

4. The Plaintiff herself has made written and oral statements that contradict sworn testimony by Mr. Bakhir including on July 12, 2004 under oath in court, testified that Mr. Bakhir had spent the night with her and Liam Smith in October 2003, prior to Mr. Bakhir's deposition.

5. Peter Berty, Mr. Bakhir's supervisor under oath testified that some of Mr. Bakhir's statements were incorrect and "does not see how it is possible" Mr. Bakhir could not know that he was Mrs. Smith's supervisor.

6. Rule 4:12(a)(3) states that "For purposes of this subdivision an evasive or incomplete answer is to be treated as a failure to answer."

7. According to Va. Code § 18.2-434, Mr. Bakhir's false answers are acts of perjury.

8. According to Va. Code § 18.2-434, Mr. Bakhir's contradictory answers are sufficient evidence of perjury. For example on Page 21 of his deposition he claims to have no friends in the U.S., yet uses interaction with friends as a answer to other questions such as page 65 about his trip to Snowshoe, and page 117, and even names a friend on page 118 but claims not to know his last name.

9. Mr. Bakhir's attempts to invoke the Fifth have been inconsistent, answering a question about Mrs. Smith or Liam Smith in one instance then later taking the Fifth as to all questions about them.

10. Mr. Bakhir's attempt to use the Fifth Amendment is contradicted by case law: "The Fifth Amendment prohibits only compelled testimony that is incriminating. See *Brown v. Walker*, 161 U. S. 591, 598 (1896) (noting that where "the answer of the witness will not directly show his infamy, but only tend to disgrace him, he is bound to answer"). " "A claim of Fifth Amendment privilege must establish " 'reasonable ground to apprehend danger to the

witness from his being compelled to answer ... [T]he danger to be apprehended must be real and appreciable, with reference to the ordinary operation of law in the ordinary course of things,--not a danger of an imaginary and unsubstantial character, having reference to some extraordinary and barely possible contingency, so improbable that no reasonable man would suffer it to influence his conduct.' " *Id.*, at 599-600 (quoting *Queen v. Boyes*, 1 Best & S. 311, 321 (1861) (Cockburn, C. J.))." (See attached case *Hibel v Sixth Judicial District Court Of Nevada*)

"We think that a merely remote and naked possibility, out of the ordinary course of law and such as no reasonable man would be affected by, should not be suffered to obstruct the administration of justice. ... But it would be to convert a salutary protection into a means of abuse if it were to be held that a mere imaginary possibility of danger, however remote and improbable, was sufficient to justify the withholding of evidence essential to the ends of justice." (See attached case *CHARLES MASON and A. Hanson, Plffs. in Err., v. UNITED STATES*)

11. There is no reasonable chance of prosecution for adultery of Mr. Bakhir to justify his use of the Fifth Amendment.

12. Mr. Bakhir's actions are a willful attempt to obstruct discovery by the Defendant and help the Plaintiff hide relevant facts from the court.

13. The Defendant still needs accurate responses from Mr. Bakhir in order to properly prove his claims in the pending case.

WHEREFORE, for all the above stated reasons, Defendant requests the following:

1. Issue a Rule against Mr. Bakhir to appear and show cause why he should not be held in contempt of court.

