

2014 WL 5500490  
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United States District Court,  
E.D. Louisiana.

Kurian DAVID, et al., Plaintiffs,  
v.  
SIGNAL INTERNATIONAL, LLC, et al.,  
Defendants,  
Equal Employment Opportunity Commission,  
Plaintiff,  
v.  
Signal International, LLC, et al., Defendants,  
Lakshmanan Ponnayan Achari, et al., Plaintiffs,  
v.  
Signal International, LLC, et al., Defendants,  
Applies to: David,  
v.  
Signal (08-1220),  
EEOC,  
v.  
Signal (12-557).  
  
Civil Action Nos. 08-1220, 12-557, 13-6218,  
13-6219, 13-6220, 13-6221, 14-732.  
|  
Signed Aug. 18, 2014.

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#### ORDER AND REASONS

SUSIE MORGAN, District Judge.

\*1 Before the Court is a Motion for Modification of Protective Order filed by defendant Signal International, LLC (“Signal”) in *David v. Signal* (08-1220) (the “*David* case”)<sup>1</sup> and *EEOC v. Signal* (12-557) (the “*EEOC* case”).<sup>2</sup> Signal’s motion is opposed by plaintiffs-intervenors and the EEOC in the *EEOC* case.<sup>3</sup> Signal filed a reply memorandum in support of its motion.<sup>4</sup>

During the class certification phase, the Plaintiffs in the *David* case sought and obtained a protective order preventing defendants from inquiring into the current immigration status of any Plaintiff, current address or

place of residence of any plaintiff, and employers or potential employers of any plaintiff post-termination of employment with Signal.<sup>5</sup> Because it would require an inquiry into the Plaintiffs' current immigration status, on August 26, 2010 Judge Knowles denied Signal's request for production of the Plaintiffs' T-Visa applications but, based on a compromise proposed by the parties, ordered that the affidavits attached to the applications should be produced.<sup>6</sup> On November 5, 2010, The Court entered a protective order (the "*David* Protective Order") with respect to production of the affidavits clarifying that they were to be marked as confidential and redacted to remove the following information:

- a. any information identifying members of the affiant's family, the affiant's residences prior to employment at Signal, or the residences of any member of the affiant's family.
- b. Any address or employment information protected from disclosure by the Court's earlier protective order [preventing inquiry into the Plaintiffs' current immigration status, current addresses, and employment history post-termination from Signal].
- c. Any information evidencing the affiant's cooperation with any law enforcement investigation or prosecution related to the subject matter of the instant lawsuit.
- d. Any information evidencing grounds for inadmissibility.
- e. Any information evidencing the commission of prior crimes or civil offenses, or any explanation of any act set forth on Form I-914, Part D.<sup>7</sup>

On November 5, 2013, the Court granted a motion for protective order in the *EEOC* case over Signal's objection that protective orders had been issued in the *David* case only because the parties were concentrating on class discovery issues at the time and a protective order was not appropriate in the *EEOC* case because class certification was not an issue.<sup>8</sup> The Court found the fact that the parties were not engaging in discovery relating to certification of a class to be of no moment, saying:

The case law cited by this Court does not distinguish between class-certification and merits-based discovery to arrive at their conclusions. Indeed, in many of the cases, it is not readily apparent that the plaintiffs sought class certification. The Court finds that the underlying reasoning and analysis of those courts apply equally here at this stage of the litigation.<sup>9</sup>

\*2 Thereafter, a Protective Order was entered in the *EEOC* case (the "*EEOC* Protective Order") providing that

Defendants shall not seek, request or subpoena the following documents or information:

- a. Documents and information relating to, or that would disclose, the current immigration status, immigration history, or any immigration proceeding of any member of the class of Indian employees described in Plaintiff's Complaint, as amended, or the Intervenor Plaintiffs, or any members of the families of either of these groups;
- b. Documents and information relating to the addresses or places of residence following employment at Signal, place of birth, social security number, and aliases and nicknames (other than those used while employed by Defendant) of any class member described in Plaintiff's Complaint, as amended, or the Intervenor Plaintiffs, or any members of the families of either of these groups;
- c. Documents and information relating to, or that would disclose, post-Signal employers or potential employers of any class member described in Plaintiff's Complaint, as amended, or the Intervenor Plaintiffs, or any members of the families of either of these groups;
- d. Documents and information relating to income received or sources of income, other than income received by Defendant, of any class member described in Plaintiff's Complaint, as amended, or the Intervenor Plaintiffs, or any members of the families of either of these groups.<sup>10</sup>

