FOR OFFICIAL PUBLICATION

SUPERIOR COURT OF THE VIRGIN ISLANDS
DIVISION OF ST. CROIX

LENARD GRANT; JEAL N. MASSICOTT; OCTAVE GRIFFITH; MARILYN M. NICHOLAS; ERROL GABRIEL; GEORGE WILLOCK; VERNON TYSON, TED MILLS; ERIC LYNCH; MATTHEW CAZAUBON; PASCAL W. BEHARRY; DAVID CANTON; ALBIN ALLEYNE; ROWARD CHARLES; EDRICK ADAMS, SUDASH BHAGWANDASS; ORLANDO PEREZ; ANTHONY S. BROWN; WAYNE A. ROSS; SYLIS KARIAH; ARRON LEE JOHNSON; DECIMA JOHN BAPTISTE; SELWYN MANBODH; CLEFRYN DE LANDE; NAZIM MOHAMMED; CLARENCE JARVIS; AMBROSE FERNANDEZ; GEORGE DANIEL; LAVERN RICHARDS; WILSHAW STEVENS; ERIC MICHAEL; FANGMANN VICTOR; NOEL EUZEBE; EMILINDA PIERRE; CYRIL S. MOSES; URIAS DESIR; LAWRENCE JOSSE; HUGHBERT JAMES; WINSTON BENJAMIN; LENROY PHILLIP; KENDRICK SYLVESTER; LINDEN DORAN; AVERELL MARS; WAYNE CHARLES; YEISAN MATIHEW; CRAIG EMANUEL; TROY COKER; ANGEL GUZMAN; CERDRIC BROOKES; GEORGE JEFFERS; ROGER G. MOORE; JOHN F. NURSE, SR.; CRISPIN INCE and HILLMAN FAUCHER, **Plaintiffs,** **v.** **HOVENSA, LLC and AMERADA HESS CORPORATION,** **Defendants.**	)	**CASE NO. SX-05-CV-443** **COMPLEX LITIGATION DIVISION**
CRESPEN INCE; SYLIS KARIAH; EDRICK ADAMS; JEAN MASSICOTT; GEORGE JEFFERS; DICEMA JOHN BAPTISTE; LENROY PHILLIP; RONALD CHARLES; WILSHAW STEVENS; CRAIG EMANUEL;	)	**CASE NO. SX-13-CV-010** **COMPLEX LITIGATION DIVISION**

JOSEPH BRIDGEWATER; and TED MILLS,)
)
Plaintiffs,)
)
v.)
)
HOVENSA, LLC and HESS CORPORATION,)
)
Defendants.)
)

Cite as: 2019 VI SUPER 72

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MEMORANDUM OPINION

MOLLOY, *Judge*.

¶1 **THESE TWO CASES** are before the Court following orders that directed the plaintiffs in each case to show cause why everyone except the first-named plaintiff in each case should not be dropped and their claims severed, and each ordered to refile an individual complaint. Additionally, because all ten of the twelve plaintiffs in *Crespen Ince, et al. v HOVENSA, LLC, et al.*, case number SX-13-CV-010 ("*Ince*" or "*Ince* plaintiffs"), are also party-plaintiffs in *Leonard Grant, et al. v. HOVENSA, LLC, et al.*, case number SX-05-CV-443 ("*Grant*" or "*Grant* plaintiffs"), the *Ince* plaintiffs were further ordered to show cause why *Ince* should not be consolidated with *Grant* and then all plaintiffs dropped, and those plaintiffs with claims in *Ince* and *Grant* given leave to refile individual complaints with all their claims in the same pleading, since *Ince* was filed in response to *Grant*, and courts can grant parties leave to supplement their pleadings "to add claims or defenses that accrue after a case is commenced." *Martinez v. Hess Oil V.I. Corp.*, 69 V.I. 519, 545 (Super. Ct. 2018) (citations omitted). The *Grant* plaintiffs responded in opposition, but asked in the alternative that, "[i]f the Court disagrees and orders severance . . . the individual cases be consolidated for purposes of discovery and all pre-trial litigation." (Pls' Resp. to Ct.'s Order to Show Cause 1, filed Feb. 6, 2019 ("Resp.").) Hess Corporation ("Hess"), the only remaining defendant in *Grant*, responded in support of severance. Neither the *Ince* plaintiffs nor Hess or HOVENSA, LLC ("HOVENSA") responded to the show cause order issued in that case. For the reasons stated below, the Court finds that the *Grant* and *Ince* plaintiffs misjoined their claims together and, therefore, severance is warranted. The Court will grant the plaintiffs leave to refile individual complaints and will open a master case to coordinate, not consolidate, the forthcoming cases.

