IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

STONEEAGLE SERVICES, INC.,	§	
	§	
Plaintiff,	§	
v.	§	3:11-cv-02408-P
	§	
DAVID GILLMAN, et al.,	§	
	§	
Defendants.	§	
_____	§	
	§	
STONEEAGLE SERVICES, INC., et al.,	§	
	§	
Plaintiffs,	§	
v.	§	3:12-cv-01687-P
	§	
JIM VALENTINE, et al.,	§	
	§	
Defendants.	§	

ORDER

Now before the Court are Plaintiffs' Motions to Consolidate filed on June 17, 2013. Doc. 306, 3:11-cv-02408; Doc. 38, 3:12-cv-01687. Defendants filed Responses on July 8, 2013.[1] Doc. 322, 3:11-cv-02408; Doc. 40, 3:12-cv-01687. Plaintiffs filed Replies on July 22, 2013. Doc. 325, 3:11-cv-02408; Doc. 41, 3:12-cv-01687. After reviewing the parties' briefing, the evidence, and the applicable law, the Court GRANTS Plaintiffs' Motion to Consolidate.

[1] Although the Responses are worded differently and filed by different attorneys, the briefings advance similar arguments against consolidation.

I. Background

The two cases at issue involve an intellectual property dispute concerning like products that provide electronic payment services aimed at healthcare billing. On September 16, 2011, StoneEagle Services, Inc. ("StoneEagle") filed a lawsuit in federal court (the "2011 case") and another in state court. Doc. 1; Doc. 306, 3:11-cv-02408 at 6; Doc. 1, 3:12-cv-01687. On May 31, 2012, the state case was removed to federal court (hereinafter the "2012 case"). *See* Doc. 1, 3:12-cv-01687. Prior to removal, the parties agreed to conduct duel discovery for both lawsuits as available and applicable.[2] Doc. 306, 3:11-cv-02408 at 3.

The 2011 case involves a lawsuit filed by StoneEagle against David Gillman ("Gillman"), Talon Transaction Technologies, Inc., a Texas corporation, Talon Transaction Technologies, Inc., an Oklahoma corporation (collectively, the "Talons"), and NexPay, Inc., ("NexPay"). *See* Doc. 302, 3:11-cv-02408. That lawsuit involved a dispute arising from an estranged business relationship between StoneEagle and certain entities that Gillman represented. *See* Doc. 302, 3:11-cv-02408.

The 2012 case involves another lawsuit filed by StoneEagle and VPay, Inc. ("VPay") against Jim and Vincent Valentine (the "Valentines"). *See* Doc. 24, 3:12-cv-01687. In that lawsuit, the Valentines were hired by StoneEagle as independent contractors and later allegedly assisted Gillman, the Talons, and NexPay in establishing a competing business. Comparing the amended complaints in each lawsuit, the storylines are very similar with each party making cameo appearances under either set of pleadings. As for the more gritty details, the Court assumes the parties are well acquainted with the underlying facts and claims.

[2] Although the parties dispute the level of discovery which actually transpired in both cases, this agreement of collaborative discovery is not contested. (Doc. 306, p. 5; Doc. 322, p. 4; Doc. 325, p. 4 n.1, 3:11-cv-02408)

After filing, the cases progressed at varying speeds with some notable differences. On February 19, 2013, the Court clarified a previous preliminary injunction entered in the 2011 case against Gillman, the Talons, and their respective agents, aiders and abetters, etc. Doc. 246, 3:11-cv-02408. The Court has yet to issue an preliminary injunction in the 2012 case. *See* Doc. 31, 3:12-cv-01687. Moreover, the 2011 case has a scheduling order in place, whereas the 2012 case does not.[3] Doc. 328, 3:11-cv-02408. Given this background, Plaintiffs now move to consolidate the cases.

