|  |  |
| --- | --- |
| **HISHAM HAMED,** individually**,**  andderivatively 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** |
|  |  |

**HISHAM HAMED’S**

**FIRST RULE 15(d) MOTION**

**FOR LEAVE TO FILE SUPPLEMENTAL COMPLAINT**

1. **Introduction**

On December 18, 2022, Hisham Hamed (“Hamed”) filed a *Motion to Amend his First Amended Complaint* (“FAC”) seeking to join Manal Yousef (“Manal”) as a defendant. Following a mutually agreed extension, on January 23, 2023, Fathi Yusuf (“Yusuf”) filed his timely opposition*.* Today, February 6, 2023, Hamed filed his *Reply to Fathi Yusuf’s Opposition to Hamed’s Motion to Amend His First Amended Complaint (to Join Manal Yousef as a Defendant*). In his opposition to that motion to amend, Yusuf made what Hamed understands to be a distinction between the allegations in the FAC and allegations about events that are post-FAC. Out of an abundance of caution, Hamed hereby files this Rule 15(d) motion for leave to supplement the FAC as to post-FAC information. **To be clear, Hamed does not seek to alter the proposed Second Amended Complaint as filed on December 18th with the motion to amend**—merely to provide additional support—renaming it the *Second Amended and Supplemented Complaint* (“SASC”)

Attached hereto as **Exhibit A** is Hamed’s proposed Second Amended and Supplemented Complaint (“SASC”) which, except for the name, is *identical* to the Second Amended Complaint (“SAC”) attached as an exhibit to Hamed’s motion to amend dated December 18, 2022. **Exhibit B** is the redline, and **Exhibit C** is the proposed order.

1. **Applicable Law**

The federal and USVI texts of Rule 15(d) are identical:

On motion and reasonable notice, the court may, on just terms, permit a party to serve a supplemental pleading setting out any transaction, occurrence, or event that happened after the date of the pleading to be supplemented. The court may permit supplementation even though the original pleading is defective in stating a claim or defense. The court may order that the opposing party plead to the supplemental pleading within a specified time.

“Rule 15(d) permits ‘claims which arise *after the initial pleadings are filed*’ to be added because the goal of the rule ‘is to promote as complete an adjudication of the dispute between the parties as possible.’ *Martinez v. Hess Oil V.I. Corp*., 69 V.I. 519, 545 (Super. Ct. 2018)(citing *William Inglis & Sons Baking Co. v. ITT Cont'l Baking Co.*, 668 F.2d 1014, 1057 (9th Cir. 1981)).

1. **The Procedural Posture**

On July 27, 20**15**, Fathi Yusuf filed ST-2015-CV-000344 (“344 action”) on St. Thomas—against “Sixteen Plus Corporation….Mohammad A. Hamed, Waleed M. Hamed, Waheed M. Hamed, Mufeed M. Hamed, and Hisham M. Hamed”. He sought:

3. An order dissolving…Sixteen Plus and directing the windup of the corporation[]; [and]

4. An order appointing a receiver for…Sixteen Plus to sell the real estate holdings of both corporations. . .

That 344 action was the first of several “Diamond Keturah” cases filed by various parties—and asked the court to dissolve Sixteen Plus in an attempt to trigger the foreclosure of what Hamed alleges is a sham note and mortgage.

In response, on February 12, 2016, Sixteen Plus Corporation filed a declaratory judgment action against Manal Yousef, seeking to void the sham note and mortgage (from Sixteen Plus to Manal) on the Diamond Keturah land. It was alleged that the sole consideration for the purchase of the land came from Sixteen Plus itself, and that Manal was nothing more than a ‘straw-man’ in a tax avoidance scheme. SX-2016-CV-00065 (“65 action”).

