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

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| **BIJU MAKRUKKATTU JOSEPH, *et al.*** | § | |
| | § | |
| **v.** | § | **1:13-CV-324** |
| | § | |
| **SIGNAL INTERNATIONAL L.L.C., *et al.*** | § | |
| | § | |

**REPORT AND RECOMMENDATION ON BILLY WILKS'S MOTION TO DISMISS (DOC. NO. 229)**

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.) Pending before the undersigned is the "Motion to Dismiss" (Doc. No. 229) filed by Defendant, Billy Wilks ("Wilks"). The Plaintiffs oppose. (Doc. No. 261.)

The Plaintiffs allege that Wilks is one of the "Labor Broker Defendants," and that this set of Defendants played a vital role in the alleged scheme to bring the Plaintiffs to the United States under the false pretense that they would receive permanent residency. (Doc. No. 208, pp. 22–27) (discussing the recruitment process). In addition, the Plaintiffs claim that Wilks is personally liable for the conduct of J &M Associates of Mississippi, Inc. ("J & M") because he "had full control and decision making authority over J & M such that J & M and Wilks were alter egos of one another." (Doc. No. 208, p. 18.)

On February 23, 2015, Wilks filed a "Motion to Dismiss." (Doc. No. 229.) In this motion, Wilks seeks dismissal of the claims against him because, according to him, based on the "undisputed facts" he "had absolutely no dealings with Signal, Global, Burnet, or Dewan in the processing of the Plaintiffs." (Id.) Wilks also attached another motion to dismiss, which he claims he filed in August of 2014. In this motion, Wilks makes the same generic assertion of

innocence. (Id.) ("This complaint fails to offer a bona fide claim which relief can be granted. None of the charges are true."). This August motion, however, is not reflected on the docket.

After reviewing Wilks's motion, the undersigned recommends that it be denied. First, it is untimely. The second amended scheduling order set October 17, 2014 as the deadline for dispositive motions. Wilks received this order on August 4, 2014, leaving him ample time to file a dispositive motion. (Doc. No. 125.)

Setting the untimeliness of Wilks's motion aside, his motion should be denied on the merits. It appears that Wilks is moving for dismissal under Federal Rule of Civil Procedure 12(b)(6). Accordingly, the inquiry is whether the Plaintiffs have stated a plausible claim for relief. Typically, courts are not to consider extrinsic evidence and take all well-pled facts as true. See Lone Star Fund V (U.S.), L.P. v. Barclays Bank PLC, 594 F.3d 383, 387 (5th Cir. 2010). After reviewing the Plaintiffs' complaint, the undersigned finds that they have stated a plausible claim against Wilks. The Plaintiffs' complaint offers numerous facts showing that J &M was involved in the recruitment process. Moreover, there are sufficient facts that Wilks was in control of J & M, and therefore, it plausible that Wilks is the alter ego of J & M, and as such, personally liable. Moreover, all Wilks offers to support the fact that he is not liable are blanket assertions he "had no dealings" with the other defendants, or that "the J & M defendants should not be in this suit." (Doc. No. 229.) These statements, standing alone, are insufficient to absolve Wilks of any wrongdoing.[1]

1. Given that Wilks is proceeding *pro se*, his pleadings are held to less stringent standards and are to be construed liberally. Haines v. Kerner, 404 U.S. 519, 520 (1972); Perez v. United States, 312 F.3d 191, 194–95 (5th Cir. 2002). Therefore, even if Wilks's motion is construed as a motion for summary judgment, because he has attached no evidence to support his claim that he had no involvement in the operative facts of this case, his motion fails.

## Recommendation

For the reasons stated above, the undersigned recommends that Billy Wilks's "Motion to Dismiss" (Doc. No. 229) be **DENIED**.

## 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) be no more than eight 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 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 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 17th day of March, 2015.

Zack Hawthorn
United States Magistrate Judge