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' REPLY IN SUPPORT OF THEIR MOTION TO STRIKE DEFENDANTS BRENT RICHARDSON, CHRIS RICHARDSON, AND SHELLY MURPHY'S ANSWER TO THEIR FOURTH AMENDED COMPLAINT

Defendants Brent Richardson, Chris Richardson, and Shelly Murphy ("Individual Defendants") fail to explain why they "lack sufficient information" about numerous facts that are indisuputably within their knowledge (such as whether the Illinois Insitute of Art's ("IIA") Schaumburg campus was located in Schaumburg, Illinois) and about which they testified just a few months ago (such as whether they informed IIA students of the loss of accreditation between January 20, 2018, and late June or early July 2018). The Court has already issued a clear warning about precisely these kinds of responses, informing all parties that the failure to be truthful "has consequences." Dkt. 155 at 6 n.2. Because Individual Defendants have ignored that admonition—as well as Federal Rule of Civil Procedure 11(b)(4)'s requirement that denials based on lack of information be "reasonably based"—Plaintiffs seek the Court's involvement to ensure that they each provide an Answer that is truthful and complies with the requirements of

the Federal Rules.

ARGUMENT

1. Individual Defendants fail to establish that their denials for "lack of sufficient information" were reasonably based. Individual Defendants claim that Rule 8 requires nothing more of them than to "state that they lack knowledge or information sufficient to form a belief about the truth of an allegation." Dkt. 178 at 4–5. But Rule 11(b)(4) also requires that denials based on lack of information be "reasonably based." *See* Dkt. 168 at 4–5 (citing cases and the Federal Rules). Individual Defendants have provided no evidence or argument that their denials with respect to any of the specific allegations highlighted in Plaintiffs' brief are reasonable. *See* Dkt. 168 at 2–4. Instead, they claim to "not yet know the precise truth of many of Plaintiffs' specific allegations" and need "months of discovery to unravel and ascertain the truth of Plaintiffs' accusations and Defendants' affirmative defenses." Dkt. 178 at 2. The vast majority of allegations about which Individual Defendants have pleaded ignorance regard events and conduct in which they took part. They do not need "months of discovery" from Plaintiffs, co-defendant DCF, or third parties to disclose what they already know. If they mean to stand by the complete and total ignorance of almost all facts about their stewardship of DCEH and IIA, they should have no objection to the primary relief requested by Plaintiffs in their motion—affirming that ignorance through *verified* answers. Given their prior history of evading questions about even the most basic facts at issue in this litigation, verifications are a necessary, and minimally burdensome, measure to ensure that each Defendant takes personal responsibility for the representations that he or she makes in this proceeding. It is

hard to imagine the Individual Defendants would really verify under oath to being as ignorant about events they participated in as their Answer presently indicates.

2. Individual Defendants should be required to file separate answers or, at minimum, to distinguish their responses were necessary. Individual Defendants assert that they "filed a combined answer together to save on costly litigation fees and costs." Dkt. 178 at 3. But cost-saving is not a justification for flouting the Federal Rules or their "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). If Individual Defendants have different recollections or knowledge—as they surely must for at least some of the facts alleged in the Complaint—they must answer separately, or at minimum distinguish their responses where necessary in a combined answer, in order to meet the requirements of Rule 11.

3. Individual Defendants' alternative request for a meet and confer should be denied. Individual Defendants also request that the Court require the parties to meet and confer in order to address the "specific factual allegations that Plaintiffs believe are deficient." Dkt. 178 at 3. That would not be productive. The Individual Defendants know better than anyone else which of the 313 allegations (over eighty percent of all pleaded) they actually "lack . . . sufficient information to form a belief as to the truth thereof." In any event, Plaintiffs have identified in their motion "specific factual allegations that Plaintiffs believe are deficient"—Individual Defendants can start there. In addition, if Individual Defendants stand by their present professions of ignorance, they could have demonstrated that to the Court with affidavits attesting to the truth of their responses. They did not. This is also not the first time that Individual Defendants have failed to "remember even the most basic facts about the events alleged in the

complaint." Dkt. 155 at 6, n.2. Given this record, Plaintiffs do not believe a meet and confer would be productive.

4. Individual Defendants' affirmative defenses were not properly pled. With respect to affirmative defenses, Individual Defendants argue that defendants must "raise all conceivable affirmative defenses in their answer to a plaintiff's complaint *that defendants' consider relevant*." Dkt. 178 at 6 (emphasis added). Plaintiffs do not disagree. What they cannot do is raise affirmative defenses that are indisputably irrelevant, *see* Dkt. 168 at 7, which is what they have done here, *id.* at 7–8 (citing cases).

CONCLUSION

For the reasons set forth above and in Plaintiffs' opening brief, Plaintiffs move the Court to strike Individual Defendants' Answer to their Fourth Amended Complaint in its entirety, require them to file amended Answers (or at minimum distinguish their responses where necessary in a combined Answer), verified under penalty of perjury, within 72 hours of the Court's Order or by such other deadline determined by the Court, and award other relief that it deems just and proper under these circumstances.

Dated: October 7, 2021

Respectfully submitted,

/s/ *Cassandra P. Miller*

Daniel A. Edelman
Cassandra P. Miller
EDELMAN, COMBS, LATTURNER &
GOODWIN, LLC
20 South Clark Street, Suite 1500

Chicago, IL 60603-1824
(312) 739-4200
(312) 419-0379 (fax)
Email address for service: courtecl@edcombs.com

Alexander S. Elson
Eric Rothschild
Robyn K. Bitner
NATIONAL STUDENT LEGAL DEFENSE NETWORK
1015 15th Street N.W., Suite 600
Washington D.C. 20005
alex@defendstudents.org
eric@defendstudents.org
robyn@defendstudents.org

Attorneys for Plaintiffs

CERTIFICATE OF SERVICE

I, Cassandra P. Miller, hereby certify that on October 7, 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.

/s/ Cassandra P. Miller
Cassandra P. Miller

Daniel A. Edelman
Cassandra P. Miller
EDELMAN, COMBS, LATTURNER & GOODWIN, LLC
20 S. Clark St., Suite 1500
Chicago, Illinois 60603
(312) 739-4200
(312) 419-0379 (FAX)