Currently, the *David* Protective Order is operative only in the *David* case and applies only to the T or U visa affidavits of the twelve named Plaintiffs in the *David* case. Signal asks the Court to apply the *David* Protective Order to the *EEOC* case and require production of the affidavits attached to the T and U visa applications, unredacted or with fewer redactions, by the Plaintiff-Intervenors and by the entire class of workers on whose behalf the *EEOC* filed suit in the *EEOC* case.<sup>11</sup> Signal also asks that the *David* Protective Order be modified so that Paragraph 4 reads in relevant part that the documents produced may not be used "... other than prosecuting or defending the above captioned related actions."<sup>12</sup>

The Court finds, for the reasons previously expressed, only the affidavits attached to T or U visa applications of the Plaintiff-Intervenors and the individuals on whose behalf the *EEOC* filed the *EEOC* case are discoverable and must be produced in the *EEOC* case. The Court has repeatedly explained its reasons for finding that the *in terrorem* effect of inquiring into the Plaintiffs' post-Signal immigration status, and other information, is outweighed by the public interest in allowing employees to enforce their rights, and will not do so again in this

Order. The underlying reasoning and analysis of previous orders apply with equal force to this proceeding. Nevertheless, the affidavits attached to the T and U visa applications, redacted as provided in the *David* Protective Order and the *EEOC* Protective Order, may be produced without undue burden to the Plaintiff–Intervenors or the individuals represented by the EEOC.

\*3 Considering the foregoing, **IT IS ORDERED** that Signal’s Motion for Modification of Protective Order be and hereby is **GRANTED**. The affidavits attached to the T or U visa applications of the Plaintiff–Intervenors and the individuals on whose behalf the EEOC filed suit in the *EEOC* case are required to be produced redacted according to the terms of both the *EEOC* Protective Order and the *David* Protective Order. **IT FURTHER ORDERED** that Signal’s Motion for Modification of Protective Order be and hereby is **DENIED** insofar as the redactions to the affidavits are not eliminated or revised.

**IT IS FURTHER ORDERED** that the T or U visa affidavits of the Plaintiff–Intervenors and the class of workers on whose behalf the EEOC brought suit in the *EEOC* case shall be produced to the Defendants within 30 days of the date of this Order, subject to the terms of the *David* Protective Order and the *EEOC* Protective Order,

and redacted as set forth in both protective orders.

**IT IS FURTHER ORDERED** that Paragraph 4 of the *David* Protective Order is modified to read as follows:

Except as may otherwise be provided by further order of the Court or stipulation of the producing party, the documents described in paragraph 1, as well as extracts and summaries thereof, shall be used for no purpose other than prosecuting or defending the above captioned related actions.

**IT IS SO ORDERED.**

**All Citations**

Not Reported in F.Supp.3d, 2014 WL 5500490

#### Footnotes

<sup>1</sup> R. Doc. 1467 in the *David* case.

<sup>2</sup> R. Doc. 342 in the *EEOC* case.

<sup>3</sup> R. Doc. 356 and R. Doc. 358 in the *EEOC* case.

<sup>4</sup> R. Doc. 363 in the *EEOC* case.

<sup>5</sup> Judge Knowles granted the plaintiffs’ request for a protective order (R. Doc. 367 in the *David* case), and on June 2, 2009 Judge Zainey upheld Judge Knowles’ findings. R. Doc. 476 in the *David* case. Judge Zainey denied a request for reconsideration of his order based on changed circumstances and clarified that the protective order entered by the Court does not preclude Defendants from “delving into facts pertaining to plaintiffs’ immigration status prior to leaving Signal—only post-Signal immigration status is affected.” R. Doc. 650 in the *David* case.

<sup>6</sup> R. Doc. 854. On November 5, 2010 Judge Knowles ordered the redacted affidavits to be produced within ten days of

the date of his Order. R. Doc. 912.

<sup>7</sup> R. Doc. 913 in the *David* case. Judge Zainey upheld this ruling. See R. Doc. 991 in the *David* case.

<sup>8</sup> R. Doc. 237 in the *EEOC* case. Affirmed in R. Doc. 313 in the *EEOC* case.

<sup>9</sup> R. Doc. 237, p. 12 in the *EEOC* case.

<sup>10</sup> R. Doc. 285 in the *EEOC* case.

<sup>11</sup> The motion is filed in the David case because the *David* Protective Order specifically provides that the information produced subject to the protective order may be used only in the *David* case.

<sup>12</sup> R. Doc. 342, p. 2.