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 FOR PROTECTIVE ORDER

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 submit this Reply in support of their Motion for Protective Order [D.E. 43] to provide interim relief to Defendants from having to respond to the discovery requests issued by Plaintiffs Kareem Britt and Monique Laurence (the "Plaintiffs") while the Court considers and rules on Defendants' pending Motion to Stay and Bifurcate Discovery ("Motion to Stay") [D.E. 34].

INTRODUCTION

Defendants have had to request intervention from the Court, again, because despite first discussing the issue months ago in a joint scheduling conference, and despite taking appropriate steps to raise the issue with the Court in the Motion to Stay, Plaintiffs have propounded broad, global discovery requests—requests that exceed even the putative class definitions and claims at issue, as well as the applicable statutes of limitations for the vast majority of the claims. In doing so, Plaintiffs are attempting to subvert the Court's authority to decide if discovery is appropriate at all by unilaterally forcing Defendants to comply with premature and overbroad discovery demands.

Defendants have nonetheless issued objections to all four sets of propounded discovery, objecting to the discovery requests in their entirety, as well as on specific grounds.[1]

The relief sought in Defendants' Motion for Protective Order is narrow and merely seeks interim protection from discovery until Defendants' pending Motion to Stay is decided. The relief sought in the Motion to Stay is a stay of discovery until the Motion to Compel Arbitration, or in the Alternative to Dismiss the putative class action Complaint (the "Motion to Compel or Dismiss") [D.E. 24] is decided. Contrary to Plaintiffs' contention, the requests do not overlap. Plaintiffs' suggestion that the Motion to Stay instead be put forward on an emergency basis is laughable; it demands the Defendants abuse the Court's time and resources reserved for legitimate emergencies when the only emergency here is Plaintiffs' impatience.

A ruling in Defendants' favor on the Motion for Protective Order pending the outcome of Judge Altman's ruling on the Motion to Stay would not result in any inconsistencies because the interim protective measures would expire upon the issuance of Judge Altman's decision. Issuing the protective order means maintaining the status quo; it would prevent Defendants from being burdened with broad discovery requests before the Court can rule on the Motion to Stay and determine the propriety of discovery at this stage. If discovery is paused pending the outcome of the Motion to Stay, it is indisputable that there would be no prejudice to Plaintiffs. If Plaintiffs are allowed to compel discovery in the interim, Defendants would be subject to significant burdens that would render the relief requested in the Motion to Stay meaningless. To deny the request would result in an inconsistent ruling if Defendants are forced to participate in expansive discovery only to be granted the stay after the fact. The best course of action during this brief period of time until the Motion to Stay is decided would be to issue an interim protective order.

ARGUMENT

Plaintiffs' Response in Opposition to the Motion for Protective Order ("Opposition") [D.E. 44] is set forth in generic, rote fashion supported by a misreading of relevant authority. Plaintiffs

[1] The parties met and conferred regarding the objections, but are at an impasse. Plaintiffs' position during the meet and confer call, held on August 26, 2020, that Defendants must provide full and complete substantive responses to the interrogatories and produce documents as called for by the requests for production—essentially compelling IEC and FCC to expend countless hours and substantial resources—unless and until the Court rules on the Motion to Stay, irrespective of the pending Motion for Protective Order, evidences why the requested interim relief is necessary. As Plaintiffs know, and the caselaw has held, affirmatively participating in discovery would not only moot any Motion to Stay discovery, but also could result in waiver of Defendants' right to arbitrate the claims.

utterly fail to rebut Defendants' evidence of "good cause" for the interim relief. Good cause exists to issue an order protecting Defendants from Plaintiffs' propounded discovery requests until the Court rules on the Motion to Stay because: (1) the Motion to Stay is likely to be granted; (2) without an interim protective order, any relief the Court could grant under the Motion to Stay would be rendered moot; and (3) protecting Defendants would not prejudice Plaintiffs. This request for interim relief is separate and exclusive from the relief sought by the Motion to Stay. Quite simply, the Motion for Protective Order seeks a stay of discovery *now* and during the interim period until the Court rules on the Motion to Stay, at which time, depending on the ruling, Defendants will either be relieved of any obligation to respond to discovery, or will be under an affirmative obligation to respond to discovery as so limited by the Court.

