

2014 WL 2581319

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United States District Court,
E.D. Louisiana.

Kurian DAVID, et al., Plaintiffs

v.

SIGNAL INTERNATIONAL, LLC, et al.,
Defendants

Related Cases:

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: EEOC v. Signal (12-557)

Civil Action Nos. 08-1220, 12-557, 13-6218,
13-6219, 13-6220, 13-6221.

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Signed May 14, 2014.

Attorneys and Law Firms

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ORDER

SUSIE MORGAN, District Judge.

***1** Before the Court is an Motion to Exclude Witnesses from Depositions filed by Plaintiff, Equal Employment Opportunity Commission (“EEOC”).¹ Defendant, Signal International, LLC (“Signal”) opposes the EEOC’s motion.²

BACKGROUND

In this employment discrimination suit filed by the EEOC against Signal, the Court ordered the depositions of Signal’s employees, in their representative and individual capacities, to be conducted between May 15, 2014 and July 11, 2014.³ The depositions of Signal’s employees are scheduled to begin on May 19, 2014.⁴

The EEOC moved pursuant to Rule 26(c)(1)(E) of the Federal Rules of Civil Procedure, to preclude multiple employee witnesses of Signal from attending the depositions of other Signal employees.⁵ The EEOC also asks the Court to bar any witness testifying as a Rule 30(b)(6) designee, or in his or her individual capacity, from reading, reviewing or discussing with any person the testimony of any prior Rule 30(b)(6) designee or individual deponent. The EEOC believes Signal will obtain a strategic advantage by allowing employee witnesses attend earlier depositions of other witnesses. The EEOC argues Signal’s witnesses will be able to “shore up, bolster, or mitigate prior unfavorable testimony” if they attend earlier depositions or review the testimony given in earlier depositions.

Signal opposes the EEOC’s motion, arguing the EEOC’s request to exclude Signal’s employee witnesses is “unusual” and not supported by any specific facts. Signal also requests costs associated with opposing the EEOC’s motion.

LAW AND ANALYSIS

The Federal Rules of Civil Procedure make clear that, in the typical case, deposition witnesses are not subject to sequestration. *See* Fed.R.Civ.P. 30(c). Rule 30(c) provides

in relevant part that, “[t]he examination and cross-examination of a deponent proceed as they would at trial under the Federal Rules of Evidence, *except Rules 103 and 615.*” Fed.R.Civ.P. 30(c)(emphasis added). Rule 615 of the Federal Rules of Evidence establishes the right of any party at trial to request that the court “order witnesses excluded so that they cannot hear the testimony of other witnesses.” Fed.R.Evid. 615. Rule 30(c)’s exclusion of the application of Rule 615 to depositions was intended to establish a general rule that “other witnesses are not automatically excluded from a deposition simply by request of a party.” Fed.R.Civ.P. 30(c) advisory committee notes. Instead, the exclusion of a witness at a deposition may be obtained only by a protective order under Rule 26. *Id.*

Rule 26(c)(1) requires a movant show good cause why justice requires an order to protect a party or person from “annoyance, embarrassment, oppression, or undue burden or expense” before issuing a protective order. *See* Fed.R.Civ.P. 26(c)(1). To make a showing of good cause, the movant has the burden of showing the injury “with specificity.” *Pearson v. Miller*, 211 F.3d 57, 72 (3d Cir.2000). In other words, the party seeking the protective order must show good cause by demonstrating a particular need for protection. *See Cipollone v. Liggett Group, Inc.*, 785 F.2d 1108, 1121 (3d Cir.1986). To establish good cause, a party seeking a protective order must set forth particular and specific demonstrations of fact, as distinguished from stereotyped and conclusory statements. *Gulf Oil Co. v. Bernard*, 452 U.S. 89, 102 n. 16, 101 S.Ct. 2193, 68 L.Ed.2d 693 (1981); *In re Terra Int’l, Inc.*, 134 F.3d 302, 306 (5th Cir.1998). Broad allegations of harm, unsubstantiated by specific examples or articulated reasoning, do not satisfy the Rule 26(c) test. *See Cipollone*, 785 F.2d at 1121 (citing *United States v. Garrett*, 571 F.2d 1323, 1326, n. 3 (5th Cir.1978))(requiring “a particular and specific demonstration of fact as distinguished from stereotyped and conclusory statements”); *Gen. Dynamics Corp. v. Selp Mfg. Corp.*, 481 F.2d 1204, 1212 (8th Cir.1973); 8 C. Wright, A. Miller & R. Marcus, Federal Practice and Procedure § 2035 (Supp.1985). Moreover, the alleged harm must be significant, not a mere trifle. *See Cipollone*, 785 F.2d at 1121 (citing *Joy v. North*, 621 F.2d 880, 894 (2d Cir.1982)).

*2 In this case, the EEOC has not made a “particular and specific demonstration of fact” sufficient to warrant a protective order precluding Signal employee witnesses from either attending other witnesses’ depositions or reviewing other deponents’ testimony. *In re Terra Int’l*, 134 F.3d at 306. Courts, for example, have found good

cause to restrict who may be present when the deponent is likely to be intimidated by a prospective attendee, *see In re Shell Oil Refinery*, 136 F.R.D. 615 (E.D.La.1991), or where the privacy interests of a party or deponent would be compromised. *See Gottlieb v. County of Orange*, 151 F.R.D. 258, 260 (S.D.N.Y.1993). On the other hand, courts have declined to order sequestration based on a conclusory allegation or inchoate fear that witnesses who attend each other’s depositions will tailor their testimony to conform. *See In re Terra Int’l*, 134 F.3d 302; *Jones v. Circle K Stores, Inc.* 185 F.R.D. 223, 224–25 (M.D.N.C.1999); *Veress v. Alumax/Alcoa Mill Products, Inc.*, 2002 WL 1022455, at *1 (E.D.Pa. May 20, 2002); *United Incentives, Inc. v. Sea Gull Lighting Products, Inc.*, 1991 WL 209018, at *1 (E.D.Pa. Oct.7, 1991).

The EEOC did not support its motion with any affidavits or other evidence supporting the EEOC’s assertion that Signal’s employee witnesses will “shore up, bolster, or mitigate prior unfavorable testimony” by attending other depositions and reviewing other deponents’ testimony. The arguments set forth by the EEOC are mere “stereotyped and conclusory” allegations that Signal’s employees will tailor their testimony if they are allowed to attend other witnesses’ depositions. *In re Terra Int’l*, 134 F.3d at 306. The EEOC has failed to show good cause and its motion must be denied.

CONCLUSION

Accordingly, **IT IS HEREBY ORDERED** that the EEOC’s Motion to Exclude Witnesses from Depositions be and hereby is **DENIED**. The Court will allow one representative of Signal to be present during the depositions of other Signal employees in their representative and individual capacities. The Court will not prevent Signal’s employee witnesses from reviewing prior deposition testimony. Signal’s request for costs is denied.

IT IS SO ORDERED.

All Citations

Not Reported in F.Supp.3d, 2014 WL 2581319

Footnotes

¹ R. Doc. 409.

² R. Doc. 414.

³ R. Doc. 412.

⁴ R. Doc. 409.

⁵ R. Doc. 409.