



amend her complaint because of its submission after his April 2, 2001 deadline to amend pleadings and on the eve of a June 2, 2001 discovery deadline. On June 13, 2001, plaintiff filed the present complaint (“*Odesina II*”) alleging the same preliminary statement of facts and raising the same counts she was denied leave to include in her complaint in *Odesina I*.

## II. DISCUSSION

Defendants argue that the prior pending action doctrine requires that the present action be either dismissed or stayed pending resolution of *Odesina I*. Plaintiff responds that *Odesina II* involves causes of action different from those in *Odesina I*, thus *Odesina II* should be permitted to proceed.

“Where there are two competing lawsuits, the first suit should have priority, absent the showing of balance of convenience . . . or . . . special circumstances . . . giving priority to the second.” *Motion Picture Lab. Technicians Local 780 v. McGregor & Werner, Inc.*, 804 F.2d 16, 19 (2d Cir. 1986)(internal quotation marks omitted). It is proper to either stay or dismiss the subsequently filed case in deference to the earlier-filed case. *Adam v. Jacobs*, 950 F.2d 89, 92 (2d Cir. 1991). Dismissal is appropriate where “an identity of issues exists and the controlling issues in the dismissed action will be determined in the other lawsuit.” 5A CHARLES A. WRIGHT & ARTHUR R. MILLER, FEDERAL PRACTICE AND PROCEDURE § 1360, at 442 (1990).

The prior pending action doctrine is closely related to claim preclusion, with the object of the former to avoid the inefficiencies of litigating that which will be precluded by the latter. *Curtis v. Citibank, N.A.*, 226 F.3d 133, 138 (2d Cir. 2000). A claim will be precluded when “the same or connected transactions are at issue and the same proof is needed to support the claims in both suits or, in other words, *whether facts essential to the second suit were present in the first suit.*” *Id.* at 139

(emphasis added). An issue is precluded if it could have been raised in an earlier suit, regardless of whether it actually was raised. *Clarke v. Frank*, 960 F.2d 1146, 1150 (2d Cir. 1992).

Plaintiff's argument that the two actions involve separate causes of action is without merit. *Odesina I* and *Odesina II* involve the same parties, the same facts and claims alleging race discrimination, gender discrimination and breach of contract. The claims in *Odesina II* could have been, and in fact were, raised in *Odesina I*. Judge Thompson's refusal to grant leave to amend the complaint does not authorize plaintiff to bring a second action for purposes of pursuing claims denied in the first action. This conclusion is premised on the sound principle that "plaintiffs have no right to maintain two actions on the same subject in the same court, against the same defendant at the same time." *Curtis*, 226 F.3d at 139. The motion to dismiss is granted.

### III. CONCLUSION

The motion to dismiss (Doc. 13) is **granted**. The parties are reserved the right to reopen the case to resolve any issues not resolved in the prior proceeding (3:98CV1823(AWT)). Jurisdiction is retained for that purpose. The Clerk shall close the file.

SO ORDERED.

Dated at New Haven, Connecticut, February \_\_\_, 2002.

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Peter C. Dorsey  
United States District Judge