I. BACKGROUND

A. *Grant, et al. v. HOVENSA, LLC, et al.*

¶2 Forty-two employees of HOVENSA, a joint venture formed in 1999 between Hess Oil Virgin Islands Corporation ("HOVIC") and Petróleos de Venezuela, S.A. Virgin Islands, filed a lawsuit in 2005 against their employer and HOVIC's parent corporation, Amerada Hess Corporation ("Hess") in the Superior Court of the Virgin Islands. According to the complaint, they claimed that, starting in 2003, Hess and HOVENSA required them to sign a dispute resolution agreement ("DRA") that mandated arbitration and waived their right to resolve any disputes through a jury trial. The *Grant* plaintiffs were considered "exempt employees" (Sixth Amend. Compl. ¶ 61), with whom HOVENSA had agreed, through an Annual Compensation Plan Bonus Program, to give annual bonuses, but only if they "diligently worked for the good of HOVENSA and towards safety, environmental and net overall profit goals." *Id.* ¶ 62. The *Grant* plaintiffs refused to sign the DRA and, consequently, HOVENSA denied them their bonuses.

¶3 The complaint, filed June 30, 2005,[1] was amended on July 14, 2005 to add two plaintiffs,[2] amended on February 27, 2006 to add another six plaintiffs,[3] amended again on March 6, 2007 to add an additional plaintiff,[4] and on October 16, 2007 to add another two plaintiffs,[5] again on April 1, 2008 to three more plaintiffs,[6] and finally, on July 28, 2008, to add one more plaintiff.[7] In total,

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[1] The June 30, 2005 complaint named the following persons as plaintiffs: Lenard Grant, Jeal N. Massicott (as in the caption, Jeannoel Massicott in the body), Octave Griffith, Marilyn M. Nicholas, Kadar Mohansingh, Errol Gabriel, George Willock, Vernon Tyson, Ted Mills, Eric Lynch, Matthew Cazaubon, Pascal W. Beharry, David Canton, Albin Alleyne, Roward Charles, Edrick Adams, Sudash Bhagwandass, Orlando Perez, Anthony S. Brown, Wayne A. Ross, Sylis Kariah, Arron Lee Johnson, Decima John Baptiste, Selwyn Manbodh, Clefryn de Lande, Nazim Mohammed, Clarence Jarvis, Ambrose Fernandez, George Daniel, Lavern Richards, Wilshaw Stevens, Eric Michael Fangmann, Victor Noel Euzebe, Emilinda Pierre, Cyril S. Moses, Urias Desir, Lawrence Josse, Hughbert James, Winston Benjamin, Lenroy Phillip, Kenrick Sylvester (Kendrick in the caption), and Wayne Charles.

[2] The July 14, 2005 amendment added Linden Doran and Aveerell Mars as plaintiffs.

[3] The February 27, 2006 amendment added Yeisan Matthew, Craig Emanuel, Troy Coker, Cerdric Brookes, Angel Guzman, and George Jefres as plaintiffs. The amendment was approved by order dated and entered March 24, 2006.

[4] The March 6, 2007 amendment added Fernando Cornett as plaintiff. The amendment was approved by order dated April 23, 2007, entered April 24, 2007. The body of the complaint included Cornett, but the caption omitted him.

[5] The October 16, 2007 amendment added Cassandra Paul and Joseph Bridgewater as plaintiffs. The amendment was approved by order dated November 7, 2007, entered November 9, 2007.

[6] The April 1, 2008 amendment added Roger G. Moore, John F. Nurse, Sr., and Chrispin Ince as plaintiffs and approved by order dated June 25, 2008, entered June 28, 2008.

[7] The July 29, 2008 amendment added Hillman Faucher as a plaintiff and was approved on August 13, 2008.

fifty-seven plaintiffs brought or joined this case to assert claims against Hess and HOVENSA for breach of contract, extortion, intentional infliction of emotional distress, negligent infliction of emotional distress, breach of the duty of good faith and fair dealing, and coercion. They seek damages, including punitive damages, for lost income, mental anguish, physical and psychological injuries, medical expenses, as well as pain, suffering, and loss of enjoyment of life. The first-amended complaint was allowed as a matter of course because the Hess Defendants had not appeared yet. *Cf.* Fed. R Civ. P. 15(a) (2005 ed. ("A party may amend the party's pleading once as a matter of course at any time before a responsive pleading is served.") The second-, third-, fourth- fifth- and sixth-amended complaints were allowed on motion. All six complaints have been answered by both defendants. Only the motion to amend the fourth-amended complaint, i.e., to file a fifth-amended complaint, was opposed by Hess and HOVENSA.

