

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

MANAL MOHAMMAD YOUSEF,)	
)	CASE NO. SX-2017-CV-342
Plaintiff and Counter-Defendant,)	
)	ACTION FOR DEBT AND
v.)	FORECLOSURE; COUNTERCLAIM
)	FOR DAMAGES; THIRD PARTY
SIXTEEN PLUS CORPORATION,)	ACTION
)	
Defendant, Counter-Plaintiff, and)	<u>JURY TRIAL DEMANDED</u>
Third-Party Plaintiff)	
)	
v.)	
)	
FATHI YUSUF,)	
)	
Third-Party Defendant.)	

CONSOLIDATED CASES: Civil Case No. SX-2016-CV-650; Civil Case No. SX-2016-CV-00065; Civil Case No. SX-2017-CV-342

**MANAL MOHAMMAD YOUSEF'S
RESPONSE TO SIXTEEN PLUS'S STATEMENT OF FACTS**

1. Wally Hamed began working at the Plaza Extra Supermarket on St. Croix in 1986, which was owned by a partnership consisting of his father, Mohammad Hamed, and Fathi Yusuf. See Exhibits 1.

RESPONSE: Undisputed for the purpose of ruling on the motion for summary judgment only. Disputed that the allegations in this paragraph are relevant, material facts in the instant debt and foreclosure action.

2. When his father decided to retire in 1995, he appointed Wally in charge of his 50% interest in the partnership, as well as all other assets generated by it that were jointly owned with Yusuf, which he later formalized in a power of attorney to Wally in 1996. See Exhibits 1.

RESPONSE: Undisputed for the purpose of ruling on the motion for summary judgment

only. Disputed that the allegations in this paragraph are relevant, material facts in the instant debt and foreclosure action.

3. Around this time, Fathi Yusuf decided to develop a scheme to skim cash from the Plaza Extra Supermarket and move it off-island to avoid paying taxes on it, which he discussed with Wally Hamed and others. See Exhibits 1 and 2.

RESPONSE: Undisputed for the purpose of ruling on the motion for summary judgment only. Disputed that the allegations in this paragraph are material facts in the instant debt and foreclosure action.

4. By 1996, this plan was in full operation, with large amounts of cash being skimmed and then diverted off-island, primarily to St. Martin first before being sent elsewhere to buy property in multiple locations at the direction of Fathi Yusuf, but with the full knowledge and participation of others, including Wally Hamed. See Exhibits 1 and 2.

RESPONSE: Undisputed for the purpose of ruling on the motion for summary judgment only. Disputed that the allegations in this paragraph are material facts in the instant debt and foreclosure action.

5. In 1996, Fathi Yusuf learned that the Bank of Nova Scotia a/k/a Scotiabank had foreclosed on a 300 acre property on the south shore of St. Croix known as Diamond Keturah, which he told Wally he wanted the partnership to buy, using the cash skimmed from the partnership. See Exhibit 1.

RESPONSE: Undisputed for the purpose of ruling on the motion for summary judgment only. Disputed that the allegations in this paragraph are material facts in the instant debt and foreclosure action. *See also* Exhibit 4 to Sixteen Plus's Cross-MSJ at 24-25 (stating that "Fathi Yusuf admitted to the money laundering scheme and of transferring tainted funds to hidden accounts in St. Maarten and then transferring the funds out of St. Maarten

to buy real property elsewhere. However, he denied any of those laundered funds were used to buy the Diamond Keturah property” and citing Fathi Yusuf’s deposition transcript at pp. 31, 122-128, 146-147).

6. In this regard, one such corporation already created to invest assets from the partnership was Plessen Enterprises, Inc., that purchased various large tracts of real estate in the Virgin Islands. This corporation was owned 50% by the Hamed family members and 50% by the Yusuf family members. See Exhibit 1.

RESPONSE: Undisputed for the purpose of ruling on the motion for summary judgment only.

7. On February 4, 1997, at Fathi Yusuf’s direction, Wally Hamed sent a letter from Plessen Enterprises, Inc. (“Plessen”) to Scotiabank expressing an interest in buying the Diamond Keturah Property for \$4,550,000, offering \$550,000 down and \$4 million at closing after the foreclosure redemption period expired. The transmittal letter included a \$100,000 check as a downpayment. See Exhibit 1.

RESPONSE: Undisputed for the purpose of ruling on the motion for summary judgment only. Disputed that the allegations in this paragraph are material facts in the instant debt and foreclosure action.

8. It was decided to form a corporation, Sixteen Plus, Inc., to eventually hold title to Diamond Keturah, so Articles of Incorporation for Sixteen Plus, Inc., were filed on February 10, 1997, with the Lieutenant Governor’s Office. Like Plessen, Sixteen Plus was set up so its shareholders would consist of 50% of members of the Hamed family and 50% of the members of the Yusuf family. See Exhibit 1.

RESPONSE: Undisputed for the purpose of ruling on the motion for summary judgment only. Disputed that the allegations in this paragraph are material facts in the instant debt and foreclosure action.

9. On February 14, 1997, Scotiabank and Plessen Enterprises, Inc. entered into a contract to assign Scotiabank's certificate of sale for the Diamond Keturah property it bought in foreclosure to Plessen Enterprises, Inc. for \$4,550,000, which contract is signed by Mohammed Hamed and Fathi Yusuf as the officers of Plessen. The remaining downpayment of \$450,000 was promptly paid to Scotiabank once the contract was signed by all. See Exhibit 1.

RESPONSE: Undisputed for the purpose of ruling on the motion for summary judgment only. Disputed that the allegations in this paragraph are material facts in the instant debt and foreclosure action.

