UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

DIGITAL MEDIA SOLUTIONS, LLC Plaintiff, v. SOUTH UNIVERSITY OF OHIO, LLC, *et al.* Defendants.	)))))))))))	CASE NO. 1:19-cv-145 JUDGE DAN AARON POLSTER MAGISTRATE JUDGE THOMAS M. PARKER

PENDING STUDENT INTERVENORS' EMERGENCY MOTION FOR STATUS CONFERENCE & PRODUCTION OF RECORDS TO ADDRESS LOSS OF STUDENTS' FUNDS

Proposed student intervenors Emmanuel Dunagan, Jessica Muscari, Robert J. Infusino and Stephanie Porreca ("Dunagan Plaintiffs")[1] move the Court to schedule an emergency status conference to address the apparent loss of over $9 million in Title IV Federal Student Aid funds that belongs to students.

1. Students at schools subject to the Receivership are reporting that the student loan stipends they rely on to pay living expenses, *which belong to the students not their schools*, have not been distributed. In numerous inquiries to undersigned counsel and in statements to multiple

[1] Dunagan Plaintiffs are named representatives in a proposed class action against the Illinois Institute of Art LLC, the Illinois Institute of Art-Schaumburg, LLC, and Dream Center Education Holdings LLC, three of the entities in Receivership. On February 6, 2019, they filed an unopposed motion to intervene in this matter, which remains pending. (Dkt. 35).

news outlets, students across the country are seeking immediate assistance because they are missing rent and mortgage payments and are unable to afford food, gas, daycare, or books.[2]

2. According to an article in the Arizona Republic, the receiver, Mr. Dottore, stated on Friday that he does not know where the student money is, but suspects it could have been used prior to his appointment on other school expenses like payroll. *See* Rachel Leingang, "Argosy University Withholding Financial Aid. Students Can't Pay Their Bills." *Arizona Republic* (Feb. 8, 2019), *available at:* https://www.usatoday.com/story/news/education/2019/02/08/argosy-university-financial-aid-closing-receivership-accreditation/2817950002/.

3. According to the same Arizona Republic article, on February 6, 2019 Principal Deputy Undersecretary of the United States Department of Education, Diane Auer Jones, sent an email to the Minnesota Office of Higher Education stating: "I have had daily calls with the receiver, but as of last night he hadn't released the stipends. We have emphasized to him that this must be done, but we are also consulting with our legal team to figure out what next steps we can take legally if it doesn't happen." *Id.*

4. These missing student funds should be readily identifiable in the schools' books and records. Department of Education regulations require schools to "maintain title IV, HEA

[2] As but one example, *see* Staci Zaretsky, "Law Students Unable to Pay Rent Without Student Loans After School Goes Into Receivership," *Above the Law* (Feb. 8, 2019) ("[S]tudent leaders at [Western State College of Law] are now expressing their concerns about an unfair lack of transparency from the administration, as their classmates have been seen crying in the hallways. Here's what one student told us: 'We've been told since January 19 that the school is working to get our financial aid and still nothing. Students are contemplating dropping out, dropping to part time, whether to buy food or pay rent or buy books. The school requested that students 'petition' for $50-$100 Visa gift cards to help with expenses and we still haven't even received that.'"), *available at:* https://abovethelaw.com/2019/02/law-school-student-loans-delay-receivership/?rf=1.

program funds in a depository account . . . insured by the FDIC or NCUA." 34 CFR § 668.163. For each depository account, the schools "must clearly identify that title IV, HEA program funds are maintained in that account" by either: (i) including the phrase "Federal Funds" on each account or (ii) by notifying the depository institution that the depository account "contains title IV, HEA program funds that are held in trust and retaining a record of that notice" as well as by filing a UCC-1 statement with the appropriate state or municipal government entity "disclosing that the depository account contains Federal funds and maintaining a copy of that statement." 34 CFR § 668.163(2). Accordingly, with proper information from the Receiver, the Court should be able to identify the accounts established by the schools to receive funds from the Department of Education, confirm that the accounts were funded by the Department, and determine when and to whom the funds in such accounts were distributed.

