

**FILED**

May 09, 2024 08:52 AM

SX-2016-CV-00650

TAMARA CHARLES

CLERK OF THE COURT

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,

v.

**SIXTEEN PLUS CORPORATION,**

NOMINAL DEFENDANT.

**Civil Case No. SX-2016-CV-650**

DERIVATIVE SHAREHOLDER SUIT,  
ACTION FOR DAMAGES AND CICO  
RELIEF

**JURY TRIAL DEMANDED**

**CONSOLIDATED CASES: Civil Case No. SX-2017-CV-342; Civil Case No. SX-2016-CV-065; Civil Case No. SX-2016-CV-650**

**ORDER OF THE SPECIAL MASTER<sup>1</sup>**

**THIS MATTER** is before the Special Master (hereinafter “Master”) for review in furtherance of the Master’s duty to address all pretrial matters and any other matters agreed upon by the parties in the three consolidated cases—*Sixteen Plus Corp. v. Yousef*, Civil Case Number SX-2016-CV-065 (hereinafter “065 Case”), *Hamed v. Yusuf, et al.*, Civil Case Number SX-2016-CV-650 (hereinafter “650 Case”), and *Yousef v. Sixteen Plus Corp.*, Civil Case Number SX-2017-CV-342 (hereinafter “342 Case”).

**BACKGROUND**

On October 31, 2016, Plaintiff Hisham Hamed (hereinafter “HH”), derivatively on behalf of Sixteen Plus Corporation (hereinafter “SPC”), file a verified complaint against Defendants Fathi

<sup>1</sup> On August 10, 2023, the Court entered an order in the three consolidated cases—*Sixteen Plus Corp. v. Yousef*, Civil Case Number SX-2016-CV-065, *Hamed v. Yusuf, et al.*, Civil Case Number SX-2016-CV-650, and *Yousef v. Sixteen Plus Corp.*, Civil Case Number SX-2017-CV-342—whereby the Court appointed the undersigned as the special master in these consolidated cases to address all pretrial matters and any other matters agreed upon by the parties. (Aug. 10, 2023 Order.)

Yusuf (hereinafter “FY”), Isam Yousuf (hereinafter “IY”), and Jamil Yousef (hereinafter “JY”) and Nominal Defendant SPC in a derivative shareholder suit, *Hamed v. Yusuf, et al.*, the 650 Case. On December 5, 2016, FY filed a motion to dismiss the complaint.<sup>2</sup> On December 23, 2016, HH, on behalf of himself and derivatively on behalf of SPC, filed a first amended verified complaint (hereinafter “FAC”), against Defendants FY, IY, and JY, and Nominal Defendant SPC.<sup>3</sup> In his FAC, HH alleged the following six counts: Count I-Civil Violation of the Criminally Influenced and Corrupt Organizations Act (against all defendants), Count II-Conversion (against all defendants), Count III-Breach of Fiduciary Duties (against FY), Count IV-Usurping of Corporate Opportunity (against FY), Count V-Civil Conspiracy (against all defendants), Count VI-Tort of Outrage (against all defendants). (FAC.)

Thereafter, a plethora of motions were filed in connection with the FAC, with the following motions remain pending: (i) On January 9, 2017, FY filed a motion to dismiss the FAC;<sup>4</sup> (ii) On January 20, 2017, HH filed a motion to strike FY’s January 9, 2017 motion to dismiss;<sup>5</sup> (iii) On January 20, 2017, HH also filed a motion for partial summary judgment as to Count III of the FAC;<sup>6</sup> (iv) On February 6, 2017, FY filed a motion for leave, nunc pro tunc, to file his motion to dismiss in excess of 20 pages;<sup>7</sup> (v) On February 24, 2017, FY filed a motion to stay discovery

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<sup>2</sup> FY’s December 5, 2016 motion to dismiss the complaint remains pending.

<sup>3</sup> The filing of the first amended verified complaint mooted FY’s December 5, 2016 motion to dismiss. As such, the Master will deny as moot FY’s December 5, 2016 motion to dismiss.

<sup>4</sup> On January 20, 2017, HH filed an opposition, and on February 6, 2017, FY filed a reply thereto. FY’s January 9, 2017 motion to dismiss remains pending.

<sup>5</sup> HH’s January 20, 2017 motion to strike FY’s January 9, 2017 motion remains pending.

<sup>6</sup> On February 9, 2017, FY filed an opposition, and on February 14, 2017, HH filed a reply thereto. HH’s January 20, 2017 motion for partial summary judgment remains pending.