¶4 The parties engaged in discovery. Hess and HOVENSA filed a motion for summary judgment, which the *Grant* plaintiffs opposed. Hess and HOVENSA also filed a motion for separate trial, which the *Grant* plaintiffs opposed. Both motions are still pending. Several plaintiffs agreed to dismiss their claims against Hess and HOVENSA,[8] which leaves forty-two individuals in *Grant* as party-plaintiffs. Additionally, the first-named plaintiff, Lenard Grant, passed away some time before April 10, 2012, which was when plaintiffs' counsel filed notice that the Magistrate Division of the Superior Court

[8] Clefryn de Lande and Lenroy Phillip stipulated to dismiss their claims against Hess and HOVENSA on July 23, 2013, which the Court approved the same day. The order was not entered until August 16, 2013, however. Eleven other plaintiffs—Kenrick Sylvester, Clarence Jarvice, Matthew Cazaubon, Marilyn M. Nicholas, Nazim Mohammed, Octave Griffith, Wayne Charles, Albin Alleyne, David Canton, Hillman Faucher, and Emilinda Pierre—had stipulated to dismiss their claims a month earlier, on June 19, 2013, which the Court approved by orders dated July 2, 2013, and entered July 8, 2013. Urias Desir stipulated to dismiss his claims on September 28, 2012, which the Court approved on October 16, 2012. Finally, Kadar Mohansingh dismissed his claims against both defendants, but through a December 20, 2007 motion, which the Court granted on January 9, 2008, order entered January 11, 2008. Later amendments to the complaint removed Mohansingh from this case. However, the caption has not been amended yet to remove any other plaintiffs dismissed from this case.

had appointed Ilma Grant as the personal representative of the Estate of Lenard Grant, so she could continue his claims. Hess and HOVENSA did not object. Ms. Grant also has not yet filed a motion to substitute.

¶5 In 2015, HOVENSA filed for bankruptcy, which automatically stayed the remaining *Grant* plaintiffs' claims against HOVENSA, and effectively stayed their claims against Hess as well, as the case went dormant until January 14, 2019, when the *Grant* plaintiffs and HOVENSA filed a joint notice of dismissal advising the Court that they had agreed to "submit[] . . . their [c]laims to final and binding valuation by former Territo[rial] Court Judge Henry Smock." (Jt Notice 3, filed Jan. 14, 2019.) In return, the *Grant* plaintiffs agreed to "release[] any and all other claims against HOVENSA" and "dismiss . . . HOVENSA as [d]efendant in this [c]ase." *Id.* In the interim, the Presiding Judge of the Superior Court designated *Grant* as complex by order dated August 6, 2018, entered August 17, 2018, and transferred it to the Complex Litigation Division.

¶6 In response to the January 14, 2019 joint notice, the Court issued an order on January 16, 2019, dismissing the remaining *Grant* plaintiffs' claims against HOVENSA. In a second order issued the same day, the Court expressed its concerns about how to proceed now that HOVENSA had been dismissed since the defendants, in moving for summary judgment and for separate trials, had "intertwined their arguments." (Order 2, entered Jan. 16, 2019.) By "joining together in the same motion," the defendants made "it extremely difficult to untangle" their respective arguments. *Id.* It might not be a concern for the separate trial motion, the Court noted,

> but it is for the summary judgment motion. Defendants represented in their summary judgment motion that "[the *Grant*] Plaintiffs claim that *HOVENSA* [not Hess] breached a contract by adding agreement to the DRP as a condition of the 2003 Plan." (Defs.' Mot. for Summ. J. 9, filed Oct. 29, 2009 (emphasis added).) Assuming, *arguendo*, that is correct, then the dismissal of HOVENSA from this case may necessitate a repleading of the complaint. What's more, Defendants, in their summary judgment motion, attack

> the viability of some of Plaintiffs' claims. *See id.* at i ("Extortion is Not a Recognized Cause of Action As a Matter of Law"); *id.* ("Coercion is Not a Recognized Cause of Action As a Matter of Law.").) Putting aside the concern that by the summary judgment phase, the viability of the claims have been assumed, i.e., answering the complaint assumes the claims are valid and hence discovery is engaged, the concern now is, following the changes in the law, *see generally Gov't of the V.I. v. Connor*, 60 V.I. 597 (2014) (*per curiam*), the Court may have to undertake a *Banks* analysis to decide the soundest rule for the Virgin Islands as [it] pertains to those claims asserted by Plaintiffs that are not yet recognized. That is, the Court cannot just dismiss the claims because they are not recognized as a matter of law. Rather, the Court will have to hold that they should not be recognized and then dismiss.

