**UNITED STATES DISTRICT COURT**
**NORTHERN DISTRICT OF OHIO**
**EASTERN DIVISION**

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| DIGITAL MEDIA SOLUTIONS, LLC,<br><br>Plaintiff,<br><br>v.<br><br>SOUTH UNIVERSITY OF OHIO, LLC, *et al.*,<br><br>Defendants. | ) | CASE NO. 1:19-CV-00145<br><br><br><br>JUDGE DAN AARON POLSTER<br><br><br>MAGISTRATE JUDGE THOMAS M. PARKER |

**SECOND SUPPLEMENT TO MOTION OF STUDIO ENTERPRISE MANAGER, LLC FOR THE ENTRY OF AN ORDER (A) PERMITTING SOUTH UNIVERSITY AND THE ARTS INSTITUTES TO ASSUME CERTAIN EMPLOYEE BENEFIT OBLIGATIONS WHICH AROSE BETWEEN JANUARY 1, 2019 THROUGH APRIL 30, 2019; (B) PERMITTING THE ARTS 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 IS APPROPRIATE**

Studio Enterprise Manager, LLC ("Studio") hereby files this second supplement (this "Second Supplement") to its motion (the "Motion") for the entry of an order (a) permitting South University – Member, LLC (collectively with all of its direct and indirect subsidiaries "South University") and The Arts Institutes International, LLC (collectively with all of its direct and indirect subsidiaries the "Arts Institutes") to assume certain employee benefit obligations that arose between January 1, 2019 through April 30, 2019 (the "Covered Period") that neither the Receivership Entities[1] nor Mark E. Dottore, the receiver (the "Receiver") have paid;

[1] The Receivership Entities are Dream Center Education Holding LLC ("DCEH"), Dream Center Education Management LLC, Dream Center Argosy University of California LLC and its direct subsidiary Argosy Education Group LLC (together, "Argosy"), South University of Ohio LLC, South University of Michigan LLC, The DC Art

(b) permitting the Arts Institutes to forgive certain loan obligations for students who were the victims of misrepresentations made by Dream Center Education Holding LLC ("DCEH") between January 20, 2018 and June 15, 2018; (c) issuing a bar order prohibiting further claims against Studio, South University, the Arts Institutes, and certain other related parties relating to the unpaid employee healthcare claims and other previously released claims, and including certain releases (the "Bar Order"); and (d) granting such other and further relief as is just and proper, filed on November 9, 2019 (Docket No. 449).

On November 20, 2019, Studio filed a supplement to its Motion (Docket No. 466) (the "First Supplement"). On November 20, 2019, Settlement Administrator Thomas Perrelli (the "Settlement Administrator") filed a statement of interest (Docket No. 464) which he later affirmed in a notice of intent filed on November 22, 2019 (Docket No. 472). On November 25, 2019, Intervenors Emmanuel Dunagan, Jessica Muscari, Robert J. Infusino and Stephanie Porreca ("Dunagan Intervenors") also filed a notice of intent to oppose Studio's Motion (Docket No. 475). On November 26, 2019, the Receiver filed a response to Studio's Motion joining and agreeing with the majority of the Motion (Docket No. 477). On December 2, 2019, the Settlement Administrator filed an opposition to the Motion (Docket No. 485) and the Dunagan Intervenors filed a response to the Motion (Docket No. 486).

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Institute of Raleigh-Durham LLC, The DC Art Institute of Charlotte LLC, DC Art Institute of Charleston LLC, DC Art Institute of Washington, LLC, The Art Institute of Tennessee-Nashville LLC, AiTN Restaurant LLC, The Art Institute of Colorado LLC, DC Art Institute of Phoenix LLC, The Art Institute of Portland LLC, The Art Institute of Seattle LLC, The Art Institute of Pittsburgh, DC LLC, The Art Institute of Philadelphia, DC, LLC, DC Art Institute of Fort Lauderdale LLC, The Illinois Institute of Art LLC, The Art Institute of Michigan LLC, The Illinois Institute of Art at Schaumberg LLC, DC Art Institute of Phoenix, LLC, The Art Institute of Las Vegas LLC, The Art Institute of Indianapolis, LLC, and AiIN Restaurant LLC.

