

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI
SOUTHERN DIVISION**

**EQUAL EMPLOYMENT
OPPORTUNITY COMMISSION, and
SABULAL VIJAYAN, JACOB JOSEPH
KADAKKARAPPALLY, and KURIAN
DAVID**

PLAINTIFFS

V.

CAUSE NO. 1:11CV179-LG-RHW

SIGNAL INTERNATIONAL, LLC

DEFENDANT

ORDER GRANTING MOTION TO TRANSFER

BEFORE THE COURT is the [26] Motion to Stay and Transfer Pursuant to the First-Filed Rule filed by Defendant Signal International, LLC ("Signal"). Signal seeks a stay of these proceedings and asks the Court to transfer this action to the United States District Court for the Eastern District of Louisiana, where, Signal claims, a "closely related . . . earlier suit is pending." Plaintiff Equal Employment Opportunity Commission ("EEOC") has filed a response [29] opposing the motion. The Court has reviewed the parties' briefs and relevant law, and finds that the motion to stay and transfer should be granted. The EEOC filed a [34] Motion to Strike Portions of Defendant's Reply Memorandum Further Supporting Motion to Stay and Transfer. The motion to strike should be denied as moot.

FACTUAL AND PROCEDURAL BACKGROUND

The EEOC filed this Title VII action against Signal in April 2011. The complaint seeks to "correct unlawful employment practices on the basis of national origin, race, and retaliation." The lawsuit arises from charges filed with the EEOC

by two Indian national employees, Vijayan and Kadakkarappally. According to the complaint, the EEOC issued Determinations with respect to those charges, concluding that Signal had discriminated against Vijayan and Kadakkarappally and other Indian employees as a class, and that it had retaliated against Vijayan and Kadakkarappally because they opposed Signal's conduct. The complaint seeks relief for Vijayan and Kadakkarappally, as well as "a class of over 500 similarly situated Indian nationals" who were brought to the United States from India to work at Signal facilities in Mississippi and Texas. The complaint includes several claims against Signal under Title VII, including allegations of a hostile work environment based on race and/or national origin, "disparate, segregated, and discriminatory treatment" in the terms and conditions of employment, retaliation, and a pattern or practice of discrimination based on race and/or national origin.

Signal seeks a stay and transfer of the EEOC's action ("the present action") to the Eastern District of Louisiana. Signal argues that the present action is closely related to a similar lawsuit filed in the Eastern District of Louisiana in March 2008, *David, et al. v. Signal, et al.*, No. 2:08-CV-1220-JCZ-DEK (hereinafter "*David*"). Signal submits that under the "first filed" rule, this case should be transferred so that its issues can be resolved with *David*.

The EEOC is not a party to *David*, but Signal is one of twelve defendants in that action.¹ The plaintiffs in *David* are a number of Indian nationals who were

¹ The *David* Defendants are: Signal International L.L.C; Malvern C. Burnett; Gulf Coast Immigration Law Center, L.L.C.; Law Offices of Malvern C. Burnett,

Signal employees, including Vijayan and Kadakkarappally (the charging parties in the present action).² Three of the named plaintiffs in *David* moved, individually and on behalf of the class of similarly-situated Indian nationals, to intervene in the EEOC's action in this Court pursuant to Federal Rule of Civil Procedure 24. *See* Mot. to Intervene, Ex. 2, ECF No. 2-2. The motion to intervene was granted on January 24, 2012. *See* Order Granting Mot. to Intervene, ECF No. 44. Intervenor Plaintiffs in this action are Sabulal Vijayan, Jacob Joseph Kadakkarappally, and Kurian David.

The *David* complaint asserts "class action claims arising from violations of" the Racketeer Influenced and Corrupt Organizations Act (RICO), the Victims of Trafficking and Violence Protection Act (TVPA), 42 U.S.C. § 1981, 42 U.S.C. § 1985, the Fair Labor Standards Act (FLSA), and claims of fraud/negligent misrepresentation, and breach of contract.³ Several plaintiffs, including Vijayan and Kadakkarappally, also bring individual claims of retaliation under § 1981 and § 1985, and claims of false imprisonment, assault, battery, and infliction of emotional

A.P.C.; Indo-Ameri Soft L.L.C.; Kurella Rao; J & M Associates, Inc. of Mississippi; Billy R. Wilks; J & M Marine & Industrial, L.L.C.; Global Resources, Inc.; Michael Pol; Sachin Dewan; and Dewan Consultants Pvt. Ltd. (a/k/a MedTech Consultants). Signal has also filed claims against a third-party defendant, Zito Companies, LLC.

