

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF LOUISIANA**

**KURIAN DAVID, et al.
Plaintiffs**

CIVIL ACTION

VERSUS

No. 08-1220

**SIGNAL INTERNATIONAL, LLC, et al.,
Defendants**

SECTION "E"

**EQUAL EMPLOYMENT OPPORTUNITY
COMMISSION,
Plaintiff**

CIVIL ACTION

VERSUS

No. 12-557

**SIGNAL INTERNATIONAL, LLC, et al.,
Defendants**

SECTION "E"

**LAKSHMANAN PONNAYAN ACHARI, et al.,
Plaintiffs**

CIVIL ACTION

VERSUS

**No. 13-6218
(c/w 13-6219, 13-6220,
13-6221, 14-732, 14-
1818)**

**SIGNAL INTERNATIONAL, LLC, et al.,
Defendants**

SECTION "E"

**Applies To:
David v. Signal
(No. 08-1220)**

ORDER

On January 14, 2015,¹ the Court ordered Plaintiffs and Signal to submit memoranda addressing the following: (1) the defendants against whom the parties may seek default judgment in this trial, (2) the issues on which the parties may seek default judgment, and (3) whether the allegations in the Sixth Amended Complaint (for Plaintiffs) and the cross claim (for Signal) are sufficient to support a default judgment under *Wooten v. McDonald Transit Associates, Inc.*² Plaintiffs and Signal have filed their briefs.³ The Court addresses Signal's crossclaims in this Order.

On July 29, 2014, Signal answered the Sixth Amended Complaint and asserted crossclaims against the Recruiter Defendants, the Legal Facilitator Defendants, and the Labor Broker Defendants.⁴ Upon motion of Signal, the clerk of court entered default against J&M Associates, Inc., J&M Marine, LLC, and Billy Wilks (collectively "J&M") on January 5, 2015.⁵ The only crossclaim remaining against J&M is for tortious interference with contractual relations.⁶ The question presented is whether the allegations in the crossclaim adequately state a claim upon which default judgment can be entered under *Wooten*.

Wooten involved a claim under the Age Discrimination in Employment Act.⁷ The district clerk entered default, and the plaintiff moved for default judgment.⁸ The district court held a hearing to determine damages.⁹ In addition to presenting evidence of

¹ R. Doc. 2147.

² No. 13-11035, 2015 WL 51251 (5th Cir. 2015).

³ R. Docs. 2151, 2159.

⁴ Signal borrowed these groupings from Plaintiffs' Third Amended Complaint.

⁵ R. Doc. 2063.

⁶ See R. Doc. 2148 (dismissing certain claims against Labor Broker Defendants); R. Doc. 2151, p. 2 (acknowledging sole remaining crossclaim against J&M).

⁷ 29 U.S.C. §§ 621–634.

⁸ *Wooten*, 2015 WL 51251, at *1.

⁹ *Id.* at *2.

damages at the hearing, the plaintiff also elaborated on the allegations in his complaint.¹⁰ The district court entered default judgment, which the defendant eventually moved to set aside.¹¹ The district court denied the motion.¹²

On appeal, the Fifth Circuit addressed whether the district court erred in entering default judgment.¹³ The analysis proceeded in three parts. The court first addressed whether the complaint adequately pleaded a *prima facie* case of age discrimination.¹⁴ Concluding that it did not, the court then considered whether the testimony at the damages hearing provided a sufficient basis to support default judgment.¹⁵ The court answered this question in the affirmative, which then tied up the following issue: can testimony at a damages hearing "cure fatally deficient pleadings for the purpose of entering a default judgment[?]"¹⁶ The panel majority answered this question with a resounding "no."¹⁷

Wooten instructs that a district court must examine the complaint (or crossclaim) before entering default judgment.¹⁸ While the lesson is clear, the lesson plan is not. The Fifth Circuit identified three possible approaches for determining whether the allegations of a complaint will adequately support default judgment: (1) inquire whether "the facts as painted by the complaint 'might [. . .] have been the case;'"¹⁹ (2) examine

¹⁰ *Id.*

¹¹ *Id.*

¹² *Id.*

¹³ *Id.* at *3.

¹⁴ *See id.* at *4–5.

¹⁵ *Id.* at *5–8.

¹⁶ *Id.* at *8.

¹⁷ *Id.* at *8–12. Judge Wiener dissented.