This Second Supplement provides Studio's response on behalf of South University and the Arts Institutes to above-referenced statements of interest, notices of intent, oppositions and responses.

The Motion is solely for the benefit of the former students and employees DCEH (and the Receivership estate due to the discharge of almost $5 million of allowable benefits claims and over $2 million in disputed claims against the estate). South University and the Arts Institutes are not obligated to provide the benefits that are the subject matter of the Motion under any cognizable legal theory (and none have been posited to date by the only remaining objectors, the Settlement Administrator or the Dunagan Intervenors). If the Motion is not approved, then thousands of employees and students will not have this gift for the holidays which is truly unfortunate. It is difficult to comprehend why anyone would want to prevent this Motion from being approved.

Before Studio addresses the specific allegations, Studio must once again remind the Settlement Administrator and the Dunagan Intervenors about Studio's role. Studio did not volunteer for this assignment. DCEH and its senior secured creditors, with the full knowledge and support of the United States Department of Education, requested that Studio enter into the Reorganization Documents in order to effect the change of ownership of South University and the Arts Institutes from DCEH (the "Reorganization").

Within eleven days of the Reorganization, DCEH entered into receivership. Since that date, Studio, South University and the Arts Institutes have endured continuous frivolous, legally deficient and false accusations from parties who are frustrated that are unlikely to recover anything on their claims and therefore are trying to circumvent the claims process of the Receivership. Instead, they have attempted to paint Studio as the owner of EPF, South

University and the Arts Institutes and the successor to all of the liabilities and obligations of, and responsible for the actions of, not just DCEH, but also EDMC, the Receivership Entities, and the Receiver. Studio has provided dozens of documents and made numerous filings (and there are also numerous independent public sources available) to clarify the exact nature of the Reorganization and the ownership and control of EPF, South University and the Arts Institutes. Studio is simply a service provider to South University and the Arts Institutes. Yet, the Dunagan Intervenors falsely claim in their response to the Motion that Studio owns the Arts Institutes, and the Settlement Administrator continues to assert that Studio is a successor to DCEH's obligations under the EDMC Consent Judgment, without citing any provision of the EDMC Consent Judgment, law, statute or case that supports this assertion—because none exist.

Without Studio's willingness to assist in the Reorganization, both South University and the Arts Institutes would cease to exist today. A critical fact that seems to be lost on the Settlement Administrator and the Dunagan Intervenors, who are asking the Court to hold up millions of dollars of relief for students and employees over $64,475.94—the amount of HLC Student Loans Collections that have been collected to date by the Arts Institutes. The remaining $2,082,839.80 of HLC Student Loans have not been paid and it does not seem that they ever will. Yet, the Settlement Administrator and Dunagan Intervenors are still willing to deprive the Covered Employees from having $4.6 million of real out-of-pocket expenses covered by South University and the Arts Institutes and depriving the HLC Students—the real victims of any purported DCEH Misrepresentations—from deciding for themselves whether to accept the over $2 million in HLC Student Loan Forgiveness.

The Dunagan Intervenors represent in their response to the Motion that the Dunagan 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." Since there are only four Dunagan Intervenors, Studio expects that the Dunagan Intervenors or their counsel National Student Legal Defense Network ("Student Defense") would be able to determine whether any of the Dunagan Intervenors actually received any institutional loans from DCEH that are included in the HLC Student Loans. Neither Studio's not the Arts Institutes' records indicate that any of the Dunagan Intervenors actually had an institutional loan from DCEH or made any payments to Studio or the Arts Institutes in respect of any institutional loans that are included in the HLC Student Loans. Studio suspects that the Dunagan Intervenors and their counsel the Student Network well know this to be true so they tried to obfuscate the fact that they have no standing to interfere in this Motion by claiming that the HLC Student Loans are not clearly defined in the Motion, and that "[o]ne 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." Studio would like to know if those other private lenders and the families of the Dunagan Intervenors are similarly obligated to forgive those loans and tuition and expenses.