10. As Sixteen Plus's real property expert, Attorney Nate Mirocha, explained in his report regarding this February 14, 1997, Scotiabank/Plessen contact (See Exhibit 3):

This is a common way for a bank to transfer title to property it has purchased at a foreclosure sale (i.e. assigning its Certificate of Sale to a buyer and letting the buyer then obtain the Marshal's Deed in the Buyer's name with the bank never having to take title). This maneuver can potentially avoid stamp taxes and shift the obligation for payment of property taxes, among other potential benefits.

RESPONSE: This paragraph contains opinion evidence, not a material fact. *See InfoDeli, LLC v. Western Robidoux, Inc.*, Case No. 4:15-cv-00364-BCW, 2018 WL 10638435, at *1 (W.D. Mo. Mar. 27, 2018) ("Plaintiffs' 'Statement of Uncontested Material Facts' consists of 144 paragraphs characterizing conflicting expert testimony and setting forth legal argument as facts. The Court declines to enter summary judgment premised on conflicting expert opinions based on Plaintiffs' characterization.").

Additionally, "an expert report cannot be used to prove the existence of facts set forth therein." *Doe v. City of San Diego*, 35 F.Supp.3d 1233, 1236-37 (S.D. Cal. 2014) (quoting *In re Citric Acid Litigation*, 191 F.3d 1090, 1102 (9th Cir.1999)) (finding that "Plaintiff has improperly supported her statement of facts by citing to the factual statements set forth by her expert witnesses in their reports rather than citing to facts in the record.").

Disputed that expert report is admissible.

“Expert testimony as to legal conclusions that determine the outcome of the case are inadmissible.” *Arvidson v. Buchar*, 72 V.I. 50, 78 (V.I. Super. 2019) (quoting *Muniz v. Rexnord Corp.*, Case No. 04 C 2405, 2006 WL 5153078, at *2 (N.D. Ill. Nov. 2, 2006)); see also *Hayes v. Douglas Dynamics, Inc.*, 8 F.3d 88, 92 (1st Cir. 1993) (“Where an expert presents “nothing but conclusions—no facts, no hint of an inferential process, no discussion of hypotheses considered and rejected”, such testimony will be insufficient to defeat a motion for summary judgment.”) (citing *Mid-State Fertilizer v. Exchange Natl. Bank*, 877 F.2d 1333, 1339 (7th Cir. 1989); *Evers v. General Motors*, 770 F.2d 984, 986 (11th Cir.1985); *Bulthuis v. Rexall Corp.*, 789 F.2d 1315, 1318 (9th Cir. 1985)).

“Put differently, legal arguments about the meaning of contracts belong in briefs, not expert reports.” *Connell v. KLN Steel Products Ltd.*, Case No. 04 C 194, 2009 WL 691292, at *9 (N.D. Ill. Mar. 16, 2009) (citing *RLJCS Enter., Inc. v. Prof'l Benefit Trust Multiple Employer Welfare Benefit Plan & Trust*, 487 F.3d 494, 498 (7th Cir. 2007) (“argument about the meaning of trust indentures, contracts, and mutual-to-stock conversions belongs in briefs, not ‘expert’ reports”); *Allison v. Ticor Title Ins.*, 979 F.2d 1187, 1196 (7th Cir.1992) (“the basic premise that an expert may not testify to the legal significance of a contract is unavoidable”); *Rumsfeld v. United Tech. Corp.*, 315 F.3d 1361, 1369 (Fed. Cir. 2003) (legal interpretation of regulations belongs in briefing and argument)).

11. The Hamed/Yusuf partners did not try to use Sixteen Plus as the buyer for that contract because it had just been formed and had no assets, so they did not think Scotiabank would enter into a contract with it. See Exhibit 1.

RESPONSE: Undisputed for the purpose of ruling on the motion for summary judgment only. Disputed that the allegations in this paragraph are material facts in the instant debt and foreclosure action.

12. On February 19, 1997, \$2 million was wired by Isam Yousuf, Fathi Yusuf's nephew, from his store's account, Island Appliance, in St. Martin to Sixteen Plus's bank account at Scotiabank on St. Croix. See Exhibit 1.

RESPONSE: Undisputed for the purpose of ruling on the motion for summary judgment only. Disputed that the allegations in this paragraph are material facts in the instant debt and foreclosure action.

13. The \$2 million in wired funds were from cash generated by the Hamed/Yusuf partnership in operating the Plaza Extra Supermarket on St. Croix, which was taken from the Plaza Extra store on St. Croix by Wally Hamed, and others, which was then deposited in either Isam Yousuf's account and/or the Island Appliance account in St. Martin, to hide these funds from the tax authorities in the U.S. Virgin Islands. Thus, these funds were "laundered" funds as that term is commonly used in such illegal skimming schemes. See Exhibits 1, 4 and 5.

RESPONSE: Disputed. Manal's father gave her \$4,500,000 to secure her marriage and financial future. **Exhibit 9** (Manal Depo Tr. at 68:21-70:7; 30:14-31:12).¹ Manal's brother Isam explained that in his culture, if a married woman does not produce children after several years, the husband will divorce her because "they want children." **Exhibit 10** (Isam Depo Tr. at 70:3-72:12). The funds were provided to Isam to manage on Manal's behalf. **Exhibit 9** (Manal Depo Tr. at 30:14-31:12). The money Manal loaned to Sixteen Plus was transferred by Isam to Sixteen Plus and Manal's father and her brother Isam negotiated the

¹ Unless otherwise indicated, exhibits referenced in Manal's responses to Statements of Fact are the exhibits attached to Manal's Renewed Motion for Summary Judgment.

terms of the Note and Mortgage on Manal's behalf. **Exhibit 9** (Manal Depo. Tr. at 47:1-48:5). Manal testified that she loaned the money to Sixteen Plus. **Exhibit 9** (Manal Depo. Tr. at 78:16-79:10).

