

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

**YUSUF YUSUF, derivatively on behalf of
PLESSEN ENTERPRISES, INC.,**

Plaintiff,

v.

**WALEED HAMED, WAHEED HAMED,
MUFEED HAMED, HISHAM HAMED
and FIVE-H HOLDINGS, INC.,**

Defendants,

and

PLESSEN ENTERPRISES, INC.,

Nominal Defendant.

Case No. SX-13-CV-120

**CIVIL ACTION FOR DAMAGES
AND INJUNCTIVE RELIEF**

JURY TRIAL DEMANDED

**SUBMISSION OF WALEED HAMED, WAHEED HAMED, MUFEED HAMED,
HISHAM HAMED AND FIVE-H HOLDINGS, INC. PURSUANT TO COURT'S ORDER
FOR COMMENTS REGARDING CONSOLIDATION AND DEPOSITIONS**

Waleed Hamed, Waheed Hamed, Mufeed Hamed, Hisham Hamed and Five-H Holdings, Inc. (collectively, the "Hamed Defendants") submit the following comments concerning consolidation and depositions in response to the Court's directive issued at the status conference on July 30, 2015:

**I. This Matter Should Be Consolidated with Case No. SX-12-CV-370,
Pending Before Honorable Douglas Brady.**

Consolidations of actions is appropriate where two actions pending in the same court "involve a common question of law or fact." Fed.R.Civ.P. 42(a).¹ "Consolidation is 'permitted as a matter of convenience and economy in administration.'" Abramsen v. Vilsack, 2010 WL 2430724, at *1 (D.V.I. June 14, 2010) (quoting Johnson v. Manhattan Ry. Co., 289 U.S. 479-

¹ Made applicable by Super. Ct. R. 7.

496-97 (1933)); see also Waste Distillation Tech., Inc. v. Pan American Resources, Inc., 775 F.Supp. 759, 761 (D. Del. 1991) (court has “broad powers to consolidate actions involving common questions of law or fact if, in its discretion, such consolidation would facilitate the administration of justice.”). In deciding whether to consolidate actions, the Court considers: “(1) is the common issue the principle issue; (2) will consolidation cause delay in one of the cases, and (3) will consolidation ‘lead to confusion or prejudice in the trial of a case’?” Id. (citing Farahmand v. Rumsfeld, 2002 WL 31603709, at * (E.D.Pa. Nov. 20, 2002)).

Consolidation “does not merge the suits into a single cause, or change the rights of the parties, or make those who are parties to one suit parties in another.” Abramsen v. Vilsack, 2010 WL 2430724, at *1 (quoting Johnson v. Manhattan Ry. Co., 289 U.S. at 496-97).

This Action is properly consolidated with Case No. SX-12-CV-370. Plaintiff has raised critical issues in this Action that Judge Brady has already addressed in several lengthy, complex opinions in Case No. SX-12-CV-370. Principles of judicial economy mandate consolidation so these issues are not revisited again, which would be inefficient and may potentially lead to confusion. Issues already before Judge Brady in SX-12-CV-370 – and already decided therein – involved extensive analysis of facts and law, as noted in the motions filed in this case addressing the same points (and attaching Judge Brady’s various opinions). Indeed, the relief sought against Plessen in the proposed Amended Complaint – dissolution – is *exactly* the same relief sought against Plessen in SX-12-CV-370.

Consolidation will not result in delay or confusion. To the contrary, a refusal to consolidate these cases will cause delay and otherwise confuse the administration of justice because the same relief is being sought in both cases. Moreover, Plaintiff will not be prejudiced

by consolidation because, consolidation will not merge this Action and SX-12-CV-370 “into a single cause, or change the rights of the parties” Abramsen v. Vilsack, 2010 WL 2430724, at *1. Consolidation of this Action with SX-12-CV-370 is appropriate.

II. The Issue of Depositions is a Red Herring.

The same parties still need to be deposed in both cases. Thus, consolidation of this Action with SX-12-CV-370 moots the issue of depositions. However, if the cases are not consolidated, it is premature to conduct depositions until Plaintiff’s motion to amend the complaint is resolved one way or the other, as it proposes to add new parties **who would need to be present if the motion to amend is granted – otherwise the new parties would have an absolute right to repeat the same discovery again.** Depositions must be held in abeyance pending resolution of Plaintiff’s motion to amend his complaint.

Respectfully submitted,

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Dated: August 7, 2015

Counsel for Waleed Hamed, Waheed Hamed,
Mufeed Hamed, Hisham Hamed and
Five-H Holdings, Inc.

CERTIFICATE OF SERVICE

I hereby certify that on this 7th day of August 2015, I served a copy of the foregoing document by First Class United States Mail, postage prepaid, on the following persons:

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A handwritten signature in blue ink, appearing to read "Abraham Edward", is written over a horizontal line.