² A group of approximately five hundred Indian nationals (the same group on whose behalf the EEOC filed the present suit) had sought class certification in *David* under Federal Rule of Civil Procedure 23. The United States District Court for the Eastern District of Louisiana denied the motion to certify the class on January 4, 2012. *See* Def.'s Notice of Supplemental Authority, Ex. 1, ECF No. 42-1.

³ The plaintiffs in *David* have filed a complaint and two amended complaints.

distress. The complaint in *David* does not allege violations of Title VII, but the plaintiffs' Section 1981 retaliation claims are based on allegations of employment discrimination against Defendant Signal. See Second Amended Complaint at ¶¶ 333-345, *David et al. v. Signal et al.*, No. 2:08-cv-1220-JCZ-DEK (E.D. La.), ECF No. 944.

DISCUSSION

I. Motion to Stay and Transfer Pursuant to the First-to-File Rule

The "first to file" rule permits a district court to decline jurisdiction over an action when it involves the same parties and issues as a previously-filed action in another court. When related cases are pending before two federal courts, the court in which the case was last filed may dismiss or transfer the case if it involves substantially similar issues which can be resolved in the earlier-filed action. See *W. Gulf Mar. Ass'n v. ILA Deep Sea Local 24*, 751 F.2d 721, 728-29 (5th Cir. 1985) and *Save Power Ltd. v. Syntek Fin. Corp.*, 121 F.3d 947, 950 (5th Cir.1997). "The concern manifestly is to avoid the waste of duplication, to avoid rulings which may trench upon the authority of sister courts, and to avoid piecemeal resolution of issues that call for a uniform result." *W. Gulf Mar. Ass'n*, 751 F.2d at 728.

The Court's inquiry is focused on whether the two cases "substantially overlap," but where the overlap is "less than complete, the judgment is made case by case, based on such factors as the extent of overlap, the likelihood of conflict, the comparative advantage and the interest of each forum in resolving the dispute." *Save Power Ltd.*, 121 F.3d at 951. The first-to-file rule is a discretionary doctrine.

Cadle Co. v. Whataburger of Alice, Inc., 174 F.3d 599, 603 (5th Cir. 1999) (citing *Kerotest Mfg. Co. v. C-O-Two Fire Equip. Co.*, 342 U.S. 180, 183-84 (1952)). It is not a rigid or inflexible rule to be mechanically applied. *Mann Mfg., Inc. v. Hortex, Inc.*, 439 F.2d 403, 407 (5th Cir. 1971). The decision of whether to apply the first-to-file rule involves determinations concerning "[w]ise judicial administration, giving regard to conservation of judicial resources and comprehensive disposition of litigation." *Kerotest*, 342 U.S. at 183.

In support of its motion, Signal essentially argues two major points: (i) that the issues and parties in the two actions are similar enough to invoke the first-to-file rule and transfer the present action to the Eastern District of Louisiana; and (ii) the relevant "equitable considerations" under the first-to-file rule further warrant a transfer. In response, the EEOC acknowledges that *David* was filed first, but argues that the motion to transfer should be denied because (i) the first-to-file rule is not applicable in this case because there are differences between the parties and the issues, and (ii) venue is not proper in the Eastern District of Louisiana.

The Issues

Signal argues that because *David* alleges intentional employment discrimination in violation of § 1981 and § 1985, the issues in *David* are substantially similar to the Title VII claims in the present action. Essentially, Signal argues that in both actions, the plaintiffs will be required to prove intentional discrimination on the part of Signal. Signal submits that the Court's inquiry into the defendant's discriminatory intent or motive will be the same under

Title VII and § 1981 and § 1985.

In response, the EEOC argues that the claims and issues in *David* are vastly different from those in the present action, and the two cases do not substantially overlap. The *David* complaint does not include claims under Title VII, but alleges claims under a range of statutes, including, but not limited to, the TVPA, RICO, the Thirteenth Amendment, and the FLSA. The EEOC argues that in comparison, the present action is much smaller in scope, as it only alleges that one defendant violated Title VII. While the EEOC concedes that the § 1981 and retaliation claims in *David* are similar to those in the present action, it argues this is not sufficient to find that the present action is "duplicative" of *David*.