Id. at 2-3. The Court further observed that the remaining "[f]orty-two [*Grant*] plaintiffs [had] assert[ed] approximately five counts each equat[ing] to approximately 200 [total] claims . . . to be tried to a jury." *Id.* at 3. "Even if the Court were to take the counts one-by-one, i.e., try count one simultaneously for all forty-two [*Grant*] plaintiffs, the Court and 'the parties might still face a trial of potentially epic proportions,'" the Court explained. *Id.* at 3-4 (brackets omitted) (quoting Defs.' Mot. for Separate Trials 2, filed Sept. 14, 2010)).

¶7 The *Grant* plaintiffs were then ordered "to show cause why the claims of everyone except Leonard Grant should not be severed and the other[s] . . . ordered to refile individual complaints" "[g]iven the present posture of this case and the fact that Hess moved for separate trials" and "question[ed] . . . joinder." *Id.* at 3 (citing V.I. R. Civ. P. 21; *Alleyne v. Diageo USVI, Inc.*, 69 V.I. 307, 337 (Super. Ct. 2018); *Greene v. Mobil Oil Corp.*, 18 F.R.D. 430, 432 (E.D. Tex. 1999)). The plaintiffs filed their response on February 6, 2019. Hess filed its reply on February 27, 2019.

B. *Ince, et al. v. HOVENSA, LLC, et al.*

¶8 On January 14, 2013, thirteen employees of HOVENSA filed a complaint against HOVENSA and Hess. The complaint, as amended on February 12, 2013,[9] asserts six claims concerning

[9] Christopher Ince and Crespen Ince were both named in the January 14, 2013 complaint. Christopher was dropped in

discrimination, retaliation, and wrongful discharge. Only ten plaintiffs asserted age discrimination claims under section 451 of title 24 of the Virgin Islands Code (Count I). But all twelve plaintiffs asserted claims for intentional infliction of emotional distress (Count VI), wrongful discharge (Count III), and breach of the duty of good faith and fair dealing (Count II), allegedly because Hess and HOVENSA terminated them in retaliation for not signing a DRA and for filing the *Grant* case. One plaintiff, Decima John Baptiste, also asserted a sex discrimination claim (Count V).[10]

¶9 After stipulating with the plaintiffs for additional time to respond to the amended complaint, Hess and HOVENSA responded by filing twelve pre-answer motions – one for each plaintiff. Ten motions seek dismissal for failure to state a claim for relief. One motion seeks dismissal of Lenroy Phillip's claims because he signed a release in 2011 and the other seeks a stay and to compel arbitration, but only for Ted Mills. Relevant to the question of severance is the fact that Hess and HOVENSA moved to dismiss the breach of the duty of good faith and fair dealing claims of ten plaintiffs because they

> already brought suit against both Defendants in this very court for an alleged breach of the covenant of good faith and fair dealing with regard to the same issues involving the same dispute resolution agreement . . . . Just as in the instant complaint, in the *Grant* litigation, the plaintiffs also allege they had refused to sign the DRA and were denied bonuses due to their refusal.

(Defs.' Mot. to Dismiss Pl. Emanuel's Amend. Comp. 9, filed Apr. 12, 2013.) The *Ince* plaintiffs refuted the Hess and HOVENSA's contention that *Ince* is a repeat of *Grant*, countering that

> this action is obviously different than the previous lawsuit filed by Plaintiffs in *Grant et. al., v. HOVENSA, and HESS*, 443/2005, as Plaintiff [sic] have suffered the additional adverse employment action of being terminated and this suit, unlike *Grant*, includes claims for wrongful discharge . . . and discrimination . . . and alleges that the motive

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the February 12, 2013 amendment and Crespen moved up to be the first-named plaintiff.

[10] Count IV was inadvertently omitted.

> for the wrongful discharge is the retaliation against Plaintiff for suing Defendants in *Grant*.

(Pl. Emmanuel's Opp'n to Defs.' Mot. to Dismiss 2 n.1, filed May 31, 2013 (italics added).) In reply, Hess and HOVESNA reiterated that the *Ince* plaintiffs' breach of good faith claim should be dismissed as duplicative because they "fail[ed] to address how these claims are different" from *Grant*. (Defs.' Reply to Pl. Emmanuel's Opp'n to Defs.' Mot. to Dismiss 6, filed July 15, 2013.) "Since the current lawsuit is based on these same allegations . . . [the] breach of duty of good faith and fair dealing claim[s] should be dismissed with prejudice," Hess and HOVENSA argued. *Id.* at 7 (citations omitted).

