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.

DEFENDANTS' MOTION FOR PROTECTIVE ORDER

Pursuant to Rule 26 of the Federal Rules of Civil Procedure and Local Rule 26.1(g)(3), Defendants IEC Corporation, d/b/a/ International Education Company ("IEC"), and IEC US Holdings, Inc., d/b/a Florida Career College ("FCC") (collectively, "Defendants"), hereby move the Court for entry of an order to protect Defendants from having to respond to the discovery requests issued by Plaintiffs Kareem Britt and Monique Laurence (the "Plaintiffs"), specifically Plaintiffs' First Set of Interrogatories and First Set of Requests for the Production of Documents. Defendants have already moved for entry of an order staying discovery pending resolution of Defendants' Motion to Compel Arbitration, or in the Alternative to Dismiss the Complaint, and also moved in the alternative to bifurcate discovery. With these motions pending, good cause exists to protect Defendants from responding to the propounded discovery.[1]

INTRODUCTION

Plaintiffs' putative class action Complaint alleges that Plaintiffs enrolled at FCC, but did not have the experience they were allegedly "promised" and now have student loan debt they are unable

[1] Defendants' Motion for Protective Order is filed without prejudice to or waiver of Defendants' rights to object to or seek protection from specific discovery requests, if needed, at the appropriate time.

to pay. Because the claims should be subject to arbitration and are also legally insufficient, Defendants filed a Motion to Compel Arbitration, or in the Alternative to Dismiss the putative class action Complaint (the "Motion to Compel or Dismiss") [D.E. 24]. These motions are highly likely to significantly narrow, if not entirely eliminate, the issues before this Court. Therefore, Defendants also filed a Motion to Stay Discovery and Bifurcate Class Discovery (the "Motion to Stay Discovery") [D.E. 34]. After fully briefing the Motion to Compel or Dismiss and Motion to Stay Discovery, Plaintiffs have now propounded broad discovery requests relating to both the putative class and merits issues. To allow Plaintiffs to proceed with these, or any other, discovery requests while the Motion to Stay Discovery is pending would defeat the purpose of seeking the stay, which is to save the time and expense of conducting discovery that likely will be rendered moot by the pending motions. Accordingly, Defendants request this Court enter an order protecting them from having to respond to discovery until the Court decides the Motion to Stay Discovery.

ARGUMENT

Federal district courts have broad discretion to control their dockets, including to enter protective orders limiting or governing the timing of discovery. *Perez v. Miami-Dade Cty.*, 297 F.3d 1255, 1263 (11th Cir. 2002). Under Rule 26 of the Federal Rules of Civil Procedure, "[t]he court may, for good cause, issue an order to protect a party or person from annoyance, embarrassment, oppression, or undue burden or expense, including [by] forbidding the disclosure or discovery[.]" Fed. R. Civ. P. 26. To evaluate whether good cause exists to issue a protective order, a court balances the non-moving party's interest in the discovery against the proffered harm that the moving party would face. *See Dude v. Congress Plaza, LLC*, No. 17-80522-CIV-Marra/Matthewman, 2019 WL 3937974, at *2 (S.D. Fla. Aug. 20, 2019). The Eleventh Circuit recently re-affirmed its long-standing holding that "[f]acial challenges to the legal sufficiency of a claim or defense, such as a motion to dismiss based on failure to state a claim for relief, should . . . be resolved before discovery begins" and that "neither the parties nor the court ha[s] any need for discovery before the court rules on the motion." *Chudasama v. Mazda Motor Corp.*, 123 F.3d 1353, 1367 (11th Cir. 1997) (reaffirmed by *Rivas v. The Bank of New York Mellon*, 676 F. App'x 926, 932 (11th Cir. 2017)).

Good cause exists to issue a protective order here because, as also explained throughout the Motion to Stay Discovery, Defendants' pending Motion to Compel or Dismiss is likely to resolve entirely (or at least significantly narrow) the issues subject to discovery in this Court.

