

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

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

RECEIVER'S REPORT REGARDING PAY STATUS OF EMPLOYEES

Pursuant to this Court's Order of March 15, 2019 [Dkt. No. 172], Mark E. Dottore, (the "Receiver") the duly appointed and acting Receiver of the Receivership Entities submits this Report concerning the pay status of employees:

Payroll on the Date of the Receiver's Appointment.

One week's accrued and unpaid payroll on January 18, 2019, the date the Receiver was appointed was \$2.7 million, plus approximately 12% for tax liabilities that had accrued on that date. These pre-Receiver amounts were paid with the February 1, 2019 payroll.

Nature and Extent of Current Unpaid Payroll

Due to the sudden loss of Title IV funding for Argosy University, the Receiver was unable to make payroll for the Argosy University campuses, and the Excluded Campuses for the two-week period ending March 1, 2019 and scheduled to be paid March 8, 2019. The total amount of unpaid Argosy University payroll is

\$1,507,557.42; the amount of unpaid payroll for the Excluded Campuses is \$983,707.03. See Exhibit A for breakdown by account number.

Sources of Funding for the Unpaid Payroll

The Receiver has identified various sources of funding for the payrolls. They are as follows:

Cash in Bank of America Former Bank Accounts

To begin with, the Receiver has located some cash accounts that were on deposit at Bank of America. Bank of America was the depository for Argosy University Group (“Argosy”) and Dream Center Educational Holdings LLC (“DCEH”). Bank of America was holding scores of accounts with small balances. The Receiver moved these accounts to the Receivership accounts this week. They include Account #1191 labeled “AU/DCEH Operating” with \$150,000.00; Account #5908 labeled “Argosy Perkins” with \$339,155.12; Account #2762 labeled “AU Phoenix AZ State Grant” with \$4,429.00; Account #4670 labeled AU AI CA State Grant with \$175,947.88; an account labeled “AU Atlanta GA State Grant with \$62,516.00; an account labeled Argosy State Grant with \$198,083.52; an account labeled Argosy MN State Grant with \$62,348.00; and an account labeled “Donations” with \$194,273.79. The total of these accounts is \$1,186,753.31.

These account balances, and others that might be applied, might have restrictions on their use. The Receiver is investigating to determine if he can apply the funds to the unpaid payroll balances. Also, as the Court is aware, the Receiver is holding \$1.5 million upon the Court’s Order, until it can determined whether it should be held in trust to be paid to students.

The total amount of cash which might be applied to the unpaid payroll is at least \$2,686,753.31.

Sales of Physical Property

The Receiver has retained Hilco Global to remove and sell personal property at the various campus locations and sell that property. Property liquidations will occur quickly, as landlords are demanding that the Receiver exit property in the shortest possible time. In addition, DCEH has its IT assets, which it will sell. While these assets are in DCEH, they comprise the collateral for undersecured secured lenders (see below), and if the secured lenders consent, the money could be used for these payrolls.

Litigation

The Receiver is exploring the option of filing various lawsuits. Director and officer liability insurance is in effect, and recoveries that are insured by these policies may be a source of funding for payroll. In addition, there appear to be sizable insider transfers that could be recovered. Obviously it will take a significant amount of time to identify these causes of action, develop them to the point of filing, litigate and recover funds.

The Department of Education

At the time of the Studio Transaction, the United States Department of Education (“DOE”) was holding approximately \$10.5 million which was the proceeds of letters of credit posted with the DOE. Although the DOE has previously refused requests to fund Argosy’s closure with these funds, or any other funds, the

Receiver remains hopeful that the DOE will make concessions when it is in the interest of the United States to do so.

The Candlewood Holdback Fund

There is a substantial fund of money that was placed in an escrow account at Morrison & Forester to pay the legal expenses of the Secured Lenders (as described below) who were preparing documentation of the January, 2019, Studio Transaction. If any of the money is left after all of the Secured Lenders' attorneys are compensated, the fund belongs to the universities. The original arrangement contained a number of terms and conditions, and contemplated a two-year time period for holding the escrow open. The secured lenders and the Receiver are in discussions to recover some of this fund, with the expectation that such a recovery could be in excess of \$100,000. Studio also had such a fund, and it is not known whether the attorney fees exceeded the fund amount.

