isam are able to pay for the *extensive* services of a top-level USVI lawyer, have matched the legal positions with Fathi Yusuf in the companion CICO conspiracy and have admitted in discovery that they have not paid taxes on over a million dollars they allege they received in cash, but have already spent.

## II. Analyses of Each of The Five Types of Refusals to Respond

### a. The simplest issue: Manal will not provide her address

Manal Yousef (“Manal”)<sup>2</sup> states in discovery (1) that her full name is Manal Mohammad Yousef, (2) she was born on April 22, 1968, (3) from January 1995 to June 2010, she resided in St. Maarten at Cole Bay, and (4) and although she refuses to give her actual address or a description of its location in discovery (see **Exhibit 1**, letter from Atty. Hymes to Atty. Hartmann dated November 7, 2022) from June 2010 to the present, she has “resided at Ramallah - West Bank, Palestine.” **Exhibit 2** (Manal’s responses to Interrogatories in 00065, at #1, dated 7/17/2017.)<sup>3</sup> Moreover, (5) she “never worked [and has] (6) been a housewife her entire life.” **65 INTER#6**. Finally, (7) over the course of her lifetime she, personally, had not earned more than an aggregate of one million dollars in wages or investment income as of February 13, 1997. **Exhibit 3** (Manal’s responses to RFA, at #5, in 00065, dated 7/17/2017.)<sup>4</sup>

Exhibit 1 is a November 7, 2022, letter from Atty. Hymes to Atty. Hartmann regarding her refusal to produce many responses after the Rule 37 conference. As to this issue, Manal has refused, through counsel, to give her actual street address. (“You

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<sup>2</sup> Sixteen Plus employs this party’s first name rather than “Yousef” because of the various spellings of Yusuf, Yousuf and Yousef among the four related defendants. Despite the various spellings, Mohammad Yusuf, who also goes by the last name Hamdan, is Fathi Yusuf’s brother. Isam Yousuf and Manal Yousef are Mohammad’s children. Thus, Fathi is their uncle. Defendant Jamil Yousuf is the brother of Manal, the son of Mohammad and the nephew of Fathi.

<sup>3</sup> Her responses to these interrogatories in Exhibit 2 will be referred to hereafter in the form: **65 INTER#6**.

<sup>4</sup> Her responses to these RFA in Exhibit 3 will be referred to hereafter in the form: **65 RFA#5**.

indicated to me that you required a description of the present address for my client so that you may serve her with process. I will not provide you with that address. If you need to serve her with process, it may be done through me.”) This was in response to Atty. Hartmann’s October 30, 2022 letter to Atty. Hymes listing the results of the Rule 37 conference where he stated “f. Interrog 6. Manal’s address. I was unclear as to your response. But I again stated that we wanted it produced.” First, Atty. Hymes’ incorrectly asserts that *effective* international process can be served through him if cross-border process-in-aid of discovery is deemed desirable, is incorrect under the applicable United States’ international treaty accord (the *Convention on the Service Abroad of Judicial and Extrajudicial Documents in Civil or Commercial Matters*, more commonly called the *Hague Service Convention*). Second, and more to the point, one of the stated reasons for seeking the address in the Rule 37 conference was that Manal alleges she has received over \$1 million from Sixteen Plus in interest—in unaccounted, undocumented, and apparently untraceable cash from Sixteen Plus—which is strongly disputed by Sixteen Plus. As discussed below, she has been asked for a detailed list of her assets, their values, and her expenditures. She has refused, stating, in Exhibit 1, that “[f]inally, you have demanded information as to how the \$1,080,000 of interest which your client denied paying was spent by Manal. She and her husband purchased a supermarket from Isam with the first payment of interest and spent the second payment supporting the operation of the supermarket and for their own personal use. They purchased a car and a van with a portion of the money. Between 1999 and 2003, a second store was opened and supported with the third payment of interest. Any remaining cash was received and used as needed for personal consumption.” Thus, it is difficult to investigate all of

these supposed assets purchased with Sixteen Plus funds if she refuses to provide a starting point for such an investigation—her home address.

b. Isam was her Agent, his Knowledge and Documents are in her Control

Both the applicable rules and case law as to what information is “in the control” of a party are set forth in *Hisham Hamed’s Second Motion to Compel: As to Bank Account Documents in The Control of Isam Yousuf*, dated November 23, 2022, as the same was filed in the companion case, *Hisham Hamed v. Fathi Yusuf, et al.*, SX-2016-CV-00650. Sixteen Plus incorporates that position here. Sixteen Plus hopes that Manal will not contest the similarly black letter law that information and documents in the hands of an agent are in the control of the principal. *See, e.g., In re Glob. Power Equip. Grp. Inc.*, 418 B.R. 833, 836 (Bankr. D. Del. 2009)

The question before the Court, therefore, is whether discovery in this contested matter may be taken under the Federal Rules of Civil Procedure, or whether it must be taken by the more laborious provisions of the Hague Evidence Convention. The Court concludes first that the *documents and witnesses in the possession of the claimant's French affiliate and agent are within the "control" of the claimant*. Second, applying the "comity analysis" articulated by the United States Supreme Court, the Court concludes that discovery in this contested matter should and shall be conducted under the Federal Rules and not under the Hague Evidence Convention. (Emphasis added.)

*See also, Avery Dennison Corp. v. UCB Films PLC*, Case No. 95 C 6351, 1998 U.S. Dist.

LEXIS 8495, at \*5-6 (N.D. Ill. May 27, 1998):

Control is customarily defined as having "the legal right to obtain the documents requested upon demand." *Henderson v. Zurn Indus., Inc.*, 131 F.R.D. 560, 567 (S.D. Ind. 1990)(quoting *Searock v. Stripling*, 736 F.2d 650, 653 (11th Cir. 1984); *see In re Folding Carton Antitrust Litig.*, 76 F.R.D. 420, 423 (N.D. Ill. 1977)(it is "well-settled that a party need not have actual possession of documents to be deemed in control of them," rather the "test is whether the party has a legal right . . . to obtain them.").

An attorney is an agent of a principal, and documents held by an agent/attorney are within the control of the client/principal. **3** *Estate of*

*Cammon*, 1989 U.S. Dist. LEXIS 13384, at \*12-13, No. 88 C 5549 (N.D. Ill. Nov. 7, 1989)(discussing basic principle of agency law: an attorney is a client's agent, and documents in an attorney's files are within the client's control), *aff'd*, 929 F.2d 1220 (7th Cir. 1991).

and *Firstcom, Inc. v. Qwest Corp.*, Civil Action No. 04-0995(ADM/JJG), 2006 U.S. Dist. LEXIS 107079, at \*10-11 (D. Minn. Feb. 16, 2006):

Firstcom has an obligation to provide full and complete responses to Qwest's interrogatories without leaving it to Qwest to ferret through hundreds of pages of deposition transcripts and discovery documents in an effort to weave together Firstcom's responses and contentions regarding Qwest's interrogatories. Only full written response, to interrogatories 2-5, 7-18 and 20 comport with the requirements of the Federal Rules. Firstcom is obligated to comply with the Rules and answer each of these interrogatories separately and fully, unless an objection is raised, *and must include in its responses all information within its control or known by its agents*. Fed. R. Civ. P. 33(b). (Emphasis added.)

Manal has stated that she does not have any documents evidencing the source of any funds used by her to loan money to Sixteen Plus Corporation as consideration for the execution of the Promissory Note. **Exhibit 4**. (Manal's responses to RFPD, at #1, in 00065, dated 7/14/2017.)<sup>5</sup> The facts alleged by Sixteen Plus are set forth in the second motion to compel--as to Isam' bank records, dated November 23, 2022 Those facts are incorporated here. The essence of the contentions can be seen at pp. 6-7:

[Sixteen Plus] will seek to argue that the central factual issue in this series of cases is starkly black and white: Whose funds were really provided to Sixteen Plus? Did Manal Yousef's father deposit \$4.5 million into Isam Yousuf's BFC accounts over a seven-year period as he alleges, or was the money in those accounts simply skimmed funds put there by Wally and Fathi over a very short period from April 1996, onwards? In other words, were Manal's funds loaned to Sixteen Plus to buy the subject land, or were only Hamed's and Yusuf's funds being deposited and transferred to Sixteen Plus to buy the land? If these were not Manal's funds, there was "fraud, coercion or other nefarious inducement into the [mortgage] contract." *Celestin v. LLP Mortg., Ltd.*, No. 2007-014, 2007 VI Supreme LEXIS 6, at

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<sup>5</sup> Her responses to these RFPD in Exhibit 4 will be referred to hereafter in the form: 65 RFPD#1.



\*5 (Nov. 9, 2007)(*citing* Restatement (Third) of Property (Mortgages) §§ 1.1 and 12.) The V.I. Supreme Court having adopted it, Hamed will contend that *Restatement 3d of Property: Mortgages*, § 1.2, is clear—that where sham notes and the associated mortgages arise without any real value having been provided by the putative loaning party (i.e., undertaken without actual funding for some other purpose than a real loan) they are, obviously, unenforceable. *See, e.g., Comments & Illustrations, comment c:*

c. Failure of consideration distinguished. It is important to distinguish an absence of consideration from "failure of consideration." While the courts are not always consistent in terminology, the latter phrase is often used to describe cases in which the mortgagor executes a note or contract, secured by a mortgage, but does not receive some or all the value for which she or he bargained. This is simply a material breach of contract, partially or wholly discharging the mortgagor's duty of performance under the note or contract. The mortgage will be unenforceable to the same extent.

and, Illustration 4, which is remarkably similar to the facts here:

4. A and B are partners in a partnership to develop land. They acquire title to the land, transfer it to a trust, and cause the trustee to execute a note and mortgage to A and B as mortgagees for no consideration. **The sole purpose of the mortgage** is to establish a lien priority superior to the claims of possible future creditors or mechanics lienors, and there is no intention that any payments be made on the note. Subsequently the partnership is dissolved and A seeks to foreclose his interest in the mortgage. Because the mortgage was created to insulate the partnership's assets from its creditors, and not with the intention of making a gift, it is unenforceable and no foreclosure should be ordered. (Emphasis added.)

At trial, [Sixteen Plus] will seek to prove that the two \$2 million tranches of funds transmitted by Isam Yousuf to Sixteen Plus were solely monies belonging to the Hamed and Yusuf families: "The sole purpose of the mortgage [from Manal was] to. . ." change the *apparent* owner of the funds and to "establish a lien priority superior to the claims of possible future creditors." *Id.* But Isam Yousuf will counter that this was a real loan—that these were separate, unrelated funds coincidentally in his same 1995 Isam BFC accounts—funds his father (Mohammad) had deposited into Isam's accounts slowly, in smaller deposits over a long period—as a gift to Manal Yousef. These are two radically different stories. The truth would have been instantly discernable and already apparent *if these bank statements had been produced by Isam.*

But in discovery, most of Manal's answers are that Isam was her agent for dealing with her father's gifts, for dealing with Sixteen Plus, for dealing with the transfers, in effect, for dealing with everything. But Isam is not a party here—she is. He is her agent in a transaction in which she claims to have spent \$4.5 million—and where she is seeking land that has been valued by Fathi Yusuf at \$30 million. Manal Yousef takes the position that she has the note, mortgage and corporate documents authorizing the note and mortgage—and apparently, she and her counsel believe that this is sufficient. But this is discovery. In discovery she has a burden to obtain all documents and other information within her control—which means she must obtain the information and documents in the possession of her agent.

1. She states she does not have any documents evidencing the source of any funds used by her to loan any money to Sixteen Plus Corporation as consideration for the execution of the Promissory Note. **65 RFPD #1**. But Isam certainly does. He “controls” all of the bank and other records of his accounts from 1996-2003. She has a duty to ascertain this information and obtain the documents, and to so certify.
2. She has refused to “list all financial accounts you have, that are fully or partially in her name or as to which she is a beneficiary from January 1, 1995 through December 31, 2000. **65 INTER #9**. She and Isam both state she was a beneficiary of Isam's BFC accounts (or other of his accounts into which their father gifted the \$4.5 million over seven years.) She has a duty to ascertain this information and obtain the documents, and to so certify.
3. She does not have any documents showing the transfer of any funds from her to Sixteen Plus corporation as consideration for the execution of the Promissory Note.

**65 RFPD#2.** Isam does, so she has a duty to ascertain this information and obtain the documents, and to so certify.

4. She does not have any documents evidencing her ownership of any funds loaned to Sixteen Plus Corporation as consideration for the execution of the Promissory Note.

**65 RFPD #3.** If Isam does, she has a duty to ascertain this information and obtain the documents, and to so certify.

5. She does not have any documents evidencing her control over any funds loaned to Sixteen Plus corporation as consideration for the execution of the Promissory Note.

**65 RFPD #4.** If Isam does, she has a duty to ascertain this information and obtain the documents, and to so certify.

6. She does not have any documents evidencing the consideration she provided in exchange for the Promissory Note regarding the property known as Diamond Keturah as stated in her Counterclaim paragraph 4 in the Civil 65, to wit: "On September 15, 1997, for good and valuable consideration, had executed a Promissory Note secured by a First Priority Mortgage . . . ." **65 RFPD #5.** If Isam does, she has a duty to ascertain this information and obtain the documents, and to so certify.

7. She does not have any documents evidencing or discussing any agreement between herself or any of her agents, and Sixteen Plus Corporation to loan it the funds leading up to the execution of the Promissory Note—except the note and mortgage themselves. **65 RFPD #6.** If Isam does, she has a duty to ascertain this information and obtain the documents, and to so certify.

8. She does not have any documents showing the negotiations for the amount of interest to be paid the Defendant by Sixteen Plus Corporation leading up to the execution of

- the Promissory Note. **65 RFPD #7**. If Isam does, she has a duty to ascertain this information and obtain the documents, and to so certify.
9. She has no documents or written communications with any lawyer regarding the preparation of the Promissory Note. If Isam does, she has a duty to ascertain this information and obtain the documents, and to so certify.
10. She does not have any closing documents for loan transaction involving the Promissory Note. **65 RFPD #8**. If Isam does, she has a duty to ascertain this information and obtain the documents, and to so certify.
11. She has absolutely no financial documents reflecting that she had or transferred any funds to obtain the note. **If Isam does**, she has a duty to ascertain this information and obtain the documents, and to so certify.
12. She does not have any monthly account statements for any checking, savings, investment, or brokerage account titled to her in her name from 1990 through 1997. **65 RFPD #9**. If Isam does, she has a duty to ascertain this information and obtain the documents, and to so certify.
13. She has no documents reflecting any payments received by Defendant from Sixteen Plus Corporation regarding the Promissory Note. **65 RFPD #10**. If Isam does, she has a duty to ascertain this information and obtain the documents, and to so certify.
14. She has no documents showing any deposit into any bank or brokerage account of any payments received by her from Sixteen Plus Corporation regarding the Promissory Note. **65 RFPD #12**. And more specifically, she says that while in 1998, the \$360,000 interest payment was made by Waleed Hamed in cash, she does not know the form of the payment of \$360,000.00 in 1999, or in 2000. **65 INTER #11**. If

Isam does, she has a duty to ascertain this information and obtain the documents, and to so certify.

15. Nor has she made a calculation of the accrued interest due through July 1, 2017, or the daily accrual of interest after July 1, 2017. **65 INTER #11**. If Isam does, she has a duty to ascertain this information and obtain the documents, and to so certify.

16. Nor has she had any written communications with Sixteen Plus or any of the individuals involved—she did not communicate:

17. with any person affiliated with or representing Sixteen Plus since 1996. **65 RFPD #18**. If Isam does, she has a duty to ascertain this information and obtain the documents, and to so certify.

18. with her brother Isam Yousef since 1996 regarding any matters related to United Corporation, Sixteen Plus, or anything to do with her loan to Sixteen Plus. **65 RFPD #16**. If Isam does, she has a duty to ascertain this information and obtain the documents, and to so certify.

19. with her uncle Fathi Yusuf since 1996 regarding any matters related to United Corporation, Sixteen Plus, or anything to do with her loan to Sixteen Plus. **65 RFPD #14**. If Isam does, she has a duty to ascertain this information and obtain the documents, and to so certify.

20. She did not personally negotiate for, receive, manage, control, move, oversee, or otherwise interact with the funds at issue here, as follows:

21. She did not negotiate anything to do with the deal or the note: “All of the terms and conditions of the promissory note and accompanying mortgage were negotiated on my behalf by my father and my brother Isam. **65 INTER #8**. If Isam has such

information, she has a duty to ascertain this information and obtain the documents, and to so certify.

22. When asked to describe the source of “all funds in your name or under your control that you used as consideration for the loan evidenced by the Promissory Note,” she stated that “During the course of my lifetime I was given money by my father for my benefit for investment purposes. These funds were managed for me by my brother, Isam.” **65 INTER #3**. If Isam has such information, she has a duty to ascertain this information and obtain the documents, and to so certify.

23. She did not transfer funds used as consideration for the loan evidenced by the Promissory Note—Isam did. **65 INTER #4**. If Isam has such information, she has a duty to ascertain this information and obtain the documents, and to so certify.

24. She could not identify the bank or brokerage account she used to transfer the funds for the loan evidenced by the Promissory Note—because Isam did it. **65 INTER #5**. If Isam has such information, she has a duty to ascertain this information and obtain the documents, and to so certify.

25. **Nor can she explain exactly how Isam kept her funds. At times she refers to a “fund” in which he kept her money. At other times she does not seem to know, and at other it seems the funds are merged into his or Island Appliances accounts.** If Isam has such information, she has a duty to ascertain this information and obtain the documents, and to so certify.

26. She states: “Assets given to Manal Yousef by her father were maintained in a fund managed by Manal's brother [Isam].” **65 RFA #6**. There is no evidence of such a fund, and, as set forth in the Motion to Compel as to Isam in 650 he is equally all

over the map—though it appears his view is now that all the funds were in the BFC Island Appliance account from which the funds were transferred to Sixteen Plus, put there over seven years by his father, Mohammad Yusuf (aka Mohammad Hamdan). If Isam has such information, she has a duty to ascertain this information and obtain the documents, and to so certify.

Therefore, Manal must inquire, collect documents, and provide the results to Sixteen Plus and state that she has done so.

c. Manal must provide information on her assets and accounts

In Atty. Hartmann's letter to Atty. Hymes containing the Rule 37

Conference results, the following is stated:

u. Interrog 20. She must, as discussed above, provide as much information and transaction timing, amounts, uses, etc. for both funds given to her in cash by Isam, and for amounts spent (including assets) for outgoing funds. Again, "perfect recollection or documentary proof is not [necessary]" she can supply best recollections, Letter Page | 6 approximations, routine activities (i.e., how Isam got funds to her and in what general amounts) and where and how she spent it in general amounts.) I note these must both add up to approximation for \$1,080,000 (3 x \$360k). Your response was unclear. At one point I thought we had reached an understanding that this was proper discovery and there would be a response. But that was unclear as we went on. I thought you said you would inquire and get back, but again—it became a bit garbled. In any case, we will expect substantial amendments on this from both Manal and Isam. The best they can do with transactions in and out adding up to \$1,08 million.

As can be seen in his responsive letter, Exhibit 1, Atty. Hymes refuses any specific information whatsoever. He just lists a business venture, car, and a van. It would be impossible to try to contest her assertion that she received over a million in totally undocumented cash in interest and spent it all without a single record or any specific inflow or outflow information—even if approximated. Atty. Hymes said:

Finally, you have demanded information as to how the \$1,080,000 of interest which your client denied paying was spent by Manal. She and her husband purchased a supermarket from Isam with the first payment of interest, and spent the second payment supporting the operation of the supermarket and for their own personal use. They purchased a car and a van with a portion of the money. Between 1999 and 2003, a second store was opened and supported with the third payment of interest. Any remaining cash was received and used as needed for personal consumption.

Access to the financial records of Island Appliances and my clients will not be granted.

Nor has she provided a single banking or other financial account record from that time *or for the present*. She states she does not have any—but that is incredible. Again, not even approximations are provided. This is a person making a \$30 million claim.

d. Refusal to provide relevant tax returns

In his letter, Exhibit 1, Atty. Hymes also refuses Manal's tax returns for the period when she allegedly received a million dollars in unaccounted, untraceable cash—and the most peculiar thing about the assertion is that the basis for refusal seems to be that Manal did not report the million for tax purposes in the USVI or in her home taxing jurisdiction:

My client has indicated that she has not paid taxes on any interest payments paid to her by your clients. Therefore, I see no need for you to obtain copies of her tax returns for the years 1990 - 2000.

Moreover, she does not intend to report or pay those taxes in her home taxing jurisdiction unless she wins here. In her discovery responses (interrogatory 19(c)), she states:

C. All taxes paid to the **governments of your residence and citizenship** for the three payments of \$360,000 from the Virgin Islands Corporation, Sixteen Plus.

