

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

BIJU MAKRUKKATTU JOSEPH, *et al.*

v.

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

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1:13-CV-324

**REPORT AND RECOMMENDATION ON PLAINTIFFS' MOTION TO DISMISS
DEFENDANT MICHAEL POL (DOC. NO. 98)**

This case is assigned to the Honorable Ron Clark, Chief United States District Judge, and is referred to the undersigned United States Magistrate Judge for all pretrial matters pursuant to a Referral Order. (Doc. No. 4.) Before the undersigned is the “Motion of Amended Plaintiffs to Dismiss without Prejudice the Claims against Defendant Michael Pol.” (Doc. No. 98.) Plaintiffs Suresh Kakkoth, Sebastian George Pananjikal, Biju Potrayil, Pankajakshan Madhavan, Gijo John, Joy Kallachiyil Varkey, Omanakuttan Govindan Kakkanthara, Iju James, Ravi Rowthu, Vasavan Babu, Abraham Varghese, Varghese Kannampuzha Devassy, Paulose Chirackal Airookaran Joseph, and Subburaj Rengasamy (“Amended Plaintiffs”) seek to dismiss their claims against Michael Pol without prejudice.

On May 21, 2013, thirty-three Plaintiffs (“Original Plaintiffs”) filed suit against multiple Defendants, including Michael Pol (“Pol”). (Doc. No. 1.) Pol filed for chapter 7 bankruptcy protection on June 13, 2013. The Original Plaintiffs amended their complaint on August 1, 2013 (Doc. No. 19), and again on December 19, 2013. (Doc. No. 64.) The amended complaints added the “Amended Plaintiffs,” but asserted no new substantive claims. The

Amended Plaintiffs¹ then sought dismissal of their causes of action against Pol because their claims could potentially violate bankruptcy laws. (Doc. No. 40) (“To the extent that the Amended Plaintiffs assert new claims against Pol that could have been brought prior to the commencement of his Chapter 7 proceedings and were not asserted in the original Complaint, such claims may be voidable in light of the automatic stay.”) (citing Sikes v. Global Marine, Inc., 881 F.2d 176, 178–79 (5th Cir. 1989)).

The Plaintiffs conferred with Pol’s bankruptcy counsel, and he did not oppose the relief sought. The undersigned, however, denied the Amended Plaintiffs’ motion to dismiss their claims against Pol as moot due to the Plaintiffs’ second amended complaint. (Doc. No. 67.)

The Amended Plaintiffs now reassert their motion to dismiss. (Doc. No. 98.) There was no indication whether Pol consented to this reasserted motion. In addition, no other party has opposed this motion and the time for doing so has passed.

In light of Pol’s bankruptcy, and given that no party has objected, the undersigned recommends that the “Motion of Amended Plaintiffs to Dismiss without Prejudice the Claims against Defendant Michael Pol” (Doc. No. 98) be **GRANTED**.

Objections

Pursuant to 28 U.S.C. § 636(b)(1)(c) (Supp. IV 2011), each party to this action has the right to file objections to this report and recommendation. Objections to this report must (1) be in writing, (2) specifically identify those findings or recommendations to which the party objects, (3) be served and filed within fourteen (14) days after being served with a copy of this report, and (4) no more than eight (8) pages in length. See 28 U.S.C. § 636(b)(1)(c); FED R. CIV. P. 72(b)(2); Local Rule CV-72(c). A party who objects to this report is entitled to a de novo

1. At this time, Paulose Chirackal Airookaran Joseph and Subburaj Rengasamy had yet to be added as plaintiffs and were not part of the first motion to dismiss.

determination by the United States District Judge of those proposed findings and recommendations to which a specific objection is timely made. See 28 U.S.C. § 636(b)(1)(c); FED R. CIV. P. 72(b)(3).

A party's failure to file specific, written objections to the proposed findings of fact and conclusions of law contained in this report, within fourteen (14) days of being served with a copy of this report, bars that party from: (1) entitlement to de novo review by the United States District Judge of the findings of fact and conclusions of law, (see Rodriguez v. Bowen, 857 F.2d 275, 276–77 (5th Cir. 1988)), and (2) appellate review, except on grounds of plain error, of any such findings of fact and conclusions of law accepted by the United States District Judge. See Douglass v. United Servs. Auto. Ass'n, 79 F.3d 1415, 1428–29 (5th Cir. 1996).

SIGNED this 27th day of January, 2015.



Zack Hawthorn
United States Magistrate Judge