Hisham Hamed, being shareholder of Sixteen Plus who was not involved during that time period--in the funds “transfers”, note, mortgage or purchase of the land--learned a great deal from those pleadings about: (1) the origination of the note and (2) mortgage, as well as (3) the conspiracy between Yusuf and his family members to try to take the Diamond Keturah land. He filed the original complaint here (“650 action”) on October 31, 2016.

On November 11, 2016, Yusuf’s St. Thomas (344) action was dismissed on a joint application of the parties.

Just over a month later, the First *Amended* Complaint (“FAC”) at issue here was filed, on December 23, 2016.

Thus, all factual allegations in this action technically ended with the filing of the FAC, on December 23, 2016. Thereafter, two things happened: (1) the alleged conspirators, along with Manal Yusuf did many post-FAC acts in furtherance of the CICO conspiracy, and (2) Hamed learned of many new facts about their acts the occurred prior to the filing of the FAC.

1. **Alleged Acts in Furtherance of the Conspiracy after the FAC was Filed**
2. Manal Yousef Filed a USVI Action in 2017 and Continues to Press it

Having initially contested USVI jurisdiction, on September 31, 2017, Manal Yousef instead filed a foreclosure action against Sixteen Plus on St. Croix. SX-2017-CV-00342 (“342 action”). In it she made the following statements relevant to this action:

1. At paragraph 6, she falsely stated that $4,500,000.00 was given by her to Sixteen Plus.
2. At paragraph 9, she falsely stated that “[t]he defendant Sixteen Plus made three (3) payments of interest only to her in the amounts of $360,000.00 each in 1998, 1999, and 2000.

At paragraph 1, Hamed also learned that Manal was, and had been at times relevant to this amendment, a resident of Ramallah, West Bank, Palestine, not St. Martin. It is also clear that the bringing and *continued prosecution* of Manal’s 342 action are substantial parts of the conspiracy and—Hamed *alleges* based on substantial post-FAC discovery testimony that she has no bank accounts or significant funds—she is being financed and directed by the other defendants herein.

1. Manal Gave False Discovery Responses in Furtherance of the Conspiracy

Manal’s many, allegedly false discovery responses fall into two groups: (1) untruths, and (2) calculated evasions. Hamed’s motion to amend relates the following:

1. In a new act in furtherance of the conspiracy, she continues to allege (and the defendants very much rely on the fact) that she has received that million dollars in interest, but recently has begun to refuse to provide the basics that would allow that income and resultant assets to be investigated:
   1. She has refused her address, which prevents Hamed from investigating ownership status, value and credit basics. *See* Exhibit 1 to Hamed’s Motion to Amend (Atty. Hymes: “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.”)[[1]](#footnote-1)
   2. Although the “gifts” she presently alleges she received from her father are the central factual issue here (also relied on heavily by the other conspirators) she has refused to provide any banking information directly related to the alleged interest she received. *See* Exhibit 1 to Hamed’s Motion to Amend,Letter to Atty Hartmann, dated November 7, 2022 (“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**.”) (Emphasis added.)[[2]](#footnote-2)
   3. She has, recently, newly asserted a preposterous story to explain when she has no documents or proof of receiving a million dollars in untaxed income—and at the same time stated she has no bank or other accounts of any type.
2. **Pre-FAC Facts Hamed Learned of After the FAC was Filed**

At the time of the filing of the FAC, Hamed did not know of any of the following, pre-FAC matters—all revealed within the past few months by Manal or the other defendants:

1. With no documentation she has *made extensive* statements concerning the million dollars she has received in interest. She, within the SOL, has for the first time, (1) admitted *she paid no taxes* on those alleged funds. She has also (2) *recently* refused to supply critical tax returns that are relevant to those payments and the alleged gifts at the center of this case. *See* Exhibit 1 to Hamed’s Motion to Amend (Atty. Hymes: “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.) Also (3) she has *recently* refused to supply critical bank information relevant to those payments and the alleged gifts at the center of this case None of these facts were asserted prior to FAC and both relate significantly to the modern conspiracy by Defendants who now use the payment of that interest as an important point in support of the conspiracy.
2. She has repeatedly—up to the filing of this reply (and despite agreeing to do so from 2017 to the present) failed to provide her passports, which would show travel related to the conspiracy during both the original acts and currently. That is a new act in support of the conspiracy. Not only were these agreed to in 2017,[[3]](#footnote-3) but again in November of 2022, by her counsel in his referenced letter—but they still have not been provided.
3. **Argument as to why the SASC Should be Allowed.**