¶10 As noted earlier, HOVENSA filed for bankruptcy, which also *Ince*, specifically the plaintiffs' claims against HOVENSA. It also effectively stayed their claims against Hess as well because *Ince* went dormant until October 25, 2018, when the plaintiffs filed a notice, stating that the District Court of the Virgin Islands, Bankruptcy Division, had agreed to lift the stay so their claims could proceed against HOVENSA. In exchange, the *Ince* plaintiffs agreed to limit their recovery to any amounts available under applicable insurance policies.

¶11 By order dated December 5, 2018, and entered December 28, 2018, the Presiding Judge of the Superior Court designated *Ince* as complex and transferred it to the Complex Litigation Division. After a review of the file, the Court issued an order *sua sponte* on January 18, 2019, noting the connection between *Ince* and *Grant*, particularly that the parties, in their motion papers had "point[ed] out that almost all *Ince* Plaintiff are also plaintiffs in the *Grant* case. The *Ince* Plaintiffs further admit[ted] that this case was filed partly in response to the *Grant* case, insofar as the basis for their wrongful discharge claims is retaliation for suing Defendants in *Grant*." (Order 2, entered Jan. 18, 2019 (quotation marks, ellipses, and citations omitted).) The Court referenced the January

16, 2019 order issued in *Grant*, directing the plaintiffs "to show cause why their claims should not be severed, and all Plaintiffs except Mr. Grant ordered to refile individual complaints," *id.*, and ordered the *Ince* plaintiffs to likewise brief misjoinder. Taking judicial notice that, except for Joseph Bridgewater and Ronald Charles, all *Ince* plaintiffs are also *Grant* plaintiffs, the Court further questioned

> whether it would be more efficient—assuming severance and refiling were ordered—to consolidate *Ince* and *Grant*. . . . Those Plaintiffs with claims in *Grant* and *Ince* could replead all their claims within the same, separately-filed complaints. Once refiled, the Court could then open a master case to manage the *Grant*/*Ince* cases together, which would also enable the Court to grant the parties leave to refile master motions papers or perhaps designate a lead case for purposes of ruling on the pre-answer motions.

Id. at 2-3 (citations omitted).

¶12 The *Ince* plaintiffs were given twenty-one days to show cause in writing why *Ince* should not be consolidated with *Grant* but the claims of all plaintiffs except for Lenard Grant and Crespen Ince severed. Hess and HOVENSA were given fourteen days to reply to the plaintiffs' response. Neither side responded.

II. DISCUSSION

¶13 Courts have discretion to "add or drop a party" or "sever . . . claim[s]," but only "on just terms." V.I. R. Civ. P. 21. "Misjoinder of parties is not a ground for dismissing an action." *Id.* "[T]o remedy misjoinder the court has two remedial options: (1) misjoined parties may be dropped on such terms as are just; or (2) any claims against misjoined parties may be severed and proceeded with separately." *Abednego v. St. Croix Alumina, LLC*, 63 V.I. 153, 183 (Super. Ct. 2015) (ellipsis. quotation marks, and citation omitted); *accord D'Tel Communs. v. Roadway Package Serv. Inc.*, 987 S.W.2d 213, 214 (Tex. App. 1999) ("The remedy for misjoinder is not dismissal but severance." (citation omitted)). If dropping parties or severing claims will implicate the statute of limitations, "court[s] must choose to sever the claim, rather than to drop the party, because that is the just option. Once severed, the claims proceed separately as 'independent actions with separate judgments entered in each.'" *Abednego*, 63 V.I. at 183 (quoting *DirecTV, Inc. v. Leto*, 467 F.3d 842, 845 (3d Cir. 2006)).

¶14 Responding to the show cause order, the *Grant* plaintiffs object to severance, contending that "there are common issues as to liability among all the remaining Plaintiffs." (Resp. 1) They also contend that *Grant* is "a very simple case with streamlined facts—that Plaintiffs were entitled to bonuses under the Annual Compensation Plan Bonus Program, Plaintiffs performed all obligations under the ACP to receive bonuses, but Defendant refused to pay Plaintiffs their earned bonuses because Plaintiffs refused to sign Dispute Resolution Agreements." *Id.* Since "there are only a few dozen Plaintiffs, this case can proceed as plead." *Id.* But if the Court disagrees, the *Grant* plaintiffs ask "that the individual cases be consolidated for purposes of discovery and all pre-trial litigation." *Id.* "Because all Plaintiffs share the same claims, the common issues *are* the principal issues," the *Grant* plaintiffs contend. *Id.* at 3. "Consolidation will not cause delay in this case," they argue. *Id.* at 4. "Consolidation will [also] not lead to confusion at trial if all pre-trial litigation, discovery and motion practice are consolidated, but the cases tried separately." *Id.*