14. These laundered funds were part of the larger scheme initially set up by Fathi Yusuf in the 1995-1996 time period to skim cash from the partnership business and move it off-island so it could then be put into various bank accounts to be used to buy real estate in multiple location, including the Virgin Islands, all done with the knowledge and assistance of Wally Hamed. See Exhibits 1, 4 and 5.

RESPONSE: Disputed. See response to Statement of Fact 13.

15. The funds sent from St. Martin on February 19, 1997, were first delivered in cash by Wally Hamed to Isam Yousuf, who then had them deposited them into the Island Appliance account in St. Martin so he could send these laundered funds back to St. Croix at Fathi Yusuf's direction to the Sixteen Plus Scotiabank account. See Exhibit 1.

RESPONSE: Disputed. See response to Statement of Fact 13.

16. On May 1, 1997, Scotiabank and Plessen Enterprises, Inc. entered into the First Amendment of the Contract to extend the time to close the Diamond Keturah contract until July 15, 1997, due to issues related to the expiration of the right of redemption of the prior owner of the property. See Exhibit 1.

RESPONSE: Undisputed for the purpose of ruling on the motion for summary judgment only. Disputed that the allegations in this paragraph are material facts in the instant debt and foreclosure action.

17. As the Hamed/Yusuf partners did not have 100% of the funds in place to close on July 15, 1997, Scotiabank agreed to loan Plessen Enterprises the balance it needed to close, which term sheet was issued on July 9, 1997, whereby Scotiabank would loan Plessen Enterprises \$2.2 million to complete the sale of its assignment of the property to Plessen. The term sheet required the personal guarantees of Fathi Yusuf and Wally Hamed (among others) and made it clear that Plessen could not transfer the Diamond Keturah property once it was transferred to it without Scotiabank's permission until the loan was repaid, which terms were accepted by Plessen and the guarantors on July 11, 1997. See Exhibit 1.

RESPONSE: Undisputed for the purpose of ruling on the motion for summary judgment only. Disputed that the allegations in this paragraph are material facts in the instant debt and foreclosure action.

18. Thereafter, on July 11, 1997, Scotiabank sent Plessen Enterprises, Inc. (c/o Andy Simpson) a notice setting the new "last" closing date for July 29, 1997. See Exhibit 1.

RESPONSE: Undisputed for the purpose of ruling on the motion for summary judgment only. Disputed that the allegations in this paragraph are material facts in the instant debt and foreclosure action.

19. On July 29, 1997, Plessen Enterprises, Inc. closed the purchase of the certificate of sale from Scotiabank. For the \$4 million balance due under the contract, Plessen used \$1.8 million of the \$2.0 million in laundered funds deposited into Sixteen Plus's account on February 19, 1997, with the balance of the \$4 million due being paid from the \$2.2 million loaned to it by Scotiabank. See Exhibit 1.

RESPONSE: Disputed. See response to Statement of Fact 13.

20. On July 30, 1997, Andy Simpson wrote to Fathi Yusuf c/o United Corporation noting that Fathi Yusuf did not want to receive the Marshal's deed for the Diamond Keturah property at that time. See Exhibit 1.

RESPONSE: Undisputed for the purpose of ruling on the motion for summary judgment only. Disputed that the allegations in this paragraph are material facts in the instant debt and foreclosure action.

21. On September 4, 1997, Sixteen Plus received another \$2.0 million in laundered funds transferred from Island Appliance in St. Martin to Sixteen Plus's Scotiabank account. The \$2 million in wired funds were from money generated by the Hamed/Yusuf partnership on St. Croix that had been taken in cash by Wally Hamed, and others, from St. Croix between

February and July of 1997, and deposited in an account in St. Martin in order to hide these funds from the tax authorities in the U.S. Virgin Islands. See Exhibits 1 and 2.

RESPONSE: Disputed. See response to Statement of Fact 13.

22. The laundered funds from the Hamed/Yusuf partnership were wired from St. Martin by Isam Yousuf on September 4, 1997, to Sixteen Plus's Scotiabank account at Fathi Yusuf's direction. See Exhibits 1 and 2.

RESPONSE: Disputed. See response to Statement of Fact 13.

23. Coupled with the previous balance of \$200,000 from the laundered funds deposited on February 19, 1997, the Scotiabank account for Sixteen Plus now had \$2.2 million in funds laundered from the Hamed/Yusuf partnership. See Exhibit 1.

RESPONSE: Disputed. See response to Statement of Fact 13.

24. On September 4, 1997, Sixteen Plus immediately then transferred the \$2.2 million in laundered funds received from Isam Yousuf to Scotiabank, with the debit memo noting that it is for "Repayment on loan for Plessen Enterprises." See Exhibit 1.

RESPONSE: Disputed. See response to Statement of Fact 13.

25. On September 15, 1997, Sixteen Plus executed a \$4.5 million note as well as a mortgage for the Diamond Keturah Property in favor of Manal Yousef. However, the note and mortgage were never intended to be enforceable, as she never loaned funds to the company; instead, the note and mortgage were created to help cover up the fact that laundered funds had been used by Plessen to buy the Diamond Keturah property. Indeed, when Wally Hamed asked Fathi Yusuf if he could trust Manal not to try to enforce these sham documents, he assured Wally that she would never do so such a thing because he was her uncle and had always been good to her and her father. See Exhibits 1, 4 and 5.

RESPONSE: Disputed. See response to Statement of Fact 13. There is no evidence that

Manal believed the Note and Mortgage were never intended to be enforceable.

