UNITED STATES DISTRICT COURT
FOR THE 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

DUNAGAN INTERVENORS' RESPONSE TO MOTION OF STUDIO ENTERPRISE MANAGER, LLC FOR THE ENTRY OF AN ORDER (A) PERMITTING SOUTH UNIVERSITY AND THE ART INSTITUTES TO ASSUME CERTAIN EMPLOYEE BENEFIT OBLIGATIONS WHICH AROSE BETWEEN JANUARY 1, 2019 THROUGH APRIL 30, 2019; (B) PERMITTING THE ART INSTITUTES TO FORGIVE CERTAIN LOAN OBLIGATIONS FOR STUDENTS WHO WERE THE VICTIMS OF MISREPRESENTATIONS MADE BY DCEH BETWEEN JANUARY 20, 2018 AND JUNE 15, 2018; (C) ISSUING A BAR ORDER PROHIBITING FURTHER CLAIMS AGAINST STUDIO AND CERTAIN OTHER RELATED PARTIES; AND (D) FOR SUCH OTHER RELIEF AS APPROPRIATE

Intervenors Emmanuel Dunagan, Jessica Muscari, Robert J. Infusino and Stephanie Porreca ("Dunagan Intervenors") submit this Response to Studio's motion (Dkt. 449, 466) seeking among other things to cancel debt that some students incurred to either the Illinois Institute of Art ("IIA") or the Art Institute of Colorado ("AIC") between January 20, 2018 and June 15, 2018, a period when their schools' loss of accreditation was concealed from them. Those loans should be discharged—without conditions—because they resulted from misrepresentation and violations of a Consent Judgment with state Attorneys General by the schools and their parent DCEH. The Settlement Administrator has requested that these debts be discharged in the Final Receivership Order, in partial satisfaction of the Corrective Action Plan that DCEH agreed with the Settlement Administrator. Dkt. 323. The Court can exercise its

authority over the Receivership entities to dispose of the students' obligations in this manner, without granting Studio's motion, which imposes unnecessary, confusing and unjust terms and obligations on students and other parties as a condition of discharging these illegal loans.

In support, Intervenors submit the following:

1. Intervenors are four of approximately 1,000 students that attended IIA, one of the two affected schools, during the relevant time period. One or more of the intervenors is believed to have HLC Student Loans addressed by the Motion and Bar Order, although HLC Student Loans is not a defined term in the Bar Order or proposed release, and is described in the Motion only as "outstanding student loan balances in the aggregate amount of $2,082,839.80," "that Studio acquired from DCEH pursuant to the Reorganization Documents, which Studio subsequently assigned to the Arts Institutes." Dkt. 449 at 15.[1] Intervenors assume that this is intended to describe "institutional debt" owed by students to their schools for tuition to attend between January 20 and June 15, 2018 or expenses for that time period, but Studio has not provided documentation to confirm this is so. One or more of the intervenors and/or their families paid tuition and expenses during this time period out of their own assets, or through loans from private lenders.

2. Intervenors are represented by the National Student Legal Defense Network ("Student Defense"). Student Defense represents these same intervenors in a proposed class action lawsuit on behalf of IIA students in federal district court. *Dunagan, et al. v. Illinois Institute Art-Chicago, LLC, et al.*, No. 19-cv-809 (N.D. Ill). Student Defense also represents

[1]It is not clear from Studio's motion whether the "HLC Student Loan Forgiveness," covering the January 20 through June 15, 2018 period, Dkt. 449 at 16 ¶ 33, is coextensive with the HLC Student Loans ($2,082,839.80) and HLC Student Collections ($64,475.94), *id.* at 15 ¶ 32, or instead pertains to only a subset of those obligations.

intervenors Dunagan and Infusino, another IIA student, and two AIC students in a proposed class action lawsuit against the Department of Education seeking cancellation of loans for students at both schools. *Infusino, et al., v. DeVos, et al.*, No. 19-cv-3162-CRC (D.D.C).

3. The HLC Student Loans that Studio proposes to forgive are limited to the January 20, 2018 to June 15, 2018 time period.[2] During that entire time period, students were misled about the schools' loss of accreditation. Prior to the appointment of the Receiver in January 2019, the schools' owner, DCEH, acknowledged to the Settlement Administrator its failure to disclose appropriately and in a timely manner the change in accreditation status. *See* Position Statement of the Settlement Administrator Regarding the DCEH Accreditation Corrective Action Plan, Dkt. 323 at 5 and Dkt 323-1. The Receiver has also stipulated to the misconduct by the schools and DCEH. Dkt. 323-1.[3]

4. As a result of this misconduct, the Settlement Administrator required DCEH to submit a Corrective Action Plan to provide financial remediation to impacted students. Dkt. 323 at 5. DCEH proposed to refund approximately $3.1 million of DCEH's assets representing

---

[2] Studio appears to have based the time period for loan forgiveness on a pleading by the Settlement Administrator describing misrepresentations by DCEH about accreditation that commenced on January 20, 2018 and were not corrected on the website until the end of June. Dkt. 199 at 3-4. Some affected students, including intervenor Dunagan, were so close to completing their programs that they determined that finishing, rather than transferring, was in their best interests even though the credits earned would be unaccredited. Dkt. 35-2 ¶¶ 142-45. Given the misrepresentations beginning on January 20, 2018 that induced students to enroll or remain enrolled at the schools, institutional loans for the June-December 2018 should also be discharged.