II. Legal Standard

Federal Rule of Civil Procedure 42(a) provides that if actions "involve a common question of law *or* fact," a court may "consolidate the actions" or "issue any other order to avoid unnecessary cost or delay." Fed. R. Civ. P. 42(a) (emphasis added). The Fifth Circuit has urged district courts "to make good use of Rule 42(a) in order to expedite . . . trial and eliminate unnecessary repetition and confusion," even when opposed by the parties. *In re Air Crash Disaster at Fla. Everglades on Dec. 29, 1972*, 549 F.2d 1006, 1013 (5th Cir. 1977) (quoting *Gentry v. Smith*, 487 F.2d 571, 581 (5th Cir. 1973)) (alterations and internal quotation marks omitted). The decision to consolidate actions under Rule 42(a) is "entirely within the discretion of the district court as it seeks to promote the administration of justice." *Gentry*, 487 F.2d at 581; *see also Luera v. M/V Alberta*, 635 F.3d 181, 194 (5th Cir. 2011) ("Moreover, where such claims are not joined under Rule 20 but brought in separate suits, Rule 42(a) provides district courts with broad authority to consolidate actions that 'involve a common question of law or fact.'"). Although "[t]he power of the district court to consolidate is purely discretionary," such

[3] The parties' Joint Motion for Issuance of a Scheduling Order in the 2012 case is currently pending. *See* Doc. 42, 3:12-cv-01687.

a ruling "is improper if it would prejudice the rights of the parties." *St. Bernard Gen. Hosp., Inc. v. Hosp. Serv. Ass'n of New Orleans, Inc.*, 712 F.2d 978, 989 (5th Cir. 1983) (citations omitted).

III. Analysis

The parties are at odds on the issue of consolidation. According to Defendants, the cases are distinct in nature and consolidation would prejudice all sides. *See* Doc. 322, 3:11-cv-02408. Defendants assert that the 2012 case implicates the Valentines as independent contractors under agreements executed in 2009, whereas the 2011 case concerns agreements executed in 2006 to which the Valentines were not parties. Doc. 322, 3:11-cv-02408 at 2-3. As discovery will focus on different parties and different time periods, consolidation will complicate divergent issues. Doc. 322, 3:11-cv-02408 at 2-3. Additionally, although discovery has begun in the 2011 case, the parties have just filed their proposal for a scheduling and discovery order in the 2012 case.[4] Doc. 42, 3:12-cv-01687. Inevitable discovery delays necessarily will stall the 2011 case as the 2012 case gets up to speed. Doc. 322, 3:11-cv-02408 at 4. Regarding prejudice, Defendants assert that any delay will prolong the preexisting preliminary injunction against Gillman and the Talons as well as result in additional expenses because the Valentines do not bear the same speedy trial incentive that others possess. Doc. 322, 3:11-cv-02408 at 4-5. As a final gasp, Defendants move in the alternative to abate the injunction presently in place or increase the bond amount to offset any prejudicial delays that would arise from consolidation. Doc. 322, 3:11-cv-02408 at 5.

Reviewing the record and arguments presented by both sides, consolidation is appropriate under these circumstances. At a basic level, both suits are before the same court and involve

[4] At the time Defendant Gillman filed his Response, the parties had not yet held a Rule 26 conference in the 2012 case. Doc. 322, 3:11-cv-02408 at 3. Since that time, it appears the parties have held their Rule 26 conference. *See* Doc. 42, 3:12-cv-01687.

similar parties. Although the parties are not exact matches, the lawsuits are riddled with factual overlaps that touch every party no matter which case someone happens finds his name affixed on the caption. Reviewing the causes of action asserted, both cases involve the same trade secrets and the same patents as well as secondary liability claims such as conspiracy and aiding and abetting which directly connect all Defendants. While Defendants assert a veiled argument that distinct issues are apparent, they go no further than to specify time-removed dates and the status of some parties as independent contractors. Even if the Valentines' liability is tethered to transactions around 2009, the 2011 case suggests that Gillman and the Talons began questionable conduct as early as 2006 that progressively carried forward through present day (thus enveloping 2009). *See* Doc. 40, 3:12-cv-01687 at 2-3. As such, to scalpel off certain dates as distinct isolated incidents ignores the breadth of conduct alleged under both cases. If anything, the cases appear to be one ball of wax that has ensnared all involved over a soured business relationship to establish a virtual payment processing product in the healthcare industry.