¹⁸ *See id.* at *12 ("[W]e cannot uphold the entry of default judgment on pleadings that are infirm . . .").

¹⁹ *Id.* at *5 (alterations and emphasis in original) (quoting *Trans World Airlines, Inc. v. Hughes*, 449 F.2d 51, 64 (2d Cir. 1971)).

whether the allegations merely "parrot the language" of the statute creating liability;²⁰ and (3) assess the factual allegations "under the familiar analysis used to evaluate motions to dismiss under Rule 12(b)(6)."²¹ Unfortunately for district courts, the panel majority did not endorse any one of these approaches over the others. Instead, the court concluded all three approaches were "broadly similar" and analyzed the allegations before it under each.²²

With this guidance in mind, the Court must now determine whether Signal has met the *Wooten* standard for pleading a cause of action against J&M for tortious interference with contractual relations. Mississippi law governs this claim.²³ In order to prevail on a theory of tortious interference with contractual relations, a plaintiff must prove:

(1) that the acts were intentional and willful; (2) that they were calculated to cause damage to the plaintiffs in their lawful business; (3) that they were done with the unlawful purpose of causing damage and loss, without right or justifiable cause on the part of the defendant (which constitutes malice); and (4) that actual damage and loss resulted.²⁴

The third element—scienter—can be inferred "when a defendant knows a contract exists between two parties and does a wrongful act that he is certain or reasonably certain will interfere with the contract."²⁵ In addition to these elements, a plaintiff must also prove that a valid contract existed between the plaintiff and a third party and that the contract would have been performed "but for the alleged interference."²⁶

²⁰ *Wooten*, 2015 WL 51251, at *5 (quoting *DirecTv, Inc. v. Hoa Huynh*, 503 F.3d 847, 854 (9th Cir. 2007)).

²¹ *Wooten*, 2015 WL 51251, at *5.

²² *See id.*

²³ *See* R. Doc. 2143.

²⁴ *Coleman & Coleman Enters. v. Waller Funeral Home*, 106 So. 3d 309, 315–16 (Miss. 2012).

²⁵ *Id.* at 316.

²⁶ *Id.*

The Court has reviewed the allegations in the crossclaim and is unable to determine what J&M is alleged to have done. Count 8 merely regurgitates the elements of a cause of action for tortious interference with contractual relations. The body of the crossclaim consists largely of broad allegations against large groups of defendants. At most, Signal alleges J&M formed contracts with Indian workers long before Signal came into the picture. These allegations cannot support a claim for tortious interference with contractual relations. Simply put, a third party cannot interfere with a contract that does not yet exist. Furthermore, Signal has not pleaded that the Indian workers would have stayed with Signal but for the actions of J&M. In fact, Signal specifically pleads "that the H-2B workers left its employ for a *variety of reasons*, some of them leaving for *more than one reason* ." ²⁷ Some of these reasons are wholly independent of J&M's alleged contracts. ²⁸

Signal's brief further underscores the pleading deficiencies in the crossclaims. Rather than undertake the paragraph-by-paragraph analysis that *Wooten* requires—leaving this task instead to the Court—Signal merely points "to the threadbare recitat[ion] of the elements of [its] cause of action" and hopes for the best. ²⁹ Signal's inability to specifically identify the relevant allegations in its own crossclaim is telling.

²⁷ *Id.* at ¶579.

²⁸ *See, e.g., id.* at ¶579(a), (b), (d).

²⁹ *See Wooten*, 2015 WL 51251, at *5 (quoting *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009)); R. Doc. 2151, p. 10; R. Doc. 1748 at ¶¶ 626–32.


CONCLUSION

Signal's crossclaim allegations are fatally defective and therefore cannot support the entry of default judgment against J&M.

Accordingly;

IT IS ORDERED that Signal's crossclaims against J&M are **DISMISSED WITHOUT PREJUDICE**.³⁰ Signal may amend its crossclaim within 30 days of this Order. The amended crossclaim must be properly served on J&M.³¹

New Orleans, Louisiana, this 18th day of January, 2015.



SUSIE MORGAN
UNITED STATES DISTRICT JUDGE

³⁰ Where, as here, a pleading is fatally deficient, a district court may *sua sponte* dismiss without prejudice and order a curative amendment. *See Wooten*, 2015 WL 51251, at *12.

³¹ *See id.* (instructing that a defective pleading subsequently amended must be served to allow "a corresponding opportunity to answer (or properly default) . . . before judgment."