

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
BEAUMONT DIVISION**

BIJU MARKUKKATTU JOSEPH, et al.

v.

**SIGNAL INTERNATIONAL L.L.C.,
et al.**

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1:13-CV-324

**ORDER SEVERING AND TRANSFERRING SIGNAL’S CROSS-CLAIMS
TO THE EASTERN DISTRICT OF LOUISIANA**

This case is assigned to the Honorable Ron Clark, United States District Judge, and is referred to the undersigned United States magistrate judge for all pretrial matters. (Doc. No. 4.) Pending before the undersigned is the “Motion to Defer Signal’s Cross Claim[s] or in the Alternative to Transfer Venue of Signal’s Cross Claim[s] Pursuant to the First-Filed Rule” (Doc. No. 167) filed by Defendants Malvern C. Burnett, Malvern C. Burnett A.P.C., and the Gulf Coast Immigration Center, L.L.C. (collectively, “Burnett”). The certificate of conference states that “Signal has no objection to the filing of the motion, but has not determined, as yet, its position on the merits of the motion itself” (*Id.* at p. 12.) It was not indicated whether any other party opposed the motion. However, the time for responding to Burnett’s motion has passed and no objections were filed. Accordingly, the undersigned considers the motion unopposed. See Local Rule CV-7(d) (“In the event that a party fails to oppose a motion in the manner prescribed herein, the court will assume that the party has no objection.”). After reviewing Burnett’s motion and the applicable authorities, the undersigned finds that Burnett’s motion should be granted in part and that Signal’s cross-claims should be severed from the main action and transferred to the Eastern District of Louisiana.

I. Background

On March 7, 2008, a putative class action was filed in the Eastern District of Louisiana on behalf of over five hundred plaintiffs who were allegedly victims of human trafficking. (See Doc. No. 1, David v. Signal Int'l, L.L.C., No. 2:08-1220 (E.D. La. March 7, 2008)). The court in *David* denied class certification (as to all claims except the plaintiffs' FLSA claims), which caused the putative class members to file suit in the district where their injuries allegedly occurred. The Plaintiffs in this case filed suit in the Eastern District of Texas because they claim to have suffered their injuries at a Signal facility in Orange, Texas.

Like in *David*, the Plaintiffs in this case sued numerous defendants. (See Doc. No. 1); (See also Doc. No. 1, David v. Signal Int'l, L.L.C., No. 2:08-1220 (E.D. La. March 7, 2008)) (naming twelve defendants). For convenience, the Plaintiffs grouped the Defendants into four categories: "Signal" (collectively, Signal International, L.L.C., Signal International Texas, G.P., Signal International Texas, L.P., and Signal International, Inc.), "Recruiter Defendants," (collectively, Global Resources, Inc., Michael Pol, Dewan Consultants Pvt., Ltd., and Sachin Dewan), "Legal Facilitator Defendants" (collectively, Malvern C. Burnett, Malvern C. Burnett A.P.C., and the Gulf Coast Immigration Center, L.L.C), and "Labor Broker Defendants" (collectively, Indo-Amerisoft, L.L.C., Kurella Rao, J & M Associates of Mississippi, Inc., and Billy R. Wilks). Also common to both cases are cross-claims Signal filed against these defendants. (Doc. No. 164, pp. 59–78); (Doc. No. 60, David v. Signal, Int'l, L.L.C., No. 2:08-1220 (E.D. La. May 9, 2008)).¹ Signal filed its cross-claims in the *David* case in 2008, and filed its cross-claims in this case in 2014.

1. In this case, Signal claims that it has suspended its cross-claims against defendant Michael Pol (Doc. No. 164, p. 59 n. 1), and in *David*, Signal's claims against him have been dismissed. (Doc. No. 1976, David v. Signal, Int'l, L.L.C., No. 2:08-1220 (E.D. La. Dec. 5, 2014)).

