

CIVIL ACTION COVER SHEET		DOCKET NUMBER <div style="font-size: 1.5em; font-family: cursive;">21-12443</div>	Trial Court of Massachusetts The Superior Court COUNTY <u>Suffolk</u>	
Plaintiff <u>Commonwealth of Massachusetts</u>		Defendant: <u>U.S. Bank, N.A., solely in its capacity as Administrative Agent and Collateral Agent</u>		
ADDRESS: <u>Office of the Attorney General</u>		ADDRESS: <u>1011 Centre Road, Suite 203</u>		
<u>1 Ashburton Place, 18th Floor</u>		<u>Delle Donne Corporate Center</u>		
<u>Boston, Massachusetts 02108</u>		<u>Wilmington, Delaware 19805</u>		
Plaintiff Attorney: <u>Diana Hooley, Assistant Attorney General</u>		Defendant Attorney: <u>Carey D. Schreiber, Esq.</u>		
ADDRESS: <u>Office of the Attorney General</u>		ADDRESS: <u>Winston & Strawn LLP</u>		
<u>1 Ashburton Place, 18th Floor</u>		<u>200 Park Avenue</u>		
<u>Boston, Massachusetts 02108</u>		<u>New York, NY 10166</u>		
BBO: <u>685418</u>		BBO:		

TYPE OF ACTION AND TRACK DESIGNATION (see instructions section below)

CODE NO. <u>E99</u>	TYPE OF ACTION (specify) <u>Other Administrative Action</u>	TRACK <u>X</u>	HAS A JURY CLAIM BEEN MADE? <input type="checkbox"/> YES <input checked="" type="checkbox"/> NO
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*If "Other" please describe: Assurance of Discontinuance pursuant to M.G.L., c. 93A, § 5

Is there a claim under G.L. c. 93A?

☒ YES ☐ NO

Is there a class action under Mass. R. Civ. P. 23?

☐ YES ☒ NO

STATEMENT OF DAMAGES PURSUANT TO G.L. c. 212, § 3A

The following is a full, itemized and detailed statement of the facts on which the undersigned plaintiff or plaintiff's counsel relies to determine money damages. For this form, disregard double or treble damage claims; indicate single damages only.

TORT CLAIMS

A. Documented medical expenses to date

1. Total hospital expenses
2. Total doctor expenses
3. Total chiropractic expenses
4. Total physical therapy expenses
5. Total other expenses (describe below)

n/a

Subtotal (1-5): \$0.00

B. Documented lost wages and compensation to date

C. Documented property damages to date

D. Reasonably anticipated future medical and hospital expenses

E. Reasonably anticipated lost wages

F. Other documented items of damages (describe below)

n/a

TOTAL (A-F): \$0.00

G. Briefly describe plaintiff's injury, including the nature and extent of injury:

n/a

CONTRACT CLAIMS

☐ This action includes a claim involving collection of a debt incurred pursuant to a revolving credit agreement. Mass. R. Civ. P. 8.1(a).

Item #	Detailed Description of Each Claim	Amount
1.	n/a	
Total		

Signature of Attorney/Unrepresented Plaintiff: X Diana Hooley

Date: 5-28-21

RELATED ACTIONS: Please provide the case number, case name, and county of any related actions pending in the Superior Court.

CERTIFICATION PURSUANT TO SJC RULE 1:18

I hereby certify that I have complied with requirements of Rule 5 of the Supreme Judicial Court Uniform Rules on Dispute Resolution (SJC Rule 1:18) requiring that I provide my clients with information about court-connected dispute resolution services and discuss with them the advantages and disadvantages of the various methods of dispute resolution.

Signature of Attorney/Unrepresented Plaintiff: X Diana Hooley

Date: 5-28-21

SC0001: 1/22/2021

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Date/Time Printed: 05-21-2021 11:38:56

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, SS.