5. On February 12, 2019, undersigned counsel contacted Special Counsel for the Receiver to discuss the Receiver's position on this motion. In response, Special Counsel provided undersigned counsel with a February 7, 2019 letter from the Receiver to the Department of Education, which is attached hereto as Exhibit A. The February 7 letter does not explain what happened to the missing student funds and raises numerous additional questions regarding the whereabouts of Receivership assets.

6. This situation needs to be addressed promptly. While the Dunagan Plaintiffs are hopeful that there is a harmless explanation and a simple solution, the reporting cited above has heightened their concern that student interests are, or have been, overlooked to address other obligations.

Accordingly, the Dunagan Plaintiffs respectfully move for the Court to schedule an emergency status conference at which the Receiver can report and the Court and others may inquire on the Receiver's efforts to ascertain the whereabouts of the missing student funds.

/s/ Richard S. Gurbst
Richard S. Gurbst (Bar # 0017672)
Eleanor M. Hagan (Bar # 0091852)
SQUIRE PATTON BOGGS (US) LLP
4900 Key Tower
127 Public Square
Cleveland, Ohio 44114
Telephone: +1 216 479 8500
E-mail: *richard.gurbst@squirepb.com*

Eric Rothschild
Admitted Pro Hac Vice
Alexander S. Elson
Admitted Pro Hac Vice

NATIONAL STUDENT LEGAL DEFENSE NETWORK
1015 15th Street NW, Suite 600
Washington, DC 20005
Telephone: +1 202 734 7495
E-mail: *alex@nsldn.org*
eric@nsldn.org

Counsel for Pending Intervenors,
Emmanuel Dunagan, Jessica Muscari,
Robert J. Infusino and Stephanie Porreca

CERTIFICATE OF SERVICE

It is hereby certified that a copy of the foregoing Emergency Motion For A Status Conference was served upon all parties of record by the Court's electronic filing system this 12th day of February 2019.

/s/ Richard S. Gurbst
Richard S. Gurbst
One of the Attorneys for Pending Intervenors

DOTTORE COMPANIES, LLC

February 7, 2019

Diane Auer Jones
Principal Deputy Undersecretary
United States Department of Education
400 Maryland Ave. SW
Washington, D.C. 20202

Re: Source and Application of Funds, January 2019
Non-Receivership Entities
AI Atlanta
AI Portland
AI Colorado
AI Houston
AI Fort Lauderdale
AI Miami
AI Chicago
South Savannah
Receivership Entities
AI Seattle
AI Pittsburgh
Argosy Orange County
AI Phoenix/Las Vegas

Dear Ms. Jones,

This letter, and its accompanying exhibits, is intended to account for $50,933,320 of funds advanced from January 1 to February 4, 2019, to the Argosy, South and Art Institutes universities (the "**Universities**") listed above, both pre- and post-receivership. Through February 4, 2019, $2,853,809 ($2,824,880 + $28,929) was advanced to the Receivership ("**Post-Receivership Receipts**"). An additional $48,079,511 was advanced to the Universities prior to the appointment of the Receiver, and to the Non-Receivership entities between January 1 and February 4, 2019 ("**Non-Receivership Receipts**"). Please see the attached spreadsheet entitled "Receipts Summary" to see the recipients of the cash and the date the cash was received.

When the Receiver seized the cash accounts, there was $5,478,585 in cash in all Receivership Entities' accounts. This cash was used by the Receiver to pay the

2544 Canal Road, Cleveland, Ohio 44113-2535
216.771.0727 fax: 216.771.2450 www.DottoreCo.com

February 1, 2019, payroll of $5,178,482. The figures are provided in the second spreadsheet entitled "AU & DCEH Cash Flow." The payment of the February 1, 2019, payroll leaves the Receivership Entities with only $3,811,883 to manage all of their support and administrative services.