¶15 Hess disagrees, claiming the "Plaintiffs' analysis is too simplistic." (Reply 1.) Hess agrees that the *Grant* "Plaintiffs have all alleged the same *causes of action*." *Id.* But Hess counters that their "*claims* are not the same." *Id.* Hess takes intentional infliction of emotional distress as an example and argues that, while each plaintiff asserted the same cause of action, proving each claim will "require different testimony and evidence from each Plaintiff because their . . . emotional distress [is] not the same." *Id.* at 1-2. "Severance will eliminate the inherent and harmful prejudice," Hess contends, of "different damages [being] presented at a single trial." *Id.* Like the *Grant* plaintiffs, Hess also hedges its bet. Hess recommends that, instead of severing, the Court should first decide "the outstanding Motion for Summary Judgment . . . [which might] determine the 'common issues' as to all Plaintiffs . . . [and] . . . eliminate the need for a trial at all." *Id.* at 2. If the *Grant* plaintiffs' claims survive summary judgment, then the Court could "sever each Plaintiff's claim for a trial . . . or sever the remaining Plaintiffs' claims into trial groups." *Id.*

¶16 As for the concerns the Court had raised about HOVENSA having been dismissed but not Hess, and HOVENSA and Hess having comingled their arguments for summary judgment, Hess blames the *Grant* Plaintiffs. Hess and HOVENSA's arguments were intertwined, Hess contends, "[b]ecause Plaintiffs did not make separate allegations against Hess, rather they alleged that Hess ratified HOVENSA's decisions." *Id.* So, "a finding that summary judgment is appropriate as to HOVENSA would likewise be appropriate as to Hess," Hess contends. *Id.* But if the Court requires, "Hess will provide briefing regarding arguments in favor of summary judgment for Hess alone." *Id.* However, the *Grant* plaintiffs should not be "given another opportunity to allege new facts or causes of action against Hess – even considering . . . the severance of individual Plaintiff's claims." *Id.* at 3. "Plaintiffs have amended their Complaint six times," Hess argues, "and have had numerous bites at the apple to allege all causes of action and facts in support." *Id.*

¶17 Having considered the arguments, and reviewed both *Grant* and *Ince*, the Court finds that the *Grant* and *Ince* plaintiffs have misjoined their claims and the remedy is consolidation followed by severance. First, as Hess points out, the *Grant* plaintiffs may have asserted the same claims for relief, and the relief they seek might be the same (monetary damages), but they don't have the same claim. Here, Hess attempts to hone in on the distinction between claims and causes of action. There is a distinction. "The terms 'cause of action' and 'claim' are not interchangeable." *Greenwaldt v. Ill. Farmers Ins. Co.*, 526 N.W.2d 202, 204 (Minn. Ct. App. 1994) (citation omitted); *see also In re: Hampers*, 97 A.3d 1106, 1113 (N.H. 2014) ("The term cause of action means the right to recover and refers to all theories on which relief could be claimed arising out of the same factual transaction in question." (quotation marks and citation omitted)); *In re: Jorden*, 249 S.W.3d 416, 421 (Tex. 2008) ("A cause of action has been defined as a fact or facts entitling one to institute and maintain an action, which must be alleged and proved in order to obtain relief." (quotation marks and footnoted citations omitted)). But the distinction between claims and causes of action is not controlling here because the concern is not whether the claims asserted by the plaintiffs arise out of the same event, meaning the "what" that caused them to file this action. Rather, the concern is that the cause of each plaintiff's action, i.e., what ensued after each of them refused to sign the DRA, is different and how it affected each of them, i.e., lost wages, emotional distress, and so forth, is different. And this is why the *Grant* plaintiffs are incorrect.

¶18 The plaintiffs do not, as they contend, "*share* the same claims." (Resp. 3 (emphasis added).) There isn't just one count of Count III, intentional infliction of emotional distress. Rather, there are forty-two counts of Count III: one for each of the forty-two plaintiffs still parties to *Grant*. Likewise, there are forty-two counts of Count I, breach of contract, and forty-two counts of Court IV, breach of the duty of good faith and fair dealing. This is why Hess is correct, "that a trial on all of the Plaintiffs' combined claims could last for months." (Reply 1.)

