IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

EMMANUEL DUNAGAN, *et al.*, *Plaintiffs*, v. ILLINOIS INSTITUTE OF ART-CHICAGO, LLC, *et al.*, *Defendants*.	Case No. 19-cv-809 Honorable Charles R. Norgle

PLAINTIFFS' MOTION TO STRIKE DEFENDANTS BRENT RICHARDSON, CHRIS RICHARDSON, AND SHELLY MURPHY'S ANSWER TO PLAINTIFFS' FOURTH AMENDED COMPLAINT

Plaintiffs Emmanuel Dunagan, Jessica Muscari, Robert J. Infusino, Stephanie Porreca, Keishana Mahone, and Lakesha Howard-Williams submit this Federal Rule of Civil Procedure 12(f) motion to strike Defendants Brent Richardson, Chris Richardson, and Shelly Murphy's ("Individual Defendants") Answer to Plaintiffs' Fourth Amended Complaint, filed on September 9, 2021. Dkt. 166. For the reasons stated below, Plaintiffs request that the Court require each individual Defendant to file an amended Answer on his or her own behalf, verified under penalty of perjury, within 72 hours of the Court's Order and award any other relief this Court deems just and proper under the circumstances.

Background

In its August 5, 2021, Order denying Individual Defendants' motions to dismiss, the Court found Shelly Murphy's deposition transcript to be "replete with representations that she

does not remember even the most basic facts about the events alleged in the complaint." Dkt. 155 at 6 n.2 (citing, among other things, Ms. Murphy's inability to recall what state the Illinois Institute of Art operates in and her lack of memory about the change in accreditation status and the accreditor's instruction to inform students about that change). The Court "admonished" "[a]ll parties[] and all attorneys" to "uphold their obligation to truthfulness and candor in sworn testimony as this case progress[es]" and stated that "failure to do so has consequences." *Id.* (citing cases).

Individual Defendants missed their August 19, 2021, deadline to answer Plaintiffs' Third Amended Complaint and, one day later, filed a single Answer on behalf of all three defendants that ignored the Court's admonition for candor and truthfulness from the parties. Dkt. 161. Plaintiffs did not move to strike that Answer because, three days after it was filed, they filed a motion to amend the Third Amended Complaint. Dkt. 163. After the Court granted their motion Dkt. 164, Plaintiffs filed their Fourth Amended Complaint on August 26, 2021, Dkt. 165, and on September 9, 2021, Individual Defendants filed a nearly identical Answer. In response to 313 allegations (over eighty percent) in the Fourth Amended Complaint, Individual Defendants state: "Defendants deny the allegations in Paragraph [] of the Complaint for lack of sufficient information to form a belief as to the truth thereof." *See* Answer ¶¶ 1–6, 9, 11, 14–15, 18–138, 141–246, 248–56, 258, 260–67, 269–77, 279, 281–89, 291, 293–302, 304–11, 313, 317, 320, 327, 339–43, 348, 353–54, 356–57, 366–67, 369–72. Examples of some of the allegations that Individual Defendants claim to "lack sufficient information" to answer include:

- Whether they "inform[ed] IIA students at any time after agreeing to purchase IIA that IIA campuses could lose their accreditation." *Id.* ¶ 6.

- Whether, between January 20, 2018, and June 2018, they "affirmatively represented that [IIA] 'remain[ed] accredited.'" *Id.* ¶ 9.

- Whether "Defendant IIA-Schaumburg is an institution of higher education located in Schaumburg, Illinois and owned by Defendant IIA." *Id.* ¶ 24.

- Whether Brent Richardson "maintained final decision-making authority for DCEH." *Id.* ¶ 30.

- Whether they "advertised, offered for sale, sold, and solicited Illinois consumers to enroll in educational courses and degree-granting programs at IIA's Illinois campuses." *Id.* ¶ 35.

- Whether "DCF completed the purchase of all IIA campuses on January 20, 2018." *Id.* ¶ 48.

- Whether Brent Richardson was a manager of the Illinois Institute of Art. *Id.* ¶ 50.

- Whether, under "Change of Control–Candidacy" status, IIA was "not an accredited institution of higher education, but rather a candidate school *seeking* accreditation." *Id.* ¶ 113.

- Whether, under such "candidacy" status, IIA was "no longer eligible to receive federal funds under Title IV of the Higher Education Act." *Id.* ¶ 114.

- Whether "DCEH's leadership team—including Defendants Brent Richardson, Chris Richardson, and Shelly Murphy—were [] aware of HLC's decision to remove IIA's accreditation and its instruction via the PDN to inform and provide accommodations to students." *Id.* ¶ 120.

- Whether, after IIA lost its accreditation, "Defendants did not inform prospective, current, or former students." *Id.* ¶ 124.

- Whether, on February 6, 2018, outside counsel suggested via email to a group of DCEH executives (including Individiual Defendants) that they prepare a statement to students about HLC's decision to place IIA into candidacy status. *Id.* ¶ 132.

- Whether, on February 26, 2018, Chris Richardson sent an email to Shelly Murphy and others instructing that the "we remain accredited" language be placed on IIA and the Art Institute of Colorado's website. *Id.* ¶ 135.