In *Doe v. Butte Cty. Prob. Dep't*, No. 2:20-cv-02248-TLN-DMC, 2022 U.S. Dist. LEXIS 42279, at \*9 (E.D. Cal. Mar. 8, 2022) the court recites the U.S. Supreme Court’s five “Foman” Rule 15(d) factors:

Courts commonly apply the following five *Foman* factors to Rule 15(d) motions: (1) undue delay; (2) bad faith or dilatory motive on the part of the movant; (3) repeated failure of previous amendments; (4) undue prejudice to the opposing party; and (5) futility of the amendment. *Foman*, 371 U.S. at 182.

As these are the same as the *Davis* factors set out by the VI Supreme Court, Hamed will not do a *Banks* analysis. Similarly, as Hamed has already briefed these identical factors in his parallel motion to amend, he will not restate his arguments here. He incorporates those arguments here *in toto*.

1. **Conclusion**

Based on the liberal text of the Rule, the early stage of the proceedings, the prior statements of all of the defendants that Manal *must* be a party here, and the commonality of the related defendants and their counsel, this is a perfect situation for amendment.

The proposed *Second Amended and Supplemented Complaint* is attached as **Exhibit A**, and the redline of that document is attached as **Exhibit B**. A proposed order is attached as **Exhibit C**.

**Counsel for Hisham Hamed**

**Dated:** February 6, 2023 **A**

**Carl J. Hartmann III, Esq.** (Bar #48)

*Co-Counsel for Hisham Hamed*

2940 Brookwind Dr,

Holland, MI 49424

Telephone: (340) 642-4422

Email: carl@carlhartmann.com

**Joel H. Holt, Esq. (**Bar # 6)

*Counsel for Hisham Hamed*

LAW OFFICES OF JOEL H. HOLT

2132 Company Street,

Christiansted, Vl 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 with the page and word limitations set forth in Rule 6-1(e) and that on **February 6, 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 Defendants Isam and Jamil Yousuf*

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 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

**Kevin A. Rames, Esq.**

*Counsel for Nominal Defendant*

*Sixteen Plus Corporation*

2111 Company Street, Suite 3

Christiansted, VI 00820

Phone: (340) 773-7284

Fax: (340) 773 -7282

kevin.rames@rameslaw.com

/s/ Carl J. Hartmann

1. In his letter above, Manal’s counsel incorrectly characterized this as solely being about the ability to serve her with process in Palestine. However the record is clear. He initially stated, in the Rule 16 conference, it would be provided—and it was almost entirely discussed as a standard request to any party where financial matters are involved, *to do credit and other financial investigation*. *See* page 2, of Hartmann’s letter to Hymes, dated October 20, 2022.

   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. [↑](#footnote-ref-1)
2. It is completely baffling as to why, when Manal concedes that Hamed contests the issue of any such interest payments, she would deny the existence of and access to her bank records for that period.) In the absence of *any* supporting documents or tax records about a million dollars in cash (from either Isam or Manal) regarding interest payments—as she alleges only recently—it would seek contemporaneous bank records would be of highest importance. Her refusal in November 2022 is another current act in furtherance as well. [↑](#footnote-ref-2)
3. *Letter* from Atty. Holt to Atty. Hymes, dated August 1, 2017, Exhibit to the motion to amend. (“ln follow up to our Rule 37 conference, I want to memorialize what I understand we agreed on. . . .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.”) [↑](#footnote-ref-3)