Contrary to assertions by the Settlement Administrator and the Dunagan Intervenors, the only harm being caused by this Motion is the harm that will be caused to the HLC Students and the Covered Employees by the Settlement Administrator and the Dunagan Intervenors if the Motion is not approved.

**Receiver's Response to the Motion**

The Receiver has requested assurance from Studio that the former officers and directors of EDMC, including specifically Brian J. Curtin, John Danielson, Chad M. Garret, Frank Jalufka, Jerome Kamer, J. Devitt Kramer, Mark A. Mceachen, Teresa L. Nelson, and Mark E. Novad

(collectively, the "EDMC Director and Officers") are not included in the broadly worded definition of "Released Parties" in the Bar Order. For avoidance of doubt, the definition of Released Parties in the Motion and Bar Order shall hereby be deemed to specifically exclude the EDMC Directors and Officers. The Receiver has informed Studio that this clarification fully satisfies the concerns raised in his response to the Motion (Docket No. 477).

**Settlement Administrator's Opposition**

The Settlement Administrator's opposition to the Motion and the Dunagan Intervenors' response to the Motion contain too many inaccuracies and unsupportable legal conclusions that it would be difficult to address all of them in this Second Supplement so only the most egregious issues will be addressed.

First and foremost, the essential element of the Settlement Administrator's arguments rests on the existence of the purported DCEH Corrective Action Plan. Studio does not believe that the DCEH Corrective Action Plan exists because the Settlement Administrator has failed to produce it despite numerous requests from Studio and the Arts Institutes. In addition, the Receiver informed Studio that the Receiver has not been provided a copy of the purported DCEH Corrective Action Plan. Nonetheless, the Settlement Administrator and the Dunagan Intervenors have disingenuously attempted to suggest that the Receiver has admitted the existence and validity of the purported DCEH Corrective Action Plan without ever having been shown a copy of such DCEH Corrective Action Plan. As such, the entire objection by the Settlement Administrator must fail because, without a valid executed and binding DCEH Correction Action Plan, there is nothing to enforce against DCEH, the Receiver, Studio, the Arts Institutes or any other party, and all of the other arguments postured by the Settlement Administrator are founded on this essential misrepresentation of fact by the Settlement Administrator.

Another false argument by the Settlement Administrator is that the Bar Order would prevent the Attorneys General from enforcing the EDMC Consent Judgment against any of the parties thereto. The Bar Order specifically and purposely does not include the EDMC Consent Judgment in the definition of Released Claims, so the Attorneys General are free to enforce its provisions on all parties subject thereto. The Bar Order only seeks to prevent parties, like the Settlement Administrator and the Dunagan Intervenors, from continuing to make baseless claims against the Released Parties regarding the existence of the purported DCEH Corrective Action Plan and even more dubious claims that any party other than DCEH would be obligated to remedy the alleged DCEH Misrepresentations or that the mere acquisition by a bona fide purchaser for value of accounts receivables under private loans would subject the purchaser to assume the obligations of the seller of such receivables. The Settlement Administrator makes these pronouncements (without any factual or legal support) as if they have the weight of law—they simply do not.

For the benefit of the Court's analysis, the following are some salient facts that the Settlement Administrator would prefer to gloss over because they prove that his objection has no merit and should be overruled.

The "EDMC Consent Judgment" is defined in the Motion to mean the Consent Judgment that Education Management Corporation, a Pennsylvania corporation ("EDMC'), entered into with the Attorney Generals of the States of Alabama, Arizona, Arkansas, Colorado, Connecticut, Delaware, Florida, Georgia, Hawaii, Idaho, Illinois, Indiana, Iowa, Kansas, Kentucky, Louisiana, Maine, Maryland, Mississippi, Missouri, Montana, Nebraska, New Jersey, New Mexico, New York, North Carolina, North Dakota, Ohio, Oregon, Pennsylvania, Rhode Island, South Dakota,

Tennessee, Utah, Vermont, Virginia, Washington, West Virginia, and Wyoming and the District of Columbia (collectively, the "Attorneys General").

The "EDMC Consent Judgment Obligations" is defined in the Motion as (a) the DCEH Misrepresentations, (b) the DCEH Corrective Action Plant and (c) the HLC Student Refunds.