26. As noted by Attorney Mirocha, the real estate expert, Sixteen Plus did not own the Diamond Keturah property when it signed the mortgage, despite an express representation in the mortgage that it did own it. See Exhibit 3.

RESPONSE: Disputed. See Response to Statement of Fact 10.

27. In fact, Manal Yusuf never had any funds available to her to fund a \$4.5 million loan, nor does she or anyone else (including her brother, Isam Yousuf) have any documents to prove that she ever had access to such funds. See Exhibits 1 and 5.

RESPONSE: Disputed that Manal Yusuf never had any funds available to her to fund a \$4.5 million loan. See response to Statement of Fact 13 and Exhibits 2 and 3 to Manal's Renewed Motion for Summary Judgment (Promissory Note and Mortgage).

28. On July 10, 1998, Plessen Enterprises paid the real property taxes for the Diamond Keturah property that it had purchased. See Exhibit 1.

RESPONSE: Undisputed for the purpose of ruling on the motion for summary judgment only. Disputed that the allegations in this paragraph are material facts in the instant debt and foreclosure action.

29. In December of 1998, Plessen Enterprises, Inc., assigned its interest to the certificate of sale it purchased from Scotiabank to Sixteen Plus, as part of the continuing cover-up of the use of the laundered funds to buy the Diamond Keturah property. See Exhibit 1.

RESPONSE: Disputed that laundered funds were used to buy the Diamond Keturah property "as part of the continuing cover-up." See response to Statement of Fact 13. The remainder of this paragraph is undisputed.

30. As noted by Attorney Mirocha, this was the first date that Sixteen Plus had any interest in the Diamond Keturah Property. See Exhibit 3.

RESPONSE: Disputed. See response to Statement of Fact 10.

31. On December 24, 1998, the Marshal conveyed a Marshal's Deed to Sixteen Plus for the Diamond Keturah property, which was not recorded until February 22, 1999, at which time the bogus September 15, 1997, \$4.5 million mortgage from Sixteen Plus to Manal Yousef was recorded as part of the continuing cover-up of the use of the laundered funds to buy

the Diamond Keturah property. See Exhibit 1.

RESPONSE: Disputed that the Mortgage is “bogus” and “recorded as part of the continuing cover-up of the use of the laundered funds to buy the Diamond Keturah property.” See response to Statement of Fact 13.

32. Fathi Yusuf had always stated that the \$4.5 million used to buy the Diamond Keturah property was to be treated as a loan on the books of Sixteen Plus, Inc. to its shareholders, who consisted 50% of members of the Hamed family and 50% of the members of the Yusuf family. See Exhibits 1 and 2.

RESPONSE: Undisputed for the purpose of ruling on the motion for summary judgment only.

33. Sixteen Plus filed its tax return in 1999, signed by Fathi Yusuf under oath, showing that it owned an asset valued at \$4.5 million in land (which was the Diamond Keturah property) and that it had a \$4.5 million loan due its shareholders. The tax return did not mention any note or mortgage due Manal Yousef, much less any interest payment to her, as she alleges was made that year, even though the form has lines for such items. See Exhibit 1.

RESPONSE: Undisputed for the purpose of ruling on the motion for summary judgment only. Disputed that the allegations in this paragraph are material facts in the instant debt and foreclosure action.

34. Sixteen Plus filed its tax return in 2000, signed by Fathi Yusuf under oath, showing that it owned an asset valued at \$4.5 million in land (which was the Diamond Keturah property) and that it had a \$4.5 million loan due its shareholders. The tax return did not mention any note or mortgage due Manal Yousef, much less any interest payment to her, as she alleges was made that year, even though the form has lines for such items. See Exhibit 1.

RESPONSE: Undisputed for the purpose of ruling on the motion for summary judgment only. Disputed that the allegations in this paragraph are material facts in the instant debt

and foreclosure action.

35. The annual corporate report for Sixteen Plus filed in 2000 with the Lieutenant Governor's Office, signed by Wally Hamed and Fathi Yusuf, also showed that it owned an asset valued at \$4.5 million in land (which was the Diamond Keturah property) and that it had a \$4.5 million loan due its shareholders. The report did not mention any note or mortgage due Manal Yousef or anyone else. See Exhibit 1.

RESPONSE: Undisputed for the purpose of ruling on the motion for summary judgment only. Disputed that the allegations in this paragraph are material facts in the instant debt and foreclosure action.

36. In 2001, the FBI searched the Plaza Extra Supermarkets and subsequently issued an indictment in 2003 for tax evasion based on the money laundering scheme against United Corporation, Fathi Yusuf, Wally Hamed and others. See Exhibits 1, 4 and 5.

RESPONSE: Undisputed for the purpose of ruling on the motion for summary judgment only. Disputed that the allegations in this paragraph are material facts in the instant debt and foreclosure action.

37. The Indictment alleged among other things that the Diamond Keturah property was purchased with illegally laundered funds, with the federal government seeking forfeiture of this property and putting a lien against it. See Exhibits 1, 4 and 5.

RESPONSE: Undisputed for the purpose of ruling on the motion for summary judgment only.

38. Sixteen Plus retained a criminal law expert, Lawrence Schoenbach, to go over the evidence available to the government in support of the claims made in this criminal filing, which he did in two separate reports. See Exhibits 4 and 5.

RESPONSE: Undisputed for the purpose of ruling on the motion for summary judgment only.

