

AGREEMENT

THIS AGREEMENT (“this Agreement”) is made and entered into by and among the following parties (“the Parties”): James A. Bartholomew, Chapter 11 Trustee (“the Trustee”) for Globe University (“Globe”) and Minnesota School of Business (“MSB”), the State of Minnesota by and through its Attorney General Keith Ellison (“the State”), Terry L. Myhre and Kathryn M. Myhre, on behalf of the equity owners of MSB and Globe (“the Myhres”), the United States Department of Education (“Education”), and Tamara Blanchette, plaintiff in the matter *Blanchette v. DeVos*, 19-cv-1774 (D.D.C.) (“Blanchette”).

Recitals

A. On November 20, 2019, MSB and Globe filed petitions seeking protection under Chapter 11 of the United States Bankruptcy Code 11 U.S.C. §101 et seq. (the “Bankruptcy Code”), in the cases entitled *In re Minn. Sch. of Bus.*, No. 19-33629 (Bankr. D. Minn.), and *In re Globe Univ., Inc.*, No. 19-33629 (Bankr. D. Minn.) (the “Bankruptcy Cases”).

B. On May 13, 2020, James A. Bartholomew was appointed as Chapter 11 Trustee in the Bankruptcy Cases and continues to serve as the Trustee.

C. Prior to the Bankruptcy Cases, the State and the Debtors were parties to a pre-petition civil enforcement action brought by the State against MSB and Globe in Hennepin County District Court, entitled *Minnesota v. Minnesota School of Business, Inc. et al.*, Case No. 27-cv-14-12558 (the “State’s Litigation”), in which the State, acting in its *parens patriae* authority and Minn. Stat. § 8.31, sought restitution for former students in MSB’s and Globe’s criminal justice program (the “Former MSB/Globe Students”).

D. On September 9, 2016, the Hennepin County District Court issued its Findings of Fact, Conclusions of Law, and Order, finding that MSB and Globe violated the Minnesota Consumer Fraud Act, Minn. Stat. § 325F.69, and Deceptive Trade Practices Act, Minn. Stat. § 325D.44, in its marketing, recruitment, and advertising of its criminal justice program. The court subsequently issued a Second Amended Order for Restitution on July 21, 2017, in which it established a process for Former MSB and Globe Students to submit claims in order to qualify for payment of restitution.

E. Certain Former MSB/Globe Students, identified in Attachment A to this Agreement (the “Participating Students”), testified at the trial in the State’s Litigation or submitted claims to participate in restitution awarded to the State.

F. The State filed Claim No. 95 in the MSB bankruptcy case and Claim No. 9 in the Globe bankruptcy case (together, “the State’s Claims”) asserting claims arising from the State’s Litigation.

G. After MSB and Globe objected to the State’s Claims, the parties to such objections entered into a compromise, approved by the Bankruptcy Court on December 22, 2020, pursuant to which the State was granted an allowed unsecured claim in the amount of \$35,000,000 in the Bankruptcy Cases.

H. The restitution awarded to the State as part of the State’s Litigation includes, among other amounts, refunds to Participating Students of amounts financed through federal student loans from (or guaranteed by) Education and owed by Participating Students, including but not limited to costs, fees, interest and other charges, for attendance at MSB and Globe (the “Federal Loan Obligations”), as well as reimbursement of amounts paid by Participating Students on those loans.

I. Based on limited student loan data held and provided by Education, MSB’s and Globe’s tuition and payment records, and payment information provided to the State by student loan servicers related to the Federal Loan Obligations, the Trustee has reasonably estimated past payments made to or collected by Education, whether voluntarily or involuntarily, towards the Participating Students’ Federal Loan Obligations (the “Federal Loan Restitution”).

J. The Debtors, in their schedules of assets and liabilities filed in the Bankruptcy Cases, scheduled an unliquidated and disputed claim in favor of Education for chargebacks of potential discharged student loans.

K. Education filed Claim No. 8 in the Globe bankruptcy case and Claim No. 60 in the MSB bankruptcy case asserting that MBS and Globe owed Education \$1,852,889 due to the discharge of federal student loans made or guaranteed by Education due to MSB’s and Globe’s closure (together, “Closed School Discharge Claim”).