Receiver's Plan to Pay Unpaid Payroll

The Receiver has requested that the payroll be analyzed by job description (*See, Exhibit B*). Each unpaid employee has been placed in one of four classifications: Student, Administrative, Faculty and Dean/Executive. The Receiver proposes to pay the students, first, in full, and the administrative personnel, second, in full. In this way, the most vulnerable will be paid with the first funds received, and those who likely earn more will be paid with the later funds.

The Receiver then proposes to pay the faculty, third, with a temporary limit established of \$3,500 for each faculty member. Then finally to pay the Deans/Executives with the same temporary limit of \$3,500. The balance due to each

employee will be paid pro rata. This is designed so that these employee groups will equitable share the burden imposed by the delay.

The Receiver submits that such a payment system is fair and equitable given the situation. This Court sits in equity, and this equitable arrangement is subject to the Court's approval.

Lien Interests and Other Issues and Impediments

The interests of lien holders and others who have an interest in money collected by the Receiver on behalf of the various Receivership Entities must be reviewed. Presently, there are two principal consensual secured creditors. U.S. Bank N.A. is agent for one group of consensual secured lenders (the "**Secured Lenders**"), but as a practical matter, Flagler Master Fund SPC, Ltd. ("**Flagler**") is the contact person for the primary secured lender.¹ Studio Enterprise Manager LLC ("**Studio**") also claims a lien in some of the Receivership Entities, but it is not owed any money.

The United States is also a substantial interest holder and by statute holds a lien interest in Argosy's assets, and in the assets of other Receivership Entities, by virtue of the federal priority statute, 31 U.S.C. § 3713. Argosy's closure has triggered student discharge indebtedness. In addition, the Receiver understands that students who did not receive their stipends have been applying for, and

¹ This group has been more properly described as, Flagler Master Fund SPC Ltd. as a lender under the Credit Agreement¹ and as a secured party and beneficiary of each of the First Lien Pledge and Security Agreement,¹ Second Lien Guaranty¹ and the Second Lien Pledge and Security Agreement,¹ and U.S. Bank, National Association, acting in its capacity as administrative agent and collateral agent under the Credit Agreement and as collateral agent under the First Lien Pledge and Security Agreement (in such capacities, the "DCEH Agent"), and as EDMC Agent under each of the Second Lien Guaranty and the Second Lien Pledge and Security Agreement.

receiving, loan discharges. The effect of the loan forgiveness, if it is occurring, is that the taxpayers are shouldering the burden of the failure to pay student stipends.

Which entities are subject to this lien, when the lien attaches, and to what that lien attaches, is yet to be discussed and decided. Also pressing is the priority of the federal government's lien, and whether it primes properly perfected, consensual liens of record, such as that of the Secured Lenders. The United States needs to be a party in these proceedings so that it will receive proper notice of matters affecting its interests, and the Court's orders determining payment and priorities will bind it.

There are other interest holders who may make appearances in regard to this issue.

Dated:

Respectfully submitted,

/s/ Mary K. Whitmer

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EXHIBIT A

UNPAID PAYROLL

MARCH 8, 2019

ACCOUNT	NAME	AMOUNT
22010	Ai Pittsburgh	\$ 123,947.90
22016	Ai Seattle	\$ 131,823.20
22023	No Location	\$ 240.00
22026	Ai Online - Div Ai Pittsburgh	\$ 305,134.07
22032	Ai CA - San Diego	\$ 146,671.32
22033	Ai Las Vegas	\$ 111,747.50
22035	Ai California - Hollywood	\$ 139,679.97
22045	AIO - Phoenix	\$ 24,463.08
32001	Argosy Education Group	\$ 40,100.58
32010	AEG Chicago	\$ 132,311.00
32011	AEG Twin Cities	\$ 195,639.74
32012	AEG Atlanta	\$ 143,551.96
32014	AEG Washington D.C.	\$ 90,190.56
32015	No Identification	\$ 1,927.78
32016	AEG Honolulu	\$ 73,066.61
32017	AEG Tampa	\$ 147,673.28
32018	AEG Phoenix	\$ 113,314.16
32019	AEG San Francisco	\$ 11,857.90
32020	AEG Seattle	\$ 3,865.71
32021	AEG Orange County	\$ 80,650.58
32023	AEG Dallas	\$ 5,522.82
32024	No Location	\$ 180.95
32027	AEG Denver	\$ 2,896.63
32028	Argosy Univ Los Angeles	\$ 30,765.49
32030	AEG Online	\$ 421,667.85
32031	AUO - Phoenix	\$ 2,913.60
32032	Argosy Salt Lake City	\$ 1,492.31
32035	Argosy - American Samoa	\$ 7,353.62
32033	No Location	\$ 400.00
32034	No Location	\$ 214.29
		<u>\$ 2,491,264.45</u>