39. As Attorney Schoenbach summarized in his second report, after reviewing the extensive evidence generated by the U.S. Government (See Exhibit 5 at pp. 8-9):

Here, based on the relevant facts already discussed herein, there is a plethora of evidence that is completely consistent with the money laundering charges surrounding the funds used to purchase the Diamond Keturah property, as alleged in the 2003 indictment. As an expert in the defense of similar criminal cases I submit that the evidence in the record, as established by the federal prosecutors and as reflected in the documents generated in the criminal case, amply supports that charge regarding the Diamond Keturah property. Their criminal conduct in the laundering of cash receipts from United's three Virgin Islands supermarkets fits exactly within the scope of §§ 1956 and 1957 of the federal criminal code.

RESPONSE: Disputed. See response to Statement of Fact 10.

40. Attorney Schoenbach was also asked to examine the new evidence generated since the plea in the criminal case was entered by United Corporation in 2009 related to the "Manal Note and Mortgage." He first took note of the tax filings and corporate reports since 2009, which he found to further support the fact that this Note and Mortgage were not valid (See Exhibit 5 at pp. 10-11):

- While tax returns and annual corporate reports were apparently not filed between 2002 and 2009 due to the pending criminal case, Sixteen Plus resumed filing its annual tax return and franchise report in 2010, which filings revealed as follows:
 - On June 25, 2010, Sixteen Plus Corporation filed its 2009 USVI Annual Corporate Report, signed under oath by Fathi Yusuf. The Annual Corporate Report listed the company's \$4.5 million-plus real estate asset, showing \$4,710,626 as a "Loan to Shareholders" under "Liabilities and Shareholders' Equity." There is no entry listed for the Manal Note/Mortgage or any other person

or entity despite specific lines for such an entry. Nor is Manal Yousef a shareholder in Sixteen Plus Corporation.

- The 2009 tax return for Sixteen Plus Corporation, was filed on June 29, 2010, was also signed under oath by Fathi Yusuf. Like the USVI Annual Report, it listed the company's \$4.5 million-plus real estate asset, with \$4,710,626 in a "Loan to Shareholders" under "Liabilities and Shareholders' Equity." No entry is listed for the Manal Note/Mortgage despite specific lines for such an entry.
- Sixteen Plus made identical tax and corporate filings for 2011, 2012, 2013, 2014, 2015 and 2016.

RESPONSE: Disputed. See response to Statement of Fact 10.

41. He then concluded as to these tax filings and corporate reports (See Exhibit 5 at p. 10-11):

In fact, for the seventeen total (17) years since Sixteen Plus Corporation acquired the property in 1997, Sixteen Plus Corporation always listed the Diamond Keturah

property as a debt owed to those shareholders, whether in a tax return or the USVI Annual Corporate Report. In each case, the company's obligation was listed as "Liabilities and Shareholders' Equity" At no time to that point, and certainly never for the prior seventeen (17) years, did Sixteen Plus Corporation ever list the Diamond Keturah Note/Mortgage of Ms. Manal Yousef. To the contrary, it explicitly represented that there was no such obligation by leaving blank the very place in those filings where the debt would be identified.

RESPONSE: Disputed. See response to Statement of Fact 10.

42. Attorney Schoenbach also found a power of attorney (POA) executed after the plea agreement in 2009 further undermined Manal's claim that the Note and Mortgage were valid. In this regard, Manal Yousef signed a Power of Attorney ("POA") on May 18, 2010, in favor of Fathi Yusuf. According to Manal Yousef's sworn deposition, she signed the POA in St. Marten and it was witnessed there by her brother Isam. She then gave that signed Power of Attorney to her brother Isam, who reportedly then gave it to Fathi Yusuf. The

Power of Attorney allowed Fathi Yusuf to “deal with the mortgage and note,” even though he was at the time (and in fact, at all times) an officer, director, and shareholder of the borrower (*i.e.*, Sixteen Plus Corporation). The Power of Attorney further indemnified Mr. Yusuf from all actions taken by him regarding the Diamond Keturah property. See Exhibit 5 at pp. 10, 17-18.

RESPONSE: Disputed. See response to Statement of Fact 10.

43. Attorney Schoenbach concluded regarding this POA (See Exhibit 5 at pp. 17-18):

Manal Yousef testified at deposition that in 2010 she gave a Power of Attorney (“POA”) to Fathi Yousuf regarding the Diamond Keturah property. Again, the timing of the POA is important, as is the substance of it. In 2010, the criminal case involving all defendants had just ended. Double jeopardy attached and, most likely, the Statute of Limitations had run. At this point, there could be no further criminal charges against Fathi Yusef or Waleed Hamad involving the Diamond Keturah property.

However, in granting the POA, Manal Yousef gave to her uncle, Fathi Yusuf, a POA that was far beyond what was normal – or rational. Frankly, it was unprecedented. By its terms the POA executed by Manal Yousef gave to Fathi Yusuf full indemnification for any and all conduct related to the Diamond Keturah property. That open-ended indemnification would allow Fathi Yusuf, were he to so chose, to cancel the Manal Yousef Promissory Note and Mortgage – or to simply name himself as the new holder of the debt. While none of this occurred it shows the remarkable power the POA gave to Fathi Yousef. In a very real sense he could take for himself all of the \$4.5 million presumptively owed to Manal Yousef – and he could keep it legally – because the borrower received from the secured lender full and unfettered authority to do anything with the property – and to do it with absolute impunity. **Again, this only makes sense if it is understood that the \$4.5 million originating funds came from Fathi Yusuf and that Manal Yousef started with zero money.** (Emphasis added).

RESPONSE: Disputed. See response to Statement of Fact 10.