**RESPONSE: As a non-US Resident, and non-US Citizen, I did not think I have to pay taxes. If I do, I do not mind paying them when the case is over.**



This is despite the fact that Atty. Hymes stated the following, that Manal did have income of over \$1 million, in Exhibit 1:

Isam managed money for Manal in two ways. First, he gave her cash as she needed it from the interest payments paid to her by your clients. Second, he assisted with the agreement for her to lend \$4.5 Million to Sixteen Plus by agreeing on her behalf to do so, and by transferring money given to her for her benefit by her father to Sixteen Plus in accordance with the terms and conditions of the Note and First Priority Mortgage executed by Sixteen Plus. **There was no account specifically titled in her name, or for her benefit. Her father deposited \$2 Million into the Island Appliances account, and Isam transferred it to Sixteen Plus as part of the \$4.5 million loan.**

Sixteen Plus should be provided with the returns for those years.

### III. A final Issue: Present Funding

Although Manal and her counsel take the position that neither her past nor her present bank accounts or records exist, and that any transactions with her counsel are privileged, Sixteen Plus must, as a conspiracy is alleged, be allowed get to the bottom of the intertwined questions of (1) are other of the alleged co-conspirators directing her representation—(2) who is funding her expensive, top-level USVI counsel if she states in discovery that she doesn't even have any bank account and is just a simple housewife. Participation in a conspiracy may be shown by payment and/or direction of a co-conspirator's attorney as part of the conspiracy. See, e.g., *Curry v. United States*, Civil Action No. 11-5800 (FSH), 2015 U.S. Dist. LEXIS 20461, at \*63 (D.N.J. Feb. 20, 2015) (“the usefulness of this testimony is demonstrably undermined by the wiretap interceptions in which Curry explicitly directed a co-conspirator to pay for Webb's legal representation.”); see also *Loughman v. Consol-Pennsylvania Coal Co.*, 6 F.3d 88 (3d Cir. 1993) (holding all furtherance of the conspiracy.)

Manal is accused of being *in pari delicto* in here, and (by the proposed amendment) of being part of a present conspiracy to do the criminal acts of a USVI CICO in the 650 action. It is alleged she acts with Isam and Fathi to do so. Sixteen Plus has the right to be able to examine the interconnections between the other conspirators, the funds involved in the conspiracy and Manal's positions and funding here.

If she will not agree to provide this information to Sixteen Plus, then an alternative method must be compelled—(1) a special master or (2) in camera review of (a) counsel's billing and receipts of funds, (b) communication directing the litigation to counsel—if it comes from other of the alleged co-conspirators, and (3) client communications with counsel that would reveal her present and ongoing participation in the predicate criminal acts.

#### **IV. Conclusion**

This is discovery in a \$30 million case. Sixteen Plus is entitled to basic address, tax, accounting, and other information in a claim of this size. It understands she has a note and mortgage, and that is powerful. But the allegations here are that the note and mortgage were shams and that she was merely part of a scheme to launder skimmed funds which is EXTREMELY well documented—and she provided absolutely no consideration from her own funds whatsoever for that note. Her position on that shows no documents, no proof and nothing to suggest the existence of \$4.5 million gift other than her and Isam's unsupported statements.

A proposed Order is attached as **Exhibit 5**.

**Counsel for Sixteen Plus Corporation**

**Dated:** January 3, 2023

*/s/Carl J. Hartmann III*  
\_\_\_\_\_  
**Carl J. Hartmann III, Esq.**  
(Bar # 48)  
*Co-Counsel for Sixteen Plus Corp.*  
2940 Brookwind Dr.  
Holland, MI 49424  
Email: carl@carlhartmann.com  
Phone: 340-642-4422

**Joel H. Holt, Esq. (Bar # 6)**  
LAW OFFICES OF JOEL H. HOLT  
2132 Company Street,  
Christiansted, VI 00820  
Email: holtvi@aol.com  
Phone: (340) 773-8709/  
Fax: (340) 773-8677

**CERTIFICATE OF SERVICE**

I hereby certify that, discounting captions, headings, signatures, quotations from authority and recitation of the opposing party's own text, this document complies the page and word limitations set forth in Rule 6-1(e) and that on **January 3, 2023**, I served a copy of the foregoing by email and the Court's E-File system, as agreed by the parties, to:

**James Hymes III, Esq.**  
*Counsel for Manal Yousef*  
LAW OFFICES OF JAMES L.  
HYMES, III, P.C.  
P.O. Box 990  
St. Thomas, VI 00804-0990  
Tel: (340) 776-3470  
Fax: (340) 775-3300  
jim@hymeslawvi.com

**Charlotte K. Perrell, Esq.**  
**Stefan B. Herpel, Esq.**  
*Counsel for Third-Party Defendant Fathi Yusuf*  
DUDLEY NEWMAN  
FEUERZEIG LLP  
Law House  
1000 Frederiksberg Gade  
P.O. Box 756  
St. Thomas, VI 00804-0756  
Tel: (340) 774-4422  
cperrell@dnfvi.com,  
sherpel@dnfvi.com

**Courtesy Copy** to Kevin Rames, Esq.

*/s/Carl J. Hartmann III*

# **EXHIBIT 1**

Hymes Letter of  
November 7, 2022

LAW OFFICES  
OF  
**JAMES L. HYMES, III, P.C.**

P.O. BOX 990  
ST. THOMAS, VIRGIN ISLANDS 00804-0990  
E-MAIL: [jim@hymeslawvi.com](mailto:jim@hymeslawvi.com)  
TELEPHONE: (340) 776-3470 CELLULAR: (340) 998-3059



REPLY TO:  
 ST. THOMAS OFFICE

REPLY TO:  
 CHRISTIANSTED OFFICE

November 7, 2022

**PRIVILEGED & CONFIDENTIAL**  
**ATTORNEY WORK PRODUCT**

Carl J. Hartmann, III, Esq.  
[carl@carlhartmann.com](mailto:carl@carlhartmann.com)  
[carl@hartmann.attorney](mailto:carl@hartmann.attorney)

Re: **Sixteen Plus v. Manal Yousuf**  
**SCVI/STX Civil No. SX-16-CV-65**  
**MMY v. Sixteen Plus**  
**SCVI/STX Civil No. SX-17-CV-342**

Dear Attorney Hartmann:

This letter will respond to your letter to me of October 20, 2022, which sets forth your understanding of our discussion, and those items which you believe are deliverable.

With respect to paragraph (2) of the August 1, 2017 letter to me from Joel Holt, I have been reminded by Jamil Yousuf that I requested that he establish a telephone conference call with Manal at the time I was retained to allow her to confirm my retention, and to avoid any question of same if it was only done by Jamil through his power of attorney.

I have agreed to obtain copies of all pages of the passports requested to be produced with the understanding that a request will be made to the Superior Court for them to be filed with the Court under seal, to avoid them being made a matter of public record.

You indicated to me that you required a description of the present address for my client so that you may serve her with process. I will not provide you with that address. If you need to serve her with process, it may be done through me.

CHRISTIANSTED OFFICE:  
1138 KING STREET (THE PENTHENY BUILDING), CHRISTIANSTED, ST. CROIX, U.S. VIRGIN ISLANDS 00820-4943  
E-MAIL: [rauna@hymeslawvi.com](mailto:rauna@hymeslawvi.com)  
TELEPHONE: (340) 773-1700

My client has indicated that she has not paid taxes on any interest payments paid to her by your clients. Therefore, I see no need for you to obtain copies of her tax returns for the years 1990 - 2000.

I will acknowledge your statement to me that you confused the name of the BFC Island Appliance with Island Appliances. In my opinion the answers to your discovery correctly responded to the question and gave information as if the question properly assumed the name of the company was Island Appliances. If you do not agree with this and wish to send a separate document with the correct name, please feel free to do so.

**Points Raised in Isam's Responses:**

Isam managed money for Manal in two ways. First, he gave her cash as she needed it from the interest payments paid to her by your clients. Second, he assisted with the agreement for her to lend \$4.5 Million to Sixteen Plus by agreeing on her behalf to do so, and by transferring money given to her for her benefit by her father to Sixteen Plus in accordance with the terms and conditions of the Note and First Priority Mortgage executed by Sixteen Plus. There was no account specifically titled in her name, or for her benefit. Her father deposited \$2 Million into the Island Appliances account, and Isam transferred it to Sixteen Plus as part of the \$4.5 million loan.

Isam has fully described and provided the addresses at which he has resided on the island of St. Maarten. No further supplementation will be forthcoming as such is unnecessary.

A description of the rate of pay of Isam, and his percentage of stock ownership in Island Appliances will not be provided as this information is totally irrelevant to any litigation.

You have asked for a description of all foreign bank accounts in his name during the period 1995 2000. Once again, this is irrelevant to any issue related to this case and will not be provided.

Interrogatory 9(b) asked how you and/or Island Appliances obtained the \$2 Million to transfer to Sixteen Plus on or about February 19, 1997. My clients have repeatedly explained to you that these funds came from Manal's father. No further explanation is required.

Document Request No. 1 asked for copies of all monthly account statements for any checking, savings, investment, brokerage account titled to you in your name from 1990 through 1997. The response was none. This response cannot change since there are no documents in his possession, custody, or control.

You have requested factual answers to Interrogatory No. 22, and its subsections E, F and G. Information will not be provided because the funds for the loan to Sixteen Plus did not come from Island Appliances, but rather from Manal's father.

I have been advised that what you thought was a bank card is in fact an insurance card, and therefore there will be no further supplementation to Document Request No. 9.

Finally, you have demanded information as to how the \$1,080,000 of interest which your client denied paying was spent by Manal. She and her husband purchased a supermarket from Isam with the first payment of interest, and spent the second payment supporting the operation of the supermarket and for their own personal use. They purchased a car and a van with a portion of the money. Between 1999 and 2003, a second store was opened and supported with the third payment of interest. Any remaining cash was received and used as needed for personal consumption.

Access to the financial records of Island Appliances and my clients will not be granted. Your clients have denied making any payments of interest. Therefore, they have no reason to look in bank accounts for those funds. If your clients used the money which they skimmed from Plaza Extra to fund the Note and Mortgage, they should have the documents by which those funds were deposited in a bank in St. Maarten for transfer back to them in the Virgin Islands. Indeed, those documents should have been produced as part of your rule 26 initial disclosures, but, unless I am mistaken, I have not seen them to date.

Respectfully submitted



James L. Hymes, III

JLH:rs

cc: Joel H. Holt, Esq.  
[holtvi@aol.com](mailto:holtvi@aol.com)



**EXHIBIT 2**  
Manal's  
Interrogatory  
Responses

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

SIXTEEN PLUS CORPORATION,  
Plaintiff/Counterclaim Defendant,

vs.

MANAL MOHAMMAD YOUSEF,  
Defendant/Counterclaim Plaintiff.

CIVIL NO. SX-16-CV-65

ACTION FOR  
DECLARATORY JUDGMENT

JURY TRIAL DEMANDED



**MANAL MOHAMMAD YOUSEF'S RESPONSE TO  
PLAINTIFF/COUNTERCLAIM DEFENDANT SIXTEEN PLUS'  
FIRST SET OF INTERROGATORIES TO  
DEFENDANT/COUNTERCLAIM PLAINTIFF MANAL MOHAMMAD YOUSEF**

The Defendant/Counterclaim Plaintiff **MANAL MOHAMMAD YOUSEF**, through her undersigned attorney, James L. Hymes, III, hereby responds to Plaintiff/Counterclaim Defendant Sixteen Plus' First Set of Interrogatories as follows:

**I. GENERAL OBJECTIONS**

Defendant/Counterclaim Plaintiff **MANAL MOHAMMAD YOUSEF**, incorporates the following general objections into each and every interrogatory response as set forth below, and further, by submitting her responses to Interrogatories, does not waive any objections to subject matter jurisdiction, personal jurisdiction, service of process, improper venue, insufficiency of process, insufficiency of service of process, or failure to state a claim upon which relief can

be granted, or any other defense or objection which may be presented whether by pleading or motion in this action:

1. This defendant/counterclaim plaintiff objects to that portion of plaintiff/counterclaim defendant's instructions and definitions to the extent that they impose any burden on this defendant not specifically provided for by the Virgin Islands Rules of Civil Procedure.

2. This defendant/counterclaim plaintiff objects to each interrogatory to the extent that any full answer thereto would require this defendant/counterclaim plaintiff to divulge information, documents, or communications protected by the attorney-client privilege or the attorney work product doctrine, or to the extent that it seeks information or documents reflecting attorney/client communications, attorney work product, or the work product of non-attorneys prepared for, or under the direction of an attorney, or in anticipation of litigation or for trial preparation.

3. This defendant/counterclaim plaintiff objects to each interrogatory to the extent that it seeks information or documents outside of this defendant's possession and custody, or in the control of a third-party over whom this defendant/counterclaim plaintiff has no power.

4. This defendant/counterclaim plaintiff objects to each interrogatory to the extent it is overly broad, unduly vague, or ambiguous.

5. This defendant/counterclaim plaintiff objects to each interrogatory to the extent it requires the production of information which would be burdensome, oppressive, or expense to produce.

6. This defendant/counterclaim plaintiff objects to each interrogatory to the extent that it seeks information that is not, in any meaningful way, related to the parties' claims or defenses.

7. This defendant/counterclaim plaintiff objects to each interrogatory, or any portion thereof, that seeks information on matters of public record, or other information to which plaintiff/counterclaim defendant has equal access.

8. This defendant/counterclaim plaintiff objects to each interrogatory, or portion thereof, which requires a response that may contain or reflect subsequent remedial measures or reflect information protected by the privilege of self-critical evaluation.

9. This defendant/counterclaim plaintiff objects to each interrogatory to the extent it seeks information not calculated to lead to the discovery of relevant or admissible evidence.

10. This defendant/counterclaim plaintiff objects to any inadvertent disclosure of privileged information being deemed a waiver, or being used affirmatively against them for any reason or purpose.

11. This defendant/counterclaim plaintiff objects to each interrogatory to the extent that it seeks information in excess of the numerical limitation including all discrete subparts.

## II. INTERROGATORIES

### Interrogatory 1:

Please state your full name, date of birth and all addresses where you have resided since January of 1995.

### Response:

**My full name is Manal Mohammad Yousef. I was born on April 22, 1968.**

**From January 1995 to June 2010, I resided in St. Maarten at Cole Bay.**

**From June 2010 to the present, I have resided at Ramallah - West Bank**

**- Palestine.**

**Interrogatory 2:**

Please state the full name and address of each person with whom you discussed any aspect the loan transaction for the Promissory Note attached hereto as Exhibit 1 and the mortgage secured by it prior to the loan being finalized, and for each such person please state:

- a) The approximate dates of each such discussion;
- b) Whether the discussion was in person or not
- c) The specifics, and if specifics are not recalled, the general nature or gist of all such discussions

**Response:**

I had discussions with my father and my brother Isam at or about the time I loaned the money to Sixteen Plus Corporation. These discussions took place in person and occurred sometime shortly before February 16, 1997. The gist of the discussions were that I would loan approximately Four Million Five Hundred Thousand Dollars (\$4,500,000) to the Sixteen Plus Corporation from money which had been given to me by my father for investment purposes, and that the corporation would execute a promissory note and mortgage to secure the repayment of the loan proceeds to me, plus interest.

**Interrogatory 3:**

Please describe the source of all funds in your name or under your control that you used as consideration for the loan evidenced by the Promissory Note attached hereto as Exhibit 1 and please state how you were able to amass such a large sum of money by age 29.

**Response:**

**During the course of my lifetime I was given money by my father for my benefit for investment purposes. These funds were managed for me by my brother, Isam.**

**Interrogatory 4:**

Please state the name and address of each person to whom you transferred the funds used as consideration for the loan evidenced by the Promissory Note attached hereto as Exhibit 1 and the mortgage secured by it.

**Response:**

**The money which I loaned to Sixteen Plus Corporation was transferred on my behalf by my brother Isam, who had control and management authority of my money which had been given to me by my father for my benefit and for investment purposes.**



**Interrogatory 5:**

Please identify the bank or brokerage account used by you to transfer the funds for the loan evidenced by the Promissory Note attached hereto as Exhibit 1 and the mortgage secured by it.

**Response:**

The money was transferred from an account managed by my brother  
**Isam.**

**Interrogatory 6:**

Please state the name and address of each place you have worked between 1986 and 1996 and for each such place, please state:

- a) Your job title or position
- b) Your rate of pay
- c) The time you started and the time you left each such job

**Response:**

**I have never worked. I have been a housewife my entire life.**

**Interrogatory 7:**

Please state the full name and address of each person with whom you discussed any aspect of the loan transaction for the Promissory Note attached hereto as Exhibit 1 and the mortgage secured by it since the loan was made and for each such person please state:

- a) The approximate dates of each such discussion;
- b) Whether the discussion was in person or not
- c) The specifics, and if specifics are not recalled, the general nature or gist of all such discussions

**Response:**

**See Response to Interrogatory 2, above.**

**Interrogatory 8:**

Describe in detail how the loan between you and Sixteen Plus evidenced by the Promissory Note attached as Exhibit 1 and accompanying Mortgage were negotiated and subsequently agreed to, including the identification of the name and address of all lawyers, third parties and financial institutions involved in this transaction.

**Response:**

**All of the terms and conditions of the promissory note and accompanying mortgage were negotiated on my behalf by my father and my brother Isam.**

**Interrogatory 9:**

Please list all financial accounts you have, that are fully or partially in your name or as to which you are a beneficiary from January 1, 1995 through December 31, 2000, including but not be limited to all: bank accounts, stock brokerage accounts, negotiable instrument accounts, retirement accounts, trading or options accounts, and funds transfer accounts, For each identify the name and address of the institution, the title holder(s), the beneficiaries or trust beneficiaries as well as the last four digits of the account number(s).

**Response:**

**I object to providing any identifying bank or financial institution account numbers on the grounds they need to be kept out of the public domain for safety reasons. Without waiving this objection, the money which was given to me by my father was managed for me by my brother in an account over which he had management control.**

**Interrogatory 10:**

Did you retain Kye Walker to represent you in this case? If so, please state:

- a) The date you retained her services;
- b) The form of communication you used to communicate with her;
- c) The date and nature of any communications you have ever had with the law firm of Dudley, Topper and Feuezeig,

**Response:**

**Attorney Kye Walker was retained on my behalf by my nephew Jamil Yousuf on or about May 10, 2016, pursuant to a general power of attorney given to him by me. In March 2017, I spoke on the telephone with Attorney Walker. I have never had any communications with the law firm of Dudley, Topper and Feuerzeig.**

**Interrogatory 11:**

Regarding the amount due under the Promissory Note attached as Exhibit 1, please state:

- a) The date and amount of all payments, if any, made to you;
- b) Your calculation of the remaining principle due on the Note;
- c) Your calculation of accrued interest due through July 1, 2017;
- d) Your calculation of the daily accrual of interest after July 1, 2017.

**Response:**

In the years 1998, 1999, and 2000, payments were made to me by the Sixteen Plus Corporation in the amount of \$360,000.00 in each of those years. In 1998, the payment was made by Waleed Hamed in cash. I do not know the form of the payment of \$360,000.00 in 1999, or in 2000. I have not made a calculation of the accrued interest due through July 1, 2017, or the daily accrual of interest after July 1, 2017. These are simple mathematical calculations that an economist, bookkeeper, or CPA can make based on the terms and conditions of the note given to me by the Sixteen Plus Corporation. At such time as these calculations are made, this response will be supplemented.

**Interrogatory 12:**

Regarding the Power of Attorney ("POA") attached hereto as Exhibit 2, please state:

- a) Who prepared this POA;
- b) Who presented it to you for signature;
- c) Where were you when you signed it;
- d) The name and address of each person with whom you discussed this POA before signing it;
- e) What were the specifics, and if the specifics are not recalled, the general nature or gist of any conversations you had with any person before you signed it.

**Response:**

**The Power of Attorney attached to the Interrogatories as Exhibit 2 was prepared by the Sixteen Plus Corporation, or by someone on its behalf and at its direction. It was given to me for signature by my brother Isam at the office of the notary public in St. Maarten. I discussed the Power of Attorney with my brother at that time and place. At the time I was asked to sign this Power of Attorney, the Sixteen Plus Corporation had a buyer for the Diamond Keturah property, and it was believed that this Power of Attorney might facilitate the sale and permit me as result to get my money repaid.**



**Interrogatory 13:**

Regarding any oral communications you have had with Fathi Yusuf from 1996 to present that you can recall regarding any matters related to United Corporation, Sixteen Plus, or anything to do with the Defendant's loan to Sixteen Plus, please state:

- a) The date and place of each such communication;
- b) The specifics, and if specifics are not recalled, the general nature or gist of each conversation;
- c) For each such communication, state where you were located when it occurred.

**Response:**

**In early 1996 or 1997, discussions took place in my home at Cole Bay in St. Maarten between me, my father, my brother, Fathi Yusuf, and Waleed Hamed concerning my loaning the Sixteen Plus Corporation money for it to use to purchase property in St. Croix, U.S. Virgin Islands. The essence of the discussions were that it would be beneficial both to me and to the corporation. My loan would be repaid with interest, and the corporation would be able to buy a valuable piece of property in St. Croix.**

**Interrogatory 14:**

Regarding any oral communications you have had with your brother Isam Yousef from 1996 to present that you can recall regarding any matters related to United Corporation, Sixteen Plus, or anything to do with the Defendant's loan to Sixteen Plus, please state:

- a) The date and place of each such communication;
- b) The specifics, and if specifics are not recalled, the general nature or gist of each conversation;
- c) For each such communication, state where you were located when it occurred.

