

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

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	)	
IN RE: RED DUST CLAIMS	)	MASTER CASE NO.
	)	SX-15-CV-620
	)	

**DEFENDANTS ST. CROIX ALUMINA, LLC; ALCOA, INC.; AND  
GLENCORE LTD'S NOTICE REGARDING PREVIOUSLY FILED  
MOTIONS TO DISMISS IN THE ABEDNEGO AND ABRAHAM CASES**

Defendants St. Croix Alumina, LLC; Alcoa, Inc.; and Glencore Ltd. f/k/a Clarendon Ltd. (collectively, "Defendants"), in response to the Court's July 5, 2017 Order, file this Notice regarding their previously filed Motions to Dismiss in the *Abednego* and *Abraham* cases, showing this Honorable Court as follows:

**I. SUMMARY OF MOTIONS TO DISMISS**

**A. *Abednego v. St. Croix Alumina, LLC*, CAFN: SX-09-CV-571**

On February 19, 2010, Defendants filed "Defendants St. Croix Alumina, LLC, Alcoa, Inc., and Glencore Ltd.'s Motion to Dismiss Plaintiffs' Complaint with Brief in Support" in District Court Civil No. 163/2011 while this case was pending in the United States District Court for the Virgin Islands, Division of St. Croix ("U.S. District Court"). After this case was remanded to the Superior Court on March 17, 2011, Defendants on April 27, 2012 filed in Civil No. SX-09-CV-571 "Defendants St. Croix Alumina, LLC, Alcoa, Inc., and Glencore Ltd.'s Renewed Motion to Dismiss Plaintiffs' Third Amended Complaint with Brief in Support."

Plaintiffs filed their “Response in Opposition to Defendants’ Renewed Motion to Dismiss Third Amended Complaint” on August 2, 2012. Defendants filed their “Reply in Support of Motion to Dismiss Plaintiffs’ Third Amended Complaint” on August 12, 2012.

On August 10, 2015, this Court denied without prejudice Defendants’ Motions to Dismiss.

**B. *Abraham v. St. Croix Alumina, LLC*, CAFN: SX-11-CV-163**

Plaintiffs filed the *Abraham* case on March 30, 2011. The *Abraham* Complaint was filed by Plaintiffs who had been dismissed from the *Abednego* case by the U.S. District Court.

The *Abraham* Plaintiffs did not serve any Defendants with process, however, until March 1, 2012—*i.e.*, 11 months after the action had been filed. On March 21, 2012, Defendants filed a Motion to Dismiss Plaintiffs’ Complaint. On June 20, 2012, Plaintiffs filed their Response Brief. Defendants timely filed their Reply Brief on July 5, 2012.

On August 10, 2015, this Court entered an Order allowing the *Abraham* Plaintiffs to rejoin *Abednego*—which essentially resulted in the dismissal of the *Abraham* case.

**II. NOTICE REGARDING DEFENDANTS’ MOTIONS TO DISMISS**

Based on Defendants’ reviews of the Complaints, it appears that several Plaintiffs in the Master Case were among the seventeen named plaintiffs in the prior *Josephat Henry, et al. v. St. Croix Alumina, et al.* litigation (including, among others, current plaintiff Josephat Henry), whose personal injury claims were summarily adjudicated in Defendants’ favor and whose property damage claims were resolved and dismissed with prejudice in that litigation. The inclusion of these Plaintiffs may be inadvertent on the part of Plaintiffs’ counsel, or they may be different individuals with the same name as the named plaintiffs in the *Henry* litigation. Rather

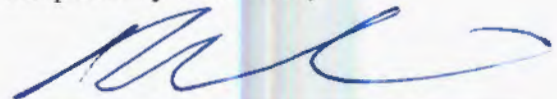
than file an unnecessary motion to dismiss, Defendants suggest that the Court and the parties discuss at the August 2, 2017 conference the most expeditious way to resolve this issue.

In addition, the Complaints appear to include Plaintiffs who were not parties to the original *Abednego* Complaint and whose claims thus appear to be time-barred. Defendants also will be prepared to discuss this issue at the August 2, 2017 conference.

Subject to the Court's directions and discussions on August 2, 2017, Defendants may file motions to dismiss and/or motions for summary judgment with respect to the Plaintiffs referenced above.

With respect to Plaintiffs and/or claims on which Defendants are not currently re-filing a Motion to Dismiss, by not now moving to dismiss any Plaintiff or claim, Defendants do not waive any defenses. Defendants reserve the right to challenge the procedural and substantive deficiencies in Plaintiffs' individual Complaints by (without limitation) affirmative defenses in answers to Complaints, which are due on September 1, 2017, and/or in Motions for Summary Judgment.

Respectfully Submitted,



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**CERTIFICATE OF SERVICE**

I hereby certify that on this 20th day of July, 2017, I served a copy of the foregoing by ~~mail and~~ <sup>ACS</sup> email, as agreed by the parties, on:

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