Just as the legal and factual similarities militate in favor of consolidation, the *de minimis* resultant prejudice further compels such an outcome. Given the substantial similarities among the facts and causes of action, the prospect of confusion incumbent on the fact finder will be nominal at best because these cases tell the same story while merely emphasizing different protagonists and antagonists where appropriate. Just as important, the 2011 case should suffer a trifle delay if at all because the present scheduling order in place under that case only runs through claim construction on the same patents at issue in both cases. To allay concerns of a rapidly advancing schedule and prejudicial trial date looming in the not so distant future, the Valentines can take heart that we are still early on and there is no end in sight as scheduled in the 2011 case. Thus, consolidation does not force the Valentines from safe shores to contentious

rapids. *See* Doc. 40, 3:12-cv-01687 at 3-4. In fact, the situation is quite the opposite with the option to amend the scheduling order. Prejudice is further mitigated by the parties' agreement to utilize duplicative discovery. As a final matter, given the outright mirror image intellectual property issues in play coupled with the complexities of patent litigation, that judicial resources would be conserved is an understatement. Although never raised as an argument by any attorney in this case, their clients will no doubt also appreciate the savings rendered from one streamlined patent dispute.

Quickly addressing Defendants' argument against the efficacy of maintaining the injunctive status quo, the Court declines the invitation to abate the injunction or increase the bond amount. At bottom, Defendants contend that a consolidation will drag out the cases through undue delay and further expose their businesses to a preliminary chokehold. As the foregoing analysis highlights, any delay should be trivial because the 2011 case has just arrived at the claim construction phase for the same patents as in the 2012 case. Outside of mere speculation and unfounded concern, Defendants cannot articulate *why* a prejudicial delay is evitable to occur. Juxtaposed with the administrative gains from consolidation, Defendants' proposition is greatly undermined. Moreover, Defendants fail to cite any case law to support this request. As such, the injunction remains as is.

In short, consolidation is warranted while abating the preexisting injunction and increasing the bond amount is not.[5] *See, e.g.*, *DAC Surgical Partners P.A. v. United Healthcare Servs.*, No. 4:11-CV-1355, 2013 U.S. Dist. LEXIS 88573, at *14 (S.D. Tex. June 24, 2013) ("Here, the two cases involve the same type of use agreements for medical services at the same

[5] For the forgoing reasons, the Court further denies the Valentines' alternative request to dismiss this Motion to Consolidate *without prejudice* pending the determination of future summary judgment motions. *See* Doc. 40, 3:12-cv-01678 at 4. To entertain such a request would defeat the purpose of consolidation.

ASC, the same denial of payments by the same defendants, and the same claims and counterclaims between the parties. Keeping those parties separated would simply be inefficient."); *Rimkus Consulting Grp., Inc. v. Cammarata*, No. H-07-0405, 2008 U.S. Dist. LEXIS 100498, at *9 (S.D. Tex. Dec. 12, 2008) ("After balancing the risks of prejudice and possible confusion against the risk of inconsistent adjudications of common factual and legal issues, the burden on the parties, witnesses and judicial resources posed by two lawsuits, and the length of time required to conclude two suits as opposed to one, this court concludes that consolidation is appropriate.").

IV. Conclusion

For the foregoing reasons, the Court GRANTS Plaintiffs' Motion to Consolidate. The parties shall submit all future filings under case number 3:11-cv-02408. Further, within 10 days from the date of this Order, the parties shall confer and submit a joint status report indicating whether they would like to adopt the current scheduling order in place under the 2011 case or propose an amended scheduling order.

IT IS SO ORDERED.

Signed this 28th day of January, 2014.

JORGE A. SOLIS
UNITED STATES DISTRICT JUDGE