**Response:**

**From 1996 to the present, I have had no discussions with my brother regarding the United Corporation. I have had many conversations with him about the loan I made to the Sixteen Plus Corporation. Most of our conversations have taken place on the telephone. In the beginning most of our conversations were regarding how I would benefit from this loan. Later on they concerned why the corporation was not paying interest due on the loan, or why it was not making payment of principal. In more recent times our conversations have involved collection of the debt.**

**Interrogatory 15:**

Regarding any oral communications you have had with Jamil Yousef from 2009 to present that you can recall regarding any matters related to United Corporation, Sixteen Plus, or anything to do with the Defendant's loan to Sixteen Plus, please state:

- a) The date and place of each such communication;
- b) The specifics, and if specifics are not recalled, the general nature or gist of each conversation;
- c) For each such communication, state where you were located when it occurred.

**Response:**

**From 2009 to the present, I have not had any conversations with Jamil regarding the United Corporation. In July, 2012, I met him in Jordan. At that time I gave him a General Power of Attorney to be in charge of the loan which I made to the Sixteen Plus Corporation. Since that time we have spoken on the telephone many times regarding the fact that payments of interest and principal have not been made by the corporation on the loan, and what can and should be done to collect payment.**

**Interrogatory 16:**

Regarding the Promissory Note attached as Exhibit 1, have you ever made a demand for payment? If so, please state when such demand was made. If not, please state why not.

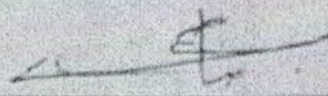
**Response:**

**My brother Isam made many personal requests on my behalf to the corporation for payment of interest and principal on the promissory note. At no time was the validity of the loan or the note denied. Excuses for nonpayment were only that the corporation had financial difficulties. More recently my nephew Jamil arranged for a letter to be sent by a lawyer in St. Maarten asking for payment.**

VERIFICATION

I hereby certify under penalty of perjury that the facts contained in each of the foregoing responses to interrogatories are true and correct to the best of my knowledge, information and belief.

Dated: \_\_\_\_\_

  
\_\_\_\_\_  
Manal Mohammad Yousef

)  
) ss.

\_\_\_\_\_  
On this, the \_\_\_\_\_ day of 2017, before me, the undersigned officer, personally appeared Manal Mohammad Yousef, known to me (or satisfactorily proven) to be the person whose name is subscribed to the within document and acknowledged that she executed the same for the purpose therein contained.

IN WITNESS WHEREOF, I hereunto set my hand and official seal.

\_\_\_\_\_  
Notary Public

**SIXTEEN PLUS CORPORATION vs. MANAL MOHAMMAD YOUSEF**

SCVI/STX Civil No. SX-16-CV-65


MANAL MOHAMMAD YOUSEF'S RESPONSE TO PLAINTIFF/COUNTERCLAIM DEFENDANT SIXTEEN PLUS' FIRST SET OF INTERROGATORIES

Respectfully Submitted,

DATED: July 17, 2017.

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

By:

  
**JAMES L. HYMES, III**

VI Bar No. 264

P.O. Box 990

St. Thomas, Virgin Islands 00804-0990

Telephone: (340) 776-3470

Facsimile: (340) 775-3300

E-Mail: [jim@hymeslawvi.com](mailto:jim@hymeslawvi.com);

[rauna@hymeslawvi.com](mailto:rauna@hymeslawvi.com)

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

---

HISHAM HAMED, individually,	)	
and derivatively for	)	CIVIL NO. SX-16-CV-00065
SIXTEEN PLUS CORPORATION,	)	<hr/>
	)	
Plaintiffs/Counterclaim Defendant,	)	ACTION FOR
	)	DECLARATORY JUDGMENT
vs.	)	CICO and FIDUCIARY DUTY
MANAL MOHAMMAD YOUSEF,	)	
	)	JURY TRIAL DEMANDED
Defendant/Counterclaim Plaintiff.	)	
<hr/>	)	
MANAL MOHAMMAD YOUSEF,	)	CIVIL NO. SX-17-CV-342
a/k/a MANAL MOHAMAD YOUSEF,	)	<hr/>
	)	ACTION FOR DEBT AND
Plaintiff,	)	FORECLOSURE OF REAL
	)	PROPERTY MORTGAGE
vs.	)	
SIXTEEN PLUS CORPORATION,	)	COUNTERCLAIM FOR
	)	DAMAGES
Defendant.	)	JURY TRIAL DEMANDED
<hr/>	)	
SIXTEEN PLUS CORPORATION,	)	
	)	
Counterclaim Plaintiff,	)	
	)	
Vs.	)	
	)	
MANAL MOHAMMAD YOUSEF a/k/a	)	
MANAL MOHAMAD YOUSEF and	)	
FATHI YUSUF,	)	
	)	
Counterclaim Defendants.	)	
<hr/>	)	

**MANAL MOHAMMAD YOUSEF'S RESPONSE TO  
SECOND INTERROGATORIES TO MANAL YOUSEF**

The Defendant/Counterclaim Plaintiff **MANAL MOHAMMAD YOUSEF**, through her undersigned attorney, James L. Hymes, III, hereby responds to the Second Interrogatories to Manal Yousef propounded by Sixteen Plus, as follows:

**I. GENERAL OBJECTIONS**

Defendant/Counterclaim Plaintiff **MANAL MOHAMMAD YOUSEF**, incorporates the following general objections into each and every interrogatory response as set forth below, and further, by submitting her responses to Interrogatories, does not waive any objections to subject matter jurisdiction, personal jurisdiction, service of process, improper venue, insufficiency of process, insufficiency of service of process, or failure to state a claim upon which relief can be granted, or any other defense or objection which may be presented whether by pleading or motion in this action:

1. This defendant/counterclaim plaintiff objects to that portion of plaintiff/counterclaim defendant's instructions and definitions to the extent that they impose any burden on this defendant not specifically provided for by the Virgin Islands Rules of Civil Procedure.

2. This defendant/counterclaim plaintiff objects to each interrogatory to the extent that any full answer thereto would require this defendant/counterclaim plaintiff to divulge information, documents, or communications protected by the attorney-client privilege or the attorney work product doctrine, or to the extent that it seeks information or documents reflecting attorney/client communications, attorney work product, or the work product of non-attorneys prepared for, or under the direction of an attorney, or in anticipation of litigation or for trial preparation.



3. This defendant/counterclaim plaintiff objects to each interrogatory to the extent that it seeks information or documents outside of this defendant's possession and custody, or in the control of a third-party over whom this defendant/counterclaim plaintiff has no power.

4. This defendant/counterclaim plaintiff objects to each interrogatory to the extent it is overly broad, unduly vague, or ambiguous.

5. This defendant/counterclaim plaintiff objects to each interrogatory to the extent it requires the production of information which would be burdensome, oppressive, or expense to produce.

6. This defendant/counterclaim plaintiff objects to each interrogatory to the extent that it seeks information that is not, in any meaningful way, related to the parties' claims or defenses.

7. This defendant/counterclaim plaintiff objects to each interrogatory, or any portion thereof, that seeks information on matters of public record, or other information to which plaintiff/counterclaim defendant has equal access.

8. This defendant/counterclaim plaintiff objects to each interrogatory, or portion thereof, which requires a response that may contain or reflect subsequent remedial measures or reflect information protected by the privilege of self-critical evaluation.

9. This defendant/counterclaim plaintiff objects to each interrogatory to the extent it seeks information not calculated to lead to the discovery of relevant or admissible evidence.

10. This defendant/counterclaim plaintiff objects to any inadvertent disclosure of privileged information being deemed a waiver, or being used affirmatively against them for any reason or purpose.

11. This defendant/counterclaim plaintiff objects to each interrogatory to the extent that it seeks information in excess of the numerical limitation including all discrete subparts.

## II. INTERROGATORIES

### Interrogatory 17:

In Interrogatory #9 in the First Interrogatories to you, you were asked the following and provided the following Response:

#### Interrogatory 9:

Please list all financial accounts you have, that are fully or partially in your name or as to which you are a beneficiary from January 1, 1995 through December 31, 2000, including but not be limited to all: bank accounts, stock brokerage accounts, negotiable instrument accounts, retirement accounts, trading or options accounts, and funds transfer accounts, For each identify the name and address of the institution, the title holder(s), the beneficiaries or trust beneficiaries as well as the last four digits of the account number(s).

#### Response:

I object to providing any identifying bank or financial institution account numbers on the grounds they need to be kept out of the public domain for safety reasons. Without waiving this objection, the money which was given to me by my father was managed for me by my brother in an account over which he had management control.

In a Rule 37 conference, your counsel, Attorney Hymes agreed to the following:

**HISHAM HAMED, et al. v. MANAL MAOHAMMAD YOUSEF, et al.**  
**SCVI/STX Civil Nos. SX-16-CV-00065 and SX-17-CV-00342**  
**MANAL MOHAMMAD YOUSEF'S RESPONSE TO**  
**SECOND INTERROGATORIES TO MANAL YOUSEF**

**Re: Sixteen Plus v Manal Yousef et al., SX-16-CV-65**

Dear Attorney Hymes:

In follow up to our Rule 37 conference, I want to memorialize what I understand we agreed on:

- 1) You will produce (1) the power of attorney from Manal Yousef to Jamil Yousuf as well as (2) the notarized signature page of the interrogatory answers now.
- 2) You will confirm in writing that your only communications have been with Jamil Yousuf, not Manal Yousef. In exchange, I will withdraw the request to produce a privilege log.
- 3) Regarding Manal's passports, you are obtaining copies as promptly as you can, which you will then file under seal with the Court, notifying me when you do.
- 4) As for Interrogatory 9, you will amend to say that Manal has no documents that have any of the requested information.

Please confirm that I have accurately summarized our discussion. If not, please let me know what you recall differently. Thanks.

Describe in detail the full response to Interrogatory #9, unless you had no such accounts, none were in your name or no such accounts existed where you were a beneficiary -- for the stated time period. If there were no such accounts, state, as agreed "I had, had in my name or was the beneficiary of no such accounts for that time period."

**RESPONSE:**

**A copy of my Power of Attorney to Jamal has been produced, as have copies of my passports.**

**I have no documents relating to my receipt of funds from Sixteen Plus. My brother gave me cash from time to time as I needed it.**

**Interrogatory 18:**

In that same Rule 37 conference, your counsel agreed to produce a power of attorney from you to Jamil. Have you produced it, and if not, why not?

**RESPONSE:**

**A copy of the Power of Attorney has been produced.**

**Interrogatory 19:**

You state in response to Interrogatory #11:

**Response:**

In the years 1998, 1999, and 2000, payments were made to me by the Sixteen Plus Corporation in the amount of \$360,000.00 in each of those years. In 1998, the payment was made by Waleed Hamed in cash. I do not know the form of the payment of \$360,000.00 in 1999, or in 2000. I have not made a calculation of the accrued interest due through July 1, 2017, or the daily accrual of interest after July 1, 2017. These are simple mathematical calculations that an economist, bookkeeper, or CPA can make based on the terms and conditions of the note given to me by the Sixteen Plus Corporation. At such time as these calculations are made, this response will be supplemented.

Please describe all of the following with a full description of the documents, dates and persons involved:

- A. All taxes paid to the US Virgin Islands Government for the three payments of \$360.000 from the Virgin Islands Corporation, Sixteen Plus. (I.e. all VI sourced income.)

**RESPONSE:**

**As a non-US Resident, and non-US Citizen, I did not think I have to pay taxes. If I do, I do not mind paying them when the case is over.**

- B. All taxes paid to the US Government for the three payments of \$360.000 from the Virgin Islands Corporation, Sixteen Plus. (I.e. all US source income.)

**RESPONSE:**

**As a non-US Resident, and non-US Citizen, I don't think I have to pay tax, and if I have to pay, I do not mind paying when the case is over.**

- C. All taxes paid to the governments of your residence and citizenship for the three payments of \$360.000 from the Virgin Islands Corporation, Sixteen Plus.

**RESPONSE:**

**As a non-US Resident, and non-US Citizen, I did not think I have to pay taxes. If I do, I do not mind paying them when the case is over.**

- D. All transfers of funds to you or for your benefit for those three payments.

**RESPONSE:**

**I receive cash from my brother from time to time, as needed.**

**Interrogatory 20:**

With regard to the three payments to you of \$360,000 each, in the years 1998, 1999, and 2000, please describe in detail:

A. In what form the payments were made

**RESPONSE:**

**Cash.**

B. Where those funds were initially deposited.

**RESPONSE:**

**They were not deposited.**

C. If you have by the date of your response here, received some or all of those funds, where they are or if spent or otherwise devised, what you spent them on or where they went.

**RESPONSE:**

**My brother gave me cash from time to time as I needed it.**

D. If you have not yet received those funds, where they are now.

**RESPONSE:**

**All funds received by my brother have been disbursed to me over time, and there are none left to be distributed.**

**Interrogatory 21:**

Give the dates and identify the person with regard to all communications with any person, including any attorney with who you have had any in person, email, telephone, or computer conversation or communication regarding your upcoming deposition or the answers to discovery from July 1, 2022 to the date of your response here. If you do not respond to this under claim of privilege, supply a privilege log.

**RESPONSE:**

**I object to responding to this interrogatory, and to providing a privilege log for the reason that all of my communications were through an attorney, and that to provide a privilege log would defeat the purpose of privilege of attorney/client confidentiality.**



**VERIFICATION**

I hereby certify under penalty of perjury that the facts contained in each of the foregoing responses to interrogatories are true and correct to the best of my knowledge, information and belief.

Dated: September 15<sup>th</sup>, 2022.

\_\_\_\_\_  
Manal Mohammad Yousef

)  
) ss.  
)

On this, the 15 day of September, 2022, before me, the undersigned officer, personally appeared Manal Mohammad Yousef, known to me (or satisfactorily proven) to be the person whose name is subscribed to the within document and acknowledged that she executed the same for the purpose therein contained.

IN WITNESS WHEREOF, I hereunto set my hand and official seal.

\_\_\_\_\_  
Notary Public



EXP. date 12/31/2022

Respectfully Submitted,

DATED: September 20, 2022.

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

By: */s/ James L. Hymes, III*

**JAMES L. HYMES, III**, [VI Bar No. 264]  
P.O. Box 990  
St. Thomas, Virgin Islands 00804-0990  
Telephone: (340) 776-3470  
E-Mail: [jim@hymeslawvi.com](mailto:jim@hymeslawvi.com);  
[rauna@hymeslawvi.com](mailto:rauna@hymeslawvi.com)

**CERTIFICATE OF SERVICE**

I hereby certify that on this the 20<sup>th</sup> day of September, 2022, I caused an exact copy of the foregoing "***Manal Mohammad Yousef's Response to Second Interrogatories to Manal Yousef***" to be served electronically by e-mail to the following counsel of record:

**JOEL H. HOLT, ESQ.**

LAW OFFICES OF JOEL H. HOLT  
2132 Company Street  
Christiansted, USVI, 00820  
[holtvi.plaza@gmail.com](mailto:holtvi.plaza@gmail.com)

***Counsel for Defendant/Counterclaim Plaintiff Sixteen Plus Corporation***

**CARL J. HARTMANN, III, ESQ.**

5000 Estate Coakley Bay, L-6  
Christiansted, VI 00820  
[carl@carlhartmann.com](mailto:carl@carlhartmann.com)

***Co-Counsel for Defendant/Counterclaim Plaintiff Sixteen Plus Corporation***

**CHARLOTTE PERRELL, ESQ.**

**STEFAN HERPEL, ESQ.**  
DUDLEY NEWMAN FEUERZEIG  
Law House, 1000 Frederriksberg Gade  
P.O. Box 756  
St. Thomas, VI 00804-0756  
[cperrell@dnfvi.com](mailto:cperrell@dnfvi.com)  
[sherpel@dnfvi.com](mailto:sherpel@dnfvi.com)

***Attorneys for Third Party Defendant Fathi Yusuf***

*/s/ James L. Hymes, III*



**Banko di Seguro Sosial**  
Sociale Verzekeringsbank • Social Insurance Bank

**Seguro Card**  
Strikt persoonlik.  
Misbruik wordt gestraaf.

SVB IDnr  
**680422760**

Hoofdverzekerde / Insured under  
**611205790**

Naam / Name  
**AKHRAS-MOHAMMAD, MANAL MONAMMED YOUSEF**

Geslacht / Gender  
**V**

Geboortedatum / Date of birth  
**22-04-1968**

Huisarts / General practitioner  
**DENNAOUI M.M.Y.**

Geldig / Valid  
**25-03-2008** «» **25-03-2010**

Geregistreerd / Registered  
**St. Maarten**



Kaartnummer / Card number  
**200604861**

Handtekening  
Verzekerde

Deze kaart is eigendom van de SVB.

201823





The Defendant/Counterclaim Plaintiff **MANAL MOHAMMAD YOUSEF**, through her undersigned attorney, James L. Hymes, III, hereby responds to the Third Interrogatories to Manal Yousef propounded by Sixteen Plus, as follows:

### I. GENERAL OBJECTIONS

Defendant/Counterclaim Plaintiff **MANAL MOHAMMAD YOUSEF**, incorporates the following general objections into each and every interrogatory response as set forth below, and further, by submitting her responses to Interrogatories, does not waive any objections to subject matter jurisdiction, personal jurisdiction, service of process, improper venue, insufficiency of process, insufficiency of service of process, or failure to state a claim upon which relief can be granted, or any other defense or objection which may be presented whether by pleading or motion in this action:

1. This defendant/counterclaim plaintiff objects to that portion of plaintiff/counterclaim defendant's instructions and definitions to the extent that they impose any burden on this defendant not specifically provided for by the Virgin Islands Rules of Civil Procedure.

2. This defendant/counterclaim plaintiff objects to each interrogatory to the extent that any full answer thereto would require this defendant/counterclaim plaintiff to divulge information, documents, or communications protected by the attorney-client privilege or the attorney work product doctrine, or to the extent that it seeks information or documents reflecting attorney/client communications, attorney work product, or the work product of non-attorneys prepared for, or under the direction of an attorney, or in anticipation of litigation or for trial preparation.

3. This defendant/counterclaim plaintiff objects to each interrogatory to the extent that it seeks information or documents outside of this defendant's possession and custody, or in the control of a third-party over whom this defendant/counterclaim plaintiff has no power.

4. This defendant/counterclaim plaintiff objects to each interrogatory to the extent it is overly broad, unduly vague, or ambiguous.

5. This defendant/counterclaim plaintiff objects to each interrogatory to the extent it requires the production of information which would be burdensome, oppressive, or expense to produce.

6. This defendant/counterclaim plaintiff objects to each interrogatory to the extent that it seeks information that is not, in any meaningful way, related to the parties' claims or defenses.

7. This defendant/counterclaim plaintiff objects to each interrogatory, or any portion thereof, that seeks information on matters of public record, or other information to which plaintiff/counterclaim defendant has equal access.

8. This defendant/counterclaim plaintiff objects to each interrogatory, or portion thereof, which requires a response that may contain or reflect subsequent remedial measures or reflect information protected by the privilege of self-critical evaluation.

9. This defendant/counterclaim plaintiff objects to each interrogatory to the extent it seeks information not calculated to lead to the discovery of relevant or admissible evidence.

10. This defendant/counterclaim plaintiff objects to any inadvertent disclosure of privileged information being deemed a waiver, or being used affirmatively against them for any reason or purpose.

11. This defendant/counterclaim plaintiff objects to each interrogatory to the extent that it seeks information in excess of the numerical limitation including all discrete subparts.

## II. INTERROGATORIES

### **Interrogatory 22:**

For each of the Affirmative Defenses In your Answer and Counterclaim in this case (65) listed below, state the factual basis of and describe in detail all facts and documents which support the defense.

22-1. The Complaint fails to state a cause of action against the defendant upon which the Court may grant relief.

### **RESPONSE TO 22-1:**

**I object to answering this Interrogatory for the reason that it was prepared by my attorney and consists of his mental thoughts and impressions of which I have no knowledge and of which the parties have no right to inquire about. I further object to responding to this interrogatory to the extent it exceeds the permissible number of 25 interrogatories which may be asked of the opposing party including discrete subparts. Without waiving these objections the Complaint fails to state a cause of action against me to the extent it seeks to declare my Note and Mortgage invalid for the reason that they were duly executed by representatives authorized and appointed by the Corporation.**



22-2. The Court lacks personal and subject matter jurisdiction over this defendant due to insufficiency of service of process.

**RESPONSE TO 22-2:**

**I object to answering this interrogatory for the reason that it seeks a legal opinion which I am not qualified or obligated to respond to. Without waiving I am willing to waive this affirmative defense.**

22-3. The Court lacks personal and subject matter jurisdiction to the extent the plaintiff is not a corporation in good standing.