The "DCEH Misrepresentations" is defined in the Motion to mean the alleged misrepresentations made by DCEH, beginning January 20, 2018 through June 15, 2018, to the HLC Students about the accreditation status of four Receivership Entities – The Art Institute of Colorado LLC, The Art Institute of Michigan LLC, The Illinois Institute of Art LLC and The Illinois Institute of Art at Schaumberg LLC (the "HLC Campuses") -- which were formerly accredited by the Higher Learning Commission.

The "DCEH Corrective Action Plan" is defined in the Motion to mean the alleged pending corrective action plan proposed by DCEH on December 20, 2018 that purportedly requires DCEH to return at least $3 million in tuition payments paid by the HLC Students to DCEH (the "HLC Student Refunds"). The Settlement Administrator now claims that the purported DCEH Corrective Action Plan contained two provision and, that in addition to the $3 million of HLC Student Refunds, DCEH was required to forgive the HLC Student Loans.

The HLC Student Releases and the Bar Order do not release and bar claims regarding the EDMC Consent Judgment. The HLC Student Releases and the Bar Order only release and bar claims regarding EDMC Consent Judgment Obligations (which the Settlement Administrator has consistently claimed are DCEH obligations in all prior filings with this Court).

The EDMC Consent Judgment is a consensual settlement of a dispute between 40 Attorneys General and EDMC in November 2015 which resolved claims by the Attorneys General that EDMC engaged in deceptive and unfair advertising practices using third-party lead

generators, primarily by EDMC's Brown Mackie schools in Kentucky. EDMC did not admit that it engaged in any deceptive and unfair advertising practices, but entered into the settlement to avoid protracted litigation.

The only laws implicated were state consumer protection laws regarding deceptive or unfair advertising practices. No education laws were allegedly implicated.

Brown Mackie was closed and not transferred to DCEH in 2017.

EDMC is no longer in business and is in chapter 7 liquidation.

The campuses, including the Arts Institutes, South University, the HLC Campuses and the other Receivership Entities acquired from EDMC by DCEH in 2017 remain subject to comply with the requirements of the EDMC Consent Judgment. None of them are guarantors of EDMC's, DCEH's or each other's obligations under the EDMC Consent Judgment.

The Settlement Administrator claimed that DCEH made misleading statements regarding the accreditation status of 4 HLC campuses in Colorado and Illinois operated under the Ai brand name (the "HLC Campuses") during the period from Jan through June 2018.

DCEH and DOE disagreed.

The HLC Students were able to receive credits that were accredited and therefor transferrable.

The HLC Campuses were not transferred to EPF on January 7, 2019.

DCEH filed for receivership on January 18, 2019.

The Arts Institutes only has campuses in Florida, Texas, Virginia and Georgia.

South University only has campuses in Texas, Florida, Georgia, Alabama, Virginia, North and South Carolina.

Texas and South Carolina are not part of the EDMC Consent Judgment.

The enforcement action was primarily focused on the misleading tactics of third-party lead generators which are not used by AI and South.

There is nothing in the EDMC Consent Judgment that could apply to Studio unless Studio becomes a third-party lead generator which it is not and will not.

The Settlement Administrator claimed that DCEH proposed the DCEH Corrective Action Plan on December 20, 2018 whereby DCEH agreed to provide at least $3 million of student loan refunds to the HLC Students. No proof of a final executed and binding DCEH Corrective Action Plan has been produced to date by the Settlement Administrator.

The Settlement Administrator first tried to claim that Studio was obligated to forgive the HLC Student Loans and refund any collections made on the HLC Student Loans under a theory that Studio was subject to the EDMC Consent Judgment and obligated to assume DCEH's liabilities simply as a bona fide purchaser for value of the HLC Student Loan receivables. This theory is without merit and completely debunked below.

When Studio informed the Settlement Administrator that Studio had assigned these loan receivables to the Arts Institutes, the Settlement Administrator changed his theory and claimed that Arts Institutes, as a former subsidiary of DECH, is a successor to DCEH under the EDMC Consent Judgment and liable for any obligations of DCEH or any other DCEH subsidiary under the purported DCEH Corrective Action Plan.

