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United States District Court, N.D. Georgia, Atlanta Division.

Motisola Malikha ABDALLAH, Gregory Allen Clark, Linda Ingram, and Kimberly Gray Orton, Individually and as Class Representatives, Plaintiffs,
v.
THE COCA–COLA COMPANY, Defendant.

No. Civ.A. 1:98CV3679–RW. | July 16, 1999.

Attorneys and Law Firms

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Robert Allan Boas, Elizabeth Finn Johnson, the Coca–Cola Company, Atlanta, GA, William A. Clineburg, Jr., Larry Dean Thompson, Michael Wayne Johnston, Shelly Yvonne Sharp, King & Spalding, Atlanta, GA, R. Lawrence Ashe, Jr., Paul Hastings, Janofsky & Walker, Atlanta, GA, John Alvin Kimbell, Fincher & Hecht, Morrow, Georgia, for Defendant.

Opinion

ORDER

STORY, J.

***1** Plaintiffs bring this proposed class action lawsuit pursuant to 42 U.S.C. § 1981 and Title VII of the Civil Rights Act of 1964, 42 U .S.C. § 2000e et seq., alleging that Defendant The Coca–Cola Company ["Coca–Cola"] utilizes employee evaluations, compensation, promotions, and job placement policies and practices that treat African–American salaried employees less favorably than similarly situated employees outside the protected group. Before the Court is Defendant's Motion to Dismiss Class Allegations [25–1], Plaintiffs' Motion to Compel [33–1], Defendant's Motion for Protective Order [35–1], and Defendant's Motion for Modification of the Scheduling Order [39–1]. After reviewing the entire record and considering all arguments of the parties, the Court enters the following Order.

A. Defendant's Motion to Dismiss

The Eleventh Circuit framed the context of the present motion in *Holmes v. Continental Can Company,* 706 F.2d 1144, 1152 (11th Cir.1983) when it described the important role class actions play in furthering the aims of Title VII as follows:

> Title VII and the class action rule should be construed so as to further the strong public policy of eradicating all vestiges of racial discrimination in employment. This court and the cases binding on this court have consistently recognized that discrimination in employment is "one of the most deplorable forms of discrimination known to our society, for it deals not with just an individual's sharing in the 'outer benefits' of being an American citizen, but rather the ability to provide decently for one's family in a job or profession for which he qualifies or chooses."

(citations omitted). In spite of these observations by the Eleventh Circuit, Defendant urges the Court to preclude redress to a potential class of 1500 employees and dismiss the potential class members based only on the pleadings, foregoing discovery altogether.

Defendant argues that, no matter what forms Plaintiffs' class claims take, they are not maintainable in a class action. But the shape and form of a class action evolves only through the process of discovery, and it is premature to draw such a conclusion before the claim has taken form.[1]The Court can conceive of a posture in which this case could be certified as a class action if certain facts are developed through discovery. Dismissal of the class allegations is thus inappropriate because it does not "appear[ ] beyond doubt that the plaintiff[s] can prove no set of facts in support of [their] claim which would entitle [them] to relief."*Conley v. Gibson,* 355 U.S. 41, 45–46, 78 S.Ct. 99, 102, 2 L.Ed.2d 80, 2 L.Ed.2d (1957).

[1] *SeeJones v. Diamond,* 519 F.2d 1090, 1098 (5th Cir.1975). (stating it would constitute an abuse of discretion to "decid[e] against the class solely on the basis of the initial pleadings" and admonishing trial courts to "be loathe to deny the justiciability of class actions without the benefit of the fullest possible factual background."); *Dillon v. Bay City Constr. Co., Inc.,* 512 F.2d 801, 804, (5th Cir.1975) (overturning trial court's dismissal of class action, stating "plaintiffs were entitled to discovery which would bear on the always troublesome questions of whether this was or ought to be considered a class action ... and the terms and conditions, if any, on which it could proceed.").

The Court is not convinced by Defendant's argument that a hybrid class action is not maintainable under Federal

Rule of Civil Procedure 23(b). As *Holmes* and other Eleventh Circuit decisions explain, Rule 23(c)(4) authorizes certification of hybrid class actions by providing class actions may be maintained "with respect to particular issues." 706 F.2d at 1158 n. 10.

***2** For all of these reasons, the Motion to Dismiss is DENIED. However, the parties are cautioned to consider these rulings only in the context of the present motion. The Court has made assumptions that still must be proved, and there remain significant legal issues and management concerns that must be addressed after discovery when Plaintiffs' claims are more clearly drawn.

B. Plaintiffs' Motion to Compel and Defendant's Motion for Protective Order

Pursuant to the informal ruling made during the June 25 tele-conference, Plaintiffs' Motion to Compel 30(b)(6) Deposition is GRANTED, and Defendant's Motion for Protective Order is DENIED. Plaintiffs should proceed with caution, however, and avoid deposing Coca–Cola officials prematurely because the Court will not subject witnesses to a series of depositions.

Plaintiffs also seek an Order compelling Coca–Cola to identify and produce all documents related to the class allegations of the Complaint. The Court grants Plaintiffs' request in part and ORDERS Coca–Cola to identify and produce all documents relating to its employment policies and practices governing compensation, promotions, performance evaluations, affirmative action initiatives, employee discipline, and termination. But to the extent Plaintiffs seek production of every Coca–Cola personnel file, the motion is DENIED.

Plaintiffs also renew their requests for a Document Preservation Order. At this time, the Court finds no basis for concern regarding Coca–Cola's efforts to preserve all documents relevant to this lawsuit, and the motion is DENIED with respect to this request.

C. Defendant's Motion for Modification of the Scheduling Order

Paragraph 8 of the Scheduling Order requires Coca–Cola to produce data from its human resources database related to, among other things, former salaried employees' dates of departure and reasons for leaving, and any disciplinary action taken against salaried employees. In their Brief in Opposition to Defendant's Motion to Dismiss, however, Plaintiffs state that "none of the plaintiffs allege discrimination in discipline or in termination."(Br. At 20 n. 18). Based on this statement, Coca–Cola moves to modify the Scheduling Order to release Coca–Cola from producing data related to terminations and discipline because it is irrelevant.

The class allegations challenge a broad range of employment practices at Coca–Cola, and it is likely that evidence regarding Coca–Cola's termination and discipline policies and practices will lead to discoverable evidence regarding these challenged policies. In addition, discovery may reveal grounds for challenging the termination and discipline policies directly. Defendant's Motion for Modification of the Scheduling Order is therefore DENIED.

D. Referral to Magistrate

The Court hereby REFERS all discovery issues to the Honorable E. Clayton Scofield, III; however, this Court will continue to decide any motions to the extent they request modification of the Scheduling Order.

Conclusion

***3** For the aforementioned reasons, Coca–Cola's Motion to Dismiss Class Allegations [25–1] is DENIED, Plaintiffs' Motion to Compel [33–1] is GRANTED IN PART AND DENIED IN PART, Defendant's Motion for Protective Order [35–1] is DENIED, and Defendant's Motion for Modification of the Scheduling Order [39–1] is DENIED. Subject to the limitation described above, all discovery issues are hereby REFERRED to the Honorable E. Clayton Scofield, III.