[3] In addition, seventeen days after *Infusino v. DeVos* was filed, the Department announced it was cancelling all federal loan obligations that students at IIA and AIC incurred on or after January 20, 2018. *See* U.S. Dept. of Education Press Release, "Secretary DeVos Cancels Student Loans, Resets Pell Eligibility, and Extends Closed School Discharge Period for Students Impacted by Dream Center School Closures," (Nov. 8, 2019), *available at* https://www.ed.gov/news/press-releases/secretary-devos-cancels-student-loans-resets-pell-eligibility-and-extends-closed-school-discharge-period-students-impacted-dream-center-school-closures; FSA Announcement, "Important Information for Students That Attended Dream Center Education Holdings-owned Schools That Closed in December 2018," (Nov. 8, 2019), *available at* https://studentaid.ed.gov/sa/about/announcements/dceh-schools.

tuition payments by affected IIA and AIC students. *Id.* If DCEH owes tuition payments *back to students* for the January to June 2018 time period—as it has admitted—it plainly has no right to keep collecting tuition from students for that same time period. The Settlement Administrator has already asked this Court for a ruling to this effect. *Id.* at 2 ("[This Court's final receivership order should . . . order the Receiver to discharge the institutional debts of students to whom DCEH made knowing misrepresentations and from whom DCEH withheld material information"); *id.* at 5 ("[S]tudents who were falsely induced into taking DCEH institutional loans should not be forced to repay DCEH for an accredited education that DCEH did not provide. This is a foundational principle of fraudulent inducement law."). Furthermore, if DCEH has insufficient assets to reimburse tuition to the students that were misled about accreditation, it can make them partially whole by discharging institutional debt that the students accumulated, whether incurred between January and June 2018 or any other time.

5. Given his and DCEH's admissions, the Receiver could not enforce these obligations against the students. At the same time, students have been barred by the court-ordered stay from suing the Receivership to enjoin collections and demand a discharge, as well as reimbursement for payments already made. Subsequent to the filing of the Settlement Administrator's Position Statement (Dkt. 323), however, it has emerged that the rights to recover institutional debts from students of IIA and AIC, including for the period they were defrauded about accreditation, were acquired from DCEH by Studio, even though IIA and AIC—which had already been closed—were not purchased by Studio or affiliated parties. Dkt. 449 at 2.[4] It has also emerged that Studio has been collecting on those debts, even though DCEH and the schools

[4] The Receiver did not respond to the Settlement Administrator's Position Statement (Dkt. 323) to inform the Court or parties that the institutional debt the Settlement Administrator had asked the Court to order the Receiver to discharge had been transferred to Studio.

plainly could not have. *Id.* at 15. These debts—induced by admitted misrepresentations—do not become more collectible by transfer from their original holder to a new party.

6. Nevertheless, Studio has moved the Court for a range of sweeping concessions before it will agree to discharge these illegal debts. The Court should not impose concessions on students and other entities acting in the interests of students as a condition of having these uncollectible loans discharged—particularly the concessions proposed by Studio.

7. First, Studio's proposed Bar Order requires each student, as a condition of being relieved of this institutional debt, to release claims against a group of "Released Parties" arising out of the HLC Student Loans and the EDMC Consent Judgment Obligations. Dkt. 466-1 at ¶¶ 15-18. That release must be executed and returned by students within 30 days of receiving notice from Studio of the Bar Order and other conditions of the loan forgiveness proposed by Studio. Dkt. 466 at 9. Most affected students are not presently represented by Student Defense, or likely any other counsel, and will not know, nor be informed by Studio, that the loans at issue:

a. were the result of fraud admitted by their schools' owners;

b. are the subject of pending class action litigation in federal court and a Consent Judgment with states Attorneys General; and

c. cannot be enforced against the students whether or not they sign the releases.

8. The release requires students to relinquish potential rights to recovery of other damages caused by the misrepresentations admitted by the schools' owners. Among other things, they could not assert any claims against the Released Parties relating to or arising out of any DCEH Misrepresentations or the DCEH Corrective Action Plan, including to recover tuition paid to their schools during the relevant time period. As just one example of how that might work, if a student secured a judgment against her school or its Dream Center owners that she was

entitled to reimbursement of tuition paid in 2018, but those entities lacked assets to pay the judgment, the discharge of loans accumulated prior to 2018 could be one means of satisfying that judgment—at least partially. But if those receivables reside with Studio, the release required from students by the Bar Order could be construed to bar this remedy.