L. After MSB and Globe objected to the Closed School Discharge Claim, MSB, Globe, and Education entered into a compromise (the “Closed School Discharge Compromise”), approved by the Bankruptcy Court on October 16, 2020, pursuant to which Education was granted an allowed claim of \$1,350,000 and was permitted to offset \$331,039.38 in funds owed Globe against this claim, resulting in a remaining Closed School Discharge Claim in the amount of \$1,018,960.62.

M. Education is party to litigation brought by Blanchette against Education on June 18, 2019, entitled *Blanchette v. DeVos*, No. 19-cv-1775 (D.D.C.) (the “*Blanchette* Litigation”), in which Blanchette (who is a Participating Student), on behalf of herself and a putative class of Former MSB/Globe Students, alleges that their Federal Loan Obligations are subject to a “group borrower defense against repayment claim,” rendering such loan obligations unenforceable against Former MSB/Globe Students, and that Education unlawfully subjected Former MSB/Globe Students to involuntary collection procedures based on the Federal Loan Obligations.

N. Education faces risk to collection and continued litigation related to the *Blanchette* Litigation, arising from MSB’s and Globe’s misrepresentations (as determined in the State’s Litigation), alleged infirmities related to the origination of the Federal Loan Obligations, alleged defenses to repayment asserted under the “borrower defense to repayment” provisions of 34 C.F.R. § 685.206 and § 685.222, and the claims alleged in the *Blanchette* Litigation.

O. Education faces additional risk of collection due to potential insolvency and inability to pay on behalf of the Participating Students.

P. Education, in the event it grants borrower loan forgiveness to Former MSB/Globe Students under the “borrower defense to repayment” provisions of 34 C.F.R. § 685.206 and § 685.222, contends that it would be entitled to assert additional claims against the Estate and the Myhres for reimbursement of the amount of such forgiven loans (the “Borrower Defense Liabilities”). Myhres, Debtors, and Chapter 11 Trustee contend that Education would not be entitled to any such additional claims based on, among other possible defenses, a release of claims in the Closed School Discharge Compromise.

Q. The Trustee and Debtors intend to file, on or before March 15, 2021, a Joint Chapter 11 Plan of Reorganization under which one hundred percent (100%) of all allowed unsecured claims shall be paid subject to the terms set forth in this Agreement, and the Myhres shall provide to the estate amounts necessary to fund payment under the plan.

R. The Parties wish to obtain certainty and alleviate the substantial risks, costs, and delays associated with further litigation and/or collection related to the matters described herein.

S. The Parties have negotiated a fair and global resolution of such matters, that will: (i) provide restitution in the form of complete (100%) discharge of the Federal Loan Obligations incurred by the Participating Students (ii) provide cash restitution to the Participating Students related to Federal Loan Obligations incurred by Participating Students relating to attendance at Globe or MSB criminal justice programs from 2009 through 2015; (iii) acknowledge an allowed claim of Education against the Estates upon forgiveness of such Federal Loan Obligations; and (iv) modify the allowed claim asserted by the State to account for cancellation of the Federal Loan Obligations.

Agreement

NOW THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby expressly acknowledged, the Parties agree as follows:

1. Filing of Chapter 11 Plan. No later than March 15, 2021, the Trustee and Debtors shall file a Chapter 11 Plan of Reorganization (the “Plan”) under which one hundred percent (100%) of all allowed unsecured claims shall be paid to such claim holders. This Agreement shall be attached as an Exhibit to the Plan or included with a plan supplement to be filed prior to confirmation of the Plan, and the provisions of the Plan shall incorporate the material terms of this Agreement. MSB, Globe, and the Myhres agree to cooperate with the Trustee’s efforts to confirm and fund the Plan, and this Agreement shall be void unless all allowed claims are paid in full pursuant to the Plan no later than sixty (60) days following the effective date of the Plan, provided that Education may declare this Agreement void if Education fails to receive payment of its allowed claims by September 1, 2021.

2. Adjustment to State’s Allowed Claim. Except in the case of default as provided in paragraph 11 below, the Allowed State Claim is hereby reduced by \$19,398,121 and is hereby allowed in the amount of \$15,601,879 (the “State’s Adjusted Allowed Claim”). The amount paid on the State’s Adjusted Allowed Claim will be distributed by the State, or agent authorized by the Plan, to the Participating Students as determined by the Attorney General pursuant to Minn.