II. Analysis

Burnett moves, pursuant to the “first-to-file-rule,” to have this court “[p]rophylactically’ refuse[] to hear Signal’s Cross Claims.” (Doc. No. 167, p. 8.) Alternatively, Burnett requests that the undersigned transfer his claims to the Eastern District of Louisiana. (Id.) No party filed an opposition or response to Burnett’s motion, thus, it is considered unopposed. See Local Rule CV-7(d) (“In the event that a party fails to oppose a motion in the manner prescribed herein, the court will assume that the party has no objection.”). However, despite the fact that the undersigned considers Burnett’s motion unopposed, the undersigned finds it prudent to consider the merits of Burnett’s motion.

“Under the first-to-file rule, when related cases are pending before two federal courts, the court in which the case was last filed may refuse to hear it if the issues raised by the cases substantially overlap.” Int’l Fid. Ins. Co. v. Sweet Little Mex. Corp., 665 F.3d 671, 677 (5th Cir. 2011) (citation omitted). “In such a case, the district court in which the later action was filed may dismiss, stay, or transfer the suit in order to avoid duplicative litigation and enforce the principle of comity.” Carter v. Dep’t of Veterans Affairs, 228 F. App’x 399, 402 (5th Cir. 2007) (per curiam). “In deciding whether to apply the first-to-file rule, the Court must resolve two questions: (1) are the two pending actions so duplicative or do they involve such substantially similar issues that one court should decide the subject matter of both actions, and if so, (2) which of the two courts should take the case.” Datamize, Inc. v. Fid. Brokerage Servs., LLC, 2:03-CV-321-DF, 2004 WL 1683171, at *3 (E.D. Tex. Apr. 22, 2004) (Folsom, J.) (citing Tex. Instruments v. Micron Semiconductor, 815 F. Supp. 994, 997 (E.D. Tex. 1993)). “Only the first issue is for the second-filed court to decide, however, for in this circuit, ‘[o]nce the likelihood of a substantial overlap between the two suits ha[s] been demonstrated, it [is] no longer up to the [second filed

court] to resolve the question of whether both should be allowed to proceed.” Nabors Drilling USA, L.P. v. Markow, Walker, P.A., 451 F. Supp. 2d 843, 845 (S.D. Miss. 2006) (alteration in original) (quoting Cadle Co. v. Whataburger of Alice, Inc., 174 F.3d 599, 605–06 (5th Cir. 1999)).

The undersigned finds that the first prong of the first-to-file rule is satisfied here. Signal’s cross claims in *David* are not just similar or related to the ones in this case—they are identical. White v. Peco Foods, Inc., 546 F. Supp. 2d 339, 342 (S.D. Miss. 2008) (“The first-to-file rule does not require that cases be identical, but merely that there is a substantial overlap in issues and parties.”). First, Signal asserts cross-claims against the exact same parties in both cases.² Compare (Doc. No. 164) with (Doc. No. 60, David v. Signal, Int’l, L.L.C., No. 2:08-1220 (E.D. La. May 9, 2008)); see also Save Power Ltd. v. Syntek Fin. Corp., 121 F.3d 947, 951 (5th Cir. 1997) (“Complete identity of parties is not required for dismissal or transfer of a case filed subsequently to a substantially related action.”). It is also worth noting that Signal’s cross-claims are in no way impacted by the difference in the make-up of the plaintiffs in each case.

Second, Signal asserted identical cross-claims in each case. In addition, beyond just pleading the same causes of action against the same defendants, resolution of Signal’s cross-claims involves the same facts and raises the same issues in both cases. In contrast, the undersigned denied Signal’s and Burnett’s requests to transfer the Plaintiffs’ claims to the Eastern District of Louisiana in part because the Plaintiffs in this case worked at a different facility than the plaintiffs in *David*, and therefore, the proof and facts for the claims would differ between the two cases. (Doc. Nos. 74, 115.) This is not the case for Signal’s cross-claims. Accordingly, the undersigned finds that there is substantial overlap between Signal’s cross-claims in this case and those in *David*.