EXHIBIT B

CLASSIFICATION OF
UNPAID PAYROLL

	JOB DESCRIPTION	GROSS AMOUNT
22010 - Ai Pittsburgh		123,947.90
	Admin	20,727.03
	Dean/Exec	9,716.81
	Faculty	80,542.80
	Student	12,961.25
22016 - Ai Seattle		131,823.20
	Admin	10,486.25
	Dean/Exec	5,192.31
	Faculty	100,075.88
	Student	16,068.76
22023 - Ai San Fran		240.00
	Faculty	240.00
22026 - Ai Online PA		305,134.07
	Admin	5,138.47
	Faculty	299,995.60
22032 - Ai San Diego		146,671.32
	Admin	46,173.93
	Dean/Exec	10,590.65
	Faculty	83,206.49
	Student	6,700.25
22033 - Ai Las Vegas		111,747.50
	Admin	6,279.86
	Dean/Exec	5,384.62
	Faculty	95,599.15
	Student	4,483.88
22035 - Ai Hollywood		139,679.97
	Admin	9,616.38
	Dean/Exec	4,615.38
	Faculty	113,007.95
	Student	12,440.25
22045 - Ai Online PHX		24,463.08
	Admin	24,463.08
32001 - AU Corp		40,100.58
	Admin	16,421.89
	Dean/Exec	20,601.77
	Faculty	3,076.92
32010 - AU Chicago		132,311.00
	Admin	8,171.43
	Dean/Exec	15,307.32
	Faculty	99,270.51
	Student	9,561.75
32011 - AU Twin Cities		195,639.75
	Admin	45,451.72
	Dean/Exec	9,884.62
	Faculty	134,555.79
	Student	5,747.63

EXHIBIT B

CLASSIFICATION OF

UNPAID PAYROLL

32012 - AU Atlanta		143,551.96
Admin	28,109.22	
Dean/Exec	11,283.05	
Faculty	100,469.44	
Student	3,690.25	
32014 - AU Washington		90,190.56
Admin	9,503.19	
Dean/Exec	10,576.92	
Faculty	62,336.30	
Student	7,774.15	
32016 - AU Hawaii		73,066.61
Admin	30,682.77	
Dean/Exec	10,461.54	
Faculty	30,068.31	
Student	1,854.00	
32017 - AU Tampa		147,673.28
Admin	14,956.54	
Dean/Exec	14,242.31	
Faculty	105,164.18	
Student	13,310.25	
32018 - AU Phoenix		113,314.16
Admin	18,492.73	
Dean/Exec	9,038.46	
Faculty	79,904.97	
Student	5,878.00	
32019 - AU San Fran		11,857.90
Admin	1,379.65	
Dean/Exec	2,692.31	
Faculty	7,785.94	
32020 - AU Seattle		3,865.71
Dean/Exec	3,865.71	
32021 - AU Orange County		80,650.58
Admin	15,878.46	
Dean/Exec	10,356.62	
Faculty	51,880.51	
Student	2,535.00	
32023 - AU Dallas		5,703.66
Admin	2,738.08	
Faculty	2,965.58	
32027 - AUDenver		2,896.63
Faculty	2,896.63	
32028 - AU LA		30,765.49
Admin	8,458.41	
Dean/Exec	4,807.69	
Faculty	15,465.51	
Student	2,033.88	
32030 - AU Online PGH		421,667.85

EXHIBIT B

**CLASSIFICATION OF
UNPAID PAYROLL**

Admin	96,498.68	
Faculty	325,169.17	
32031 - AU Online PHX		2,913.60
Admin	2,913.60	
32015 - AU Schaumburg		1,927.78
Faculty	1,927.78	
32032 - AU Salt Lake City		2,106.60
Faculty	2,106.60	
32035 - American Samoa		7,353.62
Admin	2,501.01	
Faculty	4,084.62	
Student	768.00	
	2,491,264.36	2,491,264.36