UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
Case No.: 0:20-cv-60814-RKA

KAREEM BRITT and MONIQUE LAURENCE, on behalf of themselves and all others similarly situated,

Plaintiffs,

v.

IEC CORPORATION d/b/a INTERNATIONAL EDUCATION CORPORATION, and IEC US HOLDINGS, INC. d/b/a FLORIDA CAREER COLLEGE,

Defendants.

REPLY IN SUPPORT OF DEFENDANTS' MOTION TO STAY DISCOVERY AND BIFURCATE CLASS DISCOVERY WITH SUPPORTING MEMORANDUM OF LAW

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The issues in this motion are straightforward: Defendants have filed a Motion to Compel Arbitration, or in the Alternative to Dismiss the putative class action Complaint of Kareem Britt and Monique Laurence (the "Motion") [D.E. 24], which could dispose of the case entirely or at least significantly narrow the scope. Granting the stay of discovery for a modest time, given that the Motion is ripe for review, would conserve the Court and the parties' resources, prevent abusive discovery by narrowing the issues, and is not prejudicial to the Plaintiffs. *See Chudasama v. Mazda Motor Corp.*, 123 F.3d 1353, 1367–68 (11th Cir. 1997); *Coatney v. Synchrony Bank*, No. 6:16-CV-389-ORL22TBS, 2016 WL 4506315, at *1 (M.D. Fla. Aug. 2, 2016).

Plaintiffs' attempts to paint Defendants as disregarding procedure are misplaced. First, there is nothing improper about requesting a stay of discovery after an initial scheduling order has been entered and, indeed, moving for a stay before would have been premature. *See Blankumsee v. Graham*, No. PWG-15-3495, 2016 WL 6837142, at *3 (D. Md. Nov. 17, 2016) ("A stay of discovery, however, is unnecessary at this time, as a scheduling order has not issued."). Second, Plaintiffs were aware of the relief being sought when contacted pursuant to Rule 7.1: the position to stay all discovery and later address requirements under Rule 26 and Rule 16 was first taken over a month and a half ago during the first Rule 26(f) conference among counsel; Defendants memorialized that position in the joint proposed scheduling order confirming that Defendants object to *all* discovery, which includes initial disclosures as envisioned in Rule 26(a)(1)(C), and that Defendants would seek bifurcated discovery; finally, Defendants did not take any inconsistent position during any subsequent communications. Plaintiffs have made their position known multiple times as well and additional discussions would be futile because "Plaintiffs, of course, oppose bifurcation." (Pltfs.' Resp. to Defs.' Mot. to Stay Disc. and Bifurcate, D.E. 34, at 2.)

I. DEFENDANTS' MOTION TO COMPEL ARBITRATION OR TO DISMISS THE COMPLAINT IS MERITORIOUS AND SIGNIFICANTLY NARROWS THE CLAIMS BEFORE THIS COURT.

The Court has great discretion to control discovery matters, including staying discovery where appropriate due to the pending Motion. *See Bufkin v. Scottrade, Inc.*, No. 19-12003, 2020 WL 2043393, at *2 (11th Cir. Apr. 28, 2020) (finding a stay of discovery appropriate given the potential for the claims against one party to be resolved in the motion to compel arbitration and claims against the other party to be resolved in the motion to dismiss). The Motion is dispositive, but even when claims are not entirely resolved by early motion, a stay is nonetheless appropriate to reduce the litigation burden on the Court and the parties, to simplify and streamline the issues,

and where the non-moving party will not be unduly prejudiced or tactically disadvantaged. *See Coatney*, 2016 WL 4506315, at *1. The prompt demand for arbitration also supports "limit[ing] the scope of early discovery with this possibility in view." *Gutierrez v. Wells Fargo Bank, NA*, 889 F.3d 1230, 1236 (11th Cir. 2018).

Plaintiffs do not challenge that the pending Motion could also narrow and streamline the issues in the case that are subject to discovery, nor do they identify *any* possible prejudice they would face. Rather, Plaintiffs seem to demand Defendants ensure complete dismissal with prejudice before a stay of discovery could be granted. This interpretation is not in line with the spirit or application of *Chudasama* because a stay of discovery may be appropriate where a motion to dismiss "will potentially narrow the scope of discovery." *Khan v. Bankunited, Inc.*, No. 8:15-cv-2632-T-23TGW, 2016 WL 4718156, at *1 (M.D. Fla. May 11, 2016); *see also Gill-Samuel v. Nova Biomedical Corp.*, No. 13-cv-62591, 2014 WL 11762719, at *1 (S.D. Fla. Feb. 18, 2014) (stay warranted where motion could have "significant ramifications on the scope of any factual discovery between the parties" in class action); *Miller v. Wal-Mart Stores, Inc.*, No. 19-81005-Civ, 2019 U.S. Dist. LEXIS 176553 (S.D. Fla. Oct. 10, 2019) (granting partial stay of discovery for dismissible claims). A preliminary peek at the Motion shows ample support for compelling arbitration or dismissing all claims. Even if not all claims are compelled to arbitration or dismissed, the Motion is highly likely to simplify and streamline the issues in the case. The Motion is ripe for review, which is further support for allowing the brief stay of discovery. *See Belloso v. Asplundh Tree Expert, Co.*, No. 6:18-CV-460-ORL40TBS, 2018 WL 4407088, at *3 (M.D. Fla. Sept. 17, 2018) (granting 30 day stay pending the determination of the motion ripe for review). An early stay prevents the parties from being prejudiced and still allows the benefit of narrowing discoverable issues. *See Borislow v. Canaccord Genuity Grp. Inc.*, No. 14-80134-CIV-RYSKAMP/HOPKINS, 2014 WL 12580035, at *1 (S.D. Fla. June 24, 2014); *Solar Star Sys., LLC v. Bellsouth Telecomm., Inc.*, No. 10-21105-CIV, 2011 WL 1226119, at *1 (S.D. Fla. Mar. 30, 2011). Here, all of these considerations weigh in favor of staying discovery until the Motion is decided.

