

**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF FLORIDA**

**Case No. 20-60814-cv-ALTMAN/HUNT**

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

Plaintiffs,

vs.

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

Defendants.

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**PLAINTIFF'S MEMORANDUM OF LAW IN OPPOSITION  
TO DEFENDANTS' MOTION FOR PROTECTIVE ORDER**

Defendants are determined to make their own rules in order to delay this litigation. Indeed, this motion is Defendants' *third* time asking the Court to stay discovery. And even without a stay, Defendants have already unilaterally refused to participate in the discovery process.<sup>1</sup>

Defendants first asked to stay and bifurcate discovery in the parties' Joint Scheduling Report, which Plaintiffs opposed. *See* Joint Scheduling Report [ECF No. 22] at 3-4. The Court rejected Defendants' request; it neither stayed nor bifurcated discovery. Next, on July 3, 2020, Defendants filed their Motion to Stay Discovery, or in the Alternative, to Bifurcate Class Discovery ("Motion to Stay"). [ECF No. 34]. That motion is now ripe for a decision. Now, under the guise of a Motion for Protective Order, Defendants make a *third* attempt to stay discovery.

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<sup>1</sup> For example, pursuant to Rule 26(a)(1)(C), the parties' initial disclosures were due on June 5, 2020. Plaintiffs made their required disclosures on June 5, 2020, but Defendants have refused to make theirs.

This latest motion should be denied because the relief sought is wholly encompassed in the Motion to Stay pending before Judge Altman and because it is meritless, as detailed in Plaintiffs' Opposition to Defendants' Motion to Stay Discovery and Bifurcate Class Discovery ("Plaintiffs' Opposition to Defendants' Motion to Stay"). *See* Pls' Opp'n to Defs' Mot. to Stay [ECF No. 38].

**I. Defendants' Motion for Protective Order Is Duplicative of Defendants' Motion to Stay, Currently Pending Before Judge Altman.**

As an initial matter, Defendants' Motion for Protective Order should be denied because it seeks the exact same relief as their Motion to Stay currently pending before Judge Altman. *See Kron Med. Corp. v. Groth*, 119 F.R.D. 636, 637 (M.D.N.C. 1988) ("A motion to stay discovery is tantamount to a request for a protective order prohibiting or limiting discovery pursuant to Rule 26(c), Fed. R. Civ. P."). Not satisfied, apparently, that they have yet to receive a ruling on their Motion to Stay, Defendants now seek the exact same relief in this Court.<sup>2</sup>

Local Rule 7.1(d)(2) allows parties to request emergency or expedited treatment for their motions. If Defendants feel they are prejudiced by having to await Judge Altman's decision, the more appropriate course is to file a request that their motion be given expedited treatment pursuant to Local Rule 7.1(d)(2). Such a request would be more appropriate because it would result in one court, and not two, evaluating the propriety of a stay.

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<sup>2</sup> Defendants claim that courts grant protective orders in circumstances like this, but neither case cited lends any support to that proposition. In *Girard v. Aztec RV Resort, Inc.*, No. 10-62298-CIV-ZLOCH/ROSENBAUM, 2011 WL 7945759, at \*2 (S.D. Fla. Oct. 11, 2011), the Magistrate Judge granted the motion only after the parties had agreed that the case should be dismissed and the Magistrate Judge had already entered a report and recommendation to the district court to dismiss the case. *Id. Seaway Two Corp. v. Deutsche Lufthansa Aktiengesellschaft*, No. 06-20993-CIV-ALTONAGA/Turnoff, 2006 WL 8433652, at \*1 (S.D. Fla. Nov. 11, 2006), is also inapposite. Although no judge in *Seaway* had ruled on the motions to dismiss and stay discovery before the motion for a protective order was granted, all three motions were pending before the same judge. *Id.* Thus, the *Seaway* court did not risk inconsistent determinations or duplication of another court's efforts by ruling on the motion for a protective order.