Stat. § 8.31. Distributions by the State to Participating Students will include the Federal Loan Restitution. The Trustee and the State may also agree to permit the Trustee (or other agent designated under the Plan) to remit such amounts determined in the Attorney General's discretion directly to the Former MSB/Globe Students from MSB's and Globe's bankruptcy estates or as otherwise allowed by the Plan. The State, Trustee and/or other agent designated under the Plan shall use all reasonable efforts to make Federal Loan Restitution payments to Participating Students, and shall provide a certification (the "Payment Certification") in writing within thirty (30) days after the Funding Date designated in the Plan, specifying (1) the payments of Federal Loan Restitution that have been made to Participating Students and (2) any payments have not been released to Participating Students and the reason such payments have not been released,

3. Stipulated Claim Allowance to Education. Education is hereby granted a stipulated allowed general unsecured claim of \$7,000,000 for the Participating Students' Borrower Defense Liabilities against each of MSB and Globe on account of any discharge of the Participating Students from Federal Loan Obligations (the "Borrower Defense Discharge Claim"). Education will hold the Borrower Defense Discharge Claim against MSB and Globe jointly and severally, provided that Education is only entitled to a single satisfaction and recovery for the Borrower Defense Discharge Claim through the Plan. Upon a Plan Default (as such term is defined in the Plan) or a default under this Agreement, Education will not be entitled to the Borrower Defense Discharge Claim through this Agreement, but reserves the right, if any, to assert any claims relating to any Borrower Defense Liability.

4. Education's Closed School Loan Discharge Claims. The Borrower Defense Discharge Claim is separate from and does not subsume the Closed School Discharge Claim. This Agreement does not alter or amend the Closed School Discharge Compromise.

5. Education's Discharge/Release of Former Student Loan Obligations. Except as provided below in paragraph 7, upon payment in full of the Borrower Defense Discharge Claim, the Closed School Discharge Claim, and the State's Adjusted Allowed Claim, and Education's receipt of the Payment Certification, Education releases and forever discharges any and all of the Participating Students, guarantors, or other contractual obligors from Federal Loan Obligations incurred by Participating Students relating to attendance at Globe or MSB criminal justice programs from 2009 through 2015. Education will follow existing policy regarding issuance of IRS Form 1099s to Participating Students or other guarantors or other contractual obligors related to the discharge set forth in this paragraph. Education's current policy is not to issue Form 1099s. Upon forgiveness of the loans, Education will communicate updated loan balances to applicable loan servicers responsible for communicating such information to credit reporting agencies concerning the loans.

6. Education's Release. Except as provided below in paragraph 7, upon payment in full of the Borrower Defense Discharge Claim, the Closed School Discharge Claim, and the State's Adjusted Allowed Claim, Education releases and forever discharges the Trustee in his capacity as Trustee of the bankruptcy estates of the Debtors; MSB; Globe; all current and former officers, directors, and employees of MSB and Globe; and the Myhres from any Participating Students' Borrower Defense Liabilities. The release provided for in this paragraph shall in no

way affect, alter, limit, extend or ratify the release of claims provided by Education in the Closed School Discharge Compromise.

7. Limitation on Releases. The releases provided paragraphs 5 and 6 do not release or affect any other claim, liability, or cause of action of the United States not the subject of such releases, and without any party conceding the existence or merits thereof, the United States does not release any other claim, liability, or cause of action for: (i) any civil, criminal, or administrative liability arising under Title 26 of the United States Code (the Internal Revenue Code); (ii) any criminal liability; (iii) any liability under subchapter III of chapter 37 of Title 31 of the United States Code; (iv) any liability that is based on conduct in violation of antitrust laws; (v) any claim of any agency of the United States of America other than Education, or any of the mutual obligations in this Agreement.

8. Dismissal of *Blanchette* Litigation. No later than ten (10) days following Education's discharge of Federal Loan Obligations as described in this Agreement (including any loan obligation owed to Education by Blanchette) and Blanchette's receipt of her portion of any restitution amount paid pursuant to the State's Adjusted Allowed Claim, Blanchette and Education shall prepare and file such documents as are necessary to effectuate a dismissal of the *Blanchette* Litigation with prejudice.