44. Attorney Schoenbach also reviewed the discovery responses and depositions in this case, which were obviously not available to the federal prosecutors prior to the plea agreement, which he found further undermined Manal's claims, noting in his report regarding Manal and Isam's discovery responses and deposition testimony (See Exhibit 5 at pp. 15-17):

Before there was ever even a conversation by either Fathi Yusuf or Waleed

Hamad about the Diamond Keturah property or even a thought of purchasing it or how much it would cost – or even that it was for sale -- Manal Yousuf's father "discussed giving [Manal] money in 1996. *Maybe before*. . . At first it wasn't obvious how much. It was like a big number." . . It was (coincidentally) *four million five hundred thousand*. Tr. (Manal) at 33-34. Emphasis added.

Further, Ms. Yousef testified that all \$4.5 million that she says she received from her father was done "in 1996 or 1997" and that, by mid-February 1997 all \$4.5 million was available to her to lend to Sixteen Plus Company. Ms. Yousef's interrogatory was confirmed it during her deposition; Tr. at 46:

I had discussion 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*. Emphasis added.

It cannot be coincidence that Manal Yousuf claims to have had the exact amount of money available to her in February 1997 – \$4.5 million dollars – needed to buy the Diamond Keturah property and **had this exact amount well before anyone even knew that the property would be for sale**, let alone what was to be the purchase price. As described above (see p. 7, above), in all fraudulent transactions most events appear to be and, in fact, are legitimate. It is the one or two factual "missteps" that are the tell-tale signs of an illegitimate and fraudulent transaction. The "coincidence" described above is one of those tell-tale signs. . . .

According to Isam Yousuf, he made two separate wire transfers of \$2 million each, both from his Island Appliances bank account in St. Maarten. The first wire transfer was made on February 19, 1997 and the second transfer on September 4, 1997. Tr. (Isam) at 87. Again, the dates of the transfers beg the question why *two* transfers, and, more importantly, why were they done seven months apart? If Manal Yousef's testimony is to be believed, she had the entire purchase price in her account in February 1997 when the original offer was made to Scotia Bank. Moreover, if Manal Yousef had all the money available in February 1997, and all the money is legitimately earned, why not transfer the entirety of the money to Sixteen Plus Company in February 1997 to buy the property? Why wait seven months to send the final \$2 million dollars?

The answer is simple. This was the very time period that United Corporation was in the throes of its money laundering scheme. Of course, even for as audacious a tax and money laundering scheme as here, it takes time to accumulate and then launder the \$4.5 million (needed to buy the property). It would take even more time to transport that laundered cash to St. Maarten, deposit it into Isam's bank account there (slowly as to not draw attention), and then wire the money back to the US Virgin Islands. By all accounts both Fathi Yusuf and Waleed Hamad were anxious to acquire the Diamond Keturah property. Common sense says, if the money to buy the property is

legitimate (and immediately available), they would buy it as quickly as possible. They did not.

RESPONSE: Disputed. See response to Statement of Fact 10.

45. Indeed, as the timeline in Attorney Mirocha's report noted, \$2.2 million of funds used by Plessen Enterprises to actually close on its contract to purchase the right to the Diamond Keturah property on July 29, 1997, came from Scotiabank, not Manal (See Exhibit 3), further confirming that Manal never had \$4.5 million in her name in 1996 as she claimed, as otherwise there would never have been any need for Plessen to borrow funds from Scotiabank.

RESPONSE: Disputed. See response to Statement of Fact 10.

46. Attorney Schoenbach also reviewed the timeline of the title for purchase of the Diamond Keturah property in 1997-1999 time period outlined in Attorney Mirocha's expert report that further supported his conclusion that the Manal Note and Mortgage were sham transaction, stating as follows (See Exhibit 5 at pp. 17-19):

Here, the underlying facts and, in particular, the time-line of the sale and purchase of the Keturah property bear out my expert conclusion that the Promissory Note and Mortgage provided to Manal Yousef was part of the overall tax and money laundering fraud then being perpetrated by Fathi Yousef, Waled Hamed, and Isam Yousef (and others). **In particular, those facts show that when Sixteen Plus provided the Mortgage and Promissory Note to Manal Yousef it did not own the Diamond Keturah property. . . .**

No bona fide lender for value would give a \$4 million unsecured loan to a borrower that did not own the property against which the secured interest was tendered. In September 1997, Manal Yousef's Mortgage and Promissory Note is worthless. It is a sham. The only logical conclusion I can draw based on my expertise as a criminal defense attorney is that the \$4 million was never Manal Yousef's money; it was Fathi Yusuf's and Waleed Hamed's money that they derived from the then- ongoing laundering of money from United Corporation through Isam Yousef's BFC bank in St. Martin. **It is why the \$4.5 million Promissory Note and Mortgage in September 1997 is a key to uncovering the fraudulent intent of the parties. It is one of those facially-proper documents that give the appearance of legitimacy but when viewed in totality, reveal the**

fraud and transforms what could be a legitimate business transaction into a fraudulent scheme. (Emphasis added).

RESPONSE: Disputed. See response to Statement of Fact 10.

47. Attorney Schoenbach also pointed out that because the funds wired by Isam, allegedly on Manal's behalf, only totaled \$4 million, the fact that the Note and Mortgage were for \$4.5 million further confirmed it was part of the on-going fraud (See Exhibit 5 at p.20):

But even more telling that the Diamond Keturah transaction is a fraud is the fact that, by his own admission, Isam Yousef sent a total of *only* \$4 million to Sixteen Plus. If so, why then would the company execute a \$4.5 million promissory note and mortgage? It appears to be undisputed that Isam transferred \$4 million and Plessen Enterprises, not Isam Yousef, supplied the other \$500,000. And why in favor of Manal Yousef rather than Isam Yousef? **Were this a truly legitimate real estate transaction there would be no way a company would execute a \$4.5 million debt obligation for a \$4 million loan.** It is this type of apparently minor error (if half a million dollars could be considered "minor") coupled with the use of Manal's name rather than Isam's as the lender that is the downfall, as here, of many would-be frauds. It is the red-flag indicator or factual "misstep," previously described, that this was not a legitimate transaction. It is my expert opinion that this was, in fact, a fraud and that the "factual misstep" in providing to Manal Yousef a \$4.5 million mortgage and note for a \$4 million loan the tell-tale sign of an illegitimate and fraudulent transaction. (Emphasis added).