See Mot. to Stay Disc., D.E. 34, 2–7; Reply in Support of Mot. to Stay Disc., D.E. 39, 1–3. Courts in this district have correctly found this scenario satisfies the good cause showing and warrants a protective order. *See Girard v. Aztec RV Resort, Inc.*, No. 10-62298-CIV-ZLOCH/ROSENBAUM, 2011 WL 7945759, at *2 (S.D. Fla. Oct. 11, 2011) (finding good cause to grant a protective order from discovery pending further court orders, including resolution of a motion to dismiss, that could moot the need for the discovery). Here, however, Defendants are seeking *interim* protection until the Motion to Stay Discovery can be decided by the Court. Without a protective order, Defendants would be forced to incur excessive and unnecessary legal fees and costs associated with compiling facts, documents, and preparing the relevant objections and responses for claims that are likely to change. *See Seaway Two Corp. v. Deutsche Lufthansa Aktiengesellschaft*, No. 06-20993-CIV-ALTONAGA/Turnoff, 2006 WL 8433652, at *1 (S.D. Fla. Nov. 11, 2006) (granting a protective order pending resolution of motions to dismiss and to stay discovery because "the burden and expense of discovery outweigh its potential benefits"). This risk alone is good cause to grant a protective order.

Plaintiffs propounded broad discovery requests just days after the Motion to Stay Discovery was fully briefed.[2] These four requests included: Plaintiff's First Set of Interrogatories on IEC US Holdings, Inc. (Oprison Decl. Ex. 1); Plaintiff's First Set of Interrogatories on IEC Corporation (*Id.*, Ex. 2); Plaintiff's First Request for Production on IEC US Holdings, Inc. (*Id.*, Ex. 3); Plaintiffs' First Request for Production on IEC Corporation (*Id.*, Ex. 4). The requests seek everything conceivable relating to both class-based and merits-based issues. As an example of the breadth of discovery propounded, Plaintiffs' requests to IEC repeatedly demand categories of documents relating to "IEC and FCC," ignoring that IEC is a parent corporation with many non-FCC school brands and campuses. (*See, e.g.*, *id.*, Ex. 4, ¶¶ 7–17, 20–25, 27–42.) Even when directed at just FCC, the requests seek irrelevant materials and the documents themselves are not always housed in the same location; the search could invoke the involvement of 10 Florida campuses and, as currently worded, one campus in Texas. (*See generally id.*, Exs. 1, 3.) Plaintiffs demand 44 broad categories of documents from FCC, and 46 broad categories from IEC, relating to the individual plaintiffs, all potential class members, and every document related directly or indirectly to the merits (or lack thereof) of their allegations. (*See id.*, Exs. 3, 4.) The

[2] *See* Declaration of Christopher G. Oprison, dated August 14, 2020, attached as Exhibit A.

11 interrogatory requests are not only broad but contain multiple discrete subparts pertaining to both the parent and each individual FCC campus, including, for instance:

> For every year from 2015 to the present, list, for all advertisements or other paid marketing or media for IEC and FCC, each of the following: (i) the placement, (ii) the cost, (iii) the demographics of populations the media is placed to reach, and (iv) the keywords purchased or used for online advertising.

Id., Ex. 2, ¶ 4; *see also, e.g.*, ¶¶ 2–9; Ex. 1, ¶¶ 2–9. Based on the facially broad nature of the requests relating to both class and merits discovery issues, if required to respond over any objections that could be advanced, Defendants would be required to dedicate substantial human and financial resources in order to identify and collect documents from multiple repositories and, in turn, review potentially hundreds of thousands if not millions of pages of material for responsiveness and production as well as to fully respond to the interrogatories. These burdens and expenses must have been anticipated by Plaintiffs based on the deliberately global nature of the requests. There is therefore good cause to grant interim protection to Defendants from having to respond to Plaintiffs' discovery demands. *See, e.g.*, *Girard*, 2011 WL 7945759, at *2; *Seaway Two Corp.*, 2006 WL 8433652, at *1.