The Receivership's dire cash situation was born out of an early January series of agreements that were entered into by the Non-Receivership Entities that transitioned those entities into separate 501(c)(3) entities with independent boards of directors (the "**Spin-Off**"). The problem with the Spin-Off is that the Universities were really not separate entities for purposes of their non-academic operational management. The solution, they thought, was for all of the Universities to use a managed services company named Studio Enterprise Manager, LLC, ("**Studio**"). But Studio was not equipped to provide any services to the Universities, so Studio had agreements with DCEH to continue to provide all of the operational services to the Universities.

Given that DCEH was ultimately responsible to provide operational services to the Universities, the agreements anticipated a flow of service fees from the Department of Education to the Universities, then to Studio, then to DCEH. The funds were reduced by the fees that Studio was allowed to charge under these agreements. As DCEH is providing all of the operational services to the Universities, it is hard to understand why Studio is receiving substantial fees under its Managed Services Agreements. It is also our understanding that the Universities made their payments in advance, and Studio was required to send the money on to DCEH in arrears. At this point, it appears that over $6 million is due to DCEH from Studio for services to support the Universities; this money may never be paid short of legal action.

We further understand "investors" were supposed to inject $10,000,000 to make sure DCEH paid for the Universities' operations. Unfortunately, there was no cash investment into DCEH by anyone. If any investor cash was contributed, it was consumed by administrative expenses, legal fees and/or Studio management fees. We are still pursuing this line of inquiry to determine from whom this cash was expected, if it was paid, and if paid, to what use it was put.

We also believe that there was scattered matching of revenues and expenses among the Universities. For example, prior to the receivership, DCEH was saddled with a $9 million payroll to pay employees in all of the Universities. Days later when draws on Title IV were made, it appears there was no allocation among the universities for these payroll expenses creating windfalls for the Non-Receivership Entities. Again, we are pursuing this matter with South and Art Institutes systems.

The purpose behind the reorganization in January was a laudable attempt to save the Non-Receivership Entities benefiting both students and taxpayers. However, it is not working because the Universities in good faith have paid Studio, but Studio has decided to hold on to all monies for their own fees. If the problem cannot be resolved, DCEH will have to work with the Non-Receivership Entities so that they can support their own operations.

While the Receiver is concerned about all of the students, he has a direct fiduciary responsibility to the Argosy students. In order to meet that responsibility, the Receiver is implementing a plan to support the needed managed services at a greatly reduced cost. We intend to have that plan in place by March 1st with the approval of the independent board of Argosy.

The Receiver understands that, regardless of the situation among the Universities and Studio, the most critical need is to pay the $13 million of Argosy student stipends. As the spreadsheets show, the Receiver's cash balance is only $3,811.883. This is clearly not adequate to pay $13 million of stipends due to the Argosy students and the situation must be urgently addressed.

In order to pay the student stipends, complete the semester, transition the Receivership Entities, address the Teach Out requirements, and meet the other regulatory requirements of the Department of Education and the Department of Justice, we plan to take the following action steps:

- On behalf of Argosy, the Receiver will request a $13 million drawdown of the $21 million in available funds to immediately pay all outstanding student stipends. Although Argosy is currently on HCM2, under these urgent circumstances, we are requesting a one-time exemption from the normal rules for the sake of the students who are in extreme need.

- Once the stipends are paid, on behalf of Argosy the Receiver plans to apply for the remaining $7 million in G5 funds. These funds, combined existing balances of approximately $3.8 million will fund Argosy operations and payroll for the remainder of the semester. There is also between $3 million to $6 million of additional draws available related to online starts in February and March.

- The Receiver will work with the independent boards and officers of South and Arts Institutes so that they can take over their own operating services at the earliest possible time.

- The Receiver intends to settle with or unwind the Studio transaction and recover the funds in Studio's hands.

- The Receiver is working with eight active potential purchasers and pursuing transitioning or selling the Receivership Entities as soon as possible.

We look forward to working with the Department of Education and the Department of Justice to transition these Universities to a soft landing, which is in the interest of every stakeholder.