<sup>7</sup> FY’s February 6, 2017 motion for leave, nunc pro tunc, remains pending.

pending the disposition of his January 9, 2017 motion to dismiss the FAC;<sup>8</sup> (vi) On June 14, 2017, IY and JY filed a motion to dismiss the FAC;<sup>9</sup> (vii) On February 24, 2017, IY and JY filed a motion to stay discovery pending the disposition of their June 14, 2017 motion to dismiss the FAC;<sup>10</sup> (viii) On July 26, 2017, HH filed a motion to amend the FAC;<sup>11</sup> (ix) On December 19, 2022, HH filed another motion to amend the FAC to “join Manal Yousef as a defendant.”<sup>12</sup> (Dec. 19, 2022 Motion.); and (x) On February 6, 2023, HH filed a motion for leave to file a supplemental complaint.<sup>13</sup>

### **DISCUSSION**

Having reviewed the motions, the Master finds that resolving HH’s motions to amend the FAC and motion to supplement the FAC first will be most judicially efficient and economical since they may render moot some of the other motions. The Master will address the motions in such order.

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<sup>8</sup> On March 10, 2017, HH filed an opposition, and on March 27, 2017, FY filed a reply thereto. FY’s February 24, 2017 motion to stay discovery pending the disposition of his January 9, 2017 motion to dismiss the FAC remains pending.

<sup>9</sup> On June 14, 2017, IY and JY filed a motion for leave to file their motion to dismiss in excess of 20 pages, which the Court subsequently granted in an order entered on July 7, 2017. On July 20, 2017, HH filed an opposition, and on August 8, 2017, IY and JY filed a reply thereto. IY and JY’s June 14, 2017 motion to dismiss remains pending.

<sup>10</sup> On June 21, 2017, HH filed an opposition, and on July 13, 2017, IY and JY filed a reply thereto. IY and JY’s February 24, 2017 motion to stay discovery pending the disposition of their February 24, 2017 motion to dismiss the FAC remains pending.

<sup>11</sup> No opposition was filed in response. HH’s July 26, 2017 motion to amend the first amended verified complaint remains pending.

<sup>12</sup> On January 24, 2023, FY filed an opposition and on February 7, 2023, nonparty MY filed an opposition. On February 6, 2023, HH filed a reply to FY’s opposition, and on February 8, 2023, HH filed a reply to nonparty MY’s opposition. HH’s December 19, 2022 motion to amend the FAC to join MY remains pending.

<sup>13</sup> On February 28, 2023, FY filed an opposition, and on March 7, 2023, IY and JY jointly filed an opposition. On March 6, 2023, HH filed a reply to FY’s opposition, and on March 8, 2023, HH filed a reply to IY and JY’s opposition. HH’s February 28 2023, motion for leave to file a supplemental complaint remains pending.

**1. HH's July 26, 2017 motion to amend the FAC, HH's December 19, 2022 motion to amend the FAC, and HH's February 28, 2023 motion for leave to file a supplemental complaint**

In his July 26, 2017 motion to amend the FAC, HH moved to “eliminate[] two counts Count II (Conversion) and Count V (Civil Conspiracy) against each Defendant [and] correct[] the caption to correct the spelling of the name of the Jamil Yousef to Jamil Yousuf.” (July 27, 2017 Motion.) As noted above, no opposition was filed in response.<sup>14</sup>

In his December 19, 2022 motion to amend the FAC, HH moved to amend the FAC “join Manal Yousef as a defendant.” (Motion 1.) HH made the following assertions in support of his motion: (i) HH initially felt that “[Manal Yousef] was a straw-man and dupe who was not involved in the later conspiracy at issue, but “following initial discovery in this action, Hamed now believes he can prove that she is, and has been, fully participatory with the defendants in the present conspiracy.” (Id.); (ii) “[T]his was not determined previously...[because] this action has been effectively stalled since 2017 due to a number of procedural issues...” (Id., at 2); (iii) “No answers have been filed yet, and no depositions have been taken or are presently noticed. However, after discovery re-started this summer, Hamed’s view changed significantly.” (Id.); and (iv) No oppositions are expected to be filed in response to this motion because all three defendants have “submitted motions to dismiss predicated on the absolute need to have Manal [Yousef] joined as a party here, described below. (Id.).

In his opposition to HH’s December 19, 2022 motion to amend, FY argued that HH’s motion should be denied because “there currently remains pending since January 2017, Yusuf’s Motion to Dismiss Plaintiff’s First Amended Complaint (“FAC”), in its entirety, given that it fails

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<sup>14</sup> See *supra*, footnote 11.

to state a single claim upon which relief can be granted—both because all claims are barred by the statute of limitations and are also insufficiently pled—and fails to join an indispensable party, Manal Yousef,” that “there is no excuse for such delay [in adding Manal Yousef], and that “this is not a perfunctory addition of a few paragraphs here or there to add a party, including their name, but rather a wholesale revision of various pleadings impacting more than simply the addition of Manal Yusuf [sic] as a party, years after the fact.” (Opp. 1-2.)

In his reply to FY’s opposition, HH noted that “he is simultaneously submitting his motion for leave to file a supplemental complaint—although that Second Amended and Supplemental Complaint is identical to the Second Amended Complaint already submitted with this motion,” (Reply 1), and thereafter addressed the arguments raised in FY’s opposition. (Id., at 1-15.)