A. Plaintiffs' claims are subject to arbitration.

The Motion to Compel justifies a stay of discovery because all claims should be subject to arbitration. Even if some claims are deemed inarbitrable as borrower defense claims, all remaining claims would still be subject to arbitration. Plaintiffs' first argument, that the "Notice" could

substantively change the terms of the parties' contract without new consideration, contradicts fundamental contract law and should be disregarded. (*See* Motion at 12–14; Defs.' Reply to the Motion ("Reply"), D.E. 36, at 1–2.) Plaintiffs next argue that language in the Course Catalog relating to programming changes paves the way to alter the contractual arbitration terms. This, too, is fundamentally flawed because the language refers to changes to educational programming, not core contractual rights, and are limited to those published in a revised Course Catalog. (*See* Reply at 2.)

Next, Plaintiffs argue that 34 C.F.R. § 685.300(e) or (f) should control what a borrower defense claim is. (*See* Opp. at 5.) These sections do not actually define anything because 34 C.F.R. § 685.300(i)(1) clearly states what, "[f]or the purposes of paragraphs (d) through (h) of this section, the term [] 'Borrower defense claim'" means. (*See* Motion at 12–14, Reply at 4–5.[1]) The language in the Notice mirrors verbatim language from subsections (e) and (f), which are tied to the definitions in that regulation. (*See* Motion at 12–14, Reply at 2, 4–5.) Regardless, Defendants do not seek to arbitrate borrower defense claims, but even if borrower defense claims existed and remained before this Court, the Motion to Compel, if granted (which it should be) would substantially narrow the issues.

B. Plaintiffs' claims are also subject to dismissal.

Plaintiffs only minimally attempt to defend their Complaint, referring to their earlier briefing. The reality is that Plaintiffs' Complaint suffers from multiple deficiencies that warrant dismissal of the entire Complaint. (*See* Motion at 16–29; Reply at 6–10.) Plaintiffs assert that they could replead, so their dismissal would not be final. The potential to replead does not prevent a stay of discovery where it is otherwise appropriate under the circumstances. *See Santamaria v. Carrington Mortg. Servs., LLC*, No. 6:18-CV-1618-ORL41GJK, 2020 WL 60178, at *1 (M.D. Fla. Jan. 6, 2020) (granting a stay of discovery even though Plaintiff may replead). Even so, it is not clear that Plaintiffs actually could cure the deficiencies. Even an amended complaint likely would narrow the issues for which Plaintiffs could seek discovery. *See Khan*, 2016 WL 4718156, at *1. A stay of discovery under these circumstances is warranted.

[1] As of July 1, 2020, 34 C.F.R. § 685.300(d) through (i) have been removed from the regulations altogether, further signaling the shift toward the "federal policy favoring arbitration agreements." Student Assistance General Provisions, Federal Family Education Loan Program, and William D. Ford Federal Direct Loan Program, 84 Fed. Reg. 49,788 (Sept. 23, 2019).

II. BIFURCATION IS APPROPRIATE BECAUSE THERE ARE NUMEROUS THRESHOLD PROBLEMS WITH PLAINTIFFS' CLASS ALLEGATIONS TO BE ADDRESSED BEFORE THE SUBSTANTIVE CLAIMS.

Even though class certification demands a rigorous review, bifurcation of class- and merits-based discovery remains a valid option when the circumstances support it. *See, e.g.*, *Methelus v. Sch. Bd. of Collier Cty.*, No. 2:16-cv-379-FtM-38MRM, 2016 WL 8539815, at *1–2 (M.D. Fla. July 21, 2016) (recommending bifurcated discovery focusing on class issues while a motion to dismiss was pending). For example, courts have found bifurcation appropriate where a complaint is subject to amendment and concerns of delay are outweighed by the burden that would be placed on defendants if subjected to merits-based discovery. *See Craft v. S.C. State Plastering, LLC*, No. 9:15-CV-5080-PMD, 2016 WL 7438068, at *2 (D.S.C. Dec. 27, 2016). Plaintiff fails to address the substance of the issue here. The consequence of Plaintiffs' overbroad class definitions is that class-specific discovery issues could be addressed first to determine whether the class claims are appropriate before subjecting the Defendants to the time and expense of addressing Plaintiffs' (likely vast) discovery requests on the merits. It would be far more efficient for the parties and the Court to address class certification before allowing Plaintiffs to pursue merits discovery, which could result in a waste of resources if a class is not ultimately certified (which it should not be). If after class-based discovery a class is not certified, Plaintiffs would be left with individual claims, based on a relatively limited set of evidence regarding only each Plaintiff's unique and particularized experiences and at only their two programs and campuses. If the requested modest temporary stay is not granted, bifurcated discovery would be appropriate.

* * *

The facts of this case support a stay of discovery pending the Court's ruling on Defendants' Motion. Should any claims remain viable, bifurcation is an appropriate option here to limit the initial phase of discovery to issues necessary for class certification followed by a secondary phase of discovery concerning the merits of the claims after the class certification hearing. For these reasons, Defendants respectfully request their Motion to Stay Discovery and Bifurcate Class Discovery be granted.

Dated: July 21, 2020

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on July 21, 2020, a true and correct copy of the foregoing was electronically filed with the Clerk of the Court using the CM/ECF system, and that it is being served this date on all counsel of record via transmission of Notices of Electronic Filing generated by the CM/ECF system.

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