Yours very truly,

Mark E. Dottore

Mark E. Dottore
Receiver

cc: Jonathan E. Jacobson, Esq.
Department of Justice
Benjamin W. Butterfield, Esq.
Morrison & Foerster, LLP
James A. Newton, Esq.
Morrison & Foerster, LLP

Enclosure

Title IV Receipts
Cash Flow by Day
1/1/-19 - 2/5/2019

OPEID	Entity	1/2/2019	1/3/2019	1/7/2019	1/10/2019	1/15/2019	1/16/2019	1/28/2019	1/29/2019	1/30/2019	2/4/2019	Total
Ai Atlanta	Aii	$ 233,951	$ -	$ -	$ -	$ 3,115,241	$ -	$ 810,170	$ -	$ -	$ -	$ 4,159,362
Ai Portland	Ai DCEH	$ -	$ 36,755	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ 36,755
Ai Seattle	Ai DCEH	$ 1,000	$ -	$ 544,250	$ -	$ -	$ -	$ -	$ -	$ -	$ 28,929	$ 574,179
Ai Pittsburgh	Ai DCEH	$ 1,143,182	$ -	$ -	$ -	$ 2,362,281	$ -	$ -	$ -	$ -	$ -	$ 3,505,463
Ai Philadelphia	Ai DCEH	$ 17,377	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ 17,377
Ai Colorado	Ai DCEH	$ -	$ 2,329	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ 2,329
Ai Houston	Aii	$ 46,437	$ -	$ -	$ -	$ 3,718,337	$ -	$ 494,479	$ 366,824	$ -	$ -	$ 4,626,077
Argosy Orange County	AU DCEH	$ 869,097	$ 18,372	$ -	$ -	$ 3,723,500	$ 5,519,912	$ -	$ -	$ 2,824,880	$ -	$ 12,955,761
Ai Fort Lauderdale	Ai DCEH	$ -	$ 36,138	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ 36,138
Ai Phoenix/Las Vegas	Ai DCEH	$ 32,786	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ 32,786
Ai Miami	Aii	$ 89,303	$ -	$ -	$ -	$ 2,594,620	$ 152,257	$ -	$ 874,060	$ -	$ -	$ 3,710,240
Ai Chicago	Ai DCEH	$ 7,000	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ 7,000
South Savannah	South	$ 1,651,050	$ -	$ -	$ -	$ 9,504,335	$ -	$ 10,114,468	$ -	$ -	$ -	$ 21,269,853

Total Receipts	
Entity	**Receipts**
Aii	$ 12,495,679
Ai DCEH	$ 4,212,027
AU DCEH	$ 12,955,761
South	$ 21,269,853
Total	**$ 50,933,320**

Cash Flow
Argosy/DCEH
1/1/19 - 2/5/2019

Argosy Cash Flow	Total	Pre- Receiver 1/1/19-1/20/19	Post Receiver 1/21/2019
starting balance	$ -	$ -	$ 5,449,656
Title IV Receipts	**$ 12,955,761**	$ 10,101,952	$ 2,853,809
1/18 Pay	$ (2,147,583)	$ (2,147,583)	
2/1 Pay	$ (2,141,427)		$ (2,141,427)
Stipends	$ (907,114)	$ (325,834)	$ (581,280)
Other Vendor Payments	$ (569,463)	$ (569,463)	
D2L	*$ (305,773)*	*$ (305,773)*	
Twin Cities Rent	*$ (263,690)*	*$ (263,690)*	
TSA	$ (1,609,416)	$ (1,609,416)	
Current Balance	**$ 5,580,757**	**$ 5,449,656**	$ 5,580,757

DCEH Cash Flow	Total	Pre- Receiver 1/1/19-1/20/19	Post Receiver 1/21/2019
Starting Balance	**$ 11,300,000**	$ 11,300,000	$ 1,268,180
Title IV Receipts	**$ 4,212,027**	$ 4,212,027	
1/4 Pay	$ (9,508,425)	$ (9,508,425)	
1/18 Pay	$ (4,485,422)	$ (4,485,422)	
2/1 Pay	$ (3,037,055)		$ (3,037,055)
Other Vendor Payments	$ (250,000)	$ (250,000)	
Current Balance	**$ (1,768,875)**	$ 1,268,180	$ (1,768,875)
Receiver Cash balance	$ 3,811,883		$ 3,811,883