In his February 28, 2023 motion for leave to file a supplemental complaint, HH advised:

- (i) “In his opposition to that motion to amend, [FY] made what [HH] understands to be a distinction between the allegations in the FAC and allegations about events that are post-FAC” (Motion 1);
- (ii) “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.” (Id.);
- (iii) “To be clear, Hamed does not seek to alter the proposed Second Amended Complaint as filed on December 18<sup>th</sup> with the motion to amend—merely to provide additional support—renaming it the Second Amended and Supplemented Complaint.” (Id., at 1-2) (emphasis omitted);
- (iv) “All factual allegations in this action technically ended with the filing of the FAC, on December 23, 2016” but then “two things happened: (1) the alleged conspirators, along with [MY] did many post-FAC acts in furtherance of the CICP conspiracy, and (2) [HH] learned of many new facts about their acts the [sic] occurred prior to the filing of the FAC.” (Id., at 3.) Thus, HH concluded that, [b]ased on the liberal text of the Rule, the early stage of the proceedings, the prior statements of all of the defendants that [MY]

must be a party here, and the commonality of the related defendants and their counsel, this is a perfect situation for amendment.” (Id., at 7) (emphasis omitted).

In his opposition to HH’s February 28, 2023 motion for leave to file a supplemental complaint, FY reiterated the arguments he raised in his opposition to HH’s motion to amend.

In their opposition to HH’s February 28, 2023 motion for leave to file a supplemental complaint, IY and JY argued that HH’s motion should be denied for the following reasons: (i) “[HH] should be disqualified from bringing a derivative cause of action pursuant to the provisions of subsection (b) of Rule 23.1.” (Opp. 2); (ii) HH should also be disqualified because he “cannot fairly and adequately represent the interest of shareholder [FY].” (Id.); and (iii) “[T]he facts requested to be added as supplements to the Complaint occurred years prior to filing of the Complaint and could not have been learned by [HH] only recently.” (Id., at 5.)

In his reply to FY’s opposition, HH argued that his motion should be granted for the following reasons: (i) “[HH] meets the requirements of the [applicable] rule.” (Reply 2); (ii) “[FY] does not address the language of the [applicable] rule.” (Id., at 3); (iii) “[N]ew 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.”<sup>15</sup> (Id.)

In his reply to IY and JY’s opposition, HH argued that his motion should be granted and disputed IY and JY’s allegations.

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<sup>15</sup> HH referenced: *Graciani v. Providence Health & Servs.*, 2022 U.S. Dist. LEXIS 202712, at \*4 (D. Alaska Nov. 7, 2022).

### **A. Standard of Review**

Rule 15 of the Virgin Islands Rules of Civil Procedure (hereinafter “Rule 15”) governs the amended pleadings and supplemental pleadings. Rule 15(a)(1) provides that “[a] party may amend its pleading once as a matter of course within: (A) 21 days after serving it, or (B) if the pleading is one to which a responsive pleading is required, 21 days after service of a responsive pleading or 21 days after service of a motion under Rule 12(b), (e), or (f), whichever is earlier.” V.I. R. CIV. P. 15(a)(1). Rule 15(a)(2) provides that “[i]n all other cases, a party may amend its pleading only with the opposing party's written consent or the court's leave” and “[t]he court should freely give leave when justice so requires.” V.I. R. CIV. P. 15(a)(2). “[T]he decision to permit an amendment is vested in the sound discretion of the Superior Court.” *Powell v. FAM Protective Servs., Inc.*, 72 V.I. 1029, 1039 (V.I. 2020) (citing *Reynolds v. Rohn*, 70 V.I. 887, 899 (V.I. 2019)). The Virgin Islands Supreme Court explained in *Powell*, “[i]n ruling on a motion to amend, appropriate considerations include, but are not limited to, “undue delay, bad faith or dilatory motive on the part of the movant, repeated failure to cure deficiencies by amendments previously allowed, undue prejudice to the opposing party by virtue of allowance of the amendment, [and] futility of the amendment.” 72 V.I. at 1039-40 (citing *Basic Services, Inc. v. Gov't of the V.I.*, 71 V.I. at 666-67, 2019 VI 21, ¶26. 2019 V.I. Supreme LEXIS 32 at \*23 (citing *Foman v. Davis*, 371 U.S. 178, 182, 83 S. Ct. 227, 9 L. Ed. 2d 222 (1962))); see *UHP Projects, Inc.*, 74 V.I. at 536-37. Even as late as trial, Rule 15(b)(1) dictates that “[t]he court should freely permit an amendment when doing so will aid in presenting the merits and the objecting party fails to satisfy the court that the evidence [relevant to the newly raised issue] would prejudice that party's action or defense on the merits.” V.I. R. CIV. P. 15(b)(1). On the other hand, a pleading is supplemented—not amended—to add relevant matters that occurred after the commencement of the action. See V.I. R. CIV. P. Rule 15(d)