2. Signal also filed a third-party claim against Zito Companies, L.L.C. that was dismissed. (Doc. No. 391, David v. Signal, Int’l, L.L.C., No. 2:08-1220 (E.D. La. April 7, 2009)).

Therefore, the proper course of action is to either transfer, stay, or dismiss Signal's cross-claims. Burnett requests that this court stay Signal's cross claims because "simply declining to hear those Cross Claims herein would be the easiest procedural vehicle to allow Signal's Cross Claims to proceed in the court in which they were first filed." (Doc. No. 167, p. 8.) The undersigned, however, perceives no benefit to merely staying these claims. To do so would only invite additional litigation on issue and/or claim preclusion after these claims are decided in *David*. (Id. at p. 2) ("Whatever disposition may be reached in David on Signal's Cross Claims against Burnett and the other Cross Claim Defendants will be res judicata herein."). The first-to-file rule was meant to promote efficiency, not create additional substantive issues.

In the alternative, Burnett requests that the undersigned transfer Signal's cross-claims to the Eastern District of Louisiana. Because this is the most efficient manner of resolving these claims, the undersigned finds that this is the appropriate remedy. However, in order to transfer just Signal's cross-claims, as opposed the entire case (including the Plaintiffs' claims), Signal's cross-claims must first be severed from the main case. Pursuant to Federal Rule of Civil Procedure 21, a "trial court has broad discretion to sever issues to be tried before it." Brunet v. United Gas Pipeline Co., 15 F.3d 500, 505 (5th Cir. 1994) (citing FED. R. CIV. P. 21); see also United States v. O'Neil, 709 F.2d 361, 366 (5th Cir. 1983) (noting that under Rule 21 a district court properly severed a party's counterclaims). The undersigned has authority under Rule 21 to sever Signal's cross-claims even though Burnett did not specifically request such relief. See Brunet, 15 F.3d at 505; United States v. Nat'l R.R. Passenger Corp., No. CIV.A 86-1094, 2004 WL 1335723, at *6 (E.D. Pa. June 15, 2004) ("Thus, while neither party has asked this Court to sever, Rule 21 permits a court to sever claims *sua sponte*.").

III. Conclusion

For the reasons discussed above, the undersigned **GRANTS IN PART** Burnett’s “Motion to Defer Signal’s Cross Claim or in the Alternative to Transfer Venue of Signal’s Cross Claim Pursuant to the First-Filed Rule.” (Doc. No. 167.) Accordingly, it is

ORDERED that the Clerk of Court is **DIRECTED** to sever from this action Signal’s cross-claims against cross-defendants Malvern C. Burnett, Sachin Dewan, Dewan Consultants Pvt., Ltd., Global Resources, Inc. Gulf Coast Immigration Law Center, L.L.C., Indo-Ameri Soft, L.L.C., J &M Associates, Inc. of Mississippi, J&M Marine & Industrial, L.L.C., Law Offices of Malvern C. Burnett, A.P.C., Michael Pol, Kurella Rao, and Billy R. Wilks; and it is further

ORDERED that Signal’s “Motion for Reconsideration of October 20, 2014 Oral Order” (Doc. No. 199) and Burnett’s response (Doc. No. 201), are part of the severed case; and it is further

ORDERED the Clerk of Court shall **TRANSFER** Signal’s cross-claims against Malvern C. Burnett, Sachin Dewan, Dewan Consultants Pvt., Ltd., Global Resources, Inc. Gulf Coast Immigration Law Center, L.L.C., Indo-Ameri Soft, L.L.C., J &M Associates, Inc. of Mississippi, J&M Marine & Industrial, L.L.C., Law Offices of Malvern C. Burnett, A.P.C., Michael Pol, Kurella Rao, and Billy R. Wilks and the motions listed in the preceding paragraph to the Clerk of the United States District Court for the Eastern District of Louisiana.

SIGNED this 8th day of December, 2014.



Zack Hawthorn
United States Magistrate Judge