- Whether Defendants "continued throughout the winter and spring of 2018 to recruit new students to enroll in IIA- Chicago and IIA-Schaumburg." *Id.* ¶ 155.

- Whether "[a]ll students who graduated or will graduate from IIA on or after January 20, 2018, will have graduated from an unaccredited school." *Id.* ¶ 209.

- Whether, from January 20, 2018, until IIA closed, "Defendants continued their participation in the Federal Direct Loan program and continued to draw down Title IV funds under the HEA." *Id.* ¶ 214.

- Whether "[a]ll IIA campuses closed in December 2018 and the Receivership began on January 18, 2019." *Id.* ¶ 215.

Legal Standard

Rule 8(b) requires a responding party to admit, deny, admit in part and deny in part, or state lack of knowledge or information sufficient to form a belief about the truth of an allegation. A party that "lacks knowledge or information sufficient to form a belief about the truth of an allegation must so state, and the statement has the effect of a denial." Fed. R. Civ. P. 8(b)(5).

Rule 11 provides that "[b]y presenting to the court a pleading, . . . an attorney . . . certifies that to the best of the person's knowledge, information, and belief, formed after an inquiry reasonable under the circumstances . . . [that] the denials of factual contentions are warranted on the evidence or, if specifically so identified, are reasonably based on belief or a lack of information." Fed. R. Civ. P. 11(b)(4). Defendants are "under an obligation to respond honestly to plaintiffs' well-pled allegations." *Coach, Inc. v. Bella*, No. 11-cv-3987, 2012 WL 689266, at *2 (N.D. Ill. Feb. 29, 2012); *see also Gaiardo v. Ethyl Corp.*, 835 F.2d 479, 482 (3d Cir. 1987) ("[Rule 11] imposes an obligation on counsel and client analogous to the railroad crossing sign, 'Stop, Look and Listen.' It may be rephrased, 'Stop, Think, Investigate[,] and Research' before filing papers."); *Kegerise v. Susquehanna Twp. School Dist.*, 321 F.R.D. 121, 125 (M.D. Pa.

2016) ("A party answering a complaint 'may not deny sufficient information or knowledge with impunity, but is subject to the requirements of honesty in pleading.'"). Rule 11 further provides that "[o]n its own, the court may order an attorney, law firm, or party to show cause why conduct specifically described in the order has not violated Rule 11(b)." Fed. R. Civ. P. 11(c)(3).

Rule 12(f) permits the Court to "strike from a pleading an insufficient defense or any redundant, immaterial, impertinent, or scandalous matter."

Argument

After the Court reminded all parties and attorneys to "uphold their obligation to truthfulness and candor in sworn testimony as this case progress[es]" and stated that "failure to do so has consequences," Dkt. 155 at 6 n.2 (citing cases), Individual Defendants failed to take that order, and this case, seriously.

Individual Defendants claim to "lack of [sic] sufficient information to form a belief as to the truth" of over eighty percent of the paragraphs in Plaintiffs' Fourth Amended Complaint. *See supra* at 2. Just as Defendant Murphy failed to recall the most basic facts in her deposition, the Individual Defendants now claim to lack information about basic facts that should fall squarely within their knowledge as the executives of Dream Center Education Holdings ("DCEH"), such as whether IIA-Schaumburg "is an institution of higher education located in Schaumburg, Illinois and owned by Defendant IIA," Answer ¶ 24, whether IIA continued to receive Title IV funding, *id.* ¶ 214, or the date IIA closed and entered receivership, *id.* ¶ 215. They further claim to lack information about allegations about which they have unique personal knowledge, such as whether they were "aware of HLC's decision to remove IIA's accreditation and its instruction via the PDN to inform and provide accommodations to students." *Id.* ¶ 120. Their Answer is

replete with dozens of similar examples of denials that cannot be viewed as honest responses to Plaintiffs' allegations, given their personal knowledge.

Individual Defendants even claim to lack information about facts that they testified to in their jurisdictional depositions less than four months ago. For example:

- Although Individual Defendants (including Brent Richardson) now claim to lack sufficient information to form a belief as to whether Brent Richardson was a manager of IIA, Answer ¶ 50, during his deposition Mr. Richardson reviewed the Illinois Secretary of State form listing him as a manager of IIA and did not dispute that he was in fact registered as a manager. *See* Dkt. 152, App'x A (Tr. of Brent Richardson Dep.) at 46:22-47:1 ("B. Richardson Dep.") (reviewing the Secretary of State form attached as Exhibit 3 to Mr. Richardson's deposition).

- Although Individual Defendants claim to lack sufficient information to form a belief as to whether, on November 16, 2017, HLC formally notified them that the schools would be placed in pre-accreditation status, Answer ¶ 107: (i) Shelly Murphy testified that she was involved in discussions surrounding IIA's placement on candidacy status following the receipt of the November 16, 2017, letter from HLC, Dkt. 152, App'x B (Tr. of Shelly Murphy Dep.) at 22:3-14 ("Murphy Dep."); and (ii) Brent Richardson reviewed the letter (which was addressed to him) during his deposition and admitted that it "might have gone to him," B. Richardson Dep. at 61:8:4-64:4.