9. Blanchette's Release. Effective upon Education's discharge of Federal Loan Obligations as described in paragraph 5 (including any loan obligation owed to Education by Blanchette) and Blanchette's receipt of her portion of any amount paid pursuant to the State's Adjusted Allowed Claim, Blanchette hereby releases and forever discharges Education, together with its predecessors, representatives, independent contractors, agents, assigns, and successors in interest, from any and all actions, causes of actions, claims, suits, proceedings, known or unknown, which she hereto ever had, now has, or may have or shall have, arising out of or resulting from any claim made by Blanchette, or that could have been made by Blanchette, in connection with or related in any way to her portion of the Federal Loan Obligations, including the claims she has asserted in the *Blanchette* Litigation.

10. Bankruptcy Court Approval/Effectiveness. This Agreement will be incorporated into the Plan and Disclosure Statement being filed in the bankruptcy cases described in paragraph A of the recitals above. The terms of this Agreement and the effectiveness thereof are subject to and conditioned upon either: (1) entry of an order of the Bankruptcy Court approving the terms of this Settlement Agreement and authorizing the Trustee to enter into the Agreement; or (2) entry of an order confirming the Plan, provided that the order approves the terms of this Settlement Agreement and authorizes the Trustee to enter into the Agreement. The Trustee, the State, Education, and the Myhres shall use their best efforts to obtain Bankruptcy Court approval of this Agreement.

11. Additional Condition Related to Plan Funding. As provided in the Plan and Disclosure Statement incorporating this Agreement, Substantial Consummation (as defined in the Plan) not occurring by the Funding Date constitutes a default under this Settlement Agreement. Upon such a default, the terms of this Settlement Agreement (including the releases

contained therein and the adjustment to the State's Allowed Claim) shall be deemed null and void, and the parties to this Agreement will be placed back into their pre-settlement positions.

12. Execution and Delivery. This Agreement may be executed in counterparts, which taken together shall constitute one agreement binding on all the Parties. Electronically transmitted signatures shall be valid and binding to the same extent as signatures delivered in original. In making proof of this Agreement, it will be necessary to produce only one copy signed (or reproduced from an electronically delivered signature) by the Party to be charged.

13. Amendment to the November 27 Agreement. Except as set forth in this Agreement, the November 27 Agreement between the Trustee, the State, and the Myhres remains in full force and effect in accordance with its terms. If there is a conflict between this Agreement and the November 27 Agreement, the terms of this Agreement shall prevail.

14. Integrated Agreement. This Agreement constitutes all agreements, covenants, representations, and warranties, express or implied, oral or written, of the Parties; all prior and contemporaneous conversations, negotiations, possible and alleged agreements, representations, covenants and warranties are merged herein; and this is an integrated agreement. This Agreement may not be enlarged, modified or altered, except in a writing signed by all the Parties hereto expressly referencing this Agreement.

15. No Presumption against Drafter. Each Party acknowledges that, with the assistance of counsel, it has participated in the drafting of this Agreement. The Parties agree that this Agreement has been negotiated at arm's length by parties of equal bargaining power, each of whom was represented by competent counsel of its own choosing. None of the Parties hereto shall be considered to be the drafter of this Agreement or any provision hereof for the purpose of any statute, case law or rule of interpretation or construction that would or might cause any provision to be construed against the drafter hereof.

16. Capacity. Each Party declares and represents that it is competent to execute this instrument and that it is duly authorized, and has the full right and authority, to execute this Agreement on behalf of the Party for whom he or she is signing.

17. Governing Law and Enforcement. This Agreement and any interpretation of this Agreement shall be governed by Federal law. To the extent that state law would inform the Federal rule of decision, the applicable state law to inform the Federal rule of decision shall be the laws of the State of Minnesota. The Bankruptcy Court retains jurisdiction to interpret and enforce this Agreement.

(signature pages follow)

IN WITNESS WHEREOF, the undersigned have executed this Agreement.

Dated: _____, 2021

UNITED STATES DEPARTMENT OF JUSTICE

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Dated: _____, 2021

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Globe University, Inc.

Dated: _____, 2021

James Bartholomew
Chapter 11 Trustee

Minnesota School of Business, Inc.

Dated: _____, 2021

James Bartholomew
Chapter 11 Trustee

Dated: _____, 2021

Terry L. Myhre, on behalf of himself and the equity owners of Minnesota School of Business, Inc. and Globe University, Inc.

Dated: _____, 2021

Kathryn M. Myhre, on behalf of herself and the equity owners of Minnesota School of Business, Inc. and Globe University, Inc.

Dated: _____, 2021

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