**RESPONSE TO 22-3:**

**This affirmative defense was pled so as to avoid waiver. An investigation into the legal status of the Corporation will necessarily have to be conducted during the course of discovery which has not yet been completed.**

22-4. The plaintiff is not entitled to the relief which it requests because it is legally estopped from denying the validity of the Promissory Note and First Priority Mortgage (particularly WHY it is estopped.)

**RESPONSE TO 22-4:**

**If the plaintiff did not sign the promissory note and first priority mortgage intending to be bound by the terms and conditions of it, it was committing a fraud for which is not entitled to be rewarded as a matter of law**

22-5. The plaintiff is barred from recovery herein because it is equitably estopped from denying the validity of the First Priority Mortgage. (particularly WHY it is estopped.)

**RESPONSE TO 22-5:**

**See Response to paragraph 22-4, above.**

22-6. The plaintiff is barred from recovery herein for the reason that it authorized its secretary to swear under oath, subject to the penalties of perjury, that it was justly indebted to the defendant. (And if this occurred, all facts related thereto.)

**RESPONSE TO 22-6:**

**The document speaks for itself.**

22-7. The plaintiff is barred from recovery herein to the extent its actions are fraudulent, contrary to law, in furtherance of a criminal act, not brought in good faith for a valid purpose, and therefore not in the best interests of the corporation.

**RESPONSE TO 22-7:**

**I object to answering this interrogatory on the grounds that it seeks a legal opinion. Without waiving this objection, see my Response to paragraph 22-4, above.**

22-8. The plaintiff is barred from recovery herein by reason of the fact it has an irreconcilable conflict of interest since it agreed to warrant and defend the defendant's lien and the interest of the defendant against all claims and demands made against the First Priority Mortgage.

**RESPONSE TO 22-8:**

**The Corporation, Sixteen Plus (16+), contends that the note and mortgage which it signed is not a legal valid instrument yet it signed a document by which it agreed to warrant and defend my interest in those documents.**

22-9. The plaintiff is barred from recovery herein pursuant to the provisions of the doctrine of unclean hands.

**RESPONSE TO 22-9:**

**The doctrine of unclean hands is a legal principle which I am told prohibits a corporation from benefiting from its own wrongdoing.**

22-10. The plaintiff is barred from recovery herein due to the principles of laches.

**RESPONSE: TO 22-10**

**I am told the doctrine of laches is a legal principal which prohibits a corporation from benefiting by sitting on its rights and delaying asserting them to the prejudice of other parties.**

22- 11. The plaintiff is barred from recovery herein due to the principles of waiver.

**RESPONSE TO 22-11:**

**I am told he doctrine of waiver is a legal principle which prohibits a litigant from benefiting from sitting on its rights. In this case the Sixteen Plus Corporation issued payments in accordance with the terms and conditions of note mortgage and now seeks to deny the validity of those legal documents.**

**Interrogatory 23:**

Describe all facts and related documents with regard to whether or not Manal Yusuf was a Bona Fide holder of the Note and Mortgage, including but not limited to whether she or her family members knew of the skimming of funds to avoid payment of taxes in the Plaza Extra Partnership, whether she knew Jamil and Isam were laundering money with regard to that tax evasion, and whether she knew of the federal indictment of Fathi, Jamil and Isam -- and the plea deal for tax evasion by United.

**RESPONSE TO 23:**

**See Response to 22-1, above, which makes me a bona fide holder of the Note and Mortgage. I have no knowledge of what any person did with respect to the operation of the Plaza Extra Partnership.**

**Interrogatory 24:**

State all facts and related documents as to your knowledge of the US federal lien on the subject property


**RESPONSE TO 22-4:**

**None.**

VERIFICATION

I hereby certify under penalty of perjury that the facts contained in each of the foregoing responses to interrogatories are true and correct to the best of my knowledge, information and belief.

Dated: 9/15/2022

  
\_\_\_\_\_  
Manal Mohammad Yousef

\_\_\_\_\_)  
\_\_\_\_\_) ss.  
\_\_\_\_\_)

On this, the 9/15/2022 day of ~~2021~~ <sup>2022</sup>, before me, the undersigned officer, personally appeared Manal Mohammad Yousef, known to me (or satisfactorily proven) to be the person whose name is subscribed to the within document and acknowledged that she executed the same for the purpose therein contained.

IN WITNESS WHEREOF, I hereunto set my hand and official seal.

Notary Public   
Exp. date: 12/31/2022

Respectfully Submitted,

DATED: September 20, 2022.

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

By: */s/ James L. Hymes, III*

**JAMES L. HYMES, III**  
VI Bar No. 264  
P.O. Box 990  
St. Thomas, Virgin Islands 00804-0990  
Telephone: (340) 776-3470  
E-Mail: [jim@hymeslawvi.com](mailto:jim@hymeslawvi.com);  
[rauna@hymeslawvi.com](mailto:rauna@hymeslawvi.com)

**CERTIFICATE OF SERVICE**

I hereby certify that on this the 20<sup>th</sup> day of September, 2022, I caused an exact copy of the foregoing "***Manal Mohammad Yousef's Response to Third Interrogatories to Manal Yousef,***" to be served electronically by e-mail to the following counsel of record:

**JOEL H. HOLT, ESQ.**

LAW OFFICES OF JOEL H. HOLT  
2132 Company Street  
Christiansted, USVI, 00820  
[holtvi.plaza@gmail.com](mailto:holtvi.plaza@gmail.com)

***Counsel for Defendant/Counterclaim Plaintiff Sixteen Plus Corporation***

**CARL J. HARTMANN, III, ESQ.**

5000 Estate Coakley Bay, L-6  
Christiansted, VI 00820  
[carl@carlhartmann.com](mailto:carl@carlhartmann.com)

***Co-Counsel for Defendant/Counterclaim Plaintiff Sixteen Plus Corporation***

*/s/ James L. Hymes, III*



**Banko di Seguro Sosial**  
Sociale Verzekeringsbank • Social Insurance Bank

**Seguro Card**  
Strikt persoonlik.  
Misbruik wordt gestraaf.

SVB IDnr  
**680422760**

Hoofdverzekerde / Insured under  
**611205790**

Naam / Name  
**AKHRAS-MOHAMMAD, MANAL MONAMMED YOUSEF**

Gaslacht / Gender  
**V**

Geboortedatum / Date of birth  
**22-04-1968**

Huisarts / General practitioner  
**DENNAOUI M.M.Y.**

Geldig / Valid  
**25-03-2008** <> **25-03-2010**

Geregistreerd / Registered  
**St. Maarten**



Kaartnummer / Card number  
**200804861**

Handtekening  
Verzekerde

Deze kaart is eigendom van de SVB.

201823







The Defendant/Counterclaim Plaintiff **MANAL MOHAMMAD YOUSEF**, through her undersigned attorney, James L. Hymes, III, hereby responds to the Third Interrogatories to Manal Yousef propounded by Sixteen Plus, as follows:

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1. This defendant/counterclaim plaintiff objects to that portion of plaintiff/counterclaim defendant's instructions and definitions to the extent that they impose any burden on this defendant not specifically provided for by the Virgin Islands Rules of Civil Procedure.

2. This defendant/counterclaim plaintiff objects to each interrogatory to the extent that any full answer thereto would require this defendant/counterclaim plaintiff to divulge information, documents, or communications protected by the attorney-client privilege or the attorney work product doctrine, or to the extent that it seeks information or documents reflecting attorney/client communications, attorney work product, or the work product of non-attorneys prepared for, or under the direction of an attorney, or in anticipation of litigation or for trial preparation.

3. This defendant/counterclaim plaintiff objects to each interrogatory to the extent that it seeks information or documents outside of this defendant's possession and custody, or in the control of a third-party over whom this defendant/counterclaim plaintiff has no power.

4. This defendant/counterclaim plaintiff objects to each interrogatory to the extent it is overly broad, unduly vague, or ambiguous.

5. This defendant/counterclaim plaintiff objects to each interrogatory to the extent it requires the production of information which would be burdensome, oppressive, or expense to produce.

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8. This defendant/counterclaim plaintiff objects to each interrogatory, or portion thereof, which requires a response that may contain or reflect subsequent remedial measures or reflect information protected by the privilege of self-critical evaluation.

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### **RESPONSE TO 22-1:**

**I object to answering this Interrogatory for the reason that it was prepared by my attorney and consists of his mental thoughts and impressions of which I have no knowledge and of which the parties have no right to inquire about. I further object to responding to this interrogatory to the extent it exceeds the permissible number of 25 interrogatories which may be asked of the opposing party including discrete subparts. Without waiving these objections the Complaint fails to state a cause of action against me to the extent it seeks to declare my Note and Mortgage invalid for the reason that they were duly executed by representatives authorized and appointed by the Corporation.**

22-2. The Court lacks personal and subject matter jurisdiction over this defendant due to insufficiency of service of process.

**RESPONSE TO 22-2:**

**I object to answering this interrogatory for the reason that it seeks a legal opinion which I am not qualified or obligated to respond to. Without waiving I am willing to waive this affirmative defense.**

22-3. The Court lacks personal and subject matter jurisdiction to the extent the plaintiff is not a corporation in good standing.

**RESPONSE TO 22-3:**

**This affirmative defense was pled so as to avoid waiver. An investigation into the legal status of the Corporation will necessarily have to be conducted during the course of discovery which has not yet been completed.**

22-4. The plaintiff is not entitled to the relief which it requests because it is legally estopped from denying the validity of the Promissory Note and First Priority Mortgage (particularly WHY it is estopped.)

**RESPONSE TO 22-4:**

**If the plaintiff did not sign the promissory note and first priority mortgage intending to be bound by the terms and conditions of it, it was committing a fraud for which is not entitled to be rewarded as a matter of law**

22-5. The plaintiff is barred from recovery herein because it is equitably estopped from denying the validity of the First Priority Mortgage. (particularly WHY it is estopped.)

**RESPONSE TO 22-5:**

**See Response to paragraph 22-4, above.**

22-6. The plaintiff is barred from recovery herein for the reason that it authorized its secretary to swear under oath, subject to the penalties of perjury, that it was justly indebted to the defendant. (And if this occurred, all facts related thereto.)

**RESPONSE TO 22-6:**

**The document speaks for itself.**

22-7. The plaintiff is barred from recovery herein to the extent its actions are fraudulent, contrary to law, in furtherance of a criminal act, not brought in good faith for a valid purpose, and therefore not in the best interests of the corporation.

**RESPONSE TO 22-7:**

**I object to answering this interrogatory on the grounds that it seeks a legal opinion. Without waiving this objection, see my Response to paragraph 22-4, above.**

22-8. The plaintiff is barred from recovery herein by reason of the fact it has an irreconcilable conflict of interest since it agreed to warrant and defend the defendant's lien and the interest of the defendant against all claims and demands made against the First Priority Mortgage.

**RESPONSE TO 22-8:**

**The Corporation, Sixteen Plus (16+), contends that the note and mortgage which it signed is not a legal valid instrument yet it signed a document by which it agreed to warrant and defend my interest in those documents.**

22-9. The plaintiff is barred from recovery herein pursuant to the provisions of the doctrine of unclean hands.

**RESPONSE TO 22-9:**

**The doctrine of unclean hands is a legal principle which I am told prohibits a corporation from benefiting from its own wrongdoing.**

22-10. The plaintiff is barred from recovery herein due to the principles of laches.

**RESPONSE: TO 22-10**

**I am told the doctrine of laches is a legal principal which prohibits a corporation from benefiting by sitting on its rights and delaying asserting them to the prejudice of other parties.**

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**RESPONSE TO 22-11:**

**I am told he doctrine of waiver is a legal principle which prohibits a litigant from benefiting from sitting on its rights. In this case the Sixteen Plus Corporation issued payments in accordance with the terms and conditions of note mortgage and now seeks to deny the validity of those legal documents.**

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Describe all facts and related documents with regard to whether or not Manal Yusuf was a Bona Fide holder of the Note and Mortgage, including but not limited to whether she or her family members knew of the skimming of funds to avoid payment of taxes in the Plaza Extra Partnership, whether she knew Jamil and Isam were laundering money with regard to that tax evasion, and whether she knew of the federal indictment of Fathi, Jamil and Isam -- and the plea deal for tax evasion by United.

**RESPONSE TO 23:**

**See Response to 22-1, above, which makes me a bona fide holder of the Note and Mortgage. I have no knowledge of what any person did with respect to the operation of the Plaza Extra Partnership.**

**Interrogatory 24:**

State all facts and related documents as to your knowledge of the US federal lien on the subject property


**RESPONSE TO 22-4:**

**None.**

VERIFICATION

I hereby certify under penalty of perjury that the facts contained in each of the foregoing responses to interrogatories are true and correct to the best of my knowledge, information and belief.

Dated: 9/15/2022

  
\_\_\_\_\_  
Manal Mohammad Yousef

\_\_\_\_\_)  
\_\_\_\_\_) ss.  
\_\_\_\_\_)

On this, the 9/15/2022 day of ~~2021~~ <sup>2022</sup>, before me, the undersigned officer, personally appeared Manal Mohammad Yousef, known to me (or satisfactorily proven) to be the person whose name is subscribed to the within document and acknowledged that she executed the same for the purpose therein contained.

IN WITNESS WHEREOF, I hereunto set my hand and official seal.

Notary Public   
Exp. date: 12/31/2022

Respectfully Submitted,

DATED: September 20, 2022.

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

By: */s/ James L. Hymes, III*

**JAMES L. HYMES, III**  
VI Bar No. 264  
P.O. Box 990  
St. Thomas, Virgin Islands 00804-0990  
Telephone: (340) 776-3470  
E-Mail: [jim@hymeslawvi.com](mailto:jim@hymeslawvi.com);  
[rauna@hymeslawvi.com](mailto:rauna@hymeslawvi.com)

**CERTIFICATE OF SERVICE**

I hereby certify that on this the 20<sup>th</sup> day of September, 2022, I caused an exact copy of the foregoing "***Manal Mohammad Yousef's Response to Third Interrogatories to Manal Yousef,***" to be served electronically by e-mail to the following counsel of record:

**JOEL H. HOLT, ESQ.**

LAW OFFICES OF JOEL H. HOLT  
2132 Company Street  
Christiansted, USVI, 00820  
[holtvi.plaza@gmail.com](mailto:holtvi.plaza@gmail.com)

***Counsel for Defendant/Counterclaim Plaintiff Sixteen Plus Corporation***

**CARL J. HARTMANN, III, ESQ.**

5000 Estate Coakley Bay, L-6  
Christiansted, VI 00820  
[carl@carlhartmann.com](mailto:carl@carlhartmann.com)

***Co-Counsel for Defendant/Counterclaim Plaintiff Sixteen Plus Corporation***

*/s/ James L. Hymes, III*





**Banko di Seguro Sosial**  
Sociale Verzekeringsbank • Social Insurance Bank

**Seguro Card**  
Strikt persoonlik.  
Misbruik wordi gestraff.

SVB IDnr  
**680422760**

Hoofdverzekerde / Insured under  
**611205790**

Naam / Name  
**AKHRAS-MOHAMMAD, MANAL MONAMMED YOUSEF**

Gaslacht / Gender  
**V**

Geboortedatum / Date of birth  
**22-04-1968**

Huisarts / General practitioner  
**DENNAOUI M.M.Y.**

Geldig / Valid  
**25-03-2008** <> **25-03-2010**

Geregistreerd / Registered  
**St. Maarten**



Kaartnummer / Card number  
**200804861**

Handtekening  
Verzekerde

Deze kaart is eigendom van de SVB.

201823



**EXHIBIT 3**

Manal's

RFA

Responses

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

---

SIXTEEN PLUS CORPORATION,	}	
	}	
Plaintiff/Counterclaim Defendant,	}	CIVIL NO. SX-16-CV-65
	}	
vs.	}	ACTION FOR
	}	DECLARATORY JUDGMENT
	}	
MANAL MOHAMMAD YOUSEF,	}	JURY TRIAL DEMANDED
	}	
Defendant/Counterclaim Plaintiff.	}	
	}	

---

**NOTICE OF FILING**  
**MANAL MOHAMMAD YOUSEF’S RESPONSE TO**  
**PLAINTIFF SIXTEEN PLUS’**  
**FIRST SET OF REQUESTS FOR ADMISSION**


**COMES NOW** the defendant, **MANAL MOHAMMAD YOUSEF** (hereinafter “**MMY**”), by and through her undersigned attorneys, the Law Offices of James L. Hymes, III, P.C. (***James L. Hymes, III, of Counsel***), without waiving any objections to subject matter jurisdiction, personal jurisdiction, service of process, improper venue, insufficiency of process, insufficiency of service of process, or failure to state a claim upon which relief can be granted, or any other defense or objection which may be presented whether by pleading or motion in this action, and pursuant to the provisions of LRCI 26.2(c) and Fed.R.Civ.P. 26(a)(1), provides Notice of Filing her Response to Plaintiff Sixteen Plus’ First Set of Requests for Admission by serving same on plaintiff’s counsel as set forth in the Certificate of Service, below.

Respectfully Submitted,

DATED: July 14, 2017.

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

By:

  
**JAMES L. HYMES, III**

VI Bar No. 264

P.O. Box 990

St. Thomas, Virgin Islands 00804-0990

Telephone: (340) 776-3470

Facsimile: (340) 775-3300

E-Mail: [jim@hymeslawvi.com](mailto:jim@hymeslawvi.com);

[rauna@hymeslawvi.com](mailto:rauna@hymeslawvi.com)

**CERTIFICATE OF SERVICE**

I hereby certify that this document complies with the page or word limitation set forth in Rule 6-1(e). I hereby further certify that on this the 14<sup>th</sup> day of July, 2017, I caused an exact copy of the foregoing "***Notice Of Filing Manal Mohammad Yousef's Response To Plaintiff Sixteen Plus' First Set Of Requests For Admission***" together with the responses referred to therein, to be served electronically by e-mail, and by mailing same, postage pre-paid, to the following counsel of record:

**MARK W. ECKARD, ESQ.**

HAMM ECKARD LLP

5030 Anchor Way, Suite 13

Christiansted, USVI, 00820-2690

Phone: (340) 773-6955

Fax: (855) 456-8784

[meckard@hammeckard.com](mailto:meckard@hammeckard.com)

***Counsel for Sixteen Plus Corporation***

**JOEL H. HOLT, ESQ.**

LAW OFFICES OF JOEL H. HOLT

2132 Company Street

Christiansted, USVI, 00820

Phone: (340) 773-8709

Fax: (340) 773-8677

[holtvi@aol.com](mailto:holtvi@aol.com)

***Co-Counsel for Plaintiff –***  
***Sixteen Plus Corporation***



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

---

SIXTEEN PLUS CORPORATION,	)	
	)	CIVIL NO. SX-16-CV-65
Plaintiff/Counterclaim Defendant,	)	
	)	ACTION FOR
vs.	)	DECLARATORY JUDGMENT
	)	
MANAL MOHAMMAD YOUSEF,	)	JURY TRIAL DEMANDED
	)	
Defendant/Counterclaim Plaintiff.	)	
	)	

---

**MANAL MOHAMMAD YOUSEF'S RESPONSE TO  
PLAINTIFF SIXTEEN PLUS'  
FIRST SET OF REQUESTS FOR ADMISSION**

The Defendant, **MANAL MOHAMMAD YOUSEF** (hereinafter "**Manal Yousef**"), through her undersigned Attorney, James L. Hymes, III, hereby responds to Plaintiff Sixteen Plus' First Set of Requests for Admission as follows:

**GENERAL OBJECTIONS**

1. Manal Yousef submits and incorporates into each request the following general objections to Plaintiff's First Set of Requests for Admission set forth herein, and further, by submitting her responses to the Plaintiff's Requests for Admission, does not waive any objections to subject matter jurisdiction, personal jurisdiction, service of process, improper venue, insufficiency of process, insufficiency of service of process, or failure to state a claim upon which relief can be granted, or any other

defense or objection which may be presented whether by pleading or motion in this action:

2. Manal Yousef objects to each request contained in Plaintiff's First Set of Requests for Admission to the extent such request asks for communications between her and her lawyers; these attorney-client communications are privileged and not subject to disclosure.

3. Manal Yousef objects to each request contained in Plaintiff's First Set of Requests for Admission to the extent such request asks for disclosure of material prepared by or for her lawyers or her representatives in the course of securing legal counsel, or in anticipation and defense of litigation; this material is protected from disclosure by the work product doctrine. Similarly, Manal Yousef objects to each request contained in Plaintiff's First Set of Requests for Admission to the extent such request asks for communications between her and her lawyers on the grounds of the privilege afforded to parties with a common interest or joint defense.

4. Manal Yousef has made the following responses without waiving: (1) the right to object to the use of any response for any purposes, in this action or in any other actions, on the grounds of privilege, relevance, materiality, or anything else appropriate; (2) the right to object to any other requests involving or relating to the subject matter of this response; and (3) the right to revise, correct, supplement, or clarify these responses should his ongoing investigation in defense of this action warrant such changes.