(“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.”). In other words, amended pleading and supplemental pleadings are not one and the same and should not be treated as such—to wit, an amended pleading relates to matters occurring before the filing of the original pleading, while a supplemental pleading concerns matters occurring subsequent to the original pleading and constitute only additions to the earlier pleading. “The court may permit supplementation even though the original pleading is defective in stating a claim or defense” and “[t]he court may order that the opposing party plead to the supplemental pleading within a specified time.” V.I. R. CIV. P. Rule 15(d). “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 Virgin Islands Corporation*, 69 V.I. 519, 545 (V.I. Super. Ct. 2018) (citing *William Inglis & Sons Baking Co. v. ITT Cont'l Baking Co.*, 668 F.2d 1014, 1057 (9th Cir. 1981)).

### **B. Analysis**

#### **HH’s July 26, 2017 motion to amend the FAC and HH’s December 19, 2022 motion to amend the FAC**

The Master must note the following prior to addressing the merits of HH’s motions to amend. First, HH’s July 26, 2017 motion to amend the FAC and December 19, 2022 motion to amend the FAC were filed in compliance with Rule 15-1 of the Virgin Islands Rules of Civil Procedure—to wit, separate copies of the relevant redline version and clean version of the proposed second amended complaint were attached thereto. V.I. R. CIV. P. 15-1(a) (“A party moving to amend a pleading shall attach a complete -- and properly signed -- copy of the proposed



amended pleading to the motion papers. Except as otherwise ordered by the court, any amendment to a pleading, whether filed as a matter of course or upon a motion to amend, must reproduce the entire pleading as amended specifically delineating the changes or additions and may not incorporate any prior pleading by reference.”). Upon review, the proposed second amended complaint attached to HH’s December 19, 2022 motion included the proposed amendment in HH’s July 26, 2017 motion in addition to the proposed amendment in HH’s December 19, 2022 motion. Second, as noted above,<sup>16</sup> on February 7, 2023, nonparty Manal Yousef (hereinafter “MY”)—through her counsel James L. Hymes, III, Esq.’s (hereinafter “Attorney Hymes”) in Case 065 and Case 342—filed an opposition to HH’s December 19, 2022 motion to amend the FAC to add MY as a defendant. However, given that HH’s December 19, 2022 motion was still pending at the time MY filed her opposition, MY was not a party to this matter when she filed her opposition. Thus, MY’s opposition was improperly filed—since she was a nonparty at the time—and it will not be considered by the Master. Lastly, upon review of FY’s January 9, 2017 motion to dismiss the FAC and IY and JY’s June 14, 2017 motion to dismiss the FAC, the Master notes that all three defendants indicated that MY is an indispensable party.<sup>17</sup> In fact, FY reiterated in his opposition to the December 19, 2022 motion that MY is an indispensable party in this matter.

Now turning to the merits of HH’s motions to amend, the Master finds that there is no undue delay, bad faith or dilatory motive on the part of HH and that the amendment will aid in

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<sup>16</sup> *See supra*, footnote 12.

<sup>17</sup> In his January 9, 2017 motion to dismiss the FAC, FY “move[d] the Court to dismiss Plaintiff Hisham Hamed’s First Amended Complaint (“Complaint”) against him in its entirety given that it wholly fails to state a single claim upon which relief can be granted and fails to join an indispensable party, Manal Yousef.” (Jan. 9, 2017 Motion 1.)

In their June 14, 2017 motion to dismiss the FAC, IY and JY “move[d] the Court to dismiss plaintiff Hisham Hamed’s First Amended Complaint (“FAC”) against them in its entirety given that Isam and Jamil are not subject to personal jurisdiction in this Court because they did not act within this territory the first amended complaint roundly fails to state a single claim upon which relief can be granted, and it fails to join an indispensable party, namely Manal Yousef.” (June 14, 2017 Motion 1.)

presenting the merits without prejudice to the defendants given that the defendants themselves had indicated that MY is an indispensable party in this matter and this matter was consolidated with the 065 Case and 342 Case due to a common question of law or fact. As such, the Master will grant HH's July 26, 2017 motion to amend the FAC and December 19, 2022 motion to amend the FAC. *Powell*, 72 V.I. at 1039 (“the decision to permit an amendment is vested in the sound discretion of the Superior Court”).

