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| **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**  J**URY TRIAL DEMANDED**        *Consolidated With* | |
| **SIXTEEN PLUS CORPORATION**,  *Plaintiff,*  v.  **MANAL MOHAMMAD YOUSEF,**  *Defendant.,*  and  **MANAL MOHAMMAD YOUSEF,**  *Counter-Plaintiff.,*  v.  **SIXTEEN PLUS CORPORATION,**  *Counter-Defendant.* | | **CIVIL NO. SX-2016-CV-00065**  **ACTION FOR**  **DECLARATORY JUDGMENT,**  **CICO and FIDUCIARY DUTY**  **COUNTERCLAIM**      **JURY TRIAL DEMANDED** | |
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**SIXTEEN PLUS CORPORATION’S FIRST MOTION TO COMPEL:**

**AS TO FATHI YUSUF’S ‘FIFTH AMENDMENT’ ASSERTIONS IN DISCOVERY**

**OR, IN THE ALTERNATIVE, TO PRECLUDE FURTHER TESTIMONY**

**(FILED SIMULTANEOUSLY IN SX-2016-CV-00650[[1]](#footnote-1)**

Plaintiff Sixteen Plus Corporation moves the Court to compel discovery responses from Third-Party Defendant Fathi Yusuf pursuant to Rules 26, 33 and 37, or in the alternative, to preclude further testimony regarding the subject of those interrogatories and related facts. Fathi Yusuf asserted his U.S. Constitutional Fifth Amendment right against self-incrimination many times regarding Hamed’s *central* interrogatories—both in this case and the com, or, in the alternative to preclude his testimony companion 650 CICO action.

Attached hereto, as **Exhibit A**, is Plaintiff Hisham Hamed’s *Third Motion to CompelPreclude* in that companion CICO action, SX-2016-CV-00650. Plaintiff incorporates that motion, in full, herein.

A proposed order is attached.

**Counsel for Sixteen Plus Corporation**

**Dated:** December 2, 2022 /s/ *Carl J. Hartmann III*

**Carl J. Hartmann III, Esq.**

(Bar # 48)

*Co-Counsel for Sixteen Plus Corp.*

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#### **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 **December 2, 2022**, 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.**

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/s/ Carl J. Hartmann III

**CERTIFICATE OF COMPLIANCE WITH RULE A 37(a)(1)**

I hereby certify that I made the required efforts in good faith to confer with opposing counsel to obtain the foregoing requested information, and did so confer.

**Dated:** December 2, 2022 /s/ Carl J. Hartmann III

**IN THE SUPERIOR COURT OF THE VIRGIN ISLANDS**

**DIVISION OF ST. CROIX**

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| **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**  J**URY TRIAL DEMANDED**        *Consolidated With* | |
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**ORDER**

**THIS MATTER h**aving come before the Court on Sixteen Plus Corporation’s motion to compel discovery responses from Third-Party Defendant Fathi Yusuf pursuant to Rules 26, 33 and 37, or to preclude testimony, and the Court being fully informed,

**IT IS ORDERED** that Fathi Yusuf, having asserted his Fifth Amendment right against self-incrimination, is not compelled to further answer the subject interrogatories. Yusuf has demonstrated the factual predicate pursuant to the standard for the inquiry which derives from *Hoffman v. United States*, 341 U.S. 479, 486 (1951. A witness is generally entitled to invoke the Fifth Amendment privilege against self-incrimination where there is (1) a *realistic possibility* that his answer to a question can be used in any way to convict him of a crime. It need not be probable that a criminal prosecution will be brought or that the witness's answer will be introduced in a later prosecution; the witness need only show a realistic possibility that his answer will be used against him. Moreover, (2) the Fifth Amendment forbids not only the compulsion of testimony that would itself be admissible in a criminal prosecution, but also the compulsion of testimony, whether or not itself admissible, that may aid in the development of other incriminating evidence that can be used at trial.

Yusuf has shown that testimony as to his acts from 1996 to the present meet these standards because the acts have not been fully immunized by a criminal Plea Agreement.

However, he is precluded from testimony as to the interrogatories and related facts

**SO ORDERED.**

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

**Douglas A. Brady**

**ATTEST:** TAMARA CHARLES, Judge of the Superior Court

Clerk of the Court

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

**By:** Court Clerk Supervisor

1. The identical facts, issues and Rule 37 notices are presented by Fathi Yusuf’s assertions of the Fifth Amendment in both cases. Thus, the instant motion is filed in the other action by attachment there to the simultaneously-filed *Hisham Hamed’s Third Motion to Compel.* [↑](#footnote-ref-1)