5. Manal Yousef generally objects to any request that purports to impose requirements more burdensome and beyond the scope of those set forth under the

Federal Rules of Civil Procedure, including without limitation Rule 36. Furthermore, objection is made to each and every request that is uncertain as to time and purports to request admissions as to facts or circumstances unrelated in time to any issue or claim in this action.

**REQUESTS FOR ADMISSIONS**

1. **ADMIT** that Fathi Yusuf is your uncle.

**RESPONSE:**  
**Admit.**

2. **ADMIT** that Isam Yousef is your brother.

**RESPONSE:**  
**Admit.**

3. **ADMIT** that Jamil Yousef is your nephew.

**RESPONSE:**  
**Admit.**

4. **ADMIT** that you resided in St. Martin in 1997.

**RESPONSE:**  
**Admit.**



5. **ADMIT** that over the course of your lifetime that you personally had not earned more than an aggregate of one million dollars in wages or investment income as of February 13, 1997.

**RESPONSE:**

**Admit.**

6. **ADMIT** that over the course of your lifetime that you personally, never had more than one million dollars in assets in any personal savings account, checking account, investment account or brokerage account that was in your name as of February 13, 1997.

**RESPONSE:**

**Deny. Assets given to Manal Yousef by her father were maintained in a fund managed by Manal's brother.**

7. **ADMIT** that you personally did not use any of your own funds for the loan made to Sixteen Plus that is evidenced by the Promissory Note attached hereto as Exhibit 1.

**RESPONSE:**

**Deny. Manal Yousef made a loan to Sixteen Plus Corporation from money given to her by her father.**

8. **ADMIT** that Fathi Yusuf requested that you sign the Power of Attorney attached hereto as Exhibit 2.

**RESPONSE:**

**Deny. The request to sign the Power of Attorney came from Waleed Hamed to Manal Yousef, through Manal's brother, Isam.**

9. **ADMIT** that you lived in St, Martin at the time you signed the Power of Attorney attached hereto as Exhibit 2.

**RESPONSE:**

**Admit.**

10. **ADMIT** that you never spoke to the lawyer in St. Martin who sent the letter attached as Exhibit 3 before the date on the letter.

**RESPONSE:**

**Admit. Manal Yousef's nephew contacted a lawyer in St. Maarten on Manal's behalf pursuant to a general Power of Attorney given to her nephew by Manal.**

11. **ADMIT** that you never spoke to Kye Walker at any time prior to April 1, 2017.

**RESPONSE:**

**Denied. Attorney Walker and Manal Yousef had a personal telephone conversation.**

12. **ADMIT** that you have never spoken to James Hymes at any time prior to June 1, 2017.

**RESPONSE:**

**Admit. Manal Yousef's nephew has contacted James Hymes and spoken with him on Manal's behalf pursuant to a general Power of Attorney given by Manal to her nephew.**

13. **ADMIT** that you are not entitled to keep any funds related to the repayment of the Promissory Note attached hereto as Exhibit 1.

**RESPONSE:**

**Deny.** The money which Manal Yousef loaned to Sixteen Plus Corporation came from her own personal assets, and she is entitled to repayment of the principal amount of the loan, interest, and other expenses as provided for in the loan documents.

Respectfully Submitted,

DATED: July 14, 2017.

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

By: \_\_\_\_\_

**JAMES L. HYMES, III**

VI Bar No. 264

P.O. Box 990

St. Thomas, Virgin Islands 00804-0990

Telephone: (340) 776-3470

Facsimile: (340) 775-3300

E-Mail: [jim@hymeslawvi.com](mailto:jim@hymeslawvi.com);

[rauna@hymeslawvi.com](mailto:rauna@hymeslawvi.com)

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

HISHAM HAMED, individually,  
and derivatively for  
SIXTEEN PLUS CORPORATION,  
  
Plaintiffs/Counterclaim Defendant,  
  
vs.  
MANAL MOHAMMAD YOUSEF,  
  
Defendant/Counterclaim Plaintiff.

CIVIL NO. SX-16-CV-00065  
  
ACTION FOR  
DECLARATORY JUDGMENT  
CICO and FIDUCIARY DUTY  
  
JURY TRIAL DEMANDED

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.

**MANAL MOHAMMAD YOUSEF'S RESPONSE TO  
SECOND REQUESTS TO ADMIT**

**COMES NOW, MANAL MOHAMMAD YOUSEF** (hereinafter "**Manal Yousef**"),  
through her undersigned attorney, James L. Hymes, III, hereby responds to the Second  
Requests to Admit to Manal Yousef, propounded by Sixteen Plus, as follows:

**GENERAL OBJECTIONS**

1. Manal Yousef submits and incorporates into each request the following general objections to the Second Requests to Admit propounded by Sixteen Plus, set forth herein, and further, by submitting her responses to the Second Requests to Admit, does not waive any objections to subject matter jurisdiction, personal jurisdiction, service of process, improper venue, insufficiency of process, insufficiency of service of process, or failure to state a claim upon which relief can be granted, or any other defense or objection which may be presented whether by pleading or motion in this action:

2. Manal Yousef objects to each request contained in the Second Requests to Admit to the extent such request asks for communications between her and her lawyers; these attorney-client communications are privileged and not subject to disclosure.

3. Manal Yousef objects to each request contained in the Second Requests to Admit to the extent such request asks for disclosure of material prepared by or for her lawyers or her representatives in the course of securing legal counsel, or in anticipation and defense of litigation; this material is protected from disclosure by the work product doctrine. Similarly, Manal Yousef objects to each request contained in the Second Requests to Admit to the extent such request asks for communications between her and her lawyers on the grounds of the privilege afforded to parties with a common interest or joint defense.

4. Manal Yousef has made the following responses without waiving: (1) the right to object to the use of any response for any purposes, in this action or in any other actions, on the grounds of privilege, relevance, materiality, or anything else appropriate; (2) the right to object to any other requests involving or relating to the subject matter of this response; and (3) the right to revise, correct, supplement, or clarify these responses should his ongoing investigation in defense of this action warrant such changes.

5. Manal Yousef generally objects to any request that purports to impose requirements more burdensome and beyond the scope of those set forth under the Federal Rules of Civil Procedure, including without limitation Rule 36. Furthermore, objection is made to each and every request that is uncertain as to time and purports to request admissions as to facts or circumstances unrelated in time to any issue or claim in this action.

6. Manal Yousef objects to being asked to respond to any form of written discovery which is propounded fraudulently and in contradiction of the Answer of Sixteen Plus Corporation and Hisham Hamed to the Complaint to foreclose the note and mortgage, and the affirmative defenses raised in contravention thereto, which appear to deny the legal sufficiency and/or the existence of a valid note and mortgage, or that payments of interest were made by Sixteen Plus Corporation as required by the note and mortgage, and further objects to any response to a fraudulent form of discovery being used against her, and affirmatively asserts that responses and answers to written discovery are given with the assumption that written discovery is being propounded in good faith and with the knowledge that the note, mortgage and payments of interest as required thereby were in fact lawfully issued and made.

## REQUESTS TO ADMIT

### Request to Admit 14

Admit or Deny that you understand that Fathi Yusuf has refused to answer discovery related to the facts surrounding the Note and Mortgage at issue here on the basis of the 5th Amendment to the U.S. Constitution.

#### Response:

**DENY that MMY has any understanding that Fathi Yusuf refused to answer discovery related to the facts surrounding the Note and Mortgage at issue here on the basis of the Fifth Amendment to the U.S. Constitution, for the reason that neither she nor her attorneys participated in discovery propounded to or elicited from him.**

### Request to Admit 15

Admit or Deny that you understand that his refusal to answer discovery on the basis of the 5th Amendment is because he is asserting his right against self-incrimination in an existing or potential criminal matter.

#### Response:

**DENY that MMY has any understanding that Fathi Yusuf refused to answer discovery, or knowledge of the reasons for doing so if he did, for the reason that neither she nor her attorneys participated in discovery propounded to or elicited from him.**

### Request to Admit 16

Admit or Deny that you have been informed that you are or may be a person of interest, a target, or indicted in a pending or potential criminal matter.

#### Response:

**DENY that anyone has informed her that she may be a person of interest, a target, or indicted in a pending or potential matter except from this request to admit which, if it is threatening a crime, is an impermissible form of discovery, criminal in and of itself, and an unethical form of discovery to be conducted by the attorneys in this jurisdiction.**

**Request to Admit 17**

Admit or Deny that you either believe or fear that you are or may be a person of interest, a target, or indicted in a pending or potential criminal matter.

**Response:**

**DENY for the same reasons set forth in the denial in the Request to Admit 16, above.**

**Request to Admit 18**

Admit or Deny that you have, at some point in your life, been within the physical premises of the United States; which shall include its mainland, territories, possessions, the commonwealth of Puerto Rico or physical premises in foreign lands such as embassies, military bases or special use zones.

**Response:**

**DENY for the reason that this Request to Admit is unintelligible, but to the extent it asks if Manal Yousef has ever been physically present in the United States, Puerto Rico(sic), the Virgin Islands, or other places set forth therein, this request is DENIED, with the exception that she went to the US Embassy in Amman, Jordan, in 2017, to apply for a Visa, which was denied.**

**Request to Admit 19**

Admit or Deny that, at the time you are answering this request, you are willing to physically attend a trial in this matter in the USVI.

**Response:**

**ADMIT, but DENY that she will be able to do so because she is unvaccinated and therefore cannot be issued a Visa to travel to the United States or its territories.**



**Request to Admit 20**

Admit or Deny that you are, at the time you are answering this request, physically able to physically attend a trial in this matter in the USVI.

**Response:**

**ADMIT, but DENY that she will be able to do so because she is unvaccinated and therefore cannot be issued a Visa to travel to the United States or its territories.**

**Request to Admit 21**

Admit or Deny that you are willing to apply for a Visa to attend a trial in this matter in the USVI.

**Response:**

**ADMIT, but DENY that she will be able to do so because she is unvaccinated and therefore cannot be issued a Visa to travel to the United States or its territories.**

**Request to Admit 22**

Admit or Deny that at the time you are answering this request if you had the appropriate visa, you are not prevented from physically attending a trial in this matter in the USVI by any legal or other type of impediment.

**Response:**

**ADMIT, but DENIES that she has been issued an appropriate visa to travel despite having made a request to do so, and for the reasons set forth in her Responses to Request to Admit Nos. 19, 20, and 21, above.**

**Request to Admit 23**

Admit or Deny that you personally have not filed or paid any USVI taxes relating to any interest payments you have received from Sixteen Plus.

**Response:**

**ADMIT, and further ADMITS that she is willing to make any payment of income tax obligations due at the conclusion of this litigation and following an admission by the plaintiffs in Civil No. SX-2016-CV-00065, that such payments**

were made, and following submission of documentation proving that three payments of interest due on her Note and Mortgage were made which has been denied to date.

**Request to Admit 24**

Admit or Deny that you personally have not filed or paid any USVI income taxes relating to any interest payments you have received from Sixteen Plus.

**Response:**

**ADMIT for the same reasons set forth in Request to Admit No. 23, above.**

**Request to Admit 25**

Admit or Deny that you personally have not ever filed or paid any USVI income taxes relating to USVI source income.

**Response:**

**ADMIT for the same reasons set forth in Request to Admit No. 23, above.**

**Request to Admit 26**

Admit or Deny that neither Isam nor Jamil have filed or paid any USVI income taxes for you relating to USVI source income.

**Response:**

**ADMIT for the same reasons set forth in Request to Admit No. 23, above.**

**Request to Admit 27**

Admit or Deny that neither Isam or Jamil have ever filed or paid, for you, any USVI income taxes on interest payments from Sixteen Plus to you.

**Response:**

**ADMIT for the same reason forth in Request to Admit No. 23, above.**

Respectfully Submitted,

DATED: October 5, 2022.

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

By: */s/ James L. Hymes, III*

**JAMES L. HYMES, III**  
VI Bar No. 264  
P.O. Box 990  
St. Thomas, Virgin Islands 00804-0990  
Telephone: (340) 776-3470  
E-Mail: [jim@hymeslawvi.com](mailto:jim@hymeslawvi.com);  
[rauna@hymeslawvi.com](mailto:rauna@hymeslawvi.com)

**CERTIFICATE OF SERVICE**

I hereby certify that on this the 5<sup>th</sup> day of October, 2022, I caused an exact copy of the foregoing ***"Manal Mohammad Yousef's Response to Second Requests to Admit"*** to be served electronically by e-mail to the following counsel of record:

**JOEL H. HOLT, ESQ.**  
LAW OFFICES OF JOEL H. HOLT  
2132 Company Street  
Christiansted, USVI, 00820  
[holtvi.plaza@gmail.com](mailto:holtvi.plaza@gmail.com)  
***Counsel for Defendant/Counterclaim Plaintiff Sixteen Plus Corporation***

**CARL J. HARTMANN, III, ESQ.**  
5000 Estate Coakley Bay, L-6  
Christiansted, VI 00820  
[carl@carlhartmann.com](mailto:carl@carlhartmann.com)  
***Co-Counsel for Defendant/Counterclaim Plaintiff Sixteen Plus Corporation***

**CHARLOTTE PERRELL, ESQ.**  
**STEFAN HERPEL, ESQ.**  
DUDLEY NEWMAN FEUERZEIG  
Law House, 1000 Frederiksberg Gade  
P.O. Box 756  
St. Thomas, VI 00804-0756  
[cperrell@dnfvi.com](mailto:cperrell@dnfvi.com); [sherpel@dnfvi.com](mailto:sherpel@dnfvi.com)  
***Attorneys for Third Party Defendant Fathi Yusuf***

*/s/ James L. Hymes, III*

# **EXHIBIT 4**

Manal's

RFPD

Responses

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



SIXTEEN PLUS CORPORATION,	)	
	)	CIVIL NO. SX-16-CV-65
Plaintiff/Counterclaim Defendant,	)	
	)	ACTION FOR
vs.	)	DECLARATORY JUDGMENT
	)	
MANAL MOHAMMAD YOUSEF,	)	JURY TRIAL DEMANDED
	)	
Defendant/Counterclaim Plaintiff.	)	
<hr/>		

**NOTICE OF FILING**  
**MANAL MOHAMMAD YOUSEF'S RESPONSE TO**  
**SIXTEEN PLUS' FIRST REQUEST FOR THE PRODUCTION OF DOCUMENTS**  
**TO DEFENDANT MANAL MOHAMMAD YOUSEF**

**COMES NOW** the defendant, **MANAL MOHAMMAD YOUSEF** (hereinafter "MMY"), by and through her undersigned attorneys, the Law Offices of James L. Hymes, III, P.C. (*James L. Hymes, III, of Counsel*), without waiving any objections to subject matter jurisdiction, personal jurisdiction, service of process, improper venue, insufficiency of process, insufficiency of service of process, or failure to state a claim upon which relief can be granted, or any other defense or objection which may be presented whether by pleading or motion in this action, and pursuant to the provisions of LRCI 26.2(c) and Fed.R.Civ.P. 26(a)(1), provides Notice of Filing her Response to Plaintiff Sixteen Plus' First Request for the Production of Documents by serving same on plaintiff's counsel as set forth in the Certificate of Service, below.

Respectfully Submitted,

DATED: July 14, 2017.

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

By:



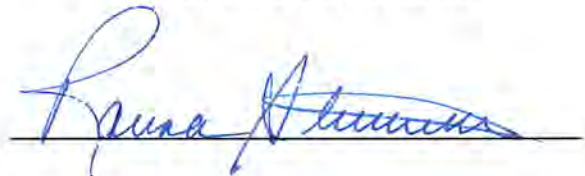
**JAMES L. HYMES, III**  
VI Bar No. 264  
P.O. Box 990  
St. Thomas, Virgin Islands 00804-0990  
Telephone: (340) 776-3470  
Facsimile: (340) 775-3300  
E-Mail: [jim@hymeslawvi.com](mailto:jim@hymeslawvi.com);  
[rauna@hymeslawvi.com](mailto:rauna@hymeslawvi.com)

**CERTIFICATE OF SERVICE**

I hereby certify that this document complies with the page or word limitation set forth in Rule 6-1(e). I hereby further certify that on this the 14<sup>th</sup> day of July, 2017, I caused an exact copy of the foregoing "**Notice Of Filing Manal Mohammad Yousef's Response To Plaintiff Sixteen Plus' First Request for the Production of Documents**" together with the responses referred to therein, to be served electronically by e-mail, and by mailing same, postage pre-paid, to the following counsel of record:

**MARK W. ECKARD, ESQ.**  
HAMM ECKARD LLP  
5030 Anchor Way, Suite 13  
Christiansted, USVI, 00820-2690  
Phone: (340) 773-6955  
Fax: (855) 456-8784  
[meckard@hammeckard.com](mailto:meckard@hammeckard.com)  
**Counsel for Sixteen Plus Corporation**

**JOEL H. HOLT, ESQ.**  
LAW OFFICES OF JOEL H. HOLT  
2132 Company Street  
Christiansted, USVI, 00820  
Phone: (340) 773-8709  
Fax: (340) 773-8677  
[holtvi@aol.com](mailto:holtvi@aol.com)  
**Co-Counsel for Plaintiff –**  
**Sixteen Plus Corporation**



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

SIXTEEN PLUS CORPORATION,	)	
	)	CIVIL NO. SX-16-CV-65
Plaintiff/Counterclaim Defendant,	)	
	)	ACTION FOR
vs.	)	DECLARATORY JUDGMENT
	)	
MANAL MOHAMMAD YOUSEF,	)	JURY TRIAL DEMANDED
	)	
Defendant/Counterclaim Plaintiff.	)	
<hr/>		

**MANAL MOHAMMAD YOUSEF'S RESPONSE TO  
SIXTEEN PLUS' FIRST REQUEST FOR THE PRODUCTION OF DOCUMENTS  
TO DEFENDANT MANAL MOHAMMAD YOUSEF**

The Defendant **MANAL MOHAMMAD YOUSEF** (hereinafter "**Manal Yousef**"), through her undersigned attorney, James L. Hymes, III, hereby responds to Plaintiff Sixteen Plus' First Set of Interrogatories as follows:

**I. GENERAL OBJECTIONS**

Defendant **MANAL YOUSEF**, incorporates the following general objections into each and every response to Plaintiff's request for the production of documents as set forth below, and further, by submitting her responses to these requests, does not waive any objections to subject matter jurisdiction, personal jurisdiction, service of process, improper venue, insufficiency of process, insufficiency of service of process, or failure to state a claim upon which relief can be granted, or any other

defense or objection which may be presented whether by pleading or motion in this action:

1. Manal Yousef objects to the portions of the requests, instructions and definitions to the extent they would impose any burden on her not specifically provided for by the Virgin Islands Rules of Civil Procedure.

2. Manal Yousef objects to each production request to the extent that any full answer thereto would require it to divulge information or communications protected by the attorney-client privilege or the attorney work product doctrine, or to the extent that it seeks information reflecting attorney/client communications, documents reflecting attorney work product, or the work product of non-attorneys prepared for, or under the direction of an attorney or in anticipation of litigation. Only non-privileged documents, or portions thereof, will be produced.

3. Manal Yousef objects to each request to the extent that it seeks the information that is not within its possession or custody. Manal Yousef further objects to each demand for documents from entities over whom it has no control.

4. Manal Yousef objects to each production request to the extent that it seeks information that is not, in any meaningful way, related to the parties' claims or defenses.

5. Manal Yousef objects to each production request to the extent it requires the production of information which would be burdensome, oppressive, or expense to produce.



6. Manal Yousef objects to each production request to the extent that it is overly broad, unduly vague, or ambiguous.

7. Manal Yousef objects to each production request, or any portion thereof, that seeks information on matters of public record to which plaintiff has equal access.

8. Manal Yousef objects to each production request to the extent that it seeks the information which may contain or reflect subsequent remedial measures.

9. Manal Yousef objects to each request or portion thereof, which requires a response that may contain or reflect information protected by the privilege of self-critical evaluation.

10. Manal Yousef objects to each production request to the extent it seeks information not calculated to lead to the discovery of relevant or admissible evidence.

11. Manal Yousef objects to any inadvertent disclosure of privileged information being deemed a waiver, or being used affirmatively against it for any reason or purpose.

**I. REQUESTS FOR THE PRODUCTION OF DOCUMENTS**

**Document Request No. 1:** All documents evidencing the source of any and all funds used by Defendant to loan any money to Sixteen Plus Corporation as consideration for the execution of the Promissory Note attached hereto as Exhibit 1.

**Response:**

**None.**

**Document Request No. 2:** All documents showing the transfer of any and all funds from Defendant to Sixteen Plus Corporation as consideration for the execution of the Promissory Note attached hereto as Exhibit 1.

**Response:**

**None.**

**Document Request No. 3:** All documents evidencing Defendant's ownership of any funds loaned to Sixteen Plus Corporation as consideration for the execution of the Promissory Note attached hereto as Exhibit 1.