9. Beyond the releases, the Bar Order prohibits all "HLC Students, the Settlement Administrator, the National Student Legal Defense Network, the Attorneys General or any other Party" from commencing any claims based on any EDMC Consent Judgment Obligations. *Id.* at 7 ¶ 17.

10. This Bar Order is outside the scope of this receivership. None of the groups or organizations that Studio seeks a claims bar against are parties to this proceeding, and only some are even represented as intervenors. As explained by the Settlement Administrator, "the proposed Bar Order raises serious constitutional issues regarding this Court's jurisdiction over final state court judgments and purports to affect the rights and authority of dozens of State Attorneys General who are not parties to this action" and "purports to make a final determination on the merits regarding rights and claims of non-parties and non-settling parties." Dkt. 472 at 1.

11. Among other things, the Bar Order prohibits students from bringing any claim against the Released Parties based on any EDMC Consent Judgment Obligations. Dkt. 466-1 at 7 ¶ 17. This could be interpreted to (a) bar a student who did not enter into a Release with Studio within 30 days from receiving notice from ever bringing a claim for, among other things, discharge of her institutional debt for the January to June 2018 period, and (b) as permission from this Court for Studio to keep collecting that debt against her.

12. Studio even purports to prohibit a non-profit legal organization—Student Defense—from bringing claims on behalf of students that have never appeared in this

proceeding. Dkt. 466-1 at 7 ¶ 17. Even if a student signs a release of claims in exchange for forgiveness of her institutional debt, that discharge would be reversed if another party or organization, including Student Defense or an Attorney General, brought a claim purportedly covered by the Bar Order (*id.*), even though such student would have no control over whether that happens.

13. Studio has cited no legal authority for such an extensive, unprecedented bar order—particularly for a party that is not the debtor over whom the court has jurisdiction. The case it primarily relies upon—*Liberte Capital Group, LLC v. Capwill*, 462 F.3d 543, 441 (6th Cir. 2006)—describes authorities that receivership courts have to protect the assets *of the receivership entities*, not third parties that happened to have transacted with them. *Id.* at 551-52. Even then, "due process demands that the claimant be heard," *id.* at 552, not barred from bringing claims before any claims process has ever been initiated.

14. The instances of receivership courts issuing bar orders in favor of third parties cited by Studio all involved settlements made between third parties and receivers and were determined to be in the best interests of the estates. Dkt. 449 at 24-25. But the student loan receivables that Studio purports to compromise by its Motion were not acquired through a settlement with the Receiver, but rather during a pre-receivership transaction between Studio and DCEH. Dkt. 449 at 2. To the extent any "settlement" of these receivables is being contemplated here, it is being foisted by Studio on the Settlement Administrator and/or students (most of whom are not represented here), not the Receiver. There is no interest of the Receivership that justifies the claim bars against non-parties that Studio proposes here.

15. In raising these problematic aspects of the Release and Bar Order, the Dunagan Intervenors state no position on whether they have claims against Studio and other related parties

on whose behalf Studio seeks releases, nor purport to speak for non-intervening students in this regard. Both Studio and the Receiver are working with more information than Intervenors about the transfer of assets from the receivership entities to third parties, and other conduct that might give rise to recoverable assets. Dkt. 449 at 16 ("Receiver's counsel has recently sent letters to certain employees of the Arts Institutes [owned by Studio] demanding the forfeiture and return of certain employee bonuses which were paid to such employees by DCEH"); *id.* at 16-17 ("allegations regarding the actions of DCEH's officers and directors, including the Chancellors [of the Art Institutes managed by Studio]"); *see also* Dkt. 439 at 2 (Dunagan Intervenors' "request that the Court require the Receiver to report on the results of his investigation into fraudulent transfers and bonus payments."). For purposes of disposing of this Motion, the Court need not make findings about Studio's liability on claims arising from the HLC Student Loans or the Consent Judgment to conclude that it should not impose concessions on non-party students, Attorneys General, or other actors as conditions of Studio relinquishing institutional debt that was unlawfully accumulated by DCEH and the schools before being transferred to Studio.

Respectfully Submitted,

/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 Intervenors,
Emmanuel Dunagan, Jessica Muscari,
Robert J. Infusino and Stephanie Porreca

CERTIFICATE OF SERVICE

It is hereby certified that a copy of the foregoing Response to Studio's Motion was served upon all parties of record by the Court's electronic filing system this 2nd day of December 2019.

/s/ Richard S. Gurbst

Richard S. Gurbst
One of the Attorneys for Intervenors