

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF ALABAMA
NORTHERN DIVISION

A.A. a minor, by Jenny Carroll, <i>et al.</i> ,)	
)	
Plaintiffs,)	
)	
v.)	CASE NO. 2:21CV367-ECM
)	
NANCY T. BUCKNER, Commissioner of)	
the Alabama Department of Human)	
Resources, in her official capacity,)	
)	
Defendant.)	

ORDER

This cause is before the Court on the Defendant’s Motion to Bifurcate Discovery (doc. 59), and the Defendant’s Motion for Leave to File Reply in Support of Motion to Bifurcate Discovery (doc. 62).

The Defendant requests that class certification discovery be bifurcated from merits discovery, arguing that whether Plaintiffs’ claims can be maintained as a class action is a threshold question that should be determined before the parties undertake extensive merits-based discovery. The Defendant contends that the Plaintiffs are unlikely to proceed on individual claims if certification is denied, and that even if the case proceeds as a class, the Court may narrowly define that class and bifurcation will avoid unnecessary production of unrelated files, data, and communications.

The Plaintiffs respond that class certification and merits issues are closely enmeshed in this case. They represent that proof of DHR’s policies and practices needed for class certification is nearly identical to the proof needed to show those policies are unlawful.

The Plaintiffs contend that allowing discovery on both class and merits issues will avoid duplication and discovery disputes over whether an issue is class or merit-related. The Plaintiffs propose that all fact discovery, for both class certification and merits issues, occur first and that the parties then exchange expert reports. Significantly, the Plaintiffs represent that expert testimony will be required for the class certification stage.

District courts have discretion to manage discovery and scheduling. *Johnson v. Bd. of Regents of Univ. of Georgia*, 263 F.3d 1234, 1269 (11th Cir. 2001). Two concerns expressed by courts where, as here, class issues substantially overlap with merits issues are duplication of efforts and needless line-drawing disputes. *Cabrera v. Gov't Emps. Ins. Co.*, 2014 WL 2999206, at *8 (S.D. Fla. 2014).

In this case, the parties have raised many of the issues another court within this circuit has pointed to in the context of a bifurcation of discovery motion, including the following: the likelihood of overlap of individual and class discovery, the likelihood of ensuing discovery motions, the likelihood of prejudice to the nonmovant, evidence suggesting the claims of the named plaintiffs lack merit or the absence of such evidence, whether the case can continue if the claims of the named plaintiffs are dismissed, the interests of judicial economy, and the “early practicable time” requirement of Rule 23(c)(1)(A). *Breines v. Pro Custom Solar LLC*, 2019 WL 7423522, at *3 (M.D. Fla. Aug. 22, 2019). In that case, factors including the overlap of issues, the likelihood of ensuing discovery motions, and judicial economy, supported the court’s exercise of discretion to deny bifurcation. *Id.*

It appears to the Court that the competing interests in this case, including the need for expert testimony at the class certification stage, largely can be accommodated without bifurcation of discovery, thereby avoiding duplication and the potential for disputes between the parties as to whether discovery is on a class or merits issue. A class certification motion date which falls after a period of some discovery and the exchange of initial expert witness reports, but before the discovery cut-off, will allow for a resolution of the class certification motion at an as early as practicable time, but will also allow time in which to complete merits discovery on issues not enmeshed with class issues once the scope of any class certified is known. The parties can work out between themselves how to prioritize the nature of the discovery conducted, and the parties are expected to bear in mind the proportionality requirement of Rule 26(b)(1).

According, it is hereby ORDERED as follows:

1. The Defendant's Motion for Leave to File Reply in Support of Motion to Bifurcate Discovery (doc. 62)¹ is GRANTED.
2. The Motion to Bifurcate Discovery (doc. 59) is DENIED.

The Court will enter a separate Uniform Scheduling Order adopting the approach outlined above.

¹ The Defendant filed a copy of her Reply in Support of Motion to Bifurcate Discovery as a attachment to her Motion for Leave to File it. (Doc. 62-1). The Court has reviewed and considered the Defendant's Reply, and as such, accepts it as filed upon entry of this order.