Furthermore, protecting Defendants from participating in discovery before an arbitrability determination is consistent with public policy and the Federal Arbitration Act. *See* Mot. to Stay Disc., D.E. 34, at 5. Otherwise, Defendants would be forced to participate in the litigation, which undermines its bargained for right to arbitration. *See, e.g.*, *Stone v. E.F. Hutton & Co.*, 898 F.2d 1542, 1543 (11th Cir.1990) ("The use of pre-trial discovery procedures by a party seeking arbitration may sufficiently prejudice the legal position of an opposing party so as to constitute a waiver of the party's right to arbitration."). Protection from discovery is precisely the type of relief envisioned in these situations for parties that provide the court with early notice of their intent to exercise arbitration rights, as Defendants did here. *See Gutierrez v. Wells Fargo Bank, NA*, 889 F.3d 1230, 1236–37 (11th Cir. 2018) (explaining that "early notice allows the Court to manage the litigation with this contingency in mind" by, for example, "limit[ing] the scope of early discovery . . . in order to avoid significant expenditures if it turns out that the arbitration provision governs"). Therefore, good cause exists for multiple reasons that support the Court's issuance of a protective order preventing Defendants from having to respond to Plaintiffs' discovery requests.

Plaintiffs would not be harmed or prejudiced by delaying any required responses until resolution of the Motion to Stay Discovery (or, for that matter, until resolution of the Motion to Compel or Dismiss). Few—if any—of the claims in the Complaint are likely to remain before the Court, no discovery has been exchanged yet, and the delay will be minimal because the underlying motions are briefed and ripe for a decision. Plaintiffs' briefing in response to the Motion to Stay Discovery did not even mention the possibility of prejudice. *See generally*, Resp. to Mot. to Stay Disc., D.E. 38. In these circumstances, courts have issued similar protective orders pending the outcome of such motions because any delay "will be relatively short [and there is no] basis to believe that their case will be prejudiced by this short delay." *Seaway Two Corp.*, 2006 WL 8433652, at *1. This is consistent with Eleventh Circuit precedent, which "emphasizes the responsibility of trial courts to manage pretrial discovery in order to avoid a massive waste of judicial and private resources and a loss of society's confidence in the court's ability to administer justice." *Perez*, 297 F.3d at 1263 (internal quotation marks omitted); s*ee also Moore v. Potter*, 141 F. App'x. 803, 807–08 (11th Cir. 2005) (upholding discovery stay and protective order until ruling on pending motion to dismiss). Therefore, these considerations weigh heavily in favor of protecting Defendants from all discovery until the Motion to Stay Discovery is resolved.

CONCLUSION

For the foregoing reasons, Defendants respectfully request the Court issue an order protecting Defendants from having to respond to Plaintiffs' discovery requests pending a ruling on Defendants' Motion to Stay Discovery and Bifurcate Class Discovery.

REQUEST FOR HEARING

Pursuant to Local Rule 7.1(b)(2), Defendants respectfully request that the Court schedule a hearing, which we estimate would take approximately thirty (30) minutes, to assist the Court in its determination relating to the matters raised herein.

RULE 26, LOCAL RULE 7.1(A)(3), AND DISCOVERY ORDER CERTIFICATE

The undersigned certifies that counsel for Defendants has conferred with counsel for Plaintiffs by telephonic conference on August 13, 2020. The parties engaged in a good faith effort to resolve the issues raised in this motion but were unable to do so. Counsel for all parties

jointly contacted the chambers of Magistrate Judge Patrick M. Hunt on August 14, 2020, at which time Defendants were granted permission to file the instant motion.

Dated: August 14, 2020

Respectfully submitted,

DLA PIPER LLP (US)

/s/ Christopher Oprison
Christopher Oprison, Esq.
Florida Bar No. 0122080
Primary Email: chris.oprison@dlapiper.com
Secondary Email: monica.tucker@dlapiper.com
Ardith Bronson, Esq.
Florida Bar No. 423025
Primary Email: ardith.bronson@dlapiper.com
200 South Biscayne Boulevard, Suite 2500
Miami, Florida 33131
Tel.: (305) 423-8522

and

DUANE MORRIS LLP
Keith Zakarin (admitted *pro hac vice*)
Primary Email: KZakarin@duanemorris.com
Courtney L. Baird (admitted *pro hac vice*)
Primary Email: CLBaird@duanemorris.com
750 B Street, Suite 2900
San Diego, California 92101
Tel.: (619) 744-2278

Attorneys for Defendants IEC Corporation and IEC US Holdings, Inc.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on August 10, 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.

/s/ Christopher Oprison
Christopher Oprison, Esq.
Florida Bar No. 0122080