

1 Pursuant to that order, Mr. McCarty states that he "contacted the agencies
2 and told them to stop active collection activities." McCarty's Motion Re Accounts
3 Receivable, p. 3, Ins. 23-24. However, for reasons not readily apparent in the
4 Trustee's motion, one collection company, Elliot Bay, continued "passive" collection
5 activities and/or accepted "voluntary" payments from student creditors. McCarty's
6 Motion Re Accounts Receivable, p. 4, Ins. 24-26. During an undisclosed period of
7 time and in undisclosed allotments, these funds were remitted to Mr. McCarty, who
8 is only now bringing it to the court's attention.

9 A. The Court Felt That it Was Improper to Employ the Collection Companies
10 for Many Reasons.

11 I ordered a CD of the hearing on Mr. Rigby's March 23, 2007 motion and
12 transcribed it. My transcription is attached to my declaration as Exhibit "C."
13 Reviewing that transcript and the Order Denying the Motion, it appears clear that
14 the court wished that student creditors not be harassed by collection companies,
15 nor did it feel that they should be fleeced anew inasmuch as, I believe that all
16 participants in these proceedings would agree, the court record reflects CRI was
17 much more a shady business enterprise than an educational institution. They had
18 their license to teach court reporting revoked by the Washington State Workforce
19 Board on November 8, 2005. See Declaration of Judy McKinney (in Opposition to
20 Fleishman Settlement filed October 30, 2008), ¶3, Ex. A. The Department of
21 Education was pursuing them for potential violations of federal aid regulations. *Id.*,
22 ¶¶ 4-7, Exs. B-E. They had several complaints filed against them by students that
23 attended the San Diego branch. *Id.*, ¶8, Ex. F. They had numerous complaints to
24 the Workforce Board that were upheld. See McKinney Declaration, ¶¶ 7-8, Ex. "E".

25 RESPONSE TO MOTION RE ACCOUNTS
26 RECEIVABLE -2

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Student Creditor

1 In fact, the Workforce Board filed a 59 page proof of claim on May 17, 2007 for a
2 total of \$540,877; tuition it had to refund to students.

3 Under these circumstances, the court appeared to feel that to allow collection
4 companies to continue to collect revenue from the potential victims of CRI would be
5 morally repugnant, notwithstanding the responsibilities of the trustee to preserve
6 the assets of the debtor.

7 The court also expressed concern about the tactics that collection companies
8 might use, and the fact that many of the students subject to collection might have
9 meritorious defenses to the tuition "debt." It appears the judge's concerns have
10 come to fruition, considering the fact that somehow one of these collection
11 companies managed to continue to collect money from victimized students despite
12 the judge's order.

13 B. There Appears to be No Genuine Impediment to Refunding the Collected
14 Funds to the Students.

15 At the original hearing on Mr. Rigby's Motion to Employ Collection Agency,
16 the court suggested that he make a motion to abandon the assets. However,
17 Mr. McCarty chose not to do that inasmuch as he stated that somehow Mr. Janisch
18 might end up with the proceeds of the collection company's activities. McCarty's
19 Motion Re Accounts Receivable, p. 4, Ins. 3-5. By accepting the payments from the
20 collection company, Mr. McCarty has successfully "shielded" the money from
21 Mr. Janisch's clutches. Thus, in keeping with the spirit of the judge's order and her
22 request that he file a motion for abandonment, Mr. McCarty should abandon the
23 assets right now and instruct Elliott Bay to refund the money to the students.

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25 RESPONSE TO MOTION RE ACCOUNTS
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1 Ironically, Mr. McCarty now suggests, the court essentially order him to do
2 just that by ordering him to direct the collection companies to return any monies
3 received *after* this motion is heard. McCarty's Motion Re Accounts Receivable, p. 4,
4 ln. 9. Following that reasoning, the court could and should simply order him to
5 return *all* the money collected instead of making a distinction between that
6 collected before the present motion and that which would be collected after it.

7 Mr. McCarty states that returning the money already received from the
8 collection agency would be problematic because the agency has already deducted
9 its fee. McCarty's Motion Re Accounts Receivable, p. 4, lns. 5-7 and 10-11.
10 However, if the collection companies did not file timely proofs of claims for the
11 money due them under the contracts, perhaps they are not even entitled to keep
12 any portion of the money collected. If they did file timely proof of claims,
13 Mr. McCarty could have rejected them in keeping with the spirit of the judge's order
14 and could potentially still do so. Even if the collection company is somehow allowed
15 to keep its "share" of the money collected, then the remainder should be returned
16 to the students.

17 C. All Payments Remitted by the Collection Companies Post-Order Should
18 Be Refunded to the Students.

19 Keeping payments from these students would akin to a reverse-preference
20 collection inasmuch as many of these students might well be listed as creditors.
21 Janisch testified that he listed every student that had attended CRI from the last
22 three years. See Transcript of July 10, 2008 of the 341 meeting of Alen Janisch,
23 pp. 11-12. McKinney Declaration, ¶ 6, Ex. D. However, at least three students
24 were listed as creditors and had ceased attending CRI as far back as the mid-

1 nineties - yet were still listed as creditors by Mr. Janisch, which is a testament to
2 the fact that he knew what a horrible school he was running and sought to forestall
3 any potential legal action his students might take against him. See Declarations of
4 Linda James, Pam Fukai and Jan Harlan attached hereto. Additionally, Mr. Janisch
5 potentially listed more former students that had ceased attending CRI more than
6 three years ago.

7 The fact that some students continued to "voluntarily" pay the collection
8 company is perhaps symptomatic of the tactics they employ and also the possibility
9 that these students making the "voluntary" payments were unaware of CRI's
10 bankruptcy. As the court will recall, the trustee made a motion to winnow down
11 the mailing matrix because so much mail was being returned because many of the
12 addresses that Mr. Janisch had were stale. These students could have been
13 among those that had their notices returned.

14 Conclusion

15 For the reasons stated above, though I was not a student in collection, I
16 would oppose Mr. McCarty's motion. Furthermore, Mr. McCarty has not furnished
17 any information on several important issues which include (1) why the collection
18 company "ignored" his request that they cease collection activities and why they
19 continued to accept "voluntary" payments; (2) what was the precise nature and
20 extent of his "contact" with the collection company and his request that they
21 "cease" collection activity; and (3) why he waited so long to inform the court of the
22 fact that he was accepting payments from a collection company. There is also no
23 declaration from the collection company explaining why they continued to collect
24 "voluntary" payments from the students despite being informed to cease collection

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1 activities and how these payments were "voluntary". Should the court be inclined
2 to grant Mr. McCarty's motion, perhaps it, and other interested parties, should have
3 answers to these questions before a ruling on the motion be rendered.

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5 
6 Judy McKinney
Student/Creditor

Dated: February 19, 2009

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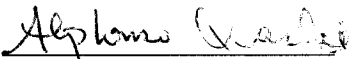
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1 CERTIFICATE OF SERVICE

2 I hereby certify that on February 19, 2009, I served a copy of the foregoing
3 document on the following parties by sending a copy via facsimile:

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RESPONSE TO MOTION RE ACCOUNTS
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