**HH's February 28, 2023 motion for leave to file a supplemental complaint**

The Master must note the following prior to addressing the merits of HH's motion for leave to file a supplemental complaint. First, unlike what HH stated in his motion, all factual allegations in this action did not “technically end with the filing of the FAC.” (Feb. 28, 2023 Motion.) Instead, the factual allegations ended with the commencement of the action—to wit, the filing of the initial complaint. *See* V.I. R. CIV. P. Rule 15(d). At this point, given that the FAC has already been accepted, the Master need not waste time to address whether the factual allegations added to the initial complaint included events that occurred before the commencement of the action—which would be an amendment to the initial complaint—or events that occurred after the commencement of the action—which would not be an amendment but a supplementation to the initial complaint. Second, under Rule 15(d), a supplemental pleading is a separate pleading that sets out any events that occurred after the commencement of the action and this supplemental pleading is to be served on its own. *See* V.I. R. CIV. P. Rule 15(d) (“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.”). Yet, here, HH combined the factual allegations of events that occurred before the commencement of the action—an amendment—and factual allegations of events after the commencement of the action—a

supplementation—in the same document—to wit, the proposed second amended complaint/proposed second amended and supplemental complaint. Lastly, in addressing the motions to amend above, the Master already addressed and granted the amendment to add MY as a defendant in this matter. Thus, this issue need not be addressed as part of HH’s motion for leave to file a supplemental complaint.

Now turning to the merits of HH’s motion for leave to file a supplemental complaint, the Master finds that it is just to permit supplementation, *see* V.I. R. CIV. P. Rule 15(d); *cf.* V.I. R. CIV. P. 15(a)(2), and it will promote “as complete an adjudication of the dispute between the parties as possible.” *Martinez*, 69 V.I. at 545; *see Powell*, 72 V.I. at 1041 (the Virgin Islands Supreme Court reiterated their longstanding preference in this jurisdiction ‘that cases be disposed of on the merits whenever practicable’ and reaffirmed their precedent holding that the decision to grant or deny leave to amend a pleading — including a proposed amendment to assert additional affirmative defenses — is vested in the sound discretion of the trial court in accordance with Virgin Islands Rule of Civil Procedure 15); *see also, Saraiw v. Fawkes*, 66 V.I. 253, 265 (V.I. 2017) (“In reaching this decision, we are cognizant of our longstanding instruction ‘that the preference is to decide cases on their merits’ and ‘that any doubts should be resolved in favor of this preference.’”) (quoting *Fuller v. Browne*, 59 V.I. 948, 956 (V.I. 2013) (quoting *Spencer v. Navarro*, 2009 V.I. Supreme LEXIS 25, at \*9 (V.I. 2009) (unpublished)).

For the reason stated above, the Master will not accept the proposed second amended complaint filed with HH’s July 26, 2017 motion and December 19, 2022 motion, and the proposed second amended and supplemental complaint filed with HH’s February 28, 2023 motion. Instead, the Master will order HH to file: (i) a new proposed second amendment complaint to “eliminate[] two counts Count II (Conversion) and Count V (Civil Conspiracy) against each Defendant [and]

correct[] the caption to correct the spelling of the name of the Jamil Yousef to Jamil Yousuf” and to add MY as a defendant, with the factual allegations added therein confined to events that occurred before the action was commenced, and (ii) a separate supplemental complaint with the factual allegations therein confined to events that occurred after the action was commenced. Furthermore, upon the Master’s approval and acceptance of HH’s new proposed second amendment complaint, HH will be ordered to serve a copy of the second amended complaint and the supplemental complaint upon all the parties in accordance with the applicable rules, and Attorney Hymes will be ordered to accept service of both documents on behalf of MY since he had already voluntarily appeared on behalf of MY in this matter when he filed—on behalf of MY—an opposition to HH’s December 19, 2022 motion.<sup>18</sup> *See* Title 5 V.I.C. § 115 (“A voluntary appearance of the defendant shall be equivalent to personal service of the summons upon him.”). The defendants will then have the opportunity to file their respective responses and/or arguments thereto.

## **2. Motions rendered moot by the rulings above**

Given the rulings above, the Master will deny as moot the following motions: (i) FY’s January 9, 2017 motion to dismiss the FAC; (ii) HH’s January 20, 2017 motion to strike FY’s January 9, 2017 motion to dismiss; (iii) HH’s January 20, 2017, HH also filed a motion for partial summary judgment as to Count III of the FAC; (iv) FY’s February 6, 2017 motion for leave, nunc pro tunc, to file his motion to dismiss in excess of 20 pages; (v) FY’s February 24, 2017 motion

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<sup>18</sup> MY’s February 7, 2023 opposition provided:

COMES NOW, MANAL MOHAMMAD YOUSEF, through her undersigned Attorney, James L. Hymes, III, and respectfully opposes the Motion of Hisham Hamed to amend his First Amended Complaint dated December 23, 2016, to join MANAL MOHAMMAD YOUSEF as a name party defendant.

(Feb. 7, 2023 Opp.)

to stay discovery pending the disposition of his January 9, 2017 motion to dismiss the FAC; (vi) IY and JY's June 14, 2017 motion to dismiss the FAC; and (vii) IY and JY's February 24, 2017 motion to stay discovery pending the disposition of their June 14, 2017 motion to dismiss the FAC.