¶19 Similarly, in *Ince*, all twelve plaintiffs may have asserted Count II, breach of the duty of good faith and fair dealing. But there really are twelve claims within Count II. By contrast, there is only one count of Count V—sex discrimination—because only Decima John Baptiste alleges she was discriminated on the basis of her gender. Likewise, "[a]ll [*Ince*] Plaintiffs except [Ronald] Charles and [Craig] Emanuel were discriminated against as a result of their age in violation of 24 V.I.C. § 451." (Amend. Compl. ¶ 189 (punctuation and section symbol added).) So, even though it appears as if there is only Count I—age discrimination—in fact there are ten counts of Count I: one for each plaintiff except Ronald Charles and Craig Emmanuel.

¶20 But more importantly, the several amendments in *Grant* truly highlight why the plaintiffs misjoined their claims. Hess (and HOVENSA before dismissal) may have had different affirmative defenses for each plaintiff, as was demonstrated in *Ince* where two of the twelve pre-answer motions Hess and HOVENSA filed asserted different grounds for relief: a release in one instance and an agreement to arbitrate in another. Furthermore, each amendment in *Grant* added new plaintiffs, which many courts have rejected. That is, an amendments may add new defendants, but not new plaintiffs, because it allows tardy plaintiffs to benefit from diligent plaintiffs and effectively circumvent the statute of limitations. *See, e.g.*, *Asher v. Unarco Material Handling, Inc.*, 596 F.3d 313, 318-19 (6th Cir. 2010) ("Rule 15(c)(1)(B) allows relation back of an amendment asserting a claim or defense, but it does not authorize the relation back of an amendment adding a new party. Similarly, Rule 15(c)(1)(C) permitting relation back of an amendment changing a party or its name applies, by its plain language, to changes to defendants. Although various courts have extended the relation-back provisions of Rule 15(c)(1)(C) to amendments changing identities of plaintiffs, the type of changes permitted are limited to corrections of misnomers or misdescriptions." (quotation marks and citations omitted)); *see also United States v. Educ. Mgmt. Corp.*, 871 F. Supp. 2d 433, 461 (W.D. Pa. 2012) ("[A] failure to limit the relation back doctrine would allow the tardy plaintiffs to benefit from the diligence of the other victims and, more importantly, could cause defendants' liability to increase geometrically and their defensive strategy to become far more complex long after the statute of limitations had run. Even if, as here, there were no showing of specific prejudice in the sense of lost or destroyed evidence, defendants would still be deprived of their interest in repose. At some point, defendants should have notice of who their adversaries are." (colon, paragraph break, and citations omitted). Virgin Islands courts have not addressed this question yet. *Cf. Der Weer v. Hess Oil Virgin Island Corp.*, 61 V.I. 87, 114 (Super. Ct. 2014) (noting that "federal courts are divided on whether Rule 15(c) applies when a plaintiff seeks leave to amend to add another plaintiff, rather than substitute one plaintiff for another." (footnote omitted)). And it is not at issue here because Hess waived the statute of limitation defense in *Grant* by not raising it in opposition to the several motions to amend the complaint – the only objection being to the motion to amend the fourth-amended complaint and then because of the potential delay. Nonetheless, the statute of limitations highlights why courts require plaintiffs who do not truly "share" the same claim to file their own cases rather than "piggyback" on each other.

¶21 Additionally, neither side opposes separate trials. (*Cf.* Reply 2 ("It is important to note that Plaintiffs did not object to Defendant's request for separate trials.").) Bifurcation and severance are not the same. *Cf. In re: United Fire Lloyds*, 327 S.W.3d 250, 254 (Tex. App. 2010) ("Severance and bifurcation are distinct trial procedures. A severance divides the lawsuit into two or more separate and independent causes. However, the bifurcation of a trial leaves the lawsuit intact but enables the court to hear and determine one or more issues without trying all controverted issues at the same time." (citations omitted)). But to bifurcate forty-two claims, trying count one for all plaintiffs simultaneously, or to bifurcate each plaintiff's claims, trying all claims for each plaintiff forty-two different times, would consume too much time. (*Cf.* Reply 1 ("It is easy to conceive that a trial on all of the Plaintiffs' combined claims could last for months.").) More importantly, "[e]ven if a few Plaintiffs' claims proceeded to trial, all Plaintiffs who obtained a jury verdict in their favor could not enforce their judgments and no order in this case would be final and appealable until all . . . claims had been decided on the merits, either through trial or dispositive motion." *Alleyne*, 69 V.I. at 337 (citations omitted). Both sides concede that, the Court could manage the re-filed cases together if the claims were severed and refiled. Although the parties also technically speak of consolidation—which would certainly be unjust, slow, and expensive, *contra* V.I. R. Civ. P. 1—the Court instead understands the parties to mean coordination. (*Cf.* Resp. 2 ("This Court has held that opening a master case to coordinate some aspect of pretrial procedure in multiple cases is inherent within authority of courts to manage their cases and at least implied within the authority granted by Virgin Islands Rule of Civil Procedure." (quotation marks, brackets, footnote, and citation omitted)); *accord* Reply 1 (citing *Alleyne*, 69 V.I. at 336)).)

