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**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA**

JAMES W. BRADY and PATRICIA  
M. BRADY,

Plaintiffs,

v.

GRENDENE USA, INC., a Delaware  
Corporation, and GRENDENE S.A., a  
Brazil Corporation,

Defendants.

AND RELATED COUNTERCLAIMS

CASE NO. 3:12-cv-0604-GPC-KSC

**ORDER:**

**(1) DENYING GRENDENE'S  
MOTION TO CONSOLIDATE;**

**[ECF No. 185]**

**(2) VACATING HEARING DATE**

**I. INTRODUCTION**

Before the Court is Defendants Grendene USA, Inc. and Grendene S.A.'s (collectively, "Grendene") Motion to Consolidate. (ECF No. 185). and Plaintiffs James W. Brady and Patricia M. Brady's (collectively, the "Bradys") oppose. (ECF No. 190.) The parties have fully briefed the motions. (ECF Nos. 185, 190.) The Court finds the motions suitable for disposition without oral argument pursuant to Civil Local Rule 7.1(d)(1). Upon review of the moving papers, admissible evidence, and applicable law, the Court DENIES Grendene's Motion to Consolidate.

**II. BACKGROUND**

On March 9, 2012, the Bradys filed a complaint against Grendene alleging

1 trademark infringement (the “Trademark Action”). (ECF No. 1.) On September 27,  
2 2013, Grendene filed an answer in the Trademark Action. (ECF No. 56.) On May 30,  
3 2014, Grendene filed a motion for summary judgment in the Trademark Action arguing  
4 that a February 16, 1995, settlement agreement between Made in Brazil, Inc., the  
5 Bradys’ company, and the Ipanema Show Corporation (“ISC”) (the “Settlement  
6 Agreement”) bars the Bradys’ trademark infringement causes of action because  
7 Grendene has succeeded to ISC’s rights in the Settlement Agreement. (ECF No. 72.)

8 On December 15, 2014, Grendene filed a complaint against the Bradys alleging  
9 a breach of the Settlement Agreement (the “Breach of Contract Action”). Complaint,  
10 *Grendene USA, Inc. v. Brady*, 3:14-cv-2955-GPC-KSC (S.D. Cal. Dec. 15, 2014), ECF  
11 No. 1. On January 6, 2015, Grendene filed a motion to consolidate this action with the  
12 Breach of Contract Action. (ECF No. 185.) On February 27, 2015, the Bradys filed an  
13 opposition to Grendene’s motion to consolidate. (ECF No. 190.)

14 In its complaint in the Breach of Contract Action, Grendene alleges that: (1) it  
15 is a successor to the Settlement Agreement, and (2) the Bradys have breached that  
16 agreement’s covenant not to sue by filing the Trademark Action. Complaint, *Grendene*  
17 *USA, Inc. v. Brady*, 3:14-cv-2955-GPC-KSC (S.D. Cal. Dec. 15, 2014), ECF No. 1  
18 Based on that breach, Grendene seeks damages for “attorneys’ fees, costs and  
19 expenses.”*Id.*

### 20 III. LEGAL STANDARD

21 Federal Rule of Civil Procedure 42(a) grants the Court broad discretion to  
22 consolidate separate actions. *Investors Research Co. v. U.S. Dist. Court for Cent. Dist.*  
23 *of Cal.*, 877 F.2d 777, 777 (9th Cir. 1989). Under Rule 42(a), the Court may  
24 consolidate actions that involve common questions of law or fact. FED. R. CIV. P. 42(a).  
25 The Court should also consider weigh any time and effort saved by consolidation  
26 against any “inconvenience, delay, or expense that it would cause.” *Huene v. United*  
27 *States*, 743 F.2d 703, 704 (9th Cir.1984) (citations omitted).

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1 **IV. DISCUSSION**

2 Grendene moves to consolidate this action with the Breach of Contract Action.  
3 (ECF No. 185.) Grendene argues that both “actions involve common questions of law  
4 and fact.” (*Id.* at 2.) The Bradys opposition to consolidation mainly restates the same  
5 arguments made in their motion to dismiss the Breach of Contract Action, (*see* ECF  
6 No. 190), which the Court rejected in that action. Order Denying Motion to Dismiss,  
7 *Grendene USA, Inc. v. Brady*, 3:14-cv-2955-GPC-KSC (S.D. Cal. April 1, 2015), ECF  
8 No. 21

9 Grendene filed its motion to consolidate on January 6, 2015, a mere three weeks  
10 after it filed its complaint in the Breach of Contract Action. (*See* ECF Nos. 185.) Thus  
11 it appears that Grendene filed this motion to consolidate as an end run around  
12 Grendene’s obligation to satisfy both Federal Rule of Civil Procedure 16’s good cause  
13 requirement and the *Foman* factors under Federal Rule of Civil Procedure 15 if it  
14 wished to amend its answer in the Trademark Action to add a breach of contract  
15 counterclaim.<sup>1</sup> *See Foman v. Davis*, 371 U.S. 178, 182 (1962) (discussing the factors  
16 that apply to a motion to amend under Rule 15); *Johnson v. Mammoth Recreations,*  
17 *Inc.*, 975 F.2d 604, 608–09 (9th Cir. 1992) (noting that a party must first meet Rule  
18 16’s good cause requirement if a scheduling order deadline has passed, and then show  
19 that amendment is proper under Rule 15); FED. R. CIV. P. 15(a)(2) (“The court should  
20 freely give leave [to amend] when justice so requires.”); FED. R. CIV. P. 16(b)(4) (“A  
21 schedule may be modified only for good cause and with the judge’s consent.”). If  
22 Grendene wanted its breach of contract counterclaim heard in the Trademark Action,  
23 it should have filed a motion to amend its answer, yet it did not. In light of such a bald-  
24 faced attempt to avoid Rules 15 and 16, the Court declines to exercise its discretion to  
25 consolidate the actions and thus DENIES Grendene’s motion to consolidate.

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28 <sup>1</sup> The deadline to amend pleadings in the Trademark Action was March 14, 2014.  
(ECF No. 62.)


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**V. CONCLUSION AND ORDER**

Based on the foregoing, **IT IS HEREBY ORDERED** that:

1. Grendene's Motion to Consolidate, (ECF No. 185), is **DENIED**; and
2. The hearing set for April 3, 2015, is **VACATED**.

DATED: April 1, 2015

  
HON. GONZALO P. CURIEL  
United States District Judge