### **CONCLUSION**

Based on the foregoing, it is hereby:

**ORDERED** that HH's July 26, 2017 motion to amend the FAC and HH's December 19, 2022 motion to amend the FAC are **GRANTED**, however the proposed second amended complaints attached thereto **ARE NOT ACCEPTED**. It is further:

**ORDERED** that HH's February 28, 2023 motion for leave to file a supplemental complaint is **GRANTED**, however the proposed second amended and supplemental complaint attached thereto **IS NOT ACCEPTED**. It is further:

**ORDERED** that, **within thirty (30) days from the date of entry of this Order**, HH shall **FILE**:

- (i) **A NEW PROPOSED SECOND AMENDMENT COMPLAINT** to "eliminate[] two counts Count II (Conversion) and Count V (Civil Conspiracy) against each Defendant [and] correct[] the caption to correct the spelling of the name of the Jamil Yousef to Jamil Yousuf" and to add MY as a defendant, with the factual allegations added therein confined to events that occurred **BEFORE** the action was commenced, and
- (ii) **A SEPARATE SUPPLEMENTAL COMPLAINT** with the factual allegations therein confined to events that occurred **AFTER** the action was commenced.

**And** it is further:

**ORDERED** that the following motions are **DENIED AS MOOT**:

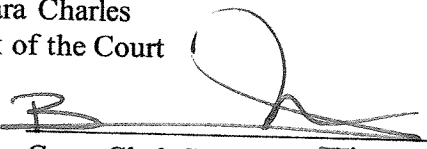
- (i) FY's December 5, 2016 motion to dismiss the complaint.
- (ii) FY's January 9, 2017 motion to dismiss the FAC;
- (iii) HH's January 20, 2017 motion to strike FY's January 9, 2017 motion to dismiss;
- (iv) HH's January 20, 2017, HH also filed a motion for partial summary judgment as to Count III of the FAC;

- (v) FY's February 6, 2017 motion for leave, nunc pro tunc, to file his motion to dismiss in excess of 20 pages;
- (vi) FY's February 24, 2017 motion to stay discovery pending the disposition of his January 9, 2017 motion to dismiss the FAC;
- (vii) IY and JY's June 14, 2017 motion to dismiss the FAC; and
- (viii) IY and JY's February 24, 2017 motion to stay discovery pending the disposition of their June 14, 2017 motion to dismiss the FAC.

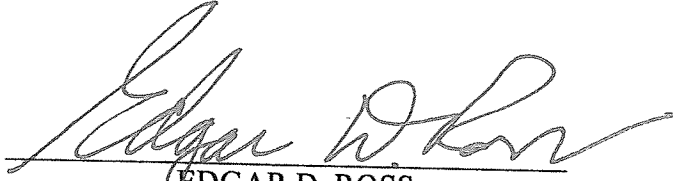
**DONE and so ORDERED this 7<sup>th</sup> day of May, 2024.**

**ATTEST:**

Tamara Charles  
Clerk of the Court

By:   
Court Clerk-Supervisor II

Dated: May 9, 2024

  
EDGAR D. ROSS  
Special Master

**FILED**

May 09, 2024 08:54 AM  
SX-2016-CV-00650  
TAMARA CHARLES  
CLERK OF THE COURT

**IN THE SUPERIOR COURT OF THE VIRGIN ISLANDS**  
District of St. Croix

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**Hisham Hamed on Behalf of Sixteen  
Plus Corp.,**  
**Plaintiff**

Case Number: **SX-2016-CV-00650**  
Action: **Damages**

v.

**Fathi Yusuf et al,**  
**Defendant.**

**NOTICE of ENTRY  
of  
Order**

**To** Joel H. Holt, Esq.

Charlotte Kathleen Perrell, Esq.

:

\_\_\_\_\_  
Carl Joseph Hartmann, III., Esq.

\_\_\_\_\_  
Stefan B. Herpel, Esq.

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James L. Hymes, III., Esq.

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Kevin A. Rames, Esq.

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**Please take notice that on May 09, 2024**  
**a(n) \_\_\_\_\_ Order of the Special Master**  
**dated \_\_\_\_\_ May 7, 2024 \_\_\_\_\_ was/were entered**  
**by the Clerk in the above-titled matter.**

**Dated** **May 09, 2024**

:

\_\_\_\_\_

**Tamara Charles**

\_\_\_\_\_  
**Clerk of the Court**

By:



\_\_\_\_\_  
**Brianna Primus**  
**Court Clerk II**

**FILED**

May 09, 2024 09:13 AM

SX-2016-CV-00650

TAMARA CHARLES

CLERK OF THE COURT

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

**HISHAM HAMED, INDIVIDUALLY, AND  
DERIVATIVELY ON BEHALF OF SIXTEEN  
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**FATHI YUSUF, ISAM YOUSUF, AND  
JAMIL YOUSUF,**

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v.