¶22 Finally, the *Ince* plaintiffs did not respond to the show cause order. Silence in response to an order to show cause can be construed as consent or as lack of opposition. *Cf. United States v. Hronek*, 95 F. App'x 827, 828 (6th Cir. 2004) ("The government has waived oral argument, and this court construes Hronek's failure to respond to its show cause letter concerning oral argument as a waiver of such argument."); *Williams v. Sullivan*, No. 2: 09-cv-3160 KJN P, 2011 U.S. Dist. LEXIS 113738, at *2 (E.D. Cal. Sep. 30, 2011) ("The court deems plaintiff's failure to respond to the order to show cause to be a waiver of opposition."); *Allstate Ins. Co. v. Halima*, No. 06 CV 1316 (DLI) (MDG), 2008 U.S. Dist. LEXIS 49414, at *4 n.1 (E.D.N.Y. June 26, 2008) ("Laurie Lamare, D.C. is a non-settling defendant, who failed to respond to the September 21, 2007 Order to Show Cause why the Settlement Bar Order should not be issued. The court construes this as a lack of opposition to the motion."). The Court will construe the *Ince* Plaintiffs' failure to respond as an indication that they do not object to consolidation and severance. But Hess and HOVENSA were not permitted to reply until after the *Ince* Plaintiffs' responded. Since the *Ince* Plaintiffs did not respond, Hess and HOVENSA, technically, had nothing to reply to. Construing their silence as a lack of opposition may not be proper. Nonetheless, Hess and HOVENSA will not be prejudiced if the Court preserves the status quo by striking the motions papers for all plaintiffs except Mr. Ince and directing the Clerk's Office to refile and redocket them in each plaintiff's respective case. *Cf.* V.I. R. Civ. P. 21 ("[T]he court may at any time, on *just terms*, add or drop a party." (emphasis added)); *accord Albert v. Hess Oil V.I. Corp.*, 2019 VI Super 45 ¶ 17, n.6 ("If severance does not require the filing of an amended complaint, because the dropping of misjoined parties is a remedy and not a dismissal with leave to file an amended complaint, then severance also should not require the parties to re-file or re-brief pending motions. Forcing the parties to re-file fully-briefed motions is not just, speedy, or inexpensive." (quotation marks, citations, brackets, and ellipses omitted)). Consolidating *Ince* and *Grant* and then dropping all plaintiffs except Mr. Ince and Mr. Grant's personal representative,[11] and ordering the other plaintiffs to refile individual complaints is the most just, speedy, and inexpensive approach to take to remedy misjoinder.

III. CONCLUSION

¶23 For the reasons stated above, the Court finds that the plaintiffs in *Grant* and *Ince* have misjoined their claims. To remedy misjoinder, courts may drop parties and sever claims. Here, the Court will remedy misjoinder first, by consolidating *Grant* and *Ince* together and then, by dropping

[11] By separate order the Court will also *sua sponte* substitute Ilma Grant as personal representative of the Estate of Lenard Grant as the first-named plaintiff in *Grant* in place of Mr. Grant. None of the parties objected to her notice of appointment.

all plaintiffs from each case except the first-named plaintiffs. Plaintiffs Grant and Ince will be given leave to file amended complaints that remove the other plaintiffs and their claims, while the remaining plaintiffs must refile individual complaints. The plaintiffs in *Grant* who also are parties in *Ince* will also be given leave to supplement their forthcoming complaints with the claims they asserted in *Ince*. Finally, because Hess and HOVENSA filed pre-answer motions in *Ince*, the Court will further strike all motion papers filed in *Ince* that do not pertain to Mr. Ince and direct the Clerk's Office to redocket and refile the motion papers within each plaintiff's respective case once opened. Appropriate order follows.

Date: May 20, 2019

ROBERT A. MOLLOY
Judge of the Superior Court

ATTEST:
ESTRELLA H. GEORGE
Clerk of the Court
By: ____________________
Court Clerk Supervisor
Dated: 5/20/19