SUPERIOR COURT
DEPARTMENT OF THE TRIAL COURT

RECEIVED

MAY 28 2021

SUPERIOR COURT-CIVIL
MICHAEL JOSEPH DONOVAN
CLERK/MAGISTRATE

_____)
In the Matter of)
)
U.S. Bank, National Association,)
solely in its capacity as)
Administrative Agent and)
Collateral Agent)
_____)

ASSURANCE OF DISCONTINUANCE
PURSUANT TO M.G.L. CHAPTER 93A § 5

I. INTRODUCTION

1. The Commonwealth of Massachusetts, by and through the Office of the Attorney General Maura Healey (the “Attorney General”), and U.S. Bank, National Association, solely in its capacity as Administrative Agent and Collateral Agent under the EDMC Credit Agreement¹ (in such capacities, the “Agent”), acting at the direction of the Requisite Lenders (as defined in the EDMC Credit Agreement), voluntarily enter into this Assurance of Discontinuance (this “AOD”).

2. Education Management Corporation (“EDMC”) owned and operated The New England Institute of Art, LLC (“NEIA”). EDMC and/or its affiliates extended lines of credit to

¹ As used herein, the term “EDMC Credit Agreement” refers to that certain Credit and Guaranty Agreement, dated as of January 5, 2015, by and among Education Management II LLC, certain of its affiliates and subsidiaries, various lenders, and Agent, together with their respective successors and permitted assigns, as such agreement may be as amended, amended and restated, modified, supplemented, or otherwise modified from time to time. NEIA is a guarantor under the EDMC Credit Agreement. As of the date hereof, no less than \$531,372,438.53 remains due and owing under the EDMC Credit Agreement.

students attending NEIA (the “NEIA Students”), which the NEIA Students used to pay portions of their tuition and fees (the “NEIA Institutional Debt”).

3. Prior to the Petition Date (as defined below), Agent, at the direction of the Requisite Lenders and in partial satisfaction of the debt owed by EDMC and its affiliates to Agent under the EDMC Credit Agreement, foreclosed on and took interest in, among other things, the NEIA Institutional Debt. Since January 1, 2018, Tuition Options, LLC (the “Servicer”) has collected \$30,653.40 on account of the NEIA Institutional Debt. Based on information provided by the Servicer, as of the date hereof, the total outstanding amount of the NEIA Institutional Debt is no less than \$232,202.69.

4. On June 29, 2018 (the “Petition Date”), EDMC and certain of its affiliates, including NEIA, filed voluntary petitions for relief under chapter 7 of title 11 of the United States Code in the United States Bankruptcy Court for the District of Delaware.

5. Pursuant to M.G.L. c. 93A § 6, the Attorney General conducted an investigation of NEIA and EDMC concerning their unfair and deceptive acts and practices in, *inter alia*, the marketing of NEIA’s bachelor’s and associate degree programs and enrollment of students.

6. As a result of the investigation, on July 30, 2018 the Attorney General filed a lawsuit against NEIA and EDMC alleging that the school violated M.G.L. c. 93A, § 2 by engaging in unfair or deceptive acts or practices. The Attorney General alleged, *inter alia*, that in order to induce students to enroll, NEIA and EDMC together made false and/or misleading representations to Massachusetts consumers regarding the success of students obtaining in-field employment, attendance costs, and the nature and availability of financial aid.

7. On October 15, 2019, the Court entered a final judgment in favor of the Commonwealth ordering EDMC and NEIA to pay restitution in the amount of \$60,200,978.00

plus interest on account of tuition that the Attorney General alleges was paid by the NEIA Students (the "Default Judgment Order") in *Commonwealth v. New England Institute of Art, LLC and Education Management Corporation*, No. 18-CV-2356H (the "NEIA Action"). The Court also ordered EDMC and NEIA to pay penalties in the amount of \$11,765,000. Agent and Requisite Lenders (i) were not a party to the NEIA Action, (ii) were not involved in the management or operation of EDMC or NEIA in any way and (iii) are not bound by the Default Judgment Order.