- Although Individual Defendants claim to lack sufficient information to form a belief as to whether they informed IIA students of the loss of accreditation between January 20, 2018, and late June or early July 2018, *see e.g.*, Answer ¶¶ 6, 9, 173, (i) Shelly Murphy testified that outside counsel instructed her to wait until June 20, 2018, to tell students about the loss of accreditation, Murphy Dep. at 42:10-23; and (ii) Brent Richardson testified that he was aware that HLC changed the accreditation status for IIA at least sometime around January or February 2018, B. Richardson Dep. at 61:21-64:4, and that he took no steps to inform students, *id.* at 84:2-8 (replying, "The short answer, I guess, is no," in response to the question, "And you didn't make any efforts to make sure that [Illinois students] knew what you knew HLC had done?").

- Although Individual Defendants claim to lack sufficient information to form a belief as to whether Chris Richardson sent an email to Shelly Murphy and others instructing that the "we remain accredited" language be placed on IIA's website, Answer ¶ 135, the email where Chris Richardson directs the "we remain accredited" language to be placed on the website was attached as Exhibit 5 to

> Plaintiffs' Third Amended Complaint, Dkt. 106-5, and Mr. Richardson reviewed the email during his deposition. In addition, Chris Richardson testified that outside counsel advised him what disclosures should be made on IIA's website, that he had the authority to recommend not using the "we remain accredited" language, and did not make any changes to the suggested language. Dkt. 152, App'x C (Tr. of Chris Richardson Dep.) at 41:6-44:23.

Furthermore, all three Individual Defendants—who have different knowledge and experiences—have filed a single joint Answer that does not differentiate the information that each of them knows. It strains credulity that all three executives would have identical amnesia and lack of information to answer exactly the same allegations, especially when some of those allegations are about separate conduct and knowledge by each of them.

Finally, Individual Defendants assert a long list of affirmative defenses, most of which are entirely irrelevant, including contract defenses where Plaintiffs do not bring any contract claims. *See, e.g.* Answer ¶ 394. This "'kitchen sink' approach to pleading defenses, when they are not actually affirmative defenses or do not provide sufficient detail, is not a permissible means of conducting federal litigation." *Dace v. Chicago Pub. Sch.,* No. 19-cv- 6819, 2020 WL 1861671, at *2 (N.D. Ill. Mar. 18, 2020). This "everything-but-the-kitchen-sink approach to [affirmative defenses]" is also "at odds with the Rule 11(b) requirement of objective good faith." *McCutcheon v. Zimmer Holdings, Inc.*, No. 06-cv-6256, 2006 WL 3431937, at *1 (N.D. Ill. Nov. 29, 2006); *see also id.* ("What must instead be done in the repleading is to be appropriately selective, so that opposing counsel and this Court can be aware[:] (1) of which defenses are really advanced seriously[;] and (2) of the basis for each of those defenses (after all, the federal principles of notice pleading apply to defendants as well as to plaintiffs)."); *Halweg v. BOC Grp.,* No. 99-cv-4350, 1999 WL 970352, at *1 (N.D. Ill. Oct. 20, 1999) (admonishing defendants

for the "noncommendable practice of throwing everything but the kitchen sink into the mix" and explaining that "this Court is not about to waste its time on a complete review when defense counsel obviously have not seen fit to devote their own time to that task (as they should have)").[1]

In sum, Individual Defendants have run afoul of this Court's clear—and recent—directive to be truthful, as well as Rule 11(b)'s requirement that denials for lack of information be "reasonably based" and defenses relevant to the case. Because this is the third time—after their depositions and their answer to the Third Amended Complaint—that Individual Defendants have refused to answer even the most basic questions, a verified answer is necessary to ensure that each Defendant takes personal responsibility for the representations that he or she makes in this proceeding.

Conclusion

For the reasons set forth above, Plaintiffs move the Court to strike Individual Defendants' Answer to their Fourth Amended Complaint in its entirety, require each Defendant to file their own amended Answer, verified under penalty of perjury, within 72 hours of the Court's Order, and award other relief that it deems just and proper under these circumstances.

1 Individual Defendants also assert as an affirmative defense that "Plaintiffs' claims are barred because Plaintiffs assigned the claims asserted in this lawsuit, as well as any potential recovery, to the Department of Education." Answer ¶ 391. To the contrary, on August 17, 2021, the United States explained unequivocally in its Statement of Interest filed in the Receivership proceeding that no such assignment ever ocurred. *See* U.S. Statement of Interest [Dkt. 747] at 2, 6–7, *Dig. Media Sols. v. South Univ. of Ohio*, No. 1:19-cv-145 (N.D. Ohio Aug. 17, 2021).

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Respectfully submitted,

/s/ *Cassandra P. Miller*

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CERTIFICATE OF SERVICE

I, Cassandra P. Miller, hereby certify that on September 10, 2021, I filed the foregoing document via the CM/ECF System, which caused notification of such filing to be sent to all counsel of record.

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