The employment discrimination claims in *David* are similar to the Title VII claims brought by the EEOC in the present action, and they appear to arise from the same conduct on the part of Signal. The Court's examination of Signal's discriminatory conduct under Title VII would likely be very similar to an inquiry into the same conduct under 42 U.S.C. § 1981. "[T]he inquiry into intentional discrimination is essentially the same for individual actions brought under sections 1981 . . . and Title VII." *Lauderdale v. Tex. Dep't of Criminal Justice, Inst. Div.*, 512 F.3d 157, 166 (5th Cir. 2007). Presumably, the same or similar evidence would be used to support § 1981 claims and Title VII claims. It follows that the discovery necessary to litigate the employment discrimination claims in *David* would likely be duplicative of discovery in the present action. The Court finds that, because the employment discrimination claims arise from the same conduct, and in light of the

likely duplication of discovery of those claims, the similarity of issues weighs in favor of a transfer.

The Parties

Signal argues that "*David* was voluntarily filed by the same Indian nationals for whose benefit the present suit was filed." (Def.'s Mem. at 7, ECF No. 27).

Signal also asserts that *David* seeks individual relief for Plaintiffs Vijayan and Kadakkarappally, who were the charging parties in the present action.

The EEOC submits that it is not a party to *David*, and that it has no right to intervene in that case because the plaintiffs in *David* never received a notice of right to sue from the EEOC, as required under 42 U.S.C. § 2000e-5(f)(1), and have not alleged a Title VII claim in their complaint. The EEOC does concede that several of the *David* plaintiffs moved to intervene in the present action. As noted *supra*, that motion has been granted.

The intervention of the private plaintiffs in this action has resulted in greater similarity of parties between the present action and *David* than when this action was originally filed. Intervenor Plaintiffs in this action are Sabulal Vijayan, Jacob Joseph Kadakkarappally, and Kurian David; each of these individuals is a named plaintiff in *David*. The Court also notes that the EEOC brings this suit on behalf of the same group of Indian nationals who filed *David*. However, the EEOC is not a party to *David*, and there are eleven other defendants in *David* who are not parties to the present action. The Court also recognizes that the Title VII claims in this suit are brought by the EEOC, and the EEOC is a distinct entity from the plaintiffs

in *David*. As an agency of the United States, the EEOC litigates on behalf of the public interest as well as the aggrieved individuals, and therefore its interests in this action differ to some degree from the private plaintiffs. See *EEOC v. Harris Chernin, Inc.*, 10 F.3d 1286, 1291 (7th Cir. 1993) ("The EEOC[s] interests are broader than those of the individuals injured by discrimination.") (citations omitted).

However, the first-filed rule does not require that the cases and the parties be identical. *Save Power Ltd.*, 121 F.3d at 950. The Fifth Circuit has held that the "crucial inquiry is one of 'substantial overlap.'" *Id.* "[R]egardless of whether or not the suits here are identical, if they overlap on the substantive issues, the cases would be required to be consolidated in ... the jurisdiction first seized of the issues." *Id.* (citing *Mann Mfg., Inc.*, 439 F.2d at 408 n. 6 and *TPM Holdings, Inc. v. Intra-Gold Indus., Inc.*, 91 F.3d 1, 4 (1st Cir. 1996)). While the parties in these two actions are not identical because the claims in *David* are more numerous and diverse, the employment discrimination claims in *David* are made only against Defendant Signal, just as the Title VII claims in the present action are against Signal. It is apparent that the Title VII claims in the present action are based on the same alleged conduct by Signal that forms the basis for the Section 1981 claims in *David*. Therefore, the substantive issues involved in the retaliation and employment-based claims in this action are similar to those in *David*, and the litigation of these claims will involve several of the same parties as those in *David*.

Equitable Considerations

Signal also argues that the "equitable considerations" of the first-to-file rule weigh in favor of transfer. In support of this assertion, Signal submits that the EEOC's filing of this case represents a "collateral attack" on the *David* Court's ruling on the plaintiffs' motion for class certification. (Def.'s Mem. at 13). Specifically, Signal asserts that the timing of the case before this Court is "suspicious" because it was filed exactly five months after the plaintiffs in *David* suffered an adverse ruling with respect to their claims for class-wide injunctive relief. *See* Def.'s Ex. C, ECF No. 27-3) (transcript of hearing in which Judge Zainey ruled that plaintiffs did not have standing to seek future injunctive relief against Signal). Signal argues that this action, therefore, "looks like a collateral attack on the first court's ruling." (Def.'s Mem. at 12, ECF No. 27).