**Response:**

**None.**

**Document Request No. 4:** All documents evidencing Defendant's control over any funds loaned to Sixteen Plus Corporation as consideration for the execution of the Promissory Note attached hereto as Exhibit 1.

**Response:**

**None.**

**Document Request No 5:** All documents evidencing the consideration you provided in exchange for the Promissory Note regarding the property known as Diamond Keturah as stated in the Counterclaim paragraph 4 in the Civil 65 (Sixteen Plus v. Manal Yousef) action, to wit: "On September 15, 1997, [you] for good and valuable consideration, executed a Promissory Note secured by a First Priority Mortgage. . . ."

**Response:**

**None.**

**Document Request 6:** All documents evidencing or discussing any agreement between the Defendant or any of her agents and Sixteen Plus Corporation to loan it the funds leading up to the execution of the Promissory Note attached hereto as Exhibit 1.

**Response:**

**Exhibit 1 attached to the Plaintiff's First Request for the Production of Documents, and the First Priority Mortgage which is not attached, constitute all documents known by Manal Yousef to be responsive to this request.**

**Document Request No. 7:** All documents showing the negotiations for the amount of interest to be paid the Defendant by Sixteen Plus Corporation leading up to the execution of the Promissory Note attached hereto as Exhibit 1.

**Response:**

**Exhibit 1 attached to the Plaintiff's First Request for the Production of Documents, and the First Priority Mortgage which is not attached, constitute all documents known by Manal Yousef to be responsive to this request.**



**Document Request No. 8:** All closing documents for loan transaction involving the Promissory Note attached hereto as Exhibit 1 and the mortgage secured by it.

**Response:**

**Exhibit 1 attached to the Plaintiff's First Request for the Production of Documents, and the First Priority Mortgage which is not attached, constitute all documents known by Manal Yousef to be responsive to this request.**

**Document Request No. 9:** All monthly account statements for any checking, savings, investment, brokerage account titled to you in your name from 1990 through 1997.

**Response:**

**None.**

**Document Request No. 10:** All demands for payment made by the Defendant on Sixteen Plus to pay the Promissory Note attached hereto as Exhibit 1.

**Response:**

**See letter dated December 12, 2012 from Attorney Snow to Sixteen Plus Corporation, attached as Exhibit 3 to the Plaintiff's First Request for the Production of Documents.**

**Document Request No. 11:** All payments received by Defendant from Sixteen Plus Corporation regarding the Promissory Note attached hereto as Exhibit 1.

**Response:**

**Manal Yousef has no documents responsive to this request.**

**Document Request No. 12:** All documents showing the deposit into any bank or brokerage account of any payments received by Defendant from Sixteen Plus Corporation regarding the Promissory Note attached hereto as Exhibit 1.

**Response:**

**See Response to Document Request No. 11, above.**

**Document Request No. 13:** All written communications with any lawyer regarding the preparation of the Promissory Note attached hereto as Exhibit 1, as well as the mortgage securing this Note.

**Response:**

**None. The terms and conditions of the Promissory Note and First Priority Mortgage were negotiated orally. The Promissory Note and First Priority Mortgage were prepared by the Sixteen Plus Corporation or persons retained by it or working on its behalf.**

**Document Request No. 14:** All written communications with Defendant's uncle Fathi Yusuf since 1996 regarding any matters related to United Corporation, Sixteen Plus, or anything to do with the Defendant's loan to Sixteen Plus.

**Response:**

**None.**

**Document Request No. 15:** All written communications with any family members of Fathi Yusuf since 1996 regarding any matters related to United Corporation, Sixteen Plus, or anything to do with the Defendant's loan to Sixteen Plus.

**Response:**

**None.**



**Document Request No. 16:** All written communications with Defendant's brother Isam Yousef since 1996 regarding any matters related to United Corporation, Sixteen Plus, or anything to do with the Defendant's loan to Sixteen Plus.

**Response:**

**None.**

**Document Request No. 17:** All written communications with Defendant's nephew Jamil Yousef since 2009 regarding any matters related to United Corporation, Sixteen Plus, or anything to do with the Defendant's loan to Sixteen Plus.

**Response:**

Manal Yousef has no written communications with her nephew since 2009 regarding the United Corporation for the reason that she has never discussed the United Corporation with him at any time. The only communications between Manal Yousef and her nephew Jamil Yousuf since 2009 involve legal documents sent to Jamil as her legal representative pursuant to the General Power of Attorney by their attorney, James Hymes, which Jamil then transmitted to Manal in connection with this case and her loan of 4.5 Million Dollars (\$4,500,000) to the Sixteen Plus Corporation. These communications are confidential, privileged, constitute attorney/client communications and work product, and are not subject to disclosure. A privilege log will be prepared with respect to this request and the request for identical documents in Document Request No. 23.

**Document Request No. 18:** All written communications with any person affiliated with or representing Sixteen Plus since 1996.

**Response:**

**None.**

**Document Request No. 19:** All written communications with anyone regarding the preparation and execution of the Power of Attorney attached hereto as Exhibit 2.

**Response:**

**None. The Real Estate Power of Attorney attached as Exhibit 2 to the Plaintiff's Request for the Production of Documents, was prepared by the Sixteen Plus Corporation or persons retained by it or working on its behalf.**

**Document Request No. 20:** All communications with any attorney in St. Martin regarding the collection of the Promissory Note attached hereto as Exhibit 1, including but not limited to the attorney who sent the letter attached hereto as Exhibit 3.

**Response:**

The defendant objects to the form of the question and further objects to responding to this request to the extent it seeks to obtain information which is confidential, privileged, constitutes attorney/client work product, and seeks to invade the attorney/client privilege. Without waiving this objection, none.

**Document Request No. 21:** All communications with Kye Walker since 2015

**Response:**

Manal Yousef spoke on one occasion with Attorney Walker on the telephone and has no written document memorializing what was said.

**Document Request No. 22:** All communications with any lawyer working for the law firm of Dudley, Topper and Feuerzeig, the law firm representing Defendant's uncle, Fathi Yusuf, since 2012.

**Response:**

**None.**

**Document Request No. 23:** All communications with James Hymes since 2016.

**Response:**

The defendant objects to the form of the question and further objects to responding to this request to the extent it seeks to obtain information which is confidential, privileged, constitutes attorney/client work product, seeks to invade the attorney/client privilege and is therefore not subject to disclosure. Without waiving this objection, a privilege log will be prepared with respect to this request and will be produced upon completion.



**Document Request No. 24:** Complete copies of all passports issued to you by any country since 1996, whether current or expired.

**Response:**

Manal Yousef objects to producing any documents in response to this request for production of documents on the grounds of relevancy, on the grounds that passport information is private and should be kept from the public domain for personal security reasons, and to protect the defendant from annoyance, embarrassment, humiliation, and oppression, and for the reasons set forth in the cases below, which have protected against the production of this type of information:

*Bacilio Ruiz and Jose Amador v. Mercer Canyons, Inc.*, US District Court for the Eastern District of Washington, 2014 U.S. Dist. LEXIS 163782; and

*Martha Galaviz-Zamora, et al. v. Brady Farms, Inc., et al.*, United States District Court For The Western District Of Michigan, Southern Division 230 F.R.D. 499; 2005 U.S. Dist. LEXIS 22120.

**Document Request No. 25:** All documents showing residential addresses you physically resided at for more than 1 month from 1996 to present.

**Response:**

None.

Respectfully Submitted,

DATED: July 14, 2017.

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

By: 

**JAMES L. HYMES, III**

VI Bar No. 264

P.O. Box 990

St. Thomas, Virgin Islands 00804-0990

Telephone: (340) 776-3470

Facsimile: (340) 775-3300

E-Mail: [jim@hymeslawvi.com](mailto:jim@hymeslawvi.com);

[rauna@hymeslawvi.com](mailto:rauna@hymeslawvi.com)

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

SIXTEEN PLUS CORPORATION,	)	
	)	CIVIL NO. SX-16-CV-65
Plaintiff/Counterclaim Defendant,	)	
	)	ACTION FOR
vs.	)	DECLARATORY JUDGMENT
	)	
MANAL MOHAMMAD YOUSEF,	)	JURY TRIAL DEMANDED
	)	
Defendant/Counterclaim Plaintiff.	)	
	)	

**NOTICE OF FILING**  
**MANAL MOHAMMAD YOUSEF'S RESPONSE TO**  
**SIXTEEN PLUS' FIRST SET OF INTERROGATORIES**  
**TO DEFENDANT/COUNTERCLAIM PLAINTIFF MANAL MOHAMMAD YOUSEF**

**COMES NOW** the Defendant/Counterclaim Plaintiff, **MANAL MOHAMMAD YOUSEF** (hereinafter "**MMY**"), by and through her undersigned attorneys, the Law Offices of James L. Hymes, III, P.C. (***James L. Hymes, III, of Counsel***), without waiving any objections to subject matter jurisdiction, personal jurisdiction, service of process, improper venue, insufficiency of process, insufficiency of service of process, or failure to state a claim upon which relief can be granted, or any other defense or objection which may be presented whether by pleading or motion in this action, and pursuant to the provisions of LRCI 26.2(c) and Fed.R.Civ.P. 26(a)(1), provides Notice of Filing her Response to Plaintiff Sixteen Plus' First Set of Interrogatories by serving same on plaintiff's counsel as set forth in the Certificate of Service, below.

Respectfully Submitted,

DATED: July 17, 2017.

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

By:   
**JAMES L. HYMES, III**  
VI Bar No. 264  
P.O. Box 990  
St. Thomas, Virgin Islands 00804-0990  
Telephone: (340) 776-3470  
Facsimile: (340) 775-3300  
E-Mail: [jim@hymeslawvi.com](mailto:jim@hymeslawvi.com);  
[rauna@hymeslawvi.com](mailto:rauna@hymeslawvi.com)

**CERTIFICATE OF SERVICE**

I hereby certify that this document complies with the page or word limitation set forth in Rule 6-1(e). I hereby further certify that on this the 17<sup>th</sup> day of July, 2017, I caused an exact copy of the foregoing "***Notice Of Filing Manal Mohammad Yousef's Response To Plaintiff Sixteen Plus' First Set Of Interrogatories To Defendant/Counterclaim Plaintiff Manal Mohammad Yousef***" together with the responses referred to therein, to be served electronically by e-mail, and by mailing same, postage pre-paid, to the following counsel of record:

**MARK W. ECKARD, ESQ.**  
HAMM ECKARD LLP  
5030 Anchor Way, Suite 13  
Christiansted, USVI, 00820-2690  
Phone: (340) 773-6955  
Fax: (855) 456-8784  
[meckard@hammeckard.com](mailto:meckard@hammeckard.com)  
***Counsel for Sixteen Plus Corporation***

**JOEL H. HOLT, ESQ.**  
LAW OFFICES OF JOEL H. HOLT  
2132 Company Street  
Christiansted, USVI, 00820  
Phone: (340) 773-8709  
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***Co-Counsel for Plaintiff –  
Sixteen Plus Corporation***



# **EXHIBIT 5**

Proposed

Order

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

**MANAL MOHAMMAD YOUSEF,**  
*Plaintiff*

v.

**SIXTEEN PLUS CORPORATION,**  
*Defendant.*

and

**SIXTEEN PLUS CORPORATION,**  
*Counter-Plaintiff*

v.

**MANAL MOHAMMAD YOUSEF,**  
*Counter-Defendant,*

and

**SIXTEEN PLUS CORPORATION,**  
*Third-Party Plaintiff*

v.

**FATHI YUSUF,**  
*Third-Party Defendant,*

**SIXTEEN PLUS CORPORATION,**  
*Plaintiff,*

v.

**MANAL MOHAMMAD YOUSEF,**  
*Defendant.,*

and

**MANAL MOHAMMAD YOUSEF,**  
*Counter-Plaintiff.,*

v.

**SIXTEEN PLUS CORPORATION,**  
*Counter-Defendant.*

**CIVIL NO. SX-2017-CV-00342**

**ACTION FOR DEBT AND  
FORECLOSURE**

**COUNTERCLAIM FOR  
DAMAGES**

**THIRD PARTY ACTION**

**JURY TRIAL DEMANDED**

*Consolidated With*

**CIVIL NO. SX-2016-CV-00065**

**ACTION FOR  
DECLARATORY JUDGMENT,  
CICO and FIDUCIARY DUTY**

**COUNTERCLAIM**

**JURY TRIAL DEMANDED**

**ORDER**

**THIS MATTER** having come on before the Court on the motion of Sixteen Plus Corporation pursuant to Rules 26, 33, 34 and 37 for an order requiring Manal Yusuf to produce discovery responses, and the Court being fully informed in the premises,

**IT IS HEREBY ORDERED** that Manal Yousef shall, within 15 days:

1. Provide her present residential address and a description of how it is located;
2. Because she represents that Isam Yousuf did many things for her as her agent, she or her counsel shall interview him, obtain documents from him, and to the extent that he has documents or information or is in “in control” of suchit—shee is also deemed to be in such control and she must get the documents and information--and supply the results to Sixteen Plus;
3. She will provide, or even approximate numbers or provide ranges with regard to assets, income, and expenditures. Where she may not know exact amounts, she can respond with ranges or approximations;
4. She will provide her tax returns for 1996-2001 and 2016 to present.
5. She will describe the funding of her suit, and its direction by any third persons. If this is arguably privileged, it will supplied to the Court, in camera.

It is **SO ORDERED**.

**Dated:** \_\_\_\_\_, 2023

**ATTEST:** TAMARA CHARLES,  
Clerk of the Court

\_\_\_\_\_  
**Douglas A. Brady**  
Judge of the Superior Court

\_\_\_\_\_  
**By:** Court Clerk Supervisor



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

SIXTEEN PLUS CORPORATION, Plaintiff,	)	
	)	CASE NO.: SX-2016-CV-00065
vs.	)	
	)	ACTION FOR DECLARATORY JUDGMENT
MANAL MOHAMMAD YOUSEF, Defendant,	)	
	)	JURY TRIAL DEMANDED
	)	
and	)	
	)	CASE NO.: SX-2017-CV-00342 (CONSOLIDATED)
MANAL MOHAMMAD YOUSEF, Counter-Plaintiff,	)	
	)	ACTION FOR DEBT AND FORECLOSURE
vs.	)	
	)	JURY TRIAL DEMANDED
SIXTEEN PLUS CORPORATION, Counter-Defendant.	)	

**RESPONSE OF MANAL YOUSEF TO THE FIRST MOTION OF  
SIXTEEN PLUS CORPORATION TO COMPEL MANAL YOUSEF  
FOR ADDRESS, AGENT’S INFORMATION, ACCOUNTING AND TAX INFORMATION**

**COMES NOW, MANAL MOHAMMAD YOUSEF**, by her undersigned attorney, James L. Hymes, III, and respectfully opposes the first motion of the Sixteen Plus Corporation to compel Manal Mohammad Yousef to produce five items of information as set forth in the Introduction section of the motion.

The Sixteen Plus Corporation and its token shareholder, Hisham Hamed, have filed various motions to, among other things, (1) compel Isam Yousuf to authorize the prosecutors and police in St. Maarten to conduct a search of the bank records of the



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**SCVI/STX Consolidated Civil Nos. SX-16-CV-00065 and SX-17-CV-00342**  
**RESPONSE OF MANAL YOUSEF TO THE FIRST MOTION OF SIXTEEN PLUS CORPORATION**  
**TO COMPEL MANAL YOUSEF FOR ADDRESS, AGENT'S INFORMATION,**  
**ACCOUNTING AND TAX INFORMATION**

company he once owned and operated; (2) compel Manal Mohammad Yousef to provide information regarding her agent, accounting records, and income tax information; and (3) to add Manal Mohammad Yousef as a named party defendant to a declaratory judgment action. All of these are opposed for the reasons that they constitute impermissible discovery requests and seek irrelevant information by impermissible means. In order to further understand the opposition to these motions it is necessary to understand the factual background and litigation history of the parties.

**Factual Introduction:**

The Sixteen Plus Corporation, in multiple civil cases, on its own behalf and derivatively through a token stockholder, Hisham Hamed, is attempting to relitigate a failed attempt by its stockholders for an accounting. These civil lawsuits have a common theme espoused by the Sixteen Plus Corporation, that \$60 Million was skimmed from the United Corporation and its three Plaza Extra stores, and the skimmed money was diverted to St. Maarten, and elsewhere, to avoid taxes, and for other nefarious purposes. In 2012, and 2014, civil actions were filed by and between Waleed Hamed and Fathi Yusuf, the two men who formed the Sixteen Plus Corporation to purchase the Diamond Keturah property. These civil actions were designed to obtain a dissolution of their partnership and a distribution of partnership assets related to and derived from the business of the Plaza Extra stores. The plaintiff, Waleed Hamed, retained the services of an expert witness who based his opinion on the 2003 third superseding indictment in the matter captioned *United States of America and Government of the Virgin Islands vs.*

**SIXTEEN PLUS CORPORATION v. MANAL MAOHAMMAD YOUSEF, et al.**  
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**TO COMPEL MANAL YOUSEF FOR ADDRESS, AGENT'S INFORMATION,**  
**ACCOUNTING AND TAX INFORMATION**

*Yusuf, et al.*, No. 2005 – 15F /B (DVI February 26, 2010). Although various individuals were charged in the indictment, only the United Corporation pled guilty to Count No. 60, by which it admitted that \$10 Million of gross receipts were skimmed and mis-accounted to avoid taxes. In his opinion letter, the expert stated, as reported by Judge Brady in his Opinion:

“The most fundamental feature of such a scheme is that the actual accounting records of the entity do not, and in fact cannot, accurately reflect the amount of cash taken in. No proper accounting can be determined from the company's financial records because the gross receipts have been intentionally misapplied and documented. The very purpose of this sort of scheme is to render any accounting inaccurate. It is critical that the parties have both admitted that many records of transaction that should have gone into accurate accounting were not kept, or mutually and intentionally destroyed. Because the very nature of the crime, particularly money laundering/tax evasion, is to hide such incoming and outgoing funds from legitimate accounting, it is impossible to determine and account for any portion of that amount each partner has or owes to the other. Since many such transactions were not recorded or destroyed, any remaining records can never be legitimately credited or debited against the unknown amounts.... The court is not called upon to express any opinion, as to the criminal nature of the conduct of the individual defendants named in the criminal matter except to the extent that such conduct demonstrates both the impossibility of reconstructing financial records or conducting, at present, an accurate accounting, and the partner's knowledge of the state of affairs. However, United's guilty plea as to Count 60 establishes that United, which as a corporation, must necessarily act through its officers and employees, intentionally schemed to obfuscate gross receipts and cash disbursements thereby rendering impossible any accurate reconstruction of accounts.” P.17-18 op. 7/21/17 2017 V.I. LEXIS 114.

The trial judge found that

*“at a bare minimum, the pleadings and record evidence establish that the partners and their sons had both unfettered access to large*

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ACCOUNTING AND TAX INFORMATION

*amounts of cash, deliberately kept off company books, and ample opportunity to secretly remove that cash, secure in the knowledge that no partner, accountant, or investigator would be able after the fact to ascertain the amount taken, as the total amount of cash in the store safes was intentionally omitted from any record-keeping.”*  
P.21. loc cit.

The court went on to state that

*“the policy of RUPA prevents both Hamed and Yousuf from imposing upon the court the great burden of sorting through the ramshackle patchwork of evidence supporting their claims, to reconstruct decades worth of partnership accounts, when the partners, who deliberately determined not to keep accurate records in the first place, were themselves content to carry on conducting partnership business despite having full knowledge of the pattern of conduct which they now belatedly complain.”* P.21. loc cit.

The central core allegation by the Sixteen Plus Corporation is that the money used to purchase the Diamond Keturah property was money skimmed from the United Corporation by Wally Hamed, which was somehow sent to St. Maarten and redirected back to St. Croix to buy the property. In all of these presently pending civil actions the Sixteen Plus Corporation is asking this Court to find now what it could not find in 2017, namely what money was skimmed from United Corporation and what was done with it, and by whom. Since it has been found beyond question that Waleed Hamed and Fathi Yusuf cannot account among themselves as to how the money skimmed from United Corporation could be accounted for, it should be axiomatic that they should be foreclosed from attempting to contend in this case, and others presently pending, that an accurate accounting can now be made to find conclusively that the \$4.5 Million used to purchase Diamond Keturah came from money skimmed from the three Plaza Extra stores, and not from money loaned to Sixteen Plus Corporation by Manal Mohammad Yousef.

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**RESPONSE OF MANAL YOUSEF TO THE FIRST MOTION OF SIXTEEN PLUS CORPORATION**  
**TO COMPEL MANAL YOUSEF FOR ADDRESS, AGENT'S INFORMATION,**  
**ACCOUNTING AND TAX INFORMATION**

Accordingly, before Sixteen Plus Corporation is given unfettered access to search the bank records of the business Isam Yousuf used to own and operate, and before Manal Mohammad Yousef is ordered to be joined as a named party defendant and to produce discovery information, it is respectfully submitted that Sixteen Plus Corporation should be ordered to produce documentary proof that the money it admits it skimmed from the United Corporation and its three Plaza Extra stores was given to Isam Yousuf and was sent by him to the Sixteen Plus Corporation for the purpose of purchasing the Diamond Keturah property from the Bank of Nova Scotia. This is the only relevant factual issue in this case.