While Studio has no direct knowledge regarding the discussions between DCEH and the Settlement Administrator, Studio has not been able to verify any of the allegations made by the Settlement Administrator that comprise the EDMC Consent Obligations. Although Studio and the Arts Institutes have requested supporting documentation and legal authority for the

Settlement Administrator's claims, the Settlement Administrator has not provided any documentation or legal authority that:

(a) there has been a judicial determination (or any determination) that the alleged DCEH Misrepresentations were a breach of the EDMC Consent Judgment;

(b) there exists a validly executed and binding DCEH Corrective Action Plan between the Settlement Administrator and DCEH;

(c) the proposed remedies (including the HLC Student Refunds) in the alleged Corrective Action Plan were specifically required or even permitted under the EDMC Consent Judgment;

(d) any of the HLC Students were not awarded credits that were fully transferrable to other accredited institutions for classes that they paid for and attended during the period of the alleged DCEH Misrepresentations, such the HLC Student Refunds were potentially an appropriate and required remedy under the EDMC Consent Judgment;

(e) the $3 million amount of the HLC Student Refunds that the Settlement Administrator has been seeking from DCEH is accurate (Studio is only aware of approximately $2 million of student loan receivables related to the HLC Students from the period of alleged DCEH Misrepresentations);

(f) the EDMC Consent Judgment prevented DCEH from selling the private loan receivables that included the HLC Student Loans free and clear of all liens and encumbrances as provided for in the Reorganization Documents; or

(g) a bona fide purchaser for value of such private loan receivables automatically assumes the obligations of DCEH under the EDMC Consent Judgment (including

the alleged DCEH Corrective Action Plan) by operation of law or the terms of the EDMC Consent Judgment.

The Settlement Administrator complains that the proposed HLC Student Release and Bar Order propose a "final determination on the merits regarding rights and claims of non-parties and non-settling parties." Actually, it is the Settlement Administrator who is attempting to impose obligations on non-parties and non-settling parties under the EDMC Consent Judgment based solely on his allegations which clearly have been contested by DCEH and disputed by the Receiver and have not been determined on the merits in any judicial proceeding, including the Receivership which is a necessary first step before attempting to impose liability on purported successors.

The Settlement Administrator argues that proper notice has not been provided to the Attorneys General. It would seem that notice to the Settlement Administrator would be sufficient notice to the Attorneys General.

By representing to this Court that the EDMC Consent Obligations (specifically that there was a fully executed and binding DCEH Corrective Action Plan) were undisputed claims against the Receivership estate, even going so far as seeking to impose a "constructive trust" on the assets of the Receivership estate, the Settlement Administrator has engaged the very deceptive practices that he claims were perpetrated by DCEH. The change in the Settlement Administrator's position regarding the existence of a valid DCEH Corrective Action Plan is in direct contradiction of his representation in his Memorandum in Support of his Notion to Intervene (Docket No. 77) in which he states that:

> "Prior to these receivership proceedings, the Administrator sought and received assurance from DCEH that filings in this case would reflect the Company's obligations under the Consent Judgment and the Corrective Action Plan ***that is currently being developed***. [Emphasis Added] But because the filings failed to

> address the Consent Judgment and implement any required Corrective Action Plans, the Administrator must intervene in this proceeding to confirm that DCEH and the Receiver are obligated to comply with the Consent Judgment and implement any Corrective Action Plans necessitated by violations thereof."

There can be no misunderstanding of the above representation of the Settlement Administrator—there was no DCEH Corrective Action Plan developed, agreed to or implemented. It is clear from his objections to the proposed HLC Loan Forgiveness that the Settlement Administrator is attempting to find a way to cure a glaring defect in his legal standing to make the Arts Institutes (as he has no chance to assert any claim against Studio or make Studio a successor to DCEH under the EDMC Consent Judgment) a successor to and guarantor of DCEH and therefore obligated to discharge DCEH's obligations under the purported DCEH Corrective Action Plan. Without a validly existing and binding DCEH Corrective Action Plan, he can't claim that the DCEH has an undisputed obligation under the EDMC Consent Judgment. In fact, as will become clear later in this Second Supplement, the Arts Institutes is not obligated to cure any obligations of DECH and is only liable for its own actions that would constitute non-compliance with the EDMC Consent Judgment. Consequently, the Settlement Administrator has been desperate to get someone to agree that there is a validly existing and binding DCEH Corrective Action Plan with DCEH or for the Arts Institutes to treat the HLC Student Loan Forgiveness as the Arts Institutes' offer to comply with the purported DCEH Corrective Action Plan.