8. The Attorney General met and conferred with counsel to Requisite Lenders regarding the NEIA Institutional Debt in light of the allegations asserted by the Attorney General against EDMC and NEIA in the NEIA Action. In response, Agent, acting at the direction of the Requisite Lenders, agreed to forgive the NEIA Institutional Debt subject to the terms of this AOD.

9. Accordingly, the Attorney General and Agent, acting at the direction of the Requisite Lenders, agree to accept this AOD on the terms and conditions contained herein.

II. ASSURANCES

10. Upon entry of this AOD, Agent, acting at the direction of the Requisite Lenders, agrees to (a) discharge and direct (in a form prepared by the Requisite Lenders) the permanent cessation of collection of any and all NEIA Institutional Debt, including principal and interest and (b) return to the Attorney General pursuant to Section III, paragraph 17, below, for distribution to the NEIA Students, the Settlement Payment which the Agent, acting at the direction of the Requisite Lenders, and the Attorney General agree reflects the amount equal to the payments received by the Servicer and remitted to Agent since January 1, 2018 on account of the NEIA Institutional Debt pursuant to Section I, paragraph 3, above.

11. Agent, acting at the direction of the Requisite Lenders, agrees to make a request (in a form prepared by the Requisite Lenders) to the Servicer to request that the national credit bureaus (the "Bureaus") delete all credit reporting information relating to the NEIA Institutional Debt. Upon entry of this AOD, Agent, acting at the direction of the Requisite Lenders (in a form prepared by the Requisite Lenders), agrees that it will make a request to the Servicer not to report or attempt to report any negative information to the Bureaus concerning any NEIA Institutional Debt. Agent, acting at the direction of the Requisite Lenders, will make a request (in a form prepared by the Requisite Lenders) to the Servicer to request that the Bureaus retract any prior negative reports concerning any NEIA Institutional Debt.

12. Agent, acting at the direction of the Requisite Lenders, and the Attorney General agree that the full amount of the NEIA Institutional Debt is a disputed debt, and this AOD represents the compromise of disputed debt. Agent, acting at the direction of the Requisite Lenders, will make a request (in a form prepared by the Requisite Lenders) to the Servicer to not send form 1099s to borrowers eligible for relief under the terms of this AOD, unless the Servicer is legally compelled to do so by an order, ruling, or regulatory mandate issued or promulgated by the IRS or any other agency of the federal government having such authority.

III. COOPERATION

13. Agent will have no further duties to the Attorney General relating to the implementation of this AOD; *provided, that* to the extent reasonably practicable, for a period of one year following the date of this AOD, Agent, acting at the direction of the Requisite Lenders, shall cooperate with reasonable requests from the Attorney General related to the implementation of this AOD.

14. Upon entry of this AOD (the "Effective Date"), Agent, acting at the direction of the Requisite Lenders, agrees that it will not (a) issue a bill relating to the NEIA Institutional Debt or (b) accept any payment on account of the NEIA Institutional Debt; provided, however, if payment is inadvertently received, Agent's compliance with the direction in the following sentence shall satisfy Agent's obligations in this regard. Agent, acting at the direction of the Requisite Lenders, shall issue the following directions to the Servicer (in a form prepared by the Requisite Lenders): (a) to the extent Agent inadvertently receives any payment referenced in the prior sentence, Agent shall direct the Servicer to reverse or return such payment directly to the NEIA Student, and (b) if the Servicer is unable to reverse or return any such payment, the Servicer shall deliver such payment, together with the name and last known address of the NEIA Student, to the Attorney General within ninety (90) days of receipt of the payment. Agent, acting at the direction of the Requisite Lenders, shall make a request to the Servicer (in a form prepared by the Requisite Lenders) to provide to the Attorney General, within 120 days of the Effective Date, a list of the payments received after the Effective Date and identify whether or not such payments were returned, reversed, or otherwise effectively rejected.

15. Agent, acting at the direction of the Requisite Lenders, shall make a request (in a form prepared by the Requisite Lenders) to the Servicer to send to each NEIA Student, by first class U.S. mail and within 30 days of the Effective Date (i) a notice of discontinuance of billing and collection and (ii) an account statement reflecting an updated balance of \$0 for each of the NEIA Student's NEIA Institutional Debt accounts.