**The Law:**

Virgin Islands Rules of Civil Procedure, Rule 26 and Rule 33, govern the scope of a parties duty to disclose information during discovery. *Cruz v. VI Water and Power Authority*, No. ST-2015-CV00491, 2020 VI Lexis 45 (citing *Gourmet Gallery Crown Bay, Inc. v. Crown Bay Marina, LP*, 2017 VI Lexis 86. Under VIR Civil Procedure Rule 26 (b)(1), “parties may obtain discovery regarding any nonprivileged matter that is relevant to any parties claim or defense. The singular factor for determining whether information is discoverable is its relevance.” *Cruz*, 2020, VI Lexis 45 at 1. Under the standard provided by Rule 401 of the Virgin Islands Rules of Evidence, the Court determines what information is relevant. See *Donastorg v. Walker*, 2019 VI Lexis 66 at 5-6. Relevant information is that which has the tendency to make the existence of any fact that is of consequence to the determination of the action more or less probable that it would be

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**TO COMPEL MANAL YOUSEF FOR ADDRESS, AGENT'S INFORMATION,**  
**ACCOUNTING AND TAX INFORMATION**

without it. *Donastorg, loc. cit.* When a request for production of documents extends to documents relevant to the claims or defenses in the matter, the request may be overly broad and therefore objectionable and subject to being stricken. See *Westhemeco Limited vs. New Hampshire Insurance Company*, 82 FRD 702 (S.D.N.Y., 1979). *Chambers vs. Capital Cities/ABC*, 154 FRD 63 (S.D.N.Y., 1994). The Court may strike a request that is not proportional to the needs of the case in light of the facts listed in the parties initial Rule 26 Disclosures.

In the Introduction section of the motion to compel, the Sixteen Plus Corporation sets forth five topics which it claims Manal Mohammad Yousef is obligated to provide information. Those five topics will be addressed as follows:

1. The address of Manal Mohammad Yousef.

Manal Mohammad Yousef is represented by counsel. Sixteen Plus Corporation has no legal basis to contact her directly and therefore does not need her address. At various times Sixteen Plus Corporation has indicated that it intends to file a lawsuit against her and therefore needs her address. If this is the case, there are various means and methods by which she may be sued which do not require Sixteen Plus Corporation to know her address. Sixteen Plus Corporation is aware and has been told she is a resident of the West Bank, Ramallah, Palestine. If Sixteen Plus Corporation wishes to sue her, it has, and now has, sufficient address information for that purpose.

2. Documents in the possession of Isam Yousuf.

Both Manal Mohammad Yousef and Isam Yousuf have responded to written discovery and indicated that they have no documents in their possession responsive to

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the request for production of documents issued in this case. The production of documents by Isam Yousuf is the subject of a separate motion and need not be addressed further here beyond stating that Isam Yousuf has no documents in his possession custody or control.

3. The subject matter of this demand for production of documents has been responded to, not with documents, but with a description of how Manal Mohammad Yousef spent the three payments of interest in the amount of \$360,000 she received from the Sixteen Plus Corporation. Neither she nor Isam Yousuf have documents in their possession, custody, or control regarding same.

4. Manal Mohammad Yousef is not now, nor has she ever been, a resident of the U.S. Virgin Islands, or the United States of America. She has indicated in answers to written discovery that she did not pay income tax with respect to the receipt of the three payments of interest by the Sixteen Plus Corporation to her. Therefore, the production of income tax returns is irrelevant to any pending issue in this case.

5. Manal Mohammad Yousef has provided written answers to written discovery stating that the funds provided by her to the Sixteen Plus Corporation came from her father. The use of the word/term conspirators is that of Sixteen Plus Corporation and not Manal Mohammad Yousef or Isam Yousuf, and is a less than veiled attempt by Sixteen Plus Corporation to white wash his own criminal conduct by attempting to include her in it.

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**ACCOUNTING AND TAX INFORMATION**

**WHEREFORE**, Manal Mohammad Yousef respectfully request that the Court deny the Motion to Compel for the reasons set forth herein.

Respectfully Submitted,

DATED: February 3, 2023.

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*Defendant Manal Mohammad Yousef*  
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**SIXTEEN PLUS CORPORATION v. MANAL MAOHAMMAD YOUSEF, et al.**  
**SCVI/STX Consolidated Civil Nos. SX-16-CV-00065 and SX-17-CV-00342**  
**RESPONSE OF MANAL YOUSEF TO THE FIRST MOTION OF SIXTEEN PLUS CORPORATION**  
**TO COMPEL MANAL YOUSEF FOR ADDRESS, AGENT'S INFORMATION,**  
**ACCOUNTING AND TAX INFORMATION**

**CERTIFICATE OF SERVICE**

I hereby certify that this document complies with the page and word limitations set forth in Rule 6-1(3). I hereby further certify that on this the 3<sup>rd</sup> day of February, 2023, as an approved C-Track filing on behalf of James L. Hyems, III, I caused an exact copy of the foregoing ***“Response Of Manal Yousef To The First Motion Of Sixteen Plus Corporation To Compel Manal Yousef For Address, Agent’s Information, Accounting And Tax Information”*** to be served electronically through the C-Track system, upon the following counsel of record:

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



**MANAL MOHAMMAD YOUSEF,**  
*Plaintiff,*  
v.  
**SIXTEEN PLUS CORPORATION,**  
*Defendant,*  
  
and  
**SIXTEEN PLUS CORPORATION,**  
*Counter-Plaintiff,*  
v.  
**MANAL MOHAMMAD YOUSEF,**  
*Counter-Defendant,*  
  
and  
**SIXTEEN PLUS CORPORATION,**  
*Third-Party Plaintiff,*  
v.  
**FATHI YUSUF,**  
*Third-Party Defendant.*

**CIVIL NO.: SX-2017-CV-00342**

**ACTION FOR DEBT AND  
FORECLOSURE**

**COUNTERCLAIM FOR  
DAMAGES**

**THIRD PARTY ACTION**

**JURY TRIAL DEMANDED**

*Consolidated With*

**CIVIL NO. SX-2016-CV-00065**

**ACTION FOR  
DECLARATORY JUDGMENT,  
CICO and FIDUCIARY DUTY**

**COUNTERCLAIM**

**JURY TRIAL DEMANDED**

**SIXTEEN PLUS CORPORATION,**  
*Plaintiff,*  
v.  
**MANAL MOHAMMAD YOUSEF,**  
*Defendant,*  
  
and  
**MANAL MOHAMMAD YOUSEF,**  
*Counter-Plaintiff,*  
v.  
**SIXTEEN PLUS CORPORATION,**  
*Counter-Defendant.*

**SIXTEEN PLUS CORPORATION'S  
REPLY  
AS TO ITS MOTION TO COMPEL MANAL YOUSEF  
FOR ADDRESS, AGENT'S INFORMATION, ACCOUNTING AND TAX INFORMATION**

**COMES NOW** Sixteen Plus Corporation, through undersigned counsel and submits the following in reply to Manal Yousef's opposition to its motion to compel.

### I. Introduction

As this is a reply, Sixteen Plus Corporation responds directly to all of the statements, *verbatim*, from Manal Yousef's ("Manal's") opposition of February 3, 2023. First, however, this introduction discusses how her opposition conflates concepts from various matters and other actions—with a number of confusing results.<sup>1</sup>

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<sup>1</sup> One type of Manal's continuing confusion arises from her repeated insertion of Hisham Hamed into her opposition. In fact, she has still taken discovery here only from Hisham Hamed, *but has not yet directed any written discovery to the actual party—Sixteen Plus*. This was pointed out to her both in Hamed's discovery responses and in later notices to the Clerk and parties. As discussed below, this mixup was then addressed by both the parties and the Clerk months ago. Sixteen Plus still expects either a request or a motion to re-open written discovery—and, along with Fathi Yusuf's counsel, has offered to do so on a reciprocal basis; which has been refused by Manal. She repeatedly makes argumentative reference to Hisham.

A second type of this confusion is created because Manal steadfastly and repeatedly refuses to make reference to (and thus adhere to or even acknowledge) Rule 26 of the V.I. Rules of Civil Procedure or V.I. case law. In one example, at 6 of the opposition, she argues against routinely providing her own address, despite the language of that Rule, which in its very first sentence requires: "(a) Required Disclosures. (1) *Initial Disclosure*. (A) *In General*. Except as exempted by Rule 26(a)(1)(B) or as otherwise stipulated or ordered by the court, a party must, without awaiting a discovery request, provide to the other parties: (i) the name and, if known, **the address** and telephone number of each individual likely to have discoverable information..." As is true throughout the opposition, in making this argument there is no mention of either that rule or argument as to why it should be ignored. As another example of her refusing to cite to the language of Rule 26, the opposition is written under the strong assertion (set out in detail) that the federal "proportionality" language of Fed.R.Civ. P. 26 applies here—quoting the federal rule and a federal case instead of any VI law.

In a third type, at 5, without reference to the rule, Manal appears to predicate the need for her to respond to discovery here on whether: (1) she is "named as a defendant" (presumably in a different case) and (2) Sixteen Plus (though not served with discovery) responds first.

before [Manal] is ordered to be joined as a named party defendant and to produce discovery information, it is respectfully submitted that Sixteen Plus Corporation should be ordered to produce documentary proof [that it gave the \$4.5 million to purchase the land to Isam and Manal]...(Emphasis added.)

The instant motion to compel deals solely with Manal's failure to respond to discovery in the two consolidated cases here: (1) Sixteen Plus Corporation's 2016 suit against Manal Yousef to void the note and mortgage ("65"), and (2) Manal's 2017 suit against Sixteen Plus for foreclosure and a deficiency judgment ("342"). Thus, despite some earlier procedural disorientation, the opposition should accept that Hisham Hamed was not a party in either case—nor is he a party in this resultant, consolidated case.<sup>2</sup> After a full discussion of this before all parties, the errors were corrected by the Clerk and the Court. Nor is there even a suggestion in the record (or elsewhere) that Hisham Hamed was involved in the laundering of funds in 1996-2003, the 1997 note and mortgage or any of the other issues before the Court. He is a shareholder in Sixteen Plus who has brought a derivative action under CICO. Thus, first, discussions in the opposition about Hisham Hamed are misplaced.

What is more confusing about Manal's refusal to respond to basic discovery is that the specific discovery at issue in *this* instant motion pertains primarily to two specific averments in Manal's *own* 342 complaint. At page 4, paragraphs 9 and 10, *she* makes the following allegations of fact as a central part of her action:

9. The defendant Sixteen Plus made three (3) payments of interest only in the amount of \$360,000.00 each in 1998, 1999, and 2000, but otherwise failed to comply with the terms and conditions of the Note and First Priority Mortgage (the "loan documents"), and is in default under those instruments, despite demand for payment for failing to pay principal and interest. . . .

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<sup>2</sup> As the Court is aware, there *is* litigation between Fathi Yusuf and the heirs of his partner in the Plaza Extra Supermarket partnership—Mohammad Hamed. *Hamed v. Yusuf*, SX-2012-CV-370 ("370"). However, that case involves the dissolution of a partnership and the reciprocal claims between the two partners for the purpose of the valuation of the two partnership accounts under RUPA. Sixteen Plus Corporation is not a party there, nor is Manal Yousef. Neither has ever appeared, been deposed, filed papers or otherwise participated in 370. Certainly Manal would have been furious and would have appealed if that court had somehow adjudicated her rights under the note and mortgage in her absence.

10. The three (3) interest only payments made by the defendant Sixteen Plus to the plaintiff Yousef in the amount of \$1,180,000.00, *is an acknowledgment by Sixteen Plus of the validity of the Note and First Priority Mortgage executed by it*, and the defendant Sixteen Plus *is estopped to deny its obligation to make payment in full* of all of the principal and interest due by it to the plaintiff as set forth therein. (Emphasis added.)

By raising this legal point and stating these facts she supports the primary contention of her 342 complaint that the mortgage is valid. It is a legal and factual assertion of 'the doctrine of partial performance' designed to prove the validity of the documents upon which she relies. She expressly avers that her receipt of over a million dollars in three interest payments "is an acknowledgment by Sixteen Plus of the validity of the Note and First Priority Mortgage executed by it." She also goes on to invoke estoppel on the same factual basis.

Yet, the majority of the discovery she has refused to answer is about the averments in those two paragraphs of her own complaint. Much of the discovery she refuses to answer has nothing to do with Fathi, Wally, the supermarket partnership (or its accounts) or the crimes she discusses. To the contrary, except for some discovery as to the alleged "gift" from her father, she mostly refuses discovery responses about her contemporaneous income and spending—and her related banking and taxes—for the period of her alleged receipt of that million dollars.<sup>3</sup> What is most perplexing is the fact that In Rule 34 discovery she has produced not one single document showing she:

- (1) actually received the alleged interest funds, or
- (2) ever deposited those funds in any bank or other account.

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<sup>3</sup> Because Manal she pleads these pre-SOL facts in support of her claim, Sixteen Plus is not time-limited as to its discovery—and even if this were the case, its affirmative defenses are not limited in any case, as it is the defending party. By the temporal scope of factual allegations in her complaint, Manal has fully opened the door to financial and tax discovery regarding that period.

Indeed, so far there are:

(3) no documents as to assets purportedly purchased with the money, despite the fact she states that it has all been spent.

Moreover:

(4) she contends, again without documents, that neither she nor Isam ever paid taxes on the alleged interest income—three payments in three different years of more than a million dollars—and she further states,

(5) that she refuses to do so now—until this litigation is over.

Finally, and most inconsistently:

(6) she has repeatedly refused to supply her address and passports for the purpose of investigation by Sixteen Plus into her assets, spending of that million dollars, movement and credit history.

Thus, *this* case and *this* motion involve Manal filing a complaint to foreclose a note and mortgage from Sixteen Plus where the land has been valued by Fathi as being worth \$30 million—and her claim of three payments of a third of a million dollars as partial performance—with no documentary proof whatsoever.

She goes on to argue that discovery should be limited because there is only one “relevant factual issue in this case”: it is whether “the money [Sixteen Plus] admits it skimmed from the United Corporation and its three Plaza Extra stores was given to Isam Yousuf and was sent by him to the Sixteen Plus Corporation for the purpose of purchasing the Diamond Keturah property from the Bank of Nova Scotia.” See page 5 of the opposition:

*before* Manal Mohammad Yousef is ordered to be joined as a named party defendant and to produce discovery information, it is respectfully submitted that Sixteen Plus Corporation should be ordered to produce documentary proof that

the money it admits it skimmed from the United Corporation and its three Plaza Extra stores was given to Isam Yousuf and was sent by him to the Sixteen Plus Corporation for the purpose of purchasing the Diamond Keturah property from the Bank of Nova Scotia. *This is the only relevant factual issue in this case.* (Emphasis added.)

But while that is certainly one critical issue, another one is whether she actually received a million dollars in partial performance of the central note. This is crucial for two distinct reasons: (1) if she did not, there was no supporting partial performance she can put before the trier of fact, and (2) it would mean she is lying about one of the major issues of evidence. The fact that would she lie about the alleged partial performance of the central document in the case would also be highly probative as to her reliability as a witness in the trial.

Another, equally confusing assertion in Manal's formulation of 'the' issue here lies in the first part of that same proffered tautology—an argument that makes no sense under the basic discovery rules or the rulings she quotes from the 370 case.

Accordingly, . . . **before** Manal Mohammad Yousef is ordered to be joined as a named party defendant and to produce discovery information, it is respectfully submitted that **Sixteen Plus Corporation should be ordered to produce documentary proof** that the money it admits it skimmed from the United Corporation and its three Plaza Extra stores was given to Isam Yousuf and was sent by him to the Sixteen Plus Corporation for the purpose of purchasing the Diamond Keturah property from the Bank of Nova Scotia. This is the only relevant factual issue in this case. (Emphasis added.)

As Manal points out in her opposition, it is clear that the books and records of United and the Partnership were so altered that prior to 2006 they were totally unreliable. Of course this is the case, as the Hamed and Yusuf families sent Isam large envelopes (and mattresses) full of hundred-dollar bills—thus the transfer of funds *in cash* to Isam would be hard to document even if their accounts were otherwise pristine. That is exactly why the tracing of the 1996-1997 land purchase funds and the alleged 1998-2000, million dollars in interest can only be

proved through testimony supported by the contemporaneous bank transfers, tax records, income, spending and bank records of the other alleged co-conspirators—Manal and Isam. Their records should be trustworthy, as those accounts (1) have been kept by banks and tax authorities, (2) St. Martin officials also were given unaltered copies (with documents already in hand showing they were provided under subpoena) and (3) the two of them obviously never thought their records and transactions would be discovered and used to prove the note and mortgage are shams. That is why they felt so free in the 2016-2017 pleadings about making up the wild stories about their impoverished father “gifting” Manal \$4.5 million through Isam’s STM laundering account and Manal receiving a million dollars in interest—*without a single document as proof!* Who thought a US court could get a look at those records? Little did they seem to recall that two French investigations had noted what was happening, and that broad discovery would be available once Manal brought a case in a US court?

That is exactly why these discovery responses are so important—they will show whether the fanciful stories about a phantom “gift” and a million in “interest received” are true. Did Isam’s father deposit \$4.5 million before 1996 as averred? Or, did those funds come from Wally and Fathi in stacks of 100’s in 1996 and 1997 as other investigative documents already show? Did Manal receive \$1 million—in 1998 to 2000, and if so, when and how—and where did it go? And what Sixteen Plus must *first* produce requires discovery requests.

Thus, in a way, Manal is entirely correct when she argues in the opposition that the Court must determine whether the subject \$4.5 million did flow into Isam’s laundering accounts from April of 1996 to September of 1997, or it did not. As she says:

[Was] the money it admits it skimmed from the United Corporation and its three Plaza Extra stores [ ] given to Isam Yousuf and [ ] sent by him to the Sixteen

Plus Corporation for the purpose of purchasing the Diamond Keturah property from the Bank of Nova Scotia.

The irony is that her and Isam's testimony and documents, their bank records, their tax records and the transfer orders from their banks will provide further evidence to substantiate the French investigations and documents, to allow the Court to make that determination.

The controlling question of law is: What support in the VI Rules or caselaw does Manal put forth to suggest the idea that if Wally and Fathi cannot FIRST come up with the relevant or trustworthy documents about the flow of those funds, then Manal and Isam should be free from discovery? No law is cited for this extraordinary claim. Instead, what the relevant law does say, as addressed below, is that all reasonable facts averred by Sixteen Plus in its complaint in the 65 Action are taken as true at this stage,<sup>4</sup> and those allegations are the starting point for determining what discovery should be allowed—not whether the Yusuf and Hamed books were falsified or whether they made their production of accounts "first."

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<sup>4</sup> It is axiomatic that CICO conspiracies rely on hidden information—almost always in the hands of some of the conspirators. But even if this were not the case, under the well-pleaded-complaint rule, the plaintiff is 'the master of the complaint'. *Home Depot U.S.A., Inc. v. Jackson*, 139 S. Ct. 1743, 1763 (2019). More importantly "[a]t this stage, Plaintiffs' allegations must be taken as true and they [should] be allowed discovery into" the allegations in the complaint. See, e.g., *Hogan v. Cleveland Ave Rest., Inc.*, No. 2:15-CV-2883, 2018 U.S. Dist. LEXIS 49587, at \*10-11 (S.D. Ohio Mar. 26, 2018), stating:

As detailed above, Plaintiffs allege that BACE and OC, acting in concert with BACE-members, conspired to agree to set the price of "rent" and "damage" resulting in Plaintiffs being paid less than they would have been in a competitive market. *At this stage*, Plaintiffs' allegations must be taken as true and they will be allowed discovery into the specific conduct of BACE and OC. (Emphasis added.)

Here, there is additional documentary and investigative evidence already in support of those averments, but even if this were not so, discovery would be entirely appropriate.



Therefore, rather than cut off the discovery before Sixteen Plus first “proves” something by reference to the accounts of the Hameds and Yusufs—at this point Manal must allow (and should welcome) discovery to fully illuminate exactly where those funds came from—whatever the source of that information. If the information now exists only in the records of Isam, Manal, their banks and their tax officials and are available to them on demand—then what possible rule of law would suggest this information not be brought before the Court?

## II. Yusuf's Specific Assertions, *Verbatim*, and the Sixteen Plus Responses

1. At 1-2, “The Sixteen Plus Corporation and its token<sup>[5]</sup> shareholder, Hisham Hamed, have filed various motions to, among other things, (1) compel Isam Yousef to authorize the prosecutors and police in St. Maarten to conduct a search of the bank records of the company he once owned and operated.” (Emphasis added.)

