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**UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA**

WEALTHY INC. and DALE
BUCZKOWSKI,
Plaintiff,
v.
SPENCER CORNELIA, CORNELIA
MEDIA LLC, and CORNELIA
EDUCATION LLC,
Defendants.

Case No. 2:21-cv-01173-JCM-EJY

**REPLY IN SUPPORT OF DEFENDANTS’
MOTION TO CONSOLIDATE CASES**

Defendants Spencer Cornelia, Cornelia Media LLC, and Cornelia Education LLC (collectively, “Defendants”) hereby file their Reply in support of their Motion to Consolidate Cases (ECF No. 43).

1.0 INTRODUCTION AND FACTUAL BACKGROUND

John Mulvehill and his entities should have been defendants in this case from the day it was filed. Both the complaint in this case and the complaint in the Mulvehill Action are essentially identical and are premised on the same statements and conduct. Despite this, Plaintiffs Wealthy Inc. and Dale Buczkowski (collectively, “Plaintiffs”) argue that their decision to wait nearly a year to file suit against the person who actually made the statements at issue counsels

1 against consolidation and that there are actually no issues in common between the two. The simple
2 fact is that these two cases are the same and will necessarily involve resolution of the same issues.
3 There is no reason not to consolidate them.

4 **2.0 LEGAL ARGUMENT**

5 In determining whether to consolidate cases, courts weigh the time and effort that will be
6 saved by the consolidation against any inconvenience, delay, or expense the consolidation would
7 cause. *Huene v. U.S.*, 743 F.2d 703 (9th Cir. 1984). Consolidation is appropriate here because
8 both cases involve the same facts and law, consolidation will save the parties and the Court
9 significant time and effort, and no party will be substantially prejudiced by consolidation.

10 **2.1 Similarities Between the Cases**

11 The Motion lays out the similarities between this case and the Mulvehill Action. (ECF No.
12 43 at 3-4.) Both actions are premised on the same statements, involve the same parties, allege the
13 same kinds of damages, and bring the same claims for relief. It is obvious that both cases will
14 involve resolution of the same factual and legal issues. There is a significant risk of inconsistent
15 findings or judgments if these cases are heard separately and before different juries.

16 Plaintiffs respond to this inevitable conclusion by focusing not on their claims for relief,
17 but rather Defendants’ defenses, namely the affirmative defenses of truth, substantial truth, and
18 opinion or rhetorical hyperbole. Plaintiffs state in sweeping fashion that Defendants have provided
19 no evidence to support any of these defenses, but in support identifies an admission of apparent
20 falsity as to one of the multiple statements at issue in this case. Defendants will not address each
21 of the statements at issue and the evidence that has been provided regarding truth, falsity, or
22 opinion, as Plaintiffs have not done this work in their Opposition, except to say Plaintiffs are
23 mischaracterizing the state of discovery.

24 More importantly, however, Plaintiffs ignore their status in this case. They have brought
25 claims for defamation, IIED, business disparagement, and violation of the Lanham Act. It is their
26 affirmative burden to show that all of the statements at issue are false and have caused compensable
27

1 damages, as well as other elements unique to the IIED and Lanham Act claims. Plaintiffs will have
2 to make these exact same showings in the Mulvehill Action, as well.

3 Another issue in common with both cases is whether Plaintiffs are public figures. While
4 this is a legal conclusion, Mulvehill is in a far superior position to prove Plaintiffs' status as public
5 figures. Defendants were unaware of Plaintiffs and their reputation until shortly before publishing
6 the videos at issue in this case, whereas Mulvehill knew Buczkowski for approximately 7 years
7 prior to any of the videos being published. Mulvehill's personal familiarity with Buczkowski will
8 unquestionably provide additional evidence and information relevant to the Court's determination
9 as to whether Plaintiffs are public figures. Defendants are attempting to depose Mulvehill on these
10 issues, among others, but unless the Court grants Defendants' pending motion to extend discovery,
11 they will not have the opportunity to do so.¹