The Settlement Administrator has even attempted to mislead the Court into believing that the EDMC Consent Judgment is akin to a state consumer protection statute when, in fact, it is simply a court-approved settlement agreement between EDMC and the Attorneys General. The Settlement Administrator also claims, without any legal support, that the EDMC Consent Judgment makes the Settlement Administrator a "law enforcement" entity. Pursuant

paragraph 34 of the EDMC Consent Judgment, the actual scope of the Settlement Administrator's authority is "to oversee EDMC's compliance with the provisions of this Consent Judgment." The Settlement Administrator's duties and authority, as set forth in paragraphs 45 through 48 of the EDMC Consent Judgment, are limited to monitoring the disclosures made to prospective students by EDMC and any third-party lead generators engaged by EDMC, writing an annual report to the Attorneys Generals evaluating EDMC's compliance, and reporting practices or patterns of non-compliance by EDMC. There are no "law enforcement" powers. The only enforcement provisions that the Settlement Administrator was delegated under the EDMC Consent Judgment, as set forth in paragraph 116 of the EDMC Consent Judgment, are as follows:

> (a) If at any time it appears that EDMC is engaged in a ***practice or pattern of non-compliance, or commits an egregious act of non-compliance*** [emphasis added], either on the basis of information obtained by the Administrator pursuant to the workplan or from information obtained through any other source, then the Administrator shall review the relevant facts, collect whatever additional facts the Administrator deems necessary, seek EDMC's position as to the practice, pattern, or egregious act of non-compliance and related instances of individual violations, and shall work in conjunction with EDMC to devise a ***corrective action plan to remedy such practice or pattern of non-compliance*** [emphasis added], including a reasonable period for corrective action and implementation of such plan. To the extent that the Administrator and EDMC are unable to agree to a corrective action plan, the Attorneys General may take whatever action they deem necessary, including but not limited to bringing an action to enforce this Consent Judgment, filing a new original action, conducting further investigation, or attempting to negotiate a corrective action plan directly with EDMC. Should the Attorneys General choose to file a new original action, ***nothing referred to in this paragraph shall affect the release in paragraph 129*** [emphasis added].
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> (b) At a reasonable time following the period for corrective action, the Administrator shall provide a report to the Executive Committee, setting forth:
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> (1) a description of the practice or pattern of non-compliance and related instances of individual violations of the Consent Judgment (including the relevant facts);
>
> (2) a description of the corrective action plan;
>
> (3) findings by the Administrator as to whether the Administrator deems it reasonably likely that EDMC is in substantial compliance with the terms of the

> Consent Judgment, including but not limited to whether EDMC has ceased to engage in a practice or pattern of non-compliance; and
>
> (4) a description of EDMC's views as to the foregoing matters.

None of the remedies for non-compliance or corrective action plans include or contemplate monetary penalties or loan forgiveness or refunds. The EDMC Consent Judgment is limited to compliance with its disclosure provisions with respect to recruiting prospective students. The remedies are limited to injunctive relief to force EDMC to comply with the disclosure requirements. This is supported by the express terms of EDMC Consent Judgment which do not provide for the releases in paragraph 129 to be voided due to any future non-compliance by EDMC.

The Settlement Administrator mischaracterizes the generous and good faith efforts of Studio and the Arts Institutes as "a problematic attitude" towards compliance obligations that "some companies might take in a litigation posture." While, at the same time, the Settlement Administrator has threatened to extend the term of the Settlement Administrator's monitoring of the few remaining EDMC Campuses which should have ended in November of 2018. These are the very tactics that the Arts Institutes wants to bar if the Arts Institutes is willing to provide the HLC Student Loan Forgiveness.