**SIXTEEN PLUS CORPORATION,**

NOMINAL DEFENDANT.

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**SIXTEEN PLUS CORPORATION,**

PLAINTIFF/COUNTER-DEFENDANT,

v.

**MANAL MOHAMMAD YOUSEF,**

DEFENDANT/COUNTER-PLAINTIFF.

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**MANAL MOHAMMAD YOUSEF,**

PLAINTIFF/COUNTER-DEFENDANT,

v.

**SIXTEEN PLUS CORPORATION,**

DEFENDANT/COUNTER-PLAINTIFF/  
THIRD-PARTY PLAINTIFF

v.

**FATHI YUSUF,**

THIRD-PARTY DEFENDANT.

**Civil Case No. SX-2016-CV-650**

DERIVATIVE SHAREHOLDER SUIT,  
ACTION FOR DAMAGES AND CICO  
RELIEF

**JURY TRIAL DEMANDED**

CONSOLIDATED WITH

**Civil Case No. SX-2016-CV-065**

ACTION FOR DECLARATORY  
JUDGMENT, CICO, AND FIDUCIARY  
DUTY; COUNTERCLAIM

**JURY TRIAL DEMANDED**

CONSOLIDATED WITH

**Civil Case No. SX-2017-CV-342**

ACTION FOR DEBT AND  
FORECLOSURE; COUNTERCLAIM  
FOR DAMAGES; THIRD PARTY  
ACTION

**JURY TRIAL DEMANDED**

**ORDER OF THE SPECIAL MASTER<sup>1</sup>**

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<sup>1</sup> On August 10, 2023, the Court entered an order in the three consolidated cases—*Sixteen Plus Corp. v. Yousef*, Civil Case Number SX-2016-CV-065, *Hamed v. Yusuf, et al.*, Civil Case Number SX-2016-CV-650, and *Yousef v. Sixteen Plus Corp.*, Civil Case Number SX-2017-CV-342—whereby the Court appointed the undersigned as



**THIS MATTER** came before the Special Master (hereinafter “Master”) on James L. Hymes, III, Esq.’s (hereinafter “Attorney Hymes”) motion to withdraw as counsel for Manal Mohammad Yousef’s (hereinafter “MY”), Jamil Yousuf (hereinafter “JY”), and Isam Yousuf (hereinafter “IY”), filed on April 1, 2024, in the three consolidated cases—*Sixteen Plus Corp. v. Yousef*, Civil Case Number SX-2016-CV-065 (hereinafter “065 Case”), *Hamed v. Yusuf, et al.*, Civil Case Number SX-2016-CV-650 (hereinafter “650 Case”), and *Yousef v. Sixteen Plus Corp.*, Civil Case Number SX-2017-CV-342 (hereinafter “342 Case”), and his statement in lieu of affidavit, dated April 1, 2024, attached thereto. In response, Sixteen Plus Corporation (hereinafter “SPC”) filed a notice of no objection in the 065 Case and the 342 Case, and Hisham Hamed (hereinafter “HH”), filed a notice of no objection in the 650 Case. On April 16, 2024, Attorney Hymes filed a supplement to his statement in lieu of affidavit, dated April 16, 2024.

Attorney Hymes currently represents MY in the 065 Case and the 342 Case and JY and IY in the 650 Case. Additionally, in an order entered contemporaneously herewith, the Master pointed out that Attorney Hymes has voluntarily appeared on behalf of MY in the 650 Case when he filed—on behalf of MY—an opposition to HH’s December 19, 2022 motion to amend the first amended complaint in the 650 Case,<sup>2</sup> and ordered Attorney Hymes to accept service—on behalf of MY—of the second amended complaint and the supplemental complaint in the 650 Case.

Pursuant to Rule 211.1.16 of the Virgin Islands Rules of Professional Conduct (hereinafter “Rule 211.1.16”), a lawyer may withdraw from representing the interests of the

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the special master in these consolidated cases to address all pretrial matters and any other matters agreed upon by the parties. (Aug. 10, 2023 Order.)

<sup>2</sup> MY’s February 7, 2023 opposition provided:

COMES NOW, MANAL MOHAMMAD YOUSEF, through her undersigned Attorney, James L. Hymes, III, and respectfully opposes the Motion of Hisham Hamed to amend his First Amended Complaint dated December 23, 2016, to join MANAL MOHAMMAD YOUSEF as a name party defendant.

(Feb. 7, 2023 Opp.)