16. Upon entry of this AOD, Agent, acting at the direction of the Requisite Lenders, shall request in writing (in a form prepared by the Requisite Lenders) that the Servicer cooperate with the Attorney General for the purposes of implementing this AOD.

17. On or before thirty (30) days after entry of this AOD, Agent, acting at the direction of the Requisite Lenders, shall issue a check for \$30,653.40, payable to the Commonwealth of Massachusetts (the "Settlement Payment"), and shall deliver the Settlement Payment via FedEx with a tracking number to Diana Hooley, Assistant Attorney General, One Ashburton Place, 18th Floor, Boston, MA 02108. The Attorney General shall distribute such amount in her sole discretion. By or before the delivery date of the payment, the Agent, acting at the direction of the Requisite Lenders, shall make a request (in a form prepared by the Requisite Lenders) to the Servicer to provide to the Attorney General the names and last known addresses of the NEIA Students entitled to relief under the terms of this AOD.

18. To the extent that the Attorney General notifies the Agent and counsel to the Requisite Lenders on or before thirty (30) days after entry of this AOD that any other servicers (other than Tuition Options, LLC) have collected or continue to collect on NEIA Institutional Debt, Agent, acting at the direction of the Requisite Lenders, agrees to make reasonable efforts to instruct the servicer(s) in the same manner set forth in paragraphs 11, 12 (second sentence only), 14 (second and third sentences only), 15 (provided that such servicer shall have 30 days from receipt of notice from the Agent to send any such notices and account statements) and 16 of this AOD.

19. Upon entry of this AOD, Agent, acting at the direction of the Requisite Lenders, agrees that it will not sell or assign any NEIA Institutional Debt or transfer any collection rights regarding the NEIA Institutional Debt.

IV. MISCELLANEOUS PROVISIONS

20. This AOD constitutes the entire agreement between the Attorney General and Agent and supersedes any prior communications, understanding or agreements, whether written

or oral, concerning the subject matter of this AOD. This AOD can be modified or supplemented only by a written document signed by both parties.

21. The Attorney General will not proceed with, or institute a civil action or proceeding against, Agent, its parents, subsidiaries and subdivisions, or the Lenders (as defined in the EDMC Credit Agreement), or any of their professionals, relating to the NEIA Institutional Debt, except that the Attorney General may bring an action relating to violations of the terms of this AOD.

22. This AOD will be binding upon both parties, as well as their successors and assigns.

23. The AOD and its provisions will be effective on the Effective Date.

24. All notices as required by the AOD will be provided as follows:

To the Attorney General:

Diana Hooley, Assistant Attorney General
Office of the Massachusetts Attorney General
Insurance & Financial Services Division
One Ashburton Place, 18th Floor
Boston, MA 02108
617-963-2198

To Agent:

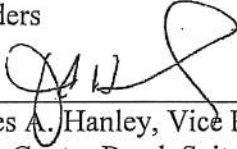
U.S. Bank, National Association
1011 Centre Road, Suite 203
Delle Donne Corporate Center
Wilmington, DE 19805
Attn: James A. Hanley

With a copy to:

Winston & Strawn LLP
200 Park Avenue
New York, NY 10166
212-294-6700
Attn: Carey D. Schreiber & Bart Pisella

[Signature Page to Follow]


U.S. BANK, NATIONAL ASSOCIATION,
solely in its capacity as Administrative Agent and
Collateral Agent at the direction of the Requisite
Lenders

By: 
James A. Hanley, Vice President
1011 Centre Road, Suite 203
Delle Donne Corporate Center
Wilmington, DE 19805

Dated:

COMMONWEALTH OF MASSACHUSETTS

MAURA HEALEY
ATTORNEY GENERAL

By: 
Diana Hooley, BBO #685418
Assistant Attorney General
One Ashburton Place, 18th Floor
Boston, Massachusetts 02108
617-963-2198
diana.hooley@mass.gov

Dated: May 28, 2021