Indeed, Attorney Schoenbach noted in his report as part of this "misstep" that Manal claims to have been paid three years of interest *in cash* from 1998 to 2000, totaling over \$1,000,000, yet she has no records of these funds. See Exhibit 5 at p. 23. More importantly, Sixteen Plus, who allegedly made these interest payments, did not take this significant tax deduction on its tax returns filed for these years, attached as Exhibit N and O to Exhibit 1.

RESPONSE: Disputed. See response to Statement of Fact 10.

48. As for Fathi Yusuf's discovery responses in discovery, Attorney Schoenbach found these points to be quite relevant to the validity of Manal's claims (See Exhibit 5 at pp. 21-23):

Fathi Yusuf's deposition as well as his interrogatory responses provide

additional support for my opinion that the funds used to purchase Diamond Keturah property were derived from the United tax and money laundering scheme. The facts derived from Mr. Yusuf's deposition can be summarized as follows:

- **Fathi Yusuf admitted to the money laundering scheme and of transferring tainted funds to hidden accounts in St. Maarten and then transferring the funds out of St. Maarten to buy real property elsewhere.** However, he denied any of those laundered funds were used to buy the Diamond Keturah property. *See, e.g.*, Tr. pp. 31, 122-128, 146-147. As his lawyers proffered in a court filing on February 17, 2023, Fathi Yusuf's deposition testimony could be summarized as follows:

[Yusuf] will further testify that partnership earnings sent to St. Martin to be deposited into his account, Waleed Hamed's account, the Hamdan Diamond Account and any other accounts in St. Martin were sent there temporarily, with the objective of ultimately transferring them to accounts held in Jordan, in the Middle East. He will testify that there was no tax-avoidance scheme that involved sending millions in partnership money to St. Martin with the intent of repatriating it back to the Virgin Islands.

- **When asked in his deposition about the details of the accounts and transactions related to the purchase of the Diamond Keturah property, he refused to answer, asserting his Constitutional rights.** *See, e.g.*, Tr. pp. 35- 36, 49-54; 123.

Fathi Yusuf's assertion of his right to not incriminate himself would be usual in a pending criminal or civil case. Here, however, the assertion of a Fifth Amendment privilege is unwarranted and legally unjustified. Given the extraordinary lapse of time, the Statute of Limitations (five years from the date of the last conspiratorial act or the time of a criminal defendant's arrest) had long since expired for any tax fraud and/or money-laundering conduct – or any other improper conduct related to the Diamond Keturah property purchase in 1997. Also, Double Jeopardy attached (to Fathi Yusuf and the other individual defendants in the criminal case) once United accepted the plea agreement and judgment was entered against it.

The question(s) were posed in a deposition in 2023; the conduct under inquiry occurred in 1997. A truthful answer to the question posed about the Diamond Keturah property purchase – about events that occurred almost 20 years ago – could *never* tend to incriminate Mr. Yousef because he could never be charged for that conduct. However, the taking of the 5th Amendment privilege, no matter where or when asserted, can be used to draw an adverse inference against those asserting the privilege. **Given the lapse of time and the impropriety of the 5th Amendment assertion, an**

adverse inference from a truthful answer should be taken. It is an adverse inference I certainly draw in forming my opinion. (Emphasis added).

RESPONSE: Disputed. See response to Statement of Fact 10.

49. Similarly, Attorney Schoenbach noted that Fathi Yusuf's discovery responses confirmed that the federal government considered the Manal mortgage to be a sham, pointing out as follows (See Exhibit 5 at pp. 23-24):

Fathi Yusuf acknowledged that he was unable to complete the negotiations for the sale of the Diamond Keturah property during the time period that the U.S. Marshal was in control of the property due to the recorded lien in the criminal case. See Interrogatory Response #1 dated September 16, 2022 (First Set of Interrogatories in case # 342).

Apparently, the Marshal agreed to release the lien on the property to enable it to be sold – but only if all of the proceeds were placed in a Court-supervised escrow account. Further, the U.S. Marshal refused to pay Manal Yousef for the release of her mortgage, particularly given Count 66 of the Indictment regarding the Diamond Keturah property. **The Marshal's refusal to satisfy Manal Yousef's mortgage (i.e., pay the debtor's secured interest in the property), coupled with the forfeiture charge in Count 66, confirms to me that law enforcement, at least by a preponderance of the evidence (if not more), did not recognize Manal Yousef's mortgage as bona fide loan transaction involving the Diamond Keturah property.** (Emphasis added).

RESPONSE: Disputed. See response to Statement of Fact 10.

50. Indeed, Isam Yousuf's failure to agree to send a letter to his own bank and the government authorities in St. Martin, as ordered by this Court, asking them to release all documents related to the criminal investigation that took place there regarding his suspicious activity, now pending as a motion to compel (See Exhibit 6) is itself a fact the jury can consider in this case regarding his participation in the laundering of cash from the Plaza Extra Supermarket, further undermining his claim (on Manal's behalf) that the mortgage was valid.

RESPONSE: Disputed that the Isam's actions undermined his own claim that the mortgage was valid. The remainder of this paragraph is undisputed.