Even if the Settlement Administrator's allegations regarding the EDMC Consent Judgment Obligations are true and legally valid, the obligation to remedy the DCEH Misrepresentations is solely the obligation of DCEH. It is true that the Arts Institutes, by virtue of being a former subsidiary of EDMC, is obligated to comply with the EDMC Consent Judgment which it clearly has done. Except for the Settlements Administrator's tortured interpretation that the Arts Institutes is not complying simply by not assuming the obligations of DCEH under the purported DCEH Corrective Action Plan, there have been no allegations by the

Settlement Administrator that the Arts Institutes' activities with respect to recruiting prospective students are not in compliance with the EDMC Consent Judgment.

The Settlement Administrator erroneously alleges that the Arts Institutes is somehow a guarantor of all obligations of EDMC under the EDMC Consent Judgment. That tortured logic would mean that, if another former subsidiary of EDMC, for example the HLC Campuses, breached the EDMC Consent Judgment, and the corrective action plan entered into by the HLC Campuses required a refund of $3 million collected from institutional student loans, and the HLC Campuses went bankrupt and were unable to refund the $3 million, then all other current and former subsidiaries of EDMC would be obligated to refund the $3 million—that is, they would be guarantors of the obligations of the HLC Campuses. There is nothing in the EDMC Consent Judgment or any law cited by the Settlement Administrator that supports this theory.

The Settlement Administrator's other theory is equally flawed. He claims that any purchaser of the loan receivables is subject to assume all obligations of the seller regarding the EDMC Consent Judgment and that such obligations are a lien or encumbrance on the loan receivables. In order for that to be true, the Attorneys General would need to have a perfected security interest and a lien filed against the loan receivables or some statutorily imposed lien which the Settlement Administrator has not cited. In fact, prior to the purchase of the loan receivables, there was a perfected security interest and a first priority lien filed against the loan receivables by the senior secured lenders of DCEH. As a condition of Studio's purchase of the loan receivables, the senior secured lenders of DCEH had to release their liens and Studio filed a perfected security interest and liens concurrently on these loan receivables. There were no other liens filed on these loan receivables and there is no mention in the EDMC Consent Judgment that any assets, including any loan receivables, were subject to any liens or encumbrances. Nor is

there any mention that EDMC was prohibited from selling its loan receivables or that it had to sell them subject to liens and encumbrances that are neither mentioned in the EDMC Consent Judgment or filed in any jurisdiction.

Although the Arts Institutes does not agree with allegations or legal standing of the Settlement Administrator or the Dunagan Intervenors regarding the EDMC Consent Judgment Obligations, the Arts Institutes has generously offered to provide the HLC Student Loan Forgiveness in return for certainty that the Settlement Administrator, the Dunagan Intervenors and the HLC Students won't try to assert that the Arts Institutes is liable for anything more in respect of the HLC Student Loan Forgiveness. No rational party would agree to assume an obligation that undisputedly belongs to another party without a release from the party benefiting from the assumption of such obligation. None of the HLC Students are being forced to accept the HLC Student Loan Forgiveness. If HLC Students prefer to preserve their right to assert claims based on the EDMC Consent Judgment Obligations, which have not been adjudicated on their merits yet, rather than accept the HLC Student Loan Forgiveness, that is their right and the Motion clearly states the rest of the HLC Students will not be affected by this choice made by any other HLC Student.

If the HLC Student Loan Forgiveness is not approved, then the HLC Students will not have been given a chance to decide this for themselves. More importantly, the Covered Employees will lose the opportunity to have the Covered Claims paid which were undisputed claims in the receivership. This would result in a strange circumstance wherein a class of disputed claims prevented a class of undisputed claims to be resolved by the Receiver. Moreover, unless the undisputed claims are determined to be allowable claims, had the HLC Student Loans still been part of the receivership estate, the Receiver would be obligated to

pursue collection of the HLC Student Loans for the benefit of the other stakeholders of the receivership estate, particularly the Covered Employees. The Covered Employees have undisputed claims and are suffering potentially even more than the HLC Students who have not been paying the HLC Student Loans, and neither the Arts Institutes nor Studio has taken any action to collect the HLC Student Loans. The HLC Student Refunds amount to only $64,475.94. The Covered Employees are mired in almost $5 million of unpaid medical bills that are being referred to collections. The Covered Employees' interests need to be given at least the same, if not more, consideration based on the reality of who has suffered the most harm by the failure of DCEH.

