

**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

**HISHAM HAMED'S REPLY TO FATHI YUSUF'S OPPOSITION
TO HAMED'S MOTION TO SUPPLEMENT THE FAC**

I. Introduction

Hamed will not re-brief or re-argue Yusuf's pending motion to dismiss or Hamed's pending motion to amend to add Manal Yousef as a defendant. Yusuf does so—and thus, does not raise any new arguments. He primarily re-argues points from those two filings--mostly by inclusion by reference of three points:

1. Plaintiff seeks more than to just add a party. (From his opposition to the motion to amend.)
2. Fatal deficiencies in the first amended complaint remain, thus, amendment would be futile. (From his motion to dismiss.)
3. Undue delay as to the addition of Manal Yousef. . (From his opposition to the motion to amend.)

Hamed responds by the similar incorporation of that motion to amend and reply.

II. The Motion to Supplement Should be Granted

Supplementation of pleadings is generally allowed “because the goal ... is to promote as complete an adjudication of the dispute between the parties [***38] as possible.” *Martinez*, 69 V.I. at 545 (quotation marks and citation omitted).

St. Croix Avis v. W. Indian Co., Ltd., 71 V.I. 39, 65 (Super. Ct. 2019)(the court allowed supplementation despite the fact that: “The concern here is that granting the Avis leave to supplement will certainly delay this matter even further. WICO will have to be given leave to respond to the amended/supplemented petition.” *Id.* at 65. Such a motion,

“may include new facts, new claims, new defenses, and new parties.” *Brian A. v. Bredesen*, No. 3:00-0445, 2009 U.S. Dist. LEXIS 112890, 2009 WL 4730352, at *2 (M.D. Tenn. Dec. 4, 2009) (citing *Stewart v. Shelby Tissue, Inc.*, 189 F.R.D. 357, 361 (W.D. Tenn. 1999)). “Generally, [a motion to supplement under Rule 15(d)] can be brought at any time the action is before the trial court.” 2009 U.S. Dist. LEXIS 112890, [WL] at *1 (citing *Stewart*, 189 F.R.D. at 362). “The granting of a motion to file a supplemental pleading is within the discretion of the trial court and, as a general rule, applications for leave to file a supplemental pleading are normally granted.” *Id.* (*Stewart*, 189 F.R.D. at 362); see also *Bostic v. Biggs*, No. 3:14-1068, 2016 U.S. Dist. LEXIS 104150, 2016 WL 4177094, at *1 (M.D. Tenn. Aug. 8, 2016). . . .

Adams & Boyle, P.C. v. Slatery, 455 F. Supp. 3d 619, 625 (M.D. Tenn. 2020).

Hamed meets the requirements of the rule. Yusuf does raise one point that should be addressed. At 2 of the opposition, he states:

However, V.I. Rule of Civ. P. Rule 15(d) does not provide unlimited recourse as Hamed suggests. First, the comments to the Rule reflect that it is only to “deals with the rare circumstance” in which supplementation may be required.

The reason that such motions are ‘somewhat’ rare is that most causes of action are complete by the time a case is filed. A battery is not on-going. Thus, the most common

form of supplementation is to add post-complaint damages.¹ But this is not the case when continuing, on-going wrongs such as are found in a persistent conspiracy are involved. The very nature of an “ongoing conspiracy” is that it is.....ongoing. As complaints should not be amended to add newly occurring acts—supplementation is the only option. That is the purpose of a supplementation. As the rule provides:

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. (Emphasis added.)

Yusuf does not address the language of the rule, *Martinez*, or their application to the facts here. Thus, Yusuf does not argue that the ‘new’ acts did not occur. He does not argue that those acts were not after the date of the filing of the FAC. Finally, he does not allege that the facts are not within the notice pleading requirements of relevance.

As to this last point, though Yusuf seems to imply otherwise, new events alleged in a supplemental complaint need not even “arise out of the same transaction” there only needs to be “some relationship between the two” because Rule 15(d) “is a tool of judicial economy and convenience” and, as such, district courts have broad discretion in allowing supplemental pleadings.” *Graciani v. Providence Health & Servs.*, No. 3:18-cv-00087-JMK, 2022 U.S. Dist. LEXIS 202712, at *4 (D. Alaska Nov. 7, 2022).

¹ Frequently what is filed is not a true supplementation, as that must not only contain the new damages, but be complete as a complaint. See, e.g., *Davis v. Phui*, No. 1:20-cv-276-HBK, 2022 U.S. Dist. LEXIS 26581, at *2 (E.D. Cal. Feb. 14, 2022)(“The supplement concerning Plaintiff’s recent medical appointments do not contain sufficient facts supporting his claims in this case, nor is it a complete supplemental complaint.”) Here, Hamed has completely restated both the FAC and the proposed SAC.

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Dated: March 3, 2023



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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 **March 3, 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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