This is a misstatement. In another action (650) Hamed individually and derivatively for Sixteen Plus, did file a motion to compel. However, it was properly directed at Isam and primarily sought to compel Isam to provide his own, personal bank records by compelling him to request them from his own bank. There is no request for a police or prosecutorial search, only for those authorities to turn over those same records *already collected and supplied to those authorities*. Moreover, there has been no proof adduced there that these laundering accounts were entity accounts much less corporate accounts,<sup>6</sup> and Isam has refused to answer qualifying inquiries about both the accounts and the alleged entity. To the contrary,

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<sup>5</sup> Sixteen Plus does not understand the implication of the use of the term “token” in reference to Hisham Hamed. He holds a proportionate share of the stock in comparison to the other Hamed and Yusuf family members, and has for decades.

<sup>6</sup> The exhibits there show the four STM laundering accounts were opened in 1996 by Isam, Wally and Fathi based solely on *their personal documents* and were not in the name of any entity.

French investigative records show this to have been opened as personal accounts with no entity records mentioned with regard to opening or ownership. Thus, that inquiry is consistent with the Rule 26 concept of discoverability of information “controlled” by a party—as argued there. In any case, it is not discovery in this action, and Isam can always file a motion for a protective order there to show Sixteen Plus and the French authorities were wrong—by supplying the entity and account opening documents and showing he didn't control it.<sup>7</sup>

2. At 2, “The Sixteen Plus Corporation, in multiple civil cases, on its own behalf and derivatively through a token stockholder, Hisham Hamed, is attempting to relitigate a failed attempt *by its stockholders* for an accounting.” (Emphasis added.)

This is simply not true. Sixteen Plus Corporation's stockholders have *never* litigated to obtain an accounting.

To the contrary, Fathi Yusuf brought a 2015 action on St. Thomas trying to obtain dissolution and an accounting of Sixteen Plus, in an attempt to trigger the sale of the subject land. *See, Fathi Yusuf v. Peter's Farm, et al.*, ST-2015-CV-00344. But neither Hisham Hamed nor any of the other shareholders countersued or sought any such accounting, and the action was not actually litigated, as it was quickly dismissed on a motion joined in by Fathi Yusuf, and all of the pending motions were deemed moot. This all occurred and was over before Manal ever brought her 342 action. *See, Order dated December 15, 2016 (Francois, J.)* There

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<sup>7</sup> That motion also notes that because, under French law, Isam has the right to demand COPIES of those identical personal bank account statements that were provided by the bank to French investigators, he must make that demand. They are not investigative or police records—they are simply officially identified copies of Isam's own bank statements previously sent from his bank to the police in response to a subpoena. That motion is supported by extensive citation to exhibits, the applicable rules, and caselaw—making it clear that where a party can demand his own documents, he controls them and must produce. Finally, French investigative reports provide detail as to the accounts, the fact that they are Isam's personal accounts, and the fact that the French authorities received copies of Isam's statements.

is no other case in which either Sixteen Plus or its shareholders sought or were denied an accounting. Nor are Sixteen Plus and Manal parties to the *Hamed v. Yusuf* 370 action.

3. At 2, "**These civil lawsuits** have a common theme **espoused by the Sixteen Plus Corporation**, that \$60 Million was skimmed from the United Corporation and its three Plaza Extra stores, and the skimmed money was diverted to St. Maarten, and elsewhere, to avoid taxes, and for other nefarious purposes. In 2012, and 2014, civil actions were filed by and between Waleed Hamed and Fathi Yusuf, the two men who formed the Sixteen Plus Corporation to purchase the Diamond Keturah property. **These civil actions were designed to obtain a dissolution of their partnership and a distribution of partnership assets related to and derived from the business of the Plaza Extra stores. . . .**

This assertion conflates two completely different actions about two different subjects and then draws a truly odd conclusion. In 2012, Mohammad Hamed sued Fathi Yusuf seeking a declaratory judgment as to the existence and effect of the Plaza Extra Supermarket partnership. Yusuf later sought dissolution therein, as well as a RUPA division of its assets into the two partnership accounts. Neither Sixteen Plus nor Manal were ever joined—nor did they appear or were they deposed. Moreover, the note and mortgage at issue here are not in the name of that partnership, the Hameds or the Yusufs.

4. At 2-3, "The plaintiff, Waleed Hamed, retained the services of an expert witness who based his opinion on the 2003 third superseding indictment in the [criminal] matter . . . Although various individuals were charged in the indictment, only the United Corporation pled guilty to Count No. 60, by which it admitted that \$10 Million of gross receipts were skimmed and mis-accounted to avoid taxes\* \* \* [Judge Brady held] "the policy of RUPA prevents both Hamed and Yousuf from imposing upon the court the great burden of sorting through the ramshackle patchwork of evidence supporting their claims, to reconstruct decades worth of partnership accounts, when the partners, who deliberately determined not to keep accurate records in the first place, were themselves content to carry on conducting partnership business despite having full knowledge of the pattern of conduct which they now belatedly complain." P.21.

Manal is correct. The expert and Judge Brady both stated the partnership's accounting was falsified and entirely unreliable prior to the September 2006 cutoff date. That has nothing to do with this action. First, holdings there do not control here, and even if they did Sixteen

Plus *does not seek to rely on any such pre-2006 accountings*—to the contrary, it relies solely on the bank transfer documents and the financial accounts of the 650 action defendants. Moreover, Judge Brady's decision would not estop Sixteen Plus from defending from a foreclosure based on the theories of: (1) the falsity of the note, (2) Manal's unclean hands or (3) the "pari delicto" status of Manal—as (1) neither it or Manal were parties there, (2) Sixteen Plus is in defense here in regard to Manal's 342 foreclosure action, (3) 370 is an equitable action and the relief by the Court was equitable relief specific to those facts, which are not of record here, and (most importantly) (4) affirmative defenses (including those as to foreclosure) are definitely not subject to statutes of limitations.

Finally. to return to the point of this particular motion, these are all unproven facts outside of the complaint, and have no place at this stage—especially in a discussion seeking to limit discovery..

5. At 4, "Since it has been found beyond question that Waleed Hamed and Fathi Yusuf cannot account among themselves as to how the money skimmed from United Corporation could be accounted for, it should be axiomatic that they should be foreclosed from attempting to contend in this case, and others presently pending, that an accurate accounting can now be made to find conclusively that the \$4.5 Million used to purchase Diamond Keturah came from money skimmed from the three Plaza Extra stores, and not from money loaned to Sixteen Plus Corporation by Manal Mohammad Yousef."

As stated in the introduction, this both misstates the law and is simply illogical.

i. Logic

Fathi and Wally may not be able to accurately account on paper for all of the funds—but they certainly can testify to the fact that they personally gave \$4.5 million in 100's to Isam to provide to Sixteen Plus for the land. The bank records of Isam, the transfers from Isam, the lack of any funds traceable to Manal's father, and the bank/tax records of the other Isam-controlled laundering accounts are also highly probative. Even if Wally, Isam and Fathi cannot

prove their testimony with their own records, it is still testimony. If their own records don't show the actual movement of the laundered cash to Isam, Wally and Isam can still testify and Isam can be impeached (Fathi has taken the Fifth). If the records of the funds flowing into Isam's account in 1996-1997 do not exist in Hamed or Yusuf records, they certainly do in Isam's and Manal's bank and tax records. Manal either did not file taxes in 1998 through 2000, or she did...and swore under oath that she did NOT receive a million dollars in interest income. In addition, foreign government records, testimony of bank and other officials and inferences derived from the operation Isam ran in St. Martin and Jordan can be sufficient for a trier of fact to make the necessary factual findings.

Thus, the illogic lies in the fact that almost all criminal CICO conspiracies involve the records of various participants. If Mr. A and Mr. B destroyed or falsified their records—how could that possibly mean that the records of co-conspirators Mr. Yousuf and Ms. Yousef cannot be obtained and used instead?

ii. Law

**V.I.R. CIV.P. RULE 26**

**(a) Required Disclosures.**

**(1) Initial Disclosure.**

**(A) In General.** Except as exempted by Rule 26(a)(1)(B) or as otherwise stipulated or ordered by the court, a party must, without awaiting a discovery request, provide to the other parties:

**(i)** the name and, if known, **the address** and telephone number of each individual likely to have discoverable information — along with the subjects of that information — that the disclosing party may use to support its claims or defenses, unless the use would be solely for impeachment.

**(ii)** a copy of all documents, electronically stored information, and tangible things that the disclosing party has in its possession, custody, **or control** and may use to support its claims or defenses,

unless the use would be solely for impeachment, unless it would be unduly burdensome to produce a copy of an item, in which case each item must be clearly identified, along with a statement as to why each cannot readily be copied, and including a description of the location where each can be reviewed. (Emphasis added.)

### **V.I.R. CIV.P. Rule 34**

Producing Documents, Electronically Stored Information, and Tangible Things, or Entering onto Land, for Inspection and Other Purposes

**(a)** In General. A party may serve on any other party a request within the scope of Rule 26(b):

(1) to produce and permit the requesting party or its representative to inspect, copy, test, or sample the following items in the responding party's possession, custody, **or control**: (Emphasis added.)

### **V.I.R. CIV.P. Rule 26(b)(1)**

(b) Discovery Scope and Limits.

(1) *Scope in General.*

Unless otherwise limited by court order, the scope of discovery is as follows: Parties may obtain discovery regarding **any nonprivileged matter that is relevant to any party's claim or defense.** Information within this scope of discovery need not be admissible in evidence to be discoverable. (Emphasis added.)

6. At 5-6, Manal's long statement of the law applicable to the scope and proportionality of discovery are partially correct and partially wrong.

Sixteen Plus largely agrees with Manal's formulation of the scope of discovery but disagrees with her interpretation and, most particularly, her discussion of the USVI rule as to proportionality. She cites a federal rules case, *Westhemeco Limited*. This references the 'new' federal standard, as described by Jason Stach in "*Effect of 'New' Proportionality Limits in Amended FRCP 26*", IP Litigator, January-February 2016.<sup>8</sup>

On December 1, 2015, with Congress's consent the Supreme Court amended the Federal Rules of Civil Procedure (FRCP. . . Under amended Rule 26(b)(1), information is discoverable if it is relevant to any party's claim or defense and proportional to the needs of the case, *with several proportionality factors now*

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<sup>8</sup> Accessed February 4, 2023 at: <https://www.finnegan.com/en/insights/articles/effect-of-new-proportionality-limits-in-amended-frcp-26.html>

*stated in the rule. [Id. at 12.] . . .* Despite all the press about the significance of the proportionality amendments, these proportionality factors are not new. Rather, most of the factors were added to Rule 26(b)(1) in 1983. [Memorandum from Hon. David G. Campbell to Hon. Jeffrey Sutton at 7 (June 14, 2014).] They were later moved to Rule 26(b)(2)(C) in 1993 as part of dividing Section (b)(1). [Id.] The Advisory Committee recently indicated that its “purpose in returning the proportionality factors to Rule 26(b)(1) is to make them an explicit component of the scope of discovery, requiring parties and courts alike to consider them when pursuing discovery and resolving discovery disputes.” [Id. at 8.]

Because the proportionality factors are not new, it is unclear whether the amendments will result in any change in practice. For example, before the 2015 amendments to Rule 26, it was common for parties to challenge discovery requests on the ground that they were unduly burdensome. Although this terminology differs from proportionality, the ultimate inquiry was the same—given the needs of the case and the relative burdens on the parties, is this discovery request more burdensome than warranted?

However, the VI Supreme Court did not adopt the federal proportionality standard in the USVI when the rules were revised in 2017. To the contrary, it expressly retained full and open discovery after being fully aware of the federal change.<sup>9</sup> But even that is really irrelevant here,

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<sup>9</sup> Compare V.I.R. CIV.P. Rule 26(b)(1):

(b) DISCOVERY SCOPE AND LIMITS.

(1) *Scope in General.*

Unless otherwise limited by court order, the scope of discovery is as follows: Parties may obtain discovery *regarding any nonprivileged matter that is relevant to any party's claim or defense.* Information within this scope of discovery need not be admissible in evidence to be discoverable.

with Fed.R.Civ.P. Rule 26(b)(1):

(b) DISCOVERY SCOPE AND LIMITS.

(1) *Scope in General.* Unless otherwise limited by court order, the scope of discovery is as follows: Parties may obtain discovery regarding any nonprivileged matter that is relevant to any party's claim or defense *and proportional to the needs of the case,* considering the importance of the issues at stake in the action, the amount in controversy, the parties' relative access to relevant information, the parties' resources, the importance of the discovery in resolving the issues, and whether the burden or expense of the proposed discovery outweighs its likely benefit. Information within this scope of discovery need not be admissible in evidence to be discoverable. (Emphasis added.)

as Sixteen Plus has made it clear that it will pay for all identification, location, copying, transport and presentation of documents for Isam, and will do the same for Manal. There will be no costs. The only additional interrogatory requests are about Manal's basic financial information—disclosing her own banking and tax information is not burdensome (or disproportionate) in an action where a party is a plaintiff seeking a \$30 million payday.

7. Sixteen Plus' responses to Manal's objections to five specific items set out in the motion:

- i. At 6, Her address: "Manal Mohammad Yousef is represented by counsel. Sixteen Plus Corporation has no legal basis to contact her directly and therefore does not need her address. At various times Sixteen Plus Corporation has indicated that it intends to file a lawsuit against her and therefore needs her address. . . ."

This is wrong for three reasons: (1) As discussed above, Rule 26 expressly requires addresses to be provided. (2) Sixteen Plus has repeatedly stated that it needs a home address as it wishes to assess asset values in light of the fact she claims she has no bank accounts, and no documents concerning the receipt and spending of a million dollars in interest central to her case. Also, (3) though counsel for Manal persists in alleging that Sixteen Plus may wish to file suit in Jordan. He has been repeatedly told this is not the case, and the motion expressly states that its interest is in the service of international process under the Hague Convention—for extra-territorial discovery and as a backstop if she does not appear in the US for this action—something she has so far not been able or willing to do. These are things not within the control or remediation of her counsel—and are allowable.

Beyond that, it beggars the imagination that a party alleging in her own complaint that she received and spent a million dollars without a single document or record (of funds coming in or going out) could hope to get a judgment which, with interest and land value could equal \$30 million, without providing even one bank record, her home address, an asset list, her



passports or a single tax record. Counsel has been able to locate no cases where an address of the plaintiff was withheld in a civil damages case absent the allegation of criminal retaliation or protection from violence. Even then, it would first require quite an explanation to the Court.

ii. At 6-7, "Both Manal Mohammad Yousef and Isam Yousuf have responded to written discovery and indicated that they have no documents **in their possession** responsive to the request for production of documents issued in this case. The production of documents by Isam Yousuf is the subject of a separate motion and need not be addressed further here beyond stating that Isam Yousuf has no documents in his possession custody or control. "

Once again, Manal ignores the extensive discussion by Sixteen Plus about the distinction between documents "in her possession" and documents "in her control." Again she ignores the specific language of the rule. Like Isam, she must either obtain and supply documents within her right to demand them—or give Sixteen Plus a letter of authorization—for her own banking and tax records. Similarly, she again refuses to engage on the fact that Isam was clearly her agent—and the legal requirement that she both inquire into and obtain documents and information "within his control"—regardless of his immediate "possession."

iii. At 7, "The subject matter of this demand for production of documents has been responded to, not with documents, but with a description of how Manal Mohammad Yousef spent the three payments of interest in the amount of \$360,000 she received from the Sixteen Plus Corporation. Neither she nor Isam Yousuf have documents in their possession, custody, or control regarding same." (Emphasis added.)

First, the so-called description is about 1 paragraph of vague musings. More to the point, Sixteen Plus does not want to take the word of Manal or Isam as to these issues. She states she does not have and has never had a bank account—either then or now. He is unclear about when, how much and where his father gifted \$4.5 million. She has refused tax documents where she would have sworn to income in the subject years, as irrelevant. Isam states his father deposited the gift prior to the date the accounts at issue were even open.

She states she never has and does not now have any documents about the receipt, transfer, spending, asset acquisition or asset sale for over a million dollars. There is no list of her assets then or now—did she buy the house with the million she avers she received but cannot detail at all? She has not given over her passports despite repeated agreements to do so. She states that she received a gift of \$4.5 million from her father that went into (*insert a shifting series of descriptions about accounts, funds and other amorphous locations here*) but neither she nor Isam have a single record or any description of when, where and how much. She has been repeatedly asked for approximations, ranges of amounts and other means of approaching such a fantastic story.

Thus, she should be ordered to either provide documents or give a letter of authorization, and RESPOND IN DETAIL to the interrogatory requests for information in this motion. Once she answers those just a little, a further motion to compel can be crafted about those details. Even absent documents, approximately when, in what amounts and how did the \$4.5 from Manal's father go to Isam? Where did he put it—was it into the laundering transfer account from which the money was sent to Sixteen Plus?? Manal also needs to inquire of Isam and he needs to answer for himself, separately. Into which of Isam's accounts did the gift go, and when? Then, on the million in interest, approximately how much did she spend on what items and when—if exact amounts are not known a range or approximation can be given. If it was given to her in cash by Isam, how, when, how much and by what means? How did he keep it, and how did he get it to her if she was thousands of miles away? And, if she says there are no bank accounts, no other records and no way to even approximate—she should deliver letters of authority to allow Sixteen Plus to request such bank and tax records.

iv. At 7, "Manal Mohammad Yousef is not now, nor has she ever been, a resident of the U.S. Virgin Islands, or the United States of America. She has indicated in answers to written discovery that she did not pay income tax with respect to the receipt of the three payments of interest by the Sixteen Plus Corporation to her. Therefore, the production of income tax returns is irrelevant to any pending issue in this case."

This statement is incomplete. What Manal has actually stated is that she did not pay taxes on the million dollars over three years in either St. Martin or Jordan either. She says she never paid taxes on this money. But what DID she state on her tax filings? That will be a major issue of proof in Sixteen Plus' case. For what better proof could Sixteen Plus have that she is not telling the truth than tax filings where she swears to what her income really was and it is a million short. These would be the same returns on which she may have revealed assets purchased with the money.

Already in this case we have Fathi Yusuf swearing under oath and subject to the penalty of perjury—on years and years of USVI tax filings—that *he and Hamed* lent Sixteen Plus the \$4.5 million—not Manal. He also expressly states that there were no third-party loans such as those Manal alleges. And he does some of this within the statute of limitations in this case, after 2010! How then, could Manal's tax returns be any less revealing? And what is the legal basis for not giving up your tax returns in a case you brought where you alleged in your complaint that you received a million dollars from the other side—and it is a central element in the case? Manal was the one who averred, in her complaint at paragraph 10:

*10. The three (3) interest only payments made by the defendant Sixteen Plus to the plaintiff Yousef in the amount of \$1,180,000.00, is an acknowledgment by Sixteen Plus of the validity of the Note and First Priority Mortgage executed by it, and the defendant Sixteen Plus is estopped to deny its obligation to make payment in full of all of the principal and interest due by it to the plaintiff as set forth therein. (Emphasis added.)*

v. At 7, "5. Manal Mohammad Yousef has provided written answers to written discovery stating that the funds provided by her to the Sixteen Plus Corporation came from her father. The use of the word/term conspirators is that of Sixteen Plus Corporation and not Manal Mohammad Yousef or Isam Yousuf, and is a less than veiled attempt by Sixteen Plus Corporation to white wash his own criminal conduct by attempting to include her in it."

Through United Corporation, \$10 million was paid to the USVI, and another \$1 million to the US. (That is \$11 million more in taxes than Isam and Manal paid. That criminal activity stands acknowledged and the debt and penalty have been assessed and paid.) Not so for Manal. In short, there is no dispute that there was a criminal enterprise in 1996-2003. How this excuses Isam, Manal and others from discovery into their participation in the instant conspiracy is unclear. But now, in this action, in this discovery, the issue is the use of a note that falsely states the source of the consideration to obtain \$30 million in land. If Manal did not provide that consideration she is now knowingly, in association with others, trying to steal that money by embezzlement, fraud and the intentional bankruptcy and destruction of a USVI corporation. The discovery requested will not show that to be true if it is not true—but without the discovery the "association" of those individuals can never be fully understood.

## **Conclusion**

Once again, instead of addressing the content and facts in the motion, the Court has been provided inflammatory, breathless rhetoric about the transgressions of Wally and Fathi in 1997-2003—and a total lack of facts and legal argument about Manal. This is the most basic discovery of a plaintiff as to averments in her complaint brought in a USVI court. There are allegedly no records or other evidence as to the "gift" to Manal used to lend funds to Sixteen Plus, and no records or other evidence as to the \$1 million in interest payments that plaintiff relies on in paragraphs 9 and 10 of her complaint. The motion should be granted.

**Counsel for Sixteen Plus Corporation**

**Dated:** February 5, 2023

*/s/ Carl J. Hartmann III*

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### CERTIFICATE OF SERVICE

I hereby certify that, discounting captions, headings, signatures, quotations from authority and recitation of the opposing party's own text, this document complies with the page and word limitations set forth in Rule 6-1(e) and that on **February 5, 2023**, I served a copy of the foregoing by email and the Court's E-File system, as agreed by the parties, to:

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**Courtesy copy** to Kevin Rames, Esq.

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