Studio will not waste more of the Court's time disassembling the Settlement Administrator's and the Dunagan Intervenor's unsupported claims that the Bar Order "raises serious constitutional issues regarding this Court's jurisdiction" because Studio provided ample supporting authority in the Motion and is confident that this Court is aware of the scope of its jurisdiction and authority.

**Dunagan Intervenors' Response**

The Dunagan Intervenors have yet to make a legally coherent objection. The Dunagen Intervenors have not cited any facts or law in support of their bold allegations. Studio provided a detailed analysis of the facts, the relevant agreements, and the law that clearly supports the relief requested in the Motion.

The Dunagan Intervenors seem to want even more than the proposed HLC Student Loan Forgiveness. They want all loans receivables purchased by Studio and/or assigned to the Arts Institutes to be discharged simply because the seller is insolvent.

The Student Defense also claims, without any legal support, that by virtue of its status as a "non-profit legal organization" is should be exempt from the Bar Order.

Studio's review of the HLC Student Loans indicates that none of named Dunagan Intervenors have outstanding HLC Student Loans that could be forgiven or made any payments that would be entitled to reimbursement under the proposed HLC Student Loan Forgiveness. It would seem inappropriate for the Dunagan Intervenors to object to the HLC Loan Forgiveness which will effectively prevent the true beneficiaries of the HLC Student Loan Forgiveness to decide for themselves whether to accept the terms of the HLC Student Loan Forgiveness without interference by the Dunagan Intervenors who have nothing to lose if their actions result in no HLC Student Loan Forgiveness.

Studio, the Arts Institutes and South University have done everything reasonable and appropriate to help the HLC Students and the Covered Employees, yet the Settlement Administrator and the Dunagan Intervenors (neither of whom have a personal economic stake in the outcome—other than the Settlement Administrator's law firm that stands to make millions by perpetuating the monitoring of the EDMC Consent Judgment against non-parties that were not responsible for any the actions that gave rise to the EDMC Consent Judgment or the alleged EDMC Consent Judgment Obligations—particularly the purported DCEH Corrective Action Plan at issue) seek to prevent the true beneficiaries from deciding for themselves whether the proposed terms of the HLC Student Loan Forgiveness are acceptable to them. Studio leaves it to this Court to approve or deny the Motion and whether the HLC Students will be permitted to decide this issue for themselves. Moreover, the inference by the Settlement Administrator and the Dunagan Intervenors jeopardizes the benefits that will accrue to the Covered Employees and the Receivership estate.

WHEREFORE, Studio respectfully requests that this Court enter an order: (a) permitting South University and the Arts Institutes to assume the Covered Claims that arose during the Covered Period; (b) permitting the Arts Institutes to arrange for the HLC Student Loan Forgiveness; (c) issuing the Bar Order prohibiting further claims against Studio, the Arts Institutes, South University, or any of the Released Parties relating to the Global Released Claims; and (d) granting such other and further relief as is just and proper.

*[Remainder of page intentionally blank; signature page follows]*

December 3, 2019

Respectfully submitted,

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**CERTIFICATE OF SERVICE**

I hereby certify that on December 3, 2019, a copy of the foregoing Second Supplement to Motion of Studio Enterprise Manager, LLC For the Entry of an Order (A) Permitting South University and The Arts Institutes To Assume Certain Employee Benefit Obligations Which Arose Between January 1, 2019 Through April 30, 2019; (B) Permitting the Arts 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 is Appropriate was filed electronically. Notice of this filing will be sent to all parties by the Court's electronic filing system. Parties may access this filing through the Court's system.

/s/ *M. Colette Gibbons*

M. Colette Gibbons (0003095)