The Court is not convinced that the EEOC's filing of the present action is a collateral attack on the *David* Court's ruling regarding class-wide injunctive relief based on Signal's assertions in its brief. Any finding with respect to the timing of the EEOC's lawsuit would be highly speculative on the part of the Court. The Court will not grant the motion to transfer on this basis.

Venue

The EEOC argues that venue of the present action is not proper in the Eastern District of Louisiana, and therefore the motion to transfer should be denied. The EEOC argues that venue is proper in the Southern District of Mississippi under Title VII because most of the alleged unlawful practices occurred

in this district, and Signal's principal place of business is in Mississippi.⁴

Signal argues that the issue of venue under 28 U.S.C. § 1404(a) is not relevant to the question of whether to transfer this action pursuant to the first-filed rule. Signal also points out that the *David* plaintiffs chose the Eastern District of Louisiana as their forum. Of course, the same argument can be made for the EEOC in the present action; as the plaintiff, the EEOC chose this forum in which to litigate this action. However, the EEOC is a federal agency with an office in New Orleans. It seems that the EEOC would be equally capable of litigating an action in New Orleans as it would in this district. While Signal's place of business may be in Mississippi, it is currently defending the *David* action in Louisiana with counsel located in New Orleans. As Signal points out, the individual intervenor plaintiffs in this action chose to file the *David* action in Louisiana, and continue to litigate there. Therefore, those plaintiffs are available to the EEOC in Louisiana. The EEOC does not argue that any witnesses or evidence will be less available to it in Louisiana than in this district. The distance between this district and the Eastern District of Louisiana is not great. The Court does not see that the parties will lack access to necessary resources by litigating this action in the Eastern District of

⁴ The EEOC submits that the explicit Title VII venue provision applies to this action, which provides that venue is proper in "any district in the State in which the unlawful employment practice is alleged to have been committed," or in the district where "the employment records relevant to such practices are maintained or administered," or in the district where "the aggrieved person would have worked but for the alleged unlawful employment practice." 42 U.S.C. § 2000e-5(f)(3). Title VII further provides that if the defendant is not in any of these districts, then an action may be filed in the district in which the defendant's principal office is located. *Id.*

Louisiana.

"The Fifth Circuit adheres to the general rule that the court in which an action is first filed is the appropriate court to determine whether subsequently filed cases involving substantially similar issues should proceed." *Save Power Ltd.*, 121 F.3d at 950 (citing *West Gulf Maritime Ass'n*, 751 F.2d at 728, and *Mann Mfg., Inc.*, 439 F.2d at 408). The Court finds that, given that these two actions arise from the same conduct, the similarity of the substantive issues involved in the employment discrimination and retaliation claims alleged in the two actions, and the similarity of the parties, Signal's motion to stay and transfer should be granted.

II. The EEOC's Motion to Strike

The EEOC has moved to strike portions of Signal's reply memorandum in support of its Motion to Stay or Transfer [33] on the grounds that new arguments were raised in the reply brief. Specifically, Signal made arguments under the Fifth Circuit's decision in *Truvillion v. King's Daughters Hospital*, 614 F.2d 520 (5th Cir. 1980), and asks the Court to consider invoking 28 U.S.C. § 1292(b) and certify this issue to the Fifth Circuit Court of Appeals. Neither of these arguments were raised in Signal's initial motion.

Signal asserts that under *Truvillion v. King's Daughters Hospital*, 614 F.2d 520 (5th Cir. 1980), the EEOC could have intervened in *David* if it issued right to sue letters *nunc pro tunc*. *Truvillion* held that where the EEOC files an action that is dismissed on jurisdictional or procedural grounds, and the EEOC does not file a second action, "it may validly issue a right-to-sue letter to an aggrieved person," so

that the private plaintiff could file his or her own action. 614 F.2d at 528. Here, the EEOC's suit has not been dismissed as procedurally or jurisdictionally defective. Therefore, the Court does not consider *Truvillion* to be controlling.

IT IS THEREFORE ORDERED AND ADJUDGED that Defendant Signal's [26] Motion to Stay or Transfer is **GRANTED**. This matter is transferred to the United States District Court for the Eastern District of Louisiana

IT IS FURTHER ORDERED AND ADJUDGED that Plaintiff EEOC's [34] Motion to Strike is **DENIED AS MOOT**.

SO ORDERED AND ADJUDGED this the 29th day of February, 2012.

s/ Louis Guirola, Jr.

LOUIS GUIROLA, JR.
CHIEF U.S. DISTRICT JUDGE