12 **2.2 Efficiencies in Consolidation**

13 Plaintiffs argue against consolidation because they claim it would result in significant delay
14 due to the different procedural postures of the cases.² This is a problem entirely of Plaintiffs' own
15 making, however, and it would be manifestly unjust to allow them to benefit from this tactic.³ They
16

17 ¹ Plaintiffs claim that Defendants not attempting to depose Mulvehill earlier is inexcusable,
18 but they ignore that Mulvehill is a resident of Brazil who, by his own account, has insufficient ties
19 with Nevada for this Court to exercise jurisdiction over him. As explained in the pending Motion
20 to Extend Discovery, securing his appearance at a deposition involuntarily would have been
21 extremely difficult and costly, if not impossible. It was only after Buczkowski's August 13, 2022
22 deposition that Mulvehill indicated he would be willing to sit for a voluntary deposition in this
23 matter. Once that happened, Defendants promptly noticed his deposition. Mulvehill's counsel later
24 informed Defendants that he would not be available for a deposition until after the current close of
25 discovery.

26 ² It is worth noting that the only authority Plaintiffs cite for this proposition is non-binding
27 and out of circuit. But even if this authority were persuasive, "[t]he fact that the cases are at
different discovery stages is not fata to the consolidation motion." *Monzo v. Am. Airlines, Inc.*, 94
F.R.D. 672, 673 (S.D.N.Y. 1982). Rather, "cases at different stages of litigation are routinely
consolidated." *Internet Law Library, Inc. v. Southridge Capital Mgmt., LLC*, 208 F.R.D. 59, 62
(S.D.N.Y. 2002).

³ Defendants have asked Plaintiffs multiple times why they chose to wait so long before
suing Mulvehill, but Plaintiffs have consistently refused to provide any explanation for this
decision.

1 chose not to sue the person who actually made the statements at issue for nearly a year, on the eve
 2 of discovery ending prior to the Court's most recent extension. They did this despite mentioning
 3 Mulvehill dozens of times in their Complaint and knowing from the outset that he made the
 4 complained-of statements. And now they have the gall to blame Defendants for the delay that
 5 consolidation would cause? Plaintiffs are solely to blame for this, and their own tactical delay
 6 should *Defendants'* request to consolidate the cases. Plaintiffs also ignore that consolidation would
 7 further streamline this litigation by mooted one of Defendants' affirmative defenses, failure to
 8 join an indispensable party. Similarly, Plaintiffs are not in a position to complain about
 9 Defendants' delay of 3 months in moving to consolidate after they waited so long to file suit against
 10 Mulvehill. They provide no authority for the proposition that a delay of approximately 3 months
 11 in moving for consolidation is fatal to Defendants' Motion, particularly where any possible delay
 12 in litigation was caused by Plaintiffs' own, much longer, delay in filing suit against Mulvehill.

13 Plaintiffs otherwise do not address other efficiencies in consolidation, such as the complete
 14 overlap in witnesses, testimony, and evidence.

15 **2.3 No Party Will Be Prejudiced by Consolidation**

16 The only prejudice that Plaintiffs allege if the cases are consolidated is possible jury
 17 confusion, with a jury possibly attempting to apportion liability between Defendants and the
 18 Mulvehill defendants. But this is hardly a unique problem; multiple defendants are sued in
 19 intentional torts cases with joint and several liability all the time. The proper recourse for any
 20 potential jury confusion is pre-trial motion practice after dispositive motions are decided to
 21 preclude any arguments as to apportionment of liability. Consolidation would not prejudice
 22 anyone.

23 **3.0 CONCLUSION**

24 For the foregoing reasons, the Court should grant the instant Motion and consolidate these
 25 cases.

1 Dated: September 6, 2022.

2 Respectfully Submitted,

3 /s/ Marc J. Randazza

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on September 6, 2022, I electronically filed the foregoing document with the Clerk of the Court using CM/ECF. I further certify that a true and correct copy of the foregoing document being served via transmission of Notices of Electronic Filing generated by CM/ECF.

Respectfully submitted,

/s/ Marc J. Randazza

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