**ORDER OF THE SPECIAL MASTER**

Page 3 of 4

client if: (1) withdrawal can be accomplished without material adverse effect on the interests of the client...” V.I.S.Ct.R. 211.1.16(b)(1). Furthermore, Rule 211.1.16 directs that “[a] lawyer must comply with applicable law requiring notice to or permission of a tribunal when terminating a representation [and] [w]hen ordered to do so by a tribunal, a lawyer shall continue representation notwithstanding good cause for terminating the representation.” V.I.S.Ct.R. 211.1.16(c). As the moving party, Attorney Hymes has the burden to show that withdrawal can be accomplished without material adverse effects on the interest of his clients. The Master finds that this burden has not been met. In fact, based on Attorney Hymes’s own representations in this instant motion and his recent filings, it is clear that his withdrawal cannot be accomplished without material adverse effect on MY, JY, and IY’s interests—to wit, Attorney Hymes indicated that MY is currently enduring various hardships—including but not limited to difficulty in maintaining a steady means of communication with the outside world—due to the war between Israel and Palestine,<sup>3</sup> and that JY insisted that Attorney Hymes continue to represent them in these cases.<sup>4</sup> Attorney Hymes’s motion does not identify substitute counsel or otherwise show how MY, JY, and IY will continue in the present proceedings if his motion is granted. Thus, allowing Attorney Hymes to withdraw as counsel for MY, JY, and IY will preclude these parties from further appearances in these proceedings, at least until substitute counsel can be identified, and thereby causing material adverse effects to MY, JY, and IY’s interests. Furthermore, in ruling on the instant motion, the Master may also consider the procedural posture of the case. *See Cianci v. Chaput*, 64 V.I. 682, 695 (V.I. 2016) (“We agree with the Superior Court that granting Walker’s motion to withdraw so late in the proceedings would have resulted in prejudice to both parties and unnecessarily delayed the conclusion of

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<sup>3</sup> See Jan. 23, 2024 Joint Motion, Exhibit A; Attorney Hymes’s Feb. 22, 2024 Reply; Attorney Hymes’s March 8, 2024 Notice; and Attorney Hymes’s March 25, 2024 Notice.

<sup>4</sup> See April 1, 2024 Motion.

**ORDER OF THE SPECIAL MASTER**

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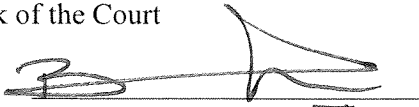
the matter, contrary to the interests of judicial economy.”). Allowing Attorney Hymes to withdraw as counsel for MY, JY, and IY will certainly result in prejudice to the other parties and impede judicial efficiency by preventing the orderly administration of these proceedings, which commenced more than eight years ago. *Cf.* V.I.S.C.T.R. 211.8.4(d) (“It is professional misconduct for a lawyer to: (d) engage in conduct that is prejudicial to the administration of justice.”). As such, the Master will deny without prejudice Attorney Hymes’s motion. Upon the appearance of substitute counsel for MY, JY, and IY, Attorney Hymes may move again to withdraw. Based on the foregoing, it is hereby:

**ORDERED** that Attorney Hymes’s motion to withdraw as counsel for MY, JY, and IY in the 065 Case, the 650 Case, and the 342 Case, filed on April 1, 2024, is **DENIED WITHOUT PREJUDICE**.

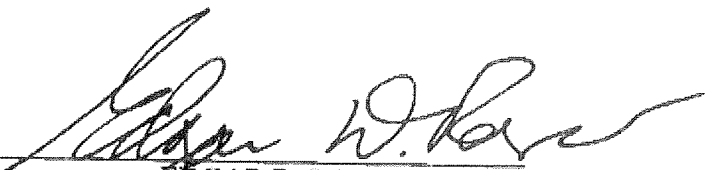
**DONE** and so **ORDERED** this 7th day of May, 2024.

**ATTEST:**

Tamara Charles  
Clerk of the Court

By:   
Court Clerk Supervisor II

Dated: May 8, 2024

  
EDGAR D. ROSS  
Special Master

**FILED**

May 09, 2024 09:15 AM  
SX-2016-CV-00650  
TAMARA CHARLES  
CLERK OF THE COURT

**IN THE SUPERIOR COURT OF THE VIRGIN ISLANDS**  
District of St. Croix

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**Hisham Hamed on Behalf of Sixteen  
Plus Corp.,**  
**Plaintiff**

Case Number: **SX-2016-CV-00650**  
Action: **Damages**

v.

**Fathi Yusuf et al,**  
**Defendant.**

**NOTICE of ENTRY  
of  
Order**

**To** Joel H. Holt, Esq.

Charlotte Kathleen Perrell, Esq.

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\_\_\_\_\_  
Carl Joseph Hartmann, III., Esq.

\_\_\_\_\_  
Stefan B. Herpel, Esq.

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James L. Hymes, III., Esq.

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Kevin A. Rames, Esq.

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**Please take notice that on May 09, 2024  
a(n) Order Denying without Prejudice Motion to Withdraw as  
Counsel**

**dated May 7, 2024 was/were entered  
by the Clerk in the above-titled matter.**

**Dated** **May 09, 2024**

:

\_\_\_\_\_

**Tamara Charles**

\_\_\_\_\_  
**Clerk of the Court**

By:



\_\_\_\_\_  
**Brianna Primus  
Court Clerk II**