51. As Attorney Schoenbach concluded in his report (See Exhibit 5 at pp. 24-25):

After conducting what I can only assume was an exhaustive FBI investigation including the issuing of search warrants for the Plaza Extra supermarkets in the Virgin Islands, federal prosecutors presented to a grand jury evidence, *inter alia*, of money laundering and tax evasion against United Corporation and various of its principals. That evidence, gleaned from the Indictment and Fathi Yusef's recent admission, showed a broad and long-term money laundering and tax evasion scheme arising from the defendants' (in the criminal case) use of funds skimmed from the Plaza Extra supermarkets. The grand jury heard the evidence and returned an Indictment against United Corporation and all (excluding Manal Yousef) of the individuals identified herein.

The Indictment included a claim sounding in forfeiture that these laundered funds were used to buy the Diamond Keturah property on St. Croix. The government thereafter placed a lien against that property in order to seek its forfeiture, asserting that the property was purchased with the proceeds of illegally laundered funds derived from a criminal tax evasion scheme.

The evidence available to the federal prosecutors amply supported their conclusion that the purchase of the Diamond Keturah properties was fraudulently accomplished through a money laundering scheme, using tainted funds sent to St. Maarten by the principals of the Plaza Extra supermarket(s), and then returned to St. Croix by Isam Yousuf.

The additional evidence I reviewed that was not available to the federal prosecutors further supports the conclusion that the purchase of the Diamond Keturah properties was fraudulently accomplished through a money laundering scheme, using tainted funds sent to St. Maarten by the principals of the Plaza Extra supermarket(s) and then sent back to St. Croix by Isam Yousuf.

In sum, the evidence I reviewed is consistent with the government's claim that the purchase of the Diamond Keturah properties was fraudulently accomplished using tainted funds that were derived from a money laundering scheme.

In short, it is my expert opinion that the transfer of \$4 million from Isam Yousef to Sixteen Plus Corporation in 1997 to enable the Sixteen Plus Corporation to buy the Diamond Keturah property is but one, albeit important, step in the money laundering scheme for which Fathi Yusef, Waleed Hamed, Isam Yousef, and others were rightfully indicted. The giving of a promissory note and mortgage to Manal Yousef was an important, but fraudulent, event in what is a clear case of tax fraud and money laundering. Manal Yousef was simply the mask to camouflage the overall scheme.

RESPONSE: Disputed. See response to Statement of Fact 10.

52. In summary, no payments are ever made to Manal Yousef on the September 15, 1997, Note, as it was never intended to be a valid and enforceable note, nor did Manal ever loan any funds to Sixteen Plus; instead, the Note and Mortgage were part of the cover-up by the Hamed/Yusuf partnership to use its laundered funds to buy the Diamond Keturah property. See Exhibits 1 and 3.

RESPONSE: Not disputed that Sixteen Plus failed to make any payments to Manal. The remainder of this statement of fact is disputed. The Note and Mortgage are enforceable.

First, Sixteen Plus admits that it executed the Note and Mortgage. *See* Sixteen Plus's Cross-Motion for Summary Judgment at 5, ¶ 25 ("On September 15, 1997, Sixteen Plus executed a \$4.5 million note as well as a mortgage for the Diamond Keturah Property in favor of Manal Yousef."); and 14-15 (admitting Promissory Note and Mortgage were signed). Accordingly, Manal is entitled to judgment in her favor as a matter of law on the first element: the debtor executed a promissory note and mortgage.

Second, Sixteen Plus also admits that it never made any payments to Manal on the Note and that it failed to make interest only payments on or after September 15, 2001. *See* Sixteen Plus's Cross-MSJ at 16-17. Given its lack of payment, Sixteen Plus is in default under the Note and Mortgage. There is no dispute that Sixteen Plus is in default under the terms of the Note and Mortgage. Accordingly, Manal is entitled to judgment in her favor on the second element: that the debtor is in default under the terms of the note and mortgage.

Third, there is no dispute that the terms of the Mortgage permit Manal to foreclose on the Diamond Keturah property. The Mortgage provides that "[i]f an Event of Default

shall have occurred, the Lender may at any time proceed at law or in equity or otherwise to foreclose the lien of this Mortgage as against all or any part of the Property.” *See* Manal’s Renewed Motion for Summary Judgment at Statement of Fact 8; Sixteen Plus’s Response to Manal’s SOF 8 at page 15-16 of Sixteen Plus’s Opposition & Cross-Motion for Summary Judgment (admitting the Mortgage contains the terms referenced in Manal’s SOF 8). Accordingly, Manal is entitled to judgment in her favor as a matter of law on the third element: the lender is authorized to foreclose on the property mortgaged as security for the note.

Manal testified that her brother invested her money on her behalf in the Note. Manal’s father gave her \$4,500,000 to secure her marriage and financial future. **Exhibit 9** (Manal Depo Tr. at 68:21-70:7; 30:14-31:12). Manal’s brother Isam explained that in his culture, if a married woman does not produce children after several years, the husband will divorce her because “they want children.” **Exhibit 10** (Isam Depo Tr. at 70:3-72:12). The funds were provided to Isam to manage on Manal’s behalf. **Exhibit 9** (Manal Depo Tr. at 30:14-31:12). The money Manal loaned to Sixteen Plus was transferred by Isam to Sixteen Plus and Manal’s father and her brother Isam negotiated the terms of the Note and Mortgage on Manal’s behalf. **Exhibit 9** (Manal Depo. Tr. at 47:1-48:5). Manal testified that she loaned the money to Sixteen Plus. **Exhibit 9** (Manal Depo. Tr. at 78:16-79:10).

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 24th day of January, 2025, a true and exact copy of the foregoing **Response to Sixteen Plus's Statement of Facts** was electronically filed with the Clerk of the Court using the VIJEFS system, which will send a notification of such filing to the following:

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