Issuing the protective order would preserve the status quo *now* and prevent Defendants from being exposed to the burdens of exceedingly broad and premature discovery, the scope of which will likely change depending on the outcome of one or more motions currently pending before the Court. *See Pacheco v. Borden Dairy Co. of Fla., LLC*, No. 5:14-cv-108-Oc-10PRL, 2014 U.S. Dist. LEXIS 66293, at *6 (M.D. Fla. May 2, 2014) (finding interim protective order appropriate to maintain status quo). A court may issue a stay of discovery when a pending motion to compel arbitration or dismiss the complaint will eliminate or significantly reduce the discovery burdens. *See, e.g., Khan v. Bankunited, Inc.*, No. 8:15-cv-2632-T-23TGW, 2016 WL 4718156, at *1 (M.D. Fla. May 11, 2016). To determine whether that is the case, a Court takes a "preliminary peek" at the motion to compel or to dismiss to determine the likelihood of its success. *See Bufkin v. Scottrade, Inc.*, No. 19-12003, 2020 WL 2043393, at *2 (11th Cir. Apr. 28, 2020) (affirming stay after a "preliminary peek" at the merits of motions to compel the claims to arbitration and to dismiss the claims). Here, a preliminary peek shows that Defendants are likely to succeed on their Motion to Compel or Dismiss, and therefore are likely to succeed on the Motion to Stay. Because Defendants are likely to succeed on their Motion to Stay, they would be irreparably harmed if forced to expend resources collecting documents in response to vastly overbroad discovery requests that may soon thereafter be rendered moot.

Plaintiffs' Opposition insists on applying an unduly narrow interpretation of *Chudasama v. Mazda Motor Corporation*, 123 F.3d 1353 (11th Cir. 1997), to challenge the likelihood of Defendants' success on the Motion to Stay. This interpretation is not in line with the spirit or application of *Chudasama* because a stay of discovery also may be appropriate where a motion to

dismiss "will potentially narrow the scope of discovery." *Khan*, 2016 WL 4718156, at *1; *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). Here, the Motion to Compel or Dismiss has the potential to resolve the case entirely, and if not, will at a minimum significantly narrow the issues which, in turn, will narrow the scope of any relevant discovery.

Defendants' Motion to Compel or Dismiss is meritorious because, contrary to Plaintiffs' Opposition, the operative agreements, in the Enrollment Agreement and Course Catalog, contain arbitration provisions that compel at least some, if not *all*, claims to individual arbitration; the "supplement" Plaintiffs describe lacks consideration so it cannot change a core term of the parties' contract. *See* Mot. to Compel or Dismiss, at 12–14; Defs.' Reply in Support of the Mot. to Compel or Dismiss [D.E. 36], at 1–2. As Defendants have made clear, some types of claims, known as "borrower defense" claims, are not subject to arbitration and Defendants do not seek to compel any claims the Court determines are borrower defense claims to arbitration. That being said, Defendants' sound reading of the applicable federal regulations militates in favor of finding that none of the claims constitute a borrower defense claim. *See* Mot. to Compel or Dismiss, at 10–15. Plaintiffs, on the other hand, continue to maintain that *all* of their claims are borrower defense claims—an utterly unsupportable position not grounded in any reasonable interpretation of the applicable regulations. Even if *some* parts of Plaintiffs' Complaint are considered borrower defense claims by the Court, the vast majority of the claims are demonstrably not and must, therefore, be compelled to arbitration. *See* Mot. to Compel or Dismiss, at 12–14; Defs.' Reply in Support of the Mot. to Compel or Dismiss, at 6.

Finally, contrary to Plaintiffs' contention, the Motion to Compel or Dismiss is also meritorious because each count in the Complaint fails to state a claim, suffering from multiple deficiencies that warrant dismissal of the entire Complaint. *See* Mot. to Compel or Dismiss, at 16–29; Reply in Support of the Mot. to Compel or Dismiss at 6–10. Even a *partial* dismissal would significantly limit the scope of the issues in the case—and the scope of discovery.

Therefore, the Motion to Compel or Dismiss is meritorious and likely to result in a stay of discovery. Furthermore, because a stay of discovery would be rendered meaningless if Defendants

were forced in the interim to respond to Plaintiffs' premature and global discovery requests, a protective order for a brief period of time pending resolution of the Motion to Stay would be appropriate.

CONCLUSION

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

Dated: August 26, 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 26, 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