**II. Defendants' Motion for Protective Order Should be Denied for the Same Reasons their Motion to Stay Should Be Denied.**

At any rate, the Motion for Protective Order should be denied on the merits because it makes the same arguments as their Motion to Stay Discovery. *Compare* Mot. for Protective Order [ECF No. 43] at 1-3 (stating there is good cause to issue the protective order because the Mot. to Compel or Dismiss will reduce or eliminate issues subject for discovery) *and* [ECF No. 43] at 4 (stating Plaintiffs' would not be harmed or prejudiced by such a delay) *with* Mot. to Stay [ECF No. 34] at 3-4, 6-7 (stating there is good cause in granting a stay and some or all of Plaintiffs' claims are subject to arbitration or dismissal) *and* [ECF No. 34] at 7-8 (stating Plaintiffs' would not be prejudiced by the stay). Both motions fail to explain why Defendants should be allowed to delay this litigation.

As more fully explained in Plaintiffs' Opposition to Defendants' Motion to Stay [ECF No. 38] at 4-7, there is no basis to stay discovery pending Defendants' Motion to Dismiss. A stay is required only where a party proves that its motion to dismiss is "clearly meritorious and truly case dispositive." *McCabe v. Foley*, 233 F.R.D. 683, 686 (M.D. Fla. 2006); *see also In re Managed Care Litig.*, No. 00-md-1334, 2001 WL 664391, at \*2-3 (S.D. Fla. June 12, 2001) (applying *Chudasama* standard in motion-to-compel-arbitration context). Here, Defendants have made no such showing, and "a stay of discovery pending the determination of a motion to dismiss is the exception rather than the rule." *Ray v. Spirit Airlines, Inc.*, No. 12-cv-61528, 2012 WL 5471793, at \*3 (S.D. Fla. Nov. 9, 2012).

Rather, Defendants' Motion to Compel or Dismiss is *not* "clearly meritorious" or "truly case dispositive." First, as more fully explained in Plaintiffs' Opposition to Defendants' Motion to Compel or Dismiss [ECF No. 30], arbitration "is a matter of contract;" therefore, courts may compel arbitration only where the parties' existent agreement requires them to arbitrate. *Klay v.*

*All Defendants*, 389 F.3d 1191, 1200 (11th Cir. 2004). Here, there was no agreement to arbitrate that applies to Plaintiffs' claims. At the outset, Plaintiffs entered into contracts that had an arbitration clause, but on May 14, 2019, the Defendants modified students' contracts by sending them a "Supplement" that expressly stated students are allowed to bring lawsuits in court with "claims concerning acts or omissions regarding the making of the Federal Direct Loan or the Provision by Florida Career College of educational services for which the Federal Direct Loan was obtained." *See* Pls' Opp'n to Defs' Mot. to Compel or Dismiss [ECF No. 30] at 5. Plaintiffs' claims plainly concern such "acts or omissions." *Id.* The Supplement thus modified any existing agreement to arbitrate Plaintiffs' claims.

Further, to the extent that Defendants argue that the borrower defense regulations are relevant notwithstanding the clear language of the Supplement, there is still no existing arbitration agreement that applies to Plaintiffs' claims. Plaintiffs' claims are clearly borrower defense claims as supported by the plain language of the regulation, case law, and regulatory history. *See* Pls' Opp'n to Defs' Mot. to Stay [ECF No. 38] at 5-6.

Defendants' Motion to Dismiss is likewise meritless because Plaintiffs sufficiently and adequately plead each claim. *See* Pls' Opp'n to Defs' Mot. to Compel or Dismiss [ECF No. 30] at 13-30. For all these reasons, as detailed in Plaintiffs' Opposition to Defendants' Motion to Compel or Dismiss, the Motion for Protective Order should be denied. *See Kemp-Gerstel v. Ally Fin. Inc.*, No. 14-20930-CIV, 2014 WL 12600806, at \*1 (S.D. Fla. Nov. 20, 2014) (denying motion to stay discovery and protective order because the motion to dismiss was not case dispositive); *Rubinstein v. Keshet Inter Vivos Tr.*, No. 17-61019-CIV, 2018 WL 3730868, at \*3 (S.D. Fla. Apr. 27, 2018) (denying motion to stay discovery as the motion to dismiss would not dismiss the case with prejudice allowing plaintiffs to cure any deficiencies by amending).

\* \* \*

For the foregoing reasons, Defendants' motion for protective order should be denied